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3159–3294

federal register

MONDAY, JANUARY 17, 1977

highlights

PART I:

AUTOMOBILE FUEL ECONOMY STANDARDS
DOT/NHTSA requests comments by 2–16–77 concerning confidential business information submitted..... 3240

MOTOR VEHICLE LIGHTING
DOT/NHTSA proposal on rear side marker lamp location on wide trailers; comments by 2–28–77..... 3187

GASOLINE
EPA proposes control of lead additives for small refiner; comments by 2–9–77..... 3183

SUPPLEMENTAL FINANCING FOR INSURED PROJECT MORTGAGES
HUD/FHC clarifies eligibility requirements of hospitals for loans; effective 1–17–77..... 3162

DEHYDRATED APPLES
USDA/AMS proposes grade standards; comments by 3–31–77..... 3178

GENERALIZED SYSTEM OF PREFERENCES
Treasury/CS adopts rule relating to bond required in connection with certain entries of merchandise; effective 1–17–77..... 3161

PRIVATE AIRCRAFT RADIO STATION
FCC extends period of time of operation by purchaser of new aircraft with factory installed radio equipment.... 3168

VESSELS IN FOREIGN TRADES
Treasury/CS adopts rules pertaining to dutiability of foreign purchases of vessel equipment by American fishing boats..... 3182

BRIDGE PERMIT ACTIONS
DOT/CG proposes clarification of policy and procedures; comments by 3–3–77..... 3181

RADAR OBSERVER ENDORSEMENT
DOT/CG clarifies requirements for demonstration of skills during license renewal; comments by 3–3–77..... 3186

TENANT MAINTENANCE
HUD/FHC proposes new lease requirement; comments by 2–18–77..... 3181

CONTINUED INSIDE

reminders

(The items in this list were editorially compiled as an aid to FEDERAL REGISTER users. Inclusion or exclusion from this list has no legal significance. Since this list is intended as a reminder, it does not include effective dates that occur within 14 days of publication.)

Rules Going Into Effect Today

Commerce/MA—Admission and training of midshipmen at U.S. Merchant Marine Academy..... 55715; 12–22–76

List of Public Laws

NOTE: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's LIST OF PUBLIC LAWS.

AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The six-month trial period ended August 6, The program is being continued on a voluntary basis (see OFR notice, 41 FR 32914, August 6, 1976). The following agencies have agreed to remain in the program:

Monday	Tuesday	Wednesday	Thursday	Friday
NRC	USDA/ASCS		NRC	USDA/ASCS
DOT/COAST GUARD	USDA/APHIS		DOT/COAST GUARD	USDA/APHIS
DOT/NHTSA	USDA/FNS		DOT/NHTSA	USDA/FNS
DOT/FAA	USDA/REA		DOT/FAA	USDA/REA
DOT/OHMO	CSC		DOT/OHMO	CSC
DOT/OPSO	LABOR		DOT/OPSO	LABOR
	HEW/FDA			HEW/FDA

Documents normally scheduled on a day that will be a Federal holiday will be published the next work day following the holiday.

Comments on this program are still invited. Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408.

ATTENTION: For questions, corrections, or requests for information please see the list of telephone numbers appearing on opposite page.

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FEDERAL REGISTER, Daily Issue:	
Subscriptions and distribution.....	202–783–3238
"Dial - a - Regulation" (recorded summary of highlighted documents appearing in next day's issue).	202–523–5022
Scheduling of documents for publication.	523–5220
Copies of documents appearing in the Federal Register.	523–5240
Corrections	523–5286
Public Inspection Desk.....	523–5215
Finding Aids.....	523–5227
Public Briefings: "How To Use the Federal Register."	523–5282
Code of Federal Regulations (CFR)..	523–5266
Finding Aids.....	523–5227
PRESIDENTIAL PAPERS:	
Executive Orders and Proclamations.	523–5233
Weekly Compilation of Presidential Documents.	523–5235
Public Papers of the Presidents....	523–5235
Index	523–5235
PUBLIC LAWS:	
Public Law dates and numbers.....	523–5237
Slip Laws.....	523–5237
U.S. Statutes at Large.....	523–5237
Index	523–5237
U.S. Government Manual.....	523–5230
Automation	523–5240
Special Projects.....	523–5240

HIGHLIGHTS—Continued

MEETINGS—

Commerce: CTAB Panel on Energy Policy, 2–7 and 2–8–77 3191
DOT/CG: Ship Structure Subcommittee, 2–9–77..... 3240
EPA: Administrator's Pesticide Policy Advisory Committee, 2–7 and 2–8–77..... 3196
FEA: East Coast Natural Gas Distribution, meetings for the months of January, February, March 1977..... 3207
HEW/ADAMHA: Advisory Committees, 2–9 thru 2–11 and 2–24 thru 2–26–77..... 3213
National Advisory Council on Alcohol Abuse and Alcoholism, 2–7 and 2–8–77..... 3213
NIH: Division of Research Grants, Study Sessions, February and March, 1977..... 3213
Interior; Water Research and Technology Advisory Panel, 1–28–77..... 3217
NPS: Cape Cod National Seashore Advisory Committee, 2–4–77..... 3216
North Atlantic Region Advisory Committee, 2–3 and 2–4–77..... 3216
Southeast Regional Advisory Committee, 2–1 thru 2–4–77..... 3217
NRC: Advisory Committee on Reactor Safeguards; Siting Evaluation Subcommittee, 2–2–77..... 3224
Advisory Committee on Reactor Safeguards; Subcommittee on Resolution of Generic Items, 2–2–77 3225
Advisory Committee on Reactor Safeguards; Working Group on Assessment of Selected Light-Water Reactor Safety Matters, 2–1–77..... 3225
NSF: Science Education Projects; Subpanel for National Needs Graduate Traineeship Program, 2–3 thru 2–5–77..... 3223
Science Education Projects; Subpanel for the Comprehensive Assistance to Undergraduate Science Education Program (CAUSE), 2–3 thru 2–5–77.. 3224
USDA/AMS: Advisory Committee on Regulatory Programs, 2–2–77..... 3189
Shippers Advisory Committee, 2–1 and 2–8–77..... 3189
VA: Cooperative Studies Evaluation Committee, 2–6 thru 2–8–77..... 3243

AMENDED MEETING—

CRC: Oklahoma Advisory Committee, 1–24–77..... 3190

RESCHEDULED MEETING—

NRC: Advisory Committee on Reactor Safeguards, Subcommittee on the Cherokee Nuclear Station, Units 1, 2, and 3 and the Perkins Nuclear Station, Units 1, 2, and 3, 3–1–77..... 3224

HEARING—

Commission on Postal Service, Public service costs of postal service, 2–9 and 2–10–77..... 3191

PART II:

UNIFORM FEDERAL STANDARDS

CSA issues policies and procedures for public and private organizations receiving grants; comments by 2–16–77; effective 4–1–77..... 3271

PART III:

COMMUNITY DEVELOPMENT

HUD proposal on eligible activities in block grants program; comments by 2–18–77..... 3291

contents

AGRICULTURAL MARKETING SERVICE

Rules

Almonds grown in Calif. 3159

Proposed Rules

Apples, dehydrated; grade standards 3178

Notices

Committees; establishment, renewals, etc.:
Shippers Advisory Committee; correction 3189

Meetings:
Regulatory Programs Advisory Committee 3189
Shippers Advisory Committee 3189

AGRICULTURE DEPARTMENT

See Agricultural Marketing Service.

ALCOHOL, DRUG ABUSE, AND MENTAL HEALTH ADMINISTRATION

Notices

Meetings:
Advisory committees; February (2 documents) 3213

ALCOHOL, TOBACCO AND FIREARMS BUREAU

Notices

Meetings:
Reports of closed meetings; availability 3242

CIVIL AERONAUTICS BOARD

Proposed Rules

Policy statements:
Hearings, standards for determining priorities; extension of time 3180

Notices

Meetings:
Oakland, port of, Calif. 3190

Hearings, etc.:
Flying Tiger Line, Inc., et al 3189
International Air Transport Association 3189
Texas International Airlines, Inc 3190

CIVIL RIGHTS COMMISSION

Notices

Meetings:
Oklahoma Advisory Committee 3190

COAST GUARD

Proposed Rules

Bridge permit actions 3181
Merchant marine officers and seamen:
Motorboat operators and staff officers; licensing and registration; radar observer endorsements 3186
Ports and waterways, vessel traffic service:
Puget Sound 3182

Notices

Committees; establishment, renewals, etc.:
Research Advisory Committee 3240

Meetings:
Ship Structure Subcommittee 3240

COMMERCE DEPARTMENT

See also Economic Development Administration.

Notices

Meetings:
Technical Advisory Board; Panel on Energy Policy 3191

COMMUNITY PLANNING AND DEVELOPMENT, OFFICE OF ASSISTANT SECRETARY

Proposed Rules

Community development block grants:
Eligible activities 3291

COMMUNITY SERVICES ADMINISTRATION

Rules

Community Action Programs:
Financial management, grantee; authority citation change 3165
Financial management, grantee; criteria for non-Federal share waiver 3165
Freedom of information; CFR correction 3165
Uniform Federal standards:
Grant-in-aid programs; policies and procedures for consistent administration 3271

CUSTOMS SERVICE

Rules

Articles conditionally free, subject to reduced rate, and liquidated damages:
Merchandise, duty free entry; release under bond; nonproduction of documents 3161
Vessels in foreign and domestic trades:
Dutiability, vessel equipment; foreign purchases by American fishing vessels 3160

ECONOMIC DEVELOPMENT ADMINISTRATION

Notices

Import determination petitions:
Hygrade Handbag Corp. 3190
Penn State Mills, Inc. 3190

ENVIRONMENTAL PROTECTION AGENCY

Rules

Water pollution; effluent guidelines for certain point source categories:
Ore mining and dressing, suspended 3165
Sugar processing, suspended 3164

Proposed Rules

Fuels and fuel additives; control of lead in gasoline 3183

Notices

Air pollution control; new motor vehicles:
California, waiver of federal preemption 3192
Environmental statements; availability, etc.:
Calumet Tunnel System 3192
Jacksonvill, City of, Jackson County, Oregon 3192
Lignite-fired steam generators 3192
Meetings:
Administrator's Pesticide Policy Advisory Committee 3196
Pesticide chemicals; tolerances, exemptions, etc.; petitions:
BASF Wyandotte Corp. 3191

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Rules

Procedural regulations:
Employment discrimination; deferral of charges to appropriate State and local agencies; designated 706 agencies 3163

FEDERAL AVIATION ADMINISTRATION

Rules

Airworthiness directives:
Piper 3170
Pratt & Whitney 3170
Control zone and transition area 3170
Standard instrument approach procedures 3171
Transition areas 3171

Proposed Rules

Transition areas (2 documents) 3181
VOR Federal airways 3179

FEDERAL COMMUNICATIONS COMMISSION

Rules

Amateur radio service:
Amateur and Citizens Division name changed to Personal Radio Division 3166
Interim amateur permits 3166
Aviation services:
Private aircraft radio station; extension of temporary authority to operate 3168
Practice and procedure:
Fee schedules; requirements suspended; clarification 3168
Television broadcast stations; table of assignments:
North Carolina 3167

Proposed Rules

FM broadcast stations; table of assignments:
West Virginia 3186

Notices

Common carrier services and facilities; resale and shared use; regulatory policies 3198
Domestic public radio services; applications accepted for filing 3196
Television broadcast station; application for construction permit:
Midwest St. Louis, Inc. and New Life Evangelistic Center, Inc. 3204

CONTENTS

FEDERAL ENERGY ADMINISTRATION

Notices

Meetings:
East Coast Natural Gas Distribution 3207

FEDERAL HOME LOAN BANK BOARD

Notices

Applications, etc.:
First Savings & Loan Assoc. 3207
Kan-Valley Enterprises, Inc. 3207
Leavell Co. 3207

FEDERAL HOUSING COMMISSIONER—OFFICE OF ASSISTANT SECRETARY FOR HOUSING

Rules

Mortgage and loan insurance program:
Hospitals; supplemental loans; eligibility 3162

FEDERAL INSURANCE ADMINISTRATION

Rules

Insurance Development Program, National:
FAIR plan, Statewide; notice to policyholders; correction 3162

FEDERAL MARITIME COMMISSION

Proposed Rules

Rates, fares and charges (freight and passenger); filing for domestic offshore trade; publication and posting; extension of time 3186

Notices

Freight forwarder licenses:
Direct Van Service 3208
Manhattan Shipping Co. 3209

Agreements filed, etc.:
American Export Lines, Inc. et al 3207
Eurogulf Self-Policing Agreement 3208
Gulf/United Kingdom Freight Conference 3208
Gulf/United Kingdom Freight Conference and Seatrain International S.A. 3208
North Atlantic Discussion Agreement 3209
Sea-Land Service, Inc. and Seatrain Lines Intercaribbean S.A. 3209
South Atlantic-North Europe Rate Agreement 3209

FEDERAL POWER COMMISSION

Notices

Hearings, etc.:
Connecticut Light & Power Co. 3210
Lawrenceburg Gas Transmission Corp 3210
Mid Louisiana Gas Co. 3210
Texas Eastern Transmission Corp (2 documents) 3211
Transcontinental Gas Pipe Line Corp 3212
Trunkline Gas Co. and Texas Gas Transmission Co. 3212

FEDERAL RESERVE SYSTEM

Rules

Banks, State; securities; financial statement forms 3171

FEDERAL TRADE COMMISSION

Proposed Rules

Mergers and acquisitions; financial transactions and institutions; transitional policy; correction 3181

GENERAL SERVICES ADMINISTRATION

Notices

Electric rate increase proceeding; proposed intervention:
Commonwealth Edison Co. 3212
Property management regulation, temporary:
Authority delegation to Defense Department Secretary 3212

HEALTH, EDUCATION, AND WELFARE DEPARTMENT

See Alcohol, Drug Abuse and Mental Health Administration; National Institutes of Health.

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

See also Community Planning and Development, Office of Assistant Secretary; Federal Housing Commissioner—Office of Assistant Secretary for Housing; Federal Insurance Administration.

Proposed Rules

Low-income housing:
Lease and grievance procedures; tenant maintenance 3181

INTERIOR DEPARTMENT

See also Land Management Bureau; National Park Service.

Notices

Meetings:
Water Research and Technology Advisory Panel 3217

INTERNAL REVENUE SERVICE

Proposed Rules

Income taxes:
Tuition remission programs; withdrawn 3181

INTERNATIONAL TRADE COMMISSION

Notices

Import investigations:
Mushrooms 3217

INTERSTATE COMMERCE COMMISSION

Rules

Motor carriers:
Household goods transportation; advertising practices 3169

Notices

Agreements under sections 5a and b, applications for approval, etc.:
California Household Goods Carriers Bureau, Inc. 3244
Machinery Haulers Association 3244
Fourth section applications for relief 3244
Hearing assignments 3243
Motor carriers:
Transfer proceedings (3 documents) 3245

JUSTICE DEPARTMENT

Rules

Organization, functions, and authority delegations:
Privacy and Information Appeals Office; correction 3163

LAND MANAGEMENT BUREAU

Notices

Opening of public lands:
Oregon (4 documents) 3215
Washington (2 documents) 3216

MANAGEMENT AND BUDGET OFFICE

Notices

Clearance of reports; list of requests 3230

NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION

Proposed Rules

Motor vehicle safety standards:
Lamps, reflective devices, and associated equipment 3187

Notices

Automobile fuel economy standards; confidential information treatment; inquiry 3240

NATIONAL INSTITUTES OF HEALTH

Notices

Meetings:
Research Grants Division 3213

NATIONAL PARK SERVICE

Notices

Meetings:
Cape Cod National Seashore Advisory Commisison 3216
North Atlantic Region Advisory Committee 3216
Southeast Regional Advisory Committee 3217

NATIONAL SCIENCE FOUNDATION

Notices

Meetings:
Comprehensive Assistance to Undergraduate Science Education Program Subpanel 3223
National Needs Graduate Traineeship Program Subpanel 3224

NUCLEAR REGULATORY COMMISSION

Proposed Rules

Environmental protection; licensing, regulatory policy, and practice rules:
Environmental statements and applications; distribution to local officials 3178

CONTENTS

Notices

Meetings:
- Reactor Safeguards Advisory Committees (4 documents) ... 3224, 3225

Applications, etc.:
- Arkansas Power & Light Co ... 3229
- Consolidated Edison Co. of New York, et al. (2 documents) ... 3227
- Consumers Power Co ... 3227
- Florida Power and Light Co ... 3228
- Nuclear Engineering Co., Inc ... 3228
- Sacramento Municipal Utility District ... 3228
- Southern California Edison Co. and San Diego Gas and Electric Co ... 3229
- Westinghouse Electric Corp ... 3228
- Wisconsin Public Service Corp., et al ... 3226

POSTAL SERVICE COMMISSION

Notices

Public service costs of postal services; announcement of hearings ... 3191

SECURITIES AND EXCHANGE COMMISSION

Notices

Self-regulatory organizations, proposed rule changes:
- Pacific Stock Exchange, Inc. (3 documents) ... 3226–3228
- Philadelphia Stock Exchange, Inc ... 3238

Hearings, etc.:
- Arkansas-Missouri Power Co. and Associated Natural Gas Co ... 3231
- Columbia Gas System Inc. (2 documents) ... 3231, 3238
- Eastern Utilities Association, et al ... 3231
- Franklin Life Insurance Co. and Franklin Financial Services Corp ... 3233
- Jefferson Standard Life Insurance Co. and Jefferson-Pilot Equity Sales, Inc ... 3235
- John Hancock Tax-exempt Income Trust and John Hancock Distributors, Inc ... 3234
- Southern Co., et al ... 3239

SMALL BUSINESS ADMINISTRATION

Notices

Applications, etc.:
- Developers Equity Capital Corp ... 3240
- Situation Ventures Corp ... 3240

TRADE NEGOTIATIONS, OFFICE OF SPECIAL REPRESENTATIVE

Notices

Import relief investigations; determinations:
- Mushrooms ... 3230

TRANSPORTATION DEPARTMENT

See Coast Guard; Federal Aviation Administration; National Highway Traffic Safety Administration.

TREASURY DEPARTMENT

See also Alcohol, Tobacco and Firearms Bureau; Customs Service; Internal Revenue Service.

Notices

Antidumping:
- Glass, clear sheet, from Romania (2 documents) ... 3242

Securities for exemption, designation; Federal Farm Credit Banks — Consolidated System-wide Bonds ... 3242

VETERANS ADMINISTRATION

Notices

Meetings:
- Corporative Studies Evaluation Committe ... 3243

"THE FEDERAL REGISTER—WHAT IT IS AND HOW TO USE IT"

Briefings at the Office of the Federal Register

(For Details, See 41 FR 46527, Oct. 21, 1976)

RESERVATIONS: DEAN L. SMITH, 523–5282

list of cfr parts affected in this issue

The following numerical guide is a list of the parts of each title of the Code of Federal Regulations affected by documents published in today's issue. A cumulative list of parts affected, covering the current month to date, follows beginning with the second issue of the month.

A Cumulative List of CFR Sections Affected is published separately at the end of each month. The guide lists the parts and sections affected by documents published since the revision date of each title.

7 CFR
- 981 ... 3159

PROPOSED RULES:
- 52 ... 3178

10 CFR

PROPOSED RULES:
- 2 ... 3178
- 51 ... 3178

12 CFR
- 206 ... 3171

14 CFR
- 39 (2 documents) ... 3170
- 71 (2 documents) ... 3170, 3171
- 97 ... 3171

PROPOSED RULES:
- 71 (3 documents) ... 3179, 3180
- 399 ... 3180

16 CFR

PROPOSED RULES:
- 801 ... 3181

19 CFR
- 4 ... 3160
- 10 ... 3161
- 172 ... 3161

24 CFR
- 241 ... 3162
- 1905 ... 3162

PROPOSED RULES:
- 570 ... 3292
- 866 ... 3181

26 CFR

PROPOSED RULES:
- 1 ... 3181

28 CFR
- 0 ... 3163

29 CFR
- 1601 ... 3163

33 CFR

PROPOSED RULES:
- 114 ... 3181
- 115 ... 3181
- 161 ... 3182

40 CFR
- 409 ... 3164
- 440 ... 3165

PROPOSED RULES:
- 80 ... 3183

45 CFR
- 1005 ... 3165
- 1050 ... 3272
- 1068 (2 documents) ... 3165

46 CFR

PROPOSED RULES:
- 10 ... 3186
- 531 ... 3186

47 CFR
- 0 (2 documents) ... 3166, 3167
- 1 (3 documents) ... 3166–3168
- 73 ... 3167
- 87 ... 3168
- 97 (2 documents) ... 3166, 3167

PROPOSED RULES:
- 73 ... 3186

49 CFR
- 1056 ... 3169

PROPOSED RULES:
- 571 ... 3187

CUMULATIVE LIST OF PARTS AFFECTED DURING JANUARY

The following numerical guide is a list of parts of each title of the Code of Federal Regulations affected by documents published to date during January.

1 CFR

PROPOSED RULES:
442 ... 1267

3 CFR

EXECUTIVE ORDERS:
10480 (Amended by EO 11956) ... 2947
11490 (Amended by EO 11953) ... 2491
11651 (Amended by EO 11951) ... 1453
11724 (Superseded by EO 11954) ... 2297
11821 (Amended by EO 11949) ... 1017
11921 (See EO 11953) ... 2491
11949 ... 1017
11950 ... 1451
11951 ... 1453
11952 ... 2293
11953 ... 2491
11954 ... 2297
11955 ... 2499
11956 ... 2947

5 CFR

213 ... 1455, 2949
1410 ... 2299

7 CFR

1 ... 743
2 ... 2968
26 ... 1019
55 ... 2969
56 ... 2970
59 ... 2971
70 ... 2971
210 ... 2971
226 ... 1475
354 ... 1475
718 ... 2973
722 ... 1476
726 ... 2300
729 ... 749
730 ... 2301
905 ... 1022
907 ... 1230, 2665
910 ... 1476, 2977
928 ... 1, 2, 2665
959 ... 2308
971 ... 2666
981 ... 3159
1430 ... 3
1473 ... 2977
1822 ... 1023, 2051
1843 ... 1231
1845 ... 2308

PROPOSED RULES:
52 ... 3178
270 ... 1479
271 ... 1479
272 ... 780, 2328
275 ... 1479
730 ... 780
967 ... 2691
987 ... 2503
1063 ... 1356
1070 ... 1356
1078 ... 1356
1079 ... 1356
1205 ... 2503
1421 ... 2328
1434 ... 2980
1701 ... 1479
1473 ... 2977

9 CFR

73 ... 2949
97 ... 1455
113 ... 750, 1456
319 ... 751
381 ... 2949

PROPOSED RULES:
92 ... 1483

10 CFR

100 ... 2051
140 ... 46
Ch. II ... 1036
212 ... 1036, 1456, 2308

PROPOSED RULES:
2 ... 3178
51 ... 3178
212 ... 2646

12 CFR

4 ... 2950
16 ... 2200
202 ... 1242, 2950
206 ... 3171
207 ... 968
211 ... 752
212 ... 2951
213 ... 752
220 ... 752
221 ... 968
224 ... 968
225 ... 752, 1263, 2951
226 ... 753, 1264, 2650
227 ... 2950
265 ... 2501, 2950
563 ... 2952
570 ... 2952
601 ... 2666
704 ... 1458

PROPOSED RULES:
226 ... 780, 1268
505b ... 2503
523 ... 2338
545 ... 2328
564 ... 2328
604 ... 55, 2078

13 CFR

309 ... 753

PROPOSED RULES:
112 ... 2506
121 ... 2505, 2980

14 CFR

25 ... 2052
37 ... 19
39 ... 1217, 1218, 2053–2055, 3170
71 ... 300, 2055, 2056, 3170, 3171
73 ... 300
75 ... 300
97 ... 1219, 2056, 3171
221a ... 1220
241 ... 1219
302 ... 2667
378a ... 2309
385 ... 1220, 2667, 2668

14 CFR—Continued

PROPOSED RULES:
39 ... 1268–1270
71 ... 1270, 1271, 2078, 2079, 3179
152 ... 2850
239 ... 2693
288 ... 1271
298 ... 2692
310b ... 2995
370 ... 2995
399 ... 3180

15 CFR

369 ... 2057
371 ... 1222
377 ... 1222
931 ... 1164

PROPOSED RULES:
920 ... 2507

16 CFR

13 ... 3–5
1201 ... 1428

PROPOSED RULES:
1 ... 2980
4 ... 2079
438 ... 1483
447 ... 2694
450 ... 1038
801 ... 3181
1301 ... 1484

17 CFR

1 ... 2628
200 ... 753
211 ... 2058
240 ... 753, 754, 2060
241 ... 759
276 ... 2953

PROPOSED RULES:
240 ... 781, 782
249 ... 782

18 CFR

2 ... 2954
11 ... 1226
141 ... 6
154 ... 2954
300 ... 2668

PROPOSED RULES:
1 ... 2079
2 ... 2329
3 ... 2079
154 ... 1272
157 ... 56

19 CFR

4 ... 3160
6 ... 2309
10 ... 2309, 2310, 3161
153 ... 2501
172 ... 3161

PROPOSED RULES:
1 ... 2329
113 ... 2330
201 ... 805

20 CFR

404 ... 2062
405 ... 1028
416 ... 2062
614 ... 1459

PROPOSED RULES:
416 ... 2079

21 CFR

2 ... 1459
4 ... 3108
8 ... 1459
102 ... 761
121 ... 1460, 1461
314 ... 1624, 1638, 3109
320 ... 1624, 1638
514 ... 3109
520 ... 1462
540 ... 1462
558 ... 761, 1463, 2312

PROPOSED RULES:
1 ... 2330
3e ... 1483
11 ... 806
18 ... 2330
121 ... 1483
128d ... 807
369 ... 2330
500 ... 2330
510 ... 2981
701 ... 2330
740 ... 2330
801 ... 2330

22 CFR

41 ... 2501
42 ... 2501

23 CFR

625 ... 6
712 ... 7

24 CFR

203 ... 782
205 ... 763
207 ... 764, 2954
213 ... 764, 2954
221 ... 765, 2954
231 ... 766, 2954
241 ... 763, 3162
280 ... 960
1905 ... 3162
1914 ... 2193
1917 ... 2063–2068
3282 ... 2576

PROPOSED RULES:
201 ... 1487
279 ... 3112
406 ... 2796
501 ... 1488
570 ... 3292
866 ... 3181
1917 ... 2082

26 CFR

1 ... 767, 1195, 1463, 2501
7 ... 1469, 1471, 2954
41 ... 2671
48 ... 2671
142 ... 2677
154 ... 2312
404 ... 1029, 2313

26 CFR—Continued

PROPOSED RULES:
1 ... 57, 2694, 3181
54 ... 1488
301 ... 1038, 1489

28 CFR

0 ... 3163

PROPOSED RULES:
32 ... 1390

29 CFR

15 ... 769
94 ... 1656, 2426
95 ... 2427
96 ... 2428
97 ... 1656
98 ... 2428
99 ... 773, 2430
511 ... 2313
609 ... 2954
672 ... 2955
673 ... 2955
1601 ... 3163
1910 ... 2956
1926 ... 2958
1952 ... 2313
2608 ... 2677
2610 ... 2678

PROPOSED RULES:
90 ... 2981
1910 ... 808, 1742, 1806
2550 ... 1488, 1618

30 CFR

100 ... 1214

PROPOSED RULES:
11 ... 2986
77 ... 2800
211 ... 1489, 2082

31 CFR

1 ... 2311
51 ... 2196, 2422
101 ... 1471
210 ... 9
515 ... 1472

32 CFR

256 ... 773
2000 ... 2679

PROPOSED RULES:
242a ... 1492
903 ... 2085

33 CFR

40 ... 10
92 ... 2681
159 ... 11
183 ... 2681, 2682

PROPOSED RULES:
114 ... 3181
115 ... 3181
161 ... 3182
209 ... 2572

34 CFR

Ch. I ... 12
232 ... 1478

36 CFR

212 ... 2957
221 ... 2957

36 CFR—Continued

231 ... 2957
251 ... 2957
261 ... 2957
262 ... 2961
271 ... 2962
272 ... 2962
291 ... 2962
295 ... 2962
606 ... 1473

PROPOSED RULES:
16 ... 812
17 ... 812

37 CFR

201 ... 2962

PROPOSED RULES:
1 ... 2632
3 ... 2632
5 ... 2632

38 CFR

0 ... 2314
3 ... 2069
17 ... 2316

39 CFR

PROPOSED RULES:
1 ... 2699
2 ... 2699
3 ... 2699
4 ... 2699
5 ... 2699
6 ... 2699
7 ... 2699
8 ... 2699

40 CFR

6 ... 2450
60 ... 1214
61 ... 1215
86 ... 1122, 1150
129 ... 2588, 2617
190 ... 2858
220 ... 2468
221 ... 2470
222 ... 2471
223 ... 2474
224 ... 2474
225 ... 2475
226 ... 2475
227 ... 2476
228 ... 2482
229 ... 2489
409 ... 3164
430 ... 1398
440 ... 3165
455 ... 2316

PROPOSED RULES:
22 ... 1492
52 ... 1273, 1494, 2705
60 ... 2842
80 ... 3183
85 ... 1044
180 ... 815
201 ... 2330
202 ... 2330
260 ... 2331
1516 ... 1044

41 CFR

3–3 ... 2683
3–4 ... 2684
3–16 ... 2684
3–50 ... 2684

41 CFR—Continued

9–7	2963
9–15	2963
9–51	2684
Ch. 14	1215
14–1	1215
14–10	1215
101–1	12
101–25	1030
101–26	1032
101–28	2317
101–38	1477

PROPOSED RULES:

3–1	1273
101–17	816

42 CFR

PROPOSED RULES:

54b	2986
101	2994

43 CFR

4	1216
2650	779
3100	1032
4110	778
4120	778

PROPOSED RULES:

3520	2684
3800	1045

PUBLIC LAND ORDER:

5561 (Amended by PLO 5612)	2684
5611 (Corrected by PLO 5612)	2684
5612	2706

45 CFR

177	2963
193	1190
248	2684
250	779
1005	3165
1050	3272
1068	3165

PROPOSED RULES:

46	2792, 3076
158	2086
Ch. II	2445

45 CFR—Continued

PROPOSED RULES—Continued

205	2440
250	2331
706	2708
1480	1045

46 CFR

536	1473

PROPOSED RULES:

10	3186
12	1278
502	817
531	3186

47 CFR

0	3166, 3167
1	3166–3168
13	1231
15	1231
21	1232
73	1233, 2502, 3167
74	2069
81	1474
83	1231, 1474
87	3168
97	3166, 3167

PROPOSED RULES:

64	1278
73	1278, 1279, 2086, 3186
74	2087
83	2088
97	2089

49 CFR

Ch. V	2864
25	12
99	3118
173	2071, 2688
174	2071
178	2688
218	2318
221	2321
225	1221
231	1222
310	2964
1033	2965
1047	19

49 CFR—Continued

1056	3169
1241	1474
1249	1474
1250	1474
1251	1474

PROPOSED RULES:

Subtitle A	2868
173	2709
179	2709
228	2994
230	2994
267	2507
523	2092
571	3187
1251	2092

50 CFR

17	2071, 2965
26	1033, 2689, 2690
32	2690
33	1034, 2690
216	1034
260	2326
261	2326
262	2326
263	2326
264	2326
265	2326
266	2326
267	2326
268	2326
269	2326
270	2326
271	2326
272	2326
273	2326
274	2326
275	2326
276	2326
277	2326
278	2326
279	2326
601	2968
602	2968

PROPOSED RULES:

17	2101, 2102, 2507
216	1049

FEDERAL REGISTER PAGES AND DATES—JANUARY

Pages	Date	Pages	Date
1–741	Jan. 3	2293–2497	11
743–1015	4	2499–2664	12
1017–1194	5	2665–2946	13
1195–1450	6	2947–3157	14
1451–2049	7	3159–3294	17
2051–2291	10		

rules and regulations

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

Title 7—Agriculture

CHAPTER IX—AGRICULTURAL MARKETING SERVICE (MARKETING AGREEMENTS AND ORDERS; FRUITS, VEGETABLES, NUTS), DEPARTMENT OF AGRICULTURE

PART 981—ALMONDS GROWN IN CALIFORNIA

Administrative Rules and Regulations; Quality Control

Notice of a proposal to amend Subpart—Administrative Rules and Regulations (7 CFR 981.441–981.481) by adding a new § 981.442 was published in the August 26, 1976, issue of the FEDERAL REGISTER (41 FR 36034). The proposed section provides for quality control of incoming almonds. It prescribes how the quantity of inedible kernels in each variety of almonds received by a handler must be determined and disposed of by the handler.

The subpart is pursuant to the marketing agreement, as amended, and Order No. 981, as amended (7 CFR Part 981; 41 FR 26852, 27827, 53650), hereinafter collectively referred to as the "order", regulating the handling of almonds grown in California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The proposal was based on a unanimous recommendation of the Almond Control Board.

The notice afforded interested persons an opportunity to submit written data, views, or arguments with respect to the proposal; one such comment was received from the Almond Board of California.

Section 981.42 (effective July 1, 1976; 41 FR 26852, 27827) provides among other things that each handler shall cause to be determined, through the inspection agency, and at the handler's expense, the percent of inedible kernels in each variety of almonds received by him, and shall report this determination to the Board. The quantity of inedible kernels in each variety in excess of two percent of the kernel weight received, shall constitute a weight obligation to be accumulated in the course of processing and shall be delivered to the Board, or Board accepted crushers, feed manufacturers, or feeders. Section 981.42 also authorizes the Board, with the approval of the Secretary, to establish rules and regulations necessary and incidental to the administration of this provision, including the method of determining inedible kernel content and satisfaction of the disposition obligation. It also provides that the Board for good cause may waive portions of obligations for those handlers not generating inedible material from such sources as blanching or manufacturing.

The notice proposed the addition of a new section, pursuant to the authority contained in § 981.42. The new § 981.442 specified the manner in which the inedible kernelweight of almonds would be determined and methods by which a handler could satisfy his inedible kernelweight obligation. The proposal also provided procedures for maintaining the identity of the various forms of almond receipts by variety, reporting requirements, and waiving a portion of the disposition obligations of those handlers not blanching almonds or manufacturing almond products.

On the basis of the Board's comment several changes are being made in § 981.442, as proposed in the notice. The last sentence of § 981.442(a)(1) is changed to require each handler to submit to the Board such reports of the quantity received by the method of acquisition—i.e. contract, field purchases, etc.—as the Board may require. In its comment, the Board indicated that this provision should not impose a mandatory requirement, but rather provide the Board with authority to obtain this information if needed for compliance.

The Board commented that that portion of § 981.442(a)(2) dealing with the definition of an "unknown" lot is at variance with handler practice in that the term "unknown" is applied only to a lot in which the unknown variety comprises 90 percent or more of the lot. Therefore, the definition of an "unknown" lot has been revised accordingly.

The Board noted that, in § 981.442(a)(3), "total kernel weight" had been proposed as a basis for inspection service reporting. This term, however, is at variance with the industry's concept of "sound meat shell-out" which takes into consideration a shellout loss. Therefore, subparagraph (3) is revised to require the inspection agency to prepare a report for each handler showing, by variety, the total kernel weight received by the handler less any allowance for shellout loss as the Board may prescribe, and the inedible kernel weight. Also, on the basis of the Board's comment, the provision for the inspection agency to include, in its report, the total kernel weight of almonds acquired by the handler, has been deleted. The Board indicated that this information is of no value to it for inedible determination. In conformity with the change in subparagraph (3), § 981.442(a)(4) is changed to require disposition of the weight of inedible kernels in excess of two percent of the kernel weight reported to the Board, instead of two percent of "total kernel weight" proposed in the notice.

In its comment, the Board also requested that almonds of the Peerless variety designated as bleaching stock be exempted from the requirements of §§ 981.42 and 981.442 for inedible determination and disposition. It also proposed that § 981.442(a)(4) be changed to permit an adjustment of the disposition obligation if almond varieties other than Peerless are used as bleaching stock.

Subsequent to the submission of the Board's comment, the order was amended December 6, 1976 (41 FR 53650). The amendment permits the Board, with the approval of the Secretary, to exempt bleaching stock almonds from inedible kernel determination or obligation pursuant to § 981.42(a). Bleaching stock are almonds which are marketed in the shell. Previously, this section which became effective July 1, 1976, provided that each handler cause to be determined the percent of inedible kernels in each variety of *all* almonds he receives and report the determination to the Board. The requirements of § 981.42(a), however, were designed primarily to control inedible kernels in shelled almonds. Therefore, § 981.442(a)(1) as proposed in the notice has been changed to permit the exemption of Peerless variety almonds designated as bleaching stock from the determination and obligation requirements. Also, § 981.442(a)(4) has been revised so that a proportionate reduction from the disposition obligation would be permitted for almonds of varieties other than Peerless when used as bleaching stock.

The Board requested that § 981.442(a)(7) be essentially the language it had previously recommended to the Secretary. The proposal in the notice would have required that all lots received from growers, as "inedible almonds unfit for processing", be disposed of in their entirety as provided in § 981.442(a)(5). Proposed subparagraph (5) would have required these lots to be received and kept under surveillance of the inspection agency, and identified as the inspection agency and the Board may require. The Board noted in its comment, however, that these requirements were unnecessary and burdensome on handlers. It said that disposition of such an inedible lot should be a separate and additional obligation, and that inspectors were not always available to perform functions specified in the notice. Therefore, § 981.442(a)(7) is changed to require all lots received from growers as "inedible almonds unfit for processing", be exempt from the requirements of § 981.442(a)(1) and (3). The lots, however, shall be disposed of in their entirety other than pickouts, as provided in § 981.442(a)(5).

Such disposition of these lots would be in addition to the disposition obliga-

tion of § 981.442(a)(4). If a grower sells or ships inedible almonds to a person other than a handler, the grower would thereby become a handler and subject to all the requirements of § 981.442(a).

The Board also requested that the introductory paragraph of § 981.442(a) be changed to that it had proposed. The Board said this should be a "general statement which does not resolve later issues." However, the language which appeared in the notice is more appropriate in that it restates the guidelines set forth in § 981.42(a), which § 981.442 implements. Thus, the wording proposed in the notice should be adopted.

Therefore, after consideration of all relevant matter presented, including that in the notice, the information and recommendation submitted by the Board, the comment received, and other available information, it is found that to amend the administrative rules and regulations as herein set forth will tend to effectuate the declared policy of the act.

It is further found that good cause exists for not postponing the effective time of this action until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553) in that: (1) These rules apply to 1976 crop almonds; (2) The delivery of the 1976 almond crop is well under way and the final details of the inedible determination and obligation are urgently needed; (3) Further delay would burden the field buying and processing activities of handlers; and (4) No useful purpose would be served by postponing its effective time beyond that hereinafter provided.

It is therefore, ordered, That Subpart—Administrative Rules and Regulations (7 CFR 981.441–981.481) be amended by adding a new § 981.442 reading as follows:

§ 981.442 Quality control.

(a) *Incoming.* Pursuant to § 981.42(a), the quantity of inedible kernels in each variety of almonds received by a handler, including almonds of his own production, shall be determined and disposed of in accordance with the provisions of this paragraph.

(1) *Sampling.* Each handler shall cause a representative sample of almonds to be drawn from each lot, except lots of Peerless variety designated as bleaching stock, of any variety received by him. The sample shall be drawn before inedible kernels are removed from the lot, or the lot is processed or stored by the handler. For receipts at premises with mechanical sampling equipment and under contracts providing for payment by the handler to the producer for sound meat content, samples shall be drawn by the handler in a manner acceptable to the Board and the inspection agency. The inspection agency shall make periodic checks of the mechanical sampling procedures. For all other receipts, including but not limited to field examination and purchase receipts, accumulations purchased for cash at the handler's door or from an accumulator, or almonds of the handler's own production, samples shall be drawn by or under the surveillance of the inspection agency. All samples shall be bagged and identified in a manner acceptable to the Board and the inspection agency. Each handler shall identify his receipts according to the method of acquisition. Each handler shall submit to the Board such reports of the quantity received by method of acquisition, as the Board may require.

(2) *Variety.* For the purpose of classifying receipts by variety to determine a handler's disposition obligation, "variety" shall mean that variety of almonds which constitutes at least 90 percent of a lot. If no variety constitutes at least 90 percent of the almonds in a lot, the lot shall be designated as "mixed". If the variety which constitutes at least 90 percent of the almonds in the lot is unknown, the lot shall be designated "unknown".

(3) *Analysis of sample.* Each sample shall be analyzed by or under the surveillance of the inspection agency to determine the kernel content and the proportion of inedible kernels in the sample. The inspection agency shall prepare a report for each handler showing, by variety, the total kernel weight received by the handler less any allowance for shellout loss as the Board may prescribe, and the inedible kernel weight. The report shall cover the handler's daily receipts or the handler's total receipts during a period not exceeding one month, and shall be submitted by the inspection agency to the Board and the handler.

(4) *Disposition obligation.* The weight of inedible kernels in excess of two percent of the kernel weight reported to the Board of any variety received by a handler shall constitute his disposition obligation. If a variety other than Peerless is used as bleaching stock, the weight so used may be reported to the Board and the disposition obligation for that variety reduced proportionately.

(5) *Meeting the disposition obligation.* Each handler shall meet his disposition obligation by delivering packer pickouts, kernels rejected in blanching, pieces of kernels, meal accumulated in manufacturing, or other material, to crushers, feed manufacturers, feeders, or dealers in nut wastes, on record with the Board as Accepted Users. Each disposition of such almond material shall be sampled and the almond meat content determined at the time of loading for delivery to the accepted user or at the user's destination by the inspection agency or the Board. The almond meat content of each delivery shall be reported to the Board and the handler and credited to the handler's disposition obligation. Deliveries containing less than 10 percent almond meat content shall not be credited against the disposition obligation: Each handler's disposition obligation shall be satisfied when the almond meat content of the material delivered to accepted users equals the disposition obligation, but no later than July 31 succeeding the crop year in which the obligation was incurred.

(6) *Partial waiver of obligation.* Any handler generating inedible kernels only in the form of pickouts after shelling, may petition the Board for a waiver of the difference between this inedible weight and his disposition obligation. The petition will be granted only if the handler certifies to the Secretary and the Board that (i) He did not engage in any blanching, cutting, chopping or other processing of almond kernels during the crop year, (ii) All almonds shelled by or for him were hand-picked on belts and the visibly inedible almonds removed, and (iii) That he did not place into trade channels any almonds with more than two percent of the handler's inedible disposition obligation.

(7) *Inedible almonds unfit for processing.* All lots received from growers as "inedible almonds unfit for processing," shall be exempt from the requirements of paragraphs (a)(1) and (3) of this section, but shall be disposed of in their entirety (other than as pickouts), as provided in paragraph (a)(5) of this section. Disposition of these lots shall not be credited toward the disposition obligation of paragraph (a)(4) of this section. If a grower sells or ships inedible almonds to a person other than a handler, the grower thereby becomes a handler and subject to all the requirements of this paragraph.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: January 12, 1977, to become effective January 17, 1977.

CHARLES R. BRADER,
Acting Director,
Fruit and Vegetable Division.

[FR Doc.77-1421 Filed 1-14-77;8:45 am]

Title 19—Customs Duties

CHAPTER I—UNITED STATES CUSTOMS SERVICE

[T.D. 77-26]

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

Equipment Purchased in Foreign Ports

On February 27, 1976, a notice of proposed rulemaking was published in the FEDERAL REGISTER (41 FR 8490), which proposed to amend § 4.15 of the Customs Regulations (19 CFR 4.15) pertaining to the dutiability under section 466, Tariff Act of 1930, as amended (19 U.S.C. 1466), of vessel equipment purchased in foreign ports by American fishing boats.

An American vessel licensed to engage in the fisheries is not considered to be engaged in foreign trade and therefore is not subject to duties arising under section 466 of the Tariff Act, except when such vessel exchanges its license for a registry or obtains a permit to touch and trade on Customs Form 1379 as required by § 4.15(a) of the Customs Regulations (19 CFR 4.15(a)), or does in fact engage in foreign trade. The United States Customs Service has ruled, as reflected in footnote 28 to § 4.15(a), that a vessel licensed for the fisheries which "puts into a foreign port or place and only obtains bunkers, stores, or supplies suitable for a fishing voyage" is not considered to have touched and traded there. Furthermore, the Customs Service has not required American fishing vessels to obtain a clearance or a permit to touch and trade when they depart the United States with the intention of purchasing fish nets or netting or other vessel equipment outside of the United States. Consequently, fish nets or netting purchased in this manner by American fishing vessels has not been subject to the assessment of the 50% duty provided for in section 466, Tariff Act of 1930, as amended.

The United States Customs Service reviewed its position in this matter in light of the amendment to section 466 of the Tariff Act of 1930 by Public Law 91–654, January 5, 1971, and has determined that the term "vessel supplies," as used in footnote 28 to § 4.15 of the Customs Regulations, does not include fish nets or netting. Thus, American fishing vessels which depart the United States for foreign ports with the intent of purchasing fish nets or netting or other vessel equipment (other than equipment which was damaged or lost on the voyage) shall be required to obtain either a clearance for the foreign port (where the vessel holds a register) or a permit to touch and trade (where the vessel is merely licensed to engage in the fisheries), whether or not the vessel engages in fishing on that voyage.

The purpose of the amendments is to require the payment of duty under section 466 of the Tariff Act on fish nets or netting or other vessel equipment purchased and laden in foreign ports, including preordered equipment. Therefore, the amendments provide that equipment purchases are dutiable, whether intended or not, inasmuch as vessels making those purchases are considered to be engaged in the foreign trade. It is emphasized that the duty under section 466 on fish nets or netting or other vessel equipment purchased in a foreign port will be remitted if the purchases replace items that, having been aboard the vessel when it cleared the United States, were damaged during the course of the voyage as a result of stress of weather or other casualty.

Interested persons were given until April 28, 1976, to submit relevant data, views, or arguments regarding the proposal. After consideration of all comments received, the following modifications were made in the proposed amendments:

The second sentence of the amendment to § 4.15(a) has been reworded to clarify the circumstances under which the master must clear for a foreign port or obtain a permit to touch and trade. Those circumstances are when a fishing vessel departs from the United States and there is an intent to stop at a foreign port (1) to lade vessel equipment which was preordered, (2) to purchase and lade vessel equipment, or (3) to purchase and lade vessel equipment to replace existing vessel equipment.

Two new sentences are added at the end of § 4.15(a) to provide that purchases of fish nets or netting or other vessel equipment, whether intended at the time of departure or not, are subject to declaration, entry, and payment of duty pursuant to section 466 of the Tariff Act of 1930, as amended, and that the duty may be remitted if it is established that the purchases resulted from stress of weather or other casualty.

The words "Fish netting," used in the parenthetical statement in the amendment to footnote 28, are changed to "Fish nets and netting," in order to conform with the terms used in section 466 of the Tariff Act of 1930, as amended, and the parentheses are deleted.

Accordingly, § 4.15(a) of the Customs Regulations (19 CFR 4.15(a)) and the last paragraph of footnote 28 to § 4.15(a), modified to include these changes, are adopted as set forth below.

Effective date. This amendment shall become effective 90 days after publication in the Customs Bulletin.

VERNON D. ACREE,
Commissioner of Customs.

Approved: January 14, 1977.

JERRY THOMAS,
Under Secretary of the Treasury.

1. Section 4.15(a) is amended to read as follows:

§ 4.15 Fishing vessels touching and trading at foreign places.

(a) Before any vessel enrolled and licensed or licensed to engage in the fisheries shall touch and trade at a foreign port or place, the master shall obtain from the district director a permit on Customs Form 1379 to touch and trade.

When a fishing vessel departs from the United States and there is an intent to stop at a foreign port (1) to lade vessel equipment which was preordered, (2) to purchase and lade vessel equipment, or (3) to purchase and lade vessel equipment to replace existing vessel equipment, the master of the vessel must either clear for that foreign port or obtain a permit to touch and trade, whether or not the vessel will engage in fishing on that voyage.[28] Purchases of such equipment, whether intended at the time of departure or not, are subject to declaration, entry, and payment of duty pursuant to section 466 of the Tariff Act of 1930, as amended (19 U.S.C. 1466). The duty may be remitted if it is established that the purchases resulted from stress of weather or other casualty.

* * * * *

2. The last paragraph of footnote 28 to § 4.15(a) is amended to read as follows:

[28] * * *

* * * * *

If such a vessel puts into a foreign port or place and only obtains bunkers, stores, or supplies suitable for a fishing voyage, it is not considered to have touched and traded there. Fish nets and netting are considered vessel equipment and not vessel supplies.

(R.S. 251, as amended, R.S. 4364, secs. 466, 624, 46 Stat. 718, as amended, 759 (19 U.S.C. 66, 1466, 1624, 46 U.S.C. 310)).

[FR Doc.77-1441 Filed 1-14-77;8:45 am]

[T.D. 77-27]

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

PART 172—LIQUIDATED DAMAGES

Entries of Merchandise Under Generalized System of Preferences

Treasury Decision 76–2, published in the FEDERAL REGISTER on December 31, 1975 (40 FR 60047), added §§ 10.171 through 10.178 to the Customs Regulations (19 CFR 10.171–178) to set forth a procedure for the duty-free entry of certain merchandise from designated beneficiary developing countries pursuant to the Generalized System of Preferences established by the President in accordance with Title V of the Trade Act of 1974 (Pub. L. 93–618, 88 Stat. 1978).

Under § 10.173(a) of the Customs Regulations, the importer or consignee of a shipment of eligible merchandise valued in excess of $250 is required to file with the district director of Customs at the time of entry a properly completed Certificate of Origin, Form A (or an acceptable duplicate thereof), as evidence of the country of origin. If a properly completed Certificate of Origin (or duplicate thereof) is not produced at the time of entry, the entry will still be accepted, if all other applicable requirements are met, provided the importer or consignee gives a bond on Customs Form 7551, 7553, or 7595 for the production of the required Certificate of Origin.

The bond is required to be given in the amount prescribed for that bond under § 113.14 of the Customs Regulations (19 CFR 113.14): in the case of the single entry bond, Customs Form 7551, the amount must be equal to the value of the merchandise as set forth in the entry, plus the estimated duty (including any taxes required by law to be treated as duties) and the estimated amount of any other taxes imposed upon or by reason of importation; in the case of the term bonds, Customs Forms 7553 and 7595, the required amounts are $10,000 and $100,000, respectively, or such larger amount as the district director may deem necessary.

In the event a properly completed Certificate of Origin (or duplicate thereof) is not delivered by the importer or consignee within 60 days after the entry, or such additional period as the district director may, for good cause, allow, § 10.173(a)(3) presently requires that liquidated damages be assessed in the full amount of the bond, if the bond was given on Customs Form 7551, or in the event the bond was given on Customs Form 7553 or 7595, in the amount that would have been demanded had bond been given on Customs Form 7551.

However, § 172.22(c) of the Customs Regulations (19 CFR 172.22(c)), provides, in part, that when free entry is dependent upon the production of a document which the importer fails to produce, the district director shall treat the claim for free entry as abandoned upon the assessment and payment of

duty and may cancel the bond given for the production of the free entry document without the collection of liquidated damages.

In view of the conflict presently existing in these provisions with respect to the assessment of liquidated damages in the event of a failure to produce a document on which a claim for free entry depends, a reappraisal of the requirements in this regard presently set forth in § 10.173(a)(3) of the Customs Regulations has resulted in the conclusion that the assessment of liquidated damages in the manner prescribed by that section is unwarranted.

Therefore, it is considered desirable to amend § 10.173(a)(3) of the Customs Regulations to provide that, in the event the importer or consignee fails to deliver a properly completed Certificate of Origin to the district director within the time allowed, the district director shall treat the entry as dutiable and may cancel the bond (or the charge against the bond) given for the production of the Certificate of Origin in accordance with § 172.22(c) of the Customs Regulations.

Upon a reexamination of the wording of § 172.22(c) of the Customs Regulations, it is also considered necessary to amend that section to emphasize that, in the event a term bond is given to secure the production of a duty-free document, it is the charge against the bond (created by the failure to produce the document), and not the bond itself, which is subject to cancellation by the district director.

Accordingly, §§ 10.173(a)(3) and 172.22(c) of the Customs Regulations (19 CFR 10.173(a)(3), 172.22(c)) are amended in the following manner:

1. Paragraph (a)(3) of § 10.173 is amended by deleting the fourth and fifth sentences and adding in lieu thereof a new fourth sentence to read as follows:

§ 10.173 Evidence of the country of origin.

(a) • • •

(3) *Release under bond.* • • • If the Certificate of Origin is not delivered to the district director within 60 days of the date of entry or such additional period as the district director, for good cause, may allow, the district director shall treat the entry as dutiable and may cancel the bond or the charge against the bond, as appropriate, in accordance with § 172.22(c) of this chapter.

• • • • • •

(R.S. 251, as amended, secs. 623, 624, 46 Stat. 759, as amended, sec. 503(b), 88 Stat. 2069 (19 U.S.C. 66, 1623, 1624, 2463(b)).)

2. Paragraph (c) of § 172.22 is amended to read as follows:

§ 172.22 Special cases acted on by District Director of Customs.

• • • • • •

(c) *Nonproduction of free-entry or reduced-duty documents.* When free entry or the application of a reduced rate of duty is dependent upon the production of a document which the importer fails to produce, or when a conditionally-free or reduced duty provision claimed on entry is held to be inapplicable, the claim for free entry or reduced rate of duty shall be treated by the district director as abandoned upon the assessment and payment of duty and the bond (or, in the case of a term bond, the charge against the bond) given for the production of the free-entry or reduced-duty document may be cancelled without the collection of liquidated damages.

• • • • • •

(R.S. 251, as amended, sec. 623, 624, 46 Stat. 759, as amended (19 U.S.C. 66, 1623, 1624).)

Inasmuch as the foregoing amendments liberalize or clarify the present provisions of the Customs Regulations and place no affirmative duty or burden on the public, prior notice and public procedure thereon is unnecessary and good cause is found for dispensing with the delayed effective date provisions of 5 U.S.C. 553(d).

Effective date: This amendment shall be effective January 17, 1977.

VERNON D. ACREE,
Commissioner of Customs.

Approved: January 6, 1977.

JERRY THOMAS,
Under Secretary of the Treasury.

[FR Doc.77-1440 Filed 1-14-77;8:45 am]

Title 24—Housing and Urban Development

CHAPTER II—OFFICE OF ASSISTANT SECRETARY FOR HOUSING—FEDERAL HOUSING COMMISSIONER, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

SUBCHAPTER B—MORTGAGE AND LOAN INSURANCE PROGRAMS UNDER NATIONAL HOUSING ACT

[Docket No. R-77-431]

PART 241—SUPPLEMENTARY FINANCING FOR INSURED PROJECT MORTGAGES

Eligibility of Hospitals for Supplemental Loans

The following amendments are being made to §§ 241.110, 241.125, and 241.140 of Title 24 of the Code of Federal Regulations in order to implement Section 5 of the Housing Authorization Act of 1976, which amends Section 241 of the National Housing Act (12 U.S.C. 1715z-6) to clarify that hospitals insured under Section 242 of the National Housing Act (12 U.S.C. 1715z-7) are eligible for supplemental loans under Section 241. Inasmuch as the amendments to the regulations implement a statutory amendment which clarifies existing eligibility requirements to provide financing for needed additions to hospitals and will not adversely affect any present participant or any potential applicants in the Section 241 program, the Secretary has determined that advance publication, notice and public procedure are impracticable and unnecessary and good cause exists for making this amendment effective upon publication.

The Department has determined that an Environmental Impact Statement is not required with respect to this rule. The Finding of Inapplicability, in accordance with HUD's environmental procedures handbook (HUD Handbook 1390.1) is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Room 10141, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C.

Accordingly, 24 CFR Part 241 is amended as follows:

1. Section 241.110 is amended to add a new subparagraph (4) to paragraph (b) as follows:

§ 241.110 Certificate of use for transient or hotel purposes.

• • • • • •

(b) • • •

(4) In connection with a hospital covered by a mortgage insured under the provisions of §§ 242.1 et seq. of this chapter or by a mortgage held by the Secretary.

• • • • • •

2. Section 241.125 is amended to read as follows:

§ 241.125 Use of loan proceeds.

The proceeds of the loan shall be used only to finance improvements or additions to a multifamily project, group practice facility or hospital which is subject to a mortgage insured under any section or title of the Act or covered by a mortgage held by the Secretary. The proceeds of a loan involving a nursing home, group practice facility or hospital may also be used in the operation of such nursing home, group practice facility or hospital.

3. Section 241.140(c) is amended to read as follows:

§ 241.140 Assurance of completion.

• • • • • •

(c) Supplemental loans, incurred solely for the purpose of purchasing equipment in a nursing home, group practice facility or hospital, are exempt from the above assurance of completion requirements.

(Sec. 7(d), Department of HUD Act; (42 U.S.C. 3535(d)).)

NOTE: It is hereby certified that the economic and inflationary impacts of this final rule have been carefully evaluated in accordance with OMB Circular A-107.

Effective date. These amendments will be effective on January 17, 1977.

JOHN T. HOWLEY,
Acting Assistant Secretary for Housing—Federal Housing Commission.

[FR Doc.77-1392 Filed 1-14-77;8:45 am]

CHAPTER X—FEDERAL INSURANCE ADMINISTRATION, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. R-77-367]

PART 1905—STATEWIDE "FAIR" PLANS

Assurance of Completion Requirements; Correction

The Notice published December 30, 1976, at 41 FR 56793 is corrected to read as follows:

Pursuant to Title XI and Title XII of the National Housing Act (added by the Urban Property Protection and Reinsurance Act of 1968, 12 U.S.C. 1749bbb—1749bbb-21), (5 U.S.C. 553), as amended by the National Insurance Development Act of 1975 (Pub. L. 9413, 89 Stat. 68, 12 U.S.C. 1749bbb Note), and delegation of authority by the Secretary of Housing and Urban Development (34 FR 2680, February 27, 1969), the Federal Insurance Administrator published in the FEDERAL REGISTER (41 FR 1499, 1500, January 8, 1976) a notice of proposed rulemaking pertaining to Part A of the Act (12 U.S.C. 1749bbb—1749bbb-21) as a new § 1905.13 of Part 1905 of Chapter X of Title 24.

The purpose of the new § 1905.13 as adopted is to promulgate in regulatory form a requirement that each FAIR Plan offering insurance pursuant to the Act (12 U.S.C. 1749bbb—1749bbb-21) shall provide a notice to all FAIR Plan policyholders with all new or renewal policies mailed on and after April 15, 1977, that consumer oriented inquiries and complaints dealing with the policy issuance and/or claims handling performance of the FAIR Plan and its agents and employees may be directed by the policyholder to the State insurance regulatory body thus being available for Federal Insurance Administration audit; to implement the Department of Housing and Urban Development's commitment to a plement the Department of Housing and and interests of consumers are fully considered and duly respected; and to comply with the spirit of President Ford's April 17, 1975, letter to the Congress stressing the importance of assuring that consumer interests "receive full consideration in all Government actions" and the President's Directive that each agency and Department undertake a review of its policies and procedures as they affect consumer representation in agency decision making.

Interested parties were given 60 days within which to submit written comments relative to the proposed rule and written comments were received from 10 State insurance authorities, 4 State FAIR Plans, 2 national trade associations, and 10 individual companies or associations of companies, a total of 26 written comments. All relevant comments were given full and careful consideration. While two State regulatory authorities endorsed the proposed rulemaking entirely, there was an expression in some of the comments that the Federal Insurance Administration should not be routinely informed of all consumer inquiries because the State insurance regulatory authorities are eminently able to protect the FAIR Plan consumer's interest and to evaluate and respond to consumer inquiries and complaints dealing with FAIR Plan activities in the jurisdictions of the insurance regulatory authorities of the several States. Such views are consistent with the Federal Insurance Administration's long-standing position that the public is best served by an insurance system under which the private insurance sector remains the principal provider, and the States the regulators of insurance. Accordingly, in order to accommodate the understandable concerns of State regulators with the needs of FIA, the provision requiring inclusion of the Federal Insurance Administrator's name as a person to be contacted in respect to complaints has been eliminated in favor of a request to regulators to segregate and separately maintain inquiries and complaints dealing with FAIR Plans to the end that they may be readily available incident to FAIR Plan audits by FIA's Office of Review and Compliance.

There were questions raised in some of the written comments as to whether the Federal Insurance Administrator had authority to issue the proposed rule to effectuate the review, by the Federal Insurance Administration, of consumer oriented inquiries and complaints dealing with the performance of the FAIR Plans of the States in which such Plans are in effect. Such authority was clearly established by the 1970 amendments to the National Insurance Development Program which established the Office of Review and Compliance under the Federal Insurance Administrator (Sec. 603 Housing and Urban Development Act of 1970, Pub. L. 91-609, approved December 31, 1970, 84 Stat. 1770, 1791, added Section 1215 to Title XII—National Insurance Development Program). Under the Office of Review and Compliance such authority includes, among other things, the implementation of review, audit and public hearing functions by the Federal Insurance Administrator. This authority is fortified by the revised purpose clause of the National Insurance Development Act of 1975 extending the authority granted in the 1970 and 1968 Acts.

The comments and advice of interested parties have been fully taken into consideration in the preparation of the regulations which are hereby adopted.

To allow the various State FAIR Plans sufficient time to implement the resulting regulations, as revised, and in accordance with the provisions of 5 U.S.C. 553(d), these regulations are effective on April 15, 1977.

It has been determined that these amendments do not have a substantial effect upon the quality of the environment nor do they have an economic impact as determined under OMB Circular A-107. Accordingly, findings of inapplicability have been prepared with respect to both environmental and economic considerations and copies of both these determinations are available for public inspection in the Office of the Rules Docket Clerk, Room 10141, Office of the Secretary.

Section 1905.13 of Part 1905—Statewide "FAIR" Plan is established to read as follows:

§ 1905.13 Notice to Policyholders.

(a) Each participating or cooperating insurer offering insurance pursuant to this program (12 U.S.C. 1749bbb-1749bbb-21) shall provide a notice to all FAIR Plan policyholders with all new or renewal policies mailed on and after April 15, 1977, containing the following information: (1) Authority for issuance of policy; (2) FAIR Plan name, address, and telephone numbers; (3) State Insurance Department addresses and telephone numbers.

(b) Compliance with the requirements of paragraph (a) of this section will be satisfied provided the participating or cooperating insurer complies with a format of notice as designated by the Federal Insurance Administrator; such notices shall, as a minimum, include the following information employing the same terms or substantially similar terms.

Dear Policyholder: The attached FAIR Plan Insurance Policy, or renewal thereof, has been issued to you by the FAIR Plan in cooperation with your State Insurance Authority and the Federal Insurance Administration of the United States Department of Housing and Urban Development. The policy is serviced generally by the statewide FAIR Plan, as listed at the end of this Notice. The FAIR Plan or your insurance agent will assist you if you need to report a loss or if you have any questions pertaining to the premium charged or the scope of the coverage afforded under the policy. In addition, your State Insurance Department which has regulatory authority over the FAIR Plan is ready to be of assistance to you in these matters, if the FAIR Plan or agent cannot help you. Moreover, since the FAIR Plan Program is intended to provide you with the highest caliber of service, your State Insurance Department would welcome any suggestions you may have for improving the program. Please do not hesitate to write, for assistance, to:

(1) FAIR Plan: (Name, Address, Telephone Number).

(2) State Insurance Department (Name, Address, Telephone Number).

(Sec. 7(d), 70 Stat. 670 (42 U.S.C. 3535d); Sec. 1103, 82 Stat. 566 (12 U.S.C. 1749bbb-17).)

Effective date. This section shall be effective on April 15, 1977.

J. ROBERT HUNTER,
Acting Federal Insurance Administrator.

[FR Doc.77-1492 Filed 1-14-77;8:45 am]

Title 28—Judicial Administration

CHAPTER I—DEPARTMENT OF JUSTICE

[Order No. 674-76]

PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

Subpart C—Office of the Deputy Attorney General

OFFICE OF PRIVACY AND INFORMATION APPEALS

Correction

In FR Doc. 76-37113 appearing on page 55179 in the issue for Friday, December 17, 1976, in the 11th line, "(23 CFR 0.18)" should have read "(28 CFR 0.18)".

Title 29—Labor

CHAPTER XIV—EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

PART 1601—PROCEDURAL REGULATIONS

Designated 706 Agencies

By virtue of the authority vested in it by section 713(a) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e-12(a), 78 Stat. 265, the Equal Em-

ployment Opportunity Commission (hereinafter referred to as the Commission) hereby amends Title 29, Chapter XIV, § 1601.12(m) in accordance with the requirements of § 1601.12(i)(1).

The amended § 1601.12(m) sets forth those state and local agencies which have been formally designated as 706 Agencies as defined in § 1601.12(c) for the purpose of receiving charges deferred by the Commission pursuant to section 706 (c) and (d) of Title VII and whose final findings and orders will be accorded substantial weight by the Commission as provided in § 1601.12(m).

Publication of this amendment to § 1601.12(m) effectuates the designation of the following Agencies as 706 Agencies:

Fort Worth (Texas) Human Relations Commission.
Lexington-Fayette Urban County Human Rights Commission.

Notice of the proposed designation of the foregoing agencies as 706 Agencies was published in the December issue of the FEDERAL REGISTER, 41 FR 245, with notice that written comments must have been filed with the Commission on or before January 5, 1977.

With the addition of the foregoing agencies, § 1601.12(m) is revised to read as follows:

§ 1601.12 Deferrals to State and Local authorities.

* * * * * *

(m) The Designated 706 Agencies are:

Alaska Commission for Human Rights
Alexandria Human Rights Office
Allentown Human Relations Commission
Arizona Civil Rights Division
Baltimore Community Relations Commission
Bloomington Human Rights Commission
California Fair Employment Practices Commission
Charleston Human Rights Commission
Colorado Civil Rights Commission
Connecticut Commission on Human Rights and Opportunities
Dade County Fair Housing and Employment Commission
Delaware Department of Labor
District of Columbia Office of Human Rights
East Chicago Human Relations Commission
Evansville (Indiana) Human Relations Commission
Fairfax County Human Rights Commission
Fort Wayne (Indiana) Metropolitan Human Relations Commission
Fort Worth (Texas) Human Relations Commission
Gary Human Relations Commission
Idaho Commission on Human Rights
Illinois Fair Employment Practices Commission
Indiana Civil Rights Commission
Iowa Commission on Civil Rights
Kansas Commission on Civil Rights
Kentucky Commission on Human Rights
Lexington-Fayette Urban County Human Rights Commission
Madison (Wisconsin) Equal Opportunities Commission
Maine Human Relations Commission
Maryland Commission on Human Relations
Massachusetts Commission Against Discrimination
Michigan Civil Rights Commission
Minneapolis Department of Civil Rights
Minnesota Department of Human Rights
Missouri Commission on Human Rights
Montana Commission for Human Rights
Montgomery County Human Relations Commission
Nebraska Equal Opportunity Commission
Nevada Commission on Equal Rights of Citizens
New Hampshire Commission for Human Rights
New Jersey Division on Civil Rights, Department of Law and Public Safety
New York City Commission on Human Rights
New York State Division of Human Rights
Ohio Civil Rights Commission
Oklahoma Human Rights Commission
Omaha Human Relations Department
Oregon Bureau of Labor
Pennsylvania Human Relations Commission
Philadelphia Commission on Human Relations
Pittsburgh Commission on Human Relations
Rhode Island Commission for Human Rights
Rockville (Maryland) Human Rights Commission
St. Paul Department of Human Rights
Seattle Human Rights Commission
Springfield (Ohio) Human Relations Department
South Bend (Indiana) Human Rights Commission
South Carolina Human Affairs Commission
South Dakota Human Relations Commission
Tacoma Human Rights Commission
Utah Industrial Commission
Vermont Attorney's General Office, Civil Rights Division
Virgin Islands Department of Labor
Washington State Human Rights Commission
West Virginia Human Rights Commission
Wheeling Human Rights Commission
Wichita Commission on Civil Rights
Wisconsin Equal Rights Division, Department of Industry, Labor and Human Relations
Wyoming Fair Employment Practices Commission

The designated Notice Agencies are:

Arkansas Governor's Committee on Human Resources
Florida Commission on Human Relations
Georgia Governor's Council on Human Relations
Montana Department of Labor and Industry
North Dakota Commission on Labor
Ohio Director of Industrial Relations
Raleigh (North Carolina) Community Relations Commission

(Sec. 713(a), 78 Stat. 265 (42 U.S.C. 2000e-12(a)).)

This amendment is effective on January 17, 1977.

Signed at Washington, D.C.

ETHEL BENT WALSH,
Vice Chairman, Equal Employment Opportunity Commission.

[FR Doc.77-1349 Filed 1-14-77;8:45 am]

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER N—EFFLUENT GUIDELINES AND STANDARDS

[FRL 671-4]

PART 409—SUGAR PROCESSING POINT SOURCE CATEGORY

Notice of Suspension

On February 27, 1975, notice was given that effluent limitations and guidelines for existing sources to be achieved by the application of best practicable control technology currently available as set forth in interim final form were promulgated by the Environmental Protection Agency (EPA). The regulation amended Part 409—sugar processing point source category by adding the Louisiana raw cane sugar processing subcategory (Subpart D), the Florida and Texas raw cane sugar processing subcategory (Subpart E), the Hilo-Hamakua Coast of the Island of Hawaii raw cane sugar processing subcategory (Subpart F), the Hawaiian raw cane sugar processing subcategory (Subpart G), and the Puerto Rican raw cane sugar processing subcategory (Subpart H), pursuant to sections 301 and 304 (b) and (c) of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251, 1311, and 1314 (b) and (c), 86 Stat. 816 et seq.; Pub. L. 92-500) (the Act).

When 40 CFR Part 409 was promulgated in interim final form comments on 40 Part 409 and comments on the development document supporting the regulation were solicited.

A number of comments were received relating to the Agency's use of bench and pilot scale data in the establishment of effluent limitations for the Hilo-Hamakua Coast of the Island of Hawaii raw cane sugar processing subcategory (Subpart F). The commenters stated that until implementation and operation of treatment systems occur, it would be difficult to predict what levels of effluent reductions would be achieved.

The Agency has learned that a full-scale treatment system treating effluent from a Hilo-Hamakua Coast cane sugar mill has been constructed. This treatment system, which incorporates essentially what was identified in the interim final regulations as the best practicable control technology currently available, has been operational since July 1, 1976. The Agency will reevaluate the technical bases on which the interim final effluent limitations for Subpart F were established to evaluate the performance of the best practicable control technology currently available over the entire range of operating conditions typical of full-scale facilities. All available data regarding the treatment of effluents from cane sugar mills operating along the Hilo-Hamakua Coast of the Island of Hawaii will be considered. This reevaluation prompts the Agency to suspend the effectiveness of Subpart F of the interim final regulation for the duration of the review.

Interested persons are encouraged to submit written comments pertaining to the Hilo-Hamakua Coast of the Island of Hawaii raw cane sugar processing subcategory (Subpart F) of the sugar processing point source category. Comments should be submitted in triplicate to the Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, Attention: Distribution Officer, WH-552. All comments received before July 1, 1977, will be considered and included in the administrative record. Steps previously taken by the Environmental Protection Agency to facilitate public response within this time period are outlined in the advance notice concerning public review procedures published on October 6, 1973 (38 FR 21202).

A copy of all public comments will be available for inspection and copying at the EPA Public Information Reference Unit, Room 2922 (EPA Library), Waterside Mall, 401 M Street, S.W., Washington, D.C. 20460.

In consideration of the foregoing discussion, 40 CFR Part 409.62 (the Hilo-Hamakua Coast of the Island of Hawaii raw cane sugar processing subcategory (Subpart F) of the sugar processing point source category) is suspended until March 1, 1978.

Dated January 10, 1977.

JOHN QUARLES,
Administrator.

[FR Doc.77-1315 Filed 1-14-77;8:45 am]

[FRL 671-3]

PART 440—ORE MINING AND DRESSING POINT SOURCE CATEGORY

Notice of Further Suspension

On November 6, 1975, notice was given that effluent limitations and guidelines for existing sources to be achieved by the application of best practicable control technology currently available as set forth in interim final form were promulgated by the Environmental Protection Agency (EPA). The regulation established Part 440—ore mining and dressing point source category and is applicable to existing sources for the iron ore subcategory (Subpart A), the base and precious metals subcategory (Subpart B), the bauxite subcategory (Subpart C), the ferroalloy ore subcategory (Subpart D), the uranium, radium and vanadium ore subcategory (Subpart E), the mercury ore subcategory (Subpart F), and the titanium ore subcategory (Subpart G) of the ore mining and dressing point source category pursuant to sections 301, 304 (b) and (c), of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1215, 1311, 1314 (b), and (c), 86 statute 816 et. sequence; Pub. L. 92-500) (the Act).

When 40 CFR Part 440 was promulgated in interim final form, comments on 40 CFR Part 440 and comments on the development document supporting the regulation were solicited.

A number of comments were received which related to the adequacy of the data available and relied upon by the Agency as a basis for the base and precious metals subcategory (Subpart B), that portion of the ferroalloy ore subcategory (Subpart D) which is applicable to the quantity of pollutants or pollutant properties discharged from mills processing ferroalloy ores by leaching techniques (either acid or alkaline) and associated chemical beneficiation techniques and the uranium, radium and vanadium subcategory (Subpart E).

In that serious questions were raised concerning the adequacy of the data base used to support these portions of this regulation, the Agency suspended the effectiveness of these portions of the regulation on May 24, 1976 (41 FR 21191) until November 1, 1976.

Interested persons were encouraged to submit written comments on the base and precious metals subcategory (Subpart B), that portion of the ferroalloy ore subcategory (Subpart D) which is applicable to the quantity of pollutants or pollutant properties discharged from mills processing ferroalloy ores by leaching techniques (either acid or alkaline) and associated chemical beneficiation techniques and the uranium, radium and vanadium subcategory (Subpart E).

Comments and additional data received relative to the above subparts of the regulation have brought about reconsideration by the Agency of these portions of the regulation. However, there is a need to continue the evaluation of data and comments for an additional period of time.

While the Agency is evaluating the technical and economic basis for these portions of the regulation, 40 CFR 440.22 applicable to the base and precious metals subcategory (Subpart B), 40 CFR 440.42 subparagraph (a)(5) applicable to that portion of the ferroalloy ores (Subpart D) mills processing ferroalloy ores by leaching techniques (either acid or alkaline) and associated chemical beneficiation techniques and 40 CFR 440.52 applicable to the uranium, radium and vanadium ores subcategory (Subpart E) are further suspended until April 30, 1977.

Dated: January 10, 1977.

JOHN QUARLES,
Acting Administrator.

[FR Doc.77-1316 Filed 1-14-77;8:45 am]

Title 45—Public Welfare

CHAPTER X—COMMUNITY SERVICES ADMINISTRATION

PART 1005—FREEDOM OF INFORMATION ACT REGULATIONS

Correction

In 45 CFR 1005.10(c)(1), the citation in line 4 is incorrect. As the correction of this citation is a technical amendment, it is effective immediately.

AUTHORITY: 5 U.S.C. 552

Effective date: January 14, 1977.

HAZEL R. ROLLINS,
General Counsel.

Title 45 Code of Federal Regulations, Part 1005 is amended as follows:

§ 1005.10 [Amended]

Section 1005.10(c)(1) is amended by substituting "1005.6(a)" for "1006.5(a)" in line 4.

[FR Doc.77-1330 Filed 1-14-77;8:45 am]

PART 1068—GRANTEE FINANCIAL MANAGEMENT

The purpose of this amendment is to update the citation of authority for 45 CFR 1068-6; it is presently stated to be section 115 of the Economic Opportunity Amendments of 1969, but the Community Services Act of 1974 incorporated it into the Economic Opportunity Act of 1964, as amended, as section 627, and the Community Services Administration Technical Amendments of 1976 shifted it to section 628. As this is a technical amendment, it is effective immediately.

Effective date: January 14, 1977.

HAZEL R. ROLLINS,
General Counsel.

The citation of authority for 45 CFR Part 1068, Subpart—Grantee Compliance with IRS Requirements for Withheld Federal Income and Social Security Taxes is amended as follows:

§ 1068.6 [Amended]

Section 1068.6 is amended by deleting the citation of authority and substituting:

"AUTHORITY: Sec. 628, 90 Stat. 806 (42 U.S.C. 2971(g))".

[FR Doc.77-1331 Filed 1-14-77;8:45 am]

[CSA Instruction 6802-6]

PART 1068—GRANTEE FINANCIAL MANAGEMENT

Additional Criteria for Waiver of Non-Federal Share

Sections 225(c) and 714 of the Economic Opportunity Act of 1964, as amended, require a non-Federal contribution for grants made under certain sections of Titles II and VII. Sections 225(c) and 714 of the Economic Opportunity Act of 1964 as amended provided the Director with the authority to develop, objective criteria under which part or all of the non-Federal share may be waived.

The following regulations are hereby promulgated to publish additional criteria for waiver of the non-Federal share for phase out grants awarded as a result of termination of grantee operations.

CSA welcomes public comment on the additional waiver criteria. Comments received prior to February 16, 1977, will be taken into consideration in revising the subpart if warranted. Please address comments to the Policy Development and Review Division, Office of Operations, Community Services Administration, 1200 19th Street, N.W., Washington, D.C. 20506.

Effective date: February 16, 1977.

SAMUEL R. MARTINEZ,
Director.

45 CFR 1068 is amended by adding the following:

Subpart—Additional Criteria for Waiver of Non-Federal Share (CSA Instruction 6802-6)

Sec.
1068.23-1 Applicability.
1068.23-2 Background.
1068.23-3 Purpose.
1068.23-4 Policy.

AUTHORITY: Sec. 602, 78 Stat. 530; 42 U.S.C. 2942.

Subpart—Additional Criteria for Waiver of Non-Federal Share (CSA Instruction 6802–6)

§ 1068.23–1 Applicability.

This subpart is applicable to all grants funded under Title II, sections 221 and 222(a) and Title VII, section 712 of the Economic Opportunity Act of 1964, as amended if the assistance is administered by the Community Services Administration.

§ 1068.23–2 Background.

Sections 225(c) and 714 of the Economic Opportunity Act of 1964, as amended require a non-Federal share contribution for grants made under certain sections of Titles II and VII. One of the major objectives of non-Federal share is to provide local resources for and to encourage involvement at the local level in the operating programs of CSA grantees. In certain instances and under defined procedures, CSA terminates and closes out grantee operations. As necessary, CSA may award additional Federal funds when there is a grantee termination and phase-out action and there are not sufficient funds on hand to meet liabilities of the grantee and/or its delegate agencies to third parties when such costs result from the phase-out activities. However, to require non-Federal share contributions for grants awarded to meet the legal obligations of grantees is inconsistent with the major intent of the legislation. Consequently, the Director is exercising his authority under sections 225(c) and 714 of the Economic Opportunity Act of 1964, as amended to develop objective criteria under which part or all of the non-Federal share may be waived.

§ 1068.23–3 Purpose.

The purpose of this subpart is to introduce additional waiver criteria under which GSA grantees who are awarded phase-out grant will not be required to contribute non-Federal share.

§ 1068.23–4 Policy.

(a) *New Waiver Criteria.* Any grantee funded under Title II, sections 221 and 222(a) and Title VII, section 712 who, as a result of termination receives a phase-out grant will not be required to meet non-Federal share requirements when the grant includes no operational elements, when all required work of the grant has been completed, and when there is documented evidence that the grantee has insufficient Federal funds to meet those liabilities which are costs of phasing out.

(b) *Grants Affected.* This waiver policy is retroactive for all current phase-out grants that contain a non-Federal share requirement.

[FR Doc.77–1393 Filed 1–14–77;8:45 am]

Title 47—Telecommunication

CHAPTER I—FEDERAL COMMUNICATIONS COMMISSION

PART 0—COMMISSION ORGANIZATION

PART 1—PRACTICE AND PROCEDURE

PART 97—AMATEUR RADIO SERVICE

Changing the Name of the Amateur and Citizens Division to the Personal Radio Division

Adopted: January 5, 1977.

Released: January 6, 1977.

In the matter of editorial amendments of Parts 0, 1, and 97 of the Commission's Rules to change the name of the Amateur and Citizens Division to the Personal Radio Division.

1. This Order is being issued to change the organization statement of the Safety and Special Radio Services Bureau. The Amateur and Citizens Division has recently undergone reorganization, and the name of the Division is herewith changed to the Personal Radio Division.

2. This amendment relates to internal Commission organization, and hence, the prior notice, procedure, and effective date provisions of the Administrative Procedures Act (5 U.S.C. 553) are not applicable. Authority for the promulgation of this amendment is contained in Sections 4(i), 5(b), 5(d), and 303 of the Communications Act of 1934, as amended and § 0.231(d) of the Commission's Rules.

3. *Accordingly, it is ordered,* effective January 20, 1977, that Parts 0, 1, and 97 of the Rules and Regulations are amended as set forth in the Appendix attached hereto.

(Secs. 4, 5, 303, 48 Stat., as amended, 1066, 1068, 1082; 47 U.S.C. 154, 155, 303.)

FEDERAL COMMUNICATIONS COMMISSION,
RICHARD D. LICHTWARDT,
Executive Director.

Parts 0, 1, and 97 of Chapter 1 of Title 47 of the Code of Federal Regulations are amended, as follows:

In Sections 0.132(e), 1.951(a), 97.25 (d), and 97.41(d), the words "Amateur and Citizens Division" are deleted, and the words "Personal Radio Division" are substituted in each instance therefore.

[FR Doc.77–1397 Filed 1–14–77;8:45 am]

[FCC 77–24]

INTERIM AMATEUR PERMITS

Instituting a System in the Amateur Radio Service

Adopted: January 5, 1977.

Released: January 13, 1977.

In the matter of Revision of Parts 0, 1, and 97 of the Commission's Rules to institute a system of Interim Amateur Permits in the Amateur Radio Service.

1. Under the existing Amateur Radio Service licensing system, Amateur Radio Service licensees successfully completing examinations for higher class licenses than the licenses they hold must wait while their new license applications are processed at the Commission's Gettysburg, Pennsylvania facility before they may take advantage of the added privileges afforded them by their new operator licenses. A delay of several weeks may be involved, although both the licensee and the Commission are aware of the results of the examination and know a new license will be issued.

2. By this Order, we are revising Parts 0, 1, and 97 of the Commission's Rules to permit the issuance of Interim Amateur Permits by the Engineers in Charge of the various Commission field offices. Interim Amateur Permits (FCC Form 660–B) will be issued to applicants already holding amateur operator licenses as soon as possible after successful completion of higher class license examinations and will authorize immediate utilization of all additional operating privileges acquired. Licensees operating under the authority of Interim Amateur Permits will be required to add distinctive suffixes to their station call signs denoting the Commission district office at which their higher class licenses were obtained. Interim Amateur Permits will be valid for a period of 90 days or until issuance of the permanent station and operator licenses, whichever is less. A record of the issuance of an Interim Amateur Permit will be retained at the office of issuance, and requests for confirmation of an operator's status must be directed to that office.

3. Authority for these amendments appears in sections 4(i), 5(d), 303, 307, 308, and 309 of the Communications Act of 1934, as amended. Some of the Amendments adopted herein are editorial and procedural in nature, and the prior notice and public procedure provisions of the Administrative Procedure Act, 5 U.S.C. 553, are not applicable. Further, because of the enormous number of Amateur and Citizens Radio Service license applications we receive each month, rapid implementation of the interim permit system is essential, and we are, for good cause, dispensing with the prior notice and public procedure provisions of the Administrative Procedure Act as impracticable.

4. Accordingly, in view of the foregoing, the public interest being served thereby, *it is ordered* that Parts 0, 1, and 97 of the Commission's Rules are amended as set forth below effective March 1, 1977.

(Secs. 4, 5, 303, 307, 308, 309, 48 Stat., as amended, 1066, 1068, 1082, 1083, 1084, 1085; 47 U.S.C. 154, 155, 303, 307, 308, 309.)

FEDERAL COMMUNICATIONS COMMISSION,[1]
VINCENT J. MULLINS,
Secretary.

[1] Commissioner Lee absent.

Parts 0, 1 and 97 of Chapter 1 of Title 47 of the Code of Federal Regulations are amended, as follows:

PART 0—COMMISSION ORGANIZATION

1. In § 0.314, a new paragraph, (v), is added, as follows:

§ 0.314 Additional authority delegated.

• • • • • •

(v) To issue Interim Amateur Permits to Amateur Radio Service licensees, pursuant to Part 97 of this Chapter.

PART 1—PRACTICE AND PROCEDURE

2. In § 1.922, a new FCC Form and Title are added, as follows:

§ 1.922 Forms to be used.

FCC form	*Title*
• • • • •	
660–B	Interim Amateur Permit
• • • • •	

3. In § 1.925, the headnote is amended, and a new paragraph, (e), is added, as follows:

§ 1.925 Application for special temporary authorization, temporary permit, or interim amateur permit.

• • • • • •

(e) Upon successful completion of a Commission supervised Amateur Radio Service operator examination, an applicant already licensed in the Amateur Radio Service may operate his amateur radio station pending issuance of his permanent amateur station and operator licenses by the Commission for a period of 90 days or until issuance of the permanent operator and station licenses, whichever comes first, under the authority of a properly executed Interim Amateur Permit (FCC Form 660–B). An Interim Amateur Permit conveys all operating privileges of the licensee's new operator license, but may be set aside by the Commission within the 90 day term if it appears that the permanent operator and station licenses cannot be granted routinely.

4. Section 1.934 is revised, as follows:

§ 1.934 Procedure with respect to amateur radio operator license.

After an application for an amateur radio operator license is accepted and an examination conducted by the Commission in accordance with Part 97 of this Chapter, the examination is graded by the office supervising the examination. If the applicant is successful, and if the applicant already holds a license in the Amateur Radio Service, the supervising office issues the applicant an Interim Amateur Permit conveying all operating privileges of the applicant's new operator license. The results of the examination are forwarded to the Commission's Gettysburg, Pennsylvania facility for issuance of a license.

5. In § 1.1115, paragraph (c)(6) is revised, as follows:

§ 1.1115 Schedule of fees for the Safety and Special Radio Services.

• • • • • •

(c) • • •

(6) Applications for Interim Amateur Permits or Novice Class licenses in the Amateur Radio Service, applications for amateur stations under military auspices, and applications in the Radio Amateur Civil Emergency Service (RACES).

• • • • • •

PART 97—AMATEUR RADIO SERVICE

6. In § 97.3(d), the definition for "operator license" is amended and a new definition, "Interim Amateur Permit", is added, as follows:

§ 97.3 Definitions.

• • • • • •

(d) • • •

Operator license. The instrument of authorization including the class of operator privileges.

Interim Amateur Permit. A temporary operator and station authorization issued to licensees successfully completing Commission supervised examinations for higher class operator licenses.

Station license. The instrument of authorization for a radio station in the Amateur Radio Service.

7. A new § 97.32 is added, as follows:

§ 97.32 Interim Amateur Permits.

(a) Upon successful completion of a Commission supervised Amateur Radio Service operator examination, an applicant already licensed in the Amateur Radio Service may operate his amateur radio station pending issuance of his permanent amateur operator and station licenses under the terms and conditions of an Interim Amateur Permit, evidenced by a properly executed FCC Form 660–B.

(b) An interim Amateur Permit conveys all operating privileges of the applicant's new operator license classification.

(c) The transmissions of amateur radio stations operated under the authority of Interim Amateur Permits shall be identified in the manner specified in § 97.87.

(d) The original Interim Amateur Permit of an amateur radio operator shall be kept in the personal possession of or posted in a conspicuous place in the room occupied by such operator when operating an amateur radio station under the authority of an Interim Amateur Permit.

(e) Interim Amateur Permits are valid for a period of 90 days from the date of issuance or until issuance of the permanent station and operator licenses, whichever comes first, but may be set aside by the Commission within the 90 day term if it appears that the permanent operator and station licenses cannot be granted routinely.

(f) Interim Amateur Permits shall not be renewed.

8. In § 97.87, paragraph (f) as amended, is redesignated paragraph (g) and a new paragraph (f) is added, as follows:

§ 97.87 Station identification.

• • • • • •

(f) When operating under the authority of an Interim Amateur Permit with privileges authorized by the Permit, but which exceed the privileges of the licensee's permanent operator license, the station must be identified in the following manner:

(1) On radiotelephony, by the transmission of the station call sign, followed by the word "interim", followed by the special identifier shown on the interim permit;

(2) On radiotelegraphy, by the transmission of the station call sign, followed by the fraction bar DN, followed by the special identifier shown on the interim permit.

(g) The identification required by this section shall be given on each frequency being utilized for transmission and shall be transmitted either by telegraphy using the international Morse code, or by telephony, using the English language. If the identification required by this section is made by an automatic device used only for identification by telegraphy, the code speed shall not exceed 20 words per minute. The Commission encourages the use of a nationally or internationally recognized standard phonetic alphabet as an aid for correct telephone identification.

[FR Doc.77–1402 Filed 1–14–77;8:45 am]

[Docket No. 20784; RM–2584]

PART 73—RADIO BROADCAST SERVICES

TV Broadcast Stations in Andrews, Bryson City, and Waynesville-Canton, North Carolina; Changes in Table of Assignments

Adopted: December 23, 1976.

Released: January 6, 1977.

In the matter of amendment of § 73.606(b), table of assignments, television broadcast stations. (Andrews, Bryson City, and Waynesville-Canton, North Carolina).

1. On April 19, 1976, the Commission adopted a Notice of Proposed Rule Making in this proceeding (41 FR 17782). At the request of the University of North Carolina ("UNC"), comments were requested on the assignment and reservation of three UHF television channels in western North Carolina. The present Waynesville Channel 59 assignment was proposed to be deleted and reassigned to Andrews; Channel 67 was proposed for assignment at Bryson City; and Channel 27 was proposed as a joint assignment to Waynesville and Canton.

2. UNC is presently authorized to operate eight noncommercial educational television stations and three television translators in North Carolina.[1] The pro-

[1] The eight television broadcast stations are: WUNF–TV, Asheville (Channel *33); WUNC–TV, Chapel Hill (Channel *4); WUND–TV, Columbia (Channel *2); WUNG–TV, Concord (Channel *58); WUNK–TV, Greenville (Channel *25); WUNE–TV, Linville (Channel *17); WUNJ–TV, Wilmington (Channel *39); and WUNL–TV, Winston-Salem (Channel *26).

posed assignments were requested to enable UNC to extend a first educational television service, by means of translators, to persons residing in and around the four specified communities. Three assignments were requested since the mountainous terrain and widely scattered population does not permit a single translator to provide effective coverage.

3. In its Notice, the Commission proposed to amend the Television Table of Assignments as requested by UNC. We noted at that time that two of the proposed assignments were short-spaced to the reference points of two existing vacant assignments: the proposed Bryson City Channel 67 assignment was short-spaced to the vacant Channel 52 assignment at Carnesville, Georgia, and the proposed Waynesville-Canton Channel 27 assignment was short-spaced to the vacant co-channel assignment at Draketown, Georgia. In view of this, the Commission requested UNC to provide additional information demonstrating that transmitter sites were available at Carnesville and Bryson City on the one hand and Draketown and Waynesville-Canton on the other, that would permit compliance with the mileage separation requirements and still provide principal community coverage.

4. The comments filed by petitioner address this request. UNC states there is an adequate area available near Draketown, Georgia, where a Channel 27 transmitter may be located in order to permit a transmitter occupying the proposed Waynesville-Canton Channel 27 assignment to meet the mileage separation requirement. Alternatively, UNC suggests the Draketown assignment may be reassigned to Buchanan, Georgia, a community located nine miles west of Draketown.

5. If this were done, the reference points of Buchanan and Canton would meet the separation criteria but those of Waynesville and Buchanan would not. Under these circumstances, UNC states it would accept the assignment of Channel 27 to Canton only. With respect to the proposed Bryson City assignment, petitioner notes the existence of areas around it and Carnesville where transmitters may be located in compliance with the separation requirements.

6. UNC further states its intention to apply for the use of the channels if they are assigned. It presently holds construction permits for 100 watt translators operating on the requested channels at Andrews and Waynesville-Canton [3] and plans to apply for the use of 1000 watt translators at these locations if the requested assignments are made. (The Bryson City facility is to be of a lower power due to siting and construction difficulties.) No other comments were filed.

7. The Commission is persuaded that the channels sought by UNC should be assigned essentially as proposed. We note the substantial first educational television service to be furnished by translators operating on them. We are also convinced that compliance with our separation requirements for the Bryson City and Waynesville-Canton proposals may be achieved. If these assignments are ever occupied by full-fledged stations rather than translators, the transmitters of the Bryson City and Carnesville stations, and the Waynesville-Canton and Draketown stations, may simply be located a short distance removed from the respective communities. This would permit each to meet the minimum mileage standard. However, it is unclear whether a station operating on the proposed Waynesville-Canton Channel 27 assignment and located to meet the spacing requirements could provide the required principal community coverage to Waynesville. Therefore, we do not believe this channel should be assigned jointly to Waynesville and Canton. Instead it is being assigned solely to Canton. Reassignment of the Draketown channel to Buchanan under these circumstances therefore is not required.

8. Accordingly, and pursuant to authority contained in Sections 4(i), 5(d)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and § 0.281(b)(6) of the Commission's Rules, *it is ordered*, That, effective February 11, 1977, § 73.606(b) of the Commission's Rules is amended as follows for the cities in North Carolina listed below:

City:	*Channel No.*
Andrews	*59
Bryson City	*67,
Canton	*27

9. *It is further ordered*, That this proceeding is terminated.

(Secs. 4, 5, 303, 48 Stat., as amended, 1066, 1068, 1082; 47 U.S.C. 154, 155, 303.)

FEDERAL COMMUNICATIONS COMMISSION,
WALLACE E. JOHNSON,
Chief, Broadcast Bureau.

[FR Doc.77-1398 Filed 1-14-77;8:45 am]

[FCC 77-8]

PART 87—AVIATION SERVICES

Extending Time for Operating a Private Aircraft Radio Station Under Special Temporary Authority.

Adopted: January 4, 1977.

Released: January 11, 1977.

In the matter of amendment of Part 87 of the rules to extend the period of time which a purchaser of a new aircraft with factory installed radio equipment may operate a private aircraft radio station under special temporary authority.

1. By this Order, the Commission is amending Part 87 of the rules by extending from 30 days the period of time which a purchaser of a new aircraft with factory installed radio equipment may operate a private aircraft radio station on the aircraft under special temporary authority evidenced by a copy of a certificate (FCC Form 453-B) executed by the manufacturer, dealer, or distributor of such aircraft.

2. This action will eliminate the filing of requests for extension of the present 30 day special temporary authority by purchasers of new aircraft when the processing time of applications for new aircraft radio stations exceeds 30 days.

3. In that the amendment adopted herein relieves a restriction, is minor in nature, and is one in which the public is not particularly interested the prior notice and effective date provisions of 5 U.S.C. 553 are unnecessary.

4. *It is ordered*, That, pursuant to the authority contained in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, Part 87 of the Commission's rules is amended as set forth below, effective January 19, 1977.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303.)

FEDERAL COMMUNICATIONS COMMISSION,[1]
VINCENT J. MULLINS,
Secretary.

Part 87 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

Section 87.29 is amended by revising paragraph (c) to read as follows:

§ 87.29 Application for aircraft radio station license.

* * * * *

(c) The purchaser of new aircraft with factory installed radio equipment may operate a private aircraft radio station on the aircraft for a period of 60 days under special temporary authority evidenced by a copy of a certificate (FCC Form 453-B) executed by the manufacturer, dealer, or distributor of such aircraft, the original of which has been mailed to the Commission with an application for new station license on FCC Form 404.

[FR Doc.77-1399 Filed 1-14-77;8:45 am]

[FCC 77-3]

PART 1—PRACTICE AND PROCEDURE

Suspension of Fees

Adopted: January 4, 1977.

Released: January 7, 1977.

Clarifying Order (FFC 76-1197) of December 22, 1976 suspending collection of all fees effective January 1, 1977.

In the matter of suspension of Subpart G of Part 1 of the Commission's Rules relating to the schedule of fees.

1. As a result of our Order of December 22, 1976 (FCC 76-1197; 41 FR 56646, December 29, 1976) suspending collection of all fees effective January 1, 1977, several parties have inquired as to the applicability of that Order to certain grant fees.

2. Where a separate grant fee was required, § 1.1102(d) of the Rules provided that the grant fee was payable either within 45 days after grant or, in the case of assignments or transfers of broadcast stations, "immediately following" consummation. Thus, for some grants that were made prior to January 1, 1977, fees were not payable until after that date. Since we contemplate some refund of most fees, our suspension order was intended to cover all fee payments, regardless of whether the actual liability for the fee was incurred before or after January 1, 1977. Our intention was, and is, that until further notice, no fees are to be submitted to the Commission after January 1, 1977—without exception.

FEDERAL COMMUNICATIONS COMMISSION,[1]
VINCENT J. MULLINS,
Secretary.

[FR Doc.77-1403 Filed 1-14-77;8:45 am]

[3] Unlike higher powered translators, these translators may operate on unreserved channels.

[1] Commissioner Lee absent.

Title 49—Transportation

CHAPTER X—INTERSTATE COMMERCE COMMISSION

SUBCHAPTER A—GENERAL RULES AND REGULATIONS

[Ex Parte No. MC-19 (Sub-No. 28)]

PART 1056—TRANSPORTATION OF HOUSEHOLD GOODS IN INTERSTATE OR FOREIGN COMMERCE

Practices of Motor Common Carriers of Household Goods (Advertising)

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D.C., on the 21st day of December 1976.

It appearing, That by Notice of Proposed Rulemaking dated December 23, 1975, this Commission instituted a proceeding to investigate certain specified matters described in the attached report concerning advertising practices of motor common carriers of household goods in interstate or foreign commerce and their agents;

And it further appearing, That investigation of the matters and things involved in this proceeding has been made and that the Commission has made and filed its report herein containing its findings of fact and conclusions thereon, which report is hereby referred to and made a part hereof:

It is ordered; That Part 1056 of Chapter X of Title 49 of the Code of Federal Regulations be, and it is hereby, amended by relettering the present subsection 1056.1(d) by making it paragraph (e) without any other changes and supplemented by adding the new section 1056.30 and the new subsection 1056.1(d) as set forth in the notice attached hereto.

It is further ordered, That this order shall become effective on February 25, 1977, and shall remain in effect until modified or revoked in whole or in part by further order of the Commission.

And it is further ordered, That notice of this order shall be given to the general public by depositing a copy thereof in the Office of the Secretary of the Interstate Commerce Commission at Washington, D.C., and by filing a copy of the attached notice with the Director, Office of the Federal Register (49 U.S.C. 301, 302, 304, 306, 307, 308, 312, 316, and 322, 5 U.S.C. 552, 553, and 559).

ROBERT L. OSWALD,
Secretary.

• Purpose: The purpose of this notice is to inform the public that the Interstate Commerce Commission has adopted regulations which require motor common carriers of household goods in interstate or foreign commerce to include in every advertisement (as defined by the Commission) the name and certificate or docket number of the carrier under whose authority each shipment of household goods will originate. •

The Interstate Commerce Commission in the above-entitled proceeding has adopted new rules relative to advertising practices of motor common carriers of household goods. Notice of the proposed rulemaking was published in the FEDERAL REGISTER on January 9, 1976, and on March 18, 1976. In this proceeding the Commission amended Part 1056 of the Commission's General Rules and Regulations (49 CFR 1056.1 *et seq.*) by adding § 1056.30 to that part, by relettering § 1056.1(d) and making it § 1056.1(e) without any other changes, and by adding a new § 1056.1(d).

This action was taken as a result of complaints the Commission has received relative to unauthorized transportation of household goods shipments. Individuals complain that they are not told in advance that the party advertising household goods transportation services will not be responsible for the actual transportation of the shipment in question. Others find that the carrier whose services they have requested are not authorized to perform those services. Although the Commission does have power to require illegal operations to cease, orders to cease illegal operations offer little consolation to the shipper who has already been deceived as to the identity and operating authority of the advertising carrier.

The new regulations require motor common carriers of household goods in interstate or foreign commerce and their agents to disclose, in each advertisement as defined by the Commission, the name and certificate or docket number of the carrier under whose operating authority the potential customer's shipment will be transported. The Commission believes that the new regulations will enable household goods shippers to make a more informed selection from among the motor transportation services being offered in printed advertising such as the yellow pages. Disclosure of the name of and certificate or docket number of the carrier responsible for providing transportation services will assist the Commission in its efforts to eliminate unauthorized operations and in our endeavor to reduce the number of complaints received concerning carriers who conduct such unauthorized operations.

This modification of regulations is issued under the authority of sections 552, 553, and 559 of the Administrative Procedure Act (5 U.S.C. 552, 553, and 559) and sections 201, 202, 204, 206, 207, 208, 212, 216, and 222 of the Interstate Commerce Act (49 U.S.C. 301, 302, 304, 306, 307, 308, 312, 316, and 322).

ROBERT L. OSWALD,
Secretary.

Accordingly, 49 CFR is modified in the manner set forth below. The following new section is added to 49 CFR 1056:

§ 1056.30 Advertising by motor common carriers of household goods.

(a) On and after March 1, 1977, every motor common carrier engaged in the transportation of household goods in interstate or foreign commerce, including any carriers providing any accessorial service incidental to or part of such interstate or foreign transportation, shall include, and shall require each of its agents to include, in every advertisement as defined in § 1056.1(d) the name or trade name of the motor carrier under whose operating authority the advertised service will originate, and the certificate or docket number assigned to such operating authority by the Interstate Commerce Commission.

(b) Such certificate or docket number shall be in the following form in every advertisement: "I.C.C. No. MC-_____" but shall not include any subnumbers which may have been assigned.

Present § 1056.1 is modified by relettering the present paragraph (d) and making it paragraph (e) without any other change, and by inserting a new paragraph (d) as follows:

§ 1056.1 Definitions.

* * * * *

(d) *Advertisement.* The term "advertisement" means any communication to the public, in written or printed form, in connection with an offer or sale of any interstate or foreign transportation service, but shall not be construed to include a simple listing of a carrier's name, address, and telephone number.

* * * * *

Commissioner Christian, dissenting:

I share the majority's commitment to protect the household goods shipper. I also understand the personal difficulties which may arise when a person selects a carrier to move his personal belongings on the strength of an advertisement which is deceptive or misleading. However, I do not believe that the regulation adopted by the majority will put an end to carrier abuses or arm the public with information which will truly assist in selecting an appropriate carrier.

In my view, the better approach to the problem would be to instruct our field staff to monitor carrier advertising practices and take effective enforcement action against those who attempt to deceive the public.

[FR Doc.77-1429 Filed 1-14-77;8:45 am]

[1] Commissioner Lee absent.

Title 14—Aeronautics and Space

CHAPTER I—FEDERAL AVIATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Docket No. 76-EA-74; Amdt. 39-2806]

PART 39—AIRWORTHINESS DIRECTIVE

Piper Aircraft

The Federal Aviation Administration is amending § 39.13 of Part 39 of the Federal Aviation Regulations so as to issue an airworthiness directive applicable to Piper PA-31 type airplanes.

As a result of surveillance of the manufacturer's facility, it has been determined that approximately 85 airplanes may have been released without the proper number of rivets attaching the horizontal stabilizer skin to the spanwise stiffeners.

Since the foregoing deficiency may exist in aircraft of the subject type, an airworthiness directive is being issued which will require an inspection and repair when necessary. The deficency is one which can affect the integrity of the skin in the affected area.

We have determined that the expected impact of the proposed regulation is so minimal that the proposal does not warrant an evaluation.

In view of the foregoing and because the deficiency is one which affects air safety, notice and public procedure hereon are impractical and good cause exists for making the amendment effective in less than 30 days.

In consideration of the foregoing and pursuant to the authority delegated to me by the Administrator, 14 CFR 11.89 [31 FR 13697] § 39.13 of Part 39 of the Federal Aviation Regulations is amended by issuing a new Airworthiness Directive as follows:

PIPER: Applies to Models PA-31 and PA-31-325, Serial Nos. 31-7612060 through 31-7612080, 31-7612082 through 31-7612089, 31-7612091, 31-7612096 and 31-7612099; Model PA-31-350, Serial Nos. 31-7652105 through 31-7652115, 31-7652117, 31-7652118, 31-7652120 through 31-7652146, 31-7652148 through 31-7652162, 31-7652164, 31-7652165 and 31-7652168 and above model aircraft which have had a replacement horizontal stabilizer installed in the field subsequent to April 1976, certificated in all categories.

To prevent possible hazards in flight associated with missing horizontal stabilizer skin-stiffener rivet attachments, accomplish the following within the next fifty hours in service from the effective date of this AD unless previously accomplished:

(a) Inspect and, if required, repair the horizontal stabilizer skin-stiffener rivet attachment in accordance with the "Instructions" section of Piper Service Bulletin No. 521 or equivalent procedures approved by the Chief, Engineering and Manufacturing Branch, FAA, Eastern Region.

NOTE.—The Federal Aviation Agency has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107.

This amendment is effective January 19, 1977.

(Sec. 313(a), 601 and 603 of the Federal Aviation Act of 1958 [49 U.S.C. 1354(a), 1421 and 1423], and section 6(c) of the Department of Transportation Act [49 U.S.C. 1655(c)].)

Issued in Jamaica, N.Y., on January 5, 1977.

L. J. CARDINALI,
Acting Director, Eastern Region.

[FR Doc.77-1231 Filed 1-14-77;8:45 am]

[Docket No. 77-NE-2; Amdt. 39-2807]

PART 39—AIRWORTHINESS DIRECTIVE

Pratt & Whitney Aircraft JT9D Engines

Inspection of certain fifth stage turbine hubs removed from Pratt & Whitney Aircraft JT9D engines has disclosed low cycle fatigue cracking in the snap area where the sixth disk mates with the fifth hub. Since this condition is likely to exist in other engines with hubs having the same part number, an airworthiness directive is being issued to reduce their cycle life in order to prevent engine failure. Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

The Federal Aviation Administration has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OBM Circular A-107

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (14 CFR 11.89), § 39.13 of Part 39 of the Federal Aviation Regulations is amended by adding the following new airworthiness directive:

PRATT & WHITNEY AIRCRAFT. Applies to all Pratt & Whitney Aircraft JT9D-3A, -7, -7H, -7A, -7AH, -7F, and -20 turbofan engines containing fifth stage turbine hubs, P/N 704705, 714905, 718905, 719205, and 726805.

Compliance required as indicated.

To prevent cracking and possible failure of fifth stage turbine hubs, the cyclic life limits on these parts have been reduced below the figures currently approved. Unless already accomplished, remove from service fifth stage turbine hubs prior to reaching the revised life limit listed below or within the next 25 cycles in service after the effective date of this AD, whichever is later:

	Previous life limit (cycles)	Revised life limit (cycles)
Hub part No.:		
704705	15,000	7,000
714905	15,000	6,000
718905	8,000	5,000
719205	8,000	5,000
726805	8,000	5,000

Upon request of the operator, an FAA maintenance inspector, subject to prior approval of the Chief, Engineering & Manufacturing Branch, New England Region, may adjust the 25 cycle compliance interval to permit compliance at an established inspection period of the operator if the request contains substantiating data to justify the increase for that operator.

NOTE.—Pratt & Whitney Alert Service Bulletin No. 4671 pertains to this subject.

This amendment becomes effective January 17, 1977.

(Secs. 313(a), 601, and 603, of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421, and 1423) and of sec 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).)

Issued in Burlington, Massachusetts on January 6, 1977.

QUENTIN S. TAYLOR,
Director, New England Region.

[FR Doc.77-1230 Filed 1-14-77;8:45 am]

[Airspace Docket No. 76-SO-68]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

Alteration of Control Zone and Transition Area

On November 4, 1976, a Notice of Proposed Rule Making (NPRM) was published in the FEDERAL REGISTER (41 FR 48541) stating that the Federal Aviation Administration (FAA) was considering an amendment to Part 71 of the Federal Aviation Regulations that would alter the Pensacola, NAS, Fla., control zone and the Pensacola, Fla., transition area.

Interested persons were afforded an opportunity to participate in the proposed rule making through the submission of comments. No comments were received.

Subsequent to publication of the notice, the U.S. Navy closed NAS Saufley Field and cancelled associated instrument approach procedures. Consequently, it is necessary to alter the proposed description of the Pensacola 700-foot transition area to revoke those segments which were formerly associated with NAS Saufley Field. Additionally, it is necessary to enlarge the segments associated with Forrest Sherman Field to provide sufficient controlled airspace to accommodate operations at that field. Separate airspace action is being taken to revoke the Pensacola, Fla., (NAS Saufley Field) control zone.

Although the Pensacola transition area description is altered from that proposed in the notice, the adjustment is considered a minor matter upon which the public would have no desire to comment. Therefor, it may be effected herein without recourse to further public notice.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective 0901 G.m.t., April 21, 1977, as hereinafter set forth.

1. In § 71.171 (42 FR 355) the description of the Pensacola, NAS, Fla., control zone is revised as follows:

PENSACOLA, NAS, FLA.

Within a 6-mile radius of Forrest Sherman Field (Lat. 30°20'53" N., Long. 87°19'04" W.); within 3 miles each side of the 174° bearing from NAS Pensacola UHF RBN, extending from the 6-mile radius zone to 8.5 miles south of the RBN.

2. In § 71.181 (42 FR 440) the description of the Pensacola, Fla., transition area is revised as follows:

PENSACOLA, FLA.

That airspace extending upward from 700 feet above the surface within an 8.5-mile radius of Pensacola Regional Airport (Lat. 30°28'25" N., Long. 87°11'20" W.); within 3 miles each side of the ILS localizer north course, extending from the 8.5-mile radius area to 8.5 miles north of Brent LOM; within an 8.5-mile radius of Forrest Sherman Field (Lat. 30°20'53" N., Long. 87°19'04" W.); and within a 17.5-mile radius of the NAS Pensacola TACAN, extending clockwise from the 070° radial to the 270° radial.

(Sec. 307(a) and 1110 of the Federal Aviation Act of 1958 (49 U.S.C. 1348(a), and 1510), Executive Order 10854 (24 FR 9565) and sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).)

Issued in Washington, D.C., on January 7, 1977.

WILLIAM E. BROADWATER,
Chief, Airspace and Air Traffic Rules Division.

[FR Doc.77-1229 Filed 1-14-77;8:45 am]

[Airspace Docket No. 76-PC-8]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

Alteration of Transition Area Honolulu, Hawaii (Wheeler AFB)

On November 1, 1976, a notice of proposed rulemaking was published in the FEDERAL REGISTER (41 FR 47948) stating that the Federal Aviation Administration was considering an amendment to Part 71 of the Federal Aviation Regulation that would alter the transition area at the Wheeler AFB, Island of Oahu, Hawaii.

Interested persons were afforded an opportunity to participate in the rulemaking through the submission of comments. No objections to the proposed alteration have been received.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended effective 0901 G.m.t. February 24, 1977, as hereinafter set forth.

In 71.181 (41 FR 513), the Honolulu, Hawaii (Wheeler AFB), transition area is amended as follows:

HONOLULU, HAWAII

WHEELER AFB

That airspace extending upward from 700 feet above the surface within 2 miles each side of the Honolulu VORTAC 358° radial extending from the arc of a 3-mile radius circle centered on Wheeler AFB (latitude 21°29'00" N, longitude 158°02'30" W) to the INT of the Honolulu, Hawaii, VORTAC 358° and the Koko Head, Hawaii, VORTAC 298° radials, and that airspace extending upward from 700 feet above the surface within 2 miles northwest of and parallel to the centerline of Runway 06 (068°38'40" true bearing) beginning at the 3-mile radius arc and extending northeast to intercept an arc of a 5-mile radius circle centered on Wheeler AFB (latitude 21°29'00" N, longitude 158°02'30" W) thence clockwise along the 5-mile arc to the Koko Head, Hawaii, VORTAC 305° radial; thence northwest along the Koko Head, Hawaii, VORTAC 305° radial to the arc of the 3-mile radius circle.

(Sec. 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348(a)); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)).)

Issued in Honolulu, Hawaii, on January 5, 1977.

R. O. ZIEGLER,
Regional Director, Pacific-Asia Region.

[FR Doc.77-1228 Filed 1-14-77;8:45 am]

[Docket No. 16416; Amdt. No. 1055]

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

Recent Changes and Additions

This amendment to Part 97 of the Federal Aviation Regulations incorporates by reference therein changes and additions to the Standard Instrument Approach Procedures (SIAPs) that were recently adopted by the Administrator to promote safety at the airports concerned.

The complete SIAPs for the changes and additions covered by this amendment are described in FAA Forms 8260-3, 8260-4, or 8260-5 and made a part of the public rule making dockets of the FAA in accordance with the procedures set forth in Amendment No. 97-696 (35 FR 5609).

SIAPs are available for examination at the Rules Docket and at the National Flight Data Center, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591. Copies of SIAPs adopted in a particular region are also available for examination at the headquarters of that region. Individual copies of SIAPs may be purchased from the FAA Public Information Center, AIS-230, 800 Independence Avenue, SW., Washington, D.C. 20591 or from the applicable FAA regional office in accordance with the fee schedule prescribed in 49 CFR 7.85. This fee is payable in advance and may be paid by check, draft, or postal money order payable to the Treasurer of the United States. A weekly transmittal of all SIAP changes and additions may be obtained by subscription at an annual rate of $150.00 per annum from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. Additional copies mailed to the same address may be ordered for $30.00 each.

Since a situation exists that requires immediate adoption of this amendment, I find that further notice and public procedure hereon is impracticable and good cause exists for making it effective in less than 30 days.

In consideration of the foregoing, Part 97 of the Federal Aviation Regulations is amended as follows, effective on the dates specified:

1. Section 97.23 is amended by originating, amending or canceling the following VOR-VOR/DME SIAPs, *effective March 3, 1977.*

Robbinsville, NJ — Trenton - Robbinsville Arpt., VOR Rwy 28, Amdt. 6.

* * * *effective February 24, 1977.*

Mt. Sterling, KY—Mt. Sterling-Montgomery County, VOR Rwy 7, Original.

Mt. Sterling, KY—Mt. Sterling-Montgomery County, VOR/DME Rwy 7, Amdt. 1.

Lambertville, MI—Wagon Wheel Arpt., VOR-A, Amdt. 4.

Bozeman, MT—Gallatin Field, VOR/DME Rwy 12, Original.

* * * *effective December 30, 1976.*

Galesburg, IL—Galesburg Municipal Arpt., VOR Rwy 20, Amdt. 8.

Wichita, KS—Beech Factory, VORTAC-B, Amdt. 7.

2. Section 97.25 is amended by originating, amending, or canceling the following SDF-LOC-LDA SIAPs, *effective February 24, 1977.*

Grand Junction, CO—Walker Field, LOC Rwy 11, Amdt. 1, cancelled.

3. Section 97.27 is amended by originating, amending, or canceling the following NDB/ADF SIAPs, *effective February 24, 1977.*

Grand Junction, CO—Walker Field, NDB Rwy 11, Amdt. 15.

Bozeman, MT—Gallatin Field, NDB Rwy 12, Amdt. 2.

Forsyth, MT—Tillitt Arpt., NDB Rwy 26, Amdt. 1.

* * * *effective January 27, 1977.*

Walnut Ridge, AR—Walnut Ridge Regional, NDB Rwy 17, Original.

4. Section 97.29 is amended by originating, amending, or canceling the following ILS SIAPs, *effective February 24, 1977.*

Grand Junction, CO—Walker Field, ILS Rwy 11, Amdt. 8.

Bozeman, MT—Gallatin Field, ILS Rwy 12, Amdt. 3.

5. Section 97.31 is amended by originating, amending, or canceling the following RADAR SIAPs, *effective February 24, 1977.*

Pago Pago, Tutuila Is., American Samoa—Pago Pago International, RADAR-1, Original.

(Secs. 307, 313, 601, 1110, Federal Aviation Act of 1958; 49 U.S.C. 1438, 1354, 1421, 1510, and sec. 6(c) Department of Transportation Act, 49 U.S.C. 1655(c).)

Issued in Washington, D.C., on January 7, 1977.

NOTE.—Incorporation by reference provisions in §§ 97.10 and 97.20 (35 FR 5610) approved by the Director of the Federal Register on May 12, 1969.

JAMES M. VINES,
Chief, Aircraft Programs Division.

[FR Doc.77-1235 Filed 1-14-77;8:45 am]

Title 12—Banks and Banking

CHAPTER II—FEDERAL RESERVE SYSTEM

SUBCHAPTER A—BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

[Docket No. R-0075]

PART 206—SECURITIES OF STATE MEMBER BANKS FORMS FOR FINANCIAL STATEMENTS

Form F-9, A, B, C, D, and E

Pursuant to its authority under section 12(i) of the Securities Exchange Act of 1934 (15 U.S.C. 781(i)), the Board has amended Form F-9 (12 CFR 206.71), which provides the forms of financial

statements that State member banks whose securities are registered under section 12 of that Act (12 U.S.C. 781(g)) are required to file with the Board under sections 12, 13, and 14 of that Act. The amendments to Form F-9 conform the forms of such financial statements to the financial reports that all State member banks are required to publish and file with the System, pursuant to section 9, ¶6 of the Federal Reserve Act (12 U.S.C. 324). Earlier this year, the Board, the Comptroller of the Currency, and the Federal Deposit Insurance Corporation jointly revised the supervisory reporting requirements for all federally-insured banks.

In that the amendment of Form F-9 relieves the 61 State member banks registered under section 12 of the Act of the burden of preparing financial statements for the Board under varying formats and instructions; in that the recent amendments to the financial statement formats were adopted after notice and receipt of public comment (see 40 FR 46399 (1975)); and in that these amendments to Form F-9 represent merely a change in form and not a substantive change, notice and public procedure in the adoption of these amendments to Form F-9 was unnecessary.

The text of the amendment of Form F-9 which supersedes existing Form F-9 reads as follows:

§ 206.71 Forms for financial statements (Forms F-9, A, B, C, D, and E).

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

FORM F-9: FINANCIAL STATEMENTS

[Revised November 15, 1976]

A. Balance Sheet (Form F-9A)

B. Statement of Income (Form F-9B)

C. Statement of Changes in Capital Accounts (Form F-9C)

D. Schedules (Form F-9D)

E. Statement of Changes in Financial Position (Form F-9E)

GENERAL INSTRUCTIONS

1. *Preparation of forms.* The forms for financial statements are not to be used as blank forms to be filled in but only as guides in the preparation of financial statements. The requirements with respect to the filing of balance sheets and statements of income are contained in the instructions as to certain other forms required by this Part. Particular attention should be given to the general requirements as to financial statements in § 206.7 of this Part, including paragraphs (e), (f), and (g) thereof, which prescribe when statements of changes in capital accounts and schedules will be filed. Although inapplicable items specified in the forms for financial statements should be omitted, the detailed instructions that relate to applicable items shall be followed.

2. *Accrual accounting.* Financial statements shall generally be prepared on the basis of accrual accounting whereby all revenues and all expenses shall be recognized during the period earned or incurred regardless of the time received or paid, with certain exceptions: (a) where the results would be only insignificantly different on a cash basis, or (b) where accrual is not feasible. Statements with respect to the first fiscal year that a bank reports on the accrual basis shall indicate clearly, by footnote or otherwise, the beginning-of-year adjustments that were necessary and their effect on prior financial statements filed under this Part.

A. BALANCE SHEET

ASSETS

1. Cash and due from banks
2. Investment securities:
   (a) U.S. Treasury securities
   (b) Obligations of other U.S. Government agencies and corporations
   (c) Obligations of States and political subdivisions
   (d) Other securities
3. Trading account securities
4. Federal funds sold and securities purchased under agreement to resell
5. Loans
   Less: reserve for possible loan losses
   Loans, net
6. Direct lease financing
7. Bank premise and equipment
8. Real estate owned other than bank premises
9. Investment in unconsolidated subsidiaries and associated companies
10. Customers' acceptance liability
11. Other assets
12. Total assets

LIABILITIES AND CAPITAL

13. Deposits:
   (a) Demand deposits in domestic offices
   (b) Savings deposits in domestic offices
   (c) Time deposits in domestic offices
   (d) Deposits in foreign offices
14. Federal funds purchased and securities sold under agreements to repurchase
15. Other liabilities for borrowed money
16. Bank's acceptance outstanding
17. Mortgage indebtedness
18. Other liabilities
19. Total liabilities (excluding subordinated notes and debentures)
20. Subordinated notes and debentures
21. Equity capital:
   (a) Capital stock:
      Common stock
      Preferred stock
   (b) Surplus
   (c) Undivided profits
   (d) Reserve for contingencies and other capital reserves
22. Total equity capital
23. Total liabilities and equity capital (Items 19, 20 and 22)

ASSETS

1. *Cash and due from banks.* (a) State the total of (1) currency and coin (A) owned and held in the bank's vaults and (B) in transit to or from a Federal Reserve Bank; (2) the bank's total reserve balance with the Federal Reserve Bank as shown by the bank's books; (3) demand and time balances with other banks; and (4) cash items in process of collection.

(b) Reciprocal demand balances with banks in the United States, except those of private banks and American branches of foreign banks, shall be reported net.

(c) Do not include unavailable balances with closed or liquidating banks. Such balances should be reported in "other assets".

(d) Cash items in process of collection include: (1) checks in process of collection drawn on another bank, private bank, or any other banking institution that are payable immediately upon presentation (including checks with a Federal Reserve Bank in process of collection and checks on hand that will be presented for payment or forwarded for collection on the following business day); (2) Government checks and warrants drawn on the Treasurer of the United States that are in process of collection; and (3) such other items in process of collection, including redeemed United States savings bonds, payable immediately upon presentation in the United States, as are customarily cleared or collected by banks as cash items.

(e) Checks drawn on a bank other than the reporting bank that have been deposited in the reporting bank (or offices or branches of such bank) and have been forwarded for collection to other offices or branches of the reporting bank are cash items in the process of collection.

(f) Do not include commodity or bill-of-lading drafts payable upon arrival of goods against which drawn, whether or not deposit credit therefor has been given to a customer. If deposit credit has been given, such drafts should be reported as "loans"; but if the drafts were received by the reporting bank on a collection basis they should not be included in the reporting bank's statement until such time as the funds have been actually collected.

(g) Unposted debits should preferably be deducted from the appropriate deposit liability caption. If such items are included hereunder, the amount shall be stated parenthetically.

2. *Investment securities.* (a) State separately book value of (1) U.S. Treasury securities; (2) Obligations of other U.S. Government agencies and corporations; (3) Obligations of States and political subdivisions; and (4) Other securities owned by the bank; include securities pledged, loaned or sold under repurchase agreements and similar arrangements.

(b) The aggregate amount on the basis of fair market value at the balance sheet date shall be shown either parenthetically on the balance sheet or by a reference note for each category of investment securities reported under caption 2 of each balance sheet required to be filed.

(c) Book value with respect to investment quality securities reported in paragraph (a) shall be cost adjusted for amortization of premium and for accretion of discount. There shall be set forth in a note to financial statements (1) the basis of accounting for book value, and (2) if bond discount amounts to 5 per cent or more of interest and dividends on investments, the total of accretion income and deferred income taxes applied thereto.

(d) Include in category (3) of paragraph (a) obligations, including warrants and tax anticipation notes, of the States of the United States and their political subdivisions, agencies, and instrumentalities; also obligations of territorial and insular possessions of the United States. Do not include obligations of foreign states.

(e) Do not include borrowed securities or securities purchased under resale agreements or similar arrangements.

3. *Trading account securities.* State the aggregate value at the balance sheet date, of securities of all types carried by the bank in a dealer trading account (or accounts) that are held principally for resale to customers. Indicate parenthetically, or otherwise in a note to financial statements, whether the inventory is valued at (1) cost, (2) lower of cost or market, or (3) market. If cost basis of valuation is used, furnish aggregate market value of the trading account inventory at the current fiscal year balance sheet date.

4. *Federal funds sold and securities purchased under agreements to resell.* (a) State the aggregate value of Federal funds sold and securities purchased under resale agreement or similar arrangements. All securities purchased under transactions of this type should be included regardless of (1) whether they are called simultaneous purchases and sales, buy-backs, turnarounds, overnight transactions, delayed deliveries, etc., and (2) whether the transactions are with the same or different institutions if the purpose of the transactions is to resell identical or similar securities.

(b) Federal funds sold and purchases of securities under resale agreements should be reported gross and not netted against purchases of Federal funds and sales of securities under repurchased agreements.

5. *Loans.* (a) (1) State the aggregate gross value of all other loans including (a) acceptances of other banks and commercial paper purchased in the open market; (b) acceptances executed by or for the account of the reporting bank and subsequently acquired by it through purchase or discount; (c) customers' liability to the reporting bank on drafts paid under letters of credit for which the bank has not been reimbursed; and (d) "cotton overdrafts" or "advances," and commodity or bill-of-lading drafts payable upon arrival of goods against which drawn, for which the reporting bank has given deposit credit to customers.

(2) Include (a) paper rediscounted with the Federal Reserve or other banks; and (b) paper pledged as collateral to secure bills payable, as marginal collateral to secure bills rediscounted, or for any other purpose.

(3) Do not include contracts of sale or other loans indirectly representing bank premises or other real estate; these should be included in "bank premises" or "other real estate."

(4) Do not deduct bona fide deposits accumulated by borrowers for the payment of loans if such deposits do not immediately reduce the unpaid balance of the loan.

(5) Deduct unearned income on loans.

(b) *Less: Reserve for Possible Loan Losses.* State the balance of the loan loss allowance account at the end of the fiscal year. Include in this allowance only the valuation portion that has been established through charges against income.

NOTE.—For banks on reserve method of accounting for loan losses, the single value reserve account representing the amount calculated pursuant to IRS regulations will be reclassified into three existing components: (1) valuation portion; (2) contingency portion; and (3) deferred tax portion.

Valuation portion. If prior to January 1, 1969, a bank did not distinguish the different parts of the reserve for loan losses, the total balance in the reserve for loan losses at January 1, 1969, is considered to have been entirely a valuation reserve. Such balance is increased by the amount of provision for loan losses charged to income in each period since December 31, 1968, and the amount of the loan recoveries in each period since December 31, 1968, and reduced by the loan losses charged to reserve for loan losses in each period since December 31, 1968. The resulting balance is the valuation portion of the reserve which is required to be deducted from total loans in the Report of Condition. Only the valuation portion of the reserve for loan losses is available for absorbing loan losses.

Contingency portion. The cumulative amount equivalent to the difference between transfers to the bad debt reserve calculated pursuant to IRS regulations, and the provisions for loan losses charged against income in each report period since December 31, 1968. Such amount, net of applicable income tax reduction benefit, should be included in the "undivided profits" account.

Deferred tax portion. The amount of deferred tax related to the contingency portion described above constitutes the deferred income tax portion and should be reported in "Other liabilities."

NOTE.—In the [illegible] circumstances where the cumulative provisions for loan losses charged against income have exceeded cumulative transfers to the bad debt reserve account calculated pursuant to IRS regulations in the period since December 31, 1968, the entire balance of the reserve for loan losses is considered a valuation reserve.

6. *Direct lease financing.* Report all lease financing transacted pursuant to applicable state statutes authorizing direct lease financing by banks. Amounts to be reported in this item for all such leases, regardless of form, are to be based on a "financing method" of accounting.

7. *Bank premises and equipment.* (a) State the aggregate cost of (1) bank premises owned, (2) leasehold improvements, and (3) equipment less any accumulated depreciation or amortization with respect to such assets.

(b) All fixed assets acquired subsequent to December 31, 1959, shall be stated at cost less accumulated depreciation or amortization.

(c) All fixed assets acquired prior to January 1, 1960, that are not presently accounted for by the bank on the basis of cost less accumulated depreciation or amortization, may be stated at book value. Any such assets that are still in use and would not have been fully depreciated on an acceptable method of accounting for depreciation if the bank had recorded depreciation on such basis shall be described briefly in a footnote, together with an explanation of the accounting that was used with respect to such assets.

(d) The term "leasehold improvements" comprehends two types of situations: (1) where the bank erects a building on leased property; and (2) where a bank occupies leased quarters or uses leased parking lots and appropriately capitalizes disbursements for vaults, fixed machinery and equipment directly related to such leased quarters, or resurfacing or other improvements directly related to such parking lots that will become an integral part of the property and will revert to the lessor on expiration of the lease.

(e) Bank premises includes valuts, fixed machinery and equipment, parking lots owned adjoining or not adjoining the bank premises that are used by customers or employees, and potential building sites.

(f) Equipment includes all movable furniture and fixtures of the bank.

8. *Real estate owned other than bank premises.* (a) State the aggregate cost of all real estate owned by the bank that is not a part of bank premises.

(b) With respect to real estate acquired through default of a loan, aggregate cost shall include the unpaid balance on the defaulted loan plus the bank's out-of-pocket costs in acquiring clear title to the property. Any adjustments from aggregate cost shall be explained in a footnote.

(c) The aggregate market value of all real estate owned by the bank that is not a part of bank premises shall be set forth in a footnote, together with an explanation of the method of determining such market value.

9. *Investments in unconsolidated subsidiaries and associated companies.* State the aggregate investment, including advances, in unconsolidated subsidiaries and associated companies (i.e., those companies where the bank directly or indirectly owns 20 to 50 per cent of common stock).

10. *Customers' acceptance liability.* (a) State the liability to the reporting bank of its customers on drafts and bills of exchange that have been accepted by the reporting bank or by other banks for its account and that are outstanding—that is, not held by the bank, on the reporting date. (If held by the reporting bank, they should be reported as "loans".)

(b) In case a customer anticipates his liability to the bank on outstanding acceptances by paying the bank either the full amount of his liability or any part thereof in advance of the actual maturity of the acceptance, the bank should decrease the amount of the customer's liability on outstanding acceptances. If such funds are not received for immediate application to the reduction of the indebtedness to the bank or the receipt thereof does not immediately reduce or extinguish the indebtedness, then such funds held to meet acceptances must be reported in "demand deposits".

(c) Do not include customer's liability on unused commercial and travelers' letters of credit issued under guaranty or against the deposit of security—that is, not issued for money or its equivalent.

11. *Other assets.* State separately, if material, (1) income earned but not collected; (2) prepaid expenses; and (3) any other asset not included in the preceding items.

12. *Total assets.* State the sum of all asset items.

LIABILITIES AND CAPITAL

13. *Deposits.* (a) State separately (1) demand deposits in domestic offices of the bank, (2) savings deposits in domestic offices of the bank, (3) time deposits in domestic offices of the bank, and (4) deposits in foreign offices. State in a note to financial statements the aggregate amount of time certificates of deposits of $100,000 or more. Related unposted debits, if any, should preferably be deducted from domestic deposits.

(b) The domestic deposit liability categories shall be segregated in accordance with the Rules and Regulations of the Federal Deposit Insurance Corporation, Part 327.2—Classification of Deposits.

(c) The term "unposted debit" means a cash item in the bank's possession drawn on itself that has been paid or credited and is chargeable against, but has not been charged against, deposit liabilities at the close of the reporting period. This term does not include items that have been reflected in deposit accounts on the general ledger, although they have not been debited to individual deposit accounts.

(d) Reciprocal demand deposit balances with banks in the United States, except those of private banks and American branches of foreign banks, shall be reported net.

(e) Include outstanding drafts (including advices or authorizations to charge the bank's balance in another bank) drawn in the regular course of business by the reporting bank on other banks pursuant to customer order.

(f) Do not include trust funds held in the bank's own trust department that the bank keeps segregated and apart from its general assets and does not use in the conduct of its business.

14. *Federal funds purchased and securities sold under agreements to repurchase.* (a) State the aggregate value of Federal funds purchased and securities sold under repurchase or similar arrangements. All securities sold under transactions of this type should be included regardless of (1) whether they are called simultaneous purchases and sales, buy-backs, turnarounds, overnight transactions, delayed deliveries, etc., and (2) whether the transactions are with the same or different institutions if the purpose of the transactions is to repurchase identical or similar securities.

(b) Federal funds purchased and sale of securities under repurchase agreements should be reported gross and not netted

against sales of Federal funds and purchases of securities under resale agreements.

15. *Other liabilities for borrowed money.* State the aggregate amount borrowed by the reporting bank on its own promissory notes, on notes and bills rediscounted (including commodity drafts rediscounted), or on any other instruments given for the purpose of borrowing money.

16. *Bank's acceptances outstanding.* (a) State the aggregate of unmatured drafts and bills of exchange accepted by the reporting bank, or by some other bank as agent for the reporting bank (other than those reported in "demand deposits"), less the amount of such acceptances acquired by the reporting bank through discount or purchase and held on the reporting date.

(b) Include bills of exchange accepted by the reporting bank that were drawn by banks or bankers in foreign countries, or in dependencies or insular possessions of the United States, for the purpose of creating dollar exchange as required by usage of trade in the respective countries, dependencies, or insular possessions.

17. *Mortgages payable.* (a) State separately here, or in a note referred to herein, such information as will indicate (1) the general character of the debt including the rate of interest; (2) the date of maturity; (3) if the payment of principal or interest is contingent, an appropriate indication of such contingency; and (4) a brief indication of priority.

(b) If there are any liens on bank premises or other real estate owned by the bank or its consolidated subsidiaries which have not been assumed by the bank or its consolidated subsidiaries, report in a footnote the amount thereof together with an appropriate explanation.

18. *Other liabilities.* State separately, if material, (a) accrued payrolls; (b) accrued income tax liability (Federal, State and local, and foreign); (c) accrued interest; (d) cash dividends declared but not paid; (e) income collected but not earned; (f) aggregate amount of deferred income taxes; (g) state the aggregate amount of minority stockholders' interests in capital stock, surplus, and undivided profits of consolidated subsidiaries (if material, minority interest shall be appropriately segregated); and (h) any other liability not included in Items 13 through 17.

19. *Total liabilities (excluding subordinated notes and debentures). State the sum of items 13 through 18.*

20. *Subordinated notes and debentures.* State separately here, or in a note referred to herein, each issue or type of obligation and such information as will indicate (a) the general character of each type of debt including the rate of interest; (b) the date of maturity (or dates if maturing serially) and call provisions; (c) the aggregate amount of maturities, and sinking fund requirements, each year for the 5 years following the date of the balance sheet; (d) if the payment of principal or interest is contingent, an appropriate indication of the nature of the contingency; (e) a brief indication of priority; and (f) if convertible, the basis.

21. *Equity capital.* (a) Capital stock. State for each class of shares the title of issue, the number of shares authorized, the number of shares outstanding and the capital share liability thereof, and, if convertible, the basis of conversion. Show also the dollar amount, if any, of capital shares subscribed but unissued, and of subscriptions receivable thereon.

(b) Surplus. State the net amount formally transferred to the surplus account on or before the reporting date.

(c) Undivided profits. State the amount of undivided profits shown by the bank's books.

(d) Reserve for contingencies and other capital reserves.

(1) State separately each such reserve and its purpose.

(2) These reserves constitute amounts set aside for possible decrease in the book value of assets, or for other unforeseen or indeterminable liabilities not otherwise reflected on the bank's books and not covered by insurance.

(3) As these reserves represent a segregation of undivided profits, do not include any element of known losses, or losses the amount of which can be estimated with reasonable accuracy.

(4) Reserves for possible security losses, contingency portion of the former tax-based reserve for loan losses may be included herein at the option of the bank, and other contingency reserves that are established as precautionary measures only shall be included in these reserves, as they represent segregations of "undivided profits".

22. *Total equity capital.* State the total of Item 21.

23. *Total liabilities and equity capital.* State the total of Items 19, 20 and 22.

B. Statement of income

1. Operating income:	
(a) Interest and fees on loans	
(b) Interest on balances with banks	
(c) Income on Federal funds sold and securities purchased under agreements to resell	
(d) Interest and dividends on investments:	
(1) U.S. Treasury securities	
(2) Obligations of other U.S. Government agencies and corporations	
(3) Obligations of States and political subdivisions	
(4) Other securities	
(e) Income from direct lease financing	
(f) Income from fiduciary activities	
(g) Service charges on deposit accounts	
(h) Other service charges, collection and exchange charges, commissions, and fees	
(i) Other operating income	
(j) Total operating income	
2. Operating expenses:	
(a) Salaries and employee benefits	
(b) Interest on time certificates of deposit of $100,000 or more	
(c) Interest on deposits in foreign offices	
(d) Interest on other deposits	
(e) Expenses of Federal funds purchased and securities sold under agreements to repurchase	
(f) Interest on borrowed money	
(g) Interest on subordinated notes and debentures	
(h) Occupancy expense of bank premises, net:	
Gross occupancy expense	
Less: Rental income	
(i) Furniture and equipment expense (including depreciation of $ ——)	
(j) Provision for loan losses	
(k) Other operating expenses	
(l) Operating expenses	
3. Income before income taxes and securities gains (losses)	
4. Applicable income taxes	
5. Income before securities gains (losses)	
6. Net security gains (losses), less related tax effect, $——	
7. Net income	
or	
7. Income before extraordinary items	
8. Extraordinary items, less related tax effect, $——	
9. Net income	
10. Earnings per common share: [1]	
Income before securities gains (losses)	
Net income	

[1] Per share amount of securities gains (losses) may be stated separately. If extraordinary items are reported per share amount of income before extraordinary items and per share amount of extraordinary items shall be stated separately.

1. *Operating income.* State separately:

(a) *Interest and fees on loans.*

(1) Include interest, fees and other charges on all assets that are reported on the balance sheet as other loans.

(2) Include interest on acceptances, commercial paper purchased in the open market, drafts for which the bank has given deposit credit to customers, etc. Also include interest on loan paper that has been rediscounted with Federal Reserve or other banks or pledged as collateral to secure bills payable or for any other purpose.

(3) Include service charges and other fees on loans.

(4) Include profits (or losses) resulting from the sale of acceptances and commercial paper at discount rates other than those at which such paper was purchased.

(5) Current amortization of premiums on mortgages or other loans shall be deducted from interest on loans and current accumulation of discount on such items shall be added to interest on loans.

(b) *Interest on balances with banks.* State the amount of interest income received or accrued during the current reporting period on balances carried with domestic and foreign banks.

(c) *Income on Federal funds sold and securities purchased under agreements to resell.* Include the total gross revenue from Federal funds sold and securities purchased under agreements to resell.

(d) *Interest and dividends on investments.* (1) State separately interest and dividends from (A) U.S. Treasury securities, (B) obligations and other U.S. Government agencies and corporations, (C) obligations of States and political subdivisions, and (D) other securities owned by the bank, including securities pledged, loaned, or sold under repurchase agreements and similar arrangements.

(2) Include accretion of discount on securities, deduct amortization of premiums on securities. If accretion of bond discount amounts to 5 per cent or more of the total of interest and dividends on investments, state in a note to financial statements, the amount of accretion income and deferred income taxes applicable thereto.

(3) When securities are purchased, any payment for accrued interest shall not be charged to expenses, nor when collected be credited to earnings. Such interest shall be charged to a separate account that will be credited upon collection of the next interest payment. The balance in the account shall be shown as "Other assets" in the balance sheet.

(e) *Income from direct lease financing.* Include net income earned from the leasing of personal property acquired for that purpose.

(f) *Income from fiduciary activities.*

(1) Include gross income from services performed by the bank in any authorized fiduciary capacity.

(2) This item may be reported on the cash basis in those instances where the presentation of the item on the financial statements would not be materially affected thereby.

(g) *Service charges on deposit accounts.* Include amounts charged depositors that fail to maintain specified minimum deposit balances; charges based on the number of checks drawn on and deposits made in deposit accounts; charges for account maintenance and for checks drawn on "no minimum balance" deposit accounts; return check charges; etc.

(h) *Other service charges, collection and exchange charges, commissions, and fees.* State the aggregate of other service charges, collection and exchange charges, commissions, and fees. Exclude charges on loans and deposits and those related to the Trust Department. Do not include reimbursements for out-of-pocket expenditures made by the bank for the account of customers. If expense accounts were charged with the amount of such expenditures, the reimbursements should be credited to the same expense accounts.

(i) *Other operating income.*

(1) Include all operating income not reported in Items 1(a) through (h).

(2) Include (A) net trading account income consisting of profits and losses, interest, and other income and expense related to securities carried in a dealer trading account or accounts that are held principally for resale to customers, but exclude salaries, commissions, and other indirect expenses; (B) gross rentals from "other real estate" and safe deposit boxes; (C) net income from unconsolidated subsidiaries and associated companies; such net income should be accounted for on the equity method of accounting; and (D) all other recurring credits (such as miscellaneous recoveries) and immaterial nonrecurring credit items.

(3) Do not include rentals from bank premises. Such rental income shall be reported in the inset to Item 2(h). In the event there is a net occupancy income, the income shall be shown in parentheses in item 2(h).

(4) Itemize (A) net trading account income. (B) equity in net income of unconsolidated subsidiaries and associated companies, and (C) all other amounts that represent 25 per cent or more of the total of this sub-item, unless "other operating income" is less than 5 percent of "total operating income."

(j) *Total operating income.* State the sum of Items 1(a) through (i).

2. *Operating expenses.* State separately:

(a) *Salaries, and employee benefits.*

(1) Include compensation for personal services of all officers and employees, including dining room and cafeteria employees but not building department employees.

(2) Include amounts withheld from salaries for Social Security taxes and contributions to the bank's pension fund.

(3) Include bonus and profit sharing paid directly or through a trustee.

(4) Do not include compensation of officers and employees who spent the major portion of their working time on bank building and related functions. Such compensation shall be included in Item 2(h).

(5) Do not include amounts paid to legal, management, and investment counsel for professional services if such counsel are not salaried officers or employees of the bank. Such amounts shall be included in Item 2(h).

(6) Include all supplementary benefits, other than direct compensation accrued during the report period on behalf of all officers and employees except building department personnel (see Item 2(h)).

(7) Include the bank's own contribution to its pension fund; unemployment and Social Security taxes for the bank's own account; life insurance premiums (net of dividends received) and hospitalization insurance payable by the bank; and other employee benefits.

(8) Do not include expenses related to testing, training or education of officers and employees; the cost of bank newspapers and magazines; premiums on insurance policies where the bank is beneficiary; and athletic activities where the principal purpose is for publicity or public relations and employee benefits are only incidental. Such amounts shall be included in Item 2(h).

(b) *Interest on time certificates of deposit of $100,000 or more.* Include all interest expense on such time certificates of deposits issued by domestic offices.

(c) *Interest on deposits in foreign offices.* Include all interest expense on deposits carried on the books of foreign offices.

(d) *Interest on other deposits.* Include interest on all other deposits.

(e) *Expense of Federal funds purchased and securities sold under agreements to repurchase.* Include the total gross expenses of Federal funds purchased and securities sold under agreements to repurchase.

(f) *Interest on other borrowed money.*

(1) Include all interest and discounts on bills payable, rediscounts, sales of participation in pools of loans, borrowings from Federal Reserve Banks, and other instruments issued for the purpose of borrowing money other than Federal funds purchased and securities sold under agreements to repurchase.

(g) *Interest on subordinated notes and debentures.*

(1) Include all interest on subordinated notes and debentures.

(2) Amortization of premium or discount shall be deducted from or included in the amount reported.

(h) *Occupancy expense of bank premises, net.*

(1) Include in "gross occupancy expense" inset the aggregate amount of (A) salaries, wages, and supplementary compensation of bank personnel who devote the major portion of their time to the operation of bank premises or its consolidated premises subsidiaries; (B) depreciation of bank premises and amortization of leasehold improvements; (C) rent expense of bank premises; (D) real estate taxes; (E) interest on mortgages on bank premises owned; and (F) other bank premises operating and maintenance expenses.

(2) Include in "rental income" inset the aggregate amount of rentals from bank premises leased by the bank or its consolidated premises subsidiaries.

(3) Report the net occupancy expense (or net income) of bank premises. If net income is reported, the amount shall be shown in parenthesis.

(i) *Furniture and equipment expense.*

(1) Include normal and recurring depreciation charges; rental costs of office machines and tabulating and data processing equipment, and ordinary repairs to furniture and office machines, including servicing costs. The amount applicable to depreciation charges shall be shown in parenthesis.

(2) Include taxes on equipment.

(j) *Provision for loan losses.*

Banks shall provide an amount sufficient to bring the balance in the "Reserve for Possible Loan Losses" account to an adequate level to absorb expected loan losses based upon management's knowledge and evaluation of the bank's current loan portfolio.

(k) *Other operating expenses.*

(1) Include all operating expenses not reported in Items 2(a) through 2(j).

(2) Include advertising, business promotion, contributions, cost of examinations by supervisory authorities, deposit insurance assessment, fees paid to directors and members of committees, memberships, net cash shortages or overages, operating expenses (except salaries) of "Real estate owned other than bank premises," postage, premium on fidelity insurance, publicity, retainer fees, stationery and office supplies, subscriptions, taxes not reported against other items, telegrams and cables, telephone, temporary agency help, travel, unreimbursed losses on counterfeits, forgeries, payments over stops, and all other recurring expenses and immaterial nonrecurring charges.

(3) Deposit insurance assessment expense shall be reported as a net figure—that is all assessment credits during the period shall be applied against the assessment expense.

(4) Itemize all amounts that represent 25 percent or more of this item.

(l) *Total operating expenses.* State the sum of Items 2(a) through 2(l).

3. *Income before income taxes and security gains (losses).* State the difference of Item 1(j) minus Item 2(l).

4. *Applicable income taxes.* (a) State the aggregate of Federal, State and local, and foreign taxes applicable to the amount reported in Item (3).

(b) Do not include taxes applicable to net security gains (losses) and extraordinary items. Such taxes (or tax credits) shall be reported in Items 6 and 8.

5. *Income before securities gains (losses).* State the difference of Item 3 minus Item 4.

6. *Net security gains (losses).* State the net result of security gains and losses realized. Related income taxes (or tax credits) shall be shown parenthetically.

7. *Net income.* State the sum or difference of Items 5 and 6.

NOTE.—If extraordinary items are reported (See Item 8) the caption to this Item shall read, "Income before extraordinary items."

8. *Extraordinary items.* State the material results of non-recurring transactions that have occurred during the current reporting period. Only the results of major events outside of the ordinary operating activity of the bank are to be reported herein. Such events would include, but not be limited to, material gain or loss from, and certain extinguishments of indebtedness between unrelated entities and application of operating tax loss carry forward benefits. Related income taxes (or tax credits) shall be shown parenthetically. (Less than material results of nonrecurring transactions are to be included in Items 1(l) or 2(k), as appropriate.)

9. *Net income.* State the sum or difference of Items 7 and 8.

10. *Earnings per common share.* State the per share amounts applicable to common stock (including common stock equivalents) and per share amounts on a fully diluted basis, if applicable. The basis of computation, including the number of shares used, shall be furnished in a note to financial statements.

C. Statement of changes in capital accounts

Increase (decrease)	Preferred stock $____ par	Common stock $____ par	Surplus	Undivided profits	Reserve for contingencies and other capital reserves
1. Net income transferred to undivided profits					
2. Preferred stock and common stock sold (par or face value)					
3. Stock issued incident to mergers and acquisitions					
4. Premium on capital stock sold					
5. Additions to, or reductions in, surplus, undivided profits, and reserves incident to mergers					
6. Cash dividends declared on preferred stock					
7. Cash dividends declared on common stock					
8. Stock dividends issued, ____ shares at par value					
9. All other increases (decreases)[1]					
10. Net increase (decrease) for the year					
11. Balance at beginning of year[2]					
12. Balance at end of year					

[1] State separately any material amounts, indicating clearly the nature of the transaction out of which the item arose.
[2] If the statement is filed as part of an annual or periodic report and the balances at the beginning of the period differ from the closing balances as filed for the previous fiscal period, state in a footnote the difference and explain.

D. Schedules

Schedule I.—*U.S. Treasury securities, securities of other U.S. Government agencies and corporations, and obligations of States and political subdivisions*

Type and maturity grouping	Book value[1]	Market value[2]
U.S. Treasury security:		
Within 1 yr		
After 1 but within 5 yr		
After 5 but within 10 yr		
After 10 yr		
Total, U.S. Treasury securities		
Securities of other U.S. Government agencies and corporations:		
Within 1 yr		
After 1 but within 5 yr		
After 5 but within 10 yr		
After 10 yr		
Total, securities of other U.S. Government agencies and corporations		
Obligations of States and political subdivisions:[3]		
Within 1 yr		
After 1 but within 5 yr		
After 5 but within 10 yr		
After 10 yr		
Total, obligation of States and political subdivisions		

[1] State briefly in a footnote the basis for determining the amounts shown in this column.
[2] If market value is determined on any basis other than market quotations at balance sheet date, explain.
[3] Include obligations of the States of the United States and their political subdivisions, agencies, and instrumentalities; also obligations of territorial and insular possessions of the United States. Do not include obligations of foreign states.

Schedule II.—*Other securities*

Type	Book value[1]	Market value[2]
Bonds, notes, and debentures[3]		
Stock of the Federal Reserve Bank		
Other stocks[3]		
Total		

[1] State briefly in a footnote the basis for determining the amounts shown in this column.
[2] If market value is determined on any basis other than market quotations at balance sheet date, explain.
[3] State in a footnote the aggregate amount and book value of foreign securities included.

Schedule III.—*Loans*

Type:	Book value
Loans in domestic offices:	
Real estate loans:	
Insured or guaranteed by the U.S. Government or its agencies	
Other	
Loans to financial institutions	
Loans for purchasing or carrying securities (secured or unsecured)	
Loans to farmers	
Commercial and industrial loans	
Loans to individuals for household, family, and other personal expenditures	
All other loans (including overdrafts)	
Loans in foreign offices	
Total loans, gross	
Less: Unearned income on loans	
Total, loans reported in balance sheet	

NOTE.—"Schedule A—Loans" of the supervisory report of condition submitted for the same year-end date may be incorporated by reference provided copies are filed with the report.

Schedule IV.—*Bank premises and equipment*

Classification[1]	Gross book value[2]	Accumulated depreciation and amortization[3][4]	Amount at which carried on balance sheet
Bank premises (including land $_____)			
Equipment			
Leasehold improvements			
Total[5]			

[1] If impractical to consolidate foreign branch and foreign subsidiary bank premises and equipment in accordance with the breakdown required by this schedule, a separate caption stating the total amount of all such property may be inserted. Such action should be explained in a footnote.
[2] State briefly in a footnote the basis of determining the amounts in this column.
[3] If provision for depreciation and amortization is credited in the books directly to the asset accounts, the amounts for the last fiscal year shall be stated in an explanatory footnote.
[4] The nature and amount of significant additions (other than provisions for depreciation and amortization) and deductions shall be stated in an explanatory footnote.
[5] Show in a footnote totals (corresponding to the first two columns) representing amounts reported for Federal income tax purposes.

Schedule V.—*Investments in, dividend income from, and share in earnings or losses of unconsolidated subsidiaries*

Name of subsidiary	Percent of voting stock owned	Total investment, including advances	Equity in underlying net assets at balance sheet date[1]	Amounts of dividends[2]	Bank's proportionate part of earnings or loss for the period
Total		$_____	$_____	$_____	$_____

[1] Equity shall include advances reported in preceding column to the extent recoverable.
[2] In a footnote state as to any dividends other than cash, the basis on which they have been reported as income. Also, if any such dividend received has been credited to income in an amount differing from that charged to surplus and/or undivided profits by the disbursing subsidiary, state the amount of such difference and explain.

Schedule VI.—*"Other" liabilities for borrowed money*

Item:	Amount
Borrowings from Federal Reserve bank	
Unsecured notes payable within 1 yr	
Unsecured notes payable after 1 yr	
Other obligations	
Total	

Schedule VII.—*Reserve for possible loan losses*[1]

Item:	Amount
Balance at beginning of period	
Recoveries credited to reserve	
Additions due to mergers and absorptions[2]	
Provision for loan losses from income statement	
Losses charged to reserve	
Balance at end of period[3][4]	

[1] Do not include any entries pertaining to reserve accounts established by segregations of the bank's undivided profits account. See instructions to Item 22, equity capital, of form F-9A.
[2] Describe briefly in a footnote any such addition.
[3] Describe briefly in a footnote the basis used in determining the amount accumulated in the allowance at the end of the period.
[4] Indicate in a footnote whether the bank's reserve for bad debts computed for Federal income tax return purposes is at the maximum allowable pursuant to the Treasury tax formula. In addition, set forth a summary reconciliation of any material difference between the reserve for possible loan losses reported herein and the reserve for bad debts computed for Federal income tax return purposes.

Schedule E.—*Changes in financial position*

Sources of funds:	
Operations:	
Net income	
Charges to income not affecting funds:	
Total, funds provided by operations	
Equity funds—Sale proceeds	
Subordinated notes and debentures—Sale proceeds	
Increase (decrease) in liabilities:[1]	
Total	
Applications of funds:	
Payment of dividends	
Purchase of property and equipment	
Increase (decrease) in assets:[1]	
Total	

[1] Sources and applications of funds items shall be shown separately by amounts when they exceed 5 pct of the average of total funds provided during the respective reported periods.

By order of the Board of Governors, effective January 30, 1977.

THEODORE E. ALLISON,
Secretary of the Board.

[FR Doc.77-1222 Filed 1-14-77;8:45 am]

proposed rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 52]

UNITED STATES STANDARDS FOR GRADES OF DEHYDRATED (LOW-MOISTURE) APPLES

Notice of Proposed Rulemaking

Notice is hereby given that the United States Department of Agriculture is proposing a revision of the United States Standards for Grades of Dehydrated (Low-Moisture) Apples (7 CFR 52.2341).

These grade standards are issued under authority of the Agricultural Marketing Act of 1946 (Secs. 203, 205, 60 Stat. 1087, as amended, 1090, as amended, 7 U.S.C. 1622, 1624), which provides for the issuance of official U.S. grades to designate different levels of quality for the voluntary use of producers, buyers, and consumers. Official grading services are also provided under this Act upon request of the applicant and upon payment of a fee to cover the cost of such service.

All persons who desire to submit written data, views, or arguments for consideration in connection with the proposal should file the same in duplicate by March 31, 1977 with the Hearing Clerk, U.S. Department of Agriculture, Room 112, Administration Building, Washington, D.C. 20250. All written submittals made pursuant to this notice will be available for public review at the Office of the Hearing Clerk during regular business hours (7 CFR 1.17(b)).

NOTE.—Compliance with the provisions of these standards shall not excuse failure to comply with the provisions of the Federal Food, Drug, and Cosmetic Act, or with applicable State laws and regulations.

STATEMENT OF CONSIDERATION

The current U.S. Standards for Grades of Dehydrated (Low-Moisture). Apples, hereinafter referred to as "dehydrated apples" have been in effect since July 1, 1957. Since that time there have been significant changes in the preparation and processing of dehydrated apples.

The proposed revision includes:

1. Designating the grades as U.S. Grade A, U.S. Grade B and Substandard, dropping the descriptive names of Fancy and Choice.

2. Eliminating the 500 parts per million limit for sulfur (sulphur) dioxide in the finished product.

Descriptive terms, such as "U.S. Fancy" would be eliminated—editorially in the final publication of the revised standards—to conform to consumer preference for a single letter grade designation.

The elimination of the limit on sulfur (sulphur) dioxide will permit the manufacture of a better colored product and one that can be prepared from readily available raw materials rather than those that are prepared especially for the manufacture of dehydrated apples. The use of sulfur (sulphur) dioxide in the processing of dried and dehydrated fruits is an old, established practice that is permitted under Food and Drug regulations. Their regulations permit its use, "• • • in such amounts as may be necessary • • •". The amount used in processing is self-limiting because too great an amount of sulfur (sulphur) dioxide will impart an off-flavor to the product. When used in adequate amounts, all traces of the sulfur (sulphur) dioxide are eliminated from the dehydrated apples during cooking.

In addition to contemplated editorial changes in the text and format—which will not change any of the requirements of these standards—the proposed amendment would change § 52.2341 (only) to read:

§ 52.2341 Product description.

Dehydrated (low-moisture) apples, hereinafter referred to as "dehydrated apples," are prepared from clean and sound fresh or previously dried (or evaporated) apples from which the peels and cores have been removed and which have been cut into segments. The dried (or evaporated) apple segments may be cut further into smaller segments in preparation for dehydration whereby practically all of the moisture is removed to produce a very dry texture and are prepared to assure a clean, sound, wholesome product. The product shall have been subjected to a sulfur treatment that is suitable and sufficient to retain a characteristic color. No other additives may be present.

Dated: January 12, 1977.

DONALD E. WILKINSON,
Administrator.

[FR Doc.77-1343 Filed 1-14-77;8:45 am]

NUCLEAR REGULATORY COMMISSION

[10 CFR Parts 2 and 51]

LICENSING AND REGULATORY POLICY AND PROCEDURES FOR ENVIRONMENTAL PROTECTION

Distribution of Applications and Environmental Statements to Local Officials

By letter dated July 7, 1976, the Township of Lower Alloways Creek, New Jersey filed with the Nuclear Regulatory Commission a petition for rule making to amend 10 CFR 2.101 and 10 CFR 51.24 of the Commission's regulations. A notice of filing of petition for rule making (PRM-51-2) was published by the Commission in the FEDERAL REGISTER on August 5, 1976 (41 FR 32801) inviting written comments or suggestions concerning the petition for rule making by October 4, 1976.

The petitioner requests that the Commission amend 10 CFR 51.24(c)(4) to provide that copies of the draft environmental impact statement and the applicant's environmental report will be provided to:

All parties to the licensing proceedings, if the draft statement is for a licensing action, including the chief executives of all the municipalities which are considered in the draft statement as either preferred or alternate locations for the licensed facility or activity.

The petitioner also requests the Commission to amend 10 CFR 2.101 to provide that if the applicant is required to consider alternate locations in his application, the applicant will also serve a copy of the application on the chief executives of the appropriate alternate municipalities or counties.

The petitioner states that although existing regulations of the Commission require the consideration of alternate sites for a facility, the regulations provide for notification only of the authorities having jurisdiction over the preferred site, and officials with jurisdiction over alternate sites are not guaranteed the knowledge that a site in their area is under consideration or that the relative merits of such a site may have been the subject of dispute at hearings held in a different locale.

The petitioner states also that authorities for the preferred site have an opportunity at Commission hearings to present evidence in favor of moving the facility to an alternate location, without rebuttal from representatives from that location, and the present rules place an unreasonable burden on the authorities in the alternate location if the preferred site is disallowed or deemed unsuitable at some point in the licensing.

It is the view of the petitioner that in the interest of providing a thorough, well-balanced, and informed review of preferred and alternate sites for nuclear facilities, all of the communities involved should be notified at the same time the original application is submitted to the Commission.

One comment has been received in response to the notice of filing of petition for rule making published in the FEDERAL REGISTER on August 5, 1976. The commenter recommended that the Commission reject the amendments proposed by the petitioner, but if some action is desired in this area, the Commission should serve a notice of the availability of environmental reports and environmental statements upon the chief executives of municipalities which are identified as alternate locations for facilities. To the extent that officials of such municipalities are interested, they could then request copies of the materials.

It is the view of the Commission's staff at this time that local officials of all of the communities involved should be informed of the plans for a facility or a commercial waste disposal service or activity at the time the initial application is submitted to the Commission. This would permit responsible officials of alternate sites to study documentation on the proposed facility or activity and the potential impact of the facility or activity on the municipality or county, and to be prepared to represent the interests of their community in the event that the preferred site is deemed unsuitable at some point in the licensing proceeding.

In accordance with the petitioner's request, the Commission is considering proposed amendments of 10 CFR 2.101 and 10 CFR 51.24 as set forth below.

It is to be noted that the site selection process is a screening process in which the applicant may consider as many as eighty sites. In the process of screening the applicant eliminates many sites for obvious reasons. In the environmental report, final site selection usually is narrowed down to four or five sites which are considered in some detail. The reference to "alternate sites" in the proposed amendments is intended to apply to the final few sites considered in the site selection process.

The proposed amendment of § 2.101 adds a provision to paragraph (a)(3)(ii) that the applicant will also be requested to serve a copy of the tendered application and/or environmental report on the chief executives of the appropriate alternate municipalities or counties which have been identified in the application or environmental report as alternate sites.

The proposed amendment of § 2.101 adds a provision to paragraph (b) which pertains to applications for licenses for receipt of waste radioactive material from other persons for the purpose of commercial disposal by the waste disposal licensee, that the applicant will also serve a copy of the application and environmental report, as appropriate, on the chief executives of the appropriate alternate municipalities or counties which have been identified in the application or environmental report as alternate sites.

The proposed amendment of § 51.24 revises paragraph (c)(4) to provide that if the draft environmental impact statement is for a licensing action, copies of the draft statement and the applicant's environmental report will be provided to all parties to the licensing proceeding and the chief executives of all municipalities or counties which are identified in the draft statement as either preferred or alternate sites for the proposed facility or activity.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, the National Environmental Policy Act of 1969, and section 553 of Title 5 of the United States Code, notice is hereby given that adoption of the following amendments to 10 CFR Parts 2 and 51 is contemplated. All interested persons who desire to submit written comments or suggestions in connection with the proposed amendments should submit them by February 16, 1977 to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch. Copies of the comments received on the proposed amendments may be examined at the Commission's Public Document Room at 1717 H Street, N.W., Washington, D.C.

Section 2.101 of 10 CFR Part 2 is amended by revising § 2.101(a)(3)(ii) to read as follows and by adding the following sentence at the end of paragraph (b):

§ 2.101 Filing of application.

(a) • • •

(3) • • •

(ii) Serve a copy on the chief executive of the municipality in which the facility is to be located or, if the facility is not to be located within a municipality, on the chief executive of the county, and on the chief executives of the appropriate alternate municipalities or counties which have been identified in the application or environmental report as alternate sites.

• • • • • •

(b) • • • The applicant will also serve a copy of the application and environmental report, as appropriate, on the chief executives of the appropriate alternate municipalities or counties which have been identified in the application or envrionmental report as alternate sites.

• • • • • •

Sertion 51.24 is amended by revising paragraph (c)(4) to read as follows:

§ 51.24 Distribution of draft environmental impact statement; new releases.

• • • • • •

(c) • • •

(4) If the draft statement is for a licensing action, all parties to the licensing proceeding and the chief executives of all municipalities or counties which are identified in the draft statement as either preferred or alternate sites for the proposed facility or activity.

(Secs. 53, 62, 81, 103, 104, 1611, Pub. L. 83-703, as amended; 68 Stat. 930, 932, 935, 936, 937, 948 (42 U.S.C. 2073, 2092, 2111, 2133, 2134, 2201(i)); Sec. 201, Pub. L. 93-438, as amended; 88 Stat. 1242, 89 Stat. 413 (42 U.S.C. 5841); Sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332).)

Dated at Bethesda, Maryland this 28th day of December 1976.

For the Nuclear Regulatory Commission.

BEN C. RUSCHE,
Acting Executive Director for Operations.

[FR Doc.77-1470 Filed 1-14-77;8:45 am]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Part 71]

[Airspace Docket No. 76-CE-13]

EXTENSION OF LOW ALTITUDE VOR FEDERAL AIRWAYS

Proposed Designation

The Federal Aviation Administration (FAA) is considering amendments to Part 71 of the Federal Aviation Regulations that would designate and extend VOR Federal Airways in the Wichita, Kans., Tulsa, Okla., areas.

Interested persons may participate in the proposed rule making by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number and be submitted in triplicate to the Director, Central Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, 601 E. 12th Street, Kansas City, Mo. 64106. All communications received on or before February 16, 1977 will be considered before action is taken on the proposed amendments. The proposals contained in this notice may be changed in the light of comments received.

An official docket will be available for examination by interested persons at the Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket, AGC-24, 800 Independence Avenue, S.W., Washington, D.C. 20591. An informal docket also will be available for examination at the office of the Regional Air Traffic Division Chief.

A request for copies of this Notice of Proposed Rule Making should be addressed to the Federal Aviation Administration, Office of Public Affairs, Attention; Public Information Center, APA-430, 800 Independence Avenue, S.W., Washington, D.C. 20591. The FAA has determined that this document does not contain a major proposal requiring preparation of an Inflationary Impact Statement under Executive Order 11821 and OMB Circular A-107.

The proposed amendments would:

1. Designate a VOR Federal Airway from Emporia, Kans., direct to Ponca City, Okla.

2. Designate a VOR Federal Airway from Wichita, Kans., to Chanute, Kans.

3. Extend Victor 73 from Wichita, Kans., direct to Tulsa, Okla.

Peak traffic over the routes described above has steadily increased over the last two years. Safety will be enhanced by

charting airways, establishing MEA's, depicting radials and mileages, and providing airway mapping on controllers' displays.

These amendments are proposed under the authority of Sec. 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348 (a)) and Sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Washington, D.C., on January 7, 1977.

WILLIAM E. BROADWATER,
Chief, Airspace and Air Traffic Rules Division.

[FR Doc.77-1232 Filed 1-14-77;8:45 am]

[14 CFR Part 71]

[Airspace Docket No. 76-GL-40]

TRANSITION AREA

Proposed Designation

The Federal Aviation Administration is considering amending Part 71 of the Federal Aviation Regulations so as to designate a transition area at Caledonia, Minnesota.

Interested persons may participate in the proposed rule making by submitting such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Director, Great Lakes Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, 2300 East Devon, Des Plaines, Illinois 60018. All communications received on or before February 16, 1977 will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Regional Air Traffic Division Chief. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

A public docket will be available for examination by interested persons in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon, Des Plaines, Illinois 60018.

A standard instrument approach procedure has been developed to the Houston County Airport, Caledonia, Minnesota. Controlled airspace is required to protect the procedure.

In consideration of the foregoing, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations as hereinafter set forth:

In § 71.181 (42 F.R. 440), the following transition area is added:

CALEDONIA, MINNESOTA

That airspace extending upward from 700 feet above the surface within a 5-mile radius of the Houston County Airport (latitude 43°35'48" N, longitude 91°30'15" W) and within 2 miles each side of the 184° radial of the Nodine VORTAC extending from the 5-mile radius area to 6 miles north of the airport, excluding that portion which overlies the La Crosse, Wisconsin, transition area.

This amendment is proposed under the authority of Section 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348), and of Section 6(c) of the Department of Transportation Act [49 U.S.C. 1655 (c)].

NOTE.—The Federal Aviation Administration has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107.

Issued in Des Plaines, Illinois, on December 26, 1976.

JOHN M. CYROCKI,
Director, Great Lakes Region.

[FR Doc.77-1233 Filed 1-14-77;8:45 am]

[14 CFR Part 71]

[Airspace Docket No. 76-GL-41]

TRANSITION AREA

Proposed Designation

The Federal Aviation Administration is considering amending Part 71 of the Federal Aviation Regulations so as to designate a transition area at Caro, Michigan.

Interested persons may participate in the proposed rulemaking by submitting such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Director, Great Lakes Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, 2300 East Devon, Des Plaines, Illinois 60018. All communications received on or before February 16, 1977 will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Regional Air Traffic Division Chief. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

A public docket will be available for examination by interested persons in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon, Des Plaines, Illinois 60018.

A standard instrument approach procedure has been developed for the Caro, Michigan Airport. Controlled airspace is required to protect the procedure.

In consideration of the foregoing, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations as hereinafter set forth:

In § 71.181 (42 FR 440), the following transition area is added:

CARO, MICHIGAN

That airspace extending upward from 700 feet above the surface within a 6-mile radius of the Caro Airport (latitude 43°27'45" N., longitude 83°26'30" W.).

This amendment is proposed under the authority of Section 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348), and of Section 6(c) of the Department of Transportation Act [49 U.S.C. 1655(c)].

NOTE.—The Federal Aviation Administration has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107.

Issued in Des Plaines, Illinois on December 29, 1976.

JOHN M. CYROCKI,
Director, Great Lakes Region.

[FR Doc.77-1234 Filed 1-14-77;8:45 am]

CIVIL AERONAUTICS BOARD

[14 CFR Part 399]

[PSDR-45A; Docket 30123; Dated January 12, 1977]

PART 399—STATEMENTS OF GENERAL POLICY

Standards for Determining Priorities of Hearings; Extension of Comment Period

By notice of Proposed Rulemaking PSDR-45, 41 FR 52698, December 1, 1976, the Civil Aeronautics Board gave notice that it was proposing to amend Part 399 of the regulations so as to delineate standards for determining priorities of hearing with respect to competing applications for operating authority. The Board requested that interested parties file comments on or before January 17, 1977.

By letter dated January 6, 1977, counsel for the local service carriers requested that the due date for filing comments be extended. The reason for the request is that Board Members Minetti and West have not yet filed their separate statement on route hearing priorities, and the carriers wish to address themselves to the views of the majority and dissenting Board Members at the same time. Accordingly, counsel for the local service carriers requests that the due date for filing comments be extended until 30 days after the issuance of the separate statement. For the same reason, counsel for Delta Air Lines, in a letter dated January 7, 1977, requests that the due date for filing comments be extended until four weeks after the issuance of the separate statement of Members Minetti and West. In any event, counsel for Delta requests an extension of at least two weeks from January 17, 1977.

In the interest of receiving the views of all interested persons, the undersigned finds that good cause has been shown for a thirty-day extension of time for filing comments.

Accordingly, pursuant to authority delegated in § 385.20(d) of the Board's Organization Regulations (14 CFR 385.20 (d)), the undersigned hereby extends the time for filing comments to February 16, 1977.

(Secs. 101, 204, 401, and 1002 of the Federal Aviation Act of 1958, as amended, 72 Stat. 737 (as amended), 743, 754 (as amended), 788 (49 U.S.C. 1301, 1324, 1371, and 1482).)

SIMON J. EILENBERG,
Associate General Counsel, Rules Division.

[FR Doc.77-1448 Filed 1-14-77;8:45 am]

FEDERAL TRADE COMMISSION

[16 CFR Part 801]

MERGERS AND ACQUISITIONS

Proposed Rulemaking

Correction

In FR Doc. 76-37343 appearing in the issue of Monday, December 20, 1976 on page 55488, the following corrections should be made:

1. On page 55488, the 3rd column, the 3rd full paragraph numbered "(8)" should read:

* * * * *

"(8) transactions which require agency approval under section 4 of the Bank Holding Company Act of 1956 (12 U.S.C. 1843), section 403 or 408(e) of the National Housing Act 12 U.S.C. 1726 and 1730(a), or section 5 of the Home Owners' Loan Act of 1933 (12 U.S.C. 1464), if copies of all information and documentary material filed with any such agency are contemporaneously filed with the Federal Trade Commission and the Assistant Attorney General at least 30 days prior to consummation of the proposed transaction;

* * * * *

2. On page 55492, § 802.10(b) should be corrected to read:

* * * * *

(b) *Acquisition not for own account.* An acquisition of voting securities by a broker or dealer in securities, to be held for the account or benefit of another person, shall be deemed an acquisition by such other person. Pursuant to subsections (c)(12) and (d)(2)(B), such broker or dealer shall be exempt from the requirements of this section as to such acquisition. Nothing in this paragraph shall exempt the person for whose account or benefit the acquisition is made from any requirement under this section, with respect to any acquisition attributed to such person by this section and this paragraph.

* * * * *

3. On page 55494, § 803.30(a)(2) should be corrected to read:

* * * * *

(2) When communicated by telephone or in person, and a written request is mailed, within the thirty-day (or, in the case of cash tender offers, fifteen-day) waiting period. The person filing notification shall be obliged to keep a suitably delegated individual reasonably available throughout the waiting period through the telephone number supplied on the certification page of the Notification and Report Form. A request for additional information or documentary materials, or for clarification, need only be communicated by telephone to that individual. The additional information or documentary material requested should be supplied to either the Federal Trade Commission or Assistant Attorney General, whichever requested the information, and not to both.

* * * * *

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary—Federal Housing Commissioner

[24 CFR Part 866]

[Docket No. R-77-344]

LOW INCOME HOUSING

Lease and Grievance Procedures; Tenant Maintenance

The Department of Housing and Urban Development proposes to amend Title 24, Chapter VIII, Part 866, § 866.4(g) Tenant maintenance.

It has come to the Department's attention that interested parties have interpreted this section, which permits leases to provide for tenant performance of seasonal and other maintenance tasks, as (1) being limited to tenants of projects of the specified architectural or structural types mentioned as examples in the section and (2) specifying that the option of tenant performance shall be embodied in an agreement between the Public Housing Agency (PHA) and the tenant which is separate from the lease.

The proposed amendment clarifies the intent of the original issuance which was to permit PHAs to incorporate into the lease a provision for the performance of seasonal and other maintenance tasks by tenants where it has been common practice for tenants of the given type of dwelling unit to perform such tasks.

All interested persons are encouraged to submit written suggestions with respect to this amendment concerning the subject matter of the interim rule to the Rules Docket Clerk, Office of the Secretary, Room 10141, Department of Housing and Urban Development, 451 7th Street, SW., Washington, D.C. 20410. All relevant material received by February 18, 1977, will be considered prior to the adoption of final amendments. A copy of each communication will be available for public inspection during regular business hours at the above address.

The Secretary has determined that Title 24, Chapter VIII, Part 866, Subpart A does not have a substantial environmental impact and a finding of inapplicability is available for public inspection in the Office of the Rules Docket Clerk at the above address.

NOTE.—It is hereby certified that the economic and inflationary impact of Part 866, Subpart A have been carefully evaluated in accordance with OMB Circular A-107.

Accordingly, Title 24, Chapter VIII, Part 866, Subpart A is amended as set forth below:

1. Section 866.4(g) is amended to read as follows:

§ 866.4 Lease requirements.

* * * * *

(g) *Tenant maintenance.* The lease may provide that the tenant shall perform seasonal maintenance tasks or other maintenance tasks, as specified in the lease, where performance of such tasks by tenants of dwelling units of a similar design and construction is customary: *Provided*, That such provision is ineluded in the lease in good faith and not for the purpose of evading the obligations of the PHA.

* * * * *

JOHN T. HOWLEY,
Acting Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc.77-1391 Filed 1-14-77;8:45 am]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR Part 1]

INCOME TAX

Tuition Remission Programs; Withdrawal of Notice of Proposed Rule Making

• *Purpose.* The purpose of this document is to withdraw the notice of proposed rulemaking relating to the treatment of amounts received under tuition remission programs for purposes of section 117 of the Internal Revenue Code of 1954, which appeared in the FEDERAL REGISTER on November 2, 1976 (41 FR 48132). •

On January 7, 1977, a public hearing was held on the proposed regulations. Testimony presented at that hearing, as well as written statements submitted previously and thereafter, pointed out problems associated with changing the tax treatment of amounts received under tuition remission programs. In view of these problems and the joint study of the tax treatment of scholarships and fellowships called for by the House and Senate Committee Reports on the Tax Reform Act of 1976, it has been concluded that the notice of proposed rulemaking should be withdrawn.

Accordingly, at the direction of the Secretary, the notice of proposed rulemaking on tuition remission programs published in the FEDERAL REGISTER (41 FR 48132) is hereby withdrawn.

CHARLES M. WALKER,
Assistant Secretary for Tax Policy.

DONALD C. ALEXANDER,
Commissioner of Internal Revenue.

[FR Doc.77-1512 Filed 1-13-77;2:54 pm]

DEPARTMENT OF TRANSPORTATION

Coast Guard

[33 CFR Parts 114, 115]

[CGD 76-144]

BRIDGE PERMIT ACTIONS

Proposed Policy and Procedures for Processing

• *Purpose:* The purpose of these proposed amendments is to better define

and describe the policy and procedures followed by the Coast Guard in processing bridge permit actions. It is proposed that paragraph (h) of § 114.05 be amended by deleting the words "document authorizing work and structures to be built or placed" and inserting the words "license permitting bridges and approaches thereto" to more clearly define the term "permit" as used in 5 U.S.C. 551. ●

A new § 114.45 is proposed to define what is considered a timely application for extensions of time for commencement and completion of work and extensions of time for removal of bridges being replaced in whole or in part.

It is proposed that § 115.60(c)(1) be amended to describe the manner in which public procedures will be conducted for cases where there are substantial issues relevant to the effect that a proposed bridge will have on the reasonable needs of navigation.

Interested persons are invited to participate in this proposed rule making by submitting written data, views or arguments to the Commandant (G-CMC/81), U.S. Coast Guard, Washington, D.C. 20590. Each person submitting a comment should include his name and address, identify the notice (CGD 76-144), and give reasons in support of his comment. Comments received before March 3, 1977, will be considered before final action is taken on this proposal. Copies of all written comments received will be available for examination by interested persons in Room 8117, Department of Transportation, Nassif Building, 400 Seventh Street SW., Washington, D.C. The proposal may be changed in light of the comments received.

In consideration of the foregoing, it is proposed that Parts 114 and 115 of Title 33 of the Code of Federal Regulations be amended by:

1. Revising § 114.05(h) to read as follows:

§ 114.05 Definitions.

• • • • •

(h) *Permit.* The term "permit" means the license permitting construction of bridges and approaches thereto in or over navigable waters of the United States, issued under the rules and regulations in this subchapter.

• • • • •

2. Adding a new § 114.45 immediately after § 114.40 to read as follows:

§ 114.45 Applications, extensions of time.

Extensions of time to commence or complete construction of a bridge or remove a bridge that has been replaced as an element of a permitted bridge project must be submitted to, and received by, the District Commander at least 30 days before the existing permit expires to allow the permit to remain in effect until the final agency action is taken.

3. Amending § 115.60(c)(1) to read as follows:

§ 115.60 Procedures for handling applications for bridge construction authorization.

• • • • •

(c) *Notice and hearing.* (1) Public hearings are held on those cases where there are substantial issues relevant to the effect that the proposed bridge will have on the reasonable needs of navigation. The Chief, Office of Marine Environment and Systems, issues the notice of public hearing described in paragraph (c)(2) of this section.

• • • • •

(Sec. 5, 28 Stat. 362, as amended; (33 U.S.C. 401, 491, 525, 535; 49 U.S.C. 1655(g)(6)); 49 CFR 1.46(c)(8), (9), (10), (q))

NOTE.—The Coast Guard has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107.

Dated: January 11, 1977.

A. F. FUGARO,
Rear Admiral, United States Coast Guard, Chief, Office of Marine Environment and Systems.

[FR Doc.77-1388 Filed 1-14-77;8:45 am]

[33 CFR Part 161]

[CGD 75-173]

PUGET SOUND VESSEL TRAFFIC SERVICE

Proposed Amendments to Operating Requirements

The Coast Guard proposes to amend the operating regulations for the Puget Sound Vessel Traffic Service to simplify reporting requirements and to reduce congestion on the assigned radio frequency. A new requirement is added to prevent vessels from getting underway in reduced visibility if they lack radio communications and are not able to obtain permission to get underway from the VTC by other means.

Interested persons may participate in this proposed rulemaking by submitting written data, views, or arguments concerning the proposal to the Commandant (G-CMC/81), U.S. Coast Guard, Washington, D.C. 20590. Each person submitting a comment should include his name, address, and organization, if any, identify the notice number (CGD 75-173) and give reasons for any recommendations. Copies of all written comments received will be available for examination in Room 8117, Department of Transportation, Nassif Building, 400 Seventh Street, SW, Washington, D.C. All comments received on or before March 3, 1977, will be considered before final action is taken on this proposal. The proposal may be changed in light of the comments received.

It is proposed to amend the title of Part 161 from "Vessel Traffic Systems" to "Vessel Traffic Management". Part 161 is intended to include Advance Notice of Arrival and Regulated Navigation Areas as well as Vessel Traffic Services; therefore, "management" is more descriptive of the regulations in this part. It is also proposed to change the Title of Subpart B from "Puget Sound Vessel Traffic System" to "Vessel Traffic Services (VTS)". All future VTS's will be in Subpart B, and "services" is considered a more appropriate word because the Coast Guard is providing mariners with a vessel traffic center to monitor vessel movement.

Operational experience at the Vessel Traffic Center (VTC) shows that both the initial and follow-up reports are not needed and that movement reports are too complicated. Therefore, it is proposed to require only a single report at least 15 minutes before a vessel enters the VTS area, and to simplify the movement reports. Section 161.128 *Initial report* would be changed by adding the information necessary for the report from the follow-up report and § 161.130 *Follow-up report* would be deleted. Much of § 161.142 *Movement reports* is proposed to be amended by shortening and simplifying reporting requirements.

Section 161.128(a) would add the requirement to report the vessel type to the requirement to report the name of the vessel. Section 161.128(f) would require that the vessel speed be reported while transiting the VTS. Section 161.128(g) would require the vessel to advise the VTC of its intent to use the Traffic Separation Scheme.

Section 161.128(h) would require that towing vessels report the overall length of their tows, including the towing vessel.

Section 161.129 applies to vessels operating within their local harbor areas. This section would replace the initial and follow-up reports with a single report, thereby reducing the number of reports to be made for this type of operation.

Section 161.131, *Final report*, would be revised to allow the report to be made up to 60 minutes before the vessel actually anchors, moors, or departs from the VTS area. However, the vessel must be out of the Traffic Separation Scheme when reporting.

Section 161.133, *Radio failure*, would be revised to require that a vessel unable to communicate with the VTC by radiotelephone must obtain permission from the VTC before getting underway. If unable to get such permission by telephone or other means, the vessel may not proceed unless visibility is more than 2 miles. It is essential for the VTC to have knowledge of those vessels getting underway in reduced visibility without communication capability so that the VTC may advise other vessels of their movements.

Section 161.142, *Movement reports*, is revised to eliminate unnecessary information. Section 161.142(b) would only require reporting the name of the vessel and reporting point and only when specifically directed to do so by the VTC.

Section 161.142(a)(6) is now § 161.142(a)(1) and is reworded to require the reporting of changes in speed in excess of one knot instead of any speed change.

Proposed § 161.142(a)(2) would require a vessel to report 10 minutes before it crosses through the TSS and again when clear.

All other requirements under § 161.142 are deleted.

Section 161.189, *Reporting points*, would be revised by deleting three points previously used because of added radar surveillance and by adding two new points that are actually used.

In view of the foregoing, it is proposed to amend Part 161 of Title 33 of the Code of Federal Regulations as follows:

PART 161—VESSEL TRAFFIC MANAGEMENT

1. By revising the title of Part 161 to read: "VESSEL TRAFFIC MANAGEMENT".

Subpart B—Vessel Traffic Services

2. By revising the title of Subpart B of Part 161 to read: "Vessel Traffic Services".

§ 161.101 [Amended]

3. In § 161.101, by striking the word "system" and inserting the word "service" in place thereof on line 3 of paragraph (a).

§ 161.103 [Amended]

4. In § 161.103(a), by striking the word "system" and inserting the word "service" in place thereof at the end of the paragraph.

5. In § 161.103(b), by striking the word "system" and inserting the word "service" in place thereof on the first line of the paragraph.

§ 161.120 [Amended]

6. In § 161.120, by inserting the words "current edition of" between the words "designated in" and "Puget Sound VTS Operating Manual."

7. By revising § 161.128 to read:

§ 161.128 Initial report.

Except as provided in § 161.129, at least 15 minutes before a vessel enters or begins to navigate in the VTS Area the master of the vessel shall report, or cause to be reported, the following information to the VTC:

(a) Name and type of the vessel.
(b) Position of the vessel.
(c) Estimated time of entering or beginning to navigate in the VTS area.
(d) Destination in the VTS Area.
(e) ETA of the vessel at its destination.
(f) Vessel speed in the VTS Area.
(g) Whether or not the vessel intends to use the TSS.
(h) If the vessel is a towing vessel, the overall length of the tow including the towing vessel.
(i) Whether or not any dangerous cargo listed in § 124.14 of this chapter is on board the vessel or its tow.
(j) Any impairment to the operation of the vessel as described in § 161.135(a) and (b).

8. By adding new § 161.129 to read:

§ 161.129 Local harbor report.

(a) When a vessel moves within a three mile radius of its point of departure in the VTS area, the movement is a local harbor movement. A vessel making a local harbor movement is exempted from the reporting requirements in §§ 161.128 and 161.131.

(b) At least 5 minutes, but not more than 45 minutes, before a vessel makes a local harbor movement under paragraph (a) of this section, the master shall report, or cause to be reported, the following information to the VTC:

(1) Name and type of vessel.
(2) Position of departure.
(3) Time of departure.
(4) Destination and ETA.
(5) General description of operation to be performed.

(c) The master shall report, or cause to be reported, any changes from the information reported under paragraph (b) of this section, except that departing or ETA times must be reported only if they vary by 15 minutes or more from the report.

§ 161.130 [Deleted]

9. By deleting § 161.130.

§ 161.136 [Amended]

10. By striking the references "§ 161.130" in § 161.136(a).

11. By revising § 161.131 to read:

§ 161.131 Final report.

(a) Whenever a vessel anchors, moors in, or departs from the VTS Area the master shall report, or cause to be reported, the place and time of anchoring, mooring, or departing, to the VTC.

(b) The report required in paragraph (a) of this section may be made up to 60 minutes before anchoring, mooring, or departing the VTS area, if the vessel is not in and will not be in the TSS after making the report.

(c) If the report in paragraph (b) of this section is made, the master shall report, or cause to be reported, the revised estimated time of action immediately if it varies by 15 minutes or more from the report.

12. By revising § 161.133 to read:

§ 161.133 Radio failure.

Whenever a vessel's radiotelephone equipment fails—

(a) Before entering or while underway in the VTS area—

(1) Compliance with §§ 161.120 and 161.142 is not required; and

(2) Compliance with §§ 161.128 and 161.131 is not required unless the reports can be made by other means;

(b) Before getting underway in the VTS area—

(1) Permission to get underway must be obtained from the VTC;

(2) If unable to contact the VTC and visibility is more than 2 miles, compliance with paragraph (b)(1) of this section is not required; and

(c) The master shall restore the radiotelephone to operating condition as soon as possible.

13. By revising § 161.142 to read:

§ 161.142 Movement reports.

(a) The master of a vessel shall report, or cause to be reported, the following information to the VTC by radiotelephone:

(1) Any increase or decrease in speed of more than one knot.
(2) The intent to cross through the TSS at least 10 minutes before beginning to cross the TSS.
(3) When the vessel clears the TSS after crossing.

(b) When directed by the VTC, and when the vessel passes a reporting point listed in § 161.189, the master of a vessel shall report, or cause to be reported, the following information to the VTC by radiotelephone:

(1) The name of the vessel.
(2) The reporting point.

14. By revising § 161.189 to read:

§ 161.189 Reporting points.

The reporting points are—

(a) When North of New Dungeness Light—Buoy R at latitude 48°16'26" N., longitude 123°06'30" W.

(b) When Northeast of Colville Point—Buoy RB at latitude 48°26'24" N., longitude 122°45'12" W.

(c) When Northeast of Lawrence Point—Buoy C at latitude 48°40'34" N., longitude 122°42'44" W.

(d) When Abeam of Matia Island—Buoy CA at latitude 48°45'19" N., longitude 122°46'26" W.

(e) When West of West Point Light—Buoy SH at latitude 47°39'42" N., longitude 122°27'48" W.

(f) When Abeam of Robinson Point—Buoy TB at latitude 47°23'07" N., longitude 122°21'08" W.

(g) When Abeam of Browns Point—Buoy TC at latitude 47°19'30" N., longitude 122°27'19" W.

(h) The boundary of the TSS.

(Sec. 104, Pub. L. 92-340, 86 Stat. 424 (33 U.S.C. 1224); 49 CFR 1.46(n)(4)).

NOTE.—The Coast guard has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107.

Dated: January 11, 1977.

A. F. FUGARO,
Rear Admiral, United States Coast Guard, Chief, Office of Marine Environment and Systems.

[FR Doc.77-1389 Filed 1-14-77;8:45 am]

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 80]

[FRL 669-3]

FUEL AND FUEL ADDITIVES

Control of Lead Additives in Gasoline; Proposed Small Refiner Amendments

BACKGROUND

On December 6, 1973 (38 FR 33734), the Environmental Protection Agency

published in the FEDERAL REGISTER regulations controlling the amount of lead additives used in gasoline. Under the regulations, the average lead content of a gallon of gasoline was to be reduced to 0.5 grams per gallon (gpg) after January 1, 1979, in accordance with a prescribed reduction schedule Small refiners, defined as those with not more than 30,000 barrels per day (BPD) crude oil or bona fide feed stock capacity, were exempted from meeting the first 2 yearly reductions in recognition of their special problems in raising capital and constructing new facilities.

Following a lengthy period of litigation during which enforcement was suspended, EPA published a notice of intent to resume enforcement of the phase-down schedule on October 1, 1976 (41 FR 28352, July 9, 1976). On October 1, 1976, following a period of comment and review, EPA formally resumed enforcement of a revised phase-down schedule (41 FR 42675, September 28, 1976). Changes were made to the original schedule in light of the length of the litigation and changes that had occurred in the national petroleum situation since the original promulgation. The September 28 notice, however, did not deal with the small refiner issue. Rather, it indicated that additional analysis was necessary with further changes to the regulations in this regard being actively considered.

The consulting firm of Sobotka and Co., Inc., under contract to EPA, investigated possible justifications for differentiation in lead phase-down regulations between various classes of refiners. In particular, they investigated whether small refiners were differentially impacted by the regulations so that those regulations in themselves would cause premature or avoidable closures of otherwise viable companies. They further investigated whether the regulations might put small refiners at a competitive disadvantage relative to the conditions that would otherwise prevail. Finally, they analyzed certain other aspects of the issue at EPA's request.

The analysis by Sobotka and Co., Inc., has been completed ("Impact of Lead Phase-down Rules on Small Refineries," dated December 30, 1976) along with other internal EPA staff investigations. The purpose of this notice is to propose amendments to the lead phase-down regulations with regard to gasoline produced by small refiners and discuss the rationale behind the proposal.

PROPOSED AMENDMENTS

The lead phase-down regulation is a health based regulation promulgated to ensure a positive and lasting reduction in lead emissions to the ambient air. At the time of promulgation, the introduction of catalytic converters was expected to begin in late 1974 (1975 model year cars). The widespread use of the catalytic converter, which requires lead-free fuel for proper operation, was projected to result in an independent reduction in lead emissions. However, the converter was not required, and there was no assurance that its use would be either widely accepted or long-lived. Thus, the promulgation of the phase-down regulation was necessary to both speed the reduction of lead in gasoline and to provide the certainty that lead levels would be reduced. The reduction timetable (with the delay for small refiners) and the 0.5 gpg final average lead level were chosen after appropriate consideration of health effects, economics and technological feasibility.

Prior to the origin promulgation of the lead phase-down regulation, the refining industry's capability to meet the regulated levels was assessed through technical and economic studies. These analyses surfaced the capital availability constraints of the small refiner which prompted the two-year delay in meeting regulated lead levels for that segment of the industry. However, these analyses did not focus on the differential economic burden which would face various classes of refiners (and refineries) striving to meet the same .5 gpg average pool lead level. Only with the recent analysis from Sobotka and Company, Inc. (and to some extent from industry comments in response to the July 9, 1976 and September 28, 1976 FEDERAL REGISTER notices) has EPA been fully advised of the differential economic impact of the existing regulation on the small refiner (and refinery).

This recent analysis shows that because of his typical production slate and refinery configuration the small refiner will in general face relatively higher costs (with less capital available to meet those costs) in meeting the .5 gpg standard than will the large refiner. These cost and capital availability differences have led EPA to propose an amendment to the existing regulation which would require the small refiner (any refiner which on and after October 1, 1976 has FEA certified capacity of not more than 30,000 BPD of crude throughput) to meet by October 1, 1979, a pool average lead level of 1.0 gpg rather than the present .5 gpg level. Any new (or old) refinery not in operation as of October 1, 1976, is required to meet the .8 gpg and .5 gpg pool average lead levels set forth in paragraph (a) of the existing regulations.

It is at approximately the pool average lead level of 1.0 gpg that the unit cost for lead removal for the small refiner is comparable to the unit cost for reduction by the larger refiner to the promulgated 0.5 gpg level. Although this amendment would not necessarily result in the same lead emission reduction as originally prescribed, the resulting lead content is only about 3 to 4 percent higher. The effect on ambient lead concentrations is considered to be negligible, in part due to the generally rural nature of small refiners and their markets.

Reporting requirements for the small refiner will be substantially reduced from that outlined in the September 28, 1976 FEDERAL REGISTER notice. Under these revisions for the small refiner the Administrator may still require, upon 30 days written notice, any reports he deems relevant to a determination of compliance with this regulation. However, the only required report is a certificate of intent to meet the 1.0 gpg standard by October 1, 1979, to be submitted in writing to the Administrator by March 31, 1977.

SMALL REFINER ANALYSIS

In the original promulgation, the requirement for compliance by small refiners was deferred 2 years "* * * in recognition of the special lead time problems faced by this group." Analysis at that time concluded that from 12 to 20 of the nation's 189 small refineries might close because of the lead phase-down regulation. It was recognized that the future use of lead-free gasoline would greatly influence this eventuality, and that if lead-free demand grew at realistic rates, those 12 to 20 refineries would probably close anyway; the phase-down regulation would only accelerate the time of closure.

Since that time other forces have come into play. In particular, the changes in the world petroleum market have placed unusual constraints on the industry, which, in response to Congressional actions and concerns, have resulted in the introduction of more complex and comprehensive governmental regulations on refinery operations. For example, with the two-tiered domestic crude oil pricing system, and high-priced foreign imports, many small refiners are viable only so long as the crude oil entitlement program, or some other similar relief, assures them of a supply of crude oil that is comparably priced to that available to the larger refiners who own and produce most of the cheaper U.S. oil.

In order to properly analyze the small refiners' present situation, a great deal of information was assessed. First, governmental sources including the Federal Energy Administration and the Bureau of Mines were queried. Next, industry responses to the July 9, 1976, Federal Register notice produced considerable relevant data. Finally, Sobotka and Co., Inc., provided independent information while they were preparing their analysis of industry submissions for EPA. Some of the pertinent data are summarized below.

The most current Government information identifies 83 small refiners (operating 100 refineries). Although these represent in number a significant fraction of the nation's approximately 270 refineries, they collectively produce less than about 3½ percent of U.S. gasoline. The majority of small plants are remotely located and a substantial portion of their product mix consists of farm or truck business which will continue to consume predominantly leaded gasoline. The July 1976 responses show that many small refiners now produce a larger fraction of regular, leaded gasoline than larger refiners, and therefore the small refiner has farther to go in terms of reducing lead content to the required level for the average pool. This and the fact that small refineries will suffer diseconomies of scale imply that small refiners will in general face higher unit costs in meeting a given lead level than will the large refiner.

Although capital constraints frequently have been referred to by small refiners, and by EPA in the original promulgation, it is difficult to verify that such constraints actually exist. However, the general lack of an assured crude oil supply, the potentially transient nature of many governmental regulations and legislation, and the more limited financial base of the small refiner lead us to conclude that small firms will have more difficulty raising capital for plant facilities to meet phase-down schedules. This difficulty will continue at least until the entitlements program is continued or a substitute is assured in 1979.

For these reasons, EPA remains convinced that the small refiner segment of the industry can reasonably be considered separately from the rest of the industry. This view was also expressed by Congress in the Emergency Petroleum Allocation Act of 1973, Section 4(b)(1) which provides for mandatory allocations and pricing "* * * to preserve the competitive viability of independent refiners, small refiners, non-branded marketers."

AVAILABLE OPTIONS

Several options are available with numerous possible variations. Four major options were considered by EPA and Sabotka and Co., in this analysis. First, no special relief could be granted to the small refiner. This would provide for the maximum in lead emission reduction, although the impact of small refiners on total emissions is relatively small and most of these facilities are rural, thus not affecting the urban areas where lead emission problems would be most severe. This option would also result in uniform regulations with attendant enforcement advantages. However, most small refiners would be faced with higher unit costs than large refiners. Assuming the entitlement program or some other equivalent form of subsidy is continued past 1979, small refiners will remain viable, but this option would be likely to result in gasoline production shifts from small to large refineries.

A second option would impose a standard of 1.4 gpg in the 1979 period to be continued until a drop to 0.5 gpg in the mid-1980's. The 1.4 gpg figure coincides with a recent California lead phase-down regulation. This option best provides for eventual attainment of the 0.5 gpg standard by all refiners. However, this only delays the eventual exit from the gasoline business of those refiners who cannot economically reach 0.5 gpg.

The third option, a variation of the second, would impose the standard of 1.0 gpg[1] in 1979 without requiring a further reduction. The major advantage of this option is that it tends to equalize the unit costs between small and large refiners better than the other options while still requiring reasonable effort on the part of the small refiners to reduce lead usage. The disadvantage is that a small increase in lead emissions results over and above what could theoretically be attained if everyone met 0.5 gpg. However, this would only increase the nationwide average lead content in the gasoline pool from 0.5 gpg to about 0.53 gpg, and as mentioned, the increase would be dispersed in more rural areas.

The final option provides that all small refiners (or some subset would be excluded from the regulatory requirements on the grounds that this would prevent accelerated closure of many small businesses. However, the principal disadvantage of this option is the substantial production cost benefit that many small refineries would receive, a fact that would seem inequitable to many others. Furthermore, this option would result in minimum lead reductions.

[1] EPA originally considered 1.4 as the gram per gallon figure which would best equalize unit cost. Later analysis supported 1.0 gpg however. Comments are invited on the difference.

OTHER CONSIDERATIONS

In the comments received in response to the July 9 FEDERAL REGISTER notice, several other issues were raised. Foremost was the distinction between refiner and refinery. The original promulgation deferred compliance for refiners with not more than 30,000 barrels per day crude oil or feed stock capacity. The rationale for focusing on the refiner instead of the refinery was the desire to recognize small business' difficulties in raising capital. Also, larger refiners were generally seen as having more options available to them than the small refiner and could spread the relatively high costs of small refinery conversion over a considerably larger base. In addition, the refinery configuration of the small refineries owned by the larger refiners is generally such that these larger refiners would not experience as large a unit cost increase as would the small refiners. Consequently, there do not appear to be any new or unusual reasons for changing the existing definitions. Capital availability and relative costs are still the major reasons for special consideration for small refiners.

In the recent California regulation, the baseline for compliance was changed from crude oil capacity to gasoline produced. Several comments requested a similar change in this regulation. However, while gasoline production is probably a theoretically preferable system of classification, it presents intractable regulatory problems. Crude capacity is well-defined on a plant-by-plant basis by the Federal Energy Agency, the Small Business Administration and the Bureau of Mines. However, there is no unequivocal way of defining finished gasoline production or manufacturing capacity because the volumes of gasoline manufacture reported can easily be shifted between refineries by transfers of unfinished components. Therefore, EPA has determined that no change is warranted in the regulatory baseline.

Finally, several gasoline blending plants provided responses generally asking for special relief. These facilities do not process crude oil but simply purchase natural gasoline and/or other gasoline blending stocks and add lead to produce finished motor gasolines. Data indicate the aggregate supply of gasoline produced by blending plants is small in comparison even to the remaining small refiners. However, we see serious problems in defining blending plants in such a way as to include all possible cases and to prevent separation of blending and refining operations to take advantage of preferential relief. For these reasons, EPA has determined that no special relief should be granted to blending plants.

PUBLIC COMMENT

Interested persons are invited to submit written comments (in triplicate) on the regulations proposed below to Mr. Donald Walters, EPA Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina 27711. The Administrator will welcome comments on all aspects of this proposed regulation. All relevant comments received on or before February 9, 1977, will be considered.

Dated: January 10, 1977.

RUSSELL E. TRAIN,
Administrator.

In Part 80, Chapter I, Title 40, of the Code of Federal Regulations, § 80.20 is proposed to be amended by adding new paragraphs (b)(1) and (b)(2) to read as follows:

§ 80.20 Controls applicable to gasoline refiners.

* * * * *

(b)(1) The provisions of paragraphs (a)(1) and (a)(4) of this section shall not be applicable to refineries in operation as of October 1, 1976, and owned by a small refiner. A small refiner is one which on and after October 1, 1976 does not have more than 30,000 barrels per day crude oil or bona fide feed stock capacity from owned or leased facilities or from facilities made available to such refiner under arrangements such as, but not limited to, an exchange agreement (except one on a refined product for refined product basis), or a throughput or other form of processing agreement, with the same effects as though such facilities had been leased.

(2)(i) Gasoline manufactured at any refinery in operation as of October 1, 1976, owned by a small refiner (as defined in paragraph (b)(1) of this section) shall not exceed an average lead content of 1.0 grams of lead per gallon for each three-month period (January through March, April through June, July through September, October through December) begining October 1, 1979.

(ii) The Administrator may require any small refiner at any time after March 31, 1977, upon thirty days written notice, to submit such written reports, construction schedules, contracts, docu-

ments and other information and evidence as the Administrator deems relevant to a determination of compliance with this regulation.

(iii) By March 31, 1977 the small refiner shall inform the Administrator in writing of his intent to either meet the required 1.0 gpg lead pool average by October 1, 1979 or to withdraw from the gasoline production business.

[FR Doc.77-1317 Filed 1-14-77;8:45 am]

DEPARTMENT OF TRANSPORTATION

Coast Guard

[46 CFR Part 10]

[CGD 76-193]

RENEWAL OF MERCHANT MARINE OFFICERS LICENSE WITH RADAR OBSERVER ENDORSEMENT

Proposed Clarification of Requirements for Demonstration of Skills

The Coast Guard is considering amending the regulations for the renewal of a merchant marine officer's license with a radar observer endorsement. This proposed change would clarify the requirements for demonstration of radar observer skills during license renewal.

Interested persons are invited to participate in this rulemaking by submitting written comments, data, views, or arguments to the Commandant (G-CMC/81), U.S. Coast Guard, Washington, D.C. 20590. Each person or organization submitting a comment should include his name and address, identify this notice (CGD 76-193), and give reasons for any recommendations made.

Comments received before March 3, 1977, will be considered before final action is taken on this proposal. Copies of comments received will be available for examination in Room 8117, Department of Transportation, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. This proposal may be changed in the light of comments received.

No hearing is contemplated, but one may be held at a time and place set out in a later notice in the FEDERAL REGISTER, if requested by a person or organization desiring to comment orally at a public hearing and raising a genuine issue.

Present regulations for the licensing of merchant marine officers require certain qualification skill endorsements to be stated on the individual's license. At the time of license renewal requalification, these skills must be demonstrated. The Coast Guard has allowed the holder of a license with a radar observer endorsement to renew the license without the radar observer endorsement if the individual does not choose to demonstrate proficiency for the endorsement. However, the Coast Guard feels that an individual who serves in any capacity under the authority of his license must be qualified in all skill aspects commensrate with the tonnage of his license. These amendments are proposed in order to clarify and reflect this policy.

In consideration of the foregoing, it is proposed that Part 10 of Title 46 of the Code of Federal Regulations be amended as follows:

By adding paragraphs (e) (7) and (8) to § 10.02-9 to read as follows:

§ 10.02-9 Requirements for renewal of license.

* * * * * * *

(e) * * *

(7) Except as required in paragraph (e) (8) of this section, an applicant who has obtained a radar observer's endorsement may renew an existing license without the radar observer's endorsement.

(8) A master, mate, or pilot whose license is for service in vessels of 300 gross tons and over must have a radar observer's endorsement if he is to serve in any capacity under the authority of his license.

* * * * * * *

(R.S. 4405, as amended (46 U.S.C. 375), R.S. 4462, as amended (46 U.S.C. 416), Sec. 6(b)(1), 80 Stat. 937 (49 U.S.C. 1655(b)(1)); 49 CFR 1.46(b).)

NOTE.—The Coast Guard has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107.

Dated: January 10, 1977.

W. M. BENKERT,
Rear Admiral, U.S. Coast Guard, Chief, Office of Merchant Marine Safety.

[FR Doc.77-1386 Filed 1-14-77;8:45 am]

FEDERAL MARITIME COMMISSION

[46 CFR Part 531]

[Docket No. 76-40]

FILING OF FREIGHT AND PASSENGER RATES, FARES AND CHARGES IN THE DOMESTIC OFFSHORE TRADE, PUBLICATION AND POSTING

Further Enlargement of Time To File Comments

JANUARY 10, 1977.

Upon request of Hearing Counsel, and good cause appearing, time within which its reply to comments shall be filed in this proceeding[1] is enlarged to and including January 31, 1977. Answers to Hearing Counsel's reply shall be filed on or before February 22, 1977.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.77-1408 Filed 1-14-77;8:45 am]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 73]

[Docket No. 21037, RM-2755]

FM BROADCAST STATION IN SUMMERSVILLE, WEST VIRGINIA

Proposed Change in Table of Assignments

Adopted: December 30, 1976.

Released: January 7, 1977.

[1] See 41 FR 32899, August 6, 1976 and 41 FR 53364, December 6, 1976.

1. *Petitioner, proposal and comments.* (a) Petition for rule making filed May 27, 1976, by R & S Broadcasting Company, Inc., proposing the assignment of Class B Channel 225 as a first FM channel to Summersville, West Virginia.[1]

(b) The channel may be assigned without affecting any existing FM assignment and conforms with all minimum distance separation requirements.

2. *Community data.* (a) *Location.* Summersville is located approximately 64 kilometers (40 miles) east of Charleston, West Virginia, and 161 kilometers (100 miles) west of Staunton, Virginia.

(b) *Population.* (1970 U.S. Census)—Summersville, 2,429; Nicholas County, 22,552.

(c) *Present aural services.* None in Summersville or Nicholas County.

(d) *Economic considerations.* Petitioner has submitted information which indicates a level of commercial and economic activity in the Nicholas County area sufficient to support the assignment of a first FM channel.

3. *Preclusion studies.* Preclusion would occur on Channels 224, 225, 226, 227 and 228. Of these channels, 224 and 228 are Class A and the other three are Class B. Twelve communities in West Virginia with populations greater than 1,000 persons would be precluded as a result of the assignment of Channel 225 to Summersville. Of these twelve communities, eight have no FM assignments: Richwood, pop. 3,717; Fayetteville, 1,712; Mullens, 2,967; Marlinton, 1,286; Webster Springs, 1,038; Sutton, 1,031; Spencer, 2,261, and Pineville, 1,187. Richwood and Pineville each has a daytime-only AM station and Sutton and Spencer each has a Class IV AM station. Oak Hill, pop. 4,738; Montgomery, 2,525, and Beckley, 19,884, each has an FM assignment and AM stations. Mount Hope, pop. 1,829, has no AM assignment but does have an FM assignment. Petitioner should show whether or not there are any alternate channels available for assignment to the communities without FM assignments.

4. *Additional considerations.* Petitioner's Roanoke Rapids showing indicates that the proposed Class B station operating with maximum facilities would provide a first FM service to an area of approximately 3,906 square kilometers (1,508 square miles), with a population of 38,659. It also shows that a second FM service would be provided to an area approximately 873 square kilometers (337 square miles) with a population of 10,538. The only portion of the abovementioned areas presently receiving nighttime AM service is in the vicinity of Sutton, West Virginia (pop. 1,031) in the area of first FM service. It therefore appears that the areas of first and second nighttime aural service are virtually identical to the areas of first and second FM service. A staff engineering analysis shows that a Class A assignment would fail to serve large parts of the areas discussed herein as areas of first or second aural service, thereby making a Class B assignment more desirable. For these reasons and because a first local FM broadcast service would be provided for Summersville and Nicholas County, we are persuaded that the assignment should be proposed despite the fact that, in the usual instance, we would not assign a Class B channel to a community the size of Summersville.

[1] Public Notice of the petition was given on October 5, 1976 (Report No. 1006).

5. In view of the above, the Commission proposes to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules, with regard to Summersville, West Virginia, as follows:

City	Channel No.	
	Present	Proposed
Summersville, W. Va.	.....	225

6. The Commission's authority to institute rule making proceedings; showings required; cut-off procedures; and filing requirements are contained in the attached Appendix and are incorporated herein.

7. Interested parties may file comments on or before February 14, 1977, and reply comments on or before March 7, 1977.

FEDERAL COMMUNICATIONS COMMISSION,
PAUL WILLIAM PUTNEY,
Acting Chief, Broadcast Bureau.

APPENDIX

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and § 0.281(b)(6) of the Commission's Rules, it is proposed to amend the FM Tables of Assignments, §73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings required.* Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build the station promptly. Failure to file may lead to denial of the request.

3. *Cut-off procedures.* The following procedures will govern the consideration of filings in this proceeding:

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of Commission Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If filed later than that, they will not be considered in connection with the decision in this docket.

4. *Comments and reply comments; service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission Rules.)

5. *Number of copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public inspection of filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

[FR Doc.77-1401 Filed 1-14-77;8:45 am]

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[49 CFR Part 571]

[Docket No. 77-01; Notice 1]

LAMPS, REFLECTIVE DEVICES, AND ASSOCIATED EQUIPMENT

Proposed Location for Wide Trailer Side Marker Lamps

This notice proposes that 49 CFR 571.108, Motor Vehicle Safety Standard No. 108, be amended to require that rear side marker lamps on trailers 80 inches or more in overall width be located as close as practicable to the lower rear corner of the trailer. The proposed effective date of this amendment is September 1, 1977.

On July 30, 1975, in response to a petition from the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Teamster's Union), the Federal Highway Administration's Bureau of Motor Carrier Safety (BMCS) published an advance notice of intent to amend 49 CFR 393.14 to require large semi trailers and full trailers operating in interstate commerce to have the rear side marker lamps at or near the lower rear corner (40 FR 31959). The purpose of the proposal is to enhance traffic safety by providing a driver of a tractor pulling such a trailer with a reference light visible in the outside rearview mirror through which he may check the tracking of the trailer's rear end at night or at such other times as the headlamps are required. The NHTSA has tentatively determined that a companion amendment of Standard No. 108 is required to preclude a conflict between the requirements of that standard and the BMCS Regulations.

BMCS, having evaluated the comments to the Advance Notice, is proposing (41 FR 47948) that rear side marker lamps be "as near as practicable to the lower rear corner, and visible in the rearview mirror of the truck tractor when the trailer is tracking straight behind the tractor." The NHTSA proposal requires only that the lamps be located as close as practicable to the lower rear corner. The difference in requirements is dictated by the different safety missions of the two issuing agencies—that of NHTSA, to insure that motor vehicles are manufactured in accordance with Federal motor vehicle safety standards, and that of BMCS, to insure that commercial vehicles in interstate commerce are operated in accordance with that agency's safety requirements. Federal motor vehicle safety standards do not apply to a combination of vehicles (tractor and trailer) and it would not be possible to determine at time of manufacture whether the rear side marker lamp of the trailer would be visible in the rearview mirror of every possible tractor that could tow it.

In consideration of the foregoing, it is hereby proposed that Table II of 49 CFR 571.108, Motor Vehicle Safety Standard No. 108, be revised to read as follows:

TABLE II.—*Location of required Equipment—Multipurpose passenger vehicles, trucks, trailers, and buses, of 80 or more inches overall width*

Item	Location on—	
	Trailers	
	Col. 1	Col. 3
* * *	* * *	* * *
Side marker lamps	* * *	On each side—1 red as far to the rear as practicable and as close as practicable to the lower rear corner, and 1 amber as far to the front as practicable.
* * *	* * *	* * *

Interested persons are invited to submit comments on the proposal. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5108, 400 Seventh Street, S.W., Washington, D.C. 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the comment closing date indicated below will be considered, and will be available for examination in the docket at the above address both before an after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date, and comments received

after the closing date and too late for consideration in regard to the action will be treated as suggestions for future rulemaking. The NHTSA will continue to file relevant material as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Comment closing date: February 28, 1977.

Proposed effective date: September 1, 1977.

(Sec. 103, 119, Pub. L. 89-563, 80 Stat. 718; 15 U.S.C. 1392, 1407); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8.)

Issued on January 7, 1977.

ROBERT L. CARTER,
Associate Administrator,
Motor Vehicle Programs.

[FR Doc.77-1202 Filed 1-14-77;8:45 am]

notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

ADVISORY COMMITTEE ON REGULATORY PROGRAMS

Meeting

Pursuant to the provisions of Section 10(a)(2) of the Federal Advisory Committee Act (86 Stat. 770), notice is hereby given of a meeting of the Advisory Committee on Regulatory Programs. The Committee will meet at the U.S. Department of Agriculture, Washington, D.C., on February 2 and 3, 1977. The meeting will be open to the public and will begin at 9 a.m. on February 2 in Room 218-A, Administration Building, 14th Street and Independence Avenue, S.W., and is scheduled to end by 4:15 p.m. on February 3.

The agenda on February 2 will include a brief discussion of recommendations from the meeting of October 20-21, 1976; and a review of the day-to-day regulatory activities of the meat and poultry inspection program.

The agenda on February 3 will be reserved primarily for discussion by Committee members of the meat and poultry inspection program, but will include an opportunity for public comments and questions.

Persons who wish to submit statements for consideration by Committee members prior to or during the meeting are requested to send them to Mr. Donald E. Wilkinson, Administrator, AMS, U.S. Department of Agriculture, Washington, D.C. 20250, telephone (202) 447-5115.

Anyone wishing further information may contact Mr. Wilkinson at the above address.

Dated: January 11, 1977.

WILLIAM T. MANLEY,
Deputy Administrator,
Program Operations.

[FR Doc.77-1345 Filed 1-14-77;8:45 am]

SHIPPERS ADVISORY COMMITTEE

Renewal; Correction

In FR Doc. 77-183 appearing at page 818 in the FEDERAL REGISTER of January 4, 1977, the fifth paragraph is corrected by adding the date, "December 22, 1978," immediately following the words "committee will expire".

Dated: January 12, 1977.

WILLIAM T. MANLEY,
Deputy Administrator,
Program Operations.

[FR Doc.77-1346 Filed 1-14-77;8:45 am]

[Marketing order No. 905]

SHIPPERS ADVISORY COMMITTEE

Public Meetings

Pursuant to the provisions of section 10(a)(2) of the Federal Advisory Committee Act (86 Stat. 770), notice is hereby given of meetings of the Shippers Advisory Committee established under Marketing Order No. 905 (7 CFR Part 905). This order regulates the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida and is effective pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). The committee will hold meetings on February 1 and February 8, 1977, at 10:30 a.m. in the A. B. Michael Auditorium of the Florida Citrus Mutual Building, 302 South Massachusetts Avenue, Lakeland, Florida.

The meetings will be open to the public and a brief period will be set aside at each meeting for public comments and questions. The agenda of each meeting includes analysis of current information concerning market supply and demand factors, and consideration of recommendations for regulation of shipments of the named fruits.

The names of committee members, agenda, and other information pertaining to each meeting may be obtained from Frank D. Trovillion, Manager, Growers Administrative Committee, P.O. Box R, Lakeland, Florida 33802; telephone 813-682-3103.

Dated: January 12, 1977.

WILLIAM T. MANLEY,
Deputy Administrator,
Program Operations.

[FR Doc.77-1420 Filed 1-14-77;8:45 am]

CIVIL AERONAUTICS BOARD

[Docket 30254]

FLYING TIGER LINE, INC., ET AL.

Enforcement Proceeding; Assignment of Proceeding

This proceeding is hereby assigned to Administrative Law Judge Burton S. Kolko. Future communications should be addressed to Judge Kolko.

Dated at Washington, D.C., January 11, 1977.

HENRY M. SWITKAY,
Acting Chief Administrative
Law Judge.

[FR Doc.77-1445 Filed 1-14-77;8:45 am]

[Order 77-1-11; Docket 29123]

INTERNATIONAL AIR TRANSPORT ASSOCIATION

Order Relating to North Atlantic Passenger Fares

JANUARY 4, 1977.

The member carriers of the International Air Transport Association (IATA) have reached an agreement on passenger fares to apply over the North Atlantic for a one year period commencing April 1, 1977.[1] Although the agreement has not been formally filed with the Board, sufficient information has been made available as to the proposed fare structure and fare levels to permit the issuance of this order. The proposed New York-London and Miami-London fares are shown in the attached table hereto.[2]

As the attached table indicates, fares from New York are proposed to be increased in varying amounts ranging up to 17 percent. Fares from Miami are proposed to be increased up to 22 percent. The present three-season fare structure, which historically has been applied to a number of fares, has been changed to a two-season structure with the peak season extended by one month.[3] The only exception to the two-season structure applies to the advance-purchase excursion fare (APEX) which would have a peak-of-peak surcharge of $20 one way for eastbound travel in July and for westbound travel in August. Existing weekend surcharges will continue to apply as would various conditions associated with the different fares with the exception of APEX and group inclusive-tour fares. The APEX fare for U.S.-originating traffic is proposed to have the advance-purchase condition lowered from the present 60 days to 45 days prior to travel. Further, effective October 1, 1977, the present 22/45-day length of stay is proposed to be increased to 14/45 days. The group inclusive-tour fares, presently available to groups of 10 or more are proposed to be available to groups of 5 or more.

The purpose of this order is to establish procedural dates for the submission of carrier justification in support of the agreement and of comments from interested persons. The carriers' justification for the agreement should assign costs attributable to scheduled passenger serv-

[1] Excludes fares to/from Canada and between the United States and Spain.

[2] Filed as part of original document.

[3] The present peak season for U.S.-originating traffic is now June through August. The agreement proposes the peak season from May 15 through September 15.

ice under both the "space method" stipulated by the Board in its April 2, 1970 decision in Docket 18381, Nonpriority Mail Rates (Orders 70–4–9 and 70–4–10), and the "revenue-offset method," adopted April 2, 1971 in Phase 7 of the Domestic Passenger-Fare Investigation, Docket 21866–7 (Orders 71–4–59 and 71–4–60). The data should be set out in a tabular format as suggested in Order 75–7–88, July 17, 1975, starting with historical data as reported to the Board in Form 41 reports by functional account for total transatlantic services for the year ended September 30, 1976. This should be adjusted to show the exclusion of those market areas not covered by the agreement, *e.g.*, mid-atlantic and intra-Europe/Asia/Africa as well as scheduled all-cargo and charter services within the North Atlantic area. The remainder, pertaining to North Atlantic scheduled combination services, should be adjusted to show the present economic status of scheduled passenger services in the market area covered by the agreement. Similarly, using the above two methods, the carriers are expected to submit forecast results under the agreement for the year ending March 31, 1978, both including and excluding the increased fares for which approval is sought.

In addition, the carriers will be required to submit detailed traffic data showing revenue passenger-miles and revenue by specific fare category, as well as capacity and load-factor information both for the historical period and for the forecast period, including and excluding the proposed fare increase.

Finally, the carriers are requested to specifically justify the proposed first-class fares, which are established at very high levels relative to the proposed normal economy fares, and additionally to demonstrate why approval of first-class fare increases is warranted in view of the unresolved matter of excess baggage charges. Carriers are directed to submit full economic support for any increase in normal economy fares, which the Board has noted are already excessive in relation to costs and therefore cross-subsidize low-rated fares; a detailed explanation for the proposed changed conditions in the APEX fares and the reduced group size for GIT fares; and the rationale warranting Board approval for increases in Miami fares considering the earnings position of National Airlines.

Accordingly, it is ordered, That:

1. All United States air carrier members of the International Air Transport Association providing services within the area concerned by the agreement shall file prior to January 25, 1977 full documentation and economic justification for the fares and related conditions embodied in the subject agreement;

2. Comments and objections from interested persons and parties shall be submitted prior to January 25, 1977;

3. Replies to submissions received in response to ordering paragraphs 1 and 2 above shall be submitted no later than February 14, 1977; and

4. Insofar as air transportation as defined by the Act is concerned, tariffs implementing the subject agreement should not be filed in advance of Board action on the subject agreement.

This order will be published in the FEDERAL REGISTER.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc.77-1446 Filed 1-14-77;8:45 am]

PORT OF OAKLAND, CALIFORNIA

Meeting

Notice is hereby given that a presentation will be made by Port of Oakland on Monday, January 24, 1977, at 10:00 a.m. (local time), in Room 1027, Universal Building, 1825 Connecticut Avenue, N.W., Washington, D.C. regarding the Port's analysis of its air service needs.

Dated at Washington, D.C., January 12, 1977.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc.77-1444 Filed 1-14-77;8:45 am]

[Docket 27434]

TEXAS INTERNATIONAL AIRLINES, INC.

Oral Argument on Motion for Summary Judgment

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that argument on the motion for summary judgment in the above-entitled proceeding will be heard on February 7, 1977 at 9:30 a.m. (local time), in Room 1003, Hearing Room B, Universal North Building, 1875 Connecticut Avenue, N.W., Washington, D.C., before the unresigned administrative law judge.

For information concerning the issues involved and other details in this proceeding, interested persons are referred to the docket of this proceeding on file in the Docket Section of the Civil Aeronautics Board.

Dated at Washington, D.C., January 11, 1977.

JANET D. SAXON,
Administrative Law Judge.

[FR Doc.77-1443 Filed 1-14-77;8:45 am]

COMMISSION ON CIVIL RIGHTS

OKLAHOMA ADVISORY COMMITTEE

Amended Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that the planning meeting of the Oklahoma Advisory Committee (SAC) of the Commission a notice previously published in the FEDERAL REGISTER Tuesday, December 21, 1976, page 55567, is hereby amended to show change in type of meeting. The meeting will be a closed or executive. The meeting date and place remain the same.

Dated at Washington, D.C., January 12, 1977.

ISAIAH T. CRESWELL, JR.,
Advisory Committee Management Officer.

[FR Doc.77-1373 Filed 1-14-77;8:45 am]

DEPARTMENT OF COMMERCE

Economic Development Administration

PETITION BY HYGRADE HANDBAG CORP.

Determination of Eligibility To Apply for Trade Adjustment Assistance

A petition by Hygrade Handbag Corporation, 235 Jersey Avenue, P.O. Box 549, New Brunswick, New Jersey 08901, a producer of handbags for women and girls, was accepted for filing on January 11, 1977, pursuant to Section 251 of the Trade Act of 1974 (Pub. L. 93–618 and § 315.23 of the Adjustment Assistance Regulations for Firms and Communities (13 CFR Part 315). Consequently, the United States Department of Commerce has initiated an investigation to determine whether increased imports into the United States of articles like or directly competitive with those produced by the firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of the petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by the Chief, Trade Act Certification Division, Economic Development Administration, U.S. Department of Commerce, Washington, D.C. 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

JACK W. OSBURN, JR.,
Chief, Trade Act Certification Division, Office of Planning and Program Support.

[FR Doc.77-1327 Filed 1-14-77;8:45 am]

PENN STATE MILLS, INC.

Petition for a Determination of Eligibility To Apply for Trade Adjustment Assistance

A petition by Penn State Mills, Incorporated, 361 Gordon Street, Allentown, Pennsylvania 18105, a producer of knit sport shirts for men, women and children, was accepted for filing on January 6, 1977, under section 251 of the Trade Act of 1974 (Pub. L. 93–618) and § 315.23 of the Adjustment Assistance Regulations for Firms and Communities (13 CFR Part 315).

Consequently, the United States Department of Commerce has initiated an investigation to determine whether increased imports into the United States of articles like or directly competitive with those produced by the firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of the petitioning firm.

Any party having a substantial interest in the the proceedings may request a public hearing on the matter. A request for a hearing must be received by the Chief, Trade Act Certification Division, Economic Development Administration, U.S. Department of Commerce, Washington, D.C. 20230, no later than the close of business on January 27, 1977.

JACK W. OSBURN, JR.,
Chief, Trade Act Certification Division, Office of Planning and Program Support.

[FR Doc.77-1351 Filed 1-14-77;8:45 am]

Office of the Secretary

CTAB PANEL ON ENERGY POLICY

Open Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. I (Supp. V, 1975), notice is hereby given that the next meeting of the Department of Commerce Technical Advisory Board (CTAB) Panel on Energy Policy will be held on Monday, February 7, 1977, from 9:00 a.m. to 5:00 p.m., and Tuesday, February 8, 1977, from 8:30 a.m. to 5:00 p.m., in Room 4830, of the Main Commerce Building, 14th Street and Constitution Avenue, NW., Washington, D.C. (Public entrance to the building is on 14th Street, between Constitution and E Street, NW.)

The Panel has been established to assess the current energy situation from a private sector point of view and to provide an experienced and independent voice to assist the further development of a national energy program.

The agenda for the two-day meeting will be: (1) Review and revision of revised draft of the national energy policy document;

(2) Adoption of the format for the Panel's final report; and

(3) Adoption of the schedule for approval and publication of the Panel's final report.

The meeting will be open to public observation. The public may submit written statements or inquiries on agenda items with the Chairman before or after the meeting. A limited number of seats will be available for the public and to the press on a first-come first-serve basis.

Copies of minutes will be made available for copying, 30 days after the meeting, following their certification by the Chairman, in accordance with the Federal Advisory Committee Act, at the U.S. Department of Commerce, Central Reference and Inspection Facility, Washington, D.C. 20230.

Persons desiring further information on the Panel or on individual meetings should contact Mr. William Dorn, Room 3877, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C. 20230; telephone (202) 377–3668.

Dated: January 11, 1977.

BETSY ANCKER-JOHNSON,
Assistant Secretary for Science and Technology.

[FR Doc.77-1418 Filed 1-17-77;8:45 am]

COMMISSION ON POSTAL SERVICE

PUBLIC SERVICE COSTS OF POSTAL SERVICE

Hearings To Be Conducted in Toms River, New Jersey and Atchison, Kansas

Under section 7(c)(1) of the Postal Reorganization Act Amendments of 1976, Pub. L. 94–421, 90 Stat. 1309, the Commission on Postal Service gives notice of its intention to hold hearings in Toms River, New Jersey and Atchinson, Kansas. This notice will supplement an earlier notice of December 22, 1976 (41 FR 55738) which announced hearings to be held between January 18 and February 3, 1977, in 18 other cities throughout the nation, including Washington, D.C.

Members of the public are invited to appear before the Commission to address the five issues of postal policy enumerated in the FEDERAL REGISTER notice of November 22, 1976 (41 FR 51435–51436). Generally, these issues concern the definition and quantification of the public service costs of postal service to the American public, postal rates and classifications, and the impact of new and developing electronic communication systems upon the Postal Service. Persons wishing to testify should notify the Commission as soon as possible at the following address:

Commission on Postal Service, 1750 K Street NW., Suite 801, Washington, D.C. 20006.

Individuals testifying for themselves are to bring three copies of their testimony with them to the hearing. Organizations and businesses will be required to file 15 advance copies of their testimony at least 10 days before the hearing. Those copies should be mailed to the above address.

There follows a supplemental schedule of hearings:

February 9, 1977: Toms River, New Jersey.
February 10, 1977: Atchison, Kansas.

Each person notifying the Commission of his intent to testify will be informed by the Commission of the time and place of the hearing at which the person intends to testify.

By the Commission.

Dated: January 11, 1977.

DAVID MINTON,
Executive Director.

[FR Doc.77-1329 Filed 1-14-77;8:45 am]

ENVIRONMENTAL PROTECTION AGENCY

[FRL 671-1; PF58]

PESTICIDE AND FOOD ADDITIVE PETITIONS

Filing

Pursuant to the provisions of Sections 408(d)(1) and 409(b)(5) of the Federal Food, Drug, and Cosmetic Act, the Environmental Protection Agency gives notice that the following petitions have been submitted to the Agency for consideration.

PP 7F1889. BASF Wyandotte Corp., 100 Cherry Hill Road, PO Box 181, Parsippany NJ 07054, proposes that 40 CFR 180.355 be amended by the establishment of a tolerance for combined residues of the herbizothiadiazin-4(3*H*)-one-2,2-dioxide) and its 6- and 8-hydroxy metabolites in or on the raw agricultural commodity group seed and pod vegetables (dry) at 0.05 part per million (ppm). Proposed analytical method for determining residues is a gas chromatographic procedure using a flame photometric detector in the sulfur-specific mode (394 nanometers). PM25 (202/426–2632)

PP 7F1886. Chemagro Agricultural Div., Mobay Chemical Corp., PO Box 4913, Kansas City MO 64120, proposes that 40 CFR 180.330 be amended by the establishment of tolerances for combined residues of the insecticide *S*-[2-(ethyisulfinyl) ethyl] *O*, *O*-dimethyl phosphorothioate and its cholinesterase-inhibiting metabolites in or the raw agricultural commodities wheat grain at 0.2 ppm and wheat straw at 5 ppm. Proposed analytical method for determining residues is a thermionic emission gas chromatographic procedure using a phosphorus-sensitive detector. PM16 (202/426–9425)

PAP 7H5155. Chemagro Agricultural Div., Mobay Chemical Corp., proposes that 21 CFR 561.234 be amended by the establishment of a regulation permitting the use of the above insecticide on growing wheat with a tolerance of 0.6 ppm in wheat bran. PM16 (202/426–9425)

PP 7F1890. The Upjohn Co., Kalamazoo MI 49001, proposes that 40 CFR 180.336 be amended by the establishment of a tolerance for residues of the fungicide cycloheximide (3-[2-(3,5-dimethyl-2-oxocyclohexyl)-2-hydroxyethyl]glutarimide in or on the raw agricultural commodity cherries at 0.05 ppm. Proposed analytical method for determining residues is a cylinder plate bioassay utilizing *Saccharomyces cerevisiae* (UC 1606 strain) on a yeast-dextrose agar medium. PM21 (202/426–2454)

Interested persons are invited to submit written comments on any petitions referred to in this notice to the Federal Register Section, Technical Services Division (WH–569), Office of Pesticide Programs, Rm. 401, East Tower, 401 M St. SW, Washington DC 20460. Three copies of the comments should be submitted to facilitate the work of the Agency and of others interested in inspecting them. Inquiries concerning specific petitions referred to in this notice may be directed to the designated Product Manager (PM), Registration Division (WH–567), Office of Pesticide Programs, at the above address, or by telephone at the numbers

[1] In furnishing the data requested, each carrier is expected to attach complete explanatory data to describe the methods used in allocating the various cost items.

cited. Written comments should bear a a notation indicating the number of the petition to which the comments pertain. Comments may be made at any time while a petition is pending before the Agency. All written comments filed pursuant to this notice will be available for public inspection in the office of the Federal Register Section from 8:30 to 4 p.m. Monday through Friday.

Dated: January 10, 1977.

DOUGLAS D. CAMPT,
Acting Director,
Registration Division.

[FR Doc.77-1319 Filed 1-14-77;8:45 am]

[FRL 671-6]

CITY OF JACKSONVILLE, JACKSON COUNTY, OREGON

Availability of Draft Environmental Impact Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Environmental Protection Agency has prepared a draft environmental impact statement (DEIS) for the City of Jacksonville, Jackson County, Oregon.

The subject action is to provide an institutionally acceptable wastewater disposal system for the citizens of Jacksonville, Oregon, located 5 miles west of the City of Medford in Jackson County, Oregon.

The DEIS was transmitted to the Council on Environmental Quality on January 6, 1977. In accordance with CEQ's notice of availability, comments are due on February 28, 1977. Copies of the DEIS are available for review and comment from: Mr. Richard Thiel, Chief, Environmental Impact Section, M/S 443, U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Seattle, Washington 98101 (telephone: 206-442-4011 or fts 399-4011).

Copies of the DEIS are available for public inspection at the following locations:

Environmental Protection Agency, Public Information Reference Unit, Room 2922, Waterside Mall, 401 M Street SW., Washington, D.C. 20460.

Environmental Protection Agency, Region X Library, 1200 Sixth Avenue, Seattle, Washington 98101.

Information copies of the DEIS are available at cost (10 cents per page) from the Environmental Law Institute, 1346 Connecticut Avenue, NW, Washington, DC 20036. Please reference ELR No. 70019.

Copies of the DEIS have been sent to various Federal, State, and local agencies, and interested individuals as outlined in the CEQ Guidelines.

Dated: January 11, 1977.

PETER L. COOK,
Acting Director,
Office of Federal Activities.

[FR Doc.77-1321 Filed 1-14-77;8:45 am]

[FRL 671-5]

PROPOSED STANDARDS OF PERFORMANCE FOR LIGNITE-FIRED STEAM GENERATORS

Availability of Draft Environmental Impact Statements

Pursuant to the EPA procedures for the Voluntary Preparation of Environmental Impact Statements (39 FR 37419), the Environmental Protection Agency has prepared a draft environmental impact statement (DEIS) for the Proposed Standards of Performance for Lignite-Fired Steam Generators.

Standards of performance under section 111 of the Clean Air Act are proposed following a detailed investigation of air pollution control methods available to the affected industry and the impact of their costs on the industry. The subject document summarizes the information obtained from such a study of lignite-fired steam generators. Large fossil fuel-fire steam generators were originally selected for standards of performance because this category is the largest stationary source of sulfur dioxide, particulate matter, and nitrogen oxides.

This DEIS was transmitted to the Council on Environmental Quality (CEQ) on January 6, 1977. In accordance with CEQ's notice of availability, comments are due on February 24, 1977. Copies of the DEIS are available from: Environmental Protection Agency, Public Information Center, PM-215, Washington, D.C. 20460 (telephone: 202-755-0707).

Copies of the DEIS are available for public inspection at the following location:

Environmental Protection Agency, Public Information Reference Unit, Room 2922, Waterside Mall, 401 M Street, SW, Washington, D.C. 20460.

Information copies of the DEIS are available at cost (10 cents/page) from the Environmental Law Institute, 1346 Connecticut Avenue, NW, Washington, DC 20036. Please reference ELR No. 70020.

Copies of the DEIS have been sent to various Federal, State, and local agencies, and interested individuals as outlined in the CEQ Guidelines.

Dated: January 11, 1977.

PETER L. COOK,
Acting Director,
Office of Federal Activities.

[FR Doc.77-1322 Filed 1-14-77;8:45 am]

[FRL 671-7]

CALUMET TUNNEL SYSTEM

Availability of Final Environmental Impact Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Environmental Protection Agency has prepared a final environmental impact statement (FEIS) for the Tunnel Component of the Tunnel and Reservoir Plan (TARP) proposed by the Metropolitan Sanitary District of Greater Chicago, Calumet Tunnel System, Chicago, Illinois.

The subject action of the FEIS is the cumulative effects of constructing and operating three conveyance tunnel systems which are part of the total Tunnel and Reservoir Plan. These three tunnel systems are: (1) Mainstream, 59th to Addison Streets, (2) Calumet, and (3) Lower Des Plaines.

This FEIS was transmitted to the Council on Environmental Quality (CEQ) on January 3, 1977, and in accordance with the CEQ Guidelines (40 CFR 1500.11), no administrative action will be taken by this Agency until thirty days after receipt of the FEIS by the Council. Copies of the FEIS are available for review from: Mr. Gene Wojcik, Environmental Protection Agency, Region V, EIS Preparation Section, 12th Floor, 230 South Dearborn Street, Chicago, Illinois 60604 (telephone 312-353-2157).

Copies of the DEIS are available for public inspection at the following locations:

Environmental Protection Agency, Public Information Reference Unit, Room 2922, Waterside Mall, 401 M Street, SW, Washington, D.C. 20460.

Environmental Protection Agency, Region V Library, 14th Floor, 230 South Dearborn Street, Chicago, Illinois 60604.

Information copies of the FEIS are available from the Environmental Law Institute, 1346 Connecticut Avenue, NW., Washington, D.C. 20036, at cost (10 cents/page). Please reference ELR No. 70001.

Copies of the FEIS have been sent to various Federal, State, and local agencies, and interested individuals as outlined in the CEQ Guidelines.

Dated: January 11, 1977.

PETER L. COOK,
Acting Director,
Office of Federal Activities.

[FR Doc.77-1323 Filed 1-14-77;8:45 am]

[FRL 666-5]

CALIFORNIA STATE MOTOR VEHICLE POLLUTION CONTROL STANDARDS

Waiver of Federal Preemption

I. INTRODUCTION

On July 23, 1976, the Environmental Protection Agency (EPA), by notice published in the FEDERAL REGISTER (41 FR 30383), announced a public hearing pursuant to section 209(b) of the Clean Air Act, as amended (hereinafter the "Act") (42 U.S.C. 1857f-6a(b)). That hearing was called to consider a request by the State of California that the Administrator waive application of section 209(a) of the Act with respect to a number of actions taken to revise California's motor vehicle emissions control program. Section 209(b) of the Act requires the Administrator to grant such waiver, after opportunity for a public hearing, unless he finds that the State of California does not require standards more stringent than applicable Federal standards to meet compelling and extraordinary conditions, or that such State standards and accompanying enforcement procedures are not consistent with section 202(a) of the Act. State standards and enforcement procedures are deemed not to be consistent with section 202(a) if there is inadequate lead time to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within that time frame, or if the Federal and California test procedures are inconsistent.

The public hearing was held in Los Angeles, California, on August 25 and 26, 1976, and the following three issues were addressed:

(i) Exhaust emission standards and test procedures for 1978 model year medium duty vehicles;

(ii) Application of the fuel evaporative emission standards and test procedure (SHED test) to 1978 and subsequent model year medium duty vehicles and heavy duty vehicles; and

(iii) Fill pipe and opening specifications for 1977 and subsequent model year gasoline-powered motor vehicles.

The record was kept open until September 10, 1976, for the submission of written material, data or arguments by interested persons.

Today's decision deals with the second item above, the application of California's evaporative emission standard and test procedure (SHED test) [1] to 1978 and subsequent model year gasoline-powered medium duty and heavy duty vehicles, and also with the application of these regulations to 1978 and subsequent model year gasoline-powered passenger cars and light duty trucks. Decisions on the other two items have been published recently in the FEDERAL REGISTER.

I have determined that I cannot make the findings required for denial of the waiver under section 209(b), and therefore I am compelled to grant the requested waiver of Federal preemption as applicable to 1978 and subsequent model year gasoline-powered medium duty and heavy duty vehicles. The record of the hearing and the other information available to me clearly indicate that compelling and extraordinary conditions exist in the State of California, that the requisite technology is currently available, and that there appears to be adequate lead time to permit the application of this technology to 1978 model year medium duty and heavy duty vehicles.

As regards the California SHED (evaporative emission) regulations applicable to 1978 and subsequent model year gasoline-powered passenger cars and light duty trucks, I have determined that the original waiver granted to California for these regulations on July 11, 1975 (*see* 40 FR 30311, July 18, 1975), was improperly deemed to lapse upon the promulgation of Federal SHED regulations for this same class of vehicles (*see* 41 FR 35626, August 23, 1976). Consequently the waiver of July 11 is reinstated, and thereby continues in effect for 1978 and subsequent model year passenger cars and light duty trucks.

With respect to 1978 model year medium duty vehicles, and with respect to 1978 and subsequent model year heavy duty vehicles, California's evaporative emission standard and test procedures are more stringent than applicable Federal standards, since no Federal standards are currently in effect. With regard to those California vehicles for which there are Federal standards currently in effect, specifically 1978 and subsequent model year passenger cars and light duty trucks, and most 1979 and subsequent model year medium duty vehicles, I cannot find that the California standard and test procedures (including the accompanying enforcement procedures) are not more stringent than applicable Federal standards and Federal test and enforcement procedures.

On October 5, 1976, the California Air Resources Board (CARB) adopted certain amendments to its SHED regulations. Although some aspects of the October 5 amendments were not discussed at the public hearing of August 25 and 26, it appears that these amendments eliminate the potential lead time problems to be discussed later. As a result, this waiver decision includes the October 5 amendments, and the waiver with respect to medium duty and heavy duty vehicles is granted specifically in light of these amendments. However, due to the fact that the manufacturers have not had an opportunity to comment upon all of the October 5 amendments, the waiver actions announced in this decision will be subject to reconsideration as part of the forthcoming EPA public hearing (California waiver hearing) on January 27 and 28, 1977, announced recently in the FEDERAL REGISTER. These waiver actions will be reconsidered if the EPA is provided with sufficient information to indicate that the findings required in order to deny a California waiver request can be made.

II. BACKGROUND

The CARB first adopted a SHED test procedure for measuring evaporative emissions on April 16, 1975, for 1977 and subsequent model year passenger cars and light duty trucks. The test procedures were subsequently amended on May 14, 1975. On July 11, 1975, the EPA denied a waiver request for this standard and test procedure for the 1977 model year, and granted a waiver for 1978 and subsequent model years. *See* 40 FR 30311 (July 18, 1975). This waiver was deemed to be no longer in effect when EPA promulgated a Federal SHED test procedure for measuring evaporative emissions for 1978 and subsequent model year light duty vehicles and light duty trucks. *See* 41 FR 35626 (August 23, 1976).

On March 31, 1976, the CARB amended its evaporative emission regulations to extend the applicability of the standard of 6 grams of hydrocarbons (HC) per test, as measured under the SHED test procedure, to all 1978 and subsequent model year gasoline-powered motor vehicles except motorcycles. On that same day the CARB amended the SHED test procedures to include a requirement of 50,000 mile SHED durability testing for passenger cars, light duty trucks and medium duty vehicles.

Under the CARB regulations, in order to demonstrate compliance with the 6 gram standard, medium duty vehicles are required to be tested under the SHED procedure. As for heavy duty vehicles, however, the March 31 regulations provided that these vehicles would not "normally" be required to undergo SHED testing in order to demonstrate compliance with the standard, but rather would be approved on the basis of an engineering evaluation of the evaporative emission control system and data submitted by the manufacturer.[2]

Subsequent to the public hearing of August 25 and 26, and as a result of the concerns that were raised at that hearing, on October 5, 1976, the CARB adopted certain amendments to the California SHED regulations. One of these changes was to eliminate the word "normally" from the regulations so as to more appropriately reflect the intention of the CARB not to require SHED testing for heavy duty vehicles. The other significant amendment was a change to the durability testing requirement for passenger cars, light duty trucks and medium duty vehicles. An optional procedure was established for the 1978 model year whereby instead of running SHED tests at specified intervals on a durability vehicle, a manufacturer can demonstrate the durability of an evaporative emission control system through a combination of bench tests and vehicle tests in order to establish an appropriate deterioration factor, with the manufacturer's method subject to the approval of the Executive Officer of the CARB.

The CARB informed the EPA of the October 5 amendments by letter dated November 1, 1976, and requested a waiver for these amendments. In that same letter the CARB contended that the EPA erroneously deemed the original California SHED waiver (for 1978 and subsequent model year passenger cars and

[1] The most important aspect of the California evaporative emission regulations is that the standard is measured under the SHED test. The SHED test is a method used to determine evaporative emission levels by placing a vehicle in a sealed enclosure. However, in addition to requiring a SHED test, the California test procedure regulations include provisions for demonstrating compliance with the evaporative emission standard, such as requiring SHED tests to be run at periodic intervals on 50,000 mile durability vehicles. This aspect of the California regulations will be referred to as "50,000 mile SHED durability testing" throughout this decision.

[2] When the term "heavy duty vehicles" is used throughout this decision it will mean all heavy duty vehicles except medium duty vehicles. As defined by California, the medium duty vehicle class is a subset of the heavy duty vehicle category.

light duty trucks) to be no longer in effect when EPA promulgated Federal SHED regulations applicable to this same class of vehicles (*see* 41 FR 35626, August 23, 1976). The CARB argued that the original California SHED waiver should be reinstated, and that such reinstatement should include the October 5 amendments as applicable to passenger cars and light duty trucks.

In order to properly decide that a waiver granted to California for certain regulations should not remain in effect, I must make specific findings regarding whether California continues to comply with the conditions for a waiver. Since such findings were not made in the SHED situation, I have determined that the original California SHED waiver was incorrectly deemed to lapse upon the promulgation of Federal SHED regulations. The waiver granted to California on July 11, 1975 (*see* 40 FR 30311, July 18, 1975), is therefore reinstated and is in effect for 1978 and subsequent model year passenger cars and light duty trucks. Furthermore, I intend to extend the reinstatement of this waiver to encompass the October 5 amendments unless further information is provided to EPA prior to or at the public hearing of January 27 and 28, 1977, enabling me to make the findings required in order to deny a California waiver request.

As stated above, there are Federal SHED regulations currently applicable to 1978 and subsequent model year light duty vehicles and light duty trucks (*see* 41 FR 35626, August 23, 1976). The Federal numerical standard is 6 grams HC per test as measured under the SHED test procedure, which is the same as the California standard. The EPA recently promulgated Federal light duty truck regulations which expand the light duty truck class for 1979 and subsequent model years to include most vehicles with a gross vehicle weight rating of up to 8,500 pounds. This correspondingly increases the class of vehicles subject to Federal SHED regulations for 1979 and subsequent model years, and encompasses most of the vehicles within the California medium duty vehicle category.

As part of the waiver actions announced in this decision, California is being given the authority to require 50,000 mile SHED durability testing for 1979 and subsequent model year medium duty vehicles. This is in spite of the fact that EPA specifically rejected this method for testing the durability of evaporative emission control systems when promulgating Federal SHED regulations for light duty vehicles and light duty trucks. As stated in the preamble to the Federal SHED regulations:

> For exhaust emission control system evaluation, the testing protocols include the operation of a limited number of test vehicles over a defined 50,000 mile run. The 50,000 miles are usually accumulated during a 3 month period. However, there are technical reasons for believing that the durability of evaporative emission control systems may be more significantly affected by time than by mileage; extensive use of plastic-like materials is expected to be made to seal possible sources of evaporative emissions, and such materials tend to deteriorate as a function of time, rather than miles. Thus there is considerable question about the validity of utilizing the 50,000 mile test as a basis for evaluating the durability of evaporative emission control systems.

41 FR 35626, 35627 (August 23, 1976). This conclusion reached at the Federal level, however, has no bearing on a California waiver situation. As stated in previous waiver decisions, questions concerning the wisdom of California's actions are beyond the scope of my review under section 209(b) of the Act. *See, e.g.*, 41 FR 44209 (October 7, 1976); 40 FR 23102, 23104 (May 28, 1975).

III. Discussion

Stringency. Under one of the criteria of section 209(b) of the Act, I am required to grant a waiver to California unless I find that California "does not require standards more stringent than applicable Federal standards to meet compelling and extraordinary conditions." In discussing the relative stringency of the Federal and California evaporative emission standards, the vehicles within the coverage of the California regulations should be separated into two categories. With respect to 1978 model year (and some 1979 and subsequent) medium duty vehicles, and 1978 and subsequent model year heavy duty vehicles, no Federal SHED regulations are currently in effect. For these vehicles the California SHED regulations are therefore more stringent than applicable Federal standards.

Federal SHED regulations are currently in effect for 1978 and subsequent model year passenger cars and light duty trucks, and most 1979 and subsequent model year medium duty vehicles. The numerical SHED standard is 6 grams HC per test, which is the same as the California standard. The differences between the Federal and California SHED regulations are in the methods required for demonstrating compliance with the standard, in the sense of demonstrating the durability of an evaporative emission control system. These methods for demonstrating compliance with a standard, generally known as accompanying enforcement procedures, can have a direct bearing on the stringency of the standard itself. In the case of the SHED regulations, the California enforcement procedures provide that demonstration of the durability of the evaporative emission control system shall be at least by a combination of bench and vehicle testing, subject to approval by the Executive Officer of the CARB. The Federal procedures, however, require only that a manufacturer inform EPA of the manner in which he chooses to assess durability and that he report any data obtained. No Federal approval is required. These differences may make the California standard more stringent than the Federal standard, and so I cannot find that the California standard is not more stringent than the applicable Federal standard. This conclusion, however, will be subject to reconsideration as part of the forthcoming public hearing of January 27 and 28, 1977, if further information is provided to EPA in this regard.

Consistency. Under section 209(b), one of the findings required in order to deny a California waiver request is a finding that the California "standards and accompanying enforcement procedures are not consistent with section 202(a)" of the Act. Where the same vehicle or engine is subject to both Federal and California standards, the California regulations are deemed not to be consistent with section 202(a) if any testing required to demonstrate compliance of a vehicle with the California standard would not satisfy a comparable testing requirement for demonstrating compliance with the applicable Federal standard. In the SHED situation, though, this is not the case. As of the present time, for any vehicle subject to Federal SHED regulations, the procedures used to successfully demonstrate compliance with the California standard will satisfy the requirements for demonstrating compliance with the Federal standard.

Technology and Lead Time. The three manufacturers who made statements at the public hearing with regard to California's SHED regulations were the Ford Motor Company, the General Motors Corporation and the Chrysler Corporation. The statements of these manufacturers indicate that the technology required to meet a standard of 6 grams HC per test, as measured under the SHED test procedure, is currently available. *See* Transcript of Public Hearing to Consider California's Request for Waiver of Federal Preemption With Respect to Medium Duty Vehicles, Application of SHED Test Procedure, and Fill Pipe and Opening Specifications, August 25 and 26, 1976, at 211–12, 278–80, 285 (hereinafter "Tr."). Since 1975 manufacturers have been developing evaporative emission control systems to be tested under the SHED procedure for use on passenger cars and light duty trucks, and it is expected that this same technology will be applied to medium duty and heavy duty vehicles. *See* Tr. at 257, 258–59, 283, 285, 289–90. The only potentially significant question is whether there is sufficient lead time to permit the manufacturers to meet California's requirements for demonstrating compliance with the evaporative emission standard, as specified in the California SHED regulations.

With respect to medium duty vehicles, the concerns of the manufacturers centered around the requirement of 50,000 mile SHED durability testing. Although the manufacturers stated that they expect to complete development and testing of medium duty vehicle evaporative emission control systems to meet a 6 gram per test standard in time for 1978 model year production, both Ford and General Motors stated that there is insufficient time to permit these systems to undergo 50,000 mile durability testing for the 1978 model year. *See* Tr. at 211–14, 280. General Motors stated that

development work on the durability of the evaporative emission control system components is currently in progress, but the components will not be available in time to be tested on any 50,000 mile durability vehicle for the 1978 model year. *See* Tr. at 280. No information was provided at the hearing to refute this claim. The only detailed lead time information was provided by Ford concerning the time required for their development and certification program. Ford is currently conducting an evaporative emission control system pre-certification development program concurrently with component design verification testing. *See Tr.* at 217–20. This development and testing is seen by Ford as a necessary optimization and learning process for the purpose of establishing the final component designs. *See* Tr. at 220–21, 229–32. Ford estimated that this testing and development process will be completed in January, 1977. *See* Tr. at 238. By that time, however, Ford is expected to be well into the process of running its 1978 model year medium duty exhaust durability fleet, and so the final evaporative emission control systems could not be placed on these vehicles for the accumulation of 50,000 miles. *See* Tr. at 213–14. Therefore, a separate evaporative durability fleet would have to be run. Chrysler stated that they were not in possession of sufficient test data to provide any information as to whether they could meet the 50,000 mile SHED durability testing requirement for 1978 model year medium duty vehicles. *See* Tr. at 287–89.

As for the California SHED requirements for heavy duty vehicles, the only issue concerns whether the CARB can require heavy duty vehicles to undergo the actual SHED test procedure in order to demonstrate compliance with the standard of 6 grams per test. Under the California regulations of March 31, 1976, it was stated that heavy duty vehicles would not "normally" be required to undergo SHED testing, but rather would be approved on the basis of an engineering evaluation of the evaporative emission control system and data submitted by the manufacturer. Upon being asked to explain the potential impact of this provision on a heavy duty manufacturer, especially with regard to the term "normally," the CARB stated that although no situation had yet arisen where testing was compelled (the CARB has been using an engineering evaluation to approve evaporative emission control systems on heavy duty vehicles under the carbon canister test procedure since the 1973 model year), they would like to have the flexibility to require SHED testing at some time if there were some disagreement between a manufacturer and the CARB. *See* Tr. at 179–80.

This potential requirement of SHED testing of heavy duty vehicles caused considerable concern to the manufacturers. The manufacturers agreed that they could comply with the California heavy duty SHED requirements if approval were based solely on an engineering evaluation. *See* Tr. at 215–16, 262–63, 282–83, 285. Ford stated that they would not be able to comply if any SHED testing will be required for heavy duty vehicles. *See* Tr. at 216. In amplifying this statement, Ford stated that they do not have adequate facilities to perform heavy duty SHED testing, nor do they have any current plans to purchase any SHEDs which are large enough to accommodate heavy duty vehicles. *See* Tr. at 216, 263–64. Based on previous inquiries of manufacturers, the EPA has learned that its own Motor Vehicle Emission Laboratory (MVEL) in Ann Arbor has the only SHED capable of testing heavy duty vehicles. Similar facilities would have to be bought, installed and tested before any manufacturer could be required to perform heavy duty SHED testing.

In response to the concerns that were raised by manufacturers at the hearing both with regard to the word "normally" as applicable to the heavy duty SHED requirements, and the 50,000 mile SHED durability testing requirement for medium duty vehicles, the staff representatives of the CARB stated their intention to recommend amendments to the relevant test procedures. *See* Tr. at 273–74. On October 5, 1976, the CARB adopted certain amendments to the regulations. As a result of these amendments the word "normally" was removed from the regulations so as to more appropriately reflect the intention of the CARB not to require SHED testing for heavy duty vehicles. Under these October 5 amendments, CARB approval of the evaporative emission control system for heavy duty vehicles will be based solely on an engineering evaluation and data submitted by the manufacturer. As a result, the only problem associated with the California heavy duty SHED regulations has been eliminated, and so it appears that manufacturers will be able to comply with the California heavy duty SHED regulations by the 1978 model year.

With respect to the October 5 amendment to the durability testing requirement for passenger cars, light duty trucks, and medium duty vehicles, an optional procedure was established for the 1978 model year whereby instead of running SHED tests at specified intervals on a durability vehicle, a manufacturer can demonstrate the durability of an evaporative emission control system through a combination of bench tests and vehicle tests in order to establish an appropriate deterioration factor, with the manufacturer's method subject to the approval of the Executive Officer of the CARB. Although this optional procedure was not discussed at the public hearing of August 25 and 26, it appears that this procedure eliminates the lead time problems associated with the 50,000 mile SHED durability test requirement. Therefore, in light of the October 5 amendments, it appears that manufacturers will be able to comply with the California SHED requirements for passenger cars, light duty trucks, and medium duty vehicles by the 1978 model year. However, since the manufacturers have not had an opportunity to comment upon the optional durability testing provision adopted as part of the October 5 amendments, the conclusions regarding the effect of the October 5 amendments on lead time will be subject to reconsideration at the public hearing of January 27 and 28, 1977, if further information in this regard is provided to the EPA.

Concerning the reinstatement of the original California SHED waiver (for 1978 and subsequent model year passenger cars and light duty trucks), this reinstatement will not pose any lead time problems for the manufacturers. As noted earlier, manufacturers have been developing evaporative emission control systems to be tested under the SHED procedure on these vehicles since calendar year 1975. Although the original SHED waiver granted to California was deemed to lapse upon the promulgation of Federal SHED regulations, these Federal regulations required the manufacturers to continue their development of evaporative emission control systems to meet a SHED standard in the 1978 model year. As a result, when the California waiver was deemed to lapse, this did not cause any interruption in the manufacturers' efforts to develop the required control systems. The only potential lead time problem for the 1978 model year with respect to passenger cars and light duty trucks is associated with the requirement for 50,000 mile SHED durability testing, similar to the problem discussed in relation to medium duty vehicles. However, as stated above, the CARB's October 5 amendments appear to eliminate this problem for passenger cars and light duty trucks, as well as for medium duty vehicles. I, therefore, intend to extend the reinstated SHED waiver to include the October 5 amendments unless further information in this regard is provided to EPA prior to or at the public hearing of January 27 and 28, 1977.

With regard to the cost of compliance with the California SHED requirements for medium duty and heavy duty vehicles, very little specific information was provided by the manufacturers at the hearing. Ford estimated that the evaporative emission control system hardware would result in a retail price increase of from five to twenty dollars per vehicle, depending on which of several potential systems is chosen for the production vehicles. *See* Tr. at 231. Although there may be some additional costs due to the running of SHED tests of medium duty vehicles, and the need to purchase additional SHEDs, no information was provided in this regard.

Findings. Having given due consideration to the record of the public hearing, all material submitted for that record, and other relevant information, I hereby make the following findings.

1. The State of California had, prior to March 30, 1966, adopted standards (other than crankcase emission standards) for the control of emissions from new motor vehicles.

2. The California evaporative emission standard and test procedures (SHED test) for 1978 model year gasoline-powered medium duty vehicles, and 1978 and

subsequent model year gasoline-powered heavy duty vehicles, are more stringent than applicable Federal standards, since no Federal standards are currently in effect.

3. I cannot find that the California evaporative emission standard and test procedures (SHED test) for 1978 and subsequent model year passenger cars and light duty trucks, and 1979 and subsequent model year medium duty vehicles, are not more stringent than applicable Federal standards.

4. Compelling and extraordinary conditions continue to exist in the State of California. The State oxidant pollution problem remains the worst in the nation. The testimony of the representatives of the CARB revealed that unless a virtual shutdown of Los Angeles is assumed, no current projections indicate that compliance with the ambient air quality standards can be achieved for California's South Coast Air Basin, a region which contains five percent of the nation's population.

5. With respect to all 1978 and subsequent model year gasoline-powered passenger cars, light duty trucks, medium duty vehicles and heavy duty vehicles, I cannot find that the California evaporative emission standard and test procedures (SHED test), and accompanying enforcement procedures, are not consistent with section 202(a) of the Clean Air Act. Taking into account the cost of compliance, I find that the requisite technology is currently available and that there appears to be adequate lead time to permit the application of this technology so as to achieve compliance with the California requirements by the 1978 model year.

IV. Decision

Based upon the above discussion and findings, I hereby waive application of section 209(a) of the Act to the State of California with respect to the following section of Title 13 of the California Administrative Code:

Section 1976, as amended March 31, 1976, and October 5, 1976, and "California Evaporative Emission Standard and Test Procedures for 1978 and Subsequent Model Gasoline-Powered Motor Vehicles Except Motorcycles," as amended March 31, 1976, and October 5, 1976, as applicable to medium duty and heavy duty vehicles.

With respect to 1978 and subsequent model year passenger cars and light duty trucks, I hereby reinstate the waiver granted to California on July 11, 1975. *See* 40 FR 30311 (July 18, 1975). I intend to extend this waiver to encompass the October 5 SHED amendments adopted by the CARB unless further information regarding this matter is provided to EPA prior to or at the public hearing of January 27 and 28, 1977.

A copy of the above standards and procedures, as well as the record of the hearing and those documents used in arriving at this decision, is available for public inspection during normal working hours (8:00 a.m. to 4:30 p.m.) at the U.S. Environmental Protection Agency, Public Information Reference Unit, Room 2922 (EPA Library), 401 M Street, S.W., Washington, D.C. 20460. Copies of the standards and test procedures are also available upon request from the California Air Resources Board, 1102 Q Street, Sacramento, California 95814.

Dated: January 11, 1977.

RUSSELL E. TRAIN,
Administrator.

[FR Doc.77-1318 Filed 1-14-77;8:45 am]

[FRL 671-2]

ADMINISTRATOR'S PESTICIDE POLICY ADVISORY COMMITTEE

Open Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following committee meeting:

Name: Administrator's Pesticide Policy Advisory Committee.

Date: February 7-8, 1977.

Place: Environmental Protection Agency, 401 "M" Street, SW., Washington, D.C., Room 3906, Mall. Seating capacity of the conference room is limited.

Time: 1:00 p.m.-4:30 p.m. (approximately), 9:00 a.m.-Noon (approximately).

PROPOSED AGENDA

FEBRUARY 7 MONDAY

1:00 p.m.-1:15 p.m.—Call to order, W. Johnson; announcements; nomination of chairman.
1:15-1:30—Administrator's remarks; administrator.
1:30-2:15—Subcommittee reports: Agenda, W. Johnson; Strategy, W. Ahlem; Risk/Benefit, C. Headley; Minor Use & Exposure, S. Bledsoe.
2:15-3:15—Program Discussion, E. Johnson; Kennedy Committee Report; Future Congressional Action.
3:15-3:30—Cancer Testing Protocol, M. Meselson.
3:30-Adjournment—Subcommittee Meetings: Strategy Subcommittee, Rm. 3906, Mall; Minor Use, Rm. 544, East Tower; Risk/Benefit, Rm. 1032, West Tower.

FEBRUARY 8 TUESDAY

9:00-11:00 a.m. — Registration/Beregistration; Program, EPA.
11:00-Noon—Open Discussion, Members.
Noon—Adjourn.

NOTE.—All times are approximate.

For further information please contact David K. Sabock, Executive Secretary, Administrator's Pesticide Policy Advisory Committee, Office of Water and Hazardous Materials (WH-556), Environmental Protection Agency, 401 "M" Street, SW., Washington, D.C. 20460. Anyone wishing to have their name placed on the mailing list for any committee reports, meeting announcements and minutes of all meetings should contact the executive secretary, either in writing or by telephone—(202) 755-0405. The general public is invited to speak to the committee on any of the topics listed in the agenda; to do so you must register with the Executive Secretary at least one week before the meeting.

ANDREW W. BREIDENBACH,
Assistant Administrator for Water and Hazardous Materials (WH-556).

JANUARY 11, 1976.

[FR Doc.77-1320 Filed 1-14-77;8:45 am]

FEDERAL COMMUNICATIONS COMMISSION

COMMON CARRIER SERVICES INFORMATION

[Report No. 840]

Applications Accepted for Filing

JANUARY 10, 1977.

The applications listed herein have been found, upon initial review, to be acceptable for filing. The Commission reserves the right to return any of these applications, if upon further examination, it is determined they are defective and not in conformance with the Commission's Rules and Regulations or its policies.

Final action will not be taken on any of these applications earlier than 31 days following the date of this notice, except for radio applications not requiring a 30-day notice period (See section 309(c) of the Communications Act), applications filed under Part 68, applications filed under Part 63 relative to small projects, or as otherwise noted. Unless specified to the contrary, comments or petitions may be filed concerning radio and section 214 applications within 30 days of the date of this notice and within 20 days for Part 68 applications.

In order for an application filed under Part 21 of the Commission's Rules (Domestic Public Radio Services) to be considered mutually exclusive with any other such application appearing herein, it must be substantially complete and tendered for filing by whichever date is earlier: (a) the close of business one business day preceding the day on which the Commission takes action on the previously filed application; or (b) within 60 days after the date of the public notice listing the first prior filed application (with which the subsequent application is in conflict) as having been accepted for filing. In common carrier radio services other than those listed under Part 21, the cut-off date for filing a mutually exclusive application is the close of business one business day preceding the day on which the previously filed application is designated for hearing. With limited exceptions, an application which is subsequently amended by a major change will be considered as a newly filed application for purposes of the cut-off rule. [See § 1.227(b)(3) and 21.30(b) of the Commission's Rules.]

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS,
Secretary.

APPLICATIONS ACCEPTED FOR FILING

DOMESTIC PUBLIC LAND MOBILE RADIO SERVICE

20333-CD-MP-77 Industrial Communications Systems, Inc. (KMD990), C.P. to relocate facilities operating on 152.18 MHz at Loc. No. 4; 3.5 mi. S/SW to Malibu, Calif.

20533-CD-P-(3)-77 Orange County Radiotelephone Service, Inc. (KMB304), C.P. to increase power operating on 454.325, 152.12 & 152.21 MHz located at Sierra Peak, Calif.

20534-CD-P-77 Orange County Radiotelephone Service, Inc. (KSV980), C.P. to increase power operating on 152.24 MHz located 4 miles West of Corona, Sierra Peak, Calif.

20535-CD-P-(5)-77 Edward C. Smith d.b.a. Answerite Professional Telephone Service (KFL873), C.P. to relocate facilities operating on 152.06, 454.275, and 454.325 MHz and for additional Repeater facilities to operate on 2115.2 MHz at Loc. No. 1: 519 E. First Street, Sanford, Fla.; and for additional Control facilities to operate on 2165.2 MHz at a new Loc. No. 2: 401 W. Fairbank Avenue, Winter Park, Fla.

20536-CD-P-77 Edward C. Smith d.b.a. Answerite Professional Telephone Service (KWT963), C.P. to relocate facilities operating on 454.250 MHz to 740 North Woodland Blvd., De Land, Fla.

20537-CD-P-(2)-77 Stockton Mobilphone, Incorporated (KMA616), C.P. to relocate facilities and change antenna system operating on 152.15 MHz, Base and 72.22 MHz, Repeater at Loc. No. 2: At Bear Mountain, appx. 4.5 miles SW of Angels Camp, Calif.

20538-CD-P-77 Southwestern Bell Telephone Company (new), C.P. for a new station to operate on 152.84 MHz to be located at 366 N. Cypress Street, Abilene, Tex.

20539-CD-P-(3)-77 San Juan Radiotelephone Corporation (KQZ767), C.P. for additional Standby facilities to operate on 152.24 and 158.70 MHz, Base and 2122 MHz, Control at a new Loc. No. 3: 1.7 miles West of Trujillo Alto, P.R.

20540-CD-P-77 Kelley's TAS of Pasco, Inc. d.b.a. Kelley's Answering Service (new), C.P. for a new 1-way station to operate on 158.70 MHz to be located at Fancher Field. East Wenatchee, Wash.

20541-CD-P-77 Continental Telephone Company of Illinois (KSJ617), C.P. to change antenna system and replace transmitter operating on 152.63 MHz located at SW edge of town, Carthage, Ill.

20542-CD-P/ML-77 WJBC Communications Corporation (KSA746), C.P. for additional facilities to operate on 152.15 MHz at a new Loc. No. 2: Rte. 66, 0.5 mi. south of Bloomington, Ill.

20543-CD-P-(2)-77 Professional Communications, Inc. (KGH857), C.P. for additional facilities to operate on 2128.0 MHz, Repeater at Loc. No. 1: 5 miles South of Erie, Pa.; and additional facilities to operate on 2178.0 MHz, Control at Loc. No. 2: 1611 Peach Street, Erie, Pa.

20544-CD-P-(3)-77 Intrastate Radio Telephone, Inc. of San Francisco (KMA833) C.P. for additional facilities to operate on 152.03, 152.06 and 152.12 MHZ at Loc. No. 8: TV Hill, 1 mile north of Highway 4 near Port Chicago, Calif.

20545-CD-AL-(4)-77 Roy M. Teel, Sr. d.b.a. Houston Radiophone Service Consent to Assignment of License from Roy M. Teel, Sr. d.b.a. Houston Radiophone Service, Assignor to Mobilfone Service, Inc., Assignee. Stations: KKA344 and KWU251, Houston, Tex.; KWU310, Alvin, Tex., and KWU518, Willis, Tex.

20546-SD-AL-77 Radio Dispatch, Inc., Consent to Assignment of License from Radio Dispatch, Inc., Assignor to Mobilfone Service, Inc., assignee. Station: KGW304, Freeport, Tex.

20547-CD-AL-(3)-77 Mobilephone of Texas, Inc. Consent to Assignment of License from Mobilephone of Texas, Inc., Assignor to Mobilfone Service, Inc., Assignee. Station: KLB322, near Vidor and Beaumont, Tex.; KQZ708, near Vidor, Tex.; KWU311, Liberty, Tex.

20548-CD-AL-(3)-77 Houston Mobilfone, Inc. Consent to Assignment of License from Houston Mobilfone, Inc., Assignor to Mobilfone Service, Inc., Assignee. Stations: KKA343 and KWU486, Houston, Tex.; KWT953, Huntsville, Tex.

20549-CD-AL-(4)-77 Radio Dispatch, Inc. Consent to Assignment of License from Radio Dispatch, Inc., Assignor to Mobilfone Service, Inc., Assignee. Stations: KLB701, Houston, Tex.; KLB678 and KJU-811, Bay City, Tex.; KWU483, Rosenberg, Tex.

20550-CD-P-77 Edward C. Smith d.b.a. Answering Professional Telephone Service (KIY581), C.P. to relocated facilities, change antenna system and replace transmitter operating on 454.050 MHz at Loc. No. 5: Rt. No. 526, 6 mi West of Orlando, Fla.

20551-CD-P-77 Advanced Electronics. Inc. (New), C.P. for a new 1-way station to operate on 158.70 MHz to be located at Sacrifice Cliff, 2 miles SE of Billings, Mont.

20552-CD-P-(4)-77 Advanced Electronics, Inc. (KWT914), C.P. for additional facilities to operate on 152.15 MHz at Loc. No. 1: Sacrifice Cliff, 2 mi SE of Billings, Mont.; and to relocate facilities operating on 152.18 MHz, Base and for additional facilities to operate on 75.60 MHz, Repeater at a new Loc. No. 2: Bull Mtn., 30 MI NNE of Billings; and for additional facilities to operate on 72.12 MHz, Control at a new Loc. No. 3: 111 Moore Lane, Billings, Mont.

20553-CD-P-(5)-77 Empire Paging Corporation (KRS674), C.P. for additional facilities to operate on 454.150 MHz at a new Loc. No. 8: 270-10 Grand Central Parkway, Glen Oaks; same facilities at a new Loc. No. 9: 3 mi SE of Manorville off Eastport Manor Road Near Manorville; same facilities at a new Loc. No. 110: 1 Fairchild Avenue, Plainview; same facilities at a new Loc. No. 11: Long Island Exp. and Blydenburgh Rd., Hauppage, N.Y.; same facilities at a new Loc. No. 12: Boardwalk at Iowa, Atlantic City, N.J.

20554-CO-P-(2)-77 San Juan Radiotelephone Corporation (WWA311), C.P. to relocate facilities and change antenna system operating on 2172 MHz, Repeater at Loc. No. 3: Atop El Yunque Peak, P.R.; and to relocate control facilities operating on 2122 MHz from Loc. No. 1 to a new Loc. No. 5: Trujillo Alto, P.R.

20555-CD-P-77 Southwestern Bell Telephone Co. (new), C.P. for a new station to operate on 152.84 MHz to be located at IH 20 and State Highway 349, Midland, Tex.

20556-CD-P-77 Citizens Telephone Company, Inc. (new), C.P. for a new station to operate on 152.60 MHz to be located at Bond and Washington Streets, Plains, Ga.

CORRECTIONS

20261-CD-ML-77 Mobilfone Service, Inc. (KLB786), Correct FN No. 834 dated 11/29/76 to read: Modification of License to change frequency from 454.100 MHz to 454.225 MHz (Control) at Loc. No. 2 and to change frequency from 459.100 MHz to 459.225 MHz (Repeater) at Loc. No. 1. All other particulars to remain as reported in the above Public Notice.

MAJOR AMENDMENT

22327-CD-MP-(2)-76 Message Center, Inc. Near Graniteville, Vt. (KWU281), Amend control frequency 459.200 MHz to read 459.325 MHz located at Burlington, Vt. All other particulars to remain the same as reported on FN No. 815 dated July 19, 1976.

RURAL RADIO

60131-CR-AL-77 Radio Dispatch, Inc. Consent to Assignment of License from Radio Dispatch, Inc., Assignor to Mobilfone Service, Inc., Assignee. Station: KKK81, Temp-Fixed.

POINT TO POINT MICROWAVE RADIO SERVICE

868-CF-P-77 Michigan Bell Telephone Co. (KQI63), 3 miles east of Allenville, Mich. Lat. 45°50'06" N., Long. 84°45'56" W. C.P. to add frequency 4110V MHz toward Stutsmanville, Mich.

869-CF-P-77 Same (KQI62), 1.5 miles West of Stutsmanville, Mich., Lat. 45°30'30" N., Long. 85°02'10" W. C.P. to add frequency 3930H MHz toward Allenville, Mich.

870-CF-P-77 Same (KZI65), 514 Mitchell St., Petoskey, Mich., Lat 44°22'25" N., Long. 84°57'06" W. C.P. to add frequencies 3730V, 11325V, and 11485V MHz toward Stutsmanville, Mich.

871-CF-P-77 Same (KQI62), 1.5 miles West of Stutsmanville, Mich., Lat. 45°30'30" N., Long. 85°02'10" W. C.P. to add frequencies 3850H, 10715V, 10875V, and 11035V MHz toward Petoskey, Mich.

911-CF-P-77 The Mountain States Telephone and Telegraph Co., (New), 118 Wyoming St., Shoshoni, Wyo., Lat. 43°14'06" N., Long. 108°06'28" W. C.P. for a new station on frequency 21620V MHz toward Copper Mountain, Wyo. on azimuth 14.5°.

912-CF-P-77 Same (KPR60), Copper Mountain, 16 miles Southeast of Thermopolis, Wyo., Lat. 43°26'50" N., Long. 108°01'56" W. C.P. to add frequency 2112.0V MHz toward Shoshoni, Wyo. on azimuth 194.6°.

913-CF-P-77 Same (New), 0.1 miles Northwest of Glendo, Wyo., Lat. 42°30'14" N., Long. 105°01'39" W. C.P. for a new station on frequency 2178.0V MHz toward Glendo PR, Wyo., on azimuth 339.7° and from passive reflector to Wendover, Wyo. on azimuth 180.8°.

914-CF-P-77 Same (KKU78), 80 miles West Northwest of Wendover, Wyo., Lat. 42°20'46" N., Long. 105°02'05" W. C.P. to add new point communication on frequency 2128.0V MHz toward Glendo PR of azimuth 0.0° and from passive reflector to Wendover, Wyo.

915-CF-P-77 American Telephone and Telegraph Co. (New), 0.8 miles North of Cherryville, N.J., Lat. 40°34'18" N., Long. 74°54'22" W. C.P. for a new station on frequency 2178.2H MHz toward Iselin, N.J. on azimuth 89.9°.

916-CF-P-77 Same (New), .85 miles West of Iselin, N.J., Lat. 40°34'16" N., Long. 74°20'49" W. C.P. for a new station on frequencies 2128.2V MHz toward Cherryville, N.J. on azimuth 270.3° and 2128.2H MHz toward New York 7, New York on azimuth 053.9°.

917-CF-P-77 Same (New), New York 7, 811 Tenth Ave., New York, N.Y., Lat. 40°46'2" N., Long. 73°59'30" W. CP for a new station on frequency 2178.2V MHz toward Iselin, N.J. on azimuth 234.2°.

938-CF-P-77 American Television & Communications Corp. (WBAR 759), Ellis Rd., Northwest of Glover Roads, Durham, N.C. (Lat. 35° 57' 43" N., Long. 78° 52' 17" W.): Construction permit to add 6108.3V and 5989.7V MHz toward Henderson, N.C. on azimuth 42.6°.

882-CF-R-77 The Western Union Telegraph Co. (WAS 470), Developmental-Temporary-fixed locations. Received renewal of above named station expiring January 9, 1977 for Frequency bands 3700-4200, 5925-6425, 10700-11700, 13200-13250 17700-19700 and 38600-40000 MHz.

MULTIPOINT DISTRIBUTION SERVICE

962-CM-MP-77 Colony Microband of R.I., Inc. (KVN 65), Providence, 8 Heath St., Johnston, Rhode Island (Lat. 41°48'22" N., Long. 71°28'12" W.): Modification of construction permit to change transmit station name, replace antenna, change polarization and to add hot standby transmitters—2154.75V and 2150.25V—2154.75H and 2150.25H MHz. Primary Service Area: Providence, R.I.

963-CM-P-77 Microband Corp. of America (KOB 43), 911 Main St., Kansas City, Mo. (Lat. 39°06'12" N., Long 94°34'58" W.): Construction permit to add hot standby transmitter—2154.75V and 2150.25V MHz. Primary Service Area: Kansas City, Mo.

949-CM-MP-77 Colony Microband of Massachusetts, Inc. (KEW 79) Springfield, East Mountain, West Springfield, Mass., (Lat. 42°09'16" N., Long. 72°41'06" W.): Modification of construction permit to change transmit station location and add hot standby transmitter—2154.75V and 2150.25V MHz. Primary Service Area: Springfield, Mass.

964-CM-MP-77 Sacramento Microband, Inc. (WSL 88) 3502 Kroy Way, Sacramento, Calif. (Lat. 38°32'36" N., Long. 121°25'-41" W.): Modification of construction permit to change transmit station location, change antenna structure and add hot standby transmitter—2154.75V and 2150.-24V MHz—2154.75H and 2150.25H MHz. Primary Service Area: Sacramento, Calif.

965-CM-MP-77 Microband MTC/West Coast, Inc. (KFI 61), 900 4th Ave., Seattle, Wash. (Lat. 47°36'21" N., Long. 122°19'52" W.): Modification of construction permit to change transmit station location and antenna structure and to add hot standby transmitter—2154.75V and 2150.25V MHz. Primary Service Area: Seattle, Wash.

[FR Doc.77-1407 Filed 1-14-77;8:45 am]

[FCC 77-34: Docket No. 20097; RM-1997; RM-2218]

REGULATORY POLICIES CONCERNING RESALE AND SHARED USE OF COMMON CARRIER SERVICES AND FACILITIES

Memorandum Opinion and Order Setting Date for Filing of Revised Tariffs

Adopted: January 5, 1977.

Released: January 12, 1977.

1. Before the Commission are Petitions for Reconsideration (and pleadings related thereto) [1] of our Report and Order in the captioned proceeding (FCC 76-641, released July 16, 1976, 60 F.C.C. 2d 261; 41 FR 30657, July 26, 1976). In the Report and Order, as modified by further orders (FCC 76-746, 60 F.C.C. 2d 588; FCC 76-848, 61 F.C.C. 2d 70; Mimeo No. 75462), we required that common carriers subject to our jurisdiction file revised tariffs no later than January 17, 1977, which eliminate restrictions on the unlimited resale and sharing of their interstate private line communications services and facilities. As detailed below, various parties urge that we clarify or reconsider aspects of the Report and Order and that upon reconsideration modifications be made.

PROCEDURAL CONSIDERATIONS

2. In the Notice of Inquiry and Proposed Rulemaking (the Notice) in this docket (47 F.C.C. 2d 644; 39 FR 25351, July 10, 1974), we stated our intention to conduct this proceeding by written presentations, with the parties afforded an opportunity to file comments, reply comments and response comments. We set forth in the Notice grounds upon which such procedures were justified for resolution of the issues. We also considered the question of appropriate procedures at great length in Appendix D of the Report and Order. However, several parties argue in their petitions for Reconsideration that our procedures herein fail to satisfy statutory requirements and judicial precedent, and that, at the minimum, the Commission must provide for oral, trial type hearings to resolve the issues under consideration. Our discussion in the Report and Order generally anticipated and answered the arguments made in support of these positions. Nevertheless, we will again look at applicable law, policy and precedent.

3. This proceeding has been a rulemaking conducted pursuant to Section 4 of the Administrative Procedure Act (5 U.S.C. 553).[2] It is not adjudicatory, as that term is used in the A.P.A.[3] Section 4 provides for "notice and comment" procedures as used herein, except that the formal hearing requirements of Sections 7 and 8 are applicable when rules "are required by statute to be made on the record after opportunity for an agency hearing * * *" The issue, then, is whether the language of Section 205(a)—"full opportunity for hearing"—is a statutory requirement which brings into play the procedures set forth in Sections 7 and 8.[4] After lengthy consideration of this matter in the Report and Order, we concluded that the language of Section 205(a) did not require a trial type hearing in all instances. We considered the legislative history of Section 205(a) of the Communications Act and its predecessor provision in the Interstate Commerce Act (I.C.A.) and found that Congress did not have in mind that trial type hearings were required in all circumstances under Section 205(a). Moreover, we considered the nature of this particular proceeding and determined that the Commission herein is not acting in a quasi-judicial capacity which might require trial type hearings. Even if we were found to be acting in a quasi-judicial capacity, we concluded that the parties had not been denied due process of law by our procedures. AT&T argues to the contrary, and maintains that a prescription of rates or practices pursuant to Section 205(a) may be accomplished only after trial type hearings.

4. AT&T cites *I.C.C. v. Louisville & Nashville R.R. Co.*, 227 U.S. 88 (1913), as holding that Section 15(1) of the I.C.A. (the predecessor of Section 205(a) of the Communications Act) mandates trial type hearings. In the Report and Order, we discussed this case, which has been described as a "pre-Administrative Procedure Act case which is fully out of harmony with that statute." *Phillips Petroleum Co. v. F.P.C.*, 475 F. 2d 842, 849, n. 7 (10th Cir. 1972). We stated that in *Louisville*, the I.C.C. was acting in a quasi-judicial capacity and that the case spoke in constitutional terms, not in terms of administrative law generally. See *United States v. Florida East Coast Ry Co.*, 410 U.S. 224 (1973). AT&T also cites *National Ass'n of Motor Bus Owners v. F.C.C.*, 460 F. 2d 561 (2d Cir. 1972), in support of the view that Section 205(a) itself has been interpreted to require trial type hearings. Again, we discussed *N.A.M.B.O.* in the Report and Order and concluded that the court's language was not controlling as to the type of hearing required herein. The court did not state that trial type hearings were required by the statute; it merely cited our language in *Telpak*, 31 F.C.C. 2d 674 (1971), that prescription of unlimited Telpak sharing would have required a fuller evidentiary record. Whether the evidentiary record could be developed *only* by trial type

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[1] Petitions for Reconsideration were filed by Western Union Telegraph Company (Western Union), United System Service, Inc. (United), GTE Service Corp. (GTE), Southern Pacific Communications Company (SPCC), Aeronautical Radio, Inc. and the Air Transport Association of America, (ARINC), International Business Machines Corp. (IBM), Computer and Business Equipment Manufacturers Association (CBEMA), Remote Processing Services Section of the Association of Data Processing Service Organization (RPSS), Western Union International, Inc. (WUI), TRT Telecommunications Corp. (TRT), United Press International, Inc. (UPI), Telenet Communications Corp. (Telenet), and American Telephone and Telegraph Co. (AT&T). RCA Globcom Systems, Inc. and Dow Jones & Company, Inc. filed petitions for clarification. RCA Alaska Communications, Inc., CBEMA, Securities Industry Automation Corporation (SIAC), MCI Telecommunications Corp. and Microwave Communications, Inc. (MCI), and American Broadcasting Companies, Inc., CBS, Inc. and National Broadcasting Company, Inc. (the Network Parties) commented on various Petitions for Reconsideration. AT&T and RPSS filed replies to these comments.

[2] 5 U.S.C. 551(4) defines "rule" as:

* * * the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency and includes the approval or prescription for the future of rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services or allowances therefor or of valuations, costs, or accounting, or practices bearing on any of the foregoing.

[3] The fact that no specific Commission rules were ultimately adopted does not affect the classification as a rulemaking proceeding.

[4] As we noted in Appendix D, however, even proceedings conducted under Sections 7 and 8 may not require trial type procedures in certain circumstances.

hearings was not at issue.[5] Finally, AT&T cites *Independent Bankers Ass'n of Ga. v. Board of Governors*, 516 F. 2d 1206 (D.C. Cir. 1975), as support for its position that trial type hearings are required when an administrative agency weighs the public benefits and detriments associated with a course of action. That case is readily distinguishable from the situation at hand. In *Independent Bankers Ass'n*, the Board of Governors approved a bank's application without trial type hearings, acting under a statutory provision which, prior to amendment, concededly required trial type hearings. The Board argued that amendments to the statutory provision allowed it to act on individual applications by "notice and comment" procedures. The court, however, viewed the amendments as merely making it possible for the Board to make:

* * * determinations of general applicability by regulation. In short, the statute now recognizes the time-honored distinction between rulemaking and adjudication. As a general matter, agencies employ rulemaking procedures to resolve broad policy questions affecting many parties and turning on issues of "legislative fact." Adjudicatory hearing procedures are used in individual cases where the outcome is dependent on the resolution of particular "adjudicative facts." (Footnotes omitted) (516 F. 2d at 1212).

Thus, in that proceeding the Board was faced with judging the merits of a particular contested application—a function previously deemed by the applicable statute to require trial type hearings because it was "almost entirely adjudicative in character." (516 F. 2d at 1217). In contrast, the proceedings herein have been to determine general policy applicable to all carriers on a prospective basis—a function which is entirely consistent with rulemaking and "notice and comment" procedures. Therefore, the arguments of AT&T, which are generally supported by certain other parties, are found to be without merit.

5. Having determined that this proceeding is governed by Section 4 of the A.P.A., we dismiss the contention of GTE that those who desire a change in the carriers' tariffs have the burden of proof. The citation in its Petition at p. 7 is to Section 7 of the A.P.A., which, as we have stated, is not applicable to this proceeding. We maintain the position set forth in the Report and Order that it is incumbent upon the carriers to justify tariff provisions which grant service to certain sharing and resale entities while denying service to others similarly situated. If there are any criteria supporting the selection of the "single customer exceptions" and other restrictions discussed in the Report and Order, they have not been satisfactorily explained in the record. Instead, AT&T in its Comments described the entities presently allowed to share. It is not clear how it determined, for example, that the electric utilities, but not trucking companies, should be allowed to share private line services. We stress, however, that our prescription of unlimited resale and sharing of private line services and facilities as just and reasonable is not based solely upon the failure of the carriers to justify the restrictions which have discriminated unlawfully among customers. Rather, we have also looked to the evidence in the record herein to determine that unlimited resale and sharing would bring about the public benefits described at paragraphs 75–88 of the Report and Order, and that there will be no adverse impact resulting therefrom. We will consider these matters below.

6. There are several further procedural matters which warrant comment. First, AT&T argues that the Report and Order is really a prescription of rates because the outcome of the decision will be a switching of services by customers, citing *A.T.&T. v. F.C.C.*, 449 F. 2d 439 (2d Cir. 1971). We disagree with this proposition that we must actually determine the specific rates that will flow as our policy decision herein is implemented. We discussed this matter in the Report and Order (para. 49) and stated that we did not envision a "large scale rate reduction" as inherent in our decision. Moreover, in Docket No. 18128 we found unlawful AT&T's Telpak service, and required that it be eliminated, although AT&T may file a new bulk offering. FCC 76–886, released October 1, 1976, para. 208. Thus, there is now no evidence that elimination of the restrictions on resale and sharing of Telpak will cause any substantial migration from other services into the bulk rate service. In any event, we disagree with the general proposition that prescription of communications policy must be accompanied by prescription of the exact rates just and reasonable thereunder. Such a requirement would constrain our ability to regulate except on a case-by-case basis—a concept clearly out of harmony with effective administrative action. In *Specialized Common Carrier Inquiry*, 29 F.C.C. 2d 870 (1971), *aff'd sub nom., Washington Utilities and Transportation Comm. v. F.C.C.*, 513 F. 2d 1142 (9th Cir. 1975), *cert. denied*, 423 U.S. 836 (1975), we found as a policy decision that the public interest would be served by the open entry of specialized common carriers in the domestic private line market. We noted therein that the impact of the decision might require AT&T to deaverage its private line rates. There was no implication that we were required to actually set the rates on a deaveraged basis, however.[6] The instant situation is similar to that proceeding. Every policy statement can be said to have an ultimate impact on rates to be charged thereunder. We conclude that neither the legislative intent nor the language of Section 205 requires that we set rates in this proceeding.[7]

7. GTE, and to some extent AT&T, argue that the reasonableness of tariff provisions prohibiting the resale of services and facilities is not a proper issue. GTE states that the order is unconstitutional to the extent that it requires carriers to serve "a new wholesale market which is not within the scope of their public undertaking." GTE Petition at 3. This position is not supported by any precedent under the Communications Act and is totally at odds with our statutory mandate and judicial interpretation thereof. The obligations of carriers and our jurisdiction with respect to those obligations are well settled. See, *e.g., Bell Telephone Co. of Pa. v. F.C.C., supra;* 47 U.S.C. 201 (a). Also, we are not in the first instance requiring carriers to serve a "wholesale" market. As we pointed out repeatedly in the Report and Order, the evidence is that the carriers, primarily AT&T, have historically provided "wholesale" services to other carriers for resale. With the creation of exceptions allowing the Composite Data Service Vendors (CDSVs) to obtain service for resale, carriers did not have to own their transmission facilities. What we now do is to require that the provision of services and facilities for resale be extended to all carriers certified by this Commission to provide interstate private line service. In short, GTE's view of the obligations of a common carrier operating under the Communications Act is unduly narrow and is hereby rejected.

8. Finally, AT&T states or implies in several parts of its Petition that trial type hearings would have established the soundness of its position and the impropriety of that adopted by the Commission. We have carefully considered the points which it raises in this regard, but we find that it has not been prej-

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[5] While our language in *Telpak* did imply that we would have to conduct additional trial type hearings to prescribe unlimited Telpak sharing, that view was made in the context of a specific type of restriction in the tariff offering of a particular carrier, unlike our formulation here of general policy applicable to the industry. As the Court of Appeals recently commented in *Bell Telephone Co. of Pa. v. F.C.C.*, 503 F. 2d 1250 (3d Cir. 1974), *cert. denied*, 422 U.S. 1026 (1975): The Commission's former policy of evaluating interconnection on a case-by-case basis was not predicated upon a belief that § 201(a) required such a policy. Rather, it was developed as a matter of procedural policy, reflecting the Commisison's view of the most efficacious and just method of administering interconnection petitions. In the absence of a statutory mandate, we see no reason to bind the Commission to this procedural policy. As technology develops and the field of communications changes, procedural, as well as substantive, policy must be flexible. The mere fact that an agency has once regarded evidentiary hearings as appropriate does not bar it from adopting another policy when changing or new circumstances require a different approach. (503 F. 2d at 1264–5).

[6] AT&T's position is also contrary to the decision in *Nader v. F.C.C.*, 520 F. 2d 182 (D.C. Cir. 1975), where the court found that the Commission could—and did—prescribe a rate of return under Section 205(a) without actually prescribing rates.

[7] GTE requests (Petition at 19) that we make clear that the Report and Order does not entitle resellers or sharers to rates different from those charged other customers. Whether different rates are proper is not at issue in this proceeding.

udiced by its inability to have the various positions herein tested by cross-examination. AT&T's most specific argument on this point deals with our rejection of its economic impact study. As we detail in para. 15, *infra*, our decision herein not to eliminate restrictions on WATS and our elimination of Telpak in Docket No. 18128 make those aspects of the study not relevant to the issues now before us. Even if we accepted the methodology after such a hearing, we have found that the impact shown therein is not so substantial that it warrants retention of the restrictions. Thus, we have no reasonable expectation that different procedures would have led us to a different result in these areas or to a different policy statement generally, nor do we find upon review of the record that any party is prejudiced by our decision not to hold further proceedings.[8]

9. In summary, we have again reviewed the procedures which led to our finding that restrictions on resale and sharing of interstate private line services and facilities are unjust, unreasonable and unlawful. Upon such review, we are convinced that the procedures herein are lawful and appropriate to the occasion. Neither the statutory language nor the legislative history of Section 205(a) requires trial type hearings in all proceedings. We are here dealing with the formulation of policy to be applied prospectively throughout an entire industry. Participating in this proceeding are numerous parties with diverse interests which nevertheless touch upon the basic question set forth in paragraph 1 of the *Notice*. As the Court of Appeals recently commented in *Bell Telephone Co. of Pa., supra:*[9]

> Non-evidentiary rulemaking permits broad participation in the decision-making process and enables an administrative agency to develop integrated plans in important policy areas.
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> When an administrative agency develops a general policy applicable on a prospective basis, courts have found it unnecessary to require evidentiary hearings. [citations omitted] This reluctance to prescribe evidentiary hearings on matters of general policy is grounded largely in practical considerations. Evidentiary hearings become 'totally unmanageable' when parties attemp to cross-examine the large numbers of persons normally interested in the development of policy. (503 F. 2d at 1265, 1266)

[8] Several parties protested the finality of the Report and Order, citing our statement in para. 40 of the *Notice* that we would issue a First Report and Order in this proceeding. They read that as mandating further hearings on the issues herein. However, our statement was qualified by the requirement that such procedures must "appear necessary or appropriate." For the reasons set forth in the Report and Order and in this document, we believe that further proceedings as to the lawfulness of restrictions on domestic services and facilities would adduce no additional significant evidence.

[9] In that case, the court refused to read into Section 201 of the Act (which calls for an "opportunity for hearing") the requirement that all hearings thereunder be trial type.

ISSUES WARRANTING RECONSIDERATION

10. We turn now to the specific areas as to which reconsideration is sought. First, we will briefly discuss two matters which we dealt with in the Report and Order, but which we now deem more appropriate for consideration elsewhere. WUI and TRT argue that the policy of unlimited resale and sharing of private line services and facilities should not be applicable to international services.[10] They do not take a position as to the lawfulness of such restrictions on domestic private line services, but instead point to alleged differences between domestic and international services and special concerns peculiar to the latter. We will not discuss these contentions herein, as we have determined on reconsideration that our policy requiring unlimited resale and sharing of private line services and facilities should not at this time be applied to international services. In view of this determination, we need not address herein WUI's contention that the Notice was inadequate to inform it that the lawfulness of its tariffs was at issue in this proceeding. We will institute a separate proceeding in which the lawfulness of tariff provisions which restrict sharing and resale of international services and facilities will be examined. We emphasize that our action herein is not a finding that existing restrictions on international services and facilities are just, reasonable or not unlawfully discriminatory.

11. We stated in the Report and Order (para. 118):

> However, due to the significant potential which exists for the cross-subsidization of these competitive (resale) service offerings from the basic monopoly services • • • we believe that the principle of "maximum separation" enunciated in the *Computer Inquiry* should apply here as well. Accordingly, underlying carriers which provide basic monopoly services as part of their normal business will be required to establish separate, arms-length subsidiaries in order to engage in resale or related activities. (footnote omitted)

Western Union objects to this requirement and requests that it be deleted. It states that it apparently is the only carrier to which the requirement will apply, that it leases from telephone companies a substantial amount of facilities to provide private line services, that complete separation (no sharing of facilities) of its monopoly and resale services would be disastrous, and that even if sharing of facilities were allowed between the corporations, there would still be available the potential for cross-subsidization. However, its administrative costs would be increased. We believe on reconsideration that it is appropriate not to require establishment of separate corporations by a carrier providing both monopoly and resale private line services and facilities. We will carefully scrutinize any resale by a monopoly carrier and take appropriate action to assure that cross-subsidization does not exist.[11]

ADEQUACY OF THE RECORD

12. We have carefully considered the arguments presented in support of a change in the Report and Order, and, except for the matters dealt with in the preceding two paragraphs, find them not to be convincing. One argument made throughout AT&T's petitions, and also mentioned by GTE, is that there allegedly is not rational basis in the record which supports the policy enunciated in the Report and Order. We recognize that there must be adequate support in the record for our action, notwithstanding any questions as to the lawfulness of the procedures used to develop the record. We believe that the record herein does contain ample support for our action, and that the path which led us to find unlawful the restrictions on resale and sharing of domestic private line services and facilities is clearly discernible. A brief review of the record is appropriate.

13. One factor which led to institution of this proceeding was the existence of specific tariff provisions which allow certain intermediaries to obtain service on behalf of third parties, while other users are denied such service through an intermediary. In Issue 9 we called for justification of such provisions, which were created by the carriers and never approved by this Commission. These provisions are *prima facie* discriminatory in their different treatment of customers who are similarly situated, and we concluded that the provisions are unlawfully discriminatory under Section 202 (a) of the Communications Act. This conclusion is supported by two factors. First, the carriers failed to provide any justification[12] for the selection of certain intermediaries entitled to service, and also failed to explain why an intermediary such as that proposed by The American Trucking Associations, Inc. (ATAI Comments at 2–6) should not receive service. However, our conclusion that sharing through intermediaries is just and reasonable is not based only on this failure of the carriers to justify their restrictions. We also received extensive comments from sharing intermediaries already recognized by the carriers. The sharing arrangements as described in the record in this proceeding are, in our view, convincing evidence that such communications operations serve an important public function and should be encouraged if we are to carry out our mandate under the Communications Act. See, *e.g.*, ARINC Comments at 4–50; SIAC Comments at 3–35. The record fully supports our conclusion that unlimited sharing of communications services and facilities, both in joint use arrangements and through intermediaries, is just and reasonable.

14. In the *Notice*, we also called for comments on the justification in carriers' tariffs which restrict or prohibit resale by a customer. The record again supports our conclusion that unlimited resale of private line services is just and reasonable; inherent in this conclusion is our finding that entities reselling such services or facilities are common carriers and must be regulated under Title II of the Communications Act. As we noted in the Report and Order, AT&T already makes available its "facilities" for resale by "Other Common Carriers" as it defines that term in its Tariff F.C.C. No. 266, Section 2.6. However, we noted that another reason leading to this inquiry was the emergence of the "value added carriers" which own no communications facilities but which are certificated to provide a communications service. While these carriers are apparently not entitled to AT&T "facilities" because they are not OCCs, they are entitled to resell WATS. Three carriers of this nature, Telenet, Graphnet and PCI, filed comments and we have heretofore described the services which they provide or plan to provide. See Note 14 of the Report and Order; Graphnet comments at 1-2. The operation of resale carriers, which have received certification by this Commission and have established their technical and financial qualifications, is convincing evidence that the resale of communications services and facilities has provided significant communications benefits. These carriers have been able to provide their unique services without the expense associated with construction of facilities. In the Report and Order, we foresaw the certification of carriers which may not "augment" the services or facilities which they receive; we referred to them as resale brokers. See Report and Order, para. 19. While the services which they provide may not appear to "add value" to that which they receive, and while they may provide nothing which the underlying carriers do not already provide, we believe that there is record support for authorizing their operation. We concluded in the Report and Order (paragraph 85) that "brokerage" leads to efficient use of private line services and facilities, and thus decreases the need for investment in facilities which may be underutilized. See OTP Reply Comments at 27–8.[13] Also, as OTP noted (OTP Reply Comments at 21–24), the introduction of brokers can aid in insuring that the tariffs of the carriers from whom they obtain services or facilities are internally consistent. We have repeatedly stated that the primary justification for a tariff rate must be the cost of providing the service; brokerage is a tool which will assist in the effectation of this policy. If the tariff offerings are truly cost related, there will be little if any economic incentive for such brokerage. Parties to this proceeding, such as Western Union, have objected to tariffs and policies which encourage non-cost related bulk rates. In summary, we conclude that the record supports the view that the public interest is served by certification of carriers which operate between the carrier owning the transmission facilities and the ultimate customer, even if the "middleman" is purely a "broker."

15. In the *Notice*, we recognized that the record in this proceeding should include evidence of the impact on the carriers and on the public of removal of the restrictions on resale and sharing. AT&T submitted a study, which we discussed at length at paragraphs 56–62 of the Report and Order, and states (AT&T Petition at 26) that no party herein has submitted economic data or analysis which supports our findings or refutes its analysis of the economic impact of unlimited resale and sharing. We have viewed this matter again and conclude that unlimited resale and sharing of private line service would not have an adverse economic impact on the carriers or the public. We first note, as we pointed out in paragraph 65 of the Report and Order, that the amount of non-Telpak private line revenues which would be affected by our policy is relatively small. Moreover, we found that the study contained certain methodological deficiencies which tended to overstate the expected revenue loss to AT&T from unlimited resale and sharing. Thirdly, we have not required the removal of the restrictions on resale and sharing of WATS, and thus any revenue loss based upon a movement into a resold or shared WATS will not materialize. This point is important, as a premise of AT&T's study was the assumption that a change in the restrictions on WATS would lead to a decrease in MTS revenues, shifting costs from interstate operations to intrastate (See AT&T Comments at 31). Finally, we point out that AT&T alleged a revenue shift of $24 million from MTS–WATS to Telpak. As noted above, in Docket No. 18128 we found Telpak to be unlawful and have required that AT&T withdraw the present offering. In the Report and Order, we stated at note 66 that because we did not have before us a true "bulk rate" available only to large users who otherwise would shift to private microwave, we need not decide whether restrictions on resale and sharing thereof would be just and reasonable. It is sufficient to say now that our findings in Docket No. 18128 as to Telpak cast doubt upon even the shift from other services to a bulk rate offering. Moreover, it can be concluded from our decision in Docket No. 18128 that the new rate schedules will make the relationship of MTS–WATS rates to private line rates relatively more favorable than that which existed at the time of AT&T's study. Thus, even if we accept AT&T's methodology, the study, considered in light of our recent rulings as to WATS and Telpak, fails to show that our action will have significant economic impact on AT&T or on intrastate revenue requirements. With respect to this latter point, we note that we have recently instituted a proceeding to consider necessary changes in separations procedures resulting from our requirement that customers be allowed to connect their own terminal equipment to the telephone system. See *Impact of Customer Provision of Terminal Equiment on Jurisdictional Separations*, Docket No. 20981 (FCC 76–1008, released Nov. 8, 1976). If experience proves that there is any sizeable shift of revenue requirements to intrastate as a result of our action herein, the place to resolve that is in a similar proceeding. One final point as to AT&T is pertinent here. We believe that the record herein and the operations of the resale carriers now certificated by the Commission lead to the logical conclusion that a wider availability of communications offerings by carriers not owning facilities will stimulate the market demand for the facilities and services of AT&T and the other carriers owning facilities. AT&T did not attempt to study what demand would be created as new carriers provide service using its facilities; indeed, given the rapidly changing nature of the industry, measurement of such stimulation by the carriers or the Commission may not be possible. In any event, the record establishes that the demand for new services exists and is now being partially exploited by the "resale carriers." Our action here opens the market to other carriers who wish to subscribe to AT&T and other carriers' facilities and services to offer the public what they perceive to be a desired service.

16. For the foregoing reasons, we believe that there is record support for the conclusion that unlimited resale and sharing would not adversely affect the carriers owning facilities or produce a shift of revenue requirements to intrastate operations of any substantial degree. We also believe that there will be no substantial economic impact on the specialized common carriers operating in competition with AT&T for private line services, although we do recognize the possibility of a shift of customers from SCCs to resellers of AT&T's services and facilities. The record data showing such

[10] RCA Globcom, Inc. and International Telephone and Telegraph Co. made similar arguments in their Motions for Stay, but they have not filed Petitions for Reconsideration. Their Petitions for Review of the *Report and Order* are pending in the United States Court of Appeals for the Second Circuit (No. 76–4190; 76–4201). In acting on reconsideration herein, we have taken into account the arguments made by these carriers in support of their Motions for Stay.

[11] By this action, we do not, of course, change in any way the requirements of § 64.702 of the rules requiring a separate corporation for a carrier's provision of data processing services.

[12] As noted above, AT&T's "justification" was really only a description of those now entitled to service. No criteria for approval of intermediaries in the future was given. Clearly, such case-by-case approval of sharing arrangements has limitations as it places procedural burdens on this Commission's regulation of AT&T's private line tariffs.

[13] AT&T "suggests" (Petition at 4) that OTP's filing should have no status in this proceeding because it was submitted after the filing date for comments. However, we have treated OTP's submission as timely filed "Reply Comments." The filing of reply comments was not limited to parties which filed comments, so long as such reply comments were properly served on all parties. AT&T and others thus had an opportunity in their response comments to challenge OTP's position, and many parties, including AT&T, did comment critically on OTP's filing. Thus, it is incorrect for AT&T to allege (Petition at 4) that "• • • no opportunity was furnished for the refutation of OTP's spurious and unsupported contentions."

a shift was premised upon the movement of customers from an SCC private line offering into a resold or shared Telpak. (See AT&T study at 11; Datran Comments at 32). We pointed out in the Report and Order (note 64) that specialized carriers would be able to mitigate the effect of such shifts by themselves subscribing to Telpak for resale to their customers. Our recent finding that Telpak has not been justified by competitive necessity and must be eliminated makes even more questionable the amount of adverse economic impact on the specialized carriers as a result of our action herein. In its Petition, SPCC argues that "• • • the Commission's established policy of full and fair competition requires that Telpak rates not be made the basis of an entire new type of competition unless and until these Telpak rates have been determined to be lawful." (SPCC Petition at 4). We are unwilling to delay implementation of our policy until the lawfulness of a revised bulk rate tariff, filed in response to our decision in Docket No. 18128, is established.[14] The effective date of tariffs filed as a result of our decision herein will preclude any significant resale or sharing of Telpak as it now exists. See paragraph 28, *infra*.

17. To summarize, we believe that the record fully supports our position that unlimited resale and sharing of domestic private line services and facilities are just and reasonable; that the "single customer" provisions are unlawfully discriminatory; [15] and that the provision of service by an intermediary between the carrier owning the facilities and the customer will bring about important public benefits (described at paragraphs 75–88 of the Report and Order) while not causing adverse economic impact on the carriers or the public.

OTHER ASPECTS OF THE REPORT AND ORDER

18. Many parties have raised specific objections to portions of the Report and Order, which, in their judgments, must be clarified or modified upon reconsideration. We now turn to those arguments. AT&T states that in the Report and Order, we have ignored the significance of the difference between the terms "service" and "facility," and that such blurring of the distinction raises "serious questions" about its ability to implement tariffs filed in response to the settlement agreement in Docket No. 20099. See *AT&T*, 52 F.C.C. 2d 727 (1975). AT&T states that under the agreement, the Bell System provides facilities to other carriers which in turn provide service to their customers. It questions whether it is required to continue the separate offering of facilities, and whether resellers and sharers are entitled to facilities as well as services. We commented in the Report and Order (paragraph 30) that our action in this proceeding was not expected to abrogate the settlement agreement in Docket No. 20099. We adhere to that position and point out that we expect the engineering and operating agreements in Docket No. 20099 to be effectuated under our policy herein. The definitions of "surface" and "facility" may not be as distinct as AT&T purports to make them, and the degree of significance in the use of those terms for regulatory purposes is unclear. We need not comment in detail on that point, however. AT&T has not been required herein to change its obligations to its customers, except for removal of the restrictions on resale and sharing. We do not hold that sharers or non-OCC carriers are entitled to communications under the "facilities tariff" as it now exists. If such entity shows a need to obtain "facilities" we will consider the reasonableness of the tariff restrictions at that time. What we have done is to require that when a common carrier makes an offering to a customer (whether another common carrier or not) which allows that customer to communicate, the carrier may not restrict the customer's ability to resell or share what it has received.[16] Whether, under our policy and present AT&T practices, a separate "facilities tariff" is now required is beyond the scope of this inquiry.

19. One subject which has apparently caused confusion and misunderstanding is our discussion of the "maximum separation" rule, § 64.702 of the Commission's Rules. In the Report and Order, we stated at paragraph 118:

> Although we do not herein adopt any changes in § 64.702 of the Rules, we believe that a resale carrier providing the services which we reasonably anticipate (see paragraphs 75–88, *supra*) may not be able to do so consistent with the requirement of separate corporations. We note in this regard that the purpose of the rule is to insure that no cross subsidization exists between a carrier's monopoly services and its data processing services. Because we anticipate that resale services will be provided by entities which do not provide monopoly services, it appears that the public interest would be served by a waiver of § 64.702 for such entities upon their request, on a case by case basis. Thus, we will consider requests for waiver of the rule in light of the considerations set forth in this Report and Order.

This statement, and our references to the nature of the industry which may result from our action in this proceeding (Report and Order, para. 84) have led to two related reconsideration requests. Several parties (CBEMA, RPSS and Telenet, *e.g.*) state that we have, in effect, waived the provisions of § 64.702 for an entire class of carriers and that such action is not proper in this proceeding, if at all. Also, CBEMA and IBM express their concern that we have herein extended our jurisdiction to data processing and other operations which use private line communications, because such concerns "resell" the communications which they obtain. Neither fear is justified by our action. With respect to § 64.702, we point out that we have specifically stated that we are not changing that rule herein, and that requests for waiver would be considered on a case by case basis. We did not intend to imply that the rule would automatically be waived upon request of a resale carrier, although we recognize that our statement in the above quotation ("the public interest would be served by a waiver") gives rise to such an interpretation. We will clarify that quotation by changing "would be served" to "might be served."

If a request for waiver is made, we will consider it as we would otherwise, although consideration of the policy set forth in the Report and Order will necessarily be a factor in our decision. Moreover, we are not extending our jurisdiction herein over any activity other than the communications and hybrid communications enunciated in the Computer Inquiry [17] and § 64.702 of our Rules. CBEMA quotes from our discussion of our jurisdiction over resellers and states (Petition at 12):

> • • • the Commission could be read to conclude that all "resellers" of any product or service that includes use of communications in the provision of their product are common carriers • • •

In so articulating its test for communications common carriage, the Commission has stated one crucial element but failed to relate it specifically to the general resale market discussed at other points. That is, to be a communications common carrier, an entity must be holding out to the public a communications service, the means of transmitting messages from one point to another, in fulfillment of a communications purpose, rather than any other purpose such as data processing. (Footnote omitted; emphasis in original)

Our language in the juirsdiction section as to resellers must be read in light of our definition of that term. In paragraph 17 of the Report and Order, we defined resale as "an activity wherein one entity subscribes to the communications services and facilities of another entity and then reoffers communications services and facilities to the public (with or without "adding value") for profit. Inclusion of the phrase "communications services and facilities" after "reoffers" was done deliberately to emphasize that the "resale" with which we are concerned is only that of "communications." [18] Thus, if what is ultimately offered to the public is data processing or anything other than "communications", this proceeding is not applicable to such activity. The question as to what is "data processing" or "communications" is at issue in Docket No. 20828. This proceeding is not concerned with the definitions of those terms, and we assume herein that our jurisdiction attaches only to the activities which are found to be "communications."

20. Telenet raises the question whether the tariff restrictions on resale and sharing of a reseller's services are permissible under our policy. It points to language in paragraph 27 of the Report and Order which discusses in general the tariff restrictions of underlying carriers (i.e., those which own transmission facilities). That language, however, is simply in introduction to a discussion of AT&T's tariffs; in our conclusions throughout the Report and Order we have repeatedly referred to the unlawfulness of tariff restrictions for all private line services and facilities. "Resale carriers", whether they be brokers or "value added" carriers such as Telenet, are equally subject to the requirements of Title II of the Communications Act. We have concluded that such restrictions are unlawful under Sections 201(b) and 202(a), and this finding applies whether or not the carrier owns its transmission facilities. Resellers have a duty to serve just as do the carriers owning their facilities and that duty cannot be avoided by the creation of restrictions on the customer's ability to resell or share its services.

21. A number of parties have commented on our decision not to exercise common carrier regulation over sharing arrangements, or at least not to adopt specific regulations as to what sharing arrangements are allowable on an unregulated basis. To briefly summarize, in the Report and Order we defined sharing as a non-profit arrangement where several users collectively use, and allocate among themselves the cost of, communications services or facilities. We pointed out that sharing may be accomplished through a non-profit intermediary,[19] by a simple sharing of line charges, or through an arrangement where one entity takes the lead role (perhaps, but not necessarily, as an intermediary) and allocates to the users a portion of all the costs of the sharing arrangement. We found that it was inconsistent with the concept of non-profit sharing for one participant in the sharing arrangement to allocate to the others a fee for management of the network, unless that participant is a non-profit corporation. (By participant, we refer to either a user or an intermediary.) We turn now to specific objections to our position on sharing. First, it has been argued that "profit" is not a proper criterion for determination whether an activity is sharing or common carriage resale subject to Title II jurisdiction. See, *e.g.*, United Petition at 2. In the Report and Order, we stated (para. 120) that our jurisdictional position is not based solely upon profit.[20] We recognize that a basic jurisdictional criterion is whether there is an indiscriminate offering to the public, as that concept has been developed by the courts. See *Nat. Ass'n. of Reg. Util Commr's* v. *F.C.C.*, 525 F. 2d 630 (D.C. Cir. 1976). The record herein establishes that sharing arrangements have the potential of large scale operations, both in geographical area and number of sharing participants. We do not otherwise place restrictions on the operation of sharing arrangements, but we feel that to allow the profit motive to be included in the operation would encourage, if not ensure, that sharing arrangements might offer indiscriminately their communications to the public. As we noted in para. 125 of the Report and Order, the sharing which we envision without regulation is that of users joining together in long term arrangements, each seeking to reduce communications costs which would otherwise be incurred. We disagree with the view that the activities of sharers and resellers are the same, absent profit (United Petition at 3), and our decision herein is thus consistent with that set forth in Land Mobile Radio Services, 46 F.C.C. 2d 752 (1974), affirmed sub nom, N.A.R.U.C., supra.

22. Telenet advocates the position that the abuses of unregulated sharing are made possible if anyone connected with the sharing arrangement operates as a profit making entity. It specifically finds inappropriate our decision which allows a for-profit network manager to provide its services to the sharing arrangement, so long as no sharing participant receives a payment connected therewith. We believe, however, that it would unduly restrict the creation of sharing arrangements to adopt Telenet's position. Moreover, it is questionable whether the mere provision of advice and management, especially by an entity with no obligation to the carrier, is sufficient to confer Commission regulation over the sharing arrangement. Telenet states that it is simplistic to assume that operation as a non-profit sharing entity precludes the realization of "profit in the economic sense." As noted above, the Commission has heretofore used that standard as a criterion upon which we can find that common carrier regulation is not appropriate. Extension of that concept to the policy set forth herein appears to be appropriate.

23. A matter related to the "profit" issue is whether the management fee may be charged to a sharing arrangement by a network manager related to one of the sharing participants. Thus, Telenet argues (Petition at 18) that it could avoid common carrier status by obtaining communications lines in its name for use by others, and transfer to an affiliated corporation the network management (upon which a profit would be realized). We have held that a for-profit sharing participant may not charge a fee for network management, and this must be read as prohibiting such a charge by an entity affiliated with a sharing participant. Our policy may not be circumvented by the use of a separate but related corporation.

24. UPI states that the prohibition against charging a management fee is unfair to it. It points out that Associated Press, as a nonprofit, entity, may charge its members a management fee while UPI, which is a corporation organized for profit, may not. UPI believes that both should be able to charge a management fee and that it makes no practical sense to differentiate between them. We believe it best to prohibit the charge of a management fee by the for-profit intermediary, however, and state again that it is inconsistent with the concept of sharing as set forth in the Report and Order for one participant to charge the others for "managing" the network. We do not view the distinction between non-profit and for-profit corporation as "legalistic" or "simplistic", as does UPI. Rather, we see this as a definite standard which will minimize the opportunity for abuse of non-regulated sharing. In our view, this standard is preferable to the imposition of detailed Commission regulations, or the exercise of our judgment in each case with no guidelines at all. The record establishes the need for sharing arrangements which use an intermediary. The creation of non-profit entities to act as intermediaries will serve a valuable public function while minimizing the abuses which have heretofore been made possible. When the intermediary is a non-profit corporation, we will not interfere with the manner in which it manages its network. If UPI's subscribers find that it is not feasible to obtain network management from an outside entity, they may form their own non-profit corporation for the sharing arrangement.

25. AT&T, supported by the Network parties, states that the Commission should make clear that Series 7000 service should not be allowed for non-video use if it is resold or shared. AT&T states that the record is not complete as to the consequences of such non-video use, and that there are unique considerations,

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[14] Western Union and MCI, which also argued against non-cost justified bulk tariff rates, did not on reconsideration request delay in resale and sharing of Telpak.

[15] ARING states that we should not have found the "single customer" provisions to be unlawfully discriminatory and that, in any event, the issue was moot. We believe it not to be moot and again affirm our analysis, set forth in Appendix B, which led us to conclude that the provisions are unlawfully discriminatory. The point which we find to be moot is whether federal statutes support preferential treatment of the federal and state governmental agencies.

[16] It is not unreasonable, however, for a carrier to provide that its offerings are available for resale only if the reseller has been certified as a common carrier by this Commission.

[17] 28 F.C.C. 2d 267 (1971), *aff'd in part and revs'd in part sub nom. GTE Service Corp.* v. *F.C.C.* 474 F. 2d 724 (2d Cir. 1973).

[18] When we use "communications" herein, we also include those activities which currently are considered to be "hybrid communications" in § 64.702.

[19] Although we did not define "intermediary" in the Report and Order, it was and is used to denote the entity directly responsible to the carrier for payment of the entire tariff charge associated with the service or facility. Generally, but not always, the intermediary will also be a user. We doubt that there will be many instances of bona fide sharing in which an intermediary (other than a non-profit corporation whose members are also the users) assumes responsibility to pay the carrier the entire tariff charge when it has no need itself for the communications service or facility.

[20] We have heretofore used profit as a criterion upon which our jurisdiction is determined. See Industrial Radiolocation Service, 5 F.C.C. 2d 197 (1966); SIAC Response and cases cited therein.

including the alleged "limited availability" of Series 7000 channels, which mandate that non-video usage not be allowed, at least without further proceedings. We are not willing to make such a requirement herein, although we are willing to consider the propriety of such a restriction if it appears from experience that sharing and resale of Series 7000 for non-video purposes is becoming extensive and is causing adverse effects as alleged. If there are special considerations which warrant different treatment of Series 7000, AT&T did not clearly state them in its Comments even though we requested such data in the Notice.

26. AT&T also states that the unintended result of this proceeding, without clarification, may be the creation of public message services similar to MTS and WATS. We noted in paragraph 64:

> Unlimited resale and sharing of a private line service does not, of course, encompass the conversion of that private line into MTS or the equivalent thereof. Thus, any resale or sharing of FX service must maintain the basic private line character of that service.

AT&T points out that our definition of private line after that quotation is less comprehensive than that we recently set forth in the Execunet decision. *See MCI Telecommunications Corp.*, 60 F.C.C. 2d 25 (1976), petition for review pending *sub nom. MCI Telecommunications Corp. v. F.C.C.*, No. 75–1635 (D.C. Cir.). The difference in terminology was unintended. The question of what is private line service was not at issue herein. Where analog voice communication services are concerned, as was the case in *Execunet*, the distinctions between private line services and MTS or WATS which were cited in *Execunet* and related decisions clearly govern.[21] Thus, with regard to AT&T's contention that the Report and Order provides the opportunity for creation of networks similar to MTS and WATS, we reaffirm our position that such arrangements will not be allowed.

Conclusions

27. For the reasons set forth above, we will not alter the policy which we prescribed in the Report and Order, except that we will not at this time apply that policy to international services. Also, a monopoly carrier providing a resale communications service need not do so through a separate corporation. We have found that there are important public benefits to be derived from elimination of the restrictions on resale and sharing of private line services and facilities, as set forth in paragraphs 75–88 of the Report and Order. Thus, we conclude that public interest is served by our adoption of a policy requiring unlimited resale and sharing of private line services and facilities, and the regulation of resellers (but not sharers) under Title II of the Act.

28. There are several procedural considerations to be dealt with. By Motion to the Chief, Common Carrier Bureau dated September 27, 1976, MCI requested additional time within which to file its response to the Petitions for Reconsideration. Although AT&T opposed the request as untimely filed, we will accept MCI's pleading. It appears that good reasons existed which made impossible the filing of its pleading on the date specified. Also AT&T requests in its Petition that the Commission convene a meeting of interested parties to discuss and clarify the Report and Order. We do not see that this is required, and therefore deny the request. American Trucking Associations, Inc. filed a Motion to Strike the Reply of AT&T to its Opposition to Motion for Stay. This motion was filed the day before we acted on the Motions for Stay and did not come to our attention in time for our decision then. ATAI properly cites Section 1.45(d) of the Rules which states that a reply to an Opposition to Motion for Stay is not allowed. AT&T's reply will not be a part of the record herein. Finally, we recognize that additional time may be required for carriers to file revised tariffs consistent with the Report and Order and our decision herein. We therefore require that revised tariffs be filed not later than March 18, 1977. Such tariffs are to be effective 90 days from that filing date.

29. *Accordingly, it is ordered*, That the Petitions for Reconsideration of our Report and Order in this proceeding are granted to the extent discussed in paragraphs 10 and 11, *supra*, and are denied in all other respects.

FEDERAL COMMUNICATIONS COMMISSION,[22]
VINCENT J. MULLINS,
Secretary.

[FR Doc.77-1405 Filed 1-14-77;8:45 am]

[FCC 77R-3]

MIDWEST ST. LOUIS, INC., AND NEW LIFE EVANGELISTIC CENTER INC.

Memorandum Opinion and Order Enlarging Issues

Adopted: January 5, 1977.

Released: January 12, 1977.

In re application of Midwest St. Louis, Inc., St. Louis, Missouri; Docket No. 20820, File No. BPCT–4674 and New Life Evangelistic Center, Inc., St. Louis, Missouri; Docket No. 20821, File No. BPCT–4826, for a construction permit for a new television broadcast station.

1. The above-captioned mutually exclusive applications for construction permits for a new television broadcast station in St. Louis, Missouri, were designated for hearing by Commission Memorandum Opinion and Order, 59 FCC 2d 805, 40 FR 24015, published June 14, 1976. Presently before the Review Board for consideration is a petition to enlarge issues, filed June 29, 1976, by Midwest St. Louis, Inc. (Midwest) which seeks the addition of financial, misrepresentation, site availability, ascertainment and programing issues against New Life Evangelistic Center, Inc. (New Life).[1]

Financial Issues[2]

2. *Cost estimates.* In support of its requested cost estimates issue, Midwest alleges that New Life's financial proposal is unreasonable on its face due to the budgeting of minimal amounts for certain costs of construction and operation. Specifically, petitioner contends that the applicant's "room and board" plan, whereby the proposed station staff would work on a voluntary basis in exchange for living accommodations and board lacks credibility. In this regard, Midwest points out that a staff of 16 employees[3] has been proposed by New Life without any funds being budgeted for salaries or for room and board, nor any indication that sponsors will be available, as proposed, to meet the staff's additional living expenses. Petitioner also questions the likelihood of New Life completely staffing its station under such a plan. Furthermore, Midwest contends that the applicant's $100 estimate for engineering costs is grossly deficient absent evidence that the services will be donated.[4] Finally, Midwest asserts that New Life has underestimated its costs for transmitter equipment, noting a $29,298 discrepancy between New Life's application and a letter of deferred credit from its supplier.[5][6] The Broadcast Bureau supports the addition of an issue with respect to New Life's failure to budget for its proposed staff (absent documentation as to the availability of volunteers and sponsors), its $100 estimate for engineering costs, and underestimation of equipment costs (absent further explanation).

3. The Board will deny Midwest's request. As a general matter, the Board will not add a financial issue inquiring into an applicant's cost estimates unless those estimates are challenged by specific facts supported by affidavits from persons having personal knowledge of those facts (see Rule 1.229(d)), or where the applicant's estimates are unreasonable on their face. See, e.g., KOWL, Inc., 49 FCC 2d 962, 971–972, 31 RR 2d 1589, 1600 (Rev. Bd. 1974), and cases cited therein. In our view, Midwest has not met this test. Thus, we agree with New Life that Midwest's allegations concerning the applicant's voluntary staffing proposal are based on speculation and surmise. In any event, New Life's response to these allegations sufficiently rebuts them. Specifically, New Life has submitted an affidavit from twelve of its proposed full-time station staff members,[7] attesting to the voluntary nature of their employment and listing the specific positions each will hold. Furthermore, an affidavit from the applicant's president, Lawrence Rice, attests to New Life's ability to furnish room and board for its volunteer staff. Affiant states that New Life has supplied room and board to its staff for the past four years. Thus, although the applicant's failure to budget any funds for staff salaries would appear to be unreasonable on its face, New Life has met its burden of assuring that its proposed volunteer help will actually be available. Compare United Broadcasting Company (KBAY), 58 FCC 2d 1346, 1358, 36 RR 2d 1556, 1573 (Rev. Bd. 1976). Turning to the applicant's estimate for engineering costs ($100), New Life adequately reubts petitioner's contentions by submitting an affidavit from John P. Suchan, New Life's proposed technical director, who states that no remuneration was given to him for the preparation of the applicant's engineering data, nor will he charge New Life for any of his engineering work during the construction stage or first year of operation of the station. And finally, although New Life concedes that it apparently understated its total equipment costs in a predesignaion amendment, we believe the addition of a cost estimates issue for this reason alone would serve no purpose. The correct figure appeared in a letter of deferred credit attached to that same amendment and New Life specifically corrected this error in its June 26, 1976 amendment (see note 4, *supra*), filed less than one month after designation by the Commission.[8]

4. *Second Year Finances.* Midwest next questions whether New Life will have sufficient funds available in its second year of operation to assure the continuing operation of its proposed facility. Petitioner contends that New Life, as a non-profit corporation, has no "risk capital", thereby forcing it to rely substantially on the deferral of bank loan repayments and deferred credit, creating a total debt in excess of $700,000. Specifically, Midwest argues that during its second year, the applicant would be required to meets its normal operating expenses of $120,000, and would also have to produce enough additional revenue to repay $229,929 in deferred principal and interest on loans and second year equipment installments. Since New Life has failed to offer any support for its ability to generate such substantial revenue, Midwest concludes that a second year financing issue is warranted.[9] The Broadcast Bureau supports addition of the issue.

5. In opposition, New Life maintains that it is not a thinly capitalized corporation, and lists, in support, its cash on hand, its real estate holdings, and the personal guarantees of three of its Board members for bank loans included in its financial proposal. Additionally, New Life asserts that there are no substantial deferrals of fixed charges, pointing out that the principal of only one of its loans is being deferred until the second year of operation. Moreover, New Life contends that none of the repayment factors relied upon by petitioner are present in its proposed financing arrangements.

6. In Ultravision Broadcasting Co., 1 FCC 2d 544, 5 RR 2d 343 (1965), the Commission held that an applicant may be required in some circumstances to establish its ability to operate on a continuing basis. See Greenfield Broadcasting Corp., supra. Thus, is the past, both the Board and the Commission have specified second year financing issues where the principals of an applicant have set up a thinly capitalized corporate structure characterized by a high debt to asset ratio, and where substantial portions of fixed costs are deferred past the first year of operation. See, e.g., Maranatha, Inc., 56 FCC 2d 194, 35 RR 2d 423 (Rev. Bd. 1975); A–C Broadcasters, supra. While New Life has shown that it is not a thinly capitalized corporation, the Board nevertheless concludes that a second year financing issue is appropriate in light of the fact that the applicant has failed to rebut Midwest's allegations that during the second year New Life will incur $229,929 in deferred principal and interest on loans and second year equipment installments as well as projected operating expenses of $120,000. Moreover, New Life has not shown its ability to obtain funds sufficient to meet these costs. Therefore, the Board will add the requested issue.

Ascertainment/Programming Issues

7. *General public survey.* Midwest initially challenges New Life's general public survey. Specifically asserts that 86% of the applicant's general public survey contacts were with individuals in neighboring or outlying communities and that only 14% of the contacts were with St. Louis city residents, contrary to the intent of Q. & A. 6 and 7 of the Primer.[10] Therefore, movant suggests that the survey is "inadequate and deficient." In opposition, New Life asserts that its general public survey reflects significantly more contacts with St. Louis city residents than with residents of any other community and, in any event, it asserts that the city contacts are of sufficient number to satisfy the Primer. Additionally, New Life notes that it conducted its survey by calling the fifth name on every fifth page of "the St. Louis phone directory" which, opponent maintains, contains both "St. Louis City and most of St. Louis County." Therefore, opponent concludes its methodology achieved the required "generally random sample." The Bureau opposes addition of the issue.

8. The Board will specify an appropriate issue. In so doing, we note that while the methodology employed by New Life in conducting its general public survey, *i.e.*, random selection of names from the elephone directory, is an ac-

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[21] Telenet states that the Report and Order can be read to require resale and sharing of "private line offerings as distinguished from switched services." (Telenet Petition at 5, emphasis in original.) This is not our intent, and Telenet's reference to language in paragraph 55 is only to the use of "switched" as a characteristic of MTS and WATS. We have not defined private line services herein as only non-switched services, as Telenet implies, nor did we do so in *Execunet*.

[22] Commissioner Lee absent; Commissioners Hooks and Quello concurring in the result.

[1] Related pleadings before the Board are: (a) partial opposition, filed August 4, 1976, by the Broadcast Bureau; (b) opposition, filed August 5, 1976, by New Life; (c) reply to New Life's opposition, filed August 20, 1976, by Midwest; and (d) statement for the record, filed October 12, 1976, by New Life.

[2] Petitioner's proposed financial issue is overly broad; its allegations actually relate to limited questions of cost estimates and second year financing and have been treated in this context.

[3] Since the filing of this petition, New Life has amended its staffing proposal to include one additional employee. See Order, FCC 76M–1106, released August 27, 1976.

[4] Although it questions the reasonableness of New Life's $2,500 estimate for legal fees, Midwest's allegations have been answered in light of an accepted amendment (Order, FCC 76M–1000, released August 4, 1976) indicating *inter alia*, a $15,000 estimate for such costs. Petitioner has not shown that this updated figure is outside the realm of reasonableness.

[5] Petitioner also alleges that New Life has underestimated its first year installment payments for its equipment proposal. However, in a Memorandum Opinion and Order, FCC 76R–260, released November 2, 1976, the Board specifically found New Life's estimate correct.

[6] Petitioner also questions the reasonableness of the applicant's proposal to lease a transmitter site for one dollar per year and requests site availability and misrepresentation issues based on this arrangement. However, by Order, FCC 76M–1426, released November 3, 1976, the Presiding Judge accepted an amendment to New Life's application reflecting the purchase from its original proposed lessor of nine acres of land to be used, in part, for its tower and transmitter facilities, thus effectively mooting Midwest's allegations in this regard.

[7] All of the proposed staff are presently full-time volunteer employees of New Life, according to that affidavit.

[8] Although petitioner also requests a misrepresentation issue apparently based on the understatement of New Life's equipment and other cost projections, it has failed to raise a substantial question that New Life's estimates were deliberately misleading.

[9] In support, petitioner cites *Greenfield Broadcasting Corp.*, 32 FCC 2d 135 (1971); *Clay Broadcasters, Inc.*, FCC 71–264, 21 RR 2d 442 (1971); *A–C Broadcasters*, 10 FCC 2d 256, 11 RR 2d 359 (1967); *Robert Cowan Wagner*, 38 FCC 2d 1187, 26 RR 2d 429 (Rev. Bd. 1973); and *5 KW, Inc.*, 33 FCC 2d 895, 23 RR 2d 1015 (Rev. Bd. 1972).

[10] *Primer on the Ascertainment of Community Problems by Broadcast Applicants*, 27 FCC 2d 650, 21 RR 1507 (1971) (Primer). In pertinent part, Q. & A. 6 directs that an applicant's "principal obligation" is to ascertain the problems of the community of license. Q. & A. 7 states, inter alia, that the ascertainment effort for outlying communities need not be as extensive as the effort directed to the community of license.

[11] According to New Life's demographic data, 1970 U.S. Census Tracts reveal a St. Louis SMSA population of 2,363,017 and a St. Louis city population of 622,236. The 1975 projections are 2,678,100 and 588,200, respectively.

ceptable method, Ken Stephens, 53 FCC 2d 389, 33 RR 2d 1494 (Rev. Bd. 1975), we are concerned with the number of people contacted who reside in St. Louis, the proposed city of license. By our calculation, only 72 out of 492 contacts were with St. Louis city residents which is an extremely small number for a city of this size." It, in our view, is too small to insure a generally random sampling within the proposed city of license. See Primer, Q. & A. 14; Jerry Lawrence, 48 FCC 2d 373, 31 RR 2d 59 (Rev. Bd. 1974); Media, Inc., 41 FCC 2d 30, 27 RR 2d 1077 (Rev. Bd. 1973). Therefore, further inquiry is warranted.

9. *Community leader survey.* Midwest next challenges New Life's community leader survey on the grounds that 60% of the leaders interviewed are not St. Louis city residents. Furthermore, petitioner alleges that leaders of significant groups and segments of the population, have not been interviewed by New Life even though the applicant's demographic survey identified some of these groups as being significant. Specifically, Midwest notes that: (1) even though New Life claimed that St. Louis is an educational center, no student or youth leaders were contacted; (2) no leaders of the shipping and trucking industries, which are shown by New Life's demographic study to be significant, were interviewed; and (3) while New Life proposes primarily religious programming, no rabbis were interviewed by the applicant even though New Life's demographic study shows that there is a significant Jewish population in the proposed service area.[12] Both New Life and the Bureau oppose addition of an issue, and the Board agrees that an issue relating to New Life's community leader survey is not warranted. First, petitioner has failed to show that New Life contacted an insufficiently low number or percentage of St. Louis city leaders as to be unrepresentative of the significant groups and interests which comprise that community.[13] Second, with respect to the groups specifically alleged by Midwest to have been omitted from New Life's leader survey, we note that New Life's August 2, 1976 amendment, note 3, supra, in part, lists 11 additional interviews with youth/student, transportation, shipping, and Jewish leaders. In our view, this amendment cures the alleged defect raised in petitioner's request and obviates the need for an issue.

10. *Programming issues.* Midwest argues that even if New Life's ascertainment efforts are in compliance with the Primer, its programming proposals are deficient. Thus, petitioner alleges that three of New Life's seven proposed programs are not locally produced presentations and at least one of the programs is produced for national distribution. Of the remaining four programs, Midwest states, one is a daily newscast,[14] and two are audience participation/phone-in talk shows which New Life proposes to use to meet numerous community problems. Station editorials are also to be employed for this purpose, according to petitioner. Midwest characterizes the proposed programming as a "shotgun approach" to the treatment of ascertained needs which the Board in the past has found unacceptable.[15] Midwest also asserts that each of New Life's locally produced programs will utilize the "talking head" approach [16] and, thereby, New Life will not fully utilize the visual impact of television. Finally, based on this allegation and allegations that: (1) New Life will not be able to effectuate its proposed 22 hours of local programming per week in light of its failure to budget staff salaries; and that (2) New Life has ordered only a "meager amount of program origination equipment," Midwest requests an inquiry into the quality of New Life's proposed programming.[17] New Life contends in opposition, first, that it proposes a weekly total of four hours and twenty minutes of locally produced programs to meet ascertained needs and interests, and, second, that it does not intend to simply utilize the "talking head" approach referred to by petitioner.[18] In its comments, the Bureau opposes addition of a programming issue on the basis of the standard enunciated by the Commission in Southeast Arkansas Radio, Inc., 57 FCC 2d 351, 35 RR 2d 1441 (1976). The Bureau also opposes the request for a quality of programming issue, arguing that the Commission is not authorized to determine the quality of programming. It cites Television Wisconsin, Inc., 58 FCC 2d 1232, 35 RR 2d 995 (1975); and Network Programming Inquiry, 20 RR 1901 (1960), in support.

11. The Board agrees with the Bureau that New Life's programming proposal must be judged under the standard established in Southeast Arkansas Radio, Inc., supra. There, the Commission stated that a programming proposal will not be questioned unless it appears to be "patently insufficient" to meet the ascertained needs and interests of the community 57 FCC 2d at 353, 35 RR 2d at 1443–44, quoting Q. & A. 31 of the Primer. We are unable to make such a finding here. Specifically, it appears from New Life's application, as amended, that New Life proposes several programs with differing formats designed to treat many of the ascertained community needs, and the fact that some programs may not be locally produced and that others may employ "talking heads" is not a sufficient basis to challenge the adequacy of New Life's programming proposal. The requested issue will, therefore, be denied. Turning to Midwest's requested quality of programming issue, we disagree with Midwest that the Commission's allowance of evidence regarding the programming proposals of both applicants under the standard comparative issue permits an inquiry into the quality of New Life's proposed programming. It is clear that what the Commission had in mind was the reception of evidence regarding the comparative need for New Life's predominantly religious programming and Midwest's subscription television proposal. Midwest St. Louis, Inc., 59 FCC 2d 805, 809 (1976). See also Television Wisconsin, Inc., supra. Moreover, in its Policy Statement on Comparative Broadcast Hearings, 1 FCC 2d 393, 5 RR 2d 1901 (1965), the Commission indicated that staffing plans and other elements of planning would not be compared, unless there was an indication of inability to effectuate proposals. Accordingly, the issue will not be specified.

12. *Accordingly, it is ordered,* That the petition to enlarge issues, filed June 29, 1976, by Midwest St. Louis, Inc., is granted to the extent indicated herein, and is denied in all other respects; and

13. *It is further ordered,* That the issues in this proceeding are enlarged to include the following issues:

(a) To determine whether New Life Evangelistic Center, Inc. will have sufficient funds to sustain its proposed station during the second year of operation and, in light of the evidence adduced pursuant thereto, whether the applicant is financially qualified.

(b) To determine whether New Life Evangelistic Center, Inc.'s general public survey complies with the standards set forth in the Primer on the Ascertainment of Community Problems by Broadcast Applicants.

14. *It is further ordered,* That the burdens of proceeding with the introduction of evidence and of proof under the issues added herein SHALL BE on New Life Evangelistic Center, Inc.

FEDERAL COMMUNICATIONS COMMISSION,[19]
VINCENT J. MULLINS,
Secretary.

[FR Doc.77-1404 Filed 1-14-77;8:45 am]

[12] In support of the requested issue, Midwest cities Maranatha, Inc., supra; and Philadelphia Broadcasting Co., 51 FCC 2d 361, 32 RR 2d 1300 (Rev. Bd. 1975).

[13] We note that New Life's August 2, 1976 amendment, note 3, supra, corrects the previous erroneous community identification of nine of the interviewed leaders. The net result is that five leaders previously listed as residents of outlying communities are now listed for St. Louis city.

[14] Midwest asserts that newscasts are not generally designed to meet community problems since they are usually considered factual in nature. Primer, Q. & A. 33.

[15] In support, Midwest cites Perdido Broadcasting Co., 58 FCC 2d 792, 35 RR 2d 847 (Rev. Bd. 1975), and Town and Country Radio, Inc., 53 FCC 2d 401, 33 RR 2d 1589 (Rev. Bd. 1975).

[16] Midwest describes the "talking head" approach to programming as placing individuals before a camera and mircophone and simply allowing them to talk.

[17] Midwest notes that the designation Order specifically permits an inquiry into both applicants' programming proposals under the standard comparative issue and that, therefore, it does not believe that a separate issue is required. However, Midwest suggests that the Board may find that a quality of programming issue is appropriate.

[18] In this regard, New Life relies on the affidavit of its president, Lawrence Rice, who states, inter alia, that New Life "expects to acquire mobile equipment and portable cameras" as time goes on and money is available. Further, New Life asserts that tape recorded interviews and slides will be utilized in its programming.

[19] Board member Kessler dissenting in connection with the inclusion of the second year financial issue.

FEDERAL ENERGY ADMINISTRATION

EAST COAST NATURAL GAS DISTRIBUTION

Meetings

Notice is hereby given that the FEA's Office of Oil and Gas will conduct a series of meetings at which representatives of the East Coast natural gas distribution industry will speak on gas distribution and operating problems confronting their industry. The meetings will consist of presentations of factual, technically oriented information followed by an informal discussion period. Discussions will be restricted to the subject matter of the presentations and will not involve FEA policies concerning the gas distribution industry.

All meetings will be open to the public. They are scheduled to be held in Room 3000–B, Federal Building, 12th and Pennsylvania Avenue, N.W., Washington, D.C., and will begin at 10 a.m. The dates of the meetings, the names of the speakers and the subjects to be discussed are as follows—

JANUARY 18

East Coast Gas Distributors' Operations and Supply Planning in the Short-Term:

Mr. Robert Catell, The Brooklyn Union Gas Company.
Mr. John Ewald, Public Service Electric & Gas Company.

JANUARY 25

East Coast Gas Distributors' Operations and Supply Planning in the Longer Term:

Mr. Marshall Dickey, Public Service Company of North Carolina, Inc.
Mr. Jack McKenna, Boston Gas Company.

FEBRUARY 1

East Coast Gas Distributor Financing/Capital Formation:

Mr. Patrick Maher, Washington Gas Light Company.

FEBRUARY 8

East Coast Gas Distributor Economics:
Mr. Craig Mathews, The Brooklyn Union Gas Company.

FEBRUARY 15 & 22

East Coast Gas Distributors' Ratemaking Policy, Practice and Procedure:

Mr. Robert Ashburn, Long Island Lighting Company.
Mr. Earl Chambers, Piedmont Natural Gas Company.
Mr. Edward Smallwood, Washington Gas Light Company.
Mr. Edward Sondey, The Brooklyn Union Gas Company.

MARCH 1

East Coast Distributors' State Level Legal and Regulatory Considerations:

Mr. Lewis Carroll or Mr. Paul Harrington, Washington Gas Light Company.
Mr. Richard Stewart, Southern Connecticut Gas Co.

MARCH 8

East Coast Gas Distributors' Federal Level Legal and Regulatory Considerations:

Mr. James Dunlop, The Brooklyn Union Gas Company.
Mr. Paul Hathaway, Consolidated Edison Company of New York, Inc.

An FEA official will chair each meeting and may impose such procedures or rules which, in his judgment, will insure an orderly meeting. Any questions concerning the meetings should be directed to Mr. Larry Dewey, Office of Oil and Gas, Room 3450, Federal Building, 12th and Pennsylvania Avenue NW., Washington, D.C. 20461. (202–566–9047).

Dated: January 11, 1977.

MICHAEL F. BUTLER,
General Counsel,
Federal Energy Administration.

[FR Doc.77-1328 Filed 1-12-77;9:57 am]

FEDERAL HOME LOAN BANK BOARD

[AC–26]

FIRST SAVINGS AND LOAN ASSOCIATION

Approval of Amendment to Conversion Application

JANUARY 12, 1977.

Notice is hereby given that on December 22, 1976, the Federal Home Loan Bank Board, as the operating head of the Federal Savings and Loan Insurance Corporation, by Resolution No. 76–984 approved an amendment to the application of First Savings and Loan Association, Del Rio, Texas, for permission to convert to the stock form of organization. The application had been approved by the Federal Home Loan Bank Board by Resolution No. 76–473, dated June 30, 1976. Copies of the application are available at the Office of the Secretary of said Corporation, 320 First Street, N.W., Washington, D.C. 20552 and at the Office of the Supervisory Agent of said Corporation at the Federal Home Loan Bank of Little Rock, 1400 Tower Building, Little Rock, Arkansas 72201.

By the Federal Home Loan Bank Board.

RONALD A. SNIDER,
Assistant Secretary.

[FR Doc.77-1376 Filed 1-14-77;8:45 am]

[H.C. 218]

KAN-VALLEY ENTERPRISES, INC.

Receipt of Application for Permission to Retain Control of State Savings and Loan Association

JANUARY 11, 1977.

Notice is hereby given that the Federal Savings and Loan Insurance Corporation has received an application from Kan-Valley Enterprises, Inc., Topeka, Kansas, for permission, pursuant to the provisions of Section 408(e) of the National Housing Act, as amended (12 U.S.C. 1730a(e) and § 584.4 of the Regulations for Savings and Loan Holding Companies, to retain control of State Savings and Loan Association, Topeka, Kansas, an institution that has submitted an application for insurance of accounts pursuant to Section 403(b) of the National Housing Act, as amended (12 U.S.C. 1726(b)). Comments on the proposed retention of control should be submitted to the Director, Office of Examinations and Supervision, Federal Home Loan Bank Board, Washington, D.C. 20552, or on before February 1, 1977.

RONALD A. SNIDER,
Assistant Secretary.
Federal Home Loan Bank Board.

[FR Doc.77-1377 Filed 1-14-77; 8:45 am]

[H.C. 219]

THE LEAVELL CO.

Receipt of Application for Permission to Acquire Control of Surety Savings Association

JANUARY 12, 1977.

Notice is hereby given that the Federal Savings and Loan Insurance Corporation has received an application from The Leavell Company, El Paso, Texas, for approval of acquisition of control of Surety Savings Association, El Paso, Texas, an insured institution, under the provisions of section 408(e) of the National Housing Act, as amended (12 U.S.C. Section 1730(a)(e)), and § 584.4 of the Regulations for Savings and Loan Holding Companies, said acquisition to be effected through the purchase, by a to be formed subsidiary of The Leavell Company, of the permanent reserve fund stock of Surety Savings Association. Comments on the proposed acquisition should be submitted to the Director, or Deputy Director, Office of Examinations and Supervision, Federal Home Loan Bank Board, Washington, D.C. 20552, on or before February 16, 1977.

RONALD A. SNIDER,
Assistant Secretary,
Federal Home Loan Bank Board.

[FR Doc.77-1378 Filed 1-14-77;8:45 am]

FEDERAL MARITIME COMMISSION

AMERICAN EXPORT LINES, INC., ET AL.

Agreement Filed

Notice is hereby given that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1100 L Street, N.W., Room 10126; or may inspect the agreement at the Field Offices located at New York, N.Y., New Orleans, La., San Juan, Puerto Rico and San Francisco, California. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C., 20573, by January 27, 1977. Any person desiring a hearing on the proposed agreement shall provide a clear and concise statement of the matters upon which

they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the statement should indicate that this has been done.

Notice of Agreement Filed by:

Howard A. Levy, Esquire, Suite 727, 17 Battery Place, New York, New York 10004.

Agreement No. 10138-2, among the above-named parties, amends Article IV of the basic agreement and Section 1 of the Annex to provide that the parties may employ an independent neutral body to serve as its Enforcement Authority as an alternative to the employment of the Executive Director of the Associated North Atlantic Freight Conferences ("ANAFC") for that purpose.

By Order of the Federal Maritime Commission.

Dated: January 12, 1977.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.77-1413 Filed 1-14-77;8:45 am]

[Independent Ocean Freight Forwarder License No. 1627]

DIRECT VAN SERVICE

Order of Revocation

By letter dated December 10, 1976, Mr. Donald F. Smith, President, Director Van Service, P.O. Box 15169, New Orleans, LA 70175, was advised by the Federal Maritime Commission that Independent Ocean Freight Forwarder License No. 1627 would be automatically revoked or suspended unless a valid surety bond was filed with the Commission on or before January 8, 1977.

Section 44(c), Shipping Act, 1916, provides that no independent ocean freight forwarder license shall remain in force unless a valid bond is in effect and on file with the Commission. Rule 510.9 of Federal Maritime Commission General Order 4, further provides that a license will be automatically revoked or suspended for failure of a licensee to maintain a valid bond on file.

Direct Van Service has failed to furnish a valid surety bond.

By virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 201.1 (Revised) § 5.01(e) dated June 30, 1975;

It is ordered, That Independent Ocean Freight Forwarder License No. 1627 issued to Direct Van Service be returned to the Commission for cancellation.

It is further ordered, That Independent Ocean Freight Forwarder License No. 1627 be and is hereby revoked effective January 8, 1977.

It is further ordered, That a copy of this Order be published in the FEDERAL REGISTER and served upon Direct Van Service.

LEROY F. FULLER,
Director, Bureau of Certification & Licensing.

[FR Doc.77-1416 Filed 1-14-77;8:45 am]

EUROGULF SELF-POLICING AGREEMENT

Petition Filed

Notice is hereby given that the following petition has been filed with the Commission for approval pursuant to section 14b of the Shipping Act, 1916, as amended (75 Stat. 762, 46 U.S.C. 813a).

Interested parties may inspect a copy of the current contract form and of the petition, reflecting the changes proposed to be made in the language of said contract, at the Washington office of the Federal Maritime Commission, 1100 L Street NW., Room 10126 or at the Field Offices located at New York, N.Y. New Orleans, Louisiana, San Francisco, California and Old San Juan, Puetro Rico. Comments with reference to the proposed changes and the petition, including a request for hearing, if desired, may be submitted to the Secretary, Federal Maritime Commission, 1100 L Street NW., Washington, D.C. 20573, by January 27, 1977. Any person desiring a hearing on the proposed modification of the contract form and/or the approved contract system shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the petition (as indicated hereinafter), and the statement should indicate that this has been done.

Notice of Agreement filed by:

Howard A. Levy, Esquire, Suite 727, 17 Battery Place, New York, New York 10004.

Agreement No. 10182-1, among the parties to the above-named agreement, amends Article IV of the basic agreement and Section 1 of the Annex to provide that the parties may employ an independent neutral body to serve as its Enforcement Authority as an alternative to the employment of the Executive Director of the Associated North Atlantic Freight Conferences ("ANAFC") for that purpose.

By Order of the Federal Maritime Commission.

Dated: January 12, 1977.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.77-1411 Filed 1-14-77;8:45 am]

GULF/UNITED KINGDOM FREIGHT CONFERENCE

Agreement Filed

Notice is hereby given that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1100 L Street, N.W., Room 10126, or may inspect the agreement at the Field Offices located at New York, N.Y., New Orleans, La., San Juan, Puerto Rico and San Francisco, California. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, by January 27, 1977. Any person desiring a hearing on the proposed agreement shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the statement should indicate that this has been done.

Notice of Agreement Filed by:

Howard A. Levy, Esquire, Suite 727, 17 Battery Place, New York, New York 10004.

Agreement No. 161-32, among the parties to the above-named agreement, amends Article 17 of the basic agreement and Section 1 of the Annex to provide that the parties may employ an independent neutral body to serve as its Enforcement Authority as an alternative to the employment of the Executive Director of the Associated North Atlantic Freight Conferences ("ANAFC") for that purpose.

By Order of the Federal Maritime Commission.

Dated: January 12, 1977.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.77-1412 Filed 1-14-77;8:45 am]

GULF/UNITED KINGDOM FREIGHT CONFERENCE AND SEATRAIN INTERNATIONAL S.A.

Petition Filed

Notice is hereby given that the following petition has been filed with the Commission for approval pursuant to section 14b of the Shipping Act, 1916, as amended (75 Stat. 762, 46 U.S.C. 813a).

Interested parties may inspect a copy of the current contract form and of the petition, reflecting the changes proposed to be made in the language of said contract, at the Washington office of the Federal Maritime Commission, 1100 L Street, N.W., Room 10126 or at the Field Offices located at New York, N.Y., New Orleans, Louisiana, San Francisco, California and Old San Juan, Puerto Rico. Comments with reference to the proposed changes and the petition, including a request for hearing, if desired, may be submitted to the Secretary, Federal Maritime Commission, 1100 L Street, N.W., Washington, D.C., 20573, by January 27, 1977. Any person desiring a hearing on the proposed modification of the contract form and/or the approved contract system shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the petition, (as indicated hereinafter), and the statement should indicate that this has been done.

Notice of Agreement Filed by:

Howard A. Levy, Esquire, Suite 727, 17 Battery Place, New York, New York 10004.

Agreement No. 10140-5, among the above-named parties, amends Article 6 of the basic agreement and Section 1 of the Annex to provide that the parties may employ an independent neutral body to serve as its Enforcement Authority as an alternative to the employment of the Executive Director of the Associated North Atlantic Freight Conferences ("ANAFC") for that purpose.

By Order of the Federal Maritime Commission.

Dated: January 12, 1977.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.77-1409 Filed 1-14-77;8:45 am]

[Independent Ocean Freight Forwarder License No. 360]

MANHATTAN SHIPPING CO.

Order of Revocation

On January 4, 1977, Manhattan Shipping Company, 233 Broadway, New York, New York 10007, voluntarily surrendered its Independent Ocean Freight Forwarder License No. 360 for revocation.

By virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 201.1 (Revised), Section 5.01 (b), dated June 30, 1975;

It is ordered, That Independent Ocean Freight Forwarder License No. 360 issued to Manhattan Shipping Company, be and is hereby revoked effective January 4, 1977 without prejudice to reapply for a license in the future.

It is further ordered, That a copy of this Order be published in the FEDERAL REGISTER and served upon Manhattan Shipping Company.

LEROY F. FULLER,
Director, Bureau of Certification & Licensing.

[FR Doc.77-1417 Filed 1-14-77; 8:45 am]

NORTH ATLANTIC DISCUSSION AGREEMENT

Agreement Filed

Notice is hereby given that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1100 L Street, N.W., Room 10126; or may inspect the agreement at the Field Offices located at New York, N.Y., New Orleans, Louisiana, San Francisco, California and Old San Juan, Puerto Rico. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C., 20573, by February 7, 1977. Any person desiring a hearing on the proposed agreement shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the statement should indicate that this has been done.

Notice of Agreement Filed by:

Howard A. Levy, Esquire, Suite 727, 17 Battery Place, New York, New York 10004.

Agreement No. 9989-6 modifies the above-named agreement by extending its duration through August 8, 1979.

By Order of the Federal Maritime Commission.

Dated: January 12, 1977.

FRANCIS C. HURNEY,
Secretary.

SEA-LAND SERVICE, INC. AND SEATRAIN LINES INTERCARIBBEAN S.A.

Agreement Filed

Notice is hereby given that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1100 L Street, N.W., Room 10126; or may inspect the agreement at the Field Offices located at New York, N.Y., New Orleans, Louisiana, San Francisco, California and Old San Juan, Puerto Rico. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, by February 7, 1977. Any person desiring a hearing on the proposed agreement shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the statement should indicate that this has been done.

Notice of Agreement Filed by:

Mr. Frank Hiller, Jr., Commerce Manager, Sea-Land Service, Inc., P.O. Box 900, Edison, New Jersey 08817.

Agreement No. 10277 between the above-named parties is a discussion agreement whereby the parties will confer and discuss the matters of rates, charges, classifications, practices and related tariff provisions in the trade between Puerto Rico and the U.S. Virgin Islands, and the Caribbean Islands of Haiti and Jamaica.

By Order of the Federal Maritime Commission.

Dated: January 12, 1977.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.77-1415 Filed 1-14-77;8:45 am]

SOUTH ATLANTIC-NORTH EUROPE RATE AGREEMENT

Petition Filed

Notice is hereby given that the following petition has been filed with the Commission for approval pursuant to section 14b of the Shipping Act, 1916, as amended (75 Stat. 762, 46 U.S.C. 813a).

Interested parties may inspect a copy of the current contract form and of the petition, reflecting the changes proposed to be made in the language of said contract, at the Washington office of the Federal Maritime Commission, 1100 L Street, N.W., Room 10126 or at the Field Offices located at New York, N.Y., New Orleans, Louisiana, San Francisco, Cali-

fornia and Old San Juan, Puerto Rico. Comments with reference to the proposed changes and the petition, including a request for hearing, if desired, may be submitted to the Secretary, Federal Maritime Commisison, 1100 L Street, N.W., Washington, D.C., 20573, by January 27, 1977. Any person desiring a hearing on the proposed modification of the contract form and/or the approved contract system shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the petition, (as indicated hereinafter), and the statement should indicate that this has been done.

Notice of Agreement Filed by:

Howard A. Levy, Esquire, Suite 727, 17 Battery Place, New York, New York 10004.

Agreement No. 9984-9, among the parties to the above-named agreement, amends Article 6 of the basic agreement and Section 1 of the Annex to provide that the parties may employ an independent neutral body to serve as its Enforcement Authority as an alternative to the employment of the Executive Director of the Associated North Atlantic Freight Conferences ("ANAFC") for that purpose.

By Order of the Federal Maritime Commission.

Dated: January 12, 1977.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.77-1410 Filed 1-14-77;8:45 am]

FEDERAL POWER COMMISSION

[Docket No. ER77-128]

CONNECTICUT LIGHT & POWER CO.

Purchase Agreement

JANUARY 4, 1977.

Take notice that on December 28, 1976, the Connecticut Light and Power Company (CL&P) tendered for filing a proposed Purchase Agreement with Respect to Various Gas Turbine Units, dated November 30, 1976 between (1) CL&P and the Hartford Electric Light Company (HELCO), and (2) Templeton Municipal Lighting Plant (TMLP).

CL&P states that the Purchase Agreement provides for a sale to TMLP of a specified percentage of capacity and energy from five gas turbine generating units (Norwalk Harbor, Devon, South Meadow 10, Middletown and Torrington Terminal) during the period from December 1, 1976 to December 31, 1976 together with related transmission service.

CL&P states that questions as to TMLP's Capability Responsibility Obligation, under the terms of the New England Power Pool (NEPOOL) Agreement, during the Term of this Purchase Agreement affected the amounts of gas turbine capacity that could be purchased by TMLP and thus delayed execution of the agreement until a date which prevented the filing of such rate schedule more than thirty days prior to the proposed effective date.

CL&P therefore requests that, in order to permit TMLP to receive urgently needed capacity, and in order to allow CL&P and HELCO to receive payment for such capacity, the Commission, pursuant to § 35.11 of its regulations, waive the thirty-day notice period and permit the rate schedule filed to become effective on December 1, 1976.

CL&P states that the capacity charge for the proposed service was a negotiated rate, the monthly transmission charge is equal to one-twelfth of the annual average unit cost of transmission service on the Northeast Utilities (NU) system determined in accordance with Section 13.9 of the New England Power Pool (NEPOOL) Agreement and the uniform rules adopted by the NEPOOL Executive Committee, multiplied by the number of kilowatts of winter capability which TMLP is entitled to receive, reduced to give due recognition of the payments made by TMLP for transmission services on intervening systems, and the variable maintenance charge was arrived at through negotiations.

CL&P requests an effective date of December 1, 1976 for the TMLP agreement.

HELCO has filed a certificate of concurrence in this docket.

CL&P states that copies of this rate schedule have been mailed or delivered to CL&P, Hartford, Connecticut, HELCO, Hartford, Connecticut and TMLP, Baldwinville, Massachusetts.

CL&P further states that the filing is in accordance with Part 35 of the Commission's Regulations.

Any person desiring to be heard or to protest said agreement should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, N.W., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 21, 1977. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a petition to intervene. Copies of this agreement are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-1438 Filed 1-14-77;8:45 am]

[Docket No. RP73-23 (PGA77-5)]

LAWRENCEBURG GAS TRANSMISSION CORP.

Filing of Revised Gas Tariff Sheets

JANUARY 5, 1977.

Take notice that on December 20, 1976 Lawrenceburg Gas Transmission Corporation (Lawrenceburg) tendered for filing two (2) revised gas tariff sheets to its FPC Gas Tariff, First Revised Volume No. 1, both of which are dated as issued on December 17, 1976, proposed to become effective February 1, 1977 and identified as follows:

Eighth Revised Sheet No. 4, and
Seventh Revised Sheet No. 18.

The proposed changes contained therein would increase revenues from jurisdictional sales by $276,926 as compared to revenues at Lawrenceburg's rates proposed to become effective January 1, 1977, based on the 12 months ending November 30, 1976.

Lawrenceburg states that these revised gas tariff sheets are being filed pursuant to the Purchased Gas Cost Adjustment provision in its FPC Gas Tariff, First Revised Volume No. 1, in order to track a change in its cost of gas purchased from Texas Gas Transmission Corporation, which is also proposed to become effective February 1, 1977.

Lawrenceburg requests an effective date of February 1, 1977 on its proposed tariff sheets and requests that the Commission waive its notice requirements, as required, in order that its proposed tariff sheets can become effective on that date.

Lawrenceburg states that copies of this filing have been mailed to its two wholesale customers and to the interested state commissions.

Any person desiring to be heard or to protest said filings should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 21, 1977. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-1436 Filed 1-14-77;8:45 am]

[Docket No. CP77-97]

MID LOUISIANA GAS CO.

Application

JANUARY 4, 1977.

Take notice that on December 17, 1976, Mid Louisiana Gas Company (Applicant), 300 Poydras Street, New Orleans, Louisiana 70130, filed in Docket No. CP77-97 an application pursuant to section 7(c) of the Natural Gas Act and § 157.7(b) of the Regulations thereunder (18 CFR 157.7(b)) for a certificate of public convenience and necessity authorizing the construction, during the twelve-month period, February 1, 1977, through January 31, 1978, and operation of facilities to enable Applicant to take into its certificated main pipeline system natural gas which would be purchased from producers and other similar sellers thereof, all as more fully set forth in the application on file with the Commission and open to public inspection.

The stated purpose of this budget-type application is to augment Applicant's ability to act with reasonable dispatch in connecting to its pipeline system supplies of natural gas which may become available from various producing areas generally co-extensive with its pipeline system or the systems of other pipeline companies which may be authorized to transport gas for the account of or exchange gas with Applicant.

Applicant states that the total cost of the proposed facilities would not exceed $500,000 and that the cost of any single project would not exceed $125,000.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 21, 1977, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will by unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-1432 Filed 1-14-77;8:45 am]

[Docket No. RP74-41 (PGA77-4)]

TEXAS EASTERN TRANSMISSION CORP.

Proposed Changes in FPC Gas Tariff

JANUARY 5, 1977.

Take notice that Texas Eastern Transmission Corporation on December 17, 1976 tendered for filing proposed changes in its FPC Gas Tariff, Fourth Revised Volume No. 1, the following sheets:

Twenty-eighth Revised Sheet No. 14
Twenty-eighth Revised Sheet No. 14A
Twenty-eighth Revised Sheet No. 14B
Twenty-eighth Revised Sheet No. 14C
Twenty-eighth Revised Sheet No. 14D

These sheets are issued pursuant to the purchased gas cost adjustment provision contained in Section 23 of the General Terms and Conditions of Texas Eastern's FPC Gas Tariff, Fourth Revised Volume No. 1. The change in Texas Eastern rates proposed by this filing reflects changes in the cost of gas purchased from one of Texas Eastern's pipeline suppliers, Texas Gas Transmission Corporation. The proposed effective date of the above tariff sheets is February 1, 1977.

Copies of the filing were served upon the company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 21, 1977. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-1435 Filed 1-14-77;8:45 am]

[Docket No. CP77-109]

TEXAS EASTERN TRANSMISSION CORP.

Abbreviated Application

JANUARY 4, 1977.

Take notice that on December 27, 1976, Texas Eastern Transmission Corporation (Applicant), P.O. Box 2521, Houston, Texas, 77001, filed an application pursuant to Section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of 28.5 miles of 10-inch pipeline, a 1100 H.P. compressor station and appurtenant facilities for the receipt, compression and transportation of natural gas volumes produced from Block 110, High Island Area, Offshore Texas. Such volumes will be purchased from Continental Oil Company (Conoco) and transported to the west bank of the Sabine River by Transcontinental Gas Pipeline Corporation (Transco).[1] Whereupon, Applicant will then transport the approximate 40,000 Mcf per day to its Vidor Compressor Station. The facilities are all to be located in Jefferson County, Texas and installed at a cost of $10,370,000.

Applicant states that the installation and operation of the proposed facilities would allow Applicant's customers to benefit from the advance payment agreement entered into with Conoco and in addition, it would avoid the construction of duplicating facilities eminating from Block 110. Applicant, also requested a temporary certificate pending consideration of its application in order to allow for the timely commencement and completion in conjunction with Transco's North High Island project.

Any person desiring to be heard or to make any protest with reference to said application, on or before January 27, 1977, should file with the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. A petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding, or to participate as a party in any hearing therein, must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-1454 Filed 1-14-77;8:45 am]

[1] Transco on March 16, 1976 filed an application in Docket No. CP76-304, seeking authorization to construct and operate a North High Island Pipeline System. On October 1, 1976, Transco was granted a Temporary Certificate.

[Docket No. CP77-85]

TRANSCONTINENTAL GAS PIPE LINE CORP.

Application

JANUARY 4, 1977.

Take notice that on December 13, 1976, Transcontinental Gas Pipe Line Corporation (Applicant), P.O. Box 1396, Houston, Texas 77001, filed in Docket No. CP77-85 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for Union, Gas Company (Union), an existing resale customer of Applicant, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that pursuant to a transportation agreement (Agreement) dated October 15, 1976, it would receive initially approximately 185 Mcf per day of natural gas at a mutually agreeable point on its system near the Eunice No. 1 Interchange on its main line in Evangeline Parish, Louisiana. From that point, it is indicated, Applicant would transport the subject gas to Union at existing points of delivery in Pennsylvania. Applicant further states that Union is purchasing the subject gas from John H. Ware, 3rd, Union's president, who developed the supply through participation in an exploration and drilling venture.

It is stated that the proposed service would be on an interruptible basis and that initially the quantity to be transported under the Agreement would be 185 Mcf at 15.025 psia but in no event would the quantity to be transported, minus quantities retained for compressor fuel and line loss make-up, exceed the quantity of gas deliveries to Union Curtailed under Applicant's Rate Schedule CD-3. It is stated that the charge for the transportation service would be 22.0 cents per Mcf at 14.73 psia and that 4.4 percent of the quantities would be retained by Applicant to compensate for compressor fuel and line loss make-up. It is further stated that the proposed transportation service would assist Union in alleviating the effects of Applicant's curtailments of deliveries.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 21, 1977, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-1433 Filed 1-14-77;8:45 am]

[Docket No. CP72-53]

TRUNKLINE GAS CO. AND TEXAS GAS TRANSMISSION CO.

Petition To Amend

JANUARY 5, 1977.

Take notice that on December 7, 1976, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77001, and Texas Gas Transmission Corporation (Texas Gas), P.O. Box 1160, Owensboro, Kentucky 42301 (sometimes jointly referred to below as Petitioners) filed in Docket No. CP72-53 a joint petition to amend the Commission's order of January 24, 1972, issued in the instant docket pursuant to Section 7(c) of the Natural Gas Act, by deleting authorization to exchange natural gas in Cameron Parish, Louisiana, and by authorizing the exchange of natural gas in Egan, Louisiana, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioners state that exchanges of natural gas were authorized by the Commission's order of January 24, 1972, in said docket, whereunder Trunkline would deliver up to an average daily quantity of 5,000 Mcf to Texas Gas at Samedan Oil Corporation's Miami Corporation B-1 Well in Sec. 34, T. 13 S., R. 5 W., Cameron Parish, Louisiana, and Texas Gas would redeliver the same quantity of gas to Trunkline at facilities operated by Shell Oil Company in the Chalkley Field Area located in Sec. 27, T. 12 S., R. 6 W., Cameron Parish, Louisiana.

Petitioners propose to discontinue exchanges at the Chalkley Field and to operate, in its place, an exchange point at the tailgate of the Continental Oil Company Egan Plant in Egan, Louisiana. Petitioners state that no new facilities are required to carry out the proposed change. It is further stated that the proposed change would increase operating flexibility on Petitioners' pipeline systems and would reduce the imbalance of volumes, owed to Trunkline by Texas Gas, attributable to Trunkline's interest in the Lake Misere, Louisiana, Field.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before January 28, 1977, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-1437 Filed 1-14-77;8:45 am]

GENERAL SERVICES ADMINISTRATION

[Intervention Notice No. 20]

COMMONWEALTH EDISON CO.

Proposed Intervention In Electric Rate Increase Proceeding

The General Services Administration seeks to intervene in a proceeding before the Illinois Commerce Commission concerning the application of the Commonwealth Edison Company for an increase in annual revenues. The GSA represents the interests of the executive agencies of the United States Government, as users of electric utility services.

The Commonwealth Edison Company has filed new tariffs and a Petition for an Interim Rate Increase, increasing their electric revenues by $263 million annually. The proposed increase would have an impact of over $2 million annually on the Federal Government.

Persons desiring to make inquiries concerning this case to GSA should submit them, in writing, to Mr. Spence W. Perry, Assistant General Counsel, Regulatory Law Division, General Services Administration, 18th & F Streets, NW., Washington, D.C. 20405, telephone (202) 566-0750, on or before February 16, 1977, and refer to this notice number.

Persons making inquiries are put on notice that the making of an inquiry shall not serve to make any persons parties of record in the proceeding.

(Sec. 201(a)(4), Federal Property and Administrative Services Act, (40 U.S.C. 481 (a)(4)).)

Dated: January 5, 1977.

JACK ECKERD,
Administrator of General Services.

[FR Doc.77-1352 Filed 1-14-77;8:45 am]

[FPMR Temp. Reg. F-409]

SECRETARY OF DEFENSE

Delegation of Authority

1. *Purpose.* This regulation delegates authority to the Secretary of Defense to represent, in conjunction with the Administrator of General Services, the consumer interests of the executive agencies of the Federal Government in an electrical rate increase proceeding and a concurrent request for a revision of existing depreciation rates.

2. *Effective date.* This regulation is effective immediately.

3. *Delegation.* a. Pursuant to the authority vested in me by the Federal Property and Administrative Services Act of 1949, 63 Stat. 377, as amended, particularly sections 201(a)(4) and 205(d) (40 U.S.C. 481(a)(4) and 486(d)), authority is delegated to the Secretary of Defense to represent the consumer interests of the Federal executive agencies before the New Jersey Board of Public Utility Commissioners (Docket Nos. 7610-1021 and 7610-1022) involving two petitions filed by the New Jersey Central Power and Light Company, requesting an increase in electric rates and a revision of existing depreciation rates, respectively. The authority delegated to the Secretary of Defense shall be exercised concurrently with the Administrator of General Services.

b. The Secretary of Defense may redelegate this authority to any officer, official, or employee of the Department of Defense.

c. This authority shall be exercised in accordance with the policies, procedures, and controls prescribed by the General Services Administration, and shall be exercised in cooperation with the responsible officers, officials, and employees thereof.

JACK ECKERD,
Administrator of General Services.

JANUARY 5, 1977.

[FR Doc.77-1353 Filed 1-14-77;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Alcohol, Drug Abuse, and Mental Health Administration

NATIONAL ADVISORY COUNCIL ON ALCOHOL ABUSE AND ALCOHOLISM

Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. Appendix I), announcement is made of the following National Advisory body scheduled to assemble during the month of February 1977:

NATIONAL ADVISORY COUNCIL ON ALCOHOL ABUSE AND ALCOHOLISM

Time: February 7-8, 9:30 a.m.
Place: Conference Rooms G and H, Parklawn Building, Rockville, Maryland.
Type of Meeting: Open—February 7 Closed—February 8.
Contact: David G. Orchard, Parklawn Building, Room 16-86, 5600 Fishers Lane, Rockville, Maryland 20857, 301-443-4703.

Purpose: The National Advisory Council on Alcohol Abuse and Alcoholism advises the Secretary, Department of Health, Education, and Welfare, the Administrator, Alcohol, Drug Abuse, and Mental Health Administration and the Director, National Institute on Alcohol Abuse and Alcoholism regarding policy direction and program issues of national significance in the area of alcohol abuse and alcoholism. Reviews all grant applications submitted, evaluates these applications in terms of scientific merit and coherence with Department policies, and makes recommendations to the Secretary with respect to approval and amount of award.

Agenda: February 7 will be devoted to Council discussion of (1) Fiscal Year 1978 budget, (2) status report on regulations to implement NIAAA renewal legislation, (3) discussion of revised needs formula for distributing state formula grant funds, (4) status report on Intramural Research, (5) report on activities of the Interagency Committee and (6) discussion of Report to Congress on grants to National Voluntary Organizations.

On February 8 the Council will conduct a final review of grant applications for Federal assistance and this session will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of Section 552(b)(5) and 552(b)(6), Title 5 U.S. Code and section 10(d) of Pub. L. 92-463 (5 U.S.C. Appendix I).

Agenda items are subject to change as priorities dictate.

Substantive program information may be obtained from the contact person listed above.

The NIAAA Information Officer who will furnish summaries of the meeting and a roster of Council members is Mr. Harry C. Bell, Associate Director for Public Affairs, National Institute on Alcohol Abuse and Alcoholism, Room 6C-15, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, 301-443-3306.

Dated: January 12, 1977.

CAROLYN T. EVANS,
Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc.77-1374 Filed 1-14-77;8:45 am]

ADVISORY COMMITTEES

Meetings

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. Appendix I), announcement is made of the following National Advisory bodies scheduled to assemble during the month of February 1977:

DRUG ABUSE DEMONSTRATION REVIEW COMMITTEE

Time: February 9-11; 9:00 a.m.
Place: Conference Room 677, Rockwall Building, Rockville, Maryland.
Type of Meeting: Open—February 9, 9:00-10:30 a.m., Closed—Otherwise. Contact: Thomas C. Voskuhl, Rockwall Building, Room 628, 11400 Rockville Pike, Rockville, Maryland 20852, 301-443-4060.

Purpose: The Committee is charged with the initial review of grant applications for Federal assistance in the program areas administered by the National Institute on Drug Abuse relating to demonstration activities and makes recommendations to the National Advisory Council on Drug Abuse for final review.

Agenda: From 9:00 a.m. to 10:30 a.m., February 9, the meeting will be open for discussion of administrative announcements and program developments. Otherwise the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of Sections 552(b)(5) and 552(b)(6), Title 5 U.S. Code and Section 10(d) of Pub. L. 92-463 (5 U.S.C. Appendix I).

MINORITY GROUP MENTAL HEALTH PROGRAMS REVIEW COMMITTEE

Time: February 24-26; 9:00 a.m.
Place: Moroccan Conference Room, Biltmore Hotel, 515 South Olive Street, Los Angeles, Calif.
Type of meeting: Open—February 24, 9:00-10:30 a.m. Closed—Otherwise.
Contact: Mrs. Edna M. Hardy Hill, Parklawn Building, Room 7-102, 5600 Fishers Lane, Rockville, Maryland 20857, 301-443-2988.

Purpose: The Committee is charged with the initial review of grant applications for Federal assistance in the program areas administered by the National Institute of Mental Health relating to minority mental health research and training and makes recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 9:00 a.m. to 10:30 a.m., February 24, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of Section 552(b)(5) and 552(b)(6) Title 5 U.S. Code and Section 10(d) of Pub. L. 92-463 (5 U.S.C. Appendix I).

Substantive information may be obtained from the contact persons listed above.

The NIDA Information Officer who will furnish summaries of the meeting and a roster of the Committee members is Mr. Kenneth Howard, Director, Office of Communications and Public Affairs, 11400 Rockville Pike, Room 814, Rockville, Maryland 20852, 301-443-6245. The NIMH Information Officer who will furnish summaries of the meeting and a roster of the Committee members is Mr. Edwin Long, Deputy Director, Division of Scientific and Public Information, NIMH, Parklawn Building, Room 15-105, 5600 Fishers Lane, Rockville, Maryland 20857, 301-443-3600.

Dated: January 6, 1977.

CAROLYN T. EVANS,
Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc.77-1382 Filed 1-14-77;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

National Institutes of Health

MEETINGS

Pursuant to Public Law 92-463, notice is hereby given of the meetings of the following study sections for February and March 1977 and the individuals from

whom summaries of meetings and rosters of committee members may be obtained.

These meetings will be open to the public to discuss administrative details relating to Study Section business for approximately one hour at the beginning of the first session of the first day of the meeting. Attendance by the public will be limited to space available. These meetings will be closed thereafter in accordance with the provisions set forth in Sections 552(b)(4), 552(b)(5) and 552(b)(6), Title 5, U.S. Code and Section 10(d) of Pub. L. 92-463, for the review, discussion and evaluation of individual initial pending, supplemental and renewal grant applications. The closed portions of the meetings involve solely the internal expression of views and judgments of study section members on individual applications which contain information of a proprietary or confidential nature, including detailed research protocols, designs, and other technical information; financial data, such as salaries; and personal information concerning individuals associated with the applications.

Mr. Richard Turlington, Chief, Grants Inquiries Office of the Division of Research Grants, Westwood Building, National Institutes of Health, Bethesda, Maryland 20014, telephone area code 301-496-7441 will furnish summaries of the meetings and rosters of committee members. Substantive program information may be obtained from each Executive Secretary whose name, room number, and telephone number are listed below each study section. Anyone planning to attend a meeting should contact the Executive Secretary to confirm the exact meeting time.

Study section	February to March 1977 meetings	Time	Location
Bacteriology and Mycology, Dr. Milton Gordon, room 234, telephone 301-496-7340.	Mar. 3 to 5	8:30	Holiday Inn, Bethesda, Md.
Biophysics and Biophysical Chemistry A, Dr. Irvin Fuhr, room 236, telephone 301-496-7060.	Mar. 1 to 6	9:00	Mayflower Hotel, Washington, D.C.
Cardiovascular and Pulmonary, Dr. Vincent J. Cairoli, room 339, telephone 301-496-7901.	Mar. 2 to 5	8:30	Holiday Inn, Bethesda, Md.
Cardiovascular and Renal, Dr. Floyd O. Atchley, room 320, telephone 301-496-7901.	do	9:00	Holiday Inn, Chevy Chase, Md.
Cell Biology, Dr. Evelyn A. Horenstein, room 2A-04, telephone 301-496-7020.	Feb. 18 to 20	8:30	Islandia Hyatt House, San Diego, Calif.
Communicative Sciences, Mr. Frederick J. Gutter, room 321, telephone 301-496-7550.	Mar. 1 to 3	8:30	Room 4, building 31, Bethesda, Md.
Computer and Biomathematical Sciences, Dr. Bernice S. Lipkin, room 310, telephone 301-496-7508.	Feb. 23 to 25	9:00	Holiday Inn, Chevy Chase, Md.
Developmental Behavioral Sciences, Dr. Bertie H. R. Woolf, room 232, telephone 301-496-7471.	Feb. 28 to Mar. 2	8:30	Holiday Inn, Bethesda, Md.
Endocrinology, Mr. Morris M. Graff, room 333, telephone 301-496-7346.	Feb. 14 to 17	7:00 p.m.	Vacation Village Hotel, San Diego, Calif.
Epidemiology and Disease Control, Mr. Glenn G. Lamson, Jr., room 325, telephone 301-496-7221.	Mar. 2 to 4	8:30	Room 6, building 31, C wing, Bethesda, Md.
Experimental Psychology, Dr. A. Keith Murray, room 220, telephone 301-496-7004.	Feb. 21 to 24	9:00	Shoreham Americana, Washington, D.C.
Experimental Therapeutics, Dr. Anne R. Bourke, room 319, telephone 301-496-7830.	Feb. 24 to 26	8:30	Kenwood Country Club, Bethesda, Md.
General Medicine A, Dr. Harold M. Davidson, room 354, telephone 301-496-7797.	Mar. 7 to 9	9:00	Room 6, building 31, C wing, Bethesda, Md.
General Medicine B, Dr. William F. Davis, Jr., room 322, telephone 301-496-7730.	Mar. 2 to 5	9:00	Shoreham Americana, Washington, D.C.
Genetics, Dr. Katherine S. Wilson, room 319, telephone 301-496-7271.	Mar. 3 to 5	9:00	Denver Hilton, Denver, Colo.
Human Embryology and Development, Dr. Samuel Moss, room 221, telephone 301-496-7597.	Feb. 14 to 17	1:00 p.m.	Vacation Village Hotel, San Diego, Calif.
Immunobiology, Dr. James H. Turner, room 233, telephone 301-496-7780.	Mar. 2 to 4	9:00	Embassy Row Hotel, Washington, D.C.
Immunological Sciences, Dr. Lottie Kornfeld, room 233, telephone 301-496-7170.	Feb. 28 to Mar. 2	9:00	Sheraton Inn, Silver Spring, Md.
Medicinal Chemistry A, Dr. Asher A. Hyatt, room 222, telephone 301-496-7286.	Mar. 3 to 6	9:00	Hyatt House, Arlington, Va.
Molecular Biology, Dr. Donald T. Disque, room 328, telephone 301-469-7839.	Feb. 24 to 27	8:30	Room 8, building 31, C wing, Bethesda, Md.
Molecular Cytology, Dr. Wendell H. Kyle, room 325, telephone 301-496-7149.	Mar. 3 to 5	8:30	Room 10, building 31, C wing, Bethesda, Md.
Neurology A, Dr. William E. Morris, room 326, telephone 301-496-7095.	Mar. 2 to 5	9:00	Holiday Inn, Chevy Chase, Md.
Neurology B, Dr. Willard L. McFarland, room 2A-10, telephone 301-496-7422.	Feb. 24 to 26	8:30	Shoreham Americana, Washington, D.C.
Nutrition, Dr. John R. Schubert, room 204, telephone 301-496-7178.	Feb. 22 to 25	7:00 p.m.	Kenwood Country Club, Bethesda, Md.
Oral Biology and Medicine, Dr. Thomas M. Turpley, Jr., room 207, telephone 301-496-7818.	do	9:00	Holiday Inn, Bethesda, Md.
Pathobiological Chemistry, Dr. J. Sri Ram, room 206, telephone 301-496-7432.	Mar. 2 to 5	9:00	Room 9, building 31, C wing, Bethesda, Md.
Pathology A, Dr. William B. Savchuck, room 337, telephone 301-496-7305.	Feb. 22 to 25	5:00 p.m.	Sheraton Inn, Silver Spring, Md.
Pathology B, Mrs. Barbara S. Bynum, room 332, telephone 301-496-7244.	Feb. 23 to 25	8:30	Holiday Inn, Bethesda, Md.
Pharmacology, Dr. Joseph A. Kaiser, room 334, telephone 301-496-7408.	Feb. 21 to 26	8:30	Shoreham Americana, Washington, D.C.
Physiology, Dr. Clara E. Hamilton, room 209, telephone 301-496-7878.	Feb. 14 to 16	9:00	Braniff Place Hotel, New Orleans, La.
Population Research, Miss Carol A. Campbell, room 210, telephone 301-496-7140.	Mar. 4 to 5	9:00	Dupont Plaza, Washington, D.C.
Radiation, Dr. Robert L. Straube, room 309, telephone 301-496-7510.	Feb. 22 to 24	9:00	Sheraton Park Hotel, Washington, D.C.
Surgery A, Dr. Keith Kraner, room 336, telephone 301-496-7771.	Mar. 3 to 5	8:30	Howard Johnsons Motor Lodge, Arlington, Va.
Surgery B, Dr. Joe W. Atkinson, room 348, telephone 301-496-7506.	do	8:30	Do.
Tropical Medicine and Parasitology, Dr. Betty June Myers, room 319, telephone 301-496-7494.	Feb. 23 to 25	8:30	Landow Bldg., room C418, Bethesda, Md.
Visual Sciences A, Dr. Orvil E. A. Bolduan, room 2A-05, telephone 301-496-7180.	Mar. 2 to 4	9:00	Shoreham Hotel, Washington, D.C.
Visual Sciences B, Dr. Marie A. Jakus, room 353, telephone 301-496-7251.	Feb. 23 to 26	9:00	Holiday Inn, Bethesda, Md.

(Catalog of Federal Domestic Assistance Program Nos. 13.333, 13.337, 13.349, 13.393–13.396, 13.836–13.844, 13.846–13.871, 13.876, National Institutes of Health, DHEW.)

Dated: January 7, 1977.

SUZANNE L. FREMEAU,
Committee Management Officer, National Institutes of Health.

[FR Doc.77-1261 Filed 1-14-77;8:45 am]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR 10458-A]

OREGON

Order Providing for Opening of Public Land

JANUARY 7, 1977.

1. In an exchange of lands made under the provisions of section 8 of the Act of June 28, 1934, 48 Stat. 1269, 1272, as amended and supplemented, 43 U.S.C. 315g (1970), the following land has been reconveyed to the United States:

WILLAMETTE MERIDIAN

T. 3 S., R. 7 E.,
Sec. 6, lot 4.

The area described contains 41.94 acres in Clackamas County.

2. The subject land is located approximately 15 miles east of the Town of Sandy. Elevation varies from 1,600 to 2,200 feet above sea level, and the topography ranges from moderately steep to very steep and mountainous. Vegetation consists primarily of second-growth Douglas fir timber. In the past, the land has been used for timber production, and it will be managed, together with adjoining national resource lands, for multiple use.

3. Subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law, the land described in paragraph 1 hereof is hereby open to operation of the public land laws, including the mining laws (Ch. 2, Title 30 U.S.C.) and the mineral leasing laws. All valid applications received at or prior to 10:00 a.m. February 14, 1977, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

4. Inquiries concerning the land should be addressed to the Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, P.O. Box 2965, Portland, Oregon 97208.

HAROLD A. BERENDS,
Chief, Branch of Lands and Minerals Operations.

[FR Doc.77-1356 Filed 1-14-77;8:45 am]

[OR 11270]

OREGON

Order Providing for Opening of Public Lands

JANUARY 7, 1977.

1. In an exchange of lands made under the provisions of section 8 of the Act of June 28, 1934, 48 Stat. 1269, 1272, as amended and supplemented, 43 U.S.C. 315g (1970), the following lands have been reconveyed to the United States:

WILLAMETTE MERIDIAN

T. 11 S., R. 40 E.,
Sec. 13, E½SE¼;
Sec. 24, NE¼NE¼.
T. 5 N., R. 42 E.,
Sec. 28, lots 5, 6, and 7, S½SE¼;
Sec. 33, NE¼NW¼.

The areas described aggregate 333.71 acres in Baker and Wallowa Counties.

2. The subject lands consist of one parcel located approximately 12 miles southeast of the City of Baker, and one pracel located adjacent to the Grande Ronde River approximately 25 miles north of the Town of Wallowa. The parcel located southeast of the City of Baker is at an elevation of 5,000 feet above sea level; the topography is gently sloping; and the vegetation consists primarily of cutover timber with some commercial size White fir and Douglas fir. The parcel adjacent to the Grande Ronde River varies in elevation from 1,830 to 3,200 feet above sea level; the topography is very steep; and the vegetation consists primarily of commercial size Douglas fir and Ponderosa pine. In the past the lands have been used for timber production, and the parcel adjacent to the Grande Ronde River has public recreational values. The lands will be managed, together with adjoining national resource lands, for multiple use.

3. Subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law, the lands described in paragraph 1 hereof are hereby open to operation of the public land laws, including the mining laws (Ch. 2, Title 30 U.S.C.) and the mineral leasing laws. All valid applications received at or prior to 10:00 a.m. February 14, 1977, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

4. Inquiries concerning the lands should be addressed to the Chief, Branch of Lands and Mineral Operations, Bureau of Land Management, P.O. Box 2965, Portland, Oregon 97208.

HAROLD A. BERENDS,
Chief, Branch of Lands and Minerals Operations.

[FR Doc.77-1357 Filed 1-14-77;8:45 am]

[OR 11292]

OREGON

Order Providing for Opening of Public Land

JANUARY 7, 1977.

1. In an exchange of lands made under the provisions of section 8 of the Act of June 28, 1934, 48 Stat. 1269, 1272, as amended and supplemented, 43 U.S.C. 315g (1970), the following land has been reconveyed to the United States:

WILLAMETTE MERIDIAN

T. 38 S., R. 11 E.,
Sec. 26, SW¼NE¼, SW¼, and W½SE¼;
Sec. 35, NW¼NE¼.

The area described contains 320 acres in Klamath County.

2. The United States acquired only one-half of the mineral rights with the land in the SW¼NE¼ and W½SE¼ of said sec. 26 and the NW¼NE¼ of said sec. 35.

3. The subject land consists of one parcel located approximately 20 miles east of the City of Klamath Falls. Elevation varies from 4,500 to 4,700 feet above sea level, and the topography is generally flat to rolling. Vegetation consists primarily of sagebrush, native grasses, and second-growth pine. In the past, the land has been used for timber production and livestock grazing. The land also has wildlife habitat values, and it will be managed, together with adjoining national resource lands, for multiple use.

4. Subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law, the land described in paragraph 1 hereof is hereby open (except as provided in paragraph 2 hereof) to operation of the public land laws, including the mining laws (Ch. 2, Title 30 U.S.C.) and the mineral leasing laws. All valid applications received at or prior to 10:00 a.m. February 14, 1977, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

5. Inquiries concernnig the land should be addressed to the Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, P.O. Box 2965, Portland, Oregon 97208.

HAROLD A. BERENDS,
Chief, Branch of Lands and Minerals Operations.

[FR Doc.77-1358 Filed 1-14-77;8:45 am]

[OR 14958]

OREGON

Order Providing for Opening of Public Land

JANUARY 7, 1977.

1. In an exchange of lands made under the provisions of the Act of October 2, 1968, 82 Stat. 906, the following land has been reconveyed to the United States:

WILLAMETTE MERIDIAN

T. 33 S., R. 10 W.,
Sec. 10, that parcel of land located in lot 11, more particularly described as follows: Beginning at the C-W-NE ¼ section corner of said sec. 10; thence west along the north line of said lot 11, 146.2 feet; thence southerly parallel to the east line of said lot 11 to the Rogue River, 1,140.82 feet, more or less; thence easterly along the Rogue River to the east line of said lot 11; thence northerly along the east line of said lot 11 to the point of beginning.

The area described contains 3.74 acres in Curry County.

2. The land described in paragraph 1 hereof is reserved and set aside for the

protection and preservation of the scenic and recreation areas adjacent to the Rogue River and its tributaries, and remains withdrawn from all forms of appropriations under the public land laws, including the mining but not the mineral leasing laws nor disposal of materials under the Act of July 31, 1947 (61 Stat. 681; 69 Stat. 367; 30 U.S.C. 601–604), as amended, nor lease or sale under the Recreation and Public Purposes Act of June 14, 1926 (44 Stat. 741; 68 Stat. 173; 43 U.S.C. 869), as amended.

3. The subject land lies adjacent to the Rogue River approximately 40 miles upstream from the City of Gold Beach. Elevation varies from 340 to 800 feet above sea level, and the topography is generally flat in the northern portion with a steep slope southward towards the river. Vegetation consists primarily of native brush and grasses with scattered hardwood and conifer trees. In the past, the land has been used for cabin site purposes. The land has public recreational and wildlife habitat values, and it will be managed, together with adjoining national resources lands, for multiple use.

4. Subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law, the land described in paragraph 1 hereof is hereby open (except as provided in paragraph 2 hereof) to operation of the public land laws, including the mineral leasing laws. All valid applications received at or prior to 10 a.m. February 14, 1977, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

5. Inquiries concerning the land should be addressed to the Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, P.O. Box 2965, Portland, Oregon 97208.

HAROLD A. BERENDS,
Chief, Branch of Lands and Minerals Operations.

[FR Doc.77-1359 Filed 1-14-77;8:45 am]

[OR 10566 (Wash.)]

WASHINGTON

Order Providing for Opening of Public Land

JANUARY 7, 1977.

1. In an exchange of lands made under the provisions of section 8 of the Act of June 28, 1934, 48 Stat. 1269, 1272, as amended and supplemented, 43 U.S.C. 315g (1970), the following land has been reconveyed to the United States:

WILLAMETTE MERIDIAN

T. 10 N., R. 31 E.,
Sec. 11, E½ and NW¼.

The area described contains 480 acres in Franklin County.

2. The subject land is located in the area known as the Juniper Forest approximately 15 miles northeast of the City of Pasco. Elevation ranges from 800 to 850 feet above sea level, and the topography is generally rolling. Vegetation consists primarily of rabbitbrush, native grasses, and western juniper. In the past, the land has been used for livestock grazing purposes. The land has outdoor recreational values, and it will be managed, together with adjoining national resource lands, for multiple use.

3. Subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law, the land described in paragraph 1 hereof is hereby open to operation of the public land laws, including the mining laws (Ch. 2, Title 30 U.S.C.) and the mineral leasing laws. All valid applications received at or prior to 10:00 a.m., February 14, 1977, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

4. Inquiries concerning the land should be addressed to the Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, P.O. Box 2965, Portland, Oregon 97208.

HAROLD A. BERENDS,
Chief, Branch of Lands and Minerals Operations.

[FR Doc.77-1354 Filed 1-14-77;8:45 am]

[OR 11296 (Wash.)]

WASHINGTON

Order Providing for Opening of Public Land

JANUARY 7, 1977.

1. In an exchange of lands made under the provisions of section 8 of the Act of June 28, 1934, 48 Stat. 1269, 1272, as amended and supplemented, 43 U.S.C. 315g (1970), the following land has been reconveyed to the United States:

WILLAMETTE MERIDIAN

T. 11 N., R. 32 E.,
Sec. 21, S½SW¼;
Sec. 29;
Sec. 33, that portion of the NW¼ lying north of a straight line drawn between the N¼ corner and the W¼ corner of said sec. 33.

The area described contains 800 acres in Franklin County.

2. The subject land is located in the area known as the Juniper Forest approximately 18 miles northeast of the City of Pasco. Elevation ranges from 800 to 850 feet above sea level, and the topography is generally rolling. Vegetation consists primarily of native grasses, rabbitbrush, and western juniper. In the past, the land has been used for livestock grazing purposes. The land has outdoor recreational values, and it will be managed, together with adjoining national resource lands, for multiple use.

3. Subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law, the land described in paragraph 1 hereof is hereby open to operation of the public land laws, including the mining laws (Ch. 2, Title 30 U.S.C.) and the mineral leasing laws. All valid applications received at or prior to 10:00 a.m. February 14, 1977, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

4. Inquiries concerning the land should be addressed to the Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, P.O. Box 2965, Portland, Oregon 97208.

HAROLD A. BERENDS,
Chief, Branch of Lands and Minerals Operations.

[FR Doc.77-1355 Filed 1-14-77;8:45 am]

National Park Service

CAPE COD NATIONAL SEASHORE ADVISORY COMMISSION

Notice of Meeting

Notice is hereby given in accordance with Public Law 92-463 that a meeting of the Cape Cod National Seashore Advisory Commission will be held on Friday, February 4, 1977, at 1:30 p.m. at the Headquarters Building, Cape Cod National Seashore, Marconi Station Area, South Wellfleet, Massachusetts.

The Commission was established by Public Law 92-463 to meet and consult with the Secretary of the Interior on general policies and specific matters relating to the development of Cape Cod National Seashore.

The purpose of the meeting is to consider the following Agenda items: (1) Alleged pollution, Province Lands area, (2) Proposed fee schedule for offroad vehicle use, and (3) Progress Reports by Subcommittees. The Superintendent will give a progress report covering current problems and items of interest, which will be reviewed and discussed.

The meeting is open to the public. It is expected that 15 persons will be able to attend the session in addition to Commission members. Interested persons may make oral/written presentations to the Commission or file written statements. Such requests should be made to the official listed below at least seven days prior to the meeting.

Further information concerning this meeting may be obtained from Lawrence C. Hadley, Superintendent, Cape Cod National Seashore, South Wellfleet, Massachusetts 02663 (telephone: 617-349-3785). Minutes of the meeting will be available for public information and copying four weeks after the meeting at the office of the Superintendent, Cape Cod National Seashore, South Wellfleet, Massachusetts.

Dated: January 4, 1977.

DENNIS P. GALVIN,
Acting Regional Director,
North Atlantic Region.

[FR Doc.77-1610 Filed 1-14-77;9:01 am]

NORTH ATLANTIC REGION ADVISORY COMMITTEE

Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act—Public Law 92-463, that a meeting of the North Atlantic Committee will be held at 2 p.m., E.S.T. on February 3, 1977 through approximately 3 p.m. E.S.T. on February 4, 1977 at the Morgan House, Route 9, Hyde Park, New York.

The purpose of the Committee is to provide for the free exchange of ideas between the National Park Service and the Public, and to facilitate the solicitation of advice or other counsel from members of the public on problems and programs pertinent to the North Atlantic Region.

The members of the Committee are as follows:

Mr. John Cole, Brunswick, Maine.
Mrs. Antoinette Downing, Providence, Rhode Island.
Ms. Helen Fenske, Green Village, New Jersey.
Dr. Charles H. W. Foster, New Haven, Connecticut.
Mr. George Hamilton, Dover, New Hampshire.
Mr. John Keith, Hartsdale, New York.
Mr. William Niering, Gales Ferry, Connecticut.
Mr. William Pinney, Charlotte, Vermont.

Matters to be discussed at this meeting include: 1. Schedule of Activities for the year, 2. Discussion on Transportation within parks, 3. Discussion of Relationship between Advisory Groups, 4. Discussion of Park Ranger Image.

The meeting will begin approximately 2 p.m., February 3, 1977, at the Morgan House, Route 9, Hyde Park, New York. The meeting will be open to the public. Any member of the public may file with the Committee a written statement concerning the matters to be discussed.

The group will make an informal tour of the Home of Franklin D. Roosevelt National Historic Site and the Vanderbilt Mansion National Historic Site before and/or after the meeting.

JACK E. STARK,
Regional Director,
North Atlantic Region.

JANUARY 7, 1977.

[FR Doc.77-1609 Filed 1-14-77; 9:01 am]

SOUTHEAST REGIONAL ADVISORY COMMITTEE

Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a combined meeting and field trip of the Southeast Regional Advisory Committee will be held on February 1-4, 1977, in Everglades National Park and Fort Jefferson National Monument, Florida.

The purpose of the Southeast Regional Advisory Committee is to provide for the free exchange of ideas between the National Park Service and the public and to facilitate the solicitation of advice or other counsel from members of the public on problems and programs pertinent to the Southeast Region of the National Park Service.

The members of the Advisory Committee are as follows:

Dr. Michael V. Gannon (Chairman), Gainesville, Florida
Dr. John M. King (Secretary), Jackson, Mississippi
Mrs. Ann Smith Bedsole, Mobile Alabama.
Mr. Tutt S. Bradford, Maryville, Tennessee.
Dr. Arthur W. Cooper, Raleigh, North Carolina
Mr. Robert Gable, Frankfort, Kentucky
Mr. Charles Edward Lee, Columbia, South Carolina
Mrs. Jane Hurt Yam, Atlanta, Georgia

The matters to be discussed at the meetings include:

1. Taylor Slough Water Resources
2. Management of Big Cypress National Preserve
3. Research Projects for Everglades
4. Preservation of Fort Jefferson National Monument

The committee will fly over Big Cypress National Preserve and Everglades National Park the morning of February 1, and tour the Everglades that afternoon. The committee will meet at the park headquarters conference room February 2 at 9:30 a.m. On February 3 at 8:30 a.m., the committee will meet at Fort Jefferson National Monument.

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited and it is expected that not more than 25 persons will be able to attend. Space will not be available for members of the public on the boat trip to Fort Jefferson. Any member of the public may file with the committee a written statement concerning the matters to be discussed.

Persons wishing further information concerning this meeting or who wish to submit written statements may contact Paul C. Swartz, Chief, Cooperative Services Division, Southeast Regional Office, at 404-996-2520, extension 253. Minutes of the meeting will be available for public inspection approximately four weeks after the meeting at the Southeast Regional Office, 1895 Phoenix Boulevard, Atlanta, Georgia 30349.

Dated: January 4, 1977.

DAVID D. THOMPSON, Jr.,
Regional Director,
Southeast Region.

[FR Doc.77-1611 Filed 1-14-77;9:01 am]

Office of the Secretary

WATER RESEARCH AND TECHNOLOGY ADVISORY PANEL

Meeting

Notice is hereby given that a meeting of the Water Research and Technology Advisory Panel will be held on Friday, January 28, 1977 at 9:00 A.M. in Room 4419, U.S. Department of the Interior, Washington, D.C.

The meeting is open to the public. The primary purpose of the meeting will be to examine and discuss the reaction by attendees at the Annual Office of Water Research and Technology Conference to the Advisory Panel's latest report and to reassess the recommendations and advice contained in that report.

Further information concerning this meeting can be obtained from George Cassaday, Staff Assistant, Office of Water Research and Technology, Washington, D.C. 20240. Telephone: (202) 343-4608.

Dated: January 11, 1977.

DENNIS N. SACHS,
Deputy Assistant Secretary.

INTERNATIONAL TRADE COMMISSION

IMPORTED MUSHROOMS

Report to the President

JANUARY 10, 1977.

In accordance with section 201(d)(1) of the Trade Act of 1974 (88 Stat. 1978), the United States International Trade Commission herein reports the results of an investigation made under section 201(b)(1) of that act, relating to mushrooms.

The investigation was undertaken to determine whether—

mushrooms, prepared or preserved, except fresh or dried, provided for in item 144.20 of the Tariff Schedules of the United States (TSUS)

are being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing articles like or directly competitive with the imported articles.

Pursuant to the direction of the President, the Special Representative for Trade Negotiations, in a letter dated September 20, 1976, requested the Commission to institute an expedited investigation on mushrooms pursuant to section 201(b)(1) of the Trade Act. Having determined, pursuant to section 201(e) of the Trade Act, good cause to exist for a reinvestigation within 1 year since the Commission made its report to the President on its previous investigation on mushrooms, the Commission instituted the requested investigation on October 5, 1976.

Notice of the investigation and hearing was published in the FEDERAL REGISTER of October 12, 1976 (41 FR 44756). A public hearing in connection with the investigation was conducted on November 11 and 12, 1976, in the Commission's hearing room in Washington, D.C. All interested parties were afforded an opportunity to be present, to produce evidence, and to be heard. A transcript of the hearing and copies of briefs submitted by interested parties in connection with the investigation are attached.

The information for this report was obtained from fieldwork, from responses to questionnaires sent to importers and domestic canners, and from the Commission's files, other Government agencies, evidence presented at the hearings, briefs filed by interested parties, and other sources.

DETERMINATIONS, FINDINGS, AND RECOMMENDATIONS OF THE COMMISSION

On the basis of its investigation, the Commission determines[1] that mush-

[1] Commissioners Parker, Leonard, Moore, and Ablondi determine in the affirmative. Commissioner Minchew determines in the negative. Commissioner Bedell abstains.

rooms, prepared or preserved, except fresh or dried, provided for in item 144.20 of the Tariff Schedules of the United States, are being imported in such increased quantities as to be a substantial cause of serious injury or the threat thereof [2] to the domestic industry producing articles like or directly competitive with the imported articles.

FINDINGS AND RECOMMENDATIONS

Commissioners Minchew,[1] Parker, and Moore—

find that to prevent the injury described in section 201(b) of the Trade Act it is necessary to impose a tariff-rate-quota system for the ensuing 5-year period applying to the mushrooms covered by the Commission's notice of investigation, which are the subject of the Commission's affirmative determination, with the existing rates of duty applying to imports of mushrooms within the tariff quotas and rates of duty hereinafter specified applying to such imports above the tariff quotas, and with the tariff quotas established and allocated to countries subject to rates of duty provided for in rate-of-duty column numbered 1 of the TSUS as hereinafter specified.

The proposed rates of duty for imports above the tariff quotas should be as follows:

1st 3 yrs	4th yr	5th yr
3.2¢ per pound on drained weight plus 35 pct ad val.	3.2¢ per pound on drained weight plus 25 pct ad val.	3.2¢ per pound on drained weight plus 15 pct ad val.

The within quota imports entered in any year should be established and allocated to countries as follows:

Country:	*Aggregate annual quota (millions of pounds, drained weight)*
Republic of China (Taiwan)	31.7
Republic of Korea	11.8
Japan	1.4
Dominican Republic	.7
France	.6
Costa Rica	.5
Equador	.5
All others	.8
Total	48.0

Commissioners Leonard and Ablondi—

determine, pursuant to section 201(d)(1) of the Trade Act, that adjustment assistance as provided in title II, chapters 2, 3, and 4, of that act can effectively remedy the serious injury to the domestic industry, and recommend the provision of such assistance.

VIEWS OF VICE CHAIRMAN JOSEPH O. PARKER

On March 17, 1976, the Commission determined with respect to investigation No. TA-201-10 that mushrooms, prepared and preserved, except fresh or dried, provided for in item 144.20 of the Tariff Schedules of the United States (TSUS), were being imported in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article. On May 17, 1976, the President on the basis of the injury determination of the Commission determined that expedited adjustment assistance was the appropriate remedy for the serious injury or threat thereof which was found by the Commission to exist.

On September 20, 1976, the Commission received a letter from the Special Representative for Trade Negotiations citing significant changes in the volume of imports and requesting a new investigation on an expedited basis under section 201(b) of the Trade Act of 1974 to determine whether the mushrooms provided for in item 144.20 of the TSUS are being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article. The Commission instituted the requested investigation on October 5, 1976, having determined, pursuant to section 201(e) of the Trade Act, good cause to exist for an investigation to be made within 1 year of its previous report to the President on the same subject matter.

DETERMINATION

After considering the evidence obtained by the Commission in this investigation, I determine that increased imports of mushrooms as described above are a substantial cause of serious injury and the threat thereof to the domestic industry producing like or directly competitive articles.

DOMESTIC INDUSTRY

As I did in the previous investigation, No. TA-201-10, in making my determination in this investigation I have considered the domestic industry to consist of the domestic facilities devoted to the production of canned mushrooms. The record of this investigation does not demonstrate that mushroom growers, which have not alleged injury or sought relief from the Commission, should be included within the scope of the domestic industry for purposes of this determination.

INCREASED IMPORTS A SUBSTANTIAL CAUSE OF SERIOUS INJURY AND THREAT OF SERIOUS INJURY

In the marketing years 1970/71 to 1974/75, imports of canned mushrooms measured on a fresh-weight basis increased from 43 million pounds to 77 million pounds, or by almost 80 percent. Imports of canned mushrooms continued to increase during the marketing year 1975/76, rising to 88 million pounds on a fresh-weight basis. Thus, imports of canned mushrooms increased by 14 percent during the last marketing year. When a comparison is made between imports of canned mushrooms during the first 10 months of 1975 and imports of these articles during the corresponding period in 1976, the increase is even greater. During the former period such imports totaled 47.5 million pounds, while in the latter period they increased to 62 million pounds, or by 30 percent. In my previous determination it was my judgment, as stated in my opinion, that imports of canned mushrooms would increase at an even more rapid rate than that which was being experienced at that time. This judgment has now been verified by current statistics, as imports of canned mushrooms have reached the highest level in history. Thus, the statutory criterion of increased imports is clearly satisfied.

While imports have been increasing steadily in recent years, the domestic industry has suffered severe reverses. Nine mushroom canners have ceased mushroom-canning operations since the 1960's; two of these nine canners have ceased mushroom-canning operations since the completion of the previous Commission investigation. Domestic production of canned mushrooms has decreased as the number of producers has declined: in the 1975/76 marketing year domestic mushroom canners produced 8 million pounds less on a fresh-weight basis than they did in the 1974/75 marketing year, and 33 million pounds less than they did in the 1971/72 marketing year.

In addition, the domestic mushroom canners have continued to be unable to achieve a reasonable level of profitability. Financial returns for partial year 1976 were received by the Commission from 21 canners accounting for approximately 65 percent of sales of domestically canned mushrooms. The returns have established that these canners had an aggregate ratio of net profit before income tax to net sales of only 1 percent during this period; this was the highest rate of return they had achieved since 1972.

Employment in the domestic mushroom-canning industry has also continued to decline. Between the 1974/75 and 1975/76 marketing years the number of production and related workers declined from 1,350 to 1,207, or by 11 percent. The number of man-hours worked by them declined even more, decreasing from 1.5 million hours in the 1974/75 marketing year to 1.2 million hours in the 1975/76 marketing year, or by 20 percent.

As demonstrated by the factors set forth above, the domestic mushroom-canning industry has experienced a significant idling of productive facilities, an inability to operate at a reasonable level of profit, and a significant decline in employment. Thus, it is clearly established that the threat of serious injury which I found in the earlier investigation on mushrooms has now materialized.

Although in my prior determination I recognized that the injury being suffered in the years 1973–75 was directly related to the effects of recalls caused by the appearance of botulism and attendant adverse publicity, it is now clear that the injury being suffered by the domestic industry is substantially caused by increased imports. As mentioned above, imports of canned mushrooms increased by 14 percent between the 1974/75 and 1975/76 marketing years. This fact, together with the decline in domestic production, during the same period, caused the ratio of imports of canned mushrooms to domestic production to increase from 68 percent to 85 percent. Likewise, while domestic consumption of canned mushrooms has been steadily increasing, imports have supplied an ever larger share. In the 1974/75 marketing year the ratio of imports to consumption was 40 percent, and in the 1975/76 marketing year this ratio increased to 44 percent.

To a large extent the increase in imports of canned mushrooms and the attendant injury to the domestic industry are the result of the lower prices at which the imported articles are sold. Complete quarterly price information is available through September 1976. This information has established that in the first 9 months of 1976 the average price of a case of imported mushrooms in retail-size cans (both stems and pieces and slices and buttons) was consistently below the average price of an equivalent case of domestically produced canned mushrooms. The average price of a case of imported mushrooms in institutional-size cans of stems and pieces was also consistently below the average price of an equivalent case of domestically produced mushrooms during the same 9-month period. With respect to a case of institutional-size cans of mushrooms slices and buttons, the average price of the imported product was consistently below the average price of the domestically produced product during the first two quarters of 1976, but in the third quarter of 1976, the average price of such mushrooms from the Republic of Korea climbed above the average domestic price. The average price of these mushrooms imported from the Republic of China, however, remained below the average domestic price. On the basis of these factors, I have determined that increased imports are a substantial cause of the serious injury which the domestic mushroom-canning industry is presently suffering.

As a result of the recalls caused by botulism during the period 1973–75 and the continuing increase in imports, the domestic mushroom-canning industry is in a weakened financial condition. As noted above, total imports of canned mushrooms again increased sharply in 1976, and there is nothing to indicate that there will be a substantial lessening of import competition in the absence of import relief. Evidence obtained in the Commission's current investigation indicates that the Republic of China, which is the largest supplier of imported canned mushrooms, has established a target for exports to the United States in 1977 greater than the amount of its exports in 1976. There is evidence to the effect that other countries also plan to increase exports of mushrooms to the United States.

In view of the present weakened condition of the domestic mushroom-canning industry, which has already been shown to be vulnerable as a result of injury from imports, I have determined that increased imports are a substantial cause of serious injury and that there is a threat of continued serious injury to the domestic industry unless effective import relief is provided.

REMEDY

In my previous determination I recommended as a remedy a tariff-quota that was designed to eliminate to the maximum extent feasible the threat of serious injury facing the domestic industry from the then-existing level of imports. The recommended increment in the ad valorem rate was intended to provide price protection in the form of a higher duty against the excessive imports that threatened the domestic industry. The relief was designed to give the domestic industry a period of time in which to improve its competitive position and strengthen its financial foundation and thereby enable it to adjust to international competition.

The Commission's current investigation has established that the increase in imports above the average level of imports in the 1972/75 through 1974/75 marketing years has been a substantial cause of serious injury to the domestic industry. The remedy that I have recommended will provide price protection in the form of a higher duty against excessive imports. The tariff-quota levels that I have recommended will also permit continued importation of substantial quantities of canned mushrooms and allow competitive forces to maintain market discipline.

Pursuant to section 201(d)(1) of the Trade Act, I have considered whether adjustment assistance can effectively remedy the serious injury and threat thereof that I have determined to exist. It is recognized that adjustment assistance might enable some firms to obtain needed capital to improve operating efficiencies. Such adjustment assistance is now available on an expedited basis as a result of the previous Commission determination and recommendation. However, even assuming that such assistance will be utilized by the domestic mushroom-canning industry, it will not, in my opinion, eliminate the present serious injury and threat of serious injury to the domestic industry from increased imports. As I noted in my previous recommendation of remedy, the tariff quota that I have recommended will enhance the possibilities for success of any adjustment assistance which might be sought and provided.

VIEWS OF COMMISSIONER WILL E. LEONARD

On September 20, 1976, the United States International Trade Commission received a letter from the Special Representative for Trade Negotiations requesting an expedited investigation, pursuant to section 201(b)(1) of the Trade Act of 1974, to determine whether mushrooms, prepared or preserved, except fresh or dried, provided for in item 144.20 of the Tariff Schedules of the United States (TSUS), are being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article. The Commission, having determined pursuant to section 201(e) of the Trade Act that good cause existed for a reinvestigation within 1 year since the Commission made its report to the President on its previous investigation on mushrooms, instituted the requested investigation on October 5, 1976.

DETERMINATION AND RECOMMENDATION

Having reviewed the evidence gathered by the Commission in the course of the current investigation on mushrooms (investigation No. TA-201-17), as well as the evidence gathered in the previous investigation (No. TA-201-10), I determine that the criteria as set forth in section 201(b)(1) of the Trade Act for an industry to be eligible for relief from imports have been met with respect to the imports that are the subject of this investigation. Specifically, I determine that mushrooms that are the subject of this investigation are being imported into the United States in such increased quantities as to be a substantial cause of serious injury to the domestic industry producing mushrooms like or directly competitive with such imported mushrooms.

Further, I determine, pursuant to section 201(d)(1) of the Trade Act, that adjustment assistance can effectively remedy the serious injury that I find to exist, and therefore I recommend the provision of such assistance.

DOMESTIC INDUSTRY, INCREASED IMPORTS, SERIOUS INJURY, AND SUBSTANTIAL CAUSE

For my views on the definition of the domestic industry, and regarding the criteria of increased imports, serious injury, and substantial cause, the reader is referred to the analysis and conclusions contained in my opinion set forth in the Commission's previous report to the President on mushrooms.[1]

Since that report was sent to the President on March 17, 1976, additional facts have come to light. Canned-mushroom imports for the first 10 months of 1976 (the latest data available to the Commission) increased by almost 30 percent over the volume imported during the corresponding period a year earlier. The ratio of imports of canned mushrooms to total domestic production of mushrooms increased from 26 percent in the

[2] Commissioners Parker, Leonard, Moore, and Ablondi determine that the domestic industry is seriously injured. Commissioner Parker also determines that the domestic industry is threatened with serious injury.

[1] Commissioner Minchew, noting that the Commission has made an affirmative determination, has made a recommendation of remedy.

[1] Views of Chairman Will E. Leonard in Mushrooms: Report to the President on Investigation No. TA-201-10 * * *, USITC Publication 761, 1976, pp. 5-15.

1974/75 marketing year (July 1 to June 30) to 28 percent in 1975/76.

The number of production and related workers employed by domestic mushroom canneries decreased from 1,360 in 1974/75 to 1,207 in 1975/76. Cannery manhours worked declined even more—from 1.5 million in 1974/75 to 1.2 million in 1975/76.

Partial-year financial data for 1976 obtained by the Commission reveal that the profitability of both canners and growers has improved somewhat since the previous mushroom investigation. However, the profitability of canners in particular is still unacceptably low. The 21 canners surveyed by the Commission (representing about 65 percent of total canners' sales for partial year 1976) reported a ratio of net operating profit to net sales of only 2.4 percent. Fully one-third of these canners were operating at a loss. The ratio of net operating profit to net sales for the 16 mushroom growers surveyed (accounting for about 35 percent of all fresh mushrooms sold in partial year 1976) was somewhat higher—about 10 percent.

Penetration of the U.S. market by canned-mushroom imports has continued to increase. The share of total domestic mushroom consumption taken by these imports rose from 21 percent in 1974/75 to 22 percent in 1975/76.

Having studied the new facts which became available since the completion of the Commission's previous investigation on mushrooms, I conclude that these facts do not alter the result I reached in that earlier investigation, viz, that increased imports of mushrooms provided for in TSUS item 144.20 (almost all of which are canned) are a substantial cause of serious injury to the domestic industry which grows and cans mushrooms.

Recommendation of Adjustment Assistance

At the conclusion of the Commission's prior escape-clause investigation on mushrooms in March 1976, I determined that adjustment assistance under chapters 2, 3, and 4 of title II of the Trade Act could effectively remedy the serious injury being suffered by the domestic industry, and I recommended the provision of such assistance. As no information has been brought to my attention in the course of the current investigation that would lead me to change my position on the issue of remedy, I again recommend the provision of adjustment assistance to the domestic industry.

Less than 8 months have elapsed since the President, acting pursuant to section 202 of the Trade Act, directed expedited trade adjustment assistance for the domestic mushroom industry. In my view it is unrealistic to expect adjustment assistance to operate effectively within such a period of time. More time is needed. This conclusion is buttressed by the fact that, as of November 15, 1976, not one of the six firms certified by the U.S. Department of Commerce as eligible to apply for adjustment assistance had yet progressed to the point of gaining approval for its plan of economic recovery.

As I pointed out in my opinion in connection with the prior mushroom investigation, the domestic industry has made efforts to compete with increased imports. I continue to be of the view that adjustment assistance, given sufficient time to become effective, is likely to permit the domestic industry to make further efforts to adjust successfully to the import competition it has experienced. Indeed, the recent improvement of conditions in the domestic mushroom industry should make it even more likely now than 9 months ago that adjustment assistance will enable the domestic industry to compete effectively with imports.

Conclusion

Having examined the evidence gathered by the Commission in the course of this investigation, I determine that mushrooms that are the subject of this investigation are being imported into the United States in such increased quantities as to be a substantial cause of serious injury to the domestic mushroom growing and canning industry. I further determine that adjustment assistance can effectively remedy such injury.

Further Comments

In determining whether to provide import relief and what method and amount of import relief to provide, the President is directed by section 202(c) of the Trade Act to take into account certain relevant considerations. The Commission's investigation on mushrooms produced information relating to the cost to consumers of import restrictions, which has a bearing on some of the considerations enumerated in section 202(c) and which may be of interest to the President.

In an attempt to estimate the cost to consumers of possible alternative remedies, the Commission made a number of statistical analyses using data gathered during this and the previous investigation. The results were generally inconclusive. Calculations designed to link consumer demand for imported mushrooms with their prices were not statistically significant. Calculations using data on domestic mushrooms only led to the following tentative conclusions: First, when the consumer enters a retail store to buy mushrooms, the absolute level of mushroom prices has little to do with his decision; second, he will tend to select fresh rather than canned mushrooms if the price of fresh mushrooms is lower than that of canned mushrooms, and vice versa. In view of the unsatisfactory statistical results obtained from these calculations, it is not possible to provide a quantitative estimate of the cost to consumers of import restrictions such as an absolute quota or a higher tariff. It is probable that such restrictions would cause a large price increase initially, until domestic growers had time to increase U.S. production sufficiently to overcome the loss of imports. The cost to consumers in the form of higher prices during this initial period could be substantial and may be higher than the cost to U.S. taxpayers of adjustment assistance to firms and workers.

View of Commissioner George M. Moore

I concur with those of my colleagues who have made an affirmative determination in this proceeding. Since the Commission's last escape-clause investigation on canned mushroom imports (TA-201-10) nearly a year ago, conditions affecting the domestic industry by reason of increased imports have changed drastically. These changed conditions constitute the basis for my affirmative determination in the present case.

The 1974 Trade Act clearly enunciates the requirement that an affirmative determination shall be made if certain articles are being imported in such increased quantities as to be a substantial cause of serious injury to the requisite domestic industry. The excessive increase in imports of canned mushrooms during 1976 outweighs any other cause of present serious injury to the domestic industry. During the first 10 months of 1976, U.S. imports of canned mushrooms totaled 62 million pounds, compared with 48 million pounds during the corresponding period in 1975. The impact of the sudden 29-percent increase in less than a year is more important than any other cause of the present serious injury to the domestic industry.

In the course of this Commission investigation and the earlier one, it was apparent that there were other causes of injury to the domestic industry. I discussed a number of these economic factors in my opinion earlier this year.

Botulism food poisoning, which was first discovered in connection with the canned mushrooms in February 1973, has largely disappeared as a major cause of the present serious injury to the domestic industry.

The downward trend in domestic consumption which occurred a few years ago has been abruptly reversed. In recent months there has been a marked increase in domestic consumption of canned mushrooms. However, domestic and imported canned mushrooms did not share equally in the increased sales in the domestic market. In fact, of the 23 million more pounds of canned mushrooms consumed in the marketing year 1975/76 than in 1973/74, 18 million pounds, or almost 79 percent, were imported. The increase in domestic consumption of fresh mushrooms and the consequent advantages to the domestic industry are overshadowed by the loss in sales suffered by the U.S. industry in failing to benefit from the recent increase in canned mushroom consumption. It is significant that the mushroom growers have likewise suffered, because sales of fresh mushrooms to domestic processors were only 3 million pounds more in the marketing year 1975/76 than in 1971/72.

In recent years the prices of domestically produced and of imported cases of six No. 10 institutional-size cans of mushrooms (stems and pieces or buttons or slices) have generally been competitive. However, the present investigation reveals that this condition has suddenly changed. Beginning with the last quarter of 1975 and continuing through 1976, the domestically produced cans of mushroom stems and pieces and buttons and slices were, for the most part, consistently undersold by the imported articles. The price comparisons developed during the Commission's investigation establish a pattern of price suppression by the imported product during the last quarter of 1975 and the year 1976. These facts are particularly significant in the present investigation in view of the fact that almost 60 percent of the imported canned mushrooms are in institutional-size containers. With respect to the remainder of the imports of canned mushrooms which are in retail-size containers, since 1974 the prices of such imports have been consistently below the prices of the domestically produced canned mushrooms in like containers.

As a consequence of the changed conditions outlined above, which are based on facts developed during the present investigation, I have determined that mushrooms, prepared or preserved, except fresh or dried, provided for in item 144.20 of the TSUS are being imported into the United States in such increased quantities as to be a substantial cause of serious injury to the domestic industry producing like or directly competitive articles.

Additional Views of Commissioner Moore

In the earlier escape clause investigation of canned mushroom imports (TA-201-10) I voted negative, because I believed that the increased importation of canned mushrooms was not a substantial cause of the serious injury being suffered at that time by the domestic industry. However, a majority of the voting Commissioners reached an affirmative decision, and in March 1976 three of the Commissioners who participated recommended "adjustment assistance" as the remedy for the serious injury to the domestic industry. The adjustment assistance recommendation of my three colleagues was accepted and the President ordered such relief to be expedited.

Within less than a year this matter has been returned to the Commission with the request that we institute a new investigation and reach a decision as quickly as possible.

Had effective relief been provided for the domestic industry it is difficult to conceive how this case could so quickly be returned to the Commission.

This is a new investigation, and I have determined that there is new evidence. These new facts have convinced me to vote in the affirmative in the present case. However, in evaluating the kind of relief or remedy necessary for the domestic industry under the provisions of the Trade Act of 1974, I cannot overlook the fact that adjustment assistance has been proven ineffective.

Therefore, the remaining alternative under the Trade Act is for me to recommend an important restriction which is necessary to remedy the serious injury I have found. This recommendation appears on page 3.

Views of Commissioner Italo H. Ablondi

At the President's direction, the Special Representative for Trade Negotiations on September 20, 1976, requested the United States International Trade Commission to conduct an expedited investigation on mushrooms, pursuant to section 201(b)(1) of the Trade Act of 1974. On October 5, 1976, the Commission instituted an investigation to determine whether mushrooms, prepared or preserved, except fresh or dried, provided for in item 144.20 of the Tariff Schedules of the United States, are being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic injury producing an article like or directly competitive with the imported article.

Earlier in the year the Commission conducted an investigation concerning the same subject matter as this investigation. In that investigation, I found increased imports to be a substantial cause of the threat of serious injury to the domestic industry.[2] That finding was consistent with the views which I expressed in an investigation which the Commission conducted in 1973 under section 332 of the Tariff Act of 1930.[3] While I still find that the criteria for import relief are satisfied, I believe that in the period since investigation No. TA-201-10, the situation has changed to the extent that the threat of injury has been realized. Accordingly, I determine that mushrooms provided for in item 144.20 of the Tariff Schedules of the United States are being imported into the United States in such increased quantities as to be a substantial cause of serious injury to the domestic industry producing an article like or directly competitive with the imported article.

The evidence received by the Commission during this investigation provides no basis upon which to alter a previous determination that the criteria requisite to an affirmative determination are satisfied. In the interest of brevity, I incorporate by reference my earlier determination, which outlines the basic reasons for an affirmative determination.

Additional facts reveal that during the first 10 months of 1976, imports of canned mushrooms increased by more than 30 percent over those in the corresponding period in 1975, from 48 million to 62 million pounds. This represents a substantial increase both in absolute terms and relative to domestic production. Moreover, during the marketing year 1975/76, the ratio of imports of canned mushrooms to domestic consumption increased by 4 percent over the ratio in 1974/75, reaching an alltime high of 44 percent. Significantly, these increases occurred while the domestic industry was experiencing an overall decline in sales of the canned product.

Of particular concern is the precipitous increase in imports of canned mushrooms, which occurred following the President's announcement on May 17, 1976, that he had accepted the Commission's recommendation regarding adjustment assistance. Total imports in June jumped to 10.4 million pounds, or nearly double the amount entered during the preceding month. During July and August, 11.9 million pounds and 10.4 million pounds, respectively, were imported, twice the amount entered during the corresponding month in 1975. Thus far in marketing year 1976/77 (July-October) imports have amounted to 30 million pounds, 10.5 million pounds above the amount imported during the marketing year. Under these circumstances, importers should not find it surprising either that a new investigation was instituted or that the Commission has again made an affirmative determination. The President's decision not to impose import restrictions should not be an occasion for importers to increase imports with impunity. The temporary increase in July and August has been followed by assurances by officials of the Governments of the Republic of China (Taiwan) and the Republic of Korea that exports to the United States in the 1976/77 marketing year will be roughly equivalent to those for the 1976/77 marketing year.

Remedy

After reviewing all the information developed during the course of this investigation, I again make the recommendation which I made in the last investigation: I find that adjustment assistance under chapters 2, 3, and 4 of title II of the Trade Act can effectively remedy the injury which I have found to exist, and therefore I recommend the provision of such assistance.

Views of Chairman Daniel Minchew

On September 20, 1976, the United States International Trade Commission (hereinafter referred to as the Commission) received a letter from the Special Representative for Trade Negotiations requesting an expedited investigation, pursuant to section 201(b)(1) of the Trade Act of 1974, to determine whether mushrooms, prepared or preserved, except fresh or dried, provided for in item 144.20 of the Tariff Schedules of the United States (TSUS), are being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article. Having determined pursuant to section 201(e) of the Trade Act, good cause to exist for a reinvestigation within 1 year since

[2] *Mushrooms: Report to the President on Investigation No. TA-201-10 * * *,* USITC Publication 761, 1976.

[3] *Mushrooms: Report to the President on Investigation No. 332-72 * * *,* TC Publication 580, 1973.

the Commission made its report to the President on its previous investigation on mushrooms, the Commission instituted the requested investigation on October 5, 1976.

Before making an affirmative determination under section 201(b)(1), the Commission must find that all three of the following criteria are met:

(1) That an article is being imported into the United States in increased quantities (the increased imports may be actual or relative to domestic production);

(2) That a domestic industry producing an article like or directly competitive with the imported is being seriously injured or threatened with serious injury; and

(3) That such increased imports of an article are a substantial cause of the serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article.

DETERMINATION

In the previous investigation on mushrooms completed on March 17, 1976 (No. TA-201-10), I determined that the criteria by which an industry must be judged eligible for relief from imports, as set forth in section 201(b)(1) of the Trade Act, were not met. Specifically, I found that the third criterion under section 201(b)(1), i.e., that of "substantial cause," was not met.[4]

In the present investigation, as a result of evidence obtained by the Commission, I have found that competitive conditions in the mushroom industry have not changed sufficiently since investigation No. TA-201-10 to justify a change in the finding I reached in the earlier case. Thus, I have determined in this investigation that the third criterion under section 201(b)(1) has not been met. The following discussion, therefore, is limited principally to the third criterion.

DOMESTIC INDUSTRY

The domestic industry consists of the industry or industries producing an article which is "like or directly competitive with" the imported article—in this case, mushrooms, except fresh or dried, listed under item 144.20 of the TSUS. I have again concluded that all mushrooms, whether preserved or fresh, are "likely or directly competitve" with the items under investigation, and that the domestic producers of such articles must be considered the industry or industries to which the statutory criteria are to be applied.

In the present case, as in the previous investigation, it would be possible to define the industry either as one industry consisting of all fresh-mushroom-production and mushroom-processing facilities, or as two industries—the fresh-mushroom-production facilities on the one hand and the mushroom-processing facilities on the other. As I have determined that the "substantial cause" criterion has not been met, and since the various products are so closely related and interchangeable, I have concluded that no specific definition of the domestic industry is necessary. Considering either of the domestic industries would lead me to the same conclusion: increased imports are not a "substantial cause" of any "serious injury" which the domestic industry may have suffered.

SUBSTANTIAL CAUSE

Section 201(b)(4) of the Trade Act defines "substantial cause" as a "cause which is important and not less than any other cause." In addressing the question of substantial cause, the House Ways and Means Committee stated:

> The Committee intends that a dual test be met—imports must constitute an important cause and be no less important than any other single cause. For example, if imports were just one of many factors of equal weight, imports would meet the test of being "not less than any other cause" but it would be unlikely that any of the causes would be deemed an "important" cause. If there were any other cause more important than imports, then the second test of being "not less than any other cause" would not be met. On the other hand, if imports were one of two factors of equal weight and there were no other factors, both tests would be met.[5]

The Senate Finance Committee stated further:

> The Committee recognizes that "weighing" causes in a dynamic economy is not always possible. It is not intended that a mathematical test be applied by the Commission. The Commissioners will have to assure themselves that imports represent a substantial cause or threat of injury, and not just one of a multitude of equal causes or threats of injury.[6]

In determining "substantial cause" it is necessary, therefore, to consider two tests. First, a cause must be important, and second, a cause must be not less than any other cause.

I have concluded as a result of evidence obtained by the Commission in the present investigation that there were several factors which may have led to any decline that the domestic industry may have suffered. I consider three of these factors, moreover, to be important: (a) increased imports; (b) the increasing diversion of fresh-mushroom production to the fresh market and to processors other than canners; and (c) the discovery of Clostridium botulinum and/or botulinal toxin (botulism) in canned mushrooms in 1973. Thus, the first test of substantial cause is satisfied.

However, despite the fact that I consider increased imports to be an important cause of injury to the domestic industry, I am unable to say that these increased imports are not less important than the other important causes—diversion of the raw product or botulism.

A major problem faced by domestic canners is the diversion of fresh mushrooms to the fresh market and to processors other than canners. Evidence presented in this investigation indicates that such diversion is a more important factor than increased imports.

During the last 5 marketing years, an increasing amount and share of U.S. fresh-mushroom production has been sold on the fresh market. In 1971/72, 66 million pounds of fresh mushrooms were sold on the fresh market—29 percent of all U.S. fresh-mushroom production: in 1975/76, the fresh market accounted for 142 million pounds of U.S. fresh-mushroom production—46 percent of the total U.S. fresh-mushroom output.

A rising fresh-mushroom price structure has accounted for much of the diversion of the fresh product away from canners and toward the fresh market and processors other than canners. This has been especially true in the last year or so. The average price for fresh mushrooms increased from 35 cents per pound in 1974/75 to 69 cents per pound by October 1976. The mushroom canner has been caught between the rapidly escalating cost of raw material and the uncertain market price for the finished product—canned mushrooms.

Canners traditionally suffered reduced profit margins in periods of high fresh-mushroom prices, which are usually highly profitable years for mushroom growers. This is especially the case for canners completely separated from growing operations. Such canners cannot use the profits obtained from fresh-mushroom production to carry over the canning operation in times of high raw-material cost.

In addition to fresh mushrooms being diverted to the fresh market, large quantities have been sold in recent years to processors other than canners, such as soup manufacturers. These quantities, which totaled about 28 million pounds in 1971/72, reached 64 million pounds in 1975/76.

I have concluded again in this investigation that botulism food poisoning (which was discovered in early 1973 in the canned mushrooms of two domestic processors and resulted in recalls by the U.S. Food and Drug Administration which lasted until December 1974, eventually affecting 10 firms, 8 domestic and 2 foreign) is a more important factor than increased imports in any "serious injury" that the domestic industry may have suffered.

Despite the increase in consumption of canned mushrooms since 1973/74, the marketing year most closely associated with the "botulism scare," the decline in consumption in that year, along with the expenses associated with the recalls in the period, so weakened the financial condition of at least the canning segment of the domestic industry that U.S. canners could not effectively supply the increasing demand for the canned product in the years subsequent to 1973/74. Moreover, the industry's greater financial burden which grew out of the "botulism scare" resulted in the discontinuance of mushroom-canning operations by five firms which were associated with recalls—one since the completion of the last investigation (No. TA-201-10). So, the effects of the increase in imports that has occurred since 1973/74 have been magnified because of the weakened condition of the domestic industry, a result of previous losses to its capital structure.

After considering all the information obtained by the Commission in the present investigation, I feel that I must conclude that increased imports are a less important cause of any "serious injury" which the domestic industry may have suffered than is the diversion of the raw product or botulism. I conclude, therefore, that the "substantial cause" criterion has not been met.

ADDITIONAL VIEWS OF CHAIRMAN DANIEL MINCHEW WITH REGARD TO RECOMMENDATIONS OF REMEDY

I believe that the statute anticipates in all cases of affirmative findings two separate, distinct votes, and, further, that each Commissioner has a duty to participate in the recommendation process regardless of the Commissioner's individual vote on the question of serious injury.

I think it is important to examine the statute and supporting materials on this important question. Section 201(d)(1) refers to the recommendation by the "Commission" without any reference to a majority or to those Commissioners voting in the affirmative. I believe the Congress intended separate votes by the Commission: First, the Commission was to determine whether the provisions of 201(b) are met so that import relief could be awarded, and, second, the "Commission" is to decide on a recommendation to be transmitted to the President, as provided in section 201(d).

Section 332(g) of the Tariff Act of 1930, as amended by section 173 of the Trade Act of 1974, provides:

> *Reports to President and Congress.*—The Commission shall put at the disposal of the President of the United States, the Committee on Ways and Means of the House of Representatives, and the Committee on Finance of the Senate, whenever requested, all information at its command, and shall make such investigations and reports as may be requested by the President or by either of said committees or by either branch of the Congress, and shall report to Congress on the first Monday of December of each year hereafter a statement of the methods adopted and all expenses incurred, a summary of all reports made during the year, and *a list of all votes taken by the commissioners voting in the affirmative and the negative on each vote and those commissioners not voting on each vote and the reasons for not voting.* (Emphasis supplied.)

The purpose of the final phrase, added by the Trade Act of 1974, as outlined in the Senate Finance Committee Report at page 117 is as follows:

> • • • any vote which results in public notice of an action, or any vote on an investigation of the Commission or which results in a report being issued, would be included in the report. *It is hoped that this amendment will encourage participation by all Commissioners in the important business of the Commission.* (Emphasis supplied.)

I think there can be little doubt that a recommendation to the President would be considered "important business of the Commission."

Equal in importance to the authority cited above, which, to me, represents an affirmative duty by Commissioners to participate in the recommendation, is the fact that nowhere in the act do we see any prohibition of an action by a Commissioner to participate in important Commission business.

A separate policy issue presents itself as to whether a Commissioner should participate in the development of a Commission recommendation if the Commission has voted negatively in the determination. I am of the opinion that a Commissioner should participate actively in the development of the recommendation.

If a Commissioner has voted negatively (which he may have done for several reasons under the statute) but the Commission has made an affirmative finding, the Commissioner must then separate the views on an affirmative or negative finding and set to the task of making a recommendation which would best redress the injury, as determined by the Commission to the domestic industry. I am not persuaded by the argument that a Commissioner cannot possibly separate the two. That is one of the responsibilities of a Commissioner. Indeed, it is possible that a Commissioner who voted negatively on the determination has sympathy with the domestic industry. It is possible that a Commissioner could find that there are no increased imports, an evaluation which necessitates a negative finding, even though the Commissioner feels the domestic industry has been injured.

The Senate Finance Committee Report at page 123 focuses on votes by Commissioners with regard to remedy (recommendation) when it states:

> • • • the Committee feels strongly that the Commission ought to reach a clear, definitive majority view on the nature of the remedy that is most suitable to the injury found.

It is hoped that this stated intent of the Congress will go a good way toward eliminating any attempt by those who might have voted in the minority to thwart the will of the majority who may have determined affirmatively.

The Commission must draw upon the diverse backgrounds of all members of the Commission in order to assure that all views are properly presented. It is in this way that the Commission was intended to function by those who established it as a Commission instead of a judicial body.

Since I feel that, in instances of affirmative determinations I must participate in the formulation of a recommendation, regardless of how I voted in the determination, I have concluded that, although I have made a negative determination in this case, I may give my view on a recommendation, because, by Presidential action, this evenly divided determination could become an affirmative finding.

CONCLUSION

I have determined that the import relief described in the Commission's determination and finding is the appropriate remedy for the United States industry impacted by the imports of canned mushrooms.

By order of the Commission:

KENNETH R. MASON,
Secretary.

JANUARY 12, 1977.

[FR Doc.77-1394 Filed 1-14-77;8:45 am]

[4] *Mushrooms: Report to the President on Investigation No. TA-201-10* • • •, USITC Publication 761, 1976, p. 30.

[5] *Trade Reform Act of 1973: Report of the Committee on Ways and Means* • • • H. Rept. No. 93-571 (93d Cong., 1st sess.), 1973, pp. 46-47.

[6] *Trade Reform Act of 1974: Report of the Committee on Finance* • • •, S. Rept. No. 93-1298 (93d Cong., 2d sess.), 1974, pp. 120-121.

NATIONAL SCIENCE FOUNDATION

SUBPANEL FOR THE COMPREHENSIVE ASSISTANCE TO UNDERGRADUATE SCIENCE EDUCATION PROGRAM (CAUSE) ADVISORY PANEL ON SCIENCE EDUCATION PROJECTS

Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Sub Panel for the Comprehensive Assistance to Undergraduate Science Education Program (CAUSE).

Date and Time: Advisory Panel on Science Education Projects: February 3, 1977—7:30 p.m.-9:30 p.m.; February 4, 1977—7:30 a.m.-5:00 p.m.; February 5, 1977—7:30 a.m.-5:00 pm.

Place: Mayflower Hotel, 1127 Connecticut Avenue, NW., Washington, D.C.

Type of Meeting: Closed.

Contact Person: Dr. John A. Maccini, Program Director, CAUSE Room W-408, National Science Foundation, Washington, D.C. 20550, Tel: 202-282-7736.

Purpose of Panel: To provide advice and recommendations concerning support for the CAUSE Program.

Agenda: To review and evaluate specific science education proposals as part of the selection process for awards.

Reason for Closing: The proposals and projects being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals and projects. These matters are within exemptions (4) and (6) of 5 U.S.C. 552(b). Freedom of Information Act. The rendering of advice by the panel is considered to be a part of the Foundation's deliberative process and is thus subject to exemption (5) of the Act.

Authority to Close Meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make determinations by the Director, NSF, on February 11, 1976.

M. REBECCA WINKLER,
Acting Committee Management Officer.

JANUARY 12, 1977.

[FR Doc.77-1452 Filed 1-14-77;8:45 am]

SUB PANEL FOR NATIONAL NEEDS GRADUATE TRAINEESHIP PROGRAM ADVISORY PANEL ON SCIENCE EDUCATION PROJECTS

Meeting

In accordance with Federal Advisory Committee Act, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Sub Panel for National Needs Graduate Traineeship Program.

Date and Time: February 3-5, 1977; February 3, 7:00 p.m. to 10:00 p.m.; February 4, 8:30 a.m. to 5:00 p.m.; February 5, 8:30 a.m. to 3:00 p.m.

Place: Quality Inn-Downtown, Massachusetts Avenue and Thomas Circle, NW., Washington, D.C.

Type of Meeting: Closed.

Contact Person: Dr. Douglas S. Chapin, Head, Graduate and Postdoctoral Programs, Room 478, National Science Foundation, 5225 Wisconsin Avenue, NW., Washington, D.C. 20550, telephone (202) 282-7154.

Purpose of Panel: To provide advice and recommendations concerning support for science education.

Agenda: To review and evaluate science education proposals and projects as part of the selection process for awards.

Reason For Closing: The proposals and projects being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals and projects. These matters are within exemptions (4) and (6) of 5 U.S.C. 552(b), Freedom of Information Act. The rendering of advice by the panel is considered to be a part of the Foundation's deliberative process and is thus subject to exemption (5) of the Act.

Authority to Close Meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make determinations by the Director, NSF, on February 11, 1976.

M. REBECCA WINKLER,
Acting Committee
Management Officer.

JANUARY 12, 1977.

[FR Doc.77-1451 Filed 1-14-77;8:45 am]

NUCLEAR REGULATORY COMMISSION

ADVISORY COMMITTEE ON REACTOR SAFEGUARDS, SUBCOMMITTEES ON THE CHEROKEE NUCLEAR STATION, UNITS 1, 2, AND 3, AND THE PERKINS NUCLEAR STATION, UNITS 1, 2, AND 3

Meeting Postponed

The January 19, 1977 meeting of subject Subcommittees has been postponed to March 1, 1977. It will still be held at the Roadway Inn Airport, 4040 I-85 and Little Rock Road, Charlotte NC (704/394-4111) and the agenda will remain the same as announced in FEDERAL REGISTER Vol. 41, No. 252, Thursday, Dec. 30, 1976.

If written comments are mailed for consideration at this meeting, they should be postmarked no later than Feb. 22, 1977, addressed to Mr. Gary R. Quittschreiber, ACRS, NRC, Wash., D.C. 20555.

Copies of the transcript and minutes of the meeting will be made available for inspection on or after March 10 and June 1, 1977, respectively, at the Public Document Rooms listed in cited FR notice.

Dated: January 12, 1977.

JOHN C. HOYLE,
Advisory Committee
Management Officer.

[FR Doc.77-1471 Filed 1-14-77;8:45 am]

ADVISORY COMMITTEE ON REACTOR SAFEGUARDS, SITING EVALUATION SUBCOMMITTEE

Meeting

In accordance with the purposes of Sections 29 and 182 b. of the Atomic Energy Act (42 U.S.C. 2039, 2232 b.), the ACRS Siting Evaluation Subcommittee will hold a meeting on February 2, 1977 in Room 1146, 1717 H Street, N.W., Washington, DC 20555. The purpose of this meeting is to discuss nuclear facility siting.

The agenda for subject meeting shall be as follows:

WEDNESDAY, FEBRUARY 2, 1977

8:30 A.M.—9:00 A.M. (OPEN)

The Subcommittee will meet in Executive Session with any of its consultants who may be present to explore their preliminary opinions regarding matters which should be considered in order to formulate a Subcommittee report and recommendations to the full Committee.

9:00 A.M. UNTIL CONCLUSION OF BUSINESS (OPEN)

The Subcommittee will hear presentations by and hold discussions with representatives of the NRC Staff regarding matters pertinent to this review.

The Subcommittee may caucus to determine whether matters have been adequately covered and whether they are ready for review by the full Committee. During the session, Subcommittee members and consultants will discuss their opinions and recommendations on these matters.

Practical considerations may dictate alterations in the agenda or schedule. The Chairman of the Subcommittee is empowered to conduct the meeting in a manner that, in his judgment, will facilitate the orderly conduct of business, including provisions to carry over an incompleted session from one day to the next.

The Advisory Committee on Reactor Safeguards is an independent group established by Congress to review and report on each application for a construction permit and on each application for an operating license for a reactor facility and on certain other nuclear safety matters. The Committee's reports become a part of the public record. Although ACRS meetings are ordinarily open to the public and provide for oral or written statements to be considered as a part of the Committee's information-gathering procedure concerning the health and safety of the public, they are not adjudicatory type hearings such as are conducted by the Nuclear Regulatory Commission's Atomic Safety & Licensing Board as part of the Commission's licensing process. ACRS meetings do not normally treat matters pertaining to environmental impacts outside the safety area.

With respect to public participation in the meeting, the following shall apply:

(a) Persons wishing to submit written statements regarding the agenda may do so by providing a readily reproducible copy to the Subcommittee at the beginning of the meeting. Comments should be limited to safety related areas within the Committee's purview.

Persons desiring to mail written comments may do so by sending a readily reproducible copy thereof in time for consideration at this meeting. Comments postmarked no later than January 26, 1977 to Mr. Thomas G. McCreless, ACRS, NRC, Washington, D.C. 20555, will normally be received in time to be considered at this meeting.

(b) Those persons wishing to make an oral statement at the meeting should make a written request to do so, identifying the topics and desired presentation time so that appropriate arrangements can be made. The Committee will receive oral statements on topics relevant to the Committee's purview at an appropriate time chosen by the Chairman of the Subcommittee.

(c) Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call on February 1, 1977 to the Office of the Executive Director of the Committee (telephone 202/634-1374, ATTN: Mr. Thomas G. McCreless) between 8:15 a.m. and 5:00 p.m., EST.

(d) Questions may be propounded only by members of the Subcommittee and its consultants.

(e) The use of still, motion picture, and television cameras, the physical installation and presence of which will not interfere with the conduct of the meeting, will be permitted both before and after the meeting and during any recess. The use of such equipment will not, however, be allowed while the meeting is in session.

(f) A copy of the transcript of the open portion(s) of the meeting where factual information is presented and a copy of the minutes of the meeting will be available for inspection on or after February 9 and May 2, 1977, respectively, at the NRC Public Document Room, 1717 H St. NW., Washington, D.C. 20555.

Copies may be obtained upon payment of appropriate charges.

Dated: January 12, 1977.

JOHN C. HOYLE,
Advisory Committee
Management Officer.

[FR Doc.77-1472 Filed 1-14-77;8:45 am]

ADVISORY COMMITTEE ON REACTOR SAFEGUARDS, WORKING GROUP ON ASSESSMENT OF SELECTED LIGHT-WATER REACTOR SAFETY MATTERS

Meeting

In accordance with the purposes of sections 29 and 182 b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b.), the ACRS Working Group on Assessment of Selected Light-Water Reactor Safety Matters will meet on February 1, 1977 in Room 1046, 1717 H Street, N.W., Washington, D.C. 20555. The purpose of this meeting is to review selected matters related to LWR safety referred to it by the NRC.

The agenda shall be as follows:

TUESDAY, FEBRUARY 1, 1977

8:30 A.M.—9:00 A.M. (OPEN)

The Working Group will meet in Executive Session, with any of its consultants who may be present, to explore and exchange their preliminary opinions, based upon their independent review of reports regarding matters which should be considered in order to formulate a Working Group report and recommendations to the full Committee.

9:00 A.M. UNTIL CONCLUSION OF BUSINESS

The Working Group will hear presentations by and hold discussions with respentatives of the NRC Staff and the nuclear industry, and their consultants, pertinent to selected matters relating to LWR safety.

The Working Group may caucus to determine whether the matters identified in the initial session have been adequately covered and whether the project is ready for review by the full Committee. During this session, Working Group members and consultants will discuss their opinions and recommendations on these matters.

It may be necessary for the Working Group to hold one or more closed sessions for the purpose of reviewing internal Commission documents or to explore with the NRC Staff and participants matters involving proprietary information. It may also be necessary to hold a closed session to receive reports from individual NRC Staff members who may wish to discuss with the ACRS their advice, opinions, and personnel policy suggestions and who may only be willing to discuss some matters in a closed session. It is the preference of the Working Group to have this portion of the meeting in open session. Accordingly, if these individuals are willing to discuss their opinions in open session, this portion of the meeting will be open.

I have determined, in accordance with subsection 10(d) of Public Law 92-463, that it is necessary to close portions of the meeting as noted above to protect intra agency memoranda (5 U.S.C. 552(b)(5)), to protect proprietary information (5 U.S.C. 552(b)(4)), and to protect the confidentiality of internal NRC Staff opinions and recommendations, which, if written, would fall within the provisions of exemption 5 U.S.C. 552(b)(5), to promote the full and frank exchange of these matters between individual NRC Staff members and the ACRS (5 U.S.C. 552(b)(5)), and which relate to the internal personnel rules and practices of the Commission (5 U.S.C. 552(b)(2)), and to prevent the disclosure of information of a personal nature which would constitute an unwarranted invasion of personal privacy (5 U.S.C. 552(b)(6)). Separation of factual information from the exempt material which may be discussed in these closed sessions is not considered practical.

Practical considerations may dictate alterations in the above agenda or schedule. The Chairman of the Working Group is empowered to conduct the meeting in a manner that, in his judgment, will facilitate the orderly conduct of business, including provisions to carry over an incompleted open session from one day to the next.

The Advisory Committee on Reactor Safeguards is an independent group established by Congress to review and report on each application for a construction permit and on each application for an operating license for a reactor facility and on certain other nuclear safety matters. The Committee's reports become a part of the public record. Although ACRS meetings are ordinarily open to the public and provide for oral or written statements to be considered as a part of the Committee's information gathering procedure concerning the health and safety of the public, they are not adjudicatory type hearings such as are conducted by the Nuclear Regulatory Commission's Atomic Safety & Licensing Board as part of the Commission's licensing process. ACRS meetings do not normally treat matters pertaining to environmental impacts outside the safety area.

With respect to public participation in the open portion of the meeting, the following requirements shall apply:

(a) Persons wishing to submit written statements regarding the agenda items may do so by providing a readily reproducible copy to the Working Group at the beginning of the meeting. Comments should be limited to safety related areas within the Working Group's purview.

Persons desiring to mail written comments may do so by sending a readily reproducible copy thereof in time for consideration at this meeting. Comments postmarked no later than January 25, 1977 to Mr. R. L. Wright, Jr., ACRS, NRC, Washington, D.C. 20555 will normally be received in time to be considered at this meeting.

(b) Those persons wishing to make an oral statement at the meeting should make a written request to do so, identifying the topics and desired presentation time so that appropriate arrangements can be made. The Working Group will receive oral statements on topics relevant to its purview at an appropriate time chosen by the Chairman of the Working Group.

(c) Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call on January 31, 1977 to the Office of the Executive Director of the Committee (telephone 202/634-1919, Attn: Mr. R. L. Wright, Jr.) between 8:15 a.m. and 5:00 p.m., EST.

(d) Questions may be propounded only by members of the Working Group and its consultants.

(e) The use of still, motion picture, and television cameras, the physical installation and presence of which will not interfere with the conduct of the meeting, will be permitted both before and after the meeting and during any recess. The use of such equipment will not, however, be allowed while the meeting is in session.

(f) Persons with agreements or orders permitting access to proprietary information may attend portions of ACRS meetings where this material is being discussed upon confirmation that such agreements are effective and relate to the material being discussed.

The Executive Director of the ACRS should be informed of such an agreement at least three working days prior to the meeting so that the agreement can be confirmed and a determination can be made regarding the applicability of the agreement to the material that will be discussed during the meeting. Minimum information provided should include information regarding the date of the agreement, the scope of material included in the agreement, the project or projects involved, and the names and titles of the persons signing the agreement. Additional information may be requested to identify the specific agreement involved. A copy of the executed agreement should be provided to Mr. R. L. Wright, Jr., of the ACRS Office, prior to the beginning of the meeting.

(g) A copy of the transcript of the open portion(s) of the meeting where factual information is presented and a copy of the minutes of the meeting will be available for inspection on or after February 8, and May 2, 1977, respectively, at the NRC Public Document Room, 1717 H St., N.W., Washington, D.C. 20555.

Copies may be obtained upon payment of appropriate charges.

Dated: January 12, 1977.

JOHN C. HOYLE,
Advisory Committee
Management Officer.

[FR Doc.77-1473 Filed 1-14-77;8:45 am]

ADVISORY COMMITTEE ON REACTOR SAFEGUARDS, SUBCOMMITTEE ON RESOLUTION OF GENERIC ITEMS

Meeting

In accordance with the purposes of sections 29 and 182 b. of the Atomic Energy Act (42 U.S.C. 2039, 2232 b.), the ACRS Subcommittee on the Resolution of Generic Items will hold a meeting on February 2, 1977 in Room 1062, 1717 H St., N.W., Washington, D.C. 20555. The purpose of this meeting is to review the status of generic items identified by the

ACRS and to determine if any new items should be added to the list.

The agenda for subject meeting shall be as follows:

WEDNESDAY, FEBRUARY 2, 1977

8:30 A.M.—9:00 A.M. (OPEN)

The Subcommittee will meet in Executive Session, with any of its consultants who may be present, to explore their preliminary opinions, based upon their independent review of safety reports, regarding matters which should be considered during the open session in order to formulate a Subcommittee report and recommendations to the full Committee.

9:00 A.M. UNTIL CONCLUSION OF BUSINESS (OPEN)

The Subcommittee will hear presentations by and hold discussions with representatives of the NRC Staff regarding matters pertinent to this review.

The Subcommittee may caucus in a brief, closed session to determine whether the matters identified in the initial session have been adequately covered and whether they are ready for review by the full Committee. During the session Subcommittee members and consultants will discuss their opinions and recommendations on these matters.

I have determined, in accordance with Subsection 10(d) of Public Law 92–463, that it is necessary to conduct the above closed session to protect the free interchange of internal views in the final stages of the Subcommittee's deliberative process (5 U.S.C. 552(b)(5)). Separation of factual material from individuals' advice, opinions, and recommendations while closed Executive Sessions are in progress is considered impractical.

Practical considerations may dictate alterations in the above agenda or schedule. The Chairman of the Subcommittee is empowered to conduct the meeting in a manner that, in his judgment, will facilitate the orderly conduct of business, including provisions to carry over an incompleted open session from one day to the next.

The Advisory Committee on Reactor Safeguards is an independent group established by Congress to review and report on each application for a construction permit and on each application for an operating license for a reactor facility and on certain other nuclear safety matters. The Committee's reports become a part of the public record. Although ACRS meetings are ordinarily open to the public and provide for oral or written statements to be considered as a part of the Committee's information gathering procedure concerning the health and safety of the public, they are not adjudicatory type hearings such as are conducted by the Nuclear Regulatory Commission's Atomic Safety & Licensing Board as part of the Commission's licensing process. ACRS meetings do not normally treat matters pertaining to environmental impacts outside the safety area.

With respect to public participation in the open portion of the meeting, the following requirements shall apply:

(a) Persons wishing to submit written statements regarding the agenda may do so by providing a readily reproducible copy to the Subcommittee at the beginning of the meeting. Comments should be limited to safety related areas within the Committee's purview.

Persons desiring to mail written comments may do so by sending a readily reproducible copy thereof in time for consideration at this meeting. Comments postmarked no later than January 26, 1977 to Mr. John C. McKinley, ACRS, NRC, Washington, D.C. 20555, will normally be received in time to be considered at this meeting.

(b) Those persons wishing to make an oral statement at the meeting should make a written request to do so, identifying the topics and desired presentation time so that appropriate arrangements can be made. The Committee will receive oral statements on topics relevant to the Committee's purview at an appropriate time chosen by the Chairman of the Subcommittee.

(c) Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call on February 1, 1977 to the Office of the Executive Director of the Committee (telephone 202/634–1371, Attn: Mr. John C. McKinley) between 8:15 a.m. and 5:00 p.m., EST.

(d) Questions may be propounded only by members of the Subcommittee and its consultants.

(e) The use of still, motion picture, and television cameras, the physical installation and presence of which will not interfere with the conduct of the meeting, will be permitted both before and after the meeting and during any recess. The use of such equipment will not, however, be allowed while the meeting is in session.

(f) A copy of the transcript of the open portion(s) of the meeting where factual information is presented and a copy of the minutes of the meeting will be available for inspection on or after February 9, and May 2, 1977, respectively, at the NRC Public Document Room, 1717 H St., N.W., Washington, D.C. 20555.

Copies may be obtained upon payment of appropriate charges.

Dated: January 12, 1977.

JOHN C. HOYLE,
Advisory Committee Management Officer.

[FR Doc.77-1474 Filed 1-14-77;8:45 am]

[Docket No. 50-305]

WISCONSIN PUBLIC SERVICE CORP.

Proposed Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–43, issued to Wisconsin Public Service Corporation, Wisconsin Power and Light Company and Madison Gas and Electric Company (the licensee), for operation of the Kewaunee Nuclear Power Plant located in Kewaunee, Wisconsin.

The amendment would increase the total peaking factor, Fq, from 2.11 to 2.25 as a result of a reanalysis of the ECCS assuming a reactor vessel upper head fluid temperature equal to the hot leg temperature in accordance with the "Order for Modification of License" issued on August 27, 1976.

By February 16, 1977 the licensee may file a request for a hearing and any person whose interest may be affected by this proceeding may file a request for a hearing in the form of a petition for leave to intervene with respect to the issuance of the amendment to the subject facility operating license. Petitions for leave to intervene must be filed under oath or affirmation in accordance with the provisions of § 2.714 of 10 CFR Part 2 of the Commission's regulations. A petition for leave to intervene must set forth the interest of the petitioner in the proceeding, how that interest may be affected by the results of the proceeding, and the petitioner's contentions with respect to the proposed licensing action. Such petitions must be filed in accordance with the provisions of this FEDERAL REGISTER notice and § 2.714, and must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Section, by the above date. A copy of the petition and/or request for a hearing should be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Steven E. Keane, Esquire, Foley, Sammond and Lardner, 735 North Water Street, Milwaukee, Wisconsin 53202, attorney for the licensee.

A petition for leave to intervene must be accompanied by a supporting affidavit which identifies the specific aspect or aspects of the proceeding as to which intervention is desired and specifies with particularity the facts on which the petitioner relies as to both his interest and his contentions with regard to each aspect on which intervention is requested. Petitions stating contentions relating only to matters outside the Commission's jurisdiction will be denied.

All petitions will be acted upon by the Commission or licensing board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel. Timely petitions will be considered to determine whether a hearing should be noticed or another appropriate order issued regarding the disposition of the petitions.

In the event that a hearing is held and a person is permitted to intervene, he becomes a party to the proceeding and has a right to participate fully in the conduct of the hearing. For example, he may present evidence and examine and cross-examine witnesses.

For further details with respect to this action, see the application for amendment dated December 10, 1976, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the Kewaunee Public Library, 314 Milwaukee Street, Kewaunee, Wisconsin 20555.

Dated at Bethesda, Maryland, this 10th day of January 1977.

For the Nuclear Regulatory Commission.

A. SCHWENCER,
Chief, Operating Reactors Branch No. 1, Division of Operating Reactors.

[FR Doc.77-1475 Filed 1-14-77;8:45 am]

[Dockets Nos. 50-247 and 50-286]

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC. AND POWER AUTHORITY OF THE STATE OF NEW YORK

Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has issued to Consolidated Edison Company of New York, Inc. (Con Ed), Amendment No. 26 to Facility Operating License No. DPR–26 for the Indian Point Nuclear Generating Unit No. 2, and has issued to Con Ed and the Power Authority of the State of New York, Amendment No. 5 to Facility Operating License No. DPR–64 for Indian Point Nuclear Generating Unit No. 3. These amendments revised Technical Specifications for operation of Indian Point Units Nos. 2 and 3 located in Buchanan, Westchester County, New York. The amendments are effective as of the date of issuance.

These amendments revise the Technical Specifications to change requirements for administrative controls at each unit. The changes principally pertain to assignments of key personnel within the plant organization.

The applications for the amendments comply with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments. Prior public notice of these amendments was not required since the amendments do not involve a significant hazards consideration.

The Commission has determined that the issuance of these amendments will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement, or negative declaration and environmental impact appraisal need not be prepared in connection with the issuance of these amendments.

For further details with respect to this action, see (1) the applications for amendments transmitted by letters dated August 27, 1976 and November 9, 1976, (2) Amendment No. 26 to License No. DPR–26, (3) Amendment No. 5 to License No. DPR–64, and (4) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the Hendrick Hudson Free Library, 31 Albany Post Road, Montrose, New York.

A copy of items (2), (3), and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Maryland, this 4th day of January 1977.

For the Nuclear Regulatory Commission.

ROBERT W. REID,
Chief, Operating Reactors Branch No. 4, Division of Operating Reactors.

[FR Doc.77-1476 Filed 1-14-77;8:45 am]

[Docket Nos. 50-329, 50-330]

CONSUMERS POWER CO. (MIDLAND PLANT, UNITS 1 AND 2)

Order

(1) The parties have been unable to agree on the scheduling of witnesses for the evidentiary session beginning January 18, 1977. Because we are reluctant to interfere with the presentation of its case by a party carrying, at least, the burden of going forward with the evidence, our order will follow Licensee's proposal.

(2) The place of hearing for the session beginning January 18, 1977, has been changed to what, we are advised, is larger space. We will be in Room 1220 on January 18, 1977, and Room 204A for the balance of the week, both in the Everett McKinley Dirkson Building, 219 South Dearborn Street, Chicago, Illinois.

(3) The Board is unable to sit during the week of January 24, 1977, and the hearing will be in recess from January 21, 1977, until January 31, 1977, when it will reconvene at a time and a room to be designated.

(4) Dow has requested that the December 14, 1976 transcript be amended to include:

Mr. Wessel: I apologize for interrupting, but I must correct Mr. Rosso's statement, 'Dow has said they believe they have a valid contractual commitment.' Not to respond to an inaccurate comment when one is present, might well constitute an admission by silence in some future proceeding in which the nature of the Dow-Consumers contractual obligation is an issue.

Dow has never taken the position that it has a valid contractual commitment with Consumers. What I said earlier, which has been Dow's position throughout, is that Dow will continue to honor our contractual obligations as we see them. There is, of course, a substantial difference between these two positions.

Mr. Rosso: I apologize for inadvertently misquoting Mr. Wessel's position.

The Staff agrees with Dow except that it urges the following statement to be added to Mr. Rosso's comment:

Mr. Wessel's correction does not change the import of what I said.

The Staff alleges the omission occurred after page 939 of the transcript and before page 940.

No party has objected to the Dow request nor that of the Staff. Both omissions therefore should be added to the transcript.

It is therefore ordered: (I) That the order of witnesses to be heard during the session commencing January 18, 1977, shall be Mr. Keeley (Parts 1 and 2 of filed testimony), Mr. Howell, Mr. Temple, Mr. Weeds, Mr. Hein and Mr. Keeley (Parts 3 and 4);

(II) That the time and place of hearing sessions will be as set out in parts 2 and 3 hereof;

(III) That the transcript is ordered amended as asked and as set out in part (4) hereof; the reporter is directed to provide a new page 939A of the transcript containing the material there set out; the reporter shall distribute such new page to each party or other person to whom copies of the transcript have been furnished for inclusion in the transcript.

Dated at Bethesda, Maryland, this 7th day of January 1977.

The Atomic Safety and Licensing Board.

FREDERIC J. COUFAL,
Chairman.

[FR Doc.77-1478 Filed 1-14-77;8:45 am]

[Docket No. P-636A]

FLORIDA POWER AND LIGHT CO.

Order

In the matter of Florida Power and Light Company, (South Dade Nuclear Units); Florida Power and Light Company, (St. Lucie Plant, Units 1 and 2); Florida Power and Light Company, (Turkey Point Plant, Units 3 and 4); Docket Nos. P-636A, 50-335A, 50-389A, 50-250A, 50-251A.

A prehearing conference in the South Dade, proceeding Docket No. P-636A, has been set for 1:30 p.m., January 31, 1977.

Oral Arguments on the St. Lucie and Turkey Point petitions, Docket Nos. 50-335A; 50-389A; 50-250A; and 50-251A will be heard beginning at 9:30 a.m., February 1, 1977.

Both sessions will be at the Commission's hearing room, 5th floor, East-West Towers Building, 4350 East-West Highway, Bethesda, Maryland 20014.

It is so ordered.

Dated this 10th day of January 1977 at Bethesda, Maryland.

For the Atomic Safety and Licensing Board.

IVAN W. SMITH,
Chairman of the Board.

[FR Doc.77-1479 Filed 1-14-77;8:45 am]

[Docket No. 27-39]

NUCLEAR ENGINEERING COMPANY, INC.

Amendment of Byproduct, Source and Special Nuclear Material License

Please take notice that the Nuclear Regulatory Commission has issued Amendment No. 11 to License No. 13-10042-01.

The license amendment provides for the following changes for the licensee's radioactive waste burial site located near Sheffield, Illinois.

1. Grants authority for burial of radioactive waste in new trenches identified as Trenches 14 and 14A.

2. Grants authority to bury liquid radioactive waste contained in scintillation liquid.

3. Deletes authority for burial of transuranic radioactive waste in concentrations greater than 10 nanocuries per gram.

4. Updates the radiological health and safety program and procedures for the Sheffield site.

The Commission has determined that prior public notice of proposed issuance of this amendment is not required since the amendment does not involve hazard considerations different from those previously evaluated. By February 1, 1977, the applicant may file a request for a hearing, and any person whose interest may be affected by this proceeding may file a petition for leave to intervene with the Commission in the manner prescribed in the Commission's "Rule of Practice", 10 CFR Part 2.

Dated at Bethesda, Maryland January 7, 1977.

For the Nuclear Regulatory Commission.

BERNARD SINGER,
Chief, Radioisotopes Licensing Branch, Division of Fuel Cycle and Material Safety.

[FR Doc.77-1480 Filed 1-14-77;8:45 am]

[Docket No. 50-312]

SACRAMENTO MUNICIPAL UTILITY DISTRICT

Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 9 to Facility Operating License No. DPR-54 issued to Sacramento Municipal Utility District, which revised Technical Specifications for operation of the Rancho Seco Nuclear Generating Station, located in Sacramento County, California. The amendment is effective as of its date of issuance.

The amendment incorporates provisions into the Technical Specifications related to limiting conditions for operation and surveillance of shock suppressors (snubbers).

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement, or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated October 6, 1976, (2) Amendment No. 9 to License No. DPR-54, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. 20555 and at the Business & Municipal Department, Sacramento City-County Library, 828 I Street, Sacramento, California.

A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Maryland, this 6th day of January 1977.

For the Nuclear Regulatory Commission.

ROBERT W. REID,
Chief, Operating Reactors Branch No. 4 Division of Operating Reactors.

[FR Doc.77-1481 Filed 1-14-77;8:45 am]

[Docket No. 50-577]

WESTINGHOUSE ELECTRIC CORP.

Application for and Consideration of Issuance of Facility Export License

Please take notice that Westinghouse Electric Corporation, Pittsburgh, Pennsylvania, has submitted to the Nuclear Regulatory Commission an application for a license to authorize the export of a pressurized water reactor with a thermal power level of 3,000 megawatts to Spain and that the issuance of such license is under consideration by the Nuclear Regulatory Commission.

No license authorizing the proposed reactor export will be issued until the Nuclear Regulatory Commission determines that such export is within the scope of and consistent with the terms of an applicable agreement for cooperation arranged pursuant to section 123 of the Atomic Energy Act of 1954, as amended (Act), nor until the Nuclear Regulatory Commission has found that:

(a) The application complies with the requirements of the Act, and the Commission's regulations set forth in 10 CFR, Chapter 1, and

(b) The reactor proposed to be exported is a utilization facility as defined in said Act and regulations.

In its review of applications solely to authorize the export of production or utilization facilities, the Nuclear Regulatory Commission does not evaluate the health and safety characteristics of the facility to be exported. Consequently, there are no safety analysis or Advisory Committee on Reactor Safeguards reports.

Unless by February 16, 1977, a request for a hearing is filed with the Nuclear Regulatory Commission by the applicant, or a petition for leave to intervene is filed by any person whose interest may be affected by the proceeding, the Director of the Office of International Programs may, upon the determinations and findings noted above, cause to be issued to Westinghouse Electric Corporation a facility export license and may cause to be published in the FEDERAL REGISTER a notice of issuance of the license. If a request for a hearing or a petition for leave to intervene is filed within the time prescribed in the notice, the Nuclear Regulatory Commission will issue a notice of hearing or an appropriate order.

A copy of the application is on file in the Nuclear Regulatory Commission's Public Document Room located at 1717 H Street, NW., Washington, D.C.

Dated at Bethesda, Maryland this 6th day of January, 1977.

For the Nuclear Regulatory Commission.

MICHAEL A. GUHIN,
Assistant Director, Export/Import and International Safeguards, Office of International Programs.

[FR Doc.77-1482 Filed 1-14-77;8:45 am]

[Docket No. 50-206]

SOUTHERN CALIFORNIA EDISON CO. AND SAN DIEGO GAS AND ELECTRIC CO.

Notice of Consideration of Variance Involving Provisional Operating License No. DPR-13

The Southern California Edison Company of Rosemead, California and San Diego Gas and Electric Company of San Diego, California (licensees) are authorized by Provisional Operating License No. DPR-13 to operate a nuclear power reactor identified as San Onofre Unit No. 1 (the facility), located in San Diego County, California, at steady state power levels up to 1347 MWt.

By letter dated November 3, 1976, Southern California Edison Company (SCEC) indicated that based on its efforts to date and the remaining work to be done to achieve compliance with the Commission's Interim Acceptance Criteria (IAC; 36 FR 12247, June 29, 1971), operation of San Onofre, Unit No. 1 was scheduled to be resumed on February 11, 1977. The work which involves the installation of the on-site emergency power system, has continued during the present facility outage with the reactor shut down since September 30, 1976, prior to the expiration of the October 1, 1976 IAC conformance date granted in the Commission's August 5, 1974 variance.

In its letter dated December 16, 1976 (which updates its previous letter dated November 19, 1976) SCEC proposed to have the new on-site emergency power system available for operation upon startup of the facility as scheduled for February 11, 1977, with transfer pumps for supplying diesel oil to the two new diesel generators that do not meet the required ASME Section III pump qualifications. The facility would be operated in this manner until replacement of the transfer pumps with physically and functionally similar pumps that will be certified to meet the ASME, Section III requirements. SCEC's request for approval of this proposed course of action may involve a request for variance from the IAC for the purpose of obtaining an extension of time for replacement of the fuel oil transfer pumps with pumps certified to meet Section III requirements.

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation is considering a variance which would extend the October 1, 1976 deadline for achieving compliance for the facility until April 30, 1977. The variance may be granted upon a finding that there is good cause and that there is reasonable assurance that the granting of the extension will not adversely affect the health and safety of the public. The Director, Office of Nuclear Reactor Regulation will consider and issue a determination, together with supporting reasons, with respect to the variance. In that connection, the Director, Office of Nuclear Reactor Regulation invites the submission of views and comments by any interested persons. Such views and comments should be submitted in writing, addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, not later than January 25, 1977.

A copy of SCEC's letters of November 3, 19, December 16, 1976, and related correspondence and documents including the Commission's Order of August 5, 1974, have been placed in the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and the Mission Viejo Branch Library, 24851 Chrisanta Drive, Mission Viejo, California.

Dated at Bethesda, Maryland, this 7th day of January, 1977.

For the Nuclear Regulatory Commission.

A. SCHWENCER,
Chief, Operating Reactors Branch No. 1, Division of Operating Reactors.

NOTE.—This document is reprinted without change from the FEDERAL REGISTER of January 11, 1977.

[FR Doc.77-1107 Filed 1-10-77;10:20 am]

[Docket No. 50-313]

ARKANSAS POWER & LIGHT CO.

Issuance of Amendment to Facility Operating License and Negative Declaration

Correction

NOTE.—The following document was inaccurately printed on page 1319 in the issue for Thursday, January 6, 1977. It is being reprinted here in its correct form.

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 17 to Facility Operating License No. DPR-51, issued to Arkansas Power & Light Company (the licensee), which revised the license and its appended Technical Specifications for operation of Arkansas Nuclear One—Unit No. 1 (the facility) located in Pope County, Arkansas. The amendment is effective as of its date of issuance.

This amendment authorized changes in the design of the ANO-1 spent fuel storage pool from that reviewed and approved in the operating license review and as described in the ANO-1 Final Safety Analysis Report. The changes will increase spent fuel storage capacity from 253 to 590 assemblies.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Notice of Consideration of Proposed Modification to Facility Spent Fuel Storage Pool in connection with this action was published in the FEDERAL REGISTER on October 28, 1976 (41 FR 47294). No request for a hearing or petition for leave to intervene was filed following notice of the proposed action.

The Commission has prepared an environmental impact appraisal for the revised Technical Specifications and has concluded that an environmental impact statement for this particular action is not warranted because there will be no significant environmental impact attributable to the action.

For further details with respect to this action, see (1) the application for amendment dated October 7, as supplemented by letters dated October 18, October 25, November 11, November 16, and November 19, 1976, (2) Amendment No. 17 to Facility Operating License No. DPR-51 and (3) the Commission's related Safety Evaluation and Environmental Impact Appraisal. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the Arkansas Polytechnic College, Russellville, Arkansas 72801. A single copy of items (2) and (3) may be obtained upon request addressed to the U. S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Maryland, this 17th day of December, 1976.

For the Nuclear Regulatory Commission.

DENNIS L. ZIEMANN,
Chief, Operating Reactors Branch No. 2, Division of Operating Reactors.

[FR Doc.77-435 Filed 1-5-77;8:45 am]

OFFICE OF MANAGEMENT AND BUDGET

CLEARANCE OF REPORTS

List of Requests

The following is a list of requests for clearance of reports intended for use in collecting information from the public received by the Office of Management and Budget on January 7, 1977 (44 U.S.C. 3509). The purpose of publishing this list in the FEDERAL REGISTER is to inform the public.

The list includes the title of each request received; the name of the agency sponsoring the proposed collection of information; the agency form number(s), if applicable; the frequency with which the information is proposed to be collected; the name of the reviewer or reviewing division within OMB, and an indication of who will be the respondents to the proposed collection.

Requests for extension which appear to raise no significant issues are to be approved after brief notice through this release.

Further information about the items on this daily list may be obtained from the Clearance Office, Office of Management and Budget, Washington, D.C. 20503 (202–395–4529), or from the reviewer listed.

NEW FORMS

DEPARTMENT OF AGRICULTURE

Economic Research Service, Agricultural Outlook Readership Survey, single-time, audience of agricultural outlook publication, Caywood, D. P., 395–3443.

DEPARTMENT OF DEFENSE

Departmental and other, Survey of Military Retirees, single-time, military retirees, National Security Division, George Hall, 395–4734.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

National Institutes of Health, Cancer Education Study, single-time, students, faculty administrators, Richard Eisinger, 395–6140.

REVISIONS

U.S. CIVIL SERVICE COMMISSION

Identification and Personnel Data for Employment, of United States Citizen, ILB–2, OSC 215, CSC 609, CT–F–11, on occasion, completed by applicant, Caywood, D. P., 395–3443.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Title II, PL 480 Commodities Annual Estimate of Requirements—FY 19 . AID 1550–3 annually, voluntary agencies, Tracey Cole, 395–5870.

DEPARTMENT OF AGRICULTURE

Forest Service:

Technical Data—Electronic Type Land Use, 2700–10, on occasion, radio, television, and radar stations, Marsha Traynham, 395–4529.

Off-Road Vehicle Permit, 2300–31, on occasion, terrain vehicles including snowmobiles, Marsha Traynham, 395–4529.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Health Resources Administration, 1977 National Nursing Home Survey, NCHS 0114, single-time, nursing homes, their residents and staff, Richard Eisinger, 395–6140.

EXTENSIONS

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service, Sugar Deliveries by type of buyer (and class of product on a geographical basis), SU64, quarterly, primary distributors of sugar in United States, Warren Topelius, 395–5872.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

National Institutes of Health, Report of trainees receiving stipend, dependency allowance, tuition or travel from FY funded training grant, NIH–2003–4, annually, program director, Warren Topelius, 395–5872.

PHILLIP D. LARSEN,
Budget and Management Officer.

[FR Doc.77–1513 Filed 1–14–77;8:45 am]

OFFICE OF THE SPECIAL REPRESENTATIVE FOR TRADE NEGOTIATIONS

TRADE POLICY STAFF COMMITTEE

Solicitation of Public Views

Pursuant to section 201 of the Trade Act of 1974, the United States International Trade Commission (USITC) has reported to the President on the case of mushrooms (Investigation No. TA–201–17). The USITC submitted a report on January 10, 1977 containing an affirmative determination that mushrooms, prepared or preserved, except fresh or dried, provided for in TSUS item 144.20 are being imported in such increased quantities as be a substantial cause of serious injury, or threat thereof, to the domestic industry producing articles like or directly competitive with the imported articles.

The Commission[1] finds and recommends the imposition of a tariff rate quota on the articles for a period of five years, with the tariff quotas established and allocated to countries subject to rates of duty provided for in rate of duty column numbered 1 of the TSUS, is necessary to remedy the injury as follows:

1st 3 yrs	4th yr	5th yr
3.2¢ per pound on drained weight plus 35 pct. ad val.	3.2¢ per pound on drained weight plus 25 pct. ad val.	3.2¢ per pound on drained weight plus 15 pct. ad val.

The within quota imports entered in any year should be established and allocated to countries as follows:

Country:	*Aggregate annual quota (millions of pounds, drained weight)*
Republic of China (Taiwan)	31.7
Republic of Korea	11.8
Japan	1.4
Dominican Republic	.7
France	.6
Costa Rica	.5
Ecuador	.5
All others	.8
Total	48.0

[1] Commissioners Minchew, Parker and Moore.

Within 60 days of receiving a report from the USITC containing an affirmative determination, the President must determine what method and amount of import relief he will provide or determine that the provision of relief is not in the national economic interest, and whether he will direct expenditious consideration of adjustment assistance petitions.

In determining whether to provide import relief and what method and amount of import relief he will provide, the President must take into account, in addition to other considerations, the following factors:

(1) The probable effectiveness of the import relief as a means to promote adjustment, the efforts being made or to be implemented by the industry concerned to adjust to import competition, and other considerations relevant to the position of the industry in the nation's economy;

(2) The effect of import relief on consumers and on competition in the domestic markets for such articles;

(3) The effect of import relief on the international economic interest of the United States;

(4) The impact on United States industries and firms as a consequence of any possible modification of duties or other import restrictions which may result from international obligations with respect to compensation;

(5) The geographic concentration of imported products marketed in the United States;

(6) The extent to which the United States market is a focal point for exports of such article by reason of restraints on exports of such article to, or on imports of such article into, third country markets;

(7) The economic and social costs which would be incured by taxpayers, communities and workers if import relief were or were not provided.

The Office of the Special Representative for Trade Negotiations chairs the interagency Trade Policy Committee structure that makes recomendations to the President as to what action, if any, he should take on reports submitted by the USITC under section 201(d). In order to assist the Trade Policy Staff Committee in developing information on possible action which may be taken under section 202 and 203 of the Trade Act of 1974, the Committee welcomes briefs from interested parties on the above listed subjects. (Further information on this case is available in the Report of the USITC on mushrooms—Investigation No. TA–201–17).

Briefs should be submitted in twenty (20) copies to Chairman, Trade Policy Staff Committee, Room 728, Office of the Special Representative for Trade Negotiations, 1800 G Street, N.W., Washington, D.C. 20506.

To be considered by the Trade Policy Staff Committee, submissions should be recieved in the Office of the Special Representative for Trade Negotiations no later than 15 days following publication of this notice in the FEDERAL REGISTER.

WILLIAM B. KELLY,
Chairman, Trade Policy Staff Committee.

[FR Doc.77–1336 Filed 1–14–77;8:45 am]

SECURITIES AND EXCHANGE COMMISSION

[70–5902]

ARKANSAS-MISSOURI POWER CO. AND ASSOCIATED NATURAL GAS CO.

Proposals by Subsidiary Utility Companies To Issue and Sell First Mortgage Bonds; Request for Exception From Competitive Bidding

Notice is hereby given that Arkansas-Missouri Power Company ("Ark-Mo"), a subsidiary holding company of Middle South Utilities, Inc. ("Middle South"), a registered holding company, and Ark-Mo's subsidiary gas utility company, Associated Natural Gas Company ("Associated"), 405 West Park Street, Blytheville, Arkansas 72315, have filed a joint application-declaration and an amendment thereto pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating sections 6 and 7 of the Act and Rule 50(a)(5) promulgated thereunder as applicable to the following proposed transactions. All interested persons are referred to the amended joint application-declaration, which is summarized below, for a complete description of the proposed transactions.

Ark-Mo is principally an electric utility company operating in northeastern Arkansas and portions of Missouri. Ark-Mo serves gas to communities in the same territory. Its subsidiary, Associated, distributes gas in scattered areas of Missouri, for the most part outside of Ark-Mo's territory, although its largest group of properties are connected with Ark-Mo's gas system. At June 30, 1976, Ark-Mo's net electric plant was $46,952,124, and its net gas plant was $11,623,973. Approximately $4 million of Ark-Mo's gas plant represents the depreciated book cost of a liquefied natural gas (LNG) facility located near Blytheville, Arkansas, on the Missouri-Arkansas border, which is used by both Ark-Mo and Associated to meet their peak-day requirements. Associated's transmission and distribution facilities had a depreciated book cost of $9,975,994 as of June 30, 1976. Ark-Mo and Associated together provide gas service to 90 communities in northeast Arkansas and southeast Missouri. Their combined gas system consists of approximately 564 miles of transmission lines and 1,273 miles of distribution lines. For the twelve months ended June 30, 1976, reported gas revenues were $7,371,069 for Ark-Mo and $9,465,420 for Associated.

The capitalization of the two companies at June 30, 1976 was:

	Ark-Mo	Percent	Associated	Percent	Consolidated	Percent
Long-term debt	$21,204,800	35.4	$1,058,000	11.4	$22,362,880	33.0
Short-term debt	12,250,000	20.4	2,750,000	29.6	15,000,000	23.5
Common stock	19,213,315	.....	971,275	.....	19,213,315	.....
Retained earnings	7,281,918	44.2	4,510,334	59.0	7,281,918	41.5
Total	60,050,123	100.0	9,289,609	100.0	63,858,123	100.0

Ark-Mo's investment of $5,772,570 in the stock of Associated represents 9.6% of its corporate capitalization.

By order dated May 5, 1971 (HCAR No. 17116), the Commission approved Middle South's acquisition of the outstanding common and preferred stock of Ark-Mo, subject to certain conditions. One of those conditions required that Middle South dispose of any direct or indirect interest in the gas utility properties of Ark-Mo and Associated. In compliance with that order, Ark-Mo and Associated commenced in 1973 an effort to sell the gas properties. Ark-Mo was granted an exception from the competitive bidding requirements of Rule 50 with respect to the outstanding common stock of Associated to permit it to consider offers for either the assets or the stock of that company. (HCAR No. 17944, April 26, 1973.)

The solicitation of offers during 1974 was not productive. Two offers for all of the gas properties were considered wholly inadequate. Ten offers for various portions of the properties were also unacceptable. Ark-Mo concluded that acceptance of such partial offers would have seriously impaired its ability to continue adequate gas service to the communities not covered by the offers and would have depreciated the value of those properties. Further negotiations with the principal offerors during 1975 and the first part of 1976 in an effort to avoid such adverse effects were also unsuccessful.

Ark-Mo and Associated consider that further attempts to sell the gas properties at this time would be fruitless and that underlying uncertainties as to gas supply inhibit reasonable offers. The continued divided ownership of the gas properties between Ark-Mo and Associated distorts the capital structure of both companies and has inhibited proper financing. Short-term debt, aggregating $15 million at June 30, 1976, requires refunding.

Accordingly, Ark-Mo and Associated intend to proceed with a plan whereby all of the gas properties owned and operated by Ark-Mo will be transferred to Associated at the net depreciated cost on the date of closing, so that, upon completion of their transfer, Associated will own and operate all of the gas properties presently owned and operated by both companies. The proposed transfer of the gas properties by Ark-Mo to Associated will consolidate into one corporate entity gas properties which, except for some isolated operations of Associated, have been operated as an integrated system. It is stated that the consolidation will simplify proceedings before regulatory agencies and enable Associated, as an expanded gas utility, to establish an operating record which can lead to a plan for the eventual divestiture of Associated or its assets.

To finance a portion of the acquisition cost of the gas properties and other transactions, Associated proposes to issue and sell, in a private negotiated sale, $4.5 million of its first mortgage bonds. Associated presently contemplates raising the additional funds needed by issuing and selling to Ark-Mo for cash 1,500,000 additional shares of its common stock for $1,500,000 and a $4 million subordinated note, and by arranging for a sale and leaseback of the LNG facility acquired from Ark-Mo. Associated will apply the proceeds of those transactions, together with funds from internal sources, totaling about $14 million, to purchase the gas properties at their net depreciated book cost (about $11.6 million at June 30, 1976) and to retire its short-term debt which, at June 30, 1976, was $2,750,000.

Ark-Mo proposes to issue and sell, also by private placement, $8 million of its first mortgage bonds. It will apply the proceeds from the bond sale and from the sale of the gas properties (totaling approximately $19.6 million), together with funds generated internally, to purchase Associated's common stock and subordinated note, to retire its own short-term debt (totaling $12,250,000 at June 30, 1976) and to meet its long-term debt obligations for 1977.

The terms and conditions of the first mortgage bonds to be sold by Associated and Ark-Mo will be the subject of an amendment to this application. The issuance of Associated's common stock and subordinated note, the transfer of the gas properties by Ark-Mo to Associated and the sale and leaseback of the Blytheville LNG facility will all be the subject of a supplemental application in this proceeding.

Ark-Mo and Associated request exceptions from the competitive bidding requirements of Rule 50 under clause (a)(5) thereof in order to place their first mortgage bonds in a negotiated private sale. They note that each is a relatively small public utility company, that neither has used competitive bidding procedures in selling their securities since 1944, and that all of their outstanding long-term debt securities are privately held. They concluded that the competitive bidding requirements of Rule 50 would not be conductive to a successful sale of their debt securities.

Notice is further given that any interested person may, not later than Janu-

ary 31, 1977, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application-declaration, as amended, which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants-declarants at the above-stated address, and proof of service (by affidavit or, in case of an attorney-at-law by certificate) should be filed with the request. At any time after said date, the application-declaration, as amended, or as it may be further amended, may be granted and permitted to become effective as provided in Rule 23 of the general rules and regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advise as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.77-1361 Filed 1-14-77;8:45 am]

[70-5950]

COLUMBIA GAS SYSTEM, INC.

Proposed Amendment of Charter and Solicitation of Proxies

Notice is hereby given that The Columbia Gas System, Inc. ("Columbia"), 20 Montchanin Road, Wilmington, Delaware 19807, a registered holding company, has filed a declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating sections 6(a) and 7 of the Act and Rules 62 and 65 promulgated thereunder as applicable to the following proposed transactions. All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transactions.

The declaration states that since March 1971 Citibank N.A., New York, N.Y., has been administering, as agent, a Dividend Reinvestment Plan ("Plan") available to all Columbia common stockholders. Dividends and optional cash payments of participating stockholders have been reinvested through the purchase of common stock of Columbia by Citibank in the open market. The approximately 13,000 shareholders currently participating in the Plan acquired 91,284 shares of Columbia common stock in the calendar year 1975 through dividend reinvestment of $2,032,216 and optional cash payments of $289,395.

In the present filing Columbia seeks authorization to amend its Certificate of Incorporation, as amended, ("Charter") to except from the preemptive rights provisions of the Charter the issuance of Columbia common stock to stockholders pursuant to stockholder dividend reinvestment plans. At the annual meeting of Columbia shareholders scheduled for April 15, 1977, stockholders will be asked to approve the proposed amendment, and Columbia proposes to solicit proxies in connection therewith. The affirmative vote of the holders of at least a majority of the outstanding shares of common stock is required for the adoption of said amendment of the Charter.

It is stated that, subject to further Commission authorization, Columbia intends to sell from time to time to Citibank for the Plan sufficient authorized but unissued shares of common stock for the reinvestment of dividends and investment of optional cash payments made under the Plan. Stockholders participating in the Plan would benefit to the extent that brokerage commissions on shares being bought by Citibank on the open market would be eliminated, and it is the intention of Columbia to absorb the agent's service charges. Columbia will benefit since it expects that large expenditures for gas supply planned for the future will necessitate the raising of large amounts of capital and the issuance of stock pursuant to the Plan will assist in maintaining the position of equity capital to debt capital required by Columbia's indentures by providing Columbia with another source of common equity capital.

It is stated that no State commission and no Federal commission, other than this Commission, has jurisdiction over the proposed transactions. The fees, commissions, and expenses related to the proposed transaction are estimated at $4,725.

Notice is further given that any interested person may, not later than January 31, 1977, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as filed or as it may be amended, may be permitted to become effective as provided in Rule 23 of the general rules and regulations promulgated under the Act, or the Commission may grant exemption from its rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.77-1362 Filed 1-14-77;8:45 am]

[70-5388]

EASTERN UTILITIES ASSOCIATES ET AL.

Proposed Extension of Bank Borrowing by Subsidiary Company and Proposed Change in Interest Rate on the Borrowing

In the matter of Eastern Utilities Associates, P.O. Box 2333, Boston, Massachusetts 02107, Blackstone Valley Electric Company, P.O. Box 1111, Lincoln, Rhode Island 02865, Brockton Edison Company, 36 Main Street, Brockton, Massachusetts 02403, Fall River Electric Light Company, 85 North Main Street, Fall River, Massachusetts 02722, Montaup Electric Company, P.O. Box 391, Fall River, Massachusetts 02722 (70-5388).

Notice is hereby given that Eastern Utilities Associates ("EUA"), a registered holding company, and its electric utility subsidiary companies, Blackstone Valley Electric Company ("Blackstone"), Brockton Edison Company ("Brockton"), Fall River Electric Light Company ("Fall River") and Montaup Electric Company ("Montaup"), have filed a post-effective amendment to their application-declaration, as previously filed and amended in this proceeding with this Commission designating sections 6(a), 7, 9(a), 10, 12(b), 12(c) and 12(f) of the Act and Rules 43(a) and 45(a) promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the application-declaration, as further amended by said post-effective amendment, which is summarized below, for a complete statement of the proposed transaction.

By prior orders issued in this proceeding, EUA has been authorized to enter into a series of transactions designed to effect the transfer of Blackstone's proportionate ownership in the securities of Montaup, the EUA system generating company, to Brockton, with the result that Brockton now owns 87.87 per cent of Montaup, Fall River, EUA's other electric utility subsidiary, now owns 12.13 per cent of Montaup's securities under the new arrangement.

As a part of this reorganization program, Blackstone has been authorized in this proceeding (order dated February 19, 1975, HCAR No. 18817) to borrow $25,000,000 from The Chase Manhattan Bank (N.A.) ("Chase"). Blackstone originally issued Chase its note in that amount, maturing on February 16, 1976, and bearing interest at 115 percent of the prime rate in effect at Chase from time to time. By order dated February 12, 1976 (HCAR No. 19386) Blackstone was authorized to extend the maturity of the note for a one year period. The note is secured by a second mortgage on certain properties of Blackstone, said second mortgage being subject, among other encumbrances, to the prior lien of Blackstone's Indenture of Mortgage and Deed of Trust dated as of November 1, 1943. No compensating balance is required in connection with this borrowing.

Proceeds of the loan have been used by Blackstone to reduce open account advances to Blackstone from EUA. EUA applied the funds so received to reduce its short-term bank borrowings.

By post-effective amendment filed in this proceeding, it is now proposed that (i) the term of the Chase note be further extended for a one year period to approximately February 6, 1978, and (ii) that the interest rate on the note be changed to a rate per annum equal to 115 percent of the sum of (a) the prime rate in effect at Chase from time to time and (b) one-half of one percent. No compensating balance will be required in connection with the extension of the Chase loan. Assuming a prime rate at Chase of 6 percent, the effective interest cost of the note, as revised and extended, would be 7.475 percent. It is stated that Blackstone had originally intended to convert that Chase note into a longer term secured obligation, but that restrictions on consolidated capitalization ratios contained in EUA's bond indenture make it impossible at the present time to extend the Chase note for more than one year.

It is stated that the Public Utilities Commission of the State of Rhode Island has jurisdiction over the proposed extension of the Chase loan to Blackstone and that no other state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction. Any fees and expenses to be incurred in connection with the proposed transaction will be supplied by amendment.

Notice is further given that any interested person may, not later than January 31, 1977, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application-declaration, as further amended by said post-effective amendment, which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants-declarants at the above-stated addresses, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as further amended by said post-effective amendment, or as it may be further amended, may be granted and permitted to become effective as provided in Rule 23 of the general rules and regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.77-1363 Filed 1-14-77;8:45 am]

[812-3903]

FRANKLIN LIFE INSURANCE CO., ET AL.

Application for an Order of Exemption From Provisions

In the matter of The Franklin Life Insurance Company, Franklin Life Variable Annuity Fund A and Franklin Financial Services Corporation, Franklin Square, Springfield, Illinois 62713, (812-3903).

Notice is hereby given that The Franklin Life Insurance Company ("The Franklin"), an Illinois stock life insurance company, Franklin Life Variable Annuity Fund A ("Fund A"), a separate account of The Franklin registered under the Investment Company Act of 1940 ("Act") as a diversified open-end management investment company, and Franklin Financial Services Corporation ("Franklin Financial"), a wholly-owned subsidiary of The Franklin and the principal underwriter for Fund A, (hereinafter collectively referred to as "Applicants"), filed an application an January 29, 1976 and an amendment thereto on December 27, 1976, pursuant to section 6(c) of the Act for an order exempting Applicants from the provisions of sections 22(e), 27(c)(1) and 27(d) of the Act to the extent necessary to permit compliance by Applicants with certain provisions of the Education Code of the State of Texas. All interested persons are referred to the application on file with the Commission for a statement of the representations therein which are summarized below.

The Franklin established Fund A on November 5, 1969 pursuant to the Illinois Insurance Code. The Franklin allocates to Fund A stipulated payments, net of certain deductions, received under individual variable annuity contracts (the "Contracts") which are designed and offered (i) for use in connection with plans established by persons entitled to the benefits of the Self-Employed Individuals' Tax Retirement Act of 1962, as amended; (ii) for other qualified employee pension and profit sharing trusts described in section 401(a) and tax-exempt under section 501(a) of the Internal Revenue Code and qualified annuity plans described in section 403(a) of the Code; (iii) for annuity purchase plans adopted by public school systems and certain tax-exempt organizations pursuant to section 403(b) of the Internal Revenue Code; and (iv) for use as an individual retirement annuity described in section 408(b) of the Internal Revenue Code.

In 1967, the State of Texas directed the governing boards of all Texas institutions of higher education to make available to certain employees an Optional Retirement Program ("Program"), codified as Subchapter G of Chapter 51 of the Texas Education Code. The statute provides as the funding media for the Program fixed or variable annuity contracts purchased from any insurance or annuity company qualified to do business in Texas. In 1973 the Texas legislature made two amendments in the Program legislation, which amendments became effective on June 14, 1973. The statutory definition of the Program was amended to provide that the benefits of such annuities are to be available only upon termination of employment in the Texas public institutions of higher education, retirement, death or total disability of the participant. The other amendment added a new § 51.358 to Subchapter G which also provides that the benefits of such annuities will be available only if the participant dies, terminates his employment due to total disability, accepts retirement, or terminates employment in the Texas public institutions of higher education.

Because of uncertainty regarding the effect of these amendments, the University of Texas System ("System") requested the opinion of the Attorney General of Texas with respect to several questions concerning such amendments. The Attorney General rendered an opinion dated February 18, 1975, in response to the System's letter. The Attorney General interpreted § 51.358 to prohibit provisions in a variable annuity contract issued in connection with the Program on or after June 14, 1973, which provide for making available the redemption value of such contract prior to the occurrence of one of the conditions specified in the statute, i.e., termination of employment, retirement, death or total disability. Moreover, the opinion further stated that the prohibitions of § 51.358 were impliedly in effect upon the establishment of the Program (in 1967) and that notwithstanding any language which may be contained in existing contracts, a participant in the Program has never had the right to redeem his annuity contract otherwise than in accordance with the limitations described above. The opinion did not affect the right of a participant to transfer the redemption value of his annuity contract from one carrier to another; accordingly, the granting of the relief requested in the application would not affect such right.

SECTIONS 27(c)(1), 22(e) AND 27(d).

Section 27(c)(1) of the Act makes it unlawful for any registered investment company issuing periodic payment plan certificates, or for any depositor of or

underwriter for such company, to sell any such certificate unless such certificate is a redeemable security. Section 2(a)(32) of the Act defines "redeemable security" to mean any security under the terms of which the holder upon its presentation to the issuer or to a person designated by the issuer is entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent thereof.

Section 22(e) of the Act provides that no registered investment company shall suspend the right of redemption or postpone the date of payment or satisfaction upon redemption of any redeemable security in accordance with its terms for more than seven days after the tender of such security to the company or its agent designated for that purpose for redemption except in certain prescribed circumstances.

Section 27(d) of the Act makes it unlawful for any registered investment company issuing periodic payment plan certificates, or for any depositor of or underwriter for such company, to sell any such certificates unless the certificates provides that the holder thereof may surrender the certificate at any time within the first eighteen months after the issuance of the certificate and receive in payment thereof, in cash, the sum of (1) the value of his account, and (2) an amount, from such underwriter or depositor, equal to that part of the excess paid for sales loading which is over 15 per centum of the gross payments made by the certificate holder.

Applicants request exemptions from the provisions of sections 22(e), 27(c)(1) and 27(d) of the Act to the extent necessary to permit compliance with § 51.358 as it pertains to (i) redemption values under Contracts issued to participants in the Program subsequent to the date of such exemptive order and (ii) redemption values under Contracts issued prior thereto but attributable to payments made subsequent to the date of such order.

Applicants assert that if such exemptions are not granted, persons participating in the Program effectively will be denied an opportunity to select as a funding medium for their retirement benefits one of two funding media (the other being fixed annuity contracts) specifically provided in the Texas statute for such purpose. Additionally, participants will be unable to obtain the State's matching contributions for the purchase of an equity-based retirement vehicle. In this respect, the Attorney General's opinion indicated that these matching contributions will encourage participation in the retirement plan but that unrestricted withdrawals prior to retirement might be detrimental to an effective retirement vehicle. In view of the foregoing, Applicants assert that the Commission should grant the requested exemptions because: (1) The limited restriction on redemption would be voluntarily assumed by participants, i.e., eligible employees are not required to participate in the Program; (2) the restrictions were not formulated nor suggested by Applicants; and (3) participants' relinquishment of the full right of redemption is a reasonable requirement in exchange for the benefits bestowed by the matching contributions of the State of Texas.

Applicants will ensure that appropriate disclosure is made to persons who consider participation in the Program, informing them of the restriction on the availability of redemption values under Contracts to be issued to them. This disclosure will take the form of an appropriate reference in each Prospectus to the restrictions on redemption of these Contracts, as well as requiring each participant, as a part of the determination that the sale of these Contracts is suitable for that participant, to sign a statement indicating that he–she is aware that these restrictions will be placed on his–her Contract when it is issued. In addition, Franklin Financial will review all sales literature that is to be used in conjunction with the sales of these contracts for the existence of material representations that are inconsistent with the restrictions to be placed on these contracts and will instruct the salespeople involved in soliciting in this market to specifically bring this restriction to the attention of the potential participants.

Section 6(c) authorizes the Commission to exempt any person, security or transaction or any class or classes of persons, securities or transactions, from the provisions of the Act and Rules promulgated thereunder if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than January 31, 1977, at 5:30 p.m. submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission should order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the address stated above. Proof of such service (by affidavit, or in the case of an attorney at law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0–5 of the rules and regulations promulgated under the Act, an order disposing of the application will be issued as of course following January 31, 1977, unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.77-1364 Filed 1-14-77;8:45 am]

[812-4066]

JOHN HANCOCK TAX-EXEMPT INCOME TRUST AND JOHN HANCOCK DISTRIBUTORS, INC.

Filing of Application for an Order Granting Exemption From Provisions

Notice is hereby given that John Hancock Tax-Exempt Income Trust (the "Fund"), John Hancock Place, P.O. Box 111, Boston, Massachusetts 02117, a diversified, open-end investment company registered under the Investment Company Act of 1940 ("Act"), and John Hancock Distributors, Inc., John Hancock Place, P.O. Box 21, Boston, Massachusetts 02117, proposed underwriter for shares of the Fund (hereinafter collectively called "Applicants"), filed an application on December 20, 1976, pursuant to section 6(c) of the Act for an order of the Commission exempting Applicants, to the extent specified therein, from the provisions of section 22(d) of the Act. The Fund has been organized by John Hancock Advisers, Inc., a wholly owned subsidiary of John Hancock Mutual Life Insurance Company ("John Hancock"). John Hancock Distributors, Inc. is a wholly owned subsidiary of John Hancock Advisers, Inc. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

On December 1, 1976, the Fund filed with the Commission a registration statement on Form N–8B–1 pursuant to section 8(b) of the Act and a registration statement on Form S–5 under the Securities Act of 1933, as amended. The registration statement on Form S–5 has not yet been declared effective. Thus, the Fund has not yet commenced distribution of its shares.

Section 22(d) of the Act provides, in pertinent part, that no registered investment company or principal underwriter shall sell any redeemable security to any person except at a current public offering price described in the prospectus. This section has been construed to prohibit variations in the sales load except as permitted by rule or order.

Exemption from section 22(d) of the Act is requested to permit funds derived from death claims and matured endowments of fixed dollar insurance policies issued by John Hancock to be applied to the purchase of shares of the Fund within the first 60 days after the date of the check in payment of such insurance at a sales charge equal to one-half the rate otherwise applicable. The regular sales charge ranges, as a percentage of the amount invested, from 8.70 percent to 1.01 percent depending

on the amount invested (or 8 percent to 1 percent, as a percentage of the offering price). Shares of the Fund will be sold only through registered representatives licensed to sell John Hancock insurance policies. However, there will be no requirement that the shares of the Fund be purchased only by policy holders of John Hancock or that any life insurance be acquired in connection with the purchase of shares of the Fund.

Applicants assert that persons who purchase Fund shares with insurance proceeds of the above fixed dollar policies will have already incurred a charge for sales expenses in connection with such fixed dollar policies that is larger than the sales charge applicable to purchase payments for shares of the Fund. Applicants also state that somewhat less selling effort and expense is involved in applying the proceeds of such fixed dollar policies to the purchase of shares of the Fund than in making an initial sale of such shares. Applicants assert that one-half of the normal sales charge more appropriately reflects the selling effort and expense involved in these circumstances.

Section 6(c) of the Act provides, in pertinent part, that the Commission, by order upon application, may conditionally or unconditionally exempt any class or classes of persons, securities, or transactions, from any provision of the Act or the Rules and Regulations promulgated thereunder, if and to the extent such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than January 25, 1977, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the addresses stated above. Proof of such service (by affidavit, or in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0–5 of the rules and regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date, unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.77-1365 Filed 1-14-77;8:45 am]

[812-3954]

JEFFERSON STANDARD LIFE INSURANCE CO. ET AL.

Application for an Order of Exemption From Provisions

Notice is hereby given that Jefferson Standard Life Insurance Company ("Jefferson Standard"), a North Carolina stock life insurance company, Jefferson Standard Separate Account A ("Account A"), a separate account of Jefferson Standard registered under the Investment Company Act of 1940 ("Act") as a unit investment trust, and Jefferson-Pilot Equity Sales, Inc. ("Equity Sales"), 101 North Elm Street, Greensboro, North Carolina 27401, the principal underwriter for Account A (hereinafter collectively referred to as "Applicants"), filed an application on May 13, 1976 and amendments thereto on November 12, 1976 and January 3, 1977, pursuant to section 6(c) of the Act for an order exempting Applicants from the provisions of sections 22(e), 27(c)(1) and 27(d) of the Act to the extent necessary to permit compliance by Applicants with certain provisions of the Education Code of the State of Texas. All interested persons are referred to the application on file with the Commission for a statement of the representations therein which are summarized below.

Account A was established by Jefferson Standard on April 15, 1971 as the facility for issuing certain variable annuity contracts. Under North Carolina insurance law that portion of the assets maintained in Account A equal to the reserves and other contract liabilities with respect to the Account may not, to the extent so provided under the applicable contracts, be charged with any liability arising out of any other business conducted by Jefferson Standard and the income, gains or lossess of Account A may be credited to or charged against the assets of Account A without regard to the other income, gains or losses of Jefferson Standard. All amounts credited to Account A pursuant to variable annuity contracts will be invested in shares of JP Growth Fund, Inc., a diversified open-end investment company registered under the Act. Jefferson Standard is a wholly-owned subsidiary of Jefferson-Pilot Corporation organized in January 1968. Equity Sales, a wholly-owned subsidiary of Jefferson-Pilot Corporation, is a registered broker-dealer under the Securities Exchange Act of 1934 and a member of the National Association of Securities Dealers, Inc.

In 1967, the State of Texas directed the governing boards of all Texas institutions of higher education to make available to certain employees an Optional Retirement Program ("Program"), codified as Subchapter G of Chapter 51 of the Texas Education Code. The statute provides as the funding media for the Program fixed or variable annuity contracts purchased from any insurance or annuity company qualified to do business in Texas. In 1973, the Texas legislature made two amendments in the Program legislation, which amendments became effective on June 14, 1973. The statutory definition of the Program was amended to provide that the benefits of such annuities are to be available only upon termination of employment in the Texas public institutions of higher education retirement, death or total disability of the participant. The other amendment added a new § 51.358 to Subchapter G which also provides that the benefits of such annuities will be available only if the participant dies, terminates his employment due to total disability, accepts retirement or terminates employment in the Texas public institutions of higher education.

Because of uncertainty regarding the effect of these amendments, the University of Texas System ("System") requested the opinon of the Attorney General of Texas with respect to several questions concerning such amendments. The Attorney General rendered an opinion dated February 18, 1975, in response to the System's letter. The Attorney General interpreted § 51.358 to prohibit provisions in a variable annuity contract issued in connection with the Program on or after June 14, 1973, which provide for making available the redemption value of such contract prior to the occurrence of one of the conditions specified in the statute, i.e., termination of employment, retirement, death or total disability. Moreover, the opinion further stated that the prohibitions of § 51.358 were impliedly in effect upon the establishment of the Program (in 1967) and that notwithstanding any language which may be contained in existing contracts, a participant in the Program has never had the right to redeem his annuity contract otherwise than in accordance with the limitations described above. The opinion did not affect the right of a participant to transfer the redemption value of his annuity contract from one carrier to another; accordingly, the granting of the relief requested in the application would not affect such right.

SECTIONS 27(c)(1), 22(e) AND 27(d)

Section 27(c)(1) of the Act makes it unlawful for any registered investment company issuing periodic payment plan certificates, or for any depositor of or underwriter for such company, to sell any such certificate unless such certificate is a redeemable security. Section 2(a)(32) of the Act defines "redeemable security" to mean any security under the terms of which the holder upon its presentation to the issuer or to a person designated by the issuer is entitled to receive approximately his proportionate

share of the issuer's current net assets, or the cash equivalent thereof.

Section 22(e) of the Act provides that no registered investment company shall suspend the right of redemption or postpone the date of payment or satisfaction upon redemption of any redeemable security in accordance with its terms for more than seven days after the tender of such security to the company or its agent designated for that purpose for redemption except in certain prescribed circumstances.

Section 27(d) of the Act makes it unlawful for any registered investment company issuing periodic payment plan certificates, or for any depositor of or underwriter for such company, to sell any such certificate unless the certificate provides that the holder thereof may surrender the certificate at any time within the first eighteen months after the issuance of the certificate and receive in payment thereof, in cash, the sum of (1) the value of his account, and (2) an amount, from such underwriter or depositor, equal to that part of the excess paid for sales loading which is over 15 per centum of the gross payments made by the certificate holder.

Applicants request exemptions from the provisions of Sections 22(e), 27(c)(1) and 27(d) of the Act to the extent necessary to permit compliance with § 51.358 as it pertains to (i) redemption values under Contracts issued to participants in the Program subsequent to the date of such exemptive order and (ii) redemption values under Contracts issued prior thereto but attributable to payments made subsequent to the date of such order.

Applicants assert that if such exemptions are not granted, persons participating in the Program effectively will be denied an opportunity to select as a funding medium for their retirement benefits one of two funding media (the other being fixed annuity contracts) specifically provided in the Texas statute for such purpose. Additionally, participants will be unable to obtain the State's matching contributions for the purchase of an equity-based retirement vehicle. In this respect, the Attorney General's opinion indicated that these matching contributions will encourage participation in the retirement plan but that unrestricted withdrawals prior to retirement might be detrimental to an effective retirement vehicle. In view of the foregoing, Applicants assert that the Commission should grant the requested exemptions because: (1) The limited restriction on redemption would be voluntarily assumed by participants, i.e., eligible employees are not required to participate in the Program; (2) the restrictions were not formulated nor suggested by Applicants; and (3) participants' relinquishment of the full right of redemption is a reasonable requirement in exchange for the benefits bestowed by the matching contributions of the State of Texas.

Applicants will ensure that appropriate disclosure is made to persons who consider participation in the Program, informing them of the restriction on the availability of redemption values under Contracts to be issued to them. This disclosure will take the form of an appropriate reference in each Prospectus to the restrictions on redemption of these Contracts, as well as requiring each participant, as a part of the determination that the sale of these Contracts is suitable for that participant, to sign a statement indicating that he/she is aware that these restrictions will be placed on his/her Contract when it is issued. In addition, Equity Sales will review all sales literature that is to be used in conjunction with the sales of these contracts for the existence of material representations that are inconsistent with the restrictions to be placed on these contracts and will instruct the salespeople involved in soliciting in this market specifically to bring this restriction to the attention of the potential participants.

Section 6(c) authorizes the Commission to exempt any person, security or transaction or any class or classes of persons, securities or transactions, from the provisions of the Act and Rules promulgated thereunder if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than February 1, 1977, at 5:30 p.m. submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission should order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the address stated above. Proof of such service (by affidavit, or in the case of an attorney at law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0–5 of the rules and regulations promulgated under the Act, an order disposing of the application will be issued as of course following February 1, 1977, unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.77-1366 Filed 1-14-77;8:45 am]

[SP-PSE-76-33]

PACIFIC STOCK EXCHANGE INC.

Filing of Proposed Rule Change and Order Approving Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) (the "Act"), as amended by Pub. L. No. 94-29, section 16 (June 4, 1975) notice is hereby given that on December 9, 1976, the Pacific Stock Exchange Incorporated ("PSE"), 618 South Spring Street, Los Angeles, California 90014, filed with the Commission copies of a proposed rule change. The proposed rule change amends PSE Rule VI, sections 12 and 13, to provide new standards for the approval and withdrawal of approval of securities underlying exchange listed options. The substance of the proposed rule change is as follows:

The initial listing standards of PSE section 12 require in substance that issuers of securities underlying exchange options have earned at least $1,000,000 in three of the last four fiscal years, including the immediately preceding fiscal year, that they have complied for the most recent three fiscal years with reporting requirements (including timeliness) of sections 13 and 14 of the Act; and that neither the company nor any of its significant subsidiaries have had a default during such three years. Further, they require for the underlying security an 8,000,000 share float, 10,000 shareholders, trading volume of 2,000,000 shares in each of the two preceding calendar years, and a minimum price per share of $10.00 each day within the six months preceding approval of such security for options transactions.

PSE section 13 requires for continued approval of an underlying security for option transactions that the underlying security have a 7.2 million share float, 9,000 shareholders, and 1.8 million shares traded in the preceding fiscal year. The delisting process will also commence when the price per share of the underlying security is below $10.00 per share on the majority of business days in any six month period with no new series introduced so long as the underlying security is below $7.50 per share. Further, there will be a minimum strike price of $10.00 per share. In the event the delisting procedure is triggered, the underlying security would have to return to standards for original listing before its option could be reinstated. For purposes of maintenance listing, such issuers must have earned a minimum of $250,000 in three of the last four fiscal years, be no more than 30 days delinquent (after exhausting all extensions) in meeting the reporting requirements of sections 13 and 14 of the Act and have cured any default within six months of the date on which it occurred.

Publication of notice of the proposed rule change is expected to be made in the FEDERAL REGISTER during the week of December 13, 1976. Interested persons are invited to submit written data, views and arguments concerning the proposed rule change. Persons desiring to make written submissions should file six copies thereof with the Secretary of Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-PSE-76-37.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges, and in particular, the requirements of section 6 and the rules and regulations thereunder.

The PSE proposal is along the lines of similar proposals of the Chicago Board Options Exchange, Inc. ("CBOE") and the American Stock Exchange, Inc. ("Amex"), variations of which proposals were published on five separate occasions with no comments having been received from anyone other than the exchanges involved.[1]

The Commission has recently approved proposals by the CBOE, Amex and Midwest Stock Exchange, Incorporated which are substantively identical to the present PSE proposal.[2] Since in the Commission's view, the rules of these exchanges represent appropriate minimum standards for the approval and withdrawal of approval of securities underlying options and in order to promote uniformity among the exchanges with respect to such standards, in light of the identical nature of the PSE proposals to those of the other exchanges which have been previously published, the Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof.

The Commission having considered this proposed rule change on December 9, 1976: *It is therefore ordered*, Pursuant to section 19(b)(2) of the Act, that the proposed rule change referenced above be, and it hereby is approved, effective December 9, 1976.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.77-1367 Filed 1-14-77;8:45 am]

[1] See Files No. SR-CBOE-76-6, Securities Exchange Act ("SEA") Release No. 12178 (March 8, 1976), 41 FR 10974 (March 15, 1976); Amendment 4 to SR-CBOE-76-6, SEA Release No. 12540 (June 11, 1976), 41 FR 24782 (June 18, 1976); SR-CBOE-76-18, SEA Release No. 12768 (September 9, 1976), 41 FR 39108 (September 14, 1976); SR-Amex-76-21, SEA Release No. 12819 (September 21, 1976), 41 FR 43478 (October 1, 1976); and SR-MSE-76-21, SEA Release No. 12881 (October 12, 1976), 41 FR 45921 (October 18, 1976).

[2] See approval orders for Files No. SR-CBOE-76-18, SEA Release No. 13050 (December 9, 1976); SR-Amex-76-21, SEA Release No. 13061 (December 9, 1976); and SR-MSE-76-21, SEA Release No. 13046 (December 8, 1976).

[SR-PSE-76-33]

PACIFIC STOCK EXCHANGE, INC.

Order Approving Proposed Rule Change

On November 11, 1976, the Pacific Stock Exchange, Inc., 618 South Spring Street, Los Angeles, California 90014, filed with the Commission, pursuant to section 19(b) of the Securities Exchange Act of 1934 (the "Act"), as amended by the Securities Acts Amendments of 1975, and Rule 19b-4 thereunder, copies of a proposed rule change to define two terms, "local security" and "dually traded security", used in its Rules II and III which were previously defined in PSE Rule XIII but were deleted from that Rule when it was amended by PSE rule filing SR-PSE-76-10.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 13010, (November 26, 1976)) and by publication in the FEDERAL REGISTER (41 FR 53149 (December 3, 1976)).

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to registered national securities exchanges, and in particular, the requirements of Section 6 and the rules and regulations thereunder.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act, that the proposed rule change filed with the Commission on November 11, 1976, be, and it hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.77-1368 Filed 1-14-77;8:45 am]

[SR-PHLX-76-22]

PHILADELPHIA STOCK EXCHANGE, INC.

Filing of Proposed Rule Change and Order Approving Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) (the "Act"), as amended by Pub. L. No. 94-29, section 16 (June 4, 1975) notice is hereby given that on December 13, 1976, the Philadelphia Stock Exchange, Incorporated ("PHLX"), 17th Street and Stock Exchange Place, Philadelphia, Pennsylvania 19103, filed with the Commission copies of a proposed rule change. The proposed rule change amends PHLX Rules 1008 and 1009 to provide new standards for the approval and withdrawal of approval of securities underlying exchange listed options. The substance of the proposed rule change is as follows:

The initial listing standards of PHLX Rule 1008 require in substance that issuers of securities underlying exchange options have earned at least $1,000,000 in three of the last four fiscal years, including the immediately preceding fiscal year, that they have complied for the most recent three fiscal years with reporting requirements (including timeliness) of sections 13 and 14 of the Act; and that neither the company nor any of its significant subsidiaries have had a default during such three years. Further, they require for the underlying security a 8,000,000 share float, 10,000 shareholders, trading volume of 2,000,000 shares in each of the two preceding calendar years, and a minimum price per share of $10.00 each day within the six months preceding approval of such security for options transactions.

PHLX Rule 1009 requires for continued approval of an underlying security for option transactions that the underlying security have a 7.2 million share float, 9,000 shareholders, and 1.8 million shares traded in the preceding fiscal year. The delisting process will also commence when the price per share of the underlying security is below $10.00 per share on the majority of business days in any six month period with no new series introduced so long as the underlying security is below $7.50 per share. Further, there will be a minimum strike price of $10.00 per share. In the event the delisting procedure is triggered, the underlying security would have to return to standards for original listing before its option could be reinstated. For purposes of maintenance listing, such issuers must have earned a minimum of $250,000 in three of the last four fiscal years, be no more than 30 days delinquent (after exhausting all extensions) in meeting the reporting requirements of sections 13 and 14 of the Act and have cured any default within six months of the date on which it occurred.

Publication of notice of the proposed rule change is expected to be made in the FEDERAL REGISTER during the week of December 20, 1976. Interested persons are invited to submit written data, views and arguments concerning the proposed rule change. Persons desiring to make written submissions should file six copies thereof with the Secretary of Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-PHLX-76-22.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges, and in particular, the requirements of section 6 and the rules and regulations thereunder.

The PHLX proposal is along the lines of similar proposals of the Chicago Board Options Exchange, Inc. ("CBOE") and the American Stock Exchange, Inc. ("Amex"), variations of which proposals were published on five separate occasions with no comments having been received

from anyone other than the exchanges involved.[1]

The Commission has recently approved proposals by the Pacific Stock Exchange Incorporated, CBOE, Amex and Midwest Stock Exchange, Incorporated which are substantively identical to the present PHLX proposal.[2] Since in the Commission's view, the rules of these exchanges represent appropriate minimum standards for the approval and withdrawal of approval of securities underlying options and in order to promote uniformity among the exchanges with respect to such standards, in light of the identical nature of the PHLX proposals to those of the other exchanges which have been previously published, the Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act, that the proposed rule change referenced above be, and it hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.77-1369 Filed 1-14-77;8:45 am]

[70-5942]

COLUMBIA GAS SYSTEM SERVICE CORP.

Proposal by System Service Company To Undertake Licensing Program With Nonaffiliates for Commercial Development of Patented Devices and Other Technical "Know-Now"

Notice is hereby given that The Columbia Gas System Service Corporation ("Service Corporation"), 20 Montchanin Road, Wilmington, Delaware 19807, the subsidiary service company for The Columbia Gas System, Inc. ("Columbia"), a registered holding company, has filed an application with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 9(a)(1) and 10 of the Act as applicable to the following proposed transactions. All interested persons are referred to the application, which is summarized below, for a complete statement of the proposed transactions.

Under the terms of the service agreement between the Service Corporation and Columbia's other subsidiaries, Service Corporation engages in research related to the operations of the system companies. Specifically, Service Corporation's engineering and research and development departments engage in ongoing research programs, both individually and jointly with other companies, to develop or to acquire the technology needed to promote new means of transportation and uses for natural gas for the benefit of Columbia's system companies. Such research has resulted in the development of a natural gas liquid and solid waste incinerator for reduction of pollution, an automatic pipe welder, an underground pipe locator, and various other devices, "know-how" and patents.

Service Corporation believes that several of the devices and patents it has helped develop can be manufactured and marketed on a commercially profitable basis for general use by the gas transportation and distribution industry, but that it is not itself in a position to undertake the costs of such further development as would be required to make these devices generally available. Accordingly, Service Corporation proposes to initiate a general program for licensing and sub-licensing the patents and "know-how" it has developed or otherwise acquired to unaffiliated parties, in return for a royalty, when and if commercialization of newly-developed devices, patents and "know-how" becomes feasible. It is not contemplated that Service Corporation's licensing activities will represent a major part of its business as a service company, but will be incidental to its research and development activities performed pursuant to its agreement with the Columbia system operating companies.

As an initial step in a general licensing program for the commercial exploitation of patents, "know-how" and devices already developed by its research department, Service Corporation has entered into thirteen licensing or sub-licensing agreements with nonaffiliated concerns. The devices which will be manufactured and marketed by the licensees and sub-licensees include an underground buried pipe locator; a remote meter index device; a high heat flux ceramic burner tile; gas fired smooth top ranges; a gas deep fat fryer; fume, liquid, and solid waste incineration equipment; and an automatic pipeline welder. It is stated that these agreements were entered into on an experimental basis in order to ascertain whether these and similar devices and patents could be further developed for commercial purposes on a profitable basis. Service Corporation now believes that commercial development of devices for use in the gas distribution and transportation industry is feasible and, accordingly, requests authorization to enter into other license and sub-license arrangements incidental to its business.

The agreements Service Corporation has heretofore entered into are typical of those the company contemplates entering into on a regular basis in the future. Under these agreements, Service Corporation expects to contribute to the costs of research and developmental work to the extent that such work is still required, but will not bear any of the costs or the risk associated with manufacture or marketing of the products. Service Corporation has not and will not contribute funds toward manufacture, production or sale of the devices. Under the agreements Service Corporation has previously entered into, the licensees or sublicensees are typically obligated to pay Service Corporation a flat fee on execution of such agreements or upon successful testing of the devices covered thereunder, and a minimum stated annual percentage royalty payment thereafter. To date, Service Corporation has been paid a total of $209,690 in payments under all of the agreements so far concluded.

It is stated that no State or Federal commission, other than this Commission, has jurisdiction over the proposed transactions. The fees, commissions and expenses paid or incurred in connection with the proposed transactions total $2,800.

Notice is further given that any interested person may, not later than February 3, 1977, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application, as filed or as it may be amended, may be granted as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.77-1379 Filed 1-14-77;8:45 am]

[SR-PSE-76-10]

PACIFIC STOCK EXCHANGE, INC.

Order Approving Proposed Rule Change

On June 17, 1976, the Pacific Stock Exchange, Incorporated, 618 South Spring Street, Los Angeles, California, filed with the Commission, pursuant to Section 19(b) of the Securities Exchange Act of 1934 (the "Act"), as amended by the Securities Acts Amendments of 1975, and Rule 19b-4 thereunder, copies of a proposed rule change. The rule change involves an amendment to Section 18(c)(2) of Exchange Rule X (Conduct of Accounts) regarding suitability standards for put option writing.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 12992 (November 17, 1976)) and by publication in the FEDERAL REGISTER (41 FR 53380 (December 6, 1976)).

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to registered national securities exchanges, and in particular, the requirements of Section 6 and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the abovementioned proposed rule change be, and it hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.77-1380 Filed 1-14-77;8:45 am]

[70-5952]

SOUTHERN, CO., ET AL.

Proposal to Allocate Consolidated Federal Income Tax Liability by Method Other Than Specified in Rule 45(b)(6)

In the matter of the Southern Company, 64 Perimeter Center East, P.O. Box 720071, Atlanta, Georgia 30346; Alabama Power Company, Alabama Property Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, Southern Electric Generating Company, Southern Services, Inc., (70-5952).

Notice is hereby given that The Southern Company ("Southern"), a registered holding company, and its subsidiary companies have filed a joint-declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Section 12(b) of the Act and Rule 45 promulgated thereunder as applicable to the following proposal. All interested persons are referred to the joint-declaration, which is summarized below, for a complete statement of the proposal.

Southern and its subsidiaries join as a group in the filing of consolidated Federal income tax returns. In accordance with Rule 45(b)(6), consolidated Federal income tax liability is allocated among system members by the method provided under Section 1552(a)(1) of the Internal Revenue Code of 1954, as amended. Under Section 1552(a)(1), consolidated income tax liability is apportioned among members of the consolidated group in accordance with the ratio which that portion of the consolidated taxable income attributable to each member having taxable income bears to the consolidated taxable income. By orders dated April 26, 1963 and March 15, 1976 (HCAR Nos. 14860 and 19429), the Commission authorized exceptions from the provisions of Rule 45(b)(6) to permit Southern and its subsidiaries to allocate investment tax credits allowable to the group to those members of the group whose investments generate the credits, and to separately account for each member's ordinary income and net long-term capital gain in apportioning consolidated tax liability.

For 1976, Southern and its subsidiaries estimate that their combined taxable incomes will be approximately $86 million and that the consolidated tax, before investment credits, will be approximately $38.7 million. Each of Southern's operating electric utility subsidiaries, except Alabama Power Company ("Alabama"), will have separate taxable income for 1976. Alabama estimates that it will report a $36.8 million taxable loss.

Because Alabama has a taxable loss, Southern and its subsidiaries state that allocation of the group's consolidated income tax liability for 1976 pursuant to the literal requirements of Rule 45(b)(6), as previously modified by Commission orders, would result in certain distortions and inequities in that the companies in the system other than Alabama will benefit from the savings in consolidated tax liability attributable to Alabama's net operating loss for the year. Under Rule 45(b)(6), Alabama would benefit from the tax savings generated by its net operating loss only to the extent of an estimated $3.2 million.

Southern and its subsidiaries propose, as an exception to Rule 45(b)(6), to allocate the consolidated tax liability for 1976 in such a manner that the reduction in the group's tax liability attributable to Alabama's 1976 net operating loss will be allocated in its entirety to Alabama, resulting in an aggregate benefit to Alabama of an estimated $17.65 million. Under the proposed method of allocation, each of Southern's other operating utility companies will be allowed to offset its liability to Alabama by its full investment credits earned. In years when Alabama has taxable income and therefore may be entitled to tax credits under the operating loss carryback and carryover provisions of the Internal Revenue Code, any tax credits remitted to Alabama as a result of the exception from Rule 45(b)(6) requested herein will be applied to reduce any credits in future years to which Alabama may otherwise be entitled under the separate return limitations of Rule 45(b)(6). The aggregate tax liability allocated any member of the group under the proposed method of allocation will not exceed the amount of tax of such company based upon a separate return computed as if such company had always filed its tax returns on a separate return basis.

Southern and its subsidiaries also propose, as an additional modification to the application of Rule 45(b)(6), to allocate the group's minimum tax liability on so-called tax "preference items," which include capital gains, percentage depletion, accelerated depreciation on real property and amortization of pollution control facilities, to those members of the group in accordance with the ratio which that portion of the total preference items attributable to each member having preference items bears to the total preference items of all members. Under Rule 45(b)(6), a company such as Alabama, which did not have ordinary taxable income for 1976 but did have preference items, would not be allocated any part of the minimum tax on those preference items. The proposed method for allocating minimum tax will permit Southern to apportion the burden of the tax among those companies of the group, including Alabama, which report tax preference items. For 1976, Southern estimates that the group will report approximately $14.8 million of preference items, of which an estimated $4.4 million will be attributable to Alabama.

The fees, expenses and commissions incurred in connection with this proposal will not exceed $3,500, which includes attorneys fees of $2,500. It is stated that no State or Federal commission, other than this Commission, has jurisdiction over the proposal.

Notice is further given that any interested person may, not later than February 3, 1977, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said joint-declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the declarants at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the joint-declaration, as filed or as it may be amended, may be permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from its rules under the Act as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.77-1381 Filed 1-14-77;8:45 am]

[1] See File No. SR-CBOE-76-6, Securities Exchange Act ("SEA") Release No. 12178 (March 8, 1976), 41 FR 10974 (March 15, 1976); Amendment 4 to SR-CBOE-76-6, SEA Release No. 12540 (June 11, 1976), 41 FR 24782 (June 18, 1976); SR-CBOE-76-18, SEA Release No. 12768 (September 9, 1976), 41 FR 39108 (September 14, 1976); SR-Amex-76-21, SEA Release No. 12819 (September 21, 1976), 41 FR 43478 (October 1, 1976); and SR-MSE-76-21, SEA Release No. 12881 (October 12, 1976), 41 FR 45921 (October 18, 1976).

[2] See approval orders for File Nos. SR-PSE-76-37, SEA Release No. 13058 (December 10, 1976); SR-CBOE-76-18, SEA Release No. 13050 (December 9, 1976); SR-Amex-76-21, SEA Release No. 13051 (December 9, 1976); and SR-MSE-76-21, SEA Release No. 13045 (December 8, 1976).

SMALL BUSINESS ADMINISTRATION

[License No. 09/14-0079]

DEVELOPERS EQUITY CAPITAL CORP.

Filing of Application for Approval of Conflict of Interest Transaction Between Associates

Notice is hereby given that Developers Equity Capital Corporation (DE), 9201 Wilshire Boulevard, Suite 204, Beverly Hills, California 90210, a Federal licensee under the Small Business Investment Act of 1958, as amended (Act), has filed with the Small Business Administration (SBA) an application pursuant to § 107.1004 of the regulations governing small business investment companies (13 CFR 107.1004(1976)), for approval of a conflict of interest transaction.

The licensee will sell equities in two parcels (about 12.7 acres) of land both facing Royal Avenue (assessors parcel Nos. 15 and 41) in Simi, California, To Mr. Larry Sade, 9201 Wilshire Boulevard, Suite 204, Beverly Hills, California 90201, for a two-year $139,000 note bearing an interest rate of ten percent per annum. This transaction falls within the purview of § 107.1004 of the regulations because Mr. Larry Sade is the controlling stockholder and President of DE and, therefore, an associate of DE.

Notice is hereby given that any interested person may, not later than February 1, 1977, submit to SBA, in writing, any relevant comments on the proposed transaction. Any such comments should be addressed to: Deputy Associate Administrator for Investment, 1441 L Street, NW., Washington, D.C. 20416.

A copy of this notice shall be published in a newspaper of general circulation in Los Angeles, California.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies.)

Dated: January 7, 1977.

PETER F. MCNEISH,
Deputy Associate Administrator for Investment.

[FR Doc.77-1360 Filed 1-14-77;8:45 am]

[Application No. 02/02-5323]

SITUATION VENTURES CORPORATION

Application for a License as a Small Business Investment Company

An application for a license to operate as a Small Business Investment Company under the provisions of the Small Business Investment Act of 1958, as amended (15 U.S.C. 661 et seq.) has been filed by Situation Ventures Corporation (applicant) with the Small Business Administration pursuant to 13 C.F.R. 107.-102 (1976).

The officers and directors are as follows:

Sam Hollander, President, 1615 51st Street, Brooklyn, New York 11204.

Max Berg, Secretary/Treasurer, 1569-50th Street, Brooklyn, New York 11219.

Herman Lebovits, Vice President, 1614-51st Street, Brooklyn, New York 11204.

Moses Hollander, Director, 1663 49th Street, Brooklyn, New York 11204.

The application will maintain its principal place of business at 126-13th Street, Brooklyn, New York 11215. It will begin operations with $200,000 of private capital derived from the sale of 2,000 shares of common stock, of which 500 shares have been issued to each of the officers and the director shown above.

The applicant will concentrate its operations in the Borough Park and Williamsburg areas of Brooklyn, New York and make both loans and equity investments. Applicant intends to finance franchisees of Meal Mart, Inc. While not presently a stockholder of applicant, Meal Mart, Inc. will become an associate of the applicant if and when it deems it advisable to invest in the capital stock of the applicant at some future date after issuance of the licenses.

As a small business investment company under Section 301(d) of the Act, the applicant has been organized and chartered solely for the purpose of performing the functions and conducting the activities contemplated under the Small Business Investment Act of 1958, as amended from time to time, and will provide assistance solely to small business concerns which will contribute to a well-balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages.

Matters involved in SBA's consideration of the applicant include the general business reputation and character of the proposed owners and management and the probability of successful operation of the applicant under their management, including adequate profitability and financial soundness, in accordance with the Small Business Investment Act and the SBA rules and regulations.

Notice is hereby given that any person may, not later than February 1, 1977, submit to SBA written comments on the proposed applicant. Any such communication should be addressed to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street, NW., Washington, D.C. 20416.

A copy of this notice shall be published in a newspaper of general circulation in Brooklyn, New York.

(Catalog of Federal Domestic Assistance Program No. 59.011 Small Business Investment Companies.)

Dated January 7, 1977.

PETER F. MCNEISH,
Deputy Associate Administrator for Investment.

[FR Doc.77-1335 Filed 1-14-77;8:45 am]

DEPARTMENT OF TRANSPORTATION

Coast Guard

[76-236]

SHIP STRUCTURE SUBCOMMITTEE Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of the Ship Structure Subcommittee to be held Wednesday, February 9, 1977 at 9:00 a.m. in the Conference Room, Administration Building, Avondale Shipyards, Inc., New Orleans, LA. The agenda for this meeting is as follows: Discussion of the research program, project status, and operations of the Ship Structure Committee.

Attendance is open to the interested public. With the approval of the Chairman, members of the public may present oral statements at the hearing. Persons wishing to attend and persons wishing to present oral statements should notify, not later than the day before the meeting, and information may be obtained from, LCDR E. A. Chazal, USCG, Secretary, Ship Structure Committee, U.S. Coast Guard Headquarters, Washington, D.C. 20590 (202) 426-2205. Any member of the public may present a written statement to the Committee at any time.

W. M. BENKERT,
Rear Admiral, United States Coast Guard, Chief, Office of Merchant Marine Safety.

DECEMBER 29, 1976.

[FR Doc.77-1387 Filed 1-14-77;8:45 am]

[CGD 77 004]

UNITED STATES COAST GUARD ADVISORY COMMITTEE

Renewal

This is to give notice in accordance with the Federal Advisory Committee Act (Pub. L. 92-466, 5 U.S.C. App. 1) of October 6, 1972, that the U.S. Coast Guard Research Advisory Committee has been renewed by the Secretary of Transportation for a two-year period beginning January 16, 1977 through January 16, 1979.

The U.S. Coast Guard Research Advisory Committee was established by a Secretarial directive dated May 11, 1969 to provide the Commandant with a broad, continuing overview of the U.S. Coast Guard's research, development, test and evaluation (RDT&E) effort.

Interested persons may seek additional information by writing:

Mrs. Patricia A. Shenkle, Executive Secretary, U.S. Coast Guard Research Advisory Committee, U.S. Coast Guard (G-DST/TP53), Washington, D.C. 20590.

or by calling: 202-426-1037.

A. H. SIEMENS,
RADM, USCG, Chief, Office of Research and Development.

[FR Doc.77-1385 Filed 1-14-77;8:45 am]

National Highway Traffic Safety Administration

[Docket No. FE 77-1; Notice 1]

AVERAGE FUEL ECONOMY

Treatment of Confidential Information

AGENCY:
National Highway Traffic Safety Administration.

ACTION:
Request for comment.

SUMMARY:
This notice requests comments from interested persons on how the National Highway Traffic Safety Administration (NHTSA) should treat confidential business information submitted to the agency in connection with rulemaking to establish or amend automobile fuel economy standards. Comment is particularly desired on whether and to what extent the Administrator of the NHTSA should use his discretionary authority to disclose such information in an administrative or judicial proceeding under the automobile fuel economy program if the information is relevant to that proceeding.

COMMENT CLOSING DATE:
February 16, 1977. All comments received before the close of business on the comment closing date will be considered, and will be available for examination in the docket at the address below both before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the agency anticipates reaching a decision on the issue of disclosure of information soon after that date.

ADDRESS:
Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5108, 400 Seventh Street, S.W., Washington, D.C. 20590. It is requested but not required that 10 copies be submitted.

For further information contact:

David A. Zisser, Office of Chief Counsel, National Highway Traffic Safety Administration, Department of Transportation, Washington, D.C. 20590 (202-426-9511).

SUPPLEMENTARY INFORMATION:

STATUTORY BACKGROUND

Title V of the Motor Vehicle Information and Cost Savings Act, as amended. (the Act) vests in the Secretary of Transportation broad authority to require automobile manufacturers to improve the fuel economy of their automobiles. The Secretary has delegated his authority under Title V to the Administrator of the NHTSA (41 FR 25015, June 22, 1976). Section 502(a) establishes average fuel economy standards for passenger automobiles in model years 1978-1980 and in model year 1985 and thereafter and requires the Administrator to promulgate standards for model years 1981-1984. Section 502(b) requires that standards be promulgated for automobiles that are not passenger automobiles (i.e., pickup trucks, vans, general utility vehicles) in model year 1979 and thereafter. Section 502(c) authorizes the Administrator to exempt manufacturers of less than 10,000 passenger automobiles from standards established under section 502(a) if alternative standards for these low volume manufacturers are established. Section 502(d) allows the Administrator to reduce passenger automobile standards for 1978, 1979, and 1980 if fuel economy for those years is reduced as a result of changes in other Federal standards.

Public access to information submitted in the rulemaking proceedings is governed by section 505(d) of the Act and the Freedom of Information Act (FOIA) (5 U.S.C. 552). Section 505(d) provides that the FOIA is applicable to information received by the agency in administering the Act. Confidential business information may be withheld by the Administrator from public disclosure under 5 U.S.C. 552(b)(4), the trade secrets exemption to the FOIA, if he determines under section 505(d) that the disclosure of the information would result in significant competitive damage.

Notwithstanding that the Administrator has determined that the disclosure of certain information would result in significant competitive damage, he may release that information under certain circumstances. Section 505(d) gives him the discretion to make that information public in any administrative or judicial proceeding under the Act if the information is relevant to the proceeding.

DISCUSSION OF THE ISSUES

The agency anticipates that the assessments of technology, both present and future, market structure, and costs related to fuel economy improvement, which must be made in the course of developing or modifying average fuel economy standards, will require the agency to consider information which vehicle manufacturers or other persons may regard to be trade secrets or confidential business information. For example, submissions which the agency has received in the course of developing average fuel economy standards for passenger automobiles for model years 1981-1984 and nonpassenger automobiles for model year 1979 have contained information for which confidential treatment has been claimed. Some of these claims have been granted.

In view of the role that such information will play in the fuel economy rulemaking, persons participating in the rulemaking may have an interest in having access to that information. Access to some of the information may enhance substantially the opportunity of the public to participate in the rulemaking.

The agency is confronted with the issues of whether and how to use its discretionary release authority for such confidential information in rulemaking under section 502. The agency's statutory authority to release confidential business information relevant to an administrative proceeding under Title V can be exercised if such release is in the public interest. The major factor influencing whether the release of such information is in the public interest is whether release will help the agency in its rulemaking by enabling significantly more probative and comprehensive public comment. However, this factor must be considered along with any public harm, such as increased unemployment or decreased private automotive research and development, that may result from the release of trade secrets or confidential business information.

COMMENTS REQUESTED

The agency requests that interested persons submit information and views whether it would be in the public interest to disclose information which the agency has determined, or will determine, to be confidential business information within the meaning of 5 U.S.C. 552(b)(4) and section 505(d) of the Act. Information falling into the following four categories has been determined by the agency to be information which, in some instances, would result in significant competitive damage if disclosed to the public:

(1) (a) Particular future product plans of automobile or automobile equipment manufacturers, including discussions of specific technological measures relating to fuel economy,

(b) The fuel economy improvement potential of such measures,

(c) The schedule for introduction of such measures, and

(d) The type of vehicle in which such measures may be implemented.

(2) Projections of automobile manufacturers' future production mix.

(3) Projections, made on a vehicle, model, engine family, or inertia weight basis, of fuel economy, and of various vehicle attributes related to fuel economy, such as vehicle weight, total drive ratio (N/V), average engine displacement (CID), and ratio of CID to vehicle weight.

(4) Manufacturers cost information.

It should be understood that these categories of information only describe types of information that have already been withheld or are considered to be good candidates for confidential treatment under 5 U.S.C. 552(b)(4). Information falling in these categories will not necessarily be automatically considered confidential. Whether a particular item of information falls within 5 U.S.C. 552(b)(4) will be determined on a case-by-case basis.

The agency recognizes that it might be easier for interested persons to respond to this notice if they knew not only that general categories of information in question, but also the particular items of information that have been and will be received. Nevertheless, the NHTSA believes that there is sufficient information available to enable interested persons to comment on the four subjects listed below. In addition to considering the categories of information described in this notice, commenters may wish to examine the following documents in the docket room: (1) in docket FE 76-1, Notice 1, relating to the advance notice of proposed rulemaking for passenger automobiles for model years 1981-1984, comments by the manufacturers with confidential information deleted; and (2) in docket FE 76-3, Notice 1, relating to the notice of proposed rulemaking for nonpassenger automobiles for model year 1979, a voluntary questionnaire sent to several of the manufac-

turers and the responses of the manufacturers with confidential information deleted. Copies of these documents may be examined in the docket room, or may be obtained from the Docket Clerk upon payment of the fees prescribed by 49 CFR 10.71–10.77.

With respect to each of the four types of information listed above, comments are requested on the following subjects:

(1) Whether disclosure of the information which may be withheld will significantly assist the agency in its rulemaking, by allowing interested persons a fuller opportunity to comment upon the proposed rules. Interested persons should indicate the uses to which such information may be put, and the analyses which may be made of such information. In addition, interested persons should indicate whether nondisclosure of any of the information would deprive any person of a meaningful opportunity to comment upon a proposed rule, and if so, the reason for, and type and extent of that deprivation.

(2) Whether there will be any public harm in disclosing the information which has been or may be deleted from the public record, and if so, the reason for, and the type and extent of that harm.

(3) Whether there are any alternatives to full public disclosure that will both provide interested persons with adequate knowledge to participate fully in the agency proceeding and protect the interests of the manufacturer.

(4) Any other factors which bear upon whether the disclosure of information described in 5 U.S.C. 552(b)(4) in the course of a rulemaking proceeding is in the public interest.

Commenters are also requested to rank the listed types of information in the order of decreasing harm to the manufacturer if the information is released and then rank them in the order of decreasing benefit to members of the public wishing to comment on rulemaking regarding the standards. Commenters are requested to explain their rankings.

(Sec. 505, Pub. L. 94–163, 89 Stat. 871 (15 U.S.C. 2005); delegation of authority at 41 FR 25015, June 22, 1976.)

Issued: January 11, 1977.

JOHN W. SNOW,
Administrator.

[FR Doc.77-1344 Filed 1-12-77;12:12 pm]

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

[Notice No. 77-1]

ADVISORY COMMITTEE CLOSED MEETINGS

Public Availability of Reports

Pursuant to the provisions of the Federal Advisory Committee Act 5 U.S.C. App. I (Pub. L. 92–463), the Advisory Committees of the Bureau of Alcohol, Tobacco and Firearms, which held closed meetings through December 31, 1976, have prepared summary reports on activities of those meetings. Copies of the reports have been filed and are available for public inspection at two locations:

The Library of Congress, Room 256, Main Building, 10 First Street, SE., Washington, D.C.

The Bureau of Alcohol, Tobacco and Firearms, Federal Building, 12th and Pennsylvania Avenue, NW., Room 8233, Washington, D.C.

Dated: January 10, 1977.

REX D. DAVIS,
Director.

[FR Doc.77-1337 Filed 1-14-77;8:45 am]

Office of the Secretary

CLEAR SHEET GLASS FROM ROMANIA

Antidumping; Withholding of Appraisement Notice

Information was received in proper form on March 9, 1976, from counsel acting on behalf of A.S.G. Industries, Inc., Libby-Owens-Ford Company, and P.P.G. Industries, Inc., alleging that clear sheet glass from Romania was being sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160 *et seq.*) (referred to in this notice as "the Act"). On the basis of this information and subsequent preliminary investigation by the Customs Service, an "Antidumping Proceeding Notice" was published in the FEDERAL REGISTER of April 8, 1976 (41 FR 14909). The "Antidumping Proceeding Notice" indicated that there was evidence on record concerning injury or likelihood of injury or prevention of establishment of an industry in the United States.

The Secretary determined that it was inadvisable to take tentative action within the normal 6-month investigatory period. Accordingly, the investigatory period in this case was extended to no more than 9 months from the date of publication of the "Antidumping Proceeding Notice", and a "Notice of Extension of Investigatory Period" to that effect was published in the FEDERAL REGISTER of August 30, 1976 (41 FR 36520).

Pursuant to section 201(b) of the Act (19 U.S.C. 160(b)), notice is hereby given that there are reasonable grounds to believe or suspect that the purchase price (section 203 of the Act; 19 U.S.C. 162) of Romanian clear sheet glass is less, or is likely to be less, than the price at which similar merchandise of a non-state-controlled-economy country, Austria, was sold in the home market of that country (section 205(c)(1) of the Act; 19 U.S.C. 164(c)(1)).

Customs officers are being directed to withhold appraisement of clear sheet glass from Romania in accordance with § 153.48, Customs Regulations (19 CFR 153.48).

No request for a 6-month withholding of appraisement has been made in this case. Therefore, a "Notice of Determination of Sales at Less Than Fair Value" by the Secretary of the Treasury is being published concurrently with this notice.

The Secretary has provided an opportunity to known interested persons to present written and oral views pursuant to § 153.40, Customs Regulations (19 CFR 153.40).

This notice, which is published pursuant to section 153.35(a), Customs Regulations (19 CFR 153.35(a)), shall become effective upon publication in the FEDERAL REGISTER.

It shall cease to be effective on April 14, 1977 unless previously revoked.

JERRY THOMAS,
Under Secretary of the Treasury.

JANUARY 10, 1977.

[FR Doc.77-1372 Filed 1-14-77;8:45 am]

FARM CREDIT ADMINISTRATION

Designation of Securities for Exemption Under the Securities Exchange Act of 1934

Paragraph 12 of section 3(a) of the Securities Exchange Act of 1934, as amended, provides in part that when used in Title I thereof, unless the context otherwise requires, the term "exempted security" or "exempted securities" shall include "such securities issued or guaranteed by corporations in which the United States has a direct or indirect interest as shall be designated for exemption by the Secretary of the Treasury as necessary or appropriate in the public interest or for the protection of investors."

Notice is hereby given that, pursuant to the above-described authority and to the authority delegated to me by the Secretary of the Treasury, I have this day designated for exemption the "Federal Farm Credit Banks—Consolidated Systemwide Bonds" of the twelve Federal Land Banks, the twelve Federal Intermediate Credit Banks, and the thirteen Banks for Cooperatives, issued pursuant to § 4.2(d) of the Farm Credit Act of 1971 (12 U.S.C. 2153).

This designation for exemption may be revoked, modified or amended at any time with respect to securities not issued prior to such time.

Dated: January 12, 1977.

ROBERT A. GERALD,
Assistant Secretary (Capital Markets and Debt Management).

[FR Doc.77-1375 Filed 1-14-77;8:45 am]

CLEAR SHEET GLASS FROM ROMANIA

Antidumping; Determination of Sales at Less Than Fair Value

Information was received in proper form on March 9, 1976, from counsel acting on behalf of ASG Industries, Inc., Libby-Owens-Ford Company, and PPG Industries, Inc., alleging that clear sheet glass from Romania was being sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160 *et seq.*) (referred to in this notice as "the Act"). On the basis of this information and subsequent preliminary investigation by the Customs Service, an "Antidumping Proceeding Notice" was published in the FEDERAL REGISTER of April 8, 1976 (41 FR 14909).

The Secretary determined that it was inadvisable to take tentative action within the normal 6-month investigatory period. The investigatory period in this case was therefore extended to 9 months and a "Notice of Extension of Investigatory Period" was published in the FEDERAL REGISTER of August 30, 1976 (41 FR 36520).

A "Withholding of Appraisement Notice" issued by the Secretary of the Treasury is being published concurrently with this notice.

DETERMINATION OF SALES AT LESS THAN FAIR VALUE

I hereby determine that, for the reasons stated below, clear sheet glass from Romania is being, or is likely to be, sold at less than fair value within the meaning of section 201(a) of the Act (19 U.S.C. 160(a)).

STATEMENT OF REASONS ON WHICH THIS FINAL DETERMINATION IS BASED

The reasons and bases for the above final determination are as follows:

a. *Scope of the Investigation.* All imports of the subject merchandise from Romania were exported by ROMSIT. Therefore, the investigation was limited to this exporter.

b. *Basis of Comparison.* For the purposes of considering whether the merchandise in question is being, or is likely to be, sold at less than fair value within the meaning of the Act, the proper basis of comparison is between purchase price and the constructed value of similar merchandise. Purchase price, as defined in section 203 of the Act (19 U.S.C. 162), was used since all export sales were made to non-related customers in the United States. Inasmuch as the merchandise under consideration was produced in a state-controlled-economy country, constructed value was based on the price at which similar merchandise was sold for home consumption in a non-state-controlled-economy country. The country chosen for this purpose was Austria, since similar merchandise was sold in Austria in sufficient quantities to provide a basis of comparison for fair value purposes, as provided in § 153.7, Customs Regulations (19 CFR 153.7).

c. *Purchase Price.* For the purposes of this final determination of sales at less than fair value, adjustments have been made on the following bases. In accordance with § 153.31(b), Customs Regulations (19 CFR 153.31(b)), pricing information was obtained concerning imports of clear sheet glass from Romania during the period November 1, 1975, through April 30, 1976.

In the import transactions, all of the merchandise was purchased, or agreed to be purchased, prior to the time of exportation by the persons by whom or for whose account it was imported, within the meaning of the Act. The purchase price has been calculated on the basis of the f.o.b. Constanza, Romania, price to unrelated U.S. purchasers. Deductions have been made for transportation, loading and shipping costs.

d. *Constructed Value.* For the purposes of this final determination of sales at less than fair value, adjustments have been made on the following bases. The Austrian home market price was calculated on the basis of the f.o.b. customer's warehouse, packed, price. Adjustments were made for shipping costs and discounts, and for differences in packing costs, credit terms, and merchandise. Adjustment for discounts relates to place of delivery discounts, cash discounts, and discounts in connection with high volume purchases. Each of the foregoing costs was directly related to the sales under consideration.

Adjustment for further volume discounts was requested by counsel for respondents. This adjustment has been denied, on the ground that no further volume discount was actually granted in the Austrian home market sales under consideration.

Adjustment for differences in the quality of the merchandise was requested by counsel for respondents. This adjustment has been granted, on the ground that there is sufficient evidence to indicate the existence of differences in quality between the Austrian and Romanian merchandise, respectively, which result in a difference in the market value of that merchandise. Quantifying these differences has been difficult to document when compared to the standard of evidence of difference in market value generally required in antidumping cases. Evidentiary difficulties existing in state-controlled-economy cases, where to a large extent the necessary documentation can only be obtained through the voluntary cooperation of disinterested third parties, merit the granting of the aforesaid adjustment based upon evidence consisting of objective analyses that quality differences exist and estimates of the extent of market value differences between Austrian and Romanian merchandise. It has been concluded that the granting of the aforesaid adjustment in these circumstances is necessary to avoid an unreasonable and inequitable result in this case.

Counsel for respondents has raised the issue whether Romanian home market sales or sales to third countries should be utilized for fair value comparison purposes. It having been established previously that the economy of Romania is state-controlled within the meaning of section 205(c) of the Act (19 U.S.C. 164(c)), and absent evidence indicating the contrary, it has been determined that in this case fair value comparisons are appropriately made based on constructed value as reflected by the prices at which similar merchandise of a non-state-controlled-economy country is sold for consumption in the home market of that country, as provided by section 205(c)(1) of the Act (19 U.S.C. 164(c)(1)).

e. *Result of Fair Value Comparisons.* Using the above criteria, purchase price was found to be lower than the constructed value of similar merchandise. Comparisons were made on approximately 100 percent of sales of the subject merchandise imported during the investigative period. Margins were found on 100 percent of the sales compared with a weighted average margin of 48 percent.

The Secretary has provided an opportunity to known interested persons to present written and oral views pursuant to § 153.40, Customs Regulations (19 CFR 153.40).

The United States International Trade Commission is being advised of this determination.

This determination is being published pursuant to section 201(c) of the Act (19 U.S.C. 160(c)).

JERRY THOMAS,
Under Secretary of the Treasury.

JANUARY 10, 1977.

[FR Doc.77-1371 Filed 1-14-77;8:45 am]

VETERANS ADMINISTRATION

COOPERATIVE STUDIES EVALUATION COMMITTEE

Meeting

The Veterans Administration gives notice pursuant to Pub. L. 92–463 that a meeting of the Cooperative Studies Evaluation Committee, authorized by 38 U.S.C. 4101, will be held at the Holiday Inn (Civic Center), 1170 N.W. 11 Street, Miami, Florida, on February 6, 7, 8, 1977. The meeting will be for the purpose of reviewing proposed cooperative studies and advising the Veterans Administration on the relevance and feasibility of the studies, the adequacy of the protocols, the scientific validity and the propriety of technical details, including involvement of human subjects. The Committee advises the Director, Medical Research Service, through the Chief of the Cooperative Studies Program on its findings.

The meeting will be open to the public up to the seating capacity of the room from 8:00 to 8:30 a.m., February 6, to discuss the general status of the program. To assure adequate accommodations, those who plan to attend should contact Dr. James A. Hagans, Coordinator of the Committee, Veterans Administration Central Office, Washington, D.C. (202–389–3702) prior to January 28.

The meeting will be closed from 8:30 a.m. to 5:00 p.m. February 6 and all day on February 7 and 8 for consideration of specific proposals in accordance with provisions set forth in Section 10(d) of Pub. L. 92–463 and Sections 552(b)(2) and 552(b)(6) of Title 5, U.S. Code. During this portion of the meeting, discussion and decisions will deal with qualifications of personnel conducting the studies and the medical records of patients who are study subjects, the disclosure of which would constitute an invasion of personal privacy.

Dated: January 12, 1977.

R. L. ROUDEBUSH,
Administrator.

[FR Doc.77-1450 Filed 1-14-77;8:45 am]

INTERSTATE COMMERCE COMMISSION

[Notice No. 305]

ASSIGNMENT OF HEARINGS

JANUARY 12, 1977.

Cases assigned for hearing, postponement, cancellation or oral argument ap-

pear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the Official Docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested.

MC-C-9299, Antrim Transportation Co., Inc., v. A & D Rentals, now being assigned March 21, 1977 (1 day) at New York, New York, in a hearing room to be later designated.

MC 142398, Fast Forward, Inc., now being assigned March 22, 1977 (1 day) at New York, New York, in a hearing room to be later designated.

MC 29613 (Sub-8), Jayne's Motor Freight, Inc., now being assigned March 23, 1977 (3 days) at New York, New York, in a hearing room to be later designated.

MC 139193 Sub 40, Roberts & Oake, Inc. now assigned February 8, 1977 at Memphis, Tennessee and will be held in Room 396, 167 North Main Street, Federal Building.

MC 140800 Sub 1, Colonial Transportation, Inc. now assigned February 9, 1977 at Memphis, Tennessee and will be held in Room 396, Federal Building, 167 North Main Street.

MC 115654 Sub 55, Tennessee Cartage Company, Inc. now assigned February 10, 1977 at Memphis, Tennessee and will be held in Room 396, Federal Building, 167 North Main Street.

MC 141097 Sub 4, Cal-Tex, Inc. now assigned March 8, 1977 at Los Angeles, California and will be held in Room 8041, Federal Building, 300 North Los Angeles Street.

MC-F 12974, Takin Bros. Freight Line, Inc.—Purchase (Portion)—Chi-Fli, Inc., MC-F 12929, CRST, Inc.—Purchase (Portion)—Chi-Fli, Inc., and MC 114273 Sub 253, CRST, INC. now assigned February 14, 1977 at Chicago, Illinois and will be held in Room 209, 536 South Clark Street.

MC 124692 Sub 162, Sammons Trucking now assigned February 23, 1977 at Phoenix, Arizona and will be held in the Tax Court, Room 235, Federal Building & Post Office, 2nd Floor, 522 North Central Avenue.

MC 106674 Sub 206, Schilli Motor Lines, Inc. now assigned February 10, 1977 at Chicago, Illinois and will be held in Room 209, 536 South Clark Street.

MC 142169, O. D. Thompson, DBA T & S Company now assigned February 9, 1977 at Chicago, Illinois and will be held in Room 209, 536 South Clark Street.

MC 67450 Sub 58, Peterlin Cartage Co. now assigned February 8, 1977 at Chicago, Illinois and will be held in Room 209, 536 South Clark Street.

MC 141804 Sub 11, Western Express, Division of International Rental, Inc. now assigned March 10, 1977 at Los Angeles, California and will be held in Room 8041, Federal Building, 300 North Los Angeles Street.

MC 134035 Sub 14, Douglas Trucking Company now assigned March 3, 1977 at Los Angeles, California and will be held in Room 8041, Federal Building, 300 North Los Angeles Street.

MC 114211 Sub 270, Warren Transport, Inc. now assigned March 7, 1977 at Los Angeles, California and will be held in Room 8041, Federal Building, 300 North Los Angeles Street.

MC 136897 Sub 19, Swift Transportation Company, Inc. now assigned March 2, 1977 at Los Angeles, California and will be held in Room 8041, Federal Building, 300 North Los Angeles Street.

MC 117823 Sub 50, Dunkley Refrigerated Transport, Inc. now assigned March 1, 1977 at Los Angeles, California and will be held in Room 8041, Federal Building, 300 North Los Angeles Street.

W-C 29, Pacific Towboat & Salvage Co.—Investigation of Operations now assigned February 28, 1977 and will be held in Los Angeles, California in Room 8041, Federal Building, 300 North Los Angeles Street.

AB-3 (Sub-9), Missouri Pacific Railroad Company Abandonment Between Dearing and Dexter in Montgomery, Chautauqua and Cowley Counties, Kansas, now assigned February 7, 1977 at Independence, Kansas; will be held in the Civic Center Room, Memorial Hall Building, Locust and Pennsylvania Avenues.

MC 138875 (Sub-29), Shoemaker Trucking Company, now assigned February 1, 1977 at Boise, Idaho; will be held in Room 589 Federal Building & U.S. Court, 550 West Fort Avenue.

MC 95540 (Sub-951), Watkins Motor Lines, Inc., now assigned February 23, 1977 at Memphis, Tennessee, will be held in Court Room 978 Federal Office Building, 167 North Main Street.

MC 134922 (Sub-184), B. J. McAdams, Inc., now assigned February 24, 1977 at Memphis, Tennessee; will be held in Court Room 978 Federal Office Building, 167 North Main Street.

ROBERT L. OSWALD,
Secretary.

[FR Doc.77-1427 Filed 1-14-77;8:45 am]

FOURTH SECTION APPLICATION FOR RELIEF

JANUARY 12, 1977.

An application, as summarized below, has been filed requesting relief from the requirements of Section 4 of the Interstate Commerce Act to permit common carriers named or described in the application to maintain higher rates and charges at intermediate points than those sought to be established at more distant points.

Protests to the granting of an application must be prepared in accordance with Rule 40 of the general rules of practice (49 CFR 1100.40) and filed on, or before February 1, 1977.

FSA No. 43298—*Joint Water-Rail Container Rates—States Company.* Filed by States Steamship Company, (No. 101), for itself and interested rail carriers. Rates on general commodities, from ports in Hong Kong, Japan, Korea, Philippines, Taiwan and Thailand, to rail stations on the U.S. Atlantic Seaboard.

Grounds for relief—Water competition.

By the Commission.

ROBERT L. OSWALD,
Secretary.

[FR Doc.77-1428 Filed 1-14-77;8:45 am]

[Section 5a, Application No. 38, Amdt. No. 2]

CALIFORNIA HOUSEHOLD GOODS CARRIERS BUREAU, INC.

Agreement Notice

JANUARY 6, 1977.

The Commission is in receipt of an application in the above-entitled proceeding for approval of amendments to the agreement therein approved.

Filed December 13, 1976 by: Woodrow W. DeWitt, President, DeWitt Transfer and Storage Company, 6060 North Figueroa Street, Los Angeles, CA 90042 (on behalf of other carrier parties). David P. Christianson, Knapp, Stevens, Grossman & Marsh, 825 City National Bank Bldg., 606 South Olive Street, Los Angeles, CA 90014, (Attorney for Applicant).

The amendments involve: Revised organization and procedures including broadening of territorial scope, embracing transportation of household goods, in containers, between points in the United States (except Alaska, but including Hawaii), in interstate or foreign commerce, in lieu of transportation of household goods, between points in California.

The complete application may be inspected at the Office of the Commission, in Washington, D.C.

Any interested person desiring to protest and participate in this proceeding shall notify the Commission in writing on or before February 16, 1977. As provided by the general rules of practice of the Commission, persons other than applicants should fully disclose their interest and the position they intend to take with respect to the application. Otherwise, the Commission, in its discretion, may proceed to investigate and determine the matters involved in such application, without further or formal hearing.

ROBERT L. OSWALD,
Secretary.

[FR Doc.77-1426 Filed 1-14-77;8:45 am]

[Section 5a, Application No. 58.
Amdt. No. 1]

MACHINERY HAULERS ASSOCIATION

Agreement Notice

JANUARY 7, 1977.

The Commission is in receipt of a supplemental application in the above-entitled proceeding for approval of amendments to the agreement therein approved.

Filed December 27, 1976 by: Charles W. Singer, Singer & Sullivan, 2440 E. Commercial Blvd., Ft. Lauderdale, FL 33308, (Attorney for Applicant).

The Amendments involve: Substantive organizational and procedural changes so as to (1) comply with Ex Parte No. 297, 349 I.C.C. 811 and 351 I.C.C. 437; (2) alter the composition of the rate committee; (3) eliminate proxy voting on rate matters; (4) establish procedures governing appeals of rate committee actions; and (5) provide for participation in Association tariffs by non-member carriers.

The complete application may be inspected at the Office of the Commission, in Washington, D.C.

Any interested person desiring to protest and participate in this proceeding shall notify the Commission in writing on or before February 16, 1977. As provided by the general rules of practice of the Commission, persons other than applicants should fully disclose their interest and the position they intend to take with respect to the application. Otherwise, the Commission, in its discretion, may proceed to investigate and deter-

mine the matters involved in such application, without further or formal hearing.

ROBERT L. OSWALD,
Secretary.

[FR Doc.77-1425 Filed 1-14-77;8:45 am]

[Notice No. 104]

MOTOR CARRIER BOARD TRANSFER PROCEEDINGS

JANUARY 17, 1977.

Synopses of orders entered by the Motor Carrier Board of the Commission pursuant to sections 212(b), 206(a), 211, 312(b), and 410(g) of the Interstate Commerce Act, and rules and regulations prescribed thereunder (49 CFR Part 1132), appear below:

Each application (except as otherwise specifically noted) filed after March 27, 1972, contains a statement by applicants that there will be no significant effect on the quality of the human environment resulting from approval of the application. As provided in the Commission's special rules of practice any interested person may file a petition seeking reconsideration of the following numbered proceedings on or before February 7, 1977. Pursuant to section 17(8) of the Interstate Commerce Act, the filing of such a petition will postpone the effective date of the order in that proceeding pending its disposition. The matters relied upon by petitioners must be specified in their petitions with particularity.

No. MC-FC-76438. By order of December 21, 1976 the Motor Carrier Board approved the transfer to Double L. Lines, Inc., Niles, Ohio, of Certificate No. MC-133487, issued August 20, 1970, to Raub Transport, Inc., Niles, Ohio, authorizing the transportation of composition roofing and other commodities between Lockland, Ohio, on the one hand, and, on the other, points in New York, Pennsylvania (except Aliquippa and points in Allegheny County) and points in Brooke, Hancock, Marshall and Ohio Counties, W. Va. Paul F. Beery, Paul F. Beery Co., 8 East Broad Street, Columbus, Ohio 43229, attorney for applicants.

ROBERT L. OSWALD,
Secretary.

[FR Doc.77-1423 Filed 1-14-77;8:45 am]

[Notice No. 105]

MOTOR CARRIER BOARD TRANSFER PROCEEDINGS

The following publications include motor carrier, water carrier, broker, and freight forwarder transfer applications filed under section 212(b), 206(a), 211, 312(b), and 410(g) of the Interstate Commerce Act.

Each application (except as otherwise specifically noted) contains a statement by applicants that there will be no significant effect on the quality of the human environment resulting from approval of the application.

Protests against approval of the application, which may include a request for oral hearing, must be filed with the Commission on or before February 16, 1977. Failure seasonably to file a protest will be construed as a waiver of opposition and participation in the proceeding. A protest must be served upon applicants' representative(s), or applicants (if no such representative is named), and the protestant must certify that such service has been made.

Unless otherwise specified, the signed original and six copies of the protest shall be filed with the Commission. All protests must specify with particularity the factual basis, and the section of the Act, or the applicable rule governing the proposed transfer which protestant believes would preclude approval of the application. If the protest contains a request for oral hearing, the request shall be supported by an explanation as to why the evidence sought to be presented cannot reasonably be submitted through the use of affidavits.

The operating rights set forth below are in synopses form, but are deemed sufficient to place interested persons on notice of the proposed transfer.

No. MC-FC-76854, filed January 11, 1977. Transferee: Linus Jankord, doing business as Jankord Trucking, Box 82, Revillo, S. Dak. 57259. Transferor: Roger L. Hansen, doing business as Roger Hansen Trucking, Kranzburg, S. Dak. 47245. Applicants' representative: Linus Jankord, Box 82, Revillo, S. Dak. 57257. Authority sought for purchase by transferee of the operating rights set forth in Certificate No. MC-125697, issued August 2, 1974, in the name of transferor, as follows: Feed and fertilizer, fencing supplies, twine, and agricultural chemicals, from Gluek and Minneapolis, Minn., to Castlewood, Kranzburg, and Watertown, S. Dak.; and feed ingredients, in bulk, from Minneapolis, Minn., to Clear Lake, S. Dak. Transferee presently hold no authority from this Commission. Application has not been filed for temporary authority under section 210a(b).

No. MC-FC-76856, filed December 14, 1976. Transferee: Crescent Moving & Storage, Highway 101 South at Humboldt Hill Overpass, Eureka, California 95501. Transferor: Joseph D. Snipes, doing business as Crescent Moving & Storage, Highway 101 South at Humboldt Hill Overpass, Eureka, California 95501. Applicants' representative: Thomas M. Loughran, 100 Bush Street, San Francisco, California 94104. Authority sought for purchase by transferee of the operating rights of transferor, as set forth in Certificate No. MC-134597 (Sub-No. 1), issued April 21, 1971, as follows: Used household goods, between points in Del Norte and Humboldt Counties, Calif., restricted to the transportation of traffic having a prior or subsequent movement, in containers, beyond the points authorized and further restricted to the performance of pickup and delivery service in connection with packing, crating, and containerization or unpacking, uncrating, and decontainerization of such traffic. Transferee presently holds no authority from this Commission. Application has been filed for temporary authority under section 210a(b).

No. MC-FC-76858 filed December 14, 1976. Transferee: Jay Waters, Inc., 1529 North Broadway, Everett, Washington, 98201. Transferor: Jay Waters, 1529 North Broadway, Everett, Washington, 98201. Applicants' representative: Michael D. Duppenthaler, Room 515, Lyon Building, 607 Third Avenue, Seattle, Washington, 98104. Authority sought for purchase by transferee of the operating rights of transferor, as set forth in Certificate No. MC-136379 issued March 21, 1973, as follows: Shakes and shingles, from points in Snohomish, Whatcom, and Skagit Counties, Wash., to points in California. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under section 210a(b).

No. MC-FC-76865, filed December 8, 1976. Transferee: Carleton W. Berry Movers, Inc., 119 Russell St., Waltham, Mass. 02154. Transferor: Carleton W. Berry, Jr., an individual, 119 Russell St., Waltham, Mass. 02154. Applicants' representative: Carleton W. Berry, Jr., 119 Russell St., Waltham, Mass. 02154. Authority sought for purchase by transferee of the operating rights of transferor, as set forth in Certificate No. MC-93822, issued September 18, 1974, as follows: *Household goods*, as defined by the Commission, over irregular routes, between Waltham, Mass., and points within 25 miles of Waltham, on the one hand, and, on the other, points in Connecticut, Maine, New Hampshire, New York, and Rhode Island. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under section 210a(b).

ROBERT L. OSWALD,
Secretary.

[FR Doc.77-1424 Filed 1-14-77;8:45 am]

[Notice No. 103]

MOTOR CARRIER TRANSFER PROCEEDINGS

JANUARY 17, 1977.

Application filed for temporary authority under section 210a(b) in connection with transfer application under section 212a(b) in connection with transfer application under section 212a(b) and transfer rules, 49 CFR Part 1132:

No. MC-FC 76907. By application filed January 4, 1977, C & D TRANSPORTATION CO., INC., 1747 West Main Road, Middletown, RI 02840, seeks temporary authority to transfer the operating rights of C & D TRANSPORTATION CO., 1747 West Main Road, Middletown, RI 02840, under section 210a(b). The transfer to C & D TRANSPORTATION CO., INC., of the operating rights of C & D TRANSPORTATION CO., is presently pending.

By the Commission.

ROBERT L. OSWALD,
Secretary.

[FR Doc.77-1422 Filed 1-14-77;8:45 am]

federal register

MONDAY, JANUARY 17, 1977

PART II



COMMUNITY SERVICES ADMINISTRATION

■

FEDERAL GRANTS

Uniform Federal Standards

Title 45—Public Welfare

CHAPTER X—COMMUNITY SERVICES ADMINISTRATION

PART 1050—UNIFORM FEDERAL STANDARDS

By a memorandum of March 27, 1969 to the Office of Management and Budget and to ten Federal agencies engaged in domestic grant-in-aid programs, the President ordered a three year effort to simplify, standardize, decentralize and otherwise modernize the Federal grant machinery. As part of implementing this order, three Task Forces were established by OMB (with membership from each of the Federal agencies so affected by the order) whose goal was to replace the multitude of varying and sometimes conflicting requirements imposed as conditions of grants. OEO/CSA has been represented on these Task Forces since their inception.

As grantees come in many shapes and forms—State and local governments, private and public institutions of higher education, public and private hospitals, and other quasi-public and private nonprofit organizations—the Task Forces decided to issue two separate sets of uniform standards, one set for State and local governments and one set for all others. One Task Force effort led to the publication in October 1971 of OMB Circular A-102 (later known as Federal Management Circular 74-7) which set standards for establishing consistency and uniformity among Federal agencies in the administration of grants to State and local governments—standards for all others were to be developed subsequent to the publication of A-102/FMC 74-7. (NOTE: FMC 74-7 is currently being modified and will be reissued at a future date as OMB Circular A-102.)

OEO/CSA did not implement the provisions of A-102 at time of publication because A-102 affected only one-seventh of its grantees and would require the agency to operate with two separate sets of policies, regulations, reporting systems, etc. It was felt that the problems created by using two systems far outweighed the benefits to be derived from such a conversion; therefore, the agency preferred to await publication of standards for private non-profit grantees. These standards were published as OMB Circular A-110 on July 30, 1976 and consequently, CSA is now implementing standards for both public and private organizations.

Subparts B through P of 45 CFR Part 1050 promulgated herein set forth both the Uniform Federal Standards pursuant to OMB Circular A-110 and FMC 74-7 and CSA's implementing policies and procedures for public and private organizations receiving funds from CSA in the form of grants and other agreements. It should be noted that CSA has extended the coverage to include private for-profit organizations funded under Title VII of the Economic Opportunity Act of 1964 as amended.

CSA is hereby implementing eleven of the fifteen standards. Two standards (Procurement and Property Management) are awaiting modifications currently underway in an inter-agency review; one (Revision of Financial Plans) is currently being reviewed within CSA to determine whether the budget forms required in FMC 74-7 could be adapted for use by private organizations; and the standards for Monitoring and Reporting Program Performance will be issued within the next two weeks.

The preamble to each of the subparts of 45 CFR Part 1050 details the changes made to existing CSA policies and procedures and highlights new requirements. Most of the changes are minor with two exceptions: one, a new financial reporting form (SF 269) will replace CSA Form 315 as of April 1977 and two, an additional form (SF 272) will be required at the time of submission of, but not necessarily with, the SF 269. (See Subpart H, § 1050.70.)

CSA welcomes comments on its implementing policies and procedures. Comments received prior to February 16, 1977 will be considered in any revision of the subparts. Please address all comments to: Jacqueline G. Lemire, Policy Development and Review Division, Community Services Administration, 1200 19th Street, N.W., Washington, D.C. 20506.

Effective date: April 1, 1977.

ROBERT C. CHASE,
Deputy Director.

45 CFR Chapter X is amended by adding a new Part 1050 entitled "Uniform Federal Standards" and by adding the following to that Part:

Subpart A—Implementation of Uniform Federal Standards by the Community Services Administration (CSA Instruction 6800–1)

Sec.
1050.1 Applicability.
1050.2 Purpose.
1050.3 Exceptions to the Uniform Federal Standards.
1050.4 Definitions of Terms as used in this Part.
1050.5 Implementing Schema.

Subpart B—Cash Depositories (Uniform Federal Standard) (CSA Instruction 6800–2)

Sec.
1050.10 Physical Segregation and Eligibility.
1050.11 Letter-of-Credit-Checks paid basis.
1050.12 FDIC Insurance Coverage.
1050.13 Minority-Owned Banks.

Subpart C—Bonding and Insurance (Uniform Federal Standard) CSA Instruction 6800–3)

1050.15 References.
1050.16 Standard.
1050.17 CSA Implementing Policies and Procedures.

Subpart D—Retention and Custodial Requirements for Records (Uniform Federal Standard) (CSA Instruction 6800–4)

1050.20 References.
1050.21 Documents affected.
1050.22 Length of Retention period.
1050.23 Starting Date of Retention period.
1050.24 Substitution of Microfilm.
1050.25 Access to Records.
1050.26 Restrictions on Public access.
1050.27 CSA implementing policies and procedures.

Subpart E—Program Income (Uniform Federal Standard) (CSA Instruction 6800–5)

1050.40 References.
1050.41 Definition of program income.
1050.42 Standard.
1050.43 CSA implementing policies and procedures.

Subpart F—Cost Sharing and Matching (Uniform Federal Standard) (CSA Instruction 6800–6)

1050.50 References.
1050.51 Definitions.
1050.52 Standards.
1050.53 Qualification.
1050.54 Valuation of grantee in-kind contributions.
1050.55 Valuation of third-party in-kind contributions.
1050.56 Supporting records for in-kind contributions from non-Federal third parties.
1050.57 CSA implementing policies and procedures.

Subpart G—Standards for Financial Management Systems (Uniform Federal Standard) (CSA Instruction 6800–7)

1050.60 References.
1050.61 Standards.
1050.62 CSA implementing policies and procedures.

Subpart H—Financial Reporting Requirements (Uniform Federal Standard) (CSA Instruction 6800–8)

1050.70 References.
1050.71 Definitions.
1050.72 Standard.
1050.73 CSA Implementing Policies and Procedures.

Subpart I—Monitoring and Reporting Program Performance [Reserved]

Subpart J—Payment Requirements (Uniform Federal Standard) (CSA Instruction 6800–10)

1050.90 References.
1050.91 Definitions.
1050.92 Standard.
1050.93 CSA Implementing Policies and Procedures.

Subpart K—Revision of Financial Plans [Reserved]

Subpart L—Grant Closeout Procedures (CSA Instruction 6800–12)

1050.110 References.
1050.111 Definitions.
1050.112 Standards.
1050.113 CSA implementing policies and procedures.

Subpart M—Suspension and Termination Procedures (Uniform Federal Standard) (CSA Instruction 6800–13)

1050.115–1 References.
1050.115–2 Definitions.
1050.115–3 Failure to comply with grant terms and conditions.
1050.115–4 Suspension.
1050.115–5 Termination for cause.
1050.115–6 Termination for convenience.
1050.115–7 CSA implementing policies and procedures governing suspensions.
1050.115–8 CSA implementing policies and procedures governing termination of assistance.

Subpart N—Standard Form for Applying for Federal Assistance (SF 424) (Uniform Federal Standard) (CSA Instruction 6800–14)

1050.120 References.
1050.121 Standards.
1050.122 CSA implementing policies and procedures.

Subpart O—Property Management Standards [Reserved]

Subpart P—Procurement Standards [Reserved]

AUTHORITY: Sec. 602, 78 Stat. 530; 42 U.S.C. 2942.

Subpart A—Implementation of Uniform Federal Standards by the Community Services Administration (CSA Instruction 6800–1)

§ 1050.1 Applicability.

45 CFR Part 1050 is applicable to all grants and other agreements made under the Economic Opportunity Act of 1964, as amended, to public and private organizations/agencies, including those serving as delegate agencies, when the assistance is administered by the Community Services Administration.

§ 1050.2 Purpose.

The purpose of Part 1050 is to set forth the Uniform Federal Standards pursuant to OMB Circular A-110 and FMC 74-7 (A-102) and to provide grantees with CSA's policies and procedures implementing those standards the goal of which is to obtain consistency and uniformity among Federal agencies in the administration of grants to, and other agreements with, units of local and State Government, public and private institutions of higher education, public and private hospitals, and other quasi-public and private non-profit organizations.

§ 1050.3 Exceptions to the Uniform Federal Standards.

(a) *For classes of grantees.* Neither CSA nor any other Federal agency can apply more restrictive or differing requirements on a class of grantees unless (1) a statute expressly prescribes policies or specific requirements that differ from the standards or (2) the agency has received approval from the Office of Management and Budget.

(b) *For certain grantees.* CSA may impose additional requirements on individual grantees if the grantee has a history of poor performance, is not financially stable, or its management system does not meet the standards set forth in Part 1050. In those instances CSA must inform the grantee in writing as to (1) why the additional standards are being imposed and (2) what corrective action is needed. Copies of such notifications must be sent to OMB and other agencies funding the grantee at the same time the grantee is notified.

§ 1050.4 Definitions of terms as used in this Part.

(a) The term "grant" means money or property provided in lieu of money paid or furnished by grantees under programs that provide financial assistance or that provide support or stimulation to accomplish a public purpose. The term "other agreements" does not include contracts which are required to be entered into and administered under procurement laws and regulations. Grants and other agreements exclude (1) technical assistance programs, which provide services instead of money, (2) assistance in the form of general revenue sharing, loans, loan guarantees, or insurance, and (3) direct payments of any kind to individuals.

(b) The term "grantee" is used by CSA in lieu of "recipient" and includes the following types of nonprofit organizations that are receiving Federal funds from a Federal agency or through a State or local government:

(1) Public and private institutions of higher education: public and private hospitals; and other quasi-public and private nonprofit organizations such as (but not limited to) community action agencies, research institutes, educational associations, and health centers. In addition, for purposes of this Part, it includes private-for-profit organizations funded under Title VII of the EOA.

(2) The term does not include foreign or international organizations (such as agencies of the United Nations) and Government-owned contractor-operated facilities or research centers providing continued support for mission-oriented, large scale programs that are Government-owned, or are designed as federally funded research and development centers.

(c) The term "delegate agency" is used by CSA in lieu of "subrecipient" and means a public or private agency, institution or organization or a State or other political jurisdiction to which the development, conduct and administration of all or part of a project assisted under the Economic Opportunity Act of 1964, as amended, has been delegated by a grantee or by another agency or organization which has received assistance by or through a grantee, but does not include individuals who ultimately receive benefits under any program or assistance.

§ 1050.5 Implementing Schema.

(a) *Responsibilities.* OMB Circular A-110 and FMC 74-7 (Cir. A-102) require all Federal agencies administering programs that involve grants and other agreements with grantees to issue appropriate implementing regulations.

(b) *Publication Formats.* As with all policy statements CSA is issuing its implementing regulations both in the FEDERAL REGISTER and as part of the CSA directives system. However, a separate Part (1050) has been established in the Code of Federal Regulations within which all Uniform Federal Standards and accompanying CSA policies and procedures will be published. Also, in the CSA directives system the 6800 series will be used exclusively for promulgation of the standards. Each standard will be issued as a separate CSA Instruction within that series with accompanying CSA implementing policies and procedures (if required) to be issued as an Attachment to the appropriate Instruction. As a further means of more easily identifying the standards, CSA will deviate from its normal practice of using yellow stock to identify policy statements and will publish the standards on blue stock.

(c) *Cross Reference Index.* Following is an index which provides a cross reference to CSA implementing regulations:

Attachments to—		Title	Implementing regulations	
OMB circular A-110	FMC 74-7		CSA instruction	CFR reference
A	A	Cash Depositories	6800-2	1050.10
B	B	Bonding and Insurance	6800-3	1050.15
C	C	Retention and Custodial Requirements for Records	6800-4	1050.20
D	E	Program Income	6800-5	1050.40
E	F	Cost Sharing and Matching	6800-6	1050.50
F	G	Standards for Financial Management Systems	6800-7	1050.60
G	H	Financial Reporting Requirements	6800-8	1050.70
H	I	Monitoring and Reporting Program Performance	6800-9	1050.80
I	J	Payment Requirements	6800-10	1050.90
J	K	Revision of Financial Plans	6800-11	1050.100
K	L	Closeout Procedures	6800-12	1050.110
L	L	Suspension and Termination Procedures	6800-13	1050.115
M	M	Standard Form for Applying for Federal Assistance	6800-14	1050.120
N	N	Property Management Standards	6800-15	1050.130
O	O	Procurement Standards	6800-16	1050.160

I. This subpart sets forth standards governing the use of banks and other institutions as depositories of funds under grants and other agreements pursuant to OMB Circular A-110 and Federal Management Circular 74-7. In the past CSA has required separate bank accounts for CSA grant funds. This is now changed in that CSA, or any other Federal grant-making agency, can not require segregation for cash depositories. Other provisions in this subpart are in line with past CSA policy.

Subpart B—Cash Depositories (Uniform Federal Standard) (CSA Instruction 6800–2)

§ 1050.10 Physical segregation and eligibility.

Except for situations described in § 1050.11, § 1050.12 and § 1050.13 the Community Services Administration does not:

(a) Require physical segregation of cash depositories for CSA funds which are provided to a grantee.

(b) Establish any eligibility requirements for cash depositories for CSA funds which are provided to a grantee.

§ 1050.11 Letter of credit—checks paid basis.

A separate bank account is required when applicable letter-of-credit agreements provide that drawdowns will be made when the grantee's checks are presented to the bank for payment.

§ 1050.12 FDIC Insurance Coverage.

Any monies advanced to a grantee which are subject to the control or regulation of the United States or any of its officers, agents or employees' (public monies as defined in Treasury Circular No. 176, as amended) must be deposited in a bank with Federal Deposit Insurance Corporation (FDIC) insurance coverage

and the balance exceeding the FDIC coverage must be collaterally secured.

§ 1050.13 Minority-owned banks.

Consistent with the national goal of expanding the opportunities for minority business enterprises, grantees and delegate agencies are encouraged to use minority banks (a bank which is owned at least 50 percent by minority group members).

II. This subpart sets forth bonding and insurance requirements for grants and other agreements with grantees pursuant to Attachment B of Circular A-110 and Attachment B to FMC 74-7.

As of the effective date of this subpart public agencies receiving CSA funds for the first initial grant will no longer be required to submit assurance of bonding (except for construction or facility improvements) to CSA. However, as in the past nongovernmental grantees will continue to be required to submit such notice of bonding. Coverage, length of duration, and responsibility vis-a-vis delegate agencies also continue to reflect the policies previously published in OEO Instruction 6809-01.

Public grantees should take note of their continuing responsibilities vis-a-vis nongovernmental delegate agencies.

Subpart C—Bonding and Insurance (Uniform Federal Standard) (CSA Instruction 6800-3)

§ 1050.15 References.

(1) OMB Circular A-110, Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations (Attachment B).

(2) FMC 74-7, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments (Attachment B).

(3) CSA Instruction 6710-6, Applying for a grant under Title VII of the Community Services Act.

(4) CSA Instruction 6710-8, Preparing a Budget for a Title VII grant under the Community Services Act.

(5) CSA Instruction 6143-1a, Emergency Energy Conservation Program (45 FR 1061.30).

§ 1050.16 Standard.

(a) In administering CSA grants, grantees shall observe their regular requirements and practices with respect to bonding and insurance. CSA will not impose additional bonding and insurance requirements including fidelity bonds, except as provided in paragraph (b) through (d) of this section.

(b) *Construction and facility improvement.* The recipient of a CSA grant which requires contracting or facility improvement (including any CSA grant which provides for alterations or renovations of real property) shall follow its own requirements and practices relating to bid guarantees, performance bonds, and payment bonds except for contracts exceeding $100,000. For contracts exceeding $100,000, CSA may determine that the grantee's bonding provisions adequately protect the Federal Government's interest; otherwise the minimum requirements shall be as follows:

(1) A bid guarantee from each bidder equivalent to five percent of the bid price. The bid guarantee shall consist of a firm commitment such as a bid bond, certified check or other negotiable instrument accompanying a bid as assurance that the bidder will upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(2) A performance bond on the part of the contractor for 100 percent of the contract price. A performance bond is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under the contract.

(3) A payment bond on the part of the contractor for 100 percent of the contract price. A payment bond is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

(c) *Loan guarantees.* Where in connection with a CSA grant, CSA also guarantees the payment of money borrowed by the grantee, CSA may, at its discretion, require adequate bonding and insurance if the bonding and insurance requirements of the grantee are not deemed adequate to protect the interests of the Federal Government.

(d) *Fidelity bonds.* If the grantee is a nongovernmental organization, CSA requires adequate fidelity bond coverage.

(e) *Source of bonds.* Any bonds obtained pursuant to paragraphs (b) (1) through (3), (c) or (d) of this section shall be obtained from companies holding certificates of authority as acceptable sureties (31 CFR Part 223).

§ 1050.17 CSA Implementing Policies and Procedures.

(a) *Policy.* OMB Circular A-110 permits Federal agencies to require fidelity bond coverage of its nongovernmental grantees if the bonding and insurance requirements of the grantee are not deemed adequate to protect the interest of the Federal Government. Therefore, CSA will require evidence of appropriate bonding or assurance that arrangements have been made to obtain such coverage in line with the following policies and procedures.

(1) *Bond Coverage of officials*—(i) *Assurance of fidelity bond coverage.* (A) Prior to the release of funds to any nongovernmental grantee for the first initial grant CSA must receive written assurance that the grantee has or has not made arrangements for appropriate bonding of grantee officials. This assurance will take the form of a letter from a bonding company or agent stating the type of bond, amount and period of coverage, positions covered, and the annual cost of the bond that has been obtained.

(ii) *Coverage.* In all other situations, nongovernmental grantees must either have secured or must take steps to secure fidelity bond coverage in line with the following guides:

(A) Coverage should be secured in the aggregate amount of $25,000 for persons authorized to sign or countersign checks or to disburse sizeable amounts of cash (such as for payrolls). Persons who handle only petty cash need not be bonded. Nor is it necessary to bond officials who are authorized to sign Payment Vouchers, but who are not authorized to sign or countersign checks or to disburse cash.

(B) Grantees normally should obtain a 3 year bond, payable annually, with an option to cancel in the event the program terminates before three years. Such terms are available from most surety companies.

(iii) *Responsibility vis-a-vis delegate agencies.* Grantees—both public and private—are responsible for assuring that appropriate officials of nongovernmental delegate agencies are bonded. Coverage for officials of delegate agencies which are private organizations shall be equal to the average of funds to be expended each month (up to an aggregate amount of $25,000). If a delegate agency will expend less than $1,000 per month in program funds, on the average, bond coverage is not required.

(b) *Procedures.* Copies of bonds secured by the grantee and by delegate agencies should be filed by the grantee and need not be submitted to CSA.

(c) *Affect of this Subpart on other CSA Policies and Procedures.* (1) OEO Instruction 7570-1, pp. 17 & 18, item 11.(3) Bonding: The three paragraphs are superseded and the sentence "See Instruction 6800-3 regarding applicability of bonding requirements and procedures." should be inserted.

(2) OEO Instruction 7570-2, p. 7, item 8.b: The period at the end of the sentence is deleted and the sentence "(See CSA Instruction 6800-3 regarding applicability of bonding requirements and procedures.)" should be inserted.

III. The purpose of this subpart is to set forth the Uniform Federal Standard for the retention and custody of records in accordance with the provisions of references (1) and (2) of this subpart.

This policy requires the revision of two existing CSA policies. OEO Instruction 6801-1 which currently requires a retention period of five years and CSA Instruction 7050-1 (General Conditions) which requires retention for 3 years after expiration of the grant. This subpart also details the starting date for the retention period and who shall have access to records in order to make audits, examinations, excerpts and transcripts. This new policy statement does not affect IRS' requirement that all employment tax records be kept for a period of at least four years. (OEO Instruction 6810-1, page 7.) Nor does it affect the one year retention requirement of reports filed with the local office of the State employment service as part of the program to assist Vietnam era veterans. (OEO Instruction 6901-2.) 45 CFR Chapter X is amended by adding the following:

Subpart D—Retention and Custodial Requirements for Records (Uniform Federal Standard) (CSA Instruction 6800-4)

§ 1050.20 References.

(1) OMB Circular A-110, Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations (Attachment C).

(2) FMC 74-7, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments (Attachment C).

(3) CSA Instruction 6800-5, Program Income (Uniform Federal Standard) (45 CFR 1050.40).

(4) CSA Instruction 6800-15, Property Management Standards (Uniform Federal Standard) (45 CFR 1050.130).

(5) OEO Instruction 6801-1, Grantee Fiscal Responsibility and Auditing.

(6) OEO Instruction 6810-1, Grantee Compliance with IRS Requirements for Withheld Federal Income and Social Security Taxes.

(7) CSA Instruction 7050-1, General Conditions Governing CSA Grants Funded Under Titles II, III-B and VII of the EOA of 1964 as amended (45 CFR 1067.5).

§ 1050.21 Documents affected.

Financial records, supporting documents, statistical records, and all other records pertinent to a grant are covered by the requirements in this subpart.

§ 1050.22 Length of retention period.

Except as provided in paragraphs (a) and (b) of this section and reference (6) (employer's tax records), records shall be retained for three years.

(a) If any litigation, claim or audit by or on behalf of the Federal Government involving the records has not been fully resolved before the expiration of the three-year period, the records shall be retained until resolution or until the end of the regular three-year period, whichever is later. In no case, however, will CSA require retention of records relating to any grant with respect to which actions by the United States to recover for diversion of money paid under the grant are barred by the statute of limitations in 28 U.S.C. 2415(b). That statute bars legal actions unless filed within six years after the right of action accrues. The six years excludes any periods in which the circumstances listed in 28 U.S.C. 2416 apply, e.g., material facts cannot be known, or a state of war exists.

(b) In order to avoid duplicate recordkeeping, CSA may make special arrangements with grantees to retain any records which are continuously needed for joint use. CSA will request transfer of records to its custody from grantees when it determines that the records possess long-term retention value. When the records are transferred to or maintained by CSA, the three-year retention requirement is not applicable to the grantee.

§ 1050.23 Starting date of retention period.

(a) *General.* Except for records covered by paragraphs (a) (1) and (2) of this section, where CSA grant support is continued or renewed on an annual basis, the retention period for each year's records starts from the date of submission to CSA of the grantee's annual or last financial report for that year; in all other cases the retention period starts from the date of submission to CSA of the grantee's final financial report.

(1) *Records for non-expendable property.* The retention period for records for non-expendable property required by reference (4) starts from the date of disposition of the property. However, for property that has been replaced pursuant to reference (4), the retention period starts from the disposition of the replacement property.

(2) *Records pertaining to certain classes of income.* For records that relate to classes of program income subject to reference (3), the three-year retention period starts from the date the income is earned.

§ 1050.24 Substitution of microfilm.

Microfilm copies may be substituted for the original records.

§ 1050.25 Access to records.

(a) CSA and the Comptroller General of the United States, or any of their authorized representatives, shall have the right of access to any books, documents, papers or other records of the grantee which are pertinent to a specific CSA grant, in order to make audits, examinations, excerpts and transcripts.

(b) In case of a delegation under a CSA grant, CSA, the Comptroller General of the United States, the grantee, any intermediate delegate agency or any of their authorized representatives shall have the right of access, at any time prior to expiration of the retention period, to any books, documents, papers or other records of the ultimate delegate agency which any of them determines are pertinent to the CSA grant, in order to make audits, examinations, excerpts and transcripts.

(c) In the case of a contract (or subcontract) under a CSA grant, CSA, the Comptroller General of the United States, the grantee, any intermediate delegate agency, contractor, or sub-contractor, or any of their authorized representatives shall have the right of access, at any time prior to expiration of the retention period, to any books, documents, papers or other records of the contractor or sub-contractor which any of them determines are pertinent to the CSA grant, in order to make audits, examinations, excerpts and transcripts.

§ 1050.26 Restrictions on Public Access.

(a) *Private grantees.* Unless otherwise required by law, CSA will not place restrictions on grantees which will limit public access to records covered by this subpart except when CSA has determined that the records must be kept confidential and would have been excepted from disclosure pursuant to the Freedom of Information Act if the records had belonged to CSA.

(b) *Public Grantees.* Unless otherwise required by law, CSA will not place restrictions on State and local governments which will limit public access to the State and local governments' records except when records must remain confidential. Following are some of the reasons for withholding records:

(1) Prevent a clearly unwarranted invasion of personal privacy.

(2) Specifically required by statute or Executive Order to be kept secret.

(3) Commercial or financial information obtained from a person or a firm on a privileged or confidential basis.

§ 1050.27 CSA implementing policies and procedures.

(a) **Changes to Existing CSA Policy Statements.**

(1) Following are changes to be made to OEO Instruction 6801-1, page 10, item 6, second sentence: Everything appearing after the word "retained" is deleted and the following is inserted:

• • • for the time period and in the manner prescribed by CSA's policy on retention and custodial requirements for records. (See CSA Instruction 6800-4.)

(2) Following are changes to be made to CSA Instruction 7050-1, page 4, item 12, line 9: Everything appearing after the word "retained" is deleted and the following added:

• • • for the time period and in the manner prescribed by CSA's policy on retention and custodial requirements for records. (See CSA Instruction 6800-4.)

IV. The purpose of this subpart is to set forth the Uniform Federal Standard pursuant to OMB Circular A-110 and Federal Management Circular 74-7 and CSA's implementing policies and procedures relating to program income, interest, and other monetary proceeds resulting from projects funded in whole or in part with CSA grant funds. This subpart reflects past CSA policy regarding the use of interest and program income, i.e. that interest must be returned to the Treasury (exception: States and their instrumentalities), and that program income may be retained by the grantee for specific uses. However, the Federal standards include several policies which CSA has not previously enunciated and which should be noted:

1. A public grantee, after termination or completion of a grant must return to the Federal agency any royalties of $200 or more earned by the Federal share in the absence of other specific agreements between CSA and the grantee, and

2. Interest earned will now be reported on a new Standard Form (SF 272) and program income on a new financial report form, SF-269 and on SF-272.

45 CFR Chapter X is amended by adding the following:

Subpart E—Program Income (Uniform Federal Standard) (CSA Instruction 6800-5)

§ 1050.40 References.

(1) OMB Circular A-110, Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations. (Attachment D.)

(2) FMC 74-7, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments (Att. E).

(3) CSA Instruction 6158-3, Small Business Programs Funded by CDCs (45 CFR 1076.20).

(4) CSA Instruction 6800-8, Financial Reporting Requirements (45 CFR 1050.70).

(5) CSA Instruction 6800-15, Property Management Standards (45 CFR 1050.130).

(6) OEO Guidance 6801-1, Grantee Financial Control Techniques.

(7) CSA Instruction 7050-1, General Conditions Governing CSA Grants Under Titles II, III-B, and VII of the EOA of 1964 as amended (45 CFR 1067.5).

§ 1050.41 Definition of Program Income.

Program income represents gross income earned by the grantee from CSA funded activities. Such earnings exclude interest earned on advances and may include, but will not be limited to, income from service fees, sale of commodities, usage or rental fees, and royalties on patents and copyrights.

§ 1050.42 Standard.

(a) *Interest.* Interest earned on advances of CSA funds shall be remitted to the Community Services Administration except for interest earned on advances to States or instrumentalities of a State as provided by the Intergovernmental Cooperation Act of 1968 (Pub. L. 90–577).

(b) *Program income*—(1) *Sale of real and personal property.* Proceeds from the sale of real and personal property either provided by CSA or purchased in whole or in part with CSA funds shall be handled in accordance with § 1050.130 (CSA Instruction 6800–15).

(2) *Royalties earned from copyrights or patents.* (i) Unless the grant provides otherwise, grantees shall have no obligation to the Community Services Administration with respect to royalties as a result of copyrights or patents produced under the grant (See references (5) and (7)).

(ii) However, in the case of public grantees, if after termination or completion of the grant, there is an excess of royalties of $200 or more earned annually by the Federal share these sums shall be returned to CSA in the absence of other specific agreement between CSA and the grantee.

(3) *Other program income.* All other program income earned during the project period shall be retained by the grantee and, in accordance with the grant, shall be:

(i) Added to funds committed to the project by the Community Services Administration and the grantee and be used to further eligible program objectives; or

(ii) Deducted from the total project cost in determining the net cost on which the Federal share of costs will be based.

§ 1050.43 CSA implementing policies and procedures.

(a) *Policy*—(1) *Service fees.* Under limited circumstances CSA may approve the charging of a fee to grantees of services supported with CSA funds. Such approval, however, does not allow the grantee to use Federal funds to produce income for the benefit of the grantee.

(b) *Procedures*—(1) *Return of interest.* Interest earned on the investment of CSA funds will be reported on SF–272, item 13.a (see reference (4)) and a check payable to the Treasurer of the United States for the earned interest should be attached to the report and sent to the CSA office responsible for administering the grant.

(2) *Return of royalties.* Public grantees who have royalty fees which must be returned to CSA (see § 1050.42(b)(2)) shall do so by forwarding a check, payable to the Treasurer of the United States, to the CSA office which had been responsible for administering the grant.

(3) *Other program income.* The CSA office responsible for administering the grant will also be responsible for determining the manner in which income retained by grantees is used within the constraints of the Standard outline in § 1050.42(b)(3).

(4) *Reporting program income.* Program income will be reported on SF 269, Financial Status Report and on SF 272, Federal Cash Transactions. (See reference (4)).

V. This subpart sets forth criteria and procedures pursuant to OMB Circular A–110 and Federal Management Circular 74–7 (OMB Circular A–102) for the allowability of cash and in-kind contributions made by grantees and delegate agencies and criteria for the valuation of donated contributions such as personal services, property, etc. The Standards set forth in this subpart and the accompanying CSA implementing policies and procedures basically reflect the policy statements previously found in OEO Instruction 6802–1a and CSA Instruction 6802–2 with one major exception, i.e. there is no longer a prohibition against counting volunteer time of grantee staff and/or board members as a non-Federal share contribution when the services contributed are not required of individuals in their capacities as board members or staff.

45 CFR Chapter X is amended by deleting § 1068.9–1 through 9–5 and § 1068.10–1 through § 1068.10–9 and adding a new subpart as follows:

Subpart F—Cost Sharing and Matching (Uniform Federal Standard) (CSA Instruction 6800–6)

§ 1050.50 References.

(1) OMB Circular A–110, Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations (Attachment E).

(2) Federal Management Circular 74–7 (or OMB Circular A–102) Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments (Attachment F).

(3) CSA Instruction 6802–3, Non-Federal Share Requirements for Title II, Sections 221, 222(a) and 231 Programs (45 CFR 1068.20).

(4) CSA Instruction 6802–4, Additional Communities Eligible for Waivers of Non-Federal Share Requirement (Puerto Rico, Trust Territories, the Virgin Islands, and Indian Tribes on Reservations) (45 CFR 1068.21).

(5) CSA Instruction 6802–5, Eligibility for Waiver of Increased Non-Federal Share Contribution (45 CFR 1068.22).

(6) OEO Instruction 7641, Waiver of Non-Federal Share of Program Costs for Certain Title I–D Programs.

§ 1050.51 Definitions.

(a) *Project costs.* Project costs are all allowable costs (as set forth in the applicable Federal cost principles) incurred by a grantee and the value of the in-kind contributions made by the grantee or third parties in accomplishing the objectives of the grant or other agreement during the project or program period.

(b) *Cost sharing and matching.* In general, cost sharing and matching represent that portion of project or program costs not borne by the Federal Government.

(c) *Cash contributions.* Cash contributions represent the grantee's cash outlay, including the outlay of money contributed to the grantee by non-Federal third parties.

(d) *In-kind contributions.* In-kind contributions represent the value of non-cash contributions provided by the grantee and non-Federal third parties. Only when authorized by Federal legislation, may property purchased with Federal funds be considered as the grantee's in-kind contributions. In-kind contributions may be in the form of charges for real property and non-expendable personal property, and the value of goods and services directly benefiting and specifically identifiable to the project or program.

§ 1050.52 Standards.

(a) *Costs and contributions acceptable.* (1) Cost sharing or matching may consist of:

(i) Charges incurred by the grantee as project costs. (Not all charges require cash outlays by the grantee during the project period: examples are depreciation and use charges for building and equipment.)

(ii) Project costs financed with cash contributed or donated to the grantee by other non-Federal public agencies and institutions, and private organizations and individuals (exception: any funds provided for payment of salaries in excess of $15,000 per annum shall not be counted as a non-Federal share contribution toward a Title II grant per Section 244(2) of the EOA as amended unless the Director has published regulations for exceptions); and

(iii) Project costs represented by services and real and personal property, or use thereof, donated by other non-Federal public agencies and institutions, and private organizations and individuals.[2]

§ 1050.53 Qualifications.

(a) All contributions, both cash and in-kind, shall be accepted as part of the grantee's cost sharing and matching when such contributions meet all of the following criteria:

(1) Are verifiable from the grantee's records;

(2) Are not included as contributions for any other federally-assisted program;

(3) Are necessary and reasonable for proper and efficient accomplishment of project objectives;

(4) Are types of charges that would be allowable under the applicable cost principles;

(5) Are not paid by the Federal Government under another assistance agreement (unless the agreement is authorized by Federal law to be used for cost sharing or matching);

(6) Are provided for in the approved budget when required by CSA; and

(7) Conform to other provisions of this subpart.

§ 1050.54 Valuation of grantee in-kind contributions.

Values for grantee in-kind contributions will be established in accordance with the applicable cost principles.

§ 1050.55 Valuation of third-party in-kind contributions.

(a) *Valuation of volunteer services.* Volunteer services may be furnished by professional and technical personnel, consultants, and other skilled and unskilled labor. Volunteer services may be counted as cost sharing or matching if the service is an integral and necessary part of an approved program.

(1) *Rates for volunteer services.* Rates for volunteers should be consistent with those paid for similar work in the grantee's organization or with those paid for similar work in the labor market in which the grantee competes for the kind of services involved.

(2) *Volunteers employed by other organizations.* When an employer other than the recipient furnishes the services of an employee, these services shall be valued at the employee's regular rate of pay (exclusive of fringe benefits and overhead costs) provided these services are in the same skill for which the employee is normally paid.

(b) *Valuation of donated, expendable personal property.* Donated, expendable personal property includes such items as expendable equipment, office supplies, laboratory supplies or workshop and classroom supplies. Value assessed to expendable personal property included in the cost or matching share should be reasonable and should not exceed the market value of the property at the time of the donation.

(c) *Valuation of donated, nonexpendable personal property, buildings, and land or use thereof.* (1) The method used for charging cost sharing or matching for donated nonexpendable personal property, buildings and land may differ according to the purpose of the grant or other agreement as follows:

(i) If the purpose of the grant or other agreement is to assist the grantee in the acquisition of equipment, buildings or land, the total value of the donated property may be claimed as cost sharing or matching.

(ii) If the purpose of the agreement is to support activities that require the use of equipment, buildings or land, depreciation or use charges for equipment and buildings may be made. The full value of equipment or other capital assets and fair rental charges for land may be allowed provided that the Community Services Administration has approved the charges.

(2) The value of donated property will be determined in accordance with the usual accounting policies of the grantee with the following qualifications:

(i) *Land and buildings.* The value of donated land and buildings may not exceed its fair market value, at the time of donation to the grantee as established by an independent appraiser (e.g., certified real property appraiser or GSA representatives) and certified by a responsible official of the grantee.

(ii) *Nonexpendable personal property.* The value of donated nonexpendable personal property shall not exceed the fair market value of equipment and property of the same age and condition at the time of donation.

(iii) *Use of space.* The value of donated space shall not exceed the fair rental value of comparable space as established by an independent appraisal of comparable space and facilities in a privately-owned building in the same locality.

(iv) *Loaned equipment.* The value of loaned equipment shall not exceed its fair rental value.

§ 1050.56 Supporting records for in-kind contribution from non-Federal third parties.

(a) Volunteer services must be documented and, to the extent feasible, supported by the same methods used by the grantee for its employees. (See § 1050.57.)

(b) The basis for determining the valuation for personal services, material, equipment, buildings and land must be documented. (See § 1050.57.)

§ 1050.57 CSA implementing policies and procedures.

(a) *CSA legislative non-Federal share requirements.* Sections 225(c), 235(b), and 714 of the Economic Opportunity Act as amended require the contribution of non-Federal share by grantees funded under Sections 221, 222(a), 235, and 712 of that Act. In addition the Director of the Community Services Administration may administratively require a non-Federal share contribution from grantees funded under other sections of the Act if the grants are administered by Community Services Administration. Policies and procedures implementing the legislative requirements of the Economic Opportunity Act will be found in references (3) through (6) of this subpart.

(b) *Accounting for the Non-Federal Share.* (1) The Statement of CSA Grant, Form 314, shows the minimum percentage of total program expenditures which non-Federal funds must constitute in the grant period. The grantee is expected to maintain the rate of contribution of the non-Federal share so that throughout the grant period Federal funds will not be used to pay for a substantially larger percentage of project costs than the Federal funds shown on the Statement of CSA Grant constitute.

(2) It is important to note that the Federal share may never exceed either the dollar amount shown on the Statement of CSA Grant or the maximum percentage of the total program expenditures that this constitutes. The grantee must provide only sufficient non-Federal contributions so that the Federal share remains at or below the maximum percentage; however, the grantee may choose to provide additional non-Federal share, to insure a margin of safety, in the event that annual audits disallow some contributions.

(3) The non-Federal share may be provided in one program account for the entire grant or it may be spread among several program accounts. (See reference (3) to this subpart.)

(4) Non-Federal share contributions of cash shall be recorded as they occur. It is not necessary to maintain separate ledger accounts for the expenditures of grantee cash.

(5) All in-kind contributions, including those applicable to delegate agencies must be recorded in the ledger accounts, either in separate accounts or in separate columns, as grant costs when the in-kind services or goods are performed or received. Records, including required supporting documentation, on in-kind services or goods performed or received must be established and maintained on a current basis.

(6) The non-Federal share is subject to audit, as is the Federal share.

(c) *Required documentation—volunteered services.* All volunteered services claimed as non-Federal share must be substantiated by time cards or records that are signed by both the volunteer and his supervisor as is required for all other employees. Such records must show the actual hours worked and the specific duties performed. They should also indicate the basis for determining the rate of volunteer's contribution and such documentation must be available for audit.

VI. This subpart sets forth the standards for grantee financial management systems pursuant to the Uniform Federal Standards contained in Attachment F of OMB Circular A–110 and Attachment G of Federal Management Circular 74–7 and outlines CSA procedures to be followed in implementing the standards.

The Uniform Federal Standards in this subject area do not conflict with any policies, procedures or other requirements previously imposed by CSA nor do they impose any additional requirements.

Subpart G—Standards for Financial Management Systems (Uniform Federal Standard) (CSA Instruction 6800–7)

§ 1050.60 References.

(1) OMB Circular A–110, Grants and Agreements with Institutions of Higher Edu-

[1] Request for waiver of applicability to CDCs, based on Title VII legislative provisions, will be requested from OMB prior to effective date.

[2] This includes volunteer services of board members. However, to be counted these services must be other than those required of them in their capacities as board members. For example, time spent at board or committee meetings by a board member who is a doctor would not be acceptable but time spent by him/her working in a clinic would be accepted. This also allows volunteer services of staff to be counted as non-Federal share when such services are not required by the positions they hold. (Grantees are reminded that any work performed by staff members which is in line with the normal responsibilities of their positions and is in excess of the normal weekly working hours is covered by the CSA overtime regulations (see OEO Instruction 6900–01) and can not be considered as a non-Federal share contribution.)

cation, Hospitals, and Other Nonprofit Organizations (Attachment F).

(2) FMC 74-7, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments. (Attachment G).

(3) OEO Instruction 6710-02, Instructions for Defining Cost Categories.

(4) CSA Instruction 6710-7, Amending a Grant Under Title VII of the Community Services Act.

(5) CSA Instruction 6710-8, Preparing a Budget for a Title VII Grant Under the Community Services Act.

(6) CSA Instruction 6800-6, Cost Sharing and Matching (Uniform Federal Standard). (45 CFR 1050-50).

(7) OEO Instruction 6801-1, Grantee Fiscal Responsibility and Auditing, and Changes 1 and 2 to that Instruction.

(8) OEO Instruction 6803-1a, Allowances and Reimbursements for Members of Policy Making Bodies.

(9) OEO Instruction 6803-2, Allowability of Costs Incurred to Borrow Funds.

(10) OEO Instruction 6806-01, Establishing and Maintaining Program Accounts.

(11) OEO Instruction 6806-04, Accounting for Delegated or Contracted Activities.

(12) OEO Instruction 6807-1, Limitation on CAA Administrative Costs.

(13) CSA Instruction 7050-1, General Conditions Governing CSA Grants Funded Under Titles II, III-B and VII of the EOA of 1964 as amended. (45 CFR 1067.5).

(14) OEO Instruction 7570-1, Applying for a New Research or Demonstration Grant Under the Economic Opportunity Act.

(15) OEO Instruction 7570-2, Applying for Continuation of a Research or Demonstration Grant Under the Economic Opportunity Act.

§ 1050.61 Standards.

(a) Following are the standards for financial management systems for grantees (References (3) through (15) contain CSA's detailed implementing policies and procedures.) CSA will impose no additional standards on grantees unless they are specifically provided for in applicable statutes. Grantees' financial management systems will provide for the following: (1) Accurate, current and complete disclosure of each CSA sponsored project or program in accordance with the financial reporting requirements set forth in § 1050.70 (CSA Instruction 6800-8).

(2) Records that identify adequately the source and application of funds for CSA sponsored projects. These records shall contain information pertaining to Federal awards, authorizations, obligations, unobligated balances, assets, outlays and income.

(3) Effective control over and accountability for all funds, property and other assets. Grantees shall adequately safeguard all such assets and shall assure that they are used solely for authorized purposes.

(4) Comparison of actual outlays with budget amounts for each grant or other agreement. Financial information should be related to performance and unit cost data.

(5) Procedures to minimize the time elapsing between the transfer of funds from the U.S. Treasury and the disbursement by the grantee, whenever funds are advanced by the Federal Government. When advances are made by a letter-of-credit method, the grantee shall make drawdowns as close as possible to the time of making disbursement. [See § 1050.90 (Instruction 6800-10) for letter-of-credit procedures.]

(6) Procedures for determining the reasonableness, allowability and allocability of costs in accordance with the provisions of the applicable Federal cost principles and the terms of the grant or other agreement.

(7) Accounting records that are supported by source documentation.

(8) Examinations in the form of audits or internal audits. Such audits shall be made by qualified individuals who are sufficiently independent of those who authorize the expenditure of Federal funds, to produce unbiased opinions, conclusions or judgments. They shall meet the independence criteria along the lines of Chapter 3, Part 3 of the U.S. General Accounting Office publication, Standards for Audit of Governmental Organizations, Programs, Activities and Functions. These examinations are intended to ascertain the effectiveness of the financial management systems, and internal procedures that have been established to meet the terms and conditions of the agreements.[3]

It is not intended that each agreement awarded to the grantee be examined. General examinations should be conducted on an organization wide basis to test the fiscal integrity of financial transactions, as well as compliance with the terms and conditions of CSA grants and other agreements. Such tests will include an appropriate sampling of CSA agreements. Examination will be conducted with reasonable frequency on a continuing basis or at scheduled intervals but at least annually in accordance with reference (7) and Section 243 of the Economic Opportunity Act of 1964 as amended.

(9) Audits to be made by the grantee or at his direction to determine, at a minimum, the fiscal integrity of financial transactions and reports, and the compliance with laws, regulations, and administrative requirements. The grantee will schedule such audits annually in accordance with reference (7) and Section 243 of the Economic Opportunity Act of 1964 as amended.[4]

(10) A systematic method to assure timely and appropriate resolution of audit findings and recommendations.

(b) *Delegate agencies.* Grantees shall require delegate agencies to adopt the standards in § 1050.61(a) except for the requirement in (5), regarding the use of the letter-of-credit method and that part of (1) regarding reporting forms and frequencies prescribed in § 1050.70 (CSA Instruction 6800-8).

§ 1050.62 CSA implementing policies and procedures.

(See references (3) through (15) of this subpart for CSA's implementing policies and procedures as they relate to the standards set forth in this subpart.)

VII. This subpart sets forth the standards for grantee financial reporting as prescribed by Attachment G to OMB Circular A-110 and Attachment H to FMC 74-7 (OMB Circular A-102) and CSA's procedures for completing SF 269, Financial Status Report, SF-271, Outlay Report and Request for Reimbursement of Construction Programs; and SF-272, Federal Cash Transactions Report.

OMB Circular A-110 and FMC 74-7 prescribe new financial reporting forms to be used by all Federal agencies with grants-in-aid programs. Consequently, beginning with quarters ending April 30, 1977 CSA will require that grantees submit SF-269, Financial Status Report, to fulfill the quarterly financial reporting requirement in lieu of the currently used CSA Form 315. Grantees also will be required to submit a new form SF-272, Federal Cash Transactions Report at the same time, but not necessarily with, the SF-269. There is an additional form (SF-271, Outlay Report and Request for Reimbursement for Construction Programs) which may be used and/or required under certain circumstances as described in this subpart. Frequency of submission of the financial reports will not change nor will the distribution of such reports.

An initial supply of Standard Forms 269 and 272 will be forwarded to grantees. They will accompany the standards when they are distributed in the form of CSA Instructions. Additional supplies of these and other referenced forms are available from the CSA Publications and Distribution Center.

Subpart H—Financial Reporting Requirements (Uniform Federal Standard) (CSA Instruction 6800-8)

§ 1050.70 References.

(1) OMB Circular A-110, Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations (Attachment G).

(2) FMC 74-7, (or OMB Circular A-102) Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments (Attachment H).

(3) OEO Instruction 6807-1a, Limitation on CAA Administrative Reports.

§ 1050.71 Definitions.

(a) *Accrued expenditures.* Charges incurred by the grantee during a given period requiring the provision of funds for: (1) goods and other tangible property received; (2) services performed by employees, contractors, delegate agencies, and other payees; and (3) amounts becoming owed by the grantee under programs for which no current services or performance are required by the grantee.

(b) *Accrued income.* The earnings during a given period which is a source of funds resulting from (1) services performed by the grantee, (2) goods and other tangible property delivered to purchasers, and (3) amounts becoming owed to the grantee for which no current services or performance are required by the grantee.

(c) *Disbursements.* Payments in cash or check.

[3] Applicable to private grantees only.

[4] Applicable to public grantees only.

(d) *Federal funds authorized.* Represent the total amount of the Federal funds (in this case CSA funds) authorized for obligations as established in the grant document. This amount shall include any authorized carryover of unobligated funds from prior fiscal or program year.

(e) *In-kind contributions.* Represent the value of noncash contributions provided by (1) the grantee, (2) other public agencies and institutions, and (3) private organizations and individuals. In-kind contributions may consist of charges for real property and equipment, and value of goods and services directly benefiting and specifically indentifiable to the grant program. When authorized by Federal legislation property purchased with Federal funds may be considered as grantee's in-kind contribution.

(f) *Obligations.* The amounts of orders placed, contracts and grants awarded, services received, and similar transactions during a given period, which will require payment during the same or a future period.

(g) *Outlays.* Represent charges made to the grant project or program. Outlays can be reported on a cash or accrued expenditure basis.

(h) *Program income.* Represents earnings by the grantee realized from the grant-supported activities. Such earnings exclude interest income and may include, but will not be limited to, income from services fees, sale of commodities, usage or rental fees, sale of assets purchased with grant funds, and royalties on patents and copyrights. Program income can be reported on a cash or accrued income basis.

(i) *Unobligated balance.* The portion of the funds authorized by CSA which has not been obligated by the grantee and is determined by deducting the cumulative obligations from the funds authorized.

(j) *Unliquidated obligations.* Represent the amount of obligations incurred by the grantee which have not been paid.

(k) *Program year.* A grantee's 12-month accounting period. For Community Action Agencies this is the funding period for the principal grant that provides funds for most of the grantee's administrative costs. For other agencies funded by CSA, this is their usual 12-month accounting period which may or may not correspond with funding period of their grant(s) from CSA.

(l) *Funding period.* A program account funding period extends from the effective date of a new or refunding action through the termination date, or expiration of the planned number of months for which funds are provided.

§ 1050.72 Standard.

(a) CSA will continue to utilize either the Letter of Credit or the predetermined monthly check issue as the two methods for making funds available to all construction and nonconstruction projects or programs. For the purpose of determining the status of those funds and to insure sound cash management on the part of grantees and delegate agencies CSA requires the submission of the following quarterly reports:

(1) *Reports required.* (i) Financial Status Report, SF 269 (for nonconstruction projects or programs).

(ii) Federal Cash Transactions Report, SF 272.

(iii) Outlay Report and Request for Reimbursement for Construction Programs, SF 271 (for construction programs only).

(2) *Preparation of reports.* Reports may be prepared on either a cash or an accrual basis with the appropriate indication on the report as to the method utilized. In the event that CSA should require all reports to be submitted on an accrual basis grantees will not be required to convert their accounting system, but shall develop such accrual information through estimates based on an analysis of documentation on hand.

(3) *Submission.* Reports are required within 15 working days after the end of each quarter of the grantees program year with a final report due within 90 days after the completion or termination of the grant. Extensions to reporting dates may be approved upon request of the grantee. CSA may require monthly reports from grantees with awards of $1 million or more annually.

(b) SF 272, *Report of Federal cash transactions.* (1) CSA will use this report to monitor cash advanced to grantees and to obtain disbursement information for each agreement from the grantees. (2) CSA requires that grantees indicate in the "remarks" section of the SF 272 report the reason(s) for having and the need for retaining a cash balance of Federal funds in excess of current operating needs. For grantees on Letter of Credit current needs will relate to the amount of time required to fully effect a draw down in order to meet daily disbursement requirements. For grantees on monthly check issue current cash needs will mean a cash balance no greater than is necessary to meet operating requirements.

(c) *Additional reporting requirements.* When CSA needs additional information or more frequent reports in order to comply with legislative requirements or, to monitor a grantee that has failed to meet the Standard for Financial Management as defined in CSA Instruction 6800-7, CSA will, prior to making any such request, adhere to the requirements imposed by OMB Circular No. A-40.

(d) CSA has the option of shading out any line item on any report that is unnecessary for decision-making purposes.

(e) CSA will accept the identical information from grantees in machine usable format or computer printouts in lieu of prescribed formats.

(f) CSA may provide computer outputs to grantee when it will expedite or contribute to the accuracy of reporting.

(g) CSA is authorized to reproduce these forms.

§ 1050.73 CSA implementing policies and procedures.

(a) *Policy.* (1) If any CSA regulation prescribes policies or requirements that differ from the provisions provided herein, the provisions of this subpart shall govern.

(2) All references to CSA Forms 315 and 315a in other documents will be deemed to mean SF-272 and the SF-269. CSA Forms 315 and 315a will be obsolete after April 30, 1977.

(3) Quarterly financial reports which are due subsequent to April 1977 will be reported on SF-269, Financial Status Report. The SF-272, Federal Transactions Report, will be submitted at the same time.

(b) *General instructions.* (1) These general instructions apply to the preparation of Standard Forms 269, 271, and 272. Detailed instructions for their preparation will be found on the forms themselves.

(i) *How many copies to prepare.* Grantees shall prepare sufficient copies of the reports for each program year to make the distribution as shown below.

(ii) *Where to send reports.* (A) Grantees whose grant is administered by a CSA Regional Office will send one copy to the appropriate Regional Office and one copy to the Grant Accounting Branch, Finance and Grants Management Division, CSA Headquarters, 1200 19th Street, N.W., Washington, D.C. 20506.

(B) Grantees who have CSA grants administered by both a CSA Regional Office and a Headquarters Office(s) will send one copy to the appropriate Regional Office, one copy to each funding office in the CSA Headquarters, and one copy to the Grant Accounting Branch, Finance and Grants Management Division, CSA Headquarters.

(C) Grants receiving funds solely from Headquarters program offices will submit one copy to each funding office and one copy to the Grant Accounting Branch, Finance and Grants Management Division, CSA Headquarters.

(iii) *When to report.* (A) Standard Forms 269, 272, (and SF 271 when required for Construction Programs) will be submitted quarterly based upon the grantee's program year. The reports are to be submitted to the appropriate CSA Office 15 working days following the end of each quarter.

(B) Grantees are required to submit a final financial report for all programs with a fixed termination date within 90 days after the termination date. In those situations where the terminated program is the grantee's only CSA-funded program, a check (payable to CSA) for the amount of the unexpended funds should accompany the report.

(iv) *What to report.* CSA grants are to be charged only with those costs related to Community Services Administration sponsored programs.

(v) *Reporting delegate agency data.* When delays do not permit reporting in time to meet the CSA grantee reporting deadlines, expenditures of the delegate agencies should be estimated by the parent organization and incorporated into the grantee quarterly Financial Status Reports. However, these amounts should be identified by an asterisk to show that they include estimates. Adjustments should be made in subsequent quarterly financial reports by netting the effects of the adjustments made into the information reported for the current report quarter; it will not be necessary to amend previously submitted financial reports except in those instances where the error reported was in a final report for a terminated program.

(vi) *Amounts reported.* All amounts are to be rounded to the nearest dollar. Do not report cents.

(vii) *Delegate agency responsibilities.* Delegate agencies are required to provide their parent organizations with all data needed to prepare quarterly financial reports which will include cash balances and expenditures of the delegate agencies.

(2) *Other financial report requirements.* An administrative costs report is required annually. See OEO Instruction 6807–1a for detailed procedures for completing and submitting CSA Form 315d, Administrative Costs Report.

(3) *Availability of forms.* Supply of referenced forms are available upon written request to: CSA Publications and Distribution Center, 5458–3rd Street, N.E., Washington, D.C. 20001.

Subpart I—Monitoring and Reporting Program Performance [Reserved]

VIII. This subpart establishes the required methods of making payments to grantees pursuant to the Uniform Federal Standards contained in Attachment I of OMB Circular A–110 and Attachment J of Federal Management Circular 74–7. These methods will minimize the time elapsing between the disbursement by grantees and the transfer of funds from the United States Treasury to grantees whether such disbursement occurs prior to or subsequent to the transfer of funds.

The Uniform Federal Standards allow payments to a grantee by two methods which are currently used by CSA, i.e. Letter of Credit (for total payment of $250,000 or more), and advance by Treasury check (for payments less than $250,000). Therefore, the attached subpart does not change any CSA policy or procedures. (The CSA policies and procedures issued as 1050.93 of this subpart are those previously found in Instruction 6714–1 and changes thereto which are hereby superseded.)

Subpart J—Payment Requirements (Uniform Federal Standard) (CSA Instruction 6800–10)

§ 1050.90 References.

(1) OMB Circular A–110, Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations (Attachment I).

(2) FMC 74–7, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments (Attachment J).

(3) OEO Instruction 6800–05, Limitations on Program Expenditures.

(4) CSA Instruction 6800–12, Grant Closeout Procedures (Uniform Federal Standard) (45 CFR 1050.110).

(5) CSA Intruction 6800–13, Suspension and Termination Procedures (Uniform Federal Standard) (45 CFR 1050.120).

(6) CSA Instruction 6710–1, Change 10, "Preparation of CSA Form 314, Statement of CSA Grant."

(7) Treasury Department Circular No. 1075, as revised, "Regulations Governing Withdrawal of Cash From the Treasury for Advance Under Federal Grant and Other Programs."

(8) Treasury Fiscal Requirements Manual, Part VI, "Other Fiscal Matters."

§ 1050.91 Definitions.

(a) *Letter-of-credit.* A letter-of-credit is an instrument certified by an authorized official of a Federal funding agency that authorizes a grantee to draw funds when needed from the Treasury, through a Federal Reserve bank and the grantee's commercial bank, in accordance with the provisions of Treasury Circular No. 1075, as revised.

(b) *Advance by treasury check.* An advance by Treasury check is a payment made by a Treasury check to a grantee upon its request before outlays are made by the grantee or through the use of predetermined payment schedules.

(c) *Reimbursement by treasury check.* A reimbursement by Treasury check is a Treasury check paid to a grantee upon request for reimbursement from the grantee.

§ 1050.92 Standard.

(a) Payments can be made to grantees through a letter-of-credit and an advance by Treasury check.

(b) Except for construction grants and other construction agreements for which optional payment methods are authorized, as described in paragraph (d) of this section, the letter-of-credit method shall be used by CSA if all the following conditions exist:

(1) If there is or will be a continuing relationship between a grantee and CSA for at least a 12 month period and the total amount of advance payments expected to be received within that period from CSA is $250,000 or more, as prescribed by Treasury Circular No. 1075. For joint funded projects the Treasury has authorized a dollar criteria of $120,000.

(2) If the grantee has established or demonstrated to CSA the willingness and ability to maintain procedures that will minimize the time elapsing between the transfer of funds and their disbursement by the grantee.

(3) If the grantee's financial management system meets the standards for fund control and accountability prescribed in (CSA Instruction 6800–7. Standards for Financial Management Systems).

(c) The method of advancing funds by Treasury check shall be used, in accordance with the provisions of Treasury Circular No. 1075, when the grantee meets all of the requirements specified in paragraph (b) of this section, except those in paragraph (b) (1) of this section.

(d) A reimbursement by Treasury check shall be the preferred method if the grantee does not meet the requirements specified in paragraphs (b) (2) and (b) (3) of this section. At the option of CSA this method may also be used on any construction agreement, or if the major portion of the program is accomplished through private market financing or Federal loans, and the Federal assistance constitutes a minor portion of the program. When the reimbursement method is used, CSA shall make payment within thirty days after receipt of the billing unless the billing is improper.

(e) When the letter-of-credit procedure is used, the grantee shall be issued one consolidated letter-of-credit whenever possible to cover anticipated cash needs for all grants and other agreements awarded by the sponsoring agency.

(f) (1) Unless otherwise required by law, CSA shall not withhold payments for proper charges made by grantees at any time during the project or program period unless (i) a grantee has failed to comply with the program objectives, general or special conditions, or CSA reporting requirements; or (ii) the grantee is indebted to the United States, and collection of the indebtedness will not impair accomplishment of the objectives of a project or program sponsored by the United States. [See § 1050.110 and § 1050.115 (CSA Instructions 6800–12 and 6800–13) for procedures in cases of closeouts, suspensions and terminations.]

(2) Under such conditions, CSA may, upon reasonable notice, inform the grantee that payments will not be made

for obligations incurred after a specified date until the conditions are corrected or the indebtedness to the Federal Government is liquidated.

§ 1050.93 CSA implementing policies and procedures.

(a) *Policy.* Federal funds awarded under CSA grants will be made available (advanced) by letter of credit or by check, depending upon the amount of the grant. Funds for grants of less than $250,000 annually will be advanced by the periodic issuance of Treasury checks. Funds for grants of over $250,000 and where there is an anticipated continuing relationship for one year will be made available through the issuance of a Treasury Department Letter of Credit.

(b) *Grants under $250,000 annually.* (1) Fund advances for grants totaling less than $250,000 annually will be made by a monthly check to the grantee. The amount of the monthly check will be computed based upon a grantee's anticipated rate of expenditure over the period of the grant, and subject to adjustment based upon an analysis of the required quarterly financial reports from the grantee. All Treasury checks will reflect the grantee number and the grant action to which the funds pertain. In the event subsequent funding actions result in a grantee's annual funding level to exceed $250,000, he will be notified that his funding procedures are to be changed and the necessary forms for conversion to Letter of Credit procedures will be sent.

(2) Special checks. When a grantee anticipates needing cash in excess of that provided by the issuance of a monthly check, he must submit a written justification. Requests will be submitted to:

Community Services Administration, Grants Accounting Branch, Finance and Grants Management Division, 1200 19th Street, N.W., Washington, D.C. 20506.

(i) At the same time, a copy of the request should also be sent to the responsible Regional or Headquarters Office that administers the grant.

(ii) Before approving issuance of a special check, the Finance and Grants Management Division will review current expenditure rates and cash balances reported on the financial reports. Delays in submission of these reports to CSA will result in delays in approval of special checks.

(c) *Grants over $250,000 annually.* When a letter of credit is issued the grantee will be required to maintain a separate bank account for funds obtained in this manner, and to the extent possible delay all draw downs on the letter of credit until after their organizations have issued checks for disbursements properly chargeable to Federal funds.

(1) *Letter of credit procedure—(i) Selection of commercial bank.* Grantees shall select a commercial bank which will agree to receive Payment Vouchers on Letter of Credit (TUS 5401) drawn on the Treasurer of the United States and forward these vouchers to the applicable Federal Reserve Bank or branch. In addition the grantee will assure that they comply with the Uniform Federal Standards applying to cash depositories. [See § 1050.10 (CSA Instruction 6800–2).] The grantee shall notify the Finance and Grants Management Division, CSA Headquarters, of the name of the commercial bank, title of the bank account, and location of the applicable Federal Reserve Bank or branch.

(ii) *Authorized signature card.* (A) The Central Control Branch in Headquarters or Financial Services Branch in the regions will send the grantee three Standard Forms 1194, Authorized Signature Card for Payment Vouchers on Letters of Credit, as part of the grant package. When properly completed by the grantee, these cards will provide the appropriate Federal Reserve Bank or branch with specimen signatures of grantee officials authorized to sign Payment Vouchers on Letter of Credit for withdrawal of funds. A sample copy of SF 1194 and instructions for completion are provided in Exhibit II.

(B) Two copies of the properly completed signature card will be returned, with all other required documents, to the Central Control Branch, Finance and Grants Management Division, CSA Headquarters, or to the Financial Services Branches in regional offices, depending on whether the grant is administered by CSA Headquarters or by a regional office.

(C) A change of persons authorized to sign payment vouchers or a change in grantee name, address, or commercial bank will require that a grantee submit a new set of signature cards to the Headquarters Grant Accounting Branch.

Blank signature cards may be obtained from that office or from the Financial Services Branches in the regional offices.

(D) The Grant Accounting Branch, Finance and Grants Management Division, or the Financial Services Branches for regional grants, will notify the grantee when the signature cards and letter of credit have been sent to the Federal Reserve Bank or Branch via the Treasury Department. The grantee will not present a payment voucher which includes the new or changed information until it has received such notification. The grantee should assure that it has sufficient funds for operating until receipt of the notification.

(E) Each letter of credit must have its own signature card. If there is a need to change a prior signature card for a specific grant, a new signature card must be submitted to the Grant Accounting Branch, Finance and Grants Management Division, CSA Headquarters.

(F) Grantees must provide signatures for at least two persons in order to enable the proper completion of the payment voucher (Form TUS 5401).

(iii) *Withdrawal of funds.* (A) As funds are needed, the grantee will prepare and submit the original, duplicate, and triplicate copies of the Payment Vouchers on Letter of Credit (Forms TUS 5401) to its commercial bank. The commercial bank will transmit all forms to the Federal Reserve Bank or branch. The recipient organization will retain the quadruplicate copy for its own records. Instructions for preparing the form are provided in Exhibit III.

(B) A supply of Forms TUS 5401 will be sent to each grantee with the letter of credit. Additional forms may be obtained by writing to the Grant Accounting Branch, Finance and Grants Management Division, CSA Headquarters. Payment vouchers are preprinted with CSA's name and station symbol. They cannot be used for withdrawals from letters of credit issued by other Federal agencies. Only Forms TUS 5401 received from CSA may be used for withdrawal of funds from CSA letters of credit.

(C) *Guidelines for withdrawal.* The U.S. Treasury Department policy provides that withdrawals by grantees shall be limited to the minimum amounts needed and shall be timed to be in accord with only the actual cash requirements needed in carrying out the purpose of the approved program or project. Where a grantee makes advances to a delegate agency, they shall conform substantially to the same standards of timing and amount as applicable to advances to the primary grantee.

Grantee draw downs shall not ordinarily be made more frequently than daily in order to maintain a minimum amount of cash on hand. However, the amount withdrawn may not exceed the dollar limitation placed on the letter of credit by CSA without prior CSA approval. Ordinarily, withdrawals should not be made for less than $10,000 nor for more than $1,000,000, and in no case in excess of $5,000,000 unless authorized by CSA, and should never exceed the amount of cash

ATTACHMENT - EXHIBIT I

6 TREASURY FRM 2000

ISSUING AGENCY	LETTER OF CREDIT	LETTER OF CREDIT NUMBER
Community Services Administration (1) 1200 19th Street NW. Washington, D.C. 20506	Auth: TREASURY DEPARTMENT CIRCULAR No. 1075, Revised	(2) _____ AMENDMENT NUMBER _____ (3)
AGENCY STATION SYMBOL 81-00-9701 (4)	(FOR AGENCY USE) (5)	EFFECTIVE DATE (6)
TO: The Federal Reserve Bank, (7)	BRANCH BANK AT (8)	

In accordance with the authorization of the Fiscal Assistant Secretary, Treasury Department, there is hereby authorized for the account and responsibility of the issuing agency a letter of credit:

IN FAVOR OF	FOR DEPOSIT ONLY TO	
(9)	(10) Recipient's ACCOUNT	
AMOUNT AUTHORIZED $ (11)	☐ EACH MONTH ☐ EACH QUARTER ☐ WITHOUT TIME LIMIT ☐ (12)	PRIOR AUTHORIZATION $ (13)
THIS CHANGE Increase $ (14) Decrease $		

15)

☐ The unpaid balance of this letter of credit will remain available until you are advised in writing by the Treasury Department that this letter has been revoked.*

OR

☐ The unpaid balance of this letter of credit is revoked at the end of each period indicated and the full amount reestablished at the beginning of the following period until you are advised in writing by the Treasury Department that this letter has been revoked.*

The amount of this letter of credit is hereby certified to be drawn against, upon presentation to you of Form TUS 5401, Payment Voucher on Letter of Credit, by the official(s) of the recipient organization whose signature(s) appear(s) on the Standard Form 1194, Authorized Signature Card for Payment Vouchers on Letter of Credit, attached hereto or previously or subsequently furnished you through the Treasury Department.

The amount of each payment voucher paid by a Federal Reserve Bank or branch to a designated commercial bank for credit to the account of the recipient organization shall constitute payment to the recipient organization by the United States.

I certify to the Treasury Department that the payments authorized herein are correct and proper for payment from the appropriations or funds legally committed and available for the purpose, when paid in accordance with the terms and conditions cited above.

*This letter of credit is irrevocable to the extent the recipient organization has obligated funds in good faith thereunder in executing the authorized Federal program in accordance with the grant, contract, or other agreement.

DATE CERTIFIED _____ (16)

AUTHORIZED CERTIFYING OFFICER

TYPED NAME AND TITLE

EXHIBIT I

EXPLANATION OF INFORMATION ON LETTER OF CREDIT

1. *Issuing Agency.* Name and address of CSA Headquarters.
2. *Letter of Credit Number.* Number assigned by the agency to identify a particular Letter of Credit.
3. *Amendment Number.* This will represent a change to letter of credit.
4. *Agency Station Symbol.* The No. 81–00–9701 is the number assigned the Treasury Department to identify CSA Letters of Credit. It will appear on all Letters of Credit issued by CSA.
5. *For Agency Use.* Shows grantee identification number and grant action number.
6. *Effective Date.* Effective date of the Letter of Credit.
7. *To the Federal Reserve Bank.* Location of Federal Reserve Bank serving Federal Reserve Branch Bank.
8. *Branch Bank at.* Location of Federal Reserve Branch serving grantee's commercial bank.
9. *In favor of.* Name and address of grantee, same as shown on the signature card and the CSA Form 314, Statement of CSA Grant.
10. *For Deposit Only to.* Name and address of commercial bank and recipient's account.
11. *Amount Authorized.* This space will be left blank.[1]
12. *Without Time Limit* This space will be left blank.[1]
13. *Prior Authorization.* This space will be left blank.[1]
14. *This Change.* The amount of increase or decrease authorized by this Letter of Credit amendment.
15. This space will be left blank.[2]
16. *Authorized Certifying Officer* Signature of authorized CSA official.

[1] Item 11, "Amount Authorized," equals item 13 "Prior Authorization," plus or minus item 14, "This Change."

[2] The Grant Accounting Branch, Finance and Grants Management Division, will complete Items 11, 12, 13, 14, and 15 before submitting a letter of credit to the U.S. Treasury.

ATTACHMENT
EXHIBIT II

Standard Form 1194 6 Treasury FRM 1000 Fiscal Service Bureau of Accounts	AUTHORIZED SIGNATURE CARD FOR PAYMENT VOUCHERS ON LETTER OF CREDIT	Letter of Credit Number (1) Federal Reserve Bank (2)
Letter of Credit Issued in Favor of *(Recipient)* (3)		Issued by *(Federal Agency)* (4)

(5)

SIGNATURES OF INDIVIDUALS AUTHORIZED TO DRAW ON THE CITED LETTER OF CREDIT

☐ ONLY ONE SIGNATURE REQUIRED ON PAYMENT VOUCHERS
or
☐ ANY TWO SIGNATURES REQUIRED TO SIGN OR COUNTERSIGN

Typed Name and Signature (6)	Typed Name and Signature (6)
Typed Name and Signature (6)	Typed Name and Signature (6)
I CERTIFY THAT THE SIGNATURES ABOVE ARE OF THE INDIVIDUALS AUTHORIZED TO DRAW PAYMENT VOUCHERS FOR THE CITED LETTER OF CREDIT. (7) DATE AND SIGNATURE OF AUTHORIZING OFFICIAL (Recipient)	APPROVED: (8) DATE AND SIGNATURE OF AGENCY CERTIFYING OFFICER

COMPLETION OF SIGNATURE CARDS

Following are instructions for completing the Signature Cards:

1. *Letter of Credit Number.* When establishing a new Letter of Credit the Finance and Grants Management Division will complete this block prior to sending the forms to the grantee for signatures. To request a change of signatures shown on a previous Form 1194, the grantee should indicate in this block, the assigned Letter of Credit number.
2. *Federal Reserve Bank.* The name of the Federal Reserve Bank or branch, as the case may be, that will serve the grantee's commercial bank will be entered by the Finance and Grants Management Division.
3. *Letter of Credit Issued in Favor of (Recipient).* Enter full name and address of grantee organization. Include city, state and zip code. This must agree with the information on the Statement of CSA Grant (CSA Form 314). If any of the information on the CSA Form 314 is incorrect, contact the CSA processing unit before completing the Form 1194.
4. *Issued by (Federal Agency).* The Community Services Administration, 1200 19th Street, N.W., Washington, D.C. 20506; Code 81–00–9701.
5. *Signatures of Individuals, etc.* Mark X in space to indicate "any two signatures required to sign or countersign."
6. *Typed Name and Signature.* Enter the typed names and signatures of at least two (and preferably more than two) individuals authorized to sign payment vouchers (Form TUS–5401) to withdraw funds from Letter of Credit. The typed names must appear exactly as the individuals sign their names.
7. *Certification Block. Date and Signature of Authorized Official* (Recipient). Date and sign. The signature should be that of the grantee official authorized to certify that the signatures are those of persons authorized to withdraw funds from the Letter of Credit.
8. *Approved.* Leave this space blank for CSA use.

ATTACHMENT
EXHIBIT III

ORIGINAL—Drawer will forward this form to bank for transmission to Federal Reserve Bank.

FORM TUS 5401 (Rev. 12-67) Dept. of the Treasury 6 TFRM 1000	PAYMENT VOUCHER ON LETTER OF CREDIT (TO BE COLLECTED AS A NON-CASH ITEM) The drawer's bank shall be the agent of the drawer for the collection of this instrument and each subsequent collecting commercial bank shall be the subagent of the drawer.	2058742 SERIAL NO. SYMBOL 17-865

VOUCHER NO.	LETTER OF CREDIT NO.	AGENCY STATION SYMBOL (3)	DATE VOUCHER DRAWN	AMOUNT
(1)	(2)	81-00-9701	(4)	$ (5)

NAME AND ADDRESS OF DRAWER	NAME AND ADDRESS OF DRAWER'S BANK	FEDERAL RESERVE BANK OR BRANCH
(6)	(7)	(8)

NAME AND ADDRESS OF U.S. AGENCY

COMMUNITY SERVICES ADMINISTRATION
Grant Accounting & Management Branch
1200 19th Street NW.
Washington, D.C. 20506

I certify that this payment voucher has been drawn in accordance with the terms and conditions of the letter of credit cited and that the amount for which drawn is properly for credit to the account of the drawer at the drawer's bank.

(9) _____ (Signature) _____ (Title)

(9) _____ (Countersignature) _____ (Title)

Per authorization of Fiscal Assistant Secretary, Treasury Department, debit the general account of the Treasurer of the U. S. and pay to the presenting bank the amount shown above.

FOR FEDERAL RESERVE BANK USE ONLY

_____ (Date Cleared) _____ (Authorized Signature)

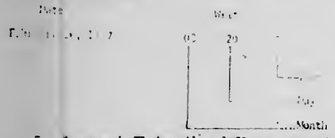
PREPARATION OF FORM TUS 5401

(1) *Voucher Number.* Grantees will number payment vouchers consecutively beginning with "1". Alphabetical designations will not be used as part of the voucher number. Amendments to the Letter of Credit will not interrupt the consecutive numbering of payment vouchers by the grantee.

(2) *Letter of Credit Number.* Enter the assigned Letter of Credit number. This is the eight-digit number shown on the Letter of Credit received from CSA.

(3) *Agency Station Symbol.* This is an eight-digit code assigned to CSA by the U.S. Treasury Department and is preprinted on the vouchers sent to grantees.

(4) *Data Voucher Drawn.* Enter the date voucher is prepared and presented to the bank. To facilitate entering this date on a computer, the date must be written as follows:



(5) *Amount.* Enter the dollar amount to be withdrawn. Round off to hundreds or thousands of dollars. Example: $35,500.00.

(6) *Name and Address of Drawer.* Complete name and address of grantee, including zip code, as shown on the Letter of Credit.

(7) *Name and Address of Drawer's Bank.* Enter name and address of the bank to which the payment voucher will be presented.

(8) *Federal Reserve Bank or Branch.* Enter name (city) of Federal Reserve Bank or Branch as shown on Letter of Credit.

(9) *Signatures.* Vouchers must be signed by two of the designated signees exactly as their signatures appear on current signature cards.

DISTRIBUTION OF PAYMENT VOUCHERS

Original, Duplicate and Triplicate: Presented to grantee's bank for payment. The Bank will retain the original and forward the duplicate and triplicate to the Federal Reserve Bank for their records.

Quadruplicate: Retain for grantee files.

Subpart K—Revision of Financial Plans [Reserved]

XI. This subpart L prescribes uniform closeout procedures for all CSA grants pursuant to the Uniform Federal Standards contained in Attachment K of OMB Circular A-110 and Attachment L of Federal Management Circular 74-7.

Prior to publication of this subpart CSA had no published policy or procedures dealing with grant closeout procedures per se although many procedures existed which, by their very nature, were applicable and used in closeouts.

This subpart notifies grantees of the Uniform Federal Standards covering this subject area, identifies the existing CSA Instructions which impact that subject, and includes a new section on closeout audits.

Subpart L—Grant Closeout Procedures (CSA Instruction 6800-12)

§ 1050.110 References.

(1) OMB Circular A-110, Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations (Attachment K).

(2) FMC 74-7, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments (Attachment L).

(3) OEO Instruction 6302-2, CAAs: Eligibility and Establishment.

(4) OEO Instruction 6730-1, Denial of Application for Refunding.

(5) CSA Instruction 6800-4, Retention and Custodial Requirements for Records (45 CFR 1050.20) (Uniform Federal Standard).

(6) CSA Instruction 6800-5, Program Income (45 CFR 1050.40) (Uniform Federal Standard).

(7) CSA Instruction 6800-8, Financial Reporting Requirements. (45 CFR 1050.70). (Uniform Federal Standard.)

(8) CSA Instruction 6800-9, Monitoring and Reporting Requirements. (45 CFR 1050.-70). (Uniform Federal Standard.)

(9) CSA Instruction 6800-10, Payment Requirements. (45 CFR 1050.90). (Uniform Federal Standard.)

(10) CSA Instruction 6800-11, Revision of Financial Plans. (45 CFR 1050.100). (Uniform Federal Standard.)

(11) CSA Instruction 6800-13, Suspension and Termination Procedures. (45 CFR 1050.-115). (Uniform Federal Standard.)

(12) CSA Instruction 6800-15, Property Management Standards. (45 CFR 1050.130). (Uniform Federal Standard.)

(13) OEO Instruction 6801-1, and Changes 1 and 2, Grantee Fiscal Responsibility and Auditing.

(14) CSA Instruction 7050-1, General Conditions Governing CSA Grants Funded Under Titles II, III-B, and VII of the EOA of 1964 as amended. (45 CFR 1067.5).

§ 1050.111 Definitions.

(a) "Closeout"—The closeout of a grant is the process by which CSA determines that all applicable administrative actions and all required work of the grant have been completed by the grantee and CSA.

(b) "Date of completion"—The date of completion is the date on which all work under the grant is completed or the

date on the grant award document, or any supplement or amendment thereto, on which Federal assistance ends.

(c) "Disallowed costs"—Disallowed costs are those charges to a grant which CSA determines to be unallowable in accordance with the applicable Federal cost principles, other conditions contained in the grant agreement and CSA Instructions.

§ 1050.112 Standards.

The following requirements shall be applicable to the closeout of all CSA grants:

(a) Upon request, CSA shall make prompt payments to the grantee for allowable reimbursable costs under the grant being closed out.

(b) The grantee shall immediately refund any balance of unobligated cash that CSA has advanced or paid, and that is not authorized to be retained by the grantee for use in other grants or for other purposes specifically authorized in writing by CSA. (See reference (7) for procedures.)

(c) Within 90 calendar days after the completion of a grant, the grantee shall submit to CSA all financial, performance, and other reports required as conditions of the grant. (See references (7), and (8), and (13) for procedures.) CSA may grant extensions when requested by the grantee.

(d) When authorized by the grant agreement, CSA shall make a settlement for any upward or downward adjustment to the Federal share of costs after these reports are received.

(e) The closeout of a grant shall not, of itself, end or otherwise affect: (1) The grantee's responsibility to account for any property acquired with Federal funds, or received from the Government, in accordance with the provisions of § 1050.130 (CSA Instruction 6800-15) Property Management Standards;

(2) The grantee's responsibility to account for program income in accordance with the provisions of § 1050.40 (CSA Instruction 6800-5);

(3) The retention period for, or Federal rights of access to, grant records pursuant to § 1050.20 (CSA Instruction 6800-4).

(f) In the event a final audit has not been performed prior to the closeout of the grant, CSA retains the right to recover an appropriate amount, after fully considering the recommendations on disallowed costs resulting from any subsequent audit which may be performed. (See reference (13) for CSA audit requirements.)

§ 1050.113 CSA implementing policies and procedures.

(a) *General.* Procedures for various activities to be undertaken in closeouts will be found in references (3) through (14). This subpart provides additional detail on required closeout procedures relating to audits. (See reference (13) for basic procedures.)

(b) *Closeout audits*—(1) *Scope of audit.* (i) Within 90 days after the date of completion of a CSA grant, the grantee will be required to submit a final audit of grant operations. This audit will be done in accordance with the Accounting System Survey and Audit Guide, CSA Manual 2410-1. If the grantee will no longer be receiving CSA funds from other grants, the scope of audit should be adjusted as follows:

(A) The independent auditor will not be required to render an appraisal of the grantee's accounting system and internal controls. However, he will be required to review internal accounting controls in accordance with generally accepted auditing standards to ascertain the degree of reliance he can place on them in determining the extent of his audit tests and procedures. Therefore, the audit report will normally contain no comments or recommendations relative to the grantee's accounting system or internal controls.

(B) The independent auditor should explain in his audit report that the grantee will not continue to receive CSA funding and will not be involved in CSA programs as a grantee.

(C) The independent auditor should emphasize in his report any action required to clear the account such as recovery of any unexpended funds or disposition of grant property.

(ii) Where questions arise in regard to the audit of CSA grantees being closed out, independent auditors should contact the cognizant CSA Regional Auditor for guidance.

(2) *Audit disallowances.* The normal CSA audit disallowance procedures as set forth in reference (13) shall be followed for audit disallowances resulting from a final audit. Final audit disallowances can only be satisfied by cash payments to CSA when the grant in question has been or is in the process of being closed out.

XII. This subpart prescribes uniform suspension and termination procedures for all CSA grants pursuant to the Uniform Federal Standards contained in Attachment L of OMB Circular A-110 and Federal Management Circular 74-7 (OMB Circular A-102).

CSA's previous policy statement and accompanying procedures re suspension and termination was found in 45 CFR 1067.1 (OEO Instruction 6730-2) which is superseded by this subpart (CSA Instruction 6800-13). However, most of the policies and procedures found in 45 CFR 1067.1 have been incorporated into this subpart. Changes in existing CSA procedures include:

General: Terminology has been corrected but very few substantive changes have been made. Procedures have not changed.

Specific: *Suspensions,* § 1050.115-7—(1) Length of suspension increased from 21 to 30 days; (2) Regional Directors explicitly added to definition of "responsible CSA official" but only for purpose of suspensions; (3) suspension procedures have been reorganized into two sections—suspension on notice and summary suspension.

Termination, § 1050.115-8—(1) Regional Directors as well as "responsible CSA official" may initiate termination, but Regional Directors may not conduct termination hearing, unless designated by the responsible CSA official, since they are not grant making officials; and (2) a final section entitled "Consequences of Termination" was transferred from CSA Instruction 7050-1, General Condition 14, to subsection 8(j) of this subpart.

45 CFR Chapter X is amended by deleting §§ 1067.1-1 to 1067.1-11 and adding the following:

Subpart M—Suspension and Termination Procedures (Uniform Federal Standard) (CSA Instruction 6800-13)

§ 1050.115-1 References.

(1) 45 CFR 1010 (OEO Instruction 6004-01a) Nondiscrimination in Federally-Assisted Programs of the Office of Economic Opportunity—Effectuation of Title VI of the Civil Rights Act of 1964;

(2) 45 CFR 1067.2 (OEO Instruction 6730-1) Denial of Application for Refunding;

(3) 45 CFR 1050.110 (CSA Instruction 6800-12) Grant Closeout Procedures;

(4) 45 CFR 1069.3 (CSA Instruction 6910 1a) Travel Regulations for CSA Grantees and Delegate Agencies.

§ 1050.115-2 Definitions.

(a) "Termination"—The termination of a grant is the cancellation of Federal assistance, in whole or in part, under a grant at any time prior to its date of completion. The following do not constitute termination:

(1) Withdrawal of funds awarded on the basis of grantee's underestimate of the unobligated balance in a prior grant period;

(2) Failure on the part of CSA to refund a grantee or to make a continuation, extension, supplemental or other additional grant;

(3) Withdrawal of the unobligated balance as of the date of completion of a grant pursuant to the provisions of CSA Instruction 6800-12 (45 CFR 1050.110);

(4) Annulment of a grant upon determination that the grant was obtained fraudulently or was otherwise illegal or invalid from inception;

(5) Withdrawal of unobligated funds from a CAA before the date of completion of its grant as a result of opt-out or de-designation proceedings under Section 210 of the Economic Opportunity Act of 1964 as amended, and OEO Instruction 6302-2.

(b) "Suspension"—The suspension of a grant is an action by CSA that temporarily suspends Federal assistance under the grant, pending a decision by CSA to terminate the grant.

§ 1050.115-3 Failure to comply with grant terms and conditions.

When a grantee has materially failed to comply with the terms and conditions of a grant (including all applicable CSA Instructions), CSA may suspend the grant in accordance with § 1050.115-4, terminate it for cause in accordance with § 1050.115-5, or take such other remedies as may be legally available and appropriate under the circumstances.

§ 1050.115–4 Suspension.

When a grantee has materially failed to comply with grant terms and conditions, CSA may suspend the grant, after giving the grantee reasonable notice and opportunity to show cause why the grant should not be suspended. Pursuant to Section 604(2) of the Economic Opportunity Act as amended, CSA may summarily suspend a grant without previous notice in an emergency situation. If a grant is suspended, CSA may withhold further payments and prohibit the grantee from incuring further obligations of funds, pending corrective action by the grantee or a decision by CSA to initiate termination proceedings in accordance with § 1050.115–5. CSA will allow all necessary and proper costs that the grantee could not reasonably avoid during the period of suspension, provided that they meet the provisions of the applicable Federal cost principles (for public grantees, the applicable provisions are those of Federal Management Circular 74–4).

§ 1050.115–5 Termination for cause.

Whenever it is determined that a grantee has failed to comply with the terms and conditions of its grant, CSA may terminate the grant in whole or in part at any time prior to its date of completion. CSA shall promptly notify the grantee of the determination and the reasons for the termination, together with its effective date. Pursuant to Section 604(3) of the Economic Opportunity Act of 1964, as amended, such determination shall not be made unless the grantee has been afforded the opportunity for a full and a fair hearing on the termination of its grant. Payment made to grantees or recoveries by CSA or other Federal grantor agencies under grants terminated for cause shall be in accordance with the legal rights and liabilities of the parties.

§ 1050.115–6 Termination for convenience.

CSA or the grantee may terminate any grant in whole or in part if and only if both parties agree that the continuation of the project would not produce beneficial results commensurate with the further expenditure of funds. The two parties must agree on the termination conditions, including the effective date, and, in the case of partial terminations, the portion to be terminated. The grantee shall not incur new obligations for the terminated program or portion thereof after the effective date of termination and shall cancel as many outstanding obligations as possible. CSA shall allow full credit to the grantee for the Federal share of the noncancellable obligations properly incurred by the grantee prior to the effective date of termination.

§ 1050.115–7 CSA Implementing Policies and Procedures Governing Suspensions.

(a) *Purpose and scope.* (1) This section establishes rules for the suspension of assistance provided under the Economic Opportunity Act of 1964, as amended (hereinafter the Act), if the assistance is administered by the Community Services Administration; a grantee may be suspended for failure to comply with the terms and conditions of its grant, including applicable laws, regulations, CSA Instructions, grant conditions, or approved work programs.

(2) However, this section shall not apply to any administrative action of the Community Services Administration based upon any violation or alleged violation of Title VI of the Civil Rights Act of 1964; in case of such violation or alleged violation the provisions of 45 CFR Part 1010 (CSA Instruction 6004–01a) shall apply.

(3) Pursuant to Section 604(2) of the Act and this subpart, the responsible CSA official may suspend a grant under the circumstances outlined in paragraph (a)(1) of this section. There are two kinds of suspension: (i) suspension on notice, as provided for in paragraph (c) of this section, and (ii) summary suspension as provided for in (d) of this section. Summary suspension may be invoked only when the responsible CSA official determines that an emergency situation exists (see paragraph (d)(1) of this section).

(b) *Definitions.* (1) The term "responsible CSA official" means the Director, Deputy Director, and any other official who is authorized to make the grant in question, the Regional Director of the Regional Office administering the grant in question, or the designee of any of these officials.

(2) The term "summary suspension" means suspension of a grant without prior notice to the grantee.

(c) *Suspension on notice.* (1) The responsible CSA official shall notify the grantee by letter or telegram that CSA intends to suspend a grant in whole or in part unless good cause is shown why the grant should not be suspended. In such letter or telegram the responsible CSA official shall specify the grounds for the proposed suspension and the proposed effective date of the suspension.

(2) The responsible CSA official shall also inform the grantee of its right to submit written material in opposition to the intended suspension and of its right to request an informal meeting at which the grantee may respond and attempt to show why such suspension should not occur. The period of time within which the grantee may submit such written material or request the informal meeting shall be established by the responsible CSA official in the notice of intent to suspend. However, in no event shall the period of time within which the grantee must submit written material or request such a meeting be less than 5 days after the notice of intent to suspend has been sent. If the grantee requests a meeting, the responsible CSA official shall fix a time and place for the meeting, which shall not be less than 5 days after the grantee's request is received by CSA.

(3) In lieu of the provisions of paragraph (c)(2) of this section dealing with the right of the grantee to request an informal meeting, the responsible CSA official may on his own initiative establish a time and place for such a meeting. However, in no event shall such a meeting be scheduled less than 7 days after the notice of intent to suspend is sent to the grantee.

(4) The responsible CSA official may in his discretion extend the period of time or date referred to in the previous paragraphs of this section and shall notify the grantee of any such extension.

(5) At the time the responsible CSA official sends the notification referred to in paragraphs (c), (1), (2), and (3) of this section to the grantee, he shall also send a copy of it to any delegate agency whose activities or failures to act are a substantial cause of the proposed suspension, and shall inform such delegate agency that it shall be entitled to submit written material or to participate in the informal meeting referred to in paragraphs (c), (2) and (3) of this section. In addition, the responsible CSA official may in his discretion give such notice to any other delegate agency.

(6) Within 3 days of receipt of the notice referred to in paragraphs (c)(1), (2), and (3) of this section, the grantee shall send a copy of these regulations to all delegate agencies which would be financially affected by the proposed suspension action. Any delegate agency that wishes to submit written material may do so within the time stated in the notice. Any delegate agency that wishes to participate in the informal meeting with the responsible CSA official contemplated herein (if not afforded a right to participate under the previous paragraphs) may request permission to do so from the responsible CSA official, who may in his discretion grant or deny such permission. In acting upon any such request from a delegate agency, the responsible CSA official shall take into account the effect of the proposed suspension on the particular delegate agency, the extent to which the meeting would become unduly complicated as a result of granting such permission, and the extent to which the interests of the delegate agency requesting such permission appear to the adequately represented by other participants.

(7) In the notice of intent to suspend assistance the responsible CSA official shall invite voluntary action to adequately correct the deficiency which led to the initiation of the suspension proceeding.

(8) The responsible CSA official shall consider any timely material presented to him in writing, any material presented to him during the course of the informal meeting provided for in paragraphs (c)(2) and (3) of this section as well as any showing that the grantee has adequately corrected the deficiency which led to the initiation of suspension proceedings. If after considering the material presented to him the responsible CSA official concludes that the grantee has failed to show cause why the grant should not be suspended, he may suspend the grant in whole or in part and under such terms and conditions as he shall specify.

(9) Notice of such suspension shall be promptly transmitted to the grantee and shall become effective upon delivery.

Suspension shall not exceed 30 days unless during such period of time termination proceedings are initiated in accordance with § 1050.115–8, or unless the responsible CSA official and the grantee agree to a continuation of the suspension for an additional period of time. If termination proceedings are initiated, the suspension shall remain in full force and effect until such proceedings have been fully concluded.

(10) During a period of suspension no new expenditures shall be made and no new obligations shall be incurred in connection with the suspended program except as specifically authorized in writing by the responsible CSA official. Expenditures to fulfill legally enforceable commitments made prior to the notice of suspension, in good faith and in accordance with the grantee's approved work program, and not in anticipation of suspension or termination, shall not be considered new expenditures. However, funds shall not be recognized as committed solely because the grantee has obligated them by contract or otherwise to a delegate agency.

NOTE.—Willful misapplication of funds may violate section 627 of the Economic Opportunity Act of 1964, as amended, 42 USC 2971(f) or other criminal statutes.

(11) The responsible CSA official may in his discretion modify the terms, condition and nature of the suspension or rescind the suspension action at any time on his own initiative or upon a showing satisfactory to him that the grantee has adequately corrected the deficiency which led to the suspension and that repetition is not threatened. Suspensions partly or fully rescinded may in the discretion of the responsible CSA official be reimposed with or without further proceedings: Provided, however, that the total time of suspension may not exceed 30 days unless termination proceedings are initiated in accordance with § 1050.115–8, or unless the responsible CSA official and the grantee agree to a continuation of the suspension for an additional period of time. If termination proceedings are initiated, the suspension shall remain in full force and effect until such proceedings have been fully concluded.

(d) *Summary suspension.* (1) As stated in paragraph (a)(3) of this section the responsible CSA official may invoke summary suspension procedures only if he determines that an emergency situation exists because there is a serious risk of: (i) substantial injury to or loss of project funds or property, or (ii) violation of a Federal, State or local criminal statute, or (3) violation of section 603(b) or 613 of the Community Services Act of 1974, as amended or of CSA Instructions implementing these sections of the Act. He must also determine that such risk is sufficiently serious to outweigh the general policy in favor of advance notice and opportunity to show cause.

(2) Notice of summary suspension shall be given to the grantee by letter or by telegram, shall become effective upon delivery to the grantee, and shall specifically advise the grantee of the effective date of the suspension and the extent, terms, and condition of any partial suspension. The notice shall also forbid the grantee to make any new expenditures or incur any new obligations in connection with the suspended portion of the program. Expenditures to fulfill legally enforceable commitments made prior to the notice of suspension, in good faith and in accordance with the grantee's approved work program, and not in anticipation of suspension or termination, shall not be considered new expenditures. However, funds shall not be recognized as committed by a grantee solely because the grantee obligated them by contract or otherwise to a delegate agency.

(3) In the notice of summary suspension the responsible CSA official shall advise the grantee that it may request CSA to provide it with an opportunity to show cause why the summary suspension should be rescinded. If the grantee requests such an opportunity, the responsible CSA official shall immediately inform the grantee in writing of the specific grounds for the suspension and shall within 7 days after receiving such request from the grantee hold an informal meeting at which the grantee may show cause why the summary suspension should be rescinded. Notwithstanding the provisions of this paragraph, the responsible CSA official may proceed to initiate termination proceedings at any time even though the grant has been suspended in whole or in part. In the event that termination proceedings are initiated, the responsible CSA official shall nevertheless afford the grantee, if it so requests, an opportunity to show cause why suspension should be rescinded pending the outcome of the termination proceedings.

(4) Notices of summary suspension shall also be furnished by the responsible CSA official and by the grantee to delegate agencies in the same manner as notices of intent to suspend as set forth in paragraphs (c)(5), (6) and (7) of this section. Delegate agencies shall have the same right to submit written material to the responsible CSA official or to participate in the informal meeting as in the case of intended suspension procedings set forth in paragraphs (c)(5) and (6) of this section.

(5) The effective period of a summary suspension may not exceed 10 days unless termination proceedings are initiated in accordance with § 1050.115–8 or unless the parties agree to a continuation of summary suspension for an additional period of time, or unless the grantee in accordance with paragraph (d)(3) of this section requests an opportunity to show cause why the summary suspension should be rescinded.

(6) If the grantee requests an opportunity to show cause why a summary suspension action should be rescinded the suspension shall continue in effect until the grantee has been afforded such opportunity and a decision has been made. Such a decision shall be made within 5 days after the conclusion of the informal meeting referred to in (d)(3) of this section. If the responsible CSA official concludes after considering all material submitted to him, that the grantee has failed to show cause why the suspension should be rescinded, the responsible CSA official may continue the suspension in effect for an additional 10 days; *Provided, however,* That if termination proceedings are initiated, the summary suspension shall remain in full force and effect until all termination proceedings have been fully concluded.

(e) *Right to counsel; travel expenses.* In all proceedings under this section whether formal or informal, the grantee and CSA shall have the right to be represented by counsel or other authorized representatives. If the grantee and any delegate agencies which have a right to participate in an informal meeting pursuant to paragraphs (d) and (e) of this section do not have an attorney acting in that capacity as a regular member of the staff of the organization or a retainer arrangement with an attorney, the Boards of Directors of such grantees and delegate agencies will be authorized to designate an attorney to represent their organizations at any termination hearing and to transfer sufficient funds from their current operating grants to pay the fees, travel, and per diem expenses of such attorney. The fees for such attorney shall be the reasonable and customary fees for an attorney. However, such fees shall not exceed $100 per day without the express written approval of CSA. Travel and per diem expenses may be paid to such attorney from grant funds only in accordance with the policies set forth in the Standard Government Travel Regulations and 45 CFR 1069.3–1 to 1069.3–6 (CSA Instruction 6910–1a). The Board of Directors of the grantee or any delegate agency which has a right to participate in an informal meeting pursuant to paragraphs (d) and (e) of this section will also be authorized to designate two persons in addition to an attorney whose travel and per diem expenses to attend the meeting or hearing may be paid from the organization's current operating grant. Such travel and per diem expenses shall conform to the policies set forth in the Standard Government Travel Regulations and in 45 CFR 1069.3–1 to 1069.3–6 (CSA Instruction 6910–1a).

§ 1050.115–8 CSA implementing policies and procedures governing termination of assistance.

(a) *Purpose and scope.* (1) This section establishes rules for the termination of assistance provided under the Economic Opportunity Act of 1964, as amended (hereinafter the Act), if the assistance is administered by the Community Services Administration; a grantee may be terminated for failure to comply with the terms and conditions of its grant, including applicable Laws, regulations, CSA Instructions, grant conditions, or approved work programs.

(2) However, this section shall not apply to any administrative action of the Community Services Administration

based upon any violation or alleged violation of Title VI of the Civil Rights Act of 1964; in case of such violation or alleged violation the provisions of 45 CFR Part 1010 (CSA Instruction 6004–01a) shall apply.

(3) Pursuant to section 604(3) of the Act and CSA Instruction 6800–13, the responsible CSA official may terminate a grant under the circumstances outlined in paragraph (a)(1) of this section.

(b) *Definitions.* (1) The term "responsible CSA official" means the Director, Deputy Director, and any other official who is authorized to make the grant in question.

(2) The term "party" means CSA, the grantee concerned, and any other agency or organization which, by right or by permission of the presiding officer, is a participant in a termination hearing.

(c) *Notice and pre-hearing procedures.* (1) If the responsible CSA official believes a grantee's violation of the terms and conditions of its grant is sufficiently serious to warrant termination, whether or not the grant has been suspended, he shall state that there appear to be grounds which warrant termination and shall set forth the specific reasons therefor. If the reasons result in whole or substantial part from the activities of a delegate agency, the notice shall identify that delegate agency. The notice shall also advise the grantee that the matter has been set down for hearing at a stated time and place, in accordance with paragraph (d) of this section. In the alternative the notice shall advise the grantee of its right to request a hearing and shall fix a period of time which shall not be less than 10 days in which the grantee may request such a hearing. [If the grant is Regionally administered, the Regional Director of the grantee's Region may initiate the notice of intent to terminate on behalf of CSA. Any notice initiated by the Regional Director shall inform the grantee of the name and address of the responsible CSA official and shall direct the grantee to address all communications concerning the termination hearing to that official.]

(2) Termination hearings shall be conducted in accordance with the provisions of paragraph (e) and (f) of this section. They shall be scheduled for the earliest practicable date, but not later than 30 days after a grantee has requested such a hearing. Consideration shall be given to a request by a grantee to advance or postpone the date of a hearing scheduled by CSA. Any such hearing shall afford the grantee a full and fair opportunity to demonstrate that it is in compliance with all applicable laws, regulations, and other requirements specified in paragraph (a) of this section. In any termination hearing, CSA shall have the burden of justifying the proposed termination. However, if the basis of the proposed termination is the failure of a grantee to take action required by law, regulation, or other requirement specified in paragraph (a) of this section, the grantee shall have the burden of proving that such action was timely taken.

(3) If a grantee requests CSA to hold a hearing in accordance with paragraph (c)(1) of this section, it shall send a copy of its request for such a hearing to all delegate agencies which would be financially affected by termination and to each delegate agency identified in the notice pursuant to paragraph (c)(1) of this section. This material shall be sent to these delegate agencies at the same time the grantee's request is made to CSA. The grantee shall promptly send CSA a list of the delegate agencies to which it has sent such material and the date on which it was sent.

(4) If the responsible CSA official pursuant to paragraph (c)(1) of this section informs a grantee that a proposed termination action has been set for hearing, the grantee shall within 5 days of its receipt of this notice send a copy of it to all delegate agencies which would be financially affected by the termination and to each delegate agency identified in the notice pursuant to paragraph (c)(1) of this section. The grantee shall send the responsible CSA official a list of all delegate agencies notified and the date of notification.

(5) If the responsible CSA official has initiated termination proceedings because of the activities of a delegate agency, that delegate agency may participate in the hearing as a matter of right. Any other delegate agency, person, agency or organization that wishes to participate in the hearing may, in accordance with paragraph (e) of this section, request permission to do so from the presiding officer of the hearing. Such participation shall not, without the consent of CSA and the grantee, alter the time limitations for the delivery of papers or other procedures set forth in this section.

(6) The results of the proceeding and any measure taken thereafter by CSA pursuant to this section shall be fully binding upon the grantee and all its delegate agencies whether or not they actually participated in the hearing.

(7) A grantee may waive a hearing and submit written information and argument for the record. Such material shall be submitted to the responsible CSA official within a reasonable period of time to be fixed by him upon the request of the grantee. The failure of a grantee to request a hearing, or to appear at a hearing for which a date has been set, unless excused for good cause shall be deemed a waiver of the right to a hearing and consent to the making of a decision on the basis of such information as is then in the possession of CSA.

(8) The responsible CSA official may attempt, either personally or through a representative, to resolve the issues in dispute by informal means prior to the date of any applicable hearing.

(d) *Time and place of termination hearings.* The termination hearing shall be held in Washington, D.C., or in the appropriate Regional Office, at a time and place fixed by the responsible CSA official, unless he determines that the convenience of CSA or of the parties or their representatives requires that another place be selected.

(e) *Termination hearing procedure—*(1) *General.* The termination hearing, the decision on termination and any review thereof shall be conducted in accordance with paragraphs (e), (f), and (g) of this section.

(2) *Presiding officer.* (i) The presiding officer at the hearing shall be the responsible CSA official or, at the discretion of the responsible CSA official an independent hearing examiner designated as promptly as possible in accordance with section 3105 of title 5 of the United States Code. The presiding officer shall conduct a full and fair hearing, avoid delay, maintain order, and make a sufficient record for a full and true disclosure of the facts and issues. To accomplish these ends, the presiding officer shall have all powers authorized by law, and he may make all procedural and evidentiary rulings necessary for the conduct of the hearing. The hearing shall be open to the public unless the presiding officer for good cause shown shall otherwise determine. (ii) After the notice described in paragraph (e)(6) of this section is filed with the presiding officer, he shall not consult any person or party on a fact in issue unless on notice and opportunity for all parties to participate. However, in performing his functions under this part the presiding officer may use the assistance and advice of an attorney designated by the General Counsel of CSA or the appropriate Regional Counsel: Provided, that the attorney designated to assist him has not represented CSA or any other party or otherwise participated in a proceeding, recommendation, or decision in the particular matter.

(3) *Presentation of evidence.* Both CSA and the grantee are entitled to present their case by oral or documentary evidence, to submit rebuttal evidence and to conduct such examination and cross-examination as may be required for a full and true disclosure of the facts bearing on the issues. The issues shall be those stated in the notice required to be filed by paragraph (e)(6) of this section, those stipulated in a prehearing conference or those agreed to by the parties.

(4) *Participation.* (i) In addition to CSA, the grantee, and any delegate agencies which have a right to appear, the presiding officer in his discretion may permit the participation in the proceedings of such persons or organizations as he deems necessary for a proper determination of the issues involved. Such participation may be limited to those issues or activities which the presiding officer believes will meet the needs of the proceeding, and may be limited to the filing of written material. (ii) Any person or organization that wishes to participate in a proceeding may apply for permission to do so from the presiding officer. This application, which shall be made as soon as possible after the notice of proposed termination has been received by the grantee, shall state the applicant's interest in the proceeding, the evidence or arguments the applicant intends to contribute, and the necessity for the introduction of such evidence or arguments. (iii)

The presiding officer shall permit or deny such participation and shall give notice of his decision to the applicant, the grantee, and CSA, and, in the case of denial, a brief statement of the reasons therefor: *Provided however,* That the presiding officer may subsequently permit such participation if, in his opinion, it is warranted by subsequent circumstances. If participation is granted, the presiding officer shall notify all parties of that fact and may, in appropriate cases, include in the notification a brief statement of the issues as to which participation is permitted. (iv) Permission to participate to any extent is not a recognition that the participant has any interest which may be adversely affected or that the participant may be aggrieved by any decision, but is allowed solely for the aid and information of the presiding officer.

(5) *Filing.* All papers and documents which are required to be filed shall be filed with the presiding officer. Prior to filing, copies shall be sent to the other parties.

(6) *Notice.* The responsible CSA official shall send the grantee and any other party a notice which states the time, place, and nature of the hearing, and the legal authority and jurisdiction under which the hearing is to be held. The notice shall also identify with reasonable specificity the facts relied on as justifying termination and the CSA requirements which it is contended the grantee has violated. The notice shall be filed and served not later than 10 days prior to the hearing and a copy thereof shall be filed with the presiding officer.

(7) *Notice of intention to appear.* The grantee and any other party which has a right or permission to participate in the hearing shall give written confirmation to CSA of its intention to appear at the hearing 3 days before it is scheduled to occur. Failure to do so may, at the discretion of the presiding officer, be deemed a waiver of the right to a hearing.

(8) *Form and date of service.* All papers and documents filed or sent to a party shall be signed in ink by the appropriate party or his authorized representative. The date on which papers are filed shall be the day on which the papers or documents are deposited, postage prepaid in the U.S. mail, or are delivered in person: Provided however, that the effective date of the notice that there appear to be grounds which warrant termination shall be the date of its delivery or attempted delivery at the grantee's last known address as reflected in the records of CSA.

(9) *Prehearing conferences.* Prior to the commencement of a hearing the presiding officer may, subject of the provisions of paragraph (e)(2)(ii) of this section, require the parties to meet with him or correspond with him concerning the settlement of any matter which will expedite a quick and fair conclusion of the hearing.

(10) *Evidence.* Technical rules of evidence shall not apply to hearings conducted pursuant to this section but the presiding officer shall apply rules or principles designed to assure production of relevant evidence and to subject testimony to such examination and cross-examination as may be required for a full and true disclosure of the facts. The presiding officer may exclude irrelevant, immaterial, or unduly repetitious evidence. A transcript shall be made of the oral evidence and shall be made available to any participant upon payment of the prescribed costs. All documents and other evidence submitted shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues.

(11) *Depositions.* If the presiding officer determines that the interests of justice would be served, he may authorize the taking of depositions provided that all parties are afforded an opportunity to participate in the taking of the depositions. The party who requested the deposition shall arrange for a transcript to be made of the proceedings and shall upon request, and at his expense, furnish all other parties with copies of the transcript.

(12) *Official notice.* Official notice may be taken of a public document, or part thereof, such as a statute, official report, decision, opinion or published scientific data issued by any agency of the Federal Government or a State or local government and such document or data may be entered on the record without further proof of authenticity. Official notice may also be taken of such matters as may be judicially noticed in the courts of the United States, or any other matter of established fact within the general knowledge of CSA. If the decision of the presiding officer rests on official notice of a material fact not appearing in evidence, a party shall on timely request be afforded an opportunity to show the contrary.

(13) *Proposed findings and conclusions.* After the hearing has concluded, but before the presiding officer makes his decision, he shall afford each participant a reasonable opportunity to submit proposed findings of fact and conclusions. After considering each proposed finding or conclusion the presiding officer shall state in his decision whether he has accepted or rejected them in accordance with the provisions of paragraph (f)(1) of this section.

(f) *Decisions, termination notices, and review by the Director.* (1) Each decision of a presiding officer shall set forth his findings of fact, and conclusions, and shall state whether he has accepted or rejected each proposed finding of fact and conclusion submitted by the parties, pursuant to paragraph (e)(13) of this section. Findings of fact shall be based only upon evidence submitted to the presiding officer and matters of which official notice has been taken. The decision shall also specify the requirement or requirements with which it is found that the grantee has failed to comply.

(2) The decision of the presiding officer may provide for continued suspension or termination of the grant in whole or in part, and may contain such terms, conditions, and other provisions as are consistent with and will effectuate the purposes of the Act.

(3) If the hearing is held by an independent hearing examiner rather than by the responsible CSA official, he shall make an initial decision, and a copy of this initial decision shall be mailed to all parties. Any party may, within 20 days of the mailing of such initial decision, or such longer period of time as the presiding officer specifies, file with the responsible CSA official his exceptions to the initial decision and any supporting brief or statement. Upon the filing of such exceptions, the responsible CSA official shall, within 20 days of the mailing of the exceptions, review the initial decision and issue his own decision thereon, including the reasons therefor. The decision of the responsible CSA official may increase, modify, approve, vacate, remit, or mitigate any sanction imposed in the initial decision or may remand the matter to the presiding officer for further hearing or consideration.

(4) Whenever a hearing is waived, a decision shall be made by the responsible CSA official and a written copy of the final decision of the responsible CSA official shall be given to the grantee.

(5) The grantee may request the Director to review a final decision by the responsible CSA official which provides for termination. Such a request must be made in writing within 15 days after the grantee has been notified of the decision in question and must state in detail the reasons for seeking the review. In the event the grantee requests such a review, the Director or his designee shall consider the reasons stated by the grantee for seeking the review and shall approve, modify, vacate or mitigate any sanction imposed by the responsible CSA official or remand the matter to the responsible CSA official for further hearing or consideration. The decision of the responsible CSA official will be given great weight by the Director or his designee during the review. During the course of his review the Director or his designee may, but is not required to, hold a hearing or allow the filing of briefs and arguments. Pending the decision of the Director or his designee, the grant shall remain suspended under the terms and the conditions specified by the responsible CSA official, unless the responsible CSA official or the Director or his designee otherwise determines. Every reasonable effort shall be made to complete the review by the Director or his designee within 30 days of receipt by the Director of the grantee's request. The Director or his designee may however extend this period of time if he determines that additional time is necessary for an adequate review.

(g) *Right to counsel: travel expenses.* In all proceedings under this section whether formal or informal, the grantee and CSA shall have the right to be represented by counsel or other authorized representatives. If the grantee and any delegate agencies which have a right to participate in a termination hearing pursuant to paragraph (c) of this section do

not have an attorney acting in that capacity as a regular member of the staff of the organization or a retainer arrangement with an attorney, the Boards of Directors of such grantees and delegate agencies will be authorized to designate an attorney to represent their organizations at any termination hearing and to transfer sufficient funds from their current operating grants to pay the fees, travel, and per diem expenses of such attorney. The fees for such attorney shall be the reasonable and customary fees for an attorney practicing in the locality of the attorney. However, such fees shall not exceed $100 per day without the express written approval of CSA. Travel and per diem expenses may be paid to such attorney from grant funds only in accordance with the policies set forth in the Standard Travel Regulation and in 45 CFR 1069.3–1 to 3–6 (CSA Instruction 6910–1a). The Board of Directors of the grantee or any delegate agency which has a right to participate in a termination hearing pursuant to paragraph (e) of this section will also be authorized to designate two persons in addition to an attorney whose travel and per diem expenses to attend the meeting or hearing may be paid from the organization's current operating grant. Such travel and per diem expenses shall conform to the policies set forth in the Standard Government Regulations and in 45 CFR 1069.3–1 to 1069.3–6 (CSA Instruction 6910–1a).

(h) *Modification of procedures by consent.* The responsible CSA official or the presiding officer of a termination hearing may alter, eliminate or modify any of the provisions of this section with the consent of the grantee and, in the case of a termination hearing, with the consent of all delegate agencies that have a right to participate in the hearing pursuant to paragraph (c)(5) of this section. Such consent must be in writing or be recorded in the hearing transcript.

(i) *Other remedies.* The procedures established by this section shall not preclude CSA from pursuing other remedies authorized by law.

(j) *Consequences of termination.* Upon termination, the disposition of unexpended Federal funds and of property purchased with program funds shall be according to the provisions of CSA Instruction 6800–12, Grant Closeout Procedures. Termination shall not affect expenditures or legally binding commitments made prior to the grantee's receipt of notice of the termination, provided such expenditures were made in good faith and are otherwise allowable. Funds shall not be considered to be legally committed solely by virtue of a grantee's contract or other commitment to a delegate agency.

XIII. The purpose of this subpart is to notify grantees of the requirements in OMB Circular A–110 and FMC 74–7 that Standard Form 424 be used by both public and private non-profit grantees and contractors to fulfill certain requirements.

CSA previously implemented the requirements of this standard when it published 45 CFR 1067.10 (CSA Instruction 6710–3a). Policies and procedures found in that subpart (and Instruction) continue to be in effect. Overprinting of the SF–424 as shown in 45 CFR 1067.10 was approved by the Office of Management and Budget. 45 CFR Chapter X is amended by adding the following:

Subpart N—Standard Form for Applying for Federal Assistance (SF 424) (Uniform Federal Standard) (CSA Instruction 6800–14)

§ 1050.120 References.

(1) OMB Circular A–110, Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations (Attachment M).

(2) FMC 74–7, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments (Attachment M).

(3) CSA Instruction 6710–3a, Project Review and Notification System. (45 CFR 1067.10)

(4) OEO Instruction 6710–1, Applying for a CAP Grant and Changes thereto.

(5) CSA Instruction 6710–6, Applying for a Grant Under Title VII of the Community Services Act. (45 CFR 1067.15)

(6) CSA Instruction 6143–1a, Emergency Energy Conservation Program (45 CFR 1061.30).

(7) OEO Instruction 7570–1, Applying for a new Research or Demonstration Grant Under EOA.

(8) OEO Instruction 7570–2, Applying for Continuation of a Research or Demonstration Grant.

§ 1050.121 Standards.

(a) Standard Form 424 will be used by public agencies and private organizations as a face sheet for applications when applying for any CSA grant.

(b) The SF–424 will be used to fulfill the requirements of OMB Circular A–95 for a notification of intent from applicant to clearinghouse(s) that assistance will be applied for from CSA in those instances where clearinghouses do not require other forms.

(c) The SF–424 will also be used by CSA funding offices to report to the clearinghouses on major actions taken on applications reviewed by clearinghouses in accordance with OMB Circular A–95, and to notify States of grants-in-aid awarded in accordance with Treasury Circular 1082.

§ 1050.122 CSA implementing policies and procedures.

(a) Detailed CSA policies regarding the uses of the SF–424, including information on completing the form, will be found in reference (3).

(b) Detailed policies and procedures for applying for grants under the Community Services Act will be found in references (4) through (8).

Subpart O—Property Management Standards [Reserved]

Subpart P—Procurement Standards [Reserved]

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federal register

MONDAY, JANUARY 17, 1977

PART III



DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Community Planning and Development

COMMUNITY DEVELOPMENT BLOCK GRANTS

Eligible Activities

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Community Planning and Development

[24 CFR Part 570]

[Docket No. R-77-292]

COMMUNITY DEVELOPMENT BLOCK GRANTS

Eligible Activities

On January 19, 1976, the Department of Housing and Urban Development (HUD) published in the FEDERAL REGISTER (41 FR 2766) revised regulations containing rules for determining the eligibility of activities to be carried out under the community development block grant program under Title I of the Housing and Community Development Act of 1974. Subpart C of Part 570 of the regulations contains rules for determining the eligibility of activities to be carried out under the program. The purpose of this notice is to propose revised rules of a technical and substantive nature regarding the eligibility of various public works, facilities, and activities in conformity with the objectives of the Housing and Community Development Act of 1974 and to provide greater clarity.

The following sections of Subpart C are proposed to be amended:

1. Paragraph (a)(1) of § 570.200, acquisition, has been changed to indicate that acquisition must be carried out either by the applicant or other public agency in behalf of the applicant.

2. Paragraph (a)(2)(i), neighborhood facilities, has been reorganized to clarify the nature of facilities eligible for assistance pursuant to this paragraph. Neighborhood facilities are defined to indicate that such facilities must be designed to serve a particular neighborhood and to provide certain services primarily for residents of that area. The term "neighborhood" is defined to mean either an area within a unit of general local government that is locally identified as a neighborhood, community, or district; or the entire unit of general local government may be considered a single neighborhood, for the purposes of § 570.200 (a)(2)(i), in two instances: First, when a unit of general local government is under 10,000 population; and second, when a unit of general local government is over 10,000 population and locally identified as a single neighborhood or as has having no separately identifiable neighborhoods within the unit of general local government.

3. Paragraph (a)(2)(iii), historic properties, has been expanded to specify that privately owned and publicly owned historical properties may be either reconstructed or rehabilitated. Publicly owned historic properties which are facilities that are normally ineligible for assistance because of their use may, nonetheless, be reconstructed or rehabilitated under the requirements of this provision.

4. Paragraph (a)(2)(v), public works related to streets, has been expanded to clarify that bridges are among the street and other similar facilities eligible for assistance under this part pursuant to this paragraph.

5. Paragraph (a)(2)(x), flood and drainage facilities, contains a definition of the term "flood and drainage facilities." The definition makes a distinction between flood and drainage facilities eligible for assistance under this Part pursuant to this paragraph and storm sewers which are eligible for assistance pursuant to paragraph (a)(2)(iv) of this section. Further, a definition of the term "storm sewers" is provided.

6. Paragraph (a)(2)(xi), parking facilities, solid waste disposal facilities, and fire protection facilities and equipment, has been expanded to provide definitions of the terms "solid waste disposal facilities," "fire protection facilities," and "fire protection equipment" to clarify the types of facilities and equipment eligible for assistance under this Part pursuant to this paragraph.

7. Paragraph (a)(4), rehabilitation activities, has been revised. Paragraph (a)(4)(i) now indicates that publicly owned properties as well as publicly acquired properties may be rehabilitated for use or resale in the provision of housing. Paragraph (a)(4)(iii) indicates that in accordance with the Housing and Community Development Act of 1974, interim assistance must be provided in connection with a physical development activity eligible for assistance under this part which is described in the community development program in order to be assisted pursuant to this paragraph. Paragraph (a)(4)(iv) provides revised language regarding the refinancing of existing indebtedness of properties receiving rehabilitation assistance when neeessary or appropriate to the execution of an approved community development program. The regulations further indicate that "being provided in connection with other physical development activities" means that those activities have occurred during the current program year or two prior or subsequent years; or, in the case of a discretionary grantee pursuant to § 570.402, during the designated period of the discretionary grant.

8. Paragraph (a)(5), special projects to remove architectural barriers for the elderly or handicapped, has been clarified to indicate that assistance may be provided to remove architectural and material barriers which restrict the mobility and accessibility of the elderly or handicapped not only to public owned buildings, facilities, and improvements, but to privately owned buildings, facilities, and improvements as well.

9. Paragraph (a)(12), planning activities, has been revised. The nature of a comprehensive community development plan is defined and the types of activities necessary for its preparation have been clarified. The activities may include data gathering and studies, with the exception that detailed planning and engineering of ineligible facilities pursuant to § 570.201 is not permitted; the actual preparation of the comprehensive community development plan or its components is permitted; actions necessary for the implementation of the comprehensive community development plan are permitted; and functional planning, which includes detailed planning and engineering activities of facilities and activities eligible for assistance under this Part is permitted so long as the appropriate environmental clearance pursuant to 24 CFR Part 58 have been completed. The nature of the improvement of the policy-planning-management capacity of the applicant has also been clarified to illustrate the link between the comprehensive community development plan and activities of the applicant to exercise management of its implementation.

Further, the following paragraphs of § 570.201, Ineligible Activities, are proposed to be amended:

1. Paragraph (a)(3), community wide facilities, has been reserved to eliminate the ambiguity generated by the prior language. Any public facility eligible for assistance pursuant to §§ 570.200(a)(2)(ii)–(xii) may be communitywide in service. A neighborhood facility eligible for assistance pursuant to § 570.200(a)(2)(i) shall serve only the neighborhood for which it is intended. It should be noted that the regulations provide three instances when a neighborhood is synonymous with the entire unit of local government. Any other public facility which is not eligible for assistance pursuant to this Subpart shall not be assisted regardless of its service area. For example, a central library is not eligible for assistance pursuant to this subpart, but a branch library, which serves a particular neighborhood may be assisted as a neighborhood facility.

2. Paragraph (a)(4)(i) has been changed to indicate that neighborhood facilities, senior centers and centers for the handicapped are not considered as school or educational facilities for the purposes of this paragraph.

3. Paragraph (a)(4)(ii) sets forth a second exception to the general prohibition against school type facilities. In the case of a facility, otherwise eligible pursuant to § 570.200(a)(2), that is to be located on a site that is owned or controlled by a school district, school board, or similar public body, the facility may be assisted so long as the access of the general public to the facility is not restricted during normal hours of operation of the facility.

4. Paragraph (a)(8) states that when a facility, otherwise eligible for assistance pursuant to § 570.200(a)(2), is to be provided as a part of a larger multiple-use building, which is otherwise ineligible for assistance, such a facility may not be assisted except when it will occupy a designated and discrete area within the larger building and the costs attributable to that facility can be determined as separate and distinct from the overall costs of the multiple-use building.

5. Paragraph (c) of § 570.201 has been changed to clarify that the cost of operating and routine maintenance of a public facility are ineligible for assistance.

6. Paragraph (f) of § 570.201 states that the new construction of residential structures and facilities, with the exception of housing of last resort for relocation resources pursuant to 24 CFR Part 43, are not eligible for assistance. Several examples of residential facilities which are ineligible for assistance are dormitories, group homes, and halfway houses.

7. Further, paragraph (f) of § 570.201 has been changed to indicate that the provision of sites, public improvements and similar activities for the development of low- or moderate-income housing are not considered as subsidies of new residential construction for the purposes of this paragraph.

8. Paragraph (g) of § 570.201 adds another example to those income payments ineligible for assistance which clarifies that the payment of taxes, levies, and charges assessed against parcels of real estate in behalf of the property owner is not eligible for assistance. Certain payments to property owners are eligible for assistance pursuant to this Subpart and these payments are not precluded by this paragraph.

Interested person are invited to participate in the making of the final rule by submitting written comments or views on the proposed amendments. Comments should be filed with the Rules Docket Clerk, Room 10141, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410. All relevant materials received on or before February 18, 1977, will be considered before adoption of final rule. Copies of comments will be available for examination during business hours at the above address.

In connection with the environmental review of the proposed amendments to §§ 570.200 and 570.201, a Finding of Inapplicability has been made under HUD Handbook 1390.1, (38 FR 19182). A copy of the Finding is available for inspection at the above address.

NOTE.—It is hereby certified that the economic and inflationary impacts of these proposed regulations have been carefully evaluated in accordance with OMB Circular No. A-107.

(Title I, Housing and Community Development Act of 1974 (42 U.S.C. 5301 et seq.); and sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d)).)

In consideration of the foregoing, it is proposed to amend 24 CFR Part 570 as follows:

§ 570.200 [Amended]

1. Insert in § 570.200, paragraph (a)(1), aftter the word "Acquisition", the phrase "* * * by the applicant or public agency designated pursuant to § 570.3(b) * * *".

2. Section 570.200 would be amended by revising paragraphs (a)(2)(i), (a)(2)(iii), (a)(2)(v), (a)(2)(x), (a)(2)(xi), (a)(4, (a)(4), and (a)(12) as follows:

(a) * * *

(2) * * *

(i) Neighborhood facilities of either a single purpose or multipurpose nature which provide health, social, recreational, or similar community services primarily for residents of the area served. For the purposes of this paragraph, the term "neighborhood" means either (A) a location within a unit of general local government locally identified as a neighborhood, community, or district; or (B) an entire unit of general local government which either (1) is under 10,000 population, or (2) is over 10,000 population and is locally identified as a single neighborhood, or as having no identifiable neighborhoods.

* * * * *

(iii) Historic properties, including (A) reconstruction or rehabilitation of privately owned properties for which there is public access; and (B) reconstruction and rehabilitation of publicly owned properties, whether or not such properties are otherwise eligible for assistance under this part.

* * * * *

(v) Streets, bridges, street lights, traffic signals, signs, street furniture, trees, and other normal appurtenances to streets, but excluding expressways and other limited access ways.

* * * * *

(x) Flood and drainage facilities in cases where assistance for such facilities has been determined to be unavailable under other Federal laws or programs pursuant to the provisions of § 570.607. For the purpose of this paragraph the term "flood and drainage facilities" means those undertakings, other than storm sewers, designed to influence or effect the flow in a natural water course. Further, the term "storm sewer" (which are eligible for assistance under this part pursuant to § 570.200(a)(2)(vi)) means sewers or other conduits, open or closed, or their appurtenances which collect, transport, and dispose of storm waters, surface water, street wash, other wash and ground water or drainage into an existing water course, excluding domestic waste water and industrial wastes.

(xi) Parking facilities, solid waste disposal facilities, and fire protection facilities and equipment which are located in or serve areas in which other activities included in the community development program described in § 570.303(b) are to be carried out. For the purposes of this paragraph, the terms solid waste disposal facilities, fire protection facilities, and fire protection equipment are defined as follows:

(A) *Solid waste disposal facilities* are defined as those physical parts of solid waste management systems commencing at and including the site or sites at which publicly or privately owned collection vehicles discharge municipal solid wastes, through the point of ultimate disposal including necessary site improvements and conveying systems, including appropriate fixed and movable equipment. For the purpose of this paragraph, all equipment and appurtenances used in the collection and/or transportation of solid wastes are not included among those solid waste disposal facilities eligible for assistance under this part.

(B) *Fire protection facilities* are defined as the land and necessary improvements thereto which are necessary for properly housing and storing fire protection equipment by a fire protection organization.

(C) *Fire protection equipment* is defined as the appropriate equipment and apparatus which an organization, public or private, requires for carrying out a program for protecting property and maintaining the safety and welfare of the public including emergency medical aid.

* * * * *

(4) Clearance, demolition, removal, and rehabilitation of buildings and improvements, including:

(i) Rehabilitation of publicly owned or acquired properties for use or resale in the provision of housing;

(ii) Demolition and modernization (but not new construction) of publicly owned low-income housing;

(iii) Interim assistance to alleviate harmful conditions in which immediate public action is needed when provided in connection with a physical development activity described in the Community Development Program which is eligible for assistance under this part; and

(iv) The financing of rehabilitation of privately owned properties through the direct use of funds in the provision of grants, loans, loan guarantees, and interest supplements when provided in connection with a physical development activity described in the Community Development Program which is eligible for assistance under this part. Loans for the rehabilitation of residential property may include an amount to refinance existing indebtedness secured by such property if such refinancing is necessary or appropriate to the execution of a HUD-approved Community Development Program.

For the purpose of this paragraph, interim assistance and rehabilitation will be considered to be provided in connection with other physical development activities if such physical development activities are being undertaken in the current program year or within two program years immediately prior to or subsequent to the current program year; or, in the case of a discretionary grantee pursuant to § 570.402, during the designated program period of such discretionary grant.

(5) Special projects directed to the removal of material and architectural barriers in publicly or privately owned buildings, facilities, and improvements which restrict the mobility and accessibility of elderly or handicapped persons.

* * * * *

(12) Activities necessary: (i) To develop a comprehensive community development plan. For the purpose of this paragraph, the term "comprehensive community development plan" means a statement or statements (in words, maps, illustrations, or other methods of communication) which identify the present conditions, needs, and major problems of the applicant's jurisdiction relating to the full range of community development and housing concerns and setting forth objectives, policies, and standards to as-

sist the applicant in developing and implementing a community development program. The activities to develop a comprehensive community development plan may include:

(A) Data gathering and studies necessary for the development of the plan or its components, excluding the gathering of detailed data and preparing of analyses necessary for the engineering and design of facilities or activities ineligible for assistance under this part pursuant to § 570.201;

(B) Development of statements of objectives, policies, and standards regarding proposed or foreseeable changes in present conditions or problems of concern to the applicant;

(C) Development of a three-year community development plan summary pursuant to § 570.303(a) which identifies community development needs, demonstrates a comprehensive strategy for meeting those needs and specifies both short- and long-term objectives to guide the applicant's community development program;

(D) Functional planning, including, but not limited to, the preparation of plans for land use, housing, open space, recreation, utilities, historic preservation, economic development, communitywide environmental assessments, and other community development programs, facilities, and activities to the extent eligible for assistance pursuant to this subpart;

(E) The collection of detailed data, preparation of analyses, engineering and design of facilities and activities eligible for assistance pursuant to this subpart, for which the appropriate environmental clearances have been completed pursuant to 24 CFR Part 58, but only such public services as are eligible for assistance pursuant to § 570.200(a)(8); and

(F) Development of other actions necessary for the implementation of the plan including the development of codes, ordinances, and regulations, and the assessment of the environmental, social, and economic consequences resulting from the objectives, policies, standards, and activities set forth by the plan.

(ii) To develop a policy-planning-management capacity so that the applicant may (A) set long-term goals and short-term objectives related to the community development and housing needs of its jurisdiction; (B) devise programs and activities to meet these goals and objectives; (C) evaluate the progress of such programs and activities and the extent to which the goals and objectives have been accomplished and (D) carry out the management, coordination, and monitoring of the activities and programs that are a part of the applicant's community development program.

* * * * *

3. Section 570.201 would be amended by reserving paragraph (a)(3) and revising paragraphs (a)(4), (a)(8), (c), (f), and (g) as follows:

§ 570.201 Ineligible activities.

(a) * * *

(3) [Reserved]

(4) Schools and educational facilities, (including elementary, secondary, college and university facilities). For the purpose of this paragraph,

(i) A neighborhood facility, senior center, or center for the handicapped in which classes in practical and vocational activities (such as first aid, homemaking, crafts, etc.) may be taught, are not considered as school or educational facilities; and

(ii) Any facility, otherwise eligible for assistance under this part pursuant to § 570.200(a)(2), which is to be located on a site controlled by a school district, school board, or similar public body: *Provided*, That the access of the general public to the facility is not restricted during normal hours of operation, is not considered as a school or educational facility.

* * * * *

(8) Any facility, otherwise eligible for assistance under this Part pursuant to § 570.200(a)(2) which is to be provided as a part of a multiple-use building/facility that is otherwise ineligible for assistance under this part, except when (i) the facility proposed for assistance will occupy a designated and discrete area within the larger facility; and (ii) the costs attributable to the facility proposed for assistance can be determined as separate and distinct from the overall costs of the multiple-use building or facility. For exemple, a senior center, which is to occupy space within a building that is otherwise used for the conduct of general governmental business, is eligible for assistance when it occupies a separate designated area within the building (i.e., the senior center does not "float" to different spaces that happen to be available on a less than permament basis) and the cost associated with providing the senior center can be determined as distinct from the costs associated with remaining ineligible portions of the building.

* * * * *

(c) *Operating and maintenance expenses.* Expenses associated with the operation and maintenance of public facilities and works are not eligible for assistance. Examples include maintenance and repairs of water and sewer and parking facilities, and salaries of staff operating such public facilities and works.

* * * * *

(f) *New housing construction.* Construction of new permanent residential structures or facilities, or any program to subsidize or finance such construction, is not a permissible use of assistance provided under this part, except as provided under the last resort housing provisions set forth in 24 CFR Part 43. Examples of facilities which can not be constructed are dormitories, group homes, and halfway houses. For the purpose of this paragraph, the provision of sites, public improvements, and similar activities for the development of low or moderate income housing are not considered as programs to subsidize or finance new residential construction.

* * * * *

(g) *Income payments.* Except as authorized under § 570.200, funds may not be expended for income payments for housing and for any other purpose. Examples include payments for income maintenance, housing allowances, down payments, mortgage subsidies and payment of any tax, levy, or charge assessed against a parcel of real estate in behalf of the property owner.

* * * * *

Issued at Washington, D.C., January 10, 1977.

WARREN H. BUTLER,
Acting Assistant Secretary for Community Planning and Development.

[FR Doc.77-1390 Filed 1-14-77;8:45 am]

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federal register

TUESDAY, JANUARY 18, 1977

highlights

PART I:

DEPARTMENT OF AGRICULTURE
Executive order designating certain officers to act as Secretary of Agriculture 3295

RIGHT TO READ ACADEMIES PROGRAM
HEW/OE announces closing date of 3–18–77 for receipt of applications 3357

SUPPLEMENTAL SECURITY INCOME
HEW/SSA proposal on deeming of income; comments by 3–4–77 3316

MEDICAID
HEW/SRS standards for services in intermediate care facilities for mentally retarded; comments by 2–17–77 3325
HEW/SRS notice of intent to issue proposal on utilization control quarterly showing requirements; comments by 3–4–77 3328

PUBLIC ASSISTANCE
HEW/SRS rules on reporting of child abuse and neglect under Aid to Families with Dependent Children Program; effective 1–18–77 3307

EMERGENCY SCHOOL AID
HEW/OE announces closing date of 4–11–77 for receipt of proposals for educational television projects 3357

FOOD ADDITIVES
HEW/FDA permits use of a terpolymer in a blend with either polyethylene or polypropylene to be used in food-contact articles; effective 1–18–77; objections by 2–17–77 3302

MEAT INSPECTION
USDA/APHIS establishes standard for "country", "country style" and "dry cured" hams and pork shoulders; effective 7–1–78 3298

BROKERS AND DEALERS
SEC proposal on recordkeeping affecting beneficial owners of account; comments by 3–4–77 3312

SERIES L 1979 NOTES
Treasury announces auction 3384

CONTINUED INSIDE

reminders

(The items in this list were editorially compiled as an aid to FEDERAL REGISTER users. Inclusion or exclusion from this list has no legal significance. Since this list is intended as a reminder, it does not include effective dates that occur within 14 days of publication.)

Rules Going Into Effect Today

NOTE: There were no items eligible for inclusion in the list of RULES GOING INTO EFFECT TODAY.

List of Public Laws

NOTE: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's LIST OF PUBLIC LAWS.

AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The six-month trial period ended August 6. The program is being continued on a voluntary basis (see OFR notice, 41 FR 32914, August 6, 1976). The following agencies have agreed to remain in the program:

Monday	Tuesday	Wednesday	Thursday	Friday
NRC	USDA/ASCS		NRC	USDA/ASCS
DOT/COAST GUARD	USDA/APHIS		DOT/COAST GUARD	USDA/APHIS
DOT/NHTSA	USDA/FNS		DOT/NHTSA	USDA/FNS
DOT/FAA	USDA/REA		DOT/FAA	USDA/REA
DOT/OHMO	CSC		DOT/OHMO	CSC
DOT/OPSO	LABOR		DOT/OPSO	LABOR
	HEW/FDA			HEW/FDA

Documents normally scheduled on a day that will be a Federal holiday will be published the next work day following the holiday.

Comments on this program are still invited. Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408.

ATTENTION: For questions, corrections, or requests for information please see the list of telephone numbers appearing on opposite page.

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Finding Aids	523–5227
Public Briefings: "How To Use the Federal Register."	523–5282
Code of Federal Regulations (CFR)	523–5266
Finding Aids	523–5227

PRESIDENTIAL PAPERS:

Executive Orders and Proclamations.	523–5233
Weekly Compilation of Presidential Documents.	523–5235
Public Papers of the Presidents	523–5235
Index	523–5235

PUBLIC LAWS:

Public Law dates and numbers	523–5237
Slip Laws	523–5237
U.S. Statutes at Large	523–5237
Index	523–5237
U.S. Government Manual	523–5230
Automation	523–5240
Special Projects	523–5240

HIGHLIGHTS—Continued

PRIVACY ACT OF 1974

Board for International Broadcasting adopts routine use for payroll system; effective 1–6–77 3333
USDA/SCS proposes availability of records and rights to privacy; comments by 4–18–77 3311

MEETINGS—

Defense Nuclear Agency: Scientific Advisory Group on Effects, 3–1 thru 3–4–77 3344
DOD: Defense Intelligence Agency Scientific Advisory Committee, 2–15–77 3343
AF: Scientific Advisory Board (3 documents), 2–9, 2–10, 2–11, 2–17, 2–18, 2–28 and 3–1–77 3342, 3343
HEW/FDA: Advisory Committees (February and March 1977) 3348
Toxicological Research National Center (Pathologists' Training) 2–2–77 3355
NSF: Advisory Committee for Research Task Force No. 14, 2–3 and 2–4–77 3382
State: Study Group 1 of U.S. National Committee for International Radio Consultative Committee, 2–15–77 3384

PART II:

ARBITRATION

CFTC amends dispute settlement procedures 3431

PART III:

HOUSING ASSISTANCE

HUD/CP&D proposal on Community Development Block Grants; comments by 2–21–77 3435

PART IV:

ALIEN EMPLOYMENT

Labor/ETA revises certification process (2 documents); effective 2–18–77 3440

PART V:

EQUAL EMPLOYMENT OPPORTUNITY

Labor/FCCPO publishes final rulemaking; effective 1–18–77 and 2–17–77 3453

PART VI:

POSTAL SERVICE MANUAL

PS issues miscellaneous amendments 3469

PART VII:

NATIONAL FLOOD INSURANCE PROGRAM

HUD/FIA list of flood prone areas of communities subject to Section 202 prohibition of Federal and federally related assistance 3571

contents

THE PRESIDENT

Executive Orders

Agriculture Department, Acting Secretary; designation of certain officers to serve as 3295

EXECUTIVE AGENCIES

AGRICULTURAL MARKETING SERVICE

Rules

Lemons grown in Ariz. and Calif ... 3297

AGRICULTURE DEPARTMENT

See Agricultural Marketing Service; Animal and Plant Health Inspection Service; Forest Service; Rural Electrification Administration; Soil Conservation Service.

AIR FORCE DEPARTMENT

Notices

Meetings:
Scientific Advisory Board (3 documents) 3342, 3343

ANIMAL AND PLANT HEALTH INSPECTION SERVICE

Rules

Livestock and poultry quarantine:
Scabies in cattle 3297
Meat and poultry inspection, mandatory:
Hams and pork shoulders; labeling, containers, definitions, and identity standards, etc 3298

ANTITRUST DIVISION, JUSTICE DEPARTMENT

Notices

Competitive impact statements and proposed consent judgments; U.S. versus listed companies:
Greater Buffalo Roofing & Sheet Metal Contractors' Association, Inc 3361

CIVIL AERONAUTICS BOARD

Rules

Military transportation; exemption of air carriers:
Commercial and military fuel surcharges; reasonable level of compensation 3299

Notices

Hearings, etc.:
Houston/New Orleans-Yucatan 3334
International Air Transport Association (2 documents) ... 3334, 3335
Louisville Service Case 3338
Pacific Western Airlines, Inc ... 3340

CIVIL SERVICE COMMISSION

Rules

Excepted service:
State Department 3297
Hours of duty:
Holiday observances; leave and pay status 3297

Notices

Noncareer assignments:
Agriculture Department 3340

COMMERCE DEPARTMENT

See Domestic and International Business Administration; National Oceanic and Atmospheric Administration.

COMMODITY FUTURES TRADING COMMISSION

Rules

Arbitration or other dispute settlement procedures; customer agreements; cautionary language 3431

COMMUNITY PLANNING AND DEVELOPMENT, OFFICE OF ASSISTANT SECRETARY

Proposed Rules

Community development block grants:
Housing assistance plans; application requirements 3435

COMPTROLLER OF CURRENCY

Rules

Securities offering disclosure rules; correction 3299

CONSUMER PRODUCT SAFETY COMMISSION

Notices

Aluminum wire connections; household systems; safety standards 3342

DEFENSE DEPARTMENT

See also Air Force Department.

Notices

Meetings:
Defense Intelligence Agency Scientific Advisory Committee ... 3343
Organization and functions:
Affirmative Action Board 3343

DEFENSE NUCLEAR AGENCY

Notices

Meetings:
Scientific Advisory Group on Effects (SAGE) 3344

DOMESTIC AND INTERNATIONAL BUSINESS ADMINISTRATION

Notices

Scientific articles; duty free entry:
Purdue University et al 3340
Vanderbilt University et al 3340

DRUG ENFORCEMENT ADMINISTRATION

Notices

Registration applications, etc.; controlled substances:
Hoffman LaRoche, Inc 3363

EDUCATION OFFICE

Notices

Applications and proposals, closing dates:
Educational television projects ... 3357
Right To Read reading academies program 3357

EMPLOYMENT AND TRAINING ADMINISTRATION

Rules

Alien permanent employment in U.S.; labor certification 3440

ENVIRONMENTAL PROTECTION AGENCY

Rules

Water pollution control:
Analysis of pollutants; test procedures; correction 3306

Notices

Food additive petitions:
Nor-Am Agricultural Products, Inc 3344
Pesticide applicator certification; State plans:
Connecticut 3344
West Virginia 3344

FEDERAL COMMUNICATIONS COMMISSION

Rules

Aviation services:
Telemetry transmitters; standards 3308
Cable television:
Reporting requirements; correction 3308
Radio broadcast services:
Emergency broadcast system; updated rules; correction 3308
Radio frequency devices:
Reporting requirements and technical requirement compliance; editorial changes 3308

Notices

Rule making proceedings filed, petitions by various companies ... 3345

FEDERAL CONTRACT COMPLIANCE PROGRAMS OFFICE

Rules

Equal employment opportunity; CFR Chapter reorganized 3453
Handicapped workers, affirmative action obligations of contractors and subcontractors; correction 3307

FEDERAL INSURANCE ADMINISTRATION

Notices

Flood Insurance Program, National:
Communities with special hazard areas, subject to prohibition of Federal assistance; list 3571

FEDERAL POWER COMMISSION

Notices

Certificates of public convenience and necessity; applications, abandonment of service and petitions to amend:
Shell Oil Co 3346
Hearings, etc.:
Citizens Utilities Co 3345
Pennsylvania Power Co 3345

FEDERAL RESERVE SYSTEM

Notices

Applications, etc.:
NL Industries, Inc 3357

FEDERAL TRADE COMMISSION

Rules

Procedures and practice rules:
Nonadjudicative procedures; consent agreement 3300

FOOD AND DRUG ADMINISTRATION

Rules

Food additives:
Olefin polymers 3302

Notices

Committees; establishment, renewals, etc.:
Toxicological Research National Center, Science Advisory Board; request for nominations 3355
Meetings:
Advisory committees, panels, etc 3348
Toxicological Research National Center, training of experimental pathologists 3355

FOREST SERVICE

Notices

Environmental statements; availability, etc.:
Chugach National Forest, Cannery Creek Timber Sale, Alaska 3332
Siskiyou National Forest, Rogue-Illinois Planning Unit, Oreg ... 3332
Siuslaw National Forest, Oregon Dunes National Recreation Area, Oreg. (2 documents) ... 3332
Tongass National Forest, Borax Mining Access Road/Quartz Hill Prospect, Alaska 3333

GEOLOGICAL SURVEY

Proposed Rules

Outer Continental Shelf; geological and geophysical explorations; submission of data 3321

Notices

Coal leasing areas:
Montana 3360
North Dakota 3360
Wyoming 3360

HEALTH, EDUCATION, AND WELFARE DEPARTMENT

See also Education Office; Food and Drug Administration; Social and Rehabilitation Service; Social Security Administration.

Proposed Rules

Adjudicative hearings, public attendance; inquiry 3325

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

See Community Planning and Development, Office of Assistant Secretary; Federal Insurance Administration; Interstate Land Sales Registration Office.

INDIAN AFFAIRS BUREAU

Proposed Rules

Irrigation projects; operation and maintenance charges:
Pyramid Lake Irrigation Project, Nev. and San Carlos Reservation Irrigation Project, Ariz 3319
Walker River Indian Irrigation Project, Nev 3319

INTERIOR DEPARTMENT

See Geological Survey; Indian Affairs Bureau; Land Management Bureau; National Park Service; Reclamation Bureau.

INTERNATIONAL BROADCASTING BOARD

Notices

Payroll records system, adoption, additional routine use 3333

INTERSTATE COMMERCE COMMISSION

Rules

Railroad car service orders; various companies:
Chicago, Milwaukee, St. Paul & Pacific Railroad Co 3310
Consolidated Rail Corp 3310
Missouri Pacific Railroad Co ... 3309
Vermont Northern Railroad Co ... 3309

Notices

Fourth section applications for relief 3386
Hearing assignments 3386
Motor carriers:
Irregular route property carriers; gateway elimination ... 3386
Temporary authority applications 3387

INTERSTATE LAND SALES REGISTRATION OFFICE

Notices

Land developers; investigatory hearings, orders of suspension, etc.:
Bethany West, A and B, East Coast Resorts, Inc 3357
Blue Ridge Manor (2 documents) 3357, 3358
Grandfather Golf and Country Club 3358
Sunset Groves 3359
Timber Hill, Inc 3359

JUSTICE DEPARTMENT

See Antitrust Division; Drug Enforcement Administration.

LABOR DEPARTMENT

See also Employment and Training Administration; Federal Contract Compliance Programs Office; Labor-Management Relations Services Office; Occupational Safety and Health Administration; Pension and Welfare Benefit Programs; Wage and Hour Division.

Rules

Immigrant labor certifications; CFR Part deleted and regulations transferred to ETA 3440

Notices

Adjustment assistance:
Abraham Eckhaus 3364
Airco Alloys 3365
Alabama By-Products Corp 3365
Aluminum Co. of America 3365
American Valve Manufacturing Corp. 3366
ARA Services of Southern Wisconsin 3364
Artvogue of California 3366
Bethlehem Steel Corp. (5 documents) 3366–3368
Brown Shoe Co 3368
Burroughs, Inc 3368
Canteen Corp 3369
Century Glove Inc 3369
Coca Cola Bottling Co 3369
Copperweld Corp 3370
Copperweld Steel Co 3370
Crane Co 3370
Daval Manufacturing Co 3371
Eastern Plastics of Maine, Inc ... 3371
Electro Motive Corp 3371
Heavenly Shoe Co 3372
ITT Corp 3372
Jones & Laughlin Industries (2 documents) 3373
Jones & Laughlin Steel Corp ... 3373
Judson Steel Corp 3374
Kenosha Cartage Co., Inc 3374
Lady Suzanne Foundations, Inc 3374
Liggett Spring & Axle Co 3375
Lone Star Steel Co 3375
Muench-Kreuzer Candle Corp. (2 documents) 3376
My Own Blouse, Inc 3375
National Steel Corp 3376
Nu-Car Carriers, Inc., et al ... 3377
Ohio Ferro Alloys Corp 3377
Perry Manufacturing Corp 3378
Prestige Shoe Co 3378
Reynoldsville Industries, Inc ... 3379
Rubber Corp. of Arkansas 3379
Sebastian, Jack, Shoe, Inc 3372
Standard Alliance Industries, Inc 3379
Standee Manufacturing Corp ... 3380
True Temper Corp.; correction ... 3380
U-Brand Corp 3380
U.S. Steel Corp 3380
Wellington Leather, Inc 3381
Wilton Corp 3381

LABOR-MANAGEMENT RELATIONS SERVICES OFFICE

Proposed Rules

Urban mass transportation systems, financing; applications and certification of acceptable employee protective arrangements ---- 3319

LAND MANAGEMENT BUREAU

Notices

Applications, etc.:
Montana ---- 3360
Wyoming (2 documents) ---- 3360

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Notices

Endangered species parts or products; certificates of exemption (2 documents) ---- 3341
Meetings:
Western Pacific Fishery Management Council; correction ---- 3342

NATIONAL PARK SERVICE

Notices

Historic Places National Register; pending nominations ---- 3361

NATIONAL SCIENCE FOUNDATION

Notices

Committees; establishment, renewals, etc.:
Minority Programs in Science Education Advisory Committee ---- 3381
Meetings:
Task Group 14, Advisory Research Committee ---- 3382

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

Rules

Health and safety standards:
Coke oven emissions exposure; correction ---- 3304

PENSION AND WELFARE BENEFIT PROGRAMS

Notices

Meetings:
Employee Welfare and Pension Benefit Plans Advisory Council ---- 3364

POSTAL SERVICE

Rules

Postal Service Manual:
Domestic services, transmittal letter ---- 3469

RECLAMATION BUREAU

Rules

Teton Dam failure; claims for damages or loss; Power County, Idaho ---- 3307

RENEGOTIATION BOARD

Proposed Rules

Sunshine Act implementation; public notice and observation of meetings ---- 3322

RURAL ELECTRIFICATION ADMINISTRATION

Notices

Loan guarantees proposed:
Big Rivers Electric Corp ---- 3333

SECURITIES AND EXCHANGE COMMISSION

Rules

Securities Exchange Act:
Uniform net capital; municipal securities ---- 3301

Proposed Rules

Investment, Security, and Securities Exchange Acts:
Brokerage placement practices, disclosure by investment managers; extension of time ---- 3312
Securities Exchange Act:
Exchange members, brokers and dealers; record keeping requirement ---- 3312

Notices

Self-regulatory organizations; proposed rule changes:
Midwest Clearing Corp. and Midwest Securities Trust Co. (2 documents) ---- 3382, 3383
Hearings, etc.:
National Association of Securities Dealers, Inc ---- 3383

SOCIAL AND REHABILITATION SERVICE

Rules

Financial assistance programs:
Eligibility coverage and conditions; child abuse and neglect notification ---- 3307

Proposed Rules

Medical assistance programs:
Mentally retarded, intermediate care facilities ---- 3325
Utilization control; quarterly report requirement; inquiry ---- 3328

SOCIAL SECURITY ADMINISTRATION

Proposed Rules

Aged, blind, and disabled; supplemental security income for:
Income, deeming ---- 3316

SOIL CONSERVATION SERVICE

Proposed Rules

Freedom of information, availability, and right to privacy ---- 3311

STATE DEPARTMENT

Notices

Meetings:
International Radio Consultative Committee, U.S. National Committee ---- 3384

TREASURY DEPARTMENT

See also Comptroller of Currency.

Notices

Authority delegations:
Inspector General for International Finance, et al.; foreign intelligence activities ---- 3384
Notes, Treasury:
L-1979 series ---- 3384

WAGE AND HOUR DIVISION

Rules

Puerto Rico; wage orders; certain industries:
Jewelry products ---- 3303
Rubber and miscellaneous plastics products ---- 3303

"THE FEDERAL REGISTER—WHAT IT IS AND HOW TO USE IT"

Briefings at the Office of the Federal Register

(For Details, See 41 FR 46527, Oct. 21, 1976)

RESERVATIONS: DEAN L. SMITH, 523-5282

list of cfr parts affected in this issue

The following numerical guide is a list of the parts of each title of the Code of Federal Regulations affected by documents published in today's issue. A cumulative list of parts affected, covering the current month to date, follows beginning with the second issue of the month.

A Cumulative List of CFR Sections Affected is published separately at the end of each month. The guide lists the parts and sections affected by documents published since the revision date of each title.

3 CFR

EXECUTIVE ORDERS:
11793 (Revoked by EO 11957) ---- 3295
11957 ---- 3295

5 CFR

213 ---- 3297
610 ---- 3297

7 CFR

910 ---- 3297

PROPOSED RULES:
661 ---- 3311

9 CFR

73 ---- 3297
317 ---- 3298
319 ---- 3298

12 CFR

16 ---- 3299

14 CFR

288 ---- 3299

16 CFR

2 ---- 3300

17 CFR

180 ---- 3433
240 ---- 3301

PROPOSED RULES:
239 ---- 3312
240 (2 documents) ---- 3312
270 ---- 3312
275 ---- 3312

20 CFR

656 ---- 3440

PROPOSED RULES:
416 ---- 3316

21 CFR

121 ---- 3302

24 CFR

PROPOSED RULES:
570 ---- 3437

25 CFR

PROPOSED RULES:
221 (2 documents) ---- 3319

29 CFR

60 ---- 3440
613 ---- 3303
720 ---- 3303
1910 ---- 3304

PROPOSED RULES:
215 ---- 3319

30 CFR

PROPOSED RULES:
251 ---- 3321

32 CFR

PROPOSED RULES:
1482 ---- 3322

39 CFR

111 ---- 3470

40 CFR

136 ---- 3306

41 CFR

60-1 ---- 3458
60-2 ---- 3461
60-30 ---- 3462
60-741 ---- 3307

43 CFR

419 ---- 3307

45 CFR

233 ---- 3307

PROPOSED RULES:
Subtitle A ---- 3325
249 ---- 3325
250 ---- 3328

47 CFR

1 ---- 3308
15 ---- 3308
73 ---- 3308
76 ---- 3308
87 ---- 3308

49 CFR

1033 (4 documents) ---- 3309, 3310

CUMULATIVE LIST OF PARTS AFFECTED DURING JANUARY

The following numerical guide is a list of parts of each title of the Code of Federal Regulations affected by documents published to date during January.

1 CFR

PROPOSED RULES:
442 ... 1267

3 CFR

EXECUTIVE ORDERS:
10480 (Amended by EO 11956) ... 2947
11490 (Amended by EO 11953) ... 2491
11651 (Amended by EO 11951) ... 1453
11724 (Superseded by EO 11954) ... 2297
11793 (Revoked by EO 11957) ... 3295
11821 (Amended by EO 11949) ... 1017
11921 (See EO 11953) ... 2491
11949 ... 1017
11950 ... 1451
11951 ... 1453
11952 ... 2293
11953 ... 2491
11954 ... 2297
11955 ... 2499
11956 ... 2947
11957 ... 3295

5 CFR

213 ... 1455, 2949, 3297
610 ... 3297
1410 ... 2299

7 CFR

1 ... 743
2 ... 2968
26 ... 1019
55 ... 2969
56 ... 2970
59 ... 2971
70 ... 2971
210 ... 2971
226 ... 1475
354 ... 1475
718 ... 2973
722 ... 1476
726 ... 2300
729 ... 749
730 ... 2301
905 ... 1022
907 ... 1230, 2665
910 ... 1476, 2977, 3297
928 ... 1, 2, 2665
959 ... 2308
971 ... 2666
981 ... 3159
1430 ... 3
1473 ... 2977
1822 ... 1023, 2051
1843 ... 1231
1845 ... 2308

PROPOSED RULES:
52 ... 3178
270 ... 1479
271 ... 1479
272 ... 780, 2328
275 ... 1479
661 ... 3311
730 ... 780
967 ... 2691
987 ... 2503
1063 ... 1356
1070 ... 1356
1078 ... 1358
1079 ... 1356
1205 ... 2503

7 CFR—Continued

PROPOSED RULES—Continued
1421 ... 2328
1434 ... 2980
1701 ... 1479
1473 ... 2977

9 CFR

73 ... 2949, 3297
97 ... 1455
113 ... 750, 1456
317 ... 3298
319 ... 751, 3298
381 ... 2949

PROPOSED RULES:
92 ... 1483

10 CFR

100 ... 2051
140 ... 46
Ch. II ... 1036
212 ... 1036, 1456, 2308

PROPOSED RULES:
2 ... 3178
51 ... 3178
212 ... 2646

12 CFR

4 ... 2950
16 ... 2200, 3299
202 ... 1242, 2950
206 ... 3171
207 ... 968
211 ... 752
212 ... 2951
213 ... 752
220 ... 752
221 ... 968
224 ... 968
225 ... 752, 1263, 2951
226 ... 753, 1264, 2650
227 ... 2950
265 ... 2501, 2950
563 ... 2952
570 ... 2952
601 ... 2666
704 ... 1458

PROPOSED RULES:
226 ... 780, 1268
505b ... 2503
523 ... 2338
545 ... 2328
564 ... 2328
604 ... 55, 2078

13 CFR

309 ... 753

PROPOSED RULES:
112 ... 2506
121 ... 2505, 2980

14 CFR

25 ... 2052
37 ... 19
39 ... 1217, 1218, 2053–2055, 3170
71 ... 300, 2055, 2056, 3170, 3171
73 ... 300
75 ... 300

14 CFR—Continued

97 ... 1219, 2056, 3171
221a ... 1220
241 ... 1219
288 ... 3299
302 ... 2667
378a ... 2309
385 ... 1220, 2667, 2668

PROPOSED RULES:
39 ... 1268–1270
71 ... 1270, 1271, 2078, 2079, 3179
152 ... 2850
239 ... 2693
288 ... 1271
298 ... 2692
310b ... 2995
370 ... 2995
399 ... 3180

15 CFR

369 ... 2057
371 ... 1222
377 ... 1222
931 ... 1164

PROPOSED RULES:
920 ... 2507

16 CFR

2 ... 3300
13 ... 3–5
1201 ... 1428

PROPOSED RULES:
[illegible] ... 2980
4 ... 2079
438 ... 1483
447 ... 2694
450 ... 1038
801 ... 3181
1301 ... 1484

17 CFR

1 ... 2628
180 ... 3433
200 ... 753
211 ... 2058
240 ... 753, 754, 2060, 3301
241 ... 759
276 ... 2953

PROPOSED RULES:
239 ... 3312
240 ... 781, 782, 3312
249 ... 782
270 ... 3312
275 ... 3312

18 CFR

2 ... 2954
11 ... 1226
141 ... 6
154 ... 2954
300 ... 2668

PROPOSED RULES:
1 ... 2079
2 ... 2329
3 ... 2079
154 ... 1272
157 ... 56

19 CFR

4 ... 3160
6 ... 2309
10 ... 2309, 2310, 3161
153 ... 2501
172 ... 3161

PROPOSED RULES:
1 ... 2329
113 ... 2330
201 ... 805

20 CFR

404 ... 2062
405 ... 1028
416 ... 2062
614 ... 1459
656 ... 3440

PROPOSED RULES:
416 ... 2079, 3316

21 CFR

2 ... 1459
4 ... 3108
8 ... 1459
102 ... 761
121 ... 1460, 1461, 3302
314 ... 1624, 1638, 3109
320 ... 1624, 1638
514 ... 3109
520 ... 1462
540 ... 1462
558 ... 761, 1463, 2312

PROPOSED RULES:
1 ... 2330
3e ... 1483
11 ... 806
18 ... 2330
121 ... 1483
128d ... 807
369 ... 2330
500 ... 2330
510 ... 2981
701 ... 2330
740 ... 2330
801 ... 2330

22 CFR

41 ... 2501
42 ... 2501

23 CFR

625 ... 6
712 ... 7

24 CFR

203 ... 762
207 ... 764, 2954
213 ... 764, 2954
221 ... 765, 2954
231 ... 766, 2954
241 ... 763, 3162
280 ... 960
1905 ... 3162
1914 ... 2193
1917 ... 2063–2068
3282 ... 2576

PROPOSED RULES:
201 ... 1487
279 ... 3112
406 ... 2796
501 ... 1488
570 ... 3292, 3437
866 ... 3181
1917 ... 2082

25 CFR

PROPOSED RULES:
221 ... 3319

26 CFR

1 ... 767, 1195, 1463, 2501
7 ... 1469, 1471, 2954
41 ... 2671
48 ... 2671
142 ... 2677
154 ... 2312
404 ... 1029, 2313

PROPOSED RULES:
1 ... 57, 2694, 3181
54 ... 1488
301 ... 1038, 1489

28 CFR

0 ... 3163

PROPOSED RULES:
32 ... 1390

29 CFR

15 ... 769
60 ... 3440
94 ... 1656, 2426
95 ... 2427
96 ... 2428
97 ... 1656
98 ... 2428
99 ... 773, 2430
511 ... 2313
609 ... 2954
613 ... 3303
672 ... 2955
673 ... 2955
720 ... 3303
1601 ... 3163
1910 ... 2956, 3304
1926 ... 2956
1952 ... 2313
2608 ... 2677
2610 ... 2678

PROPOSED RULES:
90 ... 2981
215 ... 3319
1910 ... 808, 1742, 1806
2550 ... 1488, 1618

30 CFR

100 ... 1214

PROPOSED RULES:
11 ... 2986
77 ... 2800
211 ... 1489, 2082
251 ... 3321

31 CFR

1 ... 2311
51 ... 2196, 2422
101 ... 1471
210 ... 9
515 ... 1472

32 CFR

256 ... 773
2000 ... 2679

PROPOSED RULES:
242a ... 1492
903 ... 2085
1482 ... 3322

33 CFR

40 ... 10
92 ... 2681
159 ... 11
183 ... 2681, 2682

PROPOSED RULES:
114 ... 3181
115 ... 3181
161 ... 3182
209 ... 2572

34 CFR

Ch. I ... 12
232 ... 1478

36 CFR

212 ... 2957
221 ... 2957
231 ... 2957
251 ... 2957
261 ... 2957
262 ... 2961
271 ... 2962
272 ... 2962
291 ... 2962
295 ... 2962
606 ... 1473

PROPOSED RULES:
16 ... 812
17 ... 812

37 CFR

201 ... 2962

PROPOSED RULES:
1 ... 2632
3 ... 2632
5 ... 2632

38 CFR

0 ... 2314
3 ... 2069
17 ... 2316

39 CFR

111 ... 3470

PROPOSED RULES:
1 ... 2699
2 ... 2699
3 ... 2699
4 ... 2699
5 ... 2699
6 ... 2699
7 ... 2699
8 ... 2699

40 CFR

6 ... 2450
60 ... 1214
61 ... 1215
86 ... 1122, 1150
129 ... 2588, 2617
136 ... 3306
190 ... 2858
220 ... 2468
221 ... 2470
222 ... 2471
223 ... 2474
224 ... 2474
225 ... 2475
226 ... 2475
227 ... 2476
228 ... 2482
229 ... 2489

40 CFR—Continued

409 ... 3164
430 ... 1398
440 ... 3165
455 ... 2316

PROPOSED RULES:

22 ... 1492
52 ... 1273, 1494, 2705
60 ... 2842
80 ... 3183
85 ... 1044
180 ... 815
201 ... 2330
202 ... 2330
260 ... 2331
1516 ... 1044

41 CFR

3–3 ... 2683
3–4 ... 2684
3–16 ... 2684
3–50 ... 2684
9–7 ... 2963
9–15 ... 2963
9–51 ... 2684
Ch. 14 ... 1215
14–1 ... 1215
14–10 ... 1215
60–1 ... 3458
60–2 ... 3461
60–30 ... 3462
60–741 ... 3307
101–1 ... 12
101–25 ... 1030
101–26 ... 1032
101–28 ... 2317
101–38 ... 1477

PROPOSED RULES:

3–1 ... 1273
101–17 ... 816

42 CFR

PROPOSED RULES:

54b ... 2988
101 ... 2994

43 CFR

4 ... 1216
419 ... 3307
2650 ... 779
3100 ... 1032
4110 ... 778
4120 ... 778

PUBLIC LAND ORDER:

5561 (Amended by PLO 5612) ... 2684
5611 (Corrected by PLO 5612) ... 2684
5612 ... 2706

PROPOSED RULES:

3520 ... 2684
3800 ... 1045

45 CFR

177 ... 2963
193 ... 1190
233 ... 3307
248 ... 2684
250 ... 779
1005 ... 3165
1050 ... 3272
1068 ... 3165

PROPOSED RULES:

Subtitle A ... 3325
46 ... 2792, 3076
158 ... 2086
Ch. II ... 2445
205 ... 2440
249 ... 3325
250 ... 2331, 3328
706 ... 2708
1480 ... 1045

46 CFR

536 ... 1473

PROPOSED RULES:

10 ... 3186
12 ... 1278
502 ... 817
531 ... 3186

47 CFR

0 ... 3166, 3167
1 ... 3166–3168, 3308
13 ... 1231
15 ... 1231, 3308
21 ... 1232
73 ... 1233, 2502, 3167, 3308
74 ... 2069
76 ... 3308
81 ... 1474
83 ... 1231, 1474
87 ... 3168, 3308
97 ... 3166, 3167

PROPOSED RULES:

64 ... 1278
73 ... 1278, 1279, 2086, 3186
74 ... 2087
83 ... 2088
97 ... 2089

49 CFR

Ch. V ... 2864
25 ... 12
99 ... 3118
173 ... 2071, 2688
174 ... 2071
178 ... 2688
218 ... 2318
221 ... 2321
225 ... 1221
231 ... 1222
310 ... 2964
1033 ... 2965, 3309, 3310
1047 ... 19
1056 ... 3169
1241 ... 1474
1249 ... 1474
1250 ... 1474
1251 ... 1474

PROPOSED RULES:

Subtitle A ... 2868
173 ... 2709
179 ... 2709
228 ... 2994
230 ... 2994
267 ... 2507
523 ... 2092
571 ... 3187
1251 ... 2092

50 CFR

17 ... 2071, 2965
26 ... 1033, 2689, 2690
32 ... 2690
33 ... 1034, 2690
216 ... 1034
260 ... 2326
261 ... 2326
262 ... 2326
263 ... 2326
264 ... 2326
265 ... 2326
266 ... 2326
267 ... 2326
268 ... 2326
269 ... 2326
270 ... 2326
271 ... 2326
272 ... 2326
273 ... 2326
274 ... 2326
275 ... 2326
276 ... 2326
277 ... 2326
278 ... 2326
279 ... 2326
601 ... 2968
602 ... 2968

PROPOSED RULES:

17 ... 2101, 2102, 2507
216 ... 1049

FEDERAL REGISTER PAGES AND DATES—JANUARY

Pages	Date	Pages	Date
1–741	Jan. 3	2293–2497	11
743–1015	4	2499–2664	12
1017–1194	5	2665–2946	13
1195–1450	6	2947–3157	14
1451–2049	7	3159–3294	17
2051–2291	10	3295–3624	18

presidential documents

Title 3—The President

Executive Order 11957 • January 13, 1977

Designation of Certain Officers To Act as Secretary of Agriculture

By virtue of the authority vested in me by Section 3347 of Title 5 and Section 301 of Title 3 of the United States Code, and as President of the United States of America, it is hereby ordered as follows:

SECTION 1. During any period when, by reason of absence, disability, or vacancy in office, both the Secretary of Agriculture and the Deputy Secretary of Agriculture are not available to exercise the powers or perform the duties of the Office of Secretary, the officers from the Department of Agriculture whose appointments are vested in the President, by and with the advice and consent of the Senate, shall act as Secretary in such order as the Secretary of Agriculture may from time to time prescribe. If no such order of succession is in effect at that time, then such officers shall act as Secretary in the descending order of rank, as established by the listing of their offices in Sections 5314, 5315 or 5316 of Title 5 of the United States Code and, at each level of the Executive Schedule, in the order in which they shall have taken oath as such officers.

SEC. 2. Executive Order No. 11793 of July 10, 1974, is hereby revoked.

Gerald R. Ford

THE WHITE HOUSE,
January 13, 1977.

[FR Doc.77–1804 Filed 1–14–77;4:44 pm]

rules and regulations

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

Title 5—Administrative Personnel

CHAPTER I—CIVIL SERVICE COMMISSION

PART 213—EXCEPTED SERVICE

Department of State

Section 213.3304 is amended to show that one position of Special Assistant to the Secretary is excepted under Schedule C.

Effective January 18, 1977, § 213.3304 (a) (25) is added as set out below:

§ 213.3304 Department of State.

(a) *Office of the Secretary.*

* * * * *

(25) One Special Assistant to the Secretary.

(5 U.S.C. 3301, 3302; EO 10577, 3 CFR 1954–1958 Comp., p. 218.)

UNITED STATES CIVIL SERVICE COMMISSION,
JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc.77-1593 Filed 1-17-77;8:45 am]

PART 610—HOURS OF DUTY

Amending Hours of Duty and Holiday Regulations

The Civil Service Commission is amending Part 610 to (1) reflect the statutory changes effected by sections 6 and 7, Pub. L. 92–392, making prevailing rate employees subject to hours of duty provisions of § 6101 of title 5, United States Code, and Subpart A of this Part; (2) update regulations to conform to Executive Order No. 11582, which now governs holiday observances, and (3) revoke a subsection which is no longer necessary pertaining to the observance of holidays.

Sections 610.101, 201, and 202 are amended, as set out below.

§ 610.101 Coverage.

This subpart applies to each employee to whom Subpart A of Part 550 applies and to each employee whose pay is fixed and adjusted from time to time under section 5343 or 5349 of title 5, United States Code, or by a wage board or similar administrative authority serving the same purpose.

§ 610.201 Identification of holidays.

In this subpart, "holiday" has the same meaning given that word in section 2(a) of Executive Order No. 11582.

§ 610.202 Determining the holiday.

For purposes of pay and leave, the day to be treated as a holiday is determined as follows:

(a) When a holiday falls on a workday in an employee's basic workweek (as defined in § 610.102(c)), that workday is his or her holiday.

(b) When a holiday falls on a nonworkday outside an employee's basic workweek, the day to be treated as his or her holiday is determined in accordance with section 6103(b) of title 5, United States Code, and Executive Order No. 11582.

(5 U.S.C. 6101; sec. 1(1) of E.O. 11228, 3 CFR 1964–1965 Comp., page 317.)

NOTE.—The Civil Service Commission has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A–107.

UNITED STATES CIVIL SERVICE COMMISSION,
JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc.77-1592 Filed 1-17-77;8:45 am]

Title 7—Agriculture

CHAPTER IX—AGRICULTURAL MARKETING SERVICE (MARKETING AGREEMENTS AND ORDERS; FRUITS, VEGETABLES, NUTS), DEPARTMENT OF AGRICULTURE

[Lemon Regulation 74, Amdt. 1]

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

Limitation of Handling

This regulation increases the quantity of California-Arizona lemons that may be shipped to fresh market during the weekly regulation period January 9–15, 1977. The quantity that may be shipped is increased due to improved market conditions for California-Arizona lemons. The regulation and this amendment are issued pursuant to the Agricultural Marketing Agreement Act of 1937, as amended, and Marketing Order No. 910.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 910, as amended (7 CFR Part 910), regulating the handling of lemons grown in California and Arizona, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and upon the basis of the recommendations and information submitted by the Lemon Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such lemons, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) The need for an increase in the quantity of lemons available for handling during the current week results from changes that have taken place in the marketing situation since the issuance of Lemon Regulation 74 (42 FR 1476). The marketing picture now indicates that there is a greater demand for lemons than existed when the regulation was made effective. Therefore, in order to provide an opportunity for handlers to handle a sufficient volume of lemons to fill the current market demand thereby making a greater quantity of lemons available to meet such increased demand, the regulation should be amended, as hereinafter set forth.

(3) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking procedure, and postpone the effective date of this amendment until 30 days after publication hereof in the FEDERAL REGISTER (5 U.S.C. 553) because the time intervening between the date when information upon which this amendment is based became available and the time when this amendment must become effective in order to effectuate the declared policy of the act is insufficient, and this amendment relieves restriction on the handling of lemons grown in California and Arizona.

(b) *Order, as amended.* Paragraph (b) (1) of § 910.374 (Lemon Regulation 74 (42 FR 1476)) is hereby amended to read as follows:

§ 910.374 Lemon Regulation 74.

* * * * *

(b) *Order.* (1) The quantity of lemons grown in California and Arizona which may be handled during the period January 9, 1977 through January 15, 1977, is hereby fixed at 225,000 cartons.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.)

Dated: January 12, 1977.

CHARLES R. BRADER,
Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc.77-1502 Filed 1-17-77;8:45 am]

Title 9—Animals and Animal Products

CHAPTER I—ANIMAL AND PLANT HEALTH INSPECTION SERVICE, DEPARTMENT OF AGRICULTURE

SUBCHAPTER C—INTERSTATE TRANSPORTATION OF ANIMALS (INCLUDING POULTRY) AND ANIMAL PRODUCTS

PART 73—SCABIES IN CATTLE

Release of Area Quarantined

This amendment releases a portion of Pinal County in Arizona from the areas

quarantined because of cattle scabies. Therefore, the restrictions pertaining to the interstate movement of cattle from quarantined areas contained in 9 CFR Part 73, as amended, will not apply to the excluded area, but the restrictions pertaining to the interstate movement of cattle from nonquarantined areas contained in said Part 73 will apply to the excluded area. No areas remain under quarantine in Arizona.

Accordingly, Part 73, Title 9, Code of Federal Regulations, as amended, restricting the interstate movement of cattle because of scabies is hereby amended as follows:

§ 731.a [Amended]

In § 73.1a, paragraph (c) relating to the State of Arizona is deleted.

(Secs. 4–7, 23 Stat. 32, as amended; secs. 1 and 2, 32 Stat. 791–792, as amended; secs. 1–4, 33 Stat. 1264, 1265, as amended; secs. 3 and 11, 76 Stat. 130, 132; (21 U.S.C. 111–113, 115, 117, 120, 121, 123–126, 134b, 134f); 37 FR 28464, 28477; 38 FR 19141.)

Effective date. The foregoing amendment shall become effective January 13, 1977.

The amendment relieves restrictions no longer deemed necessary to prevent the spread of cattle scabies and should be made effective promptly in order to be of maximum benefit to affected persons. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

Accordingly, under the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to the amendment are impracticable and unnecessary, and good cause is found for making the amendment effective less than 30 days after publication in the FEDERAL REGISTER.

Done at Washington, D.C., this 13th day of January 1977.

NOTE.—The Animal and Plant Health Inspection Service has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107.

J. K. ATWELL,
Acting Deputy Administrator, Veterinary Services.

[FR Doc.77-1591 Filed 1-17-77;8:45 am]

CHAPTER III—ANIMAL AND PLANT HEALTH INSPECTION SERVICE, MEAT AND POULTRY INSPECTION, DEPARTMENT OF AGRICULTURE

SUBCHAPTER A—MANDATORY MEAT INSPECTION

PART 317—LABELING, MARKING DEVICES, AND CONTAINERS

PART 319—DEFINITIONS AND STANDARDS OF IDENTITY OR COMPOSITION

"Country," "Country Style," or "Dry Cured" Hams and Pork Shoulders

• *Purpose.*—The purpose of this document is to establish standards of composition for "Country," "Country Style," or "Dry Cured" hams and pork shoulder products to become effective July 1, 1978. •

Statement of Considerations.—On September 5, 1975, there appeared in the FEDERAL REGISTER (40 FR 41139–41140) a notice of proposed rulemaking under the Federal Meat Inspection Act, as amended (21 U.S.C. 601 et seq.), which proposed to amend the Federal meat inspection regulations (9 CFR Parts 317 and 319) to establish standards of composition for "Country Ham," "Country Style Ham," "Country Pork Shoulder," "Country Style Pork Shoulder," "Dry Cured Ham," and "Dry Cured Pork Shoulder."

As the result of such notice, a total of 203 comments were received from processors; industrial, national, and State associations; State Departments of Agriculture; academic institutions; consumers; and the political community. One hundred and fifty-eight comments favored the proposal, and 45 comments opposed the proposal or expressed objections or reservations to the proposal.

Those favoring the proposal offered these general reasons:

1. A standard would protect the integrity and traditional characteristics of those products and encourage participation in the marketplace by all processors, including the small processors who include long-term aging as part of their process.

2. The consumer is entitled to know that those products conform to certain requirements.

3. The requirements allow processors considerable flexibility for individual differences, such as longer aging time and varying smoking practices.

Twenty-five of the comments stated that the 95° F. internal temperature limit on product during drying and aging was unclear and could be interpreted to mean that individuals who smoke their product outdoors under natural climatic conditions would be subject to the temperature limitation. During the summer months, the natural climatic temperature may exceed 95° F.; therefore, these processors would exceed the 95° F. limits at times during the smoking phase. However, in view of the conditions and practices under which such products are prepared they would meet the minimum standard requirements for curing, salt equalization, and aging time prior to exceeding 95° F. The 95° F. maximum temperature was not intended to apply to such operations, and this matter has been clarified in the regulation.

Five comments opposed the proposal on the basis that the proposed minimum processing period of 70-days for "Country" or "Country Style Ham" was an inadequate time period for developing a finished product with characteristics traditionally associated with such hams, especially in some geographic areas. Some suggested that at least 6 months' time was needed and should be required. The Department has determined, on the basis of its review of considerable information in connection with the proposal, and that received during the comment period, that such a product can be prepared in 70 days with all the significant characteristics that have been associated with the product.

Some comments stated that an expressed requirement of a minimum of 4 percent salt in products containing certain nitrates or nitrites would cause unnecessary time and expense in connection with determinations of salt content.

This does not appear to be a valid objection since the Department has determined that a minimum of 4 percent salt is necessary to assure that such products would not develop bone sour or other deep tissue spoilage which would not be readily evident.

Eight comments from individual processors, one State processors' association, one industry trade organization, and a delegation of nine Congressional Representatives objected to the need for such a regulation. They expressed the belief that the Department should be concerned only with wholesomeness, and the processor should otherwise be free to prepare the product as desired. They stated, however, that if a standard were promulgated, it should be on the basis of finished product characteristics, such as percent moisture, rather than involving processing procedures.

In this connection it should be noted that section 7(c) of the Federal Meat Inspection Act (21 U.S.C. 607(c) authorizes the Secretary to promulgate standards of identity or composition for meat and meat food products whenever, after specified consultations, he determines that such action is necessary for the protection of the public and would not be inconsistent with any standard under the Federal Food, Drug, and Cosmetic Act. The Secretary has determined, after consultations pursuant to the Act, that the standards for hams and pork shoulders, established herein are necessary for the protection of the public in order to assure that such products labeled as "Country," "Country Style," or "Dry Cured" have those basic characteristics that consumers associate with such products so labeled and that said standards would not be inconsistent with any standard under the Federal Food, Drug, and Cosmetic Act. Further, the Department determined that specific processing procedures are necessary to be included in the standards in order to assure that the finished products have those characteristics associated with such hams and pork shoulders.

Product prepared in accordance with the methods of preparation specified in the standards will result in product capable of being distributed without refrigeration. Therefore, the specific provisions in the proposal regarding this matter are being deleted since they are unnecessary.

The Department recognizes that label changes would be required by the establishment of these standards and that the procurement of new labels takes time. Therefore, the standards will not become effective and labels in compliance with their provisions will not be required until July 1, 1978.

In considering the technical aspects of this rulemaking as it relates to trichinae treatment required for such products, the Department recognized that, should hams or pork shoulders be produced in the minimum time specified and at temperatures considerably lower than the maximum specified, the finished product may not have been adequately treated for the destruction of possible live trichinae. In this connection wording is added to emphasize that none of the provisions of the standards could be interpreted as discharging trichinae treatment requirements. The product will be required to be treated in accordance with such methods as may be approved by the Administrator upon request in specific instances.

The proposed requirement concerning the internal salt content of at least 4 percent in § 309.106(c)(3) was intended to apply whenever any combination of the specified nitrates or nitrites were used, and this has been clarified.

The proposal specified four nutritive sweeteners for use as optional ingredients in such products. The Department has determined upon further consideration that any of the class of "nutritive sweeteners" should be permitted to be used in such products. This would allow greater flexibility of formulation without changing the basic characteristics that consumers associate with such products.

Other minor changes have been made for purposes of clarification.

Based on all of the information available to the Department it has been determined to be in the public interest to amend the Federal meat inspection regulations to provide standards for the subject products as follows.

1. Subpart D of Part 319 is amended by adding thereto a new § 319.106 to read:

§ 319.106 "Country Ham," "Country Style Ham," "Dry Cured Ham," "Country Pork Shoulder," "Country Style Pork Shoulder," and "Dry Cured Pork Shoulder."

(a) "Country Ham," "Country Style Ham," or "Dry Cured Ham," and "Country Pork Shoulder," "Country Style Pork Shoulder," or "Dry Cured Pork Shoulder" are the uncooked, cured, dried, smoked or unsmoked meat food products made respectively from a single piece of meat conforming to the definition of "ham," as specified in § 317.8(b)(13) of this subchapter, or from a single piece of meat from a pork shoulder. They are prepared in accordance with paragraph (c) of this section by the dry application of salt (NaCl), or by the dry application of salt (NaCl) and one or more of the optional ingredients as specified in paragraph (d) of this section. They may not be injected with curing solutions nor placed in curing solutions.

(b) The product must be treated for the destruction of possible live trichinae in accordance with such methods as may be approved by the Administrator upon request in specific instances and none of the provisions of this standard can be interpreted as discharging trichinae treatment requirements.

(c)(1) The entire exterior of the ham or pork shoulder shall be coated by the dry application of salt or by the dry application of salt combined with other ingredients as permitted in paragraph (d) of this section.

(2) Additional salt, or salt mixed with other permitted ingredients, may be reapplied to the product as necessary to insure complete penetration.

(3) When sodium or potassium nitrate, or sodium or potassium nitrite, or a combination thereof, is used, the application of salt shall be in sufficient quantity to insure that the finished product has an internal salt content of at least 4 percent.

(4) When no sodium nitrate, potassium nitrate, sodium nitrite, potassium nitrite or a combination thereof is used, the application of salt shall be in sufficient quantity to insure that the finished product has a brine concentration of not less than 10 percent or a water activity of not more than 0.92.

(5) For hams or pork shoulders labeled "country" or "country style," the combined period for curing and salt equalization shall not be less than 45 days for hams, and shall not be less than 25 days for pork shoulders; the total time for curing, salt equalization, and drying shall not be less than 70 days for hams, and shall not be less than 50 days for pork shoulders. During the drying and smoking period, the internal temperature of the product must not exceed 95° F., provided that such temperature requirement shall not apply to product dried or smoked under natural climatic conditions.

(6) For hams or pork shoulders labeled "dry cured," the combined period for curing and salt equalization shall not be less than 45 days for hams, and shall not be less than 25 days for pork shoulders; and the total time for curing, salt equalization, and drying shall not be less than 55 days for hams and shall not be less than 40 days for pork shoulders.

(7) The weight of the finished hams and pork shoulders covered in this section shall be at least 18 percent less than the fresh uncured weight of the article.

(d) The optional ingredients for products covered in this section are:

(1) Nutritive sweeteners, spices, seasonings and flavorings.

(2) Sodium or potassium nitrate and sodium or potassium nitrite if used as prescribed in this section and in accordance with § 318.7(c)(4) of this subchapter.

§ 317.8 [Amended]

2. In § 317.8(b), the following provision is added at the end of the first sentence in subparagraph (2): ": *And Provided further*, That the provisions of this subparagraph shall not apply to products prepared in accordance with § 319.106 of this subchapter."

It does not appear that further public participation in rulemaking proceedings on the proposal would make additional information available to the Department which would significantly alter the nature of this proceeding. Therefore, under the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that further notice and other public rulemaking procedures are unnecessary.

The Animal and Plant Health Inspection Service has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107.

The foregoing amendments shall become effective July 1, 1978.

Done at Washington, D.C., on January 14, 1977.

HARRY C. MUSSMAN,
Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc.77-1704 Filed 1-17-77;8:45 am]

Title 12—Banks and Banking

CHAPTER I—COMPTROLLER OF THE CURRENCY, DEPARTMENT OF THE TREASURY

PART 16—SECURITIES OFFERING DISCLOSURE RULES

Revision of Offering Circular Requirements

Correction

In FR Doc. 77-801, appearing at page 2200, in the issue for Monday, January 10, 1977, the following corrections should be made:

1. On page 2202, in § 16.6, under Item 1, in the third column, paragraph (f), in line 4, the first word should read, "offering".

2. On page 2204, in § 16.6, under Item 8, in the third column, paragraph (e), in the second line, "issurance" should read "issuance."

Title 14—Aeronautics and Space

CHAPTER II—CIVIL AERONAUTICS BOARD

SUBCHAPTER A—ECONOMIC REGULATIONS

[Regulation ER-981, Amdt. 55]

PART 288—EXEMPTION OF AIR CARRIERS FOR MILITARY TRANSPORTATION

Amendment of Part

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., January 11, 1977.

Effective: January 11, 1977.

Adopted: January 11, 1977.

In accordance with the methodology established in the Notice of Final Action on Revised Procedure for Part 288 [1] the Board has completed its monthly review of fuel prices reported on C.A.B. Form 41, Schedule P-12(a) for foreign and overseas MAC air transportation services for

[1] Docket 29579, dated December 22, 1976.

the month of November 1976, and is herein amending the surcharge provisions in Part 288 of its Economic Regulations (14 CFR Part 288) applicable to the rates established or those services.[2] The basis for issuing this surcharge amendment is the reduction in average fuel price for the participating MAC carriers by 1.16 cents per gallon, from 40.51 cents per gallon reflected in the currently-effective fuel surcharge rate[3] to the currently reported average price of 39.35 cents per gallon.

The Appendix sets forth the results of the surcharge rate computation for the reported fuel price changes for commercial and military fuels consumed in military charter service for the month of November 1976, as reported on Schedule P–12(a); and the rate impact for the changes in current average fuel prices from that reflected in the base rates. Accordingly, we will revise the fuel surcharge rates effective January 11, 1977, to decrease the long-range Category B and Category A rate from 2.79 to 1.95 percent.

[2] ER–962, effective July 27, 1976.
[3] ER–972, effective October 1, 1976.

In view of the continuing need for a fuel surcharge to the minimum rates set forth in Part 288, we find good cause exists to make the within amendments effective on less than thirty (30) days' notice.

In consideration of the foregoing, the Board hereby amends Part 288 of its Economic Regulations (14 CFR Part 288) effective January 11, 1977, as follows:

1. Amend § 288.7(a) by amending the third proviso following the table to read as follows:

§ 288.7 Reasonable level of compensation.

* * * * * * *

(a) * * *: *Provided, however,* That effective January 11, 1977, the total minimum compensation pursuant to the rates set forth in subparagraph (1) above for (i) services performed with regular jet, wide-bodied jet, and DC–8F–61/63 aircraft, (ii) Pacific interisland services performed with B–727 aircraft, and (iii) all other services performed with B–727 aircraft shall be increased by surcharges of 1.95 percent, 3.57 percent, and 3.57 percent, respectively.[1]

2. Amend § 288.7(d) by amending the proviso to subparagraphs (1) and (2) to read as follows:

§ 288.7 Reasonable level of compensation.

* * * * * * *

(d) * * *

* * * * * * *

Provided, That effective January 11, 1977, the total minimum compensation pursuant to the rates specified in paragraphs (d) (1) and (2) of this paragraph shall be increased by a surcharge of 1.95 percent.

* * * * * * *

(Secs. 204, 403 and 416 of the Federal Aviation Act of 1958, as amended; 72 Stat. 743, 758 and 771, as amended; 49 USC 1324, 1373 and 1386.)

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
Secretary.

[1] The surcharge provisions for services performed with B–727 aircraft will be applied to all other common-rated aircraft types.

MAC long-range carriers—Computation of fuel surcharge based on November 1976 P–12(a) fuel data report

Carriers	November 1976 P-12(a) report: Cost	Gallons	Price per gallon	Price per gallon used in latest surcharge computation [1] (cents)	Currently effective base average price [2] (cents)	Percent price increase (decrease) current/base	Fuel cost as a percent of total economic cost [3]	Fuel price change impact on base economic costs (percent)	Rate impact weighting factor [4] (percent)	Base rate impact for fuel price change (percent)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
Long range:										
Airlift	$47,567	119,818	39.88	42.03	37.63	5.98	36.07	2.16	4.47	0.097
Capitol	105,223	270,551	38.89	41.41	37.15	4.68	31.53	1.48	4.83	.071
Flying Tiger	438,713	1,166,771	37.60	40.51	35.76	11.37	23.45	2.67	16.19	.432
Northwest	372,633	940,977	39.63	39.37	35.39	11.98	27.23	3.26	9.39	.306
Overseas	341,761	847,537	40.32	41.34	39.59	1.84	30.22	.56	7.67	.043
Pan American	404,734	1,092,445	40.27	40.47	37.53	7.87	24.20	1.83	17.73	.324
Seaboard	198,424	509,546	38.94	39.97	37.63	6.48	28.11	.98	9.40	.092
Trans International	585,050	1,487,938	39.32	40.69	37.36	8.25	30.66	1.62	16.38	.265
World	221,226	555,703	39.81	39.85	36.79	8.21	28.06	2.30	13.94	.321
Total	2,715,351	6,900,189	39.35	40.51	36.77	7.02	27.43	1.926	100.00	1.951

[1] See ER–972, app. A.
[2] Average per gallon fuel costs used in determining currently effective base rates set out in ER–962.
[3] Per adjusted operating results used as base for rates fixed in ER–962.
[4] To reflect the weighting applied to individual unit cost in computing ER–962 interim final rates (individual carrier's percentage of group's computed revenues).

[FR Doc.77–1449 Filed 1–17–77;8:45 am]

Title 16—Commercial Practices

CHAPTER I—FEDERAL TRADE COMMISSION

SUBCHAPTER A—PROCEDURE AND RULES OF PRACTICE

PART 2—NONADJUDICATIVE PROCEDURES

Subpart C—Consent Order Procedure

MISCELLANEOUS AMENDMENT

The Commission announces the following amendment to Chapter I of Title 16 of the Code of Federal Regulations. The purpose of the amendment is to clarify the Commission's procedure following the placement of a consent agreement on the public record. This amendment is effective on publication (January 18, 1977), and will be applicable to all consent agreements executed (signed by Commission staff and respondents) after that date.

Section 2.32 is amended to read as follows:

§ 2.32 Agreement.

Every agreement shall contain, in addition to an appropriate order, either an admission of the proposed findings of fact and conclusions of law submitted simultaneously by the Commission's staff or an admission of all jurisdictional facts and an express waiver of the requirement that the Commission's decision contain a statement of findings of fact and conclusions of law. In addition, every agreement shall contain waivers of further procedural steps and of all rights to seek judicial review or otherwise to challenge or contest the validity of the order. The agreement shall also contain provisions that the complaint may be used in construing the terms of the order, and that no agreement, understanding, representation, or interpretation not contained in the order or the aforementioned agreement may be used to vary or to contradict the terms of the order; that the order shall have the same force and effect and may be altered, modified, or set aside in the same manner provided by statute for other orders; that the order shall become final upon service; that the agreement shall not become a part of the public record unless and until it is accepted by the Commission; that the Commission will place the order contained therein on the public record for a period of sixty

(60) days for the receipt and consideration of comments or views from any interested person; and that the Commission thereafter may either withdraw its acceptance of the agreement and so notify the other party, in which event it will take such other action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding. In addition, in appropriate circumstances the agreement may contain a statement that the signing thereof is for settlement purposes only and does not constitute an admission by any party that the law has been violated as alleged in the complaint.

(Sec. 6, 38 Stat. 721 (15 U.S.C. 46).)

By direction of the Commission dated December 14, 1976.

JOHN F. DUGAN,
Acting Secretary.

[FR Doc.77–1250 Filed 1–17–77;8:45 am]

Title 17—Commodity and Securities Exchanges

CHAPTER II—SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–13113; File No. S7–603]

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

Uniform Net Capital Rule

The Securities and Exchange Commission today announced the adoption of certain amendments to Rule 15c3–1 [17 CFR 240.15c3–11] ("§ 240.15c3–1"), the uniform net capital rule, under the Securities Exchange Act of 1934. The amendments continue the suspension of certain provisions of the net capital rule pertaining to transactions in municipal securities until May 1, 1977.

The Commission, in Securities Exchange Act Release No. 12482 (May 26, 1976) [41 FR 14114 (June 15, 1976)] ("Release No. 12482"), adopted certain amendments to § 240.15c3–1 pertaining to transactions in municipal securities.

The Commission also requested public comment, especially by way of impact studies and other appropriate statistical compilations, concerning certain of the more intricate questions arising from application of § 240.15c3–1 to transactions in municipal securities. In this connection, the Commission specifically requested public comment concerning position size and time-in-inventory parameters appropriately evidencing undue concentrations in municipal securities, the contours of a "ready market" for municipal securities, and the need for adjustments to the alternative as applied to brokers and dealers effecting transactions solely in municipal securities.

Thereafter, several members of the public invested considerable time and effort in the production of statistical analyses and other studies bearing upon the questions propounded for comment by the Commission. The results of their work have been of great value to the Commission, which appreciates their highly constructive response to its request. Largely as a result of their work, the Commission is progressing towards definitive solutions of the regulatory issues involved in the Commission's request for comment in Release No. 12482. With the aid of further impact data directed to certain issues raised by the application of § 240.15c3–1 to transactions in municipal securities, the Commission is confident that it can propose in the near future solutions to these remaining questions which are appropriate in the public interest and for the protection of investors. Accordingly, the Commission has determined to extend until May 1, 1977, the presently existing temporary amendments to § 140.15c3–1, in order to permit the public to develop and the Commission to analyze further information responsive to the Commission's renewed request for public comment.

SOLICITATION OF PUBLIC COMMENT

The Commission solicits the views of all interested members of the public concerning the appropriate net capital requirements for brokers and dealers effecting transactions in municipal securities. In particular, the Commission invites public comment addressed to the following questions:

1. On the basis of impact data and other appropriate statistical compilations, is it appropriate in the public interest and for the protestion of investors to consider unduly concentrated only those positions in municipal securities of an issue[1] which are long or short in the proprietary or other accounts of a broker or dealer longer than eleven business days, and which in market value exceed the greater of $500,000 or 10 percent of tentative net capital? Are these parameters appropriate as applied to positions in municipal notes?

2. In light of impact data and other appropriate statistical compilations, do there exist or can there be evolved uniform criteria for determining when a "ready market" for a particular municipal security exists?

3. On the basis of impact studies, trial capital computations and other appropriate statistical compilations, is it necessary to adjust the treatment of certain items under the alternative net capital requirement to reflect essential differences between the clearance and settlement mechanisms for municipal securities and their counterparts in the corporate securities industry? What would be the effect of modifications suggested in response to this question upon minimum net capital requirements for brokers and dealers effecting transactions in municipal securities, computed under the alternative net capital requirement as amended herein?

[1] For the purpose of this question, the term "municipal securities of an issue" should be assumed to denote all municipal securities issued by the same issuer and having the same dated date, maturity date, interest rate and credit backing.

Interested persons are invited to submit their views in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549, no later than March 1, 1977. Reference should be made to File No. S7–603. All comments received will be available for public inspection.

PUBLIC PROCEDURE

In Release No. 12482, the Commission invited public comment concerning several questions relating to the appropriate net capital requirements for brokers and dealers effecting transactions in municipal securities. The amendments to § 240.15c3–1 adopted herein are framed in light of considerations disclosed in the public's response to that invitation, and do not alter the existing regulatory scheme for such brokers and dealers. The Commission finds, pursuant to 5 U.S.C. § 553(b)(3)(B) (1970), that further notice and public procedure respecting these amendments is impracticable and unnecessary to the public interest. The Commission finds further that these amendments relieve regulatory restrictions within the meaning of 5 U.S.C. 553(d)(1) (1970), and may therefore become effective less than thirty days from their publication.

STATUTORY BASIS, EFFECTIVE DATE AND COMPETITIVE CONSIDERATIONS

Pursuant to the Securities Exchange Act of 1934, and particularly Sections 15(c)(3) and 23(a) thereof, 15 U.S.C. § 780(c)(3), w(a), the Commission amends § 240.15c3–1 in Part 240 of Chapter II of Title 17 of the Code of Federal Regulations in the manner set forth below, effective January 1, 1977. The Commission finds that any burden imposed upon competition by the amendments is necessary and appropriate in furtherance of the purposes of the Act, and particularly to implement the Commission's continuing mandate under Section 15(c)(3) thereof, 15 U.S.C. § 780(c)(3), to establish minimum financial responsibility standards for all brokers and dealers.

TEXT OF AMENDMENTS TO SECTION 240.15c3–1

The text of the amendments to § 240.15c3–1 is as follows:

1. Paragraphs (c)(2)(iv)(C) and (f)(1)(i) and (ii) are revised to read as follows:

§ 240.15c3–1 Net capital requirements for brokers or dealers.

* * * * * * *

(c) * * *
(2) * * *
(iv) * * *

(C) Interest receivable, floor brokerage receivable, commissions receivable from other brokers or dealers (other than syndicate profits which shall be treated as required in subdivision (c)(2)(iv)(E) below), mutual fund concessions receivable and management fees receivable from registered investment companies, all of which receivables are outstanding

longer than thirty (30) days from the date they arise; dividends receivable outstanding longer than thirty (30) days from the payable date; good faith deposits arising in connection with an underwriting, outstanding longer than eleven (11) days from the settlement of the underwriting with the issuer; and, until May 1, 1977, receivables due from participation in municipal securities underwriting syndicates and municipal securities joint underwriting accounts which are outstanding longer than ninety (90) days from settlement of the underwriting with the issuer, and good faith deposits arising in connection with an underwriting of municipal securities, outstanding longer than ninety (90) days from settlement of the underwriting with the issuer;

* * * * *

(f) *Alternative Net Capital Requirement.* (1)(i) A broker or dealer who is not exempt from the provisions of 17 CFR 240.15c3-3 under the Securities Exchange Act of 1934 pursuant to subparagraph (k)(1) or (k)(2)(i) may elect not to be subject to the limitations of paragraph (a) of this section respecting aggregate indebtedness as defined in subparagraph (c)(1) of this section and certain deductions provided for in subparagraph (c)(2) of this section. Provided, that in order to qualify to operate under this paragraph (f), such broker or dealer shall at all times maintain net capital equal to the greater of $100,000 (until May 1, 1977, $25,000 in the case of a broker or dealer effecting transactions solely in municipal securities) or 4 percent of aggregate debit items computed in accordance with the Formula for Determination of Reserve Requirements for Brokers and Dealers (Exhibit A to Rule 15c3-3, 17 CFR 240.15c3-3a) and shall notify the Examining Authority for such broker or dealer and the Regional Office of the Commission in which the broker or dealer has its principal place of business, in writing, of its election to operate under this provision. Once a broker or dealer has determined to operate pursuant to the provisions of this paragraph (f), he shall continue to do so unless a change in such election is approved upon application to the Commission.

(ii) In the case of a municipal securities broker, as defined in section 3(a)(31) of the Securities Exchange Act of 1934, who is not exempt from the provisions of 17 CFR 240.15c3-3 under the Securities Exchange Act of 1934 pursuant to subparagraph (k)(1) or (k)(2)(i), and who effects transactions only on a payment versus delivery basis with other brokers or dealers or municipal securities brokers or municipal securities dealers, and who does not hold funds or securities for, or owe money to, customers and does not otherwise carry accounts of, or for, customers, in order to qualify to operate under this paragraph (f) such municipal securities broker shall at all times, until May 1, 1977, maintain net capital equal to the greater of $25,000 or 4 percent of aggregate debit items computed in accordance with Exhibit A to Rule 15c3-3, 17 CFR 240.15c3-3a. *Provided*, That in order to qualify to operate under this paragraph (f), such municipal securities broker shall notify the Examining Authority for such broker or dealer and the Regional Office of the Commission in which the broker or dealer has its principal place of business, in writing, of its election to operate under this provision. Once a municipal securities broker has determined to operate pursuant to this subparagraph (f), he shall continue to do so unless a change in such election is approved upon application to the Commission.

§ 240.15c3-1 [Amended]

2. In § 240.15c3-1, the last sentence of paragraphs (c)(2)(vi)(M) and (f)(3)(iii) is amended to read as follows: "Provided further, that until May 1, 1977, this paragraph shall not apply to municipal securities."

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

DECEMBER 28, 1976.

[FR Doc.77-1664 Filed 1-17-77;8:45 am]

Title 21—Food and Drugs

CHAPTER I—FOOD AND DRUG ADMINISTRATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

SUBCHAPTER B—FOOD AND FOOD PRODUCTS

[Docket No. 76F-0272]

PART 121—FOOD ADDITIVES

Subpart F—Food Additives Resulting From Contact With Containers or Equipment and Food Additives Otherwise Affecting Food

OLEFIN POLYMERS

The Food and Drug Administration (FDA) is amending the food additive regulations to permit the use of a terpolymer in a blend with either polyethylene or polypropylene to be used as articles or components of articles intended for food contact and also to provide for the use of an antioxidant in the production of the terpolymer; effective January 18, 1977; objections by February 17, 1977.

Notice was given in the FEDERAL REGISTER of July 26, 1976 (41 FR 30700), that a petition (FAP 6B3216) had been filed by E. I. du Pont de Nemours & Co., Wilmington, DE 19898, proposing that § 121.2501 (21 CFR 121.2501) be amended to provide for the safe use of a terpolymer of ethylene, propylene, and 1,4-hexadiene in a blend with either polyethylene or polypropylene to be used as articles or components of articles intended for food contact. Subsequently, amended notice was given in the FEDERAL REGISTER of November 5, 1976 (41 FR 48793) that the petition also proposed amending § 121.2566 (21 CFR 121.2566) to provide for the safe use of octadecyl 3,5-di-*tert*-butyl-4-hydroxyhydrocinnamate in the production of the terpolymer.

The Commissioner of Food and Drugs, having evaluated data in the petition and other relevant material, concludes that the food additive regulations should be amended as set forth below. Also, it has come to the Commissioner's attention that in FR Doc. 68-10502, appearing in the FEDERAL REGISTER of August 31, 1968 (33 FR 12309), the temperature (135° C) to be used in determining the viscosity average molecular weight of olefin copolymers described in § 121.2501(a)(3)(iii) was inadvertently omitted from the regulation and should be inserted in § 121.2501(d)(5). The amended § 121.2501(d)(5) below includes this clarification.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 409(c)(1), 72 Stat. 1786 (21 U.S.C. 348(c)(1))) and under authority delegated to the Commissioner (21 CFR 5.1) (recodification published in the FEDERAL REGISTER of June 15, 1976 (41 FR 24262)), Part 121 is amended as follows:

1. In § 121.2501, by adding new paragraph (a)(3)(iv), by numerically adding new item 3.5 to the table in paragraph (c), and by revising paragraph (d)(5) to read as follows:

§ 121.2501 Olefin polymers.

* * * * *

(a) * * *

(3) * * *

(iv) Ethylene and propylene that may contain as a modifier not more than 4.5 weight percent of total polymer units derived by copolymerization with 1,4-hexadiene.

* * * * *

(c) * * *

Olefin polymers	Density	Melting point (MP) or softening point (SP)	Maximum extractable fraction (expressed as percent by weight of polymer) in n-hexane at specified temperatures	Maximum soluble fraction (expressed as percent by weight of polymer) in xylene at specified temperatures
* * *	*	*	*	*
3.5 Olefin copolymers, primarily nonerystalline, described in paragraph (a)(3)(iv) of this section, provided that such olefin polymers have a minimum viscosity average molecular weight of 95,000 as determined by the method described in paragraph (d)(5) of this section, and further provided that such olefin polymers are used only in blends with olefin polymers described under items 1.1, 2.1, and 2.2 of this table at a maximum level of 25 pct by weight, and provided that such olefin copolymers contact food only of the types identified in sec. 121.2526(e), table 1, under types I, II, IV-B, VI, VII-B, and VIII at temperatures not exceeding 19C° F.	0.85-0.90			
* * *	*	*	*	*

(d) * * *

(5) *Viscosity average molecular weight, olefin copolymers described in paragraphs (a)(3)(iii) and (iv) of this section.* The viscosity average molecular weight shall be determined from the kinematic viscosity (ASTM Method D 445)[1] of solutions of the copolymers in solvents and at temperatures as follows:

(i) Olefin polymers described in paragraph (a)(3)(iii) of this section in decahydronaphthalene at 135° C.

(ii) Olefin polymers described in paragraph (a)(3)(iv) of this section in tetrachloroethylene at 30° C.

* * * * *

2. In § 121.2566(b) by revising limitation 5 on the substance "Octadecyl 3,5-di-*tert*-butyl-4-hydroxyhydrocinnamate" to read as follows:

§ 121.2566 Antioxidants and/or stabilizers for polymers.

* * * * *

(b) List of substances:

	Limitations
* * *	* * *
	For use only:
	* * *
Octadecyl 3,5-di-*tert*-butyl-4-hydroxyhydrocinnamate.	5. At levels not exceeding 0.25 percent by weight of olefin copolymers complying with § 121.2501(c), items 3.4 and 3.5: *Provided*, That the finished polymer contacts nonfatty foods only of the types identified in § 121.2526, table 1, under categories I, II, IV-B, VI, VII-B, and VII.
* * *	* * *

Any person who will be adversely affected by the foregoing regulation may at any time on or before February 17, 1977, file with the Hearing Clerk, Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857, written objections thereto. Objections shall show wherein the person filing will be adversely affected by the regulation, specify with particularity the provisions of the regulation deemed objectionable, and state the grounds for the objections. If a hearing is requested, the objections shall state the issues for the hearing, shall be supported by grounds factually and legally sufficient to justify the relief sought, and shall include a detailed description and analysis of the factual information intended to be presented in support of the objections in the event that a hearing is held. Five copies of all documents shall be filed and should be identified with the Hearing Clerk docket number found in brackets in the heading of this regulation. Received objections may be seen in the above office between the hours of 9 a.m. and 4 p.m., Monday through Friday.

[1] Copies are available from: American Society for Testing and Materials, 1916 Race St., Philadelphia, PA 19103.

Effective date: This regulation shall become effective January 18, 1977.

(Sec. 409(c)(1), 72 Stat. 1786 (21 U.S.C. 348(c)(1)).)

Dated: January 10, 1977.

JOSEPH P. HILE,
Associate Commissioner for Compliance.

NOTE.—Incorporation by reference approved on December 9, 1976 by the Director of the Office of the Federal Register, and it is on file in the Federal Register library.

[FR Doc.77-1338 Filed 1-17-77;8:45 am]

Title 29—Labor

CHAPTER V—WAGE AND HOUR DIVISION, DEPARTMENT OF LABOR

PART 613—THE JEWELRY AND MISCELLANEOUS PRODUCTS MANUFACTURING INDUSTRY IN PUERTO RICO

Wage Order

Pursuant to sections 5, 6, and 8 of the Fair Labor Standards Act of 1938 (52 Stat. 1062, 1064, as amended (29 U.S.C. 205, 206, 208)), including the Fair Labor Standards Amendments of 1974 (Pub. L. 93-259; 88 Stat. 55), and Reorganization Plan No. 6 of 1950 (3 CFR 1949-53 Comp., p. 1004), and by means of Administrative Order No. 646 (41 FR 36705), the Secretary of Labor appointed and convened Industry Committee No. 136-A for the Jewelry and Miscellaneous Products Manufacturing Industry in Puerto Rico, referred to the Committee the question of the minimum rate or rates of wages to be paid under section 6 of the Act to such employees, and gave notice of a hearing to be held by the Committee.

Subsequent to an investigation and a hearing conducted pursuant to the notice, the Committee has filed with the Administrator of the Wage and Hour Division of the Department of Labor a report containing its findings of fact and recommendations with respect to the matters referred to it.

Accordingly, as authorized and required by section 8 of the Fair Labor Standards Act of 1938, Reorganization Plan No. 6 of 1950, and 29 CFR 511.18, the recommendations of Industry Committee No. 136-A are hereby published, revising § 613.1 and amending § 613.2 of Part 613, Title 29, Code of Federal Regulations. The increases in future wage rates prescribed by section 6 of the 1974 Fair Labor Standards Amendments are set forth in this wage order. The other wage rates have heretofore reached the mainland rates and are continued.

Section 613.1 is revised and § 613.2 is amended by revising paragraphs (a)(1)(v)(A), (a)(1)(vi)(A), and (a)(2)(i) to read as follows:

§ 613.1 Definition.

(a) The jewelry and miscellaneous products manufacturing industry in Puerto Rico is defined as the manufacture of jewelry and jewelry products including the processing of natural or synthetic stone for jewelry or industrial use; the manufacture of artificial flowers except those made of molded plastic, party favors and similar products; straw, hair and related products; and all other manufacturing activities which are not included in the definitions of other manufacturing industries in Puerto Rico for which wage orders have been issued: *Provided, however*, That the industry shall not include any activity carried on by an establishment primarily engaged in another industry in Puerto Rico for its own use.

(b) This industry includes, but is not limited to, the manufacture of jewelry and jewelry findings; silverware, plated ware, and stainless steel ware; rosaries, beads, buttons, buckles and hair ornaments and accessories; the processing of stones for jewelry or industrial use; the manufacture of flowers, buds, berries, foliage, leaves, fruits, plants, stems, and branches which are commonly or commercially known as artificial; the manufacture of party favors and ornaments and decorations for holidays except those made of molded plastics or metal other than metallic chenille foil or tinsel; and the manufacture of products made wholly or chiefly of straw, raffia, sisal, maguey, palm leaves, rushes, grasses, hair, bristles, feathers and similar materials.

§ 613.2 Wage rates.

* * * * *

(a) *Jewelry, novelty, decoration, straw, hair and related products sector of the industry*—(1) *Pre-1961 coverage classification.* * * *

(v) *Straw, hair and related products classification.* (A) The minimum rate for this classification is $2.00 an hour through April 30, 1977; $2.15 an hour effective May 1, 1977; and $2.30 an hour effective May 1, 1978, (section 6(c)(5)). * * *

(vi) *Other related products and activities classification.* (A) The minimum rate for this classification is $2.30 an hour.

* * * * *

(2) *1961 coverage classification.* (i) The minimum rate for this classification is $2.30 an hour.

* * * * *

(Secs. 5, 6, 8, 52 Stat. 1062 and 1064, as amended; 29 U.S.C. 205, 206, 208.)

Effective date: These amendments shall be effective on February 3, 1977.

Signed at Washington, D.C., on this 12th of January 1977.

RONALD J. JAMES,
Administrator, Wage and Hour Division, Department of Labor.

[FR Doc.77-1519 Filed 1-17-77;8:45 am]

PART 720—THE RUBBER AND MISCELLANEOUS PLASTICS PRODUCTS INDUSTRY IN PUERTO RICO

Wage Order

Pursuant to sections 5, 6 and 8 of the Fair Labor Standards Act of 1938 (52

Stat. 1062, 1064 as amended (29 U.S.C. 205, 206, 208)), including the Fair Labor Standards Amendments of 1974 (Pub. L. 93-259; 88 Stat. 55), and Reorganization Plan No. 6 of 1950 (3 CFR 1949-53 Comp., p. 1004), and by means of Administrative Order No. 646 (41 FR 36705), the Secretary of Labor appointed and convened Industry Committee No. 136-B for the Rubber and Miscellaneous Plastics Products Industry in Puerto Rico, referred to the Committee the question of the minimum rate or rates of wages to be paid under section 6 of the Act to such employees, and gave notice of a hearing to be held by the Committee.

Subsequent to an investigation and a hearing conducted pursuant to the notice, the Committee has filed with the Administrator of the Wage and Hour Division of the Department of Labor a report containing its findings of fact and recommendations with respect to the matters referred to it.

Accordingly, as authorized and required by section 8 of the Fair Labor Standards Act of 1938, Reorganization Plan No. 6 of 1950, and 29 CFR 511.18, the recommendations of Industry Committee No. 136-B are hereby published, revising § 720.1 and amending § 720.2. Those classifications which have reached mainland rates are updated.

In addition, § 720.2(c) is hereby rescinded as obsolete.

Section 720.1 is revised and § 720.2 is amended by revoking paragraph (c) and by revising paragraphs (a)(1)(i), (a)(2)(i), (a)(3)(i), (a)(4)(i), (b)(1)(i), and (b)(2)(i) to read as follows:

§ 720.1 Definition.

The rubber and miscellaneous plastics products industry in Puerto Rico is defined as the manufacture from natural, synthetic, or reclaimed rubber or latex rubber products such as, but not limited to, tires and tubes, reclaimed rubber, rubber and plastics hose and belting, industrial and mechanical rubber and plastics goods, rubberized fabrics, recapped and retreaded tires, rubber and plastics cut stock and findings for footwear, and miscellaneous rubber and fabricated plastics products: *Provided, however,* That the industry shall not include any activity in the rubber and plastics footwear industry; the chemical, petroleum and related products industry; the leather, leather goods and related products industry; the gloves and mittens industry; the men's and boys' clothing and related products industry; the corsets, brassieres and allied garments industry; the women's outerwear, needlework and miscellaneous fabricated textile products industry; the textile mill products industry; and the jewelry and miscellaneous products manufacturing industry.

§ 720.2 Wage rates.

Wages at rates not less than those prescribed in this section shall be paid under section 6(c) of the Fair Labor Standards Act of 1938 by every employer to each of his employees in the rubber and miscellaneous plastics products industry in Puerto Rico who in any workweek is engaged in commerce or in the production of goods for commerce or is employed in an enterprise engaged in commerce or in the production of goods for commerce, as these terms are defined in section 3 of the Act.

(a) *Pre-1966 coverage classifications.* * * *

(1) *Rubber products classification.* (i) The minimum rate for this classification is $2.30 an hour. * * *

(2) *Plastic dinnerware, sprayer, vaporizer, phonograph record and artificial flower classification.* (i) The minimum wage for this classification is $2.20 an hour through April 30, 1977, and $2.30 an hour effective May 1, 1977. * * *

(3) *Plastic pipe and fittings classification.* (i) The minimum wage for this classification is $2.15 an hour through April 30, 1977, and $2.30 an hour effective May 1, 1977. * * *

(4) *Other plastics products classification.* (i) The minimum wage for this classification is $2.15 an hour through April 30, 1977, and $2.30 an hour effective May 1, 1977. * * *

(b) *1966 Coverage classifications.* * * *

(1) *Rubber products classification.* (i) The minimum rate for this classification is $2.30 an hour. * * *

(2) *Plastics products classification.* (i) The minimum wage for this classification is $2.20 an hour through April 30, 1977, and $2.30 an hour effective May 1, 1977.

* * * * *

(Secs. 5, 6, 8, 52 Stat. 1062 and 1064, as amended; 29 U.S.C. 205, 206, 208.)

Effective date: These amendments shall be effective February 3, 1977.

Signed at Washington, D.C., on this 12th day of January 1977.

RONALD J. JAMES,
Administrator, Wage and Hour Division, United States Department of Labor.

[FR Doc.77-1520 Filed 1-17-77;8:45 am]

CHAPTER XVII—OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, DEPARTMENT OF LABOR

PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

Exposure to Coke Oven Emissions; Corrections

On October 22, 1976, an occupational safety and health standard was published in the FEDERAL REGISTER (41 FR 46742) for exposure to coke oven emissions pursuant to the authority in sections 6(b) and 8(c) of the Occupational Safety and Health Act of 1970 (84 Stat. 1593, 1599; 29 U.S.C. 655, 657), Secretary of Labor's Order No. 8-76 (41 FR 25059) and 29 CFR Part 1911. There were a number of typographical errors and inadvertent omissions from the document.

The coke oven standard, as promulgated on October 22, 1976, contain provisions which require, among other things, technology forcing (paragraph (f)(1)(i)) and written compliance programs (paragraph (f)(6)) for existing batteries. The preamble contains an explanatory statement of the reasons for these requirements. However, an examination of the standards indicated that OSHA had inadvertently failed to include these requirements for new and rehabilitated batteries and for beehive ovens. The same reasons which justify these requirements for existing batteries justify the requirements for all batteries. Accordingly, the Agency has corrected the inadvertent omissions of these requirements by including them in the requirements for new and rehabilitated batteries (correction numbers 64, 68, 69, and 70) and beehive ovens (correction numbers 65, 68, and 69).

The Administrative Procedure Act (5 U.S.C. 553(d)) mandates that regulations may not become effective until 30 days after publication in the FEDERAL REGISTER. Therefore, paragraphs (f)(1)(ii)(b), (f)(1)(iii)(b), and (f)(6) as it applies to new or rehabilitated coke oven batteries and beehive ovens, which are the provisions affected by the above-noted correction, shall become effective on February 17, 1977.

Accordingly, FR Doc. 76-31097 beginning at 41 FR 46742 of the issue dated October 22, 1976, is corrected as follows:

1. On page 46742, 1st paragraph, 5th line, the citation is corrected to read "(41 FR 25059)"

2. On page 46742, 3rd column, the 37th line is corrected to read "1975, (40 FR 32268) consisted of the pro-".

3. page 46743, 2nd column, 1st full paragraph, last line, the citation is corrected to read "(Ex 2-20; 2-61, Vol. 2, Pg. 142-3)".

4. On page 46743, 3rd column, 2nd full paragraph, the 12th line, "changed" is corrected to read "charged".

5. On page 46744, 1st column, the 2nd full paragraph, the 11th and 12th lines are corrected to read, "Coke oven gas, 285-345 m^3 (9,500-11,500 ft^3) Tar 27.5-34 l (6.5-9 gal)".

6. On page 46748, 2nd column, first full paragraph, the 8th line is corrected to read "ard-setting context to include both tech-".

7. On page 46749, 2nd column, 2nd paragraph, the 27th line, the word "date" is corrected to read "data".

8. On page 46749, 3rd column, the 2nd full paragraph, the 2nd line, "(39 CFR 41501)" is corrected to read "(39 FR 41501)".

9. On page 46750, 2nd column, 3rd line from the bottom, the word "appropriately" is corrected to read "approximately".

10. On page 46750. 3rd column, 2nd paragraph, the 2nd line is corrected to read "was noted that a rate of .0016 was used in".

11. On page 46750, 3rd column, 5th paragraph the 4th line is corrected to read "the standard, meaningful quantification".

12. On page 46751, 1st column, 4th full paragraph, the 9th line, the word "not" is corrected to read "no".

13. On page 46752, 1st column, 2nd paragraph, the 12th line is corrected to read "coke-side and their machinery, the battery ends, the".

14. On page 46752, 2nd column, 1st full paragraph, 12th line is corrected to read "ply in the regulated area. For example, Subpart I—"

15. On page 46754, 2nd column, 2nd full paragraph the 9th line is corrected to read "volatiles (29 CFR 1910.1000, Table Z-1)".

16. On page 46755, 1st column, 2nd full paragraph, 19th line, "0.272" is corrected to read "0.0272".

17. On page 46755, 2nd column, 1st full paragraph, the 15th line is corrected to read "current standard of 0.2 mg/m^3 are 0.0029".

18. On page 46755, 3rd column, the 3rd line from the bottom is corrected to read "relative risks are 1.309, 1.337, 1.394, and".

19. On page 46757, 1st column, 3rd full paragraph, the 5th line, the citation is corrected to read "(Ex. 1a, p. 32278; 3, p. 15)".

20. On page 46757, 2nd column, 1st full paragraph, the 7th line is corrected to read "oven emissions over an eight hour pe-".

21. On page 46757, 2nd column, last paragraph, the 2nd line is corrected to read "U.S.C. 657) * * *".

22. On page 46758, 3rd column, 2nd full paragraph, the 10th line, the citation is corrected to read "(29 U.S.C. 657)".

23. On page 46758, 3rd column, 7th line from the bottom the citation is corrected to read "657) * * *".

24. On page 46759, 2nd column, 1st paragraph, 26th line, add the sentence: "If engineering and work practice controls do not reduce employee exposure to or below the permissible exposure limit, the employer with beehive ovens is required to use these controls to reduce exposures to the lowest level achievable and to research, develop, and implement any other engineering and work practice controls necessary to reduce exposure to or below the permissible exposure limit except to the extent that the employer can establish that such controls are not feasible".

25. On page 46760, 1st column, the 1st full paragraph is corrected by adding after the last sentence the following: "That is, OSHA intends that the employer has the burden of proving the infeasibility of implementing any mandated controls. The employer would also have the same burden with respect to any additional available controls, and the controls which are researched and developed as required by the technology-forcing provisions of the standard."

26. On page 46760, 1st column, 2nd full paragraph, 19th line before the words "the battery" insert the word "of".

27. On page 46761, 1st column, 2nd paragraph, last line, "1976" is corrected to read "1975".

28. On page 46761, 1st column, last paragraph, 2nd line, the citation is corrected to read "(Ex. 68)".

29. On page 46762, 1st column, 1st full paragraph, 28th line, the word "carry" is corrected to read "larry".

30. On page 46762, 2nd column, 3rd full paragraph, 9th line is corrected by inserting the word "cars" after the word "larry".

31. On page 46763, 3rd column, last line, "(f)(2)(g)" is corrected to read "(f)(2)(i)(g)".

32. On page 46764, 2nd column, 1st full paragraph is corrected to read "The Advisory Committee recommended that steam nozzles, liquor sprays, and standpipes be inspected prior to each charge and cleaned as necessary (Ex. 3, p. 40). In view of the importance of keeping the aspiration system operating properly and standpipe caps seated correctly and sealed, the standard includes a provision similar to the Advisory Committee's recommendation."

33. On page 46766, 1st full paragraph, 3rd line is corrected by deleting "/" and inserting the word "of".

34. On page 46770, 1st column, 3rd paragraph, the sentence which begins on the 15th line and ends on the 18th line is corrected to read "The system filtered carbon monoxide (CO), total hydrocarbons, total sulfur measured as sulfur dioxide (SO_2), total particulates, and nitrogen oxide and dioxide (NO/NO_2)."

35. On page 46770, 3rd column, 5th line, the item in parentheses is corrected by deleting the "Ex.".

36. On page 46771, 2nd column, 2nd full paragraph, 20th and 21st lines are corrected by deleting "(2-151, pg. 120-1)".

37. On page 46771, 3rd column, 6th line, the transcript citation is corrected by deleting "Ex.".

38. On page 46771, 3rd column, the 2nd line from the bottom is corrected to read "the station for cleaning; for jambs on the."

39. On page 46772, 1st column, 2nd full paragraph, 3rd line, the citation is corrected to read "(TR 2312, 2474)".

40. On page 46772, 1st column, 3rd full paragraph, 11th line, the citation is corrected to read "(Ex. 2-61, p. 13; Ex. 2-20)".

41. On page 46773, 2nd column, 1st full paragraph, in the 4th from the last and in the last lines the citations are corrected to read "(TR 2150)".

42. On page 46773, 2nd column, 3rd full paragraph, 3rd line, the citation is corrected to read "(TR 143; 3994)".

43. On page 46773, 2nd column, 3rd full paragraph, the 5th line is corrected by inserting the words "as that" after the word "such".

44. On page 46773, 3rd column, the 4th line is corrected to read "(Ex. 2-121, p. 519-20; 2-18; 2-151, p. 156;".

45. On page 46774, 2nd column, last paragraph, 5th and 11th lines, the words "Part II" are corrected to read "Part 11".

46. On page 46775, 1st column, the 6th line is corrected by changing the word "must" to the word "should".

47. On page 46776, 3rd column, last paragraph, the 5th line is corrected to read "lished (the coke oven battery, wharf, screening station, and the".

48. On page 46777, 1st column, 3rd full paragraph, the 14th line is corrected by adding the following: "If it is reasonably anticipated that an employee who is assigned to a regulated area will work there for less than 30 days, the examination need not be provided at the time of initial assignment. For all other employees, the exam must be provided at the time of initial assignment."

49. On page 46777, 3rd column, 2nd full paragraph, 16th line, the citation is corrected to read "(Ex. 2-18, p. I-5)".

50. On page 46779, 1st column, 4th full paragraph, the 3rd line is corrected by deleting "-15".

51. On page 46779, 2nd column, last paragraph, the 8th line is corrected by deleting the words "anticipated or".

52. On page 46780, 2nd column, 4th full paragraph, 17th line, the word "later" is corrected to read "latter".

53. On page 46781, 2nd column, 4th full paragraph, the 12th line is corrected by changing the words "no smoking" to "no smoking or eating".

54. On page 46781, 3rd column, the 6th line is corrected by deleting "(4)" and inserting "(1)(2)(i)".

55. On page 46781, 3rd column, 5th full paragraph, lines 13-15 are corrected by deleting the phrase "* * * In light of the skin cancer hazard associated with coke oven emission * * *".

56. On page 46781, 3rd column, 5th full paragraph, the 20th line is corrected by deleting the word "which" and inserting the word "with".

57. On page 46782, 1st column, 2nd line the citation is corrected to read "(29 U.S.C. 657)".

58. On page 46784, 1st column, the last paragraph is corrected by deleting the 7th and 8th lines.

59. In § 1910.1029(b), page 46784, 3rd column, the 11th line is corrected to read "not a rehabilitated coke oven battery."

60. On page 46784, 3rd column, § 1910.1029(c), the 2nd line is corrected by adding the words "in the regulated area" after the word "employee".

61. On page 46784, 3rd column, § 1912.1029(c), the 4th line is corrected by changing the word "greated" to "greater".

62. On page 46785, 1st column, the last paragraph § 1910.1029(f)(1)(i)(*a*), 7th line, the last word is corrected to read "later".

63. On page 46785, 2nd column, § 1910.1029(f)(1)(i)(*b*), the 16th line is corrected to read "posure limit except to the extent that the employer can establish that such controls are not feasible. Wherever the engineering".

64. On page 46785, 2nd column, § 1910.1029(f)(1)(ii) is corrected by inserting "(*a*)" on the 2nd line after the word "batteries" and by adding after the last line the following:

(*b*) If after implementing all the engineering and work practice controls required by paragraph (f)(1)(ii)(*a*) of this section, employee exposures still exceed the permissible exposure limit, the employer shall research, develop and implement any other engineering and work practice controls necessary to reduce ex-

posure to or below the permissible exposure limit except to the extent that the employer can establish that such controls are not feasible. Wherever the engineering and work practice controls which can be instituted are not sufficient to reduce employe exposures to or below the permissible exposure limit, the employer shall nonetheless use them to reduce exposures to the lowest level achievable by these controls and shall supplement them by the use of respiratory protection which complies with the requirements of paragraph (g) of this section.

65. On page 46785, 2nd column, § 1910.-1029(f)(1)(iii) is corrected by inserting "(a)" after the words "Beehive ovens" and by adding after § 1910.1029(f)(1)(iii)(a) the following:

(b) If, after implementing all engineering and work practice controls required by paragraph (f)(1)(iii)(a) of this section, employee exposures still exceed the permissible exposure limit, the employer shall research, develop, and implement any other engineering and work practice controls necessary to reduce exposures to or below the permissible exposure limit except to the extent that the employer can establish that such controls are not feasible. Wherever the engineering and work practice controls which can be instituted are not sufficient to reduce employee exposures to or below the permissible exposure limit, the employer shall nonetheless use them to reduce exposures to the lowest level achievable by these controls and shall supplement them by the use of respiratory protection which complies with the requirements of paragraph (g) of this section.

66. On page 46785, 3rd column, § 1910.-1029(f)(2)(i)(*d*), the 5th line, "wi 11". is corrected to read "will".

67. On page 46786, 3rd column, § 1910.-1029(f)(6)(i), the 5th line, the word "specified" is corrected to read "required".

68. On page 46786, 3rd column, § 1910.-1029(f)(6)(i), the 6th line is corrected to read "graph (f) of this sec-".

69. On page 46787, 1st column, § 1910.-1029(f)(6)(ii)(*e*), the 3rd and 4th lines are corrected to read "practice controls required in paragraph (f) of this section;".

70. On page 46787, 1st column, § 1910.-1029(f)(6)(iii), the 4th line is corrected by adding after the word "sooner," the following: "or after completion of a new or rehabilitated battery,".

71. On page 46787, 1st column, § 1910.-1029(f)(7), 5th line, the word "education" is corrected to read "information".

72. On page 46787, 1st column, § 1910.-1029(g)(1)(i), 7th line, the word "permissable" is corrected to read "permissible".

73. On page 46787, 2nd column, Table I, § 1910.1029 (*a*)(2) and (*b*)(*1*), the words "dust, mist and fume" are corrected to read "dust and mist".

74. On page 46787, 2nd column, § 1910.-1029(g)(2)(iii), the 3rd line, is corrected to read "tection against dust and mist by".

75. On page 46787, 3rd column, § 1910.-1029(h)(1)(iv) is corrected to read "insulation from hot surfaces for footwear;".

76. On page 46787, 3rd column, § 1910.-1029(h)(2)(v), 4th line, the word "closed" is corrected to read "closable".

77. On page 46787, 3rd column, § 1910.-1029(h)(2)(v), 5th line, the word "changeroom" is corrected to read "change room".

78. On page 46788, 1st column, § 1910.-1029(j)(1)(i), the 5th line is corrected to read "a regulated area at least 30 days per".

79. On page 46788, 1st column, § 1910.-1029(j)(2), the 5th line is corrected by inserting the phrase "for employees covered under paragraph (j)(1)(i) of this section," after the word "examination".

80. On page 46788, 2nd column, § 1910.-1029(j)(4)(iii) is corrected by changing the word "anticipated" to "estimated".

81. On page 46788, 3rd column, § 1910.-1029(k)(1)(ii), the 2nd line is corrected by changing "January 20" to "January 27".

82. On page 46788, 3rd column, § 1910.-1029(k)(2)(ii) the 1st line is corrected to read: "The employer shall provide upon request all".

83. On page 46788, 3rd column, paragraph "(1) *Precautionary signs and labels*" should be corrected to read "(1) *Precautionary signs and labels.*"

84. On page 46789, 1st column, 1st line, § 1910.1029(l)(2)(ii) the legend of the sign is corrected by adding the word "DANGER" above the words "RESPIRATOR REQUIRED".

85. On page 46789, 1st column, § 1910.1029 (l)(3), the 4th and 5th lines are corrected to read "coke oven emissions bearing the legend:"

86. On page 46789, 2nd column, § 1910.1029 (m)(3)(ii), 6th line is corrected by deleting the words ", former employees,".

87. On page 46789, 2nd column, § 1910.1029 (m)(3) is corrected by adding the following paragraph after paragraph (m)(3)(iii):

(iv) The employer shall make available upon request records of employee exposure measurements required by paragraph (m)(1) of this section for inspection and copying to former employees and their designated representatives which indicate the former employees own exposures.

88. On page 46789, 3rd column, Appendix A to § 1910.1029, Section I–D, the 7th–9th lines are corrected to read "chinery, cokeside and its machinery, and the battery ends; the screening station; the wharf; and the beehive ovens and their machinery."

89. On page 46789, 3rd column, Appendix A to § 1910.1029, Section II, the 2nd line is corrected by deleting the word "possibly".

90. On page 46789, 3rd column, Appendix A to § 1910.1029, Section II, the 3rd line is corrected to read "in humans. Although there have not been an ex-".

91. On page 46789, 3rd column, Appendix A to § 1910.1029, Section III–A, the 6th line is corrected to read "trols are not feasible or insufficient to reduce exposure to or below the PEL."

92. On page 46789, 3rd column, Appendix A to § 1910.1029, Section III–B, 5th line is corrected by changing the word "over" to read "oven".

93. On page 46790, 2nd column, Appendix B to § 1910.1029, Section I–A, the 1st sentence is corrected by changing "(8-hour)" to read "(at least 7-hour)".

94. On page 46790, 2nd column, Appendix B to § 1910.1029, Section I–A, the 8th line is corrected by changing "type A" to read "type A–E".

95. On page 46790, 2nd column, Appendix B to § 1910.1029, Section I–A, 2nd paragraph, 1st sentence the last phrase is corrected to read ", at least one from each shift."

96. On page 46790, 2nd column, Appendix B to § 1910.1029, Section I–A, 2nd paragraph, the 15th line is corrected to read "samples from the same shift on each battery may be used to cal-".

97. On page 46790, 2nd column, Appendix B to § 1910.1029, Section I–B, item 2, the 1st and 3rd lines are corrected by deleting the name "Perkin-Elmer". Inclusion of brand names in Appendix B to the standard does not constitute endorsement by OSHA or the Department of Labor.

98. On page 46790, 2nd column, Appendix B to § 1910.1029, Section II–A, 2nd paragraph, the 1st sentence is corrected by changing the phrase "at the time of initial assignment to a job" to read "who work at least 30 days."

99. On page 46790, 3rd column, Appendix B to § 1910.1029, Section II–A, the 6th line is corrected by changing the words "are to" to read "need".

(Secs. 6, 8, 84 Stat. 1593, 1599 (29 U.S.C. 655, 657); Secretary of Labor's Order No. 8–76 (41 FR 25059); 29 CFR Part 1911.)

Signed at Washington, D.C., this 14th day of January 1977.

MORTON CORN,
Assistant Secretary of Labor.

[FR Doc.77–1732 Filed 1–17–77;8:45 am]

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER D—WATER PROGRAMS

PART 136—GUIDELINES ESTABLISHING TEST PROCEDURES FOR THE ANALYSIS OF POLLUTANTS

Amendment of Regulations; Corrections

In FR Doc. 76–35032 appearing at pages 52780 to 52786 in the FEDERAL REGISTER of Wednesday, December 1, 1976, the following changes should be made:

§ 136.3 [Amended]

1. On Page 52783, for parameter number 62, Nickel—Total, add "232" to the page references in the column under the 14th edition of Standard Methods opposite the colorimetric method designation.

2. On page 52784, for parameter number 89, change the parameter designation from "Nitrate" to "Nitrite."

3. On page 52784, for parameter number 96, Phenols, delete the present method designation, "Colorimetric, (4AAP)," and replace it with the method designation, "Distillation followed by colorimetric, (4AAP)"; delete the page reference in the column under the 14th edition of Standard Methods, "582," and replace it with page number "574".

Dated: January 10, 1977.

WILSON K. TALLEY,
Assistant Administrator for Research and Development.

[FR Doc.77–1453 Filed 1–17–77;8:45 am]

Title 41—Public Contracts and Property Management

CHAPTER 60—OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS, EQUAL EMPLOYMENT OPPORTUNITY, DEPARTMENT OF LABOR

PART 60–741—AFFIRMATIVE ACTION OBLIGATIONS OF CONTRACTORS AND SUBCONTRACTORS FOR HANDICAPPED WORKERS

Redesignation; Correction

In FR Doc. 76–11094 appearing at page 16147 in the FEDERAL REGISTER of Friday, April 16, 1976, the following changes should be made:

1. On page 16148 in the table of headings in the third column:

a. In the heading for 60–741.6 "requirement" is corrected to "procedures".

b. In the Subpart B heading "Compliance" is corrected to "Complaint".

c. Add under the heading for 60–741.23 and above the heading for 60–741.26:

"60–741.24 Duties of agencies.
60–741.25 Evaluations by the Director"

2. On page 16149 under § 60–751.2:

a. In the second line of the paragraph entitled "Affirmative action clause", "§ 60–741.3" is corrected to "§ 60–741.4".

b. In the twelfth line of the paragraph entitled "Handicapped individual", "Note" is corrected to "Appendix".

3. On page 16150:

a. In § 60–741.5(a) on the tenth line "741.5" is corrected to "741.6".

b. In § 60–741.5(c)(1) on the last line "Note" is corrected to "Appendix".

4. In § 60–741.6(b), "Note" which appears twice in the parentheses on pages 16150 and 16151 is corrected in both places to "Appendix".

5. On page 16152 in § 60–741.20 on the third line and in § 60–741.21 on the third line "§ 60–741.3" is corrected to "§ 60–741.4".

6. On page 16153:

a. In § 60–741.24(a) on the thirteenth line "§ 60–741.31" is corrected to "§ 60–741.28".

b. In § 60–741.27 on the sixth line "741.29" is corrected to "741.28".

7. On page 16154:

a. In § 60–741.29 in the second column in the first paragraph on the nineteenth line "§ 60–741.27" is corrected to "§ 60–741.26".

b. In § 60–741.30 on the sixth line "741.24(b)(1)" is corrected to "741.3(b)(1)".

c. In § 60–741.52(a) on the ninth line "by" is corrected to "as".

Dated: January 13, 1977.

LAWRENCE Z. LORBER,
Deputy Assistant Secretary, Director, OFCCP.

[FR Doc.77–1518 Filed 1–17–77;8:45 am]

Title 43—Public Lands: Interior

CHAPTER I—BUREAU OF RECLAMATION, INTERIOR DEPARTMENT

PART 419—ADMINISTRATIVE CLAIMS

Processing Claims for Loss or Damage; Failure of Teton Dam

On September 27, 1976, final regulations were published in the FEDERAL REGISTER (41 FR 42200) governing the processing of claims for actual damages to or loss of property, income, personal injury or for death directly resulting from the failure on June 5, 1976, of Teton Dam of the Lower Teton Division of the Teton Basin Federal Reclamation Project. The regulations provided that in order to qualify for payment under the regulations, the claimant must certify that the damage, injury, or loss for which a claim is made occurred within the major disaster area as a direct result of the failure of Teton Dam. The major disaster area was defined in the regulations. The definition now needs to be expanded to include an area in Power County, Idaho which was affected by loss of water due to the washout of a diversion dam in the Snake River.

For the foregoing reason and pursuant to the authority contained in the Annual Public Works Appropriation Act of 1976, Pub. L. 94–180, 89 Stat. 1035; the Act of July 12, 1976, 90 Stat. 889; the Act of June 17, 1902, 32 Stat. 390, as amended; and the Teton Dam Disaster Assistance Act of 1976, Pub. L. 94–400, 90 Stat. 1211, 43 CFR 419.0–5(o) is revised as follows, effective immediately.

Dated: January 12, 1977.

CHRIS FARRAND,
Acting Assistant Secretary of the Interior.

§ 419.0–5 Definitions.

* * * * *

(o) "Major disaster area" means the Idaho counties of Bingham, Bonneville, Fremont, Jefferson, and Madison, designated by the Administrator, Federal Disaster Assistance Administration, on June 6, 1976, or such other areas as may be later designated by the Administrator under the President's declaration of June 6, 1976. In addition, that portion of the Fort Hall Indian Reservation lying in Bannock County, westward from U.S. Highway 191 to the Snake River and the American Falls Reservoir and that portion of Power County serviced by the Aberdeen-Springfield Canal Company are included in the major disaster area, for the purpose of these regulations.

* * * * *

[FR Doc.77–1509 Filed 1–17–77;8:45 am]

Title 45—Public Welfare

CHAPTER II—SOCIAL AND REHABILITATION SERVICE (ASSISTANCE PROGRAMS), DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

PART 233—COVERAGE AND CONDITIONS OF ELIGIBILITY IN FINANCIAL ASSISTANCE PROGRAMS

Notification of Child Abuse and Neglect

Part 233, Chapter II of Title 45 of the Code of Federal Regulations is amended to incorporate requirements for the reporting or referral of child abuse and neglect under title IV–A of the Social Security Act for the 50 States and the District of Columbia. The requirements for Guam, Puerto Rico, and the Virgin Islands are codified under 45 CFR 220.23 (b). The purpose is to codify the requirements of the income maintenance agency for the reporting or referral of neglected or abused children who are receiving AFDC to the appropriate court or law enforcement agency. The basis of this amendment is section 402(a)(16) of the Social Security Act.

As these regulations make no new requirements upon States and were codified elsewhere in this chapter, the Department finds that there is good cause to dispense with the proposed rulemaking procedure.

Accordingly, Part 233, Chapter II, Title 45 of the Code of Federal Regulations is amended by revising § 233.90(a) to read as follows:

§ 233.90 Factors specific to AFDC.

(a) *State plan requirements.* A State plan under title IV–A of the Social Security Act shall provide that:

(1) The determination whether a child has been deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent, or (if the State plan includes such cases) the unemployment of his father, will be made only in relation to the child's natural or adoptive parent, or in relation to the child's stepparent who is ceremonially married to the child's natural or adoptive parent and is legally obligated to support the child under State law of general applicability which requires stepparents to support stepchildren to the same extent that natural or adoptive parents are required to support their children. Under this requirement, the inclusion in the family, or the presence in the home, of a "substitute parent" or "man-in-the-house" or any individual other than one described in this paragraph is not an acceptable basis for a finding of ineligibility or for assuming the availability of income by the State. In establishing financial eligibility and the amount of the assistance payment, only such net income as is actually available for current use on a regular basis

will be considered, and the income only of the parent described in the first sentence of this paragraph will be considered available for children in the household in the absence of proof of actual contributions; and

(2) Where it has reason to believe that the home in which a relative and child receiving aid reside is unsuitable because of the neglect, abuse, or exploitation of such child, the State or local agency will:

(i) Bring such condition to the attention of a court, law-enforcement agency, or other appropriate agency in the State, providing whatever data it has with respect to the situation;

(ii) In reporting such conditions, use the same criteria as are used in the State for all other parents and children; and

(iii) Cooperate with the court or other agency in planning and implementing action in the best interest of the child.

* * * * *

Effective date: This regulation is effective January 18, 1977.

(Sec. 1102, 49 Stat. 647 (42 U.S.C. 1302).)

(Catalog of Federal Domestic Assistance Program No. 13.761, Public Assistance Maintenance Assistance (State Aid).)

Dated: May 17, 1976.

DON WORTMAN,
Acting Administrator, Social and Rehabilitation Service.

Approved: January 13, 1977.

MARJORIE LYNCH,
Acting Secretary.

[FR Doc.77-1600 Filed 1-17-77;8:45 am]

Title 47—Telecommunication

CHAPTER I—FEDERAL COMMUNICATIONS COMMISSION

PART 1—PRACTICE AND PROCEDURE

PART 73—RADIO BROADCAST SERVICES

Updating and Clarification of Rules Governing the Emergency Broadcast System (EBS); Correction

Released: January 12, 1977.

In the matter of revision of Parts 1 and 73 of the Commission's rules to update and clarify the rules governing the Emergency Broadcast System (EBS).

The amendments to § 73.582, adopted November 16, 1976 (FCC 76-1053, Mimeo 43062), concerning the logging of EBS system tests and which would become effective on February 1, 1977, do not agree in paragraph sequence numbering with amendments subsequently adopted on December 14, 1976 (FCC 76-1144, Mimeo 43096) revising § 73.582 which will become effective January 27, 1977. Therefore, Instruction 8 of Appendix of the *Order* adopted November 16, 1976 (FCC 76-1053) should read as follows:

8. In § 73.582, new subparagraph (5) is added to paragraph (b) to read as follows:

§ 73.582 Program log.

* * * * *

(b) * * *

(5) For Emergency Broadcast System Operations. An entry for tests of the EBS procedures pursuant to the requirements of Subpart G of this Part and the appropriate station checklist, unless such entries are consistently made in the station operating log.

* * * * *

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS,
Secretary.

[FR Doc.77-1515 Filed 1-17-77;8:45 am]

[FCC 77-6]

PART 15—RADIO FREQUENCY DEVICES

Deletion of Certain Obsolete Sections and Reporting Requirements; Order

Adopted: January 4, 1977.

Released: January 11, 1977.

By the Commission: Commissioner Lee absent.

In the matter of amendment of Part 15 to delete certain obsolete sections and reporting requirements.

1. These amendments to Part 15 of the Commission's rules and regulations are editorial in nature and are made pursuant to the Commission's policy of updating and simplifying the rules.

2. Parts of § 15.68 ((a), (c) and (d) (2)) are being deleted; they contain reporting requirements and dates for compliance with technical requirements which by their own terms have become obsolete and may be deleted as no longer required.

3. This action is purely editorial and, therefore, may be taken without compliance with the requirements of 5 USC 553.

§ 15.68 [Amended]

4. *Accordingly, it is ordered*, effective January 19, 1977, pursuant to the authority contained in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, That paragraphs (a) and (c) and subparagraph (d)(2) of § 15.68 of Part 15 of the FCC Rules are hereby deleted, and the word [Reserved] inserted in lieu thereof.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303.)

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS,
Secretary.

[FR Doc.77-1514 Filed 1-17-77;8:45 am]

PART 76—CABLE TELEVISION SERVICES

Altering of Cable Television Reporting Requirements; Correction

Released: January 12, 1977.

In the matter of amendment of Part 76 of the Commission's rules and regulations to alter cable television reporting requirements.

The *Order* in the above-captioned matter released December 7, 1976, (FCC 76-1110) is corrected by changing Appendix A, third line from the top of the third column on page 53996—

From: "Data, which shall be returned within 60"

To: "Data, which shall be returned within 90".

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS,
Secretary.

[FR Doc.77-1516 Filed 1-17-77;8:45 am]

[Docket No. 20808; RM-2075; FCC 77-7]

PART 87—AVIATION SERVICES

Flight Test Stations

Adopted: January 4, 1977.

Released: January 12, 1977.

In the matter of amendment of Part 87 to provide technical standards for telemetry transmitters in the frequency band 1435-1535 mHz employed in flight test stations.

1. A Notice of Proposed Rule Making in the above-captioned matter was released on July 29, 1976, and was published in the FEDERAL REGISTER on August 2, 1976 (41 FR 32242). The dates for filing comments and reply comments have passed.

2. The Notice of Proposed Rule Making was issued in response to a petition (RM-2075) filed by the Aerospace and Flight Test Radio Coordinating Council (AFTRCC). The petitioner requested that the technical standards applicable to FM transmitters used for telemetry purposes in the 1435-1535 mHz band be amended to increase the frequency utilization of this portion of the frequency spectrum.

3. The 1435-1535 mHz telemetry band is shared between Government and non-Government users. In its petition, AFTRCC pointed out that the Commission and the Office of Telecommunications Policy (OTP), which grants the authorizations for the government users, have applied different technical standards to govern the operation of equipment used in flight test stations. AFTRCC stated that the existence of such dual technical standards makes efficient use of the spectrum difficult and engenders administrative coordination problems between the Government and non-Government users of this spectrum. Accordingly, it was requested that the Commission adopt technical standards similar to those developed by OTP to govern equipment used in the 1435-1535 mHz telemetry band.

4. The only comments received were filed by AFTRCC in which they fully supported the Commission's proposal in this proceeding. In their comments, AFTRCC also pointed out two relatively minor typographical errors in the proposed new rules as set forth in the Notice. The appropriate rule sections have been editorially amended, as indicated in the attached Appendix. No reply comments were filed.

5. The Commission recognizes the need for uniform technical standards to enable more efficient use of this portion of the spectrum, and to prevent possible interference between the Government and non-Government flight test stations. Accordingly, *it is ordered*, That under the authority contained in sections 4(i), 303 (b), (c), and (r) of the Communications Act of 1934, as amended, Part 87 of the Commission's rules is amended, as set forth below, effective February 17, 1977.

6. *It is further ordered*, That this proceeding is terminated.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303.)

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS,
Secretary,

Part 87 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

1. Section 87.67(b) is amended by adding a new "class of emission" to the table and a new footnote 8 to read as follows:

§ 87.67 Types of emission.

* * * * *

(b) * * *

Class of emission	Emission designator	Authorized bandwidth: Below 50 MHz	Authorized bandwidth: Above 50 MHz	Frequency deviation
*	*	*	*	*
F9 [8]		(1)	(1)	
*	*	*	*	*

[8] The authorized bandwidth is equal to the necessary bandwidth for frequency modulated transmitters used in flight test stations operating in the 1435-1535 MHz band. The necessary bandwidth shall be computed in accordance with pt. 2 of this chapter.

* * * * *

2. In § 87.71, paragraphs (a) (1) and (3) are amended, and (a) (4) and (5) are added to read as follows:

§ 87.71 Emission limitations.

(a) * * *

(1) When using transmissions other than single sideband (3A3A, 3A3H, 3A3J), or authorized frequency modulation (F9) in the frequency band 1435-1535 MHz:

* * * * *

(3) On any frequency removed from the assigned frequency by more than 250 percent of the authorized bandwidth except for FM telemetry transmitters in the 1435-1535 MHz band:

(4) [1] When using frequency modulated transmissions (F9) for telemetry at flight test stations in the 1435-1535 MHz frequency band with an authorized bandwidth equal to or less than 1 MHz:

(i) On any frequencies removed from the assigned frequency by more than 100 percent of the authorized bandwidth up to and including 100 percent of the authorized bandwidth plus 0.5 MHz: at least 60 decibels or 25 decibels below a milliwatt, whichever is greater, when measured in a 3 kHz bandwidth.

(ii) On any frequencies removed from the assigned frequency by more than 100 percent of the authorized bandwidth plus 0.5 MHz: at least 55 plus 10 $\log_{10}$ (mean power output in watts) decibels when measured in a 3 kHz bandwidth.

(5) [1] When using frequency modulated transmission (F9) for telemetry at flight test stations in the 1435-1535 MHz frequency band with an authorized bandwidth greater than 1 MHz:

(i) On any frequencies removed from the assigned frequency by more than 50 percent of the authorized bandwidth plus 0.5 MHz up to and including 50 percent of the authorized bandwidth plus 1.0 MHz: at least 60 decibels or 25 decibels below a milliwatt, whichever is greater, when measured in a 3 kHz bandwidth.

(ii) On any frequencies removed from the assigned frequency by 50 percent of the authorized bandwidth plus 1.0 MHz: at least 55 plus 10 $\log_{10}$ (mean output power in watts) measured in a 3 kHz bandwidth.

* * * * *

[1] The requirements of paragraphs (a)(4) and (a)(5) of this section shall apply to transmitters type accepted after January 1, 1977, and to all transmitters first installed after January 1, 1983.

[FR Doc.77-1400 Filed 1-17-77;8:45 am]

Title 49—Transportation

CHAPTER X—INTERSTATE COMMERCE COMMISSION

SUBCHAPTER A—GENERAL RULES AND REGULATIONS

[Service Order No. 1254, Amdt. 1]

PART 1033—CAR SERVICE

Vermont Northern Railroad Company Authorized to Operate Over Tracks Owned by State of Vermont and Formerly Operated by St. Johnsbury & Lamoille County Railroad

At a Session of the Interstate Commerce Commission, Railroad Service Board, held in Washington, D.C., on the 12th day of January, 1977.

Upon further consideration of Service Order No. 1254 (41 FR 48122), and good cause appearing therefor:

It is ordered, That: § 1033.1254 (*Service Order No. 1254* Vermont Northern Railroad Company authorized to operate over tracks owned by State of Vermont and formerly operated by St. Johnsbury & Lamoille County Railroad) be, and it is hereby, amended by substituting the following paragraph (f) for paragraph (f) thereof:

§ 1033.1254 Service Order No. 1254.

* * * * *

(f) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., June 30, 1977, unless otherwise modified, changed, or suspended by order of this Commission.

* * * * *

Effective date: This amendment shall become effective at 11:59 p.m., January 15, 1977.

(Secs. 1, 12, 15, and 17(2), 24 Stat. 379, 383, 384, as amended; 49 U.S.C. 1, 12, 15, and 17(2). Interprets or applies Secs. 1(10-17), 15(4), and 17(2). 40 Stat. 101, as amended, 54 Stat. 911; 49 U.S.C. 1(10-17), 15(4), and 17(2).)

It is further ordered, That a copy of this amendment shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association; and that notice of this amendment be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing it with the Director, Office of the FEDERAL REGISTER.

* * * * *

By the Commission, Railroad Service Board, members Joel E. Burns, Lewis R. Teeple, and Thomas J. Byrne.

ROBERT L. OSWALD,
Secretary.

[FR Doc.77-1584 Filed 1-17-77;8:45 am]

[Service Order No. 1200, Amdt. 5]

PART 1033—CAR SERVICE

Missouri Pacific Railroad Company Authorized to Operate Over Tracks of Union Pacific Railroad Co.

At a Session of the Interstate Commerce Commission, Railroad Service Board, held in Washington, D.C., on the 12th day of January, 1977.

Upon further consideration of Service Order No. 1200 (39 FR 38103, 40 FR 2990, 30268, and 41 FR 2644 and 29387), and good cause appearing therefor:

It is ordered, That: § 1033.1200 (*Service Order No. 1200*, Missouri Pacific Railroad Company authorized to operate over tracks of Union Pacific Railroad Co.), be, and it is hereby, amended by substituting the following paragraph (d) for paragraph (d) thereof:

§ 1033.1200 Service Order No. 1200.

* * * * *

(d) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., June 15, 1977, unless otherwise modified, changed or suspended by order of this Commission.

* * * * *

Effective date: This amendment shall become effective at 11:59 p.m., January 15, 1977.

(Secs. 1, 12, 15, and 17(2), 24 Stat. 379, 383, 384, as amended; 49 U.S.C. 1, 12, 15, and 17(2). Interprets or applies Secs. 1 (10-17), 15(4), and 17(2), 40 Stat. 101, as amended, 54 Stat. 911; 49 U.S.C. 1(10-17), 15(4), and 17(2).)

It is further ordered, That a copy of this amendment shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association; and that notice of this amendment be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing it with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members Joel E. Burns, Lewis R. Teeple and Thomas J. Byrne.

ROBERT L. OSWALD,
Secretary.

[FR Doc.77-1585 Filed 1-17-77;8:45 am]

[Service Order No. 1226, Amdt. 2]

PART 1033—CAR SERVICE

Chicago, Milwaukee, St. Paul and Pacific Railroad Company Authorized to Operate Over Tracks of Chicago and North Western Transportation Co.

At a Session of the Interstate Commerce Commission, Railroad Service Board, held in Washington, D.C., on the 12th day of January, 1977.

Upon further consideration of Service Order No. 1226 (40 FR 59598; 41 FR 27728) and good cause appearing therefor:

It is ordered, That: § 1033.1226 (*Service Order No. 1226* Chicago, Milwaukee, St. Paul and Pacific Railroad Company authorized to operate over tracks of Chicago and North Western Transportation Co.) be, and it is hereby, amended by substituting the following paragraph (e) for paragraph (e) thereof:

§ 1033.1226 Service Order No. 1226.

(e) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., June 15, 1977, unless otherwise modified, changed, or suspended by order of this Commission.

* * * * *

Effective date: This amendment shall become effective at 11:59 p.m., January 15, 1977.

(Secs. 1, 12, 15, and 17(2), 24 Stat. 379, 383, 384, as amended; 49 U.S.C. 1, 12, 15, and 17(2). Interprets or applies Secs. 1(10–17), 15(4), and 17(2), 40 Stat. 101, as amended, 54 Stat. 911; 49 U.S.C. 1(10–17), 15(4), and 17(2).)

It is further ordered, That a copy of this amendment shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association; and that notice of this amendment be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing it with the Director, Office of the Federal Register.

* * * * *

By the Commission, Railroad Service Board, members Joel E. Burns, Lewis R. Teeple and Thomas J. Byrne.

ROBERT L. OSWALD,
Secretary.

[FR Doc.77-1586 Filed 1-17-77;8:45 am]

[Service Order No. 1231, Amdt. No. 3]

PART 1033—CAR SERVICE

Consolidated Rail Corporation Authorized To Operate Over Tracks of Louisville and Nashville Railroad Co.

At a Session of the Interstate Commerce Commission, Railroad Service Board held in Washington, D.C., on the 12th day of January, 1977.

Upon further consideration of Service Order No. 1231, (41 FR 8480, 15414 and 27729), and good cause appearing therefore:

It is ordered, That: § 1033.1231 (*Service Order No. 1231* Consolidated Rail Corporation authorized to operate over tracks of Louisville and Nashville Railroad Co.) be, and it is hereby, amended by substituting the following paragraph (f) for paragraph (f) thereof:

§ 1033.1231 Service Order No. 1231.

* * * * *

(f) *Expiration date:* The provisions of this order shall expire at 11:59 p.m., June 30, 1977, unless otherwise modified changed, or suspended by order of this Commission.

* * * * *

Effective date: This amendment shall become effective at 11:59 p.m., January 15, 1977.

(Secs. 1, 12, 15, and 17(2), 24 Stat. 379, 383, 384, as amended; 49 U.S.C. 1, 12, 15, and 17(2). Interprets or applies Secs. 1(10–17), 15(4), and 17(2), 40 Stat. 101, as amended, 54 Stat. 911; 49 U.S.C. 1(10–17), 15(4) and 17(2).)

It is further ordered, That a copy of this amendment shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association; and that notice of this amendment be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing it with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members Joel E. Burns, Lewis R. Teeple and Thomas J. Byrne.

ROBERT L. OSWALD,
Secretary.

[FR Doc.77-1587 Filed 1-17-77;8:45 am]

proposed rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Soil Conservation Service

PUBLIC INFORMATION AND RIGHT TO PRIVACY

Availability of Information

Notice is hereby given, that the Soil Conservation Service (SCS) proposes to revise 7 CFR VI, Part 661 (38 FR 3293).

Part 661 is being redesignated as "Public Information and Right to Privacy" with two Subparts: A—Availability of Materials and Records and B—Right to Privacy.

Interested persons are invited to participate in the proposed regulations change by submitting written data, views, or arguments as they may desire. Comments should identify the regulatory docket or notice number and may be submitted to the Deputy Administrator for Administration, Soil Conservation Service, U.S. Department of Agriculture, Washington, D.C. 20250. All communications received by April 18, 1977 will be considered by the Deputy Administrator for Administration before taking any action on the proposed rule. The proposal contained in this notice may be changed due to comments received. All comments submitted will be made available, both before and after the closing date for comments, for examination by interested persons.

Dated: January 12, 1977.

R. M. DAVIS,
Administrator,
Soil Conservation Service.

Part 661 of Title 7 is proposed to be revised as follows:

Subpart A—Availability of Records and Materials

Sec.
661.1 General.
661.2 Public access and copying.
661.3 Request for records.
661.4 Appeals.
661.5 Exempt records.

Subpart B—Right to Privacy

661.6 General.

Appendix: Availability of information.

AUTHORITY: 5 U.S.C. 552, 552a; 7 CFR 1.1–1.16, 1.110–1.123.

Subpart A—Availability of Records and Materials

§ 661.1 General.

This part is issued in accordance with the regulations of the Secretary of Agriculture at 7 CFR 1.1–1.16 implementing the Freedom of Information Act (5 U.S.C. 522). The Secretary's regulations, as implemented by the regulations in this part, govern the availability to the public of records of the Soil Conservation Service (SCS) and the records for which the Soil Conservation Service (SCS) has custodial responsibility.

§ 661.2 Public access and copying.

SCS will make available for public inspection and copying those materials covered by 5 U.S.C. 552(a)(2) as set out in the Secretary's regulations. Indexes of such materials will be published on a quarterly basis as required.

§ 661.3 Requests for records.

Requests for records under 5 U.S.C. 552(a)(2) will be made in accordance with 7 CFR 1.3(a). The titles and mailing addresses of the officials in SCS authorized to receive requests for records are shown in Appendix A of this subpart. Authority is hereby delegated to these officials to make determinations regarding such requests in accordance with 7 CFR 1.4(c).

§ 661.4 Appeals.

Any person whose request for records above is denied shall have the right to appeal that denial in accordance with 7 CFR 1.3(e). All appeals shall be addressed to: Administrator, Soil Conservation Service, U.S. Department of Agriculture, Washington, D.C. 20250.

§ 661.5 Exempt records.

To the maximum extent permitted by 5 U.S.C. 552(b)(4) the Soil Conservation Service will withhold the following records: (1) conservation plans including those which support cost share contracts, (2) inventories and evaluations, (3) any recorded information which shows scope of a farm operation or other enterprises including boundaries and economic data collected during the planning process and (4) economic data collected from individuals which is used for evaluation of watershed, RC&D and other projects.

Subpart B—Right to Privacy

§ 661.6 General.

SCS implementation of the Privacy Act of 1974, 5 U.S.C. 552a are the regulations of the Secretary set forth in 7 CFR 1.110–1.123.

APPENDIX A—AVAILABILITY OF INFORMATION

The following regulations pertaining to the availability of information are published in accordance with the requirements and pursuant to the authority of Sections 552, 559 of Title 5, United States Code.

REQUEST FOR EXAMINATION OR COPY OF RECORDS

General. Request for examination and copying of a record or for copies of records shall be made to the Deputy Administrator for Administration, Soil Conservation Service, U.S. Deparment of Agriculture, Washington, D.C., or to the State Conservationist in any of the listed State Offices.

SOIL CONSERVATION SERVICE; STATE OFFICE LOCATION

State Conservationist, Wright Bldg., 138 South Gay St., P.O. Box 311, Auburn, Ala. 36830.
State Conservationist, Suite 129 Professional Bldg., 2221 East Northern Lights Blvd., Anchorage, Alaska 99504.
State Conservationist, 230 North 1st Ave., 3008 Federal Bldg., Phoenix, Ariz. 85025.
State Conservationist, Federal Bldg., Room 5029, 700 West Capitol St., P.O. Box 2323, Little Rock, Ark. 72203.
State Conservationist, 2828 Chiles Rd., Davis, Calif. 95616.
State Conservationist, Room 313, 2490 West 26th Ave., P.O. Box 17107, Denver, Colo. 80217.
State Conservationist, Mansfield Professional Park, Route 44A, Storrs, Conn. 06268.
State Conservationist, Treadway Towers, Suite 2-4, 9 East Loockerman St., Dover, Del. 19901.
State Conservationist, Federal Bldg., P.O. Box 1208, Gainesville, Fla. 32601.
State Conservationist, Federal Bldg., 355 East Hancock Ave., P.O. Box 832, Athens, Ga. 30601.
State Conservationist, Alexander Young Bldg., Room 440, Honolulu, Hawaii 96813.
State Conservationist, Room 345, 304 North 8th St., Boise, Idaho 83702.
State Conservationist, Federal Bldg., 200 West Church St., P.O. Box 678, Champaign, Ill. 61820.
State Conservationist, Atkinson Square-West Suite 2200, 5610 Crawfordsville Rd., Indianapolis, Ind. 46224.
State Conservationist, 823 Federal Bldg., 210 Walnut St., Des Moines, Iowa 50309.
State Conservationist, 760 South Broadway, P.O. Box 600, Salina, Kans. 67401.
State Conservationist, 333 Waller Ave., Lexington, Ky. 40504.
State Conservationist, 3737 Government St., P.O. Box 1630, Alexandria, La. 71301.
State Conservationist, USDA Bldg., University of Maine, Orono, Maine 04473.
State Conservationist, Hartwick Bldg., Room 522, 4321 Hartwick Rd., College Park, Md. 20740.
State Conservationist, 29 Cottage St., Amherst, Mass. 01002.
State Conservationist, 1405 South Harrison Rd., East Lansing, Mich. 48823.
State Conservationist, 200 Federal Bldg., and U.S. Courthouse, 316 North Robert St., St. Paul, Minn. 55101.
State Conservationist, Milner Bldg., Room 590, P.O. Box 610, Jackson, Miss. 39205.
State Conservationist, Parkade Plaza Shopping Center (terrace level), P.O. Box 459, Columbia, Mo. 65201.
State Conservationist, Federal Bldg., P.O. Box 970, Bozeman, Mont. 59715.
State Conservationist, Federal Bldg.–U.S. Courthouse, Room 345, Lincoln, Nebr. 68508.
State Conservationist, U.S. Post Office Bldg., P.O. Box 4850, Reno, Nev. 89505.

State Conservationist, Federal Bldg., Durham, N.H. 03824.
State Conservationist, 1370 Hamilton St., P.O. Box 219, Somerset, N.J. 08873.
State Conservationist, 517 Gold Avenue, SW., P.O. Box 2007, Albuquerque, N. M. 87103.
State Conservationist, 100 South Clinton St. No. 771, Syracuse, N.Y. 13202.
State Conservationist, Federal Office Bldg., Fifth Floor—P.O. Box 27307, Raleigh, N.C. 27611.
State Conservationist, Federal Bldg., P.O. Box 1458, Bismarck, N.D. 58501.
State Conservationist, 311 Old Federal Bldg., 3d and State St., Columbus, Ohio 43215.
State Conservationist, Agriculture Center Building, Farm and Brumley Street, Stillwater, Oklahoma 74074.
State Conservationist, Federal Building, 1220 S.W. 3d Avenue, Portland, Oregon 97204.
State Conservationist, Federal Bldg., and Courthouse, Box 985, Federal Square Station, Harrisburg, Pennsylvania 17108.
Director SCS USDA, Caribbean Area, Room 633 Federal Building, Chardon Avenue, Hato Rey, Puerto Rico 00918.
State Conservationist, 222 Quaker Lane, West Warwick, Rhode Island 02893.
State Conservationist, 240 Stoneridge Drive, Columbia, South Carolina 29210.
State Conservationist, 239 Wisconsin Avenue, S.W., P.O. Box 1357, Huron, South Dakota 57350.
State Conservationist, 561 U.S. Court House, Nashville, Tennessee 37203.
State Conservationist, W. R. Poage Federal Bldg., 101 South Main St., P.O. Box 648, Temple, Tex. 76502.
State Conservationist, 4012 Federal Building, 125 S. State Street, Salt Lake City, Utah 84138.
State Conservationist, Burlington Square, Suite 205, Burlington, Vermont 05401.
State Conservationist, Federal Building, Rm. 9201, 400 N. 8th Street, P.O. Box 10026, Richmond, Virginia 23240.
State Conservationist, 360 U.S. Courthouse, W. 920 Riverside Avenue, Spokane, Washington 99201.
State Conservationist, 75 High Street, P.O. Box 865, Morgantown, West Virginia 26505.
State Conservationist, 4601 Hammersley Road, P.O. Box 4248, Madison, Wisconsin 53711.
State Conservationist, Federal Office Building, P.O. Box 2440, Casper, Wyoming 82601.

Only those matters pertaining to the particular State and matters of general application will be available in each State Office.

[FR Doc.77-1464 Filed 1-17-77;8:45 am]

SECURITIES AND EXCHANGE COMMISSION

[17 CFR Parts 239, 240, 270, 275]

[Release Nos. 33-5798, 34-13151, IC-9601, IA-565; File No. S7-660]

DISCLOSURE OF BROKERAGE PLACEMENT PRACTICES BY INVESTMENT MANAGERS

Extension of Comment Period

The Securities and Exchange Commission today, in response to requests from interested parties, extended the comment period on its proposed rules which would require registered investment companies, some other issuers, and certain registered investment advisers to make disclosures to investors about brokerage placement practices and policies, including the use of brokerage commissions to purchase research services (Release No. 33-5772, November 30, 1976 (41 FR 53356 (1976))). The Commission believes that an extension from January 13, 1977 to February 14, 1977 is appropriate in view of the significance of the proposals.

Accordingly, all interested persons are invited to submit their views and comments on the above proposals in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Washington, D.C. 20549, on or before February 14, 1977. Such comments should refer to File No. S7-660, and will be available for public inspection.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

JANUARY 12, 1977.

[FR Doc.77-1603: Filed 1-17-77;8:45 am]

[17 CFR Part 240]

[Release No. 34-13149; File No. S7-613]

BROKERS AND DEALERS

Records Regarding Beneficial Ownership of Accounts; Further Notice as to Proposed Rulemaking

In Securities Exchange Act Release No. 12055 (Jan. 27, 1976),[1] the Commission proposed for public comment an amendment to Securities Exchange Act Rule 17a-3(a)(9).[2] That Rule currently requires brokers and dealers to maintain, with respect to each of their accounts, records containing, among other things, the name and address of the beneficial owner of the account. In the case of a joint account or a corporate account, however, the Rule requires only that those records be kept in respect of the person or persons authorized to transact business for the account. The amendment to Rule 17a-3(a)(9) would require that, in the case of a joint account or an account of a person other than a natural person, brokers and dealers need maintain only a record as to the person or persons authorized to transact business for such account (rather than the name and address of the beneficial owner or owners) if such authorized persons undertake to furnish, at the Commission's request, the name and address of each beneficial owner of the account.

After careful consideration of the comments received, which are discussed below, the Commission has determined to publish a synopsis of its proposed administrative approach to the amendment to Rule 17a-3(a)(9). The Commission is adopting that course before taking action on the amendment because, among other things, the objections of certain commentators indicate that they do not understand fully the rationale underlying the proposed amendment and the method by which the Commission anticipates limiting its use of the amended Rule in order to protect legitimate interests in the confidentiality of financial information, as discussed below.[3]

[1] 41 FR 8075 (Feb. 24, 1976).
[2] 17 CFR 240.17a-3(a)(9).

[3] The Administrative Conference of the United States has recommended that individual federal agencies consider, in the context of particular rulemaking proceedings, whether or not to provide procedural protections beyond those embodied in the notice-and-comment process of the Administrative Procedure Act's rulemaking provision, 5 U.S.C. 553. "Procedures for The Adoption of Rules of General Applicability," "Recommendation No. 72-5 of The Administrative Conference of The United States," 1 CFR 305.72-5. The Commission believes that an expansion of the customary rulemaking process in this case is particularly appropriate in light of that recommendation.

BACKGROUND

The Department of the Treasury, in its recently published "Report on Foreign Portfolio Investment in the United States,"[4] provided comprehensive data on foreign portfolio investment in the United States and important background information for the problems addressed by the proposed amendment to Rule 17a-3(a)(9). The "Treasury Report" indicates that foreign portfolio investment in stocks of United States corporations had a calculated value of $43.9 billion as of March 31, 1976, reflecting estimated net purchases of almost $6 billion since December 31, 1974,[5] and a pattern of sizeable net foreign portfolio investment since 1968.[6] Foreign ownership as a percentage of outstanding voting stock of the 200 largest companies averaged 4.1 percent; for 327 of the companies surveyed, however, foreign ownership exceeded 10 percent of the outstanding voting stock. More than half of reported foreign portfolio investment in stocks appears to be held by banks, brokers and nominees.[7]

The reasons given for foreign portfolio investment in the United States include expectations of capital gains, the relative economic and political stability of the United States, the range of investment choice and the size, liquidity, organization, regulation[8] and efficiency of United States capital markets. While most foreign investors view positively the efficiency of United States capital markets—that is, the extent to which material financial information is available to the United States markets and is promptly reflected in stock prices so that systematic profits based on inside information are not available to insiders, some investors believe that the efficiency of United States markets is a disincentive to investing. Those latter investors indicated a predilection for opportunities to manipulate, stating that they "can make good profits only on markets where manipulation is common."[9]

[4] United States Treasury Department, Report to the Congress on Foreign Portfolio Investment in the United States" (1976), submitted pursuant to the Foreign Investment Study Act of 1974, Pub. L. No. 93-479 (the "Treasury Report").

[5] For this purpose, the "Treasury Report" indicates, "foreign portfolio investment" includes portfolio investments of U.S. nationals residing abroad (who are identified as holding $2.2 billion in stocks) and excludes portfolio investments of foreign nationals residing in the United States.

[6] "The most notable characteristic of foreign portfolio investment in the U.S. is its relatively recent rapid growth." Treasury Report, Appendix F, at 5.

[7] See note 22 infra. Twelve countries accounted for 90 percent of foreign private holdings of voting stock, and five countries—Switzerland, Canada, the United Kingdom, the Netherlands and France—accounted for more than 75 percent of the total foreign private holdings. Treasury Report, at 10.

[8] The Treasury Report illustrated by a reference to the financial collapse of the IOS complex the importance attached to regulation. While that collapse did not technically involve a registered investment company (regulated under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq.), the Treasury Report notes that U.S. mutual fund business overseas was brought to a standstill.

[9] Treasury Report, at 22.

The great majority of investors in the United States markets, both U.S. residents and non-U.S. residents, base their decision to invest through those markets on a perception that they operate in a fair and orderly manner.[10] To the extent that any significant part of the activities in those markets is thought to be immune from scrutiny and therefore a potential haven for manipulation or other abuses, investor confidence can be undermined and the attractiveness of United States markets to investors diminished. Since the Securities Exchange Act of 1934[11] requires that Commission regulation and control of transactions in securities be reasonably complete and effective, the Commission's regulatory program must be adapted and reformulated as necessary or appropriate to reflect shifting trends and patterns in the securities markets and the growth of foreign portfolio investment and foreign securities transactions.

Currently, the Commission relies almost exclusively upon its subpoena powers[12] to obtain information in circumstances where there are indications of possible violations of the federal securities laws. That reliance limits the completeness and effectiveness of the Commission's regulation of transactions in securities as commonly conducted upon securities exchanges and the over-the-counter market since the Commission may only require the attendance of witnesses or their production of records "from any place in the United States," and the Commission has not required in all instances that relevant records be kept in the United States.

The limitations on the subpoena power reflect long-standing principles of international law and comity. International law distinguishes between jurisdiction to prescribe a rule of law and jurisdiction to enforce the rule.[13] For example, it is within the jurisdiction of the United States to prescribe that it is illegal to use the jurisdictional means (interstate commerce, the mails, or any facility of a national securities exchange) to engage in a course of conduct which operates as a fraud in connection with the purchase and sale of securities.[14] It may, however, be difficult for the United States to enforce that prescription in particular circumstances; even in the case of a citizen who resides outside the United States, the cooperation of the authorities of the jurisdiction of residence may be necessary to enforce compliance. And a foreign state is not required by international law to give effect to United States law so long as its refusal is not arbitrary under accepted conflict-of-law principles.[15] Those principles apply *a fortiori* to action, e.g., the issuance of a subpoena, to determine whether a violation has in fact occurred, and, thus, the courts of another country may in some cases choose not to enforce subpoenas issued by United States authorities. In other cases, foreign courts may make distinctions, based on their own legal traditions,[16] between subpoenas issued by courts and those issued by administrative agencies such as the Commission.

In light of the growth in foreign portfolio investment in the United States, and recent amendments to the securities laws which require increased monitoring of activities to determine compliance,[17] the limitations inherent in using subpoenas as an exclusive method to determine whether to take action to enforce the securities laws prompted the Commission to propose new recordkeeping requirements in order to ensure that its regulation is reasonably complete and effective.

COMMENTS

The Commission received fourteen letters commenting on the proposal to amend Rule 17a-3(a)(9).[18] The comment letters recognized that, in general, the Commission has a legitimate interest in determining the beneficial owners of accounts where trading or other circumstances appear to suggest possible violations of the United States securities laws. It was also recognized that Rule 17a-3(a)(9) as amended could help to overcome practical difficulties currently encountered in obtaining information from those persons which are neither citizens nor residents of the United States. Nevertheless, several commentators suggested in substance that financial information is considered to be legitimately confidential in several foreign countries, even in the face of inquiries from appropriate United States regulatory bodies. They further suggested that any regulatory initiative which would reduce the protection now provided to various persons by the laws and practices of such countries when they deal in the United States securities markets could be inimical to such markets and those who use them.

[10] See, e.g., id. at 21.

[11] 15 U.S.C. 78a et seq. (the "Act").

[12] The Commission may require the attendance of witnesses and the production of records in situations where it believes, among other things, that there may have been a violation of the federal securities laws. See, e.g., section 19 of the Securities Act of 1933, 15 U.S.C. 77s; section 21(a) of the Act, 15 U.S.C. 78u(a).

[13] See, e.g., Restatement (2d), "Foreign Relations Law of the United States," section 6 (1965).

[14] See "Arthur Lipper Corp. v. SEC, —— F. 2d ——," (Slip Op. Doc. No. 76-4076, (2d Cir., Dec. 10, 1976)); "ITT v. Vencap Ltd.," 519 F. 2d 1001 (2d Cir. 1975); and "Schoenbaum v. Firstbrook," 405 F. 2d 200, (2d Cir. 1968), modified in other respects, 405 F. 2d 215 (en banc), cert. denied, 395 U.S. 906 (1969). See also Restatement (2d), "Foreign Relations Law of the United States," sections 17, 18 (1965).

[15] Restatement (2d), "Foreign Relations Law of the United States," section 9 (1965).

[16] Requests by other governments for judicial assistance are normally considered under the provisions of an applicable treaty. Under the Treaty between the United States and Switzerland on Mutual Assistance in Criminal Matters (May 25, 1973, 12 "Int'l Legal Materials" 916), which takes effect in 1977, a provision has been made for assistance in connection with specifically enumerated offenses; violations of the securities laws are covered only to the extent that they constitute criminal business fraud or another crime recognized under Swiss law. Where there is not an applicable treaty, one of the controlling considerations in any decision by a foreign government to give judicial assistance in a particular case would in many cases be whether the matter being investigated would involve a crime under its laws. If it is not, a request for judicial assistance would normally be denied. Since countries generally prohibit, as a matter of law or practice, foreign government officials from performing official acts in their territories without prior authorization, the denial of authorization blocks further investigative efforts of violations of the federal securities laws, such as trading on insider information, which are not treated as crimes under the laws of many foreign countries.

[17] For example, subject to a series of exceptions, new section 11(a) of the Act prohibits an exchange member from effecting transactions for its own account or the account of any associated person or any account over which the member or an associated person exercises investment discretion. If the records of an exchange member merely reflect that transactions were effected for an account for which a financial intermediary is authorized to act but which in all likelihood the intermediary does not own beneficially, it is not possible to determine whether those transactions were effected in compliance with section 11(a). The problem of monitoring compliance is independent of any affiliation between the exchange member and the financial intermediary. See note 19 infra.

[18] Comments were received from: Asiel & Co.; The Association of the Bar of the City of New York; the Boston Stock Exchange; Gadsby and Hannah on behalf of ABD Securities Corporation, Overseas Securities Corporation and Transatlantic Securities Corporation; Goldman Sachs & Co. and Salomon Brothers; Merrill Lynch, Pierce, Fenner & Smith Incorporated; the New York Stock Exchange, Inc. (the "NYSE"); the Philadelphia Stock Exchange, Inc.; SoGen-Swiss International Corporation; the United States Treasury Department; Ultrafin International Corporation; and Wauterlek & Brown, Inc.

kets. In support of that position, it was argued that the possibility of disclosure would constitute a disincentive to investment on the part of those accustomed to other standards regarding confidentiality of individual financial information.

Commentators suggested that the amendment to Rule 17a–3(a)(9) might raise questions of international law or put foreign financial intermediaries to difficult choices between complying with the amendment and complying with the laws of their countries of domicile when they choose to trade on behalf of their customers in United States securities markets. In addition, it was argued either that the broker-dealers required to comply with the amendment to Rule 17a–3(a)(9) would be subjected to an unsustainable burden of obtaining compliance by their customers or that, because foreign financial institutions would not in fact comply with a Commission request made pursuant to the amended Rule 17a–3(a)(9), no benefit would in face be achieved by adopting the amendment. Furthermore, some commentators feared that the Rule might be administered in an unfair or discriminatory fashion against United States broker-dealer affiliates of foreign financial institutions. In light of those arguments, various suggestions were made concerning ways in which the Commission might obtain directly, through third parties such as accountants or other professionals, answers to specific Commission inquiries without necessarily uncovering the identity of the beneficial owners of accounts.[19].

[19] Section 19(g)(2) of the Act requires exchanges to "enforce compliance" with the Act and the rules and regulations thereunder by their members; however, as the Commission has pointed out (Securities Exchange Act Release No. 12994 (Nov. 18, 1976), 41 FR 51804 (Nov. 24, 1976)), "enforcing compliance" encompasses a number of different techniques, ranging from inspection programs to disciplinary proceedings, and direct inspection programs may not always be an appropriate enforcement technique. For example, third party examination techniques are commonly used; exchanges rely heavily on reports prepared by independent accountants to determine that their members are in compliance with the Commission's financial responsibility rules. Regional exchanges have voiced support for the use of third party examination techniques in other areas, e.g., section 11(a) of the Act and its predecessor, Rule 19b–2. In fact, the legislative history of section 6(c)(3)(C) makes it clear that exchange officials may appropriately rely on third party verifications under that section. See Securities Exchange Act Release No. 12157 (Mar. 2, 1976) at 9, 41 FR 10662 (Mar. 12, 1976) at 10664. Of course, whatever techniques are adopted by self-regulatory organizations must be applied in an even-handed manner. Thus, if an exchange deems it important to inspect the underlying beneficial ownership interests of accounts carried by its members, it should normally expect to do so for all members, since any account in the name of a financial intermediary may be an omnibus account which in substance is really the account of the member or one of its associated persons, irrespective of whether the financial intermediary is itself an associated person of the member.

Even though proposed Rule 17a–3(a)(9) is designed to make more appropriately equal the obligations placed on all participants in United States securities markets, both residents of the United States and non-residents, the Commission nevertheless recognizes that providing even-handed "national" treatment for foreign participants in the United States securities markets would require action on their part to comply with the Rule as well as to stay in compliance with laws of other countries. The Commission believes that an adequate provision for delayed effectiveness of the amendment should provide adequate time to accomplish the necessary accommodations. In that regard, the Commission is sensitive to the policies of other nations regarding confidentiality of financial information and believes that its amendment would accommodate those policies to the greatest extent possible within the context of the Commission's mandate under the federal securities laws.[20]

Operation of Amendment

The Commission's decision to propose the amendment to Rule 17a–3(a)(9) necessarily involved a delicate balancing of competing policy objectives and an awareness also of the changing trends and patterns that affect the securities markets subject to its jurisdiction. Modern communications systems have made it possible, and increasingly attractive, to do business on a transnational basis, often without being physically present in the country where particular transactions take place. It has, accordingly, become increasingly possible for foreign persons, without being present in the United States, to violate the federal securities laws in securities transactions occurring within the jurisdiction of the United States.[21] For example, aliens may employ brokers in the United States to execute transactions in United States markets, and accomplish other ministerial acts, in furtherance of an undisclosed manipulation or other illegal scheme. As a result, and in light of substantial increases over the last several years in United States securities transactions originating from abroad,[22] the Commission's ability, as a practical matter, to enforce the federal securities laws in connection with transactions in the United States involving foreign persons has been perceived as being incomplete.

That incompleteness both weakens the protection United States investors obtain under the federal securities laws and undermines the honesty and fairness of United States securities markets. The resulting gap in investor protection pertains not only to trading accomplished for the accounts of foreign nationals, but also permits United States persons to evade United States requirements through the use of foreign financial intermediaries (or foreign branches of United States financial intermediaries).[23] The execution of transactions by a foreign institution may be accomplished either through a United States affiliate of the foreign intermediary or, frequently, through broker-dealers in the United States that may have no affiliation whatever with the institution. Absent the consent of their principals, the foreign intermediaries may be bound by local law to protect from disclosure their principals' identity notwithstanding a Commission investigation.

The degree of confidentiality to be accorded individual securities transactions is largely a matter of internal policy within each country, reflecting in large part particular national judgments as to the relative standing to be given to considerations of confidentiality.[24] At the

[20] *See* text accompanying footnotes 10 and 11 *supra*.

[21] *See*, e.g., "United States v. Frank," 520 F. 2d 1267 (2d Cir. 1975), *cert. den.* 423 U.S. 1087 (1976) (manipulations of securities in U.S. markets); "Securities and Exchange Commission v. Cooper," 402 F. Supp. 516 (S.D.N.Y. 1975) (manipulations in connection with the distribution and aftermarket trading of a new offering); "Securities and Exchange Commission v. American Institute Counselors, Inc.", CCH Fed. Sec. L. Rep. 1975–76 Transfer Binder) ¶ 95,388 (D.D.C. 1975) (misrepresentations and omissions of material fact in connection with the sales of non-exempt, unregistered securities by unregistered brokers, dealers and investment advisers); "Securities and Exchange Commission v. General Refractories Co.", 400 F. Supp. 1248 (D.D.C. 1975) (violations of proxy and reporting requirements under the federal securities laws).

[22] In addition to the data on foreign portfolio holdings contained in the "Treasury Report", statistics developed by the NYSE show a dramatic increase in foreign transactions in securities (transactions in United States stocks purchased from Americans by foreigners, or sold by foreigners to Americans). NYSE statistics indicate that in 1975 foreigners purchased $15 billion and sold $10.6 billion of United States securities. Just ten years earlier, in 1965, the totals were only $3.7 billion and $4.1 billion, respectively. NYSE, "1976 Fact Book," at 22.

[23] See, e.g., "United States v. First National City Bank," 396 F.2d 897 (2d Cir. 1968).

[24] Several nations have laws regarding the strict confidentiality of information entrusted to others in their official or professional capacities and prohibit disclosure without the consent of the entrusting person; for example, the Bahamas, the Cayman Islands, Lebanon and Switzerland have passed laws designed specifically to protect the confidentiality of depositors' banking affairs. Those laws are construed broadly and applied strictly. Persons revealing "confidential" information may be civilly liable to the wronged entrustor as well as criminally liable.

The effect of foreign secrecy laws on enforcement of the federal securities laws has been perceived in a number of ways by different commentators, perhaps reflecting differences in their perspectives. In a 1974 release dealing generally with foreign access to United States securities markets, the Commission raised several questions specifically concerning regulatory problems arising from such laws. Securities Exchange Act Release No. 10634 (Feb. 8, 1974), 39 FR 6567 (Feb. 20, 1974). In March, 1976, the Commission published a staff summary of the comments it had received in response to the earlier release. Securities Exchange Act Release No. 12157 (Mar. 2, 1976), Appendix A, 41 FR 10662 (Mar. 12, 1976). In general, regional exchanges and United States affiliates of foreign entities (as well as the National Association of Securities Dealers, Inc.) indicated that foreign secrecy laws do not pose any special regulatory problems not capable of resolution through agreements. The NYSE, the American Stock Exchange, Inc., and the Securities Industry Association suggested, on the other hand, that foreign secrecy laws interfere substantially with exchange regulation and enforcement, but they did not suggest that foreign portfolio investment in the United States should be limited except by requiring that foreign access to U.S. securities markets be obtained indirectly through the facilities of existing exchange member firms. Subsequently, the Commission determined that, generally, the Securities Acts Amendments of 1975 resolve questions concerning foreign access in favor of permitting all registered brokers or dealers to have access to United States securities markets without any conditions based solely on nationality. *See* Securities Exchange Act Release No. 12737 (Aug. 25, 1976), 41 FR 38847 (Sept. 13, 1976).

[25] *See* section 17(a)(1), 15 U.S.C. 78q(a)(1). Rule 17a–3. 17 CFR 240.17a–3, prescribes records to be kept by every member of a national securities exchange who transacts business in securities directly with other than members of a national securities exchange, every broker or dealer who transacts a business in securities through the medium of any such member, and every broker or dealer registered pursuant to section 15 of the Act. While most foreign financial intermediaries are brokers within the meaning of section 3(a)(4) of the Act (persons engaged in the business of effecting transactions in securities for the account of others), they may generally be classified as transacting their business in securities without the United States even though their business is, to the extent it relates to transactions on United States exchange markets, conducted through the medium of members of such exchanges. Accordingly, absent express rulemaking by the Commission under section 30(b) of the Act, the broker-dealer registration requirements of the Act and the rules and regulations thereunder applicable to registered entities do not apply to such intermediaries merely by reason of their status as brokers. With respect to the general anti-fraud provisions, however, *see* note 14 *supra*.

same time, the Commission believes that United States policy in regard to transactions involving the use of United States securities markets or other jurisdictional means is reflected in the federal securities laws. Accordingly, while every effort should be made in an appropriate fashion to respect the judgments reached abroad as to the relative importance of individual privacy, the paramount consideration remains the development and enforcement of a reasonably complete and effective pattern of regulation under the Act.

In situations beyond the effective scope of the Commission's subpoena powers, requests for information may currently be wholly unavailing. Accordingly, there could be an unwarranted limitation on the Commission's ability to enforce fairly and even-handedly the securities laws if it were to rely solely on its subpoena authority. The proposed amendment would, accordingly, require as a basic condition to participation in United States securities markets that those who act on behalf of undisclosed principals establish in advance by written agreement their willingness to disclose to the Commission, upon request, the identity of their principals.

Brokers and dealers are obligated to keep such records as the Commission prescribes as necessary or appropriate in furtherance of the purposes of the Act.[25] Under the proposed amendment, they would not be required to obtain the names of the beneficial owners of a joint account or an account of a person other than a natural person maintained by them; the only new requirement to which they would become subject would be the obligation to obtain the agreement of the person authorized to effect transactions for the account that such person will furnish the name and address of beneficial owners at the request of the Commission.

While a broker-dealer may determine to conduct its business only on the basis of full disclosure, the proopsed amendment would not require that it do so. Nor would broker-dealers be responsible for seeing that such authorized persons in fact perform their agreement though, of course, a broker-dealer would not be in compliance with the proposed amendment if it accepted the required agreement from, and maintained an account for, a person which it knew or had reason to believe did not intend (or would not be able) to live up to its agreement.

Confidentiality of Information

The Commission recognizes that the need for fair and uniform administration of the federal securities laws must be carefully balanced against the need to assure the protection of individual rights to privacy in personal financial dealings. The individual's right to privacy has long been recognized and respected under American law and the need for government to avoid unwarranted invasions of privacy is deeply ingrained in that law. The Congress has not only legislated a right to privacy in the recent Privacy Act of 1974 [26] but also, in enacting a comprehensive institutional disclosure provision in the Securities Acts Amendments of 1975,[27] the Congress specifically underscored the need to protect personal privacy by providing that disclosure of personal account information would not be required. The Commission is thus keenly sensitive to the desire of persons, whether citizens or residents of the United States or non-resident aliens, to maintain the confidentiality of their financial transactions. In the great majority of cases, that desire is quite legitimate, and protection should be afforded to the maximum extent consistent with existing law. The amendment to Rule 17a–3(a)(9) has been drafted to achieve that end.

Rule 17a–3(a)(9) would not require that reports be filed with the Commission or that the names and addresses of beneficial owners of accounts be disclosed generally. If, however, the Commission determines to conduct an examination or inquiry of a particular situation, for example in order to discover whether specific securities transactions were effected in violation of a provision of the Act or any rule thereunder, the Commission would request the appropriate authorized person to disclose, as required by the agreement obtained in compliance with the proposed amendment, the name and address of the beneficial owners. The information thereby obtained would be confidential [28] except, of course, to the extent the Commission determined to bring specific enforcement proceedings.

There remains, of course, the possibility that persons entering into the agreement which would be required by the proposed amendment might subsequently decline to comply with a Commission request for information concerning the beneficial owners of an account, perhaps accompanying the refusal with a statement that compliance would be in violation of foreign laws, such as the secrecy laws in effect in certain countries. Delayed effectiveness of the amendment would provide an opportunity for obtaining the necessary consents in order to give appropriate deference to foreign secrecy laws or policies without permanently extending their effect to transactions in United States securities markets.

Foreign persons wishing to effect transactions in United States securities markets for their customers would need to arrange for whatever consents or waivers local law may require in order to permit compliance with the Rule, as amended. Where any such person would not be subject to service of process in the United States, it might be the case

[26] Pub. L. No. 93–579 (Dec. 31, 1974). At the same time, the Congress recognized the need to balance the individual's right to privacy against other public goals. The Privacy Act provides, for example, that its protections are wholly superseded by the Freedom of Information Act, 5 U.S.C. 552a(b)(2). *See* note 28 *infra*.

[27] Pub. L. No. 94–29 (June 4, 1975). *See* section 13(f) of the Act, 15 U.S.C. 78m(f), as added by the 1975 Amendments.

[28] The Freedom of Information Act, 5 U.S.C. 552, sets forth the basic federal policy and administrative practice concerning disclosure, and non-disclosure, of information in the government's possession. Under that Act, the Commission may deny a request for disclosure of information falling within one or more areas specified in section 552(b). Particularly relevant in this context are (1) the exemption provided for investigatory records compiled for law enforcement purposes to the extent that disclosure of such records would, among other things, constitute an unwarranted invasion of personal privacy and (2) the exemption provided for trade secrets and privileged or confidential commercial or financial information obtained from a person. In any situation where (1) the Commission obtained information by invoking an agreement made in compliance with the proposed amendment to Rule 17a–3(a)(9) and (11) disclosure of that information by the person making that agreement would otherwise have been prohibited (because, for example, the beneficial owner had not consented to a more genial disclosure) under the laws of the country of which that person is a domiciliary, it would appear that, generally, such information should come within the above-described exceptions to the Freedom of Information Act. For a further description of the Commission's policies under that Act, *see* 17 CFR 200.80 *et seq.*

that that Commission's remedies for non-compliance with a Rule 17a–3(a)(9) agreement would, as a practical matter, be somewhat circumscribed. In any event, however, the Commission would plan, if the need arose, to maintain a public list (analogous to its Foreign Restricted List) in order to draw to the attention of registered brokers and dealers the fact that persons on the list did not adhere to their agreements. Where a registered broker or dealer knew—and upon publication of any such list or supplement thereto it would be deemed to know—that a person would not carry out the terms of the required agreement, that broker or dealer would not be in compliance with the proposed amendment to Rule 17a–3(a)(9) if it thereafter maintained an account for such person unless the record maintained by the broker or dealer for the account in fact reflected the true name and address of the account's beneficial owner or owners. Nor, in any event, would a registered broker or dealer be in compliance with the proposed amendment to Rule 17a–3(a)(9) if it maintained an account for a person where it was apparent that a straw or dummy was being inserted for the purpose of evading Rule 17a–3(a)(9).[*]

STATUTORY BASIS

The proposed amendment would be adopted pursuant to the provisions of the Securities Exchange Act of 1934, 15 U.S.C. 78a *et seq.*, and particularly sections 2, 3, 10, 11, 15, 17, 21, 23 and 30 thereof (15 U.S.C. 78b, 78c, 78j, 78k, 78o, 78q, 78u, 78w, and 78dd).

IMPACT ON COMPETITION

The Commission recognizes that, to the extent foreign persons view the amendment as a disincentive to investing through (and consequently lessen their financial involvement in) United States markets, the proposed amendment might have an inhibiting effect on competition.

While the Commission considers it desirable to facilitate foreign access to the United States markets, it also believes that the gaps existing in the present scheme of regulation with respect to disclosure of account ownership pose serious threats to the integrity of the domestic markets and may undermine public confidence therein. The predicted decrease in foreign portfolio investment occurring as a result of the proposed amendment would be a more remote possibility. In any event, any such burden on competition would appear to be necessary and appropriate to make the Commission regulation reasonably complete and effective.

On the other hand, the proposed amendment to Rule 17a–3(a)(9) may be more likely, on balance, to lessen burdens on competition through the elimination of an inappropriate disparity in regulation with respect to domestic and foreign intermediaries. Under current regulations, persons who invest directly in the United States markets are subject to disclosure and compliance requirements under the Act which other persons, domestic and foreign alike, have been able to avoid by the use of financial intermediaries located abroad. That regulatory disparity does not appear to be necessary or appropriate in furtherance of the purposes of the Act. Particularly disturbing are indications that domestic financial intermediaries may currently be planning to rearrange their affairs to place themselves on the same footing as their foreign competitors. It does not seem appropriate to eliminate competitive disparities by degrading the investor protections afforded by the Act. Accordingly, the proposed amendment would eliminate the competitive disparity while upholding the purposes of the Act.[**]

TEXT OF RULE

Securities Exchange Act Rule 17a–3, 17 CFR 240.17a–3, would be amended to read as follows:

§ 240.17a–3 Records to be made by certain exchange members, brokers and dealers.

(a) * * *

(9) A record in respect to each cash and margin account with such member, broker, or dealer containing the name and address of each beneficial owner of such account and in the case of a margin account, the signature of such owner: *Provided*, That in the case of a joint account or an account other than an account of a natural person, such records are required only in respect of the person or persons authorized to transact business for such account if such persons undertake to furnish, at the request of the Commission, the name and address of each beneficial owner of such account.

* * * * *

All interested persons are encouraged to submit written data, views and arguments with respect to the proposed amendment or the plan of administration explained in this release. Persons wishing to make written submissions should file six copies thereof with George A. Fitzsimmons, Secretary, 500 North Capitol Street, Washington, D.C. 20549, not later than March 4, 1977. All comments should make reference to Securities and Exchange Commission File No. S7–613. Copies of all submissions will be made available in the Commission's Public Reference Section, Room 6101, 1100 L Street, Washington, D.C.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

JANUARY 10, 1977.

[FR Doc.77–1605 Filed 1–17–77;8:45 am]

[*] For example, if a well-known and active financial intermediary closed its accounts with a broker and individuals known to be officers (or other authorized agents) of that financial intermediary opened accounts in the name of a new, and unknown, intermediary, it would appear that a reasonable broker or dealer would be alerted to the possibility that an effort was being made to evade Rule 17a–3(a)(9). Under such circumstances, the broker or dealer maintaining the new accounts would need, as a practical business matter in order to reduce its own risk of violating Rule 17a–3(a)(9), to satisfy itself that the new arrangements were not being undertaken to evade disclosure under the Rule. Similar considerations would apply to a financial intermediary that found persons opening accounts on a basis which suggested that the financial intermediary would not in fact be able to comply with the agreement it had entered into pursuant to Rule 17a–3(a)(9). Nor, for example, would the beneficial owner of an account cease to be such merely because its financial intermediary had recast agency transactions for such beneficial owner's account into principal transactions.

[**] See section 3(a)(36) of the Act, 15 U.S.C. 78c(a)(36).

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Social Security Administration

[20 CFR Part 416]

[Regulations No. 16]

SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Income and Exclusions; Deeming of Income

On January 22, 1974, there was published in the FEDERAL REGISTER (39 FR 2487) a notice of proposed rulemaking with proposed amendments to the regulations relating to the deeming of income under section 1614(f) of the Social Security Act (42 U.S.C. 1382c(f)), exclusion of earnings of a child who is a student, and exclusion of certain household goods and personal effects under the supplemental security income for the aged, blind, and disabled program.

Interested parties were given the opportunity to submit within 30 days, data, views, or arguments with regard to the proposed amendments. As described below, comments were received and fully taken into consideration. The section on deeming is being published at this time in the form of notice of proposed rulemaking because of the breadth of the changes from the previously published notice. While some of the changes were the direct result of the comments received, others have been initiated by the Social Security Administration. For this reason and because the rules currently in effect have been followed for two years, it appears most appropriate to publish a revised notice pertaining to deeming of income. The other two sections published on January 22, 1974, were finalized on October 20, 1975 (40 FR 48911).

Section 1614(f) of the Social Security Ac requires that, where an eligible individual lives together with his ineligible spouse, his income shall be deemed to include the income of the spouse, except to the extent that the Secretary finds it would be inequitable to do so. Similarly, the income of the child who is eligible for SSI benefits and lives with his parents (or spouse of a parent), is deemed to include the parents' income, subject to exceptions directed by the Secretary. The amounts of a parent's income which pursuant to these regulations are not deemed to the SSI beneficiary are termed "allocations." Allocations of parents' income, prior to deeming, are provided for the use of the parents and for any other children in the household who are not SSI beneficiaries.

Comments were received from the Governor of Connecticut, the welfare administrators in the States of Idaho, Ohio, Pennsylvania, Wisconsin and the administrator of the New York City Human Resources Administration. Comments were also received from the Legal Services for the Elderly Poor in New York. All of the comments received suggested that the allocation for the ineligible spouse, parent, and spouse of the parent be the same as the SSI benefit payment levels so that a family unit involved in the deeming process could have the same amount of income as a family unit with both parents and at least one child meeting the supplemental security income eligibility criteria. The regulations have been prepared for publication with a change in the allocation amounts for an ineligible spouse, parent, or spouse of the parent. The new quarterly allocation amounts will permit the ineligible spouse, parent, or spouse of a parent with income which is to be deemed, to exclude the same amount of earned or unearned income that an eligible individual or eligible couple can have before becoming ineligible for supplemental security income payments.

Similarly, the allocation for each ineligible child has been related to the payment amounts for an eligible spouse or an essential person. At the present time, this allocation equals $252 per quarter, but will increase automatically as the SSI benefit rate increases.

Other comments were made that only the income actually available to the eligible individual should be deemed. This concept is not consistent with the legislative language in title XVI which requires that the income of an ineligible spouse, parent, and spouse of parent should be deemed to the eligible individual whether or not the income is actually available to the eligible individual. Accordingly, no change is being made on this point.

The report of the Supplemental Security Income Study Group dated January 1976, made two recommendations pertaining to the deeming of income. The Study Group recommended that deemed income of parents no longer be considered when a child recipient reaches age 18, and that the same exemptions for earned and unearned income of the eligible spouse be allowed for the ineligible spouse. The recommendation dealing with the age of the child cannot be implemented without a statutory change, because section 1614(f)(2) requires that the income and resources of a parent and spouse of a parent be deemed to a child under age 21. The second recommendation was partially adopted. Under the proposed rules, an eligible individual and an ineligible spouse will receive the same earned and unearned income exclusions that are allowed for an eligible individual and eligible spouse (eligible couple).

A new paragraph (§ 416.1185(c)) has been added to provide guidelines for the situation in which an individual's income must be deemed both to his spouse, who is an aged, blind, or disabled adult, and to his child who is blind or disabled. In this case, the individual's income is deemed to the adult first (in accordance with the rules of spouse-to-spouse deeming). Thereafter, any deemable income in excess of the amount which caused the adult to become ineligible on the basis of income will be deemed to the blind or disabled child.

When there are two or more blind or disabled children, the income to be deemed will be divided equally between the children; however, if either or both have income for their own, income will be deemed only to the extent needed to reduce a child's payment to zero. All the remaining income will be deemed to the other blind or disabled child.

The regulations (§ 416.1185(d)) provide that certain items of income will not be included in the deeming process. Several of these items are statutory exclusions adopted from title XVI or other statutes (e.g., Food Stamp Act of 1965). Assistance based on need and income based on need will not be included as income to be deemed nor will the income used to determine the eligibility and amount of the need-based payments be included because to do so would be indirectly requiring the other assistance program to support an SSI recipient. Any in-kind support and maintenance (food, clothing, and shelter) furnished to the ineligible spouse, parent or spouse of a parent, if any, and any ineligible children in the household will not be considered as deemable income under this section.

The regulations also provide (§ 416.1185(e)) that the Social Security Administration will continue to deem income to an eligible individual when either the eligible individual or the person from whom income is deemed is absent from the household for temporary periods. A temporary absence is defined as one in which either the eligible individual or the person from whom income is deemed leaves the household but intends to return in the same or the next month. However, it is specifically provided that deeming will continue to apply to a child who is absent for extended periods in order to attend school so long as the child returns home on vacations and, thus, can fairly be said to continue to maintain his residence with his parents. If the absence is not temporary, deeming will cease effective with the first full month of absence. This provision makes explicit what has been the policy of the Social Security Administration.

It should be noted that § 416.1185 was first published as an interim regulation for comment on January 22, 1974, and a number of comments were received relating to the deeming of income. This section will continue in effect, as here amended, on an interim basis effective upon publication until a final regulation is adopted.

It is being published with interim effectiveness because a delay in the implementation of the proposed changes would be contrary to the interests of the public. There are several reasons why it is in the best interests of the public to publish these changes with interim effectiveness. The policy reflected in these changes is a liberalization of the current rules applicable in deeming of income from spouse to spouse and from parent to child situations, and will also simplify eligibility determinations for all concerned. The new rules take cognizance of the inflationary process on the income of persons from whom income is deemed and will equalize the treatment of income used in the deeming process with that of other SSI recipients not involved in the deeming process. As a result it is anticipated that no individual to whom these rules are applicable will be disadvantaged. Finally, these changes also take into consideration whenever possible, comments and suggestions made by the public with respect to the deeming policy.

If there are any questions concerning this regulation, you may contact Mr. S. J. Weissman, Legal Assistant, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone—(301) 594–7341. Mr. Weissman will respond to any questions, but will not accept comments on this regulation.

Prior to final adoption of these amendments to the regulations, consideration will be given to any data, views, or arguments pertaining thereto which are submitted in writing to the Commissioner of Social Security, Department of Health, Education, and Welfare, P.O. Box 1585, Baltimore, Maryland, 21203 within a period of 45 days from the date of publication of this notice in the FEDERAL REGISTER.

Copies of all comments received in response to this notice will be available for public inspection during regular business hours at the Washington Inquiries Section, Office of Information, Social Security Administration, Department of Health, Education, and Welfare, North Building, Room 4146, 330 Independence Avenue, SW, Washington, D.C. 20201.

(Secs. 1102, 1614(f) and 1631 Social Security Act, as amended, 49 Stat. 647, as amended, 86 Stat. 1473, and 86 Stat. 1475; 42 U.S.C. 1302, 1382c(f), and 1383.)

(Catalog of Federal Domestic Assistance Program No. 13.807, Supplemental Security Income Program.)

Dated: December 13, 1976.

J. B. CARDWELL,
Commissioner of Social Security.

Approved: January 13, 1977.

MARJORIE LYNCH,
Acting Secretary of Health, Education, and Welfare.

Part 416 of Chapter III of Title 20 of the Code of Federal Regulations is amended as follows:

Section 416.1185 is added to read as follows:

§ 416.1185 Deeming of income.

Any amounts used in the examples in paragraphs (a) and (b) of this section are based on the rates for quarters beginning July 1, 1976.

(a) *Individual with spouse.* In the case of an individual who is living in the same household with a person not eligible for benefits under this part who is, or who is considered to be, such individual's husband or wife in accordance with the provisions set forth in §§ 416.1001–416.1041, such individual's income shall be deemed to include (except as otherwise provided in this section) any income (as defined in § 416.1102(a)) of such spouse whether or not such income is available to such individual. For each child in the household who is neither blind nor disabled, the quarterly income of the ineligible spouse will be reduced by an amount equal to the difference between the quarterly benefit rate for an individual (as defined in § 416.410) and the quarterly benefit rate for a couple (as defined in § 416.412). Any income of such child will be used to reduce the allocation of income made on his behalf. If the remaining income of the ineligible spouse does not exceed one-half the quarterly benefit rate for an eligible individual there is no income to be deemed. If the remaining income of the ineligible spouse exceeds one-half of the quarterly benefit rate for an eligible individual, all income will be deemed to the eligible individual, combined with his own income, and the eligible individual's income will be treated as it would be if his spouse were an eligible spouse (as indicated in § 416.412). However, in no case will a payment to the eligible individual exceed the amount specified for an eligible individual without an eligible spouse. Whenever the initial application is filed in the second or third month of the quarter, the allocations enumerated in this paragraph will be prorated on a monthly basis.

Example 1. After all the prescribed allocations have been applied, Alice, the ineligible spouse of Ted, has $200 of deemable income for the third quarter of 1976. Since this is less than half the quarterly benefit rate for an eligible individual without an eligible spouse ($503.40 divided by 2=$251.70), no income is deemed to Ted and he is paid at the rate for an eligible individual. Only his own countable income is applied to that benefit rate.

Example 2. After all the prescribed allocations have been computed, Alice has $400 of deemable income for the third quarter of 1976. Since this exceeds one-half of the quarterly benefit rate for an eligible individual, Alice's income is to be added to Ted's own countable income. Ted has $200.00 of income (before any disregards are applied), which together with the deemed income equals $600 total quarterly income. All income disregards appropriate to an eligible couple are applied to determine countable income. This countable income is applied against the amount which would be paid to an eligible couple in determining the eligibility of the individual.

(b) *Child.* (1) In the case of an individual who is a child (as defined in § 416.1050) and under age 21, such individual's income shall, subject to the succeeding sentences of this paragraph and to paragraph (c) of this section, be deemed to include (except as otherwise provided in this section), any income (as defined in § 416.1102(a)) of a parent of such individual (or the spouse of such a parent) who is not eligible for benefits under this part and is living in the same household as such individual whether or not such income is available to such individual. Income so deemed will be treated as unearned income. Whenever there is more than one blind or disabled child in the deeming situation, the income to be deemed will be divided equally among them. However, no income will be deemed to a blind or disabled child in excess of that amount which, when combined with his own income, if any, reduces his payment level to zero. Thereafter, any remaining deemable income will be deemed only to the other blind or disabled children. Whenever the initial application is filed in the second or third month of the quarter, the allocations described in this paragraph will be prorated on a monthly basis.

(2) In the case of income for any quarter of the parent and spouse of such parent, such income will be reduced by the allocation specified in paragraph (a) of this section for each ineligible child (as defined in § 416.1050) under the age of 21 of the parent or spouse of the parent residing in the household. However, any income of the ineligible child himself will be used to reduce the allocation of income made on his behalf.

(3) (i) Thereafter, in the case of income for any quarter, all of which is earned (as defined in § 416.1102(b)), of the parent and spouse of such parent, such earned income will be reduced by an amount equal to $255 plus:

(*a*) Twice the quarterly benefit rate for an individual (as defined in § 416.410) in the case of one parent or spouse of a parent residing in the household; or

(*b*) Twice the quarterly benefit rate for a couple (as defined in § 416.412) in the case of a parent and spouse of a parent residing in the household.

(ii) In the case of income for any quarter, all of which is unearned, of the parent and spouse of such parent, such unearned income will be reduced by an amount equal to $60 plus:

(*a*) The quarterly benefit rate for an individual in the case of one parent or spouse of a parent residing in the household; or

(*b*) The quarterly benefit rate for a couple in the case of a parent and spouse of a parent residing in the household.

(iii) In any case in which the total income for a quarter of the parent(s) includes both earned and unearned income, the unearned income is reduced by $60; and the earned income is reduced by $195 plus one-half of the remainder. The sum of the unearned and earned income remaining after such reduction is further reduced by:

(*a*) The quarterly benefit rate for an individual (as defined in § 416.410) in the case of one parent or spouse of a parent residing in the household; or

(*b*) The quarterly benefit rate for a couple (as defined in § 416.412) in the case of a parent and spouse of a parent residing in the household.

(c) The remaining income is deemed income.

(iv) *Examples.*

Example 1. Susan, a blind 10-year-old, lives with her mother, stepfather, and able-bodied sister. Her stepfather has earned income of $1800 for the third quarter of 1976. Neither her mother nor her sister has any income of her own. In order to compute deemable income, there is first allocated to the sister $252 for the quarter. Thereafter, since the remaining parental income is earned and is less than $1765.80 per quarter (twice the couple's rate plus $255, or the amount of earned income which just makes a couple ineligible), there is no income deemed to Susan.

Example 2. James is a disabled child who lives with his mother. His mother receives benefits under title II of the Social Security Act in the amount of $225 per month or $675 for the third quarter of 1976. James has no income of his own. Since his mother's income is totally unearned, it is reduced before deeming by $563.40 ($503.40 (the quarterly benefit rate for a single individual) plus $60 (the unearned income disregard)). Thereafter, $111.60 per quarter is deemed to James. Since this is treated as unearned income, his $60-per-quarter disregard is applied, reducing the countable income to $51.60. This quarterly benefits, therefore, equal $451.80.

(c) *Individual with spouse and child.* In the case of an individual, as described in paragraph (a) of this section, and a child, as described in paragraph (b) of this section, living in the same household with a person not eligible for benefits under this part who is, or who is considered to be, the husband or wife of the individual and parent or spouse of the parent of the child, such individual's and child's income shall be deemed to include the income of such person whether or not such income is available to such individual or child. This person's income will be treated in the same manner, as described in paragraph (a) of this section. After the application of the spouse-to-spouse deeming, as provided in paragraph (a) of this section, all income in excess of the amount which reduces the individual's payment to zero will be deemed to the blind or disabled child and treated as unearned income.

(d) *Income not included.* (1) For purposes of this section, the term income does not include:

(i) Assistance based on need and income based on need and furnished by any Federal agency, State, or political subdivision of a State, or the payments made under title XVI of the Social Security Act and any income which was taken into account in determining and which affected the eligibility for, and amount of such assistance or payments;

(ii) Any portion of any grant, scholarship, or fellowship used to pay the cost of tuitions and fees;

(iii) Amounts received for foster care of an ineligible child;

(iv) Bonus value of food stamps and the value of the Department of Agriculture donated foods;

(v) Home produce grown for personal consumption;

(vi) Refund of taxes paid on income, real property, or food purchased by the family;

(vii) Such income needed to fulfill an approved plan for achieving self-support;

(viii) Such income used to comply with the terms of court-ordered support;

(ix) The value of any in-kind support and maintenance furnished to the ineligible spouse, ineligible parent or ineligible spouse of a parent, and ineligible children in the household;

(x) Periodic payments made by a State under a program established before July 1, 1973, based solely on duration of residence and attainment of age 65; and

(xi) Income otherwise excluded by Federal statute (see § 416.1146 of this part).

(2) In determining the income of ineligible children in the household for purposes of allocating a share of the parent's income, the items enumerated in paragraph (d) (1) of this section shall be excluded, and, in addition, the total earned income of such child who is a student (subject to the limitation in § 416.1163) shall be excluded unless the child actually makes this income available to the family.

(e) *Limitation on deeming.* The procedures for computing an individual's income described in this section will be applied during periods of temporary absence from the household on the part of the individual or the person from whom income is deemed. For the purposes of this section, a temporary absence is defined as one in which either the individual, or the person from whom income is deemed, leaves the household but intends to return in the same month or the next month. If an absence is not temporary, those procedures will cease to be applied effective with the first full month of absence. However, a child who is away at school will be considered to be temporarily absent (regardless of the duration of the absence) if he comes home on weekends or lengthy holidays and vacations (or for extended visits in accordance with school regulations).

[FR Doc.77-1599 Filed 1-17-77;8:45 am]

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[25 CFR Part 221]

MISCELLANEOUS INDIAN IRRIGATION PROJECTS

Proposed Revisions

Pursuant to the authority vested in the Secretary of the Interior for issuance of irrigation operation and maintenance orders fixing per acre assessments against lands included in Indian Irrigation Projects, delegated to the Commissioner of Indian Affairs by Order No. 2508 (10 BIAM 2.1, Section 15a) and redelegated to the Area Directors by 10 BIAM 4.1, notice is hereby given that it is proposed to modify § 221.105 Charges of Title 25, Code of Federal Regulations, dealing with operation and maintenance assessments against land to which water can be delivered under the Pyramid Lake Irrigation Project in Nevada and the San Carlos Reservation Irrigation Project in Arizona. On the Pyramid Lake Irrigation Project, the annual assessment rate will be $20.00 per acre for non-Indians; and $1.00 per acre for Indian owned and operated land. On the San Carlos Reservation Irrigation Project, the annual assessment rate will be $35.23 per acre for non-Indian owned land and Indian land leased to non-Indians. These annual assessment rates shall become effective for the calendar year 1977 and subsequent years unless changed by further orders. The revised section shall read as follows:

§ 221.105 Charges.

Pursuant to the acts of August 1, 1914, and March 7, 1928 (38 Stat. 583, 45 Stat. 210; 25 U.S.C. 385, 387), the annual basic charges against the lands to which water can be delivered under the respective irrigation systems of the projects listed in this section are hereby fixed in the following amounts for non-Indian owned lands, Indian owned lands leased to non-Indians and Indian owned and operated lands, for the calendar year 1977 and for each succeeding calendar year thereafter until further notice:

Annual per acre assessment

Project	Non-Indian owned land	Indian owned land leased to non-Indians	Indian owned and operated land
Duck Valley:			
Subjugated lands	$3.40	$3.40	$3.40
Native hay lands	3.40	3.40	1.00
Pyramid Lake	20.00	20.00	1.00
San Carlos Reservation	35.23	35.23	5.50
Warm Springs	2.00	2.00	

It is the policy of the Department of the Interior whenever practicable to afford the public an opportunity to participate in the rule making process. Accordingly, interested persons may submit written comments, suggestions or objections, with respect to the proposed amendments, to John H. Artichoker, Area Director, Phoenix Area Office, P.O. Box 7007, Phoenix, Arizona 85011, on or before February 10, 1977.

CHARLES D. WORTHMAN,
Assistant Area Director.

[FR Doc.77-1458 Filed 1-17-77;8:45 am]

[25 CFR Part 221]

WALKER RIVER INDIAN IRRIGATION PROJECT

Proposed Revisions

Pursuant to the authority vested in the Secretary of the Interior for issuance of irrigation operation and maintenance orders fixing per acre assessments against lands included in Indian Irrigation Projects, delegated to the Commissioner of Indian Affairs by Order No. 2508 (10 BIAM 2.1, Section 15a) and redelegated to the Area Directors by 10 BIAM 4.1, notice is hereby given that it is proposed to modify § 221.83 Charges, of Title 25, Code of Federal Regulations, dealing with operation and maintenance assessments against land to which water can be delivered under the Walker River Indian Irrigation Project in Nevada, by establishing an assessment rate of $7.00 per irrigable acre for non-Indian owned land and Indian owned land leased to non-Indians, and $1.00 per irrigable acre for Indian owned land farmed and operated by Indians for calendar year 1977 and subsequent years unless changed by further orders. The revised section shall read as follows:

§ 221.83 Charges.

The annual basic operation and maintenance assessment rates for land to which water can be delivered under the Walker River Indian Irrigation Project in Nevada for the operation and maintenance of the project are hereby fixed at $7.00 per irrigable acre for non-Indian owned land and Indian owned land leased to non-Indians, and $1.00 per irrigable acre for Indian owned land farmed and operated by Indians. The foregoing charges shall become effective for the calendar year 1977 and continued in effect thereafter until further notice.

It is the policy of the Department of the Interior whenever practicable to afford the public an opportunity to participate in the rule making process. Accordingly, interested persons may submit written comments, suggestions or objections with respect to the proposed amendments, to John H. Artichoker, Area Director, Phoenix Area Office, P.O. Box 7007, Phoenix, Arizona 85011, on or before February 10, 1977.

CHARLES D. WORTHMAN,
Assistant Area Director.

[FR Doc.77-1457 Filed 1-17-77;8:45 am]

DEPARTMENT OF LABOR

Assistant Secretary for Labor-Management Relations Office of Labor-Management Relations Services

[29 CFR Part 215]

URBAN MASS TRANSPORTATION ACT OF 1964

Proposed Guidelines

Section 13(c) of the Urban Mass Transportation Act provides, in general, it shall be a condition of any federal financial assistance by the Department of Transportation to states other than local public bodies in financing mass transportation systems, that fair and equitable arrangements must be made, as determined by the Secretary of Labor, to protect the interests of employees affected by such assistance. In conjunction with the Secretary of Labor's role in making such determinations, it is, therefore, the purpose of these proposed guidelines to provide information concerning the Department of Labor's administrative procedures in processing applications for assistance under the Urban Mass Transportation Act, and certification by the Secretary of Labor

of acceptable employee protective arrangements.

Interested persons are accorded until on or before March 4, 1977, to offer data, views or comments addressed to the Assistant Secretary of Labor for Labor-Management Relations United States Department of Labor. New Department of Labor Building, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Any comments received by interested parties will be available for public inspection during normal working hours in Room N-5641, New Department of Labor Building at the same address.

Accordingly, it is proposed to amend 29 CFR Chapter 2, by adding a new Part 215 to read as follows:

PART 215—GUIDELINES, SECTION 13(c), URBAN MASS TRANSPORTATION ACT OF 1964, AS AMENDED

Sec.
215.1 Purpose statement.
215.2 General.
215.3 Employees represented by a labor organization.
215.4 Employees not represented by a labor organization.
215.5 Processing of amendatory applications.
215.6 Recertifications based on existing agreements.
215.7 Department of Labor contact.

AUTHORITY: Secretary's Order No. 11-72, May 12, 1972.

§ 215.1 Purpose statement.

(a) The purpose of these guidelines is to provide information concerning the Department of Labor's administrative procedures in processing applications for assistance under the Urban Mass Transportation Act of 1964, as amended (hereinafter "the Act").

(b) Section 13(c) of the Act reads as follows:

It shall be a condition of any assistance under section 3 of this Act that fair and equitable arrangements are made, as determined by the Secretary of Labor, to protect the interests of employees affected by such assistance. Such protective arrangements shall include, without being limited to, such provisions as may be necessary for (1) The preservation of rights, privileges, and benefits (including continuation of pension rights and benefits) under existing collective bargaining agreements or otherwise; (2) The continuation of collective bargaining rights; (3) The protection of individual employees against a worsening of their positions with respect to their employment; (4) Assurances of employment to employees of acquired mass transportation systems and priority of reemployment of employees terminated or laid off; and (5) Paid training or retraining programs. Such arrangements shall include provisions protecting individual employees against a worsening of their positions with respect to their employment which shall in no event provide benefits less than those established pursuant to section 5(2)(f) of the Act of February 4, 1887 (24 Stat. 379, as amended). The contract for the granting of any such assistance shall specify the terms and conditions of the protective arrangements.

§ 215.2 General.

Upon receipt of copies of applications for Federal assistance subject to section 13(c), together with a request for the certification of employee protective arrangements from the Department of Transportation, the Department of Labor will process those applications, which may be in either preliminary or final form. To facilitate review, the section of the application dealing with labor and relocation should estimate the effects on mass transportation employees of urban mass transportation carriers of the contemplated Federal assistance including possible impact of the assistance upon existing collective bargaining agreements, employment rights, privileges and benefits (including pensions) and the continuation of collective bargaining rights. The application should identify the labor organization, if any, representing employees of urban mass transit carriers in the area of the proposed project and describe what steps, if any, have been taken to develop the required employee protections.

§ 215.3 Employees represented by a labor organization.

(a) If affected employees are represented by a labor organization it is expected that protective arrangements shall be the product of negotiation, pursuant to these guidelines.

(b) Upon receipt of an application involving affected employees represented by a labor organization, the Department of Labor will refer a copy of the application to that organization and notify the applicant of referral.

(c) Following referral and notification under paragraph (b), of this section, and subject to the exceptions defined in §§ 215.5 and 215.6, parties will be expected to engage in good faith efforts to reach mutually acceptable protective arrangements through negotiation.

(d) Provisions will be made for the setting of time limitations by the Secretary of Labor within which negotiations must be concluded. It is anticipated that time limits will be set, case by case, for all projects which the Secretary of Transportation indicates have a significant possibility of funding. Further, expedited processing will be given high priority projects, upon the Secretary of Labor's own initiative or on the request of the Secretary of Transportation.

(e) The Secretary of Labor will review negotiated protective arrangements. If an arrangement meets the requirements of section 13(c), the Secretary will so certify to the Urban Mass Transportation Administrator. If the arrangement is not in conformity with the provisions of section 13(c), the Secretary may grant parties additional time to negotiate a satisfactory agreement, or he may set forth the provisions of the protective arrangement himself.

(f) If the parties are unable to reach agreement within the time period specified pursuant to paragraph (d) of this section, the Secretary will review the positions of the parties to determine appropriate action. If it is determined that the parties cannot reach agreement, he will advise them of the protective terms and conditions upon which he intends to base the certification. If the Secretary determines that the applicant has not negotiated in good faith he will refuse to certify.

§ 215.4 Employees not represented by a labor organization.

(a) The certification made by the Secretary will afford the same level of protection to those employees who are not represented by labor organizations.

(b) If there is no labor organization representing employees, the Secretary will set forth the protective terms and conditions in his letter of certification.

§ 215.5 Processing of amendatory applications.

When an application is supplemental to or revises or amends in immaterial respects an application for which the Department of Labor has already certified that fair and equitable arrangements have been made to protect the interests of mass transit employees affected by the subject project, and absent unusual circumstances, the Department of Labor will on its own initiative apply to the supplemental or other amendatory application the same terms and conditions as were certified for the subject project as originally constituted. The Department of Labor's processing of these applications will be expedited.

§ 215.66 Recertificationns based on existing agreements.

When the Department of Labor receives a certification request for a grant application which is identified as being in a category of recurring grants, as set forth below, and when the applicant has an existing section 13(c) arrangement for a previous grant in that category, the Department of Labor will notify the parties of its receipt of the application and its intent to certify the new project on the basis of the previously developed section 13(c) arrangement unless within 30 days from that notification a party objects in writing to certification on that basis. Upon receipt of any objection the Secretary of Labor will review the objection to determine appropriate action to take in future processing of the certification request. This procedure will apply to the following categories of grants:

(a) Capital grants for purchase or renovation of vehicles (including buses, railcars, or other vehicles) based on a normal equipment replacement or maintenance cycle, not resulting in a contraction of service levels;

(b) Capital grants for refurbishing of rights-of-way, buildings, or other real property where the activity is closely similar to that carried out over a period of years;

(c) Grants pursuant to specified multi-year programs of identifiable projects;

(d) Other categories to be determined by the Secretary of Labor.

§ 215.7 Department of Labor contact.

Questions concerning the subject matter covered by these guidelines should be addressed to the Division of Employee Protections, Labor-Management Services Administration, U.S. Department of Labor, Room N-5641, 200 Constitution Avenue, NW, Washington, D.C. 20210; phone number (202) 523-6495.

Signed at Washington, D.C. this 13th day of January, 1977.

BERNARD E. DELURY,
Assistant Secretary for Labor-Management Relations.

[FR Doc.77-1517 Filed 1-17-77;8:45 am]

DEPARTMENT OF THE INTERIOR

Geological Survey

[30 CFR Part 251]

GEOLOGICAL AND GEOPHYSICAL EXPLORATION PERMIT

Submission of Data

Notice is hereby given that, pursuant to the authority vested in the Secretary of the Interior by the Outer Continental Shelf Lands Act of August 7, 1953, 67 Stat. 462, 43 U.S.C. 1331-1343, the Department of the Interior proposes the following changes in Title 30, Code of Federal Regulations Part 251.

Part 251 provides for the issuance of geological and geophysical exploration permits on the Outer Continental Shelf (OCS). As promulgated (41 FR 25891, June 23, 1976), the regulations provided for the submission of permit data for inspection by the Supervisor at his request. The submission of volumes of geophysical data which the Supervisor ultimately concludes are not to be selected, but which are subject to the reimbursement provisions for reproduction costs, has proven burdensome to Geological Survey and objectionable to the geophysical exploration industry.

This amendment proposes to resolve this problem by providing that submission of data to the Supervisor prior to its selection will occur only when mutually agreeable, and that the Supervisor will rely more on inspection on the permittee's premises. This amendment should end industry's suspicion that submitted data are used, not just inspected for quality and suitability, and returned without being subject to the provisions for reimbursement of processing and reprocessing costs. This amendment makes no change in the requirements for submission of data upon their selection by the Supervisor.

The Department is now revising and simplifying the geophysical exploration permit form. In conjunction with this, certain provisions deleted from the permit should be elevated to the regulations. Among these are provisions proposed to be added to 30 CFR 251.13 and paragraph 9 below, 30 CFR 251.14(d).

The Department in this Notice also proposes to amend the definitions of "analyzed geological information" and "processed geophysical information" to include reference to data collected under a lease, so that the cross reference in 30 CFR 250.97 to definitions contained in section 251.3 is accurate.

In addition, the Department seeks, under proper circumstances, to allow geological and geophysical explortion for other commercial purposes not related to mineral development. Section 11 of the OCS Act, 43 U.S.C. 1340, requires geological and geophysical exploration of the OCS to be "authorized by the Secretary." By adopting regulations permitting only mineral exploration and scientific research, the Department did, but did not intend to, foreclose exploration permits in non-mineral commercial purposes. The proposed amendments remedy this.

This action does not require the drafting of an inflationary impact statement under the mandate of Executive Order No. 11821, 39 FR 41501 (1974). Departmental review under the criteria set forth in OMB Circular A-107 and the Department's memorandum on E.O. 11821 (revised October 7, 1975), indicates that the proposal does not invoke this impact statement requirement.

This action does not constitute a "major federal action significantly affecting the quality of the human environment within the meaning of section 102(2(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C). These technical changes will not significantly alter the environmental effects of exploration under permits issued by the Department under the Outer Continental Shelf Lands Act, 43 U.S.C. 1331-1343. These impacts were discussed in the Impact Statement prepared prior to initial promulgation of these rules, Interior FES 76-23.

It is the policy of the Department of the Interior, whenever practicable, to afford the public on opportunity to participate in the rulemaking process. Interested parties may submit written comments, suggestions, or objections with respect to the proposed regulations to the Director, U.S. Geological Survey, National Center, Reston, Virginia 22092, on or before February 17, 1977.

Dated: January 11, 1977.

WILLIAM L. FISHER,
Assistant Secretary of the Interior.

1. Accordingly, it is proposed that the table of contents for Part 251 be amended by revising the entry for § 251.12 to read:

Sec.
251.12 Inspection, selection and submission of data and information.

§ 251.3 [Amended]

2. It is proposed to revise § 251.3(j) to read as follows:

• • • • • •

(j) *Geological exploration for mineral resources or other commercial purposes.* Any operation conducted on the Outer Continental Shelf which utilizes geological and geochemical techniques, including, but not limited to, core and test drilling, well logging techniques, and various bottom sampling methods, to produce data and information on mineral resources, including data and information in support of possible exploration and development activity, or for other commercial purposes. The term does not include exploration for scientific research.

• • • • • •

3. It is proposed to revise § 251.3(k) to read as follows:

• • • • • •

(k) *Geophysical exploration for mineral resources or other commercial purposes.* Any operation conducted on the Outer Continental Shelf which utilizes geophysical techniques, including, but not limited to, gravity, magnetic and various seismic methods, to produce data and information on mineral resources, including data and information in support of possible exploration and development activity, or for other commercial purposes. The term does not include exploration for scientific research.

• • • • • •

4. It is proposed that the first sentence of 30 CFR 251.3(p) be revised to read:

• • • • • •

(p) Data, collected under a permit (or, for the purposes of § 250.97 of this chapter, under a lease), which have been analyzed. • • •

• • • • • •

5. It is proposed that the first sentence of 30 CFR 251.3(q) be revised to read:

• • • • • •

(q) Data, collected under a permit (or, for the purposes of § 250.97 of this chapter, under a lease), which have been processed. • • •

• • • • • •

§ 251.12 [Amended]

6. It is proposed that the following modifications be made in 30 CFR 251.12:

A. That the section title be revised to read:

§ 251.12 Inspection, selection and submission of data and information.

B. That the heading of paragraph (b) be revised to read:

(b) *Inspection, selection and submission of geophysical data and processed geophysical information.* • • •

C. That the second and third sentences of paragraph (b)(2) be revised to read:

(b) • • •

(2) • • • This inspection may be performed on the permittee's premises or, at the request of the Supervisor, the permittee may agree to submit the geophysical data, processed geophysical information or reprocessed geophysical information to the Supervisor for inspection. The permittee may either submit the requested material within 30 days of receipt of the Supervisor's request or immediately notify the Supervisor of his objection to submission of any or all of the material for inspection. • • •

• • • • • •

D. That the introductory portion of paragraph (b)(4) before paragraph (b)(4)(i) be revised to read:

• • • • • •

(b) • • •

(4) The right of inspection and each submission shall include, at the direction of the Supervisor, all or any part of the following: • • •

§ 251.13 [Amended]

7. It is proposed that § 251.13(b) be revised to read:

• • • • •

(b) *Reimbursement for processing and reprocessing costs.* After the Supervisor selects processed and reprocessed geophysical information by written notice to the permittee or third party in accordance with § 251.12(b)(2), the permittee or third party shall be reimbursed for not more than one-half of the cost attributable to processing and reprocessing only, as distinguished from the cost of data acquisition. Reimbursement will be for the amount attributable to processing and reprocessing costs of the lowest rate at which the processed geophysical information is made available by the permittee or third party, but in no case shall reimbursement be more than one-half of the processing and reprocessing cost incurred by the permittee or the third party. When in the exercise of his discretion, the Supervisor so directs, the permittee or third party shall refund to the United States any amount by which the lowest share of the total processing and reprocessing cost is reduced following reimbursement to the permittee or third party by the United States.

• • • • •

8. It is proposed to revise 30 CFR 251.13(c) to read as follows:

• • • • •

(c) *Procedures for establishing amount of reimbursement.* Requests for reimbursement will contain a cost breakdown in sufficient detail to allow separation of processing and reprocessing from acquisition costs. Any reimbursement to a permittee or third party shall be conditioned upon a determination by the Supervisor that the request for reimbursement as originally submitted or as revised is proper.

• • • • •

§ 251.14 [Amended]

9. It is proposed that § 251.14 be amended by the addition of a paragraph (d) to read as follows:

• • • • •

(d) *Disclosure to independent contractors.* The Government reserves the right to disclose any data or information acquired from a permittee to an independent contractor or agent for the purpose of processing, reprocessing or interpretation.

§ 251.16 [Amended]

10. It is proposed to amend 30 CFR 251.16 by the addition of the words "or other commercial purposes" after "mineral resources" and before "and exploration".

[FR Doc.77-1370 Filed 1-17-77;8:45 am]

RENEGOTIATION BOARD

[32 CFR Part 1482]

MEETINGS; PUBLIC NOTICE AND OBSERVATION

Proposed Implementation of Government in Sunshine Act

Notice is hereby given that the Renegotiation Board proposes to amend 32 CFR by adopting a new Part 1482 to implement the provisions of the Government in the Sunshine Act (Pub. L. 94-409, 90 Stat. 1241).

The Government in the Sunshine Act is intended to provide the public with the fullest practicable information regarding the decisionmaking processes of the Federal Government while protecting the rights of individuals and the ability of the Government to carry out its responsibilities. Section 3 of the act requires that certain agencies, including the Renegotiation Board, adopt regulations generally providing for public announcements of their meetings, public attendance at such meetings unless exempt under the statute, and, if a meeting is closed, public access to a transcript or recording of the nonexempt portions of such meeting. The proposed Part 1482 is intended to comply with these requirements.

The proposed § 1482.1 would state the scope of Part 1482 and would provide that it applies to all meetings of the Board, and to all meetings of divisions of the Board composed of two or more members, and that the Board members shall not jointly conduct or dispose of official agency business except in accordance with the rules set forth therein. Paragraph (c) would make it clear that access to documents is governed by Part 1480 and not by the proposed Part 1482.

The proposed § 1482.2 would contain definitions applicable to Part 1482. Paragraph (e) would define the term "meeting" broadly to include not only all meetings of a majority of the Board, but also all meetings of a majority of the members of a division but not less than two, at which deliberations are undertaken which determine or result in the joint conduct or disposition of official business. Excepted from such definition would be meetings to consider closing another meeting to the public; meetings to establish or change the time, date or subject matter of another meeting; and actions taken by the Board through written notations which do not involve any gathering at all.

The proposed § 1482.3 would provide for the issuance of public announcements of the time, place and subject matter of meetings, and whether they will be open to public observation. Generally, such public announcements would be made at least seven days before such a meeting. Under certain circumstances, meetings could be held sooner or certain exempt information could be omitted from a public announcement. Public announcements would be made available for public inspection and copying in the Board's Public Information Office and, thereafter, submitted for publication in the FEDERAL REGISTER.

The proposed § 1482.4 would require that all covered meetings be open to public observation unless they are within one or more of the ten specific exemptions set forth in the Government in the Sunshine Act and paraphased in paragraph (b). Paragraph (c) would set forth in detail the procedures for closing a meeting. Paragraph (d) would permit any affected person to request that any meeting be closed to public observation. Paragraph (e) would make clear that "public observation" means the opportunity to see and hear Board proceedings but not to participate in or to record them.

The proposed § 1482.5 would require that every covered meeting, whether open or closed to public observation, be recorded and that such recordings, after excision of exempt matter from those of closed meetings, be made available for public review and copying. In addition, paragraph (c) would require that an index to such recordings be maintained and open to the public. Excisions would be made initially by the Assistant General Counsel-Secretary and, upon the request of any person, subject to review by the Board. Fees for copies of tapes would be limited to the actual cost of duplication.

Interested persons may participate in the proposed rulemaking through submission of written comments pertaining to these proposed regulations. Comments received by the Board before February 21, 1977 will be considered by the Board before taking final action. Such comments should be addressed to the General Counsel, Renegotiation Board, Washington, D.C. 20446.

Written material and comments submitted will be available for public inspection during regular business hours in the Board's Public Information Office, 2000 M Street, NW., Washington, D.C.

The Renegotiation Board has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107.

Dated: January 13, 1977.

REX M. MATTINGLY,
Acting Chairman.

32 CFR Chapter XIV is amended by adding a new Part 1482, reading as follows:

PART 1482—PUBLIC NOTICE AND OBSERVATION OF MEETINGS

Sec.

1482.1 Scope.
1482.2 Definitions.
1482.3 Public announcement of meetings.
1482.4 Public observation of meetings.
1482.5 Recordings of meetings.

AUTHORITY: Sec. 109, Pub. L. 9, 82nd Cong., 65 Stat. 22 (50 U.S.C.A. App. 1219); sec. 3, Pub. L. 94-409, 90 Stat 1241 (5 U.S.C. 552b).

§ 1482.1 Scope.

(a) *In general.* This part implements the Government in the Sunshine Act (Pub. L. 94-409, 90 Stat. 1241). The regulations herein provide for public announcement of information concerning meetings of the Board, public observation of such meetings unless exempt from such observation by law, and public access to recordings of such meetings except to the extent that such recordings are of meetings or portions of meetings closed to public observation and the discussion thereon is exempt from disclosure by law.

(b) *Applicability.* This part applies to all meetings of the Board and all meetings of divisions of the Board which are composed of two or more members. The members of the Board shall not jointly conduct or dispose of official agency business other than in accordance with this part.

(c) *Access to records.* Access to records, including those discussed, referred to or adopted in a meeting to which this part is applicable, shall be governed exclusively by the provisions of Part 1480 of this subchapter.

§ 1482.2 Definitions.

(a) "Board" means the Renegotiation Board.

(b) "Division" means one or more members of the Board designated by the Chairman pursuant to section 107(e) of the act.

(c) "Member" means an individual who has been appointed to the Board.

(d) "General Counsel" means the General Counsel of the Board appointed pursuant to section 107(c) of the act or, in his absence, the Acting General Counsel.

(e) "Meeting" means the deliberations of at least the number of members required to take action on behalf of the Board, or the deliberations of at least the number of members of a division required to take action on behalf of the division but not less than two, where such deliberations determine or result in the joint conduct or disposition of official business, but does not include deliberations for the purpose of closing a meeting or portion thereof to public observation under § 1482.4, deliberations for the purpose of establishing or changing the time, place or subject matter of a meeting under § 1482.3, or actions taken by the Board or a division through sequential, written notation of its members.

(f) "Earliest practicable time" means as soon as reasonably possible which, except in unusual circumstances, will be not later than the close of the next day which is not a Saturday, Sunday or legal holiday.

§ 1482.3 Public announcement of meetings.

(a) *In general.* A public announcement, in the form prescribed in paragraph (c) of this section, will be posted at least seven calendar days in advance of each meeting except that if a majority of the Board determines by recorded vote that agency business requires that such meeting be called at an earlier date, such public announcement will be posted at the earliest practicable time.

(b) *Changes in public announcements.* The time and place of a meeting may be changed following its public announcement only if the Board posts a public announcement of such change at the earliest practicable time. The subject matter of a meeting or the determination to open or close a meeting or portion thereof to public observation may be changed only if:

(1) A majority of the Board determines by recorded vote that that agency business so requires and that no earlier announcement of the change was possible; and

(2) A public announcement of such change, and the vote of each member thereon, is posted at the earliest practicable time.

(c) *Contents of public announcements.* Each public announcement of a meeting required by paragraphs (a) and (b) of this section shall state:

(1) The time and place of the meeting;

(2) The subject matter of the meeting;

(3) Whether the meeting will be open or closed to public observation; and

(4) The name, address and telephone number of the official designated to respond to requests for information concerning the meeting;

except that, with respect to a meeting or portion thereof which is to be closed to public observation under § 1482.4, to the extent that any information required to be stated in a public announcement by this paragraph is exempt from disclosure under the provisions of § 1482.4(b), such information will not be included in a public announcement.

(d) *Posting.* A public announcement required under this section shall be posted by making it available for public inspection and copying during the usual hours of business in the Public Information Office at the principal office of the Board. See § 1472.6 (d)(1) and (e)(2). Immediately following its posting, such public announcement shall be submitted for publication in the FEDERAL REGISTER.

§ 1482.4 Public observation of meetings.

(a) *In general.* Except as provided in paragraph (b) of this section, every meeting shall be open to public observation.

(b) *Exemptions.* Meetings or portions of meetings will be closed to public observation, and information concerning such meetings or such portions will not be announced to the public, if the Board determines that public observation of such meeting or such portion, or public announcement of such information, is likely to:

(1) Disclose matters that are:

(i) Specifically authorized under criteria established by an Executive Order to be kept secret in the interests of national defense or foreign policy; and

(ii) In fact properly classified pursuant to such Executive Order;

(2) Relate solely to internal personnel rules and practices of the Board;

(3) Disclose matters specifically exempted from disclosure by statute (other than 5 U.S.C. 552), provided that such statute:

(i) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or

(ii) Establishes particular criteria for withholding or refers to particular types of matters to be withheld.

(4) Disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Involve accusing any person of a crime, or formally censuring any person;

(6) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(7) Disclose investigatory records compiled for law enforcement purposes, or information which if written would be contained in such records, but only to the extent that the production of such records or information would:

(i) Interfere with enforcement proceedings,

(ii) Deprive a person of a right to a fair trial or an impartial adjudication,

(iii) Constitute an unwarranted invasion of personal privacy,

(iv) Disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source,

(v) Disclose investigative techniques and procedures, or

(vi) Endanger the life or physical safety of law enforcement personnel;

(8) Disclose information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions.

(9) Disclose information the premature disclosure of which would:

(i) In the case of an agency which regulates currencies, securities, commodities, or financial institutions, be likely to

(A) Lead to significant financial speculation in currencies, securities, or the commodities, or

(B) Significantly endanger the stability of any financial institution or

(ii) In the case of any agency, be likely to frustrate implementation of a proposed agency action, except that subparagraph (ii) shall not apply in any instance where the agency has already disclosed to the public the content or nature of its proposed action, or where the agency is required by law to make such disclosure on its own initiative prior to taking final agency action on such proposal; or

(10) Specifically concern the Board's participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct, or disposition by the Board of a particular case of formal

agency adjudication involving a determination on the record after opportunity for a hearing: *Provided*, That the Board may open to public observation any meeting to which this paragraph applies if it determines that the public interest so requires. In making a determination that the public interest requires public observation of a meeting, the Board shall consider the probable effect of such public observation on the Board's ability to carry out the purposes and intent of the act and on the rights, duties and interests of affected persons, including other agencies, employees and contractors, and whether such public observation would violate any applicable provision of law, such as 5 U.S.C. 552a, 18 U.S.C. 1905 or 26 U.S.C. 7213.

(c) *Procedures.* (1) Upon the motion of any member of the Board to close any meeting or portion thereof to public observation,

(i) The General Counsel shall certify whether, in his opinion, such meeting or such portion may be closed to public observation under one or more of the exemptions set forth in paragraph (b) of this section and

(ii) The Board shall vote upon such motion.

(2) Within one business day following a vote under subparagraph (1) of this paragraph, a written record of such vote, reflecting the vote of each member and attaching the General Counsel's certification, shall be posted.

(3) If the vote of the Board under subparagraph (1) of this paragraph is to close such meeting or such portion to public observation, within one business day following such vote a full written explanation of the Board's action, together with a list of all persons expected to attend such meeting or such portion and their affiliation shall be posted.

(4) At the earliest practicable time following a meeting any portion of which is closed to public observation pursuant to this paragraph, the presiding member shall file a statement setting forth the time and place of such meeting and the persons present, which shall be posted.

(5) For the purposes of this paragraph, posting a document shall consist of making such document available for public inspection and copying during usual hours of business in the Public Information Office at the principal office of the Board. See § 1472.6(d) (1) and (e) (2) of this subchapter.

(6) With respect to any meeting or portion of a meeting closed to public observation pursuant to this section, if the Board determines that any information contained in any of the documents required to be posted pursuant to subparagraphs (1) through (4) of this paragraph is exempt from public disclosure under paragraph (b) of this section, such information shall be deleted from the copies of such documents that are posted; *Provided, however*, That undeleted copies of such documents shall be retained by the Board in its files.

(d) *Requests to close meetings.* Any person who believes that his interests may be directly affected by public observation of a meeting or portion of a meeting may request that such meeting or such portion be closed to such public observation for any of the reasons set forth in paragraph (b) of this section. Such requests shall be filed with the Assistant General Counsel-Secretary at the principal office of the Board, who shall distribute copies of such request to each member at the earliest practicable time. See § 1472.6 (d) (1) and (e) (2). Action on such request, if any, shall thereafter be taken in accordance with the procedure set forth in paragraph (c) of this section.

(e) *Public observation.* Unless otherwise stated in a public announcement made pursuant to § 1482.3 (a) or (b) of this subchapter, public observation of a meeting shall mean that all members of the public are invited to attend such meeting for the purposes of observing and listening to the proceedings but not for the purposes of participating in or recording, whether electronically, photographically or otherwise, such proceedings.

§ 1482.5 Recordings of Meetings.

(a) *In general.* Recordings of every meeting, whether open or closed to public observation under § 1482.4 of this subchapter, shall be made and retained. Each such recording shall accurately identify the meeting to which it relates, each speaker thereat and each document or physical item discussed thereat.

(b) *Excision of recordings of closed meetings.* The Assistant General Counsel-Secretary or his duly appointed representative shall prepare a copy of the recording of each meeting or portion thereof closed to public observation pursuant to § 1482.4 of this subchapter and shall excise therefrom all discussion which, in his opinion, is exempt from public disclosure under paragraph (b) of such section. The original recording of each such meeting or portion shall be retained by him.

(c) *Public access to recordings.* The recording of each meeting or portion thereof which is open to public observation and the copy of the recording of each meeting or portion thereof which is closed to public observation, after excision in accordance with paragraph (b) of this section, together with an index of the subject matter thereon and suitable equipment for the review of such recordings and copies, shall be available to the public during the usual hours of business in the Public Information Office at the principal office of the Board. See § 1472.6(d) (1) and (e) (2) of this subchapter.

(d) *Procedure for obtaining copies of recordings.* (1) Any person desiring a copy of any recording available to the public under the preceding paragraph shall submit a written request therefor, stating that it is made pursuant to the Government in the Sunshine Act and describing such recording with sufficient particularity to permit its identification with reasonable certainty. All requests should be addressed to the Assistant General Counsel-Secretary, Renegotiation Board, Washington, D.C. 20446. The envelope in which such request is sent shall be prominently marked with the letters "GISA."

(2) The Assistant General Counsel-Secretary or, in his absence, his duly appointed representative, shall furnish the requested copies within ten days (excluding Saturdays, Sundays and legal holidays) after the receipt of a request under this paragraph.

(e) *Review of excisions.* Any person who has been afforded access to a copy of a recording of a closed meeting under paragraph (c) of this section or who has received a copy of such a recording under paragraph (d) of this section may obtain review by the Board of the decision of the Assistant General Counsel-Secretary excising portions of such recordings under paragraph (b) of this section by making written application to the Renegotiation Board, Washington, D.C. 20446, within 20 calendar days after the date of such access or receipt of such copy. The decisions of the Board shall be made within 20 days (excluding Saturdays, Sundays and legal holidays) after the receipt of such application. Failure of the Board to act within the time limit prescribed in the preceding sentence shall constitute a decision of the Board not to furnish the excised discussion to the requester.

(f) *Fees.* (1) The charge for furnishing a copy of a recording under paragraph (d) of this section shall be the actual cost of its duplication.

(2) Where it is anticipated that the fees chargeable under this section will amount to more than $25, and the requester has not indicated in advance his willingness to pay fees as high as anticipated, the requester shall be notified of the amount of the anticipated fee. Such notification shall be transmitted as soon as possible, but in any event within five working days, giving the best estimate then available. In such cases, a request will not be deemed to have been received until the requester is notified of the anticipated cost and agrees to bear it.

(3) Where the anticipated fee exceeds $25 or where a requester has previously failed to pay a fee under this paragraph, an advance deposit of the full amount of the anticipated fee may be required. In any case requiring a deposit, the request will not be deemed to be received until receipt of such deposit.

(4) Remittances of fees under this paragraph shall be made payable to the order of the Renegotiation Board and mailed to the Renegotiation Board, Attention: Director, Office of Administration, Washington, D.C. 20446. The Board will assume no responsibility for cash which is lost in the mail.

(5) The Board shall waive any fee prescribed in this paragraph in any instance in which the Board, in its discretion, determines such waiver to primarily benefit the general public. There will be no charge for making copies of recordings required for use by other agencies of the Government.

(g) *Period of retention.* A recording made and maintained under paragraphs (a) or (b) of this section shall be retained for a period of not less than two years after the meeting or one year after the conclusion of any Board proceeding with respect to which the meeting was held, whichever is longer.

[FR Doc.77-1510 Filed 1-17-77;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of the Secretary

[45 CFR Subtitle A]

PUBLIC ATTENDANCE AT ADJUDICATIVE HEARINGS

Advance Notice of Proposed Rulemaking

The Secretary of the Department of Health, Education, and Welfare has determined that the Department should adopt a uniform policy with respect to public attedance at adjudicative hearings and has sent the following memorandum to the heads of the principal operating components of the Department directing that regulatory amendments be prepared to effect such a policy. Interested persons are invited to comment on the policy and to participate in the development of regulations by submitting such written data, views or arguments as they may desire. All communications should be addressed to the Director, Office of Regulatory Review, Department of Health, Education, and Welfare, Room 730–E, South Portal Building, 200 Independence Avenue, SW., Washington, D.C. 20201.

Written comments and information may be submitted in any form such as by means of letters, position papers, or memoranda. There are no special rules concerning format. However, to assure full consideration, all written comments should be submitted on or before March 21, 1977. Comments received in response to this Notice will be available for public inspection in Room 730–E, South Portal Building, 200 Independence Avenue, SW., Washington, D.C. 20201.

Dated: December 21, 1976.

DAVID MATHEWS,
Secretary.

To: Heads of Principal Operating Components, Assistant Secretary for Administration and Management, Director, Office for Civil Rights, Chairman, Grant Appeals Board.
From: Secretary.
Subject: Public Attendance at Adjudicative Hearings.

DECEMBER 21, 1976.

It has recently come to my attention that the Department has no uniform policy, and has a diversity of practice, concerning the admission of the general public to adjudicative hearings. It also appears to me that at least some of the regulations of the operating components dealing with this subject are more restrictive than they need or should be. For these reasons, I have determined that the Department should have a uniform policy permitting public attendance at adjudicative hearings unless such attendance would be inconsistent with our obligation not to disclose personal and private information, trade secrets or other information made confidential by law.

To implement the new policy, each component of the Department that conducts adjudicative hearings should prepare and submit for my approval amendments to such regulations in a form consistent with the model regulatory provision attached to this memorandum. If for any reason such an amendment is inappropriate for a particular program, the program administrator should submit to me in writing a full explanation in support of his request that he be allowed to deviate from the general policy.

The regulation amendments as well as any explanations why such amendments should not be adopted should be submitted to me no later than March 21, 1977.

Attachment.

MODEL REGULATORY PROVISION FOR PUBLIC ATTENDANCE AT ADJUDICATIVE HEARINGS

§ ------ Public attendance.

(a) Except as provided in paragraph (b) of this section, all [adjudicative[1]] hearings shall be open for attendance by the public.

(b) The presiding officer shall, on his own motion or on that of any party, close to the public any hearing or portion of a hearing at which evidence is to be offered or matters discussed which—

(1) Are of a personal nature and disclosure would constitute a clearly unwarranted invasion of personal privacy;

(2) Are trade secrets or consist of other commercial or financial information of a privileged or confidential nature; or

(3) Are such that disclosure would violate any provision of law.

[FR Doc.77-1594 Filed 1-17-77;8:45 am]

Social and Rehabilitation Service

[45 CFR Part 249]

MEDICAL ASSISTANCE PROGRAM

Intermediate Care Facilities—Institutions for the Mentally Retarded

Notice is hereby given that the regulations set forth in tentative form below are proposed by the Administrator, Social and Rehabilitation Service, with the approval of the Secretary of Health, Education, and Welfare. The purpose of these regulations is to modify certain Federal requirements which become effective on March 18, 1977, and to extend the period allowed under current regulations for compliance with certain selected standards. These regulations will apply to institutions for the mentally retarded certified on or before March 18, 1977, as Intermediate Care Facilities under the Medicaid program (title XIX, Social Security Act) and participating under an approved plan of compliance provided for under 45 CFR 249.33(a) (8). Facilities (or distinct parts thereof) entering the program after March 18, 1977, would be subject to the current provisions for full compliance under 45 CFR 249.12(c) (6) or certification with deficiencies under the provisions of 45 CFR 249.33(a) (4).

[1] The context provided by the procedural regulations in which this section would be inserted may make it unnecessary to describe the hearings as "adjudicative." On the other hand, some other qualifying adjective may be appropriate.

With the adoption of the intermediate care facility program under title XIX, Social Security Act, effective on March 18, 1974, the Department established standards applicable to institutions for the mentally retarded which provided that all such institutions participating under the title XIX program as providers of intermediate care would be required to be in compliance with Federal standards established under 45 CFR 249.13 effective March 18, 1977. To achieve this purpose, provisions were made to allow institutions for the mentally retarded to initially participate under the program provided that such facilities submitted a plan of compliance, approved by the Secretary, for achieving conformity with the standards specified in 45 CFR 249.13 no later than March 18, 1977.

A Departmental study completed in June of 1976 by the Office of Long Term Care of the status and progress of facility efforts to meet the March 18, 1977, deadline indicated that only 35% of the State-owned facilities were expected to be in full compliance by the deadline. The shortage of available State funds to make the required changes and renovations to meet Federal requirements with respect to the Life Safety Code and physical environment was identified as the major obstacle in achieving full compliance. Staffing was also identified as an area in which States needed more time because of the shortage of qualified personnel.

These problems were of sufficient significance that they became very clear to the Department both through reports and inquiries from State and local agencies and through contacts from the New Coalition, an organization consisting of the National Association of Counties, the National Governors' Conference and the National Conference of State Legislators. These groups reiterated to the Department the difficulties in meeting certain aspects of the existing regulations; they emphasized that it would be impossible for all State-owned facilities to comply in full by the specified date. A special problem existed in some States that were attempting to phase out certain facilities and place the residents in alternative care settings. These States would have been forced to spend funds on renovating those facilities in order to continue to receive Federal Medicaid matching funds. Recognizing the validity of these concerns, the Department initiated intensive discussions with the New Coalition, National Association of Retarded Citizens, Epilepsy Foundation, Cerebral Palsy Association, and the National Association of Coordinators of State Programs for the Mentally Retarded, Inc. These discussions culminated in specific recommendations made to the Department by the New Coalition, and a Departmental response indicating a willingness to make certain regulatory changes in response to their legitimate concerns. Accordingly, this Notice of Proposed Rule Making specifies such changes, which the Department also believes maintain the necessary program quality.

Under the proposal, the Department purposes to maintain in principle the March 18, 1977, compliance date for facilities providing services to the mentally retarded which were certified prior to that date. However, in the case of an individual facility which will not meet the Federal requirements for staffing, Life Safety Code, and certain physical environmental standards by the deadline date, continued Medicaid participation will be allowed provided that the health and safety of the residents in the facility will not be jeopardized by a delay in achieving compliance with those requirements.

Under these proposed regulations, facilities may be granted up to one additional year to correct deficiencies in staffing on the basis of a written plan, approved by the Secretary or his designee, which establishes a timetable of corrective action to achieve full compliance with Federal staffing requirements within one year. Similarly, provided that the facility is found in compliance with existing State fire safety and sanitation requirements, the facility may be granted up to March 18, 1980, to correct deficiencies in requirements for the Life Safety Code, living units, dining rooms, and therapy areas. Such facilities may be recognized for purposes of certification based upon a written plan, approved by the Secretary or his designee, which establishes a timetable for correcting deficiencies in, or phase-out of, buildings which will assure a facility's full compliance with Federal Life Safety Code and physical environment requirements by March 18, 1980.

The proposed regulation would also:

Modify current requirements for application of the Rooming House section of the residential occupancy section of the Life Safety Code in facilities of 15 beds or less to permit mobile nonambulatory as well as ambulatory residents to be housed in these buildings rather than in large institutions as part of the normalization and deinstitutionalization process. In addition, the Federal requirement with respect to resident actions for self-preservation has been modified to provide some flexibility of the residential occupancy code in housing arrangements for the mentally retarded population by providing for the application of the residential occupancy code in facilities of fifteen beds or less where the Secretary or his designee has determined, in the case of residents who ar not capable of self-preservation, that the facility has procedures which assure the orderly evacuation of each resident.

Expand the definition of "Qualified Mental Retardation Professional" to include a certified rehabilitation counselor in order to recognize and specifically provide for inclusion of a category which by professional training and experience would be qualified in the area of mental retardation.

Clarify the effective date of the Federal standards under 45 CFR 249.13 and correct the citations of the cross-referenced requirements under 45 CFR 249.12. The cross-referenced requirements omit, due to a technical error, current provisions for patient rights.

Modify requirements with respect to the maximum number of residents per bedroom, to recognize and allow for a variance which is in accordance with the programmatic needs of an individual. For purposes of survey and certification, the survey agency may grant a variance where the survey agency has established that a physician or qualified psychologist has documented in the resident's plan of care that such a variance is in accordance with the resident's programmatic needs.

Modify requirements for minimum bedroom floor space to provide some flexibility in the application of Federal requirements to existing buildings. The survey agency may grant a variance within certain limitations for ambulatory resident bedrooms where the survey agency has determined in accordance with Federal guidelines that such a variance does not adversely affect the programmatic needs of the resident.

These proposed amendments are intended to alleviate the serious difficulties some States are encountering in their efforts to meet the published requirements by the 1977 date, and thus to permit continued participation of facilities for a reasonable time while improvements are being made in order to avoid substantial disruption in the care, treatment, and living arrangements of the residents by having to move them to other certified facilities. Residents of the facilities will not be disadvantaged by the changes since the extended time may be granted only when an approved plan of correction is in effect and no harm will result to the individuals. The Department will monitor activities under each facility's plan to assure that adequate and timely progress is being made.

With respect to the time extension for staffing, one year is considered sufficient time for a facility to recruit the necessary staff and also is the maximum period that a facility should attempt to provide the required "active treatment" short of a full complement of staff. The Department believes a longer period could result in harm to the residents or at least deter their progress toward maximum normal functioning. With respect to structural changes, however, it is recognized that a longer period may be necessary to plan and carry out building modifications or to complete a satisfactory building phase-out plan. Thus three years is considered reasonable in this instance based upon the Department's study and review of the State's progress toward compliance in these areas. Following the time periods which are being proposed for correction of staffing, Life Safety Code, and physical environment deficiencies, the facility must be found in compliance with the Federal standards and would not be eligible for further participation under the program in accordance with Federal prohibitions with respect to repeating deficiencies under 45 CFR 249.33(a)(4).

These special provisions for achieving full compliance with the staffing and structural requirements are applicable only to facilities which have been participating in the Medicaid program under approved plans of compliance in accordance with 45 CFR 249.33(a)(8). It is the Department's view that serious harm would be done both to the States which have been attempting to provide adequate care to their retarded populations, using State and Federal funds, and, more importantly, to the individuals involved who are now benefiting from participation in the Medicaid program, if there were a cutoff of Federal funds at this point. These facilities are already making progress toward compliance so that they can continue in the program and thus their termination would serve no real purpose and could result in very inadequate or no care for their residents.

The Department's current policies on the regulations process provided for publication of a "Notice of Intent" to develop regulations on which all interested persons may comment, and which would then be followed by a Notice of Proposed Rule Making (NPRM). In the case of these proposed amendments to the standards for mental retardation facilities, it has been determined that the "Notice of Intent" step should be omitted (and the regular 45-day comment period on NPRMs shortened) since the time remaining between publication of this NPRM and the effective date of the current regulations (March 18, 1977) does not allow for it. States must know before March 18, 1977, what specific Federal standards will be applied in determining the qualifications of facilities to participate in the Medicaid program for purposes of Federal matching.

Further, the Department believes that the purpose of the "Notice of Intent" process has been met in large measure by the extensive discussions already held on the proposed changes with representatives of both the State agencies and affected consumers. Meetings have been held with the National Governors' Conference, the National Association for Retarded Citizens, the President's Committee on Mental Retardation, and the National Association of Coordinators of State Programs for the Mentally Retarded which involved thorough consideration of the existing standards and possible modifications. Accordingly, this NPRM is being published without a preceding Notice of Intent so that a final decision on standards can be communicated to all affected parties before March 18, 1977.

Prior to the adoption of the proposed regulations, consideration will be given to written comments, suggestions, or objections thereto which are received by the Administrator, Social and Rehabilitation Service, Department of Health, Education, and Welfare, P.O. Box 2382, Washington, D.C. 20013, on or before February 17, 1977. In order to assure prompt handling of comments, please refer to MSA-194-P. Agencies and organizations are requested to submit their comments in duplicate.

Comments will be available for public inspection, beginning approximately two weeks after publication, in Room 5225 of the Department's offices at 330 C Street, SW., Washington, D.C., on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (202-245-0950). Answers to specific questions may be obtained by calling Robert Silva (202-245-0425).

(Sec. 1102, 45 Stat. 647 (42 U.S.C. 1302))

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program.)

NOTE.—The Social and Rehabilitation Service has determined that this document does not require preparation of an Inflationary Impact Statement under Executive Order 11821 and OMB Circular A-107.

Dated: January 12, 1977.

ROBERT FULTON,
Administrator, Social and Rehabilitation Service.

Approved: January 13, 1977.

MARJORIE LYNCH,
Acting Secretary.

Chapter II, Title 45, Code of Federal Regulations, is amended as set forth below:

1. Section 249.10 of Part 249 is amended by revising paragraph (b)(15)(i), as set forth below:

§ 249.10 Amount, duration, and scope of medical assistance.

* * * * *

(b) *Federal financial participation.* Subject to the limitations in paragraph (c) of this section, Federal financial participation is available in expenditures for medical or remedial care and services under the State plan which meet the following definitions: * * *

(15) *Intermediate care facility services (other than such services in an institution for tuberculosis or mental diseases) for individuals who are determined, in accordance with section 1902(a)(31)(A) of the Act, to be in need of such care.* Intermediate care facility services may include services in a public institution (or distinct part thereof) for the mentally retarded or persons with related conditions. (See paragraph (d)(1)(vi) of this section.) "Intermediate care facility services" means those items and services furnished by a facility which meets the following conditions: * * *

(i) * * *

(D) It meets the standards for an intermediate care facility specified by the Secretary under § 249.12, and in the case of an institution for the mentally retarded or persons with related conditions, also meets the standards specified under § 249.13; and no later than March 18, 1977; and

* * * * *

2. Section 249.12 of Part 249 is amended by revising paragraph (a)(5), adding new paragraph (c)(3)(ix), and revising paragraph (c)(6), as set forth below:

§ 249.12 Standards for intermediate care facilities.

(a) The standards for an intermediate care facility (as defined in § 249.10(b)(15) of this part) which are specified by the Secretary pursuant to section 1905(c) and (d) of the Social Security Act and are applicable to all intermediate care facilities are as follows. The facility: * * *

(5) Meets such provisions of the Life Safety Code of the National Fire Protection Association as are applicable to institutional occupancies; except that:

(i) For facilities of 15 beds or less, the State survey agency may apply the Lodging or Rooming Houses section of the residential occupancy requirements of the Code for institutions for the mentally retarded or persons with related conditions and intermediate care facilities primarily engaged in the treatment of alcoholism and drug abuse, all of whose residents are currently certified by a physician or in the case of an institution for the mentally retarded or persons with related conditions by a physician or psychologist as defined in paragraph (c)(3)(i) of this section, as:

(A) Ambulatory or mobile nonambulatory (as defined under the provisions of § 249.13(h) of this chapter) and determined to be capable of following directions;

(B) Engaged in active programs for rehabilitation which are designed to and can reasonably be expected to lead to independent living, or in the case of an institution for the mentally retarded or persons with related conditions, receiving active treatment; and

(C) Capable of taking appropriate action for self-preservation under emergency conditions; except that, in facilities with ambulatory and mobile nonambulatory residents who are not certified as capable of self-preservation, the Lodging or Rooming Houses section of the Code may be applied where the Secretary has made a determination, in writing based upon documented evidence, that the facility has in place an adequate 24-hour operational plan designed on the basis of the specific needs of such residents, which assures their systematic and orderly evacuation within acceptable time lengths and conditions.

* * * * *

(c) In addition, for institutions for the mentally retarded or persons with related conditions the following standards specified pursuant to section 1905(d) of the Social Security Act shall apply. * * *

(3) The institution provides for a Qualified Mental Retardation Professional who is responsible for supervising the implementation of each resident's individual plan of care, integrating the various aspects of the institution's program, recording each resident's progress and initiating periodic review of each individual plan of care for necessary modifications or adjustments. The term "Qualified Mental Retardation Professional" means: * * *

(ix) A rehabilitation counselor who is certified by the Committee on Rehabilitation Counselor Certification and who has specialized training or one-year of experience in treating the mentally retarded.

* * * * *

(6) No later than March 18, 1977 the institution meets the standards specified in § 249.13. For institutions determined to meet the standards specified in § 249.13, the following sections of paragraph (a) and (c) of this section do not apply: (a)(1)(i), (ii)(A), (iv), (v) and (vi); (a)(4); (a)(6); (a)(7); (a)(8); (c)(4); and (c)(5).

3. Section 249.13 of Part 249 is amended by revising the first sentence and paragraph (b)(6), as set forth below:

§ 249.13 Standards for intermediate care facility services in institutions for the mentally retarded or persons with related conditions.

No later than March 18, 1977, the standards for intermediate care facility services (as defined in § 249.10(b)(15)) in an institution for the mentally retarded or persons with related conditions which are specified by the Secretary pursuant to section 1905(c) and (d) of the Social Security Act and referred to in § 249.12(c)(6), are specified in this section. At such time as an institution is deemed to meet the standards contained in this section, such institution will no longer be required to meet the following provisions of § 249.12: (a)(1)(i), (ii)(A), (iv), (v) and (vi); (a)(4); (a)(6); (a)(7); (a)(8); (c)(4); and (c)(5).

* * * * *

(b) *Resident living.* * * *

(6) *Design and equipage of living units.* (i) Bedrooms shall:

(A) Be on or above street grade level;

(B) Be outside rooms;

(C) Accommodate no more than 4 residents, except where the survey agency has made a finding in writing that a variance (which in no case may exceed 8 residents per room) is in accordance with the programmatic needs of each of the residents assigned to such bedroom as documented by a physician or qualified psychologist, (as defined in § 249.12(c)(3)(i) of this chapter), in the individual resident's plan of care. In instances where such a variance has been granted rejustification of the variance by the survey agency must be established in writing on a quarterly basis and maintained on file for continued certification of the institution under the program; and

(D) Provide not less than 80 square feet per resident in multiple bedrooms and not less than 100 square feet per resident in single bedrooms, except that the survey agency may grant a variance in bedrooms for ambulatory residents in existing buildings where the survey agency has justified and documented, in accordance with guidelines issued by the Secretary, that such variance does not adversely affect the programmatic needs and goals of each specific resident and provided that such variance is within the following limitations:

(*1*) Not less than 60 square feet is provided per resident in multiple bedrooms, and

(2) Not less than 80 square feet is provided per resident in single bedrooms.

* * * * *

4. Section 249.33 of Part 249 is amended by revising paragraphs (a)(2) and (a)(4)(iii), as set forth below:

§ 249.33 Standards for payment for skilled nursing and intermediate care facility services.

(a) *State plan requirements.* A State plan for medical assistance under title XIX of the Social Security Act must:

* * *

(2) Provide that the single State agency will, prior to execution of an agreement with any facility (including hospitals and skilled nursing facilities) for provision of intermediate care facility services and making payments under the plan, obtain certification from the agency designated pursuant to § 250.100 (c) of this chapter that the facility meets the definition set forth under § 249.10(b)(15), except that: (i) In the case of an intermediate care facility determined to have deficiencies under the requirements for environment and sanitation (§ 249.12(a)(6)) or of the Life Safety Code (§ 249.12(a)(5)) it may be recognized for certification as an intermediate care facility in accordance with subparagraph (a)(4)(iii) of this section for a period not exceeding 2 years following the date of such determination provided that:

(A) The institution submits a written plan of correction acceptable to the survey agency which contains;

(*1*) The specific steps that it will take to meet all such requirements; and

(2) A timetable not exceeding 2 years from the date of the initial certification of the facility for participation as an intermediate care facility detailing the corrective steps to be taken and when correction of deficiencies will be accomplished;

(B) The survey agency makes a finding that the facility potentially can meet such requirements through the corrective steps and they can be completed during the 2 year allowable period of time;

(C) During the period allowed for corrections, the institution is in compliance with existing State fire safety and sanitation codes and regulations;

(D) The institution is surveyed by qualified personnel at least semiannually until corrections are completed and the survey agency finds on the basis of such surveys that the institution has in fact made substantial effort and progress in its plan of correction as evidenced by supporting documentation, signed contracts and/or work orders, and a written justification of such findings is maintained on file; and

(E) At the completion of the period allowed for corrections, the intermediate care facility is in full compliance with the Life Safety Code requirements set forth under §249.12(a)(5), and the requirements for environment and sanitation set forth under §249.12(a)(6), except for any provisions waived in accordance with §249.12; and

(ii) In the case of an institution for the mentally retarded (or distinct part thereof) certified under the program and participating under a plan approved by the Secretary prior to March 18, 1977 in accordance with the provisions of paragraph (a)(8) of this section and determined to have deficiencies under the requirements for staffing (§249.13(b)(5)), the Life Safety Code (§ 249.12(a)(5)); living units (§ 249.13(b)(6)(i)(A), (B), (D); (ii)(D); (iii), (iv), (v), (vii), (viii), (ix) and (xii)); dining rooms (§ 249.13(c)(4)(viii)); or therapy areas (§ 249.13(c)(8)(vi)), it may be recognized for certification as an intermediate care facility in accordance with paragraph (a)(4)(iii)(A) of this section, provided that:

(A) Prior to the certification, a written plan of correction has been approved in writing by the Secretary which details the extent of the institution's current compliance with such requirements and the specific action steps that it will take to meet all such requirements. Such plans must:

(*1*) In the case of public institutions be approved by the State or political subdivision having jurisdiction over the operation of the facility; and

(2) In the case of a facility determined to have deficiencies under the requirements for staffing (§ 249.13(b)(5)) establish a timetable not exceeding one year from effective date of certification after (publication of these regulations) for completion of necessary action steps for correction of staffing deficiencies. Such plan must include the number, job titles, and qualifications of personnel employed by the facility and arrangements for recruiting and training additionally required personnel sufficient to insure that each resident participates in an effective program of active treatment, and

(3) In the case of a facility determined to have deficiencies under the requirements for the Life Safety Code (§ 249.12(a)(5)), living units (§ 249.13(b)(6)(i)(A), (B), (D); (ii)(D); (iii), (iv), (v), (vii), (viii), (ix) and (xii)); and dining rooms (§ 249.13(c)(4)(viii)), or therapy areas (§ 249.13(c)(8)(vi)), provide assurance that the facility will meet such requirements during a period not to exceed March 18, 1980 by either:

(*i*) A timetable detailing the corrective steps to be taken and specifying when correction of deficiencies will be accomplished. The timetable must specify the necessary structural changes and renovations to buildings and provide documented evidence of the availability of sufficient financial resources to complete such changes or renovations on schedule; or

(*ii*) A timetable for the phasing out of the certified institution (or distinct part thereof) which provides for no new title XIX resident admissions to subject buildings (or distinct parts thereof) after approval of the plan. Such timetables must specify the units or buildings to be closed and describe the phase-out action steps and the alternate methods and systems provided in lieu of the full regulatory requirements which will assure the health and safety of the residents until the building is completely phased out.

(B) During the period allowed for correction, the institution is in compliance with applicable existing State fire safety and sanitation codes and regulations;

(C) The institution is surveyed by qualified personnel at least semi-annually until corrections or phasing-out under the provisions of paragraph (a)(2)(ii)(A) of this section are completed and the Secretary finds on the basis of such surveys as supported by documentation, signed contracts and work orders that the institution has in fact made substantial progress in meeting its plan for correction.

(D) At the completion of the period provided for under plans established under paragraph (a)(2)(ii)(A) of this section, the institution (or distinct part thereof) has achieved full compliance with such plans and is found in compliance with the requirements for staffing (§ 249.13(b)(5)), the Life Safety Code (§ 249.12(a)(5)), living units (§ 249.13(b)(6)(i)(A), (B), (D); (ii)(D); (iii), (iv), (v), (vii) and (viii)); dining rooms (§ 249.13(c)(4)(viii)) and therapy areas (§ 249.13(c)(8)(vi)); except for any provisions waived in accordance with § 249.12(a)(5), and § 249.13(f)(1)(iv) or granted a variance under § 249.13(b)(6)(i)(C) and (D).

* * * * *

(4) Provide that certification by the survey agency designated pursuant to § 250.100(c) of this chapter will be subject to the following provisions and exclusions: * * *

(iii) In the case of facilities certified under the provisions of paragraph (a)(4)(ii)(A) and (B) of this section certification will be for:

(A) A period that is no later than the 60th day following the end of the time period specified for the correction of deficiencies in a written plan which the survey agency has approved provided that such period shall not exceed 12 full calendar months except as provided for under paragraph (a)(2)(i) or (ii) of this section, or

* * * * *

[FR Doc.77-1595 Filed 1-17-77;8:45 am]

[45 CFR Part 250]

MEDICAL ASSISTANCE PROGRAM

Utilization Control: Quarterly Showing Regulation, Notice of Intent To Issue Proposed Rules

Notice is hereby given that the Administrator, Social and Rehabilitation Service (SRS), with the approval of the Secretary of Health, Education, and Welfare, intends to propose revised regulations implementing the quarterly showing requirement of section 1903(g) of the Social Security Act, 42 U.S.C. section 139b(g), which would supersede the current regulation at 45 CFR 250.20(b)(1). Section 1903(g) requires that each State participating in title XIX of the Social Security Act (Medicaid), in order to avoid a reduction in Federal financial participation (FFP) in its Medicaid program, make a quarterly showing satisfactory to the Secretary, that it has in operation an effective program of control over the utilization of institutional services (called in this Notice utilization control or UC).

SRS has found the current regulations unsatisfactory in that it does not give States clear notice of information they may be required to supply to make a satisfactory showing of performance of the UC requirements (subject to subsequent validation). Therefore, SRS has become aware of a need to require States to provide more detailed and in-depth information in order to be able to make a more reliable judgment of the effectiveness of a State's UC program. In the interim period before a final quarterly showing regulation become effective, SRS will continue to require States to submit quarterly showings under the requirements of section 1903(g) in the format prescribed in SRS-AT-76-88, dated June 3, 1976, as revised and updated.

This Notice is confined to the issues which must be addressed in the development of quarterly showing regulations. SRS also plans an overall revision of all current UC regulations (at 45 CFR §§ 250.18, 250.19, 250.20, 250.23, and 250.24), which revision will be coordinated with the development of the quarterly showing regulations to assure their consistency with them. A Notice of Intent to Issue Proposed Rules on that subject will be published in the FEDERAL REGISTER at a later date.

STATUTORY REQUIREMENTS

Section 1903(g)(1) of the Social Security Act provides that:

* * * After an individual has received care as an inpatient in a hospital (including an institution for tuberculosis), skilled nursing facility or intermediate care facility on 60 days, or in a hospital for mental diseases on 90 days (whether or not such days are consecutive), during any fiscal year, which for purposes of this section means the four calendar quarters ending with June 30, the *Federal medical assistance percentage* with respect to amounts paid for any such care furnished thereafter to such individual in the same fiscal year *shall be decreased by 33⅓ per centum thereof unless the State agency* responsible for the administration of the plan *makes a showing satisfactory to the Secretary that*, with respect to each calendar quarter for which the State submits a request for payment at the full Federal medical assistance percentage for amounts paid for inpatient hospital services (including tuberculosis hospitals), skilled nursing facility services, or intermediate care facility services furnished beyond 60 days (or inpatient mental hospital services furnished beyond 90 days), *there is in operation in the State an effective program of control over utilization* of such services; * * * (Emphasis added.)

As stated above, the Federal medical assistance percentage for specified institutional care must be decreased by 33⅓ percent "unless the State agency responsible for the administration of the plan makes a showing satisfactory to the Secretary" that it has in operation "an effective program of control over utilization of such services." If the showing (or the Secretary's attempt to validate the showing) reveals that any of the utilization control requirements listed in section 1903(g) has not been met for a particular level of care, the Secretary must assess the entire reduction specified in the statute. These reductions are substantial.

The statute specifies five elements that must be included in a satisfactory showing. Each showing must include evidence:

(1) That in each case for which payment is made under the State plan, a physician certified the necessity of institutionalization at that level of care at the time of admission or, if later, at the time of application for medical assistance under the State plan (1903(g)(1)(A));

(2) That, in each such case, a physician recertified at 60-day intervals that there was a continuing need for institutionalization at that level of care (1903(g)(1)(A));

(3) That, in each such case, such services were furnished under a plan of care established and periodically reviewed and evaluated by a physician (1903(g)(1)(B));

(4) That the State had in effect "a continuous program of review of utilization pursuant to section 1902(a)(3) whereby each admission is reviewed or screened in accordance with criteria established by medical and other professional personnel who are not themselves directly responsible for the care of the patient involved, and who do not have a significant financial interest in any such institution and are not, except in the case of a hospital, employed by the institution providing the care involved; and the information developed from such review or screening, along with the data obtained from prior reviews of the necessity for admission and continued stay of patients by such professional personnel, shall be used as the basis for establishing the size and composition of the sample of admissions to be subject to review and evaluation by such personnel, and any such sample may be of any size up to 100 per centum of all admissions and must be of sufficient size to serve the purpose of (i) identifying the patterns of care being provided and the changes occurring over time in such patterns so that the need for modification may be ascertained, and (ii) subjecting admissions to early or more extensive review where information indicates that such consideration is warranted;"

(5) That the State had in operation an effective program of medical review of the care of patients in mental hospitals and skilled nursing facilities, and of independent professional review of the care of patients in intermediate care facilities, pursuant to sections 1902(a)(26) and (31), whereby the professional management of each case is reviewed and evaluated at least annually (1903)(g)(1)(D)).

Section 1903(g)(2) provides that the Secretary is to validate the States' showings, in part by sample onsite surveys in institutions providing inpatient services.

GENERAL PROBLEMS RELATED TO QUARTERLY SHOWING (QS) REQUIREMENTS

A. Type of Information Required. The Department seeks comments on the information that should be required as a showing with respect to each of the five required elements of a UC program. The information submitted in the showing must be verifiable by Federal reviewers in validation surveys. The information required should be a valid indicator of States' performance of the UC requirements; it must enable the Department to make an intelligent judgment as to whether a State has satisfactorily shown that it has an effective UC program and thus is entitled to full Federal funding. Because section 1903(g) requires a reduction in FFP for any State which fails to make the required showing, the regulation cannot require information as part of a satisfactory showing that does not go to the question of whether adequate UC is being performed, because to do so might create an anomalous situation in which a State's showing would be found unsatisfactory for failure to submit information which would not have shown whether it had an effective UC program as mandated by the statute. At the same time, in order to minimize the administrative burdens on both the States and the Department, the information required should be the minimum necessary to test the States' performance of each requirement.

SRS is well aware that it would be a considerable administrative burden for the States to collect and submit and for the Department staff to analyze the information under the proposed requirements outlined below, but has been unable to develop alternative requirements that would produce information providing an equally accurate picture of the States' performance of UC requirements. SRS would welcome suggestions of such alternatives. SRS would particularly welcome suggestions for use of Medicaid Management Information Systems (MMIS) or other presently available computerized data to meet the QS requirement.

B. Sampling. The collection of information on performance of UC requirements with respect to all recipients or institutions would be administratively burdensome for States. Therefore, SRS intends to require States to submit as a satisfactory showing of some or all of the UC requirements information based on a sample of institutions or of institutionalized patients.

One question to be considered is the appropriate size of each of these samples. Unnecessarily large samples will needlessly increase the burden on the States of making a satisfactory showing; on the other hand, samples that are too small may be unrepresentative.

Apart from the issue of sample size, other issues need to be considered concerning the methodology for sample selection. Perhaps a sample of patients could be taken from single State agency (sSa) records. Or sampling might be done in two steps: First, a sample of in-

stitutions could be selected for each level of care; second, a sample of the patients at each selected institution could be selected for review. The methods for selecting samples should ensure that neither a State agency nor an institution would be able to influence the selection. Ideally, the sampling methods would provide a cross-section by size of institution within each level of care, geographical location, and any other relevant factors.

Since section 1903(g) seems by its terms to require 100% performance of each element in the UC program (physician certification, recertification, and plan of care "in each case"; utilization review and medical review "of the professional management of each case" "at least annually"), it is the Department's position that it is not necessary, in order to determine that a State is subject to the penalty provided by the statute, for the sampling technique to assure a statistically valid sample, because any omission, under this reading of the statute, would be legally sufficient grounds to assess the entire penalty. However, the Department believes that the statute can be read to allow for human error. In the interests of fairness, the Department therefore proposes to set an adherence percentage, and to establish a sampling procedure which would provide a representative, though not necessarily statistically valid, sample.

The Department would welcome comments on the above discussion, and in particular seeks guidance as to the factors that are relevant to the selection of an acceptable sample, the methodology that should be used, and the size and composition of an acceptable sample. Are different samples appropriate for different purposes (for example, for testing adherence to different UC requirements)? In particular, where a State has certified only one or a few institutions for a level of care (as is often the case with mental hospitals), should a different sampling method be used, or should sampling be dispensed with altogether in favor of a comprehensive review? Are there some UC requirements, for example medical review, for which sampling is an inappropriate method of making an adequate showing?

Proposed Quarterly Showing (QS) Format

SRS is considering the following format for its quarterly showing (QS) requirement: The regulation would require that the sSa have procedures in place:

(a) To select a sample of institutions at each level of care by methods specified or approved by the Secertary;

(b) To have these institutions visited by a sSa review team meeting qualifications established by the Secretary, in order to collect specified information as evidence of adherence to each of the statutory UC requirements; and

(c) To submit the information to the Regional Commissioner when requested, on forms to be developed by the Department. This format would give SRS the flexibility to focus each QS on whichever UC requirements seemed currently of greatest concern, and would minimize the burden of QSs on the States by requiring them to collect for each quarter only the information required for that quarter's showing.

SRS seeks comments on the proposed format, and would also welcome proposals for other possible QS formats.

Proposed QS Requirements for Specific Elements of UC Program

A. *Proposed QS Requirements for Certification and Recertification.* As a showing that certification and recertification by a physician have been performed as required, SRS is considering requiring the sSa to be able to provide upon request some or all of the following information for each patient whose record is reviewed by the sSa team, and for whom, under the terms of the statute and regulations, a physician should have certified or recertified need for institutionalization:

(1) Date of admission and, if later, authorization of benefits; date of certification (and recertification);

(2) The physician's name and medical degree;

(3) A description of the form and content of the certification or recertification (e.g. statement signed and dated by attending physician that the individual is in need of a particular level of care; physician orders signed and dated on or before the date of admission; medical evaluation signed and dated by a physician prior to admission; referral or transfer forms signed and dated by a physician);

(4) A statement describing where the certification or recertification is maintained.

B. *Proposed QS Requirements for Plan of Care.* As a showing that it has complied with the statutory requirement that for each Medicaid patient there be a written plan of care periodically reviewed and evaluated by a physician, SRS is considering requiring the sSa to to be able to provide upon request the following information for each patient record reviewed.

(1) A description of the content of the plan of care which includes the diagnosis, symptoms, complaints, and/or complications indicating the need for admission;

(2) A description of the functional level of the individual;

(3) Orders (as apropriate) for medications, treatment, restorative and rehabilitative services, activities, social services and diet;

(4) Documentation of the frequency with which the plan of care is reviewed.

C. *Proposed QS Requirements for Utilization Review (UR).* As a showing that the State has complied with the statutory requirement that it have in effect a continuous program of UR pursuant to section 1902(a)(3), SRS is considering the following requirements:

(1) As evidence that it has complied with the statutory requirement of review or screening of admissions, SRS is considering requiring the sSa to be able to provide upon request some or all of the following information:

For each patient record reviewed by the sSa team: (a) date admission was reviewed or screened; (b) result of review or screening (conclusion of reviewer(s) concerning need for admission); (c) name(s), title(s), professional qualifications and affiliations of individual(s) performing review or screening.

For each institution reviewed:

(a) A description of the criteria established for UR;

(b) Names, titles, professional qualifications and affiliations of the individuals who established the UR criteria.

If the current statute is amended to restore the requirement of review or screening of extended stays, similar information would be required as evidence that this requirement was being met.

(2) As a showing that it has complied with the statutory requirement of review and evaluation of a sample of admissions, SRS is considering requiring the sSa to be able to provide, in addition to the information detailed under (1) above, a statement of the methodology and criteria used for setting the sample size and for selecting the sample.

SRS may need to establish separate QS requirements for States performing UR under a waiver pursuant to 45 CFR 250.19(b). Comments are solicited particularly from States performing UR under a 250.19(b) waiver as to the information necessary to establish a satisfactory showing of performance of UR.

D. *Proposed QS Requirements for Medical Review (MR) and Independent Professional Review (IPR).* As a showing that it has complied with the statutory requirement that MR be performed at least annually in each mental hospital and skilled nursing facility, and that IPR be performed at least annually in each intermediate care facility, SRS is considering requiring that the sSa be able to provide some or all of the following information:

(1) A *list of facilities* at each level of care certified during the quarter, which list indicates:

(a) The effective date of the provider agreement, and if the provider agreement has terminated, the termination date;

(b) The date on which MR or IPR was performed in the facility in the current annual period;

(c) The date of the most recent prior review;

(d) (In the case of MR) the name and medical degree of the physician who supervised the MR team;

(2) *For a sample of institutions* in which MR and IPR were performed in the quarter to which the QS applies:

(a) The names, titles, professional qualifications and affiliations of the review team members;

(b) The number of title XIX patients for that level of care in the facility on the review date;

(c) Specific findings in the review team's report with respect to individual patients;

(d) Action taken (or not taken) on any recommendations of the review team.

Relation of QS to Validation Surveys (VS)

Section 1903(g)(2) requires that the Secretary, as part of his validation of the States' fulfillment of the statutory UC requirements, conduct on-site surveys in health care institutions. SRS proposes to tie these validation surveys (VS) closely to the quarterly showings, focusing the survey on validation of the

quarterly showing. Issues being considered in this connection are:

Should the on-site VS be performed at the same time that the State is collecting information on-site for its QS? Or should the VS be performed later?

SSRS seeks suggestions on a VS format (or perhaps a number of interchangeable formats) that will be a reliable test of the States' operation of effective UC programs, while making the most efficient and economical use of limited administrative resources.

Consideration will be given, in designing proposed regulatory changes, to written comments and suggestions on these issues addressed to the Administrator, Social and Rehabilitation Service, Department of Health, Education, and Welfare, P.O. Box 2366, Washington, D.C. 20013, and received on or before March 4, 1977. In order to assure prompt handling of comments, please refer to MSA–197–N1. Agencies and organizations are requested to submit their comments in duplicate.

Such comments will not be acknowledged but will be available for public inspection in Room 5223 of the Department's offices at 330 C Street, S.W., Washington, D.C., beginning approximately two weeks after publication of this Notice in the Federal Register, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (area code 202–245–0950). Answers to specific questions on this Notice may be obtained by calling Dorothy Soltys, 202–245–0225.

This invitation to submit suggestions is being issued for the purpose of obtaining the broadest participation possible in drafting regulatory revisions. Any such changes developed by the Service will be published in the regular manner as a Notice of Proposed Rule Making with a period for comment by all interested parties.

(Sec. 1102, 45 Stat. 647 (42 U.S.C. 1302).

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program).)

Dated: December 16, 1976.

Robert Fulton,
Administrator, Social and Rehabilitation Service.

Approved: January 11, 1977.

Marjorie Lynch,
Acting Secretary.

[FR Doc.77–1598 Filed 1–17–77;8:45 am]

notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

CANNERY CREEK TIMBER SALE

Availability of Draft Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Forest Service, Department of Agriculture, has prepared a draft environmental statement for the Cannery Creek Timber Sale, Report Number USDA–FS–DES(Adm)R–10–77–03.

This environmental statement concerns a proposed timber sale involving the harvesting of 2.23 million board feet of timber.

This draft environmental statement was transmitted to the CEQ on January 4, 1977.

Copies are available for inspection during regular working hours at the following locations:

USDA, Forest Service, South Agriculture Bldg., Room 3231, 12th St. and Independence Ave. SW., Washington, D.C. 20250.
U.S. Department of Agriculture, Forest Service, Alaska Region, Federal Building, Juneau, Alaska 99802.
Forest Supervisor, Chugach National Forest, 2221 E. Northern Lights Blvd., Room 230, Anchorage, Alaska 99504.
Forest Supervisor, Chatham Area, Tongass National Forest, Federal Building, Sitka, Alaska 99835.
Forest Supervisor, Stikine Area, Tongass National Forest, Federal Bldg., Petersburg, Alaska 99833.
Forest Supervisor, Ketchikan Area, Tongass National Forest, Federal Building, Room 313, Ketchikan, Alaska 99901.

A limited number of single copies are available upon request to Clay G. Beal, Forest Supervisor, Chugach National Forest, 2221 E. Northern Lights Blvd., Room 230, Anchorage, Alaska 99504.

Copies of the environmental statement have been sent to various Federal, State, and local agencies as outlined in the CEQ guidelines.

Comments are invited from the public and from State and local agencies which are authorized to develop and enforce environmental standards, and from Federal agencies having jurisdiction by law or special expertise with respect to any environmental impact involved for which comments have not been requested specifically.

Comments concerning the proposed action and requests for additional information should be addressed to Clay G. Beal, Forest Supervisor, Chugach National Forest, 2221 E. Northern Lights Blvd., Room 230, Anchorage, Alaska 99504. Comments must be received by March 15, 1977 in order to be considered in the preparation of the final environmental statement.

CLAY G. BEAL,
Forest Supervisor, Chugach National Forest, Alaska Region.

JANUARY 4, 1977.

[FR Doc.77-1467 Filed 1-17-77;8:45 am]

LAND USE PLAN FOR THE ROGUE-ILLINOIS PLANNING UNIT

Availability of Draft Environmental Statement

The Notice of Availability for the Land Use Plan for the Rogue-Illinois Planning Unit, Siskiyou National Forest, Oregon, USDA–FS–R6–DES–(Adm)–77–2 that appeared in FEDERAL REGISTER Vol. 41, No. 238, Thursday, December 9, 1976 is corrected to extend the review period to February 14, 1977.

DALE L. FARLEY,
Acting Forest Supervisor.

JANUARY 10, 1977.

[FR Doc.77-1501 Filed 1-17-77;8:45 am]

OREGON DUNES NATIONAL RECREATION AREA WILDERNESS SUITABILITY

Availability of Final Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Forest Service, Department of Agriculture, has prepared a final environmental statement for the Oregon Dunes National Recreation Area Wilderness Suitability, USDA–FS–FES(Adm) 75–05.

The environmental statement concerns a review of the lands within the Oregon Dunes National Recreation Area and recommendation relative to its suitability for inclusion in the National Wilderness Preservation System, within Lane, Douglas and Coos Counties, State of Oregon, Siuslaw National Forest.

This final environmental statement was transmitted to CEQ on January 10, 1977.

Copies are available for inspection during regular working hours at the following locations:

USDA, Forest Service, South Agriculture Bldg., Room 3210, 12th St., and Independence Ave., SW, Washington, DC 20250.
USDA, Forest Service, Pacific Northwest Region, 319 SW Pine Street, Portland, Oregon 97208.
Siuslaw National Forest, 545 SW Second Street, Corvallis, Oregon 97330.
Willamette National Forest, 210 E. 11th Street, Eugene, Oregon 97402.
Oregon Dunes, National Recreation Area, 855 Highway Avenue, Reedsport, Oregon 97467.

A limited number of single copies are available upon request to Regional Forester, Pacific Northwest Region, 319 SW Pine Street, P.O. Box 3623, Portland, Oregon 97208.

Copies of the environmental statement have been sent to various Federal, State, and local agencies as outlined in the Council on Environmental Quality Guidelines.

EINAR L. ROGET,
Acting Deputy Chief.

JANUARY 10, 1977.

[FR Doc.77-1500 Filed 1-17-77;8:45 am]

RECOMMENDED MANAGEMENT PLAN FOR OREGON DUNES NATIONAL RECREATION AREA

Availability of Final Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Forest Service, Department of Agriculture, has prepared a final environmental statement for the proposed Oregon Dunes National Recreation Area Management Plan. USDA–FS–R6 FES (Adm) 75–01.

The environmental statement concerns proposed management and development proposals for lands located within the boundaries of the Oregon Dunes National Recreation Area, located within Lane, Douglas and Coos Counties, State of Oregon.

This final environmental statement was transmitted to CEQ on January 10, 1977.

Copies are available for inspection during regular working hours at the following locations:

USDA, Forest Service, South Agriculture Bldg., Room 3210, 12th Street & Independence Ave. SW, Washington, DC 20250.
USDA, Forest Service, Pacific Northwest Region, 319 SW Pine Street, Portland, Oregon 97208.
Siuslaw National Forest, 545 SW Second Street, Corvallis, Oregon 97330.
Willamette National Forest, 210 E. 11th Street, Eugene, Oregon 97402.
Oregon Dunes, National Recreation Area, 855 Highway Avenue, Reedsport, Oregon 97467.

A limited number of single copies are available upon request to Regional Forester, Pacific Northwest Region, 319 SW Pine Street, P.O. Box 3623, Portland, Oregon 97208.

Copies of the environmental statement have been sent to various Federal, state and local agencies as outlined in the CEQ guidelines.

EINAR L. ROGET,
Acting Deputy Chief.

JANUARY 10, 1977.

[FR Doc.77-1499 Filed 1-17-77;8:45 am]

U.S. BORAX MINING ACCESS ROAD FOR THE QUARTZ HILL PROSPECT

Availability of Draft Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Forest Service, Department of Agriculture, has prepared a draft environmental statement for the U.S. Borax Mining Access Road for the Quartz Hill Prospect, USDA–FS–DES(Adm)–77–04.

The U.S. Borax & Chemical Corporation, in behalf of Pacific Coast Mines, Inc., has proposed to develop a mining exploration road due east of Ketchikan on the mainland of southeast Alaska. This road is to be used for intensive development drilling of the prospect to depths below 600 feet and for the extraction of about 500 tons of ore for pilot testing (bulk sampling).

This draft environmental statement was transmitted to CEQ on January 6, 1977.

Copies are available for inspection during regular working hours at the following locations:

USDA, Forest Service, South Agricultural Bldg., Room 3231, 12th St. and Independence Ave. SW., Washington, D.C. 20250.
USDA, Forest Service, Alaska Region, Federal Office Bldg., Juneau, Alaska 99802.
Forest Supervisor, Chatham Area, Tongass National Forest, Federal Building, Sitka, Alaska 99835.
Forest Supervisor, Stikine Area, Tongass National Forest, Federal Building, Petersburg, Alaska 99833.
Forest Supervisor, Ketchikan Area, Tongass National Forest, Federal Building, Room 313, Ketchikan, Alaska 99901.

A limited number of single copies are available upon request to Forest Supervisor, Ketchikan Area, Tongass National Forest, P.O. Box 2278, Ketchikan, Alaska 99901.

Copies of the environmental statement have been sent to various Federal, State and local agencies as outlined in the CEQ guidelines.

Comments are invited from the public, and from state and local agencies which are authorized to develop and enforce environmental standards, and from Federal agencies having jurisdiction by law or special expertise with respect to any environmental impact involved for which comments have not been requested specifically.

Comments concerning the proposed action and requests for additional information should be addressed to J. S. Watson, Forest Supervisor, Ketchikan Area, Tongass National Forest, P.O. Box 2278, Ketchikan, Alaska 99901. Comments must be received by March 6, 1977 in order to be considered in the preparation of the final environmental statement.

CARL W. SWANSON,
Environmental Coordinator, Alaska Region.

JANUARY 6, 1977.

[FR Doc.77-1466 Filed 1-17-77;8:45 am]

Rural Electrification Administration

BIG RIVERS ELECTRIC CORP.

Proposed Loan Guarantee

Under the authority of Pub. L. 93–32 (87 Stat. 65) and in conformance with applicable agency policies and procedures as set forth in REA Bulletin 20–22 (Guarantee of Loans for Bulk Power Supply Facilities), notice is hereby given that the Administrator of REA will consider providing a guarantee supported by the full faith and credit of the United States of America for a loan in the approximate amount of $7,100,000 to Big Rivers Electric Corporation, of Henderson, Kentucky. These loan funds will be used to finance the purchase of an additional fuel supply to assure a 60-day, continuous burn, supply of coal on hand for the borrower's existing generation system.

Legally organized lending agencies capable of making, holding and servicing the loan proposed to be guaranteed may obtain information on the proposed project, including the engineering and economic feasibility studies and the proposed schedule for the advances to the borrower of the guaranteed loan funds from Mr. Marshall R. Dorsey, Manager, Big Rivers Electric Corporation, P.O. Box 24, Henderson, Kentucky 42420.

In order to be considered, proposals must be submitted on or before February 17, 1977 to Mr. Dorsey. The right is reserved to give such consideration and make such evalution or other disposition of all proposals received, as Big Rivers and REA deem appropriate. Prospective lenders are advised that the guaranteed financing for this project is available from the Federal Financing Bank under a standing agreement with the Rural Electrification Administration.

Copies of REA Bulletin 20–22 are available from the Director, Information Services Division, Rural Electrification Administration, U.S. Department of Agriculture, Washington, D.C. 20250.

Dated at Washington, D.C., this 12th day of January, 1977.

DAVID A. HAMIL,
Administrator, Rural Electrification Administration.

[FR Doc.77-1800 Filed 1-17-77; 8:45 am]

BOARD FOR INTERNATIONAL BROADCASTING

PRIVACY ACT OF 1974

Adoption, Additional Routine Use Payroll Records System

JANUARY 6, 1977.

On December 7, 1976, there was published in the FEDERAL REGISTER (41 FR 53517) a notice of proposed additional routine use for the system of records designated "Payroll Records—BIB–2." Interested parties were given the opportunity to submit comments on the additional routine use contained in that notice, no later than January 6, 1977.

No comments have been received, and the proposed additional routine use for this system of records is hereby adopted without change and is set forth below.

Effective date: January 6, 1977.

Signed at Washington, D.C. on January 6, 1977.

WALTER R. ROBERTS,
Executive Director.

BIB–2

System name:

Payroll Records—Board for International Broadcasting.

System location:

General Services Administration, Region Three Office; copies held by the Board for International Broadcasting. (GSA holds records for the Board for International Broadcasting under contract.)

Categories of records maintained in the system:

Varied payroll records, including, among other documents, time and attendance cards; payment vouchers; comprehensive listing of employees; health benefits records, requests for deductions; tax forms, W–2 forms, overtime requests; leave data; retirement records. Records are used by the Board for International Broadcasting and GSA employees to maintain adequate payroll information for the Board for International Broadcasting employees, and otherwise by the Board for International Broadcasting and GSA employees who have a need for the record in the performance of their duties.

Authority for the system:

31 U.S.C., generally. Also, Pub. L. 93–129, as amended.

Routine use of records:

See Appendix. Records also are disclosed to GAO for audits; to the Internal Revenue Service for investigation; and to private attorneys, pursuant to a power of attorney.

A copy of an employee's Department of the Treasury Form W–2, Wage and Tax Statement, also is disclosed to the State, city, or other local jurisdiction which is authorized to tax the employee's compensation. The record will be provided in accordance with a withholding agreement between the State, city, or other local jurisdiction and the Department of the Treasury pursuant to 5 U.S.C. 5516, 5517, or 5520, or in the absence thereof, in response to a written request from an appropriate official of the taxing jurisdiction to the Budget and Administrative Officer, Board for International Broadcasting, Suite 430, 1030 Fifteenth Street, N.W., Washington, D.C. 20005. The request must include a copy of the applica-

ble statute or ordinance authorizing the taxation of compensation and should indicate whether the authority of the jurisdiction to tax the employee is based on place of residence, place of employment, or both.

Pursuant to a withholding agreement between a city and the Department of the Treasury (5 U.S.C. 5520), copies of executed city tax withholding certificates shall be furnished the city in response to written request from an appropriate city official to the Budget and Administrative Officer of the Board for International Broadcasting.

In the absence of a withholding agreement, the Social Security Number will be furnished only to a taxing jurisdiction which has furnished this agency with evidence of its independent authority to compel disclosure of the Social Security Number, in accordance with Section 7 of the Privacy Act, Pub. L. 93–579.

Policies and practices for storing and retrieving, assessing, retaining and disposing of records in the system:

Storage:

Paper and microfilm.

Retrievability and accessing:

Social Security Number.

Safeguards:

Stored in guarded building; released only to authorized personnel.

Retention and disposal:

Disposition of records shall be in accordance with the HB GSA Records Maintenance and Disposition System (OAD P 1820.2).

System manager:

Budget and Administrative Officer; Board for International Broadcasting, Suite 430, 1030 Fifteenth Street NW., Washington, D.C. 20005.

Notification procedures:

Refer to Board for International Boardcasting access regulations contained in 1 CFR Part 415.

Record access procedures:

Refer to Board for International Broadcasting access regulations contained in 1 CFR Part 415.

Contesting records procedures:

Refer to Board for International Broadcasting access regulations contained in 1 CFR Part 415.

Categories of sources of records in the system:

The subject individual; the Board for International Broadcasting.

APPENDIX—BOARD FOR INTERNATIONAL BROADCASTING

In the event that a system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

A record from this system of records may be disclosed as a "routine use" to a federal, state or local agency maintaining civil, criminal or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract or the issuance of a license, grant or other benefit.

A record from this system of records may be disclosed to a federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision in the matter.

A record from this system of records may be disclosed to an authorized appeal grievance examiner, formal complaints examiner, equal employment opportunity investigator, arbitrator or other duly authorized official engaged in investigation or settlement of a grievance, complaint, or appeal filed by an employee. A record from this system of records may be disclosed to the United States Civil Service Commission in accordance with the agency's responsibility for evaluation and oversight of federal personnel management.

A record from this system of records may be disclosed to officers and employees of a federal agency for purposes of audit.

The information contained in this system of records will be disclosed to the Office of Management and Budget in connection with the review of private relief legislation as set forth in OMB Circular No. A–19 at any stage of the legislative coordination and clearance process as set forth in that Circular.

A record from this system of records may be disclosed as a routine use to a Member of Congress or to a Congressional staff member in response to an inquiry of the Congressional office made at the request of the individual about whom the record is maintained.

A record from this system of records may be disclosed to officers and employees of the General Services Administration in connection with administrative services provided to this agency under agreement with GSA.

[FR Doc.77–1487 Filed 1–17–77;8:45 am]

CIVIL AERONAUTICS BOARD

[Docket 29789]

HOUSTON/NEW ORLEANS-YUCATAN ROUTE PROCEEDING

Reassignment of Proceeding

This proceeding has been reassigned from the undersigned to Administrative Law Judge Arthur S. Present. Future communications should be addressed to Judge Present.

Dated at Washington, D.C., January 12, 1977.

HENRY M. SWITKAY,
Acting Chief
Administrative Law Judge.

[FR Doc.77–1580 Filed 1–17–77;8:45 am]

[Order 77–1–44; Docket 29123; Agreement C.A.B. 26352 R–1 and R–2]

INTERNATIONAL AIR TRANSPORT ASSOCIATION

Agreement Relating to Passenger Fare Matters

Issued under delegated authority January 10, 1977.

An agreement has been filed with the Board pursuant to section 412(a) of the Federal Aviation Act of 1958 (the Act) and Part 261 of the Board's Economic Regulations between various air carriers, foreign air carriers, and other carriers embodied in the resolutions of the Joint Traffic Conferences of the International Air Transport Association (IATA). The agreement, adopted by mail vote, has been assigned the above C.A.B. agreement number.

The agreement would amend the resolution establishing first-class and economy-class fares between Benghazi and Japan/Korea so that those fares need not be higher than the corresponding fares between Tripoli and Japan/Korea, thus reflecting Benghazi's status as the gateway point from Libya to the Far East.

Consistent with our prior approval, we will approve the agreement insofar as the fares established under this resolution are combinable with fares to/from the United States and thus have indirect application in air transportation as defined by the Act.

Pursuant to authority duly delegated by the Board's Regulations 14 CFR 385.14, it is not found that Resolutions JT23(Mail 83)055 and JT23(Mail 83)065 which are incorporated in Agreement C.A.B. 26352, and which have indirect application in air transportation as defined by the Act, are adverse to the public interest or in violation of the Act.

Accordingly, *it is ordered* That: Agreement C.A.B. 26352, R–1 and R–2, be and hereby is approved.

Persons entitled to petition the Board for review of this order, pursuant to the Board's Regulations, 14 CFR 385.50, may file such petitions within ten days after the date of service of this order.

This order shall be effective and become the action of the Civil Aeronautics Board upon expiration of the above period, unless within such period a petition for review thereof is filed or the Board gives notice that it will review this order on its own motion.

This order will be published in the FEDERAL REGISTER.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc.77–1583 Filed 1–17–77;8:45 am]

[Docket 27813; Agreement C.A.B. 26064, R–1 through R–13, R–15]

INTERNATIONAL AIR TRANSPORT ASSOCIATION

North/Central Pacific Passenger Fares

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 11th day of January, 1977.

Agreement adopted by the Joint Traffic Conferences of the International Air Transport Association relating to North/Central Pacific passenger fares.

By Order 76–8–147, August 27, 1976, the Board directed the U.S. carrier members of the International Air Transport Association (IATA) to submit justification in support of an agreement which would close North/Central Pacific fares through March 31, 1977.[1] Northwest Airlines, Inc. (Northwest), although not a member of IATA, was likewise directed to file pertinent economic data.

Pan American World Airways, Inc. (Pan American), the only U.S. IATA member providing service over the North/Central Pacific, has submitted economic data as directed, as has Northwest. Two supplemental carriers, Trans International Airlines, Inc. (TIA) and World Airways, Inc. (World), have jointly filed initial comments and objections, as well as reply comments, and the Puget Sound Traffic Association (PSTA) has filed reply comments. Finally, Pan American has filed a motion, which will be granted, to file an otherwise unauthorized document in response to the reply comments of TIA, World, and PSTA.

THE AGREEMENT

The agreement proposes an increase of three percent in normal economy fares, and a five percent increase in first-class and most promotional fares between the U.S. west coast/Honolulu and Japan. The basic-season group inclusive-tour (GIT) fare would be increased by an additional $50 over the five percent increase, and group-100 affinity fares applicable to U.S.-originating traffic would be increased by ten percent. Most fares between Alaska and Japan would remain at present levels, although first-class fares would be increased by four percent, and the basic-season GIT and group-100 affinity fares would be increased by $25 and 10 percent, respectively.

Fares to Asian destinations other than Japan would remain at present levels, with the exception of first-class and basic-season GIT fares which would be increased by four percent and $50 ($25 from Alaska), respectively. In addition, the agreement proposes two roundtrip 30/120-day excursion fares: one for eastbound-originating travel to the Western Hemisphere, the other for westbound travel from Canada, which is set at a lower level than that proposed for eastbound travel. Finally, the agreement would eliminate stopover restrictions previously applicable to travel on the GIT fares, and would permit individual return from the last point of embarkation in Asia to point of origin in the Western Hemisphere.

CARRIER JUSTIFICATION

Pan American anticipates that, for the year ending September 1977, the agreement will produce a $5.0 million increase in revenue, 1.7 percent above that otherwise forecast at present fares. The carrier states that it sustained an operating loss of $18.9 million and a −3.7 percent return on investment (ROI) during the historical period. It forecasts an operating profit of $10.0 million and an ROI of 5.3 percent during the forecast period under present fares, and an operating profit of $14.6 million and a ROI of 6.8 percent under the fares proposed. These estimates are based upon a historical load factor of 41.6 percent, and forecast load factors of 50.2 and 49.9 percent under present and proposed fares, respectively. The improved load factors stem from an expected 16.8 percent increase in traffic, coupled with a 3.3 percent decline in capacity offered.

Pan American contends that the three to five percent increases in U.S.-Japan fares serve only to realign these fares with other fares between this country and Asia, for which similar increases were approved in May 1976;[2] that the additional increases in the basic-season GIT and group-100 affinity fares are an effort to reduce discounts which now exceed 50 percent from the normal economy fare; and that the individual-return option on the GIT fare is necessitated by current practices of competitive non-IATA carriers. The carrier further maintains that the eastbound Asia-originating 30/120-day excursion fare is required to stem the capture of traffic by competing non-IATA carriers resulting from their overt offering of non-tariff fares at levels and conditions more liberal than those proposed in the agreement. Finally, Pan American states that the Canadian-originating 30/120-day excursion fare proposed by the IATA agreement is similar to a present fare unilaterally filed from Canada and available in tariffs from certain U.S. points by combination of fares over Canada.

In anticipation that the issue of common-faring Seattle with other U.S. west-coast cities would again be raised, Pan American contends that this practice is for the purpose of enabling the IATA carriers to compete equally for all continental U.S. traffic; that Northwest, unlike the IATA carriers, has nonstop route authority to/from Seattle and, as a result, already holds a competitive edge in terms of elapsed time; that over the routings Pan American actually operates, Seattle-Far East fares are lower on a per-mile basis than are fares from other west-coast cities; and that de-common-faring would impact adversely upon the competitive posture of various Pacific carriers, raise problems with foreign governments, and disrupt California-Far East services. The carrier argues that the Board has approved and the courts have upheld Seattle-west coast common-faring; that in seeking a change, the burden is upon the complainant to show that it would be just, reasonable, and otherwise not unlawful; and that the proper forum for full examination of the impact of de-common-faring Seattle is the investigation recommended by the administrative law judge in his Initial Decision in the *Domestic Common Fares Investigation* (DCFI) case, Docket 27330.[3]

Northwest states that the proposed fare increases will provide $4.2 million in additional revenue, 2.3 percent above that forecast at present fares for the year ending September 1977. The carrier states that it earned a $9.0 million operating profit and an ROI of 3.26 percent during the historical year ended June 1976, anticipates an operating profit of $8.9 million and an ROI of 2.92 percent during the forecast period under present fares, and an operating profit of $12.4 million and an ROI of 3.81 percent under the proposed fares. Its estimates are based upon load factors of 49.5 percent in the historical period, and 51.0 percent during the forecast period under both present and proposed fares. The improved load factor appears to be the result of a 7.0 percent increase in anticipated traffic, offset by a lesser 3.7 percent increase in forecast capacity.

COMMENTS AND CARRIER RESPONSES

In general, TIA and World contend again that further increases in normal fares should be disallowed, but express some approval of the fact that the low U.S.–Japan promotional fares would be increased in greater percentage degree than would be the normal fares. However, both object to continuation of certain promotional fares, particularly urging elimination of the group-100 affinity fare on the grounds that it continues to reflect a discount from normal economy-class fares in excess of 50 percent; that it is below fully-allocated costs; and that

[1] Agreement C.A.B. 26064, R–14, which deals with Japan-originating group—30/40 inclusive-tour fares has been disposed of by the Board in Order 76–9–160, September 30, 1976.

[2] Order 76–5–158, May 28, 1976. In that order the Board disapproved increases in U.S.-originating fares to Japan in the absence of similar increases in Japan-originating fares to the United States.

[3] The Initial Decision, presently under review by the Board, recommended deferral of final disposition of the Hawaii-U.S. mainland gateway common-faring question pending investigation of those fares in the overall context of the total international Pacific fare structure.

it has not yet been fully and specifically justified. In essence, they argue that it is predatory and, in reality, a "part-charter" fare.

The supplemental carriers urge deferral of action on the Japan-originating group-30/40 GIT fares, and request that the Board direct the participating carriers to provide additional data showing the historical and forecast impact of that fare on traffic traveling on other fares, the fare's relationship to cost, and its historic yield (net of commission). They contend that this is necessary since these fares are being further decreased in the shoulder season; that the basic-season fares are set at levels approximating discounts of 50 percent from the normal economy fare; and that the carriers apparently disagree on the impact of these fares on their respective systems.[4]

Pan American, on the other hand, argues that both the group-100 affinity and group-30/40 GIT fares produce yields which cover total operating costs, are almost entirely generative, are sufficiently restrictive to preclude diversion, and thus profitable as demonstrated in its justification. The carrier contends that advocacy of fully-allocated cost pricing by TIA and World is motivated by their desire to prevent price competition between scheduled and charter services; that this pricing methodology has no basis in economic theory or business practice; that the Board has recognized that each fare cannot be expected to meet the fully-allocated costs of service; and that the relevant standard is incremental cost. Finally, Pan American denies that the group-100 affinity fare is anti-competitive, arguing that neither supplemental carrier has demonstrated resultant injury; that the fare has little impact upon charter competition; and that the real problem lies with the restrictive charter policy of the Japanese Government which cannot be addressed by the IATA carriers or the Board within the context of its evaluation of IATA agreements.

PSTA continues to maintain that the Board is required to end the inequities suffered by Seattle. and requests that the Board condition the agreement to require mileage-related fares from west-coast gateways. It argues that it is merely seeking application of the Board's existing domestic common-fare policies which preclude the practice absent special circumstances not allegedly yet demonstrated; that while not directed towards North/Central Pacific markets, the initial decision in *DCFI* recommended abolition of common-faring; and that the present common-faring violates the "rule of equality" in all respects.[5]

PSTA contends that Pan American's reference to court approval of common-faring in the Pacific is misplaced; that de-common-faring will not disrupt California-Far East services; that the burden is on the carriers to demonstrate that "special circumstances" justify the current practice; and that the possible objection of foreign governments provides no basis for the Board to ignore the legal requirements of the Act. Absent the requested condition, PSTA requests disapproval of the agreement on the general ground that the carriers' justifications are inadequate, deficient, and show irreconcilable contradictions. The Association argues that Northwest's justification is suspect since, while supposedly a low-cost carrier, that carrier has projected a higher load factor but a lower ROI than has Pan American; that for many reasons Northwest's traffic-growth projection is unrealistically low, thus understating its forecast passenger revenue under the proposed fares; that when adjusted to Pan American's more realistic growth rate, Northwest's forecast would show a 7.4 percent rather than a 3.81 percent ROI. It is also contended that Northwest's allowance for commission expense is inexplicably excessive; and that when adjusted to Pan American's more moderate expense level, its forecast ROI would increase further to 10.44 percent. In addition, PSTA argues that Pan American uses an elasticity factor in its justification to adjust forecast revenue, whereas Northwest does not; and that Pan American's unit cost is inexplicably and substantially greater than is Northwest's which, when substituted for Pan American's, places that carrier in an excess earnings position. Finally, PSTA contends that neither carrier's justification addresses the question of apparent illegal discounting on Asia-originating fares and its effect upon historical and forecast yields.

In reply to PSTA, Pan American contends that it has demonstrated the existence of special circumstances which fully warrant the common-faring of Seattle with other west-coast points and that, if the Board wishes to reexamine its historic policy in the Pacific area, it should do so along the lines recommended in the Initial Decision in *DCFI*. The carrier further argues that, since present west coast-Far East fares are set at levels appropriate for the shortest-haul Seattle-Far East market, present Seattle-gateway passengers do not subsidize California-gateway passengers and that de-common-faring will not result in lower fares from Seattle. Finally, the carrier states that the difference between its unit operating cost and that of Northwest results from its different fleet mix and relative use of leased aircraft.

FINDINGS

Except for several important exceptions as noted below, the Board has decided to approve the agreement. It is essentially of an interim nature with the primary objective being to bring U.S.-Japan fares into line with increases in fares between the U.S. and other points in Asia previously approved by the Board (Order 76–5–158), and does, to some extent, move toward the Board's expressed objectives insofar as it narrows the spread between the normal economy fare and some of the lowest-rated promotional fares. In that context disapproval of the group-100 affinity fare at this time would not appear to solve the problem facing TIA and World which, as a practical matter, stems more from the Japanese Government's restrictive charter-policy. In all likelihood, the net result would be a continuation of the existing and lower group-100 affinity fares in the carriers' tariffs.

As for PSTA's arguments on the common-faring issue, the Board has previously determined the appropriate occasion for the examination of this issue, and has clearly placed the carriers on notice that they will be expected to consider and fully address PSTA's arguments in their justifications in support of the next major IATA North/Central Pacific fare agreement for effect April 1, 1977.[6]

Pan American has submitted detailed traffic data as requested, showing revenue passenger-miles and revenue by specific fare category. As a result of a moderate upward shift to higher fare categories, Pan American forecasts a 4.8 percent increase in yield over its historical experience, assuming continuation of present fares, and a further 2.3 percent increase under the proposed fares. By contrast, Northwest forecasts a 1.2 percent decline from its historical yield under present fares, which would be countered by a 2.3 percent increase in yield under the proposed fares for a net 1.1 percent increase. Northwest has not provided detailed traffic data as requested by the Board to document its projected initial decline in yield. In the absence of sufficient documentation by Northwest with which to compare its differing estimate and on the assumption that the recent grand jury action in San Francisco will have the effect of abating illegal discounts, we have adjusted Northwest's forecast revenue under the proposed fares to reflect an increase over its historical yield of 2.3 percent.

After making the foregoing adjustment, eliminating the elasticity factor used by Pan American and adjusting the data to the "revenue-offset" method,[7] the carriers' historical data indicate an experienced composite ROI during the historical period of 2.0 percent. This is expected to increase to 5.06 percent during the forecast period assuming continuation of currently effective fares. Under the proposed fares, the two carriers can be expected to achieve, on an adjusted basis, a $13.4 million improvement in revenues and a composite ROI of 6.40 percent.[8] It seems clear, therefore, that on a composite basis the carriers will not approach the Board's 12-percent ROI guideline. This conclusion is buttressed by our disapproval of portions of the agreement, as discussed below.

[4] These and other contentions have previously been made to the Board and considered by it in connection with its approval of the Japan-originating group-30/40 GIT fares through March 31, 1977 (Order 76–9–160).

[5] See *Transcontinental* v. *C.A.B.*, 383 F. 2d 466, 477 (5th Cir. 1967).

[6] See Orders 76–5–158, May 28, 1976 and 76–10–62, October 15, 1976.

[7] See *Hawaii Fares Investigation*, Docket 25474, Order 76–10–37 decided October 8, 1976. See also *Western Air Lines, Inc., U.S.-Mexico Passenger Fares*, Docket 28146, Order 76–11–7, November 3, 1976, denying Petition for Reconsideration.

[8] Were the "space-method" approach applied, the resulting composite ROI would be 5.59 percent.

We are unable to approve the increases proposed in the normal economy fares. The carriers were cautioned in the May 28, 1976, Order that the Board would not be prepared to approve future increases in normal economy fares. It seems increasingly clear that the level of the normal economy fares could substantially exceed that necessary to recover fully-allocated costs plus a reasonable return from those services. Based upon a 50 percent load factor, and even allowing for the increase forecast in carrier unit costs, the proposed normal economy fares are substantially in excess of the level needed to recover fully economic cost including a 12 percent ROI.

As for first-class fares, we would have been inclined to approve an increase between the U.S. west coast/Honolulu and Japan had it been limited to three percent rather than the five percent proposed, and thus held to the three percent increase in first-class fares to other destinations in Asia approved by Order 76–5–158. However, we are unable to approve the greater increase to Japan or the additional four-percent increase to other Asian destinations which are here proposed. The Board is reluctant to permit increases in first-class fares, since most carriers persist in using this fare as the basis for determining their charge for excess-baggage. Despite the Board's decision in *Baggage Allowance Tariff Rules in Overseas and Foreign Air Transportation* (Docket 24869), various governments in the North/Central Pacific area have ordered their carriers to continue to apply charges set at one percent of the applicable first-class fare in transportation to and from the United States, charges demonstrated to be excessive in a formal proceeding.

We have also decided to disapprove the proposed Asia-originating 30/120-day excursion fare. Although these fares are proposed by IATA at slightly higher levels, they are nevertheless substantially the same as those which Pan American has previously attempted to file with the Board on a unilateral basis. Then, as now, Pan American seeks to justify this fare on the need to meet alleged illegal competition. However, Pan American has again failed to submit the kind of detailed economic analysis of the potential profit impact of the fare which would lead to the conclusion that its position would be improved by implementation of such a steeply discounted, below-cost fare, which would be widely available because of its few meaningful conditions.[9] As the Board has previously stated, it is incumbent upon the IATA carriers, in tandem with IATA and governmental enforcement activities, to resolve the problem of illegal fares in the area and to undertake steps to protect the legally filed fare structure.

As for the westbound-originating 30/120-day excursion fare, it is specified in the IATA agreement only for Canadian originations. It is our understanding that it was required by CP Air because of Pan American's requirement for a comparable Asia-originating excursion fare. Since we are herein disapproving the latter, we perceive no reason for continuation of the Canada-originating fare, and strongly urge its elimination from the structure. Finally, consistent with our previously stated conviction that individual-return travel on the GIT fare erodes its economic soundness, we will condition our approval of the pertinent resolution to preclude this option.[10]

In view of the Board's partial approval of this agreement, we are constrained to caution the carriers against the trend in the transpacific fare structure and level which appears to be moving towards that which has evolved on the North Atlantic. The Board has, on a number of occasions, expressed its dissatisfaction with respect to the level of fares at the lowest end of the spectrum, most specifically the group-100 affinity group fare, and continues to question the need, much less the economic validity, for fares at such a level on scheduled service.[11] The Board is aware of the carriers' need for additional revenue but feels that the carriers should devise a fare structure that is consistent with both the Board's expectation that passengers traveling on certain already above-cost fares not be further burdened by those passengers traveling on excessively discounted fares. In this light, the carriers may well wish to renegotiate the recently submitted North/Central Pacific fare package proposed for April 1, 1977 effectiveness to make appropriate changes which would satisfy both their need for revenue and the Board's desires for a more equitable fare structure.[12]

The Board, acting pursuant to sections 102, 204(a), and 412 of the Act, makes the following findings:

1. It is not found that the following resolutions, incorporated in the agreement as indicated, are adverse to the public interest or in violation of the Act, provided that approval is subject, where applicable, to conditions previously imposed by the Board:

Agreement CAB	IATA No.	Title	Application
26064:			
R-1	001b	North and Central Pacific Special Effectiveness Resolution (Tie-in)	3/1.
R-2	001e	Special Escape for JT3I Agreements (North and Central Pacific) (New)	3/1.
R-3	002d	Special Readoption Resolution	3/1 (N/C Pacific).
R-4	015b	North and Central Pacific Proportional Fares—North America (Readopting and Amending).	3/1.
R-5	022g	JT3I (North and Central Pacific) Special Rules for Sales of Passenger Air Transportation (Readopting and Amending).	3/1.
R-10	070u	North and Central Pacific 21 Day Excursion Fares (Readopting and Amending).	3/1.
R-11	076j	North and Central Pacific Own Use and Affinity Group Fares (Readopting and Amending).	3/1.
R-12	083c	North and Central Pacific 35 Day Individual Inclusive Tour Fares (Readopting and Amending).	3/1.
R-15	097	North and Central Pacific Special One Way Fares (Readopting and Amending).	3/1.

2. It is not found that the following resolution, incorporated in the agreement as indicated, is adverse to the public interest or in violation of the Act provided that approval is subject to the conditions stated herein:

Agreement C.A.B.	IATA No.	Title	Application
26064:			
R-13	084h	North and Central Pacific Group Inclusive Tour Fares (Readopting and Amending). Provided with respect to Resolution 084b, Subparagraph (10)(b): Passengers shall be required to travel together from the last point of embarkation in TC3 to the point of origin in TC1.	3/1.

3. It is not found that the following resolution, incorporated in the agreement as indicated and which has indirect application in air transportation as defined by the Act, is adverse to the public interest or in violation of the Act:

Agreement C.A.B.	IATA No.	Title	Application
26064:			
R-9	070qq	North and Central Pacific 120 Day Excursion Fares (Westbound) (New)	3/1.

[9] See Orders 76–6–162, June 24, 1976 and 76–10–25, October 5, 1976.

[10] Order 76–2–74, February 20, 1976.

[11] See Order 75–3–100, March 26, 1975, 76–2–74, February 20, 1976 and 76–5–158, May 28, 1976.

[12] See Order 76–12–85, December 15, 1976, which set procedural dates for handling the April 1 agreement.

4. It is found that the following resolutions, incorporated in the agreement as indicated, are adverse to the public interest and in violation of the Act:

Agreement C.A.B.	IATA No.	Title	Application
26064:			
R-6	056	North and Central Pacific First Class Fares	3/1.
R-7	066	North and Central Pacific Economy Class Fares	3/1.
R-8	070pp	North and Central Pacific 120 Day Excursion Fares (Eastbound) (New)	3/1.

Accordingly, *it is ordered* That:

1. Those portions of Agreement C.A.B. 26064, set forth in finding paragraphs 1 and 3 above, be and hereby are approved subject, where applicable, to conditions previously imposed by the Board;

2. That portion of Agreement C.A.B. 26064 set forth in finding paragraph 2 above be and hereby is approved subject to the condition imposed therein;

3. Those portions of Agreement C.A.B. 26064, set forth in finding paragraph 4 above be and hereby are disapproved; and

4. Tariffs implementing the approved portions of Agreement C.A.B. 26064 may be filed on not less than one day's notice for effectiveness not earlier than January 23, 1977 and shall be marked to expire March 31, 1977. The authority in this paragraph expires February 22, 1977.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board:

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc.77-1447 Filed 1-17-77;8:45 am]

[Order 77-1-64; Docket 29968]

LOUISVILLE SERVICE CASE

Order

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 13th day of January, 1977.

By Order 76-10-113, October 26, 1976, the Board instituted the Louisville Service Case, Docket 29968. The issues in the Louisville Service Case are as follows:

(a) Do the public convenience and necessity require the certification of an air carrier or air carriers to engage in new or additional nonstop air transportation between:

(i) Louisville, Kentucky, on the one hand, and Baltimore, Maryland, Washington, D.C., or the hyphenated point Washington/Baltimore, on the other hand;

(ii) Louisville, Kentucky, on the one hand, and Los Angeles, California, Memphis, Tennessee, and/or Nashville, Tennessee, on the other hand; and/or

(iii) Houston, Texas, on the one hand, and Cincinnati, Ohio, and/or Louisville, Kentucky, on the other hand?

(b) Is the answer to (a) is in the affirmative, which air carrier(s) should be authorized to engage in such service? and

(c) What conditions, if any, should be placed on the operations of such carrier(s)?

Petitions for reconsideration of Order 73-10-113, October 26, 1976, were filed by Braniff Airways, Inc.; Delta Air Lines, Inc.; Eastern Air Lines, Inc.; Frontier Airlines, Inc.; Piedmont Aviation, Inc.; Southern Airways, Inc.; and the Louisville Parties.[1]

The various petitions urge expansion of the issues to include nine markets in addition to the seven markets already in issue herein.

Braniff urges that the case should include the Dallas/Ft. Worth-Louisville, Dallas/Ft. Worth-Cincinnati, and Cincinnati-Washington/Baltimore markets. Braniff argues in pertinent part that the Dallas/Ft. Worth-Louisville market is substantially larger than several of the markets which the Board has already placed in issue; that since Cincinnati-Houston nonstop service is already being considered herein, enlargement of the issues to include the Cincinnati-Dallas/Ft. Worth market which is a larger market than Cincinnati-Houston, would not affect the size of the proceeding; and finally that inclusion of the Cincinnati-Washington/Baltimore market would not substantially enlarge the proceeding since Louisville-Washington/Baltimore is already in issue.

In its petition Delta notes that the Board indicated in the text of Order 76-10-113 its intention to consider in the investigation the deletion of the nonstop authority of Eastern in the Louisville-Baltimore and Louisville-Nashville markets but that the ordering paragraphs fail to mention those issues.

Eastern asks the Board to expand the issues to consider the Louisville-Minneapolis/St. Paul and Louisville-Milwaukee markets. Eastern also seeks elimination of its Route 5 restriction which prevents the carrier from operating single-plane service between Buffalo and Pittsburgh, on the one hand, and Houston, on the other hand. As an alternative to elimination of its own restriction Eastern seeks a pretrial restriction which would preclude single-plane service by Allegheny in the Buffalo/Pittsburgh-Houston markets via Louisville or Cincinnati. Finally, Eastern asks the Board specifically to focus on the question of which airport or airports in the Washington/Baltimore area would be served under an authorization of additional service between Louisville, on the one hand, and Washington, Baltimore, or the hyphenated point Washington/Baltimore, on the other hand.

Frontier asks the Board to reconsider and include the Louisville-St. Louis and Louisville-Kansas City markets in the case. Frontier argues that TWA now provides no service at all in the Louisville-Kansas City market which is larger than several of the markets which the Board has included herein; that Louisville-St. Louis is larger than the Louisville-Washington market which the Board has included for consideration herein; and that Frontier has available to it a strong traffic flow to support Louisville-Kansas City and Louisville-St. Louis service.

Piedmont seeks expansion of the issues to include Nashville-Houston service. According to Piedmont, the Nashville-Houston market could support new service when combined with other markets involved in this proceeding and it is comparable in size to markets already consolidated herein.

Southern seeks inclusion of the Louisville-Detroit market. According to Southern, the Louisville-Detroit market compares favorably in size with markets already consolidated herein and the quality and quantity of Delta's Louisville-Detroit service has declined in the past year.

The Louisville Parties ask for reconsideration to the extent that the issues do not include the Louisville-St. Louis and Louisville-Kansas City markets. According to the Louisville Parties, the Louisville-St. Louis market will soon be Louisville's largest remaining monopoly market and it is larger than numerous other markets where the Board has recently investigated and in most cases actually authorized competitive nonstop service. The Louisville Parties also state that Eastern holds nonstop authority in the Louisville-St. Louis market and has not operated nonstop service since 1972. With respect to the Louisville-Kansas City market, the Louisville Parties contend that TWA actually pulled out of the Louisville-Kansas City market on October 1, 1976, and that the statement in Order 76-10-113 that TWA operates one daily nonstop round trip is therefore erroneous.

Answers to the petitions for reconsideration were filed by Allegheny Airlines, Inc.;[2] American; Delta; Eastern; Piedmont; TWA; the Cincinnati Parties, the Louisville Parties, the St. Louis Parties, and the Bureau of Operating Rights. In addition, American and Delta both filed motions to file late documents, in the case of Delta an answer to Southern's petition for reconsideration, and in the case of American, an answer to Braniff's petition for reconsideration.[3]

Allegheny opposes any expansion of the proceeding. American opposes Piedmont's request to include the additional issue of Nashville-Houston service and Braniff's request to include Louisville-Dallas/Ft. Worth, Cincinnati-Dallas/Ft. Worth, and Cincinnati-Washington/Baltimore issues. Delta opposes inclusion of the Louisville-Detroit market and also opposes Eastern's request to limit new authorizations in the Washington/Baltimore area to a specific airport or airports. Eastern opposes the petitions for reconsideration which seek inclusion of the Louisville-St. Louis market in the case; and Piedmont opposes Braniff's request to expand the issues to include the Cincinnati-Washington/Baltimore markets. TWA opposes the petitions of Louisville and Frontier insofar as they seek consideration of Louisville-St. Louis/Kansas City issues and TWA also opposes the petition of Braniff insofar as it seeks addition of a Cincinnati-Washington issue to the case. The Cincinnati Parties support Braniff's petition insofar as it relates to the Cincinnati-Dallas/Ft. Worth market. The St. Louis Parties urge the Board to expand the issues to include the St. Louis-Louisville market, and, finally, the Louisville Parties state that the Board should not consider the addition of other Louisville markets unless Louisville-St. Louis and Louisville-Kansas City are first placed in issue.

The Bureau of Operating Rights opposes all of the requests to change the issues.

Upon consideration of the pleadings and all of the relevant facts we have decided to deny the various petitions for reconsideration.[4]

In our Order of Investigation, we considered the traffic and service in the Louisville-St. Louis, Louisville-Kansas City and Louisville-Dallas/Ft. Worth markets. The petitions have not persuaded us that we should alter our previous determination not to include those markets in the instant proceeding.[5]

Several parties seek expansion of the issues to include certain markets not considered by the Board in its Order of Investigation.

A number of the suggested additional markets are non-Louisville markets and there is no sound basis for including them in a case designed to consider the service needs of Louisville. The non-Louisville markets for which inclusion is sought are: Cincinnati-Dallas/Ft. Worth, Cincinnati-Washington/Baltimore, Buffalo/Pittsburgh-Houston, and Nashville-Houston. The Cincinnati-Washington market is clearly not appropriate for consideration herein because that service issue is being considered by the Board in the *Allegheny-Piedmont Subpart M Proceeding*, Docket 29132.[6]

With respect to the Cincinnati-Dallas/Ft. Worth market, Braniff seeks inclusion of this market essentially because the Board included the Cincinnati-Houston market. Inclusion of the latter market, however, was predicated on an interrelationship between the Cincinnati-Houston market and the Louisville-Houston market and the lack of nonstop service in the Cincinnati-Houston market. These considerations are not applicable to the Cincinnati-Dallas/Ft. Worth market.

With respect to the Nashville-Houston market for which Piedmont seeks inclusion, American correctly points out that there is no relationship between the Nashville-Houston market and the instant proceeding which would require or warrant hearing Nashville-Houston in the *Louisville Service Case*. Moreover, both American and Braniff provide single-plane service in the Nashville-Houston market and American provides nonstop service.

Expansion of the issues to include the Louisville-Detroit, Louisville-Minneapolis-St. Paul, and Louisville-Milwaukee markets is sought by Southern in the case of the Detroit market and by Eastern in the case of the Twin Cities and Milwaukee markets.

Delta opposes consolidation of Southern's Louisville-Detroit application and points out that it presently provides three daily round trips in the market. Although the market is sizeable (65,000 annual passengers), it is smaller than the Louisville-St. Louis market which the Board has excluded from the instant proceeding and like the Louisville-St. Louis market, Louisville-Detroit has single-plane service.

The Louisville-Milwaukee and Louisville-Twin Cities markets are both small (13,000 in the Milwaukee market and 18,000 in the Twin Cities market) and it does not apear that there is any persuasive basis for hearing these two markets and excluding other larger Louisville markets.

Eastern has requested removal of the certificate restriction which prohibits it from providing Buffalo/Pittsburgh-Houston single-plane service on the grounds that Allegheny could receive such authority via Louisville as the result of this proceeding. In the alternative, Eastern seeks imposition of a pretrial restriction to preclude single-plane service via Allegheny in the Buffalo/Pittsburgh-Houston markets. We will deny Eastern's request. The Board's customary practice is not to impose pretrail restrictions to bar tacking. Eastern, of course, will be free to argue that such a restriction should be imposed on Allegheny if Allegheny receives an award in this proceeding.

Finally, Eastern suggests that the Board include in the issues the following: "If additional service is authorized between Louisville and the Washington/Baltimore area should the new authorization be limited to a particular airport or airports?" The Bureau correctly points out, however, that there is no need to recite the particular language suggested by Eastern, since the issues expressed in the Order of Investigation are clearly broad enough to encompass the question of whether a Washington/Baltimore award should be limited to a particular airport or airports.

Accordingly, it is ordered That: 1. The motions of American Airlines and Delta Air Lines to file late documents, be and they hereby are granted;

2. The applications of American Airlines, Docket 30075; Braniff Airways, Docket 27812 (Amendment No. 2); Delta Air Lines, Docket 27814 (Amendment No. 2); Hughes Airwest, Docket 29690; Ozark Air Lines, Docket 30078; Piedmont Aviation, Docket 30077; Southern Airways, Docket 30071; and Trans World Airlines, Docket 30074, be and they hereby are consolidated for hearing and decision with the *Louisville Service Case*, Docket 29968 to the extent that they conform to the issues in that proceeding;

3. The issues in the *Louisville Service Case*, Docket 29968, shall include the following:

Do the public convenience and necessity require, the alteration, amendment, modification or suspension of the certificates of Eastern Air Lines, Inc., so as to delete Eastern's nonstop authority in the Louisville-Baltimore and Louisville-Nashville markets?

4. The motion of the Louisville Parties for leave to file an unauthorized document, be and it hereby is denied; and

5. Except to the extent granted herein, the petitions for reconsideration of Order 76-10-113, be and they hereby are denied.

This order shall be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.[7]

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc.77-1562 Filed 1-17-77;8:45 am]

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[1] Additional applications and motions to consolidate applications were filed by American Airlines, Inc.; Braniff; Delta; Hughes Airwest; Ozark Air Lines, Inc.; Piedmont; Southern; and Trans World Airlines, Inc. The motions seek consolidation of applications which conform to the issues as presently constituted although in certain instances, the applications involve markets not presently in issue.

[2] In addition, Allegheny filed an answer to the motions to consolidate.

Moreover, the Louisville Parties filed a motion for leave to file an unauthorized document, a reply to the Bureau's answer. The Louisville Parties have not established good cause for filing a reply which would represent a third round of pleadings, and, hence, we will deny the motion.

[3] Delta states that it was never served with Southern's petition in the instant proceeding, and, therefore, did not have an opportunity to respond to Southern's petition in a timely fashion. American states that it did not actually see Braniff's petition until after the answers were due.

[4] As several parties have noted, we inadvertently omitted from the ordering paragraphs of Order 76-10-113, issues relating to the deletion of Eastern's nonstop authority in the Louisville-Baltimore and Louisville-Nashville markets. These issues are included in the ordering paragraphs herein.

[5] We recognize, as Frontier has pointed out, that TWA does not now provide any nonstop service in the Louisville-Kansas City market. However, we are not convinced that the fact that TWA does not now operate nonstop service in this market is a sufficient justification in the light of the size of the market to warrant inclusion of a Louisville-Kansas City issue.

[6] Although the Cincinnati-Baltimore market is not being directly considered in the Subpart M Proceeding, there is no logical basis for hearing Cincinnati-Baltimore in the instant proceeding and Cincinnati-Washington in some other case.

[7] Minetti and West, Members, Concurring and Dissenting statement filed as part of original.

[Docket 29882]

PACIFIC WESTERN AIRLINES, LTD.

Foreign Air Carrier Permit; Reassignment of Proceeding

This proceeding has been reassigned from Administrative Law Judge Stephen J. Gross to Administrative Law Judge Ralph L. Wiser. Future communications should be addressed to Judge Wiser.

Dated at Washington, D.C., January 13, 1977.

HENRY M. SWITKAY,
Acting Chief Administrative Law Judge.

[FR Doc.77-1581 Filed 1-17-77;8:45 am]

CIVIL SERVICE COMMISSION

DEPARTMENT OF AGRICULTURE

Revocation of Authority to Make Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission revokes the authority of the Department of Agriculture to fill by noncareer executive assignment in the excepted service the position of Assistant Administrator for Agricultural Attaches, Agricultural Attaches, Foreign Agricultural Service.

UNITED STATES CIVIL SERVICE COMMISSION,
JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc.77-1384 Filed 1-17-77;8:45 am]

DEPARTMENT OF COMMERCE

Domestic and International Business Administration

PURDUE UNIVERSITY, ET AL.

Application for Duty-Free Entry of Scientific Articles: Correction

In the Notice of Application for Duty-Free Entry of Scientific Articles appearing at page 56875 in the FEDERAL REGISTER of Thursday, December 30, 1976, the following correction should be made:

Docket Number: 77-00057 should be corrected to read:

Docket Number: 77-00057. Applicant: University of Utah, College of Pharmacy, Salt Lake City, Utah 84112. Article: Mass Spectrometer, Model MAT 731 and accessories. • • •

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

RICHARD M. SEPPA,
Director,
Special Import Programs Division.

[FR Doc.77-1504 Filed 1-17-77;8:45 am]

VANDERBILT UNIVERSITY, ET AL.

Applications for Duty-Free Entry of Scientific Articles

The following are notices of the receipt of applications for duty-free entry of scientific articles pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897). Interested persons may present their views with respect to the question of whether an instrument or apparatus of equivalent scientific value for the purposes for which the article is intended to be used is being manufactured in the United States. Such comments must be filed in triplicate with the Director, Special Import Programs Division, Office of Import Programs, Washington, D.C. 20230, on or before February 7, 1977.

Amended regulations issued under cited Act, (15 CFR 301) prescribe the requirements applicable to comments.

A copy of each application is on file, and may be examined during ordinary Commerce Department business hours at the Special Import Programs Division, Department of Commerce, Washington, D.C. 20230.

Docket Number: 77-00062. Applicant: Vanderbilt University, Department of Molecular Biology, P.O. Box 1820, Station B., Nashville, Tennessee. Article: High Vacuum Freeze Etch Unit. Manufacturer: Balzers Liechtenstein, Germany. Intended use of article: The article is intended to be used for fundamental studies on membrane arrangement by reconstituting membrane in the test tube with different proteins and lipids and looking at the freeze-fracture ultrastructures, arrangements, and density of particles in fracture faces and on freeze-etched surface. A variety of biological membranes will be studied especially from liver and muscle spermatozoans and protozoans. The article will also be used in the following courses: Molecular Biology 390, Molecular Biology 369, and Molecular Biology Ph.D. Dissertation Research.

Students will be instructed individually in the use of the equipment to provide familarity with modern laboratory techniques and to permit the student to pursue a research problem as part of undergraduate or graduate education. Application received by Commissioner of Customs: December 10, 1976.

Docket Number: 77-00063. Applicant: Emory University, Chemistry Dept. 1515 Pierce Ave., Atlanta, Ga. 30322. Article: NMR Coherent Pulse Spectrometer, CPS-2. Manufacturer: Spin Lock Ltd., Canada. Intended use of article: The article is intended to be used to measure water proton relaxation times (T_1, $T_{1\rho}$, and T_2) of suspensions of red and white blood cells for the purpose of more fully characterizing disease processes in blood (particularly sickle cell anemia, hereditary spherocytosis, leukemia and drug resistant cell lines). Measurements of water proton exchange across the membranes of blood cells can be made by utilizing these relaxation parameters. Application received by Commissioner or Customs: December 10, 1976.

Docket Number: 77-00065. Applicant: ITT Research Institute, 10 West 35th Street, Chicago, Illinois 60616. Article: Mass Spectrometer, Model MAT 311A. Manufacturer: Varian MAT GmbH, West Germany. Intended use of article: The article is intended to be used in the following mass spectral studies:

(a) Characterization of the species present in air comprising the following environments: ambient air; stationary source emisions; occupied spaces; worker environments, indoor and outdoor; fire generated atmosphere; aircraft-generated events, aircraft-range sampling.

(b) Characterization of laboratory generated atmospheres: combustion/degradation emissions; product effluents; laboratory simulated process operations; explosives effluents.

(c) Characterization of organic species in water: industrial wastewaters; receiving waters; drinking water.

(d) Characterization of organic species adsorbed on environmental particulate samples.

(e) Characterization of species present in lung effluents.

(f) Detection and quantification of specific analytes in environmental samples: air; water; biota.

(g) Detection and quantification of specific analytes for chronic bioassays in animal tests designed to establish their carcinogenic potential.

(h) Identification and characterization of organic compounds synthesized for study as potential therapeutic agents.

(i) Identification and characterization of toxic environmental contaminants synthesized for toxicologic study and for investigation of their potential carcinogenic properties.

(j) Identification and characterization of mass isotope-labeled compounds synthesized for metabolism studies and the detection, identification and characterization of metabolites obtained in these studies.

(k) Characterization and monitoring of very low levels of vapor pressure ($<10^{-5}$ mm Hg).

(l) Characterization of the sphingomyelins, cerebrosides, sulfatides and gangliosides in relation to genetically transmitted neurological diseases.

(m) Identification of the mycolic acids associated with various strains of *Mycobacteria* smegmatis.

(n) Structural alterations in the pulmonary surfactant phospholopids due to oxygen toxicity, proteinosis, and air pollutant oxidants.

(o) Studying the possible role of folic acid in the formation of cyclopropanoid fatty acids in L. *casei* using $S^{-13}C=$ methyladenosyl-methionine.

(p) Screening studies of the nucleoside distribution in normal tissue and "hard mass" carcinomas.

Application received by Commissioner of Customs: December 19, 1976.

Docket Number: 77-00066. Applicant: Associated Universities, Inc., Brookhaven National Laboratory, Upton, New York 11973. Article: NMR Spectrometer, Model WH-360 with High-Resolution Electromagnet System. Manufacturer: Bruker Instruments, Inc., West Germany. Intended use of article: The article is intended to be used in a NMR laboratory

for detection of ^3H and ^{13}C and other nuclear resonances. Emphasis will be placed on membrane structure, the function of enzymes, and other biological problems. Application received by Commissioner of Customs: December 19, 1976.

Docket Number: 77-00067. Applicant: Lehigh University, Metallurgy & Materials Science Dept., Whitaker Laboratory Bld. No. 5, Bethlehem, Pa. 18015. Article: PW6570/00C Scanning Attachment for EM 300, Adaptor; and accompanying accessories. Manufacturer: Philips Electronics Instruments NVD, The Netherlands. Intended use of article: The article is an attachment to an existing electron microscope that provides the facility to scan the electron beam across the specimen with a beam diameter from 250 to 2.5 nm. The STEM facility will be used to investigate the following materials problems:

(1) Solute redistribution occurring during selected phase transformations,

(2) Solute profiles occurring in meteorites,

(3) The fine scale structure of iron meteorites which have been shocked and cosmically reheated.

(4) The fine structure of hot-pressed and as-crept specimens of SiC and Si_3N_4 manufactured from the powder.

(5) The identification of particles in the Bi-MnBi directionally solidified eutectic.

(6) The crystalline structure of polyethylene.

The equipment will also be used in a course in Electron Metallography to introduce students to the most recent advances in electron optical applications. Application received by Commissioner of Customs: December 19, 1976.

Docket Number: 77-00068. Applicant: University of California—Los Alamos Scientific Laboratory, P.O. Box 990, Los Alamos, NM 87545. Article: Automatic Bar Machine, Model AR7 and accessories. Manufacturer: Andre Bechler, Ltd., Switzerland. Intended use of article: The article is intended to be used in the fabrication of meteorized detonator components needed and requested for the Laboratory weapons program. Application received by Commissioner of Customs: December 19, 1976.

Docket Number: 77-00069. Applicant: University of Montana, Missoula, Montana 59801. Article: Reaction Coulometer Mark IIA with accessories for Gas Chromatography. Manufacturer: Reaction Coulometers Ltd., United Kingdom. Intended use of article: The article is intended to be used for studies of cellulose, raw wood and foliage in which the heat of combustion of volatile pyrolysis products will be investigated to determine the available heat content of forest fuels. Application received by Commissioner of Customs: Demember 19, 1976.

Docket Number: 77-00070. Applicant: University of California—Los Alamos Scientific Laboratory, P.O. Box 990, Los Alamos, NM 87545. Article: Laser System, Pulsed CO_2. Manufacturer: Lumonics Research Ltd., Canada. Intended use of article: The article is intended to be used for the study of laser induced fusion of cryogenic targets. Typical targets would include various hydrocarbon and materials such as carbon dideuterium. The system will be used to investigate radiation damage in materials and the feasibility of controlled thermonuclear fusion. Application received by Commissioner of Customs: December 22, 1976.

Docket Number 77-00071: Applicant: University of Wisconsin, Department of Physics, 1150 University Avenue, Madison, WI 53706. Article: Polarized Neutral Atomic Beam Source. Manufacturer: ANAC Ltd., New Zealand. Intended use of article: The article is intended to be used to provide a directed beam of polarized hydrogen or deuterium atoms of high intensity. The ultimate purpose of the device is to bombard the polarized atoms with an intense beam of fast neutral cesium atoms to study the transformation of polarized hydrogen atoms into polarized negative ions. The objective pursued in this investigation is to determine whether in atomic collisions of this type the atoms maintain a state of polarization or whether the polarization is disturbed by the collision process. If it develops that the atoms maintain polarization, the article will be used for a second purpose—to inject the polarized negative ions into the University of Wisconsin Tandem Accelerator in order to study nuclear reactions with polarized beams. The work described above will constitute part of the Ph. D. thesis of two graduate students in the course: Physics 990. Application received by Commissioner of Customs: December 22, 1976.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

RICHARD M. SEPPA,
Director,
Special Import Programs Division.

[FR Doc.77-1503 Filed 1-17-77;8:45 am]

National Oceanic and Atmospheric Administration

CHARLES F. McALPINE

Endangered Species Certificate of Exemption; Application

Notice is hereby given that the following applicant has applied in due form for a Certificate of Exemption under Pub. L. 94-359, and the regulations issued thereunder (50 CFR Part 222, Subpart B), to engage in certain commercial activities with respect to pre-Act endangered species parts or products.

Applicant: Charles F. McAlpine, McAlpine Fur Trading Co., 819 West Fourth Avenue, Anchorage, Alaska 99501.

Period of Exemption: The applicant requests that the period of time to be covered by the Certificate of Exemption begin on the date of the original issuance of the Certificate of Exemption and be effective for a 3-year period.

Commercial activities exempted: (1) The prohibition, as set forth in section 9(a)(1)(A) of the Act, to export any such species part from the United States;

(2) The prohibition, as set forth in section 9(a)(1)(E) of the Act, to deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and in the course of commercial activity any such species part;

(3) The prohibition, as set forth in section 9(a)(1)(F) of the Act, to sell or offer for sale in interstate or foreign commerce any such species part.

Parts or products exempted: Finished scrimshaw products to be made from approximately 34,400 pounds of whale bone and 2,500 pounds of baleen.

Written comments on this application may be submitted to the Director, National Marine Fisheries Service, Department of Commerce, Washington, D.C. 20235 on or before February 17, 1977.

Dated: January 10, 1977.

ROBERT J. AYERS,
Acting Assistant Director for Fisheries Management, National Marine Fisheries Service.

[FR Doc.77-1484 Filed 1-17-77;8:45 am]

MORGAN J. LEVINE

Endangered Species Certificate of Exemption; Application

Notice is hereby given that the following applicant has applied in due form for a Certificate of Exemption under Pub. L. 94-359, and the regulations issued thereunder (50 CFR Part 222, Subpart B), to engage in certain commercial activities with respect to pre-Act endangered species parts or products.

Applicant: Morgan J. Levine d/b/a The Four Winds, Straight Wharf, Nantucket, Massachusetts 02554.

Period of Exemption: The applicant requests that the period of time to be covered by the Certificate of Exemption begin on the date of the original issuance of the Certificate of Exemption and be effective for a 3-year period.

Commercial activities exempted: (1) The prohibition, as set forth in section 9(a)(1)(E) of the Act, to deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and in the course of commercial activity any such species part;

(2) The prohibition, as set forth in section 9(a)(1)(F) of the Act, to sell or offer for sale in interstate or foreign commerce any such species part.

Parts or products exempted: Finished scrimshaw products to be made from approximately 2,079 pounds of sperm whale teeth and six sperm whale pan bones.

Written comments on this application may be submitted to the Director, National Marine Fisheries Service, Department of Commerce, Washington, D.C. 20235, on or before February 17, 1977.

Dated: January 12, 1977.

ROBERT J. AYERS,
Acting Assistant Director for Fisheries Management, National Marine Fisheries Service.

[FR Doc.77-1483 Filed 1-18-77;8:45 am]

National Oceanic and Atmospheric Administration

WESTERN PACIFIC FISHERY MANAGEMENT COUNCIL

Public Meeting

Correction

In FR Doc. 77-1265, appearing on page 3012 in the issue for Friday, January 14, 1977, the following changes should be made:

1. The first five lines of small print in the third paragraph should be replaced with:

January 21, 1977, at 9 a.m. at the State Capital Building, 1151 Punchbowl Street, Honolulu, Hawaii.
January 21, 1977, at 9 a.m. at the Office.

2. The first line of small print in the second column should read:

January 21, 1977, at 9 a.m. at the offices.

CONSUMER PRODUCT SAFETY COMMISSION

ALUMINUM WIRE CONNECTIONS

Extension of Time

The purpose of this notice is to announce that the Consumer Product Safety Commission has extended the time period within which it must publish either a proposed consumer product safety standard for aluminum wire connections or a notice withdrawing the previously published notice of proceeding to develop such a standard.

BACKGROUND

On November 4, 1975, the Commission published in the FEDERAL REGISTER (40 FR 51218) a notice under section 7 of the Consumer Product Safety Act (CPSA) (15 U.S.C. 2056) commencing a proceeding to develop a consumer product safety standard applicable to the aluminum wire system used in 15 and 20 ampere electrical circuits.

In that notice, the Commission, on the basis of various injury data and technical information, preliminarily determined that the aluminum wire system presents an unreasonable risk of injury and that a consumer product safety standard is necessary. In the notice of proceeding, the Commission identified the ultimate risk of injury it believed to be associated with the aluminum wire system as death or injury due to fire. The Commission also solicited offers to develop a standard and the submission of existing standards to address the hazard. In response to the notice, the Commission received one offer to develop a standard and the submission of an existing standard. On December 30, 1975, the Commission determined that the submissions were not acceptable because they failed to comply with the regulations of the Commission and were not fully responsive to the notice of proceeding. The Commission directed its staff to develop a plan under which the Commission would develop the standard itself.

The Commission staff on February 20, 1976, submitted a plan to the Commission for developing a standard for the aluminum wire system. This plan involved technical work by the staff with subsequent public participation in the development of a standard.

On March 25, 1976, the staff submitted to the Commission for its consideration an unsolicited proposal from Battelle Columbus Laboratories to undertake and manage the development of a consumer product safety standard for the aluminum wire system. By notice in the FEDERAL REGISTER of June 10, 1976 (41 FR 23450), the Commission extended the period within which it would publish either a proposed rule or a notice withdrawing the notice of proceeding to develop a rule until August 30, 1976.

In a briefing package dated June 11, 1976, the staff, at the Commission's request, submitted to the Commission a plan of the Commission's Bureau of Engineering Sciences for developing a design standard to address the problems associated with the alumipum wire system.

After considerable deliberation of the issues emerging from the earlier briefing packages, the Commission requested and the staff submitted another briefing package dated September 14, 1976, which contained a plan for resolving the problems associated with the aluminum wire system through modification of the National Electric Code (NEC) as it applies to aluminum wire. The National Electric Code, which is administered by the National Fire Protection Association states as one of its purposes the practical safeguarding of persons and property from hazards arising from the use of electricity.

RECENT DEVELOPMENTS

The Commission has been studying the available technical information on the nature of the aluminum wire problem in terms of the various alternatives available to it in regard to the development of a standard for the aluminum wire system. The Commission recognizes that the method of termination of an aluminum wire system, that is, the method in which electrical conductors are connected, joined, or terminated, with various products, devices and assemblies (convenience outlets, wall switches, circuit breakers and the like) to may be capable of resolution in an expeditious and cost-effective manner through modification of the National Electric Code. Thus, the Commission on December 16, 1976, approved the staff plan included in the Briefing Package of September 14, 1976, which suggested a method of resolving the problems associated with the aluminum wire system through a modification of the National Electric Code. A copy of the Briefing Package is available in the Commission's Office of the Secretary, 1111 18th Street, NW., Washington, D.C.

Recognizing the ability and technical expertise of organizations such as the National Fire Protection Association, (NFPA), the Commission has instructed its staff to contact the NFPA and other appropriate organizations to determine their interest in implementing a modification of the NEC.

In this regard, the Commission notes that the National Electric Code has been adopted and is enforced by building code authorities that have authority over the vast majority of residences in the United States. It is anticipated that this independent local governmental enforcement of the NEC can be expected to result in a high degree of compliance with the code, possibly approaching that which might be expected for a federal mandatory standard enforced by the Commission. Morover, the availability of a large, local inspectional force is of great importance in a situation such as this where the aluminum wire conections that would be the subject of the NEC modifications are assembled on site. This local inspectional capability far exceeds that available to the Commission through the use of its own resources.

Consequently, revisions to the NEC that address the risk of injury that the Commission has preliminarily determined to be associated with the aluminum wire system might reduce or eliminate that risk. Reduction to a sufficient degree, or elimination, of the risk of injury through revisions to the NEC might lead to Commission withdrawal of its notice of proceeding for the development of a mandatory safety standard for the aluminum wire system used in 15 and 20 ampere electrical circuits.

EXTENSION OF TIME

In order to provide the staff and organizations contacted an opportunity to develop appropriate requirements for the aluminum wire system, the Commission, pursuant to section 7(f) of the CPSA, as amended, is extending the period within which it must propose a consumer product safety standard for the aluminum wire system or withdraw the notice of proceeding until May 1, 1977. If, in the Commission's opinion, demonstrable progress is not being made, the Commission will then complete the development of and propose a mandatory Federal standard.

This decision does not affect the Commission's activities under section 15 of the CPSA and those activities are to continue.

Dated: January 13, 1977.

SHELDON D. BUTTS,
Acting Secretary, Consumer Product Safety Commission.

[FR Doc.77-1574 Filed 1-17-77;8:45 am]

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF SCIENTIFIC ADVISORY BOARD

Meeting

JANUARY 10, 1977.

The USAF Scientific Advisory Board, Science and Technology Advisory Group, Air Force Systems Command, will hold a meeting on February 9, 1977 at HQ SAC, Offutt AFB, Nebraska and on February 10–11, 1977 at Minot AFB, North Dakota.

The Group will receive classified briefings on the mission of the Air Force Strategic Air Command and will conduct classified discussions on the sole of basic research in the Air Force community.

The meetings concern matters listed in Section 552(b) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly the meetings will be closed to the public.

For further information contact the Scientific Advisory Board Secretariat at 202–697–4648.

FRANKIE S. ESTEP,
Air Force Federal Register Liaison Officer, Directorate of Administration.

[FR Doc.77-1462 Filed 1-17-77;8:45 am]

USAF SCIENTIFIC ADVISORY BOARD

Meeting

JANUARY 10, 1977.

The USAF Scientific Advisory Board C-141 Independent Review Team will hold a meeting on 17–18 February 1977 from 8:30 a.m. to 5 p.m. each day at the Lockheed Georgia Company, Marietta, Georgia.

The Team will review results of the Durability and Damage Tolerance Analysis Program.

The meeting will be open to the public.

For further information contact the Scientific Advisory Board Secretariat at 202–697–8845.

FRANKIE S. ESTEP,
Air Force Federal Register Liaison Officer, Directorate of Administration.

[FR Doc.77-1468 Filed 1-17-77;8:45 am]

USAF SCIENTIFIC ADVISORY BOARD

Meeting

JANUARY 3, 1977.

The USAF Scientific Advisory Board Foreign Technology Division Advisory Group, Air Force Systems Command, will hold meetings on February 28, 1977 from 8 a.m. to 5 p.m. and on March 1, 1977 from 8 a.m. to 1 p.m. at Wright-Patterson Air Force Base, Ohio in Room 276, Building 828.

The Group will receive classified briefings and participate in classified discussions relative to the Foreign Technology Division's assessments of foreign command and control systems and electronic warfare.

The meetings concern matters listed in section 552(b) and Title 5, United States Code, specifically subparagraph (1) thereof, and that accordingly the meetings are closed to the public.

For further information contact the Scientific Advisory Board Secretariat at 202–697–8404.

FRANKIE S. ESTEP,
Air Force Federal Register Liaison Officer, Directorate of Administration.

[FR Doc.77-1469 Filed 1-17-77;8:45 am]

Office of the Secretary

DEFENSE INTELLIGENCE AGENCY SCIENTIFIC ADVISORY COMMITTEE

Closed Meeting

Pursuant to the provisions of subsection (d) of section 10 of Pub. L. 92–463, as amended by Pub. L. 94–409, notice is hereby given that a closed meeting of a Panel of the DIA Scientific Advisory Committee will be held as follows:

Tuesday, 15 February 1977

The entire meeting commencing at 0845 hours is devoted to the discussion of classified information as defined in section 552(b)(1), Title 5 of the U.S. Code and therefore will be closed to the public. The Panel will receive briefings and participate in discussions relative to the Defense Intelligence Agency's assessments of foreign military equipment, operations, and capabilities.

MAURICE W. ROCHE,
Director, Correspondence and Directives OASD (Comptroller).

JANUARY 13, 1977.

[FR Doc.77-1579 Filed 1-17-77;8:45 am]

[DOD Directive 5120.46, 1/8/77]

DEPARTMENT OF DEFENSE AFFIRMATIVE ACTION BOARD

Establishment

The Secretary of Defense has approved the following:

I. *Purpose.* This Directive establishes the Department of Defense Affirmative Action Board, and prescribes its missions, functions, responsibilities, policies, and management arrangements.

II. *Applicability.* The provisions of this Directive apply to the Office of the Secretary of Defense, the Military Departments, the Organization of the Joint Chiefs of Staff, and the Defense Agencies (hereinafter referred to collectively as "DOD Components").

III. *Mission.* The mission of the DOD Affirmative Action Board is to:

A. Emphasize and coordinate efforts throughout the Department of Defense to increase the employment and promotional opportunities of minorities and women in executive positions, GS–15 and above.

B. Provide policy and operational guidance and direction to an Executive Search Group on Equal Employment Opportunity (EEO) matters relating to staffing executive positions.

C. Eliminate barriers or problems which hinder progress in attaining the numerical goals of the Affirmative Action Plans of DOD Components and in implementing established policies of the Department of Defense.

IV. *Policy.* The Department of Defense will pursue an affirmative course of action for purposes of providing increased representation of minorities and women in executive positions, GS–15 and above. All actions to achieve this policy will be in full compliance with merit system requirements.

V. *Functions.* The DOD Affirmative Action Board will:

A. Establish equal employment opportunity policies and procedures for staffing executive positions in DOD, in accordance with DOD Directive 1100.15, "The Department of Defense Equal Opportunity Program," June 3, 1976[1] and DOD Directive 1400.19, "Staffing of Executive Level Positions," June 20, 1968.[1]

B. Assess the efforts made by all DOD Components to ensure compliance with the equal employment opportunity provisions of DOD Directive 1100.15[1] as they relate to staffing executive positions throughout the DOD.

C. Monitor the progress of the Executive Search Group in its efforts to enhance equal employment opportunities for all minority group members and women in staffing executive positions.

D. Review and approve specific numerical goals and timetables for the hiring of minorities and women in executive positions by all DOD Components.

E. Periodically advise the Secretary of Defense on the status and progress made by all DOD Components in placing minorities and women in executive positions.

VI. *Responsibilities.* A. *The Assistant Secretary of Defense (Manpower and Reserve Affairs) (ASD (M&RA))* shall:

1. Serve as Chairman of the DOD Affirmative Action Board with representatives from the Army, Navy, Air Force, DSA, DASD (Administration), OASD (C); and the DASDs (Equal Opportunity) and (Civilian Personnel Policy), OASD (M&RA).

2. Establish an Executive Search Group which shall receive policy and operational guidance from the DOD Affirmative Action Board.

3. Review and approve the Executive Search Group's program plans and operational requirements.

4. Coordinate the interchange of statistical and related data between and among the DOD Components.

B. Under the direction of the ASD (M&RA), the Director of Personnel, in the Office of the Deputy Assistant Secretary of Defense (Administration), Office of the Assistant Secretary of Defense (Comptroller), shall:

1. Serve as Executive Secretary of the DOD Affirmative Action Board.

2. Provide advisory assistance to the Executive Search Group.

3. Assist in the coordination of the Executive Search Group activities within the DOD Components.

4. Provide to the Chairman analyses of the Executive Search Group activities, suggestions, and recommendations for the operation of the Group, including use of consultants with expertise in the field of minority recruiting.

[1] Filed as part of original. Copies available at U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, Pa. 19120, Attn: Code 300.

C. *The Executive Search Group* shall:

1. Establish guidelines and review procedures established by DOD Components by which minorities and female executive candidates are identified and considered for employment by DOD managers. Guidelines developed will be coordinated with DOD Components before being implemented.

2. Oversee recruitment undertaken by the DOD Components to ensure they have widely publicized executive position vacancies to all sources, including women and minority group members.

3. Use data bases consisting of extracts from automated files developed and maintained by DOD Components for their own use.

4. Make analyses and provide the DOD Affirmative Action Board with recommendations and/or reports as may be required.

5. As requested by the Secretary of Defense, the Affirmative Action Board will assist in search for personnel/nominees to fill Schedule C and other noncareer executive positions.

VII. *Authority.* The Executive Secretary, DOD Affirmative Action Board, is delegated authority to:

A. Manage and operate the Executive Search Group.

B. Communicate directly with DOD Components relative to employment programs as they relate to minority groups and women.

C. Obtain such information, data, analyses, reports, and assistance from DOD Components as is necessary for the performance of responsibilities assigned by the DOD Affirmative Action Board.

VIII. *Effective date.* This Directive is effective immediately.

MAURICE W. ROCHE,
Director, Correspondence and Directives, OASD (Comptroller).

JANUARY 12, 1977.

[FR Doc.77-1578 Filed 1-17-77;8:45 am]

DEFENSE NUCLEAR AGENCY

SCIENTIFIC ADVISORY GROUP ON EFFECTS (SAGE)

Meeting

A meeting of the Scientific Advisory Group on Effects (SAGE), Defense Nuclear Agency (DNA), will be held during the period 1-4 March 1977 at the USAF Conference Center, Homestead AFB, Florida. The principal purpose of the meeting will be an examination of research programs sponsored by DNA with specific interest concerning nuclear effects on inter-theater communications and weapons systems. Since presentations and ensuing review will contain classified information, it has been determined that the meeting will be closed to the public under the provisions of section 10(d) of the Federal Advisory Committee Act and sections 552(b) (1) and (3) of Title 5, United States Code.

W. A. HUGHES,
LCDR, USN, Executive Secretary, SAGE.

JANUARY 12, 1977.

[FR Doc.77-1505 Filed 1-17-77; 8:45 am]

ENVIRONMENTAL PROTECTION AGENCY

[FRL 672-2; OPP-240010A]

CONNECTICUT

Interim Certification To Register Pesticides To Meet "Special Local Needs"

Pursuant to section 24(c) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (86 Stat. 973; 89 Stat. 751; 7 U.S.C. 136(a) et seq.), the State of Connecticut submitted to the Environmental Protection Agency (EPA) a request for Interim Certification to register pesticides for special local needs (Request), which was subsequently approved on April 20, 1976. Notice of approval of this Request was published in the FEDERAL REGISTER on May 24, 1976 (41 FR 21219). This initial Request sought authority to amend EPA registrations that involve "changed use patterns", as that term is defined in § 162.152(c) of the proposed regulations as they were published in the FEDERAL REGISTER on September 3, 1975 (40 FR 40538), and to amend EPA registrations that did not involve changed use patterns.

On October 22, 1976, the State of Connecticut sought to amend its Request to include authority to register "new products", as that term is defined in § 162.152(g) of the proposed regulations. This Agency has found that the specific requirements for registration of new products are satisfied in the Connecticut Request, in that Connecticut's registration program provides for both efficacy determination and product hazard review.

Accordingly, notice is hereby given that the Administrator, EPA, has approved the amendment from the State of Connecticut for Interim Certification allowing that State the authority to register new products. The State agency designated responsible for issuance of such registrations, the Connecticut Department of Environmental Protection, was notified on December 16, 1976, that the amendment to its Request had been approved.

Copies of the amendment to the Request for Interim Certification from Connecticut, along with the letter reflecting the Agency's decision to approve the amendment, are available for public inspection at the following locations:

Federal Register Section, Technical Services Division (WH-569), Office of Pesticide Programs, EPA, Room 401, East Tower, 401 M Street SW., Washington, D.C. 20460.

Pesticide Branch, Hazardous Materials Control Division, EPA, John F. Kennedy Federal Bldg., Rm. 2303, Boston, Massachusetts 02203.

Dated: January 11, 1977.

EDWIN L. JOHNSON,
Deputy Assistant Administrator for Pesticide Programs.

[FR Doc.77-1454 Filed 1-17-77;8:45 am]

[FRL 672-1; PW8]

NOR-AM AGRICULTURAL PRODUCTS, INC.

Pesticide and Food Additive Petitions; Withdrawal

Notice is given that Nor-Am Agricultural Products, Inc., 1275 Lake Avenue, Woodstock, Ill. 60098, has withdrawn the following petitions without prejudice:

PP 3F1351 proposed the establishment of tolerances (40 CFR Part 180) for residues of the insecticide formetanate hydrochloride (*m*-[[(dimethylamino)methylene] amino]phenyl methylcarbamate hydrochloride) and its metabolites containing the *m*-aminiophenol moiety (calculated as formetanate hydrochloride) in or on grapes at 5 parts per million (ppm); liver and kidney of cattle, goats, hogs, horses, poultry, and sheep at 0.1 ppm; meat, fat, and meat byproducts (excluding liver and kidney) of cattle, goats, hogs, horses, poultry, and sheep; milk; and eggs at 0.05 ppm. Notice of Filing was published in the FEDERAL REGISTER of March 23, 1973 (38 FR 7488).

FAP 3H5025 proposed the establishment of food additive tolerances (21 CFR Part 121) for residues of the above insecticide in or on dried grape pomace and raisin waste at 45 ppm and raisins at 20 ppm resulting from application of the insecticide to growing grapes. (38 FR 7488)

PP 4F1419 proposed the establishment of tolerances (40 CFR Part 180) for combined residues of the above insecticide in or on the raw agricultural commodities almond hulls at 35 ppm; almonds at 0.5 ppm; and liver and kidney of cattle, goats, hogs, horses, sheep, and poultry at 0.3 ppm. Notice of Filing was published in the FEDERAL REGISTER of August 15, 1973 (38 FR 22182).

FAP 3H5029 proposed the establishment of a food additive tolerance (21 CFR Part 121) for combined residues of the above insecticide in dried apple pomace at 30 ppm resulting from application of the insecticide to the growing raw agricultural commodity apples. (38 FR 22182)

Dated: January 10, 1977.

DOUGLAS D. CAMPT,
Acting Director, Registration Division.

[FR Doc.77-1456 Filed 1-17-77;8:45 am]

[FRL 672-3; OPP-240011A]

WEST VIRGINIA

Interim Certification To Register Pesticides To Meet "Special Local Needs"

Pursuant to section 24(c) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (86 Stat. 973; 89 Stat. 751; 7 U.S.C. 136(a) et seq.), the State of West Virginia submitted to the Environmental Protection Agency (EPA) a request for Interim Certification to register pesticides for special local needs (Request), which was subsequently approved on May 7, 1976. Notice of approval of this request was published in the FEDERAL REGISTER on June 3, 1976 (41 FR 22412). This initial request sought authority to amend EPA registrations that involve "changed use patterns", as that term is defined in § 162.152(c) of the proposed regulations as they were published in the FEDERAL REGISTER on September 3, 1975 (40 FR 40538), and to amend EPA registrations that did not involve changed use patterns.

On November 17, 1976, the State of West Virginia sought to amend its Request to include authority to register "new products", as that term is defined in § 162.152(g) of the proposed regulations. This Agency has found that the specific requirements for registration of new products are satisfied in the West Virginia Request, in that West Virginia's registration program provides for both efficacy determination and product hazard review.

Accordingly, notice is hereby given that the Administrator, EPA, has approved the amendment from the State of West Virginia for Interim Certification allowing that State the authority to register new products. The State agency designated responsible for issuance of such registrations, the West Virginia Department of Agriculture, was notified on December 16, 1976, that the amendment to its Request had been approved.

Copies of the amendment to the Request for Interim Certification from West Virginia, along with the letter reflecting the Agency's decision to approve the amendment, are available for public inspection at the following locations:

Federal Register Section, Technical Services Division (WH-569), Office of Pesticide Programs, EPA, Room 401, East Tower, 401 M Street, SW, Washington, D.C. 20460.

Pesticide Branch, Hazardous Materials Control Division, EPA, Curtis Building, 6th and Walnut Streets, Philadelphia, Pennsylvania 19106.

Dated: January 11, 1977.

EDWIN L. JOHNSON,
Deputy Assistant Administrator for Pesticide Programs.

[FR Doc.77-1455 Filed 1-17-77;8:45 am]

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 1025]

RULE MAKING PROCEEDINGS FILED

Petitions for Reconsideration of Actions

JANUARY 10, 1977.

Docket or RM No.	Rule No.	Subject	Date received
RM-2608	Sec. 95.41	Request amendment of sec. 95.41 to reserve channel 19 as a moving vehicle channel in the Citizens Radio Service. Filed by C. L. Chingaro, KKG-0106, national director for Highway Assistance Modulators.	Dec. 3, 1976
RM-2676	Pts. 0 and 1	Request amendment of pts. 0 and 1 of the Commission rules to facilitate participation of indigent interested persons in Commission proceedings. Filed by Carl L. Shipley, attorney for Radio Station WFAR	Dec. 6, 1976
18875		Inquiry into policy to be followed in future licensing of facilities for overseas communications. Filed by Howard A. White, senior vice president and general counsel for ITT World Communications, Inc.	Dec. 29, 1976

NOTE.—Oppositions to petitions for reconsideration must be filed on or before February 2, 1977. Replies to an opposition must be filed within 10 days after time for filing oppositions has expired.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS,
Secretary.

[FR Doc.77-1406 Filed 1-17-77;8:45 am]

FEDERAL POWER COMMISSION

[Docket No. ES77-10]

CITIZENS UTILITIES CO.

Application

JANUARY 13, 1977.

Take notice that on January 5, 1977, Citizens Utilities Company (Applicant) filed an application seeking an order pursuant to section 204 of the Federal Power Act, authorizing the issuance of short-term promissory notes in an aggregate principal amount not to exceed $18,000,000 outstanding at any one time.

Applicant is incorporated under the laws of the State of Delaware and is qualified to do business in the States of Arizona, Colorado, Connecticut, Hawaii, Idaho and Vermont.

The Notes are to be issued pursuant to a credit arrangement with a bank or banks, or, in the alternative, in the form of commercial paper. All notes are to have a final maturity on or before a date which shall be less than one year after the issuance of the first notes issued under such arrangements. The interest rate for notes issued pursuant to the bank credit agreement shall be at the prime commercial interest rate of the banks concerned for short-term borrowings. The maximum principal amount of all notes to be issued pursuant to the application shall not exceed $18,000,000 outstanding at any one time.

The net proceeds from the sale of the Notes will be used, together with other funds of the Applicant, for replenishment of the treasury for expenditures for current transactions, for repayment of indebtedness and for the construction, extension and improvement of facilities.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 21, 1977, file with the Federal Power Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules. The application is on file with the Commission and available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-1688 Filed 1-14-77;11:35 am]

[Docket No. ER77-102]

PENNSYLVANIA POWER CO.

Initial Interim Transmission Rate

JANUARY 13, 1977.

Take notice that the Pennsylvania Power Company (Company), on December 23, 1976, tendered for filing an initial interim transmission rate schedule in its FPC Electric Service Tariff, Municipal Resale—Primary Voltage Schedule. This primary rate schedule has had an additional provision added to provide for Transmission Voltage utilizing the existing primary rate with a discount for 69 kv service and was filed in compliance with the Federal Power Commission Order issued August 20, 1975 at Docket No. E-8159.

The reason for this additional transmission voltage provision arises from the fact that Ellwood City Borough, one of five municipalities served by the Company, has either purchased, or leased, a customer-owned 69 kv substation located in the borough that is presently serving Ellwood Steel Casting Company. The Company has received notice from the Ellwood Steel Casting Company that service will no longer be required from the Pennsylvania Power Company at that station effective February 1, 1977. Ellwood City Borough is apparently of the view that all service to the borough and Ellwood Steel Casting Company can be served through this purchased or leased 69 kv substation. The interim rate schedule does not provide that a municipality can receive both primary and transmission service simultaneously.

Copies of the filing were served upon the borough secretaries of Ellwood City, Grove City, New Wilmington, Wampum and Zellenople.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such

petitions or protests should be filed on or before January 21, 1977. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-1687 Filed 1-14-77;11:35 am]

FEDERAL POWER COMMISSION

[Docket No. G-18441, et al.]

SHELL OIL COMPANY, ET AL.

Applications for Certificates, Abandonment of Service and Petitions to Amend Certificates [1]

JANUARY 5, 1977.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before January 28, 1977, file with the Federal Power Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accord with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure a hearing will be held without further notice before the Commission on all applications in which no petition to intervene is filed within the time required herein if the Commission on its own review of the matter believes that a grant of the certificates or the authorization for the proposed abandonment is required by the public convenience and necessity. Where a petition for leave to intervene is timely filed, or where the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft³	Pressure base
G-18441 [1] 7-14-76	Shell Oil Co. (successor to T. F. Hodge, (operator), et al.), 2 Shell Plaza, P.O. Box 2099, Houston, Tex. 77001.	El Paso Natural Gas Co., Jalmat Field, Lea County, N. Mex.		
G-19189 [2] 7-14-76	Shell Oil Co. (successor to L. D. Crumley, Jr. (operator), et al.).	El Paso Nztural Gas Co., Scarborough Field, Winkler County, Tex.		
G-19572 [3] 7-14-76	Shell Oil Co. (successor to the Carter Oil Co.).	Colorado Interstate Gas Co., Southwest Camp Creek Field, Beaver County, Okla.		
CI60-466 C F 11-29-76	Cabot Corp. (successor to Apexco, Inc.), P.O. Box 1101, Pampa, Tex 79065.	Northern Natural Gas Co., Barby Ranch No. 1-41 Unit Well in sec. 8, township 2 North, range 27 ECM, Beaver County, Okla.	[4] [5] 27.3060¢	14.65
CI61-323 D 12-14-76	Union Oil Co. of California, P.O. Box 7600, Los Angeles, Calif. 90051.	Transwestern Pipeline Co., lease No. LOG-BEA-7, SE/4 of sec. 25-1N-24ECM, Beaver County, Okla.	[6]	
CI61-1621 [7] 11-22-76	Hunt Industries, 2500 1st National Bank Bldg., Dallas, Tex. 75202.	Montana-Dakota Utilities Co., North Tioga area, Burke County, N.Dak.	18.0¢	14.73
CI62-286 B 4-14-76	Sun Oil Co., P.O. Box 20, Dallas, Tex. 75221.	Cities Service Gas Co., Hugoton Field, Kearny and Finney Counties, Okla.	[8]	
CI65-323 B 6-23-76	Louisiana Crude Oil & Gas Co., Inc. (successor to Consolidated Gas Supply Corp.,) 922 Richards Bldg., New Orleans, La. 70112.	Texas Gas Transmission Corp., Chalkley Field, Cameron Parish, La.	15.0¢	15.025
CI65-624: CI72-169 CI72-597 [9] 11-23-76	Phillips Petroleum Co., 5 C4 Phillips Bldg., Bartlesville, Okla. 74004.	El Paso Natural Gas Co., Ector plant tailgate, located in Ector County, Tex.	[10]	14.65
CI77-125 (CI65-154) B 11-18-76	Sun Oil Co	Northern Natural Gas Co., Laverne Field, Harper County, Okla.	[11]	
CI74-63 [7] 11-22-76	Hunt Industries	Montana-Dakota Utilities Co., North Tioga Area, Burke County, N.Dak.	[12] [13] 103.6128¢	15.025
CI75-13 [14] C 6-29-76	Diamond Shamrock Corp., P.O. Box 631, Amarillo, Tex. 79105.	Trunkline Gas Co., Block 639, West Cameron area (South addition), offshore Louisiana.	[5] 182.72¢	15.025
CI76-90 [15] B 12-2-76	Hurley Petroleum Corp., 400 Petroleum Bldg., Shreveport, La. 71101.	Mississippi River Transmission Corp., Cocke-Jobe lease and the Ella V. Armstrong lease, Waskom Field, Harrison County, Tex.	[16]	[16]
CI76-178 C 12-6-76	Ladd Petroleum Corp., 830 Denver Club Bldg., Denver, Colo. 80202.	Michigan Wisconsin Pipe Line Co., East Niles Field, Caddo and Canadian Counties, Okla.	[13] [17] [18] 160.7218¢	14.65
CI76-792 (G-15810) F 12-15-76	Gulf Oil Corp. (sncessor to Union Oil Co. of California), P.O. Box 2100, Houston, Tex. 77001.	Transwestern Pipeline Co., White City Penn Field, Eddy County, N.Mex.	[19] 94.8628¢ [20] [21] [22] 145.8643¢	15.025
CI77-129 (G-10823) B 12-6-76	Union Texas Petroleum, a division of Allied Chemical Corp., P.O. Box 2120, Houston, Tex. 77001.	Montana-Dakota Utilities Co., Glendive Plant, Wilbaux County, Mont.	[23]	
CI77-140 A 12-9-76	Energy Reserves Group, Inc., P.O. Box 1201, Wichita, Kans. 67201.	Transcontinental Gas Pipe Line Corp., Terrebonne Parish, La.	[5] [13] [24] 164.0743¢	15.025
CI77-141 (G-7207) B 12-9-76	Chevron Oil Co., western division, P.O. Box 599, Denver, Colo. 80201.	El Paso Natural Gas Co., various fields, Lockhart B No. 8 well, SE¼ SE¼ of sec. 14, T-21-S, R-27-E, Lea County, N. Mex.	[25]	[25]
CI77-142 (G-15082) B 12-9-76	Austral Oil Co., Inc., 2700 Exxon Bldg., Houston, Tex. 77002.	Michigan Wisconsin Pipe Line Co., Holly Beach Field, Cameron Parish, La.	[26]	[26]
CI77-143 (CI67-1082) B 12-9-76	Atlantic Richfield Co., P.O. Box 2819, Dallas, Tex. 75221.	Lone Star Gas Co., Raloh R. Ford unit, W/2 sec. 30-2N-8W, Stephens County, Okla.	[27]	
CI77-144 (CI75-316) B 12-10-76	Ansdarko Production Co., P.O. Box 1330, Houston, Tex. 77001.	Northern Natural Has Co., Sherard Field, Blaine and Chouteau Counties, Mont.	[28]	
CI77-145 A 12-13-76	Freeport Minerals Co., P.O. Box 3038, Midland, Tex. 79701.	Transcontinental Gas Pipe Line Corp., Block 22, Vermilion area, offshore Louisiana.	[5] [29] 155.179¢	15.025
CI77-146 A 12-13-76	Monsanto Co., 5051 Westheimer, 1300 Post Oak Tower, Houston, Tex. 77056	Kansas-Nebraska Natural Gas Co., Inc., Madden unit, Fremont and Natrona Counties, Wyo.	[30] [31] $0.93, [5] $1.43	14.73
CI77-147 (CI76-71) B12-13-76	Kerr-McGee Corp., P.O. Box 25861, Oklahoma City, Okla.	El Paso Natural Gas Co., Hemphill County, Tex.	[32]	[32]

Filing code: A—Initial service.
B—Abandonment.
C—Amendment to add acreage.
D—Amendment to delete acreage.
E—Succession.
F—Partial succession.

See footnotes at end of table.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft³	Pressure base
CI77-148 A 12-12-76	Freeport Minerals Co	Florida Gas Transmission Co., block 22, Vermilion area, offshore Louisiana.	[5] [29] 155.179¢	15.025
CI77-150 (CS67-82) B 12-17-76	Mesa Petroleum Co. et al., P.O. Box 2009, Amarillo, Tex. 79105.	Northern Natural Gas Co., Lovedale Field, Harper County, Okla.	[36]	[36]
CI77-151 A 12-9-76	Tricentrol United States, Inc., 1701 Pennsylvania Ave. NW., Washington, D.C. 20006.	Northern Natural Gas Co., 7 wells in Blaine and Hill Counties, Mont.	[5] [13] [33] $1.425	14.73
CI77-152 A 12-15-76	Marathon Oil Co., 539 South Main St., Findlay, Ohio 45840.	Transwestern Pipeline Co., South Newmill area, Chaves County, N. Mex.	[5] [33] [34] 154.6335¢	14.65
CI77-153 A 12-17-76	Exxon Corp., P.O. Box 2180, Houston, Tex. 77001.	Columbia Gas Transmission Corp., West Delta Block 117 Field, offshore Louisiana.	[5] [33] [34] [35] $1.76	15.025
CI77-154 A 12-17-76	Southland Royalty Co., 1600 1st National Bldg., Fort Worth, Tex. 76102.	El Paso Natural Gas Co., Atoka/Morrow formations, sec. 22, T24S, R28E, Eddy County, N. Mex.	[5] [33] [34] [35] 169.884¢	14.73
CI77-155 A 12-20-76	Kerr-McGee Corp	Montana-Dakota Utilities Co., Boxcar Butte Field, McKenzie County, N. Dak.	[5] [13] [33] [35] 167.7367¢	14.73
CI77-156 A 12-20-76	Placid Oil Co., 1600 1st National Bank Bldg., Dallas, Tex. 75202.	Transcontinental Gas Pipe Line Corp., Bassfield Field, Jefferson Davis County, Miss.	[5] [13] [33] [37] 52.0¢	15.025
CI77-157 A 12-20-76	Amoco Production Co., P.O. Box 3092, Houston, Tex. 77001.	El Paso Natural Gas Co., Willow Lake Atoka Field, Eddy County, N. Mex.	[13] [34] [35] $1.5617	14.73
CI77-158 A 12-20-76	The California Co., a division of Chevron Oil Co., 1111 Tulane Ave., New Orleans, La. 70112.	Tennessee Gas Pipeline Co., block 64 field, West Delta area, offshore Louisiana.	[38] $1.75 [42] 54.0614¢	15.025
CI77-159 A 12-14-76	Texas Gas Exploration Corp., P.O. Box 52310, Houston, Tex. 77052. [41]	Texas Gas Transmission Corp., block 248, Vermilion area, offshore Louisiana.	[5] [13] [33] [42] $1.90	14.73
CI77-160 A 12-13-76	Phillips Petroleum Co., 5 C4 Phillips Bldg., Bartlesville, Okla. 74004.	El Paso Natural Gas Co., Cabana No. 1 Well, Eddy County, N. Mex.	[5] [13] 93.0¢	14.73
CI77-161 A 12-14-76	Texas Gas Exploration Corp. [41]	Texas Gas Transmission Corp., block 315, Eugene Island area, offshore Louisiana.	[5] [13] [33] [42] $1.90	14.73

[1] Applicant requests termination of certificate and rate schedule No. 302, effective as of May 1, 1970.
[2] Applicant requests termination of certificate and rate schedule No. 313, effective as of May 1, 1970.
[3] Applicant requests termination of certificate and rate schedule No. 218, effective as of Oct. 1, 1969.
[4] Includes 24¢ base rate, 2.88¢ Btu adjustment and 0.4260¢ tax reimbursement.
[5] Subject to upward and downward Btu adjustment.
[6] Applicant states that the deletion is a result of a sale of Union's 25 pct working interest in the Sun-Meier No. 1 gas well and the assignment of certain acreage to Texas Energies, Inc.
[7] Filing to reflect the closing of North Tioga plant and arranging for Burmah Oil & Gas Co. to process the gas in Burmah's Tioga plant located in Williams County, N. Dak.
[8] Applicant requests termination of the certificate issued in docket No. C162-286 and of its rate schedule No. 401 due to assignment of leases to W. B. Osborn.
[9] Amendment to change delivery point from Ector plant to Goldsmith plant, both located in Ector County, Tex.
[10] CI65-624, rate schedule No. 410, 20.0¢; CI72-169, rate schedule No. 488, 37.5¢; CI72-597, rate schedule No. 504, 53.5¢. CI72-597, rate schedule No. 504, 143.5¢.
[11] The Thomas No. 1-8 well, which was assigned to David A. Chambers effective Feb. 28, 1975, was plugged and abandoned on Mar. 27, 1975.
[12] Includes 1.02¢ gathering allowance.
[13] Subject to upward Btu adjustment.
[14] Amendment authorizing initial service from reserved 10 pct of Diamond Shamrock's interest in the gas reserves.
[15] Applicant requests permission to abandon only sales from the 2 leasehold interests which have expired and does not seek to abandon sales to MRT from any interest which Hurley now holds or may hold for the remaining term of the Apr. 23, 1951, contract, as amended.
[16] Leases expired.
[17] Includes 10.8449¢ tax reimbursement.
[18] Applicant is willing to collect the national rate in accordance with opinion No. 770, as amended.
[19] Base price for wells commenced on or after Jan. 1, 1973, and before Jan. 1, 1975 per opinion No. 770, as amended (plus 7.8129¢ State taxes, and upward and downward Btu adjustment from 1,000 Btu per cubic foot).
[20] Base price for wells commenced on or after Jan. 1, 1975 per opinion No. 770, as amended (plus 12.0134¢ State taxes and upward and downward Btu adjustment from 1,000 Btu per cubic foot).
[21] Includes reimbursement of 100 pct of all State or Federal production, severance or similar taxes imposed on seller.
[22] Applicant is willing to accept a permanent certificate in accordance with opinion No. 770, as amended.
[23] Shell Oil Co. is the producer for all gas being supplied to the Glendive plant. Shell has given notice of termination of the casinghead gas contract, and there will accordingly be no gas supply for the Glendive plant.
[24] Plus 1¢ escalation per quarter.
[25] Reclassification of well.
[26] Wells have been plugged and abandoned.
[27] Atlantic no longer has any interest in acreage covered by the contract of Jan. 20, 1965. Acreage was totally assigned to C. & Y. Casing Pulling Co. by assignment dated Sept. 26, 1972.
[28] Applicant has transferred and assigned all interests in such acreage to purchaser.
[29] Base price provided in sec. 2.56a, plus 7.785¢ per 1,000 ft³ Btu adjustment based on Btu content of 1053, plus 0.51¢ per 1,000 ft³ gathering allowance.
[30] Base price for MDU No. 1 spudded Feb. 13, 1973. (Within the limits prescribed by opinion No. 770, as amended.)
[31] Base price for Okie 1-9 No. 1 spudded Dec. 20, 1975. (Within the limits prescribed by opinion No. 770, as amended.
[32] Well plugged and abandoned.
[33] Includes 100 pct tax reimbursement.
[34] Inclusive of 1.4919¢ gathering allowance, New Mexico severance, conservation, and emergency school taxes but subject to variable school district ad valorem tax adjusted annually, and subject to Btu adjustment.
[35] Includes estimated Btu adjustment of 15.1578¢ per 1,000 ft³.
[36] Plus quarterly increases.
[37] At 14.73 lb/in²a.
[38] Includes tax reimbursement.
[39] Contract price.
[40] Applicant is willing to accept a permanent certificate at the national rate in accordance with opinion No. 770, as amended (subject to unknown Btu adjustment and 0.51¢ gathering).
[41] Applicant and purchaser are affiliated.
[42] Plus 1.5¢ per 1,000 ft³ escalation per quarter commencing on Apr. 1 of the year following the date of initial deliveries.

[FR Doc.77-1439 Filed 1-17-77;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

ADVISORY COMMITTEES

Meetings

This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also sets forth a summary of the procedures governing committee meetings and methods by which interested persons may participate in open public hearings conducted by the committees and is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)), and the FDA regulations, 21 CFR Part 2, Subpart D, relating to advisory committees. The following advisory committee meetings are announced:

Committee name	Date, time, and place	Type of meeting and contact person
1. Pathology Subcommittee of the Science Advisory Board.	Feb. 3, 8:30 a.m., Board Room, Holiday Inn, North Little Rock, Ark.	Open public hearing 8:30 a.m. to 9:30 a.m.; open committee discussion 9:30 a.m. to 1 p.m.; Ruth S. Magee, National Center for Toxicological Research, Jefferson, Ark. 72079, 501-541-4528.

General function of the committee. Advises on establishment and implementation of a research program that will assist the Commissioner of Food and Drugs and the Administrator, Environmental Protection Agency, in fulfilling their regulatory responsibilities.

Agenda—Open public hearing. Any interested person may present data, information, or views, orally or in writing, on issues pending before the committee.

Open committee discussion. Discussion of the update of pathology services project, personnel, equipment, problem areas, and general discussion and recommendations.

Committee name	Date, time, and place	Type of meeting and contact person
2. Hepatoma Subcommittee of the Science Advisory Board.	Feb. 3, 1 p.m., Board Room, Holiday Inn, North Little Rock, Ark.	Open public hearing 1 p.m. to 2 p.m.; open committee discussion 2 p.m. to 4 p.m.; Ruth S. Magee, National Center for Toxicological Research, Jefferson, Ark. 72079, 501-541-4528.

General function of the committee. Advises on establishment and implementation of a research program that will assist the Commissioner of Food and Drugs and the Administrator, Environmental Protection Agency, in fulfilling their regulatory responsibilities.

Agenda—Open public hearing. Any interested person may present data, information, or views, orally or in writing, on issues pending before the committee.

Open committee discussion. Discussion of the report on the status of phenotypic lindane study, report on proposed National Cancer Institute/National Center for Toxicological Research Interagency Agreement, proposed hepatoma workshop, and general discussion and recommendations.

Committee name	Date, time, and place	Type of meeting and contact person
3. Antiperspirant Panel.....	Feb. 3 and 4, 9 a.m., Conference Room C, Parklawn Bldg., 5600 Fishers Lane, Rockville, Md.	Open public hearing Feb. 3, 9 a.m. to 10 a.m.; open committee discussion Feb. 3, 10 a.m. to 4:30 p.m., Feb. 4, 9 a.m. to 4:30 p.m.; Lee Geismar, (HFD-510) 5600 Fishers Lane, Rockville, Md. 20857, 301-443-4960.

General function of the committee. Reviews and evaluates available data concerning the safety and effectiveness of nonprescription drug products.

Agenda—Open public hearing. Any interested person may present data, information, or views, orally or in writing, on issues pending before the committee.

Open committee discussion. The panel will review data pursuant to the over-the-counter (OTC) review's call for data for this panel (see also 21 CFR 330.10(a)(2)).

The panel will be reviewing, voting upon, and modifying the content of the summary minutes and categorization of ingredients and claims.

The panel will be reviewing, voting upon, and modifying its draft report in preparation for submission to the Commissioner.

Committee name	Date, time, and place	Type of meeting and contact person
4. Neurologic Drugs Advisory Committee.	Feb. 3 and 4, 9 a.m., Conference Room M, Parklawn Bldg., 5600 Fishers Lane, Rockville, Md.	Open public hearing Feb. 3, 9 a.m. to 10 a.m.; open committee discussion Feb. 3, 10 a.m. to 4:30 p.m.; open public hearing Feb. 4, 9 a.m. to 10 a.m.; open committee discussion Feb. 4, 10 a.m. to 4:30 p.m.; Stephen C. Groft, (HFD-120) 5600 Fishers Lane, Rockville, Md. 20857, 301-443-3800.

General function of the committee. Reviews and evaluates available data concerning safety and effectiveness of marketed and investigational prescription drugs for use in neurologic disease.

Agenda—Open public hearing. Any interested person may present information, data, or views, orally or in writing, on issues pending before the committee.

Open committee discussion. Use of amphetamines in the treatment of narcolepsy, seizure disorders, and minimal brain dysfunction; and appropriate indications for the use of antiemetics.

Because of the problem of continuing abuse in spite of Schedule II controls, the Food and Drug Administration is considering the removal of the anorectic indication for amphetamine and methamphetamine. In addition, these drugs have been used in the treatment of narcolepsy, minimal brain dysfunction (MBD), and seizure disorders. The Neurologic Drugs Advisory Committee, invited guests, and other participants are requested to advise on the following:

1. Are there alternative safe and effective treatments for these disorders?

2. Would a withdrawal of amphetamine and methamphetamine from the market have a deleterious effect on the treatment of patients with narcolepsy, MBD, or seizure disorders?

The recommendations of the advisory committee to the Division of Neuropharmacological Drug Products and the Bureau of Drugs will be considered in arriving at a decision whether amphetamines should be totally withdrawn from the market, or relabeled for the treatment only of narcolepsy, MBD, and/or seizure disorders. In either case, the investigational new drug application process would still be available for research purposes.

Committee name	Date, time, and place	Type of meeting and contact person
5. Ophthalmic Panel..	Feb. 4 and 5, 9 a.m., Conference Room K, Parklawn Bldg., 5600 Fishers Lane, Rockville, Md., on Feb. 4; Connecticut Room, Holiday Inn, Bethesda, Md., on Feb. 5.	Open public hearing Feb. 4, 9 a.m. to 10 a.m.; open committee discussion Feb. 4, 10 a.m. to 4:30 p.m., Feb. 5, 9 a.m. to 4:30 p.m., John T. O'Elroy, (HFD-510), 5600 Fishers Lane, Rockville, Md. 20857, 301-443-4960.

General function of the committee. Reviews and evaluates available data concerning the safety and effectiveness of nonprescription drug products.

Agenda—Open public hearing. Any interested person may present data, information, or views, orally or in writing, on issues pending before the committee.

Open committee discussion. The panel will review data pursuant to the over-the-counter (OTC) review's call for data for this panel (see also 21 CFR 330.10(a)(2)).

The panel will be reviewing, voting upon, and modifying the content of the summary minutes and categorization of ingredients and claims.

The panel will be reviewing, voting upon, and modifying its draft report in preparation for submission to the Commissioner.

Committee name	Date, time, and place	Type of meeting and contact person
6. General Hospital and Personal Use Panel.	Feb. 7 and 8, 9 a.m., Room 1409, FB-8, 200 C St. SW., Washington, D.C.	Open public hearing Feb. 7, 9 a.m. to 10 a.m.; open committee discussion Feb. 7, 10 a.m. to 4:30 p.m., Feb. 8, 9 a.m. to 4:30 p.m.; William C. Dierksheide, Ph. D., (HFK-440), 8757 Georgia Ave., Silver Spring, Md. 20910, 301-427-7234.

General function of the committee. Reviews and evaluates available data concerning the safety and effectiveness of devices currently in use and makes recommendations for their regulation.

Agenda—Open public hearing. Those desiring to make formal presentations should notify the executive secretary by February 1, 1977, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, references to any data to be relied on, and also an indication of the approximate time required to make their comments.

Open committee discussion. Devices to be classified are as follows: spinal venous pressure manometer, hypodermic needle, piston syringe, aneroid blood pressure manometer, mercury blood pressure manometer, nursery apnea monitor, battery-powered thermometer, disposable thermometer, mercurial thermometer, battery-powered infusion line monitor, oxygen depletion alarm, laminar airflow unit, aerator cabinet, sterilization indicators, sterilization wrap, gas sterilizer, steam sterilizer, prophylactic (condom), bactericidal floormat, surgical patient isolation unit, AC-powered operating room table, manual operating room table, jet lavage, manual cardiac resuscitator, powered heart-lung resuscitator, manual resuscitator, surgical drape, surgeon glove, operating room gown, electric heating pad, chemotherapy perfusion unit, AC-powered chemotherapy perfusion unit, heat lamp, AC-powered bed, air flotation bed, hydraulic bed, ICU bed, manual bed, tiltable cradle bed, AC-powered water flotation bed, wheeled geriatric chair, patient care isolation chamber, electrically powered patient lift, manual patient lift, overhead boom patient lift, neonatal heated water mattress, patient rollers, AC-powered patient rollers, battery-powered metabolic scale, stopclock, silicone bed.

Committee name	Date, time, and place	Type of meeting and contact person
8. Matrix Approach to Carcinogenesis Bioassay Subcommittee to the Science Advisory Board	Feb. 11, 9 a.m., Conference Room 2–A–304, Childlaw Bldg., 2221 East Bijou St., Colorado Springs, Colo.	Open public hearing 9 a.m. to 10 a.m.; open committee discussion 10 a.m. to 4 p.m.; Ruth S. Magee, National Center for Toxicological Research, Jefferson, Ark. 72079, 501–541–4528.

General function of the committee. Reviews and evaluates available data concerning safety and effectiveness of marketed and investigational prescription drugs for use in gastrointestinal diseases.

Agenda—Open public hearing. Any interested person may present data, information, or views, orally or in writing, on issues pending before the committee.

Open committee discussion. Discussion of approaches to evaluation of hepatotoxicity in animals and man and discussion of pharmacogenetics and drug interaction.

Committee name	Date, time, and place	Type of meeting and contact person
7. Subcommittee on Development of Guidelines for Evaluation of Hepatotoxicity of the Gastrointestinal Drugs Advisory Committee.	Feb. 7 and 8, 9 a.m., Conference Rooms J and K, Parklawn Bldg., 5600 Fishers Lane, Rockville, Md.	Open public hearing Feb. 7, 9 a.m. to 10 a.m.; open committee discussion Feb. 7, 10 a.m. to 5 p.m., Feb. 8, 9 a.m. to 5 p.m.; Joan C. Standaert (HFD–110), 5600 Fishers Lane, Rockville, Md. 20857, 301–443–4730.

General function of the committee. Advises on establishment and implementation of a research program that will assist the Commissioner of Food and Drugs and the Administrator, Environmental Protection Agency, in fulfilling their regulatory responsibilities.

Agenda—Open public hearing. Any interested person may present data, information, or views, orally or in writing, on issues pending before the committee.

Open committee discussion. Discussion and definition of the conceptual basis of the Matrix Approach Program.

Committee name	Date, time, and place	Type of meeting and contact person
9. Mutagenesis Subcommittee of the Science Advisory Board.	Feb. 12, 9 a.m., Conference Room 2–A–304, Childlaw Bldg., 2221 East Bijou St., Colorado Springs, Colo.	Open public hearing 9 a.m. to 10 a.m.; open committee discussion 10 a.m. to 4 p.m.; Ruth S. Magee, National Center for Toxicological Research, Jefferson, Ariz. 72079, 501–541–4528.

General function of the committee. Advises on establishment and implementation of a research program that will assist the Commissioner of Food and Drugs and the Administrator, Environmental Protection Agency, in fulfilling their regulatory responsibilities.

Agenda—Open public hearing. Any interested person may present data, information, or views, orally or in writing, on issues pending before the committee.

Open committee discussion. Discussion of the implementation of the Dosimetry/Pharmacokinetics Program.

Committee name	Date, time, and place	Type of meeting and contact person
10. Vitamin, Mineral, and Hematinic Panel.	Feb. 14 and 15, 9 a.m., Room 1409, 200 C St. SW., Washington, D.C.	Open public hearing Feb. 14, 9 a.m. to 10 a.m.; open committee discussion Feb. 14, 10 a.m. to 4:30 p.m., Feb. 15, 9 a.m. to 4:30 p.m.; Thomas D. DeCillis, (HFD–510), 5600 Fishers Lane, Rockville, Md. 20857, 301–443–4960.

General function of the committee. Reviews and evaluates available data concerning the safety and effectiveness of nonprescription drug products.

Agenda—Open public hearing. Any interested person may present data, information, or views, orally or in writing, on issues pending before the committee.

Open committee discussion. The panel will review data pursuant to the over-the-counter (OTC) review's call for data for this panel (see also 21 CFR 330.10 (a)(2)).

The panel will be reviewing, voting upon, and modifying the content of the summary minutes and categorization of ingredients and claims.

The panel will be reviewing, voting upon, and modifying its draft report in preparation for submission to the Commissioner.

Committee name	Date, time, and place	Type of meeting and contact person
11. Dental Panel	Feb. 16 and 17, 9 a.m., Conference Room K, Parklawn Bldg., 5600 Fishers Lane, Rockville, Md.	Open public hearing Feb. 16, 9 a.m. to 10 a.m.; open committee discussion Feb. 16, 10 a.m. to 4:30 p.m., Feb. 17, 9 a.m. to 4:30 p.m.; Michael D. Kennedy, (HFD–510), 5600 Fishers Lane, Rockville, Md. 20857, 301–443–4960.

General function of the committee. Reviews and evaluates available data concerning the safety and effectiveness of nonprescription drug products.

Agenda—Open public hearing. Any interested person may present data, information, or views, orally or in writing, on issues pending before the committee.

Open committee discussion. The panel will review data pursuant to the over-the-counter (OTC) review's call for data for this panel (see also 21 CFR 330.10 (a)(2)).

The panel will be reviewing, voting upon, and modifying the content of the summary minutes and categorization of ingredients and claims.

The panel will be reviewing, voting upon, and modifying its draft report in preparation for submission to the Commissioner.

Committee name	Date, time, and place	Type of meeting and contact person
12. Endocrinology and Metabolism Advisory Committee.	Feb. 17 and 18, 9 a.m., Conference Rooms G and H, Parklawn Bldg., 5600 Fishers Lane, Rockville, Md.	Open public hearing Feb. 17, 9 a.m. to 10 a.m.; open committee discussion Feb. 17, 10 a.m. to 5 p.m.; open public hearing Feb. 18, 9 a.m. to 10 a.m.; open committee discussion Feb. 18, 10 a.m. to 5 p.m.; A. T. Gregoire, Ph. D., (HFD–130), 5600 Fishers Lane, Rockville, Md. 20857, 301–443–3510.

General function of the committee. Reviews and evaluates available data concerning safety and effectiveness of marketed and investigational prescription drugs for use in endocrine and metabolic disorders.

Agenda—Open public hearing. Any interested person may present data, information, or views, orally or in writing, on issues pending before the committee.

Open committee discussion. Discussion of new drug applications—NDA 17–783 (Glibenese), NDA 17–498 (Micronase), and NDA 17–532 (Dia-Beta); report to committee on antiosteoporosis guidelines workshop; and estrogen for treatment of osteoporosis.

Committee name	Date, time, and place	Type of meeting and contact person
13. Antimicrobial Panel	Feb. 18 and 19; 9 a.m., Conference Room K, Parklawn Bldg., 5600 Fishers Lane, Rockville, Md., on Feb. 18; Connecticut Room, Holiday Inn, Bethesda, Md., on Feb. 19.	Open public hearing Feb. 18, 9 a.m. to 10 a.m.; open committee discussion Feb. 18, 10 a.m. to 4:30 p.m., Feb. 19, 9 a.m. to 4:30 p.m.; Armond M. Welch, (HFD–510), 5600 Fishers Lane, Rockville, Md. 20857, 301–443–4960.

General function of the committee. Reviews and evaluates available data concerning the safety and effectiveness of nonprescription drug products.

Agenda—Open public hearing. Any interested person may present data, information, or views, orally or in writing, on issues pending before the committee.

Open committee discussion. The panel will review data pursuant to the over-the-counter (OTC) review's call for data for this panel (see also 21 CFR 330.10 (a)(2)).

The panel will be reviewing, voting upon, and modifying the content of the summary minutes and categorization of ingredients and claims.

The panel will be reviewing, voting upon, and modifying its draft report in preparation for submission to the Commissioner.

Committee name	Date, time, and place	Type of meeting and contact person
14. Gastroenterological and Urological Panel.	Feb. 20 and 21, 8 a.m., Captain's Room, Channel Inn Motel, 650 Water St. SW., Washington, D.C.	Open public hearing Feb. 20, 8 a.m. to 9 a.m., Feb. 21, 8 a.m. to 9 a.m.; open committee discussion Feb. 20, 9 a.m. to 5 p.m., Feb. 21, 9 a.m. to 5 p.m.; Thomas L. Anderson, M.D., (HFK–460), 8757 Georgia Ave., Silver Spring, Md. 20910, 301–427–7238.

General function of the committee. Reviews and evaluates available data concerning the safety and effectiveness of devices currently in use and makes recommendations for their regulation.

Agenda—Open public hearing. Interested parties are encouraged to present information pertinent to dialysis devices and endoscopes/surgical devices to the executive secretary. Submission of data relative to tentative classification findings is also invited. Those desiring to make formal presentations should notify the executive secretary by February 7, 1977, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, references to any data to be relied on, and also an indication of the approximate time required to make their comments.

Open committee discussion. Discussion of the following dialysis devices: A–V shunt accessories: Cannula clamp; vessel dilator; disconnect forcep; shunt guard; infusion "T" heparin; crimp plier; tube plier; crimp ring; joint ring; shunt stabilizer; declotting tray (including contents); blood circuit components; blood filter; blood pump inserts; line clamp; shunt connector; fistula adaptors; extraluminal blood pump; infusion extraluminal or syringe pump (heparin); shunt adaptor; clamps blood automatic tubing; vessel tip: "Y" adaptors; dialysate circuit components: Dialysis control station negative press type; water purification subsystem; reverse osmosis water purification system; holding tank; dialysate tubing connectors; dialysate tubing; dialysate delivery systems; coil canister; miscellaneous accessories; powered dialysis chair (with or without scales); unpowered dialysis chair (with or without scales); line clamp; dialyzer holder sets; protector transducer; solution-test standard-conductivity; start/stop tray (including contents); free-standing dialysis concentrate tank; tie gun; ties; declotting tray (including contents); monitors: arterial blood pressure alarm; pillow pressure alarm; venous blood pressure alarm; type remote induction conductivity meter; nonremote conductivity meter; air bubble detector; comparative inflow-outflow blood leak detector; noncomparative detector; blood level detector; dialysate level detector; blood flowmeter; dialysate flowmeter; water manometer; temperature monitor.

Endoscopes/surgical devices—biopsy instruments: Biopsy forcep covers; electric cautery biopsy forceps; nonelectric biopsy forceps; suction biopsy instrument; biopsy needle set; biopsy needles; biopsy punch; biopsy tray; gastrointestinal instrument set biopsy; diagnostic catheters: Barium enema retention catheter with bag; biliary catheter; ureteral disposable catheter (X-ray); double lumen female urethrographic catheter; positive pressure urethrographic X-ray catheter; urethrographic catheter; diagnostic light sources: Diagnostic lamps; fiberoptic focusing headlight; fiberoptic ureteral light catheter; photographic light source; pocket battery box; rechargeable battery box.

Endoscopes/surgical devices (February 21)—endoscopic equipment nonmanual air pump; nonpowered anoscope; binocular attachment for endoscope; cannula; choledochoscope; cleaning accessories for endoscopes; colonoscope; coloscope; cystourethroscope; cytology brush; electric cord for endoscopes; enteroscope; esophago - gastro - duodenoscope; esophagoscope; eyepiece attachment for insertion of prescription lens; fiberoptic illuminators; flexible fiberoptic teaching attachment; gastroscope; endoscopic inflation bulb; automatic C02 insufflator; laparoscope; measuring device for panendoscope; miscellaneous adaptor bulbs; nephroscope; obturators; peritoneoscope (fiberoptic); photo accessories for endoscope; sheaths, flexible sigmoidoscope; rigid sigmoidoscope; endoscopic smoke removal tube; special lens instruments; sphyncteroscope trocar; ureteroscope; urethroscope; enema kits: disposable barium enema kit; kit enema for cleaning purpose; gastrointestinal intraluminal diagnostic devices: electrode PH stomach; electrogastrograph; gastrointestinal motility system (electrical); GI string and tubes to locate internal bleeding; pressure and flow rate measuring devices: Hydraulic cystometric device; urine flow rate measuring devices; specimen collectors: Kit urinary drainage collection; pediatric urine collector; sterile urethral catheterization trays; monitoring devices—physiologic function monitors: Closed circuit TV and video tape; external pressure recorders, amplifiers, and transducers; photographic equipment; nonpowered rectal probe; radio pill, urine flow meter; electrical urinometer; prosthetic devices—bile collecting device: Bile collecting bag; colostomy appliances: Colostomy cup; colostomy dome; colostomy pouch; colostomy

protector; colostomy rod; disposable colostomy appliance; ostomy collector; ostomy irrigator; ostomy sleeve selector; surgical appliance cement; external supporting devices: Abdominal belt; hernia supports; pendulous abdominal support; scrotal support; scrotal truss; umbilical trusts.

Committee name	Date, time, and place	Type of meeting and contact person
15. Miscellaneous Internal Drug Products Panel.	Feb. 20 and 21, 9 a.m., Connecticut Room, Holiday Inn, Bethesda, Md.	Open public hearing Feb. 20, 9 a.m. to 10 a.m.; open committee discussion Feb. 20, 10 a.m. to 4:30 p.m.; Feb. 21, 9 a.m. to 4:30 p.m.; Armond M. Welch, (HFD-510), 5600 Fishers Lane, Rockville, Md. 20857, 301-443-4960.

General function of the committee. Reviews and evaluates available data concerning the safety and effectiveness of nonprescription drug products.

Agenda—Open public hearing. Any interested person may present data, information, or views, orally or in writing, on issues pending before the committee.

Open committee discussion. The panel will review data pursuant to the over-the-counter (OTC) review's call for data for this panel (see also 21 CFR 330.10 (a)(2)).

The panel will be reviewing, voting upon, and modifying the content of the summary minutes and categorization of ingredients and claims.

The panel will be reviewing, voting upon, and modifying its draft report in preparation for submission to the Commissioner.

Committee name	Date, time, and place	Type of meeting and contact person
16. Oral Cavity Panel	Feb. 23 and 24, 9 a.m., Conference Room J, Parklawn Bldg., 5600 Fishers Lane, Rockville, Md.	Open public hearing Feb. 23, 9 a.m. to 10 a.m.; open committee discussion Feb. 23, 10 a.m. to 4:30 p.m., Feb. 24, 9 a.m. to 4:30 p.m.; John T. McElroy, (HFD-510), 5600 Fishers Lane, Rockville, Md. 20857, 301-443-4960.

General function of the committee. Reviews and evaluates available data concerning the safety and effectiveness of nonprescription drug products.

Agenda—Open public hearing. Any interested person may present data, information, or views, orally or in writing, on issues pending before the committee.

Open committee discussion. The panel will review data pursuant to the over-the-counter (OTC) review's call for data for this panel (see also 21 CFR 330.10 (a)(2)).

The panel will be reviewing, voting upon, and modifying the content of the summary minutes and categorization of ingredients and claims.

The panel will be reviewing, voting upon, and modifying its draft report in preparation for submission to the Commissioner.

Committee name	Date, time, and place	Type of meeting and contact person
17. Subcommittee on Development of Guidelines for Evaluation of Hepatotoxicity of the Gastrointestinal Drugs Advisory Committee.	Feb. 23 and 24, 9 a.m., Conference Rooms I and L, Parklawn Bldg., 5600 Fishers Lane, Rockville, Md.	Open public hearing Feb. 23, 9 a.m. to 10 a.m.; open committee discussion Feb. 23, 10 a.m. to 5 p.m., Feb. 24, 9 a.m. to 5 p.m.; Joan C. Standaert, (HFD-110), 5600 Fishers Lane, Rockville, Md. 20857, 301-443-4730.

General function of the committee. Reviews and evaluates available data concerning safety and effectiveness of marketed and investigational prescription drugs for use in gastrointestinal diseases.

Agenda—Open public hearing. Any interested person may present data, information, or views, orally or in writing, on issues pending before the committee.

Open committee discussion. Discussion on the value of various special techniques and approaches for evaluating human hepatotoxicity, drug interaction and liver toxicity, and functional evaluation of hepatotoxicity in animals and man.

Committee name	Date, time, and place	Type of meeting and contact person
18. Topical Analgesic Panel	Feb. 23 and 24, 9 a.m., Conference Room K, Parklawn Bldg., 5600 Fishers Lane, Rockville, Md.	Open public hearing Feb. 23, 9 a.m. to 10 a.m.; open committee discussion Feb. 23, 10 a.m. to 4:30 p.m.; Feb. 24, 9 a.m. to 4:30 p.m.; Lee Geismar, (HFD-510), 5600 Fishers Lane, Rockville, Md. 20857, 301-443-4960

General function of the committee. Reviews and evaluates available data concerning the safety and effectiveness of nonprescription drug products.

Agenda—Open public hearing. Any interested person may present data, information, or views, orally or in writing, on issues pending before the committee.

Open committee discussion. The panel will review data pursuant to the over-the-counter (OTC) review's call for data for this panel (see also 21 CFR 330.10 (a)(2)).

The panel will be reviewing, voting upon, and modifying the content of the summary minutes and categorization of ingredients and claims.

The panel will be reviewing, voting upon, and modifying its draft report in preparation for submission to the Commissioner.

Committee name	Date, time, and place	Type of meeting and contact person
19. Toxicology Advisory Committee.	Feb. 23 and 24, 9 a.m., Conference Room A, Parklawn Bldg., 5600 Fishers Lane, Rockville, Md.	Open committee discussion Feb. 23, 9 a.m. to 12 m.; open public hearing Feb. 23, 1 p.m. to 2 p.m.; open committee discussion Feb. 23, 2 p.m. to 4:30 p.m., Feb. 24, 9 a.m. to 12 m.; open public hearing Feb. 24, 1 p.m. to 2 p.m.; open committee discussion Feb. 24, 2 p.m. to 3 p.m.; Jeffrey A. Staffa, Ph. D., (HFS-50), 5600 Fishers Lane, Rockville, Md. 20857, 301-443-4490.

General function of the committee. Reviews and evaluates available data relating to the evaluation of the safety of chemicals present in foods, drugs, cosmetics, and medical devices. Advises on the safety of specific human drugs, animal drugs, color and food additives, cosmetic components, and components of devices. Recommends the development of standardized methodologies for the toxicity testing of such materials.

Agenda—Open public hearing. Any interested person may present data, information, or views, orally or in writing, on issues pending before the committee.

Open committee discussion. Discussion on animal drug subgroup status report; increased prolactin levels in animals on psychotropic drugs; and toxicology guidelines.

Committee name	Date, time, and place	Type of meeting and contact person
20. General and Plastic Surgery Panel.	Feb. 24, 8 a.m., Room 4131, HEW-N., 330 Independence Ave. SW., Washington, D.C.	Open public hearing 8 a.m. to 9 a.m.; open committee discussion 9 a.m. to 3:30 p.m.; Mark F. Parrish, Ph. D., (HFK-470), 8757 Georgia Ave., Silver Spring, Md. 20910, 301-427-7238.

General function of the committee. Reviews and evaluates available data concerning the safety and effectiveness of devices currently in use and makes recommendations for their regulation.

Agenda—Open public hearing. Interested parties are encouraged to present information pertinent to the classification of the devices listed below to the executive secretary. Submission of data relative to tentative classification findings is also invited. Those desiring to make formal presentations should notify the executive secretary by February 17, 1977, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, references to any data to be relied on, and also an indication of the approximate time required to make their comments.

Open committee discussion. A presentation will be made on Proplast™ by Charles A. Homsy, Sc.D.

The panel will form its recommendations for the content of safety and performance standards for cryosurgical devices.

The following devices will be classified: tissue adhesives; apparel—apron, cap, dress, exhaust apparatus, gown (isolation, patient, and surgical), helmet, hood, mask, shoe covers, shoes, suit; suture bolster and retention bridge; surgical cameras and accessories; burn and wound dressings; surgical gloving cream; nonremote and remote illumination devices; light/illuminators and accessories—lamp (fluorescent, incandescent, ultraviolet, xenon), light (accessories, carriers, ceiling mounted, connectors, endoscopic, fiberoptic, floor standing, headband, instrument); loupe; surgical microscope; monitors—continuous blood gas, blood pressure (arterial, cardiac, pulmonary artery, venous, powered and nonpowered, invasive and noninvasive), cardiac output, EEG, respiratory, temperature; direct and electronic stethoscopes; fluid column and liquid crystals thermometer; vein fulgurator.

The panel's previous classification of colonic irrigator will be reviewed.

The panel will discuss high-frequency tweezer epilators.

Committee name	Date, time, and place	Type of meeting and contact person
21. Radiological Panel	Feb. 24 and 25, 9 a.m., Room 6821, FB-8, 200 C St. SW., Washington, D.C.	Open public hearing Feb. 24, 9 a.m. to 10 a.m.; open committee discussion Feb. 24, 10 a.m. to 4 p.m., Feb. 25, 9 a.m. to 3 p.m.; Lillian Yin, Ph. D., (HFK-470), 8757 Georgia Ave., Silver Spring, Md. 20910, 301-427-7238.

General function of the committee. Reviews and evaluates available data concerning the safety and effectiveness of devices currently in use and makes recommendations for their regulation.

Agenda—Open public hearing. Interested parties are encouraged to present information pertinent to the devices listed below to the executive secretary. Submission of data relative to tentative classification findings is also invited. Those desiring to make formal presentations should notify the executive secretary by February 11, 1977, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, references to any data to be relied on, and also an indication of the approximate time required to make their comments.

Open committee discussion. The panel will review classification of the following devices: tube housing; cathode ray tube; image amplifier tube; mammographic tube; orthicon tube; plumbicon tube; vidicon tube; field emission X-ray tube; grid bias X-ray tube; rotating

anode X-ray tube; stationary anode X-ray tube; laminographic stand; ultrasound high voltage pulser; ultrasound signal analysis and display components; ultrasonic signal amplifier; oscilloscope camera; scan converter; gray scale display; oscilloscope; electronic image processor; strip chart recorder; ultrasound systems: echocardiographic system; echoencephalographic system; continuous wave ultrasonic scanner; pulsed ultrasonic scanner; ultrasound transducers; ultrasound coupling apparatus; coupling media; multiple probe; single probe; radiation alarm; dosimeter charger; condenser ionization dosimeter; film badge dosimeter; semiconductor dosimeter; thermoluminescent dosimeter; radiation monitor; thermoluminescent dosimeter reader; gamma survey meter; X-ray survey meter; measurement cassette (Ardan-Crookes); current-measuring equipment; high voltage measuring equipment; timer measuring equipment; step wedge; protective apron; gamma ray control panel barriers; X-ray control panel barriers; positioning block; lead brick; X-ray caliper; X-ray protective curtain; protective glove; examination gown; lead syringe holder; radiographic marker; lead lined panties; isotope safe; positioning sandbag, eye shield; gonadal shield; vial shield; isotope dose calibrator; lead examination cape; sample changer; bone densitometer; isotope generator; source holder; flood/source phantom; neck phantom; source plantom; radiation dose plotter; sealed calibration source; quenched standard; decontamination supplies; focal spot camera; hoods and exhausts; anthropomorphic phantom; radionuclide test pattern; T.V. test pattern; X-ray test pattern; cabinet X-ray unit.

Committee name	Date, time, and place	Type of meeting and contact person
22. Training and Medical Applications Subcommittee of the Medical Radiation Advisory Committee.	Feb. 27, 2 p.m., Room 130, Twinbrook Bldg. 4, 12720 Twinbrook Parkway, Rockville, Md.	Open public hearing Feb. 27, 2 p.m. to 3 p.m.; open committee discussion Feb. 27, 3 p.m. to 6 p.m.; Norman C. Telles, M.D., (HFX-4), 5600 Fishers Lane, Rockville, Md. 20857, 301-443-6220.

General function of the committee. Advises on the formulation of policy and development of a coordinated program related to the application of ionizing radiation in the healing arts.

Agenda—Open public hearing. Any interested person may present data, information, or views, orally or in writing, on issues pending before the committee.

Open committee discussion. Discussion on medical radiation recommendations, consumer education activities, radiologic technologist activities, and quality assurance activities.

Committee name	Date, time, and place	Type of meeting and contact person
23. Radioactive Materials and Nuclear Medicine Subcommittee of the Medical Radiation Advisory Committee.	Feb. 27, 1:30 p.m., Room 316, Chapman Bldg., 1901 Chapman Ave., Rockville, Md.	Open public hearing Feb. 27, 1:30 p.m. to 2:30 p.m.; open committee discussion Feb. 27, 2:30 p.m. to 6:30 p.m.; Norman C. Telles, M.D., (HFX-4), 5600 Fishers Lane, Rockville, Md. 20857, 301-443-6220.

General function of the committee. Advises on the formulation of policy and development of a coordinated program related to the application of ionizing radiation in the healing arts.

Agenda—Open public hearing. Any interested person may present data, information, or views, orally or in writing, on issues pending before the committee.

Open committee discussion. Discussion on the report on nuclear medicine and medical radiation, report of task force on short-lived radionuclides, radionuclide dosimetry, and quality control for nuclear medicine instrumentation.

Committee name	Date, time, and place	Type of meeting and contact person
24. Miscellaneous External Drug Products Panel.	Feb. 27 and 28, 9 a.m., Conference Room C, Parklawn Bldg., 5600 Fishers Lane, Rockville, Md., on Feb. 27; Georgia Room, Holiday Inn, Bethesda, Md., on Feb. 28.	Open public hearing Feb. 28, 9 a.m. to 10 a.m.; open committee discussion Feb. 27, 9 a.m. to 4:30 p.m., Feb. 28, 10 a.m. to 1:30 p.m.; Michael D. Kennedy, (HFD-510), 5600 Fishers Lane, Rockville, Md. 20857, 301-443-4960.

General function of the committee. Reviews and evaluates available data concerning the safety and effectiveness of nonprescription drug products.

Agenda—Open public hearing. Any interested person may present data, information, or views, orally or in writing, on issues pending before the committee.

Open committee discussion. The panel will review data pursuant to the over-the-counter (OTC) review's call for data for this panel (see also 21 CFR 330.10 (a)(2)).

The panel will be reviewing, voting upon, and modifying the content of the summary minutes and categorization of ingredients and claims.

The panel will be reviewing, voting upon, and modifying its draft report in preparation for submission to the Commissioner.

Committee name	Date, time, and place	Type of meeting and contact person
25. Geriatric Neuropsychopharmacology Subcommittee of the Neurologic Drugs Advisory Committee.	Feb. 28, 9 a.m., Conference Room K, Parklawn Bldg., 5600 Fishers Lane, Rockville, Md.	Open public hearing 9 a.m. to 10 a.m.; open committee discussion 10 a.m. to 4:30 p.m.; Stephen C. Groft, (HFD-120), 5600 Fishers Lane, Rockville, Md. 20857, 301-443-3980.

General function of the committee. Reviews and evaluates available data concerning safety and effectiveness of marketed and investigational prescription drugs for use in neurologic disease.

Agenda—Open public hearing. Any interested person may present data, information, or views, orally or in writing, on issues pending before the committee.

Open committee discussion. Discussion of utilization of computerized tomography (CT) scan as basis for exclusion/inclusion in clinical trials of dementia and depression in elderly; guidelines for research in geropsychopharmacology; and discussion of depression in the geriatric and nongeriatric populations.

Committee name	Date, time, and place	Type of meeting and contact person
26. Medical Radiation Advisory Committee.	Feb. 28 and Mar. 1, 9 a.m., Room 400, Twinbrook Bldg. 4, 12720 Twinbrook Parkway, Rockville, Md.	Open public hearing Feb. 28, 9 a.m. to 10 a.m.; open committee discussion Feb. 28, 10 a.m. to 4:30 p.m., Mar. 1, 9 a.m. to 12 m.; Norman C. Telles, M.D., (HFX-4), 5600 Fishers Lane, Rockville, Md. 20857, 301-443-6220.

General function of the committee. Advises on the formulation of policy and development of a coordinated program related to the application of ionizing radiation in the healing arts.

Agenda—Open public hearing. Any interested person may present data, information, or views, orally or in writing, on issues pending before the committee.

Open committee discussion. Discussion of mamography, computerized tomography, radioactive materials and nuclear medicine, training and medical applications, and radiation therapy.

Committee name	Date, time, and place	Type of meeting and contact person
27. Subcommittee on Development of Guidelines for Evaluation of Hepatotoxicity of the Gastrointestinal Drugs Advisory Committee.	Mar. 7 and 8, 9 a.m., Conference Rooms K and L, Parklawn Bldg., 5600 Fishers Lane, Rockville, Md.	Open public hearing Mar. 7, 9 a.m. to 10 a.m.; open committee discussion Mar. 7, 10 a.m. to 5 p.m., Mar. 8, 9 a.m. to 5 p.m.; Joan C. Standaert (HFD-110), 5600 Fishers Lane, Rockville, Md. 20857, 301-443-4730.

General function of the committee. Reviews and evaluates available data concerning safety and effectiveness of marketed and investigational prescription drugs for use in gastrointestinal diseases.

Agenda—Open public hearing. Any interested person may present data, information, or views, orally or in writing, on issues pending before the committee.

Open committee discussion. Discussion of histopathology of hepatotoxicity, diagnostic criteria for liver injury, and followup of patients exposed to hepatotoxic drugs.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairman determines will facilitate the committee's work.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this FEDERAL REGISTER notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairman's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

A list of committee members and summary minutes of meetings may be obtained from the Public Records and Documents Center (HFC-18), 5600 Fishers Lane, Rockville, MD 20857, between the hours of 9 a.m. and 4 p.m., Monday through Friday. The FDA regulations relating to public advisory committees may be found in 21 CFR Part 2, Subpart D, published in the FEDERAL REGISTER of November 26, 1976 (41 FR 52148).

The Commissioner approves the scheduling of meetings at locations outside of the Washington, D.C., area on the basis of the criteria of § 2.307 (21 CFR 2.307) of FDA's regulations relating to public advisory committees.

Dated: January 11, 1977.

JOSEPH P. HILE,
Associate Commissioner for Compliance.

[FR Doc.77-1486 Filed 1-17-77;8:45 am]

EXPERIMENTAL PATHOLOGISTS TRAINING

Meeting

The Food and Drug Administration announces a public meeting to be sponsored by the National Center for Toxicological Research to discuss training of experimental pathologists to meet the needs of the scientific community. Principal speaker will be Dr. Henry C. Pitot, University of Wisconsin Medical School, and incoming president of the Society of Experimental Pathology.

The meeting will be held at the Holiday Inn, North Little Rock, Arkansas, on February 2, 1977, beginning at 9 a.m.

For further information, contact Ruth S. Magee, National Center for Toxicological Research, Jefferson, AR 72079, 501-541-4528.

Dated: January 13, 1977.

JOSEPH P. HILE,
Associate Commissioner for Compliance.

[FR Doc.77-1700 Filed 1-17-77;8:45 am]

PUBLIC ADVISORY COMMITTEE

Request for Nomination of Members

The Food and Drug Administration requests nominations for membership on the Science Advisory Board of the National Center for Toxicological Research at Jefferson, AR. Nine vacancies will occur on the Board as of June 30, 1977; nominations must be submitted no later than February 28, 1977.

The function of the Science Advisory Board is to advise the Director, National Center for Toxicological Research in establishing and implementing a research program that will assist the Commissioner of Food and Drugs and the Administrator of the Environmental Protection Agency in fulfilling their regulatory responsibilities. The Board provides the extra-agency review to assure that research programs and methodology development at the National Center for Toxicological Research are scientifically sound and pertinent to environmental problems.

Terms of office are 3 years. Members shall have diversified experience in biomedical research and be recognized experts in at least one discipline directly related to carcinogenesis, mutagenesis, or teratogenesis. Current needs are in pathology, food technology, immunology, biochemistry, pharmacology, teratology, endocrinology, hormones, genetics, chemistry, and biometry.

Any interested person may nominate one or more qualified persons for membership. A complete curriculum vitae of the nominee shall be included. Nominations shall state that the nominee is aware of the nomination, is willing to serve as a member of the Board, and appears to have no conflict of interest that would preclude committee membership.

Nominations should be submitted to the Executive Secretary, Science Advisory Board, National Center for Toxicological Research, Jefferson, AR 72079, no later than February 28, 1977.

Dated: January 11, 1977.

JOSEPH P. HILE,
Associate Commissioner for Compliance.

[FR Doc.77-1485 Filed 1-17-77;8:45 am]

Office of Education

EMERGENCY SCHOOL AID ACT

Closing Date for Receipt of Proposals for Educational Television Projects

The Commissioner of Education hereby gives notice that pursuant to sections 711 and 704(b) of the Emergency School Aid Act (20 U.S.C. 1610 and 1603(b)), proposals are being accepted from public and private nonprofit agencies, institutions, and organizations for Educational Television projects.

Proposals for assistance must be received by the U.S. Office of Education Application Control Center on or before April 11, 1977.

A. *Proposals sent by mail.*—A proposal sent by mail should be addressed as follows: U.S. Office of Education, Application Control Center, 400 Maryland Avenue, SW, Washington, D.C. 20202, Attention: 13.530. A proposal sent by mail will be considered to be received on time by the Application Control Center if:

(1) The proposal was sent by registered or certified mail not later than April 6, 1977, as evidenced by the U.S. Postal Service postmark on the wrapper or envelope, or on the original receipt from the U.S. Postal Service; or

(2) The proposal is received on or before the closing date by either the Department of Health, Education, and Welfare, or the U.S. Office of Education mail rooms in Washington, D.C. In establishing the date of receipt, the Commissioner will rely on the time-date stamp of such mailrooms or other documentary evidence of receipt maintained by the Department of Health, Education, and Welfare, or the U.S. Office of Education.

B. *Hand delivered proposals.*—A proposal to be hand delivered must be taken to the U.S. Office of Education Application Control Center, Room 5673, Regional Office Building Three, 7th and D Streets, SW, Washington, D.C. Hand delivered proposals will be accepted daily between the hours of 8 a.m. and 4 p.m., Washington, D.C. time, except Saturdays, Sundays, or Federal holidays. Proposals will not be accepted after 4 p.m. on the closing date.

C. *Program Information.*—(1) Projects will be considered for funding this year in the following categories as listed and described in the Notice of Proposed Rulemaking, (45 CFR Part 185) on October 20, 1976, at 41 FR 46317:

(a) 45 CFR 185.72(a)(1)—Additional programs of a national series (i.e., intended for national distribution) previously assisted under the Act (other than a series described in subparagraph (a)(6) of this section);

(b) 45 CFR 185.72(a)(5)—A national series (i.e., intended for national distribution) other than a series described in subparagraphs (a)(1) and (a)(6) of this section, to foster interracial and interethnic understanding among secondary school age children;

(c) 45 CFR 185.72(a)(6)—A national bilingual series (i.e., intended for national distribution) of cognitive and/or affective education value. A bilingual series is a series consisting of programs which contain no more than 60 percent of its content in one of the two languages it offers;

(d) 45 CFR 185.72(a)(7)—Up to three new "regional" series intended for less than nationwide utilization meeting the special needs of subgroups of minority groups as defined in section 185.02(f) which may be unique to a particular geographic region; or

(e) 45 CFR 185.72(a)(8)—Additional programs from up to two "regional" series previously funded under the Act intended for less than nationwide utilization meeting the special needs of subgroups of minority groups as defined in section 185.02(f) which may be unique to a particular geographic region.

Because of the small number of programs directed specifically at Black Americans which have previously been produced under the Emergency School Aid Act, Educational Television, the Office of Education is particularly desirous of receiving proposals whose primary target audience is Black and non-minority children under the "National Secondary and Interracial, Inter-ethnic" (affective) and the new "regional" categories. However, proposals submitted which address this primary target audience will be evaluated in the same manner and under the same criteria as proposals which address other primary target audiences designated in the Emergency School Aid Act.

(2) The ESAA appropriation for FY 77 sets aside $6,450,000 for support of Educational Television. Additional funds, up to $2,150,000, may be provided from funds appropriated for special projects (section 708(a)) of the statute.

(3) In fiscal 1976:

(a) Four "regional" awards at the then allowable maximum of $250,000 each, were made; and

(b) Three national category awards at an average of $2,488,623 were also made.

D. *Project periods.*—Awards of assistance will be made pursuant to this notice for activities commencing no earlier than May 1, 1977.

E. *Applicable regulation.*—Awards of assistance made pursuant to this notice will be subject to (1) the regulations contained in 45 CFR Part 185, and, (2) upon their becoming effective, the amendments thereto published as a notice of proposed rulemaking on October 20, 1976, at 41 FR 46317, (3) except where inconsistent with Part 185, the Office of Education General Provisions Regulations relating to direct project assistance programs (45 CFR Parts 100 and 100a). Proposers' attention is directed in particular to subpart H, Educational Television, of 45 CFR 185.

(20 U.S.C. 1610 and 1603(b))

(Catalog of Federal Domestic Assistance Number 13.530, Emergency School Aid—Educational Television)

Dated: December 28, 1976.

JOHN W. EVANS,
Acting U.S. Commissioner of Education.

[FR Doc.77-1699 Filed 1-17-77;8:45 am]

RIGHT TO READ READING ACADEMIES PROGRAM

Closing Date for Receipt of Noncompeting Continuation Applications for Fiscal Year 1977

Notice is hereby given that, pursuant to the authority contained in section 723 of Title VII of the Education Amendments of 1974, Pub. L. 93-380, as amended (20 U.S.C. 1963) applications are being accepted for non-competing continuation grants under the Right To Read Reading Academies Program (45 CFR Part 162, Subpart E). It is not expected that funds will be available in FY 1977 for new grants under the Reading Academy Program. Therefore, applications for new projects will not be accepted. Applications should be received by the U.S. Office of Education Application Control Center on or before March 18, 1977.

A. *Applications sent by mail.* An application sent by mail should be addressed as follows: U.S. Office of Education, Grant and Procurement Management Division, Application Control Center, 400 Maryland Avenue SW, Washington, D.C. 20202, Attention: 13:533E. An application sent by mail will be considered to be received on time by the Application Control Center if:

(1) The application was sent by registered or certified mail not later than March 14, 1977, as evidenced by the U.S. Postal Service postmark on the wrapper or envelope, or on the original receipt from the U.S. Postal Service; or

(2) The application is received on or before the closing date by either the Department of Health, Education, and Welfare or the U.S. Office of Education mail rooms in Washington, D.C. In establishing the date of receipt, the Commissioner will rely on the time-date stamp of such mail rooms or other documentary evidence of receipt maintained by the Department of Health, Education, and Welfare, or the U.S. Office of Education.

B. *Hand Delivered Applications.* An application to be hand delivered must be taken to the U.S. Office of Education Application Control Center, Room 5673, Regional Office Building Three, 7th and D Streets SW, Washington, D.C. 20202. Hand delivered applications will be accepted daily between the hours of 8 a.m. and 4 p.m., Washington, D.C. time except Saturdays, Sundays, or Federal holidays.

C. *Program Information.* It is anticipated that $4,800,000 will be available for funding of the Reading Academies Program. This is $800,000 less than the FY 1976 level of funding and will not permit the Commissioner to fund existing projects at their current level for a full twelve-month period.

Grantees may request a project period for a twelve-month cycle; however, it is expected that the award amount will not exceed ⅚ of the current grant award.

In order to absorb this reduction in funds and to maintain the current level of reading assistance and instruction grantees have the alternative option of reducing the project period from a twelve-month cycle to a ten-month cycle. This means that applicants may propose a work statement for a period of ten months from the end of the FY 1976 project period and a supporting budget of only ⅚ of the current grant amount. For the nineteen projects initially funded in FY 1975, that period will be from July 1, 1977 to April 30, 1978. For the sixty-three projects initially funded in FY 1976, that period will be from September 1, 1977 to June 30, 1978.

D. *Authority.* The regulations applicable to this program include the Office of Education General Provisions Regulations (45 CFR Parts 100, 100a). Regulations governing the Reading Academies Program were published in the FEDERAL REGISTER on May 26, 1976 (General Provisions, 45 CFR Part 162, Subpart A, and Reading Academies Program, 45 CFR 162, Subpart E) and will govern the operation of this program.

E. *Application Instructions and Forms.* Applications must be prepared and submitted in accordance with instructions and forms which may be obtained from the Office of Right to Read, U.S. Office of Education, Room 2108, 400 Maryland Avenue SW., Washington, D.C. 20202.

(20 U.S.C. 1963.)

Dated: January 12, 1977.

(Catalog of Federal Domestic Assistance Number 13.533, Right to Read Elimination of Illiteracy.)

EDWARD AGUIRRE,
Commissioner of Education.

[FR Doc.77-1573 Filed 1-17-77;8:45 am]

FEDERAL RESERVE SYSTEM

NL INDUSTRIES, INC.

Request for Determination and Notice Providing Opportunity for Hearing

Notice is hereby given that a request has been made to the Board of Governors of the Federal Reserve System, pursuant to the provisions of section 2(g)(3) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(g)(3)) ("the Act"), by NL Industries, Inc., New York, New York ("NL"), for a determination that, after the transfer of all its shareholdings in Lake View Trust and Savings Bank, Chicago, Illinois ("Lake View Bank"), to Mr. William N. Lane, NL will cease to be a bank holding company as it is not nor will be in fact capable of controlling Mr. Lane, and, thereby, Lake View Bank, notwithstanding the indebtedness incurred by Mr. Lane to NL in connection with his purchase of NL's shareholdings in Lake View Bank.

Section 2(g)(3) of the Act provides that shares transferred after January 1, 1966, by any bank holding company (or any company which, but for such transfer, would be a bank holding company) directly or indirectly to any transferee that is indebted to the transferor or has one or more officers, directors, trustees, or beneficiaries in common with or subject to control by the transferor, shall be deemed to be indirectly owned or controlled by the transferor unless the Board, after opportunity for hearing, determines that the transferor is not, in fact, capable of controlling the transferee.

Notice is hereby given, that pursuant to section 2(g)(3) of the Act, an opportunity is provided for filing a request for oral hearing. Any such request or written comments on the application should be submitted in writing (in duplicate) to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received no later than February 2, 1977. If a request for oral hearing is filed, each request should contain a statement of the nature of the requesting person's interest in the matter, his reasons for wishing to appear at an oral hearing, and a summary of the matters concerning which such person wishes to give testimony. The Board will subsequently designate a time and place for any hearing it orders, and will give notice of such hearing to the transferor, the transferee, and all persons that have requested an oral hearing. In the absence of a request for an oral hearing, the Board will consider the requested determination on the basis of documentary evidence filed in connection with the application.

Board of Governors of the Federal Reserve System, January 13, 1977.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc.77-1665 Filed 1-17-77;8:45 am]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Interstate Land Sales Registration

[Docket No. N-77-677; OILSR No. 0-1380-07-2]

BETHANY WEST

Hearing

In the matter of: Bethany West, A and B, East Coast Resorts, Inc. and Ernest C. Raskauskas, President, 76-345-IS, OILSR No. 0-1038-07-2 (A and B).

Pursuant to 15 U.S.C. 1706(d) and 24 CFR 1720.160(b).

Notice is hereby given that: 1. Bethany West, A and B, East Coast Resorts, Inc. and Ernest C. Raskauskas, President, authorized agents and officers, hereinafter referred to as "Respondent", being subject to the provisions of the Interstate Land Sales Full Disclosure Act (Pub. Law 90-448) (15 U.S.C. 1710, et seq.) received a Notice of Proceedings and Opportunity for Hearing issued November 8, 1976, which was sent to the developer pursuant to 15 U.S.C. 1706(d), 24 CFR 1710.45(b)(1) and 1720.125 informing the developer of information obtained by the Office of Interstate Land Sales Registration alleging that the Statement of Record and Property Report for Bethany West located in Sussex County, Delaware, contain untrue statements of material fact or omit to state material facts required to be stated therein or necessary to make the statements therein not misleading.

2. The Respondent filed an Answer received November 22, 1976, in response to the Notice of Proceedings and Opportunity for Hearing.

3. In said Answer the Respondent requested a hearing on the allegations contained in the Notice of Proceedings and Opportunity for Hearing.

4. Therefore, pursuant to the provisions of 15 U.S.C. 1706(d) and 24 CFR 1720.160(d), *it is hereby ordered* That a public hearing for the purpose of taking evidence on the questions set forth in the Notice of Proceedings and Opportunity for Hearing will be held before Judge James W. Mast, in Room 7146, Department of HUD, 451 7th Street, SW, Washington, D.C., on February 11, 1977, at 10 a.m.

The following time and procedure is applicable to such hearing: All affidavits and a list of all witnesses are requested to be filed with the Hearing Clerk, HUD Building, Room 10150, Washington, D.C., 20410 on or before January 11, 1977.

6. The Respondent is *hereby notified* That failure to appear at the above scheduled hearing shall be deemed a default and the proceedings shall be determined against Respondent, the allegations of which shall be deemed to be true, and an order Suspending the Statement of Record, herein identified, shall be issued pursuant to 24 CFR 1710.45(b)(1).

This Notice shall be served upon the Respondent forthwith pursuant to 24 CFR 1720.440.

By the Secretary.

Dated: December 1, 1976.

JAMES W. MAST,
Administrative Law Judge.

[FR Doc.77-1494 Filed 1-17-77;8:45 am]

[Docket No. N-77-676; OILSR No. 0-1506-76-02]

BLUE RIDGE MANOR, ASH LAKE SECTION

Hearing

In the matter of: Blue Ridge Manor, Ash Lake Section, Cross State Develop-

ment Company and Richard A. Howard, Vice President, 76–301–IS, OILSR No. 0–1506–38–32.

Pursuant to 15 U.S.C. 1706(d) and 24 CFR 1720.160(b).

Notice is hereby given that: 1. Blue Ridge Manor, Ash Lake Section, Cross State Development Company and Richard A. Howard, Vice President, authorized agents and officers, hereinafter referred to as "Respondent," being subject to the provisions of the Interstate Land Sales Full Disclosure Act (Pub. Law 90–448) (15 U.S.C. 1710, et seq.) received a Notice of Proceedings and Opportunity for Hearing issued October 5, 1976, which was sent to the developer pursuant to 15 U.S.C. 1706(d), 24 CFR 1710.45 (b)(1) and 1720.125 informing the developer of information obtained by the Office of Interstate Land Sales Registration alleging that the Statement of Record and Property Report for Blue Ridge Manor, Ash Lake Section, located in Ashe and Wilkes Counties, North Carolina, contain untrue statements of material fact or omit to state material facts required to be stated therein or necessary to make the statements therein not necessary to make the statements therein not misleading.

2. The Respondent filed an Answer received October 18, 1976, in response to the Notice of Proceedings and Opportunity for Hearing.

3. In said Answer the Respondent requested a hearing on the allegations contained in the Notice of Proceedings and Opportunity for Hearing.

4. Therefore, pursuant to the provisions of 15 U.S.C. 1706(d) and 24 CFR 1720.160(d), *it is hereby ordered* That a public hearing for the purpose of taking evidence on the questions set forth in the Notice of Proceedings and Opportunity for Hearing will be held before Judge James W. Mast, in Room 7146, Department of HUD, 451 7th Street, SW, Washington, D.C., on February 4, 1977, at 10 a.m.

The following time and procedure is applicable to such hearing: All affidavits and a list of all witnesses are requested to be filed with the Hearing Clerk, HUD Building, Room 10150, Washington, D.C. 20410 on or before January 14, 1977.

6. The Respondent is *hereby notified* That failure to appear at the above scheduled hearing shall be deemed a default and the proceedings shall be determined against Respondent, the allegations of which shall be deemed to be true, and an Order Suspending the Statement of Record, herein identified, shall be issued pursuant to 24 CFR 1710.45 (b)(1).

This Notice shall be served upon the Respondent forthwith pursuant to 24 CFR 1720.440.

By the Secretary.

Dated: November 23, 1976.

JAMES W. MAST,
Administrative Law Judge.

[FR Doc.77-1496 Filed 1-17-77;8:45 am]

[Docket No. N–77–673; OILSR No. 0–1168–38–15]

BLUE RIDGE MANOR

Hearing

In the matter of: Blue Ridge Manor, Cross State Development Company and Richard A. Howard, Vice President, 76–313–IS OILSR No. 0–1163–38–15.

Pursuant to 15 U.S.C. 1706(d) and 24 CFR 1720.160(b).

Notice is hereby given that: 1. Blue Ridge Manor, Cross State Development Company and Richard A. Howard, Vice President, authorized agents and officers, hereinafter referred to as "Respondent," being subject to the provisions of the Interstate Land Sales Full Disclosure Act (Pub. L. 90–448) (15 U.S.C. 1710 et seq.) received a Notice of Proceedings and Opportunity for Hearing issued October 21, 1976, which was sent to the developer pursuant to 15 U.S.C. 1706(d), 24 CFR 1710.45(b)(1) and 1720.125 informing the developer of information obtained by the Office of Interstate Land Sales Registration alleging that the Statement of Record and Property Report for Blue Ridge Manor, located in Ashe County, North Carolina, contain untrue statements of material fact or omit to state material facts required to be stated therein or necessary to make the statements therein not necessary to make the statements therein not misleading.

2. The Respondent filed an Answer received November 8, 1976; in response to the Notice of Proceedings and Opportunity for Hearing.

3. In said Answer the Respondent requested a hearing on the allegations contained in the Notice of Proceedings and Opportunity for Hearing.

4. Therefore, pursuant to the provisions of 15 U.S.C. 1706(d) and 24 CFR 1720.160(d), *it is hereby ordered* That a public hearing for the purpose of taking evidence on the questions set forth in the Notice of Proceedings and Opportunity for Hearing will be held before Judge James W. Mast, in Room 7146, Department of HUD, 451 7th Street, SW, Washington. D.C., on February 4, 1977 at 10 a.m.

The following time and procedure is applicable to such hearing: All affidavits and a list of all witnesses are requested to be filed with the Hearing Clerk, HUD Building, Room 10150, Washington, D.C. 20410 on or before January 12, 1976.

6. The Respondent is *hereby notified* That failure to appear at the above scheduled hearing shall be deemed a default and the proceedings shall be determined against Respondent, the allegations of which shall be deemed to be true, and an Order Suspending the Statement of Record, herein identified, shall be issued pursuant to 24 CFR 1710.45(b)(1).

This Notice shall be served upon the Respondent forthwith pursuant to 24 CFR 1720.440.

By the Secretary.

Dated: November 23, 1976.

JAMES W. MAST,
Administrative Law Judge.

[FR Doc.77-1495 Filed 1-17-77;8:45 am]

[Docket No. N–77–675; OILSR No. 0–1498–38–30]

GRANDFATHER GOLF AND COUNTRY CLUB

Hearing

In the matter of: Grandfather Golf and Country Club, G. F. Company, Hugh M. Morton, President, 76–318–IS, OILSR No. 0–1498–38–30.

Pursuant to 15 U.S.C. 1706(d) and 24 CFR 1720.160(b).

Notice is hereby given that: 1. Grandfather Golf and Country Club, G.F. Company, Hugh M. Morton, President, authorized agents and officers, hereinafter referred to as "Respondent", being subject to the provisions of the Interstate Land Sales Full Disclosure Act (Pub. L. 90–448) (15 U.S.C. 1710, et seq.) received a Notice of Proceedings and Opportunity for Hearing issued October 21, 1976, which was sent to the developer pursuant to 15 U.S.C. 1706(d), 24 CFR 1710.45(b)(1) and 1720.125 informing the developer of information obtained by the Office of Interstate Land Sales Registration alleging that the Statement of Record and Property Report for Grandfather Golf and Country Club, located in Avery County, North Carolina, contain untrue statements of material fact or omit to state material facts required to be stated therein or necessary to make the statements therein not necessary to make the statements therein not misleading.

2. The Respondent filed an Answer received November 8, 1976, in response to the Notice of Proceedings and Opportunity for Hearing.

3. In said Answer the Respondent requested a hearing on the allegations contained in the Notice of Proceedings and Opportunity for Hearing.

4. Therefore, pursuant to the provisions of 15 U.S.C. 1706(d) and 24 CFR 1720.160(d), *it is hereby ordered* That a public hearing for the purpose of taking evidence on the questions set forth in the Notice of Proceedings and Opportunity for Hearing will be held before Judge James W. Mast, in Room 7146, Department of HUD, 451 7th Street, SW, Washington. D.C., on February 10, 1977 at 10 a.m.

The following time and procedure is applicable to such hearing: All affidavits and a list of all witnesses are requested to be filed with the Hearing Clerk, HUD Building, Room 10150, Washington, D.C., 20410 on or before January 19, 1977.

6. The Respondent is *hereby notified* That failure to appear at the above scheduled hearing shall be deemed a default and the proceedings shall be determined against Respondent, the allegations of which shall be deemed to be true, and an ORDER Suspending the Statement of Record, herein identified, shall be issued pursuant to 24 CFR 1710.45(b)(1).

This Notice shall be served upon the Respondent forthwith pursuant to 24 CFR 1720.440.

By the Secretary.

Dated: November 23, 1976.

JAMES W. MAST,
Administrative Law Judge.

[FR Doc.77-1497 Filed 1-17-77;8:45 am]

[Docket No. N–77–678; OILSR No. 0–0226–09–62]

SUNSET GROVES

Hearing

In the matter of: Sunset Groves, Section Four, Martin County, Florida, Citrus Groves Investment Corporation, Respondent.

Land Sales Enforcement Division No. 76–265.

Notice of Proceedings and Opportunity for Hearing (Pursuant to 15 USC 1706(d), 24 CFR 1710.45(b)(1) and 24 CFR 1710.125).

Notice is hereby given that: On or about October 15, 1976, the Department of Housing and Urban Development, Office of Interstate Land Sales Registration, attempted to serve upon the Respondent at its last known mailing address, 1450 N.E. 123rd Street, North Miami, Florida, 33161, a Notice of Proceedings and Opportunity for Hearing. Service was not achieved because no agent or officer of Citrus Groves Investment Corporation would be located at said address. Therefore, pursuant to 15 USC 1706(d), 24 CFR 1710.45(b)(1) and 24 CFR 1710.125, this Notice of Proceedings and Opportunity for Hearing is published as follows:

I. The Secretary's public files disclose that:

A. The Respondent, Citrus Groves Investment Corporation, is a corporation organized under the laws of Florida.

B. J. Arthur Elliot is the president of the Respondent corporation.

C. The mailing address of the last known principal place of business of the Respondent is 1405 N.E. 123rd Street, North Miami, Florida.

D. Respondent filed a Statement of Record and a Property Report for Sunset Groves, Section Four, situated in Martin County, Florida, which became effective on June 10, 1969, and which remains in effect.

E. The Statement of Record and Property Report pertaining to the said subdivision include untrue statements of material fact and omit to state material facts required to be stated therein and which are necessary to make the statements therein true and correct.

(1) Respondent has failed to file a revised first page of the Property Report and a revised form of purchase contract conforming to the language as required by Departmental Regulations 24 CFR 1710.110, Part B, 2, 4, 5 and 6; 24 CFR 1710.105, Part VI C 1 or 24 CFR 1710.120, II B, as amended, to conform with the amendments made to the Interstate Land Sales Full Disclosure Act (15 U.S.C. 1701 et seq.) by subsection 812(c)(1) if the Housing and Community Development Act of 1974 (Pub. L. 93–383), effective October 21, 1974.

(2) Respondent has failed to amend the said Statement of Record and Property Report so as to conform to the Departmental Rules and Regulations which became effective on December 1, 1973, 24 CFR 1710 et seq., as required by the effective date provision thereof.

II. In view of the allegations shown in Part I above, the Secretary will provide an opportunity for a public hearing in order that it can be determined:

A. Whether those allegations are true and, in connection therewith, to afford the Respondent an opportunity to establish adequate defenses to such allegations, and

B. Whether remedial action is appropriate in the public interest and for the protection of purchasers pursuant to the provisions of the Interstate Land Sales Full Disclosure Act.

III. If the Respondent desires a hearing he must file a notice of desire for a hearing accompanied by an answer within 15 days after service of this Notice of Proceedings. Respondent is notified that if it shall fail to file a response pursuant to 24 CFR 1710.140 and 1720.145 within 15 days after service of this Notice of Proceedings, Respondent shall be deemed to be in default, and the proceedings be assumed to be true, and an Order suspending said Statement of Record will be entered. The said Order shall remain in effect until such time as the Statement of Record and the Property Report have been amended in accordance therewith, and thereupon the Order shall cease to be in effect.

IV. Any request for hearing, answer, motion, amendment to pleadings, offer of settlement or correspondence forwarded during the pendency of this proceeding shall be filed with the General Counsel's Clerk for Administrative Proceedings, Room 10278, HUD Building, 451 Seventh Street, SW, Washington, D.C. 20410. All such papers shall be clearly identified according to the type of matter and the docket number as set forth in this Notice of Proceedings.

V. Upon timely request of the Respondent a public hearing shall be held for the purpose of taking evidence on the allegations set forth herein, such hearing to be held before Administrative Law Judge James W. Mast, or before such other Administrative Law Judge as might be designated, in Room 7146, HUD Building, 451 Seventh Street SW, Washington, D.C. 20410, at 10 a.m. on the 30th day after receipt of the answer or at such other time as may be fixed by further order.

This Notice of Proceedings shall be served on the Respondent pursuant to 44 USC 1508.

Issued at Washington, D.C., this 29th day of December, 1976.

CONSTANCE NEWMAN,
Assistant Secretary for Consumer Affairs and Regulatory Functions.

[FR Doc.77-1493 Filed 1-17-77;8:45 am]

[Doc. No. N–77–676; OILSR No. 0–2828–44–185]

TIMBER HILL

Hearing

In the matter of: Timber Hill, Timber Hill, Inc. and Joseph R. Mattioli, President, 76–309–IS, OILSR No. 0–2828–44–185 and (A).

Pursuant to 15 U.S.C. 1706(d) and 24 CFR 1720.160(b).

Notice is hereby given that: 1. Timber Hill, Timber Hill, Inc. and Joseph R. Mattioli, President, authorized agents and officers, hereinafter referred to as "Respondent", being subject to the provisions of the Interstate Land Sales Full Disclosure Act (Pub. L. 90–448) (15 U.S.C. 1710, et seq.) received a Notice of Proceedings and Opportunity for Hearing issued October 18, 1976, which was sent to the developer pursuant to 15 U.S.C. 1706(d), 24 CFR 1710.45(b)(1) and 1720.125 informing the developer of information obtained by the Office of Interstate Land Sales Registration alleging that the Statement of Record and Property Report for Timber Hill, Timber Hill, Inc., located in Canadensis, Pennsylvania, contain untrue statements of material fact or omit to state material facts required to be stated therein or necessary to make the statements therein not necessary to make the statements therein not misleading.

2. The Respondent filed an Answer received November 4, 1976, in response to the Notice of Proceedings and Opportunity for Hearing.

3. In said Answer the Respondent requested a hearing on the allegations contained in the Notice of Proceedings and Opportunity for Hearing.

4. Therefore, pursuant to the provisions of 15 U.S.C. 1706(d) and 24 CFR 1720.160(d), *it is hereby ordered* That a public hearing for the purpose of taking evidence on the questions set forth in the Notice of Proceedings and Opportunity for Hearing will be held before Judge James W. Mast, in Room 7146, Department of HUD, 451 7th Street, SW, Washington, D.C., on February 14, 1977 at 10 a.m.

The following time and procedure is applicable to such hearing: All affidavits and a list of all witnesses are requested to be filed with the Hearing Clerk, HUD Building, Room 10150, Washington, D.C., 20410 on or before January 17, 1977.

6. The Respondent is *hereby notified* That failure to appear at the above scheduled hearing shall be deemed a default and the proceedings shall be determined against Respondent, the allegations of which shall be deemed to be true, and an ORDER Suspending the Statement of Record, herein identified, shall be issued pursuant to 24 CFR 1710.45(b)(1).

This Notice shall be served upon the Respondent forthwith pursuant to 24 CFR 1720.440.

By the Secretary.

Dated: November 23, 1976.

JAMES W. MAST,
Administrative Law Judge.

[FR Doc.77-1498 Filed 1-17-77;8:45 am]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[M 34075]

MONTANA

Application

JANUARY 11, 1977.

Notice is hereby given that, pursuant to Section 28 of the Mineral Leasing Act of 1920 (30 U. S. C. 185), as amended by the Act of November 16, 1973 (87 Stat. 576), The Montana Power Company has applied for a natural gas pipeline right-of-way for a 4-inch line across the following lands:

PRINCIPAL MERIDIAN, MONTANA

T. 26 N., R. 20 E.,
Sec. 2, Lots 2 and 3.
T. 27 N., R. 20 E.,
Sec. 35, SW¼SE¼.

This pipeline will convey natural gas across 0.61 miles of national resource lands in Blaine County, Montana.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved and, if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their names and addresses to the District Manager, Bureau of Land Management, Bank Electric Building, Drawer 1160, Lewiston Montana 59457.

ROLAND F. LEE,
Chief, Branch of Lands and Minerals Operations.

[FR Doc.77-1507 Filed 1-17-77;8:45 am]

[Wyoming 57819]

WYOMING

Application

JANUARY 10, 1977.

Notice is hereby given that pursuant to section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), Marathon Pipe Line Company of Casper, Wyoming, filed an application for a right-of-way to construct four 3 inch pipelines for the purpose of transporting oil across the following described National Resource Lands:

SIXTH PRINCIPAL MERIDIAN, WYOMING

T. 47 N., R. 91 W.,
Sec. 29, N½SW¼, SW¼SW¼;
Sec. 30, lots 8, 9, SE¼NW¼.
T. 47 N., R. 92 W.,
Sec. 1, SW¼NW¼, W½SW¼, SE¼SW¼;
Sec. 12, NE¼NW¼.

The pipelines will transport oil to connect producing leases into existing pipelines in Washakie County, Wyoming.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved and, if so, under what terms and conditions.

Interested persons desiring to express their views should do so promptly. Persons submitting comments should include their name and address and send them to the District Manager, Bureau of Land Management, 1700 Robertson Avenue, P.O. Box 119, Worland, Wyoming 82401.

HAROLD G. STINCHCOMB,
Chief, Branch of Lands and Minerals Operations.

[FR Doc 77-1506 Filed 1-17-77;8:45 am]

[Wyoming 57861]

WYOMING

Application

Notice is hereby given that pursuant to section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), Northwest Pipeline Corporation of Salt Lake City, Utah, filed an application for a right-of-way to construct a cathodic protection station for the protection and safe operation of their natural gas pipeline system across the following described National Resource Lands:

SIXTH PRINCIPAL MERIDIAN, WYOMING

T. 27 N., R. 114 W.,
sec. 25, S½NE¼.

The cathodic protection station will be used for the protection and safe operation of Northwest Pipeline's existing natural gas pipeline system located in Sublette County, Wyoming.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved and, if so, under what terms and conditions.

Interested persons desiring to express their views should do so promptly. Persons submitting comments should include their name and address and send them to the District Manager, Bureau of Land Management, Highway 187 North, P.O. Box 1869, Rock Springs, Wyoming 82901.

HAROLD G. STINCHCOMB,
Chief, Branch of Lands and Minerals Operations.

[FR Doc.77-1508 Filed 1-17-77;8:45 am]

Geological Survey

KNOWN RECOVERABLE COAL RESOURCE AREA

Knowlton, Montana

Pursuant to authority contained in the Act of March 3, 1879 (43 U.S.C. 31), as supplemented by Reorganization Plan No. 3 of 1950 (43 U.S.C. 1451, note), 203 Departmental Manual 1, Secretary's Order No. 2948, and section 8A of the Mineral Leasing Act of February 25, 1920, as added by section 7 of the Federal Coal Leasing Amendments Act of 1975 (Pub. L. 94-377, August 4, 1976), Federal lands within the State of Montana have been classified as subject to the coal leasing provisions of the Mineral Leasing Act of February 25, 1920, as amended (30 U.S.C. 201). The name of the area, effective date, and total acreage involved are as follows:

(26) MONTANA

Knowlton (Montana). Known Recoverable Coal Resource Area; March 3, 1975; 20,125 acres.

A diagram showing the boundaries of the area classified has been filed with the appropriate land office of the Bureau of Land Management. Copies of the diagram and the land description may be obtained from the Regional Conservation Manager, U.S. Geological Survey, Stop 609, Box 25046, Denver Federal Center, Denver, Colorado 80225.

Dated: January 10, 1977.

W. A. RADLINSKI,
Acting Director.

[FR Doc. 77-1461 Filed 1-17-77;8:45 am]

KNOWN RECOVERABLE COAL RESOURCE AREA

Niobe, North Dakota

Pursuant to authority contained in the Act of March 3, 1879 (43 U.S.C. 31), as supplemented by Reorganization Plan No. 3 of 1950 (43 U.S.C. 1451, note), 203 Department Manual No. 1, Secretary's Order No. 2948, and section 8A of the Mineral Leasing Act of February 25, 1920, as added by section 7 of the Federal Coal Leasing Amendments Act of 1975 (Pub. L. 94-377, August 4, 1976), Federal lands within the State of North Dakota have been classified as subject to the coal leasing provisions of the Mineral Leasing Act of February 25, 1920, as amended (30 U.S.C. 201). The name of the area, effective date, and total acreage involved are as follows:

(34) NORTH DAKOTA

Niobe (North Dakota) Known Recoverable Coal Resource Area; March 5, 1976; 16,097 acres.

A diagram showing the boundaries of the area classified for leasing has been filed with the appropriate land office of the Bureau of Land Management. Copies of the diagram and the land description may be obtained from the Regional Conservation Manager, Central Region, Mail Stop 609, Box 25046, Federal Center, Denver, Colorado 80225.

Dated: January 10, 1977.

W. A. RADLINSKI,
Acting Director.

[FR Doc. 77-1460 Filed 1-17-77;8:45 am]

KNOWN RECOVERABLE COAL RESOURCE AREA

Powder River Basin, Wyoming; Revision

Pursuant to authority contained in the Act of March 3, 1879 (43 U.S.C. 31), as supplemented by Reorganization Plan No. 3 of 1950 (43 U.S.C. 1451, note), 203 Departmental Manual 1, Secretary's Order No. 2948, and section 8A of the

Mineral Leasing Act of February 25, 1920, as added by section 7 of the Federal Coal Leasing Amendments Act of 1975 (Pub. L. 94-377, August 4, 1976), Federal lands within the State of Wyoming have been classified as subject to the coal leasing provisions of the Mineral Leasing Act of February 25, 1920, as amended (30 U.S.C. 201). The name of the area, effective date, and total acres involved (including revision) are as follows:

(50) WYOMING

Powder River Basin (Wyoming) Known Recoverable Coal Resource Area; August 1, 1975; 3,437 acres previously within the KRCRA were deleted, and 20,577 acres were added, resulting in a net addition of 17,140 acres. Total area now classified is 3,968,626 acres.

A letter size plat with the revised boundary and acreage, and a map showing the additions and deletions in detail have been filed with the appropriate land office of the Bureau of Land Management. Copies of the plat and map and land description may be obtained from the Regional Conservation Manager, U.S. Geological Survey, Central Region, Stop 609, Box 25046, Federal Center, Denver, Colorado 80225.

W. A. RADLINSKI,
Acting Director.

JANUARY 10, 1977.

[FR Doc.77-1459 Filed 1-17-77;8:45 am]

National Park Service

NATIONAL REGISTER OF HISTORIC PLACES

Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before January 10, 1977. Pursuant to § 60.13(a) of 36 CFR Part 60, published in final form on January 9, 1976, written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the Keeper of the National Register, National Park Service, U.S. Department of the Interior, Washington, D.C. 20240. Written comments or a request for additional time to prepare comments should be submitted by January 28, 1977.

JERRY L. ROGERS,
Acting Chief, Office of Archeology and Historic Preservation.

ARIZONA

Maricopa County

Glendale vicinity, *Cave Creek Dam Archeological District*, N of Glendale off I-17.

CALIFORNIA

Tulare County

Three Rivers vicinity, *Cattle Cabin*, NE of Three Rivers on Sequoia National Park.

CONNECTICUT

Fairfield County

Greenwich, *Knapp Tavern*, 243 E. Putnam Ave.

Greenwich, *Lyon, Thomas, House*, W Putnam Ave. and Byram Rd.

Hartford County

Plantsville, *Smith, H. D., Company Building*, 24 West St.
South Glastonbury, *Welles-Shipman-Ward House*, 972 Main St.
Windsor, *Moore, Deacon John, House*, 37 Elm St.

Litchfield County

Torrington vicinity, *Gillette's Grist Mill*, E of Torrington on Maple Hollow Rd

New Haven County

Middlebury vicinity, *Richardson, Nathaniel, House*, NE of Middlebury on Kelly Rd.
Milford, *Eells-Stow House*, 34 High St.

DELAWARE

Kent County

Dover vicinity, *Hughes-Willis Site*, E of Dover.

KENTUCKY

Casey County

Liberty, *Casey County Courthouse*, Courthouse Sq.

LOUISIANA

Assumption Parish

Napoleonville, *Christ Episcopal Church and Cemetery*, LA 1 and Courthouse St

Iberia Parish

New Iberia, *Episcopal Church of the Epiphany*, 803 W. Main St.

Rapides Parish

Cheneyville vicinity, *Loyd Hall Plantation*, NW of Cheneyville on Loyd Bridge Rd.

MINNESOTA

Koochiching County

Island View vicinity, *Gold Mine Sites*, NE of Island View.

Pipestone County

Pipestone, *Pipestone Architectural District*, Main St.

MISSISSIPPI

Warren County

Vicksburg, *Sprague*, Vicksburg Harbor

NORTH DAKOTA

Richland County

Christine, *Nelson's Grocery*, Main and 3rd Sts.

Traill County

Mayville, *Goose River Heritage Center*, Front St.

OREGON

Clackamas County

Canby vicinity, *Barlow, William, House*, SW of Canby at 24670 U.S. 99E.
Oregon City, *Ermatinger, Francis, House*, 1018 Center St.

Jackson County

Medford vicinity, *Bybee, William, House*, W of Medford at 883 Old Stage Rd.

Lake County

Lakeview, *Post and King Saloon*, N. 2nd and E Sts.

Multnomah County

Portland, *American Freedom Train Locomotive*, Oaks Amusement Park, SE Spokane St.
Portland, *Barber Block*, 532-538 SE Grand Ave.
Portland, *Hamilton Building*, 529 S.W. 3rd Ave.
Portland, *Poulsen, Johan, House*, 3040 SE McLoughlin Blvd.
Portland, *West Hall*, 5000 N. Willamette Blvd

Washington County

Hillsboro vicinity, *Imbrie Farm*, NE of Hillsboro off U.S. 26.

Yamhill County

Lafayette vicinity, *Mattey, Joseph, House*, W of Lafayette at jct. of Mattey Lane and Rutherford Rd.

PENNSYLVANIA

Delaware County

Glen Mills, *Glen Mills School*, Glen Mills Rd

RHODE ISLAND

Providence County

Providence vicinity, Mt. Hygeia (*Solomon Drown House*), W of Providence on RI 94

Washington County

Exeter vicinity, *Austin Farm Road Agricultural Area*, 6 mi. W of Exeter on I 95

TEXAS

Panola County

Deadwood vicinity, *Republic of Texas Granite Marker*, SE of Deadwood off SR 31 on Louisiana border.

WISCONSIN

Ashland County

La Pointe vicinity, *Hadland Fishing Camp*, N of La Pointe on Rocky Island.

[FR Doc.77-1226 Filed 1-17-77;8:45 am]

DEPARTMENT OF JUSTICE

Antitrust Division

[Civil No. CIV. 75-334]

UNITED STATES v. GREATER BUFFALO ROOFING & SHEET METAL CONTRACTORS' ASSOCIATION, INC.

Proposed Consent Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16 (b) through (h), that a proposed consent judgment and a competitive impact statement as set out below have been filed with the United States District Court for the Western District of New York in *United States of America v. Greater Buffalo Roofing & Sheet Metal Contractors' Association, Inc.*, Civil No. 75-334. The complaint in this case alleges that the defendant conspired to limit the length of guarantee on roofing work performed by its members. The proposed judgment enjoins the defendant from fixing the terms or length of any guarantee, or any price, or any other term or condition of sale, in connection with the installation of roofs. It also requires the defendant to send letters to some 180 architects, general contractors and other interested parties informing them of the settlement of this action and the discontinuance of the association's guarantee program. Public comment is invited on or before March 7, 1977. Such comments and responses thereto will be published in the FEDERAL REGISTER and filed with the Court. Comments should be directed to Bernard Whermann, Chief, New York Office, Antitrust Divi-

sion, Department of Justice, 26 Federal Plaza, New York, New York 10007.

Dated: January 6, 1977.

CHARLES F. B. MCALEER,
Assistant Chief, Judgments and Judgment Enforcement Section.

STIPULATION

Filed: January 6, 1977.

UNITED STATES DISTRICT COURT, FOR THE WESTERN DISTRICT OF NEW YORK

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. A Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendant and by filing that notice with the Court.

2. In the event plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this stipulation, this stipulation shall be of no effect whatever and the making of this stipulation shall be without prejudice to plaintiff and defendant in this and any other proceeding.

Dated: January 6, 1977.

For the Plaintiff: Donald I. Baker, *Assistant Attorney General;* John Sirignano, Jr., William E. Swope, Melvin Lubinski, Richard J. Favretto, Erwin L. Atkins, Charles F.B. McAleer, Rebecca Meiklejohn, Bernard Wehrmann, *Attorneys, Department of Justice.*

For the Defendant: Latona, Worthington, Srebro & Nitterauer, *Attorneys for Greater Buffalo Roofing and Sheet Metal Contractors' Association, Inc.,* by Salvatore M. Latona, *Member of the Firm.*

Filed: January 6, 1977.

FINAL JUDGMENT

UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF NEW YORK.

Plaintiff, United States of America, having filed its Complaint herein on August 8, 1975; Defendant, Greater Buffalo Roofing and Sheet Metal Contractors' Association, Inc., having appeared and filed its Answer to the Complaint denying the material allegations thereof and raising certain affirmative defenses; and Plaintiff and Defendant, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without this Final Judgment constituting any evidence or admission by either party with respect to any such issue;

Now, therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein and without this Final Judgment constituting any evidence or admission by either party with respect to any such issue and upon the consent of the parties, it is hereby

Ordered, adjudged and decreed as follows:

I

This Court has jurisdiction over the subject matter of this action and of the parties hereto. The Complaint states claims upon which relief may be granted against the Defendant under Section 1 of the Act of Congress of July 2, 1890, as amended (15 U.S.C. 1), commonly known as the Sherman Act.

II

As used in this Final Judgment: (A) "Person" means any individual, individual proprietorship, partnership, firm, corporation or any other legal entity; and

(B) "Installation of roofs" means the construction of new and replacement roofs and the fabrication of sheet metal in conjunction with such construction, and includes such other related services as waterproofing, dampproofing, repairing of roofs, inspecting of roofs, and estimating the cost of repair or installation of roofs.

III

The provisions of this Final Judgment applicable to the Defendant shall also apply to its successors and assigns; to its directors, officers, agents, and employees; and to all persons, including members, in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

IV

The Defendant is enjoined and restrained from, unilaterally or in concert with any person: (A) Fixing, establishing, stabilizing or maintaining the terms or length of any guarantee, or any price, or any other term or condition of sale, in connection with the installation of roofs;

(B) Urging, recommending, or suggesting that any of its members or any other person adopt or adhere to the terms or length of any guarantee, or any price, in connection with the installation of roofs;

(C) Advertising, publishing or distributing information relating to the terms or length of any guarantee, or any price, in connection with the installation of roofs;

(D) Adopting, publishing, distributing or recommending any printed form of contract or guarantee containing provisions relating to the terms or length of any guarantee, or any price, for use in connection with the installation of roofs, provided, however, that neither Defendant nor any of its members shall be prohibited from recommending any bonds which are sold by national roofing manufacturers in conection with the installation of roofs purchased from them;

(E) Adopting, adhering to, maintaining, enforcing or claiming any rights under any bylaw, rule, regulation, plan or program which restricts or limits the right of any member to give or offer, in accordance with his own business judgment, any terms or length of guarantee, or any price, or any other term or condition of sale, in connection with the installation of roofs; and

(F) Taking any punitive action against any of its members for such member's failure or refusal to adhere to any agreements with any other member or other competitor concerning the terms or length of guarantee, the price, or any other term or condition of sale, in connection with the installation of roofs.

V

The Defendant is ordered and directed within ninety (90) days after the entry of this Final Judgment to eliminate from its charter, constitution and bylaws, code of ethics, rules and regulations, and other documents governing its operations, any provision which is contrary to or inconsistent with any of the provisions of this Final Judgment.

VI

The Defendant is ordered and directed to mail, within ninety (90) days after the date of entry of this Final Judgment, a letter in the form attached hereto as Exhibit A, addressed to each person who was notified of the adoption of Defendant's guarantee program in form letters mailed on or about September 1, 1970 and February 3, 1973.

VII

The Defendant is ordered and directed: (A) To mail, within ninety (90) days after the date of entry of this Final Judgment, a copy of this Final Judgment to each of its members and to each person who was a member at any time from January 1, 1970 to the date of entry of this Final Judgment; and

(B) To furnish a copy of this Final Judgment to each person who becomes a member of Defendant within five years after the date of the entry of this Final Judgment.

VIII

Within one hundred and twenty (120) days from the date of the entry of this Final Judgment, the Defendant is ordered and directed to file with the Clerk of this Court an affidavit setting forth the fact and manner of compliance with Sections V, VI and VII (A) of this Decree.

IX

For a period of ten (10) years from the date of entry of this Final Judgment the Defendant is ordered to file with the Plaintiff, on each anniversary date of such entry, a report setting forth the steps which it has taken during the prior year to advise the Defendant's directors, officers, agents, members, and employees of its and their obligations under this Final Judgment.

X

(A) For the purpose of determining or securing compliance with this Final Judgment, duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the Defendant made to its principal office, be permitted, subject to any legally recognized privilege, and subject to the right of Defendant, if it so desires, to have counsel present:

1. Access during its office hours to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of the Defendant relating to any matters contained in this Final Judgment; and

2. Subject to the reasonable convenience of the Defendant, and without restraint or interference from it, to interview directors, officers, agents or employees of the Defendant, which persons if they wish may have counsel of their choosing present, relating to any matters contained in this Final Judgment.

(B) Upon such written request, the Defendant shall submit such reports in writing, under oath if so requested, to the Plaintiff, with respect to any of the matters contained in this Final Judgment as may from time to time be requested. No information obtained by the means provided in this Section X shall be divulged by any representative of the Department of Justice to any person, other than a duly authorized representative of the Executive Branch of Plaintiff, except in the course of legal proceedings to which the United States of America is a party or for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

XI

Jurisdiction is retained by this Court for the purpose of enabling either of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction of any of the provisions hereof, for the enforcement of compliance

therewith, and for the punishment of violations thereof.

XII

Entry of this Final Judgment is in the public interest.
Date:

United States District Judge.

EXHIBIT A

GREATER BUFFALO ROOFING AND SHEET METAL CONTRACTORS' ASSOCIATION, INC.

To: Architects, engineers, general contractors, commercial, industrial and institutional users.

Gentlemen:

On August 8, 1975, the Department of Justice filed a civil antitrust action under Section 7 of the Sherman Act, *United States v. Greater Buffalo Roofing & Sheet Metal Contractors Association, Inc.,* alleging that the Association had entered into an agreement to eliminate competition in the offer of guarantees on roofing installations. Prior to the taking of any testimony and without admission by any party in respect to any issue, the Association consented to the entry of a Final Judgment terminating the lawsuit. The Court found that the settlement was in the public interest and entered a Final Judgment on _____ 1976. A copy of that Final Judgment is available for inspection at the offices of the Association.

In accordance with the provisions of the Final Judgment, we are informing all interested parties that any previous announcements made by the undersigned respecting the duration or terms of roofing and sheet metal guarantees are hereby rescinded. Each of our members may give or offer guarantees of whatever length of time or upon such terms as he may wish. He is free to charge, give or offer whatever prices and other terms and conditions of sale for his services he may wish, in accordance with his own business judgment and which may be acceptable to his customers.

(Names of members as of date of Final Judgment who are engaged in roofing installation.)

PROPOSED CONSENT DECREE: COMPETITIVE IMPACT STATEMENT

Filed: January 6, 1977.

UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF NEW YORK.

Pursuant to Section 2(b) of the *Antitrust Procedures and Penalties Act* (15 U.S.C. 16 (b)-(h)), the United States of America hereby files this Competitive Impact Statement relating to the proposed consent judgment submitted for entry in this civil antitrust proceeding.

NATURE AND PURPOSE OF THE ACTION

On August 8, 1975, the Department of Justice filed a civil antitrust action charging that the Greater Buffalo Roofing & Sheet Metal Contractors' Association, Inc. had combined and conspired to limit the length of guarantees on roofing work performed by members of the association. The suit, brought under Section 1 of the Sherman Act, charged that the association and its members had conspired to fix, stabilize and maintain guarantees on roofing installation at two years; to fix, stabilize and maintain guarantees on sheet metal fabrication in conjunction with roofing installation at one year and to refuse to grant guarantees on waterproofing and dampproofing. It was alleged that, as a result of the conspiracy, guarantees by members of the defendant on roofing installation and sheet metal fabrication had been fixed, stabilized, and maintained at artificial and noncompetitive levels, depriving customers of free and open competition.

The Court was requested to enjoin the defendant from continuing the alleged conspiracy and from entering into any other conspiracy to fix the terms, prices, or conditions of sale for the installation of roofs or for other services offered by its members.

DESCRIPTION OF THE PRACTICES GIVING RISE TO THE ALLEGED VIOLATION

The Greater Buffalo Roofing & Sheet Metal Contractors' Asociation, Inc. is a trade association of some 30 companies primarily engaged in roofing construction, both original installation and replacement, and sheet metal fabrication in connection therewith. Customers include private homeowners, commercial, industrial and institutional establishments, and government agencies located in Buffalo, New York and in adjacent counties of western New York State. Members of the association normally provide customers a guarantee on both labor and materials as part of the contract for roofing installation.

On April 13, 1970, the Association adopted a resolution stating that:

1. The maximum guarantee on roofing installations for both materials and workmanship would be limited to a period of two years from the date of the completed installation;

2. The maximum guarantee for sheet metal work done in conjunction with roofing would not exceed one year; and

3. No guarantee would be made on waterproofing and dampproofing.

In September 1970, the association sent a form letter to some 180 architects, general contractors, school districts and other interested parties informing them of the adoption of the resolution. A similar letter was sent to some 116 persons and companies in February 1973. The association also adopted, for use by its members, a printed form incorporating the terms of the resolution.

The association's guarantee program was still in effect at the time of the filing of this action.

EXPLANATION OF THE PROPOSED CONSENT JUDGMENT

The proposed consent judgment provides a combination of specific measures to dispel the anticompetitive effects alleged by the Complaint. Defendant is enjoined and restrained from fixing, establishing, stabilizing or maintaining the terms or length of any guarantee, or any price, or any other term or condition of sale, in connection with the installation of roofs. It is prohibited from advertising, publishing or distributing information relating to the terms or length of any guarantee, or any price, in connection with the installation of roofs. Defendant is also barred from adopting, publishing, distributing or recommending any printed form of contract or guarantee containing provisions relating to the terms or length of any guarantee, or any price, for use in connection with the installation of roofs. However, neither Defendant nor any of its members is barred from recommending any manufacturers' or related bonds which are sold by national roofing manufacturers in connection with the installation of roofs purchased from them.

The defendant is ordered to mail, within ninety (90) days after the entry of the proposed consent judgment, a letter (the form of which is attached to the judgment as Exhibit A) addressed to each recipient of the September 1970 and February 1973 form letters. The letter informs each recipient of the institution and settlement of this action and of the discontinuance of the association's guarantee program.

COMPETITIVE EFFECTS OF THE PROPOSED CONSENT JUDGMENT

It is anticipated that by eliminating the conspiracy which restrained competition respecting guarantees, the proposed consent judgment will have the effect of restoring such competition among members of the defendant.

ALTERNATIVE REMEDIES CONSIDERED BY THE DEPARTMENT OF JUSTICE

The proposed consent judgment provides substantially all the relief prayed for in the complaint. No alternative to the judgment has been considered by the Department of Justice.

REMEDIES AVAILABLE TO POTENTIAL PRIVATE PLAINTIFFS

Any potential private plaintiffs who might have been damaged by the alleged violations will retain the same right to sue for monetary damages and any other legal and equitable remedies which they would have had, were the proposed consent judgment not entered. However, this judgment may not be used as *prima facie* evidence in private litigation pursuant to Section 5(a) of the Clayton Act as amended, (15 U.S.C. 16(a)).

PROCEDURES AVAILABLE FOR MODIFICATION OF THE PROPOSED CONSENT JUDGMENT

The proposed consent judgment is subject to a stipulation by and between the United States and the defendant, which provides that the United States may withdraw its consent to the proposed consent judgment until the Court has found that entry of the proposed judgment is in the public interest. By its terms, the proposed judgment provides for retention of jurisdiction of this action in order, among other things, to permit either of the parties to apply to the Court for such orders as may be necessary or appropriate for its modification.

As provided by the Antitrust Procedures and Penalties Act, any persons believing that the proposed judgment should be modified may, for a 60-day period, submit written comments to the United States Department of Justice, Antitrust Division, 26 Federal Plaza, New York, New York 10007, which will file with the Court and publish in the FEDERAL REGISTER such comments and its response to such comments. The Department of Justice will thereafter evaluate any and all such comments and determine whether there is any reason for withdrawal of its consent to the proposed judgment.

DETERMINATIVE DOCUMENTS

There are no materials or documents which the Department of Justice considered determinative in formulating this proposed consent judgment. Therefore, none are being filed with this Competition Impact Statement.

JOHN SIRIGNANO, Jr
MELVIN LUBINSKI,
ERWIN L. ATKINS,
REBECCA MEIKLEJOHN,
Department of Justice Attorneys.

[FR Doc.77-1465 Filed 1-17-77;8:45 am]

Drug Enforcement Administration

MANUFACTURE OF CONTROLLED SUBSTANCES

Registration

By Notice dated October 7, 1976 and November 8, 1976, and published in the FEDERAL REGISTER on October 18, 1976 and November 16, 1976; (41 FR 45855

and 41 FR 50473), Hoffman LaRoche, Inc., Kingland Road and Bloomfield Avenue, Nutley, N.J. 07110, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic class of controlled substances listed below:

Drug:	Schedule
Alphaprodine	II
Levorphanol	II

No comments or objections having been received, and pursuant to Section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and 21 CFR 1301.54(e), the Acting Deputy Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substances listed above is granted.

Dated: January 11, 1977.

DONALD E. MILLER,
Acting Deputy Administrator,
Drug Enforcement Administration.

[FR Doc.77-1601 Filed 1-17-77;8:45 am]

DEPARTMENT OF LABOR

Pension and Welfare Benefit Programs

ADVISORY COUNCIL ON EMPLOYEE WELFARE AND PENSION BENEFIT PLANS

Meeting

Pursuant to section 512 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1142) the January 11, 1977 meeting of the Advisory Council on Employee Welfare and Pension Benefit Plans will reconvene at 9:00 a.m. on Friday, February 4, 1977, in the Federal Ballroom North, Quality Inn—Capitol Hill, 415 New Jersey Avenue, NW, Washington, D.C.

The meeting will be open to the public. The purpose of the meeting is to discuss proposed amendments to the Employee Retirement Income Security Act of 1974, in accordance with Council discussion at the meeting held on January 11, 1977.

Any member of the public may file a written statement concerning proposed amendments to the Employee Retirement Income Security Act of 1974 by submitting 30 copies on or before the close of business Thursday, February 3, 1977, to William J. Chadwick, Administrator of Pension and Welfare Benefit Programs, New Department of Labor Building, Third Street and Constitution Avenue, NW, Room N4629, Washington, D.C. 20216.

Persons desiring to attend should notify Mr. Edward F. Lysczek, Executive Secretary of the Advisory Council, New Department of Labor Building, Third Street and Constitution Avenue, NW, Room N4629, Washington, D.C., 20216, or may call Area Code 202-523-8753.

Signed at Washington, D.C., this 14th day of January 1977.

WILLIAM J. CHADWICK,
Administrator of Pension and Welfare Benefit Programs.

[FR Doc.77-1819 Filed 1-17-77; 8:45 am]

Office of the Secretary

[TA-W-1168]

ABRAHAM ECKHAUS

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-1168: investigation regarding certification of eligibility to apply for adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on October 14, 1976 in response to a worker petition received on that date which was filed on behalf of former workers engaged in the production of men's tailored pants, a component of men's suits at Abraham Eckhaus, New York, New York.

The Notice of Investigation was published in the FEDERAL REGISTER on November 5, 1976 (41 FR 48801). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of the New York Clothing Unemployment Fund Agency, the customers of Abraham Eckhaus, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

The investigation has revealed that all four of the above criteria have been met.

SIGNIFICANT TOTAL OR PARTIAL SEPARATIONS

Average employment of production workers declined 11 percent in 1975 compared to 1974. All employees of Abraham Eckhaus were separated from employment on or before December 11, 1975.

SALES OR PRODUCTION, OR BOTH, HAVE DECREASED ABSOLUTELY

Sales and production ceased in December 1975 when the company went out of business. Sales fell 76 percent in 1974 compared to 1973 and increased 94 percent in 1975 compared to 1974. Sales declined 54 percent in 1975 compared to 1973.

Production decreased 85 percent in 1974 compared to 1973 and rose 150 percent in 1975 compared to 1974. Production fell 63 percent in 1975 compared to 1973.

INCREASED IMPORTS

Imports of men's and boys' tailored suits increased every year from 1971 through 1975, rose 27 percent in 1975 compared to 1974 and increased 7 percent in the first nine months of 1976 compared to the like period of 1975. The ratio of imports to domestic production increased from 12.3 percent in 1974 to 17.4 percent in 1975 and decreased from 19.9 percent in the first half of 1975 to 17.3 percent in the like period of 1976.

CONTRIBUTED IMPORTANTLY

The Department's investigation revealed that one customer accounting for approximately 75 percent of Abraham Eckhaus' sales in 1975, increased its purchases of imported men's suits approximately 100 percent in 1975 compared to 1974. The customer reduced its purchases from Abraham Eckhaus approximately 40 percent in 1975 compared to 1973.

The lower prices of imports influenced the customer to reduce all domestic purchases and substitute imported men's suits.

In terms of sales and production, 1974 was the worst in a series of bad years for Abraham Eckhaus. Although 1975 showed some recovery, it was not enough to offset the previous years of unusually low production and sales.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with articles produced at Abraham Eckhaus, New York, New York contributed importantly to the total or partial separation of the workers of that plant. In accordance with the provisions of the Act, I make the following certification:

All workers engaged in employment related to the production of men's tailored pants at Abraham Eckhaus, New York, New York who became totally or partially separated from employment on or after September 20, 1975 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 11th day of January 1977.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc.77-1521; Filed 1-17-77;8:45 am]

[TA-W-1,533]

ARA SERVICES OF SOUTHERN WISCONSIN

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On December 30, 1976 the Department of Labor received a petition dated December 9, 1976, which was filed under Section 221(a) of the Trade Act of 1974 ("The Act") on behalf of the workers and former workers of ARA Services of Southern Wisconsin, Kenosha, Wisconsin, a Division of ARA Food Services Company, Philadelphia, Pennsylvania (TA-W-1,533). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in Section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine wether absolute or relative increases of imports of articles like or directly competitive with the providing of vended food services by ARA Services of Southern Wisconsin or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of Section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 28, 1977.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 28, 1977.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 30th day of December 1976.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.77-1526 Filed 1-17-77;8:45 am]

[TA-W-1,531]

AIRCO ALLOYS

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On December 30, 1976 the Department of Labor received a petition dated November 30, 1976 which was filed under Section 221(a) of the Trade Act of 1974 ("the Act") by the United Steelworkers of America on behalf of the workers and former workers of Theodore, Alabama plant of Airco Alloys, Niagara Falls, New York, a Division of Airco, Inc., Montvale, New Jersey (TA-W-1,531). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in Section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with ferro, and silicon manganese produced by Airco Alloys or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of Section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 28, 1977.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 28, 1977.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 30th day of December 1976.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.77-1522 Filed 1-17-77;8:45 am]

[TA-W-1,514]

ALABAMA BY-PRODUCTS CORP.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On December 15, 1976 the Department of Labor received a petition dated November 15, 1976 which was filed under Section 221(a) of the Trade Act of 1974 ("the Act") by the United Steelworks of America on behalf of the workers and former workers of Coke Oven & By-Products Div., Tarrant, Alabama of Alabama By-Products Corp., Birmingham, Alabama (TA-W-1,514). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in Section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with furnace coke produced by Alabama By-Products Corp., or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of Section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 28, 1977.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 28, 1977.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U. S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20210.

Signed at Washington, D.C. this 15th day of December 1976.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.77-1523 Filed 1-17-77;8:45 am]

[TA-W-1,151]

ALUMINUM CO. OF AMERICA

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance; Correction

In FR Doc. 76-31729 appearing at page 47616 in the FEDERAL REGISTER of October 29, 1976, the date of the petition, appearing on page 47616 is corrected in

the 2nd column, 1st line, to read "September 1."

Signed at Washington, D.C. this 5th day of January 1977.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.77-1524 Filed 1-17-77;8:45 am]

[TA-W-1327]

AMERICAN VALVE MANUFACTURING CORP., COXSACKIE, N.Y.

Notice of Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-1327: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on November 30, 1976 in response to a worker petition received on November 30, 1976 which was filed by the United Steelworkers of America on behalf of workers producing steel, alloy, copper, and brass fittings, valves, couplings, flanges, etc. at the Coxsackie, New York plant of American Valve Manufacturing Corporation.

The notice of investigation was published in the Federal Register on December 14, 1976 (41 FR 54553). No public hearing was requested and none was held.

The information upon which the determination was made was obtained from the United Steelworkers of America and American Valve Manufacturing Corporation.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in such workers' firm or an appropriate subdivision of the firm have become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations or threat thereof; and to the decrease in sales or production.

The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

Without regard to whether any other criteria have been met, criterion (1) has not been met.

The Coxsackie, New York plant of America Valve Manufacturing Corporation produced bronze and iron valves for industrial and residential uses.

Evidence developed in the Department's investigation reveals that no involuntary separations occurred from November 1, 1975, one year prior to the signature date of the petition, to the present.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that employees at the Coxsackie, New York plant of American Valve Manufacturing Corporation have not become totally or partially separated as required in Section 222 of the Trade Act of 1974.

Signed at Washington, D.C. this 10th day of January 1977.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc.77-1525 Filed 1-17-77;8:45 am]

[TA-W-1,544]

ARTVOGUE OF CALIFORNIA

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On January 4, 1977 the Department of Labor received a petition dated December 22, 1976 which was filed under Section 221(a) of the Trade Act of 1974 ("the Act") on behalf of the workers and former workers of Artvogue of California, San Francisco, California (TA-W-1,544). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in Section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with men's sportshirts produced by Artvogue of California or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of Section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 28, 1977.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 28, 1977.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 4th day of January 1977.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.77-1527 Filed 1-17-77;8:45 am]

[TA-W-1,497]

BETHLEHEM STEEL CORP.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On December 15, 1976 the Department of Labor received a petition dated November 15, 1976 which was filed under Section 221(a) of the Trade Act of 1974 ("the Act") by the United Steelworkers of America on behalf of the workers and former workers of Steelton, Pennsylvania plant of Bethlehem Steel Corporation, Bethlehem, Pa. (TA-W-1,497). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in Section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with welded pipes, reinforcement bars & other iron and steel products produced by Bethlehem Steel Corporation or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of Section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 28, 1977.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 28, 1977.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 15th day of December 1976.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.77-1528 Filed 1-17-77;8:45 am]

[TA-W-1,499]

BETHLEHEM STEEL CORP.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On December 15, 1976 the Department of Labor received a petition dated November 15, 1976 which was filed under Section 221(a) of the Trade Act of 1974 ("the Act") by the United Steelworkers of America on behalf of the workers and former workers of Chesterton, Indiana, Burns Harbor plant of Bethlehem Steel Corp., Bethlehem, Pa. (TA-W-1,499). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in Section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with sheet, strips, plates and tin products; also other products of steel, iron and chrome produced by Bethlehem Steel Corp. or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of Section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 28, 1977.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 28, 1977.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 15th day of December 1976.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.77-1589 Filed 1-17-77;8:45 am]

[TA-W-1,500]

BETHLEHEM STEEL CORP.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On December 15, 1976 the Department of Labor received a petition dated December 1, 1976 which was filed under Section 221(a) of the Trade Act of 1974 ("the Act") by the United Steelworkers of America on behalf of the workers and former workers of Seattle, Washington plant of Bethlehem Steel Corporation, Bethlehem, Pennsylvania (TA-W-1,500). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in Section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with reinforcement bars, and spikes & industrial fasteners produced by Bethelehem Steel Corporation or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of Section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 28, 1977.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 28, 1977.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 15th day of December 1976.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.77-1530 Filed 1-17-77;8:45 am]

[TA-W-1,501]

BETHLEHEM STEEL CORP.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On December 15, 1976 the Department of Labor received a petition dated November 15, 1976 which was filed under Section 221(a) of the Trade Act of 1974 ("the Act") by the United Steelworkers of America on behalf of the workers and former workers of Johnstown, Pennsylvania plant of Bethlehem Steel Corporation, Bethlehem, Pa. (TA-W-1,501). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in Section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with wire & wire products, axles, wheels & other products of carbon & speciality, steels, iron & brass produced by Bethlehem Steel Corporation or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of Section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 28, 1977.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 28, 1977.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U. S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210.

Signed at Washington, D.C., this 15th day of December 1976.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.77-1531 Filed 1-17-77;8:45 am]

sistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 15th day of December 1976.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.77-1531 Filed 1-17-77;8:45 am]

[TA-W-1,534]

BETHLEHEM STEEL CORP.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On December 15, 1976 the Department of Labor received a petition dated November 15, 1976 which was filed under Section 221(a) of the Trade Act of 1974 ("the Act") by the United Steelworkers of America on behalf of the workers and former workers of Sparrows Point, Maryland plant of Bethlehem Steel Corporation, Bethlehem, Pa. (TA-W-1,534). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in Section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with carbon steel sheets, pins, wires and nails produced by Bethlehem Steel Corporation or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of Section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address show below, not later than January 28, 1977.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 28, 1977.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210.

Signed at Washington, D.C. this 15th day of December 1976.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.77-1532 Filed 1-17-77;8:45 am]

[TA-W-1,521]

BROWN SHOE CO.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On December 27, 1976 the Department of Labor received a petition dated December 1, 1976 which was filed under Section 221(a) of the Trade Act of 1974 ("the Act") by the Boot and Shoe Workers Union on behalf of the workers and former workers of Union City, Tennessee plant of Brown Shoe Company, St. Louis, Missouri (TA-W-1,521). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in Section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with children's and women's shoes produced by Brown Shoe Company or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of Section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 28, 1977.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 28, 1977.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 27th day of December 1976.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.77-1533 Filed 1-17-77;8:45 am]

[TA-W-1,535]

BURROUGHS, INC.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On December 30, 1976 the Department of Labor received a petition dated December 7, 1976 which was filed under Section 221(a) of the Trade Act of 1974 ("the Act") on behalf of the workers and former workers of Piscataway, New Jersey plant of Burroughs, Inc. Detroit, Michigan (TA-W-1,535). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in Section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with memory units for computers produced by Burroughs, Incorporated or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of Section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 28, 1977.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 28, 1977.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210.

Signed at Washington, D.C. this 30th day of December 1976.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.77-1534 Filed 1-17-77;8:45 am]

[TA-W-1,539]

CANTEEN CORP.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On January 3, 1977 the Department of Labor received a petition dated December 7, 1976 which was filed under Section 221(a) of the Trade Act of 1974 ("the Act") on behalf of the workers and former workers of Edison, New Jersey plant of Canteen Corporation, Chicago, Ill., a wholly owned subsidiary of TWA, New York, New York (TA-W-1,539). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in Section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with the serving of food provided by Canteen Corp. or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of Section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 28, 1977.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 28, 1977.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 3rd day of January, 1977.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.77-1535 Filed 1-17-77;8:45 am]

[TA-W-1140]

CENTURY GLOVE INC.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-1140: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on October 5, 1976 in response to a worker petition received on October 5, 1976 which was filed by the Amalgamated Clothing and Textile Workers Union on behalf of workers and former workers producing textile work gloves used for product protection at the Newark, New Jersey plant of Century Glove Incorporated, Newark, New Jersey.

No notice of investigation was published in the FEDERAL REGISTER. No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of the Century Glove Incorporated, its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in such workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated;

(2) that sales, production, or both, of the firm or subdivision have decreased absolutely;

(3) that articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) that such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

The investigation revealed that although the third criterion has been met, the first, second and fourth criteria have not been met.

SIGNIFICANT TOTAL OR PARTIAL SEPARATIONS

In the first three quarters of 1976, employment at the Newark plant rose 13.2 percent compared to the same period in 1975. Employment in the fourth quarter of 1975 and in the first three quarters of 1976 was higher than in respective quarters of the previous year.

SALES OR PRODUCTION, OR BOTH, HAVE DECREASED ABSOLUTELY

Sales of textile work gloves produced at the Newark plant increased in value by 38.3 percent from the first three quarters of 1975 to the first three quarters of 1976. Plant production increased in volume by 30.1 percent from the first three quarters of 1975 to the first three quarters of 1976. Production levels in the fourth quarter of 1975 and in the first three quarters of 1976 were higher than in the respective quarters of the previous year.

INCREASED IMPORTS

Imports of textile and textile/leather work gloves and mittens increased from 599 thousand dozen pairs in 1971 to 2.6 million dozen pairs in 1974 and declined to 2.5 million dozen pairs in 1975. In the first half of 1976, 2.1 million dozen pairs of textile and textile/leather work gloves were imported compared to 1.2 million dozen pairs in the same period in 1975. The ratio of imports to domestic gloves production increased in each year from 1971 through 1975. The ratio of imports to domestic production increased from 8.4 percent in 1974 to 11.0 percent in 1975 and rose from 10.4 percent in the first half of 1975 to 15.4 percent in the first six months of 1976.

CONTRIBUTED IMPORTANTLY

The Department's investigation revealed that the textile work gloves produced by the Standard Glove Company are designed for product protection rather than for hand protection. Customers who bought textile work gloves from Newark plant did not buy imported textile work gloves that are used for product protection.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with the textile work gloves produced at the Newark, New Jersey plant of Century Glove Incorporated did not contribute importantly to the total or partial separations of the workers at that plant.

Signed at Washington, D.C. this 11th day of January 1977.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc.77-1536 Filed 1-17-77;8:45 am]

[TA-W-1,524]

COCA COLA BOTTLING CO.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On December 27, 1976 the Department of Labor received a petition dated De-

cember 1, 1976 which was filed under Section 221(a) of the Trade Act of 1974 ("the Act") on behalf of the workers and former workers of Tenco Division, Linden, New Jersey of Coca Cola Bottling Company, Atlanta, Ga. (TA–W–1,524). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in Section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with instant, decafinated and freeze-dried coffee produced by Coca Cola Bottling Company or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of Section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 28, 1977.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 28, 1977.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210.

Signed at Washington, D.C. this 27th day of December 1976.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.77–1537 Filed 1–17–77;8:45 am]

[TA–W–1,515]

COPPERWELD STEEL CO.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On December 15, 1976 the Department of Labor received a petition dated November 15, 1976 which was filed under Section 221(a) of the Trade Act of 1974 ("the Act") by the United Steelworkers of America on behalf of the workers and former workers of Copperweld Steel Co., Warren Ohio, a wholly-owned subsidiary of Copperweld Corp., Pittsburgh, Pa. (TA–W–1,515). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in Section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with carbon and alloy steel, bars, and billets produced by Copperweld Steel Company or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of Section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 28, 1977.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 28, 1977.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 15th day of December 1976.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.77–1538 Filed 1–17–77;8:45 am]

[TA–W–1,516]

COPPERWELD CORP.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On December 15, 1976 the Department of Labor received a petition dated November 15, 1976 which was filed under Section 221(a) of the Trade Act of 1974 ("the Act") by the United Steelworkers of America on behalf of the workers and former workers of Copperweld Metallic Division, Glassport, Pennsylvania of Copperweld Corporation, Pittsburgh, Pennsylvania (TA–W–1,516). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in Section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with wires and cables produced by Copperweld Corporation or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of Section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 28, 1977.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 28, 1977.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 15th day of December 1976.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.77–1539 Filed 1–17–77;8:45 am]

[TA–W–1,513]

CRANE CO.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On December 22, 1976 the Department of Labor received a petition dated December 3, 1976 which was filed under Section 221(a) of the Trade Act of 1974 ("the Act") by the United Steelworkers of America on behalf of the workers and former workers of Crane Company, Pueblo, Colorado, a division of CF & I Steel Corporation, Pueblo, Colorado (TA–W–1,513). Accordingly, the Acting Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in Section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with carbon steel wire produced by Crane Company or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of Section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 28, 1977.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 28, 1977.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 22nd day of December 1976.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.77–1540 Filed 1–17–77;8:45 am]

[TA–W–1272]

DAVAL MANUFACTURING CO.

Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on November 15, 1976 in response to a worker petition dated October 20, 1976, which was filed by the International Leather Goods, Plastics and Novelty Workers' Union on behalf of workers and former workers producing sporting goods at Daval Manufacturing Company, Kansas City, Missouri.

The Notice of Investigation was published in the FEDERAL REGISTER on December 3, 1976 (41 FR 53087). No public hearing was requested and none was held.

During the course of the investigation, it was established that all employment at Daval Manufacturing Company was terminated in October 1974. Section 223 (b)(1) of the Trade Act of 1974 states that a certification under this section shall not apply to any worker whose last total or partial separation from the firm or appropriate subdivision of the firm occurred more than twelve months before the date of the filing under Title II, Chapter 2 of the Trade Act of 1974.

The date of the petition in this case is October 20, 1976 and, thus, workers terminated prior to October 20, 1975 are ineligible for program benefits under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 7th day of January 1977.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.77–1541 Filed 1–17–77;8:45 am]

[TA–W–1,529]

EASTERN PLASTICS OF MAINE, INC.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On December 30, 1976 the Department of Labor received a petition dated December 6, 1976 which was filed under Section 221(a) of the Trade Act of 1974 ("the Act") by the Amalgamated Clothing and Textile Workers of America on behalf of the workers and former workers of Eastern Plastics of Maine, Inc., Sanford, Maine, a Division of Eastern York, Inc., Sanford, Maine (TA–W–1,529). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in Section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with component bottoms (heels) for shoes produced by Eastern Plastics of Maine, Inc. or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of Section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 28, 1977.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 28, 1977.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210.

Signed at Washington, D.C. this 30th day of December 1976.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.77–1542 Filed 1–17–77;8:45 am]

[TA–W–1,526]

ELECTRO MOTIVE CORP.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On December 28, 1976 the Department of Labor received a petition dated December 2, 1976 which was filed under Section 221(a) of the Trade Act of 1974 ("the Act") by the Communication Workers of America on behalf of the workers and former workers of Electro Motive Corporation, Florence, S.C., a wholly-owned subsidiary of International Electronics Corporation, Florence, S.C. (TA–W–1,526). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in Section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with film capacitors, trimmer capacitors & mica capacitors produced by Electro Motive Corporation or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of Section 222 of the Act will be certified as eligible to apply

for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 28, 1977.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 28, 1977.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210.

Signed at Washington, D.C. this 28th day of December 1976.

MARVIN M. FOOKS,
Director, Office of Trade, Adjustment Assistance.

[FR Doc.77-1543 Filed 1-17-77;8:45 am]

[TA-W-1,541]

HEAVENLY SHOE CO.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On January 4, 1976 the Department of Labor received a petition dated December 14, 1976 which was filed under Section 221(a) of the Trade Act of 1974 ("the Act") by the Boot and Shoe Workers Union on behalf of the workers and former workers of Heavenly Shoe Company, Wilkes-Barre, Pennsylvania, a Division of Mallory Randall, Inc., New York, New York (TA-W-1,541). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in Section 221 (a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with women's dress and casual shoes produced by Heavenly Shoe Company or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of Section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address show below, not later than January 28, 1977.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 28, 1977.

The petition field in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210.

Signed at Washington, D.C. this 4th day of January 1977.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.77-1544 Filed 1-17-77;8:45 am]

[TA-W-1334]

ITT CORP., HOFFMAN SPECIALTY DIVISION

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-1334: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on November 30, 1976 in response to a worker petition received on November 30, 1976 which was filed by the United Steelworkers of America on behalf of workers producing steel, alloy, copper, and brass fittings, valves, couplings, flanges, etc. at the Indianapolis, Indiana plant of ITT Corporation, Hoffman Specialty Division.

The notice of investigation was published in the FEDERAL REGISTER on December 14, 1976 (41 FR 54559). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from the United Steelworkers of America and ITT Corporation, Hoffman Specialty Division.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of group eligibility requirements of Section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm have become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations or threat thereof, and to the decrease in sales or production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

Without regard to whether any other criteria have been met, criterion (1) has not been met.

The Indianapolis, Indiana plant of ITT Corporation, Hoffman Specialty Division produces steam valves and temperature regulators.

Evidence developed in the Department's investigation reveals that no involuntary separations occurred from November 1, 1975, one year prior to the signature date of the petition, to the present.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that employees at the Indianapolis, Indiana plant of ITT Corporation, Hoffman Specialty Division have not become totally or partially separated as required in Section 222 of the Trade Act of 1974.

Signed at Washington, D.C. this 10th day of January 1977.

JAMES F. TAYLOR,
Director, Office of Management Administration and Planning.

[FR Doc.77-1545 Filed 1-17-77;8:45 am]

[TA-W-1543]

JACK SEBASTIAN SHOE, INC.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On January 4, 1977 the Department of Labor received a petition dated December 14, 1976 which was filed under Section 221(a) of the Trade Act of 1974 ("the Act") by the Boot and Shoe Workers Union on behalf of the workers and former workers of Jack Sebastian Shoe, Inc., Wilkes-Barre, Pennsylvania (TA-W-1543). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in Section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with women's casual shoes produced by Jack Sebastian Shoe, Incorporated or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of Section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 28, 1977.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 28, 1977.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210.

Signed at Washington, D.C. this 4th day of January 1977.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.77-1546 Filed 1-17-77;8:45 am]

[TA-W-1511]

JONES & LAUGHLIN IND.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On December 22, 1976 the Department of Labor received a petition dated December 3, 1976 which was filed under Section 221(a) of the Trade Act of 1974 ("the Act") by the United Steelworkers of America on behalf of the workers and former workers of Aliquippa, Pennsylvania plant of Jones & Laughlin Industries, Pittsburgh, Pennsylvania (TA-W-1511). Accordingly, the Acting Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in Section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with flat rolled products produced by Jones & Laughlin Industries or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of Section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 28, 1977.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 28, 1977.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210.

Signed at Washington, D.C. this 22nd day of December 1976.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.77-1547 Filed 1-17-77;8:45 am]

[TA-W-1512]

JONES & LAUGHLIN IND.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On December 22, 1976 the Department of Labor received a petition dated December 3, 1976 which was filed under Section 221(a) of the Trade Act of 1974 ("the Act") by the United Steelworkers of America on behalf of the workers and former workers of Pittsburgh, Pennsylvania plant of Jones & Laughlin Industries, Pittsburgh, Pennsylvania (TA-W-1512). Accordingly, the Acting Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in Section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with flat rolled products produced by Jones & Laughlin Industries or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of Section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 28, 1977.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 28, 1977.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210.

Signed at Washington, D.C. this 22nd day of December 1976.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.77-1548 Filed 1-17-77;8:45 am]

[TA-W-1532]

JONES & LAUGHLIN STEEL CORP.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On December 15, 1976 the Department of Labor received a petition dated November 15, 1976 which was filed under Section 221(a) of the Trade Act of 1974 ("the Act") by the United Steelworkers of America on behalf of the workers and former workers of Jones and Laughlin Steel Corporation, Pittsburgh, Pa. a wholly-owned subsidiary of LTV Corporation, Dallas, Texas (TA-W-1532). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in Section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with carbon steel strip, galvanized, hot rolled bars and cold finished bars produced by Jones and Laughlin Steel Corporation or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial

separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of Section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address show below, not later than January 28, 1977.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 28, 1977.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 15th day of December 1976.

MARVIN M. FOOKS,
Director, Office of
Trade Adjustment Assistance.

[FR Doc.77-1549 Filed 1-17-77;8:45 am]

[TA-W-1528]

JUDSON STEEL CORP.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On December 28, 1976 the Department of Labor received a petition dated December 3, 1976 which was filed under Section 221(a) of the Trade Act of 1974 ("the Act") by the United Steelworkers of America on behalf of the workers and former workers of Judson Steel Corporation, Emeryville, California (TA-W-1528). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in Section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with steel reinforcing bar (rebar) produced by Judson Steel Corporation or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of Section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 28, 1977.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 28, 1977.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 23th day of December 1976.

MARVIN M. FOOKS,
Director, Office of
Trade Adjustment Assistance.

[FR Doc.77-1550 Filed 1-17-77;8:45 am]

[TA-W-1,522]

KENOSHA CARTAGE CO.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On December 27, 1976 the Department of Labor received a petition dated December 1, 1976 which was filed under Section 221(a) of the Trade Act of 1974 ("the Act") on behalf of the workers and former workers of Kenosha Cartage Company, Inc., Kenosha, Wisconsin (TA-W-1,522). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in Section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to deetrmine whether absolute or relative increases of imports of articles like or directly competitive with the transportation of materials to American Motors Corporation provided by Kenosha Cartage Company, Inc., or an appropriate subdvision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of Section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 28, 1977.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 28, 1977.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 27th day of December 1976.

MARVIN M. FOOKS,
Director, Office of
Trade Adjustment Assistance.

[FR Doc.77-1551 Filed 1-17-77;8:45 am]

[TA-W-1,538]

LADY SUZANNE FOUNDATIONS, INC.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On December 30, 1976 the Department of Labor received a petition dated December 1, 1976 which was filed under Section 221(a) of the Trade Act of 1974 ("the Act") by the International Ladies' Garment Workers Union on behalf of the workerrs and former workers of Lady Suzanne Foundations, Inc., Brooklyn, New York, a wholly-owned subsidiary of Duplan Corp., New York, New York (TA-W-1,538). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in Section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with brassieres produced by Lady Suzanne Foundations, Inc. or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of Section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 28, 1977.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 28, 1977.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C., this 30th day of December 1976.

MARVIN M. FOOKS,
Director, Office of
Trade Adjustment Assistance.

[FR Doc.77-1552 Filed 1-17-77;8:45 am]

[TA-W-1,530]

LIGGETT SPRING AND AXLE CO.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On December 30, 1976 the Department of Labor received a petition dated December 6, 1976 which was filed under Section 221(a) of the Trade Act of 1974 ("the Act") by the United Steelworkers of America on behalf of the workers and former workers of Liggett Spring and Axle Company, East Monongahela, Pennsylvania (TA-W-1,530). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in Section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with springs and axles produced by Liggett Spring and Axle Company or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of Section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 28, 1977.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 28, 1977.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20210.

Signed at Washington, D.C. this 30th day of December 1976.

MARVIN M. FOOKS,
Director, Office of
Trade Adjustment Assistance.

[FR Doc.77-1553 Filed 1-17-77;8:45 am]

[TA-W-1,537]

LONE STAR STEEL CO.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On December 30, 1976 the Department of Labor received a petition dated December 3, 1976 which was filed under Section 221(a) of the Trade Act of 1974 ("the Act") by the United Steelworkers of America on behalf of the workers and former workers of Lone Star Steel Company, Lone Star, Texas (TA-W-1,537). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in Section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with oil field pipes produced by Lone Star Steel Company or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or patrial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of Section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 28, 1977.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 28, 1977.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210.

Signed at Washington, D.C. this 30th day of December 1976.

MARVIN M. FOOKS,
Director, Office of
Trade Adjustment Assistance.

[FR Doc.77-1554 Filed 1-17-77;8:45 am]

[TA-W-1186]

MY OWN BLOUSE, INC.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, the Department of Labor herein presents the results of TA-W-1186: investigation regarding certification of eligibility to apply for adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on October 19, 1976 in response to a worker petition received on October 19, 1976 which was filed by the International Ladies' Garment Workers on behalf of workers and former workers producing ladies' blouses at the Philadelphia, Pennsylania plant of My Own Blouse, Inc.

The Notice of Investigaton was published in the FEDERAL REGISTER (41 FR 48815) on November 5, 1976. No public hearing was requested and none was held.

The information upon which the determination was made was obtained from officials of My Own Blouse, Inc., the international Ladies' Garment Workers' Union, and the Pennsylvania State Employment Security Office.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in such workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated,

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely, and

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

Without regrad to whether any of the third criterion has been met, criteria (1), (2) and (4) have not been met.

My Own Blouse, Inc. is a one plant facility in Philadelphia, Pennsylvania. All workers at the plant are engaged in employment related to the production of ladies' blouses.

SIGNIFICANT TOTAL OR PARTIAL SEPARATIONS

During the course of the investigation it was determined that there have been no involuntary total or partial separations at the Philadelphia, Pennsylvania plant of My Own Blouse, Inc., since October 1, 1975.

SALES OR PRODUCTION, OR BOTH, HAVE DECREASED ABSOLUTELY

Sales and production, in quantity, increased 11.3 percent in 1975 compared to 1974 and increased 13.4 percent in the first seven months of 1976 compared to the first seven months of 1975.

CONTRIBUTED IMPORTANTLY

The subject firm's only customer increased its purchases of ladies' blouses in 1976 compared to 1975 and in the fourth quarter of 1975 compared to the same period in 1974.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that a significant number of employees have not become partially or totally separated from the Philadelphia, Pennsylvania plant of My Own Blouse, Inc. as required in Section 222 of the Trade Act of 1974.

Signed at Washington, D.C. this 11th day of January 1977.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc.77-1555 Filed 1-17-77;8:45 am]

[TA-W-1,517]

MUENCH-KREUZER CANDLE CORP.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On December 18, 1976 the Department of Labor received a petition dated November 18, 1976 which was filed under Section 221(a) of the Trade Act of 1974 ("the Act") by the United Steelworkers of America on behalf of the workers and former workers of Muench-Kreuzer Candle Corporation, Liverpool, New York, a division of Rustcraft Greeting Cards, Dedham, Mass. (TA-W-1,517). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in Section 221 (a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with candles produced by Muench-Kreuzer Candle Corporation or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of Section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 28, 1977.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 28, 1977.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 18th day of December 1976.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.77-1556 Filed 1-17-77;8:45 am]

[TA-W-1,518]

MUENCH-KREUZER CANDLE CORP.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On December 18, 1976 the Department of Labor received a petition dated November 18, 1976 which was filed under Section 221(a) of the Trade Act of 1974 ("the Act") by the United Steelworkers of America on behalf of the workers and former workers of Syracuse, New York plants of Muench-Kreuzer Candle Corp., Liverpool, N.Y., a division of Rustcraft Greeting Cards, Dedham, Mass. (TA-W-1,518). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in Section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with candles produced by Muench-Kreuzer Candle Corporation or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of Section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 28, 1977.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 28, 1977.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 18th day of December 1976.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.77-1557 Filed 1-17-77;8:45 am]

[TA-W-1,502]

NATIONAL STEEL CORP.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On December 15, 1976 the Department of Labor received a petition dated November 15, 1976 which was filed under Section 221(a) of the Trade Act of 1974 ("the Act") by the United Steelworkers of America on behalf of the workers and former workers of Granite City Steel Div., Granite City, Illinois of National Steel Corporation, Pittsburgh, Pennsylvania (TA-W-1,502). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in Section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with flat rolled & corrugated sheet carbon, alloy and galvanized produced by National Steel Corporation or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of Section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 28, 1977.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 28, 1977.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 15th day of December 1976.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.77-1558 Filed 1-17-77;8:45 am]

[TA-W-1295, 1296]

NU-CAR CARRIERS, INC. AND CENTRAL JERSEY REPAIR

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-1295 and 1296: Investigations regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigations were initiated on November 22, 1976 in response to worker petitions received on that date which were filed by the Teamsters Union on behalf of workers and former workers providing transportation services at Nu-Car Carriers, Incorporated (TA-W-1295) and Central Jersey Repair (TA-W-1296), Edison, New Jersey.

The notices of investigation were published in the FEDERAL REGISTER on December 3, 1976 (41 FR 53094, 53085). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Nu-Car Carriers and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated:

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof and to the decrease in sales and production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

If any one of the above criteria is not satisfied, a negative determination must be made.

Neither Nu-Car Carriers nor Central Jersey Repair produce an article within the meaning of Section 222(3) of the Act and this Department has already determined that the performance of services is not covered by the adjustment assistance program. See Notice of Determination in Pan American World Airways, Incorporated (TA-W-53, 40 FR 54639). The only question presented in this case is whether Ford Motor Company, i.e., a firm which produces an article, namely automobiles, and for whom the service is provided, can be considered the "workers' firm". The Department has also previously determined that an independent firm for which such services are provided cannot be considered the "workers' firm". See Notice of Determination in Nu-Car Driveaway, Inc. (TA-W-393, 41 FR 12749).

Nu-Car Carriers, Incorporated is a transport business licensed and regulated by the Interstate Commerce Commission. Central Jersey Repair is a subdivision of Nu-Car Carriers which provided mechanical maintenance services to Nu-Car at its Edison, New Jersey facility.

Neither Ford Motor Company, on one hand, nor Nu-Car Carriers, on the other, is financially or otherwise involved in the business of the other. Nu-Car Carriers owns the facilities necessary to the operation of its business and owns its trucks and equipment. Central Jersey Repair has no association with the Ford Motor Company assembly plant.

The workers upon whose behalf these petitions were filed were hired and are paid by either Nu-Car Carriers or Central Jersey Repair. They are supervised by and subject to the control of Nu-Car Carriers or Central Jersey Repair personnel only. All employment benefits which they enjoy are provided and maintained by Nu-Car Carriers or Central Jersey Repair.

CONCLUSION

After careful review of the issues and facts involved, I have determined that services of the kind provided by Nu-Car Carriers, Incorporated and Central Jersey Repair, Edison, New Jersey, are not "articles" within the meaning of Section 222(3) of the Trade Act of 1974, and that the Ford Motor Company cannot be considered the "workers' firm". The petitions for trade adjustment assistance are therefore denied.

Signed at Washington, D.C., this 11th day of January 1977.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc.77-1559 Filed 1-17-77;8:45 am]

[TA-W-1,525]

OHIO FERRO ALLOYS CORP.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On December 28, 1976 the Department of Labor received a petition dated December 6, 1976 which was filed under Section 221(a) of the Trade Act of 1974 ("the Act") by the United Steelworkers of America on behalf of the workers and former workers of Brilliant, Ohio plant of Ohio Ferro Alloys Corporation, Canton, Ohio (TA-W-1,525). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in Section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with ferro silicon produced by Ohio Ferro Alloys Corporation or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further relate, as appropriate, to the

determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of Section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 28, 1977.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 28, 1977.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 28th day of December 1976.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.77-1560 Filed 1-17-77;8:45 am]

[TA-W-1223]

PERRY MANUFACTURING CO.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-1223: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on November 3, 1976 in response to a worker petition received on November 3, 1976 which was filed by the International Ladies Garment Workers Union on behalf of workers and former workers producing ladies' car coats and rain coats at the Perry Manufacturing Corporation, Perryopolis, Pennsylvania.

The Notice of Investigation was published in the FEDERAL REGISTER on November 19, 1976 (41 FR 51144). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Perry Manufacturing Corporation, its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

SIGNIFICANT TOTAL OR PARTIAL SEPARATIONS

The average number of production workers employed at Perry Manufacturing declined 4.2 percent from 1974 to 1975 but increased 48.1 percent in the last quarter of 1975 compared to the last quarter in 1974. Average employment of production workers increased 19.1 percent in the first ten months of 1976 compared to the like period in 1975 and then declined 22.2 percent in November 1976 compared to November 1975.

SALES OR PRODUCTION, OR BOTH, HAVE DECREASED

Production at Perry Manufactuirng declined 15.0 percent in quantity from 1974 to 1975 but increased 43.6 percent in the last quarter of 1975 compared to the last quarter in 1974. Production increased 3.7 percent in the first ten months of 1976 compared to the like period in 1975 and then fell 60.0 percent in November 1976 compared to November 1975. All production ceased in November 1976 when the plant was shut down for an indefinite period due to lack of orders.

INCREASED IMPORTS

U.S. Imports of women's, misses' and children's coats and jackets increased from 1971 to 1973, declined from 1973 to 1974, and increased again from 1974 to 1975. The ratios of imports to productions and imports to consumption decreased from 1971 to 1974 and then increased from 1974 to 1975. Imports increased 51.5 percent in quantity in the first nine months of 1976 compared to the like period in 1975.

U.S. imports of women's, misses' and children's raincoats increased both absolutely and relative to domestic production and consumption from 1971 to 1972, declined from 1972 to 1974 and rose again from 1974 to 1975. Imports increased 28.2 percent in quantity in the first nine months of 1976 compared to the like period in 1975.

CONTRIBUTED IMPORTANTLY

Perry Manufacturing, an independent contractor, ceased production in November 1976 for an indefinite period due to lack of orders. One of the firm's two customers, which accounted for about 50 percent of sales, ceased all purchases from Perry and switched primarily to overseas contractors which could produce women's coats at a significantly lower cost than Perry.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with women's coats and rain coats produced at Perry Manufacturing Corporation, Perryopolis, Pennsylvania, contributed importantly to the total or partial separation of the workers of such firm.

In accordance with the provisions of the Trade Act of 1974, I make the following certification:

"All workers of Perry Manufacturing Corporation, Perryopolis, Pennsylvania, who became or will become totally or partially separated from employment on or after October 25, 1976, are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974."

Signed at Washington, D.C. this 6th day of January 1977.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc.77-1561 Filed 1-17-77;8:45 am]

[TA-W-1,542]

PRESTIGE SHOE CO.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On January 4, 1977 the Department of Labor received a petition dated December 14, 1976 which was filed under Section 221(a) of the Trade Act of 1974 ("the Act") by the Boot and Shoe Workers Union on behalf of the workers and former workers of Prestige Shoe Company, Wilkes-Barre, Pennsylvania, a Division of Frier Industries, Carlstadt, New Jersey (TA-W-1,542). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in Section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with women's casual shoes produced by Prestige Shoe Company or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partical separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of Section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 28, 1977.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 28, 1977.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20210.

Signed at Washington, D.C., this 4th day of January 1977.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.77-1562 Filed 1-17-77;8:45 am]

[TA-W-1,540]

REYNOLDSVILLE IND., INC.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On January 3, 1977 the Department of Labor received a petition dated December 9, 1976 which was filed under Section 221(a) of the Trade Act of 1974 ("the Act") by the Amalgamated Clothing and Textile Workers Union on behalf of the workers and former workers of Reynoldsville Industries, Incorporated, Reynoldsville, Pennsylvania (TA-W-1,540). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in Section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with boys' knit shirts produced by Reynoldsville Industries, Inc. or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of Section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 28, 1977.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 28, 1977.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 3rd day of January 1977.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc 77-1563 Filed 1-17-77;8:45 a.m.]

[TA-W-1,520]

RUBBER CORP. OF ARKANSAS

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On December 27, 1976 the Department of Labor received a petition dated December 6, 1976 which was filed under Section 221(a) of the Trade Act of 1974 ("the Act") on behalf of the workers and former workers of Rubber Corporation of Arkansas, DeQueen, Arkansas (TA-W-1,520). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in Section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with athletic and casual footwear produced by Rubber Corporation of Arkansas or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of Section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 28, 1977.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 28, 1977.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington. D.C. 20210.

Signed at Washington, D.C. this 27th day of December 1976.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.77-1564 Filed 1-17-77;8:45 am]

[TA-W-1,519]

STANDARD ALLIANCE IND., INC.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On December 27, 1976, the Department of Labor received a petition dated December 3, 1976 which was filed under Section 221(a) of the Trade Act of 1974 ("the Act") by the International Brotherhood of Boiler Makers, Iron Ship Builders, Blacksmiths, Forgers & Helpers on behalf of the workers and former workers of Transue & Williams Div., Alliance, Ohio of Standard Alliance Industries, Inc., Chicago, Illinois (TA-W-1,519). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in Section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with rollers, connecting rods and hammers produced by Standard Alliance Industries, Inc. or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of Section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 28, 1977.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 28, 1977.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210.

Signed at Washington, D.C. this 27th day of December 1976.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.77-1565 Filed 1-17-77;8:45 am]

[TA-W-1,523]

STANDEE MANUFACTURING CORP.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On December 27, 1976 the Department of Labor receiver a petition dated November 23, 1976 which was filed under Section 221(a) of the Trade Act of 1974 ("the Act") on behalf of the workers and former workers of Standee Manufacturing Corp., Perth Amboy, New Jersey (TA-W-1,523). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in Section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative icreases of imports of articles like or directly competitive with girls' dresses produced by Standee Manufacturing Corporation or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of Section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 28, 1977.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 28, 1977.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 27th day of December 1976.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.77-1566 Filed 1-17-77;8:45 am]

[TA-W-1,148]

TRUE TEMPER CORP.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance; Correction

In FR Doc. 76-31769 appearing at page 47632 in the FEDERAL REGISTER of October 29, 1976, the date of the petition, appearing on page 47632 is corrected in 1st column, 3rd line, to read "September 26."

Signed at Washington, D.C. this 6th day of January 1977.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.77-1567 Filed 1-17-77;8:45 am]

[TA-W-1343]

U-BRAND CORP.

Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on December 1, 1976 in response to a worker petition received on that date which was filed by the United Steelworkers of America on behalf of former workers distributing iron pipe fittings at the Vernon, California warehouse of U-Brand.

Notice of the investigation was published in the FEDERAL REGISTER on December 21, 1976 (41 FR 55609). No public hearing was requested and none was held.

During the course of the investigation, it was established that all workers of U-Brand's Ashland, Ohio plant (Machine Division) and Shelby, Ohio warehouse were previously certified eligible to apply for adjustment assistance on October 18, 1976 (See TA-W-918).

It was the intent of the existing certification to cover all employees of U-Brand engaged in employment related to the production of iron pipe fittings. The employees at the Vernon, California warehouse perform the same distribution functions for iron pipe fittings as employees in the Shelby, Ohio warehouse and are covered by the existing certification. The current investigation has therefore been terminated.

Signed at Washington, D.C. this 6th day of January, 1977.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.77-1568 Filed 1-17-77;8:45 am]

[TA-W-1,450]

U.S. STEEL CORP.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On December 15, 1976 the Department of Labor received a petition dated November 15, 1976 which was filed under Section 221(a) of the Trade Act of 1974 ("the Act") by the United Steelworkers of America on behalf of the workers and former workers of Youngstown, Ohio plant of U.S. Steel Corporation, Pittsburgh, Pa. (TA-W-1,450). Accordingly, the Acting Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in Section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with iron and steel products produced by U.S. Steel Corporation or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of Section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 28, 1977.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 28, 1977.

The petition filed in this case is available for inspection at the Office of the

Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 15th day of December 1976.

DOMINIC SORRENTINO,
Acting Director, Office of Trade Adjustment Assistance.

[FR Doc.77-1569 Filed 1-17-77;8:45 a.m.]

[TA-W-1,527]

WELLINGTON LEATHER, INC.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On December 28, 1976 the Department of Labor received a petition dated December 1, 1976 which was filed under Section 221(a) of the Trade Act of 1974 ("the Act") on behalf of the workers and former workers of Wellington Leather, Inc., Peabody, Mass., a wholly-owned subsidiary of Sirois Leather, Inc., Peabody, Mass. (TA-W-1,527). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in Section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with leather outer garments produced by Wellington Leather, Incorporated or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of Section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 28, 1977.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 28, 1977.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 28th day of December 1976.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.77-1570 Filed 1-17-77;8:45 am]

[TA-W-1,536]

WILTON CORP.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On December 30, 1976 the Department of Labor received a petition dated December 1, 1976 which was filed under Section 221(a) of the Trade Act of 1974 ("the Act") by the United Steelworkers of America on behalf of the workers and former workers of Winchester, Tennessee plant of Wilton Corporation, Des Plaines, Illinois (TA-W-1,536). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in Section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with consumer and workbench vises produced by Wilton Corporation or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of Section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 28, 1977.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 28, 1977.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 30th day of December 1976.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.77-1571 Filed 1-17-77;8:45 am]

NATIONAL SCIENCE FOUNDATION

ADVISORY COMMITTEE FOR MINORITY PROGRAMS IN SCIENCE EDUCATION

Establishment

Pursuant to the Federal Advisory Committee Act (Pub. L. 92-463), it is hereby determined that the establishment of the Advisory Committee for Minority Programs in Science Education is necessary, appropriate, and in the public interest in connection with the performance of the duties imposed upon the Director, National Science Foundation (NSF) by the National Science Foundation Act of 1950, as amended, and other applicable law. This determination follows consultation with the Office of Management and Budget (OMB), pursuant to section 9(a)(2) of the Federal Advisory Committee Act and OMB Circular No. A-63, Revised.

1. *Name of Group:* Advisory Committee for Minority Programs in Science Education.

2. *Purpose:* Section 7 of the Joint Explanatory Statement of the Committee of Conference of the House and Senate on H.R. 12566 strongly urges the appointment of an advisory committee, including minority scientists, to participate in the evaluation and assessment of activities related to the Minority Centers for Graduate Education Program. The Committee will also provide advice on other Foundation programs specifically designed to promote increased participation by disadvantaged ethnic minorities in science and engineering careers.

3. *Effective Date of Establishment and Duration:* The establishment of the Advisory Committee for Minority Programs in Science Education is effective upon filing the charter with the Director, NSF, and with the standing committees of Congress having legislative jurisdiction of the National Science Foundation. The Advisory Committee for Minority Programs in Science Education will continue for two years from the effective date.

4. *Membership:* Membership of the Advisory Committee for Minority Programs in Science Education will consist of 12 members, not less than 7 of whom are representative of minority scientists, institutions with substantial minority enrollment and groups which serve important functions within the minority community. Not less than 3 of the 12 members are to be nonscientists. There will be no discrimination on the basis of race, color, national origin, religion or sex in the appointment of committee members.

5. *Advisory Group Operation:* The Advisory Committee for Minority Programs in Science Education will operate in accordance with provisions of the Federal Advisory Committee Act (Pub. L. 92-463), Foundation policy and procedures, OMB Circular No. A-63, Revised, and other directives and instructions in implementation of the Act.

RICHARD C. ATKINSON,
Acting Director.

[FR Doc 77-1576 Filed 1-17-77;8:45 am]

TASK GROUP NO. 14, ADVISORY COMMITTEE FOR RESEARCH

Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Task Group No. 14 of the Advisory Committee for Research.
Place: Room 421, National Science Foundation, 1800 G Street NW, Washington, D.C. 20550.
Date: February 3-4, 1977.
Time: 9 a.m. each day.
Type of meeting: Open.
Contact person: Mr. Leonard F. Gardner, Executive Secretary, Advisory Committee for Research, National Science Foundation, Room 307, Washington, D.C. 20550 Telephone: 202-632-4278.
Purpose of the task group: The purpose of the Task Group, composed of members of the Advisory Committee for Research, is to provide the full Committee with a mechanism to consider numerous issues of interest to the Committee that have been assigned by the National Science Foundation.
Summary minutes: May be obtained from the Committee Management Coordination Staff, Division of Personnel and Management, Rm. 248, National Science Foundation, Washington, D.C. 20550.
Tentative agenda: February 3-4. To review draft material for the revised NSF Grant Policy Manual.

M. REBECCA WINKLER,
Acting Committee Management Officer.

[FR Doc.77-1575 Filed 1-17-77;8:45 am]

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-13152; File Nos. SR-MCC-76-4 and SR-MSTC-76-13]

MIDWEST CLEARING CORP. AND MIDWEST SECURITIES TRUST CO.

Self-Regulatory Organizations; Proposed Rule Changes

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94-29, 16 (June 4, 1975), notice is hereby given that on December 22, 1976, the above-mentioned self-regulatory organizations filed with the Securities Exchange Commission proposed rule changes as follows:

STATEMENT OF THE TERMS OF SUBSTANCE OF THE PROPOSED RULE CHANGES

The Institutional Pledge Account, a central depository service for book entry pledge of securities underlying option writing programs, allows Institutional Participants to pledge deposited securities to the benefit of Options Clearing Corporation (OCC) to collateralize short option positions.

Previously, Institutional Participants wishing to collateralize a short position usually issued an Escrow Receipt which was delivered to the OCC member in lieu of the securities and satisfied the collateral requirements of both the broker/dealer and OCC. An Escrow Receipt, however, may only be issued by a bank with a minimum of $20 million in stockholders' equity and an institution may only issue escrow receipts for securities having a market value not exceeding 10% of the bank's stockholders' equity. In addition, Escrow Receipts necessitate extensive bookkeeping and create timing and coordination difficulties.

Through the Institutional Pledge Account, the Institutional Participant submits a Pledge of Collateral Form which initiates a book entry movement of the security position from the Depository Free Positon of the Institution's Regular Account to the Depository Free Positon of the Institution's Pledge Account. The book entry movement can be processed either versus free or "for payment". If "for payment" a cash adjustment is made within the system debiting the OCC member's (broker's) account and crediting the Institution's Pledge Account with the corresponding net premium monies. Release of Collateral, either upon expiration, closing purchase transaction, or assignment of the option, is also within the system after approval by OCC and the OCC member. If the transaction is "for payment", net exercise value funds move from the OCC member to the Institution's Pledge Account.

SCHEDULE OF CHARGES
MIDWEST INSTITUTIONAL PLEDGE ACCOUNTS

Account charges

Pledge Account—symbol maintenance fee (in addition to monthly charges for regular MSTC/MCC Account): $50 per month.

Activity charges

(a) Pledge of Collateral movement from participant's regular account to participant's pledge account: $.65 per position to both accounts.

Premium monies credited to participant's pledge account from OCC member's account: No charge.

(b) Release of Collateral movement from participant's pledge account to participant's regular account (expiration) or from participant's pledge account to OCC member's account (assignment) or from participant's pledge account to participant's regular account (closing purchase transaction): $.65 per position to both accounts.

Exercise monies (assignment) credited to participant's pledge account and debited from OCC member's account: No charge.

Premium monies (closing purchase transaction) credited to OCC member's account and debited from participant's pledge account: No charge.

Safekeeping charges

The new Pledge account will establish positions separate from the regular MSTC/MCC Account.

Safekeeping (maximum charge $3,000/month: $.45/position/month; $.015/1,000 shares month.

Dividend credit: $.25 per position credited.

STATEMENT OF BASIS AND PURPOSE

The basis and purpose of the foregoing proposed rule changes is as follows:

The purpose of the proposed rule changes is to establish an Institutional Pledge Account, a central depository service for book entry pledge of securities underlying option writing programs, which allows institutional participants to pledge deposited securities to the benefit of Options Clearing Corporation (OCC) to collateralize short option positions. The proposed rules also provide for attendant fees.

The proposed rule changes remove impediments to the prefection of a national market system by allowing such institutional participation, and represent an equitable allocation of reasonable fees among participants.

Comments have not been received.

The Midwest Clearing Corporation and the Midwest Securities Trust Company believe that no burden has been placed on competition. On or before February 22, 1977, or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the above-mentioned self-regulatory organizations consents, the Commission will:

(A) By order approve such proposed rule changes, or

(B) Institute proceedings to determine whether the proposed rule changes should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing rule changes. Persons desiring to make written submissions should file 6 copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filings with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of such filings will also be available for inspection and copying at the principal offices of the above-mentioned self-regulatory organizations. All submissions should refer to the file numbers referenced in the caption above and should be submitted on or before February 8, 1977.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

JANUARY 11, 1977.

[FR Doc.77-1604 Filed 1-17-77;8:45 am]

[Release No. 34-13154; File No. SR-MSTC-76-15]

MIDWEST SECURITIES TRUST CO.

Self-Regulatory Organizations; Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94-29, 16 (June 4, 1975), notice is hereby given that on December 20, 1976, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commisison a proposed rule change as follows:

Brackets indicate deletions and *italics* indicate new material

STATEMENT OF THE TERMS OF SUBSTANCE OF THE PROPOSED RULE CHANGE, RULE 3, SECTION 6, MIDWEST SECURITIES TRUST COMPANY

PLEDGEE POSITION REPORT

Sec. 6 [Each business day] There shall be made available to each Pledgee Participant a Pledgee Position Report *as frequently as the Corporation from time to time may determine* for each pledgee account of such Participant, showing, among other things, in respect of each security credited to such account:

(1) The quantity of such security credited to such account as the close of business on the business day preceding the date of the report.

(2) The identity of the Participant or Participants credited with corresponding pledged positions.

STATEMENT OF BASIS AND PURPOSE

The basis and purpose of the foregoing proposed rule change is as follows:

The purpose of the proposed rule change is to allow the Midwest Securities Trust Company the discretion to determine how often Pledge Position Reports are generated, while requiring that such reports reflect the account as of the close of business preceding the date of the report. Such discretion is required to provide flexibility based on activity, so that an unnecessary and costly amount of reports are not generated.

The proposed rule change promotes the prompt and accurate settlement of securities transactions as a result of eliminating unnecessary generation of reports and unnecessary and time-consuming review by participants.

Comments have neither been solicited nor received.

The Midwest Securities Trust Company believes that no burden has been placed on competition.

On or before February 22, 1977, or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the above-mentioned self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file 6 copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street, NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted on or before February 8, 1977.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

JANUARY 12, 1977.

[FR Doc. 77-1602 Filed 1-17-77;8:45 am]

[(SR-1) (SR-NASD-75-8)]

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

Order Approving Proposed Rule Change Relating to Reporting of Transactions in Eligible Securities and Certain Anti-Manipulative Rules

The National Association of Securities Dealers, Inc. (the "NASD"), 1735 K Street, N.W., Washington, D.C. 20006, submitted on March 21, 1975, proposed Article XVIII of the By-Laws of the NASD, and Schedule G thereunder (the "NASD Rule Changes"), governing: (i) The reporting of transactions in eligible securities in the consolidated transaction reporting system (the "consolidated system") contemplated by Rule 17a-15 under the Secuirties Exchange Act of 1934, as amended by the Securities Acts Amendments of 1975 (the "Act"); (ii) charges to cover the costs of compliance with such reporting requirements; and (iii) anti-manipulative rules relating to over-the-counter trading in such securities.

The provisions of Schedule G were amended by the NASD and refiled with the Commission on June 4, 1975. The NASD Rule Changes were deemed by the Commission to have been filed under new section 19(b) of the Act. In view of the need to implement the NASD Rule Changes immediately to permit the scheduled commencement of the consolidated system on June 16, 1975, the Commission ordered the NASD Rule Changes into effect summarily pursuant to section 19(b)(3)(B) of the Act on June 11, 1975. Notice of that action was provided by Securities Exchange Act Release No. 11461 (June 11, 1975), published in the FEDERAL REGISTER on June 18, 1975 (40 FR 25730). That release also solicited public comment on the NASD Rule Changes.[1]

On December 15, 1975, the NASD submitted, pursuant to Rule 19b-4 under the Act, a proposed modification to the NASD Rule Changes to provide that principal transactions effected by NASD members be reported in the consolidated system at the price recorded on the trade ticket without taking into account any commission, commission equivalent, or differential imposed in connection with the transaction. The proposed modification would eliminate the present disparity between the reporting of principal transactions effected by NASD members and the reporting of identical transactions effected by exchange members.[2] Notice of the proposed modification was provided in Securities Exchange Act Release No. 11951 (December 24, 1975) published in the FEDERAL REGISTER on January 5, 1976 (41 FR 836).

With respect to Article XVIII of the NASD By-Laws and Sections 1, 2 and 3 of Schedule G thereunder, which provide for reporting procedures for transactions in eligible securities effected by NASD members and establish certain anti-manipulative rules relating to over-the-counter trading in such securities, the Commission finds that the proposed additions, as proposed to be modified on December 15, 1975, are consistent with the requirements of the Act, and the rules and regulations thereunder applicable to national securities associations, and in particular the requirements of section 15A of the Act and the rules and regulations thereunder.[3]

[1] The deadline for submission of written comments pursuant to Securities Exchange Act Release No. 11461 (June 30, 1975) was extended until July 18, 1975, in Securities Exchange Act Release No. 11508 (June 30, 1975). See also Securities Exchange Act Release Nos. 11646 (July 23, 1975), 11653 (September 15, 1975), 11816 (November 10, 1975), and 11951 (December 24, 1975).

[2] Under the NASD Rule Changes as originally filed and ordered effective summarily, principal transactions effected by NASD members were required to be reported in the consolidated system inclusive of any commission, commission equivalent, or differential charge (i.e., after addition or subtraction of such charges). Principal transactions effected by exchange members, on the other hand, are reported in the consolidated system exclusive of such charges.

[3] With respect to section 4 of Schedule G, which establishes the fees and charges applicable to those members required to report their transactions in eligible securities to the NASD, the Commission has determined to take no formal action at this time. On May 6, 1976, the Commission received the consent of the NASD to a further extension of the time within which the Commission is required to act on section 4 of Schedule G, to July 14, 1976. The Commission acknowledges the consent of the NASD to extension of the deadline until July 14, 1976. In so doing, the Commission notes that it understands that the reason the NASD has consented to this further extension is in order to permit an opportunity for internal resolution of certain issues relating to the proposed fees contained in Section 4 of Schedules G. Although the Commission finds that the NASD reporting rules, as modified on December 15, 1975, are consistent with the requirements of the Act, the Commission intends to continue studying questions related to the reporting of transactions in eligible securities, particularly the method of reporting principal transactions confirmed by a dealer plus or minus a commission, commission equivalent or differential.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act, that the proposed additions to the NASD Rules contained in Article XVIII of the NASD By-Laws and Sections 1, 2 and 3 of Schedule G thereunder, as modified on December 15, 1975, be, and hereby are, approved.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.77-1606 Filed 1-17-77;8:45 am]

DEPARTMENT OF STATE

[Public Notice CM-7/16]

STUDY GROUP 1 OF THE U.S. NATIONAL COMMITTEE FOR THE INTERNATIONAL RADIO CONSULTATIVE COMMITTEE (CCIR)

Meeting

The Department of State announces that Study Group 1 of the U.S. National Committee for the International Radio Consultative Committee (CCIR) will meet on February 15, 1977 in the Forum Room, Office of Telecommunications, U.S. Department of Commerce, 1325 G Street, NW., Washington, D.C., at 9:30 a.m.

Study Group 1 deals with: matters relating to efficient use of the radio frequency spectrum, and in particular, with problems of frequency sharing, taking into account the attainable characteristics of radio equipment and systems; principles for classifying emissions; and the measurement of emission characteristics and spectrum occupancy. The agenda for the meeting will include the following:

1. Review status of work under way.
2. Review of documents ready for U.S. Study Group 1 consideration and approval.
3. Discussion and recommendations for Study Group 1 working arrangements.
4. Future meeting schedule.

Members of the general public may attend the meeting and join in the discussions subject to instructions of the Chairman.

Admittance of public members will be limited to the seating available.

Dated: January 7, 1977.

JOHN J. O'NEILL, JR.,
Director, Office of International Communications Policy.

[FR Doc.77-1463 Filed 1-17-77;8:45 am]

DEPARTMENT OF THE TREASURY

[Treasury Department Order No. 246]

INSPECTOR GENERAL FOR INTERNATIONAL FINANCE, ET AL.

Authority Delegation Implementing of Executive Order 11905

By virtue of the authority vested in me as Secretary of the Treasury, including the authority vested in me by Reorganization Plan No. 26 of 1950 and pursuant to Executive Order 1195, it is ordered as follows:

1. *The Inspector General for International Finance* (hereinafter the Inspector General) shall assume for the Treasury Department the duties and responsibilities established under Executive Order 11905 (hereinafter Executive Order) for Inspectors General within the Intelligence Community.

2. *The General Counsel* shall assume for the Treasury Department the duties and responsibilities established under the Executive Order for General Counsels within the Intelligence Community.

3. *The Inspector General* shall inform in writing all employees in the Office of the Assistant Secretary for International Affairs (OASIA) and in the Office for National Security (ONS) of the restrictions on intelligence activities contained in Section 5 of the Executive Order and obtain a written acknowledgment from each such employee that he has read the materials provided by the Inspector General. Heads of inspection services of Treasury Department Bureaus shall provide a copy of Section 5 of the Executive Order to each employee within their bureau.

4. *Treasury Department employees* shall report in confidence to the Inspector General, the General Counsel, or the head of the inspection service of their bureau any matters which they feel raise questions of propriety or legality under the Executive Order.

5. *The Inspector General* shall review at appropriate intervals intelligence activities of OASIA and ONS to determine whether any such activities raise questions of propriety under the Executive Order. Any questions arising from this review as to the legality of such activities shall be referred by the Inspector General to the General Counsel. In connection with the activities of the OASIA representatives stationed overseas, the Inspector General shall seek to make appropriate arrangements with the State Department to provide for adequate inspection while avoiding duplication of inspection activities by the State and Treasury Departments.

6. *The inspection service within a bureau* shall review at appropriate intervals the activities of the bureau in its relations with U.S. foreign intelligence agencies to determine whether such activities raise questions of legality or propriety. Any questions of legality or propriety arising from this review shall be referred to the General Counsel. The procedures established by Treasury Department Order No. 24, which provides for coordination and review of support arrangements between the Treasury Department and U.S. foreign intelligence agencies, shall remain in full force and effect.

7. *Treasury Department employees* shall cooperate with the Inspector General, the General Counsel, and the inspection service within their bureau and shall make available all necessary data to allow those officials to perform their duties and responsibilities under this Order.

Dated: January 10, 1977.

WILLIAM E. SIMON,
Secretary of the Treasury.

[FR Doc.77-1488 Filed 1-17-77;8:45 am]

Office of the Secretary

TREASURY NOTES OF JANUARY 31, 1979

Series L-1979

[Public Debt Series, No. 1-77]

JANUARY 13, 1977.

1. INVITATION FOR TENDERS

1.1. The Secretary of the Treasury, pursuant to the authority of the Second Liberty Bond Act, as amended, invites tenders for $2,500,000,000, or thereabouts, of securities of the United States, designated Treasury Notes of January 31, 1979, Series L-1979 (CUSIP No. 912827 GJ 5). The securities will be sold at auction with bidding on the basis of yield. Payment will be required at the price equivalent of the bid yield of each accepted tender. The interest rate on the securities and the price equivalent of each accepted bid will be determined as set forth below. Additional amounts of these securities may be issued to Federal Reserve Banks as agents of foreign and international monetary authorities.

2. DESCRIPTION OF SECURITIES

2.1. The securities will be dated February 3, 1977, and will bear interest from that date, payable on a semiannual basis on July 31, 1977, and each 6 months thereafter on January 31 and July 31 until the principal amount becomes payable. They will mature January 31, 1979, and will not be subject to call for redemption prior to maturity.

2.2. The income derived from the securities is subject to all taxes imposed under the Internal Revenue Code of 1954. The securities are subject to estate, inheritance, gift or other excise taxes, whether Federal or State, but are exempt from all taxation now or hereafter imposed on the principal or interest thereof by any State, or any of the possessions of the United States, or by any local taxing authority.

2.3. The securities will be acceptable to secure deposits of public moneys. They will not be acceptable in payment of taxes.

2.4. Bearer securities with interest coupons attached, and securities registered as to principal and interest, will be issued in denominations of $5,000, $10,000, $100,000 and $1,000,000. Book-entry securities will be available to eligible bidders in multiples of those amounts. Interchanges of securities of different denominations and of coupon, registered and book-entry securities, and the transfer of registered securities will be permitted.

2.5. The securities will be subject to the general regulations of the Department of the Treasury governing United States securities, now or hereafter prescribed.

3. SALE PROCEDURES

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D.C. 20226, up to 1:30 p.m., Eastern Standard time, Wednesday, January 19, 1977. Noncompetitive tenders, as defined below, will be considered timely if postmarked no later than Tuesday, January 18, 1977.

3.2. Each tender must state the face amount of securities bid for, which must be $5,000 or a multiple thereof. Competitive tenders must show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.11%. Common fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield. No bidder may submit more than one noncompetitive tender, and the amount may not exceed $1,000,000.

3.3. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and report daily to the Federal Reserve Bank of New York their positions with respect to Government securities and borrowings thereon, may submit tenders for account of customers, provided the names of the customers and the amount for each customer are furnished. Others will not be permitted to submit tenders except for their own account.

3.4. Tenders will be received without deposit for their own account from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States and political subdivisions or instrumentalities thereof; public pension and retirement and other public funds; international organizations in which the United States holds membership, foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from others must be accompanied by a deposit of 5% of the face amount of securities applied for (in the form of cash, maturing Treasury securities or readily collectible checks), or by a guarantee of such deposit by a commercial bank or a primary dealer.

3.5. Immediatly after the closing hour, tenders will be opened, following which public announcement will be made of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full at the average price (in three decimals) of accepted competitive tenders, and competitive tenders with the lowest yields will be accepted to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, a coupon rate will be determined at a ⅛ of one percent increment that translates into an average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.750. That rate of interest will be paid on all of the securities. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the average price of accepted competitive tenders.

3.6. Those submitting competitive tenders will be advised of the acceptance or rejection thereof. Those submitting noncompetitive tenders will not be notified except when the tender is not accepted in full or when the price is over par.

4. RESERVATIONS

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of securities specified in Section 1, and to make different percentage allotments to various classes of applicants when he deems it to be in the public interest, and the Secretary's action in any such respect shall be final.

5. PAYMENT AND DELIVERY

5.1. Settlement for securities allotted hereunder must be made or completed on or before Thursday, February 3, 1977, at the Federal Reserve Bank or Branch, or the Bureau of the Public Debt, Wherever the tender was submitted. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes or bonds (with all coupons detached) maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received at such institution no later than:

(a) Monday, January 31, 1977, if the check is drawn on a bank in the Federal Reserve District of the institution to which the check is submitted (the Fifth Federal Reserve District in case of the Bureau of the Public Debt), or

(b) Friday, January 28, 1977, if the check is drawn on a bank in another Federal Reserve District. Checks received after the dates set forth in the preceding sentence will not be accepted unless they are payable at the applicable Federal Reserve Bank. Payment will not be deemed to have been completed where registered securities are requested if the appropriate identifying number as required on tax returns and other documents submitted to the Internal Revenue Service (an individual's social security number or an employer identification number) is not furnished. When payment is made in securities, a cash adjustment will be made to or required of the bidder for any difference between the face amount of securities presented and the amount payable on the securities allotted.

5.2. In every case where full payment is not completed on time, the deposit submitted with the tender, up to 5 percent of the face amount of securities allotted, shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered securities tendered as deposits and in payment for securities allotted hereunder are not required to be assigned if the new securities are to be registered in the same names and forms as appear in the registrations or assignments of the securities surrendered. Specific instructions for the issuance and delivery of the new securities, signed by the owner or his authorized representative, must accompany the securities presented. Otherwise, the presented securities should be assigned by the registered payees or assignees thereof in accordance with the general regulations governing United States securities, as hereinafter set forth. When the new securities are to be registered in names and forms different from those in the inscriptions or assignments of the securities presented, the assignment should be to "The Secretary of the Treasury for (securities offered herein) in the name of (name and taxpayer identifying number)." If new securities in coupon form are desired, the assignment should be to "The Secretary of the Treasury for coupon (securities offered herein) to be delivered to (name and address)." Securities tendered in payment should be surrendered to the Federal Reserve Bank or Branch or to the Bureau of Public Debt, Washington, D.C. 20226. The securities must be delivered at the expense and risk of the holder.

5.4. If bearer securities are not ready for delivery on the settlement date, purchasers may elect to receive interim certificates. These certificates shall be issued in bearer form and shall be exchangeable for the securities offered herein, when such securities are available, at any Federal Reserve Bank or Branch, or at the Bureau of the Public Debt, Washington, D.C. 20226. The interim certificates must be returned at the risk and expense of the holder.

5.5. Delivery of securities in registered form will be made after the requested form of registration has been validated, the registered interest account has been established and the securities have been inscribed.

6. GENERAL PROVISIONS

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized and requested to receive ten-

ders, to make such allotments as may be prescribed by the Secretary of the Treasury, to issue such notices as may be necessary, to receive payment for and make delivery of securities on full-paid allotments, and to issue interim certificates pending delivery of the definitive securities.

6.2. The Secretary of the Treasury may at any time, or from time to time, prescribe supplemental or amendatory rules and regulations governing the offering, which will be communicated promptly to the Federal Reserve Banks.

WILLIAM E. SIMON,
Secretary of the Treasury.

[FR Doc.77-1648 Filed 1-17-77; 10:35 am]

INTERSTATE COMMERCE COMMISSION

[Notice No. 306]

ASSIGNMENT OF HEARINGS

JANUARY 13, 1977.

Cases assigned for hearing, postponement, cancellation or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the Official Docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested.

MC 13250 (Sub-132), J. H. Rose Truck Line, Inc., now assigned February 23, 1977 at Atlanta, Ga., will be held in Room 305, 1252 West Peachtree St. NW.

MC 124154 (Sub-57), Wingate Trucking Company, Inc., Extension—Agricultural Chemicals; MC 124154 (Sub-59), Wingate Trucking Co., Extension—Georgia Ground Clay; MC 124154 (Sub-63), Wingate Trucking Company, Inc., Extension—Dale County, Alabama and

MC 124154 (Sub-68), Wingate Trucking Company, Inc., now assigned February 24, 1977 at Atlanta, Ga., will be held in Room 305 1252 West Peachtree St. NW.

MC 59150 (Sub-90), Ploof Truck Lines, Inc., now assigned February 28, 1977 at Atlanta, Ga., will be held in Room 305, 1252 West Peachtree St. NW.

MC 119641 (Sub-134), Ringle Express, Inc., now assigned March 2, 1977 at Atlanta, Ga., will be held in Room 305 1252 West Peachtree St. NW.

No. MC 142107 (Sub-No. 1), H & M Trucking Co., now assigned January 25, 1977, at Chicago, Ill. will be held in Room 1119, Everett McKinley Dirksen Bldg., 219 South Dearborn St., instead of Room 1944C.

No. MC 82841 (Sub-No. 170), Hunt Transportation, Inc., now assigned January 27, 1977, at Chicago, Ill. will be held in Room 1119, Everett McKinley Dirksen Building, 219 South Dearborn St., instead of Room 1944C.

MC 140829 (Sub-No. 10), Cargo Contract Carrier, Corp., now assigned January 28, 1977, at Omaha, Neb. is canceled and application dismissed.

MC 141956 (Sub-No. 1), Area Container Service, Inc., now assigned January 17, 1977, at Chicago, Ill. is canceled and application dismissed.

No. MC-F-12884, O'Boyle Tank Lines, Inc., Control and Merger—Shipley Transfer, Inc., et. al., now assigned February 22, 1977, at Washington, D.C., is postponed to March 1, 1977, at the Offices of the Interstate Commerce Commission, Washington, D.C.

FD 28322, Chicago, South Shore and South Bend Railroad Discontinuance of All Passengen Train Service now being assigned January 24, 1977, for continued hearing and will be held in Room 1903, Everett Mckinley Dirksen Building, 219 South Dearborn St.

MC 142246, Van Wyk, Inc., now assigned February 23, 1977, at Omaha, Neb.; will be held in Room 616, Union Pacific Plaza, 110 North 14th St.

MC 124211 (Sub-274), Hilt Truck Line, Inc., now assigned February 24, 1977 at Omaha, Neb.; will be held in Room 616, Union Pacific Plaza, 110 North 14th St.

MC 135007 (Sub-57), American Transport, Inc., now assigned February 28, 1977 at Omaha, Neb.; will be held in Room 616, Union Pacific Plaza, 110 North 14th St.

MC 1263 (Sub-21), McCarty Truck Line, Inc., now assigned March 1, 1977 at Omaha, Neb.; will be held in Room 616, Union Pacific Plaza, 110 North 14th St.

MC 138328 (Sub-30), Clarence L. Werner, d/b/a Werner Enterprises, now assigned March 3, 1977 at Omaha, Neb.; will be held in Room 616, Union Pacific Plaza, 110 North 14th St.

MC 119726 Sub 74, N.A.B. Trucking Co., Inc., now being assigned April 12, 1977 (1 day), at New Orleans, La., in a hearing room to be later designated.

MC 95540 (Sub-949), Watkins Motor Lines, Inc., now being assigned April 13, 1977 (3 days), at New Orleans, La., in a hearing room to be later designated.

MC 136315 (Sub-13), Olen Burrage Trucking, Inc., now being assigned April 20, 1977 (3 days), at New Orleans, La., in a hearing room to be later designated.

MC 113267 Sub 336, Central & Southern Truck Lines, Inc.; MC 118142 Sub 130, M. Bruenger & Co., Inc., and MC 127042 Sub 173, Hagen, Inc., now being assigned April 18, 1977 (2 days), at New Orleans, La., in a hearing room to be later designated.

ROBERT L. OSWALD,
Secretary.

[FR Doc.77-1588 Filed 1-17-77;8:45 am]

FOURTH SECTION APPLICATIONS FOR RELIEF

JANUARY 13, 1977.

An application, as summarized below, has been filed requesting relief from the requirements of Section 4 of the Interstate Commerce Act to permit common carriers named or described in the application to maintain higher rates and charges at intermediate points than those sought to be established at more distant points.

Protests to the granting of an application must be prepared in accordance with Rule 40 of the General Rules of Practice (49 CFR 1100.40) and filed on or before February 2, 1977.

FSA No. 43299—*Joint Rail-Water Container Rates—Great Lakes and European Lines, Inc.* Filed by Great Lakes and European Lines, Inc., (No. 1), for itself and interested rail carriers. Rates on general commodities, between rail and water carrier terminals on the U.S. Pacific Coast Seaboard, and ports and terminals in Europe.

Grounds for relief—Water competition.

Tariffs—Great Lakes and European Lines, Inc., tariffs I.C.C. No. 3, F.M.C. No. 5 (Westbound), and I.C.C. No. 4, F.M.C. No. 6 (Eastbound). Rates are published to become effective on February 10, 1977.

FSA No. 43300—*Joint Water-Rail Container Rates—Sea-Land Service, Inc.* Filed by Sea-Land Service, Inc., (No. 91), for itself and interested rail carriers. Rates on household goods, personal effects, and unaccompanied baggage, between ports in Japan, Korea, Hong Kong, Taiwan, Philippines, Singapore and Thailand, and rail carriers terminals at U.S. Atlantic and Gulf Seaport cities.

Grounds for relief—Water competition.

Tariff—Sea-land Service, Inc., tariff No. 266, I.C.C. No. 109, F.M.C. No. 147. Rates are published to become effective on February 10, 1977.

FSA No. 43301—*Beet or Cane Sugar from Points in California and Serape, Arizona.* Filed by Trans-Continental Freight Bureau, Agent, (No. 513), for interested rail carirers. Rates on sugar, beet or cane, other than liquid, in carloads, as described in the application, from specified points in California and Serape, Arizona, to specified points in Illinois, Indiana, Iowa, Kentucky, Missouri, and Wisconsin.

Grounds for relief—Rate relationship and returned shipments.

Tariff—Supplement 43 to Trans-Continental Freight Bureau, Agent, tariff 2-N, I.C.C. No. 1935. Rates are published to become effective on February 10, 1977.

FSA No. 43302—*Returned Shipments of Petroleum Residual Fuel Oil from Points in Southwestern Territory to Points in Official Territory.* Filed by Southwestern Freight Bureau Agent, (No. B-650), for interested rail carriers. Rates on petroleum residual fuel oil, in tank-car loads, as described in the application, from points in southerwestern territory, including Kansas and Missouri, to points in official territory; also returned shipments in the reverse direction.

Grounds for relief—Rate relationship, returned shipments.

Tariff—Supplement 84 to Southwestern Freight Bureau, Agent, tariff SW/E-133-K, I.C.C. No. 5106. Rates are published to become effective on February 17, 1977.

By the Commission.

ROBERT L. OSWALD,
Secretary.

[FR Doc.77-1589 Filed 1-17-77;8:45 am]

[Ex Parte No. 55 (Sub-No. 8A)]

GATEWAY ELIMINATION PROJECT

Investigation of Fuel, Time, and Cost Savings

JANUARY 12, 1977.

At a General Session of the Interstate Commerce Commission, held at its office in Washington, D.C., on the 27th day of December, 1976.

It appearing, That this Commission's gateway elimination regulation (49 CFR 1065), as promulgated in *Gateway Elimination,* 119 M.C.C. 530 (1974), was adopted for the purpose of eliminating wasteful fuel practices in a manner consistent with the National Transportation Policy declared by the Congress; that by order of February 23, 1976, the Commission, acting pursuant to the provisions of section 204 of the Interstate Commerce Act, instituted an investigation in this proceeding for the purpose of assessing the fuel, cost, and time savings engendered by the Gateway Elimination Project; that the Commission's Bureau of Economics was authorized to undertake the investigation with the specific objective of determining annual savings respecting costs, manhours, mileage, and fuel; and that by the order of February 23, 1976 (referred to above), and by supplemental order of June 14, 1976, a total of 144 motor common carriers, each of which had received authority pursuant to the regulation, were authorized to comply with informational requests of the Bureau of Economics thereby enabling the Bureau to effectuate its task;

It further appearing, That the Bureau of Economics has issued a report containing findings on the issues noted in the preceding paragraph; that a copy of the report, entitled "Report of Gateway Elimination Savings Ex Parte No. 55 (Sub-No. 8A)" is annexed to this order;[1] and that a synopsis of the report's contents appears in the next paragraph below;

It further appearing, That the initial portion of the Bureau's report is devoted to a brief, general discussion of the history and nature of the Gateway Elimination Project, followed by a concise statement of the Bureau's objective in making this study; that the report then indicates the results of the Bureau's study and the method utilized in reaching these results; that inasmuch as its findings are based on information acquired from a sampling of all motor carriers affected by the regulation in 49 CFR 1065, the Bureau acknowledges that "there is a standard error associated with each," but that "one can state with a 90 percent confidence that the true savings lie between the lower and upper limits" delineated; that, specifically, the Bureau found that savings (for the year July 1, 1975 to June 30, 1976), were as follows: (1) *vehicle miles:* 63,270,006 (lower limit being 40,471,466 and upper limit being 86,068,546), (2) *gallons of fuel:* 13,936,396 (lower limit being 8,669,838 and upper limit being 19,202,954), (3) *dollars:* 37,156,044 (lower limit being 24,398,496 and upper limit being 49,913,595, and (4) *manhours:* 1,729,957 (lower limit being 1,085,256 and upper limit being 2,374,658); that the Bureau also indicated that actual annual savings would probably be somewhat higher upon final disposition of presently pending "gateway elimination" applications; that the Bureau estimates total annual savings will be as follows: (1) *vehicle miles:* 96,977,000 (lower limit being 74,179,000 and upper limit 119,776,000), (2) *gallons of fuel:* 21,329,000 (lower limit being 14,147,000 and upper limit being 28,510,000), (3) *dollars:* 58,506,000 (lower limit being 41,109,000 and upper limit being 75,902,000), and (4) *manhours:* 2,690,000 (lower limit being 1,811,000 and upper limit being 3,569,000); that, moreover, the Bureau has expressed its belief that these savings may increase in time as carriers take greater advantage of their newly acquired operating authorities; that the Bureau also made a general finding that the Gateway Elimination Project was beneficial to motor carriers in other areas including ecology, conservation, highway safety, and increased service availability; and that, the Bureau having completed its authorized task, this proceeding should be discontinued; and good cause appearing therefor:

It is ordered, That the above-entitled proceeding be, and it is hereby, discontinued.

By the Commission.

ROBERT L. OSWALD,
Secretary.

[FR Doc.77-1430 Filed 1-17-77;8:45 am]

[Notice No. 4]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

JANUARY 7, 1977.

The following are notices of filing of applications for temporary authority under Section 210a(a) of the Interstate Commerce Act provided for under the provisions of 49 CFR 1131.3. These rules provide that an original and six (6) copies of protests to an application may be filed with the field official named in the FEDERAL REGISTER publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the FEDERAL REGISTER. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in the ICC Field Office to which protests are to be transmitted.

MOTOR CARRIERS OF PROPERTY

No. MC 2098 (Sub-No. 5 TA), filed December 30, 1976. Applicant: MERLIN D. BRAMMER AND GALEN R. BRAMMER, doing business as BRAMMER TRUCK LINE, 308 N. 9th St., Sabetha, Kans. 66534. Applicant's representative: Erle W. Francis, Suite 719, 700 Kansas Ave., Topeka, Kans. 66603. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Dust pollution control equipment,* from the plant facilities of MAC Equipment, Inc., at or near Sabetha, Kans., to points in the United States (except Alaska and Hawaii), for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: MAC Equipment, Inc., P.O. Box 184, Sabetha, Kans. 66534. Send protests to: Thomas P. O'Hara, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 234 Federal Bldg., Topeka, Kans. 66603.

No. MC 26396 (Sub-No. 138 TA), filed December 29, 1976. Applicant: POPELKA TRUCKING CO., doing business as THE WAGGONERS, P.O. Box 990, Livingston, Mont. 59047. Applicant's representative: David Waggoner (same address as applicant). Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Agricultural chemicals* (except in bulk), from Des Moines, Iowa, to points in California, Colorado, Idaho, Montana, Oregon and Washington, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Richard E. Schrick, Agricultural Transportation Supervisor, Monsanto Company, 800 North Lindbergh Blvd., St. Louis, Mo. 63166. Send protests to: Paul J. Labane, District Supervisor, Interstate Commerce Commission, 2602 First Ave., North, Billings, Mont. 59101.

No. MC 53965 (Sub-No. 124 TA), filed December 29, 1976. Applicant: GRAVES TRUCK LINE, INC., 2130 S. Ohio, P.O. Box 1387, Salina, Kans. 67401. Applicant's representative: John E. Jandera, 641 Harrison St., Topeka, Kans. 66603. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Meat, meat products, meat by-products, articles distributed by meat packing plants and foodstuffs* (except hides and commodities in bulk), from the plantsite and/or warehouse facility utilized by Geo. A. Hormel & Co., at or near Fremont, Nebr., to points in Kansas and Missouri, restricted to product originating at named origin and destined to named states, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Geo. A. Hormel & Company, Box 800, Austin, Minn. 55912.

[1] Filed as part of the original document.

Send protests to: Thomas P. O'Hara, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 234 Federal Bldg., Topeka, Kans. 66603.

No. MC 56244 (Sub-No. 51 TA), filed December 30, 1976. Applicant: KUHN TRANSPORTATION COMPANY, INC., P.O. Box 98, R.D. No. 2, Gardners, Pa. 17324. Applicant's representative: John M. Musselman, 410 N. Third St., P.O. Box 1146, Harrisburg, Pa. 17108. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs* (except frozen commodities and commodities in bulk), from the facilities utilized by California Canners and Growers, at Chambersburg, Pa., and points in Adams County, Pa., to points in Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont, for 180 days. Supporting shipper: California Canners and Growers, 3100 Ferry Blvd., San Francisco, Calif. 94106. Send protests to: Robert P. Amerine, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 278 Federal Bldg., P.O. Box 869, Harrisburg, Pa. 17108.

No. MC 106497 (Sub-No. 138TA), filed December 30, 1976. Applicant: PARKHILL TRUCK COMPANY, P.O. Box 912, Joplin, Mo. 64801. Applicant's representative: A. N. Jacobs, P.O. Box 113, Joplin, Mo. 64801. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Plastic building materials, tile, flooring and mouldings*, from the plantsite of A & E Doron Plastics, at Union, Mo., to points in Arizona, California, Florida, Massachusetts, Michigan, New Jersey, New York, Ohio and Pennsylvania, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: A & E Doron Plastics, Union Industrial Court, Union, Mo. 63084. Send protests to: John V. Barry, District Supervisor, Interstate Commerce Commission, 600 Federal Bldg., 911 Walnut St., Kansas City, Mo. 64106.

No. MC 107295 (Sub-No. 841TA), filed December 29, 1976. Applicant: PRE-FAB TRANSIT CO., 100 S. Main St., P.O. Box 146, Farmer City, Ill. 61842. Applicant's representative: Duane Zehr (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Plastic building materials, tile, flooring and moldings*, from the plantsite of A & E Doron Plastics, at Union, Mo., to points in Arizona, California, Florida, Massachusetts, Michigan, New Jersey, New York, Ohio and Pennsylvania, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Dennis Allemann, Traffic Manager, A & E Doron Plastics, Union Industrial Court, Union, Mo. 63084. Send protests to: Harold C. Jolliff, District Supervisor, Interstate Commerce Commission, P.O. Box 2418, Springfield, Ill. 62705.

No. MC 110525 (Sub-No. 1178TA), filed December 30, 1976. Applicant: CHEMICAL LEAMAN TANK LINES, INC., 520 E. Lancaster Ave., P.O. Box 200, Downingtown, Pa. 19335. Applicant's representative: Thomas J. O'Brien (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Boron trifluoride gas*, in manifold tube trailers, from Marcus Hook, Pa., to Port St. Joe, Fla., and Quapaw, Okla., for 180 days. Supporting shipper: Allied Chemical Corporation, P.O. Box 1087R, Morristown, N.J. 07960. Send protests to: Monica A. Blodgett, Transportation Assistant, Interstate Commerce Commission, 600 Arch St., Room 3238, Philadelphia, Pa. 19106.

No. MC 111274 (Sub-No. 16TA), filed December 29, 1976. Applicant: ELMER C. SCHMIDGALL AND BENJAMIN G. SCHMIDGALL, doing business as SCHMIDGALL TRANSFER, Box 249, Tremont, Ill. 61568. Applicant's representative: Benjamin G. Schmidgall, Rt. 98, Box 356, Morton, Ill. 61550. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Materials and components* used in the manufacturing of grain elevators. Restriction: All materials will have subsequent movement; (1) from Parsipanny, N.J.; Scottsdale, Ga.; Maysville, Ky.; Hazel Park, Mich.; Houston, Dallas and Ft. Worth, Tex.; Valley, Nebr.; St. Louis, Mo.; Waterloo and Muscatine, Iowa, to the facilities of Hunter Mfg., at or near Blair, Nebr., and Mackinaw, Ill.; and (2) between the facilities of Hunter Mfg., at or near Blair, Nebr., and Mackinaw, Ill., under a continuing contract with Hunter Mfg., Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Hunter Mfg., Inc., William E. Hunter, President, Box 707, 201 N. Main, Mackinaw, Ill. 61755. Send protests to: Patricia A. Roscoe, Transportation Assistant, Interstate Commerce Commission, Everett McKinley Dirksen Bldg., 219 S. Dearborn St., Room 1386, Chicago, Ill. 60604.

No. MC 113678 (Sub-No. 646TA), filed December 30, 1976. Applicant: CURTIS, INC., 4810 Pontiac St., Commerce City (Denver), Colo. 80022. Applicant's representative: David L. Metzler, P.O. Box 16004, Stockyards Station, Denver, Colo. 80216. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Textiles, carpets, rugs, and related articles and equipment* used in the installation of carpeting, from Winchester, Tenn., to points in Nevada, Idaho, Montana, Wyoming, Colorado, New Mexico, Kansas, Washington, Oregon, California, Texas and points in Nebraska on and west of U.S. Highway 81, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: E & B Carpet Mills, Inc., 901 Showalter Ave., Dalton, Ga. Send protests to: Herbert C. Ruoff, District Supervisor, Interstate Commerce Commission, 721 19th St., Denver, Colo. 80202.

No. MC 117940 (Sub-No. 205TA), filed December 22, 1976. Applicant: NATIONWIDE CARRIERS, INC., P.O. Box 104, Maple Plain, Minn. 55359. Applicant's representative: Bruce A. Bullock, 530 Univac Bldg., 7100 W. Center Road, Omaha, Nebr. 68106. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Such merchandise* as is dealt in by discount and variety stores (except foodstuffs and commodities in bulk), from Savannah, Ga., to the facilities of S.S. Kresge Company, in Illinois, Iowa, Minnesota, Missouri and Wisconsin, restricted to traffic originating at the named origin point and destined to the named facilities, for 180 days. Supporting shipper: S. S. Kresge Company, 3100 W. Big Beaver, Troy, Mich. 48084. Send protests to: Marion L. Cheney, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, 414 Federal Bldg., and U. S. Courthouse, 110 S. 4th St., Minneapolis, Minn. 55401.

No. MC 118159 (Sub-No. 193TA), filed December 30, 1976. Applicant: NATIONAL REFRIGERATED TRANSPORT, P.O. Box 51366, Dawson Station, Tulsa, Okla. 74151. Applicant's representative: Neil A. DuJardin, P.O. Box 2298, Green Bay, Wis. 54306. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Picture frames, plastic products, and related advertising materials and supplies*, from Worcester, Mass., to points in Alabama, Arkansas, California, Delaware, Florida, Georgia, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nevada, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, Tennessee, Texas, Virginia, West Virginia and Wisconsin and the District of Columbia, for 180 days. Supporting shipper: Frem Corporation, P.O. Box 4, Webster Square Station, Worcester, Mass. 01603. Send protests to: Joe Green, District Supervisor, Room 240 Old Post Office Bldg., 215 N.W. Third St., Oklahoma City, Okla. 73102.

No. MC 118202 (Sub-No. 66TA), filed December 29, 1976. Applicant: SCHULTZ TRANSIT, INC., P.O. Box 406, 323 Bridge St., Winona, Minn. 55987. Applicant's representative: Robert S. Lee, 1000 First National Bank Bldg., Minneapolis, Minn. 55402. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, meat by-products and articles* distributed by meat packinghouses (except commodities in bulk, in tank vehicles, and hides), from the plant site and storage facilities of Royal Packing Company, Inc., located at or near National Stockyards, National City, Ill., to Danbury and Stamford, Conn.; Boston and Springfield, Mass.; Hawthorne and Patterson, N.J.; New York and Utica, N.Y.; and Philadelphia, Pa., for 180 days. Supporting shipper: Royal Packing Company, Inc., P.O. Box 156, St. Claire Ave., and Iceplant Road, National Stockyards, Ill. 62071. Send protests to:

Marion L. Cheney, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, 414 Federal Bldg., and U.S. Courthouse, 110 S. 4th St., Minneapolis, Minn. 55401.

No. MC 119726 (Sub-No. 78TA), filed December 27, 1976. Applicant: N.A.B. TRUCKING CO., INC., 3220 Bluff Road, Indianapolis, Ind. 46217. Applicant's representative: James L. Beattey, 130 E. Washington St., Suite 1000, Indianapolis, Ind. 46204. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Glass containers, closures, and corrugated cartons*, from the plantsite of Owens-Illinois, located at Alton, Ill., and its warehouses, located within 40 miles of Alton, Ill., in the states of Missouri and Illinois, to Fort Smith, Ark., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Owens-Illinois, Inc., P.O. Box 1035, Toledo, Ohio 43666. Send protests to: Fran Sterling, Transportation Assistant, Interstate Commerce Commission, Federal Bldg., and U.S. Courthouse, 46 E. Ohio St., Room 429, Indianapolis, Ind. 46204.

No. MC 123819 (Sub-No. 40 TA), filed December 29, 1976. Applicant: ACE FREIGHT LINE, INC., 3359 Cazassa Road, P.O. Box 16589, Memphis, Tenn. 38116. Applicant's representative: Bill R. Davis, Suite 101, Emerson Center, 2814 New Spring Road, Atlanta, Ga. 30339. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Bags*, from Memphis, Tenn., to points in Illinois, Indiana, Kansas, Kentucky, Michigan, Missouri, New Mexico, Ohio, Oklahoma and Texas, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: McDowell Industries, Inc., P.O. Box 2087, 711 Linden Ave., Memphis, Tenn. 38101. Send protests to: Allan D. McConnell, Transportation Specialist, Interstate Commerce Commission, Bureau of Operations, 100 N. Main St., Suite 2006, Memphis, Tenn. 38103.

No. MC 123872 (Sub-No. 62TA), filed December 28, 1976. Applicant: W & L MOTOR LINES, INC., P.O. Box 2607, State Road 1148, Hickory, N.C. 28601. Applicant's representative: Allen E. Bowman (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meat, meat products, meat by-products and articles* distributed by meat packinghouses (except hides and commodities in bulk), from the plantsites and storage facilities of Swift & Company, at Des Moines, Glenwood, Marshalltown, Sioux City, Iowa and Omaha, Nebr.; to points in Virginia, North Carolina, South Carolina, Tennessee (except Memphis) and points in Georgia on and north of U.S. Highway 80, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Swift & Company, 115 W. Jackson Blvd., Chicago, Ill. 60604. Send protests to: Terrell Price, District Supervisor, Interstate Commerce Commission, Mart Office Bldg., 800 Briar Creek Road, Suite CC516, Charlotte, N.C. 28205.

No. MC 124328 (Sub-No. 110TA), filed December 30, 1976. Applicant: BRINK'S INCORPORATED, Suite 710, One Crossroads of Commerce, Algonquin Rd. and Route 53, Rolling Meadows, Ill. 60008. Applicant's representative: Richard H. Streeter, 704 Southern Bldg., Washington, D.C. 20005. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Coin, currency, securities, and other rare or valuable documents or items*, from Gorham, N.H., to Lewiston, Maine, under a continuing contract with White Mountain Trust Co., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: White Mountain Trust Co., Barbara Brynes, Treasurer, 10 Exchange St., Gorham, N.H. 03581. Send protests to: Patricia A. Roscoe, Transportation Assistant, Interstate Commerce Commission, Everett McKinley Dirksen Bldg., 219 S. Dearborn St., Room 1386, Chicago, Ill. 60604.

No. MC 128685 (Sub-No. 23TA), filed December 30, 1976. Applicant: DIXON BROS., INC., P.O. Drawer 8, Newcastle, Wyo. 82701. Applicant's representative: Jerome Anderson, 100 Transwestern Bldg., 404 N. 31st St., Billings, Mont. 59101. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Processed animal feeds*, in bulk and in bags, from Morrill and Gering, Nebr., to points in Montana and Wyoming and that part of the state of South Dakota lying west of the Missouri River, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: John R. Jirdon Industries, Inc., Morrill, Nebr. 69358. Send protests to: Paul A. Naughton, District Supervisor, Room 105 Federal Bldg., and U.S. Courthouse, 111 S. Wolcott St., Casper, Wyo. 82601.

No. MC 129613 (Sub-No. 23TA), filed January 3, 1977. Applicant: ARTHUR H. FULTON, P.O. Box 86, Stephens City, Va. 22655. Applicant's representative: Charles E. Creager, 1329 Pennsylvania Ave., P.O. Box 1417, Hagerstown, Md. 21740. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Veneer*, from Paducah, Ky., and its commercial zone, to points in Virginia, North Carolina, and South Carolina, under a continuing contract with Cramer Veneers, Inc., for 180 days. Supporting shipper: Cramer Veneers, Inc., Box 1363, High Point, N.C. Send protests to: Interstate Commerce Commission, 12th and Constitution Ave., N.W., Room 1413, W. C. Hersman, District Supervisor, Washington, D.C. 20423.

No. MC 133095 (Sub-No. 126TA), filed December 29, 1976. Applicant: TEXAS CONTINENTAL EXPRESS, INC., P.O. Box 434, [illegible] Euless Blvd., Euless, Tex. 76039. Applicant's representative: Kim G. Meyer, 1600 First Federal Bldg., Atlanta, Ga. 30303. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Dated, printed publications*, from the warehouse and storage facilities of Magazine Shipper Association, Inc., at or near Bridgeport, Conn., to points in Louisiana, Missouri, Illinois, Minnesota, Wisconsin, Iowa, Nebraska, Kansas, Oklahoma, Texas, Colorado, Utah, New Mexico, Arizona, California, Oregon, Washington, Indiana, Kentucky, Tennessee, and Michigan, for 180 days. Supporting shipper: Magazine Shippers Association, Inc., 955 Union Ave., Bridgeport, Conn. 06607. Send protests to: Robert J. Kirspel, District Supervisor, Room 9A27 Federal Bldg., 819 Taylor St., Fort Worth, Tex. 76102.

No. MC 133689 (Sub-No. 96TA), filed December 29, 1976. Applicant: OVERLAND EXPRESS, INC., 717 First St., S.W., New Brighton, Minn. 55112. Applicant's representative: Robert P. Sack, P.O. Box 6010, West St. Paul, Minn. 55118. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meat, meat products, meat by-products, and articles distributed by meat* packinghouses, as described in Sections A and C of Appendix I to the report in Descriptions in Motor Carrier Certificates, 61 M.C.C. 209 and 766 (except hides and commodites in bulk), from the plantsite and storage facilities of Landy of Wisconsin, Inc., located at or near Eau Claire, Wis., to Raleigh, Durham, and Charlotte, N.C.; Columbia, S.C.; Atlanta and Tucket, Ga.; Detroit and Livonia, Mich.; North Baltimore and Cleveland, Ohio, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Landy of Wisconsin, Inc., Eau Claire, Wis. 54701. Send Protests to: Marion L. Cheney, Transportation Assistant, Interstate Commerce Commis-

sion, Bureau of Operations, 414 Federal Bldg., and U.S. Courthouse, 110 S. 4th St., Minneapolis, Minn. 55401.

No. MC 134477 (Sub-No. 131TA), filed December 29, 1976. Applicant: SCHANNO TRANSPORTATION, INC., 5 West Mendota Road, West St. Paul, Minn. 55118. Applicant's representative: Robert P. Sack, P.O. Box 6010,, West St. Paul, Minn. 55118. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fresh meats and packinghouses products* (except hides and commodities in bulk), from the plantsite and storage facilities of Wilson Foods Corporation, located at or near Albert Lea, Minn., to points in Connecticut, Massachusetts, New Jersey, New York, and Pennsylvania, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Wilson Foods Corporation, P.O. Box 26724. Oklahoma City, Okla. 73126. Send protests to: Marion L. Cheney, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations. 414 Federal Bldg., and U.S. Courthouse. 110 S. 4th St., Minneapolis. Minn. 55401.

No. MC 134477 (Sub-No. 132TA), filed December 29, 1976. Applicant: SCHANNO TRANSPORTATION, INC., 5 West Mandota Road, West St. Paul, Minn. 55118. Applicant's representative: Robert P. Sack, P.O. Box 6010, West St. Paul, Minn. 55118. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meat, meat products, meat by-products, and articles distributed by meat* packinghouses as described in Sections A and C of Appendix I to the report in Descriptions in Motor Carrier Certificates, 61 M.C.C. 209 and 766 (except hides and commodities in bulk), from the plantsite and storage facilities utilized by Landy of Wisconsin, Inc., at or near Eau Claire, Wis., to points in Connecticut, Maine, Maryland, Massachusetts, Michigan, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Virginia, and the District of Columbia, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting Shipper: Landy of Wisconsin, Inc., Eau Claire, Wis. 54701. Send protests to: Marion L. Cheney, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations. 414 Federal Bldg., and U.S. Courthouse. 110 S. 4th St., Minneapolis. Minn. 55401.

No. MC 135874 (Sub-No. 64TA), filed December 29, 1976. Applicant: LTL PERISHABLES, INC., 550 E. 5th St., South, South St. Paul, Minn. 55075. Applicant's representative: Paul Nelson (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen egg products*, from the facilities of Heying Foods, Inc., at West Union, Iowa, to points in Kansas, Missouri. Minnesota, Nebraska, North Dakota, and South Dakota, restricted to shipments originating at the named origins and destined to the named destinations, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Sunnytime Foods, Inc., 8405 Prairie Ave., Des Moines, Iowa 50322. Send protests to: Marion L. Cheney. Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, 414 Federal Bldg., and U.S. Courthouse, 110 S. 4th St., Minneapolis. Minn. 55401.

No. MC 136212 (Sub.No. 19TA), filed December 27, 1976. Applicant: JENSEN TRUCKING COMPANY, INC., P.O. Box 349, Gothenburg, Nebr. 69138. Applicant's Reptresentative: Frederick J. Coffman, 521 S. 14th St., P.O. Box 81849, Lincoln. Nebr. 68501. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meat, meat products, meat by-products, and articles distributed by meat packinghouses*, as described in Sections A and C of Appendix I to the report in Descriptions in Motor Carrier Certificates, 61 M.C.C. 209 and 766 (except hides and commodities in bulk), from a point at or near Darr, Nebr., to points in Colorado. Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Ohio, and Wisconsin, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Darold E. Mapes, Traffic Manager, Midwestern Beef, Inc., Platte Valley Division, P.O. Box 166, Cozad, Nebr. 69130. Send protests to: Max H. Johnston, District Supervisor, Interstate Commerce Commission, 285 Federal Bldg., and U.S. Courthouse, 100 Centennial Mall North, Lincoln, Nebr. 68508.

No. MC 136228 (Sub-No. 26TA), filed December 27, 1976. Applicant: LUISI TRUCK LINES, INC., P.O. Box 606, New Walla Walla Highway No. 1, Milton-Freewater, Oreg. 97862. Applicant's representative: Philip Skofstad, P.O. Box 594, Gresham, Oreg. 97030. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Hanging beef carcasses, fresh, frozen meat, from* Wallula, Wash., to Portland, Clackamas, Sublimity, Eugene, and Medford, Oreg., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Columbia Foods, Inc., P.O. Box 926, Pasco, Wash. 99301. Send protests to: R. V. Dubay, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 114 Pioneer Courthouse, Portland, Oreg. 97204.

No. MC 138144 (Sub-No. 15TA), filed December 29, 1976. Applicant: FRED OLSON CO., INC., 6022 W. State St., Wilwaukee, Wis. 53213. Applicant's representative: Daniel C. Sullivan, 327 S. LaSalle St., Chicago, Ill., 60604. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lumber, lumber products, lumber mill products, poles, posts and pilings* (except commodities in bulk), from Beardstown, Ill., to Milwaukee and Green Bay, Wis., for 180 days. Supporting shipper: Casswood Treated Products Company, R.R. 1, P.O. Box 193B, Beardstown, Ill. 62618. Send protests to: Gail Daugherty, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, U.S. Federal Bldg., and Courthouse, 517 E. Wisconsin Ave., Room 619, Milwaukee, Wis. 53202.

No. MC 139193 (Sub-No. 51TA), filed December 28, 1976. Applicant: ROBERTS & OAKE, INC., 527 E. 52d St., North, P.O. Box 1356, Sioux Falls, S. Dak. 57101. Applicant's representative: Jacob P. Billig, Suite 300, 2033 K St., NW., Washington, D.C. 20006. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Frozen sausage*, from Sioux Falls, S. Dak., to points in Iowa, Minnesota, Nebraska, North Dakota, Oregon and Washington, under a continuing contract with John Morrell & Co., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: John Morrell & Co., 208 S. LaSalle St., Chicago, Ill. 60604. Send protests to: J. L. Hammond, District Supervisor, Interstate Commerce Commission. Bureau of Operations, Room 369, Federal Bldg., Pierre, S. Dak. 57501.

No. MC 140010 (Sub-No. 8TA), filed December 27, 1976. Applicant: JOSEPH MOVING & STORAGE CO., INC., doing business as ST. JOSEPH MOTOR LINES, 573 Dutch Valley Road NE., Atlanta, Ga. 30309. Applicant's representative: Richard M. Tettelbaum, Suite 375, 3379 Peachtree Road NE., Atlanta, Ga. 30326. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Non-cellular plastic sheeting*, in vehicles equipped with mechanical refrigeration, from Nashville, Tenn., to Selma, Ala., under a continuing contract with E. I. du Pont de Nemours and Company, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: E. I. du Pont de Nemours and Company, Transportation & Distribution Department. 1007 Market St., Wilmington, Del. 19898. Send protests to: Sara K. Davis, Transportation Assistant, Bureau of Operations, Interstate Commerce Commission. 1252 W. Peachtree St. NW., Room 546. Atlanta, Ga. 30309.

No. MC 140484 (Sub-No. 21TA), filed December 28, 1976. Applicant: LESTER COGGINS TRUCKING. INC., P.O. Box 69, 2671 E. Edison Ave., Fort Myers, Fla. 33901. Applicant's representative: Chester A. Zyblut, 366 Executive Bldg., 1030 15th St. NW., Washington, D.C. 20005. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Electric motors, electric gear motors, power transmission equipment and machinery and controllers or controller parts and parts and accessories therefor;* from Lawrenceburg, Ky., to points in Arizona, California, Colorado, Nebraska, New Mexico, Oregon, Utah, Washington, Oklahoma, Louisiana and Texas, for 180 days. Supporting shipper: Reliance Electric Company, 24701 Euclid Ave., Cleveland, Ohio 44117. Send protests to: Joseph B. Teichert, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Monterey Bldg., Suite 101, 8410 N.W. 53d Terrace, Miami, Fla. 33166.

No. MC 140743 (Sub-No. 14TA), filed December 20, 1976. Applicant: GORSKI BULK TRANSPORT, INC., 21635 E. Nine Mile Road, St. Clair Shores, Mich. 48080. Applicant's representative: William B. Elmer (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Alcoholic beverages*, in bulk, in tank vehicles, from the International Boundary line between the United States and Canada, located in Michigan and New York, to Bardstown, Ky., restricted to traffic originating at the plant of Gilbey's Canada Limited in Toronto, Ontario, and destined to the plantsite of Barton Brands, Inc., in Bardstown, Ky., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Gilbey's Canada Limited Assistant Warehousing Manager, Anthony Dias, 400 Kipling Ave., Toronto, Ontario, Canada M8V 3L2. Send protests to: James A. Augustyn, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 1110 Broderick Tower, 10 Witherell Ave., Detroit, Mich. 48226.

No. MC 140829 (Sub-No. 37TA), filed December 27, 1976. Applicant: CARGO CONTRACT CARRIER CORP., P.O. Box 206, U.S. Highway 20, Sioux City, Iowa 51102. Applicant's representative: William J. Hanlon, 55 Madison Ave., Morristown, N.J. 07960. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meat, meat products and meat by-products and articles distributed by meat packinghouses*, as described in Section A of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except commodities in bulk), from the plantsite or storage facilities utilized by Meilman Food Industries, at or near Sioux Falls, S. Dak., to points in Massachusetts, New York and Pennsylvania. Restriction: The operations authorized herein are restricted to the transportation of traffic originating at the named origin and destined to points in the above-named destination States, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Lester Pucik, Traffic Manager, Meilman Food Industries, P.O. Box 1465, Sioux Falls, S. Dak. 57101. Send protests to: Carroll Russell, District Supervisor, Interstate Commerce Commission, Suite 620, 110 N. 14th St., Omaha, Nebr. 68102.

No. MC 140875 (Sub-No. 2TA), filed December 30, 1976. Applicant: LONGVIEW HAULING, INC., 2401 Cavitt, P.O. Box 3955, Bryan, Tex. 77801. Applicant's representative: E. Larry Wells, 4645 N. Central Expressway, Dallas, Tex. 75205. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Brewers grain, liquid brewers yeast, liquid brewers grain concentrates and brewers grain mixtures*, in bulk, from Longview, Tex., to Olive Branch, Miss., under a continuing contract with Murphy Products Co., Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Murphy Products Co., Inc., 124 Dodge St., Burlington, Wis. Send protests to: John F. Mensing, District Supervisor, 8610 Federal Bldg., 515 Rusk, Houston, Tex. 77002.

No. MC 142303 (Sub-No. 1TA), filed December 29, 1976. Applicant: CUTLER & LEE, INC., Route 73 & Regent Ave., Maple Shade, N.J. 08052. Applicant's representative: George A. Olsen, 69 Tonnele Ave., Jersey City, N.J. 07306. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Vehicles for salvage*, from points in New York, Connecticut, Pennsylvania, Delaware and Maryland, to South Plainfield, N.J., under a continuing contract with Fireman's Fund Insurance, dba Falcon Customer Service Center, Fireman's Fund Customer Service Center, South Plainfield, N.J., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Fireman's Fund Insurance Co., 110 Sylvania Place, South Plainfield, N.J. 07080. Send protests to: Dieter H. Harper, District Supervisor, Interstate Commerce Commission, 428 E. State St., Room 204. Trenton, N.J. 08608.

No. MC 142320 (Sub-No. 1TA), filed December 30, 1976. Applicant: FLEMING TRANSPORT COMPANY, Box 337, Long Lake, Minn. 55356. Applicant's representative: Robert P. Sack, P.O. Box 6010, West St. Paul, Minn. 55118. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Agricultural implements and parts and accessories*, from Long Lake, Minn., to points in Colorado, Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Missouri, Nebraska, New York, North Dakota, Ohio, Oklahoma, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, West Virginia and Wisconsin; and (2) *Parts, materials and supplies* used in the manufacture of the commodities in (1) above (except commodities in bulk), from points in Colorado, Connecticut, Illinois, Indiana, Iowa, Michigan, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Dakota, Washington and Wisconsin, to Long Lake, Minn., both (1) and (2) above are under a continuing contract with Fleming Manufacturing Co., Inc., for 180 days. Supporting shipper: Fleming Manufacturing Co., Inc., Box 337, Long Lake, Minn. Send protests to: Marion L. Cheney, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, 414 Federal Bldg. & U.S. Courthouse, 110 S. 4th St., Minneapolis. Minn. 55401.

No. MC 142669 (Sub-No. 3TA), filed December 28, 1976. Applicant: GENE WALTERS AND CLARK WURTELE, doing business as, M & M TRUCKING, Buchanan, N. Dak. 58420. Applicant's representative: Charles E. Johnson, P.O. Box 1982, Bismarck, N. Dak. 58501. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Dry fertilizer and dry fertilizer materials*, in hopper bottom trailers. from Minneapolis, St. Paul. Savage and Pine Bend, Minn., to points in Idaho, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Agro Supply, Box 20256, Billings, Mont. 59104. Send protests to: Ronald R. Mau, District Supervisor, Bureau of Operations, Interstate Commerce Commission, P.O. Box 2340. Fargo. N. Dak. 58102.

No. MC 142678TA, filed December 23, 1976. Applicant: BREWER'S CITY DOCK, INC., 24 Pine Ave., Box 901A, Holland, Mich. 49423. Applicant's representative: Karl L. Gotting, 1200 Bank of Lansing, Lansing, Mich. 48933. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Industrial sand*, in bulk, from the facilities of the Nugent Sand Company, at Muskegon, Mich., and its commercial zone, to Defiance, Ohio, for 180 days. Supporting shipper: Central Foundry Division, GMC, 77 W. Center St., P.O. Box 1629, Saginaw, Mich. 48605. Send protests to: C. R. Flemming, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 225 Federal Bldg., Lansing, Mich. 48933.

No. MC 142717 (Sub-No. 1 TA), filed December 30, 1976. Applicant: DAVID LUCAS AND ARTEMAS A. IRVIN, doing business as, I. L. C. TRUCKING. P.O. Box 286, Milesburg, Pa. 16853. Applicant's representative: John M. Musselman, 410 North Third St., Harrisburg, Pa. 17108. Authority sought to operate as a *contract carrier*, by motor vehicle. over irregular routes, transporting: *Coal*, in bulk, in dump vehicles, from points in Bald Eagle and Beech Creek Townships, Clinton County, Pa., to the facilities of New York Gas and Electric Power Company, at Johnson City, N.Y., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: I. L. Confer, P.O. Box 8, Milesburg. Pa. 16853. Send protests to: Robert P. Amerine, District Supervisor, Bureau of Operations, Interstate Commerce Commission. 278 Federal Bldg., P.O. Box 869, Harrisburg, Pa. 17108.

No. MC 142761TA, filed December 20, 1976. Applicant: GERTRUDZ RODRIGUEZ, doing business as RODRIGUEZ DELIVERY, 19110 N.W. 42nd Ave., Miami, Fla. Applicant's representative:

John P. Bond, 2766 Douglas Road, Miami, Fla. 33133. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except the transportation of said commodities in bulk, Classes A and B explosives, household goods, livestock, commodities requiring special handling and special equipment and cement), between points in Dade County, lying east of State Road 27, south of State Road 826, north of State Road 94, and west of the Atlantic Ocean; all shipments having a prior or subsequent movement by water, for 180 days. Supporting shippers: Torino, 8075 W. 20th Ave., Hialeah, Fla. 33014. Dolphin Freight Forwarders, Inc., 7372 N.W. 65th St., Miami, Fla. 33166. Ame International Co., 9925 S.W. 56th St., Miami, Fla. 33165. Send protests to: Joseph B. Teichert, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Monterey Bldg., Suite 101, 8410 N.W. 53rd Terrace, Miami, Fla. 33166.

No. MC 142769TA, filed December 27, 1976. Applicant: COLONIAL REFRIGERATED TRANSPORTATION, INC., P.O. Box 168, Concord, Tenn. 37922. Applicant's representative: David C. Venable, 666 Eleventh St., N.W., Washington, D.C. 20001. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Such commodities* as are dealt in or used by wholesalers and retailers of fabrics and serving supply stores, between Amarillo, Tex., on the one hand, and, on the other, points in the United States in and east of North Dakota, South Dakota, Nebraska, Colorado and New Mexico, under a continuing contract with Cloth World, Inc., for 180 days. Supporting shipper: Cloth World, Inc., 206 S. Western Ave., Amarillo, Tex. 79106. Send protests to: Joe J. Tate, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Suite A–422 U.S. Courthouse, 801 Broadway, Nashville, Tenn. 37203.

No. MC 142770 (Sub-No. 1TA), filed December 29, 1976. Applicant: ARTHUR L. KINDT & JOHN Y. KINDT, doing business as, KINDT'S MOVING & STORAGE, P.O. Box 1058, Vernal, Utah 84078. Applicant's representative: Arthur L. Kindt, 1144 S. Highway 40, Vernal, Utah 84078. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (A) *New finished* or *unfinished furniture and components thereof;* (B) *Materials, equipment and supplies* used in the manufacture of furniture; (A) from Fort Duchesne, Utah, to points in the United States west of the Mississippi River (except Alaska and Hawaii); and (B) from points in the United States west of the Mississippi River, to Fort Duchesne, Utah, under a continuing contract with Ute Indian Tribe, dba Ute Fab, Ltd., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Ute Indian Tribe, dba, Ute Fab, Ltd., Fort Duchesne, Utah 84026. Send protests to: Lyle D. Helfer, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 5301 Federal Bldg., 125 S. State St., Salt Lake City, Utah 84138.

No. MC 142772 (Sub-No. 1TA), filed December 29, 1976. Applicant: HRDLICKA ENTERPRISES, INC., Route #7, Box 59, Chippewa Falls, Wis. 54729. Applicant's representative: Roderick A. Cameron, 101 N. Broadway, Stanley, Wis. 54768. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Building and roofing slabs, tile and panels and related materials, parts, supplies and accessories*, from Cornell, Wis., to points in Colorado, Kansas, Nebraska, North Dakota and South Dakota, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Cornell Corporation, 808 S. Third St., Cornell, Wis. 54732. Send protests to: Marion L. Cheney, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, 414 Federal Bldg. & U.S. Courthouse, 110 S. 4th St., Minneapolis, Minn. 55401.

PASSENGER APPLICATION

No. MC 142744 (Sub-No. 1TA), filed December 27, 1976. Applicant: PACIFIC BUILDING, 520 S.W. Yamhill St., Portland, Oreg. 97204. Applicant's representative: Robert R. Hillis, 400 Pacific Bldg., Portland, Oreg. 97204. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *Passengers and their hand baggage*, in commuter service between points in Multnomah, Wash., and Clackamas Counties, Oreg., and Clark County, Wash., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: City of Vancouver, Vancouver City Hall, 210 E. 13th St., Vancouver, Wash. 98660. Send protests to: A. E. Odoms, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 114 Pioneer Courthouse, 555 S. Yamhill St., Portland, Oreg. 97204.

By the Commission.

ROBERT L. OSWALD,
Secretary.

[FR Doc.77–1590 Filed 1–17–77;8:45 am]

federal register

TUESDAY, JANUARY 18, 1977

PART II

THE NATIONAL ARCHIVES OF THE UNITED STATES • 1934 •

COMMODITY FUTURES TRADING COMMISSION

■

ARBITRATION OR OTHER DISPUTE SETTLEMENT PROCEDURES CAUTIONARY LANGUAGE

Title 17—Commodity and Securities Exchanges

CHAPTER I—COMMODITY FUTURES TRADING COMMISSION

PART 180—ARBITRATION OR OTHER DISPUTE SETTLEMENT PROCEDURES

Cautionary Language Requirement

The Commodity Futures Trading Commission ("Commission") has amended regulation § 180.3(b)(4) under the Commodity Exchange Act, which requires certain cautionary language to be included in any agreement between a customer and a futures commission merchant, floor broker or associated person, in which the customer agrees to arbitrate any future claim or grievance.

As originally adopted, § 180.3(b)(4) was introduced by a clause which provided that such customer agreements must contain "the following" cautionary language, 41 FR 42946-47 (September 29, 1976). The amendment to § 180.3(b)(4) modifies the introductory clause to provide that the customer agreement must contain cautionary language "to the following effect." The purpose of this amendment is to facilitate incorporating the required cautionary language into the arbitration agreements presently used by futures commission merchants and other registrants without necessitating the use of the verbatim language.

Several commentators said that requiring futures commission merchants to use the exact language specified in § 180.3(b)(4) creates a number of practical problems. For example, one commentator said that some arbitration agreements presently used by futures commission merchants refer to the customer as "I," while in the cautionary language of § 180.3(b)(4) refers to the customer as "you." To comply with the regulation, one commentator said, some futures commission merchants might have to rewrite their customer agreements completely. One commentator also suggested that, in the case of a futures commission merchant that is also a securities broker, the cautionary language should apply only to a commodities account, rather than both commodities and securities accounts, if a single agreement is to be used for disputes involving both types of accounts.

The Commission is persuaded that technical, non-substantive deviations from the cautionary language required by § 180.3(b)(4) like those mentioned above would not undermine the basic purpose of § 180.3: to ensure that the use by commodity customers of contract market arbitration or other dispute settlement procedures is voluntary. Accordingly, that provision has been amended to permit registrants to make such minor changes in the cautionary language. However, the Commission wishes to emphasize that it does not intend by this amendment to authorize any deviations from the text of the cautionary language required by § 180.3(b)(4) which alters, in substance or effect, the plain meaning of the language in any material respect.

In consideration of the foregoing, the Commission hereby revises § 180.3(b)(4) of Chapter I, Title 17 of the Code of Federal Regulations, as follows:

§ 180.3 Voluntary procedure and compulsory payments.

* * * * * * *

(b) * * *

(4) The customer agreement must contain cautionary language, printed in large boldface type, to the following effect:

WHILE THE COMMODITY FUTURES TRADING COMMISSION (CFTC) RECOGNIZES THE BENEFITS OF SETTLING DISPUTES BY ARBITRATION, IT REQUIRES THAT YOUR CONSENT TO SUCH AN AGREEMENT BE VOLUNTARY. YOU NEED NOT SIGN THIS AGREEMENT TO OPEN AN ACCOUNT WITH [name]. See 17 CFR 180.1-180.6.

BY SIGNING THIS AGREEMENT, YOU MAY BE WAIVING YOUR RIGHT TO SUE IN A COURT OF LAW, BUT YOU ARE NOT WAIVING YOUR RIGHT TO ELECT AT A LATER DATE TO PROCEED PURSUANT TO SECTION 14 OF THE COMMODITY EXCHANGE ACT TO SEEK DAMAGES SUSTAINED AS A RESULT OF A VIOLATION OF THE ACT. IN THE EVENT A DISPUTE ARISES, YOU WILL BE NOTIFIED IF [name] INTENDS TO SUBMIT THE DISPUTE TO ARBITRATION. IF YOU BELIEVE A VIOLATION OF THE COMMODITY EXCHANGE ACT IS INVOLVED AND IF YOU PREFER TO REQUEST A SECTION 14 "REPARATIONS" PROCEEDING BEFORE THE CFTC, YOU WILL STILL HAVE 45 DAYS IN WHICH TO MAKE THAT ELECTION.

* * * * * *

(Secs. 5a(11) and 8a Commodity Exchange Act, as amended, 7 U.S.C. §§ 7a(11). 12a (Supp. V, 1975).)

This amendment shall be effective immediately. The Commission finds that the notice and other public procedures called for by 5 U.S.C. 553 (1970) are not required. To begin with, the amendment relieves a restriction in that registrants are no longer required to adhere verbatim to the exact language contained in § 180.3(b)(4). The amendment will impose no additional duty of affirmative action on anyone, nor will immediate adoption impose a hardship. Second, the amendment is technical in nature and is similar in substance and effect to an interpretative rule.

Issued in Washington on January 13, 1977.

By the Commission.

WILLIAM T. BAGLEY,
Chairman, Commodity Futures Trading Commission.

[FR Doc.77-1489 Filed 1-17-77;8:45 am]

federal register

TUESDAY, JANUARY 18, 1977

PART III



DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Community Planning and Development

■

COMMUNITY DEVELOPMENT BLOCK GRANTS—HOUSING ASSISTANCE PLANS

Proposed Rulemaking

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Community Planning and Development

[24 CFR Part 570]

[Docket No. R-77-292]

COMMUNITY DEVELOPMENT BLOCK GRANTS—HOUSING ASSISTANCE PLANS

Notice of Proposed Rulemaking

The Department is proposing to amend Chapter V, Part 570, to provide under § 570.303 (published on February 19, 1976, 41 FR 7503 and amended on March 16, 1976, 41 FR 11128) with respect to Housing Assistance Plans, an alternative methodology for reducing the estimates of housing assistance needs of lower-income families who may be expected to reside in an applicant community as a result of existing or planned employment, in those applicant communities whose proportion of lower-income families exceeds that of the metropolitan areas as a whole.

This proposed amendment does not affect the basic methodology for calculating expected-to-reside as prescribed in Paragraph (c)(2)(ii) of § 570.303, but only alters the method under Paragraph (c)(2)(ii)(A) by which a community may reduce its estimate because of an undue concentration of lower-income persons. The only cities affected by this proposed amendment are those whose percentage of lower-income families exceeds that of the metropolitan area as a whole.

Analysis by the Department of continuing public comments concerning the methodology prescribed in the March 16, 1976, regulations for reducing estimates of families with lower-income workers expected to reside has indicated that the current methodology does not adequately take into account the undue concentrations of lower-income families in certain communities.

The revised methodology established by this proposed amendment allows an applicant community whose percentage of lower-income families is at least 133 percent of the percentage of lower-income families in the metropolitan area as a whole, to reduce to zero its estimate of lower-income families with workers who could reasonably be expected to reside in the community. A community whose percentage of lower-income families is between 100 and 133 percent of the percentage of lower-income families in the metropolitan areas as a whole, may reduce its estimate of families expected to reside by three times the percentage by which its percentage of such lower-income families exceeds 100 percent of the metropolitan percentage.

This proposed revision is being published for a thirty day period for public comment. It is the Department's intention to publish a final rule as soon as possible after the expiration of the public comment period and following an analysis of all comments and suggestions.

Many communities have already prepared housing assistance plans to be submitted with fiscal year 1977 community development block grant applications. Others will have done so by the time a final rule is published for effect. In light of that fact, the Department will accept amendments to approved housing assistance plans, at any time during the year, from those communities that elect to follow the revised methodology for estimating housing assistance needs of lower-income families who may be expected to reside in the community as a result of existing or planned employment.

Use of the alternate methodology for reducing estimates of families expected to reside is optional rather than mandatory. If a community chooses to amend its approved housing assistance plan to use the alternate methodology, it must refer the amendment to State and areawide clearinghouses for review and comment pursuant to § 570.300(d), and shall otherwise comply with § 570.305(a) concerning program amendments.

Housing assistance plans which are approved using the revised methodology will not affect the fiscal year 1977 allocation or reallocation of housing assistance funds, but they will affect the fiscal year 1978 allocation. In other words, housing assistance plans approved with fiscal year 1977 community development block grant applications, or amended in fiscal year 1977, will serve as the basis for the allocation of housing assistance funds in fiscal year 1978.

The use of the revised ETR figure as the basis for a finding of inconsistency under Review of Applications for Housing Assistance is also limited during fiscal year 1977. If an invitation for applications or notification of fund availability has been issued prior to the effective date of this regulation, a community could not subsequently amend its housing assistance plan under this amendment and find the housing applications inconsistent on the basis of that revision.

It has been determined that this change will not have a substantial effect upon the quality of the environment, and a statement to that effect has been prepared and is available for inspection and copying in the Office of the Rules Docket Clerk, Office of the Secretary, Room 10141, Department of Housing and Urban Development, 451 7th Street, SW, Washington, D.C.

It is hereby certified that the economic and inflationary impacts of this proposed rule have been carefully considered and evaluated in accordance with OMB Circular A-107.

Interested persons may participate in this proposed rulemaking by submitting such written data, suggestions, or arguments as they may desire. All such materials should be filed with the Rules Docket Clerk at the address listed above. All comments received on or before February 21, 1977, will be considered before adoption of a final rule in this matter. Copies of all comments received will be available for public inspection at the above address during regular business hours both before and after the close of the comment period.

Accordingly, it is proposed that § 570.303(c)(2)(ii)(A) be revised as follows:

§ 570.303 Application requirements.

* * * * * *

(c) *Housing assistance plan.* * * *

(2) * * *

(ii) * * *

(A) An applicant community, within a metropolitan area, may consider undue concentrations of lower-income persons in estimating the number of lower-income families with workers already employed in the community and living elsewhere that could be expected to reside in the community. Applicant communities shall consider the following in preparing such estimates:

(*1*) If the proportion of the community's percentage of lower-income families to the metropolitan area's percentage is less than 100 percent, the estimate of lower-income families expected to reside shall not be reduced.

Example: SMSA C Lower-income families percentage: 24 percent;
City CD Lower-income families percentage: 19 percent;
City CD percentage SMSA C percentage = 79 percent.

(*2*) If the proportion of the community's percentage of lower-income families to the metropolitan area's percentage is greater than 100 percent but less than 133 percent, the estimate of lower-income families expected to reside may be reduced by three times the percentage amount over 100 percent.

Example: SMSA X Lower-income families percentage: 10 percent;
City XY Lower-income families percentage: 12 percent;
City XY percentage/SMSA × percentage = 120 percent;
Allowed reduction (120 percent − 100 percent = 20 percent × 3) = 60 percent.

(*3*) If the proportion of the community's percentage of lower-income families to the metropolitan area's percentage is greater than 133 percent, the estimate of lower-income families expected to reside may be reduced to zero.

The allocation or reallocation of contract authority for housing assistance, made in accordance with the procedures provided at Part 891, Review of Applications for Housing Assistance; Allocation of Housing Assistance Funds, Subpart D, will not be adjusted during Fiscal Year 1977, on the basis of housing assistance plans which have been approved or amended using this methodology. Furthermore, such amendments shall not be considered, by HUD or the community, as grounds for a determination of inconsistency pursuant to Part 891, Subpart B, for housing applications which were received in response to an invitation for applications or notification of fund availability issued prior to the effective date of this regulation.

(Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).)

Issued at Washington, D.C., January 11, 1977.

ROOSEVELT JONES,
Acting Assistant Secretary for Community Planning and Development.

[FR Doc.77-1572; Filed 1-17-77;8:45 am]

federal register

TUESDAY, JANUARY 18, 1977

PART IV

THE NATIONAL ARCHIVES OF THE UNITED STATES 1934

DEPARTMENT OF LABOR

Office of the Secretary

Employment and Training Administration

■

EMPLOYMENT OF ALIENS IN THE UNITED STATES

Labor Certification Process

Title 29—Labor

SUBTITLE A—OFFICE OF THE SECRETARY OF LABOR

PART 60—IMMIGRATION: IMMIGRANT LABOR CERTIFICATIONS

Deletion of Part; Transfer of Regulations to 20 CFR Part 656

Notice is hereby given that the Department of Labor, Employment and Training Administration, is revising its regulations, heretofore published as 29 CFR Part 60, on the granting of labor certifications on behalf of aliens who seek to work permanently within the United States. The revised regulations are published in this issue as a separate document which redesignates the regulations as 20 CFR Part 656. This document deletes the present 29 CFR Part 60—Immigration: Immigrant Labor Certifications, effective February 18, 1977.

Signed at Washington, D.C., this 13th day of January, 1977.

WILLIAM H. KOLBERG,
Assistant Secretary for Employment and Training.

[FR Doc.77-1612 Filed 1-17-77;8:45 am]

CHAPTER V—EMPLOYMENT AND TRAINING ADMINISTRATION, DEPARTMENT OF LABOR

PART 656—LABOR CERTIFICATION PROCESS FOR PERMANENT EMPLOYMENT OF ALIENS IN THE UNITED STATES

Notice is hereby given that the Department of Labor, Employment and Training Administration, is publishing new regulations governing the labor certification process for the permanent employment of aliens in the United States. The regulations, designated 20 CFR Part 656, replace the Department's previous regulations at 29 CFR Part 60—Immigration: Immigrant Labor Certifications, which are being rescinded in a separate document being published in today's FEDERAL REGISTER.

The regulations are being issued under section 212(a)(14) of the Immigration and Nationality Act, which provides that certain aliens may not obtain a visa for entry into the United States in order to engage in permanent employment unless the Secretary of Labor has first certified, by granting a labor certification, that:

(1) There are not sufficient United States workers who are able, willing, qualified and available to perform the work; and

(2) The employment of the aliens will not adversely affect the wages and working conditions of United States workers similarly employed.

The regulations set forth the labor certification process in detail. They delineate the responsibilities of the public employment service in assisting employers to find available United States workers. They also set forth the responsibilities of employers who desire to employ aliens on a permanent basis. For example, such employers must recruit U.S. workers by advertising, through the public employment service, and by other reasonable means, in order to make a good faith test of U.S. worker availability. An employer's advertising, moreover, must offer prevailing wages and working conditions so as to avoid any potential adverse effect upon the wages and working conditions of U.S. workers.

The regulations implement the Immigration and Nationality Act Amendments of 1976 to the extent those amendments affect the labor certification process.

The regulations implement the amendments made to the Immigration and Nationality Act by Title VI of the Health Professions Educational Assistance Act of 1976 to the extent those amendments affect the labor certification process.

The regulations were published as proposed rule-making on November 5, 1976 at 41 FR 48938. Comments were invited until December 6, 1976. About seventy persons and organizations submitted comments. The most significant comments were as follows:

1. The proposed Schedule A included only physical therapists who had Ph. Ds or master's degrees. The comment process revealed that there is a shortage of U.S. workers who have bachelor's degrees in physical therapy. Schedule A has been revised to include physical therapists who have bachelor's degrees.

2. Some commenters requested a definition of the terms "science" and "art" for purposes of Group II of Schedule A. The final regulations include such a definition.

3. One comment requested that Group IV of Schedule A be expanded to include aliens who will be engaged in the United States in managerial or executive positions with the same international corporations or organizations which currently employ them. Such aliens have been added to Schedule A, Group IV. In addition, upon further discussion with the INS and the Department of State, the words "specialized knowledge" were deleted as they represented too broad a category of aliens for Schedule A predetermination purposes.

4. Some commenters suggested that the documentary requirements for household domestic service workers be clarified and simplified. This has been done.

5. Some commenters stated that the documentation required by the basic labor certification process put an unlawful burden on employers. The Department wishes to note that much of the documentation required of employers will be taken care of by the filling out of the Application for Alien Employment Certification form. The regulations have been revised to indicate that the form and its instructions will make clear to employers the extent of their documentation obligations. The Department also wishes to note that, under the statutory scheme, it is clear that Congress intended that employers make an effort to recruit U.S. workers before seeking to employ aliens and that the Department believes that the regulations, which require that these efforts be documented, do not impose an unreasonable burden on employers.

6. The House Subcommittee on Immigration, Citizenship, and International Law commented that the recent amendment, by Pub. L. 94-571, to sec. 212(a)(14) of the Immigration and Nationality Act with respect to members of the "teaching profession" was intended to apply only to educators at the college and university level, not to all members of the teaching profession. The final regulations have been revised in keeping with the Congressional intent.

7. Many commenters objected to the proposed requirement that the employer and the local employment service office recruit U.S. workers for 60 days. It was pointed out, for example, that State employment service agencies with Statewide computerized Job Banks could recruit Statewide rather quickly. The recruitment period has been reduced to 30 days.

8. Some commentators stated that it was contrary to sec. 212(a)(14) of the Immigration and Nationality Act, as amended by Pub. L. 94-571, for Certifying Officers to consider the availability of U.S. workers outside the area of intended employment who are willing to move to take the job. The Department, however, does not believe that it was Congress' intent to permit employers to recruit and import aliens to take jobs and to ignore or refuse to consider American workers who may live beyond commuting distance from the jobs but who are willing or will be reimbursed to move to take the jobs.

9. Many commentors from Texas objected to the removal of Nurses from Schedule A. Most of these commentors, however, seemed to believe that the removal of nurses from Schedule A would prohibit nurses from entering the country for work purposes. This, however, is not the case. Nurses may still enter the U.S. as immigrants through the regular labor certification route or as nonimmigrants through the temporary immigration procedures administered by the Immigration and Naturalization Service.

10. Some commentors objected to the exclusion from Schedule A, Group III, of persons with religious commitments who work in non-religious occupations such as nursing and teaching. Group III has been revised to include persons with a religious commitment who will work for non-profit religious organizations.

11. Some commenters objected to the definition of "agent" which, as proposed, included an attorney. The regulations have been revised to clarify this point. Attorneys may be agents, but need not necessarily be agents.

12. One commenter suggested that prior experience be required for aliens seeking certification for Schedule A Group III religious occupations. This suggestion has been accepted. The requirement for 2-years experience for these religious occupations is the same requirement as that for the "priest and minister" "special immigrant" set forth at sec. 101(a)(27)(D)(i) of the Immigration and Nationality Act.

13. One commentator suggested that it was unlawful for the Department to require that professionals have a job offer before they may receive a labor certification. The Department, however, has always believed that it could require job offers of any alien seeking to become the beneficiary of a labor certification as a reasonable method of carrying out the Secretary's statutory obligation. Heretofore the Department, recognizing that professionals were not required to have prearranged employment in order to obtain a visa, had decided not to require a job offer for a labor certification. However, it has been the Department's experience, that it is very difficult to adequately determine the availability of U.S. workers without a job opportunity to which U.S. workers may be referred. Nor, absent a specific job opportunity, can the adverse effect of an alien's employment of similarly employed U.S. workers be adequately determined. It should be noted too that Pub. L. 94-571 recently amended the Immigration and Nationality Act and that the law now requires prearranged employment for professionals for purposes of obtaining an employment related preference status.

14. Some commenters requested that the Department set forth standards for determining whether or not an alien was of "exceptional ability" for Schedule A, Group II purposes. The Department has added detailed requirements for documentation for the purposes of showing exceptional ability. It is intended that such aliens have international recognition and other evidence of their exceptional ability. Such aliens should be so far above the average members of their field that they will clearly be an asset to the United States.

15. One commenters stated that, since there are a great many performing artists who are unemployed in the U.S. today, artists of exceptional ability should not be placed on Schedule A. The Department has taken this category of aliens off of Schedule A.

16. Some commenters objected to the statement in the preamble to the proposed regulations wherein the Department reasserted its belief that labor certification determinations were not judicially reviewable under the Administrative Procedure Act. Both the House and the Senate Reports on the 1976 amendments to the Administrative Procedure Act note favorably Professor Davis' testimony that the Congress never intended the Administrative Procedure Act to be jurisdictional. The Reports, however, note that several Courts of Appeals have held otherwise in an effort to avoid the harshness of the sovereign immunity doctrine. The 1976 amendments, in limiting sovereign immunity, leave the defense of "agency discretion" untouched (see p. 12 of H. Rpt. 94-1656). The labor certification determination under sec. 212(a)(14) of the Immigration and Nationality Act is clearly an action committed to agency discretion, and is clearly exempted from judicial review under the provisions of the Administrative Procedure Act.

The Department would like to note that regional Certifying Officers have been notified by telegraphic instruction to implement the amendments to sec. 212(a)(14) of the Immigration and Nationality Act made by Pub. L. 94-571 as of the effective date of those statutory amendments.

Accordingly, Title 20 of the Code of Federal Regulations is amended by adding a new Part 656, effective February 18, 1977 for all labor certifications filed pursuant to the requirements of these regulations at any Consular or Immigration office or at any local employment service office on or after the effective date of this Part (applications filed prior to Feb. 18, 1977 will be processed pursuant to the prior regulations at 29 CFR Part 60) to read as follows:

Subpart A—Purpose and Scope of Part 656

Sec.
656.1 Purpose and scope of Part 656.
656.2 Description of the Immigration and Nationality Act and of the Department of Labor's role thereunder.

Subpart B—Occupational Labor Certification Determinations

656.10 Schedule A.
656.11 Schedule B.

Subpart C—Labor Certification Process

656.20 Introduction.
656.21 Basic labor certification application process.
656.22 Applications for labor certifications for Schedule A occupations.
656.23 Applications for labor certifications fo Schedule B occupations; requests for waivers from Schedule B.
656.24 Labor certification determinations.
656.25 Procedures following a labor certification determination.
656.26 Administrative-judicial review of denials of labor certification.
656.27 Hearings.
656.28 Document transmittal following the granting of a labor certification.
656.29 Filing of a new application after the denial of a labor certification.
656.30 Validity of and invalidation of labor certifications.
656.31 Labor certification applications involving fraud or willful misrepresentation.
656.32 Fees for services and documents.

Subpart D—Determination of Prevailing Wage

656.40 Determination of prevailing wage for labor certification purposes.

Subpart E—Definitions

656.50 Definitions, for purposes of this Part, of terms used in this Part.

Subpart F—Addresses of Department of Labor Regional Offices

656.60 Addresses of Department of Labor regional offices.

AUTHORITY: Sec. 212(a)(14) of the Immigration and Nationality Act, 8 U.S.C. 1101 et seq.; Wagner-Peyser Act of 1933, as amended, 29 U.S.C. 49 et seq., unless otherwise noted.

Subpart A—Purpose and Scope of Part 656

§ 656.1 Purpose and scope of Part 656.

(a) Under section 212(a)(14) of the Immigration and Nationality Act (Act) certain aliens may not obtain a visa for entrance into the United States in order to engage in permanent employment unless the Secretary of Labor has first certified to the Secretary of State and to the Attorney General that:

(1) There are not sufficient United States workers, who are able, willing, qualified and available at the time of application for a visa and admission into the United States and at the place where the alien is to perform the work, and

(2) The employment of the alien will not adversely affect the wages and working conditions of United States workers similarly employed.

(b) The regulations under this Part set forth the procedures whereby such immigrant labor certifications may be applied for, and given or denied.

§ 656.2 Description of the Immigration and Nationality Act and of the Department of Labor's role thereunder.

(a)(1) *Description of the Act.* The Immigration and Nationality Act (Act) regulates the admission of aliens into the United States. The Act designates the Attorney General and the Secretary of State as the principal administrators of its provisions.

(2) The Immigration and Naturalization Service (INS) performs most of the Attorney General's functions under the Act.

(3) The Consular offices of the Department of State throughout the world are generally the initial contact for aliens in foreign countries who wish to come to the United States. These offices determine the type of visa for which aliens may be eligible, obtain visa eligibility documentation, and issue visas.

(b) *Burden of proof under the Act.* Section 291 of the Act states, in pertinent part, that:

> Whenever any person makes application for a visa or any other document required for entry, or makes application for admission, or otherwise attempts to enter the United States, the burden of proof shall be upon such person to establish that he is eligible to receive such visa or such document, or is not subject to exclusion under any provision of this Act * * *

(c) *Numerical limitations on immigrant visas under the Act.* (1) Immigrant visas may be given only on an individual basis:

(2) Except for immediate relatives of U.S. citizens, to whom no numerical restriction applies, only 290,000 immigrant visas may be issued in each fiscal year, of which

(i) No more than 120,000 may be issued to immigrants born in the Western Hemisphere;

(ii) No more than 170,000 may be issued to immigrants born in the Eastern Hemisphere; and

(iii) No more than 20,000 may be issued to immigrants born in a single country.

(3) No numerical restriction exists on the number of labor certifications which may be issued by the Department of Labor in any year.

(d) *Visa preferences including nonpreference status.* (1) Under section 203 of the Act certain immigrants are eligible for preferences in obtaining visas. The INS has responsibility for determining whether such aliens qualify for preferences. The preferences for which an immigrant may be eligible are:

(i) First, second, fourth and fifth preferences, which require a close family relationship between the alien and a United States citizen or permanent resident alien of the United States;

(ii) Third preference, which requires that the alien's services be sought by an employer, and that the alien be a qualified member of a profession or a person who, because of exceptional ability in the sciences or the arts, will substantially benefit prospectively the national economy, cultural interests, or welfare of the United States;

(iii) Sixth preference, which requires that the alien be capable of performing some specific kind of skilled or unskilled labor, which is not of a temporary or seasonal nature, and for which a shortage of employable and willing persons exists in the United States; and

(iv) Seventh preference, which requires that the alien have a refugee status as described at section 203(a)(7) of the Act.

(2) Under section 203(a)(8) of the Act aliens, who are not immediate relatives of U.S. citizens, and who are not eligible for one of the preferences described in paragraph (d)(1) of this section, may be eligible for a nonpreference status and obtain visas strictly in chronological order.

(e) *Role of the Department of Labor.* (1) The role of the Department of Labor under the Act derives from section 212(a)(14), which provides that certain aliens who seek to immigrate to the United States for the purpose of employment in the United States are not eligible for a visa and shall be excluded unless the Secretary of Labor has first certified to the Secretary of State and to the Attorney General that:

(i) There are not sufficient United States workers, who are able, willing, qualified and available at the time at application for a visa and admission into the United States and at the place where the alien is to perform the work, and

(ii) The employment of the alien will not adversely affect the wages and working conditions of United States workers similarly employed.

(2) This certification is referred to in this Part as a "labor certification".

(3) Aliens required to be a beneficiary of a labor certification by section 212(a)(14) of the Act are:

(i) Aliens who are eligible for a nonpreference status as described in paragraph (d)(2) of this section; and

(ii) Aliens who are eligible for third or sixth preferences described in paragraphs (d)(1)(ii) and (d)(1)(iii) of this section.

(4) The Department of Labor issues labor certifications for both the temporary and permanent employment of aliens in the United States. The regulations under this Part apply only to labor certifications for permanent employment.

Subpart B—Occupational Labor Certification Determinations

§ 656.10 Schedule A.

The Administrator, United States Employment Service, (Administrator) has determined that there are not sufficient United States workers who are able, willing, qualified and available for the occupations listed below on Schedule A and that the wages and working conditions of the United States workers similarly employed will not be adversely affected by the employment of aliens in Schedule A occupations:

SCHEDULE A

(a) Group I:

(1) Persons who have received an advanced degree (equivalent to a Ph.D. or master's degree conferred by a United States college or university) in any of the following specialties from an institution of higher learning accredited in the country where the degree was obtained:

(i) Dietetics;

(2) Persons who have received a degree (equivalent to a bachelor's degree conferred by a United States college or university) in any of the following specialties from an institution of higher learning accredited in the country in which the degree was obtained:

(i) Physical Therapy.

(3) Definitions of Group I occupations:

(i) "Dietetics" means the occupation which involves the application of the principles of nutrition to plan menus and diets and direct the preparation and serving of meals. This occupation includes activities involved with service programs designed to feed individuals and groups with special nutritional requirements in schools, restaurants, and other institutions, and participation in research in the field of nutrition.

(ii) "Physical Therapy" means the occupation which involves the treatment of patients with disabilities, disorders and injuries to relieve pain, develop or restore function, and maintain performance, using physical means, such as exercise, massage, heat, water, light, and electricity, as prescribed by a medical doctor.

(b) Group II:

Aliens (except for aliens in the performing arts) of exceptional ability in the sciences or arts including college and university teachers of exceptional ability who have been practicing their science or art during the year prior to application and who intend to practice the same science or art in the United States. For purposes of this group, the term "science or art" means any field of knowledge and/or skill with respect to which colleges and universities commonly offer specialized courses leading to a degree in the knowledge and/or skill. An alien, however, need not have studied at a college or university in order to qualify for the Group II occupation.

(c) Group III:

(1) Aliens who seek admission to the United States in order to perform a religious occupation, such as the preaching or teaching of religion; and

(2) Aliens with a religious commitment who seek admission into the United States in order to work for a nonprofit religious organization.

(d) Group IV:

(1) Aliens who have been admitted to the United States in order to work, and who are currently working, in managerial or executive positions with the same international corporations or organizations with which they were continuously employed for one year before they were admitted; and

(2) Aliens who will be engaged in the United States in managerial or executive positions with the same international corporations or organizations with which they have been continuously employed for the immediately prior year.

§ 656.11 Schedule B.

(a) The Administrator has determined that there generally are sufficient United States workers who are able, willing, qualified and available for the occupations listed below on Schedule B and that the wages and working conditions of United States workers similarly employed will generally be adversely affected by the employment in the United States of aliens in Schedule B occupations:

SCHEDULE B

(1) Assemblers
(2) Attendants, Parking Lot
(3) Attendants (Service Workers such as Personal Service Attendants, Amusement and Recreation Service Attendants)
(4) Automobile Service Station Attendants
(5) Bartenders
(6) Bookkeepers II
(7) Caretakers
(8) Cashiers
(9) Charworkers and Cleaners
(10) Chauffeurs and Taxicab Drivers
(11) Cleaners, Hotel and Motel
(12) Clerks, General
(13) Clerks, Hotel
(14) Clerks and Checkers, Grocery Stores
(15) Clerk Typists
(16) Cooks, Short Order
(17) Counter and Fountain Workers
(18) Dining Room Attendants
(19) Electric Truck Operators
(20) Elevator Operators
(21) Floorworkers
(22) Groundskeepers
(23) Guards
(24) Helpers, any industry
(25) Hotel Cleaners
(26) Household Domestic Service Workers
(27) Housekeepers
(28) Janitors
(29) Key Punch Operators
(30) Kitchen Workers
(31) Laborers, Common
(32) Laborers, Farm
(33) Laborers, Mine
(34) Loopers and Toppers
(35) Material Handlers
(36) Nurses' Aides and Orderlies
(37) Packers, Markers, Bottlers, and Related
(38) Porters
(39) Receptionists
(40) Sailors and Deck Hands
(41) Sales Clerks, General
(42) Sewing Machine Operators and Handstitchers
(43) Stock Room and Warehouse Workers
(44) Streetcar and Bus Conductors
(45) Telephone Operators
(46) Truck Drivers and Tractor Drivers
(47) Typists, Lesser Skilled
(48) Ushers, Recreation and Amusement
(49) Yard Workers

(b) *Descriptions of Schedule B occupations.* (1) *"Assemblers"* perform one or more repetitive tasks to assemble components and subassemblies using hand or power tools to mass produce a variety of components, products or equipment. They perform such activities as riveting, drilling, filing, bolting, soldering, spot welding, cementing, gluing, cutting and fitting. They may use clamps or other work aids to hold parts during assembly, inspect or test components, or tend previously set-up or automatic machines.

(2) *"Attendants, Parking Lot"* park automobiles for customers in parking lots or garages and may collect fees based on time span of parking.

(3) *"Attendants (Service Workers such as Personal Service Attendants, Amusement and Recreation Service Attendants)"* perform a variety of routine tasks attending to the personal needs of customers at such places as amusement parks, bath houses, clothing checkrooms, and dressing rooms, including such tasks as taking and issuing tickets, checking and issuing clothing and supplies, cleaning premises and equipment, answering inquiries, checking lists, and maintaining simple records.

(4) *"Automobile Service Station Attendants"* service automotive vehicles with fuel, lubricants, and automotive accessories at drive-in service facilities; may also compute charges and collect fees from customers.

(5) *"Bartenders"* prepare, mix, and dispense alcoholic beverages for consumption by bar customers, and compute and collect charges for drinks.

(6) *"Bookkeepers II"* keep records of one facet of an establishment's financial transactions by maintaining one set of books; specialize in such areas as accounts-payable, accounts-receivable, or interest accrued rather than a complete set of records.

(7) *"Caretakers"* perform a combination of duties to keep a private home clean and in good condition such as cleaning and dusting furniture and furnishings, hallways and lavatories; beating, vacuuming, and scrubbing rugs; washing windows, waxing and polishing floors; removing and hanging draperies; cleaning and oiling furnaces and other equipment; repairing mechanical and electrical appliances; and painting.

(8) *"Cashiers"* receive payments made by customers for goods or services, make change, give receipts, operate cash registers, balance cash accounts, prepare bank deposits and perform other related duties.

(9) *"Charworkers and Cleaners"* keep the premises of commercial establishments, office buildings, or apartment houses in clean and orderly condition by performing, according to a set routine, such tasks as mopping and sweeping floors, dusting and polishing furniture and fixtures, and vacuuming rugs.

(10) *"Chauffeurs and Taxicab Drivers"* drive automobiles to convey passengers according to the passengers' instructions.

(11) *"Cleaners, Hotel and Motel"* clean hotel rooms and halls, sweep and mop floors, dust furniture, empty wastebaskets, and make beds.

(12) *"Clerks, General"* perform a variety of routine clerical tasks not requiring knowledge of systems or procedures such as copying and posting data, proofreading records or forms, counting, weighing, or measuring material, routing correspondence, answering telephones, conveying messages, and running errands.

(13) *"Clerks, Hotel"* perform a variety of routine tasks to serve hotel guests such as registering guests, dispensing keys, distributing mail, collecting payments, and adjusting complaints.

(14) *"Clerks and Checkers, Grocery Stores"* itemize, total, and receive payments for purchases in grocery stores, usually using cash registers; often assist customers in locating items, stock shelves, and keep stock-control and sales-transaction records.

(15) *"Clerk Typists"* perform general clerical work which, for the majority of duties, requires the use of typewriters; perform such activities as typing reports, bills, application forms, shipping tickets, and other matters from clerical records, filing records and reports, posting information to records, sorting and distributing mail, answering phones and similar duties.

(16) *"Cooks—Short Order"* prepare and cook to order all kinds of short-preparation-time foods; may perform such activities as carving meats, filling orders from a steamtable, preparing sandwiches, salads and beverages, and serving meals over a counter.

(17) *"Counter and Fountain Workers"* serve food to patrons at lunchroom counters, cafeterias, soda fountains, or similar public eating places; take orders from customers and frequently prepare simple items, such as dessert dishes; itemize and total checks; receive payment and make change; clean work areas and equipment.

(18) *"Dining Room Attendants"* facilitate food service in eating places by performing such tasks as removing dirty dishes, replenishing linen and silver supplies, serving water and butter to patrons, and cleaning and polishing equipment.

(19) *"Electric Truck Operators"* drive gasoline- or electric-powered industrial trucks or tractors equipped with forklift, elevating platform, or trailer hitch to move and stack equipment and materials in a warehouse, storage yard, or factory.

(20) *"Elevator Operators"* operate elevators to transport passengers and freight between building floors.

(21) *"Floorworkers"* perform a variety of routine tasks in support of other workers in and around such work sites as factory floors and service areas, frequently at the beck and call of others; perform such tasks as cleaning floors, materials and equipment, distributing materials and tools to workers, running errands, delivering messages, emptying containers, and removing materials from work areas to storage or shipping areas.

(22) *"Groundskeepers"* maintain grounds of industrial, commercial, or public property in good condition by performing such tasks as cutting lawns, trimming hedges, pruning trees, repairing fences, planting flowers, and shoveling snow.

(23) *"Guards"* guard and patrol premises of industrial or business establishments or similar types of property to prevent theft and other crimes and prevent possible injury to others.

(24) *"Helpers (any industry)"* perform a variety of duties to assist other workers who are usually of a higher level of competency of expertness by furnishing such workers with materials, tools, and supplies, cleaning work areas, machines and equipment, feeding or offbearing machines, and/or holding materials or tools.

(25) *"Hotel Cleaners"* perform routine tasks to keep hotel premises neat and clean such as cleaning rugs, washing walls, ceilings and windows, moving furniture, mopping and waxing floors, and polishing metalwork.

(26) *"Household Domestic Service Workers"* perform a variety of tasks in private households, such as cleaning, dusting, washing, ironing, making beds, maintaining clothes, marketing, cooking, serving food, and caring for children or disabled persons. This definition, however, applies only to workers who have had less than one year of documented full-time paid experience in the tasks to be performed, working on a live-in or live-out basis in private households or in public or private institutions or establishments where the worker has performed tasks equivalent to tasks normally associated with the maintenance of a private household. This definition does not include household workers who primarily provide health or instructional services.

(27) *"Housekeepers"* supervise workers engaged in maintaining interiors of commercial residential buildings in a clean and orderly fashion, assign duties to cleaners (hotel and motel), charworkers, and hotel cleaners, inspect finished work, and maintain supplies of equipment and materials.

(28) *"Janitors"* keep hotels, office buildings, apartment houses, or similar buildings in clean and orderly condition, and tend furnaces and boilers to provide heat and hot water; perform such tasks as sweeping and mopping floors, emptying trash containers, and doing minor painting and plumbing repairs; often maintain their residence at their places of work.

(29) *"Keypunch Operators"*, using machines similar in action to typewriters, punch holes in cards in such a position that each hole can be identified as representing a specific item of information. These punched cards may be used with electronic computers or tabulating machines.

(30) *"Kitchen Workers"* perform routine tasks in the kitchens of restaurants. Their primary responsibility is to maintain work areas and equipment in a clean and orderly fashion by performing such tasks as mopping floors, removing trash, washing pots and pans, transferring supplies and equipment, and washing and peeling vegetables.

(31) *"Laborers, Common"* perform routine tasks, upon instructions and according to set routine, in an industrial, construction or manufacturing environment such as loading and moving equip-

ment and supplies, cleaning work areas, and distributing tools.

(32) *"Laborers, Farm"* plant, cultivate, and harvest farm products, following the instructions of supervisors, often working as members of a team. Their typical tasks are watering and feeding livestock, picking fruit and vegetables, and cleaning storage areas and equipment.

(33) *"Laborers, Mine"* perform routine tasks in underground or surface mines, pits, or quarries, or at tipples, mills, or preparation plants such as cleaning work areas, shoveling coal onto conveyors, pushing mine cars from working faces to haulage roads, and loading or sorting material onto wheelbarrows.

(34) *"Loopers and Toppers"* (i) tend machines that shear nap, loose threads, and knots from cloth surfaces to give uniform finish and texture. (ii) operate looping machines to close openings in the toes of seamless hose or join knitted garment parts. (iii) loop stitches or ribbed garment parts on the points of transfer bars to facilitate the transfer of garment parts to the needles of knitting machines.

(35) *"Material Handlers"* load, unload, and convey materials within or near plants, yards, or worksites under specific instructions.

(36) *"Nurses' Aides and Orderlies"* assist in the care of hospital patients by performing such activities as bathing, dressing and undressing patients and giving alcohol rubs, serving and collecting food trays, cleaning and shaving hair from the skin areas of operative cases, lifting patients onto and from beds, transporting patients to treatment units, changing bed linens, running errands, and directing visitors.

(37) *"Packers, Markers, Bottlers, and Related"* pack products into containers, such as cartons or crates, mark identifying information on articles, insure that filled bottles are properly sealed and marked, often working in teams on or at end of assembly lines.

(38) *"Porters"* (i) carry baggage by hand or handtruck for airline, railroad or bus passengers, and perform related personal services in and around public transportation environments. (ii) Keep building premises, working areas in production departments of industrial organizations, or similar sites in clean and orderly condition.

(39) *"Receptionists"* receive clients or customers coming into establishments, ascertain their wants, and direct them accordingly; perform such activities as arranging appointments, directing callers to their destinations, recording names, times, nature of business and persons seen and answering phones.

(40) *"Sailors and Deck Hands"* stand deck watches and perform a variety of tasks to preserve painted surfaces of ships and to maintain lines, running gear, and cargo handling gear in safe operating condition; perform such tasks as mopping decks, chipping rust, painting chipped areas, and splicing rope.

(41) *"Sales Clerks, General"* receive payment for merchandise in retail establishments, wrap or bag merchandise, and keep shelves stocked.

(42) *"Sewing Machine Operators and Hand-Stitchers"* (i) operate single- or multiple-needle sewing machines to join parts in the manufacture of such products as awnings, carpets, and gloves; specialize in one type of sewing machine limited to joining operations; (ii) join and reinforce parts of articles such as garments and curtains, sew button-holes and attach fasteners to such articles, or sew decorative trimmings on such articles, using needles and threads.

(43) *"Stock Room and Warehouse Workers"* receive, store, ship, and distribute materials, tools, equipment, and products within establishments as directed by others.

(44) *"Streetcar and Bus Conductors"* collect fares or tickets from passengers, issue transfers, open and close doors, announce stops, answer questions, and signal operators to start or stop.

(45) *"Telephone Operators"* operate telephone switchboards to relay incoming and internal calls to phones in an establishment, and make connections with external lines for outgoing calls; often take messages, supply information and keep records of calls and charges; often are involved primarily in establishing, or aiding telephone users in establishing, local or long distance telephone connections.

(46) *"Truck Drivers and Tractor Drivers"* (i) drive trucks to transport materials, merchandise, equipment or people to and from specified destinations, such as plants, railroad stations, and offices. (ii) Drive tractors to move materials, draw implements, pull out objects imbedded in the ground, or pull cables of winches to raise, lower, or load heavy materials or equipment.

(47) *"Typists, Lesser Skilled"* type straight-copy material, such as letters, reports, stencils, and addresses, from drafts or corrected copies. They are not required to prepare materials involving the understanding of complicated technical terminology, the arrangement and setting of complex tabular detail or similar items. Their typing speed in English does not exceed 52 words per minute on a manual typewriter and/or 60 words per minute on an electric typewriter and their error rate is 12 or more errors per 5 minute typing period on representative business correspondence.

(48) *"Ushers (Recreation and Amusement)"* assist patrons at entertainment events to find seats, search for lost articles, and locate facilities.

(49) *"Yard Workers"* maintain the grounds of private residences in good order by performing such tasks as mowing and watering lawns, planting flowers and shrubs, and repairing and painting fences. They work on the instructions of private employers.

(c) *Requests for waivers from Schedule B.* Any employer who desires a labor certification involving a *Schedule B* occupation may request such a waiver by submitting a written request to the appropriate regional Certifying Officer pursuant to § 656.23 of this Part. (For the addresses of regional Certifying Officers see Subpart F of this Part.)

(d) The Administrator may revise *Schedule B* from time to time on the Administrator's own initiative, upon the request of a Regional Administrator, Employment and Training Administration, or upon the written request of any other person which sets forth reasonable grounds therefor. Such requests should be mailed to the Administrator, United States Employment Service, Room 8000, Patrick Henry Building, 601 D Street, NW., Washington, D.C. 20213.

Subpart C—Labor Certification Process

§ 656.20 Introduction.

(a) A request for a labor certification on behalf of any alien who is required by the Act to become a beneficiary of a labor certification in order to obtain permanent employment within the United States may be filed as follows:

(1) An application for a labor certification, except for an application involving an occupation listed on *Schedule A*, must be filed pursuant to § 656.21 of this Part.

(2) An alien seeking labor certification for an occupation listed on *Schedule A* may apply for a labor certification pursuant to § 656.22 of this Part.

(3) An employer seeking a labor certification for an occupation listed on *Schedule B* may apply for a labor certification pursuant to § 656.23 of this Part.

(b) (1) Aliens and employers may have agents apply for labor certifications on their behalf.

(2) The alien and/or the employer shall sign a statement that the agent is representing the alien and/or employer and that the alien and/or employer takes full responsibility for the accuracy of any representations made by the agent.

(c) Aliens and employers may have attorneys represent them. Each attorney shall file a notice of appearance, naming the attorney's client. Whenever, under this Part, any notice or other document is required to be sent to an employer or alien, the document shall be sent to their attorneys or attorney if they have an attorney or attorneys.

(d) The forms required under this Part for applications for labor certification are available at U.S. Consular offices abroad, at INS offices in the United States, and at local offices of the State employment service agencies. The forms will contain instructions on how to comply with the documentation requirements for applying for a labor certification under this Part.

§ 656.21 Basic labor certification application process.

(a) Except as otherwise provided at § 656.22 of this Part (labor certifications for *Schedule A* occupations), an employer who desires to apply for a labor certification on behalf of an alien shall file, in duplicate, a Department of Labor *Application for Alien Employment Certification* form and any attachments required by this Part with the local employment service office serving the area where the alien proposes to be employed. The employer shall set forth on the *Application for Alien Employment Certification* form, as appropriate, or in attachments:

(1) A statement of the qualifications of the alien, signed by the alien;

(2) A description of the job offer for the alien employment, including the items required by paragraph (b) of this section;

(3) If the application involves a job offer as a college or university teacher or an alien represented to be of exceptional ability in the performing arts, documentation that the employer selected the alien pursuant to a competitive recruitment and selection process through which the alien was found to be more qualified than any of the U.S. workers who applied for the job;

(4) If the application is for an alien represented to have exceptional ability in the performing arts, documentation to show this exceptional ability such as:

(i) Documents testifying to the current widespread acclaim and international recognition accorded to the alien, receipt of internationally recognized prizes or awards for excellence;

(ii) Documents showing the alien's work experience during the past year did, and the alien's intended work in the United States will, require exceptional ability;

(iii) Published material by or about the alien such as critical reviews in major newspapers, periodicals and trade journals. The title, date and author of such material shall be indicated;

(iv) Documentary evidence of earnings commensurate with the claimed level of ability;

(v) Playbills and star billings;

(vi) Documents attesting to the outstanding reputation of theaters, concert halls, night clubs and other establishments in which the alien has appeared or is scheduled to appear; and/or

(vii) Documents attesting to the outstanding reputation of repertory companies, ballet groups, orchestras or other organizations with which the alien has performed during the past year in a leading or starring capacity;

(5) If the application involves a job offer as a live-in household domestic service worker:

(i) A statement describing the household living accommodations;

(ii) Two copies of the employment contract, each signed and dated by both the employer and the alien (not by their agents). The contract shall clearly state:

(A) The wages to be paid on an hourly and weekly basis;

(B) Total hours of employment per week, and exact hours of daily employment;

(C) That the alien is free to leave the employer's premises during all non-work hours except that the alien may work overtime if paid for the overtime at no less than the legally required hourly rate;

(D) That the alien will reside on the employer's premises;

(E) Complete details of the duties to be performed by the alien;

(F) The total amount of any money to be advanced by the employer with details of specific items, and the terms of repayment by the alien of any such advance by the employer;

(G) That in no event shall the alien be required to give more than two weeks' notice of intent to leave the employment contracted for and that the employer must give the alien at least two weeks' notice before terminating employment;

(H) That a duplicate contract has been furnished to the alien;

(I) That room and board will be provided at no cost to the worker; and

(J) Any other agreement or conditions not specified on the *Application for Alien Employment Certification* form; and

(iii) (A) Documentation of the alien's paid experience in the form of statements from past or present employers setting forth the dates (month and year) employment started and ended, hours of work per day, number of days worked per week, place where the alien worked, detailed statement of duties performed on the job, equipment and appliances used, and the amount of wages paid per week or month. The total paid experience must be equal to one full year's employment on a full-time basis. For example, two year's experience working half-days is the equivalent of one year's full time experience. Time spent in a household domestic service training course cannot be included in the required one year of paid experience.

(B) Each statement must contain the name and address of the person who signed it and show the date on which the statement was signed. A statement not in the English language shall be accompanied by a translation certified by the translator as to the accuracy of the translation, and as to the translator's competency to translate.

(b) Except for labor certification applications involving *Schedule A* occupations, the employer shall submit, as part of every labor certification application, on the *Application for Alien Employment Certification* form, as appropriate, or in attachments, documentation which shows clearly that:

(1) The employer has been recruiting at the prevailing wage, as described at § 656.40 of this Part, and at prevailing working conditions, and has reason to think it will continue to be unsuccessful in its recruiting of U.S. workers through the public employment system and/or through other labor referral and recruitment sources normal to the occupation;

(2) The employer has enough funds available to pay the wage or salary offered the alien;

(3) The wage offered equals or exceeds the prevailing wage as determined pursuant to § 656.40 of this Part, and that the employer guarantees that, if a labor certification is granted, the wage the employer will pay to the alien when the alien begins work will equal or exceed the prevailing wage which is applicable at the time the alien begins work;

(4) The wage offered is not based on commissions, bonuses or other incentives, unless the employer guarantees a wage paid on a weekly, bi-weekly or monthly basis;

(5) The employer will be able to place the alien on the payroll on or before the date of the alien's proposed entrance into the United States;

(6) The job opportunity does not involve unlawful discrimination by race, creed, color, national origin, age, sex, religion, handicap, or citizenship;

(7) The job opportunity has been and is clearly open to any qualified U.S. worker;

(8) The job opportunity has been and is being described without unduly restrictive job requirements:

(i) The job opportunity's requirements, unless adequately documented as arising from business necessity, shall be those normally required for the job in the United States, be those defined for the job in the Dictionary of Occupational Titles (DOT) including those for subclasses of jobs, and not include requirements for a language other than English.

(ii) If the job opportunity involves a combination of duties, for example engineer-pilot, the employer must document that it has normally employed persons for that combination of duties and/or workers customarily perform the combination of duties in the area of intended employment, and/or the combination job opportunity is based on a business necessity.

(9) (i) The employer has advertised and is still advertising the job opportunity without success in such media as newspapers of general circulation, and ethnic and professional publications;

(ii) The employer's advertising offers prevailing working conditions and requirements and the prevailing wage for the occupation calculated pursuant to § 656.40 of this Part, states the rate of pay, offers training if the job opportunity is the type for which the employer customarily provides training, and offers wages, terms and conditions of employment which are no less favorable than those offered to the alien;

(iii) The employer's advertising describes the job opportunity with particularity; the documentation shall include a copy of at least one advertisement placed by the employer;

(iv) The employer's advertising has produced no satisfactory results;

(10) The employer has posted within its organization notices of the job opportunity which contain the information required by paragraph (b)(9)(ii) of this section;

(11) The employer's job opportunity is not:

(i) Vacant because the former occupant is on strike or is being locked out in the course of a labor dispute, or

(ii) At issue in a labor dispute;

(12) The employer's other efforts to locate and employ U.S. workers for the job opportunity such as recruitment efforts by means of private employment agencies, labor unions, advertisements placed with radio or TV stations, recruitment at trade schools, colleges, and universities or attempts to fill the job opportunity by development or promotion from among its present employees, has been and continues to be unsuccessful;

(13) If unions are customarily used as a recruitment source in the area or industry, they were unable to refer U.S. workers;

(14) The employer's requirements for the job opportunity, as described, represent the employer's actual minimum requirements for the job opportunity, and the employer has not hired workers with less training or experience for jobs similar to that involved in the job opportunity or that it is not feasible to hire workers with less training or experience than that required by the employer's job offer;

(15) If U.S. workers have applied for the job opportunity, they were rejected solely for lawful job-related reasons; and

(16) The employer's job opportunity's terms, conditions and occupational environment are not contrary to Federal, State or local law.

(c) The local employment service office shall determine if the application is for a labor certification involving Schedule A. If the application is for a Schedule A labor certification, the local employment service office shall advise the employer that the forms must be filed with an INS or Consular Office pursuant to § 656.22 of this Part, and shall explain that the Administrator has determined that U.S. workers in the occupation are unavailable throughout the United States (unless a geographic limitation is applicable) and that the employment of the alien in the occupation will not adversely affect U.S. workers similarly employed.

(d) The local office shall date stamp the application (see § 656.30 for the significance of this date), and shall make sure that the Application for Alien Employment Certification form is complete. If it is not complete the local office shall return it to the employer and shall advise the employer to re-file it when it is completed.

(e) If the Application for Alien Employment Certification form is complete, the local office, using the information on the form, shall prepare and process an employment service job order. If this job order is discriminatory or otherwise unacceptable as a job order under employment service regulations, the local office shall, as appropriate either contact the employer to try to remedy the defect or return the Application for Alien Employment Certification form to the employer with instructions on how the defect can be remedied.

(f) The local office shall calculate, to the extent of its expertise using wage information available to it, the prevailing wage for the job opportunity pursuant to § 656.40 of this Part and shall put its finding in writing. If the local office finds that the rate of wages offered is below the prevailing wage, it shall advise the employer to increase the amount offered. If the employer refuses to do so, the local office shall advise the employer that the application will have to be refiled at the local office if the labor certification is denied by the Certifying Officer because the rate of wages does not meet the prevailing wage.

(g) (1) The local office, in cooperation with the employer, shall then attempt to recruit United States workers for a period of 30 calendar days by placing the job order into the regular ES recruitment system, except that, if the employer has a previous job order for the same job on file with the same local office, the 30 days shall be reduced by the number of days which have elasped since the first job order was filed. As part of these efforts, the employer shall advertise the job in a newspaper of general circulation. This advertisement shall conform to the requirements at § 656.21(b)(9) of this Part, and shall direct applicants to report to the local office for referral to the employer.

(2) The regional Certifying Officer, at the request of a local office manager, may reduce the 30-day recruitment period for good cause shown.

(h) If, after the required recruitment period, the recruitment is not successful, the local office shall send the application, its prevailing wage finding and any appropriate additional information such as local labor market data, to the State office or, if authorized, to the regional Certifying Officer.

(i) A State office, which receives an application, may add appropriate data or comments and shall promptly transmit the application to the appropriate regional Certifying Officer.

§ 656.22 Applications for labor certifications for Schedule A occupations.

(a) An alien or agent of an alien shall apply for a labor certification for a Schedule A occupation by filing an Application for Alien Employment Certification form in duplicate with a U.S. Consular office abroad or with an INS office in the United States, not with the Department of Labor or a State employment service local office.

(b) An alien whose occupation is on Schedule A and who is seeking a third or sixth preference, as described in § 656.2 (d)(1)(ii) and (iii) of this Part, shall show evidence of prearranged employment by having an employer complete, and sign, the job offer description portion of the Application for Alien Employment Certification form. There is, however, no need for the employer to provide the other documentation required under this Part for non-Schedule A occupations.

(c) Aliens seeking labor certifications under Group I of Schedule A shall file as part of their labor certification applications documentary evidence of their degrees and of the equivalence of their degrees to United States granted Ph.D.s, master's or bachelor's degrees, as appropriate.

(d) Aliens who are applying for labor certifications under Group II of Schedule A shall file as part of their labor certification applications documentary evidence testifying to the current widespread acclaim and international recognition accorded them, receipt of internationally recognized prizes or awards for excellence, and documents testifying that they are members of international associations requiring outstanding achievements of their members as judged by recognized international experts in their disciplines or fields. They shall also submit additional documentation supporting their claim to have exceptional ability such as:

(1) Affidavits or published material testifying to their technical training or specialized experience;

(2) Published material by or about the alien. Such material shall identify the title, date and author of each publication or article;

(3) Documentary evidence of earnings commensurate with their claimed level of ability; and/or

(4) Documentation showing that their work experience during the past year did, and their intended work in the United States will, require exceptional ability.

(e) Aliens seeking a labor certification under Group III of Schedule A shall file as part of their labor certification applications documentary evidence showing that they have been primarily engaged in the regilious occupation or in working for the non-profit religious organization for the previous two years, and they will be principally engaged (more than 50 percent of working time) in the United States in performing the religious occupation or working for the non-profit religious organization.

(f) If the alien is requesting a preference described at § 656.2(d) of this Part, and if the alien has filed an Application for Alien Employment Certification form at a Consular office, the Consular Officer shall review the form as appropriate and shall then forward the application to the INS in accordance with the procedures of the Department of State and the INS.

(g) An Immigration Officer, or Consular Officer (except as provided in paragraph (f) of this section), shall determine whether the alien has met the applicable requirements of this section and of Schedule A (§ 656.10.) of this Part, shall review the application and shall determine whether or not the alien is qualified for and intends to pursue the Schedule A occupation.

(1) The Immigration or Consular Officer may request an advisory opinion as to whether the alien is qualified for the Schedule A occupation from the Division of Labor Certifications, United States Employment Service, Washington, D.C. 20213.

(2) The Schedule A determination of the INS or Department of State shall be conclusive and final. The alien, therefore, may not make use of the review procedures set forth at § 656.26 of this Part.

(h) If the alien qualifies for the occupation, the Immigration or Consular Officer shall indicate the occupation on the Application for Alien Employment Certification form. The Consular or Immigration Officer shall then promptly forward a copy of the Application for Alien Employment Certification form, without attachments, to the Administrator, indicating thereon the occupation, the Immigration or Consular office which made the Schedule A determination and the date of the determination (see § 656.30 for the significance of this date).

§ 656.23 Applications for labor certifications for Schedule B occupations: requests for waivers from Schedule B.

(a) Occupations listed on Schedule B require little or no education or experience, and employees can be trained quickly to perform them satisfactorily. In addition, many of these occupations are entry jobs in their industries which offer opportunities for high school graduates and other U.S. workers who otherwise would have difficulty finding their first employment and gaining work experience. The Administrator has determined that there is generally a nationwide surplus of U.S. workers who are available for and who can qualify for Schedule B job opportunities which offer prevailing wages and working conditions.

(b) Some of the occupations on Schedule B are also often characterized by relatively low wages, long and irregular working hours, and poor working conditions which lead to excessive turnover. In most instances, the Administrator has determined through past experience that the employment of aliens has failed to resolve such employment problems since the aliens, like U.S. workers, often quickly move to other jobs. This results in an adverse effect upon the wages and working conditions of U.S. workers who are employed in occupations which require similar education and experience.

(c) Therefore, the Administrator has determined that for occupations listed on Schedule B, U.S. workers are generally available throughout the United States, and that the employment of aliens in Schedule B occupations will generally adversely affect the wages and working conditions of U.S. workers similarly employed.

(d) An individual employer or the employer's agent may petition the regional Certifying Officer for the geographic area in which the job opportunity is located for a Schedule B waiver on behalf of an alien with respect to a specific job opportunity. (For the addresses of regional Certifying Officers see Subpart F of this Part.) The petition shall include:

(1) The documentation required by § 656.21 of this Part;

(2) Documentary verification, which the employer has obtained from the local employment service office which contains the job opportunity in its administrative area, that the employer has had a job order for the same job on file with the same local office for a period of 30 calendar days and that the local office and the employer, using the job order, were not able to obtain a qualified U.S. worker.

(e) The regional Certifying Officer, using the procedures and standards set forth at § 656.24 of this Part, shall either grant or deny the waiver and shall inform the employer of the determination in writing.

(f) If the waiver is granted, the regional Certifying Officer shall issue a labor certification.

(g) If the waiver is denied, the regional Certifying Officer shall deny the labor certification and shall follow the procedures at § 656.25(f)(2) of this Part.

§ 656.24 Labor certification determinations.

(a) If the labor certification presents a special or unique problem, the regional Certifying Officer may refer the application to the national Certifying Officer for determination. If the Administrator has directed that certain types of applications or specific applications be handled in the USES national office, the regional Certifying Officer shall refer such applications to the National Certifying Officer.

(b) The regional or national Certifying Officer, as appropriate, shall make a determination either to grant the labor certification or to issue a Notice of Findings on the basis of whether or not:

(1) The employer has met the requirements of § 656.21 of this Part;

(2) There is in the United States a worker who is able, willing, qualified and available for and at the place of the job opportunity according to the following standards:

(i) The Certifying Officer, in judging whether a U.S. worker is willing to take the job opportunity, shall look at the documented results of the employer's and the employment service office's recruitment efforts, and shall determine if there are other appropriate sources of workers where the employer should have recruited or might be able to recruit U.S. workers.

(ii) The Certifying Officer shall consider a U.S. worker able and qualified for the job opportunity if the worker, by education, training, experience, or a combination thereof, is able to perform in the normally accepted manner the duties involved in the occupation as customarily performed by other U.S. workers similarly employed, except that, if the application involves a job opportunity as a college or university teacher, or for an alien whom the Certifying Officer determines to be currently of exceptional ability in the performing arts, the U.S. worker must be at least as qualified as the alien;

(iii) In determining whether U.S. workers are available, the Certifying Officer shall consider as many sources as is appropriate and shall look to the public employment service system as one source.

(iv) In determining whether a U.S. worker is available at the place of the job opportunity, the Certifying Officer shall consider U.S. workers living or working in the area of intended employment, and may also consider U.S. workers who are willing to move from elsewhere to take the job at their own expense, or, if the prevailing practice among employers employing workers in the occupation in the area of intended employment is to pay such relocation expenses, at the employer's expense.

(3) The employment of the alien will have an adverse effect upon the wages and working conditions of U.S. workers similarly employed. In making this determination the Certifying Officer shall consider such things as labor market information, the special circumstances of the industry, organization, and/or occupation, the prevailing wage in the area of intended employment, and the prevailing working conditions, such as hours, in the occupation.

§ 656.25 Procedures following a labor certification determination.

(a) After making a labor certification determination, the Certifying Officer shall notify the employer in writing of the determination and shall send a copy of the notice to the alien.

(b) If a labor certification is granted, the Certifying Officer shall follow the document transmittal procedures set forth at § 656.28 of this Part.

(c) If a labor certification is not granted, the Certifying Officer shall issue to the employer, with a copy to the alien, a *Notice of Findings*, as defined in § 656.50 of this Part. The *Notice of Findings* shall:

(1) Contain the date on which the *Notice of Findings* was issued;

(2) State the specific bases on which the decision to issue the *Notice of Findings* was made;

(3) Specify a date, 35 calendar days from the date of the *Notice of Findings*, by which documentary evidence may be submitted to rebut the bases of the determination, and advise that, if the rebuttal evidence has not been mailed by certified mail by the date specified, the *Notice of Findings* shall automatically become the final decision of the Secretary, denying the labor certification; and

(4) Cite the rebuttal procedures set forth at paragraphs (d), (e) and (f) of this section.

(d) Rebuttal evidence may be submitted:

(1) By the employer; and

(2) By the alien, but only if the employer has also submitted rebuttal evidence.

(e) Documentary evidence to rebut the basis of a *Notice of Findings* shall be mailed by certified mail on or before the date specified in the *Notice of Findings* to the Certifying Officer who issued the *Notice of Findings*.

(f) If evidence rebutting the bases of the *Notice of Findings* is submitted on time, the Certifying Officer shall review that evidence in relation to the evidence in the file, and shall then either grant or deny the labor certification pursuant to the standards set forth in § 656.24(b) of this Part.

(g) The Certifying Officer shall send a *Determination and Transmittal* form

to the employer, and shall send a copy to the alien.

(1) If a labor certification is granted, the Certifying Officer shall follow the document transmittal procedures set forth at § 656.28 of this Part.

(2) If the labor certification is denied, the *Determination and Transmittal* form shall:

(i) Contain the date of the determination;

(ii) State the reasons for the determination;

(iii) Quote the request for review procedures at § 656.26 (a) and (b) of this Part; and

(iv) Advise that, if a request for review is not made within the specified time, the denial shall become the final determination of the Secretary.

§ 656.26 Administrative-judicial review of denials of labor certification.

(a) If a labor certification is denied, a request for an administrative-judicial review of the denial may be made:

(1) By the employer; and

(2) By the alien, but only if the employer also requests such a review.

(b) The request for review shall be in writing and shall be sent by certified mail to the Certifying Officer who denied the application within 35 calendar days of the date of the determination, that is, by the date specified on the *Determination and Transmittal* form, shall clearly identify the particular labor certification determination from which review is sought, shall set forth the particular grounds for the request, and include all the documents which accompanied the *Determination and Transmittal* form. If the labor certification denial involved an application as a college or university teacher or an application on behalf of an alien represented to be of exceptional ability in the performing arts, the employer may designate the names and addresses of persons or organizations of specialized competence which the employer has asked to submit amicus briefs.

(c) Upon the receipt of a request for review, the Certifying Officer shall immediately assemble an Appeal File, which shall be in chronological order and indexed, and which shall contain the request for review, the complete application file, and copies of all other written material such as pertinent parts and pages of surveys, reports, etc. upon which the denial was based. The Certifying Officer shall send the Appeal File to the Chief Administrative Law Judge of the Department of Labor, Vanguard Building, 1111 20th Street, N.W., Washington, D.C. 20036. If the certification was denied by the national Certifying Officer, the national Certifying Officer shall also send a copy of the Appeal File to the Solicitor of Labor, Attn: Associate Solicitor for Employment and Training Legal Services, Room N2101, 200 Constitution Avenue, NW., Washington, D.C. 20210. If the certification was denied by a regional Certifying Officer, the regional Certifying Officer shall send a copy of the Appeal File to the Administrator, and a copy to the Solicitor of Labor, Attn: Associate Solicitor for Employment and Training Legal Services. In the cases of denials involving the college and university teachers and aliens represented to be of exceptional ability in the performing arts, two additional copies of the Appeal File shall be sent to the Chief Administrative Law Judge.

(d) A hearing officer, designated by the Chief Administrative Law Judge, shall afford all parties, including the Solicitor, 30 days to submit or decline to submit any appropriate legal brief. In the cases of denials involving college and university teachers and aliens represented to be of exceptional ability in the performing arts, if the employer has designated a person or organization which the employer has asked to submit an amicus brief, the hearing officer shall also afford the person or organization 30 days to submit an amicus brief.

(e) The hearing officer shall review the denial of labor certification on the basis of the record upon which the denial of labor certification was made, the request for review and any legal briefs submitted and shall:

(1) Affirm the denial of the labor certification; or

(2) Direct the Certifying Officer to grant the certification; or

(3) Remand the matter to the Certifying Officer for further consideration or factfinding and determination; or

(4) Direct that a hearing be held on the case.

(f) The hearing officer shall notify the employer, the alien, the Certifying Officer, and the Solicitor of the determination, and shall return the record to the Certifying Officer unless the case has been set for hearing.

(g) If the case is remanded, the Certifying Officer shall do the additional factfinding or consideration, make a new determination, and issue a new *Determination and Transmittal* form.

(h) If the case has been set for hearing, the hearing officer shall notify the employer, the alien, the Certifying Officer and the Solicitor:

(1) Of the date, time, and place of the hearing; and

(2) That the hearing may be rescheduled upon written request and for good cause shown.

(i) If a labor certification has been ordered granted, the Certifying Officer shall grant the certification and shall follow the document transmittal procedures set forth at § 656.28 of this Part.

§ 656.27 Hearings.

(a) If a hearing has been ordered by the hearing officer pursuant to § 656.26 (e)(4) of this subpart, the hearing officer:

(1) May reschedule the hearing, as appropriate;

(2) Shall regulate the course of the hearing;

(3) Shall assure that all relevant issues are considered;

(4) Shall rule on the introduction of evidence and testimony;

(5) Shall rule on appropriate motions; and

(6) Shall take any other action, consistent with due process, necessary to insure an orderly hearing.

(b) The testimony at the hearing shall be recorded and transcribed except to the extent the substance thereof is stipulated for the record.

(c) The Department of Labor shall be represented by the Solicitor of Labor.

(d) The parties shall be afforded the opportunity to present, examine, and cross-examine witnesses.

(e) The hearing officer may elicit testimony from witnesses, but shall not act as advocate for any party.

(f) The hearing officer may receive and make part of the record documentary evidence offered by any party. Copies thereof shall be made available to the other interested parties by the party submitting the evidence.

(g) The case record, or any portion thereof, shall be available for inspection and copying by any party at, prior to, or subsequent to the hearing upon request. Special procedures may be used for disclosure of medical and psychological records such as disclosure to a physician designated by the individual.

(h) The hearing shall be conducted in accordance with sections 5–8 of the Administrative Procedures Act, 5 U.S.C. 553 *et seq.*

(i) Technical rules of evidence shall not apply, but rules or principles designed to assure production of the most credible evidence available, and to subject testimony to test by cross-examination, shall be applied where reasonably necessary by the hearing officer conducting the hearing. The hearing officer may exclude irrelevant, immaterial, or unduly repetitious evidence.

(j) The general provisions governing discovery as provided in the Rules of Civil Procedure for the United States District Court, Title V, 28 U.S.C., Rules 26 through 37, may be made applicable in any hearing conducted under this part to the extent that the hearing officer concludes that their use would promote the efficient advancement of the hearing.

(k) When a public officer is a respondent in a hearing in the officer's official capacity and during its pendency dies, resigns, or otherwise ceases to hold office, the proceeding does not abate and the officer's successor shall be automatically substituted as a party. Proceedings following the substitution shall be in the name of the substituted party, but any misnomer not affecting the substantive rights of the parties shall be disregarded. An order of substitution may be entered at any time, but the omission to enter such an order shall not affect the substitution.

(l) The hearing officer shall have jurisdiction to decide all issues of fact and related issues of law, but shall not have jurisdiction to decide upon the validity of Federal statutes or regulations.

(m) The hearing officer may rule:

(1) that the case is improperly before it, that is, that there is a lack of jurisdiction over the case;

(2) that the request for review has been withdrawn in writing;

(3) that reasonable cause exists to believe that the request for review has been abandoned or that repeated requests for re-scheduling are arbitrary and for the purpose of unduly delaying or avoiding a hearing; or

(4) render such other rulings as are appropriate to the issues in question.

(n) The hearing officer shall prepare a written decision and order. The decision shall state its legal and/or factual bases. The hearing officer shall send a copy of the decision and order to the applicant, the Certifying Officer, the Administrator, and the Solicitor. The hearing officer may order the labor certification granted, affirm the denial of the certification, or remand the case to the Certifying Officer for further fact-finding.

(o) Except when a case is remanded to the Certifying Officer for further factfinding, the decision of the hearing officer shall be the final decision of the Secretary of Labor.

§ 656.28 Document transmittal following the granting of a labor certification.

If a labor certification is granted, except for labor certifications granted for occupations listed on *Schedule A*, the Certifying Officer shall:

(a) If the employer has already indicated in writing that it will file a petition for a preference described at § 656.2(d)(1) of this Part, send the certified application containing the official labor certification stamp, supporting documents, and complete *Determination and Transmittal* form to the employer or, if appropriate, to the employer's agent. The *Determination and Transmittal* form shall indicate that the employer should submit all the documents to the appropriate INS office.

(b) If the employer has not indicated in writing whether or not it will, or that it will not, file a petition for a preference described at § 656.2(d)(1) of this Part,

(1) If the alien is abroad and preference or non-preference numbers are currently available, send the certified application containing the official labor certification stamp, supporting documents, and complete *Determination and Transmittal* form to the appropriate Consular office;

(2) If the alien is in the U.S. and preference or non-preference numbers are currently available, send the certified application containing the official labor certification stamp, supporting documentation, and complete *Determination and Transmittal* form to the employer, or, if appropriate, to the employer's agent. The *Determination and Transmittal* form shall indicate that the employer should submit all the documents to the appropriate INS office; and

(3) Whether the alien is abroad or in the U.S., if preference or non-preference numbers are not currently available, send the certified application containing the official labor certification stamp, supporting documentation, and complete *Determination and Transmittal* form to the employer, or, if appropriate, to the employer's agent, indicating that the employer should file all the documents with the appropriate INS office;

§ 656.29 Filing of a new application after the denial of a labor certification.

(a) A new application for labor certification by the same employer involving the same occupation may be filed at any time after the expiration of 6 months from the date of a denial of certification, except that, if the certification was denied solely because the wage or salary offered was below the prevailing wage, the employer may reapply immediately pursuant to § 656.21 of this Part.

(b) An alien who is denied a labor certification for a Schedule A occupation may at any time have an employer file for a labor certification on the alien's behalf pursuant to § 656.21 of this Part.

§ 656.30 Validity of and invalidation of labor certifications.

(a) Except as provided in paragraph (d) of this section, a labor certification is valid indefinitely. Labor certifications for Household Domestic Service Workers and teachers which were granted under the previous regulations at 29 CFR Part 60 and which lapsed after one year, shall be deemed automatically revalidated on the effective date of this Part.

(b)(1) labor certifications involving job offers shall be deemed validated as of the date the local employment service office date stamped the application; and

(2) labor certifications for Schedule A occupations shall be deemed validated as of the date the applications were dated by the Immigration or Consular Officer.

(c)(1) A labor certification for a Schedule A occupation is valid only for the occupation set forth on the Application for Alien Employment Certification form and throughout the United States unless the certification contains a geographic limitation.

(2) A labor certification involving a specific job offer is valid only for the particular job opportunity and for the area of intended employment stated on the Application for Alien Employment Certification form.

(d) After issuance labor certifications are subject to invalidation by the INS or by a Consul of the Department of State upon a determination, made in accordance with those agencies' procedures or by a Court, of fraud or willful misrepresentation of a material fact involving the labor certification application. If evidence of such fraud or willful misrepresentation becomes known to a Regional Administrator, Employment and Training Administration or to the Administrator, the Regional Administrator or Administrator, as appropriate, shall notify in writing the INS or State Department, as appropriate.

(e) Certifying Officers shall issue duplicate labor certifications only upon the written request of a Consular or Immigration Officer. Certifying Officers shall issue such duplicate certifications only to the Consular or Immigration Officer who submitted the written request. An alien, employer, or an employer or alien's agent, therefore, may petition an Immigration or Consular Officer to request a duplicate from a Certifying Officer.

§ 656.31 Labor certification applications involving fraud or willful misrepresentation.

(a) If possible fraud or willful misrepresentation involving a labor certification is discovered prior to a final labor certification determination, the Certifying Officer shall refer the matter to the INS for investigation, shall notify the employer of this referral in writing, and shall send a copy of the notification to the alien. If 90 days pass without the filing of a criminal indictment or information, the Certifying Officer shall continue to process the application.

(b) If it is learned that an application is the subject of a criminal indictment or information filed in a Court, the processing of the application shall be halted until the judicial process is completed. The Certifying Officer shall notify the employer of this fact in writing and shall send a copy of the notification to the alien.

(c) If a Court finds that there was no fraud or willful misrepresentation, or if the Department of Justice decides not to prosecute, the Certifying Officer shall not deny the labor certification application on the grounds of fraud or willful misrepresentation. The application, of course, may be denied for other reasons pursuant to this Part.

(d) If a Court, the INS or the Department of State determines that there was fraud or willful misrepresentation involving a labor certification application, the application shall be deemed invalidated, processing shall be terminated, a notice of the termination and the reason therefor shall be sent by the Certifying Officer to the employer, and a copy of the notification shall be sent by the Certifying Officer to the alien.

§ 656.32 Fees for services and documents.

(a) No Department of Labor or State employment service agency employee shall charge a fee in connection with the filing, determination, reconsideration, or review of applications for labor certification. Such employees, on request, shall advise applicants on the completion of applications and on procedures set forth in this Part without charge. No charge shall be made for the issuance or transmission of a labor certification.

(b) The Department of Labor's regulations under the Freedom of Information Act at 29 CFR Part 70 on the Examination and Copying of Labor Department Documents provide that fees may be charged for special searching and copying services. These fees shall be applicable to requests to the Department for copies of documents in the custody of the Department which were produced pursuant to this Part, except for official copies of labor certification documents.

Subpart D—Determination of Prevailing Wage

§ 656.40 Determination of prevailing wage for labor certification purposes.

(a) Whether the wage or salary stated in a labor certification application involving a job offer equals the prevailing wage as required by § 656.21(b)(3) of this Part, shall be determined as follows:

(1) If the job opportunity is in an occupation which is subject to a wage determination in the area under the Davis-Bacon Act, 40 U.S.C. 276a et seq., 29 CFR Part 1, or the McNamara-O'Hara Service Contract Act, 41 U.S.C. 351 et seq., 29 CFR Part 4, the prevailing wage shall be at the rate required under the statutory determination. Certifying Officers shall request the assistance of the DOL Employment Standards Administration wage specialists if they need assistance in making this determination.

(2) If the job opportunity is an occupation which is not covered by a prevailing wage determined under the Davis-Bacon Act or the McNamara-O'Hara Service Contract Act, the prevailing wage for labor certification purposes shall be:

(i) the average rate of wages, that is, the rate of wages to be determined, to the extent feasible, by adding the wage paid to workers similarly employed in the area of intended employment and dividing the total by the number of such workers. Since it is not always feasible to determine such an average rate of wages with exact precision, the wage set forth in the application shall be considered as meeting the prevailing wage standard if it is within 5 percent of the average rate of wages; or

(ii) If the job opportunity is covered by a union contract which was negotiated at arms-length between a union and the employer, the wage rate set forth in the union contract shall be considered as not adversely affecting the wages of U.S. workers similarly employed, that is, it shall be considered the "prevailing wage" for labor certification purposes.

(b) For purposes of this section, "similarly employed" shall mean "having substantially comparable jobs in the occupational category in the area of intended employment," except that, if no such workers are employed by employers other than the employer applicant in the area of intended employment, "similarly employed" shall mean:

(1) "Having jobs requiring a substantially similar level of skills within the area of intended employment"; or

(2) If there are no substantially comparable jobs in the area of intended employment, "having substantially comparable jobs with employers outside of the area of intended employment."

(c) A prevailing wage determination for labor certification purposes made pursuant to this section shall not permit an employer to pay a wage lower than that required under any other Federal, State or local law.

Subpart E—Definitions

§ 656.50 Definitions, for purposes of this Part, of terms used in this Part.

"Act" means the Immigration and Nationality Act, as amended, 8 U.S.C. 1101 et seq.

"Administrator" means the chief official of the United States Employment Service or the Administrator's designee.

"Agent" means a person who is not an employee of an employer, and who has been designated in writing to act on behalf of an alien or employer in connection with an application for labor certification.

"Application" means an Application for Alien Employment Certification form and any other documents submitted by an alien and/or employer (or their agents) in applying for a labor certification under this Part.

"Area of intended employment" means the area within normal commuting distance of the place (address) of intended employment. If the place of intended employment is within a Standard Metropolitan Statistical Area (SMSA), any place within the SMSA is deemed to be within normal commuting distance of the place of intended employment.

"Attorney General" means the chief official of the U.S. Department of Justice or the designee of the Attorney General.

"Certifying Officer" means a Department of Labor official who makes determinations about whether or not to grant applications for labor certifications:

(1) a regional Certifying Officer designated by a Regional Administrator, Employment and Training Administration (RA) makes such determinations in a regional office of the Department;

(2) a regional Certifying Officer designated by the Administrator makes such determinations for the Virgin Islands;

(3) a national Certifying Officer makes such determinations in the national office of the USES.

(4) The addresses of the regional Certifying Officers are set forth in Subpart F of this Part.

"Consular Officer" means an official of the U.S. Department of State who handles applications for labor certifications pursuant to this Part.

"Determination and Transmittal form" means the form used by the Certifying Officer to notify employers of labor certification determinations.

"Employment" means permanent full-time work by an employee for an employer other than oneself. For purposes of this definition an investor is not an employee.

"Employment and Training Administration (ETA)" means the agency within the Department of Labor (DOL) which includes the United States Employment Service (USES).

"Employer" means a person, association, firm, or a corporation which currently has a location within the United States to which U.S. workers may be referred for employment, and which proposes to employ a full-time worker at a place within the United States or the authorized representative of such a person, association, firm, or corporation. For purposes of this definition an "authorized representative" means an employee of the employer whose position or legal status authorizes the employee to act for the employer in labor certification matters.

"Hearing Officer" means a Department of Labor official, whether hearing officer or Administrative Law Judge, designated to preside at DOL administrative hearings.

"Immigration and Naturalization Service (INS)" means the agency within the U.S. Department of Justice which administers that Department's principal functions under the Act.

"Immigration Officer" means an official of the Immigration and Naturalization Service (INS) who handles applications for labor certifications pursuant to this Part.

"INS", see Immigration and Naturalization Service.

"Job opportunity" means a job opening for employment at a place in the United States to which U.S. workers can be referred.

"Labor certification" means the determination and certification to the Secretary of State and to the Attorney General by the Secretary of Labor pursuant to section 212(a)(14) of the Immigration and Nationality Act (1) that there are not sufficient U.S. workers who are able, willing, qualified, and available at the time of an alien's application for a visa and admission to the United States and at the place where the alien is to perform the work, and (2) that the employment of the alien will not adversely affect the wages and working conditions of similarly employed U.S. workers.

"Local employment service office" means an office of a State employment service agency which serves a particular geographic area within a State.

"Notice of Findings" means a notice which sets forth the bases upon which a Certifying Officer intends to deny a labor certification unless the bases are satisfactorily rebutted.

"Regional Administrator, Employment and Training Administration (RA)" means the chief official of the Employment and Training Administration (ETA) in a Department of Labor (DOL) regional office.

"Schedule A" means the list of occupations set forth at § 656.10 of this Part, with respect to which the Administrator has determined that there are not sufficient United States workers who are able, willing, qualified and available, and that the employment of aliens in such occupations will not adversely affect the wages and working conditions of United States workers similarly employed.

"Schedule B" means the list of occupations set forth at § 656.11 of this Part,

with respect to which the Administrator has determined that there are generally sufficient United States workers who are able, willing, qualified and available, and that the employment of aliens in such occupations will generally adversely affect the wages and working conditions of United States workers similarly employed.

"Secretary" means the Secretary of Labor, the chief official of the U.S. Department of Labor, or the Secretary's designee.

"Secretary of State" means the chief official of the U.S. Department of State or the Secretary of State's designee.

"United States Employment Service (USES)" means the agency of the U.S. Department of Labor, established under the Wagner-Peyser Act of 1933, which is charged with administering the national system of public employment offices and with carrying out the functions of the Secretary under section 212(a)(14) of the Immigration and Nationality Act.

"United States worker" means any worker who, whether U.S. citizen or alien, is legally permitted to work permanently within the United States.

Subpart F—Addresses of Department of Labor Regional Offices

§ 656.60 Addresses of Department of Labor regional offices.

Region I (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont): Room 1707, J. F. Kennedy Federal Building, Government Center, Boston, MA 02203.

Region II (New York, New Jersey, and Puerto Rico): Room 3713, 1515 Broadway, New York, NY 10036.

Region III (Delaware, Maryland, Pennsylvania, Virginia, West Virginia and the District of Columbia): P.O. Box 8796, Philadelphia, PA 19101 (3535 Market Street. Do not use street address for mailing purposes.).

Region IV (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee): Room 405, 1371 Peachtree Street, NE., Atlanta, GA 30309.

Region V (Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin): 230 S. Dearborn Street, Chicago, IL 60604.

Region VI (Arkansas, Louisiana, New Mexico, Oklahoma, and Texas): Room 317, 555 Griffin Square Building, Griffin and Young Streets, Dallas, TX 75202.

Region VII (Iowa, Kansas, Missouri, and Nebraska): Room 1000, Federal Building, 911 Walnut Street, Kansas City, MO 64106.

Region VIII (Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming): 1961 Stout Street, Denver, CO 80202.

Region IX (Arizona, California, Guam, Hawaii, and Nevada): Box 36084, Federal Office Building, 450 Golden Gate Avenue, San Francisco, CA 94102.

Region X (Alaska, Idaho, Oregon, and Washington): Room 1145 Federal Office Building, 909 First Avenue, Seattle WA 98174.

Virgin Islands—First National City Bank Building, Veterans Drive, St. Thomas, V.I. 00801.

Signed at Washington, D.C., this 13th day of January 1977.

WILLIAM H. KOLBERG,
Assistant Secretary for Employment and Training.

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federal register

TUESDAY, JANUARY 18, 1977

PART V



DEPARTMENT OF LABOR

Office of Federal Contract Compliance Programs

EQUAL EMPLOYMENT OPPORTUNITY

Final Rulemaking

Title 41—Public Contracts and Property Management

CHAPTER 60—OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS, EQUAL EMPLOYMENT OPPORTUNITY, DEPARTMENT OF LABOR

Final Rulemaking

Section 201 of Executive Order 11246, as amended (30 FR 12319; amended, 32 FR 14303), provides that the Secretary of Labor shall adopt rules, regulations and orders as he deems necessary and appropriate to achieve the purposes of the Order.

On September 17, 1976, the Office of Federal Contract Compliance Programs (OFCCP), U.S. Department of Labor, published in the FEDERAL REGISTER (41 FR 40340) a proposal to revise and redesignate the regulations in 41 CFR Parts 60–1 through 60–60. Interested persons were given until November 16, 1976, to submit written comments, suggestions or objections. Public hearings regarding the proposals were held in New York, Atlanta, Chicago and Los Angeles during the weeks of December 6 and 13, 1976 (41 FR 48128), and the records of those hearings remained open for the submission of written testimony through December 27, 1976.

On December 14, 1976, the OFCCP published in the FEDERAL REGISTER (41 FR 54499) a proposal to amend 41 CFR 60–1.40(a) and 41 CFR 60–2.1 to comply with a settlement agreement reached between the Department of Labor and the plaintiffs in "Castillo v. Usery," USDC ND Calif., Civil No. 73–282 AJZ. Interested persons were given until January 13, 1977, to submit written comments, suggestions or objections.

Numerous comments and thousands of pages of hearing transcript have been received and have been given careful consideration. The comments indicate a need for further consideration of many of the proposals and, accordingly, the major revision and redesignation proposed on September 17, 1976, will be postponed for such further consideration. Other proposed amendments and revisions, however, evoked little or no public comment, or are of overriding importance, and are adopted herein.

As was proposed on September 17, 1976, the term and definition of "Administrative law judge" are substituted for the term and definition of hearing officer in § 60–1.3 and are inserted between "administering Agency" and "agency." This change conforms the definition section in the regulations with changes being made in Part 60–30, Rules of Practice for Administrative Proceedings to Enforce Equal Opportunity Under Executive Order 11246. The definition of "Compliance agency" is amended as proposed on September 17. No comments were received regarding either of these amendments. In addition, the lettered paragraph designations in § 60–1.3 (e.g. § 60–1.3 (a) and (b) are deleted and the term and definition of "minority group" (formerly § 60–1.3(z)) is inserted, unchanged, in alphabetical order, between "Government contract" and "modification." In this manner all definitions will be in alphabetical order and the lettered paragraph designations are unnecessary.

Section 60–1.4(d) is amended by combining elements of the prior section with elements of the September 17 proposal. As amended, § 60–1.4(d) permits the incorporation by reference of the equal opportunity clause in all contracts and subcontracts, irrespective of the amount of the contract or subcontract, and in such other contracts and subcontracts as the Director may designate. The previous regulation permitted incorporation by reference only in contracts or subcontracts of $50,000 or less, and in Government bills of lading, transportation requests, contracts for the deposit of Government funds, and contracts for issuing and paying U.S. savings bonds and savings notes, and in such other contracts as the Director designated. The amendment has no substantive effect on coverage. No comments either favoring or opposing the proposal were received.

Section 60–1.4(e), as published in the September 17 proposal, replaces previous § 60–1.4(e). The effect of the change in § 60–1.4(e) is to make it clear that, consistent with the intent of the Secretary and with existing case law, the equal opportunity clause is considered a part of all non-exempt contracts, including unwritten contracts. No comments were received.

Section 60–1.5(a)(1), regarding exemption of transactions of $10,000 or under from the requirements of the equal opportunity clause, is amended by (1) explicitly stating that no dollar amount exemption is applicable to contracts and subcontracts with depositories of Federal funds and with financial institutions which are issuing and paying agents for U.S. savings bonds and savings notes, and (2) eliminating the exemption where a contractor has contracts or subcontracts which in any 12-month period total in excess of $10,000, irrespective of the dollar value of any single contract.

The provision pertaining to Executive Order coverage of financial institutions clarifies existing practice as reflected in the Department of Treasury regulations at 41 CFR 10–12.804. While the September 17 proposal did not explicitly refer under this section to the coverage of financial institutions regardless of dollar amount, this point was reflected in proposed § 60–1.6(a) regarding affirmative action programs. A banking organization recommended the establishment of dollar amount exemptions for financial institutions. However, we are reluctant to remove already existing coverage without further consideration of the impact of such removal on equal employment opportunity.

The aggregation provision is similar to that presented in the September 17 proposal, except that the dollar amount has been reduced from $50,000 to $10,000. Only one comment opposing aggregation for equal opportunity clause purposes was received. The commentator suggested that aggregation would increase the administrative and paperwork burden on small contractors. Several comments generally favoring aggregation were submitted. Upon consideration of the matter we have concluded that the burden of complying with the equal opportunity clause (as opposed, for instance, to meeting affirmative action program-type reporting requirements) is not so substantial that it should not be shouldered by all contractors doing more than $10,000 worth of business with the Government. Moreover, we have concluded that aggregation should be to $10,000 rather than $50,000 for the sake of consistency; ten contracts of $1000 each or two contracts of $5000 each are of the same value to the contractor as one contract of $10,000.

Section 1.5(a)(6) of the September 17 proposal, dealing with work on or near Indian reservations, is adopted without change as 41 CFR 60–1.5(a)(6). This provision was previously proposed by the OFCCP on June 25, 1976 (41 FR 26229) and republished as part of the September 17 proposal. It expands the employment opportunities of American Indians living on or near an Indian reservation in both construction and nonconstruction employment. The rule parallels Section 703(i) of the Civil Rights Act of 1964, as amended, and allows construction and nonconstruction contractors and subcontractors to engage in certain preferential hiring of such Indians.

Section 703(i) of the Civil Rights Act of 1964, as amended, states:

> Nothing contained in this title shall apply to any business or enterprise on or near an Indian reservation with respect to any publicly announced employment practice of such business or enterprise under which a preferential treatment is given to any individual because he is an Indian living on or near a reservation.

The use of the word "near" includes all that area where a person seeking employment could reasonably be expected to commute to and from in the course of a work day. This definition is consistent with that offered by the Equal Employment Opportunity Commission to the U.S. Commission on Civil Rights in an opinion letter dated July 18, 1973.

In accordance with the Federal equal employment policy contained in Section 715 of the Civil Rights Act of 1964, as amended, for consistent standards among the Federal equal employment opportunity enforcement agencies, the Department of Labor adopts the policy enunciated in Section 703(i) of the Civil Rights Act of 1964, as the applicable standard under Executive Order 11246 for contractors performing contracts on or near an Indian reservation.

In order to implement the proposed permissive employment preference for Indians living on or near an Indian reservation meaningfully, the Department also adopts the remainder of its June 25, 1976, proposal in 41 CFR 60–2.12(j) (republished on September 17 as 41 CFR 60–2.12(h) of Alternative A and 41 CFR 60–2.12(g) of Alternative B) to provide that a contractor or subcontractor extending a publicly announced preference for Indians under 41 CFR 60–1.5(a)(6) may reflect such preference in the goals and timetables of its written affirmative action compliance program.

The few written comments and the limited testimony at the hearings on these matters generally supported these provisions. An employer questioned the legality of these provisions, their precedential value for other groups, and the effect the implementation of the provisions would have on other protected groups. We believe that these amendments further the objectives of the Executive Order in that they support a policy of hiring American Indians living on or near reservations. The proposed amendments are consistent with Section 703(i) of the Civil Rights Act of 1964, as amended, and with the Indian Self Determination and Education Assistance Act (Pub. L. 93–638), which also covers the preferential employment of Indians by certain Federal contractors. These Indian preference provisions of these regulations do not establish mandatory Indian preference requirements on contractors nor do they impose new obligations on contractors. Rather, they clarify the Department of Labor's position as to certain contractors who choose to announce publicly a particular Indian hiring policy. With the recent passage of the Indian Self Determination and Education Assistance Act, certain Federal contractors are required to give preference to Indians when performing certain contracts. Therefore, the permissive Indian preferences set forth below are fully compatible with the new Act.

Both the proposed and the final version of § 60–1.5(a)(6) provide that contractors or subcontractors extending an Indian employment preference shall not discriminate among Indians on the basis of religion, sex or tribal affiliation. One tribe objected to this prohibition against tribal discrimination when the tribe itself forms a construction company. The favorable written comments of another tribe did not address this issue. A witness representing an Indian organization at the Los Angeles hearings expressed no position on this point, when asked, but did favor the prohibition on sex discrimination among Indians. To allow a tribal contractor to use the permissive Indian preference to discriminate against members of other Tribes would frustrate one of our basic objectives—to encourage the employment of American Indians generally. This purpose would be hindered were we to allow disparate treatment based on tribal affiliation. Further, we have not been referred to any specific provisions in the Executive Order or in other legislation which would suggest such separate treatment for tribal contractors.

Section 60–1.13 of the September 17 proposal, "Foreign government practices," as corrected at 41 FR 42678 (September 28, 1976), is adopted with one change in wording as 41 CFR 60–1.10. In the third sentence the word "shall" replaces "may." That sentence now reads as follows:

> Therefore, a contractor hiring workers in the United States for either Federal or non-federally connected work shall be in violation of Executive Order 11246, as amended, by refusing to employ or assign any person because of race, color, religion, sex, or national origin regardless of the policies of the country where the work is to be performed or for whom the work will be performed. (Emphasis added.)

Several comments opposing the proposal and several favoring it were received. The objectors generally felt that it is beyond the scope of these regulations to confront the hiring and admittance practices of foreign governments. As one commentator put it, "These regulations are not going to change the policies of any foreign nation. A contractor should not be penalized by virtue of complying with the immigration policy of a foreign country." Those favoring the proposal felt that adoption, as amended above, was appropriate in light of previous directives of the President and the Secretary of Labor prohibiting such discrimination. We agree that inasmuch as the regulation implements the stated policy of both the President and the Secretary, it is appropriately adopted.

The complaint procedures at §§ 60–1.21 through 60–1.24 have been revised to specifically provide that OFCCP and the compliance agencies may refer appropriate complaints to the Equal Employment Opportunity Commission (EEOC) for processing under Title VII of the Civil Rights Act of 1964, as amended, rather than processing them under Executive Order 11246 and the implementing regulations. Complainants and contractors would be informed of the referral of a complaint to EEOC. This provision is intended to ensure that OFCCP and the compliance agencies establish rational compliance priorities. Requiring OFCCP or the compliance agencies to investigate, as some commentators suggested, each individual complaint would interfere with a balanced compliance review and enforcement program designed to maximize federal resources for the greatest equal employment opportunity benefit and results.

The comments of the U.S. Commission on Civil Rights supported the language in the proposed regulations which would permit OFCCP and the compliance agencies to refer complaints to the EEOC. The Commission stated, in part, "We believe that this provision will enhance the ability of the Federal contract compliance program to concentrate on systemtic administration."

Some of the written comments and testimony at the hearings referred to EEOC's backlog as a reason for opposing referral of complaints to EEOC. However, it should be recognized that even in situations where EEOC itself is unable to act upon a matter, referral of a complaint to EEOC will ensure that the complainant can commence a private right of action under Title VII as a result of EEOC's issuance of a right-to-sue letter. Therefore, our referral policy will enable the matters raised in the complaint to be addressed in a timely manner under other means.

In addition to comments on referral to EEOC of individual complaints which do not raise issues of systemtic discrimination, some comments also questioned the referral of class-wide complaints to EEOC. In this regard, it is the general policy of OFCCP that such broader complaints normally be processed under Executive Order 11246. This enables OFCCP and the agencies to focus on large-scale discrimination/affirmative action matters affecting large numbers of minorities and women and to establish compliance priorities accordingly.

Referral of appropriate complaints to EEOC reflects existing policy. See OFCCP/EEOC Memorandum of Understanding (31 FR 35855, Oct. 4, 1974). It is consistent with Sections 206(b) and 209(a)(3) of Executive Order 11246, as amended, and federal equal employment policy as reflected in Section 715 of the Civil Rights Act of 1964, as amended, calling for the maximization of effort, the promotion of efficiency, and the elimination of conflict, competition, duplication and inconsistency among federal EEO agencies.

Section 60–1.23(a) adopts most of the language of proposed § 60–1.30(c)(1) to indicate that complaints filed by public interest or advocate-type organizations will be accepted notwithstanding that such complaints do not identify all or any of the alleged discriminatees so long as the complaint is of sufficient specificity as to indicate where the complaint investigation should focus. As indicated above, class-wide complaints (including those filed by third parties) would normally be retained and processed under Executive Order 11246. However, to indicate that such complaints may, on occasion, be referred to EEOC, we have deleted the phrase "for investigation" in adopting the last sentence of proposed § 60–1.30(c)(1). Some commentators opposed acceptance of complaints of this nature; they favored the identification of complainants and opposed giving public interest groups the right to file complaints on behalf of individuals or a class of individuals. They also feared harassment and the filing of specious complaints. Others favored the Department's proposal by pointing out that victims of discrimination frequently fear employer retaliation and would be reluctant to identify themselves specifically in a complaint. In order to maximize equal employment opportunity, the OFCCP and the compliance agencies need to obtain as much information as possible, including information gathered through the complaint process. Therefore, we are unwilling to deny access to these complaint procedures to organizations alleging violations of the Executive Order or implementing regulations. Our position is fully consistent with Section 206 of the Executive Order, regarding investigations and complaints.

Other changes are as follows: (1) Section 60–1.22 now states OFCCP's address for filing complaints; (2) § 60–1.24(b) has been captioned "Complaint investigations," rather than "Investigations" and adopts the language of proposed § 60–1.23, indicating that OFCCP, as well as the agencies, may conduct complaint investigations (also provided in § 60–

1.22), and that the case record should refer to at least one federal contract to ensure that the employer under investigation is subject to the Executive Order; (3) § 60–1.24(c)(3) has been revised to correspond with the enforcement scheme of § 60–1.26, which includes reference to the sanctions formerly contained in this provision; (4) § 60–1.24 (d), has been revised by having the first sentence begin with the new clause, "With the exception of complaints which have been referred to EEOC, • • •," to indicate that such complaints are not subject to the compliance agency complaint processing requirements contained therein; and (5) references to "agency" in § 60–1.21 through § 60–1.24 have been clarified by substituting the term "compliance agency".

Proposed § 60–1.25, "Enforcement proceedings," is adopted with minor changes at 41 CFR 60–1.26, and previous § 60–1.26 is deleted. Conforming amendments dealing with the administrative complaint process are made at 41 CFR 60–2.2 (b) and (c). The concepts formerly found in § 60–1.26 have been retained, to the extent applicable, and published in 41 CFR Part 60–30 (see discussion, below).

Section 60–1.26 clarifies procedures and policies regarding administrative and judicial proceedings to enforce the Executive Order and to seek appropriate relief. This section restates existing OFCCP policy that enforcement procedures are applicable to both construction and nonconstruction contracts. Seven categories of violations for which enforcement proceedings would be appropriate are set forth as examples. In the event of an alleged violation or threat of violation, the OFCCP or the compliance agency (with the approval of the Director) may institute administrative proceedings to enjoin the violation and seek appropriate relief, which may include affected class and back pay relief. This section codifies OFCCP policies regarding back pay and affected class relief which have been in effect for several years.

If it is determined after a hearing that the contractor is violating the Executive Order the compliance agency or the Secretary of Labor shall issue an Administrative Order enjoining the violations, requiring the contractor to provide whatever remedies are appropriate, imposing whatever sanctions are appropriate, or implementing any combination of these provisions.

The procedure thus established draws a critical distinction between the concepts of remedy and sanction. A remedy (such as seniority reform, red circling, or back pay) is an affirmative step which is required to eliminate discrimination or the effects of past discrimination at the subject establishment. It is remedial rather than punitive. It is the mechanism by which the contractor may bring its employment practices into compliance with the Executive Order. On the other hand, a sanction such as debarment is the Government's recourse, or the penalty to be levied, in the event of failure to comply and does not provide relief to victims of the contractor's discrimination.

This section specifies that when requesting approval to institute enforcement proceedings, the compliance agency shall provide the Director with:

Information regarding at least one contract which subjects the contractor to Executive Order liability;

Specification of the sections of the Order, regulations or equal opportunity clause allegedly violated, including a brief description of the relevant facts;

Appropriate documentation and statistical analysis;

A proposed administrative complaint, where appropriate.

In addition, the section specifies that all Executive Order administrative enforcement proceedings will be conducted under the control and supervision of the Solicitor of Labor and under OFCCP's hearing rules. This will provide greater uniformity in the processing of enforcement proceedings. However, it does not preclude other agencies from conducting enforcement proceedings under the supervision of the Solicitor. Finally, this section outlines procedures pertaining to the referral of enforcement matters to the Department of Justice and includes authorization for the Attorney General or his designee to conduct any necessary investigation, make efforts to secure compliance and institute civil actions.

A number of commentators opposed the portion in proposed § 60–1.25(a)(2) which references affected class and back pay relief as being appropriate under the Executive Order. They opined that the Executive Order is only prospective in nature, and that it contains no provision authorizing remedial relief. However, it has been OFCCP policy for a number of years that affected class and back pay relief are authorized by the Executive Order. That policy was recently upheld in "U.S. v. Duquesne Light Co." (C.A. No. 75–1110, W.D. Pa., November 30, 1976).

Commentators also questioned the legality of proposed § 60–1.25 (a)(2), (e) and (f) regarding referrals to the Department of Justice, in light of the 1972 amendments to Title VII of the Civil Rights Act of 1964, which transferred most Title VII authority to the EEOC. However, we believe that these provisions represent an appropriate exercise of the powers of the Secretary of Labor, catalogued at subparagraphs (2), (3) and (4) of Section 209(a) of the Executive Order as follows:

(2) Recommend to the Department of Justice that, in cases in which there is substantial or material violation or the threat of substantial or material violation of the contractual provisions set forth in Section 202 of this Order, appropriate proceedings be brought to enforce those provisions, including the enjoining, within the limitations of applicable law, of organizations, individuals, or groups who prevent directly, or seek to prevent directly or indirectly compliance with the provisions of this Order.

(3) Recommend to the Equal Employment Opportunity Commission or the Department of Justice that appropriate proceedings be instituted under Title VII of the Civil Rights Act of 1964.

(4) Recommend to the Department of Justice that criminal proceedings be brought for the furnishing of false information to any contracting agency or to the Secretary of Labor as the case may be.

Comments regarding proposed § 1.25 (c), which is intended to provide greater uniformity in the processing of enforcement actions, were generally favorable. Several comments objected to the control and supervision of enforcement by the Solicitor of Labor because, the commentators felt, this would delay the enforcement process. Because enforcement hearings will, as a general matter, be conducted by the staffs of the various compliance agencies (the Solicitor will control and supervise; not conduct), no undue delay should result.

Sections 60–1.40(a) and 60–2.1 are amended consistent with the December 14 proposal. Accordingly, contractors and subcontractors having 50 or more employees and Government bills of lading which, in any 12-month period, total or can reasonably be expected to total $50,000 or more are now subject to the written affirmative action program requirement.

In response to both the September 17 and December 14 proposals, an industry organization commented that aggregation of bills of lading discriminates against the motor carrier industry by establishing equal employment compliance standards which are different than those applicable to other contractors. However, if the previous provisions were to be retained, virtually the entire motor carrier industry would be excluded from the affirmative action program requirements contained in 41 CFR Part 60–2. As an industry witness stated at the Atlanta hearings, there are between three and twelve motor carriers out of 16,005 which without accumulating bills of lading, would be subject to the affirmative action program requirements of 41 CFR Part 60–2. Goals and timetables and related affirmative action requirements have been recognized as an extremely useful and effective method for ensuring that the objectives of the Executive Order are met. See, e.g., "Contractors Assn. of Eastern Pa. v. Secretary of Labor," 442 F.2d 149 (3rd Cir., 1971), cert. den., 404 U.S. 854 (1971); "U.S. v. Mississippi Power & Light Co."; —— F. Supp. —— (S.D. Miss., 1975), 10 FEP Cases 1084; "Association of General Contractors of Massachusetts v. Altshuler," 490 F. 2d 9 (1st Cir., 1973), *cert. denied*, 416 U.S. 957 (1974); "Joyce v. McCrane," 320 F. Supp. 1284 (D.N.J., 1970); "Barnett v. International Harvester," —— F. Supp. —— (W.D. Tenn., 1976), 12 FEP Cases 787.

Further, there are significant equal employment problems in the motor carrier industry. In this regard, as the U.S. Commission on Civil Rights stated: "The statistical record on employment of minorities and women in the trucking industry, as well as the number of court cases alleging discrimination by trucking companies, indicate that the compliance examiners have failed to obtain

voluntary compliance." U.S. Commission on Civil Rights, The Challenge Ahead: Equal Opportunity in Referral Unions at 170 (1976). See also "U.S. v. Trucking Employers, Inc., et al.," C.A. No. 74–453 (USDC DC, 1974); "Sagers v. Yellow Freight System", 529 F. 2d 721 (5th Cir., 1976), and the cases cited therein. The Commission's report noted that individual bills of lading for shipment of goods "rarely reach $50,000," (p. 239), and although "many firms receive in excess of $50,000 in Government bills of lading cumulated over a year, individual bills of lading almost never exceed $50,000." (p. 171). Since each Government bill of lading constitutes a separate Government contract, most motor carriers were not subject to previous 41 CFR 60–1.40 and 41 CFR Part 60–2, for the development and implementation of written affirmative action programs. The Commission's report (p. 251) supported the application of 41 CFR Part 60–2 to the surface transportation industry, and, noting the inapplicability of that regulation as it then existed to most of the industry under E.O. 11246, recommended that the Interstate Commerce Commission adopt the standards of 41 CFR Part 60–2 for its regulatees.

In order to ensure full and equal employment opportunity in the surface transportation industry, we have decided to amend 41 CFR 60–1.40 and 41 CFR Part 60–2 as described above to reach a significant portion of that important industry, which will now be subject to the same nondiscrimination and affirmative action requirements as other major segments of American industry with which the Government contracts.

In light of these considerations, we are unable to accept the assertion, in the above-referenced trade association's comments on the December 14 proposal, that this provision would be "counterproductive to the ends of equal employment and affirmative action." We believe that the new provision will have a highly salutary and beneficial effect in achieving equal employment opportunity in the surface transportation industry.

In addition, depositories of Federal funds and financial institutions which are issuing and paying agents for U.S. savings bonds and savings notes will be subject to the written affirmative action program requirement regardless of the dollar value of their contractual relationships with the Government. This was proposed at § 60–1.6(a) of the September 17 proposal, and is consistent with existing Department of Treasury practice (41 CFR 10–12.814). Opposition to this proposal was voiced by a banking industry organization, but as we noted in discussing § 1.5(a)(1), we are reluctant to remove existing coverage without further study.

One commentator noted that proposed § 1.6(e):

• • • only recognizes noncompliance in three situations: No AACP, inadequate AACP and deviation from "a previously approved program." Under this provision, the only situation in which a contractor can be found in noncompliance for failure to implement an AACP is where that AACP has previously been approved. Given the extreme understaffing of the federal compliance system, only a small portion of AACP's are ever reviewed and approved by the compliance agencies. Assume that a contractor has an acceptable written AACP which has not previously been approved by the compliance agency. Assume further that a review is conducted which reveals that the contractor has totally failed to implement the AACP and has thus "deviated" from its terms. In this situation, the compliance agencies are not authorized to find the contractor in noncompliance.

The commentator went on to note the same problem was present in the existing regulations. Sections 2.2 (b) and (c) are amended to eliminate this deficiency.

The wording of § 2.2(b) is amended to clarify procedures under which the Director may determine that there are substantial issues of law or fact as to the contractor/bidder's responsibility to the extent that a hearing is required. This provision is cross-referenced in a new paragraph (g) in § 60–1.26.

The portions of proposed § 60–8.7 which specify the information which must be contained in a notice of deficiencies have been adopted and made applicable to the 30-day notice to show cause in § 60–2.2(c)(1). Public comment regarding this "bill of particulars" approach was overwhelmingly favorable. Both contractors and public interest groups felt that it was beneficial to the effective and timely resolution of EEO issues for contractors to be made aware of specific deficiencies and suggested remedies.

The subparagraphs of § 60–2.2(c) have been renumbered to accommodate this additional provision.

In addition, language has been added to the show cause provision to clarify that it is only applicable when administrative enforcement under Part 60–2 (as opposed to judicial enforcement) is contemplated. This is consistent with OFCCP policy and Federal court decision in "United States v. Mississippi Power and Light Co.", 9 EPD (CCH) ¶ 10,164 (S.D. Miss., 1975), appeal pending, and "United States v. New Orleans Public Service, Inc.", 8 EPD (CCH) ¶ 9795 (E.D. La.,) 1974), appeal pending, and is reflected in 41 CFR 60–1.26.

On September 17, we proposed that the previously existing "Hearing rules for sanction proceedings" (41 CFR Part 60–30) be revised, be renamed "Rules of Practice for Administrative Proceedings to Enforce Equal Opportunity Under Executive Order 11246," and be published at Part 60–5. At that time we stated:

Ordinarily, rules of practice, since they deal with procedural matters, would not be subject to proposed rulemaking. However, it is the policy of the Department of Labor, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Because of the proposed general revision of the regulations, the Department therefore will consider all comments submitted on this part.

A few comments regarding the rules of practice were received, the majority of which asserted that some of the filing deadlines, most notably those for responding to interrogatories and requests for admissions, were too short. Accordingly, most of the time limitations have been lengthened. In addition, the parties will be referred to as plaintiff (Department of Labor, OFCCP and/or compliance agency) and defendant (employer), rather than complainant and respondent, as proposed.

The rules of practice are adopted as 41 CFR Part 60–30, replacing the previous Part 60–30.

In consideration of the foregoing, 41 CFR Parts 60–1, 60–2 and 60–30 are amended as set forth below.

Effective date. The Rules of Practice for Administrative Proceedings To Enforce Equal Opportunity Under Executive Order 11246 are effective on January 18, 1977, and shall be applicable to actions and proceedings brought thereafter and also to further procedure in actions and proceedings now pending, except to the extent that in the opinion of the Administrative Law Judge their application in a particular action or proceeding now pending would not be feasible or would work injustice in which event the former procedure applies.

All other provisions take effect on February 17, 1977.

Dated: January 14, 1977.

W. J. USERY, Jr.,
Secretary of Labor

JOHN C. READ,
Assistant Secretary, Employment Standards Administration.

LAWRENCE Z. LORBER,
Deputy Assistant Secretary, Director, OFCCP.

1. The title page and indexes to 41 CFR Chapter 60 and 41 CFR Part 60–1 are amended as follows:

CHAPTER 60—OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS, EQUAL EMPLOYMENT OPPORTUNITY, DEPARTMENT OF LABOR

NOTE.—The President, by Executive Order 11246 (30 FR 12319), abolished the President's Committee on Equal Employment Opportunity and delegated the functions of the abolished Committee to the Secretary of Labor. By order of the Secretary of Labor, 30 FR 13441, Oct. 22, 1965, all rules, regulations, orders, instructions, and other directives, issued by the abolished Committee, not inconsistent with E.O. 11246 remain in effect for the present as those of the Secretary of Labor. All references in this chapter to "Committee", "Chairman", "Vice-Chairman", and "Executive Vice-Chairman" shall mean the Director of the Office of Federal Contract Compliance Programs of the United States Department of Labor, and all references to "a panel of the Committee" shall mean an appropriate panel of three appointed by the Director.

Part
60–1 Obligations of contractors and subcontractors.
60–2 Affirmative action programs.
60–3 Employee selection procedures: Uniform guidelines.
60–5 Washington Plan.
60–6 San Francisco Plan.
60–7 St. Louis Plan.
60–8 Atlanta Plan.
60–10 Camden Plan.
60–11 Chicago Plan.
60–20 Sex discrimination guidelines.
60–30 Rules of practice for administrative proceedings to enforce equal opportunity under Executive Order 11246.
60–40 Examination and copying of OFCCP documents.
60–50 Guidelines on discrimination because of religion or national origin.
60–60 Contractor evaluation procedures for contractors for supplies and services.

PART 60–1—OBLIGATIONS OF CONTRACTORS AND SUBCONTRACTORS

Subpart A—Preliminary Matters; Equal Opportunity Clause; Compliance Reports

Sec.
60–1.1 Purpose and application.
60–1.2 Administrative responsibility.
60–1.3 Definitions.
60–1.4 Equal opportunity clause.
60–1.5 Exemptions.
60–1.6 Duties of agencies.
60–1.7 Reports and other required information.
60–1.8 Segregated facilities.
60–1.9 Compliance by labor unions and by recruiting and training agencies.
60–1.10 Foreign government practices.

Subpart B—General Enforcement; Compliance Review and Complaint Procedure

60–1.20 Compliance reviews.
60–1.21 Who may file complaints.
60–1.22 Where to file.
60–1.23 Contents of complaint.
60–1.24 Processing of matters by agencies and the Director.
60–1.25 Assumption of jurisdiction by or referrals to the Director.
60–1.26 Enforcement proceedings.
60–1.27 Sanctions and penalties.
60–1.28 Show cause notices.
60–1.29 Preaward notices.
60–1.30 Contract ineligibility list.
60–1.31 Reinstatement of ineligible contractors or subcontractors.
60–1.32 Intimidation and interference.

Subpart C—Ancillary Matters

60–1.40 Affirmative action compliance programs.
60–1.41 Solicitations or advertisements for employees.
60–1.42 Notices to be posted.
60–1.43 Access to records and site of employment.
60–1.44 Rulings and interpretations.
60–1.45 Existing contracts and subcontracts.
60–1.46 Delegation of authority by the Director.
60–1.47 Effective date.

Subpart A—Preliminary Matters; Equal Opportunity Clause; Compliance Reports

2. 41 CFR 60–1.3 is revised to read as follows:

§ 60–1.3 Definitions.

"Administering agency" means any department, agency and establishment in the Executive Branch of the Government, including any wholly owned Government corporation, which administers a program involving federally assisted construction contracts.

"Administrative Law Judge" means an Administrative Law Judge appointed as provided in 5 U.S.C. 3105 and Subpart B of Part 930 of Title 5 of the Code of Federal Regulations (see 37 FR 16787) and qualified to preside at hearings under 5 U.S.C. 557.

"Agency" means any contracting or any administering agency of the Government.

"Applicant" means an applicant for Federal assistance involving a construction contract, or other participant in a program involving a construction contract as determined by regulation of an administering agency. The term also includes such persons after they become recipients of such Federal assistance.

"Compliance Agency" means the agency designated by the Director on a geographical, industry or other basis to conduct compliance reviews and to undertake such other responsibilities in connection with the administration of the Order as the Director may determine to be appropriate.

"Construction work" means the construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction.

"Contract" means any Government contract or any federally assisted construction contract.

"Contracting agency" means any department agency, establishment, or instrumentality in the Executive Branch of the Government, including any wholly owned Government corporation, which enters into contracts.

"Contractor" means, unless otherwise indicated, a prime contractor or subcontractor.

"Director" means the Director, Office of Federal Contract Compliance Programs (OFCCP), U.S. Department of Labor or any person to whom he delegates authority under the regulations in this part.

"Equal opportunity clause" means the contract provisions set forth in § 60–1.4 (a) or (b), as appropriate.

"Federally assisted construction contract" means any agreement or modification thereof between any applicant and a person for construction work which is paid for in whole or in part with funds obtained from the Government or borrowed on the credit of the Government pursuant to any Federal program involving a grant, contract, loan, insurance, or guarantee, or underwritten pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, or any application or modification thereof approved by the Government for a grant, contract, loan, insurance, or guarantee under which the applicant itself participated in the construction work.

"Government" means the Government of the United States of America.

"Government contract" means any agreement or modification thereof between any contracting agency and any person for the furnishing of supplies or services or for the use of real or personal property, including lease arrangements. The term "services", as used in this section includes, but is not limited to the following services: Utility, construction, transportation, research, insurance, and fund depositary. The term "Government contract" does not include (1) agreements in which the parties stand in the relationship of employer and employee, and (2) federally assisted construction contracts.

"Minority group" as used herein shall include, where appropriate, female employees and perspective female employees.

"Modification" means any alteration in the terms and conditions of a contract, including supplemental agreements, amendments, and extensions.

"Order", "Executive Order", or "Executive Order 11246" means Parts II, III, and IV of Executive Order 11246 dated September 24, 1965 (30 FR 12319), any Executive order amending such Order, and any other Executive order superseding such order.

"Person" means any natural person, corporation, partnership, unincorporated association, State or local government, and any agency, instrumentality, or subdivision of such a government.

"Prime contractor" means any person holding a contract and, for the purposes of Subpart B of this part, any person who has held a contract subject to the Order.

"Recruiting and training agency" means any person who refers workers to any contractor or subcontractor or who provides for employment by any contractor or subcontractor.

"Rules, regulations, and relevant orders of the Secretary of Labor" used in paragraph (4) of the equal opportunity clause means rules, regulations, and relevant orders of the Secretary of Labor or his designee issued pursuant to the Order.

"Secretary" means the Secretary of Labor, U.S. Department of Labor.

"Site of construction" means the general physical location of any building, highway, or other change or improvement to real property which is undergoing construction, rehabilitation, alteration, conversion, extension, demolition, or repair and any temporary location or facility at which a contractor, subcontractor, or other participating party meets a demand or performs a function relating to the contract or subcontract.

"Subcontract" means any agreement or arrangement between a contractor and any person (in which the parties do not stand in the relationship of an employer and an employee):

(1) For the furnishing of supplies or services or for the use of real or personal property, including lease arrangements, which, in whole or in part, is necessary to the performance of any one or more contracts; or

(2) Under which any portion of the contractor's obligation under any one or more contracts is performed, undertaken, or assumed.

"Subcontractor" means any person holding a subcontract and, for the purposes of Subpart B of this part, any person who has held a subcontract subject to the Order. The term "First-tier subcontractor" refers to a subcontractor holding a subcontract with a prime contractor.

"United States" as used herein shall include the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Panama Canal Zone, and the possessions of the United States.

3. 41 CFR 60–1.4 is amended by revising paragraphs (d) and (e) as follows:

§ 60–1.4 Equal opportunity clause.

• • • • •

(d) *Incorporation by reference.*—The equal opportunity clause may be incorporated by reference in all Government contracts and subcontracts, including Government bills of lading, transportation requests, contracts for deposit of Government funds, and contracts for issuing and paying U.S. savings bonds and notes, and such other contracts and subcontracts as the Director may designate.

(e) *Incorporation by operation of the Order.*—By operation of the Order, the equal opportunity clause shall be considered to be a part of every contract and subcontract required by the Order and the regulations in this part to include such a clause whether or not it is physically incorporated in such contracts and whether or not the contract between the agency and the contractor is written.

• • • • •

4. 41 CFR 60–1.5 is amended by revising paragraph (a)(1) and by adding a new paragraph (a)(6) as follows:

§ 60–1.5 Exemptions.

(a) *General*—(1) *Transactions of $10,000 or under.*—Contracts and subcontracts not exceeding $10,000, other than Government bills of lading and other than contracts and subcontracts with depositories of Federal funds in any amount and with financial institutions which are issuing and paying agents for U.S. savings bonds and savings notes, are exempt from the requirements of the equal opportunity clause. In determining the applicability of this exemption to any federally assisted construction contract, or subcontract thereunder, the amount of such contract or subcontract rather than the amount of the Federal financial assistance shall govern. No agency, contractor, or subcontractor shall procure supplies or services in a manner so as to avoid applicability of the equal opportunity clause: *Provided,* That where a contractor has contracts or subcontracts with the Government in any 12-month period which have an aggregate total value (or can reasonably be expected to have an aggregate total value) exceeding $10,000, the $10,000 or under exemption does not apply, and the contracts are subject to the Order and the regulations issued pursuant thereto regardless of whether any single contract exceeds $10,000.

• • • • •

(6) *Work on or near Indian reservations.*—It shall not be a violation of the equal opportunity clause for a construction or nonconstruction contractor to extend a publicly announced preference in employment to Indians living on or near an Indian reservation in connection with employment opportunities on or near an Indian reservation. The use of the word "near" would include all that area where a person seeking employment could reasonably be expected to commute to and from in the course of a work day. Contractors or subcontractors extending such a preference shall not, however, discriminate among Indians on the basis of religion, sex, or tribal affiliation, and the use of such a preference shall not excuse a contractor from complying with the other requirements contained in this chapter.

• • • • •

5. 41 CFR Part 60–1 is amended by adding a new § 60–1.10 as follows:

§ 60–1.10 Foreign government practices.

Contractors shall not discriminate on the basis of race, color, religion, sex or national origin when hiring or making employee assignments for work to be performed in the United States or abroad. Contractors are exempted from this obligation only when hiring persons outside the United States for work to be performed outside the United States (see 41 CFR 60–1.5(a)(3)). Therefore, a contractor hiring workers in the United States for either Federal or nonfederally connected work shall be in violation of Executive Order 11246, as amended, by refusing to employ or assign any person because of race, color, religion, sex or national origin regardless of the policies of the country where the work is to be performed or for whom the work will be performed. Should any contractor be unable to acquire a visa of entry for any employee or potential employee to a country in which or with which it is doing business, and which refusal it believes is due to the race, color, religion, sex, or national origin of the employee or potential employee, the contractor must immediately notify the Department of State and the Director of such refusal.

Subpart B—General Enforcement; Compliance Review and Complaint Procedure

6. 41 CFR 60–1.21, 1.22, 1.23 and 1.24 are revised to read as follows:

§ 60–1.21 Filing complaints.

Complaints shall be filed within 180 days of the alleged violation unless the time for filing is extended by the compliance agency or the Director for good cause shown.

§ 60–1.22 Where to file.

Complaints may be filed with the compliance agency or the OFCCP, 200 Constitution Avenue, NW., Washington, D.C., 20210. Those filed with the Director may be referred to the compliance agency for processing, or they may be processed in accordance with § 60–1.26.

§ 60–1.23 Contents of complaint.

(a) The complaint shall include the name, address, and telephone number of the complainant, the name and address of the contractor or subcontractor committing the alleged discrimination, a description of the acts considered to be discriminatory, and any other pertinent information which will assist in the investigation and resolution of the complaint. The complaint shall be signed by the complainant or his/her authorized representative. Complaints alleging class-type violations which do not identify the alleged discriminatee or discriminatees will be accepted, provided the other requirements of this paragraph are met.

(b) Where a complaint contains incomplete information, the compliance agency or OFCCP shall seek the needed information from the complainant. In the event such information is not furnished to the compliance agency or the Director within 60 days of the date of such request, the case may be closed.

§ 60–1.24 Processing of matters by agencies and the Director.

(a) *Complaints.*—A copy of each complaint filed with the compliance agency shall be transmitted to the Director within 10 days after the receipt thereof. OFCCP and the compliance agencies may refer appropriate complaints to the Equal Employment Opportunity Commission (EEOC) for processing under Title VII of the Civil Rights Act of 1964, as amended, rather than processing under E.O. 11246 and the regulations in this chapter. Upon referring complaints to the EEOC, compliance agencies or the OFCCP, as appropriate, shall promptly notify complainant(s) and the contractor of such referral.

(b) *Complaint investigations.*—In conducting complaint investigations, OFCCP or the compliance agency shall, as a minimum, conduct a thorough evaluation of the allegations of the complaint and shall be responsible for developing a complete case record. The compliance agency shall follow such other guidance in investigating the complaints as the Director provides. The case record should contain the name, address, and telephone number of each person interviewed, the interview statements, copies, transcripts, or summaries (where appropriate) of pertinent documents, a reference to at least one covered contract, and a narrative report of the investigation with references to exhibits and other evidence which relate to the alleged violations. When a complaint is filed against a prime contractor or sub-

contractor who has contracts involving more than one agency, unless otherwise provided, the compliance agency shall conduct the investigation and make such findings and determinations as shall be appropriate for the administration of the Order.

(c) *Resolution of matters.*—(1) If the complaint investigation by the compliance agency pursuant to paragraph (b) of this section shows no violation of the equal opportunity clause, the agency shall so inform the Director. The Director may review the findings of the agency, and he may request further investigation by the agency or may undertake such investigation as he may deem appropriate.

(2) If any complaint investigation or compliance review indicates a violation of the equal opportunity clause, the matter should be resolved by informal means whenever possible. Such informal means may include the holding of a compliance conference by the compliance agency. Each prime contractor and subcontractor shall be advised that the resolution is subject to review by the Director and may be disapproved if he determines that such resolution is not sufficient to achieve compliance.

(3) Where any complaint investigation or compliance review indicates a violation of the equal opportunity clause and the matter has not been resolved by informal means, the Director or the compliance agency, with the approval of the Director, shall proceed in accordance with § 60–1.26.

(4) When a prime contractor or subcontractor, without a hearing, shall have complied with the recommendations or orders of a compliance agency or the Director and believes such recommendations or orders to be erroneous, he shall, upon filing a request therefor within ten days of such compliance, be afforded an opportunity for a hearing and review of the alleged erroneous action by the agency or the Director.

(5) For reasonable cause shown, the Director or a compliance agency may reconsider or cause to be reconsidered any matter on his own motion or pursuant to a request.

(d) *Reports to the Director.*—(1) With the exception of complaints which have been referred to EEOC, within 60 days from receipt of a complaint by the compliance agency, or within such additional time as may be allowed by the Director for good cause shown, the compliance agency shall process the complaint and submit to the Director the case record and a summary report containing the following information:

(i) Name and address of the complainant;

(ii) Brief summary of findings, including a statement as to the agency's conclusions regarding the contractor's compliance or noncompliance with the requirements of the equal opportunity clause;

(iii) A statement of the disposition of the case, including any corrective action taken and any sanctions or penalties imposed or, whenever appropriate, the recommended corrective action and sanctions or penalties.

(2) A written report of every preaward compliance review required by this regulation or otherwise required by the Director, including findings, will be forwarded to the Director within 10 days after the award for a postaward review.

(3) A written report of every other compliance review or any other matter processed by the agency involving an apparent violation of the equal opportunity clause shall be submitted to the Director. Such report shall contain a brief summary of the findings, including a statement of conclusions regarding the contractor's compliance or noncompliance with the requirements of the Order, and a statement of the disposition of the case, including any corrective action taken or recommended and any sanctions or penalties imposed or recommended.

7. 41 CFR 60–1.26 is revised to read as follows:

§ 60–1.26 Enforcement proceedings.

(a) *General.*—(1) Violations of the Order, equal opportunity clause, the regulations in this chapter, or of applicable construction industry equal employment opportunity requirements, may result in the institution of administrative or judicial enforcement proceedings to enforce the Order and to seek appropriate relief. Violations may be found based upon, inter alia, any of the following: (i) The results of a complaint investigation; (ii) analysis of an affirmative action program; (iii) the results of an on-site review of the contractor's compliance with the Order and its implementing regulations; (iv) a contractor's refusal to submit an affirmative action program; (v) a contractor's refusal to allow an on-site compliance review to be conducted; (vi) a contractor's refusal to supply records or other information as required by these regulations or applicable construction industry requirements; or (vii) any substantial or material violation or the threat of a substantial or material violation of the contractual provisions of the Order, or of the rules or regulations issued pursuant thereto.

(2) If the investigation of a complaint, or a compliance review, results in a determination that the Order, equal opportunity clause or regulations issued pursuant thereto, have been violated, and the violations have not been corrected in accordance with the conciliation procedures in this chapter, the compliance agency (with the prior approval of the Director), or OFCCP may institute an administrative enforcement proceeding to enjoin the violations, to seek appropriate relief (which may include affected class and back pay relief), and to impose appropriate sanctions, or any of the above. However, if the contractor refuses to submit an affirmative action program, or refuses to supply records or other requested information, or refuses to allow the compliance agency access to its premises for an on-site review; and if conciliation efforts under this chapter are unsuccessful, the compliance agency (with the prior approval of the Director) or OFCCP, notwithstanding the requirements of Part 60–60 of this chapter, may go directly to administrative enforcement proceedings to enjoin the violations, to seek appropriate relief, and to impose appropriate sanctions, or any of the above. Whenever the Director has reason to believe that there is substantial or material violation or the threat of substantial or material violation of the contractual provisions of the Order or of the rules, regulations or orders issued pursuant thereto, he/she may institute administrative enforcement proceedings as set forth in this section or refer the matter to the Department of Justice to enforce the contractual provisions of the Order, to seek injunctive relief (including relief against noncontractors, including labor unions, who seek to thwart implementation of the Order and regulations) and to seek such additional relief, including back pay, as may be appropriate. There are no procedural prerequisites to a referral to the Department of Justice by the Director, and such referrals may be accomplished without proceeding through the conciliation procedures in this chapter, and a referral may be made at any stage in the procedures under this chapter: *Provided,* That no order for debarment from further contracts or subcontracts pursuant to section 209(a)(6) of the Order shall be made without affording the contractor an opportunity for a hearing, either administrative or judicial.

(b) *Request to institute enforcement proceedings.*—(1) If a compliance agency determines that a contractor or any other person, organization or group is in violation or threatens violation of the Order or the regulations issued pursuant thereto (through, e.g., any of the seven examples listed in § 60–1.26(a)), the compliance agency shall attempt to resolve the matter, where appropriate, through the conciliation procedure set out in this chapter. If the compliance agency is unable to resolve the matter, it shall send to the Director a written request for the institution of either administrative or judicial enforcement proceedings. The request shall describe at least one contract which covers the contractor under the Order (or if the proposed defendant is not a contractor, the basis for finding coverage under the Order) and under § 60–1.40, if appropriate. The request shall specify sections of the Order or regulations allegedly violated and briefly describe the facts which give rise to the violations. Appropriate documentation and statistical analysis also shall be attached.

(2) If the compliance agency requests that administrative enforcement proceedings be instituted, a proposed administrative complaint which conforms to the regulations in § 60–30.5 of this chapter shall be attached to the request to institute enforcement proceedings.

(3) The Director is not bound by a request for enforcement from a compliance agency, and he/she may take such action as he/she deems appropriate: *Provided,* That where analysis of a request for enforcement proceedings (including additional investigation, if necessary) indicates a violation of the Order or its implementing regulations, and the Director is unable to resolve the matter through informal methods, he/she shall institute enforcement proceedings under § 60–1.26.

(c) *Administrative enforcement proceedings.*—Administrative enforcement proceedings instituted by a compliance agency or the OFCCP shall be conducted under the control and supervision of the Solicitor of Labor and under the Rules of Practice for Administrative Proceedings to Enforce Equal Opportunity Under Executive Order 11246 contained in Part 60–30 of this chapter.

(d) *Decision following administrative proceeding.*—If it is determined after a hearing (or after the contractor waives a hearing) that the contractor is violating the Order or the regulations issued thereunder, the compliance agency (in accordance with 41 CFR 60–30.30(b)) or the Secretary (in accordance with 41 CFR 60–30.30(a)) shall issue an Administrative Order enjoining the violations and requiring the contractor to provide whatever remedies are appropriate, and imposing whatever sanctions are appropriate, or any of the above. In any event, failure to comply with the Administrative Order shall result in the imposition of the sanctions contained in section 209(a)(5) or (a)(6) of the Executive Order.

(e) *Referrals to the Department of Justice.*—(1) Whenever a matter has been referred to the Department of Justice for consideration of judicial proceedings pursuant to § 60–1.26(a)(2) of these regulations, the Attorney General may bring a civil action in the appropriate district court of the United States requesting a temporary restraining order, preliminary or permanent injunction, and an order for such additional equitable relief, including back pay, deemed necessary or appropriate to ensure the full enjoyment of the rights secured by the Order, or any of the above.

(2) The Attorney General is authorized to conduct such investigation of the facts as he may deem necessary or appropriate to carry out his responsibilities under these regulations.

(3) Prior to the institution of any judicial proceedings, the Attorney General, on behalf of the Director, is authorized to make reasonable efforts to secure compliance with the contract provisions of the Order. He may do so by providing the contractor and any other respondent with reasonable notice of his findings, his intent to file suit, and the actions he believes necessary to obtain compliance with the contract provisions of the Order without contested litigation, and by offering the contractor and any other respondent a reasonable opportunity for conference and conciliation, in an effort to obtain such compliance without contested litigation.

(4) As defined in these regulations, the Attorney General shall mean the Attorney General, the Assistant Attorney General for Civil Rights, or any other person authorized by regulations or practice to act for the Attorney General with respect to the enforcement of equal employment opportunity laws, orders and regulations generally, or in a particular matter or case.

(5) The Director or his/her designee, representatives of the compliance agencies and representatives of the Attorney General may consult from time to time to determine what investigations should be conducted to determine whether contractors or groups of contractors or other persons may be engaged in patterns or practices in violation of the Executive Order or these regulations, or of resistance to or interference with the full enjoyment of any of the rights secured by them, warranting judicial proceedings.

(f) *Initiation of lawsuits by the Attorney General without referral from the Director.*—In addition to initiating lawsuits upon referral under 41 CFR 60–1.26, the Attorney General may, subject to approval by the Director, initiate independent investigations of contractors which he/she has reason to believe may be in violation of the Order or the rules and regulations issued pursuant thereto. If, upon completion of such an investigation, the Attorney General determines that the contractor has in fact violated the Order or the rules and regulations issued thereunder, he shall make reasonable efforts to secure compliance with the contract provisions of the Order. He may do so by providing the contractor and any other respondent with reasonable notice of the Department's findings, its intent to file suit, and the actions that the Attorney General believes are necessary to obtain compliance with the contract provisions of the Order without contested litigation, and by offering the contractor and any other respondent a reasonable opportunity for conference and conciliation in an effort to obtain such compliance without contested litigation. If these efforts are unsuccessful, the Attorney General may, upon approval by the Director, bring a civil action in the appropriate district court of the United States requesting a temporary restraining order, preliminary or permanent injunction, and an order for such additional equitable relief, including back pay, deemed necessary or appropriate to ensure the full enjoyment of the rights secured by the Order, or any of the above.

(g) To the extent applicable, this section shall govern proceedings resulting from the Director's determination under § 60–2.2(b) that there are substantial issues of law or fact as to the contractor/bidder's responsibility.

Subpart C—Ancillary Matters

8. 41 CFR 60–1.40(a) is amended to read as follows:

§ 60–1.40 Affirmative action compliance programs.

(a) *Requirements of programs.*—Each agency or applicant shall require each prime contractor who has 50 or more employees and (1) has a contract of $50,000 or more; or (2) has Government bills of lading which, in any 12-month period, total or can reasonably be expected to total $50,000 or more; or (3) serves as a depository of Government funds in any amount; or (4) is a financial institution which is an issuing and paying agent for U.S. savings bonds and savings notes in any amount, and each prime contractor and subcontractor shall require each subcontractor who has 50 or more employees and (i) has a subcontract of $50,000 or more; or (ii) has Government bills of lading which, in any 12-month period, total or can reasonably be expected to total $50,000 or more; or (iii) serves as a depository of Government funds in any amount; or (iv) is a financial institution which is an issuing and paying agent for U.S. savings bonds and savings notes in any amount, to develop a written affirmative action compliance program for each of its establishments. A necessary prerequisite to the development of a satisfactory affirmative action program is the identification and analysis of problem areas inherent in minority employment and an evaluation of opportunities for utilization of minority group personnel. The contractor's program shall provide in detail for specific steps to guarantee equal employment opportunity keyed to the problems and needs of members of minority groups, including, when there are deficiencies, the development of the specific goals and timetables for the prompt achievement of full and equal employment opportunity. Each contractor shall include in its affirmative action compliance program a table of job classifications. This table should include but need not be limited to job titles, principal duties (and auxiliary duties, if any), rates of pay, and where more than one rate of pay applies (because of length of time in the job or other factors), the applicable rates. The affirmative action compliance program shall be signed by an executive official of the contractor.

PART 60–2—AFFIRMATIVE ACTION PROGRAMS

Subpart A—General

9. 41 CFR 60–2.1 is amended to read as follows:

§ 60–2.1 Title, purpose and scope.

(a) This part shall also be known as "Revised Order No. 4" and shall cover nonconstruction contractors. Section 60–1.40 of this chapter, Affirmative action compliance programs, requires that within 120 days from the commencement of a contract each prime contractor or subcontractor with 50 or more employees and (1) a contract of $50,000 or more; or (2) Government bills of lading which, in any 12-month period, total or can reasonably be expected to total $50,000 or more; or (3) who serves as a depository of Government funds in any amount; or (4) who is a financial institution which is an issuing and paying agent for U.S. savings bonds and savings notes in any amount, develop a written affirmative action compliance program for each of its establishments.

A review of agency compliance surveys indicates that many contractors do not have affirmative action programs on file at the time an establishment is visited by a compliance investigator. This part details the agency review procedure and the results of a contractor's failure to develop and maintain an affirmative action program and then sets forth detailed guidelines to be used by the contractors and Government agencies in developing and judging these programs as well as the good faith effort required to transform the programs from paper commitments to equal employment opportunity. Subparts B and C of this part are concerned with affirmative action programs only.

(b) Relief, including back pay where appropriate, for members of an affected class who by virtue of past discrimination continue to suffer the present effects of that discrimination, shall be provided in the conciliation agreement entered into pursuant to § 60–60.6 of this title. An "affected class" problem must be remedied in order for a contractor to be considered in compliance. Section 60–2.2 herein pertaining to an acceptable affirmative action program is also applicable to the failure to remedy discrimination against members of an "affected class."

10. 41 CFR 60–22.2 (b) and (c) are amended to read as follows:

§ 60–2.2 Agency action.

* * * * *

(b) If, in determining such contractor's responsibility for an award of a contract, it comes to the contracting officer's attention through sources within his agency or through the Office of Federal Contract Compliance Programs or other Government agencies, that the contractor has no affirmative action program at each of his establishments, or has substantially deviated from an approved affirmative action program, or has failed to develop or implement an affirmative action program which complies with the regulations in this chapter, the contracting officer shall declare the contractor/bidder nonresponsible and so notify the contractor, the Director, and the compliance agency unless he can otherwise affirmatively determine that the contractor is able to comply with his equal employment obligations. Any contractor/bidder which has been declared nonresponsible in accordance with the provisions of this section may request the Director to determine that the responsibility of the contractor/bidder raises substantial issues of law or fact to the extent that a hearing is required. Such request shall set forth the basis upon which the contractor/bidder seeks such a determination. If the Director, in his/her sole discretion, determines that substantial issues of law or fact exist, an administrative or judicial proceeding may be commenced in accordance with the regulations contained in § 60–1.26; or the Director may require the compliance agency to develop the investigation or compliance review further or to conduct additional conciliation: *Provided*, That during any pre-award conferences, every effort shall be made through the processes of conciliation, mediation and persuasion to develop an acceptable affirmative action program meeting the standards and guidelines set forth in §§ 60–2.10 through 60–2.32 so that in the performance of his contract, the contractor is able to meet his equal employment obligations in accordance with the equal opportunity clause and applicable rules, regulations, and orders: *Provided further*, That when the contractor-bidder is declared nonresponsible more than once for inability to comply with the equal employment opportunity clause, the compliance agency shall promptly send to the Director a written request that enforcement proceedings be initiated pursuant to § 60–1.26. Such request for initiation of enforcement proceedings shall be sent to the Director no later than the date of issuance of the second nonresponsibility determination.

(c) (1) Immediately upon finding that a contractor has no affirmative action program, or has deviated substantially from an approved affirmative action program, or has failed to develop or implement an affirmative action program which complies with the requirements of the regulations in this chapter, the compliance agency representative or the representative of the Office of Federal Contract Compliance Programs, whichever has made such a finding, shall notify officials of the appropriate compliance agency and the Office of Federal Contract Compliance Programs of such fact. Whenever administrative enforcement is contemplated, the compliance agency shall issue a notice to the contractor giving him 30 days to show cause why enforcement proceedings under section 209(b) of Executive Order 11246, as amended, should not be instituted. The notice to show cause should contain:

(i) An itemization of the sections of the Executive Order and of the regulations with which the contractor has been found in apparent violation, and a summary of the conditions, practices, facts or circumstances which give rise to each apparent violation;

(ii) The corrective actions necessary to achieve compliance or, as may be appropriate, the concepts and principles of an acceptable remedy and/or the corrective action results anticipated;

(iii) A request for a written response to the findings, including commitments to corrective action or the presentation or opposing facts and evidence; and

(iv) A suggested date for the conciliation conference.

(2) If the contractor fails to show good cause for his failure or fails to remedy that failure by developing and implementing an acceptable affirmative action program within 30 days the compliance agency shall promptly send to the Director a written request for enforcement proceedings pursuant to § 60–1.26 of this chapter, giving the contractor 20 days to request a hearing. If a request for hearing has not been received within 20 days from such notice, such contractor will be declared ineligible for future contracts, and current contracts will be terminated for default.

(3) During the "show cause" period of 30 days, every effort will be made by the compliance agency through conciliation, mediation, and persuasion to resolve the deficiencies which led to the determination of nonresponsibility. If satisfactory adjustments designed to bring the contractor into compliance are not concluded, the compliance agency shall promptly send to the Director a written request for enforcement proceedings pursuant to § 60–1.26 of this chapter.

* * * * *

11. 41 CFR 60–2.12 is amended by redesignating paragraphs (j), (k), (l) and (m) as (k), (l), (m), and (n) and by adding a new (j) as follows:

§ 60–2.12 Establishment of goals and timetables.

* * * * *

(j) a contractor or subcontractor extending a publicly announced preference for Indians as authorized in 41 CFR 60–1.5(a)(6) may reflect in its goals and timetables the permissive employment preference for Indians living on or near an Indian reservation.

* * * * *

PART 60–30—RULES OF PRACTICE FOR ADMINISTRATIVE PROCEEDINGS TO ENFORCE EQUAL OPPORTUNITY UNDER EXECUTIVE ORDER 11246

12. 41 CFR Part 60–30 is revised to read as follows:

GENERAL PROVISIONS

Sec.
60–30.1 Applicability of rules.
60–30.2 Waiver, modification.
60–30.3 Computation of time.
60–30.4 Form, filing, service of pleadings and papers.

PREHEARING PROCEDURES

60–30.5 Administrative complaint.
60–30.6 Answer.
60–30.7 Notice of prehearing conference.
60–30.8 Motions; disposition of motions.
60–30.9 Interrogatories, and admissions as to facts and documents.
60–30.10 Production of documents and things and entry upon land for inspection and other purposes.
60–30.11 Depositions upon oral examination.
60–30.12 Prehearing conferences.
60–30.13 Consent findings and order.

HEARINGS AND RELATED MATTERS

60–30.14 Designation of Administrative Law Judges.
60–30.15 Authority and responsibilities of Administrative Law Judges.
60–30.16 Appearances.
60–30.17 Appearance of witnesses.
60–30.18 Evidence; testimony.
60–30.19 Objections; exceptions; offer of proof.
60–30.20 Ex parte communications.
60–30.21 Oral argument.
60–30.22 Official transcript.
60–30.23 Summary Judgment.
60–30.24 Participation by interested persons.

POST HEARING PROCEDURES

Sec.
60–30.25 Proposed findings of fact and conclusions of law.
60–30.26 Record for recommended decision.
60–30.27 Recommended decision.
60–30.28 Exceptions to recommended decisions.
60–30.29 Record.
60–30.30 Final Administrative Order.

AUTHORITY: Secs. 201, 205, 208, 209, 301, 302(b) and 303(a) of the Executive Order 11246, as amended, 30 FR 12319; 32 FR 14303; § 50–1.25 of Part 60–1 of this chapter (41 CFR Part 60–1).

GENERAL PROVISIONS

§ 60–30.1 Applicability of rules.

This part provides the rules of practice for all administrative proceedings, instituted either by the OFCCP or by a compliance agency, including but not limited to proceedings instituted against construction contractors or subcontractors, which relate to the enforcement of equal opportunity under Executive Order 11246, as amended. In the absence of a specific provision, procedures shall be in accordance with the Federal Rules of Civil Procedure.

§ 60–30.2 Waiver, modification.

Upon notice to all parties, the Administrative Law Judge may, with respect to matters pending before him, modify or waive any rule herein upon a determination that no party will be prejudiced and that the ends of justice will be served thereby.

§ 60–30.3 Computation of time.

In computing any period of time under these rules or in an order issued hereunder, the time begins with the day following the act, event, or default, and includes the last day of the period, unless it is a Saturday, Sunday, or legal holiday observed by the Federal Government in which event it includes the next business day.

§ 60–30.4 Form, filing, service of pleadings and papers.

(a) *Form.*—The original of all pleadings and papers in a proceeding conducted under the regulations in this part shall be filed with the Administrative Law Judge assigned to the case or with the Chief Administrative Law Judge if the case has not been assigned. Every pleading and paper filed in the proceeding shall contain a caption setting forth the name of the agency instituting the proceeding, the title of the action, the case file number assigned by the Administrative Law Judge, and a designation of the pleading or paper (e.g. complaint, motion to dismiss, etc.). The pleading or papers shall be signed and shall contain the address and telephone number of the person representing the party or the person on whose behalf the pleading or paper was filed. Unless otherwise ordered for good cause by the Administrative Law Judge regarding specific papers and pleadings in a specific case, all such papers and pleadings are public documents.

(b) *Service.*—Service upon any party shall be made by the party filing the pleading or document by delivering a copy or mailing a copy to the party's last known address. When a party is represented by an attorney, the service shall be upon the attorney.

(c) *Proof of service.*—A certificate of the person serving the pleading or other document by personal delivery or by mailing, setting forth the manner of service, shall be proof of the service.

PREHEARING PROCEDURES

§ 60–30.5 Administrative complaint.

(a) *Issuance.*—The Solicitor of Labor, upon referral from the Office of Federal Contract Compliance Programs, shall institute enforcement proceedings by issuing a complaint and causing the complaint to be served upon the contractor which shall be designated in the complaint as the defendant. The Department of Labor, OFCCP, and/or the compliance agency handling the case shall be designated as the plaintiff.

(b) *Contents.*—The complaint shall contain a concise jurisdictional statement, and a clear and concise statement sufficient to put the defendant on notice of the acts or practices it is alleged to have committed in violation of the Order, the regulations, or its contractual obligations. The complaint shall also contain a prayer regarding the relief being sought, a statement of whatever sanctions the Government will seek to impose and the name and address of the attorney who will represent the Government.

(c) *Amendment.*—The complaint may be amended once as a matter of course before an answer is filed, and the defendant may amend its answer once as a matter of course not later than 10 days after the filing of the original answer. Other amendments of the complaint or of the answer to the complaint shall be made only by leave of the Administrative Law Judge or by written consent of the adverse party; and leave shall be freely given where justice so requires. An amended complaint shall be answered within 14 days of its service, or within the time for filing an answer to the original complaint, whichever period is longer. An amended answer shall be responded to within 14 days of its service.

§ 60–30.6 Answer.

(a) *Filing and service.*—Within 20 days after the service of the complaint, the defendant shall file an answer with the Chief Administrative Law Judge if the case has not been assigned to an Administrative Law Judge. The answer shall be signed by the defendant or its attorney, and served on the Government in accordance with § 60–30.4(b).

(b) *Contents; failure to file.*—The answer shall (1) contain a statement of the facts which constitute the grounds of defense, and shall specifically admit, explain, or deny, each of the allegations of the complaint unless the defendant is without knowledge, in which case the answer shall so state; or (2) state that the defendant admits all the allegations of the complaint. The answer may contain a waiver of hearing; and if not, a separate paragraph in the answer shall request a hearing. The answer shall contain the name and address of the defendant, or of the attorney representing the defendant. Failure to file an answer or to plead specifically to any allegation of the complaint shall constitute an admission of such allegation.

(c) *Procedure, upon admission of facts.*—The admission, in the answer or by failure to file an answer, of all the material allegations of fact contained in the complaint shall constitute a waiver of hearing. Upon such admission, the Administrative Law Judge, without further hearing, may prepare his decision in which he shall adopt as his proposed findings of fact the material facts alleged in the complaint. The parties shall be given an opportunity to file exceptions to his decision and to file briefs in support of the exceptions.

§ 60–30.7 Notice of prehearing conference.

The Administrative Law Judge shall respond to defendant's request for a hearing within 15 days and shall serve a notice of prehearing conference on the parties. The notice shall contain the time and place of the conference.

§ 60–30.8 Motions; disposition of motions.

(a) *Motions.*—Motions shall state the relief sought, the authority relied upon and the facts alleged, and shall be filed with the Administrative Law Judge. If made before or after the hearing itself, the motions shall be in writing. If made at the hearing, motions may be stated orally, but the Administrative Law Judge may require that they be reduced to writing and filed and served on all parties in the same manner as a formal motion. Unless otherwise ordered by the Administrative Law Judge, written motions shall be accompanied by a supporting memorandum. Within 10 days after a written motion is served, or such other time period as may be fixed by the Administrative Law Judge, any party may file a response to a motion.

(b) *Disposition of motions.*—The Administrative Law Judge may not grant a written motion prior to the expiration of the time for filing responses thereto, except upon consent of the parties or following a hearing, but may overrule or deny such motion without awaiting response: *Provided*, That prehearing conferences, hearings, and decisions need not be delayed pending disposition of motions.

§ 60–30.9 Interrogatories and admissions as to facts and documents.

(a) *Interrogatories.*—Not later than 25 days prior to the date of the hearing, except for good cause shown, or not later than 14 days prior to such earlier date as the Administrative Law Judge may order, any party may serve upon an opposing party written interrogatories. Each interrogatory shall be answered separately and fully in writing under oath, unless objected to. Answers are to be signed by the person making them and objections by the attorney or by whoever is representing the party. Answers

and objections shall be filed and served within 25 days of service of the interrogatory.

(b) *Admissions.*—Not later than 14 days prior to the date of the hearing, except for good cause shown, or not later than 14 days prior to such earlier date as the Administrative Law Judge may order, any party may serve upon an opposing party a written request for the admission of the genuineness and authenticity of any relevant documents described in and exhibited with the request, or for the admission of the truth of any relevant matters of fact stated in the request. Each of the matters as to which an admission is requested shall be deemed admitted, unless within 25 days after service, the party to whom the request is directed serves upon the requesting party a sworn statement either (1) denying specifically the matter as to which an admission is requested, or (2) setting forth in detail the reasons why he cannot truthfully either admit or deny such matters.

(c) *Objections or failures to respond.*—The party submitting the interrogatory or request may move for an order with respect to any objection or other failure to respond.

§ 60–30.10 Production of documents and things and entry upon land for inspection and other purposes.

(a) After commencement of the action, any party may serve on any other party a request to produce and/or permit the party, or someone acting on his behalf, to inspect and copy any documents, phonorecords, and other compilations, including computer tapes and printouts which contain or may lead to relevant information and which are in the possession, custody, or control of the party upon whom the request is served. If necessary, translation of data compilations shall be done by the party furnishing the information.

(b) After commencement of the action, any party may serve on any other party a request to permit entry upon designated property which may be relevant to the issues in the proceeding and which is in the possession or control of the party upon whom the request is served for the purpose of inspection, measuring, surveying or photographing, testing, or sampling the property or any designated object or area.

(c) Each request shall set forth with reasonable particularity the items to be inspected and shall specify a reasonable time and place for making the inspection and performing the related acts.

(d) The party upon whom the request is served shall respond within 25 days after the service of the request. The response shall state, with respect to each item, that inspection and related activities will be permitted as requested, unless there are objections, in which case the reasons for each objection shall be stated. The party submitting the request may move for an order with respect to any objection or to other failure to respond.

§ 60–30.11 Depositions upon oral examination.

(a) *Depositions; notice of examination.*—After commencement of the action, any party may take the testimony of any person, including a party, having personal or expert knowledge of the matters in issue, by deposition upon oral examination. A party desiring to take a deposition shall give reasonable notice in writing to every other party to the proceeding, and may use an administrative subpoena. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs. The notice shall also set forth the categories of documents the witness is to bring with him to the deposition, if any. A copy of the notice shall be furnished to the person to be examined unless his name is unknown.

(b) *Production of witnesses; obligation of parties; objections.*—It shall be the obligation of each party to produce for examination any person, along with such documents as may be requested, at the time and place, and on the date, set forth in the notice, if that party has control over such person. Each party shall be deemed to have control over its officers, agents, employees, and members. Unless the parties agree otherwise, depositions shall be held within the county in which the witness resides or works. The party or prospective witness may file with the Administrative Law Judge an objection within 5 days after notice of production of such witness is served, stating with particularity the reasons why the party cannot or ought not produce a requested witness. The party serving the notice may move for an order with respect to such objection or failure to produce a witness. All errors or irregularities in compliance with the provisions of this section shall be deemed waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is or, with due diligence, might have been ascertained.

(c) *Before whom taken; scope of examination; failure to answer.*—Depositions may be taken before any officer authorized to administer oaths by the laws of the United States or of the place where the deposition is held. At the time and place specified in the notice, each party may examine and cross-examine the witness under oath upon any matter which is revelant to the subject matter of the proceeding, or which is reasonably calculated to lead to the production of relevant and otherwise admissible evidence. All objections to questions, except as to the form thereof, and all objections to evidence are reserved until the hearing. A refusal or failure on the part of any person under the control of a party to answer a question shall operate to create a presumption that the answer, if given, would be unfavorable to the controlling party, unless the question is subsequently ruled improper by the Administrative Law Judge or the Administrative Law Judge rules that there was valid justification for the witness' failure or refusal to answer the question: *Provided,* That the examining party shall note on the record during the deposition the question which the deponent has failed, or refused, to answer, and state his intention to invoke the presumption if no answer is forthcoming.

(d) *Subscription; certification; filing.*—The testimony shall be reduced to typewriting, either by the officer taking the deposition or under his direction, and shall be submitted to the witness for examination and signing. If the deposition is not signed by the witness because he is ill, dead, cannot be found, or refuses to sign it, such fact shall be noted in the certificate of the officer and the deposition may then be used as fully as though signed. The officer shall immediately deliver the original copy of the transcript, together with his certificate, in person or by mail to the Administrative Law Judge. Copies of the transcript and certificate shall be furnished to all persons desiring them, upon payment of reasonable charges, unless distribution is restricted by order of the Administrative Law Judge for good cause shown.

(e) *Rulings on admissibility; use of deposition.*—Subject to the provisions of this section, objection may be made at the hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying. Any part or all of a deposition, so far as admissible in the discretion of the Administrative Law Judge, may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice, in accordance with the following provisions:

(1) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness.

(2) The deposition of a party or of anyone who at the time of taking the deposition was an officer, director, or managing agent, or was designated to testify on behalf of a public or private corporation, partnership, association, or governmental agency which is a party may be used by the adverse party for any purpose.

(3) The deposition of a witness whether or not a party, may be used by any party for any purpose if the hearing examiner finds: (i) That the witness is dead; or (ii) that the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment; or (iii) that the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or (iv) upon application and notice, that such exceptional circumstances exist as to make it desirable to allow the deposition to be used.

(4) If only part of a deposition is introduced in evidence by a party, any party may introduce any other parts by way of rebuttal and otherwise.

(f) *Stipulations.*—If the parties so stipulate in writing, depositions may be taken before any person at any time or place, upon any notice and in any manner, and when so taken may be used like other depositions.

§ 60–30.12 Prehearing conferences.

(a) Upon his own motion or the motion of the parties, the Administrative Law Judge may direct the parties or their counsel to meet with him for a conference to consider:

(1) Simplification of the issues;

(2) Necessity or desirability of amendments to pleadings for purposes of clarification, simplification, or limitation;

(3) Stipulations, admissions of fact and of contents and authenticity of documents;

(4) Limitation of the number of expert witnesses;

(5) Scheduling dates for the exchange of witness lists and of proposed exhibits; and

(6) Such other matters as may tend to expedite the disposition of the proceeding.

(b) The record shall show the matters disposed of by order and by agreement in such pretrial conferences. The subsequent course of the proceeding shall be controlled by such action.

§ 60–30.13 Consent findings and order.

(a) *General.*—At any time after the issuance of a complaint and prior to or during the reception of evidence in any proceeding, the parties may jointly move to defer the receipt of any evidence for a reasonable time to permit negotiation of an agreement containing consent findings and an order disposing of the whole or any part of the proceeding. The allowance of such deferment and the duration thereof shall be in the discretion of the Administrative Law Judge after consideration of the nature of the proceeding, the requirements of the public interest, the representations of the parties, and the probability of an agreement being reached which will result in a just disposition of the issues involved.

(b) *Content.*—Any agreement containing consent findings and an order disposing of a proceeding shall also provide:

(1) That the order shall have the same force and effect as an order made after full hearing;

(2) That the entire record on which any order may be based shall consist solely of the complaint and the agreement;

(3) That any further procedural steps are waived; and

(4) That any right to challenge or contest the validity of the findings and order entered into in accordance with the agreement is waived.

(c) *Submission.*—On or before the expiration of the time granted for negotiations, the parties or their counsel may:

(1) Submit the proposed agreement to the Administrative Law Judge for his consideration; or

(2) Inform the Administrative Law Judge that agreement cannot be reached.

(d) *Disposition.*—In the event an agreement containing consent findings and an order is submitted within the time allowed, the Administrative Law Judge within 30 days, shall accept such agreement by issuing his decision based upon the agreed findings and his decision shall constitute the final Administrative Order.

HEARINGS AND RELATED MATTERS

§ 60–30.14 Designation of Administrative Law Judges.

Hearings shall be held before an Administrative Law Judge of the compliance agency or of the Department of Labor who shall be designated by the Chief Administrative Law Judge of the compliance agency or of the Department of Labor. After commencement of the proceeding but prior to the designation of an Administrative Law Judge pleadings and papers shall be filed with the Chief Administrative Law Judge.

§ 60–30.15 Authority and responsibilities of Administrative Law Judges.

The Administrative Law Judge shall propose findings and conclusions to the compliance agency or to the Secretary on the basis of the record. In order to do so, he shall have the duty to conduct a fair hearing, to take all necessary action to avoid delay, and to maintain order. He shall have all powers necessary to those ends, including, but not limited to, the power to:

(a) Hold conferences to settle, simplify, or fix the issues in a proceeding, or to consider other matters that may aid in the expeditious disposition of the proceeding by consent of the parties or upon his own motion.

(b) Require parties to state their position with respect to the various issues in the proceeding;

(c) Require parties to produce for examination those relevant witnesses and documents under their control; and require parties to answer interrogatories and requests for admissions in full.

(d) Administer oaths;

(e) Rule on motions, and other procedural items or matters pending before him;

(f) Regulate the course of the hearing and conduct of participants therein;

(g) Examine and cross-examine witnesses, and introduce into the record documentary or other evidence;

(h) Receive, rule on, exclude, or limit evidence and limit lines of questioning or testimony which are irrelevant, immaterial or unduly repetitious;

(i) Fix time limits for submission of written documents in matters before him and extend any time limits established by this part upon a determination that no party will be prejudiced and that the ends of justice will be served thereby;

(j) Impose appropriate sanctions against any party or person failing to obey an order under these rules which may include:

(1) Refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting it from introducing designated matters in evidence;

(2) Excluding all testimony of an unresponsive or evasive witness, or determining that the answer of such witness, if given, would be favorable to the party having control over him; and

(3) Expelling any party or person from further participation in the hearing;

(k) Take official notice of any material fact not appearing in evidence in the record which is among the traditional matters of judicial notice;

(l) Recommend whether the respondent is in violation of the Order, regulations, or its contractual obligations, as well as the nature of the relief necessary to ensure the full enjoyment of the rights secured by the Order;

(m) Issue subpoenas;

(n) Take any action authorized by these rules.

§ 60–30.16 Appearances.

(a) *Representation.*—The parties or other persons or organizations participating pursuant to this Part 60–30 have the right to be represented by counsel.

(b) *Failure to appear.*—In the event that a party appears at the hearing and no party appears for the opposing side, the party who is present shall have an election to present his evidence in whole or such portion thereof sufficient to make a prima facie case before the Administrative Law Judge. Failure to appear at the hearing shall not be deemed to be a waiver of the right to be served with a copy of the Administrative Law Judge's recommended decision and to file exceptions to it.

§ 60–30.17 Appearance of witnesses.

(a) A party wishing to procure the appearance at the hearing of any person having personal or expert knowledge of the matters in issue shall serve on the prospective witness a notice which may be accomplished by an administrative subpoena, setting forth the time, date and place at which he is to appeal for the purpose of giving testimony. The notice shall also set forth the categories of documents the witness is to bring with him to the hearing, if any. A copy of the notice shall be filed with the Administrative Law Judge and additional copies shall be served upon the opposing parties.

(b) It shall be the obligation of each party to produce for examination any person, along with such documents as may be requested, at the time and place, and on the date, set forth in the notice, if that party has control over such person. Each party shall be deemed to have control over its officers, agents, employees, and members. Due regard shall be given to the convenience of witnesses in scheduling their testimony so that they will be detained no longer than reasonably necessary.

(c) The party or prospective witness may file an objection within 5 days after notice of production of such witness is served, stating with particularity the reasons why the party cannot produce a requested witness. The party serving the notice may move for an order with respect to such objection or failure to produce a witness.

§ 60–30.18 Evidence; testimony.

Formal rules of evidence shall not apply, but rules or principles designed to assure production of the most probative evidence available shall be applied. Testimony shall be given orally by witnesses at the hearing. A witness shall be available for cross-examination, and, at the discretion of the Administrative Law Judge, may be cross-examined without regard to the scope of direct examination as to any matter which is relevant and material to the proceeding. The Administrative Law Judge may exclude evidence which is immaterial, irrelevant, or unduly repetitious.

§ 60–30.19 Objections; exceptions; offer of proof.

(a) *Objections.*—If a party objects to the admission or rejection of any evidence or to the limitation of the scope of any examination or cross-examination or the failure to limit such scope, he shall state briefly the grounds for such objection. Rulings on all objections shall appear in the record. Only objections made on the record may be relied upon subsequently in the proceedings.

(b) *Exceptions.*—Formal exception to an adverse ruling is not required. Rulings by the Administrative Law Judge shall not be appealed prior to the transfer of the case to the compliance agency or to the Secretary but shall be considered by the compliance agency or the Secretary upon filing exceptions to the Administrative Law Judge's recommendations and conclusions.

(c) *Offer of proof.*—An offer of proof made in connection with an objection taken to any ruling excluding proffered oral testimony shall consist of a statement of the substance of the evidence which counsel contends would be adduced by such testimony; and, if the excluded evidence consists of evidence in written form or consists of reference to documents, a copy of such evidence shall be marked for identification and shall accompany the record as the offer of proof.

§ 60–30.20 Ex parte communications.

The Administrative Law Judge shall not consult any person, or party, on any fact in issue unless upon notice and opportunity for all parties to participate. No employee or agent of the Federal Government engaged in the investigation and prosecution of this case shall participate or advise in the rendering of the recommended or final decision, except as witness or counsel in the proceeding.

§ 60–30.21 Oral argument.

Any party shall be entitled upon request to a reasonable period between the close of evidence and termination of the hearing for oral argument. Oral arguments shall be included in the official transcript of the hearing.

§ 60–30.22 Official transcript.

The official transcripts of testimony taken, together with any exhibits, briefs, or memorandums of law, shall be filed with the Administrative Law Judge. Transcripts of testimony may be obtained from the official reporter by the parties and the public as provided in Section 11(a)(1) of the Federal Advisory Committee Act (86 Stat. 770). Upon notice to all parties, the Administrative Law Judge may authorize such corrections to the transcript as are necessary to reflect accurately the testimony.

§ 60–30.23 Summary judgment.

(a) *For the Government.*—At any time after the expiration of 20 days from the commencement of the action, or after service of a motion for summary judgment by the respondent, the Government may move with or without supporting affidavits for summary judgment upon all claims or any part.

(b) *For defendant.—The defendant* may, at any time after commencement of the action, move with or without supporting affidavits for summary judgment in its favor as to all claims or any part.

(c) *Other parties.*—Any other party to a formal proceeding under this part may support or oppose motions for summary judgment made by the Government or respondent, in accordance with this section, but may not move for a summary judgment in its own behalf.

(d) *Statement of Uncontested Facts.*—All motions for summary judgment shall be accompanied by a "Statement of Uncontested Facts" in which the moving party sets forth all alleged uncontested material facts which shall provide the basis for its motion. At least 5 days prior to the time fixed for hearing on the motion, any party contending that any material fact regarding the matter covered by the motion is in dispute, shall file a "Statement of Disputed Facts." Failure to file a "Statement of Disputed Facts" shall be deemed as an admission to the "Statement of Uncontested Facts."

(e) *Motion and proceedings.*—The motion shall be served upon all parties and at least 15 days before the time fixed for the hearing on the motion. The adverse party or parties may serve opposing affidavits prior to the day of hearing. The judgment sought shall be rendered forthwith if the complaint and answer, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Summary judgment rendered for or against the Government or the respondent shall constitute the findings and recommendations on the issues involved. Hearings on motions made under this section shall be scheduled by the Administrative Law Judge.

(f) *Case not fully adjudicated on motion.*—If on motion under this section, judgment is not rendered upon the whole case or for all the relief asked and a final hearing is necessary, the Administrative Law Judge at the hearing of the motion, by examining the notice and answer and the evidence before him and by interrogating counsel, shall, if practicable, ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. He shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which relief is not in controversy, and directing such furthering proceedings as are just. At the hearing on the merits, the facts so specified shall be deemed established, and the final hearing shall be conducted accordingly.

§ 60–30.24 Participation by interested persons.

(a) (1) To the extent that proceedings hereunder involve employment of persons covered by a collective bargaining agreement, and compliance may necessitate a revision of such agreement, any labor organization which is a signatory to the agreement shall have the right to participate as a party.

(2) Other persons or organizations shall have the right to participate as parties if the final Administrative Order could adversely affect them or the class they represent and such participation may contribute materially to the proper disposition of the proceedings.

(3) Any person or organization wishing to participate as a party under this paragraph shall file with the Administrative Law Judge and serve on all parties a petition within 25 days after the commencement of the action or at such other time as ordered by the Administrative Law Judge, so long as it does not disrupt the proceeding. Such petition shall concisely state (i) petitioner's interest in the proceedings, (ii) who will appear for petitioner, (iii) the issues on which petitioner wishes to participate, and (iv) whether petitioner intends to present witnesses.

(4) The Administrative Law Judge shall determine whether each petitioner has the requisite interest in the proceedings and shall permit or deny participation accordingly. Where petitions to participate as parties are made by individuals or groups with common interest, the Administrative Law Judge may request all such petitioners to designate a single representative to represent all such petitioners: *Provided,* That the representative of a labor organization qualifying to participate under subparagraph (1) of this paragraph must be permitted to participate in the proceeding. The Administrative Law Judge shall give each petitioner written notice of the decision on his petition; and if the petition is denied, he shall briefly state the grounds for denial and shall then treat the petition as a request for participation as amicus curiae. The Administrative Law Judge shall give written notice to each party of each petition granted.

(b) (1) Any other interested person or organization wishing to participate as amicus curiae shall file a petition before the commencement of the final hearing with the Administrative Law Judge. Such petition shall concisely state (i) the petitioner's interest in the hearing, (ii) who will represent the petitioner, and (iii) the issues on which petitioner intends to present argument. The Administrative Law Judge may grant the petition if he finds that the petitioner has a legitimate interest in the proceedings, and that such participation may contribute materially to the proper disposition of the issues. An amicus curiae is not a party but may participate as provided in this paragraph.

(2) An amicus curiae may present a brief oral statement at the hearing, at the point in the proceedings specified by the Administrative Law Judge. He may submit a written statement of position to the Administrative Law Judge prior to the beginning of a hearing, and shall serve a copy on each party. He may also submit a brief or written statement at such time as the parties submit briefs and exceptions, and shall serve a copy on each party.

POST HEARING PROCEDURES

§ 60–30.25 Proposed findings of fact and conclusions of law.

Within 20 days after receipt of the transcript of the testimony, each party and amicus may file a brief. Such briefs shall be served simultaneously on all parties and amici, and a certificate of service shall be furnished to the hearing examiner. Requests for additional time in which to file a brief shall be made in writing, and copies shall be served simultaneously on the other parties. Requests for extensions shall be received not later than 3 days before the date such briefs are due. No reply brief may be filed except by special permission of the Administrative Law Judge.

§ 60–30.26 Record for recommended decision.

The transcript of testimony, exhibits, and all papers, documents, and requests filed in the proceedings, including briefs, but excepting the correspondence section of the docket, shall constitute the record for decision.

§ 60–30.27 Recommended decision.

Within a reasonable time after the filing of briefs, the Administrative Law Judge shall recommend findings, conclusions, and a decision. These recommendations shall be certified, together with the record for recommended decision to the head of the compliance agency if the proceeding was instituted by the agency, or to the Secretary if it was instituted by the OFCCP, for a final Administrative Order. The recommended findings, conclusions, and decision shall be served on all parties and amici to the proceeding.

§ 60–30.28 Exceptions to recommended decisions.

Within 14 days after receipt of the recommended findings, conclusions, and decision, any party may submit exceptions to said recommendation. These exceptions may be responded to by other parties within 14 days of their receipt by said parties. All exceptions and responses shall be filed with the compliance agency or, where appropriate, with the Secretary. Service of such briefs or exceptions and responses shall be made simultaneously on all parties to the proceeding. Requests to the compliance agency or the Secretary for additional time in which to file exceptions and responses shall be in writing and copies shall be served simultaneously on other parties. Requests for extensions must be received no later than 3 days before the exceptions are due.

§ 60–30.29 Record.

After expiration of the time for filing briefs and exceptions, the compliance agency or, where appropriate, the Secretary shall make a final decision, which shall be the final Administrative Order, on the basis of the record. The record shall consist of the record for recommended decision, the rulings and recommended decision of the Administrative Law Judge and the exceptions and briefs filed subsequent to the Administrative Law Judge's decision.

§ 60–30.30 Final Administrative Order.

(a) After expiration of the time for filing, the Secretary shall make a final Administrative Order which shall be served on all parties. If the Secretary concludes that the defendant has violated the Executive Order, the equal opportunity clause, or the regulations, an Administrative Order shall be issued enjoining the violations, and requiring the contractor to provide whatever remedies are appropriate, and imposing whatever sanctions are appropriate, or any of the above. In any event, failure to comply with the Administrative Order shall result in the immediate cancellation, termination and suspension of the respondent's contracts and/or debarment of the respondent from further contracts.

(b) If the administrative proceeding was instituted by the compliance agency, a similar order will be prepared by the agency and forwarded to the Director for approval. When approved by the Director, the order becomes the final Administrative Order and shall be served on all parties. In any event, failure to comply with the Administrative Order will result in the immediate cancellation, termination and suspension of the contractor's contracts and/or debarment of the respondent from further contracts.

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federal register

TUESDAY, JANUARY 18, 1977

PART VI

POSTAL SERVICE

POSTAL SERVICE MANUAL

Miscellaneous Amendments

Title 39—Postal Service

CHAPTER I—UNITED STATES POSTAL SERVICE

PART 111—GENERAL INFORMATION ON POSTAL SERVICE

Postal Service Manual; Miscellaneous Amendments

Chapter I of the Postal Service Manual, which has been incorporated by reference in the FEDERAL REGISTER (see 39 CFR 111.1), has been amended by the issuance of Post Office Services (Domestic) Transmittal Letter 41, Issue 115, dated December 31, 1976.

Consistent with 39 CFR 111.3, Transmittal Letter 41, Issue 115, is hereby published in the FEDERAL REGISTER in full text, and notice of this publication is added as an amendment to § 111.3. In addition, the text of the changes is filed with the Director, Office of the Federal Register. Subscribers to the Manual will receive these amendments automatically from the Government Printing Office. (For other availability of Chapter I of the Postal Service Manual, see 39 CFR 111.2.)

In consideration of the foregoing 39 CFR 111.3 is amended as follows:

§ 111.3 Amendments to Chapter I of Postal Service Manual.

* * * * *

Transmittal letter	Issue	Date	FEDERAL REGISTER publication
41	115	Dec. 31, 1976	42 FR 3470

Except as explained in 2.2l1 of the Transmittal Letter, these amendments are effective immediately, except that the new rates and fees described in 2.1a, 2.2 a, i, n, o, t, 2.5 a-i, and 2.6a of the Transmittal Letter were published in the FEDERAL REGISTER on July 16, 1976 (41 FR 29570); except that the material on sexually oriented advertisements described in 2.1 d–g of the Transmittal Letter was published in the FEDERAL REGISTER on June 1, 1976 (41 FR 22039); except that the material on pandering advertisements described in 2.1h of the Transmittal Letter was published in the FEDERAL REGISTER on July 28, 1976 (41 FR 31380); except that the mail classification implementing regulations described in 2.2 a–h, q, u–y, aa–hh, jj, kk, oo, and 2.3 d–j of the Transmittal Letter were published in the FEDERAL REGISTER on July 12, 1976 (41 FR 28478), as amended and corrected on October 20, 1976 (41 FR 46295), October 28, 1976 (41 FR 47236), and December 7, 1976 (41 FR 53478); except that the changes described in 2.2 j–m, r, and z of the Transmittal Letter were made to be consistent with Pub. L. 94–421, approved September 24, 1976; and except that the changes to 137.21 of the Postal Service Manual dealing with reimbursement for official mail service were published in the FEDERAL REGISTER on September 9, 1976 (41 FR 38166).

(5 USC 552(a), 39 USC 401.)

ROGER P. CRAIG,
Deputy General Counsel.

Accordingly, Transmittal Letter 41, Issue 115 is hereby published, and reads as follows:

a. Amended section 123.641 to describe revised List purchase procedures.
f. Amended section 123.642 to state the amount of the annual buyer's fee.
g. Amended section 123.643 to specify List request procedures.
h. Added new section 123.6 to facilitate employment of the protections offered by the *pandering advertisements statute*, 39 U.S.C. §3008 (formerly §4009), by informing both postal personnel and postal customers of their continuing availability and exact nature and how to employ them.
l. Amended section 124.55 to correct the erroneous reference to uncontrolled substances.
j. Revised section 126.2 to incorporate APO and FPO changes in the list of military post offices overseas and changes in mailing restrictions prescribed by the Department of Defense.

2. Part 130:
a. Added new sections 131.11 - .13 to describe the method of determining the rate for single piece first-class mail, to establish a bulk presort rate, and to anticipate a future surcharge on nonstandard first-class mail.
b. Amended sections 131.22a and 131.33c as to recommended ratio.
c. Added new section 131.227 to describe presorted first-class mail.
d. Amended sections 131.232 and .233 to discontinue the existing business reply mail fee structure and to establish a fee structure for such mail based upon whether or not the user maintains an active advance deposit account with the Postal Service.
e. Added new section 131.34 to define nonstandard first-class mail. Corresponding changes have been made in 131.222a, 131.33c and 134.32c.
f. Amended section 131.4 to specify the method of paying postage on mailings made at presort rates and to establish an annual fee for first-class presort mail.
g. Renumbered sections 131.6 and 131.6 as 131.7 and 131.8 respectively.
h. Added new sections 131.6 and 131.6 to deal with the preparation of presort mail for mailing, and the verification by a postal employee that such mail has been properly prepared and qualifies for the presort rate.
i. Amended Part 132 to reflect the current rates for second-class matter.
j. Expanded section 132.122d to include one conservation publication issued by a state fish or wildlife agency.
k. Amended section 132.211: The term *periodical* includes: (a) college and university course catalogs or other course listings and announcements of legal texts relating to continuing legal education published by educational institutions or nonprofit organizations, and (b) loose-leaf pages reporting developments in law and public policy.
l. Added section 132.472m to provide that requests for address correction information may be placed on wrappers or envelopes containing copies of second-class publications.
m. Amended section 132.73 to make it consistent with sections 132.71 and 132.72.
n. Amended Part 133 to reflect the current rates for controlled circulation matter.
o. Amended Part 134 to reflect the current rates for third-class matter.
p. Added new section 134.125 to explain how to calculate the maximum piece weight that can be mailed at the minimum per piece rates.
q. Added new sections 134.224 and 134.33 to define nonstandard third-class mail and to anticipate a future surcharge for such mail.
r. Amended definition of *Agricultural* organization in 134.622e to include: (a) nonprofit organizations engaged in harvesting of marine resources and (b) nonprofit organizations whose primary purpose is the collection and dissemination of information or materials relating to agricultural pursuits.

Issue 115 12-31-76

POSTAL SERVICE MANUAL

UNITED STATES POSTAL SERVICE

Post Office Services (Domestic) Transmittal Letter 41

1 FILING INSTRUCTIONS

Remove pages headed:	Insert pages headed:
Contents (123.6) - Contents (138.4) (2 sheets)	Contents (123.6) - Contents (138.4) (2 sheets)
122.442 - 122.52 (2 sheets)	122.442 - 122.52 (2 sheets)
123.611 - 124.21 (4 sheets)	123.44h - 124.21 (5 sheets)
124.63 (1 sheet)	124.63 (1 sheet)
126.2 (MPO 09123) - 126.2 (MPO 98799) (4 sheets)	126.2 (MPO 09121) - 126.2 (MPO 98799) (4 sheets)
131.212b - 132.15 (7 sheets)	131.121 - 132.222 (11 sheets)
132.473 - 137.22 (20 sheets)	132.473 - 137.22 (23 sheets)
137.267a (1 sheet)	137.267a (1 sheet)
141.114 - 141.21 (2 sheets)	141.114 - 141.21 (2 sheets)
144.46 (1 sheet)	144.46 (1 sheet)
144.962 - 147.14 (10 sheets)	144.962 - 147.231f (10 sheets)
162.31 - 164.212 (4 sheets)	162.2 - 164.212 (4 sheets)
165.6 (1 sheet)	165.6 (1 sheet)
166.611 - 166.632 (3 sheets)	166.611 - 166.68 (3 sheets)
169.215 - 169.41 (5 sheets)	169.215 - 169.41 (5 sheets)
169.73 (1 sheet)	169.73 (1 sheet)
161.152 (1 sheet)	161.152 (1 sheet)
161.513 (1 sheet)	161.513 (1 sheet)
161.921 - 162.32 (3 sheets)	161.921 - 162.32 (3 sheets)
162.73 - 163.18 (2 sheets)	162.73 - 163.18 (2 sheets)
163.712b - 163.734b (3 sheets)	163.712b - 163.734b (3 sheets)
164.94 - 168.1 (6 sheets)	164.94 - 168.1 (6 sheets)
168.72 (1 sheet)	168.72 (1 sheet)
169.554 (1 sheet)	169.553 - 169.661 (2 sheets)
171.132 (1 sheet)	171.132 (1 sheet)
171.212 (1 sheet)	171.212 (1 sheet)
173.4 (1 sheet)	173.4 (1 sheet)

2 EXPLANATION OF CHANGES

.1 Part 120:
a. Amended section 122.514 to increase the charge for correcting mailing lists.
b. Revised section 122.53 to specify the proper manner of marking address cards arranged in sequence of carrier route delivery.
c. Added new section 123.44(b) to include Matter Promoting Animal Fighting Ventures (7 U.S.C. 2156) in Part 123, which deals with nonmailable written, printed, and graphic matter.
d. Corrected section 125.52 to show the proper address to which Forms 2201 should be mailed and to indicate weekly submission of Forms 2201.

s. Modified section 134.53 so that municipal, county, or State governmental bodies are not excluded from eligibility for special third-class rates, if they can otherwise qualify within one of the defined categories which may be authorized to mail at the special rates.
t. Amended Part 135 to reflect the current rates for fourth-class matter.
u. Added new section 135.112 to provide bulk zone rates for 300 or more pieces of fourth-class (parcel post) mail.
v. Amended section 135.12 to include both fourth-class catalogs and similar bound printed matter in a subclass called *bound printed matter* and provide the rates for such matter.
w. Added new section 135.132 to provide bulk presort rates for special fourth-class matter and establish an annual fourth-class mailing fee for mailers using such rates.
x. Revised section 135.2 to clarify the classification of fourth-class mail and to provide for the special fourth-class presort rate.
y. Redesignated section 135.22 as 135.15 and amended to describe the postal zones and otherwise clarify the regulation.
z. Expanded section 135.26b to include books mailed by a publisher or distributor to a school, college, university, or library as items eligible to be mailed at library rate.
aa. Amended section 135.3 to reflect the size and weight limitations of bulk rate parcel post and bound printed matter.
bb. Amended section 135.4 to require that mailers of fourth-class matter at presort and bulk rates pay postage by permit imprint.
cc. Added new section 135.521(i) to permit enclosures or attachments to fourth-class mail on which the first-class rate has been paid.
dd. Renumbered sections 135.6 and 135.7/ as 135.53 and 135.6 respectively.
ee. Added new section 135.7 requiring a ZIP Code on all fourth-class matter mailed at bound printed matter, bulk parcel post, library and special fourth-class rates.
ff. Amended section 135.8 to require that mailings at bulk or presort rates be made at a station or branch specified by the postmaster.
gg. Amended section 136.11 to include rates when Business Reply Mail advance deposit account opion is or is not used.
hh. Added new section 136.13 to establish a presort rate for presorted airmail.
ii. Amended section 136.22 to reflect the requirements of Part 124 and air transport restricted articles tariffs.
jj. Added new section 136.33 to define nonstandard airmail and advise that a surcharge on such mail is anticipated in the future.
kk. Amended section 136.4 to require payment only by meter stamps or permit imprints for mailings made at presort airmail rates and to establish a $30 first-class presort mailing fee.
ll. The changes to Part 137 reflect the impact of amendments to the franking statutes, enacted by Public Law 93-532, approved December 22, 1974, and Public Law 94-177, approved December 23, 1975, with respect to retiring officials entitled to use the frank for a period after the termination of their service.
mm. Amended chart of authorized users in section 137.13 by changing the period during which the frank may be used by incumbents to make certain mailings read *During term of office only.* Franked mail transmitted by former incumbents has been specifically limited to mail on official business related to the closing of their respective offices. The period during which a former official may use the frank has been established as "During the 90-day period immediately following the date on which he leaves office," except for former speakers of the House, who may continue to use the frank "for as long as the former speaker determines necessary."
nn. Renumbered sections 137.14b, c, d, e, and f. Added new section 137.14b which prescribes that franked mail sent by former incumbents must relate to the closing of their respective offices.
oo. Amended section 137.272 to authorize mailing of official mail at presorted and bulk rates.

.3 Part 140:
a. Revised the tables in sections 141.121 and 141.21 to reflect the change in selling prices of plain precanceled stamped envelopes and printed precanceled stamped envelopes.
b. Amended section 144.46 to clarify the requirements concerning the content of postage meter indicia postmarks.
c. Amended section 144.492 to permit additional postal markings in ad plates.
d. Added new section 145.2(b) to state that the position of the imprint on fourth-class bound printed matter may be varied so that automatic data processing equipment can be used.
e. Renumbered section 145.33 as 145.34.
f. New section 145.33 states the requirements the permit indicia must meet when special services are required.
g. Amended section 145.4 to show the new forms of permit imprints reflecting the various new bulk and presort rate categories.
h. Amended section 145.51 to add first-class presort and fourth-class bulk rate mail to the list of permit imprint mailings that must be mailed in certain minimum quantities.
i. Amended section 145.565 to require verification that presort requirements have been met.
j. Amended section 145.84 to state that optional procedures for items of nonidentical weight must be approved by the Office of Mail Classification.
k. Section 146.2. Revised caption to add provisions relating to matter not bearing postage placed upon, attached to, supported by, or hung from, private mail receptacles.
l. Section 146.22. Revised to add provision that matter not bearing postage found upon, or attached to, or supported by, or hung from, mail receptacles is subject to postage.
m. Section 146.23. Revised to add the distributor to the list of persons for whom a report may be made to another post office.
n. Section 146.24. Revised to add the distributor to the list of persons for whom a report shall be made to the Inspector in Charge in cases of repeated violations.
o. Deleted sections 146.25 and .26 as unnecessary and redundant.
p. Changed section 146.623 to require Forms 3750, *Notice of Attempt to Deliver Mail,* to be sent to the regional revenue protection officer when there are repeated cases of shortpaid mail from the same post office.
q. Added new section 147.222 to add procedures for requests for refunds for optional procedures mailings.

.4 Part 150:
a. Revised section 151.11 to (a) add reference to §1725 of Title 18, U.S. Code, and (b) state post is not considered part of the mail receptacle.
b. Section 151.12. Revised to state that except as provided in 156.58, it is not permissible to place matter not bearing postage in, or upon, or attach it to, or hang such matter from, or cause such matter to be supported by, mail receptacles and refers to 146.2 for procedures to be followed.
c. Revised section 153.612 to permit deposit of single-piece rate third-class mail into mail chutes and receiving boxes, thus resolving conflict with section 144.52a.
d. Amended sections 154.24 and 159.41h to provide consistent procedures for handling mail addressed to deceased persons.
e. Amended title of Publication 17 in section 155.64.
f. Section 156.44. Revised caption to be consistent with caption in 146.22 and refers to 146.2 for procedures to be followed.

dates of the individual certificates occurring before April 26, 1967. No interest accrues after that date, but the face value of a certificate and the interest due to anniversary date will be paid whenever the certificate is surrendered.

173.2 RECORDS OF ACCOUNTS

The records of accounts with outstanding balances, Form 600, *Record of Postal Savings Account,* which were established when the accounts were opened, have been transferred to the Treasury Department. They will be maintained there as the official records of the accounts.

173.3 WITHDRAWALS

All withdrawals will be paid by the Treasury Department. Postmasters should advise customers to mail the endorsed certificates to the Treasury Department, Bureau of Government Financial Operations, Division of Financial Management, Claims Review and Settlement Branch, Washington, DC 20226.

173.4 INQUIRIES FROM DEPOSITORS AND CLAIMANTS

If a person claims to have a postal savings account, but does not have any certificates evidencing deposits, or requests information about an account as an entitled claimant, the postmaster will tell the person inquiring to write the Treasury Department at the above address for information and assistance.

g. Amended section 159.2 to increase the fee for giving notice to the sender of undeliverable mail; for giving new address information to the sender; and for returning certain undeliverable mail.
h. Sections 159.224 through 159.227 have been renumbered as 159.225 through 159.228.
i. New section 159.224 provides that publishers may place requests for change of address information on wrappers or envelopes containing copies of second-class publications.
j. Amended section 159.73 to increase the fee for delivery of certain mail opened in dead mail offices.

.5 Part 160:
a. Amended section 162.21 to increase the fees for indemnity and handling charges on registered mail, as well as the fees for the additional services of COD collection and return receipts.
b. Amended section 151.21 to increase the fees for insured mail. The fees for return receipts for such mail are also increased.
c. Amended section 163.21 to increase the fees for COD mail; the fee for notice of nondelivery of COD mail; and the fee for alteration of COD charges or designation of new addressee for such mail.
d. Amended section 165.12 to increase the fees for certificates of mailing.
e. Amended section 165.22 to increase the fees for return receipts, and a conforming amendment is made to section 165.242c.
f. Amended section 165.32 to increase the fees for restricted delivery.
g. Amended section 166.21 to increase the fees for special delivery.
h. Amended section 167.2 to increase the fees for special handling service.
i. Amended section 168.3 to increase the fees for certified mail service, as well as the fees for return receipts for such mail.
j. Amended section 169.122b(1) to provide more specific guidance to employees for the type of mail which should be considered in determining whether a larger box or caller service is required for boxholders who receive too much mail for their present box.
k. Amended section 169.554 to provide for prorated refunds of lockbox and caller service fees when such service is terminated as a result of discontinuance of a facility.

.6 Part 170:
a. Amended section 171.122 to increase the fees for money orders.
b. Amended section 173.3 to reflect the correct address for mailing Postal Savings Certificates and inquiries concerning Postal Savings.

P. J. Skully

Director
Office of Management Services

Chapter 1

POST OFFICE SERVICES (DOMESTIC)

CONTENTS

Subchapter 110 GENERAL INFORMATION ON POSTAL SERVICE

Part 111 WHAT THIS CHAPTER COVERS

Part 112 DOMESTIC MAIL SERVICE

Part 113 SERVICE IN POST OFFICES
- 113.1 Establishment of Post Offices
- 113.2 Hours of Business
- 113.3 General Delivery

Part 114 COMPLAINTS
- 114.1 Postal Service
- 114.2 Postal Law Violations

Part 115 MAIL TREATED IN CONFIDENCE

Subchapter 120 PREPARATION FOR MAILING

Part 121 PACKAGING
- 121.1 Packaging Adequacy
- 121.2 Definitions
- 121.3 Packaging for Mailing
- 121.4 Marking
- 121.5 Mailability
- 121.6 Packaging Improvement Report

Part 122 ADDRESSES
- 122.1 General Information
- 122.2 Arrangement of Address
- 122.3 Request for Return and Retention of Mail
- 122.4 Simplified Address
- 122.5 Mailing List Services
- 122.6 ZIP Code System
- 122.7 Second-Class Publications
- 122.8 Military Mail

Part 123 NONMAILABLE MATTER—WRITTEN, PRINTED AND GRAPHIC MATTER
- 123.1 General Provisions
- 123.2 Responsibility of Mailer
- 123.3 Advice to Mailers—Mailability Decisions
- 123.4 Nonmailable Written, Printed, or Graphic Matter Generally
- 123.5 Sexually Oriented Advertisements
- 123.6 Pandering Advertisements

Part 124 NONMAILABLE MATTER—ARTICLES AND SUBSTANCES; SPECIAL MAILING RULES
- 124.1 General Provisions
- 124.2 Harmful Matter (18 U.S.C. 1716)
- 124.3 Radioactive Material (18 U.S.C. 1716)
- 124.4 Firearms, Knives and Sharp Instruments (18 U.S.C. 1715, 1716)
- 124.5 Controlled Substances, Narcotics (18 U.S.C. 1716)
- 124.6 Motor Vehicle Master Keys (18 U.S.C. 1716A, 39 U.S.C. 3002)
- 124.7 Abortive and Contraceptive Devices or Materials
- 124.8 Nonmailable Articles (18 U.S.C. 1716)

Part 125 SECOND-CLASS BULK MAILINGS
- 125.1 Folding
- 125.2 Wrapping
- 125.3 Mailing
- 125.4 Newspaper Treatment
- 125.5 Statement and Copy Filed with Mailings
- 125.6 Weighing and Collection of Postage
- 125.7 Key Rate
- 125.8 Controlled Circulation Publications

Part 126 MAIL ADDRESSED TO MILITARY POST OFFICES OVERSEAS
- 126.1 Preparation and Handling
- 126.2 Conditions Prescribed by the Defense Department

Part 127 MAIL SENT VIA DEPARTMENT OF STATE TO U.S. FOREIGN SERVICE PERSONNEL ABROAD
- 127.1 Who May Use
- 127.2 Mailing Conditions

Subchapter 130 MAIL CLASSIFICATION AND RATES

Part 131 FIRST CLASS
- 131.1 Rates
- 131.2 Classification
- 131.3 Weight and Size Limits
- 131.4 Payment of Postage
- 131.5 Preparation of Presort Rate Mail
- 131.6 Presort Verification
- 131.7 Mail Sent by Members of the U.S. Armed Forces
- 131.8 Ship Letters

Part 132 SECOND CLASS
- 132.1 Rates
- 132.2 Qualifications for Second-Class Privileges
- 132.3 Applications for Second-Class Privileges
- 132.4 What May Be Mailed at the Second-Class Rates
- 132.5 Second-Class Mailing Privilege for News Agents
- 132.6 Ownership, Management, and Circulation Statement
- 132.7 Marking of Paid Reading Matter
- 132.8 Cancellation of Second-Class Privileges

Part 133 CONTROLLED CIRCULATION PUBLICATIONS
- 133.1 Rates
- 133.2 Permits
- 133.3 Identification Statements
- 133.4 Filing of Marked Copy
- 133.5 Enclosures

- 133.6 Addressing, Preparation for Mailing, Weighing, and Collection of Postage
- 133.7 Statistical Statement

Part 134 THIRD CLASS
- 134.1 Rates
- 134.2 Classification
- 134.3 Weight and Size Limitations
- 134.4 Preparation—Payment of Postage
- 134.5 Qualification Requirements and Application Procedure for Special Third-Class Rates
- 134.6 Permissible Additions
- 134.7 Enclosures
- 134.8 Sealing

Part 135 FOURTH CLASS
- 135.1 Rates
- 135.2 Classification
- 135.3 Weight and Size Limits
- 135.4 Payment of Postage
- 135.5 Enclosures and Additions
- 135.6 Sealing
- 135.7 Addressing
- 135.8 Place of Mailing

Part 136 AIR AND PRIORITY MAIL
- 136.1 Rates
- 136.2 Classification
- 136.3 Weight and Size Limits
- 136.4 Payment of Postage
- 136.5 Additions and Enclosures
- 136.6 Marking, Sealing, and Depositing

Part 137 OFFICIAL MAIL
- 137.1 Members of Congress
- 137.2 Executive and Judicial Officers
- 137.3 Mail Sent to Government Departments
- 137.4 State Employment Security Mailings
- 137.5 Absentee Balloting Materials
- 137.6 President-Elect, Former President, Surviving Spouse of Former President, and Surviving Spouse of Member of Congress
- 137.7 General Secretariat of the Organization of American States and Pan American Sanitary Bureau
- 137.8 General Instructions

Part 138 FOR THE BLIND AND OTHER HANDICAPPED PERSONS
- 138.1 Conditions
- 138.2 Items Mailable Free
- 138.3 Markings
- 138.4 Weight and Size Limits

Part 139 MIXED CLASSES
- 139.1 Mail of a Higher Class Enclosed with Mail of a Lower Class
- 139.2 Combination Mailings of Two Classes
- 139.3 Mailing Enclosures of Different Classes
- 139.4 Treatment
- 139.5 Special Services

Subchapter 140 POSTAGE

Part 141 ENVELOPES, POSTAL CARDS, AEROGRAMMES
- 141.1 Use
- 141.2 Printed Stamped Envelopes (Special Request)

Part 142 STAMPS (ADHESIVE)
- 142.1 Availability and Use
- 142.2 Purchase of Postage
- 142.3 Replenishment of Stock by Window Clerks
- 142.4 How to Requisition
- 142.5 Verification of Stock Received
- 142.6 How to Remit
- 142.7 Validity of Stamps
- 142.8 Unlawful Transactions
- 142.9 Adhesive Attachments and Printed Markings

Part 143 PRECANCELED STAMPS
- 143.1 Purpose of Precanceling
- 143.2 Sale and Use of Precanceled Stamps
- 143.3 Mailer's Precancel Postmark
- 143.4 Precancel Permits

Part 144 POSTAGE METERS AND METER STAMPS
- 144.1 Postage Meters
- 144.2 Meter License
- 144.3 Setting Meters
- 144.4 Meter Stamps
- 144.5 Mailings
- 144.6 Security
- 144.7 Post Office Meters
- 144.8 (Reserved)
- 144.9 Manufacture and Distribution of Postage Meters

Part 145 PERMIT IMPRINTS
- 145.1 Permit
- 145.2 Preparation of Permit Imprints
- 145.3 Content of Permit Imprints
- 145.4 Form of Permit Imprints
- 145.5 Mailings with Permit Imprints
- 145.6 Additional Services
- 145.7 Improper Use of Permit Imprints
- 145.8 Optional Procedure for Accepting Permit Imprint Mail
- 145.9 Experimental Negotiated Procedures

Part 146 PREPAYMENT AND POSTAGE DUE
- 146.1 Postage Payment
- 146.2 Mailable Matter Not Bearing Postage Found in, Placed Upon, Attached to, Supported by, or Hung From, Private Mail Receptacles
- 146.3 Collection of Postage Due

(134.122); and bulk fourth-class catalogs and similar advertising matter (135.121):

Mr. John Doe/or current occupant; *or*
Mr. John Doe/or current resident;
followed by the complete address as shown in 122.421.

b. Users of the authorized exceptional form of address on bulk third-class and fourth-class catalogs and advertisements may not use the postal endorsements *Address Correction Requested*, *Return Postage Guaranteed*, or *Forwarding and Return Postage Guaranteed* simultaneously with the exceptional form of address.
c. The materials addressed in this manner must not be enclosed in a sealed envelope or wrapper.

.43 NUMBER OF CUSTOMERS

On request, postmasters will furnish, without charge, information as follows:
a. Number of post office boxholders.
b. Route numbers and number of boxholders on each rural and star route.
c. Route numbers and number of families on each rural route.
d. Number of families served or number of business places served within the total delivery area or on particular carrier routes.

.44 MAILING UNDER CONGRESSIONAL FRANK

.441 Address by Name and Post Office

Except as provided in 122.442, all mail sent under the franking privilege must be addressed to the recipient by name and post office address.

.442 Simplified Address

a. Mail sent under the franking privilege of a Member of, or Member-elect, Delegate, Delegate-elect, Resident Commissioner, or Resident Commissioner-elect to the House of Representatives may be addressed under the simplified forms in 122.411 and 122.42 for delivery to customers within the area he was elected to represent. A member whose congressional district is redistricted may also send mail under his frank using the simplified forms for delivery within any additional area added to his district, beginning on the date the redistricting is completed by legislative or judicial proceedings (whether or not the redistricting is actually in effect), and continuing until his district is again changed by further legislative or judicial proceedings. Mail so addressed will be delivered within that district to any or all of the following:
(1) Each boxholder on a rural or star route or each family on a rural or star route.
(2) Each post office boxholder.
(3) Each stop or possible delivery on city carrier routes.
b. The information in 122.43 will, on request, be furnished for a congressional district in those instances where a post office serves areas which are located in more than one district.
c. Simplified address mailings sent under the frank must be prepared as prescribed in 122.413. Each facing slip should show the congressional district or other area in which delivery is to be made.
d. Representatives elected at large may send franked mail with simplified address to Postal customers within the entire State which elected the Member.

.45 OVERSEAS MILITARY POST OFFICES

The simplified forms of address in this section are not acceptable on mail for overseas military post offices. See 122.81 for the proper methods of addressing mail for overseas military post offices.

122.5 MAILING LIST SERVICES

.51 CORRECTION OF MAILING LISTS

.511 Service Available

Mailing lists submitted by Members of Congress, Federal agencies, departments of State governments, municipalities, religious, fraternal, and recognized charitable organizations and mailing lists used by concerns or persons for the solicitation of business by mail will be corrected as frequently as requested. Postal employees must not compile mailing lists, including *occupant lists*. Persons other than Postal employees may not copy or record by any other means names or addresses from city or rural carrier cases.

.512 Name and Address Lists

a. *Method of Submission.* Submit typewritten or printed lists on cards, one name and address to a card, to the post office that serves the addresses. The cards should be about the size and quality of a postal card. Data processing cards are acceptable. The owner of the list must place his name in the upper left corner of each card. The employee responsible for the correction and return of the mailing list will record the name and address of the owner, number of cards or sheets, and date received for accounting purposes. At post offices with 189 or fewer revenue units, mailing lists may be submitted in sheet form. Submit lists by mail only, except large lists presented by local firms for correction.
b. *Type of Corrections to be Made.* Cross off names to which mail cannot be delivered or forwarded. Correct incorrect house, rural, or post office box numbers. Correct initials where apparently the name is known to the owner of the list. Indicate the head of the family, if known, when two or more names are shown for the same address. Furnish new addresses, including ZIP Code numbers for customers who have moved, when permanent forwarding orders are on file. If no change is necessary, mark an X in the upper right corner of the card. New names will not be added to a list. See 122.53 for delivery sequence.

.513 Occupant Lists

a. *Method of Submission.* Submit lists of street addresses on cards (as described in 122.512a), one address to a card, or in sheet form, provided the sheets are made up separately by carrier routes and each sheet bears the list owner's name and address.
b. *Type of Corrections to be Made.* Correct lists for mail addressed to *occupant* and street address. Cross off numbers representing incorrect or nonexistent street addresses, but do not change or add numbers. Indicate business addresses by inserting *B* opposite the number. Indicate addresses on a rural route by *R*. Indicate the number of separate family units opposite addresses of apartment houses or other multiple dwellings. If no change is necessary, mark an *X* in the upper right corner of the card or sheet. Group corrected cards or sheets by routes when returning to the owner so that he may handle and label mailings by routes.

.514 Charges

a. The minimum charge for each list corrected is $1. For list of more than 10 names or addresses, the charge is 10 cents per name or street address, including individual apartments. Where rural routes have been consolidated

or changed to another post office, no charge will be made for correction if the list contains only names of persons residing on the route or routes involved.
b. Except for authorized users of official mail, payment must be made in advance by cash or money order. Do not return lists to commercial mailers until charges and postage fees have been collected.
c. Payment for correction of lists submitted by Members of Congress is made under the official mail reimbursement program. Submit a report on Form 103, *Originating Franked Mail*, to:
Revenue Statistics Branch
Office of Statistical Programs and Standards
U.S. Postal Service
Washington, DC 20260
(Attn: Originating Franked Mail)
d. Payment for correction of lists submitted by Federal agencies is made under the official mail reimbursement program. Submit a report on Item 013, *Routing Slip*, or by memorandum indicating the applicable charges and the name of the Federal agency for which the list was corrected, to:
Manager, Government Revenue and Examination Branch
Finance Department
U.S. Postal Service
Washington, DC 20260

.515 Postage on Lists

Typewritten lists are subject to postage at the first-class rate. Those prepared by stencil, mimeograph, printing, or similar process may be mailed at the third- or fourth-class rate depending on the weight. Return lists to customers free of postage.

.516 Mailing List Correction Time Limitation

Within 10 working days after receipt by the employee responsible for the correction and return of mailing lists, the lists must be corrected and returned to the owners. EXCEPTION: The 10-working days time limitation shall not apply to mailing lists received for correction between November 16 and January 1. Mailing lists received for correction between these dates shall be corrected and returned at the convenience of the post office, but as early as possible.

.52 FURNISHING ADDRESS CHANGES TO ELECTION BOARDS AND REGISTRATION COMMISSIONS

Residential change-of-address information is available to duly constituted election boards or registration commissions using permanent registration, at a cost of 8 cents for each change-of-address Form 3575 notwithstanding the schedule of fees in 262.7. An election board or registration commission desiring this information must submit to the postmaster a written request signed by an authorized official. The postmaster will send the request to the Regional Postmaster General for approval. On approval, the postmaster will receive necessary instructions from the Regional Postmaster General for release, control, and return of change-of-address Form 3575.

.53 ADDRESS CARDS ARRANGED IN SEQUENCE OF CARRIER DELIVERY

Arrange address cards in sequence of carrier route delivery without charge. Each card must include only one address. Withdraw cards with incorrect, nonexistent, or other undeliverable addresses. Mailers may submit address plates or stencils instead of cards when satisfactory arrangements can be made to handle them. Insert a blank card for each existing address that is not included in the owner's address cards, plates, or stencils. If several addresses are missing in a series, insert a single blank card for the series and indicate on the card the number of addresses which are missing. The missing address must not be provided by the Postal Service. Postmasters must check to see that mailers whose lists have been arranged in sequence prepare bundles for each route with the individual pieces in address sequence. This service shall not be provided to mailers who do not make the required premailing preparation. It must not be provided as a substitute for the list correction service provided by 122.51.

.54 FURNISHING CITY AND STATE SCHEMES

To assist volume mailers in preparing their mailings, postmasters may furnish, on request, a copy of the city scheme or the State scheme used by clerks for sorting mail, and he may arrange address cards, plates, or stencils by carrier routes.

.55 ZIP CODING OF MAILING LISTS

.551 Single-ZIP-Coded Offices

It is the mailer's responsibility to ZIP Code mailing lists for the single ZIP-Code post offices described in 122.632 and the multi-ZIP-Coded post offices described in 122.633 (see also 122.634).

.552 Multi-ZIP-Coded Post Offices

Under the following conditions, post offices will sort mailing lists consisting of addresses for the multi-ZIP-Coded post offices described in section 122.633 (see also 122.634) according to five-digit ZIP Code delivery units at a charge of $1.50 per thousand addresses or fraction thereof, payable to the local postmaster upon submission of the list:
a. Mailers with EDP equipment must first match their mailing lists with Postal Service EDP magnetic tapes or data processing cards, or both, to obtain the maximum number of ZIP Codes for those addresses which were previously zoned and which were unaffected by zone boundary changes when the ZIP Code system was introduced. It will also provide ZIP Codes for one-code offices. The addresses to be separated by the post offices must be submitted on cards about the size and quality of a postal card. Data processing cards are acceptable. The cards must be separated by the post offices of address and submitted by the owner to his local post office.
b. Post offices will not write ZIP Codes on individual cards. The cards will be sorted to local ZIP Code areas by city primary distributors and will be securely tied in bundles with a facing slip on each bundle reading "All for ZIP Code Area _____." Return the ZIP Coded bundles to the post office or the owner according to who submitted the cards.
c. Mailing lists should be wrapped by the owner for mailing, when practicable, and must bear the name and address of the owner. The local postmaster shall enclose addressed penalty labels (Label 41) for use in returning the coded cards to his office.
d. Gummed labels, wrappers, envelopes, or postal or post cards indicative of one-time use will not be accepted as mailing lists.

d. *Lewd or Filthy Matter (18 U.S.C. 1461, 1463).* Obscene, lewd, lascivious, or filthy publications or writings, or mail containing information concerning where, how, or from whom such matter may be obtained, and matter which is otherwise mailable but which has on its wrapper or envelope any indecent, lewd, lascivious, or obscene writing or printing. Any mail containing any filthy, vile, or indecent thing.

e. *Matter Inciting to Violence (18 U.S.C. 1461, 1717).* Any matter of a character tending to incite arson, murder, assassination, treason, insurrection, or forcible resistance to any law of the United States, or containing any threat to take the life of, or to inflict harm upon, the President of the United States.

f. *Libelous Matter (18 U.S.C. 1718).* Any matter otherwise mailable which has on its outside wrapper or envelope or any postal card which bears on its face, any libelous, scurrilous, defamatory or threatening language or delineation, or is otherwise obviously intended to reflect injuriously on the character or conduct of another.

g. *Other Matter (18 U.S.C. 1717).* Every letter, writing, circular, postal card, picture, print, engraving, photograph, newspaper, pamphlet, book, or other publication, matter or thing, described in the statutes hereinafter referenced:
(1) Forged or altered military or official passes (18 U.S.C. 499);
(2) Matter bearing forged or altered seals of Government departments or agencies (18 U.S.C. 506);
(3) Defense information (18 U.S.C. 793, 794);
(4) Documents obtained by persons falsely assuming to be foreign diplomats (18 U.S.C. 915);
(5) False statements influencing foreign governments (18 U.S.C. 954);
(6) Matter relating to a conspiracy to injure property of a foreign government (18 U.S.C. 956);
(7) Matter unlawfully in aid of a foreign government (18 U.S.C. 957);
(8) Matter relating to an expedition against a friendly nation (18 U.S.C. 960);
(9) Matter relating to delivery of an armed vessel to a belligerent nation (18 U.S.C. 964);
(10) Matter wrongfully bearing the seal of a Government department or agency (18 U.S.C. 1017);
(11) Passport applications containing false statements, and passports falsely obtained (18 U.S.C. 1542);
(12) Forged, altered or misused passports (18 U.S.C. 1543, 1544);
(13) Matter bearing false statements intended to injure armed forces during war (18 U.S.C. 2388).

h. *Matter Promoting an Animal Fighting Venture (7 U.S.C. 2156).* Matter promoting or in any other manner furthering an animal fighting venture conducted in any State, except a venture involving live birds which is permitted under the laws of the State in which it is conducted. For purposes of this provision:
(1) The term *State* means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States;
(2) The term *animal* means any live bird, or any live dog or other mammal, except man; and
(3) The term *animal fighting venture* means any event involving a fight between at least two animals which is conducted for sport, wagering, or entertainment, but does not include any activity whose primary purpose involves using one or more animals in hunting another animal or animals.

123.5 SEXUALLY ORIENTED ADVERTISEMENTS

.51 GENERAL

.511 Section 3010 of title 39, United States Code, provides a means by which a member of the public can act to protect himself and his minor children from receiving unsolicited sexually oriented advertisements through the mails. This section permits any person who is served by the U.S. Postal Service to file with the Postal Service a statement that he does not desire to receive any sexually oriented advertisements through the mails. Any mailer who sends that person an unsolicited sexually oriented advertisement more than 30 days after the date on which the Postal Service adds his name to its reference List of those who desire this protection, may be subject to both civil and criminal sanctions, as provided in 39 U.S.C. 3011 and in 18 U.S.C. 1735–37.

.512 39 U.S.C. 3010(d) defines a "sexually oriented advertisement" as "any advertisement that depicts, in actual or simulated form, or explicitly describes, in a predominantly sexual context, human genitalia, any act of natural or unnatural sexual intercourse, any act of sadism or masochism, or any other erotic subject directly related to the foregoing." It further provides that "material otherwise within the definition of this subsection shall be deemed not to constitute a sexually oriented advertisement if it constitutes only a small and insignificant part of the whole of a single catalog, book, periodical or other work the remainder of which is not primarily devoted to sexual matters."

.513 The responsibility for ensuring that no unsolicited sexually oriented advertisement is sent through the mails to any person in violation of section 3010 is placed by that section on the mailers of sexually oriented advertisements. No provision of Postal Service regulations may be used to place this responsibility upon the Postal Service. For example, the privilege of a sender to recall a piece of mail provided by section 153.5 may not be so used, although it may be used in good faith to request the recall of a specific piece of mail inadvertently deposited in the mails addressed to a person on the List.

.52 APPLICATION FOR LISTING

.521 A person may invoke the protection of section 3010 by completing and filing, with any postmaster or other designated Postal Service representative, Part II of Application for Listing Pursuant to 39 U.S.C. 3010, Form 2201, which may be obtained at any post office. Form 2201 bears a preprinted identifying number in two places: On the instruction portion (part I) and on the application portion (part II). After filing the application portion the customer should retain the instruction portion and should use the identifying number in any subsequent communication with the Postal Service concerning his application.

.522 A person may file on his own behalf and on behalf of any of his children under the age of 19 years who reside with him or are under his care, custody or supervision. An authorized officer, agent, fiduciary, surviving spouse or other representative, may file in behalf of a corporation, firm, association, estate, or deceased or incompetent addressee.

.523 Each postmaster shall transmit all applications received at his post office to the Office of Mail Classification, Rates & Classification Department, U.S. Postal Service, Washington, DC 20260 on a weekly basis.

.524 The Office of Mail Classification, Rates and Classification Department, as soon as practical after receipt of a Form 2201, shall place the customer's name and address, the names and addresses of his minor children if any are included on the application, on the Postal Service's List (hereafter, "List") of persons desiring not to receive sexually oriented advertising. This information will be processed and the List updated monthly. The 30-day period provided by section 3010(b) starts on the effective date of the List on which the person's name first appears.

.525 A person's name and address will be retained on the List for a period of 5 years, unless a request for revocation is sooner filed by that person. A person must file a new application at the end of the 5-year period if he desires to continue his name on the List. The names and addresses of minor children will be automatically removed from the List when they attain 19 years of age. A minor must file an original application in his own behalf if he desires to continue his name on the List after reaching 19 years of age.

.526 The filing of a single application results in the listing of a single address for the person filing. A person who receives mail at more than one address and who wishes the protection of section 3010 at more than one address should file a separate application for each. A person who moves must file a new application to receive the protection of section 3010 at his new address. The submission of Change of Address Order, Form 3575, will not be effective for this purpose. It would not be a violation of section 3010 to mail a sexually oriented advertisement to a person at an address other than that which is shown for him on the List. It would be a violation, however, to mail such an advertisement to him at the address shown for him even though he has moved from that address.

.53 REVOCATION OF LISTING

A person, at any time, may request the removal of his name and address, or that of one or more of his minor children, from the List by so notifying his postmaster. It would not be evidence of a violation of section 3010 if a person received a sexually oriented advertisement in the mails on or after the date he gives such notice.

.54 AVAILABILITY OF POSTAL SERVICE LISTS

.541 Copies of the List and/or periodic amendments thereto shall be available to any person upon payment of the annual service fee. A program year runs from January 1 through December 31. Buyers will receive a copy of the List and monthly updates of additions and deletions to the List for the year in which the purchase is made. The List may be ordered in the form of reduced reproduction of computer printout or magnetic tape. Further information on the format of the tapes may be obtained from the Director, Office of Mail Classification.

.542 The annual service fee will be determined by dividing the number of buyers for the previous calendar year into the total cost to the Postal Service of compiling, processing, printing, and distributing the List.

.543 Requests for the List shall be submitted to the Director, Office of Mail Classification, Rates & Classification Department, U.S. Postal Service, Washington, DC 20260. A certified or cashier's check made payable to the U.S. Postal Service must be received in payment before the List will be provided the buyer.

.544 This List may be used by mailers only to protect persons whose names appear on it from receiving unwanted sexually oriented advertisements through the mails. No person, including a subscriber to the List, may use the List for any other purpose, and no person may sell, lease, rent, lend, exchange, or license another to use this List for any purpose whatsoever, including its use by another to remove names from a list of persons to whom sexually oriented advertisements will be sent. No person may use the List or a copy thereof for the purpose of preparing mailing or other lists for sale.

lease, rent, loan, exchange or use by another. Violators are subject to criminal prosecution.

.55 MARKING OF ENVELOPE

Section 3010(a) authorizes and directs the Postal Service to provide a mark or notice which must be placed on the envelope or cover of any sexually oriented advertisement sent through the mails, together with the name and address of the sender. The following provisions are in implementation of this authority and direction:

a. Any person who mails or causes to be mailed any sexually oriented advertisement shall place in the upper left-hand corner of the exterior face of the mail piece, whereon appear the address designation and postmarks, postage stamps, or indicia thereof, the sender's name and address. In the right-hand portion below the postage stamp, or indicia thereof, and above the addressee designation, there shall be placed *Sexually Oriented Ad*. The words *Sexually Oriented Ad*, however, need not be placed on the exterior envelope or cover of a mail piece containing such an advertisement if the contents of the mail piece are enclosed in a sealed envelope or cover, inside the exterior envelope or cover, which sealed envelope or cover bears conspicuously the words *Sexually Oriented Ad*.

b. The name and address of the sender and the required legend, if it is placed on the exterior face of the mail piece, shall be printed in a size type no smaller than that used for any other word on the envelope or other cover, and in no event smaller than 12-point type. Such type shall be no less conspicuous than the boldest type used to print other words on the exterior face of the mail piece.

c. The contrast between the background and printing of the sender's name and address and the contrast between the background and the printing of the prescribed notice shall be no less than the contrast between the background and printing of any other words on the envelope or other wrapper.

d. A clear space no less than one-quarter of an inch wide shall surround the sender's name and address and the prescribed notice, separating each from any other matter appearing on the same envelope or cover.

.56 VIOLATIONS

.561 The following is a partial list of conduct which may violate 39 U.S.C. 3010 or 18 U.S.C. 1735:

a. The mailing of a sexually oriented advertisement in an envelope or other wrapper which does not bear the name and address of the sender and the legend *Sexually Oriented Ad* as provided by section 123.55;

b. The mailing directly or indirectly of a sexually oriented advertisement to a person whose name and address have been on the List for more than 30 days;

c. The sale, loan, lease, or licensing the use of the List or a copy thereof in whole or in part;

d. The use of the List or a copy of it in whole or in part for any other purpose than to insure that no mailings of sexually oriented advertisements are made to persons on the List.

.562 No person who mails sexually oriented advertisements only to persons who have specifically requested to receive the same will be deemed to have violated the statute or regulations, provided he is otherwise in compliance with the law, regardless of whether he has purchased and used the U.S. Postal Service List.

.563 A person who wishes to report that he has received an unsolicited sexually oriented advertisement after his name and address have been on the List for more than 30 days should submit the entire mail piece, including the envelope or other wrapper, to any postmaster. The mail piece must be opened by the addressee. When submitting the mail piece, the addressee must

endorse the envelope or other wrapper and also the contents thereof in substance as follows: "I received this mail piece on (date)", and sign the statement. He should also state the identifying number appearing on his application if it is known to him. See section 123.521. The postmaster of the installation to which the mail piece is submitted shall send it without delay to the Postal Inspector in Charge of the Division which has geographical jurisdiction over the address of the mailer.

.564 If a violation of section 123.54 comes to the attention of any postal officer or employee, he shall, through his postmaster, report such violation to the postal inspector whose territory includes his postal installation. Mail of a mailer in violation or apparent violation of section 3010 may not be refused for dispatch or delivery without a proper court order. Appropriate instructions to postmasters will be issued in the event that a court order is obtained.

.565 A customer who wishes to ascertain whether his name has been placed on the List should direct his inquiry to the Director, Office of Mail Classification, Rates and Classification Department, U.S. Postal Service, Washington DC 20260.

.57 DISPOSAL OF ORIGINAL FORM 2201

It is anticipated that because of the possible volume of filings pursuant to section 123.521, it may be an undue burden upon the Postal Service to retain the original executed application forms. If it is determined by the Senior Assistant Postmaster General, Finance Group, to be such a burden, each application shall be photographed on microfilm as soon as the information required for compliance with section 123.524 has been obtained and shall thereafter be destroyed.

123.6 PANDERING ADVERTISEMENTS

.61 APPLICATION FOR PROHIBITORY ORDERS (39 U.S.C. §3008)

.611 An addressee who receives by mail an advertisement, whether solicited by him or not, offering for sale matter which he determines, in his sole discretion, is "erotically arousing or sexually provocative," may obtain a prohibitory order directing the mailer of the advertisement to refrain from making further mailings to him. Postal Service forms (Form 2150, *Notice for Prohibitory Order Against Sender of Pandering Advertisement in the Mails;* Publication 123, *How You Can Curb Pandering Advertisements)* are available for the purpose of requesting such orders. The use of these forms is not mandatory, provided the information they solicit is presented in a signed written statement.

.612 An addressee who is the parent of one or more children under nineteen years of age residing with him may request an order on behalf of any or all of such children. Where the parent of any such child determines that matter offered for sale in an advertisement addressed to the child is "erotically arousing or sexually provocative," he may request issuance of an order prohibiting further mailings to such child.

.613 If at the time he applies for issuance of a prohibitory order, the addressee is receiving mail at more than one address, he may request that the order apply to any or all such addresses.

.614 A person entitled to receive mail addressed to a deceased person will be regarded as the addressee of such mail for purposes of obtaining a prohibitory order in the name of the deceased.

.615 A person authorized to receive mail addressed to a job title (e.g., sales manager) of any business, government agency, or institution, will be regarded as the addressee of such mail for purposes of obtaining a prohibitory order covering such job title.

.616 Any person having apparent authority to act for a business, governmental or institutional addressee will be regarded as the addressee of such organization's mail for purposes of obtaining a prohibitory order in the name of such organization.

.617 The application for prohibitory order may be submitted at any post office and must be accompanied by the advertisement upon which the application is based, and its opened envelope or other cover or wrapper. The postal services center serving the applicant's address (see Publication 26, *Directory of Post Offices)* is responsible for granting or denying the application. Applications submitted to other than the appropriate postal services center are to be forwarded promptly to such postal services center for processing. Publication 125, *Administering the Pandering Advertisements Statute: A Guide for Postal Services Centers*, provides guidance to assist the postal services centers in such processing.

.62 DENIAL OF APPLICATIONS

A prohibitory order will not be issued when the application is based upon one or more of the following:

a. The request of one whom the Postal Service finds does not qualify under any of the foregoing paragraphs of this section.
b. A mail piece which the Postal Service finds does not offer matter for sale.
c. A mail piece not originating with the person against whom the order is sought (e.g., a newspaper or magazine not mailed by the advertiser therein upon whose advertisement the application is based).
d. A mail piece received by a foreign addressee who has no regular mailing address at which mail is delivered directly by the Postal Service.
e. A mail piece sent by a mailer not subject to the jurisdiction of the United States.
f. A basis in any other way insufficient under the statute.

.63 ISSUANCE OF ORDERS

The prohibitory order forbids the mailer, his agents or assigns from making any further mailings to the designated addressees, effective on the thirtieth calendar day after the mailer's receipt of the order; directs immediate deletion of such addressees from all mailing lists owned or controlled by the mailer, his agents or assigns; and, prohibits any sale, rental, exchange, or other transaction by the mailer, his agents or assigns, involving mailing lists bearing the names of the designated addressees.

.64 AVAILABILITY OF REMEDIES

The fact that a name and address is included on the Postal Service list of those desiring not to receive any sexually oriented advertisements through the mails (see 123.5) does not in any way limit or affect the authority of the Postal Service to issue a prohibitory order protecting such name and address. Likewise, issuance of a prohibitory order does not in any way limit or affect the authority of the Postal Service to list, in accordance with 123.5, the name and address protected by such prohibitory order.

.65 VIOLATIONS

A person protected by a prohibitory order who receives a mail piece apparently in violation of such order should open the envelope or other outside cover of such mail piece and write thereon the identifying number of the prohibitory order (if known) and a statement indicating his receipt by mail and the date of receipt, e.g., "I received this mail piece (date)," followed by his signature. The mail piece should then be submitted directly, or via a post office, to the postal services center which issued the order. Such submission

will constitute an application for enforcement of the order. When the Postal Service finds, after appropriate administrative proceedings as described in Publication 125 and Title 39, Code of Federal Regulations, Part 916, that enforcement action is warranted, it requests the Department of Justice to seek a court order directing compliance with the prohibitory order.

.66 ABANDONMENT OF APPLICATIONS

An applicant for a prohibitory order or its enforcement will be deemed to have abandoned his application if he fails to comply, within 60 days, with any request by the Postal Service to supplement, correct, or complete his application. Abandoned applications need not be retained by the Postal Service.

.67 VOID ORDERS

A prohibitory order will be considered void upon expiration of five years from the date of issuance, except that when application for enforcement of a prohibitory order has been made, it will not be considered void until expiration of five years from the last application for enforcement. Postal Service files relating to such void orders may be disposed of provided a record is maintained of the disposal of each such file and the reason therefor.

.68 MODIFIED ORDERS

.681 An addressee protected by a prohibitory order who has a permanent change of mailing address may continue the protection provided by the order by notifying the mailer of his change of address and his desire to have the order honored with respect to the new address. The notification should be in writing and should be forwarded to the mailer by registered mail, return receipt requested. The notification should state that the addressee previously obtained a prohibitory order, and should identify the order by giving the prohibitory order number. It should also state the address covered by the order, that the addressee has had a permanent change of address, and the new address which the addressee wishes covered.

.682 To permit enforcement with respect to any violation of the order at the new address, a copy of the notification and return mailing receipt must be submitted to the postal services center which issued the order. Such written notification shall modify the order by substituting the new address for the address designated in the original or previously modified order. An order thus modified will take effect in the same manner as the original order.

.69 RATIFIED ORDERS

Orders issued on behalf of persons who had not attained nineteen years of age will not be enforced with respect to mailings received by such persons after they attain the age of nineteen, unless they ratify the order by giving written notice to the postal services center which issued the order that they wish to have the order continue in effect as to themselves. Such notice should include the prohibitory order number.

Part 124

NONMAILABLE MATTER—ARTICLES AND SUBSTANCES; SPECIAL MAILING RULES

124.1 GENERAL PROVISIONS

.11 SCOPE

Certain potentially harmful or dangerous articles and substances are nonmailable. Some of them may be mailed if specially prepared for mailing, or if mailed between specified classes of persons. This Part covers the rules applicable to nonmailable articles and substances and the special rules under which certain of them may be mailed. See Part 123 for rules relating to nonmailable written, printed or graphic material.

.12 RESPONSIBILITY OF MAILER

The mailer is responsible for compliance with applicable postal laws and regulations governing mailability and preparation for mailing, as well as other laws and regulations pertaining to the shipment of particular matter. The general requirements applicable to preparation, packaging, and packing of mailable matter are contained in Part 121.

.13 MAILABILITY RULINGS

For rules on giving advice as to the mailability of matter covered by this Part and Part 123, see 123.3.

.14 OTHER LAWS AND REGULATIONS

The customer's right to mail particular matter may be affected by conditions or limitations upon transportation of specific articles imposed by Federal agencies having jurisdiction over interstate transportation. See, for example: 49 CFR Parts 100 through 189 (Department of Transportation Regulations); 14 CFR Part 103 (Federal Aviation Regulations); the *Comprehensive Drug Abuse Prevention and Control Act of 1970* (Public Law 91-513), 21 U.S.C. 801; and the *Gun Control Act of 1968* (Public Law 90-618), 18 U.S.C. 921. For the rule on advising mailers about these other laws and regulations see 123.34.

.15 MARKINGS AND LABELS

.151 *Identification of Contents*

The identity or nature of contents of anything mailed under any of the provisions of Part 124, except firearms and switchblade knives (124.4), controlled substances (124.5) and motor vehicle master keys (124.6), must be stated plainly on the outside of the parcel as a condition of mailing. When the contents are hazardous material subject to Title 49 CFR, each package must be clearly marked on the outside with the required shipping name as set forth in 49 CFR Section 172.5.

.152 *Address Marking*

The name and address of both the mailer and the addressee must be affixed to the outside of any package, the mailing of which is covered by Part 124, using a material or method which is not water soluble and which cannot be easily rubbed off or smeared.

.153 *Labels*

Except for controlled substances mailed under 124.5, labels or other markings required by Federal law or regulation of any Federal agency must be securely affixed to the outside of the package. If the package is to be trans-

ported via aircraft, it must also bear the appropriate Department of Transportation hazardous material label.

.154 *Airmail Shipment Certification*

Every airmail shipment of restricted articles mailable under Part 124 shall be accompanied by a shipper's certification prepared in accordance with Federal Aviation Regulations, completed and signed in duplicate by the mailer.

.155 *Customs Declaration for Canal Zone*

Any package of merchandise, weighing 16 ounces or more, addressed to an individual in the Canal Zone must have customs declaration Form 2966-A, *Parcel Post Customs Declaration* (adhesive), and Form 2966, *Customs Declaration* (tie-on-tag), attached. Parcels addressed to a U.S. Government agency, including the Panama Canal Company, and the Canal Zone Government are exempt from this requirement.

124.2 HARMFUL MATTER (18 U.S.C. 1716)

.21 GENERAL

Except as provided below, any article, composition, or material which may kill or injure another, or injure the mail or other property, is nonmailable. Harmful matter includes, but is not limited to:

a. All kinds of poison or matter containing poison;
b. All poisonous animals, except scorpions (see 124.293d) all poisonous insects, all poisonous reptiles, and all kinds of snakes;
c. All disease germs or scabs;
d. Narcotics and other *controlled substances* as defined by 21 U.S.C. 801 or the regulations thereunder; and
e. All explosives, flammable material, infernal machines, and mechanical, chemical, or other devices or compositions which may ignite or explode.

Harmful matter also includes that which is likely to destroy, deface, or otherwise damage the mails or postal equipment, or which is likely to harm postal employees, such as caustic poisons (acids and alkalies), oxidizing materials, or highly flammable liquids, gases or solids; or which is likely under conditions incident to transportation to cause fires through friction, through absorption of moisture, through spontaneous chemical changes, or as a result of retained heat from manufacturing or processing; explosives or containers

.543 *Use of Registered Mail Required*

Parcels containing controlled substances, including those sent to D.E.A. Regional Offices for disposal (see 21 CFR 1307.21), generally must be sent by registered mail, return receipt requested. The Drug Enforcement Administration number or exemption status of the sender shall be set forth in the sender's address section of Form 3806 or Form 3877, as applicable. This information shall appear in the following format:

DEA Registration No. 654321

or

DEA Exempt—Police

.544 *Regular Mail Permitted*

The following may be sent by regular mail without regard to the provisions of 124.543:

a. Prescription medicines containing non-narcotic controlled substances listed in Schedule II in amounts not exceeding 100 dosage units.
b. Prescription medicine containing non-narcotic controlled substances listed in Schedules III, IV and V in amounts not exceeding a 100-day supply or 300 dosage units, whichever is less.
c. Physician's samples of medicines containing non-narcotic controlled substances in amounts not exceeding the limitations set forth in 124.544 a or b.

.55 EXEMPT SHIPMENTS

Small quantities of unknown matter suspected of containing controlled substances may be sent by regular mail without regard to the other provisions of 124.5 only when addressed to a Federal, State or local law enforcement agency for law enforcement purposes. Such mailings must comply with 124.542 (c) and (d).

.56 VIOLATIONS

Violations of this section shall be referred to the Inspection Service.

124.6 MOTOR VEHICLE MASTER KEYS (18 U.S.C. 1716A; 39 U.S.C. 3002)

.61 DEFINITION

Motor vehicle master key means any key (other than the key furnished by the manufacturer with the motor vehicle, or the key furnished with a replacement lock, or an exact duplicate of such keys) or manipulation type device designed to operate two or more motor vehicle ignition, door, or trunk locks of different combinations, including any pattern, impression, or mold from which a master key or manipulation device can be made.

.62 MAILABILITY

The items defined in 124.61, and any advertising (see 123.432) for the sale of any of these items, are nonmailable except when sent to:

a. Lock manufacturers
b. Professional locksmiths
c. Motor vehicle manufacturers or dealers
d. Federal, State or local Government agencies.

.63 MARKING

No markings of any kind which would indicate the nature of the contents shall be placed on the outside wrapper or container of any parcel containing motor vehicle master keys.

.64 QUESTIONED MAILINGS

When the postmaster at either the office of mailing or the office of address has reason to question whether the addressee qualifies under 124.62 to receive a mailing, or whether an item is nonmailable for any other reason, he shall require the mailer or addressee to furnish a written explanation of the addressee's eligibility, or of the item's mailability. If the explanation is not satisfactory to the postmaster, he shall forward it with his statement of the pertinent facts to the Office of Mail Classification, Rates and Classification Department, for a ruling.

124.7 ABORTIVE AND CONTRACEPTIVE DEVICES OR MATERIALS

.71 ABORTIVE DEVICES AND MATERIALS (18 U.S.C. 1461)

Any article or thing designed, adapted or intended for producing abortion is nonmailable. (For advertisements of abortive devices and materials see 123.433.)

.72 UNSOLICITED SAMPLES OF CONTRACEPTIVE MATERIALS (39 U.S.C. 3001; 18 U.S.C. 1461)

Unsolicited samples of articles or things, which are designed, adapted or intended for preventing conception, are mailable only when sent through the mails to a manufacturer of such articles or things, a dealer therein, a licensed physician or surgeon, or a nurse, pharmacist, druggist, hospital or clinic. (For advertisements of contraceptive materials, see 123.434.)

124.8 NONMAILABLE ARTICLES (18 U.S.C. 1716)

.81 INTOXICATING LIQUORS

Potable beverages of ½ percent or more alcoholic content by weight, which are taxable under Chapter 51, Internal Revenue Service Code, are nonmailable. If the product conforms to applicable requirements of the Internal Revenue Service and Food and Drug Administration and is neither an alcoholic beverage, poisonous nor flammable (see 124.24), it may be mailed. (For advertisements for the mailing of intoxicating liquor, see 123.431.)

.82 MATTER EMITTING OBNOXIOUS ODORS

Any matter which is a source of an obnoxious odor is nonmailable.

.83 LIQUIDS

Liquids and semi-solids which may liquefy under normal conditions and are otherwise mailable, must be adequately prepared for mailing in accordance with 121.53.

.84 BATTERY POWERED DEVICES

Devices which are powered by dry cell batteries shall have the batteries removed or deactivated to prevent activation of the device in the mail. Batteries with liquid electrolite are not acceptable (see 124.2).

.85 ODD SHAPED ITEMS IN ENVELOPES

Pens, bottle caps and similar odd-shaped items are not acceptable in letter style envelopes at the single piece first-, third- or fourth-class rate because they could burst the envelope and damage mail processing equipment or injure employees (see 121.324 and 123.431).

126.2 CONDITIONS PRESCRIBED BY THE DEFENSE DEPARTMENT APPLICABLE TO MAIL ADDRESSED TO CERTAIN MILITARY POST OFFICES OVERSEAS

Military post office number	See footnotes	Military post office number	See footnotes	Military post office number	See footnotes
09001	B-C-I	09040	A-B[1]-F-S	09077	B-C-D
09002	B-C-I	09045	B-C-D	09078	B-C-D
09007	B-C-D	09046	B-C-D	09079	B-C-D
09008	B-C-D	09047	B-C-D	09080	B-C-D
09009	B-C-D	09048	B*-C	09081	B-C-D
09010	B-C-D	09050	B-C-D	09082	B-C-D
09011	B-C-F[1]	09051	A-B[1]-F-S	09085	
09012	B-C-D	09052	B-C-D	09086	B-C-D
09017	B-E[2]-F-H[1]-R	09053	B-C-D	09088	B*
09019	B-C-I	09054	B-C-D	09090	B-C-D
09020	B[1]	09055	B*	09091	B-C-D
09021	B-C-D	09056	B-C-D	09093	B-C-D
09023		09057	B-C-D	09095	B-C-D
09025	B-C-D	09058	B-C-D	09098	B-C-D
09026	B-C-D	09059	B-C-D	09099	B-C-D
09028	B-C-D	09061	B-C-D	09102	B-C-D
09029	B-C-D	09066	B-C-D	09107	B-C-D
09030	I-N	09067	B-C-D	09108	B-C-D
09031	B-C-D	09068	B-C-D	09109	B-C-D
09033	B-C-D	09069	B-C-D	09111	B-C-D
09034	B-C-D	09070	B-C-D	09114	B-C-D
09035	B-C-D	09072	B-C-D	09117	A-B[1]-F-S
09036	B-C-D	09074	B-C-D	09118	A-B[1]-F-P-S
09038	B-E[2]-F-H[1]-R	09075	B*-C	09120	B*-C
09039	B-C-D	09076	B-C-D	09121	

See footnotes at end of table.

126.2 CONDITIONS PRESCRIBED BY THE DEFENSE DEPARTMENT APPLICABLE TO MAIL ADDRESSED TO CERTAIN MILITARY POST OFFICES OVERSEAS—Continued

Military post office number	See footnotes
09123	B-C-D
09127	B*-C
09128	B-C-D
09129	B*-C
09130	B-C-D
09131	B-C-D
09132	B-C-D
09133	A-B[1]-F-S
09137	B-C-D
09138	B-C-D
09139	B-C-D
09140	B-C-D
09141	B-C-D
09142	B-C-D
09143	B-C-D
09144	B-C-D
09146	B-C-D
09150	B*-C
09154	B-C-D
09155	A-B
09159	B-C-F[1]
09160	B-C-D
09162	B-C-D
09164	B-C-D
09165	B-C-D
09166	B-C-D
09166	B-C-I
09169	B-C-D
09170	C-D-N
09171	B-C-D
09172	B-C-D
09173	B-C-D
09175	B-C-D
09176	B-C-D
09177	B-C-D
09178	B-C-D
09179	B*-C
09180	B-C-D
09184	B-C-D
09185	B-C-D
09189	B-C-D
09193	B*-C
09194	B*-C
09202	A-B-G
09205	A-B
09210	B*-C
09220	B-C-D
09221	B-C-I
09223	A
09224	A-B[1]-F-S
09227	B-C-D
09228	A-B
09230	A-B
09232	B-C-I
09238	B*-C
09240	B-C-I
09241	B*-C
09245	B-C-D
09252	B-C-D
09253	A
09254	A-B[1]-F-S
09277	B-C-D
09281	B-C-D
09282	
09283	
09285	
09286	
09289	A-B[1]-F-S
09291	A
09292	B-C-F[1]
09293	B-C-I
09294	A-B[1]-F-S
09305	B-C-D
09309	B-C-D
09319	B-C-D

See footnotes at end of table.

126.2 CONDITIONS PRESCRIBED BY THE DEFENSE DEPARTMENT APPLICABLE TO MAIL ADDRESSED TO CERTAIN MILITARY POST OFFICES OVERSEAS—Continued

Military post office number	See footnotes
09320	A-B[1]-F-S
09322	B-C-D
09324	A-B[1]-F-S
09325	B-C-D
09326	B-C-D
09330	B-C-D
09333	B-C-D
09351	B-C-D
09352	B-C-D
09353	B-C-D
09354	B-C-D
09355	B-C-D
09358	B-C-D
09359	B-C-D
09360	B-C-D
09370	B-C-D
09378	B*-C
09380	A-B[1]-F-S
09401	
09403	B-C-D
09405	B*-C
09406	
09407	B-C-D
09411	B-C-D
09451	B-C-D
09452	B-C-D
09453	B-C-I
09454	B-C-D
09455	B-C-D
09467	B-C-D
09468	B-C-D
09460	B-C-D
09501	
09502	
09505	O
09510	B*-C
09511	B*-C-J
09512	B*-C-J
09514	B*-C-J
09515	B*-C-J
09516	B*-C-J
09517	B-C-D
09518	B*-C-J
09519	B*-C-J
09520	B-C-I
09521	B-C-I[1]
09522	B-C-I[1]
09523	B-C-I[1]
09524	B-C-I[1]
09525	A
09526	
09527	A-N
09528	A
09530	A-B-C-F-M
09532	A
09533	B-C-I[1]
09534	
09539	
09540	
09541	
09542	A-B-C-E
09544	A-B-C-E
09545	B-C-D
09546	
09549	
09551	
09552	
09553	
09554	
09555	
09556	
09558	
09559	
09560	
09571	C
09572	C

See footnotes at end of table.

126.2 CONDITIONS PRESCRIBED BY THE DEFENSE DEPARTMENT APPLICABLE TO MAIL ADDRESSED TO CERTAIN MILITARY POST OFFICES OVERSEAS—Continued

Military post office number	See footnotes
09580	B[1]
09584	B[1]
09585	B[1]
09593	
09597	
09598	
09607	B*-C
09611	B-C-D
09616	B-E[2]-F-H[1]-R
09633	B-C-D
09659	B*-C
09662	
09664	N
09666	B-C-D
09667	B*
09669	B-C-D
09670	B-C-I
09671	B-E[2]-F-H[1]-R
09672	
09676	B-C-M
09678	B-I-N
09689	B-C-I
09690	A
09692	B-C-D
09693	A
09696	B-C-D
09697	B-E[2]-F-H[1]-R
09701	B-C-D
09702	B-C-D
09710	B-C-D
09742	B-C-D
09743	B-C-D
09751	B-C-D
09755	B*-C
09757	B-C-D
09777	A-B-C-E
09794	B-C-I
09801	B-C-D
09807	B-C-D
09825	B[1]
09826	B[1]
09827	B[1]
09829	B[1]
09832	B[1]
09834	B[1]
09837	B[1]
09851	
09860	B-C-D
09862	N
09865	B-I-M
09867	M
09869	B-C-F-I-M-N
09870	C-D-N
09871	B-I-L-M-N
09872	B-C-D
09879	H-I-M-N
09880	A-B-F-N
09881	I-M-N
09883	B-I-M-N
09885	M
09887	B-D-F-I-M-N
09889	B-I-M-N
09891	B-M-N-I
09892	A-B-F
09893	C-F-H-I-M-N
09895	B-I-M
09897	I
09899	B-I-M
96208	A-B
96209	A-B-H
96210	A-B-M
96212	A-B
96213	A-B
96218	A-B
96220	A-B

See footnotes at end of table.

126.2 CONDITIONS PRESCRIBED BY THE DEFENSE DEPARTMENT APPLICABLE TO MAIL ADDRESSED TO CERTAIN MILITARY POST OFFICES OVERSEAS—Continued

Military post office number	See footnotes
96221	P
96224	A-B
96225	
96230	A-B-L-M
96231	A-B
96235	A-B-M
96236	F[1]-P
96239	A-B-M
96244	A-B-M
96248	A-B-M
96251	A-B
96259	A-B
96263	F[1]
96264	A-B
96271	A-B
96274	F-K
96276	A-B
96277	F-K
96282	F
96286	F-K-L
96287	A-B-H
96290	F[1]
96293	F[1]
96298	F-K
96301	A-B
96302	A-B
96305	
96311	F-K-L
96315	F-P-N
96319	F[1]
96323	A-B-M
96324	A-B
96327	L
96328	A-B-M
96331	A-B-M
96333	M
96334	
96335	A-B
96336	A-B-M
96340	F[1]
96341	
96343	A-B-M-N
96344	A-B-M
96346	B[1]-F-N
96351	P
96356	
96358	A-B
96360	F[1]
96361	A-B-M
96366	A-B
96367	A-B-L-M
96369	A-B-H
96370	A-B
96371	A-B
96397	A-B
96401	
96404	A-B-H
96405	A-B-H
96421	F-N
96431	F-K
96432	F-K
96434	P
96435	F[1]
96438	
96442	F-N
96455	A-B
96460	A-B
96468	F-N
96483	A-B
96488	A-B
96501	
96503	A-B-M
96515	
96519	A-B-M
96528	F-K

See footnotes at end of table.

126.2 CONDITIONS PRESCRIBED BY THE DEFENSE DEPARTMENT APPLICABLE TO MAIL ADDRESSED TO CERTAIN MILITARY POST OFFICES OVERSEAS—Continued

Military post office number	See footnotes	Military post office number	See footnotes	Military post office number	See footnotes
96545		96658	F-K	98747	
96553		96659		98748	
96555	M	96680	A-B-H-Q	98749	
96556		96685		98750	
96557		96690	B-H-M	98760	A-B-M
96558		96692		98761	A-B-M
96570	A-B	96699	A-F	98762	A-B-M
96571	A-B	98703		98763	A-B-M
96601		98704		98764	A-B-M
96602		98706		98765	A-B-M
96605	O	98709		98766	A-B-M
96610		98710		98767	A-B-M
96611		98711		98768	A-B-M
96612		98713		98769	A-B
96613		98715		98770	A-B-M
96614		98716		98771	
96615		98723		98772	A-B-M
96617		98731		98773	A-B-M
96630		98732		98774	
96637		98733		98775	
96650	F-K	98736		98776	
96651	F-K	98737		98777	
96652	F-K	98742		98781	A-B-M
96654	F-K	98745		98782	A-B-M
96656	F-K	98746		98783	

See footnotes at end of table.

126.2 CONDITIONS PRESCRIBED BY THE DEFENSE DEPARTMENT APPLICABLE TO MAIL ADDRESSED TO CERTAIN MILITARY POST OFFICES OVERSEAS—Continued

Military post office number	See footnotes	Military post office number	See footnotes	Military post office number	See footnotes
98784		98792		98796	
98785		98793		98797	
98790		98794		98798	
98791		98795		98799	

FOOTNOTES

A. No mail of any class may contain securities or currency. Precious metals in their raw, unmanufactured state are also prohibited. Official shipments are exempt from these restrictions.

B. Customs Declaration form required, except that prepaid mail from a contractor, addressed to a military organization for official use, NEED NOT bear Customs Declaration but must be endorsed "Contents Per Official Use Exempt from Customs Requirement." Official mail from Government agencies DOES NOT require customs declaration or exemption endorsement."

B[1]. Two customs declarations required. One Form 2966–A and one Form 2966.

*Articles will be liable for customs duty and/or purchase tax unless they are bona fide gifts, personal use intended for military personnel or their dependents. When the contents of a parcel meet these requirements, the mailer should place a certificate similar to the following on the customs form under the heading—"Description of Contents" "Certified to be a bona fide gift, personal effects or items for personal use of military personnel and dependents thereto."

C. Cigarettes and other tobacco products prohibited.

D. Coffee prohibited.

E. Mail may not contain: 1. Medicines or vaccines not conforming to French laws. 2. Nonauthorized publications, reprints, and publications prohibited on account of their political character or immoral contents.

F. Mail of all classes may not contain firearms of any type. See definition of firearms in 124.4 Exception: Not applicable to firearms mailed to or by official U.S. government agencies.

F[1]. No mail of any class may contain privately-owned weapons addressed to an individual.

G. Only first-class letters, second- and third-class mail authorized.

H. Meats, including preserved meats, whether hermetically sealed or not, are prohibited.

H[1]. Pork and/or pork by-products prohibited.

(Continued)

(Continued)

I. Mail of all classes may not exceed the following dimensions:

Length	
42"	72" length and girth combined.
Over 42" to 44"	24" girth.
Over 44" to 46"	20" girth.
Over 46" to 48"	16" girth.

Maximum length 48".

[1] Provisions of this footnote are not applicable to registered mail.

[2] Provisions of this footnote are not applicable to airmail nor to official Government mail marked MOM.

J. Weight for other than registered mail is restricted to 50 pounds.

K. Mail which includes in the address the words "Dependent Mail Section" may consist only of letter mail, newspapers, magazines and books. No parcel of any class containing any other matter may be mailed to Dependent Mail Section. This footnote is not applicable if the address does not include the words "Dependent Mail Section."

L. All official mail prohibited.

M. Fruits, animals, and living plants are prohibited.

N. No registered mail accepted.

O. Personal mail addressed to vessels using this number is limited to unregistered airmail, unregistered first-class mail, and certified mail. Other classes of mail may not be accepted.

P. APO will be used for the receipt and dispatch of official mail only.

Q. Mail may not exceed 66 pounds and size is limited to 42 inches maximum length and 72 inches maximum length and girth combined.

R. All alcoholic beverages, including those mailable under part 124.81 are prohibited.

S. No parcels (merchandise) of any kind accepted.

Subchapter 130 MAIL CLASSIFICATION AND RATES

Part 131

FIRST CLASS

131.1 RATES

.11 SINGLE PIECE RATES

The single piece rates are applied to each letter or piece of first-class mail according to its weight.

Kind of Mail	Rate
All first-class mail weighing 13 ounces or less except postal and post cards. See 136.12 for rates on first-class mail weighing more than 13 ounces.	13¢ for the first ounce or fraction of an ounce, 11¢ for each additional ounce or fraction of an ounce.
Single postal cards sold by the post office (see 141.13)	9¢ each.
Double postal cards sold by the post office (see 141.13)	18¢ (9¢ each portion).
Single post cards (see 131.222)	9¢ each.
Double post cards (see 131.222) (Reply portion of double post card does not have to bear postage when originally mailed.)	18¢ (9¢ each portion).
Presort rate (see 131.12)	The applicable first-class rate, less 1¢ per piece.
Business reply mail:	
Cards	14¢ each.
Other than cards:	
Weight not over two ounces	13¢ for the first ounce plus 11¢ for the second ounce, plus 5¢ per piece.
Weight over two ounces but not over 13 ounces	The applicable first-class rate plus 8¢ per piece.
Weight over 13 ounces	8¢ per piece plus rate in 136.12.
Airmail	See 136.1.

.12 BULK PRESORT RATE

.121 *Identical Pieces*

The bulk presort rate is equal to the applicable single piece first-class rate, less one cent for each piece that is part of a group of ten or more pieces sorted to the same five-digit ZIP Code, or of a group of fifty or more pieces sorted to the same three-digit ZIP Code, when they are presented at one post office as part of a single mailing of not less than 500 pieces of first-class mail of identical size and weight, each weighing 13 ounces or less. All pieces must be individually addressed to different addressees, and must be sorted to the maximum extent; i.e., all five-digit sorts in groups of ten or more must be exhausted before proceeding to make up all three-digit sorts in groups of fifty or more. Full first-class postage must be paid on the residue not sorted to

groups of 5- or 3-ZIP Code digits as described above. The mailing must be presented at a place and between the hours designated by the postmaster and must comply with the preparation requirements in 131.5. Deposit of metered presort rate mail at other than these designated places will be considered misuse of a postage meter and grounds for revocation of the meter license in accordance with 144.23. Cards subject to sortation requirements of 131.224 are eligible for the presort rate if they meet all requirements for the rate.

.122 *Nonidentical Pieces*

A group of 500 or more nonidentical pieces within the same postage rate increment, which otherwise qualify under 131.121, may be mailed at the presort rate when postage is paid by meter stamps. Nonidentical pieces of the same or different postage rate increments which otherwise qualify under 131.121 may be mailed at the presort rate under permit imprint only when authorized by the Postal Service as part of an optional procedure in accordance with 145.8, or an experimental procedure under the provisions of 145.9. Optional procedures for mailing nonidentical pieces must be approved by the Office of Mail Classification.

.12 NONSTANDARD SURCHARGE

There is currently no surcharge for nonstandard mail as defined in 131.34. However, it is anticipated that such a surcharge will be imposed sometime in calendar year 1978.

131.2 CLASSIFICATION

.21 DESCRIPTION

.211 First-class mail consists of mailable:

a. Postal cards.
b. Post cards.
c. Matter wholly or partially in writing or typewriting, except authorized additions to second-, third-, and fourth-class mail provided by 132.471, 132.472, 134.6 and 135.5, and written or typewritten matter listed in 135.24 and 135.26.
d. Matter closed against postal inspection.
e. Bills and statements of account.

.212 Examples of first-class matter:

a. Handwritten or typewritten matter, including identical copies prepared by automatic typewriter, and manifold or carbon copies of such matter. Handwritten or typewritten matter does not include matter produced by computers.
b. Autograph albums containing writing.

c. Notebooks or blank books containing written or typewritten entries or stenographic or shorthand notes.
d. Blank printed forms filled out in writing, such as notices, certificates, and checks either canceled or uncanceled.
e. Printed price lists containing written figures changing individual items.
f. Printed cards or letters bearing a written date, where the date is not the date of the card but gives information as to when something will occur or has occurred.
g. Printed matter such as receipts, orders and printed letters not sent in identical terms to several persons that, by having a signature attached, are converted into personal communications. This does not apply to Christmas or similar printed greeting cards.

.213 Two or more individuals or firms, or a party acting as the agent of two or more individuals or firms, may not mail in one envelope to a mutual addressee the bills, statements of account, or other letters of the individuals or firms, unless the envelope is endorsed on the address side to show the number and weight of each letter enclosed and sufficient postage is paid at the first-class rate on each such letter. Firms that are distinct legal entities are treated as separate firms for purposes of this regulation, regardless of their affiliation.

.214 An individual or firm may mail in one envelope more than one of its own letters to an addressee and pay postage at the first-class rate on the weight of the piece. Agents of a licensing authority may forward completed applications in one envelope to an office of the licensing authority and pay postage at the first-class rate on the weight of the piece.

.215 The following provisions are applicable to matter closed against postal inspection:

a. The Postmaster General may prescribe the manner of wrapping and securing mail not charged with first-class postage so that the contents of the mail may be easily examined. He shall charge the first-class rate of postage on all matter that cannot be examined easily.
b. To ascertain whether the proper rate of postage has been paid, postmasters may examine second-class mail and remove the wrappers and envelopes from other mail not bearing first-class postage if it can be done without destroying them.
c. Matter closed against inspection includes mail of any class so wrapped as not to be easily examined, except second-, third-, or fourth-class matter sealed subject to postal inspection. See 125.25, 134.8, and 135.6.

.216 The following is a description of bills and statements of account:

a. A bill is a request for payment of a definite sum of money claimed to be owing by the addressee either to the sender or to a third party. The mere assertion of an indebtedness in a definite sum combined with a demand for payment is sufficient to make the message a bill.
b. Generally, a statement of account is the assertion of the existence of a debt in a definite amount owed by the addressee either to the sender or to a third party but which does not necessarily contain a request or a demand for payment. The amount may be immediately due or may become due after a certain time or upon demand or billing at a later date.
c. A bill or statement of account must present the particulars of an indebtedness with sufficient definiteness to inform the debtor of the amount he is required to pay to acquit himself of the debt. However, neither a bill nor a statement of account need state the precise amount if it contains sufficient information to enable the debtor to determine the exact amount of the claim asserted.
d. A bill or statement of account is not the less a bill or statement of account merely because the amount claimed is not in fact owing or may not be legally collectible.

.22 POSTAL AND POST CARDS

.221 *Postal Cards*

A postal card is a card supplied by the Postal Service with a postage stamp printed or impressed on it, for the transmission of messages. A double postal card consists of two attached cards, each of which has printed or impressed thereon a postage stamp of the first-class rate for postal cards denomination, and one of which may be detached by the receiver and returned by mail as a reply.

.222 *Post Cards*

Post cards are privately printed mailing cards for the transmission of messages. They may not be larger than the size fixed by the Convention of the Universal Postal Union in effect and of approximately the same form, quality, and weight as postal cards. A double post card consists of two attached cards, each of which is subject when mailed to the first-class postage rate for post cards, and one of which may be detached by the receiver and returned by mail as a reply. The cardboard used for single and double post cards may be of any light color that does not prevent legible addresses and postmarks from being placed thereon. Brilliant colors must not be used. Single post cards and each part of double post cards must conform to the following specifications to qualify for mailing at the first-class postage rate for post cards (see 131.1):

a. *Size, Shape, and Ratio.* Not larger than 4¼ by 6 inches, nor smaller than 3 by 4¼ inches. Rectangular in shape. A ratio of width (height) to length between 1 to 1.3 & 1 to 2.5 is recommended. (See 131.32 and 134.32.)
b. *Quality, Weight, and Thickness.* An unfolded and uncreased piece of cardboard of approximately the quality and weight of a postal card; thickness not less than 0.006 or more than 0.0095 of an inch; and the cardboard to be uniform in thickness and as near 0.0090 as possible.
c. *Green Border Cards.* See 141.115.

.223 *Restrictions on the Use of Double Postal and Post Cards*

The users of both double postal and post cards which conform to the specifications stated in 131.222 a and b must comply with the following rules:

a. Double cards must be folded before mailing. The first half must be detached when the reply half is mailed for return.
b. The reply portion of a double card must be used for reply purposes only. It must not be used to convey a message to the original addressee of the double card, to cover up the message on the original portion, or to send statements of account.
c. Double cards must be prepared so that the address on the reply portion is on the inside when the double card is mailed.
d. Plain stickers or seals or a single wire stitch may be used to fasten the edges, provided they are so fixed that the inner folds of the cards can be readily examined.
e. Enclosures are prohibited.

.224 *Additions, Attachments, and Other Alterations to Single and Double Postal and Post Cards*

The users of both single and double postal and post cards which conform to the specifications stated in 131.222 a and b must comply with the following limitations:

a. The face of the card may be divided by a vertical line, the left half to be used for the message and the right half for the address only.
b. The message on a single card, or on the first portion of a double card, may occupy the space to the left of the vertical line and the entire back of the card.
c. Labels may be affixed by adhesive for the purpose of showing the address and the return address. Cards bearing other attachments are nonmailable as postal cards or post cards.
d. Numbers used for accounting purposes may be shown on a shaded background below the address. Holes which do not eliminate any letters or

numbers may be punched in either the address or message portion of the card. A vertical tearing guide may divide the face of the card. The address portion may be smaller than the remainder of the card. However, mailings of cards having one or more of these four characteristics must meet all of the following conditions:

(1) The mailings must consist of not less than 200 cards which are identical as to size and weight.
(2) The addresses on the cards must include ZIP Code numbers.
(3) Postage must be paid in cash by permit imprints (see part 145); by meter stamps (see part 144); or by precanceled stamps (see part 143).
(4) The mailer must separate the cards to the finest extent possible and sack them in the manner prescribed by 134.43.

e. It is recommended that all cards having a thickness less than 0.0085 of an inch meet all of the conditions in 131.224d (1), (2), (3), and (4).

.225 *Cards Other Than Postal and Post Cards*

Matter which is in the form of a single or double card but which does not conform to the specifications for a single or double post card stated in 131.222a and b may not be mailed at the first-class postage rate for post cards. Nonconforming mailable matter in the form of single or double cards is not subject to the rules and restrictions provided in 131.223 and 131.224; it is subject when mailed to postage at the first-class letter rate or at the applicable third-class rate according to its classification as first- or third-class matter; and it must not bear the words *Post Card* or *Double Post Card*. Single or double cards conforming to the specifications stated in 131.222a and b, which are entirely in print, and which do not bear the words *Post Card or Double Post Card*, if otherwise mailable, may at the option of the mailer be mailed at the applicable third-class postage rate instead of the first-class postage rate for post cards. See 131.3 and 134.3 for a list of physical characteristics which cause cards to be nonmailable.

.226 *Postal and Post Cards as Enclosures*

Stamps on postal and post cards enclosed in outer wrappers may not apply as postage on the mailing piece.

.227 *Presorted First-Class Mail*

Presorted first-class mail is mail presented in a manner that preserves the orientation, facing, and ZIP Code sequence of the pieces.

.23 BUSINESS REPLY MAIL

.231 *Purpose*

Specially printed business reply cards, envelopes, cartons, and labels may be distributed for use by mailers in sending mail to the distributor without prepayment of postage.

.232 *Permit*

a. A permit to distribute business reply cards, envelopes, cartons, and labels is required. An application on Form 3614, *Application to Distribute Business Reply Cards, Envelopes and Labels*, must be submitted at the post office where the mail will be returned, except as follows: if matter bearing the business reply imprint is distributed from a central office to be returned to branches or dealers in other cities, one permit obtained from the post office where the central office is located may be used to cover all the business reply mail.
b. On receipt of the application, the postmaster will complete the permit portion of the form and deliver it to the applicant. The application portion of the form will be filed in the post office by the permit number. Permits issued at each post office will be numbered consecutively starting with No. 1 for the first permit. Numbers of canceled permits may be used when issuing new permits. Each post office will keep an alphabetical card record of each permit on Form 3619, *Permit Number Record*.

c. When payment is not by use of an advance deposit trust account, postage is collected on each piece of business reply mail at the time it is delivered. Postage due stamps for the amount due will be affixed to the mail or to Form 3582-A, *Postage Due Bill*. The stamps will be canceled and delivered to the addressee with the mail when he pays the amount due. Business reply mail will not be mixed with other mail in direct packages or sacks for individuals or concerns. See 131.233 for amount to be collected which may not include fees for any special services.
d. Cards which do not conform to the specifications contained in 131.222 are to be charged postage at the regular first-class rate, and *not* at the card rate.

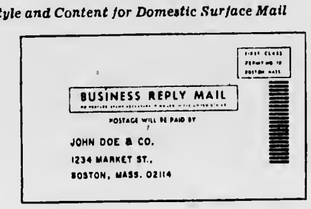
.233 *Postage and Fees*

a. An annual fee of $30 will be charged each calendar year for each permit issued. The $30 permit fee is applicable at each office where mail will be returned except that if the business reply is to be distributed from a central office for return to branches or dealers in other cities, one permit obtained from the post office where the central office is located may be used to cover all the business reply mail of the distributor, if the holder provides a copy of the receipt to each office where mail is to be returned under that permit. The permit holder guarantees payment of postage and fees on any returns refused by such branches or dealers.
b. Permit holders will have the option of keeping a Business Reply Mail (BRM) advance deposit trust account at the post office, or paying postage due charges to the carrier upon delivery. A $75 accounting fee will be charged for each BRM advance deposit trust account at each post office where the mail is to be returned. This fee will be paid each calendar year or portion thereof. No accounting fee will be charged to customers who do not maintain an advance deposit. The business reply advance deposit trust account will be used only for payment of business reply postage and fees.
c. When payment is by BRM advance deposit trust account as provided for in 131.233b, the amount to be collected is the appropriate first-class, airmail, or priority postage plus a surcharge of 3.5 cents per peice.
d. When no BRM advance deposit trust account is maintained, the amount to be collected is the appropriate first-class, airmail or priority postage, plus a surcharge of 12 cents per piece. Payment at the 12-cent rate may be paid in cash or through a regular postage due account.
e. Business reply mail addressed to several different firms at the same delivery unit may be delivered to one agent under one advance deposit trust account. The business reply mail for each firm participating in such arrangements must be covered under a valid business reply permit. Only one billing is to be provided by the Postal Service for each business reply advance deposit trust account. If the agent, or any of the firms participating in such arrangements desire separation of their charges, a separate trust account and accounting fee are required.
f. *Third party* business reply mail arrangements, whereby business reply pieces are distributed by a company, under its own permit and with its own indicia, for use by another party which is neither a branch nor a dealer of the distributor, are permissible provided:
   (1) The holder of the permit number appearing on the mail guarantees payment of postage and fees for all business reply pieces which he distributes;
   (2) The holder of the permit number appearing on the piece pays the annual business reply permit fee; and
   (3) The addressee to whom the piece is returned obtains its own business reply permit fee and itself pays the annual business reply permit fee and, if desired, the annual business reply accounting fee.

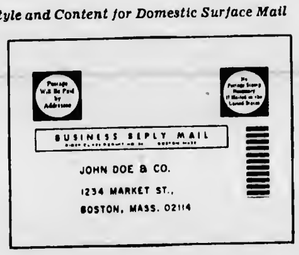
.234 *Form of Imprint and Address*

Any photographic, mechanical, or electronic process, or any combination of such processes, other than handwriting, typewriting, or handstamping, may be used to prepare the address side of business reply cards, envelopes, cartons, or labels. The address side must be prepared both as to style and content in one of the following forms without the addition of any matter other than a return address (see 141.114g for business reply window envelope requirements):

a. *Alternate Style and Content for Domestic Surface Mail*



b. *Alternate Style and Content for Domestic Surface Mail*



c. *Style and Content for Domestic Airmail.* Use alternating red and blue parallelograms for the border.



.235 *Distribution*

Business reply cards, envelopes, cartons, and labels may be distributed:

a. In any quantity for return by surface or airmail. When prepared by the distributor for return by surface mail, business reply mail may not be accepted for return by air unless postage is fully prepaid at the airmail rate.
b. To any post office in the United States and its Territories and possessions, including military post offices overseas; except in the Canal Zone, where they may not be returned without prepayment of postage. They should not be sent to any foreign country.
c. In any manner except by depositing in receptacles provided by customers for receipt of mail.

.236 *Responsibility of Distributor*

The distributor guarantees payment on delivery of postage on returned business reply mail. Any concern distributing business reply cards, envelopes, cartons, or labels under one permit for return to its branches or dealers guarantees to pay postage on any returns refused by any authorized addressees.

131.3 WEIGHT AND SIZE LIMITS

.31 WEIGHT

Each piece may weigh not more than 70 pounds.

.32 SIZE

Each piece may measure not to exceed 100 inches in length and girth combined. See 135.32 for instructions on how to measure.

.33 SHAPE, RATIO, AND SEALING FOR ENVELOPES, CARDS, AND SELF-MAILERS

The following standards apply to envelopes, cards, and self-mailers having postage paid thereon at the first-class postage rate:

a. Pieces less than 3 inches in width (height) or 4¼ inches in length are nonmailable.
b. Pieces having shapes other than rectangular are nonmailable.
c. Pieces having a ratio of width (height) to length between 1 to 1.3 and 1 to 2.5 are recommended.
d. Pieces not sealed or secured on all four edges so that they may be handled by machines are not recommended.
e. Cards having a thickness of less than 0.006 of an inch are nonmailable.

.34 NONSTANDARD FIRST-CLASS MAIL

.341 First-class mail weighing one ounce or less is nonstandard unless it meets the following size standards:

a. Length not greater than 11.5 inches, and
b. Height not greater than 6.125 inches, and
c. Thickness not greater than .25 inch, and
d. An aspect ratio (ratio of height to length) between 1:1.3 and 1:2.5 inclusive.

.342 Nonstandard mail often results in delays or damage to mail because it does not lend itself to machine processing. For this reason, mailers are encouraged to avoid mailing nonstandard first-class mail. It is anticipated that a surcharge will be imposed sometime in calendar year 1978 for nonstandard first-class mail.

131.4 PAYMENT OF POSTAGE

.41 SINGLE PIECE RATE

Mailers of first-class matter at single piece rate may pay postage by adhesive stamps, stamped envelopes and postal cards, meter stamps, and permit imprints.

.42 BULK RATE

Mailings made at presort rates must be paid only by meter stamps or permit imprints. Metered postage must be for the first-class presort rate for qualifying pieces and the full first-class rate for residual pieces.

.43 ANNUAL FEE

A first-class presort mailing fee of $30 must be paid once each calendar year at each office of mailing by or for any person who mails first-class or airmail matter at presort rates. Any person who engages a business concern or another individual to mail for him must pay the $30 fee. This fee is separate from the fee that must be paid for a permit to mail under the permit imprint system (146.1).

131.5 PREPARATION OF PRESORT RATE MAIL

.51 ADDRESSES

The address on each piece must include the ZIP Code (or carrier route code if presorted directly to carriers).

.52 MARKINGS REQUIRED

Identifying words *PRESORTED FIRST-CLASS* or *PRESORTED AIRMAIL* must be incorporated as part of the permit imprint or be printed or rubber stamped by the mailer on each piece above the address and immediately below or to the left of the meter stamps or permit imprints. The marking may be printed by a postage meter, special slug, or *ad plate*. All pieces in the mailing including residual pieces not qualifying for the lower presort rate must be so marked.

.53 MAILING STATEMENT

Mailers who qualify for the first-class presort rate (see 131.121) must complete and submit a mailing statement with each mailing. The statement must be signed by the mailer or his authorized agent:

a. Form 3602, *Statement of Mailing - Permit Imprint*, for mail with permit imprints. If editions of the form earlier than December 1975 are used, two forms must be used: one for those qualifying for the lower presort rate, and one for those which do not. The form for those qualifying for the lower presort rate *must* be marked *PRESORT RATE* across the top of the form, and should only list the items which qualify for the lower presort rate. The form for the non-qualifying pieces *must* be marked *Presort Residual* across the top of the form and should only list the items which do not qualify for the lower presort rate.

b. Form 3602-PC, *Mailing Statement - Bulk Rates*, for mail bearing meter stamps. If editions of the form earlier than May 1976 are used, two forms must be used: one for those qualifying for the lower presort rate, and one for those which do not. The form for the qualifying pieces *must* be marked *PRESORT RATE* across the top of the form, and should only list the items which qualify for the lower presort rate. The form for the non-qualifying pieces *must* be marked *Presort Residual* across the top of the form and should only list the items which do not qualify for the lower presort rate.

.54 SORTING REQUIREMENTS

.541 *Packages*

When there are 10 or more pieces to the destinations described in 131.545a and/or 50 or more pieces to the destinations described in 131.545b and c, they must be secured together as a package by the mailer. Rubber bands are the only acceptable means of securing packages in trayed mail.

.542 *Rubber Bands*

Rubber bands will be provided by USPS and will be used by mailers to secure packages of bulk mail under the following conditions:

a. Packages of pieces measuring up to 5 by 11-1/2 inches are to be secured in packages with rubber bands.
b. Packages should not exceed approximately 4 inches in thickness.
c. Packages up to one inch in thickness shall be secured with one rubber band around the girth. Packages between one and four inches in thickness shall be secured with two rubber bands, the first around the length and the second around the girth.

.543 *Labeling of Packages*

Package labels must be used to identify the makeup of presorted bundles of mail:

a. Place coded pressure sensitive labels in the lower left corner on the address side of the top piece in the package.
b. Do not date package labels.

.544 *Traying*

a. Packages are to be made up into trays in accordance with 131.545. Two-letter state abbreviations are to be used on labels. In lieu of traying, postmasters may authorize pouching or other suitable containerization of presorted mail when mutually beneficial to the mailer and the Postal Service and when the integrity of the presort can be maintained.
b. Pouches must be made up in accordance with the procedures prescribed for trays in 131.545 and with the prescribed pouch tags. Packages must be pouched by the mailer when there are enough for the same destination to fill approximately one-third of a pouch. The total weight of pieces placed in one pouch must not exceed 50 pounds. *The residual must be clearly segregated from the lower rated presorted mail.*

.545 *Sortation*

a. *Five-digit ZIP Code Delivery Unit Packages and Trays*
(1) *Packages.* When there are 10 or more pieces but less than a full tray addressed to the same five-digit ZIP Code delivery unit, they must be prepared in packages of 10 or more pieces not more than 4 inches in thickness by the mailer. The pieces in the packages must be faced in the same direction and secured with one or two rubber bands around each package as provided by 131.542. Red label D must be affixed to the lower left corner on the address side of the top piece in each package.

(2) *Presorted Trays.* When there is enough mail for the same five-digit ZIP Code delivery unit to fill a tray (approximately 500 pieces), a direct five-digit tray must be prepared. Mail left over after filling direct trays must be bundled and placed in the appropriate city or SCF mail tray with the same first three digits. A pouch label must be firmly affixed to the end of the tray. Direct five-digit trays or containers must be labeled in the following manner:

PHILADELPHIA PA 19118
FCM PRESORTED
FR JC COMPANY BOSTON MA

b. *City Packages and Trays*
(1) *Packages.* When there are 50 or more pieces, but less than a full tray, remaining for a city with a unique three-digit ZIP Code prefix, after the five-digit ZIP Code delivery unit packages required by 131.545a(1) have been prepared, they must be made up as city packages and must be secured with one or two rubber bands as provided by 131.542. Cities with unique 3-digit ZIP Codes are listed in the upper case letters in the listing of *ZIP Code Prefixes* contained in Publication 26, Directory of Post Offices. Yellow Label C must be affixed in the lower left corner on the address side of the top piece each package.
(2) *Presorted Trays.* City mail plus any packages for five-digit ZIP Code delivery units within those cities not trayed, as provided for by 131.545a(2), must be prepared in City trays. A mixed city pouch label must be firmly affixed to the end of each tray. City trays must be labeled in the following manner:

PHILADELPHIA PA 191
FCM PRESORTED
FR JAY MAILING CO CINCINNATI OH

Mail left over after filling trays must be bundled and placed in an SCF tray.

c. *Sectional Center Facility (SCF) Packages and Trays*
(1) *Packages.* When there are 50 or more pieces, but less than a full tray, remaining for the same three-digit ZIP Code prefix, after the packages required by 131.545a(1) and b(1) have been prepared, they must be bundled as SCF packages to that three-digit ZIP Code prefix. The pieces in the packages must be faced in the same direction and secured with one or two rubber bands as provided by 131.542. Green Label 3 must be affixed in the lower left corner on the address side of the top piece in each package.
(2) *Presorted Trays.* SCF packages plus any five-digit and city packages not trayed, as provided for by 131.545a(2) and b(2), and which are destined for the same sectional center facility must be prepared in SCF trays. An SCF pouch label must be firmly affixed to the end of each tray. SCF trays must be labeled in the following manner:

SCF PHILADELPHIA PA 190
FCM PRESORTED
FR Q MAILERS BALTO MD

Presorted mail left over after filling SCF trays must be bundled. It is recommended, but not required, that these be placed in state trays. If state trays are not prepared, bundles must be placed in mixed states trays.

d. *State Trays*
It is recommended, but not required, that packages remaining after traying, in accordance with 131.545a(2), b(2), and c(2), be prepared in state trays. A state pouch label in the following format must be firmly affixed to the end of the tray:

DIS CHICAGO IL 606
IL FCM PRESORTED
FR RECORD CHICAGO IL

e. *Mixed States Trays*

Packages remaining after traying in accordance with 131.454a(2), b(2), c(2) and d, must be prepared in *Mixed States* trays. A mixed states pouch label in the following format must be firmly affixed to the end of the tray:

DIS CHICAGO IL 606
MIXED STATES FCM PRESORTED
FR RECORD CHICAGO IL

f. *Residual Mail*
(1) Pieces remaining after bundles have been prepared into packages in accordance with 131.545a through e, are residual mail and are ineligible for the lower presort rate. Packages of residual mail must be placed in trays in such a way as to maintain the orientation and the ZIP Code sequence of the presort. Trays containing residual mail are not to bear a pouch label. The mail must be presented together with the lower-rated portion of a mailing, but must be clearly segregated therefrom to facilitate verification of the quantities of both the lower rated and residual pieces.
(2) In order to speed processing of the mail, it is recommended, but not required, that the mailer prepare state packages when there are 10 or more pieces to the same state. Orange label S must be affixed to the lower left corner of the address side of the top piece in each package.

g. *Exceptions to Bundling*
(1) The bundling requirements for presorted mail left over after filling full trays described in *a* through *e* may be waived when the use of separating tabs is approved by the local postmaster.
(2) The local postmaster may also waive the bundling requirements for loose-packed presorted flat mail sorted to one five-digit ZIP Code destination, when there is enough quantity to fill a number 3 sack. The flats must measure not less than approximately 8 inches high by 10 inches long.

131.6 PRESORT VERIFICATION

.61 Procedure

A designated employee in the weighing section, or other location where bulk mailings are accepted, shall verify that each mailing made at the presort rate is properly made up and presorted and qualifies for the presort rate. This is in addition to the postage computation verification performed for permit imprint mailings in accordance with 145.57. The designated employee must:

a. Verify that each mailing consist of at least 500 presorted pieces.
b. For each 10 trays or fraction thereof in a mailing:
(1) Select 2 trays of five-digit makeup and randomly withdraw and inspect by riffling 3 handfuls (about 120 letters) from each of the 2 trays to

determine whether the tray contains letters bearing other than the five-digit ZIP Code as shown on the tray label. If a discrepancy of 10 or more pieces is found, the mailing is disqualified.

(2) Select 2 trays of three-digit makeup and follow the procedures in (1).

(3) For the trays in (1) and (2), check if the proper labels are attached. If one improper label is found, check a total of ten trays. More than one improper label in ten trays is considered disqualifying.

(4) Check one tray of bundled mail to determine if the proper color-coded pressure sensitive package label is used on packages. If a wrong label is encountered, check a total of ten packages. More than one occurrence in ten packages is considered disqualifying.

(5) Check two packages to see if all pieces are in the proper bundles. If any improper bundling is detected, a total of five packages is to be checked. If more than four such improper pieces are in the five packages, the mailing is disqualified.

c. Riffle through one tray of residual mail to verify that it is in ZIP Code sequence. More than ten out of sequence in a tray is considered disqualifying.

d. If a mailing is disqualified, the next mailing by the customer at presort rates shall have twice the amount of pieces checked as called for above. In addition, one-fifth of the customer's mailings over the next six months shall receive such intensified checks.

e. For permit mailings, verify that the quantity of lower rated *presorted* mail agrees with Form 3602. This is done by weighing the presorted mail and dividing the weight by the weight of a single piece.

f. For permit mailings, verify that the quantity of *residual* mail agrees with Form 3602. This is done by weighing the residual mail and dividing the weight by the weight of a single piece.

g. Return permit imprint mailings to the mailer for corrective action or apply full rates as prescribed in 131.62 when the mailing does not qualify for the presort rate.

h. For metered mail spot check at least one tray of lower-rated pieces and one tray of residual mail to verify that proper postage is applied. If the pieces are not of identical weight, several of the heavier pieces are to be weighed and verified.

i. Return metered mailings and Form 3602-PC to the mailer for corrective action when one or more trays or pouches are found to contain mail with incorrect postage affixed, or improperly dated, or when the mailing does not qualify for the presort rate (see 131.62).

j. Mailers who elect to correct presort problems that result in disqualification of the mailing will generally be unable to return metered mail to the acceptance unit on the same day originally presented. The date in the meter stamp will thus reflect an incorrect mailing date. If the mailing is presented on the day immediately following its initial presentation and if it then meets all other acceptance requirements, accept the mailing on a one-time only basis when:

(1) Its initial presort deficiencies resulted from mailing equipment problems beyond the mailer's control, or

(2) It is the customer's first mailing at the presort rate and the improper presort resulted from misinformation or misunderstanding of the presort requirements.

.82 ACCEPTANCE OF UNQUALIFIED METERED OR PERMIT IMPRINT MAILING AT SINGLE PIECE RATES

When the verification prescribed by 131.61 reveals a disqualification for the presort rate on a mailing, the mailer may elect to pay the single piece first-class or airmail rate in lieu of correcting the disqualification. Mailers may correct the Form 3602 or Form 3602-PC for unqualified mailings to indicate postage is to be paid at single piece first-class or airmail rates in 131.11 and 136.11. All other provisions of Part 145 are applicable to such mailings. Mailers of unqualified metered mailings must pay the difference in cash at the window and present their copy of the cash receipt at the acceptance point before their mail can be released for processing.

131.7 MAIL SENT BY MEMBERS OF THE U.S. ARMED FORCES

.71 LETTERS SENT POSTAGE COLLECT

Letters sent by soldiers, sailors, airmen, and marines in the United States military service located in the United States or other places where United States domestic mail service operates, addressed to places in the United States, may be dispatched for collection on delivery, under the following conditions:

a. The address side of the letter must be marked *Soldier's Letter, Airman's Letter, Sailor's Letter,* or *Marine's Letter,* as appropriate.

b. Under the marking, the letter must bear the signature and official designation, either with facsimile handstamp or in writing, of a commissioned officer to whose command the soldier or airman belongs, or of a surgeon or chaplain at a hospital where he is; and in the Navy and Marine service, of a commissioned officer attached to the vessel on which the member is serving or an officer commanding a hospital or detachment ashore where he is.

c. Postage, at single rate for each ounce or fraction, is collected on delivery.

.72 LETTERS SENT FREE

.721 Any personal letter mail, including post cards, in the usual and generally accepted form, and sound-recorded communications having the character of personal correspondence may be mailed free of postage under the following conditions:

a. When mailed by:

(1) Any member of the U.S. Armed Forces (Army, Navy, Air Force, Marine Corps, and Coast Guard) at any U.S. military post office in Vietnam and contiguous waters, as defined by regulations of the Department of Defense.

(2) Any member of the U.S. Armed Forces hospitalized in a facility under the jurisdiction of the Armed Forces of the United States as the result of disease or injury incurred as a result of military service or operations in Vietnam and contiguous waters, and air space thereover.

b. When mailed to:

(1) Any place within the United States, including Puerto Rico or any other possession of the United States, where the domestic mail service operates.

(2) Any Army and Air Force or Navy post office.

c. When such mail bears:

(1) In the upper right corner of the address side, in the handwriting of the sender, the word *FREE,* and

(2) In the upper left corner of the address side the name of the sender, his service number, grade, and complete military address.

.722 Letter mail, post cards, and sound-recorded communications sent free under the conditions in 131.721 will be afforded transportation by air or other means which will give the earliest possible delivery to the addressee. This mail may not be registered, insured, or certified. It may be accepted as special delivery mail upon payment of the required fee.

131.8 SHIP LETTERS

.81 VESSELS NOT REGULAR MAIL CARRIERS

Letters for delivery in the United States, carried by vessels not regularly employed in carrying the mail, are charged double rate of postage to cover the fee paid to the vessel. The postage may be collected at the office of delivery or prepaid with United States postage stamps.

.82 VESSELS OPERATING OVER POST ROAD

Letters and packages carried from one port to another in the United States over a water route that is wholly a post road by law, in a private ship or vessel, are charged single rate of postage. If part of the water route is not a post road, double rates of postage are charged.

.83 DELIVERY BY THE MASTER OF A VESSEL

Wholly unpaid printed matter delivered to the post office by the master of a vessel arriving from a foreign port and not regularly engaged in carrying mail, is charged with double the third-class rate of domestic postage, to be collected on delivery, and dispatched to its destination.

Part 132

SECOND CLASS

132.1 RATES

.11 RATES CHARGED ON COPIES FOR DELIVERY WITHIN THE COUNTY WHERE PUBLISHED AND ENTERED AND FOR DELIVERY AT POST OFFICE WHERE PUBLISHERS' HEADQUARTERS OR GENERAL BUSINESS OFFICES ARE LOCATED

.111 *When Mailed at Office of Original Entry*

a. For delivery of publications *other than weeklies* at office of original entry by its letter carriers. b. For delivery of publications *other than weeklies* by the letter carriers at a different post office than the office of original entry within the delivery limits of which the headquarters or general business office of the publisher is located (except that the pound rates from the office of mailing apply if they are higher).	Publications issued more frequently than weekly: 1.6¢ per copy. Publications issued less frequently than weekly: Copies weighing 2 ounces or less: 1.6¢ per copy. Copies weighing more than 2 ounces: 2.7¢ per copy.
c. For delivery of *weekly* publications to addressees *residing within* the county where published from all offices within or without the county *including the office of original entry.* d. For delivery of all publications, of whatever frequency, through post office boxes or general delivery, and for delivery by rural or star route carriers, *at an office of original entry* which *has* letter carrier service. e. For delivery of all publications, of whatever frequency, by whatever services are provided, *at an office of original entry* which *does not have* letter carrier service. f. For delivery of all publications, of whatever frequency, to addressees *residing within* the county where published, from all offices within or without the county, *other than the office of original entry.*	1.8¢ (one and eight tenths cents) per pound or fraction of a pound plus 0.6¢ (six-tenths of a cent) per piece charge.

.112 *When Mailed at Office of Additional Entry*

a. The per copy rates in 132.111 a or b, for publications *other than weekly,* apply to copies mailed at additional entry offices and addressed for delivery either at the office of original entry or at the publisher's headquarters office, when postage at these rates is higher than the postage computed at the rates in 132.12.

b. The charges prescribed by 132.111 c, d, e, and f also apply to copies of publications, of whatever frequency, mailed at an office of additional entry *located within* the county where published and entered, to addressees *residing within* the county, for delivery at all offices within or without the county, including the office of additional entry, by whatever delivery services are provided.

.113 *Independent Cities*

Each publication having original entry at an incorporated city which is situated entirely within a county or which is situated contiguous to one or more counties in the same State, but which is politically independent of such county or counties, shall be considered to be within and a part of the county with which it is principally contiguous and copies mailed into that county are chargeable with postage at the rates in 132.111. Where more than one county is involved, the publisher will select the principal county and notify the postmaster.

.12 RATES CHARGED ON COPIES FOR DELIVERY OUTSIDE THE COUNTY WHERE PUBLISHED AND ENTERED, AND ON COPIES MAILED AT AN OFFICE OF ADDITIONAL ENTRY *LOCATED OUTSIDE THE COUNTY* WHERE PUBLISHED AND ENTERED (Publishers authorized to mail publications at the postage rates in 132.121 must submit an annual written request for authority to mail matter at the phased rates of postage provided pursuant to 39 U.S.C. 3626. A block for this purpose is provided on Form 3526, *Statement of Ownership, Management and Circulation*, for the editor, publisher, business manager or owner to sign in order to comply with this requirement. Failure to sign the appropriate block will subject the publication to the full rates.)

.121 *All Publications, Except Those Accepted at the Special Rate (132.122), Classroom Rate (132.123), or Science of Agriculture Rate (132.124)*

All publications are subject to the charges in both a and b.

a. Rates in cents per pound or fraction of a pound:	
Nonadvertising portion	6.9
Advertising portion:	
Zones 1 and 2	9.2
Zone 3	10.1
Zone 4	11.6
Zone 5	13.6
Zone 6	15.7
Zone 7	17.4
Zone 8	19.7
b. Per piece charge (cents):	
(1) All publications except those provided for in (2)	2.1
(2) Publications mailing less than 5,000 copies per issue outside the county of publication	0.7

.122 *Special Rate Publications*

All publications are subject to the charges in both a and b.

a. Rates in cents per pound or fraction of a pound:	
Nonadvertising portion	3.7
Advertising portion:	
Zones 1 and 2	6.0
Zone 3	6.7
Zone 4	8.2
Zone 5	9.9
Zone 6	11.0
Zone 7	11.7
Zone 8	12.5
b. Per piece charge (cents):	0.8

c. The zone rates in 132.122a are applicable to issues in which the advertising portion exceeds ten percent. Issues containing ten percent or less advertising shall be computed at the nonadvertising rate in 132.122a.

d. The rates in 132.122a, b, and c, apply only to publications issued by and in the interest of the following organizations and associations (see 134.5 for definitions of organizations listed in a–h) not organized for profit and none of the net income of which benefits any private stockholder or individual, when specially authorized by the Postal Service: (see 132.33a)

a. Religious
b. Educational
c. Scientific
d. Philanthropic
e. Agricultural
f. Labor
g. Veterans
h. Fraternal
i. Associations of rural electric cooperatives
j. The official highway or development agency of a State (LIMITED TO ONE PUBLICATION THAT MEETS ALL THE REQUIREMENTS of 132.22 and that contains no advertising.)
k. Program announcements or guides published by an educational radio or television agency of a State or political subdivision thereof or by a nonprofit education radio or television station.
l. One conservation publication published by an agency of a State which is responsible for management and conservation of the fish or wildlife resources of such State.

.123 *Classroom Publications*

(Religious, educational, or scientific publications designed specifically for use in school classrooms or in religious instruction classes.) All publications are subject to the charges in both a and b.

a. Rates in cents per pound or fraction of a pound:	
Nonadvertising portion	3.0
Advertising portion:	
Zones 1 and 2	4.0
Zone 3	4.7
Zone 4	5.9
Zone 5	7.7
Zone 6	9.6
Zone 7	10.8
Zone 8	12.6
b. Per piece charge (cents):	0.6

.124 *Science of Agriculture Publications*

The rates in 132.121 a and b apply to publications devoted to promoting the science of agriculture. Exception: When the total number of copies furnished during any 12-month period to subscribers residing in rural areas consists of at least 70 percent of the total number of copies distributed by any means for any purpose, the rate for zones 1 and 2, for the advertising portion, is 6.1 cents per pound.

.13 TRANSIENT RATE

Copies mailed by public.
Sample copies in excess of 10 percent allowance.
Copies to persons not included in list of subscribers.

} 10¢ for first 2 ounces; 4¢ each additional ounce or fraction thereof, or the fourth-class rate, whichever is lower.

.14 SECOND-CLASS RATES TO OTHER COUNTRIES

See Publication 42, *International Mail*.

.15 COMPUTATION OF POSTAGE CHARGES

The pound rates for both within (132.111a) and outside (132.121a) the county of publication are computed on the bulk weight of a mailing. The charge per piece for both within (132.111b) and outside (132.121b) the county of publication is computed on individually addressed pieces consisting either of single copies or packages containing unaddressed copies. When two or more unaddressed copies are mailed in a package, the package is considered as one piece. The per piece charge is applicable to all pound rate mailings

.16 WEIGHT LIMITS

There is no limit of weight for second-class mail to domestic destinations. See Publication 42, *International Mail*, for weight limits to other countries.

.17 WHO PAYS

Postage at the transient rate must be paid on all copies mailed by the general public. Only publishers and registered news agents may mail at the other second-class rates.

132.2 QUALIFICATIONS FOR SECOND-CLASS PRIVILEGES

.21 WHAT MAY QUALIFY

.211 *Mailable Publications*

Only newspapers and other periodical publications which meet the mailability criteria established in Part 123 may be mailed at the second-class rates. The term *periodical publications* includes:

a. Any catalog or other course listing, including mail announcements of legal texts which are part of post-bar admission education issued by any institution of higher education or by a nonprofit organization engaged in continuing legal education.
b. Any looseleaf page or report (including any index, instruction for filing, table, or sectional identifier which is an integral part of such report) which is designed as part of a looseleaf reporting service concerning developments in the law or public policy.

.212 *With or Without General Advertising*

All publications that meet the basic qualifications explained in 132.22 may carry general advertising. The publications of the institutions and societies specifically named in 132.23 must meet all the basic qualifications except the requirement of a paid subscription list. They are excused from having a paid list only when they do not carry general advertising. Those that carry general advertising must have a paid list.

.22 BASIC QUALIFICATIONS

.221 *Regular Issuance*

Publishers must determine the number of issues they will publish each year and adopt a statement of frequency that will show at what regular intervals the issues will appear. Examples of statements of frequency are:

Daily	Semiweekly
Weekly	Biweekly
Monthly	Semimonthly
Quarterly	Weekly during school year
Monthly except during July and August	Four times a year in January, February, October, and November

A publication may not be published under a frequency that provides for less than four issues each year. Issues must be published regularly as called for by the statement of frequency. Publishers may change the number of issues scheduled and adopt a new statement of frequency by filing an application for second-class reentry. (See 132.34.) When a publication fails to maintain regular issuance in accordance with its stated frequency, the postmaster will inform the publisher of the requirements and request compliance. If irregular issuance continues, or if the publication is discontinued, the postmaster will report all the facts, including the publisher's current mailing address, to the Office of Mail Classification for determination as to whether proceedings should be instituted to revoke the second-class mail privilege. See 132.8.

.222 *Issuance at Known Office*

Publications must be issued and mailed at a known office of publication. A known office of publication is a public office where the business of the publication is transacted during the usual business hours. The office must be maintained at the place where the publication has been granted original second-class mail privileges. Offices for the transaction of business may be maintained at more than one place, but mailings may be accepted at the second-class pound rates only at the post offices where original or additional mail privileges have been authorized.

.47 ENCLOSURES ADDITIONS, AND NOVELTY PAGES

.471 *Enclosures*

Receipts, and orders for subscriptions may be enclosed either loose or bound in. No other enclosures are permitted. They may be prepared in the following ways:

a. Printed or written.
b. Printed on cards and envelopes including business replies.
c. Arranged to include coin receptacles.
d. Arranged as combination forms for two or more second-class publications issued by the same publisher.

.472 *Additions*

Additions consist of words that may be added to the copies after they are printed or that may be placed on the envelopes or wrappers in which the copies are mailed. Only the following additions may be made:

a. Name and address of the person to whom copies are sent.
b. Index figures of subscription book, either printed or written.
c. Printed title of publication and place of its publication.
d. Printed or written name and address without addition of advertisement of the publisher or sender, or both.
e. Written or printed words or figures, or both, indicating the date on which the subscription will end.
f. Correction of any typographical error.
g. A mark, except by written or printed words, to designate a word or passage to which it is desired to call attention.
h. The words *Sample Copy* when the copies are sent as samples.
i. The words *Marked Copy* when the copies contain a marked item or article.
j. The words *Return Postage Guaranteed* when undeliverable copies are to be returned to the sender. See 159.224.
k. The number of copies enclosed may be shown on the wrapper or face of a package.
l. Messages and notices of a civic or public-service nature provided no charge is made by the publisher for placing them on the envelopes, wrappers or covers in which the publication is mailed.
m. Requests for address correction information.

.473 *Novelty Pages*

Novelty pages are printed sheets that may be used for purposes other than reading, or printed sheets with novel characteristics. Novelty pages must be prepared specifically for and intended as integral pages of newspapers or other periodical publications. Blank sheets may not be carried as pages. Envelopes and all other types of containers do not constitute printed sheets or portions thereof. The total number of novelty pages in the copies may constitute only a minor portion of the total pages. An excessive use of novelty pages may give a publication the characteristics, both as to format and purpose, of books, catalogs, or other third- or fourth-class mail. The following kinds of pages are examples of novelty pages that may be included in second-class publications:

a. Printed pages bearing words, perforations, or symbols indicating they are for detachment.
b. Pages having printed pictures for cutting out.
c. Printed pages having blank spaces for writing or marking.
d. Pages having printed illustrations permanently pasted to them. Envelopes, wrappers, pockets, all other types of containers, and any contents thereof do not constitute printed illustrations.
e. Printed coupon(s) or printed application or order form(s) prepared as pages. Such pages must bear the name of the publication or of an authorized part or section (PSM 132.454), and, if the publication is paginated, be numbered or allowed for, to preclude being considered enclosures prohibited by 132.471.
f. Pages, other than regular size pages of a publication, portions of which are printed coupon(s) or printed application or order form(s). The name of the publication or of an authorized section (PSM 132.454) must appear on the front or back of the sheet (a single leaf) on which such pages are printed, to preclude the pages being considered enclosures prohibited by 132.471.
g. Pages having printed coupon(s), or printed application or order form(s) permanently attached. Such coupon(s), or application or order form(s) must directly relate to advertising or editorial material printed on the page to which they are permanently attached, and must bear the name of the publication or of an authorized section (PSM 132.454).

.48 ADVERTISEMENTS

All advertisements in periodicals must be permanently attached. Pagination is not required in periodicals, but some or all pages of periodicals may be numbered or allowed for, or both, in any manner which indicates that pages containing advertisements are an integral part of the periodical, or of its separate editions, rather than an independent publication. Independent publications may not be inserted in periodicals as advertisements. The physical makeup of advertisements may include such features as the following:

a. Different advertisement may occupy the same space in different copies of the same issue.
b. Advertisements larger than the regular pages may be prepared for folding out horizontally, vertically, or both.
c. Advertisements may be die-cut or deckle-edged.
d. Multiple page advertisements may be prepared for detachment as permitted by 132.473a and may be held together by staples or other means separate from and in addition to the regular binding of the periodical.
e. Advertisements may be printed on sheets of paper, cellophane, foil, and other similar material.
f. Advertisements may include statements that they are printed on the product or by means of the product of the advertiser.

132.5 SECOND-CLASS MAILING PRIVILEGE FOR NEWS AGENTS

.51 DEFINITION

News agents are persons or concerns engaged in selling two or more second-class publications published by more than one publisher.

.52 INFORMATION REQUIRED FROM NEWS AGENTS

News agents must furnish postmasters evidence that copies of publications offered for mailing are entitled to second-class postage rates, and that they are sent to actual subscribers or to other news agents for the purpose of sale. A second-class imprint in the copies is sufficient evidence that a publication is entitled to be mailed at second-class rates. The addresses on bulk packages must show that the packages are sent to other news agents.

.53 REMAILING WITHOUT PAYMENT OF POSTAGE

A news agent may not remove packages of copies from a post office, write an address on each copy, and return them to the office for dispatch or delivery without paying additional postage.

.54 WHEN SUBJECT TO TRANSIENT SECOND-CLASS RATES

Unsold copies returned to publishers or other news agents, or copies sent to other news agents except for purpose of sale, or to persons not having subscriptions with the news agent, are subject to the transient second-class rate.

.55 RETURN OF PORTIONS OF UNSOLD PUBLICATIONS

The head or small portions of publications returned to publishers to show that copies have not been sold are subject to postage at third- or fourth-class rates according to weight.

132.6 OWNERSHIP, MANAGEMENT AND CIRCULATION STATEMENT

.61 REQUIREMENTS, AS CONTAINED IN 39 U.S. CODE, 3685

.611 Each owner of a publication having second-class mail privileges under 132.22 shall furnish to the Postmaster General at least once a year, and shall publish in such publication once a year, information in such form and detail and at such time as he may require respecting—

a. The identity of the editor, managing editor, publishers, and owners;
b. The identity of the corporation and stockholders thereof, if the publication is owned by a corporation;
c. The identity of known bondholders, mortgagees, and other security holders;
d. The extent and nature of the circulation of the publication, including, but not limited to, the number of copies distributed, the methods of distribution, and the extent to which such circulation is paid in whole or in part; and,
e. Such other information as he may deem necessary to determine whether the publication meets the standards for second-class mail privileges.

The Postmaster General shall not require the names of persons owning less than 1 per centum of the total amount of stocks, bonds, mortgages, or other securities.

.612 Each publication having second-class mail privileges under 132.23 shall furnish to the Postmaster General information in such form and detail, and at such times as he requires, to determine whether the publication continues to qualify thereunder. In addition, the Postmaster General may require each publication which has second-class mail privileges under 132.22 or 132.23 to furnish information, in such form and detail and at such times as he may require, to determine whether the publication continues to qualify thereunder.

.613 The Postmaster General shall make appropriate rules and regulations to carry out the purposes of this section, including provision for suspension or revocation of second-class mail privileges for failure to furnish the required information.

.62 PROCEDURES

.621 All publishers of publications having second-class mailing privileges, including the publishers of foreign publications accepted at the second-class postage rates under the provisions of 132.24, must file on or before the first day of October, a statement on Form 3526, *Statement of Ownership, Management and Circulation*, in duplicate, at the post office where the original second-class permit is authorized.

.622 Publishers who file a statement under the provisions of section 132.611 shall publish the complete statement in the second issue thereafter of the publication to which it relates. Publishers who file a statement under the provisions of section 132.612 are not required to publish the statement.

Publishers of foreign publications accepted at the second-class postage rates under the provisions of 132.24 are not required to publish the statement.

.623 Publishers of second-class matter mailed at the post offices designated in the revenue and cost analysis sampling system (whether they are original or additional entry offices), must also complete Form 15, *Second-Class Publisher's Statement of Number of Copies*, and if applicable, Form 15E, *Second-Class Publication, Foreign Destinations, Postage Affixed*, for the mailings, at the sampling offices only, of the issue for which Form 3526 in .621 was prepared. Forms 15 and 15E will be furnished to publishers by their postmasters. Completion of Forms 15 and 15E is not required for publications whose application for second-class original entry is in a pending status.

.624 A publication which fails to comply with the requirements of this section within 10 days after notice by certified mail of the failure may not be mailed at the second-class rates of postage until it has come into compliance.

.625 Postmasters shall:

a. Furnish at least 3 copies of Form 3526 for each publication not less than 10 days prior to October 1. One copy of the completed Form 3526 should be retained by the publisher for his records.
b. Examine each statement filed in duplicate to see that it contains all of the information required by law.
c. Return incomplete or incorrect statements to the publishers and obtain from them complete and correct statements.
d. Arrange the original copies alphabetically by titles and forward them to the Director, Office of Mail Classification, Rates and Classification Department, Washington, DC 20260. Retain the duplicate copies.
e. Obtain a copy of the issue of each publication in which the required statement is published. Verify the correctness of the published statement. File the copy. DO NOT forward it to Headquarters. Promptly report to the Rates and Classification Department, Office of Mail Classification, any instance where a publisher fails to file or to publish a statement.

132.7 MARKING OF PAID READING MATTER

.71 Editorial or other reading matter contained in publications entered as second-class mail and for the publication of which a valuable consideration is paid, accepted, or promised shall be marked plainly *advertisement* by the publisher.

.72 Whoever, being an editor or publisher, prints in a publication entered as second-class mail editorial or other reading matter for which he has been paid or promised a valuable consideration, without plainly marking the same *advertisement*, shall be fined not more than $500. (18 U.S.C. 1734)

.73 Each paid editorial or other reading matter which occupies all or any part of one page must be marked plainly *advertisement*. Each paid editorial or other reading matter which occupies more than one page must be marked plainly *advertisement* on each page or part of a page which it occupies.

132.8 CANCELLATION OF SECOND-CLASS PRIVILEGES

.81 The Postmaster General may revoke the entry of a publication as second-class mail whenever he finds, after a hearing, that the publication is no longer entitled to be entered as second-class mail.

.82 The Director, Office of Mail Classification, Rates and Classification Department, makes determinations concerning the suspension or revocation of a second-class entry subject to appeal and hearing requested by the publisher. He may call on a publisher from time to time to submit information bearing on the publisher's right to retain a second-class entry for his publication. When the Director determines that a publication is no longer entitled to its second-class entry, he issues a ruling of suspension or revocation to the publisher at the last

known address of the office of publication stating the reasons therefor. The ruling becomes effective in 15 days from receipt by the publisher unless the publisher appeals therefrom.

.83 A copy of the procedures governing administrative appeals and hearings relative to the denial, suspension, or annulment of second-class mail privileges may be obtained from the Director, Office of Mail Classification, Rates and Classification Department.

Part 133

CONTROLLED CIRCULATION PUBLICATIONS

133.1 RATES

Per pound or fraction of a pound	10.8 cents
Per piece charge	3.2 cents

The per piece charge is in addition to the pound rate.

133.2 PERMITS

.21 QUALIFICATIONS

Publications must:

a. Contain at least 24 pages.
b. Contain at least 25 percent nonadvertising.
c. Be issued at regular intervals of four or more times a year.
d. Not be owned and controlled by individuals or business concerns and conducted as an auxiliary to and essentially for the advancement of the main business or calling of those who own or control them.

.22 APPLICATIONS

Apply by letter to the postmaster at the office where mailings are to be made. State the name of the publication, frequency of issue, where published, the name of the publisher, and whether the publication is circulated free or mainly free. Submit two copies of the issue published nearest to the date of application marked to show the nonadvertising content as required in 133.4. The postmaster will submit the application and one copy of the publication to Director, Office of Mail Classification, Rates and Classification Department, Washington, DC 20260. Notice of authorization or disapproval will be furnished by the Director, Office of Mail Classification.

.23 DEPOSITS TO COVER POSTAGE

While an application is pending, deposits in money to cover postage on mailings at the third- or fourth-class rates may be made by the publisher. The excess deposits will be returned if a permit is issued.

133.3 IDENTIFICATION STATEMENTS

The following items must be printed on one of the first five pages of each copy, in a position where they may be easily located by postal employees and other interested persons:

a. Name of the publication on the front.
b. Date of issue.
c. Frequency of issue.
d. Address of publisher including street and number when there is carrier delivery service and the ZIP Code.
e. Subscription price, if the publication has one.

f. Controlled circulation imprint, reading: *Controlled circulation postage paid at* _____. When a publisher has filed applications at more than one post office, and has received authorizations at each office, the imprint must read: *Controlled circulation postage paid at* _____ *and at* _____.
g. Notice of pending application when copies are mailed under deposits of money, reading: *Application to mail at controlled circulation rates is pending at* _____.

A notice must be printed or handstamped on the envelopes or wrappers in which copies are mailed, reading: *Controlled circulation postage paid at* _____. When a publisher has filed applications at more than one post office, and has received authorizations at each office, the notice must read: *Controlled circulation postage paid at* _____ *and at* _____.

133.4 FILING OF MARKED COPY

A copy of each issue, marked by the publisher to show nonadvertising to the extent of at least 25 percent of the total reading and advertising portions of the publication, must be filed with the postmaster at the time of mailing. The percentage of nonadvertising must be written on the first page of the copy. Advertising includes paid advertising and the publisher's own advertising. The advertising may be in display, classified, or editorial style.

133.5 ENCLOSURES

Enclosures are not permitted.

133.6 ADDRESSING, PREPARATION FOR MAILING, WEIGHING, AND COLLECTION OF POSTAGE

See 122.7 for applicable addressing requirements; 125.1 through 125.33 for applicable preparation requirements; and 125.6 for weighing and collecting of postage procedures.

133.7 STATISTICAL STATEMENT

Publishers of controlled circulation matter must execute Form 8-C, *Pieces by Destination, Controlled Circulation Publications*, for the first mailing of each fiscal year, and for the first mailing, at any time, at a new post office of entry after the authorization to mail at controlled circulation rates has been received. The form will be distributed to publishers by their postmasters. Failure to comply with this requirement will result in non-acceptance of the mailing by the Postal Service.

Part 134

THIRD CLASS

134.1 RATES

.11 SINGLE PIECE RATE

.111 All matter not in the first or second class (see 134.31 for weight limit) except mailings made under 134.12 and 134.13:

0 to 2 ozs	14¢	Over 8 to 10 ozs	61¢
Over 2 to 4 ozs	28¢	Over 10 to 12 ozs	72¢
Over 4 to 6 ozs	39¢	Over 12 to 14 ozs	83¢
Over 6 to 8 ozs	50¢	Over 14 but less than 16 ozs	94¢

.112 The following exception applies to single-piece rate third-class mail: When the postage rate computed at the single-piece third-class rate is higher than the rate prescribed in the corresponding fourth-class category for which the piece qualifies, the applicable lower fourth-class rate will be charged.

.12 BULK RATES[1]

(See 134.222 and 134.42.)

	Special rates for authorized organizations only (see 134.5)	Regular rates
.121 Books and catalogs having 24 or more bound pages with at least 22 printed, seeds, cuttings, bulbs, roots, scions, and plants (see 134.31 for weight limit).	11¢ per pound or fraction.	30¢ per pound or fraction.
Minimum rate per piece:		
First 250,000 pieces mailed during each calendar year.	2.0¢	7.5¢
Pieces in excess of 250,000 mailed during each calendar year (see 134.124).	2.0¢	7.7¢
.122 All matter, except the items in 134.121, not included in the first- or second-class (see 134.31 for weight limit).	13¢ per pound or fraction.	36¢ per pound or fraction.
Minimum rate per piece:		
First 250,000 pieces mailed during each calendar year.	2.0¢	7.5¢
Pieces in excess of 250,000 mailed during each calendar year (see 134.124).	2.0¢	7.7¢

[1] The annual bulk mailing fee is $40

.122 If the total postage computed at the pound rates does not amount to the minimum rate per piece or more, postage must be computed at the minimum charge per piece. (See 134.222a.)

.124 When mailings are made at the minimum per piece rates of 7.5¢ provided by 134.121 and 134.122, the mailer or his agent must show on each Form 3602, *Statement of Mailing Matter with Permit Imprints*, or Form 3602-PC, *Bulk Rate Mailing Statement—Third-Class Mail*, that his total mailings, including all those made at bulk pound rates and at minimum per piece rates, at all post offices, under any name, for each current calendar year, have not exceeded 250,000 pieces. It is the responsibility of the mailer or his agent to make available upon request of postal officials whatever information is necessary to show the payment of correct minimum per piece rates on all mailings made during each calendar year. Postmasters must regularly review the records of mailings being made at the bulk third-class pound and piece rates for the purpose of determining from the identity of the mailer, the number of pieces mailed, the character of the mailing pieces, or any other facts, whether the correct minimum per piece rate is being paid. If any postmaster is in doubt as to whether the 250,000 limitation has been exceeded in a particular case, he shall submit all the facts to the Office of Mail Classification, Rates and Classification Department.

.125 The weight at which the pound bulk rates cease to apply for third-class bulk mail is found by multiplying the applicable piece rate by 16 and dividing the product by the corresponding pound rate. The result expresses this weight limit in ounces and decimal fractions of ounces. Pieces at or below this weight are subject to the applicable minimum per piece rate. The calculation should be carried to 5 decimal points.

.13 KEYS, IDENTIFICATION CARDS, IDENTIFICATION TAGS, OR SIMILAR IDENTIFICATION DEVICES

Keys, identification cards, identification tags, or similar identification devices that are without cover and that bear, contain, or have securely attached the name and complete post office address of a person, organization, or concern with instructions to return to such address and a statement guaranteeing the payment of the postage due on delivery: 19 cents for the first 2 ounces, 14 cents for the next 2 ounces or fraction thereof.

134.2 CLASSIFICATION

.21 DEFINITION

.211 Third-class mail consists of mailable matter, which is—

a. not mailed or required to be mailed as first-class mail;
b. not entered as second-class mail; and
c. less than 16 ounces in weight.

.212 Circulars, including printed letters which according to internal evidence are being sent in identical terms to several persons, are third-class mail. A circular does not lose its character as such when the date and name of the addressee and of the sender are written therein, nor by the correction in writing of mere typographical errors.

.213 Printed matter within the limit of weight is third-class mail. For the purpose of this section, printed matter is paper on which words, letters, characters, figures or images, or any combination thereof, not having the character of actual or personal correspondence, have been reproduced by any process other than handwriting or typewriting.

.22 APPLICATION OF RATES

.221 *Single Rate*

The single rate is applied to each piece according to its weight.

.222 *Bulk Rate*

a. The bulk rate is applied to mailings of identical pieces separately addressed to different addressees in quantities of not less than 50 pounds or of not less than 200 pieces. All the pieces in a bulk mailing must be identical as to size, weight, and number of enclosures, but the printed textual matter need not be identical. Postage is computed at pound rates on the entire bulk mailed at one time, except that in no case shall less than the minimum charge per piece be paid. The annual bulk mailing fee must be paid at or before the first mailing each calendar year. (See 134.4 for other conditions governing acceptance of bulk mailings.)

b. It is recommended that mailers merge and presort all third-class matter presented for mailing during a day or part of a day when the pieces are identical in size, weight and number of enclosures and when they are addressed from one list or from more than one list. A variance in the text, the use or nonuse of adhesive address labels, or the use of several lists with different key numbers does not preclude the mailer from merging the mailings and presorting them.

.223 *Other Third-Class Rates*

The rate for keys and identification items placed loose in the mail under the conditions in 134.13 is applied to each item according to its weight. When there are several items for the same addressee the office of mailing will place them in an envelope or wrapper addressed to the intended recipient and marked to show the amount of postage due. The amount of postage will be computed on each item and not on the bulk weight of the mailing piece.

.224 *Nonstandard Surcharge*

There is currently no surcharge for nonstandard mail as defined in 134.33. However, it is anticipated that such a surcharge will be imposed sometime in calendar year 1978.

134.3 WEIGHT AND SIZE LIMITATIONS

.31 WEIGHT

Each piece may weigh up to but not including 16 ounces.

.32 SIZE, SHAPE, AND RATIO

There is no maximum limit of size. The following standards apply to envelopes, cards, and self-mailers having postage paid thereon at the third-class rates:

a. Pieces less than 3 inches in width (height) or 4¼ inches in length are nonmailable.
b. Pieces having shapes other than rectangular are nonmailable.
c. Pieces having a ratio of width (height) to length between 1 to 1.3 and 1 to 2.5 are recommended.
d. Cards having a thickness of less than 0.006 of an inch are nonmailable.

.33 NONSTANDARD THIRD-CLASS MAIL

.331 Third-class single piece rate mail weighing 2 ounces or less is nonstandard unless it meets the following size standards:

a. Length not greater than 11.5 inches; and
b. Height not greater than 6.125 inches; and
c. Thickness not greater than .25 inch; and
d. An aspect ratio (ratio of height to length) between 1:1.3 and 1:2.5 inclusive.

.332 Nonstandard mail often results in delays or damage to other mail because it does not lend itself to machine processing. For this reason mailers are encouraged to avoid mailing nonstandard third-class mail.

.333 It is anticipated that a surcharge will be imposed sometime in calendar year 1978.

134.4 PREPARATION—PAYMENT OF POSTAGE

.41 SINGLE-PIECE MAILINGS

Mailers of third-class mail at other than bulk rates may use any method of paying postage, and may mail any number of pieces at one time, except when permit imprints are used (see 145.5). See 134.82 for marking required on sealed pieces.

.42 BULK MAILINGS

.421 *Annual Fee*

A fee of $40 must be paid once each calendar year by or for any person who mails at the bulk third-class rates. Any person who engages a business concern or another individual to mail for him must pay the $40 fee. This fee is separate from the fee that must be paid for a permit to mail under the permit imprint system (145.1). An alphabetical record of customers who have paid the $40 fee must be kept at the weighing section or any other place where bulk mailings are accepted and cleared. The record must show whether the mailer has been authorized to mail as one of the organizations or associations named in 134.5.

.422 *Postage Permits Required*

Postage must be prepaid by (see part 146):

a. Meter stamps. See part 144.
b. Precanceled stamps or precanceled stamped envelopes. See part 143.
c. Permit imprints (cash). See part 145.

.423 *Markings Required*

Identifying words as follows must be printed or rubber stamped by the mailer either in or immediately adjacent to permit imprints, meter stamps, or precanceled stamps:

a. *Bulk Rate*, or the abbreviation *Blk. Rt.* by mailers other than nonprofit organizations.
b. *Nonprofit Organization* or the abbreviation *Nonprofit Org.* by authorized nonprofit organizations. (See 134.5).

.424 *Mailing Statement and Verification*

A designated employee in the weighing section or place in the post office where bulk mailings are accepted verifies the mailer's statement which must be completed and submitted by the mailer with each mailing as follows:

a. Form 3602, *Statement of Mailing Matter with Permit Imprints*, for mail with permit imprints (see 145.55); or
b. Form 3602-PC, *Bulk Rate Mailing Statement—Third-Class Mail*, for mail bearing precanceled stamps or meter stamps.

.43 PREPARATION BY THE MAILER OF PIECES IN PACKAGES AND SACKS

.431 *Package Labels*

Pressure-sensitive labels are made available to publishers through local customer services offices and should be used to indicate the make-up and destination of a package. All pieces in a package must be faced in one way with a plainly addressed piece, including ZIP Code, on top:

a. *Use of Package Labels*

(1) *Five-Digit Package.* Place 10 or more pieces for the same ZIP Code area in a bundle. Affix Red Lable D.
(2) *Mixed-City Package.* Place 10 or more pieces bearing more than one ZIP Code but addressed to a multicoded city in a bundle. Affix Yellow Label C.
(3) *Sectional Center Packages.* Place 10 or more pieces for more than one post office in the same SCF area in a bundle. Affix Green Label 3.
(4) *State Packages.* After five-digit, mixed-city and SCF packages have been made place 10 or more pieces remaining for the same state in bundle. Affix Orange Label S.
(5) *Firm Packages.* When all mail in a package is for an individual firm, affix Blue Label F.

b. *Package Labels—General*

(1) Use nonstandard package labels only where a coded pressure-sensitive label cannot be used. Nonstandard labels are used to identify mixed states, split states and foreign packages. This label when affixed should cover the entire address portion of the top mail piece.
(2) Place pressure-sensitive labels on the lower left-hand corner of the face of the top piece on letter-size packages. On flats, apply pressure-sensitive label adjacent to the address on the top mail piece.

.432 *Maximum Weight in a Sack*

The total weight of pieces placed in one sack must not exceed 70 pounds.

.433 *Sack Labels Furnished by Postmaster*

When sack labels are furnished by the postmaster, the mailer is not required to place his name on the back of each label.

.434 *Unauthorized Sack Labels*

Sacks with unauthorized labels, tags, or markings are not acceptable for dispatch.

.435 *Addresses*

The address on each piece must include the ZIP Code. Exceptions:

a. The ZIP Code may be omitted from pieces bearing a simplified address (see 122.41); pieces presorted and bundled by the mailer to city, rural, or star carrier routes; and pieces presorted to five-digit ZIP Code destinations consisting of either a post office having one ZIP Code or the ZIP Code delivery unit in multi-ZIP Coded post offices.
b. The lowest or principal ZIP Code assigned to a post office may be used on pieces addressed to any multi-ZIP Coded post office except those listed in 125.327. Mailers may obtain the lowest or principal ZIP Code for particular post offices from their postmaster.

.436 *Packages and Sacks*

When there are 10 or more individually addressed pieces to the destinations described in 134.436 a, b, c, d, and e, they must be securely wrapped or tied together as a package by the mailer (the mailer may package less than 10 pieces in the same manner). Packages must be sacked by the mailer when there are enough for the same destination to fill approximately one-third of a sack:

a. *Five-digit ZIP Code Delivery Unit Packages and Sacks.* A five-digit ZIP Code delivery unit is a post office having one ZIP Code or a station or branch of the multi-ZIP Code post offices listed in 125.327.
(1) *Packages.* The mailer must prepare packages of pieces addressed to the same five-digit ZIP Code delivery unit. The pieces in the packages must be faced in the same direction. It is recommended that packages be prepared for the five-digit ZIP Code delivery units of the other multi-ZIP Coded post offices which are not listed in 125.327.
(2) *Sacks.* Sacks containing five-digit ZIP Code delivery unit packages must be labeled in the following manner:

```
PHILADELPHIA PA 19118
CIRCS
FR JC COMPANY BOSTON MA
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b. *Mixed City Packages and Sacks*
(1) *Packages.* Pieces remaining for a multi-ZIP Coded post office after the five-digit ZIP Code delivery unit packages required by 134.436a(1) have been prepared must be made up as a mixed-city package.
(2) *Sacks.* Sacks containing mixed city packages plus any packages for five-digit ZIP Code delivery units not sacked as provided for by 134.436a(2) must be labeled in the following manner:

```
PHILADELPHIA PA 191
CIRCS
FR JAY MAILING CO CINCINNATI OH
```

c. *Sectional Center Facility (SCF) Packages and Sacks*
(1) *Packages.* Pieces remaining for the post offices in a sectional center after the packages required by 134.436 a(1) and b(1) have been prepared must be combined into an SCF package.
(2) *Sacks.* Sacks containing SCF packages, plus any packages for five-digit ZIP Code delivery units and mixed city packages not sacked as provided for by 134.436 a(2) and b(2) must be labeled in the following manner:

```
SCF PHILADELPHIA PA 190
CIRCS
FR Q MAILERS BALTO MD
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d. *State Packages and Sacks*
(1) *Packages.* Pieces remaining for a State after the packages required by 134.436 a(1), b(1), and c(1) have been prepared must be combined in a State package.

(2) **Sacks.** Sacks containing State packages plus any packages for five-digit ZIP Code delivery units, mixed city packages, and SCF packages not sacked as provided for by 134.436 a(2), b(2) and c(2) must be labeled in the following manner:

DIS KANSAS CITY MO 640
MISSOURI CIRCS
FR STAR SAN FRANCISCO CA

e. *Mixed States Packages and Sacks*

(1) **Packages.** All pieces remaining after the packages required by 134.436 a(1), b(1), c(1), and d(1), have been prepared must be combined in a mixed-states package and a nonstandard label affixed.

(2) **Sacks.** Sacks containing mixed-states packages must be labeled in the following manner:

DIS CHICAGO IL 600
MIXED STATES CIRCS
FR RECORD CHICAGO IL

.44 MERCHANDISE SAMPLES

When an article given away for the purpose of advertising an article of merchandise which it represents, in whole or in part, is mailed at bulk third-class rates for general distribution on city delivery routes in a mailing piece which exceeds 5 inches in width (height) or ¼ inch in thickness or which has nonuniformity in thickness, the mailer must comply with the following preparation requirements:

a. *Address Cards*

(1) The address where the sample is to be delivered may not be placed on the sample, but must be placed on a separate address card which will be delivered with the sample.

(2) The recipient's address, the mailer's return address, and the wording, "This card was prepared for use in delivering the accompanying postage paid sample," must be placed on the address card. The brand name, color coding, or other identifying symbols must also be placed on the address card to clearly associate it with the accompanying sample.

(3) Any advertising or other printed addition on the card will require payment of separate third-class postage for the card.

(4) The address card shall measure approximately (plus or minus ¼") 3¼" by 7⅜" and be of a thickness not less than 0.006 of an inch.

(5) The address cards must be presorted, counted and packaged by 5-digit ZIP Code delivery area. Each package of address cards shall bear a labeling showing:
(a) The post office of delivery
(b) The 5-digit ZIP Code delivery area
(c) The brand name of the merchandise sample
(d) The number of cards in the package
(e) Instructions to open and distribute with matching samples.

b. *Samples*

The samples must be placed in outer cartons, labeled as follows:
(1) The post office of delivery
(2) The 5-digit ZIP Code delivery area
(3) The brand name of the merchandise sample
(4) The number of samples in the outer carton
(5) Instructions to open and distribute with matching cards.

c. *Postage*

The postage must be prepaid by one of the methods prescribed by 134.422 and shall be printed on or affixed to the address card or the sample container.

d. *Mailing Periods*

Avoid mailing during the following peak mailing periods:
(1) The last week of November and throughout the month of December.
(2) From the first to the fifth and from the twenty-sixth to the end of each month.

.45 SPECIAL SERVICES

The registry, insurance, special delivery, special handling, certified, and COD services may not be used for third-class matter mailed at bulk rates.

.46 CATALOGS AND BOOKS

Catalogs and books with covers such as *outserts, short covers* or similar bound sheets which do not fully cover (within .75 inch of each edge) the main body of the catalog or book, front and back, must be enclosed in a mailing wrapper such as a full sleeve or envelope.

134.5 QUALIFICATION REQUIREMENTS AND APPLICATION PROCEDURE FOR SPECIAL THIRD-CLASS RATES

.51 KINDS OF ORGANIZATIONS OR ASSOCIATIONS THAT MAY QUALIFY

Only the following organizations or associations not organized for profit, none of the net income of which benefits any private stockholder or individual, may be authorized to mail pieces at the special rates provided by 134.121 and 134.122:

a. Religious
b. Educational
c. Scientific
d. Philanthropic
e. Agricultural
f. Labor
g. Veterans'
h. Fraternal

.52 QUALIFICATION STANDARDS

.521 *Primary Purpose*

The standard of *primary purpose* in these definitions shall require that the organization be both organized for and operated for the primary purpose. Organizations which incidentally engage in qualifying activities only to accomplish other goals do not meet the primary purpose test.

.522 *Definitions*

a. *Religious*

A nonprofit organization whose primary purpose is one of the following:
(1) To conduct religious worship—for example, churches, synagogues, temples, or mosques;

(2) To support the religious activities of nonprofit organizations whose primary purpose is to conduct religious worship;

(3) To perform instruction in, to disseminate information about, or otherwise to further the teaching of particular religious faiths or tenets.

b. *Educational*

A nonprofit organization whose primary purpose is: (1) the instruction or training of the individual for the purpose of improving or developing his capabilities; or (2) the instruction of the public on subjects beneficial to the community. An organization may be educational even though it advocates a particular position or viewpoint so long as it presents a sufficiently full and fair exposition of the pertinent facts to permit an individual or the public to form an independent opinion or conclusion. On the other hand, an organization is not educational if its principal function is the mere presentation of unsupported opinion.

The following are examples of organizations which are educational:

(1) An organization, such as primary or secondary school, a college, or a professional or trade school, which has a regularly scheduled curriculum, a regular faculty, and a regularly enrolled body of students in attendance at a place where the educational activities are regularly carried on;

(2) An organization whose activities consist of presenting public discussion groups, forums, panels, lectures, or other similar programs. Such programs may be on radio or television;

(3) An organization which presents a course of instruction by means of correspondence or through the utilization of television or radio;

(4) Museums, zoos, planetariums, symphony orchestras, and other similar organizations.

c. *Scientific*

A nonprofit organization whose primary purpose is one of the following:
(1) To conduct research in the applied, pure or natural sciences;
(2) To disseminate systematized technical information dealing with applied, pure or natural sciences.

d. *Philanthropic (Charitable)*

A nonprofit organization organized and operated for purposes beneficial to the public. Examples of philanthropic (charitable) organizations are organizations which are organized for:

(1) Relief of the poor and distressed or of the underprivileged;
(2) Advancement of religion;
(3) Advancement of education or science;
(4) Erection or maintenance of public buildings, monuments, or works;
(5) Lessening of the burdens of Government;
(6) Promotion of social welfare by organizations designed to accomplish any of the above purposes or:
(a) to lessen neighborhood tensions;
(b) to eliminate prejudice and discrimination;
(c) to defend human and civil rights secured by law; or
(d) to combat community deterioration and juvenile delinquency.

The fact that an organization which is organized and operated for the relief of indigent persons may receive voluntary contributions from the persons intended to be relieved will not necessarily prevent such organization from being exempt as an organization organized and operated ex-

clusively for charitable purposes. The fact that an organization, in carrying out its primary purpose, advocates social or civic changes or presents opinion on controversial issues with the intention of molding public opinion or creating public sentiment to an acceptance of its views does not preclude such organization from qualifying so long as it is not an *action* organization as described in 134.53 (a), (b), (c).

e. *Agricultural*

A nonprofit organization whose primary purpose is the betterment of the conditions of those engaged in agricultural pursuits, the improvement of the grade of their products, and the development of a higher degree of efficiency in agriculture. The organization may further and advance agricultural interests through educational activities; the holding of agricultural fairs; the collection and dissemination of information concerning cultivation of the soil and its fruits or the harvesting of marine resources; the rearing, feeding, and management of livestock, poultry, bees, etc., or other activities relating to agricultural interests. The term agricultural also includes any nonprofit organization whose primary purpose is the collection and dissemination of information or materials relating to agricultural pursuits.

f. *Labor*

A nonprofit organization whose primary purpose is the betterment of the conditions of workers. Labor organizations include, but are not limited to, organizations in which employees or workmen participate, whose primary purpose is to deal with employers concerning grievances, labor disputes, wages, hours of employment, working conditions, etc. Examples are labor unions and employees' associations formed for the stated purposes.

g. *Veterans'*

A nonprofit organization of veterans of the armed services of the United States, or an auxiliary unit or society of, or a trust or foundation for, any such post or organization.

h. *Fraternal*

A nonprofit organization which meets all of the following criteria:

(1) Has as its primary purpose the fostering of brotherhood and mutual benefits among its members;

(2) Is organized under a lodge or chapter system with a representative form of government;

(3) Follows a ritualistic format; and

(4) Is comprised of members who are elected to membership by vote of the members.

Fraternal organizations include such organizations as the Masons, Knights of Columbus, Elks, college fraternities, and the like. Fraternal organizations do not encompass such organizations as business leagues, professional associations, civic associations or social clubs.

.53 EXAMPLES OF ORGANIZATIONS OR ASSOCIATIONS THAT MAY NOT QUALIFY

The following and similar organizations do not come within the prescribed categories even though they may be organized on a nonprofit basis: Automobile clubs; business leagues; chambers of commerce; citizens' and civic im-

provement associations; individuals; mutual insurance associations; political organizations; service clubs such as Civitan, Kiwanis, Lions, Optimist, and Rotary; social and hobby clubs; associations of rural electric cooperatives; trade associations; and religious, educational, scientific, and philanthropic *action* organizations. In general, state, county, or municipal governments are not eligible for the special rates. However, a separate and distinct state, county, or municipal governmental organization that meets the criteria for any one of the specific categories in 134.522 is eligible, notwithstanding its governmental status. For example, school districts and public libraries may be eligible under 134.522b. Nevertheless, governmental organizations will generally not be eligible under 134.522d (philanthropic), since their income is generally not derived primarily from voluntary contributions or donations.

Religious, educational, scientific and philanthropic *action* organizations for purposes of this section are defined as follows:

(a) An organization is an *action* organization if a substantial part of its activities is attempting to influence legislation by propaganda or otherwise. For this purpose, an organization will be regarded as attempting to influence legislation if the organization—

(1) contacts, or urges the public to contact, members of a legislative body for the purpose of proposing, supporting, or opposing legislation; or

(2) advocates the adoption or rejection of legislation.

The term *legislation*, as used in this subdivision, includes action by the Congress, by any State legislature, by any local council or similar governing body, or by the public in a referendum, initiative, constitutional amendment, or similar procedure. An organization will not fail to meet the operational test merely because it advocates, as an insubstantial part of its activities, the adoption or rejection of legislation.

(b) An organization is an *action* organization if it participates or intervenes, directly or indirectly, in any political campaign on behalf of or in opposition to any candidate for public office. The term *candidate for public office* means an individual who offers himself or is proposed by others, as a contestant for an elective public office, whether such office be national, State, or local. Activities which constitute participation or intervention in a political campaign on behalf of or in opposition to a candidate include, but are not limited to, the publication or distribution of written or printed statements or the making of oral statements on behalf of or in opposition to such a candidate.

(c) An organization is an *action* organization if it has the following two characteristics: (1) its main or primary objective or objectives (as distinguished from its incidental or secondary objectives) may be attained only by legislation or a defeat of proposed legislation; and (2) it advocates, or campaigns for, the attainment of such main or primary objective or objectives as distinguished from engaging in nonpartisan analysis, study, or research and making the results thereof available to the public. In determining whether an organization has such characteristics, all the surrounding facts and circumstances, including the articles and all activities of the organization, are to be considered.

.54 APPLICATION

.541 *Filing*

Application on Form 3624, *Application to Mail at Special Bulk Third-Class Rates for Qualified Nonprofit Organizations or Associations*, must be filed by the organization or association at the post office where mailings will be deposited. The application must include evidence that the organization is nonprofit, and, if available, a certificate of exemption from Federal income tax should accompany the application. An exemption from the payment of Federal income tax is not required in order to qualify for the special third-class bulk rates. Such exemption will be considered as evidence of qualification for preferred Postal rates but will not be controlling in the matter. When an organization submits proof that it has been granted income tax exemption under Title 26, United States Code, section 501(c)(3), as a religious, educational, scientific, or charitable (philanthropic) organization; under section 501(c)(5) as an agricultural or labor organization; under section 501(c)(8) as a fraternal organization; or under section 501(c)(19) as a veterans' organization, it will be considered as qualifying for the special third-class rates unless the available evidence discloses some disqualification.

.542 *Approval or Denial*

The application Form 3624 together with any supporting papers will be sent to the postal services center. (Pending a decision, bulk mailings subject to the minimum per piece charge may be handled in accordance with 134.55.) The postmaster at the postal services center will approve or deny the application. The application Form 3624 and any supporting papers will be returned with the decision to the postmaster where the application was filed for notification of the applicant.

.543 *Appeal*

The decision of the postmaster at the postal services center may be appealed by the applicant, in writing to the postmaster where the application was filed. The postmaster will forward the appeal to the postal services center. If, after a review of the file, the postmaster at the postal services center is still of the opinion that the organization does not qualify, he shall furnish a statement of the reasons for his denial action to the Rates & Classification Department, Domestic Mail Classification Division. The complete file, including the original application and all supporting papers, should be submitted. The papers will be returned to the postmaster at the postal services center with notification of decision on the appeal.

.55 TEMPORARY MAILINGS

Until final action is taken on the application, postage paid on the mailings may be at the special rates, provided the mailer deposits with the postmaster an amount sufficient to cover the additional postage at the higher rates. (See 134.121 and 134.122). This deposit will be returned to the mailer if the application is approved. If the application is denied, the deposit will not be returned. The deposit will be converted into postage-due stamps which will be canceled and given to the mailer if no appeal is made. If appeal is made, action concerning the deposit will be deferred.

.56 REVOCATION

The approval may be revoked if the authorization was given to an organization or association which was not qualified or which becomes unqualified. The postmaster who approved the application will notify the organization of the pending cancellation of the authorization and of the reasons for the cancellation. The organization will be allowed 10 days within which to file a written statement appealing the pending cancellation. If no appeal is filed, the postmaster will cancel the authorization. If an appeal is filed, decision on the continuance of the authorization will be made by the Rates & Classification Department, Domestic Mail Classification Division. Notice of the decision will be given the organization through the postmaster.

.57 WHAT MAY BE MAILED AT THE SPECIAL BULK THIRD-CLASS RATES FOR QUALIFIED NONPROFIT ORGANIZATIONS

An organization authorized to mail at the special bulk third-class rates for qualified nonprofit organizations may mail *only* its own matter at these rates. An organization may not delegate or lend the use of its permit to mail at special third-class rates to any other person, organization or association. Cooperative mailings may not be made at the special bulk third-class rates for qualified nonprofit organizations if one or more of the cooperating persons or organizations is not entitled itself to the special rates. Cooperative mailings involving the mailing of matter in behalf of or produced for an organization not authorized to mail at the special bulk third-class rates for qualified nonprofit organizations must be paid at the applicable regular rate. If customers disagree with a postmaster's decision that the regular rate of postage applies to a particular mailing, the procedures in 146.14 may be followed.

134.6 PERMISSIBLE ADDITIONS

The additions authorized for fourth-class mail in 135.52 are permissible with matter mailed at third-class rates of postage.

134.7 ENCLOSURES

.71 BOOKS AND CATALOGS MAILED AT BULK RATES PROVIDED BY 134.121

External attachments are not permitted. The covers of a catalog or book for postal purposes are the outermost bound sheets. Only the following specifically named items may be enclosed loose provided they relate exclusively to the book or catalog they accompany:

a. A single reply envelope or reply post card, or both.
b. A single order form.
c. A printed circular. Circulars fastened securely along the entire bound edge inside the book or catalog by paste, stitches, or staples are not loose enclosures.
d. If no circular is enclosed, a printed price list listing only articles featured in the catalog and showing only the same prices and discounts as the catalog.
e. An invoice. (See 135.522).
f. Samples of merchandise attached to pages.

.72 ALL OTHER THIRD-CLASS MATTER

The following are permissible enclosures:

a. An invoice (see 135.522).
b. Manuscripts accompanying related proof sheets (see 135.521f(2)).

134.8 SEALING

.81 EXAMINATION

Third-class mail must be prepared by the mailer so that it can be easily examined. Third-class mail which is not sealed or secured so that it may be handled by machines is not recommended. Mailing of sealed articles at the third-class rates of postage is considered consent by the mailer to postal inspection of the contents.

.82 MARKING

Each sealed piece mailed at the single piece third-class postage rate provided for by 134.11 must be legibly marked on the address side, preferably below the postage and above the name of the addressee, with the two words *Third Class*. The marking may be included as a part of a permit imprint, and it may be printed adjacent to the meter stamp by a postage meter. The marking will not be considered adequate if it is included as a part of a decorative design or advertisement. Only the markings required by 134.423 need be carried on sealed pieces mailed at the bulk third-class postage rates provided for by 134.12.

Part 135
FOURTH CLASS

135.1 RATES

.11 FOURTH-CLASS (PARCEL POST) ZONE RATES

.111 *Single Piece Zone Rates*

Weight-1 pound and not exceeding (pounds)	Zones							
	Local	1 and 2	3	4	5	6	7	8
2	$0.77	$0.90	$0.93	$1.04	$1.15	$1.28	$1.40	$1.48
3	.82	.97	1.02	1.15	1.29	1.45	1.62	1.74
4	.86	1.04	1.10	1.26	1.42	1.63	1.84	2.00
5	.91	1.11	1.18	1.36	1.56	1.81	2.06	2.26
6	.96	1.18	1.27	1.46	1.69	1.98	2.28	2.52
7	1.00	1.25	1.36	1.57	1.83	2.16	2.50	2.78
8	1.04	1.32	1.44	1.67	1.98	2.33	2.72	3.04
9	1.09	1.39	1.53	1.78	2.10	2.51	2.94	3.30
10	1.13	1.46	1.61	1.86	2.23	2.68	3.16	3.56
11	1.16	1.53	1.70	1.99	2.37	2.86	3.38	3.82
12	1.22	1.60	1.76	2.09	2.50	3.03	3.60	4.08
13	1.27	1.67	1.87	2.20	2.64	3.21	3.82	4.34
14	1.31	1.74	1.98	2.30	2.77	3.38	4.04	4.60
15	1.36	1.81	2.04	2.41	2.91	3.56	4.26	4.86
16	1.40	1.86	2.12	2.81	3.04	3.73	4.48	5.12
17	1.45	1.98	2.21	2.82	3.18	3.91	4.70	5.38
18	1.49	2.02	2.29	2.72	3.31	4.08	4.92	5.64
19	1.54	2.09	2.38	2.83	3.45	4.26	5.14	5.90
20	1.58	2.16	2.46	2.93	3.58	4.43	5.36	6.16
21	1.63	2.23	2.55	3.04	3.72	4.61	5.58	6.42
22	1.67	2.30	2.63	3.14	3.85	4.78	5.80	6.68
23	1.72	2.37	2.72	3.25	3.99	4.96	6.02	6.94
24	1.76	2.44	2.80	3.35	4.12	5.13	6.24	7.20
25	1.81	2.51	2.89	3.46	4.26	5.31	6.46	7.46
26	1.85	2.58	2.97	3.56	4.39	5.48	6.68	7.72
27	1.90	2.65	3.06	3.67	4.53	5.66	6.90	7.98
28	1.94	2.72	3.14	3.77	4.66	5.83	7.12	8.24
29	1.99	2.79	3.23	3.88	4.80	6.01	7.34	8.50
30	2.03	2.86	3.31	3.98	4.93	6.18	7.56	8.76
31	2.08	2.93	3.40	4.09	6.07	6.36	7.78	9.02
32	2.12	3.00	3.48	4.19	6.20	6.53	8.00	9.28
33	2.17	3.07	3.57	4.30	6.34	6.71	8.22	9.54
34	2.21	3.14	3.66	4.40	6.47	6.88	8.44	9.80
35	2.26	3.21	3.74	4.51	6.61	7.06	8.66	10.06
36	2.30	3.28	3.82	4.61	6.74	7.23	8.88	10.32
37	2.35	3.35	3.91	4.72	6.88	7.41	9.10	10.58
38	2.39	3.42	3.99	4.82	6.01	7.58	9.32	10.84
39	2.44	3.49	4.08	4.93	6.15	7.76	9.54	11.10
40	2.48	3.56	4.16	5.03	6.28	7.93	9.76	11.36
41	2.53	3.63	4.25	5.14	6.42	8.11	9.98	11.62
42	2.57	3.70	4.33	5.24	6.55	8.28	10.20	11.88
43	2.62	3.77	4.42	5.35	6.69	8.46	10.42	12.14
44	2.66	3.84	4.50	5.45	6.82	8.63	10.64	12.40
45	2.71	3.91	4.59	5.56	6.96	8.81	10.86	12.66
46	2.75	3.98	4.67	5.66	7.09	8.98	11.08	12.92
47	2.80	4.06	4.76	5.77	7.23	9.16	11.30	13.18
48	2.84	4.12	4.84	5.87	7.36	9.33	11.52	13.44
49	2.89	4.19	4.93	5.98	7.50	9.51	11.74	13.70
50	2.93	4.26	5.01	6.08	7.63	9.68	11.96	13.96
51	2.98	4.33	5.10	6.19	7.77	9.86	12.18	14.22
52	3.02	4.40	5.18	6.29	7.90	10.03	12.40	14.48
53	3.07	4.47	5.27	6.40	8.04	10.21	12.62	14.74
54	3.11	4.54	5.35	6.50	8.17	10.38	12.84	15.00
55	3.16	4.61	5.44	6.61	8.31	10.56	13.06	15.26

Weight-1 pound and not exceeding (pounds)	Zones							
	Local	1 and 2	3	4	5	6	7	8
56	3.20	4.68	5.52	6.71	8.44	10.73	13.28	15.52
57	3.25	4.75	5.61	6.82	8.58	10.91	13.50	15.78
58	3.29	4.82	5.69	6.92	8.71	11.08	13.72	16.04
59	3.34	4.89	5.78	7.03	8.85	11.26	13.94	16.30
60	3.38	4.95	5.86	7.13	8.98	11.43	14.16	16.56
61	3.43	5.03	5.95	7.24	9.12	11.61	14.38	16.82
62	3.47	5.10	6.03	7.34	9.25	11.78	14.60	17.08
63	3.52	5.17	6.12	7.45	9.39	11.95	14.82	17.34
64	3.56	5.24	6.20	7.55	9.52	12.13	15.04	17.60
65	3.61	5.31	6.29	7.66	9.66	12.31	15.26	17.86
66	3.65	5.38	6.37	7.76	9.79	12.48	15.48	18.12
67	3.70	5.45	6.45	7.87	9.93	12.66	15.70	18.38
68	3.74	5.52	6.54	7.97	10.06	12.83	15.92	18.64
69	3.79	5.59	6.63	8.08	10.20	13.01	16.14	18.90
70	3.83	5.66	6.71	8.18	10.33	13.18	16.36	19.16

EXCEPTIONS:

a. Parcels weighing less than 15 pounds, and measuring over 84 inches but not exceeding 100 inches in length and girth combined, are chargeable with a minimum rate equal to that for a 15 pound parcel for the zone to which addressed. See 135.3 for size and weight restrictions.

b. Gold mailed within Alaska or from Alaska to other States and U.S. possessions: 2 cents each ounce or fraction, regardless of distance.

.112 *Bulk Zone Rates (Parcel Post)*

a. Mailings of 300 or more pieces of identical weight may be mailed at bulk zone rates if separated by postal zones. Mailings of pieces of nonidentical weight may only be made at bulk zone rates when authorized by the Office of Mail Classification in accordance with 145.8 or 145.9.

b. The rate of postage to be paid on each piece of a bulk zone rate mailing shall be the single piece rate for that zone for an item equal to the average weight per piece for parcels going to that zone, rounded up to the next highest whole pound.

.12 BOUND PRINTED MATTER RATES

.121 *Single Piece Zone Rate*

Pieces weighing up to—(pounds)	Zones							
	Local	1 & 2	3	4	5	6	7	8
1.5	$0.52	$0.62	$0.64	$0.67	$0.70	$0.72	$0.78	$0.84
2	.58	.68	.67	.71	.75	.79	.85	.88
2.5	.55	.66	.70	.75	.81	.86	.93	1.02
3	.57	.71	.74	.79	.86	.93	1.01	1.11
3.5	.59	.74	.78	.84	.91	.99	1.09	1.20
4	.61	.77	.81	.88	.96	1.06	1.17	1.31
4.5	.62	.79	.84	.93	1.01	1.11	1.25	1.40
5	.64	.82	.87	.98	1.06	1.17	1.33	1.49
6	.66	.86	.94	1.05	1.16	1.31	1.47	1.67
7	.71	.94	1.06	1.13	1.26	1.44	1.68	1.86
8	.78	1.00	1.07	1.20	1.37	1.57	1.78	2.04
9	.79	1.06	1.14	1.30	1.47	1.69	1.94	2.28
10	.82	1.11	1.20	1.36	1.58	1.81	2.10	2.43

.122 *Bulk Rates for Bulk Mailings of Separately Addressed Identical Pieces in Quantities of Not Less Than 300 Mailed at One Time*

Zones	Piece rate	Bulk pound rate	Zones	Piece rate	Bulk pound rate
	(cents)	(cents)		(cents)	(cents)
Local	28	2.6	5	31	7.6
1 and 2	31	4.4	6	31	9.6
3	31	6.2	7	31	11.6
4	31	8.4	8	32	15.9

NOTE: The total charge for each bulk mailing shall be the sum of the charges derived by applying the applicable pound rate to the total number of pounds and by applying the applicable piece rate to the total number of pieces.

.13 SPECIAL FOURTH-CLASS RATE

.131 *Rates*

Kind of mail (Rate restricted to items specifically named)	Rate (without regard to zone)		
	First pound or fraction of a pound	Each additional pound or fraction through 7 pounds	Each additional pound or fraction over 7 pounds
Books; 16-millimeter or narrower width films and catalogs of such films (rate applies for films and catalogs except when mailed to or from commercial theaters); printed music, printed objective test materials, sound recordings playscripts and manuscripts for books, periodicals and music; printed educational reference charts permanently processed for preservation; looseleaf pages, and binders therefor, consisting of medical information for distribution to doctors, hospitals, medical schools, and medical students. (See 135.214)	35¢	10¢	9¢
Single piece rate, presort rates:			
Level A	[1] 23.9¢	10¢	8¢
Level B	[2] 24.2¢	10¢	9¢

[1] Mailings of 500 or more pieces properly prepared and presorted to five-digit destination ZIP Codes (See 352a and b.)

[2] Mailings of 2,000 or more pieces properly prepared and presorted to five-digit and three-digit destination ZIP Codes. (See 252c)

.132 *Annual Fee*

A $30 fourth-class presort mailing fee must be paid once each calendar year at each office of mailing by or for any person who mails at the presorted special fourth-class rates.

.14 LIBRARY RATE

Kind of mail (Rate restricted to items specifically named mailed by or to organizations mentioned in 136.261	Rate (Without regard to zone)	
	First pound or fraction of a pound	Each additional pound or fraction
Books; printed music; bound volumes of academic theses; sound recordings; periodicals; other library materials; museum and herbarium materials; 16-millimeter or narrower width films, filmstrips, transparencies, slides, microfilms; scientific or mathematical kits, instruments, or other devices; also, catalogs, guides or scripts for some of these materials. See 138.581	9¢	4¢

.15 APPLICATION OF RATES

.151 The rates in 135.11 and 135.12 are applied on the basis of weight of the individual piece and the distance the mail is sent. To administer these rates, the earth is considered to be divided into units of area thirty minutes square, identical with a quarter of the area formed by the intersecting parallels of latitude and meridians of longitude. The distance between these units of area is the basis of the postal zones and shall be measured from the center of the unit of area containing the dispatching sectional center facility or multi-ZIP Coded post office not serviced by a sectional center facility. A post office of mailing and a post office of delivery shall have the same zone relationship as their respective sectional center facilities or multi-ZIP Coded post offices, but this shall not cause two post offices to be regarded as within the same local zone. The postal zones are defined as follows:

a. The local zone, the extent of which is defined by the Postal Service. This local rate currently applies to parcels mailed at any post office for local delivery at that office; at any city letter-carrier office or at any point within its delivery limits for delivery by carriers from that office; at any office from which a rural route starts for delivery on the same route; and on a rural route for delivery at the office from which the route starts or on any rural route starting from that office.
b. The first zone includes all territory within the quadrangle in conjunction with every contiguous quadrangle, representing an area having a mean radial distance of approximately fifty miles from the center of a given unit of area. The zone one rate applies to parcels mailed between two post offices in the same sectional center.
c. The second zone includes all units of area outside the first zone lying in whole or in part within a radius of approximately one hundred and fifty miles from the center of a given unit of area.
d. The third zone includes all units of area outside the second zone lying in whole or in part within a radius of approximately three hundred miles from the center of a given unit of area.
e. The fourth zone includes all units of area outside the third zone lying in whole or in part within a radius of approximately six hundred miles from the center of a given unit of area.
f. The fifth zone includes all units of area outside the fourth zone lying in whole or in part within a radius of approximately one thousand miles from the center of a given unit of area.
g. The sixth zone includes all units of area outside the fifth zone lying in whole or in part within a radius of approximately one thousand four hundred miles from the center of a given unit of area.
h. The seventh zone includes all units of area outside the sixth zone lying in whole or in part within a radius of approximately one thousand eight hundred miles from the center of a given unit of area.
i. The eighth zone includes all units of area outside the seventh zone.

.152 For articles mailed between Postal facilities, including armed forces post offices, wherever located, the rates according to zone apply, except that the rates of postage for mail transported between the United States, the Canal Zone, Puerto Rico, or the possessions or territories of the United States, including the Trust Territory of the Pacific Islands, on the one hand, and Army, Air Force and Fleet post offices on the other, or among the latter, shall be the applicable zone rates for mail between the place of mailing or delivery and the city of the postmaster serving the Army, Air Force or Fleet post office concerned.

.153 Gold coin, gold bullion, and gold dust, between any two points in Alaska, or between any point in Alaska and any point in the other States or U.S. possessions, are charged the rate in 135.111b. The gold must be enclosed in sealed packages not exceeding 50 pounds in weight and sent by registered mail.

.154 An official zone chart may be obtained free by request to the postmaster at the office of mailing. For ZIP Code numbers, consult the *National ZIP Code Directory*, Publication 65.

.155 The rates in 135.13 and 135.14 are computed on the basis of the weight of the piece regardless of the zone to which addressed.

.156 The single piece rates and conditions are applicable to forwarding and returning of parcels mailed at bulk rates.

135.2 CLASSIFICATION

.21 FOURTH-CLASS MAIL

Fourth-class mail consists of mailable matter:

a. Not mailed or required to be mailed as first-class mail;
b. Weighing sixteen ounces or more; and
c. Not entered as second-class mail (except as specifically provided for transient rate matter).

.22 FOURTH-CLASS BULK ZONE RATES

.221 The bulk fourth-class zone rates in 135.112 are applied to mailings of 300 or more pieces of fourth-class mail of identical weight. Parcels need not be of identical size or content. Parcels which weigh less than 15 pounds and measure over 84 inches in length and girth combined may not be mailed at these rates.

.222 Mailings of nonidentical pieces may only be made if the mailer has demonstrated that adequate records are maintained to verify and audit such mailings and if the procedure has been specifically authorized by the Director, Office of Mail Classification, in accordance with 145.8 or 145.9.

.223 *Separation.* The mailer must separate mailing pieces by parcel post zones so that postage may be verified. This requirement may be waived by the Postal Service if the mailer demonstrates to the satisfaction of the Postal Service that records are maintained to enable the Postal Service to accurately verify and audit mailings of fourth-class bulk rate parcels. The Director, Office of Mail Classification, must specifically approve systems for the acceptance of such mailings.

.224 *Special services.* The insurance, special delivery, special handling, and COD services may be used on mailings sent at bulk fourth-class zone rates. However, special services may not be used selectively for individual parcels mailed at these rates. Selective special services may be used in conjunction with postage payment verification systems approved under the conditions stated in 135.222.

.225 *Markings Required.* The words *Fourth-Class Bulk Rates* or *Fourth-Class Blk. Rt.* must be incorporated as part of the permit indicia or be printed or rubber stamped above the address and to the left or below the permit imprint.

.23 BOUND PRINTED MATTER

.231 *Description*

Only the following specifically described material may be mailed at the bound printed matter rates in 135.12. *Bound printed matter* is fourth-class matter that weighs one pound or more but less than 10 pounds and which:

a. Consists of advertising, promotional, directory or editorial material, or any combination of these.
b. Is securely bound by permanent fastenings such as staples, spiral binding, glue, stitching, etc. Loose leaf binders and similar fastenings are not considered permanent.
c. Consists of sheets of which at least 90 percent are imprinted with letters, characters, figures, or images, or any combination of these, by any process other than handwriting or typewriting.
d. Does not have the nature of personal correspondence.
e. Is not a book eligible for mailing as special fourth-class rate mail.
f. Is not a book which would be eligible for mailing as special fourth-class rate mail but for the inclusion of advertising matter other than incidental announcements of books that either (1) is not permanently bound in the book itself, or (2) does not form an integral part of the book itself.
g. Is not stationery, such as pads of blank printed forms.

.232 *Markings Required*

The words *Bounded Printed Matter* must be incorporated as part of the permit indicia or be printed or rubber stamped above the address to the left or below the permit indicia. Mailings under the bulk rates in 135.122 must also be marked *Bulk Rate* or *BLK RT.*

.233 *Separation Required for Bulk Mailings*

The mailer must separate mailing pieces by parcel post zones so that postage may be verified. Mail for each parcel post zone must be further separated and placed in sacks by cities or States of destination in each instance where there are 10 or more pieces for the same post office or State, or where 5 or more catalogs weigh 10 or more pounds. Use No.3 mail sacks except when greater volume requires the use of No. 2 mail sacks. When there is insufficient volume for a direct sack or a State sack, combine the pieces in sacks for mixed States by parcel post zones. Label each sack to include parcel post zone separation and destination. The total weight of pieces placed in one sack must not exceed 70 pounds.

.234 *Separations Recommended*

In addition to the separations required in 135.233, it is recommended that the mailer separate the pieces to the finest extent possible, in the manner prescribed by 134.43.

.235 *Optional Handling of Bulk Mailings of Bound Printed Matter Weighing in Excess of 2 Pounds When Addressed for Delivery in Local Parcel Post Zone Only*

At the option of the mailer, address labels and unaddressed pieces weighing in excess of 2 pounds may be mailed separately for local delivery at the office of mailing, subject to all of the following conditions:

a. The address labels, which may not measure less than 3 by 4 1/4 inches, must show the full name and ZIP Coded address of the sender and addressee and must be sorted by the mailer to the fourth and fifth digit of the ZIP Code.

b. Postage must be paid by permit imprints for each label, including labels returned as undeliverable. The imprint may be placed on the pieces or on the label. See 145.11.
c. The mailer must submit a completed Form 3605 with each mailing.
d. The total weight of pieces placed in sacks, cartons, crates, or any other types of containers must not exceed 70 pounds.
e. The address labels must be sent to the postmaster at the mailing (delivery) office by the mailer.
f. Address labels bearing incorrect, nonexistent or any other undeliverable addresses will be corrected or endorsed to show why they are undeliverable and returned under cover to the mailer. Each envelope shall be rated with postage due at the address correction rate for each address label contained in the envelope. At the request of the mailer, the postmaster will notify the mailer, at mailer's expense and by means specified by mailer, of the number of address labels being returned. The request for notification must accompany the labels. Correctly addressed labels will be held awaiting arrival of the pieces.
g. Pieces will be deposited at the acceptance point designated by the postmaster. If the number of pieces deposited is not enough or too many to match the number of address labels, the postmaster will notify the sender, or his designated representative or agent, of the number of pieces required to complete the delivery or the number in excess. If the additional pieces are not delivered to the post office within fifteen days, the excess address labels will be returned under cover to the mailer. As soon as deliveries are completed, the postmaster will notify the sender or his representative of the number of any excess pieces on hand. Excess pieces may be called for by the mailer without charge. Any excess pieces not called for within fifteen days will be returned to sender postage due at the single piece bound printed matter rate.

.24 SPECIAL FOURTH-CLASS MAIL

Only the following specifically described articles may be mailed at the special fourth-class rate provided by 135.13:

a. Books, including books issued to supplement other books, of 24 pages or more, at least 22 of which are printed, consisting wholly of reading matter or scholarly bibliography or reading matter with incidental blank spaces for notations and containing no advertising matter other than incidental announcements of books. Advertising includes paid advertising and publishers' own advertising. Advertising may be in display, classified, or editorial style. The identification statement *Special Fourth-Class Rate—Books* must be placed conspicuously on the address side of each package.
b. 16-millimeter films or narrower width films which must be positive prints in final form for viewing, and catalogs of such films of 24 pages or more, at least 22 of which are printed, except films and film catalogs sent to or from commercial theaters. The identification statement *Special Fourth-Class Rate—16 mm or narrower Films or 16 mm or narrower Film Catalog* must be placed conspicuously on the address side of each package.
c. Printed music whether in bound form or in sheet form. The identification statement *Special Fourth-Class Rate—Printed Music* must be placed conspicuously on the address side of each package.
d. Printed objective test materials and accessories thereto used by or in behalf of educational institutions for testing ability, aptitude, achievement, interests, and other mental and personal qualities with or without answers, test scores, or identifying information recorded thereon in writing or by mark. The identification statement *Special Fourth-Class Rate—Objective Test Materials* must be placed conspicuously on the address side of each package.

e. Sound recordings, including incidental announcements of recordings and guides or scripts prepared solely for use with such recordings. Player piano rolls are classified as sound recordings. Miscellaneous advertisements, including trademarks, of persons or concerns other than the record manufacturer, are not permissible on title labels, protective sleeves, jackets, cartons, and wrappers, and such advertisements may not be mailed as enclosures. The identification statement *Special Fourth-Class Rate—Sound Recordings* must be placed conspicuously on the address side of each package.

f. Playscripts and manuscripts for books, periodicals, and music. The identification statement *Special Fourth-Class Rate—Manuscript* must be placed conspicuously on the address side of each package.

g. Printed educational reference charts, permanently processed for preservation. The identification statement *Special Fourth-Class Rate—Educational Reference Charts* must be placed conspicuously on the address side of each package.

h. Looseleaf pages, and binders therefor, consisting of medical information for distribution to doctors, hospitals, medical schools, and medical students. The identification statement *Special Fourth-Class Rate—Medical Information* must be placed conspicuously on the address side of each package.

NOTE: When two or more articles described in this section are mailed in the same package, the appropriate descriptive terms shall be combined in the identification statement placed on the address side. Example: *Special Fourth-Class Rate—Books and Sound Recordings.*

.25 SPECIAL FOURTH-CLASS PRESORT RATES

.251 *Applicability*

The presort rates apply to special fourth-class rate matter presorted by ZIP Codes, and mailed in minimum quantities (see .252), at a place designated by the postmaster.

.252 *Minimum Quantities*

a. To qualify as a presorted piece subject to the special fourth-class presort level A rate, a piece must be one of a mailing of at least 500 *identical* pieces receiving identical service and properly prepared and presented in full sacks (see 135.252a) destined for five-digit ZIP Code locations.

b. Mailings of at least 500 *identical* outsides as described in 334.5 may qualify for the presort level A if they are made up to preserve the five-digit ZIP Code presort as prescribed by the postmaster. The postmaster may require notification up to 24 hours before the mailing is ready for presentation. The mailer must comply with the postmaster's instructions on how to separate and present mailings of outsides. The postmaster will coordinate such mailings and obtain procedures for separation of parcels through the regional logistics office.

c. To qualify as a presorted piece subject to the special fourth-class presort level B rate, a piece must be one of a mailing of at least 2,000 identical sackable pieces receiving identical service and properly prepared and presented:
   (1) In full sacks or substantially full sacks, [see e(2) below] destined to five-digit ZIP Code locations. Mail must be separated and sacked to five-digit destinations in this manner to the maximum extent possible. [See e(1) below.]
   (2) The remainder in full sacks destined to three-digit locations. All material in such sacks must be addressed to the same three-digit destinations.

d. A mailing will receive only one level of presort rate, under 135.252a, 135.252b, or 135.252c. A customer may, however, elect to send a product as two or more mailings with separate mailing statements in order to avail himself of the two levels of presort rates.

e. For purposes of the bulk special fourth-class rate schedule the following definitions shall apply:
   (1) Full sack shall mean at least eight pieces, or pieces sufficient in volume to fill at least one-third of a standard No. 2 postal sack, or pieces sufficient in weight to equal at least 20 pounds, but not to exceed 70 pounds.
   (2) Substantially full sack shall mean a postal sack containing at least four pieces, or either at least 20 or more pounds or pieces sufficient in volume to fill one-third of a standard No. 2 postal sack, but not to exceed 70 pounds.
   (3) To qualify as identical pieces subject to this rate schedule, all pieces must be identical in weight. However, the size and content of each piece need not be identical.

.253 *Nonqualifying Pieces*

Pieces which are not sacked to five-digit or three-digit destinations as set forth in 135.251 are not considered presorted for purposes of this rate schedule. Pieces which are sacked to three- or five-digit destinations but, when sacked, do not meet the *full* or *substantially full* sack criteria do not qualify for the presort rate and must be presented for mailing under a separate mailing statement if mailed under permit imprint.

.254 *Nonidentical Pieces*

Nonidentical pieces, including those of different postage values, may be merged, presorted together, and presented as a single mailing only when it has been demonstrated by the mailer that records are maintained to enable the Postal Service to accurately verify and audit mailings of such matter and the procedure has been specifically authorized by the Director, Office of Mail Classification, in accordance with 145.8 or 145.9.

.255 *Markings Required*

The appropriate identification statement prescribed by 135.24 must appear on the address side of each piece, preceded by the word PRESORTED.

.256 *Sack Labeling Requirements*

Sacks must be labeled according to the following examples:

a. Five-Digit Destination

```
CLEVELAND OH 44101
5-DIGIT PRESORTED PP
FR J COMPANY BOSTON MA
```

b. City With Unique 3-digit ZIP Code

```
CLEVELAND OH 441
MACHINE PRESORTED PP
FR J COMPANY BOSTON MA
```
or
```
CLEVELAND OH 441
NONMACHINE PRESORTED SPR
FR J COMPANY BOSTON MA
```

c. Sectional Center

```
SCF CLEVELAND OH 440
MACHINE PRESORTED PP
FR J COMPANY BOSTON MA
```
or
```
CLEVELAND OH 440
NONMACHINE PRESORTED SPR
FR J COMPANY BOSTON MA
```


.257 *Container or Pallet Labeling Requirements*

a. Five-Digit Destination

```
CLEVELAND OH 44101
5-DIGIT PRESORTED PP
FR J COMPANY, BOSTON MA
```

b. City With Unique 3-digit ZIP Code

```
CLEVELAND OH 441
MACHINE PRESORTED PP
FR J COMPANY BOSTON MA
```
or
```
CLEVELAND OH 441
NONMACHINE PRESORTED PP
FR J COMPANY BOSTON MA
```

c. Sectional Center

```
CLEVELAND OH 441
MACHINE PRESORTED PP
FR J COMPANY BOSTON MA
```
or
```
CLEVELAND OH 441
NONMACHINE PRESORTED PP
FR J COMPANY BOSTON MA
```

.258 Bulk Mail Center Machinability Criteria for Special Fourth-Class Matter

a. The parcel sorter-machinability criteria are:
   (1) Weight: At least 1 pound but not over 25 pounds
   (2) Length: At least 6 inches but not over 34 inches
   (3) Height: At least 3/8 inches but not over 17 inches
   (4) Width: At least 3* inches but not over 17 inches
   *A width of 4 inches is required for parcels less than 9 inches long.

b. Mailing pieces that fall below the minimum dimensions specified in a. are considered SPR's.

c. Those exceeding the maximum dimensions or irregular in shape are considered non-machineable parcels.

d. Mailers who are not sure of the size classification of their pieces are advised to consult with their local postmaster.

.259 *Presort Verification*

For each 50 sacks or fraction thereof in a mailing, accepting post offices shall verify the presort as follows:

a. Select two sacks of 5-digit makeup and verify that no pieces are included bearing other than the 5-digit ZIP Code shown on the sack label. If a discrepancy of more than one piece is found, the mailing is disqualified.

b. For mailings that include sacks of mail presorted to 3-digit ZIP Code destination, select three sacks and verify that all pieces in a sack bear ZIP Codes having the same first three digits of ZIP Code as that shown on the sack label and that no identical 5-digit ZIP Codes are contained in quantities sufficient to make up a full or a substantially full sack, as appropriate for the presort rate level, for mail addressed to the same 5-digit ZIP Code destination. If it is found that one 5-digit sack could have been made up separately from the pieces in a 3-digit sack, the mailing is disqualified. If more than two pieces are found in any sack made up to the same 3-digit ZIP Code destination that bear a different first three digits of ZIP Code, the mail is disqualified.

c. If a mailing is disqualified, the next mailing by the customer at presort rates should have twice the number of sacks verified as specified in a. and b., and such intensified verification shall be extended to one-fifth of the customer's mailings during the following six-month period.

.26 FOURTH-CLASS LIBRARY RATE

Only the articles specifically described in this section may be mailed at the fourth-class library rate provided by 135.14. The identification statement *Library Rate* must be placed conspicuously on the address side of each package. Each package must show in the address or return address the name of a school, college, university, public library, or name of a nonprofit religious, educational, scientific, philanthropic, agricultural, labor, veterans, or fraternal organization or association. No permit is required.

a. The following specific items when loaned or exchanged between schools, colleges, or universities and public libraries, museums and herbaria, nonprofit religious, educational, scientific, philanthropic, agricultural, labor, veterans, or fraternal organizations or associations; or when cooperatively processed by libraries; or loaned or exchanged between libraries, organizations, or associations, and their members, readers, or borrowers, may be mailed at the library rate:
   (1) Books, consisting wholly of reading matter, scholarly bibliography, or reading matter with incidental blank spaces for notations and containing no advertising other than incidental announcements of books.
   (2) Printed music, whether in bound form or in sheet form.
   (3) Bound volumes of academic theses in typewritten or duplicated form.
   (4) Periodicals, whether bound or unbound.
   (5) Sound recordings. [See also 135.26b(2).]
   (6) Other library materials in printed, duplicated, or photographic form or in the form of unpublished manuscripts.
   (7) Museum materials, specimens, collections, teaching aids, printed matter, and interpretative materials intended to inform and to further the educational work and interests of museums and herbaria.

b. The following specific items when sent to or from schools, colleges, universities, public libraries, museums and herbaria and to or from nonprofit religious, educational, scientific, philanthropic, agricultural, labor, veterans, or fraternal organizations or associations, may be mailed at the library rate:
   (1) 16-millimeter or narrower width films; filmstrips; transparencies; slides; microfilms; all of which must be positive prints in final form for viewing.
   (2) Sound recordings.
   (3) Museum materials, specimens, collections, teaching aids, printed matter, and interpretative materials intended to inform and to further the educational work and interests of museums and herbaria.
   (4) Scientific or mathematical kits, instruments, or other devices.
   (5) Catalogs of the materials in 135.26b(1) - (4) and guides or scripts prepared solely for use with such materials.
   (6) Books, including books to supplement other books, consisting wholly of reading matter or scholarly bibliography or reading matter with incidental blank spaces for notations, and containing no advertising matter other than incidental announcements of books, when mailed from a publisher or a distributor to a school, college, university, or library, may be mailed at the library rate.

c. When 5,000 or more identical pieces are mailed at the rates in 135.14 during a single day and there are enough pieces for the same destination to fill approximately one-third of a sack, they must be presorted and placed in sacks under the instructions contained in 134.432, and 134.436a(2), b(2), c(2), d(2), and e(2). When 1,000 or more but less than 5,000 identical pieces are mailed at these rates during a single day and there are enough pieces for the same destination to fill approximately one-third of a sack, they must be presorted and placed in sacks under the instructions in 134.432, and 134.436b(2), c(2), d(2), and e(2).

135.3 WEIGHT AND SIZE LIMITS

.31 LIMITS

.311

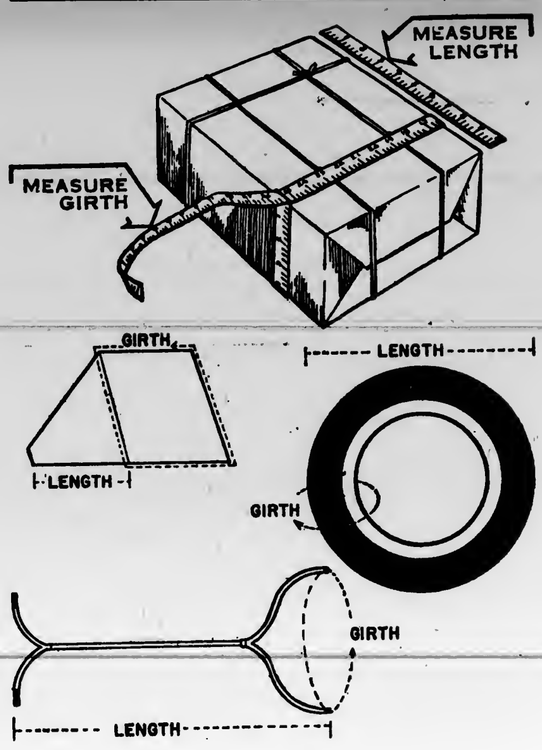
The following size and weight limitations apply to all fourth-class parcels. Additional limitations for bulk zone rate and bound printed matter are contained in 135.22 and 135.23.

	16 ounces or more but not exceeding—	Length and girth must not exceed—
.312 Parcels Mailed Between Post Offices With 960 or More Revenue Units	40 pounds...	84 inches.
Parcels mailed at these post offices in the 48 contiguous States of the United States addressed for delivery at the same office or to another such post office in the 48 contiguous States. (See exceptions in 135.312.)		
.313 All Other Parcels		
Parcels mailed at or to:		
a. Any post office with 948 or less revenue units	70 pounds...	100 inches.
b. Any rural or star route at any post office	do	do.
c. Any Army, Air Force or Fleet post office. (See Part 126 for certain exceptions.)	do	do.
d. Any post office in Alaska or Hawaii	do	do.
e. Any post office in the Commonwealth of Puerto Rico	do	do.
f. Any post office in a Territory or Possession of the United States, including the Canal Zone and Trust Territory of the Pacific Islands. (See Part 112.)	do	do.
g. Any post office when contents of parcel consists of baby poultry, nursery stock, agricultural commodities, books, Braille writers and other appliances for the blind, and other items listed in 135.13 and 135.14. (The term *agricultural commodities* includes any product grown or produced incident to an agricultural activity on a farm or in a garden, orchard, nursery, or forest, but does not include articles manufactured or processed from these commodities.)	do	do.
h. Any post office, for official mail of Federal agencies mailed under the Postage and Fees Paid indicia or as prepaid Government mail (see 137.1 for franked mail).	do	do.

.32 HOW TO COMPUTE THE SIZE OF A PARCEL

a. Measure the longest side.
b. Measure distance around the parcel at its thickest part.
c. Add both measurements.

Two or more packages may be mailed as a single parcel if they are about the same size or shape or if they are parts of one article. They must be securely wrapped or fastened together and must not, together, exceed the weight or size limit.



135.4 PAYMENT OF POSTAGE

.41 SINGLE PIECE RATE MAILINGS

Mailers of articles at single piece rates may use any method of paying postage.

.42 BULK RATE MAILINGS

Mailers of fourth-class matter at bulk rates must pay postage by permit imprint and shall complete and submit with each mailing a Form 3602, or Form 3605, as appropriate.

135.5 ENCLOSURES AND ADDITIONS

.51 REQUIRED

.511 *Return Adress*

The return address of the sender must be shown on all fourth-class mail. See 135.26 concerning packages mailed at the library rate.

.512 *Special Marking*

See 122.6, 135.225, 135.232, 135.255, and 139 for special markings required.

.513 *Customs Declarations*

See 124.155 and 126.2 concerning need for customs declaration forms for packages addressed to the Canal Zone and to certain military post offices overseas.

.52 PARCEL POST

.521 The following written additions may be placed on the wrapper, on a tag or label attached to the outside of the parcel (see 124.22 for space requirements), or inside the parcel, either attached to an article or loose:

a. Marks, numbers, name, or letters descriptive of contents.
b. *Please Do Not Open Until Christmas, Merry Christmas, Mom and Dad, Happy Birthday, Mother, With Best Wishes, John Doe,* and similar inscriptions.
c. Instructions and directions for the use of an article in the package. Example: Directions for use of prescription medicine.
d. Manuscript dedication or inscription not in the nature of personal correspondence.
e. Marks to call attention to any word or passage in text.
f. Corrections of typographical errors in—
   (1) Circulars or printed matter. Handwritten or typewritten changes or additions in the body of a circular are limited to corrections of actual typographical errors.
   (2) Proof sheets. Corrections in proof sheets include corrections of typographical and other errors, alterations of text, insertion of new text, marginal instructions to the printer, and rewrites of parts if necessary for correction. Corrections should be on margins or attached to the manuscript. Do not enclose manuscript of another article.
g. Handstamped imprints, except when the added matter is in itself personal or converts the original matter to a personal communication.
h. Any printed matter mailable as third class.
i. Enclosures or attachments for which postage is paid at the first-class rate in accordance with Part 139.

.522 An invoice whether or not also serving as a bill relating solely to the matter with which it is enclosed, may be enclosed or placed in an envelope (marked *Invoice Enclosed*) attached to the outside, showing any or all of the following:

a. Names and addresses of sender and addressee.
b. Names and quantities of articles enclosed.
c. Description of articles enclosed, including price, tax, style, stock number, size, and quality; and if defective, nature of defect.
d. Order or file number, date of order, date and manner of shipment, shipping weight, and postage paid.
e. Initials or name of packer or checker.

.53 BOUND PRINTED MATTER

Only the following may be enclosed loose or attached in items mailed at the postage rates shown in 135.121 and 135.123:

a. Order forms; reply envelopes and cards, circulars, and miscellaneous types of printed advertising sheets.
b. An invoice as provided for by 135.522.

Samples of merchandise may be attached to the bound pages and to the loose enclosures.

.54 SPECIAL FOURTH-CLASS AND LIBRARY RATE

.541 *Books*

The following items only are permissible enclosures with books mailed at the postage rates shown in 135.13 and 135.14:

a. An invoice. (See 135.522.)
b. Either one envelope or one addressed post card. (If also serving as an order form, the envelope or card may be in addition to the order form listed in c.
c. One order form. (If also serving as an envelope or post card, the order form may be in addition to the envelope or card listed above.)
d. Announcements of books, appearing in book pages or as loose enclosures. These announcements of books must be incidental, and must be exclusively devoted to books. They may not contain extraneous advertising of book related materials or services, except that announcements may fully describe the conditions and methods of ordering books, such as through membership in book clubs, and may contain ordering instructions for use with the single order form permitted above.

.542 *Sound Recordings*

The following items only are permissible enclosures with sound recordings mailed at the postage rates shown in section 135.13 and 135.14:

a. An invoice. (See 135.522.)
b. Either one envelope or one addressed post card. (If also serving as an order form, the envelope or card may be in addition to the order form listed in c.
c. One order form. (If also serving as an envelope or post card, the order form may be in addition to the envelope or card listed above.)
d. Guides or scripts prepared solely for use with such recordings.
e. Announcements of sound recordings appearing on title labels, on protective sleeves, on the carton or wrapper, or on loose enclosures. These announcements of sound recordings must be incidental, and must be exclusively devoted to sound recordings. They may not contain extraneous advertising of sound-recording related materials or services, except that announcements may fully describe the conditions and methods of ordering sound recordings, such as through membership in sound recording clubs, and may contain ordering instructions for use with the single order form permitted in 135.542c.

.843 *All Other Items Listed in 136.214 and 135.215*

Enclosures are not permitted except as provided in 135.522, and 139.3.

135.6 SEALING

Fourth-class mail must be wrapped or packaged so that it can be easily examined. Mailing of sealed parcels at the fourth-class rates of postage is considered consent by the sender to postal inspection of the contents. To assure that their parcels will not be opened for postal inspection, customers should, in addition to paying the first-class rate of postage, plainly mark their parcels *First Class* or with similar endorsements.

135.7 ADDRESSING

The address of all fourth-class matter mailed at bound printed matter, bulk parcel post, library, and special rate fourth-class rates must contain a complete ZIP Code.

135.8 PLACE OF MAILING

.81 Articles mailed at single piece fourth-class rates may be mailed at a post office, branch, or station, or handed to a rural or star route carrier.

.82 Mailing at bulk or presort rates must be made at a station or branch specified by the postmaster.

.83 Parcels exceeding the limits of size and weight for articles mailed at post offices with 950 or more revenue units that originate in and are prepared in cities or towns served by such post offices may not be diverted to other post offices or to a rural or star route carrier for mailing.

Part 136
AIR AND PRIORITY MAIL

136.1 RATES

.11 AIRMAIL

Weight	Kind of mail	Rate
10 ounces or less	Air postal or post cards	14¢ each.
	Letters and packages	17¢ for the first ounce or fraction, 15¢ for each additional ounce or fraction.
	Business reply:	
	Air cards	19¢ each.
	Airmail other than cards:	
	Weight not over 2 ounces	17¢ for first ounce or fraction, plus 15¢ for second ounce or fraction, plus 5¢ per piece.
	Weight over 2 ounces	The appropriate air mail rate, plus 5¢ per piece. Over 10 ounces priority rates plus 5¢ per piece.
	Business reply:	
	When the advance deposit account option is not used	The appropriate airmail postage; plus a surcharge of 12¢ per piece.
	When the advance deposit account option is used	The appropriate airmail postage, plus a surcharge of 3.5¢ per piece.

.12 PRIORITY MAIL (HEAVY PIECES)

Weight over 10 ounces and not exceeding—pound(s)	Rate					
	Local zones 1, 2, and 3	Zone 4	Zone 5	Zone 6	Zone 7	Zone 8
1	$1.56	$1.58	$1.60	$1.62	$1.64	$1.67
1.5	1.73	1.77	1.84	1.90	1.97	2.07
2.0	1.89	1.96	2.07	2.18	2.29	2.46
2.5	2.05	2.15	2.29	2.43	2.58	2.78
3.0	2.21	2.33	2.50	2.68	2.86	3.09
3.5	2.37	2.51	2.70	2.91	3.15	3.38
4.0	2.53	2.69	2.90	3.14	3.41	3.67
4.5	2.68	2.86	3.09	3.35	3.65	3.94
5.0	2.83	3.03	3.27	3.56	3.88	4.20
6	3.13	3.37	3.64	3.98	4.35	4.72
7	3.43	3.71	4.01	4.40	4.82	5.24
8	3.73	4.05	4.38	4.82	5.29	5.76
9	4.03	4.39	4.75	5.24	5.76	6.28
10	4.33	4.73	5.12	5.66	6.23	6.80
11	4.63	5.07	5.49	6.08	6.70	7.32
12	4.93	5.41	5.86	6.50	7.17	7.84
13	5.23	5.75	6.23	6.92	7.64	8.36
14	5.53	6.09	6.60	7.34	8.11	8.88
15	5.83	6.43	6.97	7.76	8.58	9.40
16	6.13	6.77	7.34	8.18	9.05	9.92
17	6.43	7.11	7.71	8.60	9.52	10.44
18	6.73	7.45	8.08	9.02	9.99	10.96
19	7.03	7.79	8.45	9.44	10.46	11.48
20	7.33	8.13	8.82	9.86	10.93	12.00
21	7.63	8.47	9.19	10.28	11.40	12.52
22	7.93	8.81	9.56	10.70	11.87	13.04
23	8.23	9.15	9.93	11.12	12.34	13.56
24	8.53	9.49	10.30	11.54	12.81	14.08
25	8.83	9.83	10.67	11.95	13.28	14.60
26	$9.13	$10.17	$11.04	$12.38	$13.75	$15.12
27	9.43	10.51	11.41	12.80	14.22	15.64
28	9.73	10.85	11.78	13.22	14.69	16.16
29	10.03	11.19	12.15	13.64	15.16	16.68
30	10.33	11.53	12.52	14.06	15.63	17.20
31	10.63	11.87	12.89	14.48	16.10	17.72
32	10.93	12.21	13.26	14.90	16.57	18.24
33	11.23	12.55	13.63	15.32	17.04	18.76
34	11.53	12.89	14.00	15.74	17.51	19.28
35	11.83	13.23	14.37	16.16	17.98	19.80
36	12.13	13.57	14.74	16.58	18.45	20.32
37	12.43	13.91	15.11	17.00	18.92	20.84
38	12.73	14.25	15.48	17.42	19.39	21.36
39	13.03	14.59	15.85	17.84	19.86	21.88
40	13.33	14.93	16.22	18.26	20.33	22.40
41	13.63	15.27	16.59	18.68	20.80	22.92
42	13.93	15.61	16.96	19.10	21.27	23.44
43	14.23	15.95	17.33	19.52	21.74	23.96
44	14.53	16.29	17.70	19.94	22.21	24.48
45	14.83	16.63	18.07	20.36	22.68	25.00
46	15.13	16.97	18.44	20.78	23.15	25.52
47	15.43	17.31	18.81	21.20	23.62	26.04
48	15.73	17.65	19.18	21.62	24.09	26.56
49	16.03	17.99	19.55	22.04	24.56	27.08
50	16.33	18.33	19.92	22.46	25.03	27.60
51	16.63	18.67	20.29	22.88	25.50	28.12
52	16.93	19.01	20.66	23.30	25.97	28.64
53	17.23	19.35	21.03	23.72	26.44	29.16
54	17.53	19.69	21.40	24.14	26.91	29.68
55	17.83	20.03	21.77	24.56	27.38	30.20

.12 PRIORITY MAIL (HEAVY PIECES) Cont'd

Weight over 10 ounces and not exceeding—pound(s)	Rate					
	Local zones 1, 2, and 3	Zone 4	Zone 5	Zone 6	Zone 7	Zone 8
56	18.13	20.37	22.14	24.98	27.85	30.72
57	18.43	20.71	22.51	25.40	28.32	31.24
58	18.73	21.05	22.88	25.82	28.79	31.76
59	19.03	21.39	23.25	26.24	29.26	32.28
60	19.33	21.73	23.62	26.66	29.73	32.80
61	19.63	22.07	23.99	27.08	30.20	33.32
62	19.93	22.41	24.36	27.50	30.67	33.84
63	20.23	22.75	24.73	27.92	31.14	34.36
64	20.53	23.09	25.10	28.34	31.61	34.88
65	20.83	23.43	25.47	28.76	32.08	35.40
66	21.13	23.77	25.84	29.18	32.55	35.92
67	21.43	24.11	26.21	29.60	33.02	36.44
68	21.73	24.45	26.58	30.02	33.49	36.96
69	22.03	24.79	26.95	30.44	33.96	37.48
70	22.33	25.13	27.32	30.86	34.43	38.00

EXCEPTION: Parcels weighing less than 15 pounds, measuring over 84 inches but not exceeding 100 inches in length and girth combined, are chargeable with a minimum rate equal to that for a 15-pound parcel for the zone to which addressed.

.13 BULK PRESORT RATE

The bulk presort rate is equal to the single piece airmail rate less 1 cent for each piece that is part of a group of 10 or more pieces sorted to the same five-digit ZIP Code, or of a group of 50 or more pieces for the same three-digit ZIP Code when they are presented at one post office as part of a single mailing of not less than 500 pieces of airmail of identical size and weight. The provisions of 131.12, 131.4, 131.5, 131.6 are applicable to such mailings.

136.2 CLASSIFICATION

.21 DESCRIPTION

Airmail is mail carried by air and by the fastest connecting surface carriers, and given the most expeditious handling in dispatch and delivery. Airmail is not given special delivery to the addressee unless a special delivery fee is paid in addition to the airmail postage.

.22 ACCEPTABLE ARTICLES, EXCEPTIONS

.221 Generally, matter acceptable in domestic surface mail may be sent by airmail except:

a. Anything susceptible to damage or which may become harmful because of changes in temperature or atmospheric pressures unless protected against the effects of such changes;
b. Magnetic material having a field strength sufficient to cause a compass deviation at a distance of 15 feet (4.6 meters) or more from any point on the package;
c. Flammable liquids and solids;
d. Radioactive matter;
e. Matter specifically excluded from air shipment by the regulations of the Department of Transportation, 49 CFR, Parts 100-189; Federal Aviation Agency, 14 CFR, Part 103; or the applicable restricted articles tariffs of the air carriers.

.222 Certain restricted articles as described in 49 CFR, Parts 100-189; 14 CFR, Part 103; and the restricted articles tariffs of the air carriers may be accepted for air transportation if they are properly packaged. Such articles must be labeled and bear a shipper's certification in triplicate as required by 14 CFR, Part 103, Federal Aviation Regulations, or must be marked in the manner prescribed by the air transport restricted articles tariff, e.g., *ORA Group A—DRY ICE.*

.223 Mailers are reminded that first-class mail is now regularly carried by air. Therefore, all merchandise sent by first-class mail is governed by these regulations.

.23 APPLICATION OF RATES

.231 Postage is charged on airmail (except postal and post cards) according to weight at the rates in 136.1 regardless of the class of mail.

.232 Air post cards must conform to the size and conditions prescribed for post cards. (See 131.222.)

.233 Each portion of a double air post card must be prepaid at the air card rate when originally mailed, except when the reply portion is prepared as a business reply air card. See 131.23 for information regarding business reply mail.

.234 Priority mail articles addressed to military post offices overseas (Army, Air Force, and Fleet post offices, and Naval vessels) require postage at the priority mail zone rate applicable between the mailing post office and the post office shown in the address.

.236 The eighth zone priority mail rates apply to articles mailed between:

(1) Its Possessions,
(2) the Canal Zone, and
(3) the islands of the Trust Territory of the Pacific;

b. The Possessions of the United States and
(1) the Canal Zone, and
(2) the islands of the Trust Territory of the Pacific; and

c. The Commonwealth of Puerto Rico and
(1) the Possessions of the United States,
(2) the Canal Zone, and
(3) the islands of the Trust Territory of the Pacific.

.236 The priority mail rates according to zone apply to articles mailed between:

a. The United States and
(1) the Commonwealth of Puerto Rico, and
(2) the Virgin Islands, and
b. Between the Commonwealth of Puerto Rico and the Virgin Islands.

136.3 WEIGHT AND SIZE LIMITS

.31 WEIGHT

Priority mail may weigh up to 70 pounds. See part 126 for the exception to this limit for articles addressed to certain APO's and FPO's.

.32 SIZE

Priority mail is limited to 100 inches in combined length and girth. See part 126 for the exception to this limit for articles addressed to certain APO's and FPO's, and 135.32 for instructions on how to measure parcels.

.33 NONSTANDARD AIRMAIL

.331 Airmail weighing one ounce or less is nonstandard unless it meets the following size standards:

a. Length not greater than 11.5 inches, and
b. Height not greater than 6.125 inches, and
c. Thickness not greater than .25 inch, and
d. An aspect ratio (ratio of height to length) between 1:1.3 and 1:2.5 inclusive.

.332 Nonstandard mail often results in delays or damage to mail because it does not lend itself to machine processing. For this reason, mailers are encouraged to avoid mailing nonstandard airmail. It is anticipated that a surcharge will be imposed sometime in calendar year 1976 for nonstandard airmail.

136.4 PAYMENT OF POSTAGE

.41 SINGLE PIECE RATE

Mailers of airmail matter at single piece rates may pay postage by adhesive stamps, stamped envelopes and postal cards, meter stamps, and permit imprints.

.42 BULK RATE

Mailings made at presort rates must be paid only by meter stamps or permit imprints. Metered postage must be for the airmail rate less one cent for qualifying lower rated pieces and the full airmail rate for residual pieces.

.43 ANNUAL FEE

A first-class presort mailing fee of $30 must be paid once each calendar year at each office of mailing by or for any person who mails first-class or airmail matter at presort rates. Any person who engages a business concern or another individual to mail for him must pay the $30 fee. This fee is separate from the fee that must be paid for a permit to mail under the permit imprint system (145.1).

136.5 ADDITIONS AND ENCLOSURES

There are no special restrictions with respect to written additions and enclosures in airmail.

136.6 MARKING, SEALING, AND DEPOSITING

.61 Place the word *Airmail* prominently on the address side of flat mail preferably below the stamps and above the address, and on the top, bottom, and sides of parcels. Adhesive Label 19, available without charge at the local post office, may be used. The return address of the sender must be shown on the address side of each air parcel mailed at zone rates of postage.

.62 Airmail may be sealed or left unsealed without affecting the air rate.

.63 Deposit airmail weighing 9 ounces or less at the post office or in a special airmail letter box or drop, if available, to insure fastest dispatch, or in any collection box. Airmail weighing over 9 ounces must be deposited at the post office, branch, or station, or handed to a rural or star route carrier.

.64 Use envelopes printed with special airmail design for airmail only.

Part 137

OFFICIAL MAIL

137.1 MEMBERS OF CONGRESS

.11 COLLECTION OF POSTAGE, FEES AND CHARGES

Postage, fees and charges, on mail sent under the franking privilege by the Vice President, Members and Members-elect of Congress, Delegates or Delegates-elect, the Resident Commissioner or Resident Commissioner-elect from Puerto Rico, the Secretary of the Senate, Sergeant at Arms of the Senate, each of the elected officers of the House of Representatives (other than a Member of the House), and Legislative Counsel of the House of Representatives, and the Senate are paid quarterly by a lump sum to the Postal Service.

.12 DESCRIPTION

Official mail of Members of Congress is sent without prepayment of postage and bears a written signature, printed facsimile signature or other required marking instead of a postage stamp. Mail accepted under frank, and the officials authorized to use franked mail, are shown in 137.13.

.13 AUTHORIZED USERS

Persons authorized to use the frank	Matter that may be franked	Marking required	Period during which the frank may be used
Vice President of the United States, Members of Congress, Resident Commissioners, Secretary of the Senate, Sergeant at Arms of the Senate, and each of the elected officers of the House of Representatives (other than Members of the House).	Public documents printed by order of Congress.	The words *Public Document*—and the letters U.S.S. or M.C. must appear on the address side.	Until the 1st day of April following expiration of their respective terms of office.
Members of Congress and Resident Commissioners.	Congressional Record or any part of it or any reprint of any part of it or speeches or reports contained in it, if relating to official business, activities or duties.	The words *Congressional Record* or *Part of Congressional Record*—and the letters U.S.S. or M.C. must appear on the address side.	During term of office only.
Members of Congress.	Seeds and agricultural reports from the Department of Agriculture.	The signature and title, either written or printed facsimile, of the person entitled to frank it, must appear on the address side.	Until the 30th day of June following the expiration of their terms of office.

.13 AUTHORIZED USERS (Cont'd)

Persons authorized to use the frank	Matter that may be franked	Marking required	Period during which the frank may be used
Vice President of the United States, Members and Members-elect of Congress, Resident Commissioners, Secretary of the Senate, Sergeant at Arms of the Senate, each of the Elected officers of the House of Representatives (other than a Member of the House), Legislative Counsels of the House of Representatives and the Senate.	Official correspondence including mailgrams.	Mailgrams may be sent in standard Mailgram envelopes. For other correspondence, the signature and title, either written or printed facsimile, of the person entitled to frank it, must appear on the address side.	During term of office only. When the position of Secretary, Sergeant at Arms, elected officer, or Legislative Counsel is vacant, privileges may be exercised in officer's name by authorized persons.
Vice-President-elect.	All mail, including airmail, sent by him in connection with preparation for the assumption of official duties as Vice President.	The signature and title, either written or printed facsimile, of the Vice-President-elect must appear on the address side. Matter intended for air service must be marked with the word *airmail* on the address side.	Until assumption of duties as the Vice President.
Former Vice President, each former Member of Congress, the former Secretary of the Senate, the former Sergeant at Arms of the Senate, each former elected officer of the House (other than a former Member of the House), and each former Delegate or Resident Commissioner.	Matter on official business related to the closing of their respective offices.	The signature and title, either written or printed facsimile, of the person entitled to frank it, must appear on the address side. Matter intended for air service must be marked with the word *airmail* on the address side.	During the 90-day period immediately following the date on which he leaves office.
Former Speakers of the House	Public documents, seeds and agricultural reports from the Department of Agriculture, official correspondence including Mailgrams	The signature and title, either written or printed facsimile, of the former Speaker, or appropriate Mailgram or public document marking as indicated above, must appear on the address side.	For as long as the former Speaker determines necessary.

.14 RESTRICTIONS

The following restrictions apply to franked mail:

a. Matter transmitted under frank of the Vice President, each Member of or Member-elect to Congress, the Secretary of the Senate, the Sergeant at Arms of the Senate, each of the elected officers of the House of Representatives (other than a Member of the House), each Delegate or Delegate-elect, the Resident Commissioner or Resident Commissioner-elect, and each Legislative Counsel of the House and the Senate must relate to the official business, activities, and duties of the Congress of the United States.

b. Matter transmitted under frank of the former Vice President, each former Member of Congress, the former Secretary of the Senate, the former Sergeant at Arms of the Senate, each former elected officer of the House of Representatives (other than a former Member of the House), and each former Delegate or Resident Commissioner must be on official business relating to the closing of his respective office.
c. No franked mail will be admitted to the mail unless admissible as ordinary mail.
d. A person entitled to use franked mail may not loan his frank or permit its use by any committee, organization, or association; or permit its use by any person for the benefit or use of any committee, organization, or association. This restriction does not apply to any committee composed of Members of Congress.
e. Franked mail is forwarded like any other mail, but when once delivered to the addressee it may not be remailed. A package of franked pieces may be sent by a person entitled to the franking privilege to one addressee, who, on receiving and opening the package, may on behalf of such person place addresses on the franked articles and mail them.
f. Franked mail is handled as ordinary mail.
g. Franked mail must be addressed to the recipient by name, *except as provided in 122.442.*

.15 WEIGHT AND SIZE LIMITS

.151 *Weight*

Official correspondence may not exceed 70 pounds.

.152 *Size, Shape, Rolls, and Sealing*

The provisions of 131.222, 131.32, 134.32, and 141.113 apply.

137.2 EXECUTIVE AND JUDICIAL OFFICERS

.21 COLLECTION OF POSTAGE AND FEES

Departments, agencies, and establishments of the United States Government must reimburse the Postal Service the equivalent amount of postage and fees due for the official mail service they receive. Instructions governing the manner of reimbursement for official mail service are issued and administered by the Manager, Government Revenue and Examination Branch, Finance Department. Federal Government offices and officers must promptly furnish, in the manner and form requested, all information the Manager considers necessary to assure the accuracy of measurements of official mail use and the adequacy of budgeting to facilitate timely payment. The Manager may require offices and officers to establish improved methods of estimating or measuring official mail volume, or to initiate the use of postage meters or other forms of positive accountability for the use of official mail services, where he determines such action is necessary to secure adequate reimbursement to the Postal Service. Prior to making any such determination the Manager will consult with the office or officer involved as to possible alternative actions that might be taken which would be effective but which might have a better cost/benefit ratio. If the Manager, nevertheless, decides to require the use of postage meters or other forms of positive accountability for the use of official mail services, adequate advance notice will be given to affected agencies.

.22 DESCRIPTION

The following kinds of mail may be sent as Federal Government mail by those authorized to use this privilege:

a. Official mail relating exclusively to the business of the Government of the United States mailed by officers of the executive and judicial branches of

the Government; official mail of legislative counsel for the House of Representatives and the Senate; official mail of the Superintendent of Documents; and official correspondence concerning the Congressional Directory under direction of the Joint Committee on Printing. *NOTE:* Mail matter such as retirement announcements, Christmas cards, job resumes, and all similar materials which do not relate exclusively to the business of the Government may not be sent as penalty or postage and fees paid mail.

b. All correspondence, bulletins, and reports relating to agricultural extension work and home economics carried on in cooperation with the United States Department of Agriculture, when mailed by the college officer or other person connected with the extension department of the college who has been designated by the Secretary of Agriculture. Mailings may be deposited by the designated officer only at the authorized post office. Correspondence must be conducted under the name of the designated officer. Correspondence with autograph signature may be sealed but all other matter must be left unsealed.

c. Bulletins, reports, periodicals, reprints of articles, and other publications necessary for the dissemination of results of researches and experiments, including lists of publications available for distribution, when mailed by agricultural experiment stations designated by the act of March 2, 1887, as amended by the act of August 11, 1955, as follows:

The officer in charge of a station that claims the privilege of sending materials without prepayment of postage through the mail must file an application with the Office of Mail Classification, Rates and Classification Department, through the post office where the station is located, stating the date of establishment of the station, its name or designation, its official organization, the names of its officers, the name of the college, school or institution to which it is attached, if any, the legislation of the State or Territory providing for its establishment, and any other legislation granting it the benefits of the act of Congress referred to in this section.

d. Annual reports of Government-aided colleges established under the act of July 2, 1862, when addressed to the Secretary of the Interior, the Secretary of Agriculture, and to any other Government-aided college. The postmaster receiving the annual reports from an officer of the college will use a post office penalty envelope or label to send it through the mail.

e. Copyright material sent to the Register of Copyrights with claim for registration, as follows:

(1) Postmasters receiving the claim for registration and any articles that are required to accompany the claim will use a post office penalty envelope or label to send the matter to the Register of Copyrights, Washington, DC 20540.

(2) If requested to do so, the postmaster will give a receipt for articles delivered to him to accompany a claim for registration.

(3) When desired, the person submitting copyright matter to the postmaster may also present the fee for copyright registration enclosed in a sealed envelope addressed to Register of Copyrights, Washington, DC 20540, which must have postage prepaid at the letter rate. The postmaster, after canceling the postage stamps, will enclose the envelope containing the fee together with the copyright material in the post office penalty envelope sent to the Register of Copyrights.

(4) Matter for copyright enclosed in post office penalty envelopes will not be sent by registered mail unless the registry fee is prepaid.

.23 METHODS OF PREPARING OFFICIAL MAIL

.231 *Postage and Fees Paid*

a. Authorized Departments and Agencies are:

Accounts, Bureau of
ACTION
Ad Hoc Advisory Group for Puerto Rico
Administrative Conference of the United States
Administrative Office of the United States Courts
Advisory Commission on Intergovernmental Relations
Advisory Committee on Federal Pay

corresponding Forms 3607, *Weighing and Dispatch Certificate*, together with Forms 3609, *Record of Permit Imprint Mailings*, must be forwarded by the postmaster to Headquarters for permit-imprint billing purposes.

c. *Form 3602-PC, Bulk Rate Mailing Statement—Third-Class Mail*

Federal Government agencies must present Form 3602-PC at the post office when official mail is sent at bulk third-class rates. The front of the form must be fully completed by the mailer to identify the mailing agency and must include the following information:

(1) Permit number should be a six-digit coding. Zeros should be added at the end of the authorized permit number if it is not a six-digit coded number (for example 005-200).

(2) Date and total number of pieces in mailing should be complete and legible.

(3) Designation of type of matter mailed such as circulars, books, or catalogs, should be indicated in the appropriate block.

(4) The weight of a single piece should be indicated in ounces and carried five places to the right of the decimal point. Examples are:

1 ounce to be written as	1.00000
3/4 ounce to be written as	.75000
2/3 ounce to be written as	.66667
1/2 ounce to be written as	.50000
1/3 ounce to be written as	.33333
1/4 ounce to be written as	.25000

(5) The back of Form 3602-PC must be fully completed and signed by the receiving employee.

.266 *Forwarding Billing Records*

All mailing statements and copies of Forms 3603 and 3610 pertinent to official mailings and meter settings must be forwarded to the following address at Headquarters for billing purposes:

Manager
Government Revenue & Examination Branch
U.S. Postal Service Headquarters
475 L'Enfant Plaza West SW
Washington, DC 20260

.267 *Exception Reports*

a. *Irregular Mailings*

(1) *Improper Preparation.* If any official mailing is not properly prepared or otherwise fails to qualify for a rate with which the pieces are endorsed, the mail must be accepted and processed by the post office in accordance with 137.81. A report must be submitted immediately to the Government Revenue and Examination Branch in order that the agency can be billed at the appropriate rate.

(2) *Mailings Without Authorization.* If official mail is presented for acceptance as second-class, controlled circulation, bulk third-class, permit imprint or metered mail at a post office without authorization, it must be accepted and processed by the post office in accordance with 137.81. Submit an exception report with the mailing statement or other record to the Government Revenue and Examination Branch.

.27 ZIP CODING OF MAIL

.271 *Addressing*

The address on all official mailings of Federal departments and agencies under 137.2 must include the ZIP Code number

.272 *Presorting and Postage Charges*

When identical pieces of individually addressed matter are included in a single mailing at the bulk rates in 131.12, 134.12, 135.122, 135.132 and 136.13, the mail must be prepared as prescribed for each bulk category.

137.3 MAIL SENT TO GOVERNMENT DEPARTMENTS

.31 CENSUS MAIL

All mail, of whatever class, relating to the census and addressed to the Census Office, or to any official thereof, and endorsed *Official Business, Census Office*, will be sent without prepayment of postage. (See 137.21 regarding postage reimbursement.) Mail sent by the Census Bureau of the Department of Commerce or one of its officers in envelopes of that Bureau is subject to the conditions in 137.231.

Subchapter 140 POSTAGE

Part 141

ENVELOPES, POSTAL CARDS, AEROGRAMMES

141.1 USE

.11 ENVELOPES

.111 COLOR

Use any light color that does not interfere with legible address and postmark. Do not use brilliant colors.

.112 QUALITY

Use paper strong enough to withstand normal handling. Highly glazed paper, or paper with an overall design, is not satisfactory.

.113 SIZE, SHAPE, AND RATIO

Envelopes of standard sizes and shapes are essential to the economical handling of mail, both by machine and manual methods. The following standards apply to envelopes:

a. Envelopes less than 3 inches in width (height) or 4¼ inches in length are nonmailable.
b. Envelopes more than 9 inches in width (height) or 12 inches in length are not recommended.
c. Envelopes having shapes other than rectangular are nonmailable.
d. Envelopes having a ratio of width (height) to length of less than 1 to 1.414 (1 to the square root of 2) are not recommended.

.114 WINDOW ENVELOPES

Window envelopes, or open panel envelopes, may be used under the following conditions:

a. The address window must be parallel with the length of the envelope.
b. The proper place for the address window is in the lower portion of the address side.
c. Nothing but the name, address, and any key number used by the mailer may appear through the address window.
d. The return address should appear in the upper left corner. If there is no return address and the delivery address does not show through the window, the piece will be handled as dead mail.
e. The address disclosed through the window must be on white paper or paper of a very light color.
f. When used for registered mail, they must conform with the conditions in 161.33.
g. Window envelopes, but not open panel envelopes, may be used for business reply mail provided:
   (1) All of the address side except the portion which will show through the window is prepared as required by 131.234.
   (2) An address prepared by any of the processes and in the style provided for by 131.234 is furnished by the distributor for use as an enclosure to return the envelope.
   (3) The window covering is of such texture as to allow maximum transparency.

.115 *Green Border Envelopes and Cards*

The use of envelopes and cards bearing a green border must be for first-class mail matter only. All envelopes and cards bearing a green border shall be charged postage equivalent to the first-class rate.

.12 PLAIN STAMPED ENVELOPES

.121 *Envelopes Available at Post Offices*

Kind	Size	Denomination	Item No.	Prices		
				Less than 500	500	1,000
Regular	6¾	13¢	631	$0.15	$68.55	$137.10
	10	13¢	131	.15	69.20	138.40
Window	6¾	13¢	632	——	69.00	138.00
	10	13¢	132	——	69.85	139.70
Precanceled	6¾	2¢	643	——	13.55	27.10
	10	2¢	123	——	14.20	28.40

Limit requisitions to a 3-accounting period supply. A minimum quantity of 500 plain stamped envelopes must be ordered even though this may cause some post offices to exceed the 3-accounting period stock level.

.122 *Sales at Post Offices*

Only sizes 6¾ and 10 regular will be sold in less than full box lots. Boxes contain 500 envelopes.

.123 *Discount on Sales of Plain Regular Stamped Envelopes*

a. *Definition.* Plain regular envelopes are charged to and carried on post office records at the amounts specified in *Handbook F—1.* Sales to customers are made at the rates specified in 141.12. This results in sales of 500 and multiples thereof out of the main stock or fixed credits being made at a discount.
b. *Recording Discount.* A record shall be kept of each bulk sale of 500 lots of plain regular envelopes. Use Form 3220, *Stamped Envelope Sales at Discount.* As each sale is made, record the date, purchaser's name, and quantity sold. The selling employee will obtain the purchaser's name from the check used for payment or by asking when payment is by cash. Do not refuse sales to those who decline to identify themselves. State purchaser declined identification in the name column. Enter the quantity in the proper size and denomination column.
c. *Reporting Discount.* Employees selling 500 lots may complete Form 3220 as often as necessary, but at least each accounting period at offices with 960 or more revenue units and each postal quarter at other offices in time for the discount to be included in a regular requisition submitted during the same period or quarter. The total amount of the discount claimed must be included in the total amount of the regular requisition for stock. Submit this requisition to the custodian of the main stock. The station superintendent or an employee in a similar capacity must verify the computations on Form 3220, enter his initials and submit the form direct to the director, office of finance, chief accountant or employee maintaining the cashbook as specified in Handbook F—1.

.124 *Precanceled Envelopes*

Only nonprofit organizations or associations covered in 134.5 may purchase 1.8-cent precanceled envelopes. Sales are made in full box lots only.

.125 *Window Envelopes*

Window envelopes are sold in full box lots only. All windows are 1⅛ inches wide and 4¾ inches long and are located ½ inch from the bottom of the envelope. In size 6¾, the window is located ⅞ inch from the left edge, in size 10 it is ¾ inch from the left edge.

.126 *Dimensions of Envelopes* (Dimensions may vary 1/16".)

Size 6¾ ---------- 3⅝ by 6½ inches
Size 10 ---------- 4⅛ by 9½ inches

.127 *Private Printing of Return Addresses*

Stamped envelopes may be privately printed in any style, provided at least 3½ inches of clear space is left at the right end of the address side of the envelope.

.13 POSTAL CARDS AVAILABLE

Denomination (cents)	Description
	CUT SINGLE CARDS:
9	Domestic regular single (available also in sheets of 40).
9	Domestic commemorative single.
12	Foreign regular single. 3½"×5½"
21	Foreign airmail single.
	DOUBLE REPLY-PAID CARDS:
18	Domestic regular reply (9 cents each half).

All domestic postal cards are precanceled. Postal cards in sheets for use in printing must be cut to regulation size, 3¼x5½ inches so that the stamp appears in the upper right corner. However domestic cards may be cut to 3x5 inches. Cases of sheet postal cards may be broken for sale. Return addresses are not printed on postal cards by the Postal Service. Domestic postal cards are not acceptable for foreign mailings. Only cards which measure 3½x5½ inches may be used.

.14 AEROGRAMMES

22 cents each. (See Publication 42, *International Mail.*)

141.2 PRINTED STAMPED ENVELOPES (Special-Request)

.21 PRINTED STAMPED ENVELOPES AVAILABLE

Kind	Size	Denomination	Item No.	Prices		
				500 only*	1,000 or more	
					Per 1,000	Each additional 500
Regular	6¾	13¢	631	$70.80	$141.10	$70.55
	10	13¢	131	71.45	142.40	71.20
Window	6¾	13¢	632	71.25	142.00	71.00
	10	13¢	132	72.10	143.70	71.85
Precanceled	6¾	2¢	643	15.80	31.10	15.55
	10	2¢	123	16.45	32.40	16.20

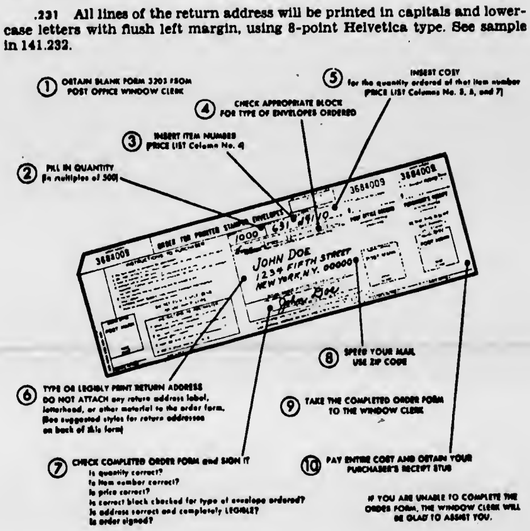
*Minimum order—Please note that the price for 500 only is more than ¼ of the per-thousand price

.22 HOW TO ORDER PRINTED STAMPED ENVELOPES

Prepare Form 3203, *Order for Printed Stamped Envelopes,* as illustrated below. Submit the order through the post office named in the return address. However, if undeliverable letters are to be returned to the main office of a firm in another city, envelopes may be ordered at the post office where they will be mailed.

.23 STYLE OF PRINTING RETURN ADDRESSES

.231 All lines of the return address will be printed in capitals and lowercase letters with flush left margin, using 8-point Helvetica type. See sample in 141.232.



CAUTION: ILLEGIBLE OR INCORRECT ORDERS DELAY RECEIPT OF ENVELOPES

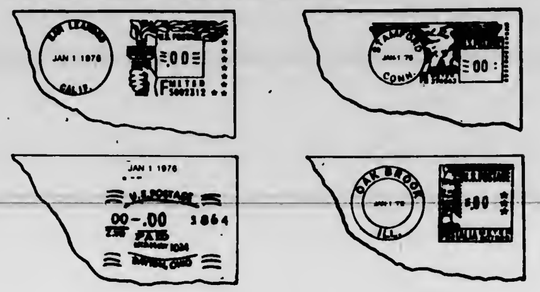
.232 **Sample style of printing:**

Charles Jones
610 Seventh Avenue
New York, NY 00000

144.4 METER STAMPS

.41 DESIGNS

The types, sizes, and styles of meter stamps are fixed when meters are approved by the Postal Service for manufacture. Only approved designs may be used. Some approved designs are illustrated below.



Official Mail (see Part 137)



.42 LEGIBILITY

Meter stamps must be legible and not overlap. Illegible or overlapping meter stamps will not be counted in determining postage paid.

.43 FLUORESCENT INK

The use of fluorescent ink is mandatory for postage imprints on letter-size metered mail effective July 1, 1973. Failure to use fluorescent ink may result in the revocation of the meter license. Letter-size mail is defined as being from 4¼" to 11½" long, 3" to 6⅛" wide, and .006" to .25" thick.

.44 METER STAMPS ON TAPE

When meter stamps are printed on tape, only tape approved by the Postal Service may be used.

.45 POSITION

Meter stamps must be printed or stuck in the upper right corner of the envelope, address label, or tag.

.46 CONTENT

144.46 Meter stamps must show the city and state designation of the licensing post office, meter number and amount of postage for all classes of mail. Upon approval of the licensing post office, a meter indicia may contain the name and state designation of its local classified branch, which sets the meter. This authorization does not apply to classified stations or contract stations or branches. ZIP Codes will not be used in customer's postage meter indicias. When it is necessary to print multidenomination meter stamps on more than one tape, the circle showing the post office or classified branch must appear on each tape.

.47 DATE OF MAILING

.471 Dates shown in the meter postmark of any type or kind of mail shall be the actual date of deposit except when the mailing piece is deposited after the last scheduled collection of the day. When deposit is made after the last scheduled collection of the day, mailers are encouraged but not required to use the date of the next scheduled collection.

.472 The month, day, and year must be shown in the meter postmark on all first-class, airmail, and priority mail (heavy pieces), and on all registered, certified, insured, COD, special delivery, and special handling mail, except prepaid reply postage, whether the postmark is printed directly on the mailing piece or on a separate tape.

.473 The month and year must be shown on meter postmarks printed on a separate tape for second-, third-, and fourth-class pieces. The day may be omitted. Mailing pieces postmarked on a separate tape with only the month and year may be accepted during the month shown and through the third day of the following month when, in the judgment of the postmaster, the mailing was unavoidably delayed prior to its deposit with the Postal Service.

.474 The date (day, month, or year) is not required to be shown on meter postmarks printed directly on a second-, third-, or fourth-class mailing piece.

.475 The date shall not be shown on meter postmarks used to prepay reply postage in accordance with 144.112.

.48 HOUR OF MAILING

The hour of mailing may be shown only on first-class, air, or special delivery mail, and then only when it is mailed in time to be dispatched at the hour shown.

.49 AD PLATES

.491 Advertising matter, slogans and the postal markings specified in .492 may be printed with the meter stamps within space limitations. Licensees must obtain the plates for the printing of this matter from authorized meter manufacturers to assure suitable quality and content in accordance with the requirements of the Postal Service. The advertising and slogans must not be objectionable or misleading.

.492 The following postal markings relating to the class of mail are permissible: FIRST CLASS; PRESORTED FIRST CLASS; THIRD CLASS; BLK. RT.; NONPROFIT ORG.; FOURTH CLASS; AIRMAIL; PRESORTED AIRMAIL; AND PRIORITY MAIL. If a postal marking is to appear in the ad plate area, no other matter is to be printed. The marking must fill the entire ad plate area to the extent practicable. All words must be in bold, capital letters which are at least ¼" in height or 18-point type and legible at two feet. Exceptions for small ad plates that will not accommodate any of the above markings will not be considered.

b. Lease his meters only to mailers to whom meter licenses have been issued by the post office.
c. Supply only those meter slogan or ad plates that meet the requirements of the U.S. Postal Service for suitable quality and content.
d. Deliver meters to post offices or postal stations only—never to mailers until set and sealed at a post office.
e. Take reasonable precautions in the transportation and storage of his meters to prevent their reaching the hands of unauthorized individuals.
f. Report the loss or theft of any of his meters, or the recovery of any lost or stolen meters, immediately to the local postmaster, the local police, and the Regional Postmaster General for the region in which the meter is licensed for use.
g. Report to the appropriate postal data center of the U.S. Postal Service each time a meter is presented at a post office for initial setting or to be checked out of service—the report to include the name and address of the mailer, the post office or postal station through which it was handled, and the readings of both registers at the time the meter left or was returned to the manufacturer's possession.
h. Maintain at his headquarters a complete record by serial number of all meters manufactured, showing all movements of each from the time it is produced until it is scrapped, and the reading of the ascending register each time it is checked into or out of service through a post office. These records must be subject to inspection at any time during businesss hours by officials of the U.S. Postal Service. These records may be destroyed 3 years after the meter is scrapped.
i. Cancel his lease agreement with any mailer whose meter license is canceled by the U.S. Postal Service and remove his meter promptly.
j. Maintain a permanent record by serial number of all meter keys issued to postmasters as well as those sections of the manufacturer's establishment in which their use is essential, preferably in the form of signed receipt cards. Report the loss or theft of any of his meter setting keys, or the recovery of lost or stolen keys, to the Regional Postmaster General.
k. Examine each meter withdrawn from service for failure to record its operations correctly and accurately, and report to the U.S. Postal Service the mechanical condition or fault which caused the failure. See 144.34.
l. Submit such other reports to the U.S. Postal Service as may be required from time to time.

.96 MAINTENANCE

.961 *Replacement.* The manufacturer must maintain his meters in proper operating condition for mailers by replacing them when necessary or desirable to forestall mechanical breakdown.

.962 *Inspection of Meters in Use.* The manufacturer must have all of his meters in service with mailers inspected at least twice annually at approximate six-month intervals. Inspections must be sufficiently thorough to determine that each meter is clean, in proper operating condition, is recording its operations correctly and accurately, that neither the post office seal nor any seal placed by the manufacturer to prevent access to the mechanism has been removed or tampered with, and that there are no other indications of tampering. A specimen printing of .00¢ shall be run off and the ascending and descending registers checked to insure that they do not change. The meter register readings must be compared with the control figure last recorded by the postal setting employee in the meter user's Form 3602-A, *Daily Record of Meter Register Readings*, to confirm the accuracy of the registers. If the post office control figure has not been recorded, obtain such figure immediately from post office to confirm accuracy of registers. Any irregularities found in

the operation of a meter at any time or any improper usage of a meter must be reported immediately to the mailer's postmaster, and appropriate steps must be taken to have the meter discontinued.

.963 *Repair of Internal Mechanism.* Repair or reconditioning of meters involving access to internal mechanisms must be performed only within a factory or suitable meter repair department under the direct control and supervision of the manufacturer. Meters must be checked out of service through the post office of setting before they are opened or any internal repairs are undertaken.

.97 NOTICE OF PROPOSED CHANGES IN REGULATIONS

So far as may be consistent with the public interest, before any changes are made in the regulations in part 144, the U.S. Postal Service will give notice of any proposed changes sufficiently far in advance of the proposed effective date to enable persons who manufacture or who may be interested in manufacturing postage meters, a reasonable opportunity to be heard and to adjust their operations to accord with the proposed changes if they are adopted.

Part 145
PERMIT IMPRINTS

145.1 PERMIT

.11 APPLICATION

A permit to use permit imprints and pay postage in cash at the time of mailing may be obtained by submitting Form 3601, *Application to Mail Without Affixing Postage Stamps*, with a fee of $20, to the post officer where mailings will be made. The postmaster will give the applicant a receipt for the fee on Form 3544. No other fee for use of permit imprints has to be paid so long as the permit is active. However, the applicant must also pay an annual bulk mailing fee if he mails third-class matter at bulk rates. See 134.421.

.12 REQUISITION OF SUPPLIES

Requisition from your supply office the following forms, when you receive the first application at your office to use permit imprints:

3601 *Application to Mail Without Affixing Postage Stamps.*
3602 *Statement of Mailing Matter With Permit Imprint.*
3607 *Weighing and Dispatch Certificate.*
3608 *Weighing Clearance.*
3609 *Record of Permit Imprint Mailings.*

.13 ISSUANCE

Issue permits on Form 3601. Date each permit and number it consecutively beginning with No. 1 for the first permit issued at your office. Numbers assigned to permits which have been revoked may not be reassigned within 6 months except when a former permit holder requests assignment of the number he previously held. Deliver the permit to the applicant and file the application portion.

.14 RECORDS

At offices that have a large number of permit holders, prepare and maintain for each active permit:

a. A numerical card file showing permit number and name of permit holder.
b. An alphabetical card file showing the permit number, name and address of permit holder, and the date permit was issued.

.15 REVOCATION

.151 The permit may be revoked if used in operating any unlawful scheme or enterprise, for nonuse during any consecutive 12 months, or for any noncompliance with the regulations governing the use of permit imprints. The method of revoking a permit is described in 144.23.

.152 If revocation is because of nonuse and the permit holder indicates that he will resume mailings within a 90-day period, continue the permit for a period not to exceed 90 days and so inform the permit holder without referring the written reply to Headquarters. Use Form 3604, *Nonuse of Mailing Permit or Meter License*, for this purpose. If the notice of revocation is for any purpose other than nonuse or the answer indicates the permit holder will not mail within the next 90 days, promptly forward the answer to the Office of Mail Classification, Rates & Classification Department, with a statement of the facts and await further instructions.

145.2 PREPARATION OF PERMIT IMPRINTS

a. Permit imprints may be made by printing press, handstamp, lithography, mimeograph, multigraph, addressograph, or similar device. They may not be typewritten or hand drawn. The imprint must be prepared both as to style and content in use of the forms shown in 145.4. No other forms of imprints may be used. The imprint must be legible and must be of a color that contrasts sufficiently with the paper to make the imprint readable. The entire imprint must be placed in the upper right corner of the address side of each piece, parallel with the length of the piece.

b. The position of the imprint on fourth-class bound printed matter may be varied so that automatic data processing equipment may be utilized to simultaneously print the address, imprint and other postal information. The permit may be placed on the parcel or on the label for items mailed under the provisions of 135.235.

145.3 CONTENT OF PERMIT IMPRINTS

.31 FIRST-CLASS MAIL

Permit imprints must show city and State; *First-Class Mail; U.S. Postage Paid;* and permit number. They may show the mailing date, amount of postage paid or the number of ounces for which postage is paid. (See illustration in 145.4a.) The ZIP Code of the permit holder may be shown immediately following the name of the State or in a separate inscription reading *ZIP Code 00000* when it is possible to include the ZIP Code without creating uncertainty as to permit holder's correct address or permit number.

.32 SECOND-, THIRD-, AND FOURTH-CLASS MAIL

Permit imprints must show same information as first class, except the date and the words *First-Class Mail* must be omitted. Permit indicia may include: amount of postage paid, weight of piece, and markings required by 131.5, 134.436 or 135.2.

.33 MAIL WITH SPECIAL SERVICES

Permit mail with special services paid by permit must show *First-Class Mail*, if first-class mail; U.S. Postage and Fees Paid; City and State; and permit number. The company may be shown in place of the city and permit number in accordance with 145.34.

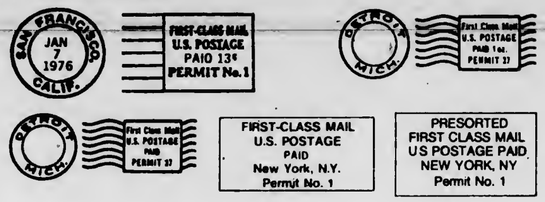
.34 COMPANY PERMIT IMPRINTS FOR ANY CLASS OF MAIL

The city, State, and permit number may be omitted if the permit holder has permits at two or more post offices, provided the exact name of the company or individual holding the permits is shown in the permit imprint. When this style of company permit imprint is used, the mailing piece *must bear a complete return address*. The permit holder must maintain for a 3-year period and make available for inspection and audit upon request of post office officials, records showing the post office at which any particular mailing was made, date of mailing, total weight of the mailing, weight of a single piece, and the amount of postage paid. A sample piece from the mailing must also be available.

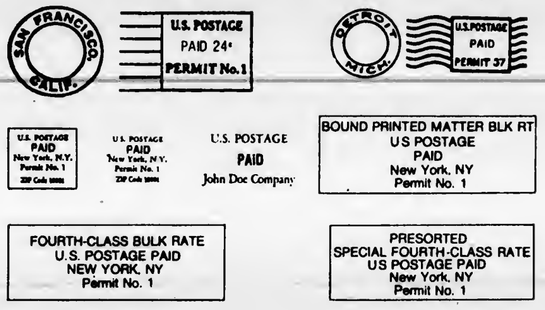
145.4 FORM OF PERMIT IMPRINTS

Permit imprints must be prepared in one of the forms illustrated. The addition of extraneous matter is not permitted.

a. FIRST-CLASS MAIL



b. SECOND-, THIRD-, AND FOURTH-CLASS MAIL
(Date and First-Class Mail omitted)



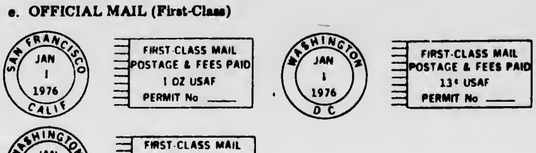
c. BULK THIRD-CLASS MAIL



d. SPECIAL RATES FOR AUTHORIZED ORGANIZATIONS ONLY



e. OFFICIAL MAIL (First-Class)



f. OFFICIAL MAIL (Fourth Class)
(Date and First Class Mail Omitted)



145.5 MAILINGS WITH PERMIT IMPRINTS

.51 MINIMUM QUANTITIES

Except as stated in 145.52, minimum quantities required to be mailed at one time are as follows:

a. *First-Class Mail.* 300 pieces of identical weight
b. *First-Class Presort Rate.* 500 pieces of identical size and weight.
c. *Second- and Third-Class Mail.* 300 pieces of identical matter, except 50 pounds or 200 pieces of identical third-class bulk mail.
d. *Fourth-Class Mail.* 250 pieces of identical matter.
e. *Fourth-Class Zone Bulk Rate Mail.* 300 or more pieces of identical weight.
f. *Special Fourth-Class Presort Rate.* 500 or more pieces of identical matter for the Level A rate. 2,000 or more pieces of identical matter for the Level B rate.
g. *International Mail.* See Publication 42, *International Mail.* 300 pieces of identical matter.

.52 EXCEPTIONS TO MINIMUM QUANTITIES

When any mailing consists of less than the required minimum, enter an explanation on the *Mailing Statement*, Form 3602. Exceptions may be made for the following reasons only:

a. *First-Class Mail.* Occasional exception for a mailer whose total daily mailings are not much more than 300 but who, to cooperate with the post office, presents a portion of his mailings early in the day.
b. *All Classes of Mail.* When a large mailing extends over two or more consecutive days and the last deposit, made to complete the mailing, is less than the minimum.

.53 PREPARATION FOR MAILING

The mailer must arrange all pieces with the address side facing the same way. It is recommended that the mailer separate the pieces to the finest extent possible in the manner prescribed by sections 125.32 and 134.43. Each class of mail must be separately presented with a separate *Mailing Statement*, Form 3602 or 3605. Fourth-class mailings on which postage is paid at different zone rates must be separated according to the postage paid on each piece.

.54 PLACE OF MAILING

Deposit mail at the post office that issued the permit or at a station or branch designated by the postmaster. Permit imprint mail shall be accepted at the main post office or at classified stations and branches where there is a separation of financial and mailhandling activities.

.55 MAILING STATEMENT

Prepare and sign a *Mailing Statement*, Form 3602 or 3605, for each mailing. The statement must be prepared by typewriter, ink, or indelible pencil to show the mailer's address, permit number, class of mail, number of pieces in the mailing, and weight of single piece. For third-class bulk mailings, additional information required by the *Mailing Statement* must be shown. If a receipt is desired, present a duplicate copy of Form 3602 or 3605, which will be initiated by the accepting employee after verification and returned to the mailer.

.56 PAYMENT OF POSTAGE

.561 *Prepayment in Full Required*

The mailer must pay for each mailing when it is presented at the post office, or make an advance deposit of enough to cover more than one mailing. Payments for postage or deposits must be made at points designated by the postmaster. These payments will not be accepted by employees handling the mail. Advance deposits may be made by mail. When the deposit becomes less than enough to pay for an entire mailing, an additional amount must be deposited before any mailings are made. Credit for postage is not allowed. Postage may not be paid partly in money and partly by postage stamps, except as provided in 145.563. Whenever the computation of postage results in a fraction of a cent in the total, the next higher even cent must be paid.

.562 *Receiving Money*

Window clerks who receive deposits must:

a. Accept money for postage, advance deposits, and fees. (See 145.11.)
b. Issue receipts on Form 3544 in triplicate, duplicate to the director, office of finance or chief accountant, and triplicate to the weigher.

.563 Confine verification of permit imprint mail to the principal weighing section if practicable. When conditions warrant, make verification at the branch or station accepting the mail. Accepting clerks at stations and branches shall telephone the principal weighing section prior to dispatch of the mail to ascertain if mailer has sufficient deposit on hand to cover postage charges.

.564 Branches and stations not authorized to make verification shall send permit imprint mail to the principal weighing section labeled to prevent the mail being taken direct to a distribution point.

.565 The verifying employee must:

a. Weight permit imprint mail and verify postage.
b. Verify mail is properly prepared. See 131.43, 131.5, and 135.25 for presort requirements.
c. Fill out the back of the mailing statement (Form 3602 or 3605) and at the same time, by carbon, prepare Form 3607. If the mailer requests a receipt, he must present a duplicate copy of the mailing statement which will be delivered to him after the back is filled out.
e. Send mail accompanied by Form 3607 to clearing point.

.566 Maintain only one ledger record, Form 3609, for each permit. Keep all Forms 3609 at the main office or other mail handling unit where the principal weighing section is located. The supervisor in charge of the weighing section will be responsible for the proper maintenance of all Forms 3609. Weighing section employees shall:

a. Record fees and advance deposits on Form 3609 from copies of Form 3544.
b. Record the postage charges on Form 3609 from each Statement of Mailing (Form 3602 or 3605).
c. Prepare daily Form 3083 and forward it to the director, office of finance or chief accountant with Forms 3602.

.57 POST OFFICE COMPUTATION OF POSTAGE

.571 *Random Samples*

Enough pieces will be selected at random from the entire lot to determine whether the whole mailing consists of identical pieces.

.572 *Weight of Single Piece*

Determine the exact weight of a single piece and the amount of postage required. When scales do not show exact weight of a single piece, weigh enough pieces to balance beam and divide total weight by number weighed.

Example: 20 pieces weigh exactly 3½ ounces.
3.5÷20=0.175 ounce.

.573 *Total Number of Pieces*

Ascertain the total number of pieces by one of the following methods:

a. Find the total weight in pounds, exclusive of tare. (For definition of tare, see 145.575.) Reduce the pounds to ounces and divide the total number of ounces by the weight of a single piece.

Example: Mailer's statement shows 1,240 pieces in mailing which weigh 13 pounds, 9 ounces. A single piece weighs 0.175 ounce.
Convert weight to ounces: 13×16+9=217 ounces.
217÷0.175=1,240 pieces.

b. Find the total weight, exclusive of tare, and the total weight exactly of 100 pieces in ounces and fractions of an ounce. Divide the total weight by the weight of 100 pieces. This will give the total number of hundreds and fractions of a hundred in the entire lot.

Example: Mailer's statement shows 124,400 pieces in mailing which weigh 1,360 pounds, 10 ounces. A single piece weighs 0.175 ounce.
Convert weight to ounces: 1,360×16+10=21,770
Weight of 100 pieces: 0.175×100=17.5
21,770÷17.5=1,244
1,244×100=124,400 pieces.

.574 *Agreement with Mailing Statement*

The result of either of these methods of computation should agree with the number of pieces shown on the statement of mailing. If they do not agree the matter will be taken up with the mailer and, if necessary, further examination and verification will be made.

.575 *Tare*

Tare includes sacks, cartons or other containers, hand trucks, skids, or similar pieces of equipment upon which the mail may be placed during the weighing operation. The standard weights for new sacks are as follows:

			Weight	
Sack	*Material*	*Color*	*Lbs.*	*Ozs.*
No. 1	Canvas	White	3	7
No. 2	Canvas	White	2	8
No. 2	Cotton	White	1	12
No. 2	Nylon	Brown	1	4
No. 3	Canvas	White	1	12
No. 3	Cotton	White	1	2
No. 3	Nylon	Brown		13

.576 *Clearance*

Designate a clearing point in the mailing division, separate from the weighing section, where an employee must check the mail with Form 3607 prior to distribution. Do not distribute mail not accompanied by Form 3607 until the form has been received from the weighing section. After comparing the number of sacks or outside bundles with the volume reported on Form 3607, the clearing section will remove Form 3607 and release the mail for distribution in sacks or hampers with identifying labels reading:

Weighing Clearance, Permit Imprint Mail from_____
(Unit or Station)

The clearing section employee verifying such mailings must sign Form 3607 in the space provided. Forward Forms 3607 to director, office of finance or chief accountant daily.

.577 *Small Offices*

At small offices which do not have a weigher or a chief accountant, the postmaster and employees designated by him must perform the weighing and financial duties following in principle the instructions in 145.54–.56 except that the use of Forms 3607 and 3083 may be omitted. The function of receiving cash deposits for permit imprint mailings should be separated, as much as possible, from that of weighing and maintaining Form 3609. The employee receiving advance deposits must forward the duplicate copies of Form 3544 to the employee maintaining the cashbook; triplicate to employee maintaining

Form 3609. When cash is paid for postage at the time of mailing, the amount of postage charged may be entered directly in the appropriate revenue account. In this case entries in the trust fund account are not required.

145.6 ADDITIONAL SERVICES

Postage may be paid by means of permit imprints on matter which is entitled to be registered, or sent as certified, insured, or COD mail.

145.7 IMPROPER USE OF PERMIT IMPRINTS

.71 DISTRIBUTED OUTSIDE THE MAIL AND AS ENCLOSURES

Since permit imprints indicate that the matter on which they appear has had postage paid thereon under the permit imprint system, they must not ordinarily appear on matter which has not had postage so paid thereon, as, for example, matter which is circulated by means other than mail or which is circulated as an enclosure with other matter either by mail or by means other than mail. Permit imprints may appear on address labels, wrappers, envelopes, and other containers, and on complete mailing pieces, which have not had postage paid thereon under the permit imprint system, provided it would be impracticable to omit the permit imprint, as, for example, when envelopes are shipped from a printer to a permit imprint permit holder.

.72 PLACE OF ACCEPTANCE

Permit imprint matter will be accepted for mailing only at the post office shown in the permit imprint except when company permit imprints are used as provided for by 145.33 or when arrangements for acceptance at other post offices are made under the provisions of 145.6.

.73 NONPERMIT MAILINGS

Permit imprints must be obliterated from matter which is mailed as nonpermit imprint matter prepaid with postage by means of stamps or meter stamps.

145.8 OPTIONAL PROCEDURE FOR ACCEPTING PERMIT IMPRINT MAIL

.81 OBJECTIVE

The purpose of this optional procedure is to provide for the acceptance of permit imprint mail using the minimum amount of space, time, and manpower, and utilizing the latest developments in mechanization, facilities, and transportation while maintaining adequate control of the collection of correct postage charges.

.82 PROCEDURE

Weighing of the entire mailing on scales is not required. Postage is computed from the mailers' *Mailing Statement*, Form 3602 or *Mailing Statement—4th Class Bulk Rates*, Form 3605, which must always show the total number of pieces. The total computed weight must also be shown when it is known that the minimum per piece postage charge will not apply.

.83 VERIFICATION

Sample pieces from each mailing shall be weighed by a post office employee, either at the mailers' plant or at the post office, to determine whether the pound or the minimum per piece postage charges apply. Post office employees may be sent on rotating assignments to the mailers' plants to weigh sample pieces and observe preparation of mail by mailers only when the mail is not to be delivered to the post office for dispatch or when considered necessary

and authorized in writing by Regional Postmaster General. Mailers must maintain for a three-year period, and make available for inspection and audit upon request of post office officials, all production and billing records relating to any particular mailing. A sample piece from the mailing must also be available.

.84 LIMITED USE OF OPTIONAL PROCEDURE

An optional procedure for items of identical weight must be authorized by the Regional Postmaster General. An optional procedure for items of nonidentical weight must be authorized by the Office of Mail Classification. It will be approved only when the mailers can make one or more of the following arrangements which are mutually beneficial to the mailers and the Postal Service:

a. Loading at the mailers' plant the major portion of the mailings into single or combination destination trailers with any remaining portion transported at the mailers' expense and risk from the plant to an acceptance place such as a special acceptance facility or sectional center facility designated by the Regional Postmaster General.
b. Transportation of the entire mailing at the mailer's expense and risk from the plant to the acceptance place designated by the Regional Postmaster General.
c. Merger by mailers of different varieties and classes of mailing pieces into direct sacks which could not be prepared if the pieces were mailed separately.
d. Unusual arrangements for which the Regional Postmaster General has obtained approval from the Office of Mail Classification, Rates & Classification Department.

145.9 EXPERIMENTAL NEGOTIATED PROCEDURES

Notwithstanding any other provision of the regulations of the Postal Service, the Office of Mail Classification may authorize contracts with individual mailers to provide for experimental methods of paying postage whenever the adoption of such methods would be in the best interests of the Postal Service. Such contracts may provide for surcharges to cover damages suffered by the Postal Service from the incorrect payment of postage.

Part 146

PREPAYMENT AND POSTAGE DUE

146.1 POSTAGE PAYMENT

.11 PREPAYMENT REQUIRED

Postage on all mail must be fully prepaid at the time of mailing, with the following exceptions:

a. Business reply mail, see 131.23, or metered reply mail handled as business reply mail, see 146.122.
b. Federal Government and free mail, see part 137.
c. Certain mail for the blind, see part 136.
d. Mail sent by members of the Armed Forces, see 131.7.
e. Letters and printed matter carried or delivered by vessels not regularly employed in carrying mail, see 131.8.
f. Keys and identification devices returned to owners, see 134.13.

.12 INSUFFICIENT PREPAYMENT

.121 Mail of any class, including that for which special services are indicated, received at either the office of mailing or office of address without any postage, will be endorsed *Returned for Postage* and returned to the sender without an attempt at delivery. If no return address is shown, or if the delivery and return address are identical, the piece will be disposed of in accordance with 159.4. (Note that letters, but not post cards, are to be sent to dead mail offices as prescribed in 159.41m.)

.122 Metered reply mail, which is prepared in accordance with 144.112, except for the mailer's inadvertent failure to imprint a meter stamp on the envelope, will be treated as business reply mail (see 131.23), and will be delivered upon payment of postage and the corresponding business reply fee specified in 131.233.

.123 Mail of any class, including that for which special services is indicated (except registered mail—see 161.31), received at either the office of mailing or office of address without sufficient postage will be:

a. Marked to show the total deficiency of postage and fees.
b. Dispatched promptly to the addressee by means of the regular or special service indicated.
c. Delivered to addressee on payment of the charges marked on the mail. When quantity mailings of ten or more pieces are received at the office of mailing without sufficient postage, the mailer will be notified, without charge, preferably by telephone, in order that the postage charges may be adjusted before the mail is dispatched.

.124 When the addressee refuses to pay the deficient postage, and when the mail is undeliverable for any other reason, it will be handled as follows:

a. First-class mail, including airmail, bearing a return address will be returned to the sender and delivered on payment by him of the deficient postage.
b. Mail other than first-class bearing a return address will be returned to the sender and delivered on payment by him of the total of the deficient postage, the forwarding postage, if any, and the return postage.
c. All mail that does not bear a return address will be disposed of in accordance with 159.4. (Note that letters, but not post cards, are to be sent to dead mail offices as prescribed in 159.41m.)

.13 POSTAGE ON MAIL INSUFFICIENTLY PREPAID

Postage stamps stuck to mail are canceled when the mail is first received in the post office. Postage stamps or meter stamps originally affixed to insufficiently prepaid mail will, when it is again presented for mailing, be accepted in payment of postage to the amount of their face value.

.14 CONTESTED CLASSIFICATION

.141 If a mailer disagrees with a classification decision made by a local post office, the decision may be appealed by the mailer, in writing, to the postmaster within thirty days. The postmaster will forward the appeal to his postal services center where a decision will be made on the appeal. An unfavorable decision by the postal services center may be appealed, in writing, within ten days following receipt of the decision. The appeal must be filed with the postmaster. The postmaster will forward the appeal to the General Manager, Domestic Mail Classification Division, U. S. Postal Service, Washington, DC 20260, for a final decision.

.142 Pending resolution of an appeal, the mailer may, by letter to the local postmaster, request to mail under a deposit arrangement. The mailer must deposit with the postmaster an amount adequate to cover postage at the higher rate. The difference between the amount deposited and a lower rate subsequently determined to be appropriate will be returned to the mailer if his appeal is sustained. If the appeal is denied, the deposit will not be returned; the applicable postage will be deducted from the deposit and entered in A/C 114 as postage revenue through the use of a postage-due invoice in lieu of postage due stamps. The customer will be requested to sign the invoice and will be given a duplicate. If a balance remains in the deposit after the postage has been deducted, it should be refunded if the customer so wishes.

146.2 MAILABLE MATTER NOT BEARING POSTAGE FOUND IN, PLACED UPON, ATTACHED TO, SUPPORTED BY, OR HUNG FROM, PRIVATE MAIL RECEPTACLES

.21 PENALTY

Whoever knowingly and willfully deposits any mailable matter such as statements of account, circulars, sale bills, or other like matter, on which no postage has been paid, in any letterbox established, approved, or accepted by the Postmaster General for the receipt or delivery of mail matter on any route with intent to avoid payment of lawful postage thereon, shall for each such offense be fined not more than $300.

.22 COLLECTION OF POSTAGE

.221 Except as permitted in 156.58, any mailable matter not bearing postage found in, or upon, or attached to, or supported by, or hung from, the private mail receptacles described in 151.11, is subject to the payment of the same postage as would be paid if carried by mail. When such matter is found, it will be dated, initialed, marked to show the address where it was found and taken to the post office. If general distribution of identical pieces has been made on a route, only two copies, each dated, initialed and marked with the address where found, should be taken to the office along with a written notation of the total number of identical pieces observed on the route. The postmaster shall have a memorandum prepared showing the details to support the claim of postage.

.222 If the person or firm or distributor responsible for, or who assists in, the impermissible use of the private mail receptacles is known, and is within the delivery area of the post office, the local postmaster shall make demand for the total postage chargeable on all pieces. If the pieces are found in the receptacles, the postmaster shall also inform the person or firm or distributor that the practice is a violation of the law. An equivalent amount of postage due stamps affixed to a sheet of paper and properly canceled as a receipt for money collected shall be given the person or firm. If payment is in form of uncanceled stamps or meter stamps, they will be affixed to a sheet, canceled and returned as a receipt for payment. No other receipt will be issued.

.23 REPORT TO OTHER OFFICE

If the person or firm or distributor responsible for the impermissible use of the private mail receptacles is located at another post office, send a sample piece with a report of the facts to the postmaster at that location with request that he take the action in 146.22.

.24 REPEATED VIOLATIONS

If the person or firm or distributor responsible for the impermissible use of the private mail receptacles continues the impermissible use after having been notified that the use is impermissible, the postmaster shall submit a sample piece and a report of the facts (see 146.22) to the postal inspector in charge.

146.3 COLLECTION OF POSTAGE DUE

.31 UPON DELIVERY

Postage due mail is collected in cash only, prior to delivery to addressee. Exception: Postage on quantity mailings found in private mail boxes is collected as required in 146.22.

.32 BY ADVANCE DEPOSIT

If postage-due collections amount to approximately $10 or more every 60 days, payment may be made by advance deposits of money.

.33 RECEIVING DEPOSITS

Window clerks who receive money deposits must issue receipts on Form 3544 in triplicate. Send or hand the original to the customer, duplicate to the director, office of finance, chief accountant, or employee maintaining the cashbook, and triplicate to the clerk designated to process postage-due mailing for customers paying by advance deposits.

.34 HANDLING MAIL

To the maximum extent practicable, the clerk designated to process postage-due mail for customers who have made advance deposits shall not handle cash, including postage-due transactions. He must:

a. Be assigned a fixed credit of postage-due stamps or the use of a postage-due meter (see 144.834).
b. Maintain a record of deposits, withdrawals, and balances for patrons on Forms 25, *Trust Fund Account*.
c. Affix necessary postage-due stamps or meter impressions to mail.

.35 REPLENISHING FIXED CREDITS

The postage-due clerk will use Form 17, *Stamp Requisition*, marked *Advance Postage Due* to replenish his fixed credit, in the same manner as for other stamp fixed credits. Requisition may be scheduled on either a weekly or an accounting period cycle, based on need for stock replenishment and number of transactions.

.36 REPORTING TRANSACTIONS

.361 Clerks using postage-due stamps will prepare Form 3083, *Trust Accounts Receipts and Withdrawals*, each time they prepare Form 17. The entry on line 2 of Form 3083 must be the total of Forms 3544 received since

submission of the previous Form 3083. The entry on line 5 of Form 3083 must be identical to the requisition total shown on the related Form 17. Send Form 3083 to the director, office of finance, chief accountant or postmaster as appropriate.

.362 Clerks assigned a postage meter for affixing postage due will prepare Form 3602-PO at the close of their tour to account for the amount of impressions applied to postage due mail. They will also prepare Form 3083 as described in 146.361 except that the entry on line 5 must be identical to the amount of postage used on Form 3602-PO. Mark Form 3602-PO *Advance Postage Due*. Forward Forms 3083 and 3602-PO to the director, office of finance, chief accountant or postmaster as appropriate.

.363 Clerks obtaining postage-due meter impressions from another employee having custody of a meter will prepare Form 3083, entering on line 5 the amount of postage furnished. Give the Form 3083 to the employee accountable for the meter for use as a cash voucher and submission with the Form 3602-PO he prepares.

.37 PARCELS CONTAINING WRITTEN MATTER

At the office of address, parcels subject to postage due may be handled as follows:

a. Collect postage due for parcels containing nonpermissible written matter which is merely incidental to the entire contents at the following rates:

Difference between first-class rate and rate paid	*Postage-due charge*
$0.01–$0.25	Full amount
0.26–1.00	$0.25
1.01 or more	1.00

b. Collect at the first-class rate postage due on parcels consisting mainly of first-class matter.
c. Affix postage-due stamps for the amount received as prescribed under *a* or *b*, cancel stamps, and deliver parcel.
d. If postage-due charge is for unpaid first-class enclosure found in parcel, use Form 3751, *Notice of Unpaid Enclosure in Package*, to notify sender.

146.4 WHEN NOT TO COLLECT

.41 STAMPS LOST OFF MAIL

When it is apparent from the impression of a canceling stamp that a postage stamp has been wholly or partially lost, handle the piece as prepaid one full rate only.

.42 ADDRESSED TO POSTMASTER

Postmasters must not pay postage due on mail addressed to them in their official capacity. If the mail is of a personal character, postage-due charges must be collected before delivery.

.43 ADDRESSED TO REGIONAL OFFICE, POSTAL INSPECTOR IN CHARGE, AND POSTAL INSPECTORS

Deliver mail bearing postage-due charges and addressed to a regional office or addressed in their official capacity to postal inspectors in charge or to postal inspectors without collection of additional postage.

.44 ADDRESSED TO OTHER FEDERAL GOVERNMENT OFFICES

.441 *At Washington, D.C.*

Deliver any part-paid or unpaid letter addressed to any U.S. Government department or bureau at Washington, D.C., without collection of additional postage. Return mail to the sender if failure to prepay full postage appears intentional. Do not collect any postage due on other mail addressed to those Federal Government agencies listed in 137.231a.

.442 *At Places Other Than Washington, D.C.*

Do not collect any postage due on mail addressed to those Federal Government agencies listed in 137.231a. Postage due on mail for Government offices not listed in 137.231a must be collected by the postmaster making delivery.

.45 REGISTERED MAIL

Deliver registered mail, except that endorsed to show that it was registered in transit, without collection of postage due. Complete Form 3826, *Registry Irregularity Report*, and send it to the post office of mailing. The postmaster at that office must follow instructions on Form 3826 to account for the short payment. Collect postage due on matter registered at other than the mailing office.

146.5 POSTAGE-DUE STAMPS

.51 USE

Postage-due stamps are to be used to collect postage due on mail. Do not accept them in payment of postage. If no postage-due stamps are on hand, issue ordinary stamps. If you receive a letter mailed from another post office with only postage-due stamps attached and their value covers full postage charges, deliver it without collection of additional postage.

.52 WHEN TO AFFIX

.521 *At City Delivery Offices*

Affix postage-due stamps to postage-due mail received for delivery, unless addressee has filed a forwarding order, or delivery is to be made through lock boxes or general delivery, or unless there is good reason to believe the postage due will not be paid.

.522 *At Other Offices*

Do not affix postage-due stamps to mail of any class prior to delivery except as provided in 146.523.

.523 Rural Delivery At All Offices

Affix postage-due stamps to all classes of shortpaid mail and assign to the carrier for collection and delivery, including any shortpaid mail for customers of non-personnel rural stations and branches served by the carrier.

.53 WHEN TO CANCEL

Immediately after affixing.

.54 CHARGING OF STAMPS TO CARRIERS

.541 Due Bill

When postage-due mail is turned over to a carrier, he must sign a due bill, Form 3582-B, for the value of the stamps furnished or handle in accordance with 146.542.

.542 Advancing Amount

Carriers may make advance payments for postage-due stamps from personal funds, and a due bill need not be signed.

.543 Failure to Collect

The carrier must leave a notice on Form 3570, *Notice of Attempt to Deliver Mail*, if the deficient postage cannot be collected. Rural carriers who cannot collect without leaving the route must give notice on Form 3570. Return the mail to the post office for the prescribed retention period pending payment of postage due or directions for disposition.

.544 Settlement

When the carrier returns to the post office, he must account for the postage due collected or return undeliverable mail. He will then be given the due bill which he signed or any portion of the sum advanced.

.55 ON UNDELIVERABLE MAIL

.551 *Voiding Stamps*

Before mail to which postage-due stamps have been affixed is forwarded or returned to another post office or transferred for delivery from another unit, station, or branch of the same office, or when this mail becomes dead, mark the postage-due stamps *Voided*.

.552 *Disposal of Mail*

After the stamps have been voided, release the mail for dispatch in the regular manner, marked for forwarding or return. Dispose of dead mail as prescribed.

.553 *Mail Bearing Voided Stamps Received at an Office*

Treat mail bearing postage-due stamps marked *Voided* which is received at any office, station, or branch in the same manner as other postage-due mail.

.56 CLAIMS FOR VOIDED STAMPS

.561 *Individual Fixed Credits*

Keep a daily record on Form 25, *Trust Fund Account*, of amount of postage-due stamps voided. Once each quarter, or more frequently if quantity justifies, total the record and mark on Form 25: *I certify that postage-due stamps in the amount of $____ were voided by me.* The certification must be signed by the postage-due clerk and certified by a supervisor. Submit the Form 25 with damaged or redeemed stamp stock, listing the value on the reverse of Form 17, *Stamp Requisition*.

.562 *Post Office Accounts*

a. *Offices Authorized to Have Stamp Stock Destruction Committee*
   (1) Keep summary record of claims from postage-due clerks on Form 25.
   (2) Have destruction committee verify claims on Form 25 from postage-due clerks and destroy Forms 25. After witnessing verification and destruction of claims from postage-due clerks, each member of the committee must sign a statement on Form 3238, *Destruction Certificate*, certifying to total amount of postage-due stamps voided.

b. *Other Offices*
   (1) Send claims for voided postage-due stamps to the appropriate sectional center in accordance with the schedule in section 224.331, Fiscal Handbook F-1, *Financial and Cost Controls*. Include the value of the voided postage-due claims with that for nonsaleable stamp stock when computing minimum values for shipment. Package voided postage-due

claims separately from other stamp stock and mark the envelope or package *Voided Postage-Due Claims*.
   (2) Prepare a separate destruction certificate, Form 3238, in accordance with instructions in section 224.332, Fiscal Handbook F-1. List claims for voided postage-due only. Do not list claims for voided postage-due on destruction certificates for any other type of stock.

c. *All Offices*
   Enter amount in AIC 510(D) and submit Form 3238 with next statement of account.

146.6 QUANTITY MAILINGS SHORTPAID

.61 FIRST CLASS

Rate amount of postage due and handle as required in 146.31.

.62 OTHER CLASSES

.621 *Report to Mailing Office*

Report to postmaster at mailing office on Form 3750, *Notice of Shortpaid Mail*, receipt of other than first-class mail obviously representing a quantity mailing of similar pieces. Send a specimen with the report. Issue this report if you are the postmaster at office of address or at a large post office designated to distribute State mail.

.622 *Disposition*

After completing report mark the balance of mail *Form 3750 Sent*, and send the mail on for delivery without rating or collecting postage due. Postage due will be collected from mailer. See 146.624.

.623 *Repeated Errors*

When it is observed that shortpaid quantity mailings are repeatedly received from the same post office, send Forms 3750 and specimen pieces to the revenue protection officer in the region where the mailing office is located.

.624 *Collection of Postage Due At Mailing Office.*

When reports on Form 3750 are received, ascertain number of pieces in entire mailing and collect total postage due from the mailer. Affix to sheet of paper, cancel, and give to mailer postage-due stamps or postage-due meter stamps as a receipt for money collected. If payment is by uncancelled stamps or meter stamps, affix them to a sheet, cancel, and return as receipt of payment. Furnish no other receipt.

.625 *Disposition of Specimen Piece.*

Send the specimen piece under cover to postmaster at office of address for delivery.

Part 147

EXCHANGES AND REFUNDS

147.1 EXCHANGES OF STAMPS

.11 POST OFFICE MISTAKES.

Mistakes in selling damaged, defective, or otherwise unserviceable stamps may be corrected by the post office by exchanging stamps at full value.

.12 PURCHASER'S MISTAKES.

Mistakes made by purchaser in buying adhesive stamps of the wrong denomination or stamped envelopes or postal cards of the wrong kind, size, or denomination may be corrected by exchanging stamps at full value, provided mistake is discovered within 48 hours from time of purchase.

.13 UNSERVICEABLE AND SPOILED ENVELOPES OR CARDS AND UNUSED PRECANCELED STAMPS.

Unserviceable and spoiled stamped envelopes or postal cards, if uncanceled, and unused precanceled stamps and postal cards, may be exchanged for other postage-stamped paper as follows:

a. Stamped envelopes (mutilated no more than is necessary to remove contents), for postage value plus value of postage added as a result of rate increase or for additional service.
b. Unmutilated aerogrammes (air-letter sheets), for postage value less 1 cent for each aerogramme redeemed.
c. Unmutilated single and double postal cards, for 85 percent of postage value plus full value of postage added as a result of rate increase or for additional service.
   (1) Either half of a double postal card may be redeemed if the double card has been printed and cut for use as single cards.
   (2) Unused double postal cards printed for reply purposes should not be separated; however, if they have been separated in error, and the purchaser presents both halves, the cards may be redeemed.
   (3) Reply halves of double postal cards that have been returned to sender outside of the mails are not redeemable by the original purchaser even though the reply half received no postal service.
d. Sheet postal cards spoiled in the process of cutting to size, for 85 percent of postage value plus full value of postage added as a result of rate increase or for additional service, if all cut sections are submitted.
e. Stamps affixed to commercial envelopes and post cards, for 90 percent of postage value. Envelopes and post cards must be in a substantially whole condition and in lots of at least 50 of the same denomination and value.
f. Unused precanceled stamps in full coils or in full sheets redeemed from precanceled permit holders, for 90 percent of postage value.

Stamped envelopes or aerogrammes (air-letter sheets) with a printed return address and postal cards with any printed matter of the purchaser, may be exchanged only by the purchaser. If there is no purchaser's printing, they may be exchanged by any responsible person. When redemption cannot be made at time of presentation, the postmaster will furnish a receipt on Form 3210 for uncanceled unserviceable or spoiled envelopes or postal cards or for unused precanceled stamps left in his custody.

.14 NONEXCHANGEABLE.

The following are nonexchangeable:

a. Adhesive stamps, unless mistakes were made in purchasing or stamps were defective or stamps were affixed to commercial envelopes and post cards.
b. Stamps cut from postal cards, stamped envelopes, or aerogrammes (air-letter sheets).
c. Parts and pieces of postal cards.
d. Postal cards, stamped envelopes and aerogrammes received for reply purposes.
e. Mutilated and defaced stamps.

147.2 REFUNDS

.21 CONDITIONS THAT JUSTIFY REFUND

.211 When postage or special service fees have been paid on mail for which no service is rendered, or collected in excess of the lawful rate, a refund may be made.

.212 The Postal Service is considered to be at fault and no *service is rendered* in cases involving returned articles improperly accepted in both domestic and international services because of excess size or weight.

.213 Mailers who customarily weigh and rate their mail are expected to be familiar with basic requirements and the Postal Service is not considered to be at fault when these mailers are required to withdraw articles from the mail prior to dispatch.

.214 See 147.232 and 147.25 for special provisions for refunding the postage value of unused meter stamps.

.215 A postage refund may be provided the sender for first-class, third-class single piece, and fourth-class mail torn or defaced during processing by the Postal Service to such extent that identification of addressee or intended delivery point cannot be made. This applies only when the failure to process and/or deliver is the fault of the Postal Service. Where possible, the damaged item should be returned with the postage refund endorsed as applicable under 333.264e. Submission of Form 3533, *Application and Voucher for Refund of Postage and Fees*, is not required.

.216 Requests for refunds which are questionable, or which cannot be processed in accordance with the provisions of this section (147.2) should be forwarded to the postal services center serving the office where the request originated. The postal services center postmaster will return the request along with his ruling to the office which submitted the request.

.22 APPLICATION

.221 Customers who wish to request a refund must submit an application on Form 3533 to the postmaster together with the envelope or wrapper, or the portion thereof having names and addresses of sender and addressee, canceled postage and postal markings, or other evidence of payment of the amount of postage and fees for which refund is desired.

.222 Requests for refunds for optional procedure mailings must be submitted to the regional director, finance department, who will forward them to the Director, Office of Mail Classification, for review.

.23 AMOUNT OF REFUND ALLOWABLE

.231 Refund of 100 percent will be made:

a. When the Postal Service is at fault.
b. For the excess when postage or fees have been overpaid the lawful rate.
c. When service to the country of destination has been suspended.
d. When postage is fire-scarred while in the custody of the Postal Service, including fire in letterbox, and the mail is returned to sender without service.
e. When special delivery stamps are erroneously used in payment of postage, and the mail is returned to the sender without service.
f. When fees are paid for special delivery, special handling, and certified mail, and the article fails to receive the special service for which the fee has been paid.

g. When surcharges are erroneously collected on domestic registered mail or collected in excess of the proper amount, or represented by stamps affixed to matter not actually accepted for registration.
h. For fees paid for return receipts or for restricted delivery when the failure to furnish return receipt or its equivalent, or erroneous delivery, or non-delivery, is due to fault or negligence of Postal Service.
i. For annual bulk mailing fee when no bulk mailings of third-class matter are made during the year for which the annual fee has been paid.

Subchapter 150 COLLECTION AND DELIVERY

Part 151

GENERAL

151.1 PRIVATE MAIL RECEPTACLES

.11 DESIGNATION AS AUTHORIZED DEPOSITORY

Every letterbox or other receptacle intended or used for the receipt or delivery of mail on any city delivery route, rural delivery route, star route, or other mail route is designated an authorized depository for mail within the meaning of 18 U.S.C. sections 1702, 1705, 1708, and 1725. For the purposes of 146.2, 151.12, 156.44 and 156.58, the post is not part of the receptacle.

.12 USE FOR MAIL ONLY

Except as provided in 156.58, the receptacles described in 151.11 shall be used exclusively for matter which bears postage. Therefore, other than as permitted in 156.58, no part of a mail receptacle may be used to deliver any matter not bearing postage. This applies to items or matter placed upon, supported by, attached to, hung from, or inserted into, a mail receptacle. Any mailable matter not bearing postage and found as described above is subject to the same postage as would be paid if it were carried by mail. See 146.2 for procedures to be followed.

151.2 LOCAL ORDINANCES AND STATE LAWS

Postmasters are expected to report to regional offices any contemplated action by local or State authorities to enact or consider enactment of local ordinances or State laws that would adversely affect operating costs or performance of postal service.

Part 152

WHO MAY CARRY LETTERS

152.1 PRIVATE EXPRESS STATUTES

By a group of laws known as the Private Express Statutes Congress has generally conferred upon the Postal Service the exclusive right to carry letters for others over post routes.

152.2 IMPLEMENTING REGULATIONS: *QUESTIONS ANSWERED ON PRIVATE EXPRESS STATUTES*

The Postal Service's regulations under the Private Express Statutes are published in the Code of Federal Regulations, 39 CFR Parts 310 and 320. These regulations take precedence over any inconsistent material in prior rulings and publications of the Postal Service, including Publication 111, *Restrictions on Transportation of Letters* (5th Ed. July 1967). The Postal Service has also published *Questions Answered on Private Express Statutes* containing answers to ten of the most frequently asked questions about the Statutes. Copies of the regulations or of *Questions Answered on Private Express Statutes* may be obtained from the Assistant General Counsel, Opinions Division, U.S. Postal Service, Washington, DC 20260.

152.3 GENERAL COVERAGE OF THE PRIVATE EXPRESS STATUTES

.31 DEFINITION OF LETTER

For purposes of the Private Express Statutes, a *letter* is defined as a message directed to a specific person or address and recorded in or on a tangible object. A *message* consists of any information or intelligence that can be recorded on tangible objects including, but not limited to, paper, in sheet or card form, recording disks, and magnetic tapes.

.32 EXCLUSIONS

Certain matter is excluded from the definition of the term *letter*, such as telegrams; checks and certain other instruments when shipped to, from, or between financial institutions; newspapers, and periodicals. (Other exclusions are described in the regulations.)

.33 PAYMENT OF POSTAGE

If the proper postage is paid, the letters may be privately carried without violating the Private Express Statutes. (The details to be complied with in cases of this kind are outlined in the regulations.)

.34 EXCEPTIONS

Letters may be carried privately and without paying postage under certain circumstances. The principal exceptions cover material transmitted with and relating exclusively to cargo; letters carried by the sender or the recipient, or by their regular salaried employees; and letters carried to or from a postal facility where they are to be or have been carried in the mail. (Details concerning these and other exceptions are found in the regulations.)

.35 SUSPENSION

A limited suspension of the Private Express Statutes permits the private carriage of certain defined data processing materials to and back from data processing centers, when the transmission is completed within 12 hours or by noon of the recipient's next business day, and when processing commences on materials sent to a processing center within 36 hours of receipt at the center. Carriers wishing to use this suspension to carry data processing materials for others must file a notice of their intention to operate on a form obtainable from the Private Express Liaison Officer, Customer Services Department, U.S. Postal Service, Washington, DC 20260. (Further details on this suspension are set out in the regulations.)

152.4 VIOLATIONS

Possible violations of the Private Express Statutes should be brought to the attention of the Inspection Service.

152.5 ADVICE ON THE MEANING OF PRIVATE EXPRESS STATUTES AND REGULATIONS

Members of the public and postal officials may obtain authoritative advice, including written advisory opinions, by contacting the Assistant General Counsel, Opinions Division, U.S. Postal Service, Washington, DC 20260.

Part 153
MAIL DEPOSIT AND COLLECTION

153.1 COLLECTION TIMES

Mail is collected in residential and business sections served by city carriers at times to connect with mail dispatches. Mail is also collected in business sections at frequent intervals to keep boxes from becoming overloaded and to provide an even flow of mail to the post office.

153.2 ORDINARY DEPOSIT OF MAIL

.21 POST OFFICES LOBBIES

Letter drops are provided in lobbies of all post offices for the deposit of mail.

.22 COLLECTION BOXES

Collection boxes for the deposit of mail are placed at convenient points in areas served by city carriers; at non-city-delivery offices in front of the post office quarters and in nonpersonnel rural stations and branches.

.23 RURAL BOXES

Mail on which postage has been paid may be deposited for collection in mailboxes on rural routes.

.24 VIM MAILROOMS

Mail may be deposited in bundle mail drops where provided. Otherwise, it may be left with the carrier on duty when the VIM call window is open.

153.3 DEPOSIT OF MAIL WITH EMPLOYEES

The following types of mail may be handed for dispatch to employees on duty in mobile units or transfer offices and at airport mail facilities. Unless acceptance has been prearranged and previously authorized by the postmaster, only parcels which may be opened for postal inspection in the presence of the mailer to determine mailability of contents may be accepted at airport mail facilities.

a. *First-Class Mail.* On which postage has been paid.

b. *Medicines and Serums.* Third- or fourth-class mail, presented by representatives of manufacturers or distributors of medicines or serums, when endorsed: *Emergency—This package has been weighed and bears necessary postage. Any additional postage found to be due is guaranteed by sender.*

Third- and fourth-class mail, other than that described and mail to be sent registered, insured, or COD, is not mailable with the employees identified above.

153.4 SEPARATION OF MAIL BY SENDER

Customers having large mailings should separate them into packages marked *Local* and *Out of Town*. These labels may be obtained from the post office.

153.5 RECALL OF MAIL

.51 WHO MAY RECALL MAIL

Mail deposited in a collection box or post office may be recalled on proper identification by the sender, by the parent or guardian of a minor child, or by the guardian of a person of unsound mind. Submit Form 1509, *Sender's Application for Recall of Mail*, obtainable at any post office, to the postmaster at the office of mailing. Postmasters at offices of address must comply promptly with recall requests from Federal Government executive departments or their regional offices. The requirement that the application for recall be made through the mailing office does not apply to official mail. File all applications for the recall of mail and related papers at the office of mailing.

.52 EXPENSES

The mailer must pay all expenses of recalling mail, including the cost of any necessary telegrams, and the regular rate of return postage (except for first-class mail, which is returned without additional postage).

.53 ORIGINAL POSTAGE

If mail recalled before dispatch is again presented for mailing, accept the original stamps for postage at face value. This does not apply to stamps in payment of registry, insurance, or COD fees.

.54 CARRIERS

Carriers or collectors will not return mail deposited in a letterbox from which collection is made by a post office employee or which has come into his custody in the performance of his official duties.

.55 REGISTERED MAIL

The customer will write or stamp *Withdrawn Before Dispatch* on his copy of the registered mail receipt, sign it, and surrender it. The customer's surrendered receipt will be attached to the post office copy. Write or stamp the same words on, and postmark the face of the article.

.56 TELEGRAM

If the mail has been dispatched from the mailing office, the postmaster at that office shall telegraph a request to the postmaster at the office of address for return of the mail. The mail shall be carefully described to identify it and prevent the return of any other mail. Dispatch particulars shall be furnished if they will be of assistance in locating the mail.

.57 RETURN

Return recalled mail to the mailing postmaster reenveloped or rewrapped under penalty indicia. The mailing postmaster must deliver it to the sender on payment of the necessary fees and any postage due. Registered mail shall be returned as official registered mail in a penalty envelope without charge for the registry fee. If the mail was delivered before the recall application or the telegram was received, make a report to the mailing postmaster who will inform the sender. Do not advise the addressee that mail has been recalled or that recall was requested.

Post Office Services (Domestic) TL-41, 12-31-76, Issue 118

153.6 MAIL CHUTES AND RECEIVING BOXES

.61 USE

.611 Mailing chutes and receiving boxes may be placed at the expense of the owner in public buildings, railroad stations, hotels, and business or office buildings of not less than 4 stories, and apartment houses of not less than 40 residential apartments. Buildings in which receiving boxes are located must be open to the general public, without restrictions, during the hours prescribed for mail collections. If the owner of a building does not desire to install a mail chute and receiving box, a receiving box only may be installed, provided the postmaster has determined it is necessary and has approved its installation.

.612 Mailing chutes and receiving boxes are intended for the deposit of first-class mail and small quantities of single-piece rate third class. Bulk rate mailings of third-class mail may not be deposited in mail chutes and receiving boxes.

.62 INSTALLATION, SPECIFICATION, AND MAINTENANCE

Requests for the installation of mailing chutes and receiving boxes must be approved by the postmaster and he must be furnished the contract and specifications for any proposed chute and box. The specifications for mail chutes and maintenance procedures are covered in Publication 16, *Mailing Chute Rules, Regulations, and Specifications.*

Post Office Services (Domestic) TL-41, 12-31-76, Issue 118

Part 154
CONDITIONS OF DELIVERY

154.1 DELIVERY TO PERSONS

.11 DELIVERY TO ADDRESSEE

The addressee may control delivery of his mail. In the absence of a contrary order, the mail is delivered as addressed. Mail addressed to several persons may be delivered to any one of them. The addressee may refuse to accept a piece of mail at the time it is offered for delivery. Also, he may request his postmaster in writing to withhold from delivery for a period not to exceed 2 years any foreign letter or printed matter bearing a specified name or address appearing on the outside. Such mail will be marked REFUSED by the post office and treated as undeliverable. After delivery, he may mark a piece of mail *Refused* and return it unopened to the mail, EXCEPT registered, insured, certified and COD mail may not be returned after delivery has been effected. Refused matter, including mail withheld from delivery in accordance with the addressee's request, will be treated as undeliverable. Where a person claiming to be the addressee of certain mail is unknown to the postmaster, the mail may be withheld pending identification of the claimant.

.12 DELIVERY TO PERSONS HAVING SIMILAR NAMES

Unless persons with similar names adopt some means to distinguish their mail, postmasters will use their judgment in making delivery.

.13 MAIL DELIVERED TO WRONG PERSON

A person receiving mail not intended for him should promptly return it to the post office endorsed *Opened by Mistake* with his signature, if the letter has been opened; otherwise it should be endorsed *Not for . . ., Not at this address*, etc.

.14 CHECKS ISSUED BY THE FEDERAL GOVERNMENT

.141 Federal Government checks will be delivered to the addressee, to persons who customarily receive his mail, or to other persons authorized in writing to receive his mail. Delivery will not be made to an attorney, claim agent, or broker even though the addressee requests such delivery unless the check is specifically addressed in care of the attorney, claim agent, or broker.

.142 If convenient, the addressee will be alerted by ringing the bell or knocking on the door. The carrier is not required to await a response.

.143 Delivery will be withheld and the check returned to the sender immediately, if it is known that the addressee:

a. Is deceased.
b. Has moved without filing a change of address even though the new address may be known.
c. Has reenlisted in the military or naval service.
d. Is under guardianship.
e. Is a widow who has remarried and the check is not addressed to her in her new name.

.144 Treasury checks enclosed in envelopes which do not indicate a date of delivery will be delivered on the first scheduled delivery after receipt.

.145 Treasury checks enclosed in envelopes which indicate a date of delivery will be delivered on that date or the first scheduled delivery after that date. In emergency or other infrequent situations, customers receiving delivery service may request pre-delivery of their mail at the office of delivery, providing withdrawal of the mail does not interfere with carriers' delivery schedules.

Post Office Services (Domestic) TL-41, 12-31-76, Issue 118.

.15 CHECKS ISSUED BY STATE AND LOCAL GOVERNMENTS

State and local government checks will be handled in accordance with instructions printed on the envelopes. Certain of these checks have instructions not to transfer or forward. If undeliverable as addressed, such checks will be returned to the sender immediately.

.16 MAIL MARKED *IN CARE OF* ANOTHER

Mail marked *In Care of* another is delivered to the first of the two persons named who may call for it; or to the address of the person in whose care it is directed in the absence of instructions from the addressee.

.17 RESTRICTED DELIVERY

Registered, certified, numbered insured, and COD mail which the sender has restricted in delivery to the addressee only may not be delivered to any other person except as provided in 165.34.

.18 MAIL MARKED PERSONAL

Mail bearing the word PERSONAL is delivered in the same way as other mail for the addressee.

.19 HOLDING MAIL AT REQUEST OF ADDRESSEE

Ordinary mail, except first-class bearing return address of sender specifying a retention period, will be retained at the office of address at the request of the addressee for a period up to 30 days. Under unusual conditions, mail may be held for a longer period if the postmaster considers it practicable.

154.2 DELIVERY OF ADDRESSEE'S MAIL TO ANOTHER

.21 DELIVERY TO ADDRESSEE'S AGENT

.211 Unless otherwise directed, an addressee's mail may be delivered to his employee or to a competent member of his family. A person or a number of persons may designate another to receive their mail. Designation of another person to receive mail should be in writing, but no special form is furnished or required.

.212 When mail is to be delivered to a commercial mail receiving agency, Form 1583, *Application for Delivery of Mail through Agent*, must be signed by both the commercial agent and the addressee. The commercial agent must witness the signature of the addressee. The addressee shall be required to furnish two items of identification, the particulars of which shall be included on Form 1583. The original of the completed Form 1583 must be filed with the postmaster and a duplicate copy of the completed Form 1583 must be kept on file by the commercial agency. The original copy of Form 1583 will be filed without verifying the addressees shown thereon and without obtaining statements from the references given unless the postmaster is specifically requested to do so by the inspector in charge, or when there is reason to believe the mail will be, or is being, used for unlawful purposes. In consideration of delivery of the mail to the commercial agent, the addressee and the agent are considered to agree that:

a. No change of address order will be filed with the post office when the agency relationship is terminated;
b. The forwarding of mail intended for the addressee is the responsibility of the agent; and,
c. When remailed by the commercial agent, the mail is subject to payment of new postage since delivery is deemed to have been made when the mail was delivered to the commercial agent.

.22 MAIL ADDRESSED TO MINORS

A minor's guardian may control delivery of mail addressed to the minor. If there is no guardian, and the minor is unmarried, then the father or, if he is dead, the mother may receive delivery of the minor's mail.

.23 MAIL ADDRESSED TO INCOMPETENTS

Where a person has been legally declared an incompetent, his mail may be delivered under the order of his guardian or conservator. Where there is no legal representative, the mail is delivered as addressed.

.24 MAIL ADDRESSED TO DECEASED PERSONS

Federal Government checks addressed to deceased persons are returned to the mailing Federal agency. Mail other than Federal Government checks may be delivered to the executor or administrator. When there will be no court action on the deceased's estate, the mail may be delivered as agreed to by all the heirs.

154.3 JOINTLY ADDRESSED MAIL

.31 DELIVERY OF JOINTLY ADDRESSED MAIL

Where mail is jointly addressed, for example, *Mr. and Mrs. John Doe, John and Jane Doe*, neither party can control delivery of such mail over the objection of the other. Jointly addressed mail is delivered as addressed by the sender so long as one of the parties can receive it there, except that U.S. Government checks will be returned if either party is deceased.

.32 DELIVERY OF MAIL ADDRESSED TO HUSBANDS AND WIVES

Neither party may control delivery of mail addressed to the other. In the absence of instructions from the wife, her mail is placed with the husband's and delivered to him with his own.

154.4 DELIVERY TO OFFICIALS OR EMPLOYEES OF ORGANIZATIONS

.41 Mail directed to officials or employees of a governmental or private organization at the address of the organization will be delivered to the organization when such mail is claimed both by an officer or employee and by the organization. This also applies to mail addressed in this manner to former officials or employees.

.42 Mail addressed elsewhere to a public or private official by title or to the organization even though marked to the attention of a particular person or title will be delivered to the organization if it so directs.

154.5 DELIVERY TO OFFICIALS OR EMPLOYEES OF CORPORATIONS AND UNINCORPORATED FIRMS

.51 MAIL ADDRESSED TO CORPORATIONS is delivered as addressed or to an authorized agent. Where disagreement arises among corporate officers and others connected with the company, the mail is delivered in accordance with the order of the president of the corporation.

.52 MAIL ADDRESSED TO UNINCORPORATED FIRMS OR PARTNERSHIPS is delivered as addressed so long as the business is being conducted under the same name at the same address despite some members of the firm's breaking off relations.

c. Streets are paved or otherwise improved to permit travel of post office vehicles at all times without damage or delay.
d. Street signs are in place and house numbers displayed, where applicable.
e. Right-of-ways, turnouts, and areas adjacent to roads and streets are improved so that installation and servicing of boxes will not be hazardous to the public or postal employees.
f. Satisfactory walks for carriers where required.
g. Approved mail receptacles or door slots are installed at designated locations.

The requirements are essential to an efficient mail delivery service, and must be met before delivery is inaugurated in a community. In establishing delivery service, a combination of delivery methods should be considered to provide adequate service to all residential and business sections of a community. All establishments of delivery service must have final approval of the Regional Postmaster General or his designee.

155.2 DELIVERY EXTENSION REQUIREMENTS

Delivery service extension requirements are the same as those listed in 155.1 with the exception of paragraph a. Methods of delivery for extensions are furnished in regional instructions. Door delivery service must have the final approval of the Regional Postmaster General or his designee.

155.3 REQUESTS FOR DELIVERY SERVICE

Requests or petitions to establish, change or extend delivery service must be made to the local postmaster. No formal petition is required. Postmasters will forward requests or petitions to establish service to the postal official designated by the regional office with a statement indicating whether the requirements in 155.1 are met.

155.4 MAIL RECEPTACLES

.41 OBLIGATION OF CUSTOMER

Customers of the carrier delivery service must provide mail receptacles or door slots. Business houses are not required to provide mail receptacles or door slots if they are open and someone is on hand to receive the mail when the carrier calls. Where an office building is equipped with an elevator, carriers will deliver to individual offices, provided they are open when the carrier arrives. If they will not be open, mail receptacles or door slots must be provided.

.42 DOOR SLOT SPECIFICATIONS

The clear rectangular opening in the outside slot plate must be at least 1½ inches wide and 7 inches long. The slot must have a flap, hinged at the top if placed horizontally, and hinged on the side away from the hinge side of the door if placed vertically. When an inside hood is used to provide greater privacy, the hooded portion must not be below the bottom line of the slot in the outside plate if placed horizontally, or beyond the side line of the slot in the outside plate nearest the hinge edge of the door if placed vertically. The hood at its greatest projection must not be less than 2½ inches beyond the inside face of the door. Door slots must be placed not less than 30 inches above the finished floor line.

155.5 OUT-OF-BOUNDS CUSTOMERS

Customers outside city delivery limits may be given delivery service if they erect boxes on the carrier's regular line of travel. Special delivery, parcel post, insured, certified, COD, and registered mail will be delivered to the residences of out-of-bounds customers, if the residences are not more than three blocks from the carrier's line of travel and passable walks have been constructed or the street is not impassable; otherwise, a notice will be left in the box requesting that the customer call for the mail. If an ordinary parcel is involved and it can be placed in the box, delivery will be made in that manner.

155.6 APARTMENT HOUSE RECEPTACLES

.61 REQUIREMENTS FOR DELIVERY

The delivery of mail to individual boxes in apartment houses, family hotels, residential flats, and business flats in residential areas containing three or more apartments having a common street entrance or common street number is contigent on the installation and maintenance of Postal Service approved mail receptables, one for each apartment, including resident manager and janitor, unless the management has arranged for the mail to be delivered at the office or desk for distribution by its employees. The cost of receptacles and their installation is paid by the owner of the building.

.62 ADDRESS NUMBER

The delivery of mail in a new apartment house where approved mail receptacles are installed at two or more entrances is contingent on assignment of a different address number to each entrance. The tenants' correct mailing address shall be the address of the entrance at which their mail receptacles are located.

.63 IMPROVED RECEPTACLES

Owners and managers of apartment houses, family hotels, and flats, equipped with obsolete apartment house mail receptacles are urged to install up-to-date and approved receptacles to assure more adequate protection to the mail of occupants. When these buildings are remodeled to provide additional apartments or when a material change in the location of boxes is made, they shall be equipped with approved receptacles.

.64 INSTALLATION, SPECIFICATIONS, AND APPROVAL

The conditions requiring installation, specifications for construction, installation procedures and approval procedures for manufacturers are covered in Publication 17, *Apartment House Mail Receptacles, Regulations, and Manufacturing Standards (Effective May 1, 1975)*.

Part 156

RURAL SERVICE

156.1 RURAL STATIONS AND BRANCHES

.11 ESTABLISHMENT

Rural stations and branches, both personnel and nonpersonnel, are established and maintained in communities where a considerable number of people would be seriously inconvenienced if required to transact postal business with rural or star route carriers only, and where it is determined inadvisable to establish an independent post office.

.12 FUNCTIONS

.121 Personnel rural stations and branches accept, dispatch, receive, and deliver mail, including registered, insured, COD, and certified mail, issue money orders and sell stamps and stamped paper.

.122 Nonpersonnel rural stations and branches are self-service units which furnish essential mail services such as the collection and delivery of ordinary mail and sale of stamps. Services such as the sale of money orders, and the acceptance and delivery of certified, insured, registered, and COD mail are provided customers of nonpersonnel rural stations and branches by the rural carrier at the time he services the unit. Carriers are

156.4 PAYMENT OF POSTAGE

.41 ACCEPTANCE OF MAIL

.411 A rural carrier will accept any mailable matter, provided postage is fully prepaid or money equal to the required postage is furnished, unless the purpose of handling mail to the carrier for deposit into one office is to "boycott" another office or deprive it of legitimate revenue. During December customers are required to affix stamps to all greeting cards and letter mail.

.412 When a rural carrier finds unstamped mail in a customer's box and the required amount of money for postage, he will normally collect the mail and money and affix the necessary postage. The carrier has stamps, stamped envelopes, and postal cards for sale. For convenience and safety, customers who leave mail and money in rural boxes to be collected by the carrier should either wrap the money, place it in a coin-holding receptacle, or attach it to the mail by means of a clip or other fastener.

.42 POSTAGE UNCERTAIN

When mail is given to a rural carrier for mailing and he is unable to determine the postage, he will accept from the sender an amount sufficient to insure full payment of postage. On the next trip he will return to the sender any excess money.

.43 INSUFFICIENT POSTAGE

When mailable matter is deposited in a box and the required postage has not been paid nor sufficient money left to purchase stamps, the rural carrier will, when the identity of the sender is known, place in the box a notice that such matter cannot be dispatched until the necessary postage is paid. If the identity of the sender is unknown, the matter will be taken to the post office and treated as unpaid mail.

.44 MAILABLE MATTER NOT BEARING POSTAGE FOUND IN, OR PLACED UPON, OR ATTACHED TO, OR SUPPORTED BY, OR HUNG FROM, THE RURAL MAIL BOX

Follow the procedures in 146.2.

156.5 RURAL BOXES

.51 SPECIFICATIONS

.511 *Dimensions and Styles*

Three approved standard sizes and two styles of boxes are approved for use on rural routes:

Traditional and Contemporary Styles

Size	Inches (Approximately)		
	Length	Width	Height
1	19	6½	8½
1-A	21	8	[1] 10½
2	23½	11½	13½

[1] Optional letter slot.

In general, boxes may be constructed in any size between the maximum and minimum outside dimensions specified on approved drawings, provided the height, width, and length proportions and the general shape are maintained.

.512 *Drawings*

Construction standards and drawings for guidance in the manufacture of rural mailboxes may be obtained by writing to the Delivery Services Department, Operations Group, U.S. Postal Service, Washington, DC 20260.

.513 *Approval*

To secure approval of rural boxes, submit to the Delivery Services Department:

a. Not less than two complete boxes of each style made of exact materials, construction, coating, paint, etc., to be identical in every way with the boxes intended to be marketed. (Two boxes will be damaged during testing.)
b. The identification of all parts of the box, by material, alloy, heat treatment, and (for non-metallic parts) physical properties.
c. The complete composition, formula, and trade name and designation, of all paints and non-metallics.
d. A sample showing the marking required by 156.514.
e. A copy of the instructions required by section S-12 of the standards.
f. Color samples showing all color schemes expected to be used.
g. The boxes wrapped in the packaging proposed for shipping them.

Written notification of approval or disapproval, including reasons for disapproval, will be issued. All boxes submitted will be returned, including those damaged during testing, unless the Postal Service is authorized, in writing, to retain them.

.514 *Marking*

All boxes shall have the following inscription legibly embossed into the door of the box (after approval of the box): U.S. MAIL and APPROVED BY THE POSTMASTER GENERAL. The name of the supplier and the month and year of manufacture shall also be noted on the box, either by embossing in small letters on the rear of the box or by a permanent conspicuous marking on one inside wall of the box. This marking may be accomplished by embossing, stenciling, stamping, or a permanent-type decal. The address of the supplier may be included, if desired.

.515 *List of Approved Manufacturers*

Following is a list of manufacturers and suppliers of rural and contemporary-style suburban mailboxes whose samples have been approved by the Postal Service:

Babco Manufacturing, Inc.
11877 Sheldon Street
Sun Valley, California 91352
C

Chicago Heights Furnace Supply Company, Inc.
96-104 East 22nd Street
Chicago Heights, Illinois 60411
1-1A-2

E. Z. Manufacturing Company
Springfield, South Dakota 57062
(Door Conversion Kit for No. 2)

Falls Stamping & Welding Company
Post Office Box 153
Cuyahoga Falls, Ohio 44222
1-2

Fulton Corporation
Fulton, Illinois 61252
1-1A-2-C

Gemini Industries, Inc.
140 Delawanna Avenue
Clifton, New Jersey 07014
1-1A

General Housewares Corporation
800 West Willard Street
Muncie, Indiana 47302
C

Hermitage Stamping Company
7119 Cockrill Bend Industrial Rd.
Post Office Box 7885
Nashville, Tennessee 37209
1

Jackes-Evans Manufacturing Company
11737 Administration Drive
Saint Louis, Missouri 63141
1-1A-2

Kelley Manufacturing Company
Los Angeles Division
5100 Santa Fe Avenue
Los Angeles, California 90058
1-2

Leigh Products, Inc.
Coopersville, Michigan 49404
C

Macklanburg-Duncan Company
Post Office Box 25188
Oklahoma City, Oklahoma 73125
1

Montgomery Ward & Company
619 West Chicago Avenue
Chicago, Illinois 60610
1-1A-2-C

Northwest Metal Products Company
Div. of Noll Manufacturing Company
Post Office Box 10
Kent, Washington 98031
1

Parker Mailboxes, Inc.
Route 14, Box 318R
Richmond, Virginia 23231
C

Premco Mfg. Co.
8482 Brown Street
Ottawa Lake, Michigan 49267
1

Remington Hardware Company, Inc.
351 West Broadway
New York, New York 10013
C

Sears, Roebuck & Company
925 South Homan Avenue, Dept. 609
Chicago, Illinois 60607
1-2-C

Southern Fabricators
Post Office Box 7321
Shreveport, Louisiana 71107
C

Steel City Corporation
Post Office Box 1227
Youngstown, Ohio 44501
1-1A-2-C

Superior Sheet Metals Inc.
3201 Roosevelt Avenue
P.O. Box 18173
Indianapolis, Indiana 46218
1-1A-2

Trend House, Inc.
1200 North Eighteenth Street
Post Office Box 4088
Monroe, Louisiana 71201
C-1-A

Waterloo Industries, Inc.
Post Office Box 209
Waterloo, Iowa 50704
C

1 Traditional Rural Box Size No. 1
1A Traditional Rural Box Size No. 1A
2 Traditional Rural Box Size No. 2
C Contemporary Style Suburban Box (also approved for use on rural routes)

.516 *Custom Built Rural Mailboxes*

Postmasters are authorized to approve rural mailboxes constructed by individuals, who for esthetic or other reasons do not wish to use an approved manufactured box. The custom-built box must conform generally to the same requirements as approved manufactured boxes relative to the flag, size, strength, and quality of construction

.52 PAINTING AND IDENTIFICATION

The Postal Service prefers that rural boxes and posts or supports be painted white, but they may be painted other colors if desired. Where box numbers are used, the box number must be inscribed in contrasting color in neat letters and numerals not less than 1 inch high on the side of the box that is visible to the carrier as he regularly approaches, or on the door if boxes are grouped. Where street names and house numbers have been assigned by local authorities, and the postmaster has authorized use of a street name and house numbers as a postal address, the house number will be shown on the box. If the box is located on a different street from the customer's residence, the street name and house number will be inscribed on the box. The placing of the owner's name on the box is optional. Advertising on boxes or supports is prohibited.

.53 POSTS AND SUPPORTS

.531 *Construction*

Posts or other supports for rural boxes must be neat and of adequate strength and size. They may not be designed to represent effigies or caricatures that would tend to disparage or ridicule any person. The box may be attached to a fixed or movable arm.

.532 *Newspaper Receptacles*

A receptacle for newspapers, not restricted to any one paper, may be placed above or below the box or on the post or support, provided it will not interfere with the delivery of mail, obstruct the view of the flag, or present a hazard to the carrier or his vehicle. The receptacle must not extend beyond the front of the box when the box door is closed. No advertising shall be displayed on the outside of the receptacle except that the name of a publication may be shown.

.54 LOCATION

Rural boxes must be placed so that they may be safely and conveniently served by carriers without leaving their conveyances, and must be located on the right-hand side of the road in the direction of travel of the carriers in all cases where traffic conditions are such that it would be dangerous for the carriers to drive to the left in order to reach the boxes, or where their doing so would constitute a violation of traffic laws and regulations. (EXCEPTION: See 156.312.) On new rural routes, all boxes must be located on the right of the road in the direction of travel of the carrier. Boxes must be placed to conform with State laws and highway regulations. Rural carriers are subject to the same traffic laws and regulations as are other motorists. Customers must remove obstructions, including snow, that make delivery difficult.

.55 GROUPING

Boxes should be grouped wherever possible, especially at or near cross roads, at service turnouts, or at other places where a considerable number of boxes are located. A simple and practicable support consists of a board erected on firmly planted posts.

.56 MORE THAN ONE FAMILY

More than one family, but not more than five families, may use the same box, provided a written notice of agreement, signed by the heads of the families, or by the individuals who desire to join in the use of such box, is filed with the postmaster at the distributing office.

.57 LOCKS

The use of locks on boxes is not required. If customers provide locks, the keys should be delivered only to the postmaster, who will assign them to the carrier. The carrier will unlock and lock the boxes when serving them. To facilitate the carrier's work, customers should, as far as practicable, adopt locks for each route of such pattern that a master key may be provided the carrier for unlocking the boxes.

.58 UNSTAMPED NEWSPAPERS

Rural boxes are to be used for mail only, except that publishers of newspapers regularly mailed as second-class mail may, on Sundays and national holidays only, place copies of the Sunday or holiday issues in the rural and star route boxes of subscribers, with the understanding that copies will be removed from the boxes before the next day on which mail deliveries are scheduled.

failure to fully prepay postage at the time of mailing will be collected from the sender when the undeliverable mail is returned. When first-class mail bearing the words *Address Correction Requested* is forwarded to a new address, the sender is notified on Form 3547, *Notice to Mailer of Correction in Address*, of the new address. The charge for this notice is 25¢.

.212 Official Mail

The treatment by classes prescribed in this section shall apply to official mail described in Part 137 except that no postage due will be rated or collected by post offices on delivery of mail or address correction notices.

.213 Postal and Post Cards

Undeliverable postal and post cards are handled as follows:

a. A card bearing the sender's address and the words *Return Postage Guaranteed* is returned without the reason for nondelivery endorsed thereon, and postage at the card rate is collected on delivery to the sender. The piece will be marked *Not Deliverable As Addressed—Unable to Forward.*
b. A card bearing the words *Address Correction Requested* is returned to the sender with the reason for nondelivery endorsed thereon. The card serves as the address correction notice. The charge for this notice is 25¢. There is not an additional charge for return postage.
c. If the full amount of card rate postage was not paid at the time of mailing, the amount of the deficiency is collected from the sender when the undeliverable card is returned.
d. When a card bearing the words *Address Correction Requested* is forwarded to a new address, the sender is notified on Form 3547, *Notice to Mailer of Correction in Address*, of the new address. The charge for this notice is 25¢.
e. Cards not bearing the words *Return Postage Guaranteed* or *Address Correction Requested* are disposed of at the post office where they become undeliverable.
f. When single cards and double cards without postage affixed to the reply portion bear the sender's return address and his guarantee to pay return postage, return to sender charged with postage due at the rate applicable to post cards.
g. Double cards having postage affixed to the reply portion, and bearing the sender's return address and his guarantee to pay return postage, must be:
   (1) Marked on the original portion for return to the sender and endorsed to show the reason for nondelivery.
   (2) Reverse folded so that address side of the reply portion is faced out.
   (3) Postmarked on the face of the reply portion, and
   (4) Returned without collection of additional postage.
h. Cancel or mutilate uncanceled stamps on cards before disposing of them as waste.

.214 Letters Showing Return Address of Hotel or Motel

a. *When to Return.* Return letters bearing:
   (1) The name of an individual in the return address.
   (2) A specific request for return as part of the return address.
   (3) The name of an office or officer as part of the return address, such as *Office of the Auditor, Cashier, President.*
b. *When Not To Return.* Do not return letters having only the name or name and address of a hotel or motel printed as an advertisement.

.215 Opened by Mistake

Return to the writer, without additional charge, fully prepaid undeliverable letters opened by mistake.

.22 SECOND-CLASS MAIL

.221 Change in Local Address

a. *Delivery for 3 Months.* When there has been any kind of a change in the local address, copies of second-class publications bearing the old local address shall be delivered to the new local address without charge for a period of 3 months even though the copies bear the request of the sender for return. The words *local address* as used in 159.22 mean any address served by the city, rural, or star carriers of any specific post office or a post office box or general delivery address at the post office. Form 3578, *Change of Address Notice to Publishers*, shall be furnished to the addressee at the new local address, and he shall be requested to use it promptly for furnishing the new local address to the sender. Form 3578 shall not be inserted in the copies but shall be delivered to the addressee separately from the copies.
b. *Procedure After 3 Months.* When copies bearing the old local address are received after a period of 3 months, the carrier or clerk serving the old address shall write the new local address, including ZIP Code number, on Form 3579, *Undeliverable 2d, 3d, 4th or Controlled Circulation Matter*, which shall then be affixed to the copies, envelopes, or wrappers, near but not over the old address. Address correction notices may be prepared on central-markup labels printed with the new address and ZIP Code number and may be affixed to the copies, envelopes, or wrappers in lieu of Form 3579 at post offices using the central-markup system. The copies shall then be delivered to the inquiry section or to the clerk designated by the postmaster to receive them. The portion of the page, envelope, or wrapper which bears both the old address, including ZIP Code number, if any, and Form 3579 or central-markup label shall then be cut or torn from the copies, envelopes, or wrappers, placed in an envelope, and mailed directly to the publisher, news agent, or other sender. The address on the envelope shall always include the name of the publication. Any number of address correction notices on Form 3579 or central-markup labels may be returned in one envelope. Each envelope shall be rated with postage due at the rate of 25 cents for each notice contained in the envelope. Copies bearing the old address which are received after the mailing of the notice shall be disposed of as waste. When the copies bear the request of the sender for return, the portion of the page, envelope, or wrapper shall not be detached, and after expiration of the 3 months' period each complete copy shall be returned to the sender, rated with postage due at the transient rate on each individually addressed copy or package of unaddressed copies and 25 cents for the notice on Form 3579 or central-markup label affixed thereto.

.222 Undeliverable for Any Reason Other Than Change in Local Address

When copies of second-class publications are undeliverable as addressed for any reason other than a change in the local address, the forwarding employee shall prepare Form 3579 or obtain a central-markup label and affix it to the first undeliverable copy, or its envelope or wrapper, near but not over the old address, and then deliver the copy to the inquiry section or to the designated clerk. If a new address has been entered on the form, the ZIP Code number for that address must be shown. If the copies do not bear the request of sender for return, the notice shall be mailed to the sender. Copies bearing the old address which are received after the mailing of the notice shall be disposed of as waste. When the copies bear the request of the sender for return, each complete copy, beginning with the first one undeliverable as addressed, shall be returned to the sender rated with postage due at the transient rate on each individually addressed copy or package of unaddressed copies and 25¢ for the notice on Form 3579 or central-markup label.

.223 Pledge of Addressee to Pay Forwarding Postage

When a change of address is other than a change of local address, and the addressee has filed a written guarantee either on Form 3575 or otherwise to pay forwarding postage, the copies of second-class publications bearing the old address shall be forwarded to the new address for a period of 3 months rated with postage due at the transient rate, computed on each individually addressed copy or package of unaddressed copies. Form 3578 shall be furnished to the addressee at the new address. If the addressee refuses to pay the postage due, the postmaster at the old address shall be requested by the postmaster at the new address to immediately discontinue forwarding the copies. When copies bearing the old address, but not the request of the sender for return, are received after the period of 3 months has expired, a notice shall be prepared and mailed to the sender. Copies bearing the old address which are received after the mailing of the notice shall be disposed of as waste. When the copies bear the request of the sender for return, each complete copy beginning with the first one bearing the old address received after the period of 3 months has expired, shall be returned to the sender rated with postage due at the transient rate on each individually addressed copy or package of unaddressed copies and 25¢ for the notice on Form 3579 or central-markup label.

.224 Address Correction Information

Publishers may place requests for change of address information on wrappers or envelopes containing copies of second-class publications. A statement reading substantially as follows may be printed on the wrappers or envelopes:

Moving? Send the address label with your corrections to: (Name and address of the publisher.)

.225 Manner in Which the Request of the Sender Shall Be Shown

The words *Return Postage Guaranteed* shall be printed on the envelopes or wrappers or on one of the outside covers of unwrapped copies, immediately preceded by the sender's name and address, including ZIP Code.

.226 Failure to Follow Procedure

When postmasters do not comply with the instructions in 159.22 their noncompliance should be brought directly to their attention by any postmaster who observes the noncompliance. In all cases where a change of address is not made by the sender within 3 months after the notice is sent on Form 3579 or central-markup label, the postmaster at the office of mailing shall be requested on Form 3538, *Irregular Handling of Undeliverable Second-Class or Controlled Circulation Publication*, to instruct the sender to make the change.

.227 Canadian Publications

The procedure prescribed by 159.221 through 159.223 shall be followed when copies of Canadian second-class publications are undeliverable as addressed.

.228 Special Circumstances

See 158.4 and 158.5 for instructions as to forwarding publications under the special circumstances described therein.

.23 CONTROLLED CIRCULATION PUBLICATIONS

Undeliverable copies mailed by a publisher will be treated as described in 159.221 through 159.224. The single piece third-class rate or the fourth-class rate according to the weight of each individually addressed copy or package of unaddressed copies is applicable, in addition to the 25-cent fee for Form 3579 or central-markup label, to each individually addressed copy or

package of unaddressed copies bearing the sender's pledge *Return Postage Guaranteed*.

.24 THIRD-CLASS MAIL

.241 *Return of Mail*

Undeliverable third-class mail bearing the words *Return Postage Guaranteed* will be returned to the sender and postage at the single-piece third-class rate will be collected on delivery. The piece will be marked *undeliverable as addressed*. The reason why the piece is undeliverable as addressed or the addressee's new address will not be endorsed on the piece.

.242 *Forwarding and Return of Mail*

Undeliverable third-class mail bearing the words *Forwarding and Return Postage Guaranteed* will be forwarded when the new address is known. Postage at the single-piece third-class rate will be collected from the addressee. If the addressee refuses to pay the forwarding postage, the piece will be returned to the sender who must pay postage at the single-piece third-class rate for its forwarding plus postage at the single-piece third-class rate for its return. If the piece cannot be forwarded because the new address is not known, it will be given the *Return Postage Guaranteed* service.

.243 *Address Correction Service*

The addressee's new address, or the reason why a third-class mailing piece is undeliverable if the new address is not known, may be obtained by the sender either independently of, or in combination with the return and forwarding services provided by 159.241 and 159.242. To obtain these services, the mailing piece must bear the words: *Address Correction Requested*, or *Address Correction Requested Return Postage Guaranteed* or *Address Correction Requested Forwarding and Return Postage Guaranteed*, according to the service desired. The following conditions govern these services:

a. A piece weighing 2 ounces or less bearing the words *Address Correction Requested* will be returned to the sender for a fee of 25 cents with the new address or reason endorsed on the piece.
b. When a piece weighing more than 2 ounces bears the words *Address Correction Requested*, Form 3579 or central-markup label will be used to notify the sender, for a fee of 25 cents. Form 3579 or central-markup label and the old address portion of the mailing piece will be prepared for mailing to the sender in an envelope, in the same manner address correction notices are prepared for mailing to second-class and controlled circulation publications. *Exception:* When address labels are affixed to plastic wrappers, or a window address format is used on a mailing piece, making compliance with the foregoing instruction difficult, substitute Form 3547 to provide the requested information.
c. When a piece weighing more than 2 ounces and bearing the words *Address Correction Requested Return Postage Guaranteed* or *Address Correction Requested Forwarding and Return Postage Guaranteed* must be returned to the sender by the post office of original address because the piece cannot be forwarded, Form 3579 or central-markup label will be affixed to the piece, and it will be returned to the sender for a fee of 25 cents for the address correction notice, plus the single-piece third-class postage for the piece.
d. When a piece of any weight bearing the words *Address Correction Requested*, *Address Correction Requested Return Postage Guaranteed*, or *Address Correction Requested Forwarding and Return Postage Guaranteed* is forwarded to the addressee in compliance with either the sender's or addressee's guarantee to pay forwarding postage (see 158.113), Form 3547 will be used by the forwarding post office to furnish the sender the new address for a fee of 25 cents.

.25 FOURTH-CLASS MAIL

.251 Undeliverable fourth-class mail will be handled according to the instructions in 159.24 for handling third-class mail weighing more than 2 ounces, except that fourth-class rates apply wherever third-class rates are mentioned. Address correction and return and forwarding services provided for third-class mail may be used for fourth-class mail.

.252 Return to the sender, or the person designated by him, undeliverable mail having obvious value or bearing the words *Return Postage Guaranteed If Undeliverable*. (If the mail bears instructions of the sender to destroy or abandon, follow the procedures in 159.257.)

.253 When fourth-class mail of obvious value bearing a postage meter stamp of a private meter user is received unaddressed and without return address and delivery cannot be made, return the piece to the mailing office. The office of mailing shall deliver the piece to the meter licensee on payment of the return postage.

.254 Compute and mark the charge on each piece. In determining the amount due compute postage at the applicable rate between the returning office and the office to which the piece is returned. If the piece has been marked to show that forwarding postage is due, add this amount to the return charge.

.255 When articles correctly prepaid at the rates in 135.123, 135.13, or 135.14 are returned, compute the return charge at the same rate or 25 cents, whichever is higher. For catalogs prepaid at the rates in 135.121, compute return postage at the rates in 135.123.

.256 If effort has been made to deliver a piece addressed for local delivery, do not return it to the sender without payment of the applicable charge.

.257 When undeliverable domestic ordinary, insured, or COD mail; or when undeliverable ordinary, insured, COD, or registered articles of domestic origin and foreign address bear instructions of the sender to abandon or destroy, hold for the prescribed retention period and then:

a. Strip the mail and dispose of the contents as prescribed in 159.72.
b. Notify the sender on Form 3858, *Notice of Undeliverable or Abandoned Mail*, relative to insured and COD mail only.
c. Treat packages of foods, drugs, and cosmetics in accordance with 159.28.

.26 AIRMAIL

Airmail weighing 10 ounces or less and priority mail (heavy pieces) will be returned by the same transportation as first-class mail at no additional charge. Priority mail (heavy pieces) includes all mail weighing over 10 ounces which has postage prepaid thereon at the rates provided by section 136.12.

.27 REGISTERED, CERTIFIED, INSURED, AND COD

.271 *Notice (Registered and COD Mail only)*

a. When registered mail is undeliverable as addressed and cannot be forwarded, a notice is sent to the mailer on Form 3858 showing the reason. By completing the form and returning it immediately in an envelope bearing first-class postage, the mailer may tell the postmaster what to do with the mail. Mail will be returned to the mailer if there is no response. The postage charge, if any, for returning the mail (but not registration or COD fees), will be collected from the mailer. EXCEPTION: When registered mail is addressed to a person who has moved and left no forwarding address, Form 3858 will not be sent, and the mail will be returned immediately to the mailer.
b. When, and only when, the mailer specifically so requests, Form 3849-D, *Notice to Sender of Undelivered COD Mail*, will be sent to the mailer in accordance with part 163.43. The mailer may then designate a new addressee or alter the amount of COD charges by submitting Form 3818, *Authorization to Change COD Charges or Addressee*, in accordance with

section 163.172. The article will be returned to the mailer at the end of the holding period if no response is received. The postage charge, if any, for returning the mail (but not registration or COD fees) will be collected from the mailer. *Exception:* When COD mail is addressed to a person who has moved and left no forwarding address, Form 3849-D will not be sent, and the mail will be returned immediately to the mailer.

.272 *Returning Registered, Numbered Insured, and Certified Mail*

Prepare the record on both sides of Form 3849 *Notice of Mail Arrival or Attempted Delivery*, or show disposition in Form 3850, *Record of Delivered Registered, Numbered Insured, Certified, and COD Mail*, if Form 3850 is used as the delivery record. File Form 3849. If a return receipt is attached, indicate the reason for non-delivery on the return receipt, initial the card, postmark the card, and *return the article to the mailer with the return receipt attached*. Return registered mail through the registered mail system.

.273 *Insured and COD Received Without Identification*

When insured or COD mail bearing a postage meter stamp or postmark is received unaddressed and without return address, open it to obtain the name and address of addressee or sender, if possible. When identification is not obtained but mailing office is known, send Form 3842 and hold parcel pending reply.

.274 *Returning COD Mail*

a. Enter on Form 3814, *Record of COD Parcels Held for Delivery*; Form 3814C, *Recording and Checking COD Parcels and Funds at Offices of the Second Class*; or Form 3850 all COD packages returned to the sender.
b. Packages marked *abandon* or *destroy* which have been improperly returned to the mailing office must be handled as prescribed in 159.257. Send a report of the irregularity on Form 3827, *Irregularity Report of Insured and COD Mail*, to the postmaster who returned the mail.

.28 DISPOSAL OF PERISHABLE MAIL, DRUGS, AND COSMETICS

.281 *Perishable Mail*

Undeliverable parcels containing perishable items that cannot be forwarded or returned before spoiling, and parcels of day-old poultry that cannot be delivered or returned within 72 hours after hatching, if salable will be disposed of by the postmaster to the highest bidder through competitive bidding. Sale by bid will not be made to the addressee. The postmaster will send the proceeds of the sale, less a commission of 10 percent (but not less than 25 cents), to the mailer, by postal money order, with an explanation of the action taken. The postal money order fee will be deducted.

.282 *Drugs*

Packages undeliverable to either the addressee or the sender that contain drugs will be destroyed. They will not be sold, donated, or retained as dead parcel post.

.283 *Cosmetics*

Packages undeliverable to either the addressee or the sender that contain cosmetics, such as soaps, perfumes, powders, home permanent waves, hand lotions, hand creams, after-shave lotions, and deodorant sticks or pastes, which bear no statements claiming medicinal properties, will be treated as dead parcel post. Lipsticks will be destroyed. If there is any question whether the use of a cosmetic might, as the result of deterioration or for other reason, jeopardize life or health, the article will be destroyed.

.284 *Prohibited Bidders*

Postal employees may not submit bids at sales of perishable mail.

.285 *Remittance and Commission*

Complete Form 3820, *Sale or Destruction of Perishable Mail*, in duplicate. Fix postage-due stamps representing the amount of the commission to the original Form 3820 to the sender, and cancel the stamps. Show on duplicate copy only the name and address of purchaser and retain on file.

.286 *Remittance by Money Order*

The money order should show the name of the postmaster at the office where the matter was sold, and not the name of the addressee, as the remitter.

.287 *Rightful Owner Not Known*

If in doubt as to the rightful owner of the proceeds, request instructions from the Office of Mail Classification, Rates & Classification Department. If possible to deliver the net proceeds to the rightful owner, hold the funds for 30 days. If unclaimed at the expiration of that period, account for the amount as *Miscellaneous Nonpostal* AIC 126.

.288 *No Bidders*

Deliver perishable articles that cannot be sold by competitive bidding to a local municipal authority for distribution to hospitals, asylums, or other charitable or reformatory institutions. If there is no such municipal authority, the articles may be delivered to any charitable institution or organization.

.289 *Other Disposal*

Destroy the contents if they spoil and become offensive or injurious to health. Notify the sender on Form 3820. Do not send perishable matter to a dead parcel post branch.

.29 DISPOSAL TO INSTITUTIONS

.291 *Food*

Usable food items treated as dead mail may be donated to charitable institutions, or public institutions supported in whole or in part by Federal, State, county, or municipal funds. These institutions include but are not limited to hospitals, asylums, and reformatories. The following conditions apply:

a. "Homemade" items must not be donated but must be destroyed. If any doubt exists as to whether an item is "homemade," the item shall be destroyed.
b. If the local municipal welfare department will assume responsibility for distribution of usable food items to eligible institutions, this method is preferred. Otherwise, postmasters shall equitably apportion the items among eligible applicant institutions.
c. The recipient must sign a release stating that the Postal Service is relieved of all responsibility connected with the food items or their subsequent use. Releases must be retained in post office files.
d. No selection shall be made by the receiving institutions as to the type quantity of food items to be accepted.
e. Food items must be called for as soon as possible. Postmasters may deliver these items, but only if unusual circumstances prevail.
f. Food items that cannot be disposed of by donation shall be destroyed.

.292 *Periodical Publications*

On request, copies of undeliverable newspapers, magazines, and other periodical publications may be furnished to reformatory institutions, hospitals, asylums, and other similar institutions which are organized for charitable purposes or which are supported in whole or part by Federal, State, or municipal funds, under the following conditions:

a. No additional clerical time shall be used in the post office over that required for disposal of the copies as waste material.
b. No selection shall be made by the receiving institutions as to character, quality, or type of publications to be furnished.
c. The receiving institutions shall call for the copies promptly after notification of their availability, or on a scheduled basis.
d. The receiving institutions shall be informed that this privilege is entirely at the option of the Postal Service and may be curtailed or discontinued at any time without notice.

.393 *Samples of Merchandise*

Dispose of undeliverable samples of merchandise sent for advertising purposes, which do not bear the words *Return Postage Guaranteed*, as follows:

a. Remove and destroy wrappers if that is practicable and can be accomplished without additional expense. Deliver impartially to charitable or reformatory institutions that promise their free distribution.

b. Dispose of, as waste, samples not suitable for distribution indicated in *a* except that anything of sufficient value to warrant the expense of transportation and handling must be sent to the proper dead parcel post branch without listing or recording.

c. Treat packages of foods, drugs, and cosmetics in accordance with 159.26.

159.3 RETENTION PERIODS

.31 ORDINARY MAIL

.311 Mail returnable under 159.21 through 159.26 is:

a. Returned immediately if refused by addressee.

b. Returned immediately if undeliverable when specifically addressed to a street, building, rural or star route, or post office box; except that when a customer moves without leaving a change of address, the mail will be held for 10 days awaiting a forwarding order. (Exception: See 154.143.) If no order is received in that time, the mail will be handled as undeliverable. However, this shall not preclude compliance with sender's request in accordance with 122.32.

c. Returned immediately, if undeliverable, when incompletely, illegibly, or incorrectly addressed and addressee is unknown. See 159.311d and e.

d. Retained in general delivery not to exceed 30 days, at request of sender, if addressed in manner to indicate addressee is expected to call for mail, or if addressee normally calls there for mail.

e. Retained as follows when not specifically addressed or when sender does not specify a retention period:

(1) Five days if for delivery by village, rural, or star route carrier.

(2) Ten days if intended for general delivery service at an office having city carrier service, except that the mail may be held up to 30 days if the addressee has given notice to the postmaster that he will be delayed in arrival.

(3) Fifteen days if intended for general delivery service at an office not having city carrier service.

.312 Perishable items not marked to abandon that cannot be delivered before spoiling or day-old poultry that cannot be delivered within 60 hours after hatching are returned immediately, provided return to sender can be made prior to spoilage or within the 60 hour period.

.313 Mail addressed and deliverable to a post office box, except registered, certified, insured, COD, and perishable, will not be returned until box is declared vacant.

.32 REGISTERED, INSURED, COD, AND CERTIFIED MAIL

.321 Undelivered registered, insured, COD, and certified mail is retained for not less than 3 days, nor more than the periods specified in 159.322, 159.323, and 159.324.

.322 Registered mail is held up to 60 days if the sender so requests by endorsement on the mail. If the sender names no specific period, the mail will be held 10 days before return. *Exception:* If the postmaster believes he will be able to make delivery if the mail is held longer than 10 days, it may be held up to 60 days if written permission is obtained from the sender.

.323 Insured and certified mail is held a maximum of 15 days. It is held a lesser number of days if the sender so specifies.

.324 COD mail is held a maximum of 30 days. It is held a lesser number of days if the sender so specifies.

.33 SPECIAL DELIVERY AND SPECIAL HANDLING MAIL

Special delivery and special handling articles are held for the period specified in 159.31 or 159.32, except that requests for immediate return of special delivery mail will be honored.

159.4 DISPOSAL OF UNDELIVERABLE MAIL AND UNCLAIMED ARTICLES

.41 DISPOSITION OF MAIL

Mail undeliverable at the last office of address is disposed of as follows:

a. Postal and post cards or samples of merchandise are destroyed or sold immediately.

b. Printed matter, including circulars, greeting cards, newspapers, magazines, and other periodical publications, obviously without value, is disposed of as waste paper without examination of contents. This mail will not be torn or mutilated before being consigned to the general waste, except when necessary to prevent improper use. Such matter as redemption coupons and uncanceled postage stamps must be burned or mutilated to prevent improper use. Magazines shall not be separated from the general waste unless their separate bulk sale by contract as waste would result in a material advantage to the Postal Service by reason of the high quality of the paper. Under no circumstances may magazines or other periodical publications be sold at a per copy rate or at auction by the post office. Contracts negotiated for the disposal of waste should contain a provision prohibiting resale by the contractor of copies of magazines or other periodical publications to the public for reading purposes.

c. Domestic ordinary, insured, or COD articles bearing sender's instructions to abandon are disposed of immediately after expiration of the periods stated in 159.3.

d. Third-class mail of no obvious value (see 159.6) and without sender's request for return is disposed of as waste.

e. Insured and COD articles bearing sender's instructions to destroy will be destroyed.

f. Packages containing medicine, perishable articles, liquids, or other articles likely to injure employees, or damage equipment or other mail, or to attract pests, must be destroyed as soon as they are known to be undeliverable.

g. Letters from Canada or Mexico with return addresses are returned to the postmaster at the post office of origin.

h. Mail addressed to a deceased person. See 154.24.

i. Unclaimed franked mail from a Member of Congress, including that addressed under provisions of 122.442, and unclaimed official mail, including official reports and bulletins sent by State agricultural colleges and experiment stations, is returned to the postmaster at the office of origin if it is known. If office of origin is not known, the mail is sent to the post office at Washington, D.C. Undeliverable mail bearing return address of the White House, the Senate, or the House of Representatives, with or without postage stamps, is returned to the post office at Washington, D.C.

j. Santa Claus letters, with postage fully prepaid (or local unpaid or partly paid), with no identification of person for whom they are intended, are

sent to institutions or persons who may request them to use for exclusively philanthropic purposes. If there is no voluntary request, they are sent to the dead mail office.

k. An undeliverable letter bearing the return address of a hotel, motel, school, college, or other public institution printed on the envelope as an advertisement is sent to a dead letter branch for disposition unless the return address also includes the name or title of an individual or a printed or written request for return.

l. Undeliverable and nonreturnable mail containing firearms is handled in accordance with 159.721d.

m. Other mail, including first-class and airmail, bearing no return address or an identical return and delivery address is sent to a dead letter or dead parcel post branch for final disposition.

n. Coins should be stripped from undeliverable circulars and their value should be accounted for as *Miscellaneous Revenue*, A/C 40990.

.42 MONEY FOUND LOOSE IN THE MAIL

Dispose of money found loose in the mail as follows:

a. United States money found loose in the mail, unless identified with losses from mail or returned to its owner, must be promptly turned over to a supervisor. Amounts turned over must be recorded on Form 26, and the entry must be receipted by both the supervisor and the finder by initialing the entry. Funds may be retained by the supervisor until $1 or more has accumulated but should be remitted at least weekly. Funds remitted must be taken into A/C 40990.

b. Retain 30 days awaiting possible claim by the owners all foreign money and any United States money having unusual value, such as uncirculated coins, antiques, or collector's items if identified as such. If unclaimed after 30 days, dispose of it as follows:

(1) Send all Canadian money to the postmaster at Buffalo, NY 14203.

(2) Send all other foreign money to the postmaster at New York, NY 10001.

(3) Send U.S. money having unusual value to the postmaster at New York, NY 10001.

(4) Register money if the known or estimated value exceeds $10.

c. Keep an identifying record only when it may assist in returning the money to its owner.

d. If a valid claim is received for money found loose in the mail after it has been taken into the postal account, make refund from current funds and take credit in A/C 40980.

.43 UNCANCELED STAMPS FOUND LOOSE IN THE MAIL

.431 Uncanceled Stamps Lost From Mail

a. Reaffix to mail if possible; if not, drop in a slotted and sealed or locked container located on the workroom floor.

b. Destroy at least once a month by burning.

c. Make no record of these stamps.

.432 Uncanceled Stamps Not Lost From Mail

a. Place in an envelope and retain 30 days in the inquiry section of the main office if found at main office or at contract stations or branches; or in custody of the superintendent if found at classified stations and branches.

b. Make a descriptive record on the envelope only if it will assist in returning the stamps to the owner. If delivered to owner, take a receipt on the envelope.

c. If unclaimed after 30 days, destroy monthly at the place of retention in the presence of a witness designated by the postmaster. Keep a record of

The post offices at Memphis, TN 38101, and Philadelphia, PA 19104, act as dead parcel post branches for matter that becomes dead in their post office.

c. States and Territories served by each dead letter and dead parcel post branch are:

State or Territory	Dead letter branch	Dead parcel post branch
Alabama	Memphis, TN 38101	Atlanta, GA 30304
Alaska	San Francisco, CA 94101	San Francisco, CA 94101
Arizona	San Francisco, CA 94101	San Francisco, CA 94101
Arkansas	St. Louis, MO 63155	New Orleans, LA 70113
California	San Francisco, CA 94101	San Francisco, CA 94101
Colorado	San Francisco, CA 94101	San Francisco, CA 91101
Connecticut	Boston, MA 02109	Boston, MA 02109
Delaware	Philadelphia, PA 19104	New York, NY 10001
District of Columbia	Washington, DC 20013	Washington, DC 20013
Florida	Atlanta, GA 30304	Atlanta, GA 30304
Georgia	Atlanta, GA 30304	Atlanta, GA 30304
Guam	San Francisco, CA 94101	San Francisco, CA 94101
Hawaii	San Francisco, CA 94101	San Francisco, CA 94101
Idaho	San Francisco, CA 94101	San Francisco, CA 94101
Illinois	Chicago, IL 60607	Chicago, IL 60607
Indiana	Cincinnati, OH 45234	Cincinnati, OH 45234
Iowa	St. Louis, MO 63155	Chicago, IL 60607
Kansas	Wichita, KS 67202	Saint Louis, MO 63155
Kentucky	Cincinnati, OH 45234	Cincinnati, OH 45234
Louisiana	Dallas, TX 75221	New Orleans, LA 70113
Maine	Boston, MA 02109	Boston, MA 02109
Maryland (Eastern Shore)	Washington, DC 20013	New York, NY 10001
Maryland (except Eastern Shore)	Washington, DC 20013	Washington, DC 20013
Massachusetts	Boston, MA 02109	Boston, MA 02109
Michigan (Lower Peninsula)	Chicago, IL 60607	Chicago, IL 60607
Michigan (Northern Peninsula)	Minneapolis, MN 55401	St. Paul, MN 55101
Minnesota	Minneapolis, MN 55401	St. Paul, MN 55101
Mississippi	Memphis, TN 38101	New Orleans, LA 70118
Missouri	St. Louis, MO 63155	St. Louis, MO 63155
Montana	San Francisco, CA 94101	San Francisco, CA 94101
Nebraska	Wichita, KS 67202	Omaha, NE 68102
Nevada	San Francisco, CA 94101	San Francisco, CA 94101
New Hampshire	Boston, MA 02109	Boston, MA 02109
New Jersey	Philadelphia, PA 19104	New York, NY 10001
New Mexico	San Francisco, CA 94101	San Francisco, CA 94101
New York	New York, NY 10001	New York, NY 10001
North Carolina	Atlanta, GA 30304	Washington, DC 20013
North Dakota	Minneapolis, MN 55401	St. Paul, MN 55101
Ohio	Cincinnati, OH 45234	Cincinnati, OH 45234
Oklahoma	Wichita, KS 67202	Fort Worth, TX 76101
Oregon	San Francisco, CA 94101	San Francisco, CA 94101
Pennsylvania	Philadelphia, PA 19104	New York, NY 10001
Puerto Rico	San Juan, PR 00902	San Juan, PR 00902
Rhode Island	Boston, MA 02109	Boston, MA 02109
Samoa	San Francisco, CA 94101	San Francisco, CA 94101
South Carolina	Atlanta, GA 30304	Atlanta, GA 30304
South Dakota	Minneapolis, MN 55401	St. Paul, MN 55101
Tennessee	Memphis, TN 38101	Atlanta, GA 30304
Texas (except zips 79830-79999)	Dallas, TX 75221	Fort Worth, TX 76101
Texas (zips 79830-79999)	San Francisco, CA 94101	San Francisco, CA 94101
Utah	San Francisco, CA 94101	San Francisco, CA 94101
Vermont	Boston, MA 02109	Boston, MA 02109
Virginia (except Accomack and Northampton Counties)	Washington, DC 20013	Washington, DC 20013
Virginia (Accomack and Northampton Counties)	Washington, DC 20013	New York, NY 10001
Virgin Islands	San Juan, PR 00902	San Juan, PR 00902
Washington	San Francisco, CA 94101	San Francisco, CA 94101
West Virginia	Washington, DC 20013	Washington, DC 20013
Wisconsin	Minneapolis, MN 55401	St. Paul, MN 55101
Wyoming	San Francisco, CA 94101	San Francisco, CA 94101

.73 TREATMENT AT DEAD MAIL OFFICE

a. Mail is examined and opened when necessary to find the name and address of the sender or addressee.

b. A fee of 20 cents is charged for delivery to sender or addressee of each letter and first-class parcel opened in the dead mail office.

c. If the sender or addressee cannot be identified, the following retention periods are observed:

(1) Letters of domestic origin with enclosures of value, 1 year.
(2) Other letters, none.
(3) Letters containing merchandise, and third- and fourth-class, mail containing valuables (including first-class mail not in the form of a letter, addressed to another country), 60 days: if posted in violation of law or treaty, 6 months.

d. Dead mail that cannot be delivered to addressee or sender is destroyed or sold.

e. Uncanceled postage stamps or stamped paper, which has been used for postage, will not be removed or salvaged in any manner. If mail bearing uncanceled postage is to be forwarded, returned, filed, or sold under the provisions of 159.7 or 159.8, the postage stamps or stamped paper will be canceled in accordance with 332.2. If mail bearing uncanceled postage is to be destroyed under 159.7 or 159.8, the destruction will include the affixed postage.

f. Follow procedure below for delivery of returned dead mail:
(1) *Confidential Treatment.* Treat this mail as if under seal. Maintain the strictest secrecy as to its contents.
(2) *Forwarding.* Forward if necessary to another post office under the same class as received. Appropriately endorse Form 4914, *Transmittal Letter To Deliver Dead Letters*, accompanying the mail and forward it with the mail.
(3) *Disposal If Undeliverable.* If the mail cannot be delivered within a reasonable time after return from the dead mail branch, endorse the reason for non-delivery on the form which accompanies the mail. Return the mail and form to the sending dead letter or dead parcel post branch under the same class by which received.

g. For registered mail:
(1) When received under registered cover, handle in the inquiry section or in some other section by an employee specifically designated by the postmaster. Do not allow the registry section to open and dispose of this mail.
(2) If the address is supplied, reregister to the rightful owner under the local registry number and charge the dead-letter fee (see 159.747) plus the minimum registry fee.
(3) Enter the registry number on the form which accompanies the dead mail. File the form.
(4) Register when forwarding or returning.

.74 TREATMENT OF DEAD MAIL IN DEAD LETTER BRANCHES

.741 *Opening Letters*

The dead letter branches dispose of dead first-class letters. Dead letters are opened at dead letter branches in an attempt to determine the name and address of the sender so that his property may be returned. Only those employees especially designated to open dead letters shall be allowed to treat such matter and then only under proper supervision. Do not ordinarily use substitute employees in dead letter branches.

.742 *Letters Which Can Be Returned to Sender or Forwarded to Addressee*

Return dead letters to the sender or, when the opening of the letter reveals the correct name and address of the addressee and the name and address of the sender is not found, forward the letter to the addressee; except:

a. Destroy any letter which contains advertising matter obviously of no value to the sender.

b. Send all domestic letters, registered or ordinary, containing money or valuable enclosures *returnable to a foreign address*, after recording when required, to the Postmaster, Dead Letter Branch, Washington, DC 20013.

Subchapter 160 SPECIAL MAIL SERVICES

Part 161

REGISTERED MAIL

161.1 DESCRIPTION

.11 WHY MAIL IS REGISTERED

Registered mail provides added protection for valuable and important mail plus evidence of mailing and delivery and indemnity in case of loss or damage.

.12 WHAT MAY BE REGISTERED

All mailable matter prepaid with postage at the first-class, airmail, or priority rates. Stamps or meter stamps must be attached representing all postage and fee charges. Business reply mail may not be registered unless postage and all fees are fully prepaid.

.13 WHERE TO MAIL

Registration may be obtained by presenting mail to:

a. *Post Offices and Their Branches and Stations.* Postmasters will accept mail of unusually high value only at the main office or larger branches and stations.

b. *Rural Carriers.* Mail and cash may be left in a rural box. Any change will be handed to the sender or placed in an envelope and left in the box on the carrier's next trip. Responsibility will not be assumed for articles or money until a receipt is issued. No responsibility will be assumed for any change placed in the box.

c. *Nonpersonnel Rural Stations and Branches.* Customers must meet the rural carrier at the nonpersonnel rural station or branch to have mail registered.

.14 REGISTRATION NOT AVAILABLE

Mail will not be registered if:

a. Placed in street letterboxes or in mail drops in post offices.
b. Addressed to post offices to which it cannot be transported with safety.
c. Not properly prepared. See 161.3.
d. Two or more articles are tied or fastened together, unless enclosed in the same envelope or wrapper.

.15 ADDITIONAL SERVICES

.151 *Registered COD*

Combined registry and COD service is available. The regular registered mail fees apply plus the collection charge specified in 161.21. The mail must conform with registered mail and COD service requirements.

.152 *Return Receipts*

The sender may obtain a return receipt, Form 3811, by paying fees, in addition to the registration fee and postage, as outlined in 165.2.

.153 *Restricted Delivery*

Restricted delivery may be obtained as set forth in 165.3 and by the payment of additional fees as provided in 165.32. For circumstances under which restricted delivery may be accomplished by delivery to other than to the addressee, see 165.34.

161.2 FEES AND LIABILITY

.21 FEES

Value	Fees (in addition to postage)	
	For articles not covered by commercial or other insurance	For articles also covered by commercial or other insurance
$0.00 to $100	$2.10	$2.10
$100.01 to $200	2.30	2.30
$200.01 to $400	2.60	2.60
$400.01 to $600	2.90	2.90
$600.01 to $800	3.20	3.20
$800.01 to $1,000	3.50	3.50
$1,000.01 to $2,000	3.60	$3.50 plus handling charge of 25 cents per $1,000 or fraction over first $1,000.
$2,000.01 to $3,000	4.10	
$3,000.01 to $4,000	4.40	
$4,000.01 to $5,000	4.70	
$5,000.01 to $6,000	5.00	
$6,000.01 to $7,000	5.30	
$7,000.01 to $8,000	5.60	
$8,000.01 to $9,000	5.90	
$9,000.01 to $10,000	6.20	
$10,000.01 to $1,000,000	$6.20 plus handling charge of 25 cents per $1,000 or fraction over first $10,000.	
$1,000,000.01 to $15,000,000	$256.70 plus handling charge of 20 cents per $1,000 or fraction over first $1,000,000.	$253.25 plus handling charge of 20 cents per $1,000 or fraction over first $1,000,000.
Over $15,000,000	Additional charges may be made based on considerations of weight, space, and value.	

ADDITIONAL SERVICES	Extra fee (cents)
COD COLLECTION CHARGE (Maximum amount collectible is $300)	85
RESTRICTED DELIVERY	60
RETURN RECEIPTS:	
Requested at time of mailing:	
Showing to whom and when delivered	35
Showing to whom, when and address where delivered	45
Requested after mailing:	
Showing to whom and when delivered	45

.22 POSTAL INSURANCE LIABILITY

.221 *Without Other Insurance*

Postal insurance covers value up to the maximum of $10,000, except as provided in 161.223.

.222 *With Other Insurance*

Postal insurance liability is limited to a maximum of $1,000. Whenever postal insurance and other insurance both apply to the first $1,000 of value

.47 WHEN NOT DELIVERED

The addressee may be required to call at the post office for registered mail if its delivery by a carrier would not be safe.

161.5 PROCEDURES AT MAILING OFFICE

.51 ACCEPTING

.511 *Endorsing*

Stamp each article on the left portion of the face side with the registration rubber stamp *Registered No.* _____. Enter the registration number. Endorse articles too small to accommodate the official endorsement with the letter *R* followed by the registration number.

.512 *Assigning Registration Numbers*

Number the articles and receipts consecutively. Retain mailing office records in numerical order. File records of firm registrations to permit ready identification in case of inquiry or claim. Assign blocks or series of numbers as follows:

a. At all post offices having stations or branches, assign blocks of registration numbers for the main office and each station and branch. The number blocks should approximate the annual number of window registrations at the points involved. Repeat the series of numbers when the last number is used.

b. All other post offices use a series of numbers approximating the annual volume of window registrations. Repeat the series when the last number is used. Keep the number of digits in the number series to a minimum.

c. Assign blocks of registration numbers to firm mailers, keeping the number of digits to a minimum. Use Form 3857, *Assignment of Number Blocks for Registered, Insured, Certified, and COD Mail.* If prefixes have been used or assigned to firms, take action, on a gradual basis if considered necessary, to reassign blocks of numbers without prefixes. This instruction regarding prefixes does not apply to a few of the larger post offices to which special authority has been granted for the limited use of prefixes.

d. In areas where carriers are required to accept mail for registration, assign 100 numbers to each carrier. For rural carriers, use the route number as the first number of the series.

.513 *Issuing Receipts*

Issue receipts on the following forms:

a. Form 3806 (offices with 190 or more revenue units). Prepare duplicate for your record. After the four receipts on the sheet are issued, detach entire sheet of carbon entries and file.

b. Form 3805 (offices with less than 190 revenue units; also offices with 190 or more revenue units, and stations and branches where volume is small). Follow instructions on cover page of form.

c. Form 3877 (firm mailing bill) when senders use this form. See 161.35. Check articles against entries on the form. If sender does not want to wait for descriptive receipt, issue bulk receipt on Form 3824, check mailing, and issue regular receipt later. Use Form 3876, *Notice of Firm Mailer—Incorrect Fees*, to notify firm mailers of payment of incorrect fees or surcharges.

d. Special firm mailing bills or recapitulation sheets, which have been approved by the Office of Mail Classification, Rates & Classification Department, Washington, DC 20260.

e. Form 3896, *Carrier Registration Book*, issued by carriers to senders of registered mail. Carrier must not assist in preparation and sealing of such letters. Carriers must deliver the registered mail to the postmaster or his

representative. When a rural carrier accepts mail for registration and it is addressed for delivery on his route, he may deliver it before returning to the post office. The carrier must cancel postage stamps at time of delivery. He must enter the disposition of the mail on the receipt (Form 3896) and also obtain the signature of the postmaster or station superintendent on it.

f. If the carrier loses his registration books or is unable to account satisfactorily for missing receipt, report facts immediately to the postal inspector in charge.

g. If requested to do so by the sender, show on the mailing receipt and post office record the time the article was accepted for mailing. Write the time in ink above the postmark block on individual receipts or next to the space for the name of the accepting employee on firm mailing bills.

.514 Postmarking.

Postmark letters twice on the back on the crossing of the upper and lower flaps or, if paste-on return receipts are used, postmark partially on the receipt and partially on the flaps of the letter. Postmark packages sealed with paper strips across opposite edges of the strips. Use additional postmarks if this would make rifling more difficult. Postmark on the address side registered mail sealed on the address side. When large mailings consist of letters, containing written or printed matter of little value, the envelopes may be postmarked once on the back by running them through a canceling machine. Postmark once on the back of the tag of sack jackets.

.515 Canceling Stamps.

Cancel the postage stamps, using rubber or hardwood canceler.

.516 Free Return Receipts

Do not charge for return receipts for free registered mail of the Postal Service. Use such receipts only when it is essential that a signed receipt be on file at the mailing post office. Do not request return receipts for official post office remittances or postal supplies.

.52 PREPARING FOR DISPATCH

.521 Rotary Lock Pouches.

Process registered mail for dispatch in rotary-lock pouches as follows:

a. Use rotary-lock pouches when quantity or bulk of mail justifies, except when dispatch is to be made by air. (See 161.8.)

b. Bill rotary-lock pouches to offices having rotary lock keys. Enter the following information on bill Form 3852, 3853, or 3854, with ball point pen:

(1) Lock and rotary number.
(2) Bill and page number, if necessary.
(3) Destination of dispatch.
(4) Time and means of dispatch, if considered necessary.
(5) Postmark on bill and coupon. Mobile unit clerks may use their stamps as a postmark.
(6) Registration numbers and post offices of origin of individual articles. ZIP Code or an abbreviation of the office of origin may be used.
(7) APO or FPO numbers will be used as the office of origin on military mail originating from overseas military post offices.
(8) Numbers and offices of origin of jacket envelopes, and fixed and rotary-lock numbers and offices of origin of rotary-lock pouches.
(9) If the Form 3830–A covering a rotary lock pouch is completed by the person who made up the inner bill of the pouch, the control number from Form 3830–A may be entered on the office copy of the

.883 Missing Dispatch Bill

Make a bill and send it to the original office, if known. If the original dispatch office is unknown, send the bill to the general manager, logistics division.

161.9 SPECIAL INSTRUCTIONS

.91 OFFICES WITH 950 OR MORE REVENUE UNITS

.911 Registry Section

a. *Transfer from Opening Unit.* Transfer mail to other units as follows:

(1) *City or Local Delivery.* Backstamp these articles. Postmark envelopes once over intersection of the flaps. Send registered mail to carrier cage and get a receipt on Forms 3852, 3853 or 3854. Show the registration numbers of all articles. No receipt is required if there is no separate cage.
(2) *Transit Pouches and Jackets.* Send to the outgoing or dispatch cage Get a receipt on the incoming bill if there is a separate cage. Use a separate form or back of incoming bill if you have a large number of pouches and jackets.
(3) *Transit and Station Articles.* Transfer to the dispatch unit to be included in outgoing dispatches.
(4) *Valuable Mail.* See 161.932. Place in vault or safe for safekeeping awaiting delivery or dispatch. If it will be delivered or dispatched in a short time, place it in a pouch or jacket promptly. This mail must be receipted for by signing opposite each valuable article listed on the incoming bill. You may bracket all valuable articles and sign only once.

b. *Transfer from Acceptance or Delivery Windows.* Transfer mail to other units without receipt except when:

(1) Valuable mail is transferred from acceptance window. See 161.932. Get receipt on office record Form 3806 or firm mailing bill.
(2) Separate dis and city cages are operated. Get receipt for articles of ordinary value to be forwarded or returned. Use Forms 3852, 3853, or 3854.
(3) Acceptance or delivery window is in a separate cage. Get receipt. Use Forms 3852, 3853, or 3854.
(4) Registered articles are sent to dead letter section. Window clerk must get receipt on Form 3849.

c. *Record of Employees.* Keep a record of employees working in the registry section each day. Use Form 1625, *Record of Entry to Registry Section or Distribution Units Thereof.* Keep a separate record of employees detailed to that section. Employees in charge of, or working in the valuable cage or vault, must record time of entering and leaving the valuable cage or vault. Use Form 1625.

.912 Stations and Branches

a. *Mail Received from Main Office.* Check articles received in pouches. Report to supervisor of the station or branch and supervisor in charge of main registry section any shortage or surplus. Endorse bill and coupon to show discrepancies. Mail coupons signed by both supervisor and opening clerk showing discrepancies to the official in charge of main registry section. Separate registered articles for desk delivery and for carrier delivery.

b. *Mail Dispatched to Main Office.* Bill as instructed in 161.52.

.92 ARTICLES INTENDED FOR REGISTRATION FOUND IN THE ORDINARY MAIL

.921 Register articles marked for registration found in ordinary mail which are not endorsed *Not in the Registered Mail* if postage and fees have been fully prepaid Endorse article *Found in ordinary mail.* Mail registration receipt and Form 3892 *Notice of Registered Mail Found in Ordinary Mail,* to

sender. Show on post office registration record when and by whom the article was removed from ordinary mail. Endorse articles not fully prepaid *Not in the Registered Mail* and dispatch as ordinary mail.

.922 Mobile unit clerks who find in the ordinary mail an article intended for registration which is not marked *Not in the registered mail* shall mark it *Found in the ordinary mail* and postmark it. When dispatching the article, it must be listed on the dispatch bill by office of origin, if known, and the letters FOM (found ordinary mail) must be entered on the bill in the column for the registration number. The article will not be numbered. The first post office to which the article is dispatched must register it and send Form 3892 to the sender with the registration receipt. Any postage due shall be rated for collection from the addressee.

.93 PROTECTION

.931 All Registered Mail

a. Keep registered mail separate from ordinary mail, except as provided in 161.524 and 161.72.

b. Handle registered mail at all times so that individual responsibility can be fixed, consistent with instructions in this part.

c. Whenever practicable, keep registry activities separate from the workroom floor and other service areas having personnel not charged with registered mail.

d. In post offices where registry activities are limited in scope and include service windows, wire screen partitions are not considered necessary to separate the activities from the workroom floor and other service areas. Acceptable security in present facilities usually may be obtained by using standard furniture items to separate the activities, or by using counter-high partitions.

e. Where service counter activities are combined, registered mail must be handled at all times in such a manner that individual responsibility for the registered mail can be fixed.

f. At post offices requiring a separate registry unit on the workroom floor, provide an operating area enclosed with wire screen partitions. If the screen partition does not extend to the ceiling, a top must be provided.

.932 Internal Protection

a. *Stationary Units*

The following special rules apply only to internal handling in a stationary postal unit. The term *valuable* as defined in (2) is not to be used as a guide to dispatching or to carrier delivery.

(1) Provide a safe, vault, separate cage, or locked container. Assign an employee or employees to be responsible for valuable registered mail. Do not permit other employees to have access to this unit.
(2) Determine on the basis of local conditions the value of registered mail considered to warrant transfer to the valuable unit while awaiting dispatch or delivery. This value is not to be less than $1,000. This determination is the responsibility of the postmaster.
(3) Transfer valuable mail to and from the valuable unit by receipts showing the number and office of origin of individual pieces or full particulars of rotary-lock pouches. Keep a record on Form 3853 or 3854 of the valuable articles and pouches on hand in the unit.
(4) While registered mail is in the valuable unit, use Form 3810, *Reminder Record,* in the dispatch or delivery sections as a reminder, unless other approved methods of identifying articles held in the valuable unit are in effect.

(5) At offices operating on a tour basis which have a separate valuable cage, make a balance at the end of each tour. The balance will cover only the registered articles in the valuable cage. Use Form 3875, *Daily Balance, Registry Section,* for this purpose. The employee in charge of the valuable unit must obtain a receipt for the valuable articles from the responsible employee in the succeeding tour. Tour receipts must be approved and filed by the supervisor.
(6) Report serious discrepancies in handling valuable registered mail to the postal inspector in charge or to the local postal inspector, by telephone or telegraph.

b. *Railway Post Offices and Storage Cars*

(1) Registered mail should be handled in railway post office cars, except when the volume is greater than can be accommodated in the available space. Registered pouches known to contain coin, currency or bullion should be handled in railway post office cars at all times unless other arrangements have been made and approved by Headquarters.
(2) When destination storage cars are operated in RPO trains, and a sufficient quantity of registered mail to justify a distinct separation is regularly available, consideration may be given to establishing a rotary locked car. The general manager, logistics division, shall conduct such investigation as necessary to determine that proper protection will be given with a substantial reduction in the number of handlings enroute. An appropriate recommendation, outlining the pertinent facts and cost factors and coordinated with the regions concerned, shall be submitted to Director, Logistics Office, Mail Processing Department. If approval is given for this dispatch, the cars shall be billed through to destination with sufficient copies of the bills to allow each clerk to retain a receipted copy without rebilling.
(3) When the volume of rotary lock pouches and outside registered articles is too great for accommodation in RPO cars, but it is not practicable to establish a rotary locked storage car or to use alternate routings, this mail except coin, currency, or bullion, shall be handled in a storage car adjacent to the RPO car. It shall be carefully separated from other mail and piled in such a manner that rotary locks are readily accessible for checking in transit. The mobile unit supervisor shall take precaution to insure that unauthorized persons cannot gain access to this mail in transit.
(4) Do not deliver registered mail to railroad employees or to mail carriers except as authorized.

.933 Hand-to-Hand Exchanges

a. Exception to the rule in 161.521c(13) is allowed when the volume of rotary-locked pouches is greater than can be reenclosed in approximately 10 iron-lock pouches for a particular surface dispatch. Rotaries may then be dispatched outside and a hand-to-hand exchange made.

b. When hand-to-hand exchanges are necessary more than 50 percent of the time between mobile units or between any mobile unit and post office at end of run, the director, logistics division, will authorize hand-to-hand exchange on a daily basis. He will authorize the postmaster to make the arrangements for hand-to-hand delivery.

c. When hand-to-hand delivery is made less than 50 percent of the time and a mobile unit employee must perform this service, he will be given additional credit. He must forward the coupon of the manifold bill receipt to his mobile unit section to certify his time. The coupon must show postmark of receiving unit, time of receipt, and name of employee to whom the registers were delivered.

.934 *Postal Employees Responsibility*

Postmasters and other postal employees will be held personally responsible for the wrong delivery, depredation on, or loss of any registered mail due to negligence or disregard of instructions.

.935 *Inspection of Damaged Mail*

To comply with the instructions concerning sanctity of the seal on first-class matter, damaged registered articles must not be examined any more than necessary to determine the extent of the damage.

Part 162

INSURED MAIL

162.1 DESCRIPTION

.11 PURPOSE

The sender may obtain payment for loss of, rifling of, or damage to domestic mail by having it insured.

.12 CLASSES OF MAIL TO WHICH APPLICABLE

.121 Third- and fourth-class mail.

.122 Airmail which contains third- or fourth-class matter (may contain incidental first-class enclosures). Sealed envelopes should be endorsed *Contains Third-Class Mail* or *Contains Fourth-Class Mail*.

.123 Official Government mail bearing *Postage and Fees Paid* endorsement.

.124 The mail must bear the complete names and addresses of sender and addressee.

.13 NOT ACCEPTABLE FOR INSURANCE

.131 Parcels containing matter offered for sale, addressed to prospective purchasers who have not ordered or authorized their sending. If such matter is received in the mail, payment will not be made for loss, rifling, or damage.

.132 Nonmailable matter.

.133 Articles that are so fragile as to prevent their safe carriage in the mail regardless of packaging.

.134 Articles not adequately prepared to withstand normal handling in the mail, see part 121. As a general rule, any package that is mailable should be insurable.

162.2 FEES AND LIABILITY

.21 FEES (IN ADDITION TO POSTAGE)

Liability	*Fee*
$0.01 to $15	$0.40
15.01 to 50	.60
50.01 to 100	.80
100.01 to 150	1.00
150.01 to 200	1.20

Liability for insured mail is limited to $200

.22 PAYMENT OF FEES AND POSTAGE

Insurance fees must be paid in addition to the postage. The mailer guarantees to pay return and forwarding postage unless he writes instructions on the wrapper or envelope not to forward or return the mail.

162.3 ADDITIONAL SERVICES

.31 RESTRICTED DELIVERY

Restricted delivery may be obtained as set forth in 165.3 and by the payment of additional fees as provided in 165.32. For circumstances under which restricted delivery may be accomplished by delivery other than to the addressee, see 165.34.

.32 RETURN RECEIPT

The sender may obtain a return receipt, Form 3811, by paying the required additional fee as provided in 165.2.

162.4 MAILING

.41 WHERE TO MAIL

Mailers must mail parcels that they insure at a post office, branch, or station, or give them to a rural carrier. They must not be deposited in mail drops at post offices, nor in or on street mail boxes. They must not be left on, but may be placed in, rural mail boxes.

.42 INQUIRY AS TO CONTENTS AND PREPARATION

The postal employee at the window is required to ask whether the package presented for insurance contains fragile, perishable, or flammable matter. If the package does not contain such matter and to all outward appearances is adequately prepared, no further inquiry as to contents will be made. If the package contains such matter, detailed inquiry will be made to determine whether contents are admissible in the mail and are adequately packed.

.43 INDIVIDUAL RECEIPTS FOR MAILING

Mailers are issued a receipt for each insured parcel mailed on one of the following forms:

a. Form 3813, *Receipt For Domestic Insured Parcel*, when the package is insured for $15 or less.
b. Form 3813–P, *Receipt For Insured Mail, Domestic-International*, when the package is insured for more than $15.

The post office keeps no record of the mailing of insured packages. Mailers must enter the name and address of the addressee on the receipt and retain it. Mailers must exhibit the receipt if claim for loss is made. The receipt should be shown if an inquiry is filed. A telephone request for inquiry is acceptable if the mailer can furnish particulars of mailing from his receipt. A temporary receipt showing only the total number of parcels accepted may be issued when a large number of articles are mailed. The permanent receipt will be issued as soon as possible.

.44 FIRM MAILINGS

.441 *Firm Mailing Books*

Mailing books, Form 3877, are furnished without charge to customers who mail an average of three or more parcels at one time. Spaces are provided for entering the description of parcels to be insured. Any alterations must be initialed by the mailer and accepting employee. The sheets of these books become the senders' receipts. The books must be presented with the parcels to be mailed. Following are instructions for their use:

a. Parcels to be insured for $15 or less are not to be numbered and should be listed on separate sheets or grouped together. Prepare one copy only.
b. For parcels to be insured for more than $15, the postmaster will assign a series of numbers. The mailer must number the articles and the items in the book to correspond.
c. The parcels must be conspicuously endorsed with the stamped or printed official insurance endorsement.
d. All entries made in firm mailing books will be made by typewriter, ink, or ball-point pen. All unused portions of the *addressee* column will be obliterated by drawing a diagonal line through the unused portion.

162.6 RECEIPTS

.61 UNNUMBERED PACKAGES

Unnumbered packages will be delivered as ordinary mail.

.62 NUMBERED PACKAGES

Postal employees will take signed receipts for the delivery of numbered packages on the following forms:

a. Form 3849, when delivery is made by carrier, and window delivery at post offices with 190 or more revenue units.
b. Form 3850, Form 3849, for window deliveries made at post offices with 189 or fewer revenue units.
c. Form 3883, when addressees regularly receive an average of three or more packages at one time.
d. Also, Form 3811, *Return Receipt*, when this service is requested by the sender.

162.7 INTERNAL CONTROLS

.71 FIRM MAILINGS

Accept large mailings of packages from reliable firms as follows:

a. Count the packages when they are received.
b. Check your count against the total number of packages listed on the mailing bill.
c. Receipt the mailing bill and return it to the mailer if your count and the total number on the bill are the same.
d. Check 5 percent of a representative mailing once each month to determine whether the correct postage and fees have been paid and whether the packages are correctly listed on the mailing bills.
e. Issue a temporary receipt on Form 3824 for the total number of packages received when your count is not the same as the total on the mailing bill. Check the entire mailing as soon as possible to determine which listed packages are not received. Correct the mailing bill and return it to the mailer.
f. Postmark each package unless meter postage is used.

.72 FILING OF DELIVERY RECORDS

File delivery records as follows:

a. File Form 3849 in the consolidated file, with those for registered and certified mail, by the last two digits of the insurance number. If quantity accumulated over the filing period is less than 200, use last digit only for breaking file. When the number is not entirely legible, file the receipt alphabetically by the name of the addressee. File Form 3883, *Firm Delivery Bill*, alphabetically by the name of the addressee or by the date of delivery.
b. Delivery receipts for numbered insured packages returned to senders may be kept separately from delivery receipts covering packages delivered to addressees.

.73 CHECK OF RECORDS

To make sure that delivering employees are obtaining the required delivery receipts and that receipts are properly filed, offices having carrier delivery service should:

a. Make a selective check at least quarterly, including a check of firm delivery bills. Use Form 3871, *Receipt Verification—Insured Mail*.
b. Keep a record for 1 year, showing dates of the selective checks and results of the checks.

.74 DISPATCH FROM POST OFFICES

Dispatch insured mail as ordinary mail. Handle it as ordinary mail while it is in transit.

Part 163

COD MAIL

163.1 DESCRIPTION

.11 PURPOSE

Customers may mail an article for which they have not been paid and have the price and the cost of the postage collected from the addressee when the article is delivered. This is collect-on-delivery or COD service. The amount collected is returned to the mailer by a postal money order. The fees for COD service include insurance against loss, rifling, or damage to the article and failure to receive the amount collected from the addressee.

.12 MAIL WHICH MAY BE SENT COD

First-, third-, and fourth-class matter may be sent as COD mail.

.13 CONDITIONS

.131 The mail must bear the complete names and addresses of sender and addressee.

.132 Amount collected from the addressee will not exceed $300.

.133 The amount to be collected or the amount of insurance coverage desired, whichever is higher, determines the COD fee.

.134 The sender guarantees to pay any return postage unless otherwise specified on the mail.

.135 The goods shipped must have been ordered by the addressee.

.14 PROHIBITIONS

COD service cannot be used for:

a. Collection agency purposes.
b. Return of merchandise about which some dissatisfaction has arisen, unless the new addressee has consented in advance to such return.
c. Sending only bills or statements of indebtedness, even though the sender may establish that the addressee has agreed to collection in this manner. However, when a legitimate COD shipment consisting of merchandise, bill of lading, etc., is being mailed, the balance due on a past or anticipated transaction may be included in the charges on a COD article, provided the addressee has consented in advance to such action.
d. Parcels containing moving-picture films mailed by exhibitors to moving-picture manufacturers, distributors, or exchanges. Such parcels may be sent as insured mail, or, if sealed, by first-class registered mail.

.15 RESTRICTIONS ON COD SERVICE TO MILITARY INSTALLATIONS

COD service is not available for articles having an APO or FPO designation as part of the address, including official shipments and shipments to Armed Forces agencies.

.16 SERVICE WITH U.S. POSSESSIONS AND TERRITORIES

There is no COD service with the Canal Zone, or Canton Island.

.17 ADDITIONAL SERVICES

.171 *Restricted Delivery*

Restricted delivery may be obtained as set forth in 165.3 and by the payment of additional fees as provided in 165.32. For circumstances under which restricted delivery may be accomplished by delivery other than to the addressee, see 165.34.

.172 *Alteration of COD Charges or Designation of New Addressee*

The sender of a COD package may alter the COD charges or direct delivery to a new addressee by filing a request with the postmaster at the office of mailing on Form 3818, *Authorization to Change COD Charges or Addressee* and paying the fee listed for this service in 163.21. The postmaster will send the directions to the office of delivery by telegram if the sender pays the costs.

.173 *Notice to Sender*

Senders desiring a notice of undelivered COD mail must request Form 3849–D *Notice to Sender of Undelivered COD Mail*, by endorsement on the address label. This request must appear conspicuously, directly under the return name and address of the sender, and separate from any other instructions, as follows:

FORM 3849–D REQUESTED

A mailer's request may include directions to send the notice to the mailer or to his representative. When the mailer's representative is designated, the representative's name and local or nearby address must be shown in a bordered space with instructions, reading: "*Do not deliver to mailer's designated representative without collecting COD charges,*" or "*Deliver without collecting COD charges to mailer's designated representative.*" The notice will be sent in accordance with 163.511.

.174 *Registered COD Mail*

Sealed domestic mail of any class bearing postage at the first-class rate may be sent as registered COD mail. Such mail is handled the same as other registered mail. The maximum amount of charges collectible on a parcel is $300, but additional indemnity may be obtained over $300 up to the regular registry limit of $10,000 by payment of a higher fee. Registered COD mail is subject to a handing charge applicable to other registered mail, except that the basis of the handling charge is the amount by which the declared actual value of the article exceeds the limit of liability covered by the fee paid. Envelopes used as covers must not be smaller than 4 x 7¾ inches.

.18 DELAYS IN REMITTANCE

Mailers should be encouraged to report instances in which there has been undue delay in receiving money orders in payment for COD parcels. The mailer should normally receive payment within 45 days of the day of mailing (75 days for parcels sent by surface ocean transportation). Delays in excess of these periods should be reported to the local postal inspector-in-charge giving the date of mailing, parcel number, address of delivery, date payment was received, and the number and date on the payment money order. Payments not received within these periods may be considered a loss for purposes of filing a claim in accordance with Part 164.

163.2 FEES

.21 IN ADDITION TO POSTAGE

Amount to be collected or insurance coverage desired	COD fees
$0.01 to $10	$0.85
$10.01 to $25	1.05
$25.01 to $50	1.25
$50.01 to $100	1.45
$100.01 to $200	1.65
$200.01 to $300	1.85
Restricted delivery	$0.60
Notice of nondelivery	.25
Alteration of COD charges or designation of new addressee	.50

.22 PAYMENT OF FEES AND POSTAGE

Fees and postage must be prepaid. If the mailer includes in the charges to be remitted the postage and fee prepaid, the COD fee will be based on the total COD charges, which include the postage and fee.

163.3 MAILER PRINTED TAGS

.31 APPROVAL

Many mailers use specially designed and privately printed COD tags which may offer advantages in processing economies or in advertising value. Such economies can often be realized by computer oriented firms when the computer can prepare the tag, develop the equivalent of Form 3877, *Firm Mailing Book for Registered, Registered COD, and Certified Mail*, and also routinely provide a numerical listing of all parcels returned by the Postal Service. Mailers desiring to print their own labels should consult printers capable of printing business forms meeting the requirements of these regulations. COD tags must be submitted to the Office of Mail Classification, Washington, DC 20260 through the local postmaster for approval before printing.

.32 BASIC TAG REQUIREMENTS

.321 Tags may be similar in design to tags provided by the Postal Service, or may be of a multi-layer design if each layer fulfills the function of a part of the tag provided by the Postal Service. COD tags must meet the requirements of this section by July 1, 1975.

.322 Tags shall, as a minimum, contain the equivalent of Form 3816a–L, *Tag for COD Articles*, or Form 3816a–S, *COD Card for Use on Sealed COD Parcels*, provided by the Postal Service; i.e., the delivery office coupon, containing name and address of addressee and mailer, the charges and fees, space for postmarks, and space for the addressee's signature, space for the date of delivery, and space for the signature of the delivery employee and the delivery employee's coupon. A remittance coupon to be returned to the mailer with the money order, may also be included.

.323 To facilitate filing and retrieval at the delivery office, the delivery office coupon should be the approximate size of the Postal Service tag (min: 3" x 3", max. 3.5" high x 4") and have space for the COD article number at the top of the tag.

.324 Tags must be conspicuously marked *COD*.

b. At offices with 949 or fewer revenue units record particulars of unidentified loose tags on Form 3850 or 3814-C in the same manner as incoming COD packages. Add a notation *Loose Tag*.
c. If a loose tag is found in transit and it cannot be connected with the package, send it to the postmaster at the office of address for handling in accordance with these instructions.

.65 PROTECTION

Accord COD mail every reasonable safeguard. Prevent access to the mail by unauthorized persons. Keep such mail in locked cabinets, if available.

.66 PARCELS BEARING TAPE-ON TAGS

When tape-on tags, Form 3816a–S, have been used on the parcels, fasten the loose ends down before the parcels are forwarded or returned.

.67 RETURNED COD

Make a selective check to determine that receipts are being obtained for returned COD's, except where such items are listed on firm delivery bills at the post office before being given to carriers. Use Form 3871.

163.7 SPECIAL INSTRUCTIONS

.71 OFFICES WITH 950 OR MORE REVENUE UNITS

.711 *Mail Opening Units*

Handle the mail as follows:

a. Give COD special delivery mail to the special delivery unit without recording it or obtaining a receipt.
b. Separate all COD mail not to be delivered from stations and give it to the recording or delivery unit without making a record or obtaining a receipt.
c. COD mail for delivery by stations may be dispatched to stations with ordinary and insured mail or may be separated and dispatched in separate sacks labeled COD and marked for the superintendent. Do not postmark the tags or make a record on any bill.

.712 *Recording Section*

a. Assign mail for delivery as follows—Give mail for window delivery to the delivery section without receipt. Assign mail for delivery by both parcel post and foot carriers. Get a receipt from the carrier, in duplicate, on the left side of Form 3821, *Bulk Receipts for C.O.D. Mail and Funds*, for the number of packages given him for delivery. Remove the delivery employee's coupons from the tags and keep them with both copies of Form 3821.
b. Clear carriers as follows:
   (1) At the end of each trip, or daily, give the carrier a receipt, in duplicate, on the right side of Form 3821. Show number of receipted tags, total amount collected, including money order fees, and number of returned packages.
   (2) The carrier will retain the copy of Form 3821, and deposit the original for the chief accountant or other designated supervisory employee (under system B, the station or branch superintendent or his designee) in a slotted and locked receptacle provided for the purpose. If a receptacle is not provided, make arrangements for the custody of these forms to prevent access by unauthorized persons.
   (3) Carriers must retain their copies of Form 3821 for 3 months from the last day of the month in which issued.

(4) Give a receipt on one copy of Form 3821 for the total number of packages turned in by a carrier to a station other than the one from which received. Enter total number of packages on the receipt. The carrier must turn in the receipt at the end of his trip, at the place where the packages were assigned, for clearance purposes.
(5) Destroy the delivering employee's coupons for delivered packages after clearing carriers. Fasten coupons to the related tags for packages to be given renewed delivery service.

c. Dispose of undelivered packages as follows. Give to the delivery section, without receipt, undelivered packages awaiting call of addressee. Prepare for dispatch and send to outgoing mail unit packages brought back by carriers which are to be forwarded or returned. Parcels to be returned to sender must be clearly endorsed to show reason for nondelivery. Record mail forwarded, returned, or abandoned on Form 3814 to show disposition of each package.
d. File Forms 3814 at the main office, alphabetically by name of addressee, or by the last two digits of the COD number. If preferred, Forms 3814 may be filed with the COD tags of delivered parcels.

.713 Delivery Section

a. If an on-hand record is necessary to provide the best means of handling, and the number of on-hand articles averages at least 100, use Form 3814 for this purpose. Enter on Form 3814 the name and address of addressee, amount of charges, and bin number if needed. Retain for 6 months if they would be useful in handling inquiries. Otherwise, destroy them.
b. Each employee delivering COD mail to the public shall make a report on Form 3821 to the chief accountant or designated supervisor (under system B, the station or branch superintendent or his designee). Prepare Form 3821 in duplicate. Keep the copy as a personal record and deposit the original in the locked receptacle provided for carriers.
c. Dispose of Form 3821 as follows:
(1) Under system A, remove Form 3821 from the locked receptacle each day for transmission to the chief accountant. No employee having responsibility for preparation of Form 3822, *COD Tag Transmittal*, or Form 1412, *Daily Cash Report*, shall have access to the Forms 3821 deposited in the locked receptacle for transmission to the chief accountant.
(2) Under system B, Forms 3821 are removed from the locked receptacle by the station or branch superintendent or his designee.

.714 Special Delivery Section

Operate the same as the recording section in assigning and clearing carriers. Turn over undelivered COD special delivery mail to the recording section if another attempt to deliver is to be made within 5 days; otherwise, to the delivery section.

.715 Remitting Units

a. All units effecting delivery of COD mail must complete Form 3822, *COD Tag Transmittal*, in duplicate, each day.
b. If both carrier and window deliveries are being accounted for at the same unit, enter the collections for both on the same Form 3822.
c. System A and system B are authorized. System A applies when all COD money orders are issued at the main office (unless otherwise stated, instructions in 163.71 relate to system A). System B applies when COD money orders are issued at delivery stations and branches including rural stations and branches.

d. At offices operating under system A, verify and forward the original copy of Form 3822, *COD Tag Transmittal*, and the adding machine tape listing separately the amount of charges and money order fee for each tag to the superintendent of the main post office window units, or to the assistant postmaster at offices with receipts of less than $1 million. Keep the tags in the same order as amounts shown on the tape. Forward the duplicate copy of Form 3822 to the chief accountant in support of Form 1412, *Daily Cash Report*, or to the postmaster at offices with receipts of less than $1 million. Merge the COD funds with other funds into a single remittance either to a bank or to the main office opening unit. Show COD funds as trust items in A/C 16601 on Form 1412. If station funds are remitted directly to a bank, forward the COD tags by ordinary mail to the main office.
e. At offices operating under system B:
(1) The COD clerk must (a) deliver direct to the money order clerk the COD tags with adding machine tape listing separately the amount of the charges and money order fee for each, the cash and Form 3822 in duplicate; (b) obtain the money order clerk's receipt on Form 3822; and (c) deliver the original to the station or branch superintendent or his designee, and retain the copy for 3 months.
(2) The money order clerk must verify the cash, the number of COD tags, and the amount shown on Form 3822, receipt and return Form 3822 in duplicate to the COD clerk, issue the money orders the same day delivery is effected, if practical, and send to senders with identification coupons, if any. He shall attach the customers' receipts to the corresponding COD tags and deliver them with adding machine tape separately listing charges and money order fees to the superintendent or designee, with funds representing COD money orders not issued.
(3) The station or branch superintendent, or designee, shall receive the receipted original Form 3822 from the COD clerk and compare the amounts thereon with the totals on Forms 3821, *Bulk Receipt for COD Mail and Funds*. These must agree. He shall receive the COD tags from the money order clerk with customers' receipts attached. Funds representing COD money orders not issued shall be recorded as trust funds on Forms 1412 and 3083, *Trust Accounts Receipts and Withdrawals*. He shall send the COD tags to the main office for filing. The original Form 3822 and supporting Forms 3821 shall be retained at the delivering station or branch and filed by date. The cash shall be accounted for as money order funds on *Daily Cash Report*, Form 1412.
(4) The station or branch superintendent, or designee, is responsible for ensuring that the check required by 163.716g is performed at the station/branch.
(5) COD delivery units of the main office shall follow the procedures in system A.

.716 Main Office Window Unit

a. Issue the money orders. (see 163.62)
b. Staple the customer's receipt to the COD tag.
c. Add separately the amounts of the money orders and fees covering the tags from each unit. If the totals agree with those on Form 3822 and the adding machine tape, no further verification is necessary.
d. Complete the money order accountability report.
e. Forward receipted Form 3822 to the chief accountant.
f. File COD tags in a separate file for semimonthly, monthly, or quarterly periods, by the last two digits of the package numbers. Postmasters may maintain this file in the inquiry section if more advantageous.

g. Check one day's COD business each month to make sure money orders are being properly prepared and promptly issued. The check must be made by employees who do not issue money orders. This check shall be performed under both systems A and B.

.717 Inquiries and Claims

Do not assign an employee engaged in the handling of COD mail or funds or in the issuance of COD money orders to handle inquiries or claims covering COD mail, unless this is unavoidable.

.718 Exceptions to Special Instructions

a. *Combining Sections.* If the quantity of mail does not justify separate recording and delivery sections and the duties can be performed in one section, or if the duties of one or both sections can be performed in the registry section, submit a statement of the facts to the Regional Director, Customer Services.
b. *Alternate Procedure.* Offices with 950 or more revenue units, receiving a daily average of less than 25 COD packages, may handle mail and funds in accordance with the instructions applicable to offices with 190 through 949 revenue units, as outlined in 163.72.

.72 OFFICES HAVING FROM 190 THROUGH 949 REVENUE UNITS

.721 Assignment of Clerks

Assign different clerks to the following work if possible:
a. Recording clerk, to list incoming COD mail on Form 3814-C, *Recording and Checking COD Parcels and Funds at Offices having from 190 Through 949 Revenue Units.*
b. COD delivery clerk, to effect window delivery, assign to and clear carriers for COD mail, and prepare undelivered COD mail for return to sender, forwarding to addressee or making other disposition at expiration of retention period.
c. Money order clerk, to issue money orders in payment of COD charges.

.722 Opening Unit

Segregate COD packages from other mail and give them to the recording clerk.

.723 Recording Clerk

a. Transfer all COD mail, including special delivery, to the COD delivery clerk. Get a receipt for the mail in duplicate on the Form 3814–C. Give the original to the delivery clerk and the copy to the postmaster.
b. If different employees are assigned to window delivery and assignment of mail to carriers, prepare a separate list for each, in duplicate. Get receipt in duplicate, giving the original with the mail and the copy to the postmaster.

.724 Delivery Clerk

a. Charge mail to carriers on the delivering employee's coupon of COD tags. At the end of each trip, or daily, clear the carrier on the same coupon.
b. Receipt the coupons and give them to the carriers on return of the amounts collected and receipted COD tags, or on return of the packages. Carriers must retain the coupons for 2 years, filed numerically, or by date of mailing office postmark. Carriers must surrender coupons for articles that are reassigned for delivery and, when requested, for other reasons.
c. Each day when making window delivery of COD mail or receiving funds from carriers, give the receipted COD tags and collections to the money order clerk. Get a receipt in the column on Form 3814–C headed *Initials of M. O. Clerk*, opposite the entry of the delivered packages.
d. Enter the final disposition of each COD package and the date in the column headed *Disposition of Parcel* on Form 3814–C. Show *D* for delivered; *R* for return to sender; and *F* and name of the post office involved if

package was forwarded to the original addressee. Show also if the package was delivered without collection, abandoned, sold at auction (baby chicks, etc.), forwarded to others than the original addressee, or returned to other than the sender. If the latter two, enter the name and complete address of the person or firm to whom forwarded or returned.

.725 Check of COD Business

a. *Intervals.* At irregular intervals, but not less than twice a month, the postmaster must make a critical examination of the COD business.
b. *Method.* Perform the examination as follows:
(1) Select at random three or more sheets of Form 3814–C covering packages received for delivery during the period to be checked.
(2) Check "open" items against the on-hand packages. Packages should be on-hand.
(3) Check the COD tag file for record of money orders covering packages shown on Form 3814–C to have been delivered. Compare dates of money orders with dates of delivery as shown on the COD tags and Form 3814–C.
(4) Compare the date of mailing office postmark with incoming postmark to detect any pattern of delay beyond normal transit time that would suggest incoming postmarks are being falsified.
(5) Select at random several delivering employees' receipts and compare dates of delivery with recorded dates of COD money orders.
(6) Assure that senders' return instructions are being observed, and that returned packages are properly endorsed to show the reason for nondelivery and the dates addressees were notified.

.726 Reports

Report immediately to the inspector in charge any irregularity indicating possible manipulation of COD funds or records. Do not reveal to employees the fact that report has been or will be made.

.727 Inquiries and Claims

All inquiries and claims relating to COD mail must be handled by the postmaster or his designated representative.

.728 Exception to Special Instructions

If any office with from 190 through 949 revenue units receives a daily average of less than 10 COD packages, mail and funds may be handled in accordance with special instructions to offices with 189 or fewer revenue units.

.73 OFFICES WITH 189 OR FEWER REVENUE UNITS

.731 Recording and Postmarking

Postmark tags to show date of receipt and record packages promptly on Form 3850, *Record of Delivered Registered, Numbered Insured and COD Mail.*

.732 Delivery at Post Office

Deliver packages in accordance with 163.51.

.733 Assignment to Rural Carriers

a. Get the receipt of the carrier for the packages on the delivering employee's coupon on each COD tag.
b. Complete and initial the delivering employee's coupons and give them to the rural carrier when he turns in the charges collected, the receipted tags, and undelivered packages.

.734 Delivery by Rural Carriers

a. Initial the delivering employee's coupons of COD tags covering parcels assigned for delivery and deliver parcels in accordance with 163.51.
b. At the end of each trip turn in charges collected, receipted tags, and undelivered packages.

c. Retain for two years the delivering employee's coupons of COD tags which have been initialed by clearing employee. File numerically, or by date of mailing office postmark.

.735 *Delivery From Rural Station*

a. Turn parcels over to rural carrier without obtaining receipt. Carrier will deliver parcel to the rural station without obtaining a receipt.
b. Delivery at station in accordance with 163.51.
c. Issue money orders for delivered parcels at the station and mail them to the senders.
d. Send the post office voucher portions of money orders to the main office with other vouchers daily.
e. Attach customer's receipt portions of money orders to delivery office portions of COD tags and send them to the main post office.
f. The main post office will complete Form 3850 to show delivery, and file COD tags and customer's receipt portions of money orders.
g. Independent rural stations will maintain a record on Form 3850 of COD parcels received for delivery.

163.8 REGISTERED COD MAIL

.81 ACCEPTANCE

.811 *Packages*

Endorse the COD tag with the word *Registered*. Place the registration number on the tag and place a COD endorsement, registry endorsement, and registration number on the address side of the package.

.812 *Envelopes*

If the COD article is in the form of an envelope, fasten the tag to the address side of the envelope by means of adhesive tape, if this can be done without obscuring any portion of the address, return card, or directions of the sender. If it cannot be properly fastened to the address side, fasten the tag to the back of the article in such a manner as to permit inspection of the postmark.

.82 RECEIPTS AND OFFICE RECORDS

.821 Mark the sender's receipt and the office registration record *COD*, and show separately the amount of COD charges, COD fee, and postage paid, in addition to particulars required to be kept of registered mail.

.822 Detach and destroy the mailing office and sender's receipt portion of COD tags, as firm registration receipts, Forms 3877, and other registration records take the place of these records.

.823 In individual registration receipts, Forms 3805 or 3806, are used, enter the COD data on the back of the receipt.

.83 DISPATCH FROM POST OFFICES

Dispatch registered COD mail in the same manner as other registered mail. Do not enter the amount of COD charges on the dispatch record. If the dispatch does not consist entirely of registered COD mail, enter the word *COD* opposite the entry of each registered COD article.

.84 HANDLING AT OFFICE OF ADDRESS

Handle as follows:

a. Include the mail with other registered mail, and handle in accordance with the methods prescribed for handling other registered mail. Obtain addressee's receipt on Form 3849 as well as on the COD tag.

a. Use the information on the original Form 3841 to complete as much of the duplicate Form 565 as possible. The signature of the customer who initiated the claim and the supporting documents is not necessary.
b. Mark the top of the Form 565 *Duplicate*.
c. Annotate the original Form 3841 to indicate that a duplicate claim has been initiated and the date forwarded to the second post office.
d. Process through normal channels.

164.9 PAYMENT CONDITIONS AND RECOVERY OF ARTICLES OR REIMBURSEMENT

164.91 PAYMENT CONDITIONS

.911 If, through established error by the Postal Service, a fee less than that required to cover the amount of insurance coverage requested at the time of mailing was charged, the mailer may be permitted to pay the deficiency in fee and postal insurance may be paid within the limit fixed for the higher fee.

.912 If commercial insurance is carried on a registered, insured, or COD article, the total amount of insurance to be received will be prorated between the Postal Service and the insurance company using the following formula:

$$\frac{\text{Postal Insurance or Actual Value (whichever is less)}}{\text{Postal Insurance or Actual Value (whichever is less)} + \text{Total Private Insurance}} \times \text{Actual Value or Cost of Repairs} = \text{Postal Liability}$$

.913 If the insured or COD article was lost or the *entire* contents totally damaged, the payment check will include an additional amount for postage (not fee) paid by the mailer.

.914 If both mailer and addressee claim insurance, they should decide between themselves who should receive payment. If no agreement is reached, payment may be made to the mailer, the person with whom the Postal Services contract of insurance was made.

.915 If the mailer is incompetent or deceased, payment will ordinarily be made to the legal representative. If there is no legal representative, payment may be made to such relative or representative of the mailer as may be entitled to receive the amount due, in accordance with applicable State laws.

.92 DISPOSITION OF ARTICLE

When a lost registered, insured, or COD article is recovered, the payee may accept the article and reimburse the Postal Service for the full amount paid if the article is undamaged, or such amount as may be determined equitable by the Postal Service if the article is damaged or has depreciated in value or if the contents are not intact.

.93 HANDLING REIMBURSEMENT

If reimbursement is tendered representing an overpayment, erroneous or improper payment, or a voluntary indemnity refund, accept it and issue a receipt. Send all reimbursements to the St. Louis Postal Data Center, with the applicable certifying office claim number and date of certification. Personal checks, money orders, or other negotiable instruments should be made payable to the Postal Service. If the instrument is made payable to the postmaster, he should sign his name and restrictively endorse it *Pay to Postal Service* and remit as above. Do not mark an entry in the cashbook.

.94 CONTROL OVER RECOVERY CLAIMS

When an overpayment, erroneous, or improper indemnity claim payment is disclosed and repayment is not tendered, report it to the Director, St. Louis Postal Data Center, by memorandum, to be placed under accounts receivable control.

Part 165

CERTIFICATES OF MAILING, RETURN RECEIPTS, AND RESTRICTED DELIVERY

165.1 CERTIFICATES OF MAILING

.11 PURPOSE

Certificates of mailing furnish evidence of mailing only. A receipt is not obtained upon delivery of the mail to the addressee. The fee paid for certificates of mailing does not insure the article against loss or damage.

.12 FEES

.121 *Individual Pieces*

Original certificate of mailing for individually listed pieces of all classes of ordinary mail.	10¢ for each piece of mail described.
Each additional copy of original certificate of mailing or original mailing receipt for registered, insured, certified, and COD mail.	10¢ for each piece of mail described.

.122 *Bulk Pieces*

Identical pieces of first- and third-class mail paid with ordinary stamps, precanceled stamps, or meter stamps are subject to the following fees:

Up to 1,000 pieces (1 certificate for total number)	50¢
For each additional 1,000 pieces, or fraction	10¢
Duplicate copy	10¢

.13 FORMS

.131 *Who Prepares*

a. Certificates of mailing are prepared by the mailer, except mailers on rural routes or at nonpersonnel rural stations and branches. Individual and firm mailing book certificates must show the name and address of both the sender and the addressee, and may show the amount of postage paid. Identifying invoice or order numbers also may be placed on the certificate.
b. Customers of rural routes and nonpersonnel rural stations and branches may deliver mail to the rural carrier with the fee for the certificate. The carrier will obtain the certificate at the post office, attach the stamps, cancel them by postmark, and deliver the certificate to the sender on his next trip.
c. Certificates of mailing must be prepared using typewriter, ink, or ballpoint pen.

.132 *Individual Certificates*

Form 3817, *Certificate of Mailing*, is used for an individual certificate for ordinary mail of any class. Forms specially printed at the mailer's expense may be used also.

.133 *Firm Mailing Books*

Firm mailing books Form 3877 or forms printed at the mailer's expense may be used for certificates for three or more pieces of mail of any class presented at one time.

.134 *Bulk Mailings*

Form 3606, *Sender's Statement and Certificate of Bulk Mailing of Matter Paid With Stamps or Meter Postage*, is used to issue certificates that a specified number of pieces have been mailed. These certificates are furnished only for mailings of identical pieces of first- and third-class matter paid with ordinary stamps, precanceled stamps, or meter stamps. A certificate will not be issued for bulk mailings paid with permit imprints.

.135 *Quantity Mailings*

When the number of articles ordinarily presented justifies such action, mailers must comply with the following:

a. When individual certificates on Form 3817 are desired, the forms must either be fixed by the stub to the articles or the forms must be consecutively numbered and fastened together. If the certificates are numbered, the articles should also be lightly numbered at a uniform place to permit relating the parcels and certificates.
b. When the articles are descriptively listed on firm mailing sheets or on special approved forms, they should, if practicable, be presented in the order in which they are entered on the sheets; otherwise, each entry must be consecutively numbered by the mailer, and the articles lightly numbered to show the sheet and line number on which they are described.

.14 ADDITIONAL CERTIFICATES AFTER MAILING

To obtain an additional certificate after mailing, the sender must present the original certificate and an additional certificate endorsed *duplicate* or *copy* showing the original dates of mailing. The additional certificate will be postmarked to show the current date.

.15 PAYMENT AND CERTIFICATION

Mailers must affix uncanceled stamps or meter stamps to cover the fee for certificates of mailing. The stamps will be canceled by the postmark of the mailing office. Signatures or initials of accepting employees are not required.

165.2 RETURN RECEIPTS

.21 PURPOSE

Return receipts furnish the mailer evidence of delivery. The fee paid for a return receipt does not insure the article against loss or damage. Return receipts may be obtained for mail which is sent COD, is insured for more than $15.00, or which is registered or certified. For international return receipts, see parts 425 and 437 of Publication 42, *International Mail*.

.22 FEES (IN ADDITION TO POSTAGE AND OTHER FEES)

Requested at Time of Mailing:	
Showing to whom (signature) and date delivered	$0.25
Showing to whom (signature) and date and address where delivered	.45
Requested After Mailing:	
Showing to whom and date delivered	.45

.23 PROCEDURES AT MAILING OFFICE

.231 The sender may request a return receipt, Form 3811, at the time of mailing by informing the postal clerk or writing on the mail *Return Receipt Requested* or *Return Receipt Requested Showing Address Where Delivered*. Firm mailers will complete the mailer's entries on the form, including the article identification number, attach the form, and *place the required endorsement on the article*. Individual mailers will also normally complete the mailer's entries on the form, but in those cases where the article is mailed with the endorsement and the correct postage but without Form 3811 attached, the clerk shall complete the form and attach it to the article.

.232 The sender may request a return receipt after mailing an article which is registered, certified, COD, or insured for more than $15.00 by paying the required fee. To do so, the sender shall complete Form 3811–A, *Request for Return Receipt (After Mailing)*, attach the proper postage, and mail the Form 3811–A to the delivery post office. The sender will be provided the date of delivery and the name of the person who signed for the article as shown in delivery records. Neither the signature of the recipient nor the address of delivery will be provided.

.233 In the event a mailer does not, after a reasonable period of time, receive a return receipt he has paid for, he may, within one year of mailing, request a duplicate if he can produce a receipt for such payment. The mailer may request the duplicate by presenting the receipt at any post office, branch, or station. The clerk shall assist the customer in completing Form 3811–A, postmark it, and mail it to the delivering post office. No charge for such duplicate is to be made.

.234 Return of Form 3811 or Form 3811–A by airmail may be obtained by the mailer affixing postage stamps to the form to cover the postal card airmail rate and endorsing it *Return by Airmail*.

.235 Payment for return receipts shall be noted on the receipt given for purchase of the COD, registry, certified mail, or insurance service.

.24 PROCEDURES AT OFFICE OF DELIVERY

.241 *Return Receipt, Form 3811*

a. Delivery employees shall obtain the signature of addressee or his agent. Delivery shall only be made to the addressee if so requested on the Form 3811, except as provided in 165.341. The address of delivery shall be filled in only if requested on Form 3811. The delivery employee shall examine the card for completeness and make any corrections necessary. Return receipts shall be given to the clearing clerk daily when the carrier returns to the post office.
b. The clearing clerk shall check all return receipts to make sure they are properly signed and dated. If the mail was restricted in delivery, check to see that delivery was not made to an agent, except as provided in 165.341. If delivery was improper, have addressee sign a second return receipt. Take prompt corrective action with delivery employees if return receipts are improperly handled or completed. Postmark all return receipts legibly and mail no later than the first working day after delivery. Undeliverable articles will be handled in accordance with 159.272 and the appropriate endorsement will be made in block 8 of Form 3811.

.242 *Request for Duplicate or Return Receipt After Mailing, Form 3811–A*

a. Records of delivery shall be checked and the date of delivery and name of the individual who signed for the article shall be placed on Form 3811–A.
b. If a signed receipt is not found for certified mail, send the addressee Form 1572, *Inquiry About Receipt of Mail*. If the reply indicates that the addressee has received the certified mail, file completed Form 1572 with Forms 3849 as a receipt. The delivery information contained on Form 1572 shall be used to complete Form 3811–A. If the addressee does not return completed Form 1572 within 14 days, Form 3811–A shall be completed to show no record of delivery and returned to the mailer.
c. Form 3811–A shall be postmarked and the 45¢ postage for receipt after mailing shall be canceled. A line is to be drawn through the address of the delivery post office on the front of Forms 3811–A (1973 and later printings) and the form mailed back to the mailer.

.25 REFUNDS

Return receipt fees will only be refunded when failure to furnish a receipt was the fault of the Postal Service.

165.3 RESTRICTED DELIVERY

.31 PURPOSE

Restricted delivery provides a means by which a mailer may direct that delivery be made only to the addressee or to an agent of the addressee who has been specifically authorized in writing by the addressee to receive his mail. This service is available only for articles addressed to natural persons specified by name (see section 165.34 for circumstances under which this service is not provided). Restricted delivery may be obtained for mail which is COD, insured for more than $15, registered, or certified. For international restricted delivery, see Part 426, Publication 42.

.32 FEE (IN ADDITION TO POSTAGE AND OTHER FEES)

Restricted delivery, $0.60.

.33 PROCEDURES

.331 *At the Time of Mailing:* The sender shall inform the postal clerk or write on the mail *Restricted Delivery*. Customers should be advised that famous personalities and executives of large organizations normally will authorize an agent to sign for such mail as provided for in section 165.341. The clerk shall stamp the article *Restricted Delivery* if the mailer has not done so. Firm mailers are expected to place the required endorsement on the article being mailed and enter the appropriate fee in the proper column of the *Firm Mailing Bill*. In the case of mail for which a return receipt has been requested, the appropriate block on the Form 3811 shall be checked to indicate restricted delivery is desired.

.332 *After Mailing:* The mailer may request restricted delivery after mailing by notifying the mailing post office in writing, providing appropriate identification of the article including the parcel number and addressee, and payment of the appropriate fee. The mailer will be required to pay for the postage, telegram, or telephone call required to effect the restricted delivery. Failure to provide the service because of prior delivery will not be grounds for refund of the fee or communication charges.

.34 PROCEDURES AT OFFICE OF DELIVERY

.341 Mail marked *Restricted Delivery* will be delivered only to the addressee or to the person he specifically authorizes in writing to receive his restricted delivery mail:

a. Addressees who regularly receive restricted delivery mail may authorize an agent by use of Form 3801, *Standing Delivery Order*, or by a letter to the postmaster. These authorizations are for post office records. The notation *This authorization is extended to include Restricted Delivery Mail* must be made by the addressee on the part of the Form 3801 provided for signatures of authorized agents.
b. Form 3849, *Notice of Mail Arrival or Attempted Delivery*, may be left for this authorization if the post office has no standing delivery order or letter on file. On the back of the form the addressee may enter the name of the person designated in the *Deliver Article To* block, and sign and date the authorization. The agent must sign for receipt of the article on the front of the form in the normal manner.
c. Proof of identification should be required of the addressee (or agent) if not known by the delivery employee when restricted delivery mail is delivered.

.342 Restricted delivery mail addressed to officials of executive agencies, or members of the legislative and judicial branches of the Government of the United States or of the States and possessions, and their political subdivisions, or to members of the diplomatic corps, may be delivered either to the addressee or to a person authorized by these persons to receive their mail.

.343 Restricted delivery mail addressed to the commander, staff sections or other officials of military organizations by name and title may be delivered to the unit mail clerk, mail orderly, postal clerk, assistant postal clerk, or postal finance clerk, when such individuals have been designated on DD Form 285 to receipt for all mail addressed to the units for which they are designated. If the mail clerk, etc., has been designated on DD Form 285 to receipt for ordinary mail only, then restricted delivery mail addressed to the commander, etc., by name and title may be delivered to the mail clerk, etc., only if authorized by the addressee in a letter to the post office, on Form 3849, or Form 3801.

.344 Restricted delivery mail addressed to minors or to individuals under guardianship may be delivered to their parents or guardians if the parent or guardian so requests.

.345 Restricted delivery mail addressed to an inmate of a city, State, or Federal penal institution, in cases where a personal signature cannot be obtained, may be delivered to the warden or his authorized representative.

.346 When mail marked *Restricted Delivery* is addressed jointly to two or more persons (as indicated by the word *and* or symbol & connecting their names), all addressees or their agents will be notified to be present to accept delivery together. The delivery receipt obtained and the return receipt, if any, must be signed by all of the joint addressees or their agents. The mail may then be delivered to any of the addressees or their agents unless one or more addressees or their agents objects, in which case delivery will not be made until all the addressees or their agents sign a statement designating who is to receive the mail.

.347 The endorsements *Deliver to Addressee Only* or *Deliver to Addressee or Order* are obsolete. Any mail bearing such endorsements will be handled in accordance with the procedures prescribed for *Restricted Delivery* mail.

.35 REFUNDS

Restricted delivery fees will be refunded only when failure to give restricted delivery was the fault of the Postal Service.

Part 166

SPECIAL DELIVERY

166.1 DESCRIPTION

.11 POINTS OF DELIVERY

Special delivery mail is given immediate delivery at the office of address during prescribed hours to:

a. Points within a radius of 1 mile of any post office, station, or branch (except contract and rural stations and branches).
b. Points within the city delivery limits of any post office having this service. These conditions apply to customers of rural routes residing within the 1-mile limitation.
c. Residences on rural routes if the road is passable and is located within one-half mile of rural route; otherwise, mail is left in the box. Delivery will be made by carrier on his regular trip.
d. Customers of nonpersonnel rural stations and branches if their residence is within one-half mile of the unit and if there is a passable road leading to it. Otherwise, mail is left in customer's box at the unit.
e. Points within one-half mile of a star route by the star route carrier who may make such delivery on his regular trip if the deviation from his regular route will not delay him in meeting schedule requirements.
f. Boxes erected on the city delivery boundary line and if customer lives no more than 3 blocks beyond and there is a passable walk or street to the residence. If there is no passable walk or street, the article is left in the box if the box will accommodate it. Otherwise, a notice is left in the box.

.12 TRANSPORTING AND DELIVERING

Special delivery mail is given preferential handling to the extent practicable in dispatch and transportation. Payment of a special delivery fee does not insure safety of delivery or provide for the payment of indemnity. Money or other valuables sent special delivery should be registered also. Insured, certified, and COD mail may be sent special delivery.

166.2 PAYMENT FOR SPECIAL DELIVERY

.21 SPECIAL DELIVERY FEES

Class of mail	Weight		
	Not more than 2 pounds (cents)	More than 2 pounds but not more than 10 pounds (cents)	More than 10 pounds (cents)
First-class, airmail, and priority mail	$1.25	$1.50	$1.75
All other classes	1.75	1.85	2.15

.22 PREPAYMENT OF FEE

Prepay the special delivery fee by special delivery stamps, ordinary postage stamps, or meter stamps. The special delivery fee must be prepaid in addition to regular postage except on *Postage and Fees Paid* mail (official mail). Official matter in penalty or franked envelopes is not entitled to free special delivery, except urgent official communications of the Postal Service.

.23 MARKING

Mailers should mark prominently the words *Special Delivery* preferably below the postage and above the name of the addressee as follows:

Frank B. White
2416 Front Street
St. Louis, Mo. 63125

SPECIAL DELIVERY

Mr. Henry Brown
24789 Alaska Avenue
Chicago, Illinois 60652

166.3 WHEN TO DELIVER

.31 HOURS OF DELIVERY

.311 *At City Delivery Offices*

a. Normal hours of delivery begin at 7 a.m. and end at 11 or 12 p.m., the ending time being contingent upon the last major mail receipt. However, depending on local conditions, first-trip delivery may begin as early as 6 a.m. or as late as 8 a.m. Delivery on the first trip should be completed within four hours of the messengers departure from the office.
b. Special delivery messengers should leave delivery unit ahead of regular letter carriers serving the same territory. Every effort should be made to deliver specials ahead of ordinary mail.
c. Deliver specials in business sections by regular letter carrier on first trip when delivery before 8:30 a.m. and ahead of special delivery messengers can be assured.

.312 *At Noncity Delivery Offices*

Normal hours of special delivery are 7 a.m. until closing hour of the post office. Unless there is a demand for earlier delivery, postmasters may authorize messengers to depart as late as 8 a.m. on the first trip. Specials arriving after the office is closed, but not later than 9 p.m., will be delivered provided the postmaster or an employee is on duty.

.313 *Sundays and Holidays*

Sunday and holiday deliveries should be scheduled as needed, but not to exceed a maximum of three delivery trips, one each in the morning, afternoon and evening.

.314 *Outside Regular Delivery Hours*

If specials arrive outside regular delivery hours, notify customers by telephone, if practicable; also notify customer if requested. Attempt to telephone rural customer if specials arrive after the rural carrier has departed on his route.

.315 *Unusual Conditions*

Postmasters and postal employees are expected to display interest and ingenuity to effect the prompt delivery of specials.

.32 FREQUENCY OF DELIVERY

A maximum of four daily city-wide trips will be made. If unusual conditions exist and postmasters feel additional trips are needed, obtain specific authority from the Regional Postmaster General. Fixed schedules will be established to connect major mail receipts to insure that the maximum available specials are delivered on each trip. Establish an additional mid-morning trip in the central business sections, if needed. Schedule one of the city-wide trips in the mid or late afternoon to provide delivery of all available specials to firms prior to the normal closing hour. The last city-wide trip should connect with the last major mail receipt; however, messengers should not leave after 9 p.m.

166.4 DELIVERY PROCEDURES

.41 TO WHOM DELIVERY MAY BE MADE

Ordinary special delivery mail is delivered to the addressee or to anyone authorized to receive his mail. At city delivery offices, special delivery mail, other than registered and insured, addressed to a post office box or to the general delivery, is delivered to the box or held for delivery through the general delivery window, unless the addressee has given written notice that such mail be delivered to his residence or place of business. When special delivery mail is received at a city delivery office addressed to a street address and the addressee usually receives his mail through a post office box or through the general delivery window, the mail is delivered as addressed, unless the addressee files a written notice directing delivery to his box or through the general delivery window. At offices not having city delivery service, all special delivery mail is delivered to the residence or place of business of the addressee, unless the addressee files a written request that such mail be deposited in his post office box or held for delivery through the general delivery window.

.42 DELIVERY IN MAIL RECEPTACLES

When no one is at the address to receive mail, the messenger, if he can determine that the occupants are absent for not more than 1 day, will leave the mail and a notice on Form 3955, *Special Delivery Notice.*

.43 NOTICE OF ATTEMPTED DELIVERY

When mail cannot be delivered as described in 166.42, the Form 3955, left under the door, between the door and doorjamb, or in the receptacle, will state where the special delivery mail is being held.

.44 RURAL AND STAR ROUTE CARRIERS

If delivery is attempted and cannot be made to a customer's residence or place of business, the special delivery matter is deposited in his box and a notice of nondelivery on Form 3955 is left at his residence or place of business.

.45 MILITARY POSTS AND CAMPS

No special delivery service is provided by military personnel at military posts and camps. Special delivery by messenger is made only to addresses such as officers' homes, headquarters, hospitals, and other places where it is definitely known that delivery can be made.

.46 FORWARDED SPECIAL DELIVERY MAIL

Special delivery mail that is forwarded is not entitled to special delivery at the second office, unless a forwarding order had been given by the addressee at the office of original address in advance of the arrival of the mail.

Part 167

SPECIAL HANDLING

167.1 DESCRIPTION

Special handling service is available for third- and fourth-class mail only, including that which is insured or sent COD. It provides preferential handling to the extent practicable in dispatch and transportation, but does not provide special delivery. Special handling parcels are delivered as parcel post is ordinarily delivered, on regular scheduled trips. The special handling fee (or special-delivery fee) must be paid on all parcels that must be given special attention in handling, transportation, and delivery, such as parcels containing baby chicks or other baby poultry, package bees carried outside mail bags, baby alligators, etc.

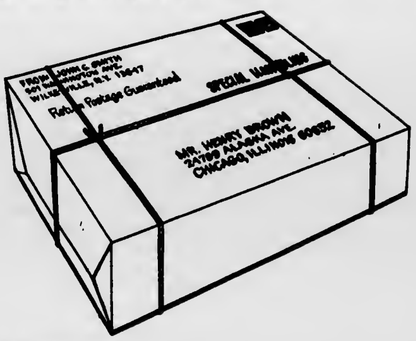
167.2 FEES

Weight	Fee
Not more than 2 pounds	$0.50
More than 2 pounds but not more than 10 pounds	.70
More than 10 pounds	1.00

The special handling fee is in addition to regular third- or fourth-class postage and may be prepaid by ordinary postage stamps or by meter stamps.

167.3 MARKING OF PARCELS

Mailers should mark the words *Special Handling* above the name of the addressee and below the stamps as illustrated:



167.4 FORWARDING

Parcels undeliverable as originally addressed and forwarded to the addressee at a new address are given special handling without requiring an additional special handling fee. Additional postage at the regular third- or fourth-class rate is collected on delivery.

Part 168

CERTIFIED MAIL

168.1 DESCRIPTION

Certified mail service provides a receipt to the sender and a record of delivery at the office of address. No record is kept at the office at which mailed. It will be dispatched and handled in transit as ordinary mail. No insurance coverage is provided. Return receipts and restricted delivery services may be obtained as set forth in part 165 and by the payment of additional fees as provided in 165.22 and 165.32. For circumstances under which restricted delivery may be accomplished by delivery other than to the addressee, see 165.34. Certified mail will be endorsed in the following manner:



168.2 CLASS OF MAIL TO WHICH APPLICABLE

Any mailable matter of no intrinsic value on which postage at the first-class rate has been paid will be accepted as certified mail. This does not exclude articles of a nonnegotiable character and other similar matter which would involve a cost of duplication if lost or destroyed. The mail may be sent by air on payment of the required postage. Special delivery services are available on payment of the prescribed fees. Penalty and franked mail may be accepted as certified mail if the fee is prepaid. Official matter of the Postal Service may be sent as certified mail without payment of the fee. Business reply mail must be fully prepaid with postage and fees.

168.3 FEES

.31 FEE IN ADDITION TO POSTAGE ..... 60 cents

.32 RESTRICTED DELIVERY ..... 60 cents

.33 RETURN RECEIPTS

Requested at time of mailing:
- Showing to whom and date delivered ..... 95 cents
- Showing to whom, date, and address where delivered ..... 45 cents

Requested after mailing:
- Showing to whom and date delivered ..... 45 cents

168.4 MAILING

.41 PAYMENT OF FEES AND POSTAGE

The fee and postage may be paid by ordinary postage stamps, meter stamps, or by permit imprints.

.42 POINTS TO WHICH MAILABLE

Certified mail may be addressed for delivery only—

a. In the United States, its territories and possessions.
b. In the Canal Zone.
c. Through Army, Air Force (APO) and Navy (FPO) post offices.
d. Through the United Nations, N.Y. post office.

.43 WHERE TO MAIL

Customers may mail certified mail at the post office, branch, or station or give it to a rural carrier. It may also be deposited in mail drops in post offices, street letterboxes, nonpersonnel rural stations and branches, or any other receptacles for first-class mail, provided the specific directions in 168.44 are followed.

.44 HOW TO MAIL

Obtain blank certified mail coupons, Forms 3800, *Receipt for Certified Mail* (no charge) at the post office or from rural mail carriers. Also obtain blank return receipt forms if needed. Observe the following procedure:

a. Enter on the receipt portion of the certified mail coupon the name and complete address of the person or firm to whom the mail is addressed.
b. If return receipt is wanted, check block on the mailing receipt to show the fee and endorse the article on the address side near the certified mail endorsement *Return Receipt Requested* or *Return Receipt Requested Showing Address Where Delivered*. The mailer must enter the certified mail number on the return receipt card, address it to himself, and attach

.62 RETURNS

Check carrier and messenger returns in the manner described in 161.763c. Carrier will turn in all undelivered articles, delivery receipts, and return receipts for delivered articles.

.63 CLEARANCE

Carrier will prepare Form 3868, *Carrier's Clearance Receipt*, to show the combined total of returned certified letters and delivery receipts. The clearing clerk will sign this receipt and return to the carrier or messenger as his personal record.

.64 DELIVERY TO MILITARY INSTALLATIONS

Certified mail addressed for delivery at military installations within the continental United States must be delivered to the military installations in the same manner as numbered insured mail.

.65 FILING DELIVERY RECEIPTS

File individual delivery receipts, Form 3849, by the last two digits of the certified mail number in the consolidated delivery receipt file unless quantity accumulated over the filing period is less than 200 in which case use last digit only for breaking file. File firm delivery receipts, Form 3883, by the name of the addressee or chronologically by date.

.66 UNDELIVERABLE

Handle certified mail that is undeliverable or is to be forwarded in accordance with 159.27.

168.7 VERIFIED MAILING RECEIPTS

.71 INDIVIDUAL MAILINGS

Verify as follows:

a. Compare name and address of addressee on the article and on Form 3800.
b. If sender has checked blocks on Form 3800 for return receipt or restricted delivery service, make sure the article bears the proper endorsement.
c. Examine the return receipt card to determine whether appropriate blocks in instructions to delivering employee have been checked, and that the card is securely attached. Make sure address is properly completed by the sender.
d. Make certain that proper postal charges have been paid by stamps affixed; endorse mail if airmail or special delivery.
e. Postmark receipt portion and give to mailer. Initial, by the entry on the receipt in ink, time article was mailed if requested to do so by sender.
f. Deposit article in mail. Do not return to the mailer.

.72 QUANTITY MAILINGS

If the certified mail numbers are listed on firm mailing bills in consecutive order and the mail is similarly arranged, verify quantity mailings as follows:

a. Count the pieces of mail and listings on the bill. These should agree.
b. Compare certified mail numbers on first and last articles with the first and last numbers listed on the bill. These should agree.
c. Make a spot check to determine that mailings are properly prepared, and that postal charges have been fully prepaid.
d. Postmark receipt and give to mailer. Enter time articles were mailed if requested to do so by the sender, placing your initials by the entry. Use ink to enter time and initials in the space for the name of accepting employee.
e. Deposit articles in mail. Do not return to mailer.

Part 169
POST OFFICE LOCKBOX AND CALLER SERVICE

169.1 PURPOSE AND DEFINITION OF SERVICE

.11 GENERAL PURPOSE

Post Office Lockbox and Caller Service are premium services provided for the convenience of the public. These two services, provided in addition to available carrier or general delivery, afford customers privacy and permit them to obtain their mail at their convenience during the hours the lobby is open. Both services make use of the traditional post office box number as the address.

.12 DESCRIPTION OF SERVICE

.121 *Lockbox Service*

a. Lockbox service is provided only through the use of post office lockboxes. The term drawer is hereby abolished and all boxes previously referred to by that term are to be considered the same as lockboxes for all purposes, including rental rates. The terms lockbox and box are to be considered the same for purposes of these regulations and the term boxholder is to be applied to those who use lockboxes.
b. Lockboxes are located only in Postal facilities. Customers receive their mail in these boxes and may open the boxes by means of a key or combination. Numbers are assigned to the boxes and the customers must use their assigned post office box number in their addresses immediately above the city, state and ZIP Code.
c. Five sizes of lockboxes are available for rent and customers are assigned a lockbox of a certain size in accordance with their needs as determined by the postmaster.
d. Boxes without doors for customer access, formerly identified as *Call Boxes*, shall be used only in conjunction with general delivery service, and no rent shall be charged for their use.
e. Lockbox service does not include *alternate means of delivery* established to replace, simplify, or extend carrier delivery service. Examples are Vertical Improved Mail (VIM) units, neighborhood cluster box units, apartment house units, rural non-personnel units, etc. These *alternate means of delivery* shall not be administered or charged for under provisions of this part.

.122 *Caller Service*

a. Caller Service is provided through the use of sacks, pouches, trays, bundles, and other devices. Normally, mail is handed to the customer or his agent at a call window or from a loading dock. Caller service users are termed Callers throughout these regulations.
b. Caller service will be provided to customers under the following conditions:
   (1) When boxholders regularly receive more mail than their lockboxes will hold and boxes of adequate size are not available. To determine when this condition exists, the following guidelines apply:
      (a) For this purpose, *regularly*, is interpreted to be when the mail exceeds the capacity of the box for three out of five days.

      (b) Types of mail which are to be considered in making this determination are: letters, flats, second-class publications, SPRs and any items which could be placed in a box in the absence of other mail. Excluded are large boxes, phonograph records, thick catalogs, or any similar item that has greater dimensions than the lockbox.
   (2) To customers who wish to rent more than five lockboxes in any one facility. Five lockboxes may be rented to one customer, but additional separation may be provided only through the use of caller service.
c. Continue to distribute the mail to the box for up to 10 days. If at the end of that time the customer has not paid the rent or left other instructions, remove the mail from the box and treat that mail and any subsequent mail addressed to the customer at that box as undeliverable mail, unless it is possible to deliver it by carrier or general delivery.
d. At the end of 10 days, close the box if the customer has not paid his rent or submitted other instructions.
e. If the customer pays his rent, unplug the lock or notify him of his new combination.

.542 *Callers*

a. If a caller fails to pay his fee by the due date, does not submit a change of address order, and does not attempt to obtain his mail, retain his mail for a period not exceeding 10 days, then treat his mail as undeliverable mail unless it may be readily delivered by carrier.
b. If a caller fails to pay his fee by the due date, does not submit a change of address order, and attempts to obtain his mail within 10 days, explain to him or his agent that at the end of the tenth day after the due date, if payments or a change of address order is not received, his mail will be delivered to his street address. Explain also that he will lose the use of his post office or caller box number(s) and may not obtain his mail at the postal facility. Continue to give him his mail until the end of the ten-day period, but do not provide him in excess of one separation (in case multiple separations had been provided) during that period.

.55 WHEN A BOX IS SURRENDERED

.551 *Rerental of a Surrendered Box*

If a customer surrenders a box before the end of the payment period, the box may be rented to another customer after 15 days. If the box has been closed by the Judicial Officer, the box may be rented to another customer after 20 days. (See 169.8.)

.552 *Surrender of a Box*

A box shall be considered to have been surrendered if:

a. The boxholder submits a permanent change of address order.
b. The boxholder refuses or fails to pay appropriate rent or fees by the due date.
c. The boxholder submits in writing an order to discontinue service.

.553 *Nonsurrender of a Box*

A box shall not be considered to have been surrendered if:

a. The boxholder dies or disappears before the end of the period for which he has rented the box.
b. The boxholder submits a temporary change of address order.
c. There is a change of address order issued for mail going to the box by any person other than the boxholder.

.554 *Refund of Box Rent and Caller Fees*

a. Handle all refunds under this section in accordance with 147.26.
b. When a lockbox is closed or surrendered or caller service is terminated, no portion of the rent or fees shall be refunded for the remainder of the semiannual payment period in which the action occurs, unless such closure or termination is the result of discontinuance or relocation of a facility (see 169.554c). A customer, who has paid for a semiannual rental period subsequent to that in which the closure or termination occurs, may apply for a refund of the entire box rent or caller fee applicable to the subsequent period.
c. Former lockbox or caller service customers of discontinued or relocated postal facilities may obtain a refund of unused box rent or caller service fees whenever additional travel of .4 kilometers (.25 miles) or more (from the address listed on the applicable Form 1093) is required to obtain equivalent service. For refunds under this section, one-sixth of a semiannual rental fee may be refunded for each month remaining in the rental period. If the effective date of the facility discontinuance falls on or before the 15th of the month, the refund shall be computed from the first day of that month. If the effective date is after the 15th day of the month, the refund shall be computed from the first day of the following month.

169.6 OPERATIONS

.61 PLACING IN BOXES

Place mail addressed to post office boxes in proper boxes immediately after distribution. If the flow of the mail allows it and no lengthy delays will occur, attempt to place larger items such as newspapers, catalogs, and magazines in boxes prior to placing smaller items such as letter mail and flats into the boxes.

.62 WITHDRAWAL FROM BOXES

Mail may be delivered to authorized persons who have forgotten their keys or cannot open their boxes. However, mail should not be handed out to persons properly supplied with keys who can open their boxes but who make it a practice of requesting that their mail be given to them.

.63 DELIVERY BY CARRIER

Do not remove mail from boxes of address for delivery by carrier except for the case of box service discontinued due to failure to pay rent.

.64 MULTI-PICKUP CALLERS

Callers who desire to call at a postal facility for their mail more than once in any 24-hour period as a regular practice shall make provisions with the postmaster for the establishment of a proper and reasonable schedule of pickup. Postmasters shall determine the times and places most satisfactory to the post office.

.65 STANDARDS

.651 *Box Service*

If the postmaster determines that safety and security provisions allow it and if he determines that there is sufficient public demand, then he may keep the box lobby open to the public 24 hours per day.

.652 *Caller Service*

Caller service shall be provided during normal hours of business. Caller service may be provided at all other hours during which mail is undergoing distribution within the facility if it is consistent with normal operations.

.66 CHANGES OF ADDRESS ORDER

.661 *Standard Procedure For Use In Facilities Without Central Markup System*

a. When the number of Forms 3575, *Change of Address Order*, averages five or more per month, maintain a change of address order book (supply item 0-391-M) in the box and caller section.
b. Use a separate *Address Change Sheet*, Form 1564, for each letter of the alphabet separated by item 0-89 (b), Index.
c. As Forms 3575 are received, post pertinent information chronologically on appropriate sheet. Make appropriate entries on Forms 1564 whenever a former boxholder fails to furnish a forwarding order at the time he surrenders a lockbox or when it is closed for nonpayment of rent.
d. Maintain one set of Forms 1564 at the main office, station, or branch providing the service.
e. After entry to Forms 1564, file Forms 3575 chronologically by months or alphabetically, in a manner that will permit withdrawal at the end of the month after requests are 2 years old. See 158.2 for forwarding time limit.

Subchapter 170 NONMAIL SERVICES

Part 171

MONEY ORDERS

171.1 ISSUANCE OF DOMESTIC MONEY ORDERS

.11 WHERE SOLD

Domestic money orders may be purchased at all post offices, branches, and stations in the United States and its possessions, except for certain offices in Alaska. Money order facilities are also provided for members of the Armed Forces of the United States.

.12 AMOUNTS, FEES, PAYMENTS

.121 *Money Order Amounts*

The maximum amount for a single money order is $300. There is no limitation on the number of orders that may be purchased at one time, except when the Postal Service may impose temporary restrictions.

.122 *Money Order Fees*

a. The fee for a postal money order issued to authorized civilian military personnel and/or their dependents by an Armed Forces Postal Clerk on board any ship or at any Military Post Office (APO or NPO) located outside the 50 States, Puerto Rico, and Guam is 15¢, regardless of the amount of the money order. Postal money orders issued to others shall be charged at the fees indicated below.
b. Fees for domestic money orders issued at other post offices including those with branches or stations on military installations are as follows:

Amount of money order	Amount of fee
	Domestic
$0.01 to $10	$0.50
$10.01 to $50	.70
$50.01 to $300	.90

.123 *Paying for Money Orders*

Money orders must be paid for in United States money. Coins are legal tender in any amounts.

.13 ISSUE PROCEDURES FOR MONEY ORDERS

.131 *General*

All orders will be issued on the money order imprinter. Manual issuance is prohibited.

.132 *Imprinter Preparation*

At the start of a duty tour, the issuing clerk receipts for blank money order sets and a numbered validation plate unless already in his possession, by signing control registers maintained on item 0-127a. At the work station, the clerk verifies that the office number plate is affixed and uses the non-metallic

stylus to set the appropriate date into the dating device on the imprinter. (The setting from left to right is year, month, and day, such as 740402 for April 2, 1974.) The validation plate is then placed in the designated position on the imprinter as described in the operating instructions.

.133 *Imprinting the Order*

Before imprinting each money order, clerks will verify that the proper date is set, the validation plate is in place and the print handle is positioned to the extreme left. Set the five amount keys to the requested amount (never more than $300) and verify the setting as registered in the small windows above the keys. Next, select and insert the limitation plate for the same or next higher amount, and insert the blank money order form set so that it lies flat on the machine within the form guides. Finally, imprint the order by moving the print handle in one continuous motion to the extreme right position and returning it in a continuous motion to the starting position.

.134 *Completing the Transaction*

Remove the imprinted form set, snap-out the carbons and dispose of the carbons and stub as trash. Verify that all information (including validation plate and limitation plate imprint) is clearly imprinted on the money order, and that the date, office number, and amount are clear and completely legible on all parts. (See 171.162 for spoiled orders.) Both customer and clerk should verify the amount on the order. Next, collect payment for the face amount and the fee and then hand the money order and customer's receipt to the customer. Finally, place the voucher in the proper receptacle for end of day reporting, replace the limitation plate in its storage slot and move the amount keys back to their asterisk position. If two or more clerks share a single imprinter at the same time, each must remove his validation plate from the imprinter after his own sale.

.135 *Inoperable Imprinter Procedures*

Manual issuance of money orders is not permitted. Inoperable imprinters must be replaced or restored to service as quickly as possible. While service is disrupted, customers will be advised of the anticipated time that service will be restored and of the location of nearby facilities where service is available. Also, they will be allowed to apply on Form 6001, *Application for Domestic Money Order* for immediate issuance of an order upon restoration of service. In such instances, procedures as prescribed for issuance to rural customers (171.15) will apply, except that mailing of orders to payee, and orders and/or customer receipt to customers will be at Postal Service expense.

.14 COMPLETION OF MONEY ORDER BY PURCHASER

Clerks should remind the purchaser of the necessity to complete the information on both the order and the customer's receipt. The Postal Service is not liable for money orders lost before completion by the purchaser. Purchasers must fill in the following information on the money order and the customer's receipt:

a. *Name and address of payee and name and address of purchaser.* The customer should do this promptly to protect his rights in the event the order is lost. Also, he should complete and safeguard the customer receipt since it must be presented if inquiries are made later. Money orders may be made payable to:
   (1) The purchaser, if desired.
   (2) Only one person or firm. Show complete name to avoid redemption difficulties.
   (3) Payee by his official title. *Examples:* Director of Internal Revenue, Baltimore; Cashier, First National Bank, Richmond, VA.

Mail Matter, should be initiated and processed immediately if loss is believed to have occurred in the mail.

(3) Application for a duplicate of a mutilated order or an order void by too many endorsements, on Form 6401, may be filed at any time if the order is attached.

(4) If the customer's receipt is presented, the post office shall endorse it "Form 6401 (date)" and return it to the applicant. *The postmaster shall not keep any record of the filing of the form.* Reply will be made directly to the inquirer.

b. *Issuance of Duplicate Order*

(1) The Money Order Division will issue a duplicate money order in accordance with the wishes of the purchaser applicant without the consent of the payee or endorsee, provided the records indicate that payment has not been made. However, the purchaser has no claim on COD orders.

(2) Send a mutilated or void order to the Money Order Division with a properly completed Form 6401.

(3) The Money Order Division will forward the duplicate to the payee named on Form 6401. The customer's receipt will be sent to the person submitting Form 6401, when he is not the payee of the duplicate.

c. *Orders Recovered After Duplicate Issued*

When a duplicate order has been issued, write *Canceled-Duplicate Issued* on the original order and send it to the Money Order Division. If the postal employee does not know whether a duplicate was actually issued, send the recovered order with Form 6401.

d. *Payment of Duplicate Orders*

A duplicate money order is payable only to the payee named thereon or to his endorsee.

171.2 INTERNATIONAL MONEY ORDERS

.21 ISSUANCE

.211 *Where Sold, Amounts and Fees*

An authorization to issue an international money order may be purchased at almost all post offices with 950 or more revenue units. Some post offices with fewer than 950 revenue units have been designated to provide this service. Post offices not designated but having sufficient need for the service will make application to the regional controller. International money orders will be issued to addressees in those countries that have agreed with the United States to conduct such business. The maximum amount for an international order is $300, EXCEPT THAT ORDERS PAYABLE IN GREAT BRITAIN SHOULD NOT EXCEED £50 (APPROXIMATELY $116) AND THOSE PAYABLE IN SYRIA $250. The fees are as follows:

Amount of International Order:	*Fee*
$0.01 to $10	$0.45
$10.01 to $50	.65
$50.01 to $300	.75

.212 *Application*

a. For most countries and localities (see 171.218 and 171.219), the authorization to issue an international money order form is used. Application must be made on Form 6701, *Application for International Money Order*. For Mexico an optional application Form 6701–A, *Application For a Money Order Payable in Mexico*, is provided. In most cases, the amount is written in United States dollars and converted into foreign currency in the country where payable. For this reason, only approximations may be given for amounts in foreign currency, except Canadian.

b. Purchasers must complete Form 6083, *Supplemental International Money Order Advice*, written in the foreign language *if possible*, when they send money orders payable in Greece, Lebanon, Syria, Yugoslavia, and Japan.

c. Purchasers will be given a receipt. The postmaster will send the authorization form to the Money Order Division where the international order is issued.

d. Purchasers must state the following details in their application regarding the payee: full name, exact address, name of city, town, or village; name of the canton, department, or district as the case may be. If the payee is a woman, state whether single, married, or widowed. The purpose of the payment should also be stated.

.213 *Domestic International Money Orders*

For certain countries the domestic money order form is used. There is no application. See 171.217.

.214 *Issuing Procedures*

a. *When Domestic Form Is Used.* Handle in the same manner as for domestic orders. (See 171.13 and .14.) For Canada, the amount on the order must be expressed in both U.S. and Canadian money. Consult the current conversion table. Put the amount received in U.S. money and select the limitation plate in the usual manner. *Write* the Canadian equivalent on the *For* line in the *Purchased By* block and put *Canadian* before it.

b. *When Authorization to Issue an International Money Order is Used*

(1) *Reviewing Application.*—Verify that Forms 6701 or 6701A are *properly and legibly completed* in accordance with the instructions on the back. Incomplete Form 6701 will delay transmission to country. *Make sure that the country of payment is one of those listed in 171.218 and 171.219.* Do not accept applications for countries not included on those lists. Every effort should be made to have customers specify the purpose of payment as an aid to the recipient in identifying the sender. However, the form may still be accepted if they refuse to do so. Verify also that the customer has properly completed and submitted Form 6083 when required.

(2) *Imprinter Preparation.*—Prepare the imprinter for issuance of the form set, *authorization to issue an international money order*, exactly the same as described in 171.132 for domestic form set. Make a practice of verifying that the date is correctly set.

(3) *Imprinting the Form Set.*—Imprint the authorization form set exactly the same as the domestic form set as described in 171.133. Manual issuance is prohibited. The imprinted amount on form sets will always be in U.S. money. If a customer insists on the foreign equivalent for an order payable in one of the following countries, obtain the conversion rate from a local bank or firm which deals in foreign currency: Belgium, Denmark, France, Great Britain, and Northern Ireland, Guyana, Ireland, Luxemburg, Netherlands, New Zealand, Norway, Republic of South Africa, Surinam, Sweden, Switzerland, and Tunisia. If no such source is available locally, call the International Exchange Section, Money Order Division, St. Louis PDC, on 314–622–4933. Advise the customer in all cases that the quoted foreign equivalent is only approximate and will not necessarily be the amount paid in the foreign country.

(4) *Completing the Transaction.*—

(a) Remove the imprinted form set and snap-out the carbons.

(b) Dispose of the carbon and stub as trash.

dates of the individual certificates occurring before April 26, 1967. No interest accrues after that date, but the face value of a certificate and the interest due to anniversary date will be paid whenever the certificate is surrendered.

173.2 RECORDS OF ACCOUNTS

The records of accounts with outstanding balances, Form 600, *Record of Postal Savings Account*, which were established when the accounts were opened, have been transferred to the Treasury Department. They will be maintained there as the official records of the accounts.

173.3 WITHDRAWALS

All withdrawals will be paid by the Treasury Department. Postmasters should advise customers to mail the endorsed certificates to the Treasury Department, Bureau of Government Financial Operations, Division of Financial Management, Claims Review and Settlement Branch, Washington, DC 20226.

173.4 INQUIRIES FROM DEPOSITORS AND CLAIMANTS

If a person claims to have a postal savings account, but does not have any certificates evidencing deposits, or requests information about an account as an entitled claimant, the postmaster will tell the person inquiring to write the Treasury Department at the above address for information and assistance.

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federal register

TUESDAY, JANUARY 18, 1977

PART VII

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Federal Insurance Administration

■

NATIONAL FLOOD INSURANCE PROGRAM

Flood Prone Areas of Communities Subject to Section 202 Prohibition of Federal and Federally Related Assistance

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Federal Insurance Administration

[Docket No. FI-2641]

NATIONAL FLOOD INSURANCE PROGRAM

Flood-Prone Areas of Communities Subject to Section 202 Prohibition of Federal and Federally Related Assistance

The purpose of this notice is to provide a list of communities that contain areas of special flood hazard potentially subject to the provisions of section 202 of the Flood Disaster Protection Act of 1973 (PL-93-234) on July 1, 1975, or an appropriate later date, and to provide a convenient reference for interested persons, communities, Federal agencies and instrumentalities, and others involved in assuring compliance with that section. This list supersedes and updates the list published in the FEDERAL REGISTER at 41 FR 46178-46286.

Section 202 provides that effective July 1, 1975, Federal agencies and federally supervised, approved, insured, or regulated lending institutions are prohibited from providing financial assistance or making loans for acquisition or construction purposes in areas which (a) have been designated by the Secretary of Housing and Urban Development as Special Flood Hazard Areas for at least one year; and (b) are in communities which are not participating in the National Flood Insurance Program (42 USC ss 4001-4128).

The prohibition does not apply to loans by Federally regulated, insured, supervised or approved lending institutions (1) to finance the acquisition of a residential dwelling occupied as a residence prior to March 1, 1976, or one year following identification of the area within which such dwelling is located as an area containing special flood hazards, whichever is later, or made to extend, renew, or increase the financing or refinancing in connection with such a dwelling, (2) to finance the acquisition of a building or structure completed and occupied by a small business concern, as defined by the Secretary, prior to January 1, 1976, (3) any loan or loans, which in the aggregate do not exceed $5,000, to finance improvements to or rehabilitation of a building or structure occupied as a residence prior to January 1, 1976, or (4) any loan or loans, which in the aggregate do not exceed an amount prescribed by the Secretary, to finance nonresidential additions or improvements to be used solely for agricultural purposes on a farm.

Each of the communities listed below received notice of its designation as flood-prone prior to April 1, 1976, and legal notice was furnished of such designation by publication under Part 1915 of Title 24 of the Code of Federal Regulations in the FEDERAL REGISTER. These communities have failed to provide the Federal Insurance Administrator with sufficient technical or scientific data to rebut their designation as flood prone nor have they as yet qualified for participation in the National Flood Insurance Program. Thus, the sanctions of Section 202 apply as of July 1, 1975, or one year after a community's identification, whichever is later, until the community participates in the program.

In order to continue Federal or federally related assistance or lending in its Special Flood Hazard Area, a community must apply for and be made eligible for participation in the program in accordance with 24 CFR (Parts 1909 to 1920). Communities may receive assistance in applying for participation by contacting the Federal Insurance Administration, 451 Seventh St., SW, Washington, D.C. 20410, (202) 755-5581, or its toll-free numbers 800-424-8872 or 800-424-8873.

Communities on this list may be made eligible to participate in the program after the date of publication of this list. Such eligibility will be published periodically in the FEDERAL REGISTER under 24 CFR 1914.6 List of eligible communities. At that time the sanctions of section 202 will no longer apply to the communities listed below.

* UNINCORPORATED AREAS ONLY

COMMUNITY NUMBER	NAME	HAZARD AREA IDENTIFIED
	ALASKA	
020108	HOOPER BAY, CITY OF (UNORGANIZED BORO.)	JUNE 28, 1974
	TOTAL IN THE STATE	1

* UNINCORPORATED AREAS ONLY

COMMUNITY NUMBER	NAME	HAZARD AREA IDENTIFIED
	ALABAMA	
010015	AKRON, TOWN OF (HALE CO)	JULY 18, 1975
010229	ALLGOOD, TOWN OF (BLOUNT CO)	JANUARY 24, 1975
010242	BARBIE, TOWN OF (COVINGTON CO)	JANUARY 10, 1975
010093A	BELK, TOWN OF (FAYETTE CO)	SEPTEMBER 13, 1974
010097	BLACK, TOWN OF (GENEVA COU)	FEBRUARY 07, 1975
010097	BOLIVER, CITY OF (CRENSHAW CO)	DECEMBER 14, 1974
010086A	BRANTLEY, TOWN OF (CRENSHAW CO)	JUNE 28, 1974 AND JULY 26, 1974
010204	CARBON HILL, TOWN OF (WALKER CO)	OCTOBER 31, 1975
010115A	CAROLIPP, TOWN OF (JEFFERSON CO)	SEPTEMBER 30, 1974 AND JANUARY 23, 1976
010240	CAROLINA, TOWN OF (COVINGTON CO)	JANUARY 10, 1975
010228	CLEVELAND, TOWN OF (BLOUNT CO)	MARCH 05, 1976
010235	COFFEE COUNTY *	JANUARY 17, 1975
010101	COLUMBIA, TOWN OF (HOUSTON CO)	FEBRUARY 20, 1976
010244	COVINGTON COUNTY *	DECEMBER 13, 1974
010103A	COWARTS, TOWN OF (HOUSTON CO)	AUGUST 16, 1974
010094A	DOZIER, TOWN OF (CRENSHAW CO)	SEPTEMBER 20, 1974
010094	ELLIOTT, TOWN OF (CHAMBERS CO)	NOVEMBER 15, 1974
010027	FIVE POINTS, TOWN OF (CHAMBERS CO)	NOVEMBER 15, 1974
010038	FULTON, TOWN OF (CLARKE CO)	JULY 05, 1974
010053A	GANTT, TOWN OF (COVINGTON CO)	JUNE 07, 1974 AND JANUARY 02, 1976
010256	GENEVA COUNTY	JANUARY 02, 1976
010057A	GLENWOOD, TOWN OF (CRENSHAW CO)	FEBRUARY 20, 1976
010293	HARPERSVILLE, TOWN OF (SHELBY CO)	SEPTEMBER 20, 1974
010294A	HELENA, TOWN OF (SHELBY CO)	APRIL 11, 1975
010257	HENAGAR, TOWN OF (DEKALB CO)	JANUARY 10, 1975 AND FEBRUARY 13, 1976
010232	ONAYCHEE, TOWN OF (CALHOUN CO)	MARCH 12, 1976
010240	PISGAH, TOWN OF (JACKSON CO)	JANUARY 31, 1975
010258	PROVIDENCE, TOWN OF (AUTAUGA CO)	MARCH 12, 1976
010182	RANDOLPH COUNTY * (CRENSHAW CO)	JANUARY 21, 1976
010243	RED LEVEL, TOWN OF (COVINGTON CO)	SEPTEMBER 03, 1976
010253	REECE CITY, CITY OF (ETOWAH CO)	JANUARY 10, 1975
010288	RIVERSIDE, TOWN OF (ST. CLAIR CO)	FEBRUARY 21, 1975
010034	SILAS, TOWN OF (CHOCTAW CO)	APRIL 04, 1975
010227	SNEAD, TOWN OF (BLOUNT CO)	JULY 11, 1975
010291	STEELE, TOWN OF (ST. CLAIR COU)	JUNE 27, 1975
010140A	SWEETWATER, TOWN OF (MARENGO CO)	FEBRUARY 07, 1975
		JULY 18, 1975 AND DECEMBER 10, 1976
010108	TAYLOR, TOWN OF (HOUSTON CO)	SEPTEMBER 13, 1974
010292	VINCENT, TOWN OF (SHELBY CO)	APRIL 11, 1975
	TOTAL IN THE STATE	39

• UNINCORPORATED AREAS ONLY

ARIZONA

COMMUNITY NUMBER	NAME	HAZARD AREA IDENTIFIED
040028	GILA COUNTY •	NOVEMBER 01, 1974
040106	TOMBSTONE, CITY OF (COCHISE CO)	AUGUST 15, 1975
	TOTAL IN THE STATE	2

• UNINCORPORATED AREAS ONLY

ARKANSAS

COMMUNITY NUMBER	NAME	HAZARD AREA IDENTIFIED
050377	ALEXANDER, TOWN OF (PULASKI & SALINE)	APRIL 18, 1975
050378	ALICIA, TOWN (LAWRENCE CO.)	JULY 11, 1975
050380	ALMYRA, TOWN (ARKANSAS CO.)	AUGUST 15, 1975
050017A	ALPENA, TOWN OF (BOONE CO.)	AUGUST 30, 1974 AND OCTOBER 03, 1975
050381	ALTUS, CITY (FRANKLIN CO.)	JULY 25, 1975
050303	AMITY, CITY OF (CLARK CO)	FEBRUARY 21, 1975
050382	ASH FLAT, TOWN (SHARP CO.)	JUNE 27, 1975
050123	AUBREY, TOWN OF (LEE CO.)	DECEMBER 06, 1974
050305	BARLING, CITY OF (SEBASTIAN)	FEBRUARY 14, 1975
050306	BERRYVILLE, CITY (CARROLL CO)	APRIL 18, 1975
050308	BETHEL HEIGHTS, TOWN (BENTON CO.)	APRIL 25, 1975
050390	BLEVINS, CITY (HEMPSTEAD CO.)	APRIL 18, 1975
050391	BLUFF CITY, TOWN (NEVADA CO.)	JULY 18, 1975
050392	BONANZA, TOWN (SEBASTIAN CO.)	AUGUST 15, 1975
050131	BRADFORD, CITY OF (WHITE CO)	FEBRUARY 21, 1975
050393	BRANCH, CITY (FRANKLIN CO.)	MAY 02, 1975
050394	BULL SHOALS, CITY (MARION CO.)	APRIL 25, 1975
050310	CAMMACK, TOWN (PULASKI CO)	APRIL 18, 1975
050397	CAULKSVILLE, TOWN (LOGAN CO.)	JUNE 27, 1975
050313	CAVE CITY, CITY (INDEP.-SHARP COS)	JULY 18, 1975
050400	CHIDESTER, CITY (OUACHITA CO)	JULY 25, 1975
050404	DAMASCUS, TOWN (FAULKNER + VAN BUREN COS.)	APRIL 18, 1975
050405	DELIGHT, CITY (PIKE CO)	APRIL 18, 1975
050406	DENNING, TOWN (FRANKLIN CO.)	AUGUST 08, 1975
050320	DIERKS, CITY OF (HOWARD)	FEBRUARY 14, 1975
050408	DYER, TOWN (CRAWFORD CO.)	JULY 11, 1975
050214	ELKINS, TOWN OF (WASHINGTON CO.)	DECEMBER 20, 1974
050410	EMERSON, TOWN (COLUMBIA CO)	APRIL 25, 1975
050017A	EVERTON, TOWN OF (BOONE CO.)	AUGUST 30, 1974 AND APRIL 09, 1976
050413	FISHER, TOWN (POINSETT CO)	APRIL 11, 1975
050414	FOUNTAIN HILL, TOWN OF (ASHLEY CO)	FEBRUARY 21, 1975
050224A	GARNER, TOWN OF (WHITE CO.)	AUGUST 30, 1974 AND NOVEMBER 07, 1975
050324	GENTRY, CITY (BENTON CO)	MAY 02, 1975
050247	GRIFFITHVILLE, TOWN (WHITE CO)	SEPTEMBER 26, 1975
050248	GUION, TOWN (IZARD CO)	APRIL 11, 1975
050249	GUM SPRINGS, TOWN (CLARK CO)	JUNE 27, 1975
050330	HARDY, TOWN (SHARP CO)	APRIL 25, 1975
050250	HARRELL, TOWN (CALHOUN CO)	APRIL 18, 1975
050234A	HAVANA, CITY OF (YELL CO.)	AUGUST 23, 1974
050254	HECTOR, TOWN (POPE CO)	APRIL 25, 1975
050058	HICKORY RIDGE, CITY (CROSS CO)	MARCH 05, 1976
050225A	HIGGINSON, TOWN OF (WHITE CO.)	AUGUST 16, 1974 AND JANUARY 09, 1976
050334A	HUNTINGTON, TOWN (SEBASTIAN CO)	SEPTEMBER 19, 1975
050120A	IMBODEN, TOWN (LAWRENCE CO)	MAY 03, 1974 AND OCTOBER 10, 1975

• UNINCORPORATED AREAS ONLY

ARKANSAS

COMMUNITY NUMBER	NAME	HAZARD AREA IDENTIFIED
050336	JUNCTION CITY, CITY (UNION CO)	APRIL 18, 1975
050260	KNOXVILLE, TOWN OF (JOHNSON CO)	FEBRUARY 21, 1975
050261	LEOLA, TOWN OF (GRANT CO)	FEBRUARY 21, 1975
050338	LINCOLN, CITY (WASHINGTON CO)	JULY 18, 1975
050339	LOCKESBURG, TOWN (SEVIER CO)	APRIL 18, 1975
050341	LONOKE, CITY (LONOKE CO)	MARCH 26, 1976
050347	MARSHALL, CITY (SEARCY CO)	APRIL 25, 1975
050170	MARVELL, CITY (PHILLIPS CO)	MARCH 12, 1976
050343	MCNEIL, CITY (COLUMBIA CO)	MAY 02, 1975
050348	MELBOURNE, CITY (IZARD CO)	APRIL 11, 1975
050266	MENIFEE, TOWN (CONWAY CO)	APRIL 25, 1975
050049	MITCHELLVILLE, TOWN OF (DESHA CO.)	NOVEMBER 08, 1974
050098	MOUNT PLEASANT, TOWN OF (IZARD CO.)	NOVEMBER 22, 1974
050352	MOUNTAIN VIEW, CITY (STONE CO)	JUNE 27, 1975
050081A	MOUNTAINBURG, TOWN OF (CRAWFORD CO.)	MAY 03, 1974 AND NOVEMBER 28, 1975
050268	MORVELL, TOWN (CRITTENDEN CO)	AUGUST 18, 1975
050269	OAK GROVE, TOWN OF (CARROLL CO)	FEBRUARY 21, 1975
050270	OSCEOLA, TOWN (LITTLE RIVER CO)	SEPTEMBER 19, 1975
050272	OKOLONA, TOWN (CLARK CO)	JULY 11, 1975
050273	OXFORD, TOWN (IZARD CO)	APRIL 25, 1975
050271	OZEAN, TOWN (RANDOLPH CO)	APRIL 18, 1975
050340	PANGBURN, CITY (WHITE CO)	APRIL 18, 1975
050007A	PARKDALE, CITY OF (ASHLEY CO.)	MARCH 29, 1974 AND OCTOBER 31, 1975
050363	PLAINVIEW, CITY (YELL CO)	APRIL 18, 1975
050364	PLUMERVILLE, CITY (CONWAY CO)	JUNE 27, 1975
050279	PRATTSVILLE, TOWN (GRANT CO)	APRIL 25, 1975
050040A	RISON, CITY OF (CLEVELAND CO.)	MARCH 08, 1974 AND OCTOBER 10, 1975
050284	RUSSELL, TOWN (WHITE CO)	APRIL 11, 1975
050286	SCRANTON, TOWN (LOGAN CO)	APRIL 18, 1975
050369	STEPHENS, CITY (OUACHITA CO)	JUNE 27, 1975
050290	SULPHUR ROCK, TOWN (INDEPENDENCE CO)	APRIL 25, 1975
050293	THORNTON, TOWN (CALHOUN CO)	JULY 25, 1975
050043A	WALDO, CITY OF (COLUMBIA CO.)	APRIL 05, 1974 AND OCTOBER 17, 1975
050374	WHEATLEY, TOWN (ST. FRANCIS CO)	SEPTEMBER 19, 1975
050298	WICKES, TOWN (POLK CO)	JUNE 27, 1975
050299	WILTON, TOWN (LITTLE RIVER CO)	APRIL 11, 1975
050077A	WINCHESTER, TOWN OF (OREN CO.)	AUGUST 30, 1974 AND OCTOBER 10, 1975
050301	WINTHROP, TOWN (LITTLE RIVER CO)	SEPTEMBER 19, 1975
	TOTAL IN THE STATE	82

• UNINCORPORATED AREAS ONLY

CALIFORNIA

COMMUNITY NUMBER	NAME	HAZARD AREA IDENTIFIED
060271	BARSTOW, CITY (SAN BERNARDINO CO)	JANUARY 17, 1978
060017	BUTTE COUNTY •	SEPTEMBER 06, 1974
060194A	CARMEL BY-THE-SEA, CITY OF (MONTEREY CO.)	JUNE 14, 1974
060249	COACHELLA, CITY OF (RIVERSIDE CO.)	MAY 17, 1974
060110A	COMMERCE, CITY OF (LOS ANGELES CO.)	JUNE 28, 1974
060040	EL DORADO COUNTY •	AUGUST 02, 1974
060498A	FERNDALE, CITY (HUMBOLDT CO.)	DECEMBER 20, 1974 AND MARCH 26, 1976
060258A	INDIO, CITY OF (RIVERSIDE CO.)	MAY 31, 1974 AND AUGUST 08, 1978
060089	LEMOORE, CITY OF (KINGS CO.) CA.	FEBRUARY 06, 1976
060481	MONTAGUE, TOWN (SISKIYOU CO)	MARCH 26, 1976
060309	PISMO BEACH, CITY (SAN LUIS OBISPO CO)	MARCH 26, 1976
060066A	SELMA, CITY OF (FRESNO CO.)	MAY 24, 1974
060082	SHAFTER, CITY OF (KERN CO.)	FEBRUARY 06, 1976
	TOTAL IN THE STATE	13

* UNINCORPORATED AREAS ONLY

COLORADO

COMMUNITY NUMBER	NAME	HAZARD AREA IDENTIFIED
080229	AGUILAR, TOWN OF (LAS ANIMAS CO.)	JULY 11, 1975
080003	BENNETT, TOWN OF (ADAMS CO.)	NOVEMBER 22, 1974
080148A	BOONE, TOWN OF (PUEBLO CO.)	SEPTEMBER 06, 1974 AND JANUARY 09, 1976
080210	COAL CREEK TOWN (FREMONT CO)	AUGUST 15, 1975
080111	CROOK, TOWN OF (LOGAN CO.)	NOVEMBER 08, 1974
080237A	DILLON, TOWN OF (SUMMIT CO.)	AUGUST 08, 1975 AND AUGUST 13, 1976
080120A	DINOSAUR, TOWN OF (MOFFAT CO.)	AUGUST 30, 1974
080047A	DOVE CREEK, TOWN OF (DOLORES CO.)	MAY 24, 1974 AND NOVEMBER 28, 1975
080096A	ELIZABETH, TOWN OF (ELBERT CO.)	SEPTEMBER 06, 1974 AND FEBRUARY 06, 1976
080212	EMPIRE, TOWN OF (CLEAR CREEK CO.)	MAY 02, 1975
080242	FLAGER TOWN (KIT CARSON CO)	SEPTEMBER 19, 1975
080112	FLEMING, TOWN OF (LOGAN CO.)	NOVEMBER 08, 1974
080073A	FRASER, TOWN OF (GRAND CO.)	SEPTEMBER 06, 1974
080117A	GRAND JUNCTION, CITY OF (MESA CO.)	FEBRUARY 01, 1974 AND JUNE 28, 1974
080219A	GRAND LAKE TOWN (GRAND CO)	AUGUST 15, 1975 AND SEPTEMBER 17, 1976
080079A	HOT SULPHUR SPRINGS, TOWN OF (GRAND CO.)	NOVEMBER 22, 1974
080044A	HOTCHKISS, TOWN OF (DELTA CO.)	JUNE 21, 1974 AND SEPTEMBER 17, 1976
080248A	IGNACIO, TOWN (LA PLATA CO)	MARCH 22, 1974
080207	ILIFF, TOWN OF (LOGAN CO.)	DECEMBER 27, 1974
080067A	KIOWA, TOWN OF (ELBERT CO.)	SEPTEMBER 06, 1974 AND FEBRUARY 27, 1976
080033	KIT CARSON, TOWN OF (CHEYENNE CO.)	DECEMBER 13, 1974
080096A	LEADVILLE, CITY OF (LAKE CO.)	MAY 17, 1974
080263A	MANASSA TOWN (CONEJOS CO)	AUGUST 08, 1975 AND JULY 16, 1976
080264	MOUNTAIN VIEW TOWN (JEFFERSON CO)	MARCH 26, 1976
080265	NEDERLAND TOWN (BOULDER CO)	AUGUST 22, 1975
080266	NEW CASTLE TOWN (GARFIELD CO)	JULY 25, 1975
080127A	NUCLA, TOWN OF (MONTROSE CO.)	MAY 24, 1974 AND MARCH 26, 1976
080178A	OTIS, TOWN OF (WASHINGTON CO.)	MAY 24, 1974 AND OCTOBER 31, 1975
080170	OVID, TOWN OF (SEDGWICK CO.)	NOVEMBER 15, 1974
080077A	PUEBLO, CITY OF (PUEBLO CO.)	AUGUST 24, 1973
080260	REDCLIFF TOWN (EAGLE CO)	SEPTEMBER 19, 1975
080078A	RIFLE, CITY OF (GARFIELD CO.)	JUNE 15, 1973
080221	ROCKVALE TOWN (FREMONT CO)	JUNE 27, 1975
080150	RYE, TOWN (PUEBLO CO)	JULY 18, 1975
080223	SILT TOWN (GARFIELD CO)	JULY 25, 1975
080200	SILVER PLUME, TOWN OF (CLEAR CREEK CO.)	DECEMBER 13, 1974
080058	SIMLA, TOWN OF (ELBERT CO.)	SEPTEMBER 13, 1974
080104A	STARKVILLE, TOWN OF (LAS ANIMAS CO.)	SEPTEMBER 06, 1974 AND JANUARY 23, 1976
080243	STRATTON TOWN (KIT CARSON CO)	MARCH 26, 1976
080224	SUGAR CITY TOWN (CROWLEY CO)	AUGUST 15, 1975
080224	VICTOR CITY (TELLER CO)	MAY 02, 1975
080264	WINDSOR TOWN (WELD CO)	MARCH 26, 1976

TOTAL IN THE STATE 42

* UNINCORPORATED AREAS ONLY

CONNECTICUT

COMMUNITY NUMBER	NAME	HAZARD AREA IDENTIFIED
090166	SALEM, TOWN OF (NEW LONDON CO)	FEBRUARY 21, 1975

TOTAL IN THE STATE 1

* UNINCORPORATED AREAS ONLY

DELAWARE

COMMUNITY NUMBER	NAME	HAZARD AREA IDENTIFIED
100013A	KENTON, TOWN OF (KENT CO.)	SEPTEMBER 13, 1974
100019A	LEIPSIC, TOWN OF (KENT CO.)	AUGUST 09, 1974 AND JANUARY 09, 1976
100044A	MILLVILLE, TOWN OF (SUSSEX CO.)	OCTOBER 18, 1974 AND DECEMBER 12, 1975
100056	ODESSA, TOWN OF (NEW CASTLE CO.)	JANUARY 31, 1975

TOTAL IN THE STATE 9

• UNINCORPORATED AREAS ONLY

FLORIDA

COMMUNITY NUMBER	NAME	HAZARD AREA IDENTIFIED
120323	BITHLO, TOWN OF (ORANGE CO.)	DECEMBER 13, 1979
120324	BRISTOL, TOWN OF (LIBERTY CO.)	DECEMBER 13, 1979
120014A	BROOKER, TOWN OF (BRADFORD CO.)	AUGUST 30, 1974
120086	BUNNELL, TOWN OF (FLAGLER CO.)	JULY 11, 1975
120126A	CAMPBELLTON, CITY OF (JACKSON CO.)	SEPTEMBER 06, 1974 AND JANUARY 30, 1976
120390	LAKE WALES, CITY OF (POLK CO.)	OCTOBER 17, 1975
120269	NORTH DAVENPORT, CITY OF (POLK CO.)	JUNE 28, 1974
120130A	SNEADS, TOWN OF (JACKSON CO.)	AUGUST 02, 1974 AND MAY 21, 1976

TOTAL IN THE STATE 8

• UNINCORPORATED AREAS ONLY

GEORGIA

COMMUNITY NUMBER	NAME	HAZARD AREA IDENTIFIED
130235A	ADAIRSVILLE, TOWN OF (BARTOW CO.)	JUNE 14, 1974 AND JANUARY 23, 1976
130360	AILEY, TOWN (MONTGOMERY CO.)	APRIL 04, 1975
130358	ALVATON, TOWN (MERIWEATHER CO.)	APRIL 04, 1975
130001	APPLING COUNTY	MARCH 12, 1976
130270A	BAKER COUNTY •	MARCH 28, 1975 AND DECEMBER 26, 1975
130205A	BALDWIN, TOWN OF (BANKS CO.)	JUNE 28, 1974 AND JANUARY 23, 1976
130423	BALL GROUND, CITY (CHEROKEE CO.)	APRIL 04, 1975
130116	BARTOW, CITY (JEFFERSON CO.)	AUGUST 22, 1975
130309A	BELLVILLE, CITY (EVANS CO.)	JULY 18, 1975
130272	BETHLEHEM, TOWN (BARROW COUNTY)	JULY 11, 1975
130402	BOSTON, CITY (THOMAS CO.)	APRIL 18, 1975
130362	BOSTWICK, TOWN (MORGAN CO.)	APRIL 04, 1975
130343	BRASELTON, CITY OF (JACKSON CO.)	APRIL 18, 1975
130244	BRINSON, TOWN (COLQUITT CO.)	JULY 18, 1975
130364	BUCKHEAD, TOWN (MORGAN CO.)	JULY 11, 1975
130323	BUFORD, CITY (GWINNETT + HALL COS.)	APRIL 04, 1975
130273	CARL, TOWN (BARROW COUNTY)	APRIL 11, 1975
130436	CHALYBEATE SPRINGS, TOWN (MERIWEATHER CO.)	APRIL 18, 1975
130293	CHATTAHOOCHEE COUNTY	FEBRUARY 20, 1976
130036	CHATTOOGA COUNTY	MARCH 26, 1976
130332	CLERMONT, TOWN (HALL CO.)	APRIL 11, 1975
130418	CLEVELAND, CITY (WHITE CO.)	APRIL 11, 1975
130398	COBBTOWN, CITY (TATTNALL CO.)	APRIL 11, 1975
130279A	COCHRAN, CITY (BLECKLEY CO.)	APRIL 04, 1975 AND SEPTEMBER 03, 1976
130146A	CRAWFORD, CITY OF (OGLETHORPE CO.)	JUNE 07, 1974 AND JANUARY 23, 1976
130069	DARSONVILLE, CITY (DARSON CO.)	JANUARY 17, 1975
130356	DEARING, TOWN (MCDUFFIE CO.)	APRIL 04, 1975
130330	DEMOREST, TOWN (HABERSHAM CO.)	APRIL 04, 1975
130215	DENTON, CITY OF (JEFF DAVIS CO.)	DECEMBER 13, 1974
130305	DOUGLASVILLE, CITY (DOUGLAS CO.)	APRIL 25, 1975
130432	FAYETTE COUNTY	FEBRUARY 20, 1976
130359	FORSYTH, CITY (MONROE CO.)	APRIL 11, 1975
130428	FORT OGLETHORPE, CITY OF (MACON CO.)	APRIL 04, 1975
130313	FRANKLIN SPRINGS, CITY (FRANKLIN CO.)	APRIL 04, 1975
130023A	GIRARD, TOWN OF (BURKE CO.)	SEPTEMBER 06, 1974 AND JANUARY 23, 1976
130419	GLENWOOD, CITY (WHEELER CO.)	APRIL 04, 1975
130325	GRAYSON, TOWN (GWINNETT CO.)	JULY 11, 1975
130220	GREENSBORO, CITY OF (GREENE CO.)	DECEMBER 20, 1974
130311A	HAGAN, CITY (EVANS CO.)	APRIL 18, 1975 AND JANUARY 23, 1976
130107A	HAMPTON, CITY OF (HENRY CO.)	JUNE 28, 1974
130299	HARALSON, TOWN (COWETA + MERRIWEATHER COS.)	APRIL 18, 1975
130192A	HELEN, CITY OF (WHITE CO.)	SEPTEMBER 06, 1974 AND

• UNINCORPORATED AREAS ONLY

GEORGIA

COMMUNITY NUMBER	NAME	HAZARD AREA IDENTIFIED
130386	MILLTONIA, TOWN (SCREVEN CO.)	OCTOBER 17, 1975
130221A	MIRAN, CITY OF (PAULDING CO.)	APRIL 11, 1975
130291	MONELAND, TOWN (CHARLTON CO.)	OCTOBER 18, 1974 AND JANUARY 23, 1976
130271	MONER, TOWN (BANKS COUNTY)	APRIL 11, 1975
130344	MOSCHTON, TOWN (JACKSON COUNTY)	APRIL 18, 1975
130375	JASPER, CITY (PICKENS CO.)	APRIL 11, 1975
130043A	JONESBORO, CITY OF (CLAYTON CO.)	MAY 24, 1974 AND MARCH 05, 1976
130277	KINGSTON, CITY (BARTOW CO.)	APRIL 18, 1975
130409	LINWOOD, TOWN (WALKER CO.)	APRIL 04, 1975
130324	LOGANVILLE, CITY (GWINNETT + WALTON COS.)	APRIL 04, 1975
130441	LOUISVILLE, CITY (JEFFERSON CO.)	AUGUST 15, 1975
130128A	LUDOWICI, CITY OF (LONG CO.)	JUNE 14, 1974 AND JANUARY 23, 1976
130229	MADISON, CITY OF (MORGAN CO.)	FEBRUARY 21, 1975
130392A	MARTIN, TOWN (STEPHENS CO.)	APRIL 04, 1975 AND MAY 28, 1976
130342	MCDONOUGH, CITY (HENRY CO.)	APRIL 11, 1975
130367	MCDUFFIE COUNTY •	MARCH 26, 1976
130421	MCINTYRE, TOWN (WILKINSON CO.)	APRIL 11, 1975
130295	MENLO, TOWN (CHATTOOGA CO.)	APRIL 18, 1975
130024	MIDVILLE, CITY (BURKE CO.)	JULY 11, 1975
130376	MOLENA, CITY (PIKE CO.)	APRIL 11, 1975
130139	MONTGOMERY COUNTY	MARCH 19, 1976
130252A	MOUNTAIN CITY, TOWN (RABUN CO.)	JANUARY 17, 1975 AND OCTOBER 22, 1976
130046A	MOUNTAIN VIEW, CITY OF (CLAYTON CO.)	MAY 10, 1974
130363	NAYLOR, TOWN (LOWNDES CO.)	APRIL 25, 1975
130161A	NEWINGTON, TOWN OF (SCREVEN CO.)	SEPTEMBER 06, 1974
130269	OAK PARK, TOWN (EMANUEL CO.)	JULY 18, 1975
130189A	OGUM, CITY (WAYNE CO.)	JANUARY 03, 1975 AND DECEMBER 19, 1975
130367	OXFORD, TOWN (NEWTON CO.)	APRIL 11, 1975
130284	PULASKI, TOWN (CANDLER, CO.)	APRIL 04, 1975
130267	RIVERSIDE, TOWN (COLQUITT CO.)	JULY 18, 1975
130162A	ROCKY FORD, TOWN OF (SCREVEN CO.)	SEPTEMBER 06, 1974
130363	RUTLEDGE, TOWN (MORGAN CO.)	AUGUST 08, 1975
130439	SALE CITY, TOWN (MITCHELL CO.)	APRIL 04, 1975
130168A	SCOTLAND, CITY OF (TELFAIR + WHEELER COS.)	AUGUST 30, 1974
130301	SENOIA, CITY (COWETA CO.)	APRIL 04, 1975
130339	SHILOH, CITY (HARRIS CO.)	APRIL 04, 1975
130308	STILLMORE, TOWN (EMANUEL CO.)	APRIL 11, 1975
130260A	STONE MOUNTAIN, CITY OF (DEKALB CO.)	MAY 12, 1975
130389	SUNNY SIDE, VILLAGE (SPALDING COUNTY)	APRIL 11, 1975
130003	SURRENCY, TOWN (APPLING CO.)	JANUARY 03, 1975
130328	SUWANEE, CITY (GWINNETT CO.)	APRIL 04, 1975
130394	TALBOT COUNTY	MARCH 26, 1976
130380	TALLULAH FALLS, CITY OF (HABERSHAM & RABUN COS.)	APRIL 25, 1975
130288	TEMPLE, TOWN (CARROLL CO.)	APRIL 11, 1975
130381	TIGER, TOWN (RABUN CO.)	JULY 11, 1975
130173	TOOMBS COUNTY	MARCH 19, 1976
130422	TOOMSBORO, TOWN (WILKINSON CO.)	APRIL 04, 1975
130361	UVALDA, TOWN (MONTGOMERY CO.)	APRIL 25, 1975
130186	WADLEY, CITY (JEFFERSON CO.)	AUGUST 22, 1975
130297	WINTERVILLE, CITY (CLARKE CO.)	APRIL 11, 1975
130434	WOODBURY, TOWN (MERIWEATHER CO.)	JUNE 27, 1975

TOTAL IN THE STATE 93

• UNINCORPORATED AREAS ONLY

IDAHO

COMMUNITY NUMBER	NAME	HAZARD AREA IDENTIFIED
160042	ALBION, TOWN (CASSIA CO.)	JANUARY 10, 1975
160180	BURL, CITY (TWIN FALLS CO.)	JUNE 27, 1975
160015A	CHATCOLET, CITY OF (BENEWAH CO.)	SEPTEMBER 13, 1974 AND FEBRUARY 27, 1976
160005A	COUNCIL, CITY OF (ADAMS CO.)	MAY 03, 1974 AND DECEMBER 12, 1975
160137	FRANKLIN, CITY (FRANKLIN CO.)	SEPTEMBER 05, 1975
160004A	GARDEN CITY, CITY OF (ADA CO.)	DECEMBER 17, 1973
160139	HAGERMAN, CITY (GOODING CO.)	MAY 02, 1975
160177	MACKAY CITY (CUSTER CO.)	MAY 02, 1975
160197	MALTA, TOWN OF (CASSIA CO.)	DECEMBER 13, 1974
160178	MARSING CITY (OWYHEE CO.)	JUNE 27, 1975
160203	MOYIE SPRINGS, CITY (BOUNDARY CO.)	AUGUST 22, 1975
160046A	OAKLEY, TOWN OF (CASSIA CO.)	OCTOBER 18, 1974 AND NOVEMBER 19, 1974
160185	POTLATCH CITY (LATAH CO.)	JULY 11, 1975
160186	PRESTON CITY (FRANKLIN CO.)	AUGUST 29, 1975
160152	ROBERTS, CITY (JEFFERSON CO.)	JANUARY 24, 1975
160153	ST. CHARLES, CITY (BEAR LAKE CO.)	MARCH 19, 1976
160154	SWAN VALLEY CITY (BONNEVILLE CO.)	AUGUST 29, 1975
160119A	VICTOR, CITY OF (TETON CO.)	SEPTEMBER 06, 1974 AND DECEMBER 05, 1975
160196	WENDELL CITY (GOODING CO.)	JULY 11, 1975

TOTAL IN THE STATE 19

* UNINCORPORATED AREAS ONLY

ILLINOIS

COMMUNITY NUMBER	NAME	HAZARD AREA IDENTIFIED
170826	ADELINE, VILLAGE (OGLE CO.)	JULY 11, 1975
170806	ALBION, VILLAGE (EDWARDS CO)	AUGUST 15, 1975
170899	ALVIN, VILLAGE OF (VERMILION CO)	FEBRUARY 21, 1975
170489	ANCHOR, VILLAGE OF (MCLEAN CO.)	DECEMBER 06, 1974
170657A	ANNA, CITY OF (UNION CO.)	MARCH 29, 1974 AND APRIL 30, 1976
170741	ASTORIA, TOWN OF (FULTON CO)	JANUARY 31, 1975
170742A	AVON, VILLAGE OF (FULTON CO.)	OCTOBER 18, 1974 AND APRIL 16, 1976
170470A	BARDOLPH, VILLAGE OF (MCDONOUGH CO.)	SEPTEMBER 13, 1974
170859	BARTELSO, VILLAGE OF (CLINTON CO)	MARCH 28, 1975
170494A	BATH, VILLAGE OF (MASON CO.)	DECEMBER 17, 1973
170895	BELGIUM, VILLAGE OF (VERMILION CO)	MARCH 28, 1975
170608A	BLUFFS, VILLAGE OF (SCOTT CO.)	JUNE 07, 1974 AND JANUARY 30, 1976
170898	BRAIDWOOD, CITY (WILL CO)	APRIL 11, 1975
170448A	BROOKPORT, CITY OF (MASSAC CO.)	JUNE 07, 1974
170226	BROWNS, VILLAGE OF (EDWARDS CO.)	NOVEMBER 15, 1974
170747	BRUSSELS, VILLAGE OF (CALHOUN CO.)	NOVEMBER 22, 1974
170794	BRYANT, VILLAGE OF (FULTON CO.)	DECEMBER 06, 1974
170850	BUREAU JUNCTION, VILLAGE OF (BUREAU CO)	MARCH 28, 1975
170471B	BUSHNELL, CITY OF (MCDONOUGH CO.)	JUNE 07, 1974 AND APRIL 02, 1976 AND AUGUST 20, 1976
170785A	CAMARGO, VILLAGE OF (DOUGLAS CO.)	APRIL 05, 1974
170260A	CARROLLTON, CITY OF (GREEN CO.)	JUNE 07, 1974 AND MARCH 05, 1976
170839A	CASEY, CITY OF (CLARK CO.)	JUNE 28, 1974
170842	CEDARVILLE, VILLAGE (STEPHENSON CO)	APRIL 11, 1975
170839	CLEAR LAKE, VILLAGE OF (SANGAMON CO)	FEBRUARY 21, 1975
170844	CLINTON COUNTY *	DECEMBER 20, 1974
170823	CORNELL, VILLAGE OF (LIVINGSTON CO)	MARCH 21, 1975
170498A	CREVE COEUR, VILLAGE OF (TAZEWELL CO.)	MARCH 01, 1974 AND APRIL 30, 1976
170422A	CULLOM, VILLAGE OF (LIVINGSTON CO.)	FEBRUARY 22, 1974
170292A	DANFORTH, VILLAGE OF (IROQUOIS CO.) (IROQUOIS CO.)	FEBRUARY 22, 1974 , SEPTEMBER 13, 1974 AND FEBRUARY 06, 1976
170761A	DE SOTO, VILLAGE OF (JACKSON CO.)	APRIL 05, 1974 AND APRIL 02, 1976
170447	DEER CREEK, VILLAGE OF (TAZEWELL CO.)	JUNE 28, 1974
170658A	DONGOLA, VILLAGE OF (UNION CO.)	MARCH 08, 1974 AND JULY 02, 1976
170876	DORELL, VILLAGE (JACKSON CO)	APRIL 18, 1975
170896	DUBOIS, VILLAGE OF (WASHINGTON CO)	MARCH 28, 1975
170873	EAST BROOKLYN, VILLAGE OF (GRUNDY CO)	MARCH 21, 1975
170432A	EAST GILLESPIE, VILLAGE (MACOUPIN CO)	JULY 19, 1974
170491A	EDWARDSVILLE, CITY OF (MADISON CO.)	APRIL 05, 1974 AND JULY 02, 1976

* UNINCORPORATED AREAS ONLY

ILLINOIS

COMMUNITY NUMBER	NAME	HAZARD AREA IDENTIFIED
170251A	ELDRED, VILLAGE OF (GREENE CO.)	DECEMBER 17, 1973 AND JANUARY 16, 1976
170889A	ELLISVILLE, VILLAGE OF (FULTON CO.)	MARCH 22, 1974
170849	ELWOOD, VILLAGE OF (WILL CO)	FEBRUARY 21, 1975
170818	FARMER CITY, CITY OF (DE WITT CO)	MARCH 21, 1975
170444	FITHIAN, VILLAGE OF (VERMILLION CO.)	AUGUST 01, 1975
170827	FOREST CITY, VILLAGE OF (MASON CO)	MARCH 28, 1975
170783A	GALVA, CITY OF (HENRY CO.)	JUNE 14, 1974
170494A	GERMANTOWN, VILLAGE OF (CLINTON CO.)	MARCH 29, 1974 AND JULY 30, 1976
170234A	GIBSON CITY, CITY OF (FORD CO.)	MARCH 29, 1974 AND JANUARY 30, 1976
170326A	GILBERTS, VILLAGE OF (KANE CO.)	SEPTEMBER 06, 1974 AND MAY 07, 1976
170885	GOLDEN GATE, VILLAGE (WAYNE CO)	JUNE 27, 1975
170002A	GOLDEN, VILLAGE OF (ADAMS CO.)	JUNE 07, 1974
170252A	GREENFIELD, CITY OF (GREEN CO.)	FEBRUARY 22, 1974 AND JULY 16, 1976
170867	GREENUP, VILLAGE OF (CUMBERLAND CO)	MARCH 28, 1975
170548A	HAMMOND, VILLAGE OF (PIATT CO.)	JUNE 14, 1974 AND APRIL 09, 1976
170267A	HANCOCK COUNTY	JANUARY 24, 1975 AND FEBRUARY 20, 1976
170445A	HAVANA, CITY OF (MASON CO.)	APRIL 05, 1974 AND JANUARY 30, 1976
170666	HENNING, VILLAGE (VERMILLION CO)	AUGUST 29, 1975
170497A	HEYWORTH, VILLAGE OF (MCLEAN CO.)	JUNE 14, 1974
170263A	HILLVIEW, VILLAGE OF (GREENE CO.)	DECEMBER 06, 1974 AND JULY 30, 1976
170184A	HINCKLEY, VILLAGE OF (DEKALB CO.)	MARCH 01, 1974 AND JUNE 04, 1976
170852	HOLLOWAYVILLE, VILLAGE OF (BUREAU CO)	MARCH 28, 1975
170369	INDIAN CREEK, VILLAGE OF (CLARK CO.)	AUGUST 23, 1974
170315A	JERSEYVILLE, CITY OF (JERSEY CO.)	JUNE 07, 1974 AND JUNE 04, 1976
170757A	JOPPA, VILLAGE OF (MASSAC CO.)	NOVEMBER 23, 1973 AND APRIL 23, 1976
170826	JUNCTION CITY, VILLAGE OF (MARION CO)	MARCH 21, 1975
170860	KEYESPORT, VILLAGE OF (CLINTON CO)	MARCH 21, 1975
170837	KINDERHOOK, VILLAGE OF (PIKE CO)	MARCH 21, 1975
170760	LA PRAIRIE, TOWN OF (ADAMS CO.)	APRIL 25, 1975
170457A	LACON, CITY OF (MARSHALL CO.)	NOVEMBER 30, 1973 AND FEBRUARY 20, 1976
170373A	LAKE BLUFF (VILLAGE OF (CLARK CO.)	FEBRUARY 01, 1974 AND FEBRUARY 04, 1976
170458	LAROSE, VILLAGE OF (MARSHALL CO.)	OCTOBER 25, 1974
170500A	LEXINGTON, CITY OF (MCLEAN CO.)	JUNE 28, 1974
170118A	LINCOLNWOOD, VILLAGE OF (COOK CO.)	JUNE 21, 1974
170342	LISBON, VILLAGE OF (KENDALL CO.)	NOVEMBER 01, 1974

* UNINCORPORATED AREAS ONLY

ILLINOIS

COMMUNITY NUMBER	NAME	HAZARD AREA IDENTIFIED
170884	LITTLE YORK, VILLAGE OF (WARREN CO)	APRIL 11, 1975
170794A	LIVINGSTON, VILLAGE OF (MADISON CO.)	MARCH 22, 1974 AND JUNE 11, 1974
170301A	MAKANDA, VILLAGE OF (JACKSON CO.)	AUGUST 23, 1974 AND DECEMBER 24, 1975
170187A	MALTA, VILLAGE OF (DEKALB CO.)	JUNE 07, 1974
170549	MANSFIELD, VILLAGE (PIATT CO)	JANUARY 03, 1975
170836	MAPLETON, VILLAGE OF (PEORIA CO)	MARCH 28, 1975
170351	MAQUON, VILLAGE OF (KNOX CO.)	NOVEMBER 15, 1974
170749	MARIETTA, VILLAGE OF (MARIETTA CO)	JANUARY 31, 1975
170650A	MARQUETTE HEIGHTS, CITY OF (TAZEWELL CO.)	MARCH 08, 1974 AND MARCH 26, 1976
170091A	MARTINSVILLE, CITY OF (CLARK CO.)	NOVEMBER 23, 1973 AND MARCH 26, 1976
170463	MASON COUNTY *	JANUARY 31, 1975
170833	MATHERVILLE, VILLAGE OF (MERCER CO)	MARCH 24, 1975
170489	MAUNIE, VILLAGE OF (WHITE CO.)	JANUARY 09, 1974
170381A	METTARA, VILLAGE OF (CLARK CO.)	OCTOBER 18, 1974 AND JULY 23, 1976
170880	MIDDLETOWN, VILLAGE OF (LOGAN CO)	MARCH 28, 1975
170685A	MILL SHOALS, VILLAGE OF (WHITE CO.)	JULY 19, 1974 AND JULY 02, 1976
170230A	MONTROSE, VILLAGE OF (EFFINGHAM CO.)	AUGUST 23, 1974
170309A	MASON, CITY OF (JEFFERSON CO.)	AUGUST 16, 1974
170767	NAUVOO, CITY (HANCOCK CO)	OCTOBER 10, 1975
170853	NEW BEDFORD, VILLAGE (BUREAU CO.)	JUNE 27, 1975
170555A	NEW CANTON, TOWN OF (PIKE CO.)	AUGUST 16, 1974
170847	NEW MINDEN, VILLAGE (WASHINGTON CO)	JUNE 27, 1975
170749	NEWMAN, VILLAGE OF (DOUGLAS CO.)	NOVEMBER 29, 1974
170303A	NEWTON, CITY OF (JASPER CO.)	DECEMBER 17, 1973 AND MAY 28, 1976
170430A	NIANTIC, VILLAGE OF (MACON CO.)	MARCH 01, 1974
170770A	NORRIS, VILLAGE OF (FULTON CO.)	DECEMBER 06, 1974
170832	OAKFORD, VILLAGE OF (MENARD CO)	MARCH 21, 1975
170821	OAKWOOD HILLS, VILLAGE (MCHENRY CO.)	APRIL 18, 1975
170362A	ONEIDA, CITY OF (KNOX CO.)	JUNE 07, 1974
170491A	ORANGEVILLE, VILLAGE OF (STEPHENSON CO.)	AUGUST 14, 1974 AND MARCH 26, 1976
170871	ORIENT, VILLAGE (FRANKLIN CO)	APRIL 04, 1975
170797A	PECATONICA, VILLAGE OF (WINNEBAGO CO.)	APRIL 05, 1974 AND APRIL 02, 1976
170538	PERRY COUNTY *	DECEMBER 13, 1974
170542	PIATT COUNTY *	JANUARY 31, 1975
170272A	PONTOOSUC, VILLAGE OF (HANCOCK CO.)	JANUARY 16, 1974 AND MAY 28, 1976
170824	REDDICK, VILLAGE (LIVINGSTON CO.)	APRIL 18, 1975
170863	REYNOLDS, VILLAGE (ROCK ISLAND CO)	APRIL 18, 1975
170443A	RIDOTT, VILLAGE OF (STEPHENSON CO.)	DECEMBER 17, 1973
170403A	RIVERTON, VILLAGE OF (SANGMON CO.)	NOVEMBER 16, 1973 AND

* UNINCORPORATED AREAS ONLY

ILLINOIS

COMMUNITY NUMBER	NAME	HAZARD AREA IDENTIFIED
170867	ROYALTON, VILLAGE OF (FRANKLIN CO)	MARCH 06, 1974
170855	SADORUS, VILLAGE OF (CHAMPAIGN CO)	MARCH 21, 1975
170405A	SCHUYLER COUNTY	MARCH 21, 1975 JANUARY 03, 1975 AND JULY 02, 1974
170595A	SILVIS, CITY OF (ROCK ISLAND CO.)	MAY 31, 1974 AND MAY 31, 1974
170190	SOMONAUK, VILLAGE (DEKALB CO)	JANUARY 24, 1975
170519A	SOUTH JACKSONVILLE, CITY OF (MORGAN CO.)	MARCH 29, 1974 AND JUNE 04, 1976
170879	SOUTH WILMINGTON, VILLAGE OF (GRUNDY CO)	MARCH 21, 1975
170459A	SPARLAND, VILLAGE OF (MARSHALL CO.)	NOVEMBER 23, 1973 AND MARCH 05, 1976
170887	SPRING BAY, VILLAGE OF (WOODFORD CO)	MARCH 28, 1975
170686	SPRINGERTON, VILLAGE OF (WHITE CO.)	DECEMBER 06, 1974
170600A	STONEFORT, VILLAGE OF (SALINE CO.)	AUGUST 30, 1974 AND JUNE 10, 1974
170775	ST. DAVID, VILLAGE OF (FULTON CO.)	DECEMBER 06, 1974
170491A	ST. FRANCISVILLE, VILLAGE OF (LAWRENCE CO.)	MARCH 29, 1974
170820	ST. MARIE, VILLAGE OF (JASPER CO)	MARCH 21, 1975
170005A	TAMMS, VILLAGE OF (ALEXANDER CO.)	MAY 10, 1974 AND JUNE 11, 1974
170778	THOMSON, VIL (CARROLL CO)	OCTOBER 17, 1975
170828	TOPEKA, TOWN OF (MASON CO)	MARCH 21, 1975
170869	URBAIN, VILLAGE OF (FRANKLIN CO)	MARCH 21, 1975
170559A	VALLEY CITY, VILLAGE OF (PIKE CO.)	DECEMBER 17, 1973 AND MARCH 19, 1976
170781A	VERMONT, VILLAGE OF (FULTON CO.)	NOVEMBER 29, 1974
170310A	WALTONVILLE, VILLAGE OF (JEFFERSON CO.)	AUGUST 23, 1974 AND MARCH 19, 1976
170455A	WANAC, CITY OF (WASHINGTON, MARION & CLINTON COS.)	JUNE 28, 1974
170804	WATERMAN, VILLAGE OF (DE KALB CO)	MARCH 21, 1975
170865	WAYNE, VILLAGE (DUPAGE CO)	AUGUST 15, 1975
170259A	WHITE HALL, CITY OF (GREENE CO.)	APRIL 05, 1974 AND JUNE 04, 1976
170827	YALE, VILLAGE OF (JASPER CO)	MARCH 21, 1975
170356A	YATES CITY, VILLAGE OF (KNOX CO.)	JUNE 14, 1974 AND JANUARY 30, 1976

TOTAL IN THE STATE 138

• UNINCORPORATED AREAS ONLY

INDIANA

COMMUNITY NUMBER	NAME	HAZARD AREA IDENTIFIED
180012A	ADVANCE, TOWN OF (BOONE CO.)	SEPTEMBER 20, 1974
180031A	ALTON, TOWN OF (CRAWFORD CO.)	JANUARY 23, 1974 AND
		JULY 02, 1976
180303	AMBOY, TOWN OF (MIAMI CO.)	NOVEMBER 29, 1974
180097A	ANDREWS, TOWN OF (HUNTINGTON CO.)	JUNE 07, 1974
180318A	ARCADIA, TOWN OF (HAMILTON CO.)	FEBRUARY 01, 1974
180371	ATLANTA, TOWN (HAMILTON CO.)	JULY 11, 1976
180314A	BLOOMFIELD, TOWN OF (GREENE CO.)	NOVEMBER 23, 1973
180273A	BOONVILLE, CITY OF (WARRICK CO.)	DECEMBER 28, 1973 AND
		MAY 28, 1976
180087A	BROWNSBURG, TOWN OF (HENDRICKS CO.)	NOVEMBER 23, 1973 AND
		JUNE 18, 1976
180318A	BURLINGTON, TOWN OF (CARROLL CO.)	NOVEMBER 23, 1973 AND
		JUNE 11, 1976
180258A	CAYUGA, TOWN OF (VERMILLION CO.)	MAY 31, 1974 AND
		MAY 21, 1976
180167A	CONVERSE, TOWN OF (MIAMI CO.)	MAY 17, 1974
180064	DUBOIS COUNTY •	DECEMBER 13, 1974
180104	DUPONT, TOWN OF (JEFFERSON CO.)	NOVEMBER 29, 1974
180241A	FAIRVIEW PARK, TOWN OF (VERMILLION CO.)	SEPTEMBER 20, 1974 AND
		JUNE 11, 1976
180390	FARMLAND, TOWN OF (RANDOLPH CO)	FEBRUARY 21, 1975
180372A	FORTVILLE, TOWN (HANCOCK CO.)	JULY 11, 1975
180282A	FOUNTAIN CITY, CITY OF (WAY	MAY 10, 1974 AND
		APRIL 16, 1976
180369	FOWLERTON, TOWN OF (GRANT CO)	FEBRUARY 21, 1975
180366	FRANCISO, TOWN OF (GIBSON CO)	MARCH 21, 1975
180360A	GASTON, TOWN OF (DELAWARE CO)	FEBRUARY 21, 1975 AND
		OCTOBER 24, 1975
180326A	GOSPORT, TOWN OF (OWEN CO.)	NOVEMBER 23, 1973
180346	GREENVILLE, TOWN OF (FLOYD CO)	MARCH 21, 1975
180080	HAMILTON COUNTY •	DECEMBER 13, 1974
180327A	HAZLETON, TOWN OF (GIBSON CO.)	NOVEMBER 23, 1973 AND
		SEPTEMBER 24, 1976
180226A	INDIAN VILLAGE, TOWN OF (ST. JOSEPH CO.)	OCTOBER 18, 1974
180106	JENNINGS COUNTY •	DECEMBER 13, 1974
180193A	JUDSON, TOWN OF (PARKE CO.)	DECEMBER 17, 1973 AND
		JUNE 11, 1976
180377	KENNARD, TOWN OF (HENRY CO)	MARCH 21, 1975
180090B	KNIGHTSTOWN, TOWN OF (HENRY CO.)	NOVEMBER 30, 1973 AND
		DECEMBER 26, 1975 AND
		NOVEMBER 19, 1976
180172A	LADOGA, TOWN OF (MONTGOMERY CO.)	MAY 24, 1974 AND
		DECEMBER 26, 1975
180036A	LEAVENWORTH, TOWN OF (CRAWFORD CO.)	NOVEMBER 30, 1973
180398	LITTLE YORK, TOWN OF (WASHINGTON CO)	MARCH 21, 1975
180278A	LIVONIA, TOWN OF (WASHINGTON CO.)	OCTOBER 18, 1974 AND
		JUNE 11, 1976
180307	MACY, TOWN OF (MIAMI CO.)	DECEMBER 06, 1974

• UNINCORPORATED AREAS ONLY

INDIANA

COMMUNITY NUMBER	NAME	HAZARD AREA IDENTIFIED
180330A	MECCA, TOWN OF (PARKE CO.)	JANUARY 23, 1974 AND
		JUNE 18, 1976
180382	MILFORD, TOWN OF (KOSCIUSKO CO)	MARCH 21, 1975
180363	MILLERSBURG, TOWN (ELKHART CO.)	JULY 11, 1975
180010	MONTPELIER, TOWN OF (BLACKFORD CO.)	DECEMBER 07, 1973
180174	MORGAN COUNTY •	DECEMBER 20, 1974
180334A	NEW PALESTINE, TOWN OF (HANCOCK CO.)	NOVEMBER 30, 1973
180337A	NEWBERRY, TOWN OF (GREENE CO.)	FEBRUARY 01, 1974
180262A	NEWPORT, TOWN OF (VERMILLION CO.)	MAY 31, 1974 AND
		MAY 21, 1976
180374	NORTH SALEM, TOWN OF (HENDRICKS CO)	FEBRUARY 21, 1975
180072A	OAKLAND CITY, CITY OF (GIBSON CO.)	MAY 10, 1974 AND
		JUNE 11, 1976
180250A	ORLAND, TOWN OF (STEUBEN CO.)	MAY 31, 1974 AND
		APRIL 09, 1976
180188A	ORLEANS, TOWN OF (ORANGE CO.)	MAY 31, 1974 AND
		APRIL 09, 1976
180229A	OSCEOLA, TOWN OF (ST. JOSEPH CO.)	DECEMBER 17, 1973 AND
		DECEMBER 06, 1975
180189A	PAOLI, TOWN OF (ORANGE CO.)	NOVEMBER 23, 1973 AND
		OCTOBER 31, 1975
180338	PARAGON, TOWN OF (MORGAN CO.)	FEBRUARY 01, 1974
180192	PARKE COUNTY •	DECEMBER 20, 1974
180340A	PATOKA, TOWN (GIBSON CO.)	NOVEMBER 23, 1973 AND
		JULY 23, 1976
180396A	PERRYSVILLE, TOWN (VERMILLION CO.)	NOVEMBER 23, 1973 AND
		JUNE 11, 1976
180388	PINES, TOWN OF (PORTER CO)	MARCH 21, 1975
180213	PUTNAM COUNTY	JANUARY 03, 1975
180342A	RILEY, TOWN OF (VIGO CO.)	FEBRUARY 01, 1974
180096A	ROANOKE, TOWN OF (HUNTINGTON CO.)	DECEMBER 20, 1973 AND
		JULY 23, 1976
180071A	ROCHESTER, CITY OF (FULTON CO.)	FEBRUARY 15, 1974 AND
		APRIL 09, 1976
180343A	ROSEDALE, TOWN OF (PARKE CO.)	NOVEMBER 30, 1973 AND
		AUGUST 08, 1975
180218A	RUSSELLVILLE, TOWN OF (PUTNAM CO.)	SEPTEMBER 20, 1974
180373	SHIRLEY, TOWN (HANCOCK AND HENRY COS.)	JULY 11, 1975
180344A	SPRING LAKE PARK, TOWN OF (HANCOCK CO.)	FEBRUARY 01, 1974
180348A	STINESVILLE, TOWN OF (MONROE CO.)	FEBRUARY 01, 1974 AND
		MARCH 05, 1976
180349A	SULPHUR SPRINGS, TOWN OF (HENRY CO.)	FEBRUARY 01, 1974 AND
		APRIL 09, 1976
180370	SWEETSER, TOWN OF (GRANT CO)	FEBRUARY 21, 1975
180360A	TENNYSON, TOWN OF (WARRICK CO.)	FEBRUARY 01, 1974 AND
		JUNE 18, 1976
180351A	UNIVERSAL, TOWN OF (VERMILLION CO.)	FEBRUARY 01, 1974
180364	WAKARUSA, TOWN OF (ELKHART CO)	FEBRUARY 21, 1975
180175A	WAYNETOWN, TOWN OF (MONTGOMERY CO.)	MAY 31, 1974 AND

• UNINCORPORATED AREAS ONLY

INDIANA

COMMUNITY NUMBER	NAME	HAZARD AREA IDENTIFIED
		APRIL 09, 1974
180265	WEST TERRE HAUTE, TOWN (VIGO CO)	NOVEMBER 22, 1974
180379	WHEATFIELD, TOWN (JASPER CO.)	JUNE 27, 1975
180313A	WHITING, CITY (LAKE CO)	JANUARY 10, 1975
	TOTAL IN THE STATE	72

• UNINCORPORATED AREAS ONLY

IOWA

COMMUNITY NUMBER	NAME	HAZARD AREA IDENTIFIED
190538	AFTON, CITY OF (UNION CO.)	SEPTEMBER 26, 1975
190525	AINSWORTH, CITY OF (WASHINGTON CO.)	SEPTEMBER 19, 1974
190136A	ALDEN, CITY OF (HARDIN CO.)	JUNE 21, 1974 AND
		DECEMBER 26, 1975
190387	ALEXANDER, CITY OF (FRANKLIN CO.)	MARCH 26, 1976
190543	ALLERTON, CITY OF (WAYNE CO.)	SEPTEMBER 26, 1975
190546	ALTOONA, CITY (POLK CO)	SEPTEMBER 26, 1975
190092A	ARION, CITY OF (CRAWFORD CO.)	SEPTEMBER 06, 1974 AND
		MAY 14, 1976
190217	ASHTON, CITY OF (OSCEOLA CO.)	JULY 11, 1975
190548	ATKINS, CITY (BENTON CO)	AUGUST 22, 1975
190698	AURORA, CITY OF (BUCHANAN)	AUGUST 22, 1975
190701	BARNES CITY, CITY OF (MAHASKA & POWESHIEK CO'S)	SEPTEMBER 19, 1975
190551	BATAVIA, CITY (JEFFERSON CO)	SEPTEMBER 26, 1975
190423	BATTLE CREEK, CITY OF (IDA CO.)	SEPTEMBER 26, 1975
190552	BAXTER, CITY (JASPER CO)	SEPTEMBER 12, 1975
190452	BEACON, CITY OF (MAHASKA CO.)	SEPTEMBER 19, 1975
190400	BEAMAN, CITY OF (GRUNDY CO.)	AUGUST 22, 1975
190303A	BELMOND, CITY OF (WRIGHT CO.)	MAY 03, 1974 AND
		AUGUST 22, 1975
190320	BLAIRSTOWN, CITY OF (BENTON CO.)	SEPTEMBER 19, 1975
190704	BLAKESBURG, CITY OF (MAPELLO CO.)	AUGUST 29, 1975
190517	BLOCKTON, CITY OF (TAYLOR CO.)	SEPTEMBER 26, 1975
190707	BONDURANT, CITY (POLK)	SEPTEMBER 05, 1975
190555	BOONE, CITY (BOONE CO)	SEPTEMBER 12, 1975
190708	BUCKHOLM, CITY OF (BOONE)	MARCH 26, 1976
190558	BOYDEN, CITY OF (SIOUX CO.)	AUGUST 29, 1975
190557	BRIGHTON, CITY OF (WASHINGTON CO.)	SEPTEMBER 19, 1975
190558	BRITT, CITY (HANCOCK CO)	AUGUST 08, 1975
190093	BUCK GROVE, CITY OF (CRAWFORD CO.)	NOVEMBER 29, 1974
190277	CALLENDER, CITY OF (WEBSTER CO.)	NOVEMBER 08, 1974
190492	CARTER LAKE, CITY (POTTAWATTAMIE CO)	SEPTEMBER 19, 1975
190713	CASTALIA, CITY OF (WINNESHIEK CO.)	SEPTEMBER 05, 1975
190442	CASTANA, CITY OF (MONONA CO.)	AUGUST 29, 1975
190249	CHILLICOTHE, CITY OF (MAPELLO CO.)	NOVEMBER 08, 1974
190396	CHURUAN, CITY OF (GREENE CO.)	AUGUST 29, 1975
190336	CLARKSVILLE, CITY OF (BUTLER CO.)	SEPTEMBER 19, 1975
190849	COLO, CITY OF (STORY CO.)	MARCH 26, 1976
190562	CORYDON, CITY OF (WAYNE CO.)	SEPTEMBER 19, 1975
190723	CRESCENT, CITY OF (POTTAWATTAMIE CO.)	SEPTEMBER 26, 1975
190421	DAKOTA CITY, CITY OF (HUMBOLDT CO.)	NOVEMBER 08, 1974
190725	DALLAS, CITY OF (MARION CO.)	AUGUST 08, 1975
190109	DAVIS CITY, CITY OF (DECATUR CO.)	JULY 18, 1975
190496	DEEP RIVER, CITY OF (POWESHIEK CO.)	SEPTEMBER 19, 1975
190566	DELMI, CITY (DELAWARE CO)	MARCH 19, 1976
190096A	DELOIT, CITY OF (CRAWFORD CO.)	AUGUST 30, 1974 AND
		DECEMBER 26, 1975
190359	DESOTO, CITY OF (DALLAS CO.)	SEPTEMBER 26, 1975
190501	DIAGONAL, CITY OF (RINGGOLD CO.)	AUGUST 29, 1975

• UNINCORPORATED AREAS ONLY

COMMUNITY NUMBER	NAME	IOWA	HAZARD AREA IDENTIFIED
190356	DICKENS, CITY OF (CLAY CO)		SEPTEMBER 06, 1975
190726	DIXON, CITY (SCOTT)		SEPTEMBER 19, 1975
190506	DONAHUE, CITY OF (SCOTT CO.)		MARCH 19, 1976
190496	DUON, CITY OF (LYON CO.)		SEPTEMBER 19, 1975
190306A	DORR, CITY OF (WRIGHT CO.)		JUNE 21, 1979 AND
			DECEMBER 26, 1975
190569	DYSART, CITY (TAMA CO)		JULY 26, 1976
190571	EARLVILLE, CITY (DELAWARE CO)		MARCH 19, 1976
190573	EDGEWOOD, CITY OF (CLAYTON AND DELAWARE COS.)		AUGUST 29, 1975
190416	ELMA, CITY OF (HOWARD CO.)		SEPTEMBER 19, 1975
190356	EVERLY, CITY OF (CLAY CO.)		SEPTEMBER 19, 1975
190578	FARLEY, CITY OF (DUBUQUE CO.)		AUGUST 29, 1975
190730	FARNHAMVILLE, CITY OF (CALHOUN CO.)		MARCH 26, 1976
190390	FARRAGUT, CITY OF (FREMONT CO.)		SEPTEMBER 26, 1975
190437	FENTON, CITY OF (KOSSUTH CO.)		SEPTEMBER 19, 1975
190457	FERGUSON, CITY OF (MARSHALL CO.)		SEPTEMBER 26, 1975
190382	FLOYD, CITY OF (FLOYD CO.)		MARCH 19, 1976
190579	FONTANELLE, CITY (ADAIR CO)		JULY 18, 1975
190027	FREDERIKA, CITY OF (BREMER CO.)		NOVEMBER 22, 1974
190308	FREDONIA, CITY OF (LOUISA CO.)		FEBRUARY 19, 1975
190731	GARDEN GROVE, CITY OF (DECATUR CO.)		SEPTEMBER 12, 1975
190580	GARNAVILLO, CITY (CLAYTON CO)		AUGUST 08, 1975
190321	GARRISON, CITY OF (BENTON CO.)		AUGUST 08, 1975
190733	GOODELL, CITY OF (WRIGHT CO.)		AUGUST 15, 1975
190279A	GOWRIE, CITY OF (WEBSTER CO.)		JUNE 28, 1979 AND
			FEBRUARY 06, 1976
190737	GRANVILLE, CITY OF (SIOUX)		SEPTEMBER 26, 1975
190738	GRAVITY, CITY OF (TAYLOR CO.)		SEPTEMBER 19, 1975
190159A	GREEN ISLAND, CITY OF (JACKSON CO.)		OCTOBER 25, 1979
190587	GREENFIELD, CITY (ADAIR CO)		SEPTEMBER 19, 1975
190228	GRIMES, CITY OF (POLK CO.)		MARCH 05, 1976
190236A	HANCOCK, CITY OF (POTTAWATTAMIE CO.)		AUGUST 30, 1979 AND
			DECEMBER 26, 1975
190280A	HARCOURT, CITY OF (WEBSTER CO.)		DECEMBER 06, 1979
190589	HARTFORD, CITY (WARREN CO)		MARCH 19, 1976
190465	HARVEY, CITY OF (MARION CO.)		MARCH 19, 1976
190204	HASTINGS, CITY OF (MILLS CO.)		SEPTEMBER 19, 1975
190484	HAVELOCK, CITY OF (POCAHONTAS CO.)		MARCH 19, 1976
190592	HEMORICK, CITY OF (KEOKUK CO.)		MARCH 19, 1976
190593	HOLSTEIN, CITY (IDA CO)		SEPTEMBER 19, 1975
190278A	INDIANOLA, CITY OF (WARREN CO.)		JUNE 07, 1979 AND
			APRIL 30, 1976
190511	IRETON, CITY OF (SIOUX CO.)		JANUARY 24, 1975
190023A	JANESVILLE, CITY OF (BLACK HAWK CO. & BREMER COS.)		DECEMBER 28, 1973 AND
			JANUARY 16, 1976
190601	KALONA, CITY (WASHINGTON CO)		SEPTEMBER 26, 1975
190164A	KELLOGG, CITY OF (JASPER CO.)		JUNE 21, 1979 AND
			JANUARY 16, 1976
190436	KEOTA, CITY OF (KEOKUK CO.)		SEPTEMBER 26, 1975

• UNINCORPORATED AREAS ONLY

COMMUNITY NUMBER	NAME	IOWA	HAZARD AREA IDENTIFIED
190607	KEYSTONE, CITY OF (BENTON CO.)		SEPTEMBER 19, 1975
190430	LA MOTTE, CITY OF (JACKSON CO.)		SEPTEMBER 26, 1975
190428	LADORA, CITY OF (IOWA CO.)		SEPTEMBER 19, 1975
190340	LAKE CITY, CITY (CALHOUN CO)		SEPTEMBER 26, 1975
190763	LAKOTA, CITY OF (KOSSUTH CO.)		MARCH 19, 1976
190331	LAMONT, CITY OF (BUCHANAN CO.)		SEPTEMBER 12, 1975
190389	LATIMER, CITY OF (FRANKLIN CO.)		MARCH 26, 1976
190310	LEHIGH, CITY OF (WEBSTER CO.)		SEPTEMBER 19, 1975
190311	LETTS, CITY OF (LOUISA CO.)		DECEMBER 27, 1979
190769	LIBERTYVILLE, CITY OF (JEFFERSON CO.)		SEPTEMBER 26, 1975
190417	LIME SPRINGS, CITY OF (HOWARD CO.)		SEPTEMBER 19, 1975
190741	LINEVILLE, CITY OF (WAYNE CO.)		SEPTEMBER 26, 1975
190037A	LINN GROVE, CITY OF (BUENA VISTA CO.)		AUGUST 16, 1979 AND
			MARCH 05, 1976
190607	LISBON, CITY (LINN CO)		MARCH 19, 1976
190762	LISCOMB, CITY OF (MARSHALL)		SEPTEMBER 19, 1975
190078A	LITTLEPORT, CITY OF (CLAYTON CO.)		AUGUST 23, 1979 AND
			FEBRUARY 06, 1976
190765	LORIMOR, CITY OF (UNION CO.)		SEPTEMBER 19, 1975
190611	LOST NATION, CITY (CLINTON CO)		AUGUST 22, 1975
190612	LOVILIA, CITY (MONROE CO)		SEPTEMBER 19, 1975
190766	LOW MOOR, CITY OF (CLINTON CO.)		MARCH 19, 1976
190768	LUVERNE, CITY OF (KOSSUTH & HUMBOLDT COS.)		SEPTEMBER 19, 1975
190165	LYNNVILLE, CITY OF (JASPER CO.)		JANUARY 03, 1975
190990	MALCOM, CITY OF (POWESHIEK CO.)		SEPTEMBER 19, 1975
190614	MARCUS, CITY OF (CHEROKEE CO.)		MARCH 19, 1976
190512	MAURICE, CITY OF (SIOUX CO.)		MARCH 19, 1976
190458	MC INTIRE, CITY OF (MITCHELL CO.)		SEPTEMBER 26, 1975
190615	MEDIAPOLIS, CITY OF (DES MOINES CO.)		SEPTEMBER 26, 1975
190617	MELCHER, CITY (MARION CO)		AUGUST 08, 1975
190527	MILTON, CITY OF (VAN BUREN CO.)		MARCH 19, 1976
190166	MINGO, CITY OF (JASPER CO.)		SEPTEMBER 06, 1975
190619	MITCHELLVILLE, CITY (POLK CO)		SEPTEMBER 19, 1975
190198A	MODALE, TOWN OF (HARRISON CO.)		OCTOBER 18, 1979
190161	MONMOUTH, CITY OF (JACKSON CO.)		JANUARY 17, 1975
190620	MONONA, CITY OF (CLAYTON CO.)		FEBRUARY 21, 1975
190782	MONTOUR, CITY OF (TAMA)		SEPTEMBER 06, 1975
190312	MORNING SUN, CITY OF (LOUISA CO.)		JANUARY 17, 1975
190625	MURRAY, CITY OF (CLARKE CO.)		SEPTEMBER 06, 1975
190493	NEOLA, CITY OF (POTTAWATTAMIE CO.)		SEPTEMBER 19, 1975
190007A	NEW ALBIN, CITY OF (ALLAMAKEE CO.)		MAY 17, 1979
190003	NODAWAY, CITY OF (ADAMS CO.)		AUGUST 22, 1975
190384	NORA SPRINGS, CITY OF (FLOYD CO.)		SEPTEMBER 26, 1975
190082A	NORTH BUENAVISTA, CITY OF (CLAYTON CO.)		OCTOBER 18, 1979 AND
			MARCH 19, 1976
190629	NORTH ENGLISH, CITY (IOWA AND KEOKUK COS)		MARCH 19, 1976
190632	NORWAY, CITY OF (BENTON CO.)		SEPTEMBER 26, 1975
190634	OGDEN, CITY OF (BOONE CO.)		AUGUST 29, 1975
190788	OKOBOJI, CITY OF (DICKINSON CO.)		SEPTEMBER 19, 1975

• UNINCORPORATED AREAS ONLY

COMMUNITY NUMBER	NAME	IOWA	HAZARD AREA IDENTIFIED
190294A	OTO, CITY OF (WOODBURY CO.)		SEPTEMBER 13, 1979 AND
			JANUARY 23, 1976
190172A	OXFORD, CITY OF (JOHNSON CO.)		MAY 10, 1979 AND
			FEBRUARY 06, 1976
190397	PATON, CITY OF (GREENE CO.)		SEPTEMBER 19, 1975
190357	PETERSON, CITY OF (CLAY CO.)		MARCH 26, 1976
190151	PISGAH, CITY OF (HARRISON CO.)		DECEMBER 06, 1979
190838	PLEASANTVILLE, CITY OF (MARION CO.)		MARCH 26, 1976
190041A	PLYMOUTH, CITY OF (CERRO GORDO CO.)		NOVEMBER 08, 1979 AND
			MAY 21, 1976
190642	PRAIRIE CITY, CITY (JASPER CO)		AUGUST 29, 1975
190431	PRESTON, CITY OF (JACKSON CO.)		SEPTEMBER 19, 1975
190819	PROTIVIN, CITY OF (HOWARD CO.)		SEPTEMBER 12, 1975
190392	RANDOLPH, CITY OF (FREMONT CO.)		MARCH 19, 1976
190147A	REASNOR, CITY OF (JASPER CO.)		NOVEMBER 01, 1979
190480	RENSEN, CITY OF (PLYMOUTH CO.)		MARCH 19, 1976
190796	RHODES, CITY OF (MARSHALL CO.)		SEPTEMBER 19, 1975
190818	RICEVILLE, CITY OF (HOWARD CO.)		MARCH 19, 1976
190647	RICHLAND, CITY OF (KEOKUK CO.)		SEPTEMBER 26, 1975
190100	RICKETTS, CITY OF (CRAWFORD CO.)		NOVEMBER 22, 1974
190373	RINGSTED, CITY OF (EMMET CO.)		MARCH 19, 1976
190493	ROBINS, CITY OF (LINN CO.)		MARCH 26, 1976
190393	ROCKWELL CITY, CITY OF (CALHOUN CO.)		MARCH 26, 1976
190352	ROCKWELL, CITY OF (CERRO GORDO CO.)		MARCH 26, 1976
190487	ROLFE, CITY OF (POCAHONTAS CO.)		SEPTEMBER 06, 1975
190800	RUNNELLS, CITY OF (POLK CO.)		SEPTEMBER 19, 1975
190801	RYAN, CITY OF (DELAWARE CO.)		MARCH 26, 1976
190661A	SANBORN, CITY (OBRIEN CO)		SEPTEMBER 19, 1975 AND
			JULY 16, 1976
190655	SEYMOUR, CITY OF (WAYNE CO.)		MARCH 26, 1976
190132A	SHEFFIELD, CITY OF (FRANKLIN CO.)		JUNE 28, 1979 AND
			JUNE 04, 1976
190657	SIDNEY, CITY OF (FREMONT CO.)		AUGUST 29, 1975
190178A	SIGOURNEY, CITY OF (KEOKUK CO.)		MARCH 15, 1979
190459	SLATER, CITY (STORY CO)		MARCH 26, 1976
190461	STACYVILLE, CITY OF (MITCHELL CO.)		MARCH 26, 1976
190066A	STANWOOD, CITY OF (CEDAR CO.)		AUGUST 09, 1979 AND
			MAY 14, 1976
190191	STEAMBOAT ROCK, CITY OF (HARDIN CO.)		JANUARY 03, 1975
190808	STOCKPORT, CITY OF (VAN BUREN)		MARCH 26, 1976
190663	STUART, CITY OF (ADAIR-GUTHRIE COS.)		MARCH 26, 1976
190471	SUTHERLAND, CITY OF (OBRIEN CO.)		SEPTEMBER 26, 1975
190669	SREA CITY, CITY OF (KOSSUTH CO.)		SEPTEMBER 19, 1975
190666	THOMPSON, CITY OF (WINNEBAGO CO.)		SEPTEMBER 19, 1975
190173	TIFFIN, CITY OF (JOHNSON CO.)		NOVEMBER 22, 1974
190667	TOLEDO, CITY (TAMA CO)		SEPTEMBER 12, 1975
190816	TREYNOR, CITY OF (POTTAWATTAMIE CO.)		MARCH 26, 1976
190669	TRIPOLI, CITY (BREMER CO)		MARCH 26, 1976
190499	UNDERWOOD, CITY OF (POTTAWATTAMIE CO.)		MARCH 26, 1976

• UNINCORPORATED AREAS ONLY

COMMUNITY NUMBER	NAME	IOWA	HAZARD AREA IDENTIFIED
190671A	UNIVERSITY PARK, TOWN (MAHASKA CO)		MARCH 19, 1976
190484	UTE, CITY OF (MONONA CO.)		MARCH 19, 1976
190673	VAN HORNE, CITY (BENTON CO)		MARCH 26, 1976
190362	VAN METER, CITY OF (DALLAS CO.)		SEPTEMBER 26, 1975
190474	WALNUT, CITY OF (POTTAWATTAMIE CO.)		SEPTEMBER 19, 1975
190677	WASHINGTON, CITY (WASHINGTON CO)		SEPTEMBER 19, 1975
190678	WAUKEE, CITY (DALLAS CO)		MARCH 26, 1976
190090A	WHEATLAND, CITY OF (CLINTON CO.)		JUNE 28, 1979 AND
			APRIL 02, 1976
190070	WOODBURN, CITY OF (CLARKE CO.)		DECEMBER 20, 1974

TOTAL IN THE STATE 186

• UNINCORPORATED AREAS ONLY

COMMUNITY NUMBER	NAME	MAZARD AREA IDENTIFIED
	KANSAS	
200380	ALTA VISTA, CITY OF WABAUNSEE CO.)	MARCH 19, 1976
200962	ALTAMONT, CITY OF (LABETTE CO.)	MARCH 26, 1976
200381	ALTON, CITY (OSBORNE CO.)	MARCH 19, 1976
200384	ARCADIA, CITY (CRAWFORD CO.)	AUGUST 15, 1975
200449	ARLINGTON, CITY (RENO CO.)	SEPTEMBER 26, 1975
200466	ARMA, CITY (CRAWFORD CO.)	MARCH 26, 1976
200390	ATHOL, CITY OF (SMITH CO.)	DECEMBER 13, 1974
200387A	ATTELL, CITY (MARSHALL CO.)	MARCH 26, 1976 AND AUGUST 20, 1976
200388	BARNES, CITY (WASHINGTON CO.)	AUGUST 22, 1975
200389	BEATTIE, CITY (MARSHALL CO.)	AUGUST 29, 1975
200967	BENNINGTON, CITY (OTTAWA CO.)	MARCH 26, 1976
200391	BISON, CITY OF (RUSH CO.)	AUGUST 29, 1975
200970	BLUE RAPIDS, CITY (MARSHALL CO.)	MARCH 26, 1976
200128	BLUFF CITY, CITY OF (HARPER CO.)	DECEMBER 27, 1974
200393	BRONSON, CITY OF (BOURBON CO.)	JULY 18, 1975
200973	BURDEN, CITY (COWLER CO.)	SEPTEMBER 19, 1975
200396	BURDETT, CITY (PAWNEE CO)	MARCH 26, 1976
200397	BURNS, CITY (MARION CO)	MARCH 26, 1976
200974	CALDWELL, CITY (SUMNER CO.)	SEPTEMBER 19, 1975
200977	CEDAR VALE, CITY (CHEUTAUQUA CO.)	AUGUST 16, 1975
200978	CHENEY, CITY (SEDGWICK CO.)	MARCH 26, 1976
200979	CHEROKEE, CITY (CRAWFORD CO.)	MARCH 26, 1976
200980	CHETOPA, CITY (LABETTE CO.)	SEPTEMBER 19, 1975
200004	COLONY, CITY OF (ANDERSON CO.)	DECEMBER 20, 1974
200984	COTTONWOOD FALLS, CITY (CHASE CO.)	MARCH 26, 1976
200400	CUBA, CITY (REPUBLIC CO.)	JULY 25, 1975
200401	CUNNINGHAM, CITY (KINGMAN CO.)	MARCH 26, 1976
200403	DEARING, CITY (MONTGOMERY CO.)	JULY 25, 1975
200139	DELIA, CITY OF (JACKSON CO.)	AUGUST 30, 1974
200079	DENTON, CITY OF (DONIPHAN CO.)	DECEMBER 27, 1974
200404	DEXTER, CITY (COWLEY CO.)	JULY 25, 1975
200989	DOUGLAS, CITY (BUTLER CO.)	JULY 18, 1975
200236	DUNLAP, CITY (MORRIS CO)	JANUARY 03, 1975
200406	DWIGHT, CITY (MORRIS CO.)	SEPTEMBER 19, 1975
200991	EASTBOROUGH, CITY (SEDGWICK CO.)	SEPTEMBER 19, 1975
200234A	ELKHART, CITY OF (MORTON CO.)	MAY 24, 1974 AND DECEMBER 06, 1974
200271	EMMETT, CITY OF (MIAMI CO.)	DECEMBER 20, 1974
200409	ENSIGN, CITY (GRAY CO.)	MARCH 26, 1976
200410	ESBON, CITY (JEWELL CO.)	AUGUST 29, 1975
200993	ESKRIDGE, CITY (WABAUNSEE CO.)	AUGUST 22, 1975
200026	FAIRVIEW, CITY OF (BROWN CO.)	NOVEMBER 08, 1974
200231	FONTANA, CITY OF (MIAMI CO.)	DECEMBER 20, 1974
200411	FORD, CITY (FORD CO.)	MARCH 26, 1976
200029	FULTON, CITY (BOURBON CO)	JANUARY 10, 1975
200997	GALVA, CITY (MCPHERSON CO.)	AUGUST 15, 1975
200342	GAYLORD, CITY OF (SMITH CO.)	DECEMBER 27, 1974
200414	GEUDA SPRINGS, CITY (COWLEY-SUMNER COS)	SEPTEMBER 12, 1975

• UNINCORPORATED AREAS ONLY

COMMUNITY NUMBER	NAME	MAZARD AREA IDENTIFIED
	KANSAS	
200237	GLEN ELDER, CITY OF (MITCHELL CO.)	DECEMBER 27, 1974
200204	GOESSEL, CITY OF (MARION CO.)	NOVEMBER 22, 1974
200239A	GOFF, CITY OF (NEMAHA CO.)	NOVEMBER 08, 1974 AND DECEMBER 26, 1975
200111	GRANDVIEW PLAZA, CITY OF (GEARY CO.)	FEBRUARY 01, 1974 AND AUGUST 09, 1974
200019	GREAT BEND, CITY (BARTON CO)	MARCH 19, 1976
200004	GREELEY, CITY OF (ANDERSON CO.)	NOVEMBER 22, 1974
200417	GREENLEAF, CITY (WASHINGTON CO.)	AUGUST 08, 1975
200418	GRENOLA, CITY (ELK CO.)	SEPTEMBER 26, 1975
200044	GRIDLEY, CITY OF (COFFEY CO.)	NOVEMBER 22, 1974
200365	HADDAM, CITY OF (WASHINGTON CO.)	DECEMBER 27, 1974
200029	HAMLIN, CITY (BROWN CO)	SEPTEMBER 19, 1975
200502	HANOVER, CITY (WASHINGTON CO.)	JULY 18, 1975
200421	HARDTNER, CITY (BARBER CO.)	AUGUST 15, 1975
200422	HARTFORD, CITY (LYON CO.)	SEPTEMBER 26, 1975
200352	HARVEYVILLE, CITY OF (WABAUNSEE CO.)	NOVEMBER 08, 1974
200504	HAVILAND, CITY (KIOWA CO)	AUGUST 22, 1974
200504	HOLYROOD, CITY (ELLSWORTH CO.)	AUGUST 08, 1975
200424	HOPE, CITY (DICKINSON CO.)	SEPTEMBER 19, 1975
200012	HURON, CITY OF (ATCHISON CO.)	DECEMBER 13, 1974
200118	INGALLS, CITY OF (GRAY CO.)	DECEMBER 20, 1974
200426	IUKA, CITY (PRATT CO.)	SEPTEMBER 26, 1975
200512	KENSINGTON, CITY (SMITH CO.)	AUGUST 22, 1975
200007	KINCAID, CITY OF (ANDERSON CO.)	NOVEMBER 22, 1974
200329	KISMET, CITY OF (SEWARD CO.)	NOVEMBER 22, 1974
200198A	LA CYGNE, CITY OF (LINN CO.)	MARCH 15, 1974 AND DECEMBER 26, 1975
200103	LANE, CITY OF (FRANKLIN CO.)	DECEMBER 27, 1974
200343	LEBANON, CITY OF (SMITH CO.)	DECEMBER 20, 1974
200514	LEON, CITY (BUTLER CO.)	MARCH 26, 1976
200046A	LEROY, CITY OF (COFFEY CO.)	DECEMBER 28, 1973 AND OCTOBER 29, 1975
200518	LEWIS, CITY (EDWARDS CO.)	MARCH 26, 1976
200309	LIEBENTHAL, CITY (RUSH CO)	JANUARY 03, 1975
200431	LINN, CITY (WASHINGTON CO.)	SEPTEMBER 05, 1975
200272	LOUISVILLE, CITY OF (POTTAWATOMIE CO.)	DECEMBER 06, 1974
200310	MCCRACKEN, CITY OF (RUSH CO.)	NOVEMBER 22, 1974
200540	MORAN, CITY (ALLEN CO.)	MARCH 26, 1976
200055	MORGANVILLE, CITY OF (CLAY CO.)	DECEMBER 20, 1974
200032	MORRILL, CITY OF (BROWN CO.)	NOVEMBER 22, 1974
200366	MORROWVILLE, CITY OF (WASHINGTON CO.)	DECEMBER 06, 1974
200197A	MOUND CITY, CITY OF (LINN CO.)	MARCH 01, 1974 AND NOVEMBER 21, 1975 AND APRIL 16, 1976
200440	MULLINVILLE, CITY (KIOWA CO.)	AUGUST 29, 1975
200014A	MUSCOTAH, CITY OF (ATCHISON CO.)	NOVEMBER 22, 1974 AND JULY 09, 1976

• UNINCORPORATED AREAS ONLY

COMMUNITY NUMBER	NAME	MAZARD AREA IDENTIFIED
	KANSAS	
200380	NEOSHO FALLS, CITY OF (WOODSON CO)	JANUARY 31, 1975
200204	NEOSHO RAPIDS, CITY (LYON CO)	JANUARY 03, 1975
200199	NETAWAKA, CITY OF (JACKSON CO.)	NOVEMBER 22, 1974
200991	NORCATUR, CITY (DECATUR CO.)	SEPTEMBER 12, 1975
200160A	NORTONVILLE, CITY OF (JEFFERSON CO.)	MARCH 01, 1974 AND JUNE 18, 1974
200444	OLPE, CITY (LYON CO.)	SEPTEMBER 26, 1975
200262A	OSAGE CITY, CITY OF (OSAGE CO)	MARCH 01, 1974 AND FEBRUARY 28, 1975
200545	OSWEGO, CITY (LABETTE CO.)	SEPTEMBER 19, 1975
200311	OTIS, CITY OF (RUSH CO.)	NOVEMBER 22, 1974
200546	OVERBROOK, CITY (OSAGE CO)	AUGUST 15, 1975
200547	OXFORD, CITY (SUMNER CO.)	AUGUST 08, 1975
200367	PALMER, CITY OF (WASHINGTON CO.)	DECEMBER 20, 1974
200178	PARKER, CITY OF (LINN COU)	FEBRUARY 07, 1975
200447	PERU, CITY (CHAUTAUQUA CO.)	SEPTEMBER 26, 1975
200105A	POMONA, CITY OF (FRANKLIN CO.)	FEBRUARY 08, 1974 AND DECEMBER 26, 1975
200998	POTWIN, CITY (BUTLER CO.)	SEPTEMBER 26, 1975
200288	REPUBLIC, CITY OF (REPUBLIC CO.)	DECEMBER 06, 1974
200453	ROLLA, CITY (MORTON CO.)	MARCH 26, 1976
200312	RUSH CENTER, CITY OF (RUSH CO.)	NOVEMBER 22, 1974
200318B	RUSSELL, CITY OF (RUSSELL CO.)	FEBRUARY 08, 1974 AND NOVEMBER 08, 1974
200455	SCANDIA, CITY (CHEROKEE CO.)	SEPTEMBER 19, 1975
200997	SCHOENCHEN, CITY (ELLIS CO)	JANUARY 17, 1975
200572	SEDAN, CITY (CHAUTAUQUA CO.)	AUGUST 22, 1975
200083	SEVERANCE, CITY OF (DONIPHAN CO.)	DECEMBER 20, 1974
200457A	SEVERY, CITY (GREENWOOD CO.)	SEPTEMBER 26, 1975 AND JUNE 11, 1976
200458	SHARON, CITY (BARBER CO.)	AUGUST 22, 1975
200195	SOLDIER, CITY OF (JACKSON CO.)	NOVEMBER 22, 1974
200459	SOUTH HAVEN, CITY (SUMNER CO)	SEPTEMBER 19, 1975
200531	SPEARVILLE, CITY (FORD CO.)	SEPTEMBER 19, 1975
200178	SPRING HILL, CITY OF (JOHNSON CO.) KS.	FEBRUARY 06, 1974
200532	STAFFORD, CITY (STAFFORD CO.)	MARCH 26, 1976
200529	ST. FRANCIS, CITY (CHEYENNE CO.E	SEPTEMBER 19, 1975
200274	ST. GEORGE, CITY (POTTAWATOMIE CO)	JANUARY 03, 1975
200526	ST. PAUL, CITY (NEOSHO CO.)	SEPTEMBER 19, 1975
200267	TORONTO, CITY (WOODSON CO)	SEPTEMBER 19, 1975
200534	TOWANDA, CITY (BUTLER CO.)	AUGUST 08, 1975
200368	TREECE, CITY (CHEROKEE CO)	MARCH 26, 1976
200535	TRIBUNE, CITY (GREELEY CO.)	SEPTEMBER 19, 1975
200369	TURON, CITY OF (RENO COU)	FEBRUARY 07, 1975
200370	TYRO, CITY (MONTGOMERY CO)	JULY 25, 1975
200154A	VALLEY FALLS, CITY OF (JEFFERSON CO.)	OCTOBER 10, 1975
200374	WALTON, CITY (HARVEY CO)	JANUARY 29, 1975
200566	WATERVILLE, CITY (MARSHALL CO.)	AUGUST 29, 1975
200567	WEIR, CITY (CHEROKEE CO.)	SEPTEMBER 19, 1975

• UNINCORPORATED AREAS ONLY

COMMUNITY NUMBER	NAME	MAZARD AREA IDENTIFIED
	KANSAS	
200277A	WESTMORELAND, CITY OF (POTTAWATOMIE CO.)	MARCH 08, 1974 AND DECEMBER 26, 1975
200008	WESTPHALIA, CITY (ANDERSON CO)	DECEMBER 20, 1974
200376	WETMORE, CITY OF (NEMAHA)	FEBRUARY 19, 1976
200377	WHITE CITY, CITY (MORRIS CO)	SEPTEMBER 19, 1975
200084	WHITE CLOUD, CITY OF (DONIPHAN CO.)	DECEMBER 27, 1974
200559	WHITEWATER, CITY (BUTLER CO.)	SEPTEMBER 19, 1975
200196	WHITING, CITY OF (JACKSON CO.)	NOVEMBER 29, 1974
200379	WOODSTON, CITY (NOOKS CO)	SEPTEMBER 26, 1975

TOTAL IN THE STATE 140

* UNINCORPORATED AREAS ONLY

COMMUNITY NUMBER	NAME	HAZARD AREA IDENTIFIED
	KENTUCKY	
210070A	ALLEN, TOWN OF (FLOYD CO.)	JANUARY 23, 1979 AND
		FEBRUARY 27, 1976
210093A	ARLINGTON, TOWN OF (CARLISLE CO.)	MAY 17, 1979
210094A	BARDWELL, TOWN OF (CARLISLE CO.)	MAY 17, 1979 AND
		FEBRUARY 27, 1976
210104A	BERRY, TOWN OF (HARRISON CO.)	AUGUST 16, 1979 AND
		FEBRUARY 20, 1976
210187A	BOONEVILLE, CITY OF (OWSLEY CO.)	FEBRUARY 01, 1979 AND
		FEBRUARY 20, 1976
210161A	BRADFORDSVILLE, CITY OF (MARION CO.)	MAY 10, 1979 AND
		FEBRUARY 20, 1976
210023	BREATHITT COUNTY	JANUARY 03, 1975
210201A	BROOKHAVEN, CITY OF (ROCK CASTLE CO.)	MAY 17, 1979 AND
		FEBRUARY 27, 1976
210159A	CALHOUN, TOWN OF (MCLEAN CO.)	FEBRUARY 01, 1979
210042	CARLISLE COUNTY *	OCTOBER 18, 1979
210053	CASEY COUNTY *	DECEMBER 13, 1979
210057	CLAY COUNTY *	DECEMBER 27, 1979
210111A	CLINTON, TOWN OF (HICKMAN CO.)	MAY 17, 1979 AND
		SEPTEMBER 24, 1976
210263	COAL RUN, CITY (PIKE CO)	JANUARY 10, 1975
210143	CRAB ORCHARD, TOWN OF (LINCOLN CO.)	JUNE 14, 1974
210060	CUMBERLAND COUNTY	JANUARY 03, 1975
210238A	FLORENCE, TOWN OF (BOONE CO.)	FEBRUARY 01, 1979 AND
		FEBRUARY 20, 1976
210038B	FORT THOMAS, CITY OF (CAMPBELL CO.)	JANUARY 25, 1979 AND
		JUNE 25, 1976
210272	FOSTER, CITY (BRACKEN CO)	AUGUST 01, 1975
210030	FREDONIA, TOWN (CALDWELL CO)	JULY 25, 1975
210081	GARRARD COUNTY *	OCTOBER 18, 1979
210096A	GHENT, TOWN OF (CARROLL CO.)	JANUARY 16, 1979
210261	GILBERTSVILLE, CITY (MARSHALL CO.)	JULY 25, 1975
210078A	GLENCOE, CITY OF (GALLATIN CO.)	FEBRUARY 01, 1979 AND
		JUNE 04, 1976
210099	HARDIN COUNTY *	OCTOBER 18, 1979
210303A	HARDIN, CITY OF (MARSHALL CO.)	JUNE 14, 1979 AND
		AUGUST 13, 1976
210165	HARDIN, TOWN OF (MARSHALL CO.)	MAY 10, 1979
210032A	HAZEL, TOWN OF (CALLOWAY CO.)	AUGUST 09, 1979
210110	HENRY COUNTY *	OCTOBER 18, 1979
210077A	HICKMAN, CITY OF (FULTON CO)	JUNE 28, 1979 AND
		JUNE 04, 1976
210112A	HOPKINS COUNTY *	OCTOBER 18, 1979 AND
		APRIL 23, 1976
210139	LAUREL COUNTY *	DECEMBER 27, 1979
210309A	LEBANON JUNCTION, CITY OF (BULLITT CO.)	MARCH 18, 1979
210086A	LEITCHFIELD, TOWN OF (GRAYSON CO.)	MAY 10, 1979 AND
		SEPTEMBER 03, 1976
210141	LEWIS COUNTY *	DECEMBER 20, 1979

* UNINCORPORATED AREAS ONLY

COMMUNITY NUMBER	NAME	HAZARD AREA IDENTIFIED
	KENTUCKY	
210166	MARTIN COUNTY *	DECEMBER 13, 1979
210071A	MARTIN, TOWN OF (FLOYD CO.)	MAY 24, 1979 AND
		FEBRUARY 27, 1976
210233A	MCHENRY, TOWN OF (OHIO CO.)	OCTOBER 26, 1979
210163	MCLEAN COUNTY *	DECEMBER 06, 1979
210019A	MILLERSBURG, CITY OF (BOURBON CO.)	MAY 10, 1979 AND
		FEBRUARY 20, 1976
210242A	MORGANTOWN, TOWN OF (BUTLER CO.)	FEBRUARY 01, 1979
210186	OWEN COUNTY *	OCTOBER 18, 1979
210244A	PETERSBURG, TOWN OF (BOONE CO.)	JANUARY 23, 1979
210299	PHELPS, CITY (PIKE CO)	AUGUST 01, 1975
210245A	ROCKPORT, TOWN OF (OHIO CO.)	FEBRUARY 01, 1979
210240	SADIEVILLE, CITY (SCOTT CO)	JANUARY 03, 1975
210209	SHELBY COUNTY *	OCTOBER 18, 1979
210294	SOUTH CARROLLTON, CITY (MUHLENBERG CO)	JULY 28, 1975
210276	SOUTHGATE, CITY (CAMPBELL CO)	AUGUST 01, 1975
210123A	ST. MATTHEWS, CITY OF (JEFFERSON CO.)	DECEMBER 06, 1979
210217	TAYLOR COUNTY *	OCTOBER 18, 1979
210218A	UNIONTOWN, TOWN OF (UNION CO.)	MAY 17, 1979
210270	UNION, TOWN (BOONE CO)	AUGUST 01, 1975
210192A	VICCO, CITY OF (PERRY CO.)	MAY 10, 1979 AND
		MARCH 05, 1976
210096A	VINE GROVE, CITY OF (HARDIN CO.)	MAY 17, 1979 AND
		MARCH 05, 1976
210240A	WHEAT CROFT, TOWN OF (WEBSTER CO.)	FEBRUARY 15, 1979 AND
		MARCH 05, 1976
210307	WINSTON PARK, TOWN OF (KENTON CO.)	JANUARY 23, 1979

TOTAL IN THE STATE 87

* UNINCORPORATED AREAS ONLY

COMMUNITY NUMBER	NAME	HAZARD AREA IDENTIFIED
	LOUISIANA	
220119A	ALBANY, VILLAGE OF (LIVINGSTON PARISH)	APRIL 12, 1979 AND
		OCTOBER 16, 1976
220231	ANGIE, VILLAGE (WASHINGTON PARISH)	JANUARY 03, 1975
220359	ATHENS, VILLAGE OF (CLAIBORNE PARISH)	FEBRUARY 21, 1975
220026	BEAUREGARD PARISH	JANUARY 17, 1975
220314	BONITA VIL (MOREHOUSE CO)	AUGUST 22, 1975
220147A	BOYCE, TOWN OF (RAPIDES PARISH)	APRIL 06, 1979
220103	CARENCRO, TOWN (LAFAYETTE PARISH)	MARCH 26, 1976
220318	CHATHAM TOWN (JACKSON CO)	SEPTEMBER 19, 1975
220320	CLARKS VIL (CALDWELL CO)	AUGUST 15, 1975
220268	CONVERSE VIL (SABINE PARISH)	AUGUST 29, 1975
220234A	COTLINE, VILLAGE OF (WEBSTER PARISH)	APRIL 05, 1979 AND
		OCTOBER 17, 1975
220280	DRY PRONG VIL (GRANT CO)	SEPTEMBER 26, 1975
220281	DUBBERLY VIL (WEBSTER CO)	MARCH 26, 1976
220329	ELIZABETH TOWN (ALLEN CO)	JULY 25, 1975
220284	EVERGREEN, VILLAGE OF (AVOYELLES PARISH)	SEPTEMBER 26, 1975
220325	FARMERVILLE TOWN (UNION CO)	MAY 02, 1975
220326	FLORIEN VIL (SABINE PARISH)	JULY 25, 1975
220285	FOLSOM VIL (EST. TAMMANY CO)	JULY 18, 1975
220117A	FRENCH SETTLEMENT, VILLAGE OF (LIVINGSTON PAR.)	OCTOBER 25, 1974 AND
		MARCH 12, 1976
220288	GEORGETOWN VIL (GRANT CO)	AUGUST 15, 1975
220327	GIBSLAND TOWN (BIENVILLE CO)	JULY 11, 1975
220290	GOLDONNA VIL (NATCHITOCHES CO)	SEPTEMBER 19, 1975
220291	GRAND CANE VIL (DE SOTO CO)	MAY 02, 1975
220293	HEFLIN VIL (WEBSTER CO)	MARCH 26, 1976
220331	HODGE VIL (JACKSON CO)	JULY 11, 1975
220332	HORNBECK VIL (VERNON CO)	AUGUST 15, 1975
220282	JONESBORO, TOWN (JACKSON PARISH)	SEPTEMBER 12, 1975
220336	JUNCTION CITY, CITY (CLAIBORNE-UNION CO)	JULY 18, 1975
220114	LIVINGSTON, VILLAGE (LIVINGSTON PARISH)	SEPTEMBER 19, 1975
220336	LOGANSPORT TOWN (DE SOTO CO)	AUGUST 15, 1975
220338	MARION VIL (UNION CO)	MAY 02, 1975
220256	MONTGOMERY, TOWN (GRANT PARISH)	SEPTEMBER 19, 1975
220307	NORWOOD VIL (EAST FELICIANA CO)	JULY 11, 1975
220012A	OBERLIN, CITY OF (ALLEN PARISH)	JUNE 21, 1974 AND
		NOVEMBER 14, 1975
220203A	PEARL RIVER, TOWN OF (ST. TAMMANY PARISH)	MAY 24, 1974 AND
		JULY 09, 1976
220306	POLLOCK, VILLAGE OF (GRANT PARISH)	AUGUST 15, 1975
220307	REEVES VIL (ALLEN CO)	AUGUST 15, 1975
220212A	ROSELAND, TOWN OF (TANGIPAHOA PARISH)	OCTOBER 24, 1973 AND
		APRIL 09, 1976
220258	SIBLEY, VILLAGE OF (WEBSTER PARISH)	FEBRUARY 07, 1975
220050A	SICILY ISLAND, VILLAGE OF (CATAHOULA PARISH)	DECEMBER 28, 1973
220310	SIKES, VILLAGE OF (RINN PARISH)	APRIL 25, 1975
220311	SIMPSON VIL (VERNON CO)	AUGUST 08, 1975
220269	SLAUGHTER, TOWN (EA. FELICIANA PAR)	SEPTEMBER 19, 1975

* UNINCORPORATED AREAS ONLY

COMMUNITY NUMBER	NAME	HAZARD AREA IDENTIFIED
	LOUISIANA	
220120	SPRINGFIELD, TOWN OF (LIVINGSTON PARISH)	AUGUST 23, 1979
220137A	STERLINGTON, TOWN OF (OUACHITA PARISH)	DECEMBER 17, 1973 AND
		JANUARY 09, 1976
220205A	SUN, VILLAGE OF (ST. TAMMANY PARISH)	AUGUST 30, 1974 AND
		APRIL 16, 1976
220069A	TURKEY CREEK, VILLAGE OF (EVANGELINE PARISH)	AUGUST 30, 1974 AND
		OCTOBER 31, 1975
220234A	VARNADO, VILLAGE OF (WASHINGTON PARISH)	OCTOBER 25, 1974 AND
		APRIL 30, 1976
220351	VIVIAN TOWN (CADDO CO)	MARCH 26, 1976
220230	WASHINGTON PARISH	JANUARY 10, 1975
220352	WILSON VIL (EAST FELICIANA CO)	JULY 18, 1975
220260	WOODWORTH, VIL (RAPIDES PARISH)	MARCH 26, 1976

TOTAL IN THE STATE 52

• UNINCORPORATED AREAS ONLY

MAINE

COMMUNITY NUMBER	NAME	HAZARD AREA IDENTIFIED	
230303A	ALEXANDER, TOWN OF (WASHINGTON CO.)	DECEMBER 06, 1974	AND
		NOVEMBER 12, 1976	
230083	ALNA, TOWN OF (LINCOLN CO)	JANUARY 03, 1975	
230272	AMHERST, TOWN OF (HANCOCK CO)	JANUARY 24, 1975	
230208	ARROWSIC, TOWN OF (SAGADAHOC CO)	JANUARY 17, 1975	
230200	BALDWIN, TOWN OF (CUMBERLAND)	FEBRUARY 14, 1975	
230267	BELMONT, TOWN OF (WALDO CO)	MARCH 14, 1975	
230149A	BERWICK, TOWN OF (YORK CO.)	AUGUST 09, 1974	AND
		JULY 30, 1976	
230379	BURLINGTON, TOWN OF (PENOBSCOT COU)	FEBRUARY 07, 1975	
230130A	BURNHAM, TOWN OF (WALDO CO.) ME	JULY 26, 1974	AND
		SEPTEMBER 24, 1976	
230375	CARMEL, TOWN OF (PENOBSCOT CO)	FEBRUARY 28, 1975	
230376	CHARLESTON, TOWN OF (PENOBSCOT CO)	FEBRUARY 21, 1975	
230378	CLIFTON, TOWN OF (PENOBSCOT COU)	FEBRUARY 07, 1975	
230307	COLUMBIA, TOWN OF (WASHINGTON)	FEBRUARY 14, 1975	
230380	CORINTH, TOWN (PENOBSCOT CO)	FEBRUARY 21, 1975	
230309	CRAWFORD, TOWN (WASHINGTON CO)	JANUARY 17, 1975	
230148A	DAYTON, TOWN OF (YORK CO)	JUNE 28, 1974	AND
		JULY 30, 1976	
230279	DEDHAM, TOWN (HANCOCK CO)	APRIL 18, 1975	
230084A	DRESDEN, TOWN OF (LINCOLN CO.)	SEPTEMBER 20, 1974	AND
		DECEMBER 03, 1976	
230147A	EDGECOMB, TOWN (LINCOLN CO)	JANUARY 03, 1975	AND
		APRIL 23, 1976	
230237	FAYETTE, TOWN OF (KENNEBEC CO.)	NOVEMBER 29, 1974	
230228	FRIENDSHIP, TOWN (KNOX CO)	JANUARY 03, 1975	
230166	GILEAD, TOWN OF (OXFORD COU)	FEBRUARY 07, 1975	
230388	GREENFIELD, TOWN OF (PENOBSCOT CO)	FEBRUARY 21, 1975	
230425	HERSEY, TOWN OF (AROOSTOOK CO.)	DECEMBER 20, 1974	
230342	JACKMAN, TOWN (SOMERSET CO)	JANUARY 24, 1975	
230318	JONESBORO, TOWN OF (WASHINGTON)	FEBRUARY 14, 1975	
230393	LAGRANGE, TOWN OF (PENOBSCOT CO.)	FEBRUARY 28, 1975	
230193	LEBANON, TOWN OF (YORK COU)	FEBRUARY 07, 1975	
230427	LINNEUS, TOWN OF (AROOSTOOK CO.)	FEBRUARY 21, 1975	
230428	LITTLETON, TOWN OF (AROOSTOOK CO.)	MARCH 21, 1975	
230395	LOWELL, TOWN OF (PENOBSCOT CO)	FEBRUARY 21, 1975	
230429	LUDLOW, TOWN OF (AROOSTOOK CO)	FEBRUARY 21, 1975	
230286	MARIAVILLE, TOWN (HANCOCK CO)	MARCH 14, 1975	
230410	MEDFORD, TOWN OF (PISCATAQUIS)	FEBRUARY 14, 1975	
230176A	MERCER, TOWN OF (SOMERSET CO.)	JANUARY 31, 1975	AND
		SEPTEMBER 24, 1976	
230261	MONTVILLE, TOWN OF (WALDO CO)	FEBRUARY 21, 1975	
230343	MOOSE RIVER, TOWN (SOMERSET CO)	JANUARY 17, 1975	
230218	NEWCASTLE, TOWN OF (LINCOLN CO.)	FEBRUARY 21, 1975	
230318	NORTHFIELD, TOWN OF (WASHINGTON)	FEBRUARY 14, 1975	
230180	ORRINGTON, TOWN OF (PENOBSCOT COU)	FEBRUARY 07, 1975	
230289	OTIS, TOWN (HANCOCK CO)	APRIL 18, 1975	

• UNINCORPORATED AREAS ONLY

MAINE

COMMUNITY NUMBER	NAME	HAZARD AREA IDENTIFIED	
230412	PARKMAN, TOWN OF (PISCATAQUIS)	FEBRUARY 14, 1975	
230193A	PEMBROKE, TOWN OF (WASHINGTON CO.)	OCTOBER 18, 1974	AND
		OCTOBER 29, 1976	
230030	PERHAM, TOWN (AROOSTOOK CO)	APRIL 18, 1975	
230269	PROSPECT, TOWN OF (WALDO)	FEBRUARY 14, 1975	
230206	SEBAGO, TOWN (CUMBERLAND CO)	JANUARY 17, 1975	
230198	SHAPLEIGH, TOWN (YORK CO)	JANUARY 17, 1975	
230416	SHIRLEY, TOWN (PISCATAQUIS CO)	JANUARY 24, 1975	
230400	SPRINGFIELD, TOWN (PENOBSCOT CO.)	JANUARY 24, 1975	
230323	STEUBEN, TOWN OF (WASHINGTON CO)	FEBRUARY 21, 1975	
230036	STOCKHOLM, TOWN (AROOSTOOK CO)	JANUARY 10, 1975	
230294A	STONINGTON, TOWN OF (HANCOCK CO)	FEBRUARY 21, 1975	AND
		JUNE 04, 1976	
230183	ST. FRANCIS, TOWN OF (AROOSTOOK CO.)	DECEMBER 20, 1974	
230324	TOPSFIELD, TOWN (WASHINGTON CO)	MARCH 14, 1975	
230298	VASSALBOROUGH, TOWN OF (KENNEBEC COU)	FEBRUARY 07, 1975	
230403A	VEAZIE, TOWN (PENOBSCOT CO.)	JANUARY 03, 1975	AND
		JULY 30, 1976	
230439	WALES, TOWN OF (ANDROSCOGGIN CO)	FEBRUARY 21, 1975	
230301	WALTHAM, TOWN (HANCOCK CO)	JANUARY 03, 1975	
230062A	WASHINGTON, TOWN OF (KNOX CO.)	SEPTEMBER 06, 1974	AND
		OCTOBER 22, 1976	
230039	WESTON, TOWN OF (AROOSTOOK CO)	FEBRUARY 21, 1975	
230222	WESTPORT, TOWN (LINCOLN CO)	JANUARY 03, 1975	
230087	WHITEFIELD, TOWN OF (LINCOLN CO.)	JULY 26, 1974	
230328	WHITING, TOWN OF (WASHINGTON COU)	FEBRUARY 07, 1975	
230409	WINN, TOWN (PENOBSCOT CO)	JANUARY 24, 1975	

TOTAL IN THE STATE 64

• UNINCORPORATED AREAS ONLY

MARYLAND

COMMUNITY NUMBER	NAME	HAZARD AREA IDENTIFIED	
240102A	DEER PARK, TOWN OF (GARRETT CO.)	NOVEMBER 08, 1974	
240104A	GALESTOWN, TOWN (DORCHESTER CO)	JULY 11, 1975	
240114	LUKE, TOWN (ALLEGANY CO)	JULY 18, 1975	
240089A	QUEEN ANNE, TOWN OF (QUEEN ANNE'S CO.)	AUGUST 09, 1974	

TOTAL IN THE STATE 4

• UNINCORPORATED AREAS ONLY

MASSACHUSETTS

COMMUNITY NUMBER	NAME	HAZARD AREA IDENTIFIED	
250098A	ACUSHNET, TOWN OF (BRISTOL CO.)	SEPTEMBER 06, 1974	AND
		OCTOBER 15, 1976	
250134	BLANDFORD, TOWN OF (HAMPDEN CO.)	JULY 26, 1974	
250135	BRIMFIELD, TOWN OF (HAMPDEN CO.)	JULY 19, 1974	
250136A	CHESTER, TOWN OF (HAMPDEN CO.)	JULY 19, 1974	AND
		NOVEMBER 19, 1976	
250300A	CLINTON, TOWN OF (WORCESTER CO.)	AUGUST 09, 1974	AND
		AUGUST 06, 1976	
250191A	DUNSTABLE, TOWN OF (MIDDLESEX CO.)	NOVEMBER 29, 1974	AND
		JULY 16, 1976	
250140	EAST HAMPTON, TOWN OF (HAMPSHIRE CO.)	JUNE 21, 1974	
255211A	FALMOUTH, TOWN OF (BARNSTABLE CO.)	MAY 10, 1973	
250306A	GARDNER, CITY OF (WORCESTER CO.)	SEPTEMBER 06, 1974	AND
		MARCH 12, 1976	
250071	GOSNOLD, TOWN OF (DUKES CO.)	DECEMBER 20, 1974	
250139A	GRANVILLE, TOWN OF (HAMPDEN CO.)	AUGUST 30, 1974	AND
		OCTOBER 22, 1976	
250311A	HUBBARDSTON, TOWN OF (WORCESTER CO.)	SEPTEMBER 06, 1974	AND
		DECEMBER 24, 1976	
250068	IPSWICH, TOWN OF	DECEMBER 06, 1974	
250121	LEYDEN, TOWN OF (FRANKLIN COU)	FEBRUARY 07, 1975	
250146	MONTGOMERY, TOWN OF (HAMPDEN CO.)	NOVEMBER 22, 1974	
250037	NEW ASHFORD, TOWN OF (BERKSHIRE CO.)	NOVEMBER 22, 1974	
250324A	OAKHAM, TOWN OF (WORCESTER CO.)	AUGUST 02, 1974	AND
		AUGUST 20, 1976	
250326A	PAXTON, TOWN OF (WORCESTER CO.)	JULY 26, 1974	AND
		JULY 30, 1976	
250168A	PELHAM, TOWN OF (HAMPSHIRE CO.)	JUNE 28, 1974	AND
		DECEMBER 10, 1976	
250034	PERU, TOWN OF (BERKSHIRE CO.)	NOVEMBER 01, 1974	
250169A	PLAINFIELD, TOWN OF (HAMPSHIRE CO.)	NOVEMBER 01, 1974	AND
		NOVEMBER 08, 1976	
250101A	RUTLEY, TOWN OF (ESSEX CO.)	JULY 26, 1974	AND
		NOVEMBER 12, 1976	
250172A	SHUTESBURY, TOWN OF (FRANKLIN CO)	FEBRUARY 21, 1975	
250151	TOLLAND, TOWN (HAMPDEN CO)	APRIL 04, 1975	
255222A	TRURO, TOWN OF (BARNSTABLE CO.)	APRIL 20, 1973	
250043	TYRINGHAM, TOWN OF (BERKSHIRE CO.)	NOVEMBER 29, 1974	
250130	WARWICK, TOWN (FRANKLIN CO)	JANUARY 24, 1975	
250099A	WASHINGTON, TOWN OF (BERKSHIRE CO.)	NOVEMBER 01, 1974	AND
		OCTOBER 08, 1976	
250131	WENDELL, TOWN (FRANKLIN CO)	JANUARY 17, 1975	
250074	WEST TISBURY, TOWN OF (DUKES)	FEBRUARY 14, 1975	
250047	WINDSOR, TOWN OF (BERKSHIRE CO.)	NOVEMBER 22, 1974	

TOTAL IN THE STATE 31

• UNINCORPOATED AREAS ONLY

COMMUNITY NUMBER	NAME	HAZARD AREA IDENTIFIED	
	MICHIGAN		
260835	ANN ARBOR, TOWNSHIP (WASHTENAW CO.)	AUGUST 15, 1975	
260558	ATHENS, VILLAGE (CALHOUN CO)	SEPTEMBER 19, 1975	
260820	BANCROFT, VILLAGE (SHIAWASEE CO.)	OCTOBER 10, 1975	
260210A	BANGOR, TOWNSHIP (VAN BUREN CO)	JANUARY 10, 1975 AND JANUARY 09, 1976	
260581	BARAGA, VILLAGE (BARAGA CO)	OCTOBER 31, 1975	
260193A	BERLIN, TOWNSHIP OF (ST. CLAIR CO.)	AUGUST 23, 1974 AND AUGUST 06, 1976	
260027A	BLAINE, TOWNSHIP OF (BENZIE CO.)	SEPTEMBER 20, 1974 AND JULY 09, 1976	
260386	BRANFTON, TOWNSHIP (DELTA CO.)	OCTOBER 10, 1975	
260830	BREESVILLE, VILLAGE (VAN BUREN CO.)	SEPTEMBER 26, 1975	
260506	BROCKWAY, TOWNSHIP (ST. CLAIR CO.)	OCTOBER 29, 1975	
260601	BRYON, VILLAGE OF (SHIAWASSEE CO.) MI	SEPTEMBER 19, 1975	
260597	CAROL VILLAGE (TUSCOLA CO)	OCTOBER 29, 1975	
260809	CENTREVILLE, VILLAGE (ST. JOSEPH CO.)	JULY 11, 1975	
260899	CHELSEA, VILLAGE (WASHTENAW CO)	OCTOBER 03, 1975	
260860	CLARENCE, TOWNSHIP (CALHOUN CO)	SEPTEMBER 26, 1975	
260579	CLIFFORD, VILLAGE (LAPEER CO)	OCTOBER 29, 1975	
260937A	CLINTON, VILLAGE (LENAWEE CO.)	APRIL 18, 1976 AND OCTOBER 01, 1976	
260198A	CLYDE, TOWNSHIP OF (ST. CLAIR CO.)	JULY 26, 1974 AND JUNE 04, 1976	
260810	COLON, TOWNSHIP (ST. JOSEPH CO.)	JULY 18, 1975	
260933	COLUMBIAVILLE, VILLAGE (LAPEER CO.)	JULY 11, 1975	
260831	COLUMBIA, TOWNSHIP (VAN BUREN CO.)	SEPTEMBER 05, 1975	
260991	COOPERSVILLE, VILLAGE OF	SEPTEMBER 26, 1975	
260954	CUSTER, VILLAGE (MASON CO.)	SEPTEMBER 26, 1975	
260600	DEXTER, VILLAGE OF (WASHTENAW CO.)	OCTOBER 17, 1975	
260391	EATON RAPIDS, TOWNSHIP (EATON CO.)	SEPTEMBER 12, 1975	
260364	EDWARDSBURG, VILLAGE (CASS CO.)	JULY 11, 1975	
260563	ELBERTA, VILLAGE (BENZIE CO)	SEPTEMBER 19, 1975	
260569	ELKTON, VILLAGE OF (HURON COUNTY)	OCTOBER 03, 1975	
260399	ELLSWORTH, VILLAGE (ANTRIM CO.)	APRIL 11, 1975	
260327A	EVART, CITY (OSCEOLA CO.)	APRIL 25, 1975 AND FEBRUARY 06, 1976	
260588A	EXETER, TOWNSHIP (MONROE CO)	OCTOBER 03, 1975 AND JULY 30, 1976	
260904	FIFE LAKE, VILLAGE (GRAND TRAVERSE CO.)	JULY 11, 1975	
260874	GALESBURG, CITY (KALAMAZOO CO)	OCTOBER 29, 1975	
260525	GILFORD, TOWNSHIP (TUSCOLA CO.)	SEPTEMBER 19, 1975	
260810	GRANT, TOWNSHIP OF (CHEBOYGAN CO.)	OCTOBER 29, 1975	
260570	HARBOR BEACH, CITY OF (HURON COUNTY)	JANUARY 30, 1976	
260843	HARRISVILLE, CITY (ALCONA CO.)	SEPTEMBER 26, 1975	
260632	HARTFORD, CITY (VAN BUREN CO.)	JULY 11, 1975	
260397	HEATH, TOWNSHIP (ALLEGAN CO.)	AUGUST 22, 1975	
260989	HERSEY, VILLAGE (OSCEOLA CO.)	JULY 11, 1975	
260985	HESPERIA, VILLAGE (OCEANA CO.)	JULY 11, 1976	

• UNINCORPOATED AREAS ONLY

COMMUNITY NUMBER	NAME	HAZARD AREA IDENTIFIED	
	MICHIGAN		
260137A	HINTON, TOWNSHIP OF (MECOSTA CO.)	SEPTEMBER 06, 1974 AND JULY 23, 1976	
260962	HOLLAND, TOWNSHIP (MISSAUKEE CO.)	AUGUST 01, 1975	
260868	HOUGHTON, CITY OF (HOUGHTON COUNTY)	OCTOBER 24, 1975	
260910	HUBBARDSTON, VILLAGE (IONIA & CLINTON COS.)	SEPTEMBER 26, 1975	
260993	HUDSONVILLE, CITY (OTTAWA CO.)	SEPTEMBER 05, 1975	
260884	ITHACA, CITY OF (GRATIOT CO.)	DECEMBER 27, 1974	
260908	JONESVILLE, VILLAGE (HILLSDALE CO.)	SEPTEMBER 26, 1975	
260594	KIMBALL, TOWNSHIP (ST. CLAIR CO)	SEPTEMBER 19, 1975	
260361	KINDERHOOK, TOWNSHIP (BRANCH CO.)	AUGUST 08, 1975	
260801	KOCHVILLE, TOWNSHIP (SAGINAW CO.)	JULY 26, 1975	
260366	LAGRANGE, TOWNSHIP (CASS CO.)	OCTOBER 17, 1975	
260912	LAKE LINDEN, VILLAGE (HOUGHTON CO.)	APRIL 11, 1975	
260963A	LAKEVIEW, VILLAGE (MONTCALM CO.)	JULY 11, 1975 AND OCTOBER 01, 1976	
260833	LARTON, VILLAGE (VAN BUREN CO.)	SEPTEMBER 26, 1975	
260014	LINCOLN, TOWNSHIP OF (ARENAC CO.)	JUNE 14, 1974	
260398	LINDEN, VILLAGE (GENESEE CO.)	SEPTEMBER 26, 1975	
260581	LUDINGTON, CITY OF (MASON CO.)	OCTOBER 03, 1975	
260609	MARATHON, TOWNSHIP OF (LAPEER CO.)	OCTOBER 29, 1975	
260863	MARENGO, TOWNSHP OF (CALHOUN COUNTY)	SEPTEMBER 19, 1975	
260328	MARION, VILLAGE (OSCEOLA CO.)	APRIL 25, 1975	
260987	MCMILLAN, TOWNSHIP (ONTONAGON CO.)	OCTOBER 03, 1975	
260584	MECOSTA, VILLAGE	OCTOBER 10, 1975	
260310	MELVINDALE, CITY (WAYNE CO)	JANUARY 10, 1975	
260366	MIDDLEVILLE, VILLAGE (BARRY CO.)	JULY 18, 1975	
260986	MILLS, TOWNSHIP (OSCEOLA CO.)	JULY 25, 1975	
260360	MONITOR, TOWNSHIP (BAY CO.)	JULY 25, 1975	
260821	NEW HAVEN, TOWNSHIP (SHIAWASEE CO.)	JULY 25, 1975	
260390	NEWAYGO, CITY (NEWAYGO CO.)	SEPTEMBER 12, 1975	
260338	NORTH BRANCH, VILLAGE (LAPEER CO.)	SEPTEMBER 12, 1975	
260332	NORWAY, CITY (DICKINSON CO.)	JULY 11, 1975	
260802	OAKLEY, VILLAGE (SAGINAW CO.)	SEPTEMBER 26, 1975	
260913	OSCEOLA, TOWNSHIP (HOUGHTON CO.)	SEPTEMBER 26, 1975	
260928	PARMA, VILLAGE (JACKSON CO.)	JULY 11, 1975	
260698	PAW PAW, VILLAGE (VAN BUREN CO)	OCTOBER 10, 1975	
260634	PERRINGTON, VILLAGE OF (GRATIOT CO.)	AUGUST 29, 1975	
260871	PIGEON, VILLAGE (HURON CO)	OCTOBER 10, 1975	
260634	PINE GROVE, TOWNSHIP (VAN BUREN CO.)	JULY 25, 1975	
260618	PORT AUSTIN, VILLAGE OF (HURON CO.)	JANUARY 30, 1976	
260960	POWERS, VILLAGE (MENOMINEE CO.)	JULY 11, 1975	
260969	RAVENNA, VILLAGE (MUSKEGON CO.)	SEPTEMBER 26, 1975	
260902	RICHFIELD, TOWNSHIP (GENESEE CO.)	JULY 11, 1975	
260822	RUSH, TOWNSHIP (SHIAWASEE CO.)	AUGUST 08, 1975	
260823	SHIAWASEE, TOWNSHIP (SHIAWASEE CO.)	OCTOBER 10, 1975	
260567	STEVENSVILLE, VILLAGE (BERRIEN CO)	SEPTEMBER 26, 1975	
260873	STOCKBRIDGE, VILLAGE (INGHAM CO)	OCTOBER 03, 1975	
260803	TAYMOUTH, TOWNSHIP (SAGINAW CO.)	AUGUST 15, 1975	
260804	TITTABAWASEE, TOWNSHIP (SAGINAW CO.)	AUGUST 18, 1975	

• UNINCORPOATED AREAS ONLY

COMMUNITY NUMBER	NAME	HAZARD AREA IDENTIFIED	
	MICHIGAN		
260351	TURNER, TOWNSHIP (ARENAC CO.)	JULY 18, 1975	
260334	ULBY, VILLAGE (HURON CO.)	APRIL 11, 1975	
260824	VERNON, VILLAGE (SHIAWASEE CO.)	JULY 11, 1975	
260847	WAKEFIELD, CITY OF (GOGEBIC CO.)	SEPTEMBER 19, 1975	
260508	WALES, TOWNSHIP (ST. CLAIR CO.)	AUGUST 08, 1975	
260049A	WEESAW, TOWNSHIP OF (BERRIEN CO.)	JUNE 28, 1974 AND SEPTEMBER 03, 1976	
260970	WHITE CLOUD, CITY (NEWAYGO CO.)	APRIL 11, 1975	
260417	WHITE OAK, TOWNSHIP (INGHAM CO.)	OCTOBER 10, 1975	
260329	YALE, CITY (ST. CLAIR CO.)	APRIL 11, 1975	
260932	YATES, TOWNSHIP (CLARE CO.)	AUGUST 15, 1975	
260541	YORK, TOWNSHIP (WASHTENAW CO.)	JULY 18, 1975	
	TOTAL IN THE STATE	99	

• UNINCORPOATED AREAS ONLY

COMMUNITY NUMBER	NAME	HAZARD AREA IDENTIFIED	
	MINNESOTA		
270492	ALORICH, CITY OF (BRADENA COU)	FEBRUARY 07, 1975	
270346A	ASKOV, CITY OF (PINE CO.)	OCTOBER 25, 1974 AND AUGUST 29, 1975	
270417A	AURORA, CITY OF (ST. LOUIS CO.)	APRIL 05, 1974 AND JUNE 28, 1976	
270562	AVOCA, CITY (MURRAY CO)	JANUARY 10, 1975	
270654	BAUDETTE, CITY OF (LAKE OF THE WOODS CO.)	DECEMBER 27, 1974	
270556A	BEJOU, CITY (MAHNOMEN CO)	JANUARY 03, 1975 AND MAY 14, 1976	
270261	BISCAY, CITY OF (MCLEOD CO.)	NOVEMBER 18, 1974	
270656	BLACKDUCK, CITY (BELTRAMI CO)	AUGUST 01, 1975	
270333A	BLUFFTON, CITY OF (OTTER TAIL CO.)	AUGUST 09, 1974 AND JUNE 28, 1976	
270293	BORUP, CITY OF (MORRISON CO.)	OCTOBER 25, 1974	
270070A	BRANCH, CITY OF (CHISAGO CO.)	AUGUST 30, 1974 AND OCTOBER 01, 1976	
270319	BREWSTER, CITY (NOBLES CO)	APRIL 25, 1975	
270857	BROOK PARK, CITY OF (PINE CO.)	OCTOBER 25, 1974	
270388A	BROOKS, CITY OF (RED LAKE CO.)	AUGUST 09, 1974	
270242A	BROWNTON, CITY OF (MCLEOD CO.)	MAY 03, 1974	
270294A	BUCKMAN, CITY OF (MORRISON CO.)	AUGUST 09, 1974	
270281	CEDAR MILLS, CITY OF (MEEKER)	FEBRUARY 14, 1975	
270276	CEYLON, CITY (MARTIN CO)	APRIL 11, 1976	
270312A	CHANDLER, CITY OF (MURRAY CO.)	AUGUST 09, 1974 AND NOVEMBER 21, 1975	
270464A	CHOKIO, CITY OF (STEVENS CO.)	MAY 03, 1974	
270664A	CLEAR LAKE, CITY (SHERBURNE CO.)	JANUARY 03, 1975 AND SEPTEMBER 12, 1975	
270559	CLEARBROOK, CITY OF (CLEARWATER CO.)	NOVEMBER 01, 1974	
270540	CLEVELAND, CITY OF (LESUEUR CO.)	DECEMBER 27, 1974	
270363A	CLIMAX, CITY OF (POLK CO.)	SEPTEMBER 20, 1974 AND JUNE 11, 1976	
270029A	CLINTON, CITY OF (BIG STONE CO.)	MAY 17, 1974 AND JUNE 04, 1976	
270948A	CLONTARF, CITY OF (SWIFT CO.)	JULY 19, 1974	
270581	COBDEN, CITY OF (BROWN CO.)	NOVEMBER 01, 1974	
270542	COLOGNE, CITY OF (CARVER CO.)	NOVEMBER 01, 1974	
270035A	COMFREY, CITY OF (BROWN CO.)	SEPTEMBER 20, 1974 AND DECEMBER 24, 1975	
270025	CORRELL, CITY (BIG STONE CO)	JANUARY 24, 1975	
270282A	COSMOS, CITY OF (MEEKER CO.)	MAY 17, 1974	
270314A	COURTLAND, CITY OF (NICOLLET CO.)	JULY 19, 1974	
270313A	CURRIE, CITY OF (MURRAY CO.)	AUGUST 02, 1974 AND JULY 16, 1976	
270369A	CYRUS, CITY OF (POPE CO.)	AUGUST 09, 1974	
270396	DANUBE, CITY OF (RENVILLE CO.)	SEPTEMBER 20, 1974	
270949A	DANVERS, CITY OF (SWIFT CO.)	AUGUST 09, 1974	
270334A	DEER CREEK, CITY OF (OTTER TAIL CO.)	AUGUST 16, 1974 AND JUNE 04, 1976	

* UNINCORPORATED AREAS ONLY

MINNESOTA

COMMUNITY NUMBER	NAME	HAZARD AREA IDENTIFIED	
270470A	DEGRAFF, CITY OF (SWIFT CO.)	AUGUST	09, 1974 AND
		SEPTEMBER	10, 1976
270116A	DELAVAN, CITY OF (FAIRBAULT CO.)	AUGUST	16, 1974 AND
		JUNE	04, 1976
270543	DELHI, CITY OF (REDWOOD CO.)	OCTOBER	25, 1974
270394	DENHAM, CITY (PINE CO)	JANUARY	24, 1975
270225	DONALDSON, CITY (KITTSON CO)	JANUARY	24, 1975
270544A	DOVER, CITY OF (OLMSTEAD CO.)	NOVEMBER	01, 1974 AND
		OCTOBER	17, 1975
270069A	EAST GULL LAKE, CITY OF (CASS CO.)	DECEMBER	20, 1974 AND
		OCTOBER	10, 1975
270283A	EDEN VALLEY, CITY OF (STEARNS CO.)	MAY	03, 1974 AND
		AUGUST	13, 1976
270320A	ELLSWORTH, CITY OF (NOBLES CO.)	MAY	03, 1974
270295A	ELMDALE, CITY OF (MORRISON CO.)	AUGUST	09, 1974
270119A	ELMORE, CITY OF (FARIBAULT CO.)	MAY	14, 1974
270457	EMMONS, CITY OF (FREEBORN CO.)	DECEMBER	27, 1974
270334A	ERHARD, CITY OF (OTTER TAIL CO.)	AUGUST	09, 1974
270422A	EVELETH, CITY OF (ST. LOUIS CO.)	JUNE	07, 1974 AND
		JULY	16, 1976
270329A	EYOTA, CITY OF (OLMSTEAD CO.)	APRIL	12, 1974
270278A	FAIRMONT, CITY OF (MARTIN CO.)	JUNE	07, 1974 AND
		DECEMBER	12, 1975
270366A	FISHER, CITY OF (POLK CO.)	AUGUST	02, 1974
270869	FRANKLIN, CITY (ST. LOUIS CO)	APRIL	26, 1976
270670	FRAZEE, CITY OF (BECKER CO.)	NOVEMBER	15, 1974
270446A	FREEPORT, CITY OF (STEARNS CO.)	MAY	03, 1974 AND
		AUGUST	08, 1975
270671	FUNKLEY, CITY (BELTRAMI CO)	JULY	11, 1975
270134A	GENEVA, CITY OF (FREEBORN CO.)	SEPTEMBER	06, 1974 AND
		JULY	02, 1976
270296	GENOLA, CITY OF (MORRISON COU)	FEBRUARY	07, 1975
270439A	GIBBON, CITY OF (SIBLEY CO.)	JUNE	21, 1974
270088A	GONVICK, CITY OF (CLEARWATER CO.)	AUGUST	23, 1974 AND
		JUNE	04, 1976
270142B	GOODHUE, CITY OF (GOODHUE CO.)	MAY	24, 1974 AND
		APRIL	23, 1976
270026A	GRACEVILLE, CITY OF (BIG STONE CO.)	MAY	17, 1974 AND
		NOVEMBER	19, 1976
270277A	GRANADA, CITY OF (MARTIN CO.)	AUGUST	02, 1974
270447A	GREENWALD, CITY OF (STEARNS CO.)	AUGUST	23, 1974 AND
		JUNE	11, 1976
270061A	HACKENSACK, CITY OF (CASS CO.)	SEPTEMBER	20, 1974
270573	HADLEY, CITY (MURRAY CO)	APRIL	11, 1975
270227	HALMA, CITY OF (KITTSON CO)	JANUARY	31, 1975
270574	HANLEY FALLS, CITY (YELLOW MEDICINE CO)	JULY	11, 1975
270071A	HARRIS, CITY OF (CHISAGO CO.)	SEPTEMBER	20, 1974 AND
		OCTOBER	24, 1975
270366	HATFIELD, CITY OF (PIPESTONE CO)	JANUARY	31, 1975

* UNINCORPORATED AREAS ONLY

MINNESOTA

COMMUNITY NUMBER	NAME	HAZARD AREA IDENTIFIED	
270338A	HENNING, CITY OF (OTTER TRAIL CO.)	MAY	03, 1974 AND
		OCTOBER	31, 1975
270002A	HILL CITY, CITY OF (AITKIN CO.)	NOVEMBER	08, 1974
270490A	HILLS, CITY OF (ROCK CO.)	APRIL	12, 1974
270678A	HOFFMAN, CITY OF (GRANT CO)	JANUARY	31, 1975
270498A	HOLDINGFORD, CITY OF (STEARNS CO.)	MAY	17, 1974
270364A	HOLLAND, CITY OF (PIPESTONE CO.)	AUGUST	30, 1974 AND
		DECEMBER	05, 1975
270471	HOLLOWAY, CITY OF (SWIFT CO.)	SEPTEMBER	06, 1974
270367A	IHLEN, CITY OF (PIPESTONE CO.)	AUGUST	02, 1974 AND
		JULY	02, 1976
270235A	INTERNATIONAL FALLS, CITY OF (KOOCHICHING CO.)	JUNE	07, 1974 AND
		MARCH	26, 1976
270579	IONA, CITY OF (MURRAY CO.)	DECEMBER	20, 1974
270580	IRON JUNCTION, CITY OF (ST. LOUIS CO.)	OCTOBER	25, 1974
270098A	JENKINS, CITY OF (CROW WING CO.)	AUGUST	23, 1974 AND
		JULY	09, 1976
270206A	KEEWATIN, CITY OF (ITASCA CO.)	MAY	03, 1974
270465	KELLOGG, CITY OF (WABASHA CO)	JANUARY	31, 1975
270523	KENT, CITY (WILKIN CO)	AUGUST	01, 1975
270143A	KENYON, CITY OF (GOODHUE CO.)	MAY	24, 1974 AND
		JULY	16, 1976
270206A	LA PRAIRIE, CITY OF (ITASCA CO.)	AUGUST	23, 1974 AND
		OCTOBER	17, 1975
270617A	MADELIA, CITY OF (WATONWAN CO.)	APRIL	12, 1974 AND
		MAY	28, 1976
270667	MAPLE LAKE, CITY (WRIGHT CO.)	JANUARY	10, 1975
270032A	MAPLETON, CITY (BLUE EARTH CO)	APRIL	26, 1974 AND
		OCTOBER	03, 1975
270243A	MARIETTA, CITY OF (LAC QUI PARLE CO.)	SEPTEMBER	06, 1974 AND
		JULY	09, 1976
270053A	MAYER, CITY OF (CARVER CO.)	NOVEMBER	23, 1973
270587	MAYNARD, CITY OF (CHIPPEWA CO.)	NOVEMBER	15, 1974
270487A	MAZEPPA, CITY OF (WABASHA CO.)	JULY	19, 1974
270588	MCINTOSH, CITY OF (POLK CO.)	NOVEMBER	29, 1974
270493B	MENAHGA, CITY OF (WADENA CO.)	APRIL	12, 1974 AND
		AUGUST	29, 1975 AND
		JANUARY	30, 1976
270110A	MENDOTA HEIGHTS, CITY OF (DAKOTA CO.)	NOVEMBER	23, 1973 AND
		APRIL	16, 1976
270109A	MENDOTA, CITY OF (DAKOTA CO.)	FEBRUARY	08, 1974
270367A	MENTOR, CITY OF (POLK CO.)	DECEMBER	20, 1974 AND
		JULY	02, 1976
270270A	MIDDLE RIVER, CITY OF (MARSHALL CO.)	JULY	11, 1975
270111A	MIESVILLE, CITY OF ([redacted]A CO.)	JULY	19, 1974 AND
		JANUARY	23, 1976
270488A	MILLVILLE, CITY OF (WABASHA CO.)	AUGUST	02, 1974 AND
		MARCH	26, 1976
270489	MINNEISKA, CITY OF (WABASHA CO.)	JULY	11, 1975

* UNINCORPORATED AREAS ONLY

MINNESOTA

COMMUNITY NUMBER	NAME	HAZARD AREA IDENTIFIED	
270122A	MINNESOTA LAKE, CITY OF (FARIBAULT CO.)	MAY	17, 1974
270408A	MORRISTOWN, CITY OF (RICE CO.)	MARCH	29, 1974 AND
		SEPTEMBER	12, 1975
270300A	MOTLEY, CITY OF (MORRISON CO.)	AUGUST	02, 1974 AND
		DECEMBER	19, 1975
270429A	MOUNTAIN IRON, VILLAGE OF (ST. LOUIS CO.)	MAY	24, 1974 AND
		NOVEMBER	26, 1976
270461	NEW MUNICH, CITY OF (STEARNS CO.)	OCTOBER	25, 1974
270497A	NEW RICHLAND, CITY OF (WABASECA CO.)	APRIL	12, 1974
270316A	NICOLLET, CITY OF (NICOLLET CO.)	APRIL	05, 1974
270590	NIELSVILLE, CITY OF (POLK CO.)	NOVEMBER	01, 1974
270591	NIMROD, CITY (WADENA CO)	APRIL	18, 1975
270592	NORCROSS, CITY OF (GRANT CO.)	DECEMBER	13, 1974
270072A	NORTH BRANCH, CITY OF (CHISAGO CO.)	MAY	10, 1974 AND
		APRIL	09, 1976
270512A	OAK PARK HEIGHTS, CITY OF (WASHINGTON CO.)	MARCH	22, 1974 AND
		APRIL	16, 1976
270599	ODIN, CITY OF (WATONWAN CO.)	DECEMBER	13, 1974
270595	OKABENA, CITY OF (JACKSON CO.)	DECEMBER	27, 1974
270389	OKLEE, CITY (RED LAKE CO)	JULY	11, 1975
270698	ORR, CITY OF (ST. LOUIS CO.)	DECEMBER	13, 1974
270688	OSSEO, CITY (HENNEPIN CO.)	JANUARY	10, 1975
270009A	PALISADE, CITY OF (AITKIN CO.)	AUGUST	02, 1974 AND
		JUNE	11, 1976
270291A	PEASE, CITY OF (MILLE LACS CO.)	AUGUST	02, 1974 AND
		FEBRUARY	13, 1976
270128A	PETERSON, CITY OF (FILLMORE CO.)	AUGUST	30, 1974
270063A	PILLAGER, CITY OF (CASS CO.)	JULY	19, 1974
270596	PLATO, CITY OF (MCLEOD CO.)	NOVEMBER	01, 1974
270221	PRINSBURG, CITY OF (KANDIYOHI CO.)	AUGUST	23, 1974
270218A	QUAMBA, CITY OF (KANABEC CO.)	AUGUST	09, 1974
270223A	REGAL, CITY OF (KANDIYOHI CO)	JANUARY	31, 1975 AND
		FEBRUARY	13, 1976
270045	REMER, CITY (CASS CO)	JULY	11, 1975
270845	REVERE, CITY (REDWOOD CO.)	APRIL	11, 1975
270897	RICE, CITY (BENTON CO)	JANUARY	17, 1975
270453A	RICHMOND, CITY OF (STEARNS CO.)	MARCH	29, 1974
270361	RICHVILLE, CITY OF (OTTER TAIL CO.)	OCTOBER	25, 1974
270021	ROMNEBY, CITY (BENTON CO)	JULY	11, 1975
270485A	ROSCOE, CITY OF (STEARNS CO.)	AUGUST	02, 1974 AND
		JUNE	04, 1976
270073A	RUSH CITY, CITY OF (CHISAGO CO.)	MAY	10, 1974 AND
		MARCH	19, 1976
270340A	RUTHTON, CITY OF (PIPESTONE CO.)	AUGUST	09, 1974
270360A	RUTLEDGE, CITY OF (PINE CO.)	AUGUST	09, 1974 AND
		AUGUST	20, 1976
270402A	SACRED HEART, CITY OF (RENVILLE CO.)	MAY	03, 1974
270094A	SCANLON, CITY OF (CARLTON CO.)	NOVEMBER	02, 1973 AND
		JULY	09, 1976

* UNINCORPORATED AREAS ONLY

MINNESOTA

COMMUNITY NUMBER	NAME	HAZARD AREA IDENTIFIED	
270402	SEAFORTH, CITY OF (REDWOOD CO.)	DECEMBER	13, 1974
270494B	SEBEKA, CITY OF (WADENA CO.)	APRIL	12, 1974 AND
		JULY	11, 1975 AND
		MAY	28, 1976
270662	SILVER LAKE, CITY (MCLEOD CO.)	JANUARY	24, 1975
270672	SKYLINE, CITY (BLUE EARTH CO)	JUNE	27, 1975
270208	SQUAW LAKE, CITY (ITASCA CO.)	AUGUST	01, 1975
270352	STURGEON LAKE, CITY OF (PINE CO.)	OCTOBER	25, 1974
270601	ST. ANTHONY, CITY OF (STEARNS CO.)	JULY	11, 1975
270033A	ST. CLAIR, CITY OF (BLUE EARTH CO.)	AUGUST	23, 1974
270488A	ST. STEPHEN, CITY OF (STEARNS CO.)	AUGUST	23, 1974
270680B	S. INTERNATIONAL FALLS, CITY (KOOCHICHING CO.)	JANUARY	17, 1975 AND
		SEPTEMBER	12, 1975 AND
		JULY	30, 1976
270609	TADPI, CITY (WINONA CO)	JANUARY	24, 1975
270240A	TAUNTON, CITY OF (LYON CO.)	JULY	19, 1974 AND
		NOVEMBER	14, 1975
270097A	THOMSON, CITY OF (CARLTON CO.)	AUGUST	02, 1974 AND
		JUNE	04, 1976
270605	TORER, CITY OF (ST. LOUIS CO.)	DECEMBER	13, 1974
270341A	TROSKY, CITY OF (PIPESTONE CO.)	AUGUST	09, 1974 AND
		JULY	16, 1976
270406	TURTLE RIVER, CITY (BELTRAMI CO)	AUGUST	01, 1975
270139A	TWIN LAKES, CITY OF (FREEBORN CO.)	AUGUST	02, 1974 AND
		JUNE	04, 1976
270306	UPSALA, CITY OF (MORRISON CO.)	OCTOBER	25, 1974
270607	VERNDALE, CITY OF (WADENA CO.)	OCTOBER	25, 1974
270608	VERNON CENTER, CITY (BLUE EARTH CO)	JANUARY	03, 1975
270609	VESTA, CITY (REDWOOD CO)	JANUARY	10, 1975
270498	WALDORF, CITY OF (WABASECA CO.)	AUGUST	09, 1974
270147A	WANAMINGO, CITY OF (GOODHUE CO.)	MAY	10, 1974 AND
		AUGUST	29, 1975
270210A	WARBA, CITY OF (ITASCA CO.)	SEPTEMBER	13, 1974 AND
		DECEMBER	26, 1975
270286A	WATKINS, CITY OF (MEEKER CO.)	APRIL	12, 1974 AND
		JULY	02, 1976
270610	WATSON, CITY OF (CHIPPEWA CO.)	DECEMBER	26, 1974
270666	WAVERLY, CITY (WRIGHT CO.)	JANUARY	17, 1975
270279A	WELCOME, CITY OF (MARTIN CO.)	MAY	10, 1974 AND
		JULY	16, 1976
270612	WILLIAMS, CITY OF (LAKE OF THE WOODS CO.)	NOVEMBER	29, 1974
270613	WINGER, CITY OF (POLK CO)	JANUARY	31, 1975
270427A	WINTON, CITY OF (ST. LOUIS CO.)	AUGUST	02, 1974 AND
		JULY	02, 1976
270529A	WOLVERTON, CITY OF (WILKIN CO.)	AUGUST	09, 1974 AND
		DECEMBER	19, 1975
270615	WOOD LAKE, CITY (YELLOW MEDICINE CO)	JANUARY	17, 1975
270098A	WRIGHT, CITY OF (CARLTON CO.)	SEPTEMBER	13, 1974
270211	ZEMPLE, CITY (ITASCA CO.)	JUNE	27, 1975

TOTAL IN THE STATE 177

* UNINCORPORATED AREAS ONLY

MISSISSIPPI

COMMUNITY NUMBER	NAME	HAZARD AREA IDENTIFIED	
280087	BAY SPRINGS, TOWN (JASPER CO)	AUGUST	01, 1975
280154A	BRAXTON, VILLAGE OF (SIMPSON CO.)	JULY	19, 1974 AND
		JULY	16, 1976
280240	CHUNKY, TOWN OF (NEWTON CO.)	DECEMBER	20, 1974
280220	CLARKE COUNTY *	NOVEMBER	29, 1974
280188	EDEN, VILLAGE OF (YAZOO CO.)	JULY	19, 1974
280008	ETHEL, TOWN OF (ATTALA COU)	FEBRUARY	07, 1975
280117A	GATTMAN, VILLAGE OF (MONROE CO.)	JULY	19, 1974 AND
		AUGUST	13, 1976
280095A	GEORGETOWN, TOWN OF (COPIAH CO.)	AUGUST	02, 1974
280093	LAFAYETTE COUNTY *	DECEMBER	27, 1974
280149A	LAKE, TOWN OF (SCOTT CO.)	JULY	19, 1974 AND
		JUNE	25, 1976
280209	LENA, TOWN (LEAKE CO)	OCTOBER	25, 1974
280008	MCCOOL, VILLAGE OF (ATTALA CO)	JANUARY	31, 1975
280225	MONTICELLO, TOWN OF (LAWRENCE CO.)	DECEMBER	27, 1974
280048	MT. OLIVE, TOWN (COVINGTON CO)	AUGUST	01, 1975
280219	PACHUTA, TOWN OF (CLARKE CO.)	NOVEMBER	08, 1974
280234	PONTOTOC COUNTY *	NOVEMBER	29, 1974
280147A	PUCKETT, TOWN OF (RANKIN CO.)	AUGUST	23, 1974 AND
		JULY	02, 1976
280009A	SALLIS, VILLAGE OF (ATTALA CO.)	AUGUST	09, 1974 AND
		JANUARY	30, 1976
280151	SEBASTOPOL, VILLAGE OF (SCOTT COU)	FEBRUARY	07, 1975
280049	SEMINARY, VILLAGE OF (COVINGTON CO.)	AUGUST	01, 1975
280034A	SHUBUTA, TOWN OF (CLARKE CO.)	JUNE	07, 1974 AND
		JUNE	25, 1976
280226	SILVER CREEK, TOWN OF (LAWRENCE CO.)	JULY	11, 1975
280243	TOCCOPOLA, TOWN OF (POTOTOC CO.)	DECEMBER	13, 1974
280237	UNION COUNTY *	DECEMBER	13, 1974
280127	UNION, TOWN OF (NEWTON COU)	FEBRUARY	07, 1975
280094A	WALNUT GROVE, TOWN OF (LEAKE CO)	JUNE	28, 1974 AND
		JULY	16, 1976
280238	WAYNE COUNTY *	DECEMBER	20, 1974
280025A	WINSTONVILLE, TOWN OF (BOLIVAR CO.)	JULY	19, 1974 AND
		JUNE	25, 1976

TOTAL IN THE STATE 28

* UNINCORPORATED AREAS ONLY

MISSOURI

COMMUNITY NUMBER	NAME	HAZARD AREA IDENTIFIED	
290761	AIRPORT DRIVE, VILLAGE OF (JASPER)	FEBRUARY	14, 1975
290005A	AMAZONIA, TOWN OF (ANDREW CO.)	AUGUST	14, 1974 AND
		FEBRUARY	06, 1976
290762	AMORET, CITY OF (BATES CO)	FEBRUARY	21, 1975
290217A	ANDERSON, CITY OF (MCDONALD CO.)	MAY	17, 1974 AND
		DECEMBER	26, 1975
290287	ANNADA, VILLAGE OF (PIKE COU)	FEBRUARY	07, 1975
290229A	ANNISTON, TOWN OF (MISSISSIPPI CO.)	MAY	03, 1974
290281	APPLETON, CITY OF (ST. CLAIR COU)	FEBRUARY	07, 1975
290765	ASBURY, CITY OF (JASPER CO)	FEBRUARY	21, 1975
290441	AUGUSTA, VILLAGE OF (ST. CHARLES CO.)	DECEMBER	06, 1974
290767	BAKERSFIELD, VILLAGE OF (OZARK CO.)	APRIL	25, 1975
290769	BATES, VILLAGE OF (LAFAYETTE CO.)	AUGUST	08, 1975
290754	BEVIER, CITY OF (MACON)	FEBRUARY	14, 1975
290757	BILLINGS, CITY (CHRISTIAN CO.)	JUNE	27, 1975
290758	BISMARCK, CITY OF (ST. FRANCIS COU)	FEBRUARY	07, 1975
290139	BLAND, CITY OF (GASCONADE CO.)	MAY	17, 1974
290772	BLOOMSDALE, CITY (STE. GENEVIEVE CO.)	JULY	11, 1975
290443	BOSWORTH, CITY (CARROLL CO)	JANUARY	17, 1975
290274	BRAGG CITY, CITY OF (PEMISCOT COU)	FEBRUARY	07, 1975
290616	BRASHEAR, CITY OF (ADAIR)	FEBRUARY	14, 1975
290769	BRAYMER, CITY (CALDWELL CO.)	APRIL	25, 1975
290760	BRECKENRIDGE, CITY OF (CALDWELL COU)	FEBRUARY	07, 1975
290739	BUFFALO, CITY (DALLA CO.)	MAY	02, 1975
290111	BUNCETON, CITY OF (COOPER CO.)	APRIL	25, 1975
290119A	BUNKER, TOWN OF (REYNOLDS CO.)	SEPTEMBER	06, 1974 AND
		APRIL	09, 1976
290620	CAINSVILLE, CITY (HARRISON CO.)	APRIL	25, 1975
290623	CALLAO, CITY OF (MACON)	FEBRUARY	14, 1975
290124A	CAMPBELL, CITY OF (OUNKLIN CO.)	MARCH	29, 1974 AND
		JUNE	11, 1976
290625	CENTERTOWN, VILLAGE (COLE CO.)	MAY	02, 1975
290626	CENTERVIEW, CITY (JOHNSON CO.)	APRIL	25, 1975
290303A	CENTER, TOWN OF (CRALLS CO.)	JULY	26, 1973
290627	CHILHOWEE, CITY OF (JOHNSON CO.)	APRIL	25, 1975
290628	CHULA, CITY (LIVINGSTON CO.)	MAY	02, 1975
290630A	CLARKSDALE, CITY OF (DE KALB CO)	FEBRUARY	21, 1975
290629	CLARK, CITY OF (RUDOLPH CO)	FEBRUARY	21, 1975
290599	CLEARMONT, CITY (WOODWAY CO.)	JULY	18, 1975
290601	COBALT CITY, VILLAGE (MADISON CO.)	MARCH	26, 1974
290228A	COLE CAMP, CITY OF (BENTON CO.)	JUNE	14, 1974
290402	CONCEPTION JUNTION, CITY (WOODWAY CO.)	APRIL	25, 1975
290194A	CONWAY, TOWN OF (LACLEDE CO.)	MAY	10, 1974 AND
		NOVEMBER	21, 1975
290159	CORNING, TOWN OF (HOLT CO.)	FEBRUARY	06, 1976
290605	CONGILL, TOWN (CALDWELL CO.)	APRIL	18, 1975
290610	CROSS TIMBERS, VILLAGE OF (HICKORY CO)	FEBRUARY	21, 1975

* UNINCORPORATED AREAS ONLY

MISSOURI

COMMUNITY NUMBER	NAME	HAZARD AREA IDENTIFIED	
290464	DALTON, VILLAGE OF (CHARITON CO.)	DECEMBER	13, 1974
290612	DE KALB, VILLAGE (BUCHANAN CO.)	MARCH	26, 1976
290747	DEEPWATER, CITY (HENRY CO.)	SEPTEMBER	26, 1975
290058	DELTA, CITY OF (CAPE GIRARDEAU CO.)	DECEMBER	06, 1974
290453	DENVER, VILLAGE OF (WORTH CO.)	NOVEMBER	22, 1974
290613	DES ARC, VILLAGE (IRON CO.)	APRIL	18, 1975
290468A	DEWITT, CITY OF (CARROLL CO.)	SEPTEMBER	06, 1974 AND
		APRIL	02, 1976
290182A	DUENWEG, CITY OF (JASPER CO.)	MAY	03, 1974 AND
		OCTOBER	29, 1975
290586	EAGLEVILLE, VILLAGE (HARRISON CO.)	APRIL	18, 1975
290466A	ELLSINORE, CITY OF (CARTER CO.)	OCTOBER	18, 1974 AND
		NOVEMBER	15, 1974
290219	ELMER, CITY OF (MACON CO.)	DECEMBER	04, 1974
290588	EOLIA, VILLAGE (PIKE CO.)	MARCH	26, 1976
290730	ESTHER, CITY OF (ST. FRANCOIS CO)	FEBRUARY	21, 1975
290591	FAIR GROVE, CITY (GREENE CO.)	JUNE	27, 1975
290292	FARLEY, TOWN (PLATTE CO)	JANUARY	24, 1975
290731	FORSYTH, CITY OF (TANEY COU)	FEBRUARY	07, 1975
290044A	FREEMAN, TOWN OF (CASS CO.)	NOVEMBER	06, 1975 AND
		JANUARY	16, 1976
290477	FREMONT, VILLAGE OF (CARTER CO)	FEBRUARY	21, 1975
290431A	GALENA, CITY OF (STONE CO.)	AUGUST	30, 1974 AND
		OCTOBER	31, 1975
290733	GALLATIN, CITY OF (DAVIESS)	FEBRUARY	14, 1975
290151A	GALT, CITY OF (GRUNDY CO.)	OCTOBER	18, 1974 AND
		APRIL	02, 1976
290738	GOLDEN CITY, CITY OF (BARTON CO)	FEBRUARY	21, 1975
290594	GRAHAM, CITY (NODAWAY CO.)	AUGUST	15, 1975
290460	GRANDIN, CITY OF (CARTER CO.)	NOVEMBER	08, 1974
290710	GREENFIELD, CITY (DADE CO.)	APRIL	25, 1975
290594	GREENTOP, CITY OF (SCHYLER CO)	FEBRUARY	21, 1975
290697A	HALE, CITY OF (CARROLL CO)	FEBRUARY	21, 1975
290712	HALLSVILLE, CITY OF (BOONE)	FEBRUARY	14, 1975
290306A	HENRIETTA, CITY OF (RAY CO.)	OCTOBER	18, 1974
290572	HERMITAGE, CITY (HICKORY CO)	APRIL	25, 1975
290578	HOUSTONIA, CITY (PETTIS CO)	SEPTEMBER	19, 1975
290718	HUNANSVILLE, CITY (POLK CO.)	JULY	11, 1975
290877	HUME, CITY OF (BATES CO)	FEBRUARY	21, 1975
290578	HUNNEWELL, CITY OF (SHELBY CO)	FEBRUARY	21, 1975
290580	IRON GATES, VILLAGE (JASPER CO)	FEBRUARY	14, 1975
290721	JAMESPORT, CITY OF (DAVIESS COU)	FEBRUARY	07, 1975
290722	JASPER, CITY OF (JASPER CO)	FEBRUARY	21, 1975
290734	KNOB NOSTER, CITY (JOHNSON CO.)	JUNE	27, 1975
290266A	KOSHKONONG, CITY OF (OREGON CO.)	SEPTEMBER	06, 1974 AND
		DECEMBER	12, 1975
290494	LA BELLE, CITY OF (LEWIS)	FEBRUARY	14, 1975
290703	LA PLATA, CITY OF (MACON)	FEBRUARY	14, 1975
290152A	LAREDO, CITY OF (GRUNDY CO.)	OCTOBER	18, 1974

* UNINCORPORATED AREAS ONLY

MISSOURI

COMMUNITY NUMBER	NAME	HAZARD AREA IDENTIFIED	
290560	LEADINGTON, VILLAGE (ST. FRANCOIS CO)	APRIL	18, 1975
290861	LEASBURG, VILLAGE OF (CRAWFORD CO)	JANUARY	31, 1975
290707	LEXINGTON, CITY (LAFAYETTE CO.)	JULY	28, 1975
290093A	LINN CREEK, CITY OF (CAMDEN CO.)	OCTOBER	28, 1974 AND
		NOVEMBER	28, 1975
290118	LOCK SPRINGS, TOWN (DAVIESS CO)	JULY	11, 1975
290082A	LURAY, VILLAGE OF (CLARK CO.)	OCTOBER	18, 1974 AND
		OCTOBER	31, 1975
290031A	LUTESVILLE, CITY OF (COLLINGER CO.)	MAY	10, 1974 AND
		DECEMBER	19, 1975
290568	MARQUAND, CITY (MADISON CO)	APRIL	18, 1975
290494A	MARTHASVILLE, VILLAGE OF (WARREN CO.)	SEPTEMBER	13, 1974
290369A	MARY RIDGE, VILLAGE OF (ST. LOUIS CO.)	APRIL	08, 1974 AND
		DECEMBER	26, 1975
290484	MAYSVILLE, CITY (DE KALB CO.)	JULY	28, 1975
290564	MEADVILLE, CITY (LINN CO)	APRIL	25, 1975
290547A	MERCER, CITY (MERCER CO)	APRIL	04, 1975
290271A	META, TOWN OF (OSAGE CO.)	SEPTEMBER	13, 1974 AND
		NOVEMBER	28, 1975
290499	MILL SPRING, VILLAGE OF (WAYNE CO.)	DECEMBER	13, 1974
290570	MINDENMINES, CITY (BARTON CO)	APRIL	18, 1975
290571	MINERAL POINT, VILLAGE (WASHINGTON CO)	AUGUST	08, 1975
290207	MONTICELLO, VILLAGE OF (LEWIS CO.)	DECEMBER	27, 1974
290490	MONTROSE, CITY (HENRY CO.)	APRIL	18, 1975
290405A	NELSON, CITY OF (SALINE CO.)	OCTOBER	18, 1974 AND
		DECEMBER	26, 1975
290548	NEW BLOOMFIELD, CITY (CALLAWAY CO)	MAY	02, 1975
290849	NEW CAMBRIA, CITY (MACON CO)	JULY	28, 1975
290550	NEW HAMPTON, CITY (HARRISON CO)	AUGUST	08, 1975
290078A	NIXA, CITY OF (CHRISTIAN CO)	JUNE	28, 1974 AND
		JANUARY	16, 1976
290218A	NOEL, TOWN OF (MCDONALD CO.)	MAY	24, 1974 AND
		NOVEMBER	14, 1975
290069A	NORBORNE, CITY OF (CARROLL CO.)	APRIL	08, 1974
290293A	NORTHMOOR, TOWN OF (PLATTE CO.)	JULY	19, 1974 AND
		NOVEMBER	14, 1975
290470	OREGON, CITY (HOLT CO.)	JULY	18, 1975
290566	OSBORN, CITY (CLINTON CO)	JULY	18, 1975
290564	OTTERVILLE, CITY (COOPER CO)	APRIL	28, 1975
290224A	PALMYRA, CITY OF (MARION CO.)	MARCH	29, 1974 AND
		JULY	18, 1975
290533	PARNELL, CITY (NODAWAY CO)	MAY	02, 1975
290476	PERRY, CITY OF (CRALLS COU)	FEBRUARY	14, 1975
290635	PINEVILLE, CITY (MCDONALD CO)	APRIL	18, 1975
290428A	PUXICO, TOWN OF (STODDARD CO.)	MARCH	06, 1974 AND
		JULY	03, 1974
290541	RAVENWOOD, CITY (NODAWAY CO)	JUNE	27, 1975
290542	RAYMONDVILLE, VILLAGE OF (TEXAS)	FEBRUARY	14, 1975
290488	RICH HALL, CITY OF (BATES)	FEBRUARY	14, 1975

* UNINCORPORATED AREAS ONLY

MISSOURI

COMMUNITY NUMBER	NAME	HAZARD AREA IDENTIFIED
290485	RITCHEY, TOWN (NEWTON CO)	JANUARY 10, 1975
290438	ROCKAWAY BEACH, TOWN(TANEY CO)	JANUARY 10, 1975
290518	ROCKVILLE, CITY OF (BATES CO)	FEBRUARY 21, 1975
290008	ROSENDALE, CITY OF (ANDREW)	FEBRUARY 19, 1975
290663	SALISBURY, CITY OF (CHARITON COU)	FEBRUARY 07, 1975
290519	SEWELL CITY, CITY (VERNON CO)	APRIL 18, 1975
290521	SELIGMAN, CITY (BARRY CO)	APRIL 25, 1975
290665	SHELBINA, CITY (SHELBY CO.)	APRIL 25, 1975
290666	SHELBYVILLE, CITY (SHELBY CO.)	APRIL 18, 1975
290527	SHELDON, CITY OF (VERNON CO)	JANUARY 31, 1975
290487A	SHOAL CREEK DRIVE, TOWN OF (NEWTON CO.)	AUGUST 16, 1974
290177A	SIBLEY, VILLAGE OF (JACKSON CO.)	AUGUST 30, 1974 AND JANUARY 16, 1976
290530	SPICKARD, CITY OF (GRUNDY COU)	FEBRUARY 07, 1975
290488	STELLA, CITY OF (NEWTON CO)	FEBRUARY 21, 1975
290135A	ST. CLAIR, TOWN OF (FRANKLIN CO.)	APRIL 12, 1974 AND DECEMBER 06, 1974
290507	SUMMERSVILLE, CITY OF (SHANNON & TEXAS CO)	JANUARY 31, 1975
290076	SUMNER, TOWN (CHARITON CO)	JANUARY 10, 1975
290660	TIPTON, CITY (MONITEAU CO.)	JANUARY 17, 1975
290228A	TUSCUMBIA, VILLAGE OF (MILLER CO.)	OCTOBER 25, 1974 AND NOVEMBER 21, 1975
290514	URBANA, VILLAGE (DALLAS CO)	JUNE 27, 1975
290496	VIBURNUM, CITY OF (IRON CO)	FEBRUARY 21, 1975
290633	WAROSVILLE, CITY (COLE CO.)	JULY 11, 1975
290498	WARRENTON, CITY OF (WARREN COU)	FEBRUARY 07, 1975
290024	WASHBURN, TOWN (BARRY CO)	JANUARY 10, 1975
290499	WAVERLY, CITY OF (LAFAYETTE CO.)	JULY 11, 1975
290651	WELLINGTON, CITY (LAFAYETTE CO.)	SEPTEMBER 19, 1975
290493	WENTWORTH, TOWN (NEWTON CO)	JANUARY 10, 1975
290635	WESTBORO, VILLAGE (ATCHISON CO.)	JULY 11, 1975
290462A	WILLIAMSVILLE, CITY OF (WAYNE CO.)	OCTOBER 18, 1974 AND MARCH 05, 1976
290654A	WRIGHT CITY, CITY OF (WARREN COU)	FEBRUARY 07, 1975 AND NOVEMBER 14, 1975
290085A	WYACONDA, CITY OF (CLARK CO.)	OCTOBER 18, 1974 AND NOVEMBER 19, 1975
290033A	ZALMA, VILLAGE OF (BOLLINGER CO.)	OCTOBER 25, 1974 AND NOVEMBER 07, 1975

TOTAL IN THE STATE 154

* UNINCORPORATED AREAS ONLY

MONTANA

COMMUNITY NUMBER	NAME	HAZARD AREA IDENTIFIED
300089A	ALBERTON, TOWN (MINERAL CO)	JUNE 27, 1975
300046	BAINVILLE, TOWN (ROOSEVELT CO)	JANUARY 03, 1975
300090	BROCKTON, TOWN (ROOSEVELT CO)	JUNE 27, 1975
300107A	CASCADE, CITY OF (CASCADE)	FEBRUARY 14, 1975
300091	CLYDE PARK, TOWN (PARK CO)	JANUARY 03, 1975
300020	DENTON, TOWN OF (FERGUS CO.)	DECEMBER 27, 1974
300053	DODSON, TOWN OF (PHILLIPS CO.)	DECEMBER 27, 1974
300092	DUTTON, TOWN (TETON CO)	APRIL 25, 1975
300049A	FAIRVIEW, TOWN OF (RICHLAND CO.)	AUGUST 16, 1974 AND MAY 14, 1976
300070A	FORSYTH, CITY OF (ROSEBUD CO.)	MARCH 08, 1974 AND JANUARY 16, 1974
300013A	FORT BENTON, CITY OF (CHOUTEAU CO.)	MAY 10, 1974 AND NOVEMBER 28, 1975
300093	FROID, TOWN (ROOSEVELT CO)	APRIL 18, 1975
300081	GLASGOW, CITY OF (VALLEY CO.)	JANUARY 09, 1974
300021	GRASS RANGE, TOWN OF (FERGUS CO.)	DECEMBER 27, 1974
300095	HINGHAM, TOWN (HILL CO)	JULY 11, 1975
300006	JOLIET, TOWN OF (CARBON CO.)	DECEMBER 27, 1974
300116	JUDITH, TOWN (GARFIELD CO)	JUNE 27, 1975
300096	KEVIN, TOWN (TOOLE CO)	JUNE 27, 1975
300031	LAVINA, TOWN (GOLDEN VALLEY CO)	JANUARY 24, 1975
300100	MOORE, TOWN (FERGUS CO)	AUGUST 08, 1975
300079A	PLAINS, TOWN OF (SANDERS CO.)	MARCH 22, 1974 AND DECEMBER 19, 1975
300119	POLSON, CITY (LAKE CO)	SEPTEMBER 26, 1975
300122	RONAN, CITY (LAKE CO)	APRIL 25, 1975
300049	ROSEBUD COUNTY *	AUGUST 02, 1974
300124A	SCOBEY, CITY (DANIELS CO)	JULY 18, 1975
300126	SHERIDAN, TOWN (MADISON CO)	SEPTEMBER 19, 1975
300037A	STANFORD, TOWN OF (JUDITH BASIN CO.)	JUNE 28, 1974
300123	ST. IGNATIUS, TOWN OF (LAKE)	FEBRUARY 19, 1975
300127	SUNBURST, TOWN (TOOLE CO)	JANUARY 10, 1975
300128	SUPERIOR, TOWN (MINERAL CO)	MAY 02, 1975
300130	THOMPSON FALLS, TOWN OF (SANDERS COU)	FEBRUARY 07, 1975
300134	WALKERVILLE, CITY (SILVER BOW CO)	JULY 18, 1975
300104	WESTBY, TOWN (SHERIDAN CO)	AUGUST 15, 1975
300047A	WHITE SULPHUR SPRINGS, CITY OF (MEAGER CO.)	MAY 24, 1974 AND JANUARY 16, 1976
300052	WINNETT, TOWN OF (PETROLEUM CO.)	DECEMBER 27, 1974

TOTAL IN THE STATE 35

* UNINCORPORATED AREAS ONLY

NEBRASKA

COMMUNITY NUMBER	NAME	HAZARD AREA IDENTIFIED
310293	ALEXANDRIA, VILLAGE (THAYER CO.)	SEPTEMBER 12, 1975
310011	ALLIANCE, CITY (BOX BUTTE CO)	MARCH 12, 1976
310391	ARAPAHOE, CITY (FURNAS CO.)	JULY 28, 1975
310392	ARNOLD, VILLAGE (CUSTER CO.)	AUGUST 15, 1975
310004	ARTHUR, VILLAGE (ARTHUR CO)	JANUARY 10, 1975
310246	ASHTON, VILLAGE (SHERMAN CO.)	JULY 11, 1975
310247	AVOCA, VILLAGE (CASS CO.)	JULY 11, 1975
310248	BARTLEY, VILLAGE (RED WILLOW CO.)	JULY 25, 1975
310348	BEAVER CITY, CITY (FURNAS CO.)	JULY 11, 1975
310249	BELGRADE, VILLAGE (NANCE CO.)	MAY 02, 1975
310024	BELLWOOD, VILLAGE OF (BUTLER CO.)	NOVEMBER 22, 1974
310250	BENEDICT, VILLAGE (YORK CO.)	APRIL 18, 1975
310399	BENKELMAN, CITY (DUNDY CO.)	AUGUST 08, 1975
310044	BIG SPRINGS, VILLAGE OF (DEUEL CO.)	DECEMBER 20, 1974
310252	BLADEN, VILLAGE (WEBSTER CO.)	JULY 11, 1975
310253	BRUNING, VILLAGE OF (THAYER CO)	JANUARY 31, 1975
310169	BURCHARD, VILLAGE OF (PAWNEE CO.)	NOVEMBER 08, 1974
310161	BURR, VILLAGE OF (OTOE CO.)	DECEMBER 06, 1974
310256	BUSHNELL, VILLAGE (KIMBALL CO.)	MARCH 26, 1976
310358	CALLAWAY, VILLAGE (CUSTER CO.)	SEPTEMBER 19, 1975
310254	CAMPBELL, VILLAGE (FRANKLIN CO.)	AUGUST 22, 1975
310257	CARROLL, VILLAGE OF (WAYNE CO)	JANUARY 31, 1975
310258	CEDAR RAPIDS, VILLAGE (BOONE CO.)	JANUARY 10, 1975
310260	CHAPMAN, VILLAGE (MERRICK CO.)	MARCH 26, 1976
310359	CLARKSON, CITY (COLFAX CO.)	JANUARY 17, 1975
310040A	CLAY CENTER, CITY OF (CLAY CO.)	MARCH 22, 1974
310263	COOY, VILLAGE (CHERRY CO.)	MARCH 26, 1976
310123A	COOK, VILLAGE OF (JOHNSON CO.)	OCTOBER 18, 1974 AND NOVEMBER 28, 1975
310267	DAVENPORT, VILLAGE (THAYER CO.)	JULY 11, 1975
310268	DAWSON, VILLAGE (RICHARDSON CO.)	JULY 11, 1975
310041	DEWEESE, VILLAGE OF (CLAY CO.)	NOVEMBER 08, 1974
310269	DILLER, VILLAGE (JEFFERSON CO.)	AUGUST 29, 1975
310270	DIX, VILLAGE (KIMBALL CO.)	SEPTEMBER 26, 1975
310363	DODGE, VILLAGE (DODGE CO.)	AUGUST 15, 1975
310271	DORCHESTER, VILLAGE (SALINE CO.)	MARCH 26, 1976
310007	DUNNING, VILLAGE OF (BLAINE CO.)	DECEMBER 20, 1974
310273	ORIENT, VILLAGE (BUTLER CO.)	JULY 18, 1975
310040A	EDDYVILLE, VILLAGE OF (DAWSON CO.)	NOVEMBER 29, 1974 AND OCTOBER 22, 1976
310126A	ELK CREEK, VILLAGE OF (JOHNSON CO.)	NOVEMBER 01, 1974 AND NOVEMBER 21, 1975
310369	ELMWOOD, VILLAGE (CASS CO.)	AUGUST 29, 1975
310368	ELWOOD, VILLAGE (GOSPER CO.)	SEPTEMBER 05, 1975
310276	EUSTIS, VILLAGE (FRONTIER CO.)	SEPTEMBER 19, 1975
310119A	ERING, VILLAGE OF (HOLT CO.)	MAY 03, 1974 AND MAY 14, 1976
310277	FAIRFIELD, CITY (CLAY CO.)	AUGUST 22, 1975
310061A	FARNAM, VILLAGE OF (DAWSON CO.)	NOVEMBER 08, 1974 AND

* UNINCORPORATED AREAS ONLY

NEBRASKA

COMMUNITY NUMBER	NAME	HAZARD AREA IDENTIFIED
310278	GILTNER, VILLAGE (HAMILTON CO.)	DECEMBER 08, 1975
310279	GLENVIL, VILLAGE (CLAY CO.)	APRIL 25, 1975
310373	GREELEY, VILLAGE (GREELEY CO.)	JULY 18, 1975
310374	GREENWOOD, VILLAGE (CASS CO.)	JULY 11, 1975
310280	GURLEY, VILLAGE (CHEYENNE CO.)	SEPTEMBER 26, 1975
310281	HAIGLER, VILLAGE (DUNDY CO.)	JULY 18, 1975
310376	HARTINGTON, CITY (CEDAR CO.)	AUGUST 15, 1975
310213A	HAY SPRINGS, CITY OF (SHERIDAN CO9)	SEPTEMBER 26, 1975
310377A	HEMINGFORD, VILLAGE (BOX BUTTE CO.)	MARCH 22, 1974 AND NOVEMBER 07, 1975
310287	HOLBROOK, VILLAGE (FURNAS CO.)	AUGUST 08, 1975
310288	HOLSTEIN, VILLAGE (ADAMS CO.)	JULY 11, 1975
310380	HORELLS, VILLAGE (COLFAX CO.)	JULY 18, 1975
310381A	HUMPHREY, VILLAGE (PLATTE CO.)	JANUARY 17, 1975
310292	JACKSON, VILLAGE OF (DAKOTA CO.)	JULY 11, 1975 AND OCTOBER 03, 1975
310293	JUNIATA, VILLAGE (ADAMS CO.)	DECEMBER 20, 1974
310097	LERELLEN, VILLAGE (GARDEN CO)	JANUARY 17, 1975
310177A	LINDSAY, VILLAGE OF (PLATTE CO.)	JANUARY 10, 1975
310296	LONG PINE, CITY (BROWN CO.)	NOVEMBER 08, 1974 AND DECEMBER 05, 1975
310387	LYMAN, VILLAGE (SCOTTS BLUFF CO.)	AUGUST 08, 1975
310088	MAYWOOD, VILLAGE OF (FRONTIER CO.)	APRIL 25, 1975
310302	MERNA, VILLAGE (CUSTER CO.)	DECEMBER 20, 1974
310304	MONROE, VILLAGE OF (PLATTE CO.)	MAY 02, 1975
310391	MORRILL, VILLAGE (SCOTTS BLUFF CO.)	AUGUST 29, 1975
310156A	NEMAHA, VILLAGE OF (NEMAHA CO.)	AUGUST 15, 1975
310070A	NICKERSON, TOWN OF (DODGE CO.)	AUGUST 30, 1974 AND MAY 14, 1976
310469	OAK, VILLAGE OF (NUCKOLLS CO.)	JANUARY 23, 1974
310081	ONIONA, VILLAGE OF (FILLMORE CO.)	NOVEMBER 15, 1974
310099	ONG, VILLAGE OF (CLAY CO.)	NOVEMBER 08, 1974
310396	OXFORD, VILLAGE (FURNAS-HARLAN CO.)	NOVEMBER 08, 1974
310307	PALMER, VILLAGE (MERRICK CO.)	MAY 02, 1975
310166A	PALMYRA, VILLAGE OF (OTOE CO.)	JUNE 27, 1975
310216	PILGER, VILLAGE OF (STANTON CO.)	SEPTEMBER 04, 1974 AND DECEMBER 26, 1975
310309	PLEASANT DALE, VILLAGE (SEWARD CO.)	DECEMBER 06, 1974
310310	POLK, VILLAGE (POLK CO.)	JULY 11, 1975
310067A	PONCA, CITY OF (DIXON CO.)	JUNE 27, 1975
310202A	PRAGUE, VILLAGE OF (SAUNDERS CO.)	APRIL 12, 1974 AND JANUARY 23, 1976
310397	RANDOLPH, CITY (CEDAR CO.)	NOVEMBER 15, 1974 AND DECEMBER 26, 1975
310138A	RAYMOND, VILLAGE OF (LANCASTER CO.)	APRIL 25, 1975
310312	RISING CITY, VILLAGE (BUTLER CO.)	OCTOBER 18, 1974 AND DECEMBER 12, 1975
310139	ROCA, VILLAGE OF (LANCASTER CO.)	JULY 11, 1975
		NOVEMBER 29, 1974

• UNINCORPORATED AREAS ONLY

NEBRASKA

COMMUNITY NUMBER	NAME	HAZARD AREA IDENTIFIED
310313	ROSALIE, VILLAGE OF (THURSTON CO.)	APRIL 26, 1976
310314	ROSELAND, VILLAGE OF (ADAMS CO.)	JULY 18, 1975
310214A	RUSHVILLE, CITY OF (SHERIDAN CO.)	MAY 03, 1974 AND APRIL 02, 1976
310315	RUSKIN, VILLAGE OF (NUCKOLLS CO)	JANUARY 31, 1975
310316	SCOTIA, VILLAGE OF (GREELEY CO.)	MAY 02, 1975
310317	SHICKLEY, VILLAGE OF (FILLMORE CO.)	MAY 02, 1975
310318	SHUBERT, VILLAGE OF (RICHARDSON CO.)	JULY 18, 1975
310398	SPALDING, VILLAGE OF (GREELEY CO.)	JANUARY 10, 1975
310320	SPRINGVIEW, VILLAGE OF (KEYA PAHA CO.)	JULY 11, 1975
310322	STAPLEHURST, VILLAGE OF (SEWARD CO.)	JANUARY 10, 1975
310323	STAPLETON, VILLAGE OF (LOGAN CO)	FEBRUARY 21, 1975
310121	STEINAUER, VILLAGE OF (PAWNEE CO.)	NOVEMBER 22, 1974
310324	STELLA, VILLAGE OF (RICHARDSON CO.)	JULY 11, 1975
310104	STOCKHAM, VILLAGE OF (HAMILTON CO.)	DECEMBER 06, 1974
310172	TABLE ROCK, VILLAGE OF (PAWNEE CO.)	NOVEMBER 01, 1974
310324	THEDFORD, VILLAGE OF (THOMAS CO.)	JULY 11, 1975
310328	UPLAND, VILLAGE OF (FRANKLIN CO.)	JULY 11, 1975
310903	VALENTINE, CITY OF (CHERRY CO.)	JULY 11, 1975
310330	VERDON, VILLAGE OF (RICHARDSON CO.)	SEPTEMBER 24, 1975
310331	WACO, VILLAGE OF (YORK CO.)	MAY 02, 1975
310904	WAKEFIELD, CITY OF (DIXON-WAYNE COS.)	AUGUST 29, 1975
310332	WALLACE, VILLAGE OF (LINCOLN CO.)	JULY 25, 1975
310905	WAUSA, VILLAGE OF (KNOX CO.)	AUGUST 08, 1975
310205A	WESTON, VILLAGE OF (SAUNDERS CO.)	OCTOBER 18, 1974 AND FEBRUARY 20, 1976
310336	WINSIDE, VILLAGE OF (WAYNE CO.)	JULY 18, 1975
310049A	WISNER, TOWN OF (CUMING CO.)	DECEMBER 07, 1973 AND SEPTEMBER 03, 1976
310337	WYNOT, VILLAGE OF (CEDAR CO.)	APRIL 28, 1975

TOTAL IN THE STATE 112

• UNINCORPORATED AREAS ONLY

NEW HAMPSHIRE

COMMUNITY NUMBER	NAME	HAZARD AREA IDENTIFIED
330152	ACWORTH, TOWN OF (SULLIVAN CO.)	SEPTEMBER 13, 1974
330179	ALBANY, TOWN OF (CARROLL CO)	JANUARY 17, 1975
330041	ALEXANDRIA, TOWN OF (GRAFTON CO)	FEBRUARY 21, 1975
330175	ATKINSON, TOWN OF (ROCKINGHAM CO)	JANUARY 03, 1975
330176	AUBURN, TOWN OF (ROCKINGHAM CO)	FEBRUARY 28, 1975
330177	BARNSTEAD, TOWN OF (BELKNAP CO)	JANUARY 03, 1975
330180	BROOKLINE, TOWN OF (HILLSBOROUGH CO)	APRIL 04, 1975
330124A	CANDIA, TOWN OF (ROCKINGHAM CO)	FEBRUARY 21, 1975 AND NOVEMBER 19, 1976
330030A	CARROLL, TOWN OF (COOS CO)	JANUARY 24, 1975 AND NOVEMBER 12, 1976
330181A	CHATHAM, TOWN OF (CARROLL CO)	JANUARY 03, 1975 AND DECEMBER 10, 1976
330182	CHESTER, TOWN OF (ROCKINGHAM CO)	FEBRUARY 21, 1975
330109A	CHICHESTER, TOWN OF (MERRIMACK CO.)	APRIL 05, 1974 AND DECEMBER 24, 1976
330184	CLARKSVILLE, TOWN OF (COOS CO)	JANUARY 03, 1975
330185	COLUMBIA, TOWN OF (COOS CO)	JANUARY 03, 1975
330156	CROYDON, TOWN OF (SULLIVAN CO.)	NOVEMBER 29, 1974
330199	DANVILLE, TOWN OF (ROCKINGHAM CO)	JANUARY 17, 1975
330050	DORCHESTER, TOWN OF (GRAFTON CO)	MARCH 14, 1975
330201	DUMMER, TOWN OF (COOS CO)	JANUARY 17, 1975
330202	DUNBARTON, TOWN OF (MERRIMACK CO)	JANUARY 17, 1975
330204A	EATON, TOWN OF (CARROLL CO)	JANUARY 17, 1975 AND OCTOBER 01, 1976
330012	EFFINGHAM, TOWN OF (CARROL CO.)	JANUARY 17, 1975
330206	ERROL, TOWN OF (COOS CO)	JANUARY 17, 1978
330013A	FREEDOM, TOWN OF (CARROLL CO.)	AUGUST 30, 1974 AND AUGUST 13, 1976
330131A	FREMONT, TOWN OF (ROCKINGHAM CO.)	AUGUST 09, 1974 AND OCTOBER 29, 1976
330208	GILMANTON, TOWN OF (BELKNAP CO.)	JANUARY 17, 1975
330064	GRAFTON, TOWN OF (GRAFTON CO)	JANUARY 17, 1975
330209	GREENFIELD, TOWN OF (HILLSBOROUGH CO)	APRIL 04, 1975
330212	HARRISVILLE, TOWN OF (CHESHIRE CO)	JANUARY 24, 1975
330119	HENNIKER, TOWN OF (MERRIMACK CO.)	MARCH 18, 1975
330092A	HUDSON, TOWN OF (HILLSBOROUGH CO.)	MARCH 08, 1974 AND OCTOBER 01, 1976
330216	JAFFREY, TOWN OF (CHESHIRE CO)	JANUARY 24, 1975
330033A	JEFFERSON, TOWN OF (COOS CO)	FEBRUARY 21, 1975 AND SEPTEMBER 10, 1976
330217	KINGSTON, TOWN OF (ROCKINGHAM CO)	JANUARY 17, 1975
330040A	LANDAFF, TOWN OF (GRAFTON CO.)	DECEMBER 06, 1974 AND NOVEMBER 19, 1976
330159	LANGDON, TOWN OF (SULLIVAN CO)	JANUARY 03, 1975
330140	LEMPSTER, TOWN OF (SULLIVAN CO.)	JANUARY 31, 1975
330062	LINCOLN, TOWN OF (GRAFTON CO)	FEBRUARY 21, 1975
330137	LOUDON, TOWN OF (MERRIMACK CO.)	AUGUST 02, 1974
330218	LYNDEBOROUGH, TOWN OF (HILLSBOROUGH CO)	FEBRUARY 21, 1975

• UNINCORPORATED AREAS ONLY

NEW HAMPSHIRE

COMMUNITY NUMBER	NAME	HAZARD AREA IDENTIFIED
330219	MADBURY, TOWN OF (STRAFFORD CO)	JANUARY 17, 1975
330220	MADISON, TOWN OF (CARROLL CO)	JANUARY 17, 1975
330221	MASON, TOWN OF (HILLSBOROUGH CO)	FEBRUARY 21, 1975
330222	MIDDLETON, TOWN OF (STRAFFORD CO.)	JANUARY 31, 1975
330035	MILAN, TOWN OF (COOS CO)	JUNE 28, 1974
330149	MILTON, TOWN OF (STRAFFORD COU)	FEBRUARY 07, 1975
330068	MONROE, TOWN OF (GRAFTON CO.)	NOVEMBER 29, 1974
330224	MOUNT VERNON, TOWN OF (HILLSBOROUGH CO)	JANUARY 17, 1975
330227A	NEW DURHAM, TOWN OF (STRAFFORD COU)	JANUARY 07, 1975 AND DECEMBER 10, 1976
330228A	NEWFIELDS, TOWN OF (ROCKINGHAM CO)	MARCH 12, 1976
330229	NEWINGTON, TOWN OF (ROCKINGHAM CO)	FEBRUARY 21, 1975
330137A	NOTTINGHAM, TOWN OF (ROCKINGHAM CO)	JUNE 28, 1974 AND NOVEMBER 19, 1976
330069	ORANGE, TOWN OF (GRAFTON CO)	JANUARY 10, 1975
330108	PITTSBURG, TOWN OF (COOS CO.)	JANUARY 31, 1975
330107	RANDOLPH, TOWN OF (COOS CO)	JANUARY 03, 1975
330188	RICHMOND, TOWN OF (CHESHIRE CO)	JANUARY 03, 1975
330189	RINDGE, TOWN OF (CHESHIRE CO)	APRIL 09, 1975
330190	ROLLINSFORD, TOWN OF (STRAFFORD CO)	JANUARY 03, 1975
330172	ROXBURY, TOWN OF (CHESHIRE)	FEBRUARY 14, 1975
330073	RUMNEY, TOWN OF (GRAFTON CO.)	MARCH 18, 1974
330191	SANDOWN, TOWN OF (ROCKINGHAM CO)	JANUARY 03, 1975
330193A	SEABROOK, TOWN OF (ROCKINGHAM CO.)	AUGUST 02, 1974 AND NOVEMBER 26, 1976
330193	SOUTH HAMPTON, TOWN OF (ROCKINGHAM CO)	FEBRUARY 28, 1975
330194	STEWARTSTOWN, TOWN OF (COOS CO)	JANUARY 10, 1975
330195	STODDARD, TOWN OF (CHESHIRE CO)	JANUARY 17, 1975
330197	STRATHAM, TOWN OF (ROCKINGHAM CO)	FEBRUARY 28, 1975
330170A	SURRY, TOWN OF (CHESHIRE CO)	JANUARY 03, 1975 AND SEPTEMBER 03, 1976
330173A	TROY, TOWN OF (CHESHIRE CO)	JANUARY 03, 1975 AND JULY 23, 1976
330165A	UNITY, TOWN OF (SULLIVAN CO.)	MAY 31, 1974 AND NOVEMBER 26, 1976
330160	WARREN, TOWN OF (GRAFTON CO.)	SEPTEMBER 13, 1974
330144A	WASHINGTON, TOWN OF (SULLIVAN CO.)	DECEMBER 27, 1974 AND AUGUST 27, 1976
330235	WEARE, TOWN OF (HILLSBOROUGH)	FEBRUARY 14, 1975
330090A	WHITEFIELD, TOWN OF (COOS CO.)	JULY 24, 1974 AND NOVEMBER 26, 1976
330134A	WILMOT, TOWN OF (MERRIMACK CO.)	AUGUST 16, 1974 AND NOVEMBER 19, 1976

TOTAL IN THE STATE 73

• UNINCORPORATED AREAS ONLY

NEW JERSEY

COMMUNITY NUMBER	NAME	HAZARD AREA IDENTIFIED
340122A	AUDUBON PARK, BOROUGH OF (CAMDEN CO.)	JUNE 21, 1974
340329A	GREEN, TOWNSHIP OF (SUSSEX CO.)	NOVEMBER 21, 1974 AND MAY 14, 1976
340395A	KINNELON, BOROUGH OF (MORRIS CO.)	JULY 13, 1973
340540	MENDHAM, BOROUGH OF (MORRIS CO.)	JANUARY 31, 1975
340213A	SOUTH HARRISON, TOWNSHIP OF (GLOUCESTER CO)	JUNE 28, 1974 AND JULY 02, 1976
340633	TABERNACLE, TOWNSHIP OF (BURLINGTON COU)	FEBRUARY 07, 1975
340599	TAVISTOCK, BOROUGH OF (CAMDEN CO.)	NOVEMBER 29, 1974
340979B	WINFIELD, TOWNSHIP OF (UNION CO.)	MARCH 08, 1974 AND OCTOBER 17, 1975

TOTAL IN THE STATE 8

* UNINCORPORATED AREAS ONLY

NEW MEXICO

COMMUNITY NUMBER	NAME	HAZARD AREA IDENTIFIED	
350110	CARRIZOZO, TOWN (LINCOLN CO)	AUGUST	22, 1975
350050A	CHAMA, VILLAGE OF (RIO ARRIBA CO.)	AUGUST	16, 1974 AND
		DECEMBER	13, 1974
350111	CLOUDCROFT, VILLAGE (OTERO CO)	JUNE	27, 1975
350037	COLUMBUS, VILLAGE OF (LUNA CO.)	DECEMBER	13, 1974
350100	DES MOINES, VILLAGE (UNION CO)	JULY	11, 1975
350112A	DEXTER, TOWN (CHAVES CO)	MAY	02, 1975 AND
		SEPTEMBER	17, 1976
350114	LOVING, VILLAGE (EDDY CO)	AUGUST	08, 1975
350076A	MAGDALENA, VILLAGE OF (SOCORRO CO.)	AUGUST	02, 1974 AND
		FEBRUARY	20, 1976
350106	MAXWELL, VILLAGE (COLFAX CO)	SEPTEMBER	19, 1975
350115A	MELROSE, VILLAGE (CURRY CO)	JULY	25, 1975 AND
		NOVEMBER	28, 1975
350097	PECOS, VILLAGE OF (SAN MIGUEL CO.)	JUNE	27, 1975
350116	QUESTA, VILLAGE (TAOS CO)	JANUARY	17, 1975
350032A	TATUM, TOWN OF (LEA CO.)	JUNE	21, 1974 AND
		JANUARY	16, 1976
350117	TEXICO, TOWN (CURRY CO)	AUGUST	29, 1975
350109	WILLARD, VILLAGE (TORRANCE CO)	SEPTEMBER	06, 1975
	TOTAL IN THE STATE	15	

* UNINCORPORATED AREAS ONLY

NEW YORK

COMMUNITY NUMBER	NAME	HAZARD AREA IDENTIFIED	
360324B	ADAMS, TOWN OF (JEFFERSON CO.)	MAY	31, 1974 AND
		MAY	07, 1976 AND
		OCTOBER	15, 1976
361341	ALLEN, TOWN OF (ALLEGHANY CO.)	JANUARY	31, 1975
361240	AMBOY, TOWN OF (OSWEGO CO.)	NOVEMBER	15, 1974
361385	AUSTERLITZ, TOWN OF (COLUMBIA CO.)	DECEMBER	27, 1974
360518A	AVA, TOWN OF (ONEIDA CO.)	JUNE	28, 1974 AND
		SEPTEMBER	10, 1976
361064A	BALDWIN, TOWN OF (CHEMUNG CO.)	MAY	31, 1974
361094A	BELFAST, TOWN OF (ALLEGANY CO.)	OCTOBER	18, 1974 AND
		JULY	16, 1976
361392	BELLMONT, TOWN (FRANKLIN CO)	JANUARY	17, 1975
361362	BIRDSALL, TOWN (ALLEGANY CO)	JANUARY	03, 1975
361127A	BLEECKER, TOWN OF (FULTON CO.)	NOVEMBER	22, 1974 AND
		NOVEMBER	14, 1975
361415	BOYLSTON, TOWN (OSWEGO CO)	JANUARY	03, 1975
361207A	BRADFORD, TOWN OF (STEUBEN CO.)	DECEMBER	13, 1974 AND
		FEBRUARY	27, 1976
360521A	BRIDGEWATER, TOWN OF (ONEIDA CO.)	SEPTEMBER	06, 1974 AND
		JULY	16, 1976
361128A	BROADALBIN, TOWN OF (FULTON CO.)	SEPTEMBER	20, 1974 AND
		AUGUST	06, 1976
361480	BRUSHTON, VILLAGE OF (FRANKLIN CO.)	NOVEMBER	15, 1974
361416	BURLINGTON, TOWN OF (OTSEGO CO.)	NOVEMBER	22, 1974
361098	BURNS, TOWN OF (ALLEGANY CO.)	NOVEMBER	08, 1974
361496	BUTLER, TOWN OF (WAYNE CO.)	NOVEMBER	29, 1974
361247A	BUTTERNUTS, TOWN OF (OTSEGO CO.)	DECEMBER	13, 1974 AND
		JUNE	25, 1976
361208	CAMERON, TOWN (STEUBEN CO)	JANUARY	10, 1975
361129A	CAROGA, TOWN OF (FULTON CO.)	NOVEMBER	08, 1974 AND
		JUNE	25, 1976
360043A	CARROLLTON, TOWN OF (CATTARAUGUS CO.)	SEPTEMBER	20, 1974 AND
		MAY	07, 1976
361843	CASTILE, VILLAGE OF (WYOMING CO)	FEBRUARY	25, 1975
360328C	CHAMPION, TOWN OF (JEFFERSON COU)	MAY	31, 1974 AND
		FEBRUARY	07, 1975
360494A	CHARLESTON, TOWN OF (MONTGOMERY CO.)	JULY	26, 1974 AND
		MAY	28, 1976
360136A	CHERRY CREEK, VILLAGE OF (CHAUTAUQUA CO.)	MAY	10, 1974 AND
		SEPTEMBER	10, 1976
360244A	CHESTERFIELD, TOWN OF (ESSEX CO.)	SEPTEMBER	06, 1974 AND
		AUGUST	13, 1976
360409	CHESTER, TOWN OF (WARREN CO.)	FEBRUARY	06, 1976
361264A	CLARENDON, TOWN OF (ORLEANS CO)	MARCH	28, 1975 AND
		OCTOBER	15, 1976
360524A	CLAYVILLE, VILLAGE OF (ONEIDA CO.)	MAY	24, 1974 AND
		JULY	30, 1976
361380	CLINTON, TOWN (CLINTON CO)	JANUARY	24, 1975
360743A	COBLESKILL, VILLAGE OF (SCHOHARIE CO.)	JUNE	07, 1974 AND

* UNINCORPORATED AREAS ONLY

NEW YORK

COMMUNITY NUMBER	NAME	HAZARD AREA IDENTIFIED	
360049A	COLD SPRING, TOWN OF (CATTARAUGUS CO.)	SEPTEMBER	12, 1975
		JUNE	21, 1974 AND
		JUNE	28, 1976
360108A	CONQUEST, TOWN OF (CAYUGA CO.)	AUGUST	16, 1974 AND
		SEPTEMBER	12, 1975
360360A	CONSTABLEVILLE, VILLAGE OF (LEWIS CO.)	AUGUST	09, 1974 AND
		MAY	28, 1976
361441	CORTLAND, CITY OF (CORTLAND CO.)	FEBRUARY	14, 1975
361384	CUYLER, TOWN OF (CORTLAN CO)	FEBRUARY	28, 1975
361381	DANNEMORA, TOWN OF (CLINTON COU)	FEBRUARY	07, 1975
361209	DANBVILLE, TOWN (STEUBEN CO)	JANUARY	24, 1975
360300A	DANUBE, TOWN OF (HERKIMER CO.)	APRIL	08, 1974 AND
		JUNE	18, 1976
361368	DELEVAN, VILLAGE (CATTARAUGUS CO)	JANUARY	03, 1975
360369A	DIANA, TOWN OF (LEWIS CO.)	SEPTEMBER	13, 1974 AND
		JUNE	11, 1976
361122A	DICKINSON, TOWN OF (FRANKLIN CO.)	NOVEMBER	08, 1974 AND
		JANUARY	09, 1976
361910	DRESDEN, TOWN OF (WASHINGTON CO.)	FEBRUARY	14, 1975
361176A	EDWARDS, TOWN (ST. LAWRENCE CO)	JANUARY	24, 1975 AND
		FEBRUARY	06, 1976
361963A	EDWARDS, VILLAGE OF (ST. LAWRENCE CO.)	NOVEMBER	15, 1974 AND
		FEBRUARY	06, 1976
361999	ELBA, VILLAGE (GENESEE CO)	JANUARY	24, 1975
361991	ELIZABETHTOWN, VILLAGE (ESSEX CO)	JANUARY	24, 1975
361382	ELLENBURG, TOWN (CLINTON CO)	MARCH	14, 1975
361074A	ELLINGTON, TOWN OF (CHAUTAUQUA CO.)	OCTOBER	28, 1974 AND
		JULY	09, 1976
361379	ERIN, TOWN (CHEMUNG CO)	JANUARY	10, 1975
361149	ESSEX, TOWN OF (ESSEX CO.)	DECEMBER	20, 1974
361918	EXETER, TOWN (OTSEGO CO)	JANUARY	10, 1975
360071A	FARMERSVILLE, TOWN OF (CATTARAUGUS CO.)	JUNE	28, 1974 AND
		JUNE	11, 1976
360073A	FRANKLINVILLE, VILLAGE OF (CATTARAUGUS CO.)	MAY	31, 1974
361397	FRANKLIN, TOWN (FRANKLIN CO)	JULY	18, 1975
361325	FREETOWN, TOWN (CORTLAND CO)	JANUARY	17, 1975
361198A	FULTON, TOWN OF (SCHOHARIE CO.)	NOVEMBER	08, 1974 AND
		JANUARY	30, 1976
361861	GALWAY, VILLAGE OF (SARATOGA CO.)	JANUARY	31, 1975
361101	GENESEE, TOWN OF (ALLEGANY CO.)	DECEMBER	13, 1974
361452A	GENESEO, VILLAGE OF (LIVINGSTON CO.)	NOVEMBER	15, 1974 AND
		NOVEMBER	14, 1975
360111A	GENOA, TOWN OF (CAYUGA CO.)	JUNE	28, 1974 AND
		JUNE	18, 1976
361298	GLEN, TOWN (MONTGOMERY CO)	JANUARY	17, 1975
361178	GOUVERNEUR, TOWN (ST. LAWRENCE CO)	JANUARY	24, 1975
360169A	GREENE, VILLAGE OF (CHENANGO CO.)	FEBRUARY	20, 1974 AND
		MAY	21, 1976
361210	GREENWOOD, TOWN (STEUBEN CO)	JANUARY	03, 1975

* UNINCORPORATED AREAS ONLY

NEW YORK

COMMUNITY NUMBER	NAME	HAZARD AREA IDENTIFIED	
361481A	HARRISVILLE, VILLAGE OF (LEWIS CO.)	NOVEMBER	15, 1974 AND
		MAY	28, 1976
361239	HARTFORD, TOWN OF (WASHINGTON CO.)	DECEMBER	27, 1974
361271A	HARTWICK, TOWN OF (OTSEGO CO.)	OCTOBER	25, 1974 AND
		JULY	09, 1976
361613A	HEAD OF THE HARBOR, VILLAGE OF (SUFFOLK CO.)	NOVEMBER	15, 1974 AND
		JULY	02, 1976
361179	HOPKINTON, TOWN OF (ST. LAWRENCE CO.)	NOVEMBER	15, 1974
361434	HOWARD, TOWN OF (STEUBEN CO.)	DECEMBER	27, 1974
360078A	HUMPHREY, TOWN OF (CATTARAUGUS CO.)	AUGUST	30, 1974 AND
		JULY	16, 1976
361008A	INDEPENDENCE, TOWN OF (ALLEGANY CO.)	SEPTEMBER	06, 1974 AND
		JUNE	11, 1976
360079A	ISCHUA, TOWN OF (CATTARAUGUS CO.)	MAY	31, 1974 AND
		MAY	21, 1976
360958A	ITALY, TOWN OF (YATES CO.)	JUNE	28, 1974 AND
		AUGUST	20, 1976
361213A	JASPER, TOWN OF (STEUBEN CO.)	NOVEMBER	01, 1974 AND
		JULY	02, 1976
361131	JOHNSTOWN, TOWN OF (FULTON CO.)	OCTOBER	28, 1974
360266A	KEESEVILLE, VILLAGE OF (ESSEX CO.)	MAY	31, 1974 AND
		MAY	21, 1976
361358A	LACONA, VILLAGE OF (OSWEGO CO.)	NOVEMBER	22, 1974 AND
		JUNE	18, 1976
361919	LAURENS, TOWN (OTSEGO CO)	JANUARY	03, 1975
361285A	LEICESTER, TOWN OF (LIVINGSTON CO.)	OCTOBER	18, 1974 AND
		AUGUST	20, 1976
361986	LEICESTER, VILLAGE (LIVINGSTON CO)	JANUARY	10, 1975
360080A	LEON, TOWN OF (CATTARAUGUS CO.)	MAY	31, 1974 AND
		JUNE	18, 1976
361152	LEWIS, TOWN OF (ESSEX CO.)	NOVEMBER	29, 1974
360360A	LEWIS, TOWN OF (LEWIS CO.)	JUNE	28, 1974 AND
		JULY	09, 1976
361957A	LIMA, VILLAGE (LIVINGSTON CO)	JANUARY	16, 1976
360309A	LITCHFIELD, TOWN OF (HERKIMER CO.)	MARCH	18, 1974 AND
		APRIL	09, 1976
361958	LIVONIA, VILLAGE (LIVINGSTON CO)	JANUARY	10, 1975
361830A	LODI, VILLAGE OF (SENECA CO)	FEBRUARY	20, 1976 AND
		JANUARY	16, 1976
361404	LONG LAKE, TOWN (HAMILTON CO)	JULY	28, 1975
360083A	LYNDON, TOWN OF (CATTARAUGUS CO.)	AUGUST	09, 1974
360371A	LYONSDALE, TOWN OF (LEWIS CO.)	AUGUST	16, 1974 AND
		JULY	16, 1976
360084A	MACHIAS, TOWN OF (CATTARAUGUS CO.)	OCTOBER	18, 1974 AND
		AUGUST	27, 1976
361132	MAYFIELD, TOWN (FULTON CO)	JANUARY	17, 1975
361357	MILFORD, VILLAGE (OTSEGO CO)	JANUARY	10, 1975
361153A	MINERVA, TOWN OF (ESSEX CO.)	DECEMBER	20, 1974 AND
		JULY	09, 1976

* UNINCORPORATED AREAS ONLY

NEW YORK

COMMUNITY NUMBER	NAME	HAZARD AREA IDENTIFIED	
361126	MOIRA, TOWN OF (FRANKLIN CO.)	NOVEMBER	16, 1979
361383	MOORES, TOWN OF (CLINTON)	FEBRUARY	14, 1975
361988	MOORES, VILLAGE OF(CLINTON CO)	JANUARY	03, 1975
360117A	MORAVIA, TOWN OF (CAYUGA CO.)	JUNE	19, 1979 AND
		JUNE	18, 1976
361389	MORIAH, TOWN OF (ESSEX CO.)	NOVEMBER	22, 1979
360704A	MORRISTOWN, TOWN OF (ST. LAWRENCE CO.)	SEPTEMBER	06, 1979 AND
		JULY	16, 1976
361363A	MORRIS, VILLAGE OF (OTSEGO CO.)	NOVEMBER	15, 1979 AND
		MAY	28, 1976
360088A	NAPOLI, TOWN OF (CATTARAUGUS CO.)	JUNE	19, 1979 AND
		JANUARY	02, 1976
361166	NASSAU, TOWN OF (RENSSELAER CO.)	NOVEMBER	22, 1979
360675B	NASSAU, VILLAGE OF (RENSSELAER CO.)	MARCH	22, 1979 AND
		MARCH	08, 1976 AND
		AUGUST	27, 1976
361920	NEW LISBON, TOWN OF (OTSEGO CO.)	JANUARY	31, 1975
361169	NORTH GREENBUSH, TOWN OF (RENSSELAER CO.)	OCTOBER	03, 1975
361900A	NORTHAMPTON, TOWN OF (FULTON CO.)	JANUARY	31, 1975 AND
		AUGUST	06, 1976
361908	OHIO, TOWN (HERKIMER CO)	JANUARY	03, 1975
361139A	OPPENHEIM, TOWN OF (FULTON CO.)	NOVEMBER	08, 1979 AND
		JUNE	18, 1976
361354A	ORISKANY FALLS, VILLAGE OF (ONEIDA CO.)	NOVEMBER	22, 1979 AND
		JUNE	18, 1976
360090A	OTTO, TOWN OF (CATTARAUGUS CO.)	MAY	31, 1979 AND
		SEPTEMBER	19, 1975
361913	PALATINE, TOWN OF (MONTGOMERY CO.)	NOVEMBER	29, 1979
361263	PALERMO, TOWN OF (OSWEGO COU)	FEBRUARY	07, 1978
361926	PARISHVILLE, TOWN (ST. LAWRENCE CO)	JANUARY	17, 1975
360996A	PERRY, TOWN OF (WYOMING CO.)	JUNE	28, 1979 AND
		MAY	07, 1976
361926	PIERCEFIELD, TOWN OF (ST. LAWRENCE CO.)	JANUARY	31, 1975
360376A	PINCKNEY, TOWN OF (LEWIS CO.)	SEPTEMBER	06, 1979
361277	PITTSFIELD, TOWN OF (OTSEGO CO.)	OCTOBER	25, 1974
361278	PLAINFIELD, TOWN OF (OTSEGO CO.)	NOVEMBER	08, 1979
361029A	PORTAGE, TOWN OF (LIVINGSTON CO.)	AUGUST	16, 1979 AND
		JUNE	18, 1976
361364A	PROSPECT, VILLAGE OF (ONEIDA CO.)	NOVEMBER	15, 1979
361190A	PROVIDENCE, TOWN OF (SARATOGA CO.)	NOVEMBER	15, 1979 AND
		AUGUST	06, 1976
360761A	RATHBONE, TOWN OF (STEUBEN CO.)	AUGUST	02, 1979 AND
		SEPTEMBER	17, 1976
361548	RED CREEK, VILLAGE (WAYNE CO)	JANUARY	10, 1975
361366	RED HOUSE, TOWN OF (CATTARAUGUS CO)	FEBRUARY	28, 1975
361265	REDFIELD, TOWN OF (OSWEGO CO.)	NOVEMBER	22, 1979
360019A	RENSSELAERVILLE, TOWN OF (ALBANY CO.)	DECEMBER	06, 1979 AND

* UNINCORPORATED AREAS ONLY

NEW YORK

COMMUNITY NUMBER	NAME	HAZARD AREA IDENTIFIED	
		SEPTEMBER	03, 1976
361279	RICHFIELD, TOWN OF (OTSEGO CO.)	OCTOBER	18, 1974
361967	RICHVILLE, VILLAGE (ST. LAWRENCE CO)	JANUARY	10, 1975
361186A	ROSSIE, TOWN OF (ST. LAWRENCE CO.)	NOVEMBER	01, 1979 AND
		MARCH	26, 1976
361928	RUSSEL, TOWN OF (ST. LAWRENCE)	FEBRUARY	19, 1976
361121A	RUSSIA, TOWN OF (HERKIMER CO.)	NOVEMBER	01, 1979 AND
		JUNE	18, 1976
361237	SALEM, TOWN OF (WASHINGTON CO.)	MARCH	26, 1976
360317A	SALISBURY, TOWN OF (HERKIMER CO.)	JUNE	07, 1979 AND
		JULY	16, 1976
361358A	SANDY CREEK, VILLAGE OF (OSWEGO CO.)	NOVEMBER	15, 1979
360171	SARANAC, TOWN (CLINTON CO)	APRIL	18, 1975
361229A	SAVANNAH, TOWN OF (WAYNE CO.)	DECEMBER	20, 1979 AND
		JUNE	25, 1976
361058	SCHAGHTICOKE, VILLAGE OF (RENSSELAER CO.)	JANUARY	23, 1976
360172A	SCHUYLER FALLS, TOWN OF (CLINTON CO.)	SEPTEMBER	13, 1979 AND
		SEPTEMBER	17, 1976
360127A	SCIPIO, TOWN OF (CAYUGA CO.)	MAY	31, 1979 AND
		MAY	28, 1976
360124A	SENNETT, TOWN OF (CAYUGA CO.)	JUNE	19, 1979 AND
		MAY	14, 1976
361549A	SHARON SPRINGS, VILLAGE (SCHOHARIE CO)	JANUARY	10, 1975
361258A	SHELBY, TOWN OF (ORLEANS CO.)	NOVEMBER	08, 1979 AND
		DECEMBER	12, 1975
361373	SHERMAN, TOWN OF (CHAUTAUQUA CO.)	JANUARY	17, 1975
360099A	SOUTH DAYTON, VILLAGE OF	MAY	31, 1979 AND
		JUNE	18, 1976
360100A	SOUTH VALLEY, TOWN OF (CATTARAUGUS CO.)	SEPTEMBER	06, 1979 AND
		SEPTEMBER	29, 1976
361288A	SPARTA, TOWN OF (LIVINGSTON CO.)	NOVEMBER	08, 1979 AND
		JUNE	11, 1976
361118	STAFFORD, TOWN (GENESEE CO)	JANUARY	29, 1975
361170	STEPHENTOWN, TOWN OF (RENSSELAER CO.)	DECEMBER	20, 1979
360555A	STEUBEN, TOWN OF (ONEIDA CO.)	JUNE	28, 1979 AND
		JULY	09, 1976
361134	STRATFORD, TOWN OF (FULTON CO.)	NOVEMBER	15, 1979
361157A	ST. ARMAND, TOWN OF (ESSEX CO.)	OCTOBER	25, 1979 AND
		JULY	02, 1976
360456A	ST. JOHNSVILLE, TOWN OF (MONTGOMERY CO.)	AUGUST	16, 1979 AND
		JUNE	04, 1976
361330	TAYLOR, TOWN (CORTLAND CO)	JULY	11, 1975
361213A	THURSTON, TOWN OF (STEUBEN CO.)	OCTOBER	25, 1974 AND
		AUGUST	13, 1976
360946A	TORREY, TOWN OF (YATES CO.)	MAY	31, 1979 AND
		JANUARY	09, 1976
360557A	TRENTON, VILLAGE OF (ONEIDA CO.)	AUGUST	30, 1979 AND
		JUNE	18, 1976
361436	TROUPSBURG, TOWN OF (STEUBEN CO)	FEBRUARY	21, 1975

* UNINCORPORATED AREAS ONLY

NEW YORK

COMMUNITY NUMBER	NAME	HAZARD AREA IDENTIFIED	
361067A	VETERAN, TOWN OF (CHEMUNG CO.)	OCTOBER	25, 1979 AND
		JUNE	18, 1976
360733A	VICTORY, VILLAGE OF (SARATOGA CO.)	APRIL	06, 1979
361224B	WALWORTH, TOWN OF (WAYNE CO.)	DECEMBER	13, 1979 AND
		OCTOBER	10, 1975 AND
		MAY	28, 1976
361985	WAMPSVILLE, VILLAGE (MADISON CO)	JANUARY	17, 1975
361364	WARD, TOWN (ALLEGANY CO)	JANUARY	17, 1975
360863A	WATERVILLE, VILLAGE OF (ONEIDA CO.)	JUNE	19, 1979 AND
		JUNE	18, 1976
361112	WELLS, TOWN OF (HAMILTON CO.)	NOVEMBER	29, 1979
361294	WETHERSFIELD, TOWN OF (WYOMING CO.)	DECEMBER	13, 1979
361238A	WHITE CREEK, TOWN OF (WASHINGTON CO.)	OCTOBER	18, 1979 AND
		JULY	23, 1976
361331A	WILLET, TOWN OF (CORTLAND CO.)	DECEMBER	20, 1979 AND
		JUNE	11, 1976
361267A	WILLIAMSTOWN, TOWN OF (OSWEGO CO.)	NOVEMBER	01, 1979 AND
		JULY	02, 1976
361161	WILMINGTON, TOWN (ESSEX CO)	JANUARY	17, 1975
361103	WIRT, TOWN (ALLEGANY CO)	APRIL	11, 1975
361203A	WORCESTER, TOWN OF (OTSEGO CO.)	NOVEMBER	01, 1979 AND
		AUGUST	13, 1976
361202	WRIGHT, TOWN OF (SCHOHARIE CO.)	NOVEMBER	08, 1979
361109	YORKSHIRE, TOWN (CATTARAUGUS CO)	APRIL	11, 1975

TOTAL IN THE STATE 177

* UNINCORPORATED AREAS ONLY

NORTH CAROLINA

COMMUNITY NUMBER	NAME	HAZARD AREA IDENTIFIED	
370358	AUTRYVILLE, TOWN (SAMPSON CO)	JULY	25, 1975
370088	BATTLEBORO, TOWN (EDGECOMBE CO)	AUGUST	18, 1975
370210	CHINA GROVE, TOWN OF (ROWAN CO.)	JANUARY	09, 1974
370321	CRAMERTON, TOWN (GASTON CO)	JULY	11, 1975
370322	DALLAS, TOWN (GASTON CO)	JUNE	27, 1975
370359	EAST LAURINBURG, TOWN (SCOTLAND CO)	JULY	11, 1975
370352	FAITH, TOWN (ROWAN CO)	OCTOBER	17, 1975
370326	HOOKERTON, TOWN (GREENE CO)	SEPTEMBER	26, 1975
370138	JOHNSTON COUNTY	JANUARY	03, 1975
370303	LAWNDALE, TOWN (CLEVELAND CO)	JULY	11, 1975
370149	LENOIR COUNTY *	DECEMBER	27, 1974
370323	LOWELL, TOWN (GASTON CO)	AUGUST	15, 1975
370090A	MACCLESFIELD, TOWN OF (EDGECOMBE CO.)	JANUARY	09, 1974 AND
		JUNE	11, 1976
370101A	MCADENVILLE, CITY OF (GASTON CO.)	JUNE	21, 1979 AND
		JULY	16, 1976
370309	MOCKSVILLE, TOWN (DAVIE CO)	JULY	11, 1975
370349	OMRUM, TOWN (ROBESON CO)	APRIL	25, 1975
370337	PINE BLUFF, TOWN (MOORE CO)	JULY	11, 1975
370329	RANLO, TOWN (GASTON CO)	JUNE	27, 1975
370341	RICHLAND, TOWN (ONSLOW CO)	JULY	11, 1975
370100A	ROBBINSVILLE, TOWN OF (GRAHAM CO.)	JUNE	14, 1974 AND
		AUGUST	27, 1976
370258A	RONDA, TOWN OF (WILKES CO.)	SEPTEMBER	06, 1974 AND
		MAY	14, 1976
370220	SAMPSON COUNTY *	DECEMBER	20, 1974
370005A	SPARTA, CITY (ALLEGANY CO.)	FEBRUARY	15, 1974 AND
		JULY	02, 1976
370093A	SPEED, TOWN OF (EDGECOMBE CO.)	JANUARY	09, 1974 AND
		APRIL	02, 1976
370354	SPINDALE, TOWN OF (RUTHERFORD CO.)	JUNE	27, 1975
370371	STANTONSBURG, TOWN (WILSON CO)	OCTOBER	03, 1975
370075A	VANCEBORO, TOWN OF (CRAVEN CO.)	MARCH	01, 1974 AND
		JULY	02, 1976
370360	WAGRAM, TOWN (SCOTLAND CO)	AUGUST	08, 1975
370259	WAYNE COUNTY *	DECEMBER	27, 1974
370346	WINFALL, TOWN (PERQUIMANS CO)	JULY	25, 1975
370365	WINGATE, TOWN (UNION CO)	OCTOBER	03, 1975

TOTAL IN THE STATE 31

* UNINCORPORATED AREAS ONLY

NORTH DAKOTA

COMMUNITY NUMBER	NAME	HAZARD AREA IDENTIFIED
380152	ADAMS, CITY (WALSH CO)	JULY 26, 1976
380164	AMAMOOSE, CITY (MCHENRY CO)	JANUARY 17, 1976
380166	ARTHUR, CITY OF (CASS)	FEBRUARY 19, 1976
380045	BALFOUR, CITY (MCHENRY CO)	SEPTEMBER 06, 1976
380080	BATHGATE, CITY OF (PEMBINA CO.)	NOVEMBER 22, 1974
380216	BEACH, CITY (GOLDEN VALLEY CO)	JULY 11, 1975
380157	BERTHOLD, CITY (WARD CO)	JULY 11, 1975
380158	BINFORD, CITY OF (GRIGGS)	FEBRUARY 19, 1976
380128	BISBEE, CITY OF (TOWNER CO)	FEBRUARY 21, 1975
380214	BOWBELLS, CITY OF (BURKE COU)	FEBRUARY 07, 1975
380159	BOWDON, CITY (BELLS CO)	JULY 11, 1975
380160	BUFFALO, CITY OF (CASS)	FEBRUARY 19, 1976
380121	COURTENAY, CITY OF (STUTSMAN CO.)	DECEMBER 27, 1974
380039	DAWSON, CITY OF (KIDDER CO.)	DECEMBER 06, 1974
380027	DODGE, CITY (DUNN CO)	APRIL 25, 1975
380222	DRAKE, CITY OF (MC HENRY CO)	FEBRUARY 21, 1975
380226A	ELLENDALE, CITY OF (DICKEY CO)	FEBRUARY 21, 1975 AND SEPTEMBER 12, 1975
380227	FINLEY, CITY OF (STEELE)	FEBRUARY 19, 1975
380169	FLAXTON, CITY OF (BURKE COU)	FEBRUARY 07, 1975
380171	FORTUNA, CITY (DIVIDE CO)	JULY 26, 1976
380172	GACKLE, CITY (LOGAN CO)	AUGUST 22, 1975
380036	GILBY, CITY OF (GRAND FORKS CO.)	NOVEMBER 22, 1974
380174	GLENBURN, CITY OF (RENVILLE)	FEBRUARY 19, 1976
380175	GOLDEN VALLEY, CITY (MERCER CO)	JUNE 27, 1975
380176	GRANVILLE, CITY (MCHENRY CO)	JANUARY 17, 1975
380177	GRENORA, CITY (WILLIAMS CO)	MAY 02, 1975
380229	GWINNER, CITY (SARGENT CO)	JANUARY 10, 1975
380094	HAMPDEN, CITY OF (RAMSEY CO.)	NOVEMBER 29, 1974
380178	HANNAFORD, CITY (GRIGGS CO)	JANUARY 17, 1975
380131A	HATTON, CITY OF (TRAIL CO.)	MAY 10, 1974
380233	HETTINGER, CITY (ADAMS CO)	JULY 11, 1975
380048	KARLSRUHE, CITY (MCHENRY CO)	JANUARY 10, 1975
380234	KENMARE, CITY (WARD CO)	MAY 02, 1975
380075A	LAKOTA, CITY OF (NELSON CO.)	MAY 03, 1974 AND DECEMBER 24, 1976
380184	LANSFORD, CITY OF (BOTTINEAU)	FEBRUARY 19, 1976
380095	LARIMORE, CITY OF (RAMSEY CO.)	DECEMBER 06, 1974
380003A	LEEDS, CITY OF (BENSON CO.)	APRIL 05, 1974 AND JANUARY 02, 1976
380043	LEHR, CITY OF (LOGAN & MCINTOSH COS.)	NOVEMBER 22, 1974
380237	LIDGERWOOD, CITY OF (RICHLAND)	FEBRUARY 19, 1976
380187	LITCHVILLE, CITY (BARNES CO)	JANUARY 17, 1975
380004A	MADDOCK, CITY OF (BENSON CO.)	MARCH 08, 1974 AND NOVEMBER 15, 1974
380037	MANVEL, CITY (GRAND FORKS CO)	JANUARY 10, 1975
380115	MARMARTH, CITY OF (SLOPE CO.)	NOVEMBER 29, 1974
380008	MARIBASS, CITY OF (BOTTINEAU CO.)	NOVEMBER 22, 1974
380060	MAX, CITY OF (MCLEAN CO.)	NOVEMBER 22, 1974

* UNINCORPORATED AREAS ONLY

NORTH DAKOTA

COMMUNITY NUMBER	NAME	HAZARD AREA IDENTIFIED
380238	MCVILLE, CITY OF (NELSON)	FEBRUARY 19, 1975
380124	MEDINA, CITY OF (STUTSMAN CO.)	DECEMBER 20, 1974
380125	MONTPELIER, CITY OF (STUTSMAN CO.)	NOVEMBER 15, 1974
380189	MUNICH, CITY (CAVALIER CO)	JANUARY 17, 1975
380031A	NEW ROCKFORD, CITY OF (EDDY CO.)	NOVEMBER 23, 1973 AND APRIL 16, 1976
380243	NEW SALEM, CITY OF (MORTON CO)	FEBRUARY 21, 1975
380197	OSNABROCK, CITY OF (CAVALIER CO.)	FEBRUARY 21, 1975
380193	PAGE, CITY OF (CASS)	FEBRUARY 19, 1976
380073	PARSHALL, CITY OF (MOUNTRAIL CO.)	NOVEMBER 29, 1974
380197	REEDER, CITY (ADAMS CO)	FEBRUARY 21, 1975
380129	ROCK LAKE, CITY OF (TOWNER CO.)	NOVEMBER 22, 1974
380201	RYDER, CITY (WARD CO)	SEPTEMBER 19, 1975
380202	SANBORN, CITY OF (BARNES CO)	FEBRUARY 21, 1975
380145	SAWYER, CITY OF (WARD CO)	JANUARY 31, 1975
380203	SHARON, CITY OF (STEELE)	FEBRUARY 19, 1976
380209	SHERWOOD, CITY OF (RENVILLE)	FEBRUARY 19, 1976
380010	SOURIS, CITY OF (BOTTINEAU CO.)	NOVEMBER 29, 1974
380094	STARKWEATHER, CITY OF (RAMSEY CO.)	DECEMBER 06, 1974
380261	STEELE, CITY OF (KIDDER CO)	FEBRUARY 21, 1975
380127	STREETER, CITY OF (STUTSMAN CO.)	NOVEMBER 22, 1974
380249	ST. THOMAS, CITY OF (PEMBINA CO)	FEBRUARY 21, 1975
380206	SURREY, CITY (WARD CO)	JUNE 27, 1975
380090	TAPPEN, CITY OF (KIDDER CO.)	DECEMBER 06, 1974
380208	THOMPSON, CITY OF (GRAND FORKS)	FEBRUARY 19, 1976
380210	TOWER CITY, CITY (BARNES CO.)	JANUARY 10, 1975
380041A	TURTLE LAKE, CITY OF (MCLEAN CO.)	MARCH 22, 1974
380060	UPHAM, CITY OF (MCHENRY CO.)	DECEMBER 06, 1974
380043A	WASHBURN, CITY OF (MCLEAN CO.)	MARCH 22, 1974 AND JANUARY 16, 1976
380074	WHITE EARTH, CITY OF (MOUNTRAIL CO.)	DECEMBER 20, 1974
380211	WILDROSE, CITY (WILLIAMS CO)	AUGUST 15, 1975
380045A	WILTON, CITY OF (MCLEAN AND BURLEIGH CO.)	MAY 24, 1974
380213	WING, CITY (BURLEIGH CO)	JUNE 27, 1975

TOTAL IN THE STATE 77

* UNINCORPORATED AREAS ONLY

OHIO

COMMUNITY NUMBER	NAME	HAZARD AREA IDENTIFIED
390727	ALBANY, VILLAGE OF (ATHENS)	FEBRUARY 19, 1975
390688	AMANDA, VILLAGE OF (FAIRFIELD CO.)	JULY 26, 1975
390016	AMESVILLE, VILLAGE (ATHENS CO)	JULY 26, 1975
390241	ARCADIA, VILLAGE (HANCOCK CO)	JULY 11, 1975
390207A	ARLINGTON HEIGHTS, VILLAGE OF (HAMILTON CO.)	FEBRUARY 01, 1974 AND DECEMBER 06, 1974
390169A	BALTIMORE, VILLAGE OF (FAIRFIELD CO.)	JUNE 21, 1974 AND APRIL 16, 1976
390029A	BARNESVILLE, VILLAGE OF (BELMONT CO.)	JUNE 07, 1974 AND OCTOBER 01, 1976
390650A	BERLIN HEIGHTS, VILLAGE OF (ERIE CO.)	APRIL 05, 1974
390674	BETHESDA, VILLAGE OF (BELMONT COU)	FEBRUARY 07, 1975
390800A	BETTSVILLE, VILLAGE OF (SENECA CO.)	APRIL 12, 1974
390079	BLANCHESTER, VILLAGE OF (CLINTON CO.)	APRIL 05, 1974
390728	BUCHTEL, VILLAGE OF (ATHENS COU)	FEBRUARY 07, 1975
390753	BURBANK, VILLAGE (WAYNE CO)	APRIL 18, 1975
390988A	BURGOON, VILLAGE OF (SANDUSKY CO.)	AUGUST 02, 1974 AND JULY 18, 1974
390719	BUTLERVILLE, VILLAGE OF (WARREN)	FEBRUARY 14, 1975
390461A	CAMDEN, VILLAGE OF (PREBLE CO.)	MAY 10, 1974 AND AUGUST 27, 1974
390807	CEDARVILLE, VIL (GREENE CO)	JANUARY 10, 1975
390808	CHESAPEAKE, VIL (LAWRENCE CO)	JANUARY 10, 1975
390478	CLIFTON, VILLAGE (CLARK CO.)	AUGUST 08, 1975
390291A	COALTON, VILLAGE OF (JACKSON CO.)	FEBRUARY 01, 1974 AND MAY 21, 1974
390486A	COLUMBUS GROVE, VILLAGE OF (PUTNAM CO.)	FEBRUARY 08, 1974
390711	COMMERCIAL POINT, VILLAGE OF (PICKAWAY COU)	JANUARY 31, 1975
390676A	CRESTON, VILLAGE OF (WAYNE CO.)	FEBRUARY 01, 1974 AND MAY 28, 1974
390187	CROWN CTY, VILLAGE (GALLIA CO)	JANUARY 10, 1975
390712	DARBYVILLE, VILLAGE OF (PICKAWAY COU)	FEBRUARY 07, 1975
390049A	DELLROY, VILLAGE OF (CARROLL CO.)	AUGUST 09, 1974
390061A	DONNELSVILLE, VILLAGE OF (CLARK CO.)	FEBRUARY 01, 1974
390720	DOYLESTOWN, VILLAGE OF (WAYNE)	FEBRUARY 14, 1975
390467A	DUPONT, VILLAGE OF (PUTNAM CO.)	AUGUST 09, 1974
390797	EDISON, VILLAGE (HARRISON CO)	APRIL 18, 1975
390714	ELDORADO, VILLAGE OF (PREBLE CO)	MARCH 28, 1975
390686A	ELIDA, VILLAGE OF (ALLEN CO.)	MARCH 29, 1974
390214A	EVENDALE, VILLAGE OF (HAMILTON CO.)	MARCH 01, 1974 AND AUGUST 27, 1974
390468A	FORT JENNINGS, VILLAGE OF (PUTNAM CO.)	MAY 31, 1974 AND SEPTEMBER 03, 1976
390426	FRAZEYSBURG, VILLAGE OF (MUSKINGHAM CO.)	AUGUST 30, 1974
390185	GALLIA COUNTY *	DECEMBER 27, 1974
390812	GENOA, VIL (OTTAWA CO)	JULY 18, 1975
390469A	GILBOA, VILLAGE OF (PUTNAM CO.)	AUGUST 09, 1974
390492A	GLENFORD, VILLAGE OF (PERRY CO.)	AUGUST 23, 1974
390738	GLENMILLOR, VILLAGE (CUYAHOGA CO)	AUGUST 08, 1975

* UNINCORPORATED AREAS ONLY

OHIO

COMMUNITY NUMBER	NAME	HAZARD AREA IDENTIFIED
390614	GRAFTON, VILLAGE OF (LORAIN CO.)	DECEMBER 20, 1974
390554B	HAMDEN, VILLAGE OF (VINTON CO.)	FEBRUARY 01, 1974 AND MAY 07, 1976
390264	HAMLER, VILLAGE OF (HENRY CO.)	APRIL 12, 1974
390250A	HARDIN COUNTY	JANUARY 03, 1975 AND NOVEMBER 24, 1976
390814	HARTVILLE, VILLAGE (STARK CO)	JULY 26, 1976
390791	IRONDALE, VILLAGE (JEFFERSON CO)	JULY 11, 1975
390508A	JACKSON CENTER, VILLAGE OF (SHELBY CO.)	MAY 31, 1974 AND JULY 09, 1976
390019A	JACKSONVILLE, VILLAGE OF (ATHENS CO.)	MAY 17, 1974
390294A	JENERA, VILLAGE OF (HANCOCK CO.)	AUGUST 09, 1974
390471B	KALIDA, VILLAGE OF (PUTNUM CO.)	MARCH 01, 1974
390201A	KIMBOLTON, VILLAGE OF (GUERNSEY CO.)	DECEMBER 04, 1974
390300	KNOX COUNTY *	JANUARY 31, 1975
390270A	LEESBURG, VILLAGE OF (HIGHLAND CO.)	APRIL 05, 1974
390080A	LEESVILLE, VILLAGE OF (CARROLL CO.)	SEPTEMBER 20, 1974
390617	LEWISBURG, VIL (PREBLE CO)	AUGUST 08, 1975
390085A	LISBON, VILLAGE OF (COLUMBIANA CO.)	APRIL 12, 1974
390491	LOCKBOURNE, VILLAGE OF (FRANKLIN COU)	JANUARY 31, 1975
390223	LOCKLAND, CITY OF (HAMILTON CO.)	FEBRUARY 15, 1974
390661A	LUCAS, VILLAGE OF (RICHLAND CO.)	APRIL 05, 1974 AND SEPTEMBER 24, 1975
390748	MARBLEHEAD, VILLAGE (OTTAWA CO)	APRIL 18, 1975
390224A	MARIEMONT, VILLAGE OF (HAMILTON CO.)	FEBRUARY 08, 1974 AND JANUARY 10, 1975
390374	MARION, CITY (MARION CO)	SEPTEMBER 08, 1976
390784	MARSEILLES, VILLAGE (WYANDOT CO)	APRIL 18, 1975
390254A	MCGUFFEY, VILLAGE OF (HARDIN CO.)	MAY 10, 1974
390378	MEDINA COUNTY	JANUARY 10, 1975
390392	MERCER COUNTY *	FEBRUARY 14, 1975
390489	MILLERSPORT, VILLAGE OF (FAIRFIELD COU)	JANUARY 31, 1975
390491A	MILLVILLE, VILLAGE OF (BUTLER CO.)	JUNE 07, 1974 AND MAY 07, 1976
390404	MONROE COUNTY *	FEBRUARY 14, 1975
390394A	MONTEZUMA, VILLAGE OF (MERCER CO.)	AUGUST 09, 1974 AND MAY 28, 1976
390581A	MONTPELIER, VILLAGE OF (WILLIAMS CO.)	MAY 31, 1974
390420	MORGAN COUNTY	JANUARY 10, 1975
390746A	MORRAL, VILLAGE (MARION CO)	APRIL 18, 1975 AND AUGUST 27, 1974
390249A	MOUNT CORY, VILLAGE OF (HANCOCK CO.)	SEPTEMBER 20, 1974
390421A	MOUNT ORAB, VIL (BROWN CO)	JULY 25, 1975 AND MAY 07, 1976
390722A	NEVADA, VILLAGE OF (WYANDOT)	FEBRUARY 14, 1975 AND NOVEMBER 19, 1976
390285A	NORTH FAIRFIELD, VILLAGE OF (HURON CO.)	MARCH 18, 1974 AND APRIL 09, 1974
390479	NORTH HAMPTON, VILLAGE OF (CLARK COU)	FEBRUARY 07, 1975

* UNINCORPORATED AREAS ONLY

OHIO

COMMUNITY NUMBER	NAME	HAZARD AREA IDENTIFIED	
390736	NORTH RANDALL, VILLAGE (CUYAHOGA CO)	APRIL 18, 1975	
390726	NORTHFIELD, VILLAGE OF (SUMMIT COU)	FEBRUARY 07, 1975	
390622	NORTHWOOD, VIL (WOOD CO)	JULY 25, 1975	
390433A	OAK HARBOR, VILLAGE OF (OTTAWA CO.)	MARCH 01, 1974	AND
		APRIL 16, 1976	
390174A	OBETZ, VILLAGE OF (FRANKLIN CO.)	FEBRUARY 15, 1974	
390737	ORANGE, VILLAGE (CUYAHOGA CO)	APRIL 18, 1975	
390191A	OSGOOD, VILLAGE OF (DARKE CO.)	AUGUST 30, 1974	
390160A	OSTRANDER, VILLAGE OF (DELAWARE CO.)	SEPTEMBER 20, 1974	
390680	ORENSVILLE, VILLAGE OF (CLERMONT CO)	MARCH 28, 1975	
390439A	PAYNE, VILLAGE OF (PAULDING CO.)	MAY 03, 1974	
390287A	PLYMOUTH, VILLAGE OF (HURON CO.)	MAY 03, 1974	AND
		MAY 21, 1976	
390463A	PORTAGE COUNTY *	DECEMBER 27, 1974	AND
		DECEMBER 10, 1976	
390700	PROCTORVILLE, VILLAGE (LAWRENCE CO.)	APRIL 18, 1975	
390499A	RARDEN, VILLAGE OF (SCIOTO CO.)	AUGUST 23, 1974	AND
		MAY 21, 1976	
390729	RICHMOND, VILLAGE (JEFFERSON CO.)	AUGUST 22, 1975	
390692	RIVERLEA, VILLAGE OF (FRANKLIN COU)	JANUARY 31, 1975	
390799	ROCHESTER, VILLAGE (LORAIN CO)	AUGUST 08, 1975	
390495A	ROGERS, VILLAGE OF (COLUMBIANA CO.)	MARCH 22, 1974	
390003	ROME, VILLAGE (ADAMS CO)	JULY 25, 1975	
390627	SABINA, VIL (CLINTON CO)	JULY 25, 1975	
390706	SARAHSVILLE, VILLAGE OF (NOBLE CO)	MARCH 28, 1975	
390803	SHELBY COUNTY *	DECEMBER 20, 1974	
390497A	SHREVE, VILLAGE OF (WAYNE CO.)	MARCH 29, 1974	
390096	SOMERVILLE, VILLAGE (BUTLER CO)	JULY 25, 1975	
390312	SOUTH MOUNT VERNON, VILLAGE OF (KNOX CO.)	JUNE 21, 1974	
390486A	SOUTH SALEM, VILLAGE OF (CROSS CO.)	AUGUST 23, 1974	
390089A	ST. PARIS, VILLAGE OF (CHAMPAIGN CO.)	JUNE 07, 1974	
390494A	SUGAR CREEK, VILLAGE OF (TUSCARAWAS CO.)	MAY 31, 1974	AND
		JUNE 11, 1976	
390632	STRANTON, VIL (FULTON CO)	JULY 25, 1975	
390758	TONTOGANY, VILLAGE (WOOD CO)	APRIL 18, 1975	
390709	UNION, VILLAGE OF (MONTGOMERY)	FEBRUARY 14, 1975	
390698A	VAN BUREN, VILLAGE OF (HANCOCK CO.)	MARCH 22, 1974	
390795	VAUGHNSVILLE, TOWN OF (PUTNAM CO.)	NOVEMBER 15, 1974	
390469A	VERNONA, VILLAGE OF (PREBLE CO.)	OCTOBER 18, 1974	AND
		MAY 20, 1976	
390189	VINTON, VILLAGE OF (GALLIA CO.)	DECEMBER 27, 1974	
390499A	WAITE HILL, VILLAGE OF (CLARK CO.)	DECEMBER 17, 1973	AND
		JUNE 25, 1976	
390733	WARSAW, VILLAGE (COSHOCTON CO)	APRIL 18, 1975	
390087A	WASHINGTONVILLE, VILLAGE OF (COLUMBIANA & MAHONING	NOVEMBER 09, 1973	AND
		JUNE 04, 1976	
390293A	WELLSTON, CITY OF (JACKSON CO.)	FEBRUARY 15, 1974	AND

* UNINCORPORATED AREAS ONLY

OHIO

COMMUNITY NUMBER	NAME	HAZARD AREA IDENTIFIED	
		JUNE 11, 1976	
390638	WEST JEFFERSON, VIL (MADISON CO)	JULY 25, 1975	
390681	WEST LAFAYETTE, VILLAGE (COSHOCTON CO.)	JULY 25, 1975	
390072A	WILLIAMSBURG, VILLAGE OF (CLERMONT CO.)	MARCH 29, 1974	
390527	WILMOT, VILLAGE (STARK CO)	AUGUST 08, 1975	
390345A	ZANESFIELD, VILLAGE OF (LOGAN CO.)	OCTOBER 18, 1974	
390752	ZOAR, VILLAGE (TUSCARAWAS CO)	APRIL 18, 1975	

TOTAL IN THE STATE 123

* UNINCORPORATED AREAS ONLY

OKLAHOMA

COMMUNITY NUMBER	NAME	HAZARD AREA IDENTIFIED	
400079A	ADDINGTON, TOWN OF (JEFFERSON CO.)	OCTOBER 18, 1974	AND
		APRIL 16, 1976	
400399	ARNETT, TOWN (ELLIS CO.)	AUGUST 15, 1975	
400261	BESSIE, TOWN (WASHITA CO.)	AUGUST 15, 1975	
400038A	BOSWELL, TOWN OF (CHOCTAW CO.)	MARCH 15, 1974	
400269	BRAMAN, TOWN (KAY CO.)	JUNE 27, 1975	
400061A	BRISTOW, CITY OF (CREEK CO)	JUNE 28, 1974	AND
		DECEMBER 26, 1975	
400149	BURBANK, TOWN (OSAGE CO)	JANUARY 10, 1975	
400176A	BYNG, TOWN OF (PONTOTOC CO.)	AUGUST 30, 1974	AND
		DECEMBER 05, 1975	
400270	CAMARGO, TOWN (DEWEY CO.)	SEPTEMBER 19, 1975	
400386	CARMEN, TOWN (ALFALFA CO.)	SEPTEMBER 19, 1975	
400386	CEMENT, TOWN (CADDO CO.)	AUGUST 29, 1975	
400187A	CHELSEA, CITY OF (ROGERS CO.)	DECEMBER 28, 1973	AND
		DECEMBER 12, 1975	
400228	CORN, TOWN (WASHITA CO)	JANUARY 10, 1975	
400122	COUNCIL HILL, TOWN OF (MUSKOGEE CO.)	DECEMBER 13, 1974	
400226A	DACOMA, TOWN OF (WOODS CO.)	NOVEMBER 08, 1974	AND
		DECEMBER 12, 1975	
400204A	DAVIDSON, TOWN OF (TILLMAN CO.)	JULY 26, 1974	
400229A	FORT SUPPLY, TOWN OF (WOODWARD CO.)	MAY 24, 1974	AND
		JANUARY 16, 1976	
400037	GENE AUTRY, TOWN OF (CARTER CO.)	NOVEMBER 08, 1974	
400013A	GREENFIELD, TOWN OF (BLAINE CO.)	AUGUST 30, 1974	
400190A	HARRAH, TOWN OF (OKLAHOMA CO.)	AUGUST 02, 1974	AND
		JUNE 04, 1976	
400029A	HYDRO, TOWN OF (CADDO CO.)	JULY 26, 1974	AND
		DECEMBER 05, 1975	
400007	JET, TOWN OF (ALFALFA CO.)	DECEMBER 06, 1974	
400290	KANSAS, TOWN (DELAWARE CO.)	SEPTEMBER 26, 1975	
400169A	KREBS, CITY OF (PITTSBURG CO.)	DECEMBER 28, 1973	AND
		JANUARY 09, 1976	
400298	LEEDEY, TOWN (DEWEY CO.)	MAY 03, 1974	
400096	LOGAN COUNTY *	DECEMBER 27, 1974	
400014	LONGDALE, TOWN OF (BLAINE CO.)	DECEMBER 13, 1974	
400083	LOYAL, TOWN (KINGFISHER CO)	APRIL 25, 1975	
400303	MANNSVILLE, TOWN (JOHNSTON CO.)	SEPTEMBER 26, 1975	
400113	MENO, TOWN OF (MAJOR CO.)	NOVEMBER 15, 1974	
400308	MILBURN, TOWN (JOHNSTON CO.)	SEPTEMBER 26, 1975	
400319	OAKS, TOWN (DELAWARE CO.)	AUGUST 29, 1975	
400217A	OKAY, TOWN OF (WAGONER CO.)	AUGUST 16, 1974	AND
		FEBRUARY 06, 1976	
400158	PEORIA, TOWN OF (OTTAWA CO.)	NOVEMBER 22, 1974	
400326	ROCKY, TOWN (WASHITA CO.)	SEPTEMBER 19, 1975	
400176	ROFF, CITY OF (PONTOTOC CO.)	MARCH 22, 1974	
400061A	SHATTUCK, TOWN OF (ELLIS CO.)	MAY 24, 1974	AND

* UNINCORPORATED AREAS ONLY

OKLAHOMA

COMMUNITY NUMBER	NAME	HAZARD AREA IDENTIFIED	
		APRIL 30, 1976	
400066A	THOMAS, CITY OF (CUSTER CO.)	APRIL 08, 1974	AND
		APRIL 23, 1976	
400180	WANETTE, TOWN OF (POTTAWATOMIE CO.)	DECEMBER 20, 1974	
400484	WYNONA, CITY (OSAGE CO.)	SEPTEMBER 24, 1975	
400488	YALE, CITY (PAYNE CO.)	AUGUST 22, 1975	

TOTAL IN THE STATE 61

* UNINCORPORATED AREAS ONLY

OREGON

COMMUNITY NUMBER	NAME	HAZARD AREA IDENTIFIED
410004	HALFWAY, TOWN (BAKER CO)	SEPTEMBER 26, 1975
410037	PRESCOTT, CITY (COLUMBIA CO)	JANUARY 10, 1975
410166	ST. PAUL, CITY OF (MARION CO.)	NOVEMBER 22, 1974
	TOTAL IN THE STATE	3

* UNINCORPORATED AREAS ONLY

PENNSYLVANIA

COMMUNITY NUMBER	NAME	HAZARD AREA IDENTIFIED
422508	ADDISON, TOWNSHIP (SOMERSET CO.)	JANUARY 03, 1975
421647	ALEPPO, TOWNSHIP OF (GREENE CO.)	DECEMBER 27, 1974
422341	ALLEGHENY, TOWNSHIP OF (BUTLER CO)	MARCH 28, 1975
422529	ALLEGHENY, TOWNSHIP (VENANGO CO.)	JANUARY 17, 1975
422509	ALLEGHENY, TOWNSHIP (SOMERSET CO.)	JANUARY 03, 1975
421928A	ALLEN, TOWNSHIP OF (NORTHAMPTON CO.)	SEPTEMBER 06, 1974 AND
		MAY 21, 1976
422361	ASHLAND, TOWNSHIP (CLARION CO.)	JANUARY 10, 1975
422297	ATWOOD, BOROUGH OF (ARMSTRONG CO.)	JANUARY 31, 1975
422478	AYR, TOWNSHIP OF (FULTON COU)	FEBRUARY 07, 1975
422435	BANKS, TOWNSHIP (INDIANA CO.)	JANUARY 17, 1975
421643	BARNETT, TOWNSHIP OF (FOREST CO.)	DECEMBER 27, 1974
422446	BARNETT, TOWNSHIP OF (JEFFERSON CO.)	DECEMBER 27, 1974
421683	BARREE, TOWNSHIP OF (HUNTINGDON CO.)	DECEMBER 06, 1974
422472	BASTRESS, TOWNSHIP OF (LYCOMING COU)	FEBRUARY 07, 1975
421738	BEALE, TOWNSHIP (JUNIATA CO)	DECEMBER 06, 1974
422129A	BEALLSVILLE, BOROUGH OF (WASHINGTON CO.)	DECEMBER 13, 1974 AND
		JULY 16, 1976
422544	BEAR LAKE, BOROUGH OF (WARREN CO.)	DECEMBER 27, 1974
421547A	BEAVER, TOWNSHIP OF (COLUMBIA CO.)	NOVEMBER 01, 1974 AND
		JULY 09, 1976
422362	BEAVER, TOWNSHIP (CLARION CO.)	JANUARY 24, 1975
422385	BEAVER, TOWNSHIP OF (CRAWFORD CO)	FEBRUARY 28, 1975
422032A	BEAVER, TOWNSHIP OF (SNYDER CO.)	NOVEMBER 01, 1974 AND
		JULY 30, 1976
422441	BEAVER, TOWNSHIP (JEFFERSON CO.)	JANUARY 17, 1975
421669	BELFAST, TOWNSHIP OF (FULTON CO.)	DECEMBER 20, 1974
420609A	BELLEVUE, BOROUGH OF (ALLEGHENY CO.)	DECEMBER 20, 1973
422244A	BELL, TOWNSHIP OF (JEFFERSON CO.)	DECEMBER 13, 1974 AND
		JULY 23, 1976
422185A	BELL, TOWNSHIP OF (WESTMORELAND CO.)	SEPTEMBER 13, 1974 AND
		SEPTEMBER 24, 1976
422612	BENEZETTE, TOWNSHIP OF (ELK COU)	FEBRUARY 07, 1975
421749	BENTON, TWP (LACKAWANNA CO)	JANUARY 10, 1975
421067A	BETHEL, TOWNSHIP OF (BERKS CO.)	SEPTEMBER 20, 1974 AND
		MAY 28, 1976
421640A	BETHEL, TWP (DELAWARE CO)	JANUARY 24, 1975
421973	BINGHAM, TOWNSHIP OF (POTTER CO.)	NOVEMBER 29, 1974
420982	BIRMINGHAM, BOROUGH OF (HUNTINGDON CO.)	DECEMBER 06, 1974
421709	BLACK LICK, TOWNSHIP OF (INDIANA CO.)	NOVEMBER 15, 1974
422510	BLACK, TOWNSHIP (SOMERSET CO.)	JANUARY 24, 1975
422141A	BLAINE, TOWNSHIP OF (WASHINGTON CO.)	OCTOBER 18, 1974 AND
		AUGUST 06, 1976
421332	BLOOMFIELD, TOWNSHIP OF (BEDFORD CO.)	JANUARY 31, 1975
421515	BOGGS, TOWNSHIP OF (CLEARFIELD CO.)	NOVEMBER 16, 1974
421301A	BOGGS, TOWNSHIP OF (ARMSTRONG CO.)	AUGUST 30, 1974 AND
		APRIL 09, 1976
420794A	BOSWELL, BOROUGH OF (SOMERSET CO.)	JULY 26, 1974 AND
		APRIL 16, 1976

* UNINCORPORATED AREAS ONLY

PENNSYLVANIA

COMMUNITY NUMBER	NAME	HAZARD AREA IDENTIFIED
421262	BRADFORD WOODS, BOROUGH (ALLEGHENY CO)	JANUARY 03, 1975
421516	BRADFORD, TOWNSHIP OF (CLEARFIELD CO.)	DECEMBER 06, 1974
421517	BRADY, TOWNSHIP OF (CLEARFIELD CO.)	NOVEMBER 15, 1974
422241A	BRADY, TOWNSHIP OF (BUTLER CO.)	OCTOBER 26, 1974 AND
		SEPTEMBER 03, 1976
422511	BROTHERSVALLEY, TWP (SOMERSET CO.)	JANUARY 10, 1975
421640	BRUSH CREEK, TOWNSHIP OF (FULTON CO)	MARCH 28, 1975
421710	BRUSH VALLEY, TWP (INDIANA CO)	JANUARY 03, 1975
421711	BUFFINGTON, TOWNSHIP OF (INDIANA CO.)	DECEMBER 27, 1974
421064A	BURLINGTON, TOWNSHIP OF (BRADFORD CO.)	SEPTEMBER 13, 1974 AND
		MAY 07, 1976
420298	BURNSIDE, BOROUGH OF (CLEARFIELD CO.)	NOVEMBER 15, 1974
421303A	BURRELL, TOWNSHIP OF (ARMSTRONG CO.)	SEPTEMBER 20, 1974 AND
		JUNE 11, 1976
421929	BUSHKILL, TOWNSHIP OF (NORTHAMPTON CO.)	NOVEMBER 08, 1974
422364	CALLENSBURG, BOROUGH OF (CLARION CO.)	JANUARY 31, 1975
420213A	CALLERY, BOROUGH OF (BUTLER CO.)	AUGUST 09, 1974
422108	CANAL, TOWNSHIP OF (VENANGO CO.)	DECEMBER 06, 1974
421713	CANOE, TWP (INDIANA CO)	JULY 11, 1975
421686	CARBON, TWP (HUNTINGDON CO)	JANUARY 10, 1975
420795	CASSELMAN, BOROUGH OF (SOMERSET CO.)	NOVEMBER 08, 1974
421684	CASS, TOWNSHIP OF (HUNTINGDON CO.)	DECEMBER 27, 1974
420129	CENTERPORT, BOROUGH OF (BERKS CO.)	NOVEMBER 22, 1974
421417A	CENTER, TOWNSHIP OF (BUTLER CO.)	SEPTEMBER 13, 1974 AND
		APRIL 30, 1976
421056A	CENTRE, TOWNSHIP OF (BERKS CO.)	NOVEMBER 01, 1974 AND
		NOVEMBER 07, 1975
422251	CHAPMAN, BOROUGH OF (NORTHAMPTON CO.)	NOVEMBER 15, 1974
422545	CHERRY GROVE, TOWNSHIP OF (WARREN CO.)	DECEMBER 27, 1974
422530	CHERRYTREE, TOWNSHIP (VENANGO CO.)	JANUARY 10, 1975
422342	CHERRY, TOWNSHIP (BUTLER CO.)	JANUARY 10, 1975
421886	CHESTNUT HILL, TOWNSHIP OF (MONROE CO.)	NOVEMBER 15, 1974
421519	CHEST, TOWNSHIP OF (CLEARFIELD CO.)	NOVEMBER 15, 1974
422404	CHEST, TOWNSHIP (CAMBRIA CO)	JANUARY 10, 1975
421974A	CLARA, TOWNSHIP OF (POTTER CO.)	OCTOBER 18, 1974 AND
		MAY 14, 1976
421221A	CLARENDON, BOROUGH (WARREN CO)	SEPTEMBER 06, 1974 AND
		MAY 21, 1976
421687	CLAY, TOWNSHIP OF (HUNTINGDON CO.)	DECEMBER 13, 1974
422343	CLAY, TOWNSHIP (BUTLER CO.)	JANUARY 17, 1975
422344	CLEARFIELD, TOWNSHIP (BUTLER CO.)	JANUARY 10, 1975
421937	CLEARFIELD, TWP (CAMBRIA CO)	JULY 18, 1975
422077	CLIFFORD, TOWNSHIP OF (SUSQUEHANNA CO.)	DECEMBER 27, 1974
421761	CLIFTON, TWP (LACKAWANNA CO)	JANUARY 24, 1975
422197	CLINTON, TOWNSHIP OF (WYOMING CO)	NOVEMBER 29, 1974
422345	CLINTON, TOWNSHIP (BUTLER CO.)	JANUARY 10, 1975
420989	COALMONT, BOROUGH OF (HUNTINGDON CO)	MARCH 28, 1975
421838	COGAN HOUSE, TOWNSHIP (LYCOMING CO)	APRIL 04, 1975
422470	COLD SPRING, TOWNSHIP (LEBANON CO.)	APRIL 04, 1975

* UNINCORPORATED AREAS ONLY

PENNSYLVANIA

COMMUNITY NUMBER	NAME	HAZARD AREA IDENTIFIED
421334	COLERAIN, TWP (BEDFORD CO)	JANUARY 03, 1975
422346	CONCORD, TOWNSHIP (BUTLER CO.)	JANUARY 17, 1975
421715	CONEMAUGH, TOWNSHIP OF (INDIANA CO.)	DECEMBER 06, 1974
422404A	CONEMAGO, TOWNSHIP OF (DAUPHIN CO.)	DECEMBER 27, 1974
421341	CONNEAUT, TOWNSHIP OF (ERIE CO.)	DECEMBER 13, 1974
422387	CONNEAUT, TOWNSHIP (CRAWFORD CO.)	JANUARY 10, 1975
421623	CONNELLSVILLE, TOWNSHIP OF (FAYETTE CO.)	DECEMBER 20, 1974
421413	CONNOQUENESSING, BOROUGH OF (BUTLER CO.)	NOVEMBER 15, 1974
421549	CONYNGHAM, TWP (COLUMBIA CO)	JANUARY 03, 1975
421184A	COOK, TOWNSHIP OF (WESTMORELAND CO.)	SEPTEMBER 20, 1974 AND
		NOVEMBER 19, 1976
422456	COVINGTON, TOWNSHIP (LACKAWANNA CO.)	JANUARY 10, 1975
421230A	CORANSHANNOCK, TOWNSHIP OF (ARMSTRONG CO.)	SEPTEMBER 13, 1974 AND
		DECEMBER 31, 1976
421535A	CRAWFORD, TOWNSHIP OF (CLINTON CO.)	DECEMBER 20, 1974 AND
		MAY 28, 1976
421428	DALE, BOROUGH OF (CAMBRIA CO)	MARCH 21, 1975
421319	DARLINGTON, BOROUGH (BEAVER CO)	JANUARY 24, 1975
421490	DEAN, TOWNSHIP OF (CAMBRIA CO.)	NOVEMBER 08, 1974
421189A	DECATUR, TOWNSHIP OF (CLEARFIELD CO.)	SEPTEMBER 20, 1974 AND
		JUNE 18, 1976
422474A	DEER CREEK, TWP (MERCER CO.)	JANUARY 10, 1975 AND
		JULY 16, 1976
422111	DEERFIELD, TOWNSHIP OF (WARREN CO.)	NOVEMBER 15, 1974
421176A	DEERFIELD, TOWNSHIP OF (TIOGA CO.)	AUGUST 30, 1974 AND
		MAY 21, 1976
420690A	DELAWARE WATER GAP, BOROUGH OF (MONROE CO.)	JUNE 21, 1974 AND
		MAY 28, 1976
421964	DINGMAN, TOWNSHIP OF (PIKE)	FEBRUARY 14, 1975
422146	DONEGAL, TOWNSHIP OF (WASHINGTON CO.)	DECEMBER 06, 1974
422187A	DONEGAL, TOWNSHIP OF (WESTMORELAND CO.)	JUNE 21, 1974 AND
		JULY 02, 1976
421689	DUBLIN, TOWNSHIP OF (HUNTINGDON CO.)	DECEMBER 13, 1974
421681A	DUDLEY, BOROUGH OF (HUNTINGDON CO.)	NOVEMBER 08, 1974 AND
		NOVEMBER 19, 1976
422431	DUNKARD, TWP (GREENE CO.)	JANUARY 24, 1975
421716	E WHEATFIELD, TWP (INDIANA CO)	JANUARY 24, 1975
422527	EAGLES MERE, BOROUGH (SULLIVAN CO.)	JANUARY 24, 1975
422252	EAST BANGOR, BOROUGH OF (NORTHAMPTON CO.)	NOVEMBER 15, 1974
420216A	EAST BUTLER, BOROUGH OF (BUTLER CO.)	JULY 26, 1974 AND
		JULY 16, 1976
422268	EAST CARROLL, TOWNSHIP OF (CAMBRIA)	FEBRUARY 14, 1975
422259	EAST CONEMAUGH, BOROUGH OF (CAMBRIA CO.)	NOVEMBER 15, 1974
422389	EAST FALLOWFIELD, TOWNSHIP (CRAWFORD CO.)	JANUARY 10, 1975
422147	EAST FINLEY, TOWNSHIP OF (WASHINGTON CO.)	NOVEMBER 29, 1974
422218	EAST HOPEWELL, TOWNSHIP OF (YORK CO.)	DECEMBER 27, 1974
421188A	EAST HUNTINGDON, TOWNSHIP OF (WESTMORELAND CO.)	SEPTEMBER 20, 1974 AND
		MAY 21, 1976
422434	EAST MAHONING, TOWNSHIP (INDIANA CO.)	JANUARY 17, 1975

* UNINCORPORATED AREAS ONLY

COMMUNITY NUMBER	NAME	HAZARD AREA IDENTIFIED
	PENNSYLVANIA	
420108A	EAST ROCHESTER, BOROUGH OF (BEAVER CO.)	FEBRUARY 01, 1979 AND
		APRIL 16, 1976
422360	EAST SIDE, BOROUGH OF (CARBON CO.)	JANUARY 31, 1975
421337	EAST ST. CLAIR, TOWNSHIP OF (BEDFORD CO)	FEBRUARY 28, 1975
422314	EASTVALE, BOROUGH OF (BEAVER CO.)	JANUARY 31, 1975
420109A	ECONOMY, BOROUGH OF (BEAVER CO.)	APRIL 08, 1974 AND
		JUNE 04, 1976
421772A	EDEN, TOWNSHIP OF (LANCASTER CO.)	AUGUST 30, 1974 AND
		MAY 07, 1976
420228A	EHRENFELD, BOROUGH OF (CAMBRIA CO.)	AUGUST 09, 1974 AND
		SEPTEMBER 24, 1976
421887	ELDRED, TOWNSHIP OF (MONROE CO.)	DECEMBER 06, 1974
422694	ELDRED, TOWNSHIP (WARREN CO.)	JANUARY 17, 1975
421443	ELDRED, TOWNSHIP (JEFFERSON CO.)	JANUARY 17, 1975
422048	ELK LICK, TOWNSHIP OF (SOMERSET CO.)	DECEMBER 27, 1974
421752A	ELMHURST, TOWN OF (LACKAWANNA CO.)	OCTOBER 18, 1974 AND
		APRIL 30, 1976
422189A	FAIRFIELD, TOWNSHIP OF (WESTMORELAND CO.)	SEPTEMBER 06, 1974 AND
		MAY 21, 1976
422049	FAIRHOPE, TOWNSHIP OF (SOMERSET CO.)	NOVEMBER 15, 1974
421848	FAIRVIEW, TOWNSHIP OF (MERCER CO.)	NOVEMBER 29, 1974
421419A	FORBES, TOWNSHIP OF (BUTLER CO.)	SEPTEMBER 13, 1974 AND
		APRIL 16, 1976
421802	FORBURG, BOROUGH OF (CLARION CO.)	DECEMBER 20, 1974
422316	FRANKFORT SPRINGS, BORO (BEAVER CO.)	JANUARY 17, 1975
422593	FRANKLIN, BOROUGH OF (CAMBRIA CO.)	JANUARY 10, 1975
422288	FRANKLIN, TOWNSHIP OF (CHESTER CO.)	NOVEMBER 29, 1974
422360	FRANKLIN, TOWNSHIP (BUTLER CO.)	JANUARY 24, 1975
422573	FRANKLIN, TOWNSHIP OF (HUNTINGDON CO.)	DECEMBER 27, 1974
422598	FRANKLIN, TOWNSHIP (GREENE CO)	JANUARY 03, 1975
422121	FREEHOLD, TWP (WARREN CO)	JANUARY 24, 1975
422432	FREEPORT, TWP (GREENE CO.)	JANUARY 03, 1975
422110	FRENCH CREEK, TOWNSHIP OF (VENANGO CO.)	NOVEMBER 22, 1974
421837	GALLAGHER, TOWNSHIP OF (CLINTON CO)	FEBRUARY 21, 1975
421627	GERMAN, TWP (FAYETTE CO)	JANUARY 03, 1975
422433A	GILMORE, TWP (GREENE CO.)	JANUARY 10, 1975 AND
		SEPTEMBER 03, 1976
420112A	GLASGOW, BOROUGH OF (BEAVER CO.)	AUGUST 16, 1974 AND
		APRIL 30, 1976
422937	GLEN CAMPBELL, BORO (INDIANA CO.)	JANUARY 24, 1975
420308A	GLEN HOPE, BOROUGH OF (CLEARFIELD CO.)	DECEMBER 20, 1974 AND
		JUNE 04, 1976
421717	GRANT, TOWNSHIP OF (INDIANA CO.)	JANUARY 31, 1975
421670A	GREENE, TWP (GREENE CO)	JANUARY 17, 1975 AND
		MAY 14, 1976
421368	GREENFIELD, TOWNSHIP OF (ERIE CO.)	DECEMBER 06, 1974
420946A	GREENFIELD, TOWNSHIP (LACKAWANNA CO.)	JANUARY 10, 1975
422812	GREENVILLE, TOWNSHIP (SOMERSET CO.)	APRIL 04, 1975
422390	GREENWOOD, TOWNSHIP (CRAWFORD CO.)	JANUARY 17, 1975

* UNINCORPORATED AREAS ONLY

COMMUNITY NUMBER	NAME	HAZARD AREA IDENTIFIED
	PENNSYLVANIA	
421823	GWEENWOOD, TOWNSHIP OF (CLEARFIELD CO.)	DECEMBER 20, 1974
421499	GREEN, TWP (FOREST CO)	JANUARY 24, 1975
421539A	GRUGAN, TOWNSHIP OF (CLINTON CO.)	NOVEMBER 08, 1974 AND
		JULY 23, 1976
421888	HAMILTON, TOWNSHIP OF (MONROE CO.)	NOVEMBER 22, 1974
421223A	HANOVER, TOWNSHIP OF (BEAVER CO.)	SEPTEMBER 06, 1974 AND
		OCTOBER 01, 1976
423628	HARTLETON, BOROUGH OF (UNION CO.)	DECEMBER 27, 1974
421728	HEATH, TOWNSHIP OF (JEFFERSON CO.)	DECEMBER 06, 1974
421069A	HEIDELBERG, TOWNSHIP OF (BERKS CO.)	DECEMBER 06, 1974 AND
		JUNE 04, 1976
421399	HERRICK, TWP (BRADFORD CO)	APRIL 04, 1975
422389	HIGHLAND, TOWNSHIP OF (CHESTER CO.)	NOVEMBER 29, 1974
422319	HOOKSTOWN, BOROUGH OF (BEAVER CO.)	JANUARY 31, 1975
421690	HOPEWELL, TOWNSHIP OF (HUNTINGDON CO.)	DECEMBER 06, 1974
421681	HOPEWELL, TOWNSHIP OF (CUMBERLAND CO.)	DECEMBER 27, 1974
421610A	HORTON, TOWNSHIP OF (ELK CO.)	SEPTEMBER 13, 1974 AND
		AUGUST 06, 1976
420307A	HOUTZDALE, BOROUGH OF (CLEARFIELD CO.)	MAY 17, 1974
421626	HUSTON, TOWNSHIP OF (CLEARFIELD CO.)	DECEMBER 20, 1974
421323A	INDEPENDENCE, TOWNSHIP OF (BEAVER CO.)	AUGUST 30, 1974 AND
		JUNE 18, 1976
422634	IRWIN, TOWNSHIP OF (VENANGO CO.)	JANUARY 31, 1975
420502A	JACKSONVILLE, BOROUGH OF (INDIANA CO.)	DECEMBER 13, 1974 AND
		MAY 21, 1976
421491	JACKSON, TOWNSHIP OF (HUNTINGDON CO.)	DECEMBER 13, 1974
421652	JACKSON, TOWNSHIP OF (COLUMBIA CO.)	DECEMBER 13, 1974
421893	JACKSON, TOWNSHIP OF (DAUPHIN CO.)	JANUARY 31, 1975
421671A	JACKSON, TOWNSHIP OF (GREENE CO.)	DECEMBER 20, 1974 AND
		JUNE 04, 1976
422601	JACKSON, TOWNSHIP OF (LYCOMING CO)	MARCH 28, 1975
422535	JACKSON, TOWNSHIP (VENANGO CO.)	JANUARY 24, 1975
421889	JACKSON, TWP (MONROE CO)	JANUARY 03, 1975
421421A	JEFFERSON, TOWNSHIP OF (BUTLER CO.)	NOVEMBER 01, 1974 AND
		JUNE 25, 1976
422457	JEFFERSON, TOWNSHIP (LACKAWANNA CO.)	JANUARY 03, 1975
421629	JEFFERSON, TWP (FAYETTE CO)	JANUARY 03, 1975
422514	JENNERSTOWN, BOROUGH OF (SOMERSET CO.)	DECEMBER 27, 1974
422383	JORDON, TOWNSHIP (CLEARFIELD CO)	JANUARY 17, 1975
420218	KARNS CITY, BOROUGH OF (BUTLER CO.)	NOVEMBER 08, 1974
421826	KARTHAUS, TOWNSHIP OF (CLEARFIELD CO.)	NOVEMBER 29, 1974
421981	KEATING, TOWNSHIP OF (POTTER CO.)	NOVEMBER 22, 1974
422423	KINGSLEY, TOWNSHIP OF (FOREST CO.)	DECEMBER 27, 1974
421342	KING, TOWNSHIP OF (BEDFORD CO.)	JANUARY 31, 1975
421209A	KISKIMINETAS, TOWNSHIP OF (ARMSTRONG CO.)	SEPTEMBER 20, 1974 AND
		MAY 21, 1976
421730	KNOX, TOWNSHIP OF (JEFFERSON CO.)	DECEMBER 20, 1974
422483	LAKE, TOWNSHIP OF (MERCER CO.)	JANUARY 31, 1975
422057	LAPORTE, BOROUGH OF (SULLIVAN CO.)	DECEMBER 20, 1974

* UNINCORPORATED AREAS ONLY

COMMUNITY NUMBER	NAME	HAZARD AREA IDENTIFIED
	PENNSYLVANIA	
422616	LARIMER, TOWNSHIP (SOMERSET CO.)	JANUARY 10, 1975
422086	LATHROP, TOWNSHIP OF (SUSQUEHANNA CO.)	NOVEMBER 29, 1974
421454	LAUSANNE, TWP (CARBON CO)	JANUARY 03, 1975
422334	LE RAYSVILLE, BORO (BRADFORD CO.)	JANUARY 24, 1975
422667	LEBANON, TWP (WAYNE CO.)	JANUARY 03, 1975
421540A	LEIGY, TOWNSHIP OF (CLINTON CO.)	DECEMBER 20, 1974 AND
		MAY 28, 1976
422200	LEMON, TOWNSHIP OF (WYOMING CO.)	NOVEMBER 29, 1974
422088	LEMOY, TOWNSHIP OF (SUSQUEHANNA CO.)	DECEMBER 20, 1974
422926	LETTERKENNY,, TOWNSHIP OF (FRANKLIN CO.)	DECEMBER 20, 1974
421682A	LICKING CREEK, TOWNSHIP OF (FULTON CO.)	DECEMBER 20, 1974 AND
		APRIL 30, 1976
422368	LICKING, TOWNSHIP (CLARION CO.)	JANUARY 24, 1975
421930A	LILLY, BOROUGH OF (CAMBRIA CO.)	NOVEMBER 01, 1974 AND
		JUNE 04, 1976
423588	LIMESTONE, TOWNSHIP (LYCOMING CO)	JANUARY 24, 1975
422547	LIMESTONE, TOWNSHIP OF (WARREN CO.)	DECEMBER 27, 1974
422516	LINCOLN, TOWNSHIP (SOMERSET CO.)	JANUARY 10, 1975
421693	LINCOLN, TWP (HUNTINGDON CO)	JANUARY 03, 1975
421633	LOGANTON, BOROUGH OF (CLINTON CO.)	NOVEMBER 08, 1974
421694	LOGAN, TOWNSHIP OF (HUNTINGDON CO.)	DECEMBER 06, 1974
421887	LOWER MIFFLIN, TOWNSHIP OF (CUMBERLAND CO.)	DECEMBER 27, 1974
422517	LOWER TURKEYFOOT, TWP (SOMERSET CO.)	JANUARY 24, 1975
421630	LOWER TYRONE, TOWNSHIP OF (FAYETTE CO.)	DECEMBER 06, 1974
421811	LOWHILL, TOWNSHIP OF (LEHIGH CO.)	DECEMBER 20, 1974
420309	LUMBER CITY, BOROUGH (CLEARFIELD CO)	FEBRUARY 14, 1975
421755	MADISON, TWP (LACKAWANNA CO)	JANUARY 03, 1975
420310A	MAHAFFEY, BOROUGH OF (CLEARFIELD CO.)	AUGUST 30, 1974 AND
		APRIL 23, 1976
421554	MAIN, TOWNSHIP OF (COLUMBIA CO)	FEBRUARY 28, 1975
421325	MANNS CHOICE, BOROUGH OF (BEDFORD CO.)	DECEMBER 13, 1974
420219A	MARION TWP (BUTLER CO)	JUNE 02, 1976 AND
		JULY 02, 1976
421936	MCKEESVILLE, BOROUGH OF (NORTHUMBERLAND CO.)	DECEMBER 27, 1974
421881	MENNO, TOWNSHIP OF (MIFFLIN CO.)	NOVEMBER 22, 1974
422362	MERCER, TOWNSHIP (BUTLER CO.)	JANUARY 10, 1975
422044	MEYERSDALE, BOROUGH OF (SOMERSET CO.)	NOVEMBER 15, 1974
421443	MIDDLE TAYLOR, TOWNSHIP OF (CAMBRIA CO.)	NOVEMBER 22, 1974
422518	MIDDLECREEK, TOWNSHIP (SOMERSET CO.)	JANUARY 03, 1975
422519	MILFORD, TOWNSHIP (SOMERSET CO.)	JANUARY 03, 1975
421870	MILL CREEK, TOWNSHIP OF (MERCER CO.)	DECEMBER 20, 1974 AND
		JUNE 18, 1976 AND
		OCTOBER 01, 1976
421695	MILLER, TOWNSHIP OF (HUNTINGDON CO.)	NOVEMBER 29, 1974
421954	MILLER, TWP (PERRY CO)	JANUARY 17, 1975
421613	MILLSTONE, TOWNSHIP OF (ELK CO)	MARCH 21, 1975
422534	MINERAL, TOWNSHIP OF (VENANGO CO.)	JANUARY 31, 1975
421673	MONONGAHELA, TWP (GREENE CO)	JULY 11, 1975

* UNINCORPORATED AREAS ONLY

COMMUNITY NUMBER	NAME	HAZARD AREA IDENTIFIED
	PENNSYLVANIA	
421744	MONROE, TOWNSHIP (JUNIATA CO)	JANUARY 10, 1975
422424	MONTGOMERY, TOWNSHIP OF (FRANKLIN CO.)	DECEMBER 13, 1974
421719	MONTGOMERY, TWP (INDIANA CO)	JANUARY 03, 1975
421674	MORGAN, TOWNSHIP OF (GREENE CO.)	NOVEMBER 01, 1974
421696	MORRIS, TOWNSHIP OF (HUNTINGDON CO.)	NOVEMBER 22, 1974
421047A	MUNCY, TOWNSHIP (LYCOMING CO)	DECEMBER 20, 1974 AND
		JULY 30, 1976
422263	MUNSTER, TOWNSHIP OF (CAMBRIA CO.)	NOVEMBER 22, 1974
421348	NAPIER, TOWNSHIP OF (BEDFORD CO.)	JANUARY 31, 1975
420887A	NEW ALEXANDRIA, BOROUGH OF (WESTMORELAND CO.)	JUNE 28, 1974 AND
		OCTOBER 17, 1975
420799	NEW BALTIMORE, BOROUGH OF (SOMERSET CO.)	NOVEMBER 08, 1974
422012	NEW CASTLE, TOWNSHIP OF (SCHUYLKILL CO.)	DECEMBER 27, 1974
422322	NEW GALILEE, BOROUGH OF (BEAVER CO.)	JANUARY 31, 1975
421984	NEW LEBANON, BORO (MERCER CO.)	JANUARY 24, 1975
422485	NEW VERNON, TOWNSHIP OF (MERCER CO.)	JANUARY 31, 1975
420312A	NEW WASHINGTON, BOROUGH OF (CLEARFIELD CO.)	DECEMBER 20, 1974 AND
		JUNE 04, 1976
420311	NEWBURG, BOROUGH OF (CLEARFIELD CO.)	NOVEMBER 29, 1974
421795	NORTH BEAVER, TOWNSHIP OF (LAWRENCE)	FEBRUARY 14, 1975
421142	NORTH BELLE VERNON, BOROUGH OF (WESTMORELAND CO.)	NOVEMBER 29, 1974
422203	NORTH BRANCH, TOWNSHIP OF (WYOMING CO.)	NOVEMBER 29, 1974
421085A	NORTH FAYETTE, TWP (ALLEGHENY CO)	SEPTEMBER 20, 1974 AND
		JUNE 18, 1976
422438	NORTH MAHONING, TWP (INDIANA CO.)	JANUARY 10, 1975
422204	NORTH MORELAND, TOWNSHIP OF (WYOMING CO.)	NOVEMBER 15, 1974
422111	OAKLAND, TOWNSHIP OF (VENANGO CO.)	DECEMBER 13, 1974
422364	OAKLAND, TOWNSHIP (BUTLER CO.)	JANUARY 10, 1975
421615A	OHIOPYLE, BOROUGH OF (FAYETTE CO.)	JANUARY 31, 1975 AND
		MARCH 19, 1976
421732	OLIVER, TOWNSHIP OF (JEFFERSON CO.)	DECEMBER 13, 1974
421401	ORWELL, TWP (BRADFORD CO)	JANUARY 24, 1975
420313A	OSCEOLA MILLS, BOROUGH OF (CLEARFIELD CO.)	MARCH 29, 1974
421860	OTTO, TOWNSHIP OF (MCKEAN CO.)	NOVEMBER 15, 1974
422568	OVERFIELD, TOWNSHIP OF (WYOMING CO.)	DECEMBER 27, 1974
421402A	OVERTON, TOWNSHIP OF (BRADFORD CO.)	AUGUST 30, 1974 AND
		AUGUST 06, 1976
421968	PALMYRA, TOWNSHIP OF (PIKE CO.)	DECEMBER 13, 1974
421891	PARADISE, TWP (MONROE CO)	APRIL 11, 1975
421219A	PARKEN, TOWNSHIP OF (BUTLER CO.)	SEPTEMBER 20, 1974 AND
		JULY 16, 1976
423326	PATTERSON HEIGHTS, BORO (BEAVER CO.)	JANUARY 17, 1975
422496	PENNSBURG, BOROUGH OF (MONTGOMERY CO.)	DECEMBER 27, 1974
421848	PENN, TOWNSHIP (LYCOMING CO)	NOVEMBER 01, 1974
421630	PENN, TOWNSHIP OF (CLEARFIELD CO.)	NOVEMBER 29, 1974
422038	PERRY, TWP (SNYDER CO)	JANUARY 03, 1975
420221	PETROLIA, BOROUGH OF (BUTLER CO.)	NOVEMBER 22, 1974
421190A	PIKE, TOWNSHIP OF (CLEARFIELD CO.)	SEPTEMBER 06, 1974 AND

* UNINCORPORATED AREAS ONLY

PENNSYLVANIA

COMMUNITY NUMBER	NAME	HAZARD AREA IDENTIFIED
421903A	PIKE, TOWNSHIP OF (BRADFORD CO.)	SEPTEMBER 10, 1976
		NOVEMBER 01, 1974 AND
		AUGUST 30, 1976
422945	PINECREEK, TOWNSHIP OF (JEFFERSON CO.)	JANUARY 24, 1975
422538	PINEGROVE, TOWNSHIP OF (VENANGO CO.)	JANUARY 24, 1975
421720	PINE, TWP OF (INDIANA CO)	JANUARY 03, 1975
421984	PLEASANT VALLEY, TOWNSHIP OF (POTTER CO.)	NOVEMBER 29, 1974
421327	PLEASANTVILLE, BOROUGH OF (BEDFORD CO.)	NOVEMBER 29, 1974
421313A	PLUM CREEK, TOWNSHIP OF (ARMSTRONG CO.)	SEPTEMBER 06, 1974 AND
		JUNE 18, 1976
420604A	PLUMVILLE, BOROUGH OF (INDIANA CO.)	AUGUST 09, 1974 AND
		OCTOBER 10, 1975
422539	PLUM, TOWNSHIP (VENANGO CO.)	JANUARY 24, 1975
421733	POLK, TOWNSHIP OF (JEFFERSON CO.)	DECEMBER 06, 1974
421985	PORTAGE, TOWNSHIP OF (POTTER CO.)	DECEMBER 13, 1974
422356	PORTERSVILLE, BORO (BUTLER CO.)	JANUARY 10, 1975
422946	PORTER, TOWNSHIP OF (JEFFERSON)	FEBRUARY 14, 1975
422327	POTTER, TOWNSHIP OF (BEAVER CO.)	DECEMBER 13, 1974
421656	QUINCY, TOWNSHIP OF (FRANKLIN CO.)	DECEMBER 27, 1974
421721	RAYNE, TWP (INDIANA CO)	JANUARY 17, 1975
421496	READE, TOWNSHIP OF (CAMBRIA CO.)	DECEMBER 06, 1974
421316	REDBANK, TOWNSHIP OF (ARMSTRONG CO.)	DECEMBER 06, 1974
422540	RICHLAND, TOWNSHIP (VENANGO CO.)	JANUARY 24, 1975
422376	RICHLAND, TOWNSHIP (CLARION CO.)	JANUARY 17, 1975
422447	RINGGOLD, TOWNSHIP (JEFFERSON CO.)	JANUARY 03, 1975
421557A	ROARING CREEK, TOWNSHIP OF (COLUMBIA CO.)	DECEMBER 13, 1974 AND
		SEPTEMBER 03, 1976
422113	ROCKLAND, TWP (VENANGO CO)	JANUARY 10, 1975
423045	ROCKWOOD, BOROUGH OF (SOMERSET CO.)	DECEMBER 06, 1974
422256	ROSETO, BOROUGH OF (NORTHAMPTON CO.)	NOVEMBER 15, 1974
420824	ROSEVILLE, BOROUGH OF (TIOGA CO.)	DECEMBER 13, 1974
421734A	ROSE, TOWNSHIP OF (JEFFERSON CO.)	SEPTEMBER 30, 1974 AND
		JUNE 18, 1976
422307	RURAL VALLEY, BORO (ARMSTRONG CO.)	JANUARY 24, 1975
422192A	SALEM, TOWNSHIP OF (WESTMORELAND CO.)	SEPTEMBER 30, 1974 AND
		JUNE 25, 1976
422374	SALEM, TOWNSHIP (CLARION CO.)	JANUARY 10, 1975
420492	SALTILLO, BOROUGH OF (HUNTINGDON CO.)	JANUARY 31, 1975
420808	SALTSBURG, BORO (INDIANA CO)	APRIL 18, 1975
421879	SANDY LAKE, TOWNSHIP OF (MERCER CO.)	DECEMBER 13, 1974
422357	SAXONBURG, BOROUGH OF (BUTLER CO.)	DECEMBER 27, 1974
421767	SCOTT, TOWNSHIP OF (LACKAWANNA CO.)	DECEMBER 27, 1974
422542A	SCRUBGRASS, TOWNSHIP OF (VENANGO CO)	FEBRUARY 28, 1975
420071B	SERICKLEY HTS, BORO (ALLEGHENY CO)	MARCH 22, 1974 AND
		MAY 17, 1974 AND
		JUNE 04, 1976
420802	SHANKSVILLE, BOROUGH OF (SOMERSET CO.)	NOVEMBER 15, 1974
421885A	SHIPPENSBURG, TWP (CUMBERLAND CO)	SEPTEMBER 06, 1974 AND
		JUNE 25, 1976

* UNINCORPORATED AREAS ONLY

PENNSYLVANIA

COMMUNITY NUMBER	NAME	HAZARD AREA IDENTIFIED
420117A	SHIPPING PORT, BOROUGH OF (BEAVER CO.)	FEBRUARY 01, 1974 AND
		MAY 14, 1976
422338	SILVERDALE, BORO (BUCKS CO.)	JANUARY 03, 1975
421349	SNAKE SPRING, TWP (BEDFORD CO)	JANUARY 24, 1975
421214A	SOUTH BEND, TOWNSHIP OF (ARMSTRONG CO.)	SEPTEMBER 20, 1974 AND
		MAY 14, 1976
420100B	SOUTH BETHLEHEM, BOROUGH OF (ARMSTRONG CO)	JUNE 28, 1974
421619	SOUTH CONNELLSVILLE, BOROUGH OF (FAYETTE CO.)	NOVEMBER 08, 1974
422330	SOUTH HEIGHTS, BOROUGH OF (BEAVER CO.)	JANUARY 31, 1975
422196A	SOUTH HUNTINGDON, TOWNSHIP OF (WESTMORELAND CO.)	AUGUST 09, 1974 AND
		SEPTEMBER 10, 1976
422439	SOUTH MAHONING, TWP (INDIANA CO.)	JANUARY 24, 1975
421584	SOUTH MERTON, TOWNSHIP OF (CUMBERLAND CO.)	DECEMBER 27, 1974
421350	SOUTH WOODBURY, TWP (BEDFORD CO)	MARCH 05, 1976
421587	SOUTHAMPTON, TOWNSHIP OF (CUMBERLAND CO.)	DECEMBER 27, 1974
421361	SOUTHAMPTON, TOWNSHIP OF (BEDFORD COU)	FEBRUARY 07, 1975
422523	SOUTHAMPTON, TOWNSHIP OF (SOMERSET CO.)	DECEMBER 27, 1974
420239	SOUTHMONT, BORO (CAMBRIA CO)	MARCH 19, 1976
422127	SOUTHWEST, TOWNSHIP OF (WARREN CO.)	NOVEMBER 22, 1974
421614	SPRING CREEK, TOWNSHIP OF (ELK CO.)	DECEMBER 04, 1974
422128	SPRING CREEK, TWP (WARREN CO)	MARCH 19, 1976
421477	SPRINGHILL, TWP (GREENE CO)	APRIL 11, 1976
421570A	SPRING, TOWNSHIP OF (CRAWFORD CO.)	MAY 31, 1974 AND
		JULY 09, 1976
421745	SPRUCE HILL, TOWNSHIP OF (JUNIATA CO.)	NOVEMBER 22, 1974
421404A	STANDING STONE, TOWNSHIP OF (BRADFORD CO.)	SEPTEMBER 20, 1974 AND
		AUGUST 20, 1976
421407A	STEVENS, TOWNSHIP OF (BRADFORD CO.)	NOVEMBER 01, 1974 AND
		JUNE 25, 1976
420152	STRAUSSTOWN, BORO (BERKS CO)	JANUARY 24, 1975
421328	ST. CLAIRSVILLE, BOROUGH OF (BEDFORD CO.)	JANUARY 31, 1975
422191A	ST. CLAIR, TOWNSHIP OF (WESTMORELAND CO.)	SEPTEMBER 20, 1974 AND
		JUNE 18, 1976
422489	SUGAR GROVE, TOWNSHIP OF (MERCER CO.)	JANUARY 31, 1975
422549	SUGAR GROVE, TOWNSHIP (WARREN CO.)	JANUARY 24, 1975
421568	SUGARLOAF, TWP (COLUMBIA CO)	APRIL 04, 1976
422399	SUMMERHILL, TOWNSHIP OF (CRAWFORD CO.)	JANUARY 31, 1975
422056	SUMMIT, TWP (SOMERSET CO)	JANUARY 03, 1975
421990	SYLVANIA, TOWNSHIP OF (POTTER CO)	DECEMBER 06, 1974
421469A	TAYLOR, TOWNSHIP OF (CENTRE CO.)	DECEMBER 20, 1974 AND
		MAY 28, 1976
422339	TELFORD, BOROUGH OF (MONTGOMERY CO.)	JANUARY 10, 1975
421664	THOMPSON, TOWNSHIP (FULTON CO.)	DECEMBER 13, 1974
422576	THREE SPRINGS, BORO (HUNTINGDON CO.)	JANUARY 24, 1975
422948	TIMBLIN, BORO (JEFFERSON CO.)	JANUARY 24, 1975
420468A	TIONESTA, TOWNSHIP OF (FOREST CO.)	NOVEMBER 29, 1974 AND
		JUNE 25, 1976
421113A	TOWANDA, TOWNSHIP OF (BRADFORD CO.)	JULY 26, 1974 AND
		JUNE 18, 1976

* UNINCORPORATED AREAS ONLY

PENNSYLVANIA

COMMUNITY NUMBER	NAME	HAZARD AREA IDENTIFIED
422560	TRIUMPH, TWP (WARREN CO.)	JANUARY 17, 1975
420315	TROUTVILLE, BOROUGH OF (CLEARFIELD CO.)	DECEMBER 06, 1974
421118	TULPEHOCKEN, TOWNSHIP OF (BERKS CO.)	NOVEMBER 08, 1974
421898	TUNKHANNOCK, TOWNSHIP OF (MONROE CO.)	JANUARY 31, 1975
421961	TYRONE, TOWNSHIP OF (PERRY CO.)	JANUARY 31, 1975
422584	UNIONDALE, BORO (SUSQUEHANNA CO.)	JANUARY 24, 1975
421704	UNION, TOWNSHIP (HUNTINGDON CO)	DECEMBER 06, 1974
422430	UNION, TOWNSHIP OF (FULTON CO.)	DECEMBER 27, 1974
421573A	UNION, TOWNSHIP OF (CRAWFORD CO.)	AUGUST 30, 1974 AND
		MAY 21, 1976
422449	UNION, TOWNSHIP OF (JEFFERSON CO.)	DECEMBER 27, 1974
421352	UNION, TOWNSHIP OF (BEDFORD CO.)	JANUARY 03, 1975
421531A	UNION, TWP (CLEARFIELD CO)	JANUARY 17, 1975 AND
		OCTOBER 22, 1976
421118A	UPPER BERN, TOWNSHIP OF (BERKS CO.)	SEPTEMBER 20, 1974 AND
		OCTOBER 01, 1976
421934	UPPER NAZARETH, TOWNSHIP OF (NORTHAMPTON CO.)	DECEMBER 27, 1971
422525	UPPER TURKEYFOOT, TOWNSHIP OF (SOMERSET CO.)	DECEMBER 27, 1974
421120	UPR TULPEHOCKEN, TWP(BERKS CO)	JANUARY 10, 1975
420841A	UTICA, BOROUGH OF (VENANGO CO.)	AUGUST 14, 1974 AND
		MAY 28, 1976
421620	VANDERBILT, BOROUGH OF (FAYETTE CO.)	JANUARY 31, 1975
421748	VANDLING, BOROUGH OF (LACKAWANNA)	FEBRUARY 14, 1975
420358A	VENANGO, BOROUGH OF (CRAWFORD CO.)	AUGUST 30, 1974
422359	VENANGO, TOWNSHIP (BUTLER CO.)	JANUARY 24, 1975
422543	VICTORY, TOWNSHIP OF (VENANGO CO.)	JANUARY 31, 1975
421577	W FALLOWFIELD, TWP (CRAWFORD CO)	JANUARY 17, 1975
422577	WALKER, TWP (HUNTINGDON CO.)	JANUARY 10, 1975
420316	WALLACETON, BOROUGH OF (CLEARFIELD CO.)	NOVEMBER 08, 1974
420082	WALL, BOROUGH OF (ALLEGHENY CO.)	APRIL 25, 1975
421908	WARREN, TOWNSHIP OF (BRADFORD CO.)	JANUARY 31, 1975
422232	WARRINGTON, TOWNSHIP (YORK CO)	DECEMBER 27, 1974
421705	WARRIORS MARK, TWP (HUNTINGDON CO)	JANUARY 17, 1975
422460	WARSAW, TOWNSHIP (JEFFERSON CO.)	JANUARY 17, 1975
422207	WASHINGTON, TOWNSHIP OF (WYOMING CO.)	DECEMBER 06, 1974
421383	WASHINGTON, TOWNSHIP OF (BERKS CO.)	NOVEMBER 22, 1974
422378	WASHINGTON, TOWNSHIP (CLARION CO.)	JANUARY 17, 1975
421498	WASHINGTON, TOWNSHIP OF (CAMBRIA CO.)	NOVEMBER 22, 1974
422468	WASHINGTON, TOWNSHIP OF (LAWRENCE COU)	FEBRUARY 07, 1975
421678A	WASHINGTON, TOWNSHIP OF (GREENE CO.)	NOVEMBER 01, 1974 AND
		OCTOBER 01, 1976
421317	WASHINGTON, TOWNSHIP OF (ARMSTRONG CO.)	NOVEMBER 15, 1974
420224A	WASHINGTON, TOWNSHIP OF (BUTLER CO.)	SEPTEMBER 13, 1974 AND
		MAY 21, 1976
421722	WASHINGTON, TWP (INDIANA CO)	DECEMBER 22, 1974

* UNINCORPORATED AREAS ONLY

PENNSYLVANIA

COMMUNITY NUMBER	NAME	HAZARD AREA IDENTIFIED
422551	WATSON, TWP (WARREN CO.)	JANUARY 10, 1975
421679	WAYNE, TOWNSHIP OF (GREENE CO.)	DECEMBER 27, 1974
422027	WAYNE, TOWNSHIP OF (SCHUYLKILL CO.)	NOVEMBER 29, 1974
421699	WAYNE, TWP (DAUPHIN CO)	JANUARY 17, 1975
422826	WELLERSBURG, BOROUGH OF (SOMERSET CO.)	JANUARY 31, 1975
421760A	WEST ABLINGTON, TOWNSHIP OF (LACKAWANNA CO.)	DECEMBER 20, 1974 AND
		JUNE 18, 1976
422507	WEST BEAVER, TWP (SNYDER CO.)	JANUARY 24, 1975
422186	WEST BETHLEHEM, TOWNSHIP OF (WASHINGTON CO.)	NOVEMBER 29, 1974
422028	WEST BRUNSWICK, TWP (SCHUYLKILL CO)	JANUARY 10, 1975
422106	WEST BUFFALO, TOWNSHIP OF (UNION CO.)	NOVEMBER 01, 1974
422545	WEST FINLEY, TOWNSHIP OF (WASHINGTON CO.)	DECEMBER 27, 1974
422304	WEST FRANKLIN, TWP (ARMSTRONG CO.)	JANUARY 10, 1975
421542	WEST KEATING, TOWNSHIP OF (CLINTON CO.)	DECEMBER 06, 1974
421723	WEST MAHONING, TWP (INDIANA CO)	JANUARY 24, 1975
422029	WEST PENN, TOWNSHIP OF (SCHUYLKILL CO.)	NOVEMBER 15, 1974
421123A	WEST ROCKHILL, TOWNSHIP OF (BUCKS CO.)	SEPTEMBER 13, 1974
422402	WEST SHENANGO, TOWNSHIP (CRAWFORD CO.)	JANUARY 17, 1975
421480	WEST TAYLOR, TOWNSHIP OF (CAMBRIA CO.)	NOVEMBER 22, 1974
421961	WETMORE, TWP (MCKEAN CO)	JULY 28, 1975
421680A	WHITELEY, TOWNSHIP OF (GREENE CO.)	DECEMBER 27, 1974 AND
		APRIL 30, 1976
422558	WHITE, TOWNSHIP OF (CAMBRIA CO.)	NOVEMBER 22, 1974
420157A	WINELSBURG, BOROUGH OF (BERKS CO.)	MAY 24, 1974
421330	WOODBURY, BOROUGH OF (BEDFORD CO.)	DECEMBER 06, 1974
421356A	WOODBURY, TOWNSHIP OF (BEDFORD CO.)	JANUARY 31, 1975 AND
		MAY 21, 1976
422903	WOODCOCK, BOROUGH OF (CRAWFORD CO.)	SEPTEMBER 13, 1974
421832	WOODWARD, TOWNSHIP OF (CLEARFIELD CO.)	DECEMBER 27, 1974
422306	WORTHINGTON, BORO (ARMSTRONG CO.)	DECEMBER 27, 1974
422492	WORTH, TWP (MERCER CO.)	JANUARY 24, 1975
420946A	YORK HAVEN, BOROUGH OF (YORK CO.)	JANUARY 23, 1974 AND
		MARCH 19, 1976

TOTAL IN THE STATE 425

* UNINCORPORATED AREAS ONLY

SOUTH CAROLINA

COMMUNITY NUMBER	NAME	HAZARD AREA IDENTIFIED
450201	ALLENDALE COUNTY *	NOVEMBER 29, 1974
450203	BAMBERG COUNTY *	NOVEMBER 29, 1974
450204	BARNWELL COUNTY *	DECEMBER 20, 1974
450116	BETHUNE, TOWN OF (KERSHAW CO)	JULY 18, 1975
450032	CAMERON, TOWN OF (CALHOUN CO)	JANUARY 03, 1975
450077	CONARD, TOWN OF (FLORENCE CO.)	OCTOBER 25, 1974
450124A	CROSS HILL, TOWN OF (LAURENS CO.)	SEPTEMBER 06, 1974 AND JUNE 18, 1976
450040	DARLINGTON COUNTY *	DECEMBER 27, 1974
450065A	DILLON, TOWN OF (DILLON CO.)	MAY 17, 1974 AND JUNE 18, 1976
450074A	EDGEFIELD, TOWN OF (EDGEFIELD CO.)	MAY 24, 1974 AND MARCH 05, 1976
450022A	EHRHARDT, TOWN OF (BAMBERG CO.)	JULY 19, 1974 AND JUNE 18, 1976
450118	ELGIN, TOWN (KERSHAW CO)	JANUARY 24, 1975
450010A	FAIRFAX, TOWN OF (ALLENDALE CO.)	MAY 31, 1974 AND APRIL 23, 1976
450132	GILBERT, TOWN OF (LEXINGTON CO.)	OCTOBER 25, 1974
450210	GRAY COURT, TOWN OF (LAURENS CO.)	DECEMBER 13, 1974
450037A	HOLLYWOOD, TOWN OF (CHARLESTON CO.)	SEPTEMBER 06, 1974 AND APRIL 23, 1976
450220	JAMESTOWN, TOWN OF (BERKELEY COU)	FEBRUARY 07, 1975
450063	LAMAR, TOWN (DARLINGTON CO)	JULY 18, 1975
450128	LYNCHBURG, TOWN (LEE CO)	JULY 18, 1975
450235	MAYESVILLE, TOWN OF (SUMTER CO.)	MARCH 19, 1976
450150	MCCOLL, TOWN (MARLBORO CO)	JULY 25, 1975
450080A	OLANTA, TOWN OF (FLORENCE CO.)	MAY 24, 1974
450081A	PAMPLICO, TOWN OF (FLORENCE CO.)	MAY 10, 1974
450135A	PELION, TOWN OF (LEXINGTON CO.)	AUGUST 09, 1974 AND JUNE 04, 1976
450210	REEVESVILLE, TOWN OF (DORCHESTER CO.)	DECEMBER 27, 1974
450071A	RIDGEVILLE, TOWN OF (DORCHESTER CO.)	MAY 31, 1974 AND APRIL 30, 1976
450168A	ROWESVILLE, TOWN OF (ORANGEBURG CO.)	SEPTEMBER 20, 1974
450212	SALEM, TOWN OF (OCONEE CO.)	NOVEMBER 08, 1974
450198A	SELLERS, TOWN OF (MARION CO.)	JUNE 07, 1974 AND JULY 23, 1976
450158	SILVERSTREET, TOWN (NEWBERRY CO)	JANUARY 24, 1975
450057A	SMOAKS, TOWN OF (COLLETON CO.)	SEPTEMBER 06, 1974 AND JUNE 18, 1976
450011	SYCAMORE, TOWN OF (ALLENDALE CO.)	OCTOBER 25, 1974
450084A	TIMMONSVILLE, TOWN OF (FLORENCE CO.)	MAY 24, 1974

TOTAL IN THE STATE 33

* UNINCORPORATED AREAS ONLY

SOUTH DAKOTA

COMMUNITY NUMBER	NAME	HAZARD AREA IDENTIFIED
460157	ALCESTER, CITY (UNION CO)	JULY 11, 1975
460153	ALEXANDRIA, CITY (HANSON CO)	JUNE 27, 1975
460096	ALPENA, TOWN OF (JERAULD CO.)	SEPTEMBER 26, 1975
460077	ASHTON, CITY OF (SPINK CO.)	DECEMBER 06, 1974
460098	AURORA, TOWN (BROOKINGS CO)	JUNE 27, 1975
460058	BALTIC, TOWN OF (MINNEHAHA CO.)	DECEMBER 06, 1974
460165	BERESFORD, CITY (LINCOLN CO.)	JULY 18, 1975
460106	CLAREMONT, TOWN (BROWN CO)	APRIL 25, 1975
460013	CLARK, TOWN (CLARK CO)	MARCH 12, 1976
460165	CLEAR LAKE, CITY OF	AUGUST 08, 1975
460008	COLUMBIA, TOWN OF (BROWN CO.)	DECEMBER 06, 1974
460107	CRESBARD, TOWN (FAULK CO)	JULY 18, 1975
460168	DE SMET, CITY (KINGSBURY CO)	JULY 11, 1975
460079	DOLAND, TOWN OF (SPINK CO.)	FEBRUARY 07, 1975
460169	DUPREE, CITY OF (ZIEBACH CO.)	APRIL 25, 1975
460024A	EDGEMONT, CITY OF (FALL RIVER CO.)	AUGUST 02, 1974 AND JANUARY 16, 1976
460112	GARY, CITY OF (DEUEL CO.)	JUNE 27, 1975
460116	HAYTI, TOWN (HAMLIN CO)	JUNE 27, 1975
460181	HERREID, CITY (CAMPBELL CO)	JULY 11, 1975
460118	HUMBOLDT, TOWN (MINNEHAHA CO)	SEPTEMBER 05, 1975
460120	IRENE, TOWN (YANKTON CO.)	JULY 11, 1975
460121	IROQUOIS, CITY (BEADLE CO.)	JULY 18, 1975
460186	KIMBALL, CITY (BRULE CO)	AUGUST 08, 1975
460124	LAKE NORDEN, CITY (HAMLIN CO)	SEPTEMBER 19, 1975
460190	LEAD, CITY OF (LAWRENCE CO)	FEBRUARY 07, 1975
460192A	LENNOX, CITY (LINCOLN CO)	SEPTEMBER 26, 1975
460193	LEOLA, CITY (MCPHERSON CO)	JUNE 27, 1975
460195	MCINTOSH, CITY (CORSON CO)	SEPTEMBER 19, 1975
460208	MURDO, CITY (JONES CO)	SEPTEMBER 19, 1975
460127	NEW EFFINGTON, TOWN (ROBERTS CO)	JULY 25, 1975
460209	NEWELL, CITY (BUTTE CO)	JULY 18, 1975
460080	NORTHVILLE, TOWN OF (SPINK CO.)	DECEMBER 13, 1974
460211	PARKER, CITY (TURNER CO)	JUNE 27, 1975
460130	PEEVER, CITY (ROBERTS CO)	AUGUST 18, 1975
460133	PUKWANA, TOWN (BRULE CO)	SEPTEMBER 19, 1975
460134	RAMONA, TOWN (LAKE CO)	JULY 25, 1975
460137	ROSLYN, TOWN (DAY CO)	APRIL 25, 1975
460214	SELBY, CITY (WALWORTH CO)	JULY 25, 1975
460138	ST. FRANCIS, TOWN (TODD CO)	SEPTEMBER 19, 1975
460139	ST. LAWRENCE, TOWN (HAND CO)	JULY 18, 1975
460141	SUMMIT, TOWN (ROBERTS CO)	JULY 18, 1975
460143	TEA, TOWN (LINCOLN CO)	SEPTEMBER 19, 1975
460145	TULARE, TOWN (SPINK CO)	JULY 25, 1975
460082	TURTON, TOWN OF (SPINK CO.)	DECEMBER 20, 1974
460221	VALLEY SPRINGS, TOWN (MINNEHAHA CO)	SEPTEMBER 26, 1975
460146	VEBLEN, TOWN OF (MARSHALL CO.)	APRIL 25, 1975
460147	WESSINGTON, CITY (BEADLE CO.)	AUGUST 22, 1975
460161	WORTHING, TOWN (LINCOLN CO)	AUGUST 22, 1975

TOTAL IN THE STATE 48

* UNINCORPORATED AREAS ONLY

TENNESSEE

COMMUNITY NUMBER	NAME	HAZARD AREA IDENTIFIED
470234	ADAIR, TOWN OF (MADISON COU)	FEBRUARY 07, 1975
470159	ADAMS, TOWN OF (ROBERTSON CO.)	NOVEMBER 15, 1974
470242	ARLINGTON, TOWN (SHELBY CO)	JULY 25, 1975
470285	ATWOOD, TOWN OF (CARROLL CO.)	JULY 18, 1975
470007A	BELL BUCKLE, TOWN OF (BEDFORD CO.)	JUNE 19, 1974
470220	BELLS, TOWN OF (CROCKETT CO.)	JANUARY 10, 1975
470218	BENTON COUNTY	JANUARY 10, 1975
470128A	BETHEL SPRINGS, TOWN OF (MCNAIRY CO.)	JUNE 28, 1974 AND APRIL 02, 1976
470067A	BRADFORD, TOWN OF (GIBSON CO.)	JUNE 21, 1974 AND APRIL 23, 1976
470120A	CHAPEL HILL, TOWN OF (MARSHALL CO.)	JUNE 19, 1974
470160	CROSS PLAINS, TOWN (ROBERTSON CO)	JANUARY 24, 1975
470096	DICKSON COUNTY *	DECEMBER 06, 1974
470146A	EAGLEVILLE, TOWN OF (RUTHERFORD CO.)	AUGUST 23, 1974 AND JULY 02, 1976
470271A	ENGLEWOOD, CITY OF (MCMINN CO.)	MAY 17, 1974 AND JULY 02, 1976
470242	FAIRVIEW, CITY (WILLIAMSON CO)	APRIL 11, 1975
470129A	FINGER, TOWN OF (MCNAIRY CO.)	SEPTEMBER 06, 1974
470221	GADSDEN, TOWN OF (CROCKETT CO.)	JANUARY 24, 1975
470264	GARLAND, TOWN OF (TIPTON COU)	JANUARY 31, 1975
470206	GIBSON, TOWN OF (GIBSON CO.)	JULY 18, 1975
470190A	GILT EDGE, CITY OF (TIPTON CO.)	SEPTEMBER 13, 1974 AND JULY 02, 1976
470255	GRAND JUNCTION, CITY OF (HARDEMAN COU)	JANUARY 31, 1975
470161A	GREENBRIER, CITY OF (ROBERTSON CO.)	JUNE 21, 1974 AND JUNE 18, 1976
470226	HANCOCK COUNTY	JANUARY 24, 1975
470088	HENDERSON COUNTY *	DECEMBER 20, 1974
470269A	HENNING, TOWN (LAUDERDALE CO)	JANUARY 03, 1975
470288	HORNSBY, TOWN OF (HARDEMAN CO.)	MARCH 05, 1976
470101A	IRON CITY, CITY OF (LAWRENCE CO.)	JUNE 19, 1974 AND JUNE 26, 1974
470062	JAMESTOWN, CITY OF (FENTRESS CO)	MARCH 28, 1975
470224	KENTON, TOWN OF (GIBSON CO.)	DECEMBER 27, 1974
470249	KINGSTON SPRINGS, CITY OF (CHEATHAM CO.)	JULY 18, 1975
470121A	LEWISBURG, CITY OF (MARSHALL CO.)	MARCH 01, 1974 AND AUGUST 06, 1976
470045A	LYNNVILLE, CITY OF (GILES CO.)	JUNE 19, 1974
470261	MEDINA, CITY (GIBSON CO)	JANUARY 03, 1975
470139	MORGAN COUNTY	JANUARY 17, 1975
470291	PEGRAM, TOWN OF (CHEATHAM CO.)	JULY 18, 1975
476442A	PIGEON FORGE, CITY OF (SEVIER CO.)	AUGUST 31, 1972
470149	PUTNAM COUNTY *	SEPTEMBER 13, 1974
470131	RAMER, TOWN OF (MCNAIRY CO.)	NOVEMBER 29, 1974
470277A	RICHARD CITY, CITY OF (MARION CO.)	FEBRUARY 01, 1974 AND OCTOBER 15, 1976
470142A	RIDGETOP, CITY OF (ROBERTSON CO.)	JUNE 07, 1974 AND

* UNINCORPORATED AREAS ONLY

TENNESSEE

COMMUNITY NUMBER	NAME	HAZARD AREA IDENTIFIED
470235	RIVES, CITY OF (OBION CO.) (OBION CO.)	JUNE 18, 1976
470041A	RUTHERFORD, TOWN OF (GIBSON CO.)	JANUARY 03, 1975 JUNE 07, 1974 AND JUNE 26, 1974
470083A	SALTILLO, TOWN OF (HARDIN CO.)	JUNE 19, 1974 AND AUGUST 06, 1976
470078A	SIGNAL MOUNTAIN, TOWN OF (HAMILTON CO.)	JUNE 19, 1974 AND SEPTEMBER 03, 1976
470256	STANTON, TOWN (HAYWOOD CO)	JANUARY 03, 1975
470180	STEWART COUNTY *	SEPTEMBER 13, 1974
470279A	SURGOINSVILLE, CITY OF (HAWKINS CO.)	MAY 17, 1974
470280A	TELLICO PLAINS, CITY OF (MONROE CO.)	MARCH 08, 1974 AND AUGUST 13, 1976
470282A	TRACY CITY, CITY OF (GRUNDY CO.)	MAY 10, 1974 AND JULY 02, 1976
470223	TRIMBLE, TOWN OF (DYER CO.)	JANUARY 03, 1975
470239	TUSCULUM, CITY OF (GREENE CO.)	FEBRUARY 07, 1975
470009B	WARTRACE, TOWN OF (BEDFORD CO.)	JUNE 19, 1974 AND APRIL 23, 1976
470248	WHITE BLUFF, TOWN (DICKSON CO)	JULY 11, 1975
470118A	WHITWELL, CITY OF (MARION CO.)	FEBRUARY 15, 1974 AND AUGUST 13, 1976
470254	YORKVILLE, CITY (GIBSON CO)	JUNE 27, 1975

TOTAL IN THE STATE 66

* UNINCORPORATED AREAS ONLY

TEXAS

COMMUNITY NUMBER	NAME	HAZARD AREA IDENTIFIED
480740	ADRIAN, CITY (OLDHAM CO)	JULY 26, 1976
480746	ALEDO, TOWN (PARKER CO)	JULY 11, 1976
480740	ALTO, TOWN (CHEROKEE CO)	AUGUST 29, 1975
480397A	ALVARADO, CITY OF (JOHNSON CO.)	AUGUST 09, 1974 AND JANUARY 23, 1976
481052	ALVORD, TOWN (WISE CO)	SEPTEMBER 19, 1975
480894	AMHERST, CITY (LAMB CO)	JULY 11, 1976
480007	ANGELINA COUNTY *	DECEMBER 27, 1974
480132A	ANNA, CITY OF (COLLIN CO.)	AUGUST 09, 1974 AND APRIL 23, 1976
480775	ARGYLE, CITY (DENTON CO)	AUGUST 29, 1975
480647	ARP, CITY OF (SMITH CO.)	AUGUST 16, 1974
480066A	BAILEYS PRAIRIE, TOWN OF (BRAZORIA CO.)	NOVEMBER 08, 1974
480707	BARTLETT, CITY (BELL CO)	SEPTEMBER 12, 1975
480967	BECKVILLE, TOWN (PANOLA CO)	AUGUST 29, 1975
480743	BELLEVUE, TOWN (CLAY CO)	JULY 11, 1975
480808	BENJAMIN, CITY (KNOX CO)	JUNE 27, 1975
481037	BIG SANDY, TOWN (UPSHUR CO)	JULY 11, 1975
481088	BLACKWELL, TOWN (COKE AND NOLAN COS)	AUGUST 15, 1975
480764	BLUE RIDGE, TOWN (COLLIN CO)	JULY 11, 1975
480350	BLUM, CITY OF (HILL CO.)	NOVEMBER 01, 1974
480474A	BOYD, CITY OF (WISE CO.)	DECEMBER 28, 1973 AND MARCH 08, 1976
480398A	BRIAR OAKS, CITY OF (JOHNSON CO.)	MARCH 29, 1974 AND JUNE 18, 1976
480827	BRYSON, CITY (JACK CO)	JULY 11, 1975
480686	BUDA, TOWN OF (HAYS COU)	FEBRUARY 07, 1975
480449	BURTON, CITY OF (WASHINGTON CO.)	DECEMBER 20, 1974
480744	BYERS, CITY (CLAY CO)	JUNE 27, 1975
480490A	CACTUS, CITY OF (MOORE CO.)	JUNE 19, 1974 AND MARCH 24, 1976
480364A	CADDO MILLS, CITY OF (HUNT CO.)	JUNE 28, 1974 AND MARCH 12, 1976
480366A	CELESTE, CITY OF (HUNT CO.)	JUNE 21, 1974 AND MAY 28, 1976
480866A	CENTER, CITY OF (SHELBY CO.)	MARCH 01, 1974 AND JANUARY 02, 1976
481202	CHILLICOTHE, CITY OF (HARDEMAN CO.)	JULY 18, 1975
481141	CHINA GROVE, CITY (BEXAR CO)	APRIL 25, 1975
480702	CHRISTINE, CITY (ATASCOSA CO)	JULY 11, 1975
480535	CLARKSVILLE, CITY OF (GREGG CO.)	JULY 11, 1975
480149A	COCKRELL HILL, CITY OF (DALLAS CO.)	DECEMBER 07, 1973 AND JUNE 11, 1976
480149	COLORADO COUNTY *	OCTOBER 25, 1974
480104A	COMBES, TOWN OF (CAMERON CO.)	MAY 10, 1974 AND MAY 21, 1976
480193A	COOPER, CITY OF (DELTA CO.)	JANUARY 09, 1974 AND SEPTEMBER 03, 1974
480827A	CORRIGAN, CITY OF (POLK CO.)	MAY 24, 1974 AND

* UNINCORPORATED AREAS ONLY

TEXAS

COMMUNITY NUMBER	NAME	HAZARD AREA IDENTIFIED
		APRIL 09, 1976
480409A	CRANDALL, CITY OF (KAUFMAN CO.)	MARCH 08, 1974 AND MAY 21, 1976
481144	DOOD CITY, TOWN (FANNIN CO)	JULY 18, 1975
480761	DODSON, TOWN (COLLINGSWORTH CO)	APRIL 25, 1975
480088A	EARLY, CITY OF (BROWN CO.)	MAY 17, 1974 AND JANUARY 30, 1976
480895	EARTH, CITY (LAMB CO)	MAY 02, 1975
481146	EASTON, VILLAGE (GREGG AND RUSK COS)	JULY 18, 1975
480809	ECTOR, TOWN (FANNIN CO)	JULY 11, 1975
480763	EDEN, VILLAGE (CONCHO CO)	MAY 02, 1975
480435A	EDGEWOOD, CITY OF (VAN ZANDT CO.)	JUNE 14, 1974 AND APRIL 02, 1976
480977	EMORY, TOWN (RAINS CO)	AUGUST 08, 1975
480207A	ENNIS, CITY OF (ELLIS CO.)	JUNE 28, 1974 AND DECEMBER 10, 1976
480277	ESTELLINE, CITY OF (HALL CO.)	NOVEMBER 08, 1974
481049	FAIRVIEW, TOWN (COLLIN CO)	JANUARY 10, 1975
480226A	FLOYDADA, CITY OF (FLOYD CO.)	MAY 31, 1974 AND JANUARY 09, 1976
480446A	FOLLETT, CITY OF (LIPSCOMB CO.)	JUNE 28, 1974 AND AUGUST 15, 1975
480003A	FRANKSTON, CITY OF (ANDERSON CO.)	AUGUST 16, 1974 AND JANUARY 09, 1976
480522A	FRIONA, CITY OF (PARMER CO.)	APRIL 12, 1974
480435A	GIDDINGS, CITY (LEE CO.)	JUNE 28, 1974 AND JANUARY 16, 1976
480574A	GLEN ROSE, CITY (SOMERVELL CO)	AUGUST 23, 1974 AND FEBRUARY 06, 1976
480880	GODLEY, TOWN (JOHNSON CO)	AUGUST 22, 1975
480936	GOLDTHWAITE, CITY (MILLS CO)	AUGUST 29, 1975
480889	GOREE, CITY (KNOX CO)	JULY 11, 1975
480964	GRAFORD, TOWN (PALO PINTO CO.)	JULY 11, 1975
480881	GRANDVIEW, CITY (JOHNSON CO)	JULY 11, 1975
481046	GRANGER, CITY OF (WILLIAMSON COU)	FEBRUARY 07, 1975
480328	GUN BARREL CITY, CITY OF (HENDERSON CO.)	NOVEMBER 08, 1974
480832	GUNTER, TOWN (GRAYSON CO)	JULY 11, 1975
480163A	GUSTINE, TOWN OF (COMANCHE CO.)	AUGUST 02, 1974 AND MARCH 19, 1976
480273A	HALE CENTER, CITY OF (HALE CO.)	MAY 28, 1974
481011	HAPPY, CITY OF (RANDALL & SWISHER)	AUGUST 22, 1975
480738	HART, CITY (CASTRO CO)	SEPTEMBER 19, 1975
480400	HASLET, CITY OF (TARRANT CO.)	JULY 25, 1975
481064	HAWKINS, CITY (WOOD CO)	JUNE 21, 1974 AND
480201A	HEDLEY, CITY OF (DONLEY CO.)	JANUARY 30, 1976
480468A	HERITT, CITY OF (MCLENNAN CO.)	AUGUST 16, 1974 AND JANUARY 12, 1976

* UNINCORPORATED AREAS ONLY

TEXAS

COMMUNITY NUMBER	NAME	HAZARD AREA IDENTIFIED
480843	HICO, TOWN (HAMILTON CO)	AUGUST 22, 1975
481105	HIGHLAND VILLAGE, CITY OF (DENTON CO.)	SEPTEMBER 19, 1975
480499	HOLLIDAY, CITY (ARCHER CO)	APRIL 18, 1975
480810	HONEY GROVE, CITY (FANNIN CO)	JULY 11, 1975
480373	HUTCHINSON COUNTY *	FEBRUARY 07, 1975
481072	IREDELL, TOWN OF (BOSQUE CO.)	NOVEMBER 01, 1974
480800	ITALY, TOWN (ELLIS CO)	AUGUST 15, 1975
480882	JOSHUA, CITY (JOHNSON CO)	JUNE 27, 1975
480479A	KERMIT, CITY OF (WINKLER CO.)	MAY 24, 1974 AND JULY 23, 1976
480890A	KNOX CITY, CITY (KNOX CO.)	AUGUST 15, 1975 AND JULY 23, 1976
481012	KRESS, CITY OF (SWISHER CO)	FEBRUARY 21, 1976
480739	KRUM, CITY (DENTON CO)	JULY 25, 1975
480476A	LACOSTE, CITY OF (MEDINA CO.)	JANUARY 09, 1974 AND FEBRUARY 27, 1974
480811	LADONIA, TOWN (FANNIN CO)	JULY 11, 1975
481149	LAKEPORT, TOWN (GREGG CO)	AUGUST 29, 1975
480278	LAKEVIEW, TOWN OF (HALL CO.)	DECEMBER 06, 1974
480812	LEONARD, CITY (FANNIN CO)	JULY 25, 1975
480902	LEXINGTON, TOWN OF (LEE CO)	FEBRUARY 21, 1975
480649A	LINDALE, CITY OF (SMITH CO.)	MARCH 22, 1974 AND JANUARY 23, 1976
480900	LOMETA, TOWN (LAMPASAS CO)	MAY 02, 1975
480368	LONE OAK, CITY (HUNT CO)	JUNE 27, 1975
481109	LORAINE, TOWN OF (MITCHELL CO.)	JUNE 27, 1975
481110	LUCAS, TOWN OF	JULY 25, 1975
480268	MARION, CITY OF (GUADALUPE CO.)	JANUARY 09, 1974
480208	MAYPEARL, CITY OF (ELLIS CO.)	NOVEMBER 29, 1974
480267A	MCLEAN, CITY OF (GRAY CO.)	MAY 17, 1974 AND JANUARY 30, 1976
480546	MCLENDON-CHISHOLM, CITY (ROCKWALL CO.)	SEPTEMBER 26, 1975
481020	MEADOW, TOWN (TERRY CO)	AUGUST 22, 1975
480700	MEGARGEL, TOWN (ARCHER CO.)	AUGUST 22, 1975
481016	MERKEL, CITY (TAYLOR CO)	MAY 02, 1975
480376A	MERTZON, CITY OF (IRION CO.)	JULY 26, 1974 AND FEBRUARY 27, 1976
480641A	MIAMI, CITY OF (ROBERTS CO.)	MAY 24, 1974 AND JUNE 11, 1976
480802	MILFORD, TOWN (ELLIS CO)	AUGUST 29, 1975
480479A	MINEOLA, CITY OF (WOOD CO.)	MAY 03, 1974 AND JUNE 04, 1976
480518	MINGUS, CITY (PALO PINTO CO)	MAY 02, 1975
480937	MITCHELL COUNTY	APRIL 12, 1974
481003	MORAN, CITY (SHACKLEFORD CO)	APRIL 25, 1975
480433A	MOULTON, TOWN OF (LAVACA CO.)	APRIL 05, 1974 AND MARCH 05, 1976
480747	MUENSTER, CITY (COOKE CO)	JULY 25, 1975
480920	NEW HOME, TOWN (LYNN CO)	SEPTEMBER 05, 1975

* UNINCORPORATED AREAS ONLY

TEXAS

COMMUNITY NUMBER	NAME	HAZARD AREA IDENTIFIED
481124	NEWARK, CITY (WISE CO)	JUNE 27, 1975
480500A	NORTON, CITY OF (HENTON CO.)	JUNE 07, 1974 AND JUNE 04, 1976
480437A	OAKWOOD, TOWN OF (LEON CO.)	MAY 24, 1974 AND FEBRUARY 06, 1976
480206A	ODESSA, CITY OF (ECTOR CO.)	JUNE 28, 1974
480495	OMAHA, CITY OF (MORRIS CO.)	FEBRUARY 04, 1976
481082	OZONA, CITY OF (CROCKETT CO.)	DECEMBER 07, 1973
480852	O'BRIEN, CITY (HASKELL CO)	JULY 25, 1975
480771	PADUCAH, CITY OF (COTTLE CO.)	JUNE 27, 1975
480509A	PERRYTON, CITY OF (OCHILTREE CO.)	SEPTEMBER 12, 1974
480783	PILOT POINT, TOWN (DENTON CO)	AUGUST 08, 1975
480118A	PITTSBURG, CITY OF (CAMP CO.)	JANUARY 23, 1974 AND MAY 28, 1976
480784	PONDER, CITY (DENTON CO)	AUGUST 22, 1975
480834	POTTSBORO, TOWN (GRAYSON CO)	SEPTEMBER 19, 1975
480757	PRINCETON, CITY (COLLIN CO)	JULY 25, 1975
480141A	PROSPER, TOWN OF (COLLIN CO.)	JUNE 21, 1974 AND JANUARY 30, 1976
480645A	PYOTE, CITY OF (WARD CO.)	AUGUST 16, 1974
480370A	QUINLAN, CITY OF (HUNT CO.)	APRIL 12, 1974 AND APRIL 16, 1976
481057	QUITMAN, CITY (WOOD CO)	SEPTEMBER 12, 1975
480205A	RANGER, CITY OF (EASTLAND CO.)	MAY 17, 1974 AND APRIL 23, 1976
480428A	RANKIN, CITY OF (UPTON CO.)	MAY 10, 1974 AND MARCH 12, 1976
480803	RED OAK, TOWN (ELLIS CO)	MAY 02, 1975
481158	RETREAT, TOWN (NAVARRO CO)	JULY 11, 1975
480957	RICE, CITY (NAVARRO CO)	SEPTEMBER 26, 1975
480547A	RICHLAND SPRINGS, CITY OF (SAN SABA CO.)	NOVEMBER 08, 1974 AND MARCH 05, 1976
480958	RICHLAND, TOWN (NAVARRO CO)	JULY 25, 1975
480785	RUANOKE, CITY (DENTON CO)	SEPTEMBER 05, 1975
480749	ROBERT LEE, CITY (COKE CO)	JUNE 27, 1975
480235A	ROBY, CITY OF (FISHER CO.)	MAY 17, 1974
481120	RUNGE, TOWN (KARNES CO)	APRIL 25, 1975
481039	SABINAL, CITY (UVALDE CO)	SEPTEMBER 26, 1975
480667A	SAN PERLITA, CITY OF (WILLACY CO.)	OCTOBER 25, 1974 AND JUNE 18, 1976
480751	SANTA ANNA, TOWN (COLEMAN CO)	JUNE 27, 1975
480114A	SANTA ROSA, CITY OF (CAMERON CO.)	MAY 17, 1974 AND APRIL 02, 1976
480728	SKELLYTOWN, TOWN (CARSON CO)	MAY 02, 1975
481143	SOUTHMAYD, TOWN (GRAYSON CO)	SEPTEMBER 12, 1975
480484A	SPLENDORA, CITY OF (MONTGOMERY CO.)	AUGUST 30, 1974 AND MARCH 05, 1976
480375A	STINNETT, CITY OF (HUTCHINSON CO.)	MAY 31, 1974 AND JANUARY 16, 1976

* UNINCORPORATED AREAS ONLY

TEXAS

COMMUNITY NUMBER	NAME	HAZARD AREA IDENTIFIED
*480673A	STOCKDALE, CITY OF (WILSON CO.)	MAY 31, 1979 AND
		OCTOBER 10, 1975
*481009	STRATFORD, TOWN (SHERMAN CO)	JULY 11, 1975
*480995	TATUM, CITY (RUSK CO)	JULY 11, 1975
*481049	TWRALL, CITY OF (WILLIAMSON CO)	FEBRUARY 21, 1975
*480835	TIOGA, TOWN (GRAYSON CO)	AUGUST 08, 1975
*480868	TOLAR, TOWN (HOOD CO)	JULY 18, 1975
*480832	TOM BEAN, TOWN (GRAYSON CO)	JULY 18, 1975
*480316	TOMBALL, CITY (HARRIS CO)	JANUARY 24, 1975
*480819	TRENTON, TOWN (FANNIN CO)	AUGUST 15, 1975
*481017	TUSCOLA, TOWN (TAYLOR CO)	AUGUST 29, 1975
*481018	TYE, CITY (TAYLOR CO)	JULY 11, 1975
*480849	UNCERTAIN, CITY (HARRISON CO)	JULY 18, 1975
*480837	VAN ALSTYNE, TOWN OF (GRAYSON CO.)	JULY 18, 1975
*480883	VENUS, TOWN (JOHNSON CO)	JULY 11, 1975
*480663A	VERNON, CITY OF (WILBARGER CO.)	MAY 17, 1979 AND
		JANUARY 16, 1976
*480791	WELLS, TOWN (CHEROKEE CO)	JULY 11, 1975
*480682	WHARTON COUNTY *	AUGUST 02, 1979
*480891	WHITE OAK, TOWN (GREGG CO)	AUGUST 22, 1975
*480838	WHITESBORO, TOWN (GRAYSON CO)	JULY 11, 1975
*480675A	WINK, CITY OF (WINKLER CO.)	JUNE 28, 1979 AND
		AUGUST 13, 1976
*480673A	WINONA, CITY OF (SMITH CO.)	NOVEMBER 01, 1979 AND
		JANUARY 23, 1976
*480372A	WOLFE CITY, CITY OF (HUNT CO.)	JUNE 28, 1979
*480434A	YOAKUM, CITY OF (LAVACA CO.)	MAY 10, 1979 AND
		OCTOBER 15, 1976
*480687	ZAPATO COUNTY *	AUGUST 02, 1979

TOTAL IN THE STATE 1[illegible]9

* UNINCORPORATED AREAS ONLY

UTAH

COMMUNITY NUMBER	NAME	HAZARD AREA IDENTIFIED
*490123	AURORA, TOWN OF (SEVIER CO)	JANUARY 31, 1975
*490194	BEAR RIVER, CITY (BOX ELDER CO)	SEPTEMBER 06, 1974
*490001	BEAVER, CITY OF (BEAVER CO.)	JUNE 11, 1979
*490096A	CIRCLEVILLE, TOWN OF (PIUTE CO.)	AUGUST 02, 1979 AND
		JUNE 11, 1976
*490007	ELWOOD, TOWN (BOX ELDER CO)	JANUARY 24, 1975
*490149A	ENTERPRISE, CITY OF (WASHINGTON CO.)	AUGUST 16, 1979
*490198	FIELDING, TOWN (BOX ELDER CO)	AUGUST 08, 1975
*490199	FRANCIS, TOWN (SUMMIT CO)	JULY 25, 1975
*490184	HENOLA, TOWN OF (UTAH COU)	FEBRUARY 07, 1975
*490186	GOSHEN, TOWN OF (UTAH COU)	JUNE 21, 1979
*490188A	HUNTSVILLE, TOWN OF (WEBER CO.)	DECEMBER 20, 1979
*490185	LOA, TOWN OF (WAYNE CO.)	SEPTEMBER 19, 1975
*490202	MANILA, TOWN (DAGGETT CO)	AUGUST 22, 1975
*490203	PLYMOUTH, TOWN (BOX ELDER CO)	AUGUST 16, 1979
*490100A	RANDOLPH, TOWN OF (RICH CO.)	JUNE 27, 1975
*490050	TRENTON, TOWN (CACHE CO)	FEBRUARY 19, 1975
*490147	UINTAH COUNTY *	JULY 24, 1979 AND
*490037A	WELLINGTON, CITY OF (CARBON CO.)	APRIL 09, 1976

TOTAL IN THE STATE 18

* UNINCORPORATED AREAS ONLY

VERMONT

COMMUNITY NUMBER	NAME	HAZARD AREA IDENTIFIED
*500279	ATHENS, TOWN OF (WINDHAM CO.)	DECEMBER 06, 1979
*500227	BELVIDERE, TOWN OF (LAMOILLE CO.)	DECEMBER 06, 1979
*500238A	BROOKFIELD, TOWN OF (ORANGE CO.)	DECEMBER 13, 1979 AND
		OCTOBER 15, 1976
*500246A	BROWNINGTON, TOWN OF (ORLEANS CO.)	DECEMBER 13, 1979 AND
		NOVEMBER 05, 1976
*500107A	CABOT, VILLAGE OF (WASHINGTON CO.)	SEPTEMBER 06, 1979
*500083A	CHARLESTON, TOWN OF (ORLEANS CO.)	AUGUST 09, 1979 AND
		NOVEMBER 19, 1976
*500186	DANVILLE, TOWN (CALEDONIA CO)	JANUARY 17, 1975
*500249	DERBY CENTER, VILLAGE OF (ORLEANS CO)	MARCH 28, 1975
*500229	EDEN, TOWN OF (LAMOILLE CO.)	DECEMBER 06, 1979
*500310	ELMORE, TOWN (LAMOILLE CO)	APRIL 11, 1975
*500061	ENOSBURG, TOWN OF (FRANKLIN CO.)	AUGUST 09, 1979
*500036A	ESSEX JCT., VILLAGE OF (CHITTENDEN CO.)	JUNE 28, 1979 AND
		JULY 30, 1976
*500210	FERDINAND, TOWN OF (ESSEX CO.)	DECEMBER 13, 1979
*500261	GLOVER, TOWN OF (ORLEANS CO.)	DECEMBER 20, 1979
*500129A	GRAFTON, TOWN OF (WINDHAM CO.)	DECEMBER 06, 1979 AND
		APRIL 02, 1976
*500211	GRANBY, TOWN OF (ESSEX CO.)	DECEMBER 13, 1979
*500003	GRANVILLE, TOWN OF (ADDISON CO.)	JANUARY 24, 1975
*500187A	HARDWICK, VILLAGE OF (CALEDONIA CO.)	DECEMBER 20, 1979 AND
		DECEMBER 24, 1976
*500313A	HUBBARDTON, TOWN OF (RUTLAND CO.)	DECEMBER 13, 1979 AND
		SEPTEMBER 10, 1976
*500262A	IRASBURG, TOWN OF (ORLEANS CO.)	DECEMBER 20, 1979 AND
		OCTOBER 22, 1976
*500263A	JAY, TOWN OF (ORLEANS CO.)	SEPTEMBER 13, 1979 AND
		NOVEMBER 05, 1976
*500188	KIRBY, TOWN OF (CALEDONIA CO.)	DECEMBER 13, 1979
*500094	LUNENBURG, TOWN OF (ESSEX CO.)	JUNE 28, 1979
*500213	MAIDSTONE, TOWN OF (ESSEX CO.)	DECEMBER 13, 1979
*500167	MONKTON, TOWN (ADDISON CO)	JANUARY 24, 1975
*500255	MORGAN, TOWN OF (ORLEANS CO.)	JANUARY 31, 1975
*500267	MT. TABOR, TOWN (RUTLAND CO)	JANUARY 10, 1975
*500286	N WESTMINSTER, VILL (WINDHAM CO)	JANUARY 10, 1975
*500190	NEWARK, TOWN (CALEDONIA CO.)	JANUARY 10, 1975
*500284	NEWFANE, VILLAGE (WINDHAM CO)	JANUARY 03, 1975
*500264A	NEWPORT, TOWN OF (ORLEANS CO.)	NOVEMBER 01, 1979 AND
		DECEMBER 17, 1976
*500180	NORTH BENNINGTON, VILLAGE OF (BENNINGTON CO)	FEBRUARY 21, 1975
*500219	NORTON, TOWN OF (ESSEX CO)	MARCH 28, 1975
*500294	PERKINSVILLE, VILL (WINDSOR CO)	JANUARY 03, 1975
*500181	PERU, TOWN (BENNINGTON CO)	JANUARY 10, 1975
*500183	SANDGATE, TOWN OF (BENNINGTON CO.)	JANUARY 31, 1975
*500184	SEARSBURG, TOWN OF (BENNINGTON CO.)	NOVEMBER 15, 1979
*500287	SOMERSET, TOWN OF (WINDHAM CO.)	NOVEMBER 22, 1979
*500321	STRATTON, TOWN OF (WINDHAM CO.)	JANUARY 31, 1975

* UNINCORPORATED AREAS ONLY

VERMONT

COMMUNITY NUMBER	NAME	HAZARD AREA IDENTIFIED
*500249	SUDBURY, TOWN (RUTLAND CO)	JANUARY 24, 1975
*500198A	SUTTON, TOWN OF (CALEDONIA CO.)	DECEMBER 13, 1979 AND
		SEPTEMBER 24, 1976
*500270	TINMOUTH, TOWN OF (RUTLAND CO.)	DECEMBER 06, 1979
*500288	TOWNSEND, VILLAGE OF (WINDHAM CO.)	NOVEMBER 29, 1979
*500292	VERSHIRE, TOWN OF (ORANGE CO.)	JANUARY 17, 1975
*500216	VICTORY, TOWN OF (ESSEX CO.)	DECEMBER 13, 1979
*500077A	WASHINGTON, TOWN OF (ORANGE CO)	JUNE 28, 1979 AND
		FEBRUARY 20, 1976
*500233A	WATERVILLE, TOWN OF (LAMOILLE CO.)	DECEMBER 20, 1979 AND
		SEPTEMBER 17, 1976
*500078	WELLS RIVER, VILLAGE OF (ORANGE CO.)	AUGUST 09, 1979
*500277	WEST HAVEN, TOWN (RUTLAND CO)	JANUARY 03, 1975
*500267A	WESTFIELD, TOWN OF (ORLEANS CO.)	SEPTEMBER 06, 1979 AND
		DECEMBER 24, 1976
*500203	WESTFORD, TOWN (CHITTENDEN CO)	JANUARY 03, 1975
*500140	WESTMINSTER, VILLAGE OF (WINDHAM CO.)	DECEMBER 20, 1979
*500311A	WESTMORE, TOWN (ORLEANS CO)	JANUARY 03, 1975 AND
		OCTOBER 01, 1976
*500204	WHEELOCK, TOWN OF (CALEDONIA CO.)	NOVEMBER 15, 1979

TOTAL IN THE STATE 64

• UNINCORPORATED AREAS ONLY

VIRGINIA

COMMUNITY NUMBER	NAME	HAZARD AREA IDENTIFIED
510247A	BELLE HAVEN, TOWN OF (ACCOMACK CO.)	NOVEMBER 01, 1974 AND SEPTEMBER 10, 1976
510218A	HALLWOOD, TOWN OF (ACCOMACK CO.)	AUGUST 09, 1974 AND MAY 28, 1976
510121A	(AYMARKET, TOWN OF (PRINCE WILLIAM CO.)	AUGUST 09, 1974
510314A	HILLSBORO, TOWN (LOUDON CO)	APRIL 04, 1975 AND SEPTEMBER 17, 1976
510309	LUNENBURG COUNTY •	JULY 25, 1975
510226A	NEW CASTLE, TOWN OF (CRAIG CO.)	AUGUST 09, 1974
510322	ROPKINS, TOWN OF (SOUTHAMPTON CO.)	MAY 31, 1974
510308	SPOTSYLVANIA COUNTY •	JULY 11, 1975

TOTAL IN THE STATE 8

• UNINCORPORATED AREAS ONLY

WASHINGTON

COMMUNITY NUMBER	NAME	HAZARD AREA IDENTIFIED
530107	ALMIRA, TOWN OF (LINCOLN CO.)	DECEMBER 06, 1974
530280A	CONNELL, TOWN (FRANKLIN CO)	JULY 11, 1975 AND NOVEMBER 12, 1976
530108A	CRESTON, TOWN OF (LINCOLN CO.)	DECEMBER 20, 1974 AND APRIL 02, 1976
530246	ELMER CITY, TOWN (OKANOGAN CO)	AUGUST 22, 1975
530150A	FRIDAY HARBOR, TOWN OF (SAN JUAN CO.)	NOVEMBER 29, 1974
530110	HARRINGTON, TOWN OF (LINCOLN CO.)	DECEMBER 13, 1974
530289	KALAMA, TOWN (COWLITZ CO)	JULY 11, 1975
530178	LATAH, TOWN OF (SPOKANE CO.)	DECEMBER 06, 1974
530250	MALDEN, TOWN (WHITMAN CO)	JULY 18, 1975
530235	MUKILTEO, TOWN (SNOHOMISH CO)	JULY 11, 1975
530259	PRESCOTT, TOWN (WALLA WALLA CO)	JULY 18, 1975
530112	REARDAN, TOWN (LINCOLN CO)	JANUARY 10, 1976
530042A	REPUBLIC, TOWN OF (FERRY CO.)	JUNE 07, 1974 AND JANUARY 16, 1976
530039	ROCK ISLAND, TOWN (DOUGLAS CO)	JANUARY 24, 1975
530262	ROY, TOWN (PIERCE CO)	JULY 18, 1975
530244	SPRINGDALE, TOWN (STEVENS CO)	MAY 02, 1975
530031	STARBUCK, CITY (COLUMBIA CO)	JANUARY 03, 1975
530265	TIETON, TOWN (YAKIMA CO)	JULY 11, 1975
530303	TOLEDO, TOWN (LEWIS CO)	JULY 11, 1975
530246A	VADER, TOWN (LEWIS CO)	SEPTEMBER 05, 1975
530184	WAVERLY, TOWN OF (SPOKANE CO.)	NOVEMBER 15, 1974
530308	WOODWAY, TOWN (SNOHOMISH CO)	SEPTEMBER 19, 1975
530309	YARROW POINT, TOWN (KING CO)	AUGUST 08, 1975

TOTAL IN THE STATE 23

• UNINCORPORATED AREAS ONLY

WEST VIRGINIA

COMMUNITY NUMBER	NAME	HAZARD AREA IDENTIFIED
540061	HARDY COUNTY •	APRIL 26, 1976
540086	LEWIS COUNTY •	FEBRUARY 21, 1975
540183	ROANE COUNTY •	APRIL 26, 1976
540213	WOOD COUNTY	JANUARY 17, 1975

TOTAL IN THE STATE 4

• UNINCORPORATED AREAS ONLY

WISCONSIN

COMMUNITY NUMBER	NAME	HAZARD AREA IDENTIFIED
550174A	BARNEVELD, VILLAGE OF (IOWA CO.)	MAY 17, 1974 AND DECEMBER 26, 1975
550520	BEAR CREEK, VILLAGE OF (OUTAGAMIE CO.)	NOVEMBER 22, 1974
550068A	BELL CENTER, VILLAGE OF (CRAWFORD CO.)	JANUARY 09, 1974
550493A	BIG FALLS, VILLAGE OF (WAUPACA CO.)	AUGUST 30, 1974
550198A	BOSCOBEL, CITY OF (GRANT CO.)	DECEMBER 17, 1973
550161A	BROWNTOWN, VILLAGE OF (GREEN CO.)	JANUARY 09, 1974 AND JUNE 04, 1976
550018A	CABLE, VILLAGE OF (BAYFIELD CO.)	AUGUST 30, 1974 AND NOVEMBER 21, 1975
550011A	CAMERON, VILLAGE OF (BARRON CO.)	DECEMBER 28, 1973 AND MAY 28, 1976
550358A	CAZENOVIA, VILLAGE OF (RICHLAND CO.)	AUGUST 23, 1974 AND OCTOBER 24, 1975
550371A	CONRATH, VILLAGE OF (RUSK CO.)	AUGUST 30, 1974 AND MARCH 19, 1976
550049A	DESOTO, VILLAGE (CRAWFORD CO)	JANUARY 09, 1974 AND MAY 14, 1976
550961A	EAGLE RIVER, CITY OF (VILAS CO.)	DECEMBER 28, 1973
550417A	ELAND, VILLAGE OF (SHAWANO CO.)	AUGUST 23, 1974 AND MARCH 19, 1976
550249A	ELDERON, VILLAGE OF (MARATHON CO.)	JULY 19, 1974 AND JULY 30, 1976
550128A	FAIRCHILD, VILLAGE OF (EAU CLAIRE CO.)	MAY 31, 1974 AND JUNE 04, 1976
550250A	FENWOOD, VILLAGE OF (MARATHON CO.)	AUGUST 02, 1974 AND MAY 14, 1976
550110A	FORESTVILLE, VILLAGE OF (DOOR CO.)	NOVEMBER 30, 1973
550367	FORTVILLE, VILLAGE OF (ROCK CO.)	MAY 31, 1974
550234A	FRANCIS CREEK, VILLAGE OF (MANITOWOC CO.)	MAY 17, 1974
550372	GLEN FLORA, VILLAGE OF (RUSK CO.)	NOVEMBER 08, 1974
550090A	GRANTON, VILLAGE OF (CLARK CO.)	AUGUST 30, 1974
550202A	HUSTLER, VILLAGE OF (JUNEAU CO.)	AUGUST 23, 1974 AND MAY 14, 1976
550374A	INGRAM, VILLAGE OF (RUSK CO.)	SEPTEMBER 06, 1974
550393A	IRONTON, VILLAGE OF (SAUK CO.)	AUGUST 16, 1974
550394A	LIME RIDGE, VILLAGE OF (SAUK CO.)	AUGUST 23, 1974 AND APRIL 23, 1976
550102A	LOBELL, VILLAGE OF (DODGE CO.)	MAY 17, 1974
550434A	LUBLIN, VILLAGE OF (TAYLOR CO.)	SEPTEMBER 30, 1974
550170A	MARQUETTE, VILLAGE OF (GREEN LAKE CO.)	DECEMBER 28, 1973
550419A	MATTOON, VILLAGE OF (SHAWANO CO.)	AUGUST 30, 1974
550288A	MELVINA, VILLAGE OF (MONROE CO.)	AUGUST 30, 1974 AND MAY 28, 1976
550152A	MOUNT HOPE, VILLAGE OF (GRANT CO.)	AUGUST 30, 1974 AND MAY 14, 1976
550205A	NECEDAH, VILLAGE OF (JUNEAU CO.)	JANUARY 09, 1974 AND MAY 28, 1976
550094A	NEW AUBURN, CITY OF (CHIPPEWA CO.)	JULY 19, 1974 AND

• UNINCORPORATED AREAS ONLY

WISCONSIN

COMMUNITY NUMBER	NAME	HAZARD AREA IDENTIFIED
550360A	NORTH BAY, VILLAGE OF (RACINE CO.)	AUGUST 13, 1974
		SEPTEMBER 06, 1974 AND
		SEPTEMBER 10, 1974
550600A	OGDENSBURG, VILLAGE OF (WAUPACA CO.)	AUGUST 23, 1974 AND
		MAY 28, 1976
550113A	OLIVER, VILLAGE OF (DOUGLAS CO.)	AUGUST 30, 1974 AND
		JUNE 18, 1976
550467A	ONTARIO, VILLAGE OF (VERNON CO.)	JANUARY 09, 1974
550427A	OOSTBURG, VILLAGE OF (SHEBOYGAN CO.)	JUNE 28, 1974 AND
		JUNE 09, 1976
550166A	POTOSI, VILLAGE OF (GRANT CO.)	DECEMBER 28, 1973
550401A	PRAIRIE DU SAC, VILLAGE OF (SAUK CO.)	DECEMBER 07, 1973
550468A	READSTOWN, VILLAGE OF (VERNON CO.)	DECEMBER 07, 1973 AND
		APRIL 16, 1976
550600A	REDGRANITE, VILLAGE OF (WAUSHARA CO.)	MAY 17, 1974 AND
		MAY 28, 1976
550222	ROCKLAND, VILLAGE OF (LA CROSSE CO)	JULY 11, 1975
550656	SHOREWOOD HILLS, VILLAGE OF (DANE COU)	JANUARY 31, 1975
550231A	SHULLSBURG, CITY OF (LAFAYETTE CO.)	MAY 17, 1974 AND
		MAY 28, 1976
550231A	SOUTH WAYNE, VILLAGE OF (LAFAYETTE CO.)	DECEMBER 07, 1973 AND
		MAY 28, 1976
550388	STANTON, TOWN OF (ST. CROIX CO.)	NOVEMBER 15, 1974
550387A	STAR PRAIRIE, VILLAGE OF (ST. CROIX CO.)	DECEMBER 28, 1973 AND
		MAY 28, 1976
550363A	STURTEVANT, VILLAGE OF (RACINE CO.)	MAY 24, 1974
550406	TROY, VILLAGE OF (SAUK CO.; SAUK CO.)	DECEMBER 06, 1974
550207	UNION CENTER, VILLAGE OF (JUNEAU CO.)	NOVEMBER 15, 1974
550267A	UNITY, CITY OF (MARATHON CO.)	SEPTEMBER 20, 1974
550519A	VESPER, VILLAGE OF (WOOD CO.)	AUGUST 02, 1974 AND
		JUNE 04, 1976
550507A	WILD ROSE, VILLAGE OF (WAUSHARA CO.)	MAY 31, 1974 AND
		JUNE 04, 1976
550156A	WOODMAN, VILLAGE OF (GRANT CO.)	JANUARY 16, 1974 AND
		AUGUST 08, 1975

TOTAL IN THE STATE 56

• UNINCORPORATED AREAS ONLY

WYOMING

COMMUNITY NUMBER	NAME	HAZARD AREA IDENTIFIED
560041A	CHUGWATER, TOWN OF (PLATTE CO.)	DECEMBER 13, 1974 AND
		NOVEMBER 26, 1976
560059	COWLEY, TOWN (BIG HORN CO)	SEPTEMBER 19, 1975
560018A	DUBOIS, TOWN OF (FREMONT CO.)	JANUARY 23, 1974 AND
		AUGUST 27, 1976
560025A	EAST THERMOPOLIS, TOWN OF (HOT SPRINGS CO.)	NOVEMBER 08, 1974 AND
		FEBRUARY 06, 1976
560061	ENCAMPMENT, TOWN (CARBON CO)	SEPTEMBER 26, 1975
560062	GLENDO, TOWN (PLATTE CO)	AUGUST 15, 1976
560005A	GREYBULL, TOWN (BIG HORN CO)	JUNE 21, 1974
560063	HANNA, TOWN (CARBON CO)	AUGUST 22, 1975
560028	KAYCEE, TOWN OF (JOHNSON CO.)	NOVEMBER 22, 1974
560035A	KEMMERER, TOWN OF (LINCOLN CO.)	MARCH 29, 1974 AND
		DECEMBER 17, 1976
560064	LINGLE, TOWN (GOSHEN CO)	AUGUST 15, 1975
560075	LYMAN, TOWN (UINTA CO)	SEPTEMBER 19, 1975
560048A	RANCHESTER, TOWN OF (SHERIDAN CO.)	SEPTEMBER 06, 1974 AND
		MARCH 12, 1976
560021A	RIVERTON, CITY OF (FREMONT CO.)	MARCH 29, 1974 AND
		AUGUST 06, 1976
560003	ROCK RIVER, CITY OF (ALBANY COU)	FEBRUARY 07, 1975
560078	SHOSHONI, TOWN (FREMONT CO)	AUGUST 15, 1975
560067	SINCLAIR, TOWN (CARBON CO)	JULY 26, 1976
560065	TEN SLEEP, TOWN OF (WASHAKIE CO.)	DECEMBER 13, 1974
560024	TODER, TOWN OF (GOSHEN CO.)	DECEMBER 06, 1974

TOTAL IN THE STATE 19

NATIONAL TOTAL 3,116

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective January 28, 1969 (33 ~~FR 17804 November 28, 1968~~); as amended, 42 U.S.C. 4001–4128; and Secretary's delegation of Authority to Federal Insurance Administrator, 34 FR 2680, February 28, 1969, as amended 39 FR 2787, January 24, 1974)

Issued: January 11, 1977.

J. ROBERT HUNTER,
Acting Federal
Insurance Administrator.

[FR Doc.77-1395 Filed 1-17-77; 8:45 am]

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PAGES
3625–3826

federal register

WEDNESDAY, JANUARY 19, 1977

highlights

PART I:

ALIENS AND IMMIGRANTS
Justice/INS issues amendments to Immigration and Nationality Act made by the Health Professions Educational Assistance Act, 1976; effective 1–19–77 3626

ANTIDUMPING
Treasury modifies findings on tuners from Japan 3725

DOMESTIC CRUDE OIL
FEA clarifies mandatory Petroleum Price Regulations 3628

FOREIGN OIL SUPPLY AGREEMENTS
FEA proposes reporting requirements; comments by 2–15–77 3652

GOVERNMENT IN SUNSHINE
National Commission on Libraries and Information Science proposes implementation of Act; comments by 2–12–77 3667

GOVERNMENT-OWNED INVENTIONS
Commerce/NTIS announces availability of patents (3 documents) 3675, 3676

MEDICAID
HEW/SRS proposal on termination of Federal financial participation in State payments to long-term care facilities; comments by 3–7–77 3665

PRIVACY ACT, 1974
FPC publishes new or intended routine uses of information in existing systems of records 3711

PUBLIC ASSISTANCE PROGRAMS
HEW/SRS/CSEO proposes repayment of Federal funds by installments (2 documents); comments by 3–7–77 .... 3663, 3664

REPORTING REQUIREMENTS
FEA proposal on foreign oil supply agreements; comments by 2–15–77 3652

STANDARDS OF CONDUCT
DOD rules on disclosure of affiliations and financial interests for all personnel, regardless of assignment; effective 1–19–77 3646

CONTINUED INSIDE

AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The six-month trial period ended August 6. The program is being continued on a voluntary basis (see OFR notice, 41 FR 32914, August 6, 1976). The following agencies have agreed to remain in the program:

Monday	Tuesday	Wednesday	Thursday	Friday
NRC	USDA/ASCS		NRC	USDA/ASCS
DOT/COAST GUARD	USDA/APHIS		DOT/COAST GUARD	USDA/APHIS
DOT/NHTSA	USDA/FNS		DOT/NHTSA	USDA/FNS
DOT/FAA	USDA/REA		DOT/FAA	USDA/REA
DOT/OHMO	CSC		DOT/OHMO	CSC
DOT/OPSO	LABOR		DOT/OPSO	LABOR
	HEW/FDA			HEW/FDA

Documents normally scheduled on a day that will be a Federal holiday will be published the next work day following the holiday.

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ATTENTION: For questions, corrections, or requests for information please see the list of telephone numbers appearing on opposite page.

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Scheduling of documents for publication.	523–5220
Copies of documents appearing in the Federal Register.	523–5240
Corrections	523–5286
Public Inspection Desk	523–5215
Finding Aids	523–5227
Public Briefings: "How To Use the Federal Register."	523–5282
Code of Federal Regulations (CFR)	523–5266
Finding Aids	523–5227
PRESIDENTIAL PAPERS:	
Executive Orders and Proclamations.	523–5233
Weekly Compilation of Presidential Documents.	523–5235
Public Papers of the Presidents	523–5235
Index	523–5235
PUBLIC LAWS:	
Public Law dates and numbers	523–5237
Slip Laws	523–5237
U.S. Statutes at Large	523–5237
Index	523–5237
U.S. Government Manual	523–5230
Automation	523–5240
Special Projects	523–5240

HIGHLIGHTS—Continued

STATE MEMBER BANKS
FRS publishes "Instructions for the Preparation of Reports of Condition by State Member Banks of the Federal Reserve System" 3711

TITLE XVII, XIX, CHAMPUS PROGRAMS
HEW/SSA rule permitting earliest possible exchange of information in fraud and abuse cases; effective 1–19–77 3640

TRANS-ALASKA PIPELINE LIABILITY FUND
Interior establishes procedures; comments by 3–7–77 3660

MEETINGS—
EPA: Polychlorinated Biphenyls (PCBs), 1–24–77 3701
FEA: Voluntary Agreement and Plan of Action to Implement International Energy Program, 1–27 and 1–28–77 3705
Federal Prevailing Rate Advisory Committee, 2–3, 2–10, 2–17 and 2–24–77 3711
HEW/OE: National Advisory Council on Extension and Continuing Education, 1–31–77 3714
Justice/LEAA: National Institute of Law Enforcement and Criminal Justice, 2–9–77 3724
NSF: Neurobiology Advisory Panel, 2–10 and 2–11–77 3724
SBA: Spokane District Advisory Council, 2–4–77 3724

PART II:

MASS TRANSPORTATION
DOT/UMTA implements uniform system of accounts, records and reporting; effective 1–10–77 3771

PART III:

NATIVE AMERICAN PROGRAMS
HEW/HDO regulations promoting economic and social self-sufficiency; effective 1–19–77 3781

PART IV:

EDUCATIONAL BROADCASTING FACILITIES PROGRAM
HEW/OE proposal governing grants for noncommercial educational television and radio broadcasting facilities; comments by 3–7–77 3791

PART V:

OUTER CONTINENTAL SHELF
Interior/BLM notice of certain oil and gas lease sales 3803

PART VI:

GOVERNMENT IN SUNSHINE, PRIVACY ACT, OPINIONS
FEC publishes proposal, notice of system of records, and advisory opinion requests (3 documents); comments by 2–18–77 3810, 3812

PART VII:

STANDARDS OF CONDUCT
FEA regulations concerning employee financial interests 3813

PART VIII:

EMPLOYEE SELECTION PROCEDURES
Justice, Labor/FCCPO, and CSC issue documents on questions and answers on the Federal executive agency guidelines (3 documents) 3820, 3825, 3826

contents

AGRICULTURAL MARKETING SERVICE
Rules
Cherries grown in Mich. et al---- 3626
Lettuce grown in So. Tex------- 3626
Pears, plums, and peaches (fresh) grown in Calif. (2 documents) - 3625
Notices
Committees; establishment, renewals, etc.:
Distributors' Advisory Committee ---------- 3671
Hop Marketing Advisory Board- 3671

AGRICULTURE DEPARTMENT
See Agricultural Marketing Service.

ANTITRUST DIVISION, JUSTICE DEPARTMENT
Notices
Competitive impact statements and proposed consent judgments; U.S. versus listed companies:
Bechtel Corp. et al---------- 3716

ARMY DEPARTMENT
See Engineers Corps.

CHILD SUPPORT ENFORCEMENT OFFICE
Proposed Rules
State plan approval and grant procedures:
Grants to States for public assistance programs; repayment of Federal funds by installments ---------- 3663

CIVIL AERONAUTICS BOARD
Notices
Mail rates, domestic service priority and nonpriority------- 3671
Hearings, etc.:
Pacific Western Airlines, Ltd-- 3671

CIVIL SERVICE COMMISSION
Notices
Employee selection procedure guidelines; appendices to Federal Personnel Manual Supplement; questions and answers-- 3826

COMMERCE DEPARTMENT
See Domestic and International Business Administration; Maritime Administration; National Technical Information Service.

COMMODITY FUTURES TRADING COMMISSION
Notices
Treatment of pending applications; registration of merchants and associated persons engaging in commodity options for customers ---------- 3699

DEFENSE DEPARTMENT
See also Engineers Corps.
Rules
Conduct standards---------- 3646

DISEASE CONTROL CENTER
Notices
Coal mine dust sampler units, personal; revocation of certificates of approval:
Bendix Corp---------- 3714

DOMESTIC AND INTERNATIONAL BUSINESS ADMINISTRATION
Notices
Organization and functions:
Energy Programs Office------- 3673

EDUCATION OFFICE
Proposed Rules
Educational broadcasting facilities program; grants---------- 3791
Notices
Meetings:
Indian Education National Advisory Council; correction--- 3714

ENGINEERS CORPS
Rules
Danger zones:
California, Pacific Ocean at San Miguel Island---------- 3646

ENVIRONMENTAL PROTECTION AGENCY
Proposed Rules
Air quality implementation plans; various States, etc.:
Illinois ---------- 3657
Notices
Meetings:
Toxic Substances Control Act; Polychlorinated Biphenyls (PCBs); implementation--- 3701
Pesticide applicator certification; State plans:
Wyoming ---------- 3705
Pesticide registration:
Chloranil ---------- 3702
Pesticides; specific exemptions and experimental use permits:
California Department of Food and Agriculture ---------- 3703
Florida Department of Agriculture ---------- 3704
Washington State Department of Agriculture---------- 3702

EXTENSION AND CONTINUING EDUCATION, NATIONAL ADVISORY COUNCIL
Notices
Meetings, Executive Committee-- 3714

FEDERAL COMMUNICATIONS COMMISSION
Rules
Radio broadcast services:
Transmission systems, automatic; usage---------- 3646
Proposed Rules
Cable television:
Frequency channelling requirements and restrictions, and signal leakage monitoring; extension of time---------- 3670
Notices
International Telecommunication Union World Administrative Radio Conference---------- 3705

FEDERAL CONTRACT COMPLIANCE PROGRAMS OFFICE
Rules
Employee selection procedures; guidelines; questions and answers ---------- 3825

FEDERAL DISASTER ASSISTANCE ADMINISTRATION
Notices
Disaster areas:
Missouri ---------- 3715
Virginia ---------- 3715

FEDERAL ELECTION COMMISSION
Proposed Rules
Sunshine Act implementation; definitions and meetings procedures ---------- 3809
Notices
Advisory opinion requests-------- 3812
Privacy Act; systems of records-- 3812

FEDERAL ENERGY ADMINISTRATION
Rules
Oil import regulations:
Conduct standards; financial interests reporting---------- 3813
Petroleum price regulations, mandatory:
Crude oil, domestic; ruling---- 3628
Proposed Rules
Foreign oil supply agreements; reporting requirements---------- 3652
Notices
Voluntary agreement and plan of action to implement International Energy Program------ 3705

FEDERAL HIGHWAY ADMINISTRATION
Rules
Engineering and traffic operations:
Highway design standards; correction ---------- 3642

FEDERAL HOUSING COMMISSIONER—OFFICE OF ASSISTANT SECRETARY FOR HOUSING
Proposed Rules
Mortgage and loan insurance programs:
Hospitals; eligibility requirements; withdrawn---------- 3655

FEDERAL MARITIME COMMISSION
Notices
Freight forwarder licenses:
Empire Household Shipping Co. of New York, Inc---------- 3706
Oil pollution; certificates of financial responsibility---------- 3705
Agreements filed, etc.:
Continental North Atlantic Westbound Freight Conference and North Atlantic Continental Freight Conference-- 3706

FEDERAL POWER COMMISSION
Notices
Privacy Act; system of records, adoption of routine use-------- 3711

FEDERAL PREVAILING RATE ADVISORY COMMITTEE
Notices
Meetings; February---------- 3711

FEDERAL RESERVE SYSTEM
Notices
State member banks; call for report of condition---------- 3711

FEDERAL TRADE COMMISSION
Rules
Prohibited trade practices:
Commercial Programming Unlimited, Inc., et al---------- 3636
RSR Corp.; correction--------- 3640
Proposed Rules
Mergers and acquisitions; financial transactions and institutions; transitional policy; correction and extension of time (2 documents) ---------- 3655
Notices
Consent agreement with analysis:
Richard D. Jones Mortgage Service, Inc., et al---------- 3712

FISH AND WILDLIFE SERVICE
Notices
Endangered species permits; applications (12 documents) - 3678, 3691, 3694, 3695
Marine mammal applications, etc.:
Lentfer, Jack W---------- 3693
Pipeline applications:
Aransas National Wildlife Refuge, Black Jack Peninsula, Tex ---------- 3677

GENERAL ACCOUNTING OFFICE
Notices
Regulatory reports review; proposals, approvals, etc---------- 3713

GEOLOGICAL SURVEY
Rules
Coal-mining operating regulations:
Wyoming, surface reclamation operations; administration and enforcement---------- 3642

HEALTH, EDUCATION, AND WELFARE DEPARTMENT
See Child Support Enforcement Office; Disease Control Center; Education Office; Health Resources Administration; Health Services Administration; Human Development Office; Social and Rehabilitation Service; Social Security Administration.

HEALTH RESOURCES ADMINISTRATION
Notices
Committees; establishment, renewals, etc.:
Health Professions Education National Advisory Council--- 3714

HEALTH SERVICES ADMINISTRATION
Notices
Authority delegations:
Health, Assistant Secretary, et al.; comprehensive health services projects---------- 3714
Committees; establishment, renewals, etc.:
Health Manpower Shortage Areas National Advisory Council ---------- 3714

HOUSING AND URBAN DEVELOPMENT DEPARTMENT
See Federal Disaster Assistance Administration; Federal Housing Commissioner—Office of Assistant Secretary for Housing.

HUMAN DEVELOPMENT OFFICE
Rules
Native American programs:
Financial assistance to promote economic and social self-sufficiency ---------- 3781

IMMIGRATION AND NATURALIZATION SERVICE
Rules
Immigration regulations:
Physicians, nurses, and medical students, alien; preference removed ---------- 3626

INTERIOR DEPARTMENT
See also Fish and Wildlife Service; Geological Survey; Land Management Bureau; National Park Service; Reclamation Bureau.
Proposed Rules
Trans-Alaska pipeline liability fund ---------- 3660
Notices
Committees; establishment, renewals, etc.:
San Jose Mission National Historic Site Advisory Board et al ---------- 3699
Off-road vehicle use designation:
Prineville Reservoir, Oreg----- 3699

INTERNAL REVENUE SERVICE
Notices
Authority delegation:
District Director of Internal Revenue ---------- 3726

INTERNATIONAL TRADE COMMISSION
Notices
Import Investigations:
Alloy Tool Steel, certain------ 3715
Meetings:
Agenda; deletions and modifications (2 documents)------- 3716

INTERSTATE COMMERCE COMMISSION
Notices
Abandonment of railroad services, etc.:
Buffalo, Rochester & Pittsburgh Railway Co. et al---------- 3727
Southern Pacific Transportation Co---------- 3727
Wabash Railroad Co. and Norfolk & Western Railway Co--- 3728
Fourth section applications for relief ---------- 3728
Hearing assignments---------- 3726
Motor carriers:
Irregular route property carriers; gateway elimination--- 3728
Transfer Proceedings--------- 3727
Rerouting of traffic:
Baltimore & Ohio Railroad Co-- 3726
Louisville & Nashville Railroad Co ---------- 3727

JUSTICE DEPARTMENT
See also Antitrust Division, Justice Department; Immigration and Naturalization Service; Law Enforcement Assistance Administration.
Notices
Employee selection procedures; uniform guidelines: questions and answers---------- 3820

LABOR DEPARTMENT
See Federal Contract Compliance Programs Office.

LAND MANAGEMENT BUREAU
Proposed Rules
Land classification:
Alaska ---------- 3657
Notices
Airport leases:
Alaska ---------- 3677
Applications, etc.:
Wyoming ---------- 3677
Oil and gas leasing; Outer Continental Shelf---------- 3803

LAW ENFORCEMENT ASSISTANCE ADMINISTRATION
Notices
Meetings:
Law Enforcement and Criminal Justice National Institute Advisory Committee---------- 3724

LIBRARIES AND INFORMATION SCIENCE, NATIONAL COMMISSION
Proposed Rules
Sunshine Act implementation; meetings ---------- 3667

MARITIME ADMINISTRATION
Notices
Applications, etc.:
States Steamship Co---------- 3674

NATIONAL PARK SERVICE

Proposed Rules

Snowmobile routes designation: Olympic National Park, Wash. 3656
Tower climbing; Devils Tower National Monument, Wyo. 3655
Vehicles, immobilized and inoperable; Grand Canyon National Park, Ariz. 3656

Notices

Authority delegations:
Bent's Old Fort National Historic Site, Colo., Administrative Officer, et al. 3697
Blue Ridge Parkway, Va. and N.C.; Administrative Officer et al. 3697
Chamizal National Memorial, El Paso, Tex., Administrative Officer 3698
Navajo Lands Group, Administrative Officer, et al. 3698
Padre Island National Seashore, Tex., Administrative Officer, et al. 3699
Rocky Mountain Region, Superintendents, et al. 3699
San Juan National Historic Site, P.R., Assistant Superintendent, et al. 3697
Sleeping Bear Dunes National Lakeshore, Mich., Administrative Officer 3697
Southwest Region, Contract Specialist, et al. 3699
Western Region, Land Acquisition Officer, et al. 3697
Snowmobile routes and areas:
Bryce Canyon National Park, Utah 3698
Wilderness suitability study workshops:
Lake Mead National Recreation Area 3696

NATIONAL SCIENCE FOUNDATION

Notices

Meetings:
Neurobiology Advisory Panel 3724

NATIONAL TECHNICAL INFORMATION SERVICE

Notices

Inventions, government-owned; availability for licensing (3 documents) 3675, 3676
Sales of products and services in Netherlands; inquiry 3675

POSTAL RATE COMMISSION

Rules

Organization and functions:
Secretary and Administrative Offices, merger 3646

Notices

Visits to Postal facilities 3724

RECLAMATION BUREAU

Notices

Environmental statements; availability, etc.:
Coronado Project, Ariz. 3677

SMALL BUSINESS ADMINISTRATION

Notices

Meetings:
Spokane District Advisory Council 3724

SOCIAL AND REHABILITATION SERVICE

Proposed Rules

Medical assistance programs:
Skilled nursing and intermediate care facilities; termination of Federal financial participation; long-term care facilities 3665
Public assistance programs:
Grants to States; Federal funds; repayment by installments 3664

SOCIAL SECURITY ADMINISTRATION

Rules

Official records and information; disclosure 3640

STATE DEPARTMENT

Notices

Market-sensitive information disclosure; inquiry 3724

TRANSPORTATION DEPARTMENT

See also Federal Aviation Administration; Federal Highway Administration; Urban Mass Transportation Administration.

Notices

Committees; establishment, renewals, etc.:
Transportation Quality, Citizens' Advisory Committee 3725

TREASURY DEPARTMENT

See also Internal Revenue Service.

Notices

Antidumping:
Tuners from Japan 3725
Organization and functions:
Commissioner, Internal Revenue Service; taxes on wagering 3725

URBAN MASS TRANSPORTATION ADMINISTRATION

Rules

Accounts, uniform systems; records and reporting system 3771

"THE FEDERAL REGISTER—WHAT IT IS AND HOW TO USE IT"

Briefings at the Office of the Federal Register

(For Details, See 41 FR 46527, Oct. 21, 1976)

RESERVATIONS: DEAN L. SMITH, 523-5282

list of cfr parts affected in this issue

The following numerical guide is a list of the parts of each title of the Code of Federal Regulations affected by documents published in today's issue. A cumulative list of parts affected, covering the current month to date, follows beginning with the second issue of the month.

A Cumulative List of CFR Sections Affected is published separately at the end of each month. The guide lists the parts and sections affected by documents published since the revision date of each title.

7 CFR
917 (2 documents) 3625, 3626
930 3626
971 3626

8 CFR
204 3626
212 3627
214 3627

10 CFR
203 3814

FEA RULINGS:
1977–1 3628

PROPOSED RULES:
215 3652

11 CFR

PROPOSED RULES:
2 3810
3 3810

16 CFR
13 (2 documents) 3636, 3640

PROPOSED RULES:
801 (2 documents) 3655

20 CFR
401 3640
422 3640

23 CFR
625 3642

24 CFR

PROPOSED RULES:
242 3655

30 CFR
211 3642

32 CFR
40 3646

33 CFR
204 3646

36 CFR

PROPOSED RULES:
7 (3 documents) 3655, 3656

39 CFR
3002 3646

40 CFR

PROPOSED RULES:
52 3657

41 CFR
60–3 3825

43 CFR

PROPOSED RULES:
29 3660
2400 3657

45 CFR
1336 3782

PROPOSED RULES:
153 3792
201 3664
249 3665
304 3663
1703 3667

47 CFR
73 3646

PROPOSED RULES:
76 3670

49 CFR
630 3772

CUMULATIVE LIST OF PARTS AFFECTED DURING JANUARY

The following numerical guide is a list of parts of each title of the Code of Federal Regulations affected by documents published to date during January.

1 CFR

PROPOSED RULES:
442 ... 1267

3 CFR

EXECUTIVE ORDERS:
10480 (Amended by EO 11956) ... 2947
11490 (Amended by EO 11953) ... 2491
11651 (Amended by EO 11951) ... 1453
11724 (Superseded by EO 11954) ... 2297
11793 (Revoked by EO 11957) ... 3295
11821 (Amended by EO 11949) ... 1017
11921 (See EO 11953) ... 2491
11949 ... 1017
11950 ... 1451
11951 ... 1453
11952 ... 2293
11953 ... 2491
11954 ... 2297
11955 ... 2499
11956 ... 2947
11957 ... 3295

5 CFR

213 ... 1455, 2949, 3297
610 ... 3297
1410 ... 2299

7 CFR

1 ... 743
2 ... 2968
26 ... 1019
55 ... 2969
56 ... 2970
58 ... 2971
70 ... 2971
210 ... 2971
226 ... 1475
354 ... 1475
718 ... 2973
722 ... 1476
726 ... 2300
729 ... 749
730 ... 2301
905 ... 1022
907 ... 1230, 2665
910 ... 1476, 2977, 3297
917 ... 3625
928 ... 1, 2, 2665
930 ... 3626
959 ... 2308
971 ... 2666, 3626
981 ... 3159
1430 ... 3
1473 ... 2977
1822 ... 1023, 2051
1843 ... 1231
1845 ... 2308

PROPOSED RULES:
52 ... 3178
270 ... 1479
271 ... 1479
272 ... 780, 2328
275 ... 1479
661 ... 3311
730 ... 780
967 ... 2691
987 ... 2503

7 CFR—Continued

PROPOSED RULES—Continued
1063 ... 1356
1070 ... 1356
1078 ... 1356
1079 ... 1356
1205 ... 2503
1421 ... 2328
1434 ... 2980
1701 ... 1479
1473 ... 2977

8 CFR

204 ... 3626
212 ... 3627
214 ... 3627

9 CFR

73 ... 2949, 3297
97 ... 1455
113 ... 750, 1456
317 ... 3298
319 ... 751, 3298
381 ... 2949

PROPOSED RULES:
92 ... 1483

10 CFR

100 ... 2051
140 ... 46
Ch. II ... 1036
203 ... 3814
212 ... 1036, 1456, 2308

FEA RULINGS:
1977–1 ... 3628

PROPOSED RULES:
2 ... 3178
51 ... 3178
212 ... 2646
215 ... 3652

11 CFR

PROPOSED RULES:
2 ... 3810
3 ... 3810

12 CFR

4 ... 2950
16 ... 2200, 3299
202 ... 1242, 2950
206 ... 3171
207 ... 968
211 ... 752
212 ... 2951
213 ... 752
220 ... 752
221 ... 968
224 ... 968
225 ... 752, 1263, 2951
226 ... 753, 1264, 2650
227 ... 2950
265 ... 2501, 2950
563 ... 2952
570 ... 2952
601 ... 2666
704 ... 1458

12 CFR—Continued

PROPOSED RULES:
226 ... 780, 1268
505b ... 2503
523 ... 2338
545 ... 2328
564 ... 2328
604 ... 55, 2078

13 CFR

309 ... 753

PROPOSED RULES:
112 ... 2506
121 ... 2505, 2980

14 CFR

25 ... 2052
37 ... 19
39 ... 1217, 1218, 2053–2055, 3170
71 ... 300, 2055, 2056, 3170, 3171
73 ... 300
75 ... 300
97 ... 1219, 2056, 3171
221a ... 1220
241 ... 1219
288 ... 3299
302 ... 2667
378a ... 2309
385 ... 1220, 2667, 2668

PROPOSED RULES:
39 ... 1268–1270
71 ... 1270, 1271, 2078, 2079, 3179
152 ... 2850
239 ... 2693
288 ... 1271
298 ... 2692
310b ... 2995
370 ... 2995
399 ... 3180

15 CFR

369 ... 2057
371 ... 1222
377 ... 1222
931 ... 1164

PROPOSED RULES:
920 ... 2507

16 CFR

2 ... 3300
13 ... 3–5, 3636, 3640
1201 ... 1428

PROPOSED RULES:
1 ... 2980
4 ... 2079
438 ... 1483
447 ... 2694
450 ... 1038
801 ... 3181, 3655
1301 ... 1484

17 CFR

1 ... 2628
180 ... 3433
200 ... 753
211 ... 2058

17 CFR—Continued

240 ... 753, 754, 2060, 3301
241 ... 759
276 ... 2953

PROPOSED RULES:
239 ... 3312
240 ... 781, 782, 3312
249 ... 782
270 ... 3312
275 ... 3312

18 CFR

2 ... 2954
11 ... 1226
141 ... 6
154 ... 2954
300 ... 2668

PROPOSED RULES:
1 ... 2079
2 ... 2329
3 ... 2079
154 ... 1272
157 ... 56

19 CFR

4 ... 3160
6 ... 2309
10 ... 2309, 2310, 3161
153 ... 2501
172 ... 3161

PROPOSED RULES:
1 ... 2329
113 ... 2330
201 ... 805

20 CFR

401 ... 3640
404 ... 2062
405 ... 1028
416 ... 2062
422 ... 3640
614 ... 1459
656 ... 3440

PROPOSED RULES:
416 ... 2079, 3316

21 CFR

2 ... 1459
4 ... 3108
8 ... 1459
102 ... 761
121 ... 1460, 1461, 3302
314 ... 1624, 1638, 3109
320 ... 1624, 1638
514 ... 3109
520 ... 1462
540 ... 1462
558 ... 761, 1463, 2312

PROPOSED RULES:
1 ... 2330
3e ... 1483
11 ... 806
18 ... 2330
121 ... 1483
128d ... 807
369 ... 2330
500 ... 2330
510 ... 2981
701 ... 2330
740 ... 2330
801 ... 2330

22 CFR

41 ... 2501
42 ... 2501

23 CFR

625 ... 6, 3642
712 ... 7

24 CFR

203 ... 762
207 ... 764, 2954
213 ... 764, 2954
221 ... 765, 2954
231 ... 766, 2954
241 ... 763, 3162
280 ... 960
1905 ... 3162
1914 ... 2193
1917 ... 2063–2068
3282 ... 2576

PROPOSED RULES:
201 ... 1487
242 ... 3655
279 ... 3112
406 ... 2796
501 ... 1488
570 ... 3292, 3437
866 ... 3181
1917 ... 2082

25 CFR

PROPOSED RULES:
221 ... 3319

26 CFR

1 ... 767, 1195, 1463, 2501
7 ... 1469, 1471, 2954
41 ... 2671
48 ... 2671
142 ... 2677
154 ... 2312
404 ... 1029, 2313

PROPOSED RULES:
1 ... 57, 2694, 3181
54 ... 1488
301 ... 1038, 1489

28 CFR

0 ... 3163

PROPOSED RULES:
32 ... 1390

29 CFR

15 ... 769
60 ... 3440
94 ... 1656, 2426
95 ... 2427
96 ... 2428
97 ... 1656
98 ... 2428
99 ... 773, 2430
511 ... 2313
609 ... 2954
613 ... 3303
672 ... 2955
673 ... 2955
720 ... 3303
1601 ... 3163
1910 ... 2956, 3304
1926 ... 2956

29 CFR—Continued

1952 ... 2313
2608 ... 2677
2610 ... 2678

PROPOSED RULES:
90 ... 2981
215 ... 3319
1910 ... 808, 1742, 1806
2550 ... 1488, 1618

30 CFR

100 ... 1214
211 ... 3642

PROPOSED RULES:
11 ... 2986
77 ... 2800
211 ... 1489, 2082
251 ... 3321

31 CFR

1 ... 2311
51 ... 2196, 2422
101 ... 1471
210 ... 9
515 ... 1472

32 CFR

40 ... 3646
256 ... 773
2000 ... 2679

PROPOSED RULES:
242a ... 1492
903 ... 2085
1482 ... 3322

33 CFR

40 ... 10
92 ... 2681
159 ... 11
183 ... 2681, 2682
204 ... 3646

PROPOSED RULES:
114 ... 3181
115 ... 3181
161 ... 3182
209 ... 2572

34 CFR

Ch. I ... 12
232 ... 1478

36 CFR

212 ... 2957
221 ... 2957
231 ... 2957
251 ... 2957
261 ... 2957
262 ... 2961
271 ... 2962
272 ... 2962
291 ... 2962
295 ... 2962
606 ... 1473

PROPOSED RULES:
7 ... 3655, 3656
16 ... 812
17 ... 812

37 CFR

201 ... 2962

PROPOSED RULES:

1 ... 2632
3 ... 2632
5 ... 2632

38 CFR

0 ... 2314
3 ... 2069
17 ... 2316

39 CFR

111 ... 3470
3002 ... 3646

PROPOSED RULES:

1 ... 2699
2 ... 2699
3 ... 2699
4 ... 2699
5 ... 2699
6 ... 2699
7 ... 2699
8 ... 2699

40 CFR

6 ... 2450
60 ... 1214
61 ... 1215
86 ... 1122, 1150
129 ... 2588, 2617
136 ... 3306
190 ... 2858
220 ... 2468
221 ... 2470
222 ... 2471
223 ... 2474
224 ... 2474
225 ... 2475
226 ... 2475
227 ... 2476
228 ... 2482
229 ... 2489
409 ... 3184
430 ... 1398
440 ... 3165
455 ... 2316

PROPOSED RULES:

22 ... 1492
52 ... 1273, 1494, 2705, 3657
60 ... 2842
80 ... 3183
85 ... 1044
180 ... 815
201 ... 2330
202 ... 2330
260 ... 2331
1516 ... 1044

41 CFR

3-3 ... 2683
3-4 ... 2684
3-16 ... 2684
3-50 ... 2684
9-7 ... 2963
9-15 ... 2963

41 CFR—Continued

9-51 ... 2684
Ch. 14 ... 1215
14-1 ... 1215
14-10 ... 1215
60-1 ... 3458
60-2 ... 3461
60-3 ... 3825
60-30 ... 3462
60-741 ... 3307
101-1 ... 12
101-25 ... 1030
101-26 ... 1032
101-28 ... 2317
101-38 ... 1477

PROPOSED RULES:

3-1 ... 1273
101-17 ... 816

42 CFR

PROPOSED RULES:

54b ... 2986
101 ... 2994

43 CFR

4 ... 1216
419 ... 3307
2650 ... 779
3100 ... 1032
4110 ... 778
4120 ... 778

PUBLIC LAND ORDER:

5561 (Amended by PLO 5612) ... 2684
5611 (Corrected by PLO 5612) ... 2684
5612 ... 2706

PROPOSED RULES:

29 ... 3660
2400 ... 3657
3520 ... 2684
3800 ... 1045

45 CFR

177 ... 2963
193 ... 1190
233 ... 3307
248 ... 2684
250 ... 779
1005 ... 3165
1050 ... 3272
1068 ... 3165
1336 ... 3782

PROPOSED RULES:

Subtitle A ... 3325
46 ... 2792, 3076
153 ... 3792
158 ... 2086
Ch. II ... 2445
201 ... 3664
205 ... 2440
249 ... 3325, 3665
250 ... 2331, 3328
304 ... 3663
706 ... 2708
1480 ... 1045
1703 ... 3667

46 CFR

536 ... 1473

PROPOSED RULES:

10 ... 3186
12 ... 1278
502 ... 817
531 ... 3186

47 CFR

0 ... 3166, 3167
1 ... 3166-3168, 3308
13 ... 1231
15 ... 1231, 3308
21 ... 1232
73 ... 1233, 2502, 3167, 3308, 3646
74 ... 2069
76 ... 3308
81 ... 1474
83 ... 1231, 1474
87 ... 3168, 3308
97 ... 3166, 3167

PROPOSED RULES:

64 ... 1278
73 ... 1278, 1279, 2088, 3186
74 ... 2087
76 ... 3670
83 ... 2088
97 ... 2089

49 CFR

Ch. V ... 2864
25 ... 12
99 ... 3118
173 ... 2071, 2688
174 ... 2071
178 ... 2688
218 ... 2318
221 ... 2321
225 ... 1221
231 ... 1222
310 ... 2964
630 ... 3772
1033 ... 2965, 3309, 3310
1047 ... 19
1056 ... 3169
1241 ... 1474
1249 ... 1474
1250 ... 1474
1251 ... 1474

PROPOSED RULES:

Subtitle A ... 2868
173 ... 2709
179 ... 2709
228 ... 2994
230 ... 2994
267 ... 2507
523 ... 2092
571 ... 3187
1251 ... 2092

50 CFR

17 ... 2071, 2965
26 ... 1033, 2689, 2690
32 ... 2690
33 ... 1034, 2690
216 ... 1034
260 ... 2326
261 ... 2326
262 ... 2326
263 ... 2326
264 ... 2326
265 ... 2326
266 ... 2326
267 ... 2326
268 ... 2326
269 ... 2326
270 ... 2326
271 ... 2326
272 ... 2326
273 ... 2326
274 ... 2326
275 ... 2326
276 ... 2326
277 ... 2326
278 ... 2326
279 ... 2326
601 ... 2968
602 ... 2968

PROPOSED RULES:

17 ... 2101, 2102, 2507
216 ... 1049

FEDERAL REGISTER PAGES AND DATES—JANUARY

Pages	Date
1-741	Jan. 3
743-1015	4
1017-1194	5
1195-1450	6
1451-2049	7
2051-2291	10
2293-2497	11
2499-2664	12
2665-2946	13
2947-3157	14
3159-3294	17
3295-3624	18
3625-3826	19

reminders

(The items in this list were editorially compiled as an aid to FEDERAL REGISTER users. Inclusion or exclusion from this list has no legal significance. Since this list is intended as a reminder, it does not include effective dates that occur within 14 days of publication.)

Rules Going Into Effect Today

NOTE: There were no items eligible for inclusion in the list of RULES GOING INTO EFFECT TODAY.

Rules Going Into Effect Jan. 20, 1977

DOT/CG—Anchorage ground establishment; Hampton Roads, Va. 55344; 12–20–76

FAA—Standard instrument approach procedures; changes and additions. 54166; 12–13–76

HUD—Low Income housing; operating subsidy performance funding system. 55676; 12–21–76

Next Week's Deadlines for Comments On Proposed Rules

AGRICULTURE DEPARTMENT

Agricultural Marketing Service—
- Milk in Des Moines, Iowa and certain other marketing areas; recommended decision, opportunity to file exceptions; comments by 1–26–77..... 1356; 1–6–77

Commodity Credit Corporation—
- Upland and extra long staple cotton; determinations for 1977 crops; comments by 1–28–77..... 56204; 12–27–76

Forest Service—
- Forest system lands; grazing livestock; comments by 1–28–77. 56210; 12–27–76

Rural Electrification Administration—
- Guaranteed loan program for bulk power facilities; revision of REA bulletin; comments by 1–27–77. 56331; 12–28–76
- Rural Telephone Program; new specification for type A telephone sets; comments by 1–27–77..... 56331; 12–28–76

CIVIL AERONAUTICS BOARD

Freight loss and damage claims by certain air carriers and foreign route air carriers; reporting data; comments by 1–24–77..... 55891; 12–23–76

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration—
- Coastal zone management interstate grants; comments by 1–24–77. 55786; 12–22–76
- Draft foreign fishing regulations; comments by 1–23–77..... 55904; 12–23–76

DEFENSE DEPARTMENT

Corps of Engineers—
- Navigation regulations; St. Marys Falls canal and locks, Michigan; comments by 1–27–77..... 56339; 12–28–76

ELECTRONIC FUND TRANSFER, NATIONAL COMMISSION

Privacy Act regulations; comments by 1–29–77..... 1267; 1–6–77

ENVIRONMENTAL PROTECTION AGENCY

Environmental radiation protection; criteria and standards for radioactive waste; comments by 1–25–77.. 2331; 1–11–77

Interstate motor carrier noise emission standards; special local determinations; extension of comments by 1–27–77..... 2330; 1–11–77
[First published at 41 FR 52317, Nov. 29, 1976]

National pollutant discharge elimination system; comments by 1–23–77. 52308; 11–29–76

Railroad noise emission standards; special local determinations; comments by 1–27–77..... 2330; 1–11–77

ENVIRONMENTAL QUALITY COUNCIL

Freedom of Information Act, procedures; comments by 1–24–77..... 54005; 12–10–76

FEDERAL COMMUNICATIONS COMMISSION

Cable televisions operators; notification of changes in name, mail address, status changes, etc.; reply comments by 1–28–77..... 54778; 12–15–76

Clear channel broadcasting in the standard Broadcast Band; extension of comments filing time; reply comments by 1–24–77.. 40503; 9–20–76

FM broadcast stations; Louisiana; comments by 1–24–77..... 52499; 11–30–76

FM translator stations; unattended operation; comments by 1–28–77. 2087; 1–10–77

Government in the Sunshine; procedures; comments by 1–27–77. 56675; 12–29–76

International and domestic telex and TWX; interface of services; comments by 1–24–77..... 54505; 12–14–76

Maintenance of certain program records; reply comments by 1–27–77. 1278; 1–6–77
[First published at 41 FR 37344, Sept. 3, 1976]

FEDERAL ENERGY ADMINISTRATION

Alternative entitlement program; adjustments for imported residual fuel oil; comments by 1–27–77..... 56821; 12–30–76

FEDERAL POWER COMMISSION

Financial report for municipal electric utilities and federal projects; new FPC form No. 164; comments by 1–25–77..... 55120; 12–16–76

Observation of Commission meetings and ex parte communications; comments by 1–26–77.... 2079; 1–10–77
[First published at 41 FR 52303, Nov. 29, 1976]

FEDERAL TRADE COMMISSION

Government in the Sunshine Act; comments by 1–25–77.. 55885; 12–23–76

HEALTH, EDUCATION, AND WELFARE DEPARTMENT

Food and Drug Administration—
- Certain Fluorocarbons (Chlorocarbons) in foods and drugs, and cosmetics; labeling requirements; comments by 1–25–76..... 52071; 11–26–76
- Cosmetic ingredient labeling; establishment of names for fluorocarbons propellant ingredients; comments by 1–25–76..... 52078; 11–26–76
- Fluorocarbons and other halocarbons; advanced notice of proposed rulemaking to phase out nonessential uses; comments by 1–25–76. 52070; 11–26–76

Public Health Service—
- Professional standards review areas; comments by 1–27–77.... 56339; 12–28–76

INTERIOR DEPARTMENT

Geological Survey—
- Surface management coal mining; steep slopes; comments by 1–24–77..... 56830; 12–30–76

Land Management Bureau—
- Surface management, coal mining; steep slopes; comments by 1–24–77..... 56830; 12–30–76

Office of the Secretary—
- Employee responsibilities and conduct, regulations; comments on rule by 1–24–77..... 56100; 12–23–76

INTERNATIONAL TRADE COMMISSION

Domestic industries; investigations of injury; comments by 1–26–77. 56205; 12–27–76

JUSTICE DEPARTMENT

Drug Enforcement Administration—
- Exempt chemical preparations; schedules of controlled substances; comments by 1–26–77..... 52867; 12–2–76
- Papaver Bracteatum; extension of time for comments; comments by 1–28–77..... 55558; 12–21–76
[First published at 41 FR 51036, Nov. 19, 1976]

Parole Commission—
- Parole, release, supervision and recommitment of prisoners, youth offenders and juvenile delinquents; comments by 1–24–77..... 52889; 12–2–76

LABOR DEPARTMENT

Occupational Safety and Health Administration—
- Alaska; supplement to approved plan; comments by 1–27–77.... 56336; 12–28–76

Pension and Welfare Benefit Programs—
- Hearing and class exemption; comments by 1–27–77..... 1488; 1–7–77
[First published at 41 FR 31838, 31874, July 30, 1976]

NUCLEAR REGULATORY COMMISSION

Appeal Board decisions; review; comments by 1–27–77..... 54206; 12–13–76

Production and utilization facilities; licensing; comments by 1–26–77. 56204; 12–27–76

TRANSPORTATION DEPARTMENT

Coast Guard—
- Camden Harbor, Me.; special anchorage area; comments by 1–27–77. 54199; 12–13–76
- Drawbridge operations; New Smyrna Beach, Fla.; comments by 1–25–77..... 55367; 12–20–76
- Drawbridge operations; Sarasota County, Fla., comments by 1–25–77..... 55367; 12–20–76

Federal Aviation Administration—
- Airspace, air traffic and general operating rules; comments by 1–24–77. 46875; 10–26–76
- Airworthiness directives; Bell; comments by 1–28–77..... 55365; 12–20–76
- Airworthiness directives; Bell Models 206B Helicopters; comments by 1–28–77..... 55889; 12–23–76
- Alteration of transition area; Seattle, Wash.; comments by 1–24–77. 55890; 12–23–76

Federal Highway Administration—
- Directional sign standards; comments by 1–24–77..... 46877; 10–26–76

National Highway Traffic Safety Administration—
- Average fuel economy standards; exemptions; comments by 1–24–77. 53827; 12–9–76
- Tire quality; uniform grading standards; comments by 1–27–77. 54205; 12–13–76

Urban Mass Transportation Administration—
- Charter bus operations by UMTA assisted operators; comments by 1–28–77..... 56680; 12–29–76

TREASURY DEPARTMENT

Fiscal Service—
- Certificates of indebtedness; State and local government series; comments by 1–26–77..... 56208; 12–27–76
- Surety companies doing business with the United States; comments by 1–28–77..... 56674; 12–29–76

Internal Revenue Service—
- Hearing and class exemption; comments by 1–27–77..... 1488; 1–7–77
[First published at 41 FR 31838, 31874, July 30, 1976]
- Income tax; assignment or alienation of benefits; comments by 1–27–77. 56334; 12–28–76

Next Week's Meetings

AGRICULTURE DEPARTMENT

Agricultural Marketing Service—
- Shippers Advisory Committee, Lakeland, Fla. (open), 1–25–77. 1496; 1–7–77

Animal and Plant Health Inspection Service—
- Poultry Health Advisory Committee, Mycoplasmosis Subcommittee, Hyattsville, Md. (open), 1–25–77. 2105; 1–10–77

Forest Service—
- Okanogan National Forest Grazing Advisory Board, Okanogan, Wash. (open), 1–28–77..... 54010; 12–10–76
- White Mountain National Forest Advisory Committee, Jackson, N.H. (open), 1–27 and 1–28–77. 1050; 1–5–77

ARTS AND HUMANITIES, NATIONAL FOUNDATION

Visual Arts Advisory Panel, Washington, D.C. (closed), 1–24 and 1–25–77. 1547; 1–7–77

CIVIL RIGHTS COMMISSION

District of Columbia Advisory Committee, Wash., D.C. (open), 1–26–77. 54014; 12–10–76

Kansas Advisory Committee, Topeka, Kans. (open), 1–27–77..... 1051; 1–5–77

Maine Advisory Committee, Augusta, Me. (open), 1–25–77.. 56356; 12–28–76

North Carolina Advisory Committee; Raleigh, N.C. (open), 1–27–77. 1051; 1–5–77

Oklahoma Advisory Committee, Oklahoma City, Okla. (closed), 1–24–77. 55567; 12–21–76

Pennsylvania Advisory Committee, Philadelphia, Pa. (open), 1–26–77. 55567; 12–21–76

South Carolina Advisory Committee, Marion, S.C. (open), 1–28–77. 55567; 12–21–76

Vermont Advisory Committee, Montpelier, Vt. (open), 1–24–77.. 1051; 1–5–77

Virginia Advisory Committee, Rosslyn, Va. (open), 1–28–77..... 2516; 1–12–77

COMMERCE DEPARTMENT

Census Bureau—
- Asian and Pacific Americans Population for the 1980 Census, Census Advisory Committee; Suitland, Md. (open), 1–27 and 1–28–77. 1061; 1–5–77
- Housing for the 1980 Census Advisory Committee, Suitland, Md. (open), 1–24–77..... 1062; 1–5–77

National Oceanic and Atmospheric Administration—
- New England Fishery Management Council, Peabody, Mass. (open), 1–25 and 1–26–77..... 2336; 1–11–77
- North Pacific Management Council Scientific and Statistical Committee Advisory Panel, Anchorage, Alaska (open), 1–26 thru 1–28–77..... 1287; 1–6–77
- South Atlantic Fishery Management Council, Buena Vista, Fla. (open), 1–25 thru 1–27–77..... 56878; 12–30–76

CONSUMER PRODUCT SAFETY COMMISSION

Product Safety Advisory Council, Washington, D.C. (open), 1–25 and 1–26–77..... 56681; 12–29–76

DEFENSE DEPARTMENT

Air Force Department—
- Air Force ROTC Advisory Panel, Montgomery, Ala. (open), 1–26 and 1–27–77..... 2355; 1–11–77

Navy Department—
- Chief of Naval Operations Executive Panel Advisory Committee, Washington, D.C. (closed), 1–26 and 1–27–77..... 1051; 1–5–77

Office of the Secretary—
- DDR & E High Energy Laser Review Group (HELRG), Albuquerque, New Mex. (closed), 1–26 thru 1–28–77. 55570; 12–21–76
- Images and Display Electron Devices Advisory Group, New York, N.Y. (closed), 1–27–77..... 55930; 12–23–76
- Laser Electron Devices Adivsory Group, Arlington, Va. (closed), 1–26 and 1–27–77.... 55930; 12–23–76

EDUCATION OF DISADVANTAGED CHILDREN, NATIONAL ADVISORY COUNCIL

Meeting, Washington, D.C. (open), 1–28 and 1–29–77..... 2387; 1–11–77

ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION

Procurement Policy Advisory Committee, Washington, D.C. (open), 1–27–77. 2524; 1–12–77

Study Group on Global Environmental Effects of Carbon Dioxide, Atlanta, Ga. (open), 1–29–77..... 3015; 1–14–77

ENVIRONMENTAL PROTECTION AGENCY

State-Federal FIFRA Implementation Advisory Committee, Washington, D.C. (open), 1–27 and 1–28–77..... 2340 1–11–77

FEDERAL COMMUNICATIONS COMMISSION

Personal Use Radio Advisory Committee, Arlington, Va. (open), 1–27–77. 12–20–76; 55377 and 12–29–76; 56707

Private Land Mobile Advisory Committee, Washington, D.C. (open), 1–27–77. 56707; 12–29–76

Radio Astronomy Service Working Group for 1979 ITU-World Administrative Radio Conference, Washington, D.C. (open),.. 1–24–77 55740; 12–22–76

Radio Technical Commission for Marine Services, Washington, D.C. (open), 1–25 thru 1–27–77..... 840; 1–4–77

1979 World Administrative Radio Conference Advisory Committee for Amateur Radio, Washington, D.C. (open with restrictions), 1–25–77.... 2113; 1–10–77

FEDERAL MEDIATION AND CONCILIATION SERVICE

Arbitration Services Advisory Committee, Washington, D.C. (open), 1–27 and 1–28–77..... 2341; 1–11–77

FEDERAL PREVAILING RATE ADVISORY COMMITTEE

Washington, D.C. (closed), 1–27–77. 54815; 12–15–76

FEDERAL REGISTER OFFICE

Legal Drafting Workshop, Washington, D.C. (open), 1–26 thru 1–29–77. 1500; 1–7–77

FINE ARTS COMMISSION

Meeting, Washington, D.C. (open), 1–25–77..... 2337; 1–11–77

HEALTH, EDUCATION, AND WELFARE DEPARTMENT

Aging Federal Council—
Research and Manpower Committee, Washington, D.C. (open), 1–24–77. 56859; 12–30–76

Alcohol, Drug Abuse and Mental Health Administration—
Interagency Committee on Federal Activities for Alcohol Abuse and Alcoholism, Rockville, Md. (open with restrictions), 1–25–77. 1515; 1–7–77

Education Office—
Adult Education National Advisory Council; Washington, D.C. (open), 1–24 thru 1–26–77..... 55387; 12–20–76

Bilingual Education National Advisory Council, Austin, Tex. (open), 1–27 and 1–28–77..... 2359; 1–11–77

Equality of Educational Opportunity National Advisory Council, Orlando, Fla. (open), 1–28 and 1–29–77. 55240; 12–17–76

Financial Aid to Students Advisory Council, Scottsdale, Ariz. (open), 1–27 and 1–28–77..... 10761; 1–5–77

Indian Education National Advisory Council, Tucson, Ariz. (open), 1–27 thru 1–29–77..... 2541; 1–12–77

Food and Drug Administration—
Ear, Nose and Throat Panel, Washington, D.C. (open), 1–24 and 1–25–77..... 1517; 1–7–77

Health Resources Administration—
Nurse Training National Advisory Council, Bethesda, Md. (partially open), 1–24 thru 1–26–77. 52539; 11–30–76

National Institutes of Health—
Advisory Eye Council, National Bethesda, Md. (partially open), 1–24 thru 1–26–77..... 2721; 1–13–77
First published at 41 FR 55592, Dec. 21, 1976

Allergy and Immunology Subcommittee of the National Advisory Allergy and Infectious Diseases Council, Bethesda, Md. (closed), 1–26–77. 2357; 1–11–77

Allergy and Infectious Diseases National Advisory Council, Bethesda, Md. (partially open), 1–27 and 1–28–77..... 857; 1–4–77
[First published at 41 FR 54817, Dec. 15, 1976]

Arthritis, Bone, and Skin Diseases Subcommittee, Bethesda, Md. (closed), 1–26–77..... 55592; 12–21–76

Arthritis, Metabolism, and Digestive Diseases National Advisory Council, Bethesda, Md. (partially closed), 1–26 thru 1–28–77..... 55592; 12–21–76

Blood Diseases and Resources Advisory Committee, Bethesda, Md. (open), 1–24 and 1–25–77. 55590; 12–21–76

Board of Regents of the National Library of Medicine, Bethesda, Md. (partially closed), 1–27 and 1–28–77..... 54816; 12–15–76

Clinical Applications and Prevention Advisory Committee, Bethesda, Md. (open), 1–24–77..... 53709; 12–8–76

Committee Advisory to the National Cancer Institute, review of research contract proposals, 1–24 and 1–25; 1–27 thru 1–29–77. 55592–55593; 12–21–76

Dental Research National Advisory Council, Bethesda, Md. (partially open), 1–27 and 1–28–77. 53709; 12–8–76

Diabetes, Endocrine, and Metabolic Diseases Subcommittee, Bethesda, Md. (closed), 1–26–77..... 55592; 12–21–76

Diagnosis and Treatment and Carcinogenesis and Prevention Committee, Bethesda, Md. (open), 1–23–77. 54817; 12–15–76

Digestive Diseases Subcommittee, Bethesda, Md. (closed), 1–26–77. 55592; 12–21–76

Kidney, Urologic and Blood Diseases Subcommittee, Bethesda, Md. (closed), 1–26–77..... 55592; 12–21–76

National Cancer Advisory Board, Bethesda, Md. (partially closed), 1–24 and 1–25–77..... 54817; 12–15–76

National Pancreatic Cancer Project Working Cadre, Los Angeles, Calif. (partially closed), 1–26–77. 54818; 12–15–76

National Prostatic Cancer Project Working Cadre, Miami, Fla. (partially closed), 1–27–77.... 54818; 12–15–76

Primate Research Centers Advisory Committee, Bethesda, Md. (open), 1–27–77..... 55592; 12–21–76

Subcommittee on Centers and Conservation, National Cancer Advisory Board, Bethesda, Md. (partially closed), 1–23–77..... 54818; 12–15–76

Subcommittee on Planning and Budget of the National Cancer Advisory Board, Bethesda, Md. (open), 1–23–77 ..... 53711; 12–8–76

Virus Cancer Program Advisory Committee, Frederick, Md. (open), 1–26 and 1–27–77 ..... 859; 1–4–77

Virus Cancer Program Advisory Committee, Bethesda, Md. (open), 1–26 and 1–27–77..... 53711; 12–8–76

Workshop on Dyslexia, Bethesda, Md. (open), 1–24 and 1–25–77. 54817; 12–15–76

Office of the Secretary—
National Professional Standards Review Council, Washington, D.C. (open), 1–24 and 1–25–77. 2543; 1–12–77

Review Panel on New Drug Regulations, Washington, D.C. (open), 1–24 and 1–25–77..... 1307; 1–6–77

Rights and Responsibilities of Women Advisory Committee, Washington, D.C., 1–26 thru 1–28–76.... 52544; 11–30–76

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Federal Insurance Administration—
National Insurance Development Advisory Board, Washington, D.C. (open), 1–26–77 ..... 1078; 1–5–77

INTERIOR DEPARTMENT

National Park Service—
Cuyahoga Valley National Recreation Area Advisory Commission, Bath, Ohio (open), 1–27–77..... 1523; 1–7–77

Midwest Regional Advisory Committee, Omaha, Nebr. (open), 1–27–77..... 55946; 12–23–76

Office of the Secretary—
Oil Shale Environmental Advisory Panel, Grand Junction, Colo. (open), 1–25 and 1–26–77. 2365; 1–11–77

JUSTICE DEPARTMENT

Law Enforcement Assistance Administration—
Criminal Justice National Minority Advisory Council, Miami, Fla. (open), 1–28 and 1–29–77..... 84; 1–3–77

National Minority Advisory Council on Criminal Justice, Atlanta, Ga. (open), 1–26 and 1–27–77. 2366; 1–11–77

LABOR DEPARTMENT

Occupational Safety and Health Administration—
Federal Advisory Council on Occupational Safety and Health, Washington, D.C., 1–26–77..... 54038; 12–10–76

National Advisory Committee on Occupational Safety and Health, Standards Subgroup, Washington, D.C. (open), 1–27–77..... 56411; 12–28–76

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Research and Technology Advisory Council, Panel on Research, Moffett Field, Calif. (open), 1–27 and 1–28–77 ..... 56420; 12–28–76

Space Program Advisory Council, Washington, D.C. (open), 1–26–77. 1319; 1–6–77

NATIONAL SCIENCE FOUNDATION

Human Cell Biology Advisory Panel, Washington, D.C. (closed), 1–27 and 1–28–77..... 55949; 12–23–76

Mathematical Sciences Ad Hoc Group on Mathematical Logic Advisory Panel, St. Louis, Mo. (closed), 1–26–77. 56422; 12–28–76

Research Advisory Committee, Task Groups 15 and 17, Washington, D.C. (open), (2 meetings), 1–27 and 1–28–77..... 56873; 12–30–76

Science Education Projects Advisory Panel; Research Initiation and Support Program, (RIAS) Subpanel, Arlington, Va. (closed), 1–27 and 1–28–77..... 1548; 1–7–77

NATIONAL TRANSPORTATION POLICY STUDY COMMISSION

(Closed), 1–27–77..... 2143; 1–10–77

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee on Emergency Core Cooling Systems, Washington, D.C., 1–29–77..... 2729; 1–13–77

Advisory Committee on Reactor Safeguards, Subcommittee on the Blue Hills Station, Units 1 and 2 (open), 1–28–77..... 2728; 1–13–77

"Inservice inspection of prestressed concrete containment structures with grouted tendons", Bethesda, Md. (open), 1–25–77.. 55394; 12–20–76

OCEANS AND ATMOSPHERE, NATIONAL ADVISORY COMMITTEE

Washington, D.C. (open), 1–24 and 1–25–77..... 1084; 1–5–77

SCIENCE AND TECHNOLOGY POLICY OFFICE

Intergovernmental Science, Engineering and Technology Advisory Panel, Detroit, Mich. (open), 1–28–77. 2544; 1–12–77

SMALL BUSINESS ADMINISTRATION

Boston District Advisory Council, Worcester, Mass. (open), 1–28–77. 55615; 12–21–76

STATE DEPARTMENT

Shipping Coordinating Committee Subcommittee on Safety of Life at Sea, Washington, D.C. (open), 1–26–77. 1092; 1–5–77

International Radio Consultative Committee, Study Group CMTT of the U.S. International Committee, Washington, D.C. (open), 1–26–77.... 56898; 12–30–76

International Radio Consultative Committee, Study Group 2 of the U.S. International Committee, Washington, D.C. (open), 1–26–77.... 56898; 12–30–76

Ocean Affairs Advisory Committee, Washington, D.C. (closed), 1–25–77. 56898; 12–30–76

TELECOMMUNICATIONS POLICY OFFICE

INMARSAT Preparatory Committee Working Group, Washington, D.C. (open), 1–24–77..... 1324; 1–6–77

TRANSPORTATION DEPARTMENT

Coast Guard—
Rules of the Road Advisory Committee, Washington, D.C. (open), 1–25–77..... 55961; 12–23–76

Federal Aviation Administration—
Radio Technical Commission for Aeronautics Executive Committee, Washington, D.C. (open), 1–28–77. 56899; 12–30–76

VETERANS ADMINISTRATION

Wage Committee, Washington, D.C. (closed), 1–27–77. 55963; 12–23–76

Next Week's Public Hearings

ENVIRONMENTAL PROTECTION AGENCY

California state standards for motor vehicle pollution control, Los Angeles, Calif., 1–27 and 1–28–77..... 1065; 1–5–77

Kepone levels in certain seafood (2 documents), Baltimore, Md., 1–24–77; Richmond, Va., 1–26–77.. 56380; 12–28–76

Stage II vapor recovery, Denver, Colo., 1–27 and 1–28–77..... 56889; 12–30–76

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Interstate Land Sales Registration Office—
Sea-Air Estates, Washington, D.C., 1–28–77..... 56403; 12–28–76

INTERNATIONAL TRADE COMMISSION

Probable Economic Effect of the Provisions of H.R. 14600 and the Need to Protect A Domestic Industry, Washington, D.C., 1–25–77..... 53549; 12–7–76

INTERSTATE COMMERCE COMMISSION

Preparation of Delmarva Peninsula Study on Rail Transportation (3 documents). Dover, Del. 1–24–77; Melfa, Va. 1–28–77; Salisbury, Md. 1–26–77. 56428; 12–28–76

POSTAL SERVICE COMMISSION

Public service costs of postal service, various cities, 1–24 thru 1–28–77. 55738; 12–22–76

VETERANS ADMINISTRATION

Station Committee on Educational Allowances, Nashville, Tenn. 1–27–77. 56425; 12–28–76

List of Public Laws

NOTE: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's LIST OF PUBLIC LAWS.

rules and regulations

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

Title 7—Agriculture

CHAPTER IX—AGRICULTURAL MARKETING SERVICE (MARKETING AGREEMENTS AND ORDERS; FRUITS, VEGETABLES, NUTS), DEPARTMENT OF AGRICULTURE

PART 917—FRESH PEARS, PLUMS, AND PEACHES GROWN IN CALIFORNIA

Nomination of Plum Commodity Committee Grower Members

This document reallocates grower member positions and realigns certain grower districts for purposes of representation on the Plum Commodity Committee.

A notice of proposed rulemaking on this matter was published in the FEDERAL REGISTER on December 16, 1976 (41 FR 54948). This notice invited interested persons to submit written data, views, or arguments in connection with the proposal through December 31, 1976. No such material was received.

The Plum Commodity Committee is established under the marketing agreement, as amended, and Order No. 917, as amended (7 CFR Part 917; 41 FR 17528). This order regulates the handling of fresh pears, plums, and peaches grown in California and is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674).

Grower representation on the Plum Commodity Committee is allocated on the basis of production of plums in districts established under the marketing order. The present allocation is set forth in § 917.116 of the Subpart—Rules and Regulations and has been in effect since 1969 and production in some of the districts has changed since that time. This action under § 917.35(g) of the order reallocates grower membership and realigns grower districts to more nearly reflect current production patterns. The number of grower members to represent the Fresno District is increased from six to seven members and the Placer-Colfax District (which currently nominates one grower member) and the North and Central Sacramento Valley Districts (which currently nominate one grower member) would nominate one grower member for all three districts.

After consideration of all relevant matter presented, including that in the notice, the information and recommendation submitted by the Committee (the administrative agency established under the order) and other available information, amendment of § 917.116 of Subpart—Rules and Regulations (7 CFR 917.100–917.179), as hereinafter set forth, is approved.

Therefore, § 917.116 is amended to read as follows:

§ 917.116 Changes in nomination of Plum Commodity Committee members.

Nominations for membership on the Plum Commodity Committee shall be made by the growers of plums in the respective representative areas as follows:

(a) Kern District, Tehachapi District, South Coast District, and Southern California District one nominee.

(b) Tulare District two nominees.

(c) Fresno District, seven nominees.

(d) Placer-Colfax District, North Sacramento Valley District, and Central Sacramento Valley District one nominee.

(e) All of the production area not included in the Kern District, Tehachapi District, South Coast District, Southern California District, Tulare District, Fresno District, Placer-Colfax District, North Sacramento Valley District, and Central Sacramento Valley District one nominee.

(Secs. 1–19, 48 Stat. 31, as amended (7 U.S.C. 601–674.)

Dated January 14, 1977, to become effective February 25, 1977.

CHARLES R. BRADER,
Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc.77–1790 Filed 1–18–77;8:45 am]

PART 917—FRESH PEARS, PLUMS, AND PEACHES GROWN IN CALIFORNIA

Qualification Requirements and Nomination Procedure for Public Members of Commodity Committees

This document establishes qualification requirements and nominating procedure for public members of the Pear, Plum, and Peach Commodity Committees.

A notice of proposed rulemaking on this matter was published in the FEDERAL REGISTER on December 20, 1976 (41 FR 55359). The notice invited interested persons to submit written data, views, or arguments in connection with the proposal through December 31, 1976. No such material was received.

The proposal was submitted by the Control Committee which is established under marketing order No. 917 (7 CFR Part 917; 41 FR 17528). The order regulates the handling of fresh pears, plums, and peaches grown in California and is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674).

A recent amendment of the marketing order provided that each of the three commodity committees (i.e. the Pear, Plum, and Peach Commodity Committees) could be increased by one public member. Such public member would be nominated by the respective commodity committee and selected by the Secretary. The decision in that amendatory proceeding concluded that procedures for the selection and appointment of public members (and their alternates) should be established by the Control Committee and approved by the Secretary. The Control Committee met on November 10, 1976, and, under § 917.34(g) of the order, unanimously recommended establishment of the qualification requirements and nomination procedure, hereinafter set forth, applicable to the public members (and their alternates) of the respective Commodity Committees.

After consideration of all relevant matter presented, including that in the notice, the information and recommendation submitted by the Control Committee, and other available information, amendment of Subpart—Rules and Regulations (7 CFR 917.100–917.179) by adding a new § 917.122 is approved. The new § 917.122 reads as follows:

§ 917.122 Qualification requirements and nomination procedure for public members of Commodity Committees.

(a) Public members shall not have a direct financial interest or be closely associated with production, processing, financing, or marketing (except as consumers) or California agricultural commodities.

(b) Public members should be able to devote sufficient time and express a willingness to attend committee activities regularly, and to familiarize themselves with the background and economics of the industry.

(c) Public members must be residents of California.

(d) Public members should be nominated by each Commodity Committee and should serve a two-year term which coincides with the term of office of grower members of Commodity Committees.

(Secs. 1–19, 48 Stat. 31, as amended (7 U.S.C. 601–674).)

(Secs. 1–19, 48 Stat. 31, as amended (7 U.S.C. 601–674).)

Dated January 14, 1977, to become effective February 25, 1977.

CHARLES R. BRADER,
Acting Director, Fruit and Vegetable Division Agricultural Marketing Service.

[FR Doc.77–1791 Filed 1–18–77;8:45 am]

PART 930—CHERRIES GROWN IN MICHIGAN, NEW YORK, WISCONSIN, PENNSYLVANIA, OHIO, VIRGINIA, WEST VIRGINIA, AND MARYLAND

Miscellaneous Amendments

This document amends the rules and regulations of Marketing Order No. 930 to: (1) increase from $10,000 to $15,000 the amount which may be set aside from reserve pool funds to defray certain costs; and (2) clearly indicate that the conditions governing the sale of reserve pool cherries are applicable to those sales of cherries which are released from the reserve pool as a result of a revision of percentages.

On December 14, 1976, a notice of proposed rulemaking on these matters was published in the FEDERAL REGISTER (41 FR 54493). The notice invited interested persons to file written data, views, or arguments through December 31, 1976. No such material was received. The proposal was unanimously recommended by the Cherry Administrative Board which is established under Marketing Order No. 930 (7 CFR Part 930) as the agency to administer the order. This order regulates the handling of cherries grown in Michigan, New York, Wisconsin, Pennsylvania, Ohio, Virginia, West Virginia, and Maryland and is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674).

At present, the Cherry Administrative Board is permitted, under § 930.109(c) to set aside a portion of reserve pool funds, not to exceed $10,000, to defray the costs of storage and maintenance of records and supporting material of such a pool. The Board has concluded that $10,000 is insufficient for such purposes and recommended this maximum amount be increased to $15,000.

Section 930.591 contains the conditions governing the sale of reserve pool cherries. Sale of such cherries to handlers are made by two methods: (1) By releasing a portion, or all, of the reserve pool cherries; and (2) by revising the free (and restricted) percentage applicable to cherries which handlers may acquire and freely handle.

During the 1974–75 season, reserve pool cherries were released by means of revising free and restricted percentages. Since § 930.591 did not clearly indicate that the conditions of sale are applicable to sales of reserve pool cherries resulting from a revision of percentages, some uncertainties arose as to conditions of sale. To remove any uncertainty in the future, this action amends § 930.591 to clearly indicate that the provisions of that section are applicable to such sales.

After consideration of all relevant matter presented, including that in the notice, the information submitted by the Cherry Administrative Board, and other available information, it is found that the amendment hereinafter set forth will tend to effectuate the declared policy of the act. Therefore, 7 CFR Part 930 is amended as follows:

1. Paragraph (c) of § 930.109 is revised to read:

§ 930.109 Distribution of reserve pool proceeds.

* * * * *

(c) In accordance with § 930.60 all reserve pool funds, after deductions, shall be distributed to equity holders in direct proportion to each person's equity in the total reserve pool. In the event of complete disposition of all reserve pool cherries, the Board may, prior to making disposition of the resulting funds, set aside a portion of such funds, not to exceed $15,000, as a reserve to defray costs of storage and maintenance of records and supporting material of the pool.

* * * * *

2. The introductory text of § 930.591 is revised to read:

§ 930.591 Conditions governing the sale of reserve pool cherries.

The procedure set forth in this section shall be applicable to cherries released from the reserve pool as a result of a revision of percentages pursuant to § 930.53(a) or release of reserve pool cherries pursuant to § 930.53(b).

* * * * *

(Secs. 1–19, 48 Stat. 31, as amended (7 U.S.C. 601–674).)

Dated January 14, 1977, to become effective February 25, 1977.

CHARLES R. BRADER,
Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc.77–1789 Filed 1–18–77;8:45 am]

[Amdt. 1]

PART 971—LETTUCE GROWN IN LOWER RIO GRANDE VALLEY IN SOUTH TEXAS

Handling Regulation

This amendment relieves on January 16, 23 and 30, 1977, the Sunday packaging prohibition. Recent rainy weather has reduced harvest and packing. This amendment is necessary to allow the industry sufficient operating time to satisfy existing and prospective orders for lettuce.

Findings. (a) Pursuant to Marketing Agreement No. 144 and Order No. 971 (7 CFR Part 971) regulating the handling of lettuce grown in the Lower Rio Grande Valley in South Texas it is hereby found that the amendment to the handling regulation, hereinafter set forth, will tend to effectuate the declared policy of the act. This program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.). The amendment is based upon recommendations and information submitted by the South Texas Lettuce Committee, established pursuant to said marketing agreement and order and upon other available information.

(b) It is hereby found that it is impractical and contrary to the public interest to give preliminary notice, or to engage in public rulemaking procedure, and that good cause exists for not postponing the effective date of this amendment until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553) in that (1) this amendment must become effective immediately if producers are to derive any benefits therefrom, (2) compliance with this amendment will not require any special preparation on the part of handlers, and (3) this amendment relieves restrictions on the handling of lettuce grown in the production area.

Regulation, as amended. In § 971.317 (41 FR 51388) the introductory paragraph is hereby amended by adding the following thereto:

§ 971.317 Handling regulation.

* * *, except that the prohibition against the packing of lettuce on Sundays shall not apply on January 16, 23 and 30, 1977.

* * * * *

(Secs. 1–19, 48 Stat. 31, as amended (7 U.S.C. 601–674).)

Effective date. Dated January 14, 1977, to become effective January 16, 1977.

CHARLES R. BRADER,
Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc.77–1788 Filed 1–18–77;8:45 am]

Title 8—Aliens and Nationality

CHAPTER I—IMMIGRATION AND NATURALIZATION SERVICE, DEPARTMENT OF JUSTICE

IMMIGRATION AND NATIONALITY ACT

Implementation

Reference is made to the notice of proposed rulemaking which was published in the FEDERAL REGISTER on November 26, 1976 (41 FR 52061) pursuant to section 553 of Title 5 of the United States Code (80 Stat. 383) and in which there were set forth proposed amendments to Parts 204, 212, and 214 of Chapter I of Title 8 of the Code of Federal Regulations implementing the amendments to the Immigration and Nationality Act which were made by the Health Professions Educational Assistance Act of 1976 (Pub. L. 94–484; 90 Stat. 2300–2303).

The Service received representations from nine parties in response to the above notice of proposed rulemaking, and they have been carefully considered.

One writer was in favor of the proposed rules. Another objected because the change from present law on the admission of alien physicians and surgeons could worsen an already critical physician shortage in his State. Two others found the requirement for the foreign physician to have passed Parts I and II of the National Board of Medical Examiners Examination an impossible one for foreigners to satisfy, since as a general rule they are not permitted to take that examination. One writer complained that no "equivalent" examination has been declared as provided for in the amended law. All of these comments pertain essentially to the amended law itself and not to Service regulations, and

are therefore not apropos. The provision for the determination of an examination as equivalent to the National Board of Medical Examiners Examination is one for implementation by the Secretary of Health, Education, and Welfare and not for the Commissioner of Immigration and Naturalization.

Another writer took issue with the change in 8 CFR 212.7(c) which states in effect that it will no longer be possible for the foreign country of the medical graduate's nationality or last residence to allege to the Secretary of State that such country has no objection to the alien being granted a waiver of the foreign residence requirement. The amended rule, however, does no more than paraphrase the changed requirement in section 212(e) of the Immigration and Nationality Act as amended by Pub. L. 94–484. Objection was also raised to the requirement that the alien physician coming as an exchange visitor for graduate medical education be trained in an institution which is affiliated with a school of medicine: the point was made that many institutions, like the Cleveland Clinic and the Mayo Clinic, are accredited teaching institutions in their own right and without having medical school affiliation. Again these comments pertain to the amended law and not to the regulation.

Another writer questions the absence in the proposed regulation of a provision which would exempt the immigrant medical graduate from the provisions of section 212(a)(32) of the amended law if the graduate were coming to teach or conduct research rather than to perform services as a member of the medical profession. It is the Service position from a reading of the whole Act that Congress clearly considered teaching and research within the "services" performed by a member of the medical profession, and therefore intended no exemption from the exclusionary provisions of section 212(a)(32) for the medical school graduate coming to engage in teaching or research as a third or sixth preference or nonpreference immigrant.

Another correspondent wrote with regard to the reference to nurses (in 8 CFR 214.2(h)(2)(iv) and in 8 CFR 214.2(h)(4)(iv)) and their classification as nonimmigrants. The observations were made (1) that nursing education obtained in Canada should no longer be deemed the equivalent of licensure since nurses educated in Canada are now required with few exceptions to take licensure examinations in the States; and (2) that alien nurses in order to be classified as nonimmigrants under section 101(a)(15)(H) of the Act should be required to present evidence of having passed the examination of the Commission on Graduates of Foreign Nursing Schools (COGFNS) when that examination becomes available in 1978. The proposed rule amended the requirements for physicians and merely restated separately the existing requirements for nurses. To eliminate the advantage now provided for the Canadian nurse will require publication of another proposed rule. The suggestion that the alien nurse be required to pass the COGFNS examination will be considered when that examination is finally made available abroad.

Another writer objected to the use of the word "solely" in the proposed rule that would require a petitioner, seeking to classify a physician as a nonimmigrant temporary worker under section 101(a)(15)(H)(i) of the Act, to establish that the physician is coming solely to teach or conduct research, or both, at or for a public or nonprofit private educational or research institution or agency at the invitation of such institution or agency. Section 101(a)(15)(H)(i) of the Act, as amended by Pub. L. 94–484, in substance now restricts that temporary worker classification for the graduate of a medical school to one coming to teach or conduct research. The inclusion of the word "solely" emphasizes the newly restricted character of the work to be performed and is not believed to vary the Congressional intent. This writer's other objection related to 8 CFR 214.2(j) and to the fact that the proposed language in that rule would make the restrictions of the new law applicable to *all* medical graduates applying as exchange visitors and not just to those coming for graduate medical education or training. The objection is well taken and the language in 8 CFR 214.2(j) has been modified and restated below to make it more closely parallel to the language of the statute.

In the light of the foregoing, minor nonsubstantive changes for purposes of clarification have been made in §§ 204.2(e)(2), 212.7(c), and 214.2(j)(2)(a) and (b). In the light of the clarifying change made in § 214.2(j)(2)(a), no change will be made in § 214.2(j)(1).

The proposed rules, as modified and set forth below, are hereby adopted:

PART 204—PETITION TO CLASSIFY ALIEN AS IMMEDIATE RELATIVE OF A UNITED STATES CITIZEN OR AS A PREFERENCE IMMIGRANT

In § 204.2(e)(2) the heading and text are revised to read as follows:

§ 204.2 Documents.

* * * * * *

(e) *Evidence of eligibility for third- or sixth-preference classification*

* * * * * *

(2) *Physicians or Surgeons.* An alien who is coming to the United States principally to perform services as a member of the medical profession shall not be considered eligible for classification as a third or sixth preference immigrant unless he establishes that he is a graduate of a medical school or has qualified to practice medicine in a foreign state; has passed parts I and II of the National Board of Medical Examiners Examination (or an equivalent examination as determined by the Secretary of Health, Education, and Welfare); and is competent in oral and written English.

* * * * * *

PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

In § 212.7, paragraph (c) is amended by adding two new sentences between the existing second and third sentences, and by adding an additional new sentence to the end thereof. As amended, § 212.7(c) reads in pertinent part, as follows:

§ 212.7 Waiver of certain grounds of excludability.

* * * * * *

(c) *Section 212(e).* * * * An alien is also subject to the foreign residence requirement of section 212(e) of the Act if he was admitted to the United States as an exchange visitor on or after January 10, 1977 to receive graduate medical education or training, or following admission, acquired such status on or after that date for that purpose. However, such exchange visitor already participating in an exchange program of graduate medical education or training as of January 9, 1977, who was not then subject to the foreign residence requirement of section 212(e) and who proceeds or has proceeded abroad temporarily and is returning to the United States to participate in the same program, continues to be exempt from the foreign residence requirement. * * * However, this "no objection" provision shall not be applicable to the exchange visitor admitted to the United States on or after January 10, 1977 to receive graduate medical education or training, or who acquired such status on or after that date for such purpose.

* * * * * *

PART 214—NONIMMIGRANT CLASSES

In § 214.2(h)(2), the heading of subparagraph (iii) is amended to read "Physicians", the text of subparagraph (iii) is revised as set forth below, existing subparagraph (iv) is redesignated (v) and a new (iv) is added:

§ 214.2 Special requirements for admission, extension, and maintenance of status.

* * * * * *

(h) *Temporary employees.*

* * * * * *

(2) *Petition for alien of distinguished merit and ability*

* * * * * *

(iii) *Physicians.* A petitioner seeking to accord a physician a classification under section 101(a)(15)(H)(i) of the Act shall attach to the petition satisfactory evidence that the physician has graduated from a medical school or has a full and unrestricted license to practice medicine in a foreign state. Additionally, the petitioner shall establish that the beneficiary is coming to the United States solely to teach or conduct research, or both, at or for a public or nonprofit private educational or research institution or agency at the invitation of such institution or agency.

(iv) *Nurses.* A petitioner seeking to accord a nurse a classification under section 101(a)(15)(H)(i) of the Act shall attach to the petition evidence that the beneficiary has obtained a full and unrestricted license to practice professional nursing in the country where she/he has obtained her/his nursing education, or that such education was obtained in the United States or Canada; also, a statement from the petitioner certifying whether to the best of petitioner's information and belief the beneficiary is fully qualified under the laws governing the place of intended employment to perform the desired services, whether under those laws the petitioner is authorized to employ the beneficiary to perform such services, and whether under those laws the beneficiary is permitted to substantially perform the services. If the laws governing the place where the services will be performed place any limitations on the services to be rendered by the beneficiary the statement should contain details as to the limitations. The district director shall consider any such limitations in determining whether the services which the beneficiary would perform are of an exceptional nature requiring a person of distinguished merit and ability.

(v) *Accompanying aliens.* Managers, trainers, musical accompanists, and other persons determined by the district director to be necessary for successful performance by the beneficiary of a petition approved for classification under section 101(a)(15)(H)(i) of the Act may also be accorded such classification if included in the same or a separate petition.

* * * * *

In § 214.2(h)(4), subparagraph (i) is revised by adding an additional new sentence at the end thereof, following the word "professions" to read as follows:

* * * * *

(4) *Petition for alien trainee.*—(i) *General.* In addition to purely industrial establishments, an individual, organization, firm, or other trainer may petition for nonimmigrant trainees on Form I-129B for the purpose of giving instruction or training in agriculture, commerce, finance, government, transportation, and the professions. However, this does not apply to trainees coming to receive graduate medical education or training.

* * * * *

In § 214.2(h)(4), in subparagraph (iv), the heading is amended, and the text revised, to read as follows:

* * * * *

(iv) *Nurses.* A petitioner may seek a classification under section 101(a)(15)(H)(iii) of the Act for a nurse who is not qualified for classification under section 101(a)(15)(H)(i) of the Act, who is coming to the United States for training in furtherance of her/his career abroad in nursing. The petitioner shall attach to the petition evidence that the beneficiary has obtained a full and unrestricted license to practice professional nursing in the country where the nursing education was obtained, or that such education was obtained in the United States or Canada; also, a statement from the petitioner certifying that to the best of the petitioner's information and belief the beneficiary is fully qualified under the laws governing the place where the training will be received to engage in such training, and that under those laws the petitioner is authorized to give the beneficiary the desired training.

* * * * *

In § 214.2(j), existing subparagraph (2) is renumbered (3), and republished without change, and a new subparagraph (2) is added to read as follows:

* * * * *

(j) *Exchange aliens.*—(1) * * *

(2) *Eligibility requirements for section 101(a)(15)(J) classification for aliens desiring to participate in programs under which they will receive graduate medical education or training.*—(i) *Requirements.* An alien coming to the United States as an exchange visitor to participate in a program under which he will receive graduate medical education or training, or an alien seeking to change his nonimmigrant status to that of an exchange visitor on Form I-506 for that purpose, must have passed parts I and II of the National Board of Medical Examiners Examination (or an equivalent examination as determined by the Secretary of Health, Education, and Welfare), and must be competent in oral and written English; and shall submit a valid Form DSP-66, completely executed on or after January 10, 1977.

(ii) *Exemptions.* From January 10, 1977 until December 31, 1980, an alien who seeks to come to the United States as an exchange visitor to participate in an accredited program of graduate medical education or training, or an alien who seeks to change his nonimmigrant status for such purpose, may be admitted to participate in such program without regard to the requirements stated in subparagraphs (A) through (D) of section 212(j)(1) of the Act if there would be substantial disruption in the health services provided in such program because the alien was not permitted to enter the United States or change his nonimmigrant status to participate in the program on account of his inability to comply with such requirements: *Provided* That an exemption from the requirements set forth in subparagraphs (A) through (D) of section 212(j)(1) of the Act shall not be granted where the granting of such exemption would increase the total number of aliens then participating in such programs to a level greater than that participating on January 10, 1977.

(3) *Aliens in cancelled programs.* When an exchange visitor program is cancelled by the Department of State a notification of the cancellation shall be sent by the district director to each participant in the program. The participant shall be informed that he may remain in the United States in his present stauts to continue his activities in the cancelled program until the date of expiration of his currently authorized stay and that he must terminate his participation in that program by that date. A copy of the notification to the alien shall be sent to the sponsor of the cancelled program. Where extension of the alien's stay will not exceed the time limitation on the type of program in which he is engaged, he shall also be informed that he may apply for an extension if he is accepted as a participant in another approved exchange program and submits Form DSP-66 executed by his new program sponsor. In such case, a release by the sponsor of the cancelled program shall not be required.

* * * * *

The basis and purpose of the rules prescribed in this order is to implement the amendments to the Immigration and Nationality Act (8 U.S.C. 1101, et seq.) made in the Health Professions Educational Assistance Act of 1976 (Pub. L. 94-484, 90 Stat. 2300-2303).

Effective date: The effective date of the rules prescribed in this order will be January 19, 1977. It is necessary that these rules be made effective on less than 30 days notice because the statute which they implement (Pub. L. 94-484; 90 Stat. 2300-2303) became effective on January 10, 1977.

(Title VI of the Health Professions Educational Assistance Act of 1976 (Pub. L. 94-484; 90 Stat. 2300-2303), and section 103 of the Immigration and Nationality Act (8 U.S.C. 1103). Interpret or apply sections 101, 204, 212, and 214 (8 U.S.C. 1101, 1154, 1182 and 1184).)

Dated: January 14, 1977.

L. F. CHAPMAN, Jr.,
Commissioner of Immigration and Naturalization.

[FR Doc.77-1803 Filed 1-18-77;8:45 am]

Title 10—Energy

CHAPTER II—FEDERAL ENERGY ADMINISTRATION

[Ruling 1977-1]

CLARIFICATIONS TO MANDATORY PETROLEUM PRICE REGULATIONS APPLICABLE TO DOMESTIC CRUDE OIL

I. BACKGROUND

On April 13, 1976, the Federal Energy Administration ("FEA") gave notice (41 FR 16179, April 16, 1976) of a proposed rulemaking and public hearing to consider clarifications to certain technical aspects of the Mandatory Petroleum Price Regulations applicable to domestic crude oil (10 CFR Part 212, Subpart D).

The FEA did not propose in that rulemaking proceeding to alter any of the major policy decisions already reached, or under consideration, in the three rulemaking stages to implement the crude oil pricing policies of the Energy Policy and Conservation Act ("EPCA," Pub. L. 94-163). Rather, the purpose of the rulemaking proceeding was to resolve as many as possible of a variety of more technical subsidiary issues that had arisen in connection with the implementation of the EPCA. These issues included those related to the definition of "property" and "posted price"; whether a well is properly classified as an "oil well" for purposes of the stripper well property rule; the partial rescission and modification of Ruling 1975-15, including the issue whether a property's producing patterns have been "significantly altered" for purposes of the enhanced recovery rule applicable to unitized properties (10 CFR 212.75); and whether the certification of domestic crude oil sales required in 10 CFR 212.131 was adequate to enable crude oil purchasers to report on the Form FEA-P124-M-O, Domestic Crude Oil Purchaser's Monthly Report, notice of which was also issued on April 13, 1976.

In the April 13 Notice, FEA set forth tentative conclusions with respect to these issues and solicited comments to aid FEA in resolving these issues in a way that would best comport with the statutory objectives of the EPCA. FEA indicated that primary consideration would be given to interpretive rulings and clarifying amendments (if needed) that would be both administratively feasible and consistent with obtaining optimum production of crude oil in the United States. After receiving written comments and oral statements, FEA issued on August 20, 1976 a Notice entitled "Clarifications to Mandatory Petroleum Price Regulations Applicable to Domestic Crude Oil" (41 FR 36172, August 26, 1976), setting forth FEA's determinations with respect to those issues, and adopting certain regulatory amendments designed to improve the incentives offered under the two tier pricing system. The purpose of this Ruling is simply to set forth in the format of a Ruling the FEA interpretations, which were initially set forth in the August 20 Notice, of certain regulatory definitions as they existed since first adopted by the Cost of Living Council. This action is being taken to eliminate possible questions concerning the legal significance of the August 20 clarifications.

II. THE DEFINITION OF "PROPERTY."[1]

A. *Outline of Common Legal Relationship in Crude Oil Production.*—Before discussing the purpose and intent of the crude oil pricing regulations and the definition of "property," a brief outline of the general nature of the legal relationships pursuant to which crude oil is typically produced should prove helpful in affording a better understanding of the issues involved.

Crude oil which can be commercially produced generally must be found in underground reservoirs[2] which have trapped a sufficient quantity of marketable crude oil to make production economically feasible. The nature of the interests which may exist in crude oil is extremely complex. In the simplest case, the owner of land in fee is generally entitled to produce and dispose of any crude oil which may be recovered by wells on that land. This right is not unqualified, however, but is subject to laws and regulations, which have been adopted in various states for conservation and other purposes, and to various legal doctrines which have evolved with respect to protection of the correlative rights of other parties, such as adjoining landowners, that may be affected by the landowner's production of crude oil.

In the typical case, however, the landowner does not exercise the right to produce crude oil which is inherent in the fee interest; rather, the various rights, powers, privileges, and immunities associated with the ownership of land in fee (and the crude oil which may be recovered therefrom) are transferred or otherwise divided among several parties. Although the nature of the interests which may be created by such transactions is virtually limitless, certain principal rights have been grouped together with sufficient frequency that they may be generally described as follows:

(a) Mineral interests,
(b) Royalty interests, and
(c) Leasehold interests.

Thus, the owner of the land may grant to others (or reserve to himself) the right to go upon the land and remove therefrom the crude oil (or other minerals) which may be found beneath the surface, thus separating this right (the "mineral interest") from the balance of rights otherwise appurtenant to the ownership of land.

The owner of the mineral interest may, in turn, execute what is generally known as an oil and gas lease, which typically conveys the right to go upon the land for the purpose of prospecting for and producing crude oil (the "leasehold interest"). Such leases are typically for a term of years, subject to extension in the event crude oil is produced from the land during the term described in the lease. In consideration for receiving such a "leashold interest," the lessee usually agrees to deliver to the lessor free of cost a share of the crude oil produced from the land (said to be taken by the lessor "in kind"), or a share of the proceeds of such crude oil produced and sold from the land. This right, typically retained by the holder of the mineral interest, to a share of production or proceeds is described as a "royalty interest." (See generally 1 H. Williams and C. Meyers, Oil and Gas Law §§ 101, 201-202 (1975 Supp.), hereinafter cited as "Williams and Meyers.") An oil and gas lease may be described as follows:

> The basic document of the oil and gas industry is the lease which authorizes an operator, the lessee or his assignee, to enter upon described premises for the purpose of exploring for and developing the mineral resources in the premises. * * *
>
> The modern oil and gas lease is the product of conflicts between the landowner and the operator of the oil and gas interest. The operator has been desirous of securing a lease with a small capital investment, keeping the lease as long as it was productive or was valuable for speculative purposes, and at the same time, being able to terminate an unprofitable lease without liability to the lessor. The landowner has been interested primarily in obtaining royalties from the lease and therefore has pressed for immediate exploration and development operations. In lieu of exploration and development operations, the lessor has tried to secure a periodic return for the holding of the leasehold interest. However, he has also wanted to limit the time the lessee can postpone drilling by periodic payments, in order to prevent the lessee from holding the lease merely for speculation, and to assure the exploration and development of the lease within a short time. (3 Williams and Meyers § 601, at 1-2.)

B. *Regulatory Background.*—The two tier pricing system was proposed on July 19, 1973 (38 FR 19464, July 20, 1973), by the Cost of Living Council ("CLC") under authority of the Economic Stabilization Act of 1970, as amended. In proposing the two tier system, CLC stated:

> The Council recognizes a need to stimulate increased production and is proposing a system which allows increased production (new crude petroleum) from each producing property and an equal amount of the current production (old crude petroleum) to be sold without respect to the ceiling price rule. Adoption of this incentive plan creates a two-tier pricing system for crude oil, which requires posting of two sets of prices, one for "old oil" and one for "new oil." Postings for "old oil" can be no higher than the ceiling price and postings for "new oil" is [sic] at the buyer's discretion.
>
> A crude oil producer is required to prorate among all his "old oil" buyers the amount of "old oil" freed from ceiling limitations by the production of a like amount of "new oil." (38 FR 19467.)

The regulations proposed on July 19 did not include a definition of the term "property," but defined "base production control level" (i.e., the level above which a property's current production and sale would qualify as "new oil") as follows:

> "Base production control level" for a particular month means—
>
> (i) For a particular property on which the producer has leased production rights, the total number of barrels of domestic crude petroleum produced in the same month of 1972 from that property.
>
> (ii) For a particular property on which the producer owns production rights, the total number of barrels of domestic crude petroleum produced in the same month of 1972 from that property. (38 FR 19482.)

In adopting the two tier pricing system on August 17, 1973 (effective August 19, 1973 (38 FR 22536, August 22, 1973)), CLC indicated:

[1] This Ruling sets forth verbatim only the interpretive portions of the August 20 Notice, and the section headings have been revised accordingly. Differences between this Ruling and the interpretive portions of the August 20 Notice, other than obvious changes in the references to the rulemaking proceeding initiated by the April 13 Notice, are referenced in subsequent notes.

[2] The reference to "geological formations" has been deleted as possibly confusing because a similar term is subsequently used to refer to more than a single reservoir.

A 2-tier price system has been adopted, providing for a ceiling on domestic crude petroleum prices but allowing new crude and an equivalent amount of old crude to be sold at prices above the ceiling * * * (38 FR 22536.)

CLC also stated:

* * * The substantive policy changes [between the July 19, 1973 proposal and the August 17, 1973 final regulations] were publicly announced on August 10. These regulations implement those policy decisions and, in addition, incorporate numerous changes to better implement the program. (38 FR 22536.)

The August 10 public announcement referred to above was in the form of a press release issued by CLC, stating that with respect to the two tier pricing system.

The Council has been very concerned that the final regulations strike a balance between constraining prices while at the same time encouraging the necessary increase in supplies which the country must have. * * *

The press release explained the two tier pricing system as follows:

Rule.—A two-tier pricing system is provided. Producers will have the opportunity to sell "new oil"—that above 1972 production levels—at free market prices.

Reason.—The two-tier pricing system which allows new oil to be sold at higher prices than "old oil" is expected to stimulate domestic crude oil production while maintaining price controls on oil presently being produced. The two-tier system will encourage increased investment in domestic exploration and will provide an economic intentive to allow the recovery of a larger percentage of oil in existing reservoirs. (2 Historical Working Papers on the Economic Stabilization Program August 15, 1971 to April 30, 1974, at 1259–60.)

There was no discussion of the term property in the preamble to the final regulations, but a definition of property was included in 6 CFR 150.354 of the August 17, 1973 final regulations, as follows:

"Property" is the right which arises from a lease or from a fee interest to produce domestic crude petroleum. (38 FR 22538.)

Thus, from the very inception of the two tier pricing system, producers were required to measure current monthly production and sale of crude oil from a "property" against the amount of crude oil produced and sold from that same "property" in the same month of 1972, in order to determine the amount of current crude oil production which would be subject to the ceiling price rule.

CLC did not elaborate on the rationale for the two tier price system, beyond the statements quoted above concerning the need to constrain prices while at the same time encouraging increased production. Thus, CLC perceived its statutory objective as primarily to control inflation with what was envisioned to be a short-term program under authority of the Economic Stabilization Act of 1970. That Act was scheduled to expire, as it did, eight months later, on April 30, 1974. (Thus, for example, CLC began sector-by-sector decontrol on October 25, 1973.) FEA noted in the April 13 Notice with respect to this consideration that

Because the Economic Stabilization Program was always intended to be a temporary program, the regulations adopted pursuant to that program were designed so as to achieve the price control regulatory objectives with minimal disruption to normal business practices. Thus, a definition of property was adopted to serve two basic purposes. First, the entity was intended to be one for which producers would in their normal course of business maintain production records so that new recordkeeping or data collection by the producers would not generally be necessary and audits for compliance purposes would be facilitated. Second, the entity was designed to serve as the basic building block for the incentive system which rewarded increased or new production from a property by classifying that production as new crude oil. (41 FR 16180.)

It should be noted also that the concept of a "current cumulative deficiency" was also incorporated in the two tier pricing system from the outset. (Once new crude oil had been produced and sold from a property, and current production and sale then fell short of 1972 production and sale levels, new crude oil could not thereafter be sold from the property until enough production in excess of 1972 levels had been sold at the ceiling price even though it would otherwise have qualified as new crude oil but for the requirement to make up the cumulative deficiency.) However, the cumulative deficiency rule was not a significant factor in the early months of the two tier system, since production and sale levels in late 1973 were, in general, not significantly less than 1972 levels.

C. Legislative Background.—The term "property" gained further significance under the crude oil pricing regulations with the advent of the statutory exemption from those regulations of the first sale of crude oil produced from stripper well leases, which was initially provided for by the Trans-Alaska Pipeline Authorization Act ("TAPAA," Pub. L. 93–153), signed by the President on November 16, 1973. The exemption was implemented by CLC by an amendment to its regulations, which was issued November 21, 1973 and made effective as of November 16, 1973 (38 FR 32494, November 26, 1973). The amendment defined "stripper well lease" to mean a "property" (as previously defined in the two tier crude oil pricing regulations) whose average daily production did not exceed the qualifying limits set by the statute. In so doing, CLC stated:

* * * For purposes of this exemption, the term "property" is described as being coextensive with that "property" used to determine 1972 base production control levels, as measured by leases in existence in 1972. This narrow definition was adopted in order to comply with the Congressional intent expressed in the Conference Report which stated that the "Congress specifically intends that the regulations shall, among other things, prevent any 'gerrymandering' of leases to average down high production wells with a number of low production stripper wells to remove the high production wells from price ceilings" (H.R. Rep. No. 93–624). (38 FR 32495.)

On November 27, 1973, the Emergency Petroleum Allocation Act of 1973 ("EPPA," Pub. L. 93–159) was enacted and it modified the test for stripper well lease qualification from one based on production levels during the preceding calendar month to one based on production levels during the preceding calendar year. A corresponding change in the crude oil pricing regulations was made by CLC, effective November 27, 1973 (38 FR 34464, December 14, 1973), but in all other respects the definition of stripper well lease remained as initially adopted.

Section 4(e)(2) of the EPAA provided for the stripper well lease exemption (until its repeal, effective February 1, 1976, by the Energy Policy and Conservation Act and read in part, as follows:

(A) The regulation promulgated under subsection (a) of this section shall not apply to the first sale of crude oil produced in the United States from any lease whose average daily production of crude oil for the preceding calendar year does not exceed ten barrels per well.

(B) To qualify for the exemption under this paragraph, a lease must be operating at the maximum feasible rate of production and in accord with recognized conservation practices.

Neither the EPAA nor the TAPAA included a definition of the term "lease." The most extensive legislative history concerning the original stripper well lease exemption is found in the Conference Report accompanying the TAPAA.

Although the Conferees did not discuss the meaning of the term "lease," they did state:

The Congress intends that the provisions of this section will be strictly enforced and regulated by the administering agency to insure that the limited exemption of this class of wells for the express purposes described above is not in any way broadened * * * Congress also directs that the administering agency shall promulgate regulations to implement the provisions of this section before it becomes operative. The Conferees expect the administering agency to utilize State data regarding production volumes, and to provide by regulation safeguards against the manipulation of gerrymandering of lease units in a manner that evades the price control and allocation programs.

These regulations shall be so designed as to provide safeguards against any abuse, over-reaching or altering of normal patterns of operations to achieve a benefit under this section which would not otherwise be available. Congress specifically intends that the regulations shall, among other things, prevent any "gerrymandering" of leases to average down high production wells with a number of low production stripper wells to remove the high production wells from price ceilings. The sole purpose and objective of this Section 406 is to keep stripper wells—those producing less than ten barrels per day—in production and to insure that the crude oil they produce continues to be available for U.S. refineries and U.S. consumers. It is not intended to confer any benefit on the owners and operators of wells producing in excess of ten barrels per day.

The Congress also intends that the regulations provide appropriate limitations and provisions in the definition of "lease" to insure that an administratively workable system is established which does not permit

abuse. (Emphasis in original, H.R. Rep. No. 624, 93d Cong., 1st Sess. at —— (1973).)

The TAPAA stripper well lease exemption originated with a floor amendment that was introduced by Senator Bartlett of Oklahoma. The original text of the amendment provided that:

Those oil leases whose average daily production per well does not exceed that of a stripper well of not more than ten barrels of oil per day shall be exempt from any allocation or price restraints. * * * (*119 Cong. Rec. S13432* (daily ed. July 14, 1973).)

In explaining this amendment Senator Bartlett stated:

So if the stripper producer had production that did not qualify, he, of course, would not be in any position to have that production exempted from price controls. It is done on a lease basis, because normally all the wells on one lease go into one tank or on a several tank basis. So if it is from a big well, the average goes away [sic] up.

Incidentally, when subsidies were put on [stripper well production] during World War II, that went beyond just a lease basis; that was done on a field basis, because it is easier to do all the accounting that way. But in this case, it is only decided on a lease basis. (Id. at S13435, remarks of Senator Bartlett.)

It should be noted also that the sponsor of the amendment understood stripper wells typically to be operated by independent producers pursuant to a lease:

Large oil companies have few stripper wells. Because of their higher operational costs, major oil companies are forced to sell their leases to independents—who can operate these leases for a longer period. (Id. at S 13432.)

The legislation which became the Emergency Petroleum Allocation Act of 1973 ("EPAA") originated in the Senate where a bill was passed on June 5, 1973, containing no stripper well provision of any kind. When the House passed a similar version of the emergency petroleum allocation measure on October 17, 1973, it contained a "stripper" exemption applicable to wells rather than to leases. In the Conference Report of November 10, 1973, a stripper well lease provision was substituted, without comment, and this provision was subsequently adopted by Congress in the final version of the EPAA without debate or comment on the meaning of "leases."

The general legislative silence on the meaning of stripper well "leases" in connection with the drafting and passage of the EPAA can therefore be explained only by the fact that this matter was decided largely in connection with the TAPAA companion measure. These two statutory stripper well lease provisions, although identical insofar as the concept of "leases" is concerned, contained certain technical differences. Because of the use of the same language in both enactments concerning "leases," however, the legislative history of the TAPAA is relevant and applicable to the meaning of stripper well "leases" under the EPAA and the implementing CLC, FEO, and FEA regulations.

D. *Changes Since Adoption of the Two Tier Crude Oil Pricing System.*—Several important changes in circumstances have occurred since the initial definitions of "property" and "stripper well lease" were adopted. First, with the passage of time, the natural decline in the rate of production has operated to make the cumulative deficiency provision of the two tier pricing system increasingly more significant. Second, the initial emphasis of CLC on restraining prices and controlling inflation has tended to be of lesser significance compared with the need to provide effective incentives for increased domestic production of crude oil. Third, the price differential between "old crude oil" and crude oil not subject to the ceiling price limitation has increased dramatically, from modest initial levels of $.50 per barrel or less, to amounts of $7.00 per barrel or more. The "old crude oil allocation" or "entitlements" program was instituted in response to this increased price disparity, and since November, 1974, refiners have been required to have an "entitlement" to refine a barrel of old crude oil, with those refiners having more than the national average of old crude oil generally required to purchase such entitlements from refiners having less than the national average of old crude oil. Finally, enactment of the EPCA on December 22, 1975, effectively, changed the crude oil pricing program from one which was expected only to be temporary to one which would be mandatory for at least 40 months.

The amendments to the crude oil pricing regulations adopted to implement the crude oil pricing policies of the EPCA are intended to reflect these changed circumstances. Under the two tier pricing system as revised effective February 1, 1976, existing cumulative deficiencies were eliminated for all properties. Also, provisions were subsequently added to take into account the natural rate of production decline in future months, so that the level of production which must be exceeded before crude oil produced from a property may be sold at upper tier prices (the "base production control level") may be adjusted downward at six month intervals. These provisions were added to help keep the incentive of higher, upper tier prices within the reach of producers of most properties, so that measures taken to increase rates of production could realistically be expected to result in upper tier prices without regard to the time that has elapsed since the initial base production control levels were first established. Also, the "released crude oil" provisions which were included in the initial two tier pricing system as a special incentive for increased production in the short term were eliminated on a prospective basis, and base production control levels are now determined with reference to the average monthly volume of "old crude oil" produced and sold from each property in 1975.

E. *General Considerations.*—Because the considerations involved with respect to past applications of the term "property" are significantly different from the considerations involved in prospective applications of the term, FEA has concluded that the clarifications that are appropriate with respect to past applications of the term are likewise different from those which are to be applied on a prospective basis. With respect to past interpretations FEA is, of course, bound to formulate those clarifications which are most consistent with the purpose and intent of the regulations in effect during that time, whereas with respect to future applications of the term, FEA enjoys greater latitude to make such prospective adjustments in the meaning of the term as will best suit the current objectives of the two tier pricing system.

In seeking at this time to clarify the meaning of a term that has been so widely applied for almost three years, FEA has sought, first, to determine the legal significance of the words used to define the term and, second, to identify and evaluate the extent to which other factors (extrinsic to the language of the definition itself) may have made it inequitable or impracticable to apply the literal meaning of that definition in certain circumstances. With this intention, and based upon the comments received in response to the April 13 Notice, therefore, FEA has concluded that the literal meaning of the term "property," as defined by FEA, is generally to be understood as synonomous with the physical "tract" or "premises" as to which a working interest is established by an oil and gas lease, or by a fee interest. It has also concluded that in certain instances it is permissible to segregate the interest so described for purposes of delineating an FEA "property," while in other instances the aggregation of such interests to form a single FEA "property" is appropriate.

The conclusion that the term "property" (i.e., "the right which arises from a lease or from a fee interest to produce domestic crude petroleum") is, in the strictest sense, generally synonymous with the tract or premises as to which a right to produce exists pursuant to an oil and gas lease or a fee interest, is based in large measure on the foregoing review of the history of these concepts.

Although the evidence is not unambiguous, FEA has concluded that CLC by its definition of the term "property" intended to refer to the premises described in the oil and gas lease pursuant to which crude oil was being produced. It also appears that this is the reasonable meaning of the definition that CLC used and that the definition should have been so understood. Thus, when CLC first proposed the two tier concept, it described the productive entity with respect to which production was to be measured as "a particular property on which the producer has leased production rights." Use of the phrase "property on which" suggests that CLC contemplated that crude oil production would be measured according to the surface acreage, or "tract," as to which a producer had obtained production rights through an oil and gas lease. (Such leases typically describe the premises by surface boundaries, although they may also delineate particular underground strata as to which rights are conferred. (See,

e.g., 3 Williams and Meyers section 605.)

When the two tier pricing system was adopted, property was defined, as noted above, as "the right which arises from a lease or from a fee interest to produce domestic crude petroleum." The term "lease" has been generally defined, for purposes of oil and gas law, as "[t]he instrument by which a leasehold or working interest is created in minerals. * * *" Williams and Meyers, Manual of Oil and Gas Terms at 240–241 (3d ed. 1971). "Working interest" has been defined, in turn, as "[t]he operating interest under an oil and gas lease. The owner of the working interest has the exclusive right to exploit the minerals on the land. * * *" (Id. at 511.)

Inasmuch as the lease is the basic document of the oil and gas industry, there should have been no doubt but that CLC intended by its definition of property to signify the premises described by an oil and gas lease (or by a deed, in those comparatively few instances in which the operator was also the owner of the mineral interest).[3] FEA believes that this term, which has generally uniform historic meaning throughout the crude oil production industry, was used initially with the intention and expectation that it would provide a uniform basis for application of price controls throughout the industry and would avoid the need for taking into account the varying state regulatory concepts and internal systems of accounting.

Also relevant to the intent with which CLC used the term is that the concept of released crude oil was specifically designed as an incentive to increased production over a relatively short time. The fastest means of increasing production was through maximum exploitation by producers of tracts subject to their working interests—whether by application of enhanced recovery techniques, re-working of wells, or by re-completion of wells in new producing formations. The treatment, for example, of separate reservoirs subject to the same oil and gas lease as separate properties would have been inconsistent with the objective of the released crude oil concept to provide producers with maximum incentives to exploit to the fullest extent the tracts which were subject to their existing rights to produce crude oil.

The evidence with respect to the legislative treatment of the term "lease" is not inconsistent with this conclusion. FEA's review of the legislative history of the stripper well lease exemption indicates that the sponsor of the stripper well lease exemption used the "lease" as the unit of measurement simply because the production of several wells subject to a single lease is commonly commingled in one or more storage tanks. He proposed that the stripper well exemption be "decided on a lease basis," rather than on some other basis, solely because of the practical necessity inherent in the common collection and storage systems in use. Thus, a well-by-well measurement would not normally be possible on the one hand and, on the other hand, averaging per-well production across an entire field, to the extent a field "went beyond" or was broader in scope than a lease, was presumably not desirable because it would in some cases have unnecessarily expanded the scope of the exemption to leases that were not marginal and in other cases would have unnecessarily prevented marginal leases from benefiting from the exemption. The term "lease" therefore appears to have been regarded as the most appropriate term available to describe an interest that would typically encompass more than a "well" but less than a "field." It also appears that the term was regarded to be commonly understood as no definition was included in the Act.

However, notwithstanding the strong support, both in the legislative history and elsewhere, for a literal interpretation of the definition of property, FEA has determined that the clarification of past applications of the property concept should recognize more flexibility because of a variety of circumstances under which an interpretation of the term property that was limited to the literal meaning of the language of the definition would be inequitable.[4] Several considerations led to this conclusion.

As noted in the foregoing review of the concept of property and its significance under the two tier price system, the term "property" was first defined in regulations which were issued on August 17, 1973, and became effective on August 19, 1973. Thus, producers were required immediately (i.e., by the end of August) to apply the new definition to their particular circumstances to determine whether any "new" or "released" crude oil had been produced from a property in that month. While the definition of the term appears to have been premised on the assumption that it would provide a common and easily-understood basis for delineating appropriate productive entities, comments received in this and other proceedings indicate that there have, in fact, been many differing interpretations of the meaning of the term among producers.

With respect to the extent to which differing and possibly conflicting interpretations of the term should be recognized by FEA as consistent with the regulations, it must be recognized that producers had no detailed guidance initially from CLC, FEO, or FEA with respect to the numerous questions that arose with respect to the property definition. The first ruling on the definition of property was not issued until August 29, 1975 (FEA Ruling 1975–15, 40 FR 40832, September 4, 1975). Further, when the CLC definition of property had to be adapted by producers to their particular circumstances in August 1973, the benefits or detriments of alternative approaches, to the extent they may have been considered, would have been perceived much differently than at a later time.

It should be recognized, for example, that the two tier pricing system initially operated generally to provide an economic incentive for the aggregation of productive entities if one such entity was capable of producing significantly higher volumes of crude oil than it produced in 1972. This is because there had not yet been time for significant current deficiencies to accumulate as to most productive entities, and the increased production from one entity, if sufficient, would serve under the special release rule to release from the ceiling price rule crude oil from other productive entities only if they were treated as part of the same property. Of course, to the extent that any cumulative deficiency had accrued at that date, selective segregation of entities would have served immediately to result in all "new crude oil" from any separate entity with respect to which production was just being initiated. As a general matter, however, it seems unjust, with the benefit of hindsight, to ascribe now improper motivations to applications of the property concept which were made under considerably different circumstances nearly three years ago.

Also favoring a more flexible interpretation of past applications of the term property is the reality of several significant consequences attached to the determinations that have been made with respect to the meaning of the term "property." Volumes of "old," "new," "released," and "stripper well lease" crude oil are a function of the scope of the "property" as determined by the producer. "Old" crude oil volumes, thus determined, have been certified, and entitlements have been purchased by refiners with respect to such volumes. The costs of the crude oil and entitlements to refiners have, in turn, generally been passed through in prices charged for refined products. Revenues paid to producers have, in like manner, generally been used to pay operating costs or to initiate enhanced recovery or new exploration and development, and remitted to royalty owners, or otherwise disposed of. In addition, since February 1, 1976, the "base production control level" of each property has been defined by reference to the volume of "old crude oil" produced and sold from the property concerned during 1975.

FEA recognizes the substantial reliance that has been placed on these determinations by numerous parties, that there is no basis for concluding in general that such determinations were other than good faith attempts to comply with the regulations, and that there is a substantial need for a measure of administrative finality to attach to as many of these determinations as possible, so as to avoid substantially disruptive retroactive adjustments.

[3] This statement, which appeared in the August 20 Notice, has given rise to questions concerning its consistency with the statement in the text at note 4 infra. The above statement concerning the intended meaning of the CLC definition wss made with reference to what FEA regarded as the vast majority of instances. It was not meant to preclude the possibility that, in certain instances, as discussed more fully in the text beginning at note 4 infra, there would have been considerable douht as to the intended meaning of the term.

[4] See note 3 supra.

The legislative history of congressional intent with respect to the meaning of "lease" in the context of the stripper well lease exemption is not inconsistent with the need to afford some measure of flexibility in the definition of the term "property." The Conference Report accompanying the TAPAA states that "Congress * * * intends that the regulations provide appropriate limitations and provisions in the definition of "lease" to insure that an administratively workable system is established which does not permit abuse." This statement clearly indicates that rigid adherence to a "lease" system was not expected and that the necessity for some degree of flexibility in defining the term was acknowledged. Consistent with this intent, the regulatory definition of a stripper well lease provided for, among other understandable exercises in flexibility, inclusion of "fee interests" within the meaning of the statutory term "lease."

The strictures in the Conference Report on the subject of stripper well "gerrymandering" do not contradict this view. The only express qualification on administrative flexibility in defining "lease" would seem to be one which would be present by implication in any event (i.e., that the administrative treatment of the term "lease"—as in any other phase of administering the stripper well exemption—must not be such as to permit abuse of the exemption).

On the other hand, FEA does not regard its ability retroactively to provide for a more flexible interpretation of the term property to be unqualified. Principles of equity generally favor that those who are similarly situated receive comparable treatment. In this regard, it would be particularly inappropriate for those producers which closely adhered to the regulatory definition of the term "property" to be treated much less favorably than those producers which interpreted the term in a less formal manner. Moreover, FEA is also concerned that unwarranted departures from its regulations not be permitted and that the interests of consumers in full and fair enforcement of the price controls on crude oil be adequately protected.

Accordingly, the detailed discussion setting forth the proper clarification of past applications of the property concept in the following Section II. F. represents FEA's attempt to strike an appropriate balance between the foregoing considerations as to a literal interpretation of the term property vis-a-vis a more flexible interpretation which takes into account factors extrinsic to the language of the definition itself.

FEA believes that the clarifications first announced on August 20, 1976 and set forth in this Ruling are consistent with the practices that have been followed by the substantial majority of producers. However, to the extent that these clarifications would permit any producer to calculate larger volumes of "new," "released," or "stripper well lease" crude oil than were calculated and certified in prior months, no recertifications of additional volumes will be permitted. Such recertifications will be considered, if at all, only on a case-by-case basis on normal grounds of inequity or hardship through the FEA exceptions process. FEA is aware that in so affording significance to differing good faith definitions of property that have been adopted by producers, similarly situated persons will in some instances be treated differently under the regulations. This fact is, however, counterbalanced in FEA's view by the need for the greatest possible measure of administrative finality to be afforded the determinations already made as to volumes of old crude oil. Appropriate compliance actions will, of course, be taken with respect to applications of the term property which are not consistent with the clarifications set forth herein, to the extent that they have resulted in the certification of greater volumes of new or upper tier crude oil than is permitted. FEA reserves the right in such compliance actions to determine whether any misapplication of the "property" concept, which resulted in improper classification of lower tier crude oil as upper tier crude oil to a particular purchaser, also resulted in that purchaser receiving at lower tier prices other volumes of crude oil that could properly have been certified as upper tier crude oil. In such cases, and in the context of formal compliance action (i.e., by remedial order or consent order), FEA may permit the producer to recertify such amounts of crude oil mistakenly invoiced as lower tier crude oil, but only to the extent that additional funds due the producer because of such recertification do not exceed refunds due to the purchaser because of sales of crude oil by the producer at prices in excess of the appropriate ceiling prices.

F. *Past Applications of the Term "Property."* The issues with respect to past applications of the term property may, for purposes of convenience, be generally divided into three categories: (1) Those involving the delineation of the premises which are subject to a single "right to produce" pursuant to a lease or fee interest, (2) Those involving the aggregation of two or more such premises, and (3) Those involving the segregation of such premises subject to a single "right to produce."

(1) *The right to produce.* FEA Ruling 1975–15 made it clear that the property concept is one that begins with "the right to produce crude oil." Consistent with the discussion above of the common meaning of that term as being generally synonymous with the concept of "working interest," the analysis of property will generally begin with identifying the one or more "premises" or "tracts" described in the instrument that confers the right to produce. Generally speaking, except in those cases where the right to produce is conveyed separately with respect to separate horizontal strata, the "premises" as to which the right to produce exists will generally be described in terms of surface acreage—commonly referred to as a "tract." In those instances in which production is undertaken by the owner of the mineral interest in fee, rather than by a lessee, the instrument conveying the fee interest will similarly describe the premises typically in terms of surface acreage, also referred to as a "tract." The terms "premises" and "tract" are both used here to refer to the physical limits as to which a right to produce exists. Since "tract" implies surface acreage, whereas "premises" is not so limited (but also signifies use of three dimensional boundaries), the latter term is preferred.

Difficult issues can arise with respect to construing a lease or deed to delineate the one or more premises as to which a "right to produce" exists under that instrument. This can occur, for example, where a lease conveys a right to produce with respect to described premises, but imposes differing or special rights or obligations with respect to the development of and production from particular portions of the described premises. Generally speaking, where the rights or duties created under a single instrument are significantly different with respect to particular identified portions of a described premises, where a producer has in good faith relied upon such differences in its exploration and development activities, and where the producer has consistently and historically accounted for such portions separately, FEA will permit the lease concerned to be considered as having established more than a single "right to produce" and, consequently, more than a single property. Thus, for example, where the time within which a lessee is obligated to begin production activities varies as to specified portions of a particular tract, those portions of the tract would be subject to differing "rights to produce," and hence, could constitute separate "properties."

(2) *Segregation of Premises Subject to a Single Right to Produce.* More complex issues are posed with respect to the extent to which the premises subject to a single right to produce may appropriately be subdivided to form separate "properties." As noted above, there are instances in which a single lease may create several distinct "rights to produce" with respect to specified portions of the premises described therein. And as discussed below, the aggregation (with premises subject to other rights to produce) of less than all of the premises covered by a single right to produce may result in the subdivision of the premises formerly subject to a single right to produce into at least two properties—the portion which has been aggregated and the portion which remains. There are, however, still further instances in which segregation into one or more properties of a premises subject to a single right to produce appears to have been appropriate under the existing regulations.

a. *Non-contiguous tracts.* One such instance is in the case of non-contiguous tracts. Particularly in the case of fee interests, but also in the case of certain

large leases (typically old leases), a single instrument may convey a single undifferentiated right to produce with respect to multiple, non-contiguous tracts, which may be located at great distances from one another. In all cases in which it can be shown that such non-contiguous tracts were developed and produced separately, and where they have historically and consistently been accounted for as separate properties, FEA will continue to permit them to be so regarded. The basis for this determination is principally that FEA understands this to have been a consistent and historic practice and one which was followed to conform the treatment of the atypical situation of multiple tracts subject to a single instrument to that afforded in the more typical situation of a single tract subject to a single lease.

b. *Very large tracts.* Another such instance is in the case of very large tracts which are subject to a single right to produce. Although this problem appears to exist mainly with respect to large fee interests, it also obtains with respect to certain large leases, particularly those granted many years ago by Federal and state governments. As noted above, the modern oil and gas lease typically conveys a right to produce which must be exercised within a specified period in order for production rights to be retained by the lessee. The objective of the lessor is to obtain production in a specified area within a specified time. Accordingly, most oil and gas leases confer a right to produce as to an area within which exploration and development by the lessee can reasonably be expected within a reasonable time—five years is typical.

Owners of mineral interests in fee which undertake their own exploration and development activities are not, of course, bound by any lease obligations with respect to the time within which such activities must take place. Accordingly, exploration and development of a large fee interest may take place over an extended period of time, in much the same manner as if several leases had been conveyed with respect to particular areas and time periods. Similarly, with respect to large leases, a comparable form of phased development may have taken place. Indeed, as to certain large government-granted leases, a "selection" process has been employed, whereby only with respect to those portions of the lease that are developed does the lessee retain production rights. In such cases, the right conveyed by the initial "lease" is more in the nature of a right to explore, which ripened into a right to produce those areas that the lessee has developed in a timely fashion.

In order to treat holders of large tracts subject to a single right to produce—whether by a lease or by fee interest—in a manner that is comparable to the treatment of those who hold a right to produce under the more limited typical modern oil and gas lease which covers a lesser area, FEA has concluded that separate geological formations subject to the same right to produce which have been developed and produced separately, and which have historically and consistently been accounted for separately may continue to be so regarded.

c. *Partial unitization or other aggregation of interests.* It is not uncommon for less than the total premises subject to a right to produce to be unitized or otherwise aggregated with all or portions of premises subject to other rights to produce, to form a single "property," leaving the balance of the premises formerly subject to a single right to produce not aggregated with any other such rights. The portion of the premises which is not aggregated is appropriately recognized as a property separate and apart from the portion of the premises which has been aggregated with other rights to produce.

In some cases, FEA understands that the inclusion of the so-called "Pugh" clause in a lease would operate to create a separate and distinct right to produce with respect to the non-unitized portion of the premises subject to that lease, by stating that production from the unitized portion of a lease will not serve to fulfill the lessee's production obligations with respect to the non-unitized portion. Thus, the two portions of the lease including such a clause would become separate properties by the terms of the lease itself. However, even where such a clause is not included, FEA has concluded that treatment of the non-unitized portion of the premises as a separate property is appropriate.

d. *Severance tax or royalty owner accountability.* Another instance in which segregation of a premises subject to a single right to produce is appropriate is where the production from identifiable portions of the premises is required to be measured and accounted for separately for purposes of determining severance tax liability or for purposes of accounting to royalty owners. FEA has concluded that where the payment of revenues to State tax authorities or to royalty owners requires separate accounting for production from identified portions of a premises subject to a single right to produce, and where such portions of the premises have consistently and historically been treated as separate properties, such separate treatment may appropriately be continued.

e. *Other segregation not permitted.* The most complex and apparently controversial issue with respect to segregation of a premises subject to a single right to produce has to do with production from separate "reservoirs." FEA has studied this issue at considerable length but has been unable to find a solution which is likely to be satisfactory to all parties concerned. FEA has concluded on the basis of the review of the legislative and regulatory history and the general considerations outlined above that a premises which contains multiple reservoirs but which is subject to a single right to produce may not, simply by virtue of the existence of separate reservoirs, be treated as comprising multiple "properties."

FEA does not believe that the language of the definition of the existing term "property" can be construed to mean that production from separate reservoirs subject to the same working interest would, simply by virtue of the fact that the several reservoirs have been developed and produced separately, be regarded as production from separate properties. (Producers have been on express notice of this at least since the issuance of FEA Ruling 1975–15 on August 29, 1975.) Moreover, any producer which adopted a reservoir-by-reservoir approach to the definition of property (and, hence, to the computation of amounts of "new" and "released" crude oil) would typically have been in a position to achieve greater benefits under the price regulations over the past three years than those producers who took the approach of aggregating production from all reservoirs subject to the same right to produce, as required under the regulations. At least until February 1, 1976, any producer that treated each reservoir as a separate property automatically would have obtained "new" crude oil whenever production was obtained from a new reservoir. Producers using the lease approach, on the other hand, were required first to exceed 1972 levels of production from the lease concerned before any production from a new reservoir would be regarded as "new" crude oil. FEA has unfortunately not been able to obtain any approximation of the extent to which producers have actually adopted a reservoir-by-reservoir definition of property.

Under these circumstances, FEA has concluded that it would be inequitable to permit producers who took an expansive—and, in FEA's view, unwarranted—view of the meaning of the term property to obtain benefits that were not afforded to producers who adhered closely to the regulations. Thus, FEA has concluded that separate reservoirs which are subject to the same right to produce will generally not be treated as separate properties prior to September 1, 1976.[*]

There are, however, instances in which, for a variety of reasons, it would have been impracticable or inequitable for producers not to have treated separately production from a separate reservoir or reservoirs. Those instances of which FEA is aware have been noted above. There may well be other instances of which FEA is not aware, but which may be appropriately addressed in subsequent rulings, as they become known. The mere existence of separate reservoirs and the requirement to report separately the production from such reservoirs in itself will, however, only suffice to permit separate property treatment if the producer has applied for exceptions relief and has been permitted to use such a definition in order to avoid serious hardship or gross inequity.

(3) *Aggregation of "Rights to Produce."* The aggregation of separate "rights to produce" pursuant to a unitization agreement was discussed in FEA Ruling 1975–15. There are, however, other circumstances under which separate rights to produce may appropriately be aggregated, pursuant to either voluntary or involuntary arrangements.

[*] Italicized language appeared in August 20 Notice as "under existing regulations."

Thus, for example, various parties may hold partial undivided interests in the right to produce crude oil from a particular tract. Whether voluntarily through a point operating agreement or other type of agreement, or pursuant to compulsory state regulations, such undivided interests in the right to produce from a tract must typically be aggregated before production can begin. Under such circumstances, no apparent purpose would be served by requiring property delineations to be carried back to the individual partial undivided interests which have been aggregated in order to perfect the right to produce.

Another instance in which rights to produce may be aggregated occurs where the premises subject to such rights are required to be combined by a state regulatory agency as a condition to the operation of production activities. Thus, for example, in Louisiana the state regulatory agency will compel a "unit" to be formed by the owners of the tracts with respect to the surface area which overlies the portion of a reservoir that may be efficiently drained by a single well, provided the owners of at least 75 percent of the surface area agree to the formation of a unit.

Similarly, in states that maintain spacing requirements for oil wells, individual rights to produce may need to be combined, whether voluntarily or involuntarily, before a single well may be drilled and the right to produce made effective. Such aggregations of rights to produce (sometimes known as "drilling units") are also appropriately recognized as single "properties."

Generally speaking, FEA will follow a liberal policy with respect to the aggregation of rights to produce which will be permitted to be treated as a single "property" as long as a bona fide reason for the aggregation can be demonstrated by the producer.

III. The Definition of "Posted Price"

FEA price regulations employ historical crude oil posted prices as references for determining lower and upper tier ceiling prices, with lower tier ceiling prices determined by reference to the highest posted price for the same grade of crude oil in the same or nearest field on May 15, 1973, plus a per-barrel increment, and with upper tier ceiling prices determined by reference to the highest posted price for the same grade of crude oil in the same or nearest field on September 30, 1975, less a per-barrel increment.

The definition of "posted price" was adopted by the Cost of Living Council on November 30, 1973, and has remained substantially unchanged since that time:

> "Posted price" means a written statement of crude petroleum prices circulated publicly among sellers and buyers of crude petroleum in a particular field in accordance with historic practices, and generally known by sellers and buyers within the field. (38 FR 33577 at 33578, December 6, 1973.)

Although FEA has until this time issued no interpretive ruling with respect to this definition, the posted price concept has served as the basis for determining lower tier ceiling prices for nearly three years.

On February 1, 1976, in connection with the first stage of rulemaking proceedings to implement the crude oil pricing policy of the EPCA, the FEA rejected its proposal (41 FR 1564, January 8, 1976) to determine upper tier ceiling prices by reference to actual transaction prices, and decided instead to determine upper tier ceiling prices with reference to highest posted prices on September 30, 1975. Most of the comments submitted in the first stage proceeding indicated that postings were prevalent in September 1975, and suggested that the use of field-wide September postings would avoid other difficulties inherent in FEA's proposal to base upper tier ceiling prices upon actual transactions (e.g., the need to establish a price where there had been no production and sale of crude oil from the property concerned in September 1975).

After publication of the February 1 amendments, however, a substantial number of inquiries were received by FEA relative to the correct application of the posted price concept to the determination of upper tier ceiling prices. (To a much lesser extent, inquiries were also received relative to the posted price for purposes of determining lower tier ceiling prices. However, the problem was said to be not as prevalent with respect to lower tier ceiling prices due to the relative uniformity of crude oil prices in May 1973.) Accordingly, FEA solicited comments in the April 13 Notice in order to determine whether any clarifications were necessary with respect to the definition of posted price. Notwithstanding the clearly expressed purpose of soliciting comments in this regard, however, a large number of written as well as oral comments suggested that FEA either (1) Depart from the posted price concept in favor of the actual transaction approach that was specifically rejected on February 1, or (2) Interpret the definition of "highest posted price" as the "highest prevailing price," so as to include within the definition actual transaction prices that prevailed on September 30, 1975. On August 20, 1976 after consideration of all the written and oral comments, FEA determined that amendments to the current definition of "posted price" were unnecessary. The following clarifications should resolve any confusion that persists with respect to the posted price concept.

Prior to the implementation of price controls by CLC, the traditional and historical operation of the crude oil market included the use of posted field prices, a mechanism well known among buyers and sellers of crude oil throughout the world as:

> The announced price at which a crude oil purchaser will buy the oil (of specified quality) from a field. At one time, the price was actually announced by a statement posted in the field. [More recently], the announcement is usually made in the newspapers. (*Williams and Meyers, Manual of Oil and Gas Terms* at 339.)

The general practice among principal purchasers has been periodically to issue price bulletins, which are widely circulated to the public, announcing the price that that particular purchaser would pay for a particular grade crude oil in a particular location.

It was in this context that CLC adopted the two tier pricing system in August 1973. In the Notice of Proposed Rulemaking issued on July 19, 1973, CLC indicated that the ceiling price for crude oil was to be "the price posted on May 15, 1973 for each grade of petroleum from each particular field." (38 FR 19464 at 19467, July 20, 1973.) The posted price concept was selected because the ready availability of price bulletins (which were understood to be in normal circulation in May 1973) provided a mechanism whereby producers and purchasers alike could be able to determine the ceiling price for any grade crude oil in any particular field. Moreover, the use of price bulletins avoided the enormous administrative complexity of having to establish ceiling prices that would maintain traditional gravity and quality price differentials.

Although the August 17 1973 Subpart L Petroleum Price Regulations did not contain a definition of posted price, a definition was adopted by CLC on November 30, 1973 to make it clear "that a posted price must be a publicly circulated written offer to purchase." (Emphasis added, 38 FR 33577 at 33578, December 6, 1973.)

While the CLC definition did not require the formality of a printed price bulletin such as is published by major purchasers, the CLC did require the formality of a "publicly circulated written offer." The requirement that the offer be in writing eliminates verbal offers, and the requirement that the written offer be publicly circulated eliminates offers (even though written) to specified producers. Accordingly, other than the published price bulletins of the type traditionally issued by major oil companies, FEA will only recognize as a "posted price" written offers to purchase only so long as they were bona fide public offers of general applicability to crude oil producers in the field. For example, a letter from a purchaser to all crude oil producers in a field or in an area would constitute a posted price if the letter was understood by producers and the purchaser to be a bona fide offer to purchase from all producers in that field or area. A written contract, of course, would not qualify as a posted price because it represents an agreement between a buyer and specific producer, not a bona fide offer to purchase from all producers.

Accordingly, in determining the "highest posted price," a producer should first determine which offers qualify as posted prices under the definition as interpreted above. The next inquiry is into which of those posted prices were on September 30, 1975 (or May 15, 1973 for lower tier ceiling prices) applicable to the particular field in question. Once that de-

termination has been made the producer simply identifies the highest price offered among qualified postings.

With respect to determining the applicability of specific postings to particular fields, it has become clear that the principal issue relates to the use of the term "field" in the definition of posted price. Buyers and sellers alike indicated that inasmuch as "field" is not a defined term, conflicting September 30, 1975 "highest posted prices" occur in many areas of the country. Specifically, the term field has different accepted meanings and usages in various producing areas, and consequently might have been interpreted to mean an area as small as a lease, or as large as one or more entire state. However, for purposes of posting crude oil prices, crude oil producers and purchasers have generally understood the term "field" to signify a general area underlain by one or more reservoirs. For example, while some price bulletins refer specifically to named fields in which the particular price prevails, other types of bulletins specify a price for a particular grade of crude oil, which is produced over a large geographical area—perhaps even over an area of one or more states.

The problem arises where a single price bulletin was issued for an area and grade of crude oil (without specifying particular fields), while a price bulletin was issued by a competing buyer offering a higher price, but specifically limited to certain named fields which do not include all the fields within the larger area referred to in the price bulletin offering a lower price. Resolution of such disputes should be as follows: Price bulletins which specify only a geographical area and crude oil grade (e.g., "West Texas Sour") are presumed to be applicable to every field within the named area, unless a particular field is specifically excluded. However, the existence of a price bulletin stating a higher price for specifically named fields within the same area will, of course, supersede the area-wide price bulletin, for the named field only.

Finally, there should remain no question that posted prices used to establish lower tier ceiling prices, as well as posted prices for upper tier crude oil, do "not include premiums above posted prices which may have been paid for crude purchased on May 15, 1973 [or September 30, 1975] (38 FR 33577 at 33578, December 6, 1973)." This was made clear by CLC in November 1973 and should have been understood since that time.

IV. APPLICABILITY OF THE STRIPPER WELL PROPERTY RULE TO CONDENSATE PRODUCED FROM GAS WELLS

Prior to February 1, 1976, 10 CFR 210.32 provided an exemption from price and allocation regulations for the first sale of "crude oil, including condensates, produced from any stripper well lease. * * *" A stripper well lease was defined in § 210.32 as a

"property" whose average daily production of crude oil, including condensates, per well did not exceed 10 barrels per day during any preceding calendar year beginning after December 31, 1972.

In FEA Ruling 1974–28 (39 FR 44414, December 24, 1974), FEA held that the stripper well lease exemption was inapplicable to condensate produced from gas wells. This issue was subsequently reconsidered in the context of a formal rulemaking proceeding, and on August 29, 1975, FEA determined that, in all respects except the applicability of the stripper well lease exemption to gas wells, Ruling 1974–28 remains interpretive of the price regulations since they were first promulgated (40 FR 40818, September 4, 1975). With respect to the treatment of gas-well condensate for purposes of the stripper well lease exemption, FEA concluded that because of the good faith treatment by producers of gas-well condensate as being eligible for treatment under the stripper well lease exemption prior to the issuance of Ruling 1974–28, FEA would not require gas-well condensate to be excluded from the scope of the stripper well lease exemption until January 1, 1975, so that the impact of Ruling 1974–28 in this respect was made prospective only.

On February 1, 1976, the stripper well lease exemption was deleted from FEA price and allocation regulations pursuant to the removal of the former exemption of the EPAA by section 401(b)(1) of the EPCA. However, FEA determined that in keeping with the congressional objectives embodied in the EPCA, crude oil produced from stripper well leases should qualify for treatment as upper tier crude oil. At that time the definition of a stripper well lease was modified to make it clear that only "crude oil (excluding condensate recovered in non-associated production)" is counted in determining whether the property qualifies as a stripper well lease.

Since the issuance of FEA Ruling 1974–28, certain producers have indicated that some uncertainty exists as to the meaning of the term "gas-well condensate," inasmuch as different state classifications might result in wells having basically the same productive characteristics being classified as a gas well in one state and an oil well in another.

In the August 29, 1975 Notice, FEA recognized this issue and stated:

In order further to eliminate any uncertainty that might have arisen from the [original] regulatory language, conforming amendments are made today, effective January 1, 1975, to the stripper well lease exemption in 10 CFR 210.32 to reflect that *the exemption extends only to crude oil and condensate recovered in associated production.* (Emphasis added, 40 FR 40820.)

Thus, the qualification of a property as a stripper well property is only prohibited to the extent that the property consists of wells having only non-associated production of natural gas and condensates. That is, unless a well produces some crude oil, the well fails to qualify for inclusion as a producing well in the stripper well property computations.

Therefore, if a well produces from an associated reservoir (i.e., a reservoir in which gas occurs in association with crude oil), that well may be included to determine if the property is a stripper well property only if crude oil is produced from that well. If only condensate is produced, in association with the gas, the well may not be included to determine if the property is a stripper well property. On the other hand, if a well is producing non-associated gas (i.e., free gas not in contact with crude oil in the reservoir), or only natural gas (even if from an associated gas reservoir), that well may not be included as a producing well because it does not produce crude oil.

To the extent that a single property includes wells of both types, only the wells that produce crude oil may be counted in calculating average daily production. The volumes of condensate produced from the non-associated gas wells are not properly included in the calculation of the property's average daily production.

In the April 13 Notice FEA solicited comments on the extent to which the distinctions outlined above may be made with uniformity in various states. Notwithstanding this specific request, the thrust of most comments was to urge FEA to eliminate the distinction between condensate produced in associated and non-associated production, and to extend the stripper well property provisions to all condensate production. In the August 20 Notice FEA rejected these suggestions and noted that such a proposal was then being considered in the context of the third stage rulemaking to implement the EPCA to adopt a stripper well property rule applicable to condensate recovered in non-associated production. (See 41 FR 18873 at 18876, May 7, 1976.)

With respect to the current stripper well property rule, however, the FEA has determined that the distinctions set forth in the April 13 Notice and reproduced here are valid and will continue to serve to determine which producing wells are to be counted for purposes of determining if the property is a stripper well lease.

DAVID G. WILSON,
Acting General Counsel.
Federal Energy Administration.

JANUARY 13, 1977.

[FR Doc.77-1608 Filed 1-14-77;7:54 am]

Title 16—Commercial Practices

CHAPTER I—FEDERAL TRADE COMMISSION

[Docket 9029]

PART 13—PROHIBITED TRADE PRACTICES, AND AFFIRMATIVE CORRECTIVE ACTIONS

Commercial Programming Unlimited, Inc., et al.

Subpart—Advertising falsely or misleadingly: § 13.10 Advertising falsely or misleadingly; 13.10–1 Availability of merchandise and/or facilities; § 13.50 Dealer or seller assistance; § 13.55 Demand, business or other opportunities; § 13.60 Earnings and profits; § 13.73 Formal regulatory and statutory requirements; 13.73–92 Truth in Lending Act; § 13.105 Individual's special selection or situation; § 13.115 Jobs and employment service; § 13.143 Opportunities; § 13.155 Prices; 13.155–95 Terms and conditions; 13.155–95(a) Truth in Lending Act; § 13.175 Quality of product or service; § 13.190 Results; § 13.205 Scientific or other relevant facts; § 13.225 Services. Subpart—Corrective actions and/or requirements: § 13.533 Corrective actions and/or requirements: 13.533–20 Disclosures; 13.533–45 Maintain records. Subpart—Failing to provide foreign language translations: § 13.1052 Failing to provide foreign language translations. Subpart—Misrepresenting oneself and goods—Goods: § 13.1608 Dealer or seller assistance: § 13.1610 Demand for or business opportunities; § 13.1615 Earnings and profits; § 13.1623 Formal regulatory and statutory requirements; § 13.1623–95 Truth in Lending Act; § 13.1663 Individual's special selection or situation; § 13.1670 Jobs and employment; § 13.1715 Quality; § 13.1725 Refunds; § 13.1740 Scientific or other relevant facts. Prices: § 13.1823 Terms and conditions; § 13.1823–20 Truth in Lending Act. Subpart—Neglecting, unfairly or deceptively, to make material disclosure: § 13.1852 Formal regulatory and statutory requirements; § 13.1852–75 Truth in Lending Act; § 13.1892 Sales contract, right-to-cancel provision; § 13.1895 Scientific or other relevant facts; § 13.1905 Terms and conditions; § 13.1905–60 Truth in Lending Act. Subpart—Offering unfair, improper and deceptive inducements to purchase or deal: § 13.1935 Earnings and profits; § 13.1985 Individual's special selection or situation; § 13.1995 Job guarantee and employment; § 13.2015 Opportunities in product or service; § 13.2063 Scientific or other relevant facts.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; 82 Stat. 146, 147; 15 U.S.C. 45, 1601, et seq.)

In the matter of Commercial Programming Unlimited, Inc., a corporation, and Walter Small, individually and as an officer of said corporation

Consent order requiring a New York City training school for data processing and computer programming, among other things to cease misrepresenting employment opportunities and demands for graduates of their training courses; misrepresenting the effectiveness of their job placement service; and the advantages of taking additional courses. Respondents must advise prospective students of their right to cancellation and refund and provide certain written disclosures relating to job placement and drop-out rates of former students. Additionally, respondent is required to cease violating the Truth in Lending Act by failing to disclose to consumers, in connection with the extension of consumer credit, such disclosures as are required by Regulation Z of the said Act.

The order to cease and desist, including further order requiring report of compliance therewith, is as follows:[1]

ORDER

I

It is ordered, That respondents Commercial Programming Unlimited, Inc., a corporation, its successors and assigns, and its officers, and Walter Small, individually and as an officer of the corporate respondent, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division, franchise or other device in connection with the creating, advertising, promoting, offering for sale, sale or distribution of courses of study, training or instruction in the field of electronic data processing or any other course in any field, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, orally, in writing or in any other manner, directly or by implication, that:

(a) College education is not necessary in all cases or advantageous for the placement of persons as computer programmers or computer programmer trainees; job experience is not necessary in all cases or advantageous for the placement of persons in the field of electronic data processing; or otherwise representing that persons with a high school education or its equivalent will achieve employment in the electronic data processing field, unless in every such instance it is disclosed, in immediate and conspicuous conjunction therewith, that college education or job experience is advantageous for placement; or misrepresenting in any manner the qualifications necessary to achieve employment in any field.

(b) There is a substantial demand, or demand of any size or proportion, for persons completing any of the courses offered by the respondents in the area of electronic data processing or any other field, or otherwise representing that opportunities for employment, or opportunities of any type or number are available to such persons or that persons completing said courses will or may earn any specified amount of money, or otherwise representing by any means the prospective earnings of such persons except as hereafter provided in Paragraph 7 of the Order.

(c) Graduates of respondents' courses of instruction are virtually assured of placement in positions for which they have been trained; or misrepresenting in any manner the employment prospects of any persons completing respondents' courses of instruction.

(d) The IBM aptitude test or any such test or entrance examination by itself can reliably determine a person's suitability for employment in the field of electronic data processing; or misrepresenting in any manner the meaning, purpose, benefit, significance or use of any examination or test or its results.

(e) Acceptance in or admission to any courses of instruction offered by respondents or others is determined solely by the applicant's suitability for such work as determined by the IBM aptitude test given to prospective students prior to enrollment.

2. Representing, orally, in writing or in any other manner, directly or by implication, that respondents own a computer or computers which enable students to gain sufficient practical experience in the operation of a computer, thereby aiding them in securing employment; or misrepresenting in any manner the facilities or equipment available to enrollees in courses of instruction offered by respondents or others.

3. Using any false inducements or representations to obtain enrollees for any of said courses of instruction or to obtain the signature of any such enrollee on documents which obligate any such enrollee to expend or pay any money.

4. Misrepresenting, orally, in writing, or in any other manner, directly or by implication, that:

(a) The training offered to students enrolled in any courses of instruction offered by the respondents or others is by itself, sufficient to qualify graduates thereof for positions as computer programmers, console operators, or as trainees in these areas, or for any other positions in the electronic data processing field; or the significance or importance of any course of instruction in qualifying any person for employment in a particular field of endeavor.

(b) The assistance provided by respondents in obtaining employment for graduates, or the effectiveness of respondents' placement service in obtaining employment for graduates of any course of instruction.

(c) The benefits to be derived by completing more than one course of instruction offered by respondents.

5. Selling more than one course of instruction or a course of instruction which combines computer programming, console operation and/or key punch to any student without obtaining a separate signed and dated document stating the following information and none other, printed in capital and lower case letters of not less than 12 point bold-faced type, in English and in Spanish, a copy of which is to be given to the customer prior to his enrolling in the course.

IMPORTANT NOTICE

Taking more than one course of instruction does not significantly improve, but may help, a student's employment chances because:

(1) To be a computer programmer a student does not need to know console operation or key punch;

(2) To be a console operator, a student does not need to know computer programming or key punch;

(3) To be a key punch operator, a student does not need to know computer programming or console operation.

[1] Copies of the Complaint, Appendices, and Decision and Order filed with the original document.

6. Selling more than one course of instruction or a course of instruction which combines computer programming, console operation and/or key punch without advising prospective enrollees to read the notice set forth in paragraph five (5) above in the language in which the initial sales presentation took place.

7. Failing to provide to each enrollee of any course of instruction, prior to the signing of any contract, the following information which shall be disclosed in writing, clearly and conspicuously, and in the form and manner prescribed in Appendices A, B or C, as applicable, and for a base period designated as described in Appendix D:

(1) The number and percentage of enrollees who have failed to complete their course of instruction, such percentage to be computed separately for each course of instruction offered by respondents at each school, location or facility;

(2) The placement rate, ratio or percentage for enrollees and graduates, and also the numbers upon which such rates, ratios or percentages are based; such rate or percentage to be computed separately for each course of instruction offered by respondents at each school, location or facility;

(3) The salary range of respondents' students as to the same students used to compute the placement percentage in (2) above;

(4) A list of firms or employers which have hired graduates of said courses in substantial numbers and in the positions for which such graduates have been trained, and the number of such graduates hired, as to the same graduates used to compute the placement precentage in (2) above.

Provided, however, That the above information shall be disclosed only for enrollees who are U.S. citizens and others who, by law, are eligible to work in the United States.

Provided, however, That the following two notes may be included in Appendices A, B, or C as applicable:

NOTE.—In compiling this data, information was sought from all graduates from the period of (the base period) and responses were received from (number) graduates.

NOTE.—This data shows the drop-out and placement records only for U.S. citizens and others who, by law, are eligible to work in the United States. Information on foreign students is not included.

Provided, however, That the above information need not be provided for courses of instruction concerning (a) Concepts of S/360 For Computer Operations; (b) Concepts of S/360 For Computer Programming; (c) Business English and Report Preparation; however, this provision shall not in any way affect respondents' obligation to disclose the information for courses of instruction in computer programming, computer operation and key punch.

Provided, however, Respondents shall disclose in the form and manner prescribed in Appendices A, B or C to each enrollee of a course of instruction concerning (a) Concepts of S/360 For Computer Operations; (b) Concepts of S/360 For Computer Programming; and (c) Business English and Report Preparation, a notice stating: Concepts of S/360 Computer Programming, Concepts of S/360 Computer Operations and Business English and Report Preparation (or other title as the case may be) may be taken in conjunction with another course of instruction. There is no separate placement information for any of these courses.

Provided, however, This paragraph shall be inapplicable to any school newly established by respondents in a metropolitan area or county, whichever is larger, where they previously did not operate a school, or to any course newly introduced by respondents until such time as the new school or course has been in operation for the base period established pursuant to Appendix D as prescribed in the Paragraph. However, during such period the following statement, and no other, shall be made in lieu of the disclosure form required by this Paragraph:

DISCLOSURE NOTICE

This school (or course, as the case may be) has not been in operation long enough to indicate what, if any, actual employment or salary may result upon graduation from this school (course).

8. (a) Contracting for the sale of any course of instruction in the form of a sales contract or any other agreement which does not contain in immediate proximity to the space reserved in the contract for the signature of the prospective enrollee in boldface type of a minimum size of ten (10) points, a statement in the following form:

You, the prospective enrollee, may cancel this transaction at any time prior to midnight of the tenth business day after the date of this transaction. See attached notice of cancellation form for an explanation of this right.

(b) Failing to furnish each prospective enrollee, at the time he signs the sales contract or otherwise agrees to enroll in a course of instruction offered by respondents, a complete form in duplicate, which shall be attached to the contract or agreement, and easily detachable, and which shall contain in ten (10) point bold face type the following information and statements:

NOTICE OF CANCELLATION

(Date)

(Enter date of transaction)

You may cancel this transaction, without any penalty or obligation, within ten (10) business days from the above date.

If you cancel, any payments made by you under the contract or sale, and any evidence of indebtedness signed by you will be returned within fifteen (15) business days following receipt by the seller of your cancellation notice, and any security interest arising out of the transaction will be cancelled.

If you cancel this transaction you must return, in substantially as good condition as when received, any books or other materials provided to you under this contract or sale. These materials must be mailed or delivered by you to ----------
(Address of Seller's place of business)

within ten (10) days of the date you cancel this transaction. If you fail to return these materials, then seller may deduct the cost of books and materials as listed in the enrollment agreement.

To cancel this transaction, deliver (and obtain a signed statement from seller indicating the date of delivery) or mail a signed and dated copy of this cancellation notice or any other written notice, or send a telegram to ----------,
(Name of Seller)

at ----------
(Address of Seller's place of business)

not later than midnight of ----------

(Enter date of 10th business day following date of transaction)

I hereby cancel this transaction.

-------- ----------
(Date) (Buyer's signature)

(c) Failing to orally inform each prospective enrollee of his right to cancel at the time he signs a contract or agreement for the sale of any course of instruction.

(d) Failing to provide a signed statement indicating the date of delivery to a prospective enrollee who delivers a notice of cancellation to respondents.

(e) Misrepresenting in any manner the prospective enrollee's right to cancel.

(f) Failing or refusing to honor any valid notice of cancellation by a prospective enrollee and within fifteen (15) business days after the receipt of such notice, to: (i) Refund all payments made under the contract or sale; *Provided, however,* That respondents may deduct from said refund the cost of any books or materials as listed in the enrollment agreement that are not returned by the student within ten (10) days of the date after the transaction has been canceled as stated above; (ii) return any goods or property traded in, in substantially as good condition as when received by respondents; (iii) cancel and return any evidence of indebtedness signed by the prospective enrollee in connection with the contract or sale.

(g) During the cancellation period described herein, respondents shall not initiate contacts with such contracting persons other than contacts permitted by this paragraph, except for the sole purpose of reminding students of the day classes will commence and the amount of tuition due.

9. Making any representations of any kind whatsoever, which are not already proscribed by other provisions of this Order, in connection with the advertising, promoting, offering for sale, sale or distribution of courses of study, training or instruction in the field of electronic data processing or any other course offered to the public in any field in or affecting commerce, for which respondents have no reasonable basis prior to the making or dissemination thereof.

II

It is further ordered, That respondents, Commercial Programming Unlimited, Inc., a corporation, its successors and assigns, and its officers and Walter Small, individually and as an officer of the corporate respondent, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division, franchise or other device, in connection with any consumer credit sale, as "consumer credit" and "credit sale" are defined in Regulation Z (12 CFR 226) and the Truth in Lending Act (P.L. 90–321, 15 U.S.C. 1601 et seq.), do forthwith cease and desist from:

1. Failing to disclose the sum of all fees and other charges included in the downpayment, and to describe that sum as the "total downpayment", as required by § 226.8(c) of Regulation Z.

2. Failing to disclose the amount of money of which the customer has the actual use, and to describe that amount as the "amount financed", as required by § 226.8(c)(7) of Regulation Z.

3. Failing to disclose the sum of the payments scheduled to repay the indebtedness, and to describe that sum as the "total of payments", as required by § 226.8(b)(3) of Regulation Z.

4. Failing to disclose the annual percentage rates accurately to the nearest quarter of one percent, in accordance with § 226.8(b)(2) of Regulation Z.

5. Failing in any consumer credit transaction or advertisement to make all disclosures, determined in accordance with §§ 226.4 and 226.5 of Regulation Z, in the manner, form and amount required by §§ 226.6, 226.8 and 226.10 of Regulation Z.

It is further ordered, That respondents maintain adequate records, to be furnished upon request of the Federal Trade Commission, which evidence compliance with the provisions of this Order, including, but not limited to, the names, addresses and scores of all enrollees who take an aptitude test of any kind, copies of all contracts entered into between respondents and customers, copies of all correspondence between respondents and their customers, records showing the name and address of each student, the dates of his attendance, the date of his graduation or other termination of his studies, the names and addresses of any employers he was referred to, if any, and his current position.

It is further ordered, That the individual respondent named herein promptly

It is further ordered, That the indinotify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment which relates in any way to the sale or offering for sale of any courses of study, training or instruction. Such notice shall include respondent's current business address and a statement as to the nature of the business or employment in which he is engaged as well as a description of his duties and responsibilities.

It is further ordered, That a copy of this Order to Cease and Desist be delivered to all present and future personnel of respondents.

It is further ordered, That Respondents: (a) Deliver, or cause to be delivered, a copy of this Order to all persons who now or in the future become franchisees of respondents for the operation of a vocational school program.

(b) Inform all franchisees that Respondents are obligated to terminate those franchisees who continue the acts or practices prohibited by this Order.

(c) Institute a program of continuing surveillance to reveal whether the business operations of each of said franchisees conform to the requirements of this Order.

(d) Upon receiving actual knowledge from any source (including but not limited to Respondents' program of surveillance, and representatives of the Federal Trade Commission) of facts indicating a violation of any provision of this Order by any of respondents' present or future franchisees, Respondents shall within 24 hours notify such franchisee by certified mail, return receipt requested, that such violation of this Order has occurred ("Notice"), and that Respondents will discontinue dealing with said franchisee upon receipt by Respondents of actual knowledge of any further violations of this Order by such franchisee. Respondents shall obtain from such franchisee written acknowledgement of receipt of such Notice with acknowledgement and shall indicate the date of receipt of such Notice.

Upon receiving actual knowledge from any source (including but not limited to Respondents' program of surveillance, and representatives of the Federal Trade Commission) of facts indicating any violations of any provision of this Order, following a franchisee's receipt of the aforesaid "Notice", and said violations are not corrected within 30 days, Respondents shall permanently terminate such franchisee.

It is further ordered, That respondents notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent, such as dissolution of subsidiaries, or any other changes in the corporation which may affect compliance obligations arising out of the Order.

It is further ordered, That respondents shall, within sixty (60) days after service upon them of this Order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with the Order to Cease and Desist contained herein.

It is further ordered, That in the event the Federal Trade Commission should promulgate a trade regulation rule concerning proprietary vocational and home study schools, any pertinent provisions of such rule shall supersede any comparable provisions of this Order.

APPENDIX A (FOR KEYPUNCH OPERATOR COURSE)

(NAME OF SCHOOL)

IMPORTANT INFORMATION FOR PROSPECTIVE STUDENTS

Below is the dropout rate, job placement rate and starting salaries for students in the (name of course) between (date) and (date). Please read this page carefully before you decide whether or not to enroll in this school.

1. Total number of students	(Number).
2. Students who failed to complete the course	(Number)—(percent).
3. Students (whether graduating or not) who obtained employment as keypunch operators or keypunch operator trainees.	Do.
4. Graduates who obtained employment as keypunch operators or keypunch operator trainees.	Do.
5. Starting salaries of students who obtained employment as keypunch operator trainees:	Do.
Less than $75/wk	Do.
$75 to $100/wk	Do.
$101 to $125/wk	Do.
$126 to $150/wk	Do.
Over $150/wk	Do.
6. Employers who hired graduates from the (name of course):	Do.
Name of employers	Number of graduates hired

NOTE.—In compiling this data, information was sought from all graduates from the period of (the base period) and responses were received from (number) graduates.

NOTE.—This data shows the drop-out and placement records only for U.S. citizens and others who, by law, are eligible to work in the United States. Information on foreign students is not included.

Concepts of S/360 for Computer Programming, Concepts of S/360 for Computer Operations and Business English and Report Preparation may be taken in conjunction with another course of instruction. There is no separate placement information for any of these courses.

APPENDIX B (FOR COMPUTER OPERATOR COURSE)

(NAME OF SCHOOL)

IMPORTANT INFORMATION FOR PROSPECTIVE STUDENTS

Below is the dropout rate, job placement rate and starting salaries for students in the (name of course) between (date) and (date). Please read this page carefully before you decide whether or not to enroll in this school.

1. Total number of students	(Number).
2. Students who failed to complete the course	(Number)—(percent).
3. Students (whether graduating or not) who obtained employment as computer operators or computer operator trainees.	Do.
4. Graduates who obtained employment as computer operators or computer operator trainees.	Do.
5. Starting salaries of students who obtained employment as computer operators or computer operator trainees:	
Less than $90/wk	Do.
$90 to $120/wk	Do.
$121 to $160/wk	Do.
$161 to $200/wk	Do.
Over $200/wk	Do.
6. Employers hired graduates from the (name of course):	
Name of employers	*Number of graduates hired*

NOTE.—In compiling this data, information was sought from all graduates from the period of (the base period) and responses were received from (number) graduates.

NOTE.—This data shows the drop-out and placement records only for U.S. citizens and others who, by law, are eligible to work in the United States. Information on foreign students is not included.

Concepts of S/360 for Computer Programming, Concepts of S/360 for Computer Operations and Business English and Report Preparation may be taken in conjunction with another course of instruction. There is no separate placement information for any of these courses.

APPENDIX C (FOR COMPUTER PROGRAMMER COURSE)

(NAME OF SCHOOL)

IMPORTANT INFORMATION FOR PROSPECTIVE STUDENTS

Below is the dropout rate, job placement rate and starting salaries for students in the (name of course) between (date) and (date). Please read this page carefully before you decide whether or not to enroll in this school.

1. Total number of students	(Number).
2. Students who failed to complete the course	(Number)—(percent).
3. Students (whether graduating or not) who obtained employment as computer programmers or computer programmer trainees.	Do.
4. Graduates who obtained employment as computer programmers or computer programmer trainees.	Do.
5. Starting salaries of students who obtained employment as computer programmers or computer programmer trainees:	
Less than $120/wk	Do.
$120 to $160/wk	Do.
$161 to $200/wk	Do.
$201 to $250/wk	Do.
$251 to $300/wk	Do.
Over $300/wk	Do.
6. Employers hired graduates from the (name of course):	
Name of employers	*Number of graduates hired*

NOTE: In compiling this data, information was sought from all graduates from the period of (the base period) and responses were received from (number) graduates.

NOTE: This data shows the drop-out and placement records only for U.S. citizens and others who, by law, are eligible to work in the United States. Information on foreign students is not included.

Concepts of S/360 for Computer Programming, Concepts of S/360 for Computer Operations and Business English and Report Preparation may be taken in conjunction with another course of instruction. There is no separate placement information for any of these courses.

APPENDIX D

1. "Base period" shall mean the calendar period of time.

a. From October 1 to March 31, inclusive; or

b. From April 1 to September 30, inclusive.

c. The first base period shall be the period from the first day of the second month following the effective date of the Order to March 31, 1977 inclusive.

2. The three (3) month period immediately following the close of the base period shall be used by respondents to monitor and record the employment experience of all enrollees whose enrollment terminated during the base period. Respondents may not include in the computation of statistics for the base period persons whose enrollment terminated during the three (3) month recordation period. Such persons will be included in the statistics for the subsequent base period.

3. On July 1 of each year respondents shall begin to disseminate statistics for the base period which ended on March 31 of that year. Respondents shall continue to distribute said statistics until December 31.

4. On January 1 of each year respondents shall begin to disseminate statistics for the base period which ended on September 30 of the previous year, and shall distribute said statistics until June 30.

The Decision and Order was issued by the Commission December 9, 1976.

JOHN F. DUGAN,
Secretary.

[FR Doc.77-1668 Filed 1-18-77;8:45 am]

[Docket No. 8959]

PART 13—PROHIBITED TRADE PRACTICES, AND AFFIRMATIVE CORRECTIVE ACTIONS

RSR Corporation; Correction

In response to RSR Corporation's petition of January 4, 1977, pointing out a variation in the wording of the Commission's Final Order in this matter, the Federal Trade Commission issued January 7, 1977, an Order Correcting Final Order which amended the language in FR Doc. 76-38398 in FEDERAL REGISTER issue for Monday, January 3, 1977, at page 5, column 1, line 17, following the word "year" to read "from the effective date of this Order" instead of "from the service of this Order."

By direction of the Commission dated January 7, 1977.

JOHN F. DUGAN,
Acting Secretary.

[FR Doc.77-1743 Filed 1-18-77;8:45 am]

Title 20—Employees' Benefits

CHAPTER III—SOCIAL SECURITY ADMINISTRATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

[Reg. Nos. 1, 22, further amended]

PART 401—DISCLOSURE OF OFFICIAL RECORDS AND INFORMATION

PART 422—ORGANIZATION AND PROCEDURES

Release of Information by Title XVIII Program to Title XIX and CHAMPUS Programs

On July 27, 1976, there was published in the FEDERAL REGISTER (41 FR 31228-31229) a notice of proposed rulemaking with proposed amendments to Regulation No. 1 (20 CFR Part 401) and Subpart E of Regulations No. 22 (20 CFR Part 422) regarding release of certain investigatory information pertaining to title XVIII of the Social Security Act to agencies administering title XIX of that Act and the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS), specifically:

(1) The name and address of any provider of medical services, organization, physician, or other individual being actively investigated for possible fraud in connection with title XVIII of the Social Security Act, and the nature of the suspected fraud. An active investigation exists when there is significant evidence supporting an initial complaint but there is need for further investigation;

(2) The name and address of any provider of medical services, organization, physician, or other individual found, after consultation with an appropriate professional association or program review team, to have provided unnecessary services, or of any physician or other individual found to have violated assignment agreements on at least three occasions.

This information in (1) and (2) above will be released by the Social Security Administration to those Federal and State officials responsible for the investigations of fraud or abuse in programs funded by title XIX of the Social Security Act, or to any officer or employee of the Department of the Army, Department of Defense, solely for the administration of its Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); these agencies will also be notified when an investigation is concluded with a finding that there is no fraud or other prosecutable offense.

Under current regulations, the Social Security Administration does not alert the title XIX agencies and CHAMPUS about title XVIII fraud and abuse cases until it refers such cases to the Department of Justice or to a State professional society or licensing board (see 20 CFR 401.3(u)(2) and 20 CFR 422.434, as amended on July 1, 1975, at 40 FR 27648 et seq.). During the period elapsing between the initiation of an investigation connected with the title XVIII program and referral of information to an agency administering the title XIX program or CHAMPUS, a suspect could have successfully defrauded the title XIX program or CHAMPUS.

It would be in the mutual interest of all concerned to effectuate an earlier exchange of information. This data exchange would serve to alert other agencies involved that a provider, physician, or supplier of services is under investigation for various categories of fraud or abuse. The other agencies could then either begin an investigation themselves or provide additional review on bills received from the suspected individuals or providers. The title XVIII and title XIX programs and CHAMPUS can be alerted to the possibility of potential violations and can take action to ensure against program fraud and abuse by the same violator. Agreements would specify that the data could be released only to the agency's enforcement branch and that the agency would preserve the confidentiality of the data received and would not be permitted to disclose such data for other than program purposes.

This procedure will meet a clear need for greater coordination between the title XVIII and title XIX programs with respect to investigations of fraud and abuse, a need also noted in reports of the General Accounting Office. Interested parties were given until August 26, 1976, to submit written comments or suggestions on the notice of proposed rulemaking. Comments and suggestions received with regard to this notice of proposed rulemaking, responses thereto, and changes in the proposed regulations are summarized below.

1. Several comments were received from State Welfare Departments and private insurance companies suggesting that the title XIX and CHAMPUS programs reciprocate by releasing similar information to title XVIII. The Social and Rehabilitation Service, which administers the title XIX program, published final regulations on June 25, 1976 (41 FR 26221-26222), for the purpose of facilitating the exchange of information with the Social Security Administration on providers under investigation for fraud and abuse.

2. A comment was made by a State Hospital Association that title XVIII should also advise title XIX and CHAMPUS when an active investigation has been terminated without a finding that there has been fraud or other prosecutable offense. We have adopted this suggestion and have revised the proposed amendments to include this provision (see §§ 401.3(t)(3) and 422.434(c)(3)).

3. Several comments were received from various State Health and Welfare Departments and from private insurance companies that completely endorsed the amendments, while several others from State and county medical societies completely opposed the amendments in general and for various specific reasons relating to potential abuse of confidentiality. The need for the amendments is obvious in view of the prior criticism of the lack of coordination between Medicare and Medicaid in investigating fraud and abuse. The regulations contain adequate safeguards (see §§ 401.3(t) and 422.434(c)) to protect the confidentiality of information about the individuals or organizations being investigated and to ensure that the information will not be released for other than program purposes.

4. Several comments were received from State and county medical societies suggesting that a person or organization being investigated should be notified of the investigation before the information is released to title XIX or CHAMPUS. This suggestion has not been followed because such a procedure would jeopardize the ongoing title XVIII investigations and would defeat the purpose of the amendments which is to allow an earlier disclosure of investigatory information to the title XIX and CHAMPUS programs than is permitted by current regulations (see 20 CFR 401.3(u)(2) and 20 CFR 422.434, as amended on July 1, 1975, at 40 FR 27648 et seq.). The notification of the title XIX agency and CHAMPUS that an investigation has been concluded with a finding that there is no fraud will adequately protect the rights of a person or organization investigated.

5. One comment was received from a county medical society that since a decision as to what constitutes "necessary" as opposed to "unnecessary" medical care is a judgmental one which may vary from area to area, such a decision should hardly result in a verdict that fraud or abuse were involved. The Medicare program currently consults appropriate professional associations before making decisions as to whether services are "unnecessary services" for the payment of claims. In addition "unnecessary services" will ordinarily be found only after examination of a number of claims indicates a pattern of providing unnecessary services. The sole purpose of the amendments is not to adjudge whether fraud or abuse are involved but to permit Medicare to alert the investigatory branch of the title XIX and CHAMPUS agencies when a significant pattern of providing unnecessary services has been noted by the professional association.

6. A comment was received from a State medical society objecting to the use of program review teams to determine when a provider or physician or other person has been furnishing unnecessary services, since program review teams have not operated on any widescale basis or with any significant experience. The Medicare program intends to continue consulting with the peer review committees of professional associations currently in operation. The program review teams were included in the amendments so that the program would have the option of using their services if appropriate.

7. Several comments were received from county medical societies that these amendments would increase the cost of running the Medicare program. On the contrary, we expect that considerable savings will be realized by these amendments in the earlier identification of possible fraud and abuse, through the exchange of information between title XVIII, title XIX, and CHAMPUS programs, while the change in operational procedures will be minimal.

8. One comment from a State Department of Health and Social Services suggested dropping the requirement that an organization or person must have violated the Medicare assignment agreement on at least three occasions before title XIX or CHAMPUS would be notified. This suggestion has not been adopted because a definite pattern of assignment violation should be established before another agency is notified.

9. Comments from a State Health Department, a former Medicaid director, and a Professional Standards Review Organization (PSRO) propose that the information to be released to title XIX and CHAMPUS by the amendments also be released to local agencies and to county medical societies and PSROs. While PSROs and other professional associations may provide information to Medicare resulting from their review of the appropriateness of health care provided to program beneficiaries which will help in identifying patterns of program abuse and unnecessary services that may become the subject of investigation by the title XVIII and XIX agencies, the specific purpose of these amendments is restricted to permit the earliest possible release of information only to title XIX agencies and CHAMPUS so that they may take appropriate action to ensure the integrity of their programs. The amendments currently provide that the information received by these agencies will be kept confidential and will be re-

leased only to the agency's enforcement branch.

10. One comment from a private insurance company advocated that title V of the Social Security Act be included with title XIX and CHAMPUS as recipient of the investigatory information. This suggestion has also not been adopted for the reason stated in item number 9 above. In addition, the title V program generally provides medical services through State-owned and operated facilities with very little fee-for-service payment. The type of information to be released under these amendments would be of very limited use to title V.

11. One comment from a private insurance company suggested that penalties be provided for misuse of the information released. Penalties are already provided under the Privacy Act of 1974 (5 U.S.C. 552a) and section 1106 of the Social Security Act for disclosure violations.

12. Various comments suggested procedures to be followed in coordinating titles XVIII, XIX, and CHAMPUS investigations. These suggestions will be considered in preparing implementing instructions after the amendments have been adopted.

Accordingly, with these changes, the amendments are adopted as proposed and are set forth below.

(Secs. 205, 1102, 1106, Social Security Act, as amended, 53 Stat. 1368, as amended, 49 Stat. 647, as amended, 53 Stat. 1398, as amended (42 U.S.C. 405, 1302, 1306).)

Effective date. The amendments shall be effective on January 19, 1977.

(Catalog of Federal Domestic Assistance Program No. 13.800–13.803, Social Security Programs.)

The Social Security Administration has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A–107.

Dated: December 16, 1976.

J. B. CARDWELL,
Commissioner of Social Security.

Approved: January 11, 1977.

MARJORIE LYNCH,
Acting Secretary of Health, Education, and Welfare.

Parts 401 and 422 of Chapter III of Title 20 of the Code of Federal Regulations are amended as set forth below:

1. In § 401.3 between paragraphs (s) and (u) a new paragraph (t) is added to read as follows:

§ 401.3 Disclosure of information relating to individuals.

* * * * *

(t) To any officer or employee of an agency of the Federal or a State government lawfully charged with the duty of conducting an investigation or prosecution with respect to possible fraud or abuse against a program receiving grants-in-aid under title XIX of the Social Security Act, but only for the purpose of conducting such an investigation or prosecution, or to any officer or employee of the Department of the Army, Department of Defense, solely for the administration of its Civilian Health and Medical Program of the Uniformed Services (CHAMPUS), the following information, provided that such agency has filed an agreement with the Social Security Administration that the information will be released only to the agency's enforcement branch and that the agency will preserve the confidentiality of the information received and will not disclose such information for other than program purposes:

(1) The name and address of any physician or other individual being actively investigated for possible fraud in connection with title XVIII of the Social Security Act, and the nature of such suspected fraud. An active investigations exists when there is significant evidence supporting an initial complaint but there is need for further investigation.

(2) The name and address of any physician or other individual found, after consultation with an appropriate professional association or a program review team, to have provided unnecessary services, or of any physician or other individual found to have violated the assignment agreement on at least three occasions.

(3) The name and address of any physician or other individual released under paragraph (t) (1) or (2) of this section concerning whom an active investigation is concluded with a finding that there is no fraud or other prosecutable offense.

* * * * *

2. Section 422.434 is revised by adding a new paragraph (c) to read as follows:

§ 422.434 Release of title XVIII information to State and Federal agencies.

* * * * *

(c) The following information may be released to any officer or employee of an agency of the Federal or a State government lawfully charged with the duty of conducting an investigation or prosecution with respect to possible fraud or abuse against a program receiving grants-in-aid under title XIX of the Social Security Act, but only for the purpose of conducting such an investigation or prosecution, or to any officer or employee of the Department of the Army, Department of Defense, solely for the administration of its Civilian Health and Medical Program of the Uniformed Services (CHAMPUS), provided that such agency has filed an agreement with the Social Security Administration that the information will be released only to the agency's enforcement branch and that the agency will preserve the confidentiality of the information received and will not disclose such information for other than program purposes:

(1) The name and address of any provider of medical services, organization, or other person being actively investigated for possible fraud in connection with title XVIII of the Social Security Act, and the nature of such suspected fraud. An active investigation exists when there is significant evidence supporting an initial complaint but there is need for further investigation.

(2) The name and address of any provider of medical services, organization, or other person found, after consultation with an appropriate professional association or a program review team, to have provided unnecessary services, or of any physician or other individual found to have violated the assignment agreement on at least three occasions.

(3) The name and address of any provider of medical services, organization or other person released under paragraph (c) (1) or (2) of this section concerning which an active investigation is concluded with a finding that there is no fraud or other prosecutable offense.

[FR Doc.77–1693 Filed 1–18–77; 8:45 am]

Title 23—Highways

CHAPTER I—FEDERAL HIGHWAY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

SUBCHAPTER G—ENGINEERING AND TRAFFIC OPERATIONS

[FHWA Docket No. 76–17]

PART 625—DESIGN STANDARDS FOR HIGHWAYS

Design Criteria; Interim Regulation; Technical Amendments

The technical amendments set forth below concerning 23 CFR Part 625 are made to FR Doc. 76–38400 published at page 6 in the FEDERAL REGISTER of January 3, 1977:

(1) The footnote at the end of 23 CFR 625.3(a)(11) should read "2."

(2) Add a footnote "4" at the end of 23 CFR 625.3(c)(3).

(3) Add a footnote "2" at the end of 23 CFR 625.3(e).

(4) In Appendix A, the address for the American Association of State Highway and Transportation Officials in No. 2 should read as follows:

American Association of State Highway and Transportation Officials, Suite 225, 444 North Capitol Street, NW., Washington, D.C. 20001.

(5) Also in Appendix A, the address for the Association of American Railroads in No. 3 should read as follows:

Association of American Railroads, American Railroad Building, 1920 L Street, NW., Washington, D.C. 20036.

Issued on: January 12, 1977.

DOWELL H. ANDERS,
Acting Chief Counsel.

[FR Doc.77–1676 Filed 1–18–77; 8:45 am]

Title 30—Mineral Resources

CHAPTER II—GEOLOGICAL SURVEY, DEPARTMENT OF THE INTERIOR

PART 211—COAL MINING OPERATING REGULATIONS

On December 9, 1976, at 41 FR 53811 the Department of the Interior published as proposed rulemaking a Cooperative Agreement between the Department of the Interior and the State of Wyoming. Interested persons were given until January 10, 1977, to comment on the proposed Cooperative Agreement. Full consideration was given to all comments that were received by that date. This rulemaking notice adopts the Cooperative Agreement as a final rule. The Cooperative Agreement will become effective on February 1, 1977.

Background. On May 17, 1976, the Department of the Interior adopted new regulations to govern the management of federally-owned coal resources. These regulations established standards for the conduct of employees of the Department of the Interior and did not attempt to exclude the application of state laws on reclamation from federal coal leaseholds. The regulations contained two other important features. First, the regulations established a procedure under which the Department would adopt as Federal law the requirements of a state's reclamation regulations which provided protection of the environment at least as stringent as would occur under the exclusive application of federal law and which would not prevent the mining of federal coal which is required by the overriding national interest. Second, since both the state and the Department would be performing similar reclamation related functions, the regulations established a procedure where the Department and a State could enter into a Cooperative Agreement to prevent duality in the administration and enforcement of reclamation requirements.

On December 9, 1976, at 41 FR 53793 the Department adopted the requirements of Wyoming's reclamation laws and regulations as federal regulations in place of portions of the regulations in 30 CFR Part 211 as the standards to govern the reclamation of lands disturbed by surface coal mining. On that same day, the Department proposed that it adopt a Cooperative Agreement which gave the State of Wyoming principal responsibility for enforcing reclamation requirements on federal coal leases in that State.

Discussion of Final Rulemaking. Other than three technical changes to eliminate inconsistencies in the proposed Cooperative Agreement, the Cooperative Agreement adopted in this final rulemaking is identical to the Agreement that was proposed in the December 9, 1976, notice. The three changes are: (1) Article IV has been modified to eliminate the inference that the Agreement applies to exploration activities that do not involve surface mining of coal; and (2) Subparagraph D–5 of Article IX has been changed to make both of the time periods in that paragraph 30 days; and (3) Article V has been modified by adding the word "coal" between "federal" and "leases" to clarify that Wyoming's inspection obligation is limited to federal coal leases. No other changes in the Agreement have been made. Both the Secretary of the Interior and the Governor of the State of Wyoming have approved these minor changes.

Although the Agreement has not been changed, the Department would like to make several comments on the effect of the regulations. Article V of the Cooperative Agreement gives the State of Wyoming pricipal responsibility to inspect the operations area of Federal coal leases for the purpose of determining whether an applicant is complying with the appropriate reclamation regulations. This section obligates the State of Wyoming to do the inspections that the Geological Survey would have otherwise performed under 30 CFR 211.3(b)(1) (insofar as that inspection pertains to reclamation) and the inspections under 30 CFR 211.41. Article V does not obligate the State to perform inspections if the lessee is not conducing coal mining operations on a lease or where operations are imminent or to perform inspections on portions of leaseholds that are totally unaffected by ongoing operations. The inspection requirement covers leases where operations are taking place.

Obligations Under Federal Regulations. With the exception of the areas mentioned in the Cooperative Agreement, a lessee's obligation to comply with the requirements of Federal laws and regulations has not been changed. The leesee or operator must still comply with the other requirements of 30 CFR Part 211 including 30 CFR Section 211.12 Mine Maps, 30 CFR Section 211.20 Information required to be submitted, 30 CFR Section 211.21 Core and Test holes, and 30 CFR Section 211.62 Reports. The Department and the State of Wyoming will work to develop joint reports to further eliminate duplication of work and reports for Federal coal lessees. If agreement is reached in this area, the Department will amend the procedures and requirements of 30 CFR Part 211 through either an amendment to the regulations or a Coal Mining Operating Order.

Obligations Under State Laws and Regulations. The Cooperative Agreement does not define in any way, a federal coal lessee's obligation to comply with laws or regulations that are not explicitly covered by the Agreement. The lessee's obligation to comply with other laws requirements, including the State of Wyoming's exploration regulations is unchanged by this Agreement, and the lessee must comply with all valid state laws.

Process of Approval of Mining Plans. The Cooperative Agreement requires an operator to submit a mining plan to both the State of Wyoming and the Department of the Interior. The Agreement also incorporates a sequential process with first the State of Wyoming and then the Department of the Interior approving a mining plan under their respective statutory and regulatory obligations. The agreement does not require the Department of the Interior to refrain from taking any steps needed prior to approving a mining plan until after the State of Wyoming has completed its determinations. The Department may proceed with all of the steps that are required in its decisionmaking process, including preparation of environmental impact statements, while the State of Wyoming is considering what action it will take on the mining plan.

New Section. Finally, the proposed notice of rulemaking did not include the Cooperative Agreement as a section in 30 CFR Part 211. The final rulemaking includes a new section, § 211.77(a), which notes the adoption of the Cooperative Agreement, and refers to the page in the FEDERAL REGISTER where the text of the Cooperative Agreement can be found.

The Department of the Interior has determined that this final rulemaking does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11821 and OMB Circular A–107.

Dated: January 13, 1977.

THOMAS S. KLEPPE,
Secretary,
U.S. Department of the Interior.

Under the authority delegated to the Secretary of the Interior, Part 211 of Title 30 CFR is amended to read as follows, effective February 1, 1977.

1. Title 30 CFR §211.10 is amended by the addition of paragraph (e) to read as follows:

§ 211.10 Exploration and mining plans.

* * * * *

(e) *States with 211.75(b) agreements.* (1) Wyoming. A federal coal lessee in the State of Wyoming who must submit a mining plan under both State and Federal law shall submit, in lieu of the mining plan required by this section, a mining plan containing the information required by:

(i) Wyo. Stat. section 35–502.24(a), (b)(i)–(ix);

(ii) Wyo. Land Quality Reg., Chapter VI;

(iii) 30 CFR Section 211.10(c)(3)(ii), (6)–(i), (iv)–(vi), (xii), (xiv)–(xv); and

(iv) 30 CFR Section 211.10(c)(7)(iii), (v)–(vi); and a statement certifying that a copy of the plan or permit application has been given to both the appropriate official in the State of Wyoming and the Secretary of the Interior.

2. Title 30 CFR § 211.74 is amended by the addition of paragraph (g) to read as follows:

§ 211.74 Variances.

* * * * *

(g) States with 211.75(b) agreements. (1) Wyoming. A federal coal lessee in the State of Wyoming shall request and receive variances from the State of Wyoming and the Secretary under the provisions of Wyo. Stat. section 35–502.-45.

3. Title 30 CFR Part 211 is amended by the addition of a new section, to read as follows:

§ 211.77 States with Cooperative Agreements.

(a) Wyoming. The Administration and enforcement of reclamation requirements on federal coal leases subject to this part shall be done according to the Cooperative Agreement between the State of Wyoming and the Department of the Interior. The Cooperative Agreement is published at 42 FR 3644, January 19, 1977, and is available at appropriate offices of the Department of the Interior.

4. The State of Wyoming and the Department of the Interior enter into a Cooperative Agreement, effective February 1, 1977, to read as follows:

Cooperative agreement between the United States Department of the Interior and the State of Wyoming under Section 32 of the Mineral Leasing Act of 1920, 30 U.S.C. Section 189, and Section 307 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. Section 1737.

This agreement (referred to as the Cooperative Agreement) is made under Section 32 of the Mineral Leasing Act of 1920, 30 U.S.C. Section 189, 30 CFR 211.75, and Section 307 of the Federal Land Policy and Management Act of 1976, between the State of Wyoming, acting by and through Ed Herschler, Governor (hereinafter referred to as the Governor) and the United States Department of the Interior, acting by and through the Secretary of the Interior (referred to as the Secretary).

ARTICLE I. PURPOSE

This agreement provides for a cooperative program between the United States Department of the Interior and the State of Wyoming with respect to the administration and enforcement of surface coal reclamation operations conducted under coal leases issued by the Department of the Interior under the Mineral Leasing Act of 1920. The basic purpose of the agreement is to prevent duality of administration and enforcement of surface reclamation requirements by designating the State of Wyoming as the principal entity to enforce reclamation laws and regulations in Wyoming.

ARTICLE II. EFFECTIVE DATE

The Cooperative Agreement is effective on the 1st day of February, 1977, and remains in effect until terminated as provided in Article IX.

ARTICLE III. REQUIREMENTS FOR COOPERATIVE AGREEMENT

The Governor affirms that the State will comply with all of the provisions of this Cooperative Agreement and will continue to meet all the conditions and requirements specified in this Article upon which the approval of the Secretary is based.

A. *Responsible Administrative Agency.* The Department of Environmental Quality and the Environmental Quality Council (hereinafter referred to as "State Agency") is, and shall continue to be, the sole agency responsible for administering this Cooperative Agreement on behalf of the Governor throughout the State.

B. *Authority of State Agency.* The State Agency designated in Paragraph A of this Article has, and shall continue to have, authority to carry out this Cooperative Agreement.

C. *State Reclamation Law.* The reclamation requirements of Wyoming listed in Appendix A afford general protection of the environment at least as stringent as would occur under the exclusive application of 30 CFR Part 211, and do not unreasonably impair the mining of federally leased coal, the mining of which is in the overriding national interest.

D. *Effectiveness of State Procedures.* The existing procedures of the State are, and shall continue to be, in the judgment of the Secretary substantially as effective for the purpose of enforcing the reclamation requirements listed in Appendix A as the procedures of the Department of the Interior.

E. *Inspection of Mines.* The Governor affirms that the State will inspect all mines located in the State, in accordance with the minimum schedules in Article V.

F. *Enforcement.* The State affirms that it will enforce the Agreement in a manner that ensures effective environmental protection.

G. *Qualified Personnel.* The State Agency has and shall continue to have an adequate number of fully qualified personnel necessary for the enforcement of this Cooperative Agreement.

H. *Funds.* The State has devoted and will continue to devote, adequate funds to the administration and enforcement of reclamation requirements in the State.

I. *Reports and Records.* The State Agency shall make reports to the Secretary containing information respecting its compliance with the terms of this Cooperative Agreement, as the Secretary shall from time to time require. The Governor shall also make available to the Secretary, upon request, information developed under the Cooperative Agreement.

The Secretary affirms that the Department of the Interior will comply with all of the provisions of this Cooperative Agreement.

ARTICLE IV. MINE PLANS

Federal regulations, 30 CFR 211.10(c), and State laws and regulations require the operator of lands leased, permitted or licensed for coal mining to receive approval of a mining plan or permit prior to conducting operations.

A. *Contents of Mining Plans and Permits.* The Governor and the Secretary agree to require a federal coal lessee who must submit a mining plan or permit application under both State and federal law to submit an application, plan or permit with the following minimum information:

1. The information required by:
   a. Wyo. Stat. Section 35–502.24 (a), (b) (i)–(ix);
   b. Wyo. Land Quality Reg., Chapter VI;
   c. 30 CFR 211.10(c) (3)(ii), (6) (i), (iv)–(vi), (xii), (xiv), (xv);
   d. 30 CFR 211.10(c)(7) (iii), (v), (vi).
2. A statement certifying that a copy of the plan or permit application has been given to both the Governor and the Secretary.

If either the Governor or the Secretary requires the operator to submit additional information, the operator shall submit the information to both the Governor and the Secretary. The operator will request variances from the mining plan in accordance with the provisions of Wyo. Stat. Section 35–502.45, and will file the request with the Governor and the Secretary.

B. *Review of Plan.* The Governor and the Secretary shall each review and analyze the adequacy of the plan, or request for a variance from the plan.

C. *Approval of Mining Plans.* The Governor shall review the mining plan, or request for a variance, as provided in Articles 4 and 6 of the Wyoming Environmental Quality Act (W.S. 35-502.20 to 35–502.41, and 35–502.45), and shall notify the Secretary of his action pursuant to such Act. The Secretary shall then independently review and take action on the mining plan, or request for a variance, acted on by the Governor. The Secretary shall notify the Governor of his action.

ARTICLE V. INSPECTIONS

A. The Governor shall inspect as authorized by Wyo. Stat. 35–502.9 as frequently as necessary but at least quarterly the operations area of all federal coal leases, permits and licenses where operations affecting the reclamation of mined lands are conducted or to be conducted, for the purpose of determining whether the operator is complying with all applicable laws, regulations and orders and all requirements of approved exploration or mining plans that affect the reclamation of mined lands.

B. The Governor will, subsequent to conducting any inspection, file with the Secretary a report on (1) the general conditions of the lands under lease, permit, and license (2) the manner in which the operations are being conducted, and (3) whether the operator is complying with applicable reclamation requirements. A copy of this report shall be furnished to the operator on request, and shall be made available for public inspection during normal business hours at the offices of the Mining Supervisor.

C. For the purpose of evaluating the manner in which the Cooperative Agreement is being carried out and to insure that reclamation is being effectively performed, the Secretary may inspect from time to time mines within the State. Inspections by the Secretary may be made in association with regular inspection by the State.

D. The Secretary may conduct inspections to determine whether the operator is complying with requirements that are unrelated to reclamation.

ARTICLE VI. ENFORCEMENT

A. If the Governor determines that the operator is not complying with a requirement that relates to the reclamation of lands disturbed by surface mining, he shall take such steps as required by Wyo. Stat. 35–502.46, 49.

B. If, in the judgment of the Governor, an operator is conducting activities on lands subject to this agreement which fail to comply with a requirement that relates to reclamation and those activities threaten immediate and serious damage to the environment, the State shall order the immediate cessation of such activities, as authorized by Wyo. Stat. 35–502.15.

C. The State shall notify the Secretary of all violations of applicable laws regarding reclamation including violations of federal laws and regulations or lease terms and of all actions taken under Wyo. Stat. 35–502.46, 49.

D. This section does not limit the Secretary's authority to seek cancellation of a federal coal lease under federal laws and regulations, or prevent the Secretary from taking appropriate steps to correct actions that violate federal, but not State law.

E. Failure to adequately enforce the reclamation laws and regulations shall be grounds for termination of this Agreement.

ARTICLE VII. BONDS

A. *Amount and Responsibility.* The Governor shall require all federal coal lessees subject to the provisions of 30 CFR Part 211 to submit a bond as required by Wyo. Stat. 35–502.34. The Secretary shall reduce the federal bond required for reclamation purposes under 43 CFR 3041.3, and 30 CFR 211.3, by the amount of the bond required by the Governor.

B. *Notification.* Prior to releasing the bond required by Wyo. Stat. 35–502.34 for lands the surface of which is owned by the federal government, the Governor shall consult with and seek the advice and consent of the Secretary.

C. *Release of Bond.* The Governor shall hold the operator responsible and liable for successful reclamation as required by Wyo. Stat. 35–502.40.

ARTICLE VIII. OPPORTUNITY TO COMPLY WITH COOPERATIVE AGREEMENT

The Secretary may, in his sole discretion, and without instituting or commencing proceedings for withdrawal of approval of the Cooperative Agreement, notify the State Agency that it has failed to comply with the provisions of the Cooperative Agreement. The Secretary shall specify how the State has failed to comply and shall specify and state the period of time within which the defects in administration shall be remedied and satisfactory evidence presented to him that the State remedied the defects in administration and is in compliance with and has met the requirements of the Secretary. Upon failure of the State Agency to meet the requirements of the Secretary within the time specified, the Secretary may institute proceedings for withdrawal of approval of the Cooperative Agreement as set forth in Article IX.

ARTICLE IX. TERMINATION OF COOPERATIVE AGREEMENT

The Cooperative Agreement may be terminated as follows:

A. *Termination by the State.* The Cooperative Agreement may be terminated by the State upon written notice to the Secretary, specifying the date upon which the State plan shall be terminated, but which date of termination shall not be less than 30 days from the date of the notice.

B. *Termination by the Secretary.* The Cooperative Agreement may be terminated by the Secretary whenever the Secretary finds, after giving due notice to the State and affording the State an opportunity for a hearing:

1. That the State has failed to comply substantially with any provision of the Cooperative Agreement; or
2. That the State has failed to comply with any assurance given by the State upon which the Cooperative Agreement is based, or any condition or requirement which is specified in Article III; or
3. That State action unrelated to surface coal mine reclamation will unreasonably and substantially prevent the mining of federal coal.

C. *Termination by Operation of Law.* This Cooperative Agreement shall terminate by operation of law when no longer authorized by federal laws and regulations.

D. *Notice of Proposed Termination.* Whenever the Secretary proposes to terminate the Cooperative Agreement he shall:

1. Give written notice to the Governor and to the State Agency specified in Article III.
2. Specify and set out in the written notice the grounds upon which he proposes to terminate the Cooperative Agreement.
3. Specify the date upon which and the place where the State will be afforded an opportunity for hearing and to show cause why the Cooperative Agreement should not be terminated by the Secretary. The date upon which such hearing shall be held shall be not less than 30 days from the date of such notice, and the plaae of hearing shall be in the State.
4. The Secretary shall also publish a notice in the Federal Register containing the items in 1–3 of this paragraph.
5. Within 30 days of the date of the written notice specifying the date of the hearing, the State shall file a written notice with the Secretary stating whether or not it will appear and participate in the hearing. The notice shall specify the issues and grounds specified by the Secretary for termination which the State will oppose or contest and a statement of its reasons and grounds for opposing or contesting. Failure to file a written notice in the Office of the Secretary within 30 days shall constitute a waiver of the opportunity for hearing, but the State may present or submit before the time fixed for the hearing written arguments and reasons why the Cooperative Agreement should not be terminated, and within the discretion of the Secretary may be permitted to appear and confer in person and present oral or written statements, and other documents relative to the proposed termination.

E. *Conduct of Hearing.* The hearing will be conducted by the Secretary. A record shall be made of the hearing and the State shall be entitled to obtain a copy of the transcript. The State shall be entitled to have legal and technical and other representatives present at the hearing or conference, and may present, either orally or in writing, evidence, information, testimony, documents, records, and materials as may be relevant and material to the issues involved.

F. *Notice of Withdrawal of Approval of Cooperative Agreement.* After a hearing has been held, or the right to a hearing has been waived or forfeited by the State, the Secretary, after consideration of the evidence, information, testimony, and arguments presented to him shall advise the State of his decision. If the Secretary determines to withdraw approval of the Cooperative Agreement, he shall notify the State Agency of his intended withdrawal of approval of the Cooperative Agreement, and afford the State an opportunity to present evidence satisfactory to the Secretary that the State has remedied the specified defects in its administration of the Cooperative Agreement. The Secretary shall state the period of time within which the defects in administration shall be remedied and satisfactory evidence presented to him, and upon failure of the State to do so within the time stated, the Secretary may thereupon withdraw his approval of the Cooperative Agreement without and further opportunity afforded to the State for a hearing.

ARTICLE X. REINSTATEMENT OF COOPERATIVE AGREEMENT

The Cooperative Agreement which has been terminated may be reinstated upon application by the State and upon giving evidence satisfactory to the Secretary that the State can and will comply with all the provisions of the Cooperative Agreement plan and has remedied all defects in administration for which the Cooperative Agreement was terminated.

ARTICLE XI. AMENDMENTS OF COOPERATIVE AGREEMENT

This Cooperative Agreement may be amended by mutual agreement of the Governor and Secretary. An amendment proposed by one party shall be submitted to the other with a statement of the reasons for such proposed amendment. The amendment shall be adopted after rulemaking and the party to whom the proposed amendment is submitted shall signify its acceptance or rejection of the proposed amendment, and if rejected shall state the reasons for rejection.

ARTICLE XII. CHANGES IN STATE OR FEDERAL STANDARDS

The Secretary of the Interior and/or the State of Wyoming may from time to time revise and promulgate new or revised reclamation requirements or enforcement and administration procedures. The Secretary and the Governor shall immediately inform the other of any final changes in their respective laws or regulations. Each party shall, if it determines it to be necessary to keep this Cooperative Agreement in force, change or revise its respective laws or regulations. For changes which may be accomplished by rulemaking, each party shall have six months in which to make such changes. For changes which require legislative authorization, each party has until the close of its next legislative session at which such legislation can be considered in which to make the changes. If such changes are not made, then the termination provision of Article IX may be invoked.

ARTICLE XIII. QUALIFICATIONS AND EXPERIENCE OF PERSONNEL

The State Agency shall be adequately staffed with, or have readily available to it an adequate number of qualified personnel to carry out fully the requirements of the Cooperative Agreement. The personnel of the State Agency shall be so qualified that the end result of their efforts is comparable to that which would have resulted from administration by Department of Interior personnel.

ARTICLE XIV. CONFLICT OF INTEREST

No member of the State Agency or agencies responsible for the administration of the State law and rules and regulations relating to this Cooperative Agreement shall participate in the review, analysis, administration, decision-making, or enforcement actions relating to any operation subject to this Cooperative Agreement if such person has, directly or indirectly, any financial interest in a company, partnership, organization, or corporation (parent or subsidiary) which owns, operates or has a financial interest in such operation subject to this Cooperative Agreement.

ARTICLE XV. EQUIPMENT AND LABORATORIES

The State Agency shall have equipment, laboratories, and facilities with which all inspections, investigations, studies, tests, analyses, can be performed or determined, and which are necessary to carry out the requirements of the Cooperative Agreement or have access to such facilities and personnel.

ARTICLE XVI. EXCHANGE OF INFORMATION

A. *Organizational and Functional Statement.* The State Agency and the Secretary shall advise each other of the organization, structure, functions, and duties of the offices, departments, divisions, and persons within their organizations. Each shall advise promptly the other in writing of changes in personnel, officials, heads of a department or division, or a change in the functions or duties of persons occupying the principal offices within the organization. The State Agency and the Secretary shall advise each other in writing the location of its various offices, addresses, telephone numbers, and the names, location, telephone numbers of their respective mine inspectors and the area within the State for which such inspectors are responsible, and shall advise promptly of any changes in such.

B. *Laws, Rules and Regulations.* The State Agency and the Secretary shall provide to each other copies of their respective laws, rules, regulations and standards pertaining to the enforcement and administration of this Cooperative Agreement and promptly furnish copies of any final revision of such laws, rules, regulations, and standards when the revision becomes effective.

ARTICLE XVII. RESERVATION OF RIGHTS

This Cooperative Agreement shall not be construed as waiving or preventing the assertion of any rights the Governor and the Secretary may have under the Mineral Leasing Act or the Constitution of the United States. Furthermore, this Cooperative

Agreement neither alters, expands, nor diminishes the rights, duties, and obligations of the parties hereto as set forth in the stipulation and Consent Decree entered in *Herschler, et al. v. Kleppe*, Docket No. C76-108B (Suit filed June 9, 1976, D. Wyoming).

ED HERSCHLER,
Governor,
State of Wyoming.

THOMAS S. KLEPPE,
Secretary,
Department of the Interior.

APPENDIX A

1. Wyo. Stat. 35-502.3(e)(i).
2. Wyo. Stat. 35-502.21(a)(i)-(vi).
3. Wyo. Stat. 35-502.24:I
4. Wyo. Stat. 35-502.32(b)(ii)-(ix).
5. Wyo. Land Quality Reg. II-1b.
6. Wyo. Land Quality Reg. II-2a (1), (2).
7. Wyo. Land Quality Reg. II-3 through 5.
8. Wyo. Land Quality Reg. III-1 through 4, 6 through 7.
9. Wyo. Land Quality Reg. IV-1.
10. Wyo. Land Quality Reg. VIII-1.

[FR Doc.77-1682 Filed 1-18-77;8:45 am]

Title 33—Navigation and Navigable Waters

CHAPTER II—CORPS OF ENGINEERS, DEPARTMENT OF THE ARMY

PART 204—DANGER ZONE REGULATIONS PACIFIC OCEAN, CALIFORNIA

San Miguel Island, Calif.

On 5 November 1976 there was published in the FEDERAL REGISTER (Vol. 41, No. 215, page 48747) a notice of proposed rulemaking concerning 33 CFR 204.203 which establishes a danger zone in the Pacific Ocean at San Miguel Island, California. We proposed to amend only paragraph (c)(9) to extend the period of use to 1 July 1978. Interested parties were given the opportunity to submit comments or objections on or before 5 December 1976.

No comments have been received and accordingly, the period of use for the danger zone is hereby extended to 1 July 1978 and is set forth below without change, effective upon publication in the FEDERAL REGISTER.

Dated: December 20, 1976.

Approved:

VICTOR V. VEYSEY,
Assistant Secretary of
the Army (Civil Works).

Section 204.203(c)(9) of 33 CFR Part 204 is amended as follows:

§ 204.203 Pacific Ocean at San Miguel Island, Calif., naval danger zone.

* * * * * *

(c) *The Regulations.* * * *

(9) The regulation in this section shall be in effect until 1 July 1978 and shall be reviewed in May 1978 to determine the continuing need.

[FR Doc.77-1667 Filed 1-18-77;8:45 am]

Title 39—Postal Service

CHAPTER III—POSTAL RATE COMMISSION

[Order No. 149; Doc. No. RM77-4]

PART 3002—ORGANIZATION

Reorganization; Combining Office of Secretary With Administrative Office

JANUARY 14, 1977.

The Postal Rate Commission has determined that an internal reorganization which merges the functions of the Office of the Secretary (39 CFR 3002.3) into an Administrative Office (39 CFR 3002.8) under the direction of a single officer, employing, as appropriate, the titles of Secretary and Chief Administrative Officer, is necessary and desirable for the efficient conduct of the business of the Commission.

All present functions of the Office of the Secretary and the Administrative Office will continue to be exercised but will be assumed by a reorganized and expanded Administrative Office. Amendments to the Commission's organization (39 CFR Part 3002), as provided herein, fully describe the reorganization changes.

Since the amendment herein made involves matters of agency organization and procedure, the notice requirements of the Administrative Procedure Act do not apply. (5 U.S.C. 553.) Accordingly, pursuant to section 3603 of title 39 (39 U.S.C. 3603), it is ordered that effective January 15, 1977, Part 3002 of the Commission's Regulations (39 CFR Part 3002) is hereby amended as follows:

(A) 39 CFR 3002.3 is revised to read as follows:

§ 3002.3 Administrative Office.

(a) The incumbent head of the office is responsible for exercising two executive functions of the Commission and utilizes the title of either "Secretary" or "Chief Administrative Officer," as appropriate.

(b) As Secretary of the Commission, the incumbent head shall have custody of the Commission's seal, the minutes of all action taken by the Commission, its rules and regulations, its administrative and other orders, and records. All orders and other actions of the Commission shall be authenticated or signed by the Secretary or any such other person as may be authorized by the Commission.

(c) As Chief Administrative Officer the incumbent head is also responsible, subject to the policy guidelines of the Commission, for: Development, implementation, and administration of the Commission's financial management system and accounting activities including those relating to the budget and the payroll; development and administration of a personnel program designed to meet the needs of the Commission and its employees; provision of facilities and operating and support services essential to the efficient and effective conduct of operations; acquisition, planning and assignment of office space; procurement and supply; serving as the contracting officer for the Commission and controlling the obligation of Commission funds, as authorized by the Commission.

§ 3002.8 [Revoked]

(B) 39 CFR 3002.8 is revoked.

§ 3002.9 [Redesignated]

§ 3002.10 [Redesignated]

(C) 39 CFR §§ 3002.9 and 3002.10 are redesignated as §§ 3002.8 and 3002.9, respectively.

By the Commission.

DAVID F. HARRIS,
Acting Secretary.

[FR Doc.77-1710 Filed 1-18-77;8:45 am]

Title 47—Telecommunication

CHAPTER I—FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 20403; FCC 76-1174]

PART 73—RADIO BROADCAST SERVICES

Automatic Transmission Systems at AM, FM and Television Broadcast Stations

Correction

In FR Doc. 77-531 appearing at page 1233 in the FEDERAL REGISTER of Thursday, January 6, 1977 the following correction should be made: On page 1239, first column, in § 73.146(a), 12th line, fourth sentence should read "If the licensee wishes to establish an ATS monitoring and alarm point other than at the station transmitter, main studio, or an authorized remote control point, an informal request is to be submitted to the Commission in Washington, D.C. with a description of the location of the point and stating the basis for its selection".

Title 32—National Defense

CHAPTER I—OFFICE OF THE SECRETARY OF DEFENSE

PART 40—STANDARDS OF CONDUCT

Promulgation

A notice of propose rulemaking was published in the FEDERAL REGISTER on December 8, 1976 (41 FR 53673), for revision of part 32 (CFR part 40 entitled, "Standards of Conduct." This revision provides for a more strict and concise standards of conduct and more comprehensive disclosure of affiliations and financial interests for all Department of Defense personnel, regardless of assignment. Interested persons were given until January 7, 1977, to submit written comments. Two comments were received from the public and several comments from Department of Defense Components.

In consideration of comments received, 32 CFR part 40 is reissued as follows:

Sec.
40.1 Purpose and objective.
40.2 Applicability and scope.
40.3 Definitions.
40.4 Proper conduct of official activities.
40.5 Equal opportunity.
40.6 Conduct prejudicial to the Government.
40.7 Conflicts of interests.
40.8 Gratuities.
40.9 Prohibition of contributions or presents to superiors.
40.10 Use of Government facilities, property, and manpower.
40.11 Use of civilian and military titles or positions in connection with commerical enterprises.
40.12 Outside employment of DOD personnel.
40.13 Gambling, betting, and lotteries.
40.14 Indebtedness.
40.15 Information to personnel.
40.16 Standards of conduct counselors.
40.17 Reporting suspected violations.
40.18 Resolving violations.
40.19 Statements of affiliations and financial interests (DD Form 1555).
40.20 Nondisqualifying financial interest.
40.21 DOD-related employment reporting.
40.22 Required statement of employment (DD Form 1357).
40.23 Delegation of authority.
40.24 Requirements for submission of DD Form 1555 statements.
40.25 Effective date.

AUTHORITY: The provisions of §§ 40.1-40.25 are issued under E.O. 11222 and Pub. L. 87-651.

§ 40.1 Purpose and Objectives.

(a) Government employment, as a public trust, requires that Department of Defense (DOD) personnel place loyalty to country, ethical principles, and law above private gain and other interests. This Part prescribes standards of conduct required of all DOD personnel, regardless of assignment.

(b) This part implements Executive Order 11222 of May 8, 1965 and the Civil Service Commission Regulation, "Employee Responsibilities and Conduct," Title 5, Code of Federal Regulations, Part 735. It includes standards of conduct based on the conflict of interest laws, and it reflects the Code of Ethics for Government Service contained in House Concurrent Resolution 175, 85th Congress.

(c) Penalties for violations of these standards include the full range of statutory and regulatory sanctions for civilian and military personnel.

§ 40.2 Applicability and scope.

The provisions of this part apply to all DOD personnel and to the Office of the Secretary of Defense, the Military Departments, the Organization of the Joint Chiefs of Staff, the Unified and Specified Commands, and the Defense Agencies (hereinafter referred to as "DOD Components"), including nonappropriated fund activities.

§ 40.3 Definitions.

(a) *DOD Personnel.* All civilian officers and employees, including special Government employees, of all Components, and all active duty officers (commissioned and warrant) and enlisted members of the Army, Navy, Air Force, and Marine Corps.

(b) *Gratuity.* Any gift, favor, entertainment, hospitality, transportation, loan, any other tangible item, and any intangible benefits (for example, discounts, passes, and promotional vendor training), given or extended to or on behalf of DOD personnel, their immediate families, or households for which fair market value is not paid by the recipient or the U.S. Government.

(c) *Special Government Employee.* A person who is retained, designated, appointed, or employed to perform, with or without compensation, not to exceed 130 days during any period of 365 consecutive days, temporary duties either on a full-time or intermittent basis. The term also includes a Reserve officer while on active duty solely for training for any length of time, one who is serving on active duty involuntarily for any length of time, and one who is serving voluntarily on extended active duty for 130 days or less. It does not include enlisted personnel.

(d) *Standards of Conduct Counselors.* See § 40.16.

§ 40.4 Proper conduct of official activities.

(a) DOD personnel shall become familiar with the scope of authority for, and the limitations concerning, the activities for which they have responsibilities.

(b) The attention of DOD personnel is directed to the statutory prohibitions which apply to DOD personnel conduct.

(c) DOD personnel shall not make or recommend any expenditure of funds or take or recommend any action known or believed to be in violation of U.S. laws, Executive Orders, or applicable Directives, Instructions, or regulations.

(d) In cases of doubt as to the propriety of a proposed action or decision in terms of regulation or law, DOD personnel shall consult legal counsel or, if appropriate, the Standards of Conduct Counselor or Deputy Counselor to ensure the proper and lawful conduct of DOD programs and activities.

§ 40.5 Equal opportunity.

DOD personnel shall scrupulously adhere to the DOD program of equal opportunity regardless of race, color, religion, sex, age, or national origin, in accordance with DOD Directive 7700.15, "Reporting Procedures on Defense Related Employment," October 30, 1970.[1]

§ 40.6 Conduct prejudicial to the Government.

DOD personnel shall avoid any action, whether or not specifically prohibited by this part, which might result in or reasonably be expected to create the appearance of:

(a) Using public office for private gain;

(b) Giving preferential treatment to any person or entity;

(c) Impeding Government efficiency or economy;

(d) Losing complete independence or impartiality;

(e) Making a Government decision outside official channels; or

(f) Affecting adversely the confidence of the public in the integrity of the Government.

§ 40.7 Conflicts of interests.

(a) *Affiliations and Financial Interests.* DOD personnel shall not engage in any personal, business, or professional activity, or receive or retain any direct or indirect financial interest, which places them in a position of conflict between their private interests and the public interests of the United States related to the duties or responsibilities of their DOD positions. For the purpose of this prohibition, the private interests of a spouse, minor child, and any household members are treated as private interests of the DOD personnel.

(b) *Using Inside Information.* DOD personnel shall not use, directly or indirectly, inside information to further a private gain for themselves or others if that information is not generally available to the public and was obtained by reason of their DOD positions.

(c) *Using DOD Position.* DOD personnel are prohibited from using their DOD positions to induce, coerce, or in any manner influence any person, including subordinates, to provide any benefit, financial or otherwise, to themselves or others.

(d) *Disqualification or Divestiture Requirements.* Unless otherwise expressly authorized by action taken under 18 U.S.C. 207 or 208, all DOD personnel who have affiliations or financial interests which create conflicts or appearances of conflicts of interests with their official duties must disqualify themselves from any official activities that are related to those affiliations or interests or the entities involved. A formal disqualification must be sent to an individual's superior and immediate subordinates whenever it appears possible that his official functions will affect those affiliations, interests, or entities. If the individual cannot adequately perform his official duties after such disqualification, he must divest himself of such involvement or be removed from that position.

(e) *Membership in Associations.* DOD personnel who are members or officers of non-Governmental associations or organizations must avoid activities on behalf of the association or organization that are incompatible with their official Government positions (DOD Directive 5500.2, "Policies Governing Participation of Department of Defense Components and Personnel in Activities of Private Associations," August 4, 1972 (37 FR 16674) and DOD Instruction 5410.20, "Public Affairs Relations with Business and Non-Governmental Organizations Representing Business," January 16, 1974).[2]

(f) *Commercial Soliciting by DOD Personnel.* To eliminate the appearance of coercion, intimidation, or pressure from rank, grade, or position, full-time DOD personnel, except special Government employees, are prohibited from making personal commercial solicitations or sales to DOD personnel who are junior in rank or grade, at any time, on or off duty.

(1) This limitation includes, but is not limited to, the solicitation and sale of insurance, stocks, mutual funds, real estate, and any other commodities, goods, or services.

(2) This prohibition is not applicable to the one-time sale by an individual of his own personal property or privately owned dwelling or to the off-duty employment of DOD personnel as employees in retail stores or other situations not including solicited sales.

(3) For civilian personnel, the limitation applies only to personnel under their supervision at any level.

(g) *Assignment of Reserves for Training.* DOD personnel who are responsible for assigning Reserves for training shall not assign them to duties in which they will obtain information that could be used by them or their private sector employers to gain unfair advantage over civilian competitors.

(h) *Prohibited Selling by Retired Officers.* There are legal limitations on sales by retired Regular military officers to any component of the Department of Defense, Coast Guard, National Oceanic and Atmospheric Administration, or Public Health Service.

(i) *Dealing with Present and Former Military and Civilian Personnel.* DOD personnel shall not knowingly deal on behalf of the Government with present or former, military or civilian, Government personnel whose participation in the transaction would be in violation of a statute, regulation, or policy set forth in this Part.

§ 40.8 Gratuities.

(a) *Policy Basis.* The acceptance of gratuities by DOD personnel or their families, no matter how innocently tendered and received, from those who have or seek business with the Department of Defense and from those whose business interests are affected by Department functions (1) May be a source of embarrassment to the Department, (2) May affect the objective judgment of the DOD personnel involved and (3) May impair public confidence in the integrity of the Government.

(b) *General Prohibition.* Except as provided in paragraph (c) of this section, DOD personnel and their immediate families shall not solicit, accept, or agree to accept any gratuity for themselves, members of their families, or others, either directly or indirectly from, or on behalf of, any source that:

(1) Is engaged in or seeks business or financial relations of any sort with any DOD Component;

(2) Conducts operations or activities that are either regulated by a DOD Component or significantly affected by DOD decisions; or

(3) Has interests that may be substantially affected by the performance or nonperformance of the official duties of DOD personnel.

(c) *Limited Exceptions.* The general prohibition in paragraph (b), above, does not apply to the following:

(1) The continued participation in employee welfare or benefit plans of a former employer when permitted by law and approved by the appropriate Standards of Conduct Counselor.

(2) The acceptance of unsolicited advertising or promotional items that are less than $5 in retail value.

(3) Trophies, entertainment, prizes, or awards for public service or achievement or given in games or contests which are clearly open to the public generally or which are officially approved for DOD personnel participation.

(4) Things available to the public (such as university scholarships) covered by DOD Directive 1322.6, "Fellowships, Scholarships, and Grants for Members of the Armed Forces," April 27, 1963 (32 CFR Part 139) and free exhibitions by Defense contractors at public trade fairs.

(5) Discounts or concessions extended Component-wide and realistically available to all personnel in the Component.

(6) Participation by DOD personnel in civic and community activities when any relationship with Defense contractors is remote; for example, participation in a little league or Combined Federal Campaign luncheon which is subsidized by a Defense contractor.

(7) Social activities engaged in by officials of a DOD Component and officers in command, or their representatives, with local civic leaders as part of community relations programs of the DOD Component in accordance with DOD Directive 5410.18, "Community Relations," July 3, 1974.[1]

(8) The participation of DOD personnel in widely attended gatherings of mutual interest to Government and industry, sponsored or hosted by industrial, technical, and professional associations (not by individual contractors) provided that they have been approved in accordance with DOD Instruction 5410.20, "Public Affairs Relations with Business and Nongovernmental Organizations Representing Business," January 14, 1974.[1]

(9) Situations in which (i) Participation by DOD personnel at public ceremonial activities of mutual interest to industry, local communities, and the DOD Component concerned serves the interests of the Government and (ii) Acceptance of the invitation is approved by the Head of the employing DOD Component, or his designee.

(10) Contractor-provided transportation, meals, or overnight accommodations in connection with official business when arrangements for Government or commercial transportation, meals, or accommodations are clearly impracticable. In any such case, the individual shall report in writing the circumstances to his supervisor as soon as possible.

(11) Attendance at promotional vendor training sessions when the vendor's products or systems are provided under contract to DOD and the training is to facilitate the utilization of those products or systems by DOD personnel.

(12) Attendance or participation of DOD personnel in gatherings, including social events such as receptions, which are hosted by foreign governments or international organizations, provided that the acceptance of the invitation is approved by the Head of the employing DOD Component, or his designee.

(13) Situations in which, in the sound judgment of the individual concerned or his supervisor, the Government's interest will be served by DOD personnel participating in activities otherwise prohibited. In any such case, a written report of the circumstances shall be made in advance, or, when an advance report is not possible, within 40 hours by the individual or his supervisor to the appropriate Standards of Conduct Counselor (or designated Deputy Counselors).

(d) *Reimbursements.* (1) The acceptance of accommodations, subsistence, or services, furnished in kind, in connection with official travel from sources other than those indicated in paragraph (b) of this section is authorized only when the individual is to be a speaker, panelist, project officer, or other bona fide participant in the activity attended and when such attendance and acceptance is authorized by the order-issuing authority as being in the overall Government interest.

(2) Except as indicated in paragraph (d) (1) of this section, DOD personnel may not accept personal reimbursement from any source for expenses incident to official travel, unless authorized by their supervisor consistent with guidance provided by the appropriate Standards of Conduct Counselor (pursuant to 5 U.S.C. 4111 or other statutory authority). Rather, reimbursement must be made to the Government by check payable to the Treasurer of the United States. Personnel will be reimbursed by the Government in accordance with regulations relating to reimbursement.

(3) In no case shall DOD personnel accept, either in kind or for cash reimbursement, benefits which are extravagant or excessive in nature.

(4) When accommodations, subsistence or services in kind are furnished to DOD personnel by non-U.S. Government sources, consistent with this subsection, appropriate deductions shall be reported and made in the travel, per diem, or other allowances payable.

(e) Procedures with respect to gifts from foreign governments are set forth in DOD Directive 1005.3, "Decorations and Gifts from Foreign Governments," September 16, 1967.[1]

(f) Procedures with respect to ROTC Staff Members are set forth in DOD Directive 1215.8, "Policies Relating to Senior Reserve Officers Training Corps (ROTC) Programs," May 1, 1974.[1]

(g) After the effective date of this part, DOD personnel who receive gratuities, or have gratuities received for them, in circumstances not in conformance with the standards of this section shall promptly report the circumstances

See footnotes at end of document.

to the appropriate Standards of Conduct Counselor (or Deputy) for disposition determination.

§ 40.9 Prohibition of contributions or presents to superiors.

DOD personnel shall not solicit a contribution from other DOD personnel for a gift to an official superior, make a donation or gift to an official superior, or accept a gift from other DOD personnel subordinate to themselves. However, this section does not prohibit voluntary gifts or contributions of nominal value on special occasions such as marriage, illness, transfer, or retirement, provided any gifts acquired with such contributions shall not exceed a reasonable value.

§ 40.10 Use of Government facilities, property, and manpower.

DOD personnel shall not directly or indirectly use, take, dispose, or allow the use, taking, or disposing of, Government property or facilities of any kind, including property leased to the Government, for other than officially approved purposes. Government facilities, property, and manpower (such as stationery, stenographic and typing assistance, mimeograph and chauffeur services) shall be used only for official Government business. DOD personnel have a positive duty to protect and conserve Government property. These provisions do not preclude the use of Government facilities for approved activities in furtherance of DOD community relations, provided they do not interfere with military missions or Government business.

§ 40.11 Use of civilian and military titles or positions in connection with commercial enterprises.

(a) All DOD personnel, excluding special Government employees, are prohibited from using their titles or positions in connection with any commercial enterprise or in endorsing any commercial product. This does not preclude author identification for materials published in accordance with DOD procedures.

(b) All retired military personnel and all members of reserve components, not on active duty, are premitted to use their military titles in connection with commercial enterprises provided that they indicate their inactive reserve or retired status. However, if such use of military titles in any way casts discredit on the Military Departments or the Department of Defense or gives the appearance of sponsorship, sanction, endorsement, or approval by the Military Departments or the Department of Defense, it is prohibited. In addition, the Military Departments may further restrict the use of titles including use by retired military personnel and members of reserve components, not on active duty, in overseas areas.

§ 40.12 Outside employment of DOD personnel.

(a) DOD personnel shall not engage in outside employment or other outside activity, with or without compensation, that: (1) Interferes with, or is not compatible with, the performance of their Government duties;

(2) May reasonably be expected to bring discredit on the Government or the DOD Component concerned; or

(3) Is otherwise inconsistent with the requirements of this Part, including the requirements to avoid actions and situations which reasonably can be expected to create the appearance of conflicts of interests.

(b) Enlisted military personnel on active duty may not be ordered or authorized to leave their post to engage in a civilian pursuit, business, or professional activity if it interferes with the customary or regular employment of local civilians in their art, trade, or profession.

(c) Off-duty employment of military personnel by an entity involved in a strike is permissible if the person was on the payroll of the entity prior to the commencement of the strike and if the employment is otherwise in conformance with the provisions of this part. After a strike begins and while it continues, no military personnel may accept employment by that involved entity at the strike location.

(d) DOD personnel are encouraged to engage in teaching, lecturing and writing. However, DOD personnel shall not, either for or without compensation, engage in activities that are dependent on information obtained as a result of their Government employment, except when (1) the information has been published or is generally available to the public, or (2) It will be made generally available to the public and the agency head gives written authorization for the use of nonpublic information on the basis that the use is in the public interest.

(e) Civilian Presidential appointees shall not receive compensation or anything of monetary value for any consultation, lecture, discussion, writing, or appearance, the subject matter of which is devoted substantially to DOD responsibilities, programs, or operations or which draws substantially from official material which has not become part of the body of public information.

§ 40.13 Gambling, betting, and lotteries.

While on Government owned, leased, or controlled property, or otherwise while on duty for the Government, DOD personnel shall not participate in any gambling activity, including a lottery or pool, a game for money or property and the sale or purchase of a number slip or ticket. The only exceptions are for activities which have been specifically approved by the Head of the DOD Component.

§ 40.14 Indebtedness.

DOD personnel shall pay their just financial obligations in a timely manner, particularly those imposed by law (such as Federal, State, and local taxes), so that their indebtedness does not adversely affect the Government as their employer, DOD Components are not required to determine the validity or amount of disputed debts.

§ 40.15 Information to personnel.

All DOD personnel, except enlisted personnel not required to file Statements of Affiliation and Financial Interests (DD Form 1555) [1] shall be given a copy of this part or implementing DOD Component regulation and an oral standards of conduct briefing proceding employment or assumption of duties. Each individual receiving such briefing shall attest in writing to his attendance at the briefing, the fact that he has read the standards of conduct, and his comprehension of the requirements imposed. Enlisted personnel not required to file the Statement shall be given standards of conduct briefings and attest in writing to their attendance at such briefings. All DOD personnel shall be reminded at least semi-annually of their duty to comply with required standards of conduct.

§ 40.16 Standards of conduct counselors.

(a) The Head of each DOD Component shall designate a Standards of Conduct Counselor and one or more Deputy Counselors. Those designated shall be responsible for providing advice and assistance to their Components and to the personnel of those Components on all questions arising from the operation and implementation of this Part. They shall also be responsible for the proper review, including audits, coordination, and advice regarding all standards of conduct problems.

(b) The General Counsel of the Department of Defense, or his designee, shall provide legal guidance and assistance to the Deputy Assistant Secretary of Defense (Administration), Office of the Assistant Secretary of Defense (Comptroller), or his designee, who shall be the Standards of Conduct Counselor for the Office of the Secretary of Defense, and to the Standards of Conduct Counsellors of all DOD Components.

(c) The General Counsel, DOD, shall represent the Department of Defense to the Civil Service Commission on matters relating to standards of conduct.

§ 40.17 Reporting suspected violations.

DOD personnel who have information which causes them to believe other DOD personnel have violated a statute or standard of conduct imposed by this Part should first bring the matter to the attention of those persons. If those persons are one's supervisors or the communication is not expected to remedy or does not appear to have remedied the problem, a report shall be made to the appropriate authority and to the Standards of Conduct Counselor.

§ 40.18 Resolving violations.

The resolution of standards of conduct violations shall be accomplished promptly by one or more measures, such as divestiture or conflicting interest, disqualification for particular assignments, changes in assigned duties, termination, or other appropriate action, as provided

See footnotes at end of document.

by statute or administrative procedures. Disciplinary actions shall be in accordance with established personnel procedures.

§ 40.19 Statements of affiliations and financial interests (DD Form 1555) [1].

The following DOD personnel are required to submit initial and annual Statements of Affiliations and Financial Interests, DD Form 1555 [1], unless they are expressly exempted. (See § 40.24 for details on applicability and requirements.)

(a) All civilian DOD personnel paid at a rate equal to or in excess of the minimum rate prescribed for employees holding the grade of GS–16 including the Executive Schedule.

(b) Officers of flag or general rank.

(c) Commanders and Deputy Commanders of major installations, activities, and operations, as determined by the Heads of the DOD Components.

(d) Board members of the Armed Service Board of Contract Appeals.

(e) DOD personnel classified at GS–13 or above, or at a comparable pay level under other authority, and members of the military in the rank of Lieutenant Colonel, Commander, or above, when the responsibilities of such personnel require the exercise of judgment in making a Government decision or in taking Government action in regard to activities in which the final decision or action may have a significant economic impact on the interests of any non-Federal entity.

(f) Special Government employees (except those exempted in § 40.24).

(g) Other DOD personnel who are required, with Civil Service Commission approval, to file such Statements.

§ 40.20 Nondisqualifying financial interest.

DOD personnel need not disqualify themselves under § 40.7(d) for holding shares of a widely held, diversified mutual fund or regulated investment company. In accordance with the provisions of 18 U.S.C. 208b(2), such holdings are hereby exempted as being too remote or inconsequential to affect the integrity of the services of Government personnel.

§ 40.21 DOD-related employment reporting.

Pre-employment and post-employment reporting requirements concerning defense-related employment are covered in DOD Directive 7700.15.[1]

§ 40.22 Required statement of employment (DD Form 1357).[1]

(a) Each retired Regular officer of the Armed Forces shall file with the Military Department in which he holds retired status a Statement of Employment (DD Form 1357).[1] Each Regular officer retiring hereafter shall file this Statement within 30 days after retirement. Whenever the information in the Statement is changed, each such officer shall file a new DD Form 1357 [1] within 30 days of that change.

(b) The Military Departments shall review the Statements of Employment as required to assure compliance with applicable statutes and regulations.

§ 40.23 Delegation of authority.

The General Counsel, DOD is authorized to modify or supplement any of the enclosures to this Part in a manner consistent with the policies set forth in this Part.

§ 40.24 Requirements for submission of DD Form 1555 statements.

(a) *DOD Personnel Required to Submit Statements.* DOD personnel required to file Statements of Affiliations and Financial Interests (DD Form 1555)[1] are those indicated in § 40.19 of this Part.

(b) *Review of Positions.* Each DOD Component shall include in the description of each position indicated in § 40.19 of this Part a statement that the incumbent of the position must file a Statement of Affiliations and Financial Interests as required by this Part. All positions shall be reviewed at least annually to determine those which require Statements. Any individual may request a review of the decision requiring him to file a Statement through the established complaint procedures of the DOD Component.

(c) *Exclusion of Positions.* Heads of DOD Components, or their designees may determine that the submission of Statements is not necessary for certain positions because of the remoteness of any impairment of the integrity of the Government and the degree of supervision and review of the incumbents' work.

(d) *Manner of Submission of Statements.* (1) The Secretary of Defense is required to submit his Statement to the Chairman of the Civil Service Commission in accordance with the provisions of section 401 of Executive Order 11222.

(2) All DOD civilian Presidential appointees and Directors of Defense Agencies shall submit their Statements to the DOD General Counsel.

(3) Personnel of the Office of the Secretary of Defense (OSD) and the Organization of the Joint Chiefs of Staff shall submit their Statements through their superiors for review and forwarding to the OSD Standards of Conduct Counselor.

(4) Military Department and Defense Agency personnel shall submit their Statements through their immediate supervisors for review and forwarding to officials of the Military Departments or Defense Agencies designated in the regulations of those Departments and Agencies.

(5) Commanders of Unified Commands shall submit their Statements directly to the OSD Standards of Conduct Counselor. Other personnel of the Unified Commands shall submit their Statements through their supervisors to the Deputy Command Counselor in the Office of the Legal Advisor to the Unified Command. Commanders who have a dual responsibility as commanders of both joint commands and components shall submit their Statements through service channels.

(6) All Statements shall be reviewed and approved by the appropriate Standards of Conduct Counselor or Deputy Counselor and the appropriate supervisor prior to the commencement of service or assumption of duties and annually thereafter as prescribed in paragraph (g) of this section. Designees to positions requiring the approval of the Secretary of Defense or the Secretary of a Military Department shall execute the Statement in advance of nomination so that it may be thoroughly reviewed prior to appointment.

(7) Agreements with other DOD Components and Government agencies involving detailing of DOD personnel shall contain a requirement that the other DOD Component or Government agency shall, within 60 days, forward to the parent DOD Component's Standards of Conduct Counselor a copy of the detailed individual's Statement, if required, and notice concerning the disposition of any conflict or apparent conflict of interests indicated.

(e) *Excusable Delay.* When required by reason of duty assignment or infirmity a superior may grant an extension of time with the concurrence of the Standards of Conduct Counselor or Deputy Counselor. Any extension in excess of 30 days requires the concurrence of the Head of the DOD Component concerned or his designee. Any late Statement shall include appropriate notation of any extension of time granted hereunder.

(f) *Special Government Employees (as defined in § 40.3 of this part).* (1) Each special Government employee shall, prior to appointment, file a Statement of Affiliations and Financial Interests.

(2) The following are exempted categories of special Government employees who are not required to file Statements unless specifically requested to do so:

(i) Physicians, dentists, and allied medical specialists engaged only in providing service to patients.

(ii) Veterinarians providing only veterinary services.

(iii) Lecturers participating in education activities.

(iv) Chaplains performing only religious services.

(v) Individuals in the motion picture and television fields who are utilized only as narrators or actors in DOD productions.

(vi) Members of selection panels for NRC/TC candidates.

(vii) A special Government employee who is not a "consultant" or "expert" as those terms are defined in the Federal Personnel Manual, Chapter 304.

(3) The Secretary or a Deputy Secretary of Defense or the Secretary of a Military Department may grant an exemption to an appointee from the requirement of filing a Statement upon a determination that such information is not relevant in light of the duties the appointee is to perform.

(g) *Annual Statements.* DD Form 1555 [1] Statements shall be filed by October 31st of each year for all affiliations and financial interests as of September 30th of that year. Even though no changes occur, a complete Statement is required. All DOD Components shall notify the Office of the Secretary of Defense Standards of Conduct Counsellor no later than December 31st of each year that all required Statements have been filed, reviewed and any problems appropriately resolved or explain the details of the outstanding cases.

(h) *Interests of Relatives of DOD Personnel.* The interest of a spouse or minor child, or any member of one's household is to be reported in the same manner as an interest of the individual.

(i) *Information Not Known by DOD Personnel.* DOD Personnel shall request submission on their behalf of required information known only to other persons. The submission may be made with a request for confidentiality that will be honored even if it includes a limitation on disclosure to the DOD personnel concerned.

(j) *Information Not Required to be Submitted.* DOD personnel are not required to submit on a Statement any information relating to their connection with or interest in a professional society or a charitable, religious, social, fraternal, recreational, public service, civic or political organization or a similar organization not conducted as a business for profit. For the purpose of this part, educational and other institutions doing research and development or related work involving grants or money from or contracts with the Government are to be included in a person's Statement.

(k) *Confidentiality of Statements of DOD Personnel.* DOD Components shall hold each Statement in confidence. A Component may not disclose information from a Statement except as the Component head or the Civil Service Commission may determine for good cause. "Good cause" includes a determination that the record or any part of the record must be released under the Freedom of Information Act. Persons designated to review the Statements are responsible for maintaining the Statements except to carry out the purpose of this part.

(l) *Disqualification.* See paragraph (d) of § 40.7 of this part for requirements concerning disqualification.

(m) *Effect of Statements on Other Requirements.* The Statements required of DOD personnel are in addition to, and not in substitution for, any similar requirement imposed by law, order, or regulation. Submission of Statements does not permit DOD personnel to participate in matters in which their participation is prohibited by law, order, or regulation.

§ 40.25 Effective date.

This part shall become effective on January 19, 1977.

Dated: January 17, 1977.

MAURICE W. ROCHE,
Director, Correspondence and Directives, OASD (Comptroller).

[FR Doc.77–1918 Filed 1–18–77;8:45 am]

[1] Form DOD Directive 1555, 1005.3, 7700.15, 5410.18 and 5410.20. Filed as part of original. Copies available from Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, Pa. 19120. Attn: Code 300.

proposed rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL ENERGY ADMINISTRATION

[10 CFR Part 215]

COLLECTION OF FOREIGN SUPPLY INFORMATION

Reporting Requirements; Foreign Oil Supply Agreements

On November 15, 1976, the Federal Energy Administration (FEA) requested comments on a proposal to establish new reporting requirements for foreign oil supply agreements (41 FR 50331). Although FEA is already collecting substantial amounts of information with respect to foreign crude oil supplies, FEA believes that such reporting needs to be expanded in order to provide the government a more comprehensive and useable data base. Such information would improve the government's ability to assess more adequately the state and direction of the international oil market and would assure that government decisions with respect to that market are based upon full and complete information.

In response to this notice, 34 comments were received. After evaluation of the comments and other available information, FEA has decided to issue a proposed rulemaking expanding reporting requirements with respect to foreign oil supply agreements. In general, the proposed rule would augment existing reports to provide certain price, cost, volume and related information on a country basis for major agreements. Less information would be required concerning other significant supply arrangements. FEA, on a case-by-case basis, could also require production of individual contracts. FEA does not at this time propose to expand existing arrangements with respect to agreements under negotiation. Notice of major negotiations, however, will be required.

I. Comments

Of the comments favoring the proposal, one was from a purchaser of petroleum products. The party indicated general support for greater information concerning crude oil supply arrangements because of the direct relationship between the cost of crude oil and petroleum products. Presumably this interest could be fulfilled by more effective cost and price reporting. A second party was concerned about promoting the use of privately-owned U.S. flag vessels, and to this end was interested in having the government develop more detailed information on downstream restrictions imposed by producing governments, particularly requirements to use vessels of such governments. Other comments from the Governor of Massachusetts, and the Chairman of the Subcommittee on Energy of the Joint Economic Committee, expressed general support.

Objections to expanded reporting requirements fell into four categories. First, parties argued that FEA already had adequate information to monitor the oil market on the basis of the Form F701–M–O (Transfer Pricing Report) and Form P–328 (Foreign Crude Oil Cost Report), briefings provided to the FEA and the State Department, and the considerable information now available in trade publications. Moreover, the parties pointed out that contract information was not particularly reliable as to future developments since contracts were frequently subject to unilateral change by selling governments especially with respect to prices. Secondly, companies felt that reporting requirements would reduce competitive pressures and opportunities in the market. The fear of publicity would substantially restrict the scope of negotiations and would tend to lead to greater rigidity and standardization of contract terms. Sales could tend to shift to foreign firms or foreign brokers not subject to reporting requirements. Thirdly, parties argued that reporting requirements with respect to negotiations in progress would tend to make the government a third party, politicizing such negotiations, and shifting bargaining to a government-to-government level. Finally, the firms argued that new reporting requirements could create significant new burdens on the industry unless their coverage was limited to the largest contracts.

II. Proposed Rule

A. General

FEA continues to believe that it is essential for the U.S. Government to have accurate and complete information concerning those aspects of the oil market which affect the energy and foreign policy interests of the United States. In addition, the U.S. Government must be aware of potential new developments in the crude oil market where these developments will affect substantial quantities of crude.

At the same time FEA recognizes that expanded reporting requirements are not costless. They could have a detrimental impact on the competitive opportunities of U.S. companies as well as the competitive nature of the market generally. Untoward disclosure of negotiations in progress could result in competitive supply opportunities being directed to foreign companies and could reduce competitive pricing pressures. Producing countries may indeed be reluctant to make price reductions below "official" prices if those reductions could become public.

At the moment companies are able to obtain concessions from official selling levels. These differences can be quite important in terms of the competitive positions of individual companies and such concessions can cause some general price pressure on OPEC, especially through differentials. At the margin such differentials may also produce shifts in supply sources which provide a further check on pricing by individual countries. Further, these discounts to the extent they exist, provide benefits for U.S. companies which may be passed forward through competition to U.S. and other consumers. Thus there is a substantial public benefit from competition among oil companies with respect to supply contracts, and reporting requirements must be structured so as to minimize any adverse competitive effects.

To balance these conflicting requirements, FEA proposes to establish the following reporting procedures:

1. Modification and expansion of existing reporting forms to provide certain additional information on major agreements concerning lifting obligations and options and, in the case of equity interests, expected production volumes and government imposed production limits. This material would be integrated with information already being collected concerning prices, government take and costs, as well as expiration and renegotiation dates of existing contracts. More limited information would be required concerning smaller but still significant contracts.

2. An expansion of the requirements for reporting certain price and cost developments, in particular government decreed changes in prices, price differentials, permitted lifting levels, and downstream obligations.

3. Establishment of explicit regulations concerning FEA's power to obtain or inspect any existing or proposed supply agreement.

B. Expanded Reporting Requirements

FEA currently collects much price and cost data; this information has, however, not always been fully utilized.[1] In part this is due to the difficulty of taking information reported on a cargo basis and projecting it in terms of future supply patterns. To alleviate this problem, FEA proposes to require expanded reports for all major supply arrangements.[2] These reports would include:

1. *In the case of purchases:*

(a) Parties.
(b) Grades available; loading terminals.
(c) Minimum lifting obligation and maximum lifting rights.
(d) Details of lifting options within the above limits.
(e) Effective delivery period.
(f) Expiration and renegotiation dates.
(g) Price terms including credit, rebates and discounts.
(h) Related service fees and cost of providing services.
(i) Restrictions on shipping or disposition; other obligations.

2. *In the case of lifting from an equity interest:*

(a) Parties including partners and percentage interest.
(b) Grades available; loading terminals.
(c) Forecast production volumes for next five years.
(d) Government imposed production limits, if any.
(e) Existing government take (i.e., tax, royalty and any other payment) net of related service fees.
(f) Cost of production.
(g) Related service fees and cost of providing services.
(h) Restrictions on shipping or disposition; other obligations.

Such reports would be required 30 days after agreement for any arrangements permitting a company to lift or produce an average of 200,000 barrels per day or more from a country for a period of at least one year. Parties would be required to report significant changes in those arrangements within 30 days after such changes occur. Certain of this information is already collected on the F701–M–O and P–328, but FEA has not been able to fully utilize that information since it is not reported on a contract-by-contract basis. To the extent of redundancy between these forms, FEA would expect to delegate or simplify those elements from the F701–M–O which have not in practice been necessary for the computation of transfer prices, the purpose for which such form was developed.

Special note should be made of the last item in each category. The purpose of this requirement is to determine the scope of leverage exercised by oil producing countries on downstream activities. It will also permit monitoring of other commitments which oil companies make to producing governments in order to obtain crude oil.

Arrangements not defined as major agreements as set out above but which are still significant would have to be noticed to FEA and more limited information provided. This notice would indicate the parties to the agreement, the volumes covered, the expiration date, and where relevant, a notation of any restrictions on shipping or disposition or any other obligations. Arrangements providing for the lifting of 100,000 barrels per day or more of crude oil from any country for a period of at least one year would have to be reported under this provision.

The purpose of this requirement is to make the government aware of agreements which when cumulated may take on greater significance.

Additionally, cost and prices for all volumes lifted by U.S. companies would still be collected on the Transfer Pricing Report and the Foreign Crude Oil Cost Report.

All reports under this system will be considered confidential and protected from public disclosure to the extent permitted by law.

C. Reporting of New Developments

In addition, in conjunction with the transfer pricing program, companies would be required to report within 30 days, prior or volumetric changes imposed by the host government in connection with their lifting. Matters to be noticed would include changes in official selling prices, government take, differentials in either official selling prices or government take, and service fees. With respect to lifting and production rights, companies would have to report any lifting or production restrictions. Reporting would be required with respect to those crude streams which a company lifts.

D. Production of Contracts

The revised reporting requirements do not require the production of individual contracts. Pursuant to section 13 of the FEA Act, FEA, however, has the power to require the production of such contracts in appropriate cases. FEA proposes to adopt specific regulations in this regard.

III. Reports on Negotiations

FEA will continue to rely on its present discretionary system of direct contact with companies in appropriate cases, and where necessary its power to require production of documents. To assure that the government is aware of negotiations in progress so that inquiries may be initiated in appropriate cases, FEA is proposing to add a new requirement that companies notify FEA of ongoing negotiations where negotiations may significantly affect the terms and conditions of major supply arrangements.

This approach has the advantage of giving the government greater flexibility in dealing with particular problems, especially the need to preserve confidentiality, while avoiding direct U.S. Government participation as a third-party in such negotiations.

FEA in conjunction with the Department of State will continue to monitor those negotiations which it deems most vital through the discretionary process now available to it, buttressed by its power to require for review purposes access to drafts or reports in particular cases. FEA's experience to date suggests that in those cases existing powers are adequate to provide the government full information concerning such negotiations.

Interested persons are invited to submit written data, views, or arguments with respect to these amendments to Executive Communications, Room 3309, Federal Energy Administration, Box KG, The Federal Building, Washington, D.C. 20461. Comments should be identified on the outside of the envelope and on the documents submitted to the Federal Energy Administration with the designation: "Reporting Requirements: Foreign Oil Supply Agreements." Fifteen (15) copies should be submitted. All comments received by 4:30 p.m., February 21, 1977, will be considered by the Federal Energy Administration in evaluating the revision and amendments.

Any information or data considered by the person furnishing it to be confidential must be so identified and submitted in writing, one copy only. The FEA reserves the right to determine the confidential status of the information or data and to treat it according to its determination.

Public hearings with respect to these amendments will be held beginning at 9:30 a.m., e.s.t., on February 17 and 18, in Room 2105, 2000 M Street, N.W., Washington, D.C. Any person who has an interest in these changes, or who is representative of a group or class of persons which has such an interest, may make a written request for an opportunity to make oral presentation. Such a request should be directed to Executive Communications, FEA, and must be received before 4:30 p.m. e.s.t., February 2, 1977. Such a request may be hand delivered to Room 3309, The Federal Building, 12th and Pennsylvania Avenue, N.W., Washington, D.C. between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday. The person making the request should be prepared to describe the interest concerned; if appropriate, to state why he is a proper representative of a group or class of persons which has such an interest; and to give a concise summary of the proposed oral presentation and a phone number where he may be contacted through February 16, 1977. Each person selected to be heard will be so notified by the FEA before 4:30 p.m., e.s.t., February 4, 1977, and must submit 100 copies of his statements to Executive Communications, FEA, Room 2214, 2000 M Street, N.W., Washington, D.C. 20461, before 4:30 p.m. e.s.t.

The FEA reserves the right to select the persons to be heard at these hear-

[1] The Form F701–M–O provides for all third-party transactions by U.S. companies, f.o.b. prices, rebates and discounts, including credit over 45 days, contract beginning, ending and renegotiation dates, shipment volumes, dates of loading and destination points. Similar information plus transportation costs is provided for all crude oil imported into the United States. Schedule P of the form also requires detailed cost data including government take and production cost. The price data is buttressed by certain world-wide volumetric data. The Form F701–M–O is supplemented by the Form P–328 which collects quarterly information on crude oil costs for companies' own production, purchases of "preferential" oil, and purchases from host governments. The P–328 is in a standardized format so it may be aggregated and used in conjunction with data provided by other member countries of the International Energy Agency.

[2] FEA is not today issuing proposed forms for the collection of this data; FEA expects, however, to issue such forms within the next two weeks.

ings, to schedule their respective presentations, and to establish the procedures governing the conduct of the hearings. The length of each presentation may be limited, based on the number of persons requesting to be heard.

An FEA official will be designated to preside at the hearings. These will not be judicial or evidentiary-type hearings. Questions may be asked only by those conducting the hearings; and there will be no cross-examination of persons presenting statements. Any decision made by the FEA with respect to the subject matter of the hearings will be based on all information available to the FEA. At the conclusion of all initial oral statements, each person who has made an oral statement will be given the opportunity, if he so desires, to make a rebuttal statement. The rebuttal statements will be given in the order in which the initial statements were made and will be subject to time limitations.

Any interested persons may submit questions to be asked of any person making a statement at the hearings to Executive Communications, FEA, before 4:30 p.m., e.s.t., February 15, 1977. Any person who makes an oral statement and who wishes to ask a question at the hearings may submit the question, in writing, to the presiding officer. The FEA or the presiding officer, if the question is submitttd at the hearings, will determine whether the question is relevant, and whether time limitations permit it to be presented for answer.

Any further procedural rules needed for the proper conduct of the hearings will be announced by the presiding officer.

A transcript of the hearings will be made and the entire record of the hearings, including the transcript, will be retained by the FEA and made available for inspection in the Freedom of Information Office, Room 2107, The Federal Building, 12th and Pennsylvania Avenue, N.W., Monday through Friday. Any person may purchase a copy of the transcript from the reporter.

Finally, this proposal has been reviewed in accordance with Executive Order 11821 and OMB Circular No. A-107 and has been determined not to require evaluation of its inflationary impact as provided therein.

[Emergency Petroleum Allocation Act of 1973, Pub. L. 93-159, as amended, Pub. L. 93-511, Pub. L. 94-99, Pub. L. 94-133 and Pub. L. 94-163, and Pub. L. 94-385; Federal Energy Administration Act of 1974, Pub. L. 93-275, as amended, Pub. L. 94-385; Energy Policy and Conservation Act, Pub. L. 94-163, as amended, Pub. L. 94-385; E.O. 11790, 39 FR 23185].

In consideration of the foregoing, it is proposed that Chapter II of Title 10 of the Code of Federal Regulations be amended as set forth below.

Issued in Washington, D.C., January 14, 1977.

ERIC J. FYGI,
Acting General Counsel,
Federal Energy Administration.

10 CFR, Chapter II, is proposed to be amended by adding a new Part 215 to read as follows:

PART 215—COLLECTION OF FOREIGN SUPPLY INFORMATION

Sec.
215.1 Purpose.
215.2 Definitions.
215.3 Supply reports.
215.4 Production of contracts and documents.
215.5 Pricing and volume reports.
215.6 Notice of negotiations.

AUTHORITY: Emergency Petroleum Allocation Act of 1973, Pub. L. 93-159, as amended, Pub. L. 93-511, Pub. L. 94-99, Pub. L. 94-133 and Pub. L. 94-163, and Pub. L. 94-385; Federal Energy Administration Act of 1974, Pub. L. 93-275, as amended, Pub. L. 94-385; Energy Policy and Conservation Act, Pub. L. 94-163, as amended, Pub. L. 94-385; E.O. 11790, 39 FR 23185.

§ 215.1 Purpose.

The purpose of this part is to set forth certain requirements pursuant to section 13 of the Federal Energy Administration Act to supply information concerning foreign supply arrangements. The authority set out in this section is not exclusive.

§ 215.2 Definitions.

As used in this subpart:

"Administrator" means the Federal Energy Administrator or his delegate.

"FEA" means to Federal Energy Administration.

"Host government" means the government of the country in which crude oil is produced and includes any entity which it controls, directly or indirectly.

"Person" means any natural person, corporation, partnership, association, consortium, or any other entity doing business or domiciled in the U.S. and includes (a) any entity controlled directly or indirectly by such a person and (b) the interest of such a person in any joint venture, consortium or other entity to the extent of entitlement to crude oil by reason of such interest.

§ 215.3 Supply reports.

(a) Any person having the right to lift or produce an average of 200,000 barrels per day or more of crude oil from a country for a period of at least one year pursuant to supply arrangements with the host government shall report the following information.

(1) *In the case of purchases:*

(i) Parties.

(ii) Grade or grades available; loading terminal or terminals.

(iii) Minimum lifting obligation and maximum lifting rights.

(iv) Details of lifting options within the above limits.

(v) Effective delivery period.

(vi) Expiration and renegotiation dates.

(vii) Price terms including rebates, discounts, and weighted average number of days of credit calculated from the date of loading.

(viii) Related service fees and cost of providing services.

(ix) Restrictions on shipping or disposition; other obligations.

(2) *In the case of lifting from an equity interest:*

(i) Parties including partners and percentage interest.

(ii) Grade or grades available; loading terminal or terminals.

(iii) Forecast production volumes for next five years.

(iv) Government imposed production limits, if any.

(v) Existing government take (*i.e.*, taxes, royalties, and any other payment to the host government) and the timing of collection calculated in terms of the average number of days from the date of loading.

(vi) Cost of production.

(vii) Related service or other fees and cost of providing services.

(viii) Restrictions on shipping or disposition; other obligations.

(b) Except to the extent that such information must be reported pursuant to paragraph (a) of this section, any person having the right to lift or produce an average of 100,000 barrels per day or more of crude oil from a country for a period of at least one year pursuant to supply arrangements with the host government shall report the following information:

(1) *In the case of purchases:*

(i) Parties.

(ii) Minimum lifting obligation and maximum lifting rights.

(iii) Price terms including rebates, discounts, and weighted average number of days of credit calculated from the date of loading.

(iv) Related service fees and cost of providing services.

(v) Restrictions on shipping or disposition; other obligations.

(2) *In the case of lifting from an equity interest:*

(i) Parties including partners and percentage interest.

(ii) Forecast production volumes for next five years.

(iii) Existing government take (*i.e.*, taxes, royalties, and any other payment to the host government) and the timing of collection calculated in terms of the weighted average number of days from the date of loading.

(iv) Cost of production.

(v) Related service or other fees and cost of providing services.

(vi) Restrictions on shipping or disposition; other obligations.

(c) Reports under this section shall be reported no later than 30 days after the later of (1) the effective date of this regulation or (2) the date when such supply arrangements are entered into. Reporting shall be based on actual practice between the parties. Material changes in any item which must be reported pursuant to this section shall be reported no later than 30 days after a person receives actual notice of such changes.

§ 215.4 Production of contracts and documents.

Whenever the Administrator determines that certain foreign supply information is necessary to assist in the formulation of energy policy or to carry out any other function of the Administrator, he may require, by order or otherwise, the production by any person of any agreement or documents relating to foreign energy supply arrangements or reports related thereto. Such documents or reports shall be provided pursuant to the conditions prescribed by the Administrator at the time of such order or subsequently.

§ 215.5 Pricing and volume reports.

To the extent not reported pursuant to § 207.12, any person lifting or producing crude in a country shall report to the FEA within 30 days of the month in which he receives actual notice:

(a) Any change (including changes in the timing of collection) by the host government in official selling prices, royalties, host government taxes, service fees, quality or port differentials, or any other payments made directly or indirectly for crude oil; and for crude oil; and

(b) Any changes in restrictions on lifting, production, or disposition.

§ 215.6 Notice of negotiations.

Any person entering into or conducting negotiations with a host government which may significantly affect the terms and conditions or may reasonably lead to the establishment of any supply arrangement subject to reporting pursuant to paragraph (a) of § 215.3 shall notify FEA of such negotiations. Such notice shall be made no later than the later of 30 days after the effective date of this regulation or the date such negotiations are initiated.

[FR Doc.77-1714 Filed 1-14-77;1:39 pm]

FEDERAL TRADE COMMISSION

[16 CFR Part 801]

MERGERS AND ACQUISITIONS

Proposed Rulemaking

On December 20, 1976 (41 FR 55488), the Federal Trade Commission published its proposed rulemaking with respect to the Hart-Scott-Rodino Antitrust Improvements Act of 1976 at pp. 55488-55501.

The Federal Trade Commission has received several requests for extensions of time in order to submit written comments with respect to the Proposed Rulemaking. Accordingly, the Federal Trade Commission has determined to grant an extension of the period for filing comments on proposed regulations implementing the premerger notification requirements of the Act for a thirty-day period until February 18, 1977. This extension does not apply to the proposed Transitional Rule which is to govern mergers and acquisitions occurring on or after February 27, 1977, the official effective date of the new law, and before the effective date of the final Notification Report Form and related rules. The deadline for filing comments with respect to the Transitional Rule remains January 19, 1977.

The Commission also stated that it does not expect to grant further extension of the comment period beyond February 18, 1977 in view of its obligation to implement the premerger notification requirements of the new law at the earliest possible date.

Dated: January 12, 1977.

JOHN F. DUGAN,
Acting Secretary.

[FR Doc.77-1742 Filed 1-18-77;8:45 am]

[16 CFR Part 801]

MERGERS AND ACQUISITIONS

Proposed Rulemaking; Correction

In FR Doc. No. 76-37343 appearing in FEDERAL REGISTER issue for Monday, December 20, 1976, at page 55488 certain pages of the submitted document were out of sequence.

The material appearing at page 55496 beginning with the heading "instructions" and including the following ten (10) paragraphs ending with the words "* * * several parties to the transactions" should correctly appear on page 55495 before the heading "Special Instruction for Certain Partial Acquisitions."

JOHN F. DUGAN,
Acting Secretary.

[FR Doc.77-1677 Filed 1-18-77;8:45 am]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing, Federal Housing Commissioner

[24 CFR Part 242]

[Docket No. R-76-374]

MORTGAGE INSURANCE FOR HOSPITALS

Withdrawal of Notice of Proposed Rulemaking

• *Purpose.* The purpose of this notice is to withdraw a proposed rule, R-76-374, (41 FR 10625) in which HUD proposed to amend § 242.57(b) of Part 242 to prohibit a mortgagee from accepting a letter of credit from nonprofit mortgagors in lieu of the cash deposit required by § 242.57(a)(1).•

Twenty-six comments were received before the deadline and numerous others were received afterwards. All of the comments were negative.

The main argument set forth in the comments was that allowing a letter of credit in lieu of a cash deposit is the most practical and least expensive manner for nonprofit hospital sponsors to raise funds for the 10 percent equity contribution based upon fund raising drives and the value of existing facilities rather than having to wait until cash is available for the 10 percent equity contribution and the costs of construction have escalated. Another primary comment stressed the overall success of the nonprofit hospital mortgage insurance program and the fact that the risks involved in a letter of credit rest with the mortgagee.

In view of the foregoing comments, HUD has determined that rulemaking action on the proposed amendment is not appropriate at this time and that the notice of proposed rulemaking should be withdrawn. The withdrawal of the proposal, however, does not preclude HUD from issuing similar notices in the future or commit HUD to any course of action.

In consideration of the foregoing, the proposed notice published in the FEDERAL REGISTER (41 FR 10625) on March 12, 1976, is hereby withdrawn.

Issued at Washington, D.C., January 11, 1977.

JOHN T. HOWLEY,
Acting Assistant Secretary for Housing, Federal Housing Commissioner.

[FR Doc.77-1718 Filed 1-18-77;8:45 am]

DEPARTMENT OF THE INTERIOR

National Park Service

[36 CFR Part 7]

DEVILS TOWER NATIONAL MONUMENT, WYO.

Climbing

Notice is hereby given that pursuant to the authority contained in section 3 of the Act of August 25, 1916 (39 Stat. 535, as amended; 16 U.S.C. 3), a Proclamation (No. 658) of September 24, 1906, 34 Stat. 3236, DMI, NPS Order No. 77 (38 FR 7478); Regional Director, Rocky Mountain Region Order No. 1 (39 FR 12369), it is proposed to add § 7.30 to Title 36 of the Code of Federal Regulations as set forth below.

The purpose of this addition is to establish restrictions on persons climbing Devils Tower. This has become necessary in order to adequately protect climbers on the tower and other nonclimbing monument visitors walking near the tower's base.

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions, or objections regarding the proposed amendment to the Superintendent, Devils Tower National Monument, Devils Tower, Wyoming, 82714, on or before February 18, 1977.

It is proposed to add § 7.30 to Title 36 as set forth below:

§ 7.30 Devils Tower National Monument.

(a) *Climbing.* Registration with a park ranger is required prior to any climbing above the talus slopes on Devils Tower. The registrant is also required to sign in immediately upon completion of a climb in a manner specified by the registering ranger.

HOMER A. ROBINSON,
Superintendent,
Devils Tower National Monument.

JANUARY 7, 1977.

[FR Doc.77-1647 Filed 1-18-77;8:45 am]

[36 CFR Part 7]

OLYMPIC NATIONAL PARK, WASH.

Snowmobile Use

Notice is hereby given that pursuant to the authority contained in Section 3 of the Act of August 25, 1916 (39 Stat. 535, as amended, 16 U.S.C. 3), and the Act of June 29, 1938 (52 Stat. 1241, as amended, 16 U.S.C. 251; 52 Stat. 1242, as amended, 16 U.S.C. 254); 245 DM 1 (34 F.R. 13879) as amended; National Park Service Order No. 77 (38 FR 7478) as amended; and Pacific Northwest Region Order No. 3 (37 FR 6325) as amended; it is proposed to amend Section 7.28 of Title 36 of the Code of Federal Regulations by adding a new paragraph (f) as set forth below.

The purpose of the proposed regulation is to designate routes for the use of snowmobiles as provided for by 36 CFR, Chapter 1, § 2.34(c). The criteria contained in Sections 3 and 4 of E.O. 11644 (37 FR 2877) have been used for guidance and other factors, such as visitor uses, safety, wildlife management, noise, erosion, geography, weather, vegetation, and resource protection were considered.

A written environmental assessment has been prepared with respect to the use of snowmobiles on the routes designated for their use. The assessment determines that the proposed Federal regulation is not a major federal action which will have a significant effect on the quality of human or natural environment. A copy of this assessment as approved on March 15, 1976, is on file and may be examined at the office of the Superintendent for the Olympic National Park and at the Pacific Northwest Regional Office of the National Park Service, Fourth and Pike Building, Seattle, Washington 98101.

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rule-making process. Accordingly, interested persons may submit written comments, suggestions, or objections with respect to the proposed amendment to the Superintendent, Olympic National Park, Port Angeles, Washington 98362, on or before February 18, 1977.

It is therefore proposed to amend 36 CFR § 7.28 by adding paragraph (f) in the manner set forth below:

§ 7.28 Olympic National Park.

• • • • •

(f) *Snowmobile use.* (1) Except as provided herein, all lands within Olympic National Park are closed to the use of snowmobiles. Snowmobiles may be used only on the following routes, as designated by the posting of appropriate signs, or by marking on a map available at the office of the Superintendent, or both:

(i) Staircase Road from the park boundary to the Staircase Ranger Station.

(ii) Dosewallips Road from the park boundary to the Dosewallips Ranger Station.

(iii) Whiskey Bend Road from the junction of Elwha Road to the Whiskey Bend trailhead.

(iv) Boulder Creek Road from Glines Canyon Dam to Boulder Creek Campground.

(v) Soleduck Road from the junction of U.S. 101 to the Soleduck trailhead.

(vi) North Fork Quinault Road from the end of the plowed portion to the North Fork Ranger Station.

(vii) South Shore Road from the end of the plowed portion to the Graves Creek Ranger Station.

(2) On roads designated for snowmobile use, only that portion of the roadway intended for wheeled vehicle use may be used by snowmobiles. Such roadway is available for snowmobile use only when the designated roadway is closed to all other public motor vehicle use.

Dated: December 14, 1976.

ROGER W. ALLIN,
Superintendent,
Olympic National Park.

[FR Doc.77-1646 Filed 1-18-77;8:45 am]

[36 CFR Part 7]

GRAND CANYON NATIONAL PARK, ARIZONA

Immobilized, Inoperable Vehicles

Notice is hereby given that pursuant to the authority contained in section 3 of the Act of August 25, 1916, (39 Stat. 535, as amended; 16 U.S.C. 3), section 2 of the Act of February 26, 1919, (40 Stat. 1177; 16 U.S.C. 222), section 2 of the Act of February 25, 1927, (44 Stat. 1240; 16 U.S.C. 221b), 245 DMI (34 FR 13879), National Park Service Order No. 77 (38 FR 7478) as amended, and Regional Director, Western Region Order No. 7 (37 FR 6326), it is proposed to amend § 7.4 of Title 36 of the Code of Federal Regulations as set forth below.

The purpose of this amendment is to establish regulations for storing immobilized and inoperable vehicles on government lands within the park. These regulations are necessary to discourage the development of hazardous conditions and physical and visual pollution of the area.

It is the policy of the Department of the Interior whenever applicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions, or objections regarding the proposed amendment to the Superintendent of Grand Canyon National Park, P.O. Box 129, Grand Canyon, Arizona 86023, on or before February 18, 1977.

It is proposed to amend § 7.4 of 36 CFR by the addition of a paragraph (i) as follows:

§ 7.4 Grand Canyon National Park.

• • • • •

(i) *Immobilized and legally inoperative vehicles.* (1) An immobilized vehicle is a motor vehicle which is not capable of moving under its own power due to equipment malfunction or deficiency. This term shall also include trailers whose wheels have been removed or which, for other reasons, cannot be immediately towed from their location, excluding trailers being used as residences which are occupying sites designated for this purpose by the Superintendent. A legally inoperative vehicle is a motor vehicle capable of movement under its own power, but not licensed to legally operate on roads.

(2) Leaving, storing, or placing upon federally owned lands within the park any immobilized or legally inoperative vehicle for a period exceeding 30 days is prohibited, except under the terms of a permit issued by the Superintendent.

(3) A revocable permit for an immobilized or legally inoperative vehicle may be issued without fee by the Superintendent for a specific period of time, upon a finding that the issuance of such a permit will not interfere with park management or impair park resources.

(i) Any permit issued will be valid for the period stated on the permit, unless otherwise revoked or terminated by the Superintendent, and will state the name and address of the owner, the description of the vehicle, and the exact location where it may be left, stored or placed.

(ii) The permittee will affix the permit securely and conspicuously to the vehicle.

(iii) The permit shall be nontransferable.

(iv) Any person issued a permit shall comply with all terms and conditions of the permit. Failure to do so will constitute cause for the Superintendent to terminate the permit at any time.

(v) A permit may be revoked at any time for the convenience of the National Park Service or upon a finding that continued authorization under the permit would interfere with park management or impair park resources.

(4) An immobilized or legally inoperative vehicle left in excess of 30 days without a permit will be removed at the owner's expense.

(5) An immobilized or legally inoperative vehicle constituting a safety hazard, causing an obstruction to roads or trails, or interfering with maintenance operations will be removed immediately at the owner's expense. Such interference or impairment may include, but shall not be limited to, the creation of a safety hazard, traffic congestion, visual pollution, or fuel and lubricant drip pollution.

(6) The Superintendent shall have the right of inspection at all reasonable times to ensure compliance with the requirements of this paragraph.

Dated: December 30, 1976.

MERLE E. STITT,
Superintendent, Grand
Canyon National Park.

[FR Doc.77-1634 Filed 1-18-77;8:45 am]

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 52]

[FRL 672-7]

ILLINOIS

Approval and Promulgation of State Implementation Plans; Emergency Episodes

On January 31, 1972, the State of Illinois submitted to the Administrator of the United States Environmental Protection Agency an implementation plan to achieve and maintain the National Ambient Air Quality Standards. The plan was approved by the Administrator on May 31, 1972 (37 FR 10862) with several exceptions, including disapproval of regulations pertaining to Prevention of Air Pollution Emergency Episodes. These deficiencies were corrected and the episode plan was fully approved on October 23, 1973 (38 FR 29297).

On April 9, 1976, the Illinois Pollution Control Board revised its emergency episode regulations after due notice and public hearings. The regulations (Illinois Pollution Control Board Regulations, Chapter 2, Part IV) took effect on April 19, 1976 and were submitted to U.S. Environmental Protection Agency (EPA) on July 22, 1976 as revisions to the Illinois State Implementation Plan (SIP).

The new regulations primarily address ozone episode situations, and would revise the plan as follows: (1) The regulations specifically state that Illinois Environmental Protection Agency has sole authority for declaring episode stages; (2) The requirement for a forecast of 24 hours of poor dispersion before an ozone episode can be declared has been revised to allow the declaration of an episode whenever specified ozone levels occur one day and are expected to recur the next day, or if an air stagnation advisory is received for any area within the State; (3) The term Ozone Advisory replaces the former designation of Ozone Watch, and is issued when a 2 hour average of 0.07 ppm of ozone is measured; (4) Episode stages have been set for concentration levels occurring for a one hour period at any monitoring station as follows: ozone yellow alert level has been raised from 0.10 to 0.17 ppm; ozone red alert level has been decreased from 0.40 to 0.30 ppm; ozone emergency level has been decreased from 0.60 to 0.50 ppm; (5) The regulations establish a procedure for filing emission reduction contingency plans and requirements for reduction of pollution levels during periods of high concentrations. Indirect sources of pollution such as large government agencies, parking garages, and fleet vehicle operations are included among sources required to file emission reduction contingency plans.

Approval of the revisions depends on their consistency with the requirements set forth in section 110(a)(2)(A)-(H) of the Clean Air Act, as amended, and the implementing regulations found in 40 CFR Part 51. The Administrator has received the submission and found it to be a necessary revision to the existing plan, and, therefore, proposes to approve the revised episode regulations.

The Administrator is announcing these proposed changes to the Illinois plan for the purpose of securing public comments. Any interested party may make a comment on the proposed rulemaking in writing by addressing correspondence to Region V's Air Programs Branch, Air and Hazardous Materials Division, 230 South Dearborn Street, Chicago, Illinois 60604. All comments received no later than thirty days from the date of this notice will be considered. Receipt of comments will be acknowledged.

Copies of the proposed regulations and public hearing transcript of hearings conducted by the State of Illinois are available for public inspection during normal working hours at the Illinois Pollution Control Board, 309 West Washington Street, Suite 300, Chicago, Illinois 60606. Copies of the proposed regulations are also available at the Illinois Environmental Protection Agency, 2200 Churchill Road, Springfield, Illinois, 62706; and at Air Programs Branch, Air and Hazardous Materials Division, EPA, Region V, 230 South Dearborn, Chicago, Illinois 60604.

Authority: 42 U.S.C. 1857c-5(a)

Dated: January 11, 1977.

GEORGE R. ALEXANDER, Jr.,
Regional Administrator.

[FR Doc.77-1624 Filed 1-18-77;8:45 am]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[43 CFR Part 2400]

ALASKA

Proposed Amendment of Principles and Procedures for Land Classifications

This proposed amendment of and addition to the regulations contained in Part 2400 of Title 43 of the Code of Federal Regulations is being made to add the authority for classification and reclassification of lands in Alaska contained in section 17(d)(1) of the Alaska Native Claims Settlement Act (43 U.S.C. 1616(d)(1)), and to place all classification criteria and procedures relating to lands in Alaska under the proposed Subpart (2480).

It is hereby determined that the publication of this proposed rulemaking is not a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document does not contain a major proposal requiring preparation of an inflation impact statement under Executive Order 11821 and OMB Circular A-1071.

In accordance with section 310 of the Federal Land Policy and Management Act of 1976, public participation is invited in rulemaking. Interested parties may submit written comments, suggestions, or objections with respect to the proposed rules to the Director (210, Bureau of Land Management, Department of the Interior, Washington, D.C., on or before February 22, 1977.

Copies of comments, suggestions, or objections made pursuant to this notice will be available for public inspection at the foregoing address during regular working hours (7:45 a.m. to 4:15 p.m.).

It is therefore proposed to revise Chapter II, Subchapter B, Group 2400 of 43 CFR as set forth below.

JACK O. HORTON,
Assistant Secretary of the Interior.

JANUARY 14, 1977.

PART 2400—LAND CLASSIFICATION

1. Section 2400.0-2 is amended by designating the existing paragraph as paragraph (a) and adding a new paragraph (b) to read as follows:

§ 2400.0-2 Objectives.

• • • • •

(b) Procedures for land classification in Alaka are contained in Subpart 2480 of this part.

§ 2400.0-3 [Amended]

2. Section 2400.0-3 is amended by deleting the words "in the case of Alaska" from the first sentence in paragraph (f).

3. Section 2400.0-3 is amended by deleting paragraph (h) and renumbering paragraphs (i) and (j) accordingly.

4. Part 2400 is amended by adding new Subparts 2480 to 2485 to read as follows:

Subpart 2480—Land Classification; Alaska

Sec.
2480.0-2 Objectives.
2480.0-3 Authority.
2480.0-4 Responsibility.
2480.0-5 Definitions.
2480.0-7 Applicability.

Subpart 2480—Land Classification; Alaska

§ 2480.0-2 Objectives.

Various statutes, many of which are cited in § 2480.0-3, authorize the Secretary of the Interior of classify Federal lands. The objectives of this subpart are (a) to specify those values and principles that will be considered in the exercise of the Secretary's authority and (b) to establish procedures for the prompt and efficient exercise of this authority with the knowledge and participation of interested parties, including the general public.

§ 2480.0-3 Authority.

The Secretary of the Interior, or his delegate, is authorized by 43 U.S.C. 2 to perform all executive duties in anywise respecting the public lands of the United States. He is also authorized by 43 U.S.C. 1624 to enforce and carry into execution by appropriate regulations every part of the provisions of the Alaska Native Claims Settlement Act (ANCSA). The following statutes, among others, authorize land classification by the Secretary:

(a) Section 17(d)(1) of the ANCSA (43 U.S.C. 1616(d)(1)) authorizes the

Secretary to classify or reclassify lands in Alaska withdrawn for classification and to open such lands to appropriation in accord with such classification. By various Public Land Orders, lands have been withdrawn from all forms of appropriation under the public land laws, including State selections (some exceptions); from location and entry under the mining laws, with some exceptions for locations for metalliferous minerals (30 U.S.C. Ch. 2); and from leasing under the Mineral Leasing Act of February 25, 1920, as amended (30 U.S.C. sections 187–287 (1970)). By these Orders, all such lands not otherwise withdrawn or appropriated are subject to classification and reclassification.

(b) The Recreation and Public Purposes Act, as amended (43 U.S.C. 869–869–4), authorizes the Secretary to classify lands for lease or sale for recreation or public purposes.

(c) The Act of August 30, 1949, as amended (43 U.S.C. 687b), authorizes the Secretary to sell at public auction lands that he classifies as suitable for industrial or commercial purposes, including construction of housing.

(d) Section 6(d) of the Wild and Scenic Rivers Act (16 U.S.C. 1277(d)) authorizes the Secretary to exchange federally owned property which he classifies as suitable for exchange or other disposal for nonfederal property within the authorized boundaries of any federally administered component of the national wild and scenic rivers system.

§ 2480.0–4 Responsibility.

Except where specified to the contrary in this subpart, the authority of the Secretary to classify lands and make other determinations in accordance with the regulations of this part has been delegated to officials of the Bureau of Land Management.

§ 2480.0–5 Definitions.

As used in the regulations of this subpart—

(a) "Agricultural" refers to the growing of cultivated crops; it does not include grazing or the production of native grasses or native forage plants.

(b) "Authorized Officer" refers to the head of a Bureau of Land Management field office who has been delegated authority to make classification decisions.

(c) "Bureau" means the Bureau of Land Management.

(d) "Classification" means a positive determination as to whether certain Federal lands will be subject to appropriation under specified law(s) or will remain in Federal ownership and control.

(e) "Appropriation" means, but is not limited to, grant, sale, exchange, selection, entry, or location for purposes of transfer of title from Federal ownership; or a lease under the Recreation and Public Purpose Act (43 U.S.C. 869, et seq.) or under the Act of May 24, 1928, as amended (49 U.S.C. 211–214).

(f) "Land Use Plan" means a plan, as of a given point in time, that sets out the future use(s) of the land based upon a systematic analysis of physical, environmental, and socioeconomic factors affecting the land.

(g) "Secretary" means the Secretary of the Interior.

(h) "State Director" means the Director of the Alaska State Office, Bureau of Land Management.

§ 2480.0–7 Applicability.

The regulations of this Subpart govern all classification of lands administered by the Bureau that are made pursuant to the authorities described in § 2480.0–3. They also apply to lands not administered by the Bureau where the head of the administering agency agrees and the specific classification authority applies; e.g., the Recreation and Public Purposes Act (43 U.S.C. 869, et seq.). Classification is a prerequisite to the approval of all appropriations and entries under the following parts, among others, of this chapter: Exchanges—Group 2200; Original, Additional, Second, Adjoining Farm, and Enlarged Homesteads in Alaska—Subparts 2511, 2512, 2513, 2514, and 2567; Indian Allotments—Part 2530; Trade and Manufacturing Sites—Subpart 2563; State Grants—Subpart 2627; Recreation and Public Purposes—Part 2740 and Subpart 2912; Airports—Subpart 2911.

Subpart 2481—Classification Principles

Sec.
2481.1 General.
2481.2 Requirements.

Subpart 2481—Classification Principles

§ 2481.1 General.

The authorities in § 2480.0–3 of Subpart 2480 of this part grant the Secretary full discretion, subject to statutory guidelines and limitations, to determine whether to classify any particular tract of Federal Lands for appropriation. The regulations in this subpart contain the principles and procedures which personnel of the Department of the Interior shall consider and follow in the exercise of land classification authority delegated to them by the Secretary.

§ 2481.2 Requirements.

(a) In arriving at the classification decision the authorized officer must find that the lands involved have the geographical, physical, and economic attributes to support the use or values upon which the classification decision is based.

(b) In arriving at a classification decision under the regulations of this part, the authorized officer shall consider:

(1) Federal uses, policies, programs and plans, including Bureau Land use plans and applicable policies and objectives set forth in Group 1700 of this chapter;

(2) State and local governmental uses, policies, programs, plans and laws, including zoning and other land use regulations, to the extent such are consistent with Federal uses, policies, programs and plans;

(3) Reasonably ascertainable present and potential uses and users of the lands;

(4) Environmental effects, including economic and social impacts;

(5) Relative scarcity of values that could be lost or impaired and availability of alternate means and sites for accommodation of those values;

(6) Effects on the administration of other public lands;

(7) The impact on resources utilized for subsistence purposes.

Subpart 2482—Classification for Appropriation

Sec.
2482.1 General.
2482.2 Relative values for types of appropriation.
2482.3 Lands classified for appropriation under particular laws.

Subpart 2482—Classification for Appropriation

§ 2482.1 General.

When lands are classified for appropriation, the classification decision shall specify the particular public land law(s) under which they may be appropriated and, where applicable, the particular type(s) of use and appropriation for which the lands will be open under such law(s).

§ 2482.2 Relative values for types of appropriation.

Where lands are found to have value for more than one type of nonfederal use or appropriation under more than one public land law, the law or laws specified in the classification decision shall be chosen so as to give the most benefit to the public, as determined by the authorized officer, with particular regard to the considerations in § 2481.2 (b) of Subpart 2481 of this part.

§ 2482.3 Classification for appropriation under particular laws.

(a) A Classification allowing appropriation for a homestead (Part 2510 and Subpart 2567 of this chapter) may be made if the lands are (1) chiefly valuable for agriculture, (2) suitable for development as a home and farm, (3) sufficient to provide an adequate return anticipated for the farm family, and (4) in an area where rainfall or groundwater and/or irrigation water is adequate and available under Alaskan law in sufficient quantity to permit agricultural development of the particular lands.

(b) A classification allowing appropriation for an Indian allotment (Part 2530 of this chapter) may be made if (1) the lands are chiefly valuable for agriculture, (2) the lands are, on the whole, suitable for a home, and (3) the anticipated agricultural use would support the allottee and the allottee's family.

(c) Needs in relation to subsistence living will be considered in investigations of the classification of lands for possible appropriation for headquarter sites, homesites, or trade and manufacturing sites (Subparts 2563 and 2562 of this chapter).

(d) The authorized officer will not finalize a proposed classification allowing appropriation solely for exchange unless the estimated fair market values of the offered and selected lands are approximately equal. Where the exceptions contained in section 17 of the Act of January 2, 1976 (89 Stat. 1156) are desired to be used by the authorized officer, the classification will not become final without the specific approval of the Secretary.

Subpart 2483.1—Applications

2483.1–1 Application or Bureau Motion.
2483.1–2 Filing.
2483.1–3 Rejection or suspension.
2483.1–4 Administrative Review.

Subpart 2483.2—Proposed Classification

2483.2–1 Commencement of Classification Action.
2483.2–2 Proposed Classification Decisions.
2483.2–3 Protests.

Subpart 2483.3—Classification

2483.3–1 Involving an environmental impact statement.
2483.3–2 In absence of protests.
2483.3–3 With protests.
2483.3–4 Classification by Secretary without certain procedures.
2483.3–5 Administrative Review.

Subpart 2483.1—Applications

§ 2483.1–1 Application or Bureau Motion.

Lands may be classified for appropriation in response to either an application for appropriation or on Bureau Motion.

§ 2483.1–2 Filing.

(a) An application must be on an approved form. Application forms and lists indicating the proper office for the filing of applications may be obtained from any office of the Bureau. All applications must be submitted in accordance with the applicable provisions of Subpart 1821 of this chapter and all other regulations concerning filing.

(b) The filing of an application gives no right to enter, occupy, or settle upon the lands.

(c) All filing fees which accompany applications submitted in accordance with the regulations of this Subpart shall be earned upon the filing of such applications with any office of the Bureau.

§ 2483.1–3 Rejection or suspension.

The classification authorities cited in § 2480.0–3, authorize classification action and applications requesting classification may be rejected without classification action at the discretion of the authorized officer or as provided by other regulations of this chapter.

(b) If the requested lands have already been classified and the application is for a type of appropriation not allowable by the existing classification, the application shall be rejected.

(c) An application for a type of appropriation not allowable under a proposed classification decision shall be suspended until the proposed decision is vacated or a final decision is issued.

(d) Applications shall also be rejected where the provisions of Subpart 2091 and other regulations of this chapter concerning segregation apply. However, applications shall not be rejected solely on the basis that the land is withdrawn pending classification under this Part.

(e) Upon finality of a classification decision, any inconsistent applications, which are then pending, will be rejected.

(f) Decisions rejecting applications will contain a statement giving the reasons for rejection and advising the applicant of corrective steps, if any, that may be taken.

(g) Upon finality of a decision rejecting an application, any advance payments on other such monies, except filing fees and reimbursement payments, submitted with the application will be returned or refunded.

§ 2483.1–4 Administrative review.

A rejection or suspension of an application pursuant to § 2483.3(a) through (e), supra, shall not be appealable to the Board of Land Appeals.

Subpart 2483.2—Proposed Classification

§ 2483.2–1 Commencement of classification action.

If an application is not rejected or suspended, or if the classification action is initiated by Bureau motion, the authorized officer shall proceed to examine the lands and prepare a proposed classification decision.

§ 2483.2–2 Proposed classification decision.

(a) Before issuing a proposed classification decision, the authorized officer shall determine whether the proposed action requires preparation of an environmental impact statement (an EIS) under section 102(2)(c) of the National Environmental Policy Act (43 U.S.C. 4332 (2)(c)). In those instances where he determines that an EIS is required, the authorized officer shall proceed to prepare an EIS based on the proposed classification decision.

(b) The authorized officer shall make and issue a proposed classification decision which shall (1) state whether the lands will be retained or offered for appropriation; (2) if appropriation, state the extent or under which authority(ies) appropriation will be allowed as provided in § 2482.1 of Subpart 2482 of this part; (3) state whether an EIS has been or is being prepared; (4) identify any and all applications filed for the land; (5) if no application has been filed and disposition is contemplated, state that the land will be open to application by all qualified persons on an equal-opportunity basis after public notice; (6) contain a statement of reasons in support of the decision proposed; and (7) specify a period of not less than 30 days during which protests shall be received. Should the authorized officer find good cause, the protest period may be shortened, and, if so shortened, the proposed decision shall contain the reason(s) in support of such lesser period of time.

(c) Such decisions shall be served upon (1) each applicant for use or appropriation of the land; (2) each permittee, licensee, or lessee using the land; (3) the local governing board, planning commission or other official body having land-use control authority in the area where the land is located; (4) any governmental officials or agencies from whom written comments concerning future use of the lands have recently been received; and (5) such other persons as the authorized officer deems appropriate.

(d) A proposed classification decision that would classify more than 2,560 acres shall be published in the FEDERAL REGISTER and in a newspaper having general circulation in the vicinity of the lands. A proposed classification decision for 2,560 acres or less may be also so published if it is deemed appropriate by the authorized officer.

(e) The authorized officer shall hold a public meeting on the proposal if the proposed classification is for more than 100,000 acres, or he determines that sufficient public interest exists to warrant the time and expense of a meeting.

§ 2483.2–3 Protests.

After a proposed classification decision has been issued, any interested party may file a written protest with the State Director during the period specified in the proposed decision. No particular form of protest is required. The protest must be sufficient to identify the specific proposed decision being protested.

Subpart 2483.3—Classification

§ 2483.3–1 Involving an environmental impact statement.

If, under § 2483.2–2(a) of Subpart 2483.2 of this part, it was determined that an EIS is necessary, no classification will become final until the final EIS has been filed. In such cases, the authorized officer shall issue a final classification notice or decision as appropriate.

§ 2483.3–2 In absence of protests.

If no protest is filed within the time allowed, the proposed classification shall become final, and the authorized officer shall serve a notice of final classification upon those served with the proposed decision. A notice shall also be published in the FEDERAL REGISTER and a local newspaper if the proposed decision was so published.

§ 2483.3–3 With protests.

If a protest to the proposed classification decision is timely filed, the following procedures shall apply:

(a) The protest shall be reviewed by the State Director. At the conclusion of the review, the State Director shall either vacate, affirm, or modify the proposed classification decision. Notice of his decision shall be served upon those served with the proposed classification decision and upon all protestants. It shall also be published in the FEDERAL REGISTER and a local newspaper if the proposed classification decision was so published.

(b) For a period of 30 days after service of the notice of the State Director's decision, any interested person may petition the Secretary for review. Notice of the filing of a petition with the Secretary

must be served on the State Director within the 30-day period.

(c) If within the 30-day period, the State Director does not receive notice of petition to the Secretary, the decision shall become the final classification decision.

(d) If a petition is timely received, including service on the State Director, the State Director's decision shall be suspended. Notice of suspension shall be given to the same persons and in the same manner as notice of the State Director's decision. Therefore, the Secretary shall make the final classification decision. Notice of the Secretary's action shall be given to the same persons and in the same manner as the notice of suspension.

§ 2483.3–4 Classification by Secretary without certain procedures.

Where the Secretary determines that the public interest would be served thereby, he may issue a final classification decision without following any or all of the procedures in §§ 2483.2–2(b) through 2483.2–3 of Subpart 2483.2 of this part and §§ 2483.3–2 and 2483.3–3 by publishing his decision in the FEDERAL REGISTER and a newspaper having general circulation in the vicinity of the lands being classified.

§ 2483.3–5 Administrative Review.

No person shall be entitled to any administrative review of a classification decision other than that provided by § 2483.3–3.

Subpart 2484—Opening of Lands

Sec.
2484.1 Preference rights.
2484.2 Appropriation in absence of preference rights.
2484.3 Right to enter, occupy, or settle.

Subpart 2484—Opening of Lands

§ 2484.1 Preference rights.

(a) No applicant shall have a preference right unless it is expressly provided by law.

(b) If it should be necessary for any reason to reject the application of the first applicant entitled to a preference right, other qualified applicants who filed prior to classification shall succeed to the preference right in order of filing.

§ 2484.2 Appropriation in absence of preference rights.

Where there is no preference right, the authorized officer shall, in accordance with the specifics of the classification:

(a) Seek application for the land from an applicant where there is only one possible qualified applicant, e.g., the State of Alaska.

(b) Publish a notice setting a time and place at which the land will be sold to the highest bidder.

(c) Publish a notice providing for a period during which applications may be filed, with the successful applicant to be determined by a drawing among all qualified applicants.

(d) In the event there is no response to the specific notices given in paragraphs (b) and (c) of this section, the authorized officer, in his discretion may cancel the classification or allow the classification to stand until the first qualified applicant submits a proper application, or the classification terminates for other reasons.

§ 2484.3 Right to enter, occupy, or settle.

(a) A classification for appropriation does not give a right to enter, locate, occupy, or settle upon the lands unless the classification decision expressly opens the lands. If a classification decision does not so provide, no person shall be entitled to possession or use of the land until otherwise expressly authorized by the authorized officer. Entry, location, occupancy, or settlement on the land prior to that time constitutes a trespass.

(b) After lands have been classified, all the laws and regulations governing the particular type of appropriation must be complied with in order for title to vest or other interest to pass. No final determination on whether an applicant has satisfied all requirements of law for appropriation need be made until the lands have been classified. No conveyancing instrument or lease shall be executed until the lands are opened.

Subpart 2485—Termination of Classification

§ 2485.1 Continuance.

A final classification shall continue in full force and effect until it is revoked, until it terminates by its own terms or by operation of law, or until the lands are reclassified. Lands may be reclassified at any time.

§ 2485.2 Recreation and public purpose classifications.

If no application is received for lands classified for appropriation under the Recreation and Public Purposes Act, as amended (43 U.S.C. 869—869–4), within 18 months of the date of classification, the classification shall automatically terminate.

[FR Doc.77–1731 Filed 1–18–77;8:45 a.m.]

Office of the Secretary

[43 CFR Part 29]

TRANS-ALASKA PIPELINE LIABILITY FUND

Establishment of Non-Profit Corporation

The United States Department of the Interior, in order to implement section 204(c) of the Trans-Alaska Pipeline Authorization Act, 43 U.S.C. 1653(c) (the Trans-Alaska Pipeline Liability Fund), proposes to adopt regulations pursuant to the Act for the purpose of establishing a non-profit corporate entity to be strictly liable without regard to fault for all damages sustained by any person or entity as a result of discharges of oil from vessels engaged in the coastwise transportation of oil from the terminal facilities of the Trans-Alaska Pipeline to a port under the jurisdiction of the United States. Specifically, the contents of these proposed regulations include directives for establishing, supervising, and administering the Trans-Alaska Pipeline Liability Fund within the requirements of section 204 (c) of the Act.

The Department of the Interior invites public comment on these proposed regulations so that they may be modified, where necessary and legally permissible, to fully reflect the needs of the public and parties affected by the provisions. Written comments should be submitted to the Office of the Secretary, U.S. Department of the Interior, 18th & C Streets, N.W., Washington, D.C. 20240, on or before March 7, 1977. Following the close of the comment period, and after review of the comments, the Secretary may amend these proposed regulations to reflect necessary and permissible changes. The Secretary shall then publish final regulations in the FEDERAL REGISTER.

THOMAS S. KLEPPE,
Secretary of the Interior.

It is proposed to add a new 43 CFR Part 29 as follows:

PART 29—TRANS-ALASKA PIPELINE LIABILITY FUND

Sec.
29.1 Definitions.
29.2 Creation of the fund.
29.3 Fund administration.
29.4 General powers.
29.5 Officers and employees.
29.6 Financing of the fund.
29.7 Imposition of strict liability.
29.8 Notification and advertisement.
29.9 Claims, settlement and adjudication.
29.10 Subrogation.
29.11 Investment.
29.12 Borrowing.
29.13 Termination.
29.14 Audit.

AUTHORITY: Sec. 204(c), Trans-Alaska Pipeline Authorization Act, 43 U.S.C. 1653(c).

§ 29.1 Definitions.

As used in this part:

(a) "United States" includes the various States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands.

(b) "Secretary" means the Secretary of the Interior or his authorized representatives.

(c) "Act" means the Trans-Alaska Pipeline Authorization Act, Title II of Pub. L. 93–153.

(d) "Trans-Alaska Pipeline System" means any pipeline or terminal facilities constructed by the Permittees.

(e) "Fund" means the Trans-Alaska Pipeline Liability Fund established as a non-profit corporate entity by Sec. 204 (c)(4) of the Trans-Alaska Pipeline Authorization Act.

(f) "Person" means an individual, a corporation, a partnership, an association, a joint stock company, a business trust, an unincorporated organization, or a Government entity.

(g) "Oil" means petroleum in any form including crude oil, refined products, and other liquid hydrocarbons which have been transported through the Trans-Alaska Pipeline System and loaded on a vessel at the terminal facilities of the pipeline.

(h) "Vessel" means any sea-going vessel of any type whatsoever, including floating craft, whether self-propelled or propelled by another vessel, constructed or adapted to carry crude oil or petroleum products in bulk in its cargo spaces, and includes combination carriers such as ore-bulk-oil and ore-oil carriers engaged in transportation of oil between the terminal facilities of the Trans-Alaska Pipeline System and ports under the jurisdiction of the United States.

(i) "Pipeline" means any pipeline in the Trans-Alaska Pipeline System.

(j) "Terminal facilities" means those facilities of the Trans-Alaska Pipeline System at which oil is taken from the pipeline and loaded on vessels or placed in storage for future loading onto vessels for transportation to ports under the jurisdiction of the United States.

(k) "Permittees" means the holders of the Pipeline right-of-way for the Trans-Alaska Pipeline System and includes the Amerada Hess Corporation, ARCO Pipe Line Company, BP Pipelines Inc., Exxon Pipeline Company, Mobil Alaska Pipeline Company, Phillips Petroleum Company, Sohio Pipeline Company, Union Alaska Pipeline Company, and successors in interest to any one or more of the aforenamed companies.

(l) "Owner" means, in the case of oil, the owner of the oil at the time that such oil is loaded on a vessel at terminal facilities in the State of Alaska for transportation to a port under the jurisdiction of the United States.

(m) "Operator of the Pipeline" means the person or persons to whom payments are made for the costs of transportation of oil through the Trans-Alaska Pipeline System.

(n) "Owner or operator" means, in the case of a vessel, any person owning, operating, or chartering by demise such vessel.

(o) "Incident" means any occurrence, or series of occurrences, which causes a discharge from a vessel of oil which is being or has been loaded at the pipeline terminal facilities with oil destined for a port under the jurisdiction of the United States.

(p) "Damage" means loss, injury or deterioration suffered by any person as a result of an incident.

(q) "Damage" means all legally compensable injuries or losses including but not limited to:

(1) The cost of preventive measures taken to avoid additional injury or loss arising from an incident.

(2) Oil removal and clean-up costs.

(3) Injury or loss to real or personal property.

(4) Injury or loss to natural resources.

(r) "Preventive measures" means any reasonable measures taken by any person after an incident has occurred, to prevent, minimize or mitigate damage stemming from the incident.

(s) "Claim" means a demand in writing for damages recoverable under this Part.

(t) "Affiliate" means:

(1) Any corporation that effectively controls or has the power to control another corporation by stock interest; or

(2) Any corporation which is under common ownership or control with another corporation.

§ 29.2 Creation of the fund.

(a) The Trans-Alaska Pipeline Liability Fund was created as a non-profit corporation to be administered by the holders of the Trans-Alaska Pipeline right-of-way under regulations prescribed by the Secretary.

(b) The Fund shall take all steps necessary to carry out its responsibilities under the Act, including registering or otherwise qualifying to do business in all states and territories of the United States that it may reasonably be expected to do business in.

(c) The Fund shall be subject to the provisions of the Act, these implementing regulations, and, to the extent consistent with this Act and regulations, to the laws and regulations of the states in which it is registered to do business.

(d) The right to repeal, alter, or amend these regulations is expressly reserved.

§ 29.3 Fund administration.

(a) The Fund shall be administered by a Board of Trustees designated by the Permittees and the Secretary as provided in (b) herein.

(b) The Board of Trustees shall be comprised of one member designated by each Permittee and one member designated by the Secretary. Each member of the Board of Trustees shall have the right to one vote. If additional persons become holders of rights-of-way, each such additional Permittee shall have the right to designate a Trustee. The Board shall elect a Chairman and a Secretary annually.

(c) The day-to-day operations of the Fund are subject to the direction of an Administrator elected by a majority vote of the Board of Trustees.

§ 29.4 General powers.

(a) The Fund shall have such powers as may be necessary and appropriate for the exercise of the powers herein specifically and impliedly conferred upon the Fund and all such incidental powers as are customary in non-profit corporations generally, including but not limited to the following:

(1) By resolution of the Board of Trustees, the Fund shall adopt a corporate seal.

(2) The Fund may sue and be sued in its corporate name and may employ counsel to represent it.

(3) The Fund shall be a resident of the State of Alaska with its principal place of business in Alaska, and the Board of Trustees shall establish a business office or offices as deemed necessary for the operation of the Fund.

(4) The Fund shall designate an agent to receive claims, in each state where a likelihood of damages resulting from the discharge of oil from a vessel transporting oil between the terminal facilities of the Pipeline and a port under the jurisdiction of the United States exists.

(5) The Board of Trustees of the Fund, subject to the approval of the Secretary, shall adopt and may amend and repeal bylaws governing the performance of its statutory duties.

(6) The Fund shall do all things reasonably necessary or advisable in conducting its activities as Trustee including (1) receipt of collections pursuant to Section 204(c)(6) of the Act; (2) payment of costs and expenses reasonably necessary to the administration of the Fund as well as costs required to satisfy claims against the Fund; (3) investment of all sums not needed for the administration and the satisfaction of claims in income producing securities as hereinafter provided; and (4) seeking recovery of any monies to which it is entitled as subrogee under circumstances set forth in Section 204(c)(8) of the Act.

(7) The Fund shall acquire, by purchase, lease, or donation such real and personal property and any interest therein, and shall sell, lease, hypothecate, or otherwise dispose of such real and personal property as may be necessary or desirable for the performance of its statutory duties.

(8) The Fund may conduct researches, surveys, and investigations relating to damage valuations from oil pollution and shall assemble data for the purpose of establishing reasonable damage evaluation criteria.

(9) The Fund shall determine the character of and the necessity for its obligations and expenditures, the manner in which they shall be incurred, allowed, and paid, and shall, through the Board of Trustees, establish an annual budget.

(10) All costs and expenses reasonably necessary to the administration of said Fund, including costs and expenses incident to the termination, settlement, or payment of claims, are properly chargeable as expenses and payable out of fees or other income of the Fund.

§ 29.5 Officers and employees.

(a) Administrator. The Administrator is the Chief Executive Officer of the Fund and is responsible for carrying out all executive and administration functions as authorized by the Board of Trustees, in accordance with the Act, including the receipt of funds collected from Owners of oil pursuant to Section 2(a) hereof, the investment of such funds in securities according to guidelines approved by the Board of Trustees and the Secretary, and the disbursement of such funds in payment of expenses and approved claims.

(b) The Fund shall employ such other persons as may be necessary to carry out its functions.

§ 29.6 Financing of the fund.

(a) The operator of the pipeline shall collect a fee of five cents per barrel from the owner of the oil at the time it is loaded on a vessel transporting such oil to a port under the jurisdiction of the United States. Such collection shall be transferred forthwith to the Fund. The collections shall cease when $100,000,000 has been accumulated in the Fund, and it shall be resumed when the accumulation in the Fund falls below $100,000,000.

(b) Costs of administration shall be paid from the money paid to the Fund, and all sums not needed for administration and the satisfaction of claims shall be invested in accordance with Section 1.10. The interest on and the proceeds from the sale of any obligations held in the Fund shall be credited to and form a part of the Fund. Income from such securities shall be added to the principal of the Fund if not used for costs of administration or settlement of claims.

(c) At the end of each month, or other agreed upon accounting period, the operator of the pipeline shall provide the Fund with a statement of the respective volumes of crude oil transported by the operator of the pipeline and delivered to vessels, the amount of fees charged, and the Owners from whom such fees were collected.

(d) At the end of each accounting period, the same proportion of the total expense of administering the Fund, including the payment of claims during such acounting period, shall be deducted from the balance of each Owner in the Fund as each Owner's balance in the Fund bears to the total of the balances of all Owners in the Fund on said date. At the end of each accounting period there shall be allocated to the balance of each Owner in the Fund the same proportion of Fund earnings during such accounting period as that Owner's balance in the Fund bears to the total of the balances of all Owners in the Fund on said date.

(e) The Fund shall provide an annual accounting showing the amounts paid into the Fund by each Owner, the proportionate share of income and expenses of the Fund attributable to each Owner, and the balance accumulated in the Fund attributable to each such Owner.

§ 29.7 Imposition of strict liability.

(a) Notwithstanding the provisions of any other law, if oil that has been transported through the Trans-Alaska Pipeline System is loaded on a vessel at the terminal facilities of the pipeline for transportation to a port under the jurisdiction of the United States, the owner and operator of the vessel (jointly and severally) and the Trans-Alaska Pipeline Liability Fund established by Section 204(c) of the Act, shall be strictly liable without regard to fault in accordance with that section for all damages including clean-up costs sustained by any person or entity, public or private, including residents of Canada, as the result of discharge(s) of oil from such vessel. Strict liability under the Act ceases when the oil is first brought ashore at a port under the jurisdiction of the United States including transportation to and beyond deepwater ports.

(b) Strict liability shall not be imposed under this Part if the owner or operator of the vessel, or the Fund, can prove that the damages were caused by an act of war or by the negligence of the United States or other governmental agency. Strict liability shall not be imposed under the Act with respect to the claim of a damaged party if the owner or operator of the vessel, or the Fund, can prove that the damage was caused by the negligence of such damaged party.

(c) Strict liability for all claims arising out of any one incident shall not exceed $100,000,000. The owner and operator of the vessel shall be jointly and severally liable for the first $14,000,000 of such claims that are allowed. The Fund shall be liable for the balance of the claims that are allowed up to $100,000,000. If the total claims allowed exceed $100,000,000, they shall be reduced proportionately. The unpaid portion of any claim may be asserted and adjudicated under other applicable Federal or State law.

(d) The owner or operator of a vessel carrying oil in bulk as cargo between terminal facilities of the pipeline and ports under the jurisdiction of the United States shall establish financial responsibility in the amount of $14,000,000 to cover any liability for damages which may arise under the Act. Financial responsibility for $14,000,000 shall be established in accordance with the provisions of Section 311(p) of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1321(p)) to the extent such provisions are consistent with the purposes of the Act. Financial responsibility shall be demonstrated before a vessel is loaded with oil. Specific requirements for demonstration of financial responsibility shall be set forth in Port Rules established pursuant to the Agreement and Grant of Right-of-Way for Trans-Alaska Pipeline between the United States of America and the Permittees.

§ 29.8 Notification and advertisement.

(a) Notification of spills and claims against operators will be made to the Fund in accordance with the Port Rules.

(b) When the Fund receives information from any person of an incident involving the discharge of oil, and it is reasonably anticipated that damages, including clean-up costs, may exceed $14,000,000, the Fund shall, where possible, designate the source or sources of the discharge, immediately notify the owner or operator of any vessel designated as the source of a discharge, and advertise the designation and the procedures by which claims for damages may be presented to the Fund. This advertisement is in addition to any notification required of the owner or operator of the vessel under Section 311(b)(5) of the Federal Water Pollution Control Act Amendments of 1972 and the regulations of the U.S. Coast Guard (33 CFR § 153.203).

(c) Advertisement under subsection (b) shall commence no later than fifteen days from the date of the designation by the corporation and shall continue for a period of not less than thirty days.

§ 29.9 Claims, settlement and adjudication.

(a) Any claim submitted to the Fund must contain the following information:

(1) A detailed statement of the circumstances, if known, in which the claimed loss occurred.

(2) Proof of ownership of the property interest which is the subject of the claim; and

(3) A detailed statement of the amount claimed as damages with respect to each item of property.

(b) The Port Rules will provide for notification to the Fund of the intent of operators to settle claims against the operators under the Act.

(c) The Fund may settle or compromise at any time any claim asserted against it if such settlement or compromise is approved at a meeting of the Board of Trustees by a majority vote of the Board present and voting. The Board of Trustees may at a meeting by a majority vote of those present and voting delegate to the Administrator the authority to compromise or settle all claims or certain classes of claims asserted against the Fund.

(d) The Administrator shall agree to submit a claim to binding arbitration by, and in accordance with the rules of, the American Arbitration Association, if the owner and operator of the vessel and the claimant shall so agree with respect to the first $14,000,000 claimed. The Fund shall be a party to any such arbitration and shall be bound by its results.

(e) (1) In any action arising under section 204(c) of the Act and brought in the United States District Court, if the Fund has not been named as a defendant and served with process in such action as provided in Rule 4 of the Federal Rules of Civil Procedure, the Fund may move to intervene in said action as provided in Rule 24 of the Federal Rules of Civil Procedure. If the Administrator determines that all claims arising from the incident which provides the basis for the plaintiff's claim in such action could in the aggregate exceed $14,000,000, the Fund shall move to intervene in such action.

(2) If an action arising under section 204(c) of the Act is commenced in a state court and the Fund is not named as a defendant and served with process in accordance with applicable state law, the Fund may move to intervene in such action. If the Administrator determines that all claims arising from the incident which provides the basis for plaintiff's claim in such action could in the aggregate exceed $14,000,000, the Fund shall move to intervene in such action.

(3) If the Fund is a defendant in an action described in paragraph (e)(2), whether after intervention or otherwise, it shall file those pleadings required by 28 U.S.C. 1446 in a United States District Court for the district and division in which the state court is located and seek to remove such action to such United States District Court.

(f) In any action in which the Fund is a defendant it shall timely file and serve a summons and third party complaint upon and otherwise seek to implead any person who may be liable to the Fund for all or any part of the damages claimed.

(g) No provision contained in these Regulations shall operate as a limitation upon the Fund's right to seek to recover by counterclaim, cross-claim, or a claim made in a civil action which it brings, or otherwise, those amounts which the Administrator determines are owed to the Fund.

(h)(1) The Fund, subject to the approval of the Secretary, shall establish uniform procedures and standards for the appraisal and settlement of claims against the Fund.

(2) The Fund may use the facilities and services of private insurance and claims adjusting organizations in administering this Part and may contract to pay compensation for those facilities and services.

§ 29.10 Subrogation.

If the Fund pays compensation to any claimant, the Fund shall be subrogated to all rights, claims, and causes of action which that claimant has to the extent permitted by law.

§ 29.11 Investment.

(a) The monies accumulated in the Fund shall be prudently invested in types of income-producing securities having a high degree of reliability and security as approved by the Secretary, such as:

(1) Fixed income securities issued by the United States or any of its agencies, at the same interest rates and terms available to private investors; and

(2) Fixed income securities which have a rating by Standard and Poors of at least "AAA" or an equivalent rating.

Provided, however, that no securities of the Permittees or their affiliates may be purchased or held by the Fund.

(b) No more than two percent of the total market value of all securities issued by a corporation may be held by the Fund at any one time.

(c) The Fund may retain one or more investment advisors to assist it in maintaining a satisfactory investment portfolio.

(d) The Secretary will review the Fund's portfolio at least once each year and may direct any changes in investment necessary to maintain the integrity of the Fund, such changes to be consistent with these Regulations and with any guidelines approved by the Board of Trustees and the Secretary.

§ 29.12 Borrowing.

In the event the Fund is unable to satisfy a claim determined to be justified, the Fund may borrow money needed to satisfy the claim from any commercial credit source at the lowest available rate of interest. If the amount to be borrowed is less than $500,000, the Administrator may arrange to pledge the credit of the Fund pursuant to a resolution of the Board of Trustees. If the proposed borrowing exceeds $500,000, the Administrator shall, prior to issuance of a note or other security pledging the credit of the Fund, secure the approval of the Secretary. No money may be borrowed from any of the Permittees or their affiliates.

§ 29.13 Termination.

Upon termination of operations of the pipelines, the full disposition of all claims, and the expiration of time for the filing of claims against the Fund, all monies remaining in the Fund shall be distributed to those persons from whom fees were collected on the basis of their respective balances in the Fund. If, at the time of termination, there are claims pending against the Fund, a reasonable reserve fund shall be set aside to cover probable costs of disposing of such claims and the balance shall be distributed as provided in this section.

§ 29.14 Audit.

The Fund shall be audited annually by the Comptroller General and the Secretary. Authorized representatives of the Comptroller General and the Secretary shall, during normal business hours, have complete access to all books, accounts, financial records, reports, files, and all other papers, things, or property belonging to or in use by the Fund and necessary to facilitate the audit, and they shall be afforded full facilities for verifying, among other things, transactions with the balances on securities held by depositories, fiscal agents, and custodians. A report of each audit made by the Comptroller General shall be submitted to the Congress.

[FR Doc.77-1577 Filed 1-18-77;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Child Support Enforcement

[45 CFR Part 304]

GRANTS TO STATES FOR PUBLIC ASSISTANCE PROGRAMS

Repayment of Federal Funds by Installments

Notice is hereby given that the regulations set forth in tentative form below are proposed by the Director, OCSE, with the approval of the Secretary of Health, Education, and Welfare. The proposed regulations would enable a State to make repayment of Federal funds by installments when it has claimed and been paid a significant amount of Federal funds, under the public assistance programs, for expenditures which are later determined to be unallowable for Federal financial participation.

Purpose: To incorporate in the regulations specific criteria for determining (1) when a State may be authorized to repay by quarterly installments Federal funds due the Federal Government and (2) the amount of the quarterly installments. Until such time as final regulations are issued, OCSE will consider negotiation of installment repayment agreements with States, and will use the criteria in this proposed regulation as guidelines.

Basis: Social and Rehabilitation Service today (at 42 FR 3664) is proposing an amendment to 45 CFR Part 201, to provide for repayment of such funds by installment. To maintain a consistent and uniform policy, OCSE is proposing to amend 45 CFR Part 304, to provide an identical installment repayment scheme. The Background and Basis statement contained in the SRS proposal is equally applicable to this proposed amendment.

Prior to the adoption of the proposed regulation, consideration will be given to any comments, suggestions, or objections thereto which are submitted in writing to the Director, OCSE, Department of Health, Education, and Welfare, Post Office Box 2366, Washington, D.C. 20013, on or before March 7, 1977. Comments received will be available for public inspection in Room 5225 of the Department's offices at 330 C Street SW., Washington, D.C. on Monday through Friday of each week 8:30 a.m. to 5 p.m. (area code 202-245-0950).

Answers to specific questions may be obtained by calling Kent Dickson (area code 202) 245-1738.

(Sec. 1102, 49 Stat. 647 (42 U.S.C. 1302).)

(Catalog of Federal Domestic Assistance Program No. 13.679, Child Support Enforcement Program.)

Dated: December 27, 1976.

ROBERT FULTON,
Director, Office of Child Support Enforcement.

Approved: January 13, 1977.

MARJORIE LYNCH,
Acting Secretary.

Part 304, Chapter III, Title 45 of the Code of Federal Regulation is amended by adding a new § 304.40 to read as follows:

§ 304.40 Repayment of Federal funds by installments.

(a) *Basic Conditions.* When a State has been reimbursed Federal funds for expenditures claimed under title IV-D, which is later determined to be unallowable for Federal financial participation, the State may make repayment of such Federal funds in installments provided: (1) The amount of the repayment exceeds 2½ percent of the estimated annual State share of expenditures for the IV-D program as set forth in paragraph (b) of this section; and (2) The State has notified the OCSE Regional Representative in writing of its intent to make installment repayments. Such notice must be given prior to the time repayment of the total was otherwise due.

(b) *Criteria governing installment repayments.* (1) The number of quarters over which the repayment of the total unallowable expenditures will be made will be determined by the percentage the total of such repayment is of the estimated State share of the annual expenditures for the IV-D program as follows:

Total repayment amount as percentage of State share of annual expenditures for the IV–D program	*Number of quarters to make repayment*
2.5 percent or less	1
Greater than 2.5, but not greater than 5	2
Greater than 5, but not greater than 7.5	3
Greater than 7.5, but not greater than 10	4
Greater than 10, but not greater than 15	5
Greater than 15, but not greater than 20	6
Greater than 20, but not greater than 25	7
Greater than 25, but not greater than 30	8
Greater than 30, but not greater than 47.5	9
Greater than 47.5, but not greater than 65	10
Greater than 65, but not greater than 82.5	11
Greater than 82.5, but not greater than 100	12

The quarterly repayment amounts for each of the quarters in the repayment schedule shall not be less than the following percentages of estimated State share of the annual expenditures for the program against which the recovery is made.

For each of the following quarters:	*Repayment installment may not be less than these percentages than these percentages*
1 to 4	2.5
5 to 8	5.0
9 to 12	17.5

If the State chooses to repay amounts representing higher percentages during the early quarters, any corresponding reduction in required minimum percentages would be applied first to the last scheduled payment, then to the next to the last payment, and so forth as necessary.

(2) The latest OCSE–OA–25 submitted by the State shall be used to estimate the State's share of annual expenditures for the IV–D program. That estimated share shall be the sum of the State's share of the estimates (as shown on the latest OCSE–OA–25) for four quarters, beginning with the quarter in which the first installment is to be paid.

(3) In case of termination of the program, the actual State share—rather than the estimate—shall be used for determining whether the amount of the repayment exceeds 2½ percent of the annual State share for the IV–D program. The annual State share in these cases will be determined using payments computable for Federal funding as reported for the program by the State on its Quarterly Statement of Expenditures (SRS–OA–41) reports submitted for the last four quarters preceding the date on which the program was terminated.

(4) Repayment shall be accomplished through adjustment in the quarterly grants over the period covered by the repayment schedule.

(5) The amount of the repayment for purpose of paragraphs (a) and (b) of this section may not include any amount previously approved for installment repayment.

(6) The repayment schedule may be extended beyond 12 quarterly installments if the total repayment amount exceeds 100% of the estimated State share of annual expenditures.

In these circumstances, the criteria in paragraphs (b) (1) and (2) or (3) of this section, as apropriate, shall be followed for repayment of the amount equal to 100% of the annual State share. The remaining amount of the repayment shall be in quarterly amounts not less than those for the 9th through 12th quarters.

(7) The amount of a retroactive claim to be paid a State will be offset against any amounts to be, or already being, repaid by the State in installments, under the same title of the Social Security Act. Under this provision the State may choose to:

(i) Suspend payments until the retroactive claim due the State has, in fact, been offset; or

(ii) Continue payments until the reduced amount of its debt (remaining after the offset), has been paid in full. This second option would result in a shorter payment period.

A retroactive claim for the purpose of this regulation is a claim applicable to any period ending 12 months or more prior to the beginning of the quarter in which the payment is to be made by the Service.

(8) Interest on repayments will not be charged unless mandated by court order.

[FR Doc.77–1597 Filed 1–18–77;8:45 am]

Social and Rehabilitation Service

[45 CFR Part 201]

GRANTS TO STATES FOR PUBLIC ASSISTANCE PROGRAMS

Repayment of Federal Funds by Installments

Notice is hereby given that the regulations set forth in tentative form below are proposed by the Administrator, Social and Rehabilitation Service, with the approval of the Secretary of Health, Education, and Welfare. The proposed regulations would enable a State to make repayment of Federal funds by installments when it has claimed and been paid a significant amount of Federal funds, under the public assistance programs, for expenditures which are later determined to be unallowable for Federal financial participation.

Purpose: To incorporate in the regulations specific criteria for determining (1) When a State may be authorized to repay by quarterly installments Federal funds due the Federal Government and (2) The amount of the quarterly installments. Until such time as final regulations are issued, SRS will consider negotiation of installment repayment agreements with States, and will use the criteria in this proposed regulation as guidelines.

Background and Basis: State agencies owing the Federal Government significant amounts of Federal funds for unallowable claims for which they have been paid are requesting that they be authorized to make repayment in installments over a period of time. The Social and Rehabilitation Service shares the concern of State agencies with respect to repayment of Federal funds funds and realizes that immediate repayment of the entire amount in certain instances could result in extreme hardship for the public assistance programs being administered by the State and have an adverse effect on the recipients of these programs.

The proposed 12-quarter time period for repayment is similar to the time period in regulations implementing the Federal Claims Act (4 CFR, Chapter II, Parts 101–105), which generally limits the repayment of a debt due the Federal Government to 3 years. However, an exception to the 12-quarter time period would be provided when amounts due exceed the State's share of annual expenditures for the program to which the disallowance applies.

The proportions of the annual State share used to determine the proposed amounts of quarterly installments (2½% for each of the first 4 quarters; 5% for each of the second 4 quarters; and 17½% for each the last 4 quarters) take into account the fact that most State legislatures would need time to enact appropriations to repay significant amounts. Under the proposed schedule, 70% of the repayment would not be due until the third year. The 2½% for each of the first 4 quarters is intended to keep the repayment low but more than a mere token amount.

The State share of estimated annual expenditures (rather than the Federal share) was used for calculating the installment repayment percentages for the 12 quarters because repayments must be made from State funds and such repayments in excess of 2½ percent of a State's annual share of a program is considered to be a hardship situation in light of the amount of expenditures for SRS programs.

The Service considered establishing a repayment schedule based on dividing the total disallowance by the number of quarters over which the improper claims were made. A repayment schedule established on this basis would not enable a State to make smaller quarterly installments during the first quarters of the repayment period. It might not provide time for a State to reprogram its funds or to enact appropriations before large amounts must be repaid. Furthermore, there is little, if any, correlation between the total repayment and the number of quarters over which the improper claims were made. As a result of using that number of quarters the installments might be too large. It is believed that the procedure set forth in the proposed regulation will enable repayment with the least adverse effect on the State and the recipients of the public assistance programs.

The proposed regulation also provides that the amount of any retroactive claim to be paid a State under a particular title of the Act will be offset against any balance due SRS from such State on any installment repayment plan resulting from a disallowance under the same title.

The basis for this provision is the Department's belief that it is the equitable way of handling such situations and is completely consistent with usual commercial practices. States would be given the choice of suspending payments equal to the offset amount, or continuing to pay installments until the reduced amount of their debt (remaining after the offset), has been paid in full.

Prior to the adoption of the proposed regulation, consideration will be given to any comments, suggestions, or objections thereto which are submitted in writing to the Administrator, Social and Rehabilitation Service, Department of Health, Education, and Welfare, Post Office Box 2366, Washington, D.C. 20013, on or before March 7, 1977. Comments received will be available for public inspection in Room 5225 of the Department's offices at 330 C Street SW., Washington, D.C., on Monday through Friday of each week 8:30 a.m. to 5 p.m. (area code 202–245–0950).

Answers to specific questions may be obtained by calling Kent Dickson, (area code 202) 245–1738.

(Section 1102, 45 Stat. 647 (45 U.S.C. 1302).)

(Catalog of Federal Domestic Assistance 13.714—Medical Assistance Program; 13.724—Public Assistance—State and Local Training; 13.748—Work Incentive Program—Child Care—Employment Related Supportive Services; 13.754—Public Assistance—Social Services; 13.761—Public Assistance—Maintenance Assistance (State Aid); and 13.711—Social Services for Low Income and Public Assistance Recipients.)

Dated: October 8, 1976.

ROBERT FULTON,
Administrator, Social and Rehabilitation Service.

Approved: January 13, 1977.

MARJORIE LYNCH,
Acting Secretary.

Part 201, Chapter II, Title 45 of the Code of Federal Regulation is amended by adding a new § 201.66 to read as follows:

§ 201.66 Repayment of Federal funds by installments.

(a) *Basic Conditions.* When a State has been reimbursed Federal funds for expenditures claimed under titles I, IV–A, VI, X, XIV, XVI (AABD), XIX or XX which are later determined to be unallowable for Federal financial participation, the State may make repayment of such Federal funds in installments provided:

(1) The amount of the repayment exceeds 2½ percent of the estimated annual State share for the program in which the unallowable expenditure occurred as set forth in paragraph (b) of this section; and

(2) The State has notified the SRS Regional Commissioner in writing of its intent to make installment repayments. Such notice must be given prior to the time repayment of the total was otherwise due.

(b) *Criteria governing installment repayments.* (1) The number of quarters over which the repayment of the total unallowable expenditures will be made will be determined by the percentage the total of such repayment is of the estimated State share of the annual expenditures for the specific program against which the recovery is made, as follows:

Total repayment amount as percentage of State share of annual expenditures for the specific program	*Number of quarters to make repayment*
2.5 pct. or less	1
Greater than 2.5, but not greater than 5	2
Greater than 5, but not greater than 7.5	3
Greater than 7.5, but not greater than 10	4
Greater than 10, but not greater than 15	5
Greater than 15, but not greater than 20	6
Greater than 20, but not greater than 25	7
Greater than 25, but not greater than 30	8
Greater than 30, but not greater than 47.5	9
Greater than 47.5, but not greater than 65	10
Greater than 65, but not greater than 82.5	11
Greater than 82.5, but not greater than 100	12

The quarterly repayment amounts for each of the quarters in the repayment schedule shall not be less than the following percentages of the estimated State share of the annual expenditures for the program against which the recovery is made.

For each of the following quarters:	*Repayment installment may not be less than these percentages*
1 to 4	2.5
5 to 8	5.0
9 to 12	17.5

If the State chooses to repay amounts representing higher percentages during the early quarters, any corresponding reduction in required minimum percentages would be applied first to the last scheduled payment, then to the next to the last payment, and so forth as necessary.

(2) The latest SRS–OA–25 submitted by the State shall be used to estimate the State's share of annual expenditures for the specific program in which the unallowable expenditures occurred. That estimated share shall be the sum of the State's share of the estimates (as shown on the latest SRS–OA–25) for four quarters, beginning with the quarter in which the first installment is to be paid.

(3) In the case of a program terminated by law or by the State, the actual State share—rather than the estimate—shall be used for determining whether the amount of the repayment exceeds 2½% of the annual State share for the program. The annual State share in these cases will be determined using payments computable for Federal funding as reported for the program by the State on its Quarterly Statement of Expenditures (SRS–OA–41) reports submitted for the last four quarters preceding the date on which the program was terminated.

(4) Repayment shall be accomplished through adjustment in the quarterly grants over the period covered by the repayment schedule.

(5) The amount of the repayment for purpose of paragraphs (a) and (b) of this section may not include any amount previously approved for installment repayment.

(6) The repayment schedule may be extended beyond 12 quarterly installments if the total repayment amount exceeds 100% of the estimated State share of annual expenditures.

In these circumstances, the criteria in paragraphs (b) (1) and (2) or (3) of this section, as appropriate, shall be followed for repayment of the amount equal to 100% of the annual State share. The remaining amount of the repayment shall be in quarterly amounts not less than those for the 9th through 12th quarters.

(7) The amount of a retroactive claim to be paid a State will be offset against any amounts to be, or already being, repaid by the State in installments, under the same title of the Social Security Act. Under this provision the State may choose to:

(i) Suspend payments until the retroactive claim due the State has, in fact, been offset; or

(ii) Continue payments until the reduced amount of its debt (remaining after the offset), has been paid in full. This second option would result in a shorter payment period.

A retroactive claim for the purpose of this regulation is a claim applicable to any period ending 12 months or more prior to the beginning of the quarter in which the payment is to be made by the Service.

(8) Interest on repayments will not be charged unless mandated by court order.

[FR Doc.77–1596 Filed 1–18–77;8:45 am]

[45 CFR Part 249]

MEDICAL ASSISTANCE PROGRAM

Long-Term Care Facilities; Termination of Federal Financial Participation

Notice is hereby given that the regulation set forth in tentative form below is proposed by the Administrator, Social and Rehabilitation Service, with the approval of the Secretary of Health, Education, and Welfare. The purpose of the proposed amendment is to clarify the circumstances in which Federal financial participation (FFP) will no longer be available in State payments to skilled nursing facilities (SNFs) or intermediate care facilities (ICFs) under the Medicaid program (title XIX, Social Security

Act). The facilities involved are those whose provider agreements for participation in the Medicaid program expire or are otherwise cancelled or denied under the provisions of 45 CFR 249.33(a) (4), (5) or (6). The proposed amendment with respect to SNFs participating in both Medicare (title XVIII) and Medicaid also clarifies the effect on continued Medicaid participation, under the provisions of 45 CFR 249.33(a) (9), when the facility's Medicare provider agreement expires or is otherwise cancelled.

With respect to SNF providers participating under Medicaid only and ICF providers, the proposed regulation requires that the State Medicaid plan provide for a hearing and appeal procedure for providers who are denied certification or whose existing certification is cancelled by the State survey agency. The regulations further provide for hearing and appeal procedures for providers who are denied an initial or new provider agreement or whose existing provider agreement is cancelled by the Medicaid agency during a contractual period for reasons other than certification action taken by the State survey agency.

The provisions contained in the proposed addition of paragraph (a) (11) to § 249.33 include appeals in those instances where certification is denied or cancelled on the basis of a survey (certification) agency determination that a facility does not quality as a provider of services under the standards established in § 249.33(a) (1) (i) or (2). State Medicaid interagency agreements under the provisions of § 250.100(c), therefore, should be modified, as necessary, to clearly assure a State survey agency hearing and appeal mechanism in accordance with proposed provisions of (a) (11) (i) in those instances where certification is denied or cancelled by that agency under the program.

The provisions contained in the proposed addition of paragraph (a) (11) to § 249.33 also includes appeals in those instances where a provider agreement is denied or cancelled by the Medicaid agency for reasons other than certification as provided for under the "good cause" provisions of paragraph (a) (6) of § 249.33.

In cases of certification and provider agreement denial or cancellation, an informal reconsideration must be made available before the cognizant agency takes such action and, upon request, an administrative hearing must be provided within four months prior or subsequent to the date of denial or cancellation. Since the facts used to determine such denials or cancellations have already been documented during the survey agency certification process or during the Medicaid agency's determination of "good cause" for not executing an agreement, the four-month hearing time frame appears to meet the interests both of provider equity and the proper and efficient administration of the State's Medicaid program.

Federal financial participation will not be available as of the effective date of a survey agency certification expiration or cancellation or in the absence, for any other reason, of a valid provider agreement. If the decision in either hearing and appeal proceedings is in the provider's favor, FFP would be available retroactively to the effective date of a valid provider agreement executed in accordance with the provisions of 45 CFR 249.33 (a) (6). For example, in the case of a facility desiring to enter the program which is denied survey agency certification and subsequent Medicaid Agency issuance of a provider agreement and the certification denial is then overturned by appeal, a provider agreement could be considered valid retroactively for purposes of FFP effective from, but not prior to, the date of the denial of certification. In the case of a provider agreement which is terminated by an automatic cancellation clause, (45 CFR 249.33(a) (4) (ii) (B)) and the survey agency appeal process results in the facility's favor, a provider agreement could be recognized as valid retroactively for the entire term of the original contractual period. Where an appeal of an automatic cancellation clause overlaps a recertification, FFP would also be available on a continuous basis provided that the State and the facility promptly execute a provider agreement retroactive to the date of the expiration (without giving effect to the cancellation clause) of the previous provider agreement and based upon valid survey data and retroactive recertification.

With respect to SNFs whose Medicaid participation is predicated upon Medicare certification, existing regulations are clarified to specify that the effective date of the Medicare agreement's expiration or cancellation must also be the effective date for expiration or cancellation of the Medicaid agreement. As of such date, Federal financial participation will no longer be available in the State Medicaid payments to the facility.

Furthermore, the proposed regulation requires that Medicaid appeal of any denial or cancellation of a certification or provider agreement with respect to such joint Medicare-Medicaid facilities is available only through the Medicare procedures described at 20 CFR Part 405 Subpart 0 for purposes of participation in both programs. These procedures are available after the date of denial or cancellation, and Federal financial participation is not available during any period in which a valid provider agreement is not in effect (§ 249.10(b) (4)), regardless of the status of any appeal then pending. If the decision in the hearing and appeal procedure is in the provider's favor, Federal financial participation would be available retroactively.

The basis for the proposed changes, with respect to joint Medicaid-Medicare facilities, is section 1910 of the Act, which provides that facilities certified under title XVIII are deemed to be certified under title XIX. Consequently a facility's certification status under Medicare determines its status for purposes of a Medicaid provider agreement. With respect to Medicaid-only facilities, the basis for these amendments is the Secretary's determination that policies similar to those for joint facilities should apply, that Federal payments should not be made in the absence of a valid and inforce provider agreement, and that facilities are entitled to a reasonable opportunity for review of adverse actions.

Prior to the adoption of the proposed regulation, consideration will be given to written comments, suggestions or objections thereto addressed to the Administrator, Social and Rehabilitation Service, Department of Health, Education, and Welfare, P.O. Box Washington, D.C. 20013, and received on or before March 7, 1977. In order to assure prompt handling of comments, please refer to MSA–159—P. Agencies and organizations are requested to submit their comments in duplicate.

Such comments will be available for public inspection in Room 5223 of the Department's offices at 330 C Street, SW., Washington, D.C., beginning approximately two weeks after publication of this Notice in the FEDERAL REGISTER, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (area code 202–245–0950). Answers to specific questions may be obtained by calling Robert Silva, 202–245–0425.

(Section 1102, 49 Stat. 647 (42 U.S.C. 1302). (Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program))

NOTE.—It is hereby certified that the economic and inflationary effects of this proposal have been carefully evaluated in accordance with Executive Order No. 11821.

Dated: January 10, 1977.

ROBERT FULTON,
Administrator, Social and Rehabilitation Service.

Approved: January 13, 1977.

MARJORIE LYNCH,
Acting Secretary.

Part 249, Chapter, II, Title 45 of the Code of Federal Regulations is amended as set forth below:

1. Section 249.10 is amended by revising paragraphs (b) (4) (i) (C) and (b) (15) (v) as set forth below:

§ 249.10 Amount, duration and scope of medical assistance.

* * * * *

(b) *Federal financial participation.*

* * *

(4) (i) * * *.

(C) Provided by a facility or distinct part of a facility which is certified to meet all of the requirements for participation pursuant to § 249.33 as evidenced by an agreement, executed in accordance with the certification provisions of § 249.33, between the single State agency and the facility for the provision of skilled nursing facility services and the making of payments under the plan; except that with respect to skilled nursing facility services furnished by a skilled nursing facility whose provider agreement has expired or has otherwise terminated, the State agency may continue to claim Federal financial participation in payments on behalf of eligible individuals for such services furnished by such institution during a period not to exceed 30 days starting with the date of expiration or other termination of its provider agreement, but only if such individuals were admitted to the facility before the date of expiration or other termination of its provider agreement, and if the State agency makes a showing satisfactory to the Secretary that it has made reasonable efforts to facilitate the orderly transfer of such individuals from such institution to another facility.

Except as authorized in the preceding sentence, Federal financial participation shall continue only through the final effective date of a valid provider agreement. Should final administrative or judicial review provided for under § 249.33 (a) (9) or (11) be in favor of the facility, FFP shall be available retroactively to the effective date of a valid provider agreement.

* * * * *

(15) * * *

(v) The term "intermediate care facility" also includes any facility located on an Indian reservation, which provides, on a regular basis, health-related care and services and is certified by the Secretary as meeting the provisions of paragraph (b) (15) (i) (C) of this section and the standards of §§ 249.12 and 249.13.

With respect to intermediate care facility services furnished by an intermediate care facility whose provider agreement has expired or has otherwise terminated, the State agency may continue to claim Federal financial participation in payments on behalf of eligible individuals for such services furnished by such facility during a period not to exceed 30 days starting with the date of expiration or other termination of its provider agreement, but only if such individuals were admitted to the facility before the date of expiration or other termination of its provider agreement, and if the State agency makes a showing satisfactory to the Secretary that it has made reasonable efforts to facilitate the orderly transfer of such individuals from such facility to another facility.

Except as authorized in the preceding sentence, Federal financial participation shall continue only through the final effective date of a valid provider agreement. Should final administrative or judicial review provided for under § 249.33 (a) (11) be in favor of the facility, FFP shall be available retroactively to the effective date of a valid provider agreement.

* * * * *

2. Section 249.33 is amended by revising paragraph (a) (9) and adding a new paragraph (a) (11) as set forth below:

§ 249.33 Standards for payment for skilled nursing facility and intermediate care facility services.

(a) *State plan requirements.* * * *

(9) Provide that, in the case of skilled nursing facilities participating in title XIX of the Act on the basis of title XVIII certification under paragraph (a) (1) (ii) of this section, a title XIX provider agreement shall be subject to the same terms and conditions and be coterminous with the period of approval of eligibility specified by the Secretary pursuant to title XVIII. Upon notification by the Social Security Administration that an agreement with the facility under title XVIII is going to be denied, or cancelled, the single State agency will take the same action under title XIX as of the effective date of the title XVIII action. When taking such action, the single State agency shall also notify the facility that an appeal from or review of the title XIX denial, or cancellation, will be provided through the title XVIII review procedures pursuant to 20 CFR Part 405 Subpart 0, and that any decision with respect to title XVIII participation will be binding with respect to title XIX participation. A facility participating in titles XVIII and XIX whose agreement has thus been denied or cancelled may not be issued another agreement for title XIX participation until the reasons which caused the denial or cancellation have been removed and reasonable assurance provided to the survey agency that they will not recur.

* * * * *

(11) (i) Provide that any skilled nursing home or intermediate care facility participating in title XIX whose certification is denied or cancelled, by the State agency designated under § 250.100(c) of this chapter, as specified in paragraph (a) (11) (ii) of this section (other than skilled nursing facilities participating under the State's title XIX program by virtue of certification under title XVIII) shall, notwithstanding any other remedies under State law, have available:

(A) An informal reconsideration before the agency takes such action; and if dissatisfied with the outcome of this reconsideration:

(B) An administrative hearing before that agency as provided for by State law and procedures, which hearing provides at least:

(*1*) An impartial hearing officer,

(2) A right to call and examine witnesses, and

(3) A full reexamination of the basis for the determination.

This administrative hearing must be made available within 4 months prior or subsequent to the date of denial or cancellation.

(ii) An action for purposes of paragraph (a) (11) (i) of this section shall only include denial or cancellation of a skilled nursing facility or intermediate care facility certification by the State agency designated under the provisions of § 250.100(c) of this chapter on the basis of the conditions specified in paragraph (a) (4) (ii), (iii), (iv) and (5) (iii) of this section.

(iii) Provide that any skilled nursing facility or intermediate care facility participating in the title XIX program whose provider agreement is denied or cancelled by the single State agency under the good cause provisions specified in paragraph (a) (6) of this section shall, under State law, have available:

(A) An informal reconsideration before the agency takes such action; and if dissatisfied with the outcome of this reconsideration:

(B) An administrative hearing as provided for by State law and procedures, which hearing provides at least:

(*1*) An impartial hearing officer,

(2) A right to call and examine witnesses, and

(3) A full reexamination of the basis for the determination.

This administrative hearing must be made available within 4 months prior or subsequent to the date of denial or cancellation and must also be available to a skilled nursing facility provider participating in title XVIII whose provider agreement for title XIX is denied or cancelled by the State for reasons other than such action being taken with respect to title XVIII participation.

* * * * *

[FR Doc.77–1692 Filed 1–18–77;8:45 am]

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

[45 CFR Part 1703]

GOVERNMENT IN THE SUNSHINE ACT

Notice of Proposed Rulemaking

The Government in the Sunshine Act was signed by the President on September 13, 1976. Agencies are charged with the issuance of rules implementing the Act by March 12, 1977, 180 days after the date of enactment. The Commission's proposed rules are set out below. We have also initiated consultations with the Office of the Chairman of the Administrative Conference of the United States, as required by the Act.

Pursuant to procedures set out in § 1703.601 of this notice of proposed rulemaking, 45 CFR Part 1703, interested persons may file comments on the proposed rules on or before February 12, 1977. Reply comments are not requested. Comments will be available for inspection in the Commission's headquarters, 1717 K Street, NW., Suite 601, Washington, D.C. 20036, during regular business hours. All relevant and timely comments will be considered by the Commission prior to final action in this proceeding. In reaching its decision, the Commission may take into account other relevant information before it in addition to the comments invited by this Notice. In accordance with the provisions of § 1703.601 of this notice of proposed rulemaking, an original and 19 copies of all comments and other materials shall be furnished the Commission. All suggestions for changes in the text as set out above should be accompanied by drafts of the language thought necessary to accomplish the desired change and by statements and arguments in support thereof.

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE,
ALPHONSE F. TREZZA,
Executive Director.

Part 1703 is proposed to be added to Title 45 as follows:

PART 1703—GOVERNMENT IN THE SUNSHINE ACT

Subpart A—General Provisions

Sec.
1703.101 Purpose.
1703.102 Definitions.
1703.103 Applicability and scope.
1703.104 Open meeting policy.

Subpart B—Procedures Governing Decisions About Meetings

1703.201 Decision to hold meetings.
1703.202 Provisions under which a meeting may be closed.
1703.203 Decision to close meeting.
1703.204 Public availability of recorded vote to close meeting.
1703.205 Public announcement of meeting.
1703.206 Providing information to the public.
1703.207 Change in meeting plans after public announcement.
1703.208 Meetings for extraordinary agency business.
1703.209 Notice of meeting in FEDERAL REGISTER.

Subpart C—Conduct of Meetings

1703.301 Meeting place.
1703.302 Role of observers.

Subpart D—Maintenance of Meeting Records

1703.401 Requirements for maintaining records.
1703.402 Availability of records to the public.
1703.403 Requests for records under Freedom of Information and Privacy Acts.
1703.404 Copying and transcription charges.

Subpart E—Administrative Review

1703.501 Administrative Review.

Subpart F—Judicial Review

1703.601 Judicial Review.

Subpart A—General Provisions

§ 1703.101 Purpose.

This part sets forth the regulations under which the Commission shall engage in public decisionmaking processes, make public announcement of meetings at which a quorum of or all Commission members consider and determine official Commission actions, and inform the public of which meetings they are entitled to observe.

§ 1703.102 Definitions.

In this part:

(a) "Meeting" means the deliberations of at least eight Commission members where such deliberations determine or result in the joint conduct of official Commission business.

(b) "Member" means one of the Commissioners of the National Commission on Libraries and Information Science (NCLIS) who is appointed to that position by the President with the advice and consent of the Senate.

§ 1703.103 Applicability and scope.

This part applies to deliberations of at least eight Commission members. Excluded from coverage of this part are deliberations of interagency committees whose composition includes Commission members and deliberations of Commission officials who are not members; individual member's consideration of official agency business circulated to the members in writing for disposition or notation; and deliberations by the agency in determining whether or not to close a portion or portions of a meeting or series of meetings as provided in § 1703.202.

§ 1703.104 Open meeting policy.

The public is entitled to the fullest practicable information regarding the decisionmaking processes of the Commission. Commission meetings involving deliberations which determine or result in the joint conduct or disposition of official Commission business are presumptively open to the public. It is the intent of these regulations to open such meetings to public observation while protecting individuals' rights and the Commission's ability to carry out its responsibilities. Meetings or portions of meetings may be closed to public observation only if closure can be justified under one of the provisions set forth in § 1703.202.

Subpart B—Procedures Governing Decisions About Meetings

§ 1703.201 Decision to hold meeting.

When Commission members make a decision to hold a meeting, the proposed meeting will ordinarily be scheduled for a date no earlier than eight days after the decision to allow sufficient time to give appropriate public notice. At the time a decision is made to hold a meeting, the time, place, and subject matter of the meeting will be determined, as well as whether the meeting is to be open or closed to the public.

§ 1703.202 Provisions under which a meeting may be closed.

(a) A meeting or portion thereof may be closed to public observation, and information pertaining to such meeting may be withheld from the public, where the Commission determines that such portion or portions of its meeting or disclosure of such information is likely to:

"(1) Disclose matters that are (i) specifically authorized under criteria established by an Executive order to be kept secret in the interests of national defense or foreign policy and (ii) in fact properly classified pursuant to such Executive order;

"(2) Relate solely to the internal personnel rules and practices of an agency;

"(3) Disclose matters specifically exempted from disclosure by statute (other than section 552 of this title), provided that such statute (i) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

"(4) Disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential;

"(5) Involve accusing any person of a crime, or formally censuring any person;

"(6) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

"(7) Disclose investigatory records compiled for law enforcement purposes, or information which if written would be contained in such records, but only to the extent that the production of such records or information would (i) interfere with enforcement proceedings, (ii) deprive a person of a right to a fair trial or an impartial adjudication, (iii) constitute an unwarranted invasion of personal privacy, (iv) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (v) disclose investigative techniques and procedures, or (vi) endanger the life or physical safety of law enforcement personnel;

"(8) Disclose information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions;

"(9) Disclose information the premature disclosure of which would—

"(i) in the case of an agency which regulates currencies, securities, commodities, or financial institutions, be likely to (A) lead to significant financial speculation in currencies, securities, or commodities, or (B) significantly endanger the stability of any financial institution; or

"(ii) in the case of any agency, be likely to significantly frustrate implementation of a proposed agency action, except that subparagraph (9) (ii) of this paragraph shall not apply in any instance where the agency has already disclosed to the public the content or nature of its proposed action, or where the agency is required by law to make such disclosure on its own initiative prior to taking final agency action on such proposal; or

"(10) Specifically concern the agency's issuance of a subpena, or the agency's participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct, or disposition by the agency of a particular case of formal agency adjudication pursuant to the procedures in section 554 of this title or otherwise involving a determination on the record after opportunity for a hearing."

(b) The Commission may exercise its authority to open to public observation a meeting which could be closed under one of the provisions of §1703.202(a), if it would be in the public interest to do so.

§ 1703.203 Decision to close meeting.

(a) Commission members may decide to close to public observation a meeting or a portion or portions thereof, or to withhold information pertaining to such meeting, only if at least eight members vote on the record to take such action. No proxy votes shall be allowed. A single vote may be taken with respect to a series of meetings, a portion or portions of which are proposed to be closed to the public, or with respect to any information concerning such series of meetings, so long as each meeting in such series involves the same particular matters and is scheduled to be held no more than thirty days after the initial meeting in such series. If a decision is made to close a portion or portions of a meeting or a series of meetings, the Commission shall prepare a full written explanation of the closure action together with a list naming all persons expected to attend the meeting and identifying their affiliation.

(b) For every meeting or portion thereof which Commission members have voted to close, the Chairman of NCLIS shall certify that, in his or her opinion, the meeting may properly be closed to the public. In addition, the Chairman shall state each relevant exemotive provision as set forth in § 1703.202(a). A copy of the Chairman's certification, together with a statement from the Chairman setting forth the time and place of the meeting and listing the persons present, shall be retained by the Commission.

(c) Whenever any person whose interests may be directly affected by a portion of a meeting requests that the Commission close such portion to the public for any of the reasons referred to in § 1703.202(a) (5), (6) or (7), the Commission members, upon request of any of the Commissioners, shall decide by recorded vote whether to close such portion. If a closure decision is made, the Commission shall prepare a full written explanation of the closure action together with a list naming all persons expected to attend the meeting and identifying their affiliation.

§ 1703.204 Public availability of recorded vote to close meeting.

Within one day of any vote taken on a proposal to close a meeting, the Commission shall make publicly available a record reflecting the vote of each member on the question. In addition, within one day of any vote which closes a portion or portions of a meeting to the public, the Commission shall make publicly available a full written explanation of its closure action together with a list naming all persons expected to attend and identifying their affiliation, unless such disclosure would reveal the information that the meeting itself was closed to protect.

§ 1703.205 Public announcement of meeting.

(a) Except as provided in §§ 1703.207 and 1703.208, the Commission shall make a public announcement at least one week before the scheduled meeting, to include the following:

(1) Time, place, and subject matter of the meeting;

(2) Whether the meeting is to be open or closed; and

(3) Name and telephone number of agency official who will respond to requests for information about the meeting.

(b) If announcement of the subject matter of a closed meeting would reveal the information that the meeting itself was closed to protect, the subject matter shall not be announced.

§ 1703.206 Providing information to the public.

Individuals or organizations interested in obtaining copies of information available § 1703.204 may request same under provisions set forth in §§ 1703.402 and 1703.404. Individuals or organizations having a special interest in activities of the Commission may request the Executive Director to the Commissioners to place them on a mailing list for receipt of information available under § 1703.205.

§ 1703.207 Change in meeting plans after public announcement.

(a) Following public announcement of a meeting, the time or place of a meeting may be changed only if the change is announced publicly at the earliest practicable time.

(b) Items that have been announced for Commission consideration may be deleted without notice.

§ 1703.208 Meetings for extraordinary agency business.

Where agency business so requires, Commission members may decide by majority, recorded vote to schedule a meeting for a date earlier than eight days after the decision. Such a decision would obviate the general requirement for a public announcement at least one week before the scheduled meeting. At the earliest practicable time, however, the Commission will announce publicly the time, place, and subject matter of the meeting, whether the meeting is to be open or closed, and the name and telephone number of an agency official who will respond to requests for information about the meeting.

§ 1703.209 Notice of meeting in Federal Register.

Immediately following each public announcement required by this subpart, the following information, as applicable, shall be submitted for publication in the FEDERAL REGISTER:

(a) Notice of the time, place, and subject matter of a meeting;

(b) Whether the meeting is open or closed;

(c) Any change in one of the preceding; and

(d) The name and telephone number of an agency official who will respond to requests for information about the meeting.

Subpart C—Conduct of Meetings

§ 1703.301 Meeting place.

Meetings will be held in meeting rooms designated in the public announcement. Whenever the number of observers is greater than can be accommodated in the meeting room designated, alternative facilities will be made available.

§ 1703.302 Role of observers.

The public may attend open meetings for the sole purpose of observation and may not record any of the discussions by means of electronic or other devices or cameras unless approved in advance by the Executive Committee of the Commission. Observers may not participate in meetings unless expressly invited or create distractions to interfere with the conduct and disposition of Commission business. Such an attempted participation or participation shall be cause for removal of any person so engaged at the discretion of the presiding member of the Commission. When meetings are partially closed, observers will leave the meeting room upon request so that discussion of matters exempt under provisions of Subpart B, § 1703.202 of this part, may take place.

Subpart D—Maintenance of Meeting Records

§ 1703.401 Requirements for maintaining records of closed meetings.

(a) A record of each meeting or portion thereof which is closed to the public must be made and retained for two years or for one year after the conclusion of the Commission proceeding involved in the meeting. The record of any portion of a meeting closed to the public shall be a comprehensive set of minutes.

(b) When minutes are produced, such minutes shall fully and clearly describe all matters discussed, and will provide a full and accurate summary of any actions taken and the reasons expressed therefor. The minutes must also reflect the vote of each member on any roll call vote taken during the proceedings and identify all documents produced at the meeting.

(c) The following documents produced under provisions of paragraph (b) of this section shall be retained by the agency as part of the minutes of the meeting:

(1) Certification by the Chairman that the meeting may properly be closed; and

(2) Statement from the presiding officer of the meeting setting forth the date, time and place of the meeting and listing the persons present.

§ 1703.402 Availability of records to the public.

(a) The Commission shall make promotly available to the public the minutes maintained as a record of a closed meeting, except for such information as may be withheld under one of the provisions of § 1703.202(a). Copies of such minutes, disclosing the identity of each speaker, shall be furnished to any person at the actual cost of duplication or transcription.

(b) The nonexempt parts of the minutes shall be in the official custody of the Executive Director of the Commission. Appropriate facilities will be made available to any person who makes a request to review these records.

(c) Requests for copies of nonexempt parts of minutes, shall be directed to the Executive Director of the Commission. Such requests shall identify the records being sought and include a statement that whatever costs are involved in furnishing the records will be acceptable or, alternatively, that costs will be acceptable up to a specified amount.

§ 1703.403 Requests for records under Freedom of Information and Privacy Acts.

Requests to review or obtain copies of records other than the minutes of a meeting will be processed under the Freedom of Information Act (5 U.S.C. 552) or, where applicable, the Privacy Act (5 U.S.C. 552a).

§ 1703.404 Copying and transcription charges.

(a) The Commission will charge fees for furnishing records at the rate of ten cents per page for photocopies and at the actual cost of transcription. When the anticipated charges exceed $50, a deposit of 20 percent of the amount anticipated must be made within 30 days. Requested information will not be released until the deposit is received. Fees shall be paid by check or money order made payable to the National Commission on Libraries and Information Science.

(b) The Executive Director of the Commission has the discretion to waive charges whenever release of the copies is determined to be in the public interest.

Subpart E—Administrative Review

§ 1703.501 Administrative Review.

Any person who believes a Commission action governed by this part to be contrary to the provisions of this part may file an objection in writing with the Executive Director to the Commissioners.

Wherever possible, the Executive Director will respond within two working days to objections concerning decisions to close meetings or portions thereof. Responses to objections concerning matters other than closed meetings will be made within ten working days.

Subpart F—Judicial Review

§ 1703.601 Judicial Review.

Any person may bring an action in a United States District Court to challenge or enforce the provisions of this part or the manner of their implementation. Such action may be brought prior to or within sixty days after the meeting in question, except that if proper public announcement of the meeting is not made, the action may be instituted at any time within sixty days after such announcement is made. An action may be brought where the Commission meeting was or is to be held or in the District of Columbia.

[FR Doc.77-1706 Filed 1-18-77;8:45 am]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 76]

[Docket No. 21006]

FREQUENCY CHANNELLING REQUIREMENTS AND SIGNAL LEAKAGE

Order Extending Time for Filing Comments and Reply Comments

Adopted: January 12, 1977.
Released: January 14, 1977.

In the matter of amendment of Part 76 of the Commission's rules to add frequency channelling requirements and restrictions and to require monitoring for signal leakage from cable television systems (see 41 FR 54512, December 14, 1976); Docket No. 21006.

1. Comments in this proceeding are now due January 17, 1977, and reply comments are due February 15, 1977. The National Cable Television Association, with the support of the Consumer Electronics Group of the Electronic Industries Association, has requested a 45-day extension of these filing dates. The additional time is said to be needed to complete the necessary research and, on the part of the EIA/CEG, to also provide time for the preparation of comments in two other Commission proceedings.

2. Good cause therefore having been shown, the requested time extension will be granted.

Accordingly, it is ordered, That the dates for filing comments and reply comments in the captioned proceeding are extended to March 3, 1977 and April 1, 1977, respectively.

This action is taken by the Chief, Cable Television Bureau pursuant to authority delegated by § 0.288(a) of the Commission's Rules.

FEDERAL COMMUNICATIONS COMMISSION,
JAMES R. HOBSON,
Chief,
Cable Television Bureau.

[FR Doc.77-1723 Filed 1-18-77;8:45 am]

notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

DISTRIBUTORS' ADVISORY COMMITTEE

Renewal

Notice is hereby given that the Distributors' Advisory Committee has been renewed for an additional period of 2 years under provisions of the Federal Advisory Committee Act (86 Stat. 770).

The purpose of the committee is to provide to the Industry Committee under Federal Marketing Order No. 918 its recommendation for regulation of peaches each time the Industry Committee meets.

The Distributors' Advisory Committee represents the Georgia peach industry as prescribed in the Order. The three shippers who shipped the largest proportion of the peaches shipped during the preceding season are entitled to one member each. The remaining four members are selected from the remaining handlers. Each district shall be represented by at least one member.

Information about this committee may be obtained from Mr. William C. Knope, Lakeland Marketing Field Office, Fruit and Vegetable Division, Agricultural Marketing Service, USDA, 302 South Massachusetts Avenue, Rooms 204–206, Florida Citrus Mutual Building; mailing address: P.O. Box 9, Lakeland, Florida 33802. Telephone: 813–683–5983.

Authority for this committee will expire January 5, 1979 unless determination is made that continuance is in the public interest.

This notice is given in compliance with P.L. 92–463.

Dated: January 14, 1977.

WILLIAM T. MANLEY,
Deputy Administrator,
Program Operations.

[FR Doc.77-1697 Filed 1-18-77;8:45 am]

HOP MARKETING ADVISORY BOARD

Renewal

Notice is hereby given that the Hop Marketing Advisory Board has been renewed for an additional period of 2 years under provisions of the Federal Advisory Committee Act (86 Stat. 770).

The purpose of the Board is to advise the Hop Administrative Committee under Federal Marketing Order No. 991 concerning marketing policy and other operational matters as the Committee requests.

This Board represents handlers of hops. Representation for most is based on the quantities of hops handled; and one representative is for extractors.

Information about this Board may be obtained from Mr. Allan E. Henry, Northwest Marketing Field Office, Fruit and Vegetable Division, Agricultural Marketing Service, USDA, Federal Building, Room 1566, 1220 S.W. Third Avenue, Portland, Oregon 97204. Telephone: 503–221–2724.

Authority for this Board will expire January 5, 1979, unless it is determined that continuance is in the public interest.

This notice is given in compliance with Pub. L. 92–463.

Dated: January 14, 1977.

WILLIAM T. MANLEY,
Deputy Administrator,
Program Operations.

[FR Doc.77-1698 Filed 1-18-77;8:45 am]

CIVIL AERONAUTICS BOARD

[Docket 29882]

PACIFIC WESTERN AIRLINES, LTD.

Foreign Air Carrier Permit; Postponement of Prehearing Conference and Hearing

The prehearing conference and hearing in this proceeding heretofore assigned for January 26, 1977 (41 FR 56684, dated December 29, 1976) is hereby postponed to 9:30 a.m., February 1, 1977 in Room 1003 D, Universal North Building, 1875 Connecticut Avenue, N.W., Washington, D.C., before Administrative Law Judge Ralph L. Wiser.

Ordinary transcript will be adequate for the proper conduct of this proceeding.

Dated at Washington, D.C., January 13, 1977.

RALPH L. WISER,
Administrative Law Judge.

[FR Doc.77-1739 Filed 1-18-77;8:45 am]

[Docket 23080–2; Order 77–1–19]

PRIORITY AND NONPRIORITY DOMESTIC MAIL SERVICE RATES—PHASE 2

Order Reclassifying Stations

Issued under delegated authority January 5, 1977.

Order 76–9–5, dated September 1, 1976, and effective September 11, 1976, as amended by Order 76–10–131, dated October 28, 1976, and effective November 6, 1976, classified the stations for the purposes of the multielement service mail rate formulas applicable to the transportation of sack mail and for standard and daylight container mail. Upon review of the revenue tons enplaned by stations for the year ended June 30, 1976, the Board finds that certain stations require reclassification.

The multielement service mail rate formulas,[1] which were designed to provide a uniform rate of pay for like mail service, are comprised of a linehaul rate and a terminal charge which varies by class of station.[2] These are applicable to both sack and container mail.

The orders fixing the multielement service mail rates provide for the reclassification of stations, without disturbing the overall rate structure, when the revenue tons enplaned at the stations in question bring such stations within a different class.

Pursuant to authority duly delegated by the Board in the Board's Regulations, 14 CFR 385.16(e); it is found that:

1. The present classification of stations should be amended, based on the volume of on-line revenue tons enplaned during the year ended June 30, 1976,[3] to bring certain stations within the new classifications shown in the Appendix hereto.

2. Such reclassifications should be made effective January 29, 1977, which date will be the first day of the next 28-day U.S. Postal Service Accounting Period.

3. In view of the foregoing, the lists of stations included in the Appendix attached to Order 76–9–5, as amended, for the station classes should be amended to reflect the new classifications designated herein.

Accordingly, pursuant to the delegated authority referred to above,

It is ordered that: 1. Effective January 29, 1977, the stations included in each of the station classes should be as specified in the Appendix attached hereto; *Provided*, That any station not listed in the Appendix shall be classified as a Class Z station;

2. Effective January 29, 1977, the Appendix attached to Order 76–9–5, as amended, shall be superseded by the Appendix attached hereto; and

3. This order be served upon all parties in Docket 23080–2.

Persons entitled to petition the Board for review of this order pursuant to the Board's Regulations, 14 CFR 385.50, may

[1] Order 74–1–89, January 16, 1974, as amended, fixed temporary service mail rates for sack mail and for standard and daylight container mail, effective on and after March 28, 1973.

[2] As set forth in Order 74–5–82, May 16, 1974, and incorporated by reference in Order 76–9–5, the standards for station classification are as follows:

Class of stations:	*Total revenue tons enplaned per year*
X	27,000 and over
Y	5,400 to 26,999
Z	5,399 or less

[3] Traffic data for the year ended June 30, 1976 cover the most recent 12-month period for which an official compilation is available.

file such petitions within seven days after the date of service of this order.

This order shall be effective and become the action of the Civil Aeronautics Board upon expiration of the above period unless within such period a petition for review thereof is filed, or the Board gives notice that it will review this order on its own motion.

This order shall be published in the FEDERAL REGISTER.

PHYLLIS T. KAYLOR,
Secretary.

APPENDIX—CLASSIFICATION OF STATIONS FOR DETERMINATION OF AIR MAIL TERMINAL CHARGES

CLASS X STATIONS

AKRON/CANTON, OHIO
ALBANY, NEW YORK
ALBUQUERQUE, NEW MEXICO
ANCHORAGE, ALASKA
ATLANTA, GEORGIA
AUSTIN, TEXAS
BALTIMORE, MARYLAND
BILLINGS, MONTANA
BIRMINGHAM, ALABAMA
BOISE, IDAHO
BOSTON, MASSACHUSETTS
BUFFALO & NIAGARA FALLS, NEW YORK
CHARLESTON, SOUTH CAROLINA
CHARLOTTE, NORTH CAROLINA
CHICAGO, ILLINOIS
CINCINNATI, OHIO
CLEVELAND, OHIO
COLORADO SPRINGS, COLORADO
COLUMBIA, SOUTH CAROLINA
COLUMBUS, OHIO
DALLAS-FORT WORTH, TEXAS
DAYTON, OHIO
DENVER, COLORADO
DES MOINES, IOWA
DETROIT & ANN ARBOR, MICHIGAN
EL PASO, TEXAS
FAIRBANKS, ALASKA
FORT LAUDERDALE, FLORIDA
FRESNO, CALIFORNIA
GRAND RAPIDS, MICHIGAN
GREEN BAY/CLINTONVILLE, WIS.
GREENSBORO/HIGH POINT, N.C.
HAMILTON, BERMUDA
HARRISBURG/YORK, PA.
HARTFD, CON/SPGFLD & WESTFLD, MASS.
HILO, HAWAII, HAWAII
HONOLULU, OAHU, HAWAII
HOUSTON, TEXAS
INDIANAPOLIS, INDIANA
JACKSON-VICKSBURG, MISS.
JACKSONVILLE, FLORIDA
KANSAS CITY, MISSOURI
KNOXVILLE, TENNESSEE
LAS VEGAS, NEVADA
LITTLE ROCK, ARKANSAS
LOS ANGELES/LONG BEACH, CALIF.
LOUISVILLE, KENTUCKY
MADISON, WISCONSIN
MEMPHIS, TENNESSEE
MEXICO CITY, MEXICO
MIAMI, FLORIDA
MILWAUKEE, WISCONSIN
MINNEAPOLIS/ST. PAUL, MINNESOTA
MOBILE, AL/PASCAGOULA, MISS.
MOLINE, ILLINOIS/DAVENPORT, IOWA
MONTREAL, QUEBEC, CANADA
NASHVILLE, TENNESSEE
NASSAU, BAHAMAS
NEWARK, NEW JERSEY
NEW ORLEANS, LOUISIANA
NEW YORK, NEW YORK
NORFOLK/VA BCH/PTSMH/CHESPKE, VA.
*OAKLAND, CALIFORNIA
*OKLAHOMA CITY, OKLAHOMA
OMAHA, NEBRASKA
ONTARIO/SAN BERNARD/RIVERSE, CA.
ORLANDO, FLORIDA
PHILADELPHIA, PA/CAMDEN, N.J.
PHOENIX, ARIZONA
PITTSBURGH, PA./WHEELING, W. VA.
PORTLAND, OREGON
PROVIDENCE, RHODE ISLAND
RALEIGH/DURHAM, NORTH CAROLINA
RENO, NEVADA
RICHMOND, VIRGINIA
ROANOKE, VIRGINIA
ROCHESTER, NEW YORK
SACRAMENTO, CALIFORNIA
ST. LOUIS, MISSOURI
SALT LAKE CITY, UTAH
SAN ANTONIO, TEXAS
SAN DIEGO, CALIFORNIA
SAN FRANCISCO, CALIFORNIA
SAN JOSE, CALIFORNIA
SAN JUAN, PUERTO RICO
SARASOTA/BRADENTON, FLORIDA
SEATTLE/TACOMA, WASHINGTON
SHREVEPORT, LOUISIANA
SPOKANE, WASHINGTON
SYRACUSE, NEW YORK
TAMPA & ST. PTSBG/CLWTRE & LKLND, FLA.
TOLEDO, OHIO
TORONTO, ONTARIO, CANADA
TUCSON, ARIZONA
TULSA, OKLAHOMA
**VANCOUVER, BR. COLUMBIA, CANADA
**WASHINGTON, DIST. OF COL.
WEST PALM BEACH/PALM BEACH, FLA.
WICHITA, KANSAS

CLASS Y STATIONS

Acapulco, Mexico
Agana Nas, Guam Island
Alexandria, Louisiana
Allentown/Bethlehem/Easton, Pa
Amarillo/Borger, Texas
Asheville, North Carolina
Ashland, Ky./Huntington, W. Va.
Aspen, Colorado
Augusta, Georgia
Bakersfield, California
Bangor, Maine
Baton Rouge, Louisiana
Binghamton/Endct/Jhnsn Cty, NY
Bismarck/Mandan, North Dakota
Bristol/Kngsprt/Jhnsn Cty, Tenn
Brownsville, Texas
Burbank, California
Burlington, Vermont
Calgary, Alberta, Canada
Casper, Wyoming
Cedar Rapids/Iowa City, Iowa
Champaign/Urbana, Illinois
Charleston/Dunbar, W. Virginia
Charlotte Amalie, Virgin Is. US
Charlottesville, Virginia
Chattanooga, Tennessee
Christiansted, St. Croix, V.I., US
Columbus, Georgia
Corpus Christi, Texas
Daytona Beach, Florida
Dothan, Alabama
Duluth, Minn./Superior, Wis.
Eglin Air Force Base, Florida
Elmira/Corning, New York
Erie, Pennsylvania
Eugene, Oregon
Eureka/Arcata, California
Evansville, Indiana
Fargo, N.D./Moorhead, Minnesota
Fayetteville, North Carolina
Flint, Michigan
Fort Myers, Florida
Fort Smith, Arkansas
Fort Wayne, Indiana
Freeport, Bahamas
Gainesville, Florida
Grand Forks, North Dakota
Grand Junction, Colorado
Great Falls, Montana
Greenville&Spartanburg, S.C.
Gulfport/Biloxi, Mississippi
Huntsville&Decatur, Alabama
Idaho Falls, Idaho
Indio/Palm Springs, California
Islip, Long Island, New York
Ithaca/Cortland, New York
Juneau, Alaska
Kalamazoo-Battle Creek, Mich.
Ketchikan, Alaska
Kinston, North Carolina
Lafayette, Louisiana
Lansing, Michigan
Lexington/Frankfort, Kentucky
Lincoln, Nebraska
Lubbock, Texas
Lynchburg, Virginia
Macon, Georgia
Medford, Oregon
Melbourne, Florida
Midland/Odessa, Texas
Minot, North Dakota
Mission/McAllen/Edinburg, Texas
Missoula, Montana
Monroe, Louisiana
Montego Bay, Jamaica
Montgomery, Alabama
Muskegon, Michigan
Myrtle Beach, South Carolina
Newpt New/Hamptn/Wilbg/Yktn, Va
Oshkosh/Appleton, Wisconsin
Panama City, Florida
Pasco/Kennewick/Richland, Wash.
Pensacola, Florida
Peoria, Illinois
Pocatello, Idaho
Portland, Maine
Rapid City, South Dakota
Rochester, Minnesota
Saginaw/Bay City/Midland, Mich.
Salinas/Monterey, California
Santa Ana-Anaheim, California
Santa Barbara, California
Santo Domingo, Dominican Rep.
Savannah, Georgia
Scranton/Wilkes-Barre, Penna.
Sioux City, Iowa
Sioux Falls, South Dakota
South Bend, Indiana
SPRINGFIELD, ILLINOIS
SPRINGFIELD, MISSOURI
TALLAHASSEE, FLORIDA
TRAVERSE CITY, MICHIGAN
WATERLOO, IOWA
WAUSAU/STEVENS POINT, WISCONSIN
WILMINGTON, NORTH CAROLINA
WINNIPEG, MANITOBA, CANADA
WINSTON-SALEM, NORTH CAROLINA
YOUNGSTOWN, OHIO

CLASS Z STATIONS

Aberdeen, South Dakota
Abilene, Texas
Almagordo/Holloman AFB, N. Mex.
Alamosa, Colorado
Albany, Georgia
Alliance, Nebraska
Alpena, Michigan
Anniston, Alabama
Aruba, Netherlands Antilles
Athens, Georgia
Augusta/Waterville, Maine
Bridgetown, Barbados
Beaumont Port Arthur, Texas
Beckley, West Virginia
Beloit/Janesville, Wisconisn
Bemidiji, Minnsota
Bend Redmond, Oregon
Benton Harbor/St. Joseph, Mich.
Bloomington, Illinois
Blythe, California.
Bozeman, Montana
Bradford, Pennsylvania
Brainerd, Minnesota
Brookings, South Dakota
Brownwood, Texas
Burlington, Iowa
Butte, Montana

Cape Girardeau/Sikeston, Mo.
Carlsbad, New Mexico
Cedar City, Utah
Chadron, Nebraska
Cheyenne, Wyoming
Chico, California
Chishold/Hibbing, Minnesota
Clarksburg/Fairmont, W. Virginia
Clarksvle/Ft. Cam/Hopksvle, Tenn.
Clinton, Iowa
Clovis, New Mexico
Columbia/Jefferson City, Mo.
Columbus, Mississippi
Columbus, Nebraska
Cordova, Alaska
Cortez, Colorado
Curacao, Netherlands Antilles
Danville, Virginia
Decatur, Illinois
Devils Lake, North Dakota
Dubuque, Iowa
Durango, Colorado
Eau Claire, Wisconsin
El Centro, California
El Dorado/Camden, Arkansas
Elko, Nevada
Ely, Nevada
Enid, Oklahoma
Escanaba, Michigan
Fairmont, Minnesota
Farmington, New Mexico
Fayetteville, Arkansas
Flagstaff, Arizona
Florence, South Carolina
Fort De France, Martinique
Fort Dodge, Iowa
Fort Leonard Wood, Missouri
Gadeden, Alabama
Galesburg, Illinois
Gallup, New Mexico
Garden City, Kansas
Glasgow, Montana
Glendive, Montana
Glen Falls, New York
Goodland, Kansas
Grand Canyon, Arizona
Grand Island, Nebraska
Grnber/Wht S Spg/Lbrg, W. Va.
Greenville, Mississippi
Greenwood, Mississippi
Guadelajara, Mexico
Guaymas, Mexico
Gunnison, Colorado
Hancock/Houghton, Michigan
Harlingen/San Benito, Texas
Harrison, Arkansas
Hastings, Nebraska
Hattiesburg/Laurel, Miss.
Havre, Montana
Hays, Kansas
Helena, Montana
Hickory, North Carolina
Hobbs, New Mexico
Hot Springs, Arkansas
Hot Springs, Virginia
Huron, South Dakota
Hyannis, Massachusetts
Independence/Vafyvle/Parsons, Kan.
International Falls, Minnesota
Iron Mountain/Kingsfd, Michigan
Ironwood, Mich./Ashland, Wis.
Jackson, Michigan
Jackson, Tennessee
Jackson, Wyoming
Jacksonville/Camp LeJeune, N.C.
Jamestown, North Dakota
Junesboro, Arkansas
Joplin, Missouri
Kalispell, Montana
Kearney, Nebraska
Keene, New Hampshire
Kingston, Jamaica
Kirksville, Missouri
Klamath Falls, Oregon
La Crosse, Wisconsin
Lake Charles, Louisiana
Lake of the Ozarks, Missouri
Lamar, Colorado
La Paz, Mexico
Laramie, Wyoming
Laredo, Texas
Lawton/Fort Sill, Oklahoma
Lebanon, NH/White Riv Junc, Vt.
Lewiston, Idaho/Clarkston, Wash.
Lewiston/Auburn, Maine
Lewistown, Montana
Liberal, Kan.-Guymon, Okla.
London/Corbin, Kentucky
Longview/Kilgor/Gladwater, Texas
Luvell/Powell/Cody, Wyoming
Manchester/Concord, N. Hampshire
Manhattan/Jct. Cty/Ft. Rily, Kan.
Manistee/Ludington, Michigan
Manitowoc/Sheboygan, Wisconsin
Mankato, Minnesota
Marinette, Wis/Menominee, Mich.
Marion/Herrin, Illinois
Marquette, Michigan
Martha's Vineyard, Massachusetts
Mason City, Iowa
Mattoon/Charleston, Illinois
Mazatlan, Mexico
McAlester, Oklahoma
McCook, Nebraska
Merced, California
Merida, Mexico
Meridian, Mississippi
Miles City, Montana
Mitchell, South Dakota
Modesto, California
Monterrey, Mexico
Montpelier/Barre, Vermont
Montrose/Delta, Colorado
Morgantown, West Virginia
Moultrie/Thomasville, Georgia
Mount Vernon, Illinois
Muscle Sh/Flor/Shef/Tusc, Ala.
Nantucket, Massachusetts
New Bedford/Fall River, Mass.
New Bern & Morehd Cty/Beaufrt, NC
New Haven/Bridgeport, Conn.
Norkfolk, Nebraska
North Bend/Coos Bay, Oregon
North Platte, Nebraska
Ottawa, Ontario, Canada
Ottumwa, Iowa
Owensboro, Kentucky
Paducah, Kentucky
Page, Arizona
Pago Pago, American Samoa
Paris, Texas
Parkersburg, W. Va./Marietta, Ohio
Pellston, Michigan
Pendleton, Oregon
Petersburg, Alaska
Pierre, South Dakota
Pointe A Pitre, Guadeloupe
Ponape, Caroline Islands
Ponca City, Oklahoma
Ponce, Puerto Rico
Port Au Prince, Haiti
Port of Spain, Trinidad & Tobago
Presque Isle/Houlton, Maine
Princeton/Bluefield, W. Virginia
Pueblo, Colorado
Puerto Vallarta, Mexico
Quincy, Ill./Hannibal, Mo.
Red Bluff/Redding, California
Rhinelander/Land O Lakes, Wisc.
Riverton/Lander, Wyoming
Rockford, Illinois
Rock Springs, Wyoming
Rocky Mount, North Carolina
Roswell, New Mexico
St. Johns, Antigua
St. Lucia British West Indies
St. Martin, Netherland Antilles
Salem, Oregon
Salina, Kansas
San Angelo, Texas
Santa Maria, California
Sault Ste. Marie, Michigan
Scottsbluff, Nebraska
Sheridan, Wyoming
Sidney, Montana
Sidney, Nebraska
Silver City/Hurley/Deming, NM
Sitka, Alaska
Staunton, Virginia
Steamboat Springs/Hayden/Craig, Colo.
Sterling/Rock Falls, Illinois
Stillwater, Oklahoma
Stockton, California
Tampico, Mexico
Temple, Texas
Texarkana, Arkansas
Thief River Falls, Minnesota
Thunder Bay, Ontario, Canada
Tinian, Mariana Islands
Topeka, Kansas
Tupela, Mississippi
Tuscaloosa, Alabama
Twin Falls, Idaho
Tyler, Texas
University/Oxford, Mississippi
Utica/Rome, New York
Valdosta, Georgia
Veracrus, Mexico
Vernal, Utah
Visalia, California
Waco, Texas
Watertown, South Dakota
West Yellowstone, Montana
White Plains, New York
Wichita, Kansas
Williamsport, Pennsylvania
Williston, North Dakota
Wolf Point, Montana
Worcester, Massachusetts
Worland, Wyoming
Worthington, Minnesota
Wrangell, Alaska
Yakima, Washington
Yakutat, Alaska
Yankton, South Dakota
Yuma, Arizona

[FR Doc.77-1740 Filed 1-18-77;8:45 am]

DEPARTMENT OF COMMERCE

Domestic and International Business Administration

[Order No. 49-1]

OFFICE OF ENERGY PROGRAMS

Statement of Organization and Function and Delegation of Authority

This order effective November 16, 1976 supplements the material appearing at 41 FR 50314 of November 15, 1976.

SECTION 1. *Purpose.*—This order prescribes the organization and assignment of functions within the Office of Energy Programs (OEP).

SEC. 2. *Organization and line of authority.*—The organization structure and line of authority shall be as depicted in the attached organization chart. The Director of the Office of Energy Programs shall report directly to the Assistant Secretary for Domestic and International Business. A copy of the chart is on file with the original of this document in the Office of the Federal Register.

SEC. 3. *Office of the Director.*—.01 The Office shall be headed by a "Director" who shall formulate policies and programs and provide oversight and direction for all activities of the Office.

.02 The "Deputy Director" shall be the principal assistant to the Director on formulation of policies and programs, have technical responsibility for OEP's energy-related scientific and economic analyses, and shall perform the functions of the Director in the latter's absence. He shall oversee the activities of the Office's energy analysis programs and be assisted by a "Technology Liaison Staff" which shall:

a. Advise on the technological ramifications of specified policy and/or program developments;

b. Provide liaison with other elements of the Department on technological aspects of energy programs;

c. Serve as the OEP point of contact on energy research and development matters; and

d. Conduct or arrange for the conduct of a program to identify the comparative advantages of alternatives energy program proposals.

SEC. 4. *Energy Resources Division.*—The Division shall perform all activities relating to the Office of Energy Programs' role in energy resources, including all matters relating to the oil, coal, gas, electric power, and other energy industries. Specifically, the Division shall:

a. Maintain a current overview of the main elements of energy supply and demand balance;

b. Assist in the identification of energy policy studies to be conducted;

c. Evaluate selected energy studies and analyses performed by other organizations;

d. Provide staff support for Commerce membership on committees contributing to the formulation or execution of energy policy as requested by the Office of Energy and Strategic Resources Policy;

e. Monitor certain energy-related commodities found to be in short supply and report to the Office of Export Administration on short supply export controls;

f. Prepare position papers and comments on energy-related programs and activities such as selected business and industrial programs;

g. Develop comments and presentations on energy-related testimony, legislation, and other related subjects; and

h. Provide staff support and/or Departmental representation, within guidance provided by the Office of Energy and Strategic Resources Policy, on energy-related task forces and committees established to examine specific energy policy issues and problems pertinent to the U.S. business community.

SEC. 5. *Planning, Evaluation, and Promotion Division.*—The Division shall work with business and industry to increase their awareness of, and to promote, energy conservation and efficiency. In addition, the Division shall be responsible for OEP's planning, evaluation, and management systems. Specifically, the Division shall:

a. Develop and evaluate approaches, methods, and programs to foster energy efficiency;

b. Coordinate, design, develop, and produce such energy conservation/efficiency informational material as films, brochures, and pamphlets for the business community;

c. Arrange and/or conduct seminars, meetings, and public appearances on energy conservation/efficiency;

d. Coordinate multi-agency participation in energy conservation/efficiency trade shows and exhibits and direct the Department's participation in such shows and exhibits as a sole exhibitor;

e. Provide an Executive Director and staff support for the National Industrial Energy Council (NIEC), and its Subcouncils on Industry Programs, Program Development, and Business Awareness;

f. Provide staff support and an Executive Director for the Department's Energy Policy Committee, which is the primary mechanism for the coordination of DOC energy policy and programs;

g. Advise and counsel other Commerce organizations in the development and implementation of energy conservation programs;

h. Coordinate energy conservation activities with DIBA's Office of Field Operations and other Commerce organizations;

i. Coordinate energy conservation awareness programs with other interested Government agencies to insure that the business community has consistent goals in, and receives objective information on, energy conservation; and

j. Develop and carry out planning, evaluation, and management systems and techniques for OEP. Such activities include management by objectives, program evaluation, and periodic audits.

SEC. 6. *Industry Programs Division.*—The Division shall establish and maintain liaison with key energy consuming industries and trade associations to:

a. Implement energy management programs that will insure the efficient use by the business community of energy resources;

b. Insure, through the key identified industry associations, that the overall objectives of the Department's energy conservation programs for energy intensive industrial and business firms are met;

c. Provide a cohesive structure for managing and reporting on more efficient energy use within the business community;

d. Support interagency energy conservation programs and manage those programs which may be established and operated by the Department in a lead agency role; and

e. Provide technical assistance relevant to energy management to participating associations and member firms.

SEC. 7. *Energy Analysis Division.*—The Division shall conduct special studies and analyses utilizing operations research, econometric and statistical techniques and methodologies on topics and issues affecting energy resources/energy utilization policies and programs. The Division will serve as the central point for data accumulations and analysis for the Office. Specifically, the Division shall:

a. Maintain energy supply and demand data with emphasis on industrial supply and demand, including an Energy Data Book;

b. Maintain and compile data on energy materials imported and exported;

c. Maintain data on potential energy conservation efforts with emphasis on industrial conservation;

d. Maintain industrial energy indicators which reflect trends;

e. Maintain industrial energy forecasts for supply and consumption;

f. Conduct energy analyses as required by the Director of OEP with emphasis on studies in industrial conservation;

g. Perform integrated analytical work within OEP which encompasses energy resources and conservation activities;

h. Maintain reports, analyses, and documentation on industrial conservation conducted by other Government organizations and private firms;

i. Maintain coordinative relationship with other U.S. Government data bases;

j. Maintain an OEP energy reference library; and

k. Conduct quick-response energy actions as required (e.g. OEP's Natural Gas Action Group).

SEC. 8. *Administrative, Public Affairs, and Field Support.*—.01 The "Office of Public Affairs," DIBA, shall furnish public affairs services to the Office.

.02 The "Directorate of Administrative Management," DIBA, shall furnish management, ADP, budget, personnel, travel, and administrative services. The Directorate will also serve as liaison with departmental elements providing other administrative support to the Office.

.03 Field support will be provided by the "Office of Field Operations."

Effective date: November 16, 1976.

DONALD E. JOHNSON,
Acting Assistant Secretary for Domestic and International Business.

[FR Doc.77-1666 Filed 1-18-77;8:45 am]

Maritime Administration

[Docket No. S-536]

STATES STEAMSHIP CO.

Application

Notice is hereby given that States Steamship Company has applied for amendment of the service descriptions of its subsidized Services B and C so as to add calls at ports on the Persian Gulf and Gulf of Oman. This is an amendment to the Operator's existing Operating-Differential Subsidy Agreement, Contract No. FMB-62, which expires on December 31, 1977.

Any person, firm or corporation having any interest in such application and desiring a hearing on issues pertinent to section 605(c) of the Merchant Marine Act, 1936, as amended (46 U.S.C. 1175), should, by the close of business on January 31, 1977 notify the Secretary, Maritime Subsidy Board in writing in triplicate, and file petition for leave to intervene in accordance with the Rules of Practice and Procedure of the Maritime Subsidy Board.

In the event a section 605(c) hearing is ordered to be held, the purpose thereof will be to receive evidence relevant to (1) whether the application is one with respect to a vessel to be operated in an essential service, served by citizens of the United States which would be in addition

to the existing service, or services, and if so, whether the service already provided by vessels of United States registry in such essential service is inadequate, and (2) whether in the accomplishment of the purposes and policy of the Act additional vessels should be operated thereon.

If no request for hearing and petition for leave to intervene is received within the specified time, or if the Maritime Subsidy Board determines that petitions for leave to intervene filed within the specified time do not demonstrate sufficient interest to warrant a hearing, the Maritime Board will take such action as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 11.504 Operating-Differential Subsidies (ODS).)

By Order of the Maritime Subsidy Board.

Dated: January 14, 1977.

JAMES S. DAWSON, Jr.,
Secretary.

[FR Doc.77-1722 Filed 1-18-77;8:45 am]

National Technical Information Service

TECHNICAL INFORMATION PRODUCTS AND SERVICES

Netherlands

The National Technical Information Service of the U.S. Department of Commerce requests that parties interested in managing the sales of its technical information products and services in the Netherlands make their interest known to the NTIS Assistant Director, Market Development, NTIS, 5285 Port Royal Springfield, Virginia 22161.

DEAN SMITH,
Asistant Director, Market Development.

Approved: 1/10/77

WILLIAM T. KNOX,
Director.

[FR Doc.77-1705 Filed 1-18-77;8:45 am]

GOVERNMENT-OWNED INVENTIONS

Availability for Licensing

The inventions listed below are owned by the U.S. Government and are available for U.S. and possibly foreign licensing, in accordance with the policies of the agency sponsors.

Copies of the patents cited are available from the Commissioner of Patents and Trademarks, Washington, D.C. 20231, for $.50 each. Requests for copies of patents must include the patent number.

Copies of the patent applications, either paper copy (PC) or microfiche (MF), can be purchased at the prices cited from the National Technical Information Service (NTIS), Springfield, Virginia 22161. Requests for copies of patent applications must include the PAT-APPL number. Claims are deleted from patent application copies sold to the public to avoid premature disclosure in the event of an interference before the Patent and Trademark Office. Claims and other technical data will usually be made available to serious prospective licenses by the agency which filed the case.

Requests for licensing information on a particular invention should be directed to the address cited for the agency-sponsor.

DOUGLAS J. CAMPION,
Patent Program Coordinator.

U.S. DEPARTMENT OF THE ARMY, Office of Judge Advocate General, Patent Division, Room 2C-455, Pentagon, Washington, D.C. 20310.

Patent application 571,175: Discrete Control Correction for Synchronizing Digital Networks; filed 24 April 1975; PC $4.00, MF $3.00.

Patent application 650,658: Glass Compositions Having Fluorescence Properties; filed 20 January 1976; PC $3.50, MF $3.00.

Patent Re 28,621: Fluid Angular Rate Sensor; filed 17 July 1969, reissued 25 November 1975; not available NTIS.

Patent Re 28,622: Fluid Angular Rate Sensor; filed 17 July 1969; reissued 25 November 1975; not available NTIS.

Patent 3,931,730: Ramp Current Apparatus and Method of Sensitivity Testing; filed 23 December 1974; patented 13 January 1976; not available NTIS.

Patent 3,932,745: Far Field Construction for Optical Fourier Transforms; filed 30 September 1974; patented 13 January 1976; not available NTIS.

Patent 3,933,096: Gyroscopic Rate Switch; filed 11 March 1974; patented 20 January 1976; not available NTIS.

Patent 3,936,902: Automatic Cleaning Apparatus for Fluid Filters; filed 11 July 1974; patented 10 February 1976; not available NTIS.

Patent 3,936,902; filed 11 July 1974; patented 10 February 1976; not available NTIS.

Patent 3,937,071: Fatigue Test Apparatus; filed 11 July 1975; patented 10 February 1976; not available NTIS.

Patent 3,938,378: Engine Compression Testing; filed 26 August 1974; patented 17 February 1976; not available NTIS.

Patent 3,938,615: Chuck Having Jaw Counterbalance Mechanism; filed 31 March 1975; patented 17 February 1976; not available NTIS.

Patent 3,942,486: Hydraulic Fan Drive System Speed Control; filed 21 August 1974; patented 9 March 1976; not available NTIS.

Patent 3,943,741: Embossing Method; filed 25 March 1975; patented 16 March 1976; not available NTIS.

Patent 3,943,776: Fluidic Acceleration Sensor; filed 23 December 1974; patented 16 March 1976; not available NTIS.

U.S. DEPARTMENT OF THE AIR FORCE, AF/JACP, Washington, D.C. 20314.

Patent application 696,341: Dual Pressure Sensing Safing and Arming Mechanism; filed 15 June 1976; PC $3.50/MF $3.00.

Patent application 696,343: N-Channel Deep Depletion Mode Semiconductor Device; filed 15 June 1976; PC $3.50/MF $3.00.

Patent application 696,344: Intershaft Balance Weight; filed 15 June 1976; PC $3.50/MF $3.00.

Patent application 696,345: Turbine Band Cooling System; filed 15 June 1976, PC $3.50/MF $3.00.

Patent application 696,963: Duct Pressure Actuated Nozzle; filed 17 June 1976; PC $3.50/MF $3.00.

Patent application 698,984: Low Power Frequency Modulated Hybrid Fiber Optic Data Acquisition System; filed 23 June 1976; PC $3.50/MF $3.00.

Patent application 699,929: Vortex Generators in Axial Flow Compressor; filed 25 June 1976; PC $3.50 MF $3.00.

Patent 3,969,907: Cold Cylinder Assembly for Cryogenic Refrigerator; filed 25 March 1975; patented 20 July 1976; not available NTIS.

Patent 3,969,978: Direct Injection Liquid Propellant Gun System; filed 20 December 1974; patented 20 July 1976; not available NTIS.

Patent 3,970,005: Mass Focus Explosive Layered Bomblet; filed 25 January 1969; patented 20 July 1976; not available NTIS.

U.S. ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION, Assistant General Counsel for Patents, Washington, DC 20545

Patent 3,904,273: Apodised Aperture Using Rotation of Plane of Polarization; filed 18 March 1974; patented 9 September 1975, not available NTIS.

Patent 3,904,985: Explosive Laser; filed 5 February 1974; patented 9 September 1975; not available NTIS.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION, Assistant General Counsel for Patent Matters, NASA Code GP-2, Washington, DC 20546.

Patent application 712,419: Flow Separation Detector; filed 6 August 1976; PC $3.50/MF $3.00.

Patent 3,545,262: Method and Apparatus for Nondestructive Testing of Pressure Vessels; patented 8 December 1970; not available NTIS.

Patent 3,955,941: Hydrogen Rich Gas Generator; patented 11 May 1976; not available NTIS.

Patent 3,971,256: Meteoroid Capture Cell Construction; patented 27 July 1976; not available NTIS.

Patent 3,971,535: Oblique-Wing Supersonic Aircraft; patented 27 July 1976; not available NTIS.

Patent 3,972,008: Method and Apparatus for Generating Coherent Radiation in the Ultraviolet Region and Above by Use of Distributed Feedback; patented 27 July 1976; not available NTIS.

[FR Doc.77-1694 Filed 1-18-77;8:45 am]

GOVERNMENT-OWNED INVENTIONS

Availability for Licensing

The inventions listed below are owned by the U.S. Government and are available for U.S. and possibly foreign licensing, in accordance with the policies of the agency sponsors.

Copies of the patents cited are available from the Commissioner of Patents and Trademarks, Washington, D.C. 20231 for $.50 each. Requests for copies of patents must include the patent number.

Copies of the patent applications, either paper copy (PC) or microfiche (MF), can be purchased at the prices cited from the National Technical Information Service (NTIS), Springfield, Virginia 22161. Requests for copies of patent applications must include the PAT-APPL number. Claims are deleted from patent application copies sold to the public to avoid premature disclosure in the event of an interference before the Patent and Trademark Office. Claims and other technical data will usually be made available to serious prospective licensees by the agency which filed the case.

Requests for licensing information on a particular invention should be directed

to the address cited for the agency-sponsor.

DOUGLAS J. CAMPION,
Patent Program Coordinator.

U.S. DEPARTMENT OF THE AIR FORCE, AF/JACP, WASHINGTON, DC 20314

Patent application 681,018: Two-Dimensional Drawing Board Manikin filed 28 April 1976; PC $3.50/MF $3.00.

Patent application 681,084: Digitally Tuned Parametric Amplifier; filed 28 April 1976; PC $3.50/MF $3.00.

Patent application 681,871: Lubricant Composition filed 30 April 1976; PC $3.50 MF $3.00.

Patent application 685,841: Method for the Fabrication of Gallium Arsenide Semiconductor Devices, filed 13 May 1976; PC $3.50/MF $3.00.

Patent application 687,285: Digital Lock-Loop Frequency Offset Correction and Display Apparatus; filed 17 May 1976; PC $3.50/MF $3.00.

Patent application 687,581: Self Synchronizing Concoler System; filed 18 May 1976; PC $3.50/MF $3.00.

Patent 3,940,892: Self-Erecting Aircraft Structure; filed 23 May 1974; patented 2 March 1976; not available NTIS.

Patent 3,955,160: High Power Resistor: filed 8 November 1974; patented 4 May 1976; not available NTIS.

Patent 3,957,083: Pressure Sensitive Regulating Valve; filed 27 January 1975; patented 18 May 1976; not available NTIS.

Patent 3,960,814: Poly (Perfluoroalkylene Oxide) Oxadiazoles and Their Synthesis; filed 27 February 1975; patented 1 June 1976; not available NTIS.

Patent 3,963,490: Dye Sensitized Dichromated Gelatin Holographic Material; filed 25 September 1974; patented 15 June 1976; not available NTIS.

Patent 3,960,422: System Channel Distortion Weighting for Predetection Combiners; filed 26 July 1974; patented 22 June 1976; not available NTIS.

U.S. DEPARTMENT OF THE NAVY, Assistant Chief for Patents, Office of Naval Research, Code 302, Arlington, VA 22217.

Patent application 587,475: Target Detection Method and Apparatus for Reducting Range-Smearing Error Caused by Relative Target Motion; filed 16 June 1975; PC $3.50/MF $3.00.

Patent application 680,944: Constant Current Base-Drive Circuit; filed 28 April 1976; PC $3.50/MF $3.00.

Patent application 681,087: Electrical Conducting Phthalonitrile Polymers; filed 28 April 1976; PC $3.50/MF $3.00.

Patent application 681, 317: Mid-Pulse Detector; filed 29 April 1976; PC $3.50 MF $3.00.

Cutting Tool: filed 3 May 1976; PC $3.50/

Patent application 682,693: Bending and MF $3.00.

Patent application 684,506: Redundant Oscillator for Clocking Signal Source; filed 7 May 1976; PC $3.50/MF $3.00.

Patent application 685,877: Material for Magnetic Bubble Devices; filed 12 May 1976; PC $3.50/MF $3.00.

Patent application 689,417: Low Loss Tuneable Filter; filed 24 May 1976; PC $3.50/MF $3.00.

Patent 3,916,229: Induction Motor for Superconducting Synchronous/Asynchronous Motor; filed 3 June 1975; patented 28 October 1975; not available NTIS.

Patent 3,924,262: Aural Warning Apparatus; filed 2 December 1974; patented 2 December 1975; not available NTIS.

Patent 3,934,204: AM/AGC Weighted Diversity Combiner/Selector; filed 4 October 1974; patented 20 January 1976; not available NTIS.

Patent 3,937,407: Multiple Strap Shock Absorber; filed 24 May 1974; patented 10 February 1976; not available NTIS.

Patent 3,939,334: Closest Point of Approach Calculator; filed 2 January 1975; patented 17 February 1976; not available NTIS.

Patent 3,940,289: Flash Melting Method for Producing New Impurity Distributions in Solids; filed 3 February 1975; patented 24 February 1976; not available NTIS.

Patent 3,942,511: Sandwiched Structure for Production of Heat and Hydrogen Gas; filed 19 September 1974; patented 9 March 1976; not available NTIS.

Patent 3,943,001: Silver Sulfide Cathode for Liquid Ammonia Batteries and Fuel Cells Containing Sulfur and H2S in the Electrolyte; filed 5 July 1973; patented 9 March 1976; not available NTIS.

Patent 3,949,378: Computer Memory Addressing Employing Base and Index Registers; filed 9 December 1974; patented 6 April 1976; not available NTIS.

Patent 3,952,186: Apparatus for the Generation of a Two Dimensional Discrete Fourier Transform; filed 10 February 1975; patented 20 April 1976; not available NTIS.

Patent 3,952,290: Read-Only Optical Memory System; filed 11 November 1974; patented 20 April 1976; not available NTIS.

Patent 3,953,260: Gossypol, an Abundant, Low-Cost Iron Deactivator, Pot-Life, Extender, and Processing Aid for HTPB Propellants; filed 23 May 1975; patented 27 April 1976; not available NTIS.

Patent 3,957,340: Electrooptical Amplitude Modulator; filed 25 February 1975; patented 18 May 1976; not available NTIS.

Patent 3,957,840: Preparation of a Ferrocenyl Compound; filed 15 July 1974; patented 18 May 1976; not available NTIS.

Patent 3,958,564: EKG Contact; filed 9 May 1975; patented 25 May 1976; not available NTIS.

Patent 3,963,198: Negative Air Cushion for Airship Ground Handling; filed 2 April 1975; patented 15 June 1976; not available NTIS.

[FR Doc.77-1695 Filed 1-18-77;8:45 am]

GOVERNMENT-OWNED INVENTIONS

Availability for Licensing

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Requests for licensing information on a particular invention should be directed to the address cited for the agency-sponsor.

DOUGLAS J. CAMPION,
Patent Program Coordinator.

U.S. DEPARTMENT OF THE ARMY, Office of Judge Advocate General, Patent Division, Room 2C-455, Pentagon, Washington, DC 20310.

Patent application 647,238: Inflatably Sealed Sterilizer Door; filed 7 January 1976; PC $3.50/MF $3.00.

Patent 3,940,474: Generation of Hydrogen; filed 6 August 1974; patented 24 February 1976; not available NTIS.

U.S. DEPARTMENT OF THE AIR FORCE, AF/JACP, Washington, DC 20314.

Patent application 692,720: Method for the Complete Dissolution of Mineral Samples; filed 4 June 1976; PC $3.50/MF $3.00.

U.S. DEPARTMENT OF AGRICULTURE, Research Agreements and Patent Management Branch, General Services Division, Federal Bldg., Agricultural Research Service, Hyattsville, MD 20782.

Patent application 705,230: Wood Impingement Dryer; filed 14 July 1976; PC $3.50/MF $3.00.

U.S. ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION, Assistant General Counsel for Patents, Washington, DC 20545.

Patent 3,904,274: Apodised Aperture Using Rotation of Plane of Polarization; filed 18 March 1974; patented 9 September 1975; not available NTIS.

Patent 3,904,985: Explosive Laser; filed 5 February 1974; patented 9 September 1975; not available NTIS.

U.S. DEPARTMENT OF THE INTERIOR, Branch of Patents, 18th and C Streets, NW., Washington, DC 20240.

Patent application 709,990: Production of Supported Raney-Type Catalysts by Reactive Diffusion; filed 30 July 1976; PC $3.50/MF $3.00.

Patent application 709,999: Massive Catalytic Inserts; filed 30 July 1976; PC $3.50/MF $3.00.

Patent 3,969,452: Method for Casting and Handling Ultra Thin Reverse Osmosis Membranes; filed 8 August 1974; patented 13 July 1976; not available NTIS.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION, Assistant General Counsel for Patent Matters, NASA Code GP-2, Washington, DC 20546.

Patent application 706,424: Heat Resistant Polymers of Oxidized Styrylphosphine; filed 19 July 1976; PC $4.00/MF $3.00.

Patent application 706,425: Power factor Control System for AC Induction Motors; filed 19 July 1976; PC $3.50/MF $3.00.

Patent application 707,125: TV fatigue Crack Monitoring System; filed 20 July 1976; PC $3.50/MF $3.00.

Patent application 708,659: Liquid Metal Slip Ring; filed 26 July 1976; PC $3.50/MF $3.00.

Patent application 708,771: Method of Producing Complex Aluminum Alloy Parts of High Temper, and Products Thereof; filed 26 July 1976; PC $3.50/MF $3.00.

aPtent application 708,795: Pressure Modulating Valve; filed 26 July 1976; PC $3.50/MF $3.00.

Patent application 708,800: Wrist Joint Assembly; filed 26 July 1976; PC $3.50 MF $3.00.

Patent application 708,951: Polymeric Foams from Cross-Linkable Poly-N-Arylenebenzimidaboles; filed 26 July 1976; PC $3.50/MF $3.00.

Patent application 712,419: Flow Separation Detector; filed 6 August 1976; PC $3.50/MF $3.00.

Patent 3,961,997: Fabrication of Polycrystalline Solar Cells on Low-Cost Substrates; patented 8 June 1976; not available NTIS.

Patent 3, 971, 362: Miniature Ingestible Telemeter Devices to Measure Deep-Body Temperature; patented 27 July 1976; not available NTIS.

Patent 3,971, 363: Myocardium Wall Thickness Transducer and Measuring Method; patented 27 July 1976; not available NTIS.

Patent 3, 971, 364: Catheter Tip Force Transducer for Cardiovascular Research; patented 27 July 1976; not available NTIS.

Patent 3, 971, 602: Thrust Bearing; patented 27 July 1976; not available NTIS.

Patent 3, 971, 697: Production of I-123; patented 27 July 1976; not available NTIS.

Patent 3, 971, 703: Method of Detecting and Counting Bacteria; patented 27 July 1976; not available NTIS.

Patent 3, 971, 847: Hydrogen Rich Gas Generator; patented 27 July 1976; not available NTIS.

Patent 3, 971, 930: Polarization Compensator for Optical Communications; patented 27 July 1976; not available NTIS.

Patent 3, 972, 008: Method and Apparatus for Generating Coherent Radiation in the Ultraviolet Region and Above by Use of Distributed Feedback; patented 27 July 1976; not available NTIS.

Patent 3,972,038: Accelerometer Telemetry System; patented 27 July 1976; not available NTIS.

Patent 3,972,651: Solar-Powered Pump; Patented 3 August 1976; not available NTIS.

Patent 3,972,727: Rechargeable Battery which Combats Shape Change of the Zinc Anode; patented 3 August 1976; not available NTIS.

[FR Doc.77-1696 Filed 1-18-77;8:45 am]

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[INT-DES 77-2]

CORONADO PROJECT

Availability of Draft Environmental Statement

Pursuant to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 7332), the Department of the Interior has prepared a draft environmental statement for the Coronado Project.

The environmental statement describes the environmental impacts associated with the Salt River Project's proposed electrical generating plant at St. John's, Arizona, and associated facilities. The purpose of the project is to provide for the future electrical energy needs of the Phoenix Metropolitan area in Maricopa County, and for the increased electrical demands of the "Eastern Mining Area." Major facilities consist of a 1050 MW coal-fired electric generating station, associated 500 kV and 230 kV transmission lines, a railroad spur for carrying coal, wellfields and pipelines to transport cooling water, service and process to the generating station, and a limestone source to provide limestone to the Air Quality Control System. The transmission lines consist of one 500 kV line from the plant southwest 240 miles to the Kyrene Substation, south of Phoenix. It will share a common corridor with the Cholla-Saguaro 500 kV line through the Sitgreaves and Tonto National National Forests. A 76-mile 500 kV backup transmission line is proposed to run from the Coronado Station to the APS Cholla plant near Holbrook, Arizona.

A Silver King Substation, 60 miles east of Phoenix, is proposed to distribute power along two 230 kV lines—one going to Goldfield Substation just east of Phoenix, and the other going to the Hayden Substation in Hayden, Arizona. Written comments may be submitted to the Regional Director (address below) on or before March 7, 1977.

Copies of the draft environmental impact statement are available for inspection at the following locations:

Office of the Assistant to the Commissioner—Ecology, Room 7622, Bureau of Reclamation, Department of the Interior, Washington, D.C. 20240. Telephone (202 343-4991.

Division of Engineering Support, Technical Services and Publications Branch, E&R Center, Denver Federal Center, Denver, Colorado 80225. Telephone (303) 234-3006.

Office of the Regional Director, Bureau of Reclamation, P.O. Box 427, Boulder City, Nevada 89005. Telephone (702) 598-7464.

Single copies of the draft statement may be obtained upon request to the Commissioner of Reclamation or the Regional Director. In addition, copies may be purchased from the Document Service, Environmental Law Institute, 1346 Connecticut Avenue, NW., Washington, D.C. 20036. Please refer to the statement number above.

Dated: January 14, 1977.

STANLEY D. DOREMUS,
Deputy Assistant Secretary of the Interior.

[FR Doc.77-1725 Filed 1-18-77;8:45 am]

Bureau of Land Management

[Serial No. F-23267]

LOUISIANA LAND AND EXPLORATION CO.

Application for Airport Lease

Notice is hereby given that pursuant to the Act of May 24, 1928 (49 U.S.C. 211-214) The Louisiana Land and Exploration Company has applied for an airport lease for the following land:

A parcel contained in Sections 21 and 22, T. 23 N., R. 28 E., Fairbanks Meridian, Alaska, further described to wit:

Commencing at a brass cap monument at the northwest corner of Section 22; thence S14°05'39" W. a distance of 664.64 feet to the true point of beginning of this parcel and lying at Alaska State Plane Zone 2 coordinates of y=4,682,526.30, x=549,825.38 at latitude 66°48'37.913" N, longitude 141°39'-16.211" W; thence N85°50'27" E, a distance of 600 feet; thence S4°09'33" E, a distance of 400 feet; thence N85°50'27" E, a distance of 4,500 feet to a point from which protracted section corner common to Sections 14, 15, 22, and 23 bears N24°48'27" E, a distance of 776.22 feet; thence continuing on the parcel boundary S4°09'33" E, a distance of 110 feet; thence along the arc of a 100 foot radius tangent curve to the right for 314.16 feet; thence along a radial line away from said curve S85°50'27" W, a distance of 5,000 feet to the beginning of a 100 foot radius non-tangent curve to the right whose center bears S85°50'27" W, thence along said curve 314.16 feet; thence on tangent to said curve N4°09'-33" W, a distance of 110 feet; thence N85°50'-27" E, a distance of 300 feet; thence N4°09'-33" W, a distance of 400 feet to the true point of beginning of this parcel; and containing 19.87 acres more or less. All bearings and distances are Alaska State Plane Zone 2.

The purpose of this notice is to inform the public that the filing of this application segregates the described land from all other forms of use or disposal under the public land laws.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, Box 1150, Fairbanks, Alaska 99707.

CARL D. JOHNSON,
Acting District Manager.

[FR Doc.77-1669 Filed 1-18-77;8:45 am]

[Wyoming 57883]

WYOMING

Application

JANUARY 10, 1977.

Notice is hereby given that pursuant to Section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), Northwest Pipeline Corporation of Salt Lake City, Utah, filed an application for a right-of-way to construct a 4½-inch pipeline for the purpose of transporting natural gas across the following described National Resource Lands:

SIXTH PRINCIPAL MERIDIAN, WYOMING

T. 24 N., R. 114 W.,
Sec. 2, lot 9;
Sec. 3, lot 11.

The pipeline will transport natural gas from a point in sec. 2, T. 24 N., R. 114 W., to a point in sec. 3, T. 24 N., R. 114 W., Lincoln County, Wyoming.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved and, if so, under what terms and conditions.

Interested persons desiring to express their views should do so promptly. Persons submitting comments should include their name and address and send them to the District Manager, Rock Springs, Highway 187 North, P.O. Box 1869, Rock Springs, Wyoming 82901.

HAROLD G. STINCHCOMB,
Chief, Branch of Lands and Minerals Operations.

[FR Doc 77-1670; Filed 1-18-77;8:45 am]

Fish and Wildlife Service

TEXAS

Application

Notice is hereby given that under section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (87 Stat. 576), Mitchell Energy Offshore Corporation has applied for a twelve inch natural gas and oil pipeline right-of-way that will cross that part of the Aransas National Wildlife Refuge located on the Black Jack Peninsula, Aransas County, Texas.

The pipeline will convey natural gas across ten miles of the Aransas National Wildlife Refuge.

The purpose of this notice is to inform the public that the United States Fish and Wildlife Service will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views, should do so within thirty

(30) days and send their name and address to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103.

ROBERT F. STEPHENS.
Acting Regional Director. United States Fish and Wildlife Service.

JANUARY 10, 1977.

[FR Doc.77-1728 Filed 1-18-77;8:45 am]

ENDANGERED SPECIES PERMIT

Receipt of Application

Notice is hereby given that the following application for a permit is deemed to have been received under section 10 of the Endangered Species Act of 1973 (Pub. L. 93-205).

Applicant: Vagn Flyger, Inland Environmental Laboratory, CEES, University of Maryland, College Park, Maryland 20742.

OMB NO. 42-R1575

DEPARTMENT OF THE INTERIOR
U.S. FISH AND WILDLIFE SERVICE
FEDERAL FISH AND WILDLIFE LICENSE/PERMIT APPLICATION

1. APPLICATION FOR (Indicate only one)
☐ IMPORT OR EXPORT LICENSE ☒ PERMIT

2. BRIEF DESCRIPTION OF ACTIVITY FOR WHICH REQUESTED LICENSE OR PERMIT IS NEEDED.
A permit is needed to trap, handle, mark (ear tatoo) Delmarva Fox Squirrels (SNC) and to temporarily attach radio collars on selected individuals. Blood smears will also be taken by a tiny incision of a footpad.

3. APPLICANT. (Name, complete address and phone number of individual, business, Agency, or institution for which permit is requested)
Vagn Flyger.
Inland Environmental Laboratory, CEES
University of Maryland
College Park, Maryland 20742
301--454-5641

4. IF "APPLICANT" IS AN INDIVIDUAL, COMPLETE THE FOLLOWING:

☒ MR. ☐ MRS. ☐ MISS ☐ MS.	HEIGHT	WEIGHT
	5'10"	195
DATE OF BIRTH	COLOR HAIR	COLOR EYES
14 January 1922	Blond	Blue
PHONE NUMBER WHERE EMPLOYED	SOCIAL SECURITY NUMBER	
301--454-5641	072-16-9585	

OCCUPATION
Professor - Wildlife, Biology

ANY BUSINESS, AGENCY, OR INSTITUTIONAL AFFILIATION HAVING TO DO WITH THE WILDLIFE TO BE COVERED BY THIS LICENSE/PERMIT
Maryland Wildlife Administration
Annapolis, Maryland

5. IF "APPLICANT" IS A BUSINESS, CORPORATION, PUBLIC AGENCY, OR INSTITUTION, COMPLETE THE FOLLOWING:
EXPLAIN TYPE OR KIND OF BUSINESS, AGENCY, OR INSTITUTION

NAME, TITLE, AND PHONE NUMBER OF PRESIDENT, PRINCIPAL OFFICER, DIRECTOR, ETC.

IF "APPLICANT" IS A CORPORATION, INDICATE STATE IN WHICH INCORPORATED

6. LOCATION WHERE PROPOSED ACTIVITY IS TO BE CONDUCTED
Radio telemetry work will be carried on P. B. Stifel's farm near Tunis Mills in Talbot Bounty. Ear tatoo, weighing and examination research will be conducted over entire range of the mammal.

7. DO YOU HOLD ANY CURRENTLY VALID FEDERAL FISH AND WILDLIFE LICENSE OR PERMIT? ☐ YES ☒ NO
(If yes, list license or permit numbers)

8. IF REQUIRED BY ANY STATE OR FOREIGN GOVERNMENT, DO YOU HAVE THEIR APPROVAL TO CONDUCT THE ACTIVITY YOU PROPOSE? ☒ YES ☐ NO
(If yes, list jurisdictions and type of documents)
Maryland Scientific Collection Permit

9. CERTIFIED CHECK OR MONEY ORDER (if applicable) PAYABLE TO THE U.S. FISH AND WILDLIFE SERVICE ENCLOSED IN AMOUNT OF
$

10. DESIRED EFFECTIVE DATE: Feb 1, 1977

11. DURATION NEEDED: Dec. 31, 1978

12. ATTACHMENTS. THE SPECIFIC INFORMATION REQUIRED FOR THE TYPE OF LICENSE/PERMIT REQUESTED (See 50 CFR 13.12(b)) MUST BE ATTACHED, IT CONSTITUTES AN INTEGRAL PART OF THIS APPLICATION. LIST SECTIONS OF 50 CFR UNDER WHICH ATTACHMENTS ARE PROVIDED.
17.22

CERTIFICATION

I HEREBY CERTIFY THAT I HAVE READ AND AM FAMILIAR WITH THE REGULATIONS CONTAINED IN TITLE 50, PART 13, OF THE [illegible] REGULATIONS AND THE OTHER APPLICABLE PARTS IN SUBCHAPTER B OF CHAPTER I OF TITLE 50, AND I FURTHER CERTIFY THAT THE INFORMATION SUBMITTED IN THIS APPLICATION FOR A LICENSE/PERMIT IS COMPLETE AND ACCURATE TO THE BEST OF MY KNOWLEDGE AND BELIEF. I UNDERSTAND THAT ANY FALSE STATEMENT HEREIN MAY SUBJECT ME TO THE CRIMINAL PENALTIES OF 18 U.S.C. 1001.

SIGNATURE (In ink) Vagn Flyger — DATE 14 Dec 1976

3-200 (6-74) GPO [illegible]

ATTACHMENT TO FORM 3-200

JUSTIFICATION FOR PERMIT TO HANDLE DELMARVA FOX SQUIRRELS BY VAGN FLYGER

50 CFR 17, 17.22.a.

1. Delmarva Fox Squirrel, *Sciurus Niger Cinereus* (Linneaua).

I plan to trap, mark and release wild Delmarva fox squirrels on the farm of P. B. Stifel near Tunis Mills in Talbot County, Maryland. The squirrels will be lightly anesthetized and marked for permanent identification by tattooing a number or letter on each ear. While the animals are under anesthesia they will be examined, weighed and measured and a small incision will be made on a footpad to get a drop of blood for making a thin smear on a microscope slide. Delmarva fox squirrels will also be captured throughout their range in nest boxes for a study being carried out in cooperation with the Maryland Wildlife Administration and the U.S. Fish and Wildlife Service.

In addition to the above studies, there will be an intensive study of Delmarva fox squirrel habitat usage. I intend to temporarily attach radio collars to approximately 20 adult individuals of both sexes and follow their daily movements. Collars will be removed after two to four weeks. Mr. Frank H. Rice, one of my graduate students, will do most of the radio telemetry work.

2. All of the Delmarva fox squirrels will be wild animals and will be returned to the wild immediately after handling.

3. I have made no previous attempt to obtain a permit to handle Delmarva fox squirrels. I have handled about forty individuals in the past before they were declared an endangered species. I have also handled about fifty other subspecies of fox squirrels and approximately 10,000 gray squirrels (including recaptures) by the method that I intend using. During this time only one squirrel (a gray squirrel) has died during the handling.

4. No captive or foreign animals are involved in this work.

5. No animals will be kept in captivity or displayed. All work will be in the field on state, federal or private property.

6. (i) Not applicable.

(ii) I have been studying, handling and marking gray squirrels for 25 years. During this time I have been perfecting my handling techniques, and adapting those of colleagues to where I believe we have one of the best techniques available for safety handling a wild mammal (see attached unpublished manuscript). Some of my wild gray squirrels have been handled more than seventy times by this method.

(iii) Not applicable.

(vi) The traps to be employed have been constructed expressly for capture of squirrels (see attached manuscript by Flyger, Barkalow and Lustig). This is the trap I have used exclusively for the last ten years to capture squirrels.

(v) The only squirrel (a gray squirrel, *Sciurus carolinensis*) which died in trapping and marking operations over the last five years was one which had a huge abcess on its right shoulder. This abcess contained about 100 ml of pus and the animal was extremely emaciated. Its fur was rough looking and the animal probably would have died soon even if it had not been handled.

Animals spend a maximum of three hours in traps which are covered with black opaque plastic on four sides. There is no chance of squirrels spending the night in traps. Animals are only lightly anesthetized.

My students have learned to handle squirrels by working with captive gray squirrels. Two or three squirrels have been killed in this learning process but no students ever handle wild animals until they have learned how to do this properly. Mr. Frank Rice has handled many gray squirrels and is a capable field worker well able to handle fox squirrels with absolute minimum mortality.

Anesthetized squirrels will be released only after they have fully recovered from anesthesia.

7. Copies of contracts and agreements include: a. Draft of Delmarva Fox Squirrel Recovery Plan, b. Contract with U.S. Forest Service.

8. (i) I would like authorization to:

a. Capture Delmarva fox squirrels by means of live traps and in nest boxes throughout their range.

b. To take a drop of blood by a slight incision in a footpad to make a thin smear. The blood parasite *Hepatozoon grisisciurus* is prevalent in gray squirrels and may be important in the health of fox squirrels.

c. To apply radio collars to approximately twenty adult fox squirrels of both sexes on the farm of P. B. Stifel, Tunis Mills, Maryland.

(ii) Activities will be carried out as follows:

Fox squirrels at the Stifel farm will be captured in wire traps baited with peanuts or captured in nest boxes. They will be lightly anesthetized by inserting the heads of the squirrels into a widemouthed quart jar containing several gouse sponges soaked with Metrofane (methoxyflourane). In about one to two minutes a squirrel becomes limp and its head can be removed from the jar. It can then be marked, weighed and examined. (For further details see enclosed manuscript by Flyger, Barkalow and Lustig.)

Fifteen gram radio-transmitters will be placed on about twenty individuals and removed after two to four weeks. Only individuals which are regular trap visitors will be fitted with transmitters and no more than two individuals will be fitted with radios at any one time. In the past another student and I conducted studies on gray squirrels using 24 gram collars. There were no mortalities and a paper on this subject has been submitted to the Journal of Wildlife Management. Since then the weight of the transmitters have reduced by 9 grams.

A study on distribution, habitat utilization, abundance and management is to be conducted by myself together with the Maryland Wildlife Administration and the U.S. Fish and Wildlife Service. About 2,500 nesting boxes are being placed in units of 50 in selected woodlands within the range of the Delmarva fox squirrel. These boxes will be visited twice a year to learn where fox squirrels occur and how abundant they are in various habitat types. I plan to mark these animals with ear tatoos to gather data on longevity, movements and population densities. None of these animals will be outfitted with radio collars but it is my intention to take thin blood smears on microscope slides.

(iii) The purpose of these activities is to learn the habitat requirements of Delmarva fox squirrels so that this species can be more effectively managed according to the procedures outlined in the Delmarva Fox Squirrel Recovery Plan.

(iv) At the termination of this activity all squirrels will continue to live in the wild.

The study of Delmarva fox squirrel habitat utilization by means of radio telemetry will continue from February 20, 1977, to February 19, 1979. The ear tattoo marking will continue from February 20, 1977, to beyond December 31, 1981. However, to comply with restrictions on duration of permits I can reapply for extension at the necessary time.

Documents and other information submitted in connection with this application are available for public inspection during normal business hours at the Service's office in Room 512, 1717 H Street, NW., Washington, D.C.

Interested persons may comment on this application by submitting written data, views, or arguments, preferably in triplicate, to the Director (FWS/WPO), U.S. Fish and Wildlife Service, Washington, D.C. 20240. This application has been assigned File Number PRT 2-532-07; please refer to this number when submitting comments. All relevant comments received by February 18, 1977, will be considered.

Dated: January 14, 1977.

DONALD G. DONAHOO,
Chief, Permit Branch, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service.

[FR Doc.77-1650 Filed 1-18-77;8:45 am]

ENDANGERED SPECIES PERMIT

Receipt of Application

Notice is hereby given that the following application for a permit is deemed to have been received under section 10 of the Endangered Species Act of 1973 (Pub. L. 93-205).

Applicant: David L. Majors, Route 1. Box 57, Stevensville, Montana 59870.

BURNT FORK GAME FARM.
Stevensville, Mont. December 21. 1976

DIRECTOR,
U.S. Fish and Wildlife Service, Washington, D.C.

DEAR SIR: In reference to your letter ADM 7-02m dated December 10. 1976 the following information is submitted. The shipping containers are reinforced wooden crates measuring 16" x 21" and 12" in height. These are padded with foam rubber on the top of the crate to prevent damage to the birds heads while in transit. The crates are also fitted with food and water containers for use during transit. These crates will hold either one pair or one bird depending upon the size of the pheasant shipped. All the pheasants that have been shipped to me in this type of container have arrived in excellent condition.

I am scheduled to be in western Washington in the first week in February 1977. I would like to pick up some of the pheasants at this time if the permit is issued prior to this date.

Cordially yours.

DAVID L. MAJORS.

OMB NO. 42-R1575

DEPARTMENT OF THE INTERIOR
U.S. FISH AND WILDLIFE SERVICE
FEDERAL FISH AND WILDLIFE LICENSE/PERMIT APPLICATION

1. APPLICATION FOR (Indicate only one)
☐ IMPORT OR EXPORT LICENSE ☒ PERMIT

2. BRIEF DESCRIPTION OF ACTIVITY FOR WHICH REQUESTED LICENSE OR PERMIT IS NEEDED.
The interstate shipment, to me, of those endangered species (pheasants), as listed in inclosure 1, for propagation of those species.

3. APPLICANT. (Name, complete address and phone number of individual, business, agency, or institution for which permit is requested)
David L. Majors
Rt.1, Box 57
Stevensville, Montana 59870
(406) 777-3642

4. IF "APPLICANT" IS AN INDIVIDUAL, COMPLETE THE FOLLOWING

☒ MR. ☐ MRS. ☐ MISS ☐ MS.	HEIGHT	WEIGHT
	5 - 8	165
DATE OF BIRTH	COLOR HAIR	COLOR EYES
May 25, 1943	Brn	Brn
PHONE NUMBER WHERE EMPLOYED	SOCIAL SECURITY NUMBER	
(406) 543-3107 ext220	534 44 2634	

OCCUPATION
sawmill foreman, game bird breeder

ANY BUSINESS, AGENCY, OR INSTITUTIONAL AFFILIATION HAVING TO DO WITH THE WILDLIFE TO BE COVERED BY THIS LICENSE/PERMIT

5. IF "APPLICANT" IS A BUSINESS, CORPORATION, PUBLIC AGENCY OR INSTITUTION, COMPLETE THE FOLLOWING:
EXPLAIN TYPE OR KIND OF BUSINESS, AGENCY, OR INSTITUTION

NAME, TITLE, AND PHONE NUMBER OF PRESIDENT, PRINCIPAL OFFICER, DIRECTOR, ETC.

IF "APPLICANT" IS A CORPORATION, INDICATE STATE IN WHICH INCORPORATED

6. LOCATION WHERE PROPOSED ACTIVITY IS TO BE CONDUCTED
Rt. 1, box 57
Stevensville, Montana 59870

Interstate shipment, to me, at the above address

7. DO YOU HOLD ANY CURRENTLY VALID FEDERAL FISH AND WILDLIFE LICENSE OR PERMIT? ☒ YES ☐ NO
(If yes, list license or permit numbers)
PRT 2-143 DM, PRT 2-2, 6-PR-298

8. IF REQUIRED BY ANY STATE OR FOREIGN GOVERNMENT, DO YOU HAVE THEIR APPROVAL TO CONDUCT THE ACTIVITY YOU PROPOSE? ☒ YES ☐ NO
(If yes, list jurisdictions and type of documents)
Montana Game Farm Permit # 737

9. CERTIFIED CHECK OR MONEY ORDER (if applicable) PAYABLE TO THE U.S. FISH AND WILDLIFE SERVICE ENCLOSED IN AMOUNT OF
$

10. DESIRED EFFECTIVE DATE: Dec 1, 1976

11. DURATION NEEDED: 2 years

12. ATTACHMENTS. THE SPECIFIC INFORMATION REQUIRED FOR THE TYPE OF LICENSE/PERMIT REQUESTED (See 50 CFR 13.12(b)) MUST BE ATTACHED, IT CONSTITUTES AN INTEGRAL PART OF THIS APPLICATION. LIST SECTIONS OF 50 CFR UNDER WHICH ATTACHMENTS ARE PROVIDED.
Five (5) inclosures 50 CFR 17.22a

CERTIFICATION

I HEREBY CERTIFY THAT I HAVE READ AND AM FAMILIAR WITH THE REGULATIONS CONTAINED IN TITLE 50, PART 13, OF THE CODE OF FEDERAL REGULATIONS AND THE OTHER APPLICABLE PARTS IN SUBCHAPTER B OF CHAPTER I OF TITLE 50, AND I FURTHER CERTIFY THAT THE INFORMATION SUBMITTED IN THIS APPLICATION FOR A LICENSE/PERMIT IS COMPLETE AND ACCURATE TO THE BEST OF MY KNOWLEDGE AND BELIEF. I UNDERSTAND THAT ANY FALSE STATEMENT HEREIN MAY SUBJECT ME TO THE CRIMINAL PENALTIES OF 18 U.S.C. 1001.

SIGNATURE (In ink) DAVID L. MAJORS — DATE Nov 11, 1976

3-200 (6-74) GPO 888-042

INCLOSURE 1

The following is a list of the endangered species (pheasants) which I desire to have shipped to me for the purpose of propagation:

1 pair of Brown eared pheasants (*Crossoptilon mantchuricum*), 1 pair of Mikados Pheasants (*Syrmaticus mikado*), 2 pair of Elliot's Pheasants (*Syrmaticus ellioti*) from Mr. Jim Chamberlain, 4850 Alcorn Rd., Fallon, Nevada 89406 all pheasants 1 year old.

1 pair of Elliot's Pheasant (*Syrmaticus ellioti*), 1 pair of Bar-tailed pheasants (*Syrmaticus humiae*), and 1 pair of Mikados Pheasant (*Syrmaticus mikado*) from Mr. Ed Benhardt P.O. Box 189 Reardan, Washington 99029.

1 pair of Elliot's Pheasant (*Syrmaticus ellioti*), and 2 pair of Edward's Pheasants (*Lophura edwardsi*) from Mr. Chick Driscoll, 219 Cowlitz Drive, Kelso, Washington 98626.

1 pair of Brown-eared Pheasants (*Crossoptilon mantchuricum*), 1 pair of Elliot's Pheasants (*Syrmaticus ellioti*), 1 pair of Bar-tailed Pheasants (*Syrmaticus humiae*), and 1 pair of Mikados Pheasants (*Syrmaticus mikado*) from Mr. Warren J. Mack, 600 East River Road, Rochester, N.Y. 14623.

1 pair of Elliot's Pheasants (*Syrmaticus ellioti*) from Mr. Dave Rollins, Altamont, Utah 84001.

1 pair of Edward's Pheasants (*Lophura edwardsi*), 1 pair of Brown-eared Pheasants (*Crossoptilon mantchuricum*) from Mr. Charles Kamm, Rt. 1, Box 87, Courtland, Minn. 56021

1 pair of Elliot's Pheasants (*Syrmaticus ellioti*), 1 pair of Mikados Pheasants (*Syrmaticus mikado*), and 2 pair of Edward's Pheasants (*Lophura edwardsi*) from Mr. Bert Rosenbaum, 3411 So. 90th Street, Tacoma, Washington 98409.

1 pair of Elliots Pheasants (*Syrmaticus ellioti*) and 2 pair of Edward's Pheasants (*Lophura edwardsi*), and 1 pair of Bar-tailed Pheasants (*Syrmaticus humiae*) from Mr. Jerry McRoberts, Gurley, Nebraska 69141.

2 pair of White Eared Pheasants (*Crossoptilon crossoptilon*) from Mr. Charles Sivelle, 41 Westcliff Drive, Dix Hills, Long Island, N.Y. 11746.

The following information is submitted as inclosures as required by 50 CFR 17

17.22a(1) provided above.

17.22a(2) the above will all be captive born birds.

17.22a(3) All of the above pheasants will be purchased as captive born stock, thus there will be no death or removal from the wild of any of the above.

17.22a(4) All of the above pheasants will be birds born in the United States of America.

17.22a(5) All of the above pheasants will be kept at Stevensville, Montana 59870.

17.22a(6)(i)—Inclosure 2.

17.22a(6)(ii)—Inclosure 3.

17.22a(6)(iii)—Inclosure 4.

17.22a(6)(iv)—All of the above will be shipped via air in containers approved by the carrier, that provide for the protection and safe delivery of the birds.

17.22a(6)(v)—Inclosure 5.

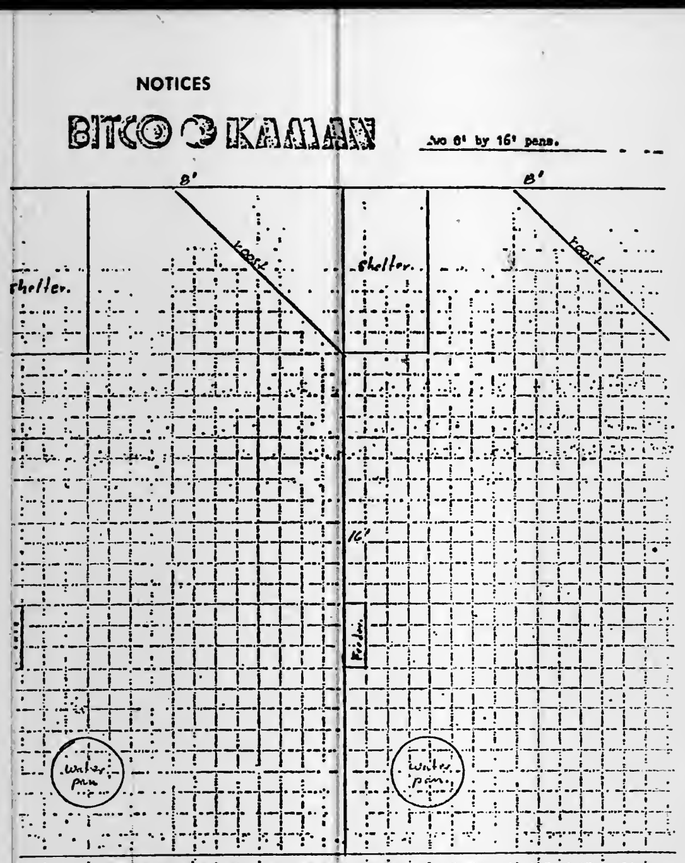
17.22a(7)—None. I can not legally acquire the above pheasants without the issuance of the permit I am applying for!

17.22a(8)(i)—The interstate shipment, to me, of the above listed, captive born pheasants.

17.22(8)(ii)—The above will be purchased and shipped to me, via air, for the propagation of that species.

17.22a(8)(iii)—The above pheasants will be used for the enhancement of that species thru captive propagation.

17.22a(8)(iv)—I do not plan to terminate my activities in raising birds. If such occurence should ever happen it would be in accordance with any applicable federal or state regulations.



The above are constructed as follows: sides 18" plywood, 24" of 1" poultry net 48" of 2" poultry netting; top - entirely covered with 2" poultry netting. 24" of 1" poultry netting burried around outside of pens.

INCLOSURE 2

I also have 16' by 16' pens and 16' by 32' pens with the same construction. As of this date I have the following pens: Twenty 8' by 16'; thirteen 16' by 16'; four 16' by 32'.

Of the 16' by 16' pens, eight have an attached 8' by 16' totally enclosed building attached. One 40' by 60' pen with top over a 20' by 25' pond for my ornamental waterfowl. Eight 16' by 80' pens and one 64' by 80' and one 80' by 80' pen for Ringneck pheasants.

INCLOSURE 3

I have the following related experience: BS in Wildlife Technology (University of Montana, June 1965), I have always had a keen interest in raising and propagating ducks, geese, and pheasants. This past year (1974) I was finally able to purchase 20 acres where I now reside, which enabled me to start actually raising the birds. I have the advice and help of my father-in-law, Mr. Virgil Fite, who has been engaged in raising pheasants and other birds for the past 30+ years. I am a member of the American Game Bird Breeders Cooperative Federation whose purpose is to "establish and preserve the game birds of the world in captivity in their pure forms."

INCLOSURE 4

I am willing to participate in a cooperative breeding program and to maintain such records as are necessary to insure the preservation of the species listed in Inclosure 1.

INCLOSURE 5

Summary of Mortalities

1 Reeves pheasant—died of unknown causes. This cock was purchased during the moulting period and turned out to be a very poor specimen, which died later in the fall. I had an excellent hatch of Reeves this past Spring and I am in the process of selling my surplus stock.

2 Yellow Golden Pheasants—killed by a skunk. These birds were killed prior to the time I buried the 1" poultry netting around my pens. Since that time I have not lost any birds to skunks.

Documents and other information submitted in connection with this application are available for public inspection during normal business hours at the Service's office in Room 512, 1717 H Street NW., Washington, D.C.

Interested persons may comment on this application by submitting written data, views, or arguments, preferably in

triplicate, to the Director (FWS/WPO), U.S. Fish and Wildlife Service, Washington, D.C. 20240. This application has been assigned File Number PRT 2-492-07; please refer to this number when submitting comments. All relevant comments received by February 18. 1977 will be considered.

Dated: January 14, 1977.

DONALD G. DONAHOO,
Chief, Permit Branch, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service.

[FR Doc.77-1657 Filed 1-18-77;8:45 a.m.]

ENDANGERED SPECIES PERMIT

Receipt of Application

Notice is hereby given that the following application for a permit is deemed to have been received under section 10 of the Endangered Species Act of 1973 (Pub. L. 93-205).

Applicant: New York Zoological Society, 185th Street and Southern Blvd., Bronx, New York 10460.

OMB NO. 42-R1670

DEPARTMENT OF THE INTERIOR
U.S. FISH AND WILDLIFE SERVICE
FEDERAL FISH AND WILDLIFE LICENSE/PERMIT APPLICATION

1. APPLICATION FOR (Indicate only one)
☐ IMPORT OR EXPORT LICENSE ☒ PERMIT

2. BRIEF DESCRIPTION OF ACTIVITY FOR WHICH REQUESTED LICENSE OR PERMIT IS NEEDED.
The New York Zoological Society seeks permission to purchase and transport interstate an endangered species, barasingha (Cervus d. duvauceli) -- 2 males, and 6 females from the YO Ranch, Mountain Home, Texas 78058 to the New York Zoological Park, Bronx, New York 10460.

3. APPLICANT. (Name, complete address and phone number of individual, business, agency, or institution for which permit is requested)
New York Zoological Society
185th Street & Southern Blvd.
Bronx, New York 10460
212-220-5100

4. IF "APPLICANT" IS AN INDIVIDUAL, COMPLETE THE FOLLOWING:
☐ MR. ☐ MRS. ☐ MISS ☐ MS.
HEIGHT: WEIGHT:
DATE OF BIRTH: COLOR HAIR: COLOR EYES:
PHONE NUMBER WHERE EMPLOYED: SOCIAL SECURITY NUMBER:
OCCUPATION:

5. IF "APPLICANT" IS A BUSINESS, CORPORATION, PUBLIC AGENCY, OR INSTITUTION, COMPLETE THE FOLLOWING:
EXPLAIN TYPE OR KIND OF BUSINESS, AGENCY, OR INSTITUTION
Zoological Park.

ANY BUSINESS, AGENCY, OR INSTITUTIONAL AFFILIATION HAVING TO DO WITH THE WILDLIFE TO BE COVERED BY THIS LICENSE/PERMIT:

NAME, TITLE, AND PHONE NUMBER OF PRESIDENT, PRINCIPAL OFFICER, DIRECTOR, ETC.
William G. Conway, General Director
IF "APPLICANT" IS A CORPORATION, INDICATE STATE IN WHICH INCORPORATED
New York

6. LOCATION WHERE PROPOSED ACTIVITY IS TO BE CONDUCTED
New York Zoological Park
185th St. & Southern Blvd.
Bronx, New York 10460

7. DO YOU HOLD ANY CURRENTLY VALID FEDERAL FISH AND WILDLIFE LICENSE OR PERMIT? ☒ YES ☐ NO
(If yes, list licenses or permit numbers)
PRT 2-577 NY 2-461-76
2-355-07

8. IF REQUIRED BY ANY STATE OR FOREIGN GOVERNMENT, DO YOU HAVE THEIR APPROVAL TO CONDUCT THE ACTIVITY YOU PROPOSE? ☐ YES ☐ NO
(If yes, list jurisdictions and type of documents)
N.Y. State Harris Act -- application for state permit being made concurrently; issuance dependent upon USDI permit

9. CERTIFIED CHECK OR MONEY ORDER (if applicable) PAYABLE TO THE U.S. FISH AND WILDLIFE SERVICE ENCLOSED IN AMOUNT OF
$

10. DESIRED EFFECTIVE DATE
1 February 1977

11. DURATION NEEDED
Six months

12. ATTACHMENTS. THE SPECIFIC INFORMATION REQUIRED FOR THE TYPE OF LICENSE/PERMIT REQUESTED (See 50 CFR 13.12(b)) MUST BE ATTACHED. IT CONSTITUTES AN INTEGRAL PART OF THIS APPLICATION. LIST SECTIONS OF 50 CFR UNDER WHICH ATTACHMENTS ARE PROVIDED.
50 CFR 17.22

CERTIFICATION

I HEREBY CERTIFY THAT I HAVE READ AND AM FAMILIAR WITH THE REGULATIONS CONTAINED IN TITLE 50, PART 13, OF THE CODE OF FEDERAL REGULATIONS AND THE OTHER APPLICABLE PARTS IN SUBCHAPTER B OF CHAPTER I OF TITLE 50, AND I FURTHER CERTIFY THAT THE INFORMATION SUBMITTED IN THIS APPLICATION FOR A LICENSE/PERMIT IS COMPLETE AND ACCURATE TO THE BEST OF MY KNOWLEDGE AND BELIEF. I UNDERSTAND THAT ANY FALSE STATEMENT HEREIN MAY SUBJECT ME TO THE CRIMINAL PENALTIES OF 18 U.S.C. 1001.

SIGNATURE (In ink) — DATE
F. Wayne King — Director of Zoology — 13 December 1976

3-200
16-748

NEW YORK ZOOLOGICAL SOCIETY, *New York Zoological Park, New York Aquarium, Center for Field Biology and Conservation, Osborn Laboratories of Marine Sciences. Bronx Zoo, Bronx, New York.*

Attachments as required to New York Zoological Society permit application 50 CFR 17.22.

(i) The common and scientific names of the species sought to be covered by the permit as well as the number, age, and sex of such species, and the activity sought to be authorized (such as taking, exporting, selling in interstate commerce, etc.):

The New York Zoological Society hereby requests permission to purchase and transport interstate 2.6 (=2 males and 6 females) captive-born barasingha (*Cervus duvaucelli duvaucelli*). The ages of the specimens are as follows:

Males—1 born 1973; 1 born 1974.
Females—1 born 1971; 1 born 1972; 2 born 1974; 2 born 1975.

(2) A statement as to whether, at the time of application, the wildlife sought to be covered by the permit (i) is still in the wild, (ii) has already been removed from the wild, or (iii) was born in captivity;

The 2.6 barasingha were born in captivity.

(3) A resume of the applicant's attempts to obtain the wildlife sought to be covered by the permit in a manner which would not cause the death or removal from the wild of such wildlife:

The 2.6 barasingha are captive-born, and represent no removal of wild stock of the species.

(4) If the wildlife sought to be covered by the permit has already been removed from the wild, the country and place where such removal occurred; if the wildlife sought to be covered by the permit was raised in captivity, the country and place where such wildlife was born:

The 2.6 barasingha were born at the YO Ranch, Mountain Home, Texas 78058. The specimens are presently located at the YO Ranch.

(5) A complete description and address of the institution or other facility where the wildlife sought to be covered by the permit will be used, displayed or maintained:

The 2.6 barasingha will be maintained at the New York Zoological Park, 185th Street & Southern Blvd., Bronx, New York 10460.

(6i) A complete description, including photographs or diagrams, of the area and facilities where such wildlife will be housed and cared for:

The New York Zoological Society seeks to establish a major propagating population of barasingha as a contribution towards the long-term survival of the species and as an educational exhibit in its forthcoming forty-acre "WILD ASIA" exhibit within the Bronx Zoo. The Society seeks to employ barasingha displays and propagating facilities as a force to arouse interest in the plight of vanishing species and as a means to raise the environmental awareness of the 2.5 million zoo-goers who visit each year.

Permanent off-exhibit quarters consist of a series of eight large corrals—approximate measurements follow: 3 corrals, some 75'x 100' each; 1 corral some 75'x75'; 1 corral some 50'x100'; 1 corral some 50'x50'; and 1 corral some 75'x150'. All corrals are equipped with open-fronted barns that will be used nightly. In addition, there are six isolation pens with barns. The exhibit consists of both grassy and forested areas much like the natural habitat of barasingha. It measures some 250 x 1000 feet. Attached, please find a drawing of the management facilities and exhibit for this species.

The barasingha will be exhibited daily for eight or nine months each year, as weather permits. They will return each evening to non-exhibit herd corrals where they will be fed and their health and behavior closely observed. Isolation pens are available should they become necessary for male separation, animals undergoing therapy, weaning, crating, or any other reason.

The diet will consist of Purina D. & H. grain ration, timothy and alfalfa hay, hydroponically grown oat and rye grass, with salt block and water always available and pasture.

(6ii) A brief resume of the technical expertise of the persons who will care for such wildlife including any experience the applicant or his personnel have had in raising, caring for, and propagating similar wildlife, or any closely related wildlife:

In the past, barasingha have been maintained most successfully at the New York Zoological Park. Starting with a trio in 1904, a total of 122 young were born at the Bronx Zoo during the period 1904–1964. Only one additional animal from outside the park, a male in 1946, was added to this herd. The last of the specimens died in August of 1965. Crandall (1964) noted that barasingha are thoroughly hardy in the New York City climate and use the provided shelters only occasionally.

Barasingha at the Bronx Zoo will receive direct care from keepers exceptionally experienced with a variety of hoofed animals, under the supervision of Curator of Mammalogy, James G. Doherty. The staff of the Department of Mammalogy has had a long-standing commitment to conservation and the captive-breeding of endangered species as evidenced by long-term breeding programs for many species, including the endangered Siberian tigers, snow leopards, Mongolian wild horse, Pere David deer and wisent. These programs are in the process of expansion as herds increase and other programs are being developed. The number of less endangered species exhibited is being reduced to accommodate the expansion of the successful breeding programs for rare or vanishing species. The Society's total collection has been reduced from 1,000 species to 675 species in the past eight years while the number of specimens has remained at 3200. *Curricula vitae* of Curator of Mammalogy James G. Doherty; Assistant Curator of Mammalogy Mark C. MacNamara; Veterinarians Emil P. Dolensek, Raymond L. Deiter, and Alan Belson are attached. A list of consultants in animal management and medicine is also attached.

The animals will be monitored as needed by the staff of the Society's Animal Health Department, under Dr. Dolensek, resident veterinarian; Dr. Deiter, assistant veterinarian; and their consultants in various specialties (see attached list). Each animal will be tuberculin-tested and given a complete health check upon arrival at the Bronx Zoo. The Society's animal hospital has excellent facilities for pathology investigations and necropsies. Parasite counts will be continuously monitored and treated as circumstances indicate.

(6iii) A statement of the applicant's willingness to participate in a cooperative breeding program and to maintain or contribute data to a studbook:

The history of the New York Zoological Society, back to the days when bison born and raised in the Bronx Zoo were shipped west to stock the national bison ranges in Oklahoma, Montana and South Dakota, is rich in examples of participation and cooperation with other institutions where breeding programs are working to save species from extinction. Below is a list showing the mammalian species now on loan from the Bronx Zoo to other institutions for captive-propagation purposes:

0.1	Matschie's tree kangaroo.
1.0	Black lemur.
2.1	Ring-tailed lemur.
1.0	Common marmoset.
1.1	Mandrill.
2.1	Bornean orang-utan.
0.1	Sumatran orang-utan.
1.0	Lowland gorilla.
0.1	Mountain gorilla.
0.1	Madagascar ring-tailed mongoose.
0.1	Flat-headed cat.
0.2	Siberian tiger.
0.1	African elephant.
1.0	Black rhinoceros.
1.1	Square-lipped rhinoceros.
2.7	Pere David deer.
3.5	Brow-antlered deer.
1.0	Roosevelt elk.
1.0	Okapi.
2.1	Eland.
1.1	Takin.

The New York Zoological Society has always encouraged studbooks and has contributed where possible. The New York Zoological Society is an active contributor to the following studbooks:

Pigmy hippopotamus, Pere David deer, Rhinoceros, Wisent, Mongolian wild horse, Wild canids, Siberian tiger, Snow leopard, Gorillas, Orang-utan, Okapi, Gaur.

Although representatives are no longer in the collection, we have participated in the following studbooks in the past:

Anoa and oryx, Wanderoo, Cheetah, Woolly tapir, Golden lion marmoset, Vicugna.

We have completed surveys in preparation for studbooks on the following:

Clouded leopard, Siberian ibex, Rare leopard subspecies.

The New York Zoological Society is a voluntary paid member of the USDI and AAZPA supported International Species Inventory System (ISIS). The Society was one of the first zoological organizations to stress the need for an ISIS-type of international computerized census and studbook of living zoo collections. NYZS would cooperate if a studbook were developed for barasingha.

(6iv) A detailed description of the type, size and construction of all containers into which such wildlife will be placed during transportation or temporary storage, if any, and of the arrangements for feeding, watering, and otherwise caring for such wildlife during that period:

Shipment will be made directly from Mountain Home, Texas to New York by truck, and effected by professional animal transporters. Crates will allow for size and postural adjustment of the animals and for proper cleaning, feeding and watering in transit.

(6v) For the 5 years preceding the date of this application provide a detailed description of all mortalities involving the species covered in the application and held by the applicant, if any (or any other wildlife of the same genus or family held by the applicant), including the causes of such mortalities and the steps taken to avoid or decrease such mortalities.

Barasingha have not been maintained at the New York Zoological Park since 1965. Attached is a summary of births and deaths in the genus *Cervus* (at the New York Zoological Park this includes Formosan sika deer and Roosevelt elk) in the years 1971–1975.

Half of the mortalities were newborn or very young fawns. The necropsy findings reflect normal mortality in newborn due to failure to nurse or due to rejection by the mother. Other mortalities included superannuated animals, and trauma among males during the rut.

Upon completion of the new exhibit area in WILD ASIA, the Formosan sika deer herd will be moved to a new, larger area which will reduce social stress. Through our records we are attempting to identify the females not rearing their young.

Attached necrospsy reports covering the past five years.

(7) Copies of the contracts and agreements pursuant to which the activities sought to be authorized by the permit will be carried out; such copies must identify all persons who will engage in the activities sought to be authorized, and must also give the dates for such activities:

Attached.

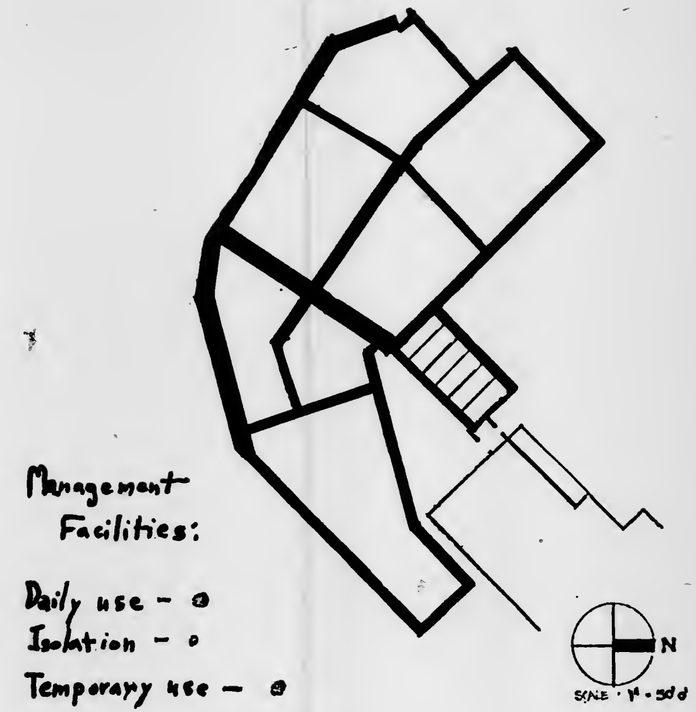
(8) A full statement of the reasons why the applicant is justified in obtaining the permit:

The New York Zoological Society has a long-term commitment to wildlife conservation. The financial support of the New York Zoological Society is sufficient to assure the continuity of its conservation and propagation activities (see attached annual report).

The New York Zoological Society guarantees that the propagation of the barasingha is a long-term commitment of its staff. Our husbandry and facilities will be updated as our knowledge of barasingha improves. Even so, if for some reason it became necessary to terminate our efforts, we would immediately make our barasingha available to a zoological institution which would continue this program.

Attachments

1. Births and deaths in genus *Cervus* in New York Zoological Park 1971–1975.
2. Drawing of animal management facilities, WILD ASIA, New York Zoological Park.
3. *Curricula vitae* for curatorial and animal medical staff.
4. List of New York Zoological Society animal medical consultants.
5. New York Zoological Society annual report.



Documents and other information submitted in connection with this application are available for public inspection during normal business hours at the Service's office in Room 512, 1717 H Street, N.W., Washington, D.C.

Interested persons may comment on this application by submitting written data, views, or arguments, preferably in triplicate, to the Director (FWS/WPO), U.S. Fish and Wildlife Service, Washington, D.C. 20240. This application has been assigned File Number PRT 2–552–07; please refer to this number when submitting comments. All relevant comments received within 30 days of the date of publication will be considered.

Dated: January 14, 1977.

DONALD G. DONAHOO,
Chief, Permit Branch, Federal Wildlife Permit Office, Fish and Wildlife Service.

[FR Doc.77-1659 Filed 1-18-77;8:45 am]

ENDANGERED SPECIES PERMIT

Receipt of Application

Notice is hereby given that the following application for a permit is deemed to have been received under section 10 of the Endangered Species Act of 1973 (Pub. L. 93-205).

Applicant: Charles Sivelle, 49 Westcliff Drive, Dix Hills, New York 11746.

OMB NO. 42-R1670

DEPARTMENT OF THE INTERIOR
U.S. FISH AND WILDLIFE SERVICE
FEDERAL FISH AND WILDLIFE
LICENSE/PERMIT APPLICATION

1. APPLICATION FOR (Indicate only one)
[X] IMPORT OR EXPORT LICENSE [ ] PERMIT

2. BRIEF DESCRIPTION OF ACTIVITY FOR WHICH REQUESTED LICENSE OR PERMIT IS NEEDED. To export 4 Edwards hens (Lophura edwardsi) '76 hatch, purpose to provide new blood for propagation & enhancement of the species in Europe, as a gift to the World Pheasant Association. Recipient will be T. Winstanley, 10, Reedings Road, Barrowby, Grantham, Lincs, England

3. APPLICANT. (Name, complete address and phone number of individual, business, agency, or institution for which permit is requested)
Charles Sivelle
41 Westcliff Drive
Dix Hills, N.Y. 11746
516-423-6146

4. IF "APPLICANT" IS AN INDIVIDUAL, COMPLETE THE FOLLOWING:
[X] MR. [ ] MRS. [ ] MISS [ ] MS. | HEIGHT 5'11" | WEIGHT 190 lbs.
DATE OF BIRTH 9-24-18 | COLOR HAIR Brown | COLOR EYES Blue
PHONE NUMBER WHERE EMPLOYED 516-423-6146 | SOCIAL SECURITY NUMBER 125-97-0277
OCCUPATION Manufacturer
ANY BUSINESS, AGENCY, OR INSTITUTIONAL AFFILIATION HAVING TO DO WITH THE WILDLIFE TO BE COVERED BY THIS LICENSE/PERMIT: None

5. IF "APPLICANT" IS A BUSINESS, CORPORATION, PUBLIC AGENCY, OR INSTITUTION, COMPLETE THE FOLLOWING:
EXPLAIN TYPE OR KIND OF BUSINESS, AGENCY, OR INSTITUTION: n.a.
NAME, TITLE, AND PHONE NUMBER OF PRESIDENT, PRINCIPAL OFFICER, DIRECTOR, ETC. n.a.
IF "APPLICANT" IS A CORPORATION, INDICATE STATE IN WHICH INCORPORATED n.a.

6. LOCATION WHERE PROPOSED ACTIVITY IS TO BE CONDUCTED: Export from New York City to England

7. DO YOU HOLD ANY CURRENTLY VALID FEDERAL FISH AND WILDLIFE LICENSE OR PERMIT? [X] YES [ ] NO
(If yes, list license or permit numbers) PRT 8 306-C, 5-PR-1084 ES-68

8. IF REQUIRED BY ANY STATE OR FOREIGN GOVERNMENT, DO YOU HAVE THEIR APPROVAL TO CONDUCT THE ACTIVITY YOU PROPOSE? [X] YES [ ] NO
(If yes, list jurisdictions and type of documents) Necessary Import Number to be supplied by Importer

9. CERTIFIED CHECK OR MONEY ORDER (if applicable) PAYABLE TO THE U.S. FISH AND WILDLIFE SERVICE ENCLOSED IN AMOUNT OF: No fee required

10. DESIRED EFFECTIVE DATE: At once

11. DURATION NEEDED: 3 months

12. ATTACHMENTS. THE SPECIFIC INFORMATION REQUIRED FOR THE TYPE OF LICENSE/PERMIT REQUESTED (See 50 CFR 13.12(a)) MUST BE ATTACHED. IT CONSTITUTES AN INTEGRAL PART OF THIS APPLICATION. LIST SECTIONS OF 50 CFR UNDER WHICH ATTACHMENTS ARE PROVIDED.
Attachment

CERTIFICATION

I HEREBY CERTIFY THAT I HAVE READ AND AM FAMILIAR WITH THE REGULATIONS CONTAINED IN TITLE 50, PART 13, OF THE CODE OF FEDERAL REGULATIONS AND THE OTHER APPLICABLE PARTS IN SUBCHAPTER B OF CHAPTER I OF TITLE 50, AND I FURTHER CERTIFY THAT THE INFORMATION SUBMITTED IN THIS APPLICATION FOR A LICENSE/PERMIT IS COMPLETE AND ACCURATE TO THE BEST OF MY KNOWLEDGE AND BELIEF. I UNDERSTAND THAT ANY FALSE STATEMENT HEREIN MAY SUBJECT ME TO THE CRIMINAL PENALTIES OF 18 U.S.C. 1001.

SIGNATURE (In ink) Charles Sivelle | DATE 11-30-76

3-200 (8/76)

CHARLES SIVELLE,
41 WESTCLIFF DR.,
DIX HILLS, N.Y., *December 2, 1976.*

DIRECTOR (FWS),
U.S. Fish and Wildlife Service,
P.O. Box 19183,
Washington, D.C. 20036.

DEAR SIR: The undersigned hereby applies for an Endangered Species Permit under Section 10(a) of the Endangered Species Act of 1973. The following information is submitted pursuant to paragraph 17.22 of Volume 40, No. 188 of the FEDERAL REGISTER.

Request is made for a permit to export 4 female Edwards pheasants (*Lophura edwardsi*) 1976 hatch, as a gift for the purpose of providing new blood for propagation and enhancement of the species in Europe. The specimens referred to were propagated in the aviaries of the undersigned at 41 Westcliff Drive, Dix Hills, N.Y., 11746 during 1976.

Mr. Winstanley is one of the foremost propagators of rare pheasants in England. He has successfully raised quantities of Edwards pheasants (*Lophura edwardsi*) and other rare pheasants during the last 12 years. His pheasant aviaries contain inside protective enclosures of 1,200 cubic feet and outside runs of approximately 3,000 cubic feet. The enclosures are landscaped and his management techniques have proven successful in the past. The British Ministry of Fish and Wildlife has authorized him to maintain a Quarantine Station so that he can arrange for the direct importation.

The undersigned is a prime propagator of the *Lophura edwardsi* pheasant in the United States today and is participating in the World Pheasant Association project for the enhancement of the survival and propagation program for this endangered pheasant.

The recipient will participate in a cooperative breeding program established by the World Pheasant Association and all data will be collected by Dr. Tim Lovell, official record holder of the World Studbook on Edwards Pheasants.

Birds will be shipped in crates similar and equal to International Air Transport Association taken from Live Animal Regulations 5th Edition, Feb. 7, 1975, containing litter on bottom, containers for feed and water and a padded top for the protection of the birds.

Proper import permits including any permit that applies to the Convention on International Trade and Endangered Species will be provided by Mr. Winstanley and the World Pheasant Association.

Sincerely yours,

CHARLES SIVELLE.

Documents and other information submitted in connection with this application are available for public inspection during normal business hours at the Service's office in Room 512, 1717 H Street NW., Washington, D.C.

Interested persons may comment on this application by submitting written data, views, or arguments, preferably in triplicate, to the Director (FWS/WPO), U.S. Fish and Wildlife Service, Washington, D.C. 20240. This application has been assigned File Number PRT 2-526-07; please refer to this number when submitting comments. All relevant comments received by February 18, 1977 will be considered.

Dated: January 14, 1977.

DONALD G. DONAHOO,
Chief, Permit Branch, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service.

[FR Doc.77-1660 Filed 1-8-77;8:45 am]

ENDANGERED SPECIES PERMIT

Receipt of Application

Notice is hereby given that the following application for a permit is deemed to have been received under section 10 of the Endangered Species Act of 1973 (Pub. L. 93-205).

Applicant: University of California, Museum of Vertebrate Zoology, 2593 Life Sciences Building, Berkeley, California 94720.

DEPARTMENT OF THE INTERIOR
U.S. FISH AND WILDLIFE SERVICE
FEDERAL FISH AND WILDLIFE
LICENSE/PERMIT APPLICATION

1. APPLICATION FOR (Indicate only one)
[ ] IMPORT OR EXPORT LICENSE [X] PERMIT

2. BRIEF DESCRIPTION OF ACTIVITY FOR WHICH REQUESTED LICENSE OR PERMIT IS NEEDED.
A request is made to collect twenty (20) larval or adult individuals of the endangered species Ambystoma macrodactylum croceum for use in a study of the genetic relationships and variation among populations of this species from throughout its range.

3. APPLICANT. (Name, complete address and phone number of individual, business, agency, or institution for which permit is requested)
Dr. Richard D. Sage
Museum of Vertebrate Zoology
2593 Life Sciences Building
University of California
Berkeley, California, 94720
805-642-3567

4. IF "APPLICANT" IS AN INDIVIDUAL, COMPLETE THE FOLLOWING:
[X] MR. [ ] MRS. [ ] MISS [ ] MS. | HEIGHT 5'11" | WEIGHT 180
DATE OF BIRTH 8 June 1943 | COLOR HAIR Br. | COLOR EYES Br.
PHONE NUMBER WHERE EMPLOYED 805-642-3567 | SOCIAL SECURITY NUMBER 558-58-0571
OCCUPATION Curatorial Associate, Herpetology
ANY BUSINESS, AGENCY, OR INSTITUTIONAL AFFILIATION HAVING TO DO WITH THE WILDLIFE TO BE COVERED BY THIS LICENSE/PERMIT: Museum of Vertebrate Zoology

5. IF "APPLICANT" IS A BUSINESS, CORPORATION, PUBLIC AGENCY, OR INSTITUTION, COMPLETE THE FOLLOWING:
EXPLAIN TYPE OR KIND OF BUSINESS, AGENCY, OR INSTITUTION: The Museum of Vertebrate Zoology is a non-profit organization devoted to research on the natural history and systematic relationships of animal species.
NAME, TITLE, AND PHONE NUMBER OF PRESIDENT, PRINCIPAL OFFICER, DIRECTOR, ETC. Dr. David B. Wake. Director, 642-3567
IF "APPLICANT" IS A CORPORATION, INDICATE STATE IN WHICH INCORPORATED

6. LOCATION WHERE PROPOSED ACTIVITY IS TO BE CONDUCTED
1. Santa Cruz co., California
2. Berkeley. Alameda co., Calif.

7. DO YOU HOLD ANY CURRENTLY VALID FEDERAL FISH AND WILDLIFE LICENSE OR PERMIT? [ ] YES [X] NO
(If yes, list license or permit numbers)

8. IF REQUIRED BY ANY STATE OR FOREIGN GOVERNMENT, DO YOU HAVE THEIR APPROVAL TO CONDUCT THE ACTIVITY YOU PROPOSE? [X] YES [ ] NO
(If yes, list jurisdictions and type of documents)
See attached letter from E.H. Vestal

9. CERTIFIED CHECK OR MONEY ORDER (if applicable) PAYABLE TO THE U.S. FISH AND WILDLIFE SERVICE ENCLOSED IN AMOUNT OF:

10. DESIRED EFFECTIVE DATE: February, 1977

11. DURATION NEEDED: Feb.-Dec., 1977

12. ATTACHMENTS. THE SPECIFIC INFORMATION REQUIRED FOR THE TYPE OF LICENSE/PERMIT REQUESTED (See 50 CFR 13.12(a)) MUST BE ATTACHED. IT CONSTITUTES AN INTEGRAL PART OF THIS APPLICATION. LIST SECTIONS OF 50 CFR UNDER WHICH ATTACHMENTS ARE PROVIDED.
1. Outline of proposed research project; 2. Letter from E.H. Vestal

CERTIFICATION

I HEREBY CERTIFY THAT I HAVE READ AND AM FAMILIAR WITH THE REGULATIONS CONTAINED IN TITLE 50, PART 13, OF THE CODE OF FEDERAL REGULATIONS AND THE OTHER APPLICABLE PARTS IN SUBCHAPTER B OF CHAPTER I OF TITLE 50, AND I FURTHER CERTIFY THAT THE INFORMATION SUBMITTED IN THIS APPLICATION FOR A LICENSE/PERMIT IS COMPLETE AND ACCURATE TO THE BEST OF MY KNOWLEDGE AND BELIEF. I UNDERSTAND THAT ANY FALSE STATEMENT HEREIN MAY SUBJECT ME TO THE CRIMINAL PENALTIES OF 18 U.S.C. 1001.

SIGNATURE (In ink) Richard D. Sage | DATE 3 December 1976

3-200 (8/76)

DEPARTMENT OF FISH AND GAME,
YOUNTVILLE, *Calif., November 29, 1976.*

DR. RICHARD D. SAGE,
Associate Curator of Herpetology,
Museum of Vertebrate Zoology,
University of California,
Berkeley, California 94720.

DEAR DR. SAGE: Thank you for attending the meeting of the Committee for Management and Recovery of the Santa Cruz Long-toed Salamander at the Museum of Vertebrate Zoology, University of California, Berkeley, October 28, 1976. Coincidentally, the full Recovery Team for the animal was present and appreciated the presentation of your proposal to collect for genetic study by electrophoretic and histochemical staining techniques twenty (20) specimens of the animal. You have described proposed collection of ten (10) animals each from two known breeding locations in Santa Cruz County, Ellicott Pond and Bennett-McClusky Slough, the collections to be made during the breeding season of spring, 1977.

Provision is made under Federal and State laws and regulations for the kind of genetic research you have proposed. Moreover, in the opinion of the Recovery Team, a determination of the genetic distinctiveness of the subspecies would have a significant bearing on management of the animal. We, therefore, recommend approval of your proposal and would urge you to apply for the necessary Federal permit to take the required number of animals. John Brode will send you the necessary application form and a copy of the Federal Regulations. It is our understanding that *A. m. croceum* larvae would serve the purpose of your research, and we would suggest you apply for them instead of adults.

If the Recovery Team can be of further assistance to you please let me know.

Sincerely yours,

ELDEN H. VESTAL,
Leader, SCLTS Recovery Team.

ELV:mb
CC: PHILIP LEHENBAUR,
U.S. Fish and Wildlife Service, Portland, Oregon.
JOHN BRODE,
Associate Fishery Biologist.

GENETIC RELATIONSHIPS AMONG AMBYSTOMA MACRODACTYLUM POPULATIONS

Proposal: Permission is requested to collect twenty specimens of the Santa Cruz long-toed salamander (*Ambystoma macrodactylum croceum*). These animals would be used in an analysis of the genetic relationships of this geographicaly isolated population and the larger, contiguous population of the nominate subspecies.

Introduction to the proposal: Through the combination of electrophoresis and histochemical staining reactions it has become possible to identify protein molecules in tissue samples. As discrete products of specific gene loci coding for protein synthesis, the enzyme bands revealed by electrophoretic techniques allow us to measure directly the genetic similarities and differences among organisms. It is now possible to quantify the genetic relatedness among individuals within and between populations. We no longer have to infer relatedness from the complexly controlled, external phenotypes of the animals. The techniques of electrophoresis are being used extensively in determining genetic relationships among many kinds of organisms, and it has become an extremely powerful tool to the systemtist.

The long-toed salamander (*Ambystoma macrodactylum*) is a widespread species in the northwestern parts of the United States and adjacent Canada. The species has a largely continuous distribution throughout most of its range. The one exception to this pattern is the population isolated along the coastal plain of Santa Cruz county in central California. Separated by 150 miles from the nearest population in the Sierra Nevada mountains to the east, and by more than 400 miles from coastal populations in Oregon, this population has persisted in isolation from the principal gene pool of the species for an unkonwn period of time. Based on a distinctive body coloration this isolated population was described as a different subspecies (*A. m. croceum*). Although the use of a subspecies designation implies the genetic distinctivenes of this population, no quantitative measure has been made of this divergence.

An electrophoretic comparison of this population with samples from the main body of the distribution of the species will allow us, for the first time, to obtain such a measure of the genetic relationship of *A. m. croceum* and the nominate subspecies. It is for such an electrophoretic analysis of this population that I would like to collect 20 individuals of the Santa Cruz subspecies. At present there are available for analysis samples of 20–50 individuals from populations in the Sierra Nevada mountains of California, central Oregon, Washington and Montana.

Results expected: Electrophoretic surveys of 20–30 enzyme loci of these four samples will allow us to describe the main gene pool of the species. The sample of 20 animals from the Santa Cruz population will provide information for a measure of the genetic distinctiveness of this isolate. In addition, data from this analysis will provide us with a measure of the amount of genetic diversity present in the gene pool of the Santa Cruz area. In order to maximize the amount of genetic information that can be obtained from these animals, I would like to subdivide the sample into ten individuals from two of the known breeding sites (Ellecott Pond and Bennett-McClusky Slough). This strategy will allow us to detect any major geographic diversity in the population structure between these colonies.

The immediate result of this analysis will be to describe in precise genetic terms the distinctness of this endangered, isolated population. It will reveal the presence of any major substructuring of the populations at the different breeding sites: information that will be valuable in a management program. In a more general sense the study will be of value by providing information on population structuring in animals with fixed breeding sites, but widespread geographic distributions. The degree of genetic divergence detected between the parental populations and the Santa Cruz isolate may indicate the length of geologic time since the separation of *A. m. croceum* from the main gene pool.

Addenda: I will point out that the excess tissues not used in the electrophoretic analy-

sis will be deposited in the newly established Museum of Vertebrate Zoology frozen collection. In this way they will be available for use by workers in the future who require molecules which have not been denatured by the conventional chemical preservation techniques.

17.22 (3) N.A.
17.22 (4) N.A.
17.22 (6) N.A.

Richard David Sage, Associate Curator of Herpetology, Museum of Vertebrate Zoology, University of California, Berkeley, California 94720, 28 October 1976.

Documents and other information submitted in connection with this application are available for public inspection during normal business hours at the Service's office in Room 512, 1717 H Street NW., Washington, D.C.

Interested persons may comment on this application by submitting written data, views, or arguments, preferably in triplicate, to the Director (FWS/WPO), U.S. Fish and Wildlife Service, Washington, D.C. 20240. This application has been assigned File Number PRT 2-543-07; please refer to this number when submitting comments. All relevant comments received by February 18, 1977 will be considered.

Dated: January 14, 1977.

DONALD G. DONAHOO,
Chief, Permit Branch, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service.

[FR Doc.77-1661 Filed 1-18-77;8:45 am]

THREATENED SPECIES PERMIT

Receipt of Application

Notice is hereby given that the following application for a permit is deemed to have ben received under section 4(d), 16 U.S.C. 1533(d), of the Endangered Species Act of 1973 (Pub. L. 93-205).

Applicant: McRoberts Game Farm, Gurley, Nebraska 69141. Jerry G. McRoberts.

OMB NO. 40-R070

DEPARTMENT OF THE INTERIOR
U.S. FISH AND WILDLIFE SERVICE
FEDERAL FISH AND WILDLIFE LICENSE/PERMIT APPLICATION

1. APPLICATION FOR (Indicate only) — [ ] IMPORT OR EXPORT LICENSE [X] PERMIT

3. APPLICANT. (If name, complete address and phone number of individual, business, agency, or institution for which permit is requested)
McRoberts Game Farm
Gurley, NE 69141
308 884-2371

2. BRIEF DESCRIPTION OF ACTIVITY FOR WHICH REQUESTED LICENSE OR PERMIT IS NEEDED.
Authorization to engage in interstate commerce of endangered pheasants which have been determined to exist in "Captive Self-sustaining Populations" within the U.S.; for a period of 2 years. (1) Brown-eared (Crossoptilon mantichuricus) (2) Edwards (Lophura edwardsi) (3) Mikado (Syrmaticus mikado) (4) White-eared (Cross crossoptilon

4. IF "APPLICANT" IS AN INDIVIDUAL, COMPLETE THE FOLLOWING:

	HEIGHT	WEIGHT
[X] MR. [ ] MRS. [ ] MISS [ ] MS.	6'3	190
DATE OF BIRTH: 8-30-42	COLOR HAIR: Brn	COLOR EYES: Brn
PHONE NUMBER WHERE EMPLOYED: 308 884-2371	SOCIAL SECURITY NUMBER: 508-54-6542	

OCCUPATION: Farmer-Game Farmer

ANY BUSINESS, AGENCY, OR INSTITUTIONAL AFFILIATION HAVING TO DO WITH THE WILDLIFE TO BE COVERED BY THIS LICENSE/PERMIT:
McRoberts Game Farm

5. IF "APPLICANT" IS A BUSINESS, CORPORATION, PUBLIC AGENCY, OR INSTITUTION, COMPLETE THE FOLLOWING:
EXPLAIN TYPE OR KIND OF BUSINESS, AGENCY, OR INSTITUTION
Family farm partnership engaged in raising farm crops and game animals and birds.

NAME, TITLE, AND PHONE NUMBER OF PRESIDENT, PRINCIPAL OFFICER, DIRECTOR, ETC.
Jerry McRoberts (partner) 308 884-2371

IF "APPLICANT" IS A CORPORATION, INDICATE STATE IN WHICH INCORPORATED
N.A.

6. LOCATION WHERE PROPOSED ACTIVITY IS TO BE CONDUCTED
On Farm ½ mile north and ½ mile west of Gurley, Nebraska

7. DO YOU HOLD ANY CURRENTLY VALID FEDERAL FISH AND WILDLIFE LICENSE OR PERMIT? [X] YES [ ] NO
(If yes, list licenses or permit numbers)
√PRT 8-346-C-I

8. IF REQUIRED BY ANY STATE OR FOREIGN GOVERNMENT, DO YOU HAVE THEIR APPROVAL TO CONDUCT THE ACTIVITY YOU PROPOSE? [X] YES [ ] NO
(If yes, list jurisdictions and type of documents)
Nebraska state game farm permit #4026

9. CERTIFIED CHECK OR MONEY ORDER (if applicable) PAYABLE TO THE U.S. FISH AND WILDLIFE SERVICE ENCLOSED IN AMOUNT OF: $ N.A.

10. DESIRED EFFECTIVE DATE: Date of issuance

11. DURATION NEEDED: 2 years

12. ATTACHMENTS. THE SPECIFIC INFORMATION REQUIRED FOR THE TYPE OF LICENSE/PERMIT REQUESTED (See 50 CFR 13.12(a)) MUST BE ATTACHED. IT CONSTITUTES AN INTEGRAL PART OF THIS APPLICATION. LIST SECTIONS OF 50 CFR UNDER WHICH ATTACHMENTS ARE PROVIDED.
For information required under 17.33 see application for endangered species permit PRT 8-346-C-I issued 3-18-76.

CERTIFICATION

I HEREBY CERTIFY THAT I HAVE READ AND AM FAMILIAR WITH THE REGULATIONS CONTAINED IN TITLE 50, PART 13, OF THE CODE OF FEDERAL REGULATIONS AND THE OTHER APPLICABLE PARTS IN SUBCHAPTER B OF CHAPTER I OF TITLE 50, AND I FURTHER CERTIFY THAT THE INFORMATION SUBMITTED IN THIS APPLICATION FOR A LICENSE/PERMIT IS COMPLETE AND ACCURATE TO THE BEST OF MY KNOWLEDGE AND BELIEF. I UNDERSTAND THAT ANY FALSE STATEMENT HEREIN MAY SUBJECT ME TO THE CRIMINAL PENALTIES OF 18 U.S.C. 1001.

SIGNATURE (In ink): Jerry D. McRobert — DATE: 10-26-76

3-200 (5/76) GPO 895-042

Additional information required for Captive Self-Sustaining permit—see file FWS/WPO 2-468-25—applied for by McRoberts Game Farm.

17.33(a) (1) See 2. of Form 3-200.

(2) See endangered species permit application PRT 8-346-C-X. Same as in 1975.

(3) See PRT 8-346-C-X.

(4) We will willingly participate in cooperative breeding programs and studbooks.

(5) All birds are shipped in cardboard apple boxes—approximate dimensions 24"x 18"x18". The top of the boxes slip clear down over the bottom and adequate ventilation holes are cut if not present. Alfalfa hay is put on the bottom, and enough apples and soaked millet grain are placed in the container to probably sustain the bird for over a week. Shipment via Air Freight usually takes less than 24 hours. In four years of shipping in these containers, we have never lost a bird.

(6) See PRT 8-346-C-X. No fatalities in the last year.

(7) (i) The purpose of this permit is primarily for disposition of progeny of the four species listed. We are fairly successful breeders, and, as we are one of the few, if not the only breeder of these species in Nebraska, surplus birds produced must go outstate or be eaten (releasing is illegal in Nebraska). New blood occasionally needs to be acquired from other breeders to insure a vigorous breeding program and prevent inbreeding.

(7) (ii) In the event of the unforeseen termination of McRoberts Game Farm all wildlife would go to reputable breeders and zoos.

Hope this information is sufficient.

Sincerely,

JERRY MCROBERTS.

Documents and other information submitted in connection with this application are available for public inspection during normal business hours at the Service's office in Room 512, 1717 H Street NW., Washington, D.C.

Interested persons may comment on this application by submitting written data, views, or arguments, preferably in triplicate, to the Director (FWS/WPO), U.S. Fish and Wildlife Service, Washington, D.C. 20240. This application has been assigned File Number PRT 2-468-25; please refer to this number when submitting comments. All relevant comments received by February 18, 1977 will be considered.

Dated: January 14, 1977.

DONALD G. DONAHOO,
Chief, Permit Branch, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service.

[FR Doc.77-1658 Filed 1-18-77; 8:45 am]

THREATENED SPECIES PERMIT

Receipt of Application

Notice is hereby given that the following application for a permit is deemed to have been received under section 4(d), 16 U.S.C. 1533(d), of the Endangered Species Act of 1973 (Pub. L. 93-205).

Applicant: James Everett Fouts, 2444 Somerset, Wichita, Kansas 67204.

DEPARTMENT OF THE INTERIOR
U.S. FISH AND WILDLIFE SERVICE
FEDERAL FISH AND WILDLIFE LICENSE/PERMIT APPLICATION

1. APPLICATION FOR (Indicate only) — [ ] IMPORT OR EXPORT LICENSE [X] PERMIT

3. APPLICANT. (If name, complete address and phone number of individual, business, agency, or institution for which permit is requested)
James Everett Fouts
2444 Somerset
Wichita, Kansas 67204
316-838-8339
(5)
(6)

2. BRIEF DESCRIPTION OF ACTIVITY FOR WHICH REQUESTED LICENSE OR PERMIT IS NEEDED.
Authorization to engage in interstate commerce of seven endangered pheasants which have been determined to exist in "Captive Self-Sustaining Populations within the U.S.;for a period of 2 years. (1) Brown-eared (Crossoptilon mantichuricum),(2) Edwards (Lophura edwardsi),(3) Bar-tailed (Syrmaticus humiae),(4) Mikado (Syrmaticus mikado), Palawan peacock (Polypectron emphanum), Swinhoe (Lophura swinhoii),(7) White-eared (crossoptilon crossoptilon)

4. IF "APPLICANT" IS AN INDIVIDUAL, COMPLETE THE FOLLOWING:

	HEIGHT	WEIGHT
[X] MR. [ ] MRS. [ ] MISS [ ] MS.	5'9"	145
DATE OF BIRTH: 6/21/53	COLOR HAIR: brown	COLOR EYES: brown
PHONE NUMBER WHERE EMPLOYED: 316-942-2212	SOCIAL SECURITY NUMBER: 510-60-2562	

OCCUPATION: Zoo Keeper

ANY BUSINESS, AGENCY, OR INSTITUTIONAL AFFILIATION HAVING TO DO WITH THE WILDLIFE TO BE COVERED BY THIS LICENSE/PERMIT:
none

5. IF "APPLICANT" IS A BUSINESS, CORPORATION, PUBLIC AGENCY, OR INSTITUTION, COMPLETE THE FOLLOWING:
EXPLAIN TYPE OR KIND OF BUSINESS, AGENCY, OR INSTITUTION
n.a. 201

NAME, TITLE, AND PHONE NUMBER OF PRESIDENT, PRINCIPAL OFFICER, DIRECTOR, ETC.
n.a.

IF "APPLICANT" IS A CORPORATION, INDICATE STATE IN WHICH INCORPORATED n.a.

6. LOCATION WHERE PROPOSED ACTIVITY IS TO BE CONDUCTED
2444 Somerset
Wichita, Kansas 67204

7. DO YOU HOLD ANY CURRENTLY VALID FEDERAL FISH AND WILDLIFE LICENSE OR PERMIT? [ ] YES [X] NO
(If yes, list licenses or permit numbers)

8. IF REQUIRED BY ANY STATE OR FOREIGN GOVERNMENT, DO YOU HAVE THEIR APPROVAL TO CONDUCT THE ACTIVITY YOU PROPOSE? [ ] YES [X] NO
(If yes, list jurisdictions and type of documents)
none required

9. CERTIFIED CHECK OR MONEY ORDER (if applicable) PAYABLE TO THE U.S. FISH AND WILDLIFE SERVICE ENCLOSED IN AMOUNT OF: $ n.a.

10. DESIRED EFFECTIVE DATE: date of issuance

11. DURATION NEEDED: 2 years

12. ATTACHMENTS. THE SPECIFIC INFORMATION REQUIRED FOR THE TYPE OF LICENSE/PERMIT REQUESTED (See 50 CFR 13.12(a)) MUST BE ATTACHED. IT CONSTITUTES AN INTEGRAL PART OF THIS APPLICATION. LIST SECTIONS OF 50 CFR UNDER WHICH ATTACHMENTS ARE PROVIDED.
17.33

CERTIFICATION

I HEREBY CERTIFY THAT I HAVE READ AND AM FAMILIAR WITH THE REGULATIONS CONTAINED IN TITLE 50, PART 13, OF THE CODE OF FEDERAL REGULATIONS AND THE OTHER APPLICABLE PARTS IN SUBCHAPTER B OF CHAPTER I OF TITLE 50, AND I FURTHER CERTIFY THAT THE INFORMATION SUBMITTED IN THIS APPLICATION FOR A LICENSE/PERMIT IS COMPLETE AND ACCURATE TO THE BEST OF MY KNOWLEDGE AND BELIEF. I UNDERSTAND THAT ANY FALSE STATEMENT HEREIN MAY SUBJECT ME TO THE CRIMINAL PENALTIES OF 18 U.S.C. 1001.

SIGNATURE (In ink): James E. Fouts — DATE: 7/20/76

3-200 (5/76) GPO 895-042

ATTACHMENT 17.33 TO PERMIT REQUEST

(1) A "Captive Self-Sustaining Population" permit is requested for the following species of pheasants: (1) Brown-eared pheasant (*Crossoptilon mantichuricum*); (2) White-eared pheasant (*Crossoptilon crossoptilon*); (3) Bar-tailed pheasant (*Syrmaticus humiae*); (4) Mikado pheasant (*Syrmaticus mikado*); (5) Palawan peacock pheasant (*Polypectron emphanum*); (6) Edwards pheasant (*Lophura edwardsi*); (7) Swinhoe pheasant (*Lophura swinhoii*).

The applicant seeks a permit to authorize an unlimited number of transactions through interstate commerce over a 2 year period of time for the 7 species of pheasant listed above in this paragraph, with the permit being subject to renewal according to section 13.24.

(2) A diagram has been attached as requested. The avaries or pens to house the birds listed above vary in size from 280 sq. ft. to 360 sq. ft. All of these avaries are modular and are comprised of wood and wire. In all there are 16 avaries 8 of which have a 100 sq. ft. indoor flight that has heat available in the winter. All avaries are designed to be predator proof as all walls on the perimeter of the compound are of a heavy guage wire and plywood. The entire compound is surrounded by a 4 ft. fence with wire buried at its base and a 110-volt electric wire along the top. This has proven to be satisfactory as no losses have resulted due to predators. The area of the compound is sufficiently isolated to allow maximum isolation and privacy by the thick vegetation that surrounds it on all four sides.

(3)(a) Two years experience raising pheasants privately. The applicant now keeps 11 species of pheasants and this past breeding season successfully bred and raised all seven of those species capable of reproduction, including the rare Palawan peacock pheasant and the Gray peacock pheasant. A total of 87 chicks were raised this year from the 7 species bred.

(b) Over 4 years experience in an approved zoo where experience has been gained in the husbandary of many birds and animals. (Sedgwick County Zoo, Wichita, Ks. 67212) Currently employed there.

(c) Member of the world Pheasant Association

(d) Member of the American Pheasant and Waterfowl Society

(e) Member of the Game Bird Breeders Cooperative Federation

(f) Member of the American Association of Zoological Parks and Aquariums.

(4) The applicant is quite willing to cooperate with all breeding programs and has already done this with several pheasants which are not endangered. The applicant is also eager to cooperate in the establishment of studbooks for endangered pheasants and is currently acting in an advisory capacity to the World Pheasant Association in regard to the establishment of a studbook for the Edwards pheasant. The applicant currently is formulating and maintaining a studbook for the Clouded Leopard for IUCN and as a result fully realizes the importance of studbooks in the proper captive management of an endangered species.

(5) The pheasants will be individually crated in light wooden crates measuring approximately 24x12x18 inches. Feed and water will be provided. All birds will be shipped by air non-stop from New York to Wichita and will be crated no more than 18 hours.

(6) To date no mortalities have resulted in either of the endangered pheasants kept in the applicants collection, or in any of the other 8 species kept.

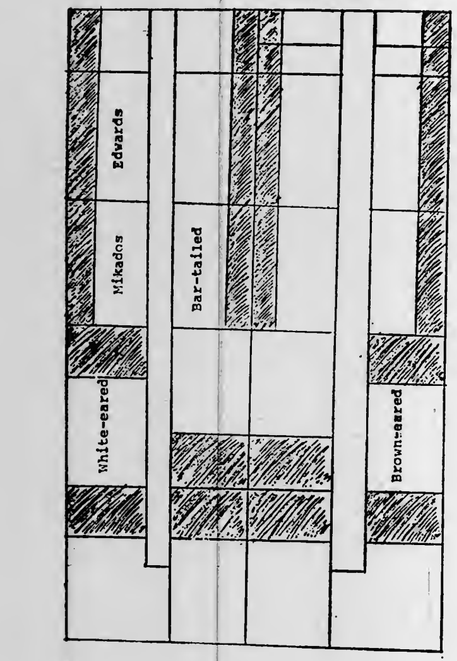
(7) (i) The applicant is making this application to gain authorization to engage in interstate commerce with the 7 pheasants listed under No. 1. This will enable the applicant to dispose of progeny raised each year to qualified breeders and thereby recover all costs invested in the above species. This will also increase the "captive self-sustaining population" of each of the species involved and thereby enhance their overall chances for survival. The applicant also contends that this will better the probability of reintroduction into their natural habitats when environmental and political situations will allow such action.

(ii) Upon termination of my breeding program, those birds covered by the permit as well as those which are not will be distributed among qualified breeders of those species concerned and/or be placed in the trust of the World Pheasant Association.

Sincerely,

JAMES E. FOUTS.

Accompanying Diagram to #2



(1) Overall dimensions: are 58 x 102 ft.
a. 8 pens 12 x 22 ft.
b. 8 pens 12 x 24 ft.
c. 4 pens 12 x 6 ft.

(2) Shaded areas denote shelters:
a. the 8 on the S ½ of the compound are heated
b. the 8 to the N will have heat lamps available this winter.

(3) entire perimeter has a 2 ft. visual barrier to inhibit potential predators. From that point on is either plywood or a 1x2 welded mesh.

(4) All doors open onto a covered hallway to prevent an escape or intrusion by unwanted visitors Both hallway doors are locked at all times.

(5) Currently landscape work is being done in preparation for the birds requested by this permit. The old substrate is also being changed to prevent contamination of the new birds.

(6) I currently keep Bar-tailed and Palawans in my collection and plan to obtain Mikados, White-eared, Brown-eared, Edwards. I do not have plans at this time for Swinhoe. These birds will be housed according to the diagram.

Dated: January 14, 1977.

DONALD G. DONAHOO,
Chief, Permit Branch, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service.

[FR Doc.77-1651 Filed 1-18-77;8:45 am]

Documents and other information submitted in connection with this application are available for public inspection during normal business hours at the Service's office in Room 512, 1717 H Street NW., Washington, D.C.

Interested persons may comment on this application by submitting written data, views, or arguments, preferably in triplicate, to the Director (FWS/WPO), U.S. Fish and Wildlife Service, Washington, D.C. 20240. This application has been assigned File Number PRT 2-334-25; please refer to this number when submitting comments. All relevant comments received by February 18, 1977 will be considered.

ENDANGERED SPECIES PERMIT

Receipt of Application

Notice is hereby given that the following application for a permit is deemed to have been received under section 10 of the Endangered Species Act of 1973 (Pub. L. 93-205).

Applicant: Paul B. Hamel, Department of Zoology, Clemson University, Clemson, South Carolina 29631.

DEPARTMENT OF THE INTERIOR
U.S. FISH AND WILDLIFE SERVICE
FEDERAL FISH AND WILDLIFE LICENSE/PERMIT APPLICATION

1. APPLICATION FOR (Indicate only one) ☐ IMPORT OR EXPORT LICENSE ☒ PERMIT

2. BRIEF DESCRIPTION OF ACTIVITY FOR WHICH REQUESTED LICENSE OR PERMIT IS NEEDED.
Permission is sought to search for, locate, and study Bachman's Warblers (Vermivora bachmanii), an endangered species, and to make photographs documenting the discovery of this species.

3. APPLICANT. (Name, complete address and phone number of individual, business, agency, or institution for which permit is requested)
Paul B. Hamel
Dept. Zoology
Clemson Univ.
Clemson, SC 29631
803/656-3247
FWS/BSFW RECEIVED 1. 1976

4. IF "APPLICANT" IS AN INDIVIDUAL, COMPLETE THE FOLLOWING:
☒ MR. ☐ MRS. ☐ MISS ☐ MS.
HEIGHT: 5'11" WEIGHT: 180 lb.
DATE OF BIRTH: 17 Oct. 1948
COLOR HAIR: Brn. COLOR EYES: Blu.
PHONE NUMBER WHERE EMPLOYED: 803/656-3247
SOCIAL SECURITY NUMBER: 367-48-2901
OCCUPATION: Research scientist - graduate student
ANY BUSINESS, AGENCY, OR INSTITUTIONAL AFFILIATION HAVING TO DO WITH THE WILDLIFE TO BE COVERED BY THIS LICENSE/PERMIT:
Ph. D. candidate, Dept. Zoology, Clemson Univ.

5. IF "APPLICANT" IS A BUSINESS, CORPORATION, PUBLIC AGENCY, OR INSTITUTION, COMPLETE THE FOLLOWING:
EXPLAIN TYPE OR KIND OF BUSINESS, AGENCY, OR INSTITUTION
NAME, TITLE, AND PHONE NUMBER OF PRESIDENT, PRINCIPAL OFFICER, DIRECTOR, ETC.
IF "APPLICANT" IS A CORPORATION, INDICATE STATE IN WHICH INCORPORATED

6. LOCATION WHERE PROPOSED ACTIVITY IS TO BE CONDUCTED
South Carolina, Alabama, Missouri, Arkansas, Kentucky, or any other location where birds may be found.

7. DO YOU HOLD ANY CURRENTLY VALID FEDERAL FISH AND WILDLIFE LICENSE OR PERMIT? ☒ YES ☐ NO
(If yes, list license or permit numbers)
Banding permit, 09613

8. IF REQUIRED BY ANY STATE OR FOREIGN GOVERNMENT, DO YOU HAVE THEIR APPROVAL TO CONDUCT THE ACTIVITY YOU PROPOSE? ☒ YES ☐ NO
(If yes, list jurisdictions and type of documents)
State permits will be acquired pending approval of this permit.

9. CERTIFIED CHECK OR MONEY ORDER (if applicable) PAYABLE TO THE U.S. FISH AND WILDLIFE SERVICE ENCLOSED IN AMOUNT OF:

10. DESIRED EFFECTIVE DATE: 10 March 1977

11. DURATION NEEDED: Three years

12. ATTACHMENTS. THE SPECIFIC INFORMATION REQUIRED FOR THE TYPE OF LICENSE/PERMIT REQUESTED (See 50 CFR 13.12(b)) MUST BE ATTACHED, IT CONSTITUTES AN INTEGRAL PART OF THIS APPLICATION. LIST SECTIONS OF 50 CFR UNDER WHICH ATTACHMENTS ARE PROVIDED.
Please see attached sheets describing activities and larger study of which they are a part.

CERTIFICATION

I HEREBY CERTIFY THAT I HAVE READ AND AM FAMILIAR WITH THE REGULATIONS CONTAINED IN TITLE 50, PART 13, OF THE CODE OF FEDERAL REGULATIONS AND THE OTHER APPLICABLE PARTS IN SUBCHAPTER B OF CHAPTER I OF TITLE 50, AND I FURTHER CERTIFY THAT THE INFORMATION SUBMITTED IN THIS APPLICATION FOR A LICENSE/PERMIT IS COMPLETE AND ACCURATE TO THE BEST OF MY KNOWLEDGE AND BELIEF. I UNDERSTAND THAT ANY FALSE STATEMENT HEREIN MAY SUBJECT ME TO THE CRIMINAL PENALTIES OF 18 U.S.C. 1001.

SIGNATURE (Do not print): Paul B Hamel
DATE: 15 November 1976

3-200
10/76

RESEARCH TO DETERMINE THE STATUS OF BACHMAN'S WARBLER, AND THE EVOLUTIONARY, ECOLOGICAL, AND HISTORICAL FACTORS RESPONSIBLE FOR ITS DECLINE

A COOPERATIVE AGREEMENT (SUPP. 11 TO CONTRACT 18-409) BETWEEN THE U.S. FOREST SERVICE SOUTHEASTERN FOREST EXPERIMENT STATION AND THE COLLEGE OF SCIENCES, CLEMSON UNIVERSITY

Principal Investigator: S. A. Gauthreaux, Jr.

Research Associate: Paul B. Hamel.

Bachman's Warbler (*Vermivora bachmanii: Parulidae*) is an extremely rare and critically endangered species. This tenuous status necessitates research as soon as possible to determine current numbers, distribution, and management strategies to prevent the species' extinction. Furthermore, the Endangered Species Act of 1973 (Pub. L. 93-205) mandates such research.

An unknown number of Bachman's Warblers exist; among extant North American species, probably only the Ivory-billed Woodpecker (*Campephilus principalis*) is rarer. Activities covered by this permit, and part of the research problem outlined below, will be to search for, identify, photograph, and study all individuals encountered. The birds will at all times remain in the wild. Searches will be conducted in 1977, 1978, and 1979. In each year the searches will begin on 15 March and continue until 15 May. If unsuccessful, searching will terminate at that time; if birds are found, behavioral observations will be made upon them until they migrate from the area, possibly as late as 1 September.

Activities sought to be covered by this permit are as follows:

(1) Searches for Bachman's Warblers will be conducted in likely swamp habitats using a transect method whereby every 400 ft. along a transect a 2-man field party will stop and play a recording of Bachman's Warbler territorial song, alternating 1 min. of recording and 1 min. of silence, totalling 5 min. Once a bird has been located song will not be played back to it again. Individuals who will participate in field searches covered by this permit are P. B. Hamel, J. E. Cely, S. A. Gauthreaux, Jr., R. E. Gutkin, L. P. Faulk, R. G. Hooper, F. R. Moore, M. R. Lennartz, P. Gowaty, C. W. Helms, H. E. LeGrand.

(2) Detailed observations of foraging and other behaviors of breeding birds will be made to determine habitat utilization by this species during the breeding season. Initial non-destructive habitat measurements will be made at the time of discovery. Detailed non-destructive habitat measurements will be made after the breeding season. Behavioral observations will also be used to construct ethograms and time-activity budgets for the species.

(3) Photographs documenting the identification of adult birds, nests, eggs, or young found will be made. These will not necessitate construction of permanent blinds nor will they necessitate any damage to habitat. Absolute proof of identifications of this species is imperative, because it is so rare. Confidentiality of territory locations and nest sites is also imperative, for the same reason. Two individuals only, S. A. Gauthreaux, Jr., and R. G. Hooper, will be taken to locations of birds to confirm the sightings; other interested persons will be able to see published photographs at a later time.

(4) After the nesting season nests will be collected for study of nest-building behaviors. No attempt will be made to collect any live individuals; should any dead individuals or unhatched eggs be found, they will be made into scientific specimens and deposited in the U.S. National Museum of Natural History.

Although systematic searches have recently failed to locate any individuals of the species (Hamel, Hooper, Wright, "Where is the Reverend Bachman's Warblem?" *South Carolina Wildlife*, March-April, 1976; Hamel and Hooper, "Bachman's Warbler—the most critically endangered," *S. C. Symp. on Endangered Species*, in press), the study of Bachman's Warbler can nevertheless make significant contributions to the investigation of endangered species. The question "Why is this species rare?" must be answered. A satisfactory biological answer should provide excellent insight into the causes of rarity and extinction. Such an answer would yield valuable results even if the primary goal of species preservation is not realized.

The case of Bachman's Warbler presents several testable hypotheses concerning the nature of endangeredness.

(a) Does the bird still exist, where, and how abundantly?

(b) What is the evolutionary history of the genus *Vermivora;* is Bachman's Warbler a primitive member of the genus or a recently evolved, highly specialized form?

(c) Have other species begun to compete with Bachman's Warbler in such a way as to exclude that species from its habitat?

(d) Has human modification made its breeding or winter environments uninhabitable?

The goal of the proposed research is to investigate each of these questions, their interactions, and potential effects on preserving this endangered species. The activities sought to be covered by this permit will be invaluable to the answering of questions a) through c). They will be indispensable to any attempt at determining critical habitat for this species, or at designing a management plan to avert the species' extinction.

Documents and other information submitted in connection with this application are available for public inspection during normal business hours at the Service's office in Room 512, 1717 H Street NW., Washington, D.C.

Interested persons may comment on this application by submitting written data, views, or arguments, preferably in triplicate, to the Director (FWS/WPO), U.S. Fish and Wildlife Service, Washington, D.C. 20240. This application has been assigned File Number PRT 2-391-07; please refer to this number when

submitting comments. All relevant comments received by February 18, 1977 will be considered.

Dated: January 14, 1977.

DONALD G. DONAHOO,
Chief, Permit Branch, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service.

[FR Doc.77-1652 Filed 1-18-77;8:45 am]

ENDANGERED SPECIES PERMIT

Receipt of Application

Notice is hereby given that the following application for a permit is deemed to have been received under section 10 of the Endangered Species Act of 1973 (Pub. L. 93-205).

Applicant: L & J Game Bird Farm, 4850 Alcorn Road, Fallon, Nevada 89406. Jim Chamberlain.

OMB NO. 42-R1670

DEPARTMENT OF THE INTERIOR
U.S. FISH AND WILDLIFE SERVICE
FEDERAL FISH AND WILDLIFE LICENSE/PERMIT APPLICATION

1. APPLICATION FOR *(Indicate only one)*: ☐ EXPORT ☒ PERMIT — One time only

2. BRIEF DESCRIPTION OF ACTIVITY FOR WHICH REQUESTED LICENSE OR PERMIT IS NEEDED.
The requested Permit is required so that I may legally transport one pair of Brown Eared Manchurians (Crossoptilon-mantchuricum) pheasants to Mr. Jack Schuiteman in Canada to add new blood to his existing flock for the enhancement and survival of the species.

3. APPLICANT: (Name, complete address and phone number of individual, business, agency, or institution for which permit is requested)
C. J. (Jim) Chamberlain
4850 Alcorn Rd.
Fallon, Nevada 89406
Ph. (702)867-2237

4. IF "APPLICANT" IS AN INDIVIDUAL, COMPLETE THE FOLLOWING:
☒ MR. ☐ MRS. ☐ MISS ☐ MS.
HEIGHT: 5-7½" WEIGHT: 140
DATE OF BIRTH: 18 February 1911
COLOR HAIR: Brown COLOR EYES: Blue
PHONE NUMBER WHERE EMPLOYED: As above
SOCIAL SECURITY NUMBER: 530-30-0581
OCCUPATION: Retired.-Civil Service - Navy Dept.
ANY BUSINESS, AGENCY, OR INSTITUTIONAL AFFILIATION HAVING TO DO WITH THE WILDLIFE TO BE COVERED BY THIS LICENSE/PERMIT: None

5. IF "APPLICANT" IS A BUSINESS, CORPORATION, PUBLIC AGENCY, OR INSTITUTION, COMPLETE THE FOLLOWING:
EXPLAIN TYPE OR KIND OF BUSINESS, AGENCY, OR INSTITUTION: None
NAME, TITLE, AND PHONE NUMBER OF PRESIDENT, PRINCIPAL OFFICER, DIRECTOR, ETC.: N.A.
IF "APPLICANT" IS A CORPORATION, INDICATE STATE IN WHICH INCORPORATED: N.A.

6. LOCATION WHERE PROPOSED ACTIVITY IS TO BE CONDUCTED: Relocation of birds from above address to Jack Schuiteman, R.R. #2, Devlin, Ontario, Canada

7. DO YOU HOLD ANY CURRENTLY VALID FEDERAL FISH AND WILDLIFE LICENSE OR PERMIT? ☐ YES ☒ NO
(If yes, list license or permit number(s)): Permits 2-352-07, 2-353-25 and 2-453-07 pending.

8. IF REQUIRED BY ANY STATE OR FOREIGN GOVERNMENT, DO YOU HAVE THEIR APPROVAL TO CONDUCT THE ACTIVITY YOU PROPOSE? ☒ YES ☐ NO
(If yes, list jurisdictions and type of document(s)): Nevada Game Bird Farm License #1 (Commercial)

9. CERTIFIED CHECK OR MONEY ORDER (if applicable) PAYABLE TO THE U.S. FISH AND WILDLIFE SERVICE ENCLOSED IN AMOUNT OF: N.A.

10. DESIRED EFFECTIVE DATE: as soon as possible

11. DURATION NEEDED: 60 days after issuance of Permit

12. ATTACHMENTS: THE SPECIFIC INFORMATION REQUIRED FOR THE TYPE OF LICENSE/PERMIT REQUESTED (See 50 CFR 13.12(b)) MUST BE ATTACHED. IT CONSTITUTES AN INTEGRAL PART OF THIS APPLICATION. LIST SECTIONS OF 50 CFR UNDER WHICH ATTACHMENTS ARE PROVIDED.
50 CFR 17.22

CERTIFICATION

I HEREBY CERTIFY THAT I HAVE READ AND AM FAMILIAR WITH THE REGULATIONS CONTAINED IN TITLE 50, PART 13, OF THE CODE OF FEDERAL REGULATIONS AND THE OTHER APPLICABLE PARTS IN SUBCHAPTER B OF CHAPTER I OF TITLE 50, AND I FURTHER CERTIFY THAT THE INFORMATION SUBMITTED IN THIS APPLICATION FOR A LICENSE/PERMIT IS COMPLETE AND ACCURATE TO THE BEST OF MY KNOWLEDGE AND BELIEF. I UNDERSTAND THAT ANY FALSE STATEMENT HEREIN MAY SUBJECT ME TO THE CRIMINAL PENALTIES OF 18 U.S.C. 1001.

SIGNATURE (In ink): [signature] DATE: 30 November 1976

Attachment to Export Permit 50 CFR 17.22

(1) Common & Scientific name: 1 (one) pair of Brown Eared Manchurian pheasants (*Crossoptilon-mantchuricum*). Birds to be transported from Fallon, Nevada, U.S.A. to Devlin, Ontario, Canada for propagation and enhancement of survival.

(2) The above birds were hatched in captivity by the above applicant in Fallon, ND.

(3) No attempt has ever been made, nor is one contemplated by the applicant to obtain birds from the wild or in any other manner that would cause injury or death to this species.

(4) As in (2) above the birds were raised in captivity in Fallon, Nevada.

(5) The birds covered by this application will be housed at Devlin, Ontario, Canada.

(6) (i) to (v): This information is unknown by the applicant as I have never seen his game bird farm. However, Mr. Schuiteman is very highly regarded as a propagator of rare and endangered pheasants. The past three years, '74, '75 and '76 he has been awarded the trophy for the outstanding pheasant breeder in all of Canada by the Canadian Pheasant & Game Bird Associations.

(7) There are no contracts or agreements in this transaction.

(8) The issuance of this Permit will enable Mr. Schuiteman to add new blood to his existing flock of Manchurians which will greatly enhance the propagation and survival of this species.

(8) (i) Activity of the Permit covers only the transportation.

(ii) Transportation will be via Air, United Airlines and Air Canada.

(iii) Surplus birds will be either sold, loaned, or given to other dedicated aviculturist.

Additional attachment to Applications for "Exportation" Permit assigned Permit No. ?-514-? 50 CFR 17.22.

(5) The birds covered by this application will be housed on a 640 acre cattle and alfalfa Ranch located approximately 1½ miles from Devlin, Ontario, Canada. Owned by Mr. Schnitegan of Devlin, Ontario, Canada.

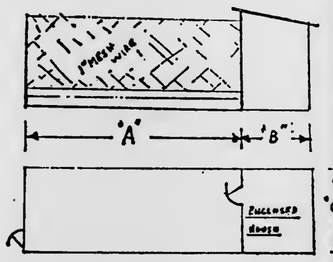
(6) (i) A diagram of both Brown Eared and Mikado pens and housing is attached. The housing contains infra-red heating which is used in extreme weather conditions.

(1) Species covered in this application are as follows:

1—Brown Eared Manchurian (female) of 1976 hatch (Crossoptilon-mantchuricum).

1—Brown Eared Manchurian (Male) of 1976 hatch (Crossoptilon-mantchuricum).

1—Mikado (Male) (Syrmaticus-mikado) of 1976 hatch.



NOT TO SCALE

JACK D. SCHUITEMAN
R.R. #2
DEVLIN-ONTARIO-CANADA

PRT #__-514-__

BROWN MANCHURIAN PEN
"A" = 45'
"B" = 8'
"C" = 10'

MIKADO PEN
"A" = 20'
"B" = 8'
"C" = 10'

Documents and other information submitted in connection with this application are available for public inspection during normal business hours at the Service's office in Room 512, 1717 H Street, N.W., Washington, D.C.

Interested persons may comment on this application by submitting written data, views, or arguments, preferably in triplicate, to the Director (FWS/WPO), U.S. Fish and Wildlife Service, Washington, D.C. 20240. This application has been assigned File Number PRT 2-514-07; please refer to this number when submitting comments. All relevant comments received by February 18, 1977 will be considered.

Dated: January 14, 1977.

DONALD G. DONAHOO,
Chief, Permit Branch, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service.

[FR Doc.77-1653 Filed 1-18-77;8:45 am]

ENDANGERED SPECIES PERMIT

Receipt of Application

Notice is hereby given that the following application for a permit is deemed to have been received under section 10 of the Endangered Species Act of 1973 (Pub. L. 93-205).

Applicant: L & J Game Bird Farm, 4850 Alcorn Road, Felton, Nevada 89406. Jim Chamberlain.

Division of Law Enforcement
P. O. Box 19183
Washington, D. C. 20036

OMB NO. 42-R158

DEPARTMENT OF THE INTERIOR
U.S. FISH AND WILDLIFE SERVICE

FEDERAL FISH AND WILDLIFE
LICENSE/PERMIT APPLICATION

1. APPLICATION FOR (indicate only one): XXX EXPORT XXX PERMIT

2. BRIEF DESCRIPTION OF ACTIVITY FOR WHICH REQUESTED LICENSE OR PERMIT IS NEEDED.
Transfer of One (1) pair of Brown Eared Manchurian pheasants (Crossoptilon-mantchuricum) from applicant to Mr. Len Glover, Stouffville, Ont. Canada. Birds are for the introduction of new blood into the present flock of Brown Eared owned by Mr. Glover. This will greatly enhance the propagation and survival of this species.

3. APPLICANT: (Name, complete address and phone number of individual, business, agency, or institution for which permit is requested)
Mr. C. J. (Jim) Chamberlain
4850 Alcorn Rd.
Fallon, Nevada 89406
Ph. (702)867-2237

4. IF "APPLICANT" IS AN INDIVIDUAL, COMPLETE THE FOLLOWING:
XX MR. ☐ MRS. ☐ MISS ☐ MS.
HEIGHT: 5'-7-1/2 | WEIGHT: 140
DATE OF BIRTH: 18 February 1911 | COLOR HAIR: Brown | COLOR EYES: Blue
PHONE NUMBER WHERE EMPLOYED: As above | SOCIAL SECURITY NUMBER: 530-30-0581
OCCUPATION: Retired - Civil Service - Navy Dept.
ANY BUSINESS, AGENCY, OR INSTITUTIONAL AFFILIATION HAVING TO DO WITH THE WILDLIFE TO BE COVERED BY THIS LICENSE/PERMIT: None

5. IF "APPLICANT" IS A BUSINESS, CORPORATION, PUBLIC AGENCY, OR INSTITUTION, COMPLETE THE FOLLOWING:
EXPLAIN TYPE OR KIND OF BUSINESS, AGENCY, OR INSTITUTION: None
NAME, TITLE, AND PHONE NUMBER OF PRESIDENT, PRINCIPAL OFFICER, DIRECTOR, ETC.: N. A.
IF "APPLICANT" IS A CORPORATION, THE DATE STATE IN WHICH INCORPORATED: N. A.

6. LOCATION WHERE PROPOSED ACTIVITY IS TO BE CONDUCTED: Transfer of birds as noted in block #2 above.

7. DO YOU HOLD ANY CURRENTLY VALID FEDERAL FISH AND WILDLIFE LICENSE OR PERMIT? ☐ YES XX NO
(If yes, list license or permit number): PRT 2-352-07 & 2-353-25 Pending.

8. IF REQUIRED BY ANY STATE OR FOREIGN GOVERNMENT, DO YOU HAVE THEIR APPROVAL TO CONDUCT THE ACTIVITY YOU PROPOSE? XX YES ☐ NO
(If yes, list jurisdictions and type of documents): Nevada State Game Bird License #1, Commercial.

9. CERTIFIED CHECK OR MONEY ORDER (If applicable) PAYABLE TO THE U.S. FISH AND WILDLIFE SERVICE ENCLOSED IN AMOUNT OF: N.A.

10. DESIRED EFFECTIVE DATE: ASAP

11. DURATION NEEDED: 3 months after issuance of Permit as Canadian [illegible] year [illegible] is a [illegible]

12. ATTACHMENTS. THE SPECIFIC INFORMATION REQUIRED FOR THE TYPE OF LICENSE/PERMIT REQUESTED IS CONTAINED IN THE SECTIONS ATTACHED, IT CONSTITUTES AN INTEGRAL PART OF THIS APPLICATION. LIST SECTIONS OF 50 CFR UNDER WHICH ATTACHMENTS ARE PROVIDED.
Please refer to attachments on Import Application assigned File # 2-352-07 by your Office. Published in Federal Register 24 Sept. '76.

CERTIFICATION

I HEREBY CERTIFY THAT I HAVE READ AND AM FAMILIAR WITH THE REGULATIONS CONTAINED IN TITLE 50, PART 13, OF THE CODE OF FEDERAL REGULATIONS AND THE OTHER APPLICABLE PARTS IN SUBCHAPTER B OF CHAPTER I OF TITLE 50, AND I FURTHER CERTIFY THAT THE INFORMATION SUBMITTED IN THIS APPLICATION FOR A LICENSE/PERMIT IS COMPLETE AND ACCURATE TO THE BEST OF MY KNOWLEDGE AND BELIEF. I UNDERSTAND THAT ANY FALSE STATEMENT HEREIN MAY SUBJECT ME TO THE CRIMINAL PENALTIES OF 18 U.S.C. 1001.

SIGNATURE (IN INK): [signature] DATE: 13 October 1976

L AND J GAME BIRD RANCH,
Ornamental Pheasants,
Fallon, Nev., December 22, 1976.

U.S. DEPARTMENT OF THE INTERIOR,
Fish and Wildlife Service, Federal Wildlife Permit Office, Washington, D.C.
Attention: Mr. Fred Bolwahnn.
Reference: PRO 2-453-07.

DEAR MR. BOLWAHNN: In compliance with our phone conversation of a few days ago I am enclosing the information you requested on the location and pen size, etc. for the Brown Eared pheasants Mr. Len Glover, of Stouffville, Ontario, Canada hopes to obtain from me.

I sincerely hope that you will do every thing possible to expedite the paper work as I certainly would like to deliver these birds to him prior to the upcoming breeding season.

I am enclosing a copy of the Canadian Government Import Permit for these birds which I'd like to have inserted in his File No. PRO 2-453-07. In view of all the requirements and time element involved to obtain a Permit from our Government, it's quite interesting to note that Mr. Glover submitted his application to the Ottawa Office on the 29th of November and his Government issued the Import Permit on December the 8th. It's really a shame too Fred, as many of the breeders who have been so dedicated in keeping some of our endangered species going have given up the propagation of these birds due to so many restrictions.

Thank you so much for your interest and attention.

Sincerely,

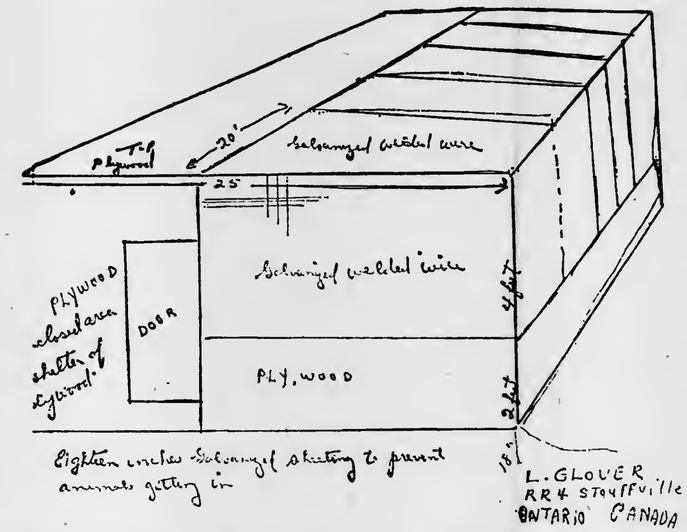
C. J. (JIM) CHAMBERLAIN.

ONE

These birds will be located 30 miles north east of Toronto on a seven and one half acre lot that is mostly wooded, it takes up the east half of lot five, concession six, in Whitchurch Township, address: R R No. 4, Stouffville, Ontario.

Two

Pens are approximately 20' x 25' situated among trees on 7½ acre wooded lot. These pens are constructed of 2 x 4 lumber and plywood, with galvanized wire to keep out prowling animals, such as coons, rats, etc. They will be housed alongside other endangered pheasants such as Elliots, Swinehoe, plus Coppers Tragapans and other species kept over the last twenty years.



Export Permit—Title 50, 17:22, Attachment to Form 3-200

(1) Common and Scientific name: One (1) pair of Brown Eared Manchurian pheasants (*Crossoptilon-mantchuricum*). Both birds are of 1976 hatch (1) male and (1) female. Birds are to be exported to Canada to Mr. Len Glover of Stouffville, Ontario, Canada for new blood for his existing flock and for the enhancement of propagation and survival of this species.

(2) The above birds were bred and hatched in captivity by Jim Chamberlain of Fallon, Nevada, U.S.A. during 1976.

(3) No attempt has ever been made, nor is one contemplated by the applicant to obtain birds from the wild or in any other manner that would cause injury or death to this specie.

(4) As in (2) above the birds were raised in captivity by Jim Chamberlain in Fallon, Nevada during 1976.

(5) Birds covered by this application will be housed at R.R. No. 4, Stouffville, Ontario, Canada.

(6) (6i): Not known.

(6) (6ii): I have never met Mr. Glover personally nor have I been to his averies, however, I do know he has been raising rare pheasants for a good number of years and has a very good reputation as a breeder.

(6) (6iii): I feel positive Mr. Glover will participate in a cooperative breeding program.

(6) (6iv): All birds will be shipped in unused wire bound crates, suitably padded with foam rubber to prevent any scalping or injury. Food and water containers will be securely wired to the corners of the crates which will be of sufficient size for the young birds to stand and turn around in, approximately 18" x 24" x 13" high. Crates will be newly painted and marked "Live Birds" on all four sides. One (1) birds only will be shipped in each crate.

(6) (6v): Unknown.

(7) There are no contracts or agreements with Mr. Glover except for the purchase price of $150.00. There are no other participants in this transaction.

(8) to (8iv): I do not have the intimate knowledge of Mr. Glover's breeding operating facilities, objectives or future plans, but I can and do vouch for his sincerety and his ability as a breeder of rare pheasants.

(9): As Toronto, Ontario, Canada is the "pick-up" point of these birds it would seem that Chicago would be the better "designated Port" for the birds to pass thru.

Documents and other information submitted in connection with this application are available for public inspection during normal business hours at the Service's office in Room 512, 1717 H Street, N.W., Washington, D.C.

Interested persons may comment on this application by submitting written data, views, or arguments, preferably in triplicate, to the Director (FWS/WPO), U.S. Fish and Wildlife Service, Washington, D.C. 20240. This application has been assigned File Number PRT 2-453-07; please refer to this number when submitting comments. All relevant comments received by February 18, 1977 will be considered.

Dated: January 14, 1977.

DONALD G. DONAHOO,
Chief, Permit Branch, Federal Wildlife Permit Office, United States Fish and Wildlife Service.

[FR Doc.77-1654 Filed 1-18-77;8:45 am]

MARINE MAMMAL PERMIT

Receipt of Application

Notice is hereby given that the following application for a permit has been received under the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407).

Applicant: Jack W. Lentfer, National Fish & Wildlife Laboratory, U.S. Fish & Wildlife Service, 4454 Business Park Blvd., Anchorage, Alaska 99503.

UNIVERSITY OF ALASKA,
Naval Arctic Research Laboratory, Barrow, Alaska. Ser-R 0176.

To: DIRECTOR U.S. FISH AND WILDLIFE SERVICE, *Washington, D.C.*
From: *Research Veterinarian, Naval Arctic Research Laboratory, Barrow, AK.*
Subject: *Proposed Care and Maintenance of Polar Bear Club.*
Date: *December 23, 1976.*

Reference permit application No. FWS/WPO PRT2-454 submitted by Mr. Jack Lentfer, U.S. Fish and Wildlife Service, Anchorage, AK.

I have personally received the arrangements for transporting and maintaining the polar bear cub and find them more than adequate to provide a healthy and humane environment for the animal.

The animal will be maintained by a staff, including myself, experienced in care and management of polar bears held in captivity for research purposes.

L. MICHAEL PHILCO, MVD.
Research Veterinarian, NARL.

(Director, NARL; Assistant Director for Science, NARL; Animal Research Facility Supervisor, NARL, Jack Lentfer.)

U.S. DEPARTMENT OF THE INTERIOR.
FISH AND WILDLIFE SERVICE.
Anchorage, Alaska. December 27, 1967.

Mr. DONALD G. DONAHOO,
Chief, Permit Branch, Federal Wildlife Permit Office, U.S. Department of the Interior, Fish and Wildlife Service, Washington, D.C.

DEAR MR. DONAHOO: You requested additional information for an application for a permit for polar bear research (FWS/WPO PRT 2-454).

The bear would be housed in a 15' x 30' cage of steel bar construction. Bars are 2 inches in diameter and 4 inches apart. The floor is concrete with drains. Straw would be provided for bedding. Fecal material is removed from the cage daily and straw is replaced as necessary to maintain a sanitary condition. The cage has two compartments. The bear can be held in either compartment while the other compartment is hosed or steam cleaned. The cage is housed in a frame building within which temperature can be controlled. The cub will be fed canned milk.

A certification from a licensed veterinarian familiar with methods of transporting and maintenance is enclosed.

Sincerely yours,

JACK W. LENTFER.
Polar Bear Project Leader.

Application for Polar Bear Research Permit as Require dby
as Required by Marine Mammal Protection Act of 1972

Information required by 50 CFR 13.12.

1. Applicant's name, address, and phone number: Jack W. Lentfer, National Fish and Wildlife Laboratory, U.S. Fish and Wildlife Service, 4454 Business Park Blvd., Anchorage, Alaska 99503, Phone 907-274-7611.

2. Date of birth: 13 May 1931.
Height: 6'1".
Weight: 170 lbs.
Color of Hair: Light.
Color of Eyes: Blue.
Sex: Male.
Affiliation: Leader, Polar Bear Project, U.S. Fish and Wildlife Service.

3. Agency Director: Lynn A. Greenwalt, Director, U.S. Fish and Wildlife Service, Washington, D.C.

4. Location of Activity: Barrow, Alaska.

5. Information required by 50 CFR 18.31 for marine mammal research permit:

(1) Purpose: To determine cold tolerance of a polar bear cub at the time of emerging from the winter maternity den and protective mechanisms for combating cold at this age.

Dates of taking: March-April 1977.
Location: Point Barrow, Alaska.
Manner of taking: A cub will be taken from a female polar bear immobilized as part of a mark-recapture study authorized by Department of Interior Marine Mammal Permit No. PRT-9-13-C.

(2) Stocks, numbers and products to be taken, weights, ages, sizes, sex, and condition: The bear will be taken from a subpopulation of approximately 2,500 animals extending from northwestern Canada to Point Lay, Alaska. The animal will be approximately 3 months old, 8-9 kilograms in weight, nursing, and of either sex.

(3) Manner of transporting and maintaining and applicant's qualifications and experience: The animal will be transported from 10 to 50 miles from the point of capture on sea ice to the animal holding facility at the Naval Arctic Research Laboratory at Barrow, Alaska in the passenger compartment of a helicopter. It will be handled without drugging. It will be fed condensed milk and housed in a building in which the temperature can be controlled. Straw will be provided for bedding. Procedures for feeding and maintaining will be similar to those used by the applicant and Naval Arctic Research Laboratory animal colony personnel for successfully raising polar bear cubs of this age in the past. The applicant has conducted polar bear research since 1966 and has had extensive experience in handling animals. A biographical sketch is attached. A veterinarian employed full-time by the Naval Arctic Research Laboratory will be available for consultation.

(4) Description of research project: The Marine Mammal Protection Act of 1972 directs the Department of Interior to protect polar bears and their ecosystem. Of major concern are possible effects of disturbances to denning females and newborn cubs caused by increasing human activity in the Arctic. The period of greatest concern is immediately after females with new cubs have broken out of winter snow dens and cubs are becoming acclimated to outside conditions. Bears are the most subject to effects of disturbance immediately after emerging from dens because they are visible and do not have the protection of the den. Defense mechanisms available to adult bears are to leave the area of disturbance or go into the water. These actions could result in mortality to cubs, particularly during extremely adverse weather when animals normally would return to the maternal den or form a temporary den.

The objective of this research is to determine cold tolerance of cubs under various conditions (still air, various wind speeds, and ice water) they might be subjected to in the wild, and to describe physiological and mechanical mechanism, which protect cubs from cold. Findings could then be correlated with meteorological data to develop more definitive stipulations for protection than can be recommended now.

Dr. A. S. Blix, physiologist at the Institute of Arctic Biology, University of Alaska, will conduct studies to determine cold tolerance and mechanisms for protection from cold. Physiological studies will require the sacrifice of the cub at the end of the study period. A research proposal is attached.

6. Documentation for importation from foreign country; Not applicable.

7. Certification: I hereby certify that I have read and am familiar with the regulations contained in Title 50. Part 13, of the Code of Federal Regulations and the other applicable parts in Subchapter B of Chapter I of Title 50, and I further certify that the information submitted in this application for a permit is complete and accurate to the best of my knowledge and belief. I understand that any false statement hereon may subject me to the criminal penalties of 18 U.S.C. 1001.

8. Desired effective date of permit: Work is planned for the period between 1 March and 30 April 1977. A permit is requested for the period 1 March 1977 through 30 April 1978, however, in case funding is delayed or work is not accomplished the first year for other reasons.

9. Date of application: 13 October 1976.

10. Signature of applicant: JACK W. LENTFER.

Documents and other information submitted in connection with this application are available for public inspection during normal business hours at the Service's office in Room 512, 1717 H Street, N.W., Washington, D.C.

Interested persons may comment on this application by submitting written data, views, or arguments, preferably in triplicate, to the Director (FWS/WPO), U.S. Fish and Wildlife Service, Washington, D.C. 20240. This application has been assigned File Number PRT 2-454-10; please refer to this number when submitting comments. All relevant comments received by February 18, 1977 will be considered.

Dated: January 14, 1977.

DONALD G. DONAHOO,
Chief, Permit Branch, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service.

[FR Doc.77-1656 Filed 1-18-77;8:45 am]

THREATENED SPECIES PERMIT

Receipt of Application

Notice is hereby given that the following application for a permit is deemed to have been received under section 4(d), 16 USC 1533(d), of the Endangered Species Act of 1973 (Pub. L. 93-205).

Applicant: L. & L. Pheasantry, East Mt. Road, Hegins, Pennsylvania 17938. Lee A. Kiefer.

OMB NO. 42-R163

DEPARTMENT OF THE INTERIOR
U.S. FISH AND WILDLIFE SERVICE
FEDERAL FISH AND WILDLIFE LICENSE/PERMIT APPLICATION

1. APPLICATION FOR (Indicate only one)
☐ IMPORT OR EXPORT LICENSE ☒ PERMIT
Captive Self-Sustaining Pop.

2. BRIEF DESCRIPTION OF ACTIVITY FOR WHICH REQUESTED LICENSE OR PERMIT IS NEEDED.
Capative propagation of ornamental pheasants listed on the endangered species list.

3. APPLICANT. (Name, complete address and phone number of individual, business, agency, or institution for which permit is requested)
L. & L. Pheasantry
East Mt. Road
Hegins, Pa. 17938

4. IF "APPLICANT" IS AN INDIVIDUAL, COMPLETE THE FOLLOWING:
☐ MR. ☐ MRS. ☐ MISS ☐ MS. | HEIGHT | WEIGHT
DATE OF BIRTH | COLOR HAIR | COLOR EYES
PHONE NUMBER WHERE EMPLOYED | SOCIAL SECURITY NUMBER
OCCUPATION
ANY BUSINESS, AGENCY, OR INSTITUTIONAL AFFILIATION HAVING TO DO WITH THE WILDLIFE TO BE COVERED BY THIS LICENSE/PERMIT

5. IF "APPLICANT" IS A BUSINESS, CORPORATION, PUBLIC AGENCY OR INSTITUTION, COMPLETE THE FOLLOWING:
EXPLAIN TYPE OR KIND OF BUSINESS, AGENCY, OR INSTITUTION
commercial propagation of ornamental pheasants listed on the Endangered Species list.
NAME, TITLE, AND PHONE NUMBER OF PRESIDENT, PRINCIPAL OFFICER, DIRECTOR, ETC.
Lee A. Kiefer
IF "APPLICANT" IS A CORPORATION, INDICATE STATE IN WHICH INCORPORATED

6. LOCATION WHERE PROPOSED ACTIVITY IS TO BE CONDUCTED
Hegins R.D.#2, Hegins Twp, Schuylkill County, Pa.

7. DO YOU HOLD ANY CURRENTLY VALID FEDERAL FISH AND WILDLIFE LICENSE OR PERMIT? ☐ YES ☒ NO
(If yes, list license or permit numbers)

8. IF REQUIRED BY ANY STATE OR FOREIGN GOVERNMENT, DO YOU HAVE THEIR APPROVAL TO CONDUCT THE ACTIVITY YOU PROPOSE? ☐ YES ☐ NO
(If yes, list jurisdictions and type of documents)

9. CERTIFIED CHECK OR MONEY ORDER (if applicable) PAYABLE TO THE U.S. FISH AND WILDLIFE SERVICE ENCLOSED IN AMOUNT OF $

10. DESIRED EFFECTIVE DATE

11. DURATION NEEDED

12. ATTACHMENTS. THE SPECIFIC INFORMATION REQUIRED FOR THE TYPE OF LICENSE/PERMIT REQUESTED (See 50 CFR 13.12(b)) MUST BE ATTACHED, IT CONSTITUTES AN INTEGRAL PART OF THIS APPLICATION. LIST SECTIONS OF 50 CFR UNDER WHICH ATTACHMENTS ARE PROVIDED.

CERTIFICATION

I HEREBY CERTIFY THAT I HAVE READ AND AM FAMILIAR WITH THE REGULATIONS CONTAINED IN TITLE 50, PART 13, OF THE CODE OF FEDERAL REGULATIONS AND THE OTHER APPLICABLE PARTS IN SUBCHAPTER B OF CHAPTER I OF TITLE 50, AND I FURTHER CERTIFY THAT THE INFORMATION SUBMITTED IN THIS APPLICATION FOR A LICENSE/PERMIT IS COMPLETE AND ACCURATE TO THE BEST OF MY KNOWLEDGE AND BELIEF. I UNDERSTAND THAT ANY FALSE STATEMENT HEREIN MAY SUBJECT ME TO THE CRIMINAL PENALTIES OF 18 U.S.C. 1001.

SIGNATURE (In ink) | DATE
Aug. 10, 1976

3-200 (6-74) GPO 895-042

L. & L. PHEASANTRY.
Hegins, Pa., September 3, 1976.

DIRECTOR (FWS/LE),
U.S. Fish and Wildlife Service, P.O. Box 19183, Washington, D.C. 20036.

Re: FWS/LE PRT 2-342-25.

GENTLEMEN: Here is the information as requested in your letter of August 25, 1976. 50 CFR 17.33(a):

1. Brown Eared Pheasant (Crossoptilon Mantchuricum), Edward's Pheasant (Lophura Edwardsi), Bar-Tailed pheasant (Syrmaticus humiae), Mikado pheasant (Syrmaticus mikado), Palawan peacock pheasant (Polyplectron emphanum), Swinhoe pheasant (Lophura Swinhoii), White-eared pheasant (Crossoptilon crossoptilon).

2. Metal and wood shelter with attached wire pens. (Photo enclosed.)

3. Propagator has 25 years experience in propagation of various species of game birds. Production of over 100,000 game species a year. Six terms as president of the Pa. Game Breeders Assn. President and director of North American Game Breeders and Shooting Preservation Assn. Member American Game Breeders Coop. Fed., The American Pheasant and Waterfowl Society, Pa. Poultry Fed. ten awards for propagation of ornamental pheasants and awarded the rank of Master Breeder. Received Game Bird Industry Man of the Year in 1975 from the Pa. Game Bird Assn. Graduate of Whitmoyer Poultry Health and Nutrition School. Also experience in formulation and manufacture of game bird feeds and use of medications for treatment and prevention of diseases in game birds and domestic poultry.

4. We will provide information under this section.

5. During transportation the corrugated carton which we manufacture and sell to other game breeders will be used. Brochure enclosed.

6. Average mortality has been about 17% as per our annual reports to the Pa. Game Commission. Most mortalities were due to weather conditions such as 24 inches of wet snow in Nov. 75 and 18 inches of rain in 24 hrs. in June of 75 and other extreme and unusual weather conditions. Several new construction methods and buildings have been a great advantage. In 75 the worst storm of the year brought about 8 inches of rain and mortality was only about 12 birds out of about 40,000 on the farm at that time. We are blood tested and under the Dept. of agriculture N.P/I.P. program and also have our own vet check the entire farm every 30 days. We are also inspected by the Pa. Game Commission twice a year. The department of Ag. in Harrisburg will be happy to give you a recommendation on our farm and the health of our stock.

7. Since both the FWS and I agree these species are endangered in the wild it is most important that people like myself continue to propagate these species in captivity or there will be none in the wild or in captivity. Since I am only producing more from captive stock and not taking any from the wild this can only increase the total number of these species. Most of these species will be sold to others who also wish to propagate these species and are in need of new blood lines or replacement of lost stock. Some are also sold to zoos where they will be propagated or displayed so the public will be able to see and learn more about endangered species.

Date requested for effective date is as soon as available and duration needed is for as long as permit is applicable or required.

LEE A. KIEFER.

Documents and other information submitted in connection with this application are available for public inspection during normal business hours at the Service's office in Room 512, 1717 H Street NW., Washington, D.C.

Interested persons may comment on this application by submitting written data, views, or arguments, preferably in triplicate, to the Director (FWS/WPO), U.S. Fish and Wildlife Service, Washington, D.C. 20240. This application has been assigned File Number PRT 2-342-25; please refer to this number when submitting comments. All relevant comments received by February 18, 1977 will be considered.

Dated: January 14, 1977.

DONALD G. DONAHOO,
Chief, Permit Branch, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service.

[FR Doc.77-1655 Filed 1-18-77;8:45 am]

THREATENED SPECIES PERMIT

Receipt of Application

Notice is hereby given that the following application for a permit is deemed to have been received under section 4(d), 16 U.S.C. 1533(d), of the Endangered Species Act of 1973 (Pub. L. 93-205).

Applicant: Woodland Park Zoological Gardens, 5500 Phinney Avenue North, Seattle, Washington 98103. David Hancocks, General Director.

OMB NO. 42-R163

DEPARTMENT OF THE INTERIOR
U.S. FISH AND WILDLIFE SERVICE
FEDERAL FISH AND WILDLIFE LICENSE/PERMIT APPLICATION

1. APPLICATION FOR (Indicate only one)
☐ IMPORT OR EXPORT LICENSE ☒ PERMIT

2. BRIEF DESCRIPTION OF ACTIVITY FOR WHICH REQUESTED LICENSE OR PERMIT IS NEEDED.
Authorizing delivery, receipt, carriage, transportation or shipment in interstate commerce, in the course of a commercial activity, or sale, or offer for sale, in interstate commerce of specimens of a captive, self-sustaining population.

3. APPLICANT. (Name, complete address and phone number of individual, business, agency, or institution for which permit is requested)
Woodland Park Zoological Gardens
5500 Phinney Avenue North
Seattle, Washington 98103
Telephone: (206) 782-1265

4. IF "APPLICANT" IS AN INDIVIDUAL, COMPLETE THE FOLLOWING:
☐ MR. ☐ MRS. ☐ MISS ☐ MS. | HEIGHT | WEIGHT
DATE OF BIRTH | COLOR HAIR | COLOR EYES
PHONE NUMBER WHERE EMPLOYED | SOCIAL SECURITY NUMBER
OCCUPATION
ANY BUSINESS, AGENCY, OR INSTITUTIONAL AFFILIATION HAVING TO DO WITH THE WILDLIFE TO BE COVERED BY THIS LICENSE PERMIT

5. IF "APPLICANT" IS A BUSINESS, CORPORATION, PUBLIC AGENCY, OR INSTITUTION, COMPLETE THE FOLLOWING:
EXPLAIN TYPE OR KIND OF BUSINESS, AGENCY, OR INSTITUTION
A municipally owned, non-profit Zoological Park, Seattle, Washington. Involved in conservation, education, recreation, research and general public use.
NAME, TITLE, AND PHONE NUMBER OF PRESIDENT, PRINCIPAL OFFICER, DIRECTOR, ETC.
782-1265
David Hancocks, General Director
IF "APPLICANT" IS A CORPORATION, INDICATE STATE IN WHICH INCORPORATED

6. LOCATION WHERE PROPOSED ACTIVITY IS TO BE CONDUCTED
Woodland Park Zoological Gardens
5500 Phinney Avenue North
Seattle, Washington 98103
Telephone: (206) 782-2919

7. DO YOU HOLD ANY CURRENTLY VALID FEDERAL FISH AND WILDLIFE LICENSE OR PERMIT? ☐ YES ☐ NO
(If yes, list license or permit numbers)
PRT-2-0666-PT
PRT-2-0725-PT

8. IF REQUIRED BY ANY STATE OR FOREIGN GOVERNMENT, DO YOU HAVE THEIR APPROVAL TO CONDUCT THE ACTIVITY YOU PROPOSE? ☐ YES ☐ NO
(If yes, list jurisdictions and type of documents)
Not required

9. CERTIFIED CHECK OR MONEY ORDER (if applicable) PAYABLE TO THE U.S. FISH AND WILDLIFE SERVICE ENCLOSED IN AMOUNT OF $

10. DESIRED EFFECTIVE DATE

11. DURATION NEEDED

12. ATTACHMENTS. THE SPECIFIC INFORMATION REQUIRED FOR THE TYPE OF LICENSE/PERMIT REQUESTED (See 50 CFR 13.12(b)) MUST BE ATTACHED, IT CONSTITUTES AN INTEGRAL PART OF THIS APPLICATION. LIST SECTIONS OF 50 CFR UNDER WHICH ATTACHMENTS ARE PROVIDED.
17.33 50CRF

CERTIFICATION

I HEREBY CERTIFY THAT I HAVE READ AND AM FAMILIAR WITH THE REGULATIONS CONTAINED IN TITLE 50, PART 13, OF THE CODE OF FEDERAL REGULATIONS AND THE OTHER APPLICABLE PARTS IN SUBCHAPTER B OF CHAPTER I OF TITLE 50, AND I FURTHER CERTIFY THAT THE INFORMATION SUBMITTED IN THIS APPLICATION FOR A LICENSE/PERMIT IS COMPLETE AND ACCURATE TO THE BEST OF MY KNOWLEDGE AND BELIEF. I UNDERSTAND THAT ANY FALSE STATEMENT HEREIN MAY SUBJECT ME TO THE CRIMINAL PENALTIES OF 18 U.S.C. 1001.

SIGNATURE (In ink) | DATE
12/76

3-200 (6-74)

YOUR SEATTLE PARKS AND RECREATION,
WOODLAND PARK ZOOLOGICAL GARDENS,
Seattle, Wash., October 13, 1976.

THE DIRECTOR,
Fish and Wildlife Service,
U.S. Department of the Interior,
Washington, D.C. 20240.

Ref: FWS, LE PRT 2-294-25.

DEAR SIR: I am in a quandary over two letters we have received from Mr. C. Bavin, Chief of your Division of Law Enforcement, about our application for a permit to conduct interstate commerce with specimens of captive self-sustained populations. Additional information has been requested for the following:

1. A brief resume on the background and technical expertise of persons responsible for the care of wildlife: Our Keeper force is made up of 6 Senior Keepers, 26 Keepers and 8 Assistant Keepers, and our staff includes a Veterinarian, a Veterinary Aide, a Technician, General Curator, a Supervisor, and a Manager of Operations. Can you confirm if you really need information on all of these individuals? The degrees of experience and expertise varies, of course, between all these people, as does their amounts of involvement and responsibilities.

2. Detailed descriptions of shipping containers, methods of transportation and duration of travel: This item is of such a complexity and so variable that it is even more difficult to attempt a sensibly useful answer than the first item. The size, type, and construction of containers is always different depending upon the animal being shipped. Naturally we always attemp to fabricate or purchase containers suitable to their purpose, but no standards other than safety and experienced common sense can apply. Similarly it is impossible to advocate any single method of transportation. We have shipped animals by air and by road, depending upon distance and convenience, and the length of time involved is always different. In general we always attempt to ensure that the animal will travel in safety and with the minimum disruption and inconvenience to avoid further jeopardizing what is invariably an unhappy or difficult experience for the animal.

3. Outline of our breeding program: With several hundred species in our collection it is impossible and unwise to have one program for breeding. With some species, for example, we expend great effort to try and ensure successful breeding, while with species such as Lions we are using implants to prevent conception.

I am presuming that the problems I have mentioned here are commonly heard from other Zoo organizations. Your assistance in this matter would be greatly appreciated.

Yours sincerely,

DAVID HANCOCKS,
General Director.

ATTACHMENT

1. To engage in interstate commerce in selling, buying and trading of the following:

MAMMALS

Jaguar (*Panthera onca*)
Lemur, black (*Lemur macaco*)
Lemur, Ring-tailed (*Lemur catta*)
Leopard (*Panthera pardus*)
Tiger (*Panthera tigris*)

BIRDS

Duck, Hawaiian (Koloa) (*Anas wyvilliana*)
Goose, Nene (Hawaiian) (*Branta sandvicensis*)
Pheasant, brown-eared (*Crossoptilon mantchurcum*)
Pheasant, Edward's (*Sophura edwardsi*)
Pheasant, Humes (bar-tailed) (*Syrmaticus humiae*)
Pheasant, Mikado (*Syrmaticus mikado*)
Pheasant, Palawon peacock (*Polyplectron emphorium*)
Pheasant, Swinhoe (*Sophura swinhoii*)
Pheasant, White-eared (*Crossoptilon crossoptilon*)
Quail, Maskfied Bobwhite (*Colinus virginianus ridgwayii*)
Teal, Layson (Layson duck) (*Anas laysanensis*)

2. The *Feline House* has both indoor and outdoor facilities. The indoor enclosures consist of (8) 16'x10'x 10' and (2) 16'x20'x10'. The outdoor enclosures consist of (4) approximately 40'x30', and (2) approximately 60'x90'. The outdoor enclosures have indoor resting facilities and there are maternity dens available to all the felines. The *Primate House* has both indoor and outdoor facilities. There are (11) indoor enclosures; (3) 9'x13'x10', (6) 10'x13'x10', (1) 27'x13'x10', and (1) 20'x13'x10'. There are (9) outdoor enclosures; (2) 30'x15'x12', (2) 12'x12'x12', (1) 35'x12'x12', (1) 18'x12'x12', (2) 12'x15'x12', and (1) 18'x12'x12'. The outdoor facilities are available to all the primates, weather permitting. The *pheasants* are enclosed in a facility containing 10 outside enclosures 37'x10'x7'. The outside enclosures are heavily planted with shrubs and small trees. Each enclosure has an inside covered area 10'x7'x10, which can be heated when necessary. Water and feed are available in the covered portion.

3. Woodland Park Zoological Gardens has been in operation since 1900. We have a staff of 43 professional animal keepers. Breeding success has been good with most of our endangered fauna. Some felines include the Snow Leopard *Panthera uncia*, Tiger *Panthera tigris*, and the Leopard *Panthera pardus*. Among the birds, *Palawon Peacock Pheasant* and Trumpeter Swan *Cygnus cygnus buccinator*. Primate include Lion-tailed Macoque *Macocoa silenus* and Cotton-headed Tamarin *Saguinas oedipus*.

4. The Woodland Park Zoological Gardens is a participant in ISIS, International Species Inventory System. The Zoo has specimens both in and out on cooperative breeding programs. We are maintaining and contributing data on all endangered species studbook.

5. Containers used in the transportation of said wildlife shall be constructed of metal, wood, fiberglass or fiberwood and marked WILD ANIMALS, THIS END UP. Size of the container shall allow the animal to move freely. The floor of the container shall be liquid-proof and be covered with sufficient absorbent material. Adequate ventilation shall be provided. Containers constructed of wire mesh shall have wire screening cover on all air vents. Access into the container shall be adequately secured to prevent accidental opening. A water trough with adequate safe access for replenishment shall be provided, as well as receptacle for food as needed. There shall be several labels on each container with instructions on where to hold, when to feed and water. The label shall contain name, address and telephone number of both shipper and receiver.

6. Mortalities involving Jaguar. Leopard and Tiger during the last 5 years:

1976

Tiger twins, March 7, 1976, Aborted.
Tiger cub, April 3, 1976, Trauma by mother (maternal rejection).

1975

Leopard, January 2, 1975, Trauma by Jaguars (management error).
Leopard cub, May 6, 1975, Trauma by mother during birth (Euthanasia).

1974

Jaguar, March 21, 1974, Acute viral pneumonia.
Jaguar, March 25, 1974, Acute viral pneumonia.
Leopard cub, June 12, 1974, Shock following trauma by mother.
Leopard cub, June 29, 1974, Stillborn.
Tiger, August 19, 1974, Euthanized; chronic degenerative kidney disease.

1973

Leopard cub, January 21, 1973, Stillborn.
Leopard cub, February 27, 1973, Bacterial (?) pneumonia.
Tiger, July 3, 1973, Bronchopneumonia.
Leopard, December 2, Chronic glomerular nephritis.
Leopard cub, July 1, 1973, Bronchopneumonia.

1972

Tiger, August 4, 1972, Euthanized; osteoneerosis, sarcoid on maxilla.

Steps being taken to avoid and decrease such mortalities are practicing preventive medicine, improved programs in keeper training and general animal management techniques.

7. The Woodland Park Zoological Gardens is a municipal institution operated by the City of Seattle. It is open seven days a week without an admission charge. The Zoo operates on a philosophy that emphasizes education (through interpretive programs and exhibit of animals), research (through observation), and conservation (through the breeding of selected, especially rare and endangered species). The disposition of surplus animals will be to appropriate institutions, by trade and sale.

Documents and other information submitted in connection with this application are available for public inspection during normal business hours at the Service's office in Room 512, 1717 H Street, NW., Washington, D.C.

Interested persons may comment on this application by submitting written data, views, or arguments, preferably in triplicate, to the Director (FWS/WPO), U.S. Fish and Wildlife Service, Washington, D.C. 20240. This application has been assigned File Number PRT 2-294-25; please refer to this number when submitting comments. All relevant comments received by February 18, 1977 will be considered.

Dated: January 14, 1977.

DONALD G. DONAHOO,
Chief, Permit Branch, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service.

[FR Doc.77-1662 Filed 1-18-77;8:45 am]

National Park Service

LAKE MEAD NATIONAL RECREATION AREA WILDERNESS STUDY

Intent

Notice is hereby given that the National Park Service will hold five public workshops in mid-February, in Arizona, California, Nevada and Utah, to provide for public involvement and citizen participation in the first phase of a new wilderness suitability study of the lands in Lake Mead National Recreation Area.

Each of four workshops will begin at 7:30 p.m., local time, as follows: February 14, 1977, in the National Park Service Southern Arizona Group Offices, 1115 North First Street, Phoenix; February 15, 1977, in Room 3123, New Federal Office Building, 300 North Los Angeles Street, Los Angeles; February 16, 1977, in the Little Theater, William Orr Junior High School, 1562 Katie Drive, Las Vegas, and February 17, 1977, in the Auditorium, Kingman High School, 400 Grandview, Kingman, Arizona. The fifth workshop will be held February 18, 1977, in the Community Room, St. George Savings and Loan Building, 95 East Tabernacle, St. George, Utah, and it will begin at 2:00 p.m. local time.

Concurrent with these workshops, the National Park Service will hold consultations with various Federal, state and local government agencies, individuals and organizations on the designation of wilderness for lands within Lake Mead National Recreation Area.

The purpose of these workshops and consultations is to provide for wide public involvement, including ideas, suggestions, and comments from individuals and organizations on wilderness designation for lands in the recreation area.

After the National Park Service completes the study, a wilderness proposal and draft environmental statement will be prepared and made available for public review followed by public hearings, as required by the Wilderness Act of 1964.

The oral statements at the public hearings and the written comments received while the record remains open will be analyzed and evaluated during the second phase of public involvement. The information will be used to formulate a Wilderness Recommendation and Final Environmental Statement that will be submitted to the Congress.

Anyone wanting information on the National Park Service planning process, or wishing to submit comments for the wilderness study may write to the Superintendent, Lake Mead National Recreation Area, 601 Nevada Highway, Boulder City, Nevada 89005.

JOHN H. DAVIS,
Acting Regional Director, Western Region.

JANUARY 6, 1977.

[FR Doc.77-1635 Filed 1-18-77;8:45 am]

[Order No. 7, Amdt. No. 5]

LAND ACQUISITION OFFICER, WESTERN REGION

Delegation of Authority

Western Region Order No. 7, approved March 3, 1972, and published in the FEDERAL REGISTER of March 28, 1972 (37 FR 6326), and Amendment No. 1, approved March 5, 1974, and published in the FEDERAL REGISTER of April 18, 1974 (39 FR 13903), and Amendment No. 2, approved March 27, 1975, and published in the FEDERAL REGISTER of May 5, 1974 (40 FR 19508), and Amendment No. 3, approved January 12, 1976, and published in the FEDERAL REGISTER of May 14, 1976 (41 FR 19993), and Amendment No. 4, approved September 8, 1976, and published in the FEDERAL REGISTER of November 15, 1976 (41 FR 50357), is hereby amended. Section 2, paragraphs (h) and (h)(1) are hereby amended to read as follows:

(h) *Realty Specialists, Joshua Tree National Monument, and Yosemite National Park.* The Realty Specialists stationed at Joshua Tree National Monument and Yosemite National Park are authorized to exercise authority with respect to the following:

(1) Approval and acceptance of options and offers to sell to the United States, lands, or interests in lands, within their respective area, and to execute all necessary agreements and conveyances incident thereto when the amount involved does not exceed $150,000.00.

(NPS Order No. 77, 38 FR 7478, Published March 22, 1973, as amended.)

Dated: November 29, 1976.

JOHN H. DAVIS,
Acting Regional Director, Western Regional Office.

[FR Doc.77-1633 Filed 1-18-77;8:45 am]

[Order No. 2]

SAN JUAN NATIONAL HISTORIC SITE, PUERTO RICO

Assistant Superintendent, et al.; Delegation of Authority

Section 1. *Assistant Superintendent.* The Assistant Superintendent may execute, approve, and administer contracts not in excess of $2,000 for supplies, equipment or services in conformity with applicable regulations and statutory authority and subject to the availability of appropriated funds.

Section 2. *Administrative Officer.* The Administrative Officer may execute, approve, and administer contracts not in excess of $1,000 for supplies, equipment or services in conformity with applicable regulations and statutory authority and subject to the availability of appropriated funds.

Section 3. *Facility Manager.* The Facility Manager may issue field purchase orders not in excess of $500.00 for supplies, equipment or services in conformity with applicable regulations and statutory authority and subject to the availability of appropriated funds.

Section 4. *Chief Park Ranger.* The Chief Park Ranger may issue field purchase orders not in excess of $100.00 for supplies, equipment or services in conformity with applicable regulations and statutory authority and subject to the availability of appropriated funds.

Section 5. *Revocation.* This order supersedes Order No. 1, dated August 12, 1963, and published in FR Doc. 63-9539; and Amendment No. 1 dated April 15, 1965, FR Doc. 65-5201.

(National Park Service Order No. 77 (38 FR 7478) as amended; Southeast Region Order No. 5 (37 FR 7721 as amended).)

Dated: December 30, 1976.

LLOYD K. WHITT,
Superintendent, San Juan National Historic Site.

[FR Doc.77-1636 Filed 1-18-77;8:45 am]

[Order No. 1]

SLEEPING BEAR DUNES NATIONAL LAKESHORE, FRANKFORT, MICH.

Administrative Officer

Section 1. *Administrative Officer.* The Administrative Officer may issue purchase orders not in excess of $2500 for supplies, equipment or services in conformity with applicable regulations and statutory authority and subject to the availability of appropriated funds.

(National Park Service Order No. 77 (38 FR 7478) as amended; Midwest Region Order No. 5 (37 FR 6324) as amended.)

Dated: December 30, 1976.

J. A. MARTINEK,
Superintendent, Sleeping Bear Dunes National Lakeshore.

[FR Doc.77-1637 Filed 1-18-77;8:45 am]

[Order No. 1]

BENT'S OLD FORT NATIONAL HISTORIC SITE, COLO.; ADMINISTRATIVE OFFICER, ET AL.

Authority Delegation

Section 1. *Administative Officer.* The Administrative Officer may issue purchase orders not in excess of $500 for supplies or equipment in conformity with applicable regulations and statutory authority and subject to the availability of appropriated funds.

(National Park Service Order No. 77 (38 FR 7478) as amended; Rocky Mountain Region Order No. 1 (39 FR 12369) as amended.)

Dated: December 14, 1976.

JOHN R. PATTERSON,
Park Manager, Bent's Old Fort National Historic Site.

[FR Doc.77-1644; Filed 1-18-77;8:45 am]

[Order No. 10]

BLUE RIDGE PARKWAY, VA. AND N.C.; ADMINISTRATIVE OFFICER, ET AL.

Authority Delegation

Sec. 1. *Administrative Officer.* The Administrative Officer may execute, approve, and administer contracts not in excess of $500,000 for construction, supplies, equipment, and services in conformity with applicable regulations and statutory authority and subject to availability of appropriated funds; and may execute and approve revocable special use permits having a term 10 years or less for use of Government-owned lands and facilities. This authority may be exercised by the Administrative Officer in behalf of any office or area administered by Blue Ridge Parkway.

Sec. 2. *General Supply Officer.* The General Supply Officer may execute, approve and administer contracts not in excess of $200,000 for construction, supplies, equipment, and services in conformity with applicable regulations and statutory authority and subject to availability of appropriated funds. This authority may be exercised by the General Supply Officer in behalf of any office or area administered by Blue Ridge Parkway.

Sec. 3. *General Supply Specialist.* The General Supply Specialist may execute, approve and administer contracts not in excess of $10,000 for supplies, equipment, and services in conformity with applicable regulations and statutory authority and subject to availability of appropriated funds. This authority may be exercised by the General Supply Specialist in behalf of any office or area administered by Blue Ridge Parkway.

Sec. 4. *Procurement Clerk (Typing).* The Procurement Clerk (Typing) may issue purchase orders not in excess of $500 for supplies, equipment, and services in conformity with applicable regulations and statutory authority and subject to availability of appropriated funds.

Sec. 5. *Assistant Superintendent, Facility Managers, District Rangers, Subdistrict Rangers, Maintenance Foremen, WS–10, Administrative Services Assistants, Signmaker Foreman, District Clerks, and Youth Conservation Corps Project Managers and Camp Directors.* The Assistant Superintendent, Facility Managers, District Rangers, Subdistrict Rangers, Maintenance Foreman (not below WS–10), Administrative Services Assistants, Signmaker Foreman, District Clerks, and Youth Conservation Corps Project Managers and Camp Directors, who are employees of the Blue Ridge Parkway, may issue field purchase orders (SF–44) not in excess of $500 for supplies and equipment in conformity with applicable regulations and statutory authority and subject to availability of appropriated funds.

The limitations in Sections 1 through 5 above apply only to open market or nonmandatory sources of supply. Each office may continue to issue FEDSTRIP orders to GSA centers in accordance with program needs subject to the availability of appropriated funds.

Sec. 6. *Revocation.* This order supersedes Order No. 9 dated April 26, 1976 (41 FR 23986) published June 14, 1976.

(National Park Service Order No. 77 (38 FR 7478), as amended; Southeast Region Order No. 5 (37 FR 7721), as amended.)

Dated: November 8, 1976.

JOE BROWN,
Superintendent,
Blue Ridge Parkway.

[FR Doc.77-1638 Filed 1-18-77;8:45 am]

BRYCE CANYON NATIONAL PARK, UTAH

Designation of Routes Open to Snowmobiles

In accordance with the requirements of paragraph (c) of § 2.34 of Title 36 of the Code of Federal Regulations, notice is hereby given of routes that will be open to snowmobiles in Bryce Canyon National Park.

In arriving at the designations of the snowmobile routes, we have been guided by the criteria contained in Sections 3 and 4 of Executive Order 11644 (37 FR 2877) and also have considered factors such as other visitor uses, safety, wildlife management, noise, erosion, geography, weather, vegetation, resource protection, and other management considerations.

A environmental assessment has been prepared on the designation of the snowmobile routes and is available for public review in the office of the Park Superintendent.

In order to properly designate the snowmobile routes, it is considered necessary to define the portions of the routes where snowmobile use will be permitted.

Available Roadway: On routes designated for snowmobile use, only that portion of the road or parking area intended for other motor vehicle use may be used by snowmobiles. Such roadway is available for snowmobile use only when the designated road or parking area is closed to all other motor vehicle use by the public.

DESIGNATED ROUTES

1. The Main Park Road from the Bryce Point-Paria Point intersection to Rainbow Point.
2. The Whiteman Bench Fire Road from the Main Park Road to the western park boundary.
3. The Yovimpa Fire Road from the Main Park Road to the western park boundary.
4. The Sunset Campground road system and its access road from the Main Park Road.
5. The Sunset Campground Service Road from the Sunset Campground to the western park boundary.

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the decision making process.

The preceding notice of intent published in the FEDERAL REGISTER (44 FR 9407) on March 4, 1976 produced minimal public comment. Seven letters were received. Three in favor of the proposal and four opposed. Therefore, to generate additional public comment prior to a final decision, the public shall be provided an additional 30-day period to comment. Accordingly, interested persons may submit written comments, suggestions, or objections, with respect to the snowmobile route designations, to the Park Superintendent, Bryce Canyon National Park, Bryce Canyon, Utah 84717. on or before February 18, 1977.

THOMAS O. HOBBS,
Superintendent,
Bryce Canyon National Park.

DECEMBER 1, 1976.

[FR Doc.77-1639 Filed 1-18-77;8:45 am]

CHAMIZAL NATIONAL MEMORIAL, TEX.; ADMINISTRATIVE OFFICER

Authority Delegation

Sec. 1.—*Administrative Officer.* The Administrative Officer may issue purchase orders not in excess of $10,000 for supplies, equipment or services in conformity with applicable regulations and statutory authority and subject to availability of appropriated funds.

Sec. 2.—*Purchasing Agent.* The Purchasing Agent may issue purchase orders not in excess of $500 for supplies, equipment or services in conformity with applicable regulations and statutory authority and subject to the availability of appropriated funds.

Sec. 3.—*Revocation.* This order supersedes Order No. 3, Chamizal National Memorial, dated: October 6, 1976, and published January 20, 1976 (41 FR 2836, January 20, 1976).

(National Park Service Order No. 77, 38 FR 7478, as amended, Southwest Region Order No. 5, 37 FR 7722 as amended.)

Dated: December 17, 1976.

FRANKLIN G. SMITH,
Superintendent, Chamizal
National Memorial.

[FR Doc.77-1642 Filed 1-18-77;8:45 am]

[Order No. 3]

NAVAJO LANDS GROUP; ADMINISTRATIVE OFFICER AND SUPPLY TECHNICAL

Authority Delegation

Sec. 1.—*Administrative Officer.* The Administrative Officer is authorized to execute, approve and administer contracts, and to issue purchase orders for equipment, supplies or services in amounts not in excess of $50,000, in conformity with applicable regulations and statutory authority and subject to availability of allotted funds. This authority may be exercised by the Administrative Officer in behalf of any unit under the administration of the Navajo Lands Group.

Sec. 2.—*Supply Technician.* The Supply Technician is authorized to execute, approve and administer contracts, and to issue purchase orders for equipment, supplies or services in amounts not in excess of $25,000, in conformity with applicable regulations and statutory authority and subject to availability of allotted funds. This authority may be exercised by the Supply Technician in behalf of any unit under the administration of the Navajo Lands Group.

Sec. 3.—*Revocation.* This order supersedes Order No. 2, Navajo Lands Group, dated May 18, 1972, and published July 25, 1972 (37 FR No. 143, 14822).

(National Park Service Order No. 77, 38 FR 7478, as amended, Southwest Region Order No. 5, 37 FR 7722, as amended).

Dated: December 20, 1976.

ARTHUR H. WHITE,
General Superintendent,
Navajo Lands Group.

[FR Doc. 77-1643 Filed 1-18-77;8:45 am]

(Order No. 4)

PADRE ISLAND NATIONAL SEASHORE, TEX.; ADMINISTRATIVE OFFICER AND SUPPLY TECHNICIAN

Authority Delegation

Section 1.—*Administrative Officer.* The Administrative Officer may execute and approve contracts not in excess of $25,000 for supplies, equipment or services in conformity with applicable regulations and statutory authority and subject to availability of appropriations.

Section 2.—*Supply Technician.* The Supply Technician may issue purchase orders not in excess of $10,000 for supplies, equipment or services in conformity with applicable regulations and statutory authority and subject to the availability of appropriated funds.

Section 3.—*Revocation.* This order supersedes Order No. 3 dated May 30, 1972 and published in 37 FR 14822 on July 25, 1972.

(National Park Service Order No. 77, 38 FR 7478 as amended; Southwest Region Order No. 5, 37 FR 7722 as amended.)

Dated: December 6, 1976.

JOHN F. TURNEY,
Superintendent,
Padre Island National Seashore.

[FR Doc.77-1641 Filed 1-18-77;8:45 am]

(Order No. 1, Amdt 4)

ROCKY MOUNTAIN REGION; SUPERINTENDENTS, ET AL.

Authority Delegation

Rocky Mountain Region Order No. 1, approved February 27, 1974, and published in the FEDERAL REGISTER of April 5, 1974 (39 FR 12369), as amended, sets forth in Section 2 limitations on redelegations of authority. This amendment changes Section 2, paragraph (a) to read as follows:

Section 2.—*Delegation.* (a) *Associate Regional Director, Administration.* The Associate Regional Director, Administration is authorized to exercise all the procurement and contracting authority now or hereafter vested in the Regional Director, Rocky Mountain Region, except authority to contract for acquisition of land and related property, and options and offers to sell related thereto. This authority may be exercised by the Associate Regional Director, Administration, in behalf of any office or area for which the Rocky Mountain Regional Office serves as the field finance office.

The Associate Regional Director, Administration, is authorized to approve use of a Government-owned or leased motor vehicle between domicile and place of employment. This authority may not be redelegated.

(National Park Service Order No. 77 (38 FR 7478) as amended.)

Dated: November 24, 1976.

LYNN H. THOMPSON,
Regional Director,
Rocky Mountain Region.

[FR Doc.77-1640 Filed 1-18-77;8:45 am]

(Order No. 5, Amdt. No. 5)

SOUTHWEST REGION; CONTRACT SPECIALIST AND PROCUREMENT ASSISTANT

Authority Delegation

Southwest Region Order No. 5, approved March 22, 1972, and published in the FEDERAL REGISTER of April 19, 1972 (37 FR 7722) as amended, is hereby amended to read as follows:

Section 2.—Delegation.

(g) Contract Specialist. The Contract Specialist may exercise all the procurement and contracting authority now vested in the Regional Director, Southwest Region, up to $50,000, except authority to contract for acquisition of land and related property and options and offers to sell related thereto.

(h) Procurement Assistant. The Procurement Assistant may issue purchase orders not in excess of $500 for supplies, equipment, or services in conformity with applicable regulations and statutory authority and subject to availability of approriated funds.

(National Park Service Order No. 77 (38 FR 7478, as amended).)

Dated: December 23, 1976.

JOSEPH C. RUMBURG, JR.,
Regional Director,
Southwest Region.

[FR Doc.77-1645 Filed 1-18-76;8:45 am]

Office of the Secretary

ADVISORY COMMITTEES

Renewal

This notice is published in accordance with the provisions of Section 7(a) of the Office of Management and Budget Circular A–63 (Revised). Pursuant to the authority contained in Section 14(a) of the Federal Advisory Committee Act (Pub. L. 92–463). I have determined that renewal of the advisory committees listed below is necessary and in the public interest.

1. Advisory Board on the San Jose Mission National Historic Site.
2. Emergency Advisory Committee for Natural Gas.
3. Federal Metal and Nonmetal Mine Safety Advisory Committee.
4. Hot Springs National Park Examining Board for Technicians.
5. Hot Springs National Park Registration Board.
6. National Advisory Board for Wild Free-Roaming Horses and Burros.

The Office of Management and Budget has concurred in the renewal of these committees.

Further information regarding these renewals may be obtained from the Department Committee Management Officer, Office of the Secretary, U.S. Department of the Interior, Washington, D.C. 20240, telephone 202–343–8401.

Dated: January 11, 1977.

THOMAS S KLEPPE,
Secretary of the Interior.

[FR Doc. 77-1671 Filed 1-18-77;8:45 am]

PRINEVILLE RESERVOIR, CROOKED RIVER PROJECT, OREG.

Designation of Certain Areas and Trails for Off-Road Vehicle Use

On July 24, 1974, a document was published in the FEDERAL REGISTER (39 FR 36893) setting forth policy and criteria relating to the use of off-road vehicles on Bureau of Reclamation lands. By virtue of those regulations, Reclamation lands were closed to off-road vehicle use on August 23, 1974.

Reclamation lands and facilities adjacent to Prineville Reservoir are under the administration of two non-Federal entities, Crook County, Oregon, and the Oregon Department of Fish and Wildlife. In accordance with 43 CFR 420.25, Reclamation lands managed by non-Federal entities will be administered in a manner consistent with both part 420 and applicable non-Federal laws and regulations. Existing non-Federal laws, regulations, and policy restrict off-road vehicle use to designated and established roads and trails.

Based on evaluations of current use, existing resources, and current administrative constraints, off-road vehicle use is restricted to designated and established roads and trails on lands within the boundaries of Prineville Reservoir. This restriction is also consistent with existing administration of other public lands in the vicinity of the reservoir lands.

Roads and trails open to off-road vehicle use are delineated on drawing No. 113–100–251 which will be on file and available for inspection at:

Bureau of Reclamation, PN Regional Office, Box 043, 550 West Fort Street, Boise, Idaho, 83724.
Crook County Courthouse, Prineville, Oregon 97754.
Oregon Department of Fish and Wildlife, District Office, Prineville, Oregon.
Prineville State Park (on Prineville Reservoir), Prineville, Oregon.
Prineville Reservoir Resort, Bob 1300, Prineville Lake Route, Prineville, Oregon.

Dated: January 11, 1977.

CHRIS FARRAND,
Deputy Assistant Secretary
of the Interior.

[FR Doc.77-1672 Filed 1-18-77;8:45 am]

COMMODITY FUTURES TRADING COMMISSION

REGISTRATION OF FUTURES COMMISSION MERCHANTS AND ASSOCIATED PERSONS ENGAGING IN COMMODITY OPTIONS FOR CUSTOMERS

Treatment of Pending Applications

On January 13, 1977, the Commodity Futures Trading Commission ("Commission") held a special meeting to consider what, if any, action to take regarding the large number of futures commission merchant ("FCM") and associated person applications filed in recent days by persons hoping to be registered by the January 17, 1977, deadline for persons engaging in commodity options transac-

tions for customers in the United States. Because of the substantial prior notice of the registration deadline and the well-publicized time required for processing applications, the Commission determined not to extend the effective date of the registration requirement. However, the Commission did determine to take no enforcement action against persons who had filed completed associated person applications on or before December 27, 1976. At that meeting, the Commission acted on each pending FCM application individually. The history behind the Commission's action and the details of that action are more fully described below.

On October 8, 1976, the Commission, pursuant to its authority contained in the Commodity Exchange Act ("Act"), as amended,[1] announced interim rules governing commodity options which were to become effective on November 22, 1976.[2] The interim regulations were subsequently modified and adopted in definitive form as published on November 24, 1976.[3] As originally announced, and as finally adopted, the regulations provide, among other things, that persons and firms who wish to engage in commodity option transactions for customers on and after January 17, 1977, are required to register with the Commission either as FCM's or as associated persons. Specifically, § 32.3 provides that it is unlawful for any person to accept funds or other property from an option customer as payment of the purchase price of a commodity option unless the person is registered as an FCM, or to solicit or accept orders for commodity options unless registered as an FCM or as an associated person of a specified FCM.

The January 17, 1977, effective date for the registration requirement was clearly stated in both the original (October 8, 1976) and the subsequent (November 24, 1976) publications of the interim rules. In the FEDERAL REGISTER release of October 8, 1976, the Commission emphasized its intention to implement the registration provisions of the regulations and suggested that those persons who would be affected by the registration requirement file their applications as soon as possible.[4] The Commission stated (footnotes added:

It should be noted that the anticipated effective date of these rules is November 22, 1976.[5] The registration provisions, however, do not go into effect until 60 days thereafter. This is to allow persons sufficient time to submit, and for the Commission to process, applications for registration. Processing of applications normally take[s] approximately 60 days. Therefore, as indicated above, the Commission urges persons wishing to register as futures commission merchants or associated persons to submit their applications promptly. A person who defers filing an application until the effective date of the regulations runs the risk that the application may not be processed on a timely basis; a person who does not file an application until after the effective date increases the risk that the application will not be processed by the time the registration requirements go into effect. The Commission intends to expedite the processing of such applications, and a prompt filing will enable the Commission to do so on a timely basis.[6]

When the Commission published the adopted interim rules on November 24, 1976, it again reminded persons affected by the new registration requirements of the need to act quickly in submitting their applications (footnote added):

The Commission also wishes to stress that as proposed and as adopted, § 32.3 of the interim rules provides that on and after January 17, 1977, it will be unlawful for a person to solicit or accept orders for commodity options transactions or for an individual to be associated with any such person, unless registered as a futures commission merchant or as an associated person of such futures commission merchant, respectively, under the Act. Therefore, the Commission again wishes to advise affected persons to file their applications for registration promptly. The Commission is already processing applications for registration which it has received as a result of its announcement of the proposed interim rules. A person who defers filing an application runs the risk that the application may not be processed before the January 17th deadline. Normal requirements for processing are 30–60 days. While the Commission intends to expedite the processing of applications, a prompt filing will enable the Commission to do so on a timely basis.[7]

Notwithstanding the substantial advance notice given to the registration requirements and the repeated warning that deferred applications might not be received in time to permit the Commission to complete its processing, the Commission received a number of FCM applications and an estimated 500 associated person applications (from persons desiring to handle commodity option orders) within the last three weeks before the January 17, 1977, deadline for registration. The vast majority of these applications were received within the last week. It was apparent that the large number of applications could not be processed in the relatively short period of time before the required registration date, January 17, 1977.[8] The Commission therefore held a special meeting on January 13, 1977, to decide how the pending applications should be treated. After considering the liberal advance notice and the extensive publicity given to the registration requirement, the Commission found no basis to disturb the January 17, 1977, effective date of the registration requirements.[9]

However, the Commission also recognized that there were a number of persons who had filed a completed application as an associated person promptly after the regulations were published, but whose application could not be processed (partially because of the volume of applications) by the January 17th deadline. So that persons within this category would not be required to suspend or defer options activities,[10] the Commission determined to take no enforcement action applicants who had filed a completed application on or before December 27, 1976, a date more than 30 days after the adopted regulations were published.[11]

With regard to those individuals[12] the Commission decided that it would bring no enforcement action, based solely on the failure to register, if the applicant meets the following conditions:

(1) a completed application was filed with the Commission on or before December 27, 1976;

(2) The applicant (or his employing futures commission merchant) has not been specifically notified that this no action position does not apply to him; and

(3) The applicant has not received a letter from the Commission or its staff advising him that, because of factors revealed during his fitness investigation, he has not been registered but that he is entitled to a hearing on the question of his fitness for registration.

The Commission's "no-action position" applies only to activities relating to the sale of commodity options, and does not apply to activities relating to the sale of commodity futures. Should the fitness investigation of any applicant reveal grounds for denial of registration, the applicant will be notified that the "no-action position" no longer applies to him and that continued activity as an associated person pending a final determination of his fitness for registration would subject him to possible enforcement action.

This "no-action position" for certain associated person applicants will terminate on February 21, 1977, since it is anticipated that the Commission will be able, by that date, to complete the processing of the applications of those persons to whom the "no-action position" applies.

With respect to applications for registration as futures commission merchants, the Commission also found that it would generally be unable to complete processing of applications filed after December 27, 1976. Thus, most of those applicants who filed FCM applications after December 27th were individually notified that they would not be registered by January 17th and could not therefore engage in commodity option transactions for customers on and after that date until they were registered.

The Commission has substantially completed processing of FCM applications which were filed on or before December 27, 1976. They have been treated as follows:

1. Letters advising FCM applicants that registration has been granted were sent to those applicants who satisfied the fitness requirements and met the minimum adjusted working capital requirement of regulation 1.17(b)(1).[13]

2. Certain applicants were able to meet the minimum financial requirement for registration as an FCM under regulation 1.17(a), but were unable to meet the higher minimum financial requirement which regulation 1.17(b)(1) imposes upon FCM's engaging in commodity option transactions. Applicants within this category that met fitness requirements were advised that their registration as a futures commission merchant was granted, but were cautioned not to engage in options transactions after January 17, 1977, unless they comply with the minimum financial requirement of regulation 1.17(b)(1), and that their registration could be suspended or revoked if they were found to be operating in violation of the additional capital requirement with which option dealers are required to conform.

3. Certain applicants appeared to be unable to meet the minimum financial prerequisites to registration as an FCM under regulation 1.17(a). If the fitness requirements were satisfied by such applicants, they were advised that unless they should voluntarily withdraw their application the staff would be obliged to recommend institution of formal proceedings for denial of their application.

4. In those instances where the Commission's audit staff was unable to determine whether an applicant was able to meet the minimum financial prerequisites of regulation 1.17(a) because, among other things, the applicant's books and records were not complete and up to date, or where there existed some other obstacle to registration, the applicant was notified that registration would not be granted by the January 17th deadline.

With respect to three firms that have applied for registration as FCM's, the Commission, on January 14, 1977, instituted formal proceedings pursuant to Section 8a(2) of the Commodity Exchange Act to determine, among other things, whether cause exists under law to refuse to register those firms.[14] In accordance with that section, pending final determination registration of those firms will not be granted.

While persons who are already registered as FCM's or associated persons under the Act need not re-register in those categories in order to engage in commodity option transactions for customers, such persons are required by § 32.2(d) and (e) promptly to notify the Commission in writing of the date on which they commenced or intend to commence engaging in commodity options activities. FCM's must, of course, meet the higher minimum adjusted working capital requirements for engaging in commodity options.

Issued in Washington, D.C. on January 17, 1977.

JOHN V. RAINBOLT II,
Vice Chairman, Commodity Futures Trading Commission.

[FR Doc.77-2046 Filed 1-18-77;8:45 am]

[1] Sections 2(a)(1), 4c and 8a of the Act, 7 U.S.C. 2, 6c and 12a (Supp. IV, 1974).

[2] 41 FR 45560.

[3] 41 FR 51809.

[4] 41 FR 44560, 44561.

[5] When the interim rules were adopted, as modified, their effective date (with the exception of the segregation provisions which were further deferred) was changed to December 9, 1976. The effective date of the registration provisions, January 17, 1977, was adopted as proposed.

[6] 41 FR 44560, 44563.

[7] 41 FR 51808, 51810.

[8] As part of registration processing, applicants names are screened through FBI and the Securities and Exchange Commission files for information which may demonstrate a lack of suitability to operate in the capacities for which the applicants seek registration in accordance with the standards set forth in section 8a of the Act and the Commission's interpretation of "other good cause" which was published in the FEDERAL REGISTER, 41 FR 28125. In addition, the Commission staff conducts preregistration audits of FCM applicants to determine whether they meet the minimum adjusted working capital requirements set forth in § 1.17 as a prerequisite to FCM registration and the higher minimum adjusted working capital requirements for engaging in commodity option transactions on behalf of customers.

[9] The plan for interim options regulations, including the proposal for registration, had originally been announced at a public meeting in Washington, D.C. on September 13, 1976. In addition to the notices contained in the FEDERAL REGISTER, a large number of newspapers, journals and trade publications throughout the United States reported on the registration requirement in articles concerning the options requirements.

[10] Section 32.3(b) provides that, on and after January 17, 1977 it shall be unlawful for:

. . . . . .

(2) Any futures commission merchant to permit an individual to become or remain associated with such futures commission merchant as a partner, officer or employee (or in any similar status or position involving similar functions) in any capacity involving such solicitation, acceptance or supervision if such futures commission merchant knew or should have know that such individual was not registered as an associated person or that such registration has expired, been suspended (and the period of suspension has not expired) or revoked.

[11] The Commission determined that, in view of the substantial notice of the registration requirements and the purpose of the registration requirements, all applications filed after that date were to be processed expeditiously in the order they were received, but that, consistent with Commission's regulations, applicants should not and could not be permitted to engage in commodity option transactions for customers until their application had been processed and they had been registered.

[12] At least 50 associated person applications were received by the Commission on or before December 27, 1976, from persons desiring to handle commodity option orders which the staff could not fully process before January 17, 1977.

[13] Regulation 1.17(b)(1) prohibits an FCM from engaging in commodity option transactions unless it maintains adjusted working capital in excess of the greater of: (1) $50,000, or (ii) the sum of certain safety factors set forth in the regulation plus five percent of the FCM's aggregate indebtedness. Registered FCM's may lawfully engage in commodity option transactions only so long as they continue to meet the minimum adjusted working capital requirements of regulation 1.17(b)(1).

[14] British American Commodity Options, Ltd.; First New York Commodity Options, Ltd.; and London Commodity House, Inc.

ENVIRONMENTAL PROTECTION AGENCY

[FRL 672-8]

POLYCHLORINATED BIPHENYLS (PCBs)

Public Meeting; Solicitation of Comments

For the purpose of obtaining additional information from interested persons on the development of regulations for the marking and disposal of PCBs, the Agency will hold a public meeting on the implementation of section 6(e) of the Toxic Substances Control Act (TSCA), Pub. L. 94-469. This meeting will be held on January 24, 1977, at 10:00 a.m. in Room 2117, Waterside Mall, Environmental Protection Agency, 401 "M" Street, SW., Washington, D.C. 20460. This meeting was announced previously in the January 5, 1977, FEDERAL REGISTER, 42 FR 1067.

Participants are encouraged to focus discussion on the issues set forth below. The suggested approaches are intended to help sharpen the discussion but do not represent the direction that the proposed rulemaking will necessarily follow. The proposed issues for discussion are as follows:

1. Which chemical compounds should be regulated? The Agency has under discussion the following definition of PCB isomers: A PCB isomer is defined as a compound resulting from the replacement of two or more of the hydrogen atoms on the biphenyl molecule with chlorine atoms.

2. What is the definition of PCBs for marking, disposal and manufacturing ban regulations? The Agency has under consideration definitions of the following classes of PCBs: PCB Liquids: A PCB liquid containing an aggregate concentration of all PCB isomers of 10 percent (by weight) or greater. PCB Mixtures: A PCB mixture is defined as any fluid, solid, or multiphase substance containing an aggregate concentration of all PCB isomers of 0.05 percent (by weight) or greater, except for substances categorized as PCB liquids. PCB Equipment: PCB equipment is defined as any manufactured item whose surfaces have been in direct contact with PCB liquids or PCB mixtures and which has not been adequately decontaminated.

3. Which classes of PCB items should be considered for specific regulatory provisions under the disposal and marking regulations? The Agency is considering the following classes of items:

Bulk PCB liquids and mixtures.
PCB mixtures—open system uses (e.g., sealants, contaminated rags and dirt, etc.).
PCB equipment—semiclosed system uses (e.g., heat exchangers, hydraulic systems, turbines, motor coolant systems).
PCB equipment—transformers.
PCB equipment—large power factor capacitors (greater than 2Kg PCB liquids).
PCB equipment—hi-intensity arc light capacitors.
PCB equipment—large industrial and appliance capacitors (greater than 1Kg PCB liquids).
PCB equipment—small industrial and appliance capacitors (less than 1Kg PCB liquids).
PCB equipment—fluorescent light ballasts.

4. Which uses of PCB items should be considered for specific regulatory provisions under the marking regulations? The Agency is considering the following use categories: Newly manufactured; Inventory (storage); Transport; In use; Servicing; Storage for disposal.

5. Considering the use categories for PCB items described in issue 4 above, what implementation schedule should the marking regulations require? The Agency is considering marking for newly manufactured items to be achieved within six months of final rulemaking. Marking for large power factor capacitors, bulk quantities of PCBs liquids, and transformers in storage would be completed within six months. For other items in storage, except open system uses, marking would be achieved within 9 months by either marking items in storage or establishing a marking procedure whereby items are marked when they are removed from storage and entered into a distribution system for use. After nine months, markings for trucks and railroad cars would be required for any transport of a transformer and major transports of bulk PCB liquids and mixtures and other PCB-containing items. A major transport of bulk PCB liquids or mixtures is 100 pounds and a major transport of other PCB-containing items is 500 pounds net weight of PCB liquids or mixtures contained within the items. Large power factor capacitors and transformers in use would be marked within 18 months. Individual large power factor capacitors would not have to be marked if markings are placed in the immediate vicinity of the capacitors and a schematic record is maintained showing the location of PCB-containing units so that the units can be marked when they are removed from use. Existing semi-closed systems and bulk PCB liquids or mixtures not covered under storage would be marked within six months. Other than transformers, large power factor capacitors, semi-closed systems, and bulk PCBs, PCB items and equipment in use would not be marked. Markings would be required after six months whenever major items such as transformers, large power factor capacitors, and semi-closed systems are serviced. Hi-intensity arc light capacitors and large industrial and appliance capacitors would come under similar marking requirements after nine months. After six months, any PCB items and their opaque containers stored for high temperature incineration or chemical waste landfill disposal would be marked. All newly manufactured PCB containing items requiring marking would also require marking on any opaque containers.

6. Which method of disposal should be required for each class of PCB items? The Agency is considering the following methods of disposal: High temperature incineration (2 second residence time at 2000 F or equivalent temperature—residence time relationships) for all bulk PCB liquids and mixtures, and all other PCB mixtures and equipment that are feasible to incinerate based on adequate temperature-residence time relationships, dimensions of the incinerator, feed mechanisms, and other pertinent engineering characteristics. Chemical waste landfill for PCB equipment from which liquids and mixtures have been removed but the equipment has not been adequately decontaminated for recycling, reuse or scrap.

7. The Agency is attempting to determine if high-temperature incineration is the only ultimate technique for disposal of PCBs from the environment during the next few generations. The question is whether or not any PCBs should be allowed to be placed in landfills—chemical or otherwise? If PCB items from private households and small industrial appliance capacitors and fluorescent light ballast from businesses were exempted from high-temperature incineration and chemical waste landfill disposal, approximately 170 million pounds of the 758 million pounds of PCBs currently in service would be ultimately released to the environment. This 170 million pounds are contained in approximately 870 million items. Some control of the 170 million pounds could be achieved by disposal regulation of individuals disposing of more than some poundage amount of PCB items each year. The Agency is particularly interested in comments concerning controls that might be placed on the disposal of small PCB items.

8. What procedures should be followed to achieve satisfactory decontamination of PCB containers and casings? Transformers have been shown to be particularly difficult to decontaminate because of the internal configurations. The Agency is considering adapting methods used for decontaminating pesticide containers and equipment.

9. What will be the economic impact of the marking and disposal regulations?

Persons who wish to respond to these issues or make a presentation at the meeting should call Mr. Harold J. Snyder at 202-755-4880. Persons are also invited to submit written data, opinion, or arguments. Written communication on these or any other aspects of this program should be submitted to: The Environmental Protection Agency, Office of Toxic Substances (WH-557), 401 "M" Street, SW., Washington, D.C. 20460, Attention: Mr. George F. Wirth. All comments received will be made available to the public. Copies will be available for inspection and copying during normal working hours at the U.S. Environmental Protection Agency's Office of Toxic Substances, Room 711, Waterside Mall, East Tower, 401 "M" Street, SW., Washington, D.C. 20460.

Dated: January 12, 1977.

KENNETH L. JOHNSON,
Acting Assistant Administrator for Toxic Substances.

[FR Doc.77-1627 Filed 1-18-77;8:45 am]

[FRL 673-1; OPP-66023]

CHLORANIL

Cancellation of Registrations of Pesticide Products Containing Tetrachloro-p-benzoquinone (Chloranil)

Pursuant to Section 6(a)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (86 Stat. 973, 89 Stat. 751, 7 U.S.C. 136(a) et seq.), on November 30, 1976, the Aceto Chemical Co., Inc. (Aceto), 126-02 Northern Blvd., Flushing NY 11368, requested that the Environmental Protection Agency (EPA) cancel its registrations for pesticide products containing tetrachloro-p-benzoquinone (chloranil). This request affects two registered products: Chloranil, which is used for repackaging by commercial pesticide formulators (EPA Registration No. 2749-24), and Chloranil 100, which is for manufacturing use only (EPA Registration No. 2749-27).

Aceto, the only Federal registrant of pesticide products containing chloranil, has informed EPA that it terminated sales and delivery of these products to customers several years ago and that it has neither of these products in stock. Accordingly, it is unlikely that any existing stocks of these products are in channels of distribution or being held by users. There are currently no applications pending for Federal registration of pesticide products containing chloranil.

This cancellation shall be effective, February 18, 1977, unless the registrant, or an interested person with the concurrence of the registrant, requests that the registration(s) be continued in effect. After the effective date of these cancellations, the sale, distribution, and use of these products shall be unlawful.

Comments concerning this action, including requests approved by the registrant that the registrations of these products be continued, may be submitted in triplicate to the Federal Register Section, Technical Services Division (WH-569), Office of Pesticide Programs, Environmental Protection Agency, East Tower, Room 401, 401 M St. S.W., Washington D.C. 20460. Comments should bear the identifying notation "OPP—66023." Any comments filed regarding this notice of cancellation will be available for public inspection in the office of the Federal Register section from 8:30 a.m. to 4 p.m. during normal working days.

Dated: January 13, 1977.

EDWIN L. JOHNSON,
Deputy Assistant Administrator for Pesticide Programs.

[FR Doc.77-1631 Filed 1-18-77;8:45 am]

[FRL 673-3; OPP-180107]

WASHINGTON STATE DEPARTMENT OF AGRICULTURE

Issuance of Specific Exemption To Use Thiabendazole to Control Fungi in Stored Sugar Beets

Pursuant to the provisions of section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (86 Stat. 973; 89 Stat. 751; 7 U.S.C. 136(a) et seq.), notice is given that the Environmental Protection Agency (EPA) has granted a specific exemption to the Washington State Department of Agriculture (hereafter referred to as the "Applicant") to use thiabendazole to control various fungi threatening 1,500,000 tons of sugar beets in storage areas in central Washington. This exemption was granted in accordance with, and is subject to, the provisions of 40 CFR Part 166, issued December 3, 1973 (38 FR 33303) which prescribes requirements for exemption of Federal and State agencies for use of pesticides under emergency conditions.

This notice contains a summary of certain information required by regulation to be included in the notice. For more detailed information, interested parties are referred to the application on file with the Registration Division (WH-567), Office of Pesticide Programs, EPA, 401 M Street, S.W., Room E-315, Washington, D.C. 20460.

According to the Applicant, about one and one-half million (1,500,000) tons of sugar beets which were awaiting processing could become infested with various fungi, such as *Penicillium, Botrytis, Phoma, Fusarium,* and others. These fungi cause deterioration while the beets are in storage, resulting in a decline of the sugar content of the beets. These fungal diseases occur naturally in sugar beets; however, only those beets to be stored for more than seventy-five days could be seriously affected. The problem was increased by use of ventilated canopy storage. This was needed to prevent the stored beets from freezing and then thawing, which renders them unfit for processing.

There are no registered alternative pesticides that can be applied as a post-harvest treatment to control fungal deterioration in sugar beets. The logistics and economics of the processing equipment made immediate processing of the beets undesirable.

The Applicant proposed to use Mertect 340-F, EPA Reg. No. 618-75-AA; this product is already registered for preharvest field use on sugar beets to control *Cercospora* Leaf Spot. The rate of application is 0.42 fluid ounces Mertect 340-F in sufficient water to cover one ton of beets. The total amount of the product that could be used would be 4,922 gallons (630,000 fluid ounces) on 1,500,000 tons of sugar beets. Applications will be made in beet storage areas of the Utah and Idaho Sugar Company in central Washington by trained employees of that Company. The estimated loss of value without this treatment ranged from two to three dollars per ton. The Applicant predicted a maximum loss for the entire crop would be about four and one-half million dollars ($4,500,000).

Permanent pesticide tolerances of 0.25 ppm on sugar beets, 10 ppm on sugar beet tops, and 0.1 ppm in milk and meat have been established (40 CFR 180.242). The existing registered product and the limited use site indicates that no adverse long- or short-term effects on the environment are likely to occur. The requested use will add only an insignificant amount of thiabendazole to the human diet.

It should be noted that an experimental use permit under the section 5 regulations of the amended FIFRA was issued for the use of Mertect 340-F on sugar beets in North Dakota and Washington; temporary tolerances were established concurrent with the experimental use permit, which expired on October 31, 1976. Quarterly reports regarding that permit indicated that the product was efficacious for that use. Although the limited use of thiabendazole under the section 5 permit could not have been intended to deal with the present emergency, EPA felt that the issuance of this emergency exemption might mitigate efforts to register the product for this use. Therefore, it was recommended that the Applicant gather and submit both efficacy and residue data as a result of this treatment to facilitate registration of thiabendazole for this use.

After reviewing the application and other available information, EPA has determined that (a) a pest outbreak of various fungi has or is about to occur; (b) here is no pesticide presently registered and available for use to control the fungi on stored sugar beets in Washington State; (c) there are no alternative means of control, taking into account the efficacy and hazard; (d) significant economic losses may result if the various fungi are not controlled; and (e) the time available for action to mitigate the problems posed is insufficient for a pesticide to be registered for this use. Accordingly, the Applicant has been granted a specific exemption to use the pesticide noted above until December 1, 1976, to the extent and in the manner set forth in the application. The specific exemption is also subject to the following conditions:

1. The thiabendazole product Mertect 340-F, EPA Reg. No. 618-75-AA, will be used;

2. The rate of application will be 0.42 fluid ounces of the product in sufficient water for coverage of one ton of sugar beets;

3. A maximum of 4,922 gallons of the product will be applied;

4. A maximum of 1,500,000 tons of sugar beets will be treated;

5. All applications will be made by trained employees of the Utah and Idaho Sugar Company;

6. The Applicant is responsible for ensuring that the restrictions pursuant to this specific exemption are met;

7. A thiabendazole residue not to exceed for (4) ppm in or on sugar beets has been determined to be adequate to protect the public health. In addition, a residue level of 20 ppm for sugar beet pulp and sugar beet molasses indicates that established tolerances for meat and milk will not be exceeded. EPA has determined that a residue level of 20 ppm for sugar molasses will not result in significant residues in poultry or eggs. The Food and Drug Administration of the U.S. Department of Health, Education, and Welfare has been advised of this action; and

8. Efficacy and residue data will be gathered and submitted to facilitate registration of thiabendazole for this use.

Dated: January 12, 1977.

EDWIN L. JOHNSON,
Deputy Assistant Administrator for Pesticide Programs.

[FR Doc.77-1630 Filed 1-18-77;8:45 am]

[FRL 673-2 OPP—180102]

CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE

Issuance of Specific Exemption To Use Sodium Chlorate as a Harvest Aid To Dessicate Lima, Navy, and Pinto Beans

Pursuant to the provisions of section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (86 Stat. 973; 89 Stat. 751; 7 U.S.C. 136(a) et seq.), notice is given that the Environmental Protection Agency (EPA) has granted a specific exemption to the California Department of Food and Agriculture (hereafter referred to as the "Applicant") to use sodium chlorate as a harvest aid to desiccate lima, navy, and pinto beans in Sacramento Valley and San Joaquin Valley in California. This exemption was granted in accordance with, and is subject to, the provisions of 40 CFR Part 166, issued December 3, 1973 (38 FR 33303), which prescribes requirements for exemption of Federal and State agencies for use of pesticides under emergency conditions.

This notice contains a summary of certain information required by regulation to be included in the notice. For more detailed information, interested parties are referred to the application on file with the Registration Division (WH-567), Office of Pesticide Programs, EPA, 401 M Street, S.W., Room E-315, Washington, D.C. 20460.

According to the Applicant, the moisture content of the bean crop is unusually high due to heavy rains in California. The wet beans have prevented the proper operation of harvest machinery; green foliage on the plants prevents the soil from drying enough to permit the machinery to pass through the field. The Applicant further stated that seasonal rains normally start during the latter half of October, and it was esential that harvest be completed before the rains began. Finally, the Applicant stated that there was no desiccant registered for this use or alternative method of control presently available. Without the use of a desiccant chemical to facilitate harvesting, heavy losses are likely to occur; the Applicant estimated that the entire crop, valued at $65,411,000 was in jeopardy. Some 154,000 acres of lima, navy, and pinto beans located in the Sacramento and San Joaquin Valleys in California are involved. It was proposed that sodium chlorate be applied by aircraft at a rate of not more than 6 pounds per acre of crop.

There is neither an established tolerance, nor an exemption from the requirement of a tolerance for sodium chlorate on lima, navy, and pinto beans. However, sodium chlorate is exempted from the requirement of a tolerance for residues in or on cottonseed, chili peppers, rice, and sorghum grain. The maximum rate of application proposed by the Applicant was equivalent to six (6) pounds of sodium chlorate per acre, which is the same rate as that granted by EPA for the use of this pesticide on sorghum and rice; furthermore, the use

pattern is essentially the same. The Applicant requested the use of FMC Corporation's Liquid MC Defoliant, which is registered by EPA and which has fire retardant capabilities.

After reviewing the application and other available information, EPA has determined that: (a) There is no pesticide presently registered and available for use to dessicate the lima, navy, and pinto beans in California; (b) there are no alternative means of control, taking into account the efficacy and hazard; (c) significant economic problems may result if the situation is not controlled; and (d) the time available for action to mitigate the problems posed is insufficient for a pesticide to be registered for this use. Accordingly, the Applicant has been granted a specific exemption to use the pesticide noted above until November 15, 1976, to the extent and in the manner set forth in the application. The specific exemption is also subject to the following conditions:

1. The dosage rate shall not exceed six (6) pounds of active ingredient sodium chlorate per acre;

2. FMC Corporation's Liquid MC Defoliant (EPA Reg. No. 279–1993) will be the product used;

3. The treated areas shall not exceed 154,000 acres located in the two Valleys mentioned above;

4. A fourteen (14) day pre-harvest interval for all treated beans will be observed;

5. A restriction prohibiting grazing of treated fields or feeding treated bean foliage to livestock will be imposed;

6. Applications are limited to lima, navy, and pinto beans;

7. The Applicant will be responsible for instructing personnel applying the sodium chlorate in the proper application procedures;

8. The Applicant must supervise aerial applications to avoid or minimize drift to non-target areas; and

9. EPA has determined that dried beans treated according to the conditions of use listed above should not pose a threat to human health. The Food and Drug Administration of the U.S. Department of Health, Education, and Welfare has been advised of this action.

Dated: January 12, 1977.

EDWIN L. JOHNSON,
Deputy Assistant Administrator for Pesticide Programs.

[FR Doc.77-1628 Filed 1-18-77;8:45 am]

[FRL 673-H; OPP-180108]

FLORIDA DEPARTMENT OF AGRICULTURE

Issuance of Specific Exemption To Use Heptachlor To Control West Indian Sugarcane Rootstalk Borer Weevil on Ornamental Plants and Non-bearing Citrus

Pursuant to the provisions of section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (86 Stat. 973; 89 Stat. 751; 7 U.S.C. 136(a) et seq.), notice is given that the Environmental Protection Agency (EPA) has granted a specific exemption to the Florida Department of Agriculture (hereafter referred to as the "Applicant") to use a five (5) percent granular heptachlor formulation as a soil treatment to control the West Indian Sugarcane Rootstalk Borer Weevil in Broward, Orange, and Seminole Counties, Florida. This exemption was granted in accordance with, and is subject to, the provisions of 40 CFR Part 166, issued December 3, 1973 (38 FR 33303), which prescribes requirements for exemption of Federal and State agencies for use of pesticides under emergency conditions.

This notice contains a summary of certain information required by regulation to be included in the notice. For more detailed information, interested parties are referred to the application on file with the Registration Division (WH–567), Office of Pesticide Programs, EPA, 401 M Street S.W., Room E–315, Washington, D.C. 20460.

According to the Applicant, the West Indian Sugarcane Rootstalk Borer Weevil (*Diaprepes abbreviatus*) poses a serious threat to both the citrus and ornamental industries in the State of Florida. The pest was first detected in this State in Orange County about 1964; however, no serious outbreaks of infestations occurred until 1968, the Applicant stated. Since that time, the weevil has expanded its range until it now infests approximately 40,000 acres which have been placed under regulation by the Florida State Department of Agriculture. Although the heavily concentrated growing areas of foliage and containerized ornamentals are not presently infested, the proximity of weevil infestations presents a continuous threat to the $40 million a year containerized ornamentals industry. The State of California has already enacted a quarantine against the State of Florida, prohibiting shipments of nursery stock from the weevil-regulated areas. According to the Applicant, without the use of an effective soil treatment, the States of Arizona, Hawaii, Louisiana, Texas, and other important markets for nursery products will probably enact similar quarantines.

Although the adult weevil consumes large amounts of foliage, the larvae present the greater threat to the plant. In the larval stage, the pest lives underground, feeding on both the root and stem system of the plant. Symptoms of damage to citrus include growth decline, loss of production and ultimate death of the trees. The weevil is known to infest 10,000 acres of commercial citrus, mostly in Orange County, and continues to be a pest of the $2 billion Florida citrus industry. In addition, the spread of the weevil presents a potential threat to the sugarcane industry in the State. This pest is known to feed on 40 native plant species and could also harm such fragile ecosystems as the Florida Everglades.

According to the Applicant, an effective soil treatment was necessary to assure the absence or eradication of the larval stage in nursery shipments; of the chemicals tested, only heptachlor has been shown to be effective as a soil control pesticide at application rates that will not cause significant damage to the plant. The Applicant has submitted data showing that five (5) percent granular heptachlor incorporated in potting soil at the rate of 0.2 ounce actual ingredient per cubic yard gives 100 percent control of neonate larvae of the West Indian sugarcane rootstalk borer weevil. Although methyl bromide has also been shown to be efficacious against larvae of the weevil, it is not sufficiently persistent to prevent reinfestation shortly after treatment.

After reviewing the application and other available information, EPA has determined that: (a) An outbreak of the West Indian sugarcane rootstalk borer weevil has or is about to occur; (b) there is no pesticide presently registered and available for use to control this pest in Florida; (c) there are no alternative means of control, taking into account the efficacy and hazard; (d) significant economic problems may result if the pest is not controlled; and (e) the time available for action to mitigate the problems posed is insufficient for a pesticide to be registered for this use. Accordingly, the Applicant has been granted a specific exemption to use the pesticide noted above until October 1, 1977, to the extent and in the manner set forth in the application. The specific exemption is also subject to the following conditions:

1. The treatment area is limited to nurseries in Broward, Orange, and Seminole Counties;

2. The total amount of heptachlor to be used is limited to 2,000 pounds active ingredient (40,000 pounds of a five percent granular heptachlor formulation) at a rate of 0.2 ounce actual ingredient per cubic yard of potting soil;

3. Heptachlor is restricted to use as a soil treatment for bedded, non-bearing citrus nursery stock which is at least two (2) years from commercial fruit production, and for potted ornamentals;

4. Proper isolation clothing and equipment will be used by applicators to minimize their exposure to heptachlor. The isolation clothing and equipment shall consist of a respirator, goggles, helmet, face protector, protective clothing, gloves, and waterproof boots;

5. The Florida Division of Plant Industry and the U.S. Department of Agriculture will supervise the application of heptachlor; and

6. The Applicant will continue to vigorously pursue research on substitute chemicals for control of this pest.

Dated: January 12, 1977.

EDWIN J. JOHNSON,
Deputy Assistant Administrator for Pesticide Programs.

[FR Doc.77-1629 Filed 1-18-77;8:45 am]

[FRL 672-6; OPP-42005 B]

WYOMING

Extension of Contingency Approval of State Plan for Certification of Pesticide Applicators

In accordance with the provisions of section 4(a)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act FIFRA), as amended (86 Stat. 973; 7 U.S.C. 136) and 40 CFR Part 171 (39 FR 36445 (October 9, 1974) and 40 FR 11698 (March 12, 1975)), the Honorable Ed Herschler, Governor of the State of Wyoming, submitted a State Plan for Certification of Pesticide Applicators to the Environmental Protection Agency (EPA) for approval, contingent upon promulgation of implementing regulations. On January 9, 1976, the Regional Administrator, EPA, Region VIII, approved the Plan on a contingency basis, allowing one year for promulgation of the regulations. Notice of the approval was published in the FEDERAL REGISTER on January 29, 1976 (41 FR 4359).

Subsequently, on December 30, 1976, the State of Wyoming requested an extension of the period of the contingency approval in order to allow additional time to promulgate the regulations required for full approval. The Agency finds that there is good cause for approving this request and as such has granted an extension until June 30, 1977.

JOHN A. GREEN,
Regional Administrator.

JANUARY 14, 1977.

[FR Doc.77-1626 Filed 1-18-77;8:45 am]

FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 20290]

AERONAUTICAL MOBILE SERVICE

Single Sideband Techniques

Adopted: January 12, 1977.

Released: January 13, 1977.

In the matter of preparation for a proposed International Telecommunication Union World Administrative Radio Conference on the Aeronautical Mobile (R) Service to renew and revise appendix 27 of the International Radio Regulations pertaining to the Aeronautical Mobile (R) Service, as necessary, to provide for the possibility of adopting single sideband techniques; order extending time for filing comments (see 40 FR 30317, July 18, 1975).

1. On December 10, 1976, we released a Third Notice of Inquiry in this docket which, essentially, reported the proceedings of the 1976 International Civil Aviation Organization Communications Divisional Meeting and requested comments from interested parties. The deadline for filing comments was January 7, 1977, in order for us to file comments by January 31, 1977, to the International Telecommunication Union through the U.S. Department of State.

2. Because of the complexity and volume of the Third NOI and its attachment, and certain other administrative difficulties, we were unable to effect the timely publication of the inquiry in the FEDERAL REGISTER. As a practical matter, we believe that most parties interested did in fact receive copies of the Third Notice and have filed comments. In the event, however, that there are others desire to comment on the Third Notice, we are extending the deadline for filing comments until February 15, 1977. Although comments made in accordance with this extension will probably not be received in sufficient time for inclusion in the January 31st comments to the ITU, we will consider any comments so received in the development of the final U.S. position in this matter. Persons interested in filing comments can obtain copies of the Third NOI and attachment from us upon request at our Washington office (Telephone 202–632–7197; mailing address—Aviation and Marine Division, 2025 M Street, NW, Washington, D.C. 20554).

3. Accordingly, pursuant to §§ 0.331 and 1.46 of the Commission's Rules, the time for filing comments in this proceeding is extended, as provided above, until February 15, 1977.

CHARLES A. HIGGINBOTHAM,
Chief, Safety and Special Radio Services Bureau.

[FR Doc.77-1724 Filed 1-18-77;8:45 am]

FEDERAL ENERGY ADMINISTRATION

VOLUNTARY AGREEMENT AND PLAN OF ACTION TO IMPLEMENT INTERNATIONAL ENERGY PROGRAM

Meeting

In accordance with Section 252 (c)(1)(A)(i) of the Energy Policy and Conservation Act (Pub. L. 94–163) notice is hereby provided of a meeting of Subcommittee C of the Industry Advisory Board (IAB) to the International Energy Agency (IEA) to be held on January 27 and 28, 1977, at the offices of Mobil Oil Corporation, 150 East 42nd Street, New York, New York, beginning at 10:00 a.m. The agenda for the meeting is as follows:

1. Opening remarks by the Chairman.
2. Pricing in an emergency, including review of SEQ discussion of IEA/SEQ(76)35.
3. Extraordinary Costs.
4. Settlement of Disputes.
   a. Principles.
   b. Disputes Settlement Center.
5. Future work of Subcommittee C.

As provided in Section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act, this meeting will not be open to the public.

Issued in Washington, D.C., January 13, 1977.

MICHAEL F. BUTLER,
General Counsel, Federal Energy Administration.

[FR Doc.77-1607 Filed 1-14-77;7:54 am]

FEDERAL MARITIME COMMISSION

CERTIFICATES OF FINANCIAL RESPONSIBILITY (OIL POLLUTION)

Certificates Revoked

Notice of voluntary revocation is hereby given with respect to Certificates of Financial Responsibility (Oil Pollution) which had been issued by the Federal Maritime Commission, covering the below indicated vessels, pursuant 46 CFR Part 542 and section 311(p)(1) of the Federal Water Pollution Control Act, as amended.

Certificate No.	*Owner/operator and vessels*
01011...	Atkieselskabet Det Ostasiatiske Kompagni: *Ancona.*
01059...	London & Overseas Freighters, Ltd.: *London Tradition, Overseas Ambassador, London Independence.*
01061...	London & Overseas Tankers Ltd *Overseas Discoverer.*
01306...	Shaw Savill & Albion Co. Ltd. *Iberic.*
01343...	Hamburg - Sudamerikanische Dampfschifffahrts - Gesellschaft Eggert & Amsinck: *Polar Argentina.*
01503...	Las Minas Compania Naviera Panamena S. A.: *Halcon.*
01514...	Alframar S. N. C.: *Ninfea.*
01574...	Fearnley & Eger: *Fernlake.*
01760...	Kornelius Olsen: *Byfjord.*
01761...	Union Steam Ship Co. of New Zealand Ltd.: *Union Wellington*
01818...	Houston Line Ltd.: *Clan Ross.*
01890...	A/S Billabong: *Star Billabong Star Ballarat.*
01893...	Silver Line Ltd.: *Avon Bridge.*
01935...	Partnership between Steamship Co., Svendborg Ltd., and Steamship Co. of 1912 Ltd.: *Nelly Maersk.*
01988...	Angfartygsaktiebolaget Tirfing: *Kungaland.*
02037...	Shosen Mitsui Kyakusen K. K *Nippon Maru.*
02158...	Koraal Scheepvaart Maatschappij N.V.: *Coral Rubrum.*
02241...	Cape Continent Shipping Co. (Proprietary) Ltd.: *Maritime Transporter.*
02834...	Transportes Fruteros Del Mediterraneo S. A.: *Glaciar Blanco.*
02929...	Soflumar-Societe D'armement Fluvial & Maritime: *Port Etienne.*
02959...	Kokuyo Kaiun Kabushiki Kaisa *Chitosegawa Maru.*
02976...	Arthur-Smith Corp.: *Tenneco 150*
03214...	Salenivest AB: *Seven Seas.*
03216...	Salenrederierna AB: *Segero.*
03428...	Hachiuma Kisen K. K.: *Kuri Maru.*
03471...	Nippo Kisen Kabushiki Kaisha: *Hokaku Maru.*
03482...	Ryutsu Kaiun K. K.: *Ryushun Maru.*
03501...	Osaka Shosen Mitsui Senpaku K K.: *Orion Maru.*
03692...	Marmac Corp.: *Ace 101.*
03743...	Ypapantis Shipping Inc.: *Melius*
03971...	Korea Shipping Corp.: *Sun Duck*
04037...	C. F. Bean Corp.: *C.S.E. Holland, BDCO 98.*
04038...	Carbosider Societa Di Navigazione S.P.A.: *Oscar Sinigaglia.*
04113...	Mon River Towing Inc.: *GBL–2, GBL–6, GBL–4, GBL–1, MRBL–88, GBL–7, GBL–8, GBL–3, GBL–5.*

Certificate No.	Owner/Operator and Vessels
04136---	Thomas Marine Co.: *FTW–14, FTW–16.*
04264---	Outerocean Navigation Corp. Ltd.: *Shelley.*
04394---	Philippine President Lines Inc.: *Pres. Aquinaldo.*
04398---	Hapag-Lloyd Aktiengesellschaft: *Regenstein, Riederstein.*
04404---	Lars Rej Johansen: *Jocare.*
04433---	Allied Chemical Corp.: *AC–4.*
04675---	Naviera Santa Catalina, S. A.: *Cimadevilla Tres.*
05041---	Transatlantic Bulk Carriers Inc.: *Ruhr Ore.*
05320---	Madrigal Shipping Co. Inc.: *V. Madrigal.*
05374---	Compania Argentina de Navegacion Intercontinental S.A.C.I.F.: *Pampa Argentina, Patagonia Argentina, Halandsville, Greenville.*
06520---	Union Carbide Corp.: *CC–104.*
06759---	Continental Armadora S. A.: *Commander Colocotronis.*
07183---	Elenmaris Shipping Co., Ltd.: *Eleni M.*
07418---	Venduerada Armadora S. A.: *Crusadar Colocotronis.*
07492---	The Crystal Shipping Co., S. A.: *Freesia.*
07550---	Erato Shipping Inc.: *Regent Azalea.*
07598---	Vroon Shipping (Liberia) Ltd.: *Arabian Express.*
07817---	Yick Fung Shipping and Enterprises Co. Ltd.: *Crete Sea, Norwegian Sea, Sulu Sea, Fuchunkiang, Baltic Sea, New East Sea.*
07993---	Cosmopolitan Tankers Inc.: *Allison Conway*
08083---	Gantline Compania Naviera S. A.: *Nedi.*
08196---	Interessentskabet AP 15, April 1972: *Nordkap, Nordpol, Nordtramp.*
08305---	Duchess Shipping Co.: *Galva.*
08353---	Interessentskapet Saga Sierra: *Carbo Sierra.*
08935---	Camelford Shipping Co. (of Liberia): *Georgios K.*
09074---	Zuito Shipping Co. Ltd.: *Zenkoren Maru No. 6.*
09405---	Seasia Shipping Co., Inc. of Liberia: *Eastern Palmas.*
09705---	Transmar S. A.: *Stratus.*
09796---	China Pacific S. A.: *Seamaco II.*
09803---	Ocean Clue Shipping Co.: *Rania.*
09924---	Lacerta Shipping Ltd.: *Golden Portsmouth.*
09867---	*K/S Bewa XXV: Rikke Bewa.*
09868---	*K/S Bewa XXVI: Mette Bewa.*
10183---	Conship Compania S. A.: *Loukia. 2200.*
10260---	Hollywood Marine Inc.: *Hollywood 2200.*
10979---	Commercial Transports Navigation Corp.: *Aristeidis.*
10990---	Silver Coast Second Compania Naviera: *Kandelfels.*
10998---	Schiffahrtsgesellschaft Jacob & Co. K. G.: *Olga Jacob.*
11102---	Commercial Cable Co. (Marine) Ltd.: *John W. MacKay.*
11153---	Sea Containers International Corp.: *Maersk Tempo.*
11225---	Cancer Shipping Corp.: *Dafra Merchant.*
11286---	Binion Marine Service, Inc.: *T 200.*
11316---	El Taino Operations, Inc.: *El Taino.*
11452---	Hot Sand S. A.: *Haensel.*
11524---	St. Dodric's Shipping Co. Ltd.: *Caricom Adventurer.*
11665---	Houston Oil & Minerals Corp.: *W–143.*
11943---	Nazca Marine Corp. of Panama: *Lady Salla.*

By the Commission.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.77–1729 Filed 1–18–77;8:45 am]

[Independent Ocean Freight Forwarder License No. 1078]

EMPIRE HOUSEHOLD SHIPPING CO. OF NEW YORK INC.

Order of Revocation

By letter dated December 14, 1976, Mr. Alan D. Gould, President, Empire Household Shipping Co. of New York Inc., 210 Verdi Street, Farmingdale, NY 11735, was advised by the Federal Maritime Commission that Independent Ocean Freight Forwarder License No. 1078 would be automatically revoked or suspended unless a valid surety bond was filed with the Commission on or before January 12, 1977.

Section 44(c), Shipping Act, 1916, provides that no independent ocean freight forwarder license shall remain in force unless a valid bond is in effect and on file with the Commission. Rule 510.9 of Federal Maritime Commission General Order 4, further provides that a license will be automatically revoked or suspended for failure of a licensee to maintain a valid bond on file.

Empire Household Shipping Co. of New York Inc., has failed to furnish a valid surety bond.

By virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 201.1 (Revised) § 5.01(c) dated June 30, 1975;

It is ordered, That Independent Ocean Freight Forwarder License No. 1078 issued to Empire Household Shipping Co. of New York Inc., be returned to the Commission for cancellation.

It is further ordered, That independent Ocean Freight Forwarder License No. 1078 be and is hereby revoked effective January 12, 1977.

It is further ordered, That a copy of this Order be published in the FEDERAL REGISTER and served upon Empire Household Shipping Co. of New York Inc.

LEROY F. FULLER,
Director, Bureau of Certification & Licensing.

[FR Doc.77–1730 Filed 1–18–77;8:45 am]

[Agreements Nos. 8210–29 and 9214–19]

A/AA MODIFICATIONS

Request for Comments

Agreements Nos. 8210–29 and 9214–19 have been filed with the Commission for approval under section 15 of the Shipping Act, 1916, by the Continental North Atlantic Westbound Freight Conference (CNAWFC) and the North Atlantic Continental Freight Conference (NACFC) respectively. These two identical amendments to the basic conference agreements generally provide that full members of each of the two conferences shall be divided into two categories designated as Class A and Class AA; that Class A/AA status shall be determined on the basis of cellular/noncellular vesssel configuration, utilization, and service frequency; and that Class AA members may quote rates lower than those of a Class A member by a fixed percentage, all as more fully described hereinafter. Approval of these amendments is requested for a period of two calendar years beginning with the effective date of the approval.

HISTORY OF A/AA AMENDMENTS

Agreement No. 8210–29 was originally filed by CNAWFC on May 23, 1975, and was noticed in the FEDERAL REGISTER on June 2, 1975. It read as follows:

> Full members of the Conference shall be divided into two categories designated as Class A and Class AA. All full members shall be equally bound to the provisions of the Agreement and shall enjoy equal rights thereunder; provided, however, that rates and charges published in Section II of the Conference tariff shall be applicable to Class AA members only.

The National Association of Alcoholic Beverage Importers (NAABI) was the only protestant to the originally filed agreement.

As a result of Commission staff insistence that the A/AA provisions must spell out the membership criteria, the CNAWFC filed the following amended provisions (new language italicized):

> Full members of the Conference shall be divided into two categories designated as Class A and Class AA. All full members shall be equally bound to the provisions of the Agreement and shall enjoy equal rights thereunder; provided, however, that rates and charges published in Section II of the Conference tariff shall be applicable to Class AA members only. *Class A/AA status shall be determined and redetermined on the basis of cellular/non-cellular vessel configuration, utilization and service frequency as specified in the Conference tariff and such tariff shall also plainly show the current membership status of each carrier party.*

Still later, more specific provisions were filed which set forth the A/AA criteria as follows:

A. *Class AA privileges.* (1) May quote rates up to 8½ percent below Class A rates the first year and up to 6½ percent the second year.

(2) May pay up to 1 percent additional freight forwarder compensation for first two years.

All second year provisions to remain in effect unless otherwise agreed by the parties and approved by the Federal Maritime Commission.

B. *Class AA qualifications.* (1) At least 50 percent of under-deck cargo capacity of each multi-purpose ship must be noncellular and used for common carrier operations.

(2) Total TEU capacity of any vessel allocated to the conference trade may not exceed 550.

(3) May allocate to the conference trade no more than 2400 TEU's per month, cumulative, nor more than 7200 TEU's per quarter, non-cumulative.

(4) No more than two sailings a month in the conference trade with fully cellularized, ro/ro or LASH/Seabee vessels.

(5) On ro/ro vessels employed in the conference trade no more than 30 percent of under-deck cargo capacity shall be allocated per voyage to non-containerizable cargo.

(6) In the event a Class AA member fails, at any time, to meet one or more of the requirements for such status, it shall operate as a Class A member as soon thereafter as such facts are established and applicable tariff filings take effect except that in the event of allocations in excess of that provided in (3) above, not resulting in a change of membership status, a full report thereof shall be provided to the Federal Maritime Commission justifying the determination not to make the change in membership status within 15 days of the last day of the month in which such excess allocation occurs.

The Commission gave notice of its intent to conditionally approve Agreement No. 8210–29 on February 5, 1976 (41 FR 5307), for the purpose of providing the basis upon which the two Eastern Bloc carriers, operating as independents in the trade, i.e., Baltic Shipping Company (BSC) and Polish Ocean Line (POL), would join the conference. In this respect, the Commission observed:

> It is the Commission's opinion that the proposed two-class membership system may be a practical means of accommodating both modern container operators and traditional breakbulk operators in the same conference. It would also appear that it is a legitimate attempt to resolve a serious transportation problem in the trades involved. Based on recent reports of declining trade and continuing increase in carrier services and capacity in the U.S. Atlantic/European trades, it would seem that competition, especially from state-owned non-conference carriers, may be posing a serious threat to the stability of the trades involved.
>
> We believe trade conditions on the North Atlantic warrant a strong and viable conference system. We believe the proposed amendments may help assure continuation of such a system.

On the basis of the above, the Commission stated that it intended to approve the A/AA membership provision (as amended) subject to specified conditions, unless NAABI "• • • or any other interested person is able to come forward with a clear, concise statement of material matters upon which it desires to adduce evidence and a statement of facts which, if so adduced, would result in disapproval."

On October 22, 1976, the CNAWFC filed an amended version of Agreement No. 8210–29 and the NACFC filed an initial A/AA amendment, Agreement No. 9214–19. (FEDERAL REGISTER Notice of November 3, 1976.)[1]

These differ from the previously noticed provisions as follows:

1. AA carriers may charge up to 10 percent below Class A rates the first year (1977) and 6½ percent after the first year.

2. AA carriers may allocate no more than 500 TEU's per week, or 2,166 TEU's per month, cumulative, or 6,500 TEU's per quarter non-cumulative.

3. Class AA carriers may have up to 20 sailings per quarter.

PROTESTS AND COMMENTS

As indicated above, NAABI was the only protestant of the original filing (Agreement 8210–29). After the Commission gave notice of its intent to conditionally approve this agreement on February 5, 1976, protests and/or requests for hearing on the original amendments were filed by NAABI, Boston Consolidation Service (an NVO), Outboard Marine Corporation (an importer/exporter), the Wine and Spirits Wholesalers of America (importers), the American Importers Association (importers), and the Department of Transportation (DOT). Although the Department of Justice did not file comments at this time, DOT stated that it had consulted with Justice in this matter and that it expressed concern about the anticompetitive implications of the proposed agreements.

In addition to the above, Baltic Shipping Company (BSC) filed comments relative to the subject amendments wherein it advised that the proposed membership criteria would have to be changed in two respects before it would be in a position to apply for Class AA membership in the conferences. One, the rate differential between A and AA rates would have to be increased from 8½ percent to 10 percent for the first year and from 6½ to 8½ percent for the second year. Two, the limit on the number of TEU's which AA carriers may allocate per quarter must be on a cumulative rather than a non-cumulative basis.

The primary stated objection of protestants to these amendments was apprehension that these would almost certainly result in the elimination of all nonconference competition in the involved trades thereby removing any control or restraint on the level of conference rates by depriving shippers of any bargaining power. Protestants feared that, once nonconference competition has been eliminated, the conference would then introduce a dual rate system to prevent the future entry of nonconference operators. In this respect, DOT stated that this total elimination of independent operators would be contrary to the intent of Congress underlying the Shipping Act, 1916, that approval of the conference system depends in part on the existence of independent operators to maintain the integrity of the pricing system. DOT claimed that during the drafting of the 1961 amendments to the Shipping Act, "• • • Congress deliberated long and hard to come up with a formula that would retain and strengthen independent competition in the conference-dominated shipping industry."

Most protestants requested a hearing with respect to the amendments on the grounds that they were "anti-competitive" or had "potentially serious anti-competitive effects" for which no cogent justification had been given. They contended that there was no evidence that BSC and POL now posed, or would pose in the near future, a "serious threat" to the conferences or the stability of rates and services in the involved trades. To illustrate the lack of any disruptive competitive practices, NAABI provided a rate comparison on 37 major moving commodities in the Continental Westbound trade for the first half of 1975 between the Eastern Bloc carriers and the CNAWFC. As NAABI pointed out, this comparison showed that the "• • • independent carriers either had the same rate level as the conference for many commodities or up to 10 percent lower rates, which is nothing unusual for an independent operator." On this basis, NAABI concluded that the 48-Hour Rate Agreement between CNAWFC and the two independents "• • • is an effective controlling device." Other protestants, such as DOT, discounted the "serious threat" posed by BSC and POL on the basis that they "• • • offer only a very small percentage of the capacity available in the trades."

With respect to the demand in the Commission's Order that protestants must bring forth facts "• • • which • • • would result in disapproval," protestants objected to this as shifting the burden of proof from the conferences to the shippers and other protestants. They argued that, since these amendments have serious anti-competitive potential, the burden of proof as to the need for their approval should rest with the proponents at the Commission and the Courts have said it should.

Responses to the November 3, 1976, FEDERAL REGISTER Notice of the (present) revised amendments indicate that the only new protestants are the Department of Justice and the Great Lakes Task Force (GLTF). Three of the earlier protestants did not file comments this time: AIA, Wines and Spirits Wholesalers of America and Boston Consolidation Service. Neither BSC nor POL filed comments at this time.

Examination of these later protests reveals that no additional reasons for holding a full evidentiary hearing were advanced. As before, the primary reasons cited are (1) the probability that the agreements will result in the elimination of all independent competition in the trade thereby removing any restraint on the level of conference rates, (2) the failure of the proponents to demonstrate that the agreements are in the public interest, (3) lack of evidence that the Eastern Bloc carriers pose a serious threat to stability, (4) no evidence of over-tonnaging or serious competitive problems in the trade, (5) no evidence of declining trade, and (6) because the agreements have not been justified and have been protested, a hearing is mandatory.

DOT and Justice also argue that the likelihood that these agreements will result in the elimination of independent competition, renders them contrary to the intent of Congress in preserving such

competition as manifest in the legislative histories of the Shipping Act.

Outboard Marine additionally contends that the agreements will result in violations of sections 16 and 17 of the Shipping Act, 1916, i.e.:

Section 16 First of the Shipping Act, 1916 declares it to be unlawful for any common carrier by water to make or give any undue or unreasonable preference or advantage to any particular person, locality or description of traffic in any respect whatsoever, or to subject them to undue or unreasonable prejudice or disadvantage in any respect whatsoever. Section 15 of the Shipping Act directs the Commission to reject, cancel or modify any agreement submitted to it for approval that it finds, after notice and hearing, to be unjustly discriminatory or unfair between carriers, shippers, exporters, importers, or ports. FMC Agreement No. 9214–19 would violate Section 16 First. By limiting the number of sailings and the carrying capacity of Class AA members, FMC Agreement No. 9214–19 will restrict the availability of ocean common carrier service by placing artificial, capricious limits thereon. Class AA members will be restrained from serving all ports at which a demand for service occurs merely because the number of sailings they may undertake is limited by FMC Agreement No. 9214–19. Section AA members will be restrained from serving all those who indicate a need or desire for their services since the vessel carrying capacity of Class AA members is restricted by FMC Agreement No. 9214–19. These restrictions will unduly prefer those who are able to secure carriage by Class AA members and will unduly prejudice those who are not able to secure such carriage, thereby forcing the latter to utilize the higher cost Class A carrier's services. Such a result should not be permitted without a hearing on the propriety thereof.

Section 17 of the Shipping Act, 1916, forbids common carriers subject to the Act to demand, charge, or collect a rate, fare or charge which is unjustly prejudicial to exporters of the United States as compared with their foreign competitors. Section 15 of the Shipping Act, 1916, commands the Commission to reject, cancel or modify any agreement that it finds, after notice and hearing, to be unjustly discriminatory between exporters from the United States and their foreign competitors. Under the auspices of a grant of Commission approval, FMC Agreement No. 9214–19 would permit carriers to openly practice such discrimination. No limitation is placed upon the possibility of a given carrier operating as a Class A (high rate) carrier in the NACFC while simultaneously offering reduced rates as a Class AA (lower rate) carrier in the trade from Europe to the United States. By so doing, the carrier would be operating under color of Commission permission subject to a filed and approved agreement. This matter deserves the closer attention of the Commission and should be made the subject of hearings.

Discussion and Conclusions

The Eastern Bloc carriers are, and may be expected to continue to be instruments of the national policies of their governments. For this reason, it is impossible to determine conclusively what may be the competitive practices of those carriers in the future, either as members of conferences or as independents. However, it is a fact that, even as some protestants concede, Soviet rate levels are currently less disparate than in the past.

Footnotes at end of document.

This condition may well result from interim actions by the Soviets showing their good faith in anticipation of conference membership. However, it is also reasonable to conclude that if their membership in these conferences were thwarted, they would consider rate policies and levels that are feasible only for carriers of non-market economy countries.

Even a full evidentiary hearing could not reveal the future intentions of these carriers. The nature of this situation, therefore, requires something other than ordinary commercial evidence.

The factual materials submitted by proponents and protestants have only shown ordinary commercial evidence. We, however, are obligated to explore all sources of relevant evidence in order properly to resolve this matter, which is of most serious concern to this Commission, to U.S. importers and exporters, and to vessel operators in our foreign commerce, both independents and conference members, both U.S. flag and foreign. This Commission's obligation extends in this particular case to the scrutiny of certain heretofore unpublished material from government sources as well as of the most current information now available from public sources, not referred to by protestants because most of it was not available to them. These sources are found in the footnotes in the appendix to this notice. We have studied these sources and have reached the following conclusions:

By Western standards, the Soviet shipping system has been, up until recently, inefficient.[3] As late as December 31, 1974, the U.S.S.R. had 15 full containerships in service with a combined capacity of 3,350 TEU's and 60,000 DWT, the largest of these vessels being a 6,400 DWT ship with a speed of only 17 knots and a TEU capacity of 358.[4] In contrast, Western container fleets included individual ships with space for 3,000 containers and speeds as high as 33 knots.[4]

At the end of the five year plan ending in 1975, 65 percent of Soviet merchant tonnage was less than 10 years old but there were a number of long-standing qualitative deficiencies, placing the Soviet fleet behind Western fleets in maritime technology. Because of draft limitations in U.S.S.R. ports, the average size of a Soviet ship was less than half the world average. At a time when the movement of general cargo in scheduled liner service on major routes like the North Atlantic and the North Pacific was becoming dominated by containerships, roll-on/roll-off (ro/ro) vessels and other craft that carry cargo in modular units to minimize time in port, the U.S.S.R. still relied heavily on conventional general-purpose dry cargo ships on which general cargo is loaded piece by piece.[5]

In 1975, however, the first Soviet full containership, suitable for trans-Pacific or trans-Atlantic service was delivered. This was the East-German built *Khudozhnik Saryan* (13,000 DWT—774 TEU's).[6] From that modest level of trade penetration, the Soviets have progressed to such a point that it is expected that at the end of the five-year plan ending in 1980, the following increases in tonnage of competitive-type container vessels are expected over levels prevailing in 1976:[7]

	Deadweight tons	
	From—	To—
Ro/Ro	89,200	298,400
Container carriers	68,300	198,300
Barge carriers	0	78,400
Total	157,500	566,100

In addition to the *Saryan* (supra) other new classes of containerships and ro/ro ships introduced or anticipated in 1975 and after are: [8]

Class	Type	Dead-weight tons	TEU capacity
Magnitogorsk	Ro/Ro	21,000	1,368
Kapitan Smirnov	Ro/Ro	20,000	1,000+
Skulptor Konenkov	Ro/Ro	13,200	774
Akademik Tupolev	Ro/Ro	4,200	235
Ivan Skuridin	Ro/Ro	4,800	242

Ro/ro vessels offer expeditious handling and carriage of wheeled vehicles and general cargo in trailers and can accommodate containers and palletized cargo. Although there is some skepticism as to the ability of such ships to compete in terms of cost and port turnaround time with the latest cellular containerships in the movement of containerized cargo, modern Soviet ro/ro's will be fully competitive with Western ro/ro's.[9]

The current Soviet 5-year plan for the merchant fleet is designed to procure the largest ro/ro and LASH/Seabee fleet in the world. These vessels are uniquely suited for transporting cargo to regions lacking adequate port facilities and specialized cargo handling equipment. It has also been observed that ro/ro and LASH ships are highly adaptable for the transport of arms and materials to support onshore military operations.[10]

Even as of January, 1977, however, the Soviets were still serving the North Atlantic mostly with 4 or 5 general cargo ships which can carry about 368 TEU's each and one ro/ro which has the capacity for 774 TEU's.[11] Polish Ocean Lines, in the same month utilized 5 smaller vesssels, 4 with the capacity of about 310 TEU's each and one which can carry about 168 TEU's.[12]

The impact in the North Atlantic trades of Eastern Bloc technologically-effective competition, therefore, appears to be a year or two hence when, it is reported, the Soviets will put in four more ro/ros and the Poles will begin operation of five 23-knot containerships.[13]

While the future threat of Soviet domination of foreign trades is our paramount concern, the importance of the history of the Soviet economic penetration in world markets and their present capability to so penetrate may not be minimized. As of June 30, 1975, the U.S.S.R. had 58 separate international cargo lines, only five of which were affiliated with conferences.[14] From an original complement of 132 ships operating in these liner services in 1970, by June 1975 the Soviets had increased their fleet to 316 vessels.[15]

The Soviet fleet's role as a cross trader has been on the increase since the mid-1960's. The tonnage of cross-trade cargo carried by it increased from 7.5 million tons in 1965 to 15 million tons in 1970, and more than 22 million in 1974.[16] Twenty of the 58 liner services operated largely or entirely outside Soviet trades by mid-1975.[17] Of an estimated 29,848 reported voyages in 1975 for the Soviet merchant fleet, some 10,358 were made in cross trades (Western port to Western port).[18]

Soviet shipping will probably remain in these cross trades because of the uneven distribution of the U.S.S.R.'s external trade. The country and commodity composition of Soviet trade has ensured that shipping capacity is pushed toward cross trading. Such cross trading can help toward capacity utilization as well as toward the accumulation of so-called "hard" currency.[19] We will discuss this latter concern more fully below.

In addition, the seasonality of many Soviet sea routes, which are blocked by ice in winter, releases ships for use elsewhere.[20] Department of Commerce figures indicate that by 1975 the Soviets had obtained 13% of the U.S. North Atlantic-West Germany trade, and 12 percent of the West German-U.S. Atlantic trade.[21]

A further factor which may not be ignored is the economic leverage of the Soviets which is inherent in their marketing system. There is strong evidence that Soviet lines are heavily subsidized by their government and that their profits are based on cost concepts completely different from those of the West. A Soviet line does not have to bear the capital costs of building ships, of securing loans, of making provision for replacement or allowance for depreciation since the trade ministry buys its ships. A Soviet line does not have to pay its own insurance costs; it will bunker as much as possible in home ports where fuel costs are one third current world prices; and it can pay much lower wages.[22] Indeed, the Soviets themselves admit that they have substantial economic advantages which result from such lesser expenses. They also readily agree that they have: a social system which provides that all employee benefits be paid by the Government; constant fuel prices; a longer useful life for vessels; the absence of hull and machinery insurance for Soviet vessels; and lower crew wages. Indeed, it has been conceded that the lower operating expenses resulting from these and other economic advantages over Western carriers permit lower ocean cargo rates.[23]

This lower threshold for profitability, in the Western sense of the word, indeed makes plausible lower freight rates by which the Soviets may attract cargo. In the long run, this gathering of cargo would result in greater profitability based on sheer volume than could be achieved be a competitor who is hampered by commercial pricing and profit controls that may make the carrier unable to compete effectively on a cost basis.[24]

More carog for the Soviets in the cross trades, however obtained, generates foreign currencies, which are now at a premium in the Soviet Union.[25] Foreign exchange earnings became a major criterion of maritime success and a yardstick for bonus payments commencing in 1960. An elaborate system of bonuses and above-plan performance for ships involved in foreign trading shows the strict control over foreign exchange expenditure. Under that system, a certatin percentage of foreign currency saved by each vessel is distributed among the crew, and foreign exchange earnings are marked up before assessing the overall profitability of a shipping operation. The importance of this gathering of foreign currency is enhanced by rigorous adherence to other currency-savings stratagems such as bunkering to the greatest extent possible in Soviet ports, restricting crews' foreign spending allowances, delaying most repairs for the home port, and dispensing with foreign pilots wherever possible.[26] This Soviet emphasis on shipping as a prime earner of foreign currency likely heralds more aggressive expansion into the major Western liner trades such as the North Atlantic.[27] This likelihood is even more dramatic when it is noted that the U.S.S.R.'s Hard Currency Trade Deficit went from $911 million in 1974,[28] to $5 billion in 1976.[29]

Soviet freedom from the normal commercial disciplines of a market economy, and their desire to obtain cargo which generates hard foreign currency, have thus enabled them to undercut the rates of Western steamship operators by an admitted 10 to 20 percent, even when operating conventional vessel service on key trade routes such as the North Atlantic.[30] The U.S.S.R. subsidization of its merchant marine also enables it to offer cut rates to Third World countries in order to reduce the developing countries' dependence on the Western industrialized nations for maritime transportation.[31] When the sophistication of the Soviet competitive ships increases, the incentive to penetrate lucrative trades will become much more pressing.[32]

The level of disparity between Soviet and conference rates is, of course, open to dispute depending on how the study is made. Protestant NAABI contends that a recent comparison of conference rates for the major moving commodities in the trade with those filed by state-owned operators in the North Atlantic "reveal no unusual, or excessive, differentials." On the other hand, a Commission staff study of rates during the same period shows that Soviet rates average well below conference rates—in some cases 21 to 36 percent lower—indicating a Soviet capability to impose "unusual" or "excessive" differentials. The reliability of such studies, of course, depends upon the selection of commodities, the complication of differing commodity descriptions, and the timing of the comparison. If the comparison is made at the time of the Eastern Bloc carrier's reduction in rates rather than when the conference was forced to reduce its rates to meet that new competition, one result will be shown. If the comparison is made later, the variation will likely have changed.

Whatever the current differentials—even were there none—their relative importance pales when compared to the potential threat of the Eastern Bloc countries which results from organization, historical operation in these and other trades, ability to compete, and announced plans and policies. No commercially profit-motivated independent carrier can wield the power available to the Soviets. By a twin policy of severe rate cutting and control over the transport of their own national cargoes, the Soviets could present profound problems for Western lines historically operating in the major liner trades, especially if aided by opportunistic shippers.[33] Chaos would result were such an event to occur because of further trade deterioration in the North Atlantic. Under such circumstances the Soviet carriers could attract the more lucrative higher rated cargoes leaving to the Western lines only the lower paying traffic. No Western carrier would permit such an act without struggling to maintain its market share. The Western carriers' attempts to survive would result undoubtedly in a vicious rate war. However, it is also clear that the survival for any length of time for commercially profit-motivated Western carriers would be dubious at best.[34]

In the words of the National Ocean Policy Study Staff, recently released:

The Soviet Union has managed to compete with the Western maritime nations by cutting shipping rates of their Government-owned merchant fleet to well below the minimum offered by the Western shipping companies. This has enabled the Soviet Union to enhance their contacts with the developing countries and reduce the Third World countries' dependence upon the Western shipping industry.[35]

As a result of all these concerns, it is the opinion of this Commission that a feasible, commercially-sound resolution of these threats is advisable now. Without this sort of commercial solution, the industry will be hard-pressed to deal with the probable conditions of the future.

The present Shipping Act machinery (such as section 18(b)(5), dealing with unfair rate levels) requires in most situations a protracted hearing before a rate can be found unreasonable. Proposed legislation, such as H.R. 14564, introduced in the Second Session of the 94th Congress, while designed to correct some of these problems, would, in our opinion, not be as effective as having the rates and services controlled under a voluntary, approved section 15 arrangement. Furthermore, action under that proposal, in all probability, would not be feasible until after a full evidentiary hearing.

These are changing times. We are not required to wear blinders restricted either by experience in times past or by prior decisions which were issued within the atmosphere then existing. Furthermore, we think it to be in the public

Footnotes at end of document.

interest to encourage and approve a modus vivendi by the operators in the trades arrived at by the give and take of the market place and commercial realities rather than to utilize, for example, section 19 of the Merchant Marine Act, 1920 (46 U.S.C. 876) to impose impediments on the access by state-controlled common carriers to our trades with the consequent hazard of government-to-government confrontation of major world powers.

Approval of the agreements now before us presents what may be a timely opportunity to avoid commercially detrimental and unacceptable conditions before they happen. With voluntary Soviet participation in the conference system in the North Atlantic trades, this solution is, in our opinion, preferable to protracted proceedings, court actions, government-to-government confrontation, or legislation after the fact.

The Soviet experience with conferences would be a crucial element in allocation of their future tonnage to world liner routes. As has been the case in other trades, the Soviets, now becoming established in this trade, may be ready to join a conference.[35] The advantages to them would be a voice in formulating policy and in developing rate structures.[37]

The Chairman of this Commission did obtain the commitment of the Soviet Ministry of Merchant Marine that it would use its good offices to have Soviet Lines actively pursue conference membership in major U.S. trades. The approval of these amendments which are tailored to fit the peculiar circumstances of the present developmental stage of the Soviet fleet, would provide an opportunity for the Soviet lines to honor this commitment by becoming conference members, albeit Class AA. Moreover, there is every indication that they intend to join the conferences if these amendments are approved.

The importance of this system as outlined above cannot be doubted. However, one protestant, OMC, is of the opinion that the system is, of itself, violative of sections 16 and 17 of the Shipping Act, 1916. OMC misconceives the system envisioned by the A/AA amended agreements. The Soviets are not, thereby, restricted from carrying or port access in any way. The system simply requires that if the Soviets only carry so-much cargo, etc. thereby qualifying as Class AA members, they may charge a separate and reduced rate commensurate with that limited service capability. If, on the other hand, the Soviet's capacity and service capability increase to "A" levels, they will no longer be permitted a reduced rate structure but will become full members of the Conference, required to charge the same rates and to compete only on service, not on rates. Viewed in this light, these proposals cannot be seen to result in any violations of sections 16 or 17 as alleged by OMC. These proposals merely protect the stability of a trade by allowing the voluntary, self-regulation of the Soviets under the Conference umbrella.

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If these agreements are approved, other protestants express fear that this Commission will hereafter approve a dual rate contract system for use in these trades and thereby, so they assert, effectively foreclose opportunity of non-conference operators to survive and provide rate competiton in these trades. We cannot predict what reactions the Commission may have if request is made for dual rate contract system authority, but we can confidently state that it will, within its sound judgment, rule upon any such requests within the guidelines of sections 14b and 15, Shipping Act, 1916. In fact, however, independent operators exist in most if not all our foreign commerce trades, even those where these conference tying contracts exist.

We are concerned, however, that non-commercially-profit motivated independents are more capable of engaging in unbridled and disruptive competition with conference lines than are Western, commercially profit-motivated independents. For this reason, we agree in principle with the following UNCTAD resolution adopted on April 6, 1974 [38] which was not objected to in the United States position: [39]

> Non-conference shipping lines competing with a conference should adhere to the principle of fair competition on a commercial basis.

We believe that the A/AA agreements here are the best accommodation of this policy, considering the fact that Eastern Bloc carriers are not motivated on a truly commercial basis as we have come to understand the term.

This type of conference agreement appears to be the only type that the Eastern Bloc carriers will enter into in these trades. As we noted earlier, no evidentiary hearing would shed light on their future intention. Further, without our approval of these agreements there looms the risk of a destructive rate war, as real and as serious as any situation which occasioned the Shipping Act, 1916, and which section 15 was designed to prevent.

Thus, there is a particularly persuasive and valid regulatory purpose to be served by their approval. For this reason, and because our ultimate disposition of these agreements will depend upon the foregoing considerations, not heretofore directly addressed by the protestants herein, we believe due process dictates that we allow any interested party an opportunity to address such considerations. To that end, we are inviting interested parties to submit affidavits and memoranda of law on the matters discussed above, i.e., the capability of the Eastern Bloc fleets to charge rates well below those which can be charged by Western commercially-profit motivated carriers, the disposition toward and possibility of those fleets taking such actions in the future, and the potential of these agreements to inhibit the risk of such rate wars.

Any person wishing to submit affidavits or memoranda, addressing the above-described issues, must do so on or before the close of business February 18, 1977.

Therefore, it is ordered, That a copy of this Notice be published in the FEDERAL REGISTER.

By the Commission, January 14, 1977.[40]

FRANCIS C. HURNEY,
Secretary.

APPENDIX

FOOTNOTES

[1] The A/AA amendment of the North Atlantic French Atlantic Freight Conference, Agreement No. 7770–13, has been withdrawn.

[2] Lambert Brothers Shipping Ltd. "Russian Shipping: Background Data and Analyses," May, 1976. p. iii.

[3] William Carr, "Soviet Shipping Strength and its Employment" in "Soviet Oceans Development," Committee Print of the U.S. Committee on Commerce and National Ocean Policy Study, Pursuant to S. Res. 222, 94th Congress, 2nd Session, October, 1976, available to the public on January 6, 1977; p. 334.

[4] Id., p. 334.

[5] Id., p. 331.

[6] Id., p. 342.

[7] Seatrade, "Soviet Shipping," February, 1976, p. 7, indicating the source to be "Morflot, Moscow."

[8] William Carr, supra, p. 342 and Lloyd's Register.

[9] Id., p. 342.

[10] National Ocean Policy Study Staff, "Summary: Soviet Ocean Development," in supra note 3, p. 4.

[11] Journal of Commerce, January 13, 1977, Sailing card No. 24 and Lloyd's Register. The *DeKabrist, Walter Ulbricht, Polessk,* and *Primorsk* are all about 12,000 dwt. In November, 1976, the one ro/ro allocated to this trade was the *Magnitogorsk* (1368 TEU's) but the only ro/ro advertised in January, 1977 was the *Skulptor Konenkov* (774 TEU's). Id.

[12] Journal of Commerce, January 13, 1977, Sailing card No. 9 and Lloyd's Register. The *General Stanislaw Poplawski, Franciszek Zubrzycki, Bronislaw Lachowicz* and *Mieczyslaw Kalinowski* are all about 10,110 dwt and the *Roman Pazinski* is about 5606 dwt. Id.

[13] *Seatrade,* supra, p. 7.

[14] William Carr, supra, p. 337.

[15] Lambert Brothers Shipping Ltd., supra, p. 13.

[16] William Carr, supra, p. 336.

[17] Id., p. 336.

[18] Lambert Brothers Shipping Ltd., supra, p. 23.

[19] Seatrade, supra, p. 16.

[20] Id., p. 16.

[21] Id., p. 7.

[22] Id., pp. 5–7.

[23] Id., p. 15.

[24] Lambert Brothers Shipping Ltd., supra, p. 15.

[25] Id., p. 15.

[26] Seatrade, supra, p. 15.

[27] Id., p. 11.

[28] "Vneshnaia Torgovlia SSSR, 1975" ("Foreign Trade USSR," 1975), pp. 9–13 and passim.

[29] U.S. Government estimate based on U.S.S.R. Trade Statistics. Morgan Guaranty Trust Company of New York's "World Financial Markets," December, 1976, p. 6, estimates the external debt of the U.S.S.R. at end of 1975, at $12,500,000,000.

[30] Lambert Brothers Shipping Ltd., *supra,* p. 14.

[31] National Ocean Policy Study Staff, supra, p. 7.

[32] William Carr, supra, p. 337.

[33] Seatrade, supra, p. 3.

[34] Id., pp. 7–9.

[35] National Ocean Policy Study Staff, supra, p. 3.

[36] Seatrade, supra, p. 9. The Soviets are full members of over a dozen conferences, and party to various rate agreements, though they have been less willing to join than East German or Polish Lines, Id.

[37] Id., p. 11.

[38] "United Nations Conference of Plenipotentiaries on a Code of Conduct for Liner Conferences," Volume II. (Final Act), July 1975, Annex to Resolution 1, p. 22.

[39] Closing Statement of U.S. Delegation, April 7, 1974.

[40] Chairman Bakke has recused himself from consideration of this matter.

[FR Doc.77–1726 Filed 1–18–77;8:45 am]

FEDERAL POWER COMMISSION

PRIVACY ACT OF 1974

New or Intended Routine Uses of Information in Existing Systems of Records

The Privacy Act of 1974, Publ. L. No. 93–579 (88 Stat. 1896), requires that each agency publish at least annually a notice of the existence and character of each "system of records," as defined in 5 U.S.C. 552a(a)(5), which the agency maintains, 5 U.S.C. 552a(e)(4). The Federal Power Commission has published such notice in the FEDERAL REGISTER at 40 FR 39353 (August 27, 1975), 40 FR 41984 (September 9, 1975), 40 FR 45118 (September 30, 1975), 40 FR 52806 (November 12, 1975), 41 FR 9010 (March 2, 1976) and 41 FR 38932 (September 13, 1976).

Pursuant to 5 U.S.C. 552a(e)(11), section 309 of the Federal Power Act, as amended (49 Stat. 858–859; 16 U.S.C. 825h), and section 16 of the Natural Gas Act, as amended (52 Stat. 830; 15 U.S.C. 717o), notice is hereby given that the Federal Power Commission proposes the adoption of new or intended uses of information in existing record systems which have been published in the FEDERAL REGISTERS cited above.

The Privacy Act requires that the Agency publish in the FEDERAL REGISTER annually a notice of the existence and character of the system of records, which notice shall include, in part, "each routine use of the records contained in the system, including the categories of users and the purpose of such use;" (5 U.S.C. 552a(e)(4)). Further, the Commission's Rules require the notice contain, at a minimum, the categories of recipients for each proposed routine use (18 CFR 3b.3(c)(5)). In accordance therewith, the Agency published in the FEDERAL REGISTER, on September 13, 1976, (41 FR 38932) its required annual notice of the existence and character of its systems of records. Included in that notice is System of Records FPC–20, "Pay and-Related Records (Payroll, Travel, Attendance, Leave)—FPC" (41 FR 38941). Routine Use j., thereunder, states (page 38941):

> j. To report to unemployment compensation agencies or boards gross wages and separation information for unemployment compensation.

The Notice invited comments pertinent to proposed systems of records pursuant to the requirements cited, infra.

On October 13, 1976, the Commission received a comment from the U.S. Department of Labor, Lawrence E. Weatherford, Jr., Administrator, Unemployment Insurance Service, suggesting that in accordance with the Unemployment Compensation for Federal Employees Program (5 U.S.C. 8506), Routine Use j. be changed to include a specific reference to the U.S. Department of Labor and State employment security agencies. In response to this request, the FPC Office of the Comptroller further suggested that "District of Columbia" be incorporated, in addition to the Labor suggestions, in Routine Use j. in order to further specify the uses to which these records shall be put and the recipients of such requests for use.

Accordingly, the Federal Power Commission hereby gives notice of the addition of the following new routine use to the FPC record systems 20 entitled, "Pay and Pay-Related Records (Payroll, Travel, Attendance, Leave)—FPC" (41 FR 38941).

j. To respond to requests from State, District of Columbia employment security agencies, and the U.S. Department of Labor for employment, wage, and separation date of former employees, to determine eligibility for unemployment compensation.

The categories of records maintained in the affected systems and the authorities authorizing the maintenance of the information contained in these systems are set forth in the appropriate FEDERAL REGISTERS cited above.

Any interested person may submit to the Federal Power Commission, Washington, D.C. 20426, on or before February 18, 1977, comments or suggestions, in writing, concerning all or part of the notice proposed herein. Submittals will be placed in the Commission's public files and will be available for public inspection at the Commission's Office of Public Information, Washington, D.C. 20426, during regular business hours. The Commission will consider all such submittals before acting on the matters proposed herein. An original and 14 conformed copies should be filed with the Secretary of the Commission. Submittals to the Commission should indicate the name and mailing address of the person filing the comments or suggestions.

The Secretary shall cause prompt publication of this notice to be made in the FEDERAL REGISTER.

By direction of the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77–1712 Filed 1–18–77;8:45 am]

FEDERAL PREVAILING RATE ADVISORY COMMITTEE

COMMITTEE MEETINGS

Pursuant to the provisions of section 10 of Pub. L. 92–463, effective January 5, 1973, notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on:

Thursday, February 3, 1977.
Thursday, February 10, 1977.
Thursday, February 17, 1977.
Thursday, February 24, 1977.

The meetings will convene at 10 a.m. and will be held in Room 5A06A, Civil Service Commission Building, 1900 E Street, NW., Washington, D.C.

The committee's primary responsibility is to study the prevailing rate system and from time to time advise the Civil Service Commission thereon.

At these scheduled meetings, the committee will consider proposed plans for implementation of Pub. L. 92–392, which law establishes pay systems for Federal prevailing rate employees.

The meetings will be closed to the public on the basis of a determination under section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463) and 5 U.S.C., section 552(b)(2), that the closing is necessary in order to provide the members with the opportunity to advance proposals and counter-proposals in meaningful debate on issues related solely to the Federal Wage System with the view toward ultimately formulating advisory policy recommendations for the consideration of the Civil Service Commission.

However, members of the public who wish to do so, are invited to submit material in writing to the Chairman concerning matters felt to be deserving of the committee's attention. Additional information concerning these meetings may be obtained by contacting the chairman, Federal Prevailing Rate Advisory Committee, Room 1338 1900 E Street, NW., Washington, D.C. 20415.

DAVID T. ROADLEY,
Chairman, Federal Prevailing Rate Advisory Committee.

JANUARY 14, 1977.

[FR Doc.77–1734 Filed 1–18–77;8:45 am]

FEDERAL RESERVE SYSTEM

CONDITION OF STATE MEMBER BANKS

Call for Report

Pursuant to section 9 of the Federal Reserve Act, as amended (12 U.S.C. 324), and to section 7(a)(3) of the Federal Deposit Insurance Act, as amended (12 U.S.C. 1817(a)(3)), the Board of Governors of the Federal Reserve System, effective January 20, 1977, has issued a call to each insured State bank that is a member of the Federal Reserve System to make a Report of Condition as of the close of business December 31, 1976. Pursuant to section 7(a)(3) of the Federal Deposit Insurance Act, as amended (12 U.S.C. 1817(a)(3)), each insured State bank that is a member of the Federal Reserve System is required to make a Report of Condition as of the close of business December 31, 1976. That date has been selected for the Report of Condition by the Chairman of the Board of Directors of the Federal Deposit Insurance Corporation, the Comptroller of the Currency, and the Chairman of the Board of Governors of the Federal Reserve System. The Report of Condition

should be filed with the Federal Reserve Bank of the district wherein the bank is located, within ten days after notice that such report shall be made: *Provided*, That if such reporting date is a non-business day for any bank, the preceding business day shall be its reporting date.

Each insured State bank that is a member of the Federal Reserve System, except a bank in the District of Columbia, shall make its original Report of Condition on Federal Reserve Form 105—Call No. 222[1] and shall send the same to the Federal Reserve Bank of the district wherein the bank is located and shall send a signed and attested copy thereof to the Federal Deposit Insurance Corporation. The original and copy of the Report of Condition shall be prepared in accordance with "Instructions for the Preparation of Reports of Condition by State Member Banks of the Federal Reserve System," dated March, 1976.[1]

Board of Governors of the Federal Reserve System, January 14, 1977.

STEPHEN S. GARDNER,
Vice Chairman, Board of Governors of the Federal Reserve System.

[FR Doc.77-1838 Filed 1-18-77;8:45 am]

FEDERAL TRADE COMMISSION

[File No. 742-3262]

RICHARD D. JONES MORTGAGE SERVICE, INC., ET AL.

Consent Agreement With Analysis To Aid Public Comment

Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's rules of practice (16 CFR 2.34, 40 F.R. 15236, April 4, 1975), notice is hereby given that the following consent agreement containing a consent order to cease and desist and an explanation thereof, having been filed with and provisionally accepted by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited on or before March 18, 1977. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commissions' rules of practice (16 CFR 4.9(b)(14), 40 F.R. 15236, April 4, 1975). Comments should be directed to:

Office of the Secretary, Federal Trade Commission, 6th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580.

[File No. 742-3262]

RICHARD D. JONES, MORTGAGE SERVICE, INC. ET AL

AGREEMENT CONTAINING CONSENT ORDER TO CEASE AND DESIST

In the matter of Richard D. Jones, Mortgage Services, Inc., a corporation, and Richard D. Jones, individually and as an officer of said corporation.

[1] Filed as part of the original document.

The Federal Trade Commission having initiated an investigation of certain acts and practices of Richard D. Jones Mortgages Services, Inc., a corporation, and Richard D. Jones, individually and as an officer of said corporation, and it now appearing that Richard D. Jones Mortgage Services, Inc., a corporation, and Richard D. Jones, individually and as an officer of said corporation, hereinafter sometimes referred to as proposed respondents, are willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated:

It is hereby agreed by and between Richard D. Jones Mortgage Services, Inc., a corporation, by its duly authorized officer, and Richard D. Jones, individually and as an officer of said corporation, and their attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent Richard D. Jones Mortgage Services, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 8580 La Mesa Boulevard, La Mesa, California 92041.

Proposed respondent Richard D. Jones is an officer of said corporation. He formulates, directs and controls the policies, acts and practices of said corporation and his address is the same as that of said corporation.

2. Proposed respondents admit all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

4. This agreement shall not become a part of the official record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released; and such acceptance may be withdrawn by the Commission if comments or views submitted to the Commission disclose facts or considerations which indicate that the order contained in the agreement is inappropriate, improper, or inadequate.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's rules, the Commission may, without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and it's decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Mailing of the complaint and decision containing the agreed-to order to proposed respondents' address as stated in this agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondents have read the proposed complaint and order contemplated hereby, and they understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order, and that they may be liable for a civil penalty in the amount provided by law for each violation of the order after it becomes final.

ORDER

It is ordered, That respondents Richard D. Jones Mortgage Services, Inc., a corporation, its successors and assigns, and its officers, and Richard D. Jones, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with any extension or arrangement for the extension of consumer credit, as "consumer credit" is defined in Regulation Z (12 CFR Part 226) of the implementing regulation of the Truth in Lending Act (15 U.S.C. sections 1601–1665 (1970), as amended, 15 U.S.C. sections 1601–1665(a), (Supp. IV, 1974)), do forthwith cease and desist from:

1. Failing to make the disclosures required by § 226.8 of Regulation Z clearly, conspicuously and in a meaningful sequence, as required by § 226.6(a) of Regulation Z.

2. Failing to include in the finance charge the service, transaction, activity or carrying charges, loan fees, points, finder's fees and similar charges as required by § 226.4(a) of Regulation Z.

3. Failing to include in the finance charge fees for title examination, abstract of title, title insurance, preparation of deeds, settlement statements, other documents, appraisal fees and credit reports, in excess of reasonable amounts, as required by § 226.4(e) of Regulation Z.

4. Failing to print the terms "annual percentage rate" and "finance charge" more conspicuously than other required terminology, as required by § 226.6(a) of Regulation Z.

5. Disclosing additional information or explanation stated, utilized or so placed so as to mislead or confuse the customer or to contradict, obscure or detract attention from the information required to be disclosed by § 226.8 of Regulation Z, including, but not limited to, setting forth any rate of interest or annual percentage rate in percentage terms which is not the true annual percentage rate required to be disclosed by Regulation Z and this order, as required by § 226.6(c) of Regulation Z.

6. Failing to preserve, for two years, evidence of compliance with the disclosure requirements of Regulation Z, other than the advertising requirements under § 226.10, as required by § 226.6(1) of Regulation Z.

7. Failing to make the disclosures required by § 226.8 of Regulation Z on either (1) the note or instrument evidencing the obligation on the same side of the page and above or adjacent to the place for the customer's signature; or (2) on one side of a separate statement which identifies the transaction, as required by § 226.8(a) of Regulation Z.

8. Failing to disclose the annual percentage rate accurately to the nearest quarter of one percent, computed in accordance with § 226.5 of Regulation Z, using the term "annual percentage rate," as required by § 226.8(b)(3) of Regulation Z.

9. Failing to disclose the due dates or periods of payment scheduled to repay indebtedness, as required by § 226.8(b)(3) of Regulation Z.

10. Failing, in arranging for the extension of credit loans secured by other than a first lien or equivalent security interest on a dwelling made to finance the purchase of that dwelling, to disclose the sum of all payments and failing to use the term "total of payments" to describe said sum, as required by § 226.8(b)(3) of Regulation Z.

11. Failing, in transactions where a payment is more than twice the amount of an otherwise regularly scheduled equal payment, to identify the amount of such payment by using the term "balloon payment," as required by § 226.8(b)(3) of Regulation Z.

12. Failing to disclose the amount, or method of computing the amount, of any default, delinquency or similar charges payable in the event of late payments, as required by § 226.8(b)(4) of Regulation Z.

13. Failing to describe the penalty charge that may be imposed by the creditor or his assignee for prepayment of the principal of the obligation with an explanation of the method of computing such penalty and the conditions under which it may be imposed, as required by § 226.8(b)(6) of Regulation Z.

14. Failing to identify the method of computing any unearned portion of the finance charge in the event of prepayment of the obligation and a statement of the amount or method of computation of any charge that may be deducted from the amount of any rebate of such unearned finance charge that will be credited to the obligation or refunded to the customer, as required by § 226.8(b)(7) of Regulation Z.

15. Failing to identify the amount of the credit which will be paid to the customer or for his account or to another person on his behalf, including all charges, individually itemized, which are included in the amount of the credit extended but which are not part of the finance charge, using the term "amount financed," as required by § 226.8(d)(1) of Regulation Z.

16. Failing to disclose, except in the case of a loan secured by a first lien or equivalent security interest on a dwelling and made to finance the purchase of that dwelling, the total amount of the finance charge, using the term "finance charge," as required by § 226.8(d)(3) of Regulation Z.

17. Failing, in the case of a transaction in which a security interest is or will be retained or acquired in any real property which is used or expected to be used as the principal residence of the customer, except in the case of the creation, retention or assumption of a first lien or equivalent security interest, as set forth in § 226.9(g) of Regulation Z, to:

a. Disclose that the customer has a right to rescind the transaction by midnight of the third business day following the transaction, as required by § 226.9 of Regulation Z; and

b. Furnish the customer with two copies of the notice set forth at § 226.9(b) of Regulation Z, as required by § 226.9(b) of Regulation Z; and

c. Set forth, along with the notice contemplated and required by § 226.9(b) of Regulation Z, § 226.9(d) of Regulation Z, as required by § 226.9(b) of Regulation Z; and

d. Delay performance of respondents' obligations under contract until the rescission period has expired, as required by § 226.9(c) of Regulation Z.

18. Failing in any consumer credit transaction to make all disclosures determined in accordance with §§ 226.4 and 226.5 of Regulation Z at the time and in the manner, form, and amount required by §§ 226.6, 226.8, and 226.9 of Regulation Z.

It is further ordered, That respondents deliver a copy of this order to cease and desist to all present and future personnel of respondents engaged in the consummation of any extension of consumer credit or in any aspect of preparation, creation or placing of advertising, and that respondents secure a signed statement acknowledging receipt of said order from each such person.

It is further ordered, That respondents notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent, such as dissolution, assignment or sale, resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of the order.

It is further ordered, That the respondents herein shall within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

It is further ordered, That the individual respondent named herein shall promptly notify the Commission of each change in his business or employment status, including discontinuance of his present business or employment, and each affiliation with a new business or employment for a period of ten years following the effective date of this order. Such notice shall include the address of the business or employment with which respondent is newly affiliated and a description of the business or employment as well as a description of the respondent's duties and responsibilities in that business or employment.

[File No. 742 3262]

RICHARD D. JONES MORTGAGE SERVICES, INC.

ANALYSIS OF PROPOSED CONSENT ORDER TO AID PUBLIC COMMENT

The Federal Trade Commission has accepted an agreement to a proposed consent order from Richard D. Jones Mortgage Services, Inc. and Richard D. Jones.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

Respondent Richard D. Jones Mortgage Services, Inc. is a California corporation engaged in the arranging of consumer loan transactions between private investors and individual borrowers. Respondent Richard D. Jones is the President of the corporate respondent. The complaint alleges that in connection with the arrangement of consumer credit, respondents have failed to make the required truth in lending disclosures to consumer borrowers as mandated by Regulation Z, the implementing regulation of the Truth in Lending Act. In addition, respondents have failed to make complete disclosures of the right of rescission to eligible consumers, and have failed to retain evidence of compliance with truth in lending as required by Regulation Z.

The consent order in this matter requires Richard D. Jones Mortgage Services, Inc. and Richard D. Jones to commence compliance with the disclosure requirements of the Truth in Lending Act. The order also requires respondents to file a report with the Commission setting forth the manner and form in which they have complied with the order. Respondents are further required to retain evidence of compliance with truth in lending for a period of two years following each transaction.

The order is generally designed to enable consumers to evaluate more accurately the terms and conditions of loan transactions arranged by the respondents.

The purpose of this analysis is to facilitate public comment on the proposed order and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

JOHN F. DUGAN,
Acting Secretary.

[FR Doc.77-1678 Filed 1-18-77;8:45 am]

GENERAL ACCOUNTING OFFICE

REGULATORY REPORTS REVIEW

Receipt of Report Proposal

The following request for clearance of report intended for use in collecting information from the public was received by the Regulatory Reports Review Staff, GAO, on January 10, 1977. See 44 U.S.C. 3512 (c) and (d). The purpose of publishing this notice in the FEDERAL REGISTER is to inform the public of such receipt.

The notice includes the title of the request received; the name of the agency sponsoring the proposed collection of information; the agency form number, if applicable; and the frequency with which the information is proposed to be collected.

Written comments on the proposed SEC request are invited from all interested persons, organizations, public interest groups, and affected businesses. Because of the limited amount of time GAO has to review the proposed request, comments (in triplicate) must be received on or before February 7, 1977, and should be addressed to Mr. John M. Lovelady, Regulatory Reports Review, United States General Accounting Office, Room 5033, 441 G Street, NW, Washington, D.C. 20548.

Further information may be obtained from Patsy J. Stuart of the Regulatory Reports Review Staff, 202–275–3532.

SECURITIES AND EXCHANGE COMMISSION

SEC requests clearance of a revision to Form R–31, Value and Volume of Sales on U.S. Stock Exchange. Form R–31 is used in the collection of Market Value and Volume of Sales on all U.S. Stock Exchanges. The form has been revised so that Bond Market Value and Volume is no longer reported by the exchanges. Potential respondents are the 10 U.S. Stock Exchanges and reporting burden is 10 minutes per monthly report.

NORMAN F. HEYL,
Regulatory Reports Review Officer.

[FR Doc.77–1767 Filed 1–18–77;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Center for Disease Control

BENDIX CORP. COAL MINE DUST PERSONAL SAMPLER UNITS

Revocation of Certificates of Approval

Pursuant to notice published in the FEDERAL REGISTER (41 FR 52103), a public hearing was held by the National Institute for Occupational Safety and Health on December 13, 1976, to receive relevant evidence concerning whether certificates of approval TC–74–018, TC–74–019, TC–74–020, TC–74–021, and TC–74–022, issued to the Bendix Corporation for its coal mine dust personal sampler units should be revoked for cause under 30 CFR 74.11 on the ground that the capsules required to be used with such units produce unreliable and inaccurate measurements of dust concentrations.

The evidence introduced by the Government showed that substantial numbers of capsules used in the Bendix Corporation sampler units spontaneously gain in excess of 0.1 milligram in weight after weighing by Bendix and prior to use in the sampler unit, with the result that determinations of dust concentrations using the Bendix units could be greater than the actual concentrations, and that measurements obtained by such units were therefore unreliable. Moreover, as a result, operators of coal mines which are, in fact, in compliance with the Federal standard for respirable dust, would be subject to citation and penalty for non-compliance under the Federal Coal Mine Health and Safety Act on the basis of inaccurate results.

The Bendix Corporation did not dispute the Government's evidence. Bendix, however, presented extensive evidence which related to the identification of, and corrective action to eliminate, the causes which it believes resulted in the capsule weight gains observed by the Government. The corrective actions proposed to be taken by the Bendix Corporation, however, are of such scope and extent that substantial retesting and reevaluation under 30 CFR Part 74 is required.

In view of the evidence that the accuracy of the samples obtained by the units using the Bendix capsules is not predictable, I find that under 30 CFR 74.11, cause exists on the stated ground for the revocation of the certificates of approval. Therefore, notice is given that certificates of approvals, numbers TC–74–018, TC–74–019, TC–74–020, TC–74–021, and TC–74–022, issued to the Bendix Corporation coal mine dust personal sampler units are hereby revoked, effective on January 19, 1977.

Dated: January 12, 1977.

JOHN F. FINKLEA,
Director, National Institute for Occupational Safety and Health.

[FR Doc.77–1680 Filed 1–18–77;8:45 am]

Health Resources Administration

NATIONAL ADVISORY COUNCIL ON HEALTH PROFESSIONS EDUCATION

Rechartering

Pursuant to the Federal Advisory Committee Act, Pub. L. 92–463, (5 U.S.C. Appendix I), the Health Resources Administration announces the rechartering by the Secretary, HEW, on December 23, 1976, of the following advisory Council:

Council	Termination date
National Advisory Council on Health Professions Education.	Continuing.

Authority for this Council is continuing. Section 14 of the Federal Advisory Committee Act shall not apply with respect to the filing of future Council charters.

Dated: January 13, 1977.

CLIFFORD ALLEN,
Acting Associate Administrator for Operations and Management.

[FR Doc.77–1681 Filed 1–18–77;8:45 am]

Health Services Administration

COMPREHENSIVE HEALTH SERVICES PROJECTS

Delegation of Authority

Notice is hereby given that the following delegations have been made under section 401 of the Economic Opportunity Act of 1964, as amended by section 7 of Pub. L. 93–644, providing for Comprehensive Health Services Projects:

1. Delegation from the Secretary of the Assistant Secretary for Health, with the authority to redelegate, of all authorities vested in the Secretary of Health, Education, and Welfare by Section 401 of the Economic Opportunity Act with the exception of authority to issue regulations.

2. Delegation from the Assistant Secretary for Health to the Regional Health Administartors, with authority to redelegate, of authority under section 401 of the Economic Opportunity Act for grants within their respective regions, other than for grants national or multi-regional in scope.

3. Delegation from the Assistant Secretary for Health to the Administrator, Health Services Administration, with authority to redelegate, of all authorities of the Assistant Secretary for Health under Section 401 of the Economic Opportunity Act except those specifically delegated to the Regional Health Administrators.

The above delegations were effective on December 30, 1976.

Dated: January 10, 1977.

JOHN OTTINA,
Assistant Secretary for Administration and Management.

[FR Doc.77–1689 Filed 1–18–77;8:45 am]

NATIONAL ADVISORY COUNCIL ON HEALTH MANPOWER SHORTAGE AREAS

Rechartering

Pursuant to the Federal Advisory Committee Act, Pub. L. 92–463, (5 U.S.C. Appendix I), the Health Services Administration announces the rechartering by the Secretary, HEW, on December 23, 1976, of the following advisory Council:

Council	Termination Date
National Advisory Council on Health Manpower Shortage Areas.	Continuing.

The Authority for this Council expires on September 30, 1977. At that time the Council will be rechartered and renamed the National Advisory Council on the National Health Service Corps.

Dated: January 13, 1977.

ARTHUR SCHWARTZ,
Acting Associate Administrator for Management.

[FR Doc.77–1679 Filed 1–18–77;8:45 am]

Office of Education

NATIONAL ADVISORY COUNCIL ON EXTENSION AND CONTINUING EDUCATION

Public Meeting

Notice is hereby given, pursuant to the Federal Advisory Committee Act, Pub. L. 92–463 that a meeting of the Executive Committee of the National Advisory Council on Extension and Continuing Education will be held on January 31, 1977 in the Council office at 425 13th Street, NW., Suite 529, Washington, D.C. The meeting on January 31 will begin at 9:00 a.m. and adjourn at 4:30 p.m.

The National Advisory Council on Extension and Continuing Education is authorized under Pub. L. 89–329. The Council is directed to advise the Commissioner of Education in the preparation of general regulations and with respect to policy matters arising in the administration of Title I, and to report annually to the President on the administration and effectiveness of all federally supported extension and continuing education programs, including community service programs.

The meeting of the Executive Committee will be open to the public, but because of the limited space available in the Council office, anyone wishing to attend the meeting should inform the Council's staff office (376–8888) no later than January 24, 1977. The purpose of the meeting is to review the content and recommendations of the Council's eleventh annual report.

All records of Council proceedings are available for public inspection at the Council's staff office, located in Suite 529, 425 Thirteenth Street, NW., Washington, D.C.

Dated: January 14, 1977.

JAMES A. TURMAN,
Executive Director.

[FR Doc.77–1720 Filed 1–18–77;8:45 am]

NATIONAL ADVISORY COUNCIL ON INDIAN EDUCATION

Meeting Correction

In the FEDERAL REGISTER of January 12, 1977, at page 2541 (FR Doc. 77–1032), the National Advisory Council on Indian Education published a notice of its forthcoming meetings. The contact person and address should be changed to read as follows:

For further information contact:

Stuart T. Tonemah, Acting Executive Director, Office of National Advisory Council on Indian Education, 425 13th Street, N.W., Room 326, Washington, D.C. 20004 (202–376–8882).

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Federal Disaster Assistance Administration

[Docket No. Nfd–386; FDAA–3017–EM]

MISSOURI

Emergency Declaration; Amendment

Notice of emergency for the State of Missouri dated September 24, 1976, and amended on November 9, 1976, is hereby further amended to include the following counties among those counties determined to have been adversely affected by the catastrophe declared an emergency by the President in his declaration of September 24, 1976:

The Counties of:

Boone	Miller
Camden	Pettis
Crawford	Phelps
Dent	Pulaski
Hickory	

The purpose of this designation is to provide emergency livestock feed assistance only in the aforementioned affected areas effective the date of this amended Notice.

Dated: January 12, 1977.

THOMAS P. DUNNE,
Administrator, Federal Disaster Assistance Administration.

(Catalog of Federal Domestic Assistance No. 14.701, Disaster Assistance.)

[FR Doc.77–1715 Filed 1–18–77;8:45 am]

[Docket No. NFD–387; FDAA–3016–EM]

VIRGINIA

Emergency Declaration; Amendment

Notice of emergency for the State of Virginia dated October 15, 1976, and amended on November 30, 1976, is hereby further amended to include the following counties among those counties determined to have been adversely affected by the catastrophe declared an emergency by the President in his declaration of October 15, 1976:

The Counties of:

Amelia	Halifax
Amherst	Henry
Appomattox	Lunenburg
Bedford	Mecklenburg
Brunswick	Nottoway
Campbell	Patrick
Charlotte	Pittsylvania
Cumberland	Powhattan
Franklin	Prince Edward

The purpose of this designation is to provide emergency livestock feed assistance only in the aforementioned affected areas effective the date of this amended Notice.

Dated: January 7, 1977.

THOMAS P. DUNNE,
Administrator, Federal Disaster Assistance Administration.

(Catalog of Federal Domestic Assistance No. 14.701, Disaster Assistance.)

[FR Doc.77–1716 Filed 1–18–77;8:45 am]

INTERNATIONAL TRADE COMMISSION

[TA–203–2]

CERTAIN ALLOY TOOL STEEL

Investigation and Hearing

Investigation instituted. Following receipt on December 7, 1976, of a request from The Special Representative for Trade Negotiations, pursuant to section 203(i)(2) of the Trade Act of 1974 and section 5(a) of Executive Order 11846 of March 27, 1975, the United States International Trade Commission on January 12, 1977, instituted an investigation under section 203(i)(2) for the purpose of advising the President as to the probable economic effect on the domestic industry concerned if the relief provided by Proclamation 4445 of June 11, 1976, as modified by Proclamation 4477 of November 16, 1976, were to be terminated in part by excluding from the quantitative restrictions imposed thereby the alloy tool steel covered by item 923.25 of the Appendix to the Tariff Schedules of the United States. The letter from The Special Trade Representative requesting the investigation is attached hereto and made a part thereof.

Public hearing. A public hearing in connection with this investigation will be held in the Commission's Hearing Room, United States International Trade Commission Building, 701 E Street NW., Washington, D.C., beginning at 10 a.m., e.s.t., on Tuesday, January 25, 1977. All interested parties will be given an opportunity to be present, to produce evidence, and to be heard at such hearing. Requests to appear at the public hearing should be received by the Secretary of the Commission at his office in Washington, D.C., not later than noon, Friday January 21, 1977.

Issued: January 14, 1977.

By order of the Commission.

KENNETH R. MASON,
Secretary

THE SPECIAL REPRESENTATIVE FOR TRADE NEGOTIATIONS.

DEAR MR. CHAIRMAN: The President, on June 11, 1976, acted to provide import relief to U.S. producers of stainless steel and alloy tool steel, pursuant to section 202 of the Trade Act of 1974. For this purpose, Presidential Proclamation 4445 inserted new provisions in the Appendix to the Tariff Schedules of the United States (TSUS) imposing temporary quantitative limitations on imports of such steel under new items 923.20 through 923.24.

Subsequent to the issuance of that proclamation it was ascertained that certain alloy tool steel covered by the quantitative limitations under item 923.24 had not either consistently or substantially been historically reported in import statistics as alloy tool steel prior to June 14, 1976. Therefore, the statistics used as a basis for establishing the quantitative limitations for alloy tool steel were inaccurate, and the quota quantity provided for that category was substantially understated.

To provide a temporary alleviation of the immediate problem which this created, I directed that certain changes be made in the provisions of the Appendix to the TSUS which govern the quantitative limitations. Subsequently, in order to provide appropriate quantitative limitations in accordance with the statutory requirements, Proclamation 4477 modified the restrictions by deleting item 923.24 and including alloy tool steel formerly provided for in item 928.24 in two new items 923.25 and 923.26, and proclaiming separate quantitative limitations for imports included in each of the new items.

Purauant to section 203(i)(2) of the Trade Act of 1974 and section 5(a) of Executive Order 11846 of March 27, 1975, I request that the Commission advise the President of its judgment as to the probable economic effect on the domestic industry concerned if the relief provided by Proclamation 4445, as modified by Proclamation 4447, were to be terminated in part by excluding from the quantitative restrictions imposed thereby the alloy tool steel covered by item 923.25.

We understand that part of the information on relevant imports of steel required for the Commission's advice must be obtained from entry documents (record copy of Customs form 7501, commercial and special invoices, and all other accompanying papers) retained by the U.S. Customs Service at the ports through which the merchandise has been and is being entered. I therefore have requested the Treasury Department to make these entry documents available to the Commission promptly. It is understood that the Commission will notify the Department of the specific entries (month, year, entry number, and port) of which it has knowledge from its analysis of statistical documents.

Sincerely,

FREDERICK B. DENT.

HON. WILL E. LEONARD,
Chairman,
U.S. International Trade Commission,
701 E Street NW.,
Washington, D.C. 20436.

[FR Doc.77–1737 Filed 1–18–77;8:45 am]

GOVERNMENT IN THE SUNSHINE

Deletion of Agenda Items

At its meeting of January 14, 1977, the United States International Trade Commission, acting on the authority of 19 U.S.C. 1335 and in conformity with proposed 19 CFR 201.38, voted to delete the following items from its agenda for the meeting of January 14, 1977:

4. Briefing by the staff on sugar (Inv. TA-201-16);

6. Mushrooms (TA-201-17)—consideration of draft determination (see action jacket GC-76-162);

7. Any other items left over from previous agenda.

Commissioners Minchew, Parker, Leonard, Moore, Bedell, and Ablondi voted by unanimous consent that Commission business requires the change in subject matter by deletion of these agenda items, affirmed that no earlier announcement of the deletion of these agenda items was possible, and directed the issuance of this notice at the earliest practicable time.

Issued: January 14, 1977.

By order of the Commission.

KENNETH R. MASON,
Secretary.

[FR Doc.77-1735 Filed 1-18-77;8:45 am]

GOVERNMENT IN THE SUNSHINE

Modification of Agenda Item

At its meeting of January 14, 1977, the United States International Trade Commission, acting on the authority of 19 U.S.C. 1335 in conformity with proposed 19 CFR 201.38, voted to modify item No. 6 of its agenda for the meeting of January 17, 1977, as follows:

6. Footwear (Inv. TA-201-18)—reconsideration of determination and consideration of draft determination previously circulated in action jacket GC-76-163.

Commissioners Minchew, Parker, Leonard, Bedell, and Ablondi voted by unanimous consent, that Commission business requires the change in subject matter by modification of this agenda item, affirmed that no earlier announcement of the modification to this agenda was possible, and directed the issuance of this notice at the earliest practicable time. (Commissioner Moore was not present for the vote.)

Issued: January 14, 1977.

By order of the Commission.

KENNETH R. MASON,
Secretary.

[FR Doc.77-1736 Filed 1-18-77;8:45 am]

DEPARTMENT OF JUSTICE

Antitrust Division

UNITED STATES v. BECHTEL CORPORATION, ET AL.

Proposed Consent Judgment and Competitive Impact Statement Thereon

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)-(h), that a proposed consent judgment and a competitive impact statement as set out below have been filed with the United States District Court for the Northern District of California in Civil Action No. C 76 99, *United States of America v. Bechtel Corporation, et al.* The complaint in this case alleges that defendants implemented in the United States a conspiracy to refuse to deal and require others to refuse to deal with persons and firms which were blacklisted pursuant to the Arab Boycott of Israel as subcontractors on major construction projects in Arab League countries. The Judgment prohibits defendants from continuing the conduct alleged in the complaint to be illegal, from entering into agreements to refuse to deal with blacklisted persons and firms in the United States, from refusing to recommend persons and firms as subcontractors on major construction projects in Arab League countries because such persons and firms are blacklisted, and from maintaining or using blacklists in the United States in connection with major construction projects. Public comment is invited on or before March 14, 1977. Such comments and responses will be published in the FEDERAL REGISTER and filed with the United States District Court for the Northern District of California and made available for inspection and copying in Room 3305, Department of Justice, Washington, D.C. Comments should be directed to Joel Davidow, Chief, Foreign Commerce Section, Antitrust Division, Department of Justice, Washington, D.C. 20530.

Dated: January 10, 1977.

DONALD I. BAKER,
Assistant Attorney General,
Antitrust Division.

UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF CALIFORNIA

United States of America, Plaintiff, v. *Bechtel Corporation, Bechtel Incorporated, Bechtel Power Corporation, Bechtel International, Inc. and Bechtel International Corporation*, Defendants.

Civil No. C 76 99 (GBH).
Filed: January 10, 1977.

STIPULATION

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. A Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of either party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16(b) *et seq.*) and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

2. In the event plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this stipulation, this stipulation shall be of no effect whatever, and the making of this stipulation shall be without prejudice to the plaintiff and defendants in this or any other proceeding.

Dated: January 10, 1977.

For the Plaintiff: Donald I. Baker, *Assistant Attorney General;* William E. Swope, Joel Davidow, By: Douglas E. Rosenthal, Charles F. B. McAleer, Douglas E. Rosenthal, Donald A. Kaplan, Jonathan J. Groner, *Attorneys, Department of Justice.*

For the Defendants: Hogan & Hartson, By Lee Loevinger; Thelen, Marrin, Johnson & Bridges, *By* Edward J. Ruff.

UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF CALIFORNIA

United States of America, Plaintiff, v. *Bechtel Corporation, Bechtel Incorporated, Bechtel Power Corporation, Bechtel International, Inc. and Bechtel International Corporation*, Defendants.

Civil No. C 76 99 (GBH).
Filed: January 10, 1977.

FINAL JUDGMENT

Plaintiff, United States of America, having filed its complaint herein on January 16, 1976, and defendants, Bechtel Corporation, Bechtel Incorporated, Bechtel Power Corporation, Bechtel International, Inc. and Bechtel International Corporation, having filed their Answer thereto on April 26, 1976; and plaintiff and defendants by their attorneys having consented to the entry of this Final Judgment, without the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting evidence or an admission by any party consenting hereto with respect to any such issue:

Now therefore, without the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon the consent of plaintiff and of each of said defendants, it is hereby.

Ordered, adjudged and decreed, as follows:

I

This Court has jurisdiction over the subject matter hereof and the parties consenting hereto. The Complaint states a claim upon which relief may be granted against each defendant under Section 1 of the Act of Congress of July 2, 1890, commonly known as the Sherman Act (15 U.S.C. § 1), as amended.

II

As used herein, the term:

(A) "Person" means any individual, corporation, partnership, association, joint venture, firm or other business entity;

(B) "Arab League Countries" means the following countries and other present and future members of the League of Arab Countries and each of them: Algeria, Bahrain, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libya, Mauritania, Morocco, Oman, Peoples' Democratic Republic of Yemen, Qatar, Saudi Arabia, Somalia, Sudan, Syria, Tunisia, United Arab Emirates (including Abu Dhabi and Dubai) and Yemen Arab Republic;

(C) "Blacklisted Person" means any Person included in one or more lists maintained, in connection with the boycott by Arab League Countries of Israel, by the Central Office for the Boycott of Israel or by any of the Arab League Countries, of Persons with whom citizens, business or nonbusiness entities and governments or other public bodies in Arab League Countries may conduct only limited, if any, trade or commerce;

(D) "United States", when used in conjunction with "Blacklisted Person", means that such individual resides in the United States, or such entity (whether or not a subsidiary or Affiliate of a foreign business entity) maintains its principal office or place of business in the United States or is organized under the laws of the United States or of any State, Territory, District, Commonwealth or Possession of the United States;

(E) "Major Construction Project" means any project in an Arab League Country, the purpose of which is to construct an installation, facility, building or system, including, but not limited to, oil or gas refineries, oil or gas pipelines, airports, nuclear or conventional power generating facilities, harbors, gas liquefication facilities, transportation systems or hotel or office buildings;

(F) "Prime Contractor" means any Person which has principal responsibilities for managing, supervising or administering a Major Construction Project or for providing construction, engineering, procurement or consulting services in connection with such Major Construction Project;

(G) "Subcontractor" means any Person, other than a Prime Contractor, which produces or provides parts, systems, material, equipment or services used in connection with Major Construction Projects, whether or not said Person enters into any contractual relationship with a Prime Contractor;

(H) "Affiliate" means any Person that directly, or indirectly through one or more intermediaries, is under common control with any defendant;

(I) "Client" means any Person, government or governmental agency which retains a defendant as a Prime Contractor or Subcontractor on a Major Construction Project, or, in the case where a defendant is a Subcontractor, which retains the Prime Contractor; and

(J) "International Agreement" means any treaty to which the United States is a party, any international agreement entered into by the United States pursuant to the independent powers of the President provided under the Constitution, or any international agreement entered into by the United States which has subsequently been approved pursuant to a joint resolution of Congress.

III

The provisions of this Final Judgment shall apply to each defendant and each of its officers, directors, agents, employees, subsidiaries, Affiliates, and to the successors and assigns of Bechtel Corporation or Bechtel Incorporated, and to all other Persons in active concert or participation with any defendant that shall have received actual notice of this Final Judgment by personal service or otherwise.

IV

The defendants are each enjoined and restrained from:

(A) Performing, implementing or enforcing any provision or term in any contract, agreement, arrangement or understanding which provides that any defendant boycott or refuse to deal with any United States Blacklisted Person as a Subcontractor in connection with any Major Construction Project in which any defendant is acting as a Prime Contractor or Subcontractor; or

(B) Requiring that any other Person boycott or refuse to deal with any United States Blacklisted Person in connection with any Major Construction Project in which any defendant is acting as a Prime Contractor or Subcontractor; or

(C) Performing, implementing or enforcing any provision or term in any contract, agreement, arrangement or understanding which provides that any other Person boycott or refuse to deal with any United States Blacklisted Person in connection with any Major Construction Project in which any defendant is acting as a Prime Contractor or Subcontractor; or

(D) Entering into within the United States any contract, agreement, arrangement or understanding:

(1) To boycott or refuse to deal with any United States Blacklisted Person as a Subcontractor in connection with any Major Construction Project; or

(2) Which provides that any Subcontractor boycott or refuse to deal with any United States Blacklisted Person in connection with any Major Construction Project in which any defendant acts as a Prime Contractor or Subcontractor; or

(E) Serving as an agent or representative for any other Person or Client for the purpose of the making, performing, implementing or enforcing in the United States of a provision or term of any contract, agreement, arrangement or understanding which provides that any Person or Client boycott or refuse to deal with any United States Blacklisted Person as a Subcontractor in connection with any Major Construction Project, if any defendant knows or has reason to believe that such provision or term exists therein and that such agreement or refusal is being made, performed, implemented or enforced; or

(F) Failing to recommend or include any Person because such Person is a United States Blacklisted Person in making any recommendation or evaluation, or submitting any list of possible Subcontractors, or soliciting bids from possible Subcontractors, in connection with any Major Construction Project; or

(G) Selecting a Subcontractor for purchases, or recommending a possible Subcontractor for purchases by any defendant, or soliciting bids from possible Subcontractors, to provide parts, systems, material, equipment or services produced within the United States for a Major Construction Project from a list or group of possible Subcontractors limited by the Client to those named or approved by the Client if any defendant knows or has reason to believe that any Person, otherwise qualified, has been excluded or struck from such list or group because it is a United States Blacklisted Person; or

(H) Maintaining in the United States or using for any purposes prohibited in this Section IV, in connection with any Major Construction Project, any list which any defendant knows or has reason to know is a list of (1) United States Blacklisted Persons, or (2) approved or accepted possible Subcontractors, from which any Person, otherwise qualified, has been excluded because it is a United States Blacklisted Person.

V

Nothing in the preceding Section IV shall be construed to preclude or prevent any defendant from:

(A) Entering into outside the United States any contract, agreement or purchase order pertaining to work on a Major Construction Project in which it is provided in form or substance that a defendant or Subcontractor shall abide by the requirements of the laws of the country in which such Major Construction Project is located, or that such agreement, contract or purchase order shall be construed according to said laws, provided, however, the existence of any such clause shall not relieve any defendant from any specific prohibition or obligation of this Final Judgment; or

(B) Purchasing for and providing to any Major Construction Project, in whole or in part, and on such basis of selection as may be desired by a defendant or required by a Client, parts, systems, material, equipment or services of Subcontractors produced and utilized outside the United States; or;

(C) Purchasing for and providing to any Major Construction Project, in its own name or in the name of its Client, parts, systems, material, equipment or services produced in the United States by a Subcontractor which has been specifically and unilaterally selected by the Client, whether or not such selection is made from a list, report or recommendation prepared and furnished by any defendant and without regard to the basis of selection or designation by the Client; or

(D) Performing work on or providing services (including, without limitation, expediting, inspection and traffic) to any Major Construction Project where the Client has independently purchased or procured parts, systems, material, equipment or services, regardless of the source or basis of selection thereof, provided, however, that any such work or services performed within the United States do not include inspection to determine whether the Subcontractor is a United States Blacklisted Person; or

(E) Using competitive bidding to procure parts, systems, material, equipment or services for a Major Construction Project by issuing invitations to bid to possible Subcontractors, including but not limited to Subcontractors proposed by the Client, and, by analysis and evaluation of bids received, making a recommendation or recommendations to the Client based on such analysis and evaluation for selection of the Subcontractor by the Client independently of any defendant, provided that any analysis or evaluation referred to in this Subsection does not include whether a possible Subcontractor is a United States Blacklisted Person.

VI

If any Act of Congress is enacted or the United States becomes a party to any International Agreement, either of which creates rights or benefits with respect to business in Arab League Countries which Persons not subject to the provisions of this or a similar Final Judgment are entitled to exercise or enjoy consistent with the Antitrust Laws, then, upon application to the Court by any defendant, the terms set forth herein shall be deleted or modified as in the Court's determination is necessary to permit said defendant to exercise or enjoy such rights or benefits.

VII

If plaintiff herein becomes plaintiff in an action in which a final judgment is entered by consent which relates to the same or similar matters as those covered herein, and if the terms of such judgment are different than the terms specified herein, then, upon application to the Court by any defendant, the terms set forth herein shall be modified as is necessary to prevent any defendant from being placed at a competitive disadvantage with respect to Major Construction Projects, provided, however, that this Section VII neither adds to nor derogates from the

right of any party to move under Section IX hereof in the light of any final judgment in a litigated case.

VIII

For the purpose of determining or securing compliance with this Final Judgment and for no other purpose, and subject to any legally recognized privilege, from time to time:

(A) Duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to a consenting defendant made to its principal office, be permitted:

(1) Access during office hours of such defendant to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of the consenting defendant, who may have counsel present, relating to any of the matters contained in this Final Judgment; and

(2) Subject to the reasonable convenience of such defendant, and without restraint or interference from it, to interview officers, employees and agents of such defendant, who may have counsel present, regarding any such matters.

(B) Upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division made to a consenting defendant's principal office, such defendant shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

No information or documents obtained by the means provided in this Section VIII shall be divulged by any representative of the Department of Justice to any Person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings in which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law. If at the time information or documents are furnished by any defendant to plaintiff, said defendant represents and identifies in writing the material in any such information or documents which is of the type described in Rule 26(c)(7) of the Federal Rules of Civil Procedure, or the material which is diplomatically sensitive, and said defendant marks each pertinent page of such material, "Subject to claim of protection under the Federal Rules of Civil Procedure," then ten days' notice shall be given by plaintiff to said defendant prior to divulging such material other than (i) to a duly authorized representative of the Executive Branch of the United States, (ii) in a Grand Jury proceeding, or (iii) in any legal proceeding to which any defendant is a party.

IX

Jurisdiction is retained for the purpose of enabling any of the parties consenting to this Final Judgment to apply to this Court at any time for such further orders or directions as may be necessary or appropriate for the construction of this Final Judgment, modification of any of the provisions hereof, enforcement of compliance herewith, or punishment of any violations hereof, and for the purpose of enabling any defendant to object to any request made pursuant to Section VIII hereof or to any divulgence or disclosure proposed in any notice given by plaintiff pursuant thereto.

X

All provisions of the Final Judgment, unless terminated or modified prior thereto, shall terminate twenty (20) years from the date of entry hereof.

XI

Entry of this Judgment is in the public interest.

Dated: San Francisco, California ----------, 1977.

United States District Judge.

Attorneys for Plaintiff: Douglas E. Rosenthal, Donald A. Kaplan, Antitrust Division Department of Justice, Washington, D.C. 20530. Telephone: (202) 739-2464.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

United States of America, Plaintiff, v. *Bechtel Corporation, Bechtel Incorporated, Bechtel Power Corporation, Bechtel International, Inc., and Bechtel International Corporation*, Defendants.

Civil No. C 76 99 (GBH).

Filed: January 10, 1977.

COMPETITIVE IMPACT STATEMENT

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16(b)-(h) P.L. 93-528 (December 21, 1974)) ("APPA"), the United States of America hereby files this Competitive Impact Statement ("C.I.S.") relating to a proposed Final Judgment in the above-entitled action to be entered against all defendants.

(1) NATURE AND PURPOSE OF THE PROCEEDING

This action was filed on January 16, 1976, against Bechtel Corporation, Bechtel Incorporated, Bechtel Power Corporation, Bechtel International, Inc., and Bechtel International Corporation ("defendants"). Either Bechtel Corporation or Bechtel Incorporated, which are themselves affiliated, wholly own, directly or indirectly, the other defendants. The Complaint alleged that defendants and certain co-conspirators entered into and, in the United States, implemented a combination and conspiracy which resulted in an unreasonable restraint in the provision of parts, systems, material, equipment or services in connection with Major Construction Projects[1] in Arab League Countries in violation of Section 1 of the Sherman Act (15 U.S.C. § 1).

The defendants filed their Answer to the Complaint on April 26, 1976. They raised several affirmative defenses to the Complaint's allegations. Principal among these were that (a) the Arab League Boycott of Israel is political in nature and beyond the scope of the Sherman Act; (b) other agencies of the United States Government sanctioned the very participation in the Boycott with which defendants were charged and the Government is therefore estopped from this prosecution; and (c) the defendants are not liable because of the sovereign compulsion and act of state defenses.

More than one month prior to the filing the Answer preliminary discussions exploring possible settlement of this action were commenced. Negotiations continued for the next eight months and led to the submission of this proposed Final Judgment.

[1] When terms are used in this C.I.S. that are defined in Section II of the proposed Final Judgment, the definition appearing there shall also apply here. Such terms will appear in both documents with initial capital letters.

(2) PRACTICES AND EVENTS GIVING RISE TO THE ALLEGED VIOLATION OF THE ANTITRUST LAWS

(a) *The Commerce Involved.* Defendants and other affiliated companies ("Bechtel Group") jointly constitute one of the largest Prime Contractors for Major Construction Projects in the world. Prime Contractors sell their services primarily to governmental and large commercial Clients. These services generally include some or all of the following: construction design, construction engineering, procuring and delivering equipment and supplies, site and economic feasibility studies, consulting and managing in connection with construction, and actually constructing such Major Construction Projects as refineries, pipeline systems, airports, nuclear or conventional power generating facilities, harbors, transportation systems, and building complexes.

In providing these services, Prime Contractors regularly deal with Subcontractors which produce or provide parts, systems, material, equipment or services used in connection with Major Construction Projects.[2] Prime Contractors frequently provide one or more of the following services to Clients in dealing with Subcontractors: suggest to the Client a list of qualified Subcontractors from which bids may be solicited; solicit Subcontractor bids; contract with specific Subcontractors for the furnishing of specified goods or services on their own behalf or on behalf of the Client; expedite the production, shipping and use of goods or services; inspect the quality of goods or services provided; arrange for forwarding goods and services to the construction site; and manage or monitor the use of those goods and services at the project site.

Three types of contractual arrangements between Prime Contractors and Clients on Major Construction Projects are most common. First, the Prime Contractor may be engaged on a "turn-key" basis. This means that the Client pays the contractor a single price (either in one lump sum or in installments paid at various stages of the construction) for all design, procurement and construction services provided by the Prime Contractor, and for all Subcontractors' goods and services which the Prime Contractor has purchased for the project in its own name. Second, the Prime Contractor's fee for the project may be determined on a "cost-plus" basis. In this arrangement the Client pays for the Prime Contractor-supplied services either at a cost plus mark-up which reflects the time spen on the Client's project by the Prime Contractor's personnel, or reflects the nature of the specific tasks performed. Subcontractors' goods and services are purchased by the Prime Contractor, usually in its own name, and then resold to the Client at a mark-up, specified in the contract, to cover the cost of procurement services. Third, the Prime Contractor may charge the Client for its services, either on a time or task basis, including procurement services, and the Client directly purchases all Subcontractors' goods and services. The Subcontractor selection procedures used by the Prime Contractor with the second and third types of arrangements are customarily the same. In both, the Prime Contractor usually develops and evaluates bids and makes a purchase recommendation to the Client. The Client then makes the final Subcontractor selection. The difference between the second and third type of arrangement lies in the party which directly pays the Subcontractor. Turn-key arrangements leave construction contracting decisions and payments to the Prime Contractor's discretion, subject to any specific contractual limitations.

[2] As used here and in the proposed Final Judgment, Subcontractors are businesses which sell goods as well as services for use in Major Construction Projects. Thus, for example, a manufacturer of steel or electronic equipment which is purchased for use in a Major Construction Project would be a Subcontractor, as would an electrical contractor which installs wiring and circuitry. Subcontractors in some cases enter into contractual relationships directly with Clients. However, the Prime Contractor usually has a substantial role in the Subcontractor selection process in those situations as well.

There are several large Prime Contractors operating throughout the world. Some of the largest of these, including the Bechtel Group, are incorporated in the United States. These large Prime Contractors are capable of serving Clients in any region of the world. In the past few years an increasing percentage of large-scale construction projects have been undertaken in the Arab League Countries and elsewhere in the Middle East. Of the approximately $12 billion in overseas new construction contracts awarded to United States Prime Contractors in 1974, $1 billion was awarded for the construction of projects in the Middle East. In 1975, total foreign contracts increased to approximately $22 billion, with approximately $7½ billion in awards from Middle East clients—nearly two-thirds of the total increase. The Bechtel Group has current construction projects in a number of Middle East states which, upon completion, will have cost a total of several billion dollars. Parts, systems, material, equipment and services supplied by Subcontractors generally represent 30–50% of the total cost of a Major Construction Project. The terms of trade with respect to Major Construction Projects are substantially similar throughout the world. One exception affects Major Construction Projects in many Arab League Countries: on these projects, the parties must generally observe the Arab League Boycott of Israel ("Boycott").

(b) *The Arab Boycott.* In 1946 the Council of the Arab League established a permanent boycott committee to implement its decision to institute a member state boycott of "Zionist" goods and products. Pursuant to this decision the Arab League established local boycott offices in several of its member countries. While the initial boycott of 1946 was designed only to prevent entry of "Zionist" goods into Arab countries, its scope was broadened in 1951 to encompass a secondary boycott against third parties viewed as being friends of or providing assistance to the State of Israel. To effectuate this broader purpose, the Arab League established the Central Office for the Boycott of Israel in Damascus, Syria. The Central Boycott Office assumed primary responsibility for establishing the terms of and for policing the Boycott.

The principal means for effectuating the Boycott is the preparation and publication of blacklists which name business entities and individuals with whom Arab League Country purchasers may not deal, or whose goods and services may not be imported into Arab League Countries. These blacklists are not widely published; however, constantly updated versions are regularly provided to the local boycott offices in those Arab League member states which actively participate in the Boycott. Some member states prepare individualized blacklists effective within their own jurisdiction. These are based upon the master blacklist furnished by the Central Boycott Office, but reflect particular local considerations. A recent version of the blacklist promulgated in Saudi Arabia contains the names of more than twelve hundred United States business entities, including firms which manufacture goods or provide services used in construction projects. Those United States firms designated on this and similar boycott lists are referred to as "United States Blacklisted Persons".

The terms of the Boycott include the requirement of adherence to the blacklist with respect to business in Arab League Countries. Several member states, including Saudi Arabia, have promulgated decrees, including codes of regulations, which require compliance with the Boycott as a matter of national law by all Persons within their respective jurisdictions. These laws provide penalties ranging from confiscation of blacklisted goods, to fines, to imprisonment for several years. Accordingly, those doing business in such states are under compulsion to participate in the Boycott. Arab League Country purchasers of goods and services, including Clients undertaking Major Construction Projects, are responsible for seeing that goods and services furnished by Blacklisted Persons are not imported into Arab League Countries. The customs services of these member states police compliance with the Boycott through their power to inspect, confiscate or refuse entry to unauthorized imports.

In sum, the Boycott is a long-standing arrangement among certain Arab League Countries, the Central Boycott Office, enterprises doing business in those Arab League Countries, and others, pursuant to which international import trade and commerce in those countries is conducted consistent with a concerted refusal to deal with Blacklisted Persons—including United States Blacklisted Persons. It is, as such, a horizontal agreement among purchasers in Arab League Countries, the purpose of which is to restrain the trade between those countries and others in the products of Blacklisted Persons.

(c) *The Nature of the Violation of the Antitrust laws.* A conspiracy, even if entered into abroad among foreigners, may be subject to United States antitrust law if it is capable of effecting a restraint upon, and is intended to affect United States domestic or foreign commerce. (*See, e.g., United States v. Aluminum Company of America*, 148 F.2d 416, 444 (2d Cir. 1945)). However, here, since (1) the United States may not be reasonably expected to achieve compliance by the attempt to impose its own law in conflict with that of a foreign jurisdiction; (2) the illegal conduct is to take place in the territory of the foreign sovereign; and (3) the application of United States antitrust law to foreign conduct directly conflicts with foreign law valid in a foreign sovereignty thereby imposing substantial hardship upon the one against whom it would be applied, it would be inappropriate both as a matter of law and enforcement policy to apply United States law to this concerted refusal to deal as it operates in Arab League Countries. This is the principle of comity which makes it possible for nations with conflicting laws and policies to deal among themselves. (Restatement, Second, Foreign Relations Law of the United States, Section 40, A.L.I. 1965). Accordingly, for the reasons just stated, it would be inappropriate to apply United States antitrust law to the Arab Boycott as so far described.

However, a principal element of the charge against the defendants contained in the Complaint was that they had not only agreed to implement the Boycott as to several Major Construction Projects in Arab League Countries, but had, in fact, implemented it within the sovereign jurisdiction of the United States by means of actions and agreements aimed against Blacklisted Persons. It was this actual implementation in restraint of United States commerce which clearly subjected defendants to United States antitrust law. Such implementation in the United States could not be excused on the ground that it was directed by a foreign state, since that would intrude on the terms of trade within the sovereign territory of the United States where United States law is paramount. If Arab states have a valid claim to control significant commercial conduct within their sovereign territories under the principle of comity, so does the United States Government within its sovereign territory. Accordingly, a restraint of trade in United States commerce in violation of the Sherman Act may result from the Boycott although it is a requirement of law in a foreign jurisdiction.

The Complaint alleges that, beginning at least as early as 1971, and continuing to at least the date of the filing of the Complaint, the defendants joined the Boycott conspiracy against United States Blacklisted Persons and furthered that conspiracy in the United States. At trial the Government would have shown that the defendants signed contracts requiring them to blacklist certain United States Persons with whom they might otherwise deal in the procurement of Subcontractor services as to Major Construction Projects; that they actually effectuated these contracts to the detriment of certain blacklisted potential United States Subcontractors; and that they entered into agreements with non-blacklisted United States Subcontractors requiring them to refuse to deal with United States Blacklisted Persons as their own Subcontractors in connection with providing goods and services to Major Construction Projects in Arab League Countries where the Bechtel Group was the Prime Contractor.

The Government was prepared to show further, that defendants' actions implementing the Boycott had a substantial and direct effect on United States commerce in that (1) certain Persons were denied the opportunity to sell goods and services for use in connection with Major Construction Projects in Arab League Countries or even to submit bids to supply such goods and services because they were United States Blacklisted Persons; or (ii) Persons which were or desired to become Subcontractors on Arab League Country Major Construction Projects were restrained from freely doing business in or with Israel for fear of being blacklisted themselves. The relief sought in the Complaint was a judgment decreeing that the alleged conduct was a violation of the Sherman Act and enjoining defendants from continuing that conduct.

The Government further would have contend that, as a matter of law, none of the affirmative defenses raised in defendants' Answer (see page 2 above) could defeat the relief sought in the Complaint. First, in response to the assertion that the Arab Boycott was politically motivated, the United States would have contended, inter alia, that its implementation by defendants had an anticompetitive effect on United States interstate and foreign commerce and, thus, was illegal under the Sherman Act regardless of the motivation (*see, e.g., Fashion Originators' Guild of America v. Federal Trade Commission*, 312 U.S. 457 (1941)). Second, even if it were found as a matter of fact that certain agencies of the United States Government had acquiesced in, or even encourage, participation in the Boycott by United States enterprises of the kind with which defendants were charged (a fact which the Government would have vigorously disputed), the United States could not be estopped from seeking prospective relief by enforcing a law expressing its sovereign and public interest (*see, e.g., Pan American Co. v. United States*, 273 U.S. 456 (1927)). Finally, as to the third principal defense, foreign sovereign compul-

sion and act of state) the Government would have contended that foreign sovereign compulsion may not override enforcement of conflicting United States law expressing a sovereign and public interest as to conduct within the United States (*see, e.g., Sabre Shipping Co.* v. *The American President Line Ltd.*, 285 F. Supp. 949 (S.D.N.Y. 1968)) and that the act of state defense does not apply to conduct outside the territory of the state whose acts are invoked as its basis, especially where the law of that state is not the applicable law for testing the legality of the extraterritorial conduct (*see, e.g., Banco Nationale de Cuba* v. *Sabbatino*, 376 U.S. 398 (1964); *United States* v. *Sisal Sales Corp.*, 274 U.S. 268 (1927)). While the Government believes it would prevail at trial, this proposed settlement means that these issues as raised by the facts of this case will not be judicially determined in this action.

(3) EXPLANATION OF THE PROPOSED FINAL JUDGMENT AND ITS EFFECTS ON COMPETITION

This section of the C.I.S. is divided into two parts. In the first part the principal prohibitory provisions of the proposed Final Judgment, which are found in Section IV, are described and explained, followed by a similar description and explanation of specific limitations set forth in Section V. The second part will discuss the various procedural and formal provisions of the proposed Final Judgment.

(a) *The Conduct Prohibited by the Proposed Final Judgment.* The heart of this proposed Final Judgment is found in Sections IV and V. Section IV describes the conduct in which defendants may no longer engage. Section V describes five specific forms of conduct which might possibly be interpreted as falling within Section IV's prohibitions, but which the proposed Final Judgment intends to permit defendants to continue.

The framework created by Sections IV and V is designed to prohibit defendants from continuing to engage in the conduct to which the allegations of the Complaint were addressed. In paragraph 22 of the Complaint, it is alleged that, pursuant to the Arab Boycott conspiracy, defendants and Persons acting on their behalf, within the jurisdiction of the United States, did a number of things including: (i) refusing to deal with Blacklisted Persons as Subcontractors in connection with Major Construction Projects; (ii) requiring Subcontractors to refuse to deal with Blacklisted Persons on such projects where defendants were Prime Contractors; and (iii) obtaining lists and other identification of Blacklisted Persons to aid in the foregoing refusals to deal. The proposed Final Judgment specifically enjoins these practices and a number of related practices as well.

Section IV(A)

This section generally enjoins and restrains defendants from refusing to deal with United States Blacklisted Persons as Subcontractors in connection with Major Construction Projects where a defendant is acting as a Prime Contratcor or Subcontractor. The provision refers to performing, implementing or enforcing a contract, agreement, arrangement or understanding since it is only contracts, combinations or conspiracies in restraint of trade which are prohibited by Section 1 of the Sherman Act.

Section IV(A) prevents defendants from taking steps to effectuate such an agreement in the United States, but not in an Arab League Country. The focus of the Complaint in this case was that defendants be subject to United States antitrust enforcement if they did some act implementing an agreement to boycott blacklisted United States Subcontractors, even if that agreement was entered into in an Arab League County under a requirement of that country's law. Such an agreement cannot be the basis for justifying any conduct or imposing any binding obligation to perform acts in violation of this Final Judgment. When United States Prime Contractors act to prevent the use of goods or services of United States Blacklisted Persons in connection with Major Construction Projects in Arab League Countries, they implement the Arab Boycott conspiracy in United States com merce and, it follows, the Court can enjoint such conduct under the Sherman Act. This is what Section IV(A) and other provisions of the proposed Final Judgment are designed to do.

Section IV(B)

This section prevents defendants from requiring that other Persons refuse to deal with United States Blacklisted Persons in connection with Major Construction Projects. For example, defendants would not be permitted to require a Subcontractor to use only those products manufactured by a company which is not a United States Blacklisted Person. Imposing such a requirement on Subcontractors pursuant to the Arab Boycott would be yet another form of Boycott implemenation in the United States beyond the power of Arab sovereign compulsion.

Section IV(C)

This section would reach possible situations of Arab Boycott implementation not reached by Sections IV(A) and IV(B). Defendants are here enjoined from implementing the Boycott even where there is no direct contractual relationship between them and a Client or other Prime Contractor, or where they do not directly contract with Subcontractors. For example, Prime Contractors often organize separate corporations, the activities of which are limited to doing business in particular countries or areas of the world, or to building a single Major Construction Project. While the actual work is performed by the parent corporation itself or by personnel normally associated with the parent corporation, these separate corporations are the contracting parties. Thus, this proposed Final Judgment would prohibit defendants from carrying out those provisions of agreements, on behalf of a separately incorporated Arab League Country signatory, which require that the signatory refuse to deal with United States Blacklisted Persons in connection with a Major Construction Project.

Also, under this section, defendants would be prohibited from interfering with a Subcontractor which selects a United States Blacklisted Person as its own Subcontractor, or from acting in any way to review or approve a list of Persons the Subcontractor proposes to use as its own Subcontractors, for the purpose of eliminating United States Blacklisted Persons. This prohibition would apply even where the Prime Contractor is not a signatory to Subcontractor agreements between the Client or one of its agents and the Subcontractor. This is consistent with the terms of Section V(D) (see page 20 below).

Section IV (D)

Agreements in restraint of United States commerce negotiated and entered into within the United States are violations of United States law which always can be reached by our Courts, whether or not they are implemented, since the Sherman Act prohibits conspiracies in restraint of trade themselves as well as acts in furtherance of those conspiracies. *See e.g., United States* v. *Trenton Potteries Co.*, 273 U.S. 392 (1927); *United States* v. *Socony Vacuum Oil Co., Inc.*, 310 U.S. 150 (1940). Thus, defendants are specifically enjoined from negotiating and entering into agreements within the United States to refuse to deal with United States Blacklisted Persons or to require others to do so regardless of any requirement by the Arab state in which the project is located.

Section IV(E)

As United States Prime Contractors, in many instances, do not directly purchase the products of Subcontractors, this section is designed to prohibit defendants from doing anything in United States commerce which would knowingly facilitate direct enforcement of the Boycott by the Client or any other Person. Of the situations to which this provision would apply, the following occurs most frequently: The Prime Contractor selects qualified Subcontractors for a Client and then, either before or after bids are solicited, participates in the Client's decision to remove all United States Blacklisted Persons from consideration. The Client then contracts directly with the selected Subcontractor. This section would prohibit any such participation in Subcontractor selection decisions where the Client refuses to deal with United States Blacklisted Persons, and would prohibit defendants, as well, from providing any other services related to the procurement of Subcontractor goods and services. However, if the Client specifically and unilaterally selects the Subcontractor, even if according to Boycott principles, and simply directs defendants to procure the required goods or services from its choice, under Section V(C) defendants will be permitted to do so and to perform certain other procurement-related services since they will not be taking any conspiratorial action which violates antitrust law.

On some Middle East Major Construction Projects, Clients have engaged a second Prime Contractor to act as a consultant only. Such second Prime Contractor may either select the Subcontractor for the Client or participate in the Client's Subcontractor selection decision, leaving to defendants all other procurement services, such as issuance of purchase orders and inspection of Subcontractor performance, even though defendants were not involved in the selection of Subcontractors. If defendants know or have reason to know of the participation of this second Prime Contractor or any other Person in a Client's Subcontractor selection decision and that in making that decision, United States Blacklisted Persons were excluded from consideration, then Section IV(E) prohibits defendants from providing any procurement services related to the Subcontractor selection process. This is so because to do so, in the language of Section IV(E), defendants would be implementing a "contract, agreement, arrangement or understanding which provides that [a] Client boycott or refuse to deal with any United States Blacklisted Person as a Subcontractor in connection with any Major Construction Project, * * *." However, if defendants have reason to believe that a Subcontractor was "specifically and unilaterally" selected by the Client, then under Section V(C) (see pages 18–19 below), they may continue to provide procurement services.

This provision is designed to complement other provisions of Section IV, in particular Section IV(E). As Clients for Major Construction Projects in Arab League Countries become more sophisticated in the manner in which they undertake such projects, they are likely to assume some of the functions which Prime Contractors have in the past performed, especially the final selection of Subcontractors of significant services and materials. However, these Clients may well continue to require the assistance of Prime Contractors to develop lists of bidders, write the specifications furnished to bidders, actually solicit the bids, evaluate them and make a recommendation as to which Subcontractor to select on technical grounds. Under Section IV(F), defendants must not discriminate against United States Blacklisted Persons in performing any of these functions.

Section IV(F) could, as well, facilitate the opening up of Arab League Country Major Construction Project business to United States Subcontractors which are blacklisted. Under this section the bid solicitation process may, in some instances, result in the Bechtel Group recommending a Subcontractor for the Client's selection which is a United States Blacklisted Person because that Subcontractor submitted the low bid or was otherwise the best choice. A Client, operating wholly within an Arab League Country, would be free to ignore that recommendation for the sole reason that the Subcontractor was blacklisted. However, the Client would at least receive the bid of a United States Blacklisted Person—something which under present practices would not happen.

Section IV(G)

This provision involves the reverse situation from that dealt with by Section IV(F). Here it is contemplated that the Client might present the defendants with a list of possible Subcontractors for bid solicitations from which United States Blacklisted Persons have been excluded. If defendants are not permitted to add to this list the names of qualified potential bidders who are United States Blacklisted Persons, or if defendants know or have reason to know that United States Blacklisted Persons have been excluded from this list, then the services which defendants can provide to the Client are limited to making a recommendation only as to which listed Subcontractor would be the best choice. They may not then proceed to solicit bids, make a final selection from among submitted bids or even procure, in their own name or in the name of the Client, goods or services from the selected Subcontractor. By prohibiting defendants from providing normal Prime Contractor procurement services where it is clear that the Client will not even consider bids from potential Subcontractors which are United States Blacklisted Persons, the proposed Final Judgment will prevent defendants from actively aiding Clients seeking to enforce the Arab Boycott conspiracy in United States commerce.

Section IV(H)

As the Arab Boycott blacklist is the means by which this conspiracy has been implemented, this section prohibits defendants not only from using the blacklist for any purpose prohibited by Section IV, but even simply from maintaining it in the United States, in connection with Major Construction Projects in Arab League Countries. The provisions of this section apply both to blacklists and lists of approved or accepted Subcontractors from which the names of qualified United States Blacklisted Persons have been excluded. Defendants are not prevented, however, from having any copy of the blacklist in their possession, so long as it is not used to further the conduct enjoined in the proposed Final Judgment.

Section V(A)

It is a common practice in the construction industry (which is required in some Arab League Countries) that the parties provide in the prime contract that it be interpreted according to the laws of the country in which the project is located. As defendants may not be able to negotiate such clauses out of contracts for Major Construction Projects in Arab League Countries, and as such clauses cannot in themselves be made the subject of antitrust enforcement under the theory of this action, since this action focuses on their implementation, the United States has agreed to permit such clauses to be included, provided that their language, in form or substance, is limited to a simple statement of which jurisdiction's laws shall apply, provided that the import of such an agreement is limited by the conditions of this Final Judgment and, provided further, that these contracts are negotiated and signed outside the United States. The position of the Department is that entering into an agreement in the United States which incorporates by reference a body of law including Boycott statutes, if intended to bring the Arab Boycott to United States shores, falls within the Sherman Act's prohibition against conspiracies in restraint of trade. All such agreements entered into in the United States are proscribed to avoid the necessarily difficult inquiry into the intent of such language. (See the discussion at pages 7–8 and 12–13 above.)

Section V(A) was not intended, however, to permit or empower defendants to engage in any conduct, directed or authorized by such clauses, which would be in violation of the proposed Final Judgment, as the proviso at the end of the section makes clear. This provision deals solely with permissible agreements outside the United States and does not pertain to any activity by defendants within the United States.

Section V(B)

This provision recognizes that the proposed Final Judgment, like the Complaint, is directed at Arab Boycott enforcement in United States commerce. If defendants, acting outside the United States, solicit bids on an Arab League Country project from only non-Blacklisted foreign companies operating outside the United States, and specifically do not solicit bids from any United States Subcontractors, they will not be discriminating among United States Persons based on the Arab Boycott. However, if defendants solicit a bid from even one United States firm then, under Section IV(F), they must not exclude Persons from that bid solicitation because they are United States Blacklisted Persons. It would be the act of excluding United States Blacklisted Persons when bids are being solicited from other United States businesses which results in the requisite effect on United States commerce for appropriate Sherman Act application. It should be noted that under Section II(D), a United States Blacklisted Person would include either a Blacklisted Person organized under the laws of a foreign country, but which has its principal office or place of business in the United States, or a subsidiary or Affiliate of any foreign Blacklisted Person which is organized under the laws of the United States or one of its subdivisions.

Section V(C)

This section establishes what may well be the basic structure of future Subcontractor selection with respect to Major Construction Projects in Arab League Countries, if Clients there persist in observing the Boycott. Under this section, defendants will have to inform the Client that, under Sections IV(E) and IV(F), they cannot screen potential bidders for United States Blacklisted Persons and similarly cannot participate in any manner in the decision to select a Subcontractor. They can simply solicit bids from all Persons who, in defendants' professional judgment, should be invited to bid on the project. They also can study those bids independently, recommend a Subcontractor, and then proceed to procure the equipment after the Client has specifically and unilaterally made its choice from the submitted bids. The Department realizes that even this total isolation of defendants from the Client's Subcontractor determination does not prevent the Client from refusing to deal with low-bidding United States Subcontractors which are blacklisted. Rather, this provision recognizes the Client's right to determine independently the specific source of the goods or services it wishes to procure. However, at the very least, the United States Prime Contractor will no longer be doing any screening or gatekeeping.

Even though defendants will continue to be able to participate in Major Construction Projects where the Client refuses to deal with United States Subcontractors who are blacklisted, Sections IV(E), IV(F) and V(C) should have a beneficial effect on competition in that United States Blacklisted Persons will be able to, at least, bid upon the major business opportunities relating to projects in Arab League Countries and, perhaps, on economic grounds, even to convince a few Arab purchasers to relax their adherence to the Boycott. Further, if a Client seeks to use defendants' procurement expertise in making its final Subcontractor selection decision, the Client must agree not to reject a bidder solely because that bidder is a United States Blacklisted Person. Otherwise the defendants would be participating in the Boycott process.

Section V(D)

In some Major Construction Projects, Clients independently procure the goods and services of Subcontractors leaving to the Prime Contractor only design and construction functions. Where the Client has truly acted independently, without defendants' participation, in soliciting bids, evaluating those bids, and selecting a Subcontractor, defendants have not enforced the Arab Boycott conspiracy against United States Blacklisted Persons, no matter what the source or basis of the Client's selection of Subcontractors. Thus, this provision permits defendants to continue to perform construction, design and other functions on Major Construction Projects in such a situation. However, to assure that defendants remain totally removed from the Boycott influenced Subcontractor selection process, a proviso reaffirms the affirmative requirements of Section IV(E) (see pages 13–15 above) by prohibiting defendants from performing any inspection services in the United States where the object of such inspection is to determine whether Subcontractors are United States Blacklisted Persons.

Section V(E)

This section simply assures that defendants will be able to continue to engage in the normal process of soliciting competitive bids, evaluating those bids and making a recommendation based on professional judgment and normal criteria, where such practices are permitted elsewhere within Sections IV and V. Defendants can perform these normal functions where a Client has proposed a list of Subcontractors (even though defendants arguably knew or may have known that no United States Blacklisted Persons were included), provided defendants are not limited to soliciting bids from only those Subcontractors suggested by the Client. As Section IV(F) requires, they must solicit bids, as well, from qualified United States Subcontractors who are blacklisted.

(b) *Procedural Provisions. The Stipulation.*—The United States and defendants have stipulated that the proposed Final Judgment, in the form negotiated by the parties, may be entered by the Court at any time after compliance with the procedures of the

APPA, provided that the United States has not withdrawn its consent. This stipulation also provides that there has been no admission by either party with respect to any issue of fact or law.

Section I

Section I of the proposed Final Judgment is a statement by the Court that it has jurisdiction over the subject matter and the parties and that the Complaint states a cause of action under Section 1 of the Sherman Act.

Section III

The proposed Final Judgment applies to the defendants and each of their respective directors, officers, agents, members, employees and subsidiaries, and to all persons in active concert or participation with defendants, who received actual notice that the proposed Final Judgment has been entered. It would also apply to successors and assigns of Bechtel Corporation or Bechtel Incorporated, of which all companies of the Bechtel Group are subsidiaries.

Section VI

This section and Section VII would entitle defendants to a modification of the proposed Final Judgment in certain specific instances. Under Section VI, defendants would be entitled to a modification permitting them to exercise rights or benefits with respect to business in Arab League Countries that others, not subject to the proposed Final Judgment, may be entitled to exercise or enjoy, where such rights are created by an Act of Congress or an International Agreement. "International Agreement," as defined by Section II(J), is limited to formal treaties, Presidential agreements and other agreements entered into on behalf of the United States which are sufficiently important to require subsequent Congressional approval. Further, such rights or benefits are limited only to those which defendants could enjoy consistent with antitrust law. This provision, while unusual in antitrust consent judgments, recognizes that the Arab Boycott involves issues other than those of antitrust enforcement which may be the subject of overriding diplomatic or legislative action.

Section VII

As it is conceivable that the United States may seek to enforce antitrust law against other United States Prime Contractors for Boycott-related violations similar to those alleged in the Complaint in this case, Section VII was included to protect defendants from being placed at a competitive disadvantage where another such case is terminated by a consent judgment more favorable than this proposed Final Judgment. Defendants would have to show that they would, in fact, necessarily be placed at a competitive disadvantage with respect to Major Construction Projects by being held to the terms of this proposed Final Judgment.

Section VIII

The proposed Final Judgment also affords the United States a method for monitoring compliance with its provisions by inspecting documents and records in control of defendants and by conducting interviews with officers, directors, employees and agents of each defendant, provided that counsel may be present at any such interviews. Defendants may also be required to report to the plaintiff in writing under oath with respect to any matters contained in the proposed Final Judgment. Section VIII further gives certain specified documents or other information obtained pursuant to this section defendants the right to receive notice before are disclosed to other persons by the Department. This applies only where documents are pre-marked and are of the type described in Rule 26(C)(7) of the Federal Rules of Civil Procedure, or are diplomatically sensitive. Such notice need not be given where the disclosure contemplated would be (i) to a duly authorized representative of the Executive Branch of the Federal Government, (ii) in a Grand Jury proceeding or (iii) in any legal proceeding where a defendant is a party. This provision, however, gives defendants no automatic right to prevent or limit disclosure. Once they receive notice, defendants will have the option of making an application to the Court (pursuant to Section IX) for a protective order, which the Department is free to oppose.

Section IX

Under this section the Court will retain jurisdiction for the purpose of enabling any of the parties to the Final Judgment to apply at any time for any order as may be necessary for the interpreting and carrying out of the Final Judgment or its modification or enforcement, for the punishing of violations of the Final Judgment, or for the purpose of enabling any defendant to make objections arising out of Section VIII.

Section X

The proposed Final Judgment provides that it shall be terminated twenty years from the date of its entry. This does not mean defendants will then be free to resume the activities upon which the Complaint was based.

Section XI

Finally, this Section constitutes a determination that entry of the proposed Final Judgment is in the public interest. Under the provisions of Section 2(e) of the APPA (15 U.S.C. § 16(e)), entry is conditioned upon this Court's determination that it is in the public interest.

(4) EFFECTS ON PRIVATE PLAINTIFFS

Section 4 of the Clayton Act (15 U.S.C. § 15) provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages such person has suffered, as well as costs and reasonable attorney's fees. The entry of the proposed Final Judgment will not have any effect on the right of any potential private plaintiff who claims to have been damaged by the alleged violation to sue for monetary damages or any other legal or equitable remedies. However, this Final Judgment may not be used as prima facie evidence in private litigation pursuant to Section 5(a) of the Clayton Act (15 U.S.C. § 16(a)).

(5) PROCEDURES AVAILABLE FOR MODIFICATION OF THE PROPOSED CONSENT JUDGMENT

The proposed Final Judgment is subject to a stipulation between the United States and the defendants providing that the United States may withdraw its consent to the proposed Final Judgment until such time as the Court has found that its entry is in the public interest. The proposed Final Judgment provides, in Section IX, for retention of jurisdiction of this action by the Court to permit, among other things, the parties thereto to apply to the Court for such orders as may be necessary or appropriate for its modification.

As provided in the APPA, any person wishing to comment upon the proposed Final Judgment may, for a 60-day period prior to the effective date of the proposed Final Judgment, submit them in writing to the United States Department of Justice, Joel Davidow, Chief, Foreign Commerce Section, Antitrust Division, Washington, D.C. 20530. The comments and the Department's response to them will be filed with the Court and published in the FEDERAL REGISTER. The Department of Justice will thereafter evaluate any and all such comments and determine whether there is any reason for withdrawal of its consent to the proposed Final Judgment.

(6) ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT ACTUALLY CONSIDERED BY THE UNITED STATES

The United States gave active consideration to several alternative proposals for final relief in this proceeding. These alternative proposals fall into two general categories: (a) full trial on the merits or motion for summary judgment, either of which would have led to a litigated judgment imposed by the Court, or (b) a proposed final judgment with provisions different from, or not included in the proposed Final Judgment being submitted with this C.I.S.

(a) *A Litigated Judgment.* As in any antitrust case, the Department had the alternative of rejecting all settlement proposals and proceeding to a determination of the lawsuit by the Court on the merits. This may have been achieved either by a full evidentiary trial or by a motion for summary judgment based on facts not in dispute. These alternatives are never finally rejected until the Department is able to examine and compare a proposed judgment against the relief which might have been obtained after a successful determination by the Court of the issues in dispute. Here it was determined that no significant additional relief could have been obtained in a litigated judgment. Accordingly, there was no justification for undertaking the risks and costs of litigation.

(b) *Alternative Provisions for a Proposed Final Judgment.* Throughout its negotiations with defendants, the Department considered various provisions not found in the proposed Final Judgment and different versions of the provisions which have been included. While numerous proposals have been considered and rejected for grammatical, technical and legal reasons, only those provisions discussed below were given serious consideration as alternatives to the language finally agreed to.

Section IV

The United States initially considered proposals regarding the principal prohibitory section of the proposed Final Judgment, Section IV, which did not include the present subsections, IV(F), IV(G) and IV(H). Section IV(F) and IV(G) were added, as is stated in Part 3 of this C.I.S., to reach particular aspects or methods of Subcontractor selection.

The original proposal for Section IV(H) considered by the United States would have prohibited defendants from obtaining, maintaining, communicating or using, in connection with any Major Construction Project, the two types of lists described in this provision. This broad alternative was rejected since the Complaint charged only using the blacklist to aid in the refusal to deal with United States Blacklisted Persons. This Section was further limited to prohibit only maintenance of the described lists in the United States since: (i) it is the enforcement of the Boycott in the United States which is the offense charged; and (ii) defendants may be required to maintain such lists within the Arab League Country in which they are doing business.

Section V

The original proposal the United States considered did not include any of the provisions of Section V. In general, the United

States agreed to include these limitations because a judgment without them would have jeopardized the continued conduct of any business by defendants (and possibly others) in Arab League Countries, and would have forced conduct by the defendants which went beyond the theory of the case. Without these provisions, some of the broad prohibitions of Section IV could have been interpreted to require defendants to refrain from acting as Prime Contractors wherever they had reason to believe that the Arab Boycott was a factor in the selection of any Person to participate in Major Construction Projects—a fact that can be reasonably inferred with respect to every Major Construction Project in certain Arab League Countries, including those where the Bechtel Group does extensive business. Further, these provisions may have appeared to impinge upon the sovereignty of Arab League Countries over their internal affairs with a possible result that, instead of opening up this commerce to United States Blacklisted Persons, it would be closed off entirely for all United States Prime Contractors and Subcontractors. This would have been beyond the purpose and allegations of the Complaint.

The following alternative or additional proposals were considered with respect to individual subsections of Section V.

Section V(A)

The United States considered an alternative which would have limited this section's scope to contracts, agreements and purchase orders which provide that defendant abide by the laws of the country in which the Major Construction Project is located only as to its activities within that country. As explained in Part 3 of this C.I.S., it is standard practice in the construction industry to provide in contracts that the law of the locality in which a project is located shall govern the performance of such contracts wherever that performance takes place. Thus, if defendants were building an oil refinery in Texas, it would be common to provide that the state law of Texas would apply, or, if they were building a pipeline in Venezuela, the law of that country would be stipulated. As long as there is no specific reference to the Arab Boycott, or no inclusion of a specific Boycott clause, the United States believes it is not necessary to create a special exception to the normal construction industry practice for projects in Arab League Countries.

As it originally appeared in the proposed Final Judgment, this Section did not include the proviso stating that defendants were not otherwise relieved from any specific prohibitions or obligations of the judgment. The original proposal, while intended to apply only to the language of contracts, agreements or purchase orders and not defendants' conduct or performance under them, was believed to create a potential ambiguity which could permit defendants to engage in Boycott enforcement in the United States because the laws of the Arab League Country in which the project was located would invariably include specific statutes requiring Boycott enforcement as to business conducted in that country. The proviso eliminates any such ambiguity.

Section V(B)

An alternative provision considered included a clause at the end of Section V(B) which would have denied to defendants protection where they were engaging in a concerted refusal to deal with all United States Persons. Since the investigation uncovered no evidence of such a conspiracy, and the Complaint only dealt with what uncovered, a refusal to deal with United States Blacklisted Persons, this clause was not required. If it is found in the future that defendants are refusing to deal with all United States Subcontractors for all of its Major Construction Projects in Arab League Countries in order to avoid dealing with United States Blacklisted Persons, the Department will have to make an independent determination as to the appropriate course of action.

Additional Section V Provision Considered

An additional provision of Section V which was considered would have permitted defendants to insert in their agreements with Subcontractors a clause providing that, if that Subcontractor's goods or personnel were refused admittance into the country in which the Major Construction Project was located due to the laws, regulations, policies or official acts of that country, the Subcontractor would assume the risks of loss and hold defendants harmless. Another alternative version of this provision would have required, where such a clause was included, that defendants make a good faith effort to obtain the admission of the Subcontractor's goods or personnel into the project country. It was agreed that the question of who shall bear the cost of any failure or inability of the Subcontractor's goods or personnel to gain admission into the project country should be left either to general principles of law or contractual negotiations between Subcontractors and the defendants. Including this provision in the proposed Final Judgment was viewed as creating unnecessary inflexibility for all parties: Subcontractors, defendants and the Department; and it was agreed that the wiser course would be to handle each situation on a case-by-case basis. The Department does not believe that the defendants are necessarily obligated to assume all risks of loss to be in compliance with this proposed Final Judgment.

Section VII

As originally considered by the United States, this section would have empowered the Court to modify the Final Judgment to conform to any judgment entered in any other antitrust case, arising out of the Arab Boycott, brought by the Department of Justice, even if the United States lost that case and the judgment entered discharged that defendant from any liability. This provision was not acceptable because of the vagaries of litigation and because special facts might result in the loss of other Arab Boycott cases while the Department's legal theory remained unaffected. Consequently, the right of defendants to a modification of the Final Judgement was limited only to those instances where a consent judgment was entered in a similar case. At the same time a proviso was added making it clear that all parties retained their right to petition the Court for a modification, pursuant to the general jurisdictional grant reserved to the Court under Section IX, in light of the results of a litigated case.

Section VIII

The United States considered an alternate version of this clause which did not include the second sentence of the last paragraph of the section providing for ten days' notice to defendants before the disclosure, under some circumstances, of certain pre-designated material obtained pursuant to this section. As the additional language created no prohibition to the disclosure otherwise permitted under the section, but simply set up a notice procedure, the Department agreed to its inclusion on the grounds of fairness.

Early proposals for a Final Judgment in this case did not include a date for the expiration of its provisions. Such a perpetual judgment was rejected because of the volatile nature of Middle East relationships. Neither the Department nor the defendants should be forever wedded to a judgment based upon 1977 facts and the present statutory and decisional state of antitrust law. Automatic termination of the judgment would permit the parties to adjust their positions accordingly at that time.

Additional Separate Sections Not Included in the Proposed Final Judgment

The United States originally considered including in the proposed Final Judgment provisions which would have required the defendants to file with the Department of Justice extensive and detailed reports of all phases of the Subcontractor selection process if defendants entered into any contract, outside the United States, which included a clause requiring them or their Subcontractors to refuse to deal with United States Blacklisted Persons. As with this proposed Final Judgment, this earlier version would not have specifically prohibited *entering into* such contracts outside the United States so long as, pursuant to such clauses, defendants did not refuse to deal, or require others to refuse to deal with United States Blacklisted Persons. Also included was a provision requiring defendants to use "good faith efforts" to attempt to gain the entry of the products of Blacklisted Persons selected as Subcontractors into Arab League Countries.

These provisions were rejected in favor of the more standard and general visitation provisions (Section VIII of the proposed Final Judgment) since they would have required the Antitrust Division to become involved extensively in the regulation of defendants' daily business affairs. This would be a highly undesirable precedent and would create an undue strain on the Antitrust Division's resources. It might also so severely increase the cost to defendants in doing business in the Middle East that they would be placed at a competitive disadvantage with respect to other United States and foreign contractors—a result inconsistent with the Department's objective, under the antitrust laws, to promote competition. Further, when the prohibitions and obligations of Section IV were made more specific, and Section V's narrow and limited exceptions were added, it became unnecessary to require defendants to submit to detailed regulatory-type observation of their affairs. The Department's power under Section VIII should be sufficiently broad to meet any need for discovery into the conduct of defendants on Arab League Country Major Construction Projects which the Department could reasonably have under its judgment enforcement and monitoring responsibilities.

Finally, any requirement that defendants make a good faith effort to achieve the entry of the goods or personnel of selected blacklisted Subcontractors was similarly rejected as impractical and not capable of policing. It is possible that this requirement would have placed the Department of Justice, a law enforcement agency, in the anomalous position of requiring defendants to engage in conduct subject to another country's sovereign jurisdiction which violated the laws of that country.

(7) DETERMINATIVE DOCUMENTS

There are no materials or documents which the Government considered determinative in formulating this proposed Final

Judgment. Therefore, none are being filed with this document.

Respectfully submitted,

Dated: Washington, D.C., January 10, 1977.

DOUGLAS E. ROSENTHAL,
DONALD A. KAPLAN,

[FR Doc.77-1673 Filed 1-18-77;8:45 am]

Law Enforcement Assistance Administration

NATIONAL INSTITUTE OF LAW ENFORCEMENT AND CRIMINAL JUSTICE

Meeting

Notice is hereby given that the Advisory Committee of the National Institute of Law Enforcement and Criminal Justice, Law Enforcement Assistance Administration, will meet on February 9, 1977 from 9:15 a.m. to 5:00 p.m. at the Twin Bridges Marriott Motor Hotel, U.S. 1 and I-95, Arlington, Virginia.

The major topic of discussion will concern long-range planning for Institute-sponsored research and evaluation.

The meeting will be open to the public.

For further information, please contact Gerald M. Caplan, National Institute of Law Enforcement and Criminal Justice, Law Enforcement Assistance Administration, U.S. Department of Justice, 633 Indiana Avenue, N.W., Washington, D.C. 20531. (202) 376-3606.

JAY BROZOST,
Attorney-Advisor,
Office of General Counsel.

[FR Doc.77-1727 Filed 1-18-77;8:45 am]

NATIONAL SCIENCE FOUNDATION

ADVISORY PANEL FOR NEUROBIOLOGY

Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Advisory Panel for Neurobiology.
Date and Time: February 10-11, 1977; 9:00 am each day.
Place: Room 338, National Science Foundation, 1800 G Street, NW, Washington, D.C. 20550.
Type of Meeting: Closed.
Contact Person: Dr. N. Herbert Spector, Program Director for Neurobiology, Room 320, National Science Foundation, Washington, D.C. 20550, Telephone (202) 634-4036.
Purpose of Panel: To provide advice and recommendations concerning support for research in neurobiology.
Agenda: To review and evaluate research proposals and projects as part of the selection process for awards.
Reason for Closing: The proposals and projects being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries; and personal information concerning individuals associated with the proposals and projects. These matters are within exemptions (4) and (6) of 5 U.S.C. 552(b), Freedom of Information Act. The rendering of advice by the panel is considered to be a part of the Foundation's deliberative process and is thus subject to exemption (5) of the Act.
Authority to close Meeting: This determination was made by the Committee pursuant to provisions of section 10(d) of Pub. L. 92-463. The Committee Management Office was delegated the authority to make determinations by the Director, NSF, on February 11, 1976.

M. REBECCA WINKLER,
Acting Committee Management Officer.

JANUARY 14, 1977.

[FR Doc.77-17-19;Filed 1-18-77;8:45 am]

POSTAL RATE COMMISSION

VISITS TO POSTAL FACILITIES

Washington, D.C.

JANUARY 13, 1977.

Notice is hereby given that employees of the Postal Rate Commission will be visiting Postal Service facilities on the dates indicated for the purpose of acquiring general background knowledge of postal operations.

No particular matter at issue in contested proceedings before the Commission nor the substantive merits of a matter that is likely to become a particular matter at issue in contested proceedings before the Commission will be discussed.

Reports of the visits will be on file in the Commission's docket room.

Place of visit	*Date of visit*
20th Street Station, Washington, D.C.	Jan. 26 and 27, 1977.
Temple Hills Station Washington, D.C.	

By direction of the Commission.

JAMES R. LINDSAY,
Secretary of the Commission.

[FR Doc.77-1674 Filed 1-18-77;8:45 am]

SMALL BUSINESS ADMINISTRATION

SPOKANE DISTRICT ADVISORY COUNCIL

Public Meeting

The Small Business Administration Spokane District Advisory Council will meet at 9:00 a.m., Friday, February 4, 1977, in Room 485, U.S. Court House Building, West 920 Riverside Avenue, in Spokane, Washington, to discuss such business as may be presented by members, the staff of the Small Business Administration, or others attending. For further information, write or call William S. Schumacher, Small Business Administration, U.S. Court House, Room 651, P.O. Box 2167, Spokane, Washington 99210, (509) 456-3781, FTS 439-3781.

Dated: January 14, 1976.

HENRY V. Z. HYDE, Jr.,
Deputy Advocate for Advisory Councils.

[FR Doc.77-1834 Filed 1-18-77;8:45 am]

DEPARTMENT OF STATE

[Public Notice 512]

DISCLOSURE OF MARKET-SENSITIVE INFORMATION

Proposed Guidelines

The Department of State plans to issue internal guidelines to its personnel concerning the release of market-sensitive information. Because of the potential effect of these guidelines on the general public, as well as on individual members of the public who might approach the Department directly for information which is determined to be of this kind, the proposed guidelines are being published in the FEDERAL REGISTER for public comment prior to being promulgated in Volume 10, Economic Affairs, Foreign Affairs Manual.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted to the Assistant Legal Adviser for Economic and Business Affairs, Department of State, 2201 C Street, NW., Washington, D.C. 20520. All comment received on or before February 18, 1977, will be considered.

760 DISCLOSURE OF MARKET-SENSITIVE INFORMATION

761 DEFINITION

Market-sensitive information is information of a nature such that its public release would be likely to have an immediate effect on relevant trading markets, such as the Commodities Foreign Currency or Securities Exchanges. Such information as crop forecasts or failures or agreements entered into in the economic-trade-commodities field may be of such significance that its release would immediately affect trading in specific commodities, currencies or stocks. Similarly, information as to balance-of-payments performance or revaluations of currency may be important enough once known to affect currency markets. Information as to a specific enterprise, such as pending expropriation or the fact that a lawsuit may be brought against it by the government, could affect trade in the securities of that company.

762 DEPARTMENT OF STATE RESPONSIBILITIES AND OBJECT OF DIRECTIVE

Department and Foreign Service officers in all areas can expect to acquire market-sensitive information in the normal course of their duties. Such information will not necessarily be classified. It is the responsibility of all officers (especially those whose duties entail public press briefings, providing background statements to the press, dealing with freedom of information requests, or frequent contact with the public) to make every effort to insure that they not release market-sensitive information in such a manner as to unduly disturb trade in the relevant market or so as to provide private, selective notification of that information. To assist officers in fulfilling their responsibilities, guidelines are set forth below.

763 DETERMINATION OF WHETHER INFORMATION IS MARKET-SENSITIVE

If an officer is not certain whether particular information which is to be released either selectively or to the public at large is market-sensitive, the officer should direct the question to the office in the Department which is best equipped to determine the significance of the information, such as the Office of International Commodities (EB/ORF/ICD), for commodity information, the Office of Food Policy (EB/ORF/OFD), for agricultural information, the Office of Monetary Affairs (EB/IFD/OMA), for foreign currency information, the Office of Investment Affairs (EB/IFD/OIA), for information relating to investment matters. It will not always be possible for officers in these offices to make a final determination of the matter, as this might require a more complete appraisal of the information in the context of the market in general and perhaps the commodity or security in particular than the officer can be expected to undertake. In such cases, the economic officer should consult the relevant government agency or agencies (such as the SEC, Department of Agriculture, Commodity Futures Trading Commission, Treasury). The offices to contact are as follows:

SEC—Directorate of Economic and Policy Research.
Agriculture—Director of Agricultural Economics.
Treasury—Office of Securities Markets Policy.
Commodity Futures Trading Commission—Office of Intergovernmental Affairs.

Officers should, of course, use their judgement in deciding whether any additional agencies should be consulted in any particular situation.

764 RELEASE OF MARKET-SENSITIVE INFORMATION

Market-sensitive information should be released in such a manner as to: (1) Limit to the greatest extent possible any disturbance in the relevant market; and (2) attempt to assure that all interested parties and the public receive access to such information at the same time, so as to prevent a few privileged parties from obtaining a trading advantage. Therefore, market-sensitive information should, as a general matter, only be released after the colse of any relevant trading market for the day. The information should then be released to news media in a manner such as to ensure the broadest possible dissemination, for example, by utilizing the Dow Jones and Reuters services. Where it is impossible to await the close of the market and it is considered that the information would have a significant impact on trading, the Department officer should coordinate with the SEC or other appropriate agency before the information is released, as certain agencies such as the SEC and Agriculture have established procedures to effect a suspension of trading in the relevant commodity or security.

While release of market-sensitive information to selected persons is to be avoided if at all possible, in certain instances (e.g., release of documents in response to a freedom of information request) such release may be unavoidable. In such instances, the Department officer should take concurrent steps (in cooperation with other agencies, if appropriate) to ensure the public dissemination of the information, thereby avoiding the possibility of the selected recipient gaining trading advantage.

Dated: January 10, 1977.

MONROE LEIGH,
Legal Adviser.

[FR Doc.77-1675 Filed 1-18-77;8:45 am]

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

CITIZENS' ADVISORY COMMITTEE ON TRANSPORTATION QUALITY

Committee Renewal

Notice is hereby given that the Citizens' Advisory Committee on Transportation Quality is being renewed effective January 5, 1977. The Secretary of Transportation has determined that renewal of this Committee is in the public interest in connection with the performance of duties imposed on the Department of Transportation by law.

This notice is given pursuant to section 9(a)(2) of the Federal Advisory Committee Act.

Issued in Washington, D.C., on January 12, 1977.

JUDITH T. CONNOR,
Assistant Secretary for Environment, Safety, and Consumer Affairs.

[FR Doc.77-1649 Filed 1-18-77;8:45 am]

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Treasury Department Order No. 221-3 (Revision 2)]

TRANSFER OF FUNCTIONS TO THE INTERNAL REVENUE SERVICE

By virtue of the authority vested in me as Secretary of the Treasury, including the authority in Reorganization Plan No. 26 of 1950, it is ordered that:

1. There is hereby transferred to the Commissioner, Internal Revenue Service those functions, powers and duties of the Director of the Bureau of Alcohol, Tobacco and Firearms arising under laws relating to taxes on wagering and the provisions of Treasury Department Order 221-3.

2. All regulations prescribed, all rules and instructions issued, and all forms adopted for administration of the wagering tax laws in effect or in use on the date of this Order shall continue in effect or in use until superseded or revised by the Commissioner.

3. To the extent that any action taken by the Director of the Bureau of Alcohol, Tobacco and Firearms, or his delegates, under Treasury Department Order 221-3, before the effective date of this Order may require ratification, such action is hereby ratified.

4. Each wagering tax case or investigation open or otherwise in process as of the date of this Order shall be pursued to conclusion by the agency processing the same on that date.

5. This Order is effective immediately. All delegations in consistent with this Order are revoked.

Dated: January 14, 1977.

WILLIAM E. SIMON,
Secretary of the Treasury.

[FR Doc.77-1912 Filed 1-18-77;8:45 am]

TUNERS (OF THE TYPE USED IN CONSUMER ELECTRONIC PRODUCTS) FROM JAPAN

Tentative Determination To Modify or Revoke Dumping Finding

A finding of dumping with respect to tuners (of the type used in consumer electronic products) from Japan was published as Treasury Decision 70-257 in the FEDERAL REGISTER of December 12, 1970 (35 FR 18914).

Subsequently, the dumping finding was modified to exclude the subject tuners produced and/or sold by the following companies:

I. Matsushita Electrical Co. Ltd., and Matsushita Electric Trading Co., Ltd. in T.D. 75-80 (40 FR 14591);
II. Victor Company of Japan Ltd. in T.D. 75-80 (40 FR 14591);
III. Tokyo Shibaura Electric Co., Ltd. T.D. 76-143 (41 FR 21185);
IV. Sanyo Electric Co., Ltd., and Sanyo Electric Trading Co., Ltd. in T.D. 76-215 (41 FR 32421); and
V. Sony Corporation of Japan in T.D. 77-26 (42 FR

After due investigation, it has been determined tentatively that the subject tuners from Japan are no longer being, nor likely to be sold in the United States at less than fair value within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160 *et seq.*).

STATEMENT OF REASONS ON WHICH THIS TENTATIVE DETERMINATION IS BASED

The investigation indicated that: 1. Sales of subject tuners by Alps Electric Co., Ltd., accounting for approximately 83.3 percent of all subject tuner sales from Japan to the United States during the years 1970 through 1975, have not, with the exception of certain sales for which dumping duties in a *de minimis* amount were found to accrue, been made at less than fair value for a 2-year period since the finding of dumping. Written assurances have been given by Alps that future sales of subject tuners to the United States will not be made at less than fair value.

2. Sales of subject tuners by Waller Japan K.K. accounting for roughly 6.2 percent of all subject Japanese tuner sales to the United States during the years 1970 through 1975, have not been made at less than fair value for a 2-year period since the finding of dumping. Written assurances have also been given that future sales by Waller Japan K.K. to the United States will not be made at less than fair value.

3. All of the above firms, for which the finding has been modified, together with Alps Electric Co. Ltd., and Waller Japan K.K., account for approximately 96.4 percent of all subject tuners from Japan sold to the United States during the years 1970 through 1975. Only *de minimis* dumping duties have been assessed on all such shipments from the Japanese firms as a whole, during a 2-year period since the findings of dumping.

Accordingly, notice is hereby given that the Department of the Treasury intends to revoke the finding of dumping with respect to tuners (of the type used in consumer electronic products) from Japan.

In accordance with § 153.40, Customs Regulations (19 CFR 153.40), interested persons may present written views or arguments, or request in writing that the Secretary of the Treasury afford an opportunity to present oral views.

Any request that the Secretary of the Treasury afford an opportunity to present oral views should be addressed to the Commissioner of Customs, 1301 Constitution Avenue, Northwest, Washington, D.C. 20229, in time to be received by his office on or before January 31, 1977. Such request must be accompanied by a statement outlining the issues, wished to be discussed.

Any written views or arguments should likewise be addressed to the Commissioner of Customs in time to be received by his office on or before February 18, 1977.

This notice is published pursuant to § 153.44(c) of the Customs Regulations (19 CFR 153.44(c)).

Dated: January 13, 1977.

JERRY THOMAS,
Under Secretary of the Treasury.

[FR Doc.77-172, Filed 1-18-77;8:45 am]

Internal Revenue Service

[Order No. 112 (Rev. 4)]

DISTRICT DIRECTOR OF INTERNAL REVENUE

Authority To Issue Determination Letters Relating to Employee Plans Matters

Pursuant to authority vested in the Commissioner of Internal Revenue by Treasury Department Order No. 150-37, dated March 17, 1955, there is hereby delegated to the District Director of Internal Revenue for each of the Key Districts for Employee Plans and Exempt Organizations matters the authority to:

(1) Issue determination letters involving the provisions of sections 401, 403(a), 405, and 501(a) of the Internal Revenue Code of 1954 with respect to:

(a) Initial qualification of stock bonus, pension, profit-sharing, annuity, and bond purchase plans;

(b) Initial exemption from Federal income tax under section 501(a) of trusts forming a part of such plans, provided that the determination does not involve application of section 502 (feeder organizations) or section 511 (unrelated business income), or the question of whether a proposed transaction will be a prohibited transaction under section 503;

(c) Compliance with the applicable requirements of foreign situs trusts as to taxability of beneficiaries (section 402(c)) and deductions for employer contributions (section 404(a)(4)); and

(d) Amendments, curtailments, or terminations of such plans and trusts.

(2) With respect to applications for determination received by the Internal Revenue Service prior to the effective date of this Delegation Order, issue determination letters involving the provisions of section 408(c) of the Internal Revenue Code of 1954 with respect to exemption from Federal income tax under section 408(e) of trusts creating individual retirement accounts.

(3) Issue determination letters with respect to whether a plan constitutes an employee stock ownership plan as contemplated in section 46(a)(1)(B) of the Internal Revenue Code of 1954.

(4) Issue modifications or revocations of determination letters described above.

(5) Redelegate this authority as follows:

(a) With respect to issuance and modification of determination letters, not below Internal Revenue Agent and Tax Law Specialist, GS-12, provided such individual is a person other than the initiator.

(b) With respect to revocation of determination letters, not below Chief, Employee Plans and Exempt Organizations Division.

Delegation Order No. 112 (Rev. 3), issued November 19, 1975, is hereby superseded.

Date of issue: January 14, 1977.

Effective date: January 19, 1977.

DONALD C. ALEXANDER,
Commissioner.

[FR Doc.77-2064 Filed 1-18-77;11:16 am]

INTERSTATE COMMERCE COMMISSION

[Notice No. 307]

ASSIGNMENT OF HEARINGS

JANUARY 14, 1977.

Cases assigned for hearing, postponement, cancellation or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the Official Docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested.

MC 73165 (Sub-No. 390), Eagle Motor Lines, Inc., now assigned March 4, 1977, at Dallas, Tex. is canceled and application dismissed.

MC 141097 (Sub-No. 4), Cal-Tex, Inc., now assigned March 8, 1977, at Los Angeles, Calif. is canceled and application dismissed.

MC 125076 (Sub-No. 8), Superior Bus Service, Inc., DBA Travelines United, application dismissed.

MC 141804 (Sub-No. 24), Western Express, Division of Interstate Rental, Inc., application dismissed.

MC 141663, Robert E. Moore, d.b.a. Moore Trucking Company, now being assigned February 15, 1977 (4 days) at Greensboro, N.C., in a hearing room to be later designated.

Ex Parte No. 315 (Sub-No. 1), In the Matter of Kenneth R. Davis, now being assigned February 23, 1977 at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 142174, Loiselle Transport Limited, now assigned February 8, 1977 at Helena, Montana, will be held in The Conference Room Montana Public Service Commission, 1227 11th Avenue.

MC 128273 (Sub-No. 234), Midwestern Distribution, Inc., now being assigned March 8, 1977 (2 days) at Los Angeles, California, in Room 8041 Federal Building, 300 North Los Angeles Street.

ROBERT L. OSWALD,
Secretary.

[FR Doc.77-1796 Filed 1-18-77;8:45 am]

[I.C.C. Order No. 16; Service Order No. 1252]

BALTIMORE AND OHIO RAILROAD CO.

Rerouting or Diversion of Traffic

In the opinion of Joel E. Burns, Agent, The Baltimore and Ohio Railroad Company (B&O) is unable promptly to transfer shipments of coal from rail to water because of an accumulation of cars awaiting unloading at its coal unloading piers at Baltimore, Maryland, caused by adverse weather conditions, resulting in excessive car delays and serious shortages of cars at the mines.

It is ordered, That: (a) The B&O being unable promptly to transfer shipments of coal from rail to water because of an accumulation of cars awaiting unloading at its coal unloading piers at Baltimore, Maryland, caused by adverse weather conditions; that carrier is hereby authorized to divert to Newport News, Virginia, via any available route, for unloading at the coal piers located at that point.

(b) *Concurrence of receiving roads to be obtained.* The B&O, when diverting traffic under this order shall receive the concurrence of other railroads to which such traffic is to be diverted, before the diversion is ordered.

(c) *Notification to shippers.* The B&O, when diverting cars in accordance with this order shall notify each shipper at the time each car is diverted and shall furnish to such shipper the new routing provided under this order.

(d) Inasmuch as the diversion of traffic is deemed to be due to carrier disability, the rates applicable to traffic diverted by said Agent shall be the rates which were applicable at the time of shipment on the shipments as originally routed.

(e) In executing the directions of the Commission and of such Agent provided for in this order, the common carriers involved shall proceed even though no contracts, agreements, or arrangements now exist between them with reference to the division of the rates of transportation applicable to said traffic. Divisions shall be, during the time this order remains in force, those voluntarily agreed upon by and between said carriers; or upon failure of the carriers to so agree, said divisions shall be those hereafter fixed by the Commission in accordance with pertinent authority conferred upon it by the Interstate Commerce Act.

(f) *Effective date.* This order shall become effective at 2:00 p.m., January 3, 1977.

(g) *Expiration date.* This order shall expire at 11:59 p.m., January 31, 1977, unless otherwise modified, changed, or suspended.

It is further ordered, That this order shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association; and that it be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., January 3, 1977.

INTERSTATE COMMERCE COMMISSION,
JOEL E. BURNS,
Agent.

[FR Doc.77-1997 Filed 1-18-77;8:45 am]

[AB 19 (Sub-No. 28)]

BUFFALO, ROCHESTER AND PITTSBURGH RAILWAY CO. AND BALTIMORE AND OHIO RAILROAD CO.

Abandonment Between Ashford and Leroy, Including Silver Lake Branch Between Silver Lake Junction and Chace, in Genesee, Wyoming, Allegany and Cattaraugus Counties, New York

JANUARY 5, 1977.

The Interstate Commerce Commission hereby gives notice that: 1. The Commission's Section of Energy and Environment has prepared an environmental threshold assessment survey in the above-entitled proceeding in which it was concluded that the proceeding does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321, et seq. 2. A notice setting forth this conclusion as served November 9, 1976, and no substantive comments in opposition, of an environmental nature, have been received by the Commission in response to said notice. 3. This proceeding is now ready for further disposition within the Office of Hearings or the Office of Proceedings as appropriate.

ROBERT L. OSWALD,
Secretary.

[FR Doc.77-1795 Filed 1-18-77;8:45 am]

[I.C.C. Order No. 8, Amdt. 1; Service Order No. 1252]

LOUISVILLE AND NASHVILLE RAILROAD CO.

Rerouting or Diversion of Traffic

Upon further consideration of I.C.C. Order No. 8, (Louisville and Nashville Railroad Company) and good cause appearing therefor:

It is ordered, That:

I.C.C. Order No. 8 be, and it is hereby, amended by substituting the following paragraph (g) for paragraph (g) thereof:

(g) *Expiration date.* This order shall expire at 11:59 p.m., June 15, 1977, unless otherwise modified, changed, or suspended.

It is further ordered, That this amendment shall become effective at 11:59 p.m., January 15, 1977, and that this order shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association; and that it be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., January 7, 1977.

INTERSTATE COMMERCE COMMISSION,
JOEL E. BURNS,
Agent.

[FR Doc.77-1798 Filed 1-18-77;8:45 am]

[Notice No. 106]

MOTOR CARRIER BOARD TRANSFER PROCEEDINGS

JANUARY 19, 1977.

Synopses of orders entered by the Motor Carrier Board of the Commission pursuant to sections 212(b), 206(a), 211, 312(b), and 410(g) of the Interstate Commerce Act, and rules and regulations prescribed thereunder (49 CFR Part 1132), appear below:

Each application (except as otherwise specifically noted) filed after March 27, 1972, contains a statement by applicants that there will be no significant effect on the quality of the human environment resulting from approval of the application. As provided in the Commission's special rules of practice any interested person may file a petition seeking reconsideration of the following numbered proceedings on or before February 8, 1977. Pursuant to section 17(8) of the Interstate Commerce Act, the filing of such a petition will postpone the effective date of the order in that proceeding pending its disposition. The matters relied upon by petitioners must be specified in their petitions with particularity.

No. MC-FC-76362 By order dated December 22, 1976, the Motor Carrier Board approved the transfer to James Meyers, Doing Business As Meyers Transfer, of Permits No. MC-124957 and MC-124957 (Sub-No. 3), MC-124957 (Sub-No. 4), and MC-124957 (Sub-No. 7), issued by the Commission, July 25, 1963, October 26, 1967, June 21, 1971, and January 2, 1974, respectively, to Kenneth Kohls, Mankato, Minnesota, authorizing the transportation of concrete conduit, brick and tile, concrete pedestals, concrete, manholes, concrete manhole extension sections, and concrete collars, from specified points in Minnesota, Iowa and Wisconsin to points in Iowa, Missouri, Nebraska, North Dakota, South Dakota, Minnesota, Illinois, and Wisconsin. Earl Hacking, 1700 New Brighton Blvd., Minneapolis, Minnesota, 55413, attorney for applicants.

No. MC-FC-76423 By order entered December 21, 1976, the Motor Carrier Board approved the transfer to Nebraska-Iowa-Missouri Express, Inc., Trenton, Missouri, of Certificate No. MC-121540 (Sub-No. 2), issued March 26, 1970, to East Nebraska Motor Freight, Inc., Lincoln, Nebraska, authorizing the transportation of General Commodities, except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading, between Omaha, Nebr., and Utica, Nebr., serving the intermediate and off-route points of Lincoln, Milford, Beaver Crossing, and Goehner, Nebr. This authority is restricted against serving points in Iowa within the Omaha, Nebr., Commercial Zone, as defined by the Commission. Patrick E. Quinn, P.O. Box 82028, Lincoln, Nebraska, 68501, attorney for applicants.

ROBERT L. OSWALD,
Secretary.

[FR Doc.77-1799 Filed 1-18-77;8:45 am]

[AB 12 (Sub-No. 24)]

SOUTHERN PACIFIC TRANSPORTATION CO.

Abandonment Between Alla and Venice in Los Angeles County, California

JANUARY 5, 1977.

The Interstate Commerce Commission hereby gives notice that: 1. The Commission's Section of Energy and Environment has prepared an environmental threshold assessment survey in the above-entitled proceeding in which it was concluded that the proceeding does not constitute a major Federal action significantly affecting the quality of

the human environment within the meaning of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321, et seq. 2. A notice setting forth this conclusion was served November 22, 1976, and no substantive comments in opposition, of an environmental nature, have been received by the Commission in response to said notice. 3. This proceeding is now ready for further disposition within the Office of Hearings or the Office of Proceedings as appropriate.

ROBERT L. OSWALD,
Secretary.

[FR Doc.77-1794 Filed 1-18-77;8:45 am]

[AB 10 (Sub-No. 7)]

WABASH RAILROAD CO. AND NORFOLK AND WESTERN RAILWAY CO.

Abandonment Between Bement and Sullivan in Piatt and Moultrie Counties, Illinois

JANUARY 5, 1977.

The Interstate Commerce Commission hereby gives notice that: 1. The Commission's Section of Energy and Environment has prepared an environmental threshold assessment survey in the above-entitled proceeding in which it was concluded that the proceeding does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321, et seq. 2. A notice setting forth this conclusion was served November 22, 1976, and no substantive comments in opposition, of an environmental nature, have been received by the Commission in response to said notice. 3. This proceeding is now ready for further disposition within the Office of Hearings or the Office of Proceedings as appropriate.

ROBERT L. OSWALD,
Secretary.

[FR Doc.77-1793 Filed 1-18-77;8:45 am]

FOURTH SECTION APPLICATION FOR RELIEF

JANUARY 14, 1977.

An application, as summarized below, has been filed requesting relief from the requirements of Section 4 of the Interstate Commerce Act to permit common carriers named or described in the application to maintain higher rates and charges at intermediate points than those sought to be established at more distant points.

Protests to the granting of an application must be prepared in accordance with Rule 40 of the General Rules of Practice (49 CFR 1100.40) and filed by February 3, 1977.

FSA No. 43303—*Building, Roofing or Sheating Paper Between Points in Southern Territory.* Filed by M. B. Hart, Jr., Agent, (No. A6348), for interested rail carriers. Rates on building, roofing or sheathing paper, and related articles, in carloads, as described in the application, between points in southern territory.

Grounds for relief—Short-line distance formula and grouping.

Tariff—Supplement 26 to Southern Freight Association, Agent, tariff 862-G, I.C.C. No. S-1269. Rates are published to become effective on February 17, 1977.

By the Commission.

ROBERT L. OSWALD,
Secretary.

[FR Doc.77-1802 Filed 1-18-77;8:45 am]

IRREGULAR-ROUTE MOTOR COMMON CARRIERS OF PROPERTY

Elimination of Gateway Letter Notices

JANUARY 14, 1977.

The following letter-notices of proposals to eliminate gateways for the purpose of reducing highway congestion, alleviating air and noise pollution, minimizing safety hazards, and conserving fuel have been filed with the Interstate Commerce Commission under the Commission's Gateway Elimination Rules (49 CFR 1065), and notice thereof to all interested persons is hereby given as provided in such rules.

An original and two copies of protests against the proposed elimination of any gateway herein described may be filed with the Interstate Commerce Commission by January 31, 1977. A copy must also be served upon applicant or its representative. Protests against the elimination of a gateway will not operate to stay commencement of the proposed operation.

Successively filed letter-notices of the same carrier under these rules will be numbered consecutively for convenience in identification. Protests, if any, must refer to such letter-notices by number.

No. MC-61825 (Sub E 769), filed March 5, 1976. Applicant: ROY STONE TRANSFER CORPORATION, P.O. Box 385, Collinsville, Va. 24078. Applicant's representative: Harry J. Jordan, 1000—16th Street, N.W., Washington, D.C. 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Furniture materials* (except in bulk), from points in Oregon and Washington, and points in California, Idaho, Montana, and Nevada on and northwest of a line beginning at Los Angeles, Calif., and extending northwest along Interstate Highway 5 to junction California Highway 14, thence north along California Highway 14 to junction U.S. Highway 395, thence north along U.S. Highway 395 to junction California Highway 168, thence northeast along California Highway 168 to junction California Highway 266, thence northwest along California Highway 266 to junction Nevada Highway 3A, thence north along Nevada Highway 3A to junction U.S. Highway 6, thence east along U.S. Highway 6 to junction Nevada Highway 8A, thence north along Nevada Highway 8A to junction Nevada Highway 82, thence north along Nevada Highway 82 to junction U.S. Highway 50, thence east along U.S. Highway 50 to junction Nevada Highway 46, thence north along Nevada Highway 46 to junction U.S. Highway 40, thence east along U.S. Highway 40 to junction U.S. Highway 93, thence north along U.S. Highway 93 to junction U.S. Highway 26, thence northeast along U.S. Highway 26 to junction Idaho Highway 22, thence northeast along Idaho Highway 22 to junction U.S. Highway 91, thence north along U.S. Highway 91 to the Idaho-Montana State line, thence east along the Idaho-Montana State line to the Montana-Wyoming State line, thence north and east along the Montana-Wyoming State line to junction U.S. Highway 89, thence north along U.S. Highway 89 to junction U.S. Highway 10, thence east along U.S. Highway 10 to junction U.S. Highway 87, thence north along U.S. Highway 87 to junction Montana Highway 19, thence north along Montana Highway 19 to junction U.S. Highway 191, thence northeast along U.S. Highway 191 to junction U.S. Highway 2, thence east along U.S. Highway 2 to junction Montana Highway 247, thence north along Montana Highway 247 to the United States-Canadian International Boundary line, to points in Tennessee on and bounded by a line beginning at the North Carolina-Tennessee State line and extending northwest along Tennessee Highway 32 to junction U.S. Highway 411, thence west along U.S. Highway 411 to junction U.S. Highway 25E, thence north along U.S. Highway 25E to junction U.S. Highway 11E, thence southwest along U.S. Highway 11E to junction U.S. Highway 441 at Knoxville, Tennessee, thence southeast along U.S. Highway 441 to the Tennessee-North Carolina State line, and thence northeast along the Tennessee-North Carolina State line to point of beginning. The purpose of this filing is to eliminate the gateway of Martinsville, Va.

No. MC-61825 (Sub E 770), filed March 5, 1976. Applicant: ROY STONE TRANSFER CORPORATION, P.O. Box 385, Collinsville, Va. 24078. Applicant's representative: Harrry J. Jordan, 1000 16th Street NW., Washington, D.C. 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Furniture materials* (except in bulk) from points in Washington, and points in California, Idaho, Montana, Nevada, and Oregon on and northwest of a line beginning at San Francisco, Calif., and extending south along Interstate Highway 280 to junction California Highway 92, thence east along California Highway 92 to junction California Highway 238, thence north along California Highway 238 to junction Interstate Highway 580, thence east along Interstate Highway 580 to junction California Highway 84, thence north along California Highway 84 to junction California Highway 4, thence east along California Highway 4 to junction California Highway 26, thence northeast along California Highway 26 to junction California Highway 88, thence east along California Highway 88 to junction Nevada Highway 88, thence north along Nevada Highway 88 to junction U.S. Highway 395, thence north along U.S. Highway 395 to junction U.S. Highway 50, thence east along U.S. Highway 50 to junction U.S. Highway 95, thence north along U.S. Highway 95 to junction Nevada Highway 48, thence northwest along Nevada Highway 48 to junction Nevada Highway 34, thence north along Nevada Highway 34 to junction Nevada Highway 8A, thence northeast along Nevada Highway 8A to junction Nevada Highway 140, thence northwest along Nevada Highway 140 to junction Oregon Highway 140, thence northwest along Oregon Highway 140 to junction U.S. Highway 395, thence north along Oregon Highway 140 to junction U.S. Highway 395, thence north along U.S. Highway 395 to junction U.S. Highway 26, thence east along U.S. Highway 26 to junction Oregon Highway 7, thence northeast along Oregon Highway 7 to junction Oregon Highway 86, thence east along Oregon Highway 86 to the Oregon-Idaho State line, thence north along the Oregon-Idaho State line to the Washington-Idaho State line.

Thence north along the Washington-Idaho State line to junction U.S. Highway 12, thence east along U.S. Highway 12 to junction U.S. Highway 10, thence southeast along U.S. Highway 10 to junction U.S. Highway 91 at Butte, Mont., thence northeast along U.S. Highway 91 to junction U.S. Highway 12, thence east along U.S. Highway 12 to junction U.S. Highway 89, thence north along U.S. Highway 89 to junction Montana Highway 427, thence north along Montana Highway 427 to junction U.S. Highway 87, thence east along U.S. Highway 87 to junction U.S. Highway 191, thence northeast along U.S. Highway 191 to junction Montana Highway 242, thence north along Montana Highway 242 to the United States-Canadian International Boundary line, to those points in Tennessee on and bounded by a line beginning at North Carolina-Tennessee State line and extending west along U.S. Highway 64 to junction Tennessee Highway 30, thence north along Tennessee Highway 30 to junction U.S. Highway 11, thence northeast along U.S. Highway 11 to junction Tennessee Highway 95, thence northeast along Tennessee Highway 95 to junction Tennessee Highway 61, thence northeast along Tennessee Highway 61 to junction Tennessee Highway 33, thence northeast along Tennessee Highway 33 to junction U.S. Highway 25E, thence north along U.S. Highway 25E to the Tennessee-Virginia State line, thence east along the Tennessee-Virginia State line to junction U.S. Highway 23, thence south along U.S. Highway 23 to junction U.S. Highway 11W, thence southwest along U.S. Highway 11W to junction Tennessee Highway 66, thence south along Tennessee Highway 66 to junction U.S. Highway 11E, thence southwest along U.S. Highway 11E to junction U.S. Highway 441 at Knoxville, Tenn., thence southeast along U.S. Highway 441 to the Tennessee-North Carolina State line, and thence southwest along the Tennessee-North Carolina State line to point of beginning. The purpose of this filing is to eliminate the gateway of Martinsville, Va.

No. MC-61825 (Sub-No. E 771), filed March 5, 1976. Applicant: Roy STONE TRANSFER CORP., P.O. Box 385, Collinsville, Va. 24078. Applicant's representative: Harry J. Jordan, 1000-16th Street, N.W., Washington, D.C. 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Furniture materials*, (except in bulk), from points in California, Oregon, and Washington on and west of a line beginning at Ventura, California and extending north along California Highway 33 to junction California Highway 119, thence northeast along California Highway 119 to junction California Highway 43, thence north along California Highway 43 to junction California Highway J15, thence east along California Highway J15 to junction California Highway 99, thence northwest along California Highway 99 to junction California Highway 140, thence northeast along California Highway 140 to junction California Highway 49, thence north along California Highway 49 to junction California Highway 20, thence west along California Highway 20 to junction California Highway 99, thence north along California Highway 99 to junction California Highway 32, thence north along California Highway 32 to junction California Highway 36, thence northwest along California Highway 36 to junction California Highway 89, thence north along California Highway 89 to junction California Highway 299, thence northeast along California Highway 299 to junction U.S. Highway 395, thence north along U.S. Highway 395 to junction Oregon Highway 31, thence northwest along Oregon Highway 31 to junction U.S. Highway 97, thence southwest along U.S. Highway 97 to junction Oregon Highway 58, thence northwest along Oregon Highway 58 to junction Interstate Highway 5, thence north along Interstate Highway 5 to junction Oregon Highway 126, thence east along Oregon Highway 126 to junction U.S. Highway 97, thence north along U.S. Highway 97 to junction U.S. Highway 197.

Thence north along U.S. Highway 197 to the Oregon-Washington State line, thence east along the Oregon-Washington State line to junction Washington Highway 125, thence north along Washington Highway 125 to junction Washington Highway 124, thence west along Washington Highway 124 to junction U.S. Highway 395, thence north along U.S. Highway 395 to junction U.S. Highway 10, thence west along U.S. Highway 10 to junction Washington Highway 21, thence north along Washington Highway 21 to junction Washington Highway 20, thence east along Washington Highway 20 to junction U.S. Highway 395, and thence north along U.S. Highway 395 to the United State-Canadian International Boundary line, to those points in Kentucky on and east of a line beginning at the Tennessee-Kentucky State line and extending north along Interstate Highway 75 to junction Kentucky Highway 192, thence north along Kentucky Highway 192 to junction U.S. Highway 25, thence northwest along U.S. Highway 25 to junction Kentucky Highway 30, thence northeast along Kentucky Highway 30 to junction Kentucky Highway 15, thence north along Kentucky Highway 15 to junction Kentucky Highway 1812, thence north along Kentucky Highway 1812 to junction Kentucky Highway 191, thence north along Kentucky Highway 191 to junction Kentucky Highway 203, thence north along Kentucky Highway 203 to junction U.S. Highway 460, thence northeast along U.S. Highway 460 to junction Kentucky Highway 7, thence north along Kentucky Highway 7 to junction Kentucky Highway 1, thence north along Kentucky Highway 1 to junction Kentucky Highway 207, and thence northeast along Kentucky Highway 207 to the Kentucky-Ohio State line. The purpose of this filing is to eliminate the gateway of Martinsville, Va.

No. MC 61825 (Sub E 772), filed March 5, 1976. Applicant: ROY STONE TRANSFER CORPORATION, P.O. Box. 385, Collinsville, Va. 24078. Applicant's representative: Harry J. Jordan, 1000 16th Street, NW., Washington, D.C. 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *New furniture* between points in Delaware, on the one hand, and, on the other, points in Arizona, California, Idaho, Nevada, New Mexico, Oregon, Utah, and Washington and points in Colorado, Montana, Nebraska, North Dakota, and Wyoming on and west of a line beginning at the Oklahoma-Kansas-Colorado State line and extending north along the Kansas-Colorado State line to Junction U.S. Highway 36, thence west along U.S. Highway 36 to junction U.S. Highway 385, thence north along U.S. Highway 385 to junction U.S. Highway 6, thence west along U.S. Highway 6 to junction Colorado Highway 71, thence north along Colorado Highway 71 to junction Nebraska Highway 71, thence north along Nebraska Highway 71 to junction U.S. Highway 26, thence northwest along U.S. Highway 26 to junction Wyoming Highway 59, thence north along Wyoming Highway 59 to junction Montana Highway 59, thence north along Montana Highway 59 to junction U.S. Highway 212, thence west along U.S. Highway 212 to junction U.S. Highway 312, thence north along U.S. Highway 312 to junction U.S. Highway 10, thence northeast along U.S. Highway 10 to junction Montana Highway 16, thence northeast along Montana Highway 16 to junction Montana Highway 200, thence northeast along Montana Highway 200 to junction North Dakota Highway 200, thence east along North Dakota Highway 200 to junction U.S. Highway 85, and thence along U.S. Highway 85 to the United States-Canadian International Boundary line, restricted against the transportation of class A and B explosives, commodities in bulk, and those requiring special equipment. The purpose of this filing is to eliminate the gateways of Pulaski, Lynchburg, and Bedford, Va.

No. MC 61825 (Sub-No. E778), filed March 5, 1976. Applicant: ROY STONE

TRANSFER CORPORATION, P.O. Box 385, Collinsville, Va. 24078. Applicant's representative: Harry J. Jordan, 1000 Sixteenth St. NW., Washington, D.C. 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Furniture parts*, between points in New Jersey on and northwest of a line beginning at the New Jersey-New York State line and extending along U.S. Highway 202, to the New Jersey-Pennsylvania State line, and points in New York (except New York City, New York) on and southeast of a line beginning at the New Jersey-New York State line and extending northeast along U.S. Highway 209 to junction New York Highway 213, thence east along New York Highway 213 to junction New York Highway 32, thence north along New York Highway 32 to junction New York Highway 199, thence east along New York Highway 199 to junction U.S. Highway 9, thence north along U.S. Highway 9 to junction New York Highway 23B, thence east along New York Highway 23B to junction New York Highway 23, and thence east along New York Highway 23 to the New York-Massachusetts State line, on the one hand, and, on the other, points in Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming, and points in Nebraska, North Dakota, and South Dakota on and west of a line beginning at the Kansas-Nebraska State line and extending north along U.S. Highway 83 to junction U.S. Highway 6, thence west along U.S. Highway 6 to junction Nebraska Highway 61, thence north along Nebraska Highway 61 to junction U.S. Highway 26, thence northwest along U.S. Highway 26 to junction U.S. Highway 385, thence north along U.S. Highway 385 to junction Nebraska Highway 2, thence north along Nebraska Highway 2 to junction Nebraska Highway 87, thence west along Nebraska Highway 87 to junction Nebraska Highway 71, thence southwest along Nebraska Highway 71 to junction U.S. Highway 26, thence west along U.S. Highway 26 to the Nebraska-Wyoming State line, thence north along the Nebraska-Wyoming State line to the South Dakota-Wyoming State line, thence north along the South Dakota-Wyoming State line to junction U.S. Highway 18, thence east along U.S. Highway 18 to junction South Dakota Highway 89, thence north along South Dakota Highway 89 to junction U.S. Highway 385, thence north along U.S. Highway 385 to junction U.S. Highway 85, thence north along U.S. Highway 85 to junction U.S. Highway 10, thence east along U.S. Highway 10 to junction North Dakota Highway 22, thence north along North Dakota Highway 22 to junction North Dakota Highway 23, thence east along North Dakota Highway 23 to junction U.S. Highway 83, thence north along U.S. Highway 83 to junction North Dakota Highway 256, and thence north along North Dakota Highway 256 to the United States-Canadian International Boundary line. The purpose of this filing is to eliminate the gateway of Bassett, Va.

No. MC 61825 (Sub-No. E779), filed March 5, 1976. Applicant: ROY STONE TRANSFER CORPORATION, P.O. Box 385, Collinsville, Va. 24078. Applicant's representative: Harry J. Jordan, 1000 Sixteenth St. NW., Washington, D.C. 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Furniture parts*, between points in New York and Pennsylvania on and bounded by a line beginning at the Maryland-Pennsylvania State line and extending north along U.S. Highway 522 to junction Pennsylvania Highway 643, thence northwest along Pennsylvania Highway 643 to junction Interstate Highway 70, thence north along Interstate Highway 70 to junction Pennsylvania Highway 915, thence northwest along Pennsylvania Highway 915 to junction Pennsylvania Highway 26, thence west along Pennsylvania Highway 26 to junction Pennsylvania Highway 46, thence north along Pennsylvania Highway 46 to junction U.S. Highway 220, thence northeast along U.S. Highway 220 to junction Pennsylvania Highway 87, thence northeast along Pennsylvania Highway 87 to junction U.S. Highway 220, thence north along U.S. Highway 220 to junction U.S. Highway 6, thence east along U.S. Highway 6 to junction Pennsylvania Highway 187, thence north along Pennsylvania Highway 187 to junction New York Highway 282, thence north along New York Highway 282 to junction New York Highway 17C, thence east along New York Highway 17C to junction New York Highway 17, thence east along New York Highway 17 to junction New York Highway 12, thence northeast along New York Highway 12 to junction New York Highway 23, thence east along New York Highway 23 to junction New York Highway 7, thence northeast along New York Highway 7 to junction New York Highway 30, thence north along New York Highway 30 to junction New York Highway 67, thence east along New York Highway 67 to junction New York Highway 50, thence northeast along New York Highway 50 to junction U.S. Highway 9, thence north along U.S. Highway 9 to Plattsburgh, New York, thence east to the New York-Vermont State line, thence south along the New York-Vermont State line to the New York-Massachusetts State line, hence south along the New York-Massachusetts State line to junction New York Highway 23, thence west along New York Highway 23 to junction New York Highway 23B.

Thence west along New York Highway 23B to junction U.S. Highway 9, thence south along U.S. Highway 9 to junction New York Highway 199, thence west along New York Highway 199 to junction New York Highway 32, thence south along New York Highway 32 to junction New York Highway 213, thence west along New York Highway 213 to junction U.S. Highway 209, thence southwest along U.S. Highway 209 to the New York-New Jersey State line, thence south along the New York-New Jersey State line to the Pennsylvania-New Jersey State line, thence south along the Pennsylvania-New Jersey State line to junction U.S. Highway 202, to junction U.S. Highway 422 to junction U.S. Highway 322, thence west along U.S. Highway 322 to junction U.S. Highway 15 to junction U.S. Highway 15 Business, thence south along U.S. Highway 15 Business to junction U.S. Highway 15, thence south along U.S. Highway 15 to the Pennsylvania-Maryland State line, and thence west to point of beginning, on the one hand, and, on the other, points in Arizona, California, Idaho, Nevada, New Mexico, Oregon, Utah, and Washington, and points in Colorado, Montana, and Wyoming on and west of a line beginning at the Oklahoma-Colorado State line and extending north along U.S. Highway 287 to junction U.S. Highway 160, thence west along U.S. Highway 160 to junction Colorado Highway 101, thence north along Colorado Highway 101 to junction U.S. Highway 50, thence west along U.S. Highway 50 to junction U.S. Highway 87, thence north along U.S. Highway 87 to junction U.S. Highway 40, thence west along U.S. Highway 40 to junction Colorado Highway 318, thence northwest along Colorado Highway 318 to the Colorado-Wyoming State line, thence west along the Colorado-Wyoming State line to the Utah-Wyoming State line, thence west along the Utah-Wyoming State line to junction Wyoming Highway 150, thence north along Wyoming Highway 150 to junction U.S. Highway 189, thence north along U.S. Highway 189 to junction U.S. Highway 89, thence north along U.S. Highway 89 to junction U.S. Highway 287, thence northwest along U.S. Highway 287 to junction U.S. Highway 191, thence north along U.S. Highway 191 to junction U.S. Highway 10, thence west along U.S. Highway 10 to junction U.S. Highway 287, thence north along U.S. Highway 287 to junction U.S. Highway 91, thence north along U.S. Highway 91 to the United States-Canadian International Boundary line. The purpose of this filing is to eliminate the gateway of Bassett, Va.

No. MC 61825 (Sub-No. E780), filed March 5, 1976. Applicant: ROY STONE TRANSFER CORPORATION P.O. Box 385, Collinsville, Va. 24078. Applicant's representative: Harry J. Jordon, 1000 Sixteenth St., NW., Washington, D.C. 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Furniture parts*, between points in New York, and Pennsylvania on and bounded by a line beginning at the Maryland-Pennsylvania State line and extending north along U.S. Highway 522 to junction Pennsylvania Highway 643, thence northeast along Pennsylvania Highway 643 to junction Interstate Highway 70, thence north along Interstate Highway 70 to junction Pennsylvania Highway 915, thence northwest along Pennsylvania Highway 915 to junction Pennsylvania Highway 26, thence west along Pennsylvania Highway 26 to junction Pennsylvania Highway 46, thence north along Pennsylvania Highway 46 to junction U.S. Highway 220, thence northeast along U.S. Highway 220 to junction Pennsylvania Highway 87, thence northeast along Pennsylvania Highway 87 to junction U.S. Highway 220, thence north along U.S. Highway 220 to junction U.S. Highway 6, thence east along U.S. Highway 6 to junction Pennsylvania Highway 187, thence north along Pennsylvania Highway 187 to junction New York Highway 282, thence north along New York Highway 282 to junction New York Highway 17C, thence east along New York Highway 17C to junction New York Highway 17, thence east along New York Highway 17 to junction New York Highway 12, thence northeast along New York Highway 12 to junction New York Highway 23, thence east along New York Highway 23 to junction New York Highway 7, thence northeast along New York Highway 7 to junction New York Highway 30, thence north along New York Highway 30 to junction New York Highway 67, thence east along New York Highway 67 to junction New York Highway 50, thence northeast along New York Highway 50 to junction U.S. Highway 9, thence north along U.S. Highway 9 to Plattsburgh, New York, thence east to the New York-Vermont State line, thence south along the New York-Vermont State line to the New York-Massachusetts State line, hence south along the New York-Massachusetts State line to junction New York Highway 23, thence west along New York Highway 23 to junction New York Highway 23B.

Thence west along New York Highway 23B to junction U.S. Highway 9, thence south along U.S. Highway 9 to junction New York Highway 199, thence west along New York Highway 199 to junction New York Highway 32, thence south along New York Highway 32 to junction New York Highway 213, thence west along New York Highway 213 to junction U.S. Highway 209, thence southwest along U.S. Highway 209 to the New York-New Jersey State line, thence south along the New York-New Jersey State line to the Pennsylvania-New Jersey State line, thence south along the Pennsylvania-New Jersey State line to junction U.S. Highway 202, to junction U.S. Highway 422 to junction U.S. Highway 322, thence west along U.S. Highway 322 to junction U.S. Highway 15 to junction U.S. Highway 15 Business, thence south along U.S. Highway 15 Business to junction U.S. Highway 15, thence south along U.S. Highway 15 to the Pennsylvania-Maryland State line, and thence west to point of beginning, on the one hand, and, on the other, points in Arizona, California, Idaho, Nevada, New Mexico, Oregon, Utah, and Washington, and points in Colorado, Montana, and Wyoming on and west of a line beginning at the Oklahoma-Colorado State line and extending north along U.S. Highway 287 to junction U.S. Highway 160, thence west along U.S. Highway 160 to junction Colorado Highway 101, thence north along Colorado Highway 101 to junction U.S. Highway 50, thence west along U.S. Highway 50 to junction U.S. Highway 87, thence north along U.S. Highway 87 to junction U.S. Highway 40, thence west along U.S. Highway 40 to junction Colorado Highway 318, thence northwest along Colorado Highway 318 to the Colorado-Wyoming State line, thence west along the Colorado-Wyoming State line to the Utah-Wyoming State line, thence west along the Utah-Wyoming State line to junction Wyoming Highway 150, thence north along Wyoming Highway 150 to junction U.S. Highway 189, thence north along U.S. Highway 189 to junction U.S. Highway 89, thence north along U.S. Highway 89 to junction U.S. Highway 287, thence northwest along U.S. Highway 287 to junction U.S. Highway 191, thence north along U.S. Highway 191 to junction U.S. Highway 10, thence west along U.S. Highway 10 to junction U.S. Highway 287, thence north along U.S. Highway 287 to junction U.S. Highway 91, thence north along U.S. Highway 91 to the United States-Canadian International Boundary line. The purpose of this filing is to eliminate the gateway of Bassett, Va.

Pennsylvania Highway 46, thence north along Pennsylvania Highway 46 to junction U.S. Highway 220, thence northeast along U.S. Highway 220 to junction Pennsylvania Highway 87, thence northeast along Pennsylvania Highway 87 to junction U.S. Highway 220, thence north along U.S. Highway 220 to junction U.S. Highway 6, thence east along U.S. Highway 6 to junction Pennsylvania Highway 187, thence north along Pennsylvania Highway 187 to junction New York Highway 282, thence north along New York Highway 282 to junction New York Highway 17C, thence east along New York Highway 17C to junction New York Highway 17, thence east along New York Highway 17 to junction New York Highway 12, thence northeast along New York Highway 12 to junction New York Highway 23, thence east along New York Highway 23 to junction New York Highway 7, thence northeast along New York Highway 7 to junction New York Highway 30, thence north along New York Highway 30 to junction New York Highway 67, thence east along New York Highway 67 to junction New York Highway 50, thence northeast along New York Highway 50 to junction New York Highway 9, thence north along U.S. Highway 9 to Plattsburgh, New York, thence east to the New York-Vermont State line, thence north along the New York-Vermont State line to the United States-Canadian International Boundary line, thence west along the United States-Canadian International Boundary line to Lake Ontario, thence west along the shores of Lake Ontario to Rochester, N.Y.

Thence south along U.S. Highway 15 to junction New York Highway 256, thence south along New York Highway 256 to junction New York Highway 36, thence south along New York Highway 36 to junction New York Highway 70A, thence west along New York Highway 70A to junction New York Highway 70, thence west along New York Highway 70 to junction New York Highway 408, thence southwest along New York Highway 408 to junction New York Highway 16, thence south along New York Highway 16 to junction Pennsylvania Highway 646, thence southwest along Pennsylvania Highway 646 to junction Pennsylvania Highway 346, thence west along Pennsylvania Highway 346 to junction U.S. Highway 219, thence south along U.S. Highway 219 to junction U.S. Highway 6, thence southwest along U.S. Highway 6 to junction Pennsylvania Highway 66, thence southwest along Pennsylvania Highway 66 to junction Pennsylvania Highway 68, thence southwest along Pennsylvania Highway 68 to junction Pennsylvania Highway 8, thence south along Pennsylvania Highway 8 to junction U.S. Highway 19, thence south along U.S. Highway 19 to junction U.S. Highway 30, thence west along U.S. Highway 30 to junction Pennsylvania Highway 50, thence southwest along Pennsylvania Highway 50 to junction Pennsylvania Highway 844, thence west along Pennsylvania Highway 844 to the Pennsylvania-West Virginia State line, thence south and thence east along the Pennsylvania-West Virginia State line to the Pennsylvania-Maryland State line, and thence east along the Pennsylvania-Maryland State line to point of beginning, on the one hand, and, on the other, points in California, and points in Arizona, Nevada, New Mexico, Oregon, and Washington on and southwest of a line beginning at the Texas-New Mexico State line and extending west along New Mexico Highway 83 to junction U.S. Highway 82, thence west along U.S. Highway 82 to junction U.S. Highway 285, thence north along U.S. Highway 285 to junction U.S. Highway 380, thence west along U.S. Highway 380 to junction U.S. Highway 85, thence north along U.S. Highway 85 to junction U.S. Highway 66, thence west along U.S. Highway 66 to junction U.S. Highway 666, thence north along U.S. Highway 666 to junction New Mexico Highway 264, thence west along New Mexico Highway 264 to junction U.S. Highway 160, thence west along U.S. Highway 160 to junction U.S. Highway 89, thence north along U.S. Highway 89 to junction U.S. Highway 89 Alternate.

Thence north along U.S. Highway 89 Alternate to the Colorado River, thence southwest along the Colorado River to the Arizona-Nevada State line, thence north along the Arizona-Nevada State line to junction U.S. Highway 91, thence west along U.S. Highway 91 to junction Nevada Highway 7, thence northwest along Nevada Highway 7 to junction U.S. Highway 93, thence north along U.S. Highway 93 to junction Nevada Highway 25, thence northwest along Nevada Highway 25 to junction U.S. Highway 6, thence west along U.S. Highway 6 to junction U.S. Highway 95, thence northwest along U.S. Highway 95 to junction U.S. Highway 95 Alternate, thence west along U.S. Highway 95 Alternate to junction Nevada Highway 34, thence north along Nevada Highway 34 to the Nevada-Oregon State line, thence west along the Nevada-Oregon State line to the California-Oregon State line, thence west along the California-Oregon State line to junction U.S. Highway 395, thence north along U.S. Highway 395 to junction Interstate Highway 80N, thence west along Interstate Highway 80N to junction U.S. Highway 97, thence north along U.S. Highway 97 to the Klickitat River, thence northwest along the Klickitat River to the Yakima-Lewis County line (Washington), thence north along the Yakima-Lewis County line (Washington) to the Yakima-Pierce County line (Washington), thence north along the Yakima-Pierce County line (Washington), to junction Washington Highway 410, thence northwest along Washington Highway 410 to junction Washington Highway 169, thence northwest along Washington Highway 169 to junction Interstate Highway 405, thence north along Interstate Highway 405 to junction Interstate Highway 5, thence north along Interstate Highway 5 to junction Washington Highway 539, and thence north along Washington Highway 539 to the United States-Canadian International Boundary line. The purpose of this filing is to eliminate the gateway of Bassett, Va.

No. MC 61825 (Sub-No. E781), filed March 5, 1976. Applicant: ROY STONE TRANSFER CORPORATION, P.O. Box 385, Collinsville, Va. 24078. Applicant's representative: Harry J. Jordan, 1000 Sixteenth St. NW., Washington, D.C. 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *New furniture and furniture materials* (except in bulk), from points in Arizona, California, Colorado, Idaho, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming, to points in Delaware. The purpose of this filing is to eliminate the gateway of Bassett, Va.

No. MC 61825 (Sub-No. E782), filed March 5, 1976. Applicant: ROY STONE TRANSFER CORPORATION, P.O. Box 385, Collinsville, Va. 24078. Applicant's representative: Harry J. Jordan, 1000 Sixteenth St. NW., Washington, D.C. 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Furniture materials and new furniture*, (except in bulk), from points in Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming, and points in Nebraska, North Dakota, and South Dakota on and west of a line beginning at the Kansas-Nebraska State line and extending north along U.S. Highway 83 to junction U.S. Highway 6, thence west along U.S. Highway 6 to junction Nebraska Highway 61, thence north along Nebraska Highway 61 to junction U.S. Highway 26, thence northwest along U.S. Highway 26 to junction U.S. Highway 385, thence north along U.S. Highway 385 to junction Nebraska Highway 2, thence north along Nebraska Highway 2 to junction Nebraska Highway 87, thence west along Nebraska Highway 87 to junction Nebraska Highway 71, thence southwest along Nebraska Highway 71 to junction U.S. Highway 26, thence west along U.S. Highway 26 to the Nebraska-Wyoming State line, thence north long the Nebraska-Wyoming State line to the South Dakota-Wyoming State line, thence north along the South Dakota-Wyoming State line to junction U.S. Highway 18, thence east along U.S. Highway 18 to junction South Dakota Highway 89, thence north along South Dakota Highway 89 to junction U.S. Highway 385, thence north along U.S. Highway 385 to junction U.S. Highway 85, thence north along U.S. Highway 85 to junction U.S. Highway 10, thence east along U.S. Highway 10 to junction North Dakota Highway 22, thence north along North Dakota Highway 22 to junction North Dakota Highway 23, thence east along North Dakota Highway 23 to junction U.S. Highway 83, thence north along U.S. Highway 83 to junction North Dakota Highway 256, and

thence north along North Dakota Highway 256 to the United States-Canadian International Boundary line, to points in New Jersey on and northwest of U.S. Highway 202, and points in New York on and southeast of a line beginning at the New Jersey-New York State line and extending northeast along U.S. Highway 209 to junction New York Highway 213, thence east along New York Highway 213 to junction New York Highway 32, thence east along New York Highway 213 to junction New York Highway 32, thence north along New York Highway 32 to junction New York Highway 199, thence east along New York Highway 199 to junction U.S. Highway 9, thence north along U.S. Highway 9 to junction New York Highway 23B, thence east along New York Highway 23B to junction New York Highway 23, and thence east along New York Highway 23 to the New York-Massachusetts State line. The purpose of this filing is to eliminate the gateway of Bassett, Va.

No. MC 61825 (Sub-No. E783), filed March 5, 1976. Applicant: ROY STONE TRANSFER CORPORATION, P.O. Box 385, Collinsville, Va. 24078. Applicant's representative: Harry J. Jordan, 1000 Sixteenth St., NW., Washington, D.C. 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Furniture materials and new furniture* (except in bulk), from points in Arizona, California, Idaho, Nevada, New Mexico, Oregon, Utah, and Washington, and points in Colorado, Montana, and Wyoming on and west of a line beginning at the Oklahoma-Colorado State line and extending north along U.S. Highway 287 to junction U.S. Highway 160, thence west along U.S. Highway 160 to junction Colorado Highway 101, thence north along Colorado Highway 101 to junction U.S. Highway 50, thence west along U.S. Highway 50 to junction U.S. Highway 87, thence north along U.S. Highway 87 to junction U.S. Highway 40, thence west along U.S. Highway 40 to junction Colorado Highway 318, thence northwest along Colorado Highway 318 to the Colorado-Wyoming State line, thence west along the Colorado-Wyoming State line to the Utah-Wyoming State line, thence west along the Utah-Wyoming State line to junction Wyoming Highway 150, thence north along Wyoming Highway 150 to junction U.S. Highway 189, thence north along U.S. Highway 189 to junction U.S. Highway 89, thence north along U.S. Highway 89 to junction U.S. Highway 287, thence northwest along U.S. Highway 287 to junction U.S. Highway 191, thence north along U.S. Highway 191 to junction U.S. Highway 10, thence west along U.S. Highway 10 to junction U.S. Highway 287, thence north along U.S. Highway 287 to junction U.S. Highway 91, thence north along U.S. Highway 91 to the United States-Canadian International Boundary line, to points in New York and Pennsylvania on and bounded by a line beginning at the Maryland-Pennsylvania State line and extending north along U.S. Highway 522 to junction Pennsylvania Highway 643, thence northwest along Pennsylvania Highway 643 to junction Interstate Highway 70, thence north along Interstate Highway 70 to junction Pennsylvania Highway 915, thence northwest along Pennsylvania Highway 915 to junction Pennsylvania 26, thence west along Pennsylvania Highway 26, to junction Pennsylvania Highway 46, thence north along Pennsylvania Highway 46 to junction U.S. Highway 220, thence northeast along U.S. Highway 220 to junction Pennsylvania Highway 87.

Thence northeast along Pennsylvania Highway 87 to junction U.S. Highway 220, thence north along U.S. Highway 220 to junction U.S. Highway 6, thence east along U.S. Highway 6 to junction Pennsylvania Highway 187, thence north along Pennsylvania Highway 187 to junction New York Highway 282, thence north along New York Highway 282 to junction New York Highway 17C, thence east along New York Highway 17C to junction New York 17, thence east along New York Highway 17 to junction New York Highway 12, thence northeast along New York Highway 12 to junction New York Highway 23, thence east along New York Highway 23 to junction New York Highway 7, thence northeast along New York Highway 7 to junction New York Highway 30, thence north along New York Highway 30 to junction New York Highway 67, thence east along New York Highway 67 to junction New York Highway 50, thence northeast along New York Highway 50 to junction U.S. Highway 9, thence north along U.S. Highway 9 to Plattsburgh, N.Y., thence east to the New York-Vermont State line, thence south along the New York-Vermont State line to the New York-Massachusetts State line, thence south along the New York-Massachusetts State line to junction New York Highway 23, thence west along New York Highway 23 to junction New York Highway 23B, thence west along New York Highway 23 to junction U.S. Highway 9, thence south along U.S. Highway 9 to junction New York Highway 199, thence west along New York Highway 199 to junction New York 32, thence south along New York Highway 32 to junction New York Highway 213, thence west along New York Highway 213 to junction U.S. Highway 209, thence southwest along U.S. Highway 209 to the New York-New Jersey State line, thence south along the New York-New Jersey State line to the Pennsylvania-New Jersey State line, thence south along the Pennsylvania-New Jersey State line to junction U.S. Highway 202 to junction U.S. Highway 422, to junction U.S. Highway 322, thence west along U.S. Highway 322 to junction U.S. Highway 15 to junction U.S. Highway 15 (Business Rd.), thence south along U.S. Highway 15 (Business Rd.) to junction U.S. Highway 15, thence south along U.S. Highway 15 to the Pennsylvania-Maryland State line, and thence west to point beginning. The purpose of this filing is to eliminate the gateway of Bassett, Va.

No. MC–61825 (Sub-No. E784), filed March 5, 1976. Applicant ROY STONE TRANSFER CORPORATION, P.O. Box 385 Collinsville, Va. 24078. Applicant's representative: Harry J. Jordan, 1000 Sixteenth St., N.W., Washington, D.C. 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Furniture materials, and new furniture* (except in bulk), from points in California and points in Arizona, Nevada, New Mexico, Oregon, and Washington on and southwest of a line beginning at the Texas-New Mexico State line and extending west along New Mexico Highway 33 to junction U.S. Highway 82, thence west along U.S. Highway 82 to junction U.S. Highway 285, thence north along U.S. Highway 285 to junction U.S. Highway 380, thence west along U.S. Highway 380 to junction U.S. Highway 85, thence north along U.S. Highway 85 to junction U.S. Highway 66, thence west along U.S. Highway 66 to junction U.S. Highway 666, thence north along U.S. Highway 666 to junction New Mexico Highway 264, thence west along New Mexico Highway 264 to junction Arizona Highway 264, thence west along Arizona Highway 264 to junction U.S. Highway 160, thence west along U.S. Highway 160 to junction U.S. Highway 89, thence north along U.S. Highway 89 to junction U.S. Highway 89 Alternate, thence north along U.S. Highway 89 Alternate to the Colorado River, thence southwest along the Colorado River to the Arizona-Nevada State line, thence north along the Arizona-Nevada State line to junction U.S. Highway 91, thence west along U.S. Highway 91 to junction Nevada Highway 7, thence northwest along Nevada Highway 7 to junction U.S. Highway 93, thence north along U.S. Highway 93 to junction Nevada Highway 25, thence northwest along Nevada Highway 25 to junction U.S. Highway 6, thence west along U.S. Highway 6 to junction U.S. Highway 95, thence northwest along U.S. Highway 95 to junction U.S. Highway 95 Alternate, thence west along U.S. Highway 95 Alternate to junction Nevada Highway 34, thence north along Nevada Highway 34 to the Nevada-Oregon State line, thence west along the Nevada-Oregon State line to the California-Oregon State line, thence west along the California-Oregon State line to junction U.S. Highway 395, thence north along U.S. Highway 395 to junction Interstate Highway 80N.

Thence west along Interstate Highway 80N to junction U.S. Highway 97, thence north along U.S. Highway 97 to the Klickitat River, thence northwest along the Klickitat River to the Yakima-Lewis County line (Washington), thence north along the Yakima-Lewis County line (Washington) to the Yakima-Pierce County line (Washington), thence north along the Yakima-Pierce County line (Washington) to junction Washington Highway 410, thence northwest along Washington Highway 410 to junction Washington Highway 169, thence northwest along Washington Highway 169 to junction Interstate Highway 405, thence

north along Interstate Highway 405 to junction Interstate Highway 5, thence north along Interstate Highway 5 to junction Washington Highway 539, and thence north along Washington Highway 539 to the United States-Canadian International Boundary line, to points in New York and Pennsylvania on and bounded by a line beginning at the Maryland-Pennsylvania State line and extending north along U.S. Highway 522 to junction Pennsylvania Highway 643, thence northeast along Pennsylvania Highway 643 to junction Interstate Highway 70, thence north along Interstate Highway 70 to junction Pennsylvania Highway 915, thence northwest along Pennsylvania Highway 915 to junction Pennsylvania Highway 26, thence west along Pennsylvania Highway 26 to junction Pennsylvania Highway 46, thence north along Pennsylvania Highway 46 to junction U.S. Highway 220, thence northeast along U.S. Highway 220 to junction Pennsylvania Highway 87, thence northeast along Pennsylvania Highway 87 to junction U.S. Highway 220, thence north along U.S. Highway 220 to junction U.S. Highway 6, thence east along U.S. Highway 6 to junction Pennsylvania Highway 187, thence north along Pennsylvania Highway 187 to junction New York Highway 282, thence north along New York Highway 282 to junction New York Highway 17C, thence east along New York Highway 17C to junction New York Highway 17, thence east along New York Highway 17 to junction New York Highway 12, thence northeast along New York Highway 12 to junction New York Highway 23, thence east along New York Highway 23 to junction New York Highway 7, thence northeast along New York Highway 7 to junction New York Highway 30, thence north along New York Highway 30 to junction New York Highway 67, thence east along New York Highway 67 to junction New York Highway 50.

Thence northeast along New York Highway 50 to junction U.S. Highway 9, thence north along U.S. Highway 9 to Plattsburgh, N.Y., thence east to the New York-Vermont State line, thence north along the United States-Canadian International Boundary line, thence west along the United States-Canadian International Boundary line, to Lake Ontario, thence west along the shores of Lake Ontario to Rochester, N.Y., thence south along U.S. Highway 15 to junction New York Highway 256, thence south along New York Highway 256 to junction New York Highway 36, thence south along New York Highway 36 to junction New York Highway 70A, thence west along New York Highway 70A to junction New York Highway 70, thence west along New York Highway 70 to junction New York Highway 408, thence southwest along New York Highway 16, thence south along New York Highway 16 to junction Pennsylvania Highway 646, thence southwest along the Pennsylvania Highway 646 to junction Pennsylvania Highway 346, thence west along Pennsylvania Highway 346 to junction U.S. Highway 219, thence south along U.S. Highway 219 to junction U.S. Highway 6, thence southwest along U.S. Highway 6 to junction Pennsylvania Highway 66, thence southwest along Pennsylvania Highway 66 to junction Pennsylvania Highway 68, thence southwest along Pennsylvania Highway 68 to junction Pennsylvania Highway 8, thence south along Pennsylvania Highway 8 to junction U.S. Highway 19, thence south along U.S. Highway 19 to junction U.S. Highway 30, thence west along U.S. Highway 30 to junction Pennsylvania Highway 50, thence southwest along Pennsylvania Highway 50 to junction Pennsylvania Highway 844, thence west along Pennsylvania Highway 844 to the Pennsylvania-West Virginia State line thence south and thence east along the Pennsylvania-West Virginia State Line to the Pennsylvania-Maryland State line, and thence east along the Pennsylvania-Maryland State line to point of beginning. The purpose of this filing is to eliminate the gateway of Bassett, Va.

No. MC–61825 (Sub E 813), filed March 5, 1976. Applicant: ROY STONE TRANSFER CORPORATION, P.O. Box 385, Collinsville, Va. 24078. Applicant's representative: Harry J. Jordan, 1000 Sixteenth St., Washington, D.C. 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *New Furniture, Furniture Parts, Furniture materials* (except in bulk), from points in Arizona, California, Colorado, Idaho, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming, to points in North Carolina on and east of U.S. Highway 52 and points in South Carolina on and east of a line beginning at the North Carolina-South Carolina State line and extending south along U.S. Highway 221 to junction South Carolina Highway 176, thence southeast along South Carolina Highway 176 to junction U.S. Highway 52, thence south along U.S. Highway 52 to junction South Carolina Highway 7, thence south along South Carolina Highway 7 to junction South Carolina Highway 171, thence south along South Carolina Highway 171 to Folly Beach, South Carolina, and thence to the Atlantic Ocean. The purpose of this filing is to eliminate the gateways of Bassett, Va.

No. MC–61825 (Sub SE 814), filed March 5, 1976. Applicant: ROY STONE TRANSFER CORPORATION, P.O. Box 385, Collinsville, Va. 24078. Applicant's representative: Harry J. Jordan, 1000 Sixteenth St., Washington, D.C. 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *New Furniture, Furniture parts*, and *Furniture materials* (except in bulk), from points in California, Idaho, Montana, Nevada, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming, and points in Arizona, Colorado, Nebraska, and New Mexico on, north and west of a line beginning at the United States-Mexico International Boundary line near Douglas, Ariz., and extending north along U.S. Highway 666 to junction U.S. Highway 550, thence east along U.S. Highway 550 to junction New Mexico Highway 17, thence northeast along New Mexico Highway 17 to junction Colorado Highway 17, thence northeast along Colorado Highway 17 to junction Colorado Highway 140, thence east along Colorado Highway 140 to junction U.S. Highway 160, thence east along U.S. Highway 160 to junction U.S. Highway 85, thence north along U.S. Highway 85 to junction Colorado Highway 96, thence east along Colorado Highway 96 to the Colorado-Kansas State line, thence north along the Colorado-Kansas State line to the Kansas-Nebraska State line, thence east along the Kansas-Nebraska State line to junction U.S. Highway 281, thence north along U.S. Highway 281 to junction Nebraska Highway 74, thence east along Nebraska Highway 74 to junction Nebraska Highway 14, thence north along Nebraska Highway 14 to junction U.S. Highway 6, thence northeast along U.S. Highway 6 to junction Nebraska Highway 66, thence east along Nebraska Highway 66 to junction U.S. Highway 34, and thence east along U.S. Highway 34 to the Nebraska-Iowa State line, to points in South Carolina on and bounded by a line beginning at the North Carolina-South Carolina State line and extending south along U.S. Highway 25 to junction U.S. Highway 221 to hte South Carolina-U.S. Highway 221 to the Sotuh Carolina-Georgia State line, thence southeast along the South Carolina-Georgia State line to the At Ocean, thence northeast along the Atlantic Coast to Folly Beach, S.C., thence north along Carolina Highway 171 to junction South Carolina Highway 7, thence north along South Carolina Highway 7 to junction U.S. Highway 52, thence north along U.S. Highway 52 to junction U.S. Highway 176, thence northwest along U.S. Highway 176 to junction U.S. Highway 221, thence north along U.S. Highway 221 to the South Carolina-North Carolina State line, and thence west along the South Carolina-North Carolina State line to point of beginning. The purpose of this filing is to eliminate the gateways of Bassett, Va.

No. MC-61825 (Sub E 815), filed March 5, 1976. Applicant: ROY STONE TRANSFER CORPORATION, P.O. Box 385, Collinsville, Va. 24078. Applicant's representative: Harry J. Jordan, 1000 Sixteenth Street, Washington, D.C. 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *New Furniture, Furniture parts*, and *Furniture materials* (except in bulk), from points in California, Idaho, Montana, Nevada, North Dakota, Oregon, Utah, Washington, and Wyoming, and points in Arizona, Colorado, Nebraska, and South Dakota on, north and west of a line beginning at the United States-Mexico International Boundary line near Lukeville, Ariz., and extending north along Arizona

Highway 85 to junction Arizona Highway 86, thence east along Arizona Highway 86 to junction Indian Trail 15, thence north along Indian Trail 15 to junction Arizona Highway 93, thence north along Arizona Highway 93 to junction U.S. Highway 89, thence north along U.S. Highway 89 to junction Arizona Highway 64, thence northeast along Arizona Highway 64 to junction U.S. Highway 89, thence north along U.S. Highway 89 to junction U.S. Highway 160, thence northeast along U.S. Highway 160, to junction U.S. Highway 160 to junction U.S. Highway 550, thence north along U.S. Highway 550 to junction U.S. Highway 50, thence east along U.S. Highway 50 to junction Colorado Highway 135, thence north along Colorado Highway 135 to junction Taylor Road, thence northeast along Taylor Road to junction Rainbow Lane, thence east along Rainbow Lane to junction Colorado Highway 306.

Thence east along Colorado Highway 306 to junction U.S. Highway 24, thence south along U.S. Highway 24 to junction U.S. Highway 285, thence northeast along U.S. Highway 285 to junction U.S. Highway 85, thence north along U.S. Highway 85 to the Colorado-Wyoming State line, thence east along the Colorado-Wyoming State line to the Colorado-Nebraska State line, thence east along the Colorado-Nebraska State line to junction Nebraska Highway 71, thence north along Nebraska Highway 71 to junction U.S. Highway 30, thence east along U.S. Highway 30 to junction U.S. Highway 385, thence north along U.S. Highway 385 to junction Nebraska Highway 2, thence east along Nebraska Highway 2 to Mullen, Nebr., thence northeast along unnumbered Highway to Valentine, Nebr., thence north along U.S. Highway 83 to the Nebraska-South Dakota State line, thence east along the Nebraska-South Dakota State line to junction U.S. Highway 81, thence north along U.S. Highway 81 to junction South Dakota Highway 46, thence east along South Dakota Highway 46 to junction South Dakota Highway 10, thence east along South Dakota Highway 10 to the South Dakota-Iowa State line, to points in South Carolina on and west of a line beginning at the North Carolina-South Carolina State line and extending south along U.S. Highway 25 to junction U.S. Highway 221, and thence south along U.S. Highway 221 to the South Carolina-Georgia State line. The purpose of this filing is to eliminate the gateways of Bassett, Va.

No. MC-61825 (Sub E 816), filed March 5, 1976. Applicant: ROY STONE TRANSFER CORPORATION, P.O. Box 385, Collinsville, Va. 24078. Applicant's representative: Harry J. Jordan, 1000. Sixteenth St., Washington, D.C. 20036.

Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *New Furniture, Furniture parts,* and *Furniture Materials* (except in bulk) from points in Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming, and points in Nebraska on, north and west of a line beginning at the Colorado-Kansas-Nebraska State line and extending east along the Kansas-Nebraska State line to junction U.S. Highway 77, thence north along U.S. Highway 77 to junction Nebraska Highway 41, thence east along Nebraska Highway 41 to junction Nebraska Highway 43, thence north along Nebraska Highway 43 to junction Nebraska Highway 2, thence east along Nebraska Highway 2 to the Nebraska-Iowa State line to points in North Carolina on and bounded by a line beginning at the Tennessee-North Carolina State line and extending south along U.S. Highway 421 to junction U.S. Highway 321, thence southeast along U.S. Highway 321 to junction U.S. Highway 221, thence south along U.S. Highway 221 to the North Carolina-South Carolina State line, thence east along the North Carolina-South Carolina State line to junction U.S. Highway 52, thence north along U.S. Highway 52 to the North Carolina-Virginia State line, thence west along the North Carolina-Virginia State line to the North Carolina-Tennessee State line, and thence south along the North Carolina-Tennessee State line to point of beginning. The purpose of this filing is to eliminate the gateways of Basset, Va.

No. MC 73165 (Sub-E 124), filed April 8, 1976. Applicant: EAGLE MOTOR LINES, INC., P.O. Box 11086, Birmingham, Ala. 35202. Applicant's representative: William P. Parker (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting:

(1) *Cooling towers*, and *accessories, materials and supplies* for cooling towers, which because of size or weight require special equipment (except pipe, pipeline material, machinery, equipment and supplies incidental to and used in connection with the construction, dismantling and repair of pipe lines and commodities in bulk):

(A) from points in Arkansas to points in Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island, New York, Pennsylvania, New Jersey, Maryland, Delaware, the District of Columbia, Virginia, West Virginia, North Carolina, South Carolina, and Georgia.

(B) from points in Arkansas on and south of a line beginning at the Arkansas-Oklahoma State line, and extending along Interstate Highway 40, thence along Interstate Highway 40 to the Arkansas-Tennessee State line to points in Ohio, Kentucky, Indiana, Michigan, and those points in Illinois on and east of a line beginning at Lake Michigan and extending along Interstate Highway 57, thence along Interstate Highway 57 to the Illinois-Missouri State line, and to those points in Wisconsin on and east of a line beginning at the Michigan-Wisconsin State line and extending along U.S. Highway 51, thence along U.S. Highway 51 to the Illinois-Wisconsin State line.

(C) from those points in Arkansas on and north and west of a line beginning at the Arkansas-Texas State line, and extending along U.S. Highway 67 to junction Interstate Highway 30, thence along Interstate Highway 30 to junction Interstate Highway 40, thence east along Interstate Highway 40 to the Mississippi River to points in Mississippi on and north and east of a line beginning at the Tennessee-Mississippi State line and extending along U.S. Highway 78 to junction U.S. Highway 45.

Thence along U.S. Highway 45 to junction U.S. Highway 82, thence along U.S. Highway 82 to the Alabama-Mississippi State line, to those points in Alabama on and north and east of a line beginning at the Alabama-Mississippi State line, thence along U.S. Highway 82 to junction Alabama Highway 5, thence along Alabama Highway 5 to junction U.S. Highway 80, thence along U.S. Highway 80 to junction U.S. Highway 231, thence along U.S. Highway 231 to the Alabama-Florida State line, and to those points in Florida on and north, and east of a line beginning at the Florida-Alabama State line, thence along U.S. Highway 231 to junction U.S. Highway 90, thence along U.S. Highway 90 to junction U.S. Highway 319, thence along U.S. Highway 319 to the Gulf of Mexico.

(D) from those points in Arkansas on and north of a line beginning at the Arkansas-Oklahoma State line and extending along Interstate Highway 40, thence along Interstate Highway 40 to the Arkansas-Tennessee State line, to points in Florida, Alabama, those points in Mississippi on and east of a line beginning at the Mississippi-Tennessee State line, and extending along Interstate Highway 55, thence along Interstate Highway 55 to the Mississippi-Louisiana State line, to those points in Louisiana on and east of West Feliciana, East Baton Rouge, West Baton Rouge, Iberville, Assumption and Terrebonne Parishes, La.

(E) from points in Arkansas on and north of a line beginning at the Arkansas-Oklahoma State line and extending along Interstate Highway 40, thence along Interstate Highway 40 to the Arkansas-Tennessee State line, to points in Tennessee and Kentucky except those points in Tennessee on and west of a line beginning at the Tennessee-Arkansas Arkansas State line and extending along U.S. Highway 51 to the Kentucky State line, and those points in Kentucky beginning at the Tennessee-Kentucky State line and extending along Western Kentucky Parkway to junction U.S. Highway 41, thence along U.S. Highway 41 to the Kentucky-Indiana State line, to those points in Indiana on and east of a line beginning at the Indiana-Kentucky State line, and extending along Indiana Highway 57 to junction U.S. Highway 50, thence along U.S. Highway 50 to the Indiana-Ohio State line to those points in Ohio on and east of a line beginning at the Kentucky-Ohio State line and extending along Interstate Highway 75.

Thence along Interstate Highway 75 to the Michigan-Ohio State line.

(F) from points in Arkansas on, south, and east of a line beginning at the Arkansas-Texas State line and extending along U.S. Highway 67 to junction Interstate Highway 30, thence along Interstate Highway 30 to junction Interstate Highway 40, thence along Interstate Highway 40 to the Mississippi River, to points in Washington, Idaho, Oregon, those points in Montana on and west of a line beginning at the Montana-Wyoming State line, thence along U.S. Highway 87 to junction U.S. Highway 191, thence along U.S. Highway 191 to junction Montana Highway 242, thence along Montana Highway 242 to the International Boundary between the United States and Canada.

(G) from points in Crittenden County, Ark., to points in the United States (except Arkansas, Alaska, and Hawaii).

(H) from points in Pulaski County, Ark., to points in Washington, Oregon, California, Nevada, Idaho, Arizona, Montana, Wyoming, Utah, those points in Colorado on and west of a line beginning at the New Mexico-Colorado State line and extending along Interstate Highway 25, to the Colorado-Wyoming State line.

(2) *Cooling towers*, and *accessories, materials and supplies*, for cooling towers, which because of size or weight require special equipment (except pipe, pipe-line materials, machinery, equipment, and supplies incidental to and used in connection with the construction, dismantling, and repair of pipe-lines and commodities in bulk).

Restriction: Restricted to machinery, equipment, materials and supplies used in, or in connection with, the discovery, development, production, refining, manufacture, processing, storage, transmission and distribution of natural gas and petroleum and their products and by-products.

(A) from those points in Texas on and east of a line beginning at the United States-Mexico boundary line and extending along Interstate Highway 35 to junction Interstate Highway 35 W, thence along Interstate Highway 35 W to the Texas-Oklahoma State line, to points in Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island, New York, Pennsylvania, New Jersey, Delaware, Maryland, the District of Columbia, Virginia, North Carolina, West Virginia, Ohio, Michigan, Indiana, Kentucky, Tennessee, those points in South Carolina on and north of a line beginning at the Atlantic Ocean, and extending along U.S. Highway 78, thence along U.S. Highway 78 to the South Carolina-Georgia State line to those points in Illinois on and east of a line beginning at the Illinois-Iowa State line and extending along U.S. Highway 67 to junction Illinois Highway 100, thence along Illinois Highway 100 to the Illinois-Missouri State line, to those points in Iowa on and east of a line beginning at the Illinois-Iowa State line, and extending along U.S. Highway 61, to those points in Wisconsin on and east of a line beginning at the Illinois-Wisconsin State line, and extending along U.S. Highway 51, thence along U.S. Highway 51 to the Michigan-Wisconsin State line to those points in Missouri on and east and south of a line beginning at the Missouri-Arkansas line and extending along Missouri Highway 21 to junction Missouri Highway 47, thence along Missouri Highway 47 to junction Interstate Highway 70, thence along Interstate Highway 70 to the Missouri-Illinois State line, and those points in Arkansas on and east of a line beginning at the Arkansas-Missouri State line, and extending along U.S. Highway 63, thence along U.S. Highway 63 to the Missouri-Tennessee State line.

(B) from those points in Texas on, and south and east of a line beginning at the New Mexico-Texas State line and extending along U.S. Highway 82 to junction Texas Highway 283, thence along Texas Highway 283 to the Oklahoma-Texas State line, and those points in Texas on and west of a line beginning at the International Boundary line between the United States and Mexico and extending along Interstate Highway 35 to junction Interstate Highway 35 W, thence along Interstate Highway 35 W to the Texas-Oklahoma State line, to points in Maine, New Hampshire, Vermont, Massachusetts Rhode Island, Connecticut, New York, Pennsylvania, Delaware, Maryland, the District of Columbia, Virginia, North Carolina, West Virginia, Ohio, Indiana, Michigan, to those points in Georgia on, and north, and east of a line beginning at the Alabama-Georgia State line, and extending along U.S. Highway 82 to junction U.S. Highway 23, thence along U.S. Highway 23 to the Georgia-Florida State line, to those points in Alabama on and north of a line beginning at the Georgia-Alabama State line, and extending along U.S. Highway 82, thence along Highway 82 to the Alabama-Mississippi State line, to points in Mississippi on, and north and east of a line beginning at the Tennessee-Mississippi State line and extending along U.S. Highway 78 to junction U.S. Highway 45, thence along U.S. Highway 45 to junction U.S. Highway 82, thence along U.S. Highway 82 to the Mississippi-Alabama State line, to those points in Illinois on and east of a line beginning at the Missouri-Illinois State line and extending along U.S. Highway 67, thence along U.S. Highway 67 to the Iowa-Illinois State line, to those points in Missouri on and east of a line beginning at the Missouri-Arkansas State line and extending thence along U.S. Highway 63 to junction Missouri Highway 17, thence along Missouri Highway 17 to junction Missouri Highway 106, thence along Missouri Highway 106 to junction Missouri Highway 19, thence along Missouri Highway 19 to junction Interstate Highway 44, thence along Interstate Highway 44 to the Missouri-Illinois State line to those points in Arkansas on and east of a line beginning at the Tennessee-Arkansas State line and extending along U.S. Highway 64 to junction U.S. Highway 167, thence along U.S. Highway 167 to the Arkansas-Missouri State line, and to those points in Wisconsin on and east of a line beginning at the Illinois-Wisconsin State line and extending along U.S. Highway 51, thence along U.S. Highway 51 to the Wisconsin-Michigan State line.

(C) from points in Texas on, and north and west of a line beginning at the Texas-New Mexico State line and extending along U.S. Highway 82 to Junction Texas Highway 283, thence along Texas Highway 283 to the Texas-Oklahoma State line to points in Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, District of Columbia, Virginia, West Virginia, North Carolina, Tennessee, Kentucky, South Carolina, Georgia, Florida, Alabama, and to those points in Mississippi on, and north and east of a line beginning at the Mississippi-Tennessee State line and extending along U.S. Highway 78 to junction Mississippi Highway 15, thence along Mississippi Highway 15 to junction U.S. Highway 84, thence along U.S. Highway 84 to junction U.S. Highway 45, thence along U.S. Highway 45 to the Mississippi-Tennessee State line, to those points in Arkansas and Missouri on and east of a line beginning at the Tennessee-Arkansas State line and extending along Interstate Highway 55 to junction Interstate Highway 57, thence along Interstate Highway 57 to the Missouri-Illinois State line to those points in Illinois on, and south and east of a line beginning at the Illinois-Missouri State line, and extending along Interstate Highway 57 to junction Illinois Highway 13, thence along Illinois Highway 13 to junction U.S. Highway 45, thence along U.S. Highway 45 to junction Illinois Highway 1, thence along Illinois Highway 1 to the Illinois-Indiana State line, to those points in Indiana on and south and east of a line beginning at the Indiana-Illinois State line and extending along Interstate Highway 64 to junction Indiana Highway 62, thence along Indiana Highway 62 to junction U. S. Highway 50, thence along U.S. Highway 50 to the Ohio-Indiana State line, to those points in Ohio on and east of a line beginning at the Kentucky-Ohio State line and extending along Interstate Highway 75 to junction Interstate Highway 70, thence along Interstate Highway 70 to junction Interstate Highway 270, thence along Interstate Highway 270 to junction Interstate Highway 71, thence along Interstate Highway 71 to Lake Erie.

(D) from points in Louisiana to points in Washington and Oregon.

(E) from points in Caddo and Bossier Parishes, La., to points in Maine, Vermont, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, Delaware, New Jersey, Pennsylvania, Maryland, the District of Columbia, Virginia, West Virginia, Ohio, Indiana,

Michigan, Wisconsin, Illinois, Kentucky, Tennessee, North Carolina, South Carolina, Washington, Oregon and to those points in Alabama on and north of a line beginning at the Mississippi-Alabama State line, and extending along U.S. Highway 278 to junction U.S. Highway 431, thence along the U.S. Highway 431 to junction U.S. Highway 78, thence along U.S. Highway 78 to the Georgia-Alabama State line, to those points in Georgia on and north of a line beginning at the Alabama-Georgia State line and extending along U.S. Highway 78 to junction Interstate Highway 75, thence along Interstate Highway 75 to junction U.S. Highway 23, thence along U.S. Highway 23 to junction U.S. Highway 341, thence along U.S. Highway 341 to Atlantic Ocean, to those points in Missouri on and east of a line beginning at the Missouri-Arkansas State line, thence along U.S. Highway 67 to junction U.S. Highway 60, thence along U.S. Highway 60 to junction Missouri Highway 19, thence along Missouri Highway 19 to junction Missouri Highway 72, thence along Missouri Highway 72 to junction U.S. Highway 63, thence along U.S. Highway 63 to the Missouri-Iowa State line to those points in Mississippi on and east and north of a line beginning at the Alabama-Mississippi State line and extending along U.S. Highway 78, thence along U.S. Highway 78 to the Mississippi-Tennessee State line, to those points in Arkansas on and east of a line beginning at the Tennessee-Arkansas State line, and extending along Interstate Highway 55 to junction Interstate Highway 55 to junction Arkansas Highway 140, thence along Arkansas Highway 140 to junction Arkansas Highway 135, thence along Arkansas Highway 135 to junction U.S. Highway 67, thence along U.S. Highway 67 to the Arkansas-Missouri State line, to those points in Iowa on and east of a line beginning at the Iowa-Missouri State line, and extending along U.S. Highway 63 to junction U.S. Highway 218, thence along U.S. Highway 218 to the Iowa-Minnesota State line, and to those points in Minnesota on, and north and east of a line beginning at the Iowa-Minnesota State line and extending along Interstate Highway 35 to junction Interstate Highway 94 thence along Interstate Highway 94 to the Minneapolis-North Dakota State line.

(F) from those points in Oklahoma on and south of a line beginning at the Oklahoma-Texas State line and extending along the H. E. Bailey Turnpike to junction Interstate Highway 44, thence along Interstate Highway 44 to the Oklahoma-Missouri State line, to points in Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New Jersey, Delaware, Virginia, the District of Columbia, North Carolina, South Carolina, Georgia, Florida, to those points in New York on and east of a line beginning at the New York-New Jersey State line, and extending along Interstate Highway 87, thence along Interstate Highway 87 to the International Boundary line between United States and Canada, to those points in Pennsylvania on and east of a line beginning at the Maryland-Pennsylvania State line and extending along U.S. Highway 15 to junction U.S. Highway 30, thence along U.S. Highway 30 to junction U.S. Highway 222, thence along U.S. Highway 222 to junction U.S. Highway 209, thence along U.S. Highway 209 to the Pennsylvania-New York State line, to those points in Maryland on and east of a line beginning at the Maryland-Virginia State line, and extending along Interstate Highway 81, thence along Interstate Highway 81 to the Maryland-Pennsylvania State line, to those points in West Virginia on and south of a line beginning at the West Virginia-Kentucky State line and extending along U.S. Highway 119, to junction U.S. Highway 60, thence along U.S. Highway 60 to junction U.S. Highway 219, thence along U.S. Highway 219 to the West Virginia-Maryland State line, to those points in Tennessee on and east of a line beginning at the Tennessee-Alabama State line and extending along U.S. Highway 31, thence along U.S. Highway 31 to the Tennessee-Kentucky State line, and to those points in Alabama on and east of a line beginning at the Alabama-Florida State line and extending along Alabama Highway 41 to junction U.S. Highway 84, thence along U.S. Highway 84 to junction U.S. Highway 43, thence along U.S. Highway 43 to junction Alabama State Highway 69, thence along Alabama State Highway 69 to junction Interstate Highway 65, thence along Interstate Highway 65 to the Alabama-Tennessee State line.

The purpose of this filing is to eliminate the gateways of (1) Memphis, Tenn., and (2) Texashana, Texas-Arkansas, points in Arkansas, and Memphis, Tenn.

No. MC-105813 (Sub E 62), filed December 5, 1975. Applicant: BELFORD TRUCKING CO., INC., P.O. Box 1936, Ocala, Fla. 32670. Applicant's representative: Arthur J. Sibik, 7000 South Pulaski, Chicago, Illinois 60629. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Edible Meats, Edible meat products, and edible meat by-products, and edible articles distributed by meat packinghouses*, as described in sections A and C of Appendix to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766, (except commodities in bulk, in tank vehicles), from the site of the plant of Iowa Beef Packers, Inc., located at or near Emporia, Kans., to those points in Mississippi on and south of a line beginning at the Alabama-Mississippi State line and extending west along U.S. Highway 84 to junction Mississippi Highway 63, thence south along Mississippi Highway 63 to junction Mississippi 42, thence west along Mississippi Highway 42 to junction Mississippi Highway 29, thence south along Mississippi Highway 29 to junction Mississippi Highway 26, thence west along Mississippi Highway 26 to junction U.S. Highway 11, thence south along U.S. Highway 11 to junction Interstate Highway 59, thence south along Interstate Highway 59 to the Louisiana-Mississippi State line. The purpose of this filing is to eliminate the gateway of points in Florida.

No. MC-105813 (Sub E 63), filed December 5, 1975. Applicant: BELFORD TRUCKING CO., INC., P.O. Box 1936, Ocala, Flordia 32670. Applicant's representative: Arthur J. Sibik, 7000 South Pulaski, Chicago, Illinois 60629. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Edible meats, edible meat products*, and *edible meat by-products*, and *edible articles distributed by meat-packing houses*, as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766, in mechanically refrigerated vehicles, from Danville, Ill., to those points in Mississippi on and south of a line beginning at the Alabama-Mississippi State line and extending west along Mississippi Highway 594 to junction Mississippi Highway 63, west along Mississippi Highway 63 to junction Mississippi Highway 57, thence west along Mississippi Highway 57 to junction Mississippi Highway 26, thence west along Mississippi Highway 26 to junction U.S. Highway 11, thence south along U.S. Highway 11 to junction Interstate Highway 59, thence south along Interstate Highway 59 to the Louisiana-Mississippi State line, and to those points in Texas beginning at the Gulf of Mexico and extending on and south along Texas Highway 361 to junction Texas Highway 35, thence west along Texas Highway 35 to junction U.S. Highway 181, thence south along U.S. Highway 181 to junction Texas Highway 44, thence west along Texas Highway 44 to junction U.S. Highway 59, thence west along U.S. Highway 59 to the International Boundary between the United States and Canada.

Restriction: The authority granted herein is restricted against the transportation of any such commodities in bulk, in tank vehicles.

The purpose of this filing is to eliminate the gateway of points in Florida.

No. MC-105813 (Sub E 64), filed December 5. 1975. Applicant: BELFORD TRUCKING CO., INC., P.O. Box 1936 Ocala, Fla. 32670. Applicant's representative: Arthur J. Sibik, 7000 South Pulaski, Chicago, Ill. 60629. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Canned foods*, except commodities in bulk, from Mt. Summit, Muncie and Shirley, Ind., to those points in Texas on and south of a line beginning at the Louisiana-Texas State line and extending west along Interstate Highway 10 to junction U.S. Highway 59, thence southwest along U.S. Highway 59 to the

International Boundary line between the United States and Mexico.

Restriction: The service authorized herein is restricted against the transportation of traffic from the Chicago, Ill., Commercial Zone to points in Florida.

The purpose of this filing is to eliminate the gateway of points in Florida.

No. MC-114868 (Sub E 42) (Correction) filed August 1, 1975, published in the FEDERAL REGISTER issue of December 23, 1976, and republished, as corrected, this issue.

Applicant: NEWLON'S TRANSFER AND STORAGE, 1511 N. Nelson Street, Arlington, Va. 22201. Applicant's representative: Robert J. Gallagher, 1000 Connecticut Avenue, N.W., Suite 1200, Washington, D.C. 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Household goods*, between points in Wisconsin, on the one hand, and, on the other, points in Kentucky. The purpose of this filing is to eliminate the gateway of points in Kentucky within 125 miles of Nashville.

NOTE.—The purpose of this correction is to state the correct territorial description

By the Commission.

ROBERT L. OSWALD,
Secretary.

[FR Doc.77-1801 Filed 1-18-77;8:45 am]

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WEDNESDAY, JANUARY 19, 1977

PART II

THE NATIONAL ARCHIVES OF THE UNITED STATES • 1934 •

DEPARTMENT OF TRANSPORTATION

Urban Mass Transportation Administration

■

UNIFORM SYSTEM OF ACCOUNTS AND RECORDS

Implementation

Title 49—Transportation

CHAPTER VI—URBAN MASS TRANSPORTATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

PART 630—UNIFORM SYSTEM OF ACCOUNTS AND RECORDS AND REPORTING SYSTEM

Implementation

On November 22, 1976 the Urban Mass Transportation Administration published proposed regulations regarding a reporting system to accumulate public mass transportation financial and operating information by uniform categories, and a uniform system of accounts and records. Section 15 of the Urban Mass Transportation Act requires the Secretary of Transportation to develop, test, and prescribe such systems by January 10, 1977.

The purpose of the proposed systems is to assist in meeting the need for information on which to base planning for public transportation services, and to make public sector investment decisions at all levels of government. After July 1, 1978, the Secretary may not make any grant under section 5 of the Urban Mass Transportation Act unless the applicant for such grant and any beneficiary are each subject to both the reporting system and the uniform system of accounts and records prescribed pursuant to section 15. Grants under section 5 are those apportioned to urbanized areas by formula and usable for either capital investments or operating expenses.

Interested persons were invited to submit written comments on the proposed regulations, and 23 such comments were received. In addition, a hearing on the proposed regulations was held on December 7, 1976 in Washington, D.C., at which 21 persons testified. Most of the comments received during the comment period were supportive of the regulations. This may have been because the development of the proposed uniform system of accounts actually took place over a period of several years, in collaboration with representatives of the transit industry, metropolitan planning organizations, and State departments of transportation. However, a number of thoughtful suggestions and criticisms were offered, and the regulations now being issued have in many ways been revised in response to such comments.

Because the number of communications received was not overwhelming, the Urban Mass Transportation Administration will make a special effort to contact correspondents individually to indicate the extent to which their comments were accommodated. The following text identifies the principal changes from the proposed regulations, and changes in policies for administering them, based on public comments which were received.

Mandatory-Voluntary Levels of Detail.—A general concern was expressed about the level of detail specified in the uniform system of accounts and records and in the reporting system described in the proposed regulations, even though an attempt had been made to stratify the level of detail by size of transit operations. This was done by describing three levels for expense reporting: Level A, more than 500 revenue vehicles (about 20 systems); Level B, between 101 and 500 revenue vehicles (about 50 systems); and Level C, 100 or less revenue vehicles (about 800 systems).

The general concern about excessive detail found expression in requests by representatives of smaller operations to reduce the number of expense objects to be used, and to reduce the number of reports. It was suggested that a more simplified system be designed for the smallest systems. At the intermediate level, exception was taken to the number of functions specified for expense reporting, as well as to objects. The largest systems in general expressed their concern by suggesting the need for flexibility in phasing in the implementation from lesser to greater levels of detail, and by advocating a waiver provision in the regulations to permit accommodation of such difficulties without penalty.

These concerns can be considered symptomatic of the dilemma and challenge presented by the relatively unique charter of section 15, which calls for the prescribed systems to assist in meeting the diverse information needs of individual public mass transportation systems, Federal, State and local governments, and the public. Transit operators require relatively detailed information, consistent with their size, for internal management purposes—comparison of their own operations over time and with other transit systems. Local, State and Federal governments, in that order, have significantly fewer requirements to accommodate their concerns. Federal agencies, furthermore, are constrained by the requirements of the Federal Reports Act of 1942 to minimize record-keeping and reporting burdens placed upon the public and affected organizations.

The final regulations now make a distinction between required and voluntary (i.e., recommended) systems, to address this general dilemma. This is a significant change. The uniform system of accounts and records and the reporting system include provisions for both mandatory and voluntary collection and reporting of data. Definitions for the required data are consistent with and summarized from those for the more extensive voluntary data. The central processing system will be designed to support the assimilation and analysis of the more detailed expense and revenue data, as well as mandatory data. Thus, if State or local governments mandate the more detailed revenue and expense data, or if transit operators elect to provide this data to further expand the capability for comparative analysis, the central processing system will accommodate these additional needs.

The net effect of this change is a substantial reduction in the level of detail which must be reported. The number of required data categories for revenues and expenses combined is reduced from 125 to approximately 29. Expense reporting in effect is an abbreviated Level C, shown in Table B–1. Furthermore, systems of 25 buses or fewer are not required to submit the Operators' Wages Subsidiary Schedule, Fringe Benefits Subsidiary Schedule, and Pension Plan Questionnaire. In total, the number of required reporting forms for all systems has been reduced by approximately one-third. With respect to balance sheet data, the data categories reported have been reduced from approximately 267 to 59. With respect to non-financial operating data, categories for accident reporting have been reduced from approximately 316 to 44.

These amendments, of course, necessitated extensive changes in the reference documents describing and explaining the systems, and identified in § 630.6 of the regulations. These documents will be distributed by UMTA to interested parties as soon as possible, probably by mid-February.

Redundancy in Reporting.—Associated with the general concern for the level of detail of reporting were some comments about possible redundancy in record-keeping and reporting resulting from the requirements of Federal agencies. Reference was made to burdens imposed on certain systems which are required to report financial data in accordance with a uniform system of accounts to the Interstate Commerce Commission (ICC), and now will have a section 15 requirement to meet. This problem is addressed in § 630.11 of the regulations, limiting UMTA's now modified requirement to one easily met using the ICC system.

Further, though not made explicit in the regulation itself, UMTA will permit transit authorities which purchase service from several providers to consolidate financial and operating data for them. And for providers with fleets of 25 vehicles or fewer, the authority may report only a "purchase of service" item to satisfy the reporting requirement. This is further explained in the reference documents.

Also mentioned was an apparent redundancy in the Federal Highway Administration's reporting requirements on sources of revenue for urban transportation modes, including transit, and the section 15 requirements of UMTA. It was suggested that the two DOT agencies coordinate their requirements to avoid the redundancy. The two agencies are conferring to this effect.

Waivers.—The regulations now include a waiver provision, § 630.7, in response to several expressions of concern for the need to provide formally a basis for flexible administration of the requirements of the regulations. In the formal comment period, the most frequent subjects of concern were the time constraints for complying with the requirements, the need to describe an acceptable method for providing passenger trip data for rail systems, and difficulty in providing the Operators' Wages Subsidiary Schedule.

It is hoped that the distinction now made in the regulations between the

mandatory and voluntary systems will mitigate the need for waivers with reference to time for compliance. With respect to the Operators' Wages Subsidiary Schedule, a waiver is granted to all operators for the first year, and systems with 25 vehicles or less have a permanent waiver. A methodology for addressing the passenger trip data problem hopefully will be described within the next few months, based on activity in progress.

Cost of Implementation.—The preamble to the proposed regulations of November 22, 1976 stated that the one-time cost of conversion to the prescribed systems would be considered either eligible capital expenditures or operating expense under the section 5 grant program. It was also stated that for agencies which might not be eligible for section 5 funds but wanted to implement the systems, section 3 funds (capital grant program) might be made available.

Several larger operators objected that their section 5 funds were fully programmed, and requested that section 3 funds be made available for this purpose without the restriction stated in the preamble.

The UMTA considers section 5 the more flexible and appropriate resource to be used in accommodating the expense of implementation, but acknowledges the circumstances described and will consider the use of section 3 funds on a case-by-case basis, for systems which would have been subject to the Level A and Level B requirements. In the final regulations, Levels A, B and C are no longer required as such. However, their implementation will be encouraged with appropriate arrangements for financial assistance, so that transit operators may develop and report information at the voluntary levels.

Administration of system.—A number of witnesses at the December 7, 1976 hearing expressed the fear of erroneous interpretations of data to be provided eventually in reports emanating from the system. It was suggested that care be taken to minimize such problems; for example, by making available "profiles" of systems taking into account such factors as topography, demographic characteristics, density of development, labor contracts, fare policies, and so forth. Undoubtedly, there will be several issues of this nature related to the administration of the system, and appropriate arrangements will be made to seek advice about them as the system evolves.

As the steward of the section 15 systems, the UMTA will make arrangements for developing and maintaining a data collection and processing system to permit acceptance and use of the mandatory and optional levels of detail described in the regulations. Manipulation of the data for purposes of analysis will be at the expense of users, except for a series of reports being designed to be of general interest to all users.

Within the Urban Mass Transportation Administration, responsibility for the administration of section 15 has been assigned to the Associate Administrator for Transportation Management and Demonstrations. Inquiries pertaining to these regulations should therefore be addressed to that office.

In consideration of the foregoing and under the authority of section 15 of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1611) and the delegation of authority by the Secretary of Transportation at 49 CFR 1.51, Chapter VI of the Code of Federal Regulations is hereby amended by adding a new Part 630 as set forth below.

Effective Date: This regulation is effective January 10, 1977.

Issued on January 10, 1977.

ROBERT E. PATRICELLI,
Urban Mass Transportation Administrator.

Subpart A—General

Sec.
630.1 Purpose.
630.2 Scope.
630.3 Definitions.
630.4 Overview of the Uniform System of Accounts and Records and the Reporting System.
630.5 Commuter rail reporting requirements.
630.6 Reference documents.
630.7 Waiver.

Subpart B—Uniform System of Accounts and Records

630.10 Purpose.
630.11 General instructions.
630.12 Structure of the Uniform System of Accounts and Records.

Subpart C—Reporting System

630.20 Purpose.
630.21 Reporting requirements.
630.22 Reporting period.
630.23 Availability of reporting forms and instructions.

AUTHORITY: Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1601 et seq.) and 49 CFR 1.51.

Subpart A—General

§ 630.1 Purpose.

The purpose of this subpart is to define the terms and procedures guiding the application of the Uniform System of Accounts and Records and the Reporting System required to be prescribed by Section 15 of the Urban Mass Transportation Act. These systems are described in the report entitled "Urban Mass Transportation Industry Uniform System of Accounts and Records and Reporting System," January, 1977.

§ 630.2 Scope.

These regulations apply to all applicants and beneficiaries of Federal financial assistance under section 5 of the UMT Act (49 U.S.C. 1604 et seq.). Applicants and beneficiaries under Section 5 must adhere to the Uniform System of Accounts and Records and participate in the Reporting System as provided hereunder. Failure to do so will result in loss of eligibility for assistance under section 5.

§ 630.3 Definitions.

(a) Except as otherwise provided, terms defined in the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1601 et seq.), are used in this part as so defined.

(b) For purposes of this part—

"The UMT Act" means the Urban Mass Transportation Act of 1964 as amended (49 U.S.C. 1601 et seq.).

"Administrator" means the Urban Mass Transportation Administrator or his designee.

"Applicant" means Applicant for Assistance under section 5 of the UMT Act.

"Assistance" means Federal financial assistance for the acquisition, construction or operation of public mass transportation services.

"Central Processing System" means the procedures and computer software needed to receive Section 15 reports, validate their data, maintain the data, and provide standard reports, special reports and computer data facsimiles to the system's users including governments at all levels, transit operators and the public.

"Central Processing Agency" means the organizational element in UMTA responsible for operation and maintenance of the Central Processing System.

"Commuter Rail System" means passenger transportation by railroad within, to or from an urbanized area usually typified by closer headways during weekday morning and afternoons and by the sale of commutation tickets.

"Beneficiary" means any organization operating and delivering urban transit services that receives benefits directly from assistance under Section 5 of the UMT Act.

"Metropolitan Planning Organization" means that organization designated by the Governor as being responsible, together with the state for carrying out the provisions of 23 U.S.C. 134 (Federal-Aid Highway Planning Requirements) and capable of meeting the requirements of 49 U.S.C. 1603(a) (Urban Mass Transportation planning requirements). This organization is the forum for cooperative decision-making by principal elected officials of general purpose local government.

"Mass Transportation System" or "transit system" means a system to transport people by bus, or rail, or other conveyance, either publicly or privately owned, and which provides to the public, general or special service (but not including school or charter or sightseeing service) on a regular and continuing, scheduled or unscheduled, basis. Transit systems are classified according to the mode of transit service operated. A multi-mode transit system is one operating two or more of these modes, described hereafter.

(1) *Rail Rapid Transit.*—High-speed passenger rail cars operating singly or in trains of two or more cars on fixed rails in separate rights-of-way from which all other vehicular and foot traffic is excluded. The tracks may be located in underground tunnels, on elevated structures, in open cut or at surface level. There are very few, if any, crossings of streets and roads at track level, and rail traffic has the right-of-way at such intersections. The cars are driven electri-

cally with the power being drawn from an overhead electric line or from an electrified third rail.

(2) *Streetcar.*—Lightweight passenger rail cars operating singly (or in short, usually two-car, trains) on fixed rails in right-of-way that is not separated from other traffic for much of the way. Streetcars do not necessarily have the right-of-way at at-grade crossings with other traffic. Streetcars are driven electrically with the power being drawn from an overhead electric line via a trolley or a pantograph.

(3) *Trolleybus.*—Rubber-tired passenger vehicles operating singly on city streets. These buses are driven electrically with the power being drawn from an overhead electric line via trolleys.

(4) *Motor Bus.*—Rubber-tired passenger vehicles operating singly on city streets. These buses are powered by diesel, gasoline or propane engines contained within the bus; they are, therefore, not restricted to operating on a fixed route.

(5) *Dial-A-Ride.*—Rubber-tired passenger vehicles operating on city streets, propelled by gas, gasoline or diesel engines, equipped to provide personal demand transit service, normally upon dispatch, and used exclusively for this service.

(6) *School Bus.*—Type I and Type II school vehicles as defined in Highway Safety Program Standard No. 17, used exclusively to transport school students, personnel and equipment.

(7) *Ferryboat.*—A vessel for carrying passengers and/or vehicles over a body of water. The vessels are generally steam or diesel-powered conventional ferry vessels. They may also be hovercraft, hydrofoil and other high-speed vessels.

(8) *Other.*—Other modes of transit service such as cable cars, personal rapid transit systems of varying designs, monorails, incline railways, etc., not covered in the above categories.

§ 630.4 Overview of the Uniform System of Accounts and Records and the Reporting System.

(a) *Distinction between required and voluntary systems.*—The Uniform System of Accounts and Records and the Reporting System include provisions for both mandatory and voluntary collection and reporting of data. The definitions for the required data are consistent with and summarized from those for the more extensive voluntary data. As described in Subparts B and C of this regulation, operators may elect to collect and report revenue and expense data in greater detail than that required to meet the section 15 requirement. The Central section 15 Processing System will be configured to support the assimilation and analysis of the more detailed expense and revenue data as well as mandatory data. Thus, if state or local governments mandate the more detailed revenue and expense data, or if transit operators elect to provide this data to further expand the capability for comparative analysis, the Central Processing System will accommodate these additional needs.

(b) *Relationship of system of accounts and records to reporting system.*—There is a distinction between a uniform system of accounts and records, and a system of reports generated to satisfy the requirements of various users of financial and operating information.

(1) The uniform system of accounts and records consists of (1) Various categories of accounts and records for classifying financial and operating data, (2) Precise definitions as to what data elements are to be included in these categories, and (3) Definition of practices for systematic collection and recording of such information.

(2) The reporting system consists of forms and procedures (i) For transmitting information from operators to the central processing agency designated to collect data from all operators, (ii) For editing and storing information, and (iii) For the data center to report information to various user groups. User reports may consist of basic data summaries and analytical measures or performance indicators to assist the analysis of information.

(3) The level of detail of data element categories in the system of accounts and records should not be confused with the level of detail to be reported to the central processing agency and ultimately to users. The level of detail in the system of accounts and records maintained by the reporting agencies should be dictated largely by the management needs of the reporting agency, and by the requirement to provide an audit trail from the internal accounting system to the prescribed system, if the latter is not actually adopted in practice. The level of detail to be reported to the central processing agency will normally be less than that required for internal management purposes.

§ 630.5 Commuter rail reporting requirements.

Commuter railroads shall maintain their internal books of account in the manner specified by the Interstate Commerce Commission (ICC). The commuter rail reporting requirements under section 15 are those prescribed by the Rail Services Planning Office (RSPO) under 49 CFR Part 1127 as published in the FEDERAL REGISTER on August 3, 1976.

§ 630.6 Reference documents.

(a) The Uniform System of Accounts and Reeords and the Reporting System required by section 15 are contained in the report entitled "Urban Mass Transportation Industry Uniform System of Accounts and Records and Reporting System," January, 1977. The report distinguishes between the mandatory collection and reporting of data required under section 15, and the voluntary collection and reporting which section 15 will accommodate. The report is presented in four volumes.

VOLUME I—GENERAL DESCRIPTION presents an overview of the systems, and an identification of the analytical potential provided by comparative data generated by the systems.

VOLUME II—UNIFORM SYSTEM OF ACCOUNTS AND RECORDS contains the definitions for the uniform system of accounts and records.

VOLUME III—REPORTING SYSTEM FORMS AND INSTRUCTIONS—REQUIRED contains illustrative forms for each of the reports required to be submitted under section 15 and instructions for completing those forms.

VOLUME IV—REPORTING SYSTEM FORMS AND INSTRUCTIONS—VOLUNTARY contains illustrative forms and instructions for optional revenue and expense reporting. The voluntary reports in Volume IV are more detailed than their counterparts in Volume III. Operators may elect one or more of the optional reports in Volume IV in place of counterpart reports in Volume III.

(b) Volumes I, II, and III will be of use to all reporting transit systems. Volume IV will be useful to those operators who elect to comply with the more detailed revenue and expense options.

§ 630.7 Waiver.

The requirements set forth in this part may be modified or waived on a case-by-case basis upon application to the Urban Mass Transportation Administrator, if the Administrator determines that such modification or waiver is clearly necessary and is consistent with the intent of the law.

Subpart B—Uniform System of Accounts and Records

§ 630.10 Purpose.

The purpose of this Subpart is to prescribe the Uniform System of Accounts and Records under section 15 of the Urban Mass Transportation Act.

§ 630.11 General instructions.

(a) The Uniform System of Accounts and Records hereby prescribed pursuant to section 15 for each transit system affected by this regulation, except for commuter rail systems, is that described in the publication "Urban Mass Transportation Industry Uniform System of Accounts and Records and Reporting System," January, 1977, available from:

Section Fifteen, Office of Transit Management, UMD–10, Urban Mass Transportation Administration, 2100 2nd Street, SW., Washington, D.C. 20590.

(1) In addition to the prescribed accounts, temporary or supplemental accounts and subdivisions of any accounts may be kept, provided the integrity of the prescribed accounts is not impaired. A transit property is not required to adopt the prescribed uniform system of accounts and records as its own internal system of accounts. Each entity can customize its internal books of account to meet its own internal management requirements, provided that it is able to translate its accounts to the prescribed uniform system of accounts and records. It is intended that the records shall be kept in a manner to permit ready analysis by prescribed accounts and to permit preparation of financial and operating data directly from such records at the end of the fiscal year. Any summary and/or translation to the prescribed Uniform System of Accounts and Records must be consistent with the following:

(i) The data have been developed using the accrual basis of accounting. Those transit systems that use cash-basis accounting, in whole or in part, in their books of account will have to make work sheet adjustments to record the data on the accrual basis.

(ii) The accounting treatment specified in the Accounting Practice Instructions in the publication "Urban Mass Transportation Industry Uniform System of Accounts and Records and Reporting System," January, 1977, has been followed.

(iii) The transit system's accounting categories (chart of accounts) have been correctly related, via a clear audit trail, to the accounting categories prescribed in this system.

(b) Commuter rail systems shall maintain their internal books of account in the manner specified by the Interstate Commerce Commission.

(c) Transit systems held subject by the Interstate Commerce Commission to the Interstate Commerce Commission's Uniform System of Accounts for Class I Common and Contract Motor Carriers of Passengers are not subject to the system of accounts and records described in this subpart. However, such transit systems are subject to the Section 15 reporting requirements specified in Subpart C.

§ 630.12 Structure of the Uniform System of Accounts and Records.

(a) In order to aid affected persons, enterprises and the public in comprehending this Uniform System of Accounts and Records, the general structure of the system is described as follows:

(1) *Two-Dimension Classification of Expenses.*—In the section 15 system, operating expenses incurred by the transit system are classified within mode according to two dimensions:

(i) The type of expenditure (object classes).

(ii) The functions or activities performed.

(2) *Expense Object Classes.*—The expense object classes are typical of most transit accounting systems. Although some operators may not identify the specific categories or use the same names, their systems usually capture the same information and can be reclassified into the Section 15 categories. The additional level of detail presented in "Urban Mass Transportation Industry Uniform System of Accounts and Records and Reporting System" Volume II contains definitions that should help in this reclassification. Table B–1 presents the expense object classes and functions required under Section 15. Table B–2 is a more detailed list which includes recommended expense object classes that have been developed to assist transit operators in implementing the Section 15 requirements. The object class definitions are contained in the "Urban Mass Transportation Industry Uniform System of Accounts and Records and Reporting System," January, 1977.

TABLE B–1.—*Required expense object classes and functions*

Object classes	Functional categories: 010 operations	040 maintenance	100 general administrations	Total all functions
501 Labor				
01 Operators' salaries and wages				
02 Other salaries and wages				
502 Fringe benefits				
503 Services				
504 Materials and supplies consumed				
01 Fuel and lubricants				
02 Tires and tubes				
99 Other materials and supplies				
505 Utilities				
506 Casualty and liability costs				
507 Taxes				
508 Purchased transportation service				
509 Miscellaneous expense				
510 Expense transfers				
511 Interest expense				
512 Leases and rentals				
513 Depreciation and amortization				
Total expense				

TABLE B–2

RECOMMENDED EXPENSE OBJECT CLASSES

501. *Labor*[1]
- 01. Operators' Salaries and Wages.[1]
- 02. Other Salaries and Wages.[1]

502. *Fringe Benefits*[1]
- 01. FICA or Railroad Retirement.
- 02. Pension Plans (including long-term disability insurance).
- 03. Hospital, Medical and Surgical Plans.
- 04. Dental Plans.
- 05. Life Insurance Plans.
- 06. Short-Term Disability Insurance Plans.
- 07. Unemployment Insurance.
- 08. Workmen's Compensation Insurance or Federal Employees Liability Act Contributions.
- 09. Sick Leave.
- 10. Holiday (including all premiums paid for working on holidays).
- 11. Vacation.
- 12. Other Paid Absence (bereavement pay, military pay, jury duty pay, etc.).
- 13. Uniform and Work Clothing Allowances.
- 14. Other Fringe Benefits.
- 15. Distribution of Fringe Benefits.

503. *Services*[1]
- 01. Management Service Fees.
- 02. Advertising Fees.
- 03. Professional and Technical Services.
- 04. Temporary Help.
- 05. Contract Maintenance Services.
- 06. Custodial Services.
- 07. Security Services.
- 99. Other Services.

504. *Materials and Supplies Consumed*[1]
- 01. Fuel and Lubricants.[1]
- 02. Tires and Tubes.[1]
- 99. Other Materials and Supplies.[1]

505. *Utilities*[1]
- 01. Propulsion Power.
- 02. Utilities Other Than Propulsion Power.

506. *Casualty and Liability Costs*[1]
- 01. Premiums for Physical Damage Insurance.
- 02. Recoveries of Physical Damage Losses.
- 03. Premiums for Public Liability and Property Damage Insurance.
- 04. Payouts for Uninsured Public Liability and Property Damage Settlements.
- 05. Provision for Uninsured Public Liability and Property Damage Settlements.
- 06. Payouts for Insured Public Liability and Property Damage Settlements.
- 07. Recoveries of Public Liability and Property Damage Settlements.
- 08. Premiums for Other Corporate Insurances.
- 09. Other Corporate Losses.
- 10. Recoveries of Other Corporate Losses.

507. *Taxes*[1]
- 01. Federal Income Tax.
- 02. State Income Tax.
- 03. Property Tax.
- 04. Vehicle Licensing and Registration Fees.
- 05. Fuel and Lubricant Taxes.
- 06. Electric Power Taxes.
- 99. Other taxes.

508. *Purchased Transportation Service*[1]

509. *Miscellaneous Expense*[1]
- 01. Dues and Subscriptions.
- 02. Travel and Meetings.
- 03. Bridge, Tunnel and Highway Tolls.
- 04. Entertainment Expense.
- 05. Charitable Donations.
- 06. Fines and Penalties.
- 07. Bad Debt Expense.
- 08. Advertising/Promotion Media.
- 99. Other Miscellaneous Expense.

510. *Expense Transfers*[1]
- 01. Function Reclassifications.
- 02. Expense Reclassifications.
- 03. Capitalization of Nonoperating Costs.

511. *Interest Expense*[1]
- 01. Interest on Long-Term Debt Obligations (net of interest capitalized).
- 02. Interest on Short-Term Debt Obligations.

512. *Leases and Rentals*[1]
- 01. Transit Way and Transit Way Structures and Equipment.
- 02. Passenger Stations.
- 03. Passenger Parking Facilities.
- 04. Passenger Revenue Vehicles.
- 05. Service Vehicles.
- 06. Operating Yards or Stations.
- 07. Engine Houses, Car Shops and Garages.
- 08. Power Generation and Distribution Facilities.
- 09. Revenue Vehicles Movement Control Facilities.
- 10. Data Processing Facilities.
- 11. Revenue Collection and Processing Facilities.
- 12. Other General Administration Facilities.

[1] Denotes required object classes.

Sec.
513 *Depreciation and Amortization* [1]
01. Transit Way and Transit Way Structures and Equipment.
02. Passenger Stations.
03. Passenger Parking Facilities.
04. Passenger Revenue Vehicles.
05. Service Vehicles.
06. Operating Yards or Stations.
07. Engine Houses, Car Shops and Garages.
08. Power Generation and Distribution Facilities.
09. Revenue Vehicle Movement Control Facilities.
10. Data Processing Facilities.
11. Revenue Collection and Processing Facilities.
12. Other General Administration Facilities.
13. Amortization of Intangibles.

(3) *Functional Categories.*—Most current systems classify expenditures according to organizational categories. These organizational entities may or may not conform to the functional categories. Moreover, the organizational categories vary a great deal among systems. To obtain uniformity and enhance the usefulness of the data, a standard set of functional classifications has been defined. The functional classifications reflect the complexity, needs and capabilities of various sizes of operations. Large systems need to develop specialized activities and are able to identify labor and other expenses directly with these activities. Small companies have less need to develop specialized activities. For example, in an operation with ten vehicles, one person may perform general management, operating and maintenance activities.

(i) For the above reasons, three levels of detail for functional categories were developed and are recommended:

(A) Level A—Applies to operations with more than 500 vehicles.
(B) Level B—Applies to operations with 101–500 vehicles.
(C) Level C—Applies to operations with 100 vehicles or less.

(ii) Table B–3 shows the three levels of functional classification and how they relate to one another. Function definitions are contained in the January, 1977 publication "Urban Mass Transportation Industry Uniform System of Accounts and Records and Reporting System." Level A is the most detailed. Level B is an aggregation of Level A, and Level C is an aggregation of Level B. The breakdown in Table B–1 is Level C. Note that it will be possible to compare all systems at the C–Level regardless of reporting level chosen. The three functions defined for Level C are required under Section 15 for all operators, i.e., 010 Operations, 040 Maintenance, and 160 General Administration. Transit systems are encouraged, however, to adopt the functional classification developed for their size of operation.

[1] Denotes required object classes.

TABLE B–3. *Aggregation of functions for expense classification*

Level A—Detail		Level B (aggregation of A		Level C (aggregation of A)
011	Transportation administration	010	Administration of transportation operations.	010 operations.
012	Revenue vehicle movement control.			
021	Schedule of transportation operations.	020	Scheduling of transportating operations.	
030	Revenue vehicle operation	030	Revenue vehicle operation	
041	Maintenance administration—vehicles.	040	Maintenance administration	040 maintenance.
042	Maintenance administration—facilities.			
050	Servicing revenue vehicles	050	Servicing revenue vehicles	
061	Inspection and maintenance of revenue vehicles.	060	Inspection and maintenance of revenue vehicles.	
062	Accident repairs of revenue vehicles.	062	Accident repairs of revenue vehicles.	
070	Vandalism repairs of revenue vehicles.	070	Vandalism repairs of revenue vehicles.	
080	Servicing and fuel for service vehicles.	080	Servicing and fuel for service vehicles.	
090	Inspection and maintenance of service vehicles.	090	Inspection and maintenance of service vehicles.	
100	Maintenance of vehicle movement control systems.	100	Maintenance of vehicle movement control systems.	
110	Maintenance of fare collection and counting equipment.	110	Maintenance of fare collection and counting equipment.	
121	Maintenance of roadway and track.	120	Maintenance of other buildings, grounds, and equipment.	
122	Maintenance of structures, tunnels, bridges, and subways.			
123	Maintenance of passenger stations.			
124	Maintenance of operating station buildings, grounds, and equipment.			
125	Maintenance of garage and shop buildings, grounds, and equipment.			
126	Maintenance of communication system.			
127	Maintenance of general administration buildings, grounds, and equipment.			
128	Accident repairs of buildings, grounds, and equipment.			
130	Vandalism repairs of buildings, grounds, and equipment.	130	Vandalism repairs of buildings, grounds, and equipment.	
140	Operation and maintenance of electric power facilities.	140	Operation and maintenance of electric power facilities.	
145	Preliminary transit system development.	145	Preliminary transit system development.	
150	Ticketing and fare collection	150	Ticketing and fare collection	
161	System security	160	General administration	160 general administration.
165	Injuries and damages			
166	Safety			
167	Personnel administration			
168	General legal services			
169	General insurance			
170	Data processing			
171	Finance and accounting			
172	Purchasing and stores			
173	General engineering			
174	Real estate management			
175	Office management and services.			
176	General management			
162	Customer services	170	Marketing	
163	Promotion			
164	Market research			
177	Planning			
180	General function	180	General function	

[1] Denotes required functional categories.

(4) *Revenue Classes.*—Table B–4 presents the revenue object classes required under Section 15. Table B–5 is a more detailed list which includes recommended revenue object classes that have been developed to assist transit operators in implementing the Section 15 requirement. The object class definitions appear in the January, 1977 publication "Urban Mass Transportation Industry Uniform System of Accounts and Records and Reporting System."

TABLE B–4

REQUIRED REVENUE OBJECT CLASSES

401. Passenger Fares for Transit Service
402. Special Transit Fares
403. School Bus Service Revenues
404. Freight Tariffs
405. Charter Service Revenues
406. Auxiliary Transportation Revenues
407. Nontransportation Revenues
408. Taxes Levied Directly by Transit System
409. Local Cash Grants and Reimbursements
410. Local Special Fare Assistance
411. State Cash Grants and Reimbursements
412. State Special Fare Assistance
413. Federal Cash Grants and Reimbursements
430. Contributed Services
440. Subsidy from Other Sectors of Operations

TABLE B–5

RECOMMENDED REVENUE OBJECT CLASSES

401. *Passenger Fares for Transit Service* [1]
0.1 Full Adult Fares.
0.2 Senior Citizen Fares.
0.3 Student Fares.
04. Child Fares.
05. Handicapped Rider Fares.
06. Parking Lot Revenue.
99. Other Primary Ride Fares.
402. *Special Transit Fares* [1]
01. Contract Fares for Postmen.
02. Contract Fares for Policemen.
03. Special Route Guarantees.
04. Other Special Contract Transit Fares—State and Local Government.
05. Other Special Contract Transit Fares—Other Sources.
07. Non-Contract Special Service Fares.
403. *School Bus Service Revenues* [1]
404. *Freight Tariffs* [1]
405. *Charter Service Revenues* [1]
406. *Auxiliary Transportation Revenues* [1]
01. Station Concessions.
02. Vehicle Concessions.
03. Advertising Services.
04. Automotive Vehicle Ferriage.
99. Other Auxiliary Transportation Revenues.
407. *Nontransportation Revenues* [1]
01. Sales of Maintenance Services.
02. Rental of Revenue Vehicles.
03. Rental of Buildings and Other Property.
04. Investment Income.
05. Parking Lot Revenue.
99. Other Nontransportation Revenues.
408. *Taxes Levied Directly by Transit System* [1]
01. Property Tax Revenue.
02. Sales Tax Revenue.
03. Income Tax Revenue.
04. Payroll Tax Revenue.
05. Utility Tax Revenue.
99. Other Tax Revenue.
409. *Local Cash Grants and Reimbursements* [1]
01. General Operating Assistance.
02. Special Demonstration Project Assistance—Local Projects.
03. Special Demonstration Project Assistance—Local Share for State Projects.
04. Special Demonstration Project Assistance—Local Share for UMTA Projects.
05. Reimbursement of Taxes Paid.
06. Reimbursement of Interest Paid.
07. Reimbursement of Transit System Maintenance Costs.
09. Reimbursement of Security Costs.
99. Other Financial Assistance.
410. *Local Special Fare Assistance* [1]
01. Handicapped Citizen Fare Assistance.
02. Senior Citizen Fare Assistance.
03. Student Fare Assistance.
99. Other Special Fare Assistance.
411. *State Cash Grants and Reimbursements* [1]
01. General Operating Assistance.
03. Special Demonstration Project Assistance—State Projects.
04. Special Demonstration Project Assistance—State Share for UMTA Projects.
05. Reimbursement of Taxes Paid.
06. Reimbursement of Interest Paid.
07. Reimbursement of Transit System Maintenance Costs.
09. Reimbursement of Security Costs.
99. Other Financial Assistance.
412. *State Special Fare Assistance* [1]
01. Handicapped Citizen Fare Assistance.
02. Senior Citizen Fare Assistance.
03. Student Fare Assistance.
99. Other Special Fare Assistance.
413. *Federal Cash Grants and Reimbursements* [1]
01. General Operating Assistance.
04. Special Demonstration Project Assistance.
99. Other Financial Assistance
430. *Contributed Services* [1]
01. State and Local Government.
02. Contra Account for Expense.
440. *Subsidy From Other Sectors of Operations* [1]
01. Subsidy from Utility Rates.
02. Subsidy from Bridge and Tunnel Tolls.

(5) *Balance Sheet Object Classes.*—Table B–6 presents the classifications for assets, liabilities and capital accounts required under Section 15. Table B–7 is a more detailed list which includes recommended balance sheet accounts that have been developed to assist transit operators in implementing the Section 15 requirement. The definitions appear in the January, 1977 publication "Urban Mass Transportation Industry Uniform System of Accounts and Records and Reporting System."

TABLE B–6

REQUIRED BALANCE SHEET OBJECT CLASSES

Assets

101. Cash and Cash Items.
102. Receivables.
103. Materials and Supplies Inventory.
104. Other Current Assets.
105. Work in Process.
111. Tangible Transit Operating Property
03. Accumulated Depreciation.
112 Tangible Property Other Than for Transit Operations
02. Accumulated Depreciation.
121. Intangible Assets.
06. Accumulated Amortization.
131. Investments.
141. Special Funds.
151. Other Assets.

Liabilities

201. Trade Payables.
202. Accrued Payroll Liabilities.
203. Accrued Tax Liabilities.
204. Short-Term Debt.
205. Other Current Liabilities.
211. Advances Payable.
221. Long-Term Debt.
231. Estimated Liabilities.
241. Deferred Credits.

Capital

301. Public (Governmental) Entity Ownership.
302. Private Corporation Ownership.
303. Private Noncorporate Ownership.
304. Grants, Donations and Other Paid-In Capital.
305. Accumulated Earnings (Losses).

[1] Denotes required object classes.

TABLE B–7

RECOMMENDED BALANCE SHEET OBJECT CLASSES

Assets

101. *Cash and Cash Items* [1]
01. Cash.
02. Working (Imprest) Funds.
03. Special Deposits, Interest.
04. Special Deposits, Dividends.
05. Special Deposits, Other.
06. Temporary Cash Investments.
102. *Receivables* [1]
01. Accounts Receivable.
02. Notes Receivable.
03. Interest and Dividends Receivable.
04. Receivables from Associated Companies.
05. Receivable Subscriptions to Capital Stock.
06. Receivables for Capital Grants.
07. Receivables for Operating Assistance.
08. Other Receivables.
09. Reserve for Uncollectible Accounts.
103. *Materials and Supplies Inventory* [1]
104. *Other Current Assets* [1]
105. *Work in Process* [1]
01. Unbilled Work for Others
02. Capital Projects.
111 *Tangible Transit Operating Property* [1]
01. Property Cost.
02. Leased-Out Property Cost.
03. Accumulated Depreciation.[1]
112. *Tangible Property Other Than for Transit Operations* [1]
01. Property Cost.
02. Accumulated Depreciation
121. *Intangible Assets* [1]
01. Organization Costs.
02. Franchises.
03. Patents.
04. Goodwill.
05. Other Intangible Assets.
06. Accumulated Amortization.[1]
131. *Investments* [1]
01. Investments and Advances, Associated Companies.
02. Other Investments and Advances
.03 Reserve for Revaluation of Investments.
141. *Special Funds* [1]
01. Sinking Funds.
02. Capital Asset Funds.
03. Insurance Reserve Funds.
04. Pension Funds.
05. Other Special Funds
151 *Other Assets* [1]
01. Prepayments.
02. Miscellaneous Other Assets.

Liabilities

201. *Trade Payables* [1]
0.1 Accounts Payable.
02. Payables to Associated Companies
202. *Accrued Payroll Liabilities* [1]
203. *Accrued Tax Liabilities* [1]
204. *Short-Term Debt* [1]
01. Notes Payable.
02. Matured Equipment and Long-Term Obligations.
03. Unmatured Equipment and Long-Term Obligations, Current Portion.
04. Matured Interest Payable.
05. Accrued Interest Payable.
06. Current Pension Liabilities
205. *Other Current Liabilities* [1]
01. Unredeemed Fares.
02. C.O.D.'s Unremitted.
03. Dividends Declared and Payable.

04. Short-Term Construction Liabilities.
05. Miscellaneous Other Current Liabilities.

211. *Advances Payable*[1]
01. Advances Payable to Associated Companies.
02. Other Advances Payable.

221. *Long-Term Debt*[1]
01. Equipment Obligations.
02. Bonds.
03. Receivers' and Trustees' Securities.
04. Long-Term Construction Liabilities.
05. Other Long-Term Obligations.
06. Unamortized Debt Discount and Expense.
07. Unamortized Premium on Debt.
08. Reacquired and Nominally Issued Long-Term Obligations.

231. *Estimated Liabilities*[1]
01. Long-Term Pension Liabilities.
02. Uninsured Public Liability and Property Damage Losses.
03. Other Estimated Liabilities.

241. *Deferred Credits*[1]

Capital

361. *Public (Governmental) Entity Ownership*[1]

362. *Private Corporation Ownership*[1]
01. Preferred Capital Stock.
02. Common Capital Stock.
03. Premiums and Assessments on Capital Stock.
04. Discount on Capital Stock.
05. Commission and Expense on Capital Stock.
06. Capital Stock Subscribed.
07. Reacquired Securities.
08. Nominally Issued Securities.

363. *Private Noncorporate Ownership*[1]
01. Sole Proprietorship Capital.
02. Partnership Capital.

364. *Grants, Donations and Other Paid-In Capital*[1]
01. Federal Government Capital Grants.
02. State Government Capital Grants.
03. Local Government Capital Grants.
04. Nongovernmental Donations and Other Paid-In Capital.

305. *Accumulated Earnings (Losses)*[1]
01. Accumulated Earnings (Losses).
02. Dividend Appropriations.
03. Restricted Accumulated Earnings.

(6) *Accumulation Period.*—The period of accumulation of data is the operator's fiscal year. This avoids allocation inaccuracies that would occur if the operator were to be forced into a common year, i.e., calendar year, or the disruption which would be caused if all were to be required to adopt a fiscal year ending on the same date.

(7) *Operating Data Elements.*—The January, 1977 publication "Urban Mass Transportation Industry Uniform System of Accounts and Records and Reporting System" also defines and recommends procedures for the collection of certain operating data elements. The required operating data elements are listed in Table B–8.

(i) It should be noted here that for urbanized areas with populations over 750,000, this information will be supplemented periodically by a user survey conducted by the Metropolitan Planning Organizations (MPO's). A measure of walking accessibility to transit systems and certain demographic data will also be provided by the MPO's for all urbanized areas with 50,000 or more population.

[1] Denotes required object classes.

TABLE B–8

REQUIRED OPERATING DATA ELEMENTS

Time Periods

Facilities and Equipment
Miles of roadway or track.
Railway classifications.
Bus roadway classifications.
Revenue vehicle inventory classifications.
Number of passenger stations.

Employees
Transit operating personnel classifications.
Employee count classifications.

Maintenance Performance and Fuel Consumption
Roadcalls for mechanical failure.
Roadcalls for other reasons.
Labor hours for inspection and maintenance of revenue vehicles.
Fuel power consumption.
Number of light maintenance facilities.

Safety
Collision accident classifications.
Noncollision accident classifications.
Injury and damage classifications.

Service Supplied and Vehicle Utilization
Average and total vehicles operated.
Miles of revenue service.
Miles of total service.
Miles of charter and school bus service.
Hours of revenue service.
Hours of total service.
Hours of charter and school bus service.

Passenger Utilization
Unlinked passenger trips.
Passenger miles.
Average time per unlinked trip.

Subpart C—Reporting System

§ 630.20 Purpose.

(a) The purpose of this subpart is to prescribe the Reporting System and present general instructions for reporting the financial and nonfinancial operating data required.

(b) *Distinction between reporting system inputs and outputs.*—(1) *Reporting system inputs.*—The reporting system inputs are the data elements which are actually reported by the system operators to the central processing agency.

(2) *Reporting system outputs.*—The reporting system outputs are the reports which are generated by the data center for the various user groups. These reports may contain the values of the individual data elements reported by the operators, and/or aggregations of the data, and/or ratios or other analyses of interest to various users.

§ 630.21 Reporting requirements.

(a) The reporting requirements cover the following major segments which are based on the Uniform System of Accounts and Records.
(1) Balance sheet.
(2) Revenue report.
(3) Expense report.
(4) Nonfinancial operating data reports.
(5) Miscellaneous auxiliary questionnaires and subsidiary schedules.

(b) The reporting requirements under Section 15 consist of reporting information contained in each of the required accounts specified in Subpart B and of reporting more detailed information on sources of funding, payroll and labor related expenses.

(c) Transit operators may submit a more detailed revenue report which would include the information contained in the recommended revenue object classes listed in Subpart B, Table B–5.

(d) Transit operators may submit a more detailed expense report which would include the information contained in the recommended expense object classes and functions listed in Subpart B, Tables B–2 and B–3. Transit operators choosing this option are encouraged to use the guidelines specified in Subpart B in determining the level of functional category detail to use in the collection and reporting of expense data, i.e., Level A, B or C.

(e) Transit operators with 25 revenue vehicles or less are not required to submit the following subsidiary forms:

Operators' Wages Subsidiary Schedule
Fringe Benefits Subsidiary Schedule
Pension Plan Questionnaire

§ 630.22 Reporting period.

(a) At the end of its fiscal year, each transit operator subject to this Reporting System shall file a report that contains the reporting forms required by section 15. The transit system shall file with such report, a letter or report signed by an independent public accountant or other responsible independent entity such as a state audit agency attesting to the conformity, in all material respects, of the financial data reporting forms in such report with the prescribed Uniform System of Accounts and Records and Reporting System.

(b) A suggested form of a letter or report follows:

In connection with our regular examination of the financial statements of _____ for the year ended _____, on which we have reported separately under date of _____, we have also reviewed the reporting forms listed below and included in the _____ report for the year ended _____, required under Section 15 of the Urban Mass Transportation Act, for conformity in all material respects with the requirements of the Urban Mass Transportation Administration as set forth in its applicable Uniform System of Accounts and Records and Reporting System. Our review for this purpose included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances. We did not make a detailed examination such as would be required to determine that each transaction has been recorded in accordance with the Uniform System of Accounts and Records.

LIST OF REPORTING FORMS BEING REPORTED UPON

Based on our review, in our opinion, the accompanying reporting forms identified above (except as noted below[1]) conform in all material respects with the accounting requirements of the Urban Mass Transportation Administration as set forth in its applicable Uniform System of Accounts and Records and Reporting System.

[1] Parenthetical phrase inserted only when exceptions are to be reported.

(c) The letter or report shall state, additionally, which, if any, of the reporting forms set forth above do not conform to the Urban Mass Transportation Administration requirements, and shall describe the discrepancies that exist.

(d) If the system is not audited by an independent public accountant, such certification will be required from a governmental audit agency, such as a state audit agency or a municipal audit agency. However, the certification must be made by an agency that is in fact independent. The Urban Mass Transportation Administration will determine the fact of independence by considering all of the relevant circumstances.

(e) Each transit system reporting its results will file a report covering its own fiscal year. This annual report will include all applicable forms in the Reporting System. All reports are due 120 days after the close of the fiscal year.

(f) Table C–1 indicates the key dates for accumulating and reporting information, based on a transit system's fiscal year.

TABLE C–1

If fiscal year ends	Internal systems to support sec. 15, reporting system should be in place as of:	1st report due to system administrator 120 d after fiscal yearend
July 31	Aug. 1, 1977	Nov. 28, 1978
Aug. 31	Sept. 1, 1977	Dec. 28, 1978
Sept. 30	Oct. 1, 1977	Jan. 28, 1979
Oct. 31	Nov. 1, 1977	Feb. 28, 1979
Nov. 30	Dec. 1, 1977	Mar. 30, 1979
Dec. 31	Jan. 1, 1978	Apr. 30, 1979
Jan. 31	Feb. 1, 1978	May 31, 1979
Feb. 28	Mar. 1, 1978	June 28, 1979
Mar. 31	Apr. 1, 1978	July 29, 1979
Apr. 30	May 1, 1978	Aug. 28, 1979
May 31	June 1, 1978	Sept. 28, 1979
June 30	July 1, 1978	Oct. 28, 1979

(g) Financial data must be reported to the nearest dollar. All information reported on the forms must be typewritten or printed legibly.

(h) Recognizing that many transit systems might experience difficulty responding to the complete Reporting System in the first year, the initial reports will be a subset of the full Reporting System. Specifically, for financial data, the first year requirements and the full section 15 requirements are identical except that:

(1) Transit operators are not required to complete the Operators' Wages Subsidiary Schedule in the first year; and

(2) Transit operators who participate in pay-as-you-go pension plans are not required to report in the first year what the cost of a fully-funded pension plan would have been.

(i) The accounting basis to be used in developing the data for the reports is the accrual basis. Using the accrual basis, revenues will be recorded when earned, regardless of whether or not receipt of the revenue takes place in the same reporting period. Similarly, expenditures will be recorded as soon as they result in liabilities for benefits received, regardless of whether or not payment of the expenditure is made in the same reporting period.

(j) Those transit systems that use cash-basis accounting, in whole or in part, in their books of account will have to make work sheet adjustments to develop report data on the accrual basis.

§ 630.23 Availability of reporting forms.

The required forms and instructions are available from:

Section 15, Office of Transit Management, UMD–10, Urban Mass Transportation Administration, Room 6412, 2100 Second Street, SW., Washington, D.C. 20590.

Illustrative forms for each of these required reports are included in the "Uniform System of Accounts and Records and Reporting System," January 1977, Volume III—Reporting System Forms and Instructions—Required. Volume IV—Reporting System Forms and Instructions—Voluntary contains illustrative forms and instructions for the optional revenue report and expense reports. Table C–2 contains a list of the reporting forms required under Section 15. An asterisk indicates that the reporting form is not required from operators who operate twenty-five or fewer revenue vehicles.

TABLE C–2

REQUIRED REPORTING FORMS

Financial Data
Balance Sheet Summary Schedule
Capital Subsidiary Schedule
Revenue Summary Schedule
Revenue Subsidiary Schedule
Single Mode Expenses and Functions Schedule or
Multi-Mode Expenses and Functions Schedule
Operators' Wages Subsidiary Schedule
Fringe Benefits Subsidiary Schedule
Pension Plan Questionnaire

Operating Data
Weekday Time Period Schedule
Transit Way Descriptions Schedule
Revenue Vehicle Inventory Schedule
Energy Consumption Schedule
Transit Service Personnel Schedule
Transit System Employee Count Schedule
Accidents Schedule
Transit Service Supplied Schedule
Transit Service Consumed Schedule

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federal register

WEDNESDAY, JANUARY 19, 1977

PART III



DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Human Development

■

NATIVE AMERICAN PROGRAMS

Final Regulations

Title 45—Public Welfare

CHAPTER XIII—OFFICE OF HUMAN DEVELOPMENT, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

PART 1336—NATIVE AMERICAN PROGRAMS

Final Regulations

On January 13, 1976, there was published in the FEDERAL REGISTER (41 FR 2046) a notice of proposed rulemaking for the purpose of implementing the Native American Programs Act, Title VIII of the Headstart, Economic Opportunity, and Community Partnership Act of 1974, Pub. L. 93-644, signed into law January 4, 1975. Title VIII authorizes financial assistance to promote economic and social self-sufficiency for Native Americans (American Indians, Native Hawaiians, and Alaskan Natives). The notice provided for the filing of comments, recommendations, or suggestions regarding the proposed Part 1336 on or before February 27, 1976. The comments in the letters received by this date were given careful consideration by the Office of Native American Programs (ONAP). Revisions to the proposed regulations are made on the basis of these comments and comments of the Department.

A. The following changes in the proposed rules are made for the reasons given:

1. It was noted that the definition of "Alaskan Native" was too restrictive. The definition is based on the definition of "Native" in the Alaska Native Claims Settlement Act (Pub. L. 92-203) and included the statement that this term "means a citizen of the United States who is a person of one fourth degree or more Alaskan Indian * * *, Eskimo, or Aleut blood." "Alaskan Native" is therefore redefined in § 1336.1(b) as "a person who is an Alaskan Indian (including Tsimshian Indians not enrolled in the Metlakatla Indian Community), Eskimo, or Aleut, or any combination thereof. The term also includes any person who is regarded as an Alaskan Native by the Alaskan Native village or group of which he or she claims to be a member and whose father or mother is (or, if deceased, was) regarded as an Alaskan Native by an Alaskan Native village or group. The term includes any Alaskan Native as so defined, either or both of whose adoptive parents are not Alaskan Natives." This change is made in order to delete all references to blood quantum and United States citizenship. The language of Title VIII makes no mention of blood quantum or citizenship with respect to any segment of the target population of the Office of Native American Programs. Regulations applicable to this title should not therefore be more restrictive regarding the definition of the service population.

2. Several letters requested changes in the definition of "American Indian or Indian." The major objection to the definition in the Proposed Regulations was that it required United States citizenship. This citizenship requirement in effect excluded certain groups such as the Micmacs and Maliseets who have had, or whose ancestors have had, long-standing special relationships with either the United States government or a State government or who have had special historical ties with the land which now constitutes the United States. In many cases these historical ties and special relationships were formalized or established in treaties or agreements which guarantee to specified Indians who do not have U.S. citizenship services and consideration similar to those guaranteed to Indians who do have U.S. citizenship. In accordance with this concern, "American Indian or Indian" is redefined in § 1336.1(e) as "any individual who is a member or a descendant of a member of a North American tribe, band, or other organized group of native people who are indigenous to the continental United States or who otherwise have a special relationship with the United States or a State through treaty, agreement, or some other form of recognition. This includes any individual who claims to be an Indian and who is regarded as such by the Indian community in which he or she lives or by the Indian community of which he or she claims to be a part. This definition also includes Alaskan Natives."

3. It was suggested that the definition of "Federal reservation," formerly § 1336.1(j), would be more precise and closer to the legislative intent if it were replaced with the definition of "Indian reservation" found in Title VIII in section 813(2). Consistent with this recommendation, separate definitions of "Federal reservation" and "State reservation" are deleted, and a single definition of "Indian reservation" based on Title VIII's definition is added as § 1336.1(p).

4. Several letters expressed concern that open and public election of the governing body of urban Indian organizations was not specified in the regulations. In view of the fact that metropolitan areas frequently have several Indian organizations competing for the same funds and professing to represent the same constituency, it was determined essential to have an open and public election requirement for urban ONAP grantees. Such a requirement should ensure true community participation and subsequently true representation of community needs and desires. Therefore, a definition of "urban Indian center" which includes the requirement for open and public election of the governing board is added to the Regulations as § 1336.1(z). This requirement has been in effect as ONAP policy for three years. Publication in the regulations reconfirms that policy and in no way represents a change in program direction for ONAP's urban grantees. As further clarification, a definition of "open and public election" is added as § 1336.1(w).

5. It was suggested that the term "independent public acountant" be substituted for the term "independent certified public accountant" in § 1336.50(b), referring to the annual project audit. Since it is not the intention of the Office of Native American Programs to eliminate any categories of qualified auditors from consideration for providing services, this suggestion is accepted. The language of the Regulations is therefore changed to require the services of an "independent public accountant, certified or licensed by a regulatory authority of a State or other political subdivision of the United States," rather than the services of an "independent certified public accountant." In the Final Regulations, this section is numbered § 1336.50(a)(2).

6. An additional area of comment concerned the excessive paperwork generated when prior approval for budget revisions is required in instances in which this might not actually be necessary or desirable. This observation is considered valid. Accordingly, § 1336.50 is amended to include a new paragraph, (b), waiving paragraphs (b)(3) and (b)(4) of 45 CFR 74.102. This change is consistent with the action taken by programs within the Office of Human Development to waive these paragraphs; § 74.102(d) states that these paragraphs may be waived by the granting agency for those grant programs in which it determines that the requirements are not needed. Paragraph (b)(3) required that grantees request prior approval for budget revisions when the grant budget is over $100,000 and the cumulative amount of transfers among budget line items exceeds or is expected to exceed $10,000, or five percent of the grant budget, whichever is greater. Paragraph (b)(4) required prior approval for budget revisions when the grant budget is $100,000 or less, and the cumulative amount of transfers among budget line items exceeds or is expected to exceed five percent of the grant budget.

7. Section 1336.51(b)(3) requires, as part of the grantee's application for financial assistance, submission of "the qualifications of the principal staff members to be responsible for the project or program." It was proposed that this paragraph be clarified, in case the staff members have not yet been hired. Accordingly, the paragraph is amended to include the phrase, "or, if they have not been selected, the job descriptions and qualifications for the principal staff members."

8. Another comment proposed that paragraph (7) of § 1336.51(b), which required that the application for financial assistance include a description of innovative features of the project or program, be omitted unless Title VIII requires that programs be innovative. Whereas innovative projects are encouraged, they are not required. Therefore, paragraph (7) is deleted.

9. Paragraph (10) of § 1336.51(b), the requirement that the application for financial assistance include "a description of the provisions that have been made for an evaluation of the project or program," was questioned. Whereas self-evaluation is encouraged, official project evaluation is the responsibility of the funding agency as required by section 810(a) of Title VIII. Therefore, paragraph (10) is omitted.

10. It was proposed that a maximum project period of five years be established. This suggestion is accepted, consistent with the HEW administrative policy of specifying the length of the project period. Five years is considered to be an appropriate period of time, after which all projects and their results can be fairly reviewed and appraised and after which all applicants will compete for funding. (Grantees must still apply for continuation support within the project period.) This addition to the Regulations is made under § 1336.51(f).

11. Section 1336.51(h)(1) of the Proposed Regulations required that a grant application approved by the Office of Native American Programs (ONAP) be returned for approval or disapproval to the governing body of the reservation or village which submitted it. Concern was expressed that this requirement was repetitive and unnecessary, since all applications submitted to ONAP are transmitted through the governing body originally. Since ONAP will require that the governing body formally approve the application before it is initially submitted to ONAP, its resubmission to the governing body for approval at a later time would not be necessary. Section 1336.51(h)(1) is, therefore, omitted. In order to verify that the governing body approves the original application for financial assistance, § 1336.51(b)(8) is added, requiring inclusion with the application of "a resolution of approval of the application from the governing body of the Indian tribe, Alaskan Native Village, or urban Indian organization or other Native American organization."

12. Concern was expressed about the use of per capita income figures as the only basis for determining whether a grantee (which has not been involved in a major disaster) may waive the nonfederal share requirement. It was stated that the community's per capita income figure does not necessarily reflect the community's capacity to provide the nonfederal share; this figure is sometimes not an accurate indication of the financial status of the tribe or group as a whole. This observation is considered valid. Since it is the intention of the Office of Native American Programs to assure that communities which do not have economic resources to match ONAP grant funds are able to participate in its programs, an additional objective criterion for waiver of the nonfederal share is included in the regulations, as authorized by Title VIII, section 803(b). Section 1336.52(a)(2) is amended to include a provision for waiver of the nonfederal share if the grantee can document that it is unable to mobilize local, State, or private resources to satisfy the nonfederal share requirement. This new criterion is open to all grantees. The Office of Native American Programs believes that the addition of this criterion will be the best and fairest way to enable grantees for whom it would be a burden to provide the nonfederal share to waive this requirement. However, this criterion would not enable those grantees who are able to provide the nonfederal share to waive the requirement.

13. It was proposed that the conflict of interest provision in § 1336.54(c)(4) be clarified, since there has been confusion about whether this provision applies to a situation in which a tribal council or governing body member concurrently holds a position as a staff member paid in whole or in part with ONAP grant funds. The conflict of interest provision states that grantees "shall not use their positions for a purpose that is; or gives the appearance of being, motivated by a desire for private gain for themselves * * *." Since tribal council and governing body members are in a position to influence the selection of grantee staff members, and since salary payment from ONAP grant funds constitutes "private gain," a sentence is added stating that the conflict of interest provision applies to such situations.

Also, in response to concern expressed about the difficulty that a community, especially a small one, may have in adequately filling certain jobs, paragraph (ii) is added to the conflict of interest section. This paragraph provides for waiver of the conflict of interest regulation in certain cases in which a community can document that it has made an unsuccessful search to find a person qualified to fill a job which requires special expertise obtained through education and/or experience. The conflict of interest provision itself covers two situations: when there is evidence of actual conflict of interest, and when there is an appearance of a conflict of interest. The waiver applies only to situations in which there is an appearance of a conflict of interest.

14. Several letters requested that the Indian preference provisions of section 7(b) of Pub. L. 93-638, the Indian Self-Determination and Education Assistance Act, be included in the regulations. These provisions apply to contracts, subcontracts, grants, and subgrants pursuant to any act authorizing Federal contracts with or grants to Indian organizations or for the benefit of Indians. Therefore, these provisions are applicable to all contracts, subcontracts, grants, and subgrants awarded under the Native American Programs Act, except those relating to Native Hawaiians. They stipulate preference for Indians for training and employment in connection with the administration of contracts and grants and preference for Indian organizations and Indian-owned economic enterprises in the award of subcontracts and subgrants. They were inadvertently omitted from the notice of proposed rulemaking, but they are added to the final regulations in a new subpart, Subpart H, as § 1336.60(a). In addition, § 1336.60(b) provides a statement in regulatory form of ONAP's policy of giving preference to Indian organizations and Indian-owned economic enterprises in the award of ONAP contracts.

15. In addition, various minor technical changes designed to clarify the language and intent of the regulations are included in the Final Regulations.

B. Other recommendations have been carefully considered but have not been accepted. The following suggestions were not adopted for the reasons given:

1. Several letters recommended that the definition of "American Indian or Indian" in § 1336.1(e) be made more restrictive. For example, some stated that the provisions of the Native American Programs Act should apply only to Federally recognized land based tribes. This suggestion cannot be incorporated in the Regulations because Title VIII, section 803(a), clearly identifies the service population under the Act as "public and nonprofit private agencies, including but not limited to, governing bodies of Indian tribes on Federal and State reservations, Alaskan Native villages and regional corporations established by the Alaska Native Claims Settlement Act, and such public and nonprofit private agencies serving Hawaiian Natives, and Indian organizations in urban or rural nonreservation areas."

2. It was also proposed that the provisions of the Native American Programs Act should apply only to individuals (from Federally recognized tribes) with one fourth degree or more of Indian blood. This suggestion is rejected because Title VIII makes no mention of blood quantum. Regulations applicable to this Title should not be more restrictive than the Law with respect to the potential service population.

3. Two comments requested changes in the definition of "Native Hawaiian" in § 1336.1(u)—now 1336.1(t). One proposed the addition of a narrowed definition which included a blood quantum requirement. This suggestion is not accepted, since Title VIII does not specify a particular blood quantum, and to incorporate in the regulations an additional eligibility requirement not contained in the Statute might violate an expression of Congressional intent. The second comment proposed an addition to the definition in order to specify that the term includes any Native Hawaiian either or both of whose adoptive parents are not Native Hawaiians and any person, in the absence of formal proof of ancestry, who is regarded as a Native Hawaiian by, or whose father or mother is (or if deceased, was) regarded as a Native Hawaiian by a Council of Native Hawaiians authorized to review such cases. ONAP wishes to retain in its Regulations the present definition, since this definition is taken from Title VIII, section 813(3). Moreover, this definition, as stated, does include those persons requested for specification.

4. It was suggested that the due date for the annual project audit given in § 1336.50(a)(3) should be extended beyond the present four month deadline. This suggestion is not accepted, since four months is an adequate period of time. In addition, early completion of the annual audit should result in better program and financial control for the grantee.

5. Another letter questioned § 1336.54(c)(5)(i), whose purpose is to prevent nepotism. It was suggested that tribes—especially small ones—should not be restricted in the selection of employees by

regulations designed to revent nepotism. This suggestion is not accepted, since it is believed that better programs will result from open competition which assures hiring of the most qualified applicants. In addition, the anti-nepotism provision is intended to promote fairness and equal opportunity for all job applicants, as well as to avoid situations of conflict of interest. The Office of Native American Programs does provide for waiver of the anti-nepotism regulation in § 1336.54(c)(5)(ii) in cases in which a community can document that it has made an unsuccessful search to find another qualified person to fill a job requiring special expertise obtained through education and/or experience.

The Final Regulations for Part 1336, implementing the Native American Programs Act, are divided into eight basic subparts to make clear to the general public the regulatory provisions which apply to all programs funded under the Act. They are intended to assure consistency with the language and intent of Title VIII and with general Department grant operating procedures. The purpose and basis of these subparts, and of significant regulations contained in each, will be discussed in the following paragraphs.

Subpart A consists of definitions of terms used in the Regulations. The purpose of this subpart is to define terms used throughout the Regulations in a clear and uniform manner. These definitions are based on definitions and provisions in the Native American Programs Act itself, definitions and provisions in other relevant acts, established Departmental policy, and definitions commonly accepted by Native American communities.

Subpart B gives the purpose of the Native American Program. This is the purpose of the program as stated in Title VIII, section 802.

Subpart C concerns financial assistance for Native American projects. The listing under § 1336.10 of the types of eligible applicants is taken from Title VIII, section 803(a). The listing under § 1336.11 of types of projects supported is based on Title VIII and on planning documents. This listing is intended to inform the public which types of projects will receive the highest priority for funding. Section 1336.12 deals with approval of grants and gives priorities for funding based on established criteria. These criteria are taken from planning documents.

The provisions of Subpart D give information relating to training and technical assistance and are based on Title VIII, section 804, as well as on ONAP planning documents. Their purpose is to make more effective ONAP's general community programming efforts, which constitute a majority of ONAP's programs.

The provisions of Subpart E give information relating to eligibility for and scope of research, demonstration, and pilot projects. They are based on Title VIII, section 805, and on ONAP's Implementation Plan. This subpart is intended to inform the public which types of research, demonstration, and pilot projects will receive the highest priority for funding.

Subpart F concerns project evaluations. Its provisions are based on Title VIII, section 810, which requires that projects assisted by the Office of Native American Programs be evaluated and which specifies the items that are to be included in the evaluations. This subpart also points out that the extent to which grantees have met ONAP's (Interim) Evaluation Standards will be considered in deciding whether to renew or supplement financial assistance; this provision is based on and is intended to implement Title VIII, section 810(b).

Subpart G contains grants administrative procedures. § 1336.50 specifically incorporates the provisions of 45 CFR Part 74, establishing uniform administrative requirements and cost principles. This regulation is included because it is the Department's belief that it is advantageous to all concerned to follow uniform administrative requirements and cost principles in order to avoid or minimize mistakes and misinterpretations of administrative provisions. Also, most grantees are already generally familiar with Part 74 requirements.

Instead of § 74.61(h), § 1336.50(a)(1)(i) through (iv), concerning grantee project audits, are added. They require an annual audit in order to help grantees assure adequate fiscal controls and integrity and to make sure that any problems in this area are uncovered and corrected in a relatively brief time.

Section 1336.51 concerns application, review, award, and amendment of grants. The listing of information required in the application for funding includes data which, in the best judgment of the Office of Native American Programs, will help this Office properly evaluate applications and select which ones to fund as well as insure that the applicant has carefully planned the prospective program. Additional provisions in this section relate to eligibility, fiscal capability of applicants, disposition of applications, amendments, grant awards, effective date of approved projects, and submission of plans to State and local officials. These provisions are included in order to insure that prospective grantees are aware of ONAP policy in these areas and of the necessity of complying with it. They are based on the Department of Health, Education, and Welfare Grants Administrative Manual, 45 CFR Part 74, and general DHEW and ONAP requirements.

Section 1336.52 details cost sharing, matching, and payments provisions. Title VIII, section 803(b), stipulates that financial assistance shall not exceed 80 percent of the approved costs of the assisted project except when a larger Federal share is required in furtherance of the purpose of the title and when regulations establishing objective criteria for providing a larger Federal share are met. In order to implement this section, § 1336.52(a)(2) establishes three objective criteria for waiver of the nonfederal share and provides detailed explanations of how grantees who meet any one of these criteria may apply for a waiver of the nonfederal share. The criteria are: The community has a per capita income of less than $1,500 per year, has been involved in a major disaster, or can document its inability to mobilize local, State, or private resources to satisfy the nonfederal share requirement. It is the best judgment of the Office of Native American Programs that these particular criteria provide the most equitable and impartial way for communities which do not have economic resources to match ONAP grant funds to participate in its programs.

The $1,500 per capita income figure is based on upward adjustment, in line with the increase in the Consumer Price Index, of the Office of Economic Opportunity and Department of Labor poverty guideline figure of $750, which was based on per capita incomes in the 1960 Census. In § 1336.52(a)(2)(iii), ONAP's Regulations state that this $1,500 figure shall be adjusted annually by multiplying it by the percentage change in the Consumer Price Index.

The provisions of § 1336.53 and §§ 1336.56 through 1336.58 incorporate by reference parts of Title 45 of the Code of Federal Regulations and certain chapters of the Department of Health, Education, and Welfare Grants Administration Manual. Departmental policy requires that grants made under this Act be subject to them. Therefore, these sections are added in order to give public notice to grantees that these sections apply.

Section 1336.54 also incorporates by reference provisions from Title 45 and from the Grants Administration Manual, as well as provisions based on requirements in Title VIII and current policy of the Office of Native American Programs. The purpose of § 1336.54(b), "Maintenance of effort," is to implement Title VIII, section 803(c), and to emphasize to grantees that activities supported by ONAP funding may not be used to replace comparable activities provided without Federal assistance. The requirements for personnel policies listed under § 1336.54(c)(1) and (2) are included because ONAP wishes to assure fair treatment for employees paid with its grant funds. It is the best judgment of this Office that these particular requirements will help to accomplish this purpose.

The conflict of interest provisions of § 1336.54(c)(4) are intended to help assure that Federal money is used for the public good, rather than for private gain or the appearance of private gain. The nepotism provisions of § 1336.54(c)(5) are intended to assure that individuals may not use the power of their positions in order to secure favored treatment for their relatives. It is the best judgment of the Office of Native American Programs that these particular provisions will best achieve these goals.

The purpose of § 1336.59, "Grant closeout, suspension, and termination," is to implement section 809 of Title VIII. The provisions of this section incorporate by reference regulations implementing section 519 of the Headstart-Follow Through Act, which is Title V of Pub. L. 93-644. They were chosen because of the administrative desirability of having programs authorized by Pub. L. 93-644 handle appeals, suspension, and termination in a uniform and consistent manner.

The purpose and basis for Subpart H, "Indian Preference Provisions," are discussed earlier in this preamble.

Chapter XIII of Title 45 of the Code of Federal Regulations is amended by adding Part 1336 as follows:

Subpart A—Definitions

Sec.
1336.1 Definitions.

Subpart B—Purpose of the Native American Program

1336.5 Program purpose.

Subpart C—Financial Assistance for Native American Projects

1336.10 Eligibility.
1336.11 Types of projects supported.
1336.12 Approval of grants.

Subpart D—Training and Technical Assistance

1336.20 Eligibility.
1336.21 Types of training and technical assistance.

Subpart E—Research, Demonstration, and Pilot Projects

1336.30 Eligibility.
1336.31 Scope of research, demonstration, and pilot projects.

Subpart F—Project Evaluations

1336.40 Evaluation.

Subpart G—Grants Administrative Provisions

1336.50 General.
1336.51 Application, review, award, and amendment of grants.
1336.52 Cost sharing, matching, and payments.
1336.53 Public policy requirements.
1336.54 Financial and administrative requirements.
1336.55 Reporting requirements.
1336.56 Grantee procurements.
1336.57 Property requirements.
1336.58 Allowability of costs.
1336.59 Grant closeout, suspension, and termination.

Subpart H—Indian Preference Provisions

1336.60 Indian preference.

AUTHORITY: 88 Stat. 2324 (42 U.S.C. 2991).

Subpart A—Definitions

§ 1336.1 Definitions.

For the purposes of this part, unless the context otherwise requires:

(a) "Act" means the Native American Programs Act of 1974, Title VIII of the Headstart, Economic Opportunity, and Community Partnership Act of 1974 (Pub. L. 93-644), which amends the Economic Opportunity Act of 1964.

(b) "Alaskan Native" means a person who is an Alaskan Indian (including Tsimshian Indians not enrolled in the Metlakatla Indian Community), Eskimo, or Aleut, or any combination thereof. The term also includes any person who is regarded as an Alaskan Native by the Alaskan Native village or group of which he or she claims to be a member and whose father or mother is (or, if deceased, was) regarded as an Alaskan Native by an Alaskan Native village or group. The term includes any Alaskan Native as so defined, either or both of whose adoptive parents are not Alaskan Natives.

(c) "Alaskan Native Regional Corporation" means an Alaskan Native Regional Corporation established under the laws of the State of Alaska in accordance with the provisions of the Alaska Native Claims Settlement Act (Pub. L. 92-203, December 17, 1971).

(d) "Alaskan Native Village" means any tribe, band, clan, group, village, community, or association in Alaska listed in sections 11 and 16 of the Alaska Native Claims Settlement Act (Pub. L. 92-203, December 17, 1971), or which meets the requirements of that Act, and which the Secretary of the Interior determines was, on the 1970 census enumeration date (as shown by the census or other evidence satisfactory to the Secretary of the Interior, who shall make findings of fact in each instance), composed of twenty-five or more Natives.

(e) "American Indian or Indian" means any individual who is a member or a descendant of a member of a North American tribe, band, or other organized group of native people who are indigenous to the continental United States or who otherwise have a special relationship with the United States or a State through treaty, agreement, or some other form of recognition. This includes any individual who claims to be an Indian and who is regarded as such by the Indian community in which he or she lives or by the Indian community of which he or she claims to be a part. This definition also includes Alaskan Natives.

(f) "Budget period" means the interval of time, usually 12 months, for which funds are awarded.

(g) "Community" or "Service area" means an Indian reservation, neighborhood or other area (irrespective of boundaries or political subdivisions) which provides a suitable organizational base and possesses the commonality of interest needed to provide services to a designated constituency pursuant to this part.

(h) "Economic and social self-sufficiency" means the capacity of Native Americans to define and achieve their own economic and social goals.

(i) "Economic development" means the process involving the achievement of specific objectives, usually through the implementation of appropriate programs and projects, which results in long-term improvements in Native American economic self-sufficiency.

(j) "Financial assistance" means assistance advanced by the Office of Native American Programs by grant, agreement, or contract, but does not include the procurement of plant or equipment, or goods or services.

(k) "Governing body of an Indian tribe or Alaskan Native village" means those duly elected or appointed representatives who have the authority to provide services to, and enter into contracts, agreements and grants on behalf of, their constituency.

(l) "Grants Administration Manual" (hereinafter referred to as "the GAM") means the Department of Health, Education, and Welfare staff manual which sets forth policies for the administration of grants by agencies of the Department. The manual is available to the public by purchase on a subscription basis from the Superintendent of Documents, U.S. Government Printing Office. In addition, it is available for public inspection and copying in the Department's central and regional office information centers pursuant to the Department's public information regulation (45 CFR Part 5).

(m) "Hawaiian homestead" means that land which was set aside for the particular and exclusive use of Native Hawaiians by the Hawaiian Homes Commission Act (42 Stat. 108, July 9, 1921).

(n) "Human development services" means the full range of services necessary for the development of human potential and well-being, including social services, training, and education.

(o) "Indian organization" means a public or private nonprofit agency whose principal purpose is promoting the economic or social self-sufficiency of Indians in urban or rural non-reservation areas, the majority of whose governing board and membership is Indian.

(p) "Indian reservation" means the reservation of any federally or State recognized Indian tribe, including any band, nation, pueblo, or rancheria, any former reservation in Oklahoma, any community or non-trust land under the jurisdiction of an Indian tribe, including a band, nation, pueblo, or rancheria, with allotted lands or lands subject to a restriction against alienation imposed by the United States or a State.

(q) "Indian tribe" means a distinct political community of Indians which exercises powers of self-government.

(r) "Major disaster" means any hurricane, tornado, storm, flood, highwater, wind-driven water, tidal wave, earthquake, drought, fire, accident, or other catastrophe which is of such severity and magnitude as to directly affect the capability of the grantee, providing services to the damaged community, to continue the program unless the Federal share of the approved costs is increased above 80 percent.

(s) "Native American" means American Indians, Native Hawaiians, and Alaskan Natives, as defined in this subpart.

(t) "Native Hawaiian" means any individual, any of whose ancestors were, prior to 1778, natives of the area which consists of the Hawaiian Islands.

(u) "OHD" means the Office of Human Development within the Department of Health, Education, and Welfare.

(v) "ONAP" means the Office of Native American Programs within the Office of Human Development.

(w) "Open and public election" means an election conducted in accordance with the election procedures as set forth in the organization's constitution and/or by-laws, providing that such procedures ensure wide community participation as well as participation from all members of the community who wish to participate

in the elective process. There can be no fee or payment required for participation. This includes the payment of membership dues as a prerequisite for voting.

(x) "Responsible HEW official" means the official of the Department of Health, Education, and Welfare authorized to grant the financial assistance in question, or his designee.

(y) "Secretary" means the Secretary of Health, Education, and Welfare or his designee.

(z) "Urban Indian center" means a multi-purpose nonprofit private agency which provides outreach and referral services as well as a variety of social services to an urban Indian community, and whose governing body is comprised of representatives, a majority of whom are Indian, who have been duly elected by means of an open and public election, and who have the authority to provide services to, and enter into contracts, agreements, and grants on behalf of the urban Indian constituency.

Subpart B—Purpose of the Native American Program

§ 1336.5 Program purpose.

The purpose of this part is to promote the goal of economic and social self-sufficiency for Native Americans.

Subpart C—Financial Assistance for Native American Projects

§ 1336.10 Eligibility.

Financial assistance under this subpart may be made to public and private nonprofit agencies, including but not limited to, governing bodies of Indian tribes on Federal and States reservations, Alaskan Native Villages and regional corporations established by the Alaska Native Claims Settlement Act, and such public and nonprofit agencies serving Native Hawaiians, and Indian organizations in urban or rural non-reservation areas.

§ 1336.11 Types of projects supported.

Financial assistance will be provided to those applicants whose proposed program goals and objectives are to promote the economic and social self-sufficiency of Native Americans. Financial assistance under this subpart will include, but is not limited to, projects which:

(a) Support community economic development;

(b) Support locally determined human service priorities which would not otherwise be provided;

(c) Support the operation of urban Indian centers for Native Americans living off reservations; and

(d) Strengthen the administrative capacities of governing bodies of Native American tribes, groups, and organizations, particularly with regard to planning and management.

§ 1336.12 Approval of grants.

In approving proposals for financial assistance under this subpart consideration will be given to the extent to which proposals focus on priorities consistent with the following ONAP long range goals:

(a) To develop the capacity of Native American governing bodies and organizations to use and focus on planning as the basic method to improve resource allocations and effectiveness of services in Native American communities;

(b) To achieve the development of the necessary social and economic infrastructure in Native American communities to increase self-sufficiency; and

(c) To eliminate, through Native American institutions, the most critical gaps in the range of human development services necessary for self-sufficiency.

Subpart D—Training and Technical Assistance

§ 1336.20 Eligibility.

(a) Contracts for technical assistance to aid in developing, conducting, and administering projects under this part may be made to public and private agencies.

(b) Short-term in-service training for specialized or other personnel may be provided by contract to agencies receiving financial assistance under this part.

§ 1336.21 Types of training and technical assistance.

(a) Contracts for training and technical assistance will be awarded for the purposes of providing management assistance and program assistance.

(1) Contracts to provide management assistance will have as their overall objective strengthening the capabilities of Native Americans to exercise self-government. Such capacity-building efforts will include assistance in planning, management, and organizational development.

(2) Contracts to provide program assistance will be of a general support nature and will include, but are not limited to, assistance in program evaluation, fiscal and administrative management, and resource mobilization.

(b) Management assistance and program assistance may include short-term in-service training for employees of grantees and members of Indian governing bodies, such as tribal council members and Native American organization board members.

Subpart E—Research, Demonstration, and Pilot Projects

§ 1336.30 Eligibility.

Financial assistance under this subpart may be made to public or private nonprofit agencies including, but not limited to, governing bodies of Indian tribes on Federal and State reservations, Alaskan Native villages and regional corporations established by the Alaska Native Claims Settlement Act, and such public and nonprofit private agencies serving Native Hawaiians, and Indian organizations in urban or rural non-reservation areas.

§ 1336.31 Scope of research, demonstration, and pilot projects.

(a) Financial assistance will be provided for research, demonstration, or pilot projects which are designed to test or assist in the development of new approaches or methods that will aid in overcoming special problems or otherwise furthering the purposes of this part. This may include: (a) Research activities designed to generate demographic and program impact data and to identify and resolve problems which hinder the attainment of social and economic self-sufficiency by Native Americans; and (b) pilot or demonstration efforts designed to test innovative methods to meet and solve problems related to the purposes of this part and to encourage the delivery of human development services to Native Americans.

Subpart F—Project Evaluations

§ 1336.40 Evaluation.

(a) The Secretary shall provide, directly or through grants or contracts, for the evaluation of projects assisted under this part. Such evaluations shall describe and measure the impact of such projects and their effectiveness in achieving stated goals, their impact on related programs, and their structure and mechanisms for delivery of services, including, where appropriate, comparisons with appropriate control groups composed of persons who have not participated in such projects.

(b) In carrying out evaluations of projects supported under this part, the specific views of persons participating in and served by such projects will be solicited, where feasible. All studies, evaluations, proposals, and data produced or developed with assistance under this part shall become the property of the United States.

(c) Interim standards for the evaluation of program and project effectiveness in achieving the objectives of this part were published on July 2, 1975, in the FEDERAL REGISTER (40 FR 27961). According to Section 810(b) of the Act, the extent to which these standards have been met shall be considered by the Secretary in deciding whether to renew or supplement financial assistance under this part. All grantees shall provide the Secretary with information deemed necessary to determine the extent to which they are complying with these standards. When final standards for the evaluation of program and project effectiveness are published in the FEDERAL REGISTER, the extent to which these final standards have been met shall be considered by the Secretary in deciding whether to renew or supplement financial assistance. All grantees shall provide the Secretary with information deemed necessary to determine the extent to which they are complying with these standards.

Subpart G—Grants Administrative Provisions

§ 1336.50 General.

(a) With the exception of § 74.61(h), the provisions of Part 74 of this title quirements and costs principles, shall apply to all grants awarded under this establishing uniform administrative repart. The following provisions shall apply in lieu of § 74.61(h):

(1) *Audit requirements*—(i) *General.* An annual project audit shall be made by an independent auditor to determine whether the financial statements fairly present the financial position of the OHD grant; whether the grantee is complying with the terms and conditions of the grant, including applicable laws, regulations, and directives; and whether appropriate financial and administrative procedures and controls have been installed and are operating effectively.

(ii) *Audit coverage.* The audit shall cover the grantee's prior budget period, unless the responsible HEW official has approved in writing a different audit period.

(iii) *Submission of report.* The auditor shall submit its audit to the grantee within four months after the end of the budget period. The grantee shall transmit seven (7) copies of the report to the appropriate Regional Audit Director and two (2) copies to the responsible HEW official. OHD grant funds may not be used to pay for more than one audit annually, except in instances when the responsible HEW official requests in writing additional audits.

(iv) *Delegate agencies.* The grantee shall include delegate agency audits as part of its annual audit or shall provide for separate independent audits for its delegate agencies.

(2) *Independent auditor.* The annual project audit shall be conducted by individuals who are sufficiently independent of those persons who authorize the expenditure of grant funds in order that unbiased opinions, conclusions, or judgments may be obtained. Generally, an independent public accountant, certified or licensed by a regulatory authority of a State or other political subdivision of the United States, will be retained. If the grantee is a State or local government agency, or if its accounting records are maintained by a local government or public agency, the auditing official or official governmental auditing agency which customarily conducts the agency's audits may be substituted for an independent auditor.

(b) In accordance with the option provided to granting agencies in § 74.102(d), the requirements contained in paragraphs (b)(3) and (b)(4) of § 74.102 are waived.

§ 1336.51 Application, review, award, and amendment of grants.

(a) *Eligibility.* In addition to the eligibility criteria set forth in §§ 1336.10, 1336.20, and 1336.30, the provisions of Chapter 1–00. Eligibility for Grants, of the GAM shall apply to all grants under this part.

(b) *Application.* Any applicant eligible for financial assistance under this part shall submit an application in accordance with the forms and instructions prescribed herein or otherwise provided. The application shall contain at least the following information:

(1) A detailed budget;

(2) A budget justification which justifies the proposed program as well as clearly relates the proposed program to the acomplishment of long range goals for increasing economic and social self-sufficiency;

(3) The qualifications of the principal staff members to be responsible for the project or program, or, if they have not been selected, the job descriptions and qualifications for the principal staff members;

(4) A description of the long-range goals of the proposed project or program, as well as the specific annual goals and the methods to be used in implementing these goals;

(5) A description of the actual results obtained from previously funded projects or programs and a brief comparison with the results originally expected;

(6) A statement of compliance with the maintenance of effort provisions of § 1336.54(b);

(7) A description of the total Federal and nonfederal resources anticipated to be available for the proposed project or program. This description shall identify the relationship, if any, between the proposed project or program and other Federal, State, or local programs; and

(8) A resolution of approval of the application from the governing body of the Indian tribe, Alaskan Native village, or urban Indian organization or other Native American organization.

(c) *Fiscal capability of applicants.* In determining whether to provide financial assistance under this part, the responsible HEW official will consider the extent to which the applicant is fiscally capable of administering an ONAP project in accordance with the standards set forth in Subpart H of 45 CFR Part 74 with the exception of § 74.61(h). In making this determination, the responsible HEW official may require the applicant to submit, with its application, an accounting certification prepared by an independent auditor (as defined in § 1336.50(a)(2)). The certification shall state that the prospective grantee and its delegate agencies have established an adequate accounting system with appropriate internal controls to safeguard assets, check the accuracy and reliability of their accounting data, promote operating efficiency, and encourage compliance with prescribed management policies and any additional fiscal responsibilities and accounting requirements established by OHD.

(d) *Disposition of applications*—(1) *General.* On the basis of a review of an application for financial assistance under this part, the responsible HEW official will approve the application in whole or in part for such amount of funds and subject to such conditions as may be deemed necessary or desirable for the completion of the approved project; disapprove the application; or defer action on the application for such reasons as incompleteness of application or unavailability of funds.

(2) *Reconsideration.* Any deferral or disapproval of an application shall not preclude its resubmission by the applicant or reconsideration by the responsible HEW official.

(3) *Notification of disposition.* The responsible HEW official will notify the applicant in writing of the disposition of its application.

(4) *"Notice of Grant Awarded."* A signed "Notice of Grant Awarded" will be issued to notify the applicant of an approved project application.

(e) *Amendments.* Requests for an amendment to the work plan or budget of a funded project shall be submitted in the same manner and on the same forms as the original application. Only those pages of the required forms relating to the requested changes shall be submitted. A revised "Notice of Grant Awarded" will be issued to notify the applicant of any approved amendments.

(f) *Grant awards.* The responsible HEW official will award a grant for financial assistance to those applicants whose approved projects will best promote the purpose of the Act and this part. All grant awards shall be in writing, and shall set forth the amount of funds awarded, the purposes for which funds are awarded, and the budget period for which support is given. The initial award shall also specify the project period for which support is contemplated, provided the activity is satisfactorily carried out and Federal funds are available. However, in no instance shall the project period exceed five years. Grantees applying for continuation support within the project period shall make separate applications in accordance with instructions which will be provided. At the end of the project period, grantees may apply for an extension of the project period. Such application for an extension shall be on the same forms as a new application and shall be subjected to the same review and analysis as a new application and shall compete with other applications for support.

(g) *Effective date of approved project.* Federal financial assistance is available only for those obligations which are incurred subsequent to the effective date of an approved project. The effective date of the project will be set forth in the "Notice of Grant Awarded."

(h) *Submission of plans to State and local officials.* (1) Financial assistance will not be provided under Subparts C and E of this part for programs to be carried out in a State, other than on an Indian reservation or Alaskan Native village or Hawaiian Homestead, until the responsible HEW official has notified the chief executive officer of the State of his decision to provide that assistance.

(2) Financial assistance will not be provided under Subparts C and E of this part for programs to be carried out in a city, county, or other major political subdivision of a State, other than on an Indian reservation, Alaskan Native village, or Hawaiian Homestead, until the responsible HEW official has notified the local governing officials of his decision to provide that assistance.

(3) The provisions of Chapter 1–140, Project Notification and Review System, of the GAM shall apply to all grants awarded under this part.

§ 1336.52 Cost sharing, matching, and payments.

(a) *Matching requirements.* (1) Federal financial assistance shall not exceed 80 percent of the approved cost of the assisted project except as provided in § 1336.52(a)(2). The nonfederal share may be in cash or in kind, fairly evaluated, including but not limited to plant, equipment, and services.

(2) Increase in Federal financial participation.

(i) Eligibility and application. (A) A grantee is eligible to apply in writing to the responsible HEW official to have the Federal share increased above 80 percent if that grantee is in a community which meets at least one of the following three conditions: (*1*) The community has a per capita income of less than $1500 per year based on data from the 1970 U.S. Census of Population or any more recent reliable source of annual per capita income data; (*2*) the community has been involved in a major disaster; (*3*) the community can document its inability to mobilize local, State, or private resources to satisfy the nonfederal share requirement.

(B) In those cases where either (A)(*1*) or (*2*) applies, the grantee's application to have the Federal share increased above 80 percent shall provide: (*1*) The annual per capita income of the community and the basis on which it was determined, or a statement of the belief that the community has been involved in a major disaster, and an explanation of the nature and extent of the major disaster; (*2*) a statement that the level of the annual per capita income of the community, or the major disaster, does not allow the grantee to meet the 20 percent nonfederal share; (*3*) a statement of the amount of the nonfederal share the grantee is able to provide; and (*4*) a statement that a reasonable effort to provide more nonfederal share has been unsuccessful.

(C) In those cases where (A)(*3*) applies, the grantee's application to have the Federal share increased above 80 percent shall provide: (*1*) A statement that the community is unable to mobilize local, State, or private resources to satisfy the nonfederal share requirement; (*2*) a statement of the amount of the nonfederal share the grantee is able to provide; (*3*) a statement that a reasonable effort to provide more nonfederal share has been unsuccessful; (*4*) copies of file documents demonstrating attempts to generate revenue from sources such as foundations, churches, and other private organizations; and (*5*) to the extent they are available, records of in-kind contributions, such as furniture, equipment, supplies, and volunteer help to the program.

(D) An application based upon the annual per capita income of the community, or upon the inability of the community to mobilize local, State, or private resources to satisfy the nonfederal share requirement, shall be submitted at the same time as the application for funding or refunding and shall be with respect to the same budget period as the application. Approval shall be only for such budget period.

(E) An application based upon the involvement of the community in a major disaster shall be submitted within a reasonable time after the major disaster and may be for the remainder of the current budget period and all or part of any subsequent budget period.

(ii) Decision. (A) The responsible HEW official, on the basis of the written application and any evidence in support of the application that he may require shall approve financial assistance in excess of 80 percent if it is determined that the annual per capita income of the community is less than $1.500, that the community has been involved in a major disaster, or that the community is unable to mobilize local, State, or private resources to satisfy the nonfederal share requirement, and that such increase is required to enable the grantee to carry on the program.

(B) The decision of the responsible HEW official shall be in writing and shall include a statement of the facts and reasons upon which it is based. Copies of the decision shall be furnished to the applicant and the Director, Office of Native American Programs.

(iii) The per capita income limitation enumerated in paragraph (a)(2)(i)(A)(*1*) of this section shall be adjusted annually by multiplying the dollar limitation by the percentage change in the Consumer Price Index.

(b) *Payments.* Grant funds awarded under this part will be made in installments, either by check or by letter of credit.

(c) *Limitation of costs.* The amount of the award shall be set forth in the grant award document ("Notice of Grant Awarded"). The total cost to the Government will not exceed the amount set forth in the grant award document or any modification thereof approved by the responsible HEW official which meets the requirements of applicable statutes and regulations. The Government will not be obligated to reimburse the grantee for costs incurred in excess of such amount unless and until the responsible HEW official has notified the grantee in writing that such amount has been increased and specified such increased amount in a revised grant award document. Such revised amount shall thereupon constitute the maximum cost to the Government for the performance of the program or project.

§ 1336.53 Public policy requirements.

(a) *Protection of human subjects.* The provisions of Part 46, Protection of Human Subjects, of this title are applicable to all grants awarded under this part.

(b) *Nondiscrimination.* The provisions of Part 80, Nondiscrimination Under Programs Receiving Federal Assistance, and Part 81, Practice and Procedures for Hearings under Part 80, of this title are applicable to all grants awarded under this part.

§ 1336.54 Financial and administrative requirements.

(a) *Use of consultants.* The provisions of Chapter 1–45, Use of Consultants, of the GAM shall apply to all grants awarded under this part.

(b) *Maintenance of effort.* Applications for grants awarded under this part shall include a written assurance that the activities provided under the program will be in addition to, and not in substitution for, comparable activities provided without Federal assistance.

(c) *Personnel administration.*—(1) *Personnel policies and procedures.* Grantees shall adopt personnel policies and procedures which shall include at least the following: Staff qualifications; recruitment and selection; classification of positions and basis for determination of pay; employee benefits, including leave, holidays, overtime, and fringe benefits; expenses, including travel and per diem; training, career development, and performance evaluation; employee-management relations, including grievance, termination of employment, and other adverse actions; and employee conduct including outside employment, acceptance of gifts and gratuities.

(2) *Documentation of personnel policies.* The personnel policies and procedures required by paragraph (c)(1) of this section shall be documented in writing and shall be issued to, or made available to, all grantee employees.

(3) *Political activities.* The provisions of § 70.6 of this title shall apply to all grants awarded under this part.

(4) *Conflict of interest.* (i) Grantees shall establish or adopt rules to assure that employees or individuals participating in a program or project funded under this part shall not use their positions for a purpose that is, or gives the appearance of being, motivated by a desire for private gain for themselves, or others, particularly those with whom they have family, business, or other ties. This includes, but is not limited to, situations in which a tribal council or governing body member concurrently holds a position as a staff member paid in whole or in part with ONAP grant funds.

(ii) The responsible HEW official may waive the requirement of paragraph (c)(4)(i) of this section when there is the appearance of conflict of interest, but a grantee or delegate agency cannot otherwise adequately staff a position. Such grantee or delegate agency shall demonstrate in writing that no other individual within its community or service area is qualified and/or available for employment.

(5) *Nepotism.* (i) No grantee or delegate agency shall hire, or permit the hiring of, any individual in a position funded in whole or in part under this part if a member of that individual's immediate family is employed by the grantee in an administrative capacity or is a member of the governing board. In addition, no person may serve on a governing board if a member of that individual's immediate family is concurrently serving in an administrative capacity in a position paid in whole or in part with ONAP grant funds. For the purpose of this part, the term "immediate family" means wife, husband, son, daughter, mother, father, brother, sister, son-in-law, daughter-in-law, mother-in-law, father-in-law, brother-in-law, sister-in-law, or other legal dependent; the term "administrative capacity" means a position having responsibilities relating to the selection, hiring, or supervising of employees.

(ii) The responsible HEW official may waive the requirement of paragraph (c)(5)(i) of this section when a grantee or delegate agency cannot adequately staff the positions without hiring more than one person from the same immediate family. Such grantees or delegate agencies shall demonstrate in writing that no other individuals within its community or service area are qualified and/or available for employment.

(6) *Labor standards.* All laborers and mechanics employed by contractors or subcontractors in the construction, alteration or repair, including painting or decorating, of buildings or other facilities in connection with projects assisted under this part shall be paid wages at rates no less than those prevailing on similiar construction in the locality, as determined by the Secrtary of Labor in accordance with the Davis-Bacon Act, as amended.

(d) *Direction of research effort.* The provisions of Chapter 2–400, Review and Direction of Research Effort Under Research Grants, of the GAM shall apply to all research grants awarded under Subpart E of this part.

(e) *Delegation of program operations.* A delegation of program operations to a delegate agency shall require specific prior approval by the responsible HEW official. Such delegation shall be formalized by written agreement and shall be on file in the office of the grantee. The agreement shall specify the activities to be performed by the delegate agency, the time schedule, the policies and procedures to be followed, the dollar limitations, and the costs allowed. A budget for each delegate agency shall be submitted as part of the grantee's application.

§ 1336.55 Reporting requirements.

The grantee shall submit reports in such form and containing such information as prescribed by the Secretary and shall keep such records and afford such access thereto as the Secretary may find necessary to assure the correctness and verification of such reports.

§ 1336.56 Grantee procurements.

The provisions of Chapter 1–46, Use of Small Businesses and Minority-Owned Businesses, of the GAM shall apply to all grants awarded under this part.

§ 1336.57 Property requirements.

(a) The provisions of Part 6, Inventions and Patents (General), of this title shall apply to all grants awarded under this part.

(b) The provisions of Part 8, Inventions Resulting from Research Grants, Fellowship Awards and Contracts for Research, of this title shall apply to all grants and contracts awarded under Subpart E of this part.

§ 1336.58 Allowability of costs.

(a) The following chapters of the GAM shall apply to all grants awarded under this part.

(1) Chapter 1–44, Alteration and Renovation of Facilities with DHEW Grant Funds Appropriated for Other Than Construction;

(2) Chapter 6–10, Charges for Leased Facilities and Equipment;

(3) Chapter 6–60, Charges for Facilities Purchased or Constructed by State and Local Governments;

(4) Chapter 6–100, Establishment of Indirect Cost Rates;

(5) Chapter 6–110, Use of Special Indirect Cost Rates;

(6) Chapter 6–120, Treatment of Costs of Services Provided by Affiliated Organizations;

(7) Chapter 6–150, Reimbursement of Indirect Costs; and

(8) Chapter 6–160, Reimbursement of Indirect Costs on Training Grants.

(b) The provisions of Part 75, Informal Grant Appeals Procedures (indirect costs), of this title shall apply to all grants awarded under this part.

(c) Grantees may appeal the following adverse decisions by the responsible HEW official in accordance with Part 16, Department Grants Appeals Process, of this title:

(1) A determination that an expenditure not allowable under the grant has been charged to the grant, or that the grantee has otherwise failed to discharge its obligation for grant funds;

(2) A disapproval of a grantee's written request for permission to incur an expenditure during the term of the grant; and

(3) A determination that a grant is void; and

(4) Determinations with respect to indirect costs and certain other rates as specified in § 16.5(a)(5) of this title.

§ 1336.59 Grant closeout, suspension, and termination.

Appeals, notice and hearing. Grantees that have been suspended or terminated, or whose applications for refunding have been denied, may appeal such decisions in accordance with the provisions of Part 1303, Subparts A, C, and D, of this title except that for purposes of this part:

(a) The authority "88 Stat. 2304, (42 U.S.C. 2928h)" is eliminated and "88 Stat. 2324, (45 U.S.C. 2991h)" is substituted therefor;

(b) The citation "Section 519 of the Headstart-Follow Through Act" is eliminated and "Section 809 of the Native American Programs Act" is substituted therefor;

(c) The reference to "* * * appeals by current and prospective delegate agencies from specified adverse action by grantees * * *" in § 1303.1–1 is inapplicable;

(d) The term "OCD" is eliminated and the term "ONAP" is substituted therefor;

(e) The term "Director" means the Director of the Office of Native American Programs;

(f) The term "Headstart Program" is eliminated and the term "Native American Program" is substituted therefor;

(g) The terms "current delegate agency", "prospective delegate agency", "program account", and "substantial rejection" are eliminated;

(h) The term "Headstart-Follow Through Act" is eliminated and the term "Native American Programs Act" shall be substituted therefor;

(i) The phrase "in accordance with Part 1302 of this Chapter" in §§ 1303.3–1 and 1303.4–1 is eliminated; and

(j) The term "grantee" means the recipient of financial assistance from ONAP under the Act and this part.

Subpart H—Indian Preference Provisions

§ 1336.60 Indian preference.

(a) As provided in section 7(b) of Pub. L. 93–638, the Indian Self-Determination and Education Assistance Act, any contract, subcontract, grant, or subgrant pursuant to the Native American Programs Act of 1974 which is for the benefit of Indians shall require that to the greatest extent feasible:

(1) Preferences and opportunities for training and employment in connection with the administration of such contracts or grants shall be given to Indians; and

(2) Preference in the award of subcontracts and subgrants in connection with the administration of such contracts or grants shall be given to Indian organizations and to Indian-owned economic enterprises as defined in Section 3 of the Indian Financing Act of 1974 (88 Stat. 77).

(b) Preference in the award of contracts for the benefit of Indians shall be given by ONAP to Indian organizations and to Indian-owned economic enterprises.

NOTE.—It is hereby certified that this proposal has been screened pursuant to Executive Order No. 11821 and does not require an Inflation Impact Evaluation.

Effective date. These regulations for the Native American Programs Act, Title VIII of the Headstart, Economic Opportunity, and Community Partnership Act of 1974, Pub. L. 93–644, represent, in the main, current ONAP operating policy. Therefore, they will be effective on January 19, 1977, except that current grantees will have 90 days to comply with the conflict of interest and nepotism provisions.

(Catalogue of Federal Domestic Assistance—13.612—Native American Programs.)

Dated: December 22, 1976.

STANLEY B. THOMAS, Jr.,
Assistant Secretary for Human Development.

Approved: January 12, 1977.

DAVID MATHEWS,
Secretary.

[FR Doc.77-1691 Filed 1-18-77;8:45 am]

federal register

WEDNESDAY, JANUARY 19, 1977

PART IV

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

■

NONCOMMERCIAL EDUCATIONAL FACILITIES PROGRAM

1976 Communications Act Amendments

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

[45 CFR Part 153]

NONCOMMERCIAL EDUCATIONAL BROADCASTING FACILITIES PROGRAM

Communications Act of 1934; Proposed Implementation of 1976 Amendments

Pursuant to the authority contained in Part IV of Title III of the Communications Act of 1934, as amended, 47 U.S.C. 390 et seq., the Commissioner of Education, with the approval of the Secretary of Health, Education, and Welfare, proposes to amend Part 153 of Title 45 of the Code of Federal Regulations (1) to implement revisions of the statute enacted by the Educational Broadcasting Facilities and Telecommunications Demonstration Act of 1976 (Pub. L. 94-309) and (2) to make other changes in the program regulation. The provisions of Section 392 A of the statute, as enacted by Section 8 of the 1976 Act, authorizing telecommunications demonstration grants are being implemented through regulation in Part 63 of Title 45 of the Code of Federal Regulations. A separate Notice of Proposed Rulemaking pertaining to these grants is being published in the FEDERAL REGISTER.

The preponderance of provisions in this proposed regulation is unchanged from the existing regulation. The whole regulation has been published in proposed form so that the proposed regulation will be more understandable to the public and to permit comments on all aspects of the program regulation.

1. *Program Purpose.* The Educational Broadcasting Facilities Program assists, through matching grants, in the development of public broadcast facilities for noncommercial educational radio and television broadcasting stations capable of serving local, State, and national needs. Grants are made on a competitive basis to eligible applicants for the acquisition of transmission and other authorized apparatus necessary for initial activation and/or the upgrading of existing noncommercial broadcast stations serving the educational, cultural, and informational needs of citizens. Authorized funds may not be used for land acquisition, the construction or repair of structures housing apparatus, or for broadcast station operation. The Federal Government maintains a 10-year interest in the continued noncommercial use of facilities funded under this program.

2. *1976 Amendments.* The 1976 amendments to the Communications Act of 1934 made the following changes affecting the Educational Broadcasting Facilities Program:

(a) An expansion of the eligible applicant categories to include private, nonprofit colleges, or universities and other educational or cultural institutions affiliated with an eligible college or university. This change is reflected in §§ 153.3(b) and 153.4 of the proposed regulation;

(b) A revision of the grant criteria to recognize and reflect the disparity in the development of public radio and television station facilities. This change is reflected in Appendix B of the proposed regulation;

(c) A redefinition of the term "construction" as used to identify eligible facilities for which grant funds may be used to include particular "reception" apparatus necessary for television or radio broadcasting. This change is reflected in § 153.3(b) of the proposed regulation; and

(d) Provision for grants without a matching requirement to prior grantees under the statute where necessary to acquire logging recorders to comply with Section 399(b)(1) of the Communications Act of 1934, as amended. This change is reflected in § 153.23 of the proposed regulation.

3. *Other Proposed Changes.* Other changes, not required by the amendments, have been included in the proposed regulation. For example, the several references to "transmission apparatus" have been revised to read "eligible apparatus" or "transmission and reception apparatus;" in other sections, the wording has been revised for purposes of clarification.

Provisions in existing §§ 153.13(a) and 153.22(d) providing for a petition for reconsideration of an application which has been denied approval for funding and therefore deferred for consideration until the next fiscal year have been deleted. Whether an eligible application is granted or deferred is based upon the collective evaluations of outside field readers, outside expert advisors, ratings of program officers, and a consensus of the Educational Broadcasting Facilities Program staff. This involves a competitive decision which may not lend itself to a petition for reconsideration. On the other hand, the petition for reconsideration is retained for decisions on acceptance for filing.

Other proposed changes include modifications to the evaluation criteria in § 153.12, including the addition of a criterion on performance under any prior grant, changes in the list of eligible equipment items in Appendix A, and clarification of the non-Federal matching requirement in § 153.14(b).

4. *Proposed Incorporation of Electronic Industries Association Standards.* Appendix A-II proposes to continue in effect the following standards and specifications of the Electronic Industries Association:

(a) Electronic Industries Association Standard RS-222-B (December, 1972), "Structural Standards for Steel Antenna Towers and Supporting Structures;"

(b) Electronic Industries Association Standard RS-170 (November, 1970), "Electrical Performance Standards—Monochrome Television Studio Facilities;" and

(c) Electronic Industries Association Standard RS-240 (April 1961), "Electrical Performance Standards for Television Broadcast Transmitters."

These provisions were approved for incorporation by reference by the Director of the Federal Register March 7, 1975 and were incorporated by reference in the program regulation published March 10, 1975 (40 F.R. 11240).

In addition to these standards previously incorporated by reference, Appendix A-II proposes to incorporate:

(a) Electronic Industries Association Standard RS-411 (August 1973), "Electrical and Mechanical Characteristics of Antennas for Satellite Earth Stations"; and

(b) Electronic Industries Association Standard RS-195A (November 1966), "Electrical and Mechanical Characteristics for Microwave Relay System Antennas and Passive Reflectors."

All of these standards would serve as benchmarks for determining the extent to which the various items of transmission apparatus proposed for a project are necessary to, and capable of, achieving the objectives of the project, a criterion for evaluation of applications set forth in proposed § 153.12(b)(6).

The materials proposed for incorporation, which are published by the Electronic Industries Association, an association of the manufacturers of electronic equipment, are widely recognized and utilized within the electronics industry as the appropriate standards and specifications for electronic equipment.

Copies of these standards may be obtained from the Director, Educational Broadcasting Facilities Program, U.S. Office of Education, 400 Maryland Avenue, S.W., Washington, D.C. 20202 or from the Electronic Industries Association, Engineering Department, 2001 Eye Street, N.W., Washington, D.C. 20006.

5. *Advance Comments on Restricting Commercial Use of Programs.* The public is invited to provide comments and suggestions not only on the specific provisions contained in the proposed regulation, but also on the issue of what regulation is needed, if any, on the question of the use for other than noncommercial educational broadcasting purposes of programming developed with Federally funded equipment.

The Communications Act of 1934, as amended, and the program regulation provide that further facilities assisted under the program must be used only for noncommercial educational purposes. However, neither the statute nor the existing regulation clarifies the scope of this limitation, with specific regard to secondary use of programming produced with funded facilities. The proposed regulation also does not squarely address this issue. Given the large implications and sensitivity of this area, guidance is sought from the public at this time as to whether regulation is needed and, if so, what it should be. Based on this guidance, the Office of Education will consider whether a subsequent proposed regulation should be issued relating to this problem.

Examples of issues which are being raised by grantees include whether program-funded equipment may be used to make a training video-tape recording at the standard charge rate for a commercial organization; whether tapes of local programming developed with program-funded equipment may be made available for delayed commercial broadcast in return for an underwriting by the commercial station of the production costs; and whether tapes of local programming, e.g. (athletic events) developed with program-funded equipment may be provided to a nonprofit organization, e.g. ("booster club") to be used in conjunction with the promotional activities of the latter organization.

The primary issue appears to relate to secondary, delayed broadcast or closed circuit uses by commercial operations of programming initially developed for a noncommercial broadcast use with Federally funded equipment.

Public comments and suggestions are invited on the following and any other pertinent issues:

(a) Should limits on these uses be set forth in the regulation?

(b) If so, should the primary or initial use of the programming developed with funded facilities be distinguished from a secondary or delayed use of the program? If so, how should these uses be distinguished?

(c) With respect to any regulation concerning commercial use of programs developed with funded equipment, how should "commercial use" be defined?

(d) If explicit limits are established in the regulation, what sanctions, if any, should be established to govern violations? How should the sanctions, if any, be enforced?

6. *Public Input.* Discussions relative to the proposed changes in these regulations have been conducted with officials in the public broadcasting systems, eligible applicants, and constituent agencies interested in the development of telecommunications facilities for the distribution of health, education, and other public or social service information.

Interested persons are invited to submit written comments on the proposed regulation and on the issues raised under paragraph 5 above to Dr. John L. Cameron, Chief, Educational Broadcasting Facilities Program, Division of Educational Technology, U.S. Office of Education, 400 Maryland Avenue, S.W. (Room 3122A, ROB No. 3), Washington, D.C. 20202.

All comments must be received on or before March 7, 1977. These comments will be available for public inspection in the above office between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week.

Due to timing constraints to implement the statutory changes, no public hearings are planned on this proposed regulation. However, one or more public hearings may be scheduled prior to the submission of a subsequent regulation on the issues raised under paragraph 5 above once written comments are received.

The Office of Education has determined that this document does not contain a major proposal requiring preparation of an Inflationary Impact Statement under Executive Order 11821 and OMB Circular A-107.

(Catalog of Federal Domestic Assistance No. 13.413, Educational Broadcasting Facilities (Public Broadcasting))

Dated: January 11, 1977.

EDWARD AGUIRRE,
U.S. Commissioner of Education.

Approved: January 12, 1977.

DAVID MATHEWS,
Secretary of Health, Education, and Welfare.

PART 153—EDUCATIONAL BROADCASTING FACILITIES PROGRAM

Subpart A—General

Sec.
153.1 Scope.
153.2 Other pertinent rules and regulations.
153.3 Definitions.

Subpart B—Eligibility and Applications

153.4 Eligible applicants.
153.5 Application for financial assistance.
153.6 FCC authorization.
153.7 Service of applications.
153.8 Acceptance of applications.
153.9 Comments on applications.
153.10 Processing of applications.
153.11 Coordination with interested agencies and organizations.
153.12 Criteria for evaluation of applications.
153.13 Action on applications.

Subpart C—Federal Financial Participation and Conditions of Federal Grant

Sec.
153.14 Amount of Federal grant.
153.15 Payment of Federal grant.
153.16 Conditions of Federal grant.

Subpart D—Accountability for Federal Funds

153.17 Retention of property records.
153.18 Final certification.
153.19 Annual status reports.
153.20 Termination.
153.21 Change in eligibility to use
153.22 Petition for reconsideration.

Subpart E—Audio Logging Recorders

153.23 Audio logging recorders.
APPENDIX A—Educational Radio and Television Transmission Apparatus and related costs list and Minimum Equipment Performance Standards.
APPENDIX B—Project Priorities.

AUTHORITY: Pub. L. 87-447, 76 Stat. 64-67, as amended (47 U.S.C. 390-395, 397-399), unless otherwise noted.

Subpart A—General

§ 153.1 Scope.

This part governs the provision of grants by the Commissioner under authority delegated by the Secretary for the construction of educational broadcasting facilities for noncommercial purposes pursuant to the provisions of Part IV of Title III of the Communications Act of 1934, as amended (47 U.S.C. 390-395; 397-399).

(47 U.S.C. 394)

§ 153.2 Other pertinent rules and regulations.

(a) Assistance provided under this part shall be subject to applicable provisions contained in Subchapter A of this Chapter (General Provisions for Office of Education programs relating to fiscal, administrative, and other matters), except to the extent that such provisions are inconsistent with, or expressly made inapplicable by, the provisions in this part.

(b) Other rules and regulations pertinent to applications for the operation of noncommercial educational broadcasting stations are contained in the rules and regulations of the Federal Communications Commission, 47 CFR Part 1 (Practice and Procedure); Part 2 (Frequency Allocations and Radio Treaty Matters: General Rules and Regulations); Part 17 (Construction, Marking, and Lighting of Antenna Structures); Part 3, Subpart E (Television Broadcasting Stations); Part 73 (Radio Broadcast Services); and Part 74 (Experimental Auxiliary and Special Broadcast and Other Program Distributional Services).

(47 U.S.C. 394)

§ 153.3 Definitions.

(a) Applicable definitions set forth in § 100.1 of this chapter shall apply to the regulations of this part, except that definitions of "equipment" and "project" set forth in § 100.1 of this chapter shall not be applicable to this part.

(b) The following terms shall have the following meanings when used in this part:

Notwithstanding the definition of "Acquisition" set forth in § 100.1 of this chapter, "Acquisition" means the assumption of ownership of apparatus eligible for funding under this part (including the receipt of gifts) and necessary delivery.

"Act" means Part IV of Title III of the Communications Act of 1934, as amended (47 U.S.C. 390-395, 397-399).

"Affiliated" means that the educational or cultural institution is:

(1) (i) Contractually associated, for educational purposes, with an eligible college or university; or

(ii) A legally incorporated consortium made up in whole or in part of eligible colleges or universities.

(2) Qualified to be a licensee of a noncommercial educational broadcasting station.

(Senate Report No. 94-813, Committee Amendment pg. 8)

"Broadcasting" means the dissemination of standard AM, FM, or TV electronic energy through the atmosphere intended primarily for reception by the general public.

"Closed circuit" means a system for the distribution of electronic signals by a means other than broadcasting.

"College" and "university" mean an educational institution in any State which (1) admits as regular students only persons having a certificate of graduation from a school providing secondary education or the recognized equivalent of such a certificate; (2) is legally authorized within such State to provide a program of education beyond the secondary level; (3) provides an educational program for which it awards a bachelor's degree or provides not less than a 2-year program which is acceptable for full credit toward such a degree;

and (4) is accredited by a nationally recognized accrediting agency or association; or, if not so accredited; (i) is an institution with respect to which the Commissioner has determined that there is satisfactory assurance, considering the resources available to the institution, the period of time, if any, during which it has operated, the effort it is making to meet accreditation standards, and the purpose for which this determination is being made, that the institution will meet the accreditation standards of such an agency or association within a reasonable time; or (ii) is an institution whose credits are accepted, on transfer, by not less than three accredited institutions, on the same basis as if transferred from an accredited institution.

"Construction" means the planning for, acquisition, and installation of transmission and reception apparatus (including towers, microwave equipment, boosters, translators, repeaters, mobile equipment, video recording equipment, non-video recording equipment, radio subcarrier receivers, and satellite transceivers) necessary for television broadcasting or radio broadcasting, as the case may be, including apparatus which must be used primarily for open broadcast purposes, but which may incidentally be used for producing and/or transmitting closed circuit television or radio programs for public or private nonprofit agencies. However, the term does not include the construction or repair of structures to house this apparatus.

"Corporation" means the Corporation for Public Broadcasting established pursuant to Subpart B of the Act (47 U.S.C. 396).

"Educational broadcasting" means broadcasting of educational, community service, and cultural programs of benefit to the area or community served by such broadcasting.

"Facilities" means transmission and reception apparatus as defined in this section.

"Fair-market value" means the price determined by a seller who is willing to sell, and a buyer who is willing to buy, where both parties are freely negotiating in good faith. Criteria used to establish fair-market value include: (1) The price at which a like item (model, age, and condition) has changed hands; (2) in the case of a donation, the donor's purchase price or cost of manufacture, less reasonable allowance for depreciation due to use and age; (3) the catalog or other established price of a new item of the same type, less reasonable allowance for depreciation due to use and age; or (4) appraisal, satisfactory to the United States, made by one or more qualified impartial appraisers.

"FCC" means the Federal Communications Commission.

"Installation" means assembling, affixing, and taking any other steps necessary or required in order to make ready for use transmission and reception apparatus included in the project.

"Interconnection" means the use of microwave equipment, boosters, translators, repeaters, communication space satellites, or other apparatus or equipment for the transmission and distribution of television or radio programs to noncommercial educational broadcasting stations.

"Owned by the applicant" as applied to transmission and reception apparatus means that the applicant's interest in such eligible apparatus is, at least, the primary, equitable, or beneficial interest, including the obligation to own.

"Planning" means such engineering, legal, and other activities as are provided for in Appendix A to this part, but does not include the preparation of statewide or regional plans, the conduct of surveys, or the preparation and conduct of proceedings or contests before the FCC beyond the preparation, filing, and routine prosecution normally required for uncontested applications.

"Project" means the planning, acquisition, and installation of only those items of eligible apparatus, in accordance with the provisions of Appendix A to this part, related to one noncommercial educational broadcasting station which the Commissioner determines to be eligible for Federal financial assistance pursuant to provisions of this part. Where an applicant may more cost efficiently operate two or more television or radio stations which are interconnected or are served by a common staff, the project may relate to more than one television station or to more than one radio station. The project may not relate to a combination of radio and television stations.

"Reception apparatus" means control room and studio monitors, radio subcarrier receivers for stations with FCC approved Subsidiary Communications Authority (SCA), and satellite transceivers necessary for television or radio broadcasting.

"Regional plan" means an organized design for the dispersion of noncommercial educational broadcasting facilities within a geographical area not otherwise specifically defined by either State boundaries or by the broadcast contours of an individual noncommercial educational broadcast station.

"Reserved channel" means a channel reserved by the FCC for the exclusive use of a noncommercial educational broadcast station.

"Service area" means:

(1) In the case of television, that area included within the station's predicted Grade B contour.

(2) In the cast of AM radio broadcasting, that area included within the station's predicted 500 microvolt contour, and

(3) In the case of FM radio broadcasting, that area included within the station's predicted 1 millivolt contour.

"Situated in any State" means, with respect to a noncommercial educational broadcast station and all transmission and reception apparatus resulting from a project associated with such station, situated (irrespective of physical location) in the State in which the channel occupied or applied for is assigned by the FCC, unless the Commissioner, in light of all the pertinent facts and circumstances of a particular case, specifically determines otherwise.

"State" means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands.

"State educational television agency" and "State educational radio agency" mean, with respect to television broadcasting and radio broadcasting, respectively:

(1) A board or commission established by State law for the purpose of promoting such broadcasting within a State;

(2) A board or commission appointed by the Governor of a State for such purpose if such appointment is not inconsistent with State law; or

(3) A State officer or agency responsible for the supervision of public elementary or secondary education or public higher education within the State which has been designated by the Governor to assume responsibility for the promotion of such broadcasting. In the case of the District of Columbia, the term "Governor" as used in this paragraph means the Mayor of the District of Columbia, and, in the case of the Trust Territory of the Pacific Islands, means the High Commissioner.

"Transmission apparatus" means telecommunications apparatus which is necessary for noncommercial educational broadcasting in accordance with provisions of Appendix A to this part.

(47 U.S.C. 392, 394, 397; 20 U.S.C. 1221)

Subpart B—Eligibility and Applications

§ 153.4 Eligible applicants.

(a) Applications for Federal financial assistance under this part for an educational television project may be submitted by:

(1) An agency or officer responsible for the supervision of public elementary or secondary education or public higher education within a State, or within a political subdivision thereof;

(2) A State educational television agency;

(3) A public or private nonprofit college or university or other educational or cultural institution which is affiliated with an eligible college or university;

(4) A nonprofit foundation, corporation, or association which is organized primarily to engage in or encourage noncommercial educational television broadcasting and is eligible to receive a license from the FCC for a noncommercial educational television broadcasting station pursuant to the rules and regulations of the FCC in effect on April 12, 1962; or

(5) A municipality which already owns and operates a facility used only for noncommercial educational broadcasting or which will own and operate the facility, for which assistance is requested, only for noncommercial educational broadcasting.

(b) Applications for Federal financial assistance under this part for an educational radio project may be submitted by:

(1) An agency or officer responsible for the supervision of public elementary or secondary education or public higher education within a State, or within a political subdivision thereof;

(2) A State educational radio agency;

(3) A public or private nonprofit college or university or other educational or cultural institution which is affiliated with an eligible college or university;

(4) A nonprofit foundation, corporation, or association which is organized primarily to engage in or encourage noncommercial educational radio broadcasting and is eligible to receive a license from the FCC, or meets the requirements of paragraph (a)(4) of this section and is organized primarily to engage in or encourage such radio broadcasting and is eligible for such a license for such a radio station; or

(5) A municipality which already owns and operates a facility used only for noncommercial educational broadcasting or which will own and operate the facility, for which assistance is requested, only for noncommercial educational broadcasting.

(47 U.S.C. 392(a)(1), 394, 397.)

§ 153.5 Application for financial assistance.

(a) (1) An applicant eligible for grant assistance under this part must file an application in triplicate with the Commissioner as provided in § 100a.15 of this chapter.

(2) To reactivate any deferred application accepted for filing in a previous fiscal year, the applicant must, on or before such cutoff date as may be provided by the Commissioner pursuant to § 100a.15 of this title, submit a statement indicating that it wishes the application to be reconsidered, and amend its application.

(3) Any application or amendment thereto shall contain (i) a current project summary, (ii) information required under paragraph (c) of this section, and (iii) such other information relating to noncommercial broadcasting activities as may be deemed necessary by the Commissioner pursuant to §§ 100a.15; 100a.16, except paragraph (b) thereof; 100a.17; 100a.18; and 100a.19 of this chapter.

(4) On proposed projects for which an assessment of environmental impact is required under § 100a.185, applications submitted under Subpart A of the Act must include a copy of the environmental impact statement which is provided to the FCC as required of all broadcast applications for construction permits (§ 1.1311 of the FCC Rules and Regulations); and

(5) The applicant may submit amendments or additional information relevant to its application.

(b) Radio and television applications must be submitted separately.

(47 U.S.C. 394.)

(c) Except as provided in § 153.23 for audio logging recorder applications, no project will be approved unless the applicant has provided in the application information to establish, to the Commissioner's satisfaction, that:

(1) (i) The applicant meets the requirements of eligibility set forth in § 153.4;

(ii) The applicant's organic or corporate powers include the authority to construct and operate noncommercial educational broadcast facilities, and to receive Federal funds for such construction.

(2) In the case of a nonprofit foundation, corporation, or association eligible under § 153.4 (a)(4) or (b)(4), the applicant is so organized as to be reasonably representative of the educational, cultural, and civic groups in the community to be served, and free from such control by a single private entity (either through membership on its board of directors, source of funds, or otherwise) as would prevent or restrict it from serving overall community needs or interests;

(3) The transmission and reception apparatus to be acquired and installed under the project will be owned by the applicant;

(4) The operation of the noncommercial educational broadcast facilities will be under the control of the applicant or an agency or institution qualified under § 153.4 to be an applicant during the 10 year period of Federal interest;

(5) Sufficient funds will be available when needed:

(i) To meet the non-Federal share of the cost of the project;

(ii) To acquire all land and to construct and install all facilities, structures, and equipment, in addition to the eligible apparatus included in the project, necessary to place the proposed noncommercial educational broadcast facilities in operation; and

(iii) To operate and maintain the noncommercial educational broadcast facilities at a level which will provide adequate program services to the community on a scale consistent with the intent of the Act and the proposed project;

(6) All non-Federal financial sources available for the project have been taken into account, and the non-Federal share stated by the applicant as being available for use in the project is the maximum contribution available from such sources;

(7) The applicant holds appropriate title or lease to the site or sites on which apparatus proposed in the project will be operated, including the right to construct, maintain, operate, and remove such apparatus, sufficient to assure continuity of operation of the station for a period of 10 years following completion of the project;

(8) The eligible apparatus to be acquired and installed under the project will be used primarily for educational broadcasting purposes and only incidentally for educational purposes by means of closed circuit;

(9) There has been comprehensive planning for educational broadcasting facilities and services in the area the applicant proposes to serve, and the applicant has participated in such planning; and

(10) The applicant will make the most efficient use of the frequency assigned to him by the FCC.

(47 U.S.C. 392 (a), (d), and (e), 394.)

§ 153.6 FCC authorization.

(a) Any FCC authorization or authorizations required for the project and for the operation of the station with which the project is to be associated must be in the name of the applicant.

(b) If the project is to be associated with an existing station, FCC operating authority for that station must be current and valid.

(c) For any project requiring a new authorization or authorizations from the FCC, the applicant must file with the Commissioner a copy of each FCC application and any amendments thereto.

(d) If the applicant fails to file a required FCC application or applications by any closing date established pursuant to § 100a.15 of this chapter, or if the FCC returns, dismisses, or denies an application required for the project or any part thereof, or for the operation of the station with which the project is associated, the Commissioner may return the application for Federal financial assistance to the applicant.

(47 U.S.C. 392(a), 394, 395.)

§ 153.7 Service to applications.

(a) Each applicant shall promptly serve a copy of his application, and each amendment thereto, for Federal financial assistance under this part upon each of the following:

(1) The Secretary, Federal Communications Commission, Washington, D.C. 20554; and

(2) The State educational television or radio agency, if any, in the State in which the channel associated with the project is assigned by the FCC, or, if the channel in question is assigned jointly to communities in different States, upon the State educational television or radio agency, if any, in each of such States.

(b) Each applicant must also give written notice of the filing of the application to the State educational television (radio agency, if any, in any State, any part of which is within the service area of the proposed broadcast station.

(47 U.S.C. 392(c), 394.)

§ 153.8 Acceptance of applications.

(a) Applications tendered for filing with the Commissioner will be given a preliminary examination. Those found to be complete and in accordance with the provisions of this part will be accepted for filing. Applications which are not complete or which are determined to be not in accordance with the provisions of this part will not be accepted for filing and will be returned to the applicant: *Provided*, That within 30 days of such return, the applicant may file with the Commissioner a petition pursuant to § 153.22. Acceptance of an application for filing will not preclude subsequent return or disapproval of the application if it is found to be not in accordance with the provisions of this part, or if the ap-

plicant fails to file any additional information or documents requested by the Commissioner.

(b) Applications proposing projects which require new authorization or authorizations from the FCC will not be accepted for filing by the Commissioner until after the FCC has accepted for filing the necessary application or applications to the FCC for such authorization or authorizations.

(c) The acceptance of applications for filing, as provided in paragraph (a), is a procedure designed for making preliminary determinations of eligibility and for providing an opportunity for public comment on applications, as described in § 153.9. Acceptance of an application for filing does not assure that application of being funded; it merely qualifies that application to compete for funding with other applications accepted for filing.

(47 U.S.C. 392(a), 394, 395.)

§ 153.9 Comments on applications.

(a) The Commissioner will publish notice in the FEDERAL REGISTER of the acceptance for filing of each application and of the receipt of each amendment which substantially changes the proposed project.

(b) Within 30 calendar days from the date on which notice is published in the FEDERAL REGISTER of the acceptance for filing of an application or an amendment to an application any State educational television and/or radio agency and any other interested person may file comments with the Commissioner supporting or opposing the application or amendment, setting forth the grounds for support or opposition, accompanied by a certification that a copy of the comments has been mailed to the applicant.

(c) Within 15 calendar days from the last day for filing such comments, the applicant may file a reply to any comments opposing its application or an amendment thereof.

(d) The time periods referred to in paragraphs (b) and (c) of this section may be extended by the Commissioner if good cause is shown.

(47 U.S.C. 394.)

§ 153.10 Processing of applications.

With respect to applications accepted for filing pursuant to § 153.8, the Commissioner may at any time establish limitations on the maximum amount of Federal grants which may be approved for projects situated in each of the several States in order to comply with the limitation in the Act on grants for any State to 8½ per centum of the appropriation for any fiscal year or if in the Commissioner's judgment such an action would assist in promoting equitable distribution of such Federal grants throughout the several States.

(47 U.S.C. 392 (b) and (d), 394.)

§ 153.11 Coordination with interested agencies and organizations.

In acting on applications and carrying out other responsibilities under the Act and this part, the Commissioner may consult with:

(a) The FCC with respect to functions which are of interest to or affect functions of the FCC;

(b) The Corporation for Public Broadcasting with respect to functions which are of interest to or affect the functions of the Corporation; and

(c) Other agencies, organizations, and institutions administering programs which may be coordinated effectively with Federal assistance provided under this part.

(47 U.S.C. 394, 395.)

§ 153.12 Criteria for evaluation of applications.

(a) The Commissioner may set aside a portion of funds appropriated to carry out this part for projects to acquire audio logging recorders under § 153.23. Applications which request assistance only to acquire and install an audio logging recorder will be governed by § 153.23 and will not be subject to criteria in this section.

(b) In order to achieve the objectives of § 392(d) of the Act, the Commissioner, in determining whether to approve an application for a Federal grant in whole or in part and the amount of such grant, or whether to defer action on such an application, will consider, in addition to criteria set forth in § 100a.26(b) of this chapter, excepting paragraphs (3), (6), and (8) of § 100a.26(b) of this chapter, the following factors:

(1) Specific program priorities set forth in Appendix B to this part;

(2) The extent to which the applicant has assessed specific educational, informational, and cultural needs of the local community, State, or Nation for public broadcasting service, as well as the need, where applicable, for local outlets to provide first or supplemental service, extend existing service, or strengthen production and reproduction capability;

(3) The extent to which station objectives and the proposed project respond to meeting the needs described under subparagraph (2);

(4) The extent to which provision has been made for community participation by the service agencies, educational and cultural institutions, and organizations within the service area of the station, and the extent to which intended audiences are using or will use broadcast services;

(5) Equitable geographical distribution of funds throughout the States;

(6) The extent to which the various items of eligible apparatus proposed are necessary to, and capable of, achieving the objectives of the project and are making the most efficient use of the frequency assignment;

(7) The cost-effectiveness of Federal funds in relationship to objectives of the project, and the extent to which non-Federal funds will be used to meet the total cost of the project;

(8) The standards by which the noncommercial educational broadcasting station will operate, including the number of hours of broadcast proposed, the size of the professional staff to be employed, and the adequacy of facilities, power, and program service;

(9) The adequacy and continuity of financial resources for long-term operational support, which assure the station's continual service to the communities within the coverage area; and the availability of necessary funds for capital expenditures;

(10) The provisions of any relevant statewide or regional noncommercial educational broadcast plans;

(11) The recommendations, if any, of the State educational television or radio agency; and

(12) Past performance by the applicant in carrying out any prior grants to it under this part in accordance with the applicable terms and conditions, *provided* That if the Commissioner decides to deny an application based upon this criterion, the Commissioner will do so only after providing the applicant with notice and an opportunity to rebut the basis for the decision.

(c) Applications under this part will not be approved by the Commissioner if they request funding to:

(1) Establish or improve a station with very low transmission power, except where the project is to convert a low transmission power station to a high transmission power station, or where low transmission power can be justified in terms of meeting the project's purposes;

(2) Provide program services which are limited in nature, scope, and hours of broadcast; or

(3) Acquire transmission or reception apparatus which is to be used primarily for student training purposes.

(47 U.S.C. 392 (a), (c), (d), and (e); 394 397(2).)

§ 153.13 Action on applications.

(a) After consideration of the application accepted for filing under § 153.8, any comments and replies filed by interested parties, and any other relevant information, the Commissioner will take one of the following actions provided for in § 100a.27(a) of this chapter: select the application for funding; return the application to the applicant; or defer the application for reconsideration pursuant to § 153.5, provided that when the Commissioner returns or defers the application, the Commissioner will notify the applicant of the grounds and reasons therefor.

(b) Upon the Commissioner's approval or deferral, in whole or in part, of an application, the Commissioner will, in accordance with the provisions of § 100a.27 (c) of this chapter, inform:

(1) The applicant,

(2) Each State educational television or radio agency, if any, in any State, any part of which lies within the service area of the applicant's broadcast station,

(3) The FCC, and

(4) The Corporation.

(c) If the Commissioner awards a grant, the grant award document shall include grant terms and conditions set forth in Appendix A to Subchapter A of this Chapter, excepting terms and conditions 2, 3(b) and (c), 5(e), 10, 11, 14, 20(a), 23, and 24 of this Appendix, and whatever other provisions are required by Federal law or regulations, or may be deemed necessary or desirable for the achievement of the purposes of the program supported under this part.

(47 U.S.C. 392(c), 394.)

Subpart C—Federal Financial Participation and Conditions of Federal Grant

§ 153.14 Amount of Federal grant.

(a) In accordance with §§ 100a.50 and 100a.51 of this chapter, and subject to the provisions of paragraphs (b) and (c) of this section, the Federal grant award shall be an amount determined by the Commissioner and set forth in the grant award document, which, except as provided in § 153.23, shall not exceed 75 percent of the amount determined to be the estimated, total, reasonable, and necessary cost of the project. This cost shall include the following:

(1) The purchase price of transmission and reception apparatus (or fair market value of donated eligible apparatus) to be acquired in the project (in accordance with the provisions of Appendix A to this part); and

(2) Other costs related to the planning, acquisition, and installation of transmission and reception appartus in the project (in accordance with provisions of Appendix A to this part).

(b) No part of the grantee's matching share of the eligible project costs may be met with Federal funds (including funds supplied by the Corporation for Public Broadcasting), except where the use of such funds to meet a Federal matching requirement is specifically and expressly authorized by Federal statute.

(c) Project costs shall not include the value of:

(1) Eligible apparatus owned by the applicant prior to the effective date of acceptance by the Commissioner for filing of the application, and services related thereto. The effective date of acceptance for filing shall be specified in the FEDERAL REGISTER notice provided for under § 153.9(a) and shall be no earlier than the date on which the application was first received by the Commissioner in substantially approvable form;

(2) Transmission and reception to the extent acquired or installed by donation from the United States or with Federal funds provided from sources other than under this part; and

(3) Transmission and reception apparatus previously acquired or installed by a person other than the applicant by donation from the United States, or with Federal funds pursuant to this part or any other provisions of law.

(d) If the actual costs incurred in completing the project are less than the estimated costs which constituted the basis for the Commissioner's determination of the amount of the Federal grant award, the amount of the final grant shall be that amount of the actual total project cost remaining after deducting the amount of local matching funds used as a basis for the grant award time of project approval (including the fair-market value of gifts, if any) provided that in no case shall the final Federal grant exceed the Federal grant award.

(e) Notwithstanding § 100a.51 of this chapter, grant awards under this part will not be revised by the Commissioner if the effect of the revision is to increase the amount of the grant award.

(47 U.S.C. 392(e), 394; 20 U.S.C. 1221c(b)(1), 1221c(b)(3))

§ 153.15 Payment of Federal grant.

(a) No payments under any award will be made unless and until the recipient complies with all relevant requirements imposed by this part, and until confirmation has been received from the FCC that any necessary existing authorization is current and valid and any necessary new authorization has been granted and such grant has become final.

(b) After the conditions indicated in paragraph (a) of this section have been satisfied, and notwithstanding §§ 100a.60–100a.64 of this chapter, payment will be made to the grantee in such installments consistent with construction progress, as the Commissioner may determine. The Commissioner may require as a precondition to any such payments such site visits by representatives of the Department as he may deem appropriate to determine construction progress.

(47 U.S.C. 392(e), 394)

§ 153.16 Conditions of Federal grant.

(a)(1) Federal grants under this part shall not be subject to §§ 100a.156, 100a.159, 100a.161, 100a.172, 100a.173, 100a.260, 100a.270, and 100a.276 of this chapter.

(2) As applied to grants under this part, the terms "construction" and "facilities" used in Subpart K of Part 100a of this chapter shall have the applicable definitions set forth in §153.3.

(3) As applied to grants under this part, "program income", as the term is used in Subpart M of Part 100a, of this chapter, shall not include income to the grantee generated by its television or radio programming.

(b) Each Federal grant under this part shall be subject to the conditions that the grantee shall:

(1) Continue to meet the requirements set forth in § 153.5(c);

(2) Use the Federal grant funds for the purposes for which the Federal grant was made and for the item of apparatus and other expenditure items specified in the application for inclusion in the project, except that the grantee may substitute other items where necessary or desirable to carry out the purpose of the project as approved in advance by the Commissioner;

(3) Promptly complete the project and place the noncommercial educational broadcast facilities into operation;

(4) Maintain, during construction of the project and for 10 years after completion of the project, protection against common hazards through adequate insurance coverage or other equivalent undertakings, except that, to the extent the applicant follows a different policy of protection with respect to its other property, the applicant may extend such policy to transmission and reception apparatus acquired and installed under the project;

(5) Permit inspections by the Commissioner or a duly authorized representative of the Commissioner of the transmission and reception apparatus acquired with Federal financial assistance at the time of completion of the project and at any other reasonable time within 10 years after completion of the project.

(47 U.S.C. 392(d)(i), 392(f), 394)

Subpart D—Accountability for Federal Funds

§ 153.17 Retention of property records.

(a) Each grantee shall keep intact and accessible fiscal records in accordance with the provisions of § 100a.477 of this chapter, provided that final dispositon of nonexpendable personal property purchased under this part for purposes of § 100a.477(b)(2) of this chapter shall be deemed to have occurred 10 years after completion of the project.

(b) The grantee shall mark project apparatus in a permanent manner in order to assure easy and accurate identification and reference to inventory records.

(47 U.S.C. 392(f), 393, 394, 20 U.S.C. 1232c(a)

§ 153.18 Final certification.

Upon completion of the project, the grantee shall:

(a) Certify that the noncommercial educational broadcasting station has, where required, FCC authorization to broadcast following acquisition and installation of project equipment; and

(f) Certify that the acquisition and installation of the project equipment has been completed in accordance with the project as approved by the Commissioner.

(47 U.S.C. 392(f), 394, 20 U.S.C. 1232c(b)(3); 20 U.S.C. 1221c(b)(1))

§ 153.19 Annual status reports.

In addition to reports which may be required to be filed under § 100a.406 and § 100a.433 of this chapter, the grantee must file with the Commissioner during the 10-year period commencing with the date of completion of a project, an annual status on or before each April 1 following completion of the project, certifying that:

(a) The grantee continues to be an eligible agency, officer, institution, foundation, corporation, association, or municipality described in § 153.4;

(b) There has been no change in ownership or use of the project apparatus during the reporting period, or describing any change during such period;

(c) Project apparatus, owned by the grantee as of that date, is being used for noncommercial educational broadcasting purposes; and

(d) The requirements of § 153.16(b)(4) continue to be met.

(47 U.S.C. 392(f), 394)

§ 153.20 Termination.

In addition to grounds for termination for cause specified in § 100a.495(a) of this chapter, the following circumstances shall constitute grounds for termination under § 100a.495 of this chapter:

(a) Final action by the FCC revoking a construction permit required for a project, denying an application for extension or a required modification of the construction permit, denying an application for a construction permit to replace the required construction permit, or denying an application for a license to cover the construction permit; or

(b) Forfeiture of a construction permit required for a project for which a grant has been approved.

(47 U.S.C. 394; 20 U.S.C. 1221c(b)(1))

§ 153.21 Change in eligibility or use.

(a) Notwithstanding §§ 100a.215 (b), (c), and (d) and 100a.216 of this chapter, if assistance under this part is terminated pursuant to § 153.20 or if within 10 years after completion of any project with respect to which a Federal grant has been made pursuant to this part:

(1) The grantee ceases to be an agency, officer, institution, foundation, corporation, association, or municipality described in § 153.4 as being eligible to receive a Federal grant; or

(2) Any of the eligible apparatus included in the project ceases to be used primarily for noncommercial educational broadcasting, either permanently or for an indefinite period of time, or such apparatus is used or disposed of for other than noncommercial educational broadcasting (other than as a trade-in for acquisition of other eligible apparatus), then the grantee shall (except as provided in paragraph (b of this section) pay to the United States the amount bearing the same ratio to the then fair-market value of such apparatus, as the amount of the Federal participation bore to the cost of acquisition or installation of such apparatus.

(b) Where a grantee proposes to cease using any of the eligible apparatus included in the project primarily for noncommercial educational broadcasting (as set forth in paragraph (a)(2) of this section), that grantee may file a petition with the Commissioner requesting release from the obligation to make repayment to the United States, and setting forth with particularity the grounds and reasons for the request. These petitions will be granted by the Commissioner only for good cause, and only if the proposed cessation of use for noncommercial educational broadcasting has not already taken place, unless the petitioner demonstrates to the satisfaction of the Commissioner that the cessation was due to causes not under the control of the petitioner. If the Commissioner denies the petition, the grantee may within 30 calendar days from the date of receipt of notice of the denial, file a petition for reconsideration pursuant to § 153.22.

(c) In any case where the Commissioner has reason to believe that any change in eligibility or use of transmission and reception apparatus (as described in paragraph (a) of this section), has already taken place, the grantee will be notified promptly of the grounds and reasons that repayment to the United States is required. The grantee may, within 30 calendar days from the date of receipt of this notification, file with the Commissioner a petition for reconsideration pursuant to § 153.22.

(d) If the Commissioner determines that the grantee is obligated to make a repayment to the United States, the Commissioner will seek to reach agreement as to the amount and method of repayment. If an agreement cannot be reached, the Commissioner will cause an action to be brought in the U.S. District Court for the district in which the noncommercial educational broadcasting facilities are situated to determine the amount of the repayment, and will take the necessary action to secure repayment.

(47 U.S.C. 392(f), 394)

§ 153.22 Petition for reconsideration.

(a) A petition for reconsideration as provided in §§ 153.8 and 153.21 must be filed with the Commissioner within 30 calendar days, must state with particularity in what respect the Commissioner's action is claimed to be unjust, unwarranted, or erroneous, must specifically indicate the relief sought, and must be accompanied by a written statement on the question presented. The petition for reconsideration may be accompanied by a request for a hearing, in which event the petitioner must state with particularity the grounds and reasons for a hearing. If the Commissioner designates the matter for hearing, the Commissioner will specify the questions in issue, designate the hearing officer, and specify the procedures and rules relating to the conduct of the hearing. If the Commissioner does not find that sufficient grounds and reasons exist for granting the relief sought or for providing a requested hearing, the Commissioner will notify the petitioner, giving reasons for the refusal.

(b) In the event of a hearing the hearing officer shall make a written report to the Commissioner based upon the hearing and containing a recommended decision on the issues. A copy of the report shall be mailed to the petitioner, and the petitioner shall have 15 calendar days from the date of receipt (or such additional time as may be given for good cause) to file with the Commissioner a written statement setting forth with particularity alleged errors in the report and discussing any policy and legal issues presented.

(c) If no written statement is made by the petitioner or by a State educational television or radio agency on the report of the hearing officer and if the Commissioner does not decide to review it, the Commissioner shall review the administrative decision without further proceedings. If a written statement is made on the report of the hearing officer or if the Commissioner decides to review it, the Commissioner shall review the record of the proceedings and issue a decision based on it, setting forth the grounds and reasons.

(d) The Commissioner will notify each State education television or radio agency, if any, in any State, any part of which lies within the service area of the petitioner's broadcasting station, of the filing of a petition for reconsideration under this section and each agency will be given an opportunity to comment upon the petition.

(e) Interested persons other than a State educational television or radio agency referred to in paragraph (d) of this section may comment in writing upon any petition for reconsideration filed under this section and for good cause shown, and may be given an opportunity to participate in a hearing held pursuant to this section to an extent the Commissioner determines appropriate.

(47 U.S.C. 394)

Subpart E—Audio Logging Recorders

§ 153.23 Audio logging recorders.

(a) The Commissioner may make a grant to any licensee of a noncommercial educational broadcast station to acquire no more than one audio logging recorder per station to permit the licensee to comply with Section 399(b) of the Act.

(b)(1) An applicant may receive up to the full amount of the cost of acquiring and installing each audio logging recorder if the applicant:

(i) Previously received financial assistance under Part IV of Title III of the Communications Act of 1934, as amended, and

(ii) Establishes, to the Commissioner's satisfaction, that:

(A) applicant has no funds from non-Federal sources available to apply toward the costs of acquiring and installing the audio logging recorder; and

(B) An audio logging recorder is not already available to the applicant and is needed to comply with Section 399(b) of the Act.

(2) If the applicant does not meet the requirements in subparagraph (1), it may receive assistance to acquire and install an audio logging recorder subject to the non-Federal matching requirements in § 153.14.

(c) An application which requests assistance only for one or more audio logging recorders must meet the requirements in § 153.5 (a) and (c) (1), (2), (3), and (4) and if it seeks assistance beyond the Federal 75% matching share in § 153.14, must:

(1) Provide information meeting the requirements in paragraph (b) (1) of this Section; and

(2) Be a separate application from any other application for a facilities grant under this part.

(d) If funds are not adequate to fund all eligible applications which seek assistance for audio logging recorders, such application swill be competitively evaluated on the basis of the applicant's financial need for Federal assistance and its need for the audio logging recorder to comply with Section 399(b) of the Act. The evalution criteria in § 153.12 and the priorities in Appendix B will not apply to these applicatfons.

(e) Audio logging recorders acquired under this section must meet all applicable Standards in Appendix A.

(47 U.S.C. 392, 394, 397(2) 399 (b))

APPENDIX A—EDUCATIONAL RADIO AND TELEVISION TRANSMISSION APPARATUS AND RELATED COSTS LIST AND MINIMUM EQUIPMENT PERFORMANCE STANDARDS

This appendix sets forth requirements and standards related to eligible and ineligible costs list for assistance under this part, including:

(a) List of transmission and receiving apparatus and related costs, including installation, considered to be eligible for grant participation and a list of items and costs which are specifically ineligible for grant participation. In general, only items of the transmission systems from the lens of the camera or the housing of the microphone to the radiating element of the antenna are eligible. Neither list is intended to be all-inclusive. It is recognized that both technological changes and/or specific circumstances related to individual applications may warrant amendments to the lists or consideration of specific justification for the eligibility and inclusion of unlisted items in certain projects; and

(b) Standards for determining acceptable minimum performance requirements which will meet the capability of achievement criterion contained in § 153.12(b)(6). Information included in this Appendix is applicable to both radio and television projects.

I. ELIGIBLE AND INELIGIBLE PROJECT COSTS

(A) *Transmission Appraratus Eligible for Federal Matching Grants.*

(1) *Antenna systems:*

(a) Tower (guyed or self-supporting) and tower construction including test borings;

(b) Antenna and erection;

(c) Transmission line system or waveguides;

(d) Tower painting and lighting, including lighting controls (new installations only);

(e) Tower footings, guy anchors, and guy wires;

(f) Gas pressure equipment for transmission line; and

(g) De-icing equipment and controls.

(2) *Transmitter;*

(a) Transmitter, including modulator, power supply, one set of spare tubes, and subcarrier generators;

(b) Diplexers, filters, etc., as required;

(c) Crystals, including one set of spares;

(d) Dummy load and wattmeter to measure transmitter power output;

(e) Transmitter and operational console, picture and calibrated wave form monitors, where necessary;

(f) Frequency and modulation monitoring apparatus in compliance with FCC requirements;

(g) Input items required, including stabilizing amplifier;

(h) Mounting racks;

(i) Cables and hardware for installation; and

(j) Test equipment required by good engineering practice.

(3) *Translators:*

(a) Apparatus of the type listed under "Antenna system" and "Transmitter" necessary for the operation of translators; and

(b) Special receiver required for supplying programs to the translator.

(4) *Microwave apparatus (studio-transmitter links, interconnecting microwave relays, and mobile microwave units):*

(a) Transmitter, complete;

(b) Receiver, complete;

(c) Waveguide or transmission line;

(d) Control apparatus as required;

(e) Antennas and protective domes;

(f) Antenna supports and mountings;

(g) Reflectors;

(h) Waveguide switches;

(i) Ferrite isolator and circulator;

(j) Sound diplexing apparatus;

(k) Mounting racks; and

(l) Auxiliary radio communications apparatus to install, maintain, and operate the total broadcast facility.

(5) *Recording and receiving apparatus:*

(a) Broadcast quality video and audio tape recorders and playback machines including video cassette and audio cartridge machines;

(b) Time base correctors;

(c) Time code generator, reader, synchronizer assemblies;

(d) Recorders using other techniques if capable of maintaining standards of good engineering practice;

(e) Related monitoring apparatus, including calibrated oscilloscopes;

(f) Accessories required, including electronic editors and spare recording heads as required by good engineering practice;

(g) Logging recorders; and

(h) FM subcarrier receivers.

(6) *Studio production equipment (including that intended for remote or mobile program origination):*

(a) Cameras, with control units, picture monitors, and wave form monitors;

(b) Telecine systems;

(c) Camera lenses, zoom lenses;

(d) Camera pedestals, tripods, friction heads, and cradles (professional models);

(e) Camera cables, plugs, and connectors;

(f) Sync generator, including a spare and switchover mechanism;

(g) Video switcher and console, picture, and calibrated wave form monitors, and electronic effects generator;

(h) Calibrated wave form monitor and picture monitor with provision to display pulse cross for checking sync pulses;

(i) Utility monitors;

(j) Power supplies, regulated;

(k) Broadcast-type control consoles, amplifiers, VU meter, etc.;

(l) Microphones, low impedance, high quality;

(m) Microphone booms;

(n) Broadcast quality turntables with accessories required;

(o) Broadcast quality audio tape recorders with accessories required;

(p) Equipment racks, patch panels, plugs, cords, loudspeakers; and

(q) Test equipment required by good engineering practice.

(7) *Satellite equipment:*

(a) Transceivers;

(b) Transmitter;

(c) Parabolic antenna and hardware; and

(d) Amplifiers, demodulators, and related apparatus.

(8) *Other interconnection equipment:*

Interconnection equipment is eligible to the extent reasonable and necessary, as determined by the Commissioner, for the reception and utilization of program material made available via interconnection systems.

(9) *Other apparatus.*

Automation apparatus, character generators, quadrophonic equipment, sound improvement systems, spare or back up systems or equipment may be included when the necessity for this apparatus in the proposed system can be specifically justified and is consistent with standards of good broadcast engineering practice.

(47 U.S.C. 392(a) and (d), 394)

(B) *Installation Costs Eligible for Federal Matching Grants.*

Labor and materials necessary for the initial installation of project apparatus, including direct supervision but not including indirect or overhead costs.

(47 U.S.C. 392(a) and (d), 394)

(C) *Planning Costs Eligible for Federal Matching Grants.*

Engineering, legal, and other activities which are performed by appropriately licensed employees or consultants and which are directly related to the planning of the project, the preparation and filing of appropriate applications to HEW and FCC, and the installation of apparatus; but not including indirect or overhead costs. Approvability of such items is subject to final determination by the Commissioner. Such services may include:

(1) Project planning;

(2) Equipment planning;

(3) Engineering planning;

(4) Hardware and engineering aspects of preparing and filing the HEW application for grant and related FCC applications for construction permits;

(5) Preparation of specifications;

(6) Evaluation of bids;

(7) Supervision of installation;

(8) Inspection upon completion;

(9) Proof of performance;

(10) Legal services, to the extent reasonably required for the preparation, filing, and routine prosecution of uncontested applications; and

(11) Other services related to site location and planning, frequency or channel search, and feasibility or structural studies conducted prior to the filing of an application.

(47 U.S.C. 392 (a) and (d); 394)

(D) *Items Ineligible for Federal Matching Grants.*

(1) Land and land improvements for studio and/or transmitter building, tower, and the like;

(2) Structures, including any reinforcement or modification to house or support any transmission apparatus or any other radio or television equipment or facilities, including structural analysis studies;

(3) Maintenance equipment such as hand and power tools and maintenance services;

(4) Vehicles, including those in which mobile equipment is mounted or carried;

(5) Broadcast receiving equipment (except as required for station personnel to monitor transmitted programs or for rebroadcast purposes, SCA subcarrier receivers, or satellite transceivers);

(6) Manual film or tape editing equipment;

(7) Studio lighting and control equipment;

(8) Air conditioning for control or equipment rooms, studios, transmitter, and mobile units, except that the cost to provide ventilation of project apparatus as is required by good engineering practice is an eligible installation cost;

(9) Reels (film or tape);

(10) Office intercom equipment;

(11) Primary power supply, regulators, and associated equipment;

(12) Furniture, fixtures, studio clocks, and the like;

(13 Office equipment, printing and duplicating supplies;

(14) Scenery and props;

(15) Production devices such as prompting systems, background screen projection systems, wind generators, and the like;

(16) Storage cabinets;

(17) Cleaning equipment;

(18) Film;
(19) Recording tape;
(20) Art supplies and equipment;
(21) 16mm cameras, sound synchronization systems, and film processors;
(22) Expendable items, including tubes normally considered spares except for the transmitters; and
(23) Staff time necessary for planning and preparation of applications, except as permitted under Section I(C) of this Appendix.

(47 U.S.C. 392(a) and (d), 394)

II. STANDARDS FOR PROJECT APPARATUS

Project apparatus must comply with the specifications and performance requirements contained in the FCC's rules and regulations cited in § 153.2. The FCC requirements primarily relate to transmitters, translators, and antenna systems. The following performance standards, which are in addition to FCC requirements, shall serve as benchmarks for determining minimum system capacities for purposes of § 153.12(b)(6). Electronic Industries Association (EIA) standards specified in the following paragraphs of this Appendix are hereby incorporated in this part by reference, as approved by the Director of the FEDERAL REGISTER. Copies of these standards may be obtained from the Director, Educational Broadcasting Facilities Program, U.S. Office of Education, 400 Maryland Avenue, SW, Washington, D.C. 20202 or from the Electronic Industries Association, Engineering Department, 2001 Eye Street, NW, Washington, D.C. 20006.

(A) *Broadcast Transmitting Apparatus (Antenna System, Transmitter System, and Related Items).*

(1) In addition to current pertinent FCC requirements, EIA Standard RS-222-B (December 1972) "Structural Standards for Steel Antenna Towers and Supporting Structures," established by the EIA should apply to the tower and antenna system of broadcast stations. EIA Standard RS-411 (August 1973), "Electrical and Mechanical Characteristics of Antennas for Satellite Earth Stations," should apply to earth station antennas with high geothermal for satellite communications. EIA Standard RS-195-A (November 1966), "Electrical and Mechanical Characteristics for Microwave Relay System Antennas and Passive Reflectors", should apply to microwave relay systems operating above 890 Mc.

(2) Where an antenna system is to be added to an existing tower, a structural analysis should be performed to assure that the added facility will not overload the tower.

(3) Selection of transmission lines or waveguide should be dictated by good engineering practice in keeping with high efficiency and minimal attenuation.

(4) Selection of transmitter and the component visual and aural transmitters should be dictated by the good engineering practice specified in EIA Standard RS-240 (April, 1961), "Electrical Performance Standards for Television Broadcast Transmitters."

(B) *Studio Equipment.*

(1) Studio equipment and mobile equipment should comply with specifications contained in EIA Standard RS-170 (November 1957) "Electrical Performance Standards—Monochrome Television Studio Facilities," to the extent those specifications are applicable to color equipment.

(c) Special Purchase Equipment.

Audio logging recorders and FM subcarrier channel receivers should comply with the following minimum performance standards:

(1) A program logging recorder should be a four-track program tape recorder designed for continuous, long duration audio recording which records and plays in both directions to equal performance specifications. Adjustable level and equalization for each head, bias and calibration adjustments; signal to noise ratio minimum 43dB, one percent maximum wow and flutter, frequency response is within 3dB from 200 to 2700 Hz. Total unattended time—204 hours 48 minutes at $15/_{32}$ i.p.s. using triple play tape; 307 hours 12 minutes at $5/_{16}$ i.p.s. using triple play tape. Straight-line threading, automatic tape lifters, interlocked controls, editing and cueing components, remote control, solenoid actuated capstan control, solenoid actuated brakes, automatic reversing; tape counter, playback timing accuracy within one percent at all speeds. Standard 10½ inch NAB reels and hubs, or EIA 7-inch plastic reels; tape ¼ inch wide, ½ mil to 1½ mil thick, with tape speeds of $15/_{16}$, $15/_{32}$, and $5/_{16}$ i.p.s.

(2) An FM/SCA subcarrier channel receiver should be a crystal controlled, self-contained receiver factory tuned to a specific frequency in the 88-108 MHz range, AC or DC powered. It should have a combined on/off power switch and volume control; main/SCA program select switch; headphone jack, telescopic whip antenna, 34½ inch fully extended; screw terminals on rear for optional external 75 ohm antenna for "fringe areas" or a master antenna; front mounted permanent magnet high efficiency dynamic speaker with an all solid state design, wide dynamic range RF amplifier; an audio output of 1.0 watt rms with less than 1.5 percent total harmonic distortion; frequency response balanced for voice and music; sensitivity for SCA channel: 3.5 uV for 30 dB quieting, for Main channel: 1.0 uV for 30 dB quieting; crosstalk: main to subchannel at least 45 dB below a 400 Hz reference tone; hum and noise 50 dB or greater below full modulation of subcarrier; auxiliary audio output (with phone jack) with level at 100 millivolts, rms at 400 Hz; and power cord.

APPENDIX B—PROJECT PRIORITIES

I. *Assignment of priorities to applications.* Applications which have been filed in accordance with § 153.5 and accepted by the Commissioner under procedures established in § 153.8 will be assigned one or more of the following priorities. If an application consists of components which fall into more than one priority category, the applicant must be prepared to accept, for the entire project, a grant award for whatever portion, if any, the Commissioner determines can be accommodated within the funding limitations of a fiscal year. With regard to projects funded in part, components not funded must be resubmitted as new applications in accordance with § 153.5 and accepted for filing as provided in § 153.8.

Proportions of the available funds to be warded in various priority categories will be determined by the Commissioner to achieve a fair distribution of funds over the improved quality of services to the public as measured against the funding criteria and with the pattern of needs reflected in applications under consideration for a given fiscal year. As the percentage of the U.S. population brought within the coverage range of at least one noncommercial broadcast station is enlarged, it is expected that the implementation of these priorities will result in the expenditure of an increasing share of appropriated funds to extending the facilities of existing stations to provide for essential initial and basic capabilities required to (1) serve fully their local communities; (2) develop a national system of effective noncommercial stations; and (3) provide for production capability justified by national, regional, statewide, and local programming commitments.

As used in this Appendix, the terms "public radio station" or "public television station" refer to noncommercial educational broadcasting stations other than those subject to disapproval under the terms of § 153.12(c).

II. *Project Priorities for Television. Priority*

A. Projects to provide stations with their first state-of-the-art production and/or reproduction capability. This refers to color capability of a videotape recorder, film chains, studio color cameras, switchers, and related apparatus where this need can be justified by proven production and/or reproduction requirements to meet identified community needs.

B. Projects to provide local stations with state-of-the-art broadcast apparatus which, while used primarily for educational broadcasting, will be used also for the production and distribution of programs designed for non-broadcast educational uses which are in conjunction with but incidental to the station's broadcast service. Such a project will enable the station's facilities to be adapted to serve the greatest number of persons, to serve them in as many areas of the total station's service area as possible, and to broaden the educational uses of those facilities.

C. Projects to acquire transmitter/antenna apparatus necessary to increase power or otherwise extend station coverage where the in-State population to be served increases substantially, or which are necessary to provide improved signal (including transmission colorization) for larger population groupings, and provide comparability with commercial station coverage.

D. Projects to acquire apparatus for the interconnection of stations in a State network (or a particular geographical region across State lines) where applicant ownership of interconnection facilities can be fully justified as advantageous in comparison with leasing of interconnection services. Such apparatus may include satellite transceivers and related earth station equipment.

Priority II. A. Projects to establish new public television stations in areas currently without such a station with appropriate local or State license, to serve populations of 500,000 or more. Proposals to establish the first public television station in a State.

B. Projects to establish new public television stations in areas currently without such a station under appropriate local or State license, to serve populations between 250,000 and 500,000.

C. Projects to provide production capability for stations providing program services beyond their local requirements for distribution over national, regional, and statewide interconnection. (To qualify in this category, a project justification must be verified by production commitment from recognized national, regional, or State network program clients supporting such a production need the applicant must demonstrate the inability of presently owned apparatus to meet production requirements, and the appartus requested may not exceed the reasonable requirements of the verified production commitments.)

D. Projects to acquire transmitter/antenna apparatus necessary to increase power or otherwise extend or improve station coverage where the increase in population does not justify inclusion in Category IC.

Priority III. A. Projects to establish new public television stations in areas currently without such a station under appropriate local or State license where population to be served is less than 250,000.

B. Projects to augment production and reproduction capabilities of local stations beyond the basic or initial capability. These proposals will require documentation of local live production requirements in excess of existing capability.

Priority IV. A. Projects to establish second (or more) public television stations in areas already served by such a station under appropriate local or State license.

B. Projects to equip auxiliary studios at other than the main studio.

(47 U.S.C. 392(d), 394; 45 CFR 153.12)

III. *Project Priorities for Radio. Priority I.* A Projects to establish public radio stations in areas currently without a public radio station (either through the activation of new stations, the purchase of existing commercial stations, or the expansion of existing low power stations) to serve populations of 500,000 or more. Projects to establish the first public radio station in a State.

B. Projects to establish public radio stations in areas currently without a public radio station (either through the activation of new stations, the purchase of existing stations, or the expansion of existing low power stations) to serve populations between 250,000 and 500,000.

C. Projects to provide public radio stations with first state-of-the-art production capability, where this need can be justified by proven production requirements to meet identified community needs. This refers to the provision of sterio and SCA capability for FM facilities and up-dating of AM facilities, the provision of tape recorders, SCA side band generator, modulator and receivers, audio consoles, turntables, microphones, logging recorders, remote amplifiers, and other related apparatus.

D. Projects to acquire transmitter/antenna apparatus necessary to increase power or otherwise extend area coverage of an existing public radio station where the in-State population to be served increases substantially, or which are necessary to provide improved signal (including the improved audio capability, by the addition of SCA, or stereo) for larger population groupings and provide comparability with commercial station coverage.

Priority II. A Projects to establish public radio stations in areas currently without a public radio station (either through the activation of new stations, the purchase of existing commercial stations, or the expansion of existing low power stations) to serve populations of less than 250,000.

B. Projects to establish, in major population centers where one or more public radio stations already provide service, full service public radio stations which will provide a broadened program service designed for special interest, minority, and educational uses.

C. Projects to acquire transmitter/antenna apparatus necessary to increase power or otherwise extend or improve station coverage where the increase in population served does not justify inclusion in Category ID.

D. Projects to augment production and reproduction capabilities of local stations beyond the basic or initial capability. Such proposals will require documentation of local live production requirements in excess of existing capability.

Priority III. A. Projects to provide production capability for stations providing program services beyond their local requirements for distribution over national, regional, and statewide interconnection. (To qualify in this category, a project justification must be verified by production commitment from recognized national, regional, or State network program clients supporting such production need; the applicant must demonstrate the inability of presently owned apparatus to meet production requirements, and the apparatus requested may not exceed the reasonable requirements of the verified production commitments.)

B. Projects to equip studios auxiliary to the main studio.

C. Projects to acquire apparatus for the interconnection of public radio stations in a State network (or a particular geographical region across State lines) where applicant ownership of interconnection facilities can be fully justified as advantageous in comparison with leasing of interconnection services.

(47 U.S.C. 392(d), 394; 45 CFR 153.12)

[FR Doc.77-1690 Filed 1-18-77;8:45 am]

federal register

WEDNESDAY, JANUARY 19, 1977

PART V



DEPARTMENT OF THE INTERIOR

Bureau of Land Management

■

OUTER CONTINENTAL SHELF; ALASKA

Oil and Gas Lease Sale No. CI; February 23, 1977

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

OUTER CONTINENTAL SHELF; ALASKA

Oil and Gas Lease Sale No. CI; February 23, 1977

1. *Authority.* This notice is published pursuant to the Outer Continental Shelf Lands Act (43 U.S.C. 1331–1343) and the regulations issued thereunder (43 CFR Part 3300).

2. *Filing of Bids.* Sealed bids will be received by the Manager, Alaska Outer Continental Shelf Office, Bureau of Land Management, either in person or by mail, for the oil and gas lease sale on tracts described in paragraph 12 herein, and located in the Outer Continental Shelf adjacent to the State of Alaska. Bids sent by mail should be addressed to P.O. Box 1159, Anchorage, Alaska 99510, and will be received until 9:30 a.m., a.s.t., February 23, 1977. Bids delivered in person to the Manager will be received at his office at 800 A Street, Anchorage, Alaska, until 4:00 p.m., a.s.t., February 22, 1977, or at the Grand Ballroom, Anchorage Westward Hotel, 3rd and E Streets, Anchorage, Alaska 99501, between the hours of 8:00 a.m., a.s.t., and 9:30 a.m., a.s.t., February 23, 1977. Bids received by the Manager later than the times and dates specified above will be returned to the bidders unopened. Bids may not be modified or withdrawn unless written modification or withdrawal is received by the Manager prior to 9:30 a.m., a.s.t., February 23, 1977. All bids must be submitted and will be considered in accordance with applicable regulations, including 43 CFR Part 3300. The list of restricted joint bidders which applies to this sale was published in the FEDERAL REGISTER, 41 FR 43747, October 4, 1976.

3. *Rent, Royalty and Bonus.* Bids submitted on all tracts to be offered at this sale must be on a cash bonus bid basis with a fixed royalty of 16⅔ percent. Leases which may be issued will provide for a yearly rental or minimum royalty of $3.00 per hectare [1] or fraction thereof.

4. *Method of Bidding.* A separate bid in a sealed envelope must be submitted for each tract and be labeled "Sealed Bid for Oil and Gas Lease (insert number of tract); not to be opened until 10:00 a.m., a.s.t., February 23, 1977." A suggested bid format appears in paragraph 16. Bidders are advised that tract numbers are assigned solely for administrative purposes during this sale and are not the same as block numbers found on OCS Official Protraction Diagrams. All bids received shall be deemed submitted for a numbered tract. Bidders must submit with each bid one-fifth of the cash bonus in cash, or by cashier's check, bank draft, certified check, or money order, payable to the order of the Bureau of Land Management. No bid for less than a full tract described in paragraph 12 will be considered. Bidders submitting joint bids must state on the bid form the proportionate interest of each participating bidder in a percent to a maximum of five decimal places, as well as submit a sworn statement that the bidder is qualified under 43 CFR 3302. The form for this statement appears in paragraph 16. Other documents required of bidders are listed under 43 CFR 3302.4. Bidders are warned against violation of 18 USC 1860, prohibiting unlawful combination or intimidation of bidders.

5. *Equal Opportunity.* Each bidder must have submitted by 9:30 a.m., a.s.t., February 23, 1977, the certification required by 41 CFR 60–1.7(b) and Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, on the Compliance Report Certification Form, Form 1140–8 (November 1973), and the Affirmative Action Representation Form, Form 1140–7 (December 1971).

6. *Bid Opening.* Bids will be opened on February 23, 1977, beginning at 10:00 a.m., a.s.t., in the Grand Ballroom, Anchorage Westward Hotel, at the address stated in paragraph 2. The opening of bids is for the sole purpose of publicly announcing and recording bids received; no bids will be accepted or rejected at that time. If the Department is prohibited for any reason from opening any bid before midnight February 23, 1977, that bid will be returned unopened to the bidder as soon thereafter as possible.

7. *Deposit of Payments.* Any cash, checks, drafts or money orders submitted with a bid may be deposited in a suspense account in the Treasury during the period the bids are being considered. Such a deposit does not constitute and shall not be construed as acceptance of any bid on behalf of the United States.

8. *Withdrawal of Tracts.* The United States reserves the right to withdraw any tracts from this sale prior to the issuance of a written acceptance of a bid for that tract.

9. *Acceptance or Rejection of Bids.* The United States reserves the right to reject any and all bids for any tract. In any case, no bid for any tract will be accepted and no lease for any tract will be awarded to any bidder unless:

(A) The bidder has complied with all requirements of this notice and applicable regulations;

(B) His bid is the highest valid cash bonus bid; and

(C) The amount of the bid has been determined to be adequate by the United States.

No bid will be considered for acceptance unless it offers a cash bonus in the amount of $62.00 or more per hectare.

10. *Successful Bidders.* Each person who has submitted a bid accepted by the United States will be required to execute copies of the lease specified below, pay the balance of the cash bonus bid together with the first year's annual rental and satisfy the bonding requirements of 43 CFR 3304.1 within the time provided in 43 CFR 3302.5.

11. *Protraction Diagrams.* The tracts offered for lease described in paragraph 12, may be located on the following Outer Continental Shelf Official Protraction Diagrams which may be purchased for $2.00 each from the Manager, Alaska Outer Continental Shelf Office at the address stated in paragraph 2:

(1) NO 5-1---------- Iliamna.
(2) NO 5-2---------- Seldovia.
(3) NO 5-3---------- Mt. Katmai.
(4) NO 5-4---------- Afognak.

12. *Tract Descriptions.* The tracts offered for bid are as follows:

NOTE.—There are gaps in the sequence of the numbers of the tracts listed. Some of the tracts identified in the final environmental impact statement are not included in this notice.

[1] One Hectare equals 2.471 acres.

OCS OFFICIAL PROTRACTION DIAGRAM, SELDOVIA NO 5-2
(Approved March 20, 1975)

Tract No.	Block	Description	Hectares
CI-1	144	All	2304.00
CI-2	187	All	2304.00
CI-3	188	All	2304.00
CI-4	230	All	2304.00
CI-5	231	All	2304.00
CI-6	268	All	2304.00
CI-7	269	All	2304.00
CI-8	274	All	2304.00
CI-9	275	All	2304.00
CI-10	312	All	2304.00
CI-11	313	All	2304.00
CI-12	314	All	2304.00
CI-13	315	All	2304.00
CI-14	318	All	2304.00
CI-15	319	All	2304.00
CI-16	354	All	2304.00
CI-17	355	All	2304.00
CI-18	356	All	2304.00
CI-19	357	All	2304.00
CI-20	358	All	2304.00
CI-21	359	All	2304.00
CI-22	362	All	2304.00
CI-23	363	All	2304.00
CI-24	397	All	2304.00
CI-25	398	All	2304.00
CI-26	399	All	2304.00
CI-27	400	All	2304.00
CI-28	401	All	2304.00
CI-29	402	All	2304.00
CI-30	403	All	2304.00
CI-33	441	All	2304.00
CI-34	442	All	2304.00
CI-35	443	All	2304.00
CI-36	444	All	2304.00
CI-37	445	All	2304.00
CI-38	446	All	2304.00
CI-39	447	All	2304.00

OCS OFFICIAL PROTRACTION DIAGRAM, SELDOVIA NO 5-2 (Cont'd)
(Approved March 20, 1975)

Tract No.	Block	Description	Hectares
CI-42	485	All	2304.00
CI-43	486	All	2304.00
CI-44	487	All	2304.00
CI-45	488	All	2304.00
CI-46	489	All	2304.00
CI-47	490	All	2304.00
CI-48	491	All	2304.00
CI-51	529	All	2304.00
CI-52	530	All	2304.00
CI-53	531	All	2304.00
CI-54	532	All	2304.00
CI-55	533	All	2304.00
CI-56	534	All	2304.00
CI-57	535	All	2304.00
CI-60	573	All	2304.00
CI-61	574	All	2304.00
CI-62	575	All	2304.00
CI-63	576	All	2304.00
CI-64	577	All	2304.00
CI-65	578	All	2304.00
CI-66	579	All	2304.00
CI-69	617	All	2304.00
CI-70	618	All	2304.00
CI-71	619	All	2304.00
CI-72	620	All	2304.00
CI-73	621	All	2304.00
CI-74	622	All	2304.00
CI-75	623	All	2304.00
CI-78	661	All	2304.00

OCS OFFICIAL PROTRACTION DIAGRAM, SELDOVIA NO 5-2 (Cont'd)
(Approved March 20, 1975)

Tract No.	Block	Description	Hectares
CI-79	662	All	2304.00
CI-80	663	All	2304.00
CI-81	664	All	2304.00
CI-82	665	All	2304.00
CI-83	666	All	2304.00
CI-84	667	All	2304.00
CI-87	705	All	2304.00
CI-88	706	All	2304.00
CI-89	707	All	2304.00
CI-90	708	All	2304.00
CI-91	709	All	2304.00
CI-92	710	All	2304.00
CI-93	711	All	2304.00
CI-100	753	All	2304.00
CI-101	754	All	2304.00
CI-102	755	All	2304.00
CI-108	797	All	2304.00
CI-109	798	All	2304.00
CI-110	799	All	2304.00
CI-114	841	All	2304.00
CI-115	842	All	2304.00

OCS OFFICIAL PROTRACTION DIAGRAM, SELDOVIA NO 5-2 (Cont'd)
(Approved March 20, 1975)

Tract No.	Block	Description	Hectares
CI-120	885	All	2304.00
CI-121	886	All	2304.00
CI-122	925	All	2304.00
CI-123	926	All	2304.00
CI-124	927	All	2304.00
CI-125	928	All	2304.00
CI-126	929	All	2304.00
CI-127	969	All	2304.00
CI-128	970	All	2304.00
CI-129	971	All	2304.00
CI-130	972	All	2304.00
CI-131	1013	All	2304.00
CI-132	1014	All	2304.00
CI-133	1015	All	2304.00
CI-134	1016	All	2304.00

OCS OFFICIAL PROTRACTION DIAGRAM, ILIAMNA NO 5-1
(Approved March 20, 1975)

Tract No.	Block	Description	Hectares
CI-135	484	All	2304.00
CI-136	528	All	2304.00
CI-137	571	All	2304.00
CI-138	572	All	2304.00
CI-139	615	All	2304.00
CI-140	616	All	2304.00
CI-141	659	All	2304.00
CI-142	660	All	2304.00
CI-143	703	All	2304.00
CI-144	704	All	2304.00

OCS OFFICIAL PROTRACTION DIAGRAM, MT. KATMAI NO 5-3
(Approved July 3, 1975)

Tract No.	Block	Description	Hectares
CI-145	132	All	2304.00

13. *Lease Terms and Stipulations.* Leases issued as a result of this sale will be on Form 3300-1 (December 1976) available from the Manager, Alaska Outer Continental Shelf Office, at the address stated in paragraph 2. Except as otherwise noted, the following stipulations will be included in each lease resulting from this sale:

STIPULATION NO. 1

If the Supervisor, having reason to believe that a site, structure, or object of historical or archaeological significance, hereinafter referred to as "cultural resource," may exist in the lease area, gives the lessee written notice that the lessor is invoking the provisions of this stipulation, the lessee shall upon receipt of such notice comply with the following requirements:

Prior to any drilling activity or the construction or placement of any structure for exploration or development on the lease including, but not limited to, well drilling and pipeline and platform placement, hereinafter in this stipulation referred to as "operation," the lessee shall conduct geophysical surveys to determine the potential existence of any cultural resource that may be affected by such operations. All data produced by such geophysical surveys shall be examined by the Supervisor to determine if anomalies are present which suggest the existence of a cultural resource that may be adversely affected by any lease operation.

If such anomalies exist the lessee shall: (1) locate the site of such operation so as not to adversely affect the anomaly identified; or (2) establish, to the satisfaction of the Supervisor, on the basis of further archaeological investigation conducted by a qualified marine archaeological surveyor using such survey equipment and techniques as deemed necessary by the Supervisor, either that such operation will not adversely affect the anomaly identified or that the potential cultural resource suggested by the occurrence of the anomaly does not exist.

A report of the investigation prepared by the marine archaeological surveyor shall be submitted to the Supervisor for his review. Should the Supervisor determine that the existence of a cultural resource which may be adversely affected by such operation is sufficiently established to warrant protection, the lessee shall take no action that may result in an adverse effect on such cultural resource until the Supervisor has given directions as to its disposition.

The lessee agrees that if any site, structure, or object of historical or archaeological significance should be discovered during the conduct of any operations on the leased area, he shall report immediately such findings to the Supervisor, and make every reasonable effort to preserve and protect the cultural resource from damage until the Supervisor has given directions as to its disposition.

STIPULATION NO. 2

If the Supervisor, having reason to believe that an area of special biological significance may exist in the lease area, gives the lessee written notice that the lessor is invoking the provisions of this stipulation, the lessee shall upon receipt of such notice comply with the following requirements:

Prior to any drilling activity or the construction or placement of any structure for exploration or development of lease areas including, but not limited to, well drilling and pipeline and platform placement, hereinafter in this stipulation referred to as "operation," the lessee shall conduct block wide or site specific surveys, as approved by the Supervisor, to determine if the block or site contains special biological communities that may be adversely affected by any lease operation. If such surveys indicate the existence of such communities, the lessee shall: (1) establish, to the satisfaction of the Supervisor, that such operation will not have a significant adverse effect on the community identified; or (2) modify his operating procedure to minimize the impact of the operation on the biological community. Such modification could include relocation of the drilling site.

All data obtained in the course of any biological surveys conducted pursuant to the provisions hereof shall be submitted in a report to the Supervisor prior to or with any application by the lessee for drilling or other activity with a copy to the Manager, Alaska OCS Office. Should the Supervisor determine that the existence of a biological resource which may be adversely affected by such operation exists, the lessee shall take no action that may result in any adverse effect on such resource until the Supervisor has given the lessee directions with respect to the resource.

The lessee agrees that, if any communities of special biological significance should be discovered during the conduct of any operations on the leased area, he shall report such findings to the Supervisor, and make every reasonable effort to preserve and protect the resource from damage until the Supervisor has given the lessee directions with respect to the resource.

STIPULATION NO. 3

To assist coastal communities in planning for the impact of activities during exploration under this lease, the lessee shall submit, for review and comment, to the Governor of the State of Alaska and to local jurisdictions that will be directly affected by those activities a "Notice of Support Activity for the Exploration Program" (called hereafter in this stipulation "Notice"). When the lessee has doubts as to which local jurisdictions shall be informed, he will be guided by the advice of the Supervisor. The lessee shall not be required to include privileged information in the Notice. A lessee shall have discretion whether to submit a separate Notice in connection with each Exploration Plan submitted under 30 CFR 250.34 on a lease or to submit a Notice in connection with two or more Plans on one or more leases. The Notice shall not be subject to approval or disapproval by the Supervisor.

A copy of the Notice shall be submitted to the Supervisor simultaneously with, or prior to, the Exploration Plan with a certification that it has been submitted to the Governor of the State of Alaska and to the local jurisdictions that will be directly affected by activities under the Plan. If the lessee shall submit a Notice in connection with two or more Exploration Plans, he shall not be required to submit additional copies of the Notice, but may instead refer to that previous submission. Before the Supervisor approves or disapproves the Exploration Plan, he shall allow at least 30 days from the date of receipt of the certification for the Governor and local jurisdictions to submit comments on the Notice to him as well as to the lessee. Subsequent to the submission of the certification, significant changes in estimated support activities will be forwarded by the lessee, as an amendment to the Notice, to the Supervisor, the Governor, and to the local jurisdictions that will be directly affected by the program.

OCS OFFICIAL PROTRACTION DIAGRAM, AFOGNAK NO 5-4
(Approved July 3, 1975)

Tract No.	Block	Description	Hectares
CI-146	1	All	2304.00
CI-147	2	All	2304.00
CI-148	3	All	2304.00
CI-149	4	All	2304.00
CI-150	45	All	2304.00
CI-151	46	All	2304.00
CI-152	89	All	2304.00

The Notice shall include with respect to the lessee and his contractors:

(1) A description of the facilities, including site and size, that may be constructed, leased, rented or otherwise procured in affected areas;

(2) The location and amount of acreage required within the State for facilities, including the need for storage of various supplies;

(3) An estimate of the frequency of boat and aircraft departures and arrivals, on a monthly basis, and the onshore location of terminals;

(4) The approximate number of persons who are expected to be engaged in onshore support activities and transportation, the approximate number of local personnel who are expected to be employed for or in support of the exploration program, and the approximate total number of persons who are expected to be employed for the exploration program;

(5) Estimates of the approximate addition to the population of the local jurisdiction because of the exploration program and the approximate number of persons needing housing and other facilities;

(6) An estimate of any significant quantity of major supplies and equipment to be procured within the State; and

(7) The onshore addresses of the lessee's operation offices and of the contractors' offices involved with the exploratory operation.

STIPULATION NO. 4

Barging of production will be permitted only in case of emergency or under special circumstances as determined by the Supervisor. Continuous barging will not be permitted. The U.S. reserves the right to determine the method of transportation of production.

STIPULATION NO. 5

Each pipeline right-of-way application will be reviewed on a case-by-case basis by the Manager, Alaska OCS Office. All pipelines shall be designed, installed, and maintained to minimize environmental impacts and to be compatible with trawling operations and other uses. All pipelines installed in water depths less than than 200 feet (61 meters) shall be buried. Alternate methods of pipeline installation may be approved where unusual conditions dictate such an alternate choice.

STIPULATION NO. 6

To reduce the impacts of human disturbance (i.e., aircraft and vessel traffic) at major seabird colonies and marine mammal rookeries, boats will be routed to stay at least ½-mile from all colonies and rookeries during May 1 to September 15. In addition, during this period, fixed-wing and rotary aircraft must maintain a ½-mile horizontal and 2,500 foot vertical distance from seabird colonies and marine mammal rookeries. The list and geographic locations of major seabird colonies and marine mammal rookeries will be available from the Manager, Alaska OCS Office. The location of any major colonies are rookeries discovered in the future will be submitted to the Manager, Alaska OCS Office, for addition to the present list. Human safety will at all times take precedence over the provisions of this stipulation.

14. *Information for Lessees.* Some of the tracts offered for lease may fall in areas which may be included in fairways, precautionary zones, or traffic separation schemes. Department of the Army permits are required for construction of any structures in or over any navigable waters of the United States pursuant to Section 10 of the River and Harbor Act of 1899 (30 Stat. 1151; 33 U.S.C. 403) and for artificial islands and fixed structures located on the Outer Continental Shelf in accordance with Section 4(f) of the Outer Continental Shelf Lands Act of 1953 (67 Stat. 463; 43 U.S.C. 1333(f)). Permit applications and inquiries should be directed to the District Engineer, Anchorage District, U.S. Army Corps of Engineers.

Scare techniques will be used to protect bird resources during significant oil pollution incidents. A description of the scare techniques and devices shall be included in the operators oil spill contingency plan required by OCS Order No. 7.

Any use of explosives shall require prior approval by the Supervisor.

Tracts CI-100, CI-108 through CI-110, CI-114, CI-115, CI-120 through CI-134, and CI-145 through CI-152, are designated as areas of special biological significance. The effect of exploratory drilling on aquatic biota in such areas will be monitored. Based upon findings of moni-

toring operations, alternative disposal methods of drilling muds and formation waters may be required pursuant to OCS Order No. 7.

Bidders are advised that the Departments of the Interior and Transportation have entered into a Memorandum of Understanding dated May 6, 1976, concerning the design, installation, operation and maintenance of offshore pipelines. Bidders should consult the Department of Transportation for regulations applicable to offshore pipelines under its jurisdiction.

15. *OCS Orders.* Operations on all leases resulting from this sale will be conducted in accordance with the provisions of all Gulf of Alaska OCS Orders, issued effective March 1, 1976, and any other applicable OCS Order, as it becomes effective. Proposed OCS Operating Order No. 15 will be revised to provide for notification to local jurisdictions of the availability of "Notice of Support Activity for Field Development" for review and comment.

16. *Suggested Bid Form.* It is suggested that bidders submit their bids to the Manager, Alaska Outer Continental Shelf Office in the following form:

OIL AND GAS BID

The following bid is submitted for an oil and gas lease on the tract of the Outer Continental Shelf specified below:

Tract No.	Total amount bid	Amount per hectare	Amount of cash bonus submitted with bid

Proportionate Interest of Company(s) Submitting Bid

Qualification File No. YK----------%

Company

Address

Signature
(Please type signer's name under signature)

17. *Required Joint Bidder's Statement.* In the case of joint bids, each point bidder must execute the following statement before a notary public and submit it with his bid.

Joint Bidder's Statement

I hereby certify that----------
(entity submitting bid)
is eligible under 43 CFR 3302 to bid jointly with the other parties submitting this bid.

Signature
(Please type signer's name under signature)

Sworn to and subscribed before me this ------ day of -------- 19---.

Notary Public
State of-------
(County) of----

CURT BERKLUND,
Director,
Bureau of Land Management.

Approved: January 13, 1977.

THOMAS S. KLEPPE,
Secretary of the Interior.

[FR Doc.77-1632 Filed 1-18-77;8:45 am]

federal register

WEDNESDAY, JANUARY 19, 1977

PART VI



FEDERAL ELECTION COMMISSION

PROPOSED SUNSHINE ACT REGULATIONS

PRIVACY ACT OF 1974

ADVISORY OPINION REQUESTS

Systems of Records

FEDERAL ELECTION COMMISSION

[11 CFR Parts 2 and 3]

[Notice 1977–5]

SUNSHINE ACT REGULATIONS

Notice of Proposed Rulemaking

Pursuant to Pub. L. 94–409 as enacted in 5 U.S.C. 552b, the "Government in the Sunshine Act," the Federal Election Commission publishes for public comment its proposed regulations implementing 5 U.S.C. 552b, as required by 2 U.S.C. 552b(g).

Written comments on these regulations should be sent to: Regulation Section, Office of the General Counsel, Federal Election Commission, 1325 K Street, NW., Washington, D.C. 20463. Comments should be submitted on or before February 18, 1977.

VERNON W. THOMSON,
Chairman for the
Federal Election Commission.

JANUARY 13, 1977.

It is proposed to add 11 CFR Parts 2 and 3 as follows:

PART 2—SCOPE AND DEFINITIONS

Sec.
2.1 Scope.
2.2 Commission.
2.3 Commissioner or member.
2.4 Person.
2.5 Meeting.

AUTHORITY: Sec. 3(a), Pub. L. 94–409.

§ 2.1 Scope.

These regulations are promulgated pursuant to the directive of 5 U.S.C. § 552b(g) which was added by section 3(a) of Pub. L. 94–409, the Government in the Sunshine Act and specifically implement subsections (b) through (f) of that Act.

§ 2.2 Commission.

"Commission" means the Federal Election Commission, 1325 K Street NW., Washington, D.C. 20463.

§ 2.3 Commissioner or member.

"Commissioner" or "member" means an individual appointed to the Federal Election Commission pursuant to 2 U.S.C. 437(a) and § 101(e) of Pub. L. 94–283 and shall also include ex-officio non-voting Commissioners or members, the Secretary of the Senate and the Clerk of the House, but does not include a proxy or other designated representative of a Commissioner.

§ 2.4 Person.

"Person" includes an individual, partnership, corporation, association, or public or private organization, other than an agency of the United States Government.

§ 2.5 Meeting.

"Meeting" means the deliberation, including those conducted through conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, of at least four voting members of the Commission in collegil where such deliberations determine or result in the joint conduct or disposition of official Commission business, but does not include deliberations to schedule a meeting, to take action to open or close a meeting, or to release or withhold information, or to change the subject matter of a meeting under §§ 3.2 and 3.3 of this chapter.

PART 3—MEETINGS

Sec.
3.1 General rules.
3.2 Exempted meetings.
3.3 Procedure for closing meetings.
3.4 Transcripts, recordings and minutes.
3.5 Announcement of meetings and schedule changes.
3.6 Annual report.

AUTHORITY: Sec. 3(a), Pub. L. 94–409.

§ 3.1 General rules.

(a) Commissioners shall not jointly conduct, determine or dispose of Commission business other than in accordance with this part.

(b) Except as provided in § 3.2, every portion of every Commission meeting shall be open to public observation.

§ 3.2 Exempted meetings.

(a) (1) As required by 2 U.S.C. 437g (a) (3) (B), all Commission meetings, or parts of meetings, pertaining to the notification or investigation of a complaint that the Act has been violated, shall be closed to the public, and the requirements of §§ 3.4 and 3.5 shall not apply.

(2) For the purposes of this section, "notification or investigation of a complaint" means, *inter alia*, determinations pursuant to 2 U.S.C. 427g(a), the issuance of supoenas, discussion of civil actions or proceedings, formal agency adjudication pursuant to § 5 of the Administrative Procedure Act, discussion of referrals to the Department of Justice, or any other matter related to the Commission's enforcement activity.

(b) The requirement of open meetings shall not apply where the Commission finds, pursuant to § 3.3, that an open meeting is more likely than not to result in the disclosure of:

(1) Matters that relate solely to the sions, rules and practices, except Commission's internal personnel decisions, rules and practices, except that exemption does not extend to Commission discussions regarding employees' dealings with the public, such as personnel manuals or Commission directives setting forth job functions or procedures;

(2) Matters which involve the consideration of a proceeding of a formal nature by the Commission against a specific person or the formal censure of any person;

(3) Information of a personal nature where discolsure would constitute a clearly unwarranted invasion of personal privacy;

(4) Financial information obtained from any person and which is privileged or confidential;

(5) Information the premature disclosure of which would be likely to have a considerable adverse effect on the implementation of a proposed Commission action.

§ 3.3 Procedure for closing meetings.

(a) No meeting or portion of a meeting may be closed pursuant to § 3.2 to public observation unless a majority of the Commissioners (not including the ex-officio non-voting Commissioners) vote to take such action.

(b) A Commission vote to close a meeting shall be taken upon the motion of any member, other than the ex-officio non-voting members. A single vote may be taken with respect to a series of meetings, all or a portion or portions of which are proposed to be closed to the public, or with respect to any information concerning such series of meetings, so long as each meeting in such series involves the same particular matters and is scheduled to be held no more than 30 days after the initial meeting in such series.

(c) Although no meeting need be held to consider closing a meeting each vote taken pursuant to subsection (b) shall be recorded by the Secretary to the Commission. No proxies, written or otherwise, shall be counted.

(d) (1) If the Commission votes to close a meeting, or any portion or portions thereof, to the public, then within 24 hours it shall make publicly available a written statement with respect to such vote. The written statement shall contain:

(i) A citation to the section of these regulations pursuant to which the meeting was closed to public observation together with an explanation as to why the specific discussion comes within the cited exemption;

(ii) The vote of each Commissioner on the motion to close the meeting;

(iii) A list of the names of all persons, other than Commissioners or Commission staff, expected to attend the closed meeting and their affiliations. For purposes of this paragraph (d) (iii) of this section affiliation means title or position, and employer and, in the case of a representative, the name of the person represented, and

(iv) Shall be signed by the Commissioner who presided at the meeting where the vote to close the meeting was taken.

(2) The original copy of the statement shall be maintained in the Commission's Public Records Office.

(e) Each time that the Commission votes, pursuant to paragraph (b) of this section, to close a meeting, the General Counsel shall publicly certify that, in his or her opinion, the meeting may properly be closed to public observation. The certification shall state each relevant exemptive provision. The original copy of such certification shall be attached to, and preserved with, the statement required by paragraph (d) of this section.

§ 3.4 Transcripts, recordings and minutes.

(a) The Secretary to the Commission shall maintain a complete transcript or electronic recording adequate to record fully the proceedings of each meeting,

or portion of a meeting, closed to public observation. An electronic recording of a meeting shall be coded, or other records shall be kept, in a manner adequate to identify each speaker.

(b) In the case of a meeting, or portion of a meeting, closed to public observation because it concerns matters set out in paragraph (a) of § 3.2, the Commission may, in lieu of a complete transcript or electronic recording, maintain a set of minutes. Such minutes shall fully and clearly describe all matters discussed and shall provide a full and accurate summary of any actions taken and the reasons therefor, including a description of each of the views expressed at the meeting on any item by any person attending and shall reflect the vote of each member on any document considered in connection with any action taken at the meeting.

(c) The Commission shall, within a reasonable time not to exceed 30 days, place on file in the Public Records Office of the Commission, a copy of the transcript, recording, or minutes, as appropriate, which reflects matters discussed, or information developed, at the meeting which were not within the scope of the exemption provision of § 3.2 pursuant to which the meeting was closed.

(d) A complete verbatim copy of the transcript, a complete copy of the minutes, or a complete electronic recording of each meeting, or portion of meeting, closed to the public, shall be maintained by the Secretary to the Commission in the confidential files of the Commission, for a period of two years subsequent to such meeting, or until one year after the conclusion of any agency proceeding with respect to which the meeting, or portion of the meeting was held, whichever occurs later.

§ 3.5 Announcement of meetings and schedule changes.

(a) In the case of each meeting, the Commission shall publicly announce and shall submit such announcement for publication in the FEDERAL REGISTER at least seven days prior to the day on which the meeting is to be called to order. Such announcement must contain:

(1) The date of the meeting;

(2) The place of the meeting;

(3) The subject matter of the meeting;

(4) Whether the meeting is to be open or closed to the public; and

(5) The name and telephone number of the official designated by the agency to respond to requests for information about the meeting.

(b) The public announcement and submission for publication required by paragraph (a) of this section, shall be made in the case of every meeting to be held by the Commission unless a majority of the Commissioners decide by recorded vote that the situation requires that a particular meeting be called at an earlier date, in which case the Commission shall make, at the earliest practicable time, the public announcement required by paragraph (a) of this section and a concurrent submission to the FEDERAL REGISTER.

(c) The time or place of a meeting may be changed following the public announcement required by paragraphs (a) and (b) of this section, only if the Commission publicly announces such change at the earliest practicable time.

(d) The subject matter of a meeting, or the determination of the Commission to open or close a meeting, or portion of a meeting, to the public, may be changed following the public announcement required by paragraphs (a) and (b) of this section only if:

(1) A majority of the entire membership of the Commission determines by a recorded vote that Commission business so requires and that no earlier announcement of the change was possible, and

(2) The Commission publicly announces, and concurrently submits for publication in the FEDERAL REGISTER, the change and the vote of each member upon such change at the earliest practicable time.

§ 3.6 Annual report.

The Commission shall report annually to Congress regarding its compliance with such requirements including:

(1) A tabulation of the total number of Commission meetings open to the public

(2) The total number of such meetings closed to the public

(3) The reasons for closing such meetings

(4) A description of any litigation brought against the Commission under the Act, including any costs assessed against the Commisssion in such litigation (whether or not paid by the Commission).

[FR Doc.77–1686 Filed 1–18–77;8:45 am]

FEDERAL ELECTION COMMISSION

[Notice 1977-2]

PRIVACY ACT OF 1974

Proposed New Notice of System of Records

On December 14, 1976 (41 FR 54719), the Federal Election Commission published in Notice 1976-68, FEC 8 which was to be effective 30 days after publication provided the request for a waiver of the new system notice was granted by the Office of Management and Budget or unless the Commission published a notice to the contrary. The Office of Management and Budget granted such a waiver on December 29, 1976.

THOMAS E. HARRIS,
Vice Chairman for the Federal Election Commission.

JANUARY 13, 1977.

[FR Doc. 77-1683 Filed 1-18-77;8:45 am]

[Notice 1977-4, AOR 1976-116 and AOR 1977-1]

ADVISORY OPINION REQUESTS

Pursuant to 2 U.S.C. 437f(c) and the procedures reflected in Part 112 of the Commission's Proposed Regulations, published on August 25, 1976 (41 FR 35954), Advisory Opinion Requests 1976-116 and 1977-1 have been made public at the Commission. Copies of AOR 1976-116 and AOR 1977-1 were made available on January 11, 1977. These copies of advisory opinion requests were made available for public inspection and purchase at the Federal Election Commission, Public Records Division, at 1325 K Street NW., Washington, D.C. 20463.

Interested persons may submit written comments on any advisory opinion request within ten days after the date the request was made public at the Commission. These comments should be directed to the Office of the General Counsel, Advisory Opinion Section, at the Commission. Persons requiring additional time in which to respond to any advisory opinion requests will normally be granted such time upon written request to the Commission. All timely comments received by the Commission will be considered before the Commission issues an advisory opinion. Comments on pending requests should refer to the specific AOR number of the requests and statutory references should be to the United States Code citations rather than to the Public Law citations.

A descriptive listing of each of the requests recently made public as well as the identification of the requesting party follows hereafter:

AOR 1976-116: May the campaign committee of a Member of Congress expend funds to finance the writing of a book and screenplay about the life of a Member?—Requested by Representative Mario Biaggi, U.S. House of Representatives, Washington, D.C.

AOR 1977-1: Whether an automobile purchased by the principal campaign committee of a Member of Congress to provide campaign-related transportation may be used by the Member or his staff for official duties with expenses for such use being paid by the committee.—Requested by P. Robert Matthews on behalf of the Lent for Congress Committee, Baldwin, New York.

VERNON W. THOMSON,
Chairman for the Federal Election Commission.

JANUARY 13, 1977.

[FR Doc.77-1685 Filed 1-18-77;8:45 am]

federal register

WEDNESDAY, JANUARY 19, 1977

PART VII

FEDERAL ENERGY ADMINISTRATION

STANDARDS OF CONDUCT

Additional Requirements Concerning Reporting of Employee Financial Interests

Title 10—Energy

CHAPTER II—FEDERAL ENERGY ADMINISTRATION

PART 203—STANDARDS OF CONDUCT

Additional Requirements Concerning Reporting of Employee Financial Interests

On April 2, 1976, a proposal to amend 10 CFR 203 (Standards of Conduct Regulations) was published in the FEDERAL REGISTER (41 FR 14261). The amendments were issued pursuant to section 522 of the Energy Policy and Conservation Act (EPCA), Pub. L. 94–163, to implement the reporting requirements contained therein with respect to financial interests of FEA personnel performing functions and duties under the EPCA.

The final regulations hereby promulgated, which embrace several modifications of the proposed regulations discussed below, require that any employee of FEA not specifically listed as exempt in Appendix E annually file a "Statement of Known Financial Interests" (published here as Appendix F) beginning on February 1, 1977. These statements are subject to examination and are available to the public for copying upon request. Nonexempt employees must list any known financial interest in: (1) any person engaged in the business of exploring, developing, producing, refining, transporting by pipeline, or distributing (other than at retail level) coal, natural gas, or petroleum products; and (2) property from which coal, natural gas, or crude oil is commercially produced, held by the officer or employee during the preceding calendar year. The regulations define the terms "known financial interest" and "policymaking position" and establish methods by which the filing requirement will be monitored and enforced, including appropriate provision for the filing of the statements and their review by the Administrator of FEA. Furthermore, the regulations provide for the annual review of the list of exempted positions along with a method by which an employee may immediately appeal the requirement that he file the "Statement of Known Financial Interests".

All comments received by FEA pertaining to its proposed regulations were given full and careful consideration. One comment pointed out that in amending § 203.27 of the Standards of Conduct Regulations the existing subsection (c), enumerating specific types of remedial action available to the Administrator in his review of statements of financial interest, was deleted. The deletion of this subsection was the inadvertent result of proposed renumbering, and the final regulations published here reflect its reincorporation.

With respect to the list of exempted positions in Appendix E, the General Accounting Office suggested that a general exemption of all positions below the GS–13 level in FEA's non-regulatory offices was deficient in its failure to reflect an affirmative decision that each position exempted was non-regulatory and non-policymaking in nature. Hence, FEA has defined the term "policymaking position" in § 203.26a(b) and, after canvassing the appropriate FEA offices for a reassessment of the exempted positions contained in the proposed regulations, has revised the list of exempted positions contained in Appendix E in accordance with this definition. Thus, while all FEA personnel in positions classified as GS–13 and above continued to be covered by the reporting requirement, a number of other positions not required to report under the proposed regulations are now covered.

The criteria establishing which mutual funds or investment clubs must be reported under § 203.26a(b) have been clarified. A mutual fund or investment club specializing in or maintaining 20% or more of its assets in energy businesses or properties will be considered to have substantial energy holdings and must be reported.

Technical changes in the proposed amendments were made which have no substantive effect on the content of the regulations. The proposed amendments omitted reference to the "Statement of Known Financial Interests" in § 203.6 (c) (2) for review by the Regional Counsel. The regulations as published correct this technical error.

Appendix E has been amended to reflect organizational changes in FEA. The Office of Policy and Analysis has been eliminated and in its place the Office of Policy and Program Evaluation and the Office of Energy Information and Analysis were created. A new Office of Strategic Petroleum Reserve has been established and the title of the Office of Management and Administration has been shortened to the Office of Management.

It was also felt that additional clarity was needed in the "Statement of Known Financial Interests" form required to be filed for public disclosure by the covered FEA officers and employees. Amendments have, therefore, been made to the form and its accompanying instruction sheet (Appendix F of the final regulations). These revisions in no way change the substantive reporting requirements of FEA officers and employees. They are intended merely to clarify for the employee the types of financial interests in energy businesses and energy properties which must be reported and reflect alterations made to the proposed regulations, as incorporated in the final regulations published below.

Finally, minor grammatical, punctuation, and organizational changes were made to the regulations for clarity and to align them with the substantive changes enumerated above and to correct obvious clerical errors in the proposed regulations. No substantive changes were made other than those listed above.

(Federal Energy Administration Act of 1974, Pub. L. 93–275, E.O. 11790, 30 FR 23185; Energy Policy and Conservation Act, Pub. L. 94–163; E.O. 11222, 30 FR 6469; 3 CFR, 1964–1965 Comp., 306; 5 CFR 735.104.)

In consideration of the foregoing, Part 203 of Chapter II, Title 10 of the Code of Federal Regulations is amended as set forth below.

Issued in Washington, D.C., January 14, 1977.

ERIC J. FYGI,
Acting General Counsel,
Federal Energy Administration.

1. The table of contents of Part 203 is amended by adding the titles of the following new section and appendixes in the appropriate order:

Sec.

* * * * * *

203.26a Additional reporting requirements concerning financial interests: Statement of Known Financial Interests.

* * * * * *

Appendix E
Appendix F

2. Section 203.1 is amended by revising paragraph (b) and inserting after the fourth sentence of paragraph (c) new language to read as follows:

§ 203.1 Purpose and Scope.

* * * * *

(b) This part is intended to foster the foregoing concepts. It is issued in compliance with the requirements of Executive Order 11222 of May 8, 1965, and is based upon the provisions of that order, the regulations of the Civil Service Commission issued thereunder (part 735 of 5 CFR, Chapter I), the requirements of section 522 of the Energy Policy and Conservation Act (Pub. L. 94–163), and the other statutes cited elsewhere in this part.

(c) * * *

Additionally this part implements section 522 of the Energy Policy and Conservation Act. * * *

3. Section 203.3 is amended by revising the introductory clause thereof to read as follows:

§ 203.3 Definitions.

Except as otherwise provided in § 203.26a of this part—

* * * * *

4. Section 203.6 is amended by revising paragraph (b) (3) and paragraph (c) (2) thereof to read, respectively, as follows:

§ 203.6 Interpretation and advisory service: counseling.

* * * * *

(b) * * *

* * * * *

(3) Receive information on and resolve or forward to the Administrator of FEA for consideration conflicts or apparent conflicts which appear in the Statements of Employment and Financial Interests and the Statements of Known Financial Interests submitted under this part, which are not resolved at a lower level.

(c) * * *

* * * * *

(2) Receive information on and attempt to resolve, or refer to the Counselor for FEA, conflicts of interest or appearances of conflicts of interest in

Statements of Employment and Financial Interests and Statements of Known Financial Interests submitted by employees and special Government employees to whom they are required to give advice and guidance, which are not resolved at lower levels.

* * * * *

5. Section 203.8 is amended by revising the first sentence of paragraph (c) to read as follows:

§ 203.8 Conflicts of Interest.

* * * * *

(c) The principal statutory provisions relating to bribery, graft, and conflicts of interest are contained in Chapter 11 of the Criminal Code, 18 U.S.C. 201–224, and section 522 of the Energy Policy and Conservation Act (Pub. L. 94–163). * * *

§ 203.25 [Amended]

6. Section 203.25(e) is amended by deleting "June 30" and inserting in lieu thereof "December 31."

7. A new section 203.26a is added, to read as follows:

§ 203.26a Additional reporting requirements concerning financial interests: Statement of Known Financial Interests.

(a) This section applies to all covered employees, as defined in paragraph (b) of this section. This section imposes certain reporting requirements, as required by section 522 of the Energy Policy and Conservation Act, on all officers and employees of the FEA performing functions or duties pursuant to the Energy Policy and Conservation Act (including any function or duty delegated by the President pursuant to Executive Order) except those officers and employees who occupy positions which the Administrator determines are of a non-regulatory and non-policymaking nature. Appendix E of this part sets forth those positions which the Administrator has determined, by applying thereto the included definition of "policymaking positions", to involve the performance of duties or functions under the Energy Policy and Conservation Act, but which are of a non-regulatory and non-policymaking nature, and exempt from the requirements of this section. All officers and employees holding positions within FEA not listed as exempt in Appendix E, at any time during the applicable calendar year, are considered covered employees and are subject to the requirements of this section.

(b) For purposes of this section:

"Officer or employee" means an officer or employee of FEA and includes a special Government employee as defined in § 203.3(d) of this part.

"Policymaking position" means a position in which the incumbent has the authority, whether intermediate or final, exerciseable either alone or with others, to supervise, guide, change, or otherwise affect the direction of any program of FEA specifically authorized or extended by EPCA. A position in which the incumbent makes only those administrative decisions which are necessary for the implementation of FEA policy developed pursuant to FEA programs, specifically authorized or extended by EPCA, is not considered a "policymaking position".

"Covered employee" means an officer or employee holding a position with FEA at any time during the applicable calendar year which is not listed as exempt in Appendix E of this part.

"Person" means any natural person, corporation, partnership, association, consortium, or any entity organized for a common business purpose, wherever situated, domiciled, or doing business, who directly or through other persons subject to their control does business in any part of the United States.

"Engaged in energy business" means the active conduct of one or more of the businesses of commercially exploring, developing, producing, refining, transporting by pipeline, or distributing (other than at the retail level) coal, natural gas, or petroleum products. A parent business, including a holding company, shall be considered to be engaged in energy business for purposes of this section if one or more of its subsidiaries actively conducts one or more of the businesses enumerated in the preceding sentence. A mutual fund or investment club shall be considered to be engaged in energy business for purposes of this section if a substantial portion of its investments are in one or more of the businesses enumerated in this section. Mutual funds or investment clubs specializing in or maintaining 20% or more of their assets in energy businesses or properties are considered to have substantial energy holdings and must be reported.

"Energy property" means lands, including submerged lands, or any mineral rights thereto, from which coal, natural gas, or crude oil is commercially produced. A financial interest in a company which holds real property or interests in real property from which coal, natural gas, or crude oil is commercially produced shall be considered an interest in energy property.

"Petroleum products" means crude oil, residual fuel oil, or any refined petroleum product (including any natural liquid and any natural gas liquid product).

"Known financial interest" means any pecuniary interest of an officer or employee, of which such officer or employee has knowledge or of which he can reasonably be expected to have knowledge: (1) in any person engaged in energy business or (2) in energy property. Such interest includes the right to occupy or use energy property, or to take any benefits therefrom based upon a lease or rental agreement, and includes any oral or written contract by the officer or employee or his agent with a person who has such right, which contract results in or is expected to result in benefit to the officer or employee, which benefit is or would be derived from such person's right. With respect to officers or employees who are beneficiaries of blind trusts, only pecuniary interests that are initially committed to the blind trust, not any interests thereafter acquired, shall be deemed to be known financial interests.

"Blind trust" means a trust instrument whereby: (1) The officer or employee requires the trustee to sell, exchange, or otherwise dispose of any pecuniary interest initially committed to the trust in any person engaged in energy business or in energy property; and

(2) The officer or employee has no knowledge or control over future financial interests acquired by the trustee.

(c) Beginning on February 1, 1977, a Statement of Known Financial Interests (Appendix F to this part) shall be filed annually with the supervisor to whom the employee reports by each covered employee. The term "covered employee" is defined in paragraph (b) of this section. Such statement shall set forth each known financial interest, as defined in paragraph (b) of this section, held by such employee during the part of the preceding calendar year that the employee held a position not listed as exempt in Appendix E. If a covered employee has held no known financial interest, as defined in paragraph (b) of this section, during the preceding calendar year, he shall file with the supervisor to whom he reports a Statement of Known Financial Interests marked to indicate that no such interest was held during such period.

(d) The FEA supervisor to whom a covered employee reports shall obtain the Statement of Known Financial Interests from him and forward such statement together with the employee's Statement of Employment and Financial Interests, if required by §§ 203.25 or 203.26, to the Office of Executive Programs for transmittal to the Counselor or his designee for review, or in the case of a regional employee, to the Regional Counselor for his review.

(e) A covered employee, if he believes that the position he holds should be listed as exempt in Appendix E because his position:

(1) Does not involve performance of functions or duties under the Energy Policy and Conservation Act; or

(2) Does involve performance of such functions, but is of a non-regulatory and non-policymaking nature, may file a written request for reconsideration of the classification of his position with the Counselor or designee. The Counselor or designee shall consider such request within a reasonable time and, after approval by the Administrator, shall inform the employee of his conclusion in writing. The counselor or designee on his own initiative, or in response to requests for reconsideration, may from time to time with the approval of the Administrator amend Appendix E to add or delete positions from such Appendix or change the filing requirement for any position listed therein. Any such amendments shall immediately be made available to the affected employees or to appropriate office heads for transmission to affected employees, and to the Regional Counselors. Such amendments shall be available for public examination

and copying in the Office of Executive Programs and in the Office of the Regional Counselor.

(f) The counselor or designee will annually review positions within FEA to determine if revisions to Appendix E are appropriate. Any amendments to Appendix E shall be published annually, following completion of such review, as a notice in the FEDERAL REGISTER.

(g) Statements of Known Financial Interests shall be available for public examination and copying upon request in the Office of Executive Programs or, in the case of regional employees, in the office of the appropriate Regional Counselor.

(h) Statements of Known Financial Interests are required of officers and employees in addition to, and not in substitution for or in derogation of, any similar requirement imposed by law, order or regulation. The submission of such statement by an officer or employee does not permit him or any other person to participate in a matter in which his or the other person's participation is prohibited by law, order or regulation.

(i) The Office of Executive Programs shall be responsible for the collection and retention of the statements of officers and employees of the National Office. Regional Counselors shall collect and retain the statements of regional employees.

8. Section 203.27 is amended by revising paragraphs (a) and (b) and by adding a new paragraph (d) to read as follows:

§ 203.27 Reviewing statements of financial interests.

(a) The counselor or his designee in cooperation with the employee's supervisor shall review the statements required by §§ 203.25, 203.26, and 203.26a to determine whether there exists a conflict, appearance of conflict or potential conflict, between the interests of the officer or employee or Special Government employee concerned and the performance of his service for the Government. In addition, the Counselor or designee shall review the Confidential Statements and the Statements of Known Financial Interests of regional employees: when there exists an appearance of conflict or a potential conflict of interest; when a suspected violation by a regional employee is reported; or when a Confidential Statement or Statement of Known Financial Interests or recommendation for remedial action is referred to him by a Regional Counselor for review. If the Counselor or designee determines that such a conflict or appearance of conflict exists, he shall discuss with the employee possible ways of eliminating the conflict or appearance of conflict. If he concludes that remedial action should be taken, he shall refer the statement to the Administrator of FEA with his recommendation for such action. The Administrator, after consideration of the employee's explanation and such investigation as he deems appropriate, shall direct appropriate remedial action if he deems it necessary.

(b) The Regional Counselor shall review the statements of regional employees required by §§ 203.25, 203.26 and 203.26a to determine whether there exists a conflict, appearance of conflict or potential conflict between the interests of the officer or employee or Special Government employee concerned and the performance of his service for the Government. If the Regional Counselor determines that such a conflict or appearance of conflict exists, he shall discuss with the employee possible ways of eliminating the conflict or appearance of conflict. If he concludes that remedial action should be taken, he shall refer the statements to the Counselor or his designee with his recommendation for such action.

. . . . . .

(d) If in reviewing the statements required by §§ 203.25, 203.26 and 203.26a, the Counselor or his designee or the Regional Counselor determines that known financial interests as defined in section 203.26a were incorrectly excluded from the statement required by § 203.26a, he shall inform the officer or employee or Special Government employee filing the statement of the need to amend the statement to include such interests. If such reviewer determines that interests reported pursuant to § 203.26a were unnecessarily included because they do not constitute known financial interests as defined in § 203.26a, the reviewer shall inform the employee that he may submit an amended statement from which such interests are deleted. The Counselor or his designee or the Regional Counselor shall provide advice to employees, prior to the filing of statements required by section 203.26a, concerning what interests constitute known financial interests as defined by that section.

APPENDIX E

1. The Administrator has determined that officers and employees as defined in § 203.26a (b) holding positions classified as GS-13 and above must file a Statement of Known Financial Interests. All officers and employees whose positions are classified as GS-12 and below must also file a Statement of Known Financial Interests unless their position is listed or referred to as exempt in section 1(a) or 1(b) of this Appendix E.

(a) NATIONAL HEADQUARTERS

Office of Administrator. Officers and employees in the occupational codes listed in section 2 of this Appendix and employees occupying the positions hereinafter listed are exempted:

Title	Series	Grade
Public information specialist	1081	7
Information clerk (typing)	301	5
Administrative technician	301	7

Office of General Counsel. Officers and employees in the occupational codes listed in section 2 of this Appendix are exempted.

Office of Management. Officers and employees in the occupational codes listed in section 2 of this Appendix and employees occupying the positions hereinafter listed are exempted:

Title	Series	Grade
Accountant	510	11, 9
Accounting technician	525	9, 6
Accounts maintenance clerk	520	6
Budget analyst	560	9, 5
Communications relay operator	392	6
Contract specialist	1102	12, 11, 9
Employee development specialist	235	12, 9
Employee relations and development specialist	201	11
Employee relations assistant	203	8
Employee relations specialist	230	7
Equal opportunity specialist	160	12, 9
Labor management relations specialist	230	9
Management analyst	343	11
Operating accountant	510	9
Payroll clerk	544	6, 5
Payroll supervisor	544	9
Payroll technician	544	7, 6
Personnel assistant	203	6
Personnel assistant (typing)	203	6
Personnel management specialist	201	12, 11
Personnel security specialist	80	12, 11, 9
Position classification specialist	221	12
Printing specialist	1645	12
Procurement agent	1102	9
Procurement assistant	1106	7
Purchasing agent	1105	6
Staffing assistant (typing)	203	6
Staffing clerk (typing)	203	5
Supervisory fiscal accounting specialist	501	9
Supervisory pay and financial assistant	501	12
Supervisory personnel staffing specialist	212	12
Supervisory voucher examiner	540	8
Supply management officer	2003	11
Transportation specialist	2101	11, 9
Visual information specialist (printed material)	1084	11
Voucher examiner	540	6, 5, 4
Wage grade:		
Writer-editor	1082	9
Administrative aide (steno)	301	5
Administrative clerk (typing)	301	5
Administrative funds specialist	301	11
Administrative services assistant	301	10
Administrative technician	301	7
Communications assistant	301	7
Correspondence analyst	301	6
Data processing clerk (typing)	301	5
Distribution clerk	301	4
Executive assistant	301	11, 9
Freedom of information specialist	301	9
Information access specialist	301	11
Mail analyst	301	5
Mail and messenger services supervisor	301	5
Security clerk	301	5
Space management specialist	301	9
Supervisor freedom of information specialist	301	11
Supervisor management information specialist	301	9

Office of Energy Information and Analysis. Officers and employees in the occupational codes listed in section 2 of this Appendix and employees occupying the positions hereinafter listed are exempted:

Title	Series	Grade
Project manager	301	12
Price stabilization analyst	301	12

Office of Energy Resource Development. Officers and employees in the occupational codes listed in section 2 of this Appendix and employees occupying the positions hereinafter listed are exempted providing they are not engaged in implementing the Energy Supply and Environmental Coordination Act of 1974 relating to the conversion of fuel burning installations to coal. All officers and employees engaged in implementing the Energy Supply and Environmental Coordination Act of 1974 relating to the conversion of fuel burning installations to coal must file unless listed in the occupational codes in section 2.

Title	Series	Grade
Writer-editor	1082	11
Coal utilization program assistant	301	7
Program assistant regional coordinator	301	11
Program assistant (financial plan)	301	5
Program specialist	301	11
Research assistant	301	9, 7, 5
Research assistant (steno)	301	7
Utility projects program assistant	301	7
Utility projects regional coordinator	301	7

Office of Strategic Petroleum Reserves. Officers and employees in the occupational codes listed in section 2 of this Appendix and employees occupying the positions hereinafter listed are exempted providing they are not engaged in implementing Title I Part B of the Energy Policy and Conservation Act relating to strategic petroleum reserves. All officers and employees engaged in implementing Title I Part B of the Energy Policy and Conservation Act relating to strategic petroleum reserves must file unless listed in the occupational codes in section 2.

Title	Series	Grade
Program analyst	345	12, 11, 9
Operations research analyst	1515	12, 11
Economist	110	12, 9
Chemist	1320	11
Geologist	1350	11
Civil engineer	810	12
Petroleum engineer	881	12
Mechanical engineer	830	11
Research assistant	301	7
Policy analyst	301	12, 11
Administrative services technician	301	7
Regulatory specialist	301	11
Environmental specialist	301	12, 7
Environmental program specialist	301	9

Office of Communications and Public Affairs. Officers and employees in the occupational codes listed in section 2 of this Appendix and employees occupying the positions hereinafter listed are exempted:

Title	Series	Grade
Public information assistant	1081	9, 7, 5
Public information specialist	1081	9, 7, 5
Radio production specialist	1071	9, 7, 5
Regional liaison specialist	1001	11
Visual information assistant	1001	5
Visual information specialist	1084	9, 7, 5
Radio production assistant	1071	7
Writer-editor	1082	9, 7, 5
Confidential assistant (secretary) to the Director	301	9
Correspondence analyst	301	7
Public information assistant	301	5

Office of Congressional Affairs. Officers and employees in the occupational codes listed in section 2 of this Appendix and employees occupying the positions hereinafter listed are exempted:

Title	Series	Grade
Congressional affairs specialist	301	11, 9
Congressional liaison specialist	301	9
Staff assistant to the special assistant	301	8
Legislative specialist	301	9

Office of Policy and Program Evaluation. Officers and employees in the occupational codes listed in section 2 of this Appendix and employees occupying the positions hereinafter listed are exempted:

Title	Series	Grade
Program analyst	345	12
Administrative services specialist	301	11
Research analyst	301	12
Research writer	301	11

Office of Conservation and Environment. Officers and employees in the occupational codes listed in section 2 of this Appendix and employees occupying the positions hereinafter listed are exempted providing they are not engaged in implementing Title III Part B of the Energy Policy and Conservation Act relating to appliance efficiency labeling. All officers and employees engaged in implementing Title III Part B of the Energy Policy and Conservation Act relating to appliance efficiency labeling must file unless listed in the occupational codes in section 2.

Title	Series	Grade
Budget and fiscal specialist	501	9
Public information specialist	1081	7
Technical information specialist (general)	1412	12
Wage grade:		
Administrative services assistant	301	9
Confidential assistant (secretary) to the assistant administrator	301	11
Program assistant (typing)	301	8
Research assistant	301	7
Clerk (DMIT)	301	5

Office of International Energy Affairs. Officers and employees in the occupational codes listed in section 2 of this Appendix and employees occupying the positions hereinafter listed are exempted:

Title	Series	Grade
Security assistant	301	8
Wage board		

Office of Regulatory Programs. Officers and employees in the occupational codes listed in section 2 of this Appendix are exempted.

Office of Private Grievances and Redress. Officers and employees in the occupational codes listed in section 2 of this Appendix are exempted.

Office of Intergovernmental Relations & Special Programs. Officers and employees in the occupational codes listed in section 2 of this Appendix and employees occupying the positions hereinafter listed are exempted:

Title	Series	Grade
Program assistant	301	9

(b) *Regional Offices.*—Officers and employees in the Regional divisions that are designated Management are exempt when in positions having the following titles and grades or when in the occupational codes listed in section 2 of this Appendix.

Title	Series	Grade
Accounting technician	525	6, 4
Accounts maintenance clerk	520	5
Administrative services specialist	301	11
Budget and accounting officer	504	12, 11
Budget and accounting technician	501	6
Budget and accounting analyst	504	9, 11
Clerk (teletyping)	301	4
Communications clerk/operator	392	3
Communications technician	392	5
Employee development specialist	235	7, 5
Employee relations and development specialist	201	7
Equal employment opportunity specialist	160	12
Equal opportunity specialist	160	9
Fiscal accounting clerk	501	6
Fiscal and budget assistant	501	8
General clerk	301	4
Management analyst	343	11, 12
Management information analyst	301	12
Operating accountant	510	11
Payroll and accounting technician	501	5
Personnel assistant	203	7, 6
Personnel classification specialist	211	7
Personnel clerk	203	4
Personnel management specialist	201	12, 11, 9
Personnel officer	201	12
Personnel staffing specialist	212	9, 7
Program training specialist	1701	12
Purchasing agent	1105	6, 5, 4
Report clerk	301	5
Special assistant	301	12
Stenographic and typing unit supervisor	313	5
Supervisory support services specialist	301	9
Support services manager	301	11
Support services specialist	301	9
Support services technician	301	5
Voucher examiner	540	5, 4
Wage board: Word processing supervisor	301	6

Officers and employees employed in other Regional divisions must file except for those in the occupational codes listed in section 2 of this Appendix.

2. The exempt occupational codes referred to in section 1 of this Appendix are listed below. An officer or employee may determine his occupational code by referring to Standard Form 50, Notification of Personnel Act. or by asking the Personnel representative in his administrative office.

(1) 119;
(2) 199;
(3) 1020;
(4) 1087;
(5) 1531;
(6) 2005;
(7) 302; 304; 305; 309; 312; 316; 318; 319; 322; 324; 330; 332; 334; 335; 341; 342; 344; 346; 350; 354; 355; 356; 357; 359; 362; 382; 388; 389; 390; 391; 393; 394; and
(8) Those in 301 with the following job titles:

Correspondence Information Coordinator.
Correspondence Management Specialist.
Supervisory Correspondence Control Clerk.
Administrative Fiscal Service Assistant (Typing).
Clerk (Typing).
Clerk.
Administrative Assistant.
Clerical Assistant.
Clerk (Stenography).
Work Processing Assistant (Editorial).
Chief, Correspondence Unit.
Staff Technician (Stenography).
Information Clerk.
Staff Assistant to the Administrator.
Advisory Committee Management Officer.
Document Control Clerk.
Correspondence Management Technician.
Staff Assistant to the Deputy Administrator.
Staff Assistant (Stenography).
Advisory Committee Program Specialist.
Confidential Assistant (Secretary) to the General Counsel.
Office Services Assistant.
Clerical Assistant (Typing).
Clerical Assistant (Stenography).
Management Information Assistant.
Information Assistant.
Administrative Clerk.
Administrative Aide (Typing).
Project Assistant.
Program Assistant.
Correspondence Control Clerk (Typing).
Supervisory Correspondence Management Specialist.
Staff Assistant.

APPENDIX F

STATEMENT OF KNOWN FINANCIAL INTERESTS

1. _____
Name (Last, first, initial)
2. _____
Title of covered position(s) held during preceding calendar year

3.

Period(s) of service in covered position(s)

4.

Office/division

5.

Occupational code

6.

GS level

PART I. KNOWN FINANCIAL INTERESTS IN ENERGY BUSINESSES

List all known financial interests in energy businesses are defined in the attached instruction sheet. List interests (a) which you held during the preceding calendar year of come, or other arrangement as a result of a current or prior employment or business or professional association; or (b) which you hold through the ownership of stock, stock options, bonds, securities, or other arrangements, including trusts. Include all interests held during the preceding calendar year or portion thereof with respect to which you are required to report. If as of the reporting date an interest is no longer held, so indicate. If no such interest has been held during the preceding calendar year, write None.

Name and kind of business
Address

Nature of known financial interest

PART II. KNOWN FINANCIAL INTERESTS IN ENERGY PROPERTIES:

List all known financial interests in energy properties as defined in the attached instruction sheet. List interests which you held through direct ownership, or through a company or other organization, or through rights held by leasehold, rental, or contract. Include all interests held during the preceding calendar year or portion thereof with respect to which you are required to report. If as of the reporting date an interest is no longer held, so indicate. If no such interest has been held during the preceding calendar year, write NONE.

Nature of interest	Address/location of property

PART III.

The information furnished in this statement is not confidential and is subject to examination and available to the public upon request.

Any officer or employee who is subject to the reporting requirement of section 522 of the Energy Policy and Conservation Act, and who knowingly violates its requirements shall be fined not more than $2,500 or imprisoned not more than one year, or both.

I am aware of the provisions of the law and regulations which require the filing of this statement.

I certify that the statements I have made are true, complete, and correct to the best of my knowledge and belief.

Date Signature

STATEMENT OF KNOWN FINANCIAL INTERESTS

For use by an officer or employee as required by subsection (a) of section 522 of the Energy Policy and Conservation Act (EPCA), Pub. L. 94-163, prescribing the annual reporting requirements of known financial interests in specific energy businesses and energy properties.

GENERAL REQUIREMENTS

The information to be furnished in this statement is required by law to be subject to examination and to be available for copying by the public upon request to the FEA.

Any officer or employee, including a Special Government employee, of FEA performing any function or duty under the EPCA who occupies at any time during the preceding calendar year a position not listed as an exempted position in Appendix E to part 203 of the FEA regulations must file this statement. The statement is to be filed annually.

Disclosure is required of all known financial interests. Known financial interests are pecuniary interests of which the officer or employee has knowledge, or of which he can reasonably be expected to have knowledge, in specific energy businesses or energy properties. The types of energy businesses and energy properties covered by this disclosure requirement are described below.

In cases involving interests in energy businesses or energy properties held in a blind trust, as defined in § 203.26a of part 203 of the FEA regulations, only those interests initially committed to the trust in any person engaged in energy business or in energy property need be reported.

An officer or employee must report all interests in an energy business or energy property held during the preceding calendar year or, if he held a position exempted by Appendix E during part of the year, interests held during such part of the year as his position was not listed in the exempted categories in Appendix E to part 203.

The interest, if any, of a spouse, minor child, or other members of the immediate household need not be reported in this statement.

A knowing violation of this reporting requirement shall be punishable by a fine of not more than $2,500 or imprisonment for not more than one year, or both.

The information to be listed does not require a showing of the amount of financial interest, indebtedness, or the value of real property.

KNOWN FINANCIAL INTERESTS IN ENERGY BUSINESSES

(1) Known financial interests in energy businesses are interests in any natural persons, corporations, partnerships, associations, consortiums, or any entity organized for a common business purpose, wherever situated, domiciled, or doing business who directly or through other persons subject to their control does business in any part of the United States and which is engaged in the active conduct of one or more of the businesses of exploring, developing, producing, refining, transporting by pipeline, or distributing (other than at the retail level) coal, natural gas, or petroleum products.

(2) A parent company, including a holding company, which has one or more subsidiaries which are actively engaged in one or more of the energy businesses enumerated in clause (1) above must also be reported.

(3) Diversified mutual funds need not be reported. A mutual fund or investment club which has a substantial portion of its investment in one or more of the energy businesses or properties enumerated above must, however, be reported. A mutual fund or investment club specializing in or maintaining 20 percent or more of its assets in energy businesses or properties is considered to have substantial energy holdings.

KNOWN FINANCIAL INTERESTS IN ENERGY PROPERTIES

(1) Known financial interests in energy properties are interests in lands, including submerged lands, or any mineral rights thereto from which coal, natural gas, or crude oil is commercially produced.

(2) Interests in investment companies maintaining holding in the energy properties enumerated above must also be reported.

(3) A financial interest in energy properties includes the right to occupy or use energy property, or to take any benefits therefrom based upon a lease or rental agreement, and includes any oral or written contract by the officer or employee or his agent with a person who has such rights, which contract results in or is expected to result in benefit to the officer or employee, which benefit is or would be derived from such person's right.

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federal register

WEDNESDAY, JANUARY 19, 1977
PART VIII



DEPARTMENT OF JUSTICE

DEPARTMENT OF LABOR

CIVIL SERVICE COMMISSION

■

QUESTIONS AND ANSWERS ON THE FEDERAL EXECUTIVE AGENCY GUIDELINES ON EMPLOYEE SELECTION PROCEDURES

DEPARTMENT OF JUSTICE

Office of the Deputy Attorney General

QUESTIONS AND ANSWERS ON THE FEDERAL EXECUTIVE AGENCY GUIDELINES ON EMPLOYEE SELECTION PROCEDURES

Introduction

The problems addressed by the Federal Executive Agency Guidelines on Employee Selection Procedures (41 FR 51734 et seq., Nov. 23, 1976) are numerous and important, and some of them are complex. The history of the development of those guidelines is set forth in the introduction to them (41 FR 51734–35). The experience of the Department of Labor in administering its earlier Testing and Selection Order (41 CFR Part 60–3) has been that a series of answers to commonly asked questions is helpful in providing guidance not only to employers and other users, but also to psychologists and others who are called upon to conduct validity studies, and to compliance officers and other Federal personnel who have enforcement responsibilities.

The three Federal agencies issuing the guidelines—the Departments of Justice and Labor and the Civil Service Commission—seeking to benefit from the experience of the Department of Labor, and recognizing that the goal of a uniform position on these issues can best be achieved through a common interpretation of the same guidelines, have decided to issue the following Questions and Answers. The material included is intended to interpret and clarify the provisions of the guidelines. The questions selected are commonly asked questions in the field and those suggested by the guidelines themselves and by the extensive comments received on the various sets of proposed guidelines prior to their adoption. Terms are used in the questions and answers as they are defined in the guidelines.

The three agencies recognize that additional questions may be appropriate for similar treatment at a later date, and contemplate working together to provide additional guidance in interpreting the guidelines. Users and other interested persons are invited to submit additional commonly recurring questions they believe warrant answers, and any comments on the questions and answers set forth below to the appropriate issuing agency.

HAROLD R. TYLER, JR.,
Deputy Attorney General.

LAWRENCE Z. LORBER,
Deputy Assistant Secretary, Director, Office of Federal Contract Compliance Programs.

JAMES C. SPRY,
Executive Assistant to the Commissioners, United States Civil Service Commission.

JANUARY 17, 1977.

1. Q. What is the purpose of the Guidelines?

A. The Guidelines are designed to aid in the achievement of our Nation's goal of equal employment opportunity without discrimination on the grounds of race, color, sex, religion or national origin, by providing a set of principles governing use of employment selection procedures that is consistent with applicable legal and psychological standards, is workable, and which the adopting agencies will apply in the discharge of their respective responsibilities. The Guidelines deal only with this one aspect of the overall equal employment opportunity question and do not purport to provide guidance for anything other than use of selection procedures.

2. Q. What is the basic principle of the guidelines?

A. Selection procedures which have an adverse impact on members of a racial, sex or ethnic group and thus operate to exclude them disproportionately are unlawfully discriminatory unless the user validates the procedure in accord with the Guidelines, or the user otherwise justifies them in accord with Federal law. See § 3.[1] The basis for this principle was adopted by the Supreme Court unanimously in *Griggs* v. *Duke Power Co.*, 401 U.S. 424, and was ratified and endorsed by the Congress when it passed the Equal Employment Opportunity Act of 1972.

3. Q. What is adverse impact, and how is it measured?

A. Adverse impact is a substantially different rate of selection in hiring, promotion or other employment decision) which works to the disadvantage of members of a racial, sex or ethnic group. § 4b. Rate of selection for each group is determined by dividing the number of applicants selected from that group by the total number of applicants from that group and by comparing the results with the result derived in the same way for the group with the highest selection rate. For example, a user may have had over a six month period 120 applicants, 80 white, and 40 black; of whom 60 were hired, 48 whites, and 12 blacks. The selection rate for white applicants was thus 48/80=60%; while that for black applicants was 12/40=30%. In this example, the selection process adversely affected the employment opportunities of blacks because their selection rate (30%) was only one half that of whites (60%).

4. Q. What is a substantially different rate of selection?

A. The Guidelines adopt a 4/5 (80%) Rule of thumb for guidance and operational use. See § 4b. If the selection rate for a group is within 4/5 or 80% of the rate for the group with the highest rate, the enforcement agency will generally not consider adverse impact to exist. In the prior example, the selection rate for blacks was 30%, while that for whites was 60%; so that the black selection rate was 1/2 or 50% of the highest group and there was adverse impact. If, on the other hand, there were 120 applicants, of which 80 were white and 40 black, and the user had selected 42 whites and 18 blacks, the selection rate for blacks would be 18/40 or 45%, while that for whites would be 42/80 or 52.5%. Because the selection rate for blacks as compared to that for whites is 45/52.5 or 85.4% (i.e., more than 80% (or 4/5)), the difference in impact would not be regarded as substantial in the absence of additional information.

5. Q. Does the 4/5 rule of thumb mean that the Guidelines will tolerate up to 20% discrimination?

A. No. The 4/5 rule of thumb speaks only to the question of adverse impact, and is not intended to resolve the ultimate question of unlawful discrimination. Regardless of the amount of difference in selection rates, unlawful discrimination may be present, and may be demonstrated through appropriate evidence. The 4/5 rule merely establishes a numerical basis for drawing initial inference and for requiring additional information.

With respect to adverse impact, the Guidelines expressly state (§ 4b) that differences in selection rates of less than 20% may still amount to adverse impact where the differences are significant in both statistical and practical terms. In the absence of differences which are large enough to meet the 4/5ths rule of thumb or a test of statistical significance, there is no reason to assume that the differences are reliable, or that they are based upon anything other than chance.

Two examples will be illustrative. If, for the sake of illustration we assume that nationwide statistics show that use of an arrest record would disqualify 10% of all Spanish-surnamed persons but only 4% of all Anglo persons, the "selection rate" for that selection procedure is 90% for Spanish-surnamed Americans and 96% for Anglos. Therefore, the 4/5 rule of thumb would not indicate the presence of adverse impact (90% is approximately 94% of 96%). But in this example, the sample is large enough to be statistically significant, and the difference (Spanish-surnamed Americans are 2½ times as likely to be disqualified as Anglos) is large enough to be practically significant. Thus, the enforcement agencies would consider use of arrest record alone as having an adverse impact. See *Gregory* v. *Litton Industries*, 472 F.2d 631 (9th Cir., 1972).

Similarly, a difference of more than 20% in rates may not provide a basis for finding adverse impact if the numbers are very small. For example, if the employer selected three men and one woman from an applicant pool of 20 men and 10 women, the 4/5 rule would indicate adverse impact (selection rate for women is 10%; for men 15%; 10/15 or 66⅔% is less than 80%), yet the numbers are so small that a difference in one person hired would show an adverse impact the other way. In these circumstances, the enforcement agency would not require validity evidence in the absence of additional information.

6. Q. Is adverse impact determined on the basis of the overall selection process or for the components in that process?

A. Adverse impact is determined first for the overall selection process for each job category. If there is no adverse impact from the selection process, there is no obligation under the Guidelines to validate the selection procedures used for that job. If the overall selection process has an adverse impact, the adverse impact of the individual selection procedures should be analysed. For any selection procedure in the process having an adverse impact which the user continues to use, the user is expected to have evidence of validity satisfying the guidelines. § 4b and § 5c.

7. Q. If adverse impact is determined initially on the basis of the overall selection process, does this allow discrimination in one selection procedure to be balanced by another discriminatory procedure?

A. No. As shown above (see answer to Question 5), discrimination and adverse impact have different meanings; and these Guidelines do not permit any kind of discrimination. There are, moreover, many methods of determining proficiency. In some cases, proficiency may be best demonstrated by a written examination, while for others a review of experience or an interview, or a combination of all three may be best. Many employers and other users are utilizing alternative or combinations of approaches. Where the overall selection process of a user results in equal employment opportunities for members of racial, sex or ethnic groups for a job, the Guidelines reflect the position that it would be inappropriate for the federal enforcement agencies to expend their limited enforcement resources examining the validity of each procedure utilized in the process.

8. Q. Is the user obliged to keep records which show whether its selection procedures have an adverse impact on race, sex or ethnic groups?

A. Yes. Under the Guidelines the user is obliged to maintain evidence indicating the impact (if any) which their selection procedures have on identifiable racial, sex or ethnic groups. § 4 a and b. If the selection procedure does have an adverse impact on one or more such groups, the user is expected to maintain documentation evidence showing the validity of the procedure. § 13a.

9. Q. What is the relationship between affirmative action and the requirements of the Guidelines?

A. The two subjects are different, although related. The Guidelines state that compliance with these Guidelines does not relieve users of any affirmative action obligations they may have. § 11. The Guidelines, however, encourage the development and effective implementation of affirmative action plans or programs in two ways. First, the Guidelines state (§ 4c) that in determining whether to institute action against a user on the basis of a selection procedure which has adverse impact and which has not been validated, the enforcement agency will take into account the general equal employment opportunity posture of the user with respect to the job classifications for which the procedure is used and the progress which has been made in carrying out any affirmative action program. If the user has demonstrated over a substantial period of time that it is in fact providing equal employment opportunity in the job or job groups in question, the enforcement agency will generally exercise its discretion by not initiating enforcement proceedings. Secondly, the Guidelines encourage affirmative action programs by stating (§ 11) that nothing in them is intended to preclude the use of selection procedures, consistent with Federal law, which assist in the achievement of affirmative action objectives.

10. Q. Does the language of § 4c and § 11 concerning non-discrimination in the making of employment decisions prevent the adoption of effective affirmative action programs?

A. No. The Equal Employment Opportunity Coordinating Council has adopted a policy statement on affirmative action programs (41 Fed. Reg., Sept. 13, 1976). A copy of that statement is attached hereto and incorporated herein. The language of § 4c and § 11 is based upon and merely intended as a reminder of the non-discrimination provisions contained in Title VII and Executive Order 11246. The policy statement on affirmative action contains a similar prohibition for the same reason. The kind of color conscious affirmative action steps outlined in the Coordinating Council's policy statement do not, in the judgment of the enforcement agencies, violate the language of § 4c or § 11 of the Guidelines. This view is consistent with the well established principle that affirmative action programs of this kind do not violate the comparable anti-preference provisions of Title VII or Executive Order 11246.

11. Q. If it is not feasible or appropriate to validate a selection procedure, what obligations does the user of such a procedure have?

A. The Guidelines recognize that it is not always feasible or appropriate to utilize the validation techniques of the psychological profession as contemplated by the Guidelines. If the procedure cannot be validated because it is informal, unstandardized or unscored, the user should insofar as possible eliminate adverse impact, or if feasible modify the procedure to one which is formal, scored or quantified, and then validate the procedure in accord with these Guidelines. If it is not feasible to validate a standardized selection procedure, the user should either adopt an alternative procedure to eliminate adverse impact or modify the procedure to eliminate the adverse impact. The continued use of either a standardized or unstandardized procedure may also be permitted if the user can otherwise justify such use in accord with the federal law. See § 3b.

12. Q. How can users justify continued use in accord with federal laws of a procedure which has an adverse impact and which it is not feasible or appropriate to validate?

A. That subject is one to which the Guidelines are not addressed. In *Griggs* v. *Duke Power Co.*, 401 U.S. 424, the Supreme Court indicated that the burden on the user was a heavy one, but that the selection procedure could be used if there was a "business necessity" for its continued use. The federal agencies will consider evidence which shows "business necessity" to justify continued use of a selection procedure. Evidence of any other justification would have to be considered on a case by case basis.

13. Q. Do the Guidelines apply to the selection procedures utilized by state and local government licensing and certification boards and agencies?

A. The Guidelines neither broaden nor narrow the coverage of the underlying federal law. The Guidelines state however that licensing and certification are employment decisions to the extent that they may be covered by federal law. The courts are divided on that question. The Department of Justice has taken the position that at least some kinds of licensing and certification which deny persons access to employment opportunity may be enjoined in an action brought pursuant to Section 707 of the Civil Rights Act of 1964, as amended. See. *United States* v. *North Carolina*, 400 F. Supp. 343 (E.D. N.C. 1975) (three judge court) (certification of teachers).

14. Q. Where can a user obtain a "certification of validity"?

A. The federal enforcement agencies do not recognize any certification of validity or validation. See § 7a. If a user's selection procedures have an adverse impact, the user is expected to produce evidence of the validity of the procedure, not a certificate that they have been validated. Thus, the assertion by anyone, including a State employment service representative, that a test battery or other selection procedure has been validated is not sufficient to satisfy the Guidelines.

15. Q. What is the relationship between the Guidelines and other statements of psychological principles, such as the Standards for Education and Psychological tests published by the American Psychological Association (Wash., D.C., 1974) (hereinafter "APA Standards")?

A. The Guidelines are designed to be consistent with the generally accepted standards of the psychological profession. However, to the extent that there may be differences between particular provisions of the Guidelines and expressions of principles found elsewhere, the Guidelines will be given precedence by the enforcement agencies. With respect to any matters not addressed by the Guidelines, users are, of course, free to follow the standards of the profession so long as doing so is consistent with appli-

[1] Section references throughout these questions and answers are to the Sections of the Federal Executive Agency Guidelines on Employee Selection Procedures (herein referred to as "Guidelines") that were published by the Department of Labor, Department of Justice and the U.S. Civil Service Commission on November 23, 1976, at 41 FR 51734 et seq. In the Department of Labor issuance, the section references are preceded by an additional reference to "§ 60–3" (thus, the reference here to § 3 refers to § 60–3.3 in the Labor Department's issuance).

cable equal employment opportunity requirements.

16. Q. When should a validity study be carried out?

A. The Guidelines call for a validation study whenever a selection procedure has adverse impact on any racial, sex or ethnic group. If a selection procedure has adverse impact, its use in making employment decisions without adequate evidence of validity would be inconsistent with the Guidelines. Waiting until a selection procedure is challenged increases the risk that the user will be found to be discriminating and be liable for back pay awards, plaintiffs' attorneys fees, loss of Federal contracts or grants and the like. Validation studies begun on the eve of litigation have seldom been found to be adequate. Users of selection procedures should consider the potential benefit to their employment systems and the savings in resources which can result from having a validation study completed or well under way before the procedures are administered for use in employment decisions. Public merit systems typically have a special obligation to validate selection procedures regardless of any expectation that adverse impact may result.

17. Q. Are there any special requirements as to who is allowed to perform a validity study?

A. No, a validity study is judged on its own merits, and may be performed by a member of the user's staff, a consultant, or any person knowledgeable of the principles of validity research. However, it is the user's responsibility to see that the study meets these Guidelines which are based upon professionally accepted standards.

18. Q. Can a selection procedure be a valid predictor of performance on a job in a certain location and be invalid for predicting success on a different job or the same job in a different location?

A. Yes. Differences in job duties, locations or study samples can affect validity, so that a selection procedure found to have validity in one situation may not have validity in different circumstances. Conversely, a selection procedure not found to have validity in one situation may have validity in different circumstances.

19. Q. Does the way a selection procedure is used affect its validity?

A. Yes. Selection procedures which have been properly validated can be used in improper ways. For this reason selection procedures must be administered and scored in a standardized manner during the research and must continue to be administered and scored in the same way while being used operationally. § 5d. A selection procedure which has been validated as predicting success on one job might be invalid for predicting success on another job.

Even if the selection procedure is properly administered and scored and the same job is involved, it may be used improperly. For instance, it would be improper to use a selection procedure to rank applicants if the validity study only supported the use of minimum acceptance levels ("pass/fail"). The validity study should reflect the way the selection procedure will be used in practice.

20. Q. Is the user of a selection procedure required to develop the procedure from scratch?

A. No, a selection procedure developed elsewhere may be used. However, the user has the obligation to show that its use for the job in question is consistent with the Guidelines.

21. Q. Is evidence that a selection procedure which has been validated in one context has validity in another context (validity generalization) alone sufficient justification for its use elsewhere (transportability)?

A. No. The conditions governing transportability are stated in § 6 of the Guidelines. While some degree of validity generalization is necessary for transportability, it is not sufficient.

Validity generalization refers to the degree to which the results of a criterion-related validity study conducted on a selection procedure in one situation lead to inferences concerning the degree of validity of that selection procedure or similar selection procedures in other situations. Transportability refers to the permissible use of a selection procedure in more than one context. Validity generalization is a statistical concept concerning validity evidence, while transportability is a judgment concerning use of selection procedure.

22. Q. Under what circumstances can a criterion-related validity study done elsewhere be used as sufficient validity evidence to meet the Guidelines (on other than an interim basis)?

A. A validity study done elsewhere may be used as sufficient evidence if four conditions are met (see § 6b):

1. The weight of the evidence from one or more studies must show that the procedure was valid in its use elsewhere.

2. The job(s) for which the selection procedure will be used must closely match the job(s) in the original study as shown by a comparison of results (in terms of job duties) of the job analyses in both contexts.

3. A fairness study must be contained in the original evidence for those groups constituting a significant factor in the user's labor market (see Answer to Questions 31–34 below).

4. There are no variables in the other study or studies which are likely to affect validity or fairness significantly (see Answer to Question 23 below).

23. Q. Under what circumstances can a selection procedure supported either by criterion-related validity evidence obtained elsewhere or by a partially completed validity study be used on an interim basis?

A. Interim use of criterion-related validity evidence is permitted in three situations:

1. If it is technically feasible for a user to conduct an internal validity study and there are significant differences between the research sample in a study done elsewhere and the user's job applicants in terms of such variables as age, education, job experience, etc., the selection procedure may only be used on an interim basis pending an internal validity study.

2. If validity evidence obtained elsewhere does not contain an investigation of fairness the selection procedure may only be used on an interim basis until evidence of fairness or unfairness is shown either from other sources or the user's own study.

3. If a user has substantial validity evidence either from other sources or from studies being conducted by or for the user, but which are not in complete compliance with the Guidelines, the selection procedure may be used only on an interim basis pending completion of validity studies.

24. Q. What are the potential consequences to a user when a selection procedure is used on an interim basis?

A. The fact that the Guidelines permit interim use of a selection procedure does not immunize the user from liability for back pay, attorney fees and the like, should use of the selection procedures later be found to be in violation of the Guidelines (e.g., because of a showing of unfairness), and for this reason users should take steps to come into full and complete compliance with the guidelines as soon as possible. It is also appropriate for users to consider ways of minimizing adverse impact during the period of interim use.

25. Q. Under what circumstances may a validity study conducted cooperatively among users or in different units of a multi-unit organization be used in locations not included in the validity study?

A. A selection procedure supported by validity evidence obtained from a cooperative or multi-unit study may be used in new situations where the conditions described in the answer to Question 22 are met, and where there are no significant differences between the applicant populations and the research subjects in such characteristics as age, education, job experience, or the like.

26. Q. How does a user choose which validation strategy to use?

A. A user should select the validation strategy which is most appropriate for the type of selection procedure, the job, and the employment situation. Content validity by itself is inappropriate where the selection procedures are measures of aptitude or personality traits, and for jobs in which the employee is expected to gain the measured skills or knowledges while on the job. In such circumstances criterion-related or construct validation strategies should be used. On the other hand where the selection procedures are work samples or measures of fully developed skills or knowledges, content validity is appropriate although criterion-related validation techniques could be used where technically feasible. Where a sample of sufficient size cannot be obtained, where appropriate measures of employee proficiency to be used as criteria cannot be developed, or where there is a severe range restriction in scores on selection procedures, and this range restriction cannot be reduced or appropriately corrected, criterion-related validity may be technically infeasible.

27. Q. Why don't the Guidelines contain a preference for criterion related validity over content or construct validity?

A. Generally accepted principles of the psychological profession do not recognize any such preference, but contemplate the use of criterion related, content, or construct validity strategies as appropriate. APA Standards, E, pp. 25–26; *Washington* v. *Davis*, ____ U.S. ____, 44 U.S.L.W. 4789, fn. 13. Moreover, the Guidelines normally require criterion related evidence as a component part of any construct validity study § 12d. With respect to content validity, where the content of the selection procedure closely matches the behaviors or activities required for job performance, as in a typing test for typists or a truck driving test for truck drivers, a content validity approach is the most appropriate way of showing validity. Because the Guidelines make it clear that content validity by itself is not appropriate for aptitude, intelligence, personality or interest tests (§ 12c(1)), and that evidence of content validity depends upon the closeness of the resemblance between work behavior and the selection procedure, there is no need or justification for a general preference for criterion related validity over content validity. All three strategies are empirically based. Construct validity requires empirical research evidence, which is normally criterion-related, linking the selection procedure to the job, while content validity requires a factually based linkage of the selection procedure to the activities of the job.

28. Q. Is the use of a content validity strategy appropriate for measuring in the selection process skills or knowledges which are taught in a training academy after initial employment?

A. No. The Guidelines state (§ 12c(1)) that content validity is not appropriate where the slection procedure involves knowledges, skills, or abilities which the employee will be expected to learn "on the job." The phrase "on the job" is intended to apply to training which occurs after hiring, promotion or the like.

29. Q. Is a full job analysis necessary for all validity studies?

A. It is required for all content and construct studies, but not for all criteria in a criterion related study. See § 12a, and § 12b(3). Proper measures of the results or outcomes of job behaviors such as production rate or error rate may be used without a full job analysis where a review of information about the job shows that these criteria are important to the employment situation of the user. Similarly, measures such as absenteeism, tardiness or turnover may be used if these behaviors are shown by a review of information about the job to be important in the specifics situation. A standardized rating of overall job performance may be used if the user can demonstrate its appropriateness for the specific job and employment situation through a study of the job. Measures of overall job performance should be carefully developed and standardized, and their use should be carefully controlled. See, *Albemarle Paper Co.* v. *Moody*, 422 U.S. 405 (1975).

30. Q. Under what circumstances may success in training be used as a criterion in criterion-related validity studies?

A. Success in training is an appropriate criterion when: (1) The job analysis shows that success in training is necessary for successful job performance or related to increasing proficiency on the job; and (2) training success is properly measured. § 12b(3). Where the measure of success in training is a paper and pencil test, the measure should be carefully developed to ensure that factors which are not job related do not unfairly inflate or depress the measures of training success and to ensure that the measures are in fact job related. § 12b(3).

31. Q. What does "unfairness of a selection procedure" mean?

A. When a specific score on a selection procedure has a different meaning in terms of expected job performance for members of one racial, sex or ethnic group than the same score does for members of another group, the use of that selection procedure may be unfair for members of one of the groups. See § 14 (k). For example, if members of one group have an average score of 40 on the selection procedure, but perform on the job as well as another group which has an average score of 50, then the selection procedure is unfair to the members of the lower scoring group. (The concept of test fairness has sometimes been referred to as differential validity or differential prediction).

32. Q. When should the user investigate the question of fairness?

A. Fairness should be investigated generally at the same time that a criterion-related validity study is conducted, or as soon thereafter as feasible.

33. Q. Why do the Guidelines require that users look for evidence of unfairness?

A. The consequences of using unfair selection procedures are severe in terms of discriminating against applicants on the basis of race, sex or ethnic group membership, or in terms of perpetuating the effects of past discrimination. Accordingly, these studies should be performed routinely where technically feasible and appropriate, even if the probability of finding unfairness is small. See *Albemarle Paper Co.* v. *Moody*, 422 U.S. 405, 435. Moreover, the APA Standards published in 1974 call for the investigation of test fairness in criterion related studies wherever feasible (pp. 43–44).

34. Q. What should be done if a selection procedure is unfair for one or more groups in the relevant labor market?

A. The user has three options. See, § 12b(7)(iv). First, the selection instrument may be replaced by another validated instrument which is fair to all groups. Second, the selection instrument may be revised to eliminate the sources of unfairness. For example, certain items may be found to be the only ones which cause the unfairness to a particular group, and these items may be replaced by others. Finally, revisions may be made in the use of the selection procedure to ensure that the probability of being selected is compatible with the probability of successful job performance.

35. Q. If there are not enough members of an adversely affected race, sex or ethnic group in the potential research sample to make it feasible to study test fairness, should the group still be included in the sample?

A. Yes, normally the study should be conducted on a sample which is representative of the expected candidates for the job in question. However, there may be situations in which the members of the race, sex or ethnic group available for the study are so dissimilar from other persons in the sample that the information should not be combined for data analyses.

36. Q. Do the Guidelines require a search for alternative selection procedures?

A. The Guidelines provide that while a validity study is being conducted, the user should attempt to find and apply procedures that have as little adverse impact as possible. However, once that effort has been made and the chosen procedure has been studied and shown to be valid, the Guidelines do not require the user to search further for alternative procedures. The Guidelines do call for a user to take steps to ensure that selection procedures are kept current, and to investigate any alternative procedures shown to have at least equal validity and less adverse impact. The obligation to investigate alternative procedures is greater when the user is in an interim use status.

37. Q. What does a user do if there are not enough persons in a job to conduct a criterion related study?

A. There are a number of options the user should consider, depending upon the particular facts and circumstances.

1. Changing the procedure so as to eliminate adverse impact;

2. Validating the procedure through a content validity strategy, if appropriate (see § 12c and answer to Question 25 and 27);

3. Using a selection procedure validated elsewhere in conformity with the Guidelines (see § 6 and answers to Questions 22–24);

4. Engaging in a cooperative study with other facilities or users (in cooperation with such users either bilaterally or through industry or trade association), or participating in research studies conducted by the state employment security system. Where different locations are combined, care is needed to insure that the jobs studied are in fact the same and that the study is adequate and in conformity with the Guidelines (see § 6);

5. Combining essentially similar jobs into a single study sample may in some circumstances be consistent with the Guidelines (see § 5g and § 12b).

38. Q. If a user has previously engaged in discrimination against members of a racial, sex or ethnic group, is the user precluded from making its selection procedures more stringent?

A. In such circumstances, the Guidelines provide (§ 9) that the user should afford those members of the group discriminated against, who were available in the relevant job market during the period of discriminatory practices, an opportunity to qualify under the less stringent procedures, unless the user demonstrates that the more stringent procedures are required for the safety or efficiency of the operation. The user is not precluded from using the more stringent procedures for all other persons.

39. Q. If a user has all selection procedures administered by an employment agency or a consultant, does that relieve the user of responsibilities under the Guidelines?

A. No. The user remains responsible for the selection procedures utilized by others on behalf of the user. It is therefore expected that the user will have sufficient information available to show: (a) what selection procedures are being used on its behalf; (b) the adverse impact of those procedures, and evidence of the validity of any such procedures; and (c) the number of persons by race, sex and ethnic group referred, and the total number considered for referral or for job applications.

[FR Doc.77-1932 Filed 1-18-77;9:05 am]

Title 41—Public Contracts and Property Management

CHAPTER 60—OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS, EQUAL EMPLOYMENT OPPORTUNITY, DEPARTMENT OF LABOR

PART 60-3—GUIDELINES ON EMPLOYEE SELECTION PROCEDURES

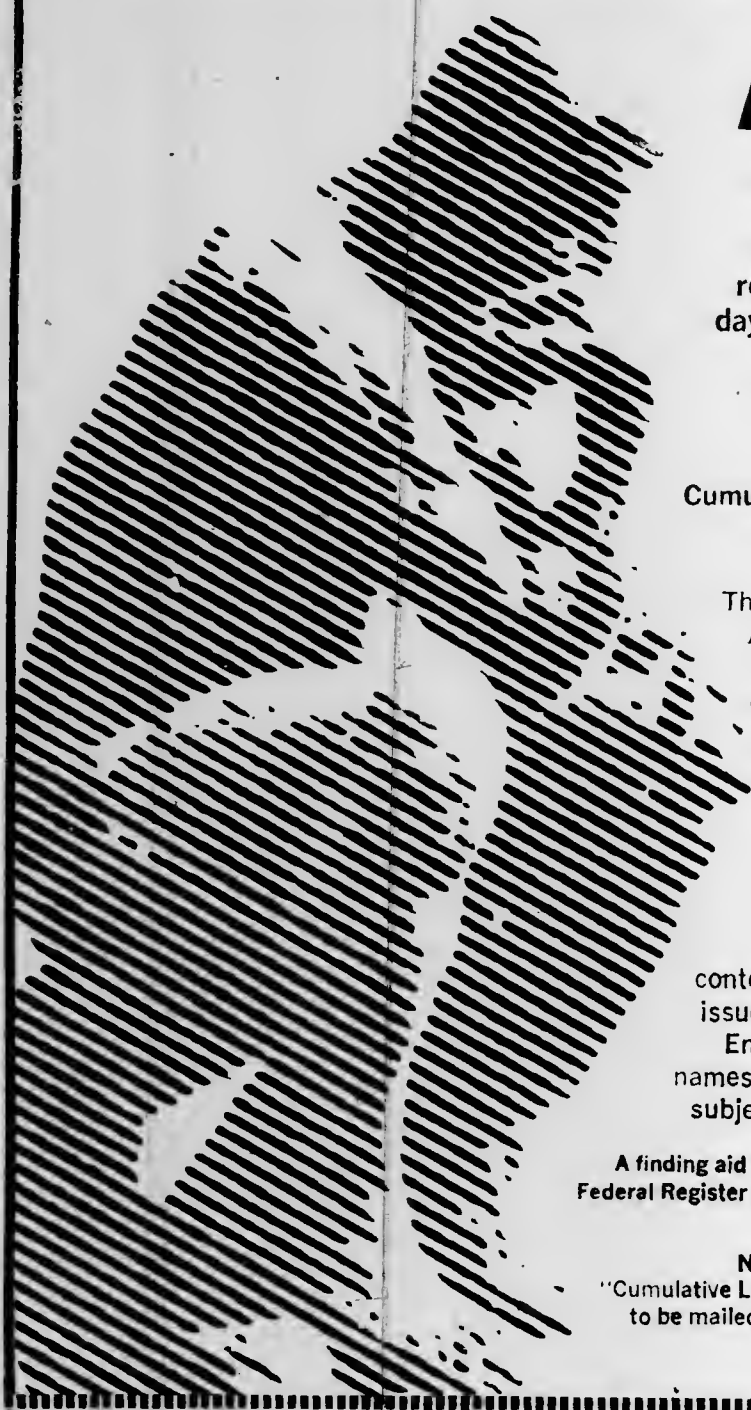
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CIVIL SERVICE COMMISSION

EMPLOYEES SELECTION PROCEDURE GUIDELINES

Appendices to Federal Personnel Manual Supplements

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Vol.42—No.14
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PAGES
3827–4109

federal register

FRIDAY, JANUARY 21, 1977

highlights

PART I:

FEDERAL REGISTER:
WHAT IT IS AND HOW TO USE IT
OFR announces three workshops in Los Angeles, 2–23 thru 2–25–77 and three workshops in San Francisco, 3–1 thru 3–3–77..... 3908

EMERGENCY SCHOOL AID
HEW/OE notice on "desegregation" plan interpretation.. 3900
HEW/OE sets standards for evaluation of applications.. 3842

AIR TRAFFIC REGULATORY REVIEW PROGRAM
DOT/FAA announces schedule and invites proposals by 3–15–77 for review of flight rules..... 3863

REAL ESTATE INVESTMENTS AND IMPROVEMENTS
USDA/REA reduces instances in which title insurance is required 3847

MOBILE HOME LOANS
HUD/FHC conforms regulation to new fiscal year; effective 1–17–77..... 3839

INCOME TAX
Treasury/IRS proposes regulations on corporate separations; comments by 3–5–77..... 3866

NEW PNEUMATIC TIRES
DOT/NHTSA adds certain size designations to Federal Motor Vehicle Safety Standard..... 3844

PRIVACY ACT OF 1974
OMB reports on new systems..... 3909

STATE DEMONSTRATION PROGRAM
DOT/FAA selects certain States for participation in receiving Federal grants for airway development..... 3946

CIVIL AVIATION
NTSB announces availability of 1976 safety statistics.... 3907

FOREIGN EMBARKATION LIVESTOCK QUARANTINE FACILITY
USDA/APHIS proposes criteria and standards for establishment; comments by 3–22–77..... 3859

CONTINUED INSIDE

reminders

(The items in this list were editorially compiled as an aid to FEDERAL REGISTER users. Inclusion or exclusion from this list has no legal significance. Since this list is intended as a reminder, it does not include effective dates that occur within 14 days of publication.)

Rules Going Into Effect Today

DOT/CG—Drawbridge operations; Curtis Creek, Md..... 55345; 12–20–76
EPA—Implementation plans; Virgin Islands..... 55530; 12–21–76

List of Public Laws

NOTE: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's LIST OF PUBLIC LAWS.

AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The six-month trial period ended August 6. The program is being continued on a voluntary basis (see OFR notice, 41 FR 32914, August 6, 1976). The following agencies have agreed to remain in the program:

Monday	Tuesday	Wednesday	Thursday	Friday
NRC	USDA/ASCS		NRC	USDA/ASCS
DOT/COAST GUARD	USDA/APHIS		DOT/COAST GUARD	USDA/APHIS
DOT/NHTSA	USDA/FNS		DOT/NHTSA	USDA/FNS
DOT/FAA	USDA/REA		DOT/FAA	USDA/REA
DOT/OHMO	CSC		DOT/OHMO	CSC
DOT/OPSO	LABOR		DOT/OPSO	LABOR
	HEW/FDA			HEW/FDA

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Scheduling of documents for publication.	523–5220
Copies of documents appearing in the Federal Register.	523–5240
Corrections	523–5286
Public Inspection Desk.....	523–5215
Finding Aids.....	523–5227
Public Briefings: "How To Use the Federal Register."	523–5282
Code of Federal Regulations (CFR)..	523–5266
Finding Aids.....	523–5227
PRESIDENTIAL PAPERS:	
Executive Orders and Proclamations.	523–5233
Weekly Compilation of Presidential Documents.	523–5235
Public Papers of the Presidents....	523–5235
Index	523–5235
PUBLIC LAWS:	
Public Law dates and numbers.....	523–5237
Slip Laws.....	523–5237
U.S. Statutes at Large.....	523–5237
Index	523–5237
U.S. Government Manual.....	523–5230
Automation	523–5240
Special Projects.....	523–5240

HIGHLIGHTS—Continued

ANIMAL DRUGS
HEW/FDA approves cambendazole suspension, pellets, or paste for treating helminth in horses; effective 1–21–77 3838
HEW/FDA changes sponsor name for certain new drugs; effective 1–21–77..... 3837
HEW/FDA clarifies use of Ketamine hydrochloride injection in cats; effective 1–21–77..... 3838

SHUTTLE SERVICES
NASA procedures for reimbursement from non-U.S. Government users; effective 1–21–77..... 3829

FEDERAL OIL AND GAS FIELDS
Interior seeks comments by 2–22–77 on procedures for determination of Maximum Efficient Rate and Temporary Emergency Production Rate..... 3904

AGRICULTURAL COMMODITIES
USDA/CCC proposes to revise export credit sales program; comments by 2–22–77..... 3849

GOVERNMENT IN SUNSHINE ACT
Foreign Claims Settlement Commission proposes procedures for public meetings; comments by 2–17–77..... 3872
Indian Claims Commission proposes opening agency meetings to public and prohibiting ex parte communications; comments by 2–28–77..... 3864

CHILD CARE FOOD PROGRAM
USDA/FNS prescribes food cost factors for meals for 1–1–77 thru 6–30–77; effective 1–1–77..... 3885

CHANGED MEETINGS—
Commerce/DIBA: Importers' Textile Advisory Committee; 2–9–77..... 3886
Management-Labor Textile Advisory Committee; 2–10–77 3886
NSF: Advisory Committee for Research; 1–27 thru 1–28–77; location change..... 3905

MEETINGS—
Advisory Council on Historic Preservation; 2–2 thru 2–3–77 3875
USDA/FS: President's Quetico-Superior Committee; 3–17–77 3885
Superior National Forest Advisory Committee; 2–24–77 3885
CRC: South Carolina Advisory Committee; 2–4–77..... 3885
Commerce/NOAA: Marine Fisheries Advisory Committee; 2–9 thru 2–10–77..... 3887
HEW/Federal Council on Aging: Committee on Economics of Aging; 2–14 thru 2–15–77..... 3899
Senior Services Committee; 2–15 thru 2–16–77..... 3900
International Trade Commission; 1–24–77..... 3905
NRC: Advisory Committee on Reactor Safeguards:
Emergency Core Cooling Systems Subcommittee; 2–5–77 3906
Preliminary schedule; January thru March..... 3905
State: Ocean Affairs Advisory Committee; 1–25 thru 1–26–77 3944
Secretary of State's Advisory Committee on Private International Law, Study Group of Hotelkeepers Liability; 2–17–77..... 3945
Shipping Coordinating Committee, Subcommittee on Safety of Life at Sea; 2–17–77..... 3945
AID: International Food and Agricultural Development Board; 2–14 thru 2–15–77..... 3945
DOT/FAA: Microwave Landing System Advisory Committee; 2–3–77..... 3947

PART II:

HEALTH PLANNING
HEW/PHS regulates capital expenditure review, certificate of need, and review of new institutional health services; effective 2–22–77 4001

PART III:

LIFE INSURANCE CONTRACTS
Labor/P&WPB and Treasury/IRS announce proposed class exemption for transfers between plan participants and employee benefit plans (2 documents); comments by 2–22–77..... 4034, 4036

PART IV:

INDEX
FEC publishes Index to Advisory Opinions issued by the Commission 4039

PART V:

NATIONAL RESEARCH AND TECHNICAL ASSISTANCE PROGRAM
Commerce/NOAA proposes procedures for operation and awarding of grants; comments by 2–21–77..... 4045

PART VI:

EMPLOYEE SELECTION PROCEDURES
Justice, Labor/FCCPO, and CSC issue document on questions and answers on Federal executive agency guidelines 4051

PART VII:

MINIMUM WAGES
Labor/ESA publishes general wage determination decisions for Federal and federally assisted construction.... 4051

contents

AGENCY FOR INTERNATIONAL DEVELOPMENT
Notices
Meetings:
International Food and Agricultural Development Board.... 3945

AGING, FEDERAL COUNCIL
Notices
Meetings:
Economics of Aging Committee 3899
Senior Services Committee..... 3900

AGRICULTURAL MARKETING SERVICE
Rules
Almonds grown in Calif..... 3847
Oranges (navel) grown in Ariz. and Calif (2 documents).. 3845, 3846

AGRICULTURE DEPARTMENT
See Agricultural Marketing Service; Animal and Plant Health Inspection Service; Commodity Credit Corporation; Farmers Home Administration; Food and Nutrition Service; Forest Service; Rural Electrification Administration; Soil Conservation Service.

ALCOHOL, TOBACCO AND FIREARMS BUREAU
Rules
Metric fill standards; distilled spirits; conversion factor..... 3839

ANIMAL AND PLANT HEALTH INSPECTION SERVICE
Proposed Rules
Animal and poultry import restrictions:
Livestock foreign embarkation quarantine station, establishment; criteria and standards. 3859

ARMY DEPARTMENT
See Engineers Corps.

CHILD SUPPORT ENFORCEMENT OFFICE
Rules
Federal financial participation:
Deferral, disallowance, and reconsideration of claims..... 3843

CIVIL RIGHTS COMMISSION
Notices
Meetings:
South Carolina Advisory Committee 3885

CIVIL SERVICE COMMISSION
Rules
Excepted service:
Army Department..... 3827
National Aeronautics and Space Administration 3827
Overseas Private Investment Corp 3827
Veterans Administration..... 3827
Notices
Employee selection procedure guidelines; appendices to Federal Personnel Manual Supplement; questions and answers.. 4058
President's Commission on White House Fellowships; availability of report on 1976 activities..... 3886

COAST GUARD
Rules
Drawbridge operations:
California, Oakland Inner Harbor Tidal Canal..... 3841
Proposed Rules
Anchorage regulations:
Hawaii 3871
Notices
Bridges, highway; proposed construction:
Boca Raton, Fla., hearing..... 3946
Committees; establishment, renewals, etc.:
Towing Industry Advisory Committee et al.; appointment of members 3945

COMMERCE DEPARTMENT
See Domestic and International Business Administration; Maritime Administration; National Oceanic and Atmospheric Administration.

COMMODITY CREDIT CORPORATION
Proposed Rules
Export programs:
Agricultural commodities; financing of sales from private stocks 3849

DEFENSE DEPARTMENT
See Engineers Corps.

DOMESTIC AND INTERNATIONAL BUSINESS ADMINISTRATION
Notices
Meetings:
Management-Labor and Importers Textile Advisory Committees; date and time changes 3886

EDUCATION OFFICE
Rules
Emergency school aid:
Applications; criteria and procedures 3842
Notices
Emergency school aid; interpretation regarding desegregation plans 3900

EMPLOYMENT STANDARDS ADMINISTRATION
Rules
Longshoremen's and Harbor Workers' Compensation Act:
Administering Agency; definitions and use of terms; and administration and procedures; redesignation of Office of Workers' Compensation Programs and establishment and changes in compensation districts 3847
Notices
Minimum wages for Federal and federally-assisted construction; general wage determination decisions, modifications, and supersedeas decisions..... 4059

ENGINEERS CORPS
Rules
Planning assistance to States:
Water resources development.. 3841

ENVIRONMENTAL PROTECTION AGENCY
Rules
Air quality implementation plans; various States, etc.:
New Jersey; mass transit priority incentives..... 3841
Notices
Air pollution; motorcycles, exhaust and crankcase emission standards; availability of environmental statement..... 3889
Air quality implementation plans, preparation, adoption and submittal; interpretative ruling, hearings 3888
Pesticide chemicals; tolerances, exemptions, etc.; petitions:
BASF Wyandotte Corp.; correction 3889
Water pollution; availability of environmental statements on wastewater management facilities:
New Milford, Conn..... 3889
Western Contra Costa County, Calif 3889

FARMERS HOME ADMINISTRATION
Notices
Disaster and emergency areas:
Arkansas 3884
Minnesota 3884
New York..... 3884
Wisconsin 3884

FEDERAL AVIATION ADMINISTRATION
Rules
Airworthiness directives:
Boeing 3828
General Electric..... 3828
Rockwell 3828
Restricted areas..... 3829
Proposed Rules
Air traffic operating and flight rules:
Regulatory review program; inquiry 3863
Transition areas (4 documents).. 3861–3863
Notices
Airport development, State demonstration programs; implementation and operation..... 3946
Meetings:
Microwave Landing System Advisory Committee..... 3947

FEDERAL COMMUNICATIONS COMMISSION
Notices
Interference from spark-type ignition systems in motor vehicles; extension of time..... 3894
Hearings, etc.:
Hildreth Communications Co. and A–R Microwave Corp..... 3890
Newhouse Alabama Microwave, Inc., et al..... 3890
WTWV, Inc..... 3891

FEDERAL CONTRACT COMPLIANCE PROGRAMS OFFICE
Rules
Employee selection procedures; guidelines; questions and answers 4057

FEDERAL ELECTION COMMISSION
Notices
Index of advisory opinions issued by the Commission..... 4040

FEDERAL HOME LOAN BANK BOARD
Notices
Applications, etc.:
Hickory Investments, Inc..... 3894

FEDERAL HOUSING COMMISSIONER—OFFICE OF ASSISTANT SECRETARY FOR HOUSING
Rules
Minimum property standards; fire protection, lighting, etc..... 3838
Mortgage and loan insurance programs:
Property improvement and mobile home loans; fiscal year conformation 3839

FEDERAL POWER COMMISSION
Notices
Hydroelectric project licenses, specified reasonable rate of return 3878
Hearings, etc.:
Chattanooga Gas Co..... 3875
Cities Service Gas Co. (2 documents)..... 3875, 3876
Columbia Gas Transmission Corp 3876
East Tennessee Natural Gas Co. 3877
El Paso Electric Co..... 3877
Granite State Gas Transmission, Inc..... 3877
Iowa Public Service Co..... 3878
Mid Louisiana Gas Co..... 3878
Midwestern Gas Transmission Co 3878
New England Power Co..... 3879
Oklahoma Gas & Electric Co.. 3879
Panhandle Eastern Pipe Line Co 3880
Tenneco Atlantic Pipeline Co.. 3880
Tennessee Gas Pipeline Co..... 3882
Transcontinental Gas Pipe Line Corp 3883
United Gas Pipe Line Co. (2 documents) 3883

FEDERAL RAILROAD ADMINISTRATION
Rules
Operating rules:
Workmen, blue signal, protection; correction..... 3843
Rear end marking devices, passenger, commuter, and freight trains; correction..... 3843

FEDERAL REGISTER OFFICE
Notices
"Federal Register—what it is and how to use it," educational workshops; Los Angeles and San Francisco, Calif..... 3908

FEDERAL RESERVE SYSTEM
Rules
Truth-in-lending:
Official staff interpretations..... 3827
Notices
Board actions; applications and reports 3897
Applications, etc.:
American National Bancshares, Inc. 3894
Ellis Banking Corp..... 3896
Farmers Bancshares, Inc..... 3895
First City Bancorporation of Texas, Inc..... 3895
Indiana National Corp..... 3896
Mahaska Investment Co..... 3896
Royal Trust Co..... 3897

FEDERAL TRADE COMMISSION
Rules
Prohibited trade practices:
International Telephone & Telegraph Corp. et al..... 3833

FISH AND WILDLIFE SERVICE
Rules
Fishing:
Savannah National Wildlife Refuge, Ga..... 3845
Public access, entry, use, and recreation:
Wheeler National Wildlife Refuge, Ala..... 3845

FOOD AND DRUG ADMINISTRATION
Rules
Animal drugs, feeds, and related products:
Byk-Gulden, Inc.; sponsor name change 3837
Cambendazole 3838
Ketamine hydrochloride injection 3838

FOOD AND NUTRITION SERVICE
Notices
Child care food program:
Food cost factors, January–June 1977 3885

FOREIGN CLAIMS SETTLEMENT COMMISSION
Proposed Rules
Sunshine Act implementation; meetings, public observation... 3872

FOREST SERVICE
Notices
Meetings:
Quetico-Superior Committee... 3885
Superior National Forest Advisory Committee..... 3885

GEOLOGICAL SURVEY
Notices
Geothermal resource areas, operations, etc.:
California 3903

HEALTH, EDUCATION, AND WELFARE DEPARTMENT

See Child Support Enforcement Office; Education Office; Food and Drug Administration; Public Health Service; Social Security Administration.

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

See Federal Housing Commissioner—Office of Assistant Secretary for Housing.

HISTORIC PRESERVATION, ADVISORY COUNCIL

Notices

Meeting ---- 3875

INDIAN CLAIMS COMMISSION

Proposed Rules

Sunshine Act implementation; public observation of meetings and ex parte communications ---- 3864

INTERIOR DEPARTMENT

See also Fish and Wildlife Service; Geological Survey; Land Management Bureau.

Notices

Oil and gas fields, Federal; implementation of section 106, Energy Policy and Conservation Act ---- 3904

Rate adjustment; Pacific Gas and Electric Co., final position ---- 3903

INTERNAL REVENUE SERVICE

Rules

Income taxes:
- Retirement accounts, annuities, and endowment contracts, individual; disclosure statements ---- 3839

Proposed Rules

Income taxes:
- Corporate separations; distribution of stock and securities; republication ---- 3866

Notices

- Life insurance contracts transfer to employee benefit plans; pendency of proposed class exemption ---- 4034

INTERNATIONAL TRADE COMMISSION

Notices

Meeting, closed portion ---- 3905

INTERSTATE COMMERCE COMMISSION

Rules

Railroad car service orders:
- Boxcars; substitution of stock cars ---- 3844

Notices

Abandonment of railroad services, etc:
- Louisville and Nashville Railroad Co ---- 3949

Car service exemptions, mandatory (2 documents) ---- 3948

Hearing assignments ---- 3948

Motor carriers:
- Temporary authority applications ---- 3949

Petitions, applications, finance matters (including temporary authorities), railroad abandonments, alternate route deviations, and intrastate applications ---- 3953

JUSTICE DEPARTMENT

Notices

Employee selection procedures; uniform guidelines; questions and answers ---- 4052

LABOR DEPARTMENT

See Employment Standards Administration; Federal Contract Compliance Programs Office; Pension and Welfare Benefit Programs Office.

LAND MANAGEMENT BUREAU

Notices

Airport leases:
- Nevada (2 documents) ---- 3901, 3902

Applications, etc.:
- New Mexico (4 documents) ---- 3902

Authority delegations:
- Lands and Minerals Operations Branch, Lands Section Chief and Minerals Section Chief ---- 3901

Opening of public lands:
- Oregon ---- 3902

Outer Continental Shelf official protraction diagram, approval ---- 3903

Withdrawal and reservation of lands, proposed, etc.:
- Colorado ---- 3903

MANAGEMENT AND BUDGET OFFICE

Notices

Clearance of reports; list of requests ---- 3908

Privacy Act of 1974, reports on new systems ---- 3909

MARITIME ADMINISTRATION

Notices

Foreign construction cost computations:
- LASH Type vessels; MA Design C9–S–81f ---- 3886

Applications, etc.:
- States Steamship Co ---- 3886

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Rules

Shuttle services, reimbursement; non-U.S. government users ---- 3829

NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION

Rules

Motor vehicle safety standards:
- Tires, new pneumatic, for passenger cars ---- 3844

Organization and functions:
- Authority delegation to chief counsel; odometers ---- 3843

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Rules

Marine mammals:
- Taking and importation; State laws and regulations, approval and review; correction ---- 3845

Proposed Rules

Coastal zone management programs; research and technical assistance ---- 4045

Notices

Meetings:
- Marine Fisheries Advisory Committee ---- 3887

Marine mammals:
- Incidental taking; yellowfin tuna purse seine fishing operations; receipt of recommended decision ---- 3886

Marine mammal permit applications, etc.:
- Mystic Marinelife Aquarium ---- 3886

NATIONAL SCIENCE FOUNDATION

Notices

Meetings:
- Research Advisory Committee; location change ---- 3905

NATIONAL TRANSPORTATION SAFETY BOARD

Notices

Safety recommendations and accident reports, and 1976 civil aviation safety statistics; availability and receipt ---- 3907

NUCLEAR REGULATORY COMMISSION

Notices

Meetings:
- Reactor Safeguards Advisory Committee (2 documents) ---- 3905, 3908

PENSION AND WELFARE BENEFIT PROGRAMS OFFICE

Rules

Life insurance contracts transfer to employee benefit plans; pendency of proposed class exemption; cross reference ---- 4057

Proposed Rules

Fiduciary responsibility:
- Employer securities and real property; acquisition and holding, divestiture; correction ---- 3871

Notices

Employee benefit plans:
- Life insurance contracts and annuities transfer to plan participants; pendency of proposed class exemption ---- 4036

PUBLIC HEALTH SERVICE

Rules

Health planning and resources development:
- Capital expenditure review, certificate of need, and review of new institutional health services ---- 4001

Notices

Health maintenance organizations, qualified ---- 3901

RURAL ELECTRIFICATION ADMINISTRATION

Rules

Information, public:
- Title insurance for realty investments; Bulletin 380–1 supplement ---- 3847

Notices

Environmental statements; availability, etc.:
- Colorado-Ute Electric Association, Inc ---- 3885
- Pacific Northwest Generating Co ---- 3885

SECURITIES AND EXCHANGE COMMISSION

Notices

Self-regulatory organizations; proposed rule changes:
- American Stock Exchange, Inc ---- 3909
- Chicago Board Options Exchange, Inc. (2 documents) ---- 3909, 3911
- Pacific Stock Exchange Inc ---- 3914
- Philadelphia Stock Exchange, Inc ---- 3915

Hearings, etc.:
- Boston Stock Exchange ---- 3939
- CNA Money Instruments, Inc ---- 3939
- General Public Utilities Corp ---- 3912
- Jersey Central Power & Light Co., et al ---- 3913
- Keogh-Smathers Fund, Inc ---- 3939
- Midwest Stock Exchange, Inc ---- 3940
- National Association of Securities Dealers, Inc ---- 3913
- National Securities Clearing Corp ---- 3916
- Options Clearing Corp ---- 3914
- Philadelphia Stock Exchange, Inc ---- 3915
- Schuster Spectrum Fund, Inc ---- 3915
- Stephens Arkansas Tax-Exempt Bond Fund and Stephens, Inc ---- 3940
- SoGen International Fund Inc ---- 3942

SMALL BUSINESS ADMINISTRATION

Notices

Applications, etc.:
- Admiral Investment Co., Inc ---- 3943
- Cameron-Brown Capital Corp ---- 3944

Disaster areas:
- Minnesota ---- 3944

SOIL CONSERVATION SERVICE

Rules

Organization and functions:
- Administrator; coordination of State coastal zone management plan reviews ---- 3845

SOCIAL SECURITY ADMINISTRATION

Notices

Authority delegations:
- Deputy Commissioner, et al., kidney transplant and dialysis services reimbursement limits; correction ---- 3901

STATE DEPARTMENT

See also Agency for International Development.

Notices

Meetings:
- Ocean Affairs Advisory Committee ---- 3944
- Private International Law Advisory Committee, Hotelkeepers' Liability Study Group ---- 3945
- Shipping Coordinating Committee, Safety of Life at Sea Subcommittee ---- 3945

TEXTILE AGREEMENTS IMPLEMENTATION COMMITTEE

Notices

Tariff schedules of United States Annotated Numbers; correlation of textile and apparel categories ---- 3888

TRANSPORTATION DEPARTMENT

See also Coast Guard; Federal Aviation Administration; Federal Railroad Administration; National Highway Traffic Safety Administration.

Notices

Deepwater port licenses:
- LOOP and Seadock ---- 3947

TREASURY DEPARTMENT

See also Alcohol, Tobacco and Firearms Bureau; Internal Revenue Service.

Rules

Foreign diplomatic missions, protection; procedures for assistance to State and local governments; correction ---- 3841

"THE FEDERAL REGISTER—WHAT IT IS AND HOW TO USE IT"

Briefings at the Office of the Federal Register

(For Details, See 41 FR 46527, Oct. 21, 1976)

RESERVATIONS: DEAN L. SMITH, 523–5282

list of cfr parts affected in this issue

The following numerical guide is a list of the parts of each title of the Code of Federal Regulations affected by documents published in today's issue. A cumulative list of parts affected, covering the current month to date, follows beginning with the second issue of the month.

A Cumulative List of CFR Sections Affected is published separately at the end of each month. The guide lists the parts and sections affected by documents published since the revision date of each title.

5 CFR
213 (4 documents) ---- 3827

7 CFR
601 ---- 3845
907 (2 documents) ---- 3845, 3846
981 ---- 3847
1701 ---- 3847

PROPOSED RULES:
1488 ---- 3849

9 CFR

PROPOSED RULES:
92 ---- 3859

12 CFR
226 ---- 3827

14 CFR
39 (3 documents) ---- 3828
71 ---- 3829
73 ---- 3829
1214 ---- 3829

PROPOSED RULES:
71 (4 documents) ---- 3861–3863
91 ---- 3863

15 CFR

PROPOSED RULES:
933 ---- 4046

16 CFR
13 ---- 3833

20 CFR
701 ---- 3847
702 ---- 3847

21 CFR
510 ---- 3837
520 ---- 3838
522 ---- 3838
548 ---- 3838
555 ---- 3838

24 CFR
200 ---- 3838
201 ---- 3839

25 CFR

PROPOSED RULES:
504 ---- 3864

26 CFR
1 ---- 3839

PROPOSED RULES:
1 ---- 3866

27 CFR
170 ---- 3840
194 ---- 3840
201 ---- 3840

29 CFR

PROPOSED RULES:
2550 ---- 3871

31 CFR
13 ---- 3841

33 CFR
117 ---- 3841
265 ---- 3841

PROPOSED RULES:
110 ---- 3871

40 CFR
52 ---- 3841

41 CFR
60–3 ---- 4057

42 CFR
100 ---- 4024
122 ---- 4024
123 ---- 4028

45 CFR
185 ---- 3842
304 ---- 3843

PROPOSED RULES:
504 ---- 3872

49 CFR
218 ---- 3843
221 ---- 3843
501 ---- 3843
571 ---- 3844
1033 ---- 3844

50 CFR
28 ---- 3845
33 ---- 3845
216 ---- 3845

CUMULATIVE LIST OF PARTS AFFECTED DURING JANUARY

The following numerical guide is a list of parts of each title of the Code of Federal Regulations affected by documents published to date during January.

1 CFR

PROPOSED RULES:
442 ---- 1267

3 CFR

EXECUTIVE ORDERS:
10480 (Amended by EO 11956) ---- 2947
11490 (Amended by EO 11953) ---- 2491
11651 (Amended by EO 11951) ---- 1453
11724 (Superseded by EO 11954) ---- 2297
11793 (Revoked by EO 11957) ---- 3295
11821 (Amended by EO 11949) ---- 1017
11921 (See EO 11953) ---- 2491
11949 ---- 1017
11950 ---- 1451
11951 ---- 1453
11952 ---- 2293
11953 ---- 2491
11954 ---- 2297
11955 ---- 2499
11956 ---- 2947
11957 ---- 3295

5 CFR
213 ---- 1455, 2949, 3297, 3827
610 ---- 3297
1410 ---- 2299

7 CFR
1 ---- 743
2 ---- 2968
26 ---- 1019
55 ---- 2969
56 ---- 2970
59 ---- 2971
70 ---- 2971
210 ---- 2971
226 ---- 1475
354 ---- 1475
601 ---- 3845
718 ---- 2973
722 ---- 1476
726 ---- 2300
729 ---- 749
730 ---- 2301
905 ---- 1022
907 ---- 1230, 2665, 3845, 3846
910 ---- 1476, 2977, 3297
917 ---- 3625
928 ---- 1, 2, 2665
930 ---- 3626
959 ---- 2308
971 ---- 2666, 3626
981 ---- 3159, 3847
1430 ---- 3
1473 ---- 2977
1701 ---- 3847
1822 ---- 1023, 2051
1843 ---- 1231
1845 ---- 2308

PROPOSED RULES:
52 ---- 3178
270 ---- 1479
271 ---- 1479
272 ---- 780, 2328
275 ---- 1479
661 ---- 3311
730 ---- 780
967 ---- 2691
987 ---- 2503
1063 ---- 1356

7 CFR—Continued

PROPOSED RULES—Continued
1070 ---- 1356
1078 ---- 1356
1079 ---- 1356
1205 ---- 2503
1421 ---- 2328
1434 ---- 2980
1473 ---- 2977
1488 ---- 3849
1701 ---- 1479

8 CFR
204 ---- 3626
212 ---- 3627
214 ---- 3627

9 CFR
73 ---- 2949, 3297
97 ---- 1455
113 ---- 750, 1456
317 ---- 3298
319 ---- 751, 3298
381 ---- 2949

PROPOSED RULES:
92 ---- 1483, 3859

10 CFR
100 ---- 2051
140 ---- 46
Ch. II ---- 1036
203 ---- 3814
212 ---- 1036, 1456, 2308

FEA RULINGS:
1977–1 ---- 3628

PROPOSED RULES:
2 ---- 3178
51 ---- 3178
212 ---- 2646
215 ---- 3652

11 CFR

PROPOSED RULES:
2 ---- 3810
3 ---- 3810

12 CFR
4 ---- 2950
16 ---- 2200, 3299
202 ---- 1242, 2950
206 ---- 3171
207 ---- 968
211 ---- 752
212 ---- 2951
213 ---- 752
220 ---- 752
221 ---- 968
224 ---- 968
225 ---- 752, 1263, 2951
226 ---- 753, 1264, 2650, 3827
227 ---- 2950
265 ---- 2501, 2950
563 ---- 2952
570 ---- 2952
601 ---- 2666
704 ---- 1458

PROPOSED RULES:
226 ---- 780, 1268
505b ---- 2503

12 CFR—Continued

PROPOSED RULES—Continued
523 ---- 2338
545 ---- 2328
564 ---- 2328
604 ---- 55, 2078

13 CFR
309 ---- 753

PROPOSED RULES:
112 ---- 2506
121 ---- 2505, 2980

14 CFR
25 ---- 2052
37 ---- 19
39 ---- 1217, 1218, 2053–2055, 3870, 3828
71 ---- 300, 2055, 2056, 3170, 3171, 3829
73 ---- 300, 3829
75 ---- 300
97 ---- 1219, 2056, 3171
221a ---- 1220
241 ---- 1219
288 ---- 3299
302 ---- 2667
378a ---- 2309
385 ---- 1220, 2667, 2668
1214 ---- 3829

PROPOSED RULES:
39 ---- 1268–1270
71 ---- 1270, 1271, 2078, 2079, 3179, 3861–3863
91 ---- 3863
152 ---- 2850
239 ---- 2693
288 ---- 1271
298 ---- 2692
310b ---- 2995
370 ---- 2995
399 ---- 3180

15 CFR
369 ---- 2057
371 ---- 1222
377 ---- 1222
931 ---- 1164

PROPOSED RULES:
920 ---- 2507
933 ---- 4046

16 CFR
2 ---- 3300
13 ---- 3–5, 3636, 3640, 3833
1201 ---- 1428

PROPOSED RULES:
1 ---- 2980
4 ---- 2079
438 ---- 1483
447 ---- 2694
450 ---- 1038
801 ---- 3181, 3655
1301 ---- 1484

17 CFR
1 ---- 2628
180 ---- 3433
200 ---- 753
211 ---- 2058
240 ---- 753, 754, 2060, 3301

17 CFR—Continued
241 ... 759
276 ... 2953
PROPOSED RULES:
239 ... 3312
240 ... 781, 782, 3312
249 ... 782
270 ... 3312
275 ... 3312

18 CFR
2 ... 2954
11 ... 1226
141 ... 6
154 ... 2954
300 ... 2668
PROPOSED RULES:
1 ... 2079
2 ... 2329
3 ... 2079
154 ... 1272
157 ... 56

19 CFR
4 ... 3160
6 ... 2309
10 ... 2309, 2310, 3161
153 ... 2501
172 ... 3161
PROPOSED RULES:
1 ... 2329
113 ... 2330
201 ... 805

20 CFR
401 ... 3640
404 ... 2062
405 ... 1028
416 ... 2062
422 ... 3640
614 ... 1459
656 ... 3440
701 ... 3847
702 ... 3847
PROPOSED RULES:
416 ... 2079, 3316

21 CFR
2 ... 1459
4 ... 3108
8 ... 1459
102 ... 761
121 ... 1460, 1461, 3302
314 ... 1624, 1638, 3109
320 ... 1624, 1638
510 ... 3837
514 ... 3109
520 ... 1462, 3838
522 ... 3838
540 ... 1462
548 ... 3838
555 ... 3838
558 ... 761, 1463, 2312
PROPOSED RULES:
1 ... 2330
3e ... 1483
11 ... 806
18 ... 2330
121 ... 1483
128d ... 807
369 ... 2330
500 ... 2330
510 ... 2981
701 ... 2330

21 CFR—Continued
PROPOSED RULES—Continued
740 ... 2330
801 ... 2330

22 CFR
41 ... 2501
42 ... 2501

23 CFR
625 ... 6, 3642
712 ... 7

24 CFR
200 ... 3838
201 ... 3839
203 ... 762
207 ... 764, 2954
213 ... 764, 2954
221 ... 765, 2954
231 ... 766, 2954
241 ... 763, 3162
280 ... 960
1905 ... 3162
1914 ... 2193
1917 ... 2063–2068
3282 ... 2576
PROPOSED RULES:
201 ... 1487
242 ... 3655
279 ... 3112
406 ... 2796
501 ... 1488
570 ... 3292, 3437
866 ... 3181
1917 ... 2082

25 CFR
PROPOSED RULES:
221 ... 3319
504 ... 3864

26 CFR
1 ... 767, 1195, 1463, 2501, 3839
7 ... 1469, 1471, 2954
41 ... 2671
48 ... 2671
142 ... 2677
154 ... 2312
404 ... 1029, 2313
PROPOSED RULES:
1 ... 57, 2694, 3181, 3866
54 ... 1488
301 ... 1038, 1489

27 CFRN
170 ... 3840
194 ... 3840
201 ... 3840

28 CFR
0 ... 3163
PROPOSED RULES:
32 ... 1390

29 CFR
15 ... 769
60 ... 3440
94 ... 1656, 2426
95 ... 2427
96 ... 2428
97 ... 1656
98 ... 2428
99 ... 773, 2430
511 ... 2313

29 CFR—Continued
609 ... 2954
613 ... 3303
672 ... 2965
673 ... 2955
720 ... 3303
1601 ... 3163
1910 ... 2956, 3304
1926 ... 2956
1952 ... 2313
2608 ... 2677
2610 ... 2678
PROPOSED RULES:
90 ... 2981
215 ... 3319
1910 ... 808, 1742, 1806
2550 ... 1488, 1618, 3871

30 CFR
100 ... 1214
211 ... 3642
PROPOSED RULES:
11 ... 2986
77 ... 2800
211 ... 1489, 2082
251 ... 3321

31 CFR
1 ... 2311
13 ... 3841
51 ... 2196, 2422
101 ... 1471
210 ... 9
515 ... 1472

32 CFR
40 ... 3646
256 ... 773
2000 ... 2679
PROPOSED RULES:
242a ... 1492
903 ... 2085
1482 ... 3322

33 CFR
40 ... 10
92 ... 2681
117 ... 3841
159 ... 11
183 ... 2681, 2682
204 ... 3646
265 ... 3841
PROPOSED RULES:
110 ... 3871
114 ... 3181
115 ... 3181
161 ... 3182
209 ... 2572

34 CFR
Ch. I ... 12
232 ... 1478

36 CFR
212 ... 2957
221 ... 2957
231 ... 2957
251 ... 2957
261 ... 2957
262 ... 2961
271 ... 2962
272 ... 2962
291 ... 2962
295 ... 2962
606 ... 1473

36 CFR—Continued
PROPOSED RULES:
7 ... 3655, 3656
16 ... 812
17 ... 812

37 CFR
201 ... 2962
PROPOSED RULES:
1 ... 2632
3 ... 2632
5 ... 2632

38 CFR
0 ... 2314
3 ... 2069
17 ... 2316

39 CFR
111 ... 3470
3002 ... 3646
PROPOSED RULES:
1 ... 2699
2 ... 2699
3 ... 2699
4 ... 2699
5 ... 2699
6 ... 2699
7 ... 2699
8 ... 2699

40 CFR
6 ... 2450
52 ... 3841
60 ... 1214
61 ... 1215
86 ... 1122, 1150
129 ... 2588, 2617
136 ... 3306
190 ... 2858
220 ... 2468
221 ... 2470
222 ... 2471
223 ... 2474
224 ... 2474
225 ... 2475
226 ... 2475
227 ... 2476
228 ... 2482
229 ... 2489
409 ... 3164
430 ... 1398
440 ... 3165
455 ... 2316
PROPOSED RULES:
22 ... 1492
52 ... 1273, 1494, 2705, 3657
60 ... 2842
80 ... 3183
85 ... 1044
180 ... 815
201 ... 2330
202 ... 2330
260 ... 2331
1516 ... 1044

41 CFR
3-3 ... 2683
3-4 ... 2684
3-16 ... 2684
3-50 ... 2684
9-7 ... 2963
9-15 ... 2963
9-51 ... 2684
Ch. 14 ... 1215
14-1 ... 1215
14-10 ... 1215
60-1 ... 3458
60-2 ... 3461
60-3 ... 3825
60-30 ... 3462, 4057
60-741 ... 3307
101-1 ... 12
101-25 ... 1030
101-26 ... 1032
101-28 ... 2317
101-38 ... 1477
PROPOSED RULES:
3-1 ... 1273
101-17 ... 816

42 CFR
100 ... 4024
122 ... 4024
123 ... 4028
PROPOSED RULES:
54b ... 2986
101 ... 2994

43 CFR
4 ... 1216
419 ... 3307
2650 ... 779
3100 ... 1032
4110 ... 778
4120 ... 778
PUBLIC LAND ORDER:
5561 (Amended by PLO 5612) ... 2684
5611 (Corrected by PLO 5612) ... 2684
5612 ... 2706
PROPOSED RULES:
29 ... 3660
2400 ... 3657
3520 ... 2684
3800 ... 1045

45 CFR
177 ... 2963
185 ... 3842
193 ... 1190
233 ... 3307
248 ... 2684
250 ... 779
304 ... 3843
1005 ... 3165
1050 ... 3272
1068 ... 3165
1336 ... 3782
PROPOSED RULES:
Subtitle A ... 3325
46 ... 2792, 3076
153 ... 3792
158 ... 2086
Ch. II ... 2445
201 ... 3664
205 ... 2440
249 ... 3325, 3665
250 ... 2331, 3328
304 ... 3663
504 ... 3872
706 ... 2708
1480 ... 1045
1703 ... 3667

46 CFR
536 ... 1473
PROPOSED RULES:
10 ... 3186
12 ... 1278

46 CFR—Continued
PROPOSED RULES—Continued
502 ... 817
531 ... 3186

47 CFR
0 ... 3166, 3167
1 ... 3166–3168, 3308
13 ... 1231
15 ... 1231, 3308
21 ... 1232
73 ... 1233, 2502, 3167, 3308, 3646
74 ... 2069
76 ... 3308
81 ... 1474
83 ... 1231, 1474
87 ... 3168, 3308
97 ... 3166, 3167
PROPOSED RULES:
64 ... 1278
73 ... 1278, 1279, 2086, 3186
74 ... 2087
76 ... 3670
83 ... 2088
97 ... 2089

49 CFR
Ch. V ... 2864
25 ... 12
99 ... 3118
173 ... 2071, 2688
174 ... 2071
178 ... 2688
218 ... 2318, 3843
221 ... 2321, 3843
225 ... 1221
231 ... 1222
310 ... 2964
501 ... 3843
571 ... 3844
630 ... 3772
1033 ... 2965, 3309, 3310, 3844
1047 ... 19
1056 ... 3169
1241 ... 1474
1249 ... 1474
1250 ... 1474
1251 ... 1474
PROPOSED RULES:
Subtitle A ... 2868
173 ... 2709
179 ... 2709
228 ... 2994
230 ... 2994
267 ... 2507
523 ... 2092
571 ... 3187
1251 ... 2092

50 CFR
17 ... 2071, 2965
26 ... 1033, 2689, 2690, 3845
32 ... 2690
33 ... 1034, 2690, 3845
216 ... 1034, 3845
260 ... 2326
261 ... 2326
262 ... 2326
263 ... 2326
264 ... 2326
265 ... 2326
266 ... 2326
267 ... 2326
268 ... 2326
269 ... 2326
270 ... 2326
271 ... 2326
272 ... 2326
273 ... 2326

50 CFR—Continued	
274	2326
275	2326
276	2326
277	2326
278	2326
279	2326

50 CFR—Continued	
601	2968
602	2968
PROPOSED RULES:	
17	2101, 2102, 2507
216	1049

FEDERAL REGISTER PAGES AND DATES—JANUARY

Pages	*Date*
1–741	Jan. 3
743–1015	4
1017–1194	5
1195–1450	6
1451–2049	7
2051–2291	10
2293–2497	11
2499–2664	12
2665–2946	13
2947–3157	14
3159–3294	17
3295–3624	18
3625–3826	19
3827–4109	21

rules and regulations

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

Title 5—Administrative Personnel

CHAPTER I—CIVIL SERVICE COMMISSION

PART 213—EXCEPTED SERVICE

Department of the Army

Part 213 is amended to show that 10 positions of professor in the National Defense University are excepted under Schedule B. Simultaneously, Schedule A § 213.3107(e), which is superseded by the Schedule B authority, is revoked.

Effective on January 21, 1977, § 213.3107(e) is revoked and § 213.3207 (b) is added as set out below:

§ 213.3107 Department of the Army.

* * * * *

(e) [Revoked].

* * * * *

§ 213.3207 Department of the Army.

(b) *National Defense University.* (1) Ten positions of professor for employment of any one individual not to exceed 1 year. Such employment may be extended twice for additional periods not to exceed 1 year with prior Commission approval. Total employment of any one individual under this authority may not exceed 3 years.

(5 U.S.C. 3301, 3302; EO 10577, 3 CFR 1954–1958 Comp., p. 218.)

UNITED STATES CIVIL SERVICE COMMISSION,
JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc.77-1934 Filed 1-19-77;8:45 am]

PART 213—EXCEPTED SERVICE

Overseas Private Investment Corporation

Section 213.3317 is amended to show that one position of Secretary (Stenography) to the Vice President, Insurance, is excepted under Schedule C.

Effective on January 21, 1977, § 213.3317(d) is added as set out below:

§ 213.3317 Overseas Private Investment Corporation.

* * * * *

(d) One Secretary (Stenography) to the Vice President, Insurance.

(5 U.S.C. 3301, 3302; EO 10577, 3 CFR 1954–1958 Comp., p. 218.)

UNITED STATES CIVIL SERVICE COMMISSION,
JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc.77-1933 Filed 1-19-77;8:45 am]

PART 213—EXCEPTED SERVICE

Veterans Administration

Section 213.3327 is amended to show that the following positions are reestablished under Schedule C: Four Confidential Assistants to the Special Assistant to the Administrator; one Confidential Assistant to the Administrator; two Confidential Assistants to the Executive Assistant to the Administrator; and one Confidential Assistant to the Assistant Deputy Administrator.

Effective on January 21, 1977, §§ 213.3327(a)(1), (a)(6), (a)(7), and (a)(8) are amended as set out below:

§ 213.3327 Veterans Administration.

(a) *Office of the Administrator.* (1) Five Confidential Assistants to the Special Assistant to the Administrator.

* * * * *

(6) Four Confidential Assistants to the Administrator.

(7) Three Confidential Assistants to the Executive Assistant to the Administrator.

(8) Five Confidential Assistants to the Assistant Deputy Administrator.

* * * * *

(5 U.S.C. 3301, 3302; EO 10577, 3 CFR 1954–1958 Comp., p. 218.)

UNITED STATES CIVIL SERVICE COMMISSION,
JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc.77-1936 Filed 1-19-77;8:45 am]

PART 213—EXCEPTED SERVICE

National Aeronautics and Space Administration

Section 213.3348 is amended to show that two positions of Special Assistant to the Associate Administrator for External Affairs are excepted under Schedule C.

Effective on January 21, 1977, § 213.3348(e) is added as set out below:

§ 213.3348 National Aeronautics and Space Administration.

* * * * *

(e) Two Special Assistants to the Associate Administrator for External Affairs.

* * * * *

(5 U.S.C. 3301, 3302; EO 10577, 3 CFR 1954–1958 Comp., p. 218.)

UNITED STATES CIVIL SERVICE COMMISSION,
JAMES C. SPRY,
Executive Assistant to the Commissioner.

[FR Doc.77-1935 Filed 1-19-77;8:45 am]

Title 12—Banks and Banking

CHAPTER II—FEDERAL RESERVE SYSTEM

SUBCHAPTER A—BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

[Reg. Z; FC–0036, FC–0087]

PART 226—TRUTH IN LENDING

Official Staff Interpretations

In accordance with 12 CFR 226.1(d), the Board is publishing the following official staff interpretations of Regulation Z, issued by a duly authorized official of the Division of Consumer Affairs.

Identifying details have been deleted to the extent required to prevent a clearly unwarranted invasion of personal privacy. The Board maintains and makes available for public inspection and copying a current index providing identifying information for the public subject to certain limitations stated in 12 CFR 261.6.

Official staff interpretations may be reconsidered by the Board upon request of interested parties and in accordance with 12 CFR 226.1(d)(2). Every request for reconsideration should clearly identify the number of the official staff interpretation in question, and should be addressed to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

This interpretation shall be effective as of January 17, 1977.

§ 226.7(k); Creditor who must adjust computer software may use either § 226.7(k)(7)(i) alternative until October 28, 1977.

JANUARY 3, 1977.

This is in response to your letter of ------- in which you raised questions under § 226.7(k) of Regulation Z. Your concern is with a situation in which a creditor's computer software needs modification in order to comply with the requirements of § 226.7(k)(3)(ii). This section requires a descriptively billed non-sale credit transaction to be identified by a characterization of the transaction as a cash advance, overdraft loan, or other designation as appropriate. You ask whether a creditor who must modify computer systems in order to comply can make use of the alternative of omitting information which is not reasonably available and treating any inquiry as a billing error and an erroneous billing, and providing documentary evidence of the transaction under § 226.7(k)(7)(i)(B).

In staff's opinion, § 226.7(k)(7)(i) was intended to provide alternatives to creditors until October 28, 1977, to enable them to adjust their systems and procedures for compliance with the ultimate requirements of the Regulation and, at the same time, to ensure that customers are provided meaningful information regarding open end credit transactions. Therefore, staff believes that a creditor whose computer systems must be modified to comply with the requirements of § 226.7(k)(3)(ii) can avail himself of the § 226.7(k)(7)(i)(B) alternative. The required information would not be consid-

ered "reasonably available" in such circumstances.

In staff's opinion no different standards were intended by the Board for use of the different alternatives provided under § 226.7 (k) (7) (i) (A) and § 226.7(k)(7)(i)(B). They are both equally available during the transition period for creditors who must make adjustments to their procedures and systems in order to comply. It is the individual creditor's choice as to which of the alternatives is used.

In your letter you indicate that it is your belief that § 226.7(k)(3)(ii) requires an "alpha" description of each transaction. I should point out that it is staff's view that the designation of the transaction as a cash advance, overdraft, or other loan can be made by clearly and conspicuously referenced symbols.

This is an official staff interpretation of Regulation Z, issued in accordance with § 226.1(d)(3) of the Regulation and limited in its application to the facts outlined herein. I trust that it is responsive to your inquiry.

Sincerely,

JERAULD C. KLUCKMAN,
Assistant Director.

§ 226.4(a)(5) and § 226.4(a)(6); Credit life health and accident insurance disclosures required in order to exclude the premiums from the finance charge may be made on a statement separate from the disclosure form. This also applies to the insurance disclosures required under § 226.4(a)(5).

JANUARY 4, 1977.

This is in response to your letter of • • • in which you requested an official staff interpretation concerning the disclosure requirements of § 226.4(a)(5) of Regulation Z.

You have pointed out in your letter that Public Opinion Letter 853, dated October 30, 1974, takes the position that the disclosures required under § 226.4(a)(5) in order to exclude the premiums for credit life, accident and health insurance from the finance charge may be made on a statement separate from the regular Truth in Lending disclosure form. Several of your clients have proposed that they remove from the Truth in Lending disclosure forms all reference to credit life, accident and health insurance except for a statement that such insurance is not required by the lender. The disclosure of the cost of the insurance and the indication of the borrower's desire for the insurance would be made on a separate brochure sent to all borrowers for their consideration. You have asked for an official staff interpretation confirming that this method of disclosing insurance premiums under § 226.4(a)(5) would be in compliance with the requirements of Regulation Z.

Staff is of the opinion that the disclosures required by § 226.4(a)(5) in order to exclude the premiums for credit life, accident and health insurance from the finance charge may be made on a statement separate from the regular Truth in Lending disclosure form. This also applies to the insurance disclosures required under § 226.4(a)(5).

This is an official staff interpretation issued in accordance with § 226.1(d)(3) and is confined to the facts as stated. I trust that it is responsive to your inquiry.

Sincerely,

JERAULD C. KLUCKMAN,
Assistant Director.

Board of Governors of the Federal Reserve System, January 12, 1977.

THEODORE E. ALLISON,
Secretary of the Board.

[FR Doc.77-1830 Filed 1-19-77;8:45 am]

Title 14—Aeronautics and Space

CHAPTER I—FEDERAL AVIATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Docket No. 76-NW-26-AD; Amdt. 39-2808]

PART 39—AIRWORTHINESS DIRECTIVES

Boeing 727-100/-100C Series Airplanes

Amendment 39-2720 (41 FR 38759) AD 76-18-11, as amended by Amendments 39-2736 (41 FR 43713) and 39-2771 (41 FR 50805) requires inspection of the aft cargo door lowest side stop fittings and repair/replacement, as necessary on Boeing Model 727-100 and 727-100C series airplanes. After issuing Amendment 39-2771, the FAA has become aware that Boeing 727 operators interchange cargo doors in their fleet. Presently the AD requires inspection of only those airplanes listed in Boeing Alert Service Bulletin No. 727-52-A102 which are only those airplanes originally delivered with aft cargo doors having the stop fittings subject to fatigue cracking. These stop fittings are identified as P/N 65-19670-2 and -3. Accordingly, the AD is being amended to include all Boeing Model 727-100 and -100C series airplanes with P/N 65-59670-2 and -3 aft cargo door lowest side stop fittings which have accumulated 15,000 or more pressurization cycles.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421, and 1423), sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c))

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (31 FR 13697), § 39.13 of the Federal Aviation Regulations, Amendment 39-2720 (41 FR 38759) AD 76-18-11, as amended by Amendments 39-2736 (41 FR 43713) and 39-2771 (41 FR 50805) is amended by amending the applicability to read as follows:

BOEING. Applies to all Model 727-100 and 727-100C series airplanes, certificated in all categories, with P/N 65-19670-2 and -3 aft cargo door lowest side stop fittings which have accumulated 15,000 or more pressurization cycles.

Compliance required as indicated.

The manufacturer's specifications and procedures identified and described in this directive are incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1).

All persons affected by this directive who have not already received these documents from the manufacturer, may obtain copies upon request to Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. The documents may also be examined at FAA Northwest Region, 9010 East Marginal Way South, Seattle, Washington.

An evaluation of the anticipated impacts has been made, and it is expected that the final regulation is neither costly nor controversial.

The preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107 is not required.

This amendment becomes effective February 18, 1977.

Issued in Seattle, Washington, February 10, 1977.

C. B. WALK, JR.
Director, Northwest Region.

NOTE.—The incorporation by reference provisions in the document were approved by the Director of the Federal Register on June 19, 1967.

[FR Doc.77-1616 Filed 1-19-77;8:45 am]

[Docket No. 76-NE-36; Amdt. 39-2809]

PART 39—AIRWORTHINESS DIRECTIVES

General Electric Company CT64-820-4 Model Engines

A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive reducing the engine output shaft overspeed limit was published in 41 FR 50274.

Interested persons have been afforded an opportunity to participate in the making of the amendment. No objections were received.

The Federal Aviation Administration has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107.

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (31 FR 13697), § 39.13 of the Federal Aviation Regulations is amended by adding the following new airworthiness directive:

GENERAL ELECTRIC COMPANY. Applies to all General Electric Company CT64-820-4 model turboprop engines.

Compliance required within the next 100 hours time in service after the effective date of this AD, unless already accomplished.

To prevent the possibility of overstressing the Stage 4 turbine buckets, the engine output shaft overspeed limit is reduced from 1512 rpm to 1450 rpm. The original limit is given in Note 2 of Type Certificate Data Sheet E13EA-10, dated February 15, 1976.

This amendment becomes effective February 9, 1977.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421, and 1423) sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)))

Issued in Burlington, Massachusetts, on January 11, 1977.

QUENTIN S. TAYLOR,
Director, New England Region.

[FR Doc.77-1618 Filed 1-19-77;8:45 am]

[Airworthiness Docket No. 76-SW-61; Amdt. 39-2805]

PART 39—AIRWORTHINESS DIRECTIVES

Rockwell Model 112 Airplanes

There have been failures of the oil pressure gauge line Part Number 46320-1, on Rockwell Commander Model 112 airplanes which resulted in total loss of engine oil causing engine seizure and consequent forced emergency landing. Since this condition is likely to exist or develop in other airplanes of the same type design, an airworthiness directive is being issued to require replacement of the present copper oil pressure line assembly with a flexible hose assembly on Rockwell Commander Model 112 airplanes.

Since a situation exists which requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

In consideration of the foregoing and pursuant to the authority delegated to me by the Administrator (31 FR 13697), § 39.13 of Part 39 of the Federal Aviation Regulations is amended by adding the following new airworthiness directive:

ROCKWELL INTERNATIONAL. Applies to Model 112 airplanes (Serial Numbers 3 through 470) certificated in all categories.

Compliance required as indicated. To prevent engine failure due to loss of engine oil from failure of the engine oil pressure tube assembly, accomplish the following:

(a) As a part of each preflight check, after the effective date of this airworthiness directive, conduct a visual check of the P/N 46320-1 copper oil pressure tube assembly for cracks and oil leakage, particularly in the areas where the copper tube and its fittings attach. If any cracks or leakage are detected, remove and replace such assembly as described in paragraph c below before further flight.

(b) Within the next ten hours' time in service after the effective date of this airworthiness directive and thereafter at intervals not to exceed ten hours' time in service, accomplish the following:

(1) Remove the upper engine cowling.

(2) Clean the copper oil pressure tube assembly, P/N 46320-1, with an oil soluble solvent.

(3) Start and operate the engine until it is warm enough to respond smoothly to throttle changes (monitor oil temperature and cylinder head temperature gauges to maintain temperatures within limits), then stop the engine.

(4) Check the copper oil pressure tube assembly, P/N 46320-1, for cracks, chaffing, or any signs of oil leakage.

(5) If any of the conditions in step 4 above are detected, remove and replace such assembly as described in paragraph c below before further flight.

(6) Part I(1)(b) of Rockwell International Service Bulletin No. SB-112-46 dated November 2, 1976, refers to this same subject.

A pilot may perform the requirements of items a and b above pursuant to the provisions of FAR 43.3(h).

NOTE.—For the requirements regarding the listing of compliance and method of compliance with paragraphs a and b of this AD in the aircraft permanent maintenance record, see FAR 91.173.

(c) Within 50 hours' time in service after the effective date of this airworthiness directive, remove the P/N 46320-1 copper oil pressure tube assembly, the P/N 46080-1 elbow, the AN919-0 reducer, and the P/N 46136-47 hose assembly and replace them with P/N 46136-63 hose assembly and P/N 46080-3 elbow in accordance with Part II of Rockwell Commander Service Bulletin No. SB-112-46 dated November 2, 1976, or later FAA DOA approved revision. Previous compliance with Rockwell Commander Service Letter No. SL-112-26, June 3, 1976, satisfies this airworthiness directive.

(d) The checks required by paragraphs a and b of this airworthiness directive are no longer required after paragraph c of this airworthiness directive is accomplished.

(e) The manufacturer's specifications and procedures identified and described in this directive are incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to Customer Service Department, Rockwell International, General Aviation Division, 5001 North Rockwell Avenue, Bethany, Oklahoma 73008. These documents may also be examined at the Office of the Regional Counsel, Southwest Region, FAA, 4400 Blue Mound Road, Fort Worth, Texas, and at FAA Headquarters, 800 Independence Avenue, S.W., Washington, D.C. A historical file on this AD which includes the incorporated material in full is maintained by the FAA at its headquarters in Washington, D.C., and at the Southwest Region Office in Fort Worth, Texas.

(f) Any alternate equivalent method of compliance with this airworthiness directive must be approved by the Chief, Engineering and Manufacturing Branch, Flight Standards Division, Southwest Region, Federal Aviation Administration.

This amendment becomes effective on January 14, 1977.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421, and 1423); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)).)

Issued in Fort Worth, Texas, on December 30, 1976.

HENRY L. NEWMAN,
Director, Southwest Region.

NOTE.—The incorporation by reference provisions in this document was approved by the Director of the Federal Register on June 19, 1967.

[FR Doc.77-1617 Filed 1-19-77;8:45 am]

[Airspace Docket No. 76-SW-60]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

PART 73—SPECIAL USE AIRSPACE

Rescission of a Restricted Area

The purpose of these amendments to Parts 71 and 73 of the Federal Aviation Regulations is to revoke the Camp Claiborne, La., Restricted Area, R-3801D.

The United States Air Force, the using agency, has advised the Federal Aviation Administration (FAA) that no present or future requirements exist for use of this airspace.

Because this airspace is no longer used for the purpose for which it was designated, this revocation is a minor matter upon which the public would have no particular desire to comment. For this reason, notice and public procedure thereon are unnecessary.

Since these actions return airspace to public use and it is desirable to incorporate these changes in the regulations to correctly reflect current airspace use, good reason exists for making these changes effective on less than 30 days notice.

In consideration of the foregoing, Parts 71 and 73 of the Federal Aviation Regulations are amended, effective January 21, 1977 as hereinafter set forth.

§ 71.151 [Amended]

1. In § 71.151 (42 FR 345) R-3801D Camp Claiborne, La., title is deleted.

§ 73.38 [Amended]

2. In § 73.38 (42 FR 679) R-3801D Camp Claiborne, La., title and text is deleted.

(Sec. 307(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a)); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)).)

Issued in Washington, D.C., on January 10, 1977.

WILLIAM E. BROADWATER,
Chief, Airspace and Air Traffic Rules Division.

[FR Doc.77-1615 Filed 1-19-77;8:45 am]

CHAPTER V—NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

PART 1214—REIMBURSEMENT FOR SHUTTLE SERVICES

Reimbursement for Shuttle Services Provided to Non-U.S. Government Users

The following policy identifies the pricing method that the National Aeronautics and Space Administration (NASA) shall employ in providing various Shuttle services to non-U.S. Government users under appropriate agreements. It states NASA policy with respect to patent and data rights and responsibility for damage to a user's payload to be launched on Shuttle, and it assigns responsibility within NASA for implementation of certain aspects of the policy. This policy covers a twelve-year period of Shuttle operations but it is recognized that the policy may evolve and be changed during the Shuttle program as NASA acquires experience in providing Shuttle services and receives recommendations for improvement from Shuttle users and other persons and organizations.

Since the policy involves the use of public property and the policy will be applied in agreements entered into by NASA, the notice and public procedures of 5 U.S.C. 553 were not followed since the policy is determined to be exempt under 5 U.S.C. 553(a)(2) "as a matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts."

1. 14 CFR Chapter V is amended by adding a new Part 1214 consisting at this time of Subpart 1214.1, reading as follows:

Subpart 1214.1—Reimbursement for Shuttle Services Provided to Non-U.S. Government Users

Sec.
1214.100 Scope.
1214.101 Definition.
1214.102 Reimbursement policy.
1214.103 Reflight guarantee.

Sec.
1214.104 Patent and data rights.
1214.105 Revisit and/or retrieval services.
1214.106 Damage to payload.
1214.107 Responsibilities.

Appendix A—Costs for which NASA shall be reimbursed.
Appendix B—Standard Shuttle services.
Appendix C—Optional Shuttle services.
Appendix D—Shared flight charge and graph.
Appendix E—Occupancy fee schedule.

AUTHORITY: Sec. 203, Pub. L. 85-568, 72 Stat. 429, as amended (42 U.S.C. 2473); sec. 201(b), Pub. L. 87-624, 76 Stat. 421 (47 U.S.C. 721(b)).

Subpart 1214.1—Reimbursement for Shuttle Services Provided to Non-U.S. Government Users

§ 1214.100 Scope.

This Subpart 1214.1 sets forth:

(a) The policy on reimbursement for Shuttle services which are provided by NASA to non-U.S. Government users (as defined in § 1214.101) under launch services agreements, and

(b) Responsibilities for putting such policy into effect and carrying it out.

§ 1214.101 Definition.

For the purpose of this subpart, the term "Non-U.S. Government Users" means:

(a) Private persons or private organizations of the United States, including its territories, the District of Columbia, Panama Canal Zone, and Puerto Rico.

(b) Public organizations of the United States that are not part of the Government of the United States.

(c) Foreign governments or private persons and private or public organizations of foreign countries, except for the government of Canada and governments of the European Space Agency (ESA) member nations participating in Spacelab development when conducting experimental science or experimental applications missions, with no near-term commercial implications, undertaken on behalf of government agencies. The NASA Administrator shall determine the missions which qualify for this exception.

(d) International organizations, except the ESA when conducting experimental science or experimental applications missions with no near-term commercial implications.

(e) Other U.S. Government agencies, Canadian government agencies and the ESA, requesting Shuttle services from NASA in connection with launch and other services being performed by such agencies for users listed in paragraphs (a) through (d) of this section.

§ 1214.102 Reimbursement policy.

(a) *Features of policy.* (1) All users will be charged on a fixed price basis; there will be no post-flight charges, except for prespecified optional services.

(2) The price will be based on estimated costs.

(3) The price will be held constant for flights in the first three years of Space Transportation Systems (STS) operations.

(4) Payments with respect to total operations costs shall be escalated according to the Bureau of Labor Statistics Index for Compensation per hour, Total Private. Payments with respect to the use charge shall not be escalated.

(5) Subsequent to the first three years the price will be adjusted annually to insure that aggregate costs are recovered over a twelve-year period.

(6) Pricing incentives are designed to maximize the proper utilization of the STS.

(b) *Dedicated flight reimbursements.* (1) For the purposes of this policy, a dedicated flight is one sold to a single customer.

(2) The policy is established for two distinct phases of Shuttle operations. The first phase is through the third full fiscal year of Shuttle operations and the second phase consists of nine full fiscal years subsequent to the first phase.

(i) For a dedicated Shuttle flight during the first phase, NASA shall be reimbursed in an amount which is a pro-rata share of forecast additive costs averaged over the first phase of three years, plus a use charge in lieu of depreciation for the use of facilities, support equipment and the Shuttle fleet; however, the price shall not be less than a pro-rata share of forecast aggregate costs averaged over both the first and second phases of the twelve-year Shuttle operation period.

(ii) For a dedicated Shuttle flight during the second phase, NASA shall be reimbursed a pro-rata share of forecast aggregate costs over both phases to insure that total aggregate costs are recovered over the twelve year period.

(iii) The definition of the costs as specified in this Subpart are set forth in Appendix A to this subpart.

(iv) Subject to NASA approval, a dedicated flight user may apportion and assign STS services to other STS users provided they satisfy STS user requirements. The price of integrating additional payloads will be negotiated.

(v) A summary of standard Shuttle services included in the flight price is set forth in Appendix B to this subpart.

(vi) The prices of optional Shuttle services are being developed and shall be set forth in the Shuttle Price Book which is being developed. A summary of the optional services is set forth in Appendix C to this subpart.

(vii) For the user with an experimental, new use of space or first time use of space of great public value, the reimbursement to NASA for the dedicated, standard Shuttle flight in either the first or second phase shall be a pro-rata share of the average twelve-year additive costs as estimated at the time of negotiations. Programs which qualify for this price will be determined by an STS Exceptional Program Selection Process. In all cases, the Administrator will be the selection official.

(viii) For dedicated flight users, NASA and the user will identify a desired launch date within a period of ninety days three years prior to flight. One year prior to the flight a firm launch and payload delivery date will be identified by NASA. The firm launch date will be within the first sixty days of the original ninety-day period. Launch will occur on the firmly scheduled launch date or within a period of thirty days thereafter. The payload must be ready to launch for the duration of that period.

(c) *Shared flight reimbursements.* (1) The price of a shared Shuttle flight will be a fraction of the dedicated Shuttle flight price. The fraction will be based on the length and weight of the payload and the mission destination at the time of contract negotiations. The formula for computing the fraction is set forth in Appendix D to this subpart.

(2) For shared flight users, NASA and the user will identify a desired launch date three years prior to flight. Launch will occur within a period of ninety days, beginning on the desired launch date. One year prior to flight a payload delivery date and a firm launch date will be coordinated among the share flight users. This firm launch date will be within the first thirty days of the original ninety-day period. The launch will occur on the firmly scheduled launch date or within a period of sixty days thereafter. The payloads must be ready to launch for the duration of that period.

(3) A 20 percent discount on the standard flight price will be given to shared flight users who will fly on a space-available (standby) basis. NASA will provide launch services within a prenegotiated period of one year. Shared flight payloads must be flight deliverable to the launch site on the first day of the one-year period and sustain that condition until delivery to the launch site. The user will be notified sixty days prior to the firmly scheduled launch date which has been established by NASA. At that time, NASA will also establish a payload delivery date. The payload must be available at the launch site on the assigned delivery date and ready to launch for a period of sixty days after the firmly scheduled launch date.

(d) *Small self-contained payloads.* Packages under 200 pounds and smaller than five cubic feet which require no Shuttle services (power, deployment, etc.), and are for R&D purposes, will be flown on a space-available basis during both phases of Shuttle operation. The price for this service will be negotiated based on size and weight, but will not exceed $10,000 in 1975 dollars. A minimum charge of $3,000 in 1975 dollars will be made. If Shuttle services are required, the price will be individually negotiated. Reimbursement to NASA will be made at the time the package is scheduled for flight.

(e) *Options.* (1) Options for future flights will be made available to STS users already contracting for STS launch services. Fixed price options for flights in a given year beyond the three year fixed price period will be made available. For fixed price options, NASA shall be reimbursed the user's flight price compounded at 8 percent per year for each year beyond the fixed price period. The fee for this option is one million dollars in 1975 dollars. The option fee will be applied to the price of the user's flight. The user will exercise his option by contracting for the flight on the normal 33-month reimbursement schedule or the option fee will be retained by NASA.

(2) In order to insure that space will be available for flights in a given future year, scheduled launch options, where NASA will provide a launch during a ninety-day period, will be given to STS users already contracting for flights at a fee of $100,000 in 1975 dollars. The option fee will be applied to the price of the user's flight. The user will exercise his option by contracting for the flight on the normal 33-month reimbursement schedule or the option fee will be retained by NASA.

(3) In order to allow the user greater flexibility in selecting a launch date, the user may purchase a "floating launch date" option. At the time of contract execution, the user will begin to make payments according to a 33-month reimbursement schedule for this launching. At any time during Phase 1 or 2, the user may exercise this option by informing NASA of his desired launch date for this option which will then be negotiated by NASA and the user. This launch date must be at least 33 months after the date of the first reimbursement payment. If the desired launch date is within one year of the date of declaration, the short term call-up option and associated fee will apply. If the desired launch is to occur in a year for which a new price per flight is in effect, the user will pay the new price. The fee for this option is 10 percent of the user's flight price in effect at the time of contract execution and is payable at that time. This fee will not be applied to the price of the user's flight.

(4) Options must be exercised for a flight by the end of the second phase of operations or the option fee will be retained by NASA.

(f) *Fixed price period and escalation.* (1) The price will remain constant for flights during the first phase of Shuttle operation. For flights during the second phase, the price will be adjusted on a yearly basis, if necessary, to assure recovery of aggregate costs over a twelve year period. These adjusted prices will be applicable only to agreements executed after the adjustment is made.

(2) Shuttle services for both phases will be contracted on a fixed price basis. The payments in the contract will be escalated to the time of the payment using the Bureau of Labor Statistics Index for Compensation per hour, Total Private.

(g) *Earnest money.* Earnest money will be paid to NASA prior to contract negotiations. The earnest money required per contract shall be $100,000 in 1975 dollars; however, if the payload is a small self-contained payload, the earnest money shall be $500.00. The earnest money will be applied to the first payment made by the customer or will be retained by NASA.

(h) *Reimbursement schedule.* (1) Reimbursement shall be made in accordance with the reimbursement schedule contained in this subsection. No charges shall be made after the flight, except as negotiated in the contract for prespecified extra services. Those users who contract for Shuttle services less than three years before the desired launch date will be accommodated and will pay on an accelerated basis according to the reimbursement schedule.

(2) Standby payloads.

(i) Before the establishment of a firmly scheduled launch date, the number of months before launch will be computed assuming a launch date at the mid-point of the designated one-year period.

(ii) Once the firmly scheduled launch date is established, the user shall reimburse NASA to make his payments current according to the reimbursement schedule.

(3) Reimbursement schedule.

Number of months before launch flight is scheduled	Percent of price: Months prior to scheduled launch date					
	33	27	21	15	9	3
33 or more	10	10	17	17	23	23
27-32	21	17	17	23	23	
21-26	40	17	23	23		
15-20	61	23	23			
9-14	90	23				
3-8	122					

This schedule holds unless there are offsetting advantages to the U.S. Government of an accelerated launch schedule.

(4) Contracts for Shuttle services made one year or less before a flight and up to three months before a flight will be made on a space-available basis unless the short term call-up option is elected.

(i) *Short term call-up option.* (1) For flights contracted one year or less before launch, but not less than three months before launch, short term call-up will be provided to dedicated flight users at the dedicated flight price according to the reimbursement schedule.

(2) For dedicated flight users requiring short term call-up flights less than three months before launch, NASA will provide STS launch services on a space-available basis. NASA shall be reimbursed the dedicated flight price according to the reimbursement schedule plus short term call-up additional costs. The additional costs will be based on estimated costs to be incurred.

(3) For shared flights contracted one year or less before launch, but more than six months before launch, users may elect to short term call-up option. The user shall reimburse NASA the standard shared flight price according to the reimbursement schedule plus a load factor-recovery fee. The load factor-recovery fee is half the difference between a dedicated flight price and the user's shared flight price or the difference between a dedicated flight price and the total adjusted reimbursements from all shared users, whichever is less.

(4) For shared flights contracted six months or less before launch, but more than three months before launch, users may elect the short term call-up option. The user shall reimburse NASA the standard shared flight price according to the reimbursement schedule plus a load factor-recovery fee which is the difference between a dedicated flight price and the total adjusted reimbursement from all shared flight users.

(5) Shared flights contracted three months or less before launch will be flown on a space-available basis. NASA shall be reimbursed the shared flight price according to the reimbursement schedule plus short term call-up additional costs. These additional charges will be based on estimated costs to be incurred.

(6) For the purposes of this subparagraph, "adjusted reimbursements" is defined to be reimbursements assuming all shared users are non-U.S. Government.

(7) The load factor-recovery fee will never be less than zero.

(8) The load factor-recovery fee is payable upon receipt of NASA's billing therefor.

(j) *Accelerated launches.* For users who reschedule a launch so that it occurs earlier than the planned launch, the user will pay on an accelerated reimbursement schedule. The user will reimburse NASA to make his payments current on the new accelerated reimbursement schedule. If the time from notification of acceleration is less than one year from the new launch date, short term call-up reimbursements will also apply.

(k) *Postponements.* (1) Non-standby payloads. (i) A user can postpone a flight of his payload one time with no additional charge if postponement occurs more than one year before launch. For subsequent postponed flights more than one year before launch, the user shall reimburse NASA a postponement fee of 5 percent of the user's flight price. For postponements one year or less before launch, the user shall reimburse NASA 5 percent of the user's flight price plus an occupancy fee according to the occupancy fee schedule in Appendix E to this subpart.

(ii) If the postponement of a flight causes the payload to be launched in a year for which a different price per flight has been established, the new price shall apply if it is higher than the originally contracted price.

(2) Standby payloads.

(i) For flights postponed more than six months prior to the beginning of the negotiated one-year period, NASA shall renegotiate a new one-year period during which launch will occur. No additional fee will be imposed.

(ii) For flights postponed six months or less prior to the beginning of the negotiated one-year period, the user shall reimburse NASA 5 percent of the user's flight price plus an occupancy fee according to the occupancy fee schedule set forth in Appendix E to this Subpart.

(3) Postponement fees are payable upon receipt of NASA's billing therefor.

(4) Flights postponed will henceforth be treated as newly scheduled launches according to the reimbursement schedule. The number of months prior to launch will be taken as the total number of months between the date postpone-

ment is elected and the new launch date. Short-term call-up options and associated fees shall apply.

(5) Minor delays (up to three days) caused by the users will not constitute a postponement. No fee will be charged for a minor delay.

(i) *Cancellations.* (1) Non-standby payloads. Users who cancel a flight more than one year before launch shall reimburse NASA 10 percent of the user's flight price. For a cancelled flight one year or less before launch, the user shall reimburse NASA 10 percent of the user's flight price plus an occupancy fee as set forth in Appendix E to this subpart.

(2) Standby payloads.

(i) Users who cancel a flight more than six months prior to the beginning of the negotiated one-year period shall reimburse NASA 10 percent of the user's flight price.

(ii) For a flight cancelled six months or less prior to the beginning of the negotiated one-year period, the user shall reimburse NASA 10 percent of the user's flight price plus an occupancy fee as set forth in Appendix E to this subpart.

(3) Cancellation fees are payable upon receipt of NASA's billing therefor.

§ 1214.103 Reflight guarantee.

(a) A fee for a reflight guarantee is included in the price charged the user. In consideration of that fee, NASA guarantees one reflight of:

(1) The launch and deployment of a free flying payload into a Shuttle compatible mission orbit if, through no fault of the user, the first launch and deployment attempt is unsuccessful and if the payload returns safely to earth or a second payload is provided by the user.

(2) The launch of an attached payload into its mission orbit if the first launch attempt is unsuccessful through no fault of the user, and if the payload returns safely to earth or a second payload is provided by the user.

(3) A launch of a Shuttle into a payload mission orbit for the purpose of retrieving a payload if the first retrieval attempt is unsuccessful through no fault of the user. This guarantee only applies if the payload is in a safe retrievable condition as determined by NASA.

(b) This reflight guarantee will not be applicable to payloads or upper stages placed into orbits other than the Shuttle mission orbit.

§ 1214.104 Patent and data rights.

(a) NASA will not acquire rights to inventions, patents or proprietary data privately funded by a user, or arising out of activities for which a user has reimbursed NASA under the policies set forth herein. However, in certain instances in which the NASA Administrator has determined that activities may have a significant impact on the public health, safety or welfare, NASA may obtain assurances from the user that the results will be made available to the public on terms and conditions reasonable under the circumstances.

(b) The user will be required to furnish NASA with sufficient information to verify peaceful purposes and to insure Shuttle safety and NASA's and the U.S. Government's continued compliance with law and the Government's obligations.

§ 1214.105 Revisit and/or retrieval services.

These services will be priced on the basis of estimated costs. If a special dedicated Shuttle flight is required, the full dedicated price will be charged. If the user's retrieval requirement is such that it can be accomplished on a scheduled Shuttle flight, he will only pay for added mission planning, unique hardware or software, time on orbit, and other extra costs incurred by the revisit.

§ 1214.106 Damage to payload.

The price does not include a contingency or premium for damage that may be caused to a payload through the fault of the U.S. Government or its contractors. The U.S. Government, therefore, will assume no risk for damage or loss to the user's payload. The users will assume that risk or obtain insurance protecting themselves against that risk.

§ 1214.107 Responsibilities.

(a) *Headquarters officials.* (1) The NASA Comptroller, in coordination with the Associate Administrator for Space Flight will:

(i) Prescribe guidelines, procedures, and other instructions which are necessary for estimating costs and setting prices and publishing them in the NASA Issuance System, and

(ii) Review and arrange for the billing of users.

(2) The Associate Administrator for Space Flight will arrange for:

(i) Developing estimates for costs and establishing prices in sufficient detail to reveal their basis and rationale.

(ii) Obtaining approval of the NASA Comptroller of such estimates and related information prior to the execution of any agreement, and

(iii) Reviewing of final billings to users prior to submission to the NASA Comptroller.

(b) *Field installation officials.* The Directors of Field Installations responsible for the STS operations will:

(1) Maintain and/or establish agency systems which are needed to identify costs in the manner prescribed by the NASA Comptroller,

(2) Compile financial records, reports, and related information, and

(3) Provide assistance to other NASA officials concerned with costs and related information.

APPENDIX A—COSTS FOR WHICH NASA SHALL BE REIMBURSED

Additive Costs. All additional costs, both direct and indirect, that the NASA has to incur above those it would otherwise have incurred had it not undertaken to meet non-NASA user requirements.

Total Operations Costs. Total Operations Costs include all direct and indirect costs, excluding costs composing the use charge. Such costs include direct program charges for manpower, expended hardware, refurbishment of hardware, spares, propellants, provisions, consumables and launch and recovery services. They also include a charge for program support, center overhead, and contract administration.

Use Charge. A charge in lieu of depreciation for use of facilities, support equipment and the Shuttle fleet.

Aggregate Costs. Aggregate costs are all reasonable costs which include the sum of the use charge and total operations costs.

APPENDIX B—STANDARD SHUTTLE SERVICES

Two standard mission destinations:
(1) 160 NM Altitude; 28.5° Inclination.
(2) 160 NM Altitude; 56.0° Inclination.
One day mission operations
Orbiter flight planning services
Transmission of payload data to compatible receiving stations
A three-man flight crew
On-orbit payload handling
Deployment of a free flyer
NASA support of payload design reviews
Prelaunch payload installation, verification and orbiter compatibility testing
NASA payload safety review

APPENDIX C—OPTIONAL SHUTTLE SERVICES

Revisit and retrieval
Use of Spacelab or other special equipment
Use of Mission Kits to extend basic orbiter capability
Use of Upper Stages
EVA services
Unique payload/orbiter integration and test
Payload mission planning services, other than for launch, deployment and entry phases
Additional time on-orbit
Payload data processing
Launch from Western Test Range
Two standard mission destinations are available from the Western Test Range site:
(1) 160 NM Altitude; 90.0° Inclination.
(2) 160 NM Altitude; 104.0° Inclination.

APPENDIX D—SHARED FLIGHT CHARGE

To calculate the cost of individual payloads transported on a flight shared with other payloads:

(1) Find the load factor for the payload by dividing the payload weight by the Shuttle capability for the desired inclination (Table in Figure 1).

(2) Find the load factor for the payload by dividing the payload length by 60 feet.

(3) Enter the curve (Figure 1) at the higher value obtained from steps 1 and 2 and read the Charge Factor (C_f) from the curve.

(4) Multiply the C_f value times the quoted price per dedicated flight. This will result in the price for the payload flight.

The price for each payload flight (Step 4) entitles the user to be provided a pro-rata share of the facilities available on board the standard Shuttle flight. For example, if the payload load factor is 0.5, then the payload is entitled to 50% of the power, cooling, and other services provided on the standard flight. Standard services required that exceed the pro-rata share will be an additional charge to the user based on the cost of the service provided.

For purposes of this attachment, payload weight includes a pro-rata share of all special equipment (e.g., spin tables and their controls) needed for the user's mission. Payload length includes a pro-rata share of the clearance length necessary to operate or deploy the payload, including the length of deployment mechanisms.

DETERMINATION OF CHARGE FACTOR (C_f) FOR 160 N.MI

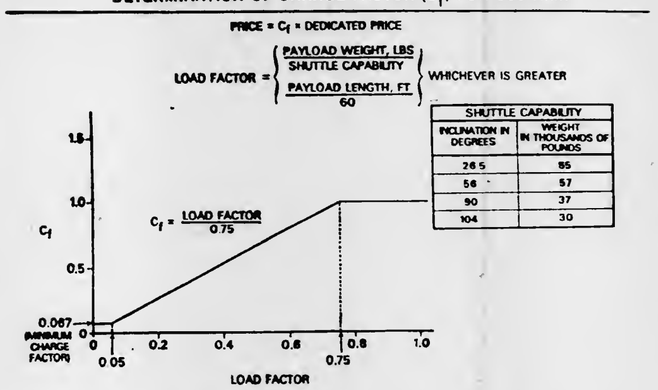


FIG 1

APPENDIX E—OCCUPANCY FEE SCHEDULE

For a postponed or cancelled dedicated flight, the occupancy fee will be zero.

For a postponed or cancelled shared flight, the occupancy fee will be computed according to the computation instructions set forth below. If the computation results in an occupancy fee which is less than zero, the occupancy fee will be reset to zero.

For a postponed or cancelled shared flight one year or less, but more than six months before launch, the user shall reimburse NASA an occupancy fee of half the user's flight price less any adjusted reimbursements from other users who contract for the same flight subsequent to the postponement or cancellation date.

For a postponed or cancelled shared flight six months or less before launch, the user shall reimburse NASA an occupancy fee of 90% of the user's flight price less any adjusted reimbursements from other users who contract for the same flight subsequent to the postponement or cancellation date.

For a given shared flight, if the occupancy fee so computed would result in total adjusted reimbursements (exclusive of the 5% (10%) postponement (cancellation) fee) in excess of the price of a dedicated flight, the occupancy fee will be reduced in order to recover the price of a dedicated flight.

In the event that, as a result of the postponement or cancellation, the Shuttle is not launched at all for the intended flight, the occupancy fee will be zero.

(For purposes of this attachment, "adjusted reimbursements" is defined to be reimbursements assuming all users are non-U.S. Government.)

Effective date: January 21, 1977.

JAMES C. FLETCHER,
Administrator.

[FR Doc.77-1872 Filed 1-19-77;8:45 am]

Title 16—Commercial Practices

CHAPTER 1—FEDERAL TRADE COMMISSION

[Docket C-2854]

PART 13—PROHIBITED TRADE PRACTICES, AND AFFIRMATIVE CORRECTIVE ACTIONS

International Telephone and Telegraph Corporation, et al.

Subpart—Advertising falsely or misleadingly: § 13.10 Advertising falsely or misleadingly; 13.10–1 Availability of merchandise and/or facilities; § 13.35 Condition of goods; § 13.42 Connection of others with goods; § 13.55 Demand, business or other opportunities; § 13.90 History of product or offering; § 13.143 Opportunities; § 13.155 Prices; 13.155–5 Additional charges unmentioned; 13.155–95 Terms and conditions; § 13.160 Promotional sales plans; § 13.195 Safety; 13.195–30 Investment; § 13.205 Scientific or other relevant facts; § 13.285 Value. Subpart—Corrective actions and/or requirements: § 13.533 Corrective actions and/or requirements; 13.533–20 Disclosures. Subpart—Misrepresenting oneself and goods—Goods: § 13.1595 Condition of goods; § 13.1615 Earnings and profits; § 13.1650 History of product; § 13.1675 Law or legal requirements; § 13.1697 Opportunities in product or service; § 13.1740 Scientific or other relevant facts; § 13.1760 Terms and conditions; 13.1760–50 Sales contract; § 13.1775 Value. Prices: § 13.1778 Additional costs unmentioned; § 13.1823 Terms and conditions; Subpart—Neglecting, unfairly or deceptively, to make material disclosure: § 13.1863 Limitations of product; § 13.1882 Prices; 13.1882–10 Additional prices unmentioned; § 13.1889 Risk of loss; § 13.1892 Sales contract, right-to-cancel provision; § 13.1895 Scientific or other relevant facts; § 13.1905 Terms and conditions; 13.1905–50 Sales contract. Subpart—Offering unfair, improper and deceptive inducements to purchase or deal: § 13.1935 Earnings and profits; § 13.2000 Limited offers or supply; § 13.2015 Opportunities in product or service; § 13.2040 Returns and reimbursements; § 13.2063 Scientific or other relevant facts; § 13.2080 Terms and conditions.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45.)

In the matter of International Telephone and Telegraph Corporation, a corporation, ITT Community Development Corporation, a corporation, and Palm Coast, Inc., a corporation.

Consent order requiring a New York City conglomerate and its Miami, Fla., subsidiaries, ITT Community Development Corporation and Palm Coast, Inc., among other things to cease misrepresenting or failing to make pertinent oral and/or written disclosures regarding the risks, value, and soundness of land development; misrepresenting the degree of development of the land they offer; failing to disclose additional costs to be incurred and misrepresenting the property's proximity to waterways, major roads, shopping and recreational facilities; and failing to disclose purchaser's rights to cancellation and refunds. Further, the order requires construction of particular facilities intended to improve the value of land already sold, and limits the sale of registered lots for a period of fifteen (15) years.

The order to cease and desist, including further order requiring report of compliance therewith, is as follows.[1]

ORDER

For the purposes of this Order, the following definitions shall apply:

1. "Business Day" shall mean any calendar day except Saturday, Sunday and the following holidays: New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, and Christmas Day.

2. "Contract" shall be limited to contracts for the sale of land.

3. "Land" shall be limited to any residential lot which has been or is being

[1] Copies of the Complaint and Decision and Order filed with the original document.

sold by one or more of the respondents to any purchaser.

4. "Purchaser" shall mean any person, partnership, corporation or other entity who has signed a contract to purchase land from one or more of the respondents.

5. "Property Report" shall be understood to include any Public Offering Statement, prospectus or other report required by state or federal law to be provided to a purchaser or prospective purchaser of land.

As used in this Order, a requirement to cease and desist from representing or misrepresenting shall include representing or misrepresenting directly or by implication.

For purposes of this Order, all required disclosures shall be made in a clear and conspicuous manner.

It is ordered that respondents International Telephone and Telegraph Corporation ("ITT"), ITT Community Development Corporation ("ICDC"), Palm Coast, Inc., ("Palm Coast"), and their officers, and their subsidiaries and the officers of those subsidiaries, and respondents' successors, assigns, agents, representatives and employees, directly or through any corporate or other device in connection with the advertising, offering for sale to prospective purchasers, or sale to purchasers of land, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

1. Misrepresenting that respondent ITT or any business entity or third party is legally responsible for any debts or obligations of respondent ICDC or any of ICDC's subsidiaries.

2. (a) Failing, if ITT has not assumed legal responsibility for any of the debts or obligations of ICDC or any of its subsidiaries, to disclose in any property report the following statement:

The debts and obligations of ITT Community Development Corporation are NOT legally guaranteed by International Telephone and Telegraph Corporation, and International Telephone and Telegraph Corporation has not pledged its assets for the development of Palm Coast.

(b) Failing, if ITT has assumed legal responsibility for some or all of the debts or obligations of ICDC or any of ICDC's subsidiaries, to disclose in any property report the following statement, in which the blank portions are to be accurately completed:

ITT has assumed legal liability for approximately ____ percent (to the nearest 5 percent) of the total debts and obligations of (names of corporations for which debts and obligations have been guaranteed).

3. Failing to set forth as the title of any contract in boldface type the following language: "CONTRACT FOR THE PURCHASE OF LAND."

4. (a) Failing to include the following statement in 12 point boldface type on the first page of any contract:

This is a contract by which you agree to purchase land. The future value of this land, as well as all undeveloped real estate, is speculative. You should not assume that the value of land will increase. Do not assume that you will be able to resell your land without significant community development and population growth. You have ten (10) business days in which to determine whether to continue this contract or cancel it with full refund. See the attached "Notice of Cancellation" form for an explanation of your rights. Use this time to examine with care the property report (also called a Public Offering Statement) which must be given to you at or before the time you sign this contract. It is suggested that you have both this contract and the property report reviewed by a qualified professional.

(b) Failing to include the following statement in any property report relating to land for which neither respondents nor any other parties are legally obligated to make a central sewer system available:

ITT Community Development Corporation is not legally obligated to provide a central sewer system in Section (number) of (name of subdivision). Installation of a septic tank will be at your expense, which is now approximately (amount). The use of a septic tank on your lot is contingent on approval by governmental authorities.

(c) Failing to include the following statement, completed as appropriate, in any property report relating to land for which a central sewer system may or will become available in the future, or such other language as clearly and fully sets forth and discloses the amount of any sewer connection fee(s) and the time and circumstances in which such fee(s) must be paid:

A central sewer system (may or will) be available to your lot in the future. (If or when) it becomes available, you will be required to pay a sewer connection fee, which is now approximately (amount), on the date that the sewer is available to your lot, whether or not connection is actually made at that time, or at the time (name of respondent) conveys title to the lot, whichever date occurs later.

(d) Failing to include the following statement in any contract:

Note to buyer: See page (insert page number) of the property report for statements relating to the additional expense for sewerage systems.

5. Failing to disclose the following statement in any promotional material relating to the sale of land:

Since land values are uncertain, you should consult with a qualified professional before purchasing.

Provided, however, That the above statement need not be included in the following:

(a) Billboard advertisements;

(b) Radio or television advertisements of ten (10) seconds or less;

(c) Magazine advertisements of one-eighth page or less; or

(d) Newspaper advertisements of one-eighth page or less.

6. Failing to disclose in all sales presentations relating to the sale of land the following statement:

The future value of this land, as well as all undeveloped real estate, is speculative. You should not assume that the value of land will increase. Do not assume that you will be able to resell your lot without significant community development and population growth. You should consult a qualified professional before purchasing

7. Failing, where any provisions or conditions are set forth on the reverse side of the contract, to disclose at the bottom of the front side of the contract that the purchaser should examine the reverse side.

8. (a) Failing to include in boldface type in any contract, in immediate proximity to the space reserved in the contract for the signature of the purchaser, the following statement:

You, the purchaser(s), may cancel this transaction at any time prior to midnight of the tenth (10th) business day after the date on which you signed this contract. See the attached "Notice of Cancellation" form for an explanation of this right.

(b) Failing to provide each purchaser, at the time any contract is entered into, with two copies of a "Notice of Cancellation" granting the purchaser at least ten (10) business days after receipt of the notice in which to cancel the contract without any loss, expense, penalty or obligation.

9. Failing to inform a prospective purchaser orally, at or before the time a contract is signed, of his or her right to cancel the contract in accordance with the provisions of Paragraph 8 of this Order.

10. Whenever respondents offer a refund that is contingent upon the purchaser taking a company-guided inspection tour of the property in which the purchaser's land is located:

(a) Failing to afford the purchaser three (3) business days after taking such tour in which to request a refund;

(b) Failing to include in any contract, in immediate proximity to any provision setting forth the availability of a refund upon the completion of a company-guided inspection tour of the property, the following statement:

You, the purchaser(s), have a right to cancel this contract if you take the company-guided tour of the property and notify the company prior to midnight of the third business day after the date of such tour.

(c) Failing orally to inform each purchaser of any such cancellation right at or before the execution of any contract and at the time any such tour is taken;

(d) Failing to furnish each purchaser immediately upon the conclusion of such tour, a completed form in duplicate, captioned "NOTICE OF CANCELLATION," which shall be completed in accordance with subparagraph (e) of this paragraph, and shall consist of the following statements:

NOTICE OF CANCELLATION

[enter date of company-guided inspection tour of property]

[enter contract number]

YOU MAY CANCEL YOUR CONTRACT, WITHOUT ANY LOSS, EXPENSE, PENALTY OR OBLIGATION, AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD (3rd) BUSINESS DAY AFTER THE ABOVE DATE.

IF YOU CANCEL, ANY PAYMENTS MADE BY YOU UNDER THE CONTRACT WILL BE RETURNED WITHIN TEN (10) BUSINESS DAYS FOLLOWING RECEIPT BY THE SELLER OF YOUR CANCELLATION NOTICE.

TO CANCEL YOUR CONTRACT, DELIVER OR MAIL (CERTIFIED MAIL, RETURN RECEIPT REQUESTED, IS RECOMMENDED) A SIGNED COPY OF THIS CANCELLATION NOTICE OR ANY SIMILAR WRITTEN CANCELLATION NOTICE, OR SEND A TELEGRAM OF CANCELLATION TO: ITT COMMUNITY DEVELOPMENT CORPORATION, AT ----------
(address of place of business)
NOT LATER THAN MIDNIGHT OF ----------

IF TWO OR MORE PERSONS HAVE SIGNED THE CONTRACT AS PURCHASERS, EACH OF THOSE PERSONS SHOULD SIGN THIS NOTICE, IN ORDER TO CANCEL THE CONTRACT.

IF, HOWEVER, ALL OF THE PURCHASERS DO NOT SIGN THE NOTICE, THOSE WHO DO SIGN THEREBY REPRESENT THAT THEY ARE DULY AUTHORIZED TO ACT ON BEHALF OF ALL OF THE OTHER PURCHASERS. I (WE) HEREBY CANCEL THE CONTRACT.

(Date)

(Signature(s))

(e) Failing, before furnishing to the purchaser the "Notice of Cancellation" set forth in subparagraph (d) of this paragraph, to complete both copies of such notice by entering the address of ICDC's place of business, the date of the company-guided inspection tour of the property, and the date, not earlier than the third business day following the date of such tour, by which the purchaser may give notice of cancellation.

11. Failing or refusing to honor any valid and timely notice of cancellation submitted by a purchaser in accordance with the provisions of Paragraphs 8 and 10 of this Order, and within ten (10) business days after the receipt of such notice, to refund all payments made and cancel any indebtedness under the contract.

12. Failing in any promotional material, contract or sales presentation that expressly refers or relates to one or more specific lots, to disclose the existence, nature and location of any easements, mortgages and covenants running with the land.

13. Representing that any of respondents' lots is located within any property or portion thereof designated or described as a "self-contained" or "fully developed" community or designated or described by words or terms that are of similar import to "self-contained" or "fully developed" unless:

(a) Those facilities, amenities and public services normally associated with a "self-contained" and "fully developed" community, including but not limited to shopping, commercial, recreational and industrial facilities, public services, and amenities, are available within the property in which each lot is located; and

(b) Paved roads, electricity, telephone service, central water, and a sewer system or septic tanks are available to all lots within each property or portion thereof designated or described as a "self-contained" or "fully developed" community or by words or terms of similar import.

14. Failing to include in any contract a provision that if any utility or improvement which respondents are legally obligated to make available under the terms of a contract is not available to the lot which is the subject of the contract or if any of the facilities required by the contract to be provided by respondents are not completed.

(i) Within six (6) months of the date(s) certain specified in the contract or property report, for the availability or completion of the utility, improvement or facility, or, if there is no such date, within six (6) months after the maturity date of the contract, plus, whether or not there is such a date certain, the actual number of days of delay in the availability of any such utility, improvement or facility that are caused by any strike, work stoppage or other such event beyond respondents' control, or

(ii) If the availability of any such utility, improvement or facility is delayed by reason of any act or omission of any federal, state or local governmental agency or officer, within eighteen (18) months after such date certain, or, if none, the maturity date of the contract, respondents will, upon conclusion of the applicable period, provide the purchaser within fifteen (15) business days with notice of the unavailability or failure to complete, and of the purchaser's right to cancel and receive a full refund of monies paid, plus interest at the rate of seven percent (7%) per annum compounded annually on each payment made by the purchaser from the date of the payment to the date upon which the purchaser received notification of a right to refund.

15. (a) Failing, if any utility or improvement required to be provided by respondents under the terms of a contract is not available to the lot which is the subject of the contract or any facility required to be provided by respondents under the terms of a contract is not completed

(i) Within six (6) months of any date certain specified in the contract or property report, for the availability or completion of the utility, improvement or facility, or, if there is no such date, within six (6) months after the maturity date of the contract, plus, whether or not there is such a date certain, the actual number of days of delay in the availability of any such utility, improvement or facility that are caused by any strike, work stoppage or other such event beyond respondents' control, or

(ii) If the availability of any such utility, improvement or facility is delayed by reason of any act or omission of any federal, state or local governmental agency or officer, within eighteen (18) months after such date certain, or, if none, the maturity date of the contract, to provide each purchaser with a notice by certified mail, return receipt requested, immediately upon the conclusion of the applicable period, which is titled "Important Notice of Your Right to a Refund." Such notice must clearly disclose the fact of default and state that the purchaser is entitled to a full refund plus interest at the rate of seven percent (7%) per annum compounded annually on the amount to be refunded, computed in accordance with the provisions of Paragraph 14 of this Order.

(b) Failing to refund, to any purchaser who exercises the option for a refund, within sixty (60) days of receipt of such notification from the purchaser, all monies paid by the purchaser pursuant to the contract plus interest at the rate of seven percent (7%) per annum, compounded annually on each payment made by the purchaser, from the date of the payment to the date upon which the notification of the right to refund is received by the purchaser.

16. Imposing any condition or limitation upon the right of a purchaser to a refund as set forth in Paragraphs 14 and 15 of this Order; *Provided, however,* That respondents may require a purchaser to exercise an option for a refund within a stated time period of not less than thirty (30) days after the receipt by the purchaser of the notice required by Paragraphs 14 and 15 of this Order; and may offer by mail to each purchaser the additional option of exchanging his or her land for other land in the same or a different portion of respondents' property; and may require a purchaser to execute a quitclaim deed or other documents necessary to release his or her interest in the land as to which the purchaser has elected to accept a refund or exchange. All such documents shall be included in the same envelope used to mail the notice of right to refund described in Paragraphs 14 and 15 of this Order and the purpose for which such documents are being sent shall be disclosed.

17. Making any statement or representation concerning the proximity to respondents' property of any city, the Atlantic Ocean, the Intracoastal Waterway, major shopping center, recreational or educational facility, or access to I-95, A1A or U.S. Highway 1 without disclosing, in immediate conjunction therewith and with the same conspicuousness as such statement or representation, the distance in road miles to the nearest two miles from such place or facility to the Welcome Center or similar facility on respondents' property.

18. Making any statement or representation using words such as "adjacent," "near to," or any word or term of similar import or meaning to describe the

proximity to any specific lot in respondents' property of any city, the Atlantic Ocean, the Intracoastal Waterway, major shopping center, recreational or educational facility, or access to I-95, A1A or U.S. Highway 1, without disclosing, in immediate conjunction therewith and with the same conspicuousness as such statement or representation, the distance in road miles to the nearest two miles from such place or facility to the specific lot referred to in the statement or representation; *Provided, however,* That if such distance is less than two miles, such distance shall be disclosed to the nearest one-fifth of a mile.

19. Making any statement or representation concerning any past, present or future population, employment or industrial statistic or trend or other statistic or trend, unless respondents have a reasonable basis to believe that such statistic or trend has or will in the near future have relevance to respondents' property or any part thereof to which such statement or representation relates.

A reasonable basis for a statement or representation shall consist of current, relevant and objective statistical or economic data or studies, where such data are collected or such studies are conducted in accordance with accepted applicable demographic, economic or statistical principles.

20. Making any written statement or representation concerning the purchase price of any land without disclosing:

(i) The nature and approximate amount of any additional payments that must be made by a purchaser to respondents in order to purchase such land;

(ii) The approximate cost of sewage connection or septic tank installation, as appropriate; and

(iii) The approximate cost of any tree stump removal, if necessary.

21. Failing, at least once during any sales presentation in which any statement or representation is made concerning the purchase price of any land, to disclose:

(i) The nature and approximate amount of any additional payments that must be made by a purchaser to respondents in order to purchase such land;

(ii) The approximate cost of sewage connection or septic tank installation, as appropriate; and

(iii) The approximate cost of any tree stump removal, if necessary.

22. Failing to include in any contract entered into on or after January 1, 1974, a provision limiting the amount forfeited, in the event of default, to an amount not larger than 44.8% of the cash price disclosed in the contract.

23. Soliciting the written acknowledgement of a purchaser that he or she has been afforded an opportunity to inspect respondents' land and has concluded that the land is satisfactory and in accord with all contractual agreements. This provision shall not be construed to prohibit respondents from providing a form of acknowledgement to the purchaser at the same time as the notice of cancellation required by Paragraph 10 herein, and informing such purchaser that he or she may elect at his or her option to return to respondents by mail the notice of cancellation, the acknowledgement, or neither of them.

24. Representing that the purchase for resale of land in respondents' property is a way to achieve financial security, to deal with inflation, or to become wealthy.

25. Representing that real estate is a good or safe investment, or the purchase of land in respondents' property is a good or safe investment.

26. Making any statement or representation that refers to or concerns investment in stocks, banks, annuities or any other form of investment other than respondents' land.

27. Making any statement or representation concerning the approximate number of homes presently located in respondent's property without disclosing in conjunction therewith and with the same prominence the approximate number of residential lots to the nearest 1,000 lots] planned to be located within the property after respondents have finished subdividing it.

28. Representing that the prices of respondents' land periodically rise or that prices are increasing, have increased, or will increase, without disclosing at the same time, and by the same medium by which such representation is comunicated, that such price increases are made at respondents' discretion and do not necessarily relate to changes in the value of the land.

29. Representing, unless such is the fact, that respondents may or will buy back land from or resell for purchasers, or may or will set up a resale division, or that purchasers can resell their land or their interest therein at a profit.

30. Representing that respondents have undertaken any legal obligation or commitment to provide any facility or amenity without, in conjunction with any such representation, stating the calendar year during which the facility or amenity is at the time of the representation, reasonably expected to be available.

31. Making any statement or representation as to any increase in the number of residents in respondents' property without disclosing in conjunction therewith the approximate number of such residents at the time the representation is made.

32. Making any statement or representation as to any increase in the number of facilities in respondents' property without disclosing in conjunction therewith the number of such facilities at the time the representation is made.

33. Making any statement or representation concerning possible visits by any purchaser or prospective purchaser to any lot in respondents' property without disclosing in conjunction therewith that such purchaser or prospective purchaser may not be able to visit such lot, unless such lot is capable of being reached by automobile.

34. Misrepresenting that land similar to that being offered for sale may not or will not be available in the future.

It is further ordered: (a) That respondents deliver, by certified mail or in person, a copy of this Order to all of their present or future salesmen, independent brokers, advertising agencies, and other employees of respondents who sell or, through personal contact or telephone communication with potential purchasers, promote the sale of land;

(b) That respondents provide a form to each of their present or future salesmen, independent brokers, others who, on behalf of respondents, sell land, and each person conducting tours for any purchaser or prospective purchaser on respondents' property, to be returned to respondents, clearly affirming the intention of that person to be bound by and to conform his business practices with the requirements of this Order;

(c) That respondents inform each of the persons referred to in subparagraph (a) of this paragraph that respondents are required by this order not to use, and shall not use, any such person to sell or to promote the sale of land unless that person complies with the provisions of this Order;

(d) That respondents continue and improve their program of surveillance to determine whether the business operations of the persons described in subparagraph (b) of this paragraph conform with the applicable provisions of this Order;

(e) That respondents upon receiving any information that any of the persons referred to in subparagraph (b) of this paragraph has violated any of the applicable provisions of this Order shall cause such person to receive instruction in the terms and requirements of this Order, and if respondents subsequently receive reliable information that such person has, despite such instruction, continued to violate any provision of this Order, respondents shall take steps promptly to suspend or terminate the employment or contractual relationship of the offending person with respondents.

It is further ordered. That if the Interstate Land Sales Full Disclosure Act, presently codified at 15 U.S.C. 1701–20 (1970), or any regulation that has been or may be promulgated pursuant thereto, requires an act or practice that is prohibited by any provision of this Order, or prohibits an act or practice that is required by any such provision, or is otherwise wholly or partly inconsistent with any such provision of this Order, any such provision of this Order shall be without legal force or effect, except insofar as such provision increases any time period within which any act may be performed.

It is further ordered that nothing in this Order shall be understood to prevent respondents from accurately representing or describing any contributions or services made or provided by ITT or any of its subsidiaries to ICDC or any of ICDC's subsidiaries.

It is further ordered that, for a period of fifteen (15) years after the service upon respondents of this Order, except with the prior authorization of the Federal Trade Commission, respondents shall limit and restrict the deveelopment presently known as Palm Coast and consisting of approximately 93,000 acres, to a maximum of approximately 48,000 registered lots in a maximum of 42,000 acres, including substantial areas set aside for commercial, industrial and reserve parcels, locations for multi-family housing, and areas of conservation and preservation; and, accordingly, respondents shall neither register any lots nor sell any registered lots in the balance of such approximately 93,000 acres.

It is further ordered That the provisions of this Order shall have no application to the sale of ten (10) or more residential lots by any of the respondents to a builder, developer or other person who purchases the lots for purposes of development. *Provided,* That, for a period of fifteen (15) years after the service upon respondents of this Order (or, if under the following two paragraphs the Commission extends the fifteen-year period, for an additional period equal to any such extension), except with the prior authorization of the Federal Trade Commission, such sales of ten (10) or more residential lots at Palm Coast shall be confined to the 42,000 acres referred to in the preceding paragraph.

It is further ordered That respondents shall, 720 days prior to the expiration of the aforementioned fifteen-year period, submit to the Commission a written report in which they shall describe the extent of development at Palm Coast, including, but not limited to, information regarding the number of dwelling units, the extent of recreational facilities, and the extent of public and commercial services.

It is further ordered That unless, at the time of the submission of the report referred to in the preceding paragraph, it reliably appears that the number of dwelling units located or under construction at Palm Coast after the expiration of the fifteen-year period referred to above will be equal to at least 50 percent of the number of lots at Palm Coast then authorized for residential use as to which deeds are at that time held by purchasers or their assignees, the Commission may initiate proceedings under § 3.72 of the Commission's Rules to extend the fifteen-year period for an additional period not to exceed five years. Any such extension must be ordered not later than the expiration of the fifteen-year period. Respondents shall not, by reason of this Order, be deemed to have waived or abandoned any procedural step or right other than the right to seek judicial review of any proceedings provided for in this paragraph.

It is further ordered That respondents shall not represent that as the result of any portion of this Order any agency of the United States Government has endorsed or approved the land development presently known as Palm Coast.

It is further ordered That, not later than six (6) years after the service upon respondents of this Order, respondents shall cause the corporate headquarters of ICDC to be transferred to and located at respondents' property at Palm Coast, Florida.

It is further ordered That respondents shall provide or lawfully cause others to provide, not later than six (6) years after the service upon respondents of this Order, each of the following:

(1) Shopping center building or buildings located upon respondents' land at Palm Coast with a total floor space of at least 40,000 square feet;

(2) An office and research park area located upon respondents' land at Palm Coast, to consist of at least 40 acres, which shall include appropriate roads, water lines, sewers and landscaping suitable for possible future construction of office buildings or research facilities;

(3) A multi-purpose office structure located within the office and research park area referred to in (2) herein, which shall have a total floor space of at least 5,000 square feet;

(4) An office building located upon respondents' land at Palm Coast, which shall be suitably designed to house the corporate headquarters of ICDC, and shall have a total floor space of at least 30,000 square feet;

(5) An interchange, substantially similar to plans submitted to the Florida Department of Transportation on or about August 17, 1972, that affords access to and egress from Highway I–95 at a location on or adjacent to respondents' property at Palm Coast; *Provided, however,* That respondents' obligations with respect to such an interchange are conditioned upon (a) receipt of any and all authorizations and approvals that may be required from federal, state and local governmental agencies, and (b) the agreement of all appropriate federal, state and local governmental agencies that any such interchange shall form part of, and shall be administered and maintained by governmental authorities as part of, Highway I–95; and

(6) Paving of the existing St. Joe Road, Flagler County, Florida, between Highway I–95 and U.S. Highway Route 1; *Provided, however,* That respondents' obligations with respect to such paving are conditioned upon (a) the receipt of any and all authorizations and approvals that may be required from federal, state and local governmental agencies, and (b) the agreement of all appropriate federal, state and local governmental agencies that St. Joe Road shall continue to be a public road, and shall continue to be administered and maintained by governmental authorities as a public road.

It is further ordered That respondents shall make good faith efforts to encourage a supermarket operator to establish a supermarket in the shopping center building or buildings referred to in this Order to be provided at Palm Coast, including, if necessary, a good faith offer to agree to reasonable financial incentives, to continue for a period of at least two years, for the establishment of such supermarket.

It is further ordered That respondents shall give notice to the Commission at least thirty (30) days in advance of the date of effectiveness of any proposed legal change in respondents' corporate form if that change may significantly alter or affect respondents' compliance with the provisions of this Order.

It is further ordered That respondents herein shall within sixty (60) days after service upon them of this Order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this Order.

The Decision and Order was issued by the Commission December 10, 1976.

JOHN F. DUGAN,
Acting Secretary.

[FR Doc.77-1880 Filed 1-19-77;8:45 am]

Title 21—Food and Drugs

CHAPTER I—FOOD AND DRUG ADMINISTRATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

SUBCHAPTER E—ANIMAL DRUGS, FEEDS, AND RELATED PRODUCTS

BYK-GULDEN, INC.

Change in Sponsor Name for Certain New Animal Drugs

The Food and Drug Administration approves three supplemental new animal drug applications (NADA's 65–015, 65–016, 65–460V) filed by Byk-Gulden, Inc., Cantiague Rock Rd., P.O. Box 730, Hicksville, NY 11802, providing for the change in sponsor name for zinc bacitracin, polymyxin B sulfate, neomycin sulfate; zinc bacitracin, polymyxin B sulfate, neomycin sulfate, hydrocortisone acetate; and chloramphenicol ophthalmic ointments from Kasco-Efco Laboratories to the parent company, Byk-Gulden, Inc. The approvals are effective January 21, 1977.

The Commissioner of Food and Drugs is amending §§ 510.600, 548.314, and 555.-310 (21 CFR 510.600, 548.314, and 555.-310) to reflect these approvals. This independent action to approve the intracorporate transfer of the NADA's has not required a reevaluation of the parent NADA's and does not constitute a reaffirmation of the drugs' safety and effectiveness.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner (21 CFR 5.1) (recodification published in the FEDERAL REGISTER of June 15, 1976 (41 FR 24262)), Parts 510, 548, and 555 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. Part 510 is amended in § 510.600 in paragraph (c)(1) by alphabetically adding a new sponsor and in paragarph (c)(2) by numerically adding a new sponsor, to read as follows:

§ 510.600 Names, addresses, and code numbers of sponsors of approved applications.

* * * * * *

(c) * * *

(1) * * *

Firm name and address:	Drug listing No.
* * * * *	
Byk-Gulden, Inc., Cantiague Rock Rd., P.O. Box 730, Hicksville, NY 11802	025463
* * * * *	

(2) * * *

Drug listing No:	Firm name and address
* *	* *
025463	Byk-Gulden, Inc., Cantiague Rock Rd., P.O. Box 730, Hicksville, NY 11802.
* *	* *

PART 548—CERTIFIABLE PEPTIDE ANTIBIOTIC DRUGS FOR ANIMAL USE

2. Part 548 is amended:

§ 548.314a [Amended]

a. In § 548.314a *Zinc bacitracin, polymyxin B sulfate, neomycin sulfate ophthalmic ointment* in paragraph (b)(2) by deleting sponsor No. "010616" and inserting in its place "025463."'

§ 548.314b [Amended]

b. In § 548.314b *Zinc bacitracin, polymyxin B sulfate, neomycin sulfate, hydrocortisone acetate, ophthalmic ointment* in paragraph (c)(2) by deleting sponsor No. "010616" and inserting in its place "025463."

PART 555—CHLORAMPHENICOL DRUGS FOR ANIMAL USE

§ 555.310c [Amended]

3. Part 555 is amended in § 555.310c *Chloramphenicol ophthalmic ointment* in paragraph (c)(2) by deleting sponsor No. "010616" and inserting in its place "025463."

Effective date: This amendment shall be effective January 21, 1977.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b (i)).)

Dated: January 11, 1977.

C. D. VAN HOUWELING,
Director, Bureau of Veterinary Medicine.

[FR Doc.77-1702 Filed 1-19-77;8:45 am]

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

Cambendazole Oral Dosage Forms

The Food and Drug Administration approves supplemental new animal drug applications (NADA's 94-642V, 96-506V, 96-731V) filed by Merck Sharp & Dohme Research Laboratories, Division of Merck & Co., Inc., Rahway, NJ 07065, proposing the safe and effective use of cambendazole suspension, pellets, or paste for treating certain helminth infections in horses. The supplemental applications provide for a caution statement in the labeling that the drug is not to be administered to pregnant mares during the first 3 months of pregnancy. The approval is effective January 21, 1977.

The Commissioner of Food and Drugs is amending Part 520 (21 CFR Part 520) to reflect this approval.

In accordance with § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)) of the animal drug regulations, a summary of the safety and effectiveness data and information submitted to support the approval of this application is released publicly. The summary is available for public examination at the office of the Hearing Clerk, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857, between the hours of 9 a.m. and 4 p.m., Monday through Friday.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner (21 CFR 5.1) (recodification published in the FEDERAL REGISTER of June 15, 1976 (41 FR 24262)), Part 520 is amended as follows:

1. In §520.300a, paragraph (c)(5) is revised to read as follows:

§ 520.300a Cambendazole suspension.

* * * * * *

(c) * * *

(5) Caution: Do not administer to pregnant mares during first 3 months of pregnancy.

* * * * * *

2. In § 520.300b, paragraph (c)(5) is revised to read as follows:

§ 520.300b Cambendazole pellets.

* * * * * *

(c) * * *

(5) Caution: Do not administer to pregnant mares during first 3 months of pregnancy.

* * * * * *

3. In § 520.300c, paragraph (c)(5) is revised to read as follows:

§ 520.300c Cambendazole paste.

* * * * * *

(c) * * *

(5) Caution: Do not administer to pregnant mares during first 3 months of pregnancy.

* * * * * *

Effective date: These amendments shall be effective January 21, 1977.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)).)

Dated: January 12, 1977.

C. D. VAN HOUWELING,
Director, Bureau of Veterinary Medicine.

[FR Doc.77-1701 Filed 1-19-77;8:45 am]

[Docket No. 75N-0027]

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

Ketamine Hydrochloride Injection

The Food and Drug Administration is clarifying an animal drug regulation regarding a ketamine hydrochloride injection used in cats; effective January 21, 1977.

A regulation published in the FEDERAL REGISTER of December 23, 1975 (40 FR 59342) provided for the approval of a new animal drug application, NADA 92-116V filed by Bristol Laboratories, Division of Bristol-Myers Co., P.O. Box 657, Syracuse, NY 13201, by issuance of § 522.1222b *Ketamine hydrochloride with promazine hydrochloride and aminopentamide hydrogen sulfate injection* (21 CFR 522.1222b). It provides in paragraph (e)(1) for use of the drug in cats as the sole anesthetic agent for diagnostic or surgical procedures. To more accurately reflect the labeling approved for the drug, paragraph (e)(1) is revised to state that the drug is used in cats as the sole anesthetic agent for ovariohysterectomy and general surgery.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner (21 CFR 5.1) (recodification published in the FEDERAL REGISTER of June 15, 1976 (41 FR 24262)), § 522.1222b(e)(1) is revised to read as follows:

§ 522.1222b Ketamine hydrochloride with promazine hydrochloride and aminopentamide hydrogen sulfate injection.

* * * * * *

(e) * * *

(1) It is used in cats as the sole anesthetic agent for ovariohysterectomy and general surgery.

* * * * * *

Effective date: This amendment shall be effective January 21, 1977.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)).)

Dated: January 11, 1977.

C. D. VAN HOUWELING,
Director, Bureau of Veterinary Medicine.

[FR Doc.77-1703 Filed 1-19-77;8:45 am]

Title 24—Housing and Urban Development

CHAPTER II—OFFICE OF ASSISTANT SECRETARY FOR HOUSING PRODUCTION AND MORTGAGE CREDIT—FEDERAL HOUSING COMMISSIONER (FEDERAL HOUSING ADMINISTRATION), DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. N-77-682]

PART 200—INTRODUCTION

Minimum Property Standards

Revision No. 4 containing minor technical amendments to the Minimum Property Standards has been completed and distributed to the field offices of the Department of Housing and Urban Development. The revision is made to:

(1) Conform our requirements to certain criteria of the National Fire Protection Association,

(2) Reduce required lighting in public spaces in the interest of conservation of energy,

(3) Clarify standards and make them more specific in response to field office needs, requests and questions.

The Minimum Property Standards are incorporated by reference into 200.933, Title 24 of the Code of Federal Regulations. An official, historic file of the Minimum Property Standards and these changes is available in the Office of Mechanical Support, Room 6160, of the HUD Central Office in Washington, D.C., and in each HUD Regional, Area, and Insuring Office. A copy of the standards and revisions is also maintained in the Office of the Federal Register, Washington, D.C. Copies of the Minimum Property Standards and their revisions can be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

A finding of inapplicability of section 102(2)(c) of the National Environmental Policy Act of 1969 and a similar finding in relation to economic impact pursuant to OMB Circular A-107 have been made. Both findings are available for public inspection at the Office of the Rules Docket Clerk, in the HUD Central Office in Washington, D.C. during business hours.

(Sec. 7(d) of the Department of HUD Act (42 U.S.C. 3535(d)).)

Issued at Washington, D.C., January 12, 1977.

JOHN T. HOWLEY,
Acting Assistant Secretary for Housing — Federal Housing Commissioner.

[FR Doc.77-1717 Filed 1-19-77;8:45 am]

[Docket No. R-77-434]

PART 201—PROPERTY IMPROVEMENT AND MOBILE HOME LOANS

Fiscal Year

The Department of Housing and Urban Development is amending its Property Improvement and Mobile Home Regulations to conform with the new fiscal year.

Notice and public procedure are unnecessary under the provisions of 5 U.S.C. 553(b) since the change is for the purpose of conforming the regulation to the new fiscal year. Advance publication for the 30-day period specified in 5 U.S.C. 553(d) is unnecessary and good cause exists for making the revision effective January 17, 1977.

The Department has determined that an Environmental Impact Statement is not required with respect to this rule. A copy of the Finding of Inapplicability is available for public inspection and copying according to the Departmental rules and regulations at the office of the Rules Docket Clerk, Room 10141, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C.

Accordingly, § 201.12 (c) and (e) are revised to read as follows:

§ 201.12 Insurance reserve.

* * * * * *

(c) *Adjustment of general reserve.* The amount of the general insurance reserve to the credit of each insured shall be adjusted on October 1 of each year * * *

However, no such adjustment shall be made in the insurance reserve of any financial institution until the first day of October * * *

* * * * * *

(e) *Transfer of insurance reserve.* Insurance reserve of more than $5,000 shall not be transferred to or from the reserve account of any insured during any fiscal year (October 1 through September 30) without the prior approval of the Commissioner. * * *

* * * * * *

(Sec. 7(d) 79 Stat. 670 (42 U.S.C. 3535(d)); sec. 2, 48 Stat. 1246, (12 U.S.C. 1703).)

NOTE.—It is hereby certified that the economic and inflationary impacts of this proposed regulation have been carefully evaluated in accordance with OMB Circular A-107.

Effective date: This amendment is effective January 17, 1977.

JOHN T. HOWLEY,
Acting Assistant Secretary for Housing — Federal Housing Commissioner.

[FR Doc.77-1848 Filed 1-19-77;8:45 am]

Title 26—Internal Revenue

CHAPTER I—INTERNAL REVENUE SERVICE, DEPARTMENT OF THE TREASURY

SUBCHAPTER A—INCOME TAX

[T.D. 7462]

PART 1—INCOME TAX: TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Disclosure Statements Regarding Individual Retirement Accounts, Individual Retirement Annuities and Endowment Contracts

This document adopts an amendment to the Income Tax Regulations (26 CFR Part 1) under section 408(i) of the Internal Revenue Code of 1954, relating to disclosure statements regarding individual retirement accounts, individual retirement annuities and certain endowment contracts, to postpone the effective date of such regulations from January 1, 1977 to February 15, 1977.

ADOPTION OF AMENDMENT TO THE REGULATIONS

§ 1.408-1 [Amended]

In order to postpone the effective date of income tax regulations under section 408(i) of the Internal Revenue Code of 1954, § 1.408-1(d)(4)(x) of the Income Tax Regulations (26 CFR Part 1) is amended by striking out "December 31, 1976" and inserting in lieu thereof "February 14, 1977".

Because this Treasury decision merely postpones the effective date of a rule, and because of the need for immediate guidance with respect to such postponement, it is found unnecessary and impracticable to issue this Treasury decision with notice and public procedure thereon under subsection (b) of section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

(Sec. 408(i), 7805, Internal Revenue Code of 1954 (88 Stat. 964 and 68A Stat. 917; (26 U.S.C. 408(i), 7805)).)

DONALD C. ALEXANDER,
Commissioner of Internal Revenue.

Approved: January 13, 1977.

CHARLES M. WALKER,
Assistant Secretary of the Treasury.

[FR Doc.77-1839 Filed 1-19-77;8:45 am]

Title 27—Alcohol, Tobacco Products and Firearms

CHAPTER I—BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, DEPARTMENT OF THE TREASURY

[T.D. ATF-39]

CONVERSION FACTOR

Metric Standards of Fill

The Bureau of Alcohol, Tobacco and Firearms (ATF) published Treasury decision ATF-34 in the FEDERAL REGISTER on October 26, 1976 (41 FR 46859). That decision made a number of changes in Title 27 CFR, one of which was the addition of three sections prescribing a conversion factor to be used in converting metric units into U.S. units. ATF is now revising these conversion factor sections to clarify how the converted amounts should be rounded off.

Background. On October 1, 1976, members of the distilled spirits industry could begin importing or bottling distilled spirits according to metric standards of fill. To implement the new metric sizes, ATF issued T.D. ATF-34 which: (1) Prescribed case marking requirements for metric-size bottles; (2) required separate strip stamp accounting for metric sizes; (3) liberalized record-keeping requirements; and (4) prescribed a conversion factor to use when converting metric units to U.S. units.

Records and conversion factor. Since current Federal excise tax statutes and regulations are based upon wine gallon and proof gallon units, industry members who handle cases of metric-size bottles may have to convert metric units to U.S. units. T.D. ATF-34 enables industry members to choose when these conversions are made. Thus, an industry member may keep required commercial records (1) in liter or wine gallon units; (2) in liters per case and proof, wine gallons per case and proof, or proof gallons per case; (3) in liters per case or wine gallons per case; or (4) in proof gallons. (In general, industry members will not have as many options when required forms, reports or tax returns are prepared since proof gallons are still the basis for computing taxes, claims, etc.)

Potential Problem. Industry members may face a potential problem depending

on whether the prescribed conversion factor (0.264172) is used before or after multiplying by the number of cases. The following examples illustrate the problem which may arise:

If an industry member were computing the total wine gallons in 4,567 cases of a 1.75 liter-size product, the industry member could calculate—

(1) 1.75 liters×6 bottles per case=10.5 liters per case; 10.5×4,567=47,953.5 liters; 47,953.5×0.264172=12,667.97 wine gallons; or

(2) 1.75 liters×6 bottles per case=10.5 liters per case; 10.5×0.264172=2.77 wine gallons per case (rounded off to two decimal places as allowed by §§ 170.64, 194.232 and 201.611a); 2.77×4,567=12,650.59 wine gallons.

If another industry member were computing the wine gallon total of 4,567 cases of a 50 ml size product, that industry member could calculate—

(3) 0.050 liters×120 bottles per case=6 liters per case; 6×4,567 cases=27,402.0 liters; 27,402×0.264172=7,238.84 wine gallons; or

(4) 0.050 liters×120 bottles per case=6 liters; 6×0.264172=1.59 wine gallons per case; 1.59×4,567=7,261.53 wine gallons.

In the above examples using the 1.75 liter size, there is an approximately 17-wine gallon difference depending on whether the conversion factor is used before or after multiplying by the number of cases. With the 50 ml size, the difference is about 23 wine gallons. When the conversion factor is used before multiplying by the number of cases, the wine gallon total is understated by about 17 gallons for the 1.75 liter size and overstated by about 23 gallons for the 50 ml size.

The implications of the above differences (depending on whether the conversion factor is used before or after multiplying by the number of cases) could have effects not only on the record-keeping and accounting systems of industry members, but these differences could also affect the payment of excise taxes.

Solutions. The above problems would not arise if industry members only used the conversion factor after multiplying by the number of cases, or if they maintained records in liters where possible (such as the Daily Summary of Removals from Controlled Stock). However, these solutions would give industry members little flexibility in determining what unit to keep their records in.

Another solution is to require that equivalent wine gallon and proof gallons amounts (i.e., liters×0.264172×proof) be rounded off to six decimal places whenever the conversion factor is used before multiplying by the number of cases. Thus, examples (2) and (4) above would be recomputed as follows:

(2) 1.75×6=10.5 liters per case; 10.5×0.264172=2.773806 wine gallons per case; 2.773806×4,567 cases=12,667.97 wine gallons; and

(4) 0.050×120=6 liters per case; 6×0.264172=1.585032 wine gallons per case; 1.585032×4,567 cases=7,238.84 wine gallons.

By rounding the wine-gallons-per-case or proof gallons per case amounts to the nearest sixth decimal place, the computations are exactly equal to examples (1) and (3), respectively. The integrity of all commercial records is preserved and taxpayments would be accurate.

Regulation changes. ATF is, therefore, revising the three conversion factor sections, §§ 170.64, 194.232 and 201.611a, by requiring that conversions from metric to U.S. units be carried out to the nearest sixth decimal place whenever the conversion factor is used before multiplying by the number of cases. Whenever the conversion factor is used after multiplying by the number of cases, the equivalent U.S. units need only be rounded off to the nearest hundredth.

The following examples illustrate how conversions from metric to U.S. units are to be rounded off:

(5) 1.75 liters×6 bottles=10.5 liters per cases; 10.5×0.264172=2.773806 wine gallons per case; 4,567 cases×2.773806=12,667.97 wine gallons.

(6) 1.75 liters×6 bottles=10.5 liters per case; 10.5×0.264172=2.773806 wine gallons per case; 2.773806×0.8 (proof divided by 100)=2.219045 proof gallons per case; 2.219045×4,567 cases=10,134.38 proof gallons; or

(7) 1.75 liters×6 bottles=10.5 liters per case; 10.5×0.264172=2.773806 wine gallons per case; 2.773806×4,567 cases=12,667.97 wine gallons; 12,667.97×0.8 (proof divided by 100)=10,134.38 proof gallons.

(8) 1.75 liters×6 bottles=10.5 liters per case; 10.5×4,567 cases=47,953.50 liters; 47,953.50×0.264172=12,667.97 wine gallons; 12,667.97×0.8 (proof divided by 100)=10,134.38 proof gallons.

In the above examples, once the amounts are multiplied by the number of cases, it is only necessary to round off to the nearest one-hundredth.

The following regulations are issued under the authority contained in 26 U.S.C. 7805 (68 Stat. 917).

REGULATION CHANGES

In consideration of the foregoing, 27 CFR is amended as follows:

PART 170—MISCELLANEOUS REGULATIONS RELATING TO LIQUOR

Paragraph 1. Section 170.64 of Part 170 is amended to read as follows:

§ 170.64 Conversion between metric and U.S. units.

Whenever liters are converted to wine gallons, the quantity in liters shall be multiplied by 0.264172 to determine the equivalent quantity in wine gallons. If the conversion from liters to wine gallons is made before multiplying by the number of cases, the quantity in U.S. units shall be rounded off to the nearest sixth decimal place. If the conversion is made after multiplying by the number of cases, the quantity in U.S. units shall be rounded off to the nearest hundredth.

PART 194—LIQUOR DEALERS

Par. 2. Section 194.232 is amended to read as follows:

§ 194.232 Conversion between metric and U.S. units.

Whenever liters are converted to wine gallons, the quantity in liters shall be multiplied by 0.264172 to determine the equivalent quantity in wine gallons. If the conversion from liters to U.S. units is made before multiplying by the numbers of cases, the quantity in U.S. units shall be rounded off to the nearest sixth decimal place. If the conversion from liters to U.S. units is made after multiplying by the number of cases, the quantity in U.S. units shall be rounded off to the nearest hundredth.

PART 201—DISTILLED SPIRITS PLANTS

Par. 3. Section 201.611a of Part 201 is amended to read as follows:

§ 201.611a Conversion between metric and U.S. units.

Whenever liters are converted to wine gallons, the quantity in liters shall be multiplied by 0.264172 to determine the equivalent quantity in wine gallons. If the conversion from liters to U.S. units is made before multiplying by the number of cases, the quantity in U.S. units shall be rounded off to the nearest sixth decimal place. If the conversion is made after multiplying by the number of cases, the quantity in U.S. units shall be rounded off to the nearest hundredth.

Because the amendments made by this Treasury decision correct a potential inequity in determining excise taxes and are clarifying in nature, it is found that it is unnecessary to issue this Treasury decision with notice and public procedure thereon under 5 U.S.C. 553(b) nor subject to the effective date limitation of 5 U.S.C. 553(d).

Therefore, this Treasury decision shall become effective on January 21, 1977.

The Bureau of Alcohol, Tobacco and Firearms has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107.

Signed: December 15, 1976.

REX D. DAVIS,
Director.

Approved: January 10, 1977.

JERRY THOMAS,
Under Secretary of the Treasury.

[FR Doc.77-1924 Filed 1-19-77;8:45 am]

Title 31—Money and Finance

SUBTITLE A—OFFICE OF THE SECRETARY OF THE TREASURY

PART 13—PROCEDURES FOR PROVIDING ASSISTANCE TO STATE AND LOCAL GOVERNMENTS IN PROTECTING FOREIGN DIPLOMATIC MISSIONS

Daily Cost Sheets; Correction

In FR Doc. 76-37077, appearing at page 55179 in the issue for Friday, December 17, 1976, the last line of page 55187, reading "*Attach daily cost sheets (Appendix I (B) through I(E)." should be changed to read: "*Attach daily cost sheets (Appendix II(B) through II(E))."

Dated: January 11, 1977.

JERRY THOMAS,
Under Secretary of the Treasury.

[FR Doc.77-1835 Filed 1-19-77;8:45 am]

Title 33—Navigation and Navigable Waters

CHAPTER I—COAST GUARD, DEPARTMENT OF TRANSPORTATION

[CGD 76-119]

PART 117—DRAWBRIDGE OPERATION REGULATIONS

Oakland Inner Harbor Tidal Canal, Calif.

This amendment changes the regulations for the High Street bridge to provide for closed periods from 7:30 a.m. to 8:30 a.m. and from 3:45 p.m. to 5:45 p.m., Monday through Friday. This amendment was circulated as a public notice dated October 29, 1976 by the Commander, Twelfth Coast Guard District and was published in the FEDERAL REGISTER as a notice of proposed rulemaking (CGD 76-119) on October 28, 1976 (41 FR 47263). Four replies were received that concurred with or had no objection to the proposal.

Ownership of the Fruitvale Avenue bridge has been transferred from the Department of the Army to Alameda County and the heading of § 117.712(d) is amended to reflect this change.

Accordingly, Part 117 of Title 33 of the Code of Federal Regulations is amended by revising § 117.712(d) to read as follows:

§ 117.712 Tributaries of San Francisco Bay and San Pablo Bay, Calif.

* * * * *

(d) *Oakland Inner Harbor Tidal Canal; County of Alameda Highway bridges at Park, Fruitvale Avenue (Miller-Sweeny) and High Streets and Department of Army railroad bridge at Fruitvale Avenue.* (1) From 7:30 a.m. to 8:30 a.m., and from 3:45 p.m. to 5:45 p.m., Monday through Friday, except holidays, the draw need not open for the passage of vessels except that—

(i) The draw shall open as soon as possible for vessels in distress, and emergency vessels, including commercial vessels engaged in rescue or emergency salvage operations; and

(ii) The draw shall open after two hours notice to the Park Street bridge for vessels which must, for reasons of safety, move on a tide or slack water.

(2) At all other time, the draw shall open on signal.

* * * * *

(Sec. 5, 28 Stat. 362, as amended, sec. 6(g)(2), 80 Stat. 937; (33 U.S.C. 499, 49 U.S.C. 1655(g)(2)); 49 CFR 1.46(c)(5), 33 CFR 1.051(c)(4).)

Effective date: This revision shall become effective on February 22, 1977.

NOTE.—The Coast Guard has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107.

Dated: January 17, 1977.

A. F. FUGARO,
Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Environment and Systems.

[FR Doc.77-1874 Filed 1-19-76;8:45 am]

CHAPTER II—CORPS OF ENGINEERS, DEPARTMENT OF THE ARMY

[ER 1105-2-81]

PART 265—PLANNING ASSISTANCE TO STATES

Amendments

On September 15, 1975, the Chief of Engineers adopted a regulation on the Corps of Engineers implementation of section 22 of the Water Resources Development Act of 1974 (Pub. L. 93-251). This law permits the Chief of Engineers to participate with States in developing comprehensive water resources plans.

Section 168 of the Water Resources Development Act of 1976 (Pub. L. 94-587), raised the annual monetary limitation for the section 22 planning assistance program from $2 million to $4 million.

This amendment revises the Corps regulation to reflect the new monetary limitation and to clarify the eligibility criteria for work under the section 22 program.

Since the amendments to this regulation contain no changes in policies or procedures for the section 22 program, the amendments are not being published under proposed rulemaking and are being adopted effective 22 October 1976, the date on which the President approved Pub. L. 94-587.

The Corps of Engineers has determined that this amendment does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107.

Dated: January 10, 1977.

RUSSELL J. LAMP,
Colonel, Corps of Engineers Executive.

Part 265 of Title 33 is amended as follows:

§ 265.10 [Amended]

1. Section 265.10 is amended to add two words at the end of sentence to read as follows: "This regulation provides basic policies and general guidelines for Corps of Engineers' participation in the program authorized by section 22 of the Water Resources Development Act of 1974 (Pub. L. 93-251), as amended."

§ 265.12 [Amended]

2. Section 265.12(a) is revised to indicate amendment to referenced section 22, Pub. L. 251, to read as follows: "Section 22, Public Law 93-251, Water Resources Development Act of 1974, 7 March 1974, as amended by section 168, Pub. L. 94-587, Water Resources Development Act of 1976, 22 October 1976 (90 Stat. 2936)".

§ 265.13 [Amended]

3. Section 265.13(a) is amended to add two words in first sentence to read as follows: "Specifically, section 22, as amended, provides for the following:"

4. Section 265.13(a)(2) is amended to change the amount from "$2,000,000" to "$4,000,000".

§ 265.15 [Amended]

5. Section 265.15(b) is amended to revise first sentence to read as follows: "As outlined in paragraph 5a, the primary factor in the determination of eligibility is the objective of the study. The section 22 program is to furnish information into a larger study to be used in some type of State water plan."

[FR Doc.77-1332 Filed 1-19-77;8:45 am]

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER C—AIR PROGRAMS

[FRL 670-8]

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Mass Transit Priority Incentives in the State of New Jersey; Action of Employers' Programs

The purpose of this notice is to announce approval by the Environmental Protection Agency (EPA) of two employer transit incentive programs and to announce the discontinuation of another program previously approved. These programs are developed in accordance with a part of the air pollution control plan for the State of New Jersey as contained in 40 CFR 52.1590, "Employer's provisions for mass transit priority incentives." This regulation requires certain employers who maintain 400 or more parking spaces available for use by their employees to submit an adequate transit incentive program designed to encourage the use of mass transit, carpooling, vanpooling and other strategies.

In the November 12, 1976 FEDERAL REGISTER (41 FR 50052), EPA announced its proposed approval of transit incentive plans submitted by the BASF Wyandotte Corporation located in Parsippany, New Jersey and Nabisco, Inc. located in East Hanover, New Jersey. In that same notice EPA announced its intention to approve the discontinuation of the program previously approved for the Otis Elevator Company of Harrison, New Jersey. Otis Elevator Company no longer maintains 400 or more employee parking spaces at its facility.

The November 12 FEDERAL REGISTER notice also provided an opportunity for public comment on each of these actions. No comments were received. EPA review has determined that the transit incentive plans submitted by the BASF Wyandotte Corporation, Parsippany, New Jersey and Nabisco, Inc., East Hanover, New Jersey maximize carpooling and transit utilization and represent a good faith effort on the part of these employers. Therefore, they are hereby approved. The transit incentive program of the Otis Elevator Company, Harrison, New Jersey, also is hereby approved for discontinuance.

Dated: January 12, 1977.

JOHN QUARLES,
Acting Administrator,
Environmental Protection Agency.

[FR Doc.77-1625 Filed 1-19-77; 8:45 am]

Title 45—Public Welfare

CHAPTER I—OFFICE OF EDUCATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

PART 185—EMERGENCY SCHOOL AID

Amended Criteria and Procedures

On October 15, 1976 there was published in the FEDERAL REGISTER, at 41 FR 45702, a Notice of Proposed Rulemaking which set forth standards for the minimum acceptable merit of applications for assistance under sections 706(a), 706(b), 708(b), and 708(c) of the Emergency School Aid Act, as amended (20 U.S.C. 1601–1619) and procedures for evaluating these applications.

Interested persons were given 45 days to submit comments and recommendations concerning the proposed amendments. One letter of comment was received, but none of the comments and recommendations in that letter pertained to standards for the minimum acceptable merit of applications or to fund reservation procedures to be used in evaluating applications. Since the only comments and recommendations received were, therefore, beyond the scope of the proposed amendments, those amendments are adopted without change.

As required by section 431(d) of the General Education Provisions Act, as amended (20 U.S.C. 1232(d)), these regulations have been transmitted to the Congress concurrently with the publication of this document in the FEDERAL REGISTER. That section provides that regulations subject to it become effective on the forty-fifth day following transmission, subject to the provisions in that section concerning Congressional action and adjournment.

The Assistant Secretary for Education has determined that this document does not contain a major proposal requiring preparation of an Inflationary Impact Statement under Executive Order 11821 and OMB Circular A–107.

In consideration of the foregoing, Part 185 of Title 45 of the Code of Federal Rgulations is amended as set forth below.

(Catalog of Federal Domestic Assistance Number 13.525 Emergency School Aid—Basic Grants; 13.526 Emergency School Aid—Pilot Projects; 13.528 Emergency School Aid—Bilingual Projects; 13.529 Emergency School Aid—Nonprofit Organizations.)

Dated: December 23, 1976.

CHARLES E. HANSEN,
Acting Assistant
Secretary for Education.

Approved: January 12, 1977.

DAVID MATHEWS,
Secretary of Health, Education, and Welfare.

1. In § 185.14, paragraph (c) is revised to read as follows:

§ 185.14 Criteria for assistance.

* * * * *

(c) *Funding criteria and procedures.* (1) In determining amounts to be awarded to applicants for assistance under this subpart, the Assistant Secretary shall consider:

(i) The additional cost to such applicants (as such cost is defined in § 185.13 (a) of effectively carrying out its proposed program, project, or activity; and

(ii) The amount of funds available for assistance under this subpart within the State in relation to other applications from the State pending before the Assistant Secretary.

(2) An application for assistance under this subpart will be considered to set forth a program, project, or activity of such insufficient promise for achieving the purpose of the Act that its approval is not warranted, and shall not be approved for funding, if such application has been awarded:

(i) fewer than 40 points on the basis of the criteria in paragraphs (a) and (b) of this section; or

(ii) fewer than 28 points on the basis of the criteria in paragraph (b) of this section.

(3) An application determined on the basis of the standards in paragraph (c)(2) of this section to be unapprovable will be returned to the applicant. The Assistant Secretary shall notify the applicant of the specific reasons for such determination, and shall afford the applicant an appropriate opportunity to modify and resubmit its application.

(4) Except as provided in paragraph (c)(5) of this section, the Assistant Secretary shall award funds to applicants for assistance under this subpart from a State (whose applications meet the requirements of the Act and are approvable on the basis of the standards in paragraph (c)(2) of this section) in the order of their ranking on the basis of the criteria set out in paragraphs (a) and (b) of this section until the funds apportioned to the State for the purpose of this subpart have been exhausted.

(5)(i) Not less than one-third of the funds apportioned to a State for the purpose of this subpart shall be reserved until applicants whose initial applications were determined to be unapprovable on the basis of the standards in paragraph (c)(2) of this section have been afforded an appropriate opportunity to modify and resubmit their applications. From the funds not so reserved, the Assistant Secretary shall award funds to applicants whose applications are approvable in the order of the ranking of their initial applications (on the basis of the criteria set out in paragraphs (a) and (b) of this section) until unreserved funds are insufficient to support the next ranking approvable application at the level determined by the Assistant Secretary to be necessary to carry out effectively the proposed program, project or activity.

(ii) Where unreserved funds are insufficient to support the next ranking approvable application at the level determined by the Assistant Secretary to be necessary to carry out effectively the proposed program, project or activity, the Assistant Secretary shall notify the applicant of the specific reasons for its ranking, and shall afford the applicant an appropriate opportunity to modify and resubmit its application to compete for reserved funds. If such an applicant chooses to modify and resubmit its application, its ranking shall be determined on the basis of the criteria set out in paragraphs (a) and (b) of this section as applied to its resubmitted application.

(Public Law 92-318, sections 702; 705(a)(1), (b)(3); 706(a); 710(c), (d)(2).)

2. In § 185.24, paragraph (c) is revised to read as follows:

§ 185.24 Criteria for assistance.

* * * * *

(c) *Funding criteria and procedures.* The provisions of § 185.14(c) shall apply to awards of assistance under this subpart, except that:

(1) References in § 185.14(c) to "this subpart" shall be understood to refer to Subpart C—Pilot Projects;

(2) References in § 185.14(c) to "this section" shall be understood to refer to § 185.24; and

(3) The minimum points referred to in paragraph (c)(2) of § 185.14 shall, for the purpose of this subpart, be 45 on the basis of the criteria in paragraphs (a) and (b) of this section and 33 on the basis of the criteria in paragraph (b).

(Public Law 92-318, sections 702; 705(a)(2), (b)(3); 706(b); 710(a), (d)(2).)

3. In § 185.54, paragraph (c) is revised to read as follows:

§ 185.54 Criteria for assistance.

* * * * *

(c) *Funding criteria and procedures.* The provisions of § 185.14(c) shall apply to awards of assistance under this subpart, except that:

(1) References in § 185.14(c) to "this subpart" shall be understood to refer to Subpart F—Bilingual Projects;

(3) References in § 185.14(c) to "this section" shall be understood to refer to § 185.54;

(3) References in § 185.14(c) to a "State" shall be understood to refer to the 50 States and the District of Columbia, taken together; and

(4) The minimum points referred to in subparagraph (2) of § 185.14(c) shall, for the purpose of this subpart, be 45 on the basis of the criteria in paragraphs (a) and (b) of this section, and 33 on the basis of the criteria in § 185.54(b).

(20 U.S.C. 1601; 1603(b)(A); 1607(c); 1609(d)(2).)

4. In § 185.64, paragraph (c) is revised to read as follows:

§ 185.64 Criteria for assistance.

* * * * *

(c) *Funding criteria and procedures.* The provisions of § 185.14(c) shall apply to awards of assistance under this subpart, except that:

(1) References in § 185.14(c) to "this subpart" shall be understood to refer to Subpart G—Public or Nonprofit Private Organizations; and

(2) References in § 185.14(c) to "this section" shall be understood to refer to § 185.64.

(Public Law 92-318, sections 702; 705(a)(3), (b)(3); 708(b).)

[FR Doc.77-1947 Filed 1-19-77;8:45 am]

CHAPTER III—OFFICE OF CHILD SUPPORT ENFORCEMENT (CHILD SUPPORT ENFORCEMENT PROGRAM) DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

PART 304—FEDERAL FINANCIAL PARTICIPATION

Applicability of Other Regulations

Part 304, Chapter III, Title 45 of the Code of Federal Regulations is amended by adding a new § 304.29 which explicitly conforms §§ 201.14 and 201.15 of 45 CFR Part 201, Grants to States for Public Assistance Programs, relating to disallowance, deferral and reconsideration of claims for FFP, to the terminology used in the Child Support Enforcement Program.

Good cause exists to dispense with notice of proposed rulemaking since 45 CFR 201.14 and 45 CFR 201.15 already apply to all of title IV, including title IV-D. The purpose of this regulation is to clarify which officials perform the specific tasks related to disallowance, deferral and reconsideration in the Office of Child Support Enforcement.

As amended, Part 304 reads as set forth below:

Section 304.29 is added to read as follows:

§ 304.29 Applicability of other regulations.

Sections 201.14 and 201.15 of Chapter II of Title 45 of the Code of Federal Regulations, which establish procedures for disallowance, deferral and reconsideration of claims for expenditures submitted by the States, shall apply to all expenditures claimed for FFP under title IV-D of the Act. For purposes of applying those provisions under title IV-D, "Service" shall read "Office" which refers to the Office of Child Support Enforcement; "Administrator" shall read "Director" which refers to the Director, Office of Child Support Enforcement; "Deputy Administrator" shall read "Deputy Director" which refers to the Deputy Director, Office of Child Support Enforcement; "Regional Commissioner" shall read "Regional Representative" which refers to the Regional Representatives of the Office of Child Support Enforcement; and "State" shall refer to the State IV-D agency.

(Sec. 1102, 49 Stat. 647 (42 U.S.C. 1302).)

This regulation shall be effective on January 21, 1977.

(Catalog of Federal Domestic Assistance Program No. 13679, Child Support Enforcement Program.)

NOTE.—The Office of Child Support Enforcement has determined that this document does not require preparation of an inflationary impact statement under Executive Order 11821 and OMB Circular A-107.

Dated: January 10, 1977.

ROBERT FULTON,
Director, Office of
Child Support Enforcement.

Approved: January 13, 1977.

MARJORIE LYNCH,
Acting Secretary.

[FR Doc.77-1946 Filed 1-19-77;8:45 am]

Title 49—Transportation

CHAPTER II—FEDERAL RAILROAD ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[FRA Docket No. RSOR-3; Notice 6]

PART 218—RAILROAD OPERATING RULES

Blue Signal Protection of Workmen; Correction

In FR Doc. 77-1043 appearing at page 2318 in the FEDERAL REGISTER of Tuesday, January 11, 1977, paragraph (a) of § 218.23 appearing on page 2320 is corrected in the second line of that paragraph by inserting the words "§ 218.25 or" immediately following the word "with", and immediately before the word "§ 218.27".

Dated: January 14, 1977.

R. LAWRENCE MCCAFFREY, Jr.,
Chief Counsel.

[FR Doc.77-1817 Filed 1-19-77;8:45 am]

[FRA Docket No. RSRM-1; Notice 3]

PART 221—REAR END MARKING DEVICE—PASSENGER, COMMUTER AND FREIGHT TRAINS

Miscellaneous Corrections

In FR Doc. 77-1044 appearing at page 2321 in the FEDERAL REGISTER of Tuesday, January 11, 1977, the following changes should be made:

1. On page 2325 paragraph (c) of § 221.5 is corrected in the first line and in the fourth line by deleting from both lines the word "selfpropelled" and inserting in its place in both lines the word "self-propelled".

2. On page 2326 paragraph (a) of § 221.13 is corrected in the fourth line by deleting the word "located" and inserting in its place the word "located".

3. On page 2326 paragraph (a) of § 218.15 is corrected by deleting the period at the end thereof and inserting in its place "with:".

4. On page 2326 paragraph (c)(1) of § 221.15 is corrected to read as follows:

§ 221.15 Marking devices.

* * * * *

(c) * * *

(1) At least one marking device which complies with paragraph (a) of this section; or

* * * * *

Dated: January 14, 1977.

R. LAWRENCE MCCAFFREY, Jr.
Chief Counsel.

[FR Doc.77-1816 Filed 1-19-77;8:45 am]

CHAPTER V—NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

PART 501—ORGANIZATION AND DELEGATION OF POWERS AND DUTIES

Amended Delegations of Authority

This notice amends the delegation of authority to administer the odometer requirements of Title IV of the Motor Vehicle Information and Cost Savings Act (Pub. L. 92–513, as amended Pub. L. 94–364, 15 U.S.C. 1981–1999).

The authority to administer Title IV, delegated to the Associate Administrator for Motor Vehicle Programs at 49 CFR 501.8(c), is hereby deleted from § 501.8 (c) and redelegated to the Chief Counsel as paragraph (a) of a new § 501.8(i).

In consideration of the foregoing, Part 501 of Title 49, Code of Federal Regulations, is amended as follows:

§ 501.8 [Amended]

1. The last clause of § 501.8(c) is amended as follows:

* * * * *

(c) * * *; and Titles I and II of the Motor Vehicle Information and Cost Savings Act (86 Stat. 947, as amended 90 Stat. 981; 15 U.S.C. 1901).

* * * * *

2. Section 501.8(i) is added as follows:

* * * * *

(i) *Chief Counsel.* The Chief Counsel is delegated authority to:

(1) Exercise the powers of the Administrator under Title IV of the Motor Vehicle Information and Cost Savings Act (86 Stat. 947, as amended 90 Stat. 981; 15 U.S.C. 1901).

This notice amends a rule of agency practice and therefore requires no notice of proposed rulemaking and opportunity for comment thereon.

(Pub. L. 92-513, 86 Stat. 947, as amended Pub. L. 94-364, 90 Stat 981, 15 U.S.C. 1901-1999; delegation at 49 CFR 1.50(f).)

Effective date: January 14, 1977.

Issued on: January 14, 1977.

JOHN W. SNOW,
Administrator.

[FR Doc.77-1870 Filed 1-19-77;8:45 am]

[Docket No. 76-3; Notice 4]

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

New Pneumatic Tires for Passenger Cars

This amendment adds certain tire size designations to 49 CFR 571.109 (Federal Motor Vehicle Safety Standard No. 109).

Guidelines were published in the FEDERAL REGISTER on October 5, 1968 (33 FR 14964), and amended August 31, 1974 (39 FR 28980), specifying procedures by which routine additions could be made effective 30 days from publication in the FEDERAL REGISTER, if no objections are received. If objections are received, rulemaking procedures for the issuance of motor vehicle safety standards (49 CFR Part 553) are followed.

Accordingly, Appendix A of 49 CFR § 571.109 is amended, subject to the 30-day provision indicated above, as specified below.

Effective date: February 22, 1977, if objections are not received.

The following changes are made to Appendix A of § 571.109, Standard No. 109, New Pneumatic Tires.

§ 571.109 [Appendix Amended].

1. Amendment requested by the Rubber Manufacturers Association:

In Table I-G, the following new tire size designation and corresponding values are added.

TABLE I-G.—*Tire load ratings, test rims, minimum size factors, and section widths for "70 Series" radial ply tires*

Tire size [1] designation	Maximum tire loads (pounds) at various cold inflation pressures (pounds per square inch)													Test rim width (inches)	Minimum size factor (inches)	Section width [2] (inches)
	16	18	20	22	24	26	28	30	32	34	36	38	40			
BR70-15	780	840	890	930	980	1,030	1,070	1,110	1,150	1,190	1,230	1,270	1,300	5	31.92	7.10

[1] The letters "HR," "SR" or "VR" may be included in any specified tire size designation adjacent to or in place of the dash.
[2] Actual section width and overall width shall not exceed the specified section width by more than 7 pct.

2. Amendment requested by the European Tyre and Rim Technical Organisation:

In Table I-Y the following new tire size designation and corresponding values are added.

TABLE I-Y.—*Tire load ratings, test rims, minimum size factors, and section widths for all millimetric "65" series radial ply tires*

Tire size [1] designation	Maximum tire loads (pounds) at various cold inflation pressures (pounds per square inch)													Test rim width (millimeter)	Minimum size factor (inches)	Section width [2] (inches)
	16	18	20	22	24	26	28	30	32	34	36	38	40			
195/65R375	865	905	945	990	1,035	1,080	1,125	1,170	1,210	1,250	1,290	1,330	1,370	105	31.66	7.48

[1] The letters "H," "S" or "V" may be included in any specified tire size designation adjacent to the letter "R."
[2] Actual section width and overall width shall not exceed the specified section width by more than 7 pct.

(Secs. 103, 119, 201 and 202, Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392, 1407, 1421 and 1422); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8.)

Issued on January 12, 1977.

ROBERT L. CARTER,
Associate Administrator,
Motor Vehicle Programs.

[FR Doc.77-1511 Filed 1-19-77;8:45 am]

CHAPTER X—INTERSTATE COMMERCE COMMISSION

SUBCHAPTER A—GENERAL RULES AND REGULATIONS

[Revised Service Order No. 1182]

PART 1033—CAR SERVICE

Substitution of Stock Cars for Boxcars

At a Session of the Interstate Commerce Commission, Railroad Service Board, held in Washington, D.C., on the 14th day of January, 1977.

It appearing, That, because of an acute shortage of boxcars for shipments of grain, grain screenings, grain products, soybeans or soybean products, during past months, certain shippers were granted permission to install at their own expense, plywood linings to stock cars owned by the Burlington Northern Inc. (BN); that such cars are assigned by the BN to those shippers for transporting shipments of the aforementioned commodities; that continued use of these cars for transporting grain, grain screenings, grain products, soybeans or soybean products is precluded by certain tariff provisions requiring the use of boxcars, thus curtailing shipments of grain, grain screenings, grain products, soybeans or soybean products and creating great economic loss; that present regulations and practices with respect to the use of boxcars are ineffective. It is the opinion of the Commission that continued use of these cars will promote car service in the interest of the public and the commerce of the people. Accordingly, the Commission finds that notice and public procedure are impracticable and contrary to the public interest, and that good cause exists for making this order effective upon less than thirty days' notice.

It is ordered, That:

§ 1033.1182 Substitution of stock cars for boxcars.

(a) *Substitution of cars.* Subject to the concurrence of the shipper, the Burlington Northern Inc. (BN) may substitute specially conditioned stock cars for shipments of grain, grain screenings, grain products, soybeans or soybean products, whether from the point of origin or from an intermediate in-transit point, regardless of tariff provisions requiring the use of boxcars.

(b) *Minimum weights.* The minimum weights per shipments of grain, grain screenings, grain products, soybeans or soybean products transported in stock cars substituted for boxcars shall be the minimum weights specified in the tariffs for shipments made in boxcars regardless of the number of stock cars required to be used to secure the minimum weight.

(c) Bills of lading covering movements authorized by this order shall contain a notation that shipment is moving under authority of Revised Service Order No. 1182.

(d) The term "stock cars" means all cars listed in the Official Railway Equipment Register, I.C.C.-R.E.R. No. 401, issued by W. J. Trezise, or successive issues thereof, as having one of the mechanical designations listed under the heading Class "S"—Stock Car Type, and bearing reporting marks assigned to the BN.

(e) The term "boxcars" means all cars listed in the Official Railway Equipment Register, I.C.C.-R.E.R. No. 401, issued by W. J. Trezise, or successive issues thereof, as having one of the mechanical designations listed under the heading Class "X"—Box Car Type.

(f) *Rules and regulations suspended.* The operation of tariffs or other rules and regulations, insofar as they conflict with the provisions of this order, is hereby suspended.

(g) *Application.* The provisions of this order shall apply to intrastate, interstate, and foreign commerce.

(h) *Effective date.* This order shall become effective at 11:59 p.m., January 15, 1977.

(i) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., July 15, 1977, unles otherwise modified, changed, or suspended by order of this Commission.

(Secs. 1, 12, 15, and 17(2), 24 Stat. 379, 383, 384, as amended; 49 U.S.C. 1, 12, 15, and 17(2). Interprets or applies secs. 1(10-17) 15(4) and 17(2), 40 Stat. 101, as amended, 54 Stat. 911; 49 U.S.C. 1(10-17), 15(4) and 17(2).)

It is further ordered, That a copy of this order and direction shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association; and that notice of this order be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing it with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members Joel E. Burns, Lewis R. Teeple and Thomas J. Byrne.

ROBERT L. OSWALD,
Secretary.

[FR Doc.77-1960 Filed 1-19-77;8:45 am]

Title 50—Wildlife and Fisheries

CHAPTER I—U.S. FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR

PART 33—SPORT FISHING

Savannah National Wildlife Refuge, Georgia

The following special regulations are issued and are effective on January 1, 1977.

§ 33.5 Special regulations; sport fishing; for individual wildlife refuge areas.

GEORGIA

SAVANNAH NATIONAL WILDLIFE REFUGE

Sport fishing on the Savannah National Wildlife Refuge is permitted only on impounded waters, tidal creeks, ditches and canals in an area comprising 13,000 acres and delineated on a map available at the refuge headquarters and from the office of the Regional Director, U.S. Fish and Wildlife Service, 17 Executive Park Drive, N.E., Atlanta, Georgia 30329. Sport fishing shall be in accordance with all applicable State regulations subject to the following special conditions:

(1) The sport fishing season on the refuge extends from March 15, 1977 through October 25, 1977.

(2) Fishing is permitted during daylight hours only.

(3) Outboard motors prohibited in impounded waters.

(4) Tidal creeks may be fished from boat only from February 1 through October 25.

(5) Rod and reel, pole and line, artificial and live baits permitted.

(6) All areas posted with "closed area signs" are closed to all activities including fishing.

The provisions of these special regulations supplement the regulations which govern fishing on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 33, and are effective through December 31, 1977.

KENNETH E. BLACK,
Regional Director,
Fish and Wildlife Service.

JANUARY 11, 1977.

[FR Doc.77-1923 Filed 1-19-77;8:45 am]

PART 28—PUBLIC ACCESS, USE, AND RECREATION

Wheeler National Wildlife Refuge, Alabama

The following special regulation is issued and is effective on April 1, 1977.

§ 28.28 Special regulations, public access, use, and recreation: for individual wildlife refuge areas.

ALABAMA

WHEELER NATIONAL WILDLIFE REFUGE

With the exception of the display pool adjoining the observation building, the area immediately north of its dike, and along the headquarters shoreline, which are closed to all fishing throughout the year, the area is open to transportation of unstrung bows and arrows when used for fishing in conformance with Alabama State fishing regulations. This regulation effective April 1, 1977 through June 30, 1977.

KENNETH E. BLACK,
Regional Director,
Fish and Wildlife Service.

JANUARY 11, 1977.

[FR Doc.77-1922 Filed 1-19-77;8:45 am]

CHAPTER II—NATIONAL MARINE FISHERIES SERVICE, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT OF COMMERCE

PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

Approval and Review of State Laws and Regulations; Correction

On August 31, 1976, in FR Doc. 76-25514 appearing at page 36659, the Director, National Marine Fisheries Service, published final regulations regarding the approval and review of State laws and regulations governing the taking and importing of marine mammals.

The following amendment is made: On page 36661, in § 216.107, the word "rate" is deleted from the second line.

Dated: January 14, 1977.

JACK W. GEHRINGER,
Deputy Director,
National Marine Fisheries Service.

[FR Doc.77-1826 Filed 1-19-77;8:45 am]

Title 7—Agriculture

CHAPTER VI—SOIL CONSERVATION SERVICE, DEPARTMENT OF AGRICULTURE

PART 601—FUNCTIONS

Functions Assigned

On December 17, 1973, there was published in the FEDERAL REGISTER (38 FR 34642) a notice of organization and functions of the Soil Conservation Service, United States Department of Agriculture. This was published in Chapter VI of Title 7 of the Code of Federal Regulations. It is necessary to add the function assigned to the Soil Conservation Service for coordination of the United States Department of Agriculture input to the Coastal Zone Management Program administered by the Office of Coastal Zone Management, National Oceanic and Atmospheric Administration, Department of Commerce.

The Administrator of the Soil Conservation Service was designated on March 31, 1975, by letter from the Secretary of Agriculture to the Acting Secretary of Commerce, as the USDA representative to coordinate reviews of State coastal zone management plans and associated environmental impact statements within USDA and with the Office of Coastal Zone Management. This publication adds that assignment to the list of functions assigned.

7 CFR 601.1 is amended by adding a new § 601.1(h), reading as follows:

§ 601.1 Functions assigned.

* * * * * *

(h) Coordination of Departmental input and assistance to the Office of Coastal Zone Management, Department of Commerce, and to qualifying states and localities in the development, review, and implementation of coastal management programs prepared under the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.).

Effective date: January 21, 1977.

R. M. DAVIS,
Administrator.

[FR Doc.77-1820 Filed 1-19-77;8:45 am]

CHAPTER IX—AGRICULTURAL MARKETING SERVICE (MARKETING AGREEMENTS AND ORDERS: FRUITS, VEGETABLES, NUTS), DEPARTMENT OF AGRICULTURE

[Navel Orange Reg. 391, Amdt. 1]

PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

Minimum Size Requirement

This amendment extends the minimum size requirement of 2.32 inches in diameter currently in effect for navel oranges grown in District 2 of the production area, effective January 21, through July 15, 1977. This size requirement is designed to promote orderly marketing in the interest of producers and consumers.

On December 30, 1976, notice was published in the FEDERAL REGISTER (41 FR 56821) regarding a proposed amendment to be made effective pursuant to the marketing agreement, as amended, and Order No. 907, as amended (7 CFR Part 907), regulating the handling of navel oranges grown in Arizona and designated part of California. This notice allowed interested persons 14 days during which they could submit written data, views, or arguments pertaining to this proposed amendment. None were submitted. The amendment was proposed by the Navel Orange Administrative Committee established pursuant to the said marketing agreement and order. This program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674).

This action reflects the Department's appraisal of the need for regulation based on the current and prospective crop and market conditions. Shipment of navel oranges from District 2 of the production area is now in progress, and such navel oranges in fresh domestic shipments are required to be at least 2.32 inches in diameter through January 20, 1977. This amendment extends the effective period of this minimum size requirement through July 15, 1977. The volume and size composition of the navel orange crop grown in District 2 is such that ample supplies of the more desirable sizes of fruit are available to satisfy the demand in regulated channels. The amendment is designed to permit shipment of ample supplies of navel oranges of acceptable sizes in the interest of both growers and consumers, and is necessary to maintain orderly marketing conditions, provide consumer satisfaction, and prevent shipment of fruit of less desirable sizes. Navel oranges which do not meet the minimum size requirement may be shipped to fresh export markets where smaller fruit is in demand, left on the trees to attain further growth, or utilized in processing. The amendment is consistent with the objectives of the act of promoting orderly marketing and protecting the interest of consumers.

After consideration of all relevant matter presented, including the proposal set forth in the aforesaid notice, the recommendation and information submitted by the committee, and other available information, it is hereby found and determined that the amendment, as hereinafter set forth, is in accordance with the provisions of the said amended marketing agreement and order and will tend to effectuate the declared policy of the act.

It is hereby further found that good cause exists for not postponing the effective date of this amendment until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553) in that (1) notice of this proposed amendment was published in the FEDERAL REGISTER and no objections were received; (2) the regulatory provisions in the amendment are the same as those now in effect through January 20, 1977, (3) compliance with these regulatory provisions will not require any special preparation on the part of navel orange handlers which cannot be completed by January 21, 1977; and (4) shipment of navel oranges from District 2 is now in progress, and insofar as practicable, the regulatory provisions should apply to all shipments of such oranges in order to effectuate the declared policy of the act.

Order. The provisions of § 907.691 *Navel Orange Regulation 391* (41 FR 54197) are amended to read as follows:

§ 907.691 Navel Orange Regulation 391.

Order. (a) During the period January 21, 1977, through July 15, 1977, no handler shall handle any navel oranges grown in District 2 which are of a size smaller than 2.32 inches in diameter, which shall be the largest measurement at a right angle to a straight line running from the stem to the blossom end of the fruit: *Provided,* That not to exceed 5 percent, by count, of the navel oranges contained in any type of container may measure smaller than 2.32 inches in diameter.

(b) The terms "handler" and "handle" as used herein shall have the same meaning as is given to the respective terms in said marketing agreement and order.

(Secs. 1–19, 48 Stat. 31, as amended; (7 U.S.C. 601–674).)

Dated, January 17, 1977, to become effective January 21, 1977.

CHARLES R. BRADER,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc.77–1965 Filed 1–19–77;8:45 am]

[Navel Orange Reg. 397]

PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

Limitation of Handling

This regulation fixes the quantity of California-Arizona Navel oranges that may be shipped to fresh market during the weekly regulation period January 21–27, 1977. It is issued pursuant to the Agricultural Marketing Agreement Act of 1937, as amended, and Marketing Order No. 907. The quantity of Navel oranges so fixed was arrived at after consideration of the total available supply of Navel oranges, the quantity currently available for market, the fresh market demand for Navel oranges, Navel orange prices, and the relationship of season average returns to the parity price for Navel oranges.

§ 907.697 Navel orange regulation 397.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 907, as amended (7 CFR Part 907), regulating the handling of Navel oranges grown in Arizona and designated part of California, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and upon the basis of the recommendations and information submitted by the Navel Orange Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such Navel oranges as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) The need for this regulation to limit the respective quantities of Navel oranges that may be marketed from District 1, District 2, and District 3 during the ensuing week stems from the production and marketing situation confronting the Navel orange industry.

(i) The committee has submitted its recommendation with respect to the quantities of Navel oranges that should be marketed during the next succeeding week. Such recommendation, designed to provide equity of marketing opportunity to handlers in all districts, resulted from consideration of the factors enumerated in the order. The committee further reports that the fresh market demand for Navel oranges improved during the past week. Prices f.o.b. averaged $3.46 a carton on a reported sales volume of 623 carlots last week, compared with $3.63 per carton on sales of 685 carlots a week earlier. Track and rolling supplies at 340 cars were up 11 cars from last week.

(ii) Having considered the recommendation and information submitted by the committee, and other available information, the Secretary finds that the respective quantitiets of Navel oranges which may be handled should be fixed as hereinafter set forth.

(3) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking procedure, and postpone the effective date of this regulation until 30 days after publication hereof in the FEDERAL REGISTER (5 U.S.C. 553) because the time intervening between the date when information upon which this regulation is based because available and the time this regulation must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The committee held an open meeting during the current week, after giving due notice thereof, to consider supply and market conditions for Navel oranges and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such Navel oranges; it is necessary, in order to effectuate the declared policy of the act, to make this regulation effective during the period herein specified; and compliance with this regulation will not require any special preparation on the part of persons subject hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on January 18, 1977.

(b) *Order.* (1) The respective quantities of Navel oranges grown in Arizona and designated part of California which may be handled during the period January 21, 1977, through January 27, 1977, are hereby fixed as follows:

(i) District 1: 1,121,000 cartons;

(ii) District 2: 229,000 cartons;

(iii) District 3: Unlimited movement.

(2) As used in this section, "handled," "District 1," "District 2," "District 3," and "carton" have the same meaning as when used in said amended marketing agreement and order.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: January 19, 1977.

CHARLES R. BRADER,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc.77–2237 Filed 1–19–77;11:58 am]

PART 981—HANDLING OF ALMONDS GROWN IN CALIFORNIA

Revision of Salable and Reserve Percentages for 1976–77 Crop Year

This action revises the salable and reserve percentages for the 1976–77 crop year to 100 percent and 0 percent, respectively. Currently, salable, reserve and export percentages of 96.8 percent, 3.2 percent and 0 percent, respectively, for California almonds for the 1976–77 crop year are in effect (41 FR 43710). The 1976–77 crop year began July 1, 1976.

The action was unanimously recommended by the Almond Board of California pursuant to the provisions of the marketing agreement, as amended, and Order No. 981, as amended (7 CFR Part 981; 41 FR 26852, 27827, 53650), regulating the handling of almonds grown in California. The marketing agreement and order program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674).

In arriving at its recommendation the Board noted that there is no immediate prospect of selling reserve almonds in new-use outlets. Moreover, shipments of salable almonds during the first five months of the 1976–77 season were greater than handlers expected, and it now appears that trade demand for the entire year will exceed the projections made at the Almond Board meeting July 29, 1976. Thus, the quantity of almonds now held in reserve is needed to fill demand in normal marketing channels. Currently, the reserve percentage is 3.2 percent (8.3 million pounds) of the estimated marketable production of 264 million pounds as estimated by the Board at its July 29, 1976, meeting. The reserve is available to develop new outlets noncompetitive with existing normal domestic and export outlets. However, due to the changing market conditions, the Board has not specified any outlets.

In recommending a salable percentage of 100 percent, the Board, pursuant to §§ 981.47 and 981.49, revised its July estimates on which the percentages currently in effect were based. The Board's estimate of total production remains at 280 million pounds, but the Board lowered its estimate of California 1976 marketable production to 260 million pounds because poor harvest conditions caused a higher than anticipated rate of inedible material. Trade demand for the 1976–77 crop year is now estimated at 230 million pounds—95 million pounds for domestic needs and 135 million pounds for export needs. Previously, the Board estimated 1976–77 trade demand at 215 million pounds—95 million in domestic markets and 120 million pounds in export. A carryover adjustment of 30 million pounds, instead of 40.7 million pounds, is the result of an estimate of 89 million pounds for desirable handler carryover from the 1976 crop minus the 59 million pounds handlers carried over from the 1975 crop. This carryover adjustment is added to the trade demand estimate to equal 260 million pounds, the quantity of almonds from the estimated marketable production available for trade demand needs. Since the salable percentage is computed as the ratio of the total marketable production, 260 million pounds, to this total, also 260 million pounds, the salable percentage equals 100 percent. The reserve percentage, therefore, equals 0 percent.

After consideration of the Board's recommendation and supporting information, and other available information, it is found that to establish salable, reserve, and export percentages as hereinafter set forth will tend to effectuate the declared policy of the act.

It is also found that, it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in public rulemaking procedure, and that good cause exists for not postponing the effective time of this action until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553) in that: (1) The relevant provisions of said amended marketing agreement and this part require that salable, reserve and export percentages designated for a particular crop year shall be applicable to all almonds received by handlers for their own accounts during such year; (2) the current crop year began on July 1, 1976, and the percentages established herein will automatically apply to all such almonds beginning with such date; and (3) this action relieves a restriction on handlers.

Therefore, the salable and reserve percentages for almonds received by handlers for their own account during the 1976–77 crop year are established as follows:

§ 981.226 Salable, reserve, and export percentages for almonds during the crop year, beginning July 1 1976.

The salable, reserve, and export percentages during the crop year beginning July 1, 1976, shall be 100 percent, 0 percent and 0 percent, respectively.

NOTE.—It is hereby certified that the economic and inflationary impacts of this regulation have been carefully evaluated in accordance with OMB Circular A-107.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674).

Dated: January 14, 1977.

CHARLES R. BRADER,
Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc.77–1844 Filed 1–19–77;8:45 am]

CHAPTER XVII—RURAL ELECTRIFICATION ADMINISTRATION, DEPARTMENT OF AGRICULTURE

PART 1701—PUBLIC INFORMATION

Appendix A—REA Bulletins; Title Insurance

Appendix A to Part 1701, Tilte 7, is hereby amended to include a new supplement dated January 14, 1977, to REA Bulletin 380–1, Right-of-Way and Title Procedures, Telephone.

The purpose of this supplement is to further reduce the number of instances in which REA requires borrowers to secure title insurance for investments in real estate and improvements thereon which legally are considered part of the realty. Effective with the date of this supplement, REA will require title insurance only in cases in which the borrower's investment in realty is $250,000 or more. The revised regulation replaces that of April 12, 1966, which requires title insurance in cases in which the real estate investment is $100,000 or more.

Since this change will result in fewer instances in which title insurance will be required to be obtained by REA borrowers, and thereby benefits borrowers without the imposition of any additional burdens, it is not considered necessary to invite public comment prior to its adoption. However, any comment on the revised requirement may be submitted to the Director, Telephone Operations and Standards Division, Room 1355, South Building, Rural Electrification Administration, U.S. Department of Agriculture, Washington, D.C. 20250, for appropriate consideration in any further revisions. Copies of the new supplement are available from the office named above.

Dated: January 14, 1977.

DAVID A. HAMIL,
Administrator.

[FR Doc.77–1847 Filed 1–19–77;8:45 am]

Title 20—Employees' Benefits

CHAPTER VI—EMPLOYMENT STANDARDS ADMINISTRATION, DEPARTMENT OF LABOR

SUBCHAPTER A—LONGSHOREMEN'S AND HARBOR WORKERS' COMPENSATION ACT AND RELATED STATUTES

PART 701—GENERAL; ADMINISTERING AGENCY; DEFINITIONS AND USE OF TERMS

PART 702—ADMINISTRATION AND PROCEDURES

Office of Workers' Compensation Programs; Longshoremen's and Harbor Workers' Compensation

On August 13, 1976, the Employment Standards Administration of the U.S. Department of Labor published a notice of proposed amendments to certain provisions of 20 CFR 701 and 702 in the FEDERAL REGISTER (41 FR 34294). The proposed amendments were intended to clarify and expand certain procedural rules applicable to the filing, processing and adjudication of claims under the

Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. 901 et seq., as amended. The notice also established a 30-day comment period, during which time interested persons were invited to submit written comments on the proposal.

The Employment Standards Administration has received comments regarding many of the proposed amendments. No comments were received, however, concerning the proposed amendments to §§ 701.201 or 701.301(a)(5) which would redesignate the Office of Workmen's Compensation Programs as the Office of Worker's Compensation Programs, or to § 702.101 which would establish two new compensation districts—District No. 11 and District No. 12—and change the boundaries of Districts No. 10 and 14. To avoid further delay in effectuating these procedural amendments while considering the comments submitted concerning other amendments, the Employment Standards Administration adopts unchanged the amendments to §§ 701.201, 701.301(a)(5) and 702.101 as set forth in the proposal published in the FEDERAL REGISTER on August 13, 1976 at 41 FR 34294 and 34295 and as set forth below. Section 701.201 and § 701.301(a)(5) will be effective January 21, 1977. To insure the orderly transfer of responsibilities to the newly designated compensation districts and to protect the rights of persons affected by changes in existing boundaries, § 702.101 will be effective on March 1, 1977.

Section 701.201 is amended to read as follows:

§ 701.201 Establishment of the Office of Workers' Compensation Programs.

The Assistant Secretary of Labor for Employment Standards, by authority vested in him by the Secretary of Labor in Secretary's Order 16–75, 40 FR 55913, established in the Employment Standards Administration (ESA) an Office of Workers' Compensation Programs (OWCP) by Employment Standards Order 2–75, 40 FR 56743. The Assistant Secretary has further designated as the head thereof a Director who, under the general supervision of the Assistant Secretary, shall administer the programs assigned to that Office by the Assistant Secretary.

Section 701.301(a)(5) is amended to read as follows:

§ 701.301 Definitions and use of terms.

(a) * * *

(5) "Office of Workers' Compensation Programs" or "OWCP" or "the Office" means the Office of Workers' Compensation Programs in the Department of Labor, described in § 701.201 of this part. Whenever the term "Office of Workmen's Compensation Programs" appears in this part or in Part 702, it shall have the same meaning as "Office of Worker's Compensation Programs."

Section 702.101 is amended to read as follows:

§ 702.101 Establishment of compensation districts.

Pursuant to section 39(b) of the Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. 939(b), the following compensation districts have been established:

District No. 1. Comprises the States of Massachusetts, Maine, New Hampshire, Vermont, Rhode Island, and Connecticut; with headquarters at Boston, Mass.

District No. 2. Comprises the States of New York and New Jersey; with headquarters at New York, N.Y.

District No. 3. Comprises the States of Pennsylvania, Delaware, and West Virginia; with headquarters at Philadelphia, Pa.

District No. 4. Comprises the State of Maryland and the District of Columbia; with headquarters at Baltimore, Md.

District No. 5. Comprises the State of Virginia; with headquarters at Norfolk, Va.

District No. 6. Comprises the States of Florida, North Carolina, Kentucky, Tennessee, South Carolina, Georgia, Alabama, and Mississippi; with headquarters at Jacksonville, Fla.

District No. 7. Comprises the States of Louisiana and Arkansas; with headquarters at New Orleans, La.

District No. 8. Comprises the States of Texas, Oklahoma, and New Mexico; with headquarters at Houston, Tex.

District No. 9. Comprises the States of Ohio, Indiana, and Michigan; with headquarters at Cleveland, Ohio.

District No. 10. Comprises the States of Illinois, Minnesota, and Wisconsin; with headquarters at Chicago, Ill.

District No. 11. Comprises the States of Missouri, Iowa, Kansas and Nebraska; with headquarters at Kansas City, Mo.

District No. 12. Comprises the States of Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming; with headquarters at Denver, Colo.

District No. 13. Comprises the States of California, Arizona, and Nevada; with headquarters at San Francisco, Calif.

District No. 14. Comprises the States of Washington, Idaho, Oregon, and Alaska; with headquarters at Seattle, Wash.

District No. 15. Comprises the State of Hawaii; with headquarters at Honolulu, Hawaii.

Signed at Washington, D.C. this 13th day of January 1977.

JOHN C. READ,
Assistant Secretary for Employment Standards.

[FR Doc.77-2131 Filed 1-19-77;8:45 am]

proposed rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

[7 CFR Part 1488]

FINANCING OF SALES OF AGRICULTURAL COMMODITIES

Financing of Export Sales of Agricultural Commodities From Private Stocks Under CCC Export Credit Sales Program (GSM–5)

The Office of the General Sales Manager (OGSM) is proposing to revise the regulations entitled *Financing of Export Sales of Agricultural Commodities from Private Stocks under CCC Export Credit Sales Program (GSM–4, Revision III)* and supplements I, II, and III, thereto, covering beef breeding cattle, dairy breeding cattle, and breeding swine, respectively. This revision includes minor editorial changes and the following proposed major changes:

1. The filing of financing applications and the issuance of financing approvals are eliminated.

2. The interest rate applicable to a particular sale will be the interest rate in effect on the date CCC receives the sale registration request.

Interested persons may participate in this proposed rulemaking by submitting written comments, suggestions, data, views, or arguments to the Assistant Sales Manager, Commercial Export Programs, Office of the General Sales Manager, U.S. Department of Agriculture, 14th Street and Independence Avenue, S.W., Washington, D.C. 20250. Each person submitting a comment should include his name and address, identify the notice (GSM–5), and give reasons for any recommendations. In order to be sure of consideration before final action is taken on this proposal, comments must be received before February 22, 1977. Copies of all written comments received will be available for examination by interested persons in room 4526, South Agriculture Building, 14th Street and Independence Avenue, S.W., Washington, D.C. 20250.

It is proposed to revise Part 1488, Title 7, Code of Federal Regulations, covering the CCC Export Credit Sales Program (GSM–4) published in the FEDERAL REGISTER on April 11, 1975 (40 FR 16322–16333), to read as follows:

Subpart A—Financing of Export Sales of Agricultural Commodities From Private Stocks Under CCC Export Credit Sales Program (GSM–5)

GENERAL

Sec.
1488.1 General Statement.
1488.2 Definition of terms.

FINANCING EXPORT SALES

1488.3 General.
1488.4 Submission of requests for sale registrations.
1488.5 Acceptance of sales registrations.
1488.6 Amendments to financing agreement.
1488.7 Expiration of period(s) for delivery and/or export.

DOCUMENTS REQUIRED FOR FINANCING

1488.8 Documents required after delivery.
1488.9 Evidence of export.

DOCUMENTS REQUIRED AFTER FINANCING

1488.10 Evidence of entry into country of destination.

DELIVERY REQUIREMENTS

1488.11 Liquidated damages.

BANK OBLIGATIONS AND REPAYMENT

1488.12 Coverage of bank obligations.
1488.13 CCC drafts.
1488.14 Interest charges.
1488.15 Advance payment.
1488.16 Liability for payment.

MISCELLANEOUS PROVISIONS

1488.17 Assignment.
1488.18 Covenant against contingent fees.
1488.19 Shipments of commodities on vessels calling at Cuban and North Vietnamese ports.
1488.20 Officials not to benefit.
1488.21 Exporter's records and accounts.
1488.22 Communications.

SUPPLEMENT I—BEEF BREEDING CATTLE
SUPPLEMENT II—DAIRY BREEDING CATTLE
SUPPLEMENT III—BREEDING SWINE

Authority: Sec. 5(f), 62 Stat. 1072 (15 U.S.C. 714c), and sec. 4, 80 Stat. 1538 (7 U.S.C. 1707a).

Subpart A—Financing of Export Sales of Agricultural Commodities From Private Stocks Under CCC Export Credit Sales Program (GSM–5)

GENERAL

§ 1488.1 General statement.

(a) Except as otherwise provided in this paragraph (a), the regulations and the supplements thereto contained in this Subpart A supersede the regulations and supplements revised April 1975, and set forth the terms and conditions governing the CCC Export Credit Sales Program (GSM–5). The maximum financing period shall be three years. The regulations and supplements as revised in April 1971 and April 1975, shall remain in effect for all transactions under financing approvals issued thereunder.

(b) Subject to the terms and conditions set forth in this Subpart A, CCC will purchase for cash, after delivery, the exporter's account receivable arising from the export sale.

(c) The provisions of Public Law 83–664 are not applicable to shipments under this program.

(d) The regulations contained in this Subpart A may be supplemented by additional terms and conditions applicable to specified agricultural commodities and, to the extent that they may be in conflict or inconsistent with any other provisions of this Subpart A, such additional terms and conditions shall prevail.

§ 1488.2 Definition of terms.

As used in this Subpart A and in the forms and documents related thereto, the following terms shall have the meanings assigned to them in this section:

(a) "Account receivable" means the contractual obligation of the foreign importer to the exporter for the port value of the commodity delivered for which the exporter is extending credit to the importer. The account receivable shall be evidenced by documents, in form and substance satisfactory to CCC, establishing the contractual obligation between the U.S. exporter and the foreign importer. The account receivable shall provide for (1) payment of principal and interest in U.S. dollars in the United States, (2) interest in accordance with § 1488.14 and (3) acceleration of payment thereunder in accordance with these regulations.

(b) "Agency or branch bank" means an agency or branch of a foreign bank, supervised by New York State banking authorities or the banking authorities of any other State providing similar supervision, and approved by the Controller, CCC.

(c) "Assistant Sales Manager" means the Assistant Sales Manager, Commercial Export Programs, Office of the General Sales Manager.

(d) "Bank obligation" means an obligation, acceptable to CCC, of a U.S. bank, a foreign bank, an agency or branch bank, to pay to CCC in U.S. dollars the amount of the account receivable, plus interest in accordance with § 1488.14. The bank obligation shall be in the form of an irrevocable letter of credit issued by a U.S. bank or a branch bank, or confirmed or advised by a U.S. bank or an agency or branch bank in accordance with § 1488.12. The bank obligation shall provide for payment under the terms and conditions of the financing agreement and shall be payable not later than the date of expiration of the financing period or of the bank obligation, whichever oc-

curs first, if payment is not received from other sources.

(e) "CCC" means the Commodity Credit Corporation, U.S. Department of Agriculture.

(f) "Carrying charges" means storage, insurance, and interest charges involved in the cost of storing the commodity before delivery as provided for in the sales contract, and other incidential costs as may be approved by the Assistant Sales Manager.

(g) "Commercial risk" means risk of loss due to any cause other than a political risk.

(h) "Date of delivery" means the on-board date of the ocean bill of lading, or the date of airway bill, or, if exported by rail or truck, the date of entry shown on an authenticated landing certificate or similar document issued by an official of the government of the importing country, or, if delivery is before export, the date(s) of the warehouse receipts or other evidence, acceptable to CCC, of delivery of the commodity to a warehouse.

(i) "Date of sale" means the earliest date the exporter has knowledge that a contractual obligation exists with the foreign buyer under which a firm dollar and cent price has been established or a mechanism to establish the price has been agreed upon.

(j) "Delivery" means the delivery required by the export sale contract to transfer to the importer full or conditional title to the agricultural commodity. Delivery before export shall be at a warehouse in the U.S. acceptable to CCC. Delivery at point of export shall be f.a.s. or f.o.b. export carrier at U.S. ports, at U.S. airports, at U.S. border points or exit or, if transshipped though Canada, at ports on the Great Lakes and on the St. Lawrence River.

(k) "Eligible commodities" means agricultural commodities, including eligible cotton, produced in the United States and designated as eligible for export under CCC's Export Credit Sales Program in a USDA announcement. Commodities which have been purchased from CCC are eligible for export as private stocks. Exports of commodities pursuant to any CCC barter contract, PL–480, AID agreement, or direct loan by the Export-Import Bank are not eligible for financing under this program. Commodities delivered prior to CCC receiving the sale registration request in accordance with § 1488.4 are not eligible for financing under this program unless such financing is determined by the Vice President, CCC, or the Assistant Sales Manager to be in the interest of CCC.

(l) "Eligible cotton" means Upland ad Extra long staple cotton grown in the United States: *Provided, however*, That reginned or repacked cotton, as defined in regulations of the U.S. Department of Agriculture under the U.S. Cotton Standards Act (7 CFR 28.40), by-products of cotton such as cotton mill waste, motes, and linters, and any cotton that contains any by-products of cotton are not eligible for export financing hereunder. CCC's determination as to the eligibility of cotton shall be final.

(m) "Eligible destination" means the country which is named in the financing agreement and which meets the licensing requirements of the U.S. Department of Commerce.

(n) "Eligible exporter" or "exporter" means a person (1) who is engaged in the business of buying or selling commodities and for this purpose maintains a bona fide business office in the United States, its territories or possessions, and has someone on whom service of judicial process may be had within the United States, (2) who is financially responsible, and (3) who is not suspended or debarred from contracting or participating in any program financed by CCC on the date of issuance of the financing agreement.

(o) "OGSM" means the Office of the General Sales Manager, U.S. Department of Agriculture.

(p) "Financing agreement" means the exporter's request for a sale registration as approved by the Assistant Sales Manager, including the terms and conditions of the regulations in effect on the date of approval.

(q) "Financing period" means the specified number of months over which repayment is to be made. Such period shall start on the date of delivery or the weighted average delivery date of the commodities to be exported under the financing agreement and shall expire on the expiration of the bank obligation or the specified period over which repayment is to be made, whichever occurs first.

(r) "Foreign bank" means a bank which is not a U.S. bank or an agency or branch bank, but includes a foreign branch of a U.S. bank.

(s) "Foreign importer" or "importer" means the foreign buyer who purchases the commodities to be exported under a financing agreement and executes the documents evidencing the account receivable assigned to CCC.

(t) "GSM–5" means the regulations contained in this Subpart A, and supplements thereto, setting forth the terms and conditions governing the CCC Export Credit Sales Program.

(u) "Political risk" means risk of loss due to (1) inability of the foreign bank through no fault of its own to convert foreign currency to dollars, or (2) nondelivery into the eligible destination of the commodity covered by a financing agreement through no fault of the foreign bank or importer or exporter, because of the cancellation by the government of the eligible destination of the previously issued valid authority to import such shipment into the eligible destination, or because of the imposition of any law or of any order, decree, or regulation having the force of law which prevents the import of such shipment into the eligible destination, or (3) inability of the foreign bank to make payment due to war, hostilities, civil war, rebellion, revolution, insurrection, civil commotion, or other like disturbance occurring in the eligible destination, or expropriation, confiscation, or other like action by the government of the eligible destination country, or (4) failure of the foreign bank to make payment for any reason, if it is an instrumentality of or is wholly owned by the foreign government.

(v) "Port value" means the net amount of the exporter's sale price of the commodity to be exported under the financing agreement, basis f.a.s. or f.o.b. export carrier at U.S. ports, at U.S border points of exit, at U.S. airports if shipped by air, or if transshipped through Canada, at ports on the Great Lakes or on the St. Lawrence River. The port value shall not include ocean freight for a c.&f. sale or ocean freight and marine and war risk insurance for a c.i.f. sale but may include carrying charges as provided for in the sales contract. The net amount of the exporter's sales price means the exporter's contract price for the commodities, on the basis stated above, less any payments made to the exporter and less any discounts, credits, or allowances by the exporter.

(w) "Sale" means a contract to sell on credit U.S. agricultural commodities to be financed under GSM–5.

(x) "United States" means the 50 States, the District of Columbia, and Puerto Rico.

(y) "U.S. bank" means a bank organized under the laws of the United States, a State, or the District of Columbia.

(z) "USDA announcement" means an announcement published monthly by the U.S. Department of Agriculture (USDA), and which includes the list of eligible commodities and interest rates under GSM–5.

(aa) "Vice President, CCC" means the Vice President who is the General Sales Manager, Office of the General Sales Manager.

Financing Export Sales

§ 1488.3 General.

When considering the extension of CCC credit for the purpose of financing agricultural commodities, CCC will take into account the extent to which CCC credit financing will:

(1) Permit U.S. exporters to meet competition from other countries.

(2) Prevent a decline in U.S. commercial export sales.

(3) Substitute commercial dollar sales for sales made pursuant to Pub. L. 480 or other concessional programs.

(4) Result in a new use of the agricultural commodity in the importing country.

(5) Permit expanded consumption of agricultural commodities in the importing country and thereby increase total commercial sales of agricultural commodities to the importing country.

§ 1488.4 Submission of requests for sale registrations.

(a) An eligible exporter shall submit a request for a sale registration for financing to the office specified in § 1488.22.

(b) Requests for sale registrations shall be in writing. If such a request is made by telephone, it must be confirmed by letter or wire.

(c) The total amount requested to be registered under a sale shall not exceed the sale contract value, including the upward tolerance, if any.

(d) Requests for sale registration shall incorporate by reference all terms and conditions of GSM–5. The following information shall also be included in the exporter's request for a sale registration:

(1) The name, class, grade, or quality, as applicable, and quantity of the commodity to be exported.

(2) The country of destination.

(3) The port value of the commodity to be exported and the sale contract tolerance, if applicable.

(4) The date of sale and exporter's sale number.

(5) The date of delivery or the period for delivery and the month in which application for payment will be submitted.

(6) The financing period.

(7) Whether the bank obligation assuring payment of the account receivable will be issued by a U.S. bank, branch bank, or foreign bank. If it will be issued by a foreign bank, its name and address, and the name of the confirming U.S. bank, branch bank, or agency bank (if approved as provided in § 1488.12b), and the percentage of confirmation.

(8) The name and address of the foreign importer.

(9) If delivery of the commodity to be exported is before export, the name and address of the warehouse to which delivery is to be made.

(10) If the commodity will be sold through an intervening purchaser, the name and address of the intervening purchaser, and a statement that the sale of the commodity is or will be conditioned on its resale by the intervening purchaser and that the commodity will be shipped directly to the foreign importer in the destination country specified in paragraph (d)(2) of this section pursuant to a contract in which the foreign importer agrees to pay the U.S. exporter the amount to be financed in accordance with the terms of GSM–5 financing agreement.

(11) Any additional information as determined by CCC.

§ 1488.5 Acceptance of sale registrations.

(a) Upon receiving a request for a sale registration complying with the applicable provisions of this Subpart, the Assistant Sales Manager may approve the registration of the sale. If approved, the exporter will be notified in writing of the financing agreement number which will constitute notice that the sale is registered and eligible for financing.

(b) A sale entered into prior to the date that financing becomes available will not be eligible for financing unless such sale is made contingent upon the availability of CCC credit or unless CCC determines that acceptance of such sale would be in the interest of the program objectives.

(c) CCC reserves the right to reject any and all requests for sale registration.

(d) The registration of a sale shall create a financing agreement between the exporter and CCC which shall consist of the exporter's request for a sale registration, CCC's acceptance of the sale registration, the applicable terms and conditions of this Subpart, including amendments and supplemental announcements hereunder which are in effect on the date of approval.

(e) The financing agreement may contain such terms and conditions, not inconsistent with GSM–5, as are deemed necessary in the interest of CCC.

(f) An exporter shall promptly notify the Assistant Sales Manager when he is unable to fulfill his obligations under any sale registered with CCC.

§ 1488.6 Amendments to financing agreement.

The financing agreement may be amended provided such amendment is in conformity with GSM–5 at the time of amendment and is determined to be in the interest of CCC. Amendments may include extension of the period for delivery or the period for export, and change in the interest rate. After the commodity has been delivered, CCC will consider requests to increase the amount of the sale registration value for any quantity within the tolerance in the sales contract and for carrying charges provided such requests relate to the same sale as originally registered with CCC.

§ 1488.7 Expiration of period(s) for delivery and/or export.

(a) Unless delivery by the exporter to the importer is made within such period as may be provided in the financing agreement or any amendment thereof, or under paragraph (b) of this section, the financing agreement will no longer be valid.

(b) If the Assistant Sales Manager determines that delay in delivery was due solely to causes without the fault or negligence of the exporter, the period for delivery may be extended by CCC by the period of such delay.

(c) If delivery is made before export under the terms of the financing agreement, failure to export within the period specified therefor in the financing agreement shall constitute a breach of the financing agreement. In such case, if full payment under the bank obligation or account receivable has not been received, the account receivable and the bank obligation shall, at the option of the Assistant Sales Manager, become immediately due and payable, and liquidated damages shall be payable in accordance with § 1488.11.

Documents Required for Financing

§ 1488.8 Document required after delivery.

(a) CCC will purchase an exporter's account receivable only if the Treasurer, Commodity Credit Corporation, United States Department of Agriculture, Washington, D.C. 20250, receives the documents specified in paragraphs (b) through (e) of this section within forty-five days, or any extension thereof by the Treasurer or Assistant Treasurer, CCC, after date of delivery of commodities exported or to be exported under the financing agreement.

(b) The exporter shall submit a "Combined Application for Disbursement, Assignment of Account Receivable and Certification" which shall include:

(1) A written application for disbursement, showing the financing agreement number and the port value of the commodity delivered.

(2) An assignment of the account receivable arising from the export sale, in form and substance acceptable to CCC.

(3) The exporter's certification (i) that he has entered into a contract to sell an eligible commodity; (ii) of the date of sale, the grade, quality, quantity, agreed upon price for the commodity and payment terms and interest in accordance with the financing agreement; (iii) that he has in his files documents evidencing the export sale contract and the obligation of the importer to him for the financed portion of the export sale and will retain and furnish them to CCC on demand until 3 years after the end of the financing period; (iv) that agricultural commodities of the grade, quality, and quantity called for in the exporter's sale as registered with CCC have been delivered to the foreign importer; and (v) that he knows of no defenses to the account receivable assigned to CCC.

(c) A copy of the sales invoice to the foreign importer, or, if the commodity has been sold through an intervening purchaser, a copy of the exporter's sales invoice to the intervening purchaser and of the intervening purchaser's sales invoice to the foreign importer.

(d) Either (1) a copy of the document evidencing export provided for in § 1488.9 and, if the consignee is other than the foreign importer named in the financing agreement, such additional information as CCC may request to show that export was made in accordance with the instructions of, or the export sale contract with, the foreign importer, or (2) if delivery is before export, documents acceptable to CCC evidencing delivery of the commodity to the importer or his agent.

(e) A bank obligation or obligations in accordance with § 1488.7(c), § 1488.10, § 1488.12 and paragraph (i) of this section, naming CCC as beneficiary, in form and substance acceptable to CCC, covering the amount of the application for disbursement, citing the financing agreement number; and providing for the payment of interest in accordance with § 1488.14.

(f) On receipt of the documents described in paragraphs (b) through (e) of this section, the Treasurer, CCC will pay promptly to the exporter the amount of the account receivable or the dollar amount of sales registered in accordance with § 1488.5, whichever is the lesser.

(g) If an acceptable application for disbursement and the supporting documents described in paragraphs (b) through (e) of this section have not been received by CCC within 45 days from the date of the delivery, or any extension thereof by the Treasurer or Assistant Treasurer, CCC, the financing agreement shall be void.

(h) If, under the financing agreement, delivery is made before export,

documents evidencing export as provided in § 1488.9 shall be submitted to the Assistant Sales Manager within 20 days after delivery to export carrier.

(i) If for any reason a draft drawn under a foreign bank obligation is dishonored or if the issuing bank is insolvent, in bankruptcy, in receivership, or in liquidation, or has made an assignment for the benefit or creditors, or for any other reason discontinues or suspends payments to depositors or creditors, or otherwise ceases to operate on an unrestricted basis, any balance due on the account receivable assured by the obligation issued by such bank shall, at the option of CCC, become immediately due and payable. CCC may permit the substitution of another acceptable foreign bank obligation covering such balance due if confirmed in accordance with § 1488.12.

§ 1488.9 Evidence of export.

(a) If the commodity is exported by rail or truck, the exporter shall furnish to the Treasurer, CCC, one copy of the bill of lading covering the commodity exported, certified by the exporter as being a true copy, and an authenticated landing certificate or similar document issued by an official of the government of the country to which the commodity is exported, showing the quantity, the gross landed weight of the commodity, the place and date of entry, and the name and address of both the exporter and the importer.

(b) If the commodity is exported by ocean carrier, the exporter shall furnish to the Treasurer, CCC, one non-negotiable copy or photo copy or other type of copy of either (1) an on-board ocean bill of lading or (2) an ocean bill of lading with an onboard endorsement, dated and signed or initialed on behalf of the carrier. The bill of lading must be certified by the exporter as being a true copy and must show the quantity, the date and place of loading the commodity, the name of the vessel, the destination of the commodity and the name and address of both the exporter and the importer.

(c) If the commodity is exported by aircraft, the exporter shall furnish to the Treasurer, CCC, one non-negotiable copy of an airway bill, dated and signed or initialed on behalf of the carrier. The airway bill must be certified by the exporter as being a true copy and must show the date and place of loading the commodity, the name of the airline, the destination of the commodity, and the name and address of both the exporter and the importer.

(d) If the exporter is unable to supply documentary evidence of export as specified in this section, he shall submit such other documentary evidence as may be acceptable to CCC.

(e) For commodities transshipped through Canada via the Great Lakes or the St. Lawrence River, the exporter shall certify that the commodity transshipped was produced in the United States.

DOCUMENTS REQUIRED AFTER FINANCING

§ 1488.10 Evidence of entry into country of destination.

(a) Commodities exported under a financing agreement must enter the destination country specified in the financing agreement.

(b) For a financing agreement under which the financing period is in excess of 12 months, within 90 days, or such extension of time as may be granted in writing by the Assistant Sales Manager, following shipment from the United States of any agricultural commodity exported under the financing agreement, the exporter shall furnish to the office specified in § 1488.22, documentary evidence verifying entry of the commodity into the country of destination specified in the financing agreement. The documentary evidence must (1) identify the agricultural commodity (or permit identification through supplementary documents also furnished) as that exported under the financing agreement, (2) state the quantity and date of entry of the commodity into the destination country, and (3) be signed by (i) a customs official of the destination country, or (ii) the importer, or (iii) a representative of an independent superintending or controlling firm.

(c) When the commodity enters the country of destination in bond, a statement by the importer will be acceptable which (1) identifies the commodity as that exported under the financing agreement, (2) states the quantity of the commodity entered under bond and date of entry into the destination country, and (3) certifies that the commodity will be withdrawn from bonded storage at a later date for consumption in the destination country.

(d) If the evidence of entry is in other than the English language, the exporter shall also provide an English translation thereof.

(e) Failure to furnish, within the time specified, evidence of entry of the commodity into the country of destination shall constitute prima facie evidence of failure to enter or to cause the entry of the commodity into such country as required. In such case, the financing agreement may be terminated by the Assistant Sales Manager, and if full payment under the bank obligation or account receivable has not yet been received, the bank obligation and the account receivable shall at the option of CCC, become due and payable and liquidated damages shall be payable in accordance with § 1488.11. The remedy herein provided shall not be exclusive of other rights available to the Federal Government if the commodity enters a country other than that specified in the financing agreement.

DELIVERY REQUIREMENTS

§ 1488.11 Liquidated damages.

Failure of the exporter to export or cause to be exported, within the period provided therefor, any agricultural commodity financed, when delivery is made before export under the terms of the financing agreement, or failure of the exporter to enter or cause the entry of, such commodity into the country of destination, shall constitute a breach of the financing agreement which will result in serious and substantial damage to CCC and to its program. Since it will be difficult, if not impossible, to prove the exact amount of such damage, the exporter shall pay to CCC promptly on demand, as reasonable compensation and not as a penalty, liquidated damages in lieu of probable actual damages, as follows: (a) For each day of delay in exportation after the final date for exportation, when delivery is made before export under the terms of the financing agreement, .15 percent of the amount financed under the financing agreement for the commodity not exported; (b) for failure to export or cause exportation, when delivery is made before export under the terms of the financing agreement, 5 percent of the amount financed under the financing agreement for the commodity not exported; (c) for failure, after exportation, to enter or cause the entry of the commodity into the country of destination, at the rate of 5 percent a year of the amount financed under the financing agreement for such commodity from the start of the financing period until payment to CCC of the amount financed; *Provided however*, That the aggregate of all amounts assessed under this § 1488.11 with respect to the same commodity shall not exceed 5 percent of the amount financed for such commodity. Liquidated damages shall not be assessed; under paragraph (a) of this section if the Assistant Sales Manager determines that the delay was due to such causes as acts of God or government or public enemy, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or unusually severe weather; under (b) of this section if the Assistant Sales Manager determines that failure to export was due to loss, damage, destruction or deterioration of the commodity or act of God or government or public enemy; and under paragraph (c) if this section if the Assistant Sales Manager determines that failure to enter or cause the entry of the commodity into the country of destination was due to loss, damage, destruction or deterioration of the commodity or act of God or government or public enemy.

BANK OBLIGATIONS AND REPAYMENT

§ 1488.12 Coverage of bank obligations.

(a) U.S. banks and branch banks shall be liable without regard to risk for payment of bank obligations issued by them.

(b) An obligation issued by a foreign bank must be confirmed and advised, as provided in paragraphs (c), (d), (e), and (f) of this section, by a U.S. bank or a branch bank, or may be confirmed by an agency bank when determined by the President or Vice President, CCC, after consultation with the Controller, CCC, to be in the interest of CCC.

(c) A U.S. bank must confirm the full amount of an obligation issued by its foreign branch. CCC will hold the U.S. bank liable for payment without regard to risks.

(d) If a branch bank confirms an obligation issued by its home office, or by another branch of its home office, it must confirm the full amount thereof. CCC will hold the branch bank liable for payment without regard to risks.

(e) If CCC accepts an agency bank confirmation of a foreign bank obligation, it must be for the full amount thereof without regard to risks and will be subject to such terms and conditions as may be contained in the financing agreement. CCC will not accept an agency bank confirmation of an obligation issued by its home office, or by a branch of its home office.

(f) Except as provided in paragraphs (c) and (d) of this section, if a U.S. bank or a branch bank confirms an obligation issued by a foreign bank, it must confirm at least 10 percent pro rata and must advise the remainder of the foreign bank obligation. The percentage of confirmation shall be the same for both the account receivable and the interest portions of the obligation. For the confirmed amount, CCC will hold the U.S. bank or branch bank liable for commercial risks but not for political risks. For the advised amount, CCC will not hold the U.S. bank or branch bank liable without regard to risks for all amounts not recovered from the U.S. or branch bank.

(g) Under special circumstances, on application in writing, the Vice President, CCC, may reduce or waive requirement for 10 percent confirmation by a U.S. or branch bank, but a bank will not be relieved of any obligation it undertakes.

(h) Any bank obligation which provides for a bank acceptance of a time draft by CCC (banker's acceptance) shall not be acceptable to CCC.

(i) CCC will consent to cancellation or reduction of a bank obligation to the extent of any payment it receives from other sources of amounts otherwise payable under such bank obligation.

(j) Collection of accounts receivable purchased under GSM–5 will be effected through the issuance by CCC of sight drafts against the bank obligations, but this method of collection shall not be exclusive of any other collection procedures or rights available to CCC.

§ 1488.13 CCC drafts.

CCC will draw one draft for each payment due under bank obligations. If any portion of a CCC draft is dishonored, the U.S. bank or branch bank shall return the dishonored draft together with its statement of the reason for nonpayment. If a draft which is drawn under a partially confirmed bank obligation is dishonored, CCC will replace the draft with separate drafts for the confirmed and unconfirmed portions at the request of the confirming bank. Such replacement shall not alter the confirming bank's obligation for timely payment to CCC of the confirmed portion of the credit. For confirmed amounts, except as provided in § 1488.12 (c) and (d), a U.S. or branch bank may request refund from CCC of the amount paid if it certifies to CCC that it is unable to recover funds from the foreign bank due to a stipulated political risk which existed on the date payment was made to CCC under the draft. If CCC finds that inability to recover funds was due to such a political risk, the refund shall be promptly made together with interest at the Federal Reserve Bank of New York discount rate from and including the date payment was originally made to CCC but not include the date of refund by CCC. For unconfirmed amounts, remittance to CCC shall be considered final, and the U.S. bank or branch bank shall not thereafter have recourse to CCC.

§ 1488.14 Interest charges.

The account receivable assigned to CCC and the related bank obligation(s) shall bear interest as specified in this section. Rates of interest applicable to financing agreements shall be published in a USDA announcement. The interest rate applicable to that portion of an account receivable for which payment is assured by a bank obligation issued or prorata confirmed by a U.S. bank shall be lower than the interest rate applicable for the remainder of the account receivable. The interest rate applicable to that portion of an account receivable the payment of which is assured by a bank obligation issued or prorata confirmed by a branch bank shall, when determined by the President or Vice President, CCC, after consultation with the Controller, CCC, to be in the interest of CCC, be lower than the interest rate applicable for the remainder of the account receivable. The interest rates applicable to accounts receivable the payment of which is assured by an agency bank confirmation may, when determined by the President or Vice President, CCC, after consultation with the Controller, CCC, to be in the interest of CCC, be lower than the interest rate applicable for the remainder of the account receivable. The interest rate applicable will be the rate in effect on the date CCC receives the sale registration request under § 1488.4. Interest shall accrue on the account receivable from the date of delivery or the weighted average delivery date of the agricultural commodities delivered under the financing agreement to the date of payment, or to the date of expiration of the financing period, or to the date of expiration of the bank obligation, whichever occurs first, and shall be payable as specified in the financing agreement. Thereafter, interest shall accrue on any unpaid part of both the principal and interest due as of such expiration date.

§ 1488.15 Advance payment.

If, before expiration of the financing period, the exporter or the U.S. bank or the agency or branch bank accepts payment from or on behalf of the foreign importer of any part of the account receivable, it shall be remitted promptly to CCC. Such prepayment shall be applied first to interest on the unpaid balance of the account receivable to the date CCC receives such prepayment and then to the principal.

§ 1488.16 Liability for payment.

If delivery is made within the coverage of the bank obligation(s) submitted in accordance with § 1488.8, CCC will look to the obligating bank or banks and the foreign importer, rather than to the exporter or intervening purchaser, for payment of all amounts due at maturity of the account receivable and of the bank obligation(s), but the exporter and the intervening purchaser shall remain liable for any loss arising from breach of any contractual obligation, certification or warranty made by them pursuant to the financing agreement, and the exporter shall remain liable for any amounts not covered by the bank obligation which are owing to CCC, and any remittance or refund required by § 1488.15 and § 1488.18, together with interest thereon at the rate specified in the documents evidencing the account receivable, as well as for any liquidated damages provided for in § 1488.11. The liability of the bank and the importer under their respective obligations shall be several.

MISCELLANEOUS PROVISIONS

§ 1488.17 Assignment.

The exporter shall not assign any claim or rights or any amounts payable under the financing agreement, in whole or in part, without written approval of the Vice President, CCC, or the Controller, CCC.

§ 1488.18 Covenant against contingent fees.

The exporter warrants that no person or selling agency has been employed or retained to solicit or secure the financing agreement on an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the exporter for the purpose of securing business. For breach or violation of this warranty, CCC shall have the right, without limitation on any other rights it may have, to annul the financing agreement without liability to CCC. Should the financing agreement be annulled, CCC will promptly consent to the reduction or cancellation of related bank obligations except for amounts outstanding under a financing agreement. Such amounts shall, on demand, be refunded to CCC by the exporter.

§ 1488.19 Shipment of commodities on vessels calling at Cuban and North Vietnamese ports.

Any commodity exported under a financing agreement shall not be shipped from the United States, or transshipped through Canada via ports on the Great Lakes or on the St. Lawrence River, on a vessel which has called at a Cuban port on or after January 1, 1963, or at a North Vietnamese port on or after January 25, 1966, unless a special waiver is granted by the Maritime Administration. Commodities shipped on such vessel shall not be considered to have been exported under the financing agreement.

§ 1488.20 Officials not to benefit.

No member of or delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of the financing agreement or to any benefit that may arise therefrom, but this provision shall not be construed to extend to the financing agreement if made with a corporation for its general benefit.

§ 1488.21 Exporter's records and accounts.

CCC shall have access to and the right to examine any directly pertinent books, documents, papers and records of the exporter involving transactions related to the financed export credit sale until the expiration of three years after the end of the financing period.

§ 1488.22 Communications.

(a) Unless otherwise provided, written requests, notifications, or communications by the applicant pertaining to the financing agreement shall be addressed to the Assistant Sales Manager, Commercial Export Programs, Office of the General Sales Manager, U.S. Department of Agriculture, Washington, D.C. 20250.

SUPPLEMENT I—BEEF BREEDING CATTLE

Section

A. Additional definitions.
B. Submission of requests for sale registrations.
C. Additional documents required after delivery.
D. Miscellaneous (identification, quality, certification).
E. Dual purpose breeds (standards applicable).
Exhibit I—Females (general breed and health requirements).
Exhibit II—Bulls (general breed and health requirements).
Appendix I—Performance Testing.
Appendix II—Specification for Official U.S. Standards for Grades.

A. ADDITIONAL DEFINITIONS

1. "Port value" means the net amount of the exporter's sales price for beef breeding cattle to be exported under the financing agreement, basis f.a.s. or f.o.b. export carrier at U.S. ports, at U.S. border points of exit, or at U.S. airports if shipped by air. The point of exportation for animals shall be designated by the Animal and Plant Health Inspection Service (APHIS), U.S. Department of Agriculture. The port value shall not include the ocean freight for a c. & f. sale or ocean freight and marine and war risk insurance for a c.i.f. sale, and shall also not include any animal care or servicing cost incurred after such animals are loaded aboard the export carrier. The net amount of the exporter's sales price means the contract price for the animals less any payments made by the importer and less any discounts credits, or allowances to the importer. Such net amount shall not exceed (a) for registered bulls, $2000 each or, with prior approval of the Assistant Sales Manager for commercial Export Programs, $5,000 if performance has been superior to the performance records specified in Exhibit II to this supplement; (b) for registered females, $1,000 each or, with prior approval of the Assistant Sales Manager for Commercial Export Programs, $1,500 if performance has been superior to the performance records specified in Exhibit I to this supplement; (c) for nonregistered females, and average, for the sale, of $750 each or, with prior approval of the Assistant Sales Manager for Commercial Export Programs, $1,000 if performance has been superior to the performance records specified in said Exhibit I. The difference, if any, between the maximum net amount specified in (a), (b), or (c) of this paragraph A.1. and the contract price for the individual animal, if registered, or the average contract price for the individual animal, if nonregistered, shall not be included as part of the port value.

2. "Producer" means the person holding legal title to the animal at time of birth and who has had continuous ownership of such animal until sold for export under an approved financing agreement.

3. "Bred female" means either a bred heifer or bred cow as set forth in Exhibit I, Option B, which has been certified to as pregnant at the time of inspection.

4. "Breeder" means the person holding legal title to the female animal at the time she was served to qualify such animal hereunder as a bred female.

5. "Eligible animal" means an animal which meets all the following requirements:

(a) The animal must be the progeny of a nationally recognized beef cattle breed (Exhibits I and II);

(b) The animal must have been owned by a person who had continuous title to such animal for a period of at least 90 days immediately before acquisition by the exporter, unless the exporter is the producer of the animal.

(c) The animal must, at the time of export, be individually identified by an eartag, a legible ear tattoo symbol, or a firebrand and ranch holding brand symbol acceptable to USDA testing authority as an authentic identification symbol for such animal. The term "identification number(s)" as used herein shall also include ear tattoo symbol and firebrand and ranch holding brand symbol.

(d) The animal must qualify under the specifications of Exhibit I for females and Exhibit II for bulls.

6. "Registered animal" means an eligible animal which the appropriate natianal breed association has officially registered or otherwise classified as a purebred animal of that breed. Such animal must be marked with a legible tattoo or brand which corresponds with the number shown in the certificate of registration or other official document issued by the appropriate national breed association.

7. "Nonregistered animal" means an eligible animal, whether or not purebred, which is predominantly of the color characteristics and body conformation of the beef breed stated in the contract between the exporter and the importer. (See Exhibits I and II.)

B. SUBMISSION OF REQUESTS FOR SALE REGISTRATIONS

1. In addition to the information required by § 1488.4(c) (1) through (11), the request for a sale registration for financing export credit sales of beef breeding cattle shall include the following:

(a) A general description by breed of the animals to be exported, separately describing the animals under the following classes:
(1) Registered bulls:
(2) Registered bred females;
(3) Registered unbred females;
(4) Nonregistered bred females; and
(5) Nonregistered unbred females.

(b) A statement that such animals will conform to the general specification requirements set forth in Exhibits I or II, as applicable to the class of animals to be exported.

2. In addition to the considerations specified in § 1488.3, a financing period in excess of 12 months but not in excess of 36 months for beef breeding cattle may be justified when it will result in the use by the importer, or by purchasers from the importer, of the animals in the destination country under conditions which will promote expanded demand for additional breeding animals or feed stuffs from the United States.

C. ADDITIONAL DOCUMENTS REQUIRED AFTER DELIVERY

In addition to the documents specified in § 1488.8 (b) through (e), the exporter shall submit the following documents to the Treasurer, Commodity Credit Corporation:

1. Separate animal identification lists for registered animals and for nonregistered animals, containing the following information:
(a) Identification number;
(b) For each registered animal, shown separately opposite the identification number, the sales price as specified in the sales invoice;
(c) For nonregistered animals, shown for each lot group by identification number, the average sales price per animal based on the sales invoice for such nonregistered animals.

2. Performance records for animals for which a higher maximum port value has been approved by the Assistant Sales Manager for Commercial Export Programs as provided in paragraph A.1.

3. A certification by the exporter that animals of the description in the exporter's sales contract have been delivered, and that the exporter knows of no defenses to the account receivable assigned to CCC.

4. A certification by the exporter that the documents specified in paragraph D. of this Supplement have been furnished to the importer.

D. MISCELLANEOUS

The following documents or certifications, as applicable, shall be furnished to the importer by the exporter:

1. The certificates issued by an agent of the Agricultural Marketing Service (AMS), U.S. Department of Agriculture, as to official registration of the animal(s) and listing the identification number(s) and corresponding registration certificate number(s) for each registered animal showing that such numbers have been verified as legible and accurate for such animal, and that the person holding legal title to the animal at the time of export sale has appropriately executed such certificate for transfer to the party designated by the importer. (See Exhibit I or II.)

2. A certification by the breeder of females sold as "bred females" showing the identification numbers and stating that the service bull was a registered bull of the same beef cattle breed as the female to which bred. (See Exhibit I.)

3. The certificate issued or endorsed by Veterinary Services, Animal and Plant Health Inspection Service, listing the identification number(s) and showing that such animal has been inspected for compliance with "Health" requirements. (See Exhibit I or II.)

4. The certificates issued by the Agricultural Marketing Service listing the identification number(s) for each animal showing for such animal compliance with breed, age, weight, and conformation grade, for the class, as shown in Exhibit I or II, as applicable.

5. Certificates issued by a veterinarian accredited by the Animal and Plant Health Inspection Service, showing that bred females, sold as such, were examined and found to be with calf at time of inspection.

6. A semen certification by a veterinarian accredited by the Animal and Plant Health Inspection Service, for bulls over one year of age, except that for Santa Gertrudis and Brahman cattle the certification shall be for bulls over 18 months of age.

E. DUAL PURPOSE BREEDS

When dual purpose breeds [1] are eligible for financing under the provisions of both Supplement I and Supplement II to GSM-5, as revised, the exporter has the option of qualifying such animals under the provisions of either supplement. Such option must be stated in the request for a sale registration filed pursuant to § 1488.4. In the event such dual purpose breeds are approved for export hereunder, the provisions of this supplement shall apply.

EXHIBIT I TO SUPPLEMENT I

USDA Approved Beef Breeding Cattle Export Specifications—Females, Option A (to be specified by purchaser):

1. Registered.[2]

BREED

a. Angus.
b. Hereford.
c. Polled Hereford.
d. Charolais.
e. Santa Gertrudis.
f. Shorthorn.
g. Polled Shorthorn.
h. Brahman.
i. Milking Shorthorn.[3]
j. Red Poll.[3]
k. Other beef cattle breeds having a registry Association in the U.S.

2. Nonregistered.[3]

PREDOMINANT BREED

Specify from breed above.

Option B (to be specified by purchaser):

AGE [4]

1. Calf—(7 to 12 months).
2. Yearling Open—(12 to 18 months).
3. Heifer Open—(18 to 24 months).
4. Bred Heifer—(18 to 36 months).
5. Bred Cow—(24 to 48 months).
6. Mature Cow—(24 to 48 months).[5]

General Requirements:

A. *Health.*[6]

1. Tested negative for tuberculosis within 30 days of loading aboard export carrier.
2. Tested negative for brucellosis within 30 days of loading aboard export carrier, or is an official vaccinate under 30 months of age.
3. Certified that the United States is a country where foot-and-mouth disease has not existed since 1929, contagious bovine pleuropneumonia has not existed since 1892, and rinderpest has never occurred.
4. Animals come from farms that have not been under State or Federal quarantine for any communicable disease during the past year.
5. Animals have been inspected, and found sound (including freedom of blindness, structural defects, etc.), free of evidence of communicable disease and exposure thereto, and free of mites, ticks and ringworm or freed from the same.

B. *Minimum Weight.*[7]

1. Calf—(7 to 12 months), 400 pounds.
2. Yearling Open—(12 to 18 months), 500 pounds.
3. Heifer Open—(18 to 24 months), 600 pounds.
4. Bred Heifer—(18 to 24 months), 700 pounds; (24 to 36 months), 800 pounds.
5. Bred Cow—(24 to 36 months), 800 pounds; (36 to 48 months), 950 pounds.
6. Mature Cow—(24 to 36 months), 800 pounds; (36 to 48 months), 950 pounds.[8]

C. *Minimum Conformation:* Choice.[9]

All nonregistered females must be dehorned or naturally polled unless otherwise specified in the request for a sale registration. Horn stubs in excess of one inch will not be acceptable on dehorned cattle.

D. *Performance Records.*[10] (Optional, unless specified.) (See attached Appendix I to Exhibits I and II.)

1. Minimum adjusted daily gain to weaning 1.6 pounds/day.
2. Minimum adjusted daily gain to weaning of offspring 1.6 pounds/day (if appropriate).

E. *Statement of Service or Other Requirement.* 1. Bred females must have been bred to a registered bull of the same breed and the calf from a registered female must be eligible for registration.[11]

2. Bred females must be at least two months but no more than six months pregnant at time of inspection when being shipped by vessel. If shipped by air, bred females must be at least two months pregnant but may be up to eight months pregnant with veterinarian approval.[12]

3. Mature cows not qualifying as "bred cows", to be eligible for financing hereunder, must be lactating and have their offspring not in excess of approximately five months of age at side at time of inspection by AMS. Such calves, though not eligible for financing, may be supplied along with the parent cow if facilities for their care and safe transportation to destination point are adequate.

EXHIBIT II TO SUPPLEMENT I

USDA Approved Beef Breeding Cattle Export Specifications—Bulls, Option A (to be specified by purchaser):

BREED [1]

1. Angus.
2. Hereford.
3. Polled Hereford.
4. Charolais.
5. Santa Gertrudis.
6. Shorthorn.
7. Polled Shorthorn.
8. Braham.
9. Milking Shorthorn.[3]
10. Red Poll.[3]
11. Other beef cattle breeds having a registry Association in the U.S.

Option B (to be specified by purchaser):

AGE [4]

1. Bull Calf—(7 to 12 months).
2. Yearling Bull—(12 to 18 months).
3. Bull—(18 to 24 months).
4. Mature Bull—(24 to 48 months).

General Requirements:

A. *Health.*[6]

1. Tested negative for tuberculosis within 30 days of loading aboard export carrier.
2. Tested negative for brucellosis within 30 days of loading aboard export carrier.
3. Certified that the United States is a country where foot-and-mouth disease has not existed since 1929, contagious bovine pleuropneumonia has not existed since 1892, and rinderpest has never occurred.
4. Animals come from farms that have not been under State or Federal quarantine for any communicable disease during the past year.
5. Animals have been inspected, and found sound (including freedom from blindness, structual defects, etc.), free of evidence of communicable disease and exposure thereto, and free of mites, ticks, ringworm or freed from the same.

B. *Minimum Weight.*[8]

1. 7 to 12 months, 470 pounds.
2. 12 to 18 months, 790 pounds.
3. 18 to 24 months, 1100 pounds.
4. Over 24 months, 1350 pounds.

C. *Minimum Conformation*: Prime.[9]

D. *Performance Records,*[10] (optional, unless specified). (See attached Appendix I to Exhibits I and II.).

1. Minimum adjusted daily gain to weaning, 1.9 pounds per day.

E. A semen check indicating at least 60 percent sperm motility must be supplied for bulls over one year of age,[7] except that for Santa Gertrudis and Brahman cattle the certification shall be for bulls over 18 months of age.

APPENDIX I TO EXHIBITS I AND II—PERFORMANCE TESTING

Performance testing is known by several names in the United States, but practically all organizations evaluate similar characteristics in beef cattle. The principal factors used in evaluating performance are growth rate and conformation, but not necessarily both. Animals which are tested are weighed at birth and again at weaning. The weaning weight is adjusted to an equivalent of 205 days of age and is also adjusted depending on the age of the dam. This is done to make weights of calves from first-calf heifers comparable to weights of calves from older cows.

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[1] Milking Shorthorn and Red Poll.

[2] Animals must be officially registered with the appropriate National Breed Association and be so certified by AMS agent.

[3] Dual Purpose Breeds (see paragraph E, Supplement I or II).

[4] Certification by AMS agent.

[5] See E3 of this Exhibit I.

[6] Certification or endorsement furnished by Veterinary Services, Animal and Plant Health Inspection Service, USDA.

[7] Certification furnished by Livestock Division, AMS, USDA. Conformation grade to be based on the muscling requirements of the official USDA Feeder Cattle Standards. (See Appendix II attached.)

[8] Official State records or National Breed Association records, or Performance Registry International records.

[9] Must be certified to by the breeder of the female at time of sale to exporter.

[10] Certification of pregnancy shall be issued by an accredited veterinarian.

[11] All animals for delivery under these specifications must be officially registered with the appropriate National Breed Association and be so certified by AMS agent.

[12] Dual Purpose Breeds (see paragraph E, Supplement I or II).

[13] Certification by AMS agent.

[14] Certification or endorsement furnished by Veterinary Services, Animal and Plant Health Inspection Service, USDA.

[15] Certification furnished by Livestock Division, AMS, USDA. Conformation grade based on the muscling requirements of the official USDA Feeder Cattle Standards. (See Appendix II attached.)

[16] Official State records or National Breed Association records, or Performance Registry International records.

[17] Certification must be issued by an accredited veterinarian.

The adjusted daily gain from birth to weaning is indicative not only of inherited gaining ability but also of the milking ability of the dam.

APPENDIX II TO EXHIBITS I AND II—SPECIFICATIONS FOR OFFICIAL UNITED STATES STANDARDS FOR GRADES OF CATTLE (STEERS, HEIFERS, AND COWS) [1]

PRIME

Cattle which possess typical minimum qualifications for the Prime grade are very thickly muscled throughout. They are wide through the chest with well sprung ribs and are moderately wide and thick through the crops, back and loin. The rounds tend to be thick and the twist is moderately deep. They have large, rugged frames with moderately large but refined bone.

CHOICE

Cattle which possess typical minimum qualifications for the Choice grade are thickly muscled throughout. They are moderately wide through the chest with a moderate spring of ribs and are slightly wide and thick through the crops, back and loin. The rounds are slightly thick and the twist is slightly deep. They have moderately large, rugged frames, and the bone usually is moderately large, but may be slightly fine or slightly large and coarse.

SUPPLEMENTAL II—DAIRY BREEDING CATTLE

Sec.

A. Additional definition.
B. Submission of requests for sale registrations.
C. Additional documents required after delivery.
D. Miscellaneous (identification, quality, certification).
E. Dual purpose breeds (standards applicable).

EXHIBIT I—Females (general breed and health requirements). Appendix to Exhibit I.

EXHIBIT II—Bulls (general breed and health requirements). Appendix to Exhibit II.

A. ADDITIONAL DEFINITIONS

1. "Port value" means the net amount of the exporter's sales price for dairy breeding cattle to be exported under the financing agreement, basis f.a.s. or f.o.b. export carrier at U.S. ports, at U.S. border points of exit, or at U.S. airports if shipped by air. The point of exportation for animals shall be designated by the Animal and Plant Health Inspection Service, U.S. Department of Agriculture. The port value shall not include the ocean freight for c. & f. sale or ocean freight and marine and war risk insurance for a c.i.f. sale, and shall also not include any animal care or servicing cost incurred after such animals are loaded aboard the export carrier. The net amount of the exporter's sales price means the contract price for the animals less any payments made by the importer and less any discounts, credits, or allowances to the importer. Such net amount shall not exceed (a) $4,500 each for registered bulls which have an Acceptable performance index as set out in paragraph D.1., Exhibit II to this supplement, or, with prior approval of the Assistant Sales Manager for Commercial Export Programs, $7,500 if such animal has a Superior performance index as set out in paragraph D.2. of Exhibit II; (b) $1,500 each for registered females which have an Acceptable performance index as set out in paragraph D.1., Exhibit I to this supplement, or with prior approval of the Assistant Sales Manager for Commercial Export Programs, $3,000 if such animal has a Superior performance index as set out in paragraph D.2. of Exhibit I; (c) with prior approval of the Assistant Sales Manager for Commercial Export Programs, $5,000 each for registered mature cows which have a Superior performance index asest out in paragraph D.3. of Exhibit I; (d) with prior approval of the Assistant Sales Manager for Commercial Export Programs, $1,500 each for nonregistered mature cows which have a Superior performance index as set out in paragraph D.3. of Exhibit I; or (e) $1,200 average for the sale of nonregistered females, other than mature cows with a Superior performance index, if each such animal has an Acceptable performance index as set out in paragraph D.1. of Exhibit I. The difference, if any, between the maximum net amount specified in (a), (b), (c), (d), or (e) of this paragraph A.1. and the contract price for individual registered animals or nonregistered mature cows with a Superior performance index, or the average contract price for nonregistered females, other than mature cows with a Superior performance index, shall not be included as a part of the port value.

2. "Producer" means the person holding legal title to the animal at time of birth and who has had continuous ownership of such animal until sold for export under an approved financing agreement.

3. "Bred female" means either a bred heifer or bred cow as set forth in Exhibit I, Option B, which has been certified to as pregnant at the time of inspection.

4. "Breeder" means the person holding legal title to the female animal at the time she was served to qualify such animal hereunder as a bred female.

5. "Eligible animal" means an animal which meets all the following requirements:

(a) The animal must be the progeny of a nationally recognized dairy cattle breed (Exhibits I and II);

(b) The animal must have been owned by a person who had continuous title to such animal for a period of at least 90 days immediately before acquisition by the exporter, unless the exporter is the producer of the animal;

(c) The animal must, at the time of export, be individually identified by an eartag, a legible ear tattoo symbol, or a firebrand and ranch holding brand symbol acceptable to USDA testing authority as an authentic identification symbol for such animal. The term "identification number(s)" as used herein shall also include ear tattoo symbol and firebrand and ranch holding brand symbol.

(d) The animal must qualify under the specifications of Exhibit I for females and Exhibit II for bulls.

6. "Registered animal" means an eligible animal which the appropriate national breed association has officially registered or otherwise classified as a purebred animal of that breed. Such animal must be marked with a legible tattoo or brand which corresponds with the number shown in the certificate of registration or other official document issued by the appropriate national breed association.

7. "Nonregistered animal" means an eligible animal, whether or not purebred, which is predominately of the color characteristics and body conformation of the dairy breed stated in the contract between the exporter and the importer. (See Exhibits I and II).

B. SUBMISSION OF REQUESTS FOR SALE REGISTRATIONS FOR FINANCING

1. In addition to the information required by § 1488.4(c) (1) through (11), the request for a sale registration for financing export credit sales of dairy breeding cattle shall include the following:

(a) A general description by breed of the animals to be exported, separately describing the animals under the following classes:
(1) Registered bulls;
(2) Registered bred females;
(3) Registered unbred females;
(4) Nonregistered bred females; and
(5) Nonregistered unbred females.

(b) A statement that such animals will conform to the general specification requirements set forth in Exhibits I or II, as applicable to the class of animals to be exported.

2. In addition to the considerations specified in § 1488.3 a financing period in excess of 12 months but not in excess of 36 months for dairy breeding cattle may be justified when it will result in the use by the importer, or by purchasers from the importer, of the animals in the destination country under conditions which will promote expanded demand for additional breeding animals or feed stuffs from the United States.

C. ADDITIONAL DOCUMENTS REQUIRED AFTER DELIVERY

In addition to the documents specified in § 1488.8 (b) through (e), the exporter shall submit the following documents to the Treasurer, Commodity Credit Corporation:

1. Separate identification lists for each group of animals described in paragraphs A.1. (a), (b), (c), (d), and (e) of this supplement, containing the following information:

(a) Identification number;

(b) For each registered animal or nonregistered mature cow with a Superior performance index, shown separately opposite the identification number, the sales price as specified in the sales invoice;

(c) For nonregistered females other than mature cows with a Superior performance index, shown for each lot group by identification list, the average sales price per animal based on the sales invoice for such nonregistered animals.

2. Production Performance Index records as follows: (a) For registered bulls the applicable Acceptable or Superior performance index records of Sire and Dam as described in paragraph D. 1. or D. 2. of Exhibit II;

(b) For registered females if applicable, the Superior performance index records of Sire and Dam as described in paragraph D. 2. of Exhibit I;

(c) For registered or nonregistered mature cows if applicable, the Superior performance index records of Sire and Dam as described in paragraph D. 3. of Exhibit I.

3. A certification by the exporter that animals of the description in the exporter's sales contract have been delivered and that the exporter knows of no defenses to the account receivable assigned to CCC.

4. A certification by the exporter that the documents specified in paragraph D of this Supplement have been furnished to the importer.

D. MISCELLANEOUS

The following documents or certifications, as applicable, shall be furnished to the importer by the exporter.

1. The certificates issued by an agent of the Agricultural Marketing Service, U.S. Department of Agriculture, as to official registration of the animal(s) and listing the identification number(s) and corresponding registration certificate number(s) for each registered animal showing that such numbers have been verified as legible and accurate for such animal, and that the person holding legal title to the animal at the time of export sale has appropriately executed such certificate for transfer to the party designated by the importer. (See Exhibit I or II.)

2. A certification by the breeder of females sold as "bred females" showing the identification number and stating that the service bull was a registered bull of the same dairy cattle breed as the female to which bred. (See Exhibit I.)

3. The certificates issued or endorsed by Veterinary Service, Animal and Plant Health Inspection Service, listing the identification number(s) and showing that such animal has been inspected for compliance with "Health" requirements. (See Exhibit I or II.)

4. The certificates issued by the Agricultural Marketing Service listing the identification number(s) for each animal showing for such animal compliance with breed, age, weight, and conformation specifications, for the class, as shown in Exhibit I or II, as applicable.

5. Certificates issued by a veterinarian accredited by Animal and Plant Health Inspection Service, showing that bred females, sold as such, were examined and found to be with calf at time of inspection.

6. A semen certification by a veterinarian accredited by Animal and Plant Health Inspection Service, for bulls over one year of age.

E. DUAL PURPOSE BREEDS

When dual purpose breeds [2] are eligible for financing under the provisions of both Supplement I and Supplement II to GSM-5, as revised, the exporter has the option of qualifying such animals under the provisions of either supplement. Such option must be stated in the request for a sale registration filed pursuant to Section 1488.4. In the event such dual purpose breeds are approved for export hereunder, the provisions of this supplement shall apply with the exception that the Assistant Sales Manager for Commercial Export Programs is authorized, at the request of the applicant, to establish a minimum weight schedule and DHIR Milk Production Breed Average.

EXHIBIT I TO SUPPLEMENT II

USDA Approved Dairy Cattle Export Specifications—Females, Option A (to be specified by purchaser):

1. Registered.[3]

BREED

a. Ayrshire.
b. Brown Swiss.
c. Guernsey.
d. Holstein.
e. Jersey.
f. Milking Shorthorn.[4]
g. Red Poll.[4]
2. Nonregistered.[5]

PREDOMINANT BREED

Specify from above.

Option B (to be specified by purchaser).

AGE [6]

1. Calf—(6 to 12 months)
2. Yearling Open—(12 to 18 months)
3. Heifer Open—(18 to 30 months)
4. Bred Heifer—(18 to 30 months)
5. Mature Cow—(24 to 48 months)

General Requirements:

A. Health [6]

1. Tested negative for tuberculosis within 30 days of loading export carrier.

2. Tested negative for brucellosis within 30 days of loading aboard export carrier, or is an official vaccinate under 24 months of age.

3. Certified that the United States is a country where foot-and-mouth disease has not existed since 1929, contagious bovine pleuropneumonia has not existed since 1892, and rinderpest has never occurred.

4. Animals come from farms that have not been under State or Federal quarantine for any communicable disease during the past year.

5. Animals have been inspected and found sound (including freedom from blindness, structural defects, etc.), free of evidence of communicable disease and exposure thereto, and free of mites, ticks and ringworm or freed from the same.

6. Mature cows must be physically examined at time of inspection for the presence of mastitis by manipulating and stripping the udder and found not to have evidence of such infection. The exporter, at his option, may require the person from whom he purchases a mature cow to supply additional evidence of non-mastitis infection as he sees fit.

B. Minimum Weights.[6]

1. Registered Animals.

Age [1] (in months)	Holstein and Brown Swiss	Guernsey and Ayrshire	Jersey
a. 6	360	295	260
b. 8	470	385	340
c. 10	565	455	410
d. 12	640	525	470
e. 14	710	585	520
f. 16	775	635	555
g. 18	835	685	600
h. 20	900	745	645
i. 22	970	790	695
j. 24	1,015	845	735
k. 26	1,045	870	760
l. 28	1,070	895	780
m. 30	1,090	910	790
n. 36 and over	1,180	990	865

[1] Minimum weights for ages between the ages shown shall be determined proportionately.

2. *Non-registered Animals*

Class	Holstein and Brown Swiss	Guernsey and Ayrshire	Jersey
a. Calf	360	295	260
b. Yearling Open	640	525	470
c. Heifer Open	835	685	600
d. Heifer Bred	835	685	600
e. Mature Cow	1,015	845	735

C. Minimum Conformation.[6]

All animals must meet the minimum body conformation specifications as described in Appendix to this Exhibit I.

D. Production Performance Index.[7]

1. *Acceptable.* An acceptable performance index for *Registered* or *Nonregistered Females* will be considered to exist if such animals meet the minimum conformation of Item C above.

2. *Superior.* A Superior performance index for a *Registered Female* will be considered to exist if:

(a) *Sire* has a Plus (+) USDA Predicted Difference [8] equal to two percent of DHI breed average as shown in Item E below, or in the event the Sire does not have a summary, his Sire has a predicted difference (+500 pounds) [8] and

(b) *Dam* has a DHI or DHIR record [9] equal to 10 percent above the DHI breed average as shown in Item E below.

3. *Superior.* A superior performance index for a *Registered* or *Nonregistered Mature Cow* will be considered to exist if such animal has a DHI production record [9] 15 percent above the DHI breed average as shown in Item E below.

E. DHI Milk Production Breed Average (Mature Equivalent)

The following breed averages are applicable to these specifications.

Breed	Breed average	2 pct of breed average	10 pct of breed average	15 pct of breed average
	(*Pounds*)	(*Pounds*)	(*Pounds*)	(*Pounds*)
Ayrshire	11,112	222	1,111	1,666
Brown Swiss	12,203	244	1,220	1,830
Guernsey	9,632	192	963	1,444
Holstein	13,943	278	1,394	2,091
Jersey	8,853	177	885	1,328

F. STATEMENT OF SERVICE

1. Bred females must have been bred to a registered bull of the same breed.[10]

2. Bred females must be at least two months pregnant but no more than six months pregnant at time of inspection when being shipped by vessel. If shipped by air, bred females must be at least two months pregnant but may be up to eight months pregnant with veterinarian approval.[11]

APPENDIX TO EXHIBIT I—MINIMUM BODY CONFORMATION SPECIFICATION FOR FEMALES

In addition to meeting the minimum weight for the breed as specified in Exhibit I, the animal shall possess femininity, normal breed conformation, quality and body capacity. She shall have the general appearance of thrift and vitality with eyes bright and ears alert. The feet and legs shall be well formed with the legs straight, strong and well set. The mammary system, if sufficiently developed, shall be strongly attached, well balanced and of fine texture. The teats shall be of acceptable size. There shall be no evidence of lameness or other serious body defects. She shall possess normal dairy character by showing a lack of obvious excess fatty condition for the age class. Females officially classified by the respective breed association as "Good Plus" (or equivalent) or higher shall be acceptable if found at time of inspection not to have developed a physical defect in conflict with the above-stated conditions.

EXHIBIT II

USDA Approved Dairy Cattle Export Specifications—Bulls, Option A (to be specified by purchaser):

[1] Adapted from Service and Regulatory Announcement AMS-183, issued March 1965. A copy of this publication and charts picturing the grades of feeder cattle may be obtained upon request from the Livestock Division, AMS, USDA, Washington, D.C. 20250.

[1] Milking Shorthorn and Red Poll.

[2] Animals must be officially registered with the appropriate National Breed Association and be so certified by AMS agent.

[3] Dual purpose breeds (See paragraph E, Supplement I or II).

[4] Nonregistered animals will be certified for breed by AMS agent.

[5] Certification by AMS agent.

[6] Certification or endorsement furnished by Veterinary Service, Animal and Plant Health Inspection Service, USDA.

[7] Certification or endorsement furnished by Livestock Division, AMS, USDA. Conformation specifications to be based on standards as set out in Appendix to Exhibit I attached. Weights may be determined by weighing or by estimates using a girth measurement tape.

[8] DHI or DHIR milk production records mature equivalent based on 305-day, two times day milking.

[8] Source: USDA-DHI Sire Summary Records—Animal and Plant Health Inspection Service.

[9] Source: Breed Association, or Dairy Records Processing Center Serving the DHI Association where tested.

[10] Must be certified to by the breeder of the female at time of sale to exporter.

[11] The certification of pregnancy shall be by an accredited veterinarian.

BREED.[1]

a. Ayrshire.
b. Brown Swiss.
c. Guernsey.
d. Holstein.
e. Jersey.
f. Milking Shorthorn.[2]
g. Red Poll.[2]

Option B (to be specified by purchaser):

AGE.[3]

a. Calf—(6 to 12 months).
b. Yearling—(12 to 18 months).
c. Young Bull—(18 to 24 months).
d. Mature Bull—(24 to 48 months).
General Requirements:
A. *Health.*[4]
1. Tested negative for tuberculosis and brucellosis within 30 days of loading aboard export carrier.
2. Animals come from farms that have not been under quarantine for any communicable disease during the past year.
3. Certified that the United States is a country where foot-and-mouth disease has not existed since 1929, contagious bovine pleuropneumonia has not existed since 1892, and rinderpest has never occurred.
4. Animals have been inspected and found sound (including freedom from blindness, structural defects, etc.), free of evidence of communicable disease and exposure thereto and free of mites, ticks and ringword or freed from the same.
B. *Minimum Weight.*[5]

Age [1] (in months)	Holstein and Brown Swiss	Guernsey and Ayrshire	Jersey
6	450	370	315
8	585	480	410
10	710	555	490
12	830	655	565
14	930	755	645
16	1,040	840	745
18	1,155	920	815
21	1,320	1,085	950
24	1,455	1,210	1,050
27	1,570	1,310	1,140
30	1,670	1,395	1,215
36 and over	1,840	1,545	1,350

[1] Minimun weights for ages between the ages shown shall be determined proportionately.

C. *Minimum Conformation.*[6]
All animals must meet the minimum body conformation as described in Appendix to Exhibit II.
D. *Production performance Index.*[6]
1. *Acceptable.* An Acceptable performance index for a *Registered Bull* will be considered to exist if:

[1] All animals for delivery under these specifications must be officially registered with the appropriate National Breed Association and be so certified by AMS agent.
[2] Dual purpose breeds (See paragraph E, Supplement I or II).
[3] Certified by AMS agent.
[4] Certification or endorsement furnished by Veterinary Services, Animal and Plant Health Inspection Service, USDA.
[5] Certification or endorsement furnished by Livestock Division, AMS, USDA. Conformation specifications to be based on standards as set out in Appendix to Exhibit II attached. Weights may be determined by weighing or by estimates using a girth measurement tape.
[6] Certification or endorsement furnished by Livestock Division, AMS, USDA. Conformation specifications to be based on standards as set out in Appendix to Exhibit II attached. Weights may be determined by weighing or by estimates using a girth measurement tape.
[7] DHI or DHIR milk production records. Mature equivalent based on 305-day, two times day milking.

(a) *Sire* has a Plus (+) USDA Predicted Difference[7], and
(b) *Dam* has a DHI or DHIR record[8] 10 percent above the DHIR breed average as shown in item E below.
2. *Superior.* A Superior performance index for a *Registered Bull* will be considered to exist if:
(a) *Sire* has a Plus (+) USDA Predicted Difference[7] equal to two percent of DHIR breed average as shown in item E below, and
(b) *Dam* has a DHI or DHIR record[8] 20 percent above the DHIR breed average as shown in item E below.
E. *DHIR Milk Production Breed Averages (Mature Equivalent).*
The following breed averages are applicable to these specifications:

Breed	Breed average	2 pct of breed average	10 pct of breed average	20 pct of breed average
	(Pounds)	(Pounds)	(Pounds)	(Pounds)
Ayrshire	12,556	251	1,255	2,511
Brown Swiss	13,187	264	1,318	2,637
Guernsey	10,483	210	1,048	2,096
Holstein	15,204	304	1,520	3,040
Jersey	9,465	189	946	1,893

F. *A semen check indicating at least 60 percent sperm motility must be supplied for bulls over one year of age.*[9]

APPENDIX TO EXHIBIT II—MINIMUM BODY CONFORMATION SPECIFICATIONS FOR BULLS

In addition to meeting the minimum weight for the breed as specified in Exhibit II, the animal shall possess masculinity, normal breed conformation, quality, and body capacity. He shall have the general appearance of thrift and vitality with eyes bright and ears alert. The feet and legs shall be well formed with legs straight, strong, and well set. There shall be no evidence of lameness or other serious body defects. He shall possess normal dairy character by showing a lack of obvious excess fatty condition for the age class. Bulls officially classified by the respective breed association as "Good Plus" (or equivalent) or higher shall be acceptable if found at time of inspection not to have developed a physical defect in conflict with the above-stated conditions.

SUPPLEMENT III—BREEDING SWINE

Section
A. Additional definitions.
B. Submission of requests for sale registrations.
C. Additional documents required after delivery.
D. Miscellaneous.
Exhibit I—Females.
Exhibit II—Boars.
Appendix I—Health Requirements.
Appendix II—Specifications for Official U.S. Standards for Grades.

A. ADDITIONAL DEFINITIONS

1. "Port value" means the net amount of the exporters sales price for breeding swine to be exported under the financing agreement, basis f.a.s. or f.o.b. export carrier at U.S. ports, at U.S. border points of exit, or at U.S. points of flight if transported by air freight. The point of exportation for animals shall be designated by the Animal and Plant Health Inspecton Service, U.S. Department of Agriculture. The port value shall not include the ocean freight for c.&f. sale or ocean freight and marine and war risk insurance for a c.i.f. sale, and shall also not include any animal care or servicing cost incurred after such animals are loaded aboard the export carrier. The net amount of the exporter's sales price means the contract price for the animals less any payments made by the importer and less any discounts, credits, or allowances to the importer. Such net amount shall not exceed (a) for boars, $750 each; (b) for bred females, $500 each; and (c) for unbred females $400 each, unless approved by the Assistant Sales Manager for Commercial Export Programs. The difference, if any, between the maximum net amount specified in (a) (b), or (c) of this paragraph A. 1. and the contract price for the individual animal shall not be included as part of the port value.
2. "Producer" means the person holding legal title to the animal at time of birth and who has had continuous ownership of such animal until sold for export under an approved financing agreement.
3. "Bred female" means a bred gilt as set forth in Exhibit I, Option B, and must be accompanied by a breeding certificate provided by the breeder.
4. "Breeder" means the person holding legal title to the female animal at the time she was served to qualify such animal hereunder as a bred female.
5. "Registered animal" means an eligible animal which the appropriate national breed association has officially registered, declared eligible for registry or otherwise classified as a purebred animal of that breed.
6. "Eligible animal" means a registered animal which meets all of the following requirements:
(a) The animal must have been owned by a person who had continuous title to such animal for a period of at least 60 days immediately before acquisition by the exporter, unless the exporter is the producer of the animal;
(b) The animal must, at the time of export, have two eartags acceptable to USDA as an authentic identifying symbol for such animal and must be marked with a legible ear notch which corresponds with the number shown in the certificate of registration or other official document issued by the appropriate national breed association;
(c) The animal must qualify under the specifications of Exhibit I for females and Exhibit II for boars.

B. SUBMISSION OF REQUESTS FOR SALE REGISTRATIONS

1. In addition to the information required by § 1488.4(c) (1) through (11), the request for a sale registration for financing export credit sales of breeding swine shall include the following:
(a) A list of the animals to be exported including the identification number, breed, and price under the following classes:
1. Boars.
2. Bred females.
3. Unbred females.
(b) If applicable, a statement of justification for prices over the maximum limits specified in A.1.(a), (b), or (c).
(c) A statement that such animals will conform to the general specification requirements set forth in Exhibit I or II, as applicable to the class of animals to be exported.
2. In addition to the consideration specified in § 1488.3, a financing period in excess of 12 months but not in excess of 36 months for breeding swine may be justified when it will result in the use by the importer, or by purchasers from the importer, of the animals in the destination country under conditions which will promote expanded demand for additional breeding animals or feed stuffs from the United States.

[7] Source: USDA–DHI Sire Summary Records, Animals and Plant Health Inspection Service.
[8] Source: Breed Association or Dairy Records Processing Center Serving the DHI Association where tested.
[9] Certification must be issued by an accredited veterinarian.

C. ADDITIONAL DOCUMENTS REQUIRED AFTER DELIVERY.

In addition to the documents specified in § 1488.8 (b) through (e), the exporter shall submit the following documents to the Treasurer, Commodity Credit Corporation:
1. An animal identification list containing the following information:
(a) Identification number.
(b) For each animal, shown separately opposite the identification number, the sales price as specified in the sales invoice.
2. A certification by the exporter that animals of the description in the exporter's sales contract have been delivered, and that the exporter knows of no defenses to the account receivable assigned to CCC.

D. MISCELLANEOUS.

The following documents or certifications, as applicable, shall be furnished to the importer by the exporter:
1. The certificates issued by an agent of the Agricultural Marketing Service, U.S. Department of Agriculture, as to official registration of the animal(s) and listing the identification number(s) and corresponding registration certificate number(s) for each animal showing that such numbers have been verified as legible and accurate for such animal, and that the person holding legal title to the animal at the time of export sale has appropriately executed such certificate for transfer to the party designated by the importer. (See Exhibit I or II.)
2. A certification by the breeder of females sold as "bred females" showing the identification number of both the female and boar and stating that the service boar was a registered boar of the same breed. In addition the breeder will certify that the bred females have missed at least one heat period since last service. It will also be certified by the breeder that the bred females will not be more than three months pregnant at time of departure from point of exit.
3. The certificates issued or endorsed by Veterinary Services, Animal and Plant Health Inspection Service, listing the identification number and showing that such animal has been inspected for compliance with "Health" requirements. (See Appendix I to Exhibits I and II.)
4. The certificates issued by the Agricultural Marketing Service listing the identification number for each animal and showing for such animal compliance with breed registration, number of teats, and USDA grade, for the class, as shown in Exhibit I or II, as applicable.
5. The certificates signed by the breeder listing, for each animal, the individual identification number, breed, and age and a statement that the animal was from a litter of at least seven pigs.

EXHIBIT I TO SUPPLEMENT III

USDA Approved Breeding Swine Export Specifications—Females, Option A (to be specified by purchaser):
1. Registered.[1]

BREED

a. Poland China.
b. Chester White.
c. Yorkshire.
d. Hampshire.

[1] All animals for delivery under these specifications must be certified by AMS agent as officially registered with the appropriate National Breed Association.

e. Berkshire.
f. Duroc.
g. Tamworth.
h. Landrace.
i. Hereford.
j. Spotted Swine.

Option B (to be sepcified by purchaser):

AGE [2]

1. Unbred female—10 weeks-7 months.[3]
2. Bred female—7-14 months.
General Requirements:
A. *Health.* (See Appendix I)
B. *Minimum USDA Grade—U.S. No. 2.*[4]
C. Eligible females must be out of a litter of at least seven pigs.[5] Also, they must have at least six functional teats on each side of the underline with no inverted nipples.[6]
D. *Statement of Service or Other Requirements.*
Bred females must have been bred to a registered boar of the same breed. In addition, bred females shall have missed at least one heat period since last service and be not more than three months pregnant at time of departure from point of exit.[7]

EXHIBIT II TO SUPPLEMENT III

USDA Approved Breeding Swine Export Specifications—Boars, Option A (to be specified by purchaser):

BREED [1]

(a) Poland China.
(b) Chester White.
(c) Yorkshire.
(d) Hampshire.
(e) Berkshire.
(f) Duroc.
(g) Tamworth.
(h) Landrace.
(i) Hereford.
(j) Spotted Swine.

Option B (to be specified by purchaser)

AGE [2]

1. Boar pigs—10-16 weeks.[3]
2. Boars—4-8 months.
3. Boars—8-12 months.
General Requirements:
A. *Health.* (See Appendix I).
B. *Minimum USDA grade—U.S. No. 1.*[4]
C. Eligible boars must be from a litter of at least seven pigs.[5]

APPENDIX I TO EXHIBITS I AND II

HEALTH REQUIREMENTS [1]

Swine financed for export under the CCC Export Credit Sales Program shall be certified by the appropriate USDA inspectors as follows:
1. U.S. is free of foot-and-mouth disease, African swine fever, Teschen disease and vesicular exanthema.
2. The swine originate from a free area [2] where hog cholera is not known to exist according to Title 9, Part 76 of the U.S. Department of Agriculture regulations.
3. Animals have been inspected and found sound (including freedom from blindness, structural defects, etc.), free of evidence of communicable disease and exposure thereto, and free of mites, lice, and ticks or freed from the same.
Export inspection and certification requirements of the U.S. Department of Agriculture must be met.

APPENDIX II TO EXHIBITS I AND II

Specifications for Official United States Standards for Grades of Feeder Pigs:

U.S. NO. 1

Feeder pigs in this grade near the borderline of the U.S. No. 2 grade are long and have thick muscling throughout. Thickness of muscling is particularly evident in thick and full hams and shoulders. The hams and shoulders are thicker than the back, which is well-rounded. They usually present a well-balanced appearance.

U.S. NO. 2

Feeder pigs in this grade near the borderline of the U.S. No. 3 grade are moderately long and have moderately thick muscling throughout. Thickness of muscling is particularly evident in moderately thick and full hams and shoulders. The back usually appears slightly full and well-rounded. They usually present a well-balanced appearance.

NOTE.—The recordkeeping and reporting requirements contained herein have been approved by the Office of Management and Budget in accordance with the Federal Reports Act of 1942.

Signed at Washington, D.C. on January 14, 1977.

JAMES L. HUTCHINSON,
Vice President, Commodity Credit Corporation and General Sales Manager, Office of the General Sales Manager.

[FR Doc.77-1841 Filed 1-19-77;8:45 am]

[1] Certification by breeder.
[2] Female pigs in this class must weigh at least 60 pounds. Certification furnished by Livestock Division, AMS, USDA.
[3] Certification furnished by Livestock Division, AMS, USDA, Grade to be based on the official U.S. standards for grades of feeder pigs. (See Appendix II.)
[4] Certification by Livestock Division, AMS, USDA.
[5] All animals for delivery under these specifications must be certified by AMS agent as officially registered with the appropriate National breeder.
[6] Certification by Breeder.
[7] Boar pigs must weigh at least 60 pounds. Certification furnished by Livestock Division, AMS, USDA.
[8] Certification furnished by Livestock Division, AMS, USDA Grade to be based on the official U.S. standards for grades of feeder pigs. (See Appendix II.)
[9] Certification by breeder
[1] Certification or endorsement furnished by Veterinary Services, Animal and Plant Health Inspection Service, USDA.

[2] Free area means a radius of 5 miles within which no cholera has occurred within 3 months.

Animal and Plant Health Inspection Service

[9 CFR Part 92]

FOREIGN EMBARKATION QUARANTINE STATION FOR LIVESTOCK

Proposed Criteria and Standards for Establishment

● *Purpose.* The purpose of these proposed amendments is to provide standards for a foreign embarkation quarantine facility in which livestock proposed for importation into the United States through the Fleming Key Animal Import Center may be assembled and processed for exportation to the United States. ●

Statement of considerations. Notice is hereby given in accordance with the administrative procedure provisions in 5 U.S.C. 553, that, pursuant to section 1 of the Act of May 6, 1970 (21 U.S.C. 135),

the Animal and Plant Health Inspection Service is considering amending Part 92, Title 9, Code of Federal Regulations, to provide standards for such a foreign embarkation quarantine facility. Section 1 of the Act of May 6, 1970 (Pub. L. 91-239, 84 Stat. 202 (21 U.S.C. 135)), provides authority for the Secretary of Agriculture to establish and maintain a maximum security international animal quarantine station within the territory of the United States, into which animals may be brought from any country, including but not limited to those countries in which the Secretary determines that rinderpest or foot-and-mouth disease (FMD) exists, and be subsequently moved into other parts of the United States, in accordance with such conditions as the Secretary shall determine are adequate to prevent the introduction into and dissemination within the United States of livestock or poultry diseases or pests.

In order to guard against the importation into the Fleming Key facility of animals infected with diseases such as rinderpest and foot-and-mouth disease, it appears necessary that such animals should be held in a foreign embarkation quarantine prior to shipment to Fleming Key. An embarkation quarantine would require frequent inspection and supervision by Department personnel and therefore would constitute an expense to the Department. Further, it appears that logistic problems would arise concerning the gathering of animals from different countries and placing them in an embarkation quarantine facility for subsequent shipment to Fleming Key. Accordingly, it appears that a single embarkation quarantine facility with a capacity of 450 animals would minimize the problems of supervision, expense, and coordination of movement of animals into Fleming Key, and would maximize the utilization of the Fleming Key facility and reduce the chance of the introduction of communicable diseases of livestock and poultry into this country. Therefore, the Department is proposing to establish standards of approval for such a facility.

Part 92, Title 9, Code of Federal Regulations, would be amended in the following respects:

A new § 92.4a would be added to read:

§ 92.4a Embarkation quarantine facility; criteria and standards for approval.

Criteria for the establishment of an approved embarkation quarantine facility outside the United States for the purpose of importing animals into the United States through the Fleming Key Animal Import Center are as follows:

(a) *Establishment.* (1) The Deputy Administrator, Veterinary Services, may enter into an agreement with one or more parties for the establishment of such a facility pursuant to the standards in paragraph (b) of this section.

(2) To quality for designation as an approved embarkation quarantine facility and to retain such approval, the physical facility, and its maintenance and operation, shall meet the minimum requirements of paragraph (b) of this section.

(3) All costs associated with the establishment and operation of such an approved embarkation quarantine facility shall be borne by the owner or operator of such facility.

(4) Requests for approval and plans for proposed facilities shall be submitted to the Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Federal Building, 6505 Belcrest Road, Hyattsville, Maryland 20782. Each request for approval will be considered on the basis of the date and time it is received by the Deputy Administrator, Veterinary Services. The first such application received which can comply with the standards and regulations established in this section shall be approved by the Deputy Administrator, Veterinary Services. If the approval of any approved facility is ever terminated or revoked, then the Deputy Administrator, Veterinary Services, shall approve another application in the same manner as set forth in this paragraph.

(5) Permission to place animals in the foreign embarkation quarantine facility shall be given to any person who has received permission to import animals through the Fleming Key Animal Import Center unless the Deputy Administrator, Veterinary Services, determines that sufficient grounds exist whereby such person may be denied such permission.

(6) Fees charged by the owner or operator for the use of such facility shall be provided in private agreements between the owner or operator of the facility and the owners of the animals proposed for importation. Such fees shall be nondiscriminatory and reasonable as determined by the Deputy Administrator, Veterinary Services.

(7) Approval of any approved quarantine facility may be withdrawn at any time by the Deputy Administrator, Veterinary Services, upon his determination that any requirement of this section is not being met. Before such action is taken, the operator of the facility will be informed of the reasons for the proposed action and afforded opportunity to present his views thereon. Upon withdrawal of approval, the operator, upon request, shall be afforded opportunity for a hearing with respect to the merits or validity of such withdrawal or refusal shall continue in effect unless otherwise ordered by the Deputy Administrator, Veterinary Services.

(b) *Standards for approval of embarkation quarantine facilities*—(1) *Location.* (i) The embarkation quarantine facility shall be so located as to be isolated from all domestic ruminants, swine, and poultry and from all wild ruminants, swine, and poultry and shall be near docks from which international shipments may be made by ocean vessels.

(ii) The route of travel between the embarkation quarantine facility and the docks from which such animals are to be exported shall be through areas free of domestic and wild ruminants, swine and poultry.

(iii) The facility shall be so situated that there will be no contact between animals held in the facility with any other species of animals.

(iv) The facility shall be so situated that it will be free from contact with water and waste effluents from local livestock or poultry. Water and waste effluents from the facility shall be disposed of in a manner determined by the Deputy Administrator, Veterinary Services, to be adequate to insure no exposure to local livestock or poultry.

(2) *Building.* (i) The exterior of the building shall be of durable, low maintenance, waterproof type construction that will withstand repeated cleaning and disinfecting.

(ii) Roofs shall be watertight. The styling and configuration of the roof of the animal holding building shall provide for optimum air circulation throughout the facility.

(iii) The interior finish of the building shall be durable, washable, and of low maintenance type construction. The floor shall be concrete with no cracks or crevices.

(iv) All openings in the building shall be double screened, with such mesh as to preclude the entrance of small flying insects such as mosquitos into the animal hoding area.

(v) Stalls, pens, and runways shall be constructed of sufficient height and strength to confine and restrain all animals simultaneously for daily veterinary examinations.

(vi) at least 70-foot candle lighting shall be provided in the inspection area. A minimum light of 30-candle shall be available in all other areas of the facility.

(vii) A dipping vat of a concrete pit type with inspection chute, holding pen, dripping pen, and post-drip area similar to USDA Extension Plan 5940, revised, shall be provided.[14]

(viii) The waste management system shall be carefully designed to meet all applicable sanitation and quarantine requirements and the existing environmental standards of the country in which the embarkation quarantine facility is located.

(3) *Fencing.* (i) The outer perimeter of all facilities shall be surrounded by a fence which shall be of sufficiently small mesh as to preclude the entrance of small farm animals, including dogs, and of such height and strength as to prevent entrance of larger animals. This fence shall be located at least 200 feet from the building in which quarantined animals are to be held.

(ii) In areas affected by cattle fever ticks all such facilities shall be double fenced with the inner perimeter fence located at least 15 feet from the outer perimeter fence. When double fencing is required, the space between the outer and inner perimeter fences shall be kept free from all foliage at all times.

(iii) The outer fence of the facility shall be posted with signs in appropriate language, which shall convey the following: Restricted Area—keep out, Quarantine Area—keep out, or Restricted Quarantine Area—keep out.

(4) *Other requirements.* (i) Access into the quarantine area shall be through a single door which shall lead into a walk through shower area with clothes change areas located on either side of the shower and adjacent thereto.

(ii) Toilet and lavatory facilities as determined by the Deputy Administrator, Veterinary Services, to be adequate to preclude transmission of livestock or poultry disease agents from the facility shall be located within the animal holding areas.

(iii) A sufficient supply of clean clothing including towels and footwear as determined by the Deputy Administrator shall be maintained within the quarantine area.

(iv) A continuous supply of hot and cold running water shall be provided which shall include potable water for personnel.

(v) If lunch is to be eaten within the facility, a lunch room must be provided and all food entered into the facility must be approved by the supervising United States government veterinarian.

(vi) A separate room containing the equipment for preparation and packaging of laboratory specimens with adequate office space as determined by the Deputy Administrator, Veterinary Services, to perform his duties shall be provided for the supervising veterinary official. All records, equipment, and other mtterials used in the facility, must be maintained within the quarantint facility for the entire quarantine period.

(vii) A separate area situated apart from the animal holding area shall be provided for necropsies and a means for the removal of the carcass of dead animals shall be provided without breaking quarantine security.

(viii) An animal receiving area and a chute or stocks for restraint during examination and veterinary inspection, as determined to be appropriate by the Deputy Administrator, Veterinary Services, to permit examination of the animal, shall be provided.

(ix) Feed shall be stored in such a manner that replenishment during the quarantine period does not require transporting vehicles to enter the quarantine area.

(x) Equipment necessary for the care, cleaning, feeding, waste disposal, and handling of the animals shall be provided and maintained within the quarantine area.

(xi) Additional requirements as to security, physical plant and facilities, and sanitation may be imposed by the Deputy Administrator, Veterinary Services, in each specific case in order to assure that the quarantine of the animals in such facility will be adequate to enable determination of their health status, prevent the spread of disease among animals in quarantine, and prevent escape of animal disease agents from the facility.

Any person who wishes to submit written data, views, or arguments concerning the proposed amendments may do so by filing them with the Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Hyattsville, Maryland 20782, before March 22, 1977.

All written submissions made pursuant to this notice will be made available for public inspection at the Federal Building, 6505 Belcrest Road, Room 821-A, Hyattsville, Maryland, during regular hours of business (8 a.m. to 4:30 p.m., Monday to Friday, except holidays) in a manner convenient to the public business (7 CFR 1.27(b)).

Comments submitted should bear a reference to the date and page number of this issue in the FEDERAL REGISTER.

Done at Washington, DC, this 17th day of January 1977.

NOTE.—The Animal and Plant Health Inspection Service has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107.

PIERRE A. CHALOUX,
Acting Deputy Administrator, Veterinary Services.

[FR Doc.77-1966 Filed 1-19-77;8:45 am]

[14] Copies of the USDA Extension Plan 5940, revised, may be obtained from the Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Hyattsville, Maryland 20782.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Part 71]

[Airspace Docket No. 76-PC-7]

TRANSITION AREA

Proposed Alteration

The Federal Aviation Administration (FAA) is considering an amendment to Part 71 of the Federal Aviation Regulations that would alter the 700 feet transition area of Honolulu, Hawaii.

Interested persons may participate in the proposed rule making by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number and be submitted in triplicate to the Director, Pacific-Asia Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, P.O. Box 4009, Honolulu, Hawaii 96813. All communications received on or before February 22, 1977, will be considered before action is taken on the proposed amendment. The proposal contained in this notice may be changed in the light of comments received.

An official docket will be available for examination by interested persons at the Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket, AGC-24, 800 Independence Avenue, S.W., Washington, D.C. 20591. An informal docket also will be available for examination at the office of the Regional Air Traffic Division Chief.

Request for copies of this notice of proposed rulemaking should be addressed to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, S.W., Washington, D.C. 20591.

As part of this proposal relates to the navigable airspace outside the United States, this notice is submitted in consonance with the ICAO International Standards and Recommended Practices.

Applicability of International Standards and Recommended Practices by the Air Traffic Service, FAA, in areas outside domestic airspace of the United States is governed by Article 12 of and Annex 11 to the Convention on International Civil Aviation, which pertain to the establishment of air navigation facilities and services necessary to promoting the safe, orderly, and expeditious flow of civil air traffic. Their purpose is to insure that civil flying on international air routes is carried out under uniform conditions designed to improve the safety and efficiency of air operations.

The International Standards and Recommended Practices in Annex 11 apply in those parts of the airspace under the jurisdiction of a contracting state, derived from ICAO, wherein air traffic services are provided and also whenever a contracting state accepts the responsibility of providing air traffic services over high seas or in airspace of undetermined sovereignty. A contracting state accepting such responsibility may apply the International Standards and Recommended Practices to civil aircraft in a manner consistent with that adopted for airspace under its domestic jurisdiction.

In accordance with Article 3 of the Convention on International Civil Aviation, Chicago, 1944, state aircraft are exempt from the provisions of Annex 11 and its Standards and Recommended Practices. As a contracting state, the United States agreed by Article 3(d) that its state aircraft will be operated in international airspace with due regard for the safety of civil aircraft.

Since this action involves, in part, the designation of navigable airspace outside the United States, the Administrator has consulted with the Secretary of State and the Secretary of Defense in accordance with the provisions of Executive Order 10854.

The proposed amendment would extend the 700 feet transition area southward by redesignating it to read as follows:

HONOLULU, HAWAII (HONOLULU INTERNATIONAL AIRPORT)

That airspace extending upward from 700 feet above the surface south and southeast of Honolulu beginning at Lat. 21°20'30" N., Long. 157°51'15" W., thence south to Lat. 21°15'30" N., Long. 157°49'15" W., thence east along the shoreline to and clockwise along the arc of a 15 NM radius circle centered on Honolulu International Airport (Lat. 21°19'35" N., Long. 157°55'45" W.) to Lat. 21°06'40" N., Long. 158°07'35" W.,

thence northwest to Lat. 21°10'10" N., Long. 158°11'55" W., thence northeast along a line 4.5 miles southeast of and parallel to the Honolulu VORTAC 242° radial to and counterclockwise along the arc of a 5-mile radius circle centered on NAS Barbers Point (Lat. 21°16'35" N., Long. 158°04'30" W.) to and counterclockwise along the arc of a 5-mile radius circle centered on Honolulu International Airport to the point of beginning, and within 3 miles northwest and 4.5 miles southeast of the Honolulu VORTAC 242° radial, extending from 13 miles to 14 miles southwest of the VORTAC.

The proposed extension of this transition area would provide controlled airspace for aircraft arriving from the east and southeast at the lower altitudes.

(Secs. 307(a) and 1110, Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1510), Executive Order 10854 (24 FR 9565), sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)).)

Issued in Washington, D.C., on January 12, 1977.

WILLIAM E. BROADWATER,
Chief, Airspace and Air Traffic Rules Division.

[FR Doc.77-1621 Filed 1-19-77;8:45 am]

[14 CFR Part 71]

[Airspace Docket No. 76-PC-3]

TRANSITION AREA

Proposed Designation

The Federal Aviation Administration (FAA) is considering an amendment to Part 71 of the Federal Aviation Regulations that would designate a Kaanapali, Hawaii, transition area.

Interested persons may participate in the proposed rule making by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number and be submitted in triplicate to the Director, Pacific Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, P.O. Box 4009, Honolulu, Hawaii 96813. All communications received on or before March 7, 1977, wil be considered before action is taken on the proposed amendment. The proposal contained in this notice may be changed in the light of comments received.

An official docket will be available for examination by interested persons at the Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket, AGC-24, 800 Independence Avenue, S.W., Washington, D.C. 20591. An informal docket also will be available for examination at the office of the Regional Air Traffic Division Chief.

Request for copies of this notice of proposed rulemaking should be addressed to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-320, 800 Independence Avenue, S.W., Washington, D.C. 20591.

As part of this proposal relates to the navigable airspace outside the United States, this notice is submitted in consonance with the ICAO International Standards and Recommended Practices.

Applicability of International Standards and Recommended Practices by the Air Traffic Service, FAA, in areas outside domestic airspace of the United States is governed by Article 12 of and Annex 11 to the Convention on International Civil Aviation, which pertain to the establishment of air navigation facilities and services necessary to promoting the safe, orderly, and expeditious flow of civil air traffic. Their purpose is to insure that civil flying on international air routes is carried out under uniform conditions designed to improve the safety and efficiency of air operations.

The International Standards and Recommended Practices in Annex 11 apply in those parts of the airspace under the jurisdiction of a contracting state, derived from ICAO, wherein air traffic services are provided and also whenever a contracting state accepts the responsibility of providing air traffic services over high seas or in airspace of undetermined sovereignty. A contracting state accepting such responsibility may apply the International Standards and Recommended Practices to civil aircraft in a manner consistent with that adopted for airspace under its domestic jurisdiction.

In accordance with Article 3 of the Convention on International Civil Aviation, Chicago, 1944, state aircraft are exempt from the provisions of Annex 11 and its Standards and Recommended Practices. As a contracting state, the United States agreed by Article 3(d) that its state aircraft will be operated in international airspace with due regard for the safety of civil aircraft.

Since this action involves, in part, the designation of navigable airspace outside the United States, the Administrator has consulted with the Secretary of State and the Secretary of Defense in accordance with the provisions of Executive Order 10854.

The proposed amendment would designate the following transition area:

KAANAPALI, HAWAII

That area extending upward from 700 feet above the surface within a 5-mile radius of Kaanapali Airport (Lat. 20°56'45" N., Long. 156°41'35" W.), within 3 miles each side of the Molokai VORTAC 114° T radial extending from the 5-mile radius to 7.5 miles northwest of the airport.

A transition area of sufficient dimension, which would contain IFR operations within controlled airspace between the base of the 700 foot transition area and the overlying 1,200 foot controlled airspace, is needed for a new instrument approach procedure to Kaanapali Airport, Maui, Hawaii.

(Sec. 307(a) and 1110 of the Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1510), Executive Order 10854 (24 FR 9565) and Sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).)

Issued in Washington, D.C., on January 12, 1977.

WILLIAM E. BROADWATER,
Chief, Airspace and Air Traffic Rules Division.

[FR Doc.77-1622 Filed 1-19-77;8:45 am]

[14 CFR Part 71]

[Airspace Docket No. 76-WE-25]

TRANSITION AREA

Proposed Alteration

The Federal Aviation Administration (FAA) is considering an amendment to Part 71 of the Federal Aviation Regulations that would provide additional controlled airspace to accommodate an instrument approach procedure for Catalina Airport, Avalon, Calif. (Santa Catalina Island).

Interested persons may participate in the proposed rule making by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number and be submitted in triplicate to the Director, Western Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, 15000 Aviation Boulevard, P.O. Box 92007, Worldway Postal Center, Los Angeles, Calif. 90009. All communications received on or before February 22, 1977, will be considered before action is taken on the proposed amendment. The proposal contained in this notice may be changed in the light of comments received.

An official docket will be avaialble for examination by interested persons at the Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket, AGC-24, 800 Independence Avenue, S.W., Washington, D.C. 20591. An informal docket also will be available for examination at the office of the Regional Air Traffic Division Chief.

Request for copies of this notice of proposed rulemaking should be addressed to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, S.W., Washington, D.C. 20591. The rule proposed herein has been reviewed in accordance with E.O. 11821 titled, Inflationary Impact Statements, (39 FR 41501, November 29, 1974), and it has been determined that the preparation of an Inflationary Impact Statement is not necessary.

As part of this proposal relates to the navigable airspace outside the United States, this notice is submitted in consonance with the ICAO International Standards and Recommended Practices.

Applicability of International Standards and Recommended Practices by the Air Traffic Service, FAA, in areas outside domestic airspace of the United States is governed by Article 12 of and Annex 11 to the Convention on International Civil Aviation, which pertain to the establishment of air navigation facilities and services necessary to promoting the safe, orderly, and expeditious flow of civil air traffic. Their purpose is to insure that civil flying on international air routes is carried out under uniform conditions designed to improve the safety and efficiency of air operations.

The International Standards and Recommended Practices in Annex 11 apply in those parts of the airspace under the jurisdiction of a contracting state, derived from ICAO, wherein air traffic services are provided and also whenever a contracting state accepts the responsibility of providing air traffic services over high seas or in airspace of undetermined sovereignty. A contracting state accepting such responsibility may apply the International Standards and Recommended Practices to civil aircraft in a manner consistent with that adopted for airspace under its domestic jurisdiction.

In accordance with Article 3 of the Convention on International Civil Aviation, Chicago, 1944, state aircraft are exempt from the provisions of Annex 11 and its Standards and Recommended Practices. As a contracting state, the United States agreed by Article 3(d) that its state aircraft will be operated in international airspace with due regard for the safety of civil aircraft.

Since this action involves, in part, the designation of navigable airspace outside the United States, the Administrator has consulted with the Secretary of State and the Secretary of Defense in accordance with the provisions of Executive Order 10854.

The proposed amendment would provide transition airspace extending upward from 700 feet above the surface within five miles each side of the 229°T (214°M) and 012°T (357°M) radials extending from six miles north to 12 miles southwest of the Santa Catalina VORTAC.

The proposed additional controlled airspace will upgrade the capability of Avalon Airport by providing airspace protection for its first instrument approach procedure. The instrument approach will enhance safety by providing a procedure during IFR weather and marginal VFR weather.

(Sec 307(a) and 1110 of the Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1510), Executive Order 10854 (24 FR 9565) and Sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).)

Issued in Washington, D.C., on January 12, 1977.

WILLIAM E. BROADWATER,
Chief, Airspace and Air Traffic Rules Division.

[FR Doc.77-1620 Filed 1-19-77;8:45 am]

[14 CFR Part 71]

[Airspace Docket No. 76-SO-108]

TRANSITION AREA

Proposed Designation

The Federal Aviation Administration is considering an amendment to Part 71 of the Federal Aviation Regulations that would designate the Camden, Tennessee, transition area.

Interested persons may submit such written data, views or arguments as they desire. Communications should be submitted to the Federal Aviation Administration, Southern Region, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. All communications received on or before March 7, 1977, will be considered before action is taken on this amendment. No hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Chief, Airspace and Procedures Branch. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become a part of the record for consideration. The proposal contained in this notice may be changed in light of comments received.

The official docket will be available for examination by interested persons at the Federal Aviation Administration, Southern Region, Room 645, 3400 Whipple Street, East Point, Ga.

The Camden transition area would be designated as:

That airspace extending upward from 700 feet above the surface within a 5.5-mile radius of the Benton County Airport (latitude 36°00'40" N., longitude 88°07'24" W.).

The proposed designation is required to provide controlled airspace protection for IFR operations at Benton County Airport. A prescribed instrument approach procedure to this airport, utilizing the Jacks Creek VORTAC, is proposed in conjunction with the designation of this transition area.

This amendment is proposed under the authority of sec. 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348(a)) and of sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

The FAA has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107.

Issued in East Point, Ga., on January 6, 1977.

PHILLIP M. SWATEK,
Director, Southern Region.

[FR Doc.77-1619 Filed 1-19-77;8:45 am]

[14 CFR Part 91]

[Docket No. 16431; Notice 77-2]

REGULATORY REVIEW PROGRAM

Invitation to Submit Proposals for Consideration

The Federal Aviation Administration gives public notice of the Part 91, Subpart B Regulatory Review Program (herein called "program"). This program will be administered by the Airspace and Air Traffic Rules Division, Air Traffic Service. The program, a result of the Secretary of Transportation's regulatory reform policy statement of March 23, 1976, will be patterned on the airworthiness and operations review programs of 1974–76 and will proceed according to the schedule in Appendix A of this notice.

Proposals Invited. All interested persons are invited to submit any proposals to amend Part 91, Subpart B of the Federal Aviation Regulations that they deem appropriate. Proposals should be submitted in duplicate as soon as possible to the Federal Aviation Administration, Air Traffic Service, Airspace and Air Traffic Rules Division, AAT-200, 800 Independence Avenue, SW, Washington, D.C. 20591. To receive consideration, proposals must be within the scope of the program as set forth in this notice and must be received by the FAA not later than March 15, 1977. Proposals received after that date will be deferred for consideration during a future regulatory review. This is in addition to, and does not supersede, the processing of petitions for rulemaking under Part 11 of the Federal Aviation Regulations, where appropriate.

Scope. This program includes only Subpart B (Flight Rules) of Part 91 of the Federal Aviation Regulations (14 CFR Part 91).

Pending Notices. Appendix B to this notice identifies a number of currently outstanding notices of proposed rule making which affect Part 91, Subpart B. These notices will be pursued to a conclusion or withdrawn outside the program.

Status of the Rules. The last amendment to the Part is Amendment 91-136, "Phased Compliance with Part 36 Noise Limits by Certain Turbojets with Maximum Weights Greater than 75,000 Pounds, issued December 17, 1976, and effective on January 24, 1977 (see 41 FR 56046, December 23, 1976). There are no petitions for rule making pending concerning Subpart B of Part 91.

Required Format and Information. Based on experience gained during the Airworthiness and Operations Review Programs, the FAA has determined that use of a standard format and the inclusion of certain specific information for each proposal will greatly facilitate the processing, compilation and evaluation of the proposals received by the FAA. Appendix C of this notice contains a sample of the format that should be used. In addition, each proposal should include at least the following information:

1. The full name or title of the proponent or an acceptable acronym.
2. The FAR 91 section affected.
3. A short title identifying the subject of the proposal (in 10 words or less).
4. The specific regulatory language being proposed to achieve the desired objective, if at all possible.
5. The language of the existing rule that the proposal would change.
6. An explanation and justification of the proposal, including:
   a. Background, pertinent to proposed change.
   b. Why is the change necessary?
   c. How is aviation safety enhanced or the existing level of safety maintained?
   d. What are the environmental, economic (including inflationary) and cost/benefit consequenses, if any, of the proposal if adopted?

e. What other rules are affected (for example, parallel rules in other FAR Parts)?

f. What other proposals, if any, are directly related?

7. Additional data or references to publications.

When more than one proposal is submitted on an issue to achieve the desired result, the information required in item 6, above, should be stated in full on only one proposal and a cross-reference included in the other related proposals. Proponents may submit a precise statement of the objective sought instead of the information required under item 4 above.

Compilation of Proposals. Each proposal, received no later than March 15, 1977, will be evaluated. The FAA will then prepare a Compilation of Proposals for consideration during the Part 91, Subpart B Regulatory Review. In addition to proposals received from outside the agency, the FAA will consider in this compilation FAA proposals believed appropriate for the program.

Agenda and Conference. All proposals received will be considered in preparing the agenda for the Part 91, Subpart B Regulatory Review Conference. The agenda (including the Compilation of Proposals) will be distributed by July 1, 1977. At that time, a Notice of Availability of the Agenda will be published in the FEDERAL REGISTER. The conference will be held during the period August 1–4, 1977 in the Washington, D.C. area at a place to be announced. There will be no admission fee or other charge to attend and participate in the conference. All conference sessions will be open, on a space available basis, to all interested persons who register to attend. All meetings will be taped. Copies of the tapes may be purchased, at fees determined in accordance with 49 CFR 7.95(j), from the Office of the Chief Counsel, AGC-24, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, D.C. 20591.

Proposed and Final Rulemaking. The Conference tapes and related regulatory review documents will be used in developing notices of proposed rulemaking, where appropriate.

(Secs. 305, 307, 312, 313(a), and 601 of the Federal Aviation Act of 1958 (49 U.S.C. 1346, 1348, 1353, 1354(a), 1421).)

NOTE.—The Federal Aviation Administration has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107.

Issued in Washington, D.C., on January 13, 1977.

GLEN D. TIGNER,
Acting Director,
Air Traffic Service.

APPENDIX A—SCHEDULE FOR PART 91, SUBPART B REGULATORY REVIEW PROGRAM

January 17, 1977—Notice initiating Part 91, Subpart B Regulatory Review Program and inviting proposals to amend the Federal Aviation Regulations.

March 15, 1977—Final date for delivering proposals to FAA.

July 1, 1977—Distribute agenda (including compilation of proposals) and related working documents for Part 91, Subpart B Regulatory Review Program and publish a Notice of Availability of the Agenda in the FEDERAL REGISTER.

August 1 to 4, 1977—Part 91, Subpart B Regulatory Review Program Conference.

APPENDIX B—PENDING NOTICES OF PROPOSED RULE MAKING EXCLUDED FROM THE PART 91, SUBPART B REGULATORY REVIEW PROGRAM

The FAA has issued a number of notices of proposed rule making proposing amendments to Part 91 of the Federal Aviation Regulations within the scope of this program. These notices will be pursued to a conclusion outside the program. They are identified below:

1. *Notice 71–22, VFR Flight Beneath Clouds.* This notice (36 FR 14659, August 7, 1971) proposed "amending § 91.105(c) by removing the ceiling as reported at the primary airport as the criterion for VFR flight in a control zone, and substituting the actual cloud condition prevailing at any given point in the control zone where VFR flight is being conducted." The comment period expired November 5, 1971.

2. *Notice 74–8, Two-Way Radio Communications During IFR Operations.* This notice (39 FR 7431, February 26, 1974) proposed "amending § 91.127(c)(4) of the Federal Aviation Regulations to provide that, when holding instructions have been received, a pilot who has lost two-way communications under IFR must either leave the holding fix at the expect-further-clearance time received or, if an expect-approach-clearance time has been received, commence the approach at the expect-approach-clearance time received." The comment period expired April 29, 1974.

3. *Notice 76–20, Operations Review Program, Proposed Airspace, Air Traffic and General Operating Rules.* This notice (41 FR 46875, October 26, 1976) proposes "amending Parts 71 and 91 of the Federal Aviation Regulations by removing all provisions for designating Group III TCAs, by removing the 200-knot restriction from terminal control areas, and by making other editorial and clarifying changes." The comment period expires January 24, 1977.

4. *Notice 76–26, Turbojet-Powered Airplanes. Delayed Landing Flap Procedure.* This notice (41 FR 52396, November 29, 1976) proposes "amending Part 91 of the Federal Aviation Regulations (14 CFR Part 91) to add a new § 91.85(d) to require that the landing flap setting for turbojet-powered airplanes be delayed until at or below 1,000 feet above the airport elevation." The comment period expires January 28, 1977.

APPENDIX C—FORMAT FOR PART 91, SUBPART B REVIEW

The following format and guidelines should be followed in developing proposals for consideration during the Review.

Guidelines. Each proposal should be submitted on a separate page. The text should be within margins not more than 6½" wide and 9" long, so that it can be printed on paper 8" by 10½".

SAMPLE FORMAT

Proposal: (Leave Blank—for FAA use).
From: Ms. Jane Doe.
Index: (Leave Blank—for FAA use).
FAR: 91.83.
SUBJ: Flight plan; information required.

PROPOSAL

Amend 91.83(a)(10) to read as follows:

(a) Unless otherwise authorized by ATC, each person filing an IFR or VFR flight plan shall include in it the following information:

(10) The number of persons in the aircraft.

CURRENT RULE

91.83 Flight plan; information required.

(a) Unless otherwise authorized by ATC, each person filing an IFR or VFR flight plan shall include in it the following information:

(10) In the case of an international flight, the number of persons in the aircraft.

EXPLANATION AND JUSTIFICATION

Flight plan information should always contain information as to the number of persons aboard, etc. The environmental and economic impacts are none.

(Attach additional data, if any.)

[FR Doc.77-1614 Filed 1-19-77;8:45 am]

INDIAN CLAIMS COMMISSION

[25 CFR Part 504]

GOVERNMENT IN THE SUNSHINE ACT

Public Observation of Commission Meetings; Prohibition of Ex Parte Communications Relevant to Merits of Pending Commission Proceedings

For the purpose of implementing the provisions of the Government in the Sunshine Act, 5 U.S.C. 552b, 557(d), the Indian Claims Commission proposes to amend Chapter III of Title 25 of the Code of Federal Regulations by adding a new Part 504 to that chapter.

The Government in the Sunshine Act provides for opening agency meetings to public observation and prohibits ex parte communications between members or employees of an agency and interested persons outside the agency relevant to the merits of any proceeding before the agency.

These amendments to Title 25, Chapter III of the Code of Federal Regulations are made under the authority of section 3 of the Government in the Sunshine Act, 5 U.S.C. 552b(g) and sections 8 and 9 of the Indian Claims Commission Act, 60 Stat. 1051 (25 U.S.C. 70g, 70h).

It is proposed to make these regulations effective on March 12, 1977, the effective date of the Government in the Sunshine Act.

Written comments concerning these proposed regulations are invited from the public and other interested persons. Comments should be presented to the office of the Executive Director, Indian Claims Commission, 1730 K Street, NW., Washington, D.C. 20006. Where possible, nine copies should accompany the original of all comments. However, failure to submit copies will in no way affect the consideration given all comments. All comments must be received no later than February 28, 1977. Such comments will be available for inspection at the office of the Executive Director of the Commission between 8:00 a.m. and 4:00 p.m. on nomal Federal business days.

The proposed regulations are set forth in tentative form below:

PART 504—PUBLIC OBSERVATION OF COMMISSION MEETINGS; PROHIBITION OF EX PARTE COMMUNICATIONS RELEVANT TO MERITS OF PENDING COMMISSION PROCEEDINGS

Sec.
504.1 Scope and purpose.
504.2 Definitions.

Sec.
504.3 Public observation of commission hearings.
504.4 Public inspection of records in dockets.
504.5 Conduct of Commission business.
504.6 Public observation of meetings.
504.7 Closing of exempt meetings or portions thereof.
504.8 Procedure for announcing meetings.
504.9 Procedures for closing certain meetings or portions thereof.
504.10 Procedure for closing exempt meetings described in § 504.7(a)(2).
504.11 Chief Counsel's certification of closed meetings.
504.12 Maintenance of transcripts, recordings, or minutes.
504.13 Annual report to Congress.
504.14 *Ex Parte* Communications.

AUTHORITY: 5 U.S.C. 552b(g), unless otherwise noted.

§ 504.1 Scope and purpose.

It is hereby declared to be the policy of the Indian Claims Commission that the public is entitled to the fullest practicable information regarding its decisionmaking processes. It is the purpose of this part to provide the public with such information while protecting the rights of individuals and the ability of the Indian Claims Commission to carry out its responsibilities.

§ 504.2 Definitions.

For purposes of this part, (a) "Commission" means the Indian Claims Commission, which is a collegial body composed of five members appointed by the President with the advice and consent of the Senate. The President designates one member as Chairman.

(b) "Commissioner" means a member of the Commission, including the Chairman.

(c) "Meeting" means the deliberations of at least three Commissioners where such deliberations determine or result in the joint conduct or disposition of the Commission's business, but does not include deliberations required or permitted by §§ 504.8 and 504.9.

(d) "Earliest practicable time" means as soon as possible, including after the commencement of the meeting or portion thereof in question.

§ 504.3 Public observation of Commission hearings.

All hearings before the Commission shall be open to public observation. (Sec. 9, 60 Stat. 1051 (25 U.S.C. 70h).)

§ 504.4 Public inspection of records in dockets.

The complete record in each docket before the Commission shall be available for public inspection at the office of the Clerk of the Commission between 8:00 a.m. and 4:00 p.m. on normal Federal business days. (Sec. 8, 60 Stat. 1051 (25 U.S.C. 70g).)

§ 504.5 Conduct of Commission business.

Commissioners shall not jointly conduct or dispose of Commission business other than in accordance with this part.

§ 504.6 Public observation of meetings.

Every portion of every Commission meeting shall, except as otherwise provided in § 504.7, be open to public observation.

§ 504.7 Closing of exempt meetings or portions thereof.

(a) Notwithstanding the requirements of § 504.6, the Commission's meetings may be closed to the public, and information concerning said meetings may be withheld from the public, when the meeting is likely to:

(1) Relate solely to the internal personnel rules and practices of the Commission, or

(2) Concern the Commission's participation in a civil action or proceeding, or the conduct or disposition by the Commission of a particular case of formal adjudication involving a determination on the record after the opportunity for a hearing under § 503.22 of this chapter (section 22 of the Commission's general rules of procedure), or

(3) Involve any deliberations which fall within the exemptions contained in 5 U.S.C. 552b (c)(1) or (c)(3) through (c)(9).

(b) Notwithstanding the exemptions provided in paragraph (a) of this section, the Commissioners may vote to open such meetings when the public interest so demands.

§ 504.8 Procedure for announcing meetings.

(a) Except with respect to meetings or portions thereof which may be closed to public observation under § 504.7(a)(2), announcement of which is described in § 504.10(d), the Commission shall publicly announce its meetings as described in paragraphs (b), (c), (d), and (e) of this section.

(b) The Commission shall issue a public notice at least ten (10) days before each Commission meeting which notice shall (1) state the date, time, and place of the meeting, (2) list the subjects or agenda items to be discussed at such meetings, (3) state whether the meeting is to be open or closed to public observation, and (4) give the name and business telephone number of the Executive Director of the Commission to whom requests for information about the meeting should be directed. In the event that a majority of the full membership of the Commission determine by a recorded vote that Commission business requires that a meeting be held within ten (10) days of such determination, the public notice described in the immediately preceding sentence shall be issued at the earliest practicable time.

(c) The date, time, or place of a Commission meeting may be changed after issuance of the public notice described in paragraph (b) of this section only if the Commission gives public notice of any such change at the earliest practicable time. Subjects or agenda items to be discussed at a meeting or determinations by the Commission to open or close a meeting, or a portion of a meeting, to the public, after issuance of the public notice described in paragraph (b) of this section may be changed only if (1) a majority of the full membership of the Commission determine by a recorded vote that Commission business so requires and that no earlier public notice of the change or changes was possible, and (2) the Commission gives public notice of the change and the vote of each Commissioner upon such change or changes at the earliest practicable time.

(d) Immediately following the issuance of each public notice described in paragraphs (b) and (c) of this section, notice of the date, time, place, subjects or agenda items, whether the meeting or any portions thereof will be open or closed to public observation, any change in any of the preceding facts, and the name and business telephone number of the Executive Director of the Commission, shall be submitted for publication in the FEDERAL REGISTER.

(e) The Commission shall also promptly post all public notices described in paragraphs (b) and (c) of this section on a bulletin board maintained for this purpose at the offices of the Commission and shall mail copies to those who request that the Commission's Executive Director place their names on the Commission's general mailing list.

§ 504.9 Procedures for closing certain meetings or portions thereof.

(a) Except with respect to meetings or portions thereof which may be closed to public observation under § 504.7(a)(2), with respect to which the procedure described in § 504.10 applies, action by the Commission to close any meeting or portion thereof shall be governed by the procedures described in paragraphs (b), (c), and (d) of this section.

(b) Action to close a meeting or any portion thereof pursuant to paragraphs (a)(1) or (a)(3) of § 504.7 shall be taken only when a majority of the full membership of the Commission vote to do so. A separate vote of the Commissioners shall be taken with respect to each meeting a portion or portions of which are so proposed to be closed to public observation or with respect to any information which is proposed to be so withheld. A single vote may be taken with respect to a series of meetings, a portion or portions of which are proposed to be closed to public observation, or with respect to any information concerning such series of meetings, so long as each meeting in such series involves the same particular matters and is scheduled to be held no more than thirty (30) days after the initial meeting in the series. The vote of each participating Commisioner will be recorded and no proxies will be allowed. Each meeting in the series shall be subject to the requirements as to notice to the public described in § 504.8.

(c) Whenever any person whose interests may be directly affected by a portion of a meeting requests that the Commission close such portion to public observa-

tion for any of the reasons referred to in paragraphs (5), (6), or (7) of 5 U.S.C. 552b(c), any one Commissioner may request that a recorded vote of the Commissioners be taken to close such meeting.

(d) Within one day of any vote taken pursuant to paragraphs (b) or (c) of this § 504.9, the Executive Director of the Commission shall make available to the public a written copy thereof showing the vote of each Commissioner. If all or a portion of the meeting is to be closed to public observation, the Executive Director shall, within one day of the vote taken pursuant to paragraphs (b) or (c) of this section, make available to the public a full written explanation of the Commission's action closing the meeting or portion thereof, together with a list of all persons who are to attend the meeting and their affiliation. This information shall be made available in the same manner as described in paragraph (e) of § 504.8 to the extent that it is not exempt from disclosure under § 504.7.

§ 504.10 Procedure for closing exempt meetings described in § 504.7(a)(2).

(a) The Commission purposes are exclusively adjudicatory. They consist of trying claims permitted to be filed on behalf of Indian tribes, bands, and groups against the United States pursuant to section 2 of the Indian Claims Commission Act, 60 Stat. 1050 (25 U.S.C. 70a). The Commission has no regulatory or rulemaking functions, nor is it charged with administering any substantive legislation. To protect the integrity of its adjudicatory deliberations, Commission meetings have historically been closed to public observation. For these reasons the Commission has determined that a majority of its meetings may properly be closed to public observation pursuant to § 504.7(a)(2).

(b) In the case of any meeting, or portion thereof, which may be closed to public observation for the reasons described in paragraph (a) of this section, the Commission shall, by a recorded vote at the beginning of said meeting or portion thereof, vote on whether to close the meeting or portion thereof. If a majority of the full membership of the Commission vote to close the meeting or portion thereof, it shall be so closed. A copy of the vote, reflecting the vote of each Commissioner on the question, shall be made available to the public.

(c) In the case of meetings or portions thereof to which this § 504.10 applies, the provisions of §§ 504.8 and 504.9 shall not apply.

(d) Except to the extent that such information is exempt from disclosure under § 504.7, public announcement of the date, time, place, and subject matters and agenda items of a meeting, or portion thereof, to which this § 504.10 applies, shall be posted at the earliest practicable time on the bulletin board maintained for this purpose at the offices of the Commission.

§ 504.11 Chief Counsel's certification of closed meetings.

For every meeting closed pursuant to § 504.7, the Chief Counsel of the Commission shall publicly certify that, in his opinion, the meeting may be closed to the public and shall state which exemptions as set out in 5 U.S.C. 552b(c) are applicable. A copy of this certification, together with a statement from the presiding Commissioner setting forth the date, time, and place of the meeting, and the persons present shall be retained by the Commission.

§ 504.12 Maintenance of transcripts, recordings, or minutes.

(a) The Commission shall maintain a complete transcript, or electronic recording, adequate to record fully the proceedings, of each meeting or portion of a meeting closed to the public, except that, in the case of a meeting or portion thereof closed to the public under § 504.7(a)(2), the Commission may instead maintain a set of minutes.

(b) The minutes shall fully and clearly describe all matters discussed and shall provide a full and accurate summary of any action taken, and the reasons, including a description of each of the views expressed on any items and the record of any roll call vote, reflecting the vote of each Commissioner on the question. All documents considered in connection with any action shall be identified in the minutes.

(c) The Commission shall make promptly available to the public, in the office of the Executive Director of the Commission, the transcript, electronic recording, or minutes of the discussion of any item on the agenda, except for those items or discussion which the Commission determines to contain information which may be withheld under § 504.7

(d) Subject to the exemptions in § 504.7, copies of the transcript, minutes, or the transcription of a recording disclosing the identity of each speaker, will be furnished to any person at the actual cost of duplication or transcription.

(e) The Chief Counsel shall be responsible for determining what information may be withheld and what standards are to be applied in making that determination. Should an individual be denied access to information by a decision of the Chief Counsel, that individual may file a written appeal with the Commission. The Commission shall issue an order granting or denying the petitioner's appeal. No hearing will be permitted under this appeal. (Sec. 9, 60 Stat. 1051 (25 U.S.C. 70h).)

(f) The Commission shall maintain a complete verbatim copy of the transcript, a complete copy of the minutes, or a complete electronic recording of each meeting, or portion thereof, closed to the public, for at least two years after the meeting, or until one year after the conclusion of any Commission proceeding with respect to which the meeting or portion thereof, was held, whichever occurs later.

§ 504.13 Annual report to Congress.

The Commission shall annually report to Congress regarding its compliance with the Government in the Sunshine Act, 5 U.S.C. 552b. The report must include a tabulation of the total number of Commission meetings open to the public, the total number of meetings closed to the public, the reasons for closing the meetings, and a description of any litigation brought against the Commission under the Act, including any costs assessed against the Commission in such litigation.

§ 504.14 Ex parte communications.

(a) No person outside the Commission shall make or knowingly cause to be made to any Commissioner, Chief Counsel, staff attorney, or other employee of the Commission, an *ex parte* communication relevant to the merits of any proceeding before the Commission.

(b) No Commissioner, Chief Counsel, staff attorney, or other employee of the Commission shall make or knowingly cause to be made to any person outside the Commission, an *ex parte* communication relevant to the merits of any proceeding before the Commission.

(c) Any Commissioner, Chief Counsel, staff attorney, or other employee of the Commission who receives, or who makes or knowingly causes to be made a communication prohibited by this section, shall place on the public record of the proceeding:

(1) All such written communications;

(2) Memoranda stating the substance of all such oral communications; and

(3) All written responses, and memoranda stating the substance of all oral responses, to such communications.

(d) Upon receipt of a communication knowingly made or knowingly caused to be made by a party to the proceeding, or by counsel, in violation of this section, the Commission may, to the extent consistent with the interests of justice, require the offending party to show cause why its claim or interest in the proceeding should not be dismissed, denied, or otherwise adversely affected on account of such violation.

(e) A request for a status report on any matter currently before the Commission is not an *ex parte* communication within the meaning of this section. Questions regarding the status of a case shall be directed to the Clerk of the Commission. (Sec. 9, 60 Stat. 1051 (25 U.S.C. 70h).)

By order of the Commission dated January 13, 1977.

DAVID H. BIGELOW,
Executive Director.

[FR Doc.77-1833 Filed 1-19-77;8:45 am]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR Part 1]

INCOME TAX

Corporate Separations

EDITORIAL NOTE: The Office of the FEDERAL REGISTER is reprinting below the full text of FR Doc. 77-1178 which appeared at 42 FR 2694 of the issue of Thursday, January 13, 1977. This reprinting is necessary because the copy submitted for printing did not conform in all respects to the text of the original signed document. Due to this reprinting, the date for receipt of comments has been extended to March 5, 1977.

Notice is hereby given that the regulations set forth in tentative form below are proposed to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury or his delegate. Prior to the final adoption of such regulations, consideration will be given to any comments pertaining thereto which are submitted in writing (preferably six copies) to the Commissioner of Internal Revenue, Attention: CC:LR:T, Washington, D.C. 20224, by March 5, 1977. Pursuant to 26 CFR 601.601(b), designations of material as confidential or not to be disclosed, contained in such comments, will not be accepted. Thus, persons submitting written comments should not include therein material that they consider to be confidential or inappropriate for disclosure to the public. It will be presumed by the Internal Revenue Service that every written comments submitted to it in response to this notice of proposed rulemaking is intended by the person submitting it to be subject in its entirety to public inspection and copying in accordance with the procedures of 26 CFR 601.702(d)(9). Any person submitting written comments who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit a request, in writing, to the Commissioner by March 5, 1977. In such case, a public hearing will be held, and notice of the time, place, and date will be published in a subsequent issue of the FEDERAL REGISTER, unless the person or persons who have requested a hearing withdraw their requests for a hearing before notice of the hearing has been filed with the Office of the Federal Register. The proposed regulations are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

DONALD C. ALEXANDER,
Commissioner of Internal Revenue.

This document contains a proposed amendment to the Income Tax Regulations (26 CFR Part 1) under sections 355, relating to distribution of stock and securities of a controlled corporation, and 346, relating to partial liquidation defined, of the Internal Revenue Code of 1954.

Section 355 provides for the separation, without recognition of gain or loss to the shareholders and security holders, of one or more existing businesses formerly operated, directly or indirectly, by a single corporation. Section 355 applies only to the separation of existing businesses which have been in active operation for at least 5 years (or a business which has been in active operation for at least 5 years into separate businesses) and which, generally, have been owned for at least 5 years by the corporation making the distribution of stock or of stock and securities.

Section 355 provides nonrecognition of gain or loss on a distribution by a corporation of stock or securities of a controlled corporation to its shareholders with respect to its own stock or to its security holders in exchange for its own securities only if the distribution is carried out for real and substantial nontax reasons germane to the business of the corporations and only if there is a continuity of interest in all or a part of the business enterprise by those persons who were the owners of the enterprise before the distribution. In addition, section 355 does not apply to a transaction which has been used principally as a device for the distribution of earnings and profits of the distributing corporation, of the controlled corporation, or of both.

In order to qualify under section 355, the distributing corporation must distribute all of the stock of the controlled corporation which it owns, or at least an amount of the stock which constitutes control as defined in section 368(c). If a part of either the stock or securities is retained by the distributing corporation, it must be established to the satisfaction of the Commissioner that such retention was not in pursuance of a plan having as one of its principal purposes the avoidance of Federal income tax.

The proposed amendment contains two major changes to the current regulations. The rules under section 355(a)(1)(B), relating to a transaction which was used principally as a device for the distribution of earnings and profits, have been revised to describe factors which are to be taken into account in making the determination of whether a transaction was such a "device". The rules under section 355(b), relating to active conduct of a trade or business, have been revised to provide for the separation of a single business consistent with the holdings in *Coady v. Commissioner*, 289 F.2d 490 (6th Cir. 1961), and *United States v. Marett*, 325 F.2d 28 (5th Cir. 1963). *Proposed amendment to the regulations.*

The Income Tax Regulations (26 CFR Part 1) under section 355, relating to distribution of stock and securities of a controlled corporation, and 346, relating to partial liquidation defined, of the Internal Revenue Code of 1954 are amended as follows:

Paragraph 1. Sections 1.355-1 through 1.355-4 are amended to read as follows:

§ 1.355-1 Distribution of stock and securities of a controlled corporation.

(a) *Application of section.* Section 355 provides for the separation, without recognition of gain or loss to the shareholders and security holders, of one or more existing businesses formerly operated, directly or indirectly, by a single corporation. It applies only to the separation of existing businesses which have been in active operation for at least 5 years (or a business which has been in active operation for at least 5 years into separate businesses), and which, in general, have been owned, directly or indirectly, for at least 5 years by the corporation making the distribution of stock or of stock and securities. For the purpose of section 355, stock rights or stock warrants are not included in the term "stock and securities".

(b) *Type of separations.* Section 355 is concerned with two general types of separations. The first is the distribution of the stock of an existing corporation. The second is the distribution of the stock of a corporation holding assets of a business previously operated by the distributing corporation. In both cases, section 355 contemplates the continued operation of the business or businesses existing prior to the separation.

§ 1.355-2 Limitations.

(a) *Property distributed.* In order for section 355 to apply, the property distributed must consist solely of stock, or stock and securities, of a controlled corporation. If additional property (including an excess principal amount of securities received over securities surrendered) is received, see section 356.

(b) *Business purpose and continuity of interest*—(1) *In general.* A distribution by a corporation of stock or securities of a controlled corporation to its shareholders with respect to its own stock or to its security holders in exchange for its own securities will qualify under section 355 only if carried out for real and substantial nontax reasons germane to the business of the corporations. The principal reason for this requirement is to provide nonrecognition treatment only to those distributions or exchanges of stock or securities of the controlled corporation which are incident to such readjustment of corporate structures as is required by business exigencies and which effect only a readjustment of continuing interests in property under modified corporate forms. Depending upon the facts of a particular case, a shareholder purpose for a transaction may be so nearly coextensive with a corporate business purpose as to preclude any distinction between them. In such a case, the transaction is carried out for purposes germane to the business of the corporations. On the other hand, if a transaction is motivated solely by the personal reasons of a shareholder, for example, if a transaction is undertaken solely for the purpose of fulfilling the personal planning purposes of a shareholder, the distribution will not qualify under section 355 since it is not carried out for purposes germane to the business of the corporations. Section 355 contemplates a continuity of interest in all or part of the business enterprise on the part of those persons who, directly or indirectly, were the owners of the enterprise prior to the distribution or exchange. For rules with respect to the requirement of a business purpose for a transfer of assets to a controlled corporation in connection with a reorganization described in section 368(a)(1)(D), see § 1.368-1(b).

(2) *Examples.* The provisions of paragraph (b)(1) of this section may be illustrated by the following examples:

Example (1). Corporation P is engaged in the production, transportation, and refining of petroleum products. In 1962, P acquired all of the properties of corporation S, which was also engaged in the production, transportation, and refining of petroleum products. In 1968, as a result of anti-trust litigation, P was ordered to divest itself of all properties acquired from S. P proposes to transfer the assets acquired from S to a new corporation and to distribute the stock of such new corporation to its shareholders. In view of the divestiture order, the distribution of the stock of the new corporation to the shareholders of P will be considered to have been carried out for a real and substantial nontax reason germane to the business of the corporations.

Example (2). Corporation R owns and operates two men's retail clothing stores. The outstanding stock of R is owned equally by two brothers, A and B, and F, their father, who does not take an active part in the retail clothing business. A and B no longer can agree on major decisions affecting the operation of the corporation. Corporation R proposes to transfer one store to a new corporation and distribute 66.7 percent of the stock of such new corporation to one brother in exchange for all of his R stock. The other 33.3 percent of the stock of such new corporation will be exchanged for one-half of F's stock of corporation R. In view of the disagreement between managing shareholders, the distribution of the stock of the new corporation will be considered to have been carried out for a real and substantial nontax reason germane to the business of the corporations.

Example (3). Coporation T is engaged in the manufacture and sale of children's novelty toys. It also manufactures and sells candy and candy products. The shareholders wish to separate the candy business from the risks and vicissitudes of the novelty toy business. It is proposed that the assets and activities associated with the toy business be transferred to a new corporation, the stock of which would then be distributed to T's shareholders. The purpose of protecting the candy business from the risks of the novelty toy business, which is fulfilled when the novelty toy assets and activities are transferred to the new corporation, does not satisfy the requirement there be a substantial nontax reason, germane to the business of the corporation, for the distribution of the stock of the new corporation to the shareholders.

Example (4). The facts are the same as in example (3) except that T also requires outside financing in order to substantially expand its candy business. As a condition of the loan, in order to prevent the potential diversion of funds to the toy business, the lender requires the separation of the candy business and the novelty toy business and the distribution of the stock of the novelty toy corporation to the shareholders. The lender's requirements are based upon customary business practice. In this case, the distribution of the stock of the novelty toy corporation to the shareholders will be considered to have been carried out for a real and substantial nontax reason germane to the business of the corporations.

(c) *Device for distribution of earnings and profits*—(1) *In general.* Section 355 does not apply to a transaction which has been used principally as a device for the distribution of the earnings and profits of the distributing corporation, of the controlled corporation, or of both. The Code recognizes that a tax-free distribution of the stock of a controlled corporation presents an extraordinary potential for tax avoidance by placing the shareholders of the distributing corporation in a position whereby, as a consequence of the subsequent sale of stock or the liquidation of either the distributing corporation or the controlled corporation, they can avoid the dividend provisions of the Code. A distribution which is pro rata or substantially pro rata among the shareholders of the distributing corporation presents the greatest potential for the withdrawal of earnings and profits and is more likely to be undertaken principally as a device for the distribution of earnings and profits. Whether a transaction which has the potential for the distribution of earnings and profits was used principally as such a device shall be determined from all the facts and circumstances. Among the factors to be considered are those factors described in paragraph (c) (2) and (3) of this section. However, in any case in which a distribution with respect to each distributee would be treated as a redemption to which section 302(a) would apply if it were taxable, the transaction is ordinarily not considered to be a device for the distribution of earnings and profits. For purposes of the preceding sentence, section 302(c)(2)(A) shall be applied without regard to clauses (ii) and (iii). Further, if, on the date of the distribution, no part of a distribution of money by the distributing corporation, the controlled corporation, or any corporation controlled, directly or indirectly, by either of such corporations could have been taxable as a dividend as defined in section 316 because of the absence of earnings and profits, the transaction is ordinarily not considered to be such a device.

(2) *Subsequent sales of stock.* If, pursuant to an arrangement negotiated or agreed upon before the distribution, 20 percent or more of the stock of either the distributing corporation or the controlled corporation is to be sold or exchanged after the distribution, the distribution will be considered to have been used principally as a device for the distribution of earnings and profits of the distributing corporation, the controlled corporation, or both. If, pursuant to such an arrangement, part or all of the securities or less than 20 percent of the stock of either corporation is to be sold or exchanged after the distribution, this fact will be considered as substantial evidence that the transaction was used principally as such a device. For purposes of this subparagraph, the term "exchange" does not include an exchange of stock or securities pursuant to a plan of reorganization if no gain or loss is recognized on the exchange or an insubstantial amount of gain is recognized on the exchange. A sale is always pursuant to an arrangement negotiated or agreed upon before the distribution when enforceable rights to buy or sell exist before such distribution. If a sale was discussed by the buyer and the seller before the distribution and was reasonably to be anticipated by both parties, such sale shall ordinarily be considered as made pursuant to an arrangement negotiated or agreed upon before the distribution.

Whether or not a sale is negotiated or agreed upon prior to the distribution, the fact of any sale of stock or securities shall be taken into account with other evidence in determining whether a transaction was used principally as a device for the distribution of earnings and profits.

(3) *Nature and use of assets*—(i) *General.* In determining whether a transaction was used principally as a device for the distribution of earnings and profits of the distributing corporation, the controlled corporation, or both, consideration will be given to the nature, kind, and amount of the assets of both corporations (and corporations controlled by them) immediately after the transactions and to the use of such assets by such corporations.

(ii) *New trade or business.* If a substantial portion of the assets of any post-distribution corporation consists of a trade or business acquired within the 5-year period ending on the date of the distribution in a transaction in which the basis of such assets was not determined in whole or in part by reference to the transferor's basis, this will be considered as evidence that the transaction was used principally as a device for the distribution of earnings and profits.

(iii) *Liquid assets.* The transfer or retention of cash or liquid assets (for example, securities and accounts receivable) which is not related to the reasonable needs of the business of the transferee or retaining corporation will be considered as evidence that the transaction was used principally as a device for the distribution of earnings and profits.

(iv) *Related function.* In certain cases the relationship between the nature and use of the assets of the distributing corporation and the controlled corporation will be considered as evidence that a transaction was used principally as a device for the distribution of earnings and profits or example where the principal function of one corporation before the transaction is to perform services for or supply technical or research data to the other corporation and after the transaction that corporation continues to function on the same basis, this would be considered as evidence that the transaction was used principally as such a device. Thus, in example (9) of § 1.355-3(c), involving a controlled corporation operating a coal mine for the sole purpose of satisfying the requirements of the parent steel corporation before the transaction, if the coal mining business continued to operate on the same basis after the transaction, this fact would be considered as evidence that the distribution of the stock of the coal mining corporation in example (9) is principally a device for the distribution of earnings and profits. Similarly, in a transaction which separates the manufacturing and sales operations, as in example (8) of § 1.355-3(c), if the sales corporation merely functions as the exclusive agent for the manufacturing corporation after the transaction, this fact would be considered as evidence that the transaction was principally a device for the distribution of earnings and profits.

(4) *Examples.* The provisions of this paragraph (c) may be illustrated by the following examples:

Example (1). Corporation W has engaged in the commercial banking business in state N for 20 years. The stock of W is owned equally by individuals A, B, and C. Six years ago, W organized corporation X as a wholly-owned subsidiary to offer computerized bookkeeping services to the public. W and X have substantial accumulated earnings and profits. State N has recently amended its banking laws to provide that commercial banks operating in N may not offer computerized bookkeeping services directly or through a subsidiary. D, an individual, has offered to purchase the stock of X. At a stockholders' meeting the offer was rejected and it was decided to distribute the stock of X pro rata to A, B, and C. After the meeting and before the distribution, A, B, and C agreed to sell D one-half of X stock they were to receive in the distribution. Notwithstanding the existence of a real and substantial nontax reason for the distribution of the stock of X, the distribution will be considered to have been used principally as a device for the distribution of earnings and profits of W.

Example (2). Assume the same facts as in example (1) except that A, B, and C did not agree to sell any of the X stock they were to receive to D. At the shareholders' meeting it was decided to transfer cash to X before making the pro rata distribution. The amount of cash transferred substantially exceeded the reasonable business needs of X. After the distribution A and B agreed to sell to E, an individual, one-half of their X stock. Notwithstanding the existence of a real and substantial nontax reason for the distribution, the transaction will be considered to have been used principally as a device for the distribution of earnings and profits because of the transfer of cash to X and the subsequent sale of X stock by A and B.

(d) *Stock and securities distributed.* The distributing corporation must distribute:

(1) All of the stock and securities of the controlled corporation which it owns, or

(2) At least an amount of the stock which constitutes control as defined in section 368(c). In such case all, or any part, of the securities of the controlled corporation may be distributed.

Where a part of either the stock or securities is retained under paragraph (d)(2) of this section, it must be established to the satisfaction of the Commissioner that such retention was not in pursuance of a plan having as one of its principal purposes the avoidance of Federal income tax. Ordinarily, the business reasons (as distinguished from the desire to make a distribution of the earnings and profits) which support a distribution of stock and securities of a controlled corporation under paragraph (b) of this section will require the distribution of all of the stock and securities. If the distribution of all of the stock and securities of a controlled corporation would be treated to any extent as a distribution of "other property" under section 356, this fact does not tend to establish that the retention of any of such stock and securities is not in pursuance of a plan having as one of its principal purposes the avoidance of Federal income tax.

(e) *Principal amount of securities*—(1) *Securities received.* Section 355(a)(1) is not applicable if the principal amount of securities received exceeds the principal amount of securities surrendered or if securities are received and no securities are surrendered. In such cases, see section 356.

(2) *Only stock received.* If only stock is received in a transaction to which section 355 is applicable, the principal amount of securities surrendered, if any, and the par or stated value of stock are not relevant to the application of such section.

(f) *Period of ownership*—(1) *Other property.* For the purposes of determining whether gain or loss will be recognized upon a distribution, stock of a controlled corporation acquired in a transaction in which gain or loss is recognized, in whole or in part (other than a transaction described in § 1.355-3(b)(4)(ii)) within the 5-year period ending on the date of the distribution of such stock is treated as "other property." Section 355 does not apply to a transaction which includes a distribution of such stock. See section 356. The stock so acquired is "stock", however, for the purpose of the requirements respecting the distribution of stock of such controlled corporation provided in section 355(a)(1)(D).

(2) *Example.* Paragraph (f)(1) of this section may be illustrated by the following example:

Example. Corporation A has held 85 of the 100 outstanding shares of the stock of corporation B for more than 5 years on the date of distribution. Six months before such date, it purchased 10 shares of such stock. If all of the stock of the controlled corporation owned by A is distributed, section 355 is not applicable to such distribution since the 10 shares would represent "other property." See, however, section 356. If, however, for proper business reasons it is decided to retain some of the stock of B, then the determination of the amount of such stock which must be distributed under section 355(a)(1)(D) in order to constitute a distribution to which section 355 is applicable must be made by reference to all of the stock of the controlled corporation including the 10 shares acquired 6 months before such date and the 5 shares owned by others. Similarly, if, by the use of any agency, the distributing corporation acquires any stock of the controlled corporation within the 5-year period ending on the date of distribution in a transaction in which gain or loss is recognized in whole or in part, for example, where another subsidiary purchases such stock, such stock will be treated as "other property." If A had held only 75 of the 100 outstanding shares of stock of B for more than 5 years on the date of distribution and had purchased the remaining 25 shares 6 months before such date, neither section 355 nor section 356 would be applicable.

(g) *Active conduct of a trade or business.* The rules of section 355(b) and § 1.355-3 relating to the active conduct of a trade or business must be satisfied.

§ 1.355-3 Active conduct of a trade or business.

(a) *Requirements as to active business*—(1) *In general*—(i) *Application of section 355.* Under section 355(b)(1), a distribution of stock or securities of a controlled corporation is subject to section 355(a) only if—

(A) The distributing corporation and the controlled corporation are each engaged in the active conduct of a trade or business immediately after the distribution of stock or securities of the controlled corporation (section 355(b)(1)(A)), or

(B) Immediately before the distribution the distributing corporation had no assets other than stock or securities in the controlled corporations and each of the controlled corporations is engaged in the active conduct of a trade or business immediately after the distribution (section 355(b)(1)(B)). In connection with the requirement of "no assets" a de minimis rule is applicable.

(ii) *Examples.* Paragraph (a)(1)(i) of this section may be illustrated by the following examples:

Example (1). Corporation A, prior to the distribution, is engaged in the active conduct of a trade or business and owns all of the stock of corporation B which also is engaged in the active conduct of a business. A distributes all of the stock of B to its shareholders, and each corporation continues the active conduct of its business. The active business requirement of section 355(b)(1)(A) is satisfied.

Example (2). The facts are the same as in example (1), except that A transfers all of its assets except the stock of B to a new corporation in exchange for all of the new corporation's stock and transfers the stock of both controlled corporations to its shareholders. The active business requirement of section 355(b)(1)(B) is satisfied.

(b) *Active conduct of a trade or business defined*—(1) *In general.* Section 355(b)(2) provides rules for determining whether any corporation is treated as engaged in the active conduct of a trade or business for purposes of ascertaining whether the distributing corporation and the controlled corporation meet the requirements of section 355(b)(1). Under section 355(b)(2)(A), a corporation is treated as engaged in the active conduct of a trade or business if it is itself engaged in such a trade or business or if substantially all of its assets consist of the stock and securities of a corporation or corporations controlled by it (immediately after the distribution) each of which is engaged in the active conduct of a trade or business.

(2) *Active conduct of trade or business immediately after distribution*—(i) *General.* For purposes of section 355(b), a corporation shall be treated as engaged in the "active conduct of a trade or business" immediately after a distribution if the assets and activities of such corporation meet the tests and limitations de-

scribed in paragraph (b)(2) (ii), (iii) and (iv) of this section.

(ii) *Trade or business.* A corporation shall be treated as engaged in a trade or business immediately after a distribution of stock if a specific group of activities are being carried on by such corporation for the purpose of earning income or profit from such group of activities, and the activities included in such group include every operation which forms a part of, or a step in, the process of earning income or profit from such group. Such group of activities ordinarily must include the collection of income and the payment of expenses.

(iii) *Active conduct.* For purposes of section 355, the determination of whether a trade or business is actively conducted is a question of fact to be determined under all the facts and circumstances. In general, the corporation must perform active and substantial management and operational functions.

(iv) *Limitations.* The active conduct of a trade or business does not include—

(A) The holding for investment purposes of stock, securities, land, or other property, or

(B) The ownership and operation (including leasing) of real or personal property used in a trade or business, unless the owner performs significant services with respect to the operation and management of the property.

(3) *Active conduct for 5-year period preceding distribution.* Under section 355(b)(2)(B), a trade or business must have been actively conducted for the 5-year period ending on the date of distribution of the stock and securities of the controlled corporation. For this purpose, activities which constitute a trade or business under the tests described in paragraph (b)(2) of this section, shall be treated as meeting the test contained in the preceding sentence if such activities were actively conducted throughout such 5-year period. For the purpose of determining whether such trade or business has been actively conducted throughout the 5-year period described in section 355(b)(2), the fact that during such 5-year period such trade or business underwent change (for example, by the addition of new or the dropping of old products, changes in production capacity, and the like) shall be disregarded provided the changes are not of such a character as to constitute the acquisition of a new or different business.

(4) *Special rules for acquisition of a trade or business*—(i) *General.* For purposes of section 355(b), a trade or business which is relied upon to meet the requirements of such section must not have been acquired by the distributing corporation, the controlled corporation, or another member of the affiliated group during the 5-year period ending on the date of distribution of the stock and securities of the controlled corporation unless it was acquired in a transaction in which no gain or loss was recognized (section 355(b)(2)(C)). For purposes of this subparagraph (4), the term "affiliated group" means an affiliated group as defined in section 1504(a) (without regard to section 1504(b)) except that the term "stock" includes nonvoting stock which is limited and preferred as to dividends. In addition, under section 355(b)(2)(D), such trade or business must not have been indirectly acquired during such 5-year period in a transaction in which gain or loss was recognized in whole or in part by means of the acquisition of control of the corporation that was engaged in such trade or business or by means of an indirect acquisition of control of such corporation through another corporation or any of its predecessors in interest. A business acquired, directly or indirectly, within the 5-year period ending on the date of the distribution in a transaction in which the basis of the assets acquired is not determined in whole or in part by reference to the transferor's basis for such assets will not qualify under section 355(b)(2), even though no gain or loss was recognized by the transferor (for example, by reason of section 337).

(ii) *Gain or loss recognized in certain transactions.* The rules of section 355(b)(2)(C) and (D) are intended to prevent the direct or indirect acquisition of a trade or business by a corporation as a temporary investment of liquid assets in anticipation of a distribution by such corporation of such trade or business in a transaction to which section 355 would otherwise apply. A direct or indirect acquisition of a trade or business by one member of an affiliated group from another member of such group is not the type of transaction to which section 355(b)(2)(C) and (D) is intended to apply. Therefore, in applying section 355(b)(2)(C) or (D), such an acquisition, even though taxable, shall be disregarded.

(iii) *Example.* Paragraph (b)(4)(i) may be illustrated by the following example:

Example: In 1956, corporation B, having cash and other liquid assets, purchased all of the stock of corporation A which was engaged in an active business. Later, in the same year, B in a "downstream" statutory merger merges into A. In 1958, A places the assets formerly owned by B in a new subsidiary, corporation X. A's distribution of the stock of X to the stockholders of A is not within the terms of section 355, since the active business of A had, in effect, been purchased less than 5 years prior to the distribution.

(c) *Examples.* The following examples illustrate the application of the rules provided in section 355(b)(2)(A) and (B). However, a transaction which satisfies the active conduct of a trade or business requirement in these examples will qualify under section 355(a) only if the other requirements of that section are met.

Example (1). Corporation A is engaged in the manufacture and sale of soap and detergents and owns investment securities. It proposes to place the investment securities in a new corporation and distribute the stock of such new corporation to its shareholders. The new corporation's holding of investment securities does not qualify as the active conduct of a trade or business immediately after the distribution.

Example (2). Corporation B owns, manages, and derives rental income from an office building and also owns vacant land. It proposes to transfer the vacant land to a new corporation and distribute the stock of such new corporation to its shareholders. The new corporation's holding of the vacant land does not qualify as the active conduct of a trade or business immediately after the distribution.

Example (3). Corporation C owns land on which it engages in the ranching business. Oil has been discovered in the area and it is apparent that oil may be found under the land on which the ranching activities are conducted. Corporation C has engaged in no significant activities in connection with the mineral rights. It proposes to transfer the mineral rights to a new corporation and distribute the stock of the new corporation to its shareholders. The new corporation's holding of mineral rights does not qualify as the active conduct of a trade or business immediately after the distribution.

Example (4). Corporation D, a bank, has for the past 7 years owned an 11-story downtown office building, the ground floor of which has been occupied by it in the conduct of its banking business. The remaining 10 floors are rented to various tenants and the building is managed and maintained by employees of the bank. Corporation D proposes to transfer the building to a new corporation and to distribute the stock of such new corporation to the bank's shareholders. The new corporation will manage the building, negotiate leases, seek new tenants, and will repair and maintain the building. Immediately after the distribution the activities in connection with banking will constitute the active conduct of a trade or business, as will the activities in connection with the rental of the building.

Example (5). Corporation E, a bank, has for the past 9 years owned a 2-story building in a suburban area, the ground floor and one-half of the second floor of which are occupied by it in the conduct of its banking business. The other one-half of the second floor is rented as storage space to a neighboring retail merchant. Corporation E proposes to transfer the building to a new corporation and distribute the stock of the new corporation to its shareholders. Corporation E will lease the space formerly occupied by it in the bank building from the new corporation and, under the lease, will repair and maintain its portion of the building and pay property taxes and insurance. The new corporation will not be engaged in the active conduct of a trade or business immediately after the distribution.

Example (6). Corporation F is engaged in the retail grocery business and owns all of the stock of corporation G. Corporation G has for the past 10 years derived all of its gross income from the rental of its land and building to F, under a lease in which G's principal activity consists of the collection of rent from the building. Corporation F proposes to distribute the G stock to its shareholders. Corporation G will not be engaged in the active conduct of a trade or business immediately after the distribution, since it has not actively conducted a trade or business throughout the 5-year period ending on the date of the distribution.

Example (7). Corporation H has owned and operated a men's retail clothing store in the downtown area of the City of R for 7 years and has also owned and operated a men's retail clothing store in the suburban area of the City of R for 9 years. Corporation H proposes to transfer the store building, fixtures, inventory, and other assets related to the suburban store's activity to a new corporation. However, the warehouses which formerly served both the downtown and suburban stores will be retained by H, and the new corporation will lease warehouse space from an unrelated public warehouse company. Moreover, the delivery trucks and employees which formerly served both stores will be transferred to the new corporation for its exclusive use, and corporation H will contract with a local public delivery organization to effect its deliveries. Corporation H proposes to distribute the stock of the new corporation to its shareholders. Immediately after the distribution the activities in connection with the downtown store will constitute the active conduct of a trade or business, as will the activities in connection with the suburban store.

Example (8). Corporation I has processed and sold meat products for 8 years. It has no other income. Corporation I proposes to separate the selling from the processing activities by forming a separate corporation, J to purchase for resale the meats processed by I. Corporation I will transfer to J certain physical assets pertaining to the sales function, plus cash for working capital, in exchange for the capital stock of J which will be distributed to the shareholders of I. Immediately after the distribution corporation I will be engaged in the active conduct of a meat products processing business and corporation J will be engaged in the active conduct of a meat distribution business. The business of each corporation is deemed to have been actively conducted from the date corporation I began its meat processing and sales business.

Example (9). For 8 years corporation K has been engaged in the manufacture and sale of steel and steel products. For 6 years K's wholly-owned subsidiary, corporation L, has owned and operated a coal mine for the sole purpose of supplying K's coal requirements in the manufacture of steel. It is proposed that the stock of L be distributed to the shareholders of K. Immediately after the distribution, the activities of L in connection with the operation of the coal mine constitute the active conduct of a trade or business. The activities of K in connection with the manufacture and sale of steel products immediately after the distribution also constitute the active conduct of a trade or business.

Example (10). Corporation M has for more than 5 years been engaged in the single business of contructing sewage disposal plants and other facilities. Corporation M proposes to transfer one-half of its assets to corporation N. These assets will include a contract for the construction of a sewage disposal plant in State X, construction equipment, cash, and other tangible assets. Corporation M will retain a contract for the construction of a sewage disposal plant in State Y, construction equipment, cash and other intangible assets. The N stock is then to be distributed to one of the M shareholders in exchange for all of his M stock. Both corporations will be engaged in the active conduct of the construction business immediately after the distribution.

Example (11). Corporation O has for the past 6 years owned three factories devoted to the production of edible pork skins. The entire output of two of the factories is sold to one customer. The third factory's output is sold to a number of different customers. Corporation O proposes to transfer the two factories which produce pork skins for the single customer, together with their related activities, to a new corporation and to distribute the stock of such new corporation to its shareholders. Immediately after the distribution the activities in connection with the production and sale of edible pork skins to the one customer will constitute the active conduct of a trade or business, as well the activities in connection with the production and sale of pork skins to the other customers.

Example (12). Corporation P has owned and operated a department store in the City of W for 9 years. Three years ago P acquired a parcel of land and constructed a branch store in a suburban area of the City of W. The two stores are operated as a single unit and have common advertising, bank accounts, billing, purchasing, and management. Corporation P proposes to transfer the suburban store, together with its related activities, to a new corporation and to distribute the stock of such new corporation to its shareholders. Each store will have its own manager and will be operated independently of the other store. Immediately after the distribution the activities in connection with each of the department stores constitute the active conduct of a trade or business since each store was an integrated part of the single department store business conducted by P for 9 years.

Example (13). Corporation Q is engaged in the business of manufacturing hats in its own factory building. It proposes to transfer the factory building to corporation R and distribute the stock of R to its shareholders. After the transfer, Q will lease the factory building under a long-term lease and will operate and maintain the building and the machinery in the building. The activities of R in connection with the leased factory building immediately after the distribution will not constitute the active conduct of a trade or business.

Example (14). Corporation S has been engaged in the manufacture and sale of household products for 8 years. Throughout this period, in connection with such manufacturing, it has maintained a research department for its own use. The research department has 30 employees actively engaged in the development of new products. Corporation S proposes to transfer the research department to a new corporation and to distribute the stock of the new corporation to its shareholders. After the distribution the new corporation will continue its research operations on a contractual basis with several corporations including S. Immediately after the distribution the activities of the new corporation in connection with research will constitute the active conduct of a trade or business, as will the activities of S in connection with manufacturing.

§ 1.355-4 Non pro rata distributions, etc.

Section 355 provides for nonrecognition of gain or loss with respect to a distribution whether or not (a) the distribution is pro rata with respect to all of the shareholders of the distributing corporation, (b) the distribution is pursuant to a plan of reorganization within the meaning of section 368(a)(1)(D)), or (c) the shareholder surrenders stock in the distributing corporation. Under section 355 the stock of a controlled corporation may consist of common or preferred. (See, however, section 306 and the regulations thereunder.) Section 355 does not apply, however, if the substance of a transaction is merely an exchange between shareholders or security holders of stock or securities in one corporation for stock and securities in another corporation. For example if two individuals, A and B, each own directly 50 percent of the stock of corporation M and 50 percent of the stock of corporation N, section 355 would not apply to a transaction in which A and B tranfser all of their stock of M and N to a new corporation P, for all of the stock of P, and P then distributes the stock of M to A and the stock of N to B.

PAR. 2. Section 1.346-1 is amended by deleting the last sentence of paragraph (c) and by inserting in lieu thereof "The term 'active conduct of a trade or business' shall have the same meaning in this section as in § 1.355-3(b)(2)."

DEPARTMENT OF LABOR

Pension and Welfare Benefit Programs

[29 CFR Part 2550]

RULES AND REGULATIONS FOR FIDUCIARY RESPONSIBILITY

Proposed Regulations Relating to the Acquisition and Holding of Employer Securities and Employer Real Property and the Requirement That Certain Employer Securities and Employer Real Property be Divested no Later Than December 31, 1979

Correction

In FR Doc. 76-38493, appearing at page 1618 in the issue for Friday, January 7, 1977, make the following changes:

1. On page 1618, in the first column, wherever the references to "section 401" appear, they should be changed to "section 407".

2. On page 1619, in the fourth line of the first column, "section 2550.401a-1" should be "§ 2550.407a-1".

3. In § 2550.407a-1(b)(2), the last line should read "section 414 (c)(2) of the Act".

4. In § 2550.407a-2(c)(3), the tenth line should read "shall be the fair market value of such * * *".

5. On page 1620, in § 2550.407a-4(c)(1)(i)(B), the fifth line should read "mate under paragraph (c)(1)(i)(B) must * * *".

6. In § 2550.407a-4(c)(1)(ii), the fourth line should read "divested pursuant to paragraph (c)(1)(i) * * *".

7. In §2550.407a-4(c)(2), on page 1621, first column, the first and second lines of the flush paragraph should read "For purposes of this paragraph (c)(2), the fair market value of plan as- * * *".

DEPARTMENT OF TRANSPORTATION

Coast Guard

[33 CFR Part 110]

[CGD 76-186]

ISLANDS OF HAWAII, KAUAI, AND OAHU, HAWAII

Proposed Special Anchorage Areas

The Coast Guard is considering amending the Anchorage Regulations by establishing special anchorages in the vicinity of the Islands of Hawaii, Kauai, and Oahu, Hawaii. These anchorages would be for the general use of the public. In special anchorage areas, vessels

under 65 feet in length, when at anchor, are not required to carry or exhibit anchor lights.

Interested persons may participate in this proposed rule-making by submitting written data, views, or arguments concerning the proposal to the Commander, Fourteenth Coast Guard District, Pacific International Building, 677 Ala Moana, Honolulu, Hawaii 96813. Each person submitting comments should include his name and address and organization, if any, identify the notice number (CGD 76-186), and give reasons for any recommended change in the proposal. Copies of all written comments will be available for examination by interested persons at the office of the Commander, Fourteenth Coast Guard District.

The commander, Fourteenth Coast Guard District will forward all comments received before, and his recommendations to the Chief, Office of Marine Environment and Systems, U.S. Coast Guard Headquarters, who will evaluate all communications received and take final action on the proposal. The proposed regulations may be changed in the light of comments received.

In consideration of the foregoing, it is proposed that new sections 110.128 b, c, and d, be added to Part 110 of Title 33 of the Code of Federal Regulations to read as follows:

§ 110.128b Island of Hawaii, Hawaii.

(a) *Hilo Bay.* The waters of Hilo Bay enclosed by a line beginning at 19°43'-55.5" N. latitude, 155°03'30" W. longitude; thence to 19°44'08" N. latitude, 155°04'19" W. longitude, thence to 19°-43'51" N. latitude, 155°04'30" W. longitude; thence to 19°44'10" N. latitude, 155°05'29" W. longitude; thence along the shoreline to the beginning point.

(b) *Kuhio Bay.* The waters of Kuhio Bay enclosed by a line beginning at 19°-44'13" N. latitude, 155°03'25" W. longitude; thence to 19°44'15" N. latitude, 155°03'25" W. longitude; thence along the shoreline to the beginning point.

(c) *Keauhou Bay.* The waters of Keauhou Bay enclosed by a line beginning at 19°34'01.2" N. latitude 155°58'10" W. longitude; thence to 19°33'48.4" N. latitude, 155°58'6.9" W. longitude; thence along the shoreline to the beginning point.

(d) *Kawaihae Bay.* The waters of Kawaihae Bay enclosed by a line beginning at 20°01'04" N, latitude, 155°49'43" W. longitude; thence to 20°02'16" N. latitude, 155°50'12" W. longitude, thence along the shoreline to the beginning point.

(e) *Kawaihae Bay.* The waters of Kawaihae Bay enclosed by a line beginning at 20°02'29" N. latitude, 155°50'03" W. longitude; thence to 20°02'35" N. latitude, 155°50'15" W. longitude; thence to 20°03'19.5" N. latitude, 155°50'46" W. longitude; thence along the shoreline to the beginning point.

(f) *Kealakekua Bay.* The waters of Kealakekua Bay enclosed by a line beginning at 19°28'23" N. latitude, 155°55'32" W. longitude; thence to 19°28'54" N. latitude, 155°56'16" W. longitude; thence to 19°28'50" N. latitude, 155°55'22.5" W. longitude; thence along the shoreline to the beginning point.

§ 110.128c Island of Kauai, Hawaii.

(a) *Nawiliwili Bay.* The waters of Nawiliwili Bay enclosed by a line beginning at 21°57'12.5" N. latitude, 159°21'38" W. longitude; thence to 21°57'26" N. latitude, 159°21'39.5" W. longitude; thence along the shoreline to the beginning point.

(b) *Hanalei Bay.* The waters of Hanalei Bay enclosed by a line beginning at 22°13'33" N. latitude, 159°30'00" W. longitude; thence to 22°13'07" N. latitude, 159°31'19.5" W. longitude; thence along the shoreline to the beginning point.

§ 110.128d Island of Oahu, Hawaii.

(a) *Kaneohe Bay.* The waters of Kaneohe Bay enclosed by a line beginning at 21°26'28" N. latitude, 157°46'00" W. longitude; thence to 21°26'00" N. latitude, 157°46'14" W. longitude; thence to 21°26'20" N. latitude, 157°47'24" W. longitude; thence to 21°27'00" N. latitude, 157°48'25" W. longitude; thence to 21°26'46" N. latitude, 157°48'37" W. longitude; thence along the shoreline to point.

(b) *Kanohe Bay.* The waters of Kaneohe Bay enclosed by a line beginning at 21°27'28" N. latitude, 157°49'08" W. longitude; thence to 21°28'10" N. latitude, 157°50'03" W. longitude; thence to 21°29'10" N. latitude, 157°50'40" W. longitude; thence to 21°30'43" N. latitude, 157°49'57" W. longitude; thence to 21°31'47" N. latitude, 157°50'14" W. longitude; thence along the shoreline to the beginning point.

(c) *Keehi Lagoon.* The waters of Keehi Lagoon enclosed by a line beginning at 21°19'41" N. latitude, 157°53'51" W. longitude; thence to 21°19'37" N. latitude, 157°54'00" W. longitude; thence to 21°19'06" N. latitude, 157°53'44" W. longitude; thence to 21°19'04" N. latitude, 157°53'50" W. longitude; thence to 21°18'44" N. latitude, 157°53'53" W. longitude; thence to 21°18'44" N. latitude, 155°54'32" W. longitude; thence along the shoreline to the beginning point.

(d) *Manalau Bay.* The waters of Manalau Bay enclosed by a line beginning at 21°16'00" N. latitude 157°42'52" W. longitude; thence to 21°16'55" N. latitude, 157°42'55" W. longitude; thence to 21°-17'01" N. latitude, 157°42'50" W. longitude; thence along the shoreline to the beginning point.

(e) *Pokai Bay.* The waters of Pokai Bay enclosed by a line beginning at 21°-26'46.5" N. latitude, 158°11'39.4" W. longitude; thence to 21°27'07" N. latitude, 158°11'56.6" W. longitude; thence along the shoreline to the beginning point.

(f) *Sans Souci Beach.* The waters of Sans Souci Beach enclosed by a line beginning at 21°15'50" N. latitude, 157°49'-26" W. longitude; thence to 21°15'49" N. latitude, 157°49'31" W. longitude; thence to 21°16'02" N. latitude, 157°49'33" W. longitude; thence to 21°16'02" N. latitude, 157°49'30.5" W. longitude; thence along the shoreline to the beginning point.

(g) *Aiea Bay.* The waters of Aiea Bay enclosed by a line beginning at 21°22'20" N. latitude, 157°56'30" W. longitude; thence to 21°22'27" N. latitude, 157°56'-40.5" W. longitude; thence to 21°22'30" N. latitude, 157°56'40.5" W. longitude; thence to 21°22'37" N. latitude, 157°56'-19" W. longitude; thence along the shoreline to the beginning point.

(h) *Iroquois Point Lagoon.* The waters of Iroquois Point Lagoon enclosed by a line beginning at 21°19'53" N. latitude, 157°58'30" W. longitude; thence to 21°-19'56" N. latitude, 157°58'31" W. longitude; thence along the shoreline to the beginning point.

(i) *Hickam AFB Marina.* The waters of Hickham AFB Marina enclosed by a line beginning at 21°19'14" N. latitude, 157°57'40" W. longitude; thence to 21°18'54" N. latitude, 157°57'40" W. longitude; thence to 21°18'54" N. latitude, 157°57'00" W. longitude; thence along the shoreline to the beginning point.

(Sec. 1, 30 Stat. 98, as amended, sec. 6(g)(1)(B), 80 Stat. 937; (33 U.S.C. 180, 49 U.S.C. 1655(g)(1)(B)), 49 CFR 1.46(c)(2).)

NOTE.—The Coast Guard has determined that this document does not contain a major proposal requiring preparation of an inflation Impact Statement under Executive Order 11821 and OMB Circular A-107.

Dated: January 13, 1977.

A. F. FUGARO,
Rear Admiral U.S. Coast Guard,
Chief, Office of Marine Environment and Systems.

[FR Doc.77-1875 Filed 1-19-77;8:45 am]

FOREIGN CLAIMS SETTLEMENT COMMISSION

[45 CFR Part 504]

GOVERNMENT IN THE SUNSHINE ACT

Meetings of the Foreign Claims Settlement Commission

Notice is hereby given that the Foreign Claims Settlement Commission has under consideration proposed additions to its regulations which would implement the provisions of the Government in the Sunshine Act (5 U.S.C. 552b). These proposed additions would (1) define terms used therein, (2) request notification from the public of intention to attend an open meeting, (3) clarify that this addition applies only to meetings of the Commission, (4) declare that, unless otherwise specified, every meeting of the Foreign Claims Settlement Commission shall be open to the public, (5) state the basis for closing a meeting to the public (6) provide for the announcement of meetings, (7) state how a meeting shall be closed. (8) require the keeping of records of closed meetings, (9) state to whom requests for information shall be addressed.

Prior to adoption of these proposed additions, consideration will be given to any comments or suggestions pertaining thereto which are submitted in writing (5 copies) no later than February 17, 1977, to J. Raymond Bell, Chairman, Foreign Claims Settlement Commission, Washington, D.C. 20579. Copies of all communications received will be available for examination by interested persons in the Office of the Executive Director, Foreign Claims Settlement Commission.

Chapter V of Title 45 of the Code of Federal Regulations is proposed to be amended by changing the title "Part 504—Privacy Act Regulations" to "Part 504—Privacy Act and Government in the Sunshine Regulations", changing the title of § 504.1 from "General Policies" to "General Policies—Privacy Act", changing the title of § 504.2 from "Definitions" to "Definitions—Privacy Act", and adding the following sections:

PART 504—PRIVACY ACT AND GOVERNMENT IN THE SUNSHINE REGULATIONS

Sec.

504.20 Definitions—Government in the Sunshine Act (Meetings of the Foreign Claims Settlement Commission).
504.21 Notice of public observation.
504.22 Scope of application.
504.23 Open meetings.
504.24 Grounds for closing a meeting.
504.25 Announcement of meetings.
504.26 Procedure for closing of meetings.
504.27 Reconsideration of opening or closing, or rescheduling a meeting.
504.28 Record of closed meetings or closed portion of a meeting.
504.29 Requests for information.

AUTHORITY: 5 U.S.C. 552b.

§ 504.20 Definitions.

For the purposes of this part: (1) The term "agency" means any agency, as defined in 5 U.S.C. 552b(e), which includes the Foreign Claims Settlement Commission, headed by a collegial body composed of two or more individual members, a majority of whom are appointed by the President with the advice and consent of the Senate, and any subdivision thereof authorized to act on behalf of the agency;

(2) The term "Commission" means the Foreign Claims Settlement Commission, which is a collegial body that functions as a unit composed of three individual members, appointed by the President with the advice and consent of the Senate;

(3) The term "member" means any one of the three members of the Commission;

(4) The term "meeting" means the deliberations of at least two (quorum) members of the Commission where such deliberations determine or result in joint conduct or disposition of official Commission business;

(5) The terms "closed meeting" and "closed portion of a meeting" means, respectively, a meeting or that part of a meeting designated as provided in § 504.-26 as closed to the public by reason of one or more of the closure provisions listed in § 504.24;

(6) The term "open" meeting means a meeting or portion of a meeting which is not a closed meeting or a closed portion of a meeting; and

(7) The term "public observation" means the right of any member of the public to attend and observe, but not participate or interfere in any way in an open meeting of the Commission within the limits of reasonable and comfortable accommodations made available for such purpose by the Foreign Claims Settlement Commission.

§ 504.21 Notice of public observation.

(a) A member of the public is not required to give advance notice to the Commission of an intention to exercise the right of public observation of an open meeting of the Commission. However, in order to permit the Commission to determine the amount of space and number of seats which must be made available to accommodate individuals who desire to exercise the right of public observation, such individuals are requested to give notice to the Commission at least two business days before the start of the open meeting of the intention to exercise such right.

(b) Notice of intention to exercise the right of public observation may be given in writing, in person, or by telephone to the official designated in § 504.29.

(c) Individuals who have not given advance notice of intention to exercise the right of public observation will not be permitted to attend and observe the open meeting of the Commission if the available space and seating are necessary to accommodate individuals who gave advance notice of such intention to the Commission.

§ 504.22 Scope of application.

The provisions of this part 504, §§ 504.-20 through 504.29, apply to meetings of the Commission, and do not apply to conferences or other gatherings of employees of the Foreign Claims Settlement Commission who meet or join with others, except at meetings of the Commission to deliberate on or conduct official agency business.

§ 504.23 Open meetings.

Every meeting of the Commission shall be open to public observation except as provided in § 504.24.

§ 504.24 Grounds for closing a meeting.

Except in a case where the Commission determines otherwise, a meeting or portion of a meeting may be closed to public observation where the Commission determines that the meeting or portion of the meeting is likely to:

(a) Disclose matters that are (1) specifically authorized under criteria established by an Executive order to be kept secret in the interests of national defense or foreign policy and (2) in fact properly classified pursuant to such Executive order;

(b) Relate solely to the internal personnel rules and practices of the Commission;

(c) Disclose matters specifically exempted from disclosure by statute (other than 5 U.S.C. 552) provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(d) Disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(e) Involve accusing any person of a crime, or formally censuring any person;

(f) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(g) Disclose investigatory records compiled for law enforcement purposes, or information which if written would be contained in such records, but only to the extent that the production of such records or information would (1) interfere with enforcement proceedings, (2) deprive a person of a right to a fair trial or an impartial adjudication, (3) constitute an unwarranted invasion of personal privacy, (4) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (5) disclose investigative techniques and procedures, or (6) endanger the life or physical safety of law enforcement personnel;

(h) Disclose information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of the Foreign Claims Settlement Commission;

(i) Disclose information the premature disclosure of which would (1) significantly endanger the stability of any bank or association; or (2) be likely to significantly frustrate implementation of a proposed action of the Foreign Claims Settlement Commission, provided the Commission has not already disclosed to the public the content or nature of its proposed action, or is not required by law to make such disclosure on its own initiative prior to taking final action on such proposal; or

(j) Specifically concern the Commission's issuance of a subpoena or the Commission's participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct, or disposition by the Commission of a particular case of formal agency adjudication pursuant to the procedures in section 554, of Title V or otherwise involving a determination on the record after opportunity for a hearing.

§ 504.25 Announcement of meetings.

(a) The Commission meets beginning at 10:30 a.m. in the offices of the Foreign Claims Settlement Commission, 1111 20th Street, NW, Washington, DC, on each Wednesday, unless notice to the contrary is given.

(b) At any duly called meeting held previous to any meeting scheduled as provided in paragraph (a) of this section, the Commission may fix a different time and place for a subsequent meeting.

(c) For any meeting of the Commission which is fixed as provided in (b) of this section, the Foreign Claims Settlement Commission shall, at the earliest practicable time, make information available for public inspection in its offices, or pursuant to telephonic or written requests, concerning the time and place fixed for such subsequent meeting.

(d) At the earliest practicable time, which is estimated to be not later than eight days before the beginning of a meeting of the Commission the Foreign Claims Settlement Commission shall make available for public inspection in its offices, or pursuant to telephonic or written requests, the subject matter of the meeting except to the extent that such information is exempt from disclosure under the provisions of § 504.24.

§ 504.26 Procedures for closing of meetings.

(a) The closing of a meeting shall occur only when:

(1) A majority of the membership of the Commission votes to take such action. A separate vote of the Commission members shall be taken with respect to each Commission meeting a portion or portions of which are proposed to be closed to the public pursuant to § 504.24, or with respect to any information which is proposed to be withheld under § 504.24. A single vote may be taken with respect to a series of meetings, a portion or portions of which are proposed to be closed to the public, or with respect to any information concerning such series of meetings, so long as each meeting in such series involves the same particular matters and is scheduled to be held no more than thirty days after the initial meeting in such series. The vote of each Commission member participating in such vote shall be recorded and no proxies shall be allowed.

(2) Whenever any person whose interests may be directly affected by a portion of a meeting requests that the Commission close such portion to the public for any of the reasons referred to in § 504.24 (e), (f) or (g), the Commission upon request of any one of its Commission members, shall take a recorded vote, whether to close such portion of the meeting.

(b) Within one day of any vote taken, the Commission shall make publicly available a written copy of such vote reflecting the vote of each member on the question and full written explanation of its action closing the entire or portion of the meeting together with a list of all persons expected to attend the meeting and their affiliation.

(c) The Commission shall announce the time, place and subject matter of the meeting at least 8 days before the meeting.

(d) For every closed meeting, the General Counsel of the Commission shall publicly certify that, in his or her opinion, the meeting may be closed to the public, and shall state each relevant closure provision. A copy of such certification, together with a statement from the presiding officer of the meeting setting forth the time and place of the meeting, and the persons present, shall be retained by the Commission.

§ 504.27 Reconsideration of opening or closing, or rescheduling a meeting.

The time or place of a Commission meeting may be changed following the public announcement only if the Commission publicly announces such change at the earliest practicable time. The subject matter of a meeting, or the determination of the Commission to open or close a meeting, or portion of meeting, to the public, may be changed following the public announcement only if a majority of the Commission members determines by a recorded vote that Commission business so requires and that no earlier announcement of the change was possible, and the Commission publicly announces such change and the vote of each member upon such change at the earliest practicable time.

§ 504.28 Record of closed meetings or closed portion of a meeting.

(a) The Foreign Claims Settlement Commission shall maintain a complete transcript or electronic recording adequate to record fully the proceedings of each closed meeting or closed portion of a meeting, except that in the case of a meeting or portion of a meeting closed to the public pursuant to § 504.24 (d), (h), (i) (1), or (j), the Foreign Claims Settlement Commission shall maintain either such transcript, recording, or a detailed set of minutes.

(b) Any minutes so maintained shall fully and clearly describe all matters discussed and shall provide a full and accurate summary of any actions taken, and the reason therefor, including a description of each of the views expressed on any item and the record of any roll call vote. All documents considered in connection with any action shall be identified in the minutes.

(c) The Foreign Claims Settlement Commission shall promptly make available to the public, in its offices, the transcript, electronic recording, or minutes, of the discussion of any item on the agenda of a closed meeting, or closed portion of a meeting, except for such item or items of discussion which the Foreign Claims Settlement Commission determines to contain information which may be withheld under § 504.24. Copies of such transcript or minutes, or a transcription of such recording disclosing the identity of each speaker, shall be furnished to any person at the actual cost of duplication or transcription.

(d) The Foreign Claims Settlement Commission shall maintain a complete verbatim copy of the transcript, a complete copy of the minutes, or a complete electronic recording of each closed meeting or closed portion of a meeting for a period of two years after the date of such closed meeting or closed portion of a meeting.

(e) All actions required or permitted by this section to be undertaken by the Foreign Claims Settlement Commission shall be by or under the authority of the Chairman, Foreign Claims Settlement Commission.

§ 504.29 Requests for information.

Requests to the Foreign Claims Settlement Commission for information about the time, place, and subject matter of a meeting, whether it or any portion thereof is closed to the public, and any requests for copies of the transcript or minutes or of a transcript of an electronic recording of a closed meeting, or closed portion of a meeting, to the extent not exempt from disclosure by the provisions of § 504.24, shall be addressed to the Executive Director, Foreign Claims Settlement Commission, 1111 20th Street, NW, Washington, DC 20579, telephone 202/653-6156.

Dated at Washington, DC, on January 17, 1977.

J. RAYMOND BELL,
Chairman.

[FR Doc.77-1916 Filed 1-19-77;8:45 am]

notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

MEETING

Notice is hereby given in accordance with the Advisory Council's Procedures for the Protection of Historic and Cultural Properties (36 CFR Part 800) that the regular meeting of the Advisory Council on Historic Preservation will be held on February 2–3, 1977, in Washington, D.C. and Baltimore, Maryland. The entire meeting is open to the public.

The Advisory Council was established by the National Historic Preservation Act of 1966 (Pub. L. 89–665, as amended, Pub. L. 94–422) to advise the President and Congress on matters relating to historic preservation and to comment upon Federal, federally assisted and federally licensed undertakings having an effect upon properties listed in or eligible for inclusion in the National Register of Historic Places. The Council's members are the Secretaries of the Interior; Housing and Urban Development; Commerce; Treasury; Agriculture; Transportation; State; Defense; Health, Education, and Welfare; and Smithsonian Institution; the Administrator of the General Services Administration; the Attorney General; the Chairman of the Council on Environmental Quality; the Chairman of the Federal Council on the Arts and Humanities; the Architect of the Capitol; the Chairman of the National Trust for Historic Preservation; the President of the National Conference of State Historic Preservation Officers; and twelve non-Federal members appointed by the President.

In accordance with Section 106 of the National Historic Preservation Act, the Advisory Council will meet to consider the proposed construction of Interstate Route 83 in Baltimore City, Baltimore, Maryland, to be assisted by the Federal Highway Administration. The meeting will begin on Wednesday, February 2, at 9:00 a.m., in Baltimore, Maryland, and will reconvene on Thursday, February 3, 9:00 a.m., in the Cash Room, Department of the Treasury, 15th & Pennsylvania Avenue, NW, Washington, D.C.

A summary of the meeting agenda follows:

I. Consideration of Proposed Construction of Interstate 83 in Baltimore City, to be assisted by Federal Highway Administration.
A. Report of Federal Highway Administration/Interstate Division for Baltimore City;
B. Report of the State Historic Preservation Officer;
C. Testimony by Maryland State Officials;
D. On Site Inspection of Proposed I–83 Corridor;
E. Public Testimony;
F. Report of the Executive Director; and
G. Deliberation by the Full Council.
II. Report of the Chairman's Task Force on Archeology.
III. Report of the Executive Director.

For reasons of security in Federal and State buildings, those wishing to attend must notify the Council by January 26 of their name, address, social security number, and date of birth. Either notify the Council at Suite 530, 1522 K Street, NW., Washington, D.C. 20005, or call (202) 254–7788.

Agenda and additional information concerning the meeting and the submission of oral and written statements to the Council are available from the Executive Director, Advisory Council on Historic Preservation, Suite 530, 1522 K Street, NW., Washington, D.C. 20005 (202) 254–3974.

Dated: January 14, 1977.

ROBERT R. GARVEY, Jr.,
Executive Director.

[FR Doc.77-1970 Filed 1-19-77;8:45 am]

FEDERAL POWER COMMISSION

[Docket No. CP73-329 (PGA77-3)]

CHATTANOOGA GAS CO.

Proposed PGA Rate Adjustment

JANUARY 6, 1977.

Take notice that on December 16, 1976, Chattanooga Gas Company, A Division of Jupiter Industries, Inc., (Chattanooga) tendered for filing proposed changes to Original Volume No. 1 of its FPC Gas Tariff to be effective on January 1, 1977, consisting of the following revised tariff:

Twenty First Revised Sheet No. 6

Chattanooga states that the sole purpose of this Revised Tariff Sheet is to adjust Chattanooga's LNG rates pursuant to the PGA provision in Section 5 of the General Terms and Conditions of its FPC Tariff to reflect increased purchased gas costs resulting from PGA rate changes by its suppliers, East Tennessee Natural Gas Company, (East Tennessee) in Docket Nos. RP71–15 and RP75–28 and Southern Natural Gas Company (Southern) in Docket No. RP73–64 and Opinion No. 770–A (Special PGA Increase).

Chattanooga requests that its Twenty First Revised Sheet No. 6 be made effective on January 1, 1977, the proposed effective date of the underlying changes by East Tennessee and Southern.

Chattanooga states that copies of the filing have been mailed to all of its jurisdictional customers.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 21, 1977. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-1891 Filed 1-19-77;8:45 am]

[Docket No. CP77-89]

CITIES SERVICE GAS CO.

Application

JANUARY 6, 1977.

Take notice that on December 13, 1976, Cities Service Gas Company (Applicant), P.O. Box 25128, Oklahoma City, Oklahoma 73125, filed in Docket No. CP 77–89 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of unspecified pipeline taps, measuring, regulating and appurtenant facilities for the sale of natural gas, either directly or for resale through authorized local natural gas distribution companies, to customers pursuant to obligations contained in right-of-way easements or agreements, gas storage leases or similar agreements, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it is aware that authorizations of the kind requested have not been granted under current Commission interpretations of § 157.7(c) of the Commission's Regulations under the Natural Gas Act (18 C.F.R. 157.7(c)) since the Commission's Order No. 507 issued March 18, 1974, in Docket No. RM 74–6. However, Applicant states, the Commission's Opinion No. 773 issued August 13, 1976, in Docket No. CP75–333, *Northern Natural Gas Company*, holds that the certification of gas service such as presently proposed for right-of-way easement grantors and gas storage lessors is in the public interest. Applicant further states that in the last year it has made five applications for certificates of public convenience and necessity to serve a total of 83 customers; that it recently has filed an application for authority to serve an additional 28 customers; that all applications for such service, including those proposed in the instant application, involve sales to rural domestic or irrigation customers; that all such serv-

ice is made pursuant to virtually identical clauses in right-of-way easements or agreements or gas storage leases; and, that all such service represents private grants of service relied on in good faith as a definite part of negotiations for such easements, agreements or leases. It is stated in conclusion by the Applicant that all sales and installations proposed in the instant application would be made under right-of-way provisions or gas storage lease provisions of identical legal import and that the procedure of filing separate certificate applications for such proposed customers, or groups of such customers, not only results in delay for such customers but also that the procedure does not provide the Commission with relevant information upon which to determine to certify some of the sales and deny certification to others.

Applicant requests authority to install the necessary pipeline tap, measuring, regulating and appurtentant facilities, and to make sales of gas for domestic or irrigation purposes, either directly or for resale through authorized local gas distribution companies, to customers who hold right-of-way easements or agreements, gas storage leases or similar agreements where part of the consideration for the agreement was the receipt of gas from the Applicant. Applicant states that it could make up to 150 such installations and sales in any calendar year; that the cost of each installation would range from $400 to $1,500; and, that it estimates each domestic customer would use, on average, from 250 to 300 Mcf of natural gas annually, and an irrigation customer would use 3,800 to 5,000 Mcf annually.

Applicant states that if required by the Commission it would agree to submit an annual report containing the pertinent details of the sales and installations made within the preceding period. The annual report, it is stated, would serve to advise the Commission completely of the facilities installed and the service rendered as if individual applications were filed for each sale without the burden of handling and processing numerous applications and without the necessity to prepare and file numerous reports as to when each individual facility is placed in service or as to its cost.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 24, 1977, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-1903 Filed 1-19-77;8:45 am]

[Docket No. RP76-135]

CITIES SERVICE GAS CO.

Proposed Revisions in Rate Increase

JANUARY 6, 1977.

Take notice that on December 18, 1976, Cities Service Gas Company (Cities Service) tendered for filing revised tariff sheets in Docket No. RP76-135. Such sheets are designated Substitute Seventeenth Revised Sheet PGA-1 and Substitute Fourth Revised Sheet No. 37D.

Cities Service states that the purpose of these tariff sheets is to incorporate the current purchase gas costs and the current deferred purchase gas cost balance in the rates currently under suspension in Docket No. RP76-135.

Cities Service states that copies of its filing were served on all jurisdictional customers, interested state commissions and all parties to the proceedings in Docket Nos. RP76-135 and RP72-142.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, Union Center Plaza Building, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 18, 1977. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-1889 Filed 1-19-77;8:45 am]

[Docket No. CP77-105]

COLUMBIA GAS TRANSMISSION CORP.

Application

JANUARY 6, 1977.

Take notice that on December 21, 1976, Columbia Gas Transmission Corporation (Applicant), P.O. Box 1273, Charleston, West Virginia 25325, filed in Docket No. CP77-105 an application pursuant to section 7(c) of the Natural Gas Act and § 2.79 of the Commission's General Policy and Interpretations (18 CFR 2.79) for a certificate of public convenience and necessity authorizing the transportation of natural gas on behalf of Glenshaw Glass Company, Inc. (Glenshaw), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to transport for Glenshaw up to 3,150 Mcf of natural gas per day for two years for use at Glenshaw's bottle manufacturing plant in Orangeburg, New York. It is stated that the subject gas would be received by Applicant at a mutually agreeable point on Applicant's Line O-133 in Center Township, Noble County, Ohio, from LNG Services, Inc. (Services), and redelivered by Applicant, for the account of Glenshaw, to Orange and Rockland Utilities, Inc. (Orange and Rockland), at an existing point of delivery in Rockland County, New York. Orange and Rockland is a wholesale customer of the Applicant and is the gas distribution company which serves Glenshaw. The volumes to be transported for Glenshaw under the proposed service would be subject to Applicant pipeline capacity and would be further limited by those volumes required to offset curtailments affecting the Glenshaw plant.

It is indicated that pursuant to a gas purchase agreement between Glenshaw and Services, dated November 15, 1976, Services agrees to sell up to 3,150 Mcf of natural gas per day to Glenshaw from the production of an existing well situated in Enoch Township, Noble County, Ohio, and known as the Pauline M. Crum Well No. 1. It is further stated that Glenshaw is required to purchase a minimum quantity of 1,000 Mcf of gas per day, such minimum quantity to be averaged over each calendar month. The sale price for the gas is $1.90 per Mcf at the point of delivery to the Applicant for the first three months of the agreement; thereafter, the price increases by $0.03 every three months for the two-year term of the agreement. It is indicated that to make delivery under the terms of the purchase agreement, Services would construct 15,800 feet of 3-inch diameter pipeline at a cost of $100,000.

Applicant states that it would retain 3.1 percent of the volume received for transportation as make-up for line loss and compressor fuel and that the initial transportation charge would be 22.21 cents per Mcf of natural gas. Applicant asserts that since the proposed transportation service would be provided only when sufficient capacity is available, the proposal would have no impact on its ability to deliver to Priority 1 markets. Applicant indicates that the subject natural gas supply was not available to it by reason of Services's unwillingness to sell at interstate rates.

It is stated that Glenshaw manufactures glass bottles used to package a variety of products produced in the states of New York, Pennsylvania, Massachusetts, Maine and Vermont; that Glenshaw is the major employer in the Orangeburg, New York, area; that Glenshaw is anticipating curtailments of up to 100 percent from Orange and Rockland; and, that Glenshaw has been utilizing propane fuel as an alternative to natural gas. It is further stated that the continued use of propane would make Glenshaw's product noncompetitive and could result in the loss of employment for many of Glenshaw's employees.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 31, 1977, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-1899 Filed 1-19-77;8:45 am]

[Docket No. RP71-15 (PGA77-3)]

EAST TENNESSEE NATURAL GAS CO.

Proposed PGA Rate Adjustment

JANUARY 6, 1977.

Take notice that on December 20, 1976, East Tennessee Natural Gas Company (East Tennessee) tendered for filing Nineteenth Revised Sheet No. 4 to Sixth Revised Volume No. 1 of its FPC Gas Tariff. The proposed effective date is February 1, 1977.

East Tennessee states that its filing reflects a general rate increase filed by Tennessee Gas Pipeline Company, a Division of Tenneco Inc., which will become effective February 1, 1977, in Docket No. RP76-137 pursuant to the Commission's order issued August 30, 1976.

East Tennessee further states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 21, 1977. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene; provided, however, that any person who has previously filed a petition to intervene in this proceeding is not required to file a further petition. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-1898 Filed 1-19-77;8:45 am]

[Docket No. ES77-7]

EL PASO ELECTRIC CO.

Application

JANUARY 6, 1977.

Take notice that on December 22, 1976, the El Paso Electric Company (Applicant) filed an application pursuant to Section 204 of the Federal Power Act seeking authorization to negotiate with investment bankers, with respect to the issuance of $10,000,000 of cumulative Preferred Stock through a negotiated public sale or private placement. Applicant asserts that due to the relatively small size of the proposed Preferred Stock offering, market conditions at the time of the sale may enable it to receive more favorable terms through a negotiated public sale or private placement than through a competitive public sale.

Applicant is incorporated under the laws of the State of Texas, with its principal business office at El Paso, Texas and is engaged in the generation, transmission, distribution and sale of electrical energy in the States of Texas and New Mexico.

Any person desiring to be heard or to make any protest with reference to said application should, on or before January 19, 1977, file petitions or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in a hearing therein must file petitions to intervene in accordance with the Commission's Rules. The application is on file with the Commission and available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-1892 Filed 1-19-77;8:45 am]

[Docket No. RP73-17 (PGA77-3)]

GRANITE STATE GAS TRANSMISSION, INC.

Proposed Changes in Rates Pursuant to Purchased Gas Adjustment Provision

JANUARY 6, 1977.

Take notice that Granite State Gas Transmission, Inc. (Granite State), 66 Market Street (P.O. Box 508), Portsmouth, New Hampshire 03801, on December 22, 1976, tendered for filing Sixteenth Revised Sheet No. 3A in its FPC Gas Tariff, Original Volume No. 1, containing proposed changes in rates for effectiveness on February 1, 1977.

According to Granite State, the instant filing tracks revised changes in its cost of gas purchased from Tennessee Gas Pipeline Company, a Division of Tenneco, Inc. (Tennessee) which Tennessee has proposed to make effective February 1, 1977, in Docket No. RP76-137. Granite State further avers that its filing is made pursuant to the purchased gas cost adjustment provision in its Tariff, previously approved by the Commission on December 14, 1972, in Docket No. RP 73-17.

Granite State further states that its revised purchased gas cost changes are applicable to its sales to Northern Utilities, Inc. (Northern) which is Granite State's sole jurisdictional customer. According to Granite State, the annual effect on Northern of the proposed rates contained on Sixteenth Revised Sheet No. 3A is $605,353. The estimate is based on purchases from Tennessee and sales to Northern for the twelve months ended November 30, 1976.

According to Granite State, copies of the filing were served upon Northern and the regulatory commissions of the States of Maine and New Hampshire.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 21, 1977. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must

file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-1893 Filed 1-19-77;8:45 am]

[Docket No. RM76-1]

HYDROELECTRIC PROJECT LICENSES

Reasonable Rate of Return

JANUARY 6, 1977.

Commission Order No. 550, Order Adopting Statement of Policy as to the Specified Reasonable Rate of Return, was issued June 24, 1976, in Docket No. RM76-1. In the order the Commission referred to the Treasury Department's 10-year constant maturity bond yield series in connection with determining the cost of equity capital component of specified reasonable rates.

On July 16, 1976, the Commission issued a notice providing the actual monthly observations and the yearly averages for the series for the period 1972 through May, 1976. The Commission stated at that time it would notice the information necessary for calculating the specified reasonable rate of return as soon as it became available each year.

The monthly observations of the constant maturity series for 1976 are provided here.

10-YEAR CONSTANT MATURITY BOND YIELDS—1976

January	7.74
February	7.79
March	7.78
April	7.56
May	7.90
June	7.86
July	7.83
August	7.77
September	7.59
October	7.41
November	7.29
December	6.87

For the calendar year 1976, a single specified reasonable rate should be used. This should be calculated on the basis of (1) six percent for the period prior to the effective date of the license amendment and (2) the rate determined by application of the formula specified in Order No. 550 for the remaining months. For purposes of the latter calculation, the average of the above bond yields for the months since the license amendment should be used. For example, a company that filed for amendment between October 15 and November 15 would use the average bond yield for November and December or 7.08.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-1897 Filed 1-19-77;8:45 am]

[Docket No. ES77-5]

IOWA PUBLIC SERVICE CO.

Application

JANUARY 6, 1977.

Take notice that on December 20, 1976, Iowa Public Service Company (Applicant) filed an application, pursuant to section 204 of the Federal Power Act, for authorization for authority to negotiate privately with the City of Chillicothe, Iowa, for the purpose of financing the Company's individual interest in certain pollution control facilities at Unit No. 1 of the Ottumwa Generating Station through the issuance of the City's Pollution Control Revenue Bonds. An agreement between the City and the Applicant would commit the City to issue and sell to underwriters its Pollution Control Bonds in an aggregate amount equal to the cost of the Company's ownership interest in such facilities and to loan the proceeds from the sale of such Revenue Bonds to the Applicant. The repayment obligation of the Applicant would be evidenced by debt obligation bearing identical terms with, and pledged to support the payment of, such Revenue Bonds.

Applicant is incorporated under the laws of the State of Iowa, with its principal business office at Sioux City, Iowa and is engaged in the generation, transmission, distribution and sale of electrical energy in the states of Iowa, Nebraska and South Dakota.

Any person desiring to be heard or to make any protest with reference to the Application should on or before January 24, 1977, file with the Federal Power Commission, Washington, D.C. 20426, petitions or protests in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceedings. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules. The application is on file and available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-1895 Filed 1-19-77;8:45 am]

[Docket No. RP73-43 (PGA77-2)]

MID LOUISIANA GAS CO.

Proposed Change in Rates

JANUARY 6, 1977.

Take notice that Mid Louisiana Gas Company (Mid Louisiana), on December 17, 1976, tendered for filing as a part of First Revised Volume No. 1 of its FPC Gas Tariff, Twenty-Fourth Revised Sheet No. 3a.

Mid Louisiana states that the purpose of the filing is to reflect a Purchased Gas Cost Current Adjustment to Mid Louisiana's Rate Schedules G-1, SG-1, I-1 and E-1, to be effective February 1, 1977, and that the filing is being made in accordance with Section 19 of Mid Louisiana's FPC Gas Tariff and in compliance with Commission Order Nos. 452 and 452-A; and that copies of the filing were served on interested customers and state commissions.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 21, 1977. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-1890 Filed 1-19-77;8:45 am]

[Docket Nos. RP71-16 and RP74-29 (PGA77-3) (DCA77-1)]

MIDWESTERN GAS TRANSMISSION CO.

Filing Pursuant to Tariff Rate Adjustment Provisions

JANUARY 6, 1977.

Take notice that on December 17, 1976, Midwestern Gas Transmission Company (Midwestern) tendered for filing Eighteenth Revised Sheet No. 5 and First Revised Sheet No. 5A to its FPC Gas Tariff, Third Revised Volume No. 1, to be effective February 1, 1977. Midwestern states that the sole purpose of the revised tariff sheets is to reflect adjustments to its rates pursuant to rate adjustment provisions in Articles XVII, XVIII, and XIX of the General Terms and Conditions of its tariff.

Midwestern states that as to the Southern System, Eighteenth Revised Sheet No. 5 reflects (1) a Current Purchased Cost Rate Adjustment pursuant to section 2 of Article XVII which is based on rate changes reflected in the revised filing by Tennessee Gas Pipeline Company, a Division of Tenneco Inc. on December 20, 1976, in Docket No. RP76-137 and (2) a revised Surcharge for Amortizing the Unrecovered Purchased Gas Cost Account for the Southern System of 0.53 cents per Mcf pursuant to section 3 of Article XVII. According to Midwestern, the revised tariff sheet also reflects a Current Rate Adjustment of 1.12 cents per Mcf to reflect curtailment credits applicable to the Southern System pursuant to Section 9 of Article XIX.

Midwestern states that as to the Northern System, First Revised Sheet No. 5A reflects a revised Surcharge for Amortizing the Unrecovered Purchased Gas Cost Account for the Northern System of 3.93 cents per Mcf as specified in section 3 of Article XVIII.

Midwestern states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 21, 1977. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene; provided, however, that any person who has previously filed a petition to intervene in this proceeding is not required to file a further petition. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-1888 Filed 1-19-77;8:45 am]

[Docket Nos. ER77-97 and ER77-75]

NEW ENGLAND POWER CO.

Order Accepting for Filing and Suspending Proposed Tariff Changes, Denying Waiver, Providing for Hearing and Consolidating Proceedings

JANUARY 5, 1977.

On December 6, 1976, New England Power Company (NEPCO) tendered for filing proposed changes in its FPC Electric Tariff,[1] constituting a new Rate R-11. For the reasons hereinafter stated, we shall accept the proposed changes for filing, suspend their effectiveness until February 1, 1977, and establish hearing procedures to determine their lawfulness.

The tariff changes proposed herein would decrease revenues by $3,173,517 (0.6%) for service to NNEPCO's 12 primary rate (full requirements) customers[2] and would increase revenues by $2,934,150[3] to its contract demand rate (partial requirements or CD) customers, based on the test year ending December 31, 1977. NEPCO requests waiver of the 30 day prior notice requirement so as to permit an effective date of January 1, 1977. Alternatively, NEPCO requests an effective date of February 1, 1977.

Public notice of the subject filing was issued on December 15, 1976, with protests or petitions to intervene due on or before December 31, 1976.

Our review indicates that the proposed tariff changes have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory, preferential or otherwise unlawful. Accordingly, we shall suspend the proposed tariff changes under February 1, 1977, and establish hearing procedures.

By order issued December 22, 1976, in Docket No. ER77-75, a proceeding concerning a proposed reduction in the credit permitted NEPCO's affiliate, Narragansett Electric Company, for NEPCO's use of Narragansett's generation and transmission facilities, we found:

[1] See Attachment for designations.
[2] Three of which are affiliates of NEPCO.
[3] On December 20, 1976, NEPCO revised its filing so as to reduce the rate increase to the CD customers from $2,934,150 (9.9%) to $2,720,418 (9.2%) reflecting an error in NEPCO's development of cost of service.

It is noted that the purchased power costs to NEPCO presented by the G&T Credit to Narragansett is an item in the cost of service claimed by NEPCO in support of the "R-11" general rate change filed by NEPCO on December 6, 1976, in Docket No. ER77-97. Accordingly, with a view towards the possibility of consolidating these proceedings we shall defer establishing hearing procedures pending action on Docket No. ER77-97.

Finding common questions of law and fact, we deem it appropriate to consolidate Docket Nos. ER77-97 and ER77-75 for purposes of hearing and decision.

The Commission finds: (1) Good cause has not been shown to warrant waiver of the prior notice requirements so as to permit an effective date of January 1, 1977.

(2) Good cause exists to accept for filing the proposed tariff changes as designated in the Attachment and to suspend the use thereof until February 1, 1977, when they may become effective subject to refund.

(3) It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Federal Power Act, that the Commission enter upon a hearing concerning the lawfulness of NEPCO's FPC Electric Tariff as proposed to be revised herein.

(4) Good cause exists to consolidate Docket Nos. ER77-97 and ER77-75 for purposes of hearing and decision.

The Commission orders: (A) NEPCO's request for waiver of the prior notice requirements is hereby denied.

(B) Pursuant to the authority of the Federal Power Act, particularly sections 205 and 206 thereof, and the Commissions' Rules and Regulations, a public hearing shall be held concerning the justness and reasonableness of the rates, charges, terms and conditions of service included in NEPCO's FPC Electric Tariff, particularly as proposed to be revised by the subject filing.

(C) Pending a hearing and a final decision thereon, NEPCO's proposed tariff changes are hereby accepted for filing as designated in the Attachment and suspended until February 1, 1977, when they may become effective subject to refund.

(D) The Staff shall prepare and serve top sheets on all parties for settlement purposes on or before April 15, 1977. (See Administrative Order No. 157).

(E) The proceedings in Docket Nos. ER77-97 and ER77-75 are hereby consolidated for hearing and decision.

(F) A Presiding Administrative Law Judge, to be designated by the Chief Administrative Law Judge for that purpose (See Delegation of Authority, 18 CFR 3.5 (d)), shall convene a settlement conference in this proceeding on a date certain within 10 days after the service of top sheets by the Staff, in a hearing or conference room of the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. Said Presiding Administrative Law Judge is hereby authorized to establish all procedural dates and to rule upon all motions (with the exceptions of petitions to intervene, motions to consolidate and sever, and motions to dismiss), as provided for in the Rules of Practice and Procedure.

(G) NEPCO shall file monthly with the Commission a report on billing determinants and revenues collected under the presently effective R-10 rates and the proposed R-11 rates filed herein, such report to be in the format prescribed by § 35.19 of the Commission's Regulations. 18 CFR 35.19a.

(H) The Secretary shall cause the prompt publication of this order in the FEDERAL REGISTER.

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-1905 Filed 1-19-77;8:45 am]

[Docket No. ER77-127]

OKLAHOMA GAS AND ELECTRIC CO.

Filing of Proposed Wholesale Electric Tariffs and Proposed Increase in Rates

JANUARY 6, 1977.

Take notice that on December 27, 1976, Oklahoma Gas and Electric Company (OG&E), P.O. Box 321, Oklahoma City, Oklahoma 73101, tendered for filing a proposed FPC Tariff Original Volume No. 1—Municipalities applicable, as the individual contracts expire, to Blackwell, Edmond, Geary, Kingfisher, Manchester, Mannford, Okeene, Orlando, Perry, Ponca City, Pond Creek, Prague, Purcell, Stillwater, Stroud, Tecumseh, Tonkawa, Watonga, Waynoka and Wynnewood, Oklahoma, and Clarksville, Arkansas, and a proposed FPC Tariff Original Volume No. 1—Cooperatives applicable, as the individual contracts expire, to Alfalfa Electric Cooperative, Inc., Arkansas Valley Electric Cooperative Corporation, Cimarron Electric Cooperative, Indian Electric Cooperative, Inc., KAMO Electric Cooperative, Inc., and Red River Valley Rural Electric Association. Each tariff is proposed to become effective February 1, 1977.

OG&E states that the tariffs provide for an increase in rates, and for changes in the rate design and would place service for each of the wholesale customers on a comparable basis. In addition, revised rate schedules have been filed for rate increases identical to those included in the tariffs, to be applicable, after approval by the Commission, to cover the period of time prior to applicability of the tariffs to the individual customers. OG&E alleges that it has experienced significant cost increases in all areas of its operations, including wages, fuel, materials and supplies, and particularly capital. OG&E further states that it has served notices of cancellation of the contracts on each of its municipal and cooperative customers.

OG&E states that copies of the tariff, rate schedules and of the entire filing have been delivered to its municipal and cooperative customers and to the Corporation Commission of the State of Oklahoma and mailed to the Arkansas Public Service Commission.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 21, 1977. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-1904 Filed 1-19-77;8:45 a.m.]

[Docket No. CP77-91]

PANHANDLE EASTERN PIPE LINE CO.

Application

JANUARY 6, 1977.

Take notice that on December 15, 1976, Panhandle Eastern Pipe Line Company (Applicant), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP77-91 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the acquisition by purchase of a natural gas pipeline system from Baca Gas Gathering System, Inc. (Baca), for a price of $400,000, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it seeks authorization to purchase the following facilities located in Baca County, Colorado, and Morton County, Kansas:

1. All of Baca's plant and equipment, consisting of field pipelines, field compressor station equipment, field measuring and regulating equipment, miscellaneous equipment and intangible plant costs.

2. All of Baca's right, title and interest in and to fee simple interests, easements and rights-of-way surface leases incidental to the use of the aforementioned equipment and the operation of the natural gas pipeline system.

3. All of Baca's franchises and consents incidental to its conduct of the natural gas pipeline system.

4. All of Baca's interests in gas purchase contracts with producers, gas processing and conditioning agreements and other contracts and agreements.

Applicant states that the facilities include 58.1 miles of pipeline, consisting of 9.7 miles of 10-inch, 21.7 miles of 8-inch, 3.2 miles of 6-inch, 7.8 miles of 4-inch and 15.7 miles of 3-inch pipeline. In addition, Applicant indicates that it would purchase all of Baca's interest in gas purchase contracts covering 25,006.31 acres out of a total 50,146.81 acres dedicated to interstate markets in Baca County, Colorado, and any future producer contracts entered into by Baca.

Applicant states that the cost of acquisition would be $400,000, or an amount estimated to equal the book value of Baca's assets on the date of authorization by the Commission. Applicant states that it would finance this amount from general funds. Further, Applicant states that it plans to spend $185,000 to upgrade the subject facilities in order to bring them into compliance with the Natural Gas Pipeline Safety Act of 1968.

Applicant states that in recent years Baca has been relatively inactive in acquiring new gas supplies and that the prospect of Baca's acquiring additional gas supplies that will be sold to Applicant for resale appears minimal. It is further stated that the proposed extension of Applicant's system into southeastern Colorado will allow Applicant to acquire new reserves and stimulate additional drilling in the region.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 28, 1977, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to interevne is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise adivsed, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-1902 Filed 1-19-77;8:45 am]

[Docket Nos. CP77-100, CP77-101 and CP77-102]

TENNECO ATLANTIC PIPELINE CO.

Applications and Consolidation

JANUARY 6, 1977.

Take notice that on December 20, 1976, Tenneco Atlantic Pipeline Company (Applicant), P.O. Box 2511, Houston, Texas 77001, filed applications in Docket Nos. CP77-100, CP77-101 and CP77-102 pursuant to provisions of the Natural Gas Act and Executive Order No. 10485 requesting appropriate authorization to construct, operate and maintain natural gas facilities at the international boundary between the United States and Canada and in the states of Maine, New Hampshire, Massachusetts, New York and Pennsylvania, to import natural gas from Canada, and to sell the subject imported gas to Tennessee Gas Pipeline Company, a Division of Tenneco, Inc. (Tennessee), all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

Applicant requests the following: (1) In Docket No. CP77-102 authorization pursuant to Executive Order No. 10485 to construct, operate, connect and maintain natural gas facilities at the international boundary between the United States and Canada at a point near Calais, Maine, for the purpose of importing a maximum of 1,140,000 Mcf and an average of 971,672 Mcf of natural gas per day from Canada into the United States; (2) In Docket No. CP77-101 authorization pursuant to Section 3 of the Natural Gas Act to import the subject natural gas into the United States from Canada; and (3) In Docket No. CP77-100 a certificate of public convenience and necessity pursuant to section 7(c) of the Natural Gas Act authorizing the construction of a 36-inch pipeline from a point near Calais, Maine, through the states of Maine, New Hampshire and Massachusetts to a point near Albany, New York, a 30-inch pipeline from a point near Albany, New York, to a point near Milford, Pennsylvania, six compressor stations, and metering and other appurtenant facilities to the pipeline and authorizing the transportation and sale of the imported natural gas to Tennessee at an estimated cost of $4.57 per Mcf in 1984.

Applicant states that Tenneco LNG Inc. (Tenneco LNG) has entered into a contract (LNG Contract) with Societe Nationale SONATRACH (Sonatrach), the national oil and gas company of Algeria, dated October 4, 1976, whereunder Tenneco LNG would purchase 100 billion thermies of liquefied natural gas (LNG) per year for a primary term of 20 years. Initial deliveries under the LNG Contract would begin in late 1981 and the 20 year term would commence when full delivery levels are reached, estimated to be mid-1983. The LNG to be purchased from Sonatrach would be produced from any and all Algerian gas fields, existing and future, and Sonatrach would gather and liquefy the natural gas and load the resulting LNG onto cyrogenic tankers. The price under the contract is the higher of the minimum price (defined to be $1.30 U.S. dollars per million Btu's as of July 1, 1975, subject to escalation to reflect devaluation of the U.S. dollar in relation to certain European currencies) and the invoicing price (determined by the average price of No. 2 and No. 6 fuel oil in New York Harbor).

Applicant states that the purchased LNG would be loaded aboard cyrogenic tankers at one or more Algerian ports and shipped to Saint John, New Brunswick, Canada. It is estimated that a total of eight tankers each with a capacity of 125,000 cubic meters would be required for the proposed shipments. Applicant indicates that arrangements for shipping would be shared equally by Tenneco LNG and Sonatrach so that each company would be responsible for four tankers. Applicant further indicates that Tenneco LNG has entered into a letter of intent with Canadian Pacific Ltd. for the construction and operation of facilities near Saint John for the terminalling and vaporization of the LNG for the 20-year term of the contract. It is indicated that after unloading into storage and vaporization at the planned Saint John terminal, the vaporized LNG would be delivered into pipeline facilities to be constructed, owned and operated by Trans-Canada Pipelines Limited (TransCanada), or its designee, and transported to the Canada-United States border near Calais, Maine, so as to interconnect with the facilities proposed in the instant applications.

Applicant, in Docket No. CP77-101, proposes to import 971,672 Mcf of natural gas on an average day from Canada. The volumes to be received and purchased at the border are estimated in the following manner: Pursuant to the LNG Contract Tenneco LNG would purchase 100 billion thermies or approximately 396.8 trillion Btu's. After cargo weathering, tanker heel and terminal fuel and losses, this volume is reduced to 382.3 trillion Btu's per year of natural gas available for sale at the tailgate of the planned LNG facility. Since the anticipated Btu content of the imported gas is 1,060 Btu's per Mcf, this volume is equal to 360,660,000 Mcf per year or 988,110 Mcf per day. Of this volume 83 percent or 820,131 Mcf per day would be sold to Applicant directly at the Canada-United States border. Seventeen percent of the volume would be sold to Canadian Lowell Gas, Ltd. (Lowell), on the high seas. Of this seventeen percent, or approximately 167,979 Mcf, approximately 16,438 Mcf of gas would be resold to New England LNG Inc., for transportation to various points by cyrogenic trunks and the other 151,541 Mcf would be resold to Applicant at the Canada-United States border. Therefore, it is indicated, a total average volume of 971,672 Mcf of natural gas per day would be sold to Applicant at the border. Applicant requests in Docket No. CP77-101 authorization to import up to 1,140,000 Mcf of natural gas per day so as to allow for operating flexibility. Applicant states that the price to be paid by both Lowell and Tenneco LNG would be determined on a cost-of-service basis.

In Docket No. CP77-102 Applicant requests authority to construct, operate, connect and maintain facilities on the Canada-United States border generally northwest of Calais, Maine. The proposed facilities include pipeline, a block valve, metering facilities and facilities appurtenant thereto. The purpose of the proposed border facilities would be to import natural gas proposed in Docket No. CP77-101.

In Docket No. CP77-100. Applicant proposes to construct and operate the following:

(a) Approximately 391 miles of 36-inch pipeline extending from the Maine-New Brunswick border near Calais, Maine, to a point near Albany, New York;

(b) Approximately 107 miles of 30-inch pipeline extending from the terminus of the 36-inch pipeline to a point near Milford, Pennsylvania;

(c) Four 17,000 HP compressor stations, one of which would be located one mile from the origin of the proposed 36-inch pipeline near Calais, Maine, and the others would be placed approximately every 92 miles along that pipeline;

(d) Two 7,000 HP compressor stations one to be located near the origin of the 30-inch pipeline near Albany, New York, and the other near the terminus of that pipeline near Milford, Pennsylvania;

(e) Three delivery points to be located at interconnections between Applicant's proposed pipeline and the facilities of Tennessee at Tennessee's (1) Concord Lateral near Concord, New Hampshire (2) Compressor Station No. 254 near Albany, New York, and (3) 300 Line near Main Line Valve 324 near Milford, Pennsylvania.

(f) Metering stations at each of the three delivery points; and

(g) Miscellaneous facilities appurtenant to the above.

In addition, Applicant proposes to sell the imported volumes, minus compressor fuel and line losses, or approximately 958,152 Mcf on average and a maximum of 1,123,666 Mcf per day, to Tennessee at the three proposed delivery points. The estimated cost of natural gas to Tennessee is $4.57 per Mcf as of 1984 expressed in 1984 dollars.

Applicant states that the cost of the proposed facilities would be $546,366,000 based on 1976 dollars. This price includes, it is stated, total direct costs including overheads, regulatory fees and engineering costs. Applicant states that it plans to construct the 36-inch pipeline and related facilities during 1980 and 1981 in order to accommodate the volumes expected to be delivered during the start-up period commencing in late 1981. The remaining facilities would be constructed during 1982, it is indicated, so that all facilities would be ready for service by mid-1983 when full deliveries under the LNG Contract are expected to begin. Applicant proposes to finance the facilities through three issues of long-term debt in the amounts of $175 million, $215 million and $100 million, all at an interest rate of 9.5 percent, to be issued and sold in October 1980, October 1981 and October 1982, respectively. Additional financing, it is stated, would be obtained from the sale of one-year term notes at an estimated cost of 8% per year and the issuance of common stock. It is estimated that $398,168,000 in short-term notes will be issued in the construction phase ending in mid-1981, and an additional $124,738,000 will be issued in the build-up period between October 1, 1981, and December 31, 1982, with minor amounts issued thereafter. Total common equity issued is expected to equal $206,577,000 by the end of 1982, it is indicated, and would be issued so as to maintain a capitalization of 70 percent debt and 30 common stock during the build-up and construction periods. All common stock would be sold to Tenneco, Inc.

Applicant indicates that the proposed importation of natural gas, the proposed facilities and the proposed sale of natural gas to Tennessee are needed to augment Tennessee's overall system gas supply to meet the base period requirements of its Priority 1 and 2 customers. It is indicated that Tennessee is presently curtailing service of Priority 2 customers and that it will be required to curtail Priority 1 customers beginning in the 1981-82 winter season unless the supplemental proposed gas service is made available.

Concurrently herewith a notice is being issued in Docket No. CP77-103 of an application filed by Tennessee pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of facilities to receive the gas proposed to be sold by Applicant. Since the instant applications and the application in Docket No. CP77-103 may involve common questions of law or fact, the proceedings on all of said applications are consolidated for hearing.

Any person desiring to be heard or to make any protest with reference to the applications in Docket Nos. CP77-100, CP77-101 and CP77-102 should on or before January 31, 1977, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by Sections 3, 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on these applications if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and other authorizations is required by the public convenience and

necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-1906 Filed 1-19-77;8:45 am]

[Docket No. CP77-103]

TENNESSEE GAS PIPELINE CO., A DIVISION OF TENNECO INC.

Application

JANUARY 6, 1977.

Take notice that on December 20, 1976, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Applicant), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP77-103 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities and the modification of its existing pipeline system to enable it to receive natural gas, purchased from Tenneco Atlantic Pipeline Company (TAPCO), a wholly owned subsidiary of Tenneco Inc. at points near Concord, New Hampshire, Albany, New York, and Milford, Pennsylvania, and authorizing the delivery of the subject natural gas to its existing customers, all as more fully set forth in the application on file with the Commission and open to public inspection.

Applicant states that the instant application is part of a comprehensive project for securing an additional gas supply to meet the high priority requirements of Applicant's existing customers. Applicant states that by a companion application filed pursuant to Section 3 of the Natural Gas Act in Docket No. CP77-101, TAPCO is requesting authorization to import from Canada up to 1,140,000 Mcf of natural gas per day and 971,672 Mcf of natural gas on an average day. Applicant further states that the gas so imported would be purchased by TAPCO from Tenneco LNG Inc. (Teneco LNG) and Canadian Lowell Gas Ltd. at the international boundary between the United States and Canada near Calais, Maine. The subject natural gas, it is indicated, would be purchased by Tenneco LNG from Societe Nationale SONATRACH, the national oil and gas company of Algeria, and shipped by cryogenic tankers from Algerian ports to a proposed liquefied natural gas (LNG) storage and vaporization facility on the east coast of Canada near Saint John, New Brunswick. From Saint John, it is stated, the subject gas would be transported in a vaporized state by TransCanada PipeLines Limited for delivery and sale to TAPCO at the international boundary. Applicant further states that by companion applications filed pursuant to Section 7(c) of the Natural Gas Act in Docket No. CP77-100 and pursuant to Executive Order No. 10845 in Docket No. CP77-102, TAPCO is requesting authorization to construct and maintain facilities and to transport and sell the subject natural gas volumes, minus transportation losses and compressor fuel, to applicant at three proposed points of delivery.

It is stated that the three points of delivery and interconnection would be (1) at Applicant's Concord Lateral, near Concord, New Hampshire (Concord Delivery Point); (2) at Applicant's Compressor Station No. 254 near Albany, New York (Albany Delivery Point); and (3) at a point on Applicant's 300 Line near Main Line Valve 324 near Milford, Pennsylvania (Milford Delivery Point). Pursuant to a sales contract between Applicant and TAPCO, dated December 15, 1976, TAPCO would sell and deliver to Applicant up to 1,123,666 Mcf of natural gas per day and an average of 958,152 Mcf of natural gas per day at these three points. Applicant further indicates that delivery of total contract quantities would not be attained until mid-1983 and that the delivery of partial contract volumes would begin with the "build-up" phase of TAPCO's construction in late 1981.

Applicant requests authorization for the construction or modification and the operation of the following: (a) Three delivery points as indicated above; (b) the replacement of approximately 2,000 feet of 24-inch pipeline between Applicant's Main Line Valve 236 and 237 for the purpose of obtaining an operating pressure of 760 psig; (c) the installation of pressure regulating equipment near the Albany Delivery Point for the protection of westerly flow at 760 psig and the secondary regulation of easterly flow; and, (d) station turnarounds, that is, the reversal of suction and discharge lines and piping alterations at Applicant's Compressor Station Nos. 237, 241, 245, 249 and 254 on the pipeline running from near Clifton Springs, New York, to a point near Albany, New York, and at Compressor Station Nos. 313, 315, 317 and 321 on the pipeline running from near Coudersport, Pennsylvania, to Milford, Pennsylvania.

Applicant estimates that the total cost of the proposed facilities and modifications would be $3,175,000 and states that this amount would be financed from the general funds of the company. Applicant indicates that a portion of the facilities proposed are scheduled for completion in 1981 to allow for partial deliveries during the build-up phase of TAPCO's pipeline construction and that completion of all facilities is scheduled for 1982 to correspond to the expected date of full natural gas deliveries from TAPCO.

Applicant states that the gas it proposes to purchase from TAPCO would be treated as an integral part of its overall system gas supply and would be sold to its existing customers under existing sales rate schedules and contracts and would be allocated among its customers under Applicant's curtailment plan. Applicant states that it is presently curtailing service to some Priority 2 customers and without the proposed supplemental gas supply it projects that it would be required to curtail service to some of its Priority 1 customers beginning in the 1981-82 winter season. Applicant further indicates that even if the proposed supplemental gas supply is available on schedule, it will be required to continue curtailments to some of its Priority 2 customers through at least 1986.

The application states that Applicant proposes to record its payments to TAPCO in Account No. 803 of the Uniform System of Accounts for Natural Gas Companies, and to reflect such payments in Applicant's purchased gas adjustment filings. Applicant believes that the inclusion of such payments is in accord with its tariff and § 154.38(d)(4) of the Regulations under the Natural Gas Act (18 CFR 154.38(d)(4)); however, if the Commission should deem a waiver of said regulation necessary for the inclusion of such payments, Applicant requests such a waiver.

Concurrently herewith a notice is being issued in Docket Nos. CP77-100, CP77-101, and CP77-102 of applications filed by TAPCO pursuant to Sections 7(c) and 3 of the Natural Gas Act and Executive Order No. 10485, respectively, for authorizations to construct and operate facilities and to import, transport, and sell natural gas. Since the instant application and those in Docket Nos. CP77-100, CP77-101, and CP77-102 may involve common questions of law or fact, the proceedings on all of said applications are consolidated for hearing by the notice issued concurrently herewith in Docket No. CP77-100, et al.

Any person desiring to be heard or to make any protest with reference to the application in Docket No. CP77-102 should on or before January 31, 1977, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-1898 Filed 1-19-77;8:45 am]

[Docket No. CP77-86]

TRANSCONTINENTAL GAS PIPE LINE CORP.

Application

JANUARY 6, 1977.

Take notice that on December 13, 1976, Transcontinental Gas Pipe Line Corporation (Applicant), P.O. Box 1396, Houston, Texas 77001, filed in Docket No. CP77-86 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon natural gas pipeline facilities in Forsyth and Cherokee Counties, Georgia, by sale to Atlanta Gas Light Company (Atlanta), all as more fully set forth in the application on file with the Commission and open to public inspection.

Applicant states that it proposes to abandon facilities originally certificated by order of the Commission in Docket No. CP64-270. The subject facilities, it is stated, consist of approximately 9.68 miles of 16-inch and 17.628 miles of 12-inch pipeline running approximately from Applicant's Mile Post 27.09 of the Ball Ground Lateral of the Georgia Extension to Mile Post 54.398 near Ball Ground, Georgia. In addition, Applicant states that two measuring and regulating stations and appurtenant facilities would also be abandoned.

It is indicated that Applicant will sell subject facilities to Atlanta at the net book value of the facilities on the date of sale plus any related income tax liability that would accrue to Applicant and the cost associated with severing the facilities. The total selling price is estimated by the Applicant to be $1,418,000 on December 31, 1976.

It is stated that the subject facilities or duplicate facilities are required by Atlanta in order to distribute liquefied natural gas (LNG) to the Atlanta system from a planned LNG facility to be located adjacent to the Applicant's line in Cherokee County, Georgia. It is further indicated that Atlanta is the only customer of the Applicant that is served by the subject pipeline facilities and, therefore, that the abandonment can be accomplished without adverse effect upon Applicant's other customers.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 28, 1977, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-1900 Filed 1-19-77;8:45 am]

[Docket No. RP75-24]

UNITED GAS PIPE LINE COMPANY (MONROE UTILITIES COMMISSION)

Settlement Agreement

JANUARY 6, 1977.

Take notice that on December 28, 1976 the Utilities Commission of the City of Monroe, Louisiana (Monroe) filed a proposed settlement agreement and a motion that it be approved. The provisions of the settlement agreement would effect a termination both of the instant proceeding and of a proceeding pending before the United States Court of Appeals for judicial review of the Commission's orders in this docket.

Pursuant to the emergency exemption from curtailment which was prescribed in Opinion No. 647, 49 FPC 179, Monroe received emergency deliveries of natural gas from United Gas Pipe Line Company (United) for two years. Such emergency takes were subject to a repayment obligation. By orders issued in this docket on July 20, 1976 and September 17, 1976, the Commission found that an emergency no longer existed, that the emergency deliveries should terminate, and that Monroe should repay the volumes taken pursuant to the emergency exemption. Subsequently, Monroe petitioned for judicial review of the Commission orders in the Court of Appeals for the Fifth Circuit.

The instant settlement proposal would resolve the repayment issue. Therein Monroe recognizes its payback obligation in the volume stated in the Commission's orders, and would undertake satisfaction of the obligation by waiver of that portion of its entitlement under United's curtailment plan designated for consumption in its power plant. Repayment at that rate would continue until the obligation has been satisfied, however, it would not require Monroe to reduce its takes below that portion of its curtailment entitlement designated for non-power-plant usage. Upon approval by the Commission of the settlement proposal, Monroe would withdraw its petition for judicial review and terminate the court proceeding.

Any person desiring to be heard or to make protest with reference to the said settlement proposal should, on or before January 21, 1977, file with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the proper action to be taken but will not serve to make the protestants parties to a proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules. The settlement proposal is on file with the Commission and is available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-1894 Filed 1-19-77;8:45 am]

[Docket No. CP77-90]

UNITED GAS PIPE LINE CO.

Application

JANUARY 6, 1977.

Take notice that on December 15, 1976, United Gas Pipe Line Company (Applicant), 1500 Southwest Tower, Houston, Texas 77002, filed in Docket No. CP77-90 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing farm tap service to Arthur R. McElroy pursuant to the terms of a right-of-way easement entered into between Applicant and Mr. McElroy, all as more fully set forth in the application on file with the Commission and open to public inspection.

It is stated that Arthur R. McElroy granted Applicant an easement through his lands in Red River Parish, Louisiana, to facilitate the construction of Applicant's Agua Dulce-Perryville to Bistineau Storage 24-inch line. In partial consideration for said easement, it is indicated, Applicant agreed to deliver gas to grantor-landowner through a local gas

distribution company, Louisiana Gas Service Company (Louisiana Gas).

Applicant requests authorization to serve Mr. McElroy through Louisiana Gas. The application states that Louisiana Gas has advised Applicant of its ability to provide the service from within the seasonal volumetric limitation established by the Commission for its purchases from Applicant. Applicant further indicates that a tap is already in place and no new facilities need be constructed by Applicant. It is estimated that deliveries would be about 80 Mcf of natural gas per year.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 28, 1977, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-1901 Filed 1-19-77;8:45 am]

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

[Notice of Designation Number A398]

ARKANSAS

Designation of Emergency Areas

The Secretary of Agriculture has determined that farming, ranching, or aquaculture operations have been substantially affected in the following Arkansas Counties as a result of drought during the 1976 crop year.

Johnson	Yell
Searcy	

Therefore, the Secretary has designated this area as eligible for emergency loans pursuant to the provisions of the Consolidated Farm and Rural Development Act, as amended by Pub. L. 94-68, and the provisions of 7 CFR 1832.3(b).

Applications for emergency loans must be received by this Department no later than February 3, 1977, for physical losses and September 6, 1977, for production losses, except that qualified borrowers who receive initial loans pursuant to this designation may be eligible for subsequent loans. The urgency of the need for loans in the designated area makes it impracticable and contrary to the public interest to give advance notice of proposed rulemaking and invite public participation.

Done at Washington, D.C., this 13th day of January 1977.

FRANK B. ELLIOTT,
Administrator,
Farmers Home Administration.

[FR Doc.77-1842 Filed 1-19-77;8:45 am]

[Notice of Designation Number A366]

MINNESOTA

Designation of Emergency Areas

The Secretary of Agriculture has determined that farming, ranching, or aquaculture operations have been substantially affected in the following Minnesota Counties as a result of drought during the 1976 crop year.

Aitkin	Lac qui Parle
Becker	Lincoln
Beltrami	Lyon
Benton	Morrison
Big Stone	Otter Tail
Brown	Pope
Carlton	Redwood
Cass	Stearns
Chippewa	Stevens
Chisago	Swift
Clearwater	Todd
Crow Wing	Traverse
Douglas	Wadena
Hubbard	Yellow Medicine
Isanti	

Therefore, the Secretary has designated this area as eligible for emergency loans pursuant to the provisions of the Consolidated Farm and Rural Development Act, as amended by Pub. L. 94-68, and the provisions of 7 CFR 1832.3(b).

Applications for emergency loans must be received by this Department no later than March 7, 1977, for physical losses and October 5, 1977, for production losses, except that qualified borrowers who receive initial loans pursuant to this designation may be eligible for subsequent loans. The urgency of the need for loans in the designated area makes it impracticable and contrary to the public interest to give advance notice of proposed rulemaking and invite public participation.

Done at Washington, DC, this 13th day of January 1977.

FRANK B. ELLIOTT,
Administrator,
Farmers Home Administration.

[FR Doc.77-1843 Filed 1-19-77;8:45 am]

[Notice of Designation Number A426]

NEW YORK

Designation of Emergency Areas

The Secretary of Agriculture has determined that farming, ranching, or aquaculture operations have been substantially affected in the following New York Counties as a result of excessive rainfall May 1 through October 31, 1976.

Jefferson	Ontario

Therefore, the Secretary has designated this area as eligible for emergency loans pursuant to the provisions of the Consolidated Farm and Rural Development Act, as amended by Pub. L. 94-68, and the provisions of 7 CFR 1832.3(b) including the recommendation of Governor Hugh L. Carey that such designation be made.

Applications for emergency loans must be received by this Department no later than March 10, 1977, for physical losses and October 7, 1977, for production losses, except that qualified borrowers who receive initial loans pursuant to this designation may be eligible for subsequent loans. The urgency of the need for loans in the designated area makes it impracticable and contrary to the public interest to give advance notice of proposed rulemaking and invite public participation.

Done at Washington, DC, this 14th day of January 1977.

FRANK B. ELLIOTT,
Administrator, Farmers
Home Administration.

[FR Doc.77-1963 Filed 1-19-77;8:45 am]

[Notice of Designation Number A368]

WISCONSIN

Designation of Emergency Areas

The Secretary of Agriculture has determined that farming, ranching, or aquaculture operations have been substantially affected in the following Wisconsin Counties as a result of drought during the 1976 crop year.

Ashland	Marathon
Bayfield	Oneida
Burnett	Price
Clark	Rusk
Douglas	Sawyer
Florence	Shawano
Forest	Taylor
Iron	Washburn
Langlade	Waushara
Lincoln	Wood

Therefore, the Secretary has designated this area as eligible for emergency loans pursuant to the provisions of the Consolidated Farm and Rural Development Act, as amended by Pub. L. 94-68, and the provisions of 7 CFR 1832.3(b).

Applications for emergency loans must be received by this Department no later than March 7, 1977, for physical losses and October 5, 1977, for production losses, except that qualified borrowers who receive initial loans pursuant to this designation may be eligible for subsequent loans. The urgency of the need for loans in the designated area makes it impracticable and contrary to the public interest to give advance notice of proposed rulemaking and invite public participation.

Done at Washington, D.C., this 14th day of January 1977.

FRANK B. ELLIOTT,
Administrator, Farmers
Home Administration.

[FR Doc.77-1964 Filed 1-19-77;8:45 am]

Food and Nutrition Service

CHILD CARE FOOD PROGRAM

Food Cost Factors for the Period January 1 through June 30, 1977

Pursuant to § 226.12(h) of the regulations governing the Child Care Food Program (7 CFR Part 226), notice is hereby given that food cost factors for meals served to children attending family and group day care homes whose sponsoring organizations participate in the Child Care Food Program during the period January 1–June 30, 1977, shall be as follows: (a) 42.25 cents for each lunch or supper; (b) 23.75 cents for each breakfast; and (c) 14.50 cents for each supplement.

The above factors may be used by sponsoring organizations for all family and group day care homes under their jurisdiction, in lieu of maintaining records on the actual cost of food used. These factors are adjusted semi-annually to reflect changes in the Consumer Price Index series for food away from home.

The above factors represent a 2.814 percent increase in the factors prescribed for the period ending December 31, 1976. This represents the percent increase during the six-month period June–November 1976 (from 184.8 in May 1976 to 190.0 in November 1976) in the series for food away from home of the Consumer Price Index, published by the Bureau of Labor Statistics of the Department of Labor.

Definitions. The terms used in this notice shall have the meanings ascribed to them in the regulations governing the Child Care Food Prograam (7 CFR Part 226).

(Catalog of Federal Domestic Assistance Program No. 10.558, National Archives Reference Service.)

Effective date: This notice shall be effective as of January 1, 1977.

Dated: January 18, 1977.

RICHARD L. FELTER,
Assistant Secretary.

[FR Doc.77-2048 Filed 1-19-77;8:45 am]

Forest Service

QUETICO-SUPERIOR COMMITTEE

Meeting

The President's Quetico-Superior Committee will meet beginning at 9:00 a.m., March 17, 1977, at the Radisson Hotel, Duluth, Minnesota to discuss management of Federal land along the Minnesota-Canadian border.

The meeting will be open to the public. Persons who wish to attend should notify the Forest Supervisor, Superior National Forest, P.O. Box 338, Duluth, Minnesota, 55801, phone number (218) 727-6692. Written statements may be filed with the committee before or after the meeting.

The committee has established the following rules for public participation: Public participation will be limited to a period designated for open discussion following completion of topics on the agenda. To the extent time permits, interested persons may be permitted by the committee chairman to present oral statements.

Dated: January 14, 1977.

STEVE YURICH,
Regional Forester.

[FR Doc.77-1878 Filed 1-19-77;8:45 am]

SUPERIOR NATIONAL FOREST ADVISORY COMMITTEE

Meeting

The Superior National Forest Advisory Committee will meet at 10:00 AM on February 24, 1977, in the Multi-Media Room, St. Louis County Heritage and Arts Center (Depot), Duluth, Minnesota.

The purpose of this meeting is to discuss current issues on the Superior National Forest, fire season "76" and predictions for 1977, plus planning for the next two meetings of the Advisory Committee.

The meeting will be open to the public. Persons who wish to attend should notify James F. Torrence, Forest Supervisor, Superior National Forest, P.O. Box 338, Duluth, Minnesota 55801. Written statements may be filed with the committee before or after the meeting.

JAMES F. TORRENCE,
Forest Supervisor.

JANUARY 12, 1977.

[FR Doc.77-1907 Filed 1-19-77;8:45 am]

Rural Electrification Administration

COLORADO-UTE ELECTRIC ASSOCIATION, INC.

Draft Environmental Statement

Notice is hereby given that the Rural Electrification Administration intends to prepare a Draft Environmental Impact Statement in accordance with section 102(2)(C) of the National Environmental Policy Act of 1969 in connection with a proposed project of Colorado-Ute Electric Association, Inc., P.O. Box 1149, Montrose, Colorado 81401, involving REA financing. The Statement covers a 115 kV transmission line between Lake City and Creede, Colorado, and a substation at Creede.

Interested persons are invited to submit comments which may be helpful in preparing the Draft EIS.

Comments should be forwarded to the Assistant Administrator, Electric, Rural Electrification Administration, U.S. Department of Agriculture, Washington, D.C. 20250, with a copy to the borrower whose address was given above. Additional information may be obtained at the borrower's office during regular business hours.

Dated: at Washington, D.C. this 13th day of January, 1977.

DAVID A. HAMIL,
Administrator, Rural
Electrification Administration.

[FR Doc.77-1845 Filed 1-19-77;8:45 am]

PACIFIC NORTHWEST GENERATING COMPANY

Draft Environmental Statement

Notice is hereby given that the Rural Electrification Administration intends to prepare a Draft Environmental Impact Statement in accordance with section 102(2)(C) of the National Environmental Policy Act of 1969 in connection with a proposed loan application from Pacific Northwest Generating Company (PNGE), P.O. Box 48, Hermiston, Oregon 97838. PNGC is a cooperative corporation with 14 members which are distribution-type cooperatives financed by REA. The Statement will cover participation by PNGC in a 500 NW coal-fired generating unit at the Boardman site in Oregon. The generating plant is to be constructed by Portland General Electric Company approximately 11 miles southwest of Boardman in Morrow County, Oregon. PNGC proposes to the a 10 percent participant in the project.

Interested persons are invited to submit comments which may be helpful in preparing the Draft EIS.

Comments should be forwarded to the Assistant Administrator-Electric, Rural Electrification Administration, U.S. Department of Agriculture, Washington, D.C. 20250, with a copy to the borrower whose address was given above. Additional information may be obtained at the borrower's office during regular business hours.

Dated: at Washington, D.C. this 13th day of January, 1977.

DAVID A. HAMIL,
Administrator, Rural
Electrification Administration.

[FR Doc.77-1846 Filed 1-19-77;8:45 am]

CIVIL RIGHTS COMMISSION

SOUTH CAROLINA ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a planning meeting of the South Carolina Advisory Committee (SAc) of the Commission will convene at 10:30 am. and end at 3:30 pm. on February 4, 1977, at the Mark I Motel, Private Dining Room, 515 S. Main, Marion, South Carolina 29571.

Persons wishing to attend this open meeting should contact the Committee

Chairperson, or the Southern Regional Office of the Commission, Citizens Trust Bank Bldg. Room 362, 75 Piedmont Avenue, NE., Atlanta, Georgia 30303.

The purpose of this meeting will be to make decision on target city of project on Public Facilities; tour of city; briefing on data of city; outline of additional data required, adoption of schedule of project.

This meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., January 17, 1977.

ISAIAH T. CRESWELL, JR.,
Advisory Committee Management Officer.

[FR Doc.77-2116 Filed 1-19-77;8:45 am]

CIVIL SERVICE COMMISSION

PRESIDENT'S COMMISSION ON WHITE HOUSE FELLOWSHIPS

Public Availability of Report of Activities

Pursuant to section 10(d) of the Federal Advisory Committee Act (Pub. L. 92-463) and OMB Circular A-63 of March 27, 1974, the President's Commission on White House Fellowships has prepared a report on its activities during fiscal year 1976.

The report is available for public inspection and copying at the following location:

U.S. Civil Service Commission
President's Commission on White House Fellowships
1900 E Street, N.W.
Washington, D.C. 20415

DONALD J. BIGLIN,
Advisory Committee Management Officer, United States Civil Service Commission.

[FR Doc.77-1931 Filed 1-19-77;8:45 am]

DEPARTMENT OF COMMERCE

Domestic and International Business Administration

MANAGEMENT-LABOR AND IMPORTERS TEXTILE ADVISORY COMMITTEES

Change of Dates and Times for Meetings

On December 23, 1976, there were published in the FEDERAL REGISTER (41 FR 55921) notices dated December 17, 1976 announcing meetings of the Management-Labor and Importers' Textile Advisory Committees in New York City on February 9 and 10, respectively.

The purpose of this notice is to announce that the dates and times of these two meetings have been changed to the following:

Importers Textile Advisory Committee, February 9, 1977, 2:00 p.m. Management-Labor Textile Advisory Committee, February 10, 1977, 10:30 a.m.

Both meetings will be held in Room 3105, Federal Office Building, 26 Federal Place, New York, New York 10007.

Dated: January 17, 1977.

ARTHUR GAREL,
Director, Office of Textiles.

[FR Doc.77-2065 Filed 1-19-77;8:45 am]

Maritime Administration

CONSTRUCTION OF FOUR LASH TYPE VESSELS MA DESIGN C9-S-81f

Computation of Foreign Cost; Intent

Notice is hereby given of the intent of the Maritime Subsidy Board, pursuant to the provisions of section 502(b) of the Merchant Marine Act, 1936, as amended, to compute the estimated foreign cost of the construction of four LASH type vessels, MA Design C9-S-81f.

Any person, firm or corporation having any interest (within the meaning of section 502(b)) in such computations may file written statements by the close of business on February 18, 1977, with the Secretary, Maritime Subsidy Board, Maritime Administration, Room 3099B, Department of Commerce Building, 14th & E Streets, N.W., Washington, D.C. 20230.

Dated: January 17, 1977.

By Order of the Maritime Subsidy Board, Maritime Administration.

JAMES S. DAWSON, JR.,
Secretary.

[FR Doc.77-2090 Filed 1-19-77;8:45 am]

[Docket No. S-537]

STATES STEAMSHIP CO.

Application

Notice is hereby given that States Steamship Company (States) has filed an amendment dated December 28, 1976, to its application of May 10, 1974, as amended, for a new 20-year Operating-Differential Subsidy Contract to cover the operation of its vessels on Trade Route No. 29 U.S. Pacific ports/Far East). Notice of the original application was published in the FEDERAL REGISTER on April 30, 1975 (40 FR 18827), and a Notice of Amended Application was published on June 13, 1975 (40 FR 25242).

The amendment of December 28, 1976, proposes to change the service description relevant to the services to be performed by States by adding calls at ports in the Middle East on the Persian Gulf and the Gulf of Oman, including without limitation, ports in Saudi Arabia, Bahrain, Kuwait, Oman, Qatar, the United Arab Emirates, Iran, Iraq, and any other nation which henceforth may come into being in the areas extending from Bandar Abbas through the Persian Gulf to the southwestern tip of the Saudi Arabian peninsula. States intends, if the application is approved, to make approximately twelve to thirteen sailings annually to these ports with four Ro/Ro vessels and, if the cargo should dictate, additional sailings with the four Ro/Ro vessels as well as the mariner type vessels in States' fleet.

Interested parties may inspect this amendment in the Office of the Secretary, Maritime Subsidy Board, Room 3099-B, Department of Commerce Building, 14th and E Streets, N.W. Washington, D.C. 20230.

Any person, firm or corporation having an interest in such application who desires to offer views and comments thereon for consideration by the Maritime Subsidy Board should submit them in writing, in triplicate, to the Secretary, Maritime Subsidy Board, Washington, D.C. 20230, by the close of business on February 7, 1977.

The Maritime Subsidy Board will consider these views and comments, and take such action with respect thereto as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 11.504, Operating-Differential Subsidies (ODS)).

Dated: January 17, 1977.

JAMES S. DAWSON, JR.,
Secretary.

[FR Doc.77-2091 Filed 1-19-77;8:45 am]

National Oceanic and Atmospheric Administration

[MMPAH-#2-1976]

RECOMMENDED DECISION ON INCIDENTAL TAKING OF MARINE MAMMALS IN THE COURSE OF YELLOWFIN TUNA PURSE SEINE FISHING OPERATIONS

Receipt

On October 14, 1976, the National Oceanic and Atmospheric Administration (NOAA) proposed regulations on the taking of marine mammals incidental to yellowfin tuna purse seining in 1977, and gave notice of a hearing thereon, 41 FR 45015-45019.

Following a period for public review, a hearing (Doc. MMPAH-#2-1976) commenced on November 15, 1976, and continued until December 22, 1976. The hearing was presided over by an Administrative Law Judge, the Honorable Frank W. Vanderheyden.

The Director, National Marine Fisheries Service, announces that on January 18, 1977, he received a recommended decision from Judge Vanderheyden.

The decision is available for review in the Office of the Director, National Marine Fisheries Service, 3300 Whitehaven Street, N.W., Washington, D.C. and the Office of the Regional Director, National Marine Fisheries Service, Southwest Region, 300 South Ferry Street, Terminal Island, California.

WINFRED H. MEIBOHM,
Associate Director, National Marine Fisheries Service.

JANUARY 17, 1977.

[FR Doc.77-2089 Filed 1-19-77;8:45 am]

MYSTIC MARINELIFE AQUARIUM

Receipt of Application for Public Display Permit

Notice is hereby given that the following Applicant has applied in due form for a Permit to take fur seals for public display as authorized by the Fur Seal Act of 1966 (16 U.S.C. 1151-1187), and the Regulations Governing the Taking of Fur Seals (50 CFR Part 215).

Mystic Marinelife Aquarium, Mystic, Connecticut 06355, has applied to take ten (10) Northern fur seals (*Callorhinus ursinus*) for public display.

The animals will be captured on St. Paul Island, Pribilof Islands, by National Marine Fisheries Service personnel.

The animals will be transported to the Mystic facility by commercial aircraft and truck.

The animals will be displayed in a new seal exhibit under construction at the facilities. The pool area is 2,050 square feet by 8 feet deep. The display will provide haul-out areas in the form of beaches, intertidal areas and islands totaling 905 square feet. In addition, there is an enclosed salt water holding pool, 100 square feet by 4 feet deep.

The facility is a profit making organization open daily to the public with an estimated 500,000 annual visitors.

The arrangements and facilities for transporting and maintaining the marine mammals requested in the above described application have been inspected by a licensed veterinarian, who has certified that such arrangements and facilities are adequate to provide for the well-being of the marine mammals involved.

Documents submitted in connection with the above application are available for review in the following offices:

Director, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.;
Regional Director, National Marine Fisheries Service, Northwest Region, 1700 Westlake Avenue North, Seattle, Washington 91809;
Regional Director, National Marine Fisheries Service, Alaska Region, P.O. Box 1668, Juneau, Alaska 99801; and
Regional Director, National Marine Fisheries Service, Northeast Region, Federal Building, 14 Elm Street, Gloucester, Massachusetts 01930.

Concurrent with the publication of this notice in the FEDERAL REGISTER, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Written views or data, or requests for a public hearing on this application should be submitted to the Director, National Marine Fisheries Service, Department of Commerce, Washington, D.C. 20235, on or before February 22, 1977. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such a hearing is at the discretion of the Director.

All statements and opinions contained in this notice in support of this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Dated: January 12, 1977.

ROBERT J. AYERS,
Acting Assistant Director for Fisheries Management, National Marine Fisheries Service.

[FR Doc.77-1825 Filed 1-19-77;8:45 am]

FISHERIES ADVISORY COMMITTEE

Public Meetings

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C., Appendix I, notice is hereby given of meetings of the Marine Fisheries Advisory Committee (MAFAC) and subcommittees.

The committee meeting (MAFAC XVI) will be held on Wednesday and Thursday, February 9 and 10, 1977, in Room 4830 of the Department of Commerce Building, 14th Street between E Street and Constitution Avenue, NW., Washington, D.C. The committee will meet at 8:30 a.m. on Wednesday, February 9, to consider the agenda items specified below. The Wednesday session is scheduled to conclude by 4:45 p.m. On Thursday, February 10, the committee will meet for its last session at 8:30 a.m. to consider the remaining agenda items. It is anticipated that the meeting will be adjourned at about noon on Thursday.

Two subcommittee meetings will be held in conjunction with the committee meeting. Both meetings will be held in Room 5230 of the Department of Commerce Building. On Tuesday morning, February 8, beginning at 10:00 a.m. the MAFAC National Plan for Marine Fisheries subcommittee will meet to consider elements of the Secretary's Program for Marine Fisheries. The subcommittee meeting should conclude by 4:00 p.m. It will be immediately followed by a meeting of the MAFAC Marine Recreational Fisheries subcommittee to consider current marine recreational fisheries issues. This meeting will run to 6:00 p.m. or longer if necessary.

Interested members of the public are also advised that there will not be a meeting of the MAFAC subcommittee on Extended Jurisdiction Planning. Ample time is provided on the agenda below for thorough discussion of extended jurisdiction matters and such matters are likely to pertain to items of interest to the committee of the whole.

Items proposed for discussion at the committee meeting are shown on the following agenda:

FEB. 8, 1977 (TUESDAY)

10 to 12 noon	National Plan for Marine Fisheries (NPMF) subcommittee meeting.
12 to 1:30 p.m.	Lunch.
1:30 to 4 p.m.	Reconvene NPMF subcommittee meeting.
4 to 6 p.m.	Marine Recreational Fisheries (MRF) subcommittee meeting.
6 p.m.	Adjourn for day.

FEB. 9, 1977 (WEDNESDAY)

8:30 a.m.	Convene MAFAC XVI.
8:30 to 8:40 a.m.	Introduction and announcements.
8:40 to 9:40 a.m.	Report on fiscal year 1977 and fiscal year 1978 NMFS budget actions.
9:40 to 11:10 a.m.	Extended Jurisdiction Status Report.
11:10 to 12 noon	Regional Fishery Management Councils Report (tentative).
12 noon	Lunch.
1:30 p.m.	Reconvene MAFAC.
1:30 to 2:10 p.m.	Report on NPMF subcommittee meeting.
2:10 to 3:00 p.m.	Report on results of the Eastland survey.
3 to 3:40 p.m.	Government Accounting Office Report on the U.S. Fishing Industry.
3:40 to 4:10 p.m.	Progress Report on NMFS Bauman Bill Actions.
4:10 to 4:45 p.m.	Update on the tuna/porpoise situation.
4:45	Adjourn for the day.

FEB. 10, 1977 (THURSDAY)

8:30 a.m.	Reconvene MAFAC XVI.
8:30 to 9:30 a.m.	Report on Multilateral Trade Negotiations.
9:30 to 10:30 a.m.	Report on Radio/TV Promotion of the Voluntary Fishery Products Inspection Program.
10:30 to 11:20 a.m.	Report on MRF subcommittee meeting.
11:20 to 11:40 a.m.	National Fisheries Policy Conference Report.
11:40 to 12 noon	Special items raised by committee for discussion.
12 noon	Adjourn MAFAC XVI.
Contingency item	NMFS fishery engineering policy.

The committee meeting and the subcommittee meetings are open to the public and there will be seating for approximately 20 public members available on a first come, first served basis. Members of the public having an interest in specific items for discussion are advised that agenda changes are at times made prior to the meeting. To receive information on changes, if any, made to the agenda, interested members of the public should contact:

Mr. Alfred J. Blik, Executive Secretary, Marine Fisheries Advisory Committee, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, Washington, D.C. 20235, Telephone: Area Code 202-634-7270.

on or about February 1, 1977.

At the discretion of the Chairman, interested members of the public may be permitted to speak at times which will allow the orderly conduct of committee business, and a reasonable time relation between the committee's discussion of a given subject and an address to that same subject by a member of the public.

Interested members of the public who wish to submit written comments should do so by addressing the same to the Executive Secretary, as above. To receive due consideration and facilitate their inclusion in the record of the meeting, written statements should be received

within 10 days after the close of the committee meeting.

Dated January 18, 1977.

ROBERT M. WHITE,
Administrator, National Oceanic and Atmospheric Administration.

[FR Doc.77-2234 Filed 1-19-77;11:38 am]

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED NUMBERS

Correlation of Textile and Apparel Categories; Correction

JANUARY 14, 1977.

In FR Doc. 76-38255 appearing on pages 56881, 56882 and 56883 in the issue of Thursday, December 30, 1976, the list of Tariff Schedules of the United States Annotated Numbers specifying changes in the arrangement of textile categories used by the United States in administering the textile trade agreements program should have included the changes listed below.

ROBERT E. SHEPHERD,
Acting Chairman, Committee for the Implementation of Textile Agreements, and Acting Deputy Assistant Secretary for Resources and Trade Assistance, U.S. Department of Commerce.

List of the tariff schedules of the U.S. annotated numbers specifying changes in the arrangement of textile categories used by the United States in administering the textile trade agreements program

Category	Old TSUS	New TSUS	Description
63			Wearing apparel, not knit, nes.
	376.5400(pt)		Garments designed for railwear:
		376.5420	Other than coats and jackets.
	380.0078	No change	Men's and boys' ornamented:
			Judo, Karate, Kung Fu, and other martial arts uniforms.
	380.3982	do	Men's and boys' not ornamented:
			Judo, Karate, Kung Fu, and other martial arts uniforms.
	382.0092	do	Other wearing apparel ornamented:
			Judo, Karate, Kung Fu, and other martial arts uniforms.
	382.0094		Other:
			Other:
		382.0095	Infants' sets up to and including 24 months.
		382.0096	Other.
	382.3383	No change	Other wearing apparel not ornamented:
			Judo, Karate, Kung Fu, and other martial arts uniforms.
	382.3387		Other:
			Other:
		382.3388	Infants' sets up to and including 24 months.
		372.3391	Other.
	702.1020	701.1220	Headwear of cotton, not knit.
209			Woven fabrics, other, wholly noncontinuous:
			Not bleached, not colored:
	338.3064		Polyamide.
		338.3067	Nylon.
	338.3065	338.3068	Polyester.
	338.3066	338.3070	Acrylic.
	338.3069	338.3071	Other.
			Other:
	338.3084		Polyamide.
		338.3087	Nylon.
	338.3085	338.3088	Polyester.
	338.3086	338.3090	Acrylic.
	338.3089	338.3091	Other.
220			Woven fabric, other:
			Not bleached, not colored:
	338.3074		Polyamide.
		338.3077	Nylon.
	338.3075	338.3078	Polyester.
	338.3076	338.3080	Acrylic.
	338.3079	338.3081	Other.
			Other:
	338.3094		Polyamide.
		338.3004	Nylon.
	338.3099	338.3098	Other.
221			Sweaters and cardigans:
			Women's, girls' and infants':
	382.0429		Ornamented:
		382.0427	Infants' sweaters.
		382.0430	Other.
	382.7875		Not ornamented:
		382.7870	Infants' sweaters.
		382.7873	Other.
226			Handkerchiefs:
	370.2020	370.2100	Lace handkerchiefs, ornamented.
229			Coats, not knit:
	376.5600 (pt)	376.5610	Coats, jackets, designed for hunting, fishing etc.

[FR Doc.77-1736 Filed 1-19-77;8:45 am]

ENVIRONMENTAL PROTECTION AGENCY

[FRL 673-5]

AIR QUALITY STANDARDS; INTERPRETATIVE RULING

Notice of Public Hearings

On December 21, 1976, the Environmental Protection Agency published at 41 FR 55524 an Interpretative Ruling on the preconstruction review requirements for stationary sources of air pollution under 40 CFR 51.18. The Ruling provides that a major new source may locate in an area violating a national ambient air quality standard only if stringent conditions can be met. These conditions are designed to insure that the new source's emissions will be controlled to the greatest degree possible; that more than equivalent offsetting emission reductions ("emission offsets") will be obtained from existing sources; and that there will be progress toward achievement of such ambient standard.

In the preamble to the Ruling, EPA encouraged all interested parties and the public to comment on both the general policies and the detailed provisions of the Ruling. EPA asked for written comments by February 15, 1977, and noted that informal hearings would be held. While the Ruling is effective now, EPA may make adjustments to it as warranted by the public written and oral comment.

The purpose of today's notice is to announce the time and place of the hearings. The hearings are open to the general public, and all interested persons are invited to express their views. Hearings will be held as follows:

SAN FRANCISCO, CALIFORNIA: FEBRUARY 23, 1977

2nd Floor Conference Rooms, 100 California Street, 9:00 a.m.

DALLAS, TEXAS: MARCH 1, 1977

Baker Hotel, Terrace Room, 1400 Commerce Street, 10:00 a.m.

NEW YORK, NEW YORK: March, 10 1977

26 Federal Plaza, Room 305, Broadway & Duane Streets, 9:00 a.m.

CHICAGO, ILLINOIS: March 17, 1977

Room 1265, 230 S. Dearborn Street, 9:00 a.m.

The hearings will be of the informal, "legislative" type. Each speaker will present comments orally to Agency officials (a presiding officer and other members of the hearing panel) for the record. While members of the hearing panel may ask questions in order to seek clarification or amplification of a speaker's comments, there will be no sworn testimony or cross-examination. The presiding officer may at his or her discretion limit irrelevant or repetitious oral presentations, and may set time limits for each presentation.

In order to assist the Agency in scheduling presentations, persons desiring to speak are encouraged to notify the appropriate EPA office by mail (at the address noted below) no later than ten days prior to the applicable hearing date. The notification should identify the group or corporation (if any) on whose behalf the person wishes to speak. If a sufficient number of persons indicates a desire to speak, each hearing may be extended an extra day.

A verbatim transcript will be made of the proceedings. Speakers are nevertheless encouraged to bring extra copies of their presentations for the convenience of the hearing reporter, the press, the hearing panel, and other participants. Speakers will be permitted to enter into the record any additional written comments they do not present orally.

Notices of intent to speak at the hearings should be sent to the appropriate EPA Regional Counsel at the following address (envelopes should be marked "Emission Offset Hearing"):

SAN FRANCISCO: REGIONAL COUNSEL

U.S. Environmetal Protection Agency, 100 California Street, San Francisco, California 94111.

DALLAS: REGIONAL COUNSEL

U.S. Environmental Protection Agency, First International Building, 1201 Elm Street, Dallas, Texas 75270.

NEW YORK: REGIONAL COUNSEL

U.S. Environmental Protection Agency, 26 Federal Plaza, Room 430, New York, New York 10007.

CHICAGO: REGIONAL COUNSEL

U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604.

Dated: January 14, 1977.

ROGER STRELOW,
Assistant Administrator for Air and Waste Management.

[FR Doc.77-1818 Filed 1-19-77;8:45 am]

[FRL 674-7]

EXHAUST AND CRANKCASE REGULATIONS

Availability of Final Environmental Impact Statement

Pursuant to the EPA procedures for the Voluntary Preparation of Environmental Impact Statements (39 FR 37419), the Environmental Protection Agency has prepared a final environmental impact statement (FEIS) for the Exhaust and Crankcase Regulations for the 1978 and Later Model Year Motorcycles.

This action will impose exhaust and crankcase emissions standards on new street-legal motorcycles with displacements greater than 50 cc built after January 1, 1978. Motorcycles currently are not subject to federal emission control regulations.

This FEIS was transmitted to the Council on Environmental Quality (CEQ) on January 12, 1977. These standards became effective on February 4, 1977 pursuant to 42 FR 1122.

Copies of the FEIS are available for review from: Environmental Protection Agency, Public Information Center (PM-215), 401 M Street, SW, Washington, D.C. 20460 (telephone: 202-755-0707).

Copies of the FEIS are available for public inspection at the following location:

Environmental Protection Agency, Public Information Reference Unit, Room 2922, Waterside Mall, 401 M Street, SW., Washington, D.C. 20460.

Information copies of the FEIS are available at cost (10 cents per page) from the Environmental Law Institute, 1346 Connecticut Avenue, NW., Washington, D.C. 20036. Please reference ELR No. 70038.

Copies of the FEIS have been sent to various Federal, State, and local agencies and interested individuals who made substantive comments on the draft EIS.

Dated: January 18, 1977.

REBECCA W. HANMER,
Director, Office of Federal Activities.

[FR Doc.77-2181 Filed 1-19-77;8:45 am]

(FRL 675-1)

NEW MILFORD, CONNECTICUT

Availability of Draft Environmental Impact Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Environmental Protection Agency has prepared a draft environmental impact statement (DEIS) for the Wastewater Collection and Treatment Facilities, New Milford, Connecticut.

The subject DEIS is a proposal to develop a wastewater treatment and collection system to serve the towns of New Milford, Brookfield, New Fairfield and Washington, Connecticut. The recommended project involves federal financial assistance for the construction of a limited regional wastewater collection and treatment system. Included is the expansion of an existing system which currently serves only the downtown area of New Milford.

To receive additional public comments, the Environmental Protection Agency, Region I, will hold an open public hearing on this DEIS on February 15, 1977 at 7:30 pm at the Sunny Valley High Auditorium, New Milford, Connecticut. All interested persons are invited to express their views at this hearing. To ensure the accuracy of the record, oral statements should be accompanied by a written statement. Oral statements should summarize extensive written material to allow time for all interested persons to be heard.

This DEIS was transmitted to the Council of Environmental Quality (CEQ) on January 12, 1977. In accordance with CEQ's notice of availability, comments are due on March 7, 1977. Copies of the DEIS are available for review and comment from: Mr. Bob Mendoza, Environmental Policy Coordination Office, Region I, Room 2203, JFK Federal Building, Boston, Massachusetts 02203 (telephone: 617-223-4635).

Copies of the DEIS are available for public inspection at the following locations:

Environmental Protection Agency, Region I Library, 22nd Floor, JFK Federal Bldg., Boston, Massachusetts 02203.

Environmental Protection Agency, Public Information Reference Unit, Room 2922, Waterside Mall, 401 M Street, SW., Washington, D.C. 20460.

Information copies of DEIS are available at cost (10 cents per page) from the Environmental Law Institute, 1346 Connecticut Avenue, NW., Washington, D.C. 20036. Please reference ELR No. 70048.

Copies of the DEIS have been sent to various Federal, State, and local agencies, and interested individuals as outlined in the CEQ Guidelines.

Dated: January 18, 1977.

REBECCA W. HANMER,
Director, Office of Federal Activities.

[FR Doc.77-2183 Filed 1-19-77;8:45 am]

[FRL 671-1; PF58]

PESTICIDE AND FOOD ADDITIVE PETITIONS

Filing

Correction

In FR Doc. 77-1319 appearing at page 3191 of the issue for Monday, January 17, 1977, in PP 7F1889 (BASF Wyandotte Corp.), in the last column of page 3191, the following should be inserted between the fifth and sixth lines: "cide bentazon (3-isopropyl-1*H*-2,1,3-ben-".

[FRL 674-8]

WESTERN CONTRA COSTA COUNTY WASTEWATER MANAGEMENT PROGRAM

Availability of Draft Environmental Impact Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Environmental Protection Agency has prepared a draft environmental impact statement (DEIS) for the Western Contra Costa County Wastewater Management Program, California.

The wastewater management plan is being developed for the Western Contra Costa County area primarily to meet the needs of municipal wastewater dischargers. The objectives relate to upgrading the method of effluent disposal and providing adequate treatment, while enhancing the early reclamation and reuse of wastewater effluent.

The DEIS was transmitted to the Council on Environmental Quality on January 10, 1977. In accordance with CEQ's notice of availability, comments are due on February 28, 1977. Copies of the DEIS are available for review and comment from: Mr. Mark Zuckerman,

Environmental Protection Agency, Region 9, 100 California Street, San Francisco, California (telephone: 415–556–3668).

Copies of the DEIS are available for public inspection at the following locations:

Environmental Protection Agency, Public Information Reference Unit, Room 2922, Waterside Mall, 401 M Street, SW, Washington, D.C. 20460.

Environmental Protection Agency, Region IX Library, 100 California Street, San Francisco, California 96101.

Information copies of the DEIS are available at cost (10 cents per page) from the Environmental Law Institute, 1346 Connecticut Avenue, NW, Washington, D.C. 20036. Please reference ELR No. 70032.

Copies of the DEIS have been sent to various Federal, State and local agencies, and interested individuals as outlined in the CEQ Guidelines.

Dated: January 18, 1977.

REBECCA W. HANMER,
Director, Office of Federal Activities.

[FR Doc.77–2182 Filed 1–19–77;8:45 am]

FEDERAL COMMUNICATIONS COMMISSION

[Docket Nos. 21045, 21046; File Nos. 9088–CM–P–72, 1464–CM–P–73]

HILDRETH COMMUNICATIONS CO. AND A–R MICROWAVE CORP.

Memorandum Opinion and Order Designating Applications for Consolidated Hearing on Stated Issues

Adopted: December 29, 1976.
Released: January 17, 1977.

In regard applications of Hildreth Communications Company, Docket No. 21045, File No. 9088–CM–P–72; and A–R Microwave Corporation, Docket No. 21046, File No. 1464–CM–P–73; for construction permits in the Multipoint Distribution Services for a new station at Portland, Maine.

1. The Commission has before it the above-referenced applications of Hildreth Communications Company (Hildreth) (File No. 9088–CM–P–72), filed on June 15, 1972 and A–R Microwave Corporation (A–R) (File No. 1464–CM–P–73), filed on August 31, 1973. Both applications propose Channel 1 operation in the Portland, Maine area, and thus are are mutually exclusive and require comparative consideration. Both applications have been amended as a result of informal requests of the Commission staff for additional information, and no petitions to deny or other objections to any of the applications have been received.

2. Hildreth, wholly-owned subsidiary of Diversified Communications, Inc. (formerly known as Media Diversified), has only the subject MDS application before the Commission. Diversified Communications, however, has controlling interest in various broadcasting, business radio and mobile stations in Maine. A–R, a wholly-owned subsidiary of Adams-Russell Company, Inc., likewise has only the subject construction permit application under Commission consideration. Adams-Russell, through its Aurovideo Division, has broadcasting and CATV interests in, among other places, Maine and New York.

3. Upon review of the captioned applications, we find that both applicants are legally, technically, financially, and otherwise qualified to provide the services which they propose, and that a hearing will be required to determine, on a comparative basis, which of these applications should be granted.

4. *Accordingly, it is hereby ordered,* That pursuant to section 309(e) of the Communications Act of 1934, as amended, and § 0.291 of the Commission's rules, the above-captioned applications are designated for hearing, in a consolidated proceeding, at a time and place to be specified in a subsequent order, to determine, on a comparative basis, which of the above-captioned applications should be granted in order to best serve the public interest, convenience, and necessity. In making such a determination, the following factors shall be considered: [1]

(a) The relative merits of each proposal with respect to service area and efficient frequency use;

(b) The nature of the services and facilities proposed, and whether they will satisfy service requirements known to exist or likely to exist in the Portland, Maine area;

(c) The anticipated quality and reliability of the service proposed, including selection of equipment, installation, subscriber security, and maintenance;

(d) The charges, regulations and conditions of the service to be rendered, and their relation to the nature, quality and costs of service; and

(e) The managerial and entrepreneurial qualifications of the applicants.

5. *It is further ordered,* That Hildreth Communications Company, A–R Microwave Corporation and the Chief, Common Carrier Bureau, are made parties to this proceeding.

6. *It is further ordered,* That parties desiring to participate herein shall file their notices of appearance in accordance with the provisions of § 1.221 of the Commission's rules.

JOSEPH A. MARINO,
Deputy Chief for Chief, Common Carrier Bureau.

[FR Doc.77–1927 Filed 1–19–77;8:45 am]

[1] Consideration of these factors shall be made in light of the Commission's discussion in Peabody Telephone Answering Service, et al., 55 F.C.C. 2d 626 (1975).

[Docket Nos. 21040–21042; File Nos. 4847–CM–P–72, etc.]

NEWHOUSE ALABAMA MICROWAVE, INC. ET AL.

Memorandum Opinion and Order Designating Applications for Consolidated Hearing on Stated Issues

Adopted: December 29, 1976.

Released: January 14, 1977.

In reference to applications of Newhouse Alabama Microwave, Incorporated, Docket No. 21040, File No. 4847–CM–P–72; W. F. Glasscock d/b/a Radio Dispatch Service, Docket No. 21041, File No. 6380–CM–P–72; and Birmingham Signal Company, Docket No. 21042, File No. 6381–CM–P–72; for construction permits in the multipoint distribution service for a new station at Birmingham, Alabama.

1. The Commission has before it the above-referenced applications of Newhouse Alabama Microwave, Inc. (Newhouse) (File No. 4847–CM–P–72), filed on January 29, 1972; W. F. Glasscock d/b/a Radio Dispatch Service (Radio Dispatch) (File No. 6380–CM–P–72), filed on March 14, 1972; and Birmingham Signal Company (Signal) (File No. 6381–CM–P–72), filed on March 15, 1972. All three applications propose Channel 1 operation in the Birmingham, Alabama area, and thus are mutually exclusive and require comparative consideration. All three applications have been amended as a result of informal requests of the Commission staff for additional information, and no petitions to deny or other objections to any of the applications have been received.

2. Newhouse is a wholly-owned subsidiary of Newhouse Broadcasting Corporation, Newhouse has only this MDS application on file. Radio Dispatch also has only this application pending. Signal is owned equally by Signal Engineering and Sales, Inc., organized to engage in construction of communications facilities, and National Telecommunications Associates, Inc., which offers programming and organizational management, and John Williamson & Associates. Several of the principals of these entities have interests in MDS applications in other cities, including Mobile, Alabama.

3. Upon review of the captioned applications, we find that the three applicants are legally, technically, financially, and otherwise qualified to provide the services which they propose, and that a hearing will be required to determine, on a comparative basis which of these applications should be granted.

4. *Accordingly, it is hereby ordered,* That pursuant to section 309(e) of the Communications Act of 1934, as amended, and § 0.291 of the Commission's rules, the above-captioned applications are designated for hearing, in a consolidated proceeding, at a time and place to be specified in a subsequent order, to determine, on a comparative basis, which of the above-captioned applications should be granted in order to best serve the public interest, convenience, and necessity. In making such a determination, the following factors shall be considered: [1]

(a) The relative merits of each proposal with respect to service area and efficient frequency use;

(b) The nature of the services and facilities proposed, and whether they will satisfy service requirements known to exist or likely to exist in the Birmingham, Alabama area;

(c) The anticipated quality and reliability of the service proposed, including selection of equipment, installation; subscriber security, and maintenance;

(d) The charges, regulations and conditions of the service to be rendered, and their relation to the nature, quality and costs of service; and

(e) The managerial and entrepreneurial qualifications of the applicants.

5. *It is further ordered,* That Newhouse Alabama Microwave, Inc., W. F. Glasscock d/b/a Radio Dispatch Service, and Birmingham Signal Company and the Chief, Common Carrier Bureau, are made parties to this proceeding.

6. *It is further ordered,* That parties desiring to participate herein shall file their notices of appearance in accordance with the provisions of § 1.221 of the Commission's rules.

JOSEPH A. MARINO,
Deputy Chief for Chief, Common Carrier Bureau.

[FR Doc.77–1928 Filed 1–19–77;8:45 am]

[1] Consideration of these factors shall be made in light of the Commission's discussion in Peabody Telephone Answering Service, et. al., 55 F.C.C. 2d 626 (1975).

[Docket No. 21021; File No. BRCT–531; FCC 76–1168]

WTWV, INC.

Memorandum Opinion and Order Designating Application for Hearing and Stated Issues

Adopted: December 16, 1976.

Released: January 14, 1977.

In reference to application of WTWV, Inc., Tupelo, Mississippi, Docket No. 21021, File No. BRCT–531; for renewal of license of Television Station WTWV.

1. The Commission has before it: (i) The above-captioned license renewal application, filed January 30, 1976 by WTWV, Inc. (licensee or WTWV); (ii) a petition to deny, filed May 3, 1976 by Malcolm Jackson, William Armstrong, Johnny Armstrong, Robert P. Reno and Frederick P. Grayson in their capacity as members of the North Mississippi Coalition for Better Broadcasting, on their own behalf and on behalf of the viewing audience of WTWV; (iii) a petition to deny, filed May 3, 1976 by Jack Benney, individually and as an officer of the Pollution and Consumers Protection Foundation and on behalf of the viewing audience of WTWV (Benney); [1] (iv) an opposition to the petition to deny, filed June 1, 1976 by WTWV; (v) a joint reply to the opposition, filed August 26, 1976; [2] (vi) a staff letter of inquiry addressed to WTWV, dated October 20, 1976; (vii) WTWV's reply letter, dated October 27, 1976 (supplemental pleading); and (viii) a response thereto, dated November 18, 1976 by Jackson et al. and Benney et al. (response).

PROCEDURAL MATTERS

2. All parties have filed extensive pleadings. To discuss every detailed allegation and response would unduly burden this Memorandum Opinion and Order. Accordingly, although we will not discuss every claim and counterclaim, we have summarized the portions of the pleadings necessary to fulfill our statutory mandate regarding petitions to deny. See 47 U.S.C. 309(d)(2). The remaining allegations either are unsupported by specifics, conclusory in nature or otherwise sufficiently refuted so as not to warrant separate discussion. Further, WTWV requests the Jackson petition be dismissed on the grounds that it fails to meet the specificity requirements of section 309(d)(1) of the Act, 47 U.S.C. 309(d)(1). Our review of each petition, however, reveals each is in substantial compliance with the requirements set forth in that Section. Accordingly, we will treat the instant pleadings as petitions to deny.

EQUAL EMPLOYMENT OPPORTUNITY

3. First, petitioners allege licensee's employment profile shows a pattern and practice of employment discrimination and violation of the Commission's rules. [3] They charge that although the percentage of Blacks in Lee County—in which Tupelo is located—is 21 percent, the percentage of WTWV's Black full-time employees for 1975 was only 13 percent, and that percentage in 1972 and 1974 was even lower with respect to both the full-time and upper four job categories. In opposition, WTWV argues petitioners fail to show any instances of discrimination or a policy of exclusion. It submits it is committed to a policy of nondiscrimination, as shown by Exhibit 7 to its renewal application (its Equal Employment Opportunity (EEO) program) and its 1976 employment record, which allegedly reflects that 16.7 percent of its full-time workforce is Black. It contends this percentage is a significant increase in comparison to its comparable 1975 statistics, as well as the "significantly lower" figures discussed in our grant of its 1973 renewal application, "WTWV, Inc.", 51 FCC 2d 1247 (1975). WTWV concludes its 1976 employment record, when looked upon as "a trend toward increased employment of Blacks", militates against a prima facie showing of discriminatory hiring practices.

4. According to the State of Mississippi Employment Security Commission statistics, of which we take official notice, the estimated total labor force for Lee County as of June 1975 was 27,280, of which 4,940 (18.1 percent) were Black, [4] and 11,390 (41.7 percent) were female. Annual Employment Reports (FCC Form 395) on file with the Commission reflect the following statistical data:

Year	Total minorities full Time	Total minorities upper 4 categories	Total women full Time	Total women upper 4 categories
1976	16.7% (36/60)	7.1% (2/28)	21.2% (36/8)	14.3% (28/4)
1975	13.2% (38/5)	0% (18/0)	13.2% (38/5)	0% (18/0)
1974	12.9% (31/4)	0% (9/0)	12.9% (31/4)	11.1% (9/1)
1973	11.8% (27/4)	0% (9/0)	14.8% (27/4)	11.1% (9/1)
1972	0% (22/0)	0% (14/0)	13.6% (22/3)	0% (14/0)
1971	4.3% (23/1)	0% (14/0)	13.0% (23/3)	0% (14/0)

[1] The 1st number in each parenthesis represents total employees in the various categories; the 2d number refers to total minority or women employees in these categories.

5. A review of licensee's employment profile supports its contention that there has been a significant increase in the employment of minorities and women. In 1976, the percentage of minorities in full-time positions and in the upper four job categories rose, respectively, from 13.2 to 16.7 and from 0 to 7.1; and the percentages of women in full-time positions and in the upper four job categories rose, respectively, from 13.2 to 22.2 and from 0 to 14.3. These figures compare favorably to the percentage of minorities and women in the local labor force. It thus appears licensee is implementing effectively its affirmative action program, and petitioners have failed to establish a prima facie issue regarding employment discrimination. This determination is consistent with our conclusions in WTWV, Inc., supra at 1252, in which we observed that licensee had a viable, continuing training program, and had actively recruited every minority person on its payroll.

PROGRAMMING

6. Next, the Jackson petition charges WTWV has failed to uncover and report the many problems of poor and Black residents of Tupelo. In an accompanying affidavit, Jackson alleges, inter alia,

[1] Each petitioning group filed against the above-captioned renewal application and against the unrelated renewal application of Lee Broadcasting Corporation, licensee of standard broadcast station WTUP, Tupelo, Mississippi. To facilitate discussion, we will treat the application of WTUP as a separate matter.

[2] On August 26, 1976, petitioners filed a motion for leave to file a reply to WTWV's opposition, and the reply itself. As indicated at para. 21, infra, this late-filed motion is granted and the reply is accepted.

[3] The Commission's pertinent equal employment opportunity rule is set forth at 47 CFR 73.680.

[4] According to current U.S. Census data, of which we also take official notice, Lee County contains only 12 minority persons other than of the Black race.

that WTWV does not: adequately cover news items which are important to Blacks; cover Black sports events or worship services; publicize problems of the Black community; and allow fair comment to Blacks who are the focus of its reporting. The affidavits of Johnny Armstrong, Robert P. Reno and Frederick Grayson reiterate some of the allegations made in the Jackson affidavit, and further allege WTWV has aired an excessive amount of commercials and has purposely disrupted programs involving "black-white confrontations."

7. Benney et al. charge WTWV: consistently refused to run public service announcements (PSAs) for Black organizations; failed to give adequate coverage to problems of local pollution despite the fact it allegedly was among the problems ascertained by licensee in 1973; refused to broadcast civil rights cases and "* * * deliberately suppressed police brutality cases and other civil rights activities during the entire time it has been a Commission licensee"; [5] did not air a local public affairs program from March 1975 through February 1976; and failed to broadcast a news report concerning a community meeting conducted by Benney on January 24, 1976, even though WTWV's news director was present at the meeting.

8. In opposition, WTWV maintains it does provide news coverage of issues important to the Black community, and provides examples of news stories concerning police brutality and deprivation of civil rights. Regarding the civil damage suit (see n. 6, supra), licensee states on March 27, 1975 it carried the story on its "Six O'clock News". Licensee further asserts its news reporters regularly cover community meetings, but reserves to itself as a news judgment the decision whether a particular story is sufficiently newsworthy to be broadcast. In this regard, licensee states that although its news director was present at the January 1976 community meeting, as alleged by Benney, it did not consider the meeting merited specific coverage. Next, WTWV submits fourteen allegedly typical PSAs of interest to the Black community which were broadcast during 1975–1976 (Amex B, opposition). Finally, it submits a list of local public affairs program segments allegedly broadcast between March 1975 and February 1976 (Amex C, opposition.[6]

9. The Benney petition also alleges that, in November 1974, Benney was asked by a leader of the National Association for the Advancement of Colored People (NAACP) who was invited to appear on WTWV, to substitute for him. Benney, a white person, alleges that when he arrived at the station, he was told by Jim Duke, WTWV's news director, the station had a policy of not allowing Blacks and whites to appear on the station together locally. He then allegedly was told, by direction of WTWV's program director and general manager, to leave the station. (Petition, p. 10 and Exhibit F.)

10. In opposition, WTWV flatly denies this accusation by stating it never has had a segregationist policy in local programs, but does not flatly deny Benney may have been prevented from appearing. It states it does broadcast programs involving appearances by Black guests exclusively, and it may well have been that Benney was informed on one occasion that he was not a qualified spokesman for a subject to be discussed by an all-Black panel. (Supp., p. 2.) Additionally, it informs the Commission that: (1) Blacks and whites regularly appear on programs produced by WTWV; (2) Blacks and whites work side by side at the station; (3) Blacks and whites appear on WTWV news programs; and (4) it broadcasts interviews with white newsmakers conducted by a Black newsman. (Opposition, pp. 7–8.) Additionally, licensee describes three programs which allegedly it has aired and which have included Black and white participants, including one program in which the local president of the NAACP appeared. (Annex C, opposition.)

11. In reply, petitioners acknowledge the local president of the NAACP appeared on the program listed in licensee's opposition, but charge he did not appear together with white newsmakers. They allege each person was interviewed and taped separately, and none of the participants appeared on the program together. (Reply, p. 30.) And, in response to licensee's supplemental pleading (see para 16, *infra*), petitioners contend licensee has not rebutted its allegation of not allowing Blacks and whites to appear together locally.

12. A principal ingredient of a licensee's obligation to operate in the public interest is a diligent, positive and continuing effort to discover the needs and interests of its service area, and provision of programming to meet those needs and intertests. "Stone v. FCC," 466 F. 2d 316, reh. den. 466 F. 2d 231 (D.C. Cir. 1972); "Commission en banc Programming Inquiry," 44 FCC 2303,*2312 (1960). However, a licensee is not required to program to meet every problem. "Hubbard Broadcasting, Inc.," 48 FCC 2d 517 (1974), "aff'd sub nom. Alianza Federal de Mercedes v. FCC," No. 74–1895 (D.C. Cir., decided April 27, 1976).

13. Benney's allegations that WTWV did not air the civil suit and community meeting news reports and devote adequate coverage to the problem of pollution do not of themselves raise any substantial and material issue. Aside from WTWV's representation that it did broadcast a news story concerning the civil suit in question, we will not question its news judgment in this regard. A licensee assumes a nondelegable responsibility for control of the material broadcast over its station. Inherent in this responsibility is the prerogative to decide what particular news events merit broadcast coverage. Here, the record indicates licensee apparently has provided news coverage of issues important to Blacks and poor people; and, further, has not ignored public affairs programming of interest to Blacks and poor people. (See n. 7, supra.)

14. Likewise, the allegations concerning Black sports coverage and PSAs for Black organizations do not of themselves raise any substantial and material questions. Benney's unsupported, conclusory allegation that WTWV has refused to run PSAs of interest to Blacks is squarely rebutted by licensee's specific announcements it states were broadcast. (See para. 8, supra.) And, although Jackson et al. contend WTWV never gives scores or coverage of predominately Black colleges' sports events, they fail to show a policy of exclusion in light of licensee's averment that it has no "scoreboard" permitting the carriage of scores of numerous schools, Black or white, and did not originate any weekend sports programming. (Supp., p. 1.) In sum, a review of the record indicates that, overall, licensee has provided coverage addressed to the needs and interests of its service area, and, except for the programming allegation discussed infra, apparently has met the needs and interests of that area. The remaining allegations not explored herein are too general or too vague to warrant discussion, and accordingly are dismissed for want of specificity or as being not of decisional significance.

15. The programming allegation concerning licensee's policy of not allowing Blacks and whites to appear together on local shows is, however, troubling. As discused supra, the record indicates that licensee has provided coverage of needs and interests addressed to its community, including problems of interest to Blacks, e.g., police brutality and civil rights. Moreover, it is undisputed that Blacks have appeared on local programs produced by WTWV. However, still unresolved is the question of whether WTWV allows Blacks and whites physically to appear together on local shows. On the face of the record now before us, we must conclude sufficient specific factual allegations have been adduced in this regard which raise substantial and ma-

[5] As an example of WTWV's allegedly deficient news coverage, Benney et al. submit what appears to be an undated newspaper clipping (Exhibit D, petition) and an affidavit signed by Benney (Exhibit F, petition). The clipping is identified only with the by-line "By Joe Rutherford, Journal Staff Writer," and concerns a civil suit filed by six Blacks against certain local law enforcement officials seeking damages for illegal arrest, brutality, malicious prosecution and racial discrimination.

[6] The following topics were covered during this period on licensee's program Focus: Visit by Rumanian choir; plight of northern Mississippi cities; regional olympics for handicapped children; visit to Mississippi by Moshe Dayan; airport master plan; drug abuse; candidates for public office; city budget; revenue sharing; and emergency medical services. Additional topics that were covered during the 1972–1976 license term included cotton farming; lack of vocational training; lack of industrial expansion; crowding of Blacks and urban renewal; interview with Black student leaders; and lack of recreational facilities (Exhibit 9, renewal application).

terial questions of fact bearing on WTWV's fitness to continue as a licensee of this Commission.

16. Licensee denies it has such a policy, but, in the face of this allegation, has not brought to the Commission's attention even one locally produced show in which Blacks and whites physically have appeared together. Its contentions that some programs have had Black and white participants and that a Black member of its news staff interviews white newsmakers, are insufficient to rebut this allegation in the absence of any information as to whether Blacks and whites actually are seen together by licensee's audience. This is especially true in light of licensee's response to our staff letter of inquiry, dated October 20, 1976. In that letter, license was appraised, inter alia, that this allegation had not been fully answered, and accordingly its comments were requested. Licensee's response, however, did not address the matter further, other than providing another flat denial.[7]

17. We think WTWV has not satisfactorily responded to this allegation. Although a licensee is afforded wide discretion in its choice of newsmakers and public affairs guests, as well as in the format in which they are presented to the viewing public, a practice of nonintegrated programming would raise a serious question concerning WTWV's good faith exercise of that discretion. As we have stated, "(A licensee's discretion) * * * is, of course, limited by the necessity to act under policies consistent with the public interest * * * Refusal to present members of (an ethnic group), either as such or in integrated situations with members of other groups, would constitute discrimination in programming." "Letter to Albert H. Kramer, Esq.," FCC 70–594, dated June 4, 1970, 20 RR 2d 19, 21 (1970). (Critical issue was whether television licensee had a policy of not presenting material involving interpersonal relationships between the races. Id. at 22.) See also "Letter to Mr. William R. Smith, Jr.," FCC 70–648, dated June 17, 1970, 19 RR 2d 372 (1970). Accordingly, in view of this unanswered question, an issue will be designated as set forth below for exploration in an evidentiary hearing. Further, a substantial and material question a priori is raised whether a licensee's programming allegedly infused with such a policy or practice of nonintegration can adequately meet the needs and interests of its community. Accordingly, an appropriate issue in this regard will be specified as well.

Fairness Doctrine

18. Finally, Benney et al. claim on November 3, 1975, licensee broadcast a half-hour program concerning a forthcoming referendum on the issuance of a 1.9 million dollar bond to expand a local airport. They allege the "sole purpose" of the program was to advocate approval, and that an organization opposing the bond, Citizens for the Best Possible Location (CBPL), was not afforded time to present its opposing views. In opposition, WTWV denies it violated the Fairness Doctrine, and states that all proponents and opponents of the bond were afforded opportunities to air their views. In support, it appends a letter from Dwayne Spencer, Chairman of CBPL (Annex A, opposition), which states WTWV allowed his organization to express fully its views in the weeks before the referendum, and those views were presented together with proponents' views on a half-hour program broadcast November 2, 1975. In reply, petitioners contend the Spencer letter was unilaterally prepared and not authorized by CBPL.

19. The Fairness Doctrine requires, inter alia, that when a broadcast station presents one side of a controversial issue of public importance, it must afford a reasonable opportunity for the presentation of contrasting viewpoints. Both sides need not be given in the same broadcast or series of broadcasts and no particular person or group is entitled to appear on the station, since the Doctrine is designed to protect the public's right to be informed rather than the right of any particular entity to broadcast its view. In order for the Commission to act in this area, the complainant must submit certain information, including: (a) The specific issue or issues of a controversial nature of public importance presented by the station; (b) the date and time when the issue or issues were broadcast; (c) the basis for the claim that the issue or issues were controversial issues of public importance; (d) the basis for the claim that the station broadcast only one side of the issue or issues in its overall programming; and (e) whether the station has afforded or has expressed an intention to afford a reasonable opportunity for the presentation of contrasting views. To prevent unwarranted government interference in programming, the licensee is given initial and primary responsibility in making the decision as to the adequacy with which it has presented contrasting views on the issue in question. This wide discretion must be respected in the absence of demonstrated unreasonableness or bad faith, even though this agency's views might be contrary to the licensee's. "Applicability of Fairness Doctrine," 40 FCC 598, 599–600 (1964).

20. In light of the analysis set forth above and after a thorough review of the allegations, it is clear licensee has not unreasonably exercised its good faith discretion in determining it has met its Fairness Doctrine obligation. In this regard, Benney's assertion that Spencer's letter represented merely his personal view rather than that of CBPL, is totally unsupported by the record. Further, Benney's reliance on the "equal time" requirements of the Act and our rules is misplaced. Although the bond issue was on the public ballot, the Commission has consistently held that a discussion of such issues involves only the general Fairness Doctrine requirements discussed above, not the more detailed "equal time" requirements applicable to political candidates.[8] "Fairness Report," 48 FCC 2d 1, 31–33, recon. den. 58 FCC 2d 691 (1976). Further, we note Benney et al. failed to raise their complaint prior to the filing of the instant petition. Id.

21. *Accordingly, it is ordered*, That the motion for leave to file reply to the opposition of WTWV, filed August 26, 1976 by Malcolm Jackson et al. and Jack Benney et al., is granted, and the reply to the opposition of WTWV, filed August 26, 1976, is accepted for filing, nunc pro tunc.

22. *It is further ordered*, That pursuant to section 309(e) of the Communications Act of 1934, as amended, 47 U.S.C. 309(e), the above-captioned application is designated for hearing at a time and place to be specified in a subsequent Order upon the following issues:

(1) To determine the facts and circumstances surrounding Station WTWV–TV's policies or practices regarding the appearance of minority group members in the station's programming, and whether, in light of the evidence adduced, the station engaged in racially discriminatory programming;

(2) To determine, in the event licensee fails to meet its burden of proof under issue (1) above, whether WTWV, Inc., has served the needs and interests of its service area during the license term 1973–1976; and

(3) To determine, in light of the evidence adduced under the above issues, whether the applicant has the requisite qualifications to remain a Commission licensee, and whether a grant of the ap-

[7] An additional, unsolicited letter—signed by licensee's counsel—and attachments thereto were filed by licensee on December 13, 1976. Since this pleading was filed well after the close of the last authorized pleading cycle (viz., November 18, 1976), and since § 1.45 of the rules, 47 CFR 1.45, disallows additional pleadings unless specifically requested or authorized by the Commission, we are under no obligation to consider the subject pleading. See Federal Broadcasting System, Inc., 59 FCC 2d 356 (1976). However, due to the subject matter of the pleading, we will, in this particular instance, consider its merits in order for us to be apprised fully of the entire record. The attachments consist of the following: (1) affidavit of Ed Bishop, program director; (2) affidavit of Jim Duke, former news director; (3) a list of Focus programs; and (4) a list of six news stories. Bishop says he has no recollection of telling Benney of any policy of programming exclusion and Duke's recollection is in direct conflict with Benney's. Significantly, all the Focus programs listed were aired subsequent to the filing of the petitions to deny—all but two of which were aired after the license period expired (June 1, 1976)—and all the news stories listed were broadcast several months after the past license period expired. We note further that the assertion by licensee's counsel in the cover letter that Blacks and whites "appeared together" on the Focus programs, supra, is not corroborated in either Bishop's or Duke's appended affidavits.

[8] The "equal time" requirement applies to the use of a broadcast station by a legally qualified candidate for public office. With certain exemptions, a licensee is required to afford all other candidates for that office equal opportunities to use the station's facilities. See 47 U.S.C. 315.

plication would serve the public interest, convenience and necessity.

23. *It is further ordered,* That pursuant to section 309(e) of the Communications Act of 1934, as amended, the burden of proceeding with the introduction of evidence under issue (1) above shall be upon petitioners, since information regarding WTWV's alleged discriminatory programming is peculiarly within their knowledge; that the burden of proceeding with the introduction of evidence under issue (2) above shall be upon WTWV, Inc.; and that the burden of proof with respect to all issues shall be on WTWV, Inc.

24. *It is further ordered,* That the petitions to deny filed by Malcolm Jackson et al. and Jack Benney et al. are granted to the extent indicated herein and are denied in all other respects,[9] and that Malcolm Jackson et al. and Jack Benney et al. are made parties to the hearing ordered herein.

25. *It is further ordered,* That to avail themselves of the opportunity to be heard, WTWV, Inc., and petitioners, pursuant to § 1.221(c) of the Commission's rules in person or by attorney, shall within twenty (20) days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and present evidence on the issues specified in this order.

26. *It is further ordered,* That WTWV, Inc., shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 1.594 of the Commission's rules, give notice of the hearing within the time and in the manner prescribed in such rules, and shall advise the Commission of the publication of such notice as required by § 1.594(g) of the rules.

27. *It is also ordered,* That if it is determined that the record adduced pursuant to the above issues does not warrant denial of the above-captioned renewal application, the licensee of WTWV's satellite television station, WHTV-TV, is required to maintain operating local studio facilities in Meridian, Mississippi.[10]

28. *It is further ordered,* That the Secretary of the Commission shall send a copy of this Memorandum Opinion and Order, by Certified Mail—Return Receipt Requested, to each of the parties to this proceeding.

FEDERAL COMMUNICATIONS COMMISSION,[11]
VINCENT J. MULLINS,
Secretary.

[FR Doc.77-1929 Filed 1-19-77;8:45 am]

[9] Jackson et al. have presented no substantive evidence in support of their request for an areawide Commission investigation of broadcast stations in and around Tupelo on the grounds of alleged wrongdoing, to include continuing employment discrimination practices. Accordingly, this request is denied. See, e.g., 1972 License Renewal Applications for 28 Broadcast Facilities Licensed to the Philadelphia, Pennsylvania Area, 53 FCC 2d 104 (1975); 1972 License Renewal Applications for 17 Broadcast Facilities Licensed to the Richmond, Virginia Area, 54 FCC 2d 953 (1975).

[10] A principal of WTWV, Inc., is also a principal of Central Television, Inc., licensee of WHTV-TV, which is operated as a satellite of WTWV. See WTWV, Inc., supra, at 1262.

[11] Commissioner Lee absent.

[Docket No. 20654]

MOTOR VEHICLES

Interference From Spark-Type Ignition Systems: Order Extending Time for Filing of Comments and Reply Comments

Adopted: December 28, 1976.

Released: January 12, 1977.

In the matter of Interference from Spark-Type Ignition Systems in Motor Vehicles, Docket No. 20654.

1. The Land Mobile Communications Section of the Communications Division of the Electronics Industries Association (EIA) has requested an extension of time for the filing of comments in this proceeding (see 41 FR 1323, Jan. 7, 1976; 41 FR 11880, Mar. 22, 1976; 41 FR 29746, July 19, 1976).

2. In so requesting, EIA has pointed out that the additional time (180 days) would enable research to be initiated, the results of which would aid in the development of a quantitative grading scale for determining the degree of degradation to signal quality caused by ignition systems. Such information and data it appears would be of assistance to the Commission in resolving the matters under consideration in this proceeding.

3. Accordingly, under the authority granted by § 0.241(d) of the Commission's rules, EIA's petition is granted; and the date for filing of Comments is extended to June 17, 1977; and the date for filing of Reply Comments is extended to August 5, 1977.

RAYMOND E. SPENCE,
Chief Engineer.

[FR Doc.77-1926 Filed 1-19-77;8:45 am]

FEDERAL HOME LOAN BANK BOARD

[H. C. No. 220]

HICKORY INVESTMENTS, INC.

Receipt of Application for Permission To Retain Control of Investors Savings and Loan Association

JANUARY 17, 1977.

Notice is hereby given that the Federal Savings and Loan Insurance Corporation has received an application from Hickory Investments, Inc., Nashville, Tennessee, for permission, pursuant to the provisions of section 408(e) of the National Housing Act, as amended (12 U.S.C. 1730(e)), and § 584.4 of the Regulations for Savings and Loan Holding Companies, to retain control of Investors Savings and Loan Association, Hendersonville, Tennessee, an institution that has submitted an application for insurance of accounts pursuant to section 403(b) of the National Housing Act, as amended (12 U.S.C. 1726(b)). Comments on the proposed retention of control should be submitted to the Director, Office of Examinations and Supervision, Federal Home Loan Bank Board, Washington, D.C. 20552, on or before February 7, 1977.

RONALD A. SNIDER,
Assistant Secretary,
Federal Home Loan Bank Board.

[FR Doc.77-1937 Filed 1-19-77;8:45 am]

FEDERAL RESERVE SYSTEM

AMERICAN NATIONAL BANCSHARES, INC.

Order Denying Formation of Bank Holding Company

American National Bancshares, Inc., Midwest City, Oklahoma, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) of formation of a bank holding through acquisition of 80 per cent (or more) of the voting shares of American National Bank of Midwest City, Midwest City, Oklahoma ("Bank").

Notice of the application, affording opportunity for interested persons to submit comments and views, has been given in accordance with section 3(b) of the Act. The time for filing comments and views has expired, and the Board has considered the application and all comments received, including those of the Comptroller of the Currency, in light of the factors set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Applicant is a nonoperating corporation organized for the purpose of becoming a bank holding company through acquisition of Bank. Bank, with deposits of $23 million,[1] representing .22 per cent of the total commercial bank deposits in Oklahoma, is the 19th largest of 43 banking organizations within the relevant banking market.[2] Bank holds 1.0 per cent of the total commercial bank deposits in this market. Inasmuch as the proposal represents merely a restructuring of Bank's ownership into corporate form and Applicant has no other banking interests, the acquisition of Bank by Applicant would have no adverse effects on existing or potential competiton within the relevant banking market and would not increase the concentration of banking resources in the relevant market. Accordingly, competitive considerations are consistent with approval of the application.

The Board has indicated on previous occasions that it believes that a holding company should constitute a source of financial and managerial strength to its subsidiary bank(s), and that the Board will closely examine the condition of an applicant in each case with this consideration in mind. The financial and managerial resources and prospects of the newly formed Applicant are generally dependent upon these considerations as they relate to Bank. While the Board considers the financial and managerial resources of Bank to be generally satisfactory, it appears that Bank is in need of some additional capital. Although Applicant would initially increase Bank's capital, the Board notes that Applicant would borrow the funds to make such a capital injection and that such borrowing, coupled with the acquisition debt Applicant would incur in connection with the proposed transaction, would increase the demands on Bank's earnings to service such debt, thus counteracting to a significant extent the benefits of any capital contributions by Applicant. In the Board's view, besides straining Bank's capital adequacy, the debt servicing obligations to be incurred by Applicant would also significantly limit Applicant's ability to meet any unforeseen financial problems that might arise.

In addition, it appears that Applicant's principal shareholder may not be in a sufficiently strong financial position because of his personal debt to provide meaningful assistance to Applicant in the event problems arise in the servicing of Applicant's debt or in meeting other unforeseen financial needs. Moreover, if Applicant is called upon to assist in the servicing and retirement of its principal shareholder's personal debt, further strains would be placed on Bank's capital position.

Finally, the Board notes that a covenant in the loan agreement between representatives of Applicant and the lending institution from which Applicant would borrow the funds to acquire Bank's stock involves the use of Bank's examination reports to monitor the value of Bank's stock pledged as collateral on the loan.[3] The Board does not view such a covenant as an appropriate use of examination reports and is of the view that such a practice may threaten the integrity of the examination process by providing a bank's management an incentive to provide less than complete and candid disclosure of information to the examiner. In addition, the examiner would be subjected to extraneous outside pressures by the knowledge that if he classifies a large percentage of a bank's assets it may result in a default on the loan and increase the likelihood of a change of ownership of the bank that could further weaken the bank's condition.[4] The Board is of the opinion that an accurate assessment of the value of bank stock as collateral on a loan can be developed without reference to confidential examination reports.

In view of the substantial debt to be incurred by Applicant in connecion with this proposal, the strain that could be placed on Bank's capital position as a result of Applicant's debt servicing requirements, the limited financial flexibility of Applicant and its principal shareholder, and the fact that the terms of the loan agreement may accelerate any difficulties that might occur in Bank's operations, the Board is of the opinion that considerations relating to financial resources and future prospects weigh against approval of the application.

Applicant indicates that banking services currently rendered in the community served by Bank will remain unchanged upon consummation of the proposal. Accordingly, considerations relating to the convenience and needs of the community to be served do not outweigh the adverse findings with respect to the financial factors involved in Applicant's proposal.

On the basis of the circumstances concerning this application, the Board concludes that the banking considerations involved in this proposal present adverse factors bearing upon the financial resources and future prospects of both Applicant and Bank. Such adverse factors are not outweighed by any procompetitive effects, managerial resources, or by benefits that would result in serving the convenience and needs of the community. Accordingly, it is the Board's judgment that approval of the application to become a bank holding company would not be in the public interest and that the application should be denied.

On the basis of the facts of record, the application is denied for the reasons summarized above.

By order of the Board of Governors,[5] effective January 10, 1977.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc.77-1829 Filed 1-18-77;8:45 am]

[1] All banking data are as of December 31, 1975.

[2] The relevant market is approximated by Oklahoma County.

[3] The loan agreement provides for default and immediate payment of all outstanding indebtedness: (d) *Sound Condition of Bank.* In the event the applicable governmental agency bank examiners should, in the course of an official examination, classify assets of Bank as substandard, doubtful or as a loss, to the extent that said classified assets equal or exceed 30 per cent of the total capital structure of Bank, the indebtedness to which this Loan Agreement relates shall become due and payable immediately, unless such default shall have been cured within 90 days after receipt by Debtor of notice of such classification.

[4] In commenting on this application, the Comptroller of the Currency expressed concern over this particular provision of the loan agreement. The Board notes that such a provision appears to be inconsistent with the Comptroller's regulation relating to disclosure of examination reports to financial institutions (12 CFR 4.18(c)).

[5] Voting for this action: Vice Chairman Gardner and Governors Wallich, Jackson, and Lilly. Absent and not voting: Chairman Burns and Governors Coldwell and Partee.

FARMERS BANCSHARES, INC.

Formation of Bank Holding Company

Farmers Bancshares, Inc., Hardinsburg, Kentucky, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company through acquisition of 80 percent or more of the voting shares of The Farmers Bank, Hardinsburg, Kentucky. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Farmers Bancshares, Inc., Hardinsburg, Kentucky has also applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to acquire voting shares of Bennett Insurance Agency, Hardinsburg, Kentucky. Notice of the application was published on December 23, 1976 in the Breckinridge County Herald-News, a newspaper circulated in Hardinsburg, Kentucky.

Applicant states that the proposed subsidiary would engage in the activities of acting as agent for the sale of credit life, credit accident and health and hazard insurance directly related to extensions of credit by the subsidiary bank. Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question should be accompanied by a statement summarizing the evidence the person requesting the hearing proposes to submit or to elicit at the hearing and a statement of the reasons why this matter should not be resolved without a hearing.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of St. Louis.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than February 7, 1977.

Board of Governors of the Federal Reserve System, January 11, 1977.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc.77-1827 Filed 1-18-77;8:45 am]

FIRST CITY BANCORPORATION OF TEXAS, INC.

Acquisition of Bank

First City Bancorporation of Texas, Inc., Houston, Texas, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12

U.S.C. 1842(a)(3)) to acquire 100 per cent of the voting shares (less directors' qualifying shares) of East Dallas Bank, Dallas, Texas. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Dallas. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than February 10, 1977.

Board of Governors of the Federal Reserve System, January 12, 1977.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc.77-1831 Filed 1-18-77;8:45 am]

INDIANA NATIONAL CORP.

Order Approving Retention of Bank Shares

Indiana National Corporation, Indianapolis, Indiana, a bank holding company within the meaning of the Bank Holding Company Act, has applied for the Board's approval under section 3(a)(3) of the Act (12 U.S.C. 1842(a)(3)) to retain, through its wholly-owned subsidiary, The Indiana National Bank, Indianapolis, Indiana ("Indiana Bank"), 8.16 per cent of the outstanding voting shares of Gary National Bank, Gary, Indiana ("Bank").

Notice of the application, affording opportunity for interested persons to submit comments and views, has been given in accordance with section 3(b) of the Act. The time for filing comments and views has expired, and the Board has considered the application and all comments received in light of the factors set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

On March 1, 1976, Indiana Bank received 8.16 per cent (48,960) of the outstanding voting shares of Bank from a predecessor trustee pursuant to a revocable inter vivos trust agreement between Mildred C. Gasser and Bank. In that agreement, Indiana Bank, a wholly-owned subsidiary of Applicant, was named successor trustee and was granted sole discretionary voting power over the 48,960 shares and is required by the terms of the trust to vote the shares in the best interest of the immediate beneficiaries of the trust, members of the Gasser family, who control an additional 29.12 percent of the outstanding voting shares.

Bank, with deposits of $367.8 million, is the fifth largest commercial bank in Indian, controlling 2.1 percent of the total deposits in commercial banks in the State.[1] Indiana Bank, with deposits of $1.3 billion, is the second largest commercial bank in Indiana, controlling 7.3 percent of the total commercial bank deposits in the State. Indiana Bank and Bank are located in separate, non-adjacent banking markets, approximately 200 miles apart. Each bank derives from the service area of the other less than 0.5 percent of its loans to, and deposits from, individuals, partnerships, and corporations. Hence, the proposed retention of shares would not eliminate any significant existing competition between the two banks nor would it increase concentration of banking resources in any local banking market. Furthermore, the proposal would not eliminate any significant future competition since Indiana law prohibits either bank from operating a branch office outside its home office county and prohibits Applicant from acquiring an additional bank for its own account. Hence, competitive considerations are consistent with approval of the application, particularly in that it does not appear Applicant will be capable of controlling the management or policies of Bank by virtue of the instant acquisition.

The financial and managerial resources and future prospects of Applicant, Indiana Bank, and Bank are satisfactory. Accordingly, banking factors are consistent with approval. There is no indication that the convenience and needs of the community to be served are not currently being met. Although there will be no immediate increase in the services offered by Bank, convenience and needs considerations are consistent with approval. Therefore, it is the Board's judgment that the retention of the shares of Bank would be in the public interest and that the application should be approved.

On the basis of the record, the application is approved for the reasons summarized above.

By order of the Board of Governors,[2] effective January 12, 1977.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc.77-1832 Filed 1-18-77;8:45 am]

MAHASKA INVESTMENT CO.

Formation of Bank Holding

Mahaska Investment Company, Oskaloosa, Iowa, has applied for the Board's approval under § 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company through acquisition of 51.47 per cent of the voting shares of Farmers Savings Bank, Fremont, Iowa. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. § 1842(c)).

Mahaska Investment Company, Oskaloosa, Iowa has also applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to continue to engage in certain real and personal property leasing activities. Notices of the application were published on December 9 and 10, 1976 in the Oskaloosa Daily Herald, a newspaper circulated in Oskaloosa, Iowa.

Applicant states that it proposes to continue to engage (1) directly in the activity of leasing real property or acting as agent, broker or advisor in leasing such real property, and (2) indirectly, through its wholly-owned subsidiary, MIC Leasing Co., Oskaloosa, Iowa, in the activity of leasing personal property or acting as agent, broker or advisor in leasing such personal property. These activities will be conducted from offices in Oskaloosa, Iowa. Applicant states that such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweight possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question should be accompanied by a statement summarizing the evidence the person requesting the hearing proposes to submit or to elicit at the hearing and a statement of the reasons why this matter should not be resolved without a hearing.

The applications may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than February 9, 1977.

Board of Governors of the Federal Reserve System, January 11, 1977.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc.77-1828 Filed 1-18-77;8:45 am]

ELLIS BANKING CORP.

Acquisition of Bank

Ellis Banking Corporation, Bradenton, Florida, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 50.1 per cent or more of the voting shares of Citizens Bank of Bunnell, Bunnell, Florida. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Atlanta. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than February 14, 1977.

Board of Governors of the Federal Reserve System, January 14, 1977.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc.77-1913 Filed 1-19-77;8:45 am]

[1] Unless otherwise indicated, all banking data are as of December 31, 1975.

[2] Voting for this action: Vice Chairman Gardner and Governors Wallich, Coldwell, Jackson, Partee, and Lilly. Absent and not voting: Chairman Burns.

ROYAL TRUST CO.

Acquisition of Bank

The Royal Trust Company, Montreal, Quebec, Canada, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 80 per cent or more of the voting shares of Baymeadows Bank, Jacksonville, Florida. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Atlanta. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than February 11, 1977.

Board of Governors of the Federal Reserve System, January 13, 1977.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc.77-1914 Filed 1-19-77;8:45 am]

[H.2, 1977 No. 1]

ACTIONS OF THE BOARD

Applications and Reports Received During the Week Ending January 1, 1977

ACTIONS OF THE BOARD

Regulation B amendments to implement the 1976 amendments to the Equal Credit Opportunity Act; the revised Act and the revised Regulation will become effective March 23, 1977.

Over-the-counter stocks, the Board published a revised list of OTC stocks that are subject to its margin regulations, effective immediately.

Regulation Z, the Board issued for public comment a proposed amendment to its Truth in Lending regulation to clarify provisions that permit discounts for cash customers; comment should be received by February 4, 1977 (Docket No. R-0072).

Regulation Z, technical amendment, the Board announced adoption of a technical amendment correcting an error in the Fair Credit Billing section of the regulation (Docket No. R-0073).

Regulation Z, proposal to amend Board's Truth in Lending regulation to require disclosure of a dealer participation in a consumer credit contract; comment should be received by the Board by February 4, 1977 (Docket No. R-0053).

Regulation T, temporary suspension of uniform margin requirements for option specialists (Docket No. R-0004).

Regulations K, M and Y, interpretation of the regulations regarding the use of a foreign subsidiary to sell long-term debt abroad and use the proceeds for domestic purposes.

Regulation Y, interpretation concerning a proposal by several bank holding companies to acquire interests in a credit related insurance company under section 4(c)(6) of the Bank Holding Company Act.

Survey of foreign claims of certain member banks and U.S. offices of foreign banks; this survey is a part of a joint effort with other central banks and the Bank for International Settlements to obtain information on the amounts and maturity distribution of credits by banks.

Brookline Trust Company, Brookline, Massachusetts, proposed merger with Metrobank and Trust Co./Norfolk, Milton, Massachusetts, report to the Federal Deposit Insurance Corporation.

Iowa State Bank, Stockport, Iowa, proposed acquisition by The State Central Savings Bank, Keokuk, Iowa, report to the Federal Deposit Insurance Corporation on competitive factors.

Issuance of subordinated capital notes by The Farmers Bank of Lincoln, Lincoln, Missouri.

Issuance of subordinated capital notes by The Bank of Woodward, Woodward, Oklahoma.

Cameron Bancshares, Inc., Cameron, Missouri, extension of time to January 25, 1977, within which to file its registration statement.[1]

Citizens and Southern Holding Company, Atlanta, Georgia, extension of time to March 30, 1977, within which to open for business the offices of Citizens and Southern Mortgage Company located in Albany, Columbus and Rome, Georgia.[1]

Deregistration under the provisions of Regulation G for the Youngstown Sheet and Tube Company, Youngstown, Ohio; Marathon Finance Company, Findlay, Ohio; and Wheeling-Pittsburgh Steel Corporation, Pittsburgh, Pennsylvania.[1]

Citizens Bank of Hattiesburg, Hattiesburg, Mississippi, to make an investment in bank premises.[1]

Connecticut Bank and Trust Company, Hartford, Connecticut, extension of time to June 30, 1977, within which to establish a branch at 629-633 Campbell Avenue, West Haven, Connecticut.[1]

Jackson State Bank, Jackson, Wyoming, extension of time to April 30, 1977, within which to complete the sale of subordinated capital notes.[1]

Citibank Overseas Investment Corporation, New York, New York, extension of time within which to (1) purchase and hold additional shares of HMF; (2) purchase and hold all the shares of AMF; (3) continue to hold the shares of HMF after HMF purchases additional shares of SPAARKAS and (4) acquires the balance of the outstanding shares of CREDIVIT.[1]

Crocker International Bank, amends Article THIRD of its Articles of Association to read: "The home office of this corporation shall be located in the United States at New York City, New York".[1]

Independent Bankers Trust Company, San Rafael, California, extension of time to February 24, 1977, within which to accomplish admission to membership in Federal Reserve System.[1]

[1] Application processed on behalf of the Board of Governors under delegated authority.

To Establish a Domestic Branch Pursuant to Section 9 of the Federal Reserve Act.

APPROVED

Union Trust Company of Wildwood, New Jersey, Wildwood, Cape May County, New Jersey, Branch to be established at the Southwest corner of 5th Avenue and New Jersey Avenue, North Wildwood, Cape May County.[1]

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International Investments and Other Actions Pursuant to Sections 25 and 25 (a) of the Federal Reserve Act and Sections 4(c)(9) and 4(c)(13) of the Bank Holding Company Act of 1956, as amended.

APPROVED

Bankers International Corporation: Investment—additional in Bankers Trustee and Executor Co., Ltd., London.

Chase Manhattan Bank N.A.: Investment—additional shares of Banco del Comercio (Panama) S.A.

Chase Manhattan Bank N.A.: Investment—additional in Familienbank A G., Germany.

Morgan Guaranty Trust Company of New York: An extension of time to establish a Shell Branch in George Town, Cayman Islands.

Mellon International Finance Corporation: Investment—to acquire 24.55 per cent of Network Finance Limited, Australia.

Continental International Finance Corporation: Investment—additional in Singapore International Merchant Bankers Limited

First Chicago International Finance Corporation: Investment—addition in First Chicago Australia Limited, Australia.

Bamerical International Financial Corporation: Investment—additional in Bamerical Mortgage & Finance Co., Inc., Hato Rey, Puerto Rico.

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International Investments and Other Actions Pursuant to Sections 25 and 25 (a) of the Federal Reserve Act and Sections 4(c)(9) and 4(c)(13) of the Bank Holding Company Act of 1956, as amended.

APPROVED

Bank of America N.T. and S.A.: Investment—additional in European Brazilian Bank Limited, London.

Bank of America N.T. and S.A.: Investment—to acquire 80 percent interest in Banco Colombo-Americano, a commercial bank to be established in Bogota, Columbia.

Wells Fargo Bank N.A.: An extension of time to establish a Shell Branch in George Town, Cayman Islands.

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On H. 2 No. 50, 1976 the following was typed in error, below is the correct listing.

International Investments and Other Actions Pursuant to Sections 25 and 25 (a) of the Federal Reserve Act and Sections 4(c)(9) and 4(c)(13) of the Bank Holding Company Act of 1956, as amended.

APPROVED

Crocker International Bank. To amend Articles of Association by changing its name to Crocker Bank International (New York).

[2] Application processed by the Reserve Bank on behalf of the Board of Governors under delegated authority

To Form a Bank Holding Company Pursuant to Section 3(a)(1) of the Bank Holding Company Act of 1956.

APPROVED

Banco Union, C.A., Caracas, Venezuela, for approval to acquire indirectly 25 per cent of the voting shares of Union Chelsea National Bank, New York, New York, the successor by absorption to Chelsea National Bank, New York, New York.

Consorcio Financiero Union, S.A., Caracas, Venezuela, for approval to acquire indirectly 75 per cent of the voting shares of Union Chelsea National Bank, New York, New York, the successor by absorption to Chelsea National Bank, New York, New York.

Union International Corporation, Wilmington, Delaware, for approval to acquire directly 100 per cent of the voting shares of Union Chelsea National Bank, New York, New York, the successor by absorption to Chelsea National Bank, New York, New York.

Putnam National Corporation, Greencastle, Indiana, for approval to acquire between 50.9 and 99.3 per cent of the voting shares of The Central National Bank of Greencastle, Greencastle, Indiana.[2]

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To Expand a Bank Holding Company Pursuant to Section 3(a)(3) of the Bank Holding Company Act of 1956.

SUSPENDED

First National Holding Corp., Atlanta, Georgia, for approval to acquire 100 per cent of the voting shares of First Bank of Savannah, Savannah, Georgia.

First National Holding Corp., Atlanta, Georgia, for approval to acquire 39.28 per cent of the voting shares of The First National Bank of Dalton, Dalton, Georgia.

First National Holding Corp., Atlanta, Georgia, for approval to acquire The Bank of Dalton, Dalton, Georgia indirectly through acquisition of The First National Bank of Dalton, Dalton, Georgia and National Loan Company, Dalton, Georgia.

APPROVED

First Maryland Bancorp, Baltimore, Maryland, for approval to acquire 51 per cent of the voting shares of The Hancock Bank, Hancock, Maryland.

Royal Trust Bank Corp., Miami, Florida, for approval to acquire 51 per cent or more of the voting shares of Royal Trust Bank of St. Petersburg, Gulfport, Florida.[2]

Royal Trust Bank Corp., Miami, Florida, for approval to acquire 51 per cent or more of the voting shares of Royal Trust Bank of Tampa, Tampa, Florida.[2]

Manufacturers National Corporation, Detroit, Michigan, for approval to acquire 100 per cent of the voting shares (less directors' qualifying shares) of National Bank of Southfield, Southfield, Michigan.

Northwest Bancorporation, Minneapolis, Minnesota, for approval to acquire 90 per cent or more of the voting shares of First National Bank of Ottumwa, Ottumwa, Iowa.

To Expand a Bank Holding Company Pursuant to Section 4(c)(8) of the Bank Holding Company Act of 1956.

DELAYED

Flagship Banks, Inc., Miami Beach, Florida, notification of intent to engage in de *novo* activities (acting as agent for the sale of credit life and credit accident and health insurance and other credit related insurance that is directly related to extensions of credit by the bank holding company and/or its banking and non-banking subsidiaries) at offices in Tallahassee, Melbourne, Orlando, Tavares, Sanford, Kissimmee, Titusville, Ormond Beach, Crescent City, Arcadia, Tampa, Lutz, Mulberry, Zephyrhills, Fort Meade, Hialeah, Miami, Coral Gables, St. Petersburg, Jacksonville, Boynton Beach, West Palm Beach, Fort Myers, Punta Gorda, all located in Florida, through a subsidiary, Seaforth, Inc., 5401 West Kennedy Blvd., Tampa, Florida (listed on H.2 No. 50, 1976 as Received) and at West Bay Street, Davenport, 120 South Lake Shore Way, Lake Alfred, and Jones Avenue at 6th Street, Haines City, all located in Florida, through a subsidiary, Seaforth, Inc. (listed on H.2 No. 51, 1976 as Received) (12/30/76)[2]

PERMITTED

First Pennsylvania Corporation, Philadelphia, Pennsylvania, notification of intent to engage in *de novo* activities (making, acquiring, or servicing for its own account or for the account of others, loans or other extensions of credit in particular commerical lending related to lease transactions and conditional sales financing) at Center Square West, 16th and Market Streets, Philadelphia, Pennsylvania, through its subsidiary, First Pennsylvania Leasing, Inc. (12/30/76)[2]

NBC Co., Lincoln, Nebraska, notification of intent to continue to engage in *de novo* activities (conducting the business of an industrial loan and investment company including issuance of interest bearing savings certificates and the making of loans, including consumer loans, commercial loans, and real estate mortgage loans) through a subsidiary, Mutual Savings Company and (acting as an insurance agent in the sale of credit life and accident insurance directly related to extensions of credit by company's subsidiary, Mutual Savings Company for the purposes of assuring the repayment of extensions of credit in the event of death or disability of the borrower) through a subsidiary, NBC Credit Insurance Agency, Inc. Such activities will be conducted at the southwest corner of 40th & South Streets, Lincoln, Nebraska (12/31/76)[2]

Mercantile Texas Corporation, Dallas, Texas, notification of intent to engage in *de novo* activities (making or acquiring, for its own account or for the account of others, loans, or extensions of credit including the following: "consumer credit" loans; accounts receivable of a bank in connection with purchases made by holders of credit cards issued by that bank; loans secured by liens on improved real estate and payable in a lump sum at maturity; interim loans to finance the construction of industrial, commercial, residential, or farm building; short-term commercial loans made for business or commercial purposes generally payable within 90 days; loans made to finance the acquisition or carrying of accounts receivable or inventory by merchants and dealers; retail instalment paper originated by dealers or other sellers of goods or services and purchased by a bank; equipment leases executed in financing transactions in which a bank's property has been purchased for the purpose of leasing it to a customer; certificates of deposit issued by a bank having maturities ranging from 30 to 270 days; mortgage warehousing loans generally secured by pledges of the mortgage notes and ordinarily held for one year or less; equipment financing loans made by businesses secured by personal property and generally repayable in installments over a one-to-five year period; income-producing mineral interest loans secured by income-producing mineral interest generally repayable in installments over a three-to-seven year period; repurchase agreements with financial institutions involving money-market and other investments in short-term securities either on a direct investment or on a repurchase basis) at 1704 Main Street, Dallas, Texas (12/30/76)[2]

Fremont Bancorporation, Fremont, California, notification of intent to engage in *de novo* activities (acting as investment or financial adviser including providing portfolio and investment advice to any person) at 39150 Fremont Boulevard, Fremont, California (12/30/76)[2]

Security Pacific Corporation, Los Angeles, California, notification of intent to engage in *de novo* activities (the financing of personal property and equipment and real property and the leasing of such property or the acting as an agent, broker, or adviser in the leasing and/or financing of such property where at the inception of the initial lease the effect of the transaction (and, with respect to governmental entities only, reasonably anticipated future transactions) will yield a return that will compensate the lessor for not less than the lessor's full investment in the property plus the estimated total cost of financing the property over the term of the lease and the servicing of such financing and/or leases) at Suite 206, The Weber Building, 9420 Annapolis Road, Lanham, Maryland, through its subsidiary, Security Pacific Leasing Corporation (12/30/76)[2]

Security Pacific Corporation, Los Angeles, California, notification of intent to engage in *de novo* activities (the origination and acquisition of mortgage loans including development and construction loans on multi-family and commercial properties, for its own account or for the sale to others and servicing of such loans for others) at 20370 Tower Center Lane, Cupertino, California, through its subsidiary, Security Pacific Mortgage Corporation (12/27/76)[2]

Security Pacific Corporation, Los Angeles, California, notification of intent to engage in *de novo* activities (the origination and acquisition of mortgage loans including development and construction loans on multi-family and commercial properties, for its own account or for the sale to others and the servicing of such loans for others) at 3735 Main Street, Riverside, California, through its subsidiary, Security Pacific Mortgage Corporation (12/27/76)[2]

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To Expand a Bank Holding Company Pursuant to Section 4(c)(12) of the Bank Holding Company Act of 1956.

RETURNED

Chicago Helicopter Industries, Inc., Chicago, Illinois, notification of intent to acquire through a wholly-owned subsidiary to be formed the operating division known as "Steel Packaging Division—St. Louis Region", of N.L. Industries, Inc., New York (12/28/76)[2]

APPLICATIONS RECEIVED

To Establish a Domestic Branch Pursuant to Section 9 of the Federal Reserve Act.

Dutchess Bank and Trust Company, Poughkeepsie, New York. Branch to be established at the Southwest corner of Mill and Garden Streets, City of Poughkeepsie, County of Dutchess.

[2] 4(c)(8) and 4(c)(12) notifications processed by Reserve Bank on behalf of the Board of Governors under delegated authority.

The Provident Bank, Cincinnati, Ohio. Branch to be established at Madison and Michigan Avenue, Cincinnati, Hamilton County.

The Central Trust Company of Canal Winchester, Canal Winchester, Ohio. Branch to be established at 8 South High Street, Canal Winchester, Franklin County.

First Virginia Bank, Falls Church, Virginia. Branch to be established at Braddock and Twinbrooke Roads, Fairfax County.

The De Kalb Bank, De Kalb, Illinois. Branch to be established at 1602 Sycamore Road, De Kalb.

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To Establish an Overseas Branch of a Member Bank Pursuant to Section 25 of the Federal Reserve Act.

Manufacturers Hanover Trust Company, New York, New York: Branch—Milan, Italy.

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To Form a Bank Holding Company Pursuant to Section 3(a)(1) of the Bank Holding Company Act of 1956.

Banco Union, C.A., Caracas, Venezuela, for approval to acquire indirectly 25 percent of the voting shares of Union Chelsea National Bank, New York, New York, the successor by absorption to Chelsea National Bank, New York, New York.

Consorcio Financiero Union, S.A., Carcaras, Venezuela, for approval to acquire indirectly 75 per cent of the voting shares of Union Chelsea National Bank, New York, New York, the successor by absorption to Chelsea National Bank, New York, New York.

Union International Corporation, Wilmington, Delaware, for approval to acquire directly 100 per cent of the voting shares of Union Chelsea National Bank, New York, New York, the successor by absorption to Chelsea National Bank, New York, New York.

Farmers Bancshares, Inc., Hardinsburg, Kentucky, for approval to acquire 80 per cent of the voting shares of The Farmers Bank, Hardinsburg, Kentucky.

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To expand a Bank Holding Company Pursuant to Section 3(a)(3) of the Bank Holding Company Act of 1956.

Republic of Texas Corporation, Dallas Texas, for approval to acquire 100 per cent of the voting shares (less directors' qualifying shares) of Dallas National Bank in Dallas, Dallas, Texas.

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To Expand a Bank Holding Company Pursuant to Section 4(c)(8) of the Bank Holding Company Act of 1956.

Chemical New York Corporation, New York, New York, notification of intent to engage in *de novo* activities (operating as an industrial bank in the manner authorized by the laws of the State of Colorado including: making direct loans, purchasing sales finance contracts and such other extensions of credit as would be made or acquired by an industrial bank; providing, at the election of debtors of said industrial bank, group credit life and group accident and health insurance directly related to such extensions of credit; and receiving time savings deposits) at 2779 Canyon Boulevard, Boulder, Colorado, 116 East Foothills Parkway, Fort Collins, Colorado, and 1005 29th Avenue Court, Greeley, Colorado, through its subsidiary, Sunamerica Corporation and its subsidiary, Sun Finance and Loan Company (12/31/76).[2]

Citicorp, New York, New York, notification of intent to relocate *de novo* activities (the purchasing and servicing for its own account consumer installment sales finance contracts; and acting as broker for the sale of consumer credit related life/accident and health insurance and consumer credit related property and casualty insurance on purchased consumer installment sales finance contracts, said insurance will only be offered when such transactions are the equivalent of direct extensions of consumer credit by the subsidiary; if this proposal is effected, the subsidiary will offer to sell insurance as follows: group credit life/accident and health insurance to cover the outstanding balances on consumer installment sales finance contracts to obligators, singly or jointly, with their spouses or cosigners in the case of life coverage in the event of death, or, to make the contractual monthly payments on consumer installment sales finance transactions in the event of the obligators' disability to the extent permissible under applicable State insurance laws and regulations; individual casualty insurance on personal property subject to security agreements) from 11950 Airline Drive, Houston, Texas to 12400 I-45 at Greens Road, Houston, Texas, through its subsidiary, Nationwide Financial Corporation (12/28/76).[2]

Fidelity Union Bancorporation, Newark, New Jersey, notification of intent to engage in *de novo* activities (the business of making loans in the present maximum amount of $5,000.00 or less under the provisions of the Pennsylvania Consumer Discount Company Act; and making available to customers, credit life insurance and disability insurance covering the unpaid balance of loans outstanding and fire and theft insurance to protect household goods held as collateral during the periods of credit extensions) at Valmont Shopping Center, Route 93, West Hazelton, Luzerne County, Pennsylvania, through its subsidiary, Suburban Finance Company and its subsidiary, Sentry Consumer Discount Company (12/29/76).[2]

Financial Services Corporation of the Midwest, Rock Island, Illinois, notification of intent to engage in *de novo* activities (making or acquiring, for its own account secured and unsecured installment loans and other extensions of credit including through acceptance of drafts primarily to individuals, and selling participations in but not acting as underwriter, agent, or broker with respect thereto group credit life and credit health and accident insurance coverage directly related to such loans and other extensions of credits) at 821 15th Avenue, East Moline, Illinois, through its subsidiary, F.S.C. Money Shops, Inc. (12/22/76)[2]

National Detroit Corporation, Detroit, Michigan, notification of intent to engage in *de novo* activities (making, acquiring, and servicing for its own account and for the account of others, mortgage loans and other extensions of credit in connection with the purchase, development and/or improvement of real property and all activities incidental thereto) at 715 East Front Street, Traverse City, Michigan, through its subsidiary, NBD Mortgage Company (12/10/76)[2]

Northern States Bancorporation, Inc., Detroit, Michigan, notification of intent to relocate *de novo* activities (mortgage banking activities by originating residential, commercial and industrial mortgage loans for its own account but principally for sale to others, servicing such loans for others, and acting as an investment or a financial adviser to the extent of serving as the advisory company for a mortgage or real estate investment trust) from 717 South Grand Traverse Street, Flint, Michigan to G 3306 W. Corunna Road, Flint, Michigan, through its subsidiary, Kelly Mortgage Investment Company (12/28/76)[2]

Farmers Bancshares, Inc., Hardinsburg, Kentucky, for approval to acquire the assets of Farmers Insurance Agency (previously operated as the Bennett Insurance Agency), Hardinsburg, Kentucky.

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REPORTS RECEIVED

Proxy Statement (Special Meeting) Filed Pursuant to Section 14(a) of the Securities Exchange Act.

Union Trust Company of Wildwood, Wildwood, New Jersey.

PETITIONS FOR RULEMAKING

None.

Board of Governors of the Federal Reserve System, January 14, 1977.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc.77-1915 Filed 1-19-77;8:45 am]

[2] 4(c)(8) and 4(c)(12) notifications processed by Reserve Bank on behalf of the Board of Governors under delegated authority.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Federal Council on the Aging

COMMITTEE ON THE ECONOMICS OF AGING

Meeting

The Federal Council an the Aging was established by the 1973 amendments to the Older Americans Act of 1965 (Pub. L. 93-29) for the purpose of advising the President, the Secretary of Health, Education, and Welfare, the Commissioner on Aging, and the Congress on matters relating to the special needs of older Americans.

Notice is hereby given pursuant to Pub. L. 92-463 that the FCA Committee on the Economics of Aging will meet on February 14, 1977 from 1 p.m. to 5 p.m., and on February 15, 1977 from 9:00 a.m. to 3 p.m., in Room 3131 HEW North Building, 330 Independence Ave., S.W. Washington, D.C. 20201. The agenda will consist of: Status of Asset Project; Update on Access of Minorities to Subsidized Housing; Discussion of Establishment of Social Security Advisory Committee; Review of FCA Actions on Health Care for the Elderly and Review of 1977 FCA Work Plan and approximate completion date.

This meeting will be open for public observation. Further information on the Council may be obtained from: Cleonice Tavani, Executive Director, Federal Council on the Aging, Washington, D.C. 20201, telephone: (202) 245-0441.

CLEONICE TAVANI,
Executive Director,
Federal Council on the Aging.

JANUARY 13, 1977.

[FR Doc.77-1836 Filed 1-19-77;8:45 am]

SENIOR SERVICES COMMITTEE

Meeting

The Federal Council on the Aging was established by the 1973 amendments to the Older Americans Act of 1965 (Pub. L. 93–29) for the purpose of advising the President, the Secretary of Health, Education, and Welfare, the Commissioner on Aging, and the Congress on matters relating to the special needs of older Americans.

Notice is hereby given pursuant to Pub. L. 92–463 that the FCA Senior Services Committee will meet on February 15–16, 1977, from 9:00 a.m. to 5 p.m. in Room 3131 HEW—North Building, 330 Independence Ave., S.W. Washington, D.C. 20201. The agenda will consist of: Review of FCA Actions on Health Care for the Elderly; Development of FCA Activities on Systematizing Federal Services and Benefits for the Elderly; Review of Aspects of FCA Frail Elderly Project; Status of National Meals on Wheels Legislation and Review of 1977 FCA Work Plan.

This meeting will be open for public observation.

Further information on the Council may be obtained from: Cleonice Tavani, Executive Director, Federal Council on the Aging, Washington, D.C. 20201, telephone: (202) 245–0441.

JANUARY 13, 1977.

CLEONICE TAVANI,
Executive Director,
Federal Council on the Aging.

[FR Doc.77–1837 Filed 1–19–77;8:45 am]

Office of Education

EMERGENCY SCHOOL AID ACT

Interpretation Regarding Desegregation Plans

The purpose of this notice is to clarify for local educational agencies ("LEA's") seeking financial assistance under the Emergency School Aid Act ("ESAA"; Title VII of Pub. L. 92–318, as amended (20 U.S.C. 1601–1619)) with respect to the characteristics of plans for "desegregation" as that term is used in section 706(a)(1)(A) of the statute.

BACKGROUND

Section 706(a)(1)(A) authorizes financial assistance to a local educational agency which is implementing a plan—

(i) Which has been undertaken pursuant to a final order issued by a court of the United States or a cout of any State, or any other State agency or official of competent jurisdiction, and which requires the *desegregation of minority group segregated children or faculty* in the elementary and secondary schools of such agency * * *; or

(ii) Which has been approved by the Secretary (of HEW) as adequate under Title VI of the Civil Rights Act of 1964 for the *desegregation of minority group segregated children or faculty* in such schools * * *

(Italic supplied.)

Program regulations adopted under the ESAA define "desegregation", at 45 CFR 185.02, as follows:

(k) The term "desegregation" means the assignment of children or faculty to public schools and within such schools without regard to their membership in a minority group, but "desegregation" does not mean the assignment of such persons to or within public schools in order to overcome racial imbalance.

Information sought by local educational agencies indicates that there remains some uncertainty as to whether particular plans are "desegregation" plans within the meaning of these statutory and regulatory provisions. Questions have arisen as to the applicability of these provisions in the case of LEA's implementing plans to improve the quality of educational services to minority group children where no finding of illegal conduct respecting those children has been made, or plans undertaken in response to a finding of illegal conduct (particularly violations of Title VI of the Civil Rights Act of 1964) other than the illegal separation of minority group children or faculty from their nonminority group counterparts. Therefore, the Commissioner has determined that publication of an interpretation of section 706(a)(1)(A) will aid LEA's in assessing their eligibility for ESAA assistance, and will help to ensure the uniform administration of programs under the ESAA throughout the country.

INTERPRETATION

1. It is the Commissioner's interpretation that a plan for the "desegregation of minority group segregated children or faculty" under section 706(a)(1)(A), unlike other qualifying plans described in section 706(a), must arise out of a legal obligation to remedy illegal conduct. This reading of the statute is in accord with the distinction, in the above-quoted regulatory definition of "desegregation", between assignments without regard to minority group membership ("desegregation") and assignments to overcome racial imbalance (not "desegregation"). It is, furthermore, consistent with the legislative history of the statute. The House Report on the bill which became the ESAA (H.R. 2266, 92nd Cong.) states as follows regarding categories of eligibility:

> The first category of eligibility includes those districts implementing plans to desegregate or integrate *under mandate* from Federal or State courts or from the Department of Health, Education, and Welfare (under authority of title VI of the Civil Rights Act of 1964). (H.R. Rep. No. 92–576, 92nd Cong., 1st Sess. 12 (1971); italics supplied.)

The report on the Senate counterpart to the same bill (S. 1557, 92nd Cong.) also makes that point in the following language:

> In ascertaining the eligibility of any local educational agency on the basis of its implementation of a plan in compliance with the categories provided in [clauses (i) and (ii) of section 706(a)(1)(A)], the end requirement of the plan and *the origin of the requirement must be considered.* (Sen. Rep. No. 92–61, 92nd Cong., 1st Sess. 35 (1971); italics supplied.)

For these reasons, the Commissioner will consider as a "desegregation" plan under section 706(a)(1)(A) (i) or (ii) only a plan which is premised on a finding of illegal conduct, and which consists of the steps required by the pertinent court, agency, or official to remedy that illegal conduct. In particular, a plan under clause (ii) of that section, relating to title VI of the Civil Rights Act of 1964, will be deemed to include only steps approved as adequate to remedy a violation of that statute. Where an LEA has not violated title VI, it must look to other provisions of section 706(a) as a basis for its eligibility for ESAA assistance. (20 U.S.C. 1605(a)(1)(A))

2. In addition, the Commissioner interprets the phrase "desegregation of minority group segregated children or faculty" in section 706(a)(1)(A) to refer to the reassignment of children or faculty in order to overcome the illegal separation of minority group children or faculty from their nonminority group counterparts in a local educational agency's schools. Under this interpretation the terms "desegregation" and "segregated" in the quoted phrase are given the meanings they are understood to have in ordinary usage, and meanings which are in accord with the regulatory definition of "desegregation" set out at 45 CFR 185.02(k). This interpretation is also consistent with expressions of the Congressional purpose in enacting the statute. The House report on H.R. 2266 states as follows:

> The rationale for the reported bill is best expressed in the President's words: "This Act deals specifically with problems which arise from racial separation, whether deliberate or not, and whether past or present."
> (H.R. Rep. No. 92–576, 92d Cong., 1st Sess. 3 (1971); emphasis supplied.)
> (Undeliberate separation is treated in this bill, and in the statute as enacted, in provisions dealing with plans affecting "minority group isolation".)

The Senate report on S. 1557 indicates that a similar need was addressed by that bill:

> Whether or not it is deliberate, racial, ethnic, and socio-economic separation in our schools and school systems have serious and often irreparable adverse effects on the education of all children, be they from deprived or from advantaged backgrounds. (Sen. Rep. No. 92–61, 92d Cong., 1st Sess. 6 (1971); emphasis supplied.)

In the light of this legislative history, as well as the language of the statute, the Commissioner will consider as a "desegregation" plan under section 706(a)(1)(A)(i) or (ii) only those plans, or parts of plans, which provide for the reassignment of illegally separated children or faculty to or within the schools of a local educational agency.

(20 U.S.C. 1605(a)(1)(A))

EFFECTIVE DATE

Pursuant to section 431(d) of the General Education Provisions Act, as amended (20 U.S.C. 1232(d)), this document has been transmitted to the Congress concurrently with its publication in the FEDERAL REGISTER, and becomes effective on the forty-fifth day following transmission, subject to the provision in section 431(d) concerning Congressional action and adjournment.

Dated: January 17, 1977.

EDWARD AGUIRRE,
United States Commissioner of Education.

Approved:

VIRGINIA Y. TROTTER,
Assistant Secretary for Education.

[FR Doc.77–1871 Filed 1–19–77;8:45 am]

Public Health Service

QUALIFIED HEALTH MAINTENANCE ORGANIZATIONS

Listing

Notice is hereby given, pursuant to 42 CFR 110.605, that in the month of December 1976 the following entities have been determined to be qualified health maintenance organizations under section 1310(d) of the Public Health Service Act (42 U.S.C. 300e–9(d)).

LIST OF QUALIFIED HEALTH MAINTENANCE ORGANIZATIONS

Name, address, service area, and date of qualification (Preoperational qualified health maintenance organizations: 42 CFR 110.603(c))

1. Capital Area Community Health Plan, Inc., Box 1894, 146 State Street, Albany, New York 12201. Service area as follows:

Albany County

Albany City	Guilderland Town
Berne Town	Knox Town
Bethlehem Town	New Scotland Town
Coeymans Town	Rensselaerville Town
Cohoes City	Watervliet City
Colonie Town	Westerlo Town
Green Island Town	

Rensselaer County

Brunswick Town	Pittstown Town
East Greenbush Town	Poestenkill Town
Grafton Town	Rensselaer City
Nassau Town	Sand Lake Town
North Greenbush Town	Schaghticoke Town
	Schodack Town
	Troy City

Saratoga County

Ballston Town	Milton Town
Charlton Town	Saratoga Town
Clifton Park Town	Saratoga Springs City
Galway Town	
Halfmoon Town	Stillwater Town
Malta Town	Waterford Town
Mechanicville City	

Schenectady County

Duanesburg Town	Princetown Town
Glenville Town	Rotterdam Town
Niskayuna Town	Schenectady City

Date of Qualification: December 6, 1976.

2. Central Essex Health Plan, 715 Park Avenue, East Orange, New Jersey 07017. Service area: Essex County communities of:

Belleville	East Orange
Bloomfield	Essex Fells
Caldwell	Fairfield
Cedar Grove	Glen Ridge
Irvington	Orange
Livingston	Roseland
Maplewood	South Orange
Millburn	Verona
Montclair	West Caldwell
North Caldwell	West Orange
Nutley	

Date of Qualification: December 28, 1976.

Files containing detailed information regarding the qualified health maintenance organizations will be available for public inspection between the hours of 8:30 a.m. and 5:00 p.m., Monday through Friday, at the Office of Quality Standards, Office of the Assistant Secretary for Health, Department of Health, Education and Welfare, Room 14A–27, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Questions about the review process or requests for information about qualified health maintenance organizations should be sent to the same office.

Dated: January 11, 1977.

JOHN A. O'ROURKE,
Acting Director,
Office of Quality Standards.

JANUARY 12, 1977.

[FR Doc.77–1821 Filed 1–19–77;8:45 am]

Social Security Administration

SECRETARY OF HEALTH, EDUCATION, AND WELFARE DEPARTMENT

Redelegations of Authority Pertaining to the Reimbursement of Suppliers of End-Stage Renal Disease Services Under the Medicare Program, and to the Withdrawal of Approval of Medicare Coverage of Such Suppliers of Services

Correction

In FR Doc. 37112, appearing at page 55242 in the issue of Friday, December 17, 1976, on page 52243, in the ninth line, in the first column, following the words "subsection (g)", delete the words "of section (g)".

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

CHIEFS, LANDS SECTION AND MINERALS SECTION, BRANCH OF LANDS AND MINERALS OPERATIONS, CALIFORNIA

Redelegation of Authority

1. Pursuant to the authority contained in Section 2.1 and Part IIA of BLM Order No. 701 (29 FR 10526, July 29, 1964), as amended, the following authority is hereby delegated to the Chief, Lands Section, and Chief, Minerals Section, to take action on the following matters:

A. *Chief, Lands Section.* Section 2.2(b), 2.2(k), 2.3(a) authority limited to Section 1.3(a)(1) of Part I of BLM Order No. 701, 2.3(c). Subject to receipt of report from the State Director: 2.5(b) and 2.5(c). Subject to classification action by the State Director where necessary: 2.9(a), 2.9(b), 2.9(c), subject to approval of color-of-title or claim of right by the Regional Solicitor, 2.9(d) subject to title approval by the Regional Solicitor and subject to Part 1.0(b)(4) where the selected lands appraised value exceeds $250,000, 2.9(e), 2.9(f), 2.9(h) through (n), inclusive, 2.9(p) through (s), inclusive, 2.9(u), 2.9(x), 2.9(y).

B. *Chief, Minerals Section.* Sections 2.2(b), 2.3(a) authority limited to Section 1.3(a)(1) of Part I of BLM Order No. 701, 2.3(c), 2.6(a) through (l), inclusive, 2.6(n) authority does not include (1) functions pertaining to geothermal deposits that involve approval or execution of unit or cooperative agreements, communitizating agreements, operating, drilling, or development contracts, and (2) functions relating to the grant, approval, or termination of the waiver, suspension, or reduction of rental or minimum royalty, the reduction of royalty, suspension of operations, or production under a lease.

2. The Chief, Branch of Lands and Minerals Operations, may, at his discretion, personally exercise any authority hereby delegated to the Chief, Lands Section, and the Chief, Minerals Section.

3. The authority delegated in paragraph 1 above may not be redelegated, but the Chief of each section may, by written order, designate any qualified employee of that section to perform the functions of the position in an acting capacity, in the Chief's absence. Such order will be approved by the Chief, Branch of Lands and Minerals Operations.

4. *Effective date.* This redelegation will become effective immediately January 21, 1977.

CHARLES R. KNIGHT,
Chief, Division of Technical Services

Approved: January 13, 1977.

ED HASTEY,
State Director.

[FR Doc.77–1930 Filed 1–19–77;8:45 am]

NEVADA

Airport Lease Applications

JANUARY 13, 1977.

1. Notice is hereby given that pursuant to the Act of May 24, 1928 (49 U.S.C. 211–214), Max D. Pierson, has applied for airport leases on the following lands:

MOUNT DIABLO MERIDIAN, NEVADA

T. 16 N., R. 21 E.,
Sec. 22, SW¼NW¼, S½;
Sec. 27, N½NE¼;
T. 16 N., R. 22 E. (partially unsurveyed),
Sec. 16, NE¼, S½;
Sec. 20, N½, SW¼, N½SE¼, SW¼SE¼, SW¼SE¼SE¼, N½SE¼SE¼;
Sec. 29, N½, W½SW¼;
Sec. 30, N½, S½SW¼, NE¼SW¼, SE¼.

2. The purpose of this notice is to inform the public that the filing of these applications segregate the described public lands from all other forms of appropriation under the public land laws.

3. Interested persons desiring to express their views should promptly send their comments together with their name and address to the District Manager, 1050 E. Williams, Carson City, Nevada 89701.

CHARLES HANCOCK,
Acting Chief,
Division of Technical Services

[FR Doc.77–1908 Filed 1–19–77;8:45 am]

NEVADA

Airport Lease Application

JANUARY 13, 1977.

1. Notice is hereby given that pursuant to the Act of May 24, 1928 (49 U.S.C. 211–214), Chester Oxborrow has applied for an airport lease on the following land:

MOUNT DIABLO MERIDIAN, NEVADA

T. 1 N., R. 68 E.,
Sec. 36, SE¼NE¼SE¼.

2. The purpose of this notice is to inform the public that the filing of this application segregates the described land from all other forms of appropriation under the public land laws.

3. Interested persons desiring to express their views should promptly send their comments together with their name and address to the District Manager, Bureau of Land Management, 4765 West Vegas Drive, Box 5400, Las Vegas, Nevada 89102.

CHARLES HANCOCK,
Acting Chief,
Division of Technical Services.

[FR Doc.77-1920 Filed 1-19-77;8:45 am]

[NM 29478 and 29539]

NEW MEXICO

Applications

JANUARY 11, 1977.

Notice is hereby given that, pursuant to section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (87 Stat. 576), El Paso Natural Gas Company has applied for two 4½-inch natural gas pipeline rights-of-way across the following lands:

NEW MEXICO PRINCIPAL MERIDIAN, NEW MEXICO

T. 20 S., R. 27 E.,
Sec. 28, S½SW¼ and SW¼SE¼;
Sec. 29, SE¼SW¼ and SE¼SE¼;
Sec. 33, NW¼NE¼.
T. 21 S., R. 27 E.,
Sec. 33, N½NE¼;
Sec. 34, NW¼NW¼.

These pipelines will convey natural gas across 1.956 miles of national resource lands in Eddy County, New Mexico.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the applications should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 1397, Roswell, New Mexico 88201.

FRED E. PADILLA,
Chief, Branch of
Lands and Minerals Operations.

[FR Doc.77-1909 Filed 1-19-77;8:45 am]

[NM 29304]

NEW MEXICO

Applications

JANUARY 11, 1977.

Notice is hereby given that, pursuant to section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (87 Stat. 576), Southern Union Gathering Company has applied for twelve 2, 4, and 6-inch natural gas pipeline right-of-way across the following land:

NEW MEXICO PRINCIPAL MERIDIAN, NEW MEXICO

T. 30 N., R. 11 W.,
Sec. 1, lots 12, 13, 15, and 16;
Sec. 2, lots 5 and 6;
Sec. 11, lots 2, 3, and 4;
Sec. 12, lots 2, 3, 4, 5, 7, and 11;
Sec. 13, lots 3, 4, and 7;
Sec. 14, lots 2, 5, and 6.

This pipeline will convey natural gas across 4.998 miles of national resource land in San Juan County, New Mexico.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 6770, Albuquerque, New Mexico 87107.

FRED E. PADILLA,
Branch of
Lands and Minerals Operations.

[FR Doc.77-1910 Filed 1-19-77;8:45 am]

[NM 29535 and 29536]

NEW MEXICO

Applications

JANUARY 11, 1977.

Notice is hereby given that pursuant to section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (87 Stat. 576), Continental Oil Company has applied for two 4-inch natural gas pipeline rights-of-way across the following lands:

NEW MEXICO PRINCIPAL MERIDIAN, NEW MEXICO

T. 18 S., R. 31 E.,
Sec. 20, SE¼SW¼ and SW¼SE¼;
T. 19 S., R. 31 E.,
Sec. 1, lot 3 and S½NW¼.

These pipelines will convey natural gas across 0.695 miles of national resource lands in Eddy County, New Mexico.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 1397, Roswell, New Mexico 88201.

FRED E. PADILLA,
Chief, Branch of
Lands and Minerals Operations.

[FR Doc.77-1911 Filed 1-19-77;8:45 am]

[NM 29548]

NEW MEXICO

Application

JANUARY 13, 1977.

Notice is hereby given that pursuant to section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (87 Stat. 576), Norhern Natural Gas Company has applied for one 4-inch natural gas pipeline right-of-way across the following land:

NEW MEXICO PRINCIPAL MERIDIAN, NEW MEXICO

T. 20 S., R. 37 E.,
Sec. 6, E½SW¼.

This pipeline will convey natural gas across 0.287 miles of natural resource land in Lea County, New Mexico.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 1397, Roswell, New Mexico 88201.

RAUL E. MARTINEZ,
Acting Chief, Branch of
Lands and Mineral Operations.

[FR Doc.77-1919 Filed 1-19-77;8:45 am]

[OR 10458-B]

OREGON

Order Providing for Opening of Public Land

JANUARY 12, 1977.

1. In an exchange of lands made under the provisions of the Act of July 31, 1939, 53 Stat. 1144, the following land has been reconveyed to the United States:

WILLAMETTE MERIDIAN

T. 2 S., R. 6 E.,
Sec. 36, S½SE¼.

The area described contains 80 acres in Clackamas County and is administered under the policy of sustained-yield forest management which governs the administration of the revested Oregon and California Railroad lands.

2. Subject to valid existing rights, the provisions of existing withdrawals, and the requirements of law applicable to revested Oregon and California Railroad lands, the land described in paragraph 1 hereof is hereby open to operation of the public land laws, including the mining laws (Ch. 2, Title 30 U.S.C.), and the mineral leasing laws. All valid applications received at or prior to 10:00 a.m., February 17, 1977, shall be considered as simultaneously filed at that time. These received thereafter shall be considered in the order of filing.

3. Inquiries concerning the land should be addressed to the Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, P.O. Box 2965. Portland, Oregon 97208.

HAROLD A. BERENDS,
Chief, Branch of
Lands and Minerals Operations.

[FR Doc.77-1921 Filed 1-19-77;8:45 am]

[Colorado 436]

PARTIAL TERMINATION OF PROPOSED WITHDRAWAL AND RESERVATION OF LANDS

JANUARY 10, 1976.

Notice of a Forest Service, U.S. Department of Agriculture application, Colorado 4436, for withdrawal and reservation of lands for public purposes was published as FR Doc. 68-9371, on page 11181 of the issue of August 7, 1968. The applicant agency has cancelled its application insofar as it affects the following described lands:

SIXTH PRINCIPAL MERIDIAN

T. 8 S., R. 78 W.,
Sec. 26: Lot 1;
Lot 2, North 15 chains of east 10 chains;
Lot 8, South 5 chains;
Lot 9, East 10 chains of South 5 chains;
W½SE¼.

The above area aggregates 150 acres.

Therefore, pursuant to the regulations contained in 43 CFR, Part 2311, such lands will be relieved of the segregative effect of the above-mentioned application 30 days from the date of this notice.

ALAN D. CAMPBELL,
Acting Chief,
Branch of Land Operations.

[FR Doc.77-1879 Filed 1-19-77;8:45 am]

PACIFIC OUTER CONTINENTAL SHELF OFFICE

Approval of Outer Continental Shelf Official Protraction Diagram

1. Notice is hereby given that, effective January 21, 1977, the following OCS Official Protraction Diagram approved on the date indicated, is available, for information only, in the Pacific Outer Continental Shelf Office, Bureau of Land Management, Los Angeles, CA. In accordance with Title 43, Code of Federal Regulations, this protraction diagram is the basic record for the description of mineral and oil and gas lease offers in the geographic area it represents.

OUTER CONTINENTAL SHELF OFFICIAL PROTRACTION DIAGRAM

Description:	*Approval date*
NI 10-12	Dec. 6, 1976

2. Copies of this diagram are for sale at two dollars ($2.00) per sheet by the Manager, Pacific Outer Continental Shelf Office, Bureau of Land Management, 300 N. Los Angeles St., Rm. 7127, Los Angeles, CA 90012. Checks or money orders should be made payable to the Bureau of Land Management.

WILLIAM E. GRANT,
Manager, Pacific Outer
Continental Shelf Office.

[FR Doc. 77-1883 Filed 1-19-77;8:45 am]

Geological Survey

KNOWN GEOTHERMAL RESOURCES AREA

Land Description; Lake City-Surprise Valley, California; Correction

The following is a correction to the land description for the Lake City-Surprise Valley Known Geothermal Resources Area FR Doc. 75-5605 which appeared on page 8972 of the Tuesday, March 4, 1975 issue. The description of the portion of the known geothermal resources area lying in T. 41 N., R. 17 E., MDM should read as follows:

T. 41 N., R. 17 E.,
Secs. 3, 4;
Sec. 5, projected;
Secs. 6, 7, all protracted lands as per Calif. Protraction Diagram 166;
Sec. 8, projected;
Secs. 9, 10, 15;
Sec. 16, all protracted lands as per Calif. Protraction Diagram 166;
Sec. 21, projected;
Secs. 22, 27;
Sec. 28, all protracted lands as per Calif. Protraction Diagram 166.

Dated: January 7, 1977.

WILLARD C. GERE,
Acting Conservation Manager,
Western Region.

[FR Doc.77-1881 Filed 1-19-77;8:45 am]

Office of the Secretary

CENTRAL VALLEY PROJECT

Rates for Sale of Power to Pacific Gas and Electric Company

On February 20, 1976, the Department of the Interior announced a proposed rate adjustment to PG&E for Northwest power. Subsequently, written comments were made by interested parties and meetings were held in Washington, D.C., and in Sacramento and San Francisco, California, with interested parties. PG&E has agreed that the rate ultimately decided upon will be retroactive to April 1, 1976.

Attached are copies of letters regarding the final rate offered PG&E by the Department and subsequent acceptance of that rate by PG&E.

The final position of the Department of the Interior in this matter is presented in the statement set forth below.

Dated: January 12, 1977.

DENNIS N. SACHS,
Deputy Assistant Secretary
of the Interior.

FINAL POSITION ON AN ADJUSTMENT IN RATES TO THE PACIFIC GAS AND ELECTRIC COMPANY FOR NORTHWEST CAPACITY AND ENERGY

DECEMBER 14, 1976.

The purpose of this statement is to announce the final decision regarding power rates to PG&E for capacity and energy imported from the Northwest under Contract No. 14-06-200-2948A, in connection with the Central Valley Project in California.

On February 20, 1976, the Assistant Secretary Land and Water Resources issued a statement setting forth our "Proposed Adjustment in Rates to the Pacific Gas and Electric Company for Northwest Capacity and Energy" under Contract No. 14-06-200-2948A, noting that comments would be received until March 24, 1976. This announced that the Department proposed to support a "pass-through" rate reflecting the actual cost of thermal power. The rate stated was initially to be $4.28 per kilowatt month for capacity and 9.03 mills per kilowatthour for energy and was subject to annual adjustment.

I have examined the record regarding the February 20, 1976, proposed decision on PG&E power rates, reviewed both oral and written comments presented by the preference customers and PG&E, considered internal staff documents concerning the proposed rate adjustment, and have concluded that the "split" rate is the appropriate rate for PG&E to pay for Northwest power.

The initial charge for April through December 1976 for capacity with energy will now be $4.12 per kilowatt month and 7.70 mills per kilowatthour for energy. These rates which are different from those shown in our February 20, 1976 announcement are based on more recent cost data. The charge for capacity without energy would be the Central Valley Project rate for capacity.

The method of determining the charges to PG&E for this rate is shown in Exhibit A.

Under this rate PG&E will be charged the "pass-through" or-cost-of service rate for energy actually received but will pay the pass-through capacity charge for only that portion of capacity associated with energy at a 60 percent load factor. The balance of the Northwest capacity delivered to PG&E will be charged at the Central Valley Project rate.

The value of Northwest capacity that PG&E purchases is directly related to the amount of energy that accompanies that capacity. Since PG&E is expected to receive Northwest power at an annual load factor decreasing from about 35 percent during 1976 to 12 percent during 1980, as opposed to their system load factor of about 60 percent, the value of the capacity that PG&E will receive under the contract will be less. Therefore, the capacity sold to PG&E should be sold at a lesser price than that purchased with a high capacity factor.

The preference customers contended in support of the imposition of full "pass-through" rate that the cost to PG&E of alternative sources of generation was considerably more expensive than Northwest power. Alternative costs are, in the view of the Departments Solicitor, an appropriate consideration in the determination of "fair and equitable" rates under Article 32 of the Contract.

Data developed by the Department indicate that the average cost of capacity under the "split" rate would be somewhat above the cost of 20 percent load factor peaking facility and somewhat below the cost of a base load facility operated at 60 percent load factor which the company presumably would have built in lieu of the purchase of Northwest imports.

Analyses prepared by the Department indicate that the appropriate alternative would be either an oil fired baseload plant with an 80 percent load factor or a peaking plant with a 20 percent load factor. The baseload alternative would cost the company approximately 25 mills per kilowatthour for power while the peaking alternative would approach 44 mills per kilowatthour. The "split" rate as developed by the Department at 20 percent load factor would cost PG&E approximately 27 mills per kilowatthour, slightly more than the baseload alternative.

Moreover, the weight of the evidence supports the "split" rate, in that there can be no guarantee that energy accompanying Northwest power will actually be available to PG&E at any load factor. Since there can be no guarantee of any Northwest energy, it is reasonable that it costs less than firm power available to PG&E.

Over the next five years preference customers demands for power are anticipated to be such that the amount of energy sold to PG&E will decrease annually at a much greater rate than the decrease in capacity sold to PG&E. It would therefore be unfair and inequitable to require PG&E and its customers to pay a high baseload rate with no assurance that the company could purchase high quality baseload energy. While the "split" rate accords no assurance that baseload energy will be supplied from Northwest sources to the company, it does assure that the costs which the company incurs and passes through to its customers will more truly reflect the value of energy actually delivered to the company for its use.

The Department of the Interior has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107.

Dated: December 14, 1976.

KENT FRIZZELL,
Under Secretary of the Interior.

EXHIBIT A

RATE FOR NORTHWEST POWER UNDER ARTICLE 22(b)(2) AFTER APRIL 1, 1978

PG and E would be charged for Northwest power sold to it by the USBR after April 1, 1976, as follows:

(1) For capacity and energy from the Northwest:

(A) *Capacity with Energy.* For the Northwest capacity accompanied by energy, PG and E will pay the Bureau the cost of Northwest capacity as determined by Exhibit B. The amount of capacity paid for at this rate, in any month, shall be that amount of capacity, not to exceed Contract Dependable Capacity, accompanied by energy at 60 percent load factor.

(B) *Capacity without Energy.* For any remaining capacity not purchased under (A), PG and E will pay the CVP (Project) capacity rate, provided that the total amount of capacity purchased under A) and B) shall not exceed Contract Dependable Capacity.

(C) *Energy.* PG and E will pay for Northwest energy at rates as determined by Exhibit B.

EXHIBIT B

METHODOLOGY FOR CALCULATING CAPACITY AND ENERGY CHARGES FOR NORTHWEST POWER SOLD TO PACIFIC GAS AND ELECTRIC COMPANY

The annual cost of capacity will be calculated as the sum of:

a. 100 percent of annual fixed cost of the Centralia facilities.

b. 65 percent of the annual O&M cost of the Centralia facilities.

c. 10 percent of the annual fuel cost for the Centralia facilities.

d. That part of wheeling and capacity reserve annual cost paid to BPA proportional to the capacity component of the total capacity and energy cost of Centralia.

The monthly capacity charge per kilowatt will be the total annual cost for Northwest capacity divided by 12 and then by 382,000 kilowatts, the Northwest capacity delivered to the CVP load center at Tracy.

The annual cost of energy, up to 7,050 kWh/kW/year, will be calculated as the sum of:

a. 35 percent of the annual O&M cost of the Centralia facilities.

b. 90 percent of the annual fuel cost of the Centralia facilities.

c. That part of the wheeling and capacity reserve annual cost paid to BPA proportional to the energy component of the total capacity and energy cost of Centralia.

d. Estimated annual energy support purchased from the Northwest.

The energy charge per kilowatthour will be the total energy cost divided by the Northwest energy delivered to the CVP load center at Tracy.

Not later than October 1 of each year, Reclamation will prepare and furnish to PG&E estimated energy and capacity charges for Northwest power determined on this basis. These charges will apply to sales to PG&E during the following year. Annually, during January, the billing to PG&E for the previous year will be adjusted, as necessary, based on actual billing of Northwest power cost to CVP.

The rate for Northwest energy in excess of 7,050 kWh/kW/yr will be determined by the cost as purchased from the Northwest and adjusted upward for losses to the CVP load center at Tracy.

DECEMBER 14, 1976.

Mr. JOHN F. BONNER,
President, Pacific Gas and Electric Company, 77 Beale Street, San Francisco, California 94106.

DEAR MR. BONNER: Enclosed is a statement giving the final position of the Secretary of the Interior on the rate to your company for the sale of capacity and energy delivered to you by the Central Valley Project (CVP) under Contract No. 14-06-200-2948A, Article 22(b)(2).

In your March 22, 1976, letter, you pointed out that this rate should not apply to "non-Centralia" energy imported from the Northwest. We agree with your contention on that point. This rate will not apply to imported Northwest energy in excess of 7,050 kWh/kW/yr in accordance with Article 19(d) of that contract. The rate for energy imported in excess of 7,050 kWh/kW from the Northwest will be the cost to the CVP of such energy as adjusted upward for losses to the CVP load center.

If you do agree to accept this rate, please advise us of your concurrence within 10 days. If you do not agree to accept the rate, we would also need to know this within 10 days so that we can prepare the necessary material to submit the matter to the Federal Power Commission for the decision as provided for in Article 32 of the contract.

Sincerely yours,

KENT FRIZZELL,
Under Secretary of the Interior.

CENTRAL VALLEY

DECEMBER 20, 1976.

The Honorable KENT FRIZZELL,
Under Secretary of the Interior, U.S. Department of the Interior, Washington, D.C. 20240.

DEAR MR. FRIZZELL: We have received your letter of December 14, 1976, stating the final position of the Secretary of the Interior on the rates for capacity and energy sold to Pacific Gas and Electric Company under Article 22(b)(2) of the Contract 14-06-200-2948A ("Contract"). We note that your proposal includes the rates for both Centralia power and other energy imported from the Northwest by the Central Valley Project. By this letter Pacific Gas and Electric Company accepts and agrees to the rates proposed in your December 14, 1976, letter and described in the Secretary of the Interior's December 14, 1976, "Final Position on an Adjustment in Rates to the Pacific Gas and Electric Company for Northwest Capacity and Energy" and Exhibits A and B, attached thereto. Accordingly, pursuant to Article 32 of the Contract the rates for the five year period commencing on April 1, 1976, shall be determined as set forth in said Exhibits A and B.

Sincerely yours,

JOHN F. BONNER.

[FR Doc.77-1884 Filed 1-19-77;8:45 am]

HEARINGS

Procedural Suggestions for Implementation of Sec. 106 of the Energy Policy and Conservation Act

Section 160(a)(1) of the Energy Policy and Conservation Act of December 22, 1975 (42 USC 6214, Supp. V), provides that "The Secretary of the Interior, by rule on the record after an opportunity for hearing, shall, to the greatest extent practicable, determine the maximum efficient rate of production and, if any, the temporary emergency production rate for each field on Federal lands which produces, or is determined to be capable of producing, significant volumes of crude oil or natural gas, or both." Section 106(e)(1) states that "The term 'maximum efficient rate of production' means the maximum rate of production of crude oil or natural gas, or both, which may be sustained without loss of ultimate recovery of crude oil or natural gas, or both, under sound engineering and economic principles."

The Geological Survey proposes to implement section 106 by providing regulations to determine the Maximum Efficient Rate (MER) and the Temporary Emergency Production Rate (TEPR). However, because the MER definition in Section 106 and the existing MER definition under OCS Order No. 11 issued under the Outer Continental Shelf Lands Act (namely "The maximum sustainable daily oil or gas withdrawal rate from a reservoir which will permit economic development and depletion of that reservoir without detriment to ultimate recovery"), although phrased in similar terms, were designed to meet different purposes, the definitions and procedures for implementing section 106 must be developed. Consideration will be given to the definitions in section 106, OCS Order No. 11, the possible definition that maximum efficient rate (MER) represents that rate of production which maximizes net value to the producer based on discounted cash flow, and any other definitions that may be proposed. Background documents include Section 106, OCS Order No. 11, and a report from Resources for the Future on "The use of maximum efficent rate (MER) as a regulatory tool," available on request from the Chief, Conservation Division, U.S. Geological Survey, Reston, Va. 22092.

Interested persons may submit written comments on the proposed definitions and procedures thereunder, which will be considered in formulating an agenda for open hearings to obtain suggestions as to a working definition of MER and TEPR and appropriate procedures for implementing Section 106. The hearings will be held within 45 to 60 days at Washington, D.C., New Orleans, Louisiana, and Denver, Colorado.

Interested persons who wish to submit comments or to appear and present a statement may write to the Chief, Conservation Division, U.S. Geological Survey, Reston, Va. 22092, by February 22, 1977. An exact schedule of the hearings is being prepared and will be published soon.

WILLIAM L. FISHER,
Assistant Secretary Energy and Minerals.

JANUARY 13, 1977.

[FR Doc.77-1882 Filed 1-19-77;8:45 am]

INTERNATIONAL TRADE COMMISSION

[USITC SE-77-3B]

GOVERNMENT IN THE SUNSHINE

Closed Portion of Meeting

At its meeting of January 17, 1977, the Commission voted to hold the discussion under the following agenda item for its meeting of January 17, 1977, in closed session:

4. GSP (Inv. 503(a)-3 and 332-81)—consideration of draft report.

Pursuant to the specific exemptions of 5 U.S.C. 552b(c)(4) and (9)(A) and (B), on the authority of 19 U.S.C. 1335, and in conformity with proposed 19 CFR 201.37, Commissioners Parker, Moore, Bedell, and Ablondi voted to hold the portion of the January 17, 1977, meeting pertaining to item No. 4 in closed session. Commissioners Minchew and Leonard voted against closing this portion to the public.

A majority of the entire membership of the Commission felt that this portion of the meeting should be closed to the public since information to be discussed in such portion is: (1) Likely to disclose commercial or financial information obtained from a person and privileged or confidential; (2) information the premature disclosure of which would lead to significant financial speculation in affected commodities; and (3) information which would be likely to significantly frustrate implementation of a proposed agency action.

Those persons reasonably expected to be present at this closed portion and their corresponding affiliations are listed as follows:

Daniel Minchew, Chairman
Joseph O. Parker, Vice Chairman
Will E. Leonard, Commissioner
George M. Moore, Commissioner
Catherine Bedell, Commissioner
Italo H. Ablondi, Commissioner
Kenneth R. Mason, Secretary
Al Sparks, Court Reporter
Edward P. Furlow, Acting Deputy Director, Operations
Charles Katlin, Commodity Analyst
E. William Fry, Supervisory Investigator
Nicholas C. Tolerico, Commodity Analyst
Robert T. Roeder, Commodity Analyst
Charles W. Dalker, Acting Chief, Machinery & Equipment
Leonard Jensen, Acting Chief, Agriculture, Fisheries, and Forest Products
Alvin Z. Macomber, Commodity Analyst
James S. Chase, Commodity Analyst
Thomas C. Lopp, Commodity Analyst
Clyde Gumbmann, Commodity Analyst
John G. Reeder, Commodity Analyst
David E. Ludwick, Commodity Analyst
Bruce N. Hatton, Assistant to Commissioner Leonard
F. David Foster, Assistant to Commissioner Leonard
Claude L. Gingrich, Assistant to Commissioner Parker
Edward R. Easton, Attorney-Advisor
George N. Ecklund, Acting Director, Office of Economic Research
Robert A. Cornell, Acting Director, Office of Industries
J. Frederick Warren, Commodity Analyst
Lowell Grant, Commodity Analyst
Russell N. Shewmaker, General Counsel
Charles R. Ramsdale, Acting Director, Personnel

The General Counsel to the Commission certified that it is his opinion that the Commission's action in closing this portion of its meeting of January 17, 1977, was properly taken by a vote of a majority of the entire membership of the Commission pursuant to 5 U.S.C. 552b(d)(1) and in conformity with proposed 19 CFR 201.37(d). The discussion to be held in closed session is within the specific exemptions of 5 U.S.C. 552b(c)(4) and (9)(A) and (B).

Issued: January 17, 1977.

By order of the Commission.

KENNETH R. MASON,
Secretary.

RUSSELL N. SHEWMAKER,
General Counsel.

[FR Doc.77-1968 Filed 1-19-77;8:45 am]

NATIONAL SCIENCE FOUNDATION

ADVISORY COMMITTEE FOR RESEARCH—TASK GROUP 15

Amendment to Meeting

Task Group 15 of the Advisory Committee for Research is meeting on January 27 and 28, 1977. The meeting was originally scheduled to be held in Rm. 405, 5225 Wisconsin Avenue, NW.

The meeting will now be held at two different locations as follows:

January 27—Rm.405 at 5225 Wisconsin Avenue NW.; and
January 28—Rm. 511, 1800 G St. NW

There are no other changes in the meeting notice.

The notice of this meeting appeared in the FEDERAL REGISTER on Thursday, December 20, 1976, Vol. 41, No. 252, FR Doc. 76-38336, page 56873.

M. REBECCA WINKLER,
Acting Committee Management Officer.

JANUARY 17, 1977.

[FR Doc. 77-1975 Filed 1-19-77;8:45 am]

NUCLEAR REGULATORY COMMISSION

ADVISORY COMMITTEE ON REACTOR SAFEGUARDS

Proposed Meetings

In order to provide advance information regarding proposed meetings of ACRS Subcommittees and Working Groups and of the full Committee, the following preliminary schedule is being published. This preliminary schedule reflects the current situation, taking into account additional meetings which have been scheduled and meetings which have been postponed or cancelled since the last list of proposed meetings published in FR Vol. 41, December 20, 1976, page 55395. Those meetings that are definitely scheduled have had, or will have, an individual notice published in the FR approximately 15 days (or more) prior to the meeting. Those Subcommittee and Working Group meetings for which it is anticipated that there will be a portion or all of the meeting open to the public are indicated by an asterisk (*). It is expected that the sessions of the full Committee meeting designated by an asterisk (*) will be open in whole or in part to the public. Information as to whether a meeting has been firmly scheduled, cancelled or rescheduled, or whether changes have been made in the agenda for the February 10-12, 1977 ACRS full Committee meeting can be obtained by a prepaid telephone call to the Office of the Executive Director of the Committee (telephone 202/634-1374, Attn: Mary E. Vanderholt) between 8:15 a.m. and 5:00 p.m., EST.

SUBCOMMITTEE AND WORKING GROUP MEETINGS

**Cherokee Nuclear Station, Units 1, 2, and 3, and Perkins Nuclear Station, Units 1, 2, and 3*, January 19, 1977, Charlotte, NC; POSTPONED to March 1, 1977, Charlotte, NC.

**Transportation of Radioactive Materials*, January 25, 1977, Chicago, IL POSTPONED to February 24, 1977, Atlanta, GA.

**Enrico Fermi Atomic Power Plant, Unit No. 2*, January 27, 1977, Detroit, MI.. POSTPONED INDEFINITELY.

**Blue Hills Station, Units 1 and 2*, January 28, 1977, Jasper, TX to review the application of Gulf States Utility Company for an early site review

Emergency Core Cooling System, January 29, 1977, Washington, DC to review Exxon Nuclear Company, Inc. integrated ECCS evaluation model for nonjet-pump boiling water reactors.

Assessment of Selected Light-Water Reactor Safety Matters, February 1, 1977, Washington, DC to review selected matters related to light water reactor safety referred to the ACRS by the NRC.

Resolution of Generic Items, February 2, 1977, Washington, DC to review the status of generic items identified by the ACRS and to determine if any new items should be added to the list.

Siting Evaluation, February 2, 1977, Washington, DC to discuss nuclear facility siting.

Emergency Core Cooling System, February 5, 1977, Washington, DC to discuss experimentation concerning core bypass of emergency core coolant.

Seismic Activity, February 8–9, 1977, Washington, DC to discuss recent seismic related developments, ground motion for seismic design, soil-structure interaction, and to review seismic related matters referred to the ACRS by the NRC.

Regulatory Activities, February 9, 1977, Washington, DC to review working papers, future Regulatory Guides, and proposed changes to existing Regulatory Guides; also, to discuss pertinent activities which affect the current licensing process and/or reactor operations, including practices and procedures for correction of ECCS errors for operating plants.

Sundesert Nuclear Power Plant, Units 1 and 2, February 18, 1977, Blythe, CA to review the application of the San Diego Gas and Electric Company for a site review.

Transportation of Radioactive Materials, February 24, 1977, Atlanta, GA to review public comments on NUREG–034, "Draft Environmental Statement on the Transportation of Radioactive Material by Air and Other Modes."

Cherokee Nuclear Station, Units 1, 2, and 3, and Perkins Nuclear Station, Units 1, 2, and 3, March 1, 1977, Charlotte, NC to review the application of the Duke Power Company for a permit to construct these Units.

Phipps Bend Nuclear Power Plant, Units 1 and 2, March 3 or 4, 1977, Tentative—Washington, DC to review the application of the Tennessee Valley Authority for a permit to construct Units 1 and 2.

Fort Calhoun Station, Unit 2, March 8, 1977, Omaha, NE to review the application of the Omaha Public Power District for a permit to construct Unit 2.

Regulatory Activities, March 9, 1977, Washington, DC to review working papers, future Regulatory Guides, and proposed changes to existing Regulatory Guides; also, to discuss pertinent activities which affect the current licensing process and/or reactor operations.

FULL COMMITTEE MEETINGS

February 10–12, 1977:

A. *Blue Hills Station, Units 1 and 2—Construction Permit Review.

B. *Exxon Nuclear Company, Inc. Replacement Fuel—ECCS evaluation models for PWR plants with low pressure containments and nonjet-pump BWRs.

March 10–12, 1977:

Agenda to be announced.

Dated: January 17, 1977.

JOHN C. HOYLE,
Advisory Committee Management Officer.

[FR Doc.77-2016 Filed 1-19-77;8:45 am]

ADVISORY COMMITTTE ON REACTOR SAFEGUARDS; SUBCOMMITTEE ON EMERGENCY CORE COOLING SYSTEMS

Meeting

In accordance with the purposes of Sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b.), the ACRS Subcommittee on Emergency Core Cooling Systems (ECCS) will hold an open meeting on February 5, 1977 in Room 1046, 1717 H Street, N.W., Washington, DC 20555. The purpose of this meeting is to discuss experimentation concerning core bypass of emergency core coolant.

The agenda for subject meeting shall be as follows:

SATURDAY, FEBRUARY 5, 1977, 8:30 A.M. UNTIL THE CONCLUSION OF BUSINESS

The Subcommittee may meet in Executive Session, with any of its consultants who may be present, to explore and exchange their preliminary opinions regarding matters which should be considered during the meeting and to formulate a Subcommittee report and recommendations to the full Committee.

At the conclusion of the Executive Session, the Subcommittee will hear presentations by and hold discussions with representatives of the NRC Staff, and its consultants, pertinent to selected matters relating to experimentation concerning core bypass of emergency core coolant.

The Subcommittee may then caucus to determine whether the matters have been adequately covered and whether the project is ready for review by the full Committee.

Practical considerations may dictate alterations in the above agenda or schedule. The Chairman of the Subcommittee is empowered to conduct the meeting in a manner that, in his judgment, will facilitate the orderly conduct of business, including provisions to carry over an incompleted open session from one day to the next.

The Advisory Committee on Reactor Safeguards is an independent group established by Congress to review and report on each application for a construction permit and on each application for an operating license for a reactor facility and on certain other nuclear safety matters. The Committee's reports become a part of the public record. Although ACRS meetings are ordinarily open to the public and provide for oral or written statements to be considered as a part of the Committee's information gathering procedure concerning the health and safety of the public, they are not adjudicatory type hearings such as are conducted by the Nuclear Regulatory Commission's Atomic Safety and Licensing Board as part of the Commission's licensing process. ACRS meetings do not normally treat matter pertaining to environmental impacts outside the safety area.

With respect to public participation in the open portion of the meeting, the following requirements shall apply:

(a) Persons wishing to submit written statements regarding the agenda may do so by providing a readily reproducible copy to the Subcommittee at the beginning of the meeting. Comments should be limited to safety related areas within the Committee's purview.

Persons desiring to mail written comments may do so by sending a readily reproducible copy thereof in time for consideration at this meeting. Comments postmarked no later than January 29, 1977 to Mr. Thomas G. McCreless, ACRS, NRC, Washington, DC 20555, will normally be received in time to be considered at this meeting.

Background information concerning items to be considered at this meeting regarding the Oyster Creek Nuclear Power Plant can be found in documents on file and available for public inspection at the NRC Public Document Room, 1717 H St., N.W., Washington, DC 20555 and at the Ocean Country Library, 15 Hooper Avenue, Toms River, NJ 08753.

(b) Persons desiring to make an oral statement at the meeting should make a written request to do so, identifying the topics and desired presentation time so that appropriate arrangements can be made. The Subcommittee will receive oral statements on topics relevant to its purview at an appropriate time chosen by the Chairman.

(c) Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call on January 28, 1977 to the Office of the Executive Director of the Committee (telephone 202/634–1374, Attn: Mr. Thomas G. McCreless) between 8:15 a.m. and 5:00 p.m., EST.

(d) Questions may be propounded only by members of the Subcommittee and its consultants.

(e) The use of still, motion picture, and television cameras, the physical installation and presence of which will not interfere with the conduct of the meeting, will be permitted both before and after the meeting and during any recess. The use of such equipment will not, however, be allowed while the meeting is in session.

(f) A copy of the transcript of the meeting where factual information is presented and a copy of the minutes of the meeting will be available for inspection on or after February 14, 1977 and May 5, 1977, respectively, at the NRC Public Document Room, 1717 H St., N.W., Washington, DC 20555.

Copies may be obtained upon payment of appropriate charges.

Dated: January 17, 1977.

JOHN C. HOYLE,
Advisory Committee Management Officer.

[FR Doc.77-2017 Filed 1-19-77;8:45 am]

NATIONAL TRANSPORTATION SAFETY BOARD

[N–AR 77–3]

CIVIL AVIATION SAFETY STATISTICS, 1976; CORRESPONDENCE CONCERNING NTSB RECOMMENDATIONS

Availability and Receipt

U.S. civil aviation—air carriers and general aviation alike—achieved a generally excellent safety record in 1976, according to press release No. SB–77–2, issued January 13 by the National Transportation Safety Board. As reflected in the 13 preliminary accident statistical tables attached to the press release, air carriers last year recorded the lowest accident total in commercial aviation history, and the fewest fatalities in more than 20 years. In general aviation—all non-air carrier flying—fatal accident rates were at record lows, and the fatal accident total was the lowest in 9 years.

In all operations, the certificated route air carriers, supplemental carriers, and commercial operators of large aircraft had only 26 accidents in 1976, four of them fatal. The passenger and crew fatality total was 45. The same carriers and operators in 1975 had 45 accidents, three of which were fatal, and a fatality total of 124. The certificated route and supplemental carriers' fatality toll of 42 in three fatal accidents was the lowest since the same carriers recorded 40 fatalities in 1954. These carriers flew nearly 2.5 billion aircraft miles last year.

Statistics specific to general aviation accidents indicate that, although total accidents increased by 8 percent to 4,567 last year, the fatal accident total of 636 was a decrease of 6 percent from 1975 and 13 percent from 1974; 1976 was the second successive year in which fatal general aviation accidents decreased.

According to the press release, general aviation accident exposure increased, in terms of both aircraft hours and miles flown. In air taxi operations, which are part of general aviation, commuter and on-demand air taxies combined to record 195 total accidents, five fewer than in 1975. Commuter air carriers accounted for 36 accidents in all operations last year; 12 were fatal, causing 32 fatalities.

Final civil aviation statistics for 1976 will be available later this year in the Safety Board's "Annual Review of Aircraft Accident Data."

Response to Safety Board Recommendations.—In acknowledging receipt of recommendations R–76–56 and R–76–57, the Association of American Railroads by letter dated December 27 indicates that the recommendations are being referred to appropriate groups within the AAR for consideration and comment. The recommendations were issued as a result of investigation of the autotrain derailment last May 5 at Jarratt, Virginia. (See 41 FR 52116, November 26, 1976.)

Commenting specifically on recommendation R–76–56, which recommended that AAR establish a system to insure that wheels exposed to critical temperatures are removed from service before failure occurs, AAR states that it does have in place a very good system which has proven to be very reliable. AAR states, "It is not possible to 'insure' that the possibility of failure can be completely eliminated." There is no precise "critical temperature" and time of exposure that apply uniformly to all wheels, according to AAR; the time and temperature at which dangerous overheating occurs varies with wheel design and composition. AAR's present definition of overheated wheel depends upon visual observation (metal discoloration) and was revised two years ago to reflect current technology.

Safety Board Replies to Recommendation Responses—Board letter of January 13 to the Federal Aviation Administration concerns recommendations A–74–75 through A–74–17 issued March 1, 1974, regarding expanded parameter flight data recording systems. The Board notes that FAA in response to these recommendations issued a notice of proposed rulemaking to amend 14 CFR 121.343 (40 FR 23058, May 27, 1975). The Board now expresses concern that no action has been taken by the FAA to implement this proposal in the 18 months since it was published, and believes that this important regulation should be adopted as soon as possible.

Board letter of December 29 concerning recommendations A–76–20 through A–76–28 is in reply to FAA's letter of August 2, 1976. The recommendations were issued last April 29 as a result of the Board's special study, "Chemically Generated Supplemental Oxygen Systems in 18730, May 6, 1976, and 41 FR 35090, August 19, 1976.)

Re A–76–23, the Board takes note of FAA's decision to establish a service life and periodic inspection requirements for supplemental oxygen equipment. In its commentary on FAA's implementation of recommendations A–76–24 through A–76–26 by issuance of Air Carrier Operations Bulletin No. 76–4, the Board states that while the brief description of required actions on the part of Principal Operations Inspectors may satisfy the intent of these recommendations, the Bulletin does not provide guidelines for improved passenger briefings or for improved printed instructions for the use of chemical supplemental oxygen systems, as recommended in A–76–25. Board intent was that FAA provide criteria to operators, as well as Operations Inspectors, by which they could measure the adequacy of briefings and printed instructions.

Re A–76–20, which recommended that passenger supplemental oxygen systems have a means to indicate oxygen flow when the system is operating, the Board is aware that a variety of sensitive, reliable, and simple flow-indciating devices are available today to perform this function. However, as cited in the Board's special study, passengers discard their oxygen equipment where there is no flow indication. FAA's response suggested an alternative to this problem—an expanded briefing for passengers. The Board cites FAA for not providing guidelines as to what constitutes an adequate briefing.

With reference to recommendations A–76–21 and 22, which asked that adjustment tabs be installed on oxygen mask headbands, the Board disagrees that such a modification would not be cost effective. The Board believes that a tab-equipped adjustable strap can easily be retrofitted to existing masks as a field modification. The FAA stated that better passenger briefings may be the more realistic approach to this end; but the Board believes that this may be suitable material for inclusion in an Advisory Circular, as recommended in A–76–25.

In commenting on A–76–27, which recommended development of design standards for passenger supplemental oxygen systems which would include accepted human factors engineering principles and system design concepts for use by designers of these systems, the Board notes that its special study clearly identified the supplemental oxygen system in the DC–10 aircraft as having user-equipment interface problems which could have been avoided if guidance material had been available to the designer to point out some of these compatibility problems and means to avoid them. "That these human factors considerations were not initially recognized was clearly demonstrated by the Douglas Aircraft Company in 1974 when a study, initiated to evaluate illustrated instruction placards for the seatback-installed oxygen systems, concluded that less than 25 percent of the test subjects performed the necessary tasks to obtain oxygen when presented with the oxygen system without further instructions," the Board stated.

Re A–76–28, which asked for standards for type certification demonstration tests of passenger supplemental oxygen systems, the Board notes that the intent of this recommendation is a logical follow-up to any system design when it is so closely related to passenger safety. The Board believes that systems which must be used in an emergency situation by the untrained must be tested in the early design stages to show that the user is able to perform the required actions with minimal difficulty and in sufficient time to avoid unconsciousness. According to the Board, the DC–10 supplemental oxygen system was not so tested, either in its early design stage or during aircraft certification. The Board believes that if the FAA can require demonstration tests for evacuation systems, it should also consider such tests for supplemental oxygen systems.

The Board urges that FAA reconsider recommendations A–76–20 through A–76–22, A–76–25, and A–76–27 through A–76–28.

Board letter, also dated December 29, concerning recommendations A–76–67 through A–76–20 is in reply to FAA's response of July 0, 1976. The recommendations were issued last May 13 in connection with the Trans World Airlines

Boeing 707 accident near Milan, Italy, on December 22, 1975. The recommendations concerned the practice by some U.S.-flag air carriers of conducting "look-see" approaches at foreign airports. (See 41 FR 20747, May 20, 1976, and 41 FR 34125, August 12, 1976.)

The Board does not concur with FAA's analysis of these recommendations nor its proposed alternate action for the following reasons:

1. The Board believes that safety is compromised by the fact that U.S.-flag air carriers are permitted to conduct "look-see" approaches in foreign countries while such practices are not permitted in the United States, except under provisions of 14 CFR 121.651(c). Also, supplemental air carriers and commercial operators are prohibited by Federal Aviation Regulations from conducting "look-see" approaches at all times. Thus, a higher level of safety has been provided for this class air carrier than for U.S.-flag and domestic air carriers. Such an inconsistency is not in the interest of safety.

2. Only three air carriers—TWA, Northwest Airlines, and Pan American—allow their pilots to initiate an approach at foreign airports regardless of the reported weather, if the rules of that foreign country contain no other restrictions. All other companies have adopted the U.S. rule (14 CFR 121.651(c)) in foreign operations, the rule requiring an operative instrument landing system and precision approach radar and requiring that both of these facilities be used for an approach when the weather is reported to be below minimum conditions. This regulation effectively eliminates "look-see" approaches in the 48 contiguous States, since precision approach radar is virtually nonexistent at civil airports in the United States. The Board believes that many foreign weather facilities are now of a quality comparable to those in the United States and that reports emanating from these facilities should be acceptable for controlling approaches and landings at those airports. The same safety criteria governing "look-see" approaches in the United States should apply at foreign airports.

3. There may be instances in operating U.S.-flag air carriers when restrictions to "look-see" approaches would seriously hinder a viable operation into some foreign airports. However, this is not a reason to retain the current blanket authority for "look-see" approaches in foreign operations since other means can be employed to allow reasonably efficient service into such airports. Retaining the "look-see" authority until ICAO standards are revised is not considered to be in the best public interest and is not in keeping with the role of leadership which FAA has exhibited in the past, according to the Safety Board.

4. The alternate action proposed by FAA and expressed in Air Carrier Operations Bulletin No. 76-5 serves as further encouragement to pilots to execute approaches at foreign airports regardless of the reported weather. To caution pilots not to execute an approach if the reported weather is well below their landing minimums is tantamount to condoning an approach attempt when the visibility is reported to be zero; it depends on the pilot's interpretation of the term "well below." The Safety Board objects to such advice.

In view of the above, the Board urges FAA to reconsider recommendations A-76-67 through A-67-70 in the interest of safety.

The press release is available to the general public; single copies may be obtained without charge. Copies of correspondence relating to safety recommendations may be obtained at a cost of $4.00 for service and 10¢ per page for reproduction. All requests must be in writing, identified by recommendation number and date of publication of this notice in the FEDERAL REGISTER. Address inquiries to: Publications Unit, National Transportation Safety Board, Washington, D.C. 20594.

(Sec. 307 of the Independent Safety Board Act of 1974 (Pub. L. 93-633, 88 Stat. 2172 (49 U.S.C. 1906)).)

MARGARET L. FISHER,
Federal Register Liaison Officer.

JANUARY 17, 1977.

[FR Doc.77-1954 Filed 1-19-77;8:45 am]

OFFICE OF THE FEDERAL REGISTER

EDUCATIONAL WORKSHOPS ON HOW TO USE THE FEDERAL REGISTER

Region IX Workshops in Los Angeles and San Francisco, California

The Office of the Federal Register (OFR) will hold six separate workshops on "The Federal Register—What It Is and How To Use It" in Los Angeles and San Francisco, California, as part of the General Services Administration's Consumer Representation Plan.

LOS ANGELES WORKSHOPS

Workshop dates: Wednesday, February 23, 9:30 a.m.; Thursday, February 24, 9:30 a.m.; Friday, February 25, 9:30 a.m. (Reservations required for each session). Location: Room 8544, Federal Building, 300 North Los Angeles Street, Los Angeles, CA. Reservations: Cornelia Born, 213-688-3210

SAN FRANCISCO WORKSHOPS

Workshop dates: Tuesday, March 1, 9:30 a.m.; Wednesday, March 2, 9:30 a.m.; Thursday, March 3, 9:30 a.m. (Reservations required for each session). Location: Room 2575, Tishman Building, 525 Market Street, San Francisco, CA. Reservations: Velma Anlew, 415-556-2786

AGENDA

The content of each workshop session will be identical. Each workshop will last for approximately three hours and will cover the following areas:

1. A brief history of the FEDERAL REGISTER.

2. The difference between legislation and regulations.

3. The relationship of the FEDERAL REGISTER and the Code of Federal Regulations.

4. Important elements of a typical FEDERAL REGISTER document.

5. An introduction to the finding aids of the OFR and a practical exercise using those finding aids.

The OFR does not interpret specific agency regulations and the workshops will not provide a forum for the discussion of substantitive questions. Rather, the workshops are designed as an introduction for the person who discovers that he or she must use FEDERAL REGISTER publications to keep track and to gain an understanding of Federal regulations.

Dated: January 19, 1977.

FRED J. EMERY,
Director of the Federal Register.

[FR Doc.77-2194 Filed 1-19-77;10:34 a.m.]

OFFICE OF MANAGEMENT AND BUDGET

CLEARANCE OF REPORTS

List of Requests

The following is a list of requests for clearance of reports intended for use in collecting information from the public received by the Office of Management and Budget on January 13, 1977 (44 U.S.C. 3509). The purpose of publishing this list in the FEDERAL REGISTER is to inform the public.

The list includes the title of each request received; the name of the agency sponsoring the proposed collection of information; the agency form number(s), if applicable; the frequency with which the information is proposed to be collected; the name of the reviewer or reviewing division within OMB, and an indication of who will be the respondents to the proposed collection.

Requests for extension which appear to raise no significant issues are to be approved after brief notice thru this release.

Further information about the items on this daily list may be obtained from the clearance office, Office of Management and Budget, Washington, D.C. 20503 (202-395-4529), or from the reviewer listed.

NEW FORMS

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

National Institutes of Health:
- Survey of the Use of Videotechnology to Teach Interpersonal Skills, single time, users of videotechnology to teach skills to health profession, Richard Eisinger, 395-6140.
- Pathology Questionnaire, single time, University Hospital Departments, Richard Eisinger, 395-6140.
- Social and Rehabilitation Service, 1977 Recipient Characteristics Survey, SRS-NCSS-127, single time, case workers Sunderhauf, M.B., 395-6140.

Office of the Secretary, National Head Start Parent Involvement Evaluation, single time, parent-child pairs of HS & non-HS in 40 States, Human Resources Division, Reese B. F.

REVISIONS

SELECTIVE SERVICE SYSTEM

Employer's Statement of Availability of Job as Alternate Service, SSS-156, on occasion, employers, Marsha Traynham, 395-4529.

VETERANS ADMINISTRATION

Insurance Deduction Authorization, 29-888, on occasion, insured veteran, Caywood, D. P., 395-3443.

DEPARTMENT OF COMMERCE

Bureau of Census, Construction Machinery—Manufacturer's Quarterly Report, M&-35D, quarterly, manufacturing establishments, Peterson, M. O., 395-5631.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Social Security Administration, Statements of Person with Whom Beneficiary Is Living, SSA-780A, on occasion, Ind. In conjunction with applications for SS benefits, Caywood, D. P., 395-3443.

EXTENSIONS

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service, Animal Welfare Regulations, other (see SF-83), dealers, research facilities, exhibitors, Marsha Traynham, 395-4529.

DEPARTMENT OF COMMERCE

Bureau of Census, Shipper's Summary Export Declaration, 7525M, monthly, exporters, Marsha Traynham, 395-4529.

DEPARTMENT OF DEFENSE

Department of the Army (excl. Def Civil Preparedness Agcy), Inventory of U.S. Property held by Civilian Rifle Clubs, DA 1275, annually, custodian of each club, Warren Topellus, 395-5872.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration, Registration of Cosmetic Product Establishment, FD 2511, on occasion, cosmetic product manufacturers and repackers, Marsha Traynham, 395-4529.

Social Security Administration:
- Social Security Disability Beneficiary Report, SSA-454A, on occasion, Beneficiaries Whose Disability is Expected to Improve, Caywood, D. P., 395-3443.
- Third Party Premium Billing Request, SSA-2384, on occasion, enrollees, Marsha Traynham, 395-4529.

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service:
- Application for Exception from the Classification of Alien Enemy, N-436, on occasion, alien enemies, Marsha Traynham, 395-4529.
- Verification of Record of Naturalization, N-25, on occasion, clerks of court, Marsha Traynham, 396-4529.
- Letter to Alien Relative to Cancellation of Public Charge Bond, I-356, on occasion, aliens, Marsha Traynham, 395-4529.

Certificate of Eligibility (For Non-Immigrant F-1 Student Status), I-20AB, on occasion, students, Marsha Traynham, 395-4529.

DEPARTMENT OF THE INTERIOR

Mining Enforcement and Safety Administration:
- Employment and Production Report, 3000-2, monthly, all coal mine operations, Marsha Traynham, 395-4529.
- Metal-Nonmetal Quarterly Employment Report, MESA 3000-4, on occasion, all metal-nonmetal mine operations, Marsha Traynham, 395-4529.

PHILLIP D. LARSEN,
Budget and Management Officer.

[FR Doc.77-2114 Filed 1-19-77;8:45 am]

PRIVACY ACT OF 1974

Reports on New Systems

The purpose of this notice is to list reports on new systems filed with the Office of Management and Budget to give members of the public the opportunity to make inquiries about them and to comment on them.

The Privacy Act of 1974 requires that agencies give advance notice to the Congress and the Office of Management and Budget of their intent to establish or modify systems of records subject to the Act (5 U.S.C. 552a(o)). During the period December 27, 1976 through January 7, 1977 the Office of Management and Budget received the following reports on new (or revised) systems of records.

DEPARTMENT OF JUSTICE

System Names:

(1) Public Safety Officers' Benefits Systems.
(2) Consumer Inquiry Index.
(3) Criminal Case Files.

Report Date:

December 27, 1976

Point of Contact:

Mr. Harry L. Gastley, Administration Counsel, Office of Management and Finance, Department of Justice, Washington, D.C. 20240.

VELMA N. BALDWIN,
Assistant to the Director for Administration.

[FR Doc.77-1938 Filed 1-19-77;8:45 am]

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-13126; File No. SR-Amex-76-27]

AMERICAN STOCK EXCHANGE INC.

Self-Regulatory Organizations; Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94-29, 16 (June 4, 1975), notice is hereby given that on December 8, 1976, the American Stock Exchange, Inc. (the "Amex") filed with the Securities and Exchange Commission a proposed rule change as follows:

STATEMENT OF THE TERMS OF SUBSTANCE OF THE PROPOSED RULE CHANGE

Provisions regarding the determination of margin maintenance requirements pertaining to options specialists and registered options traders are deleted from Rule 940, and are reestablished in a revised form, complying with recent amendments to the uniform net capital rule, under a new subsection "I" to Rule 462(d)(2).

STATEMENT OF BASIS AND PURPOSE

The purpose of the proposed rule change is to conform Amex maintenance margin requirements for specialists in options and registered options traders to the amendments to the uniform net capital rules, dealing with the accounts of options market makers, which were recently promulgated by the Commission and become effective January 1, 1977.

Rule 940(b) and Commentaries .01 and .03 thereto, apply solely to the margining of call option contracts, and are proposed to be deleted. The substance of such provisions, however, is proposed to be incorporated into a new subsection "I" to Rule 462(d)(2).

The proposed amendments are based upon section 6(b)(1) of the Securities Exchange Act of 1934, as amended by the Securities Acts Amendments of 1975, and relate to the Amex's capacity to enforce compliance by Amex members and persons associated with members to the margin maintenance provisions of the uniform net capital rules to the Act. (Item 4(a)(1)).

No comments were solicited or received with respect to the proposed rule changes.

The Amex has determined that the proposed rule changes will not impose any burden on competition.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges, and in particular, the requirements of Section 6, and the rules and regulations thereunder.

Further, the Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof. Approval of the proposed rule change at this time is necessary and appropriate to enable the Exchange's rules to accommodate revisions to the Commission's financial responsibility requirements pertaining to transactions in options, which become effective on January 1, 1977.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, That the proposed rule change referenced above be, and it hereby is, approved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to the file number referenced in the caption above and should be submitted by February 11, 1977.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

DECEMBER 30, 1976.

[FR Doc.77-1811 Filed 1-19-77;8:45 am]

[Release No. 34-13159; File No. SR-CBOE-76-26]

CHICAGO BOARD OPTIONS EXCHANGE, INC.

Self-Regulatory Organizations; Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15

U.S.C. 78s(b)(1) as amended by Pub. L. No. 94-29, 16 (June 4, 1975), notice is hereby given that on December 22, 1976 the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

Additions *italicized*, deletions bracketed

EXCHANGE'S STATEMENT OF THE TERMS OF SUBSTANCE OF THE PROPOSED RULE CHANGE

PRIORITY OF BIDS AND OFFERS

Rule 6.45. Except as provided by Rule 6.47 below, the following Rules of priority shall be observed with respect to bids and offers:

(a) (No change)

(b) (No change)

(c) Openings. Notwithstanding anything in paragraphs (a) and (b) to the contrary, where necessary to achieve a single-price opening, [the Board Broker may give] market orders *in which no member or any non-member broker/dealer has an interest* [, entitled to participate in the opening] *shall have* priority over limit orders at the same opening price on the Board Broker's book. [The Floor Procedure Committee shall establish] The cut-off time for orders entitled to participate in the opening [.] *is set forth in Interpretation .02 to Rule 7.4.*

* * * *Interpretations and Policies:*

.01 (No change)

.02 (No change)

CROSSING ORDERS

Rule 6.74. (a) A Floor Broker who holds orders to buy and sell the same option contract may cross such orders, provided that he proceeds in the following manner:

(i) [He must request that the Board Broker, in accordance with Rule 7.5, call upon Market-Makers assigned to such option contract to make bids and/or offers] *In accordance with his responsibilities for due diligence, a Floor Broker shall request a quotation and make all persons in the trading crowd, including the Board Broker, aware of his request for a quotation.*

(ii) After providing an opportunity for such bids and offers to be made, he [may] *must* bid above the highest bid in the market [and] or offer below the lowest offer in the market at the same price or at prices differing by the minimum fraction.

(iii) If neither his bid nor his offer is taken he may cross the orders [(or any untaken parts thereof)] by announcing by public outcry that he is crossing and giving the quantity and price.

(b) During the opening rotation for a class of option contracts, in the interests of achieving a single price opening, an exception may be made to the requirements of subparagraphs (ii) and (iii) of paragraph (a) above, and the Floor Brokers may proceed as follows:

(i) A Floor Broker may match all market orders in his possession in which no member or non-member broker/dealer has an interest;

(ii) The Floor Broker shall then announce by public outcry the number and price of all orders that he has matched and is crossing; and

(iii) The Floor Broker may then continue to bid or offer the remaining unmatched and unexecuted orders he has in his possession for execution during the opening rotation.

DISCRETIONARY TRANSACTIONS

Rule 6.75. No Floor Broker shall execute or cause to be executed any [transaction] *order or orders* on this Exchange with respect to which [transaction] such Floor Broker is vested with discretion as to: (1) the choice of the class of options to be bought or sold, (2) the number of contracts to be bought or sold, or (3) whether any such transaction shall be one of purchase or sale; however, the provisions of this paragraph shall not apply to any discretionary transaction executed by a Market-Maker for an account in which he has an interest.

* * * Interpretations and Policies:

.01 The Floor Procedure Committee has determined that no Floor Broker shall hold "not held" market orders (buy and sell) or orders which have the effect of "not held" market orders (buy and sell) in the same series of options for the same account or the accounts of the same beneficial owner. Holding such orders can be interpreted as allowing the Floor Broker discretion as to the purchase or sale of such options.

OBLIGATIONS FOR ORDERS

Rule 7.4. (a) Acceptance. A Board Broker shall ordinarily be expected, for all option contracts of the class or classes to which his appointment extends, to accept and maintain a written record of orders that are placed in his custody. Such orders shall include market orders (as defined in Rule 6.53(a)), limit orders (as defined in Rule 6.53(b)), and such other orders as may be designated by the Floor Procedure Committee. A Board Broker shall not accept orders of any other type or from any source other than a member. No member shall place, or permit to be placed, an order with a Board Broker for an account in which such member , [or] any other member , *or any non-member broker/dealer* has an interest.

(b) (No change)

(c) (No change)

Interpretations and Policies:

.01 (No change)

[.02 Pursuant to Rule 7.4, the Floor Procedure Committee has designated Stop (Stop-Loss) Orders (as defined in Rule 6.53(c) (ii) and Stop-Limit Orders (as defined in Rule 6.53(c)(ii)) as orders that a Board Broker shall ordinarily be expected, for all option contracts of the class or classes to which his appointment extends, to accept and maintain a written record.

The Floor Procedure Committee has made the above designation with the following restrictions:

1. That Stop (Stop-Loss) Orders and Stop-Limit Orders for six or more option contracts shall not be considered designated orders that a Board Broker shall be permitted to accept.

2. That the Floor Procedure Committee reserves the right to review this policy at a later date.]

[.03] .02 Board Brokers shall accept orders, including cancels and changes, at the opening on the same time sequence basis as pertains during the balance of the day. However, a Board Broker shall not be held for orders accepted during a time interval from five (5) minutes prior to the first report of a transaction in an underlying security through the end of the opening rotation in that class of option contracts for execution of such orders at the opening.

.03 A Board Broker must maintain one "order shoe" for each type of option in each class of option contracts traded at his post, and these order shoes shall be the depository for all orders.

OBLIGATION FOR FAIR AND ORDERLY MARKET

Rule 7.5. At the request of a Floor Broker who holds an order for a particular option contract, [or before any crossing transaction is effected in accordance with Rule 6.74], or whenever in the Board Broker's opinion the interests of a fair, orderly and competitive market are best served by such action, a Board Broker shall call upon those Market-Makers with Principal Appointments and, whenever it is requested or in his opinion it is needed, Supplemental Appointments in that class of option contracts to make bids and/or offers that contribute to meeting the standards set forth in Rule 8.7. To the extent practicable, and in a form prescribed by the Exchange, the Board Broker shall keep a record of the responses of Market-Makers that provide or improve upon a market commensurate with these standards. If satisfactory responses are not forthcoming promptly, the Board Broker shall make a record of this fact. Copies of all records kept in accordance with this Rule shall be forwarded to the Department of Compliance.

* * * *Interpretations and Policies:*

.01 (No change)

EXCHANGE'S STATEMENT OF BASIS AND PURPOSE

Rule 6.45. The purpose of this rule change is to ensure fair and orderly markets through the use of single price openings. Therefore in an effort to standardize the opening rotation procedures utilized by each Board Broker to achieve this goal, it is proposed that this rule be amended to require, rather than permit, market orders to be given priority over limit orders held by the Board Broker. It should be noted that only market orders for those other than members and non-member broker/dealers shall be afforded priority treatment in order to effect single price openings. This provision maintains the priority afforded orders of public customers. Furthermore, the proposed amendment also cross-references to relevant amendments recently approved by the Securities and Exchange Commission to Rule 7.4.

Rule 6.74. The language of subparagraph (i) of paragraph (a) is proposed to be deleted in recognition of the ample number of Market-Makers which presently comprise every trading crowd. This negates the need to utilize a Board Broker to call for Market-Makers in an order crossing situation. Concurrently, however, it is believed appropriate to reiterate a Floor Broker's obligation to exercise due diligence in the execution of orders, and to specify what one of such Floor Broker's duties would be in crossing an order.

The purpose of the proposed amendments to subparagraphs (ii) and (iii) of paragraph (a) is to conform the language of the rule to those trading procedures which have been followed in a crossing situation.

The provisions of proposed new paragraph (b) will standardize the procedures to be implemented by a Floor Broker who wishes to cross public customer orders during an opening rotation. The proposal will also ensure that all members of the trading crowd are made aware of the volume and price of the orders to be crossed.

Rule 6.75. The purpose of the proposed amendment is to interpret clause (3) of the rule by describing certain order combinations which if used by a Floor Broker would find him in violation of the rule. This proposal specifically proscribes the use of certain orders, the effect of which would be to imbue the Floor Broker with discretion as to the purchase or sale of an option. Such discretion belies the Floor Broker's agency function and enables him to operate like a Market-Maker.

Rule 7.4. The purpose of the proposed revision to paragraph (a) of the rule is to clarify that Board Brokers shall accept only public customer orders. This provision will effectively preclude all broker/dealers from transmitting proprietary orders to the Board Broker. This proposed amendment is consistent with the Exchange's intent and long standing policy to afford the Board Broker's limit order priority only to public customers.

Section .02 to Rule 7.4 is proposed to be deleted, for it has been found that a Board Broker's handling of contingency orders, such as Stop-Loss and Stop-Limit orders, creates undue clerical burdens, and detracts from a Board Broker's ability to carry out his primary responsibilities regarding limit and market orders and trading crowd control. It has also been found that considerable confusion among members of a trading crowd can arise when a number of Stop orders held by a Board Broker become market orders due to a movement in the stock, and the Board Broker's book display suddenly changes. Such a proposed change will contribute to the maintenance of a fair and orderly market.

The purpose of new section .03 to Rule 7.4 is to standardize the manner in which one of the devices located at a Board Broker's post must be used in order to transmit an order to the Board Broker. A Floor Broker shall place an order with the Board Broker by inserting the order card into the metal "order shoe" which is designated for that class and type of option. The use of this "shoe" enables the Board Broker to properly segregate and place into sequence all new orders transmitted to him.

Rule 7.5. The purpose of this amendment is to conform the provisions of this Rule to the revisions proposed for Rule 6.74.

The amendments proposed herein are in accordance with section 6(b)(5) of the Act which provides, inter alia, that rules of the Exchange promote just and equitable principles of trade and protect investors and the public interest.

Comments were not solicited, nor have comments been received from members of the Exchange.

No burden will be imposed upon competition by virtue of the implementation of these rules changes.

On or before February 25, 1977, or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the above mentioned self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file 6 copies thereof with the Secretary of the Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted on or before February 22, 1977.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

JANUARY 13, 1977

[FR Doc.77-1812 Filed 1-19-77;8:45 am]

[Release No. 34-13160; File No. SR-CBOE-76-27]

CHICAGO BOARD OPTIONS EXCHANGE, INC.

Self-Regulatory Organizations; Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) as amended by Pub. L. No. 94-29, 16 (June 4, 1975), notice is hereby given that on December 22, 1976 the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

EXCHANGE'S STATEMENT OF THE TERMS OF SUBSTANCE OF THE PROPOSED RULE CHANGE

The Chicago Board Options Exchange, Incorporated ("the Exchange"), hereby requests that it be permitted over the next few months to expand the number of securities which provide the basis for its trading activities from the present authorized level of 100 to 125. As can be seen, it is intended that such request represent only a short-term growth program which will be followed, in the near future, by a longer range Exchange expansion plan. In order that interested persons may be afforded an opportunity for formal notice of and to comment on its request, CBOE hereby elects pursuant to clause (ii) of paragraph (a) of Rule 19 b-4 to treat its request for expansion of the number of securities which provide the basis for its trading activity as a "proposed rule change" under said Rule and to file such proposed rule change in accordance with the provisions of section 19(b)(2) of the Securities Exchange Act of 1934, as amended.

EXCHANGE'S STATEMENT OF BASIS AND PURPOSE

The proposed rule change will enable the Exchange to plan for and implement a moderate expansion of the number of securities on which its trading activity is based. Such expansion will enable the Exchange to efficiently utilize its present facilities which will comfortably accommodate the peak volume of trading which it is anticipated would result from Commission approval of the proposed securities expansion.

It is the Exchange's view that the Commission's approval of the expansion program set forth above would be entirely consistent with the protection of investors and the public interest. Through such an Exchange expansion, the Commission would enable the Exchange to utilize its present capabilities to the fullest extent, while at the same time permitting the Exchange to respond to competitive pressures to improve the current level of Exchange service to the investing public and the member community, and to introduce innovative trading concepts which offer greater investment opportunities to those same groups. This kind of Exchange activity would be responsive to the statutory mandate that national securities exchanges perfect the mechanism of free and open markets.

In order to accurately assess the Exchange's capacity to operate efficiently in the face of the increased trading volume which would result from realization of the Exchange's proposed expansion program, there are three key areas which must be measured—communication systems, floor facilities and regulatory ca-

pability. Over the past twelve months, the Exchange has labored successfully to improve the timeliness and efficiency of its last sale and bid/ask quote dissemination. In addition, the Exchange's trading support communications ability has been significantly increased since October, 1975. During this same period of time, the Exchange floor communications abilities of member firms have also been greatly enhanced.

With respect to the Exchange's trading floor facilities, the Exchange has completed construction on a number of additional trading posts and has provided member firms with a larger number of communications booths. The Exchange has also built a communications room adjacent to the Exchange floor specifically for use by member firms during peak periods if their respective booth facilities are unable to efficiently handle the volume of orders.

The Exchange's Department of Compliance and Department of Trading Procedures have continued to add qualified, highly educated personnel to their respective investigative and analytical staffs. In the area of market surveillance, especially, the Exchange has significantly expanded its capability not only through the acquisition of experienced, well educated data and market analysts, but also through the introduction of on-line market analysis with computerized support.

Comments were not, and are not intended to be, solicited with respect to the proposed rule change.

The Exchange believes that its ability to expand the number of securities upon which its trading activity is based will enable it to compete more effectively without in any way imposing any burdens upon competition.

On or before February 25, 1977, or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the above mentioned self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file 6 copies thereof with the Secretary of the Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and all written submission will be available for inspection and copying in the Public Reference Room, 1100 L Street, NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted on or before February 22, 1977.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

JANUARY 13, 1977.

[FR Doc.77-1813 Filed 1-19-77;8:45 am]

[Rel. No. 19852, 70-5791]

GENERAL PUBLIC UTILITIES CORP.

Proposed Amendment of Articles of Incorporation and Solicitation of Proxies

JANUARY 13, 1977.

Notice is hereby given That General Public Utilities Corporation ("GPU"), 80 Pine Street, New York, New York 10005, a registered holding company, has filed a post-effective amendment to its declaration, previously filed with this Commission, pursuant to the Public Utility Holding Company Act of 1935 ("Act") designating sections 6(a), 7 and 12(e) of the Act and Rule 62 promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the declaration, as amended by said post-effective amendment, for a complete statement of the proposed transactions.

By order dated February 20, 1976 (HCAR No. 19396) issued in this proceeding, GPU was authorized, among other things, to amend its Articles of Incorporation ("Charter"), subject to the obtaining of necessary stockholder approval, to eliminate the preemptive rights of common stockholders of GPU. GPU obtained the necessary stockholder approval for this Charter amendment on April 5, 1976 and the Charter was accordingly amended on April 6, 1976.

After the February 20, 1976 order was issued, GPU undertook with this Commission that unless otherwise authorized by the Commission, GPU would not sell additional shares of common stock except pursuant to a public offering for cash or an employee stock option plan or in connection with a merger or consolidation or for consideration other than cash, without first offering such shares to its stockholders. GPU now desires to incorporate, subject to the obtaining of favorable action by its stockholders at its annual meeting to be held on April 4, 1977, the substance of this undertaking in its Charter, as amended.

It is specifically proposed to amend Article 9 of the Charter to provide that stockholders shall have preemptive rights to purchase GPU common stock offered for sale other than through: (i) A public offering; or (ii) an offering through underwriters or dealers who agree to make a prompt public offering thereof; or (iii) operation of a common stock cash dividend reinvestment program (including the right to invest additional amounts in additional shares of common stock); or (iv) operation of an employee stock ownership plan: or (v) any other offering which shall have been authorized at a meeting of stockholders by the affirmative vote of a majority of all outstanding shares entitled to vote thereon, or shall be consistent with a plan authorized or approved by such a vote of the holders of a majority of all outstanding shares entitled to vote thereon.

The proposed Charter amendment further provides that the preemptive rights provision shall entitle stockholders having such rights to purchase shares of GPU's common stock as nearly a practicable in such proportion as would, if such preemptive rights were exercised, preserve the relative holdings of such stockholders. The price for stock purchased pursuant to preemptive rights will have a price or prices not less than the price or prices at which such shares are proposed to be offered for sale to others (before giving effect to any reduction in the amount realized by GPU by expenses, including underwriters' and dealers' compensation, incurred in connection with the sale). It is further provided that GPU shall not be obligated to offer or issue any fractional interest in a full share of its common stock pursuant to preemptive rights. The Charter amendment will also provide that at any time within a period expiring not more than one year after the granting of preemptive rights, shares which have been offered to stockholders and which have not been subscribed for or purchased may be issued or sold to such persons (including stockholders) at such prices and at such times as may be fixed by the Board of Directors, provided that the price will not be less than the price at which such shares were obtainable upon the exercise of preemptive rights granted in connection with the offering.

GPU proposes to solicit proxies from its stockholders in connection with the proposed Charter amendment for use at the GPU annual meeting on April 4, 1977. Adoption of the proposed Charter amendment requires the affirmative vote of the holders of a majority of the outstanding shares of GPU common stock.

Fees and expenses to be incurred in connection with the proposed transaction will be supplied by amendment. The cost to GPU for reimbursement to stockholders who hold stock for others for forwarding copies of proxy material to them is estimated at $25,000. It is stated that no state or federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Notice is further given That any interested person may, not later than February 7, 1977, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said declaration, as amended by said post-effective amendment, which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any

time after said date, the declaration, as amended by said post-effective amendment, or as it may be further amended, may be permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from its rules under the Act as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.77-1805 Filed 1-19-77;8:45 am]

[Rel. No. 19851, 70-5951]

JERSEY CENTRAL POWER & LIGHT CO., ET AL.

Proposed Sale of Utility Assets Between Affiliates

JANUARY 13, 1977.

Notice is hereby given That Jersey Central Power & Light Company ("JCP&L"), Madison Avenue at Punchbowl Road, Morristown, New Jersey 07960, Metropolitan Edison Company ("Met-Ed"), 2800 Pottsville Pike, Reading, Pennsylvania 19603, and Pennsylvania Electric Company ("Penelec"), 1001 Broad Street, Johnstown, Pennsylvania 15907, electric utility subsidiary companies of General Public Utilities Corporation, a registered holding company, have filed a declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act") designating sections 12(d) and 12(f) of the Act and Rule 43 promulgated thereunder as applicable to the following proposed transactions. All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transactions.

The declarants are currently engaged in the construction of Unit No. 2 of the Three Mile Island nuclear generating station ("TMHI No. 2"). The declarants now own the unit as tenants in common (without rights of partition) in the following proportions: JCP&L: 25%, Met-Ed: 50% and Penelec: 25%.

It is proposed that Met-Ed sell JCP&L an additional 25% undivided interest and that Penelec sell JCP&L an additional 15% undivided interest in TMI No. 2. The resulting ownership proportions would then be: JCP&L: 65%, Met-Ed: 25% and Penelec: 10%.

It is proposed that the sales of the interests in TMI No. 2 be made in a series of installments (which will not necessarily be pro rata as between Met-Ed and Penelec) geared to JCP&L's ability to make payments and the ability of Met-Ed and Penelec to make use of the sales proceeds. The sales will be completed by the time TMI No. 2 is placed in commercial service, such time now being estimated to be in the Spring of 1978. The sales price of the interests will be the book cost, including allowance for funds used during construction ("AFC"), of the interests conveyed by the sellers, adjusted in order to retain for the respective customers of the sellers the net benefit of certain tax allocations.

It is also proposed that JCP&L sell Met-Ed and Penelec 25% undivided interests in the Forked River nuclear generating station which is presently owned 100% by JCP&L. After the proposed sales, the Forked River station would be owned 50% by JCP&L and 25% each by Met-Ed and Penelec. The sales will be made in one or more installments but will also be completed by the time TMI No. 2 is in commercial service. The sale will be made for the book cost of the interests conveyed by JCP&L, including AFC, adjusted to retain for JCP&L's customers the net benefit of (i) certain tax allocations and (ii) the inclusion of a portion of JCP&L's investment in Forked River in rate base.

The declarants own undivided interests in Unit No. 1 of the Three Mile Island generating station ("TMI No. 1") in the following proportions: JCP&L: 25%; Met-Ed 50% and Penelec: 25%. The proposed transactions will not affect these ownership interests. However, there are certain facilities which are to be used in common for TMI No. 1 and No. 2. The original cost of such common facilities at the time TMI No. 1 was placed in commercial service was approximately $14 million, of which Met-Ed's share was approximately $7 million and the Penelec and JCP&L shares were approximately $3.5 million. It is stated that the Pennsylvania Public Utilities Commission has excluded from rate base one-half of Penelec's and Met-Ed's investment in these common facilities as being assignable to TMI No. 2. Therefore, one-half of their cost of such common facilities will be regarded by Met-Ed and Penelec as assignable to TMI No. 2 and the interests in TMI No. 2 to be conveyed by those companies will include proportionate interests in such facilities.

JCP&L owns 100% of the Oyster Creek nuclear generating station which was placed in commercial service in 1969. Some of the Oyster Creek facilities will be used in common for Forked River, which is immediately adjacent to Oyster Creek. These common facilities will be equitably allocated between Oyster Creek and Forked River and the undivided interests in Forked River conveyed by JCP&L to Met-Ed and Penelec will include proportionate interests in the common facilities.

It is stated that various events, including an oil embargo, fuel price increases, a pause in the rate of increase of the consumption of electricity and the deferral of the completion dates for TMI No. 2 and Forked River have made it appropriate to reallocate participation in the units among the declarants.

It is stated that the New Jersey and Pennsylvania Public Utilities Commissions have jurisdiction over various aspects of the proposed transactions and that the consummation of certain of the proposed transactions may require amendment of the construction permits issued by the United States Nuclear Regulatory Commission. It is stated that no other state or federal commission, other than this Commission, has jurisdiction over the proposed transactions. Fees and expenses to be incurred in connection with the proposed transactions are to be supplied by amendment.

Notice is further given. That any interested person may, not later than February 7, 1977, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the declarants at the above-stated addresses, and proof of service (by affidavit or, in case an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as it may be amended, may be permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exception from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.77-1806 Filed 1-19-77;8:45 am]

[Release No. 13162; SR-NASD-76-8]

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

Order Approving Proposed Rule Change

JANUARY 13, 1977.

On September 20, 1976, the National Association of Securities Dealers, Inc. ("NASD"), 1735 K Street, N.W., Washington, D.C. 20006, filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94-29, 16 (June 4, 1975) (the "Act"), and Rule 19b-4 thereunder, copies of a proposal (the "Proposal") to amend NASD's Rules of Fair Practice by adding new section 33 ("section 33") to Article III thereof.

Section 33 would authorize the NASD's Board of Governors to adopt rules, regulations and procedures relating to transactions in options contracts, including options displayed on the NASDAQ system, for purposes specified therein. Rules, regulations and procedures so adopted would be incorporated into Appendix E to be attached to and made a part of NASD's Rules of Fair Practice.

Notice of the Proposal together with the terms of substance thereof was given by publication of a Commission Release (Securities Exchange Act Release No. 12830, September 24, 1976) and by publication in the FEDERAL REGISTER (41 FR 43481, October 1, 1976).

The Commission finds that the Proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to registered securities associations, and, in particular, the requirements of Section 15A of the Act and the rules and regulations thereunder.

This Order is not intended to authorize commencement of an NASD option program such as the program referred to in a letter dated September 24, 1976 from this Commission to the NASD which would involve, *inter alia*, use of NASD facilities to display quotations in standardized options issued by The Options Clearing Corporation. Such authorization would depend, at a minimum, on Commission approval of rules adopted by the Board of Governors under Section 33 and the fulfillment of certain conditions such as those set forth preliminarily in that letter.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, That the Proposal be, and it hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.77-1807 Filed 1-19-77;8:45 am]

[Release No. 13155; File No. SR-OCC-76-10]

OPTIONS CLEARING CORP.

Automatic Exercise Procedure for Certain Expiring Option Contracts

JANUARY 12, 1977.

On November 4, 1976, The Options Clearing Corporation ("OCC"), 6150 Sears Tower, Chicago, Illinois 60606, submitted, pursuant to Rule 19b-4 under the Securities Exchange Act of 1934 (the "Act"), a proposed rule change to permit expiring in-the-money options to be exercised via an automatic exercise procedure. The proposed rule change purports to apply to both call option and put option contracts as well as to option contracts for securities traded in the over-the-counter market.

In accordance with section 19(b) of the Act and Rule 19b-4 thereunder, the proposed rule change was published in the FEDERAL REGISTER (41 FR 51157, November 19, 1976), and the public was invited to submit comments until December 10, 1976. Notice of the filing and an invitation for comments also appeared in Securities Exchange Act Release No. 12979, November 15, 1976. No letters of comment were received.

Since exchange trading is listed put option contracts has not been approved by the Commission, the Commission is not at this time making any determination with respect to the proposed rule change insofar as it relates to put option contracts. Also, the provisions of the proposed rule change which relate to option contracts for securities traded in the over-the-counter market shall not be effective until the Commission permits option markets to trade listed option contracts for such securities. The Commission has reviewed the OCC submission and finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to registered clearing agencies insofar as the proposed rule change relates to call option contracts.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, That the proposed rule change contained in File No. SR-OCC-76-10 be, and hereby is, approved insofar as it relates to call option contracts.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.77-1808 Filed 1-19-77;8:45 am]

[Release No. 34-13161; File No. SR-PSE-76-40]

PACIFIC STOCK EXCHANGE INC.

Self-Regulatory Organizations, Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94-29, 16 (June 4, 1975), notice is hereby given that on December 23, 1976, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

EXCHANGE'S STATEMENT OF THE TERMS OF SUBSTANCE OF THE PROPOSED RULE CHANGE

Pacific Stock Exchange Incorporated ("PSE") hereby requests permission to expand by twenty the number of underlying listed stocks in which it may approve trading in call options. The accomplishment of such a proposed change in current PSE procedures would expand to a total of fifty the current number of call options which PSE would be authorized to trade. The underlying stocks on which PSE would be authorized to trade options would meet PSE's new listing standards contained in File No. SR-PSE-76-37 which became effective on December 9, 1976.

EXCHANGE'S STATEMENT OF BASIS AND PURPOSE

The basis and purpose of the foregoing proposed rule change is as follows:

The purpose of the proposed rule change is to permit an expansion in PSE's program of trading call options.

The proposed rule change will enable PSE to increase the number of underlying stocks on which PSE trades call options. PSE believes it consistent with the protection of investors and the public interest that it be permitted to expand the number of call options it trades. PSE is presently trading call options in twenty-six of the thirty underlying stocks for which it has authorization, and accordingly, further progress in PSE's efforts to establish a viable regional options trading facility necessitates the proposed increase in the number of classes of call options traded on PSE.

PSE believes that the experience it has gained in its current options trading program, as well as the capabilities it has developed in the areas of data collection, communication systems and surveillance procedures are more than sufficient to accommodate the increased volume of trading which would result from the approval of the requested additional call options classes. PSE has recently expanded its floor capacity and trading posts, and its physical facilities are consequently able to accommodate this increased volume.

PSE believes that the granting of this request to expand the number of options classes traded on its floor will contribute to its growth as a viable competitive options trading facility. Moreover, PSE believes that the additional authorization sought herein is especially appropriate in light of the changed listing standards recently approved by the Commission for options exchanges.

Comments were not, and are not intended to be, solicited with respect to the proposed rule change.

The proposed rule change will not impose any burden on competition. Rather, it will encourage competition by contributing to PSE's viability as a competitive options trading facility.

On or before February 25, 1977, or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the above-mentioned self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file 6 copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted on or before February 22, 1977. For the Commission by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

JANUARY 13, 1977.

[FR Doc.77-1814 Filed 1-19-77;8:45 am]

[Release No. 34-13158; File No. SR-PHLX 76-20]

PHILADELPHIA STOCK EXCHANGE, INC.

Self-Regulatory Organization; Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94-29, 16 (June 4, 1975), notice is hereby given that on December 22, 1976, the above mentioned self-regulatory organization filed with the Securities and Exchange Commission proposed rules changes as follows:

EXCHANGE'S STATEMENT OF THE TERMS OF SUBSTANCE OF THE PROPOSED RULES CHANGES

Pursuant to Rule 19b-4A, the Philadelphia Stock Exchange (PHLX) proposes to rescind Rules 1042 and 1050 concerning the obligation of members to file certain reports in respect to option contracts which are listed and traded on the Exchange.

The Board of Governors of PHLX approved the amendment to Rules 1042 and 1050 on December 15, 1976.

Rule 1042 requires every member and member organization of PHLX who buys or sells 5 or more option contracts of one class for his or its account in one trading session pursuant to an order entered from off-the-floor, to report such activity to the Exchange.

In the case of PHLX, member organizations that are clearing members of The Options Clearing Corporation (OCC) the filing of reports pursuant to the Rule is duplicative of information available to the Exchange from OCC.

In the case of PHLX member organizations that are not clearing members of the OCC, proprietary positions are reported in the same manner as nonmember customers' positions. Thus, the firm reports its long or short positions in excess of 100 contracts per class and any subsequent changes in such positions. The Exchange has concluded that the information provided by nonclearing member firms is adequate for surveillance purposes.

Rule 1050 states that member organizations are to file with the Exchange a monthly report of all open exercise positions.

An open exercise position is defined as one firm's failure to deliver shares of stock it owes to another firm as a result of the latter's having exercised an option contract.

Currently, the exercise of options issued by the OCC are settled on a continuous net settlement (CNS) system through the facilities of the Midwest Security Trust Company. It is expected that this settlement procedure will soon be extended to the Securities Industry Automation Corporation, Pacific Clearporation of Philadelphia, also on a CNS basis. Moreover, all unsettled exercise positions are marked to the market on a daily basis beginning on the settlement date of each exercise and continuing until the required stock has been delivered. The PHLX has concluded that OCC procedures make the original rule unnecessary.

EXCHANGE'S STATEMENT OF BASIS AND PURPOSE

Section 6(b)(5) of the Securities Exchange Act of 1934 ("the Act"), in part, requires that the Exchange rules be designed to protect investors and the public interest. The Exchange believes that it is consistent with this section of the Act to rescind Rules 1042 and 1050 because the information produced pursuant to these rules is available to the Exchange from other sources.

Comments were not solicited nor were comments received.

The Exchange does not believe any burden on competition will be imposed by these rules changes.

On or before February 25, 1977, or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the above-mentioned self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rules changes, or

(b) Institute proceedings to determine whether the proposed rules changes should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file six (6) copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 "L" Street, N.W., Washington, D.C. Copies of such filings will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted on or before February 22, 1977.

For the Commission by the Division of Market Regulation pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

JANUARY 13, 1977.

[FR Doc.77-1815 Filed 1-19-77;8:45 a.m.]

PHILADELPHIA STOCK EXCHANGE, INC.

Application for Unlisted Trading Privileges and Opportunity for Hearing

JANUARY 13, 1977.

In the matter of an application of Philadelphia Stock Exchange, Inc. for unlisted trading privileges in a certain security.

The above named national securities exchange has filed an application with the the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the security of the company as set forth below, which security is listed and registered on one or more other national securities exchanges:

Varian Associates, File No. 7-4905, Common Stock—$1 Par Value

Upon receipt of a request, on or before January 29, 1977 from any interested person, the Commission will determine whether the application with respect to the company named shall be set down for hearing. Any such request should state briefly the title of the security in which that person is interested, the nature of the interest of the person making the request, and the position he proposes to take at the hearing, if ordered. In addition, any interested person may submit his views or any additional facts bearing on the said application by means of a letter addressed to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549 not later than the date specified. If no request for a hearing with respect to the particular application is made, such application will be determined by order of the Commission on the basis of the facts stated therein and other information contained in the official files of the Commission pertaining thereto.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.77-1809 Filed 1-19-77;8:45 a.m.]

[Release No. 9603, 811-1833]

SCHUSTER SPECTRUM FUND, INC.

Application for a Order Declaring That Company has Ceased to be an Investment Company

JANUARY 12, 1977.

Notice is hereby given That Schuster Spectrum Fund, Inc. ("Applicant"), 245 Park Avenue, New York, New York 10017, an open-end, non-diversified, management investment company registered under the Investment Company Act of 1940 (the "Act"), has filed an application pursuant to section 8(f) of the Act for an order of the Commission declaring that Applicant has ceased to be an investment company as defined in the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant, a Maryland corporation, registered under the Act in 1969. Applicant states that on November 6, 1974, its shareholders approved a Plan of Reorganization and Agreement of Merger whereby the Applicant would be merged into Schuster Fund, Inc., an open-end, diversified, management investment company registered under the Act. Applicant further states that the merger became effective when Articles of Merger were filed with the State of Maryland Department of Assessments and Taxation on November 6, 1974, and the separate corporate existence of Applicant ceased to exist.

Section 8(f) of the Act provides, in pertinent part, that whenever the Commission, upon application, finds that a registered investment company has ceased to be an investment company, it shall so declare by order, and upon the taking effect of such order, the registration of such company shall cease to be in effect.

Notice is further given, That any interested person may, not later than February 7, 1977, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reasons for such request and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit, or in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc 77-1810 Filed 1-19-77;8:45 am]

[File No. 600-15]

NATIONAL SECURITIES CLEARING CORP.

Order Granting Registration and Statement of Reasons

JANUARY 13, 1977.

These are proceedings pursuant to section 19(a)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s (a)(1) (1975), as amended by the Securities Acts Amendments of 1975 (the "1975 Amendments"),[1] to determine whether to grant or deny the application of the National Securities Clearing Corporation ("NSCC") for registration as a clearing agency[2] pursuant to section 17A of the Act, 15 U.S.C. 78q-1 (1975), and Rule 17Ab2-1 thereunder, 17 CFR 240.17Ab2-1. NSCC's application contemplates the performance by NSCC of the clearing and settlement operations currently performed by the American Stock Exchange Clearing Corporation ("ASECC"), National Clearing Corporation ("NCC") and Stock Clearing Corporation ("SCC").

Section 19(a)(1) of the Act provides that, upon the filing of an application for registration as a registered clearing agency pursuant to section 17A of the Act, the Commission shall publish notice of the filing and afford interested persons an opportunity to submit written data, views and arguments concerning the application. Thereafter, the Commission either grants the registration or institutes further proceedings to determine whether registration should be granted or denied.

On March 29, 1976, the Commission gave notice of the filing of NSCC's application for registration.[3] The importance of the application to the Commission's efforts to perfect the mechanisms of a national market system for securities[4] and to facilitate the establishment of a safe and efficient national system for the clearance and settlement of transactions in securities,[5] the complexity of the technical, legal and economic issues raised by the application, and the written data, views and arguments concerning the application submitted in response to the Commission's March 29, 1976, announcement led the Commission to conclude that further exploration of the issues raised by the application was desirable. Accordingly, on May 28, 1976, the Commission instituted these proceedings and provided an opportunity for oral presentation of data, views and arguments on June 16-18, 1976.[6] On November 3, 1976, the Commission announced it was considering approving the NSCC application subject to four proposed conditions, requested public comment on the proposed conditions, and extended the time for concluding the proceedings in connection with the application to November 29, 1976.[7]

In the light of its experience in regulating securities markets, clearing corporations, securities depositories, transfer agents and brokers and dealers, the Commission reviewed and analyzed the many technical, legal and economic issues raised by NSCC's application, submissions made in response to the application, and other presentations of data, views and arguments made in connection with these proceedings and in response to the Commission's request for comment on the proposed conditions to approval of the application. Thereafter, the Commission made specific determinations required by the Act and, in accordance with the Act's directive to facilitate the establishment of a national system for the prompt and accurate clearance and settlement of transactions in securities, evaluated the application against the statutory findings and objectives of safety, efficiency, the use of new data processing and communications techniques, the linking of clearance and settlement facilities, the development of uniform standards and procedures, and reductions in unnecessary costs.[8] In addition, and as required by the Act, the Commission considered the effects which the exercise of its authority to grant or deny NSCC's application for registration would have on the public interest, the protection of investors, the safeguarding of funds and securities and the maintenance of fair competition.[9] On the basis of its review, analysis and evaluation of the NSCC application and a balancing of the concerns which the Commission must consider in using its authority under the Act to facilitate the establishment of a national clearing and settlement system,[10] the Commission has concluded these proceedings and has determined to grant registration to NSCC subject to the terms of this order and to the four conditions and the directives set forth herein.[11]

NSCC will be required to comply with those conditions to the satisfaction of the Commission before NSCC may begin operating, as a single integrated system, the clearing and settlement systems currently operated by ASECC, NCC and SCC. In the interim, NSCC must submit for Commission approval any proposed changes in the rules, operating procedures and facilities management arrangements of NSCC or any of its operating divisions which are in effect immediately following the issuance of this order.

[1] Pub. L. No. 94-29, section 16, 89 Stat. 146 (1975).

[2] Section 3(a)(23) of the Act, 15 U.S.C. 78(c)(a)(23) (1975), defines "clearing agencies" to include, inter alia, clearing corporations and securities depositories. See also N.Y. Uniform Commercial Code, Sections 8-102(3) and 8-320 (McKinney Supp. 1975-76). For a description of clearing corporation and depository functions, see discussion under "Characteristics of a National System" infra.

[3] Securities Exchange Act Release No. 12274 (March 29, 1976), 41 FR 14455 (April 5, 1976).

[4] The Act, Section 2, 15 U.S.C. 78(b) (1975).

[5] The Act, Sections 2 and 17A.

[6] Securities Exchange Act Release No. 12489 (May 28, 1976), 41 FR 23255 (June 9, 1976).

[7] Securities Exchange Act Release No. 12954 (November 3, 1976), 41 FR 49721 (November 10, 1976). NSCC subsequently consented to an extension of time for concluding these proceedings to January 13, 1977.

[8] The Act, Section 17A(a)(1).

[9] The Act, Section 17A(a)(2).

[10] *Id.*

[11] The determinations the Commission is making under the Act and the duration of, conditions to and directives issued in connection with NSCC's registration are set forth below under "Determinations, Conditions and Directives."

In the Commission's view, establishment of the national system for the prompt and accurate clearance and settlement of transactions in securities contemplated by Section 17A of the Act requires that brokers and dealers located in New York City and elsewhere throughout the country have access, at a reasonable cost, to one or more entities through each of which brokers and dealers can efficiently and safely compare, clear and settle transactions in securities regardless of the market in which the transactions occur or the location of the other parties to the transactions. The Commission's determination to grant NSCC's registration is based on the Commission's conclusion that NSCC's registration, subject to the conditions contained in this order, is an essential step toward the establishment, at an early date, of a comprehensive network of linked clearance and settlement systems and branch facilities with the national scope, efficiencies and safeguards envisioned by Congress in enacting the 1975 Amendments.

The remainder of this order is organized as follows:

THE STATUTORY FRAMEWORK

The Paperwork Crisis
Commission and Congressional Reaction
The 1975 Amendments
Characteristics of a National System:
  Book Entry Clearing
  Non-Book Entry Clearing
  Comparison, Accounting and Settlement
  Depository Capabilities
Statutory Determinations to be Made in Connection with NSCC's Registration

THE NSCC APPLICATION

Background to the Application
The Application:
  Facilities Management
  User-Control
  Payments to the Amex, NASD and NYSE
  Services to be Provided
  Relationship to Securities Depositories
  Trade Comparison
  Participant Qualifications
  Cost Savings

DETERMINATIONS WITH RESPECT TO NSCC

Scope of Consideration
Reaffirmation of Determinations Made Previously:
  Safeguards and Fixing Rates or Fees
  Protection of Investors
Determinations Not Involving Conflicting Data, Views and Arguments:
  Capacity to Facilitate and Promote the Prompt and Accurate Clearance and Settlement of Securities Transactions
  Capacity to Take Advantage of New Data Processing and Communications techniques
Determinations Involving Conflicting Data, Views and Arguments:
  Capacity to Reduce Unnecessary Costs
  Capacity to Achieve the Linking of Clear and Settlement Systems and Facilitate the Establishment of a National Sytem
Competitive Considerations:
  Effects on Competition Among Brokers and Dealers
  Effects on Competition Among Clearing Agencies
  Effects on Competition Among Transfer Agents
  Effects on Competition Among Securities Exchanges
  Payments to the Amex, NASD and NYSE
  The NSCC-SIAC Facilities Management Agreement
Alternative Approaches Considered

IMPLEMENTATION AND MONITORING DETERMINATIONS, CONDITIONS AND DIRECTIVES

THE STATUTORY FRAMEWORK

THE PAPERWORK CRISIS

The Commission's action today is taken against the background of a severe operational and financial crisis of the late 1960's and the subsequent efforts of Congress, the Commission and the securities industry to diagnose and resolve the many serious problems in securities transaction processing that brought about the crisis.

During the late 1960's the securities industry experienced an explosion in trading volume. With some exceptions, the financial community lacked the systems, procedures, equipment and qualified back-office personnel necessary to handle the increased business.[12] Because the problems confronting the industry were industry-wide and could not be tackled in isolation, few immediate solutions were available. The ensuing breakdown of securities processing arrangements resulted in the near chaos described in the following excerpt from the Commission's "Study of Unsafe and Unsound Practices":

> Apart from the inability of broker-dealers to keep their records current, the number of errors in the handling and recording of transactions multiplied. The back offices of many a broker-dealer resembled a trackless forest. Since the broker-dealer industry is a highly interdependent community the problems of the less efficient firms had a rippling effect on the entire broker-dealer community; and inter-dealer clearing systems, as well as the transfer facilities of banks, were similarly taxed beyond their capacities. The entire machinery for the delivery and transfer of securities and the concomitant remittance of funds became clogged. Even those broker-dealers who attempted belatedly to stem the tide by computerizing their operations or augmenting their back office personnel could not keep pace with the volume; in fact, they were caught on a worse treadmill in that, by the time they were able to research their errors of a given date, they were confronted with a greater number of errors to contend with. The expensive computerized hardware which was thrown into the breach malfunctioned; and, since parallel manual records were often not maintained during a reasonable trial period, the use of the computer increased the already existing confusion. Moreover, the employment of newly recruited and untrained or inadequately trained individuals who were put to work in the back offices resulted in a further increase in the number of errors. The combination of all of these factors culminated in such a critical predicament for some firms that they not only lost control of their records, but experienced a new phenomenon—the loss of control over the securities which were or were supposed to be in their possession for delivery, custody or safekeeping. The efforts by the Commission and the self-regulatory organizations to build a dike against this torrent proved of little avail [footnote omitted].[13]

During the paperwork crisis, the level of "fails to deliver" and "fails to receive" was frequently cited as a measure of the securities industry's operational problems.[14] In December 1968, member firms of the New York Stock Exchange, Inc. ("NYSE") had $4.4 billion in "fails to deliver" and $4.7 billion in "fails to receive."[15] Brokers and dealers with fails to receive risks the possibility that the brokers and dealers failing to deliver would become insolvent and not complete the open deliveries; accordingly, even sound brokers and dealers became exposed to the risk of loss as a result of the operational and financial difficulties of the brokers and dealers with which they were obliged to do business.[16]

The confusion and delays in the back offices of brokers and dealers were magnified by inadequate clearance and settlement facilities, particularly in the over-the-counter ("OTC") area, and clogged transfer agent facilities.[17] Systems designed for the three million share days of 1960 proved incapable of dealing with the thirteen million share days of the late 1960's, and, as trading volume rose, so did the fails and unresolved dif-

[12] Securities and Exchange Commission, "Study of Unsafe and Unsound Practices of Brokers and Dealers", H.R. Doc. No. 231, 92d Cong., 1st Sess. 13 (1971) (hereinafter cited as "Study of Unsafe and Unsound Practices"); see also "Securities Industry Study", Report of the Subcomm. on Commerce and Finance of the House Comm. on Interstate and Foreign Commerce, H.R. Rep. No. 92-1519, 92d Cong., 2d Sess. (1972) (hereinafter cited as "1972 House Securities Industry Study"); "Securities Industry Study", Report of the Subcomm. on Securities of the Senate Comm. on Banking, Housing and Urban Affairs for the Period Ended February 4, 1972, 92d Cong., 2d Sess. (Comm. Print 1972) (hereinafter cited as "1972 Senate Securities Industry Study"); "Securities Industry Study", Report of the Subcomm. on Securities of the Senate Comm. on Banking, Housing and Urban Affairs, 93d Cong., 1st Sess. (Comm. Print 1973) (hereinafter cited as "1973 Senate Securities Industry Study").

[13] "Study of Unsafe and Unsound Practices," supra note 12, at 13-14.

[14] A "fail to deliver" represents the obligation of a broker or dealer to deliver securities to another broker or dealer beyond the conventional five business day settlement period. A "fail to receive," the converse of a "fail to deliver," represents the obligation of a broker or dealer to pay money to another broker or dealer against receipt of a security after the settlement period has passed.

[15] Clearance and Settlement of Securities Transactions, Hearings on S. 3412, S. 3297 and S. 2551 Before the Subcom. on Securities of the Senate Comm. on Banking, Housing and Urban Affairs, 92d Cong., 2d Sess., 95-96 (1972) (hereinafter cited as "Clearance and Settlement Hearings").

[16] *Id.* at 96; Securities Processing Act, Hearings on H.R. 14567, H.R. 14826 and S. 3876 Before the Subcomm. on Commerce and Finance of the House Comm. on Interstate and Foreign Commerce, 92nd Cong., 2d Sess., 100 (1972) (hereinafter cited as "Securities Processing Act Hearings").

[17] "Study of Unsafe and Unsound Practices", *supra* note 12, at 13 and 14, 165-168; 1972 Senate Securities Industry Study, supra note 12, at 16-17; 1972 House Securities Industry Study, supra note 12, at 4-6.

ferences of brokers and dealers.[14] These developments so reduced the supply of securities available for delivery that lengthy delays were not uncommon and many record differences were never resolved.[15] Although the Commission and the self-regulatory organizations attempted remedial measures, the fundamental nature of the industry's problems coupled with the absence of a pervasive regulatory authority over entities engaged in securities processing made these efforts generally unavailing.

During this period it was difficult, and in some cases impossible, for brokers and dealers to ascertain their own financial condition.[16] Those with regulatory responsibility over brokers and dealers were at an even greater disadvantage. Stock record differences and unresolved dividend receivables had grown to record levels.[17] Yet, brokers and dealers found it difficult to obtain confirmation of their transfer positions from transfer agents and the Commission lacked the authority to impose a requirement for prompt confirmations by transfer agents.[18]

As the industry struggled with operational difficulties, a different but equally critical problem evolved. In late 1969 the securities markets experienced a sharp decline in prices. Although the accompanying decline in trading volume eased some of the pressure on securities processing operations, the reduced volume also reduced commission revenues and the decline in market prices reduced the value of securities held in firm and proprietary accounts.[19] Broker and dealer liquidations became common and, through the exposures represented by open fails, threatened the survival of otherwise sound firms which had dealt with the insolvents. The result of that operational and financial crisis was a massive collapse within the securities industry. More than 100 brokerage firms were forced into liquidation, causing financial loss to the investing public.[20]

COMMISSION AND CONGRESSIONAL REACTION

The Commission responded to the paperwork crisis by restructing the regulatory framework governing the back-office operations of brokers and dealers. The Commission established new standards for the maintenance of books and records by brokers and dealers, imposed requirements for the custody, and limited use, of their customers' funds and securities, and tightened net capital requirements applicable to them.[21] The Commission reviewed changes in the securities processing operations conducted by subsidiaries of the national securities exchanges and the National Association of Securities Dealers, Inc. (the "NASD") to ensure that progress in processing was not achieved at the expense of investor protection; in particular, the Commission sought to ensure that funds and securities handled by clearing corporations and securities depositories were adequately safeguarded. In addition, through its review of exchange and NASD rule submission pertaining to clearing and settlement, the Commission fostered expanded to clearing corporations and depositories and the establishment of interfaces and links between securities processing entities.

Congress responded by enacting the Securities Investor Protection Act of 1970 (the "SIPC Act")[22] to protect customers from the consequences of broker and dealer solvency. Under the SIPC Act, the accounts of broker and dealer customers are protected for up to $50,000 for securities and cash, with a limitation of $20,000 for cash, by a fund established from industry revenues and backed by drawing rights on the United States Treasury of up to $1 billion. Concerned that there might be a recurrence of the widespread incidence of broker and dealer failures which led to passage of the SIPC Act, Congress directed the Commission to compile a list of unsafe and unsound practices employed by brokers and dealers in conducting their business, report to Congress on the steps being taken under existing laws to eliminate these practices, and submit recommendations on additional legislation which might be needed to eliminate these unsafe and unsound practices.[23]

In December 1971, the Commission submitted its "Study of Unsafe and Unsound Practices" to Congress. The Study stated that

> There is no area of the securities business which offers more opportunity for reducing costs as well as exposure to the kind of disruption which resulted in loss to customers during the 1969–70 period, than the improvement and modernization of the systems for clearing, settlement, delivery and transfer of securities. It was the archaic method of achieving this simple objective which nearly drowned the financial community in a tidal wave of uncontrolled paper. It is clear that modern communications and computer technology have now advanced to a point where the transfer of stock ownership, the payment therefor, and the documents controlling and recording the transfer of ownership and payment can be dramatically simplified.[24]

The Study noted that to ensure against future breakdowns from the significantly increased volume of securities transactions which would be necessary if the nation's capital needs were to be met in the years ahead, a modernized nationwide system for securities transactions should be created.[25] The Study recommended, among other things, that the Commission be given additional authority over the processing of securities transactions.[26]

Concurrently with the Commission's preparation of its "Study on Unsafe and Unsound Practices," the House and the Senate conducted extensive studies and hearings regarding the paperwork crisis and its aftermath which reached general agreement on the pressing need for improved securities processing systems.[27] These studies and hearings demonstrated that, although broker and dealer front-office sales activities had increased extensively, back-office operations often relied on manual processing operations which had been conducted in the same manner for many years. In a typical brokerage house at least 30 different documents had to be prepared in executing and processing a single transaction, and in the case of one large brokerage firm at least 210 pieces of paper had been prepared in connection with a single transaction.[28] In the absence of a nationwide clearing and settlement mechanism enabling them to participate in a single system, brokers and dealers were required to participate in several systems and thereby to incur increased costs of doing business. The lack of uniform methods of doing business and the failure of clearing and settlement entities to coordinate their various systems increased the brokers' and dealers' costs and their accounting and control problems. The fundamental weakness discerned by Congress was the absence of a mechanism to give direction to, and ensure cooperation and coordination among, the entities engaged in securities processing—clearing corporations, securities depositories, transfer agents and corporate issuers.

THE 1975 AMENDMENTS

In March 1972, the Commission submitted to Congress the "Securities Transaction Processing Act of 1972," a bill intended to provide a basis for the development of an efficient national system for clearance and settlement of securities transactions under the Commission's guidance.[29] In addition to the Commission's bill, various bills designed to provide a basis for the development of an efficient nationwide system of clearance and settlement were introduced in both Houses of Congress in 1972, 1973 and 1975, culminating with the enactment of

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[14] "Study of Unsafe and Unsound Practices", supra note 12, at 11–20; Clearance and Settlement Hearings, supra note 15, at 97.

[15] "1972 House Securities Industry Study", supra note 12, at 6, 10.

[16] Clearance and Settlement Hearings, supra note 15, at 97.

[17] *Id.*

[18] *Id.*

[19] "1972 House Securities Industry Study", supra note 12, at 9–10; "Study of Unsafe and Unsound Practices", supra note 12 at 14.

[20] "Improved National Securities Transfer System, Report of the Senate Comm. on Banking, Housing and Urban Affairs to Accompany S. 3876", S. Rep. No. 92-1009, 92d Cong., 2d Sess. 1 (1972).

[21] *See, e.g.*, Securities Exchange Act Release Nos. 9376 (November 8, 1971), 9594 (May 12, 1972), 9633 (June 14, 1972), 9856 (November 10, 1972), and 11497 (June 26, 1975).

[22] Pub. L. No. 91-598, 84 Stat. 1636 (1970).

[23] Section 11(h) of the SIPC Act, 15 U.S.C. 78 KKK(h) (1970).

[24] "Study of Unsafe and Unsound Practices," *supra* note 12 at 35–36.

[25] *Id.* at 1.

[26] *Id.* at 5–6, 39.

[27] *See, e.g.*, "1972 House Securities Industry Study", *supra* note 12; "1972 Senate Securities Industry Study", *supra* note 12; "1973 Senate Securities Industry Study", *supra* note 12.

[28] "1972 House Securities Industry Study", *supra* note 12, at 60.

[29] S. 3412 and H.R. 14567 (92d Cong., 2d Sess. (1972)).

the 1975 Amendments, which were signed into law on June 4, 1975.[30]

As expanded by the 1975 Amendments, one of the purposes of the Act is "to remove impediments to and perfect the mechanisms of • • • a national system for the clearance and settlement of securities transactions and the safeguarding of securities and funds related thereto • • • ."[31] The 1975 Amendments added a new Section 17A to the Act in which Congress set forth its findings that the linking of all clearance and settlement facilities, the use of new data processing and communications techniques and the development of uniform standards and procedures for clearance and settlement would reduce unnecessary costs and increase the protection of investors and persons acting on their behalf.[32]

Section 17A(a)(2) of the Act requires the Commission "to use its authority under [the Act] to facilitate the establishment of a national system for the prompt and accurate clearance and settlement of transactions in securities • • • in accordance with the findings and to carry out the objectives set forth in [17A(a)(1)]." In using its authority, the Commission is to have "due regard for the public interest, the protection of investors, the safeguarding of securities and funds, and maintenance of fair competition among brokers and dealers, clearing agencies and transfer agents • • • ."

Section 17A(b)(3) of the Act provides that the Commission shall not grant registration as a clearing agency to an applicant unless the Commission determines, among other things, that (i) the applicant is so organized and has the capacity to be able to facilitate the prompt and accurate clearance and settlement of securities transactions, to safeguard securities and funds, and to carry out the purposes of Section 17A of the Act; (ii) the applicant's rules are designed to promote the prompt and accurate clearance and settlement of securities transactions, to assure the safeguarding of securities and funds, to foster cooperation and coordination with persons engaged in securities processing and to remove the impediments to and perfect the mechanisms of a national system for the clearance and settlement of securities transactions; and (iii) the applicant's rules do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Two basic themes which recur throughout the legislative history underlying the securities processing provisions of the 1975 Amendments are (i) the prevention of another paperwork crisis in the securities industry and (ii) the establishment of a safe, efficient and modern national clearing and settlement system.

The Report of the Senate Committee on Banking, Housing and Urban Affairs to Accompany S. 249, the Senate version of the 1975 Amendments, describes the need for greater coordination among processing entities and standardization of forms and states that "[d]espite considerable progress in operational matters since the debacle of the late 1960's, the paperwork processing problems facing the securities industry remain extremely complex."[33] The Senate Report on S. 249 leaves to the Commission's expertise and experience in securities processing the task of shaping a national system to alleviate the problems of excessive processing costs and poor service to investors.

> Without addressing the merits of any particular system or the shape a national clearing and settlement system should take, the Committee is persuaded that the present uncoordinated state of affairs with respect to securities processing should not be allowed to continue.[34]

The Senate Report on S. 249 characterizes the accompanying bill as legislation designed to provide a comprehensive regulatory framework for the resolution of securities processing problems and the establishment of a national system.[35] The Report states "[t]he Committee expects the Commission to use the broad powers provided in the bill in a bold and effective manner to facilitate the rapid development of a nationwide system for processing securities transactions • • • ."[36] In discussing the broad rulemaking authority over clearing corporations, securities depositories and transfer agents vested in the Commission under S. 249, the Report states that "[t]he Commission is expected to use this authority in order to facilitate the prompt development of an integrated national system for the clearance and settlement of securities transactions and the elimination or consolidation of duplicative facilities and procedures."[37]

The Senate Committee believed that reductions in processing expenses would be in the public interest because, by increasing brokers' and dealers' profits, the reductions would result in a healthier securities industry. The Senate Committee assumed that investors would benefit from reduced processing costs.[38]

In discussing the Senate and House bills, the Conference Committee Report accompanying the 1975 Amendments observed:

> To assure the development of a modern, nationwide system for the safe and efficient handling of securities transactions in a manner which best serves the financial community and the investing public, the Senate bill and the House Amendment directed the Commission to facilitate the establishment of the [national] system and centralized in the Commission the authority and responsibility to regulate, coordinate and direct the operations of all persons involved in the securities handling process.[39]

Under Section 17A of the Act, the Commission has an obligation to consider the competitive implications of its actions.[40] The Commission is not required to justify that its actions be the least anticompetitive manner of achieving a regulatory ob-

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[30] See S. 2551, S. 3297, S. 3876, H.R. 14826 and H.R. 16946 (92d Cong., 2d Sess. (1972)); S. 2058 and H.R. 5050 (93d Cong., 1st Sess. (1973)); S. 249 and H.R. 4111 (94th Cong., 1st Sess. (1975)).

[31] The Act, Section 2.

[32] The Act, Section 17A(a)(1).

[33] "Securities Acts Amendments of 1975, Report of the Senate Comm. on Banking, Housing and Urban Affairs to Accompany S. 249", S. Rep. No. 94-75, 94th Cong., 1st Sess. 4 (1975) [hereinafter cited as "Senate Report on S. 249"]. The Senate Report on S. 249 summarizes the Committee's concerns about securities processing as follows: Processing economies, the public interest in protecting investors against loss of securities and cash, the financial and operational responsibilities of broker-dealers, the need for greater public confidence in the market system, and the expectation that the markets of the future will be required to handle higher volume, all require a modernized national system for consummating securities transactions. The need for legislation is clear. *Id.* at 6.

[34] *Id.* at 5.

[35] The Senate Report on S. 249 stated: S. 249 would facilitate the creation of a system of centralized regulation and decisionmaking which extends to every facet of the securities handling process involving securities transactions within the United States—clearing agencies, depositories, corporate issuers and transfer agents. Only by the creation of a central authority in operational matters can paper-handling problems be squarely addressed; only the creation of such authority can assure the prompt development of a national clearing system. • • • *Id.* at 55.

[36] *Id.* 55.

[37] "Securities Acts Amendments of 1975, Conference Report to Accompany S. 249, Joint Explanatory Statement of the Comm. of Conference," H.R. Rep. No. 229, 94th Cong., 1st Sess. 102 (1975) [hereinafter cited as "Conference Report"].

[38] For example, in its report on H.R. 4111 (the House version of the 1975 Amendments), the House Committee on Interstate and Foreign Commerce, after stressing the projected efficiencies of a national clearing and settlement system, stated:

> It should be made clear that the statutory charge to develop a unified system for the clearance and settlement of securities transactions does not carry with it the call—nor does it grant the authority—to eliminate competition among separate entities in the performance of these functions. Many of the innovations and improvements in clearance and settlement of the last several years have been the product of vigorous and healthy competition among different service entities. Often new market entrants have been responsible for the most significant advances. The Committee believes, therefore, that a national system, through [sic] fully integrated, must make full allowance for the continuance and future entry of separate service entities. (*Securities Reform Act of 1975, Report of the House Comm. on Interstate and Foreign Commerce to Accompany H.R. 4111*, H.R. Rep. No. 94-123, 94th Cong., 1st Sess. 51 (1975)).

jective.[46] Rather, in exercising its authority, the Commission must balance the maintenance of fair competition and a number of other equally important express purposes of the Act. Indeed, Section 17A specifically recognizes that need and directs the Commission, in exercising its mandate to facilitate the establishment of a national clearing and settlement system, to perform that balancing function "having due regard for the public interest, the protection of investors, the safeguarding of securities and funds, and maintenance of fair competition among brokers and dealers, clearing agencies, and transfer agents * * *."

CHARACTERISTICS OF A NATIONAL SYSTEM [47]

The directive of the 1975 Amendments that the Commission use its authority to facilitate the establishment of a national system animates the review, analysis, evaluation and balancing required of the Commission in determining whether to grant or deny NSCC's application for registration as a clearing agency. Consistent with that directive, the Commission must be attuned to the dynamic growth process of the nation's securities markets and the concomitant need for a national clearing and settlement system with the capacity to service, and the flexibility to adapt to changes in, the nation's capital-raising mechanisms. In response to those needs, the Commission has formulated the characteristics of a national clearing and settlement system which will advance the Act's several objectives by drawing on expertise acquired through experience in regulating the activities of clearing corporations, securities depositories, transfer agents, brokers and dealers, securities information processors and securities markets. In its formulation, the Commission has sought to reconcile the directives of Section 17A with the requirements of such diverse areas as trade comparison,[48] transfer agent operations,[49] other Congressionally-mandated programs for safeguarding securities processing activities [50] and the allocation of regulatory responsibilities.[51] The Commission has sought also to ensure that its formulation will be compatible with new technological developments.

The Commission believes that to satisfy the requirements of Section 17A of the Act and the other concerns affected by the operation of a national clearing and settlement system the system should: (i) process securities transactions by means, including book entry movement,[52] suitable to the character of the issues processed; [53] (ii) provide access, either directly or indirectly, to all brokers and dealers and financial institutions; [54] (iii) enable participants to compare,[55] account for [56] and settle [57] through one entity all trades in securities included in the system, regardless of the location of the other party to the trade or the market in which the trade is executed ("one account processing"); [58] (iv) enable participants to deposit and maintain their securities in a custodial account at the depository level which makes possible book entry movements between participants, to settle participants' clearing obligations, to effect pledges and to perform other functions which may be effected by book entry; [59] (v) enable participants to make a single daily money settlement, for both clearing obligations and depository-related movements; [60] and (vi) provide, in a book entry environment, same-day turnaround [61] at both the clearing corporation and depository levels.[62]

BOOK ENTRY CLEARING

The book entry clearing portion of the national system should have the following characteristics: (i) an accounting function which nets participants' securities positions daily and permits netted positions to be carried forward and netted against positions established on subsequent days ("continuous netting"); (ii) a trade guarantee as of settlement date; [63] (iii) mark-to-the-market protection from settlement date onward; [64] (iv) one daily clearing position per issue for each participant; (v) a link between the continuous netting system and a depository to make possible automatic book entry delivery to satisfy short-valued positions [65] in the continuous netting system and to permit deliveries to, and receipts from, the continuous netting system at various remote locations; and (vi) a same-day turnaround capability for both securities received by a participant from the continuous netting system and securities delivered to a participant which the participant wishes to redeliver to the continuous netting system.

NON-BOOK ENTRY CLEARING

The non-book entry clearing portion of the national system, which could include low-volume clearing operations,[66] should guarantee transactions as of, and mark them to the market from, settlement date. In addition, subject to the limitations of certificate as opposed to book entry settlement,[67] same-day turnaround should be available for securities settled throug the non-book entry portion of the system.

COMPARISON, ACCOUNTING AND SETTLEMENT

The national system should permit participants to elect to use all, or only a portion of, the system's clearing and settlement services. Accordingly, while a participant should be able to obtain one account processing through one clearing entity, the participant should be able also (i) to compare trades through the clearing entity affiliated with the marketplace in which the trade was executed and direct delivery of the compared trade to the clearing entity the participant selects to perform the accounting operation and (ii) to direct delivery of the securities settlement instructions generated by the accounting operation to the depository entity the participant elects to use for securities settlement. It does not appear necessary at this time for the national system to provide participants with an ability to direct delivery of securities settlement instruction to a depository other than the one linked to the clearing entity which generated the instructions.[68] Nonetheless, because of the possibility of competitive innovation at the depository level—including development of transfer agent depository ("TAD") systems [69]—the national system should not preclude developments which would permit a participant to direct delivery of securities settlement instructions to any depository entity.

DEPOSITORY CAPABILITIES

The depository portion of the national system should provide the following services: (i) ability of a participant to make valued and free securities deliveries by book entry; [70] (ii) dividend and proxy protection for securities left on deposit; (iii) facilities for the deposit and withdrawal of securities at locations remote from central depositories; [71] and (iv) same-day turnaround for (A) free or valued book entry deliveries to a participant's depository account from the clearing portion of the system, (B) free or valued book entry deliveries to a participant's depository account through the depository, and (C) deposits to a participant's depository account.

The depository portion of the system should be able to perform all securities processing functions which may be effected by book entry. Currently, these functions include free and valued movements of securities and movements to effect pledges and loans of securities. The depository portion of the system should permit withdrawals of certificates in street name [72] and in registered form and expedited withdrawals of certificates. Also, the depository portion of the national system should be designed to be compatible with TAD programs, transfer agent custodian ("TAC") programs,[73] and other developments in the transfer agent area which reduce certificate movement.

The Commission believes that a national system with the foregoing characteristics would protect investors by providing prompt and accurate clearance and settlement of securities transactions and by safeguarding securities and funds.[74] In addition, by using advanced data processing and communications techniques, linking clearance and settlement facilities and establishing uniform standards and procedures, the system would reduce the unnecessary costs imposed on investors by inefficient clearance and settlement procedures and would increase the protection of investors.[75] Specifically, the system would (i) reduce the cost to participants of relating to present clearing, settlement and depository systems;[76] (ii) reduce the average delivery time for the settlement of securities transactions and the carrying costs associated with settlement activity; (iii) simplify recordkeeping; (iv) enhance the ability of clearing agencies and other self-regulatory organizations to monitor the clearing positions of participants who are becoming overextended;[77] (v) increase insulation of participants (and their customers) from the effects of another participant's insolvency; and (vi) reduce the number of lost or stolen certificates.[77]

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[46] It had been suggested that, adopting the 1975 Amendments, Congress should require the Commission to cleave to a "least anticompetitive" standard in making rules and regulations under the Act, but Congress determined instead to grant broader discretion to the Commission and to view the need for competition in the context of the Act as a whole and its several objectives so that burdens on competition could be accepted where necessary or appropriate in furtherance of the purposes of the Act. See Statement of Donald I. Baker, Deputy Assistant Attorney General, Antitrust Division, Department of Justice, in "Hearings on S. 249 Before the Subcomm. on Securities of the Senate Comm. on Banking, Housing and Urban Affairs," 94th Cong., 1st Sess. 244–252, 257–262 (1975); *see also* Securities Exchange Act Release No. 12737 (August 25, 1976) at 59–60, 41 FR 38847 (September 13, 1976).

[47] The characteristics of a national clearing and settlement system and the benefits which the Commission believes such a system would provide were discussed in detail in Securities Exchange Act Release No. 12954 (November 3, 1976), 41 FR 49721 (November 10, 1976).

[48] Trade comparison procedures vary depending on the trading mechanisms used, the kinds of securities traded and trading volume and are likely to present further variations as the nature of the securities markets changes.

[49] Transfer agent operations vary greatly in degree of automation and volume of transfers processed and are rapidly changing in response to new technologies.

[50] Pursuant to Section 17(f)(2) of the Act, 15 U.S.C. 78q(f)(2) (1975), the Commission has adopted a rule relating to fingerprinting requirements for, among others, clearing agencies and transfer agents. Securities Exchange Act Release No. 12214 (March 16, 1976), 41 FR 13594 (March 31, 1976), announced a lost and stolen securities program and adopted a rule regarding reporting and inquiry with respect to missing, lost and stolen securities. Securities Exchange Act Release No. 13053 (December 10, 1976), 41 FR 54923 (December 16, 1976).

[51] Pursuant to Sections 17(d)(1) and 19(g)(2) of the Act and Section 9(c) of the SIPC Act, 15 U.S.C. 78iii(c) (1975), the Commission has adopted and proposed rules for the allocation of responsibilities among "self-regulatory organizations," a term which Section 3(a)(26) of the Act defines to include registered clearing agencies. Securities Exchange Act Release No. 12352 (April 20, 1976), 41 FR 18879 (May 7, 1976).

[52] "Book entry movement" occurs when a clearing agency credits and debits participants' accounts to effect transfers between participants of securities registered in the name of the clearing agency and held for its participants.

[53] *See* subparagraph 17A(a)(1)(A) of the Act.

[54] The term "financial institutions" includes banks, insurance companies, investment companies, clearing agencies and any other entities which receive, deliver or hold securities. *See* subparagraph 17A(b)(3)(B) of the Act.

[55] Comparison, the process by which participants in the securities markets reach agreement on the existence and terms of trades made in the marketplace, culminates in the production and submission to the accounting operation of contract lists representing transactions which have been confirmed by both parties.

[56] The accounting process generates the money and securities settlement obligations of participants in clearing corporations. Continuous netting and daily balance order accounting systems generate net positions to be received or delivered and thereby minimize the required number of securities settlements; other accounting systems, such as trade-by-trade systems, do not net obligations.

[57] Obligations generated by the accounting function are satisfied through the settlement process by the delivery and receipt of funds and securities.

[58] Although the national system would include a number of entities through which one account processing would be available, a participant should not be required to belong, or relate directly, to more than one entity. *See* subparagraphs 17A(a)(1)(A) and (D) of the Act.

[59] *See* subparagraphs 17A(a)(1)(A), (C) and (D) of the Act.

[60] *See* subparagraphs 17A(a)(1)(B) and (D) of the Act.

[61] "Same-day turnaround" is the ability of a participant to redeliver securities to another participant on the day on which they are received.

[62] *See* subparagraph 17A(a)(1)(B), (C) and (D).

[63] Currently, most clearing corporations guarantee transactions from and after settlement date by interposing the corporation between the parties to the transactions.

[64] A "mark-to-the-market" payment is the amount required by a clearing system from any party to a trade guaranteed by the system who becomes a potential net obligor of the system because the market price of the securities involved in the clearing transactions moves away from the contract price for the clearing transaction.

In the future it may be appropriate for clearing corporations to guarantee trades as of trade date and provide mark-to-the-market protection from trade date onward.

[65] In a continuous netting system, settlement obligations run primarily between each participant and the system which, on settlement day, generates net obligations to deliver securities to the system against payment ("short-valued positions") or to receive securities from the system and make payment for them ("long-valued positions").

[66] The non-book entry clearing components of the national system could use continuous netting, daily balance order, trade-by-trade or any other clearing system which would produce, receive and deliver instructions.

[67] In the case of certificate settlement, the same-day turnaround capacity of the national system would be limited by the location at which deposits and withdrawals are made and by transfer agent turnaround times. Accordingly, turnaround time could vary depending on whether the deposit or withdrawal were in-town or at a remote location and on whether the transfer agent involved were in-town or out-of-town.

[68] The alternative—a link between each clearing entity and each depository in the system—would appear, at the present time, to pose significant communications problems. However, as long as all depositories are interfaced, a participant would be able to relate to the entire depository network by relating to one depository and would not necessarily require direct access to more than one depository.

[69] In its ultimate form, the TAD concept would replace the stock certificate with computerized stockholder lists, maintained by TAD's, which would serve both as the issuers' stock records and as stockholders' ownership records. The lists would be updated continuously. Communications between TAD's and institutional customers, brokers and dealers, banks and others would be effected through instruction routing entities located in various financial centers throughout the United States. The instructions would direct the TAD's (i) to effect book entry transfers and pledges between participants by debiting and crediting the TAD's records and (ii), if necessary, to issue and deliver physical certificates.

[70] A valued delivery is made against payment for the securities delivered; a free delivery is not made against payment.

[71] Each central depository presumably would have to have a network of deposit and withdrawal facilities.

[72] Currently, the time necessary to complete the transfer process has led to the practice of withdrawing from a depository certificates registered in the name of the depository or of a depositing broker and executed in a form or accompanied by documents which make the certificates negotiable. This practice is necessary to permit delivery on a same-day basis to institutions and others which make payment only against receipt of certificates. Presumably, participation of more institutions in depositories will reduce the importance of an expedited certificate withdrawal capability.

[73] In a TAC arrangement the depository maintains all but a working supply of certificates of an issue with the transfer agent custodian in the form of a balance certificate. As the need for certificates in the depository changes, the depository adjusts its in-house inventory by increasing or decreasing the number of shares held in-house in nominee name and correspondingly decreasing or increasing the number of shares held by the transfer agent. Appropriate shipments of certificates between the depository and transfer agent are made in connection with the adjustments.

[74] The Act, subparagraph 17A(a)(1)(A).

[75] The Act, subparagraph 17A(a)(1)(B), (C) and (D).

[76] Reductions in the costs of relating to present systems would result primarily from such advantages of the account processing as (1) the ability of participants' back-office personnel to be familiar with one set of procedures and to use one set of forms in processing securities transactions, (ii) the ability of participants to make one daily money settlement (rather than multiple and possibly offsetting money settlements) and (iii) reductions in the facilities and personnel in participants' back offices associated with the delivery, receipt and handling of certificates.

[77] Because currently a participant may have clearing positions settling in more than one system, individual clearing agencies may not become aware of more than a normal exposure even though the participant's combined exposure in all clearing systems is abnormally large.

[77] The Department of Justice has recommended the retention of securities in depositories as a means of reducing securities thefts. "Suggestions by the Department of Justice for Safe Handling of Marketable Securities by Financial Institutions, Including Hints for Detecting Counterfeit, Forged, Worthless and Spurious Securities." Department of Justice announcement (December 23, 1974) at p. 1.

STATUTARY DETERMINATIONS TO BE MADE IN CONNECTION WITH NSCC'S REGISTRATION

The general mandate contained in Section 17A(a) of the Act is implemented by, among other things, Section 17A(b), which provides for the registration of clearing agencies. Paragraph (3) of Section 17A(b) provides that the Commission may not register a clearing agency unless the Commission makes the determinations contained in subparagraphs (A)–(I) of paragraph (3) which, in general, require the Commission to determine that the clearing agency is organized and has the capacity, and its rules are designed, to carry out the purposes of Section 17A of the Act.

Pursuant to Rule 17Ab2–1 under the Act,[70] an applicant for registration as a clearing agency may apply for full registration under the Act, in which case the Commission must make all the determinations called for by subparagraphs (A) through (I) of section 17A(b)(3) in order to register the applicant. Alternatively, pursuant to paragraph (c)(1) of the Rule, an applicant can apply for a limited registration which terminates 18 months from the date on which it becomes effective in which case the Commission may register the applicant while making fewer than all the determinations called for by subparagraphs (A) through (I). In accordance with paragraph (c)(2) of the Rule, at the expiration of the first nine months of an 18-month registration pursuant to paragraph (c)(1) of the Rule, the Commission must either grant registration without exempting the registrant from one or more of the subparagraphs (A) through (I) determinations or institute proceedings to determine whether registration should be denied at the expiration of the 18-month registration.[71]

In granting NSCC's application for registration as a clearing agency for a period of 18 months the Commission is determining, in accordance with section 17A(b) of the Act and Rule 17Ab2–1 thereunder, that: (i) NSCC is "so organized and has the capacity to be able to facilitate the prompt and accurate clearance and settlement of securities transactions * * * to safeguard securities and funds in its custody or control * * * to comply with the provisions of [the Act] and the rules and regulations thereunder * * * and to carry out the purposes of (Section 17A of the Act)," [80] (ii) NSCC's rules "do not impose any schedule of prices, or fix rates or other fees, for services rendered by its participants," [81] (iii) NSCC's rules are designed "to promote the prompt and accurate clearance and settlement of securities transactions, to assure the safeguarding of securities and funds * * * in (its) custody or control * * * to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions (and) to remove impediments to and perfect the mechanism of a (national clearing and settlement system), and, in general, to protect investors and the public interest * * *," [82] and (iv) NSCC's rules do not "impose any burden on competition not necessary or appropriate in furtherance of the purposes of [the Act.]" [83]

In accordance with the requirements of sections 17A (a) and (b) of the Act, the Commission is considering also whether NSCC is so organized and has the capacity to (i) protect investors and those facilitating transactions on behalf of investors, (ii) reduce unnecessary costs resulting from inefficient clearing and settlement procedures, (iii) take advantage of the efficiencies and safety made available by new data processing and communications techniques and (iv) provide for the linking of all clearing and settlement facilities and the development of uniform standards and procedures.[84]

The Commission's determinations concerning such matters as safeguards, efficiencies, cost reductions and effects on competition, are being made in the context of the Commission's statutory responsibility to facilitate the establishment of a national clearing and settlement system which will have the characteristics called for by the Act, be compatible with future developments in the structure of the nation's securities markets and have the operational capability to avoid a future paperwork crisis.

THE NSCC APPLICATION

BACKGROUND TO THE APPLICATION

The Commission's review of NSCC's application has been made in the context of the progress in clearing and settlement achieved during the last decade and the efforts of entities engaged in securities processing—brokers and dealers, clearing corporations, securities depositories, transfer agents, institutional investors, securities exchanges and the National Association of Securities Dealers, Inc. (the "NASD")—to establish clearing and settlement systems and to integrate them into a national system. The importance of NSCC's establishment to that progress and the significance of the accords and compromises on which NSCC's establishment is based can be gauged only against the backdrop of a decade of industry effort.

Efforts to establish clearing and settlement systems were conceived and initiated before and during the paperwork crisis by the exchanges and the NASD, which organized and funded separate subsidiaries to perform clearing, settlement and depository functions. The securities processing subsidiaries were closely linked to their parent organizations and, in addition to performing processing functions, provided a variety of other services for their participants and parent organizations. Establishment of the processing entities entailed substantial expenditures for the development of systems and computer programs, the purchase or lease of computers, peripheral equipment and working space and the retention and training of personnel. Generally, the expenditures were funded by contributions from the parent organizations and clearing fees paid by the entities' participants.

Although the severity of the paperwork crisis might have been tempered had the exchanges and the NASD taken initiatives earlier, the continually growing paper onslaught of the late 1960's was unaffected by the systems then being considered and developed and was little deterred by the untested systems then being implemented. Against the stark background of confusion, loss of confidence, and broker and dealer liquidations left by the paperwork crisis, the entities engaged in securities processing began a program of reconstruction designed to build on the initiatives taken already and to advance securities processing beyond the possibility of a recurrence of that crisis.

During the early 1970's those processing entities developed and implemented substantial improvements in their securities processing operations, including the automation of manual functions, the establishment of new and more efficient clearing and settlement systems, a rapid expansion in the number and use of securities depositories, and an intensification of efforts to establish interfaces among previously unrelated clearing and settlement systems. The extent of the improvements was highlighted in January and February 1976 when securities processing systems successfully handled average daily trading volume on the NYSE of 31 million shares compared with the average daily volume on the NYSE of 12 to 13 million shares which had overwhelmed the securities industry in the late 1960's.

Despite these improvements, only modest progress was made toward the establishment of a comprehensive national clearing and settlement system. In part, the lack of progress was attributable to the absence of a centralized, decision-making authority in the securitis processing area and a consequent tendency for processing entities to seek immediate solutions to their individual problems rather than industry-wide solutions to the larger problems which confronted all the entities. The lack of progress was attributable also to the close operational and financial relationships between securities processing subsidiaries and their parent organizations which made them initially reluctant to participate in plans to establish a national system which, the organizations recognized, would entail a diminution in their control over the services and revenue streams provided by the processing subsidiaries.

An ambitious effort to establish a national system was begun in December 1973 when the NASD and the NYSE submitted to the Commission a memorandum of understanding providing, among other things, for the establishment of the National Securities Processing Committee, which was to develop a plan for a single national facility for clearing and settling securities transactions.[85] Although the Committee was organized by, and its membership included representatives of, the NYSE, the NASD and other self-regulatory organizations and their processing subsidiaries, a majority of the Committee's members were brokers and dealers. The Committee met a number of times during 1974 and early 1975 but was unable to reach agreement on a program for the establishment of a national clearing and settlement system. Nevertheless, the Committee's deliberations were instrumental in improving cooperation among existing clearing and settlement entities and in developing a consensus on the operating characteristics of a national clearing and settlement system.

Much of the Committee's effort was directed toward eliminating what its members viewed as the inefficiencies represented by the location and operation, within several blocks of each other in downtown Manhattan, of three high-volume clearing and settlement entities with essentially similar systems and substantial membership overlaps: ASECC, NCC and SCC.[86] The members believed these inefficiencies created costs for brokers and dealers by requiring their back-office operations to interact and reconcile end of day balances with multiple clearing corporations and by subjecting them to clearing and settlement fees which supported the operational and administrative redundancies of three clearing corporations. After the Committee disbanded, its former members and other participants in securities processing operations continued their efforts to establish a national clearing and settlement system, including the elimination of perceived inefficiencies in securities processing in New York City.

During 1973 and 1974, low OTC transaction volume caused NCC, the NASD's securities processing subsidiary, to experience significant operating losses. Since NCC was making substantial equipment lease payments as its own facilities manager, NCC and the NASD approached the Securities Industry Automation Corporation ("SIAC") [87] and Bradford National Corporation ("Bradford") to determine the feasibility of having NCC's processing performed by an outside facilities manager under an arrangement which would avoid further loss to NCC. On October 1, 1974, following submission of bids by SIAC and Bradford and comparison of the bids with each other and with an internal cost reduction program proposed by NCC's operating staff, the NASD and NCC entered into a processing agreement with Bradford National Clearing Corporation ("BNCC"), a Bradford-guaranteed subsidiary established to perform NCC's processing. Under the agreement, NCC was entitled to terminate BNCC as its processor before the expiration of the agreement's five-year term upon payment of an early termination penalty.[88]

In April 1975, SIAC submitted a formal proposal to NCC to perform all of NCC's processing functions. NCC initially rejected the proposal. Subsequently, NCC's parent organization, the NASD, and SIAC's parent organizations, the Amex and the NYSE, sponsored the establishment of committees to negotiate an agreement for combining the processing functions of ASECC, NCC and SCC.[89] The committee sponsored by the NASD was composed of NASD members who used NCC's services, and the committee sponsored by the Amex and the NYSE was composed of members of the two exchanges who, through ASECC and SCC, used SIAC's clearing and settlement services. In July 1975, the two user committees reached a nine-point "agreement in principle" providing for the merger of ASECC, NCC and SCC into a single, New York-based clearing and settlement facility.[90]

Under the agreement in principle, the Amex, the NASD and the NYSE agreed to transfer the operations of their wholly-owned subsidiary clearing corporations, ASECC, NCC and SCC, to a new entity which would be controlled by its participants rather than by the parent self-regulatory organizations. The agreement in principle specified that transfer should be accomplished in a way which "would avoid any loss to the respective parent companies of the clearing corporations" and that SIAC would be the processor for the new entity. Thereafter, the NCC and SIAC user committees formed a number of specialized subcommittees which, during late 1975 and early 1976, worked out the details of NSCC's establishment in accordance with the nine-point agreement. NSCC was incorporated on March 17, 1976, and on March 29, 1976, filed its application for registration as a clearing agency.

THE APPLICATION

NSCC's application for registration comprises 25 documents filed on 12 different occasions between March 29, 1976, and September 27, 1976, and is supplemented by information contained in related correspondence and developed during the course of the oral presentations of data, views and arguments.[91] Much of NSCC's application consists of documents necessary to transform the assortment of corporate arrangements under which the Amex, NASD and NYSE have in the past provided clearance and settlement services to their members into a single clearance and settlement corporation controlled by the users of those services.

In legal structure the clearance and settlement operations of the Amex, NASD and NYSE are separate wholly-

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[70] Adopted in Securities Exchange Act Release No. 11787 (November 3, 1975), 41 FR 52356 (November 10, 1975).

[71] On December 1, 1975, the Commission granted registration pursuant to paragraph (c)(1) of the Rule to 13 clearing agencies: ASECC, Boston Stock Exchange Clearing Corporation ("BSECC"), Bradford Securities Processing Services, Inc. ("SPS"), The Depository Trust Company ("DTC"), Midwest Clearing Corporation ("MCC"), Midwest Securities Trust Company ("MSTC"), NCC, The Options Clearing Corporation ("OCC"), Pacific Clearing Corporation ("PCC"), Pacific Securities Depository Trust Company ("PSDTC"), SCC, Stock Clearing Corporation of Philadelphia ("SCCP") and TAD Depository Corporation ("TADDC"). Subsequently, pursuant to paragraph (c)(1) of the Rule, the Commission registered the New England Securities Depository Trust Company ("NESDTC"), a wholly-owned subsidiary of the Boston Stock Exchange, upon the same findings made in connection with the December 1, 1975, registrations.

[80] The Act, subparagraph 17A(b)(3)(A).

[81] The Act, subparagraph 17A(b)(3)(E).

[82] The Act, subparagraph 17A(b)(3)(F).

[83] The Act, subparagraph 17A(b)(3)(I). In accordance with Rule 17Ab2–1 under the Act, the Commission has not made any determinations with respect to the following portions of subparagraphs (A)–(I) of Section 17A(b)(3) of the Act: the portion of subparagraph (A) pertaining to NSCC's ability to enforce compliance by its participants with its rules; any of subparagraphs (B), (C) or (D); the portions of subparagraph (F) prohibiting NSCC's rules from permitting unfair discrimination among participants or regulating matters not related to the purposes of Section 17A of the Act or the administration of NSCC; or any of subparagraphs (G) and (H). These determinations will be made prior to the expiration of NSCO's 18-month registration.

[84] The Act, Section 17A(a).

[85] In response to the memorandum of understanding, the Commission released a letter addressed to the NASD and the NYSE in which the Commission recognized the need to develop a national system and recommended criteria for the Committee to consider in connection with its deliberations. Securities Exchange Act Release No. 10631 (February 7, 1974).

[86] In general, ASEC clears American Stock Exchange, Inc. ("Amex") transactions; NCC clears OTC transactions; and SCC clears NYSE transactions.

[87] SIAC is a communications, service and securities processing entity, owned ⅔ by the NYSE and ⅓ by the Amex, which performs all securities processing operations for both SCC and ASECC.

[88] The termination penalty was $250,000 if BNCC were terminated between October 1, 1974, and September 30, 1976, and $125,000 if BNCC were terminated between October 1, 1976, and September 30, 1977. There was no penalty for termination after October 1, 1977.

[89] On April 23, 1975, Peter Del Col, Chairman of the Board of Bradford, wrote to the Amex, the NASD and the NYSE offering to bid competitively against SIAC for a contract to perform securities processing for ASECC, NCC and SCC and requesting the NYSE and the Amex to make available to Bradford information on which to base its bid. By letter dated May 6, 1975, Chairman James J. Needham of the NYSE informed Bradford that it would be premature for the NYSE to consider Bradford's proposal and request for information before completion of the discussions then under way between the NASD and SIAC user committees.

[90] "A Plan for Consolidation of Clearance and Settlement Activities for Listed and Over-the-Counter Stocks," July 15, 1975.

[91] The documents filed by NSCC, related correspondence, memoranda of meetings, transcripts of the oral presentations of data, views and arguments and comment letters on the application and on Commission releases issued in connection with the application are contained in Securities and Exchange Commission File No. 600–15 and are available for inspection at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C.

owned subsidiaries, ASECC, NCC and SCC; each clearing corporation is, however, essentially a shell corporation with relatively limited assets and a small number of administrative employees. The extensive data processing and clerical operations required to accomplish clearance and settlement are housed in or furnished by other corporate entities. As a result, combining the three clearing operations is not merely a matter of transferring control over three corporate shells but requires, in addition, recasting the separately housed processing and clerical functions which provide the underlying services.

In the case of the Amex and the NYSE, data processing and clerical operations are performed for the clearance and settlement subsidiaries, ASECC and SCC, by SIAC, a jointly-owned Amex and NYSE subsidiary which leases computers, peripheral equipment and space under long-term agreements and employs a large clerical staff dedicated in substantial part to the performance of clearance and settlement operations. Unlike ASECC and SCC, NCC initially operated its clearance and settlement operations, employing its own clerical and related personnel and itself entering into the necessary equipment and space lease arrangements. In 1974, however, NCC retained BNCC as securities processor, transferred to BNCC or terminated most non-administrative personnel and became a shell subsidiary of the NASD. Unlike ASECC and SCC, however, NCC did not use a corporate affiliate to conduct its clearance and settlement operation.

The description of NSCC's application contained in this order outlines the steps of a transformation essentially intended to accomplish four results. First, the corporate structures of, and the operations performed for, ASECC, NCC and SCC are to be combined into a single administrative and operational structure. Second, ownership of the new clearing corporation is to be structured in a manner which will preserve NSCC's status as a "clearing corporation" under the applicable Uniform Commercial Code provisions.[44] Third, the current users of ASECC, NCC and SCC are to exercise direction over the management and operations of NSCC. And, fourth, the combination is to be effected in a manner which will ensure that the Amex, NASD and NYSE are compensated to their satisfaction for the operations over which control is being ceded to NSCC's user board. The summary does not describe changes which would result from NSCC's satisfaction of the conditions to its registration contained in this order.

Following the grant of NSCC's registration, ASECC, NCC and SCC will each transfer to NSCC their clearing agency operations, including the future revenues generated by the operations. In addition, ASECC and SCC will each transfer $300,000 in cash to NSCC in exchange for 10,000 shares of NSCC common stock, and NCC will transfer to NSCC assets valued at $900,000 in exchange for 10,000 shares of NSCC common stock and a $600,000 promissory note of NSCC. The 30,000 shares of NSCC common stock to be issued to ASECC, NCC and SCC will constitute all NSCC's outstanding common stock and will be subject to restrictions on transfer designed, among other things, to preserve NSCC's status as a "clearing corporation" under the applicable Uniform Commercial Code provision. In addition, the rights and obligations among each of the combining clearing agencies and its participants will be assigned to and assumed by NSCC. The clearing funds of the combining entities will be transferred to NSCC, and NSCC will assume certain other liabilities of the combining entities.

Following transfer to NSCC of the clearing agency operations of ASECC, NCC and SCC and their contributions of cash and assets, NSCC will operate the business of each transferor clearing agency as a separate NSCC division, i.e., the ASECC Division, the NCC Division and the SCC Division. Each division will operate under substantially the same rules, procedures and agreements used by the division's predecessor clearing agency.

Operation under the divisional structure, which NSCC has estimated would last approximately 120 days, is referred to as "Phase I" of the merger. SIAC prepared much of the technical portions of NSCC's application. During Phase I, SIAC will continue its current role as processor for ASECC and SCC. In addition, building in part on the work done already in preparing the technical portions of the application, SIAC will develop a plan to convert the ASECC–SCC and NCC systems into a single system combining desirable aspects of both. Operating rules and procedures for the combined system will be prepared by NSCC and SIAC and submitted to the Commission for review and approval before they could be implemented. Following Commission approval of the combined system's rules and procedures, NSCC and SIAC will begin to operate the combined system, thereby initiating "Phase II" of the merger plan.

FACILITIES MANAGEMENT

Pursuant to a facilities management agreement between NSCC and SIAC (the "Management Agreement"), all NSCC securities processing functions, including those performed currently for NCC by BNCC, will be performed by SIAC.[45] Under the Management Agreement, SIAC will be obligated to charge NSCC no more than SIAC's costs for providing the services covered by the Management Agreement. NSCC will have the right to monitor all phases of SIAC's NSCC operation in order to ensure that the operation was adequate and in compliance with statutory criteria. Furthermore, NSCC will have the right, either itself or through its agents (including its independent public accountants), to review SIAC's operation and evaluate the accuracy and appropriateness of the cost allocations made by SIAC in determining its cost of performing processing for NSCC.

The Management Agreement will have a term of five years, at the expiration of which NSCC will have no further obligation to SIAC and SIAC will be obligated to facilitate the transfer of the NSCC operations to any processor selected by NSCC. Any time after the second year of the Management Agreement, NSCC will have the right to terminate the agreement upon six months written notice, which may be given during the second year, and upon NSCC's agreement to pay SIAC a monthly fee of $225,000 from the termination date to the end of the Management Agreement's term. The amount of NSCC's monthly payment will be reduced by $100,000 if NSCC assumes responsibility for SIAC's lease of space used for the NSCC operation and by an additional $25,000 if NSCC assumes SIACs' severance obligations to employees engaged in the performance of the NSCC operations.

USER-CONTROL

NSCC will operate under the governance of a 16-member Board of Directors, 12 members of which will be NSCC participants ("participant directors"). ASECC, NCC and SCC each will have one representative on the Board ("shareholder directors"). The sixteenth member will be the president of NSCC (the "management director").

Annually after the first year of NSCC's operation, one shareholder director's seat and four participant directors' seats will be open for election. The shareholder director's seat will be filled with the nominee of the shareholder whose seat has become vacant. An annually elected nominating committee will select four participant director candidates and also will select the nominating committee for the following year.[46]

[44] N.Y. Uniform Commercial Code, Sections 8–102(3) and 8–320, supra note 2. The agreement contemplates that the Amex, NASD and NYSE, the parent corporations of ASECC, NCC and SCC, may become transferees of the stock of NSCC received by the subsidiary clearing and settlement entities.

[45] During the Commission's review of rules proposed by NSCC for combined systems operations, NSCC, as NCC's assignee under the NCC–BNCC facilities management, will exercise NCC's termination right by paying BNCC a $125,000 early termination penalty. Thereafter, NSCC will direct SIAC to perform the NCC processing functions performed currently by BNCC in addition to the ASECC–SCC processing functions SIAC performs currently.

[46] Sixty days before the election, the nominating committee's slate of candidates for the participant directors' seats and for the following year's nominating committee will be circulated to NSCC's membership. The membership will be able to propose alternative nominees upon the filing of a petition by the lesser of five percent of NSCC's participants or 15 participants. If any alternative nominees are proposed, a vote will be held in which the participants, voting cumulatively under a formula based on usage of NSCC, will select the nominees to be elected to the NSCC board and the nominating committee. NSCC's shareholders will vote for the slate selected by the nominating committee, if no opposing nominees are proposed, or for the nominees who received a majority of the participants' votes, if opposing candidates are proposed and an election is held.

After the second year of NSCC's operation participant directors will be elected for three-year terms. No participant director will be permitted to serve as a director for more than five consecutive years or to serve on the nominating committee while a director or during the year following the expiration of the director's term of office. No member of a nominating committee can be included in the slate of director nominees selected by that nominating committee and no member of a nominating committee can serve consecutive terms. Neither a shareholder director nor the management director will be permitted to be a member of either the NSCC board's audit committee or the board's operations committee; the latter will, among other things, review the performance of SIAC as NSCC's facilities manager.

The Amex, the NASD and the NYSE will have a veto over NSCC's adoption of new rules, other than those which NSCC would be required to adopt pursuant to statutes, ordinances, rules or regulations applicable to NSCC. The veto can be exercised only if the proposed NSCC rule would affect the ability of the party exercising the veto to meet any statutory responsibilities it might have for the settlement of securities contracts.

PAYMENTS TO THE AMEX, NASD AND NYSE

The NSCC application contains a shareholders' agreement among the ASECC, NCC and SCC, to which the Amex, NASD, NYSE and NSCC are parties. The agreement provides that, for a period of five years from the date of the agreement's execution, the Amex, the NASD and the NYSE will receive $0.12 for each buy and sell side of trades in equity securities, or warrants to purchase equity securities, executed on their respective markets and compared through NSCC. The $0.12 fee will not apply to trades cleared through NSCC but executed on exchanges other than the Amex or NYSE nor will it apply to OTC transaction not compared through NSCC. The total payments to be received by the self-regulators in any one year will be limited to $550,000 for the Amex, $1,000,000 for the NASD and $3,000,000 for the NYSE.[47]

The amount of the fee ($0.12) was derived by determining that per-side charge which would yield to NYSE $3,000,000 annually based on a projected NYSE daily transaction volume of 17 million shares. The $3,000,000 was based on the average annual revenues which the NYSE has derived from SCC for the past ten years. That amount was established as the ceiling for the NYSE, and the ceilings on the amounts to be received by the Amex and the NASD were derived by applying the $0.12 per-side fee to their projected annual transaction volume.

[47] The ceiling on payments to be received by a self-regulator would be subject to the proviso that any amounts in excess of its ceiling for a given year would be paid to the self-regulator to the extent that in prior years the fees were less than the ceiling.

The agreement states that the payments will be made in return for furnishing certain regulatory services to NSCC consisting of conducting periodic examinations of the books, records and operations of NSCC participants; monitoring the financial and operational condition of NSCC participants; investigating the financial and operational condition of entities which apply for participation in NSCC; and apprising NSCC of any unusual market conditions which affect securities cleared by NSCC. Each of the self-regulators will examine those NSCC participants for which the self-regulator has been designated by the Commission to conduct examinations for compliance with the applicable financial responsibility rules, as well as such participants as NSCC might direct for which none of the three self-regulators has been designated.

The shareholders' agreement provides that after two years the self-regulators and NSCC shall "review the provisions of [the contract] as to the [s]ervices and the payments therefor in order to determine whether such provisions should be amended or modified. * * *" The agreement does not permit renegotiation of the level of payment or the level of services at any time during the agreement's five-year term, except by mutual agreement of the parties.

SERVICES TO BE PROVIDED

During Phase I, NSCC plans to offer all services now offered by either ASECC–SCC or NCC. During Phase II, duplicative services will be combined so as to insure that no participant in either organization will experience a reducation in the kinds and levels of service currently available. NSCC's services will be available, either directly or indirectly, to all current participants in ASECC–SCC and in NCC and access to NSCC's services will be available to all qualified entities. NSCC's application states that fees to participants will be set by NSCC's board of directors and will be based on the cost to NSCC of providing its services.[48] NSCC will attempt to establish a contingency fund from its revenues but, in general, does not propose to earn profits and will not pay dividends on its shares.

RELATIONSHIP TO SECURITIES DEPOSITORIES

Because NSCC's application envisions NSCC's use of the current ASECC–SCC system, securities settlement[49] for NSCC transactions will have to be made in DTC and all NSCC participants will be required to be participants in DTC.[50] In order to provide access to DTC for those participants in NCC who are not currently DTC participants and who do not believe their clearing volume warrants DTC participation, NSCC will provide sponsored accounts in DTC.[51] Although securities settlement for transactions cleared through NSCC will occur in DTC, money settlement for the transactions will occur in NSCC. In anticipation of the ASECC–SCC and NCC operational combination, DTC has initiated a program for expanding the list of securities eligible for deposit to include all issues currently eligible for deposit in NCC's system. NSCC does not plan to begin Phase II until the DTC expansion is complete.

TADDC, a securities depository which ultimately intends to serve as the bridge for the implementation of the TAD concept, currently has an interface with NCC through which NCC participants deliver and receive securities through TADDC in settlement of NCC obligations. NSCC intends to work out an arrangement with TADDC before the start of Phase II operations under which NSCC users will be permitted to receive from or to deliver to NSCC securities on deposit with TADDC.

TRADE COMPARISON

NSCC will continue to perform comparison for Amex and NYSE transactions and will perform comparison for OTC transactions between NSCC participants. OTC transactions between participants in a clearing corporation other than NSCC will be compared by the other clearing corporation or by a clearing corporation retained by it to perform the OTC comparisons. OTC transactions between participants in two different clearing corporations will be compared by a clearing corporation other than NSCC.

From the beginning of Phase II operations, NSCC will enable its participants located in New York City to submit Amex, NYSE and OTC transactions to NSCC for comparison. In the plan described in NSCC's application, NSCC participants located outside New York City, and relating to NSCC through the former NCC regional network, will be able, as they are currently, to submit OTC transactions for comparison during Phase I but will not be able to submit Amex and NYSE transactions for comparison until some time after the initiation of Phase II.

PARTICIPANT QUALIFICATIONS

Any entity will be able to participate in NSCC, subject to qualification standards based on financial and operational ability.

[48] Not all NSCC's fees will be based on cost, however; NSCC has indicated its fee structure will be designed to enable NSCC participants located outside New York City and relating to NSCC through the former NCC branch network to pay the same clearing fees as NSCC participants located in New York City.

[49] Settlement is the process through which securities trading obligations are satisfied by delivery and receipt of funds and securities.

[50] All current clearing members of ASECC–SCC are participants in DTC.

[51] Sponsored accounts in DTC will be guaranteed by NSCC and, for participants with low clearing volume, will make that form of participation less expensive than direct participation. In order to encourage direct participation in DTC by any sponsored participant whose clearing volume increases to a point at which direct participation becomes economically justifiable, a participant's sponsored account fees will graduate with increases in its clearing volume.

COST SAVINGS

In its application, NSCC identified two categories of cost savings which will result from the initiation of Phase II operations: (i) cost savings from combining the operations of ASECC NCC and SCC, including the elimination of duplicate personnel, operations and equipment; and (ii) cost savings to current participants in either or both ASECC–SCC and NCC through, among other things, combining back-office functions, reducing interest costs and delivery fees and standardizing forms and schedules. NSCC estimated that in Phase II the annual combined savings from both categories will be between $12.4 million (assuming low transaction volume) and $17.4 million (assuming high transaction volume).

At the request of the Commission's staff, NSCC included a comparison of the savings anticipated from consolidation of ASECC–SCC and NCC ("Model I") with the savings which could be anticipated were ASECC–SCC and NCC to compete and interface with one another, each establish and maintain a network of regional facilites comparable to the existing NCC network and each offer its participants the ability to clear and settle through it all Amex, NYSE and OTC transactions ("Model II"). After comparing the clearing corporation operation savings of Model I and Model II, NSCC concluded that Model I would be less expensive than Model II by $7.2 to $9.4 million a year, depending on the volume of transactions processed.

DETERMINATIONS WITH RESPECT TO NSCC

SCOPE OF CONSIDERATION

As noted above, the Commission's decision to grant registration to NSCC grows out of the Commission's landmark study of the problems that precipitated the paperwork crisis in the late 1960's and the Commission's subsequent extensive experience in regulating the securities markets and their securities processing adjuncts. In view of the Commission's expertise as the agency charged with overseeing the Nation's securities markets, Congress directed the Commission to use its pervasive authority under the Act to facilitate the establishment of a national system in accordance with broadly stated objectives. As the Senate made clear, that new authority conferred on the Commission "is designed to eliminate any possible ambiguity and thereby avoid any delay in achieving comprehensive regulation of the processing of securities transactions." [100]

In exercising the plenary power conferred on it by Congress, the Commission is guided not only by the specific Congressional findings in Section 17A of the Act but also by the overall objectives of the Act to establish and maintain a comprehensive pattern of regulation and control of transactions in securities as commonly conducted upon securities exchanges and in the OTC markets, and of practices and matters related thereto, as well as to remove impediments to and perfect the mechanisms of a national market system for securities and a national system for the clearance and settlement of securities transactions and the safeguarding of securities and funds related thereto.[101]

The Commission is guided also by the general need to consider the impact of its actions on competition and to balance the need for full and effective competition against the other Congressional purposes set forth in the Act. In adopting the 1975 Amendments, Congress recognized that competition is itself an effective regulator and that the Commission's pattern of regulation should give appropriate attention to ways of maintaining competition among brokers and dealers as well as among market centers, clearing agencies and transfer agents. As indicated previously, in adopting the 1975 Amendments, Congress declined to require the Commission to cleave to a "least anticompetitive" standard in making rules and regulations under the Act. Instead, Congress determined to grant broader discretion to the Commission and to view the need for competition in the context of the Act as a whole and its several objectives so that burdens on competition could be accepted where necessary or appropriate in furtherance of the purposes of the Act. Indeed, section 17A itself directs the Commission, in exercising its authority over the securities processing area, to balance the maintenance of fair competition against the other statutory objectives of "the public interest, the protection of investors [and] the safeguarding of securities and funds * * *." [102]

The Commission's action today is consistent not only with the specific directives of section 17A but also with the broader pattern of the Act,[103] including the establishment of a national market system affording professionals engaged in securities transactions access to multiple market centers. The effective operation of such a market system is dependent in part on the existence of a national clearance and settlement system capable of receiving input from multiple market centers, identifying the input to individual participants in the market system and generating settlement instructions which net offsetting securities and money settlement obligations. Accordingly, early achievement of a national market system is dependent, in large measure, on prior or at least contemporaneous establishment of a national clearance and settlement system.

In making the determinations set forth in this order, the Commission has carefully considered all the data, views and arguments submitted and presented orally [104] during the course of its extensive deliberations on this matter and in response to the Commission's release of the proposed conditions to NSCC's registration. The Commission has reached its own judgments as to the conditions under which the application should be granted after considering the comments expressing a concern about NSCC's potential effects on competition among clearing agencies, securities exchanges and facilities managers. The Commission's focus, however, has been on the several purposes of the Act and in particular the need to avoid the delay in the establishment of a national market system which would result from the absence of an efficient national system for clearance and settlement. The Commission did not, and indeed could not, limit the scope of its consideration to section 17A; rather the Commission has considered NSCC's application in terms of the overall pattern of progress and change that is now occurring in response to the 1975 Amendments.

In order to make the basis of its policy determinations clear, the Commission has set forth in some detail the various considerations that have shaped its decision. While the need to keep this order to a reasonable length precludes detailed explanation of each facet of the matters considered by the Commission, an attempt has been made to furnish wherever appropriate a statement of the reasons supporting the Commission's determinations.[105]

REAFFIRMATION OF DETERMINATIONS MADE PREVIOUSLY

Since NSCC will assume the functions of existing clearing agencies whose reg-

[100] Senate Report on S. 249, supra note 37, at 58. The Conference Committee observed, in resolving the differences between the Senate and House bills that preceded the 1975 Amendments, that those bills were both in agreement and would amend the Act "to establish a system for effective regulation and centralized decision-making extending to every facet of the securities handling process in the United States—clearing agencies, securities depositories, corporate issuers, and transfer agents." Conference Report, supra note 43, at 102.

[101] See Section 2 of the Act.

[102] Section 17A(a)(2) of the Act.

[103] In establishing the requirements for passing on applications for registration of, among other things, clearing agencies, Section 19(a)(1) of the Act directs the Commission to expand the scope of its concern beyond Section 17A by providing that "[t]he Commission shall grant such registration if it finds that the requirements of [the Act] and the rules and regulations thereunder with respect to the applicant are satisfied."

[104] Transcript In the Matter of Application for Registration of National Securities Clearing Corporation, Commission File No. 600–15 ("Proceeding Transcript"). During the course of the oral presentation of data, views and arguments, the Commission received presentations from 23 individuals representing the following organizations: ASECC, Amex, Boston Stock Exchange ("BSE"), BSECC, Legg Mason, Division First Regional Securities, Inc. ("Legg Mason"), MCC, MSTC, Midwest Stock Exchange, Inc. ("MSE"), NASD, NCC, NSCC, NYSE, PSDTC, Pacific Stock Exchange, Inc. ("PSE"), Philadelphia Stock Exchange, Inc. ("Phlx"), Securities Industry Association ("SIA"), Securities Operating Division of the SIA ("SOD"), SCC, SCCP and Wedbush, Noble Cooke, Inc. ("Wedbush"). In excess of 500 pages of oral presentations were recorded and the Commission received over 300 pages of additional materials supplementing those presentations.

[105] See Section 23(c) of the Act, 15 U.S.C. 78w(c) (1975); see also 17 CFR 201.27.

istrations have already been granted under the Act, the Commission's reaffirmation today of the determinations made earlier with respect to those separate registrations is being made against the background of the Commission's experience with operations of those registered entities. In addition, the Commission has decided to make additional determinations under section 17A of the Act with respect to NSCC. Both the reaffirmed determinations and the new determinations are discussed below.

SAFEGUARDS AND FIXING RATES OR FEES

On December 1, 1975, in registering ASECC, NCC and SCC—the clearing corporations whose operations are to be performed by NSCC—the Commission determined with respect to each that (i) it is so organized and has the capacity to safeguard securities and funds in its control or for which it is responsible; (ii) its rules do not impose any schedule of prices or fix rates or other fees for services rendered by participants; and (iii) its rules assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible.

Those determinations, in each case, required a full review of the registrant's rules, procedures and operating capacity and a determination that the registrant's physical security, procedures for handling and safeguarding funds and securities, reconciliation procedures, insurance program, operating systems, backup facilities, credit policies and mark-to-the-market and participants' fund policies were adequate for the safeguarding of funds and securities. Since December 1, 1975, the Commission has monitored the operations of ASECC, NCC and SCC and, pursuant to Sections 17A and 19(b) of the Act, has reviewed and approved the rule changes each has put into effect.

The NSCC application contemplates that each of the systems reviewed by the Commission in December and found to satisfy the foregoing determinations will continue to operate under its current rules and in the manner it currently operates until NSCC submits, and the Commission approves, rule changes for the operation of the Phase II integrated system. Accordingly, the Commission reaffirms the determinations made previously with respect to ASECC, NCC and SCC in now finding that (i) NSCC is so organized and has the capacity to safeguard securities and funds in its control or for which it is responsible; (ii) NSCC's rules do not impose any schedule of prices or fix rates or other fees for services rendered by participants; and (iii) NSCC's rules assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible.

PROTECTION OF INVESTORS

While broader than the findings concerning safeguards, the determination that NSCC's rules are designed to protect investors and the public interest is based on the determination that NSCC's rules are designed to assure the safeguarding of funds and securities entrusted to NSCC by its participants. The protection of NSCC's participant brokers and dealers, bank and financial institutions inures to the benefit of those who invest through NSCC's participants. Having reaffirmed its previous determinations with respect to the safeguards of ASECC, NCC and SCC and based on its analysis of and experience with the operations of those entities since December 1, 1975, the Commission has determined that NSCC's rules are designed to protect investors and the public interest.

In reaffirming its earlier determinations, the Commission recognizes, as it did in making the original determinations with respect to ASECC, NCC and SCC, that the development of a national clearance and settlement system is an evolving and dynamic process. While the Commission has reached certain conclusions concerning the likely effects of NSCC's registration based on the Commission's experience and evaluation of current trends, the Commission has been aware of the difficulties of attempting to predict the future in a changing environment which involves the expanding use of new technologies. Recognizing its responsibility to remain alert to shifting trends in the markets as well as in the clearing agencies serving those markets, the Commission expects to monitor the operations of ASECC, NCC and SCC in their capacity as divisions of NSCC and to reconsider, as appropriate, the determinations which it has made today.[106]

DETERMINATIONS NOT INVOLVING CONFLICTING DATA, VIEWS AND ARGUMENTS

Capacity to facilitate and promote the prompt and accurate clearance and settlement of securities transactions. The Commission has determined that NSCC has the organization and capacity to facilitate, and that NSCC's rules are designed to promote, the prompt and accurate clearance and settlement of securities transactions. During Phase I, NSCC's operations and rules will be the current operations and rules of ASECC, NCC and SCC; accordingly, at this time, the Commission's findings are made with respect to those operations and rules.

The rules of ASECC and SCC and their combined operations, which are run by SIAC, provide participants with prompt and accurate service. The efficiencies and cost savings afforded today by ASECC, NCC and SCC have taken years to develop.[107] While the registration of NSCC is only a first step toward the ultimate development of the national system envisioned by the Congress, it is an important step. The technical achievements realized thus far, and now to be augmented by the establishment of NSCC, hold out important promise for the future and impel the Commission toward the conclusion that approval of the registration is critical to the achievement of the national system.

Both the ASECC and SCC systems operate in a continuous netting mode, are interfaced with three other clearing systems and enable participants to make all settlements in DTC by book entry. Those advances enable participants in the systems to reduce significantly the number of settlements which must be made by physical delivery of securities certificates and anticipate the statutory goal of immobilization of the securities certificate in connection with the settlement of securities transactions among brokers and dealers.[108] In addition, the ASECC and SCC systems provide a local envelope delivery service which simplifies the settlement of transactions not completed by book entry. NCC's rules and operations also provide prompt and accurate service. Like ASECC and SCC, NCC's system operates in a continuous netting mode, is interfaced with PCC's OTC clearing operation, provides local and regional envelope delivery services and has a "free position" (a depository-equivalent account included in NCC's clearing operation) which is interfaced with both DTC and TADDC for book entry settlement of continuous netting transactions.

As noted above, the Commission's determinations made today relate to Phase I of the proposed NSCC operation. Before the commencement of Phase II, the Commission will consider the same determinations with respect to the envisioned NSCC integrated system as it is then to be constituted. The Commission expects to be able to assess at that time the extent to which NSCC can implement its plans for an integrated system to (i) combine the best features of both the ASECC–SCC and NCC systems by including, among other things, the current same-day turnaround features of the ASECC–SCC system and the NCC regional delivery network; and (ii) provide advantages not available in either of the current systems, such as one account processing [109] for Amex, NYSE and OTC transactions of all NSCC participants.

Capacity to take advantage of new data processing and communications techniques. Because the equipment and techniques employed by clearing agencies—computers, peripheral equipment and communications systems—are developed in a wider arena than securities processing, they usually are developed without specific reference to the needs

[106] See discussion under "Implementation and Monitoring" infra.

[107] See discussion under "Background to the Application" supra.

[108] Section 17A(e) of the Act directs the Commission to "use its authority under [the Act] to end the physical movement of securities certificates in connection with the settlement among brokers and dealers of transactions in securities consummated by means of the mails or any means or instrumentalities of interstate commerce."

[109] See discussion *supra* under "Characteristics of a National System" with respect to the capabilities which the Commission believes a national clearing and settlement system should have in order to satisfy the requirements of Section 17A of the Act.

of or developments in securities processing. Accordingly, a high degree of technical proficency is often needed to evaluate new systems and new technologies for, and to envision their possible use in, the clearance and settlement of securities transactions. In their achievements to date, ASECC, SCC and NCC have demonstrated an ability to adapt new systems to their needs; the existing efficiencies they have accomplished, as well as those realized by the proposed facilities manager SIAC, argue strongly that NSCC too will exhibit the requisite proficiency.

Accordingly, on the basis of the data, views and arguments presented to the Commission, which did not contest NSCC's abilities in this regard,[110] as well as its own familiarity with developments to date,[111] the Commission has determined that ASECC–SCC and NCC have, and NSCC will have, the ability to analyze the need for and take advantage of new data processing and communications equipment.

DETERMINATIONS INVOLVING CONFLICTING DATA, VIEWS AND ARGUMENTS

As a major initiative for linking the nation's securities market centers which holds out the promise of an early realization of the Congressional goal of a nationwide clearing and settlement system, the NSCC application has received a thorough examination from the Commission and from numerous commenters.

The efficiencies and cost savings envisioned by NSCC's application have the potential for improving the efficiency of the markets in handling an expanding trading volume. Also, they establish a setting in which existing competitive and operational relationships will be significantly altered. As a consequence, the NSCC application presents a number of complex and often conflicting considerations, not the least of which is its probable effect on competition among clearing agencies and facilities managers as well as competition among securities markets and brokers and dealers.

Many commenters have presented their own data, views and arguments on the NSCC application. Perhaps reflecting differences in perspective, as well as concern about the effect of NSCC's registration on their own processing operations, the commenters have differed sharply in expressing views on the application. It has, accordingly, been necessary for the Commission to devote substantial effort, both in its own time and in that of its staff, to identify, categorize and resolve the issues presented. In that endeavor, the Commission has reviewed all the data, views and arguments presented and has formed its judgments in the light of of its regulatory experience and the Acts objectives.

Throughout its consideration of NSCC's application, the Commission has recognized that, in an area as dynamic and complex as securities processing, there may not be any permanent resolution of the problem which the NSCC application addresses and the issues which it raises. As the Commission indicated once before,

> [A]s conditions change, existing problems may be superseded by new problems, and existing "solutions" may be rendered obsolete * * *. But the very purpose and nature of administrative agencies demands that current industry problems be faced and dealt with as expeditiously as possible and that the administrative authority not abdicate its clearly-defined obligation to act.[112]

In discussing the issues raised, the Commission has undertaken to present its own analysis of the problems involved and the reasons for, and the intended effects of, the conditions imposed on NSCC's registration. Of necessity, the Commission has limited detailed recitation of the voluminous data, views and arguments presented by commenters, in order to attempt a clear presentation in this order of the bases on which the Commission has made its determinations as well as the reasons supporting those determinations.

CAPACITY TO REDUCE UNNECESSARY COSTS

From the financial difficulties which beset brokers and dealers during the paperwork crisis and from the Congressional concern that a national clearing and settlement system take advantage of available economies, the Commission has concluded that both the national system and its components, such as NSCC, should have the capability to reduce unnecessary costs and, to the extent possible, to take advantage of savings which may be achieved through the combination of compatible operations and the discontinuation of unnecessary operations.

The cost information submitted by NSCC during the proceedings tended to show that, depending on the volume of transactions processed, the combined systems operations planned for Phase II would generate annual industry cost reductions of $12.4 to $17.4 million, comprising reductions of $10.0 to $13.3 million in the costs incurred by present participants in relating to ASECC, NCC and SCC, and annual reductions of $2.4 to $4.1 million in the current costs of operating the three clearing corporations.[113] At the request of the Commission's staff, NSCC prepared estimates comparing the cost of Phase II operations ("Model I") with the cost of the most likely possible alternatives to NSCC's establishment—operation of ASECC–SCC and NCC as two interfaced and competing systems ("Model II").[114] That comparison showed that, depending on volume, the annual cost of clearing corporation operations under Model II would be $7.2 million to $9.4 million higher than under Model I.[115]

Portions of the data submitted by NSCC were questioned by commenters and NSCC's data were analyzed by the Commission. As a result of its analysis, the Commission concluded that, while the cost reductions estimated for Model I appeared to be reasonable, the estimates comparing the costs of Model I and Model II overstated the estimated annual costs of Model II by approximately $1 million and consequently overstated by a like amount the excess of Model II annual costs over those of Model I.[116] Notwithstanding that conclusion, the Commission is persuaded that NSCC's Phase II operations would generate annual reductions in current clearing corporation operating costs and, allowing for the revised estimate, would have a lower operating cost than Model II operations. Even though annual clearing corporation cost reductions (from $2.4 to 4.1 million) would represent between 13 and 18 percent of combined current ASECC, NCC ad SCC operating costs[117] the Commission has not accorded substantial weight to those reductions in granting NSCC's registration because of the Commission's belief that most, although not necessarily all,[118] of the more significant $10.0 to $13.3 million participant cost savings could be achieved in either a Model I or a Model II environment.

CAPACITY TO ACHIEVE THE LINKING OF CLEARING AND SETTLEMENT SYSTEMS AND FACILITATE THE ESTABLISHMENT OF A NATIONAL SYSTEM

The Commission has determined that the existing operations of ASECC, NCC and SCC, which will be NSCC's operations during Phase I, and the planned operations of NSCC following implementation of Phase II, as modified by the conditions to this order, have the capacity to achieve the important statutory objectives of linking clearing and settlement systems, fostering cooperation and coordination among persons engaged in the clearance and settlement of securities transactions and facilitating the establishment of a national system for the clearance and settlement of transactions in securities. The Commission's determinations that NSCC has the capacity to make these substantial contributions to the establishment of a national system are based on uncontroverted data, views and arguments submitted by NSCC, written views and arguments of brokers and dealers located both in and outside of New York City and the Commission's belief that the conditions imposed by this order will counter the negative consequences which might otherwise result from NSCC's establishment.[119]

A number of registered clearing agencies located outside New York City expressed concern that NSCC would discourage, rather than use its capacity to achieve, links between clearing and settlement systems and the establishment of a national system by engaging in delaying tactics, failing to cooperate with other registered clearing agencies and establishing prohibitive interface fees.[120]

The first condition to which the Commission is subjecting NSCC's registration responds to those concerns by requiring NSCC to offer to establish full interfaces[121] with continuous netting systems and appropriate links with certain other clearing and settlement operations, without interface charges, before it may initiate Phase II operations (the "Free Interface Condition").[122] In addition, during Phase I, NSCC may not make any changes in the existing rules, operating procedures or facilities management agreements of NSCC or any of its operating divisions without prior Commission approval. As a result of the Free Interface Condition, NSCC will not be able to offer services other than those offered presently by its operating divisions until each of the clearing corporations which must establish links with NSCC in order to provide the accounting and settlement component of one account processing[123] has, in the judgment of the Commission, completed or had an adequate opportunity to complete arrangements with NSCC necessary to enable it to provide services comparable to those which NSCC intends to provide.

Also the Commission is directing NSCC to establish coordinating groups to identify and resolve any matters which are delaying completion of linking. Moreover, if there are delays in achieving the implementation of Phase II operations, the Commission would consider taking steps to suspend or revoke NSCC's registration and to explore other approaches to facilitating the prompt establishment of a national clearing and settlement system.

Assuming satisfaction of the conditions imposed in connection with NSCC's registration, the Commission believes that NSCC will further the linking of clearing systems and the establishment of a national system. In particular, through the expansion of the ASECC–SCC Regional Interface Operation ("RIO") developed by SIAC, NSCC will have in place by the start of Phase II clearing interfaces for OTC and listed transactions with each of MCC, PCC and SCCP and appropriate links with BSECC and TADDC. By providing interfaces without interface charges,[124] the initiation of Phase II integrated operations will facilitate the establishment of a national clearing and settlement system of interfaced entities in which brokers and dealers will be able to choose the marketplace for a transaction on the basis of the best price obtainable and brokers and dealers, banks and other financial institutions[125] will be able to process the transaction through the clearing corporation of their choice.[126]

NCC's operation includes in its book entry system approximately 10,300 issues, including issues listed on exchanges and issues traded only OTC. The ASECC and SCC book entry systems do not include issues which are not listed on an exchange. At present, NCC clears only OTC transaction and, although through existing interfaces ASECC and SCC clear some transactions in issues listed on exchanges other than the Amex and NYSE. esentially, ASECC clears only transactions in Amex-listed issues and SCC clears only transactions in NYSE-listed issues. As a result, brokers and dealers with Amex, NYSE and OTC transactions to clear and settle must currently participate in all three entities, either directly or through a correspondent. If the multiple clearing corporation participation is direct, after January 2, 1977, the broker or dealer may be required to deliver securities of the same issue to, or receive them from, more than one clearing corporation on a given settlement day and, in some cases, may have to make multiple securities settlements which would be offsetting (and therefore would not have required separate settlements) if they had been made with or through a single clearing corporation.[127] Also, as a result of multiple clearing corporation membership, a broker or dealer could be required to make multiple daily money settlements which would offset each other if they could be made through one clearing corporation.[128] The Commission believes the Act calls for a national system which provides one daily securities settlement per issue and one daily money settlement.[129]

Under the Phase II operations, NSCC would include in its book entry system all issues currently included in the ASECC, NCC and SCC book entry sys-

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[110] Proceeding Transcript, *supra* note 104, and related documents.

[111] *See* "Background to the Application" and discussions under "Safeguards and Fixing Rates or Fees" and "Capacity to Facilitate and Promote the Prompt and Accurate Clearance and Settlement of Securities Transactions *supra*.

[112] Securities Exchange Act Release No. 9950 (Jan. 16, 1973) at 3–4, 38 FR 3902 (Feb. 8, 1973). [Footnote omitted.] *See also* PBW Stock Exchange v. Securities and Exchange Commission, 485 F. 2d 718 (3d Cir. 1973), *cert. denied*, 416 U.S. 969 (1974).

[113] Justification For A Consolidation of New York Clearing Facilities, [hereinafter cited as "Justification"] at 2, 10, 12.

[114] *See* discussion under "Cost Savings" *supra*.

[115] The comparison estimated that improvements necessary under Model II to enable both the ASECC–SCC and NCC systems to provide Phase II levels of service would increase annual clearing corporation operating costs from the current $18.8 to $21.8 million range to the $23.6 to $27.1 million range, a net increase of from $4.8 to $5.3 million. Because participants would experience estimated annual savings of from $10.0 to $13.3 million, however, operations under Model II would generate net annual industry savings of $5.2 to $8.0 million. Justification *supra* note 113, at 17.

[116] The NSCC estimates are based on comparisons of projected costs under the general categories of "Manpower," "Data Processing," "Branch Network," "Facilities," "General" and "DTC Cost Increase." After reviewing the components of those categories, the Commission concluded that the Model II estimates for the "Manpower," "Data Processing," "Facilities" and "DTC Cost Increase" categories were overstated in an aggregate amount of $1 million. Justification *supra* note 113 Exhibit I.

[117] The current annual operating costs of ASECC, NCC and SCC are $18.8 to $21.8 million, depending on volume.

[118] The Commission's staff requested NSCC to assume, in comparing Model I and Model II clearing corporation operating costs, that participant savings would be the same under Model I and Model II. The assumption that Model I and Model II could provide identical services is open to question, however, and it is possible that participant savings under Model II could be higher or lower than under Model I.

[119] *See, e.g.*, Proceeding Transcript, *supra* note 104, at 6–15 (NSCC), NSCC memorandum, filed June 4, 1976, containing a narrative description of the proposed merger and NSCC's responses to a variety of questions posed by the staff, and letters of Bache Halsey Stuart Inc., August 23, 1976, and Bosworth Sullivan & Company, Inc., August 20, 1976.

[120] *See, e.g.*, Proceeding Transcript, *supra* note 104, at 119–122 (SCCP), 151–154 (PSE) and 257 (MSE).

[121] A "full interface" is one through which any participant in either of the interfacing clearing corporations can move all its transactions in issues eligible for comparison, clearing and settlement at both clearing corporations.

[122] The conditions to NSCC's registration are set forth under "DETERMINATIONS, CONDITIONS AND DIRECTIVES" *infra*.

[123] *See* discussion of one account processing under "Characteristics of a National System" *supra*.

[124] While the absence of interface charges will have the effect of spreading the costs of interfaces among all participants in a clearing corporation, the Commission believes it is appropriate for all clearing corporation participants to defray the costs of the national system's interface network. Current trading practices obligate the selling side of a transaction to make delivery to the buying side of the transaction. Once interfaces are in place, a party to a transaction effected on an exchange or through use of an OTC trading mechanism usually will not know the location at which the other party to the transaction has elected to clear and settle securities transactions. As a result, all parties to exchange and OTC transactions would have an equal likelihood of entering into sale transactions which would occasion the use of interfaces.

[125] NSCC would provide for participation by qualified brokers, dealers and financial institutions; *see* subparagraph 17A(b)(3)(B) of the Act.

[126] *See* Characteristics of a National System" *supra*.

[127] On December 19, 1975, the Commission adopted Rule 19c-1 under the Act. Pursuant to that Rule, after January 2, 1977, exchange rules may not prevent exchange members acting as agents, from effecting transactions in listed securities on other exchanges or OTC, with a third market maker or non-member block positioner. Securities Exchange Act Release No. 11942 (December 19, 1975) 41 FR 4507 (January 30, 1976). Accordingly, after January 2, 1977, a broker or dealer which, during the course of a trading day, executes sales of 1,000 shares of X Company on the NYSE and executes purchases of 1,000 shares of X Company OTC with third market makers may have two settling positions in X Company shares, one at SCC and one at NCC.

[128] Under existing arrangements participants in ASECC and SCC may make one daily money settlement for obligations to the two clearing corporations.

[129] *See* discussion under "Characteristics of a National System" *supra; see also* subparagraphs 17A(a)(1)(A), (C) and (D) of the Act.

tems and would clear all transactions currently cleared by ASECC, NCC and SCC.[120] Accordingly, through NSCC, former ASECC, NCC and SCC participants would have one daily settling position in each issue cleared and one daily money settlement.

Neither ASECC, nor NCC, nor SCC provides its participants with the ability to compare through the clearing corporation transactions other than those effected in the marketplaces for which the clearing corporation performs the comparison function. Consequently, participants in ASECC, NCC and SCC currently must maintain an ability to perform a separate daily comparison with each of the three clearing corporations. In a national system, a participant should be able to compare all its transactions through a single clearing and settlement entity.[121]

Beginning with Phase II of NSCC's plan, NSCC participants located in New York City would be able to effect trade comparison through NSCC for Amex, NYSE and OTC transactions. The second condition to NSCC's registration (the "Remote Comparison Condition") requires NSCC, by the beginning of Phase II, to provide the same comparison capability through the NSCC branch network and, at cost, to provide facilities through which NSCC participants located outside New York City and participants in other clearing corporations, wherever located, will be able to compare Amex, NYSE and OTC transactions eligible for comparison by NSCC.[122]

The combination of accounting and settlement functions for Amex, NYSE and OTC transactions which would occur in Phase II and the availability in Phase II of comparison for Amex, NYSE and OTC transactions through NSCC would provide for NSCC participants the benefits of one account processing for the bulk of their securities transactions, The Commission believes that by providing one account processing for Amex, NYSE and OTC transactions NSCC's Phase II operations would provide the most important element of a national system.[123]

ASECC and SCC currently operate a common envelope delivery system and NCC currently operates its own envelope delivery system. Because the two systems have different although overlapping membership, many brokers and dealers belong to both systems in order to complete deliveries to other brokers and dealers. In Phase II, NSCC would provide a single envelope settlement system servicing all existing ASECC, NCC and SCC envelope routes. Also, the ability to use a single envelope system at NSCC would permit NSCC participants to combine their daily envelope system and book entry system money settlements.[124]

Because DTC does not accept many OTC issues for deposit, participants in ASECC and SCC currently are required to maintain these OTC securities either outside the book entry environment or in another depository. NCC participants may maintain virtually all listed equity issues and many OTC equity issues in NCC's depository-equivalent free position. By the beginning of Phase II, participants in NSCC will be able to maintain on deposit in a book entry environment all issues currently included in the ASECC, NCC and SCC book entry systems. Accordingly, consistent with the capabilities which the Commission believes a clearing entity participating in the national system should have, NSCC would enable its participants to deliver securities to, and receive securities from, NSCC and other participants and clearing corporations by book entry and to take advantage of the other functions which may be performed by book entry.[125]

At present, participants in ASECC and SCC are able to achieve sameday turnaround of Amex and NYSE listed issues on both the clearing and depository levels. The same ability is not available in NCC and consequently is not available at all for the OTC issues which are cleared only by NCC. In Phase II, NSCC would make available same-day turnaround at the clearing and depository levels for Amex, NYSE, OTC and other listed transactions. By permitting rapid redelivery of OTC issues, Phase II operations would both alleviate delays which have arisen in the past due to the unavailability of certificate inventory for OTC issues and provide a significant component of a national system.[126]

COMPETITIVE CONSIDERATIONS

Effects on competition among brokers and dealers. Brokers and dealers located outside major financial centers have incurred higher costs in relating to and comparing, clearing and settling transactions through clearing corporations located in those centers than brokers and dealers located in the major financial centers.[127] The difference in those costs has been particularly evident in New York City because of its importance as a financial center and because of the high cost to a broker or dealer located outside New York City of comparing, clearing and settling Amex and NYSE transactions through ASECC and SCC.[128] Through the planned expansion and upgrading of the existing NCC branch network and NSCC's proposed policy of charging the same fees for transactions compared, cleared and settled through the branch network as for transactions compared, cleared and settled in New York City ("geographic price mutualization") NSCC promises to make available to brokers and dealers located outside New York City the full range of processing operations currently available to brokers and dealers located in New York City at the same fees paid by New York City brokers and dealers.[129]

A number of NSCC's potential clearing corporation competitors and the United States Department of Justice expressed the view that NSCC's activities should be restricted to New York City, either indefinitely or for a fixed period, in order to protect clearing corporations operating outside New York City from the dangers of competition with NSCC.[130] The Commission has concluded, for the reasons discussed under "Competition Among Clearing Agencies," that NSCC's operation of the branch network subject to the conditions contained in this order would not adversely affect competition among clearing agencies. Even if the Commission had not reached that conclusion, however, the Commission believes that the encouragement of competition among brokers and dealers is a paramount concern of the Act and represents a direct benefit for the investing public.

The effects of competition among brokers and dealers are reflected in services provided to, and commissions charged, individual and institutional customers. While the levels of those services and commissions are affected by clearing and settlement fees, they constitute a relatively small component of the services individual customers receive and the commissions individual and institutional customers pay. The levels of those services and commissions tend to be affected more significantly and more directly by competition among brokers and dealers. Accordingly, although the maintenance of competition among clearing agencies is an important statutory objective, when balanced against

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[120] The NCC depository-equivalent free account currently includes most issues included in securities depositories and existing interfaces between SCC and MCC. PCC and SCCP permit transactions in issues listed on those exchanges to be accounted for and settled through SCC.

[121] *See* discussion under "Characteristics of a National System" *supra*.

[122] The second conditions to NSCC's registration is set forth under "Determinations, Conditions and Directives" *infra*. Through participation in NSCC, a competing clearing corporation presumably would be able to effect comparison as agent for its participants.

[123] *See* discussion of one account processing under "Characteristics of a National System" *supra; see also* subparagraphs 17A(a)(1)(A), (C) and (D) of the Act.

[124] Justification, *supra* note 113, Exhibit II at 10–11, 18–19.

[125] *See* discussion of "Characteristics of a National System" *supra; see also* subparagraphs 17A(a)(1)(A), (C) and (D) of the Act.

[126] *See* discussion under "The Paperwork Crisis" and under "Characteristics of a National System" *supra*.

[127] The components of those costs are drafting charges, interest expense, messenger fees, correspondent fees and direct clearing fees.

[128] *See, e.g.*, Proceeding Transcript, *supra* note 104, at 37 (NSCC), 348–350 (Legg Mason), letters of Wayne Hummer & Co., June 11, 1976, and Robinson-Humphrey Co., Inc., June 17, 1976.

[129] Proceeding Transcript, *supra* note 104, at 436 (NSCC). *See also* letters of Prescott, Ball & Turben, June 16, 1976, and Wayne Hummer & Co., June 11, 1976.

[130] *See, e.g.*, Proceeding Transcript, *supra* note 104, at 190–194 (BSECC), letters of SCCP, July 23, 1976, C. A. Mathews & Co., July 2, 1976, and United States Department of Justice, July 23, 1976, and November 19, 1976.

the facilitation of competition among brokers and dealers, clearing agency competition must give way to the public interest in maintaining the form of competition which most directly influences the levels of services received and commissions paid by individual and institutional customers.

Based on the information developed during the proceedings and the Commission's experience in regulating clearing agencies and brokers and dealers, the Commission believes that by narrowing the difference between the clearing and settlement costs of brokers and dealers located outside New York City and the costs of brokers and dealers located in New York City, Phase II operations will significantly facilitate competition among brokers and dealers.[141] Accordingly, the Commission has concluded that Phase II operations provide a comprehensive and practicable plan by a major segment of the securities industry for establishing a setting in which competition among brokers and dealers will be able to occur.

Effects on competition among clearing agencies. During the proceedings, conflicting claims were made concerning the effect which NSCC's registration would have on competition among clearing corporations and securities depositories both during the interim between the grant of NSCC's registration and the implementation of Phase II and following implementation of Phase II.

Implicit in the views and arguments pertaining to the adverse effects of NSCC's registration during the interim was the concern that the registration's possible anticompetitive effects could not be reversed if, as a result of NSCC's failure to satisfy the conditions, its registration ceased to be effective. Concern was expressed also that NSCC would obtain a competitive advantage over other clearing corporations during the interim by offering to provide prospective NSCC participants the advantages of one account processing at the start of Phase II operations while suggesting that competing clearing corporations would be unable to offer comparable services or to offer them as soon as NSCC.[142] The Commission believes that the potential for implementation of Phase II operations to achieve the objectives of the Act, including making possible the early establishment of a national system and facilitating competition among brokers and dealers,[143] outweighs any possible effects which NSCC's registration may have on competition during the interim preceding implementation of Phase II.

Currently, ASECC, NCC and SCC do not compete for accounting and settlement business.[144] The Commission recognizes that competition between ASECC–SCC and NCC for the accounting and settlement business of brokers and dealers located in New York City could occur if ASECC and SCC were to combine their operations, offer clearance and settlement for OTC transactions and establish a full interface with NCC. If ASECC–SCC were to establish a branch network comparable to NCC's, ASECC–SCC and NCC presumably would compete for the business of brokers and dealers located outside New York City.

ASEC–SC and NC memberships,[145] coupled with the NASD's belief that NCC could not compete successfully with ASECC–SCC,[146] suggest that, regardless of the theoretical possibility of competition between ASECC–SCC and NCC, NCC might choose not to compete. Assuming competition would occur, however, it would merely be delayed during the interim preceding implementation of Phase II while ASECC, NCC and SCC devise a definitive plan to combine their systems. During that interim, the Commission will monitor the impact of NSCC's registration on brokers and dealers and clearing agencies and, pursuant to the conditions to NSCC's registration contained in this order, will review each step NSCC takes toward implementing Phase II. If Phase II does not come to pass as planned, the Commission will consider revoking NSCC's registration. Undoing the limited combination which would be effected during Phase I by NSCC's registration would not be without difficulty, and would delay briefly the realization of any potential which exists for competition between ASECC–SCC and NCC. However, the requirement that Phase II operations not be initiated until the conditions are satisfied is intended to insure that no irreversible steps are taken before the installation of mechanisms which the Commission believes will prevent Phase II operations from imposing unnecessary or inappropriate burdens on competition. And the Commission's monitoring will ensure that exploration of possible alternatives such as competition between ASECC–SCC and NCC will not be delayed unduly by an inappropriate prolongation of Phase I.

The conditions to NSCC's registration contained in this order are intended to ensure, among other things, that NSCC will not prevent competing clearing corporations which must interact and cooperate with it from providing, contemporaneously with NSCC, services similar to those it will provide in Phase II. Even if the conditions themselves prove to be deficient in deterring NSCC from engaging in delaying tactics, the monitoring which the Commission intends to carry out,[147] coupled with its broad authority under the Act, should ensure NSCC's compliance with the spirit of the 1975 Amendments. In view of the conditions contained in this order and the Commission's expressed intention to exercise its authority under the Act to ensure that NSCC does not make inappropriate use of its pivotal position, the Commission does not believe that, during the interim before implementation of Phase II, competing clearing corporations will be disadvantaged in their efforts to market the kinds of services which NSCC intends to provide in Phase II.

NSCC and supporters of its application maintained that if ASECC and SCC, using SIAC, and NCC, using BNCC or another processor, were permitted to clear and settle all securities transactions and compete with each other, the current eight-to-one clearing volume advantage which ASECC and SCC have over NCC would drive NCC out of business.[148] In view of the supposed impossibility of effective competition between ASECC–SCC and NCC, NSCC and its supporters argued that establishment of NSCC would have no effect on potential competition between a combined ASECC–SCC operation and NCC.[149] Other clearing corporations and opponents of NSCC's application maintained that NCC could compete successfully with ASECC–SCC and that, therefore, NSCC's establishment would eliminate the possibility of competition among clearing corporations in New York City.[150]

While there are serious questions whether successful competition between ASECC–SCC and NCC would be possible

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[141] While one commenter on the Commission's proposed conditions implied that NSCC's proposed geographic price mutualization would artificially restrict competition with NSCC's branch network by correspondent brokers and dealers, the Commission believes it is not inappropriate that services which have developed in the absence of a national system, be curtailed or modified in the processing environment which a national system will foster. *See* letter of Pershing & Co., Inc., November 19, 1976.

[142] See, e.g., Proceeding Transcript, supra note 104, at 188–189 (BSECC), and July 23, 1976, letter of United States Department of Justice.

[143] See discussion under "Effects on Competition Among Brokers and Dealers" supra.

[144] See discussion under "Capacity to Achieve the Linking of Clearing and Settlement Systems and Facilitate the Establishment of a National System" supra.

[145] As of the date of NSCC's application there was a 100 percent membership overlap between ASECC and SCC, and 59 percent of NCC's members, accounting for 82 percent of its volume, were ASECC–SCC members. NSCC memorandum, filed June 4, 1976, containing a narrative description of NSCC's plans and responses to questions of the Commission's staff, p. 9.

[146] Proceeding Transcript, supra note 104, at 90, 98–99 (NASD).

[147] The Commission's monitoring measures are described under "Implementation and Monitoring" infra.

[148] Gordon S. Macklin, President of the NASD and Chairman of the Board of NCC, advised the Commission "[w]e are concerned that the result of a complete interfacing with two clearing corporations would mean that we would die." See Proceeding Transcript, supra note 104, at 98. See also Proceeding Transcript, supra note 104, at 233 (SIA) and 319 (SOD).

[149] See, e.g., Proceeding Transcript, supra note 104, at 18–21, 497–498 (NSCC), and 90 (NASD).

[150] Id. at 137 (SCCP), 155 (PSE), 384 (Jerome Shuman of Georgetown University Law Center); letters of United States Department of Justice, July 23 and November 19, 1976.

and strong indications that it could occur only if NCC's competitive posture were bolstered by the imposition of restrictions delaying or prohibiting ASECC–SCC from offering one account processing and offering its services outside New York City,[151] the Commission does not have a sufficient factual basis to conclude that NCC could not compete. Accordingly, the Commission has not assumed that NCC would be unable to survive in competition with ASECC–SCC and has recognized that approval of NSCC's application forecloses the potential for that competition. Having weighed the probable effects of that foreclosure against the benefits NSCC will provide through fostering competition among brokers and dealers,[152] providing cost savings [153] and facilitating the establishment of a national system with the capabilities envisioned by the 1975 Amendments,[154] the Commission has concluded that it is essential, in this instance, for the potential competition between ASECC–SCC and NCC to be subordinated to the Act's other objectives.

The Commission believes that a combination of the ASECC, NCC and SCC clearing volume and the NCC branch network is necessary to make available to brokers and dealers located outside New York City, at the earliest possible date, the processing advantages which NSCC will provide in Phase II. The revenues generated by NSCC's New York City clearing volume coupled with NSCC's intention to pursue a policy of geographic price mutualization,[155] are likely to make possible the maintenance of an extensive branch network through which brokers and dealers located outside New York City will enjoy the efficiencies and economies of one-account processing,[156] book entry movement,[157] same-day turnaround [158] and lower per unit clearing fees.[159] As discussed previously,[160] the Commission believes that the availability of those processing advantages will foster competition among brokers and dealers.

Also, the existence of ASECC–SCC and NCC as separate entities would delay the attainment of important objectives of the Act by (i) creating unnecessary costs from the operation in New York City of two clearing systems with duplicate facilities and administrative overhead, (ii) impeding the linking of clearing systems by requiring other clearing agencies to establish interfaces with two clearing systems, rather than one, and (iii) complicating reconciliation procedures and creating additional costs by requiring the establishment and operation of a high-volume comparison and clearing interface between ASECC–SCC and NCC.[161]

A number of clearing corporations and other commenters argued that NSCC's policy of geographic price mutualization would adversely affect their competitive posture. They maintained that, coupled with the revenues NSCC would derive from its large New York City-based clearing volume, NSCC's operation of the NCC branch network pursuant to a policy of geographic price mutualization would enable NSCC to offer its services through the network at prices below the cost of providing those services and, possibly, below the lowest prices the competing clearing corporations could offer.[162] Those clearing corporations and the United States Department of Justice and others included suggestions that NSCC's registration be conditioned on restriction of NSCC's operation to New York City either indefinitely or for some fixed period following the grant of NSCC's registration.[163] This argument assumes that NSCC's large processing volume, coupled with geographic price mutualization, will enable NSCC to offer clearing services through the branch network at prices competing clearing corporations will be unable to meet.

NSCC and supporters of its application maintained that NSCC should be free to pursue a policy of geographic price mutualization in order to enable NSCC participants located outside New York City to obtain NSCC's services on the same basis as participants located in New York City and to benefit from any lower unit costs which NSCC's volume will provide.[164] They maintained also that through geographic price mutualization NSCC will be able to facilitate the establishment of a national system by maintaining a more extensive branch network than would be possible under a non-mutualized pricing policy. As discussed previously, preclusion of NSCC from operating a branch network would deny these benefits to brokers and dealers located outside New York City and would perpetuate the current disadvantages which brokers and dealers located outside New York City experience through incurring higher clearing and settlement costs than brokers and dealers whose operations are located in New York City.

The Commission believes that, by permitting competing clearing corporations to participate in the NSCC branch network by paying a proportionate share of the branches' operating overhead,[165] the third condition (the "Common Branch Facility Condition") to NSCC's registration will enable other clearing corporations to compete with NSCC in offering services to brokers and dealers located outside New York City.[166] Participation in branch facilities maintained by NSCC presumably would enable a competing clearing corporation to do business in locations at which its own clearing volume would not justify the maintenance of a separate branch facility. At the same time, NSCC's operation of the network would ensure that brokers and dealers located outside New York City for whose business other clearing corporations might not attempt to compete would receive the benefits which participation in NSCC will provide. Restricting NSCC's activities could deprive brokers and dealers located outside New York City of the benefits of Phase II operations and, by, in effect, geographically allocating clearing and settlement territories, would deprive brokers and dealers of the benefits of dealing with competing clearing corporations. The Commission believes, therefore, that restriction of NSCC's operations to New York City would eliminate one of the most important benefits promised by NSCC's Phase II operations, would be inconsistent with the establishment of a national system and would retard the development of competition among brokers and dealers and clearing agencies.

Several clearing corporations argued that NSCC could obtain a competitive advantage by charging interface fees, or fees which act as interface fees, designed to encourage brokers and dealers located

[151] See, e.g., June 15, 1976, letter from the Commission's staff to BNCC and June 15, 1976, response of BNCC.

[152] The Act, Section 17A(a)(2).

[153] The Act, subparagraph 17A(a)(1)(D).

[154] The Act, Section 17A(a)(2).

[155] Geographic price mutualization is discussed under "Effects on Competition Among Brokers and Dealers" supra.

[156] See discussion under "Comparison, Accounting and Settlement" supra.

[157] See discussion under "Book Entry Clearing" supra.

[158] Id.

[159] See discussion under "Cost Savings" supra.

[160] See discussion under "Effects on Competition Among Brokers and Dealers" supra.

[161] In subparagraph 17A(a)(1)(D) of the Act Congress finds that the linking of all clearance and settlement facilities and the development of uniform standards and procedures for clearance and settlement will reduce unnecessary costs and increase the protection of investors.

[162] See, e.g., Proceeding Transcript, supra note 104, at 118–119, 131–132 (SCCP), 188 (BSECC), and July 23, 1976, and November 19, 1976, letters of United States Department of Justice.

[163] See, e.g., Proceeding Transcript, supra note 104, at 190–192 (BSE), and letters of C. A. Mathews & Co., July 2, 1976, and United States Department of Justice, July 23, 1976.

[164] See e.g., Proceeding Transcript, supra note 104, at 38–39, 76, 436–437 (NSCC), 350–354 (Legg Mason).

[165] The cost of establishing a link between an NSCC branch facility and another registered clearing corporation would be borne by the registered clearing corporation. Of course, since no clearing corporation would be obligated to use any given facility, any clearing corporation which believed that NSCC's provision of services was inadequate could establish its own facility. Moreover, while NSCC could determine to discontinue a branch facility, NSCC could not re-open the facility without providing access to other registered clearing agencies.

[166] In commenting on the "Common Branch Facility Condition," clearing corporations which would be competitors of NSCC expressed concern that NSCC's management of the facilities might result in discrimination in favor of NSCC in the operation of those facilities. The measures the Commission is taking in implementing and monitoring this order and the directive to NSCC to establish coordinating groups in connection with the implementation of interfaces and branch facilities are intended to reduce the likelihood of any such abuse and its durtaion should it arise. The third condition to NSCC's registration and the directive for the establishment of coordinating groups are set forth under "Determinations, Conditions and Directives" infra.

outside New York City to use the NSCC network rather than another clearing corporation.[167] If not restricted, they maintained, NSCC theoretically could induce a broker or dealer located outside New York City with large transaction volumes on the Amex or the NYSE to use NSCC's branch network by forcing a choice between (i) moving Amex and NYSE transactions compared by NSCC to competing clearing corporations through interfaces and paying an interface charge or (ii) clearing and settling the transactions through the branch network without an interface charge. They believe a broker or dealer confronted with that choice would perceive any interface charge imposed by NSCC as an additional cost of clearing Amex and NYSE transactions through a competing clearing corporation. Accordingly, depending on the level of the interface fee, the competing clearing corporation's other costs and the geographically mutualized price of NSCC's services through its branch network, NSCC's interface charges could raise the cost of using another clearing corporation to clear and settle Amex and NYSE transactions to a level at which NSCC's branch network, or a correspondent relationship, would be the only realistic alternatives for brokers and dealers with substantial Amex and NYSE volume.

The Free Interface Condition to NSCC's registration is intended to meet this concern. By requiring NSCC to offer to establish interfaces with competing clearing corporations under which neither they nor NSCC can charge an interface fee, the Free Interface Condition would enable competing clearing corporations to restrict NSCC from using interface fees to obtain a competitive advantage.[168] Moreover, through its review of the fees of registered clearing corporations pursuant to Rule 19b–4 under the Act, 17 CFR 240.19b–4, and the program the Commission will implement to monitor the effect of NSCC's establishment,[169] the Commission believes it will be able to identify and evaluate the effects of NSCC's pricing policies on competition among clearing agencies and brokers and dealers. If, as a result of its monitoring and evaluation, the Commission determines that, notwithstanding the conditions imposed on NSCC's registration. NSCC's pricing policies are having unanticipated or inappropriate effects, the Commission will be able at that time to use its authority under the Act, including the authority to rescind or modify this order for non-compliance with its conditions, to take whatever remedial measures may be appropriate to carry out its objectives.[170]

As a result of its analysis of NSCC's application, the Commission was concerned that, if registered without conditions, NSCC would discourage brokers and dealers located outside New York City from using other clearing corporations by denying brokers and dealers the ability, as a practical matter, to effect comparison of Amex and NYSE transactions other than through the NSCC branch network, an NSCC equivalent of SCC's direct clearing or a correspondent broker or dealer participating in NSCC.[171] The Remote Comparison Condition attempts to obviate this concern by requiring NSCC to provide, at cost, efficient facilities through which a broker or dealer can, either directly or through an agent, including a registered clearing corporation, compare Amex, NYSE and OTC transactions eligible for comparison at NSCC.[172]

The Free Interface Condition and the Remote Comparison Condition are intended also to play a critical role in undoing operational relationships which in the past have impeded competition among brokers and dealers and clearing corporations. Currently, brokers and dealers are unable to compare Amex and NYSE transactions other than by participating in ASECC and SCC through an office maintained in New York City or through SCC's direct clearing service or by using a correspondent broker or dealer. Compared transactions can be transmitted to other clearing corporations for accounting and settlement, but ASECC and SCC charge the same fee for comparing a transaction and transmitting it through an interface as for comparing a transaction and accounting for and settling it in ASECC or SCC. Consequently, a broker or dealer which transmits an Amex or NYSE transaction through an interface pays both the standard comparison, accounting and settlement charge which would be payable for a transaction retained by ASECC and SCC and the accounting and settlement charge of the clearing corporation

[167] If an interface charge were imposed on movements from NSCC, a participant in another clearing corporation would have to pay NSCC's comparison charge, an interface charge and the other clearing corporation's accounting and settlement charge in order to compare, clear and settle a transaction. The same broker or dealer using NSCC's regional network would have to pay NSCC's comparison charge, NSCC's accounting and settlement charge and, assuming the cost of operating the network were not geographically mutualized, an additional charge for network operations and communications. Since it is NSCC's intention to engage in geographic price mutualization of the operating cost of the regional network, a broker or dealer using the regional network will pay the same comparison, accounting and settlement charge as a broker or dealer located in New York. If NSCC imposes an interface charge whose effect is to make the combined charges paid by a broker or dealer of moving compared trades from NSCC through an interface with another clearing corporation higher than the charges of moving compared trades through NSCC's branch network, the broker or dealer could be compelled to use the branch network. Similarly, NSCC participants which send compared trades to another clearing corporation for accounting and settlement would pay a hidden interface fee if NSCC imposed an inflated comparison charge defraying part of the cost of NSCC's accounting and settlement function and charged NSCC participants less than cost for performing the accounting and settlement function.

[168] The terms and arrangements pursuant to which registered clearing agencies not mentioned specifically in this order will be able to participate in or interface with NSCC during the interim preceding initiation of Phase II operations and thereafter would be subject to the requirements of the Act, including those of subparagraphs 17A(b)(3)(B) and (F) which, among other things, require that the rules of registered clearing agencies permit participation by other registered clearing agencies, not permit unfair discrimination in the admission of participants or among participants in the use of the clearing agency's facilities, foster cooperation among persons engaged in the clearance and settlement of securities transactions and remove impediments to attainment of a national clearing system.

[169] The Commission's monitoring program is discussed under "Implementation and Monitoring" infra.

[170] The arrangements between interfacing clearing corporations contemplated by the Free Interface Condition would not preclude NSCC or another interfacing clearing corporation from charging trade recording or comparison fees or from charging the costs of interface operations to other clearing operations in ways which do not have the effect of establishing an interface fee. The Commission recognizes that a policy disfavoring interface charges may be inappropriate for interfaces between entities other than clearing corporations, and for certain links between clearing corporations and entities performing operations other than comparison and accounting and may prove inappropriate for the interfaces and links affected by the Free Interface Condition.

[171] For example, even though an NSCC participant could clear and settle Amex, MSE, NYSE and OTC transactions through NSCC, the participant could compare only NYSE, Amex and OTC transactions through NSCC and would have to maintain a separate presence at, or communications with, MCC in order to compare MSE transactions. Conversely, a participant in MCC would be able to clear and settle Amex, MSE, NYSE and OTC trades through MCC but would have to maintain a separate presence at, or communications with, NSCC for the comparison of Amex and NYSE transactions. Because for most brokers and dealers regional exchange volume is a relatively small percentage of their total transactions and because the regional exchanges use a "floor derived" or "locked-in" trade procedure which streamlines the comparison function, the inability of an NSCC participant to compare MCC transactions through NSCC probably would not be sufficiently serious to require maintenance of a presence in Chicago. On the other hand, in order to compare transactions on the Amex and NYSE which, because of high transaction volume, have not implemented "locked-in" trade procedures, a participant in MCC probably would be required to maintain a presence in New York or to use a correspondent or direct clearing. In such a case it seems likely that the broker or dealer would either direct its comparison, clearing and settlement flow to NSCC or have a correspondent perform all its comparison, clearing and settlement functions.

[172] The standards for determining cost pursuant to the second condition to NSCC's registration would be developed during the interim before implementation of Phase II in conjunction with the Commission's monitoring of clearing agency costs and revenues.

to which the transaction is transmitted. Together, the costs of maintaining an office in New York City or making other arrangements necessary to effect comparison and the added cost of an interface fee make it virtually impossible for a broker or dealer located outside New York City which does a substantial Amex and NYSE business to avoid either belonging to ASECC and SCC (and using SCC's direct clearing service or maintaining an office in New York City) or using a correspondent broker or dealer for comparing, clearing and settling Amex and NYSE transactions.

The combined effect of existing Amex, ASECC, NYSE and SCC rules, procedures and restrictive operational links, which are not unique to those entities, has been to impede competition between brokers and dealers located outside major financial centers and brokers and dealers located in those centers and virtually to preclude competition between clearing corporations for the business of clearing and settling transactions compared by other clearing corporations. Those effects have been particularly pronounced in the case of transactions executed on the Amex and the NYSE, the two securities markets with the highest trading volume. In conjunction with the Commission's ongoing review of the rules of clearing agencies [173] and securities markets in connection with the Commission's implementation of the 1975 Amendments,[174] including the rules of NSCC and the Amex, NYSE and NASD, imposition of the Free Interface and Remote Comparison Conditions will sever the restrictive operational links which in the past have impeded competition among registered clearing agencies and among brokers and dealers and will enable brokers and dealers to effect one account processing, including processing of Amex and NYSE transactions, through another clearing corporation, a correspondent broker or dealer, or the NSCC branch network.

The fourth condition to NSCC's registration (the "OTC Comparison Condition") requires NSCC to make its computer programs for the performance of OTC comparison available upon request to any registered clearing agency prior to the start of Phase II operations in order to perform comparison of OTC transactions between its participants.[175] The OTC Comparison Condition provides also that comparison of all OTC transactions between participants in two different clearing agencies will be performed by a single clearing agency free of charge to other clearing agencies.[176]

The Commission believes that the effect of NSCC's registration on competition among securities depositories will be similar to its effect on competition among clearing corporations.

Securities depositories provide services related integrally to clearing corporation operations and custodial and book entry delivery services used by banks and other financial institutions which do not participate in clearing corporations. Accordingly, the effect of NSCC's registration on securities depositories is limited to those depository services, such as the ability to effect securities settlements with clearing corporations by automatic book entry movement, which enable or facilitate participation in the clearing corporations. Currently, both MSTC and PSDTC are linked integrally to the clearing operations of MCC and PCC in much the same way as DTC will be linked to NSCC, and SCCP's depository and NESDTC currently are operationally dependent on SCCP and BSECC. To the extent that the relationship of those depositories and clearing corporations would affect the depositories' competitive posture, the Commission believes that the depositories would experience the same effects from NSCC's registration as their related clearing corporations, which the Commission believes will be able to compete with each other and with NSCC more effectively than they have competed with ASECC and SCC in the past. Also, the Free Interface Condition is designed to preserve TADDC's competitive position and the processing efficiencies provided by its existing relationship with NCC.

In response to expressions of concern that NSCC's registration would have adverse effects on competition among clearing agencies and in order to address concerns identified through the Commission's analysis of NSCC's application and facilitate the establishment of a national system, the Commission has imposed four conditions on NSCC's registration. The Commission believes that those conditions, which have been modified in the light of responses to the Commission's request for comments, will provide a setting in which clearing agencies will be able to compete across the country in offering one account processing to brokers and dealers.

Effects on competition among transfer agents. During the proceedings the Commission received no data, views or arguments concerning the effect of NSCC's registration on the maintenance of competition among transfer agents. Based on its experience in registering and regulating transfer agents and on the absence of comment by transfer agents during the proceedings, the Commission believes that NSCC's registration will have no effect on competition among transfer agents.

Effects on competition among securities exchanges. During these proceedings, several regional securities exchanges stated that, while they were becoming increasingly independent of their clearing corporation subsidiaries, historically regional securities exchanges had shared facilities with their subsidiary clearing corporations and had relied on them for revenues and the provision of specialized services to exchange members.[177] The representatives of three securities exchanges expressed concern that NSCC's establishment might have an adverse impact on regional exchanges by impairing the viability of their subsidiary clearing corporations.[178] The representatives of two of those exchanges advised the Commission that their viability was dependent on the visibility of their subsidiary clearing corporations.[179] In granting NSCC's registration, the Commission has imposed conditions which it believes will remove constraints which in the past have disadvantaged clearing agencies located outside New York City in their efforts to account for and settle Amex and NYSE transactions and have prevented those clearing agencies from competing effectively with ASECC and SCC. Accordingly, the Commission does not believe that NSCC's establishment will threaten the viability of other clearing corporations or, through them, adversely affect the competitive posture of their affiliated securities exchanges. Nevertheless, the Commission will monitor the effect of NSCC's establishment on clearing agencies, and, in connection with its responsibilities under the Act, will continue its current monitoring of the competitive posture of securities exchanges.

Payments to the Amex, NASD and NYSE. A number of commenters maintained that the $0.12 fee which NSCC participants would pay and which NSCC, in turn, would pay to the Amex, NASD and NYSE to help defray their

[173] *See* discussion of the Commission's current program for the registration of clearing agencies under "Statutory Determinations to be Made in Connection with NSCC's Registration" supra. In connection with that program, the Commission will be seeking to insure that the rules of registered clearing agencies permit appropriate interfacing and participation by other registered clearing agencies and do not discriminate among registered clearing agencies or otherwise impede competition among registered clearing agencies.

[174] Section 31(b) of the 1975 Amendments provides a statutory mechanism for the Commission to review the rules or national securities exchanges and registered securities associations for compliance with the Act. On December 1, 1976, pursuant to that subsection, the Commission mailed letters to the exchanges and the NASD notifying them that, and specifying the respect in which, certain of their rules may not be in compliance with the Act. Among the rules cited in the Commission's letters were approximately 160 rules pertaining to securities processing, many of which concerned restrictive operational links between securities markets and their securities processing subsidiaries. Securities Exchange Act Release No. 13027 (December 1, 1976) 41 F.R. 53557 (December 7, 1976).

[175] The OTC Comparison Condition contemplates that registered clearing agencies which do not elect to perform comparison for OTC transactions between their participants will contract with another registered clearing agency for performance of the function at a price determined by negotiation between the parties. The condition contemplates also that NSCC will provide relevant documentation and error maintenance information.

[176] The OTC Comparison Condition is set forth under "Determinations, Conditions and Directives" infra.

[177] *See*, e.g., Proceeding Transcript, supra note 104, at 123–124, 139–141 (Phlx and SCCP) and 170–171 (PSE).

[178] *Id.* at 112–113 (Phlx), 180 (BSE) and 247 (MSE).

[179] *Id.* at 112–113 (Phlx) and 197–198 (BSE).

self-regulatory costs is inappropriate.[180] NSCC and the three self-regulators maintained that imposition of the $0.12 fee was a method of replacing a revenue stream which the self-regulators would forego as a result of transferring the clearing agency operations of their wholly-owned subsidiaries to the NSCC. The three self-regulators added that the fee is intended to provide those revenues until alternative revenue sources are developed or until diminished regulatory responsibilities reduce the need for the revenues.[181]

During the past ten years, the NYSE derived from SCC approximately the same annual revenue which the $0.12 fee would generate. It used those revenues, together with the other revenues it received, to defray the costs of its self-regulatory program.[182] During the same period, the Amex received virtually no payments from ASECC.[183] The NASD did not receive payments from NCC until October 1, 1975, when NCC began paying the NASD a fee of $0.12 per side for transactions processed by NCC.[184] The Amex, NASD and NYSE represented [185] (and financial data periodically filed with the Commission by the self-regulators confirms) [186] that the cost of their self-regulatory activities substantially exceeds the revenue which the $0.12 fee will generate and that all their revenues are used in carrying out self-regulatory functions.

Brokers and dealers effecting OTC transactions can avoid the charge by comparing the transactions at another clearing corporation and clearing and settling the transactions either there or through NSCC. Brokers and dealers effecting Amex and NYSE transactions are unable to avoid the $0.12 fee since those transactions are compared by NSCC, and representatives of the Amex and the NYSE maintained that were the fee not charged through NSCC it would be imposed as an exchange transaction fee or a comparison fee and would have to be paid by brokers and dealers effecting transactions on the Amex and the NYSE, regardless of the clearing corporation through which the transactions were cleared and settled.

Pursuant to Section 17(d)(1) of the Act, the Commission is exploring with the national securities exchanges and the NASD alternative approaches to the allocation of self-regulatory responsibilities among the existing self-regulatory organizations.[187] Pending the resolution of the issues currently under consideration, the Commission believes it is not inappropriate for the Amex, NASD and NYSE to continue their existing revenue arrangements, including the $0.12 fee to the collected through NSCC.

The Commission will monitor the effect of the $0.12 fee on brokers and dealers, clearing agencies and securities exchanges and, in addition to its continuing authority under the Act, reserves the right to review the appropriateness of the fee in general or with respect to any of the Amex, NASD and NYSE. In determining whether NSCC's collection, and the self-regulators' receipt, of the $0.12 fee continues to be appropriate, the Commission will consider the results of its monitoring and any new allocations of self-regulatory responsibilities effected pursuant to Section 17(d)(1) of the Act. The Commission's consideration may include the appropriateness of the fee in light of the obligations and costs related to NSCC's establishment and performance of clearing and settlement functions and in light of the regulatory and other responsibilities of the three self-regulators, the contribution their regulation makes to NSCC's operation and the alternative sources of revenue available to support that regulation. Depending on its conclusion, the Commission may determine to use its authority under the Act to make such modifications in the fee arrangements as appear to be necessary of appropriate in furtherance of the purposes of the Act.

The NSCC–SIAC facilities management agreement. As part of the restructuring of the corporate arrangements through which the Amex, NASD and NYSE have provided their members clearing and settlement services, the NSCC application provides that the clerical and processing functions underlying those services are to be combined in SIAC and provided to NSCC at cost. During Phase I, NSCC, as assignee of NCC's rights under its facilities management agreement with BNCC, will exercise NCC's right to terminate BNCC's services by paying BNCC the early termination penalty contemplated by the agreement. Thereafter, pursuant to the Management Agreement, SIAC will begin performing the processing functions currently performed for NCC by BNCC and will continue performing the processing functions SIAC currently performs for ASECC and SCC.

The five-year Management Agreement included in NSCC's application was amended several times during these proceedings. The amendments, among other things, added a clause acknowledging the parties' right to terminate the Agreement upon breach, added buy-out provisions under which NSCC may replace SIAC as facilities manager and expanded NSCC's right to monitor SIAC's performance of NSCC clearing and settlement operations and the cost allocations made by SIAC in determining its charges to NSCC.

Under the buy-out provisions of the Management Agreement, NSCC may replace SIAC after the second year upon NSCC's assumption of a decreasing portion of the liabilities with which SIAC would be left as a result of the termination. The liabilities which NSCC would have to assume are less than the $14.7 million in liabilities which SIAC and its parent corporations (the Amex and the NYSE) and its affiliates (SCC and ASECC) estimate they have incurred in providing clearing and settlement services to the Amex and NYSE membership and which they would have to absorb in the absence of offsetting clearing revenues. After the second year of the Agreement, NSCC would have to assume liabilities of $8.1 million, after the third year $5.4 million, and after the fourth year $2.7 million.[188] At the expiration of the Management Agreement, NSCC would have no further obligations to SIAC, and SIAC would be left with approximately $7.7 million of lease obligations for space used for clearing and settlement operations.

To provide facilities for the clearing and settlement of their members' exchange transactions, the Amex and NYSE had the corporations in which the clearing functions were housed—ASECC, SCC and SIAC—enter into space and equipment leases, hire personnel, develop clearing and settlement systems and program computers to operate as part of the systems. In so doing, the Amex and the NYSE directly, and through or on behalf of their subsidiaries, incurred liabilities attributable solely to clearing and settlement operations and liabilities attributable to space, equipment and personnel used for both clearing and settlement and other ex-

[180] See, e.g., letter of Pershing & Co., Inc., November 19, 1976.

[181] See, e.g., Proceeding Transcript, supra note 104, at 72 (NSCC), 92–93, 95 (NYSE) and 93–94 (NASD).

[182] Letter dated June 15, 1976, from Francis J. Palamara (NYSE) and letter dated June 15, 1976, from Richard N. Priest (NYSE).

[183] Letter dated June 16, 1976, from Joseph J. Gulick (ASECC).

[184] Letter dated June 14, 1976, from C. Richard Justice (NCC).

[185] See, e.g., Proceeding Transcript, supra note 104, at 95 (NYSE).

[186] National securities exchanges file financial information with the Commission in connection with the Commission's Survey of Self-Regulatory Organizations and Subsidiaries.

[187] In Securities Exchange Act Rel. No 12935 (October 28, 1976), 41 FR 4991 (November 8, 1976), the Commission announced the adoption of Rule 17d–2 under the Act, 17 CFR 240.17d–2, which, among other things, invites self-regulatory organizations to propose to the Commission plans for allocating among themselves specified statutory responsibilities on or before March 15, 1977. In the release the Commission ordered oral hearings on the issues raised by the allocation of self-regulatory responsibilities; the hearings were held during the week of December 20, 1976.

[188] If the NSCC facilities management package had been submitted to competitive bid, the NYSE and the Amex presumably would have insisted on specifications requiring the successful bidder to assume the $14.7 million in liabilities for space and equipment leases, accrued vacation and severance pay and reprogramming obligations which are reflected in the buy-out provisions of the current Management Agreement. To the extent that the amounts payable under the buy-out provision would have been assumed by a successful bidder, after the second year of the Management Agreement's term a processor retained by NSCC in connection with a buy-out of SIAC probably would have to assume roughly the same portion of the $14.7 million as an initial successful bidder would have been left with at the end of the second year

change-related operations. The decision that SIAC act as NSCC's facilities manager resulted from negotiations among the Amex, the NASD and the NYSE concerning the terms on which each self-regulator would relinquish control over its clearing and settlement operations and transform them and their related assets and revenues to a single clearing operation which would be controlled by its users rather than by the self-regulators. In those negotiations the self-regulators agreed that for the first five years of NSCC's operations SIAC would act as facilities manager and charge NSCC, and indirectly its participants, SIAC's cost of providing NSCC's clearing and settlement services.

During the proceedings opponents of NSCC's registration and the United States Department of Justice maintained that the Management Agreement was anticompetitive and recommended that any grant of registration to NSCC be conditioned on exposure of NSCC's facilities management contract to competitive bidding.[189] NSCC, the Amex, NASD, NYSE and supporters of NSCC's registration maintained that the decision to retain SIAC as NSCC's processor is an appropriate exercise of business judgment made in connection with a realignment of their clearing and settlement operations and is intended to match clearing-related liabilities with the revenues necessary to offset them.[190] They maintained also that NSCC's retention of SIAC would avoid possible disruptions entailed in transferring existing ASECC and SCC clearing operations to a new processor and would take maximum advantage of the planning and other work performed by SIAC in connection with the submission of NSCC's application.[191]

The Commission has not been persuaded that NSCC should be required to expose its facilities management contract to competitive bidding. The Act does not compel registered clearing agencies to submit such agreements to competitive bidding and the circumstances of the decision for NSCC to retain SIAC do not appear to require the Commission to substitute its business judgment for that of the NSCC board of directors. When, as in this case, the Commission has no cause to believe that the processor will be unable to provide the safeguards and efficiencies required by the Act, a clearing agency's decision to terminate the services of a processor and retain another processor, act as its own processor or use a subsidiary or affiliated entity as its processor, is an appropriate exercise of business judgment, with or without resort to competitive bidding.[192]

In its application NSCC indicated that it would exercise NCC's rights under the five-year NCC–BNCC facilities management agreement to terminate BNCC by paying the early termination penalty applicable to a termination during the agreement's third year.[193] NSCC's termination of BNCC pursuant to the NCC–BNCC agreement is not central to the broad regulatory decisions which the Commission is making today. Moreover, the Commission does not believe that BNCC's termination requires the Commission to treat NSCC's judgment to retain SIAC without competitive bidding differently from other business judgments by engaging in the questionable exercise of revisiting a determination involving complex operational and financial matters.

In view of the flexibility NSCC will have under the Management Agreement, the continuity provided by SIAC's retention and the importance of NSCC's retention of SIAC to the accords which have made possible the initiative represented by NSCC's establishment, NSCC's failure to resort to competitive bidding does not, in the Commission's opinion, warrant disapproval of NSCC's application or imposition of the substantial delay in achieving the advantages of Phase II operations which would be entailed in resorting to competitive bidding at this time.

ALTERNATIVE APPROACH CONSIDERED

In order to determine whether there were any alternatives to the registration of NSCC which arguably had less anticompetitive impact and an equal potential for achieving the Act's objectives, the Commission evaluated three theoretical alternatives, each of which presupposed denial of NSCC's registration and the Commission's adoption of rules which would require all registered clearing agencies, including NSCC, to provide the levels of service necessary for the establishment of a national system.[194] The three alternatives were: (i) Competition among fully interfaced entities, including NCC; and (ii) merger of NCC with a clearing agency other than ASECC or SCC; and (iii) NCC's discontinuation of clearing and settlement operations and retention of OTC comparison operations.[195] Each of the alternatives was compared with the plan outlined in NSCCs' application to determine relative implementation times, operating costs, ability to facilitate the establishment of a national system and effects on competition among brokers and dealers.

The following assumptions were made regarding the impact of the alternatives on competition: (i) Operation of NCC as a fully-competitive entity was assumed to be possible and to have less of an adverse impact on competition among clearing agencies in New York City than NSCC's establishment; (ii) merger of NCC with a clearing agency other than ASECC or SCC was assumed to be financially and operationally feasible and to result in less concentration of clearing and settlement volume in one entity than NSCC's establishment; and (iii) NCC's discontinuation of clearing and settlement activities was assumed to be financially and operationally feasible and to result in the same dispersion of NCC's discontinued clearing and settlement volume among other clearing agencies as NSCC's establishment while withholding from NSCC the ability to perform comparison for OTC transactions.

Because NSCC's establishment would require fewer comparison and clearing interfaces than any alternative except NCC's merger with another clearing agency, would entail less disruption of existing clearing and settlement arrangements than any alternative except operation of NCC as a fully competitive entity and already has been the subject of a year's planning and development, the Commission believes NSCC's plans could be implemented significantly sooner than any of the alternatives. Comparison of the alternatives' theoretical operating costs suggested that, except for NCC's merger with another registered clearing agency, which arguably could provide the same operating cost savings as NSCC's establishment, none of the alternatives would reduce administrative overhead or duplicative facilities, and consequently operating costs, as much as NSCC's establishment.[196]

Because none of the alternatives would have NSCC's potential for maintaining and expanding the NCC branch network and the services available through that network,[197] no alternative would foster competition between brokers and dealers located in New York City and brokers and dealers located outside New York City to the same extent as NSCC's establishment and no alternative would be likely to provide an extensive branch network through which the business of brokers and dealers located outside major financial centers could become the object of competition among a number of registered clearing agencies. As a result of its comparative analysis, the Commission concluded that none of the alternatives could be implemented as soon as NSCC's Phase II operations, only the merger of NCC with another clearing agency would have the potential of providing the same operating cost savings as Phase II operations and none of the alternatives would permit increased competition among brokers and dealers to the same extent as NSCC's Phase II operations.

In the absence of evidence that would warrant predicating regulatory action on the assumption that clearing and settlement is a natural monopoly,[198] the Commission did not explore in depth alternatives to NSCC's registration requiring allocation of territories or issues among NSCC and other registered clearing agencies or other kinds of restraints fundamentally affecting free competition among clearing agencies. Based on its experience in regulating securities markets, clearing agencies, brokers and dealers, transfer agents and securities information processors and the knowledge of the dynamics of competition among securities markets and clearing agencies acquired in the course of efforts to structure a national market system and an accompanying national clearing and settlement system, the Commission has concluded that the benefits and economic discipline of competition can be attained in the clearing and settlement area. Accordingly, rather than adopting approaches appropriate to a natural monopoly, the Commission has sought to free the competitive potential present in the clearing and settlement area by imposing conditions on NSCC's registration designed to sever existing restrictive ties between clearing agencies and their affiliated securities markets.[199]

The legislative history of the 1975 Amendments stresses the need for the Commission to facilitate the establishment of a national clearing and settlement system at the earliest possible date.[200] For this mandate to be carried out and a national clearing and settlement system to be in place in time to receive the transactions of a national market system, initiatives which moved toward national solutions to processing problems and which accord with the purposes of the Act must be encouraged and carried forward. If the Commission is to discharge in a timely manner its statutory obligations to foster national market and clearing systems, it must in large measure base its decisions in those highly technical and complex areas on concrete proposals submitted to it such as NSCC's application for registration. Recognizing the urgency of its task, the Commission has reviewed, analyzed and evaluated NSCC's application for registration and has considered the three alternatives described previously. The Commission has not considered other possible alternatives which, in the absence of definitive plans, would be at best theoretical constructs.

Examples of such cooperative organizations include local clearing house associations through which banks clear checks drawn on local banks and the federal reserve bank clearing system through which banks clear checks drawn on banks in other localities. The existence of the clearing house associations and the federal reserve system has not adversely affected competition among banks. Members of clearing house associations are not precluded from direct presentment to local banks or from by-passing the federal reserve system by presenting checks to nonlocal banks through correspondent banks.

IMPLEMENTATION AND MONITORING

In granting NSCC's registration the Commission has reviewed and analyzed NSCC's application, evaluated NSCC's projected Phase II operations in accordance with the criteria of section 17A(a)(1) of the Act, weighed the results of its evaluation against the concerns of Section 17A(a)(2) of the Act and made the determinations pursuant to Section 17A(b)(3) of the Act which the Commission is making at this time. The Commission believes that by contributing to the establishment of a national clearing system with the characteristics envisioned by the Act at the earliest possible date, the determination to grant NSCC's registration will be instrumental in ensuring that the development of a national market system is not delayed for want of a national clearing system. Although in light of the information available at this time the Commission believes that its decision is correct and represents the most likely avenue for reaching the Act's objectives at an early date, the Commission recognizes it is engaged in a complex and dynamic regulatory endeavor whose parameters and objectives necessarily must change in response to new technological advances and new developments in the nation's securities markets. Accordingly, the Commission intends to monitor closely the effects of the decision it is making today.

Although the Commission believes the decision made today is fully consistent with the objectives of the Act, the Commission is comforted by the realization that it may, if necessary, substantially modify or reverse that decision. Should the results of the Commission's monitoring disclose the evolution of relationships among clearing and settlement entities and participants in the clearing and settlement process which indicate the need for new or different approaches to the registration of clearing agencies, the Commission will undertake appropriate action pursuant to its authority under the Act.

In addition to the Commission's continuing jurisdiction under the Act and oversight of NSCC as a registered clearing agency,[201] the registration granted by this order is conditional and may be withdrawn if the conditions contained in this order are not satisfied or if it appears to the Commission that delays in satisfying the conditions warrant the exploration of other approaches to facilitate the prompt establishment of a national clearing and settlement system. The Commission may modify any part of the conditions prior to the initiation of Phase II operations if the Commission determines that NSCC's satisfaction of the conditions is being delayed by other persons or that such action is necessary or appropriate to carry out the purposes of the Act.

This order directs NSCC to establish coordinating groups during Phase I to facilitate the establishment and operation of interfaces and NSCC branch facilities in which one or more other clearing corporations elect to participate. The Commission believes that these groups will serve as forums in which difficulties and lapses in cooperation encountered by NSCC and other registered clearing agencies in their joint efforts to establish interfaces and branch facilities can be identified and, either resolved or brought to the attention of, and resolved by, user boards. Before implementation of Phase II operations, the Commission will determine, on the basis of the coordinating groups performance during Phase I, whether it is necessary or appropriate to continue their existence during Phase II.

Currently, the Commission is conducting proceedings in connection with continuing the registration of 13 clearing agencies registered on December 1, 1975.[202] As part of those proceedings and

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[189] *See, e.g.*, letters of United States Department of Justice, July 23 and November 19, 1976, and letter dated December 3, 1976 from Allen Karron to George A. Fitzsimmons.

[190] *See, e.g.*, Proceeding Transcript, *supra* note 104, at 52–53 (NSCC), 67–89 (Amex and NASD).

[191] *Id.*, NSCC written response to June 2, 1976, letter from the Commission's staff.

[192] For example, except for NCC, each of the 14 clearing agencies currently registered with the Commission either performs its own processing operations or has them performed by an operations subsidiary of its parent corporation.

[193] See NSCC written submission to the Commission filed on June 4, 1976, containing a narrative description of the proposed merger and NSCC's responses to a variety of questions posed by the staff.

[194] *See* discussion under "Characteristics of a National System" *supra*.

[195] For the purposes of analysis it was assumed that the decisions to compete, merge or discontinue clearing and settlement operations would be made by NCC and the NASD. It was assumed also that each registered clearing agency would have the financial and operational capability to comply with the Commission's rules requiring clearing agencies to provide the levels of service necessary for the establishment of a national system.

[196] Because the Commission's analysis assumed that each of the alternatives would provide the same levels of service as NSCC's Phase II operations pursuant to the conditions, participant savings were assumed to be the same for each alternative.

[197] While ASECC and SCC theoretically could establish their own branch network under each of the alternatives, establishment and operation of more than one branch network would entail duplicative implementation and operational costs and would not necessarily be used to provide access to registered clearing agencies without branch networks of their own.

[198] If the clearing agency function were shown to be a natural monopoly, the Commission would have to consider whether the artificial measures necessary to keep several clearing agencies in existence would inappropriately raise the costs of clearing and settlement to brokers and dealers and investors. Moreover, even in the absence of a determination that clearing and settlement operations are a natural monopoly, the Commission recognizes that at a future date new developments in clearing and settlement operations may warrant the performance of all or discreet portions of those operations by a single, cooperative organization.

[199] See discussions under "Effects on Competition Among Brokers and Dealers" and "Effects on Competition Among Clearing Agencies" *infra*.

[200] Senate Report on S. 249, *supra* note 37, at 126.

[201] *See, e.g.*, Sections 0, 11A, 15A, 17, 17A, 19 and 21 of the Act.

[202] In Securities Exchange Act Release No. 12759 (September 1, 1976), 41 FR 38841 (September 13, 1976) the Commission announced the institution of proceedings to determine whether to grant or deny the registration of the 13 clearing agencies registered on December 1, 1975, at the expiration of the registrations previously granted to the registrants pursuant to paragraph (c) of Rule 17Ab2–1. The Commission instituted these proceedings in order to obtain data, views and arguments concerning the appropriateness of fully registering each of the registrants, with particular reference to the compliance of their organization and rules with the objectives of Section 17A of the Act, including the determinations called for by subparagraphs (A)–(I) of Section 17A(b)(3) of the Act.

in connection with the determinations with respect to NSCC's registration not made in this order, the Commission will consider, during the period before the implementation of Phase II and thereafter, such matters as (i) the issues which should be included in the book entry portion of a national clearing and settlement system, (ii) the appropriateness and parameters of interface fees for movements between securities depositories, (iii) the bases on which and arrangements under which registered clearing agencies should participate in other registered clearing agencies,[202] (iv) the extent to and manner in which registered clearing agency operations should facilitate settlements between brokers and dealers and their institutional customers, (v) the size and nature of the clearing fund contributions and other membership requirements to which participants in registered clearing agencies should be subject in general and as participants in more than one registered clearing agency and (vi) the extent to which clearing agencies should be obligated to discolse cost and revenue data to participants and owners. At the same time, the Commission will be considering areas in which it should exercise its rulemaking authority with respect to registered clearing agencies. In the discharge of this broad range of regulatory responsibilities the Commission will seek to harmonize the Act's objective of developing a national clearing and settlement system with NSCC's initiation of Phase II operations.

While NSCC will operate in the context of the continuing oversight conducted by the Commission in discharging its regulatory responsibilities with respect to securities markets, clearing agencies, brokers and dealers, transfer agents and securities information processors, the Commission will implement measures uniquely intended to isolate, identify and evaluate the effects of NSCC's establishment on each of those entities.

In addition to meetings with registered clearing agencies and their participants to determine the rate of NSCC's progress toward the implementation of Phase II and the effects of its pricing policies, the Commission plans to establish a program for the receipt of regular reports from registered clearing agencies covering such matters as (i) price and service data, (ii) aggregate clearing volume and number of participants, (iii) volume in either direction through each interface or link (detailed) as to each participant, (iv) names of participants withdrawing from registered clearing agencies, (v) the history of clearing volume generated by withdrawing participants, (vi) clearing volume generated by participants joining registered clearing agencies during the six months before their joining and (vii) cost and revenue data for the clearance and settlement operations (detailed as to, among other things, comparison, interface and branch facility operations). The Commission will also monitor the effects and appropriateness of the $0.12 fee imposed pursuant to the NSCC shareholders' agreement in connection with the Commission's survey of Self-Regulatory Organizations and Subsidiaries.[204]

In appropriate instances, the Commission may determine that cost data obtained from registered clearing agencies with respect to matters such as interface, comparison and branch facility operations should be furnished to other clearing agencies participating in the interfaces or branch facility operations.

DETERMINATIONS, CONDITIONS AND DIRECTIVES

NSCC having made application for registration as a clearing agency pursuant to sections 17A(b) and 19(a)(1) of the Act and, pursuant to Rule 17Ab2-1 under the Act, having requested the Commission to exempt NSCC from one or more of the requirements as to which the Commission is directed to make determinations pursuant to subparagraphs (A)-(I) at section 17A(b)(3) of the Act;

And the Commission having determined: that NSCC is so organized and has the capacity to be able to facilitate the prompt and accurate clearance and settlement of securities transactions for which it is responsible, to safeguard securities and funds in its custody or control or for which it is responsible, to comply with the provisions of the Act and the rules and regulations thereunder and to carry out the purposes of section 17A of the Act; that the rules of NSCC do not impose any schedule of prices, or fix rates or other fees, for services rendered by its participants; that the rules of NSCC are designed to promote the prompt and accurate clearance and settlement of securities transactions, to assure the safeguarding of securities and funds which are in NSCC's custody or control or for which it is responsible, to foster cooperation and coordination with persons engaged in clearance and settlement of securities transactions, to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, and, in general, to protect investors and the public interest; and that the rules of NSCC do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act;

It is ordered, That NSCC's registration be and it hereby is granted, subject to the terms contained in this order and to the following conditions and directions, this 13th day of January 1977, to be effective for not more than 18 months, implementation thereof by NSCC to occur not earlier than January 20, 1977; and

Further ordered, That NSCC may not begin operating, as an integrated system, the clearing and settlement systems currently operated by the American Stock Exchange Clearing Corporation ("ASECC"), the National Clearing Corporation ("NCC") and Stock Clearing Corporation ("SCC") or make, without prior Commission approval, any changes in the rules, operating procedures or facilities management arrangements of NSCC or any of its operating divisions in effect immediately following issuance of its order unless NSCC shall have first:

(i) Established full interfaces with each of the Midwest Clearing Corporation ("MCC"); Pacific Clearing Corporation ("PCC"); and Stock Clearing Corporation of Philadelphia ("SCCP") and appropriate links with Boston Stock Exchange Clearing Corporation ("BSECC") and TAD Depository Corporation ("TADDC") and offered to operate each interface and link under agreements which would provide that the parties to the interface or link would not charge each other for interface movements or charge their participants either an interface fee or any fee which would operate as an interface fee;

(ii) Provided, at cost, efficient facilities, and cooperated with brokers and dealers and other registered clearing agencies in the development of alternative means, through which brokers and dealers may compare, either directly or through an agent, transactions eligible for comparison at NSCC, and enabled its participants to effect comparison, clearance and settlement of New York Stock Exchange, Inc. ("NYSE"), American Stock Exchange, Inc. ("Amex") and over-the-counter ("OTC") transactions through the NSCC branch network;

(iii) Begun operating existing NCC branch facilities so that those facilities, and any other branch facilities established by NSCC, provide, at a minimum, the same level of service provided through the facilities to NSCC participants to participants in any other registered clearing agency which agrees to use any of the facilities and to defray a portion of any such facility's operating costs equal to such clearing agency's proportionate use of the facility; and

(iv) Furnished without charge to any registered clearing agency which requested them computer programs for the performance of trade comparison for OTC transactions between the registered clearing agency's participants and made arrangements, for any other registered clearing agency which is willing to do so to compare all OTC transactions between participants in different registered clearing agencies, without charge to such registered clearing agencies, or, if no other registered clearing agency is willing to do so, undertaken to compare all such transactions without charge to registered clearing agencies; and

Further ordered, That in order to facilitate establishment of the interfaces and links referred to in the first condition and the shared operation of branch facilities referred to in the third condition, NSCC be and it hereby is directed to offer to constitute a coordinating group for each interface or link which NSCC establishes and each branch facility in which one or more registered clearing agencies other than NSCC elect to participate. The composition of the coordinating groups is to be as follows: In the case of an interface or link, (i) a representative of NSCC, (ii) a representative of an NSCC participant designated by NSCC that intends to use the interface or link, (iii) a representative of the other clearing agency participating in the interface or link and (iv) a representative of a participant in the other clearing agency designated by it which participant intends to use the interface or link; and, in the case of a branch facility in which one or more registered clearing agencies other than NSCC elect to participate, (i) a representative of NSCC, (ii) a representative of an NSCC participant that uses the branch facility, (iii) a representative of each other registered clearing agency that elects to participate in the branch facility and (iv) a representative of a participant in each other registered clearing agency designated by it which participant intends to use the branch facility. During the period preceding implementation of integrated systems operations each coordinating group shall meet periodically and upon the call of two or more of its members and, not less frequently than once a month during this period, shall report to NSCC and to the other registered clearing agency or agencies represented in the group on the progress made in establishing the interface, link or branch facility and on any difficulties encountered in its establishment.

By the Commission (Chairman Hills and Commissioners Loomis, Evans and Pollack).

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.77-1945 Filed 1-19-77;8:45 am]

[202] *See* note 168 *supra.*

[204] *See* discussions under "Payments to the Amex, NASD and NYSE" in "THE NSCC APPLICATION" and "DETERMINATIONS WITH RESPECT TO NSCC" *supra.*

BOSTON STOCK EXCHANGE

Application for Unlisted Trading Privileges and of Opportunity for Hearing

JANUARY 13, 1977.

The above named national securities exchange has filed an application with the Securities and Exchange Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the security of the company as set forth below, which security is listed and registered on one or more other national securities exchanges:

IROP Corp. File No. 7-4906. Common stock—$1 par value.

Upon receipt of a request, on or before January 29, 1977 from any interested person, the Commission will determine whether the application with respect to the company named shall be set down for hearing. Any such request should state briefly the title of the security in which that person is interested, the nature of the interest of the person making the request, and the position he proposes to take at the hearing, if ordered. In addition, any interested person may submit his views or any additional facts bearing on the said application by means of a letter addressed to the Secretary Securities and Exchange Commission, Washington, D.C. 20549 not later than the date specified. If no request for a hearing with respect to the particular application is made, such application will be determined by order of the Commission on the basis of the facts stated therein and other information contained in the official files of the Commission pertaining thereto.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.77-1939 Filed 1-19-77;8:45 am]

[Release No. 9606; 811-2525]

CNA MONEY INSTRUMENTS, INC.

Filing of Application for an Order Declaring That Company Has Ceased To Be an Investment Company

JANUARY 14, 1977.

Notice is hereby given that CNA Money Instruments, Inc. ("Applicant"), 245 Park Avenue, New York, New York 10017, an open-end, diversified management investment company registered under the Investment Company Act of 1940 ("Act"), has filed an application pursuant to section 8(f) of the Act for an order of the Commission declaring that Applicant has ceased to be an investment company as defined in the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant is a corporation organized under the laws of the State of Maryland in September, 1974. A notification of registration and registration statement pursuant to section 8 of the Act and a registration statement under the Securities Act of 1933 were filed with the Commission on September 20, 1974.

Applicant states that due to economic conditions, business operations of Applicant were never commenced. No capital was ever invested in Applicant and Applicant's registration statement under the Securities Act of 1933 has been withdrawn.

Section 8(f) of the Act provides, in pertinent part, that whenever the Commission, upon application, finds that a registered investment company has ceased to be an investment company, it shall so declare by order, and upon the taking effect of such order, the registration of such company shall cease to be in effect.

Notice is further given that any interested person may, not later than February 8, 1977, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reasons for such request and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address set forth above. Proof of such service (by affidavit, or in case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notice and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.77-1940 Filed 1-19-77;8:45 am]

[Rel. No. 9607; 811-2526]

KEOGH-SMATHERS FUND, INC.

Filing of Application for an Order Declaring That Company Has Ceased to be an Investment Company

JANUARY 14, 1977.

Notice is hereby given that the Keogh-Smathers Fund, Inc. ("Applicant"), 245 Park Avenue, New York, New York 10017, an open-end, diversified management investment company registered under the Investment Company Act of 1940 ("Act"), has filed an application pursuant to section 8(f) of the Act for an order of the Commission declaring that Applicant has ceased to be an investment company as defined in the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant was organized under the laws of the State of Maryland on September 19, 1974. A notification of registration was filed with the Commission on September 20, 1974, and registration statements pursuant to section 8 of the Act and under the Securities Act of 1933 were filed in October 1974.

Applicant states that due to changes in economic conditions, business operations of Applicant were never commenced. No capital has been invested in Applicant and Applicant's registration statement under the Securities Act of 1933 was declared abandoned by order of the Commission on October 28, 1975.

Section 8(f) of the Act provides, in pertinent part, that whenever the Commission, upon application, finds that a registered investment company has ceased to be an investment company, it shall so declare by order, and upon the taking effect of such order the registration of such company shall cease to be in effect.

Notice is further given that any interested person may, not later than Feb-

ruary 7, 1977, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reasons for such request and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address set forth above. Proof of such service (by affidavit, or in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0–5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.77–1941 Filed 1–19–77;8:45 a.m.]

MIDWEST STOCK EXCHANGE, INC.

Application for Unlisted Trading Privileges and of Opportunity for Hearing

JANUARY 13, 1977.

The above named national securities exchange has filed an application with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the security of the company as set forth below, which security is listed and registered on one or more other national securities exchanges:

Varian Associates, File No. 7–4904, Common Stock—$1 Par Value.

Upon receipt of a request, on or before January 29, 1977 from any interested person, the Commission will determine whether the application with respect to the company named shall be set down for hearing. Any such request should state briefly the title of the security in which that person is interested, the nature of the interest of the person making the request, and the position he proposes to take at the hearing, if ordered. In addition, any interested person may submit his views or any additional facts bearing on the said application by means of a letter addressed to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549 not later than the date specified. If no request for a hearing with respect to the particular application is made, such application will be determined by order of the Commission on the basis of the facts stated therein and other information contained in the official files of the Commission pertaining thereto.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.77–1942 Filed 1–19–77;8:45 a.m.]

[Rel. No. 9608; 812–4040]

STEPHENS ARKANSAS TAX-EXEMPT BOND FUND, SERIES ONE (AND SUBSEQUENT SERIES) AND STEPHENS, INC.

Filing of Application Pursuant to Section 6(c) of the Act for an Order of Exemption

JANUARY 14, 1977.

Notice is hereby given that Stephens Arkansas Tax-Exempt Bond Fund, Series One and Subsequent Series ("Fund"), a unit investment trust registered under the Investment Company Act of 1940 ("Act") and its sponsor, Stephens, Inc. ("Sponsor"), 114 East Capital Avenue, Little Rock, Arkansas 72201, (hereinafter the Sponsor and the Fund are referred to collectively as "Applicants"), have filed an application on October 12, 1976 and amendments thereto on December 29, 1976, and January 13, 1977, pursuant to section 6(c) of the Act for an order of the Commission exempting the Fund from the provisions of Section 14(a) of the Act, exempting the frequency of capital gains distributions of the Fund from the provisions of Rule 19b–1 and exempting the secondary market operations of the Sponsor from the provisions of Rule 22c–1 under the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

The Fund will be comprised of a series of trusts, each of which will be governed by a separate Trust Indenture and Agreement ("Indenture") (hereinafter Series One of the Fund is referred to as "Series One"; all subsequent series are collectively referred to as the "Series"; and Series and Series One are collectively referred to as the "Funds" and severally referred to as the "Fund"). The Sponsor has filed a Form S–6 Registration Statement under the Securities Act of 1933 ("1933 Act") for Series One. A similar registration statement will be filed for each subsequent series. Each Indenture will be executed on or about the time the registration statement under the 1933 Act for each such Series becomes effective. Each Indenture will have the Sponsor acting as such, the Union National Bank, Little Rock, as Trustee, and Robert P. Lindsey, Little Rock, Arkansas, as Evaluator. Each Indenture will contain substantially identical terms and conditions. Pursuant to the Indenture, the Sponsor will deposit with the Trustee bonds ("Bonds") which the Sponsor shall have accumulated for such purpose in an amount at least equal to the aggregate principal amount of units to be offered. Simultaneously with such deposit the Trustee will deliver to the Sponsor registered certificates for the units which will represent the entire ownership of the respective Fund. These units will in turn be offered for sale to the public by the Sponsor. The 1933 Act registration statement for Series One covers a maximum of 28,000 units of fractional undivided interest in Series One to be offered to investors at the public offering price set forth in the prospectus included in the 1933 Act registration statement, including 5,250 units registered for secondary market purposes. The 1933 Act registration statement for Series One has not yet become effective.

Applicants state that the Bonds deposited in each Series will not be pledged or be in any other way subjected to any debt at any time after the bonds are deposited in the Fund except for the lien of the Trustee as security for certain liabilities set forth in the Indenture. All such Bonds will be interest-bearing obligations issued by or on behalf of the State of Arkansas or cities, counties, municipalities, school districts, and authorities and political subdivisions thereof, the interest on which will be, in the opinion of counsel, exempt from all Federal income tax, and under certain conditions Arkansas income tax under existing law.

The assets of each Series will consist of the Bonds initially deposited, such other bonds as any continue to be held from time to time in exchange or substitution for any of the Bonds upon certain refundings, accrued and undistributed interest, and undistributed cash. Certain of these Bonds may from time to time be sold under the special circumstances set forth in the Indenture with respect to such Series or may be redeemed or may mature in accordance with their terms. The proceeds from such disposition will be distributed to Unitholders and not reinvested. There is no provision in the Indenture for the sale of Bonds and the reinvestment of proceeds thereof, and such activity will not take place.

Each Unit of the Fund will represent a fractional undivided interest, the numerator of the fractional interest represented will be 1 and the denominator will be the number of Units issued and outstanding in any particular Series. Units are redeemable, and in the event that any Units are redeemed, the fractional undivided interest represented by each Unit will be increased accordingly. Units will remain outstanding until redeemed or until the termination of the Indenture. The Indenture may be terminated with respect to any Series upon approval by 66⅔ percent of the Unitholders of such Series or, in the event that the value of the bonds in such Series shall fall below 40 percent of the principal amount of the bonds initially deposited in such Series, upon direction of the Sponsor to the Trustee. There is no provision in the Indenture for the issuance of any units after the initial offering of units and such activity will not take place (except to the extent that the secondary trading by the Sponsor in the Units is deemed the issuance of Units under the Act).

The Sponsor, while under no obligation to do so, intends to maintain a market for Units of the Fund and to offer to purchase such Units at prices based on the most recent evaluation by the Evaluator or Sponsor, which prices will be based upon the offering prices of the underlying Bonds. The Sponsor will not purchase any Units at a price less than a price based on the aggregate offering price of the underlying Bonds. Resales of such Units will be made by the Sponsor at the public offering price set forth in the then currently effective Prospectus.

SECTION 14(a)

Section 14(a) of the Act requires that a registered investment company, prior to making a public offering of its securities: (a) Have a net worth of $100,000, (b) have previously made a public offering and at that time have had a net worth of $100,000, or (c) have made arrangements for at least $100,000 to be paid in by 25 or fewer persons before acceptance of public subscriptions.

Applicants assert that section 14(a) of the Act is intended to limit the formation of undercapitalized investment companies. Applicants state that it is intended that each Series, at the date of deposit and before any Unit is offered to the public, will have a net worth far in excess of $100,000, and that the Sponsor intends to sell all Units to the public at offering prices disclosed in the Prospectus for each such Series, and that other applicable information concerning the underlying Bonds will be disclosed in the Prospectus. Applicants seek an exemption from the provisions of section 14(a), in order that a public offering of units of the Funds as described above may be made.

In connection with the requested exemption from section 14(a), the Sponsor agrees: (i) To refund on demand and without deduction all sales charges to purchasers of Units of a Series if, within 90 days from the time that the registration statement under the 1933 Act relating to such Series becomes effective, the net worth of such Series shall be reduced to less than $100,000, or if such Series is terminated; (ii) to instruct the Trustee on the date the bonds are deposited in each such Series that in the event that redemption by the Sponsor of Units constituting a part of the unsold Units of any Series shall result in that Series having a net worth less than 40 percent of the principal amount of Bonds initially deposited in such Series, that the Trustee shall terminate such Series in the manner provided in the Indenture, and distribute any bonds or other assets deposited with the Trustee pursuant to the Indenture as provided therein; and (iii) in the event of termination for the reasons described in (ii) above, to refund any sales load to any purchasers of units purchased from the Sponsor on demand and without any deduction.

RULE 19b–1

Rule 19b–1(a) provides, in substance, that no registered investment company which is a "regulated investment company" as defined in section 851 of the Internal Revenue Code shall make more than one distribution of long term capital gains in any one taxable year of such investment company. Paragraph (b) of said Rule contains a similar prohibition for a company not a "regulated investment company" but permits a unit investment trust to distribute capital gain dividends received from a "regulated investment company" within a reasonable time after receipt.

The Fund proposes to make quarterly distributions of principal and interest to Unitholders of a Series. Distributions of principal constituting capital gains to Unitholders may arise in two instances: (1) If an issuing authority calls or redeems an issue held in the portfolio, the sums received by the Fund will be distributed to a Unitholder on the next distribution date; and (2) if units are redeemed by the Trustee and bonds from the portfolio are sold to provide the funds necessary for such redemption, each Unitholder will receive his pro rata portion of the proceeds from the bonds sold over the amount required to satisfy such redemption distribution. In such instances, a Unitholder may receive in his distribution funds which constitute capital gains, since in some cases the value of the portfolio bonds redeemed or sold may have increased since the date of initial deposit.

Applicants state that the dangers against which Rule 19b–1 is intended to guard will not exist in connection with any Series of the Fund, because neither the Fund nor the Sponsor has control over the events which would trigger capital gains, i.e., the tendering of units for redemption and the prepayment of portfolio bonds by the issuing authorities. The Fund seeks to make a combined distribution of principal, including capital gains, and interest each quarter, and states that any capital gains in such distribution will be clearly indicated as such in accompanying reports to Unitholders. In addition, it is alleged that the amounts involved in the normal distribution of principal will be relatively small in comparison to the normal interest distribution.

As noted above, paragraph (b) of Rule 19b–1 provides that a unit investment trust may distribute capital gain dividends received from a "regulated investment company" within a reasonable time after receipt. Applicants assert that the purpose behind such provision is to avoid forcing unit investment trusts to accumulate valid distributions received throughout the year and distribute them only at year end. Applicants further allege that the situation presented by them places the Fund squarely within the purpose of such provision. However, in order to comply with the literal requirements of the Rule, the respective Series of the Fund would be forced to hold any moneys which would constitute capital gains upon distribution until the end of their taxable years. The Applicants contend that such a practice would clearly be detrimental to the Unitholders.

RULE 22c–1

Rule 22c–1 provides, in relevant part, that redeemable securites of registered investment companies may not be sold, redeemed or repurchased except at a price based on the current net asset value (computed on each day during which the New York Stock Exchange is open for trading not less frequently than once daily as of the time of the close of trading on such exchange) which is next computed after receipt of a tender of such security for redemption, or of an order to purchase or sell such security.

Applicants state that Rule 22c–1 has two purposes: (1) To eliminate or to reduce so far as reasonably practicable any dilution of the value of outstanding redeemable securities of registered investment companies which might occur through the sale, redemption or repurchase of such securities at prices other than their current net asset values; and (2) to minimize speculative trading practices in the securites of registered investment companies.

Applicants contend that Rule 22c–1 is intended to guard against the danger of excessive speculation in investment company securities. Applicants allege that as a practical matter, this danger does not exist with respect to the Fund since the whole appeal of the Fund is to investors seeking income and conservation of capital (the stated objectives of the Fund) rather than capital appreciation.

The following pricing procedures for the purpose of effecting redemption, repurchase, sale and resale transactions will be followed by the Fund:

During the initial public offering period, the public offering price will be based upon the offering prices of the underlying Bonds plus a sales charge not to exceed 5 percent of the public offering price per unit. During the initial public offering period, the Sponsor may repurchase Units at a price based upon the offering price of the underlying Bonds.

On the date of deposit, the Evaluator will make an evaluation of the underlying Bonds based upon both the bid and offering prices of such Bonds. Thereafter during the initial public offering period, the Evaluator will make a similar evaluation on each Friday, or on the preceding Thursday if Friday is a legal holiday recognized as such by the New York Stock Exchange, such evaluations being made as of the close of trading on the New York Stock Exchange. During the initial public offering period, on each business day, other than the date of deposit and other than each date on which the evaluator will make his weekly evaluation, the Sponsor will make a daily evaluation of the bid and offering prices of the underlying Bonds, such evaluations being made as of the close of trading on the New York Stock Exchange.

During the initial public offering period, redemption of Units will be based

upon the bid prices of the underlying Bonds. The Trustee will utilize such bid price evaluation, as described herein, to daily determine the Unit Value of the Units of the Fund, which Unit Value will be the redemption price for Units tendered for redemption before the close of trading on the New York Stock Exchange on any business day. Business day is defined to mean each day on which the New York Stock Exchange is open for trading.

The public offering price, the repurchase price, and the redemption price during the initial public offering period will be readjusted daily in accordance with the evaluations by the Evaluator and Sponsor, such readjusted prices to be effective for all Units tendered for redemption, Units sold, or Units repurchased before the close of trading on the New York Stock Exchange on such day of adjustment. For all Units tendered for redemption, repurchase or sale after the close of trading on the New York Exchange, the relevant prices will be computed as of the next time for evaluation as described herein.

During the secondary market period, which is the period subsequent to the termination of the initial offering period, the Sponsor, while not obligated to do so, intends to offer to purchase units at prices based on the offering side evaluation of the bonds in the Fund. During the secondary market period the Sponsor may also sell Units based upon the offering prices of the underlying Bonds plus a sales charge not to exceed 5 percent of the secondary market offering price per unit. During the secondary market period, redemption of Units will continue to be made on the basis of the bid prices of the underlying Bonds.

During the secondary market period, the Evaluator will make an evaluation of the underlying Bonds on each Friday, Thursday if Friday is a legal holiday, as of the close of trading on the New York Stock Exchange, such evaluation to be both for the bid and offering prices of the underlying Bonds. The bid evaluation will be used by the Trustee for purposes of redemption during the week following the evaluation. The offering evaluations will be used by the Sponsor in determining its repurchase and sale prices during the following week.

Applicants state that the Sponsor has undertaken to adopt a procedure whereby it will review on each business day, except on days when the Evaluator makes his Evaluation, the underlying bid and offering prices of the Bonds in the Fund. In the case of a repurchase, if the Sponsor cannot state that the current bid price is not higher than the offering side evaluation, computed as of the last business day of the previous week, the Sponsor will make a full evaluation. The Sponsor has agreed that, in case of the resale of Units in the secondary market, if the Sponsor cannot state that the offering side evaluation computed as of the last business day of the previous week is not more than one-half point greater than the current offering side evaluation, a full evalutaion will be made, which evaluation will then be utilized for the purpose of effecting redemption, repurchase and sale transactions of Units until the next weekly evaluation by the Evaluator or until such evaluations have to be re-evaluated in accordance with the daily review by the Sponsor.

Unit Value is defined to be the pro rata share of each Unit in the Fund determined on the basis of (1) cash on hand in the Fund or monies in the process of being collected, (2) the value on the bid side of the market as reported by the Evaluator of the underlying Bonds in the Fund, and (3) interest accrued thereon but not subject to collection, less (1) amounts representing taxes or governmental charges payable out of the Fund, (2) accrued expenses of the Fund, and (3) cash held for distribution to Unitholders as of a record date prior to the Unit Value determination then being made.

The secondary market activities of the Sponsor and the manner for the acquisition by investors of new Units, may be deemed to violate Rule 22c-1 because of the absence of daily pricing. Applicants contend, however, that the purposes of Rule 22c-1 will not be offended by the Sponsor's secondary market activities. Applicants assert that the pricing of Units by the Sponsor in the secondary market will in no way dilute the assets of the Fund, and that Unitholders will benefit from the Sponsor's pricing procedure in the secondary market since they will normally receive a higher repurchase price for their Units than they could be redeeming their Units at the current net asset value and that this will be accomplished without the cost burden to the Fund of daily evaluations of the unit redemption value.

Applicants also contend that speculation in Units of any Series is unlikely because price changes are limited in respect to the kind of bonds which will be held by such Series.

Applicants therefore request an exemption from the provisions of Rule 22c-1 for Series 1 and for all subsequently created Series insofar as the Rule may apply after completion of the primary distribution of Units of such Series.

Section 6(c) of the Act provides, in part, that the Commission may, upon application, conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions from any provisions of the Act or of any rule or regulation under the Act, if and to the extent such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than February 7, 1977, at 12:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reason for such request and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission orders a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon the Applicants at the address stated above. Proof of such service (by affidavit, or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date, unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons, who request a hearing or advice as to whether a hearing is ordered, will receive any notices and orders issued in the matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.77-1943 Filed 1-19-77; 8:45 am]

[Release No. 9609; 812-4053]

SoGEN INTERNATIONAL FUND, INC.

Filing of Application for Exemption From Section 2(a)(19) of the Act

JANUARY 14, 1977.

Notice is hereby given that SoGen International Fund, Inc. ("Applicant"), 20 Broad Street, New York, New York 10005, a Delaware corporation registered under the Investment Company Act of 1940 ("Act") as a diversified, open-end, management investment company, filed an application on November 12, 1976, pursuant to section 6(c) of the Act, for an order declaring that Richard M. Bressler ("Bressler") shall not be deemed to be an "interested person" of the Applicant, or SoGen-Swiss International Corporation ("Adviser"), the investment adviser to and principal underwriter of the Applicant, or Smith Barney, Harris Upham & Co., Incorporated ("Subinvestment Adviser"), the sub-investment adviser to the Applicant, within the meaning of section 2(a)(19) of the Act solely by reason of his being a director of Union Mutual Life Insurance Company ("Union Mutual Life"), a Maine life insurance company, and Unionmutual Corporation ("Unionmutual") a wholly-owned subsidiary of Union Mutual Life. All interestered persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Bressler is currently a director of Applicant, and at the same time is a director of both Union Mutual Life and Unionmutual. According to the application, Unionmutual Sales Corporation ("Unionmutual Sales"), a wholly-owned subsidiary of Unionmutual Equity Corporation, which in turn is a wholly-owned subsidiary of Unionmutual, is registered as a broker-dealer under the Securities Exchange Act of 1934 ("Exchange Act"). It is represented that Unionmutual also holds a 12.5 percent interest in Linsco Corporation ("Linsco") of Washington, D.C., a registered broker-dealer under the Exchange Act.

Sections 2(a)(19) (A)(v) and (B)(v) of the Act define an "interested person" of an investment company and of an investment adviser of an investment company to include any broker or dealer registered under the Exchange Act or any affiliated person of such broker or dealer. Section 2(a)(3) of the Act includes in the definition of an "affiliated person" any person directly or indirectly controlling, controlled by or under common control with such other person.

Applicant states that because of Bressler's position as a director of Unionmutual Life and Unionmutual, Bressler might be considered for purposes of section 2(a)(19) of the Act, to be an affiliated person of Unionmutual Sales and/or Linsco and, thus, an interested person of the Applicant, the Adviser and the Sub-investment Adviser.

Applicant states that Unionmutual Sales has been inactive since June 25, 1976, prior to which time its sole function was to act as principal underwriter for Lighthouse Fund B, Inc. ("Lighthouse") a registered, open-end management investment company organized by Union Mutual Life. It is further stated that on June 25, 1976, Lighthouse sold substantially all of its assets to Sigma Capital Shares, Inc. ("Sigma"), a registered, open-end management investment company, in return for shares of Sigma. Lighthouse subsequently distributed the Sigma shares to its shareholders, and it is in the process of dissolving. On September 7, 1976, the Commission issued an order (Investment Company Act Release No. 9428) pursuant to an application of Lighthouse declaring that Lighthouse had ceased to be an investment company as defined in the Act. Applicant states that Unionmutual Sales has not otherwise acted as a broker-dealer and that Union Mutual Life has advised Applicant that no definite plans have been formed concerning the future activities of Unionmutual Sales.

Applicant states that Linsco was formed by eight insurance companies (one being unionmutual), each of which owns 12.5 percent of its shares, in order to share the costs of establishing and operating a broker-dealer which would be licensed in most states for the retail sale of mutual fund shares and variable annuities. Insurance agents of the eight life insurance companies who desire to offer these products to their clients may register with the National Association of Securities Dealers as registered representatives of Linsco. In addition, it is stated that Linsco occasionally arranges private placements and real estate syndications and may otherwise act as a broker-dealer. Applicant represents that neither Unionmutual Sales nor Linsco has ever engaged in securities transactions on behalf of Applicant or has ever participated in the sale of Applicant's shares.

According to the application, Bressler lives in Los Angeles, and his principal occupation is his position as Senior Vice President-Finance of Atlantic Richfield Company. It is represented that Bressler, as a director of Union Mutual Life and Unionmutual, shares in the general responsibility of the directors of both companies for the management of their affairs, but does not participate in the day-to-day operations of either company; that he is neither a director nor an officer of Unionmutual Sales or Linsco or in any other way a participant in the day-to-day operations of said broker-dealers; that other than his fees as a director of Union Mutual Life and Unionmutual, which comprises an insignificant portion of his total income, Bressler receives no remuneration from Union Mutual Life, its subsidiaries or Linsco; and that Bressler has no personal interest in the operations of Union Mutual Life, its subsidiaries or Linsco.

Applicant represents and warrants to the Commission that, so long as Bressler remains one of its directors, Applicant will not knowingly purchase any securities from or through or sell any securities to or through, Union Mutual Life, its subsidiaries or Linsco, and that neither Union Mutual Life nor Linsco will be permitted to participate in the distribution of Applicant's shares.

Applicant requests that an order be issued, pursuant to section 6(c) of the Act declaring that Bressler shall not be deemed an interested person of Applicant, the Adviser or the Sub-investment Adviser within the meaning of section 2(a)(19) of the Act solely by reason of his being a director of Union Mutual Life and Unionmutual.

Section 6(c) of the Act provides that the Commission, by order upon application, may conditionally or unconditionally exempt any person or transaction from any provision of the Act or of any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than February 9, 1977, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit, or in case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.77-1944 Filed 1-19-77;8:45 am]

SMALL BUSINESS ADMINISTRATION

[License No. 06/10-0088]

ADMIRAL INVESTMENT COMPANY, INC.

Application for Transfer of Control of Licensed Small Business Investment Company

Notice is hereby given that an application has been filed with the Small Business Administration (SBA), pursuant to § 107.701 of the regulations governing small business investment companies (13 CFR 107.701 (1976)), for transfer of control of Admiral Investment Company, Inc., (Admiral), 2200 West Loop South, Suite 210, Houston, Texas 77027, a Federal Licensee under the Small Business Investment Act of 1958, as amended (The Act), (15 U.S.C. 661 et seq.), and the rules and regulations promulgated thereunder.

Admiral was licensed on December 28, 1961, and its present capitalization is $500,000. It is proposed that MMC Investors Services, Inc., (MMCIS), 75 Rockefeller Plaza, New York, N.Y. 10019, purchase all of the 500,000 shares of Admiral's issued and outstanding common stock. This is the only class of stock authorized. MMCIS is an Oklahoma corporation organized in 1974 and is engaged in providing financial and investment consulting services to corporate clients, and will provide such services to the Licensee. Mr. William N. Vitalis and his wife own 50 percent of MMCIS. The remaining 50 percent is owned by Ollie Development Co., Inc., located in Midland Center, Oklahoma City, Oklahoma 73126, an Oklahoma corporation primarily engaged in real estate, Mr. George J. Records and his wife, together with members of and trusts for the benefit of their family, own all of the outstanding capital stock of Ollie Development Co., Inc.

Mr. Records and his family also control Midland Mortgage Co., an Oklahoma City based mortgage banking firm. Admiral should benefit from its relationship to Midland Mortgage Co., because of their branch offices in Oklahoma City, Lawton and Tulsa, Oklahoma; Phoenix, Prescott and Tucson, Arizona; Houston, Texas; Colorado Springs, Denver and

Pueblo, Colorado; and Tustin, California.

The proposed transfer of control is subject to the approval of SBA. If such approval is given, the new officers and directors of Admiral will be:

George Jeffrey Records, Chairman of the Board, 1510 Guilford Lane, Oklahoma City, Oklahoma 73120.
William Nelson Vitalis, President, Director, Dibble Hill Road, West Cornwall, Connecticut 06796.
Mrs. Ada B. Jones, Secretary, Treasurer, Route #3, Box 343, Edmond, Oklahoma 73034.
Caroline Seeger, Assistant Secretary, 170–12 Pidgeon Meadow Rd., Flushing, New York 11365.
Betty L. Rodgers, Assistant Secretary, 2701 S.W. 53rd Street, Oklahoma City, Oklahoma 73110.
Paul Donnelly Paganucci, Director, 33 Rope Ferry Road, Hanover, New Hampshire 03755.

There will be no significant change in Admiral's charter and bylaws; however, its name will be changed to Activest Capital Corporation and its principal office will be moved to Suite 101, 1501 Classen Boulevard, Oklahoma City, Oklahoma 73106. The Licensee will continue to conduct its operations in the State of Texas and to expand its activities to the States of Oklahoma, Arizona, California, Colorado and Connecticut.

Admiral is considered to be a real estate specialist and is permitted by SBA to have up to 100 percent of its portfolio invested in small business concerns primarily engaged in real estate. The proposed new owners plan to retain this real estate exemption.

Matters involved in SBA's consideration of the application include the general business reputation and character of management and shareholders, and the probability of successful operations of Admiral under their management in accordance with the Act and Regulations.

Notice is further given that any person may, not later than February 7, 1977, submit to SBA in writing, comments on the proposed transfer of control of this company. Any such comments should be addressed to: Associate Administrator for Finance and Investment, Small Business Administration, 1441 "L" Street, N.W., Washington D.C. 20416.

A copy of this notice will be published by Admiral in a newspaper of general circulation in Houston, Texas and Oklahoma City, Oklahoma.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies.)

Dated: January 12, 1977.

PETER F. MCNEISH,
Deputy Associate Administrator for Investment.

[FR Doc.77-1823 Filed 1-19-77;8:45 am]

[License No. 04/04-0047]

Proposed Transfer of Control

CAMERON-BROWN CAPITAL CORP.

Notice is hereby given that an application has been filed with the Small Business Administration (SBA) pursuant to § 107.701 of the SBA regulations governing small business investment companies (13 CFR 107.701 (1976)) for the Transfer of Control of Cameron-Brown Capital Corporation, 4300 Six Forks Road, Raleigh, North Carolina 27609, a Federal Licensee under the Small Business Investment Act of 1958, as amended (the Act).

Cameron-Brown Capital Corporation (Cameron-Brown) was licensed on October 20, 1961. Its present combined paid-in capital and surplus is $1,250,265. The proposed transfer of control is subject to and contingent upon the approval of SBA.

The Applicant, R. S. Dickson & Company, 2000 Jefferson First Union Plaza, Charlotte, North Carolina 28282, trading as Ruddick Investment Company (RIC) is a wholly-owned subsidiary of Ruddick Corporation, a holding company organized under the laws of North Carolina.

RIC is proposing to puchase from Cameron-Brown, a North Carolina Corporation, (a wholly-owned subsidiary of First Union Corporation) all of the issued and outstanding capital stock of Cameron-Brown consisting of up to 1,185,364 shares of common stock.

The proposed officers and directors of the applicant are as follows:

Chairman of the Board and Director, R. Stuart Dickson, 2235 Pinewood Circle, Charlotte, North Carolina 28211.
President, Director, H. B. McManaway, Jr., 8427 Seward Place, Charlotte, North Carolina 28211.
Vice President, Director, J. Alex McMillan, III, 754 Museum Drive, Charlotte, North Carolina 28207.
Vice President, Director, Alan T. Dickson, 512 Museum Drive, Charlotte, North Carolina 28207.
Treasurer, Joseph L. Overton, 5500 Sardis Road, Charlotte, North Carolina 28211.
Secretary, Donald B. Williford, 16 Hamilton Ferry Road, River Hills Plantation, Clover, South Carolina 29710.
Assistant Secretary, James O. Stephens, 1910 Birchcrest Drive, Charlotte, North Carolina 28205.

Subsequent to final approval from the SBA, the Applicant intends to change the name of the Licensee to Heritage Capital Corporation.

Matter involved in SBA's consideration of the Applicant include the general business reputation and character of the new owners and management, and the probability of successful operations of the Licensee under their management and control, including adequate profitability and financial soundness, in accordance with the Act and regulations.

Notice is hereby given that any person may, not later than February 7, 1977 submit to SBA, in writing comments on the Transfer of Control.

Any such communications should be addressed to the Deputy Associate Administrator for Investment, 1441 "L" Street, N.W., Washington, D.C. 20416.

A copy of this notice shall be published in a newspaper of general circulation in Charlotte and Raleigh, North Carolina.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: January 12, 1977.

PETER F. MCNEISH,
Deputy Associate Administrator for Investment.

[FR Doc.77-1824 Filed 1-19-77;8:45 am]

[Declaration of Disaster Loan Area No. 1281]

MINNESOTA

Declaration of Disaster Area

St. Louis County and adjacent Counties within the State of Minnesota constitute a disaster area because of physical damage to wells resulting from drought which occurred in the calendar year 1976.

Eligible persons, firms and organizations may file applications for loans for physical damage as a result of drought until the close of business on March 14, 1977, and for economic injury until the close of business on October 14, 1977, at:

Small Business Administration, District Office, Plymouth Building, Room 530, 12 South Sixth Street, Minneapolis, Minnesota 55402.

or other locally announced locations.

Dated: January 12, 1977.

MITCHELL P. KOBELINSKI,
Administrator.

[FR Doc.77-1822 Filed 1-19-77;8:45 am]

DEPARTMENT OF STATE

[Public Notice CM-7/19]

OCEAN AFFAIRS ADVISORY COMMITTEE

Rescheduling of Meeting

The meeting of the Ocean Affairs Advisory Committee scheduled for January 25–26, 1977, and announced in the FEDERAL REGISTER of Thursday, December 30, 1976, Vol. 41, No. 252 (41 FR 56898) has been rescheduled for March 15–16, 1977. The rescheduling is due to scheduling conflicts on the original dates.

Dated: January 12, 1977.

WILLIAM L. SULLIVAN, JR.,
Acting Deputy Assistant Secretary for Oceans and Fisheries Affairs.

[FR Doc.77-1887 Filed 1-19-77;8:45 am]

[Public Notice CM-7/18]

SECRETARY OF STATE'S ADVISORY COMMITTEE ON PRIVATE INTERNATIONAL LAW STUDY GROUP ON HOTELKEEPERS' LIABILITY

Meeting

A meeting of the Study Group on Hotelkeepers' Liability, a subgroup of the Secretary of State's Advisory Committee on Private International Law, will be held at 10:00 a.m. on Thursday, February 17, 1977, in room 5519 of the Department of State. Members of the general public may attend up to the limits of the capacity of the meeting room and participate in the discussion subject to instructions of the Chairman.

The meeting will consider the positions which should be taken by the United States representative at the first session of the committee of governmental experts on the hotelkeeper's contract to be held by the International Institute for the Unification of Private Law in Rome March 28–April 1, 1977.

Entrance to the Department of State building is controlled, and members of the general public should use the C Street entrance. Entry will be facilitated if arrangements are made in advance, and it is requested that members of the general public who plan to attend the meeting inform their name, affiliation, and address to Miss Dorothy Fagan, Office of the Legal Adviser, Department of State, prior to February 17, 1977. The telephone number is area code 202, 632–8134.

RICHARD D. KEARNEY,
Chairman.

JANUARY 12, 1977.

[FR Doc.77-1886 Filed 1-19-77; 8:45 am]

[Public Notice CM-7/17]

SHIPPING COORDINATING COMMITTEE SUBCOMMITTEE ON SAFETY OF LIFE AT SEA

Meeting

The working group on radiocommunications of the Subcommittee on Safety of Life at Sea, a subcommittee of the Shipping Coordinating Committee, will hold an open meeting at 2:00 p.m. on Thursday, February 17, 1977, in Room 7426 of the Department of Transportation, 400 Seventh Street, S.W., Washington, D.C.

The purpose of the meeting is to prepare position documents for the Seventeenth Session of the Subcommittee on Radiocommunications of the Intergovernmental Maritime Consultative Organization (IMOC), to be held in London February 21–25, 1977. In particular, the working group will discuss the following topics:

Promulgation of navigational warnings to shipping;
Operational standards for shipboard radio equipment;
Operational requirements for emergency position-indicating radio beacons and portable radio apparatus for survival craft; and
Matters resulting from the World Maritime Administrative Radio Conference, 1974, and the work of the International Radio Consultative Committee.

Requests for further information on the meeting should be directed to LT. F. N. Wilder, United States Coast Guard. He may be reached by telephone on (area code 202) 426–1345.

The Chairman will entertain comments from the public as time permits.

RICHARD K. BANK,
Chairman, Shipping Coordinating Committee.

JANUARY 11, 1977.

[FR Doc.77-1885 Filed 1-19-77;8:45 am]

Agency for International Development

BOARD FOR INTERNATIONAL FOOD AND AGRICULTURAL DEVELOPMENT

Meeting

Pursuant to Executive Order 11769 and the provisions of section 10(a), (2), Pub. L. 92–463, Federal Advisory Committee Act, notice is hereby given of the fifth meeting of the Board for International Food and Agricultural Development on February 14 and 15, 1977. The purpose of the meeting is to begin review of the Annual Report, to receive briefings on sectoral strategies for agriculture, Mission Guidelines, and to review nominees for the Joint Committees.

The meeting will begin at 9:00 a.m. and adjourn at 5:30 p.m., and will meet in Room 5951, U.S. Department of State, 21st and Virginia Avenue on both days. The meeting is open to the public. Dr. Erven J. Long, Associate Assistant Administrator, is designated as the Federal Officer at the meeting. It is suggested that those desiring more specific information contact him at 21st and Virginia Avenue, NW., Washington, D.C., 20523 or call area code 202–632–3800.

Dated: January 12, 1977.

ERVEN J. LONG,
Federal Officer, Board for International Food and Agricultural Development.

[FR Doc.77-1840 Filed 1-19-77;8:45 am]

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 77-005]

ADVISORY COMMITTEES

Applicants for Membership

The Coast Guard is seeking applicants who are interested in being appointed as a member on one of the following advisory committees:

1. Towing industry advisory committee (TIAC). TIAC advises the Marine Safety Council, an internal Coast Guard Council which advises the Commandant on the safe operation of towing vessels and barges on rivers, inland waters, along the coasts, and upon the oceans.

2. National offshore operations industry advisory committee (NOOIAC). NOOIAC advises the Marine Safety Council on offshore operations and the coastal environment, including offshore oil and mineral exploitation, transmission of energy resources, and support facilities.

3. Chemical transportation industry advisory committee (CTIAC). CTIAC advises the Marine Safety Council on the water transportation of hazardous materials.

4. Rules of the road advisory committee (RRAC). RRAC advises the Marine Safety Council on proposals that affect the Rules of the Road.

Each applicant should clearly indicate which of the committees he is interested in. Additional information will be mailed to each applicant. Selection will be based upon expertise and leadership within the field of interest of the committee. Membership is open to all qualified persons. Environmental and public interest representatives who are knowledgeable in the area of interest of a comimttee are encouraged to apply for membership upon that committee. Applications for membership will be accepted until February 11, 1977.

Each committee meets once or twice a year at a location that is selected by the Committee Sponsor. Members serve at their own expense and receive neither travel nor per diem allowances.

Interested parties should write to: Commandant (G-CMC/81), U.S. Coast Guard, Washington, D.C. 20590.

G. H. PATRICK BURSLEY,
Rear Admiral, U.S. Coast Guard, Chairman, Marine Safety Council.

JANUARY 13, 1977.

[FR Doc.77-1876 Filed 1-19-77;8:45 am]

[CGD 77-610]

PROPOSED PALMETTO PARK ROAD BRIDGE ACROSS THE ATLANTIC INTRACOASTAL WATERWAY (LAKE BOCA RATON) BOCA RATON, PALM BEACH COUNTY, FLORIDA

Public Hearing

The Commandant has authorized a public hearing to be held by the Commander, Seventh Coast Guard District. The hearing will be on Monday, February 28, 1977, at 7:00 p.m. at Boca Raton City Council Chambers, 201 West Palmetto Park Road, Boca Raton, Florida.

This hearing is being held under the provision of § 115.60(c) of Title 33 Code of Federal Regulations which provides that public hearings will be held in those cases which are of special importance or where significant differences of opinion have not been resolved.

On February 21, 1975 the State of Florida, Department of Transportation made application on behalf of Palm Beach County for Coast Guard approval of the location and plans for a single leaf four lane bascule bridge across the Intracoastal Waterway, mile 330.5 at Palmetto Park Road, Boca Raton, Florida. The proposed bridge would provide a vertical clearance at mid channel of 15.5 feet (MHW) in the closed position. The proposed bridge is to replace the existing two lane single leaf bascule bridge which provides a vertical clearance at mid channel of 7.0 feet (MHW) in the closed position.

In February 1976 the Coast Guard denied the application for the reason that the proposed bridge would not provide for the reasonable needs of navigation. The bridge did not provide adequate vertical clearance in the closed position. The Coast Guard indicated that a bridge providing a vertical clearance at mid channel of 21.0 feet (MHW) would most likely provide for the reasonable needs of navigation. Data available to the Coast Guard indicated the proposed 15.5 foot vertical clearance would reduce bridge openings by about 25–30 percent. A bridge providing a vertical clearance of 21 feet would reduce bridge openings by about 70–75 percent and a bridge providing a vertical clearance of 25 feet would reduce bridge openings by a slightly higher percentage of about 75–80 percent. The Coast Guard has not issued a bridge permit for a drawbridge across the Intracoastal Waterway of less than 20 feet in the closed position since 1971.

Palm Beach County has petitioned the Coast Guard for reconsideration of the denial of the application citing financial hardship as the principal basis. Palm Beach County in support of their petition has agreed to not request drawbridge regulations regardless of future highway traffic increases. The bridge would always be opened on signal.

Previous objectors to the proposed bridge consulted in the course of reconsideration, have reiterated their objections that the bridge will not provide for the reasonable needs of navigation and a restriction against future drawbridge regulations is unrealistic. These objectors consist of 20 member yacht clubs of the Florida Council of Yacht Clubs, with a total membership of about 17,000 individual members. There are unresolved differences of opinion.

Interested persons may present comments orally or in writing concerning any matter relevant to the proposed bridge. Information is desired concerning short and long range projections of marine and highway traffic, potential development and projected population densities for the Boca Raton beach area, projected increases of recreational use of the public beaches and associated highway traffic, prospective significant impacts on the human environment and the adequacy of the proposed bridge, opening on signal at all times, for accommodating future marine and highway traffic.

The hearing will be informal. A Coast Guard representative will preside at the hearing, will make a brief opening statement describing the proposed bridge, and will announce the procedures for the hearing. Each person who wishes to make an oral statement should notify the Commander (oan) Seventh Coast Guard District, Federal Building, 51 SW First Avenue, Miami, Florida 33130, by February 21, 1977. This notification should include the approximate time required to make the presentation. A transcript of the hearing may be purchased by the public. Interested persons who are unable to attend this hearing may also participate in the consideration of this petition by submitting their comments in writing before March 28, 1977 to the Commander (oan), Seventh Coast Guard District. Each comment should state the reasons for any objections, comments, or proposed changes to the plans and the name and address of the person or organization submitting the comment.

Copies of all written communications will be available for examination by interested persons at the office of the Commander (oan), Seventh Coast Guard District. All comments received will be considered before final action is taken on the petition for reconsideration. After the time period for the submission of comments, the Commander, Seventh Coast Guard District, will forward the record, including all written comments and his recommendations, to the Commandant, U.S. Coast Guard, Washington, D.C. 20590.

(Sec. 502, 60 State. 847, as amended; (33 U.S.C. 525, 49 U.S.C. 1655(g)(6)(C)): 33 CFR 115, 60(c) 49 CFR 1.46(c)(10).)

Dated: January 12, 1977.

D. J. RILEY,
Captain, U.S. Coast Guard, Acting Chief, Office of Marine Environment and Systems.

[FR Doc.77-1877 Filed 1-19-77;8:45 a.m.]

Federal Aviation Administration

GENERAL AVIATION AIRPORT DEVELOPMENT

State Demonstration Programs; Notice of Policy

The purpose of this notice is to set forth the policy of the Federal Aviation Administration with respect to the implementation and operation of the state demonstration program for general aviation airport development established under section 28 of the 1976 amendments to the Airport and Airway Development Act of 1970, as amended (AADA), Pub. L. 94-353 (90 Stat. 871).

Under the state demonstration program which will include only four states and which must be initiated prior to January 1, 1977, the FAA is authorized to make grants to each state in the demonstration program for use by that state in making grants to sponsors of general aviation airports. Pursuant to the authority contained in section 28, the FAA has selected the following four states for participation in the state demonstration program: Arizona, Michigan, Pennsylvania, and South Dakota. These four states were selected from the twenty states that applied on the basis of several factors, including: geographic location; the relative significance of general aviation in the state; the size and scope of its general aviation development program; and the degree to which the selected state is representative of a group of states.

Although the state demonstration program involves Federal grants for the development of general aviation airports, Part 152 of the Federal Aviation Regulations is not applicable to the program. Part 152 prescribes the FAA policies and procedures for administering the Airport Development Aid Program (ADAP) for airport development and planning grant projects under the AADA. In implementing the ADAP, the FAA, except in cases where states act as sponsors or co-sponsors or supplement Federal funds, makes direct grants to local sponsors without state participation in the grant agreements. Consequently, Part 152 is neither meant to be nor is it applicable to the state demonstration program where grants are made by the states.

However, under section 28, grants by the participating states of program funds must be made in the same manner and subject to the same statutory requirements and conditions as grants made by the FAA to airport sponsors. Furthermore, demonstration program grants made by the FAA to participating states will contain appropriate substantive requirements of Part 152, and, as a condition of demonstration program grants, those states must include the applicable requirements of Part 152 in subsequent grants to airport sponsors.

It should be noted that the purpose of the state demonstration program is to enable the FAA to evaluate whether state administration of the general aviation portion of the ADAP is practicable and feasible and can be carried out in an efficient and economical manner.

(Sec. 11 through 30, Airport and Airway Development Act of 1970, as amended (49 U.S.C. 1711 through 1730), and § 1.47(g) of the Regulations of the Office of the Secretary of Transportation (49 CFR 1.47(g)).)

Issued in Washington, D.C., on January 10, 1977.

JOHN L. MCLUCAS,
Administrator.

[FR Doc.77-1623 Filed 1-19-77;8:45 am]

MICROWAVE LANDING SYSTEM ADVISORY COMMITTEE

Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of the Microwave Landing System (MLS) Advisory Committee to be held February 3, 1977, at 9:30 a.m. in Room 9A/B/C, Federal Office Building 10A, 800 Independence Avenue, S.W., Washington, D.C. The agenda for the meeting is as follows: Review of program progess over the past year, plans for future work including ongoing procurement of military and civil prototype hardware, and status of the current international program to select an MLS for standardization.

Attendance is open to the interested public but limited to the space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to attend and persons wishing to present oral statements should notify, not later than the day before the meeting, and information may be obtained from, Gene Jensen, Executive Director, MLS Advisory Committee, Room 3100, Transportation Building, 2100 2nd Street, S.W., Washington, D.C., telephone (202) 426-2072. Any member of the public may present a written statement to the Committee at any time.

Issued in Washington, D.C., on January 14, 1977.

FRANK L. FRISBIE,
Chief, Approach and Landing Division, Federal Aviation Administration.

[FR Doc.77-1873 Filed 1-18-77;8:45 am]

Office of the Secretary

[CGD 76-010; CGD 76-011]

DEEPWATER PORT LICENSES

Issuance To LOOP and Seadock

Notice is hereby given that on January 17, 1977, in accordance with his decisions announced on December 17, 1976, the Secretary of Transportation issued to LOOP INC. and Seadock, Inc., licenses to own, construct, and operate deepwater ports.

Copies of the licenses are available for public inspection in the offices of the Commandant, U.S. Coast Guard (G-WDWP/61) Room 6125, 400 Seventh Street, S.W., Washington, D.C. 20590.

Issued in Washington, D.C., on January 17, 1977.

J. E. LESCROART,
Director, Office of Deepwater Ports.

[FR Doc.77-2092 Filed 1-18-77;1:22 pm]

INTERSTATE COMMERCE COMMISSION

[Notice No. 308]

ASSIGNMENT OF HEARINGS

JANUARY 17, 1977.

Cases assigned for hearing, postponement, cancellation or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the Official Docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested.

MC 117119 (Sub-No. 600), Willis Shaw Frozen Express, Inc., now being assigned March 4, 1977 (1 day) at Dallas, Texas, in a hearing room to be later designated.

MC 9859 Sub 3, Kane Transfer Company, now being assigned March 8, 1977 (3 days), at Salisburg, Maryland, in a hearing room to be later designated.

MC 114569 Sub 145, Shaffer Trucking, Inc., now being assigned February 14, 1977 (2 days), at Kansas City, Missouri, will be held in Room 609, Federal Office Bldg., 911 Walnut Street.

No. W 370 Sub 3, Albert Bernert, Inc. now being assigned March 15, 1977 (4 days) at Portland, Oregon in a hearing room to be later designated.

MC 140612 Sub 10, Robert F. Kazimour, an Individual, now being assigned March 21, 1977 (1 day) at Portland, Oregon in a hearing room to be later designated.

MC 142469, Jerry Lee Bullock, d.b.a. Bullock Towing now being assigned March 22, 1977 (2 days) at Portland, Oregon in a hearing room to be later designated.

MC 83539 Sub 436, C & H Transportation Co., Inc. now being assigned March 24, 1977 (2 days) at Portland, Oregon in a hearing room to be later designated.

MC-F 12952, Navajo Freight Lines, Inc.—Control and Merger—Exley Express, Inc. and FD 28274, Navajo Freight Lines, Inc. now being assigned March 28, 1977 (1 week) at Portland, Oregon in a hearing room to be later designated.

AB-28 Sub-1, Central of Georgia Railroad Company, Abandonment of Operation Between Clayton and Ozark in Barbour and Dale Counties, Alabama, now assigned February 23, 1977 at Ozark, Alabama, will be held in Judge Borom's Small Court Room, Dale County Court House.

MC-F-12939, K Deaton, Inc.—Investigation of Control-H. S. Anderson Trucking Company, now assigned March 2, 1977 at Birmingham, Alabama will be held in the GSA Conference Room No. 345, Federal Building, 1800 5th Avenue, North.

MC-F-12753, Whitfield Transportation, Inc.-Purchase-Haywood L. Washum, d.b.a. Los Angeles-Yuma Freight Lines and MC 108461 (Sub-No. 126), Whitfield Transportation, Inc., now assigned February 28, 1977 at Phoenix, Arizona; will be held in the Camelback Sahara Motor Hotel, 502 W. Camelback Road.

MC 2900 (Sub-No. 293), Ryder Truck Lines, Inc., now assigned February 7, 1977 at Atlanta, Georgia, is postponed to February 28, 1977, at the Atlanta American Motor Hotel, Carnegie Way and Spring Street, Atlanta, Georgia.

MC 59856 (Sub-No. 64), Salt Creek Freightways, now assigned March 7, 1977, at Boise, Idaho is canceled and reassigned for March 7, 1977 (1 week), at Idaho Falls, Idaho, Room 122, Ramada Inn, 850 Lindsay Boulevard.

MC 11207 (Sub-367), Deaton, Inc.; MC 73165 (Sub-384), Eagle Motor Lines, Inc.; MC 106644 (Sub-221), Superior Trucking Company, Inc.; MC 111545 (Sub-221), Home Transportation Company, Inc. and MC 136828 (Sub-8), Cox & Shay, Inc., now assigned February 28, 1977, at Birmingham, Alabama; will be held in The GSA Conference Room No. 345 Federal Building, 1800 5th Avenue, North.

MC 142170, Jersey Best, Inc. now being assigned April 18, 1977 (1 day) at New York, New York in a hearing room to be designated.

MC 136343 Sub 92, Milton Transportation, Inc. now being assigned April 19, 1977 (1 day) at New York, New York in a hearing room to be later designated.

MC 134477 Sub 123, Schanno Transportation, Inc. now being assigned April 20, 1977 (1 day) at New York, New York in a hearing room to be later designated.

MC 142008 Sub 2, William C. Thomas now being assigned April 21, 1977 (1 day) at New York, New York in a hearing room to be later designated.

MC 60430 Sub 22, Friedman's Express, Inc. now being assigned April 22, 1977 (1 day) at New York, New York in a hearing room to be later designated.

F.D. 28255 Chesapeake and Ohio Railroad Company—Lease and Operate—The Baltimore and Ohio Railroad Company Between Clendenin and Charleston in Kanawha County, West Virginia, now being assigned March 8, 1977 (2 days), at Charleston, West Virginia, in a hearing room to be later designated.

MC 82841 (Sub-No. 170), Hunt Transportation, Inc., now assigned January 27, 1977 at Chicago, Illinois, hearing canceled and the application is dismissed.

MC 107012 Sub 229, North American Van Lines, Inc. now being assigned March 23, 1977 (3 days) at Chicago, Illinois in a hearing room to be later designated.

MC 103066 Sub 41, Stone Trucking Company now being assigned March 21, 1977 (2 days) at Chicago, Illinois in a hearing room to be later designated.

MC-F 12808, BN Transport, Inc.—Purchase (Portion)—Joliet Warehouse and Transfer Company and MC 63562 Sub 54, BN Transport, Inc. now being assigned March 15, 1977 (4 days) for continued hearing in a hearing room to be later designated.

ROBERT L. OSWALD,
Secretary.

[FR Doc.77-1959 Filed 1-19-77;8:45 am]

[Fourth Revised Exemption No. 129]

ATCHISON, TOPEKA AND SANTA FE RAILWAY, CO., ET AL.

Exemption Under Provision of Rule 19 of the Mandatory Car Service Rules Ordered in Ex Parte No. 241

It appearing, that the railroads named herein own numerous 40-ft. plain boxcars; that under present conditions, there is virtually no demand for these cars on the lines of the car owners; that return of these cars to the car owners would result in their being stored idle on these lines; that such cars can be used by other carriers for transporting traffic offered for shipments to points remote from the car owners; and that compliance with Car Service Rules 1 and 2 prevents such use of plain boxcars owned by the railroads listed herein, resulting in unnecessary loss of utilization of such cars.

It is ordered, that, pursuant to the authority vested in me by Car Service Rule 19, plain boxcars described in the Official Railway Equipment Register, I.C.C.-R.E.R. No. 401 issued by W. J. Trezise, or successive issues thereof, as having mechanical designation "XM", with inside length 44-ft. 6 in. or less, regardless of door width and bearing reporting marks assigned to the railroads named below, shall be exempt from the provisions of Car Service Rules 1(a), 2(a), and 2(b).

The Atchison, Topeka and Santa Fe Railway Company, Reporting Marks: ATSF.
Bessemer and Lake Erie Railroad Company, Reporting Marks: BLE.
The Baltimore and Ohio Railroad Company, Reporting Marks: BO.
Burlington Northern Inc., Reporting Marks: BN-CBQ-GN-NP-SPS.
The Chesapeake and Ohio Railway Company, Reporting Marks: CO-PM.
Chicago Rock Island and Pacific Railroad Company, Reporting Marks: RI-ROCK.
Chicago, West Pullman & Southern Railroad Company, Reporting Marks: CWP.
The Denver and Rio Grande Western Railroad Company, Reporting Marks: DRGW.
Detroit and Mackinac Railway Company, Reporting Marks: D&M-DM.
Elgin, Joliet and Eastern Railway Company, Reporting Marks: EJE.
Illinois Terminal Railroad Company, Reporting Marks: ITC.
Louisville and Nashville Railroad Company, Reporting Marks: CIL-L&N-MON-NC.
Louisville, New Albany & Corydon Railroad Company, Reporting Marks: LNAC.
Missouri-Kansas-Texas Railroad Company, Reporting Marks: MKT.
Missouri Pacific Railroad Company, Reporting Marks: CEI-MI-MP-TP.
New Hope and Ivyland Railroad Company, Reporting Marks: NHIR.[1]
Southern Railroad Company, Reporting Marks: CG-NS-SA-SOU.
St. Louis-San Francisco Railway Company, Reporting Marks: SLSF.
SOO Line Railroad Company, Reporting Marks: SOO.
Union Pacific Railroad Company, Reporting Marks: UP.
Western Maryland Railway Company, Reporting Marks: WM.

Effective 12:01 a.m., January 15, 1977, and continuing in effect until further order of this Commission.

Issued at Washington, D.C., January 10, 1977.

INTERSTATE COMMERCE COMMISSION,
JOEL E. BURNS,
Agent.

[FR Doc.77-1957 Filed 1-19-77;8:45 am]

[Twenty-fifth Revised Exemption No. 12]

ATLANTA AND SAINT ANDREWS BAY RAILWAY CO., ET AL.

Exemption Under Provision of Rule 19 of the Mandatory Car Service Rules Ordered in Ex Parte No. 241

It appearing, that the railroads named herein own numerous plain boxcars; that under present conditions there is virtually no demand for these cars on the lines of the car owners; that return of these cars to the car owners would result in their being stored idle on these lines; that such cars can be used by other carriers for transporting traffic offered for shipments to points remote from the car owners; and that compliance with Car Service Rules 1 and 2 prevents such use of plain boxcars owned by the railroads listed herein, resulting in unnecessary loss of utilization of such cars.

It is ordered, that pursuant to the authority vested in me by Car Service Rule 19, plain boxcars described in the Official Railway Equipment Register, I.C.C.-R.E.R. No. 401, issued by W. J. Trezise, or successive issues thereof, as having mechanical designation "XM", and bearing reporting marks assigned to the railroads named below, shall be exempt from the provisions of Car Service Rules 1(a), 2(a), and 2(b).

Atlanta & Saint Andrews Bay Railway Company, Reporting Marks: ASAB.
Atlantic and Western Railway, Reporting Marks: ATW.
Chicago & Illinois Midland Railway Company, Reporting Marks: CIM.
Fonda, Johnstown and Gloversville Railroad Company, Reporting Marks: FJG.
Hartford and Slocomb Railroad Company, Reporting Marks: HS.
Louisiana Midland Railway Company, Reporting Marks: LOAM.
Manufacturers Railway Company, Reporting Marks: MRS.
Maryland and Pennsylvania Railroad Company, Reporting Marks: MPA.
Minneapolis, Northfield and Southern Railway, Reporting Marks: MNS.[1]
Pickens Railroad Company, Reporting Marks: PICK.
Roscoe, Snyder and Pacific Railway Company, Reporting Marks: RSP.
Wellsville, Addison & Galeton Railroad Corporation, Reporting Marks: WAG.

Effective January 15, 1977, and continuing in effect until further order of this Commission.

Issued at Washington, D.C., January 10, 1977.

INTERSTATE COMMERCE COMMISSION,
JOEL E. BURNS,
Agent.

[FR Doc.77-1956 Filed 1-19-77;8:45 am]

[1] Addition.

[AB 2 (Sub-No. 12)]

LOUISVILLE AND NASHVILLE RAILROAD CO.

Abandonment Between Otter Creek Junction and Brazil, in Vigo and Clay Counties, Indiana

JANUARY 10, 1977.

The Interstate Commerce Commission hereby gives notice that its Section of Energy and Environment has concluded that the proposed abandonment by the Louisville and Nashville Railroad Company (L&N) of its line of railroad between Milepost 171.4 near Otter Creek Junction, to the end of the line at Milepost 184 near Brazil, a distance of 12.66 miles, all in Vigo and Clay Counties, Ind., if approved by the Commission, does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. §§ 4321, et seq., and that preparation of a detailed environmental impact statement will not be required under section 4332(2)(C) of the NEPA.

It was concluded, among other things, that the environmental impacts of the proposed action are considered insignificant because of the light density of traffic involved and the absence of any major historic, safety, or ecological consequences associated with the proposed abandonment. Highways in the vicinity of the subject line are able to accommodate the resultant slight diversion to truck transportation. One major industrial site and several industries exist in the area adjacent to the rail line and abandonment would make these tracts less desirable for future development. However, since ConRail will continue service to the city of Brazil, the proposed abandonment should not have a serious adverse impact on rural and community development.

This conclusion is contained in a staff-prepared environmental threshold assessment survey, which is available on request to the Interstate Commerce Commission, Office of Proceedings, Washington, D.C. 20423; telephone 202-275-7011.

Interested persons may comment on this matter by filing their statments in writing with the Interstate Commerce Commission, Washington, D.C. 20423, on or before February 21, 1977.

It should be emphasized that the environmental threshold assessment survey represents an evaluation of the environmental issues in the proceeding and does not purport to resolve the issue of whether the present or future public convenience and necessity permit discontinuance of the line proposed for abandonment. Consequently, comments on the environmental study should be limited to discussion of the presence or absence of environmental impacts and reasonable alternatives.

ROBERT J. OSWALD,
Secretary.

[FR Doc.77-1955 Filed 1-19-77;8:45 am]

[1] New Hope and Ivyland Railroad deleted.

[Notice No. 6]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

JANUARY 12, 1977.

The following are notices of filing of applications for temporary authority under section 210a(a) of the Interstate Commerce Act provided for under the provisions of 49 CFR 1131.3. These rules provide that an original and six (6) copies of protests to an application may be filed with the field official named in the FEDERAL REGISTER publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the FEDERAL REGISTER. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in the ICC Field Office to which protests are to be transmitted.

MOTOR CARRIERS OF PROPERTY

No. MC 95084 (Sub-No. 116TA), filed December 22, 1976. Applicant: HOVE TRUCK LINE, Stanhope, Iowa 52046. Applicant's representative: Kenneth F. Dudley, P.O. Box 279, Ottumwa, Iowa 52501. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, meat by-products, and articles distributed by meat packinghouses* as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except hides and commodities in bulk), between the facilities of Sioux City Cold Storage, located at or near Sioux City, Iowa, on the one hand, and, on the other, points in Alabama, California, Colorado, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Jersey, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee Texas, Washington, West Virginia, Wisconsin and the District of Columbia, for 180 days. Supporting Shipper: Sioux City Cold Storage Company, 1000 Cunningham Drive, Sioux City, Iowa 51107. Send protests to: Herbert W. Allen, Distsict Supervisor, Bureau of Operations, Interstate Commerce Commission, 518 Federal Bldg., Des Moines, Iowa 50309.

No. MC 107403 (Sub-No. 995TA), filed January 4, 1977. Applicant: MATLACK, INC., Ten W. Baltimore Ave., Lansdowne, Pa. 19050. Applicant's representative: Martin C. Hynes, Jr. (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (a) *Liquid sugar*, in bulk, in tank vehicles, from Reserve, La., to Cincinnati, Ohio; Louisville, Ky.; Atlanta and Forest Park, Ga.; and (b) *Dry sugar*, in bulk, in tank vehicles, from Reserve, La., to Cincinnati, Ohio and Atlanta and Forest Park, Ga.,

for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Godchaux-Henderson Sugar Co., Inc., P.O. Box 17169, Denver, Colo. 80217. Send protests to: Monica A. Blodgett, Interstate Commerce Commission, 600 Arch St., Room 3238, Philadelphia, Pa. 19106.

No. MC 107496 (Sub-No. 1058TA), filed January 3, 1977. Applicant: RUAN TRANSPORT CORPORATION, 3200 Ruan Center, 666 Grand Ave., Des Moines, Iowa 50309. Applicant's representative: E. Check (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *LPG*, in bulk, from Memphis, Tenn., to points in Missouri, Arkansas, Mississippi and Alabama, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Union Texas Petroleum, P.O. Box 2120, Houston, Tex. 77001. Send protests to: Herbert W. Allen, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 518 Federal Bldg., Des Moines, Iowa 50309.

No. MC 111729 (Sub-No. 691TA), filed January 3, 1977. Applicant: PUROLATOR COURIER CORP., 3333 New Hyde Park Road, New Hyde Park, N.Y. 11040. Applicant's representative: Elizabeth L. Henoch (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Business papers, records, audit and accounting media of all kinds;* (a) between Lincoln and Omaha, Nebr., on traffic having an immediately prior or subsequent movement by air; (b) between points in Illinois, Missouri and Texas, on traffic having an immediately prior or subsequent movement by air; and (c) between Lincoln, Nebr., on the one hand, and, on the other, points in Iowa and Minnesota; and (2) *Replacement parts* related to the telephone industry, restricted against the transportation of packages or articles exceeding 50 pounds per shipment or 100 pounds in the aggregate from one consignor to one consignee on any one day; (a) between Lincoln and Omaha, Nebr., on traffic having an immediately prior or subsequent movement by air; (b) between points in Florida, Illinois, Missouri, North Carolina, Virginia and Texas, on traffic having an immediately prior or subsequent movement by air; and (c) between Lincoln, Nebr., on the one hand, and, on the other, points in Iowa and Minnesota, for 180 days. Supporting shipper: Central Telephone Company, 1201 N St., Lincoln, Nebr. 68501. Send protests to: Maria B. Kejss, Transportation Assistant, Interstate Commerce Commission, 26 Federal Plaza, New York, N.Y. 10007.

No. MC 113024 (Sub-No. 148TA), filed January 3, 1977. Applicant: ARLINGTON J. WILLIAMS, INC., 1398 S. Du Pont Highway, Smyrna, Del. 19977. Applicant's representative: Samuel W. Earnshaw, 833 Washington Bldg., Washington, D.C. 20005. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Manufactured fertilizer* (except in bulk), from points in Louisiana and Missouri, to Burlington, N.J., under a continuing contract with Hercules Incorporated, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Matthew C. Minker, District Traffic Manager, Hercules Incorporated, 910 Market St., Wilmington, Del. 19899. Send protests to: William L. Hughes, District Supervisor, Interstate Commerce Commission, 814-B Federal Bldg., Baltimore, Md.

No. MC 112750 (Sub-No. 334TA), filed December 27, 1976. Applicant: PUROLATOR COURIER CORP., 3333 New Hyde Park Road, New Hyde Park, N.Y. 11040. Applicant's representative: Elizabeth L. Henoch (same address as applicant). Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Microfilm, microfiche, microforms and related items*, used in the business of banks and banking institutions; (1) between Metairie, La., on the one hand, and, on the other, points in Mississippi; (2) between Baltimore, Md., on the one hand, and, on the other, points in Virginia and West Virginia; (3) between Framingham, Mass., on the one hand, and, on the other, points in Maine, New Hampshire and Rhode Island; (4) between Minneapolis, Minn., on the one hand, and, on the other, points in Wisconsin; (5) between Cincinnati, Ohio, on the one hand, and, on the other, points in Indiana, Kentucky and West Virginia; (6) between Ft. Washington, Pa., on the one hand, and, on the other, points in New Jersey; and (7) between Parkersburg, W. Va., on the one hand, and, on the other, points in Ohio, under a continuing contract with Banks and Banking Institutions, for 90 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shippers: There are approximately 60 statements of support attached to the application, which may be examined at the Interstate Commerce Commission in Washington, D.C., or copies thereof which may be examined at the field office named below. Send protests to: Maria B. Kejss, Transportation Assistant, Interstate Commerce Commission, 26 Federal Plaza, New York, N.Y. 10007.

No. MC 114045 (Sub-No. 453 TA), filed January 3, 1977. Applicant: TRANSCOLD EXPRESS, INC., P.O. Box 61228, D/FW Airport, Tex. 75261. Applicant's representative: J. B. Stuart (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Cleaning or polishing compound; scale preventing or scale removing compound; thermal or acoustical insulating or vehicle body sealer or sound deadener compound; anti-freeze, engine coolant preparation or de-icing preparation; oils*, other than petroleum, lubricating; petroleum oils; radiator cement; carbon, gum or sludge removing compound; electrode joint or electrical contact compound; engine starting fluid; belt dressing, in vehicles equipped with mechanical refrigeration, restricted against the transportation of commodities in bulk, from Newark, N.J., to point in Texas, Louisiana, Oklahoma and California, for 180 days. Supporting Shipper: Siloo Incorporated, 393 Seventh Ave., New York, N.Y. 10001. Send Protests To: Opal M. Jones, Transportation Assistant, Interstate Commerce Commission, 1100 Commerce St., Room 13C12, Dallas, Tex. 75242.

No. MC 114632 (Sub-No. 90 TA), filed December 30, 1976. Applicant: APPLE LINES, INC., 212 S.W. Second St., P.O. Box 287, Madison, S. Dak. 57042. Applicant's representative: Andrew Clark, 1000 1st National Bank Bldg., Minneapolis, Minn. 55402. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, meat by-products, and articles distributed by meat* packinghouses, as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except hides and commodities in bulk), (1) from the facilities of Farmland Foods, at Denison, Iowa Falls and Carroll, Iowa, to points in Illinois, Indiana, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota and Wisconsin, and (2) from the facilities of Farmland Foods, at Crete, Nebr., to points in Illinois, Indiana, Michigan and Ohio, for 180 days. Supporting Shipper: Farmland Foods, Inc., P.O. Box 403, Denison, Iowa 51442. Send Protests To: J. L. Hammond, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 369, Federal Bldg., Pierre, S. Dak. 57501.

No. MC 115092 (Sub-No. 54 TA), filed January 3, 1977. Applicant: TOMAHAWK TRUCKING, INC., P.O. Box 0, Vernal, Utah 84078. Applicant's representative: Walter Kobos, 1016 Kehoe Drive, St. Charles, Ill. 60174. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lumber and lumber mill products*, from points in Butte, Custer, Fall River, Harding, Lawrence, Meade, Pennington, Perkins and Shannon Counties, S. Dak., to points in New Mexico, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting Shipper: Kaibab Industries, Inc., P.O. Box 20506, Phoenix, Ariz. 85036. Send Protests To: Lyle D. Helfer, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 5301 Federal Bldg., 125 S. State St., Salt Lake City, Utah 94138.

No. MC 118989 (Sub-No. 151 TA), filed January 3, 1977. Applicant: CONTAINER TRANSIT, INC., 5223 S. 9th St., Milwaukee, Wis. 53221. Applicant's representative: Albert A. Andrin, 180 N. LaSalle St., Chicago, Ill. 60601. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fibreboard cans*, with or without metal ends, from Whiting, Ind., to Cincinnati, Ohio, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting Shipper: Boise Cascade Corporation, P.O. Box 7747, Boise, Idaho 83707. Send Protests To: Gail Daugherty, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, U.S. Federal Bldg., & Courthouse, 517 E. Wisconsin Ave., Room 619, Milwaukee, Wis. 53202.

No. MC 121437 (Sub-No. 2 TA), filed December 30, 1976. Applicant: CARROLL E. FLYNN, doing business as A–1 MOBILE HOME MOVERS, 2923 W. Montebello, Phoenix, Ariz. 85017. Applicant's representative: Phil B. Hammond, 10th Floor, 111 W. Monroe, Phoenix, Ariz. 85003. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (a) *Mobile homes and trailers* designed to be drawn by passenger automobiles in initial and/or secondary movements; and (b) Buildings, knocked down, completed, or in sections, mounted on wheeled undercarriages equipped with hitchball connectors, in initial and/or secondary movements, between points in Arizona, on the one hand, and, on the other, points in Nevada and New Mexico, for 180 days. Supporting shippers: Modulaire Leasing Company, 3171 W. Osborn Road, Phoenix, Ariz. 85017. National Homes, 309 S. Perry Lane, Tempe, Ariz. 85281. Send protests to: Andrew V. Baylor, District Supervisor, Interstate Commerce Commission, Room 3427 Federal Bldg., 230 N. First Ave., Phoenix, Ariz. 85025.

No. MC 121437 (Sub-No. 3 TA), filed December 30, 1976. Applicant: CARROLL E. FLYNN, doing business as A–1 MOBILE HOME MOVERS, 2923 W. Montebello, Phoenix, Ariz. 85017. Applicant's representative: Phil B. Hammond, 10th Floor, 111 W. Monroe, Phoenix, Ariz. 85003. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (a) *Mobile homes and trailers* designed to be drawn by passenger automobiles in initial and/or secondary movements; and (b) *Buildings*, knocked down, completed, or in sections, mounted on wheeled undercarriages, equipped with hitchball connectors in initial and/or secondary movements, between points in Arizona on the one hand, and, on the other, points in Nevada and New Mexico, for 180 days. Supporting shippers: (1) Modulaire Leasing Company, 3171 W. Osborn Road, Phoenix, Ariz. 85017. (2) National Homes, 309 S. Perry Lane, Tempe, Ariz. 85281. (3) Fuqua Homes, Inc., 802 S. 59th Ave., Phoenix, Ariz. 85034. (4) Kaufman & Broad Home Systems, Incorporated, 5530 W. Bethany Home Road, Glendale, Ariz. 85301. Send protests to: Andrew V. Baylor, District Supervisor, Interstate Commerce Commission, Room 3427, Federal Bldg., 230 N. First Ave., Phoenix, Ariz. 85025.

No. MC 126118 (Sub-No. 27 TA), filed January 3, 1977. Applicant: CRETE CARRIER CORPORATION, P.O. Box 81228, Lincoln, Nebr. 68501. Applicant's representative: Duane W. Acklie (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Malt beverages*, in containers, moving in trailers equipped with temperature control, from Monroe, Wis., and Chicago, Ill., and their commercial zones, to points in South Carolina, North Carolina, Tennessee, Missouri, Texas and Kansas City, Kans., and its commercial zone, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Fred Huber, President of Peter Hand Brewing Co., Vice President, Sales, Jos. J. Huber Brewing Co., 1000 W. North Ave., Chicago, Ill. 60622. Send protests to: Max H. Johnsoon, District Supervisor, 285 Federal Bldg., & Courthouse.

No. MC 133095 (Sub-No. 127 TA), filed January 3, 1977. Applicant: TEXAS-CONTINENTAL EXPRESS, INC., P.O. Box 434, 2603 W. Euless Blvd., Euless, Tex. 76039. Applicant's representative: Kim G. Meyer, 1600 First Federal Bldg., Atlanta, Ga. 30303. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting; *Paper and paper articles*, from the facilities of the Scott Paper Company, at or near Mobile, Ala., to points in Pennsylvania, Maryland, Virginia, New Jersey, New York, Connecticut, Massachusetts, West Virginia, Rhode Island and the District of Columbia, for 180 days. Supporting shipper: Scott Paper Company, Scott Plaza, Philadelphia, Pa. 19113. Send protests to: Robert J. Kirspel, District Supervisor, Room 9A27 Federal Bldg., 819 Taylor St., Fort Worth, Tex. 76102.

No. MC 133095 (Sub-No. 128TA), filed January 3, 1977. Applicant: TEXAS-CONTINENTAL EXPRESS, INC., P.O. Box 434, 2603 W. Euless Blvd., Euless, Tex. 76039. Applicant's representative: Kim G. Meyer, 1600 First Federal Bldg., Atlanta, Ga. 30303. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Drugs and intravenous solutions;* (2) *glass containers;* (3) *stopper enclosures, aluminum seals, aluminum and plastic seals*, from points in Erie County, N.Y., to points in the United States in and west of Michigan, Ohio, Kentucky, Tennessee, Georgia, Florida (except Alaska and Hawaii); (2) from Millville, N.J.; and Chicago Heights, Ill.; to points in Erie County, N.Y.; and (3) from St. Petersburg, Fla., to points in Erie County, N.Y., for 180 days. Supporting shipper: Invenex Pharmaceuticals, 3175 Staley Road, Grand Island, N.Y. 14072. Send protests to: Robert J. Kirspel, District Supervisor, Room 9A27 Federal Bldg., 819 Taylor St., Fort Worth, Tex. 76102.

No. MC 133097 (Sub-No. 17 TA), filed December 29, 1976. Applicant: SYSTEM REEFER SERVICE INC., 4614 Lincoln Ave., Cypress, Calif. 90630. Applicant's representative: Charles A. Creager, 1329 Pennsylvania Ave., Hagerstown, Md. 21740. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Foods; foodstuffs; food-treating compounds; chemicals and additives; and advertising paraphernalia; and materials, equipment and supplies* used in the manufacture, preparation, sale and distribution of spices, extracts, convenience foods, confectionery products, food products, salad dressing, and foodstuffs; and (2) *Commodities*, the transportation of which is exempt or partially exempt from regulation under the provisions of section 203(b)(6) of the Interstate Commerce Act, in mixed loads with the commodities described in (1) above; (a) between Salinas, Gilroy, San Francisco and Vacaville, Calif., including their respective commercial zones, on the one hand, and, on the other, points in Alabama, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Maryland, Michigan, Minnesota, Missouri, New Jersey, New York, Ohio, Oregon, South Carolina, Tennessee, Texas, Utah, Virginia and Wisconsin; (b) between Baltimore, Md., including its commercial zone, on the one hand, and, on the other, points in Alabama, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Michigan, Minnesota, Missouri, Ohio, South Carolina, Tennessee, Virginia and Wisconsin; (c) between South Bend and Bremen, Ind., including their respective commercial zones, on the one hand, and, on the other, points in Arizona, Arkansas, California, Colorado, Connecticut, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Massachusetts, Minnesota, Missouri, Montana, Nebraska, Nevada, New Jersey, New Mexico, New York, Ohio, Oregon, Pennsylvania, Tennessee, Utah, Washington, West Virginia, Wisconsin and Wyoming; and (d) from Atlanta, Ga., and its commercial zone to points in New Jersey, New York, Pennsylvania and Virginia, under a continuing contract with McCormick & Co., Inc., Hunt Valley, Md., for 180 days. Supporting shipper: McCormick & Co., Inc., William M. Pappas, Manager, Distribution Services, 11100 McCormick Road, Hunt Valley, Md. 21031. Send protests to: Mary Alice Francy, Transportation Assistant, Interstate Commerce Commission, Room 1321 Federal Bldg., 300 N. Los Angeles St., Los Angeles, Calif. 90012.

No. MC 136704 (Sub-No. 2 TA), filed January 4, 1977. Applicant: KENNETH FRANKLIN WAGNON, LILLIAN ANN WAGNON, AND KENNETH DAVID WAGNON, doing business as, KENNETH F. WAGNON TRUCKING CONTRACTOR, 84774 N. Cloverdale Road, Creswell, Oreg. 97426. Applicant's representative: James C. Gee, (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Rough lumber handles*, from Everett, Wash., to Eugene, Oreg., for 180 days. Supporting Shipper: Cascade Handle Co., Inc., P.O. Box 364, Senaca Road, Eugene, Oreg. 97401. Send Protests to: A. E. Odoms, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 114 Pioneer Courthouse, 555 S.W. Yamhill St., Portland, Oreg. 97204.

No. MC 142196 (Sub-No. 3 TA), filed January 4, 1977. Applicant: THREE-B'S TRANSPORTATION, INC., 230 S. 30th St., Philadelphia, Pa. 19104. Applicant's representative: J. Michael Farrell, 1725 K St., N.E., Suite 814, Washington, D.C. 20006. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Such foods, commodities and equipment* as are used in connection with the operation of hotels, restaurants and others engaged in food operations, from the facilities of Buff-Henley Paper Company, at Baltimore and Columbia, Md.; Wood Ridge, N.J.; and Philadelphia, Pa., to the District of Columbia, under a continuing contract with Buff-Henley Paper Company, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting Shipper: Buff-Henley Paper Company, 230 S. 30th St., Philadelphia, Pa. 19104. Send Protests to: Monica A. Blodgett, Transportation Assistant, Interstate Commerce Commission, Room 3238, Philadelphia, Pa. 19106.

No. MC 142386 (Sub-No. 2 TA), filed December 30, 1976. Applicant: HEDLEY BENNETT TRUCKING LIMITED, 1681 Pension Lane, London, Ontario, Canada. Applicant's representative: Jeremy Kahn, Suite 733 Investment Bldg., Washington, D.C. 20005. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Wet brewers' grain*, in bulk, in sealed, dump vehicles, from ports of entry on the International boundary line between the United States and Canada located on the Detroit and St. Clair Rivers, to points in Genesee and Lapeer Counties, Mich. Restrictions: (1) The transportation authorized herein is restricted to transportation in foreign commerce; (2) The transportation authorized herein is restricted to transportation performed under a continuing contract with Miracle Feeds, a Division of Ogilvie Mills Ltd., Ontario, Canada; and (3) The transportation authorized herein is restricted to traffic originating at the facilities of LaBatt, Breweries Ontario Limited, Toronto, Ontario, Canada, and London, Ontario, Canada, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting Shipper: Miracle Feeds, a Division of The Ogilvie Mills, Ltd., Sales Manager Peter Brewer, 1620 Sun Life Bldg., Montreal, Quebec, Canada. Send Protests To: James A. Augustyn, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 1110 Broderick Tower, 10 Witherell Ave., Detroit, Mich. 48226.

No. MC 142634 (Sub-No. 1TA), filed December 28, 1976. Applicant: FRANK'S PARCEL SERVICE, INC., Foot of Babcock Place at Alexander St., Yonkers, N.Y. 10701. Applicant's representative: Larsh B. Mewhinney, 235 Mamaroneck Ave., White Plains, N.Y. 10605. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Finished pharmaceutical products, raw materials* used in the production thereof, and packaging components therefor, between points in the New York, N.Y. Commercial Zone as defined in 49 CFR 1(b) (1) and (2) on the one hand, and, on the other, Totowa, N.J., under a continuing contract with Bard Pharmaceutical Co., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Bard Pharmaceutical Co., 00-101 Saw Mill River Road, Yonkers, N.Y. 10701. Send protests to: Maria B. Kejss, Transportation Assistant, Interstate Commerce Commission, 26 Federal Plaza, New York, N.Y. 10007.

No. MC 142667 TA, filed December 29, 1976. Applicant: JACK DARWIN, doing business as JACK DARWIN TRUCKING, 7009 Alondra, Paramount, Calif. 90723. Applicant's representative: Jack Darwin (same address as applicant). Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Truck body beds*, uncrated and the return of *empty truck bed racks*, from Long Beach, Calif., to Portland, Oreg., and Houston, Tex., under a continuing contract with Toyota Motor Sales, U.S.A., Inc., for 180 days. Supporting shipper: Toyota Motor Sales, U.S.A., Inc., Robert L. Miller, National Vehicle Traffic Manager, 2055 W. 190th St., Torrance, Calif. 90504. Send protests to: Mary Alice Francy, Transportation Assistant, Interstate Commerce Commission, Room 1321 Federal Bldg., 300 N. Los Angeles St., Los Angeles, Calif. 90012.

No. MC 142683 (Sub-No. 1 TA), filed December 30, 1976. Applicant: K.N.K. TRANSCO, INC., P.O. Box 1433, Spencer, Iowa 51301. Applicant's representative: Arlyn L. Westergren, Suite 530, Univac Bldg., 7100 W. Center Road, Omaha, Nebr. 68106. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats and packinghouses products*, from the facilities of Hygrade Food Products, Inc., at Storm Lake and Cherokee, Iowa, to points in Connecticut, Delaware, Maryland, Massachusetts, New Jersey, New York, Pennsylvania, Rhode Island, and West Virginia, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Donald M. Montgomery, Assistant General Traffic Manager, Hygrade Food Products, P.O. Box 4771, Detroit, Mich. 48219. Send protests to: Carroll Russell, District Supervisor, Interstate Commerce Commission, Suite 620, 110 N. 14th St., Omaha, Nebr. 68102.

No. MC 142725 (Sub-No. 1 TA), filed January 3, 1977. Applicant: NEVADA WESTERN CONCRETE, INC., 2600 Akron Way, Carson City, Nev. 89701. Applicant's representative: Lee Fanter (same address as applicant). Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Natural, crushed, gypsum*, in bulk, in end dump type equipment, from the Minesite of Western States Gypsum Co., and/or at Art Wilson Co., in Lyon County, Nev., on the one hand, to points in California north of Fresno, Calif., to points in Oregon south of Interstate 20; and to points in Idaho south of a line extending from the Oregon border to the Utah border and intersecting Weiser, Idaho, on the west and St. Anthony, Idaho, on the east, on the other, under a continuing contract with Western States Gypsum Co. and/or Art Wilson Company, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: W. J. Heetig, District Supervisor, Interstate Commerce Commission, 203 Federal Bldg., 705 N. Plaza St., Carson City, Nev. 89701.

No. MC 142774 TA, filed December 30, 1976. Applicant: A NU TRANSFER, INC., 2929 N.W. 73rd St., Miami, Fla. 33178. Applicant's representative: Richard B. Austin, 214 Palm Coast II Bldg., 5255 N.W. 87th Ave., Miami, Fla. 33178. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except household goods as defined by the Commission, Classes A and B explosives; cement; motor vehicles, articles of unusual value of which are injurious or contaminating to other ladings; and articles which because of their size or weight require specialized handling and equipment), and trailers or containers, with or without wheels, loaded or empty, between points in the City of Miami and its Commercial Zone, restricted to shipments having a prior or subsequent movement in interstate or foreign commerce by water, under a continuing contract with Econocaribe Consolidators Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Econocaribe Consolidators Inc., 2929 N.W. 73rd St., Miami, Fla. 33147. Send protests to: Joseph B. Teichert, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Monterey Bldg., Suite 101, 8410 N.W. 53rd Terrace, Miami, Fla. 33166.

No. MC 142775 TA, filed January 3, 1977. Applicant: GEORGE W. STANFORD, doing business as STANFORD TRUCKING CO., 14218 N. 1 Highway, Woodbridge, Va. 22191. Applicant's representative: Henry U. Snavely, 410 Pine St., Vienna, Va. 22180. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Sand and stone*, in dump vehicles, from points in Anne Arundel, Montgomery and Prince Georges Counties, Md., and from points in the commercial zones of Fredericksburg, Va.; Marriottsville and Texas, Md.; Friendsville, Tenn.; and Mt. Airy, N.C., to the facilities of Arban & Carosi, Inc., at Woodbridge, Va., and of American Stone, Inc., at Newington, Va., and (2) *Precast architectural concrete*, from the facilities of Arban & Carosi, Inc., at Woodbridge, Va., to points in the District of Columbia, and to points in Maryland and Virginia, under a continuing contract with Arban & Carosi, Inc., of Woodbridge, Va., and American Stone, Inc., of Newington, Va., for 180 days. Supporting shipper: American Stone, Inc., 7901 Cinder Bed Road, Newington, Va. 22122. Arban & Carosi, Inc., 13800 Dawson Beach Road, Woodbridge, Va. 22191. Send protests to: W. C. Hersman, District Supervisor, Interstate Commerce Commission, Room 1413, 12th & Constitution Ave., N.W., Washington, D.C. 20423.

No. MC 142777 TA, filed December 30, 1976. Applicant: ROAD AMERICA FREIGHT SYSTEMS, INC., P.O. Box 3756, Ontario, Calif. 91761. Applicant's representative: Kenneth F. Dudley, P.O. Box 279, 611 Church St., Ottumwa, Iowa 52501. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Pressure sensitive tape, tape, tape products and materials, and materials, equipment and supplies* used in the manufacture of pressure sensitive tape, tape and tape products; (1) from Beacon, N.Y., to Carbondale, Ill.; Phoenix and Tucson, Ariz.; and points in California and Nevada; and (2) from Carbondale, Ill., to Phoenix and Tucson, Ariz., and points in California and Nevada, for 180 days. Supporting shipper: Technical Tape Inc. & Tuck Industries, 248 Tioranda Ave., Beacon, N.Y. 12508. Send protests to: Mary A. Francy, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, Room 1321 Federal Bldg., 300 N. Los Angeles St., Los Angeles, Calif. 90012.

No. MC 142779 TA, filed January 3, 1977. Applicant: WEIER AIR FREIGHT, INC., 5785 Rochelle Drive, Greendale, Wis. 53129. Applicant's representative: Wayne Wilson, P.O. Box 8004, Madison, Wis. 53708. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Materials, equipment, supplies and parts*, used or useful in the manufacture, sale, distribution of production of agricultural, industrial and construction, *machinery and equipment*, and *printed matter*, between Racine and Sturtevant, Wis., on the one hand, and, on the other, General Mitchell Field, Milwaukee, Wis., and O'Hare International Airport, Cook County, Ill., restricted to traffic originating at or destined to the plantsites, warehouses and facilities of J. I. Case, at Racine and Sturtevant, Wis., and further restricted to shipments having a prior or subsequent movement by air, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: J. I. Case, 700 State St., Racine, Wis. 53404. Send protests to: Gail Daugherty, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, U.S. Federal Bldg., & Courthouse, 517 E. Wisconsin Ave., Room 619, Milwaukee, Wis. 53202.

No. MC 142780 TA, filed January 4, 1977. Applicant: MARINE DISTRIBUTORS OF VIRGINIA, INC., 1505 Sherbrook Road, Chesapeake, Va. 23323. Applicant's representative: Blair P. Wakefield, Suite 1001 First and Merchants Bank Bldg., Norfolk, Va. 23510. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Boats*, in straight loads or in mixed loads with their parts, equipment and supplies therefor, from the plantsite of Columbia Yacht. A Division of Whittaker Corporation, in Chesapeake, Va., and the plantsite of Seahorse Plastics Corporation, in Suffolk, Va., to points in Alabama, Arkansas, Connecticut, Florida, Georgia, Illinois, Indiana, Louisiana, Maine, Maryland, Massachusetts, Michigan, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Vermont and Virginia, under a continuing contract with Columbia Yacht, a Division of Whittaker Corporation; and Seahorse Plastics Corporation, for 180 days. Supporting shippers: Columbia Yacht, a Division of Whittaker Corporation, Larry R. Engholm, 2600 Yacht Drive, Chesapeake, Va. 23320. Seahorse Plastics Corporation, Jeremy C. Lotz, President, 4680 Shoulders Hillroad, Suffolk, Va. 23435. Send protests to: Paul D. Collins, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Room 10-502 Federal Bldg., 400 N. 8th St., Richmond, Va. 23240.

By the Commission.

ROBERT L. OSWALD,
Secretary.

[FR Doc.77-1958 Filed 1-19-77;8:45 am]

[Vol. No. 66]

PETITIONS FOR MODIFICATIONS, INTERPRETATION OR REINSTATEMENT OF OPERATING RIGHTS AUTHORITY

JANUARY 14, 1977.

The following petitions seek modification or interpretation of existing operating rights authority, or reinstatement of terminated operating rights authority.

An original and one copy of protests to the granting of the requested authority must be filed with the Commission on or before February 22, 1977. Such protest shall comply with Special Rule 247(d) of the Commission's *General Rules of Practice* (49 CFR 1100.247)[1] and shall include a concise statement of protestant's interest in the proceeding and copies of its conflicting authorities. Verified statements in opposition should not be tendered at this time. A copy of the protest shall be served concurrently upon petitioner's representative, or petitioner if no representative is named.

No. MC 3717 (Notice of Filing of Petition To Modify Commodity Description), filed December 20, 1976. Petitioner: SERVICE WAREHOUSE COMPANY, INC., 112 Poinier St., Newark, N.J. 07114. Petitioner's representative: George A. Olsen, 69 Tonnele Avenue, Jersey City, N.J. 07306. Petitioner holds a motor *common carrier* Certificate in No. MC 3717, issued November 2, 1971, authorizing transportation, as pertinent, over irregular routes, of (1) *frosted foods, and machinery, equipment and supplies* used or useful in the frosting thereof, (a) between Boston, Gloucester and Cambridge, Mass., Jersey City, Newark, and Bridgetown, N.J., Philadelphia, Pa., New York, Waterport, Mt. Morris, Syracuse, and Sayville, N.Y., and Baltimore, Md.; and (b) from Boston, Mass., and Jersey City, N.J., to Albany, N.Y.; and (2) *frozen foods*, between Boston and Gloucester, Mass., on the one hand, and, on the other, Westbury, Long Island, N.Y.

By the instant petition, petitioner seeks to modify the commodity descriptions in the authority above by substituting "refrigerated foods" in lieu of "frosted foods" in (1) above, and in lieu of "frozen foods" in (2) above.

No. MC 106920 (Sub-No. 2), (Notice of Filing a Petition To Modify Petition), filed December 6, 1976. Petitioner: RIGGS FOOD EXPRESS, INC., West Monroe Street, P.O. Box 26, New Bremen, Ohio 45869. Petitioner's representative: E. Stephen Heisley, 666 11th Street, N.W., Suite 805, Washington, D.C. 20001. Petitioner holds a motor *common carrier* certificate in No. MC 106920 (Sub-No. 2), issued October 31, 1950, authorizing transportation, by motor vehicle, over irregular routes, of (1) *Liquid sugar*, in bulk in tank vehicles, from New York, N.Y., to Portland, Ind.; and (2) *sugar* (non-fluid), from Boston, Mass., New York, N.Y., Baltimore, Md., and Philadelphia, Pa., to points in Indiana.

By the instant petition, petitioner seeks to (a) delete the phrase "non-fluid" from the commodity description in (2) above; and (b) to add an additional commodity and territorial to its present authority which would read as follows: *Sugar* (except in bulk), from points in the New York, N.Y., Commercial Zone as defined in *Commercial Zones and Terminal Areas*, 53 M.C.C. 451, within which local operations may be conducted pursuant to the partial exemption of Section 203(b)(9) of the Interstate Commerce Act (the "exempt" zone), and those points in New Jersey within 5 miles of New York, N.Y., and all of any municipality in New Jersey, any part of which is within 5 miles of New York, N.Y. (except New York, N.Y.), to points in Indiana.

No. MC 116702 (Sub-No. 37), (Notice of Filing of Petition To Modify Permit), filed December 15, 1976. Petitioner: THADDEAUS A. GORSKI, doing business as, GORSKI BULK TRANSPORT, Box 700, Harrow, Ontario, Canada. Petitioner's representative: William B. Elmer, 21635 East Nine Mile Road, St. Clair Shores, Mich. 48080. Petitioner holds a motor *contract carrier* permit in No. MC 116702 (Sub-No. 37), issued April 5, 1973, authorizing transportation, by motor vehicle, over irregular routes, as pertinent, of *alcoholic beverages*, in bulk, in tank vehicles, from ports of entry on the International Boundary line between the United States and Canada located at or near Champlain, Rouses Point and Trout River, N.Y., Derby Line and Newport, Vt., and located on the Niagara and St. Lawrence Rivers, to

[1] Copies of Special Rule 247 (as amended) can be obtained by writing to the Secretary, Interstate Commerce Commission, Washington, D.C. 20423.

Hartford, Conn., under a continuing contract, or contracts, with Heublin, Inc.

By the instant petition, petitioner seeks to broaden the above described authority (1) by adding Allen Park, Mich., as a destination point on bulk commodities: and (2) by including St. Clair and Detroit Rivers, Mich. as additional ports of entry.

No. MC 129600 (Sub-No. 13), (Notice of Filing of Petition to Modify Territorial Description), filed December 8, 1976. Petitioner: POLAR TRANSPORT, INC., 176 King Street, P.O. Box 44, Hanover, Mass. 02339. Petitioner's representative: Frank J. Weiner, 15 Court Square, Boston, Mass. 02108. Petitioner holds a motor *contract carrier* permit in No. MC 129600, (Sub-No. 13), issued April 18, 1974, authorizing transportation, as pertinent, over irregular routes, of *Ice cream, ice cream confections, ice water confections, and sherbert*, from Suffield, Conn., to points in Alabama, Delaware, Florida, Georgia, Illinois, Indiana, Maryland, Maine, Massachusetts, Michigan, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Tennessee, Texas, Virginia and the District of Columbia, under a continuing contract, or contracts, with H. P. Hood, Inc., located at Charleston, Mass.

By the instant petition, petitioner seeks to add Portland, Maine as an additional origin point in the above described authority.

No. MC 138225 and (Sub-No. 2), (Notice of Filing of Petition to Modify Permits), filed December 15, 1976. Petitioner: HEDRICK ASSOCIATES, INC., R.R. 2, Box 10A2, Douglas Rd., Far Hills, N.J. 07931. Petitioner's representative: William P. Jackson, Jr., 3426 North Washington Boulevard, P.O. Box 1267, Arlington, Va. 22210. Petitioner holds motor *contract carrier* Permits in No. MC 138225 and (Sub-No. 2), issued July 12, 1974, and October 17, 1974 respectively, authorizing transportation over irregular routes, (1) in MC 138225, of (a) *swimming pools;* (b) *swimming pool parts;* and (c) *materials, supplies, and equipment* used in connection with swimming pools (except commodities in bulk), from Garfield and East Paterson, N.J., to points in the United States (except Alaska and Hawaii), under a continuing contract, or contracts, with Heldor Associates, Inc., of Hamden, Conn.; and (2) in MC 138225 (Sub-No. 2), of *materials, equipment and supplies* (except commodities in bulk, the transportation of which because of size or weight requires the use of special equipment) used in the manufacture or installation of swimming pools, from points in the United States (except Alaska and Hawaii), to the facilities of Heldor Associates, Inc., located at or near Garfield and East Paterson, N.J., restricted to the transportation of traffic destined to the facilities of Heldor Associates, located at or near Garfield and East Paterson, N.J., under a continuing contract, or contracts, with Heldor Associates, Inc., of Hamden, Conn.

By the instant petition, petitioner seeks (I) in MC 138225, to modify the territorial description above by the addition of Trenton, N.J. as an additional origin point; and (II) in MC 138225 (Sub-No. 2), to modify the territorial description above by the addition of the facilities of Heldor Associates, Inc., located at or near Trenton, N.J. as an additional destination point, and to modify the restriction above to correspond, through the addition of the facilities of Heldor Associates, located at or near Trenton, N.J.

No. MC 138412 (notice of filing of petition to add an additional contracting shipper), filed December 2, 1976. Petitioner: MAR-CHELLE, INC., No. 6 Mintert Manor, St. Louis, Mo. 63135. Petitioner's representative: Joseph Flynn, 76 Bellerive Acres, St. Louis, Mo. 63135. Petitioner holds a motor *contract carrier* Permit in No. MC 138412, issued June 18, 1974, authorizing transportation over irregular routes, of (1) *household appliances;* (2) *new furniture* (uncrated); (3) *kitchen equipment;* and (4) *electrical appliances, equipment and parts,* as described respectively in (2), (3), and (4), in Appendices II, IV and VII to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209, between St. Louis, Mo., and points in Bond, Calhoun, Clinton, Greene, Jersey, Macoupin, Madison, Monroe, Montgomery, Randolph, St. Clair, and Washington Counties, Ill., under a continuing contract, or contracts, with the following shippers: Rothman Stores, Inc., of St. Louis, Mo.; M. C. Distributors, of St. Louis, Mo.; Independent Merchants Corp., of St. Louis, Mo. By the instant petition, petitioner seeks to add Ideal Home Furnishings Co., Inc., as an additional contracting shipper to the authority above.

REPUBLICATIONS OF GRANTS OF OPERATING RIGHTS AUTHORITY PRIOR TO CERTIFICATION

The following grants of operating rights authorities are republished by order of the Commission to indicate a broadened grant of authority over that previously noticed in the FEDERAL REGISTER.

An original and one copy of protests to the granting of the authority must be filed with the Commission within 30 days after the date of this FEDERAL REGISTER notice. Such protest shall comply with Special Rule 247(d) of the Commission's General Rules of Practice (49 CFR 1100.247) addressing specifically the issue(s) indicated as the purpose for republication, and including a concise statement of protestant's interest in the proceeding and copies of its conflicting authorities. Verified statements in opposition shall not be tendered at this time. A copy of the protest shall be served concurrently upon the carrier's representative, or carrier if no representative is named.

No. MC 107129 (Sub-No. 9) (republication), filed September 20, 1972, published in the FR issue of December 21, 1972, and republished this issue. Applicant: E. K. Motor Service, Inc., 2005 North Broadway, Joliet, Ill., 60435. Applicant's representative: Tom B. Kretsinger, 450 Professional Building, Kansas City, Mo. 64106. A Decision and Order of the Commission, Division 1, dated December 6, 1976, and served December 9, 1976, authorizes operation by applicant, in interestate or foreign commerce, as a *common carrier* by motor vehicle, over irregular routes, of *roofing and building materials* (except commodities in bulk), and *commodities* used in the manufacture, distribution, and shipping of roofing and building materials (except commodities in bulk), from Joliet, Ill., to points in Iowa, Ohio, and Wisconsin, restricted to the transportation of traffic originating at Joliet, Ill., and destined to the above-named destinations. The purpose of this republication is to indicate applicant's grant of authority as a common carrier rather than as a contract carrier.

No. MC 110563 (Sub-No. 161) (republication), filed September 18, 1975, published in the FR issue of October 9, 1975, and republished this issue. Applicant: COLDWAY FOOD EXPRESS, INC., P.O. Box 747, Sidney, Ohio 45365. Applicant's representative: Joseph M. Scanlan, 111 W. Washington Ave., Chicago, Ill. 60602. An Order of the Commission, Review Board Number 1, dated January 3, 1977, and served January 6, 1977, finds that the present and future public convenience and necessity require operation by applicant, in interstate or foreign commerce, as a *common carrier* by motor vehicle, over irregular routes, in the transportation of *meat, meat products, meat byproducts, and articles distributed by meat-packing houses*, as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except hides and commodities in bulk), from Booker, Tex., to points in Kentucky, Pennsylvania, West Virginia, Virginia, Maryland, Delaware, New Jersey, New York, Connecticut, Rhode Island, Massachusetts, New Hampshire, Vermont, Maine, and the District of Columbia, restricted to the transportation of shipments originating at the named origin; that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder. The purpose of this republication is to indicate the addition of Virginia as a destination state in applicant's grant of authority.

No. MC 111729, (Sub-No. 560) (Republication), filed July 8, 1975, published in the FR issue of August 7, 1975, and republished this issue. Applicant: PUROLATOR COURIER CORP., 2 Nevada Drive, Lake Success, N.Y. 11040. Applicant's representative: Russell S. Bernhard, 1625 K Street, N.W., Washington, D.C. 20006. An order of the Commission, Review Board Number 3, dated December 6, 1976, and served January 10, 1977, finds that the present and future public convenience and necessity require operation by applicant, in interstate or foreign commerce, as a *common carrier* by motor vehicle, over irregular routes, in the transportation of (1) *household cleaning compounds and brushes*, from Seattle, Wash., to points in Washington and points in Benton, Clackamas, Clatsop, Columbia, Douglas, Lane, Lincoln, Linn, Marion, Multnomah, Tillamook, Washington, and Yamhill Counties, Oreg., restricted to the transportation of shipments having an immediately prior movement by air, rail, or motor vehicle, and to shipments moving from or to the facilities of The Fuller Brush Company; and (2) *toiletries and cosmetics*, from Seattle, Wash., and Portland, Oreg., to points in Washington and points in Benton, Clackamas, Clatsop, Columbia, Douglas, Lane, Lincoln, Linn, Marion, Multnomah, Tillamook, Washington, and Yamhill Counties, Oreg., restricted to the transportation of shipments having an immediately prior movement by motor vehicle and to shipments moving from or to the facilities of Avon Products, Inc., restricted further in (1) and (2) above as follows: (a) restricted against providing service from or to the premises of banks and banking institutions; (2) restricted against providing service from or to the premises of persons, other than agencies of the United States Government, who or which have entered into contracts with applicant or its affiliates and are served by them pursuant to permits issued by the Commission; and (3) restricted against the transportation of shipments weighing in excess of 150 pounds; that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder. The purpose of this republication is to (I) indicate the addition of *household cleaning compounds and brushes* to applicant's grant of authority; and (II) indicate the modification of the territorial description in applicant's grant of authority.

No. MC 127647 (Sub-No. 3) (republication), filed March 1, 1976, published in the FR issue of April 1, 1976, and republished this issue. Applicant: RALPH H. LARSEN, 195 Roundtoft Drive, Salt Lake City, Utah 84123. Applicant's representative: Harry D. Pugsley, Suite 400, 315 East 2nd Street, Salt Lake City, Utah 84111. An order of the Commission, Review Board Number 3, dated December 13, 1976, and served January 10, 1977, finds that the present and future public convenience and necessity require operation by applicant in interstate or foreign commerce, as a *common carrier* by motor vehicle over irregular routes, in the transportation of (1) (a) *bananas* and (b) *fresh fruits and vegetables*, which are otherwise exempt under section 203(b)(6) of the Interstate Commerce Act, in mixed loads with bananas, from Long Beach, Calif., to Salinas and Indio, Calif.; (2) *bananas* in mixed loads with the commodities described in (3); and (3) *fresh fruits and vegetables*, which are otherwise exempt from economic regulation under section 203(b)(6) of the Interstate Commerce Act, in mixed loads with bananas, from Salinas and Indio, Calif., to points in Montana; that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder. The purpose of this republication is to indicate the modification of the commodity and territorial description in applicant's grant of authority.

No. MC 133119 (Sub-No. 89) (Republication) filed February 9, 1976, published in the FR issue of March 18, 1976, and republished this issue. Applicant: HEYL TRUCK LINES, INC., 200 Norka Drive, Akron, Iowa 51001. Applicant's representative: A. J. Swanson, 521 South 14th St., P.O. Box 81849, Lincoln, Nebr. 68501. An order of the Commission, Review Board Number 2, dated December 9, 1976, and served January 10, 1977, finds that the present and future public convenience and necessity require operation by applicant, in interstate or foreign commerce, as a *common carrier* by motor vehicle, over irregular routes, in the transportation of *frozen foods*, from Minneapolis, Minn., to points in Alabama, Arkansas, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, and points in Missouri on and east of U.S. Highway 67, restricted to the transportation of traffic originating at the facilities of The Pillsbury Company, located at Minneapolis, Minn.; that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder. The purpose of this republication is to indicate the substitution of *frozen foods* in lieu of *frozen pizza* in applicant's grant of authority.

MOTOR CARRIER, BROKER, WATER CARRIER AND FREIGHT FORWARDER OPERATING RIGHTS APPLICATIONS

The following applications are governed by Special Rule 247 of the Commission's General Rules of Practice (49 CFR § 1100.247). These rules provide, among other things, that a protest to the granting of an application must be filed with the Commission within 30 days after the date of notice of filing of the application is published in the FEDERAL REGISTER. Failure to seasonably file a protest will be construed as a waiver of opposition and participation in the proceeding. A protest under these rules should comply with section 247(d)(3) of the rules of practice which requires that it set forth specifically the grounds upon which it is made, contain a detailed statement of protestant's interest in the proceeding (including a copy of the specific portions of its authority which protestant believes to be in conflict with that sought in the application, and describing in detail the method—whether by joinder, interline, or other means—by which protestant would use such authority to provide all or part of the service proposed), and shall specify with particularity the facts, matters, and things relied upon, but shall not include issues or allegations phrased generally. Protests not in reasonable compliance with the requirements of the rules may be rejected. The original and one copy of the protest shall be filed with the Commission, and a copy shall be served concurrently upon applicant's representative, or applicant if no representative is named. If the protest includes a request for oral hearing, such requests shall meet the requirements of section 247(d)(4) of the special rules, and shall include the certification required therein.

Section 247(f) further provides, in part, that an applicant who does not intend timely to prosecute its application shall promptly request dismissal thereof, and that failure to prosecute an application under procedures ordered by the Commission will result in dismissal of the application.

Further processing steps will be by Commission order which will be served on each party of record. Broadening amendments will not be accepted after the date of this publication except for good cause shown, and restrictive amendments will not be entertained following publication in the FEDERAL REGISTER of a notice that the proceeding has been assigned for oral hearing.

Each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

No. MC 720 (Sub-No. 23), filed December 13, 1976. Applicant: BIRD TRUCKING COMPANY, INC., P.O. Box 227, Waupun, Wis. 53963. Applicant's representative: Michael J. Wyngaard, 329 West Wilson Street, P.O. Box 8004, Madison, Wis. 53708. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Frozen foodstuffs* (except commodities in bulk, in tank vehicles); and (2) *frozen meats and meat by-products*, unfit for human consumption (except commodities in bulk, in tank vehicles), from the facilities of Wiscold, Inc., located at or near Beaver Dam and Milwaukee, Wis., to Alabama, Connecticut, Delaware, Florida, Georgia, Kentucky, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Rhode Island, South Carolina, Tennesee, Vermont, Virginia, West Virginia, and the District of Columbia.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at Milwaukee, or Madison, Wis.

No. MC 2900 (Sub-No. 296), filed December 20, 1976. Applicant: RYDER TRUCK LINES, INC., 2050 Kings Road, Jacksonville, Fla. 32209. Applicant's representative: S. E. Somers, Jr. (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk and those requiring special equipment). Serving points in West Virginia and those points in that part of Kentucky on and

east of Interstate Highway 75 including Lexington, Ky., as off-route points in connection with applicant presently authorized regular route operations.

NOTE.—Common control may be involved. If a hearing is deemed necessary, the applicant requests it be held at either Pittsburgh, Pa., Charleston, W. Va., or Cincinnati, Ohio.

No. MC 4405 (Sub-No. 542), filed December 10, 1976. Applicant: DEALERS TRANSIT, INC., 522 South Boston Avenue, Enterprise Bldg., Tulsa, Okla. 74103. Applicant's representative: Michael E. Miller, 502 First National Bank Bldg., Fargo, N. Dak. 58102. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Tanks and heat exchangers*, and *materials, parts, and equipment used in* the installation of the above-named commodities, from St. Louis, Mo., to points in the United States (except Alaska and Hawaii).

NOTE.—Common control may be involved. If a hearing is deemed necessary, the apppllcant requests it be held at Chicago, Ill.

No. MC 5623 (Sub-No. 29), filed December 14, 1976. Applicant: ARROW TRUCKINS CO., a Corporation, P.O. Box 7280, Tulsa, Okla. 74105. Applicant's representative: J. G. Dail, Jr., P.O. Box 567, McLean, Va. 22101. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Machinery, equipment, materials, and supplies* used in, or in connection with, the discovery, development, production, refining, manufacture, processing, storage, transmission, and distribution of natural gas and petroleum and their products and by-products, and *machinery, materials, equipment, and supplies* used in, or in connection with, the construction, operation, repair, servicing, maintenance, and dismantling of pipelines, including the stringing and picking up thereof; and (2) *earth drilling machinery and equipment*, and *machinery, equipment, materials, supplies, and pipe* incidental to, used in, or in connection with (a) the transportation, installation, removal, operation, repair, servicing, maintenance, and dismantling of drilling machinery and equipment, (b) the completion of holes or wells drilled, (c) the production, storage, and transmission of commodities resulting from drilling operations at well or hole sites, and (d) the injection or removal of commodities into or from holes or wells, (A) between points in Connecticut, Delaware, Florida, Georgia, Indiana, Kentucky, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Virginia, Vermont, West Virginia, and the District of Columbia; and (B) between points named in (A) above, on the one hand, and, on the other, points in Arkansas, Colorado, Illinois, Kansas, Louisiana, Mississippi, Missouri, Montana, Nebraska, New Mexico, Oklahoma, Texas, Utah and Wyoming.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at either Tulsa, Okla.; Houston, Tex.; or Washington, D.C.

No. MC 8964 (Sub-No. 32), filed December 17, 1976. Applicant: WITTE TRANSPORTATION COMPANY, a Corporation, 2481 Cleveland Avenue North, St. Paul, Minn. 55113. Applicant's representative: William S. Rosen, 630 Osborn Building, St. Paul, Minn. 55102. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, household goods as defined by the Commission, commodities in bulk and those requiring special equipment), Between Kansas City, Mo. and Spring Valley, Minn., serving the intermediate and offroute points of Albert Lea, Austin, Plymouth, Eden Prairie, Brooklyn Park and North Oaks, Minn.; (a) From Kansas City over Interstate Highway 35 to Albert Lea, Minn., thence over Interstate Highway 90 to Austin, Minn., thence over Interstate Highway 90 to junction U.S. Highway 16, thence over U.S. Highway 16 to Spring Valley, and return over the same route; (b) From Kansas City over U.S. Highway 69 to Albert Lea, Minn., thence over U.S. Highway 16 to Austin, Minn., thence over U.S. Highway 16 to Spring Valley, and return over the same route; and (c) From Kansas City over Interstate Highway 35 (also over U.S. Highway 69) to Des Moines, Iowa thence over Interstate Highway 80 (also over U.S. Highway 6) to junction U.S. Highway 63, thence over U.S. Highway 63 to Spring Valley, and return over the same route.

NOTE.—Common control may be involved. If a hearing is deemed necessary, the applicant requests it be held at St. Paul, Minn. and Kansas City, Mo.

No. MC 16872 (Sub-No. 16), filed December 9, 1976. Applicant: WILLIAM MIRRER, doing business as MIRRER'S TRUCKING CO., 38 Alan Avenue, Glen Rock, N.J. 07452. Applicant's representative: George A. Olsen, 69 Tonnele Avenue, Jersey City, N.J. 07306. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Plastic granules* (except in bulk), (1) from the facilities of Rexene Polyolefins Company, a Division of Dart Industries, Inc., Chemical Group located at Holyoke, Ludlow and Springfield, Mass., to Chicago and Joliet, Ill., New York and Syosset, N.Y., and Paterson, N.J.; and (2) from the facilities of Rexene Polyolefins Company, a Division of Dart Industries, Inc., Chemical Group located at Chicago and Joliet, Ill., to Elizabeth, Paterson and Plainfield, N.J. and New York, N.Y., restricted to shipments having an origin at the above named points and destined to above named points.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at either New York, N.Y. or Washington, D.C.

No. MC 19157 (Sub-No. 22), filed December 17, 1976. Applicant: McCORMACK'S HIGHWAY TRANSPORTATION, INC., Route 3, Box 4 Campbell Road, Schenectady, N.Y. 12306. Applicant's representative: Clem Tomlins (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Electrical appliances equipment and parts, and materials* used in the manufacture thereof (except commodities in bulk and those requiring special equipment), between Plantersville, Miss., and Cedar Bluff, Ky., on the one hand, and, on the other, points in Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Kentucky, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia, Wisconsin, and the District of Columbia.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at either Schenectady, N.Y. or Atlanta, Ga.

No. MC 19778 (Sub-No. 92), filed December 6, 1976. Applicant: THE MILWAUKEE MOTOR TRANSPORTATION COMPANY, a Corporation, 516 W. Jackson Blvd., Suite 508, Chicago, Ill. 60606. Applicant's representative: Robert F. Munsell (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Trailers*, in truckaway service, between the plant site of Great Dane Trailers—Indiana, Inc., at or near Brazil, Ind., and points in Illinois, Iowa, Minnesota, Nebraska, Ohio, and Wisconsin.

NOTE.—Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill.

No. MC 20783 (Sub-No. 110) filed December 17, 1976. Applicant: TOMPKINS MOTOR LINES, INC., P.O. Box 1830, Highway 77 North, Gadsden, Ala. 35902. Applicant's representative: Larry Smith (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meat, meat products, meat by-products and articles distributed by meat packing houses* as described in Section A of Appendix I to the report in *Description in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except hides and commodities in bulk), from the plantsite and/or storage facilities of Stark Wetzel Food located at Indianapolis, Ind., to points in Alabama, Georgia, Kentucky, North Carolina, South Carolina and Tennessee (except Memphis).

NOTE.—Common control may be involved. If a hearing is deemed necessary, the applicant requests it be held at either Waterloo, Iowa or Washington, D.C.

No. MC 22229 (Sub-No. 111), filed December 13, 1976. Applicant: TERMINAL TRANSPORT COMPANY, INC., 248 Chester Avenue, S.E., Atlanta, Ga. 30316. Applicant's representative: Harold H. Clokey, 1740 The Equitable Building, Atlanta, Ga. 30303. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment): Serving the plantsite and warehouse facilities of Rheem Manufacturing Company, located at or near Milledgeville, Ga., as an off-route point in connection with carriers authorized regular-route operation between Atlanta, and Savannah, Ga., and between Baldwin, Fla. and Atlanta, Ga.

NOTE.—Common control may be involved. If a hearing is deemed necessary, the applicant requests it be held at Atlanta, Ga., or Washington, D.C.

No. MC 33641 (Sub-No. 128), filed December 20, 1976. Applicant: IML FREIGHT, INC., 2175 South 3270 West, P.O. Box 2277, Salt Lake City, Utah 84110. Applicant's representative: William S. Richards, 1515 Walker Bank Bldg., P.O. Box 2465, Salt Lake City, Utah 84110. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk and those requiring special equipment), (1) Between Weiser, Idaho and Spokane, Wash., (a) From Weiser over U.S. Highway 95 to junction U.S. Highway 195 near Lewiston, Idaho, thence over U.S. Highway 195 to Spokane, and return over the same route, serving the intermediate point of Lewiston, Idaho, and the off-route points of Spokane County, Wash.; and (b) From Weiser over U.S. Highway 95 to junction Idaho Highway 58 near Worley, Idaho, thence over Idaho Highway 58 to the Idaho-Washington boundary line, thence continuing on unnumbered Washington Highway to junction Washington Highway 27, thence over Washington Highway 27 to junction Interstate Highway 90, thence over Interstate Highway 90 to Spokane, and return over the same route, serving the intermediate points of Moscow, Desmet, Tensed, Plummer, Worley, Idaho; Opportunity, Washington; and the off-route points of Potlatch, Harrison, St. Maries, St. Joe, Santa, Clarkia, Bovill, Fernwood, Calder, Avery and Emida, Idaho; (2) Between Ketchum, Idaho, and Wells, Nev.: From Ketchum over U.S. Highway 93 to Wells, and return over the same route, serving all intermediate points, and the off-route point of Sun Valley, Idaho; (3) Between Pocatello, Idaho and West Yellowstone, Mont.; From Pocatello over U.S. Highway 91 to Idaho Falls, Idaho, thence over U.S. Highway 191 to West Yellowstone, and return over the same route, serving all intermediate points.

NOTE.—Common control may be involved. If a hearing is deemed necessary, the applicant requests it be held at Salt Lake City, Utah and Spokane, Wash.

No. MC 42011 (Sub-No. 29) filed November 30, 1976. Applicant: D. Q. WISE & CO., INC., P.O. Box 15125, Tulsa, Okla. 74115. Applicant's representative: J. G. Dail, Jr., P.O. Box 567, McLean, Va. 22101. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Castings, empty shipping containers, scrap metal, variable speed drives, electrical cable, switch boards, transformers, motors, pumps, motor and pump parts and accessories;* and (2) *equipment, materials, and supplies*, used in, or in connection with, the transportation, installation, operation, removal, repair, manufacture, and maintenance of the commodities described in (1) above, between the facilities of Byron Jackson Pump Division and Centrilift Division, Borg-Warner Corporation located at or near Ardmore, Healdton, and Tulsa County, Okla., Casper and Cody, Wyo., Glendive, Mont., Huntington Beach and Los Angeles, Calif., Rangely, Colo., and Conroe, Midland, Plainview and Tyler, Tex., on the one hand, and, on the other, points in the United States, including Alaska, but excluding Hawaii, restricted against the transportation of (a) variable speed drives, electrical cable, switch boards, motors, pumps, pump parts and accessories, and (b) equipment, material, and supplies used in connection with the transportation, installation, operation, removal, repair, manufacture, and maintenance of the commodities described in (a) above, between the facilities of Byron Jackson Pump Division, Borg-Warner Corporation located at Healdton and Tulsa, Okla., Midland, Tex., Great Bend, Kans., and Rangley, Colo., on the one hand, and, on the other, points in Colorado Illinois, Kansas, Louisiana, Mississippi, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Utah, and Wyoming.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at Washington, D.C.

No. MC 49368 (Sub-No. 100), filed December 17, 1976. Applicant: COMPLETE AUTO TRANSIT, INC., E. 4111 Andover Road, Bloomfield Hills, Mich. 48013. Applicant's representative: Eugene C. Ewald, 100 West Long Lake Road, Suite 102, Bloomfield Hills, Mich. 48013. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Motor vehicles*, in initial movements, in truckaway service, (1) from the plantsites of General Motors Corporation located at Atlanta and Doraville, Ga., to points in Iowa and Kansas; and (2) from the plantsite of General Motors Corporation located at St. Louis, Mo., to points in Florida, Georgia, North Carolina and South Carolina, under a continuing contract or contracts with General Motors Corporation.

NOTE.—Common control may be involved. If a hearing is deemed necessary, the applicant requests it be held at Washington, D.C.

No. MC 54847 (Sub-No. 12), filed December 9, 1976. Applicant: INTRA-COASTAL TRUCK LINE, INC., P.O. Box 354, 1200 Peters Road, Harvey, La. 70058. Applicant's representative: Daniel Lund, 806 First National Bank of Commerce Bldg., New Orleans, La. 70112. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Machinery equipment, materials and supplies* used in or in connection with, the discovery, development, production, refining, manufacture, processing, storage, transmission, and distribution of natural gas and petroleum and their products and by-products; and (2) *machinery, materials, equipment and supplies* used in or in connection with, the construction, operation, repair, servicing, maintenance and dismantling of pipe lines, including the stringing and picking up thereof (except the picking up or stringing of pipe in connection with main pipe lines), between points in Alabama, Florida, Louisiana, Mississippi and Texas, on the one hand, and, on the other, points in Connecticut, Delaware, Kentucky, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Virginia and West Virginia.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at either New Orleans, La. or Houston, Tex.

No. MC 58923 (Sub-No. 45), filed December 10, 1976. Applicant: GEORGIA HIGHWAY EXPRESS, INC., 2090 Jonesboro Road, S.E., P.O. Box 6944, Atlanta, Ga. 30315. Applicant's representative: Bates Block, 33rd Floor, First National Bank Tower, Atlanta, Ga. 30303. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and commodities requiring special equipment), (1) between Rossville, Ga., and the junction of the Tennessee-Kentucky State line near Westmoreland, Tenn., serving all intermediate points: From Rossville over U.S. Highway 27 to junction U.S. Highway 41, thence over U.S. Highway 41 to junction of U.S. Highway 231, thence over U.S. Highway 231 to Westmoreland, and return over the same route; (2) between Murfreesboro, Tenn., and the junction of the Tennessee-Kentucky state line near Clarksville, Tenn., serving all intermediate points: From Murfreesboro over U.S. Highway 41 to Nashville, thence over Alternate U.S. Highway 41 to Kentucky-Tennessee state line at or near Clarksville, Tenn. and return over the same route; (3) between Lebanon, Tenn. and Memphis, Tenn., serving all intermediate points: From Lebanon over U.S. Highway 70 to Memphis and return over the same route; (4) between Jackson, Tenn. and junction U.S. Highway 72 and U.S. Highway 41 near Kimball, Tenn., serving all intermediate points: From Jackson over U.S. Highway 45 to junction U.S. Highway 72, thence over U.S. Highway 72, also 72A to Huntsville, Ala., thence over U.S. Highway 72 to junction U.S. Highway 72 and U.S. Highway 41, near Kimball, Tenn., and return over the same routes; (5) between the junction of the Tennessee-Kentucky state line near Mitchell, Tenn. and Mobile, Ala., serving all intermediate points.

From Mitchell over U.S. Highway 31W to U.S. Highway 31, thence over U.S. Highway 31 to Mobile and return over the same route; (6) between the junction of the Tennessee-Kentucky state line near Jellico, Tenn. and Mobile, Ala.,

serving all intermediate points: From Jellico over U.S. Highway 25W, also Interstate Highway 75 to junction U.S. Highway 70 and Tennessee Highway 61, thence over U.S. Highway 70 to junction of U.S. Highway 27, and from junction U.S. Highway 70 to Tennessee Highway 61 over Tennessee Highway 61 to junction U.S. Highway 27, thence over U.S. Highway 27 to junction U.S. Highway 11, thence over U.S. Highway 11 to junction U.S. Highway 43, thence over U.S. Highway 43 to Mobile and return over these same routes; (7) between Murfreesboro, Tenn., and Mobile, Ala., serving all intermediate points: From Murfreesboro over U.S. Highway 231 to junction U.S. Highway 431, thence over U.S. Highway 431 to junction U.S. Highway 231 and U.S. Highway 84, thence over U.S. Highway 84 to junction U.S. Highway 29, thence over U.S. Highway 29 to junction U.S. Highway 90, thence over U.S. Highway 90 to Mobile, also, from the junction of U.S. Highway 84 and U.S. Highway 231 over U.S. Highway 231 to junction U.S. Highway 90, thence over U.S. Highway 90 to Mobile and return over the same routes; (8) between Memphis, Tenn. and Savannah, Ga., serving all intermediate points.

From Memphis over U.S. Highway 78 to junction U.S. Highway 278, thence over U.S. Highway 78, also U.S. Highway 278 to junction U.S. Highway 25, thence over U.S. Highway 25 to junction U.S. Highway 80, thence over U.S. Highway 80 to Savannah, Ga., also over U.S. Highway 78 to junction U.S. Highway 301, thence over U.S. Highway 301 to junction U.S. Highway 321, thence over U.S. Highway 321 to junction U.S. Highway 17, also over U.S. Highway 278 to junction U.S. Highway 17, thence over U.S. Highway 17 to Savannah, Ga., and return over the same routes; (9) between the junction of the Tennessee-Kentucky state line near South Fulton, Tenn. and Pensacola, Fla., serving all intermediate points: From South Fulton over U.S. Highway 45 (U.S. Highway 45E, also U.S. Highway 45W) to junction U.S. Highway 82, thence over U.S. Highway 82 to junction U.S. Highway 319 and U.S. Highway 41, thence over U.S. Highway 319 to junction U.S. Highway 90, also over U.S. Highway 41 to junction Georgia Highway 31, thence over Georgia Highway 31 to junction Florida Highway 145, thence over Florida Highway 145 to junction U.S. Highway 90, thence over U.S. Highway 90 to junction U.S. Highway 231, thence over U.S. Highway 231 to junction U.S. Highway 98, thence over U.S. Highway 98 to Pensacola, Fla., and return over the same routes; (10) between Memphis, Tenn., and Anderson, S.C., serving all intermediate points: From Memphis over U.S. Highway 64, also U.S. Highway 72 to junction U.S. Highway 431, thence over U.S. Highway 431 to junction U.S. Highway 411, thence over U.S. Highway 411 to junction U.S. Highway 41, thence over U.S. Highway 41 to junction U.S. Highway 29 and Interstate Highway 85, thence over Interstate Highway 85 to junction U.S. Highway 76, thence over U.S. Highway 76 to Anderson, also over U.S. Highway 29 to Anderson, and return over the same routes; (11) between Dalton, Ga., and Knoxville, Tenn., serving all intermediate points: From Dalton over U.S. Highway 76 to junction of U.S. Highway 411, thence over U.S. Highway 411 to junction U.S. Highway 129 and Tennessee Highway 73, thence over U.S. Highway 129 to Knoxville, Tenn.; also over Tennessee Highway 33 to Knoxville and return over the same routes.

(12) Between Royston, Ga., and Washington, Ga., serving all intermediate points: From Royston over Georgia State Highway 17 to Washington, and return over the same route; (13) between Anderson, S.C., and Augusta, Ga., serving all intermediate points: From Anderson over South Carolina State Highway 28 to South Carolina-Georgia State line, thence over Georgia State Highway 82 to Augusta or over U.S. Highway 178 to junction U.S. Highway 25, thence over U.S. Highway 25 to Augusta and return over the same route; (14) serving all points in Florida not intermediate on the above routes located in and west of Madison, Hamilton and Taylor Counties as off-route points; (15) serving all points in Tennessee not intermediate on the above routes on and west of a line running along U.S. Highway 411 from the Georgia-Tennessee state line, northeast to the junction of Tennessee Highway 33, thence along Tennessee Highway 33 to junction U.S. Highway 441, thence along U.S. Highway 441 to junction U.S. Highway 25W, thence along U.S. Highway 25W to the Kentucky-Tennessee state line as off-route points; (16) serving all points in Alabama not intermediate on the above routes as off-route points; (17) between points in the commercial zone of Birmingham, Ala.; (18) between points in the commercial zone of Memphis, Tenn.; (19) between points in the commercial zone of Mobile, Ala.; (20) between points in the commercial zone of Nashville, Tenn.

NOTE.—Common control may be involved. If a hearing is deemed necessary, the applicant requests it be held at Atlanta, Ga.; Memphis or Nashville, Tenn.; or Washington, D.C.

No. MC 59457 (Sub-No. 35), filed December 8, 1976. Applicant: SORENSEN TRANSPORTATION COMPANY, INC., Old Amity Road, Bethany, Conn. 06525. Applicant's representative: Thomas W. Murrett, 342 North Main Street, West Hartford, Conn. 06525. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Materials and supplies* used in the manufacture and preparation of dated, printed publications and parts thereof, (1) between the District of Columbia, on the one hand, and, on the other Albany, Hauppauge, and Carle Place, N.Y., and points in Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont; and (2) between Buffalo, N.Y., on the one hand, and, on the other points in Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at Hartford, Conn.

No. MC 59583 (Sub-No. 157), filed December 7, 1976. Applicant: THE MASON AND DIXON LINES, INC., P.O. Box 969, Kingsport, Tenn. 37662. Applicant's representative: Ronald R. Tiller, P.O. Box 343, Kingsport, Tenn. 37662. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Tractors*, excavating, grading, loading or road making and *attachments and/or parts* thereof, from the plant sites of Clark Equipment Company located at Skyland, N.C., to points in Alabama, Connecticut, Delaware, Georgia, Illinois, Indiana, Kentucky, Maryland, Massachusetts, Mississippi, North Carolina, New Jersey, New York, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, West Virginia and the District of Columbia; and (2) *materials, equipment and supplies* used in the manufacture and sale of the commodities above, from the destination states named above, to the plant site of Clark Equipment Company located at Skyland, N.C.

NOTE.—Common control may be involved. If a hearing is deemed necessary, the applicant requests it be held at either Washington, D.C. or Detroit, Mich.

No. MC 64932 (Sub-No. 569), filed December 14, 1976. Applicant: ROGERS CARTAGE COMPANY, a corporation, 10735 South Cicero Avenue, Oak Lawn, Ill. 60453. Applicant's representative: Carl L. Steiner, 39 South La Salle Street, Chicago, Ill. 60603. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Alcohol*, in bulk, in tank vehicles, from the plant site and storage facilities of Archer Daniels Midland Company located at Decatur, Ill., to points in the United States (except Alaska and Hawaii).

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at Hartford, Conn.

No. MC 66746 (Sub-No. 19), filed November 22, 1976. Applicant: JOHN L. KERR AND G. O. KERR, JR., a partnership, doing business as SHIPPERS EXPRESS, 1651 Kerr Drive, Jackson, Miss. 39204. Applicant's representative: Harold D. Miller, Jr., P.O. Box 22567, 1700 Deposit Guaranty Plaza, Jackson, Miss. 39205. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), (1) Between Jackson and Walnut, Miss.: From Jackson over U.S. Highway 51 (also portion of Interstate Highway 55) to Canton, Miss., thence over Mississippi Highway 16 to Carthage, thence over Mississippi Highway 35 to Kosciusko, thence over Mississippi Highway 12 to Ackerman, thence over Mississippi Highway 15 to Walnut, Miss., and return over the same route; (2) Between Ackerman and Newton, Miss.: From Ackerman over Mississippi Highway 15 to Newton and return over the same route; (3) Between Corinth and the junction of U.S. Highway 45 and Interstate Highway 20 at or near Meridian: From Corinth over U.S. Highway 45 to the junction of U.S. Highway 45 and Interstate Highway 20 at or near Meridian and return over the same route.

(4) Between the junction of U.S. Highway 45 and U.S. Alternate 45 at or near Shannon and the junction of U.S. Highway 45 and U.S. Alternate 45 at or near Brooksville, Miss.: From the junction of U.S. Highway 45 and U.S. Alternate 45 at or near Brooksville, Miss., and return 45 to its junction with U.S. Highway 45 at or near Brooksville, Miss., and return over the same route; (5) Between Tupelo and the Mississippi-Tennessee State Line: From Tupelo over U.S. Highway 78 to the Mississippi State Line and return over the same route; (6) Between Jackson and the Mississippi-Tennessee State Line: From Jackson over U.S. Highway 51 and/or Interstate Highway 55 to the Mississippi-Tennessee State Line and return over the same route; (7) Between Senatobia and the junction of Mississippi Highway 25 and Mississippi Highway 30: From Senatobia over Mississippi Highway 4 to Booneville, thence over Mississippi Highway 30 to the junction of Mississippi Highway 25 and Mississippi Highway 30 at or near Tishomingo, Miss., and return over the same route; (8) Between Batesville and Tremont, Miss.: From Batesville over Mississippi Highway 6 to Tupelo, thence over U.S. Highway 78 to Tremont, Miss., and return over the same route. (9) Between Grenada and Gattman, Miss.: From Grenada over Mississippi Highway 8 to its junction with U.S. Highway 278, thence over U.S. Highway 278 to Gattman, Miss., and return over the same route; (10) Between Winona and the Mississippi-Alabama State Line: From Winona over U.S. Highway 82 to the Mississippi-Alabama State Line and return over the same route; (11) Between Durant and the Mississippi-Alabama State Line: From Durant over Mississippi Highway 12 to Kosciusko, thence over Mississippi Highway 19 to its junction with Mississippi Highway 14, thence over Mississippi Highway 14 to the Mississippi-Alabama State Line and return over the same route.

(12) Between Canton and the Mississippi-Alabama State Line: From Canton over Mississippi Highway 16 to the Mississippi-Alabama State Line and return over the same route; and (13) Between Jackson and the Mississippi-Alabama State Line: From Jackson over U.S. Highway 80 and Interstate Highway 20 to the Mississippi-Alabama State Line and return over the same route. Serving all intermediate points in (1) thru (13) above, and all other points in Mississippi on and east of Interstate Highway 55 and/or U.S. Highway 51 and on and north of Interstate Highway 20 and/or U.S. Highway 80 as off-route points. Service is restricted to those portions of the commercial zones, as defined by the Commission, physically located in the State of Mississippi.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at Tupelo, Miss. and New Orleans, La.

No. MC 81908 (Sub-No. 8), filed December 6, 1976. Applicant: GARNER TRUCKING, INC., Route No. 4, Findlay, Ohio 45840. Applicant's representative: Michael M. Briley, 300 Madison Avenue, Toledo, Ohio 43603. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *House trailers and preassembled house trailer sections* on their own under-carriage, in tow-away service and initial movements, from Bowling Green and Greewich, Ohio and the plantsite and facilities of Mobile Home Estates, Inc., located at or near Bryan, Ohio to points in Illinois, Indiana, Kentucky, Michigan, Missouri, Pennsylvania, Virginia and West Virginia.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at either Toledo, Ohio or Washington, D.C.

No. MC 82063 (Sub-No. 72), filed December 9, 1976. Applicant: KLIPSCH HAULING CO., a Corporation, 10795 Watson Road, St. Louis, Mo. 63127. Applicant's representative: W. E. Klipsch (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Liquid chemicals*, in bulk, in tank vehicles, from point in Pulaski County, Ark., to points in the United States (except Alaska and Hawaii); and (2) *liquid chemicals, and materials and supplies*, used in the manufacture, processing and sale of liquid chemicals, in bulk, in tank vehicles, from points in the United States (except Alaska and Hawaii), to points in Pulaski County, Ark.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at Little Rock, Ark.

No. MC 83539 (Sub-No. 449), filed December 15, 1976. Applicant: C & H TRANSPORTATION CO., INC., 1936-2010 West Commerce Street, P.O. Box 5976 Dallas, Tex. 75222. Applicant's representative: Thomas E. James (same address as applicant). Authority sought to operate as a *common carrier* by motor vehicle, over irregular routes, transporting: *Aluminum, aluminum products, and supplies, materials and equipment*, used in the manufacture of aluminum and aluminum products (except in bulk), between the plantsites of Alumax, Inc. located at Decatur, Ala.; Casa Grande, Ariz.; Long Beach, Riverside, Visalia, Perris Valley and Woodland, Calif.; Loveland, Colo.; Ocala and Plant City, Fla.; Peachtree City and Jonesboro, Ga.; Twin Falls, Idaho; Chicago and Morris, Ill.; Lebanon, Bristol and Franklin, Ind.; McPherson, Kans.; Frederick, Md.; Montevideo, Minn.; St. Louis, Mo.; Hernando, Miss.; Reidsville, N.C.; Cleveland, Ohio; Tulsa and Checotah, Okla.; Stayton, Oreg.; Bloomsburg, Pa.; Mansfield, Tex.; Harrisonburg, Va.; Spokane and Ferndale, Wash.; and Marshfield, Wis., on the one hand, and, on the other, points in the United States (except Alaska and Hawaii).

NOTE.—Common control may be involved. If a hearing is deemed necessary, the applicant requests it be held in Washington, D.C.

No. MC 94350 (Sub-No. 373), filed December 15, 1976. Applicant: TRANSIT HOMES, INC., P.O. Box 1628, Greenville, S.C. 29602. Applicant's representative: Mitchell King, Jr. (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Double-wide mobile homes*, from points in Rockingham County, N.C., to points in Kentucky, Maryland, South Carolina, Tennessee, Virginia, and West Virginia.

NOTE.—Common control may be involved. If a hearing is deemed necessary, the applicant requests it be held at Charlotte, N.C.

No. MC 94350 (Sub-No. 374), filed December 15, 1976. Applicant: TRANSIT HOMES, INC., P.O. Box 1628, Greenville, S.C. 29602. Applicant's representative: Mitchell King, Jr. (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Single-wide mobile homes and double-wide mobile homes*, in secondary movements, (1) from points in Indiana to points in the United States, including Alaska but excluding Hawaii; and (2) from points in Alabama, California, Florida, Georgia, Kansas, Louisiana, Mississippi, North Carolina, Oregon, South Carolina, and Texas to points in Indiana.

NOTE.—Common control may be involved. If a hearing is deemed necessary, the applicant requests it be held at Indianapolis, Ind.

No. MC 95376 (Sub-No. 14), filed December 6, 1976. Applicant: MCVEY TRUCKING, INC., Rt. No. 1, Oakwood, Ill. 61858. Applicant's representative: Robert T. Lawley, 300 Reisch Bldg., Springfield, Ill. 62701. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (a) *Dry weed killing compounds*, (except in bulk), *dry insecticides and fungicides*, (except in bulk); *and hand operated fertilizer spreaders*, from the facilities of Lebanon Chemical Corp., located at Danville, Ill., to points in Indiana, Iowa, Kansas, Kentucky, Ohio, Michigan, Minnesota, Missouri and Wisconsin; (b) *dry bagged fertilizer* from the facilities of Lebanon Chemical Corp. located at Danville, Ill., to points in Kansas, Iowa, Missouri, Minnesota and Tennessee; (c) *dry fertilizer ingredients*, from points in Indiana and Ohio to Danville, Ill.; (d) *dry corn and soybean products and dry feed ingredients*, in bulk, from Danville, Ill., to points in Indiana, Iowa, Kentucky, Michigan, Missouri, Ohio and Wisconsin; (e) *dry*

animal and poultry feed; dry mineral mixtures for animals *and poultry feeds, animal and poultry tonics, insecticides* (except agricultural), *and premiums and advertising matter* relating to such products, from Danville, Ill., to points in Iowa, Kentucky and Missouri; (f) *dry mineral mixtures* for animal and *poultry feeds. animal and poultry tonics, insecticides* (except agricultural), *and premiums and advertising matter* relating to such products, from Danville, Ill., to points in Indiana, Ohio, Michigan and Wisconsin; and (g) *dry feed ingredients* from points in Indiana, Iowa, Minnesota, Ohio and Wisconsin to Danville, Ill.

NOTE.—Applicant holds contract carrier authority in MC 128990 and subs thereunder, therefore dual operations may be involved. If a hearing is deemed necessary, the applicant requests it be held at either Chicago, Ill., or St. Louis, Mo.

No. MC 95540 (Sub-No. 966), filed December 13, 1976. Applicant: WATKINS MOTOR LINES, INC., P.O. Box 1636, 1144 West Griffin Road, Lakeland, Fla. 33802. Applicant's representative: Benjy W. Fincher (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs* (except commodities in bulk, in tank vehicles), from Kansas City, Mo., and Kansas City, Kans., to points in Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Virginia and West Virginia.

NOTE.—Common control may be involved. If a hearing is deemed necessary, the applicant requests it be held at either Kansas City, Kans., Kansas City, Mo., Washington, D.C. or Tampa, Fla.

No. MC 106074 (Sub-No. 29), filed December 10, 1976. Applicant: B AND P MOTOR LINES, INC., P.O. Box 741, Forest City, N.C. 28043. Applicant's representative: Charles G. Dennis, Suite 101, 10205 Oasis Street, P.O. Box 32948, San Antonio, Tex. 78216. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Malt liquor beverages* (except in bulk), and *advertising and promotional equipment, materials and supplies* used in connection therewith, from San Antonio, Tex., to points in Arizona, California, Colorado, Idaho, Montana, Nevada, Oregon, Utah, Washington and Wyoming.

NOTE.—Applicant holds contract carrier authority in MC 140842 (Sub-No. 1), therefore dual operations may be involved. If a hearing is deemed necessary, the applicant requests it be held at either San Antonio, Tex. or Charlotte, N.C.

No. MC 106398 (Sub-No. 764), filed December 13, 1976. Applicant: NATIONAL TRAILER CONVOY, INC., P.O. Box 3329, 525 South Main, Tulsa, Okla. 74101. Applicant's representative: Irvin Tull (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Trailers* designed *to be drawn by* passenger automobiles, in initial movements, from points in Union County, Ill., to points in the United States (except Alaska and Hawaii).

NOTE.—Common control may be involved. If a hearing is deemed necessary, the applicant requests it be held at Chicago, Ill.

No. MC 106603 (Sub-No. 151), filed December 10, 1976. Applicant: DIRECT TRANSIT LINES, INC., 200 Colrain Street, SW, Grand Rapids, Mich. 49508. Applicant's representative: Martin J. Leavitt, 22375 Haggerty Road, P.O. Box 400, Northville, Mich. 48167. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Refractories and refractory products*, from the plantsite of North American Refractories Co., at White Cloud, Mich., to points in Alabama, Illinois, Indiana, Iowa, Kansas, Kentucky, Minnesota, Mississippi, Missouri, Tennessee and Wisconsin; and (2) *materials and supplies*, used in the manufacture of refractories, from Alabama, Illinois, Indiana, Iowa, Kansas, Kentucky, Minnesota, Mississippi, Missouri, Tennessee, and Wisconsin, to the plantsite of North American Refractories Co., at White Cloud, Mich.

NOTE.—Applicant holds contract carrier authority in MC 46240 and subs thereunder, therefore dual operations may be involved. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill.; Detroit, Mich.; or Washington, D.C.

No. MC 106644 (Sub-No. 228), filed December 17, 1976. Applicant: SUPERIOR TRUCKING COMPANY, INC., 2770 Peyton Road, NW., Atlanta, Ga. 30318. Applicant's representative: Hubert Johnson (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Aircraft loading/unloading and maintenance equipment*, from Monterey County, Calif., to points in the United States (except Alaska and Hawaii).

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at either San Francisco, Calif., or Washington, D.C.

No. MC 106644 (Sub-No. 229), filed December 17, 1976. Applicant: SUPERIOR TRUCKING COMPANY, INC., 2770 Peyton Road NW., Atlanta, Ga. 30318. Applicant's representative: Hubert Johnson (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Aircraft loading/unloading and maintenance equipment*, from Monterey County, Calif., to points in the United States (except Alaska and Hawaii).

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at either San Francisco, Calif., or Washington, D.C.

No. MC 106644 (Sub-No. 230), filed December 17, 1976. Applicant: SUPERIOR TRUCKING COMPANY, INC., 2770 Peyton Road, NW., Atlanta, Ga. 30318. Applicant's representative: Hubert Johnson (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Self-propelled utility graders*, not exceeding 10,000 pounds, and *parts thereof*, from Gwinnett County, Ga., to points in the United States (except Alaska and Hawaii).

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at either Atlanta, Ga. or Washington, D.C.

No. MC 106674 (Sub-No. 221), filed December 10, 1976. Applicant: SCHILLI MOTOR LINES, INC., P.O. Box 123, Remington, Ind. 47977. Applicant's representative: Jerry L. Johnson (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Propane*, in bulk, in tank vehicles, from West Kankakee, Ill., and Middletown, Ohio, to points in Indiana.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at either Chicago, Ill. or Indianapolis, Ind.

No. MC 107496 (Sub-No. 1057), filed December 15, 1976. Applicant: RUAN TRANSPORT CORPORATION, 3200 RUAN Center, 666 Grand Avenue, Des Moines, Iowa 50309. Applicant's representative: E. Check, P.O. Box 855, Des Moines, Iowa 50304. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Caustic soda*, in bulk, from the facilities of the Cargill, Inc. plantsite located at or near Buffalo, Iowa, to points in Illinois, Iowa, Minnesota, Missouri, Nebraska, North Dakota, South Dakota and Wisconsin.

NOTE.—Common control may be involved. If a hearing is deemed necessary, the applicant requests it be held at either Kansas City, Mo. or Chicago, Ill.

No. MC 108341 (Sub-No. 55), filed December 8, 1976. Applicant: MOSS TRUCKING COMPANY, INC., P.O. Box 8409, Charlotte, N.C. 28208. Applicant's representative: Morton E. Kiel, 5 World Trade Center, Suite 6193, New York, N.Y. 10048. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Vinyl or plastic covered plywood, gypsumboard, hardboard, composition board, fibreboar, particleboard*, and *materials, accessories, moldings, and supplies* used in the installation and distribution of the aforementioned commodities (except in bulk), from the facilities of Sioux Veneer Company located at or near Hanahan, S.C., to points in the United States in and east of Arkansas, Iowa, Louisiana, Minnesota and Missouri.

NOTE.—Common control may be involved. If a hearing is deemed necessary, the applicant requests it be held at Washington, D.C.

No. MC 110410 (Sub-No. 20), filed December 16, 1976. Applicant: BENTON BROTHERS FILM EXPRESS, INC., 168 Baker Street, N.W., Atlanta, Ga 30313. Applicant's representative: Warren A. Goff, 2008 Clark Tower, 5100 Poplar Avenue, Memphis, Tenn. 38137. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Motion picture film, supplies and accessories*, between those points in that part of Georgia south of U.S. Highway 278 (except points located on U.S. Highway 278 between Atlanta and Warrenton), but including Atlanta and Warrenton, and east of U.S. Highway 19, and points in Florida.

NOTE. Common control may be involved. If a hearing is deemed necessary, the applicant requests it be held at Atlanta, Ga.

No. MC 111310 (Sub-No. 22), (Partial Correction), filed November 24, 1976, published in FEDERAL REGISTER issue of December 23, 1976, as MC 111310 (Sub-No. 21), and republished as corrected this issue. Applicant: BEER TRANSIT, INC., P.O. Box 352, Black River Falls, Wis. 54615. The purpose of this partial republication is to indicate the correct docket number, which was published incorrectly in the FEDERAL REGISTER issue of December 23, 1976, as 111310 (Sub-No. 21) in lieu of 111310 (Sub-No. 22).

No. MC 111729 (Sub-No. 690), filed December 8, 1976. Applicant: PUROLATOR COURIER CORP., 3333 New Hyde Park Road, New Hyde Park, N.Y. 11040. Applicant's representative: Elizabeth L. Henoch, (Same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Drugs, narcotics, pharmaceuticals, toiletries, sundries, proprietaries*, and other *items related to drug stores and hospitals*, (1) between Nashville, Tenn., on the one hand, and, on the other, Bloomington, Bolingbrook, Bridge View, Decatur, Des Plaines, Dolton, Elgin, Franklin Park, Hanover Park, Joliet, Lansing, Lores Park, Melrose Park, Mundelein, N. Aurora, Pekin, Peoria, Peru, Rockford, Schaumburg, and Tinley Park, Ill., Cadiz, Central City, Lexington, Marion, Mayfield, Murray, Paducah, Priceton, Providence, Salem, and Smith Groves, Ky., Baltimore, Hagerstown, and Posodera, Md., Charlottesville, Danville, Hampton, Lynchburg, Newport News, Norfolk, Petersburg, Richmond, and Roanoke, Va., Charleston, Parkersburg, St. Albans and Vienna, W. Va.; and (2) between Huntsville, Ala., on the one hand, and, on the other, Pensacola, Fla., Alexandria, Baton Rouge, and Lafayette, La., Balch Springs, Dallas, Houston, McAllen, S. Houston, and Temple, Tex., restricted in (1) and (2) above against the transportation of articles or packages weighing more than 50 pounds per shipment or 100 pounds in the aggregate, from one consignor to one consignee on any one day.

NOTE.—Applicant holds contract carrier authority in MC 112750 and subs thereunder, therefore dual operations may be involved. Common control may be involved. If a hearing is deemed necessary, the applicant requests it be held at Washington, D.C.

No. MC 112520 (Sub-No. 328), filed December 13, 1976. Applicant: McKENZIE TANK LINES, INC., P.O. Box 1200, Tallahassee, Fla. 32302. Applicant's representative: Thomas F. Panebianco (same address as applicant). Authority sought to operate a *common carrier*, by motor vehicle, over irregular routes, transporting: *D'limonene* (citrus stripper oil), in bulk, in tank vehicles, from points in Hillsborough, Manatee and Polk Counties, Fla., to Brunswick, Ga.

NOTE.—Common control may be involved. If a hearing is deemed necessary, the applicant requests it be held at either Atlanta, Ga. or Washington, D.C.

No. MC 112801 (Sub-No. 190), filed December 14, 1976. Applicant: TRANSPORT SERVICE CO., a Corporation, 2 Salt Creek Lane, Hinsdale, Ill. 60521. Applicant's representative: Carl L. Steiner, 39 South La Salle Street, Chicago, Ill. 60603. Authority sought to operate as a *common carrier*, by motor vehicle over irregular routes, transporting: *Alcohol*, in bulk, from the plant and storage facilities of Archer Daniels Midland Company located at Decatur, Ill., to points in the United States (except Alaska and Hawaii).

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at Chicago, Ill.

No. MC 113624 (Sub-No. 77), filed December 10, 1976. Applicant: WARD TRANSPORT, INC., P.O. Box 735, Pueblo, Colo. 81001. Applicant's representative: Marion F. Jones, 1660 Lincoln Street, Denver, Colo. 80203. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Coal tar products, toluene, toluol, and xylene*, in bulk, in tank vehicles, from Denver and Pueblo, Colo., to points in Montana.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at either Denver, Colo., or Billings, Mont.

No. MC 114211 (Sub-No. 293), filed December 13, 1976. Applicant: WARREN TRANSPORT, INC., 324 Manhard St., P.O. Box 420, Waterloo, Iowa 50704. Applicant's representative: Daniel Sullivan, 327 South La Salle Street, Chicago, Ill. 60604. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lumber, lumber products, particle board* (except in bulk and tank vehicles), from Huttig, Ark., and Lillie and Winnfield, La., to points in Arkansas, Kansas, Missouri, Nebraska and Oklahoma.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at either Little Rock, Ark.; New Orleans, La.; or Dallas, Tex.

No. MC 114273 (Sub-No. 276), filed December 13, 1976. Applicant: CRST, INC., P.O. Box 68, Cedar Rapids, Iowa 52406. Applicant's representative: Robert E. Konchar, Suite 315 Commerce Exchange Building, 2720 First Avenue N.E., P.O. Box 1943, Cedar Rapids, Iowa 52406. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Chilled shot*, from Howell, Mich., and Cleveland and Toledo, Ohio, to points in Texas and Wisconsin.

NOTE.—Common control may be involved. If a hearing is deemed necessary, the applicant requests it be held at Washington, D.C.

No. MC 114632 (Sub-No. 89), filed December 9, 1976. Applicant: APPLE LINES, INC., 212 S.W. Second St., Madison, S. Dak. 57042. Applicant's representative: Andrew Clark; 1000 First National Bank Bldg., Minneapolis, Minn. 55402. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meat, meat products, and meat by-products*, as described in Section A of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except commodities in bulk), in vehicles equipped with mechanical refrigeration, (1) from points in Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota and South Dakota, to the plantsite of Landy of Wisconsin, at or near Eau Claire, Wis.; and (2) from the plantsite of Landy of Wisconsin, at or near Eau Claire, Wis., to points in Illinois, Indiana, Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota and South Dakota.

NOTE.—Applicant holds contract carrier authority in MC 129706, therefore dual operations may be involved. If a hearing is deemed necessary, applicant requests it be held at Minneapolis, Minn., or Chicago, Ill.

No. MC 114829 (Sub-No. 12), filed December 8, 1976. Applicant: GENERAL CARTAGE COMPANY, INC., West U.S. Route 30, Rock Falls, Ill. 61071. Applicant's representative: Daniel C. Sullivan, 327 South LaSalle Street, Chicago, Ill. 60604. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Iron and steel, and iron and steel articles*, from Sterling, Ill., to points in that part of Iowa on and north of U.S. Highway 34 and on and east of Interstate Highway 35, points in that part of Wisconsin on and south of U.S. Highway 10, points in that part of Indiana on and north of U.S. Highway 40, and points in that part of Michigan on and south of Interstate Highway 96 and on and west of U.S. Highway 27; and (2) *equipment, materials and supplies*, from the destination points named in (1) above to Sterling, Ill., under a continuing contract or contracts, in (1) and (2) above, with Northwestern Steel and Wire Company.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at either Sterling or Chicago, Ill.

No. MC 115162 (Sub-No. 344), filed December 15, 1976. Applicant: POOLE TRUCK LINE, INC., Post Office Drawer 500, Evergreen, Ala. 36401. Applicant's representative: Robert E. Tate (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Paper and paper products, paper bags, wrapping paper, and pulpboard*, from St. Marys, Ga., to points in Illinois, Indiana, Iowa, Maine, Michigan, Minnesota, Missouri, New Hampshire, New York, Ohio, Pennsylvania, Vermont, and Wisconsin.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at either Jacksonville, Fla., or Atlanta, Ga.

No. MC 115494 (Sub-No. 5), filed December 8, 1976. Applicant: J. D. LEWIS CORPORATION, Route No. 3, Box 15, Cordele, Ga. 31015. Applicant's repre-

resentative: Paul M. Daniell, P.O. Box 872, Atlanta, Ga. 30301. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Sawdust* and *bark*, when transported in mixed loads with sawdust, in bulk, from Cordele, Ga., to points in Florida.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at either Atlanta, Ga or Jacksonville, Fla.

No. MC 11564 (Sub-No. 60), filed December 10, 1976. Applicant: TENNESSEE CARTAGE CO., INC., Candy Lane, P.O. Box 23193, Nashville, Tenn. 37202. Applicant's representative: Walter Harwood, P.O. Box 15214, Nashville, Tenn. 37215. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, meat by-products and packinghouse products* (except in bulk), from Searcy, Ark., to points in Alabama, Georgia, Illinois, Indiana, Mississippi, Missouri, Ohio and Tennessee.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at either Memphis or Nashville, Tenn.

No. MC 116077 (Sub-No. 376), filed December 15, 1976. Applicant: ROBERTSON TANK LINES, INC., 2000 West Loop South, Suite 1800, Houston, Tex. 77027. Applicant's representative: Pat H. Robertson, P.O. Box 1945, 500 West Sixteenth Street, Austin, Tex. 78767. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Titanium dioxide*, in bulk, from Hamilton, Miss., to points in California, Delaware, Georgia, Illinois, Indiana, Maryland, North Carolina, New Jersey, Ohio, Pennsylvania, Texas and Wisconsin.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at New Orleau, La., or Dallas, Tex.

No. MC 116077 (Sub-No. 377), filed December 16, 1976. Applicant: ROBERTSON TANK LINES, INC., 2000 West Loop South, Suite 1800, Houston, Tex. 77027. Applicant's representative: Pat H. Robertson, P.O. Box 1945, 500 West Sixteenth Street, Austin, Tex. 78767. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Nodular pulp*, in bulk, Evadale, Tex., to Ashdown, Ark.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at either Washington, D.C. or Atlanta, Ga.

No. MC 116254 (Sub-No. 171), filed December 13, 1976. Applicant: CHEM-HAULERS, INC., P.O. Box 339, Florence, Ala. 35630. Applicant's representative: Hampton M. Mills (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Aluminum ingots*, in dump vehicles, from the plantsite of Texas Reduction Corporation located at or near Manvel, Tex., to points in Colbert, Franklin, and Lauderdale Counties, Ala.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at either Houston, Tex., or Washington, D.C.

No. MC 116254 (Sub-No. 172), filed December 13, 1976. Applicant: CHEM-HAULERS, INC., P.O. Box 339, Florence, Ala. 35630. Applicant's representative: Hampton M. Mills (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Alloys*, in dump vehicles, from Selma (Dallas County), Ala., to points in Texas.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at Birmingham, Ala., or Washington, D.C.

No. MC 116254 (Sub-No. 173), filed December 13, 1976. Applicant: CHEM-HAULERS, INC., P.O. Box 339, Florence, Ala. 35630. Applicant's representative: Hampton M. Mills (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Adipic acid*, dry, in bulk, in tank vehicles, from the plant site of Monsanto Company located at or near Gonzales and Pensacola, Fla., to points in Alabama, Connecticut, Illinois, Maryland, Massachusetts, New Jersey, Ohio, Pennsylvania, and West Virginia.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at either Birmingham, Ala., or Washington, D.C.

No. MC 119226 (Sub-No. 97), filed December 10, 1976. Applicant: LIQUID TRANSPORT CORP., 3901 Madison Avenue, Indianapolis, Ind. 46227. Applicant's representative: Robert W. Loser, 1009 Chamber of Commerce Bldg., Indianapolis, Ind. 46204. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Alcohol*, in bulk, from the plant and storage facilities of Archer Daniels Midland Company located at Decatur, Ill., to points in the United States (except Alaska and Hawaii).

NOTE.—Common control may be involved. If a hearing is deemed necessary, the applicant requests it be held at either Indianapolis, Ind.; Chicago, Ill.; or Washington, D.C.

No. MC 121739 (Sub-No. 3), filed December 10, 1976. Applicant: BURK MOTOR FREIGHT, INC., P.O. Box 387, 512 Magnolia St., Burkburnett, Tex. 76354. Applicant's representative: T. M. Brown, 223 Ciudad Building, Oklahoma City, Okla. 73112. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except Classes A and B explosives, articles of unusual value, those requiring special equipment, and commodities in bulk), between Wichita Falls, Tex., and Frederick, Okla.: From Wichita Falls, Tex., over U.S. Highway 277 to junction U.S. Highway 70, thence over U.S. Highway 70 to junction U.S. Highway 183, thence over U.S. Highway 183 to Frederick, Okla., and return over the same route serving all intermediate and off-route points.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at Wichita Falls, Tex.

No. MC 124821 (Sub-No. 22), filed December 6, 1976. Applicant: WILLIAM GILCHRIST, 105 North Keyser Avenue, Old Forge, Pa. 18518. Applicant's representative: William J. Boyd, 600 Enterprise Drive, Suite 222, Oak Brook, Ill. 60521. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foods, food products, food ingredients, animal foods, animal food ingredients and meat by-products* (except in bulk), (1) from the warehouses of Beatrice Foods Co., located at Scranton, Pa., and located at or near Allentown, Pa., to points in Connecticut, Delaware, Illinois, Indiana, Kentucky, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, Virginia, Vermont, West Virginia and the District of Columbia, restricted to the transportation of traffic originating at the warehouse of Beatrice Foods Co., located at Scranton, Pa., and located at or near Allentown, Pa., and destined to the named destination states; and (2) from points in Connecticut, Delaware, Illinois, Indiana, Kentucky, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Vermont, Rhode Island, Virginia, West Virginia and the District of Columbia, to the warehouses of Beatrice Foods Co., located at Scranton, Pa., and located at or near Allentown, Pa., restricted to the movement of traffic originating in the named origin states and destined to the warehouses of Beatrice Foods Co., located at Scranton, Pa., and located at or near Allentown, Pa.

NOTE.—Common control may be involved. If a hearing is deemed necessary, the applicant requests it be held at either Washington, D.C., or Philadelphia, Pa.

No. MC 124896 (Sub-No. 19), filed December 16, 1976. Applicant: WILLIAMSON TRUCK LINES, INC., Thorne and Ralson Streets, P.O. Box 3485, Wilson, N.C. 27893. Applicant's representative: Jack H. Blanshan, Suite 200, 205 West Touhy Avenue, Park Ridge, Ill. 60068. Authority sought to operate as a *common carrier, by* motor vehicle, over irregular routes, transporting: *Meat, meat products, meat by-products, and articles distributed by meat packinghouses*, as described in Sections A and C of Appendix I to the Report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except hides and commodities in bulk), from the plantsites and storage facilities of Farmland Foods, Inc. located at or near Carroll, Denison and Iowa Falls, Iowa, to points in Alabama, Delaware, Florida, Georgia, Kentucky, Maryland, Mississippi, North Carolina, South Carolina, Tennessee, Virginia and West Virginia, restricted to the transportation of traffic originating at the above named origins and destined to the above named destinations.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at either Sioux City, Iowa; Omaha, Nebr; or Des Moines, Iowa.

No. MC 125777 (Sub-No. 183), filed December 13, 1976. Applicant: JACK GRAY TRANSPORT, INC., 4600 East 15th Avenue, Gary, Ind. 46406. Applicant's Carl L. Steiner, 39 South La Salle Street, Chicago, Ill. 60603. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Spent alumina catalyst*, in dump vehicles, from points in the United States (except Alaska and Hawaii), to Canon City, Colo.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at Chicago, Ill.

No. MC 128662 (Sub-No. 2), filed December 10, 1976. Applicant: STICKLEY'S GARAGE, INC., doing business as STICKLEY'S TRUCKING, 1043 Millwood Avenue, Winchester, Va. 22601. Applicant's representative: Charles E. Creager, 1329 Pennsylvania Avenue, P.O. Box 1417, Hagerstown, Md. 21740. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen fruit*, between the plantsite, warehouses, shipping and receiving facilities of The Zeropack Company located in Winchester, Va., on the one hand, and, on the other, points in Connecticut, Delaware, Florida, Georgia, Maryland, Massachusetts, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, West Virginia, and the District of Columbia.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at Washington, D.C.

No. MC 128883 (Sub-No. 2), filed December 15, 1976. Applicant: NORTH IOWA EXPRESS, INC., 1921 NE 58th Avenue, Des Moines, Iowa 50313. Applicant's representative: William L. Fairbank, 1980 Financial Center, Des Moines, Iowa 50309. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving points in Iowa located in Dallas County and on and west of U.S. Highway 69 located in Polk County, as off route points in connection with carrier's regular route operations proposed herein; (1) Between Des Moines and Granger, Iowa: from Des Moines over Interstate Highway 35 to junction Iowa Highway 141, thence over Iowa Highway 141 to Granger, and return over same routes; and (2) Between Des Moines, and Redfield, Iowa: from Des Moines over U.S. Highway 6 to Redfield, and return over the same route.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at Des Moines, Iowa.

No. MC 129328 (Sub-No. 6), filed December 10, 1976. Applicant: PAL TEX TRANSPORT CO., a Corporation, P.O Box 396, Palestine, Tex. 75801. Applicant's representative: Kenneth R. Hoffman, 1100 Milam Bldg., Suite 3300, Houston, Tex. 77002. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Paper and paper products*, from the plantsite and storage facilities of Clevepak Corporation, at or near Dallas, Tex., to points in Alabama, Illinois, Indiana, Kentucky, Ohio and Wisconsin; and (2) *materials, equipment, and supplies*, used in the manufacture, sale, or distribution of the commodities in (1) above, from points in Alabama, Arkansas, Illinois, Indiana, Kentucky, Louisiana, Mississippi, Ohio, Oklahoma, and Wisconsin, to the facilities of Clevepak Corporation, at or near Dallas, Tex., restricted in (1) and (2) above, against the transportation of commodities in bulk, and restricted to a transportation service to be performed under a continuing contract, or contracts, with Clevepak Corporation.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at either Dallas or Houston, Tex.

No. MC 129537 (Sub-No. 19), filed December 13, 1976. Applicant: REEVES TRANSPORTATION COMPANY, a Corporation, Route 5, Dew's Pond Road, Calhoun, Ga. 30701. Applicant's representative: John C. Vogt, Jr., 406 N. Morgan Street, Tampa, Fla. 33602. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Carpets and rugs*, from points in Bartow, Catoosa, Chattooga, Floyd, Gordon, Murray, Muscogee, Troup, Walker and Whitfield Counties, Ga., to points in Mississippi.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at Atlanta, Ga.

No. MC 129903 (Sub-No. 7), filed December 8, 1976. Applicant: EMPORIA MOTOR FREIGHT, INC., Route No. 5, Box 1103, Emporia, Kans. 66801. Applicant's representative: John L. Richeson, P.O. Box 7, Ottawa, Kans. 66067. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between Emporia, Kans. and Kansas City, Mo.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at either Topeka or Wichita, Kans or Kansas City, Mo

No. MC 133095 (Sub-No. 125), filed December 9, 1976. Applicant: TEXAS CONTINENTAL EXPRESS, INC., P.O. Box 434, 2603 W. Euless Blvd., Euless, Tex. 76039. Applicant's representative: Hugh T. Matthews, 2340 Fidelity Union Tower, Dallas, Tex. 75201. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Canned goods*, from Athens, Tex., to points in the United States (except Alaska and Hawaii).

NOTE.—Applicant holds contract carrier authority in MC 136032 and subs thereunder, therefore dual operations may be involved. If a hearing is deemed necessary, the applicant requests it be held at Dallas Tex

No. MC 133892 (Sub-No. 6), filed December 7, 1976. Applicant: B & W SERVICE, INC., 25 Littlefield Street, Avon, Mass. 02322. Applicant's representative: Frank J. Weiner, 15 Court Square, Boston, Mass. 02108. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Such merchandise* as is dealt in by retail department stores, and (2) *equipment, materials, and supplies* used in the operation of retail department stores (except liquid commodities in bulk), between Obetz, Ohio, on the one hand, and, on the other, points in Indiana, Missouri, New York and Pennsylvania, under a continuing contract or contracts with Child World, Inc.

NOTE.—If a hearing is deemed necessary the applicant requests it be held at Boston, Mass.

No. MC 134922 (Sub-No. 212), filed December 13, 1976. Applicant: B. J. MCADAMS, INC., Route 6, Box 15, North Little Rock, Ark. 72118. Applicant's representative: Bob McAdams (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Tile and such commodities* as are manufactured or distributed by manufacturers or distributors of tile, and *materials and supplies* used in the manufacture of tile (except commodities in bulk and those which because of size or weight require the use of special equipment), between Chicago, Ill., on the one hand, and, on the other, points in the United States in and west of New Mexico Utah, Wyoming and Montana

NOTE.—If a hearing is deemed necessary the applicant requests it be held at either Little Rock, Ark., or New York, N.Y.

No. MC 134922 (Sub-No. 213), filed December 13, 1976. Applicant: B. J. MCADAMS, INC., Route 6, Box 15, North Little Rock, Ark. 72118. Applicant's representative: Bob McAdams (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Plastic bottles*, from the plantsite and storage facilities of Georgia Pacific Corporation, in Los Angeles County, Calif., to Humboldt, Tenn.

NOTE.—If a hearing is deemed necessary the applicant requests it be held at Los Angeles, Calif., or Little Rock, Ark

No. MC 134922 (Sub-No. 214) filed December 13, 1976. Applicant: B. J. MCADAMS, INC., Route 6, Box 15, North Little Rock, Ark. 72118. Applicant's representative: Bob McAdams (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities*, having a prior

or subsequent movement by rail (except in bulk), between Rhinehart and Zion, La., on the one hand, and, on the other, points in the United States including Alaska and Hawaii.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at either Little Rock, Ark., or Memphis, Tenn.

No. MC 135231 (Sub-No. 22), filed December 6, 1976. Applicant: NORTH STAR TRANSPORT, INC., Route 1 Highway 1 and 59 West, Thief River Falls, Minn. 56701. Applicant's representative: Anthony C. Vance, 1300 Old Chain Bridge Road, McLean, Va. 22170. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (I) *Snowmobiles, motorbikes, boats, parts and accessories, and sound reproducing equipment*, from Roseau, Thief River Falls, Karlstad, Rochester and Minneapolis, Minn., and Omaha, Nebr., to points in the United States including Anchorage, Alaska (excepting service to unnamed Alaska points and Hawaii), restricted (a) to traffic originating at the plant sites or facilities utilized by Polaris E–Z–Go Division of Textron, Inc., Arctic Enterprises, Inc., and Telex Communications, Inc., at the origin points specified, and (b) against tacking or joining the authority proposed with any other authority concurrently proposed or presently held; (II) (1) *agricultural implements and parts thereof*, from Thief River Falls and Minneapolis, Minn., to points in the United States (except Alaska and Hawaii) and (2) *parts, supplies, materials, accessories and equipment* named in (1) above, from points in the United States (except Alaska and Hawaii) to Thief River Falls and Minneapolis, Minn., (1) and (2).

(a) Restricted to traffic originating at or destined to the plantsites or facilities utilized by Arctic Enterprises, Inc. at the origin or destination points specified, and (b) restricted against tacking or joining the authority proposed with any other authority concurrently proposed or presently held; (III) *such merchandise*, as is dealt in by lawn and garden dealers, from the plantsites, warehouse facilities and experimental farms of Deere & Company in Dodge County, Wis., to points in Connecticut, Delaware, Indiana, Kentucky, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia, and the District of Columbia, restricted against tacking or joining the authority proposed with any other authority concurrently proposed or presently held; (IV) *three-wheeled utility trucks*, self-propelled, weighing less than 1500 pounds, from the plantsite of Polaris E–Z–Go Division of Textron, Inc., located at or near Roseau, Minn., to Lake Zurich, Ill., Augusta, Ga., Sarasota and Fort Lauderdale, Fla., Norton, Grove City and North Royalton, Ohio, Lansing, Mich., Olathe, Kans., Houston, Arlington and Dallas, Tex., Plainview, N.Y., New Kensington and Bethlehem, Pa., Bordentown, N.J., Falmouth, Mass., Spokane, Wash., Santa Anna, Calif., Gaithersburg, Md., and Fuquay Varina, N.C., restricted against tacking or joining the authority proposed with any other authority concurrently proposed or presently held; (V) *buildings, complete, knocked down, or in sections and component parts, materials and supplies* used in the erection thereof, from Terre Haute, Ind., to points in Beltrami, Clearwater, Kittson, Lake of the Woods, Marshall, Pennington, Red Lake and Roseau Counties, Minn., Cavalier, Grand Forks, Pembina, Steele, Traill, and Walsh Counties, N. Dak., restricted (a) to traffic destined to job sites or facilities of Prichard Brothers, Inc. at the destination points specified and (b) against tacking or joining the authority proposed with any other authority concurrently proposed with any other authority concurrently proposed or presently held.

(VI) *Materials, supplies, parts and equipment* (except commodities in bulk) used in the manufacture or sale of snowmobiles, motorbikes, sound reproducing equipment, and boats from points in the United States (except Alaska and Hawaii), to plant sites and facilities utilized by Polaris E–Z–Go Division of Textron, Inc., Arctic Enterprises, Inc., and Telex Communications, Inc., at Thief River Falls, Roseau, Karlstad, Moorhead, Clearbrook, Rochester and Minneapolis, Minn., and Omaha, Nebr., restricted against tacking or joining the authority proposed with any other authority concurrently proposed or presently held;

(VII) *Snowmobile clothing*, from Seattle, Wash., to Lansing, Mich., St. Paul and Thief River Falls, Minn., and Neenah, Wis., restricted (a) to traffic originating at the plantsite or facilities utilized by Arctic Enterprises, Inc., at the origin point specified above, and (b) against tacking or joining the authority proposed with any other authority concurrently proposed or presently held. The authority proposed above is subject to the following conditions: (1) upon the granting of the proposed authority above applicant states it will request the coincidental cancellation of its permits in No. MC 134145; Sub Nos. 1, 3, 5, 6, 7, 13, 14, 19, 21, 22, 27, 28, 30, 31, 32, 36, 48, 50, and 55; (2) the proposed authority in this application if granted, and existing authority that it duplicates shall be construed as conferring only a single operating right; (3) all of the foregoing converted authority and applicant's previously issued certificates shall be restricted so that no shipping or delivery service shall be provided to and from the premises of Control Data Corp. and/or Computer Peripherals, Inc., applicant's only retained contract shippers if this conversion application is approved.

NOTE.—Applicant states the purpose of this application is to convert its Permits in No. MC 134145 (Sub-Nos. 1, 3, 5, 6, 7, 13, 14, 19, 22, 27, 30, 31, 32, 36, 48, 55), and the proposed authority in No. MC 134145 (Sub-No. 64), to a Certificate of Public Convenience and Necessity. If a hearing is deemed necessary, the applicant requests it be held at St. Paul, Minn.

No. MC 135384 (Sub-No. 23), filed December 14, 1976. Applicant: SPECIALIZED TRUCK SERVICE, INC., Highway 81 and I–75, McDonough, Ga. 30253. Applicant's representative: Frank D. Hall, 3384 Peachtree Rd., N.E., Suite 713, Atlanta, Ga. 30326. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Malt beverages, related advertising materials, and empty malt beverage containers*, from Fort Worth, Tex., to Panama City, Fla.

NOTE.—Common control may be involved. If a hearing is deemed necessary, the applicant requests it be held at either Atlanta, Ga., or Washington, D.C.

No. MC 136008 (Sub-No. 79), filed December 15, 1976. Applicant: JOE BROWN COMPANY, INC., P.O. Box 1669, 20 Third Street, N.E., Ardmore, Okla. 73401. Applicant's representative: G. Timothy Armstrong, Suite 200, Timbergate Office Gardens, 6161 North May Avenue, Oklahoma City, Okla. 73112. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Sand, gravel, rock, caliche, ore, ready mix asphalt, aggregate, clinker, gypsum, clay, cement mixed with aggregate, and coal*, (1) between points in New Mexico, on the one hand, and, on the other, points in Colorado, Kansas, Oklahoma and Texas; and (2) between points in Texas (except points in Camp, Cass, Collin, Bowie, Fannin, Grayson, Harrison, Hopkins, Hunt, Lamar, Marion, Morris, Panola, Red River and Titus Counties, Tex.), on the one hand, and, on the other, points in Louisiana (except points in Bossier, Caddo, DeSoto and Webster Parishes, La.), restricted against the transportation of sand from points in McCulloch County, Tex.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at either Oklahoma City, Okla., or Albuquerque, N. Mex.

No. MC 136222 (Sub-No. 3), filed December 10, 1976. Applicant: MOVERS PORT SERVICE, INCORPORATED, 7035 Convoy Court, San Diego, Calif. 92138. Applicant's representative: Robert J. Gallagher, 1000 Connecticut Ave., N.W., Suite 1200, Washington, D.C. 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Empty household goods shipping containers*, set up or knocked down, between points in Arizona, California and New Mexico.

NOTE.—Common control may be involved. If a hearing is deemed necessary, the applicant requests a consolidated hearing with other similar applications at San Diego, Calif.

No. MC 136343 (Sub-No. 97), filed December 13, 1976. Applicant: MILTON TRANSPORTATION, INC., P.O. Box 355, Milton, Pa. 17847. Applicant's representative: George A. Olsen, 69 Tonnele Ave., Jersey City, N.J. 07306 Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) (a) *Salt in packages;* (b) *pepper in packages* in mixed loads with salt in packages; (c) *materials and supplies* used in the agricultural, water treatment, food processing, wholesale grocery and institutional supply industries (except commodities in bulk), in mixed loads with salt in packages, from the facilities of Morton Salt Co., located at or near Rittman, Ohio, to points in Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, Vermont and Virginia; and (2) *salt, salt products, calcium chloride, and mixture of salt, salt products, and calcium chloride*, from the facilities of Morton Salt Co., located at or near Fairport Harbor, Ohio, to points in Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont and Virginia.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at either Columbus, Ohio or Washington, D.C.

No. MC 138807 (Sub-No. 16), filed December 8, 1976. Applicant: ZIP TRUCKING, INC., P.O. Box 5717, Jackson, Miss. 39208. Applicant's representative: K. Edward Wolcott, 1600 First Federal Bldg., Atlanta, Ga. 30303. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Cooper wire and fluorescent lamp ballasts*, from Mendenhall, Miss., to points in Florida and Texas, under contract with Universal Manufacturing Company.

NOTE.—Applicant holds common carrier authority in MC 141652 and subs thereunder, therefore dual operations may be involved. If a hearing is deemed necessary, the applicant requests it be held at New York, N.Y., or Washington, D.C.

No. MC 138869 (Sub-No. 9), filed December 13, 1976. Applicant: W. T. MYLES TRANSPORTATION CO., a Corporation, P.O. Box 321, 4481 Moreland Ave., Conley, Ga. 30027. Applicant's representative: Archie B. Culbreth, Suite 246, 1252 West Peachtree St., N.W., Atlanta, Ga. 30309. Authority sought to operate as a *contract carrier*, by motor vehicle over irregular routes, transporting: (1) *Newsprint, groundwood papers, printing paper and woodpulp*, from the plantsite of Bowater Southern Paper Corporation located at Calhoun, Tenn., to points in Delaware, Illinois, Indiana, Iowa, Kansas, Kentucky (points east of a line beginning at the Tennessee-Kentucky State Boundary line and extending along U.S. Highway 25E to junction U.S. Highway 25 near Corbin, Ky., thence along U.S. Highway 25 to Georgetown, Ky., thence north of a line extending from Georgetown, Ky., along U.S. Highway 62 to Nortonville, Ky., and thence west of a line extending from Nortonville, Ky., along U.S. Highway 41 to the Kentucky-Tennessee State Boundary line), Maryland, Michigan (points on and south of Michigan Highway 21), Minnesota, Missouri, Nebraska, New Jersey, Ohio, Pennsylvania, South Dakota, West Virginia and Wisconsin; and (2) *paper core tubes, materials, and supplies* used in the manufacture of the commodities described in (1) above, (except in bulk), from points in the destination states named in (1) above, to the plantsite of Bowater Southern Paper Corporation located at Calhoun, Tenn., under a continuing contract or contracts with Bowater Southern Paper Corporation.

NOTE.—Applicant holds common carrier authority in MC 140563 and subs thereunder, therefore dual operations may be involved. If a hearing is deemed necessary, the applicant requests it be held at Atlanta, Ga.

No. MC 138875 (Sub-No. 41), filed December 10, 1976. Applicant: SHOEMAKER TRUCKING COMPANY, a Corporation, 11900 Franklin Road, Boise, Idaho 83705. Applicant's representative: F. L. Sigloh (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Diatomaceous earth* and *materials and supplies* used in the mining, manufacturing and distribution thereof (except commodities in bulk, in tank vehicles), between the plantsite of Witco Chemical Company, located at or near Quincy, Wash., on the one hand, and on the other, points in California, Colorado, Idaho, Montana, Oregon, Utah, Washington and Wyoming. NOTE.—Applicant seeks to tack this sought authority with its present authority in MC 138875 (Sub-No. 25), at Westfall (Malheur County), Oreg., to provide a through service to points in Arizona, Arkansas, Colorado, California, Idaho, Iowa, Kansas, Louisiana, Minnesota, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Utah, Washington and Wyoming.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at either Boise, Idaho or Quincy, Wash.

No. MC 139381 (Sub-No. 7), filed December 13, 1976. Applicant: SPIRIT OF '76 OVERLAND EXPRESS, INC., 5320 Industrial Road, Fort Wayne, Ind. 46825. Applicant's representative: Anthony E. Young, 327 South LaSalle Street, Chicago, Ill. 60604. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Such commodities* as are dealt in, or used by, manufacturers and distributors of crusher, breaker and grinding parts, between the facilities of The Frog, Switch and Manufacturing Company located at Carlisle, Pa., on the one hand, and, on the other, points in Arizona, California, Colorado, Idaho, Nevada, New Mexico, Texas, Utah, and Wyoming, under a continuing contract or contracts with The Frog, Switch and Manufacturing Company of Carlisle, Pa.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at Chicago, Ill.

No. MC 139482 (Sub-No. 9), filed December 17, 1976. Applicant: NEW ULM FREIGHT LINES, INC., County Road 29 West, New Ulm, Minn. 56073. Applicant's representative: Samuel Rubenstein, 301 North Fifth Street, Minneapolis, Minn. 55403. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Such merchandise* as is dealt in by retail and wholesale department and hardware stores (except commodities in bulk), from points in that part of the United States in and east of Alabama, Illinois, Missouri, Tennessee and Wisconsin, to Brookings, S. Dak., restricted to traffic destined to Coast to Coast Stores Central Organization, Inc., located at or near Brookings, S. Dak.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at Minneapolis or St. Paul, Minn.

No. MC 139495 (Sub-No. 184), filed December 9, 1976. Applicant: NATIONAL CARRIERS, INC., 1501 East 8th Street, P.O. Box 1258, Liberal, Kans. 67901. Applicant's representative: Frederick J. Coffman, 521 South 14th Street, P.O. Box 81849, Lincoln, Nebr. 68501. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Petroleum products and lubricating oils* in containers, from the plantsite and warehouses of Mobile Oil Corporation located at or near Kansas City, Kans., to points in Colorado; and (2) *returned empty containers*, from points in Colorado to Kansas city, Kans.

NOTE.—Applicant holds contract carrier authority in MC 133106 and subs thereunder, therefore dual operations may be involved. If a hearing is deemed necessary, the applicant requests it be held at Dallas or Kansas City, Kans.

No. MC 140645 (Sub-No. 5), filed December 10, 1976. Applicant: UNITED TRUKING, INC., 100 Stoffel Drive, Tallapoosa, Ga. 30176. Applicant's representative: Clyde W. Carver, Suite 212, 5299 Roswell Road, N.E., Atlanta, Ga. 30342. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Metal containers and metal container ends;* and (2) *machinery, materials, and supplies*, used in the manufacture and distribution of metal containers, between points in Montgomery County, Pa., on the one hand, and, on the other, points in Alabama, Arkansas, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Vermont, Virginia, West Virginia, Wisconsin and the District of Columbia, restricted to a transportation service to be performed under a continuing contract, or contracts, with Southern Can Company, at Tallapoosa, Ga.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at Atlanta, Ga.

No. MC 140849 (Sub-No. 5), filed December 10, 1976. Applicant: ROBERTS TRUCKING CO., INC., U.S. Highway 271 South, Poteau, Okla. 74953. Applicant's representative: Prentiss Shelley, P.O. Drawer G., Poteau, Okla. 74953. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular

routes, transporting: *Fabrics, piece goods and materials and supplies* used in the manufacture of clothing (except commodities in bulk in tank vehicles), from points in Virginia to Idabel, Pauls Valley and Frederick, Okla., under a continuing contract or contracts with Kellwood Company.

NOTE.—Applicant holds common carrier authority in MC 126243 and subs thereunder, therefore dual operations may be involved. If a hearing is deemed necessary, the applicant requests it be held at either Oklahoma City, or Tulsa, Okla., or Washington, D.C.

No. MC 140883 (Sub-No. 10), filed December 13, 1976. Applicant: DOWNS TRANSPORTATION CO., INC., 2705 Canna Ridge Circle, N.E., Atlanta, Ga. 30345. Applicant's representative: Paul M. Daniell, P.O. Box 872, Atlanta, Ga. 30301. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Plastic articles* (except in bulk), from Jacksonville and Springfield, Ill., to points in Georgia and New Jersey, under a continuing contract, or contracts, with Mobil Chemical Company, Plastics Division.

NOTE.—If a hearing is deemed necessary the applicant requests it be held at Atlanta, Ga.

No. MC 141071 (Sub-No. 7), filed December 13, 1976. Applicant: LARANETA TRUCKING COMPANY, INC., 870 West 9th Street, San Pedro, Calif. 90731. Applicant's representative: William J. Monheim, 15942 Whittier Blvd., P.O. Box 1756, Whittier, Calif. 90609. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Pet food and canned tuna*, from Terminal Island, Calif., to points in Idaho and Utah, under contract with Star-Kist Foods, Inc.

NOTE.—Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Los Angeles, Calif.

No. MC 141084 (Sub-No. 6), filed December 6, 1976. Applicant: NATIONAL FREIGHT LINES, INC., 6069 Maywood Avenue, Huntington Park, Calif. 90058. Applicant's representative: Daniel C. Sullivan, 327 South La Salle Street, Chicago, Ill. 60604. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Chemicals, materials and supplies* used in the manufacturing and transportation of chemicals, (except commodities in bulk), between the facilities of FMC Corporation located at Baltimore, Md.; Middleport and Tonawanda, N.Y.; Carteret and Lyndhurst, N.J.; Newark, Del., South Charleston and Nitro, W. Va.; Lawrence, Kans.; Newark, Calif.; Green River, Wyo.; Lewistown, Pa.; and Jacksonville, Fla.; on the one hand, and, on the other, points in Arizona, Arkansas, California, Colorado, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Mexico, New York, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Texas, Utah, Washington, Wisconsin and Wyoming, under a continuing contract or contracts with FMC Corporation.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at either Philadelphia, Pa., or Washington, D.C.

No. MC 141152 (Sub-No. 2), filed December 15, 1976. Applicant: JAMES H. FUNCH, doing business as JAMES FUNCH TRUCKING, 2750 North Polk Avenue, Fresno, Calif. 93705. Applicant's representative: Eldon M. Johnson, 650 California Street, Suite 2808, San Francisco, Calif. 94108. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Shingles, shakes and ridge*, from points in Clallam, Grays Harbor, Jefferson, Skagit and Whatcom Counties, Wash., to points in Arizona, restricted to movements in van equipment.

NOTE.—Applicant holds contract carrier authority in MC 141152 and subs thereunder, therefore dual operations may be involved. If a hearing is deemed necessary, applicant requests it be held at Seattle, Wash., or San Francisco, Calif.

No MC 141774 (Sub-No. 2), filed December 10, 1976. Applicant: R & L TRUCKING CO., INC., 105 Rocket Avenue, Opelika, Ala. 36801. Applicant's representative: Robert E. Tate, P.O. Box 517, Evergreen, Ala. 36401. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Seats, baby carriers and tubing*, from Opelika, Ala., and Moscow, Tenn., to points in Arkansas, Florida, Georgia, Kentucky, Missouri and Tennessee; and (2) *materials and supplies* used in the manufacture of seats, baby carriers and tubing (except commodities in bulk, in tank vehicles), from points in Arkansas, Florida, Georgia, Kentucky, Missouri and Tennessee, to Opelika, Ala. and Moscow, Tenn.

NOTE.—Applicant holds contract carrier authority in MC 136378 and subs thereunder, therefore dual operations may be involved. If a hearing is deemed necessary, the applicant requests it be held at either Memphis, Tenn. or Birmingham, Ala.

No. MC 142080 (Sub-No. 1), filed December 7, 1976. Applicant: LITE TRANSPORT, INC., 135 State Street, Suite 200, Springfield, Mass. 01103. Applicant's representative: David M. Marshall (same address as applicant). Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Building materials* (except commodities in bulk, in tank trucks), between the facilities of Allied International, Inc., located in the United States, on the one hand, and, on the other, points in the United States (except Alaska and Hawaii), under a continuing contract or contracts with Allied International, Inc.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at Boston, Mass.; Providence, R.I., or Washington, D.C.

No. MC 142082 (Sub-No. 3), filed December 2, 1976. Applicant: OLIVER BROWN TRUCKING CO., INC., Raritan Center, Building 529, Edison, N.J. 08817. Applicant's representative: Robert B. Pepper, 168 Woodbridge Avenue, Highland Park, N.J. 08904. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Polyurethane foam* (except in bulk), from Irvington, N.J., to points in Connecticut, Delaware, New York, and Pennsylvania; and (2) *materials and supplies*, used in the manufacturing, distribution and packaging thereof (except in bulk), from points in Connecticut, Delaware, New York, and Pennsylvania, to Irvington, N.J., under a continuing contract or contracts, with Reeves Brothers, Inc., Curon Division, Metro Plant, at Irvington, N.J.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at Newark, N.J., or New York, N.Y.

No. MC 142558 (correction), filed October 12, 1976, published in the FR Issue of November 11, 1976, republished as corrected this issue. Applicant: DIRECT AIR FREIGHT, INC., 564 Valley Street, Orange, N.J. 07050. Applicant's representative: Ronald I. Shapss, 450 Seventh Avenue, New York, N.Y. 10001. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except Classes A and B explosives, commodities in bulk, household goods as defined by the Commission and commodities requiring special equipment), between ports of entry on the International Boundary line between the United States and Canada, located at or near Champlain, N.Y. and Highgate Springs, Vt., on the one hand, and, on the other Tweed-New Haven Airport, located at New Haven, Conn., and Newark Airport, located at Newark, N.J., restricted to the transportation of shipments having an immediately prior or subsequent movement by air.

NOTE.—The purpose of this republication is to indicate Newark Airport being located at Newark, N.J. in lieu of Newark, N.Y. If a hearing is deemed necessary, the applicant requests it be held at New York, N.Y.

No. MC 142567 (Sub-No. 1), filed December 9, 1976. Applicant: GREENVILLE TRANSIT, INC., Route 1, Box 452, Scuffletown Road, Simpsonville, S.C. 29681. Applicant's representative: Mitchell King Jr., P.O. Box 1628, Greenville, S.C. 29602. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel articles*, between the facilities of South Carolina Steel Corporation located in Greenville County, S.C., on the one hand, and, on the other, points east of Kansas, Nebraska, North Dakota, Oklahoma, South Dakota and Texas, under a continuing contract or contracts with South Carolina Steel Corporation.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at Charlotte, N.C.

No. MC 142681 (Sub-No. 1), filed December 13, 1976. Applicant: JOHN L. BRADY, doing business as J & M ENTERPRIZE, 48 North 1 West, Hyde Park, Utah 84318. Applicant's representative: Irene Warr, 430 Judge Building, Salt Lake City, Utah 84111. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Flour and bran*, in bags, from the plantsite of Gilt Edge Flour Mill, located at or near Richmond, Utah, to points in California, under contract with Gilt Edge Flour Mill.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at Salt Lake City, Utah.

No. MC 142747, filed December 22, 1976. Applicant: DAVID L. TATE, HAMER L. TATE, ALICIA L. TATE, WILLIAM H. TATE, BERYL E. TATE AND GERALD ROSS, a Partnership, doing business as TATE CHEESE COMPANY, No. 1 Cheddar Lane, Valley City, Ill. 62340. Applicant's representative: Tom B. Kretsinger, 910 Brookfield Building, 101 West Eleventh St., Kansas City, Mo. 64105. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Processed and natural cheese, meat and meat products, poultry parts, dairy products and derivatives, baking products ingredients, chemicals, packaging materials, manufacturing equipment, grain products, processed and containerized fruits and vegetables*, and *commodities* exempt under Section 203(b)(6) when transported in connection with the commodities listed above, between Valley City, Ill., on the one hand, and on the other, points in the United States (except Alaska and Hawaii), under a continuing contract or contracts with Tate Cheese Company.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at either Chicago, Ill. or Kansas City, Mo.

No. MC 142755, filed December 13, 1976. Applicant: W. E. HAMILTON, doing business as W. E. HAMILTON TRUCKING COMPANY, 107 North Cedar Street, Pecos, Tex. 79772. Applicant's representative: Mike Cotten, P.O. Box 1148, Austin, Tex. 78767. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Dry fertilizer*, in bulk and in sacks or bags, and *fungicides, herbicides and insecticides*, in containers, in mixed loads with dry fertilizer in sacks or bags, from points in Reeves County, Tex., to points in New Mexico; and (2) *empty pallets*, from points in New Mexico, to points in Reeves County, Tex.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at Dallas, Tex.; Albuquerque, N. Mex.; or Washington, D.C.

No. MC 142757, filed December 9, 1976. Applicant: WAYNE H. ROBERTSON, doing business as ROBERTSON TANK SERVICE, Box 100, Elkhart, Kans. 67950. Applicant's representative: Wilburn L. Williamson, 280 National Foundation Life Bldg., 3535 N.W. 58th Street, Oklahoma City, Okla. 73112. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Anhydrous ammonia, nitrogen fertilizer solutions, and urea liquor*, from the plantsites of Oklahoma Nitrogen Corporation and Bison Chemical Company located at or near Woodward, Okla., to points in Arkansas, Colorado, Kansas, Iowa, Louisiana, Missouri, Nebraska, New Mexico, Oklahoma, South Dakota and Texas.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at Oklahoma City, Okla.

No. MC 142758, filed December 6, 1976. Applicant: OHIO DELIVERY, INC., 85 East Gay Street, Columbus, Ohio 43215. Applicant's representative: Earl N. Merwin, (same address as applicant). Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except commodities in bulk), between Cincinnati, Ohio, on the one hand, and, on the other, points in West Virginia, under a continuing contract, or contracts, with Union Oil Company of California.

NOTE.—Common control may be involved. If a hearing is deemed necessary, the applicant requests it be held at Columbus, Ohio.

No. MC 142759, filed December 9, 1976. Applicant: S. J. WURMNEST, doing business as WURMNEST TRUCKING, Rural Route 1, Sibley, Ill. 61773. Applicant's representative: Albert A. Andrin, 180 North La Salle Street, Chicago, Ill. 60601. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Agricultural chemicals and fertilizer*, (1) from points in Arkansas, Indiana, Iowa, Kansas, Kentucky, Minnesota, Missouri and Wisconsin, to Sibley, Ill., and (2) from Sibley, Ill., to points in Arkansas, Indiana, Iowa, Kansas, Kentucky, Minnesota, Missouri and Wisconsin, under a continuing contract, or contracts, with Ag Supply, Inc., Meyerousch, Inc., Helena Chemical Co., and Terra Illinois, Inc.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at Chicago, Ill.

PASSENGER APPLICATIONS

No. MC 1515 (Sub-No. 221), filed December 13, 1976. Applicant: GREYHOUND LINES, INC., Greyhound Tower, Phoenix, Ariz. 85077. Applicant's representative: W. L. McCracken, (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *Passengers and their baggage, express and newspapers* in the same vehicle with passengers, (1) Between Cleveland, Ohio and the junction of New Ohio Highway 2 and old Ohio Highway 2 west of Port Clinton, Ohio, serving all intermediate points: From Cleveland over New Ohio Highway 2 (portions of which are also designated Interstate Highway 90) to junction old Ohio Highway 2 and return over the same route; and (2) Between the junction of Interstate Highway 90 and Ohio Highway 2 and the junction of Interstate Highway 90 and Interstate Highway 80, serving no intermediate points: From the junction of Interstate Highway 90 and Ohio Highway 2 over Interstate Highway 90 to junction Interstate Highway 80 and return over the same route; and (3) Between Lorain, Ohio and the junction of Ohio Highway 58 and New Ohio Highway 2 serving all intermediate points: From Lorain over Ohio Highway 58 to junction New Ohio Highway 2 and return over the same route.

NOTE.—Applicant states that in conjunction with the above requested authority, it proposes to abandon that portion of its current authority over old Ohio Highway 2 between its junction with U.S. Highway 6 west of Sandusky, Ohio and its junction with New Ohio Highway 2 near Danbury, Ohio as contained in Certificate of Public Convenience and Necessity No. MC 1515 (Sub-No. 6), Sheet No. 13, Route 42B. Common control may be involved. If a hearing is deemed necessary, the applicant requests that it be held at Cleveland, Ohio.

No. MC 2661 (Sub-No. 15), filed December 9, 1976. Applicant: INDIAN TRAILS, INC., 109 East Comstock, Owosso, Mich. 48867. Applicant's representative: Robert D. Schuler, 100 West Long Lake Road, Suite 102, Bloomfield Hills, Mich. 48013. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Passengers and their baggage* in the same vehicle with passengers in round-trip and one-way sightseeing and pleasure tours in special operations between points in Berrien, Cass, St. Joseph, Branch, Hillsdale, Lenawee, Monroe, Van Buren, Kalamazoo, Calhoun, Jackson, Washtenaw, Wayne, Allegan, Barry, Eton, Ingham, Livingston, Oakland, Macomb, Ionia, Clinton, Shiawassee, Genessee, Lapeer, St. Clair, Montcalm, Gratiot, Saginaw, Tuscola, Sanilac, Mecosta, Isabella, Midland, Bay, and Huron Counties, Mich., on the one hand, and, on the other, points in the United States, including Alaska but excluding Hawaii; the one-way operations requested immediately above are restricted to the transportation of passengers and their baggage having a prior or subsequent movement by air, rail, or water from or to one of the above-named counties in Michigan.

NOTE.—Applicant offers to surrender partially duplicating authority in Docket No. MC 2661 (Sub-No. 14), if this application is granted substantially as filed. If a hearing is deemed necessary, the applicant requests that it be held at Lansing, Mich.

No. MC 109897 (Sub-No. 2), filed December 6, 1976. Applicant: GRAY LINE NEW YORK TOURS CORP., 254 West 54th Street, New York, N.Y. 10019. Applicant's representative: W. L. McCracken, Greyhound Tower, Phoenix, Ariz. 85077. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Passengers and their baggage*, in special operations, beginning and ending at New York, N.Y., and extending to Great Adventure Amusement Park, Jackson, N.J.

NOTE.—Common control may be involved. If a hearing is deemed necessary, the appli-

cant requests it be held at either New York, N.Y., or Philadelphia, Pa.

No. MC 115521 (Sub-No. 4), filed December 9, 1976. Applicant: MC DERMOTT BUS CORP., 2164 Caton Avenue, Brooklyn, N.Y. 11226. Applicant's representative: Sidney J. Leshin, 575 Madison Avenue, New York, N.Y. 10022. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Passengers*, in special round trip operations, beginning and ending in the Boroughs of Brooklyn and Queens, New York, N.Y., and extending to the Meadowland Sporting Complex, at East Rutherford, N.J.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at New York, N.Y.

No. MC 141465 (Sub-No. 3), filed December 8, 1976. Applicant: GENEVA LAKE AREA JOINT TRANSIT COMMISSION, 623 Main Street, Lake Geneva, Wis. 53147. Applicant's representative: Anthony E. Young, 327 South LaSalle Street, Chicago, Ill. 60604. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *Passengers, and their baggage* moving in the same vehicle with passengers, (1) Between Delavan, Wis. and Richmond, Ill., serving all intermediate points: From Delavan over Wisconsin Highway 50 to junction County Highway P, thence over County Highway P to junction Wisconsin Highway 67, thence over Wisconsin Highway 67 to junction Wisconsin Highway 50, thence over Wisconsin Highway 50 to junction County Highway H, thence over County Highway H, to junction U.S. Highway 12, thence over U.S. Highway 12 to Richmond, Ill., and return over the same route; (2) Between Whitewater, Wis., and Crystal Lake, Ill., serving all intermediate points: From Whitewater, Wis., over U.S. Highway 12 to junction Wisconsin Highway 11, thence over Wisconsin Highway 11 to Delavan, thence over Wisconsin Highway 50 to junction of County Highway F, thence over County Highway P to junction Wisconsin Highway 67, thence over Wisconsin Highway 67 to junction Wisconsin Highway 50, thence over Wisconsin Highway 50 to junction County Highway H, thence over County Highway H, to junction U.S. Highway 12, thence over U.S. Highway 12 to Richmond, Ill., and return over the same route, (3) Between Elkhorn, Wis. and Chicago-O'Hare International Airport, located at or near Chicago, Ill. serving all intermediate points: From Elkhorn, Wis., over U.S. Highway 11 to junction Wisconsin Highway 50, thence over Wisconsin Highway 50 to junction County Highway F, thence over County Highway F, to junction Wisconsin Highway 67, thence over Wisconsin Highway 67 to Fontana, Wis., return on Wisconsin High Highway 67 to junction Wisconsin Highway 50 thence over Wisconsin Highway 50 to junction U.S. Highway 12, thence over U.S. Highway 12 to junction Illinois Highway 68, thence over Illinois Highway 68 to junction Illinois Highway 53, thence over Illinois Highway 53 to junction Illinois Highway 194, thence over Illinois Highway 194 to junction Illinois Highway 594, thence over Illinois Highway 594 to the Chicago-O'Hare International Airport, located at or near Chicago, Ill., and return over the same route, and (4) Between Delavan, Wis. and the Chicago-O'Hare International Airport, located at or near Chicago, Ill., serving all intermediate points: From Delavan, Wis., over Wisconsin Highway 15 to junction U.S. Highway 12, thence over U.S. Highway 12 to junction Wisconsin Highway 50, thence over Wisconsin Highway 50 to junction Wisconsin Highway 67, thence over Wisconsin Highway 67 to junction U.S. Highway 14, thence over U.S. Highway 14 to junction Virginia Road, thence over Virginia Road to junction Illinois Highway 31, thence over Illinois Highway 31 to junction Illinois Highway 62, thence over Illinois Highway 62 to junction Barrington Road, thence over Barrington Road to junction U.S. Highway 90, thence over U.S. Highway 90 to junction Illinois Highway 194, and thence over Illinois Highway 194 to junction Illinois Highway 594, thence over Illinois Highway 594 to the Chicago-O'Hare International Airport, located at or near Chicago, Ill., and return over the same route.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at Lake Geneva, Wis.

No. MC 142153 (Sub-No. 3), filed December 9, 1976. Applicant: DANNER'S INCORPORATED, 102 Bedford, Houston, Tex. 77012. Applicant's representative: John W. Carlisle, 4100 Greenbriar, Suite 215, Houston, Tex. 77098. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Passengers*, restricted to ship's officers, crew members, Company personnel and representatives engaged in and responsible for the operation, maintenance, repair and safety of ocean going ships or vessels, *and their baggage*; and (2) *detained persons*, including stowaways when moving under guard or in custody of applicant, *and their baggage*, (a) between Intercontinental Airport, located at Houston, Tex., Gulfport-Biloxi Municipal Airport, located at Gulfport-Biloxi, Miss., Ryan Airport, located at Baton Rouge, La., Greenville Municipal Airport, located at Greenville, Miss., Rio Grande Valley Airport, located at Brownsville, Tex., Moisant Airport, located at Metairie, La., Corpus Christi International Airport, located at Corpus Christi, Tex., Lake Charles Municipal Airport, located at Lake Charles, La., Jefferson County Airport, located at Beaumont, Tex., and Scholes Field, located at Galveston, Tex., on the one hand, and, on the other, the Gulfports of Houston Navigation District, Baytown-LaPorte, Galveston, Corpus Christi, Port Lavaca, Orange, Brownsville, Port Arthur, Beaumont, Freeport, Port Neches and Texas City, Tex.; Lake Charles, Baton Rouge and New Orleans, La.: Biloxi, Gulfport, Pascagoula and Greenville, Miss.: and (b) between the Gulfports of Houston Navigation District, Baytown-LaPorte, Galveston, Corpus Christi, Port Lavaca, Orange, Brownsville, Port Arthur, Beaumont, Freeport, Port Neches and Texas City, Tex.; Lake Charles, Baton Rouge and New Orleans, La.; Biloxi, Gulfport, Pascagoula and Greenville, Miss.

NOTE.—If a hearing is deemed necessary, the applicant does not specify a location.

BROKER APPLICATIONS

No. MC 130427, filed December 13, 1976. Applicant: WILLIAM V. AND GREGORY S. KITLEY, a Partnership, doing business as KITLEY BROTHERS EXCURSIONS, P.O. Box 14230, Opportunity, Wash. 99214. Applicant's representative: George R. LaBissoniere, 1100 Norton Building, Seattle, Wash. 98104. Authority sought to engage in operation, in interstate or foreign commerce, as a *broker* at Opportunity and Spokane, Wash., to sell or offer to sell the transportation of *passengers and their baggage*, in round trip, sightseeing and pleasure tours, by motor, rail, water, and air carriers, beginning and ending at points in Spokane County, Wash., and extending to points in the United States, including Alaska and Hawaii.

NOTE.—If a hearing is deemed necessary, the applicant requests that it be held at Spokane, Wash.

No. MC 130428, filed December 6, 1976. Applicant: FOUR SEASONS TRAVEL SERVICE, INC., 845 North Clinton, Defiance, Ohio 43512. Applicant's representative: A. Charles Tell, 100 East Broad Street, Columbus, Ohio 43215. Authority sought to engage in operation, in interstate or foreign commerce, as a *broker* at Definance, Ohio, to sell or offer to sell the transportation of *individual passengers and groups of passengers, and their baggage*, in special and charter operations, in round-trip, all-expense tours, beginning and ending at points in Definance, Henry, Paulding, Putnam and Williams Counties, Ohio, and extending to points in the United States, including Alaska and Hawaii.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at Defiance, Ohio.

No. MC 130429, filed December 14, 1976. Applicant: CHARLES W. ALBERTSON, Route 2, Box 141-E, Beulaville, N.C., 28518. Applicant's representative: Charles W. Albertson (same address as applicant). Authority sought to engage in operation, in interstate or foreign commerce, as a *broker* at Beulaville, N.C., to sell or offer to sell the transportation of *passengers and their baggage* in the same vehicle with passengers, by motor,

rail, water, and air carriers, beginning and ending at points in Duplin County, N.C., and extending to points in the United States (except Alaska and Hawaii).

NOTE.—If a hearing is deemed necessary, the applicant requests that it be held at either Raleigh or Charlotte, N.C.

FINANCE APPLICATIONS

The following applications seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control through ownership of stock, of rail carriers or motor carriers pursuant to Sections 5(2) or 210a(b) of the Interstate Commerce Act.

An original and two copies of protests against the granting of the requested authority must be filed with the Commission by February 22, 1977. Such protest shall comply with Special Rules 240 (c) or 240(d) of the Commission's *General Rules of Practice* (49 CFR 1100.240) and shall include a concise statement of protestant's interest in the proceeding. A copy of the protest shall be served concurrently upon applicant's representative, or applicant, if no representative is named.

No. MC-F-12938. (Amendment). (Cooper-Jarrett, Inc.—purchase—Sherer Freight Lines, Inc., Associated Transport, Inc., Thomas J. Cahill, trustee in bankruptcy), published in the August 26, 1976, FEDERAL REGISTER. Prior notice should have included: "Service is authorized to and from all intermediate points."

No. MC-F-13050. (Amendment) (J. B. Williams Express, Inc.—Purchase (portion)—National Transportation Co., d.b.a. National Transport 101, published in the December 23, 1976, FEDERAL REGISTER. Prior notice should exclude all authority except as follows: General commodities, with exceptions as a common carrier over regular routes between New Freedom, Pa., and junction U.S. Highways 1 and 9 near Woodbridge, N.J., serving all intermediate points in Pennsylvania with restrictions; General commodities with exceptions as common carrier over regular routes serving the plant site of P. H. Glatfelter Company at Spring Grove, Pa., as an off-route points in connection with carrier's otherwise authorized regular route operations between New Freedom, Pa., and junction U.S. Highways 1 and 9 near Woodbridge, N.J.

Alternate route operating convenience only; General commodities, except those of unusual value, those requiring special equipment, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those injurious or contaminating to other lading, between Newark, N.J., and Lancaster, Pa., in connection with carrier's presently authorized regular route operations between Lancaster, Pa., and Newark, N.J., over U.S. Highway 30, 1, and 9, serving no intermediate points: From Newark over U.S. Highway 22 to Allentown, Pa., thence over U.S. Highway 222 to Lancaster, and return over the same route, with restrictions; General commodities with exceptions as a common carrier over irregular routes between points in Middlesex, Somerset, and Union Counties, N.J., on the one hand, and, on the other, New York, N.Y., and points in Nassau, Orange, Westchester, Putnam, Dutchess, Rockland, Ulster, Sullivan, and Delaware Counties, N.Y., and those in Fairfield County, Conn., and Berks, Lehigh, and Northampton Counties, Pa., with restrictions: no service may be performed between points in Rockland County, N.Y., on the one hand, and, on the other, points in Fairfield, Hartford, Middlesex, and New Haven Counties, Conn.; General commodities with exceptions as a common carrier over irregular routes between New York, N.Y., Philadelphia, Pa., and Camden, N.J., on the one hand, and, on the other, points in Union, Essex, Hudson, Bergen, Middlesex, Passaic, Mercer, Morris, and Somerset Counties, N.J., between Newark, N.J., on the one hand, and, on the other, points in Middlesex County, N.J.

No. MC-F-13065. Authority sought for purchase by Rio Grande Motor Way, Inc., 1400 West 52nd Avenue, Denver, Colo., 80221, of a portion of the operating rights and property of Arrow Auto Line, Inc., d.b.a. Arrow Auto Line, 3700 North First West, Price, Utah, 84501 and for acquisition by the Denver and Rio Grande Western Railroad Company, 1515 Arapahoe Street, One Park Central, P.O. Box 5482, Denver, Colo., 80217, of control of such rights through the purchase. Applicants' attorney: John S. Walker, Jr., P.O. Box 5482, Denver, Colo., 80217. Operating rights sought to be transferred: General commodities, with exceptions as a common carrier over regular routes between Price, Utah, and Sunnyside, Utah, service is authorized to and from all intermediate points, and the off-route points of Columbia and Horse Canyon, Utah; between Price, Utah, and Mohrland, Utah, service is authorized to and from all intermediate points. Vendee is authorized to operate as a *common carrier* in Utah and Colorado. Application has not been filed for temporary authority under section 210a(b).

No. MC-F-13068. Authority sought for purchase by McVey Trucking, Inc., Rural Route 1, Oakwood, Ill. 61858, of the operating rights of Harry J. Patton and Carlos E. Brewer, a Partnership, d.b.a. Patton Trucking Co., Homer Ill. 61849, and for acquisition by Lloyd McVey and Norma McVey, both of Oakwood, Ill., 61858, of control of such rights through the purchase. Applicants' attorney: Clyde Meachum, 41 On The Mall, Danville, Ill., 61832. Operating rights sought to be transferred: *Sand and Gravel* as a *common carrier* over irregular routes from Vermillion and Warren Counties, Indiana to points in Champaign County, Ill.; *Gravel* from points in Fountain and Parke Counties, Indiana, to points in Champaign County, Ill; *Tile and Clay Products* from points in Morgan County, Indiana, to points in Champaign County, Ill.; *Coal*, from points in Clay County, Indiana, to points in Champaign County, Illinois; and *Livestock*, from points in Champaign and Vermilion Counties, Illinois, to Indianapolis and Terre Haute, Indiana; *Sand* and *Gravel*, from points in Fountain and Warren Counties, Indiana, to points in Piatt and DeWitt Counties, Illinois; *Building Brick*, from Cayuga, Montezuma and Brazil, Indiana, to points in Champaign County, Ill.; *Building Brick*, from points in Jefferson County, Kentucky, Polk, Warren, Dallas and Wapello Counties, Iowa, Jackson, Greene, and Lake Counties, Indiana, and St. Louis County, Missouri, to points in Ford, Iroquois, Champaign, Vermilion, Piatt, Douglas, Edgar, DeWitt and McLean Counties, Ill. Vendee is authorized to operate as a *contract carrier* in Illinois, Indiana, Iowa, Wisconsin, Ohio, Kentucky, Tennessee, Michigan, Missouri, Minnesota, Florida, New York and Texas and as a *common carrier* in Illinois, Indiana, Wisconsin, Ohio, Michigan, Minnesota, Iowa, Kentucky, Missouri, Tennessee, Florida, New York, and Texas. Application has been filed for temporary authority under Section 210a (b).

No. MC-F-13071. Authority sought for purchase by Gateway Transportation Co., Inc., 455 Park Plaza Drive, La Crosse, Wisc., 54601, of a portion of the operating rights of Roadway Express, Inc., 1077 George Boulevard, P.O. Box 471, Akron, Ohio, 44309, and for acquisition by estate of W. Leo Murphy, Eugene W. Murphy, John A. Murphy, and Michael P. Murphy, 1st Wisconsin Trust Co., Milwaukee, Wis., 300 Ocean Blvd., Palm Beach, Fla., 455 Park Plaza Dr., La Crosse, Wisc., and 10301 S. Harlem Avenue, Chicago, Ill., 60415 respectively, of control of such rights through the purchase. Applicants' attorneys: William O'Neill Turney, Suite 1010, 7101 Wisconsin Avenue, Washington, D.C., 20014 and F. Neil Aschemeyer, Vice President-Law and General Counsel, 455 Park Plaza Drive, La Crosse, Wisc., 54601. Operating rights sought to be transferred: General commodities, with exception as a common carrier over regular routes between Buffalo, N.Y., and Syracuse, N.Y., serving the intermediate point of Rochester, N.Y.; serving the intermediate point of Albany, N.Y., in connection with carrier's regular route operations presently authorized between Cleveland, Ohio, and New York, N.Y., serving all intermediate points in Ohio and those between Peekskill and New York, N.Y.; between junction U.S. Highways 62 and 20 at or near Big Tree, N.Y., and Crittenden, N.Y., serving all intermediate points; between Buffalo, N.Y., and Syracuse, N.Y., serving all intermediate points; between New York points, serving all intermediate points, as follows: from junction U.S. Highway 20 and New York Highway 78 at or near Depew, N.Y., over New York Highway 78 to Lockport, and return over the same route. From Buffalo over New York Highway 263 to Millersport, and return over the same route. From Buffalo over New York Highway 384 to Niagara Falls, and return over the same route. From Buffalo

over U.S. Highway 62 to Niagara Falls, and return over the same route.

From Le Roy over New York Highway 19 to Bergen, and return over the same. From Rochester over U.S. Highway 15 to East Avon, and return over the same route. From Rochester over New York Highway 31 (formerly portion New York Highway 2) to junction New York Highway 96 (formerly portion New York Highway 2), thence over New York Highway 96 to Waterloo, and return over the same route. From Rochester over New York Highway 31F (formerly portions New York Highways 33 and 33B) to Fairport, N.Y., thence over New York Highway 250 to junction New York Highway 96 (formerly New York Highway 2), and return over the same route. From Manchester over New York Highway 21 to Canandaigua, N.Y., thence over New York Highway 332 to junction New York Highway 96 (formerly New York Highway 2), and return over the same route. From Lyons over New York Highway 14 to Geneva, N.Y., thence over New York Highway 96A (formerly New York Highway 2A) to Ovid, N.Y., thence over New York Highway 96 (formerly New York Highway 2) to Interlaken, and return over the same route. From Port Byron over New York Highway 38 to Auburn, N.Y., thence over New York Highway 5 to junction New York Highway 31B, and return over the same route. From Syracuse over New York Highway 57 to Oswego (also from Syracuse over New York Highway 48 to Oswego) and return over the same route. From Syracuse over New York Highway 5 to junction New York Highway 365, thence over New York Highway 365 to Rome (also from Syracuse over New York Highway 48 to Oswego) and return over the same routes. From Syracuse over New York Highway 5 to junction New York Highway 365, thence over New York Highway 365 to Rome (also from Syracuse over New York Highway 298 to junction New York Highway 31, thence over New York Highway 31 to junction New York Highway 365, thence over New York Highway 365 to Rome), and return over the same routes.

Between Niagara Falls, N.Y., and Rochester, N.Y., serving the intermediate point of Lockport, N.Y.: from Niagara Falls over New York Highway 31 to Rochester, and return over the same route. Between Albany and Syracuse, N.Y., serving all intermediate points including off-route points within ten miles of the described routes, and those within ten miles of Syracuse, except points on New York Highway 5 west of Syracuse: From Albany over U.S. Highway 20 via Cazenovia, N.Y., to junction New York Highway 92, thence over New York Highway 92 to Syracuse, and return over the same route. From Albany over New York Highway 5 via Vernon, N.Y., to Syracuse, and return over the same route. From Vernon over New York Highway 234 to junction New York Highway 31, thence over New York Highway 31 to Cicero, N.Y., thence U.S. Highway 11 to Syracuse, and return over the same route. Vendee is authorized to operate as a common carrier in Alabama, Arkansas, Connecticut, Delaware, the District of Columbia, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Virginia, West Virginia, and Wisconsin. Application has not been filed for temporary authority under section 210a(b).

No. MC-F-13074. Authority sought for purchase by K. G. Moore, Inc., 16 Progress Avenue, Nashua, N.H., 03060, of the operating rights of Forest City Express Company, Brewery Street, P.O. Box 2572, Waterbury, Conn., 06720, and for acquisition by Robert F. Anderson, Jr., and Walter Anderson, both of 16 Progress Ave., Nashua, N.H., and James J. Anderson, of 583 Main St., Walpole, Mass., of control of such rights through the purchase. Applicants' attorneys: Robert G. Parks, 189 Neholden St., Needham, Mass., 02192 and Thomas W. Murrett, 342 N. Main St., W. Hartford, Conn., 06117. Operating rights sought to be transferred: Under a certificate of registration in Docket No. MC-15405 (Sub-No. 2), General commodities, as a common carrier beween all points in the State of Connecticut, over irregular routes and over described regular routes. Vendee is authorized to operate as a common carrier in Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, and New Jersey. Application has been filed for temporary authority under section 210a(b).

NOTE.—MC-22988 (Sub-No. 10) is a directly related matter.

No. MC-F-13079. Authority sought for purchase by Matson Truck Lines, Inc., P.O. Box 328, 1407 St. John Avenue, Albert Lea, Minn., 56007, of a portion of the operating rights of Johnsrud Transport, Inc., Highway 9 West, P.O. Box 447, Cresco, Iowa, 52136, of control of such rights through the purchase. Applicants' attorneys: Val M. Higgins, 1000 First National Bank Building, Minneapolis, Minn., 55402 and Patrick E. Quinn, P.O. Box 82028, Lincoln, Neb., 68051. Operating rights sought to be transferred: *Steel sheets, steel coils, and steel blanks*, as a *common carrier* over irregular routes from Chicago, Ill.; and Milwaukee, Wis., to the facilities of Donaldson Company, Inc., at Cresco and Oelwein, Iowa; *butter and cheese*, except in bulk, from Cresco, Decorah, and Schley, Iowa, to points in Minnesota (except those in the Minneapolis-St. Paul commercial zone as defined by the Commission) and Sioux Falls, S. Dak., with restrictions. Vendee is authorized to operate as a common carrier in all the States in the United States including Alaska, (excluding Hawaii). Application has been filed for temporary authority under section 210a(b).

WATER CARRIER APPLICATION

Docket No. W-101 (Exemption Section 303(e)(2)). Authority sought for cancellation of the above-noted exemption in the name of Raymond International, Inc., P.O. Box 22718, Houston, Tex. 77027, and reissuance of same to Hoffman International Inc. (formerly Hoffman Rigging & Crane Service, Inc.), a motor carrier, 560 Cortland St., Belleville, N.J., 07109, controlled by Hary L. Hoffman, Jr., also of Belleville, N.J., 07109. Applicant's attorney: Morton E. Kiel, 5 World Trade Center, Suite 6193, New York, N.Y., 10048. Exemption sought to be cancelled and reissued: Transportation, in interstate or foreign commerce, as a water contract carrier (1) by derricks and/or barges and tugs from and to ports on the Atlantic and Gulf coasts of heavy or bulky articles such as tanks, boilers, airplanes, cracking chambers, machinery and similar pieces of freight, and (2) by towing vessels and derrick lighters of contractors' equipment and materials, consisting of steam shovels, pile driving rigs, trucks, bulldozers, ditching machines, caterpillar cranes, compressors, dredges, derrick lighters, and other miscellaneous heavy and bulky materials used in construction work between construction sites, along the Atlantic coast, on Long Island, N.Y., and along Long Island Sound, Block Island Sound, and their tributary waterways, Narrangansett Bay, Providence River, and in the area defined in the order of March 26, 1941, in Ex Parte No. 140, *Determination of the Limits of New York Harbor and Harbors Contiguous Thereto*.

NOTE (1): This transaction is related to the purchase transaction previously described on November 8, 1972 in the Federal Register at No. MC-11701 wherein Hoffman International, Inc. (formerly Hoffman Rigging & Crane Service, Inc.), a motor carrier, proposed to purchase the certificated water carrier operating rights and certain other property of Raymond International Inc. Authority to acquire the said certificated rights and property was granted by order of the Commission, Division 3, acting as an Appellate Division, served November 8, 1973.

NOTE (2): To facilitate processing of this proceeding, copies of all protests should be served upon applicants and their representatives.

NOTE (3): (a) The transaction proposed in No. W-101 will be processed under the modified procedure. Applicants have been directed to file opening verified statements in support of the application within 30 days or less of the date of this notice. Protestants must file their verified statements in opposition to the application within 50 days or less of the date of this notice. Applicants must file verified statements in reply within 65 days or less of the date of this notice.

(b) All protesting parties as well as applicants must comply with applicable provisions of section 1100.45(b), 1100.46(b), and 1100.47-1100.54, inclusive of the Commission's General Rules of Practice, relating to modified procedure, except that the original and one copy of any statement made pursuant to section 1100.51 shall be filed with the Commission.

(c) Copies of any verified statements in opposition must be served upon applicants and their representative, and a copy of each statement filed with the Commission shall so certify. Similarly, applicants have been directed to serve copies of their verified statements upon protestants.

(d) Except for good cause shown, preliminary motions and requests for cross-examination of witnesses or for other relief will not be acted upon prior to the date on or before which all verified statements are required to be filed.

ABANDONMENT APPLICATIONS

Notice is hereby given pursuant to section 1a(6)(a) of the Interstate Commerce Act that orders have been entered in the following abandonment applications which are administratively final and which found that subject to conditions the present and future public convenience and necessity permit abandonment.

A Certificate of Abandonment will be issued to the applicant carriers 30 days after this FEDERAL REGISTER publication unless the instructions set forth in the notices are followed.

[Docket No. AB-1 (Sub-No. 7)]

CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY—ABANDONMENT BETWEEN STANWOOD AND TIPTON, IOWA

FINDINGS

Notice is hereby given pursuant to Section 1a(6)(a) of the Interstate Commerce Act (49 U.S.C. 1a(6)(a)) that by an order entered on October 28, 1976, a finding, which is administratively final, was made by the Commission, Division 3, stating that, subject to the conditions for the protection of railway employees prescribed by the Commission in *Chicago, B. & Q. R. Co., Abandonment*, 257 I.C.C. 700, the present and future public convenience and necessity permit the abandonment by the Chicago and North Western Transportation Company of its branch line beginning at milepost 0.34 at Stanwood, Iowa, and extending in a southerly direction to the end of the line at milepost 9.14 at Tipton, Iowa, a distance of approximately 8.2 miles, all in Cedar County, Iowa. A certificate of abandonment will be issued to the Chicago and North Western Transportation Company based on the above-described finding of abandonment, 30 days after publication of this notice, unless within 30 days from the date of publication, the Commission further finds that:

(1) A financially responsible person (including a government entity) has offered financial assistance (in the form of a rail service continuation payment) to enable the rail service involved to be continued; and

(2) It is likely that such proffered assistance would:

(a) Cover the difference between the revenues which are attributable to such line of railroad and the avoidable cost of providing rail freight service on such line, together with a reasonable return on the value of such line, or

(b) Cover the acquisition cost of all or any portion of such line of railroad.

If the Commission so finds, the issuance of a certficate of abandonment will be postponed for such reasonable time, not to exceed 6 months, as is necessary to enable such person or entity to enter into a binding agreement, with the carrier seeking such abandonment, to provide such assistance or to purchase such line and to provide for the continued operation of rail services over such line. Upon notification to the Commission of the execution of such as assistance or acquisition and operating agreement, the Commission shall postpone the issuance of such a certificate for such period of time as such an agreement (including any extensions or modifications) is in effect. Information and procedures regarding the financial assistance for continued rail service or the acquisition of the involved rail line are contained in the Notice of the Commission entitled "Procedures for Pending Rail Abandonment Cases" published in the FEDERAL REGISTER on March 31, 1976, at 41 FR 13691. All interested persons are advised to follow the instructions contained therein as well as the instructions contained in the above-referenced order

[Docket No. AB-2 (Sub-No 5)]

LOUISVILLE AND NASHVILLE RAILROAD COMPANY ABANDONMENT BETWEEN COLESBURG AND HOHENWALD, IN DICKSON, HICKMAN AND LEWIS COUNTIES, TENNESSEE

FINDINGS

Notice is hereby given pursuant to Section 1a(6)(a) of the Interstate Commerce Act (49 U.S.C. 1a(6)(a)) that by an order entered on May 17, 1976, and the decision and order of the Commission, Division 3, served November 29, 1976, which affirmed and adopted the initial decision of the Administrative Law Judge entered on May 17, 1976, a finding, which is administratively final, was made stating that, subject to the conditions for the protection of railway employees prescribed by the Commisison in *Chicago, B. & Q. R. Co., Abandonment*, 257 I.C.C. 700, and for public use as set forth in said order, the present and future public convenience and necessity permit the abandonment by the Louisville and Nashville Railroad Company of the line of railroad which turns out of the Louisville and Nashville's main line at Colesburg, Dickson County, Tennessee, and extends from milepost 2 to just south of milepost 52 near Hohenwald, Lewis County, Tennessee, a distance of about 50.5 miles. A certificate of abandonment will be issued to the Louisville and Nashville Railroad Company based on the above-described finding of abandonment, 30 days after publication of this notice, unless within 30 days from the date of publication, the Commission further finds that:

(1) A financially responsible person (including a government entity) has offered financial assistance (in the form of a rail service continuation payment) to enable the rail service involved to be continued; and

(2) It is likely that such proffered assistance would:

(a) Cover the difference between the revenues which are attributable to such line of railroad and the avoidable cost of providing rail freight service on such line, together with a reasonable return on the value of such line, or

(b) Cover the acquisition cost of all or any portion of such line of railroad

If the Commission so finds, the issuance of a certificate of abandonment will be postponed for such reasonable time, not to exceed 6 months, as is necessary to enable such person or entity to enter into a binding agreement, with the carrier seeking such abandonment, to provide such assistance or to purchase such line and to provide for the continued operation of rail services over such line. Upon notification to the Commission of the execution of such an assistance or acquisition and operating agreement, the Commission shall postpone the issuance of such a certificate for such period of time as such an agreement (including any extensions or modifications) is in effect. Information and procedures regarding the financial assistance for continued rail service or the acquisition of the involved rail line are contained in the Notice of the Commission entitled "Procedures for Pending Rail Abandonment Cases" published in the FEDERAL REGISTER on March 31, 1976, at 41 FR 13691. All interested persons are advised to follow the instructions contained therein as well as the instructions contained in the above-referenced order.

[Docket No. AB-2 (Sub-No 9)]

LOUISVILLE AND NASHVILLE RAILROAD COMPANY ABANDONMENT BETWEEN FRIENDSVILLE AND GREENBACK, IN BLOUNT AND LOUDON COUNTIES, TENNESSEE

FINDINGS

Notice is hereby given pursuant to Section 1a(6)(a) of the Interstate Commerce Act (49 U.S.C. 1a(6)(a)) that by an order entered on November 15, 1976, a finding, which is administratively final was made by the Commission, Review Board Number 5, stating that, subject to the conditions for the protection of railway employees prescribed by the Commission in *Chicago, B & Q. R Co., Abandonment*, 257 I.C.C. 700, the present and future public convenience and necessity permit the abandonment by the Louisville and Nashville Railroad Company of the line of railroad extending from railroad milepost KT296 near Friendsville, Tennessee, in a south southwesterly direction to milepost KT304.5 near Greenback, Tennessee, a distance of 8.5 miles, in Blount and Loudon Counties, Tennessee. A certificate of abandonment will be issued to the Louisville and Nashville Railroad Company based on the above-described finding of abandonment, 30 days after publication of this notice, unless within 30 days from the date of publication, the Commission further finds that:

(1) A financially responsible person (including a government entity) has offered financial assistance (in the form of a rail service continuation payment) to enable the rail service involved to be continued; and

(2) It is likely that such proffered assistance would:

(a) Cover the difference between the revenues which are attributable to such line of railroad and the avoidable cost of providing rail freight service on such line, together with a reasonable return on the value of such line, or

(b) Cover the acquisition cost of all or any portion of such line of railroad.

If the Commission so finds, the issuance of a certificate of abandonment will be postponed for such reasonable time, not to exceed 6 months, as is necessary to enable such person or entity to enter into a binding agreement, with the carrier seeking such abandonment, to provide such assistance or to purchase such line and to provide for the continued operation of rail services over such line. Upon notification to the Commission of the execution of such an assistance or acquisition and operating agreement, the Commission shall postpone the issuance of such a certificate for such period of time as such an agreement (including any extensions or modifications) is in effect. Information and procedures regarding the financial assistance for continued rail service or the acquisition of the involved rail line are contained in the Notice of the Commission entitled "Procedures for Pending Rail Abandonment Cases" published in the FEDERAL REGISTER on March 31, 1976, at 41 FR 13691. All interested persons are advised to follow the instructions contained therein as well as the instructions contained in the above-referenced order.

[Docket No. AB-18 (Sub-No. 23)]

CHESAPEAKE AND OHIO RAILWAY COMPANY ABANDONMENT BETWEEN FOREST AND MCVEY IN RALEIGH COUNTY, WEST VIRGINIA

FINDINGS

Notice is hereby given pursuant to Section 1a(6)(a) of the Interstate Commerce Act (49 U.S.C. 1a(6)(a)) that by an order entered on November 16, 1976, a finding, which is administratively final, was made by the Commission, Commissioner Brown, stating that, subject to the conditions for the protection of railway employees prescribed by the Commission in *Chicago, B. & Q. R. Co., Abandonment*, 257 I.C.C. 700, the present and future public convenience and necessity permit the abandonment by the Chesapeake and Ohio Railway Company of a portion of its Raleigh and Southwestern Subdivision from Valuation Station 280+80.5 at or near Forest to Valuation Station 328+55 at end of line at or near McVey, a distance of approximately 0.90 mile, all in Raleigh County, West Virginia. A certificate of abandonment will be issued to the Chesapeake and Ohio Railway Company based on the above-described finding of abandonment, 30 days after publication of this notice, unless within 30 days from the date of publication, the Commission further finds that:

(1) A financially responsible person (including a government entity) has offered financial assistance (in the form of a rail service continuation payment) to enable the rail service involved to be continued; and

(2) It is likely that such proffered assistance would:

(a) Cover the difference between the revenues which are attributable to such line of railroad and the avoidable cost of providing rail freight service on such line, together with a reasonable return on the value of such line, or

(b) Cover the acquisition cost of all or any portion of such line of railroad.

If the Commission so finds, the issuance of a certificate of abandonment will be postponed for such reasonable time, not to exceed 6 months, as is necessary to enable such person or entity to enter into a binding agreement, with the carrier seeking such abandonment, to provide such assistance or to purchase such line and to provide for the continued operation of rail services over such line. Upon notification to the Commission of the execution of such an assistance or acquisition and operating agreement, the Commission shall postpone the issuance of such a certificate for such period of time as such an agreement (including any extensions or modifications) is in effect. Information and procedures regarding the financial assistance for continued rail service or the acquisition of the involved rail line are contained in the Notice of the Commission entitled "Procedures for Pending Rail Abandonment Cases" published in the FEDERAL REGISTER on March 31, 1976, at 41 FR 13691. All interested persons are advised to follow the instructions contained therein as well as the instructions contained in the above-referenced order.

[Docket No AB-42 (Sub-No 1)]

AROOSTOOK VALLEY RAILROAD COMPANY—ABANDONMENT BETWEEN CARSON SIDING AND SWEDEN SIDING, IN AROOSTOOK COUNTY, MAINE

FINDINGS

Notice is hereby given pursuant to Section 1a(6)(a) of the Interstate Commerce Act (49 U.S.C. 1a(6)(a)) that by an order entered on November 15, 1976, a finding, which is administratively final, was made by the Commission, Review Board Number 5, stating that, subject to the conditions for the protection of railway employees prescribed by the Commission in *Chicago, B. & Q. R. Co., Abandonment*, 257 I.C.C. 700, and for public use as set forth in said order, the present and future public convenience and necessity permit the abandonment by the Aroostook Valley Railroad Company of the line of railroad extending from milepost 15.9 near Carson Siding, Maine, in a northerly direction to the end of line at Sweden Siding, Maine, a distance of approximately 7.2 miles. A certificate of abandonment will be issued to the Aroostook Valley Railroad Company based on the above-described finding of abandonment, 30 days after publication of this notice, unless within 30 days from the date of publication, the Commission further finds that:

(1) A financially responsible person (including a government entity) has offered financial assistance (in the form of a rail service continuation payment) to enable the rail service involved to be continued; and

(2) It is likely that such proffered assistance would:

(a) Cover the difference between the revenues which are attributable to such line of railroad and the avoidable cost of providing rail freight service on such line, together with a reasonable return on the value of such line, or

(b) Cover the acquisition cost of all or any portion of such line of railroad.

If the Commission so finds, the issuance of a certificate of abandonment will be postponed for such reasonable time, not to exceed 6 months, as is necessary to enable such person or entity to enter into a binding agreement, with the carrier seeking such abandonment, to provide such assistance or to purchase such line and to provide for the continued operation of rail services over such line. Upon notification to the Commission of the execution of such an assistance or acquisition and operating agreement, the Commission shall postpone the issuance of such a certificate for such period of time as such an agreement (including any extensions or modifications) is in effect. Information and procedures regarding the financial assistance for continued rail service or the acquisition of the involved rail line are contained in the Notice of the Commission entitled "Procedures for Pending Rail Abandonment Cases" published in the FEDERAL REGISTER on March 31, 1976, at 41 FR 13691. All interested persons are advised to follow the instructions contained therein as well as the instructions contained in the above-referenced order.

OPERATING RIGHTS APPLICATION(S) DIRECTLY RELATED TO FINANCE PROCEEDINGS

The following operating rights application(s) are filed in connection with pending finance applications under Section 5(2) of the Interstate Commerce Act, or seek tacking and/or gateway elimination in connection with transfer applications under Section 212(b) of the Interstate Commerce Act.

An original and two copies of protests to the granting of the authorities must be filed with the Commission by February 22, 1977. Such protests shall comply with Special Rule 247(d) of the Commission's General Rules of Practice (49 CFR 1100.247) and include a concise statement of protestant's interest in the proceeding and copies of its conflicting authorities. Verified statements in opposition should not be tendered at this time. A copy of the protest shall be served concurrently upon applicant's representative, or applicant if no representative is named.

Each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

No. MC 60430 (Sub-No. 23), filed December 9, 1976. Applicant: FRIEDMAN'S EXPRESS, INC., P.O. Box 480, Wilkes Barre (Dorrance), Pa. 18703. Applicant's representative: George A. Olsen, 69 Tonnele Ave., Jersey City, N.J. 07306. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *General commodities* (except household goods as defined by the Commission, commodities in bulk, those of unusual value, Classes A and B explosives, and those requiring special equipment), from points in Schuylkill County, Pa., to Reading, Pa., restricted against the transportation of shipments destined to Reading, Pa.; and (2) *general commodities* (except Classes A and B explosives, commodities in bulk, and those requiring special equipment), (a) between Orwigsburg, Pa., on the one hand, and, on the other, Landingville, Adamsdale, and Auburn, Pa., and points in Pennsylvania within 10 miles of Orwigsburg; and (b) between Landingville, Pa., on the one hand, and, on the other, points within 10 miles of Orwigsburg; and (3) between Schuylkill Haven, Pa., and Orwigsburg, Pa.

NOTE.—The purpose of this filing is to eliminate the gateway of Schuylkill Haven, Pa. and to indicate applicant's intent to tack at that point to provide a through service to Reading, Pa. This matter is directly related to a Section 5(2) finance proceeding in MC-F-13056, published in the FEDERAL REGISTER issue of December 23, 1976. If a hearing is deemed necessary, the applicant requests it be held at Wilkes Barre, or Harrisburg, Pa.

No. MC 68860 (Sub-No. 24), filed December 10, 1976. Applicant: RUSSELL TRANSFER, INCORPORATED, 444 Glenmore Drive, Salem, Va. 24153. Applicant's representative Daniel B. Johnson, Suite 1123 Munsey Bldg., 1329 E St., N.W., Washington, D.C. 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Malt beverages in truckload lots, empty malt beverage containers, farm products, farm machinery, such bulk commodities* as sand, gravel, coal, and coke, and *building construction, mining and road machinery materials, and equipment*, between points in Meigs, Gallia and Lawrence Counties, Ohio, and Wayne, Cabell, Mason, Jackson, Putnam, and Kanawha Counties, W. Va., on the one hand, and, on the other, points in Ohio, West Virginia, and those points in that part of Kentucky east of a line beginning at Covington, Ky., and extending along U.S. Highway 25 to Lexington, Ky., thence along U.S. Highway 27 to the Kentucky-Tennessee State line, including points on the indicated portions of the Highway specified.

NOTE.—The purpose of this application is to tack applicant's lead Certificate in No. MC 68860 and its Sub-No. 7 with the authority sought above, at Charleston, W. Va., and concurrently eliminate the gateway there, so as to provide a through service of the commodities requested above between South Carolina, on the one hand, and, on the other, the above described radial territory. This is a matter directly related to a Section 5(2) finance proceeding in MC-F-13054 published in the FEDERAL REGISTER issue of December 28, 1976. If a hearing is deemed necessary, the applicant requests it be held at either Roanoke, Va.; Charleston, W. Va.; or Washington, D.C.

No. MC 120679 (Sub-No. 2), filed December 7, 1976. Applicant: JOHN A. JUNGERMANN & SON, INC., 215 West Hoffman Ave., P.O. Box 428, Lindenhurst, N.Y. 11757. Applicant's representative: Martin Werner, 2 West 45 Street, New York, N.Y. 10036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), (a) between New York City, N.Y., on the one hand, and, on the other, points in Nassau and Suffolk Counties, N.Y.; and (b) between points in Nassau and Suffolk Counties, N.Y. The purpose of this filing is to convert applicant's Certificate of Registration to a Certificate of Public Convenience and Necessity; (2) *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between points in Nassau and Suffolk Counties, N.Y., on the one hand, and, on the other, points in Passaic, Bergen, Essex, Union and Hudson Counties, N.J. The purpose of this filing is to indicate applicant's intent to tack at and eliminate the gateway of New York City, N.Y. to provide a through service to Passaic, Bergen, Essex, Union and Hudson Counties, N.J.

NOTE.—This is a matter directly related to a Section 5(2) finance proceeding in MC-F-13058 published in the FEDERAL REGISTER issue of January 6, 1977. If a hearing is deemed necessary, the applicant requests it be held at New York, N.Y.

No. MC 142761, filed November 8, 1976. Applicant: HEMMINGS MOVING & STORAGE CO., INC., P.O. Box 96, Chester, N.J. 07930. Applicant's representative: Edward F. Bowes, P.O. Box 1409, 167 Fairfield Road, Fairfield, N.J. 07006. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Household goods*, as defined by the Commission, (1) between points in Virginia and West Virginia, on the one hand, and, on the other, points in Connecticut, Massachusetts, New Hampshire, Rhode Island, Vermont, and points in New York on and east of Interstate Highway 81; and (2) between points in Michigan, Ohio and Pennsylvania, on the one hand, and, on the other, points in Connecticut, Massachusetts, New Hampshire, Rhode Island and Vermont.

NOTE.—The purpose of this filing is to eliminate the gateway of Washington, N.J., and points within 25 miles thereof. This matter is related to a Section 212(b) transfer proceeding in MC-FC-76807, published in the FEDERAL REGISTER issue of January 6, 1977. Common control may be involved. If a hearing is deemed necessary, the applicant does not specify a location.

MOTOR CARRIER ALTERNATE ROUTE DEVIATIONS

The following letter-notices to operate over deviation routes for operating convenience only have been filed with the Commission under the Deviation Rules—Motor Carrier of Property (49 CFR 1042.4(c)(11)).

Protests against the use of any proposed deviation route herein described may be filed with the Commission in the manner and form provided in such rules at any time, but will not operate to stay commencement of the proposed operations unless filed by February 22, 1977.

Each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its request.

MOTOR CARRIERS OF PROPERTY

No. MC-2900 (Deviation No. 32), RYDER TRUCK LINES, INC., 2050 Kings Road, Jacksonville, Fla., filed January 4, 1977. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, (with certain exceptions) over a deviation route as follows, From Kansas City, Mo., over U.S. Highway 50 to junction U.S. Highway 65, thence over U.S. Highway 65 to junction U.S. Highway 60, thence over U.S. Highway 60 to junction U.S. Highway 63, thence over U.S. Highway 63 to Memphis, Tenn., and return over the same route for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities over a pertinent service route as follows: From Kansas City, Mo., over U.S. Highway 40 to St. Louis, Mo., thence over Illinois Highway 3 to junction U.S. Highway 51, thence over U.S. Highway 51 to Memphis, Tenn., and return over the same route.

By the Commission.

ROBERT L. OSWALD,
Secretary.

[FR Doc. 7-1792 Filed 1-19-77; 8:45 a.m.]

federal register

FRIDAY, JANUARY 21, 1977

PART II



DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Public Health Service

HEALTH PLANNING

Capital Expenditure Review, Certificate of Need, and Review of New Institutional Health Services

Title 42—Public Health

CHAPTER 1—PUBLIC HEALTH SERVICE, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

HEALTH PLANNING

Capital Expenditure Review, Certificate of Need, and Review of New Institutional Health Services

On March 19, 1976, a Notice of Proposed Rulemaking was published in the FEDERAL REGISTER (41 FR 11688) proposing to amend Title 42, Code of Federal Regulations, as follows:

1. To add to Part 122 thereof a new Subpart D, entitled "Procedures and Criteria for Review of New Institutional Health Services".

2. To add to Subchapter K thereof a new Part 123, entitled "State Health Planning and Development Agencies", and to add to such new Part 123 the following new subparts: Subpart A, entitled "Definitions"; Subpart B, entitled "Designation of State Health Planning and Development Agencies"; Subpart C, entitled "Grants to State Health Planning and Development Agencies"; Subpart D, entitled "Statewide Health Coordinating Councils"; and Subpart E, entitled "Certificate of Need and Review of New Institutional Health Services."

3. To revise Part 100 thereof, entitled "Limitation on Federal Participation for Capital Expenditures".

The regulations under items 1 and 2 above were proposed as part of the Secretary's implementation of Title XV of the Public Health Service Act ("the Act"), added by Pub. L. 93–641. The revision of Part 100 is in part made necessary by Pub. L. 93–641, and in part results from the Secretary's experience in carrying out his responsibilities under section 1122 of the Social Security Act.

Interested persons were afforded the opportunity to participate in the rulemaking process by submitting written comments concerning the proposed regulations no later than May 3, 1976. More than 3,000 comments were received during the comment period.

Because of the large number of comments, and the complex issues raised therein, an extended period was needed to analyze the comments and revise all of the proposed regulations accordingly. The Secretary determined, however, for the reasons set forth in the FEDERAL REGISTER of June 3, 1976, (41 FR 22524), that it was neither necessary nor wise to delay the implementation of Title XV as it related to the designation and funding of State Health Planning and Development Agencies (hereinafter "State Agencies") until such time as the comments received in response to the notice of proposed rulemaking of March 19, 1976, could be analyzed. Therefore, on June 3, 1976, the Secretary issued interim regulations which constituted the bare minimum necessary under the statute to enable the Secretary to go forward with the designation and funding of the State Agencies. Only Subparts A, B, C and D of Part 123 were made effective in this manner.

The Department's analysis of the comments made pursuant to the proposed rulemaking on March 19, 1976, continues with respect to Subparts A, B, C, and D of Part 123 and Part 100, although it has been completed with respect to Subpart E of Part 123 and Subpart D of Part 122. A summary of the comments and recommendations, and the Secretary's conclusions in light of them, as well as a description of other changes made in these two subparts which result from further Departmental consideration, are set forth below.

A few comments were received expressing general dissatisfaction with Pub. L. 93–641, which added Titles XV and XVI to the Public Health Service Act (hereinafter, the Act) or with the proposed regulations; the commenters, however, were not specific in their opposition. The Secretary notes that repeal or amendment of any Federal statute is a matter for the Congress to consider. The Secretary has the responsibility to carry out the Act and cannot change or delete any of the requirements therein.

Because of the similarity in the content and structure of Subpart D, Part 122, and Subpart E, Part 123, many individual comments addressed points included in both subparts or raised questions regarding aspects of one subpart which affected aspects of the other subpart. Therefore, this Preamble is organized to reflect this situation. A Table of Contents is set forth below to facilitate the reader's understanding of this organization. The Table should alert the reader to look for information on subsections in more than one location under the appropriate main subpart heading. Also, commenters did not address every section or subsection of the proposed regulations; therefore, not every numbered section of the regulations will be found in the Preamble's Table of Contents.

ORGANIZED TABLE OF CONTENTS TO PREAMBLE

Comments of a General Nature
Comments on Specific Portions of the Regulations.

§ 122.301 and § 123.401 Definitions.
§ 122.303 and §123.403 General.
§ 122.304 and § 123.404 New institutional health services subject to review.
§ 123.405 Enforcement.
§ 122.305 and § 123.406 Adoption and public notice of review procedures and criteria by health systems agencies and State Agencies.
§ 122.305 Adoption and public notice by health systems agencies.
§ 123.406 Adoption and public notice by State Agencies.
§ 122.306 Procedures for health systems agency review; general comments.
§ 123.407 Procedures for State Agency review; general comments.
§ 122.306(a) and § 123.407(a) Procedures for health systems agency and State Agency review; general comments.
§ 123.407(a) Procedures for State Agency review; delegation of functions.
§ 122.306(a)(1) and § 123.407(a)(1) Notification of the beginning of a review by health systems agencies and State Agencies.
§ 122.306(a)(1) Notification of the beginning of a review by health systems agencies and State Agencies.
§ 122.306(a)(2) and § 123.407(a)(2) Health systems agency and State Agency schedules for reviews.
§ 122.407(a)(2) State Agency schedules for reviews.
§ 122.306(a)(2)(i) Health systems agency schedules for reviews.
§ 122.306(a)(3) and § 123.407(a)(3) Submission of information by persons subject to review to health systems agencies and State Agencies.
§ 122.306(a)(3) Submission of information to health systems agencies.
§ 123.407(a)(3) Submission of information to State Agencies.
§ 122.306(a)(4) and § 123.407(a)(4) Submission of periodic reports by persons subject to review to health systems agencies and State Agencies.
§ 122.306(a)(5) and § 123.407(a)(5) Provision for written findings by health systems agencies and State Agencies.
§ 122.306(a)(5) Provision for written findings by health systems agencies.
§ 122.306(a)(7) and § 123.407(a)(7) Provision for public hearing in the course of agency review by health systems agencies and State Agencies.
§ 122.306(a)(7) Provision for public hearing in the course of agency review by health systems agencies.
§ 122.407(a)(7) Provision for public hearing in the course of agency review by State Agencies.
§ 122.306(a)(8) and § 123.407(a)(8) Provision for public hearing for review of health systems agency and State Agency decisions.
§ 122.306(a)(8) Provision for public hearing for review of health systems agency decisions.
§ 123.407(a)(8) Provision for public hearing for review of State Agency decisions.
§ 123.407(a)(9) Appeal of State Agency decisions requested by health systems agencies.
§ 123.407(a)(9) and (10) Appeals of State Agency decisions.
§ 123.407(a)(10) Appeal of State Agency decisions requested by proponent.
§ 123.407(a)(11) State Agency decisions inconsistent with health systems agency plans.
§ 123.407(a)(12) State Agency reports of reviews.
§ 122.306(a)(9) Health systems agency reports of reviews.
§ 122.306(a)(10) Public access to health systems agency material.
§ 123.407(a)(13) Public access to State Agency material.
§ 122.306(a)(11) and § 123.407(a)(14) Letters of intent for construction projects.
§ 122.306(b) and § 123.407(b) Procedures for different types of reviews.
§ 122.307 and § 123.408 Exceptions to the use of procedures.
§ 122.307 Exceptions to the use of procedures for health systems agencies.
§ 122.308 and § 123.409 Criteria for health systems agency and State Agency reviews; general comments.
§ 122.308(a)(1) and § 123.409(a)(1) Relationship of services reviewed to plans.
§ 122.308(a)(2) and § 123.409(a)(2) Relationship of services reviewed to long range development plans.
§ 122.308(a)(3) and § 123.409(a)(3) Need for such services.
§ 122.308(a)(4) and § 123.409(a)(4) Availability of alternatives.
§ 122.308(a)(5) and § 123.409(a)(5) Financial feasibility.
§ 122.308(a)(6) and § 123.409(a)(6) Relationship of proposed services to existing system.

§ 122.308(a)(7) and § 123.409(a)(7) Availability of resources.
§ 122.308(a)(8) and § 123.409(a)(8) Relationship of proposed services to ancillary services.
§ 122.308(a)(9) and § 123.409(a)(9) Special needs of providers serving more than one health service area.
§ 122.309(a)(10) and § 123.409(a)(10) Special needs of HMOs.
§ 122.308(a)(11) and § 123.409(a)(11) Special needs of research projects.
§ 122.308(a)(12) and § 123.409(a)(12) Construction projects.
§ 122.303(a)(12)(i) and § 123.409(a)(12)(i) Costs and methods of proposed construction.
§ 122.308(b) and § 123.409(b) Criteria for different types of reviews.
§ 122.309 and § 123.410 Inpatient facilities, required findings; general comments.
§ 122.309(a) and § 123.410(a) Alternatives to inpatient services.
§ 122.309(b) and § 123.410(b) Alternatives to new construction.
§ 122.309(c) and § 123.410(c) Problems in obtaining proposed types of service.
§ 122.309(d) and § 123.410(d) Consistency with other State plans for long term care.

COMMENTS OF A GENERAL NATURE

One commenter questioned both the constitutionality and legality of the vesting of "regulatory" authority in a nongovernmental entity such as a private, nonprofit health systems agency. However, with respect to the review of new institutional health services, each HSA is obliged to serve in an advisory capacity to the State Agency by making recommendations to it. It does not make final decisions of a regulatory nature.

Many comments were received with respect to the scope of coverage of a State's certificate of need program (required by section 1523(a)(4)(B) of the Act) and program of review of new institutional health services (required by section 1523(a)(5) of the Act). Both programs are required to provide for the review of new institutional health services, which are defined in section 1531 (5) of the Act as the health services provided in or through health care facilities or HMOs. The principal difference is that § 123.405, *Enforcement*, applies only to the certificate of need programs.

One commenter felt that a State Agency could not perform the review of new institutional health services as required in the proposed regulations without also being required to perform functions relating to the establishment of the State certificate of need program. Several commenters suggested that State Agency review of new institutional health services should be deleted as a mandated function.

It is anticipated that in the final regulation of Part 123, Subpart B, the Secretary will require that the State Agency begin its review of new institutional health services (section 1523(a)(5) of the Act) during the period of conditional designation. While the scope of this review function is the same as that for the certificate of need program (section 1523(a)(4)(B) of the Act), this function is essentially a planning function, not requiring any sanction where there is a finding that a proposed new institutional health service is not needed, whereas the certificate of need function is essentially regulatory, requiring that the State have sanctions which prevent the offering or development of proposed new institutional health services found not to be needed. Thus, in keeping with the legislative history of section 1523(a)(5), it is anticipated that the Secretary will require that State Agencies assume this function as soon as possible.

The Secretary does not intend, however, that the States be required to seek State statutory authority to assume this function. The Secretary believes that the conduct of reviews under section 1523(a)(5), as a planning and sanctionless function, will not require additional State legislative authority. The Secretary is aware that some State Agencies will not have authority to enforce a requirement that health care facilities and HMOs submit their proposed new institutional health services for review; accordingly, the Secretary will accept as adequate performance of this function a State program which calls for the filing of appropriate applications and which enforces such a requirement to the extent that it may do so under existing statutory and administrative authority.

The Secretary notes that in many States, reviews within the scope of section 1523(a)(5) are already being performed; for example, reviews under section 1122 of the Social Security Act and under existing certificate of need programs, and reviews pursuant to Office of Management and Budget Circular A–95. However, if the procedures used in conducting these review programs are inconsistent with the procedures required by § 123.407, they must, to the extent that the reviews are to fulfill the requirements of section 1523(a)(5), be modified so as to be consistent, or an exception must be sought and received from the Secretary under § 123.408; if the procedures used in conducting these reviews do not include all the procedural steps required by § 123.407, then either the missing steps must be added, or equivalent steps added and an exception sought and received from the Secretary under § 123.408.

Several commenters expressed the opinion that the regulation was too detailed and burdensome for an HSA to implement without detracting substantially from its required planning function. In developing this regulation, the Secretary has added to the language found in the statute only in those cases where clarification was found to be necessary or where substance needed to be given to a minimum requirement. The Secretary has taken cognizance of the fact that the planning function is initially of primary importance through the development of schedules for the gradual assumption of functions which emphasize the planning function early in this process. The functions of review of proposed new institutional health services are, however, important functions in the health planning and resources development process and cannot be delayed indefinitely.

A comment suggested that the definitions pertaining to Title XV should be consolidated in one place. This may happen at a later time. However, since the regulations which implement Title XV are not all being published at one time, and since some readers may have interest only in a particular Part or Subpart of the regulations, the definitions appear with the Part or Subpart where they are used and are repeated when necessary for ease of reference.

Many commenters requested a clarification of the roles and relationships of the HSA and State Agency, particularly with respect to the development of procedures and criteria for the conduct of reviews of new institutional health services as required by § 122.305, § 122.306, § 123.407. The commenters were divided in their opinion as to which agency, the HSA or State Agency, should be the controlling one. The roles of these respective agencies are defined by the functions which they are required by the statute to perform. In the case of the review of new institutional health services, the relationship is also a consequence of function: the HSA is to recommend (§ 122.302), and the State Agency is to decide (§ 123.402(a)(2)). With respect to the development of procedures and criteria, section 1532 of the Act (and § 122.305 and § 123.406 of these regulations) directs each agency separately to follow procedures and apply criteria developed and published by that agency. The Secretary is sympathetic to the opinions of those commenters who have urged that the development process, particularly with respect to the procedures to be used, should be a coordinated one. However, the Secretary has chosen not to mandate such coordination in these regulations. It should be noted, however, that final regulations for HSAs (at § 122.107(c)(14)) provide that HSAs shall make recommendations "in accordance with procedural requirements developed by the State Agency."

The Secretary's support of efforts at coordination between HSAs and State Agencies has led him to delete from § 122.305(a) and § 123.406(a) of the proposed regulations the requirement that these agencies adopt procedures and criteria for review within three months of designation. The regulation now simply requires that HSAs and State Agencies adopt such procedures and criteria prior to the time they begin their review of new institutional health services. It is expected that this flexibility will be used by HSAs and State Agencies to establish the necessary coordinative arrangements.

A commenter requested that language be added such that the provision of public notice and use by an HSA of review procedures and criteria be in accordance not only with the appropriate sections of the regulation, but also be "In accordance with applicable State law not inconsistent with this subpart." This addition has not been made since HSAs are, in any case, bound by applicable State law which is not inconsistent with Federal law and regulations.

A few comments were received stating that the amount of Federal funds which HSA will receive is inadequate to perform these (and other) functions. The Secretary is aware that the level of funding as set forth in the FEDERAL REGISTER, September 21, 1976 (41 FR 41089) is short of what many regard as desirable, and the Secretary will be carefully monitoring the ability of these agencies to perform their functions adequately within the limitations of the available resources.

Many commenters expressed the opinion that execution of the functions required of an HSA, particularly with respect to the application of the review criteria found at § 122.308, would not be possible without extensive technical assistance to these agencies. The Secretary realizes that all agencies will not begin operations at the same level of expertise, and, therefore, some will not be able to perform this function as well or with the same thoroughness as others. The Secretary is required by section 1533 of the Act to provide agencies with the assistance necessary to perform their functions properly, and is committed to providing this assistance in a timely and useful manner. This will occur both through the provision of materials developed or otherwise made available by the Secretary and through the funding of the centers for health planning, required by section 1534 of the Act; in each of the Department's ten regions. In addition, the HSAs have expertise available to them through such other mechanisms as surveying the published literature, contracting for special expertise, utilizing the experience and training of members of their governing bodies and other persons in the community who may volunteer their services to the HSA, and making use of services available through the National Health Planning Information Center.

Many comments were received requesting clarification or further definition of various terms and expressions used in the regulation. It is important to make clear that where terms are used either in these regulations, or the related regulations regarding HSAs (42 CFR 122) they can, as needed, be given further definition by State Agencies and HSAs. These explications must, however, be consistent with the statute and Federal regulation.

Two commenters contended that the scope of coverage of new institutional health services review, §§ 122.304 and 123.404, exceeded statutory authority. One contended that the definition of "health care facility" in these regulations is required to be identical with that in the section 1122 regulation as it was at the time of enactment of Pub. L. 93-641 and the other contended that review is limited to only those cases where a capital expenditure is proposed. These interpretations are contrary to both the language of the statute and the written record of Congressional intent. Section 1531(5) of the Act defines the term institutional health services as

> Health services provided through health care facilities and health maintenance organizations (as such facilities and organizations are defined in regulations prescribed under section 1122 of the Social Security Act) and includes the entities through which such services are provided.

If the Congress had intended simply to adopt the definitions of the terms contained in the section 1122 regulation in effect at the time of enactment, it could have done so by repeating these definitions verbatim, rather than referring generally to the definitions. Moreover, the legislative history of section 1531(5) indicates the Congressional intent that the definition of these terms for purposes of Title XV be subject to future revisions of the regulations under section 1122. As stated in the Report of the House Committee on Interstate and Foreign Commerce on this legislation

> The committee has chosen to key the definitions of "institutional health service" to the definition in regulations of facilities and organizations reviewable under section 1122 of the Social Security Act and to allow a measure of flexibility in the definition of institutional health services.

The stated Congressional intent is to allow flexibility in the definitions, as well as to assure their consistency. The Secretary has concluded that the definition of "health care facility" in § 100.102 of the section 1122 regulations may be amended and that this amended definition, as set forth in § 122.301(b) and § 123.401(b), is applicable to the review of new institutional health services. Accordingly, while a full analysis of comments on the March 19, 1976, proposed amendments to the regulations under section 1122 (Part 100) has not been completed, the Secretary hereby amends 42 CFR 100.102(e), the definition of "health care facility."

With respect to whether the review of new institutional health services must be limited to the review of capital expenditures as under the section 1122 program, it is pointed out, that the only statutory link to the section 1122 review program is through the definitions of health care facility and health maintenance organization (HMO). The term "institutional health services," as defined in section 1531(5) of the Act, is in no way limited to capital expenditures.

One commenter asked for clarification of the Secretary's position with respect to a State charging fees for the processing of certificate of need applications. The commenter argued that a fee would be inappropriate since Federal funds will be used to support the review function. Nothing in these regulations prohibits the charging of an application fee, although the Secretary encourages any State which chooses to do so to set the amount of the fee at a level which will not impede market entry. However, the regulation does specifically prohibit the imposition of fees specifically for public hearings during the course of, or after, agency reviews (see § 122.306(a) (7) and (8) and § 123.407(a) (7) and (8)). The Secretary also notes that revenues or projected revenues from such application fees must be reported to him by the State Agency.

A few commenters questioned the required use, as set forth at § 122.308(a) (1) and § 123.409(a) (1), of the Health System Plan (HSP) and Annual Implementation Plan (AIP) in the review of new institutional health services. Some noted that there may not exist an HSP and an AIP at the time the review of new institutional health services begins, and two commenters claimed that it would be improper to conduct these reviews in the absence of such plans. The Secretary notes that section 1532 of the statute and § 123.409 of the regulation specify that the relationship of a proposed new institutional health service to the HSP and AIP is only one of several criteria to be used in conducting these reviews. Although it would be inconsistent with the purpose of the statute for a State to permit the unrestricted development of new institutional health services within that State pending development of HSPs or AIPs, plans and criteria with respect to the need for health services and facilities already exist in many States and communities. The Secretary encourages the State Agencies and HSAs for this purpose to adopt as appropriate, and utilize as necessary, the plans and criteria of their predecessor agencies, i.e., comprehensive health planning agencies.

Another commenter suggested amending the regulation to require the State Agency to develop plans and criteria which pertain to a specific health service prior to undertaking a review of a proposal to provide that health service. The Secretary points out that the existence of specific plans and criteria for each type of proposal may be desirable, but may not be possible. The important consideration is that the proponent of a new health service should have access in advance to the standards by which his proposed health service will be judged, not that those standards be so specific as to apply only to his proposed type of health service.

One commenter requested the addition of language which would require that State Agency procedures and criteria (§ 123.407 and § 123.409 respectively) be "in conformance with State law not inconsistent with Federal law." The commenter's reason for requesting this addition was not stated. If the purpose was to clarify that the State Agency is bound by State law, the addition of such language to the regulation is not necessary, since this is indisputably the case. If, however, the purpose of the proposed language is to nullify those requirements of the Federal regulation which add to the language of the statute but which may be contrary to State law, the Secretary notes that there is already in the regulation, at § 123.408, a process for the State to request exceptions to the required procedures when there is sufficient reason to do so. Incompatability of the requirement with present State law may be a reason that a State would wish to initiate the process set forth in § 123.408.

One commenter suggested requiring that Professional Standards Review Organizations (PSROs) be consulted on all

decisions which require medical judgment. The Secretary is not requiring that those organizations be so consulted, since the responsibility for making the decision with respect to a proposed new institutional health service rests with the State Agency, and the responsibility for making recommendations to the State Agency is with the HSA. The utilization of the PSRO for advice in this area of expertise, however, is a proper subject for the agreement required by 42 CFR § 122.107(c) (10) between the HSA and each appropriate PSRO.

One respondent felt that the emphasis in these subparts on the review of "new" services appears to preclude review of existing services and, thus, impairs the capability of the HSA and State Agency to have a constructive impact on the health care delivery system. These subparts, however, are issued to implement only the sections of the Act pertaining to "reviews of new institutional health services" (section 1513(f) of the Act for HSAs and sections 1523 (a) (4) and 1523(a) (5) of the Act for State Agencies and to "other reviews" of proposed health services conducted by HSAs (see section 1532(a) of the Act and § 122.302). In fact, HSAs will necessarily review existing health services in the course of analyzing data pursuant to section 1513(b) (1), and developing the HSP and AIP required in sections 1513 (b) (2) and 1513(b) (3). State Agencies are likely to find a review of existing health services crucial to obtaining the information needed to prepare a preliminary State Health Plan and to make determinations of need pursuant to sections 1523(a) (4) and 1523(a) (5) of the Act. In addition, the Act requires HSAs (in section 1513(g)) and State Agencies (in section 1523(a) (6)) periodically to review existing services for appropriateness; this function will be addressed in future regulations.

A commenter suggested that the Secretary should develop a comprehensive study to evaluate the effectiveness of certificate of need review and its effect on the health care system. The commenter requested that undue reliance not be placed on the certificate of need process until the results of the study were available. The Secretary has previously sponsored limited studies of the effects of existing State certificate of need programs and will continue to analyze the effectiveness of these programs as they are modified by the States to meet Federal requirements. Additionally, the Secretary does not agree that undue reliance is being placed on this regulatory approach to improvement of the health care system, which is one of several regulatory mechanisms required by Title XV of the Act.

A commenter asked that the Secretary define the term "plan," since apparently there is some confusion as to the type of plan which would be needed for the review of new institutional health services. Section 1532(c) (1) of the statute and § 122.308(a) (1) and § 123.409 (a) (1) of the regulations require that both the HSA and the State Agency consider the relationships of the proposed new institutional health service to the appropriate HSP and AIP, if any. The Secretary published in the FEDERAL REGISTER of July 8, 1976 (41 FR 27996), a Notice asking for public comments on proposed guidelines for the HSP and AIP. It is these guidelines which will elaborate on the structure and content of these plans.

One comment proposed several additions to the language contained in these subparts for the purpose of addressing more directly the concerns of minority groups. Specifically, additions were recommended for the sections concerning public notice of review procedures and criteria (§ 122.305, § 123.406), notice of the beginning of review (§ 122.306(a) (1) and § 123.407(a) (1)), criteria to be used in conducting reviews (§ 122.308, § 123.409), and enforcement of certificate of need decisions by the State Agency (§ 123.405). Many of these suggested additions have merit, and the Secretary plans to consider them in preparing guideline materials to assist these agencies in performing their review functions. However, these additions are not incorporated into the final regulations because to do so would have greatly and unnecessarily complicated the regulations.

COMMENTS ON SPECIFIC PORTIONS OF THE REGULATIONS

§ 122.301 and § 123.401 Definitions.

This section includes definitions of the terms "health care facility" and "health maintenance organization," which are required to be covered in State certificate of need programs. The entities referred to in these definitions, together with the definition of "new institutional health services" in § 122.304 and § 123.404, in effect, constitute the minimum scope of coverage for State certificate of need programs.

Many commenters questioned the scope of coverage of State certificate of need programs (and reviews of new institutional health services); they contrasted the coverage of these programs to the coverage required under 42 CFR § 100.103, which implements section 1122 of the Social Security Act. Section 1531 (5) requires that the definition of "health care facility" and "health maintenance organization" be the same as their definition in the section 1122 regulation. However, the program authorized by section 1122 is limited to review of certain capital expenditures, whereas State certificate of need programs and reviews of new institutional health services mandated in sections 1523(a) (4) (B) and 1523(a) (5) of the Act require a broader scope to cover all new institutional health services, not just those involving capital expenditures.

It was also suggested that the definitions for the components of the term "health care facility" set forth in sections 1861 and 1905 of the Social Security Act be used for the certificate of need regulations. These components were defined therein for the section 1122 program in order to assure certain standards of quality in facilities receiving reimbursement under the Social Security Act. The Secretary has decided that, for purposes of certificate of need programs, coverage is better expressed in terms more general than the Social Security Act definitions. Therefore, while the proposed definitions have been based on the Social Security Act definitions, they have also been broadened. It is important to include all such facilities, whether or not they meet standards of quality required by the Social Security Act definitions, to prevent a facility from circumventing certificate of need review by not meeting Social Security Act standards.

It was specifically recommended that the term "psychiatric hospital" in § 122.301(b) (2) and § 123.401(b) (2) be expanded to include reference to the mentally retarded. Insufficient rationale was presented by the commenter to warrant altering the definition, although States are free to make the addition if they so choose. Further, one commenter recommended eliminating the separate definition for "psychiatric hospital" and including the term as a component of the term "hospital." This recommendation was not followed because the Secretary feels that a definition of "psychiatric hospital" should be presented in the regulations in order to make clear that such hospitals are to be covered in State certificate of need programs.

Some commenters asked that the definitions of "skilled nursing facility" (§ 122.301(b) (4) and § 123.401(b) (4)) and "intermediate care facility" (§ 122.301(b) (5) and § 123.401(b) (5)) be expanded, but offered no suggested language or rationale for doing so. However, one commenter did suggest deletion of the final clause of the definition of "intermediate care facility" because the stipulation that health care and services "can be made available to them only through institutional facilities" was inappropriate. The commenter pointed out that "intermediate care facilities" do offer health services which could be provided in other than an institutional context, e.g., home health services; however, these might not be procured due to family and social preferences, home health care program restrictions or unavailability of home health care. The Secretary agrees that this change would result in a more accurate definition of "intermediate care facilities," and the suggested deletion has been made in § 122.301(b) (5) and § 123.401(b) (5).

Again with respect to the definition of "intermediate care facility," one commenter suggested that there are facilities offering a level of care above the level of room and board, but which does not yet constitute a form of health care that should be regulated through certificate of need. Section 1523(a) (4) (B) and section 1523(a) (5) of the Public Health Service Act apply to "health care facilities," and no authority exists to extend coverage to facilities which are non-health care facilities. The Secretary also notes that there may be borderline cases, and that in all cases, States must apply the definition of "health care facility"

(§ 122.301(b) and § 123.401(b)) to individual cases and judge whether an institution provides health services in such a way, or to such an extent that it falls under the definition and is thus subject to review. Further, States are free to extend certificate of need programs beyond these minimum requirements and include facilities such as these in their coverage.

It was further suggested that the definition of the term "intermediate care facility" be clarified to specify the kind of care and services required by patients of such facilities. The term "health related" has therefore, been inserted in the definition at § 122.301(b)(5) and § 123.401(b)(5) to make this clarification.

In addition, a large number of comments were received concerning the proposed deletion of the terms "home health agencies, providers of outpatient physical therapy services," and "organized ambulatory health care facilities," from the definition of "health care facility" in the section 1122 regulation at § 100.102(e) and in these regulations. The commenters felt that the definition of facilities covered should remain as inclusive as possible, and they argued that there is need both to plan and to regulate the entire range of "health care facilities" providing health services. Further, they saw improved standards of care, integrated system-wide planning, the prevention of overdevelopment and duplication of effort in the health care industry, and an even-handed approach to both institution-based and free-standing providers of home health care, outpatient physical therapy, and ambulatory care services as by-products of certificate of need reviews.

In the case of home health agencies, the Secretary has decided not to include such agencies in the definition of "health care facilities." He has decided to omit, for the sake of uniformity, home health services from coverage under certificate of need regardless of whether these services are free standing or institutionally based. However, it should be noted that capital expenditures by a covered health care facility or HMO for home health service programs (and their supporting administrative services, etc.) are subject to certificate of need review in the same manner as other capital expenditures by facilities or HMOs. It should be noted, however, that the Secretary is sensitive to the concerns expressed by the commenters that home health agencies might appropriately be subject to such reviews. As stated in the preamble to the proposed regulations, the Department intends to monitor closely the growth and expansion of such agencies in order to evaluate their impact on the health care system.

With respect to "organized ambulatory health care facilities," with Preamble to the proposed regulations noted that the variety of forms in which these facilities manifest themselves resulted in "serious definitional difficulties" of these facilities throughout the States, the Secretary proposed to forego establishing a uniform national method for dealing with this issue; the Preamble to the proposed regulations encouraged States "to undertake various aproaches" toward "organized ambulatory health care facilities."

The comments on the proposed rules generally supported the Secretary's statement in the Preamble to the proposed regulation that "the practice of medicine in ambulatory facilities constitutes an important means for the delivery of health care" and that "unnecessary acquisitions of expensive items of capital equipment by such facilities might adversely affect health care costs," and favored including "organized ambulatory health care facilities" in the definition of "health care facility." Although several commenters offered definitions for organized ambulatory facilities to be used for specific facilities covered under this term, no definition was offered, or has been formulated, which is both workable and within the limits of the statute. Therefore, the Secretary has chosen not to include organized ambulatory health care facilities in the definition of health care facilities at this time. He will, however, follow closely the effect of this regulation on the sources and objects of capital expenditures in the health area and on health care costs.

In addition, it is important to note that several commenters have expressed confusion concerning whether home health care and ambulatory care services would require review regardless of the institutional setting which they are offered. Ambulatory health care services are required to be covered only when they are based in a covered institution (a health care facility or health maintenance organization as defined in the regulations (§ 122.301(b) and § 123.401(b)). When they are freestanding, they are subject to review only if covered by a provision of a State program which goes beyond the Federal minimum requirements. As noted previously, home health services are not required to be covered under minimum Federal certificate of need regulations. They would be subject to certificate of need review only if covered by a State program which goes beyond the Federal minimum requirements.

Several commenters also requested deletion of "health maintenance organizations" from those institutions whose proposed new institutional health services must be included in a State certificate of need program. This recommendation cannot be accepted because inclusion of health maintenance organizations is a statutory requirement (section 1531(5) of the Act). Some commenters also questioned whether certain types or activities of health maintenance organizations are required to be included in a State certificate of need program. Specifically, questions were raised with respect to inclusion of health maintenance organizations not qualified under Title XIII of the Public Health Service Act ("Health Maintenance Organizations"), physician services obtained through contractural arrangements, the administrative and insuring entities of health maintenance organizations which do not provide hospital care, and Blue Cross/Blue Shield plans. Further, one commenter questioned the meaning of the phrase "health services . . . offered in or through a . . . health maintenance organization" (see § 122.304(d) of the proposed regulations and § 122.304(a)(4) and § 123.404(a)(4) of the final regulation).

In answer to these questions, § 122.301(c) and § 123.401(c) of the regulations define "health maintenance organizations" broadly. Any public or private organization or entity which is organized under State laws and which meets the criteria set forth in the regulations is included within the term "health maintenance organization" as defined. It pertains to both those health maintenance organizations which are qualified under Title XIII of the Act and those which are not so qualified, but which meet the other definitional requirements of the regulations for inclusion of health maintenance organizations. This definition also states that a "health maintenance organization" subject to review is one which "provides or otherwise makes available" certain health services. This means that an entity which makes available health services through contract or other formal arrangement with health care providers is not exempt from certificate of need review merely because it does not itself provide the services. However, this does not mean that individual providers of health care necessarily become subject to certificate of need review because they have contracted with a health maintenance organization to provide health services. Rather, it is the health maintenance organization proposing a new health service as set forth in § 122.304 and § 123.404 which is subject to review. State law must determine whether the individual provider who has contracted with the health maintenance organization is to be considered a part of the health maintenance organization entity, and, thus, subject to review if he or she seeks to offer or develop a new institutional health service.

Clarification was also sought concerning whether the benefit package payment arrangements, insurance aspects, and so forth of "health maintenance organizations" are subect to review. To the extent that such characteristics of health maintenance organizations meet the definition of new institutional health services contained in the regulation (§ 122.304 and § 123.404) or are within the coverage of the certificate of need program as expanded upon by the State, they are subject to review. Where confusion or uncertainty persists concerning which entities or organizations do, in fact, meet the definition of "health maintenance organization" as set forth in the regulations, States will be obliged to interpret individual State laws under which a "health maintenance organization" is organized, and clarify the term as it is applied in that State.

Numerous alternatives were offered to § 122.301(d) and § 123.401(d), the proposed definition of "health services." The Secretary has substituted the term "treatment" for "curative" as a type of clinically related health service in these sections, because "treatment" connotes a broader range of health activities than does "curative," including for example ameliorative or maintenance health services.

It was further recommended that "health services" be specifically defined to include nutrition, health education, environmental and occupational health, or what could be termed generally "preventive health services." The "promotion of activities for the prevention of disease" is a national health priority set out in the Act; support for this goal is evidenced in the guidelines for development of Health Systems Plans and State Health Plans. The Secretary does not feel that mandatory coverage in State certificate of need programs is the appropriate mechanism for emphasizing the importance of, and need for, preventive health services. Rather, it is hoped that certificate of need programs will promote the reallocation of limited resources to the most appropriate areas, including appropriate preventive care services and programs.

The Secretary does not agree with a comment that the definition of "health services" is so vague as to include certain social service agencies, schools, and so forth, because of counseling services they provide. Only new health services offered in or through "health care facilities" and "health maintenance organizations," as these institutions are defined in § 122.301 and § 123.401, are required by this regulation to be subject to review for certificate of need. However, the definition of "health services" as it now stands in § 122.301(d) and § 123.401(d) is only a minimal one, and States may expand the term in ways suitable to their individual needs.

Several comments were also received concerning the definition of the term "modernization" in § 122.301(f) and § 123.401(f). One respondent asked that the term be clarified to indicate whether or not it includes replacement of a structure at a different site. Other respondents considered the term too broadly defined and inconsistent with the definition of modernization in Section 1633 (11) of the Public Health Service Act, and suggested it be deleted. Since the term "modernization" itself is used only as an example in the body of the regulations, the definition has been deleted.

For the purpose of establishing which new institutional health services are covered by certificate of need, it was suggested that the definition of "person" in § 122.301(g) and § 123.401(g) of the final regulation (§ 122.301(h), § 123.401(h) of the proposed regulations) be expanded to include the Federal Government and its instrumentalities. The Secretary has concluded that a requirement for coverage of Federal facilities in State programs for review of new institutional health services has no basis in the Act. Nonetheless, voluntary participation of Veterans Administration facilities in State and local health planning is encouraged through the statutory provision for *ex officio* membership on the HSA governing body (section 1512(b)(3)(C)(iii)(III)) and the SHCC (section 1524(b)(1)(D)).

Miscellaneous other comments were received suggesting changes in phraseology which, because they did not change the meaning of the terms addressed, have not been accepted.

Two commenters recommended the exclusion of States and their agencies and instrumentalities from the definition of "person." These comments were not accepted, since section 1523(a)(4)(B) mandates that certificate of need reviews apply to all proposed new institutional health services and State-owned facilities are not exempted. Further, such facilities constitute an important part of the health care system; to exclude them would severely limit the effectiveness of any new institutional health services review program. In fact, several State certificate of need programs currently cover State-owned facilities and this provision has proved to be workable and effective.

§ 122.304 and § 123.404 New institutional health services subject to review.

These provisions have been renumbered due to the transfer to these sections of language regarding coverage. New § 122.304(b) and § 123.404(b) concern certificate of need review with respect to predevelopment activities, and include an amended definition of such activities. Because this definition was located at § 123.405(a), *Enforcement*, in the proposed regulation, the discussion of the comments received regarding this provision will be found in the portion of the Preamble where § 123.405(a) is discussed.

With respect to the new institutional health services subject to review, one commenter argued that the proposed thresholds are too low in view of the cost involved in regulating through certificate of need. The Secretary has reviewed the thresholds in the section 1122 program and the existing State certificate of need programs. The thresholds set forth at § 123.404 were developed in light of this experience. However, States are provided some flexibility in applying the thresholds for certificate of need review. For example, § 123.404(a)(3) leaves it to States to define bed capacity and bed categories and, hence, determine when an increase in bed capacity is reviewable or when redistribution of beds crosses these category lines and becomes reviewable; § 123.404(b) of the proposed regulations (now § 123.404(c) of the final regulations) allows the States to extend the scope of review coverage beyond that of § 123.404(a).

Two commenters noted that the thresholds might be so low as to discourage health maintenance organizations and health care facilities from making positive modifications in their programs. If such modifications are found by a State Agency to be needed, however, the requested certificates of need will be granted. The very purpose of the certificate of need program is to enable the State to make these determinations so as to ensure that only needed services and facilities are offered. Further, if the State wishes to expedite consideration of certain types of bed changes, certain types of capital expenditures or certain types of health services by using procedures not in conformance with the minimal procedures set forth at § 122.306 and § 123.407, it may (under provisions of § 122.307 and § 123.408) apply to the Secretary for an exception to the use of the required procedures for review in these instances. It was also suggested that States be allowed further to define conditions activating certificate of need review. Here, as in any other aspect of the certificate of need program, States are permitted to go beyond the Federally required minimum, as long as the additional requirements of the State program are not inconsistent with the Federal statute or regulations.

Several respondents also favored requiring that the first condition necessary for any review must be a capital expenditure of at least $150,000 (either alone or with one of the other three thresholds). This is inconsistent with the requirement in section 1523 of the Act that the program apply to "new institutional health services," which includes new services not requiring capital expenditures.

In addition, several respondents have favored applying the second threshold ($150,000 capital expenditure, § 122.304(a)(2) and § 123.404(a)(2)) only to those cases where the offering or development of a health service is being proposed, instead of covering expenditures made for both health and nonhealth purposes by "health care facilities" and "health maintenance organizations." One commenter asserted that the Act does not provide for reviews of capital expenditures, but only for reviews of new institutional health services. This would have the effect of eliminating the coverage of large capital expenditures for administrative support functions (e.g., computers, parking garages, staff residences, and employee restaurants). The Secretary disagrees with this interpretation because one important goal of the required certificate of need program is to contain the rapidly rising costs of providing health care. In section 2 of Pub. L. 93-641, Congress made the finding that increases in the cost of health care have been both uncontrollable and inflationary. Furthermore, Congress stated that at this time there are insufficient incentives for consumers to utilize alternatives to inpatient hospital care, one of the prime contributors to rising costs. In order to promote the alternatives to inpatient care successfully, as well as to explore opportunities for controlling costs, the certificate of need program must be able to influence all expenditures by health institutions, including expenditures not directly for patient care. Capital expenditures made by a facility affect the cost base which is normally used to calculate a facility's direct charges and reimbursement by third parties. Unnecessary capital expenditures, therefore, contribute directly to unnecessary increases in health care costs.

In answer to the comment that there are no suitable criteria to determine need for such expenditures, the Secretary notes that it is the role of both State Agencies and HSAs to develop criteria for all new institutional health services which are subject to review, based on considerations set forth at § 122.308 and § 123.409 of the regulation.

Some respondents asked for clarification as to when a series of capital expenditures, each less than $150,000, constitutes a single expenditure and therefore is subject to review. As discussed earlier in the Preamble, each State must address such questions in administering its own certificate of need program in order to take into account individual and unique circumstances. In addition, several requests to change the $150,000 level were received. Most favored lowering this dollar level or making it consistent with the section 1122 dollar threshold ($100,000). The dollar threshold for section 1122 programs was established by statute and, therefore, cannot be changed through regulation. Based on (1) the experience of section 1122 and State certificate of need programs; (2) the fact that few significant capital expenditures are less than $150,000; and (3) the inflation in the cost of medical equipment in the years since the enactment by Congress of the section 1122 program, the Secretary has decided to retain the dollar threshold set forth in the proposed rule (§ 122.304 and § 123.404). States desiring a threshold consistent with section 1122 may set their certificate of need threshold at $100,000, since the regulations permit States to be more stringent than the minimums set forth in Federal regulation.

Some respondents favored explicitly covering the acquisition of existing health institutions, through leases as well as changes in ownership by sale or donation. The Secretary feels that the question of coverage of acquisitions of existing health care facilities and health maintenance organizations should be left to the States, and this is specified at § 122.304(a)(2) and § 123.404(a)(2) of the final regulations. It should also be noted that the coverage of "site acquisitions" has been made optional (see the discussion which follows in this Preamble of § 123.405(a) and the regulations at § 123.404).

To summarize the provisions of these regulations with respect to acquisition: (a) Capital expenditures in excess of $150,000 are subject to review, except that site acquisitions and acquisitions of existing health care facilities and health maintenance organizations (whether through sale, lease, or donation) are excluded from this requirement. (States may choose to require review of capital expenditures of less than $150,000, and may choose to require review of site acquisitions and acquisitions of health care facilities and health maintenance organizations.

(b) Coverage is required of any other acquisition (including, for example, expensive medical equipment) through lease or donation if its acquisition by purchase would have required review.

(c) If a State chooses to cover site acquisitions and acquisition of health care facilities and health maintenance organizations by purchase, it need not cover their acquisition by lease or donation since the coverage of such purchases would already exceed the minimum requirements. However, States are encouraged in such cases to complete their coverage by including acquisition by lease or donation.

It was also proposed that the capital expenditure threshold not be applied to the termination of a service, because in many instances (e.g., where services may be duplicative) termination can lead to the kinds of savings and efficiencies the Act is designed to encourage. However, the Secretary, while interested in promoting comprehensive health planning, agrees that States are not required to cover capital expenditures solely for terminations or reductions of beds or health services. Therefore, § 122.304(a)(2) and § 123.404(a)(2) (§ 122.304(b) and § 123.404(a)(2) of the proposed regulation) have been modified accordingly.

With respect to the "bed complement" threshold, several respondents asserted that the term "bed complement," used in §§ 122.304(c) and 123.404(a)(3) of the proposed rule and now in §§ 122.304(a)(3) and 123.404(a)(3) below, was confusing because it is presently used variably to denote: (a) an institution's total licensed beds; (b) an institution's total bed capacity; (c) the beds staffed and in operation for any given period of time; and (d) the allocation of beds to various specialities (e.g., medical/surgical, obstetrics, gynecology, etc.). In order that there be no ambiguity regarding the purpose of this threshold, the word "complement" has been deleted due to the confusion caused by its several different connotations and has been replaced by specific definition of those bed changes requiring review.

Many comments were received regarding coverage of changes in beds. Some asserted that the statute does not provide for review of bed changes because such changes do not necessarily involve the offering of a *new* institutional health service. Others argued that changes of only one bed, as required in §§ 122.304(c) and 123.404(a)(3) of the proposed regulations do not warrant a certification of need review. Still others asked that "conversion" of beds be excluded, as long as the beds in question are all licensed, since conversions would not increase the overall supply of beds. It was also proposed that the capital expenditure threshold not be applied to the reduction of the number of beds. After considering all of the above comments, the Secretary has determined that substantial conversions or additions in beds may affect the delivery and cost of health services. Therefore the term "substantial" has been given operational meaning by the revisions made to §§ 122.304(a)(3) and 123.404(a)(3) which now provide that additions or conversions of more than forty beds or twenty-five percent, whichever is less, over a two year period must be covered regardless of whether any capital expenditure is involved.

On this same subject, one commenter expressed concern that since bed use may change daily from one category to another (e.g., "skilled nursing facility" to "intermediate care facility") it would be impossible for a certificate of need program to regulate these constant variations. Daily bed fluctuation clearly need not be subject to certificate of need review, because States are required by the Federal regulations to review only substantial bed changes. States are, of course, free to require review of those bed changes which are not covered by the Federal regulations.

In addition, a question was raised as to what is meant by "relocation" of beds. The final regulations at § 122.304(a)(3) and § 123.404(a)(3) specify that relocation of beds "from one physical facility or site to another" requires review. If there is any confusion with respect to relocation in particular circumstances, the State Agency must determine whether review is necessary.

Regarding § 122.304(d) of the proposed regulation, § 122.304(a)(4) and § 123.404(a)(4) below, numerous requests were made that the Secretary define the term "new service," that he limit reviews to those for "substantial changes" in service, and that he specifically exclude increases of a type of service already offered. Section 123.404(b) of the proposed regulations, § 123.404(c) of the final regulations, provides that the State Agency shall issue a description of the scope of coverage of its program. In doing so, it will define such terms as necessary.

Numerous questions about whether various specific services are covered can be answered simply: any service is covered if it is included in the scope of coverage developed by the State. This scope of coverage must be at least as broad as the definition of "health services" set forth at § 122.301(d) and § 123.401(d), but may be more comprehensive.

One commenter also suggested that § 122.304(d) of the proposed regulation, § 122.304(a)(4), and § 123.404(a)(4) below, be amended to require review of new services which were not offered on a regular basis within the 12 month period prior to the date of application for review, rather than the 12 month period prior to the time such services would be offered as presently required. Insufficient rationale was presented to support this change and it has not been made.

Three commenters asked what was meant by the phrase "on a regular basis" as used in § 122.304(d) of the proposed regulation, § 122.304(a)(4) and § 123.404(a)(4) below. This phrase serves to modify "new service," and it is expected that it will be given operational meaning by each State.

Questions were received concerning the meaning of "health services offered in or through a health care facility or

health maintenance organization * * *" (emphasis added, in § 122.304(d) of the proposed regulation, and § 122.304(a)(4), and § 123.404(a)(4) below). The effect of the word "through" is that those services not offered physically in the institution subject to review, but which are offered to a substantial extent on behalf of such an institution by others, are required to be reviewed for certificate of need purposes.

One State suggested granting an exception to certificate of need review for "experimental programs" of one year duration if no capital expenditure is involved. The Secretary does not feel that such programs should be exempted from review, since they may have a substantial impact upon the provision of other services and the allocation of resources within the State. However, State Agencies could process such cases expeditiously if the appropriate exception to procedures has been sought from and granted by the Secretary. (See the discussion in this Preamble of § 122.307 and § 123.408.)

In addition, several respondents questioned the requirement for review of changes in physical facilities in emergency situations (e.g., the replacement of a furnace) or in cases where another public regulatory body imposes conditions that the institution must meet in order to continue in operation (e.g., compliance with fire and other safety codes). These sorts of changes, if subject to review under the State program, can be reviewed "expeditiously" if agencies apply for and receive from the Secretary, under § 122.307 and § 123.408 of the regulations, an exception to the procedures required for review.

Finally, because the proposed regulation did not provide sufficient time for States to develop an adequate scope of coverage, the time allowed to publish the scope of services covered has been made more flexible in § 123.404(c) (which was § 123.404(b) of the proposed regulation). Publication is now required before an agency reviews new institutional health services.

§ 123.405 Enforcement.

Several commenters requested specification of a maximum period for commencement of the development or offering of a new institutional health service following the granting of a certificate of need and a maximum number of renewals. Although these comments have merit, the Secretary believes provisions such as these should be developed by the individual States in administration of their own certificate of need programs, rather than by the Federal Government. The Secretary notes that nothing in the Act or in this regulation precludes a State from adopting such a provision. Therefore, these suggestions have not been followed. Another commenter suggested a provision specifying that the maximum life of a certificate should, in no event, exceed the useful or depreciable life of major equipment or facilities. While this suggestion may be followed by any State, the Secretary has not adopted it for the reason given above.

One commenter suggested the addition of a provision requiring the denial of a certificate of need where the applicant is a facility which has received funds under Title VI of the Public Health Service Act (the Hill-Burton program) and has failed to fulfill its assurances of provision of "free care" and "community service." This suggestion was not accepted because there is no statutory basis for such an approach, and because sanctions exist under Title XVI of the Act to deal with this specific problem.

The following additional provision was recommended by one commenter: "In providing for sanctions as required in (b) above, the Governor may request as part of an agreement under section 123.105 and/or section 123.106 (of the proposed regulation governing State Agencies): Federal cooperation through the Intergovernmental Cooperation Act of 1968, pub. L. 90-577; 82 Stat. 1098 (1968) or other appropriate method." The commenter added that by allowing States to request cooperation from the Department and/or through the Federal Intergovernmental Cooperation Act, certain States may be able more effectively and economically to achieve the results desired. Another commenter recommended that as a further sanction the Department should assist the State by prohibiting conveyance of funds within its control (e.g., Medicare and Medicaid reimbursements) to facilities in violation of certificate of need. Neither of these suggestions can be accepted since at this time there is currently no authority, beyond that provided in section 1122 of the Social Security Act, for the Federal Government to act generally to enforce State determinations of need. Moreover, the State's sanctions themselves must be effective in preventing the offering or development of unneeded services and facilities, thus negating any need for the Federal sanctions suggested.

A change in wording of § 123.405(a)(1) was recommended by one commenter, from "only those new institutional health services * * * found to be needed" to "only those new institutional health services * * * found * * * to meet the adopted criteria of the State Agency as well as the appropriate Health System Agency(ies)". This suggestion may be interpreted one of two ways: First, the wording could require that both the State Agency and the HSA would have to agree that a proposed new service met their adopted criteria, which would have the effect of giving HSAs a veto rather than the recommendatory function given them by section 1513(f). Alternatively, the wording could be interpreted to mean that the State Agency would have to adopt any criteria adopted by the HSA. This would be contrary to section 1532(a) of the Act, which mandates that HSAs and State Agencies each develop procedures and criteria. Since either interpretation would be inconsistent with the Act, the suggestion cannot be accepted. Moreover, the Secretary notes that the requirement of a finding of need is derived from the statute and must therefore be kept in the regulation.

Another commenter expressed concern that the language in § 123.405(b) implied that certificate of need and licensure are dependent upon each other and that this is impracticable if tied to § 123.106(b)(6), the review of existing institutional health services for appropriateness, because an entire institution "would be at risk for a small part of its operation that is deemed unnecessary and because of decisions after the fact." The Secretary will issue the regulation governing reviews under § 123.106(b)(6) at a future date and it is important that the distinction between the functions of review of existing institutional health services and review of new institutional health services be clear. A licensure sanction may be used to prevent the offering of a new facility, or a new service in an existing, already licensed facility, if the State selects it as a sanction under its certificate of need program, as set forth in § 123.405(b), although licensure is only one example of a sanction that a State may use. Additionally, it should be reiterated here that the enforcement requirement applies only to certificate of need reviews, not to reviews of proposed new institutional health services under section 1523(a)(5) of the Act or of existing institutional health services. Section 123.405(b) lists several types of sanctions, and States may use one or a combination of the listed sanctions or devise alternatives as long as the resulting provisions ensure that only needed new institutional health services are offered or developed within the State.

One commenter, objecting to the statement in Subpart E of the Preamble to the proposed regulation that "sanctions leading to the denial of reimbursements * * * are not, in themselves, sufficient sanctions * * *," stated that provider sanctions should be viewed on their merits in a particular locale. Denial of reimbursement may be effective in deterring a certificate of need regulation violation. However, Title XV requires that "only those services, facilities and organizations found to be needed shall be offered or developed." Such a sanction would not apply to all institutional health services; for example, it would not affect new services aimed entirely at the private-pay market which might be offered or developed despite a negative finding by a State Agency.

One commenter objected to "criminal penalties," as a sanction (§ 123.405(b)), and another stated that the enumerated sanctions were too severe and should be an individual State prerogative. All types of sanctions listed in § 123.405(b) are examples of sanctions which might be used by States and are intended to be illustrative only.

A commenter requested that the regulation provide for both "conditional" and "partial" certification to permit the State Agency to attach conditions or to approve part of the application. The Secretary believes it is not appropriate

for the regulation either to prohibit or require this. A change has been made in § 123.407(a)(5) to clarify that States may attach conditions to a final decision if the State program provides for such a procedure.

To allow States more flexibility in determining sanctions, one commenter suggested the following word change in paragraph (b): from "• • • which the Secretary finds appropriate • • •" to "• • • which the Secretary finds sufficient • • •". The Secretary agrees that this suggested rewording more clearly reflects the intent of the legislation and, therefore, has incorporated this change in the regulation.

Many commenters stated that the review of predevelopment activities involving a capital expenditure in excess of $150,000 (§ 123.405(a) of the proposed regulation and § 122.304(b) and § 123.404(b) below) would be inappropriate interference with institutional management because the planning for new services is a vital function of a business. One observed that hospitals enter into feasibility studies as part of their long-range planning in the normal course of business, and that health planning agencies would not be performing such activities for institutions. Others remarked that no mention was made of predevelopment activities in the Act. However, the statute does require, at section 1523(a)(4)(B), that State certificate of need programs provide for review and determination of the need for new institutional health services "prior to the time such services, facilities, and organizations are offered or developed or substantial expenditures are undertaken in preparation for such offering or development • • •". Therefore, the required review of certain predevelopment activities must be retained.

Based on the comments received, the Secretary has reconsidered the requirement that site acquisition be reviewed. It has been pointed out that institutions frequently acquire real estate as opportunities arise, often for investment purposes, and with no definite plans for development or expansion. Since the purpose of this threshold is to review actions closely related to the offering or development of health services, the acquisition of land, which is not necessarily development-related, is no longer required by regulation to be reviewed. Also, preliminary plans, surveys, and studies, on the basis of the arguments stated above, could be said to fall within the normal course of business; because they represent a very early and speculative stage of development, the regulation does not require these to be reviewed unless the State program so specifies. Consequently, the terms "site acquisition" and "preliminary plans, surveys, and studies" have been deleted from the definition of predevelopment activities found in § 123.405(a) of the proposed regulation § 122.304(b) and § 123.404(b) below of the regulations. However, the regulation still requires a determination of need prior to substantial expenditures in preparation for the offering or development of a new institutional health service, and any expenditure in excess of $150,000 for architectural designs, plans, working drawings, and specifications remains subject to review. Therefore, this requirement has been retained but moved to § 123.404(b). In addition, language has been added to § 122.304(b) and § 123.404(b) in order to clarify that these activities are to be covered under new institutional health services subject to review.

A commenter pointed out that if a proponent has secured arrangements or commitments for financing a new institutional health service, this might influence a planning agency to approve the offering or development of a proposed new service; conversely, if the proposed service then were not approved, serious financial losses to the applicant might result. For these reasons, this action has been included in § 123.404(b) as a predevelopment activity which may not be undertaken prior to a determination of need.

§ 122.305 and § 123.406 Adoption and public notice of review procedures and criteria.

Proposed § 122.305 and § 123.406 set forth for the HSAs and State Agencies, respectively, the schedule for the adoption of review procedures and criteria and the requirements for publicizing and distributing these procedures and criteria. A number of comments considered these sections to be undue regulation on the part of the Secretary and one commenter felt the sections should be deleted. A further rationale offered for deletion of § 123.406 was that a State can implement the review of new institutional health services only through existing programs such as certificate of need or review under section 1122 of the Social Security Act, and, therefore, there is no need to develop and publish a separate set of procedures and criteria. Another commenter called the regulations burdensome and costly. The statutory basis for inclusion of these sections is section 1532(a) of the Act which requires HSAs and State Agencies to follow procedures, and apply criteria, developed and published in accordance with regulations of the Secretary. The requirements of section 1532 apply equally to reviews of new institutional health services, certificate of need reviews and section 1122 reviews by HSAs and State Agencies, and other reviews of proposed health services by HSAs.

One respondent suggested that the criteria for the present review of capital expenditures in accordance with section 1122 of the Social Security Act should be allowable for use during the conditional designation period, implying that lack of adequate time would require use of temporary measures for proposed procedures and criteria. As explained below, the revised time period will allow sufficient time for development of procedures and criteria.

A large number of commenters expressed opposition to the three-month time period for adoption of procedures and criteria in § 122.305(a) and § 123.406(a). As a result of these comments, the provisions have been changed. Since the HSAs are only recently designated in many areas, and a few State Agencies are still undesignated, the Secretary believes it unwise to require adoption of procedures and criteria by these agencies in such a short period because the HSA and State Agency might be unable to coordinate with each other. The regulations governing the time period for both HSA (§ 122.305) and State Agency (§ 123.406) adoption of procedures and criteria have been revised to require their adoption prior to performance of the review functions. However, under the authority of sections 1515(b)(2) and 1521(b)(2)(A) of the Act, the Secretary may require any conditionally designated State Agency or HSA to adopt review procedures and criteria and to assume a review function at the earliest practicable date when in his judgment that agency is capable of doing so.

Others suggested allowing a specific time period for interested groups to comment on proposed procedures and criteria, and allowing appeals from provider groups affected (§ 122.305(b) and § 123.406(b)). Neither suggestion was adopted since the Secretary believes this is inappropriate detail for these regulations. The State Agency and HSA are required to give interested persons the opportunity to comment, but a time limit may be set. Either agency may also provide for an appeal if it desires to do so.

Several commenters thought the distribution list in § 122.305(b)(1) and § 123.406(b)(1) should be more selective, while others proposed the addition of other persons or groups to receive copies of proposed or adopted procedures and criteria. The Secretary agrees that any agency which establishes rates for health institutions must receive this information so that the various regulatory methods may be coordinated. A provision has been added at § 122.305(b)(1) and § 123.406(b)(1) to this effect.

The requirement at § 122.305(b)(2) and § 123.406(b)(2) for publication of proposed or adopted procedures and criteria elicited numerous comments. Many respondents protested the prohibition on placement of the notice in the legal notice or classified advertisement sections of the newspaper. Two reasons were given: (1) Placement elsewhere in the paper is financially prohibitive; and (2) exact placement of the notice cannot always be assured. This section has been revised to delete the prohibition against the placement of the notice in legal or classified sections. A contrasting suggestion was that publication of the notice be required once a week for three consecutive weeks in the classified or display ads. This suggestion was not followed, since to do so would be unnecessarily burdensome. Another comment suggested that public notice be given by the issuance of press releases to all the news media in the area. This was not adopted because agencies cannot assure that press releases will be used and notice actually given to the public by this means. One comment dealt specifically with the use of alternative methods for providing notice of proposed procedures and criteria. The suggestion was incorporated into the revised regulation by adding § 122.305(b)(3) and § 123.406(b)(3), which allow the HSA or the State Agency to receive an exception to this requirement in certain instances where a suitable alternative means is proposed.

Other comments involved suggestions for post-adoption actions. These ranged from holding a public hearing to give reasons for not adopting comments to providing for a written appeal after adoption. These suggestions were not accepted because they limit too severely the flexibility of the agencies. However, the State Agency or HSA is free to add these or other provisions, not inconsistent with the regulations, as it deems necessary.

§ 122.305.

One commenter asked for clarification of the term "unit of local government" in § 122.305(b)(1). The term is defined at 42 CFR 122.1(q). To be consistent with this reference, the term has been changed to "units of general local government."

§ 123.406 Adoption and public notice by State Agencies.

One commenter noted that the SHCC and one or more HSAs in the State may not exist at the time the State Agency adopts its procedures and criteria, and, therefore, the regulation should speak to this circumstance in § 123.406(b)(1). No change to the regulation is required, since the State Agency may fulfill its requirement by distribution to those agencies which exist at the time of adoption and to the others upon their establishment.

One commenter suggested that the public notice of procedures and criteria for a State Agency serving a State with an interstate standard metropolitan statistical area should be published throughout that area (§ 123.406(b)(2)). The Secretary believes that sufficient public notice has been provided for in the regulations and that the addition of such a requirement would be unnecessarily burdensome to the State Agency.

§ 122.306 Health systems agency procedures; general comments.

A commenter said that the review of HMOs by HSAs must be more clearly addressed in the regulations if it is to be meaningful. The commenter claimed that existing procedures for review by the Department of HMO grants would make HSA review and comment redundant. However, HSAs are required by section 1513(f) of the Act to review and make recommendations to State Agencies respecting the need for new institutional health services, which would include those provided in or through HMOs, as well as new HMOs themselves. This review would be based on the agencies' criteria, which might well be different from those established by the Secretary for reviewing the HMO grant proposal. The HSAs nonetheless are encouraged to coordinate their reviews with other required reviews of HMO proposals, including for example their reviews of proposed uses of Federal funds under section 1513(e) of the Act, a program for which the Secretary will soon issue regulations.

§ 123.407 State Agency procedures; general comments.

It was suggested that § 123.407 be rewritten to coincide with the procedures for section 1122 of the Social Security Act. It is expected that section 1122 reviews and reviews of new institutional health services (including certificate of need) will be closely coordinated at the State and HSA level. In fact, pursuant to section 1532 of the Act, many of the procedures for reviews under section 1122 are identical to those for reviews of proposed new institutional health services. However, since the authority and responsibility for the section 1122 program rests with the Federal Government, it is necessary that the regulation pertaining to this review provide the necessary detail so that ambiguity and differing State-by-State interpretations do not exist. With respect to reviews of new institutional health services, the Secretary's intent is to provide minimum regulations in order to allow States and HSAs as much flexibility as possible in developing their own review programs to meet State and local needs.

§ 122.306(a) and § 123.407(a) Health systems agency and State Agency procedures; general comments.

Many commenters objected to the duplicate procedural requirements found in § 122.306(a) for HSAs and § 123.407(a) for State Agencies. While section 1532(a) of the Act directs each of these agencies to make provisions for carrying out all the procedural requirements listed in section 1532(b), the Secretary recognizes that four of these procedural requirements need not be actually performed by both agencies in order to achieve the results required by the Act. For this reason, paragraph (c) was added to § 122.306 to relieve HSAs of the requirement of § 122.306(a)(1) for written notification of the beginning of a review, if the State Agency, in performing its function under § 123.407(a)(1) gives such notification. Also § 122.306(d) and § 123.407(c) were added to permit the HSA and State Agency to coordinate the three functions listed so that if one agency provides for performance of the function, the other agency is not required to do so. These three functions are those of requiring certain information from persons subject to review; submission of periodic reports by providers and others respecting development of proposals subject to review; and submission of letters of intent in the case of construction projects. In addition, the HSA's provision of the opportunity for a public hearing during the course of review may satisfy this required procedure for the State Agency, if the State program so specifies.

§ 123.407(a) Procedure of agencies delegated State Agency functions.

A comment was received suggesting the inclusion of language referring to the procedures adopted and utilized by agencies other than the State Agency, when such functions are delegated to such agencies in accordance with § 123.107. It is anticipated that appropriate language will be added to § 123.1 (when Subpart A of Part 123 is finally adopted) to require that reference to the State Agency with respect to a particular function shall be deemed reference to the agency which is performing that function under an appropriate agreement with the State Agency.

§ 122.306(a)(1) and § 123.407(a)(1) Notification of the beginning of a review by health systems agencies and State Agencies.

Several commenters suggested that the notification of the beginning of a review by the HSA or State Agency should be made only upon receipt of a completed application. The Secretary believes that this matter is best left to the agencies to address in their published procedures.

Further, the Secretary, in order to prevent confusion, has defined the "date of notification" for purposes of § 122.306(a)(1) and § 123.407(a)(1) to mean the date on which notice to affected persons is sent or the date on which notification appears in the newspaper, whichever date is later.

Several comments suggested that the minimum 30-day period, required to be allowed for affected persons to request a public hearing, may be too long in emergency situations. In response, the parenthetical phrase, "which period may not be less than 30 days from the date of the written notification required by this subparagraph," has been deleted from § 122.306(a)(1) and § 123.407(a)(1). Section 122.306(a)(7) and § 123.407(a)(7), dealing with public hearings in the course of agency review, have been modified to provide that such hearings must be held within a reasonable period from the date of written notification to affected persons of the beginning of a review.

Other commenters recommended permitting the legal notices section of a newspaper to be the medium for notifying "affected persons." Sections 122.306(a)(1) and 123.407(a)(1) require the HSA and State Agency to notify members of the public through newspapers of general circulation but do not specify the particular section of the newspaper. Thus, there is no need to change this language.

Several commenters requested that certain groups be specifically mentioned in the definition of "affected persons" in § 122.306(a)(1) and § 123.407(a)(1). Among the organizations proposed to be included were hospital councils, Medicare fiscal intermediaries, and PSROs. These organizations have not been named, but the Secretary did consider it necessary to include specific mention of any agency which establishes rates for

health institutions, so that the various regulatory methods may be coordinated. Accordingly, language has been added at § 123.407(a)(1) to include such agencies in the lists of "affected persons" who receive notification of the schedule for review. In addition, HSAs and State agencies may expand this minimum definition to include other individuals and organizations.

It was also suggested by several commenters that notification to "affected persons" should be allowed by means other than direct mail. As indicated in § 122.306(a)(1) and § 123.407(a)(1) of the regulations, these persons may be notified through a regular system of mailed notices, such as newsletters, rather than by individual letters announcing single reviews.

One commenter suggested stronger language to encourage increased utilization of newspapers for public notice. The Secretary has determined that the present language adequately carries out the intent of the statute.

A comment was received requesting the inclusion of language to allow notice through other communications media, in addition to newspapers of general circulation. However, such additional notice is not prohibited by the language of § 122.306(a)(1) and § 123.407(a)(1).

§ 122.306(a)(1) Notification of the beginning of a review by health systems agencies.

One commenter suggested that the responsibility for written notification to affected persons be placed upon the applicant, rather than upon the HSA. Section 1532(b)(1) of the statute requires only that each HSA and State Agency include in its procedures a requirement for written notice to affected persons. The Secretary believes that the assignment of responsibility for this notification is more properly dealt with by HSAs and State Agencies as they develop review procedures, than by Federal regulation.

§ 122.306(a)(2) and § 123.407(a)(2) Health systems agency and State Agency schedules for review.

Comments were received recommending that schedules for reviews by the HSA and State Agency of new institutional health services consist of two separate 90-day review periods, rather than the single 90-day period required in § 122.306(a)(2) and § 123.407(a)(2) of the proposed regulations. Experience with the section 1122 program suggests that a 90-day period is usually adequate to complete the review. In any case, the requirement is that it be 90 days "to the extent practicable." Finally, there is no legislative history to suggest that Congress intended a 180-day period of review for each new proposed service. The 180-day period is longer than the review period normally found in State certificate of need programs, and it could represent a substantial and costly delay to the proponent of a new institutional health service. For these reasons this proposal has not been accepted.

Several commenters recommended that a concurrent review be required by the HSA and State Agency. Other commenters suggested that a sequential review be mandated. The regulation specifies neither, and therefore, allows either type of review to take place within the required time period.

One comment was received suggesting that the review by the State Agency and HSA be a joint review, or that the State Agency waive its option to review proposals. This suggestion is contrary to the statute, which requires distinct reviews by the HSA (section 1513(f)) and the State Agency (sections 1523(a)(4)(b) and 1523(a)(5)) of proposed new institutional health services.

Several comments were received requesting clarification of those activities which must be performed within the 90-day review period. In response, the Secretary expects that agencies will have reached a decision, pursuant to their adopted procedures, within the 90-day review period. The Secretary notes that a public hearing for good cause shown occurs subsequent to a decision, and therefore is excluded from this 90-day time frame. Further, he notes that § 123.407(a)(2) requires agencies to adopt criteria for determining when it would not be practicable to limit a review to 90-days; and that it is likely that these criteria will include provision for those occasions when a public hearing during the course of a review extends beyond the usual time. He further notes that the period allotted for HSA review may not be reduced beyond 60-days without the written consent of the HSAs.

Section 123.407(a)(2) State Agency schedules for reviews.

Several comments were received suggesting modifications that would extend the 90-day review period. However, the present language already provides the opportunity for the State Agency to extend the review period based upon criteria it establishes for determining that the 90-day review period is not practicable.

A recommendation was also received that when a decision by a State Agency is not rendered within the 90-day review period, the proposal shall be deemed to have been approved. The language of the statute does not allow this, as section 1523(a)(4) requires that the State certificate of need program provide that "only those services, facilities and organizations found to be needed shall be offered or developed. * * *" Therefore, provision has been made at § 123.407(a)(15) for cases where a proposal for a new institutional health service has not been reviewed in the appropriate period. The proposal then is deemed to have been found by the State Agency not to be needed.

Two comments concerned cases in which an HSA would not make a recommendation to the State Agency within the time allotted by the State Agency for its review. One commenter recommended that States should be able to act on the application without waiting for the HSA recommendation, while the other felt that the State should not be able to make a final decision until it has received the recommendation. Section 1523(a)(4) and 1523(a)(5) of the statute and § 123.403(b) of the regulation require the State Agency to consider the recommendation of the HSA in conducting its review. However, if the HSA does not make a recommendation in the allotted period of time, the State Agency must make a decision by the end of its review period without waiting for the HSA recommendation. It should be noted, however, that an HSA has the obligation under the statute to make recommendations within the appropriate period.

Some commenters asked about coordination of procedures and review time periods between HSAs and State Agencies. The Secretary notes that § 122.306(a)(2)(i) of the regulations requires that reviews pursuant to section 1513(g) of the Act shall not take longer than the period specified by the State Agency in accordance with 42 CFR 123.407(a)(2). This provision is necessary in order that the State Agency have the necessary flexibility to obtain HSA recommendations on certain types of reviews (for example, reviews under section 1122, which are governed by the provisions of 42 CFR 100).

§ 122.306(a)(3) and § 123.407(a)(3) Submission of information by persons subject to review to health systems agencies and State Agencies.

A comment was received which urged language allowing an applicant to make minor revisions in a submitted application during the course of review if these revisions would not change the scope or content of the application. Others suggested that the Secretary remove provisions in the proposed rules allowing amendment of proposals during a review cycle. The Secretary has decided that this issue should be left to the individual States for resolution.

Further, an addition has been made to these subparagraphs to clarify the regulation on the types of information which agencies may request. The addition permits agencies to vary the informational requirements according to the purpose for which a particular review is conducted or the type of health service being reviewed, provided that the HSAs and State Agencies may require no information of person subject to review which is not prescribed and published as being required for that type of review.

§ 122.306(a)(3) Submission of information to health systems agencies.

Several commenters suggested modifications to the requirement that HSAs prescribe and publish a description of the types of information they will require from persons subject to review. The proposed rules did not contain such a requirement. However, the Secretary has decided that this subparagraph should be changed to require HSAs to prescribe and publish a description of the type of information that is required, in addition to its form and manner.

§ 123.407(a)(3) Submission of information to State agencies.

Other commenters suggested that the State Agency prescribe the information to be submitted to the HSA as well as itself for review purposes. The Secretary has decided not to require this. However, in § 122.107(c)(14) of the regulation governing HSAs, these agencies are required to make their recommendations to State Agencies in accordance with the procedural requirements developed by the State Agency. In other matters, the Secretary encourages coordination between the State Agency and the HSAs within the State, in this and all other review procedures. In fact, provision has been made at § 122.306(c) and (d), and § 123.407(c), to allow agencies to coordinate performance of certain functions in order to avoid unnecessary duplication of effort (see the discussion under those sections of the Preamble). The submission of required information to the State Agency is a procedure which need not be performed at both the State Agency and HSA level if one agency provides for performance of this function.

§ 122.306(a)(4) and § 123.407(a)(4) Submission of periodic reports by persons subject to review to health systems agencies and State Agencies.

Several commenters suggested that an institution's long-term plan should be deemed sufficient to meet the requirement for "periodic reports" which must be submitted to the health systems agency and the State Agency. It is the responsibility of the HSA and the State Agency to determine the form of periodic report required, and they may consider such plans acceptable. Several commenters suggested that these provisions for periodic reports be deleted, but they are required by section 1532(b)(5) of the Act and cannot be deleted.

Several commenters expressed concern with the content and timing of the submission of periodic reports required by both the State Agency and HSA and suggested a coordinated, common reporting system. As is the case with certain other procedures, § 122.306(d) and § 123.407(c) permit coordination between the State Agency and the HSA; there is, however, no requirement for it in the regulation.

§ 122.306(a)(5) and § 123.407(a)(5) Provisions for written findings by health systems agencies and State Agencies.

A comment was received suggesting that HSAs contiguous to the health service area in which the proposed institutional health service is to be located be included among parties required to receive written findings. The Secretary does not find this additional requirement to be necessary, since a contiguous HSA must be given notice of the beginning of a review and may then request a copy of the written findings, if it wishes to do so.

Section 123.407(a)(5) has been revised to make it clear that if a State Agency wishes to attach conditions to its recommendation or decision, it may do so as long as the established State program permits conditions to be attached. Section 122.306(a)(5) now provides HSAs may attach conditions if the State program does not prohibit such a procedure.

§ 122.306(a)(5) Provision for written findings by health systems agencies.

One comment was received asking for correction of the section references within the parenthetical clause to § 122.309, and the correction has been made.

Many commenters requested deletion of the words "final decision of" from this subparagraph on grounds that HSAs make only recommendations, not decisions. The phrase has been retained for reasons explained below in the discussion of § 122.306(a)(8).

§ 122.306(a)(7) and § 123.407(a)(7) Provision for public hearing in the course of agency review by health systems agencies and State Agencies.

Several comments were received on the minimum definition to "persons directly affected" who are, therefore, entitled to request a public hearing in the course of agency review. Many felt that the definition was too broad and that certain elements of the definition should be deleted to give more flexibility to the HSA and State Agency. Others commented that the definition should include mention of specific groups, such as Medicare intermediaries, health care providers within the region served, or public elected officials, either in addition to, or in place of, current elements of the definition. The Secretary has determined that any agencies which establish rates for health care facilities or HMOs in the State or health service area should be included in this definition. Furthermore, HSAs or State Agencies may expand the definition in their adopted procedures.

Several comments stated that the term "hearing" in many States requires special treatment under State law and suggested that a less formal term be used, such as "public meeting." The term "hearing" is retained in §122.306(a)(7) and § 123.407(a)(7) and (8), since it is the term used in section 1532(b)(8) of the Act. A comment was also received recommending that the regulation provide for the following: right to representation by counsel; right to require the availability of documents; written records of hearings; pre-hearing discovery, and pre-hearing conference; and receipt of testimony under oath. However, specification of the degree of formality of the hearing has been left to the agency's procedures.

Other commenters objected to repetitive public hearings and asked that this paragraph be deleted. Some commenters felt that a single hearing should be held by the HSA while others were of the opinion that only the State Agency should hold a public hearing. Section 1532(b)(8) of the statute requires, however, that each agency make provision for public hearings in the course of agency review. It should be noted, however, that nothing in this regulation requires more than a single public hearing for a proposed new institutional health service, and nothing in it prohibits the holding of a single public hearing for consideration of more than one new institutional health service proposal. The regulations explicitly provide at § 123.407(a)(7)(ii) that the State Agency may consider the provision of an opportunity for a public hearing by the HSA as satisfying the State Agency requirement.

One comment was received asking that the public be allowed to comment at meetings at which the application is scheduled for discussion or other action. All business meetings of the HSA and State Agency must be open to the public and, should the HSA or State Agency decide to use the meeting at which the application is reviewed as a public hearing for the purpose of accepting comments, it may do so. The regulations provide that the procedure for such a public hearing must permit any person to present testimony.

Some commenters asked, without specifying any details, that persons requesting a hearing sometimes be required to bear the cost of the hearing. HSAs and State Agencies are funded for the purpose of carrying out certain functions, including the provision of an opportunity for public hearing. The Secretary feels that for agencies to charge fees expressly for conducting public hearings would unduly restrict public participation, contrary to the intent of the Act. The regulations have been revised at § 122.306(a)(7), § 122.306(a)(8), § 123.407(a)(7) and § 123.407(a)(8) so as to prohibit State Agencies and HSAs from imposing fees for hearings requested by "persons directly affected" or hearings for "good cause shown." This, of course, does not preclude a State's requiring an application fee in its certificate of need program, even though the review process may entail a hearing.

One commenter proposed that the procedures for holding hearings coincide with procedures in the section 1122 regulation. The regulations permit, but do not require, the HSA or State Agency to develop the procedures for hearings to coincide with the section 1122 hearing procedures.

Several comments were received regarding procedures for presenting testimony. Some contended that time limits should be set for each person proposing to testify and that groups should be requested to provide a single speaker. Others urged that a notice of intent to give testimony be required prior to the public hearing, with the applicant being furnished a list of those to testify. Still others sought clarification as to whether written testimony would satisfy the requirement of a public hearing. The regulations leave procedural details of this nature to the HSA and State Agency and do not preclude any of the above. As stated above, § 122.306(a)(7) (for HSAs) and § 123.407(a)(7) (for State Agencies) provide that there must be an opportunity for an open public hearing, at which any person may present testimony.

Comments were received asking that there be clarification as to the notice of public hearings during the review. The regulations provide for the HSA and State Agency to develop the procedure to be used to notify persons of public hearings, and this procedure is required to be provided in the notification of the beginning of a review pursuant to § 122.306 (a) (1) and § 123.407(a) (1).

A comment was received questioning the purpose and procedure for holding a public hearing prior to final decision or recomendation on the proposal. Section 1532(b) (8) of the statute provides for each agency to permit a directly affected person to request a public hearing; the purpose of this provision is to allow such persons who may be affected by the proposal to have, prior to any final decision or recommendations, a forum for presenting facts and expressing their opinions. The hearing for good cause shown, which is to reconsider a decision after it is made, would not achieve this purpose.

§ 122.306(a) (7) Provision for public hearing in the course of agency review by health systems agencies.

Several coments were received recommending that the HSA be required routinely to hold a public hearing during the process of each review. The statute requires only that a hearing be held if requested by a person directly affected; however, the HSA is not precluded from routinely holding such hearings.

Several comments were also received asking that the HSA be required to develop criteria delineating the circumstances under which the application would receive a public hearing. Others asked that the HSA be required to make a determination within set time limits during the review period as to whether an application would receive a public hearing. Still others asked for the inclusion of a definition of "good cause" and that a minimum number of requests be received in order for a hearing to be required. As mentioned above, the statute requires that there be a hearing during the course of review if requested by persons directly affected by the review. The procedures must provide for time frames within which the request for public hearings may be made and time frames for the holding of such hearings prior to the due date of the HSA's recommendations. The HSA may develop other procedures to implement the public hearing provision as long as such procedures do not restrict the ability of any person directly affected by the review to request a public hearing, or relieve the HSA of the responsibility for holding one.

The phrase "health care facilities and health maintenance organizations located in the health service areas of the agency which provide services similar to the proposed services under review" in § 122.306(a) (7) was accidentally repeated. The repetitive phrase has now been deleted.

A comment was received noting that § 123.407(a) (7), concerning State Agencies, included the words "one or more" preceding "persons directly affected" while § 122.306(a) (7), concerning HSAs, did not. For consistency, the words "one or more" have been added to the latter section.

§ 123.407(a) (7) Provision for public hearing in the course of agency review by State Agencies.

Several comments were received suggesting that the State Agency not be required to hold a public hearing if the HSA had provided the opportunity for a public hearing. The regulations now provide at § 122.306(d) and § 123.407(c) that when an opportunity for a public hearing is provided by the appropriate HSA, the State Agency is not required to hold such a hearing, if its procedures so state. However, language has been added to the regulations stating that where the HSA did not provide the opportunity for a public hearing to a person defined as "directly affected" by the State Agency due to a difference in definition of "persons directly affected," the State Agency must provide such an opportunity to that person. The paragraph has been modified to include this requirement.

A comment was received stating that there should be a mandatory public hearing on all inpatient applications. While the regulations do not require such action, there is nothing in the regulation to prevent the State Agency (or HSA) from adopting procedures mandating a public hearing in the case of applications for inpatient services.

§ 122.306(a) (8) and § 123.407(a) (8) Provision for public hearing for review of health systems agency and State Agency decision.

Several comments were received concerning the term "good cause shown." One commenter recommended that the term "good cause" be replaced by "on grounds of arbitrary or capricious" action. This suggestion has not been accepted because the statute uses the term "good cause." Still another commenter requested that the definition be made more exact. This is considered unnecessary because the agencies are expected to give any needed clarity to this requirement in their adopted procedures.

Several commenters also recommended that this section be deleted and replaced by a provision for a public hearing held during, rather than after, the review process. Section 122.306(a) (7) (in the case of HSAs) and § 123.407(a) (7) (in the case of State Agencies) provide for public hearings during the review if requested by persons directly affected by a proposal. The Act requires an additional hearing after the agency decision if requested by any person who has shown good cause. However, because reviews of proposed new institutional health services under section 1513(f), result in "recommendations", not "decisions", by HSAs, the requirement for a post-decision hearing does not apply to these reviews.

Other comments sought specific time limits for requesting and holding hearings for good cause shown in order that decisions would not indefinitely remain under a cloud of doubt. To avoid this possibility, the Secretary has amended § 122.306(a) (8) and § 123.407(a) (8). Section 123.407(a) (8) now requires that to be effective, requests for hearings must be received within thirty days of an agency decision and that the hearing shall commence within thirty days of receipt of such a request. However, where the State law governing the practices and procedures of administrative agencies provides for different time periods, the latter shall govern.

One comment was received requesting that the term "any person" as used in this paragraph be defined to include only those persons who participated in public hearings during the review process. Other comments were received requesting that where a proposal by an HMO has been reviewed, the applicant HMO is the only person who should be able to request a public hearing for good cause shown for review of a decision. These recommendations were unacceptable because the term "any person" is taken from the statute, and the Secretary has no basis for restricting its literal definition.

Several comments were received asking that a request for a public hearing for the purpose of reviewing a decision regarding an HMO be completed within 30 days from receipt of the request. As noted above, time limits have now been placed on the review of an agency decision. Further, as has been explained in the Preamble discussion of § 122.308 and § 123.409, the HSA and State Agency are encouraged to consider the time requirements of those HMOs which are receiving or requesting Federal assistance.

Comments were received noting that the proposed regulations contained no notification requirement for holding a public hearing for the purpose of reviewing a decision; they also recommended that the regulations include minimum notice requirements. This recommendation was accepted, and the language requiring notification has been added in § 122.306(a) (8) and § 123.407(a) (8).

Several comments requested clarification concerning which procedural requirements might be applicable to a reviewed decision. In response, § 122.306 (a) (8) now states that a reviewed decision under that paragraph shall be considered a decision of the HSA and shall be subject to the requirements of § 122.306(a) (5), (6) and (9), regarding written findings, notification of status and results of reviews, and publication of reports of reviews. A similar, but extended, provision has also been added to § 123.407(a) (8), which pertains to the State Agency.

In addition, several commenters asked for clarification of who determines that "good cause" has been shown in order to require review of a decision regarding the need for a new institutional health service. In the case of State Agency decisions, it is the State Agency that determines whether "good cause" is shown, and § 123.407(a) (8) has been adjusted to clarify this. Similarly, in the case of HSA decisions, it is the HSA that determines whether "good cause" is shown, and § 122.306(a) (8) now clarifies this.

§ 122.306(a) (8) Provision for public hearing for review of health systems agency decision.

Several comments were received questioning the need for review hearings at the HSA level since the HSA makes recommendations, not decisions, to the State Agency, in its reviews of new institutional health services. Such recommendations are not subject to review at a public hearing for good cause shown. However, section 1532(a) of the Act and § 122.302 of the regulations, pertain to required procedures for two types of reviews: Those conducted "pursuant to sub-sections (e), (f), and (g) of section 1513" and "any other reviews of proposed or existing health services." In regard to the former type of review, § 122.306(a) (8) notes that, "an agency recommendation pursuant to section 1513 (f) is not a decision." Therefore, the HSA "recommendation" is not considered a "decision" which requires a hearing for "good cause shown." However, it is the second kind of review to which this paragraph applies, since it is only this latter sort of review in which the HSA may make a decision. Examples of such reviews might be those reviews performed under the provisions of Office of Management and Budget Circular A–95, which, although they are reviews of proposed health services, do not fall within the meaning of reviews of "new institutional health services." Further, this paragraph does not apply to the review functions conducted under section 1513 (e) or (g) of the Act (review and approval of certain proposed uses of Federal funds, and periodic review of existing institutional health services for appropriateness); the regulations pertaining to these reviews will be issued at a later date.

One commenter recommended that the same criteria be included for determining "good cause shown" as are included in § 123.407(a) (8) for State Agencies, and this recommendation has been followed.

§ 123.407(a) (8) Provision for public hearing for review of State Agency decision.

Several commenters stated that this provision for public hearings to review decisions when good cause is shown is unnecessary and should be deleted. Reasons given included duplication of the available appeal procedures provided by State administrative procedure acts, other traditional legal procedures, and the appeals provided for HSAs (§ 123.407(a) (9)) and "the person proposing the new institutional health service" (§ 123.407(a) (10)). It was also stated that hearings on the State Agency decision should be the responsibility of an independent authority. This recommendation was not adopted, as the statute requires the State Agency to make provisions for these public hearings if good cause is shown.

Some commenters recommended that the criteria listed in § 123.407(a) (8) (i–iv) for determining good cause to be expanded to include "failure of the State Agency to apply its own criteria." The Secretary feels that the criteria which are listed at § 123.407(a) (8) (i–iv) are sufficient Federal criteria for determining good cause, and, therefore, this suggestion was not accepted. State Agencies may, of course, adopt additional criteria.

Others recommended that an agency of the State, other than the State Agency, be allowed to determine when good cause has been shown. This recommendation was not adopted because the hearing for good cause shown respecting a State Agency decision is intended to be not a formal appeal but rather the review of a decision by the agency making the decision.

Several comments referred to specific questions of administrative procedures. Some of these comments included suggestions that the regulations specify a time period for requesting hearings as previously discussed in that part of the Preamble concerning § 122.306(a) (8) and 123.407(a) (8). This change has been made in both sections. Others were that there should be a limit on the number of these hearings on a single application; that there should be a procedure for the conduct of hearings covering such matters as board composition, representation of parties, and evidence to be heard; and that there should be procedures for a further hearing by the same agency on a reviewed decision if that decision reversed or modified the original decision. The Secretary encourages the State Agency to address specific proceduressu ch as these in developing its program; however, the addition of such detail to the Federal regulation is viewed as inappropriate.

Other commenters asked that the term "any person" be defined to include entities such as third-party payors and persons who participated in public hearings during the review. Since the term "any person" would include any individual or entity, this modification is not necessary.

§ 123.407(a) (9) Appeal of State Agency decisions requested by health systems agencies.

Several comments recommended amendment of this section to require that in cases where an appeal body makes a determination which is inconsistent with an HSA recommendation or State Agency decision, it also be required to furnish its findings in writing and the basis for its decision, as the State Agency is required to do. The Secretary agrees that such a procedure is consistent with section 1522(b) (13) of the Act since the decision of the appeal agency in section 1522(b) (13) (B) is considered the State Agency decision, which section 1532(b) (6) requires must be in writing. Therefore, this requirement has been added to § 123.407(a) (9).

One commenter proposed that this section clearly identify grounds upon which the State Agency could take action contrary to HSA recommendations. There is no statutory basis for such a limitation on the State Agency, although the regulation does not preclude the State Agency from identifying the grounds for this form of self-limitation. In addition, § 123.407(a) (9) requires a State Agency to provide to the HSA reasons for a decision inconsistent with the HSA's recommendations.

Of concern to several commenters was the lack of time frames for appeal of a State Agency decision. They recommended amendment of the regulations to conform to appropriate parts of the regulations for the section 1122 review program, 42 CFR 100.106(c). This recommendation has been accepted, and a provision has been added to § 123.407(a) (9) which requires that: (1) HSA has 30 days in which to appeal a State Agency decision, except that where State law governing the practices and procedures of administrative agencies provides a different time period, that time period prevails; and (2) the review shall commence within 30 days of the request, again, except where State law provides a different time period.

One commenter suggested that if the tentative decision of the State Agency is not in agreement with the recommendation of the affected HSA, the State Agency should be required to hold a public review (hearing) on the certificate of need request, and should be required to notify the affected HSA, the applicant and "other affected persons." The Secretary is of the opinion that the requirement for a hearing after the State Agency decision is sufficient; to require another one before it would substantially burden the State Agency, although the State is not precluded from adopting such a procedure.

A commenter proposed that § 123.407 (a) (9) read "Provision that if a State Agency makes a decision • • • which is not in agreement with a recommendation made with respect thereto by a health systems agency, the State Agency shall submit to such HSA its written findings and recommendations together with reasons for its decision. Such decision • • • shall, upon request of the health systems agency be reviewed, by the Board of Control of the State Agency or under an appeals mechanism as provided under § 123.407(a) (10)." This suggestion has not been accepted because it would not add significantly to the regulations.

One commenter noted that § 123.407 (a) (9) did not make it clear that only the HSA within whose area a project is to be located is entitled to an appeal of a State Agency decision. The section has been changed to clarify this provision.

Another commenter wanted this same section expanded to provide for an appeal by any aggrieved party. This has not been accepted because there is no statutory requirement to do so, and to add this as a requirement would add a significant burden to the State Agency. The Secretary notes, however, that

§ 123.407(a)(10) requires that the State Agency permit the person proposing the new institutional health service to appeal the State Agency's decision. Again, States may, if they choose, exceed Federal requirements and allow any person to appeal.

One commenter believed that, since the applicant has the right to appeal under § 123.407(a)(10), there appears to be no reason why an HSA should be allowed to challenge the decision of the State. This position has not been adopted because the HSA's right to appeal is a statutory requirement mandated by section 1522(b)(13)(A). It is likely to be exercised, for example, in the appeal of a State Agency finding of need, which an applicant would be less likely to appeal.

An observation was made that where a State Agency performs HSA functions under the special provisions of section 1536 of the Act, no HSA exists to appeal State Agency findings of need and, therefore, only the applicant has appeal rights. The suggestion was made that any person affected by a State Agency decision in such a State should have appeal rights. This has not been adopted on grounds that such provisions would be burdensome. Further, in such States there is broad-based representation through the Statewide Health Coordinating Council (SHCC), and this organization must be given the opportunity to review and comment prior to each decision of the State Agency (§ 123.110(a)(3)(iv)).

§ 123.407(a)(9) and § 123.407(a)(10) Appeals of State Agency decisions.

Several commenters believed there should be a "good cause" provision allowing an HSA or applicant to request a review by another agency, and suggested language similar to that in § 123.407(a)(8). This suggestion has not been adopted because section 1522(b)(13)(A) of the Act does not limit the HSA to a showing of good cause; rather, it requires that a review be made available whenever the State Agency decision is inconsistent with the HSA's recommendation. The provision for an applicant's appeal has been designed to parallel that for HSAs.

Other commenters were of the opinion that the appeals agency should have the option only of upholding a State Agency decision or remanding to the State Agency for review and should not itself render decisions. These comments could not be accepted, as the reviewing agency is clearly given decision making capability by section 1522(b)(13)(B), which provides that any decision by the reviewing agency is considered to be the decision of the State Agency. However, this section does not require that the reviewing agency make a decision on every appeal. Thus, the reviewing agency has the option to remand the matter to the State Agency for further action.

A commenter believed that the regulations prohibit the State Agency from being the appeals body, even where the certificate of need review function has been delegated to a different agency pursuant to section 1523(b)(1), and objected to such a prohibition. The Secretary believes that there is no such prohibition and intends to amend §123.104(b)(17) to clarify that the State Agency may be the appeals body where another agency of State government is performing the certificate of need function.

Commenters also asked for clarification as to whether State Courts and the State legislature can be considered agencies of the State other than the State Agency for the purpose of hearing appeals. It is the opinion of the Secretary that State judicial and legislative agencies might qualify for this purpose, but that case-by-case decisions must be made.

§ 123.407(a)(10) Appeal of State Agency decisions requested by proponents.

Several commenters recommended requiring that the person proposing the new institutional health service file notice of intent to appeal within 30 days and that the State Agency hearing be held within 60 days. In response, a provision has been added to § 123.407(a)(10) requiring that, to be effective, a request for a hearing be made within 30 days of a State Agency decision and that the hearing commence within 30 days of such a request (except where other periods are required by State law).

Other commenters requested provision of a mechanism to appeal State Agency decisions to the Secretary. They noted that such a mechanism exists with respect to capital expenditure reviews pursuant to section 1122 of the Social Security Act. This suggestion was not accepted because the certificate of need program requires that determinations be made by the State as to whether or not a need for the proposed services or facilities exists. The Secretary believes that unlike in the section 1122 program, there is no role envisioned for the Federal government in such individual determinations in the certificate of need and new institutional health service review programs.

Another commenter sought standards for appeal procedures to assure openness and the opportunity for the HSA and applicant to present their cases. Section 1522(b)(13)(A) of the Act and § 123.407(a)(10) require that the appeal mechanism must be consistent with applicable State law. The Secretary believes that, together with § 122.306(a)(9), § 123.407(a)(8), and § 123.407(a)(9), these provisions assure applicants and HSAs of openness in the appeals procedure. Furthermore, because of the varying State laws throughout the country, the Secretary has determined that no additional procedures are practical.

One commenter suggested that any decision made by a State Agency, approval as well as disapproval, should, upon request of the proponent, be reviewed under an appropriate appeals mechanism. This recommendation has been accepted, as the Secretary believes that the proponent should be able to appeal partial or conditional approvals where the State Agency chooses to make that kind of decision.

§ 123.407(a)(11) State Agency decisions inconsistent with health system agency plans.

Several commenters suggested that the regulation should include the language, "the HSA's health systems plan approved by the SHCC." This suggestion has not been accepted because the HSA may, in performing its review functions, have to use a health systems plan (HSP) which has not yet been reviewed by the SHCC and revised as needed. The intent of this provision is to require the State Agency to provide the HSA with a written statement of the reasons for State Agency inconsistency with the HSA's HSP used in review of the new institutional health service. Others requested deleting this provision entirely. This change has not been made because this provision is required by section 1523(c) of the Act.

§ 123.407(a)(12) State Agency reports of reviews.

One commenter requested that, because the requirement for publication of reports by the State Agencies was not based on the law, this provision should be stricken from the regulations. This suggestion has not been followed because section 1532(b)(9) of the Act imposes this requirement upon State Agencies. The regulations have simply interpreted the statutory reference to "regular" reports to mean "at least annually."

Another commenter urged that the publication of reports required by this paragraph be in one or more newspapers of general circulation, and occur once a week for three consecutive weeks in the classified section of the newspaper. This request has not been accepted because it is unduly burdensome. The Secretary believes that the method of publication is best determined by the State Agency.

§ 122.306(a)(9) Health systems agency reports of reviews.

One commenter suggested that where reviews have been completed at the State level, the reports by the HSA on its reviews should include the final determinations of the State Agency as well as whether an appeal was requested. While such information would be helpful, the suggestion has not been adotped, since it is felt that such an additional requirement would be unnecessarily burdensome to the HSA and this information will be available directly from the State Agency, in the report it is required to make under the provisions of § 123.407(a)(12).

§ 123.306(a)(10) Public access to health systems agency material.

One commenter observed that HSA meetings at which decisions are made should be open to the public. The Secretary agrees with this comment and notes that at § 122.109(e)(3) the term "business meetings" is defined broadly to include meetings at which functions under the Act (including reviews of propsed new institutional health service) are performed. Additionally, the HSA must conduct its business meetings in public and must give adequate notice of such meetings, and must make its data and records available to the public in accordance with the requirement of § 122.114.

§ 123.407(a)(13) Public access to State Agency material.

Several commenters proposed that the regulations be amended to allow State Agencies to adopt as policies for public access to records related to applications, policies which conform to State law governing confidentiality. The Secretary cannot accept this proposal, as the statutory language in section 1522(b)(6) does not allow the State to restrict access to this information.

§§ 122.306(a)(11) and 123.407(a)(14) Letters of intent for construction projects.

Several commenters suggested omitting the requirement for submission of letters of intent, believing that this generates unnecessary paperwork and, in general, serves no useful purpose. This suggestion is not accepted because there is a statutory requirement for submission of letters of intent. Agencies may, of course, limit their requirements for information to be contained in such letters. Others suggested language allowing this requirement to be satisfied by the filing by providers of a long-range development plan with the appropriate agency. Their rationale was that such plans are superior in content to periodic reports. It is, of course, for the State Agency and the HSA to specify the precise detail, as well as the form, of the information to be submitted.

One commenter requested deletion of the requirement that letters of intent be given to both the State Agency and the HSA. Section 1532(b)(11) requires that these letters be submitted to both the HSA and the State Agency, in the case of construction projects, in order to inform these agencies of the scope and nature of the projects at the earliest possible opportunity. After considering this comment, the Secretary has concluded that this requirement would be satisfied if either the HSA or the State Agency has provided for the submission of letters of intent in the case of construction projects, so long as these letters are made available to the other agency. Accordingly, language to this effect has been added to the regulations at §§ 122.306(d) and 123.407(e). Further, it should be pointed out that § 122.307 (in the case of HSAs) and § 123.408 (in the case of State Agencies) of the regulation provide for exceptions to the required procedures for review. The Secretary may grant exceptions to these procedures if he determines that the proposed substitute procedures are less costly or more effective, are consistent with the purposes of the statute, and do not adversely and substantially affect the rights of persons affected by the subject reviews.

§ 122.306(b) and § 123.407(b) Procedures for different types of reviews.

Another commenter asked for interpretation of these paragraphs. The meaning here is that the procedures used by the HSA and the State Agency may vary depending on the type of review or type of service reviewed. However, the procedure for each type of review must meet the minimum requirements of this subpart.

As an example of varying procedures for different types of reviews, the HSA might adopt procedures for A–95 reviews of proposed health services that differ from procedures for review of new institutional health services; both sets of procedures, however, must meet the minimum requirements of this subpart. An example of varying procedures for different types of services reviewed would be the adoption of review procedures for construction proposals which differ from review procedures for proposals to change services not involving construction. Both sets of procedures must, however, meet the minimum requirements of this subpart.

All reviews within a type of review, or type of service reviewed, must follow the procedures adopted for that type. Where the HSA or State Agency wishes to develop procedures not consistent with the requirements of this subpart, § 122.307 or § 123.408 (Exceptions to the use of procedures), respectively, applies.

§ 122.307 and § 123.408 Exceptions to the use of procedures.

One commenter stated that these sections are not clear and asked that grounds for granting exceptions be spelled out. Others felt that these sections should permit non-substantive review, as well as expeditious review or no review at all when changes are required by licensing or accrediting agencies or by emergency conditions. The Secretary believes that the HSAs and State Agencies should determine those instances in which requests for exceptions to the minimum Federal requirements are in order. Examples of reasons for requesting exceptions might include instances when a required procedure is in conflict with State law or regulation, or instances where there is a need for expeditious review in those situations requiring an immediate decision on a proposal before the Agency.

§ 122.307 Exceptions to the use of procedures for health systems agencies.

Several commenters were of the opinion that the procedure for granting an exception to § 122.306 (Procedures for health systems agency review) gives the Secretary unlimited authority, and that the regulations should be changed to require State approval of HSA requests for such exception. Others felt that provider groups should also be given the opportunity to comment on requests for exceptions. Still others suggested requiring a written statement that the State Agency has verified that the proposed procedures are consistent with State law. Although there is no change to the language of the regulations, the Secretary intends to consult with State Agencies prior to the granting of exceptions requested by HSAs to determine whether the proposed substitute procedures are consistent with State law and compatible with the procedures used by the State Agency.

§§ 122.308 and 123.409 Criteria for health systems agency and State Agency reviews.

A number of comments were received which expressed the opinion that the criteria as set forth in these sections are only guidelines and not sufficiently specific to be applied to the review process. In addition, several commenters questioned the ability of the planning agencies to develop and utilize appropriate criteria; they felt that agency staff would be limited by low funding levels and by the heavy responsibilities created by the Act and these regulations.

With respect to these comments, it is pointed out that these sections as well as the statute do not, strictly speaking, specify criteria that must be applied to the review of all proposals for new institutional health services. Rather, § 122.308 and § 123.409 delineate a minimum set of considerations to be included in the review criteria and provide that such criteria may vary "according to the purpose for which a review is being conducted or the type of health service being reviewed." Since these considerations constitute only a minimum mandatory set, HSAs and State Agencies are encouraged to elaborate on these and, in so doing, to incorporate concerns and circumstances appropriate to their health service areas and States. The Secretary will seek to provide technical assistance wherever possible through the Centers for Health Planning and by disseminating appropriate guidelines and suggested standards. National guidelines for health planning will be issued, as provided for in section 1501 of the Act. In addition, planning agencies may also acquire needed information and expertise from the National Health Planning Information Center as well as from other sources, including members of their governing bodies and committees. It should be pointed out, however, that the development of criteria is possible even without direct technical assistance, as much work has already been done in this area, and the results of this work are available in the literature.

Numerous comments were received from several interest groups representing providers and consumers requesting that the Federal regulation include specific criteria to address their special needs and circumstances. The Secretary recognizes these concerns but believes that the problems vary with local conditions and are, therefore, more appropriately addressed by local solutions. As indicated above, the considerations set forth in the regulations are the mini-

mum considerations to be addressed in review of new institutional health services, and HSAs and State Agencies should take local needs and concerns into account as they develop more specific review criteria. Furthermore, these needs and concerns should also be reflected in the HSPs and State Health Plans.

One commenter suggested that exceptions be provided for those HSAs and State Agencies which are not able to apply these considerations. The Secretary has not accepted this suggestion, believing that these considerations are the minimum necessary considerations to achieve the goals of the Act. In addition, § 122.308 and § 123.400(b) stipulate that criteria may vary according to the purpose for which a review is being performed or the type of health service being reviewed.

Several comments were received suggesting that review criteria used by the HSA be consistent with those of the State Agency. In fact, one commenter recommended that this be accomplished by requiring the State Agency to develop a master set of criteria. There is no specific statutory authority for the State Agency to direct the development of criteria by the HSAs; rather each type of agency is required by section 1532(a) to develop its own criteria. However, the HSAs and State Agencies have now been given a more flexible time schedule for completing the development of review criteria and procedures (§ 122.350(a) and § 123.406(a) respectively) and it is expected that they will take advantage of this flexibility to coordinate the development of their procedures and criteria.

The Secretary received several comments urging inclusion of a criterion related to the capability of the applicant to develop or offer the new institutional health service. The Secretary believes that this consideration is implicit in one or more of the considerations already listed in the regulations. In any case, these criteria constitute only the minimum set of considerations; planning agencies are free to include provider capability as an additional specific measure for evaluating a proposed new institutional health service.

Several comments were received suggesting that the regulations should require that categorical disease expertise and patient care standards be used where they exist. The Secretary believes that this matter is not appropriate for Federal regulations; however, HSAs and State Agencies are encouraged to obtain this expertise and information and to use them in performing their reviews.

Another commenter stated that criteria other than those in the Act should not be included in the regulations. These additional considerations were added to address other sections of the statute, particulary section 2 of Pub. L. 93-641, "Findings and Purpose," and section 1502 of the Act, "National Health Priorities." The specific criteria appropriate to the review of a particular new institutional health service proposal must be determined by the agency conducting the review.

§ 122.308(a)(1) and § 123.409(a)(1) Relationship of services reviewed to plans.

One commenter asked whether it is the AIP or the HSP with which a proposed project must be consistent in the event of a conflict between the two plans regarding the proposed project. Another indicated that the regulations should not require conformance to the AIP as a discrete document. The Secretary points out that the regulations do not require that the proposed service be consistent with either the HSP or the AIP. They require only that the planning agency take these plans into consideration in evaluating the proposed project.

On the same general issue, the Secretary received a number of comments suggesting that applications for new institutional health services be examined in terms of compliance with the HSP and the State Medical Facility Plan. However, the Secretary wishes to emphasize that the State Medical Facility Plan must, under Title XVI of the Public Health Service Act, be consistent with the State Health Plan. The latter in turn is made up of HSPs, as revised by the Statewide Health Coordinating Council (SHCC) to "achieve their appropriate coordination or to deal more effectively with Statewide health needs" (section 1524(c)(2)(A)). Since HSPs and State Medical Facilities Plans must be consistent it is not necessary to require in the Federal regulation that both plans be used in conducting reviews.

Several commenters also recommended that the HSP which has been revised by the SHCC in developing the State Health Plan be the only valid HSP for use in reviewing proposals for new institutional health services. The Secretary notes that when the HSP has been revised by the SHCC pursuant to section 1524(c)(2)(A), the HSP as so revised becomes the only effective HSP, and, therefore, which must be used in the process of reviewing new institutional health services. However, until such time as the SHCC has revised the document, the HSP established and adopted by the HSA pursuant to section 1513(b) is the only HSP in existence, and, therefore, must be used for review of new institutional health services.

One commenter advocated that public need for a health service should take precedence over the requirement that the service be considered in light of the HSP. The Secretary has listed the criteria in the regulation in the same order as they are listed in the statute. No priority ranking is implied and, furthermore, an agency is free to develop its own priorities to address the needs of its area.

§ 122.308(a)(2) and § 123.409(a)(2) Relationship of services reviewed to long-range development plans.

Several comments were received requesting deletion of the requirement that proposed new institutional health services "conform" to the applicant's long-range development plan. This consideration is required by the statute and, therefore, cannot be deleted. However, the Secretary wishes to emphasize that this is only one of twelve minimum considerations to be included in the criteria for reviewing the proposed service. Furthermore, conformance to the long-range plan is not required, only consideration of the relationship.

§ 122.308(a)(3) and § 123.409(a)(3) Need for such services.

The Secretary received a comment recommending that this provision be changed from "need * * * for the services" to "appropriateness of the services" for the population to be served. The suggestion was not accepted because the language of the proposed regulations was derived directly from the statute. However, when adopting criteria for the review of new institutional health services, HSAs and State Agencies are encouraged to specify whatever elements of need are proper for particular types of services and for their planning areas.

One commenter said that services designed to meet special needs often cannot be justified when compared to services that meet the general needs of the community. It is the Secretary's view that in evaluating a proposed service to meet a special need, the agency should regard this need as one of many factors to be considered in deciding whether or not to approve the service. The task of balancing multiple criteria is one that the HSA and State Agency must undertake.

A very large number of comments were received from osteopathic physicians, hospitals and their patients, expressing concern that the proposed regulations did not include language in § 122.308(a)(3) and § 123.409(a)(3) which mandated consideration of the availability of both osteopathic and allopathic facilities and services within a community. The Secretary recognizes that this is a pervasive, although largely anticipatory, concern of the osteopathic community. He has thoroughly examined the statute and the arguments for and against separate consideration for osteopathic services and facilities and he has concluded that he cannot administer the statute in accord with its intent and, at the same time, place such a requirement on the HSAs and State Agencies. A basic goal of the law is to require and allow local and State planning agencies to develop health plans which incorporate the unique concerns of their respective planning areas, and, subsequently, to conduct reviews of new institutional health services which utilize these plans as guides in the review process. To include the requested osteopathic consideration in Federal regulations would be a serious interference with the local planning process, especially since the extent of the osteopathic community's concerns varies greatly from state to state.

The Secretary was also persuaded by additional arguments. For example, the intent of Congress was to make health planning a public process through the requirements specified in the Act. The governing boards of HSAs must include, among others, consumers, public officials, and representatives of various provider groups. Osteopathic concerns may be voiced through these persons. Moreover the statute provides for public hearings before and after review decisions are made by the planning agencies; this constitutes another avenue to ensure that osteopathic concerns are considered. Finally, there is ample opportunity for community input in the development of both the HSP and the State Health Plan. Therefore, the Secretary believes that the structure of the HSA and the planning process afford adequate opportunity for the inclusion of osteopathic concerns, where they exist, in the health plans of the area. These concerns are safeguarded even further by the provision in § 123.407(a)(11) that the State Agency must provide written findings if its decision is counter to the HSP or AIP of the HSA; and § 123.407(a)(9) provides for an appeal hearing at the option of the HSAs if the State Agency's decision is contrary to the recommendations of the HSA. Moreover, although osteopathic physicians and facilities in some areas of the country may have experienced opposition from the allopathic medical community, no evidence has been presented to indicate that osteopaths have received discriminatory treatment from comprehensive health planning agencies in the past.

The Secretary, because of his concern about discrimination against populations who wish to be served by osteopathic services and facilities in their communities, strongly encourages State Agencies and HSAs to incorporate consideration of the needs of the population being served by such services into their health plans. However, he wishes to make clear that he is not advocating the development of duplicate systems of health care and, in particular, does not advocate the duplication of expensive facilities and equipment.

The Secretary is mindful of his continuing obligation to monitor the performance of the HSAs and State Agencies. As a part of this monitoring, he will look at the extent to which plans, recommendations, and review decisions reflect the needs of the population wishing to be served by osteopathic services and facilities. The Secretary also invites public comment on the impact of these regulations on this issue. The reader's attention is also drawn to the "Guidelines Concerning the Development of Health Systems Plans and Annual Implementation Plans," issued December 23, 1976 (page 20), which also drew attention to the concerns of the osteopathic community.

§ 122.308(a)(4) and § 123.409(a)(4) Availability of alternatives.

A commenter argued that the possibility that a less costly alternative service could be developed is too theoretical a ground for determining that a proposed service is not needed. The Secretary wishes to clarify this provision by pointing out that "availability," as used in this provision, refers to existing alternative services or those alternatives which have a reasonable opportunity of being developed, not services which theoretically might be developed in the community.

§ 122.308(a)(5) and § 123.409(a)(5) Financial feasibility.

One commenter remarked that consideration of immediate and long-term financial feasibility of a proposed service is counter-productive and unnecessary, and presumably desired the deletion of this consideration. The Secretary considers the financial feasibility of a proposed service to be an important consideration in reviews, so that agencies may have a basis for preventing adverse effect on the health care costs of the applicant facility and of the community being served through the facility's failure to meet its costs or through substantial rate increases.

Another commenter proposed that where there is a rate review body in a State, that review body, rather than the State Agency, should assume the responsibility for rendering decisions regarding financial feasibility, availability of resources, and cost of proposed construction. The Secretary agrees that rate review body may be useful as a resource to the planning agency; however, the statute requires that decision-making authority for new institutional health service proposals reside with the State Agency, unless the entire function is performed by another agency under an agreement in accordance with section 1523(b)(1). Rate review agencies have now been added to the list of persons to receive certain notifications as specified in § 123.406 and § 123.407, and language has been added to require consideration of the probable impact of the proposal on the costs of and charges for providing services by the person proposing the new institutional health service.

A suggestion was made to amend § 122.308(a)(5) and § 123.409(a)(5) to make the regulations conform with the requirements for grants under Title XVI of the Act. The commenter implied that Congress intended that poverty projects supported by Federal funds be deemed financially feasible. However, the Secretary has concluded that this is not the intent of the law. Section 1604(b)(1)(E) of the Act provides that Federal assistance given to medical facilities in poverty areas or individuals served by them shall be considered as financial support in determining if reasonable assurance can be given that adequate financial support will be available for the projects' maintenance and operation. Thus, Federal funds received by a poverty project can be considered as financial support in determining if the project is financially feasible, but receipt of Federal support should not be equated with financial feasibility. Moreover, section 1513(e) assigns to HSAs the responsibility to review and approve or disapprove certain proposed uses of Federal funds within their health service areas, including proposed assistance under Title XVI. Thus, a Federal determination of need is not contemplated under the statute as being a basis for overlooking State and local determinations of need.

A suggestion was made to amend the financial feasibility provision to include additional specific considerations. The Secretary believes that such detail is not appropriate in Federal regulations but is more appropriately left to the HSAs and State Agencies.

§ 122.308(a)(6) and § 123.409(a)(6) Relationship of proposed services to existing system.

A number of comments recommended that an additional criterion be added to address the impact of a proposed health service on other services offered by the applicant, on third party payors, and on the community. It is the opinion of the Secretary that such concerns are already included in several of the considerations listed in the sections on criteria.

Another commenter suggested that § 122.308(a)(6) and § 123.409(a)(6) be either clarified or deleted. Inasmuch as these provisions are required by statute, they cannot be deleted. However, the Secretary points out that while the relationship of the proposed service to the area's health care system must be considered in reviewing a new institutional health service, the actual measures used to evaluate its impact on the existing system are to be determined by the HSA and State Agency.

One commenter indicated that the proposed regulations did not fully address the problem of limited access by poverty populations to existing facilities. Although this is a valid concern, the solution to this problem lies not in mandating specific standards in Federal regulations but in the incorporation of this concern as a part of the consideration of access in the development of the HSP and AIP. This question of access will be further addressed in technical assistance materials to be issued by the Secretary.

§ 122.308(a)(7) and § 123.409(a)(7) Availability of resources.

One commenter advocated that the determination of whether there are available the resources needed to undertake a new institutional health service be made by the proponent of the service. The Secretary believes that the proponent has an active role to play in this matter and his documentation concerning the availability of resources should be taken into consideration in the review process. However, the planning agency must be the final arbiter on this question.

One commenter suggested that it is not realistic for an agency to disapprove a service which satisfies other appropriate criteria on the grounds that the resources required for the service could have been invested in an alternative service that is more desirable from the

planners' point of view. The Secretary wishes to emphasize that this consideration is only one of twelve required to be applied in evaluating a proposed service. If a project satisfies the other criteria, the planning agency should take that into account in arriving at its decision.

§ 122.308(a)(8) and § 123.409(a)(8) Relationship of proposed services to ancillary services.

A commenter questioned the need for considering the relationship of proposed services to auxiliary or support services. It is the Secretary's view that these factors must be considered, because the full implications of a proposed new institutional health service may not be known unless there is also an assessment of the availability of those services necessary to support the proposed new service (e.g., kidney dialysis in the case of a burn care service) and those services necessary to provide for proper continuity of care (e.g., an immunization or treatment program in the case of a proposed program for screening of early childhood disease).

§ 122.308(a)(9) and § 123.409(a)(9) Special needs of providers serving more than one health service area.

The Secretary received a number of comments recommending that the list of entities receiving special consideration for providing resources or services to individuals residing in adjacent health service areas be extended to include institutions with accredited residency programs, sectarian health care facilities, sectarian homes for the aged and behavioral and biomedical research projects, among others. While the Secretary thinks that it would be inappropriate to list additional examples, he emphasizes that if one or more of these factors is important in any local area, the HSA and State Agency may develop criteria to address these special needs.

Several comments requested that the Secretary require each applicant to submit to the HSA a quantitative estimate of the extent to which the proposed new institutional health service will meet needs outside the health service area and the extent to which it will serve the general community. It is the Secretary's opinion that the importance of this factor may vary from area to area and state to state, and that it therefore is not an appropriate matter for Federal regulations. Furthermore, § 122.306(a)(3) and § 123.407(a)(3) permit planning agencies to require such information if they deem it important.

§ 122.308(a)(10) and § 123.409(a)(10) Special needs of HMOs.

A large number of commenters, fearing an adverse impact on health maintenance organizations (HMOs) as a result of these regulations, strongly favored a Federal requirement that HSAs and State Agencies give special consideration to HMOs and many offered specific criteria to be used in the review process. After considering these comments, the Secretary has amplified the general language contained in section 1532(c)(8) of the statute by including in the regulations the minimum special needs and circumstances of HMOs which shall be given consideration by HSAs and State Agencies in developing review criteria.

In arriving at this provision, the Secretary was persuaded by the following factors. First, inasmuch as the Congress has established and the Department administers a national program under Title XIII of the Act specifically designed to encourage the growth and development of HMOs, this policy should be sustained and supported. Regulations promulgated under Title XV should not counteract the purposes of that program. Second, HMOs represent a different and competing system for the delivery and financing of health services, and they therefore respond to the health industry's need to experiment and innovate so that consumers may be provided with an alternative mode of health care delivery. In order to promote innovation, an environment conducive, or at least not hostile, to experimentation must be fostered. A final factor is the existence of impediments in some states and localities to the development of HMOs and the expansion of their services. These impediments are found in the requirements of some State laws and in opposition from some local planning bodies. Any HSA or State Agency that does not recognize the situations of developmental HMOs may aggravate the problems faced by entities that wish to become HMOs.

Notwithstanding the above, the Secretary points out that when new institutional health services proposed by HMOs involve inpatient facilities, § 122.309 and § 123.410 ("Inpatient facilities; required findings"), as well as § 122.310 and § 123.411 ("Health Maintenance Organizations: required findings"), shall apply.

Comments were also received pointing out that since both Title XIII, Health Maintenance Organizations, and Title XV of the Act govern certain aspects of HMOs, the two titles should be coordinated so as to avoid conflict. Additionally, commenters highlighted the problems of applicants for assistance under Title XIII whose developmental or operational activities could be significantly delayed and possibly jeopardized unless coordination occurred. They feared that either the length of time required by the review and appeals process, or the disapproval of a new institutional health service that is a continuation of an earlier activity for which a certificate of need has already been granted, would undermine the development of HMOs. The Secretary recognizes that HMOs receiving Federal grants under Title XIII are confined to a stringent timetable for completing each phase of their planning and developmental activities. Therefore, the Secretary emphasizes the need for HSAs and State Agencies to establish a flexible review schedule for HMOs and to expedite appeals procedures to meet the needs of applicants under the Federal HMO program.

In addition, new § 122.310 and § 123.411, "Health Maintenance Organizations; required finding" have been added to address the second concern above. These provisions ensure that an HMO will not be denied a certificate of need for a new institutional health service which is consistent with the basic objectives, time schedule, and plans of its previously approved application, if any.

Numerous comments suggested that the review criteria already established under Title XIII be used by HSAs and State Agencies to review HMO proposals for new institutional health services. In accordance with section 117(a) of the recently enacted Health Maintenance Organization Amendment of 1976 (Pub. L. 94-460), the Secretary has added to the regulations the requirement that the criteria established by HSAs and State Agencies under these paragraphs "shall be consistent with the standards and criteria established by the Secretary under section 1306(c) of the Act." Existing regulations under section 1306(c) are found at 42 CFR 110.204; these will be amended shortly to carry out the provisions of Pub. L. 94-460.

The commenters differed on whether an HMO should be exempt from review if it has been determined to be a qualified HMO under Title XIII. Some indicated that they were in favor of exemption while others claimed that since Federal qualification is not an indicator of quality, these HMOs should not be exempt. The Secretary points out that coverage of HMOs under these regulations is required by the statute, and there is no legal basis for their exemption, regardless of whether they have been found to be qualified HMOs under Title XIII.

A few commenters suggested that, in developing criteria for reviews of new institutional health services, HSAs and State Agencies should give special consideration to those HMOs which predominantly serve Medicare and Medicaid beneficiaries as well as those HMOs which serve more than one health service area. While these concerns are important, they should be addressed at the HSA and State level. As HSPs and State Health Plans are established and review criteria developed, HMOs with unique concerns should provide information to the planning agencies so that their particular circumstances are considered.

Objection was raised to the fact that HMOs are placed in a disadvantageous position compared to providers of ambulatory services on a fee-for-service basis and insurance companies (which provide indemnity coverage), since these regulations do not cover either of the latter. Coverage under the regulations is based on the statute, which requires review only of institutional health services, defined in section 1531(5) explicitly to include services provided through health care facilities and HMOs.

A number of commenters recommended that language be added to the regulations to state that the HSA shall recommend, and the State Agency shall grant, certificates of need to HMOs unless the agencies can make written findings that there is an excessive number of HMOs in the area or that the proposed new institutional health service is available from non-HMO providers in a reasonable and cost effective manner. This recommendation was not accepted because it would be tantamount to creating a separate review process for HMOs. HSAs and State Agencies would be required to show that the proposed new institutional health service is not needed rather than confirming that a need for such services exists. This would result in the planning agencies having minimal authority to exercise any regulatory control over the development or expansion of HMOs. The Secretary believes that this would be contrary to the statute, which specifically requires the review of the need for new institutional health services "provided through health care facilities and health maintenance organizations."

§ 122.308(a)(11) and § 123.409(a)(11) Special needs of research projects.

From several comments, it has become apparent that some confusion exists with respect to the requirement for consideration of the special needs and circumstances of biomedical or behavioral research projects which are designed to meet a national need and for which local conditions offer special advantages. This consideration was included to discourage the disapproval of such projects without at least consideration of their special needs, such as the presence of a highly skilled investigator or access to certain facilities.

A few commenters requested identification of the entity that would be responsible for determining whether a national need was being met by a research project. These commenters suggested that a mechanism be established for a coordinated review of such proposals by Federal, State and local agencies. The Secretary notes that the reviewing agency is the entity which must determine whether a national need would be met, and encourages Federal agencies, State Agencies and HSAs to coordinate their activities in reviewing such research projects.

§ 122.308(a)(12) and § 123.409(a)(12) Construction projects.

Numerous comments were received requesting deletion of the provision requiring consideration of the cost and impact of construction projects. These provisions are required pursuant to section 1532(c)(9) of the statute and, thus, cannot be deleted.

Several commenters suggested that planning agencies review only those construction projects which have an impact on the area's health care system or services and exempt those projects which entail only minor renovation or modernization. The Secretary believes that any construction project covered by these regulations would have an effect on costs. If the construction affects the costs of the applicant in providing health care, it obviously affects the health care costs of the community; the extent of this effect can be determined only by review.

§ 122.308(a)(12)(i) and § 123.409(a)(12)(i) Costs and methods of proposed construction.

A number of commenters opposed the role of HSAs and State Agencies in reviewing the methods of construction to be utilized in a proposed project and requested deletion of these provisions. However, this requirement is set out in section 1532(c)(9)(A) of the Act, and therefore cannot be deleted.

Additional comments were also received suggesting deletion of the requirement that HSAs and State Agencies consider the costs and methods of energy provision. Although this provision is not a statutory requirement, it was included because the costs of providing energy are rapidly increasing and causing significant increases in the costs of construction and on-going operation of facilities. The Secretary has, therefore, concluded that these are necessary conditions. Another commenter suggested that this consideration be broadened to include consideration of energy utilization and the provisions of other utilities. The Secretary feels that this degree of detail is inappropriate for Federal regulations and is best left to the HSA and State Agency.

§ 122.308(b) and § 123.409(b) Criteria for different types of reviews.

One commenter recommended that exceptions be allowed to the use of criteria. This recommendation has not been accepted because the criteria ultimately adopted by an agency need to be applied only as appropriate to a particular proposal. Given this flexibility in the application of criteria, the commenter's concern is satisfied without further provisions in the regulations.

§ 122.309 and § 123.410 Inpatient facilities; required findings; general comments.

Many commenters requested the deletion from these sections of the required findings with respect to the appropriateness of the use of similar existing inpatient services. Deletion was requested for the following reasons: (1) An impartial and objective analysis is impossible to perform and the reviewing agencies are powerless to impose sanctions with respect to existing services or otherwise to correct deficiencies; (2) this requirement provides no incentive for a health facility to operate in an efficient and effective manner; (3) it is actually a disincentive to efficiency in that any provider can discourage competition by being inefficient; and (4) it is vague, indefinite, not reasonably capable of proof and budget constraints do not permit its review. Other commenters indicated that the burden placed on an applicant by this requirement is unfair since the applicant cannot directly influence the behavior of competitors and should therefore not be held responsible for their efficiency. The Secretary is convinced by these arguments and has deleted this provision (§ 122.309(b) and § 123.410(b) of the proposed regulations) as a required finding. However, the appropriateness and efficiency of existing inpatient facilities providing services similar to those being proposed are important factors in the review of an application for a certificate of need. Therefore, the introductory paragraphs of § 122.309 and § 123.410 have been modified to reflect the need for this consideration. This modification also addresses the concerns of those who requested that public charity hospitals and HMOs not be subject to these findings, because in their view such entities would have been penalized by § 122.309(b) and § 123.410(b) of the proposed regulation. The deletion of § 122.309(b) and § 123.410(b) also eliminates any need to combine them with § 122.309(d) and § 123.410(d), as suggested by one commenter.

One commenter requested that the phrase "existing inpatient facilities" be changed to "existing health care system." Although the appropriate and efficient use of all parts of the existing health care system is a goal of certificate of need programs, this change was not included in the amendment to the introductory paragraph in § 122.309 and § 123.410, since the Secretary does not expect an HSA or a State Agency to review the entire health care system in the review of a specific proposal.

One commenter suggested that local providers and provider organizations should be involved in making the findings required by § 122.309(b) and § 123.410(b) of the proposed regulations, to prevent arbitrary decisions on the part of the HSAs. This provision is considered unnecessary in the language now added to the introductory paragraphs, since the agencies may use whatever sources of expertise are available to them but are required to make these findings themselves prior to recommending or approving an inpatient service.

Another commenter requested that the requirement for comparison be modified to ensure that, where existing inpatient facilities of low quality are not being used in an appropriate and efficient manner, they should not be included in the comparison so that competing high quality services would be allowed to develop. This comment has been addressed by deleting the requirement for this finding.

Several commenters suggested clarification or modification of the language of the proposed regulations clearly to indicate the placement of the burden of proof for the required findings on either the provider applicant or the reviewing agency. One commenter suggested that the language should be neutral with respect to the placement of the burden of proof. Related to these comments were many others concerning the time and staff required by the reviewing agencies to implement these sections of the regulations. One commenter stated that the requirements of § 122.309 and § 123.410 would substantially increase the depth and scope of the certificate of need reviews without providing additional bene-

fits and should be deleted. Others suggested limiting the scope of the requirements or delaying the implementation of these requirements for a specified period of time. In all but one instance, those suggestions were not followed. The Secretary has concluded that the language of the proposed regulations is neutral with respect to the placement of the burden of proof and it does not prevent either the HSA or the State agency from requiring the applicant to address all the appropriate criteria enumerated under § 122.309 and § 123.410. The reviewing agency may then accept or reject the applicant's analysis of his conformance with the criteria, but must prepare its own written findings pursuant to § 122.306(a)(5) or § 123.407(a)(5). Since the reviewing agencies are required only to make "findings," not necessarily to perform original analysis, they may base their findings on analysis conducted by the applicant, other institutions, agencies or parties, or any other information available to them. Therefore, comments concerning staffing limitations, which proposed limiting the scope of these requirements and delaying their implementation, were not adopted.

Many commenters indicated that the phrase "service to inpatients" is vague and would seem to cover all aspects of a hospital's operations. One commenter suggested that the introductory paragraph in § 122.309 and § 123.410 be modified to read as follows: "In the case of certain proposed new institutional health services * * *" Another commenter indicated that these sections should apply only to changes in bed capacity, since they duplicate the criteria in § 122.308 and § 123.409. To clarify this issue, the Secretary has revised the regulations to provide that only proposed new institutional health services for th provision of health services to inpatients will require that agencies make the specified findings. Thus, capital expenditures of $150,000 or more relating to food services or other support services for inpatients are examples of inpatient services to which the "required findings" provisions do not apply. Moreover, "required findings" are not mandatory for those hospital services not related to inpatients; examples are ambulatory and emergency medical services.

Many commenters expressed concern regarding the applicability of these requirements to all inpatient facilities and institutional health services. One commenter suggested that it does not appear necessary to accentuate the special nature of inpatient facilities and that these requirements should be deleted here and included under § 122.308 and 123.409 as criteria to be applied to all reviews. Another commenter suggested that these sections be made optional for State certificate of need programs because conditions of excess inpatient beds do not exist uniformly in every state or in every region within a State. Lastly, one commenter claimed that the requirements prohibit any capital expenditure improvements. These suggestions were not accepted because the Secretary considers that a major purpose of a State certificate of need program is to prevent the construction of unnecessary and inappropriate health care facilities. Furthermore, as indicated in the Preamble to proposed regulations, evidence suggests that there is an excess supply of hospital beds in many areas of the country and that some states already have an adequate or excess number of nursing home beds. The findings required by these sections are intended to confront the problem of overbuilding of inpatient facilities and to minimize or eliminate overbuilding. It is not expected that these required findings will create adverse effects in areas where there is a demonstrable shortage of facilities or services.

Another commenter requested that § 122.309 and § 123.410 be limited to proposals which permanently increase or decrease inpatient bed supply. This suggestion was not adopted because, as previously stated, the Secretary has incorporated a time factor in the definition, at § 122.304(a)(3) and § 123.404(a)(3), of the bed changes which must be reviewed.

Several commenters also requested that these sections be expanded to include other than inpatient levels of care, such as outpatient care. However, the major objective of these sections is to confront the overbuilding and excess supply of inpatient beds. Nevertheless, any State may also include other than inpatient services in the findings required for issuance of a certificate of need.

Many commenters suggested that all of these sections be deleted because they are not based on statutory authority as expressed in Pub. L. 93-641. However, section 1523(a)(4)(B) of the Act requires a State to administer a State certificate of need program "which applies to new institutional health services proposed to be offered or developed within the State and which is satisfactory to the Secretary." Because of the findings of section 2(a)(4) of Pub. L. 93-641 which pertain to the previously uncontrollable and inflationary increases in the costs of health care, particularly of inpatient hospital care the Secretary has determined that these required findings for inpatient services are necessary for a satisfactory certificate of need program.

Other commenters requested that § 122.309 and § 123.410 be deleted because the differences between certificate of need, review of new institutional health services, and section 1122 reviews are unnecessary and cumbersome, because these sections are based on the assumption that valid needs for inpatient services do not exist, and because they override local differences and autonomy by establishing absolute standards. These suggestions have not been followed for several reasons. There is a substantial difference between reviews of new institutional health services, including certificate of need reviews, and reviews under section 1122. The former reviews are directed toward proposed new institutional health services, while the section 1122 program is limited to review of proposed capital expenditures. Further, the Secretary recognizes that a need for inpatient services does exist in some areas and, while these sections are directed toward areas of excess supply, they are not expected to hamper the development of additional supply in areas where there is a shortage. Finally, these requirements are not intended to override local differences and autonomy, since HSAs and State Agencies must develop standards and criteria based on these sections, and make the required findings.

One commenter questioned the applicability of these findings in States with a single statewide HSA. The Secretary has indicated in the proposed regulations and in previous regulations that the HSAs and State Agencies are separate bodies and therefore the conduct of this responsibility would be the same as in States with more than one HSA.

One commenter requested that, because of the demand placed upon the resources of the reviewing agencies in making these findings, the State Agency be required only to confirm or reject the findings of the HSA. The Secretary emphasizes that § 122.309 and § 123.410 require that the HSA and the State Agency each make its own findings in writing.

Another commenter suggested that the regulation should be more specific and should define what is meant by an adequate demonstration of findings. This suggestion has not been adopted; whatever standards and additional criteria are used by the reviewing agency will define an adequate demonstration of findings.

One commenter expressed concern that a State Agency would be subject to providing a hearing to any interested person regarding its decision on these findings, while another commenter indicated that a public hearing on these findings is warranted. In response to these comments, the Secretary notes that these findings, as a necessary part of certain agency decisions, are subject to challenge when a hearing on any of these decisions is held.

Two commenters questioned why these findings must be made in writing. They specifically suggested that the State Agency should not have to provide a detailed written statement of any discrepancy between the State Agency's findings and those of the HSA. The Secretary sees the need for written findings and notes that § 123.407(a)(9) requires a detailed statement only if the State Agency's decision differs from the HSA's recommendation.

§ 123.309(a) and § 123.410(a) Alternatives to inpatient services.

Many commenters requested specific changes in the wording of the proposed regulations. One commenter suggested that the phrase "the development of alternatives has been studied" be changed to "the development of alternatives has been reasonably studied." The Secretary has not included this suggestion because such a change would raise additional questions without improving the language of the regulations. As presently stated, the regulations permit agencies the latitude to define the scope and depth of the analysis required to support their findings. Use of the word "reasonably" would require further guidance from the Secretary and, thus diminish the latitude of the reviewing agencies. Several commenters suggested that the phrase, "less costly, more efficient, or more appropriate alternatives" be changed by substituting "and" for "or." This exact suggestion was not adopted, but § 122.309(a) and § 123.410(a) have been changed to clarify that the purpose of this provision is to ensure that State agencies consider alternatives to the proposal and must find that, at least in terms of cost, efficiency, and appropriateness, these alternatives are not practicable. Further, the Secretary does not agree with suggestions that the word "practicable" should be followed by the phrase, "at the time of the review;" it adds little meaning to this subsection since the reviewing agencies will be aware that what is not practicable immediately may become so in the near future. Another commenter requested that these subsections be ended after the phrase, "not available." This comment was not adopted because if an alternative is not available, yet its development might be practicable, serious consideration should be given to such development.

Two commenters expressed concern that these subsections would deter the development of new institutional health services and the development of alternate methods of health delivery. One was particularly concerned that the language of the proposed regulations was too restrictive and the other indicated that the studies needed to support the required findings would result in delays which would not otherwise occur in granting certificates of need. Regarding the former concerns, the Secretary has indicated that the purpose of this section is to highlight the need for alternate methods of health care delivery and to prevent the development of services and facilities which are not as efficient and appropriate as these alternatives. The Secretary has also noted that the latter concerns may be well founded, but that any ensuing delays should result in better decisions on certificate of need applications.

Two commenters suggested that the terms "more efficient" and "more appropriate" in § 122.309(a) and § 123.410(a) are excessive and vague. In response to these comments, the Secretary points out that the reviewing agencies may define these terms based on local perspectives, as expressed in their adopted plans, criteria and standards.

One commenter indicated with regard to § 122.309(a) and § 123.410(a) that even if alternative services are feasible, the lack of someone to finance and develop them may prevent their establishment. He added that feasible but nonexistent services should not be grounds for denying proposals for services which are otherwise desirable. However, the term "available" as used in this provision implies existing or readily available services, not remote or theoretical services.

§ 122.309(b) and § 123.410(b) Alternatives to new construction.

Many comments requested deletion of § 122.309(c) and § 123.410(c) of the proposed regulations, now § 122.309(b) and § 123.410(b), regarding required findings concerning alternatives to new construction. Most of these commenters argued that the language of the proposed regulations emphasized modernization rather than replacement, and thus might actually encourage wasteful expenditures in some cases. Others indicated that this requirement could not be fulfilled and that it was not based on statutory authority. One commenter requested that the last phrase, "and have been implemented to the extent practicable," be deleted. These comments were not accepted because the regulations require only that modernization has been considered as an alternative. If modernization is more expensive or otherwise not feasible, then a finding may be made that alternatives have been "implemented to the maximum extent practicable."

Several commenters suggested specific modifications to the required finding regarding alternatives to new construction. One requested that the wording be changed to indicate that alternatives to new construction have been explored and found to be either more expensive or not practicable. Another suggested that these alternatives only need to be considered and found not feasible. Others suggested that these alternatives be "reasonably" considered. One commenter suggested that further definition be given to the word "practicable." Another commenter sought clarification of the extent to which alternatives for construction must be considered and implemented. The Secretary has not followed these suggestions because they either excessively weaken the provision or create a need for further clarification. Furthermore, it is intended that the reviewing agencies determine the operational definition of "practicable" based on state and local circumstances.

§ 122.309(c) and § 123.410(c) Problems in obtaining proposed types of service.

A number of commenters requested the deletion of § 122.309(d) and § 123.410(d) of the proposed regulations, now § 122.309(c) and § 123.410(c), which required a finding that patients will experience serious problems in the absence of the proposed new service as a precondition of determining that a proposed new inpatient service is needed. They cited the following reasons: (1) The requirement has no statutory authority; (2) it is inconsistent with sound planning; (3) other parts of § 122.309 and § 123.410 accomplish this intent; and (4) it is impractical and cannot be administered effectively. Another commenter took issue with the word "serious." The Secretary has retained these provisions because an important purpose of the health planning and regulatory programs required by Title XV is to prevent or alleviate the health problems of the population served or to be served. This provision is consistent with sound health planning and can, in the judgment of the Secretary, be administered effectively, based upon the criteria and standards that an agency must develop and use in reviewing a certificate of need application. The one commenter who objected to the term "serious" was joined by others who suggested clarification of this word. To reflect more precisely the intent of the requirement, certain types of serious problems have been specified, while allowing the agencies to add other criteria if they choose.

Another commenter suggested that this criterion be ranked first on the list of required findings. These provisions were not ranked in order of priority, and all of the findings must be made as a condition for recommending or granting a certificate of need.

§ 122.309(d) and § 123.410(d) Consistency with other State plans for long-term care.

State Agencies are required by § 123.410(d) (§ 123.410(a) of the proposed regulations), to make a finding, in the case of proposals for the addition of beds for the provision of skilled nursing or intermediate care services, that the addition will be consistent with the plans of other State Agencies responsible for the financing of long-term care (including home health services). One commenter asked why the Secretary did not, in § 122.309, require HSAs to make the same finding. The Secretary has modified § 122.309 to include a similar provision.

Many commenters suggested that § 123.410(e) of the proposed regulation § 123.410(e) of the proposed regulations be deleted because the State Health Plan is the authoritative document for the State for the development of health resources. One argued that this provision would create confusion concerning the roles of the State Agency and other State agencies. The Secretary concurs with these concerns and has modified the regulation to require "consideration" of the relationship of the proposal to these other agencies' plans, rather than requiring that they be "consistent."

One commenter claimed that this provision would force the reviewing agency to certify levels of care within institutions, to some extent. However, the requirement is only that the finding be made prior to approval of this type of service.

One commenter questioned the inclusion of home health services in this section, since the proposed regulation had excluded home health agencies from coverage under the requirements for a State certificate of need program. The Secretary believes that coverage of home health agencies by certificate of need is not linked with this requirement. Awareness of the plans of State Agencies responible for the provision and financing of home health services brings an addi-

tional factor to the review of an application for a certificate of need and will presumably result in a better decision by the reviewing agency. Therefore, although home health services are not required to be covered for certificate of need. review, the planning agencies should consider them in developing their HSPs.

One commenter suggested that the required findings be enlarged by requiring that there be a utilization review program in place and that such program not be limited to the Medicare and Medicaid programs. The Secretary believes that it is impractical to require an intensive review of this nature for every application; however, there is nothing in the language of the regulations which prevents an agency from employing utilization as a criterion.

Accordingly, 42 CFR Parts 122, 123, and 100 are amended in the manner set forth below.

Effective date: The regulations set forth below are effective February 22, 1977.

The Department of Health, Education, and Welfare has determined that this document does not contain a major proposal requiring preparation of an inflation impact statement under Executive Order 11821 and OMB Circular A-107.

Dated: January 11, 1977.

THEODORE COOPER,
Assistant Secretary for Health.

Approved: January 13, 1977.

DAVID MATHEWS,
Secretary.

PART 100—LIMITATION ON FEDERAL PARTICIPATION FOR CAPITAL EXPENDITURES

3. Paragraph (e) of 42 CFR 100.102 is revised to read as follows:

§ 100.102 Definitions.

* * * * * *

(e) "Health care facility" includes hospitals, psychiatric hospitals, tuberculosis hospitals, skilled nursing facilities, kidney disease treatment centers, including freestanding hemodialysis units, intermediate care facilities, and ambulatory surgical facilities, but does not include Christian Science sanatoriums operated, or listed and certified, by the First Church of Christ, Scientist, Boston, Massachusetts. For purposes of this paragraph:

(1) The term "hospital" means an institution which is primarily engaged in providing to inpatients, by or under supervision of physicians, diagnostic services and therapeutic services for medical diagnosis, treatment, and care of injured, disabled, or sick persons, or rehabilitation services for the rehabilitation of injured, disabled, or sick persons. Such term does not include psychiatric and tuberculosis hospitals.

(2) The term "psychiatric hospital" means an institution which is primarily engaged in providing to inpatients, by or under the supervision of a physician, psychiatric services for the diagnosis and treatment of mentally ill persons.

(3) The term "tuberculosis hospital" means an institution which is primarily engaged in providing to inpatients, by or under the supervision of a physician, medical services for the diagnosis and treatment of tuberculosis.

(4) The term "skilled nursing facility" means an institution or a distinct part of an institution which is primarily engaged in providing to inpatients skilled nursing care and related services for patients who require medical or nursing care, or rehabilitation services for the rehabilitation of injured, disabled, or sick persons.

(5) The term "intermediate care facility" means an institution which provides, on a regular basis, health-related care and services to individuals who do not require the degree of care and treatment which a hospital or skilled nursing facility is designed to provide, but who because of their mental or physical condition require health-related care and services (above the level of room and board).

(6) The term "ambulatory surgical facility" means a facility, not a part of a hospital, which provides surgical treatment to patients not requiring hospitalization. Such term does not include the offices of private physicians or dentists, whether for individual or group practice.

(Sec. 1122, Social Security Act, 86 Stat. 1386 (42 U.S.C. 1320a-1).)

PART 122—HEALTH SYSTEMS AGENCIES

1. Part 122 of Title 42, CFR, is amended by adding thereto a new Subpart D, to read as follows:

Subpart D—Procedures and Criteria for Review of New Institutional Health Services

Sec.

122.301 Definition.
122.302 Purpose and applicability.
122.303 General.
122.304 New institutional health services subject to review.
122.305 Adoption and public notice of review procedures and criteria.
122.306 Procedures for health systems agency review.
122.307 Exceptions to use of procedures.
122.308 Criteria for health systems agency review.
122.309 Inpatient facilities; required findings.
122.310 Health maintenance organizations; required finding.

AUTHORITY: Sec. 215, 58 Stat. 690 (42 U.S.C. 216); sec. 1532 of the Public Health Service Act, 88 Stat. 2251-53 (42 U.S.C. 300n-1).

§ 122.301 Definitions.

In addition to the terms defined in subpart A of this Part, as used in this subpart:

(a) The term "to develop," when used in connection with health services, means to undertake those activities which on their completion will result in the offer of a new institutional health service or the incurring of a financial obligation, as defined under applicable State law, in relation to the offering of such a service.

(b) The term "health care facility" is defined under section 1531(5) of the Act to have the same meaning as such term as in regulations prescribed under section 1122 of the Social Security Act. Such regulations (42 CFR § 100.102(e)) define the term "health care facility" as including hospitals, psychiatric hospitals, tuberculosis hospitals, skilled nursing facilities, kidney disease treatment centers, including freestanding hemodialysis units, intermediate care facilities, and ambulatory surgical facilities, but does not include Christian Science sanatoriums operated, or listed and certified, by the First Church of Christ Scientist, Boston, Massachusetts. Such regulations also provide that:

(1) The term "hospital" means an institution which is primarily engaged in providing to inpatients, by or under the supervision of physicians, diagnostic services and therapeutic services for medical diagnosis, treatment, and care of injured, disabled, or sick persons, or rehabilitation services for the rehabilitation of injured, disabled, or sick persons. Such terms do not include psychiatric and tuberculosis hospitals.

(2) The term "psychiatric hospital" means an institution which is primarily engaged in providing to inpatients, by or under the supervision of a physician, psychiatric services for the diagnosis and treatment of mentally ill persons.

(3) The term "tuberculosis hospital" means an institution which is primarily engaged in providing to inpatients, by or under the supervision of a physician, medical services for the diagnosis and treatment of tuberculosis.

(4) The term "skilled nursing facility" means an institution or a distinct part of an institution which is primarily engaged in providing to inpatients skilled nursing care and related services for patients who require medical or nursing care, or rehabilitition services for the rehabilitation of injured, disabled, or sick persons.

(5) The term "intermediate care facility" means an institution which provides, on a regular basis, health-related care and services to individuals who do not require the degree of care and treatment which a hospital or skilled nursing facility is designed to provide, but who because of their mental or physical condition require health related care and services (above the level of room and board).

(6) The term "ambulatory surgical facility" means a facility, not a part of a hospital, which provides surgical treatment to patients not requiring hospitalization.

Such term does not include the offices of private physicians or dentists, whether for individual or group practice.

(c) The term "health maintenance organization" is defined under section 1531(5) of the Act to have the same meaning as such term has in regulations prescribed under section 1122 of the Social Security Act. Such regulations (42 CFR § 100.102(f)) define the term "health maintenance organization" to mean a public or private organization, organized under the laws of any State, which

(1) Provides or otherwise makes available to enrolled participants health care services, including at least the following basic health care services: Usual physician services, hospitalization, laboratory, X-ray, emergency and preventive services, and out-of-area coverage;

(2) Is compensated (except for copayments) for the provision of the basic health care services listed in paragraph (c)(1) of this section to enrolled participants on a predetermined periodic rate basis; and

(3) Provides physicians' services primarily (i) directly through physicians who are either employees or partners of such organization, or (ii) through arrangements with individual physicians or one or more groups of physicians (organized on a group practice or individual practice basis).

(d) The term "health services" means clinically related (i.e., diagnostic, treatment, or rehabilitative) services, and includes alcohol, drug abuse, and mental health services.

(e) The term "institutional health services" means health services provided in or through health care facilities or health maintenance organizations and includes the entities in or through which such services are provided.

(f) The term "to offer," when used in connection with health services, means that the health care facility or health maintenance organization holds itself out as capable of providing, or as having the means for the provision of, specified health services.

(g) The term "person" means an individual, a trust or estate, a partnership, a corporation (including associations, joint-stock companies, and insurance companies) a State, or a political subdivision or instrumentality (including a municipal corporation) of a State.

§ 122.302 Purpose and applicability.

Section 1513(f) of the Public Health Service Act requires each health systems agency, in order to assist State health planning and development agencies in carrying out their functions under paragraphs (4) and (5) of section 1523(a), to review and make recommendations to the appropriate State Agency respecting the need for new institutional health services proposed to be offered or developed in the health service area of such health systems agency. Section 1532 (a) of the Act requires that in performing its review functions under section 1513(f) of the Act or in conducting any other reviews of proposed health services, each health systems agency shall follow procedures and apply criteria developed and published by the health systems agency in accordance with regulations of the Secretary. This subpart sets forth the minimum procedures and criteria to be utilized by health systems agencies in conducting such reviews and the manner in which such procedures and criteria shall be developed and published.

§ 122.303 General.

Except as provided in § 122.307 of this subpart, each health systems agency shall utilize review procedures and criteria which meet the requirements of § 122.306 and § 122.308, respectively, when conducting reviews of new institutional health services and other reviews of proposed health services. The public shall be given notice of such review procedures and criteria in accordance with the requirements of § 122.305. In addition, in the case of any proposed new institutional health service for the provision of health services to inpatients, the health systems agency shall comply with the requirements of § 122.309; in the case of any proposed new institutional health service proposed for a health maintenance organization, the health systems agency shall comply with the requirements of § 122.310.

§ 122.304 New institutional health services subject to review.

(a) All new institutional health services proposed to be offered or developed within the health service area of the health systems agency shall be subject to review under this subpart. For purposes of this subpart, "new institutional health services" shall include:

(1) The construction, development, or other establishment of a new health care facility or health maintenance organization;

(2) Any expenditure by or on behalf of a health care facility or health maintenance organization in excess of $150,000 (or such lesser amount as the State may specify) which, under generally accepted accounting principles consistently applied, is a capital expenditure, except that this subpart shall not apply to expenditures for (i) site acquisitions; (ii) acquisitions of existing health care facilities and health maintenance organizations; or (iii) expenditures solely for the termination or reduction of beds or of a health service; unless included by the State in its scope of coverage. Where a person makes an acquisition by or on behalf of a health care facility or health maintenance organization under lease or comparable arrangement, or through donation, which would have required review if the acquisition had been by purchase, such acquisition shall be deemed a capital expenditure subject to review.

(3) A change in the bed capacity of a health care facility or health maintenance organization which increases the total number of beds (or distributes beds among various categories, or relocates such beds from one physical facility or site to another) by more than forty beds or more than twenty-five percent of total bed capacity as defined by the State, whichever is less, over a two-year period.

(4) Health services, except home health services, which are offered in or through a health care facility or health maintenance organization and which were not offered on a regular basis in or through such health care facility or health maintenance organization within the twelve month period prior to the time such services would be offered.

(b)(1) Any expenditure by or on behalf of a health care facility or health maintenance organization in excess of $150,000 (or such lesser amount as the State may specify) made in preparation for the offering or development of a new institutional health service and any arrangement or commitment made for financing the offering or development of the new institutional health service shall be subject to review under this subpart. (2) Nothing in this subpart shall preclude a health systems agency from recommending that a State Agency grant a certificate of need which permits expenditures only for predevelopment activities, but does not authorize the offering or development of the new institutional health service with respect to which such predevelopment activities are proposed. Expenditures in preparation for the offering of a new institutional health service shall include expenditures for architectural designs, plans, working drawings, and specifications. Such expenditures may also include those for site acquisition and preliminary plans, studies, and survey, if these are included by the State Agency in its definition of predevelopment activities.

§ 122.305 Adoption and public notice of review procedures and criteria.

(a) Each health systems agency shall adopt and review and revise as necessary, review procedures and criteria in accordance with the requirements of this subpart prior to its review of new institutional health services and in accordance with its Designation Agreement.

(b) Before adopting the review procedures and criteria required by this subpart or any revisions of such procedures and criteria, the health systems agency shall give interested persons an opportunity to offer written comments on the procedures and criteria, or any revisions thereof, which it proposes to adopt, as follows:

(1) The health systems agency shall distribute copies of its proposed review procedures and criteria, and proposed revisions thereof, to the agencies, institutions and associations with which the agency must coordinate its activities pursuant to section 1513(d) of the Act and its designation agreement, to units of general local government within its health service area, to the State Agency and Statewide Health Coordinating Council of each State in which all or any part of the agency's health service area is located, and to health systems agencies designated for contiguous health service areas, and to any agency which establishes rates for health care facilities or health maintenance organizations in its health service area.

(2) The health systems agency shall publish, in one or more newspapers of general circulation in its health service area, a notice stating that review procedures and criteria, or revisions thereof, have been proposed for adoption and are available at specified addresses for inspection and copying by interested persons.

(3) A health systems agency may request from the Secretary an exception to the requirement of § 122.305(b)(2). Such request shall be in writing, shall contain a detailed explanation of the reasons for the request and of the substitute publication procedures that the

agency intends to follow if the exception is approved. The Secretary may grant such an exception if he determines that the proposed substitute procedures are less costly or more effective and do not adversely and substantially affect the rights of persons affected by the subject reviews.

(c) Each health systems agency shall distribute copies of its adopted review procedures and criteria, and any revisions thereof, to the agencies and organizations specified in paragraph (b)(1) of this section and to the Secretary, and shall provide such copies to other persons upon request.

§ 122.306 Procedures for health systems agency review.

(a) The procedures adopted and utilized by a health systems agency for conducting the reviews covered by this subpart shall include at least the following:

(1) Written notification to affected persons of the beginning of a review, which shall include notification of the proposed schedule for the review, of the period within which a public hearing during the course of the review may be requested by persons directly affected by the review as defined in paragraph (a)(7) of this section, and of the manner in which notification will be provided of the time and place of any hearing so requested. For purposes of this subparagraph, "affected persons" include, at a minimum, the person whose proposal is being reviewed, the State Agency for each State in which all or any part of the agency's health service area is located, health systems agencies serving contiguous health service areas, health care facilities and health maintenance organizations located in the health service area which provide institutional health services, any agency which establishes rates for health care facilities or health maintenance organizations in its health service area, and those members of the public who are to be served by the proposed institutional health services. For purposes of this subparagraph, the date of "notification" is the date on which the notice is sent or the date on which the notice appears in a newspaper of general circulation, whichever is later. Written notification to members of the public may be provided through newspapers of general circulation in the area and public information channels; notification to all other affected persons shall be by mail (which may be as part of a newsletter).

(2)(i) With respect to reviews of proposed new institutional health services pursuant to section 1513(f) of the Act, schedules for reviews which provide that no such review shall take longer than the period specified in accordance with 42 CFR 123.407(a)(2) by the State Agency of the State in which the new institutional health service is proposed to be offered or developed, except that in the case of reviews under section 1122 of the Social Security Act, schedules for reviews shall be in accordance with 42 CFR 100.-106, which govern the State Agency's procedures for review under section 1122 agreements.

(ii) With respect to other reviews of proposed health services, schedules for reviews which provide that no review shall, to the extent practicable, take longer than 90 days from the date of notification made in accordance with paragraph (a)(1) of this section to the date of the written findings made in accordance with paragraph (a)(5) of this section.

(3) Provision for persons subject to a review to submit to the health systems agency in such form and manner, and containing such information, as the agency shall prescribe and publish, such information as the agency may require concerning the subject of such review. Such information requirements may vary according to the purpose for which a particular review is being conducted or the type of health service being reviewed: *Provided*, That the health systems agency may require no information of a person subject to review which is not prescribed and published as being required.

(4) Submission of periodic reports by providers of health services and other persons subject to health systems agency review under this subpart respecting the development of proposals subject to review.

(5) Provision for written findings (including, as appropriate, the findings required under § 122.309 and § 122.310 of this subpart) which state the basis for any final decision or recommendation made by the health systems agency. The health systems agency may make its recommendations conditional if the established State program does not prohibit such a procedure. Such findings shall be sent to the person proposing the new institutional health service and to the State Agency for the State in which the new institutional health service is proposed to be offered or developed, and shall be available to others upon request.

(6) Notification, upon request, of providers of health services and other persons subject to health systems agency review under this subpart of the status of the agency review of the proposals subject to review, findings made in the course of such review, and other appropriate information respecting such review.

(7) Provision for public hearing in the course of agency review if requested by one or more persons directly affected by the review. The agency must provide for a reasonable period from the date of written notification of the beginning of a review (see paragraph (a)(1) of this section) within which a public hearing during the course of the review may be requested by persons directly affected by the review. The agency may not impose fees for such a hearing. For purposes of this subparagraph, "persons directly affected" by the review include, at a minimum, the person whose proposal is being reviewed; members of the public who are to be served by the proposed new institutional health services; health care facilities and health maintenance organizations located in the health service area of the agency which provide services similar to the proposed services under review; health care facilities and health maintenance organizations which, prior to receipt by the agency of the proposal being reviewed, have formally indicated an intention to provide such similar services in the future, either through the filing of a letter of intent or by adoption of a plan; and any agency which establishes rates for health care facilities or health maintenance organizations located in the health service area in which the service is proposed to be offered or developed. Where such a hearing is requested, the agency shall, prior to such hearing, provide notice of such hearing, in accordance with its procedure adopted pursuant to paragraph (a)(1) of this section. The procedure for a hearing must provide an opportunity for any person to present testimony.

(8) Provision that any person may, for good cause shown, request in writing a public hearing for purposes of reconsideration of a health systems agency decision. The agency may not impose fees for such a hearing. For purposes of this subparagraph, an agency recommendation pursuant to section 1513(f) is not a decision. A request for a public hearing shall be deemed by the health systems agency to have shown good cause if it (i) presents significant relevant information not previously considered by the health systems agency, (ii) demonstrates that there have been significant changes in factors or circumstances relied upon by the health systems agency in reaching its decision, (iii) demonstrates that the health systems agency has materially failed to follow its adopted procedures in reaching its decision, or (iv) provides such other bases for a public hearing as the health systems agency determines constitutes good cause. To be effective, a request for such a hearing shall be received within 30 days of the health systems agency decision, and the hearing shall commence within 30 days after the receipt of the request; except that where any different time periods for such procedures are established by State law governing the practices and procedures of the health systems agency, the latter shall govern. Notification of such a public hearing shall be sent, prior to the date of the hearing, to the person requesting the hearing and to the person proposing the new health service, and shall be sent to others upon request. The health systems agency shall make written findings which state the basis for its decision within 45 days after the conclusion of such hearing, except that where any different time period is required by State law governing the practices and procedures of administrative agencies, the latter shall govern. A decision of the health systems agency following a public hearing under this subparagraph shall be considered a decision of the health systems agency for purposes of subparagraphs (5), (6), and (9) of this paragraph.

(9) Preparation and publication, at least annually, of reports by the health systems agency of the reviews being conducted (including a statement concerning the status of each such review) and of the reviews completed by the agency since the publication of the last report and a general statement of the findings and decisions made in the course of such reviews.

(10) Access by the general public to all applications reviewed by the health systems agency and to all other written materials pertinent to any agency review.

(11) In the case of construction projects, submission to the health systems agency by the persons proposing such projects of letters of intent in such detail and in such form as may be necessary to inform the agency of the scope and nature of the projects at the earliest possible opportunity in the course of planning of such construction projects.

(b) Procedures adopted for reviews in accordance with paragraph (a) of this section may vary according to the purpose for which a particular review is being conducted or the type of health service being reviewed.

(c) The procedures shall provide that the requirements of paragraph (a)(1) of this section shall be deemed satisfied if the State Agency, in providing notice of the beginning of the review in accordance with 42 CFR 123.407(a)(1), provides the information described in paragraph (a)(1) of this section.

(d) The procedures may provide that the requirements of subparagraphs (3), (4), or (11) of paragraph (a) of this section shall be deemed satisfied if the State Agency has provided for the corresponding procedure found at 42 CFR 123.407 (a)(3), (4), or (14).

§ 122.307 Exceptions to use of procedures.

After following the procedure set forth in § 122.305(b), an agency may, with respect to any type or group of reviews, request from the Secretary an exception to the requirement of § 122.303 that it utilize review procedures which meet the requirements of § 122.306. Such request shall be in writing, shall contain a detailed explanation of the reasons for the request and of the substitute review procedures that the agency intends to follow if the exception is approved, and shall be accompanied by copies of all written comments submitted under § 122.305(b) to the agency with respect to the request for an exception. The Secretary may grant such an exception if he determines that the proposed substitute procedures are less costly or more effective, are consistent with the purposes of the Act, and do not adversely and substantially affect the rights of persons affected by the subject reviews. The health systems agency shall distribute copies of substitute procedures approved by the Secretary in accordance with the requirements of § 122.305(c) of this subpart.

§ 122.308 Criteria for health systems agency review.

(a) The health systems agency shall adopt, and utilize as appropriate, specific criteria for conducting the reviews covered by this subpart, which criteria shall include at least the following general considerations:

(1) The relationship of the health services being reviewed to the applicable health systems plan and annual implementation plan adopted pursuant to section 1513(b)(2) and (3), respectively, of the Act.

(2) The relationship of services reviewed to the long-range development plan (if any) of the person providing or proposing such services.

(3) The need that the population served or to be served by such services has for such services.

(4) The availability of less costly or more effective alternative methods of providing such services.

(5) The immediate and long-term financial feasibility of the proposal, as well as the probable impact of the proposal on the costs of and charges for providing health services by the person proposing the new institutional health service.

(6) The relationship of the services proposed to be provided to the existing health care system of the area in which such services are proposed to be provided.

(7) The availability of resources (including health manpower, management personnel, and funds for capital and operating needs) for the provision of the services proposed to be provided and the availability of alternative uses of such resources for the provision of other health services.

(8) The relationship, including the organizational relationship, of the health services proposed to be provided to ancillary or support services.

(9) The special needs and circumstances of those entities which provide a substantial portion of their services or resources, or both, to individuals not residing in the health service areas in which the entities are located or in adjacent health service areas. Such entities may include medical and other health professions schools, multidisciplinary clinics and specialty centers.

(10) The special needs and circumstances of health maintenance organizations for which assistance may be provided under Title XIII of the Act. Such needs and circumstances include the needs of and costs to members and projected members of the health maintenance organization in obtaining health services and the potential for a reduction in the use of inpatient care in the community through an extension of preventive health services and the provision of more systematic and comprehensive health services. The consideration of a new institutional health service proposed by a health maintenance organization shall also address the availability and cost of obtaining the proposed new institutional health service from the existing providers in the area that are not health maintenance organizations. The criteria established by the health systems agency pursuant to this subparagraph shall be consistent with standards and procedures established by the Secretary under section 1306(c) of the Act (see 42 CFR 110.204).

(11) The special needs and circumstances of biomedical and behavioral research projects which are designed to meet a national need and for which local conditions offer special advantages.

(12) In the case of a construction project—

(i) the costs and methods of the proposed construction, including the costs and methods of energy provision, and

(ii) The probable impact of the construction project reviewed on the costs of providing health services by the person proposing such construction project.

(b) Criteria adopted for reviews in accordance with paragraph (a) of this section may vary according to the purpose for which a particular review is being conducted or the type of health service reviewed.

§ 122.309 Inpatient facilities; required findings.

In the case of any proposed new institutional health service for the provision of health services to inpatients, a health systems agency shall not recommend that a State grant a certificate of need under its certificate of need program, or otherwise make a finding that such proposed new institutional health service is needed, unless, after consideration of the appropriateness of the use of existing facilities providing inpatient services similar to those being proposed, the health systems agency makes each of the following findings in writing:

(a) That superior alternatives to such inpatient services in terms of cost, efficiency, and appropriateness do not exist and that the development of such alternatives is not practicable.

(b) That in the case of new construction, alternatives to new construction (e.g., modernization or sharing arrangements) have been considered and have been implemented to the maximum extent practicable;

(c) That patients will experience serious problems in terms of cost, availability, or accessibility, or such other problems as may be identified by the reviewing agency, in obtaining inpatient care of the type proposed in the absence of the proposed new service.

(d) That in the case of a proposal for the addition of beds for the provision of skilled nursing or intermediate care, the relationship of the addition to the plans of agencies of the State responsible for providing and financing long-term care (including home health services) has been considered.

§ 122.310 Health maintenance organizations; required finding.

In the case of any new institutional health service proposed to be provided by or through a health maintenance organization, a health systems agency shall

not recommend that a State Agency deny a certificate of need with respect to such service (or otherwise make a finding under this subpart that such service is not needed) in those cases (a) when the State Agency has granted a certificate of need which authorized the development of the service, or expenditures in preparation for such offering or development (or has otherwise made a finding that such development or expenditure is needed), and (b) when the offering of this new institutional health service will be consistent with the basic objectives, time schedules, and plans of the previously approved application.

PART 123—STATE HEALTH PLANNING AND DEVELOPMENT AGENCIES

2. Part 123 of Title 42, CFR, is amended by adding thereto a new Subpart E. to read as follows:

Subpart E—Certificate of Need and Review of New Institutional Health Services

123.401 Definitions.
123.402 Purpose and applicability.
123.403 General.
123.404 News institutional health services subject to review.
123.405 Enforcement.
123.406 Adoption and public notice of review procedures and criteria.
123.407 Procedure for State Agency review.
123.408 Exceptions to use of procedures.
123.409 Criteria for State Agency review.
123.410 Inpatient facilities; required findings.
123.411 Health maintenance organizations; required finding.

AUTHORITY: Sec. 215, 58 Stat. 690 (42 U.S.C. 216); secs. 1523, 1532 of the Public Health Service Act, 68 Stat. 2246, 2251.

§ 123.401 Definitions.

In addition to the terms defined in subpart A of this Part, as used in this subpart:

(a) The term "to develop," when used in connection with health services, means to undertake those activities which on their completion will result in the offer of a new institutional health service or the incurring of a financial obligation, as defined under applicable State law, in relation to the offering of such a service.

(b) The term "health care facility" is defined under section 1531(5) of the Act to have the same meaning as such term has in regulations prescribed under section 1122 of the Social Security Act. Such regulations (42 CFR § 100.102(e)) define the term "health care facility" as including hospitals, psychiatric hospitals, tuberculosis hospitals, skilled nursing facilities, kidney disease treatment centers, including freestanding hemodialysis units, intermediate care facilities, and ambulatory surgical facilities, but does not include Christian Science sanatoriums operated, or listed and certified by the First Church of Christ Scientist, Boston, Massachusetts. Such regulations also provide that:

(1) The term "hospital" means an institution which is primarily engaged in providing to inpatients, by or under the supervision of physicians, diagnostic services and therapeutic services for medical diagnosis, treatment, and care of injured, disabled, or sick persons, or rehabilitation services for the rehabilitation of injured, disabled, or sick persons. Such term does not include psychiatric and tuberculosis hospitals.

(2) The term "psychiatric hospital" means an institution which is primarily engaged in providing to inpatients, by or under the supervision of a physician, psychiatric services for the diagnosis and treatment of mentally ill persons.

(3) The term "tuberculosis hospital" means an institution which is primarily engaged in providing to inpatients, by or under the supervision of a physician, medical services for the diagnosis and treatment of tuberculosis.

(4) The term "skilled nursing facility" means an institution or a distinct part of an institution which is primarily engaged in providing to inpatients skilled nursing care and related services for patients who require medical or nursing care, or rehabilitation services for the rehabilitation of injured, disabled, or sick persons.

(5) The term "intermediate care facility" means an institution which provides, on a regular basis, health-related care and services to individuals who do not require the degree of care and treatment which a hospital or skilled nursing facility is designed to provide, but who because of their mental or physical condition require health related care and services (above the level of room and board).

(6) The term "ambulatory surgical facility" means a facility, not a part of a hospital, which provides surgical treatment to patients not requiring hospitalization. Such term does not include the offices of private physicians or dentists, whether for individual or group practice.

(c) The term "health maintenance organization" is defined under section 1531(5) of the Act to have the same meaning as such term has in regulations prescribed under section 1122 of the Social Security Act. Such regulations (42 CFR § 100.102(f)) define the term "health maintenance organization" to mean a public or private organization, organized under the laws of any State, which:

(1) Provides or otherwise makes available to enrolled participants health care services, including at least the following basic health care services: Usual physician services, hospitalization, laboratory, x-ray, emergency and preventive services, and out-of-area coverage;

(2) Is compensated (except for copayments) for the provision of the basic health care services listed in paragraph (c)(1) of this section to enrolled participants on a predetermined periodic rate basis; and

(3) Provides physicians' services primarily (i) directly through physicians who are either employees or partners of such organization, or (ii) through arrangements with individual physicians or one or more groups of physicians (organized on a group practice or individual practice basis).

(d) The term "health services" means clinically related (i.e., diagnostic, treatment, or rehabilitative) services, and includes alcohol, drug abuse, and mental health services.

(e) The term "institutional health services" means health services provided in or through health care facilities or health maintenance organizations and includes the entities in or through which such services are provided.

(f) The term "to offer," when used in connection with health services, means that the health care facility or health maintenance organization holds itself out as capable of providing, or as having the means for the provision of, specified health services.

(g) The term "person" means an individual, a trust or estate, a partnership, a corporation (including associations, joint stock companies, and insurance companies) a State, or a political subdivision or instrumentality (including a municipal corporation) of a State.

§ 123.402 Purpose and applicability.

(a) (1) Section 1523(a)(4)(B) of the Public Health Service Act requires each State health planning and development agency to administer a State certificate of need program which applies to new institutional health services proposed to be offered or developed within the State and which is satisfactory to the Secretary. The purpose of this subpart is to set forth the requirements and standards that a State certificate of need program must meet in order for the Secretary to find it satisfactory. A State certificate of need program may include additional provisions not inconsistent with the requirements of this subpart.

(2) Section 1523(a)(5) of the Act requires each State Agency, after consideration of recommendations submitted by health systems agencies under section 1513(f) of the Act and 42 CFR Part 122, Subpart D, to make findings as to the need for new institutional health services proposed to be offered within the State. This subpart also sets forth the requirements and standards for State reviews under section 1523(a)(5).

(3) Section 1532(a) of the Act requires that in performing its review functions under section 1523 of the Act (which include reviews conducted pursuant to section 1523(a)(4)(B) and (5)), each State Agency shall (except to the extent approved by the Secretary) follow procedures and apply criteria developed and published by the State Agency in accordance with regulations of the Secretary. This subpart sets forth requirements respecting such procedures and criteria.

(b) The regulations of this subpart are applicable to State certificate of need programs under section 1523(a)(4)(B) of the Act and, except for § 123.405 (Enforcement), to reviews for purposes of making findings as to the need for new institutional health services to be offered within a State under section 1523(a)(5) of the Act.

§ 123.403 General.

(a) Each state health planning and development agency shall (1) administer within the State a certificate of need program meeting the requirements of this subpart; *Provided*, that this requirement shall not apply to a State Agency of a State until the expiration of the first regular session of the legislature of the State which begins after January 4, 1975; and

(2) Make findings as to the need for new institutional health services proposed to be offered or developed in the State, in accordance with the applicable requirements of this subpart.

(b) The State Agency shall consider recommendations made by health systems agencies under section 1513(f) of the Act and in accordance with 42 CFR Part 122, Subpart D, in reviewing any proposed new institutional health service under this subpart.

(c) Except as provided in § 123.408, each State Agency shall adopt and utilize review procedures and criteria which meet the requirements of § 123.407 and § 123.409, respectively, when conducting reviews of new institutional health services. The public shall be given notice of such review procedures and criteria in accordance with the requirements of § 123.406. In addition, in the case of any proposed new institutional health service for the provision of health services to inpatients, the State Agency shall comply with the requirements of § 123.410; in the case of any new institutional health service proposed for a health maintenance organization the State Agency shall comply with the requirements of § 123.411.

§ 123.404 New institutional health services subject to review.

(a) All new institutional health services proposed to be offered or developed within the State by any person shall be subject to review under this subpart. For purposes of this subpart, "new institutional health services" shall include:

(1) The construction, development, or other establishment of a new health care facility or health maintenance organization;

(2) Any expenditure by or on behalf of a health care facility or health maintenance organization in excess of $150,000 (or such lesser amount as the State may specify) which, under generally accepted accounting principles consistently applied, is a capital expenditure; except that this subpart shall not apply to expenditures for (i) site acquisitions; (ii) acquisitions of existing health care facilities and health maintenance organizations; or (iii) expenditures solely for the termination or reduction of beds or of a health service; unless included by the State in its scope of coverage. Where a person makes an acquisition by or on behalf of a health care facility or health maintenance organization under lease or comparable arrangement, or through donation, which would have required review if the acquisition had been by purchase, such acquisition shall be deemed a capital expenditure subject to review.

(3) A change in bed capacity of a health care facility or health maintenance organization which increases the total number of beds (or distributes beds among various categories, or relocates such beds from one physical facility or site to another) by more than forty beds or more than twenty-five percent of total bed capacity as defined by the State, whichever is less, over a two-year period.

(4) Health services, except home health services, which are offered in or through a health care facility or health maintenance organization and which were not offered on a regular basis in or through such health care facility or health maintenance organization within the twelve month period prior to the time such services would be offered.

(b)(1) Any expenditure by or on behalf of a health care facility or health maintenance organization in excess of $150,000 (or such lesser amount as the State may specify) made in preparation for the offering or development of a new institutional health service and any arrangement or commitment made for financing the offering or development of the new institutional health service shall be subject to review under this subpart.

(2) Nothing in this subpart shall preclude a State Agency from granting a certificate of need which permits expenditures only for predevelopment activities, but does not authorize the offering or development of the new institutional health service with respect to which such predevelopment activities are proposed. Expenditures in preparation for the offering of a new institutional health service shall include expenditures for architectural designs, plans, working drawings, and specifications. Such expenditures may also include those for site acquisition and preliminary plans, studies, and surveys, if these are included by the State Agency in its definition of predevelopment activities.

(c) Prior to its review of new institutional health services, each State Agency shall disseminate to all health care facilities and health maintenance organizations within the State, and shall publish in one or more newspapers of general circulation in the State, a description of the scope of coverage of its program for review of new institutional health services. Such description shall include, at a minimum, the coverage required by paragraphs (a) and (b) of this section. Whenever the scope of such coverage is revised, the State Agency shall disseminate and publish a revised description thereof.

§ 123.405 Enforcement.

(a) The State certificate of need program shall provide (1) that only those new institutional health services which are found by the State Agency to be needed shall be granted certificates of need, (2) that only those new institutional health services which are granted certificates of need shall be offered or developed within the State, (3) that no expenditures in excess of $150,000 (or such lesser amount as the State may specify) in preparation for the offering or development of a new institutional health service shall be made by any person unless a certificate of need for such services or expenditures has been granted; and (4) that no arrangement or commitment for financing the offering or development of the new institutional health service shall be made by any person, unless a certificate of need for such arrangement or commitment has been granted.

(b) The State certificate of need program shall provide sanctions, such as the denial or revocation of a license to operate, civil or criminal penalties, or injunctive relief, which the Secretary finds sufficient to assure compliance with the provisions of paragraph (a) of this section.

§ 123.406 Adoption and public notice of review procedures and criteria.

(a) Each State Agency shall adopt and review and revise as necessary, review procedures and criteria in accordance with the requirements of this subpart prior to its review of new institutional health services, and in accordance with its Designation Agreement.

(b) Before adopting the review procedures and criteria required by this subpart or any revisions of such procedures and criteria, the State Agency shall give interested persons an opportunity to offer written comments on the procedures and criteria, or any revisions thereof, which it proposes to adopt, as follows:

(1) The State Agency shall distribute copies of its proposed review procedures and criteria, and proposed revisions thereof, to Statewide health agencies and organizations, the Statewide Health Coordinating Council, and each health systems agency for a health service area located in whole or in part within the State, and any agency which establishes rates for health care facilities or health maintenance organizations in the State.

(2) The State Agency shall publish, in one or more newspapers of general circulation in the State, a notice stating that review procedures and criteria, or revisions thereof, have been proposed for adoption and are available at specified addresses for inspection and copying by interested persons.

(3) A health systems agency may request from the Secretary an exception to the requirement of § 122.305(b)(2). Such request shall be in writing, shall contain a detailed explanation of the reasons for the request and of the substitute publication procedures that the agency intends to follow if the exception is approved. The Secretary may grant such an exception if he determines that the proposed substitute procedures are less costly or more effective and do not adversely and substantially affect the rights of persons affected by the subject reviews.

(c) Each State Agency shall distribute copies of its adopted review procedures and criteria, and any revisions thereof, to the agencies and organizations specified in paragraph (b)(1) of this section and to the Secretary, and shall provide

such copies to other persons upon request.

§ 123.407 Procedures for State Agency review.

(a) The procedures adopted and utilized by a State Agency for conducting the reviews covered by this subpart shall include at least the following:

(1) Written notification to affected persons of the beginning of a review, which shall include notification of the proposed schedule for the review, of the period within which a public hearing during the course of the review may be requested by persons directly affected by the review as defined in paragraph (a)(7) of this section, and of the manner in which notification will be provided of the time and place of any hearing so requested. For purposes of this subparagraph, "affected persons" include, at a minimum, the person whose proposal is being reviewed, the health systems agency for the health service area in which the proposed new institutional health service is to be offered or developed, health systems agencies serving contiguous health systems areas, health care facilities and health maintenance organizations located in the health service area which provide institutional health services, any agency which establishes rates for health care facilities or health maintenance organizations in the State, and those members of the public who are to be served by the proposed new institutional health services. For purposes of this subparagraph, the date of "notification" is the date on which the notice is sent or the date on which the notice appears in a newspaper of general circulation, whichever is later. Written notification to members of the public may be provided through newspapers of general circulation in such area and public information channels; notification to all other affected persons shall be by mail (which may be as part of a newsletter).

(2) Schedules for reviews which provide that no review shall, to the extent practicable, take longer than 90 days from the date that notification is sent to all affected persons to the date of the written findings made in accordance with paragraph (a)(5) of this section. The State Agency shall adopt criteria for determining when it would not be practicable to complete a review within 90 days. Where a proposed new institutional health service is to be provided in a health service area for which a health systems agency has been designated, such schedule shall set forth the period within which the health systems agency must complete its review under section 1513(f) of the Act and 42 CFR Part 122, subpart D, and provide its recommendation with respect to such new service to the State Agency: *Provided*, That the period allotted by the State Agency to the health systems agency for completion of its review and submission of its recommendations may not be less than 60 days, except with the written consent of the health systems agency.

(3) Provision for persons subject to a review to submit to the State Agency in such form and manner, and containing such information as the State agency shall prescribe and publish, such information as the State Agency may require concerning the subject of such review. Such information requirements may vary according to the purpose for which a particular review is being conducted or the type of health service being reviewed; *Provided*, That the State Agency may require no information of a person subject to review which is not prescribed and published as being required.

(4) Submission of periodic reports by providers of health services and other persons subject to State Agency review under section 1523 (a)(4)(B) and (a)(5) of the Act respecting the development of proposals subject to review under this subpart.

(5) Provision for written findings (including, as appropriate, the required findings under § 123.410 and § 123.411) which state the basis for any final decision made by the State Agency. The State Agency may make its final decision conditional if the established State program provides for such a procedure. Such findings shall be sent to the person proposing the new institutional health service and to the health systems agency for the health service area in which the new service is proposed to be offered or developed, and shall be available to others upon request.

(6) Notification, upon request, of providers of health services and other persons subject to review under this subpart of the status of the State Agency review of new institutional health services subject to review, findings made in the course of such review, and other appropriate information respecting such review.

(7) Provision for a public hearing in the course of agency review if requested by one or more persons directly affected by the review. The agency must provide for a reasonable period from the date of written notification of the beginning of a review (see paragraph (a)(1) of this section) within which a public hearing during the course of the review may be requested by persons directly affected by the review. The agency may not impose fees for such a hearing.

(i) For purposes of this subparagraph, "persons directly affected" by the review include, at a minimum, the person whose proposal is being reviewed, members of the public who are to be served by the proposed new institutional health services; health care facilities and health maintenance organizations located in the health service area in which the service is proposed to be offered or developed which provide services similar to the proposed services under review; health care facilities and health maintenance organizations which, prior to receipt by the agency of the proposal being reviewed, have formally indicated an intention to provide such similar services in the future; and any agency which establishes rates for health care facilities or health maintenance organizations located in the health service area in which the service is proposed to be offered or developed. Where such a hearing is requested, the State Agency shall, prior to such hearing, provide notice of such hearing, in accordance with its procedure adopted pursuant to paragraph (a)(1) of this section. The procedure for the hearing must provide an opportunity for any person to present testimony.

(ii) Although paragraph (c) of this section provides that the requirement of this paragraph is satisfied if the appropriate health systems agency has provided for the corresponding procedure found at 42 CFR 122.306(a)(7), in the event that a person qualifying under the State Agency definition of "directly affected" is not provided an opportunity for a public hearing by the health system agency, due to a difference in that agency's definition of "directly affected persons", the State Agency must provide an opportunity for a public hearing.

(8) Provision that any person may, for good cause shown, request in writing a public hearing for purposes of reconsideration of a State Agency decision, and procedures for such a hearing. The agency may not impose fees for such a hearing. For purposes of this subparagraph, a request for a public hearing shall be deemed by the State Agency to have shown good cause if it (i) presents significant, relevant information not previously considered by the State Agency, (ii) demonstrates that there have been significant changes in factors or circumstances relied upon by the State Agency in reaching its decision, (iii) demonstrates that the State Agency has materially failed to follow its adopted procedures in reaching its decision, or (iv) provides such other bases for a public hearing as the State Agency determines constitutes good cause. To be effective, a request for such a hearing shall be received within 30 days of the State Agency decision, and the hearing shall commence within 30 days of receipt of the request, except that where any different time periods for such procedures are established by State law governing the practices and procedures of administrative agencies, the latter shall govern. Notification of such a public hearing shall be sent, prior to the date of the hearing, to the person requesting the hearing, the person proposing the new institutional health service, and the health systems agency for the health service area in which the new institutional health service is proposed to be offered or developed, and shall be sent to others upon request. The State Agency shall make written findings which state the basis for its decision within 45 days after the conclusion of such hearing, except that where any different time period is required by State law governing the practices and procedures of administrative agencies, the latter shall govern. A decision of the State Agency following a public hearing under this subparagraph shall be considered a decision of the State Agency for purposes of subparagraphs (5), (6), (9), (10), (11), and (12) of this paragraph.

(9) Provision that if the State Agency makes a decision regarding a proposed new institutional health service which is inconsistent with a recommendation made with respect thereto by the health systems agency making such recommendation pursuant to 42 CFR 122.107(c)(14), the State Agency shall submit to such health systems agency a written, detailed statement of the reasons for the inconsistency. Such decision (and the record upon which it was made) shall, upon request of the health systems agency, be reviewed, under an appeals mechanism consistent with State law governing the practices and procedures of administrative agencies, by an agency of the State (other than the State Agency) designated by the Governor. To be effective, the health systems agency's request must be received within 30 days of the State Agency decision, and the hearing shall commence within 30 days of receipt of the request, except that where any different time periods for such procedures are established by State law governing the practices and procedures of administrative agencies, the latter shall govern. The decision of the reviewing agency shall be made in writing within 45 days after the conclusion of such review, except that where any different time period is required by State law governing the practices and procedures of administrative agencies, the latter shall govern. These written findings shall be sent to the person proposing the new institutional health service, to the health systems agency requesting the review, and to the State Agency, and shall be made available by the State Agency to others upon request. The decision of the reviewing agency shall be considered the final decision of the State Agency; however, the reviewing agency may remand the matter to the State Agency for further action or consideration if applicable State law permits such remanding.

(10) Provision that any decision of the State Agency under this subpart (and the record upon which it was made) shall, upon request of the person proposing the new institutional health service, be reviewed, under an appeals mechanism consistent with State law governing the practices and procedures of administrative agencies, by an agency of the State (other than the State Agency) designated by the Governor. To be effective, the request of the person proposing the new institutional health service must be received within 30 days of the State Agency decision, and the hearing shall commence within 30 days of receipt of the request, except that where any different time periods for such procedures are established by State law governing the practices and procedures of administrative agencies, the latter shall govern. The decision of the reviewing agency shall be made in writing within 45 days after the conclusion of such review, except that where any different time period is required by State law governing the practices and procedures of administrative agencies, the latter shall govern. These written findings shall be sent to the person proposing the new institutional health service, the appropriate health systems agency, and to the State Agency, and shall be made available by the State Agency to others upon request. The decision of the reviewing agency shall be considered the final decision of the State Agency; however, the reviewing agency may remand the matter to the State Agency for further action or consideration if applicable State law permits such remanding.

(11) If a State Agency (or a reviewing agency, under subparagraph (a)(9) or (a)(10) of this section) makes a decision regarding a proposed new institutional health service which the State Agency determines is not consistent with the goals of the applicable health systems plan (established under section 1513(b)(2) of the Act) or the priorities of the applicable annual implementation plan (established under section 1513(b)(3) of the Act), the State Agency (or the reviewing agency, as appropriate) shall submit to the appropriate Health Systems Agency a written, detailed statement of the reasons for the inconsistency.

(12) Preparation and publication, at least annually, of reports by the State Agency of the reviews being conducted (including a statement concerning the status of each such review) and of the reviews completed by the agency since the publication of the last report and a general statement of the findings and decisions made in the course of such reviews.

(13) Access by the general public to all applications reviewed by the State Agency and to all other written materials pertinent to any agency review.

(14) In the case of construction projects, submission to the State Agency by the persons proposing such projects of letters of intent in such detail as may be necessary to inform the agency of the scope and nature of the projects at the earliest possible opportunity in the course of planning of such construction projects.

(15) Provision that if the State Agency does not make a decision regarding a proposed new institutional health service within the period of time specified for State Agency review, the proposal shall be deemed to have been found not to be needed.

(b) Procedures adopted for reviews in accordance with paragraph (a) of this section may vary according to the purpose for which a particular review is being conducted or the type of health service being reviewed.

(c) The procedures may provide that the requirements of paragraph (a)(3), (4), (7), or (14) of this section shall be deemed satisfied if the appropriate health systems agency has provided for the corresponding procedure found at 42 CFR 122.306(a)(3), (4), (7), or (11).

§ 123.408 Exceptions to use of procedures.

After following the procedure set forth at § 123.406(b), a State Agency may, with respect to any type or group or reviews, request from the Secretary an exception to the requirement of § 123.403(c) that it utilize review procedures which meet the requirements of § 123.407. Such request shall be in writing, shall contain a detailed explanation of the reasons for the request and of the substitute review procedures that the agency intends to follow if the exception is approved, and shall be accompanied by copies of all written comments submitted under § 123.406(b) to the State Agency with respect to the request for an exception. The Secretary may grant such an exception if he determines that the proposed substitute procedures are less costly or more effective, are consistent with the purposes of the Act, and do not adversely and substantially affect the rights of persons affected by the subject reviews. The State Agency shall distribute copies of substitute procedures approved by the Secretary in accordance with the requirements of § 123.406(c).

§ 123.409 Criteria for State Agency review.

(a) The State Agency shall adopt, and utilize as appropriate, specific criteria for conducting the reviews covered by this subpart, which criteria shall include at least the following general considerations:

(1) The relationship of the health services being reviewed to the applicable health systems plan and annual implementation plan adopted pursuant to section 1513(b)(2) and (3), respectively, of the Act.

(2) The relationship of services reviewed to the long-range development plan (if any) of the person providing or proposing such services.

(3) The need that the population served or to be served by such services has for such services.

(4) The availability of less costly or more effective alternative methods of providing such services.

(5) The immediate and long-term financial feasibility of the proposal, as well as the probable impact of the proposal on the costs of and charges for providing health services by the person proposing the new institutional health service.

(6) The relationship of the services proposed to be provided to the existing health care system of the area in which such services are proposed to be provided.

(7) The availability of resources (including health manpower, management personnel, and funds for capital and operating needs) for the provision of the services proposed to be provided and the availability of alternative uses of such resources for the provision of other health services.

(8) The relationship, including the organizational relationship, of the health services proposed to be provided to ancillary or support services.

(9) Special needs and circumstances of those entities which provide a substantial portion of their services or resources, or both, to individuals not residing in the health service areas in

which the entities are located or in adjacent health service areas. Such entities may include medical and other health professions schools, multidisciplinary clinics and specialty centers.

(10) The special needs and circumstances of health maintenance organizations for which assistance may be provided under title XIII of the Act. Such needs and circumstances include the needs of and costs to members and projected members of the health maintenance organization in obtaining health services and the potential for a reduction in the use of inpatient care in the community through an extension of preventive health services and the provision of more systematic and comprehensive health services. The consideration of a new institutional health service proposed by a health maintenance organization shall also address the availability and cost of obtaining the proposed new institutional health service from the existing providers in the area that are not health maintenance organizations. The criteria established by the State Agency pursuant to this subparagraph shall be consistent with standards and procedures established by the Secretary under section 1306(c) of the Act (see 42 CFR 110.204).

(11) The special needs and circumstances of biomedical and behavioral research projects which are designed to meet a national need and for which local conditions offer special advantages.

(12) In the case of a construction project—

(i) The costs and methods of the proposed construction, including the costs and methods of energy provision, and

(ii) The probable impact of the construction project reviewed on the costs of providing health services by the person proposing such construction project.

(b) Criteria adopted for reviews in accordance with paragraph (a) of this section may vary according to the purpose for which a particular review is being conducted or the type of health service reviewed.

§ 123.410 Inpatient facilities: required findings.

In the case of any proposed new institutional health service for the provision of health services to inpatients, a State Agency shall not grant a certificate of need under its certificate of need program, or otherwise make a finding that such proposed new institutional health service is needed, unless, after consideration of the appropriateness of the use of existing facilities providing inpatient services similar to those being proposed, the State Agency makes each of the following findings in writing:

(a) That superior alternatives to such inpatient services in terms of cost, efficiency, and appropriateness do not exist and that the development of such alternatives is not practicable.

(b) That in the case of new construction, alternatives to new construction (e.g., modernization or sharing arrangements) have been considered and have been implemented to the maximum extent practicable;

(c) That patients will experience serious problems in terms of cost, availability, or accessibility, or such other problems as may be identified by the reviewing agency, in obtaining inpatient care of the type proposed in the absence of the proposed new service, and

(d) That in the case of a proposal for the addition of beds for the provision of skilled nursing or intermediate care the relationship of the addition to the plans of other agencies of the State responsible for providing and financing long-term care (including home health services) has been considered.

§ 123.411 Health maintenance organizations: required finding.

In the case of any new institutional health service proposed to be provided by or through a health maintenance organization, a State Agency shall not deny a certificate of need with respect to such service (or otherwise make a finding under this subpart that such service is not needed) in those cases (a) when the State Agency has granted a certificate of need which authorized the development of the service, or expenditures in preparation for such offering or development (or has otherwise made a finding that such development or expenditure is needed), and (b) when the offering of this new institutional health service will be consistent with the basic objectives, time schedules, and plans of the previously approved application: *Provided*, That the State Agency may impose a limitation on the duration of the certificate of need which shall expire at the end of such time unless the health service is offered prior thereto.

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federal register

FRIDAY, JANUARY 21, 1977

PART III



DEPARTMENT OF THE TREASURY

Internal Revenue Service

DEPARTMENT OF LABOR

Pension and Welfare Benefit Programs

■

EMPLOYEE BENEFIT PLANS

Transfer of Individual Life Insurance Contracts

DEPARTMENT OF THE TREASURY

Internal Revenue Service

DEPARTMENT OF LABOR

Pension and Welfare Benefit Programs

EMPLOYEE BENEFIT PLANS

Pendency of Proposed Class Exemption Involving the Transfer of Individual Life Insurance Contracts to Employee Benefit Plans

Notice is hereby given of the pendency before the Department of Labor and the Internal Revenue Service (hereinafter collectively referred to as the Agencies) of a proposed class exemption from the restrictions of sections 406(a) and 406 (b)(1) and (2) of the Employee Retirement Income Security Act of 1974 (the Act) and from the taxes imposed by section 4975(a) and (b) of the Internal Revenue Code of 1954 (the Code), by reason of section 4975(c)(1)(A) through (E) of the Code, for the sale, transfer, or exchange of individual life insurance contracts for their cash surrender value to a defined contribution plan as defined in section 3(34) of the Act and section 414 (i) of the Code or to an employee welfare benefit plan as defined in section 3 (1) of the Act by plan participants or by an employer any of whose employees participate in the plan (the employer). This exemption is proposed pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975) and Rev. Proc. 75–26, 1975–1 C.B. 722.

The Agencies have on file the following applications which request individual exemptions for the sale of individual life insurance contracts to a plan from its participants or from an employer:

Name	*Number*
Hunton, Williams, Gay & Gibson	D–056
St. John's Anesthesia Associates, P.C., Pension Plan and Trust	D–213
Crosby & Henry, Inc. Profit Sharing Plan	D–331
Southwest Factories, Inc. Profit Sharing Plan	D–351
Martin W. Dann, M.D., P.A.	D–361
Norcliffe E. Brown	D–379
Hawkins, Brydon and Swearenger, P.C. Pension Plan and Trust	D–420
R. L. Falender, D.D.S., Inc. Profit Sharing Plan and Trust	D–427
St. Louis-Clayton Orthopaedic Group, Inc. Profit Sharing Plan & Trust	D–449
William T. Adams, A Medical Corporation Profit Sharing Plan & Trust	D–467
Quinn, Gent, Buseck & Leemhuis, Inc. Profit Sharing Trust	D–493
M & W Tool Co	D–510
National Heat & Power Co., Inc.	D–511
Taylor, Knudson & Lum	D–512
Gordon G. Bennett, DMD, M.D., Inc	D–522
Donald A. Gragen, M.D.	D–539
Rosenthal & Herman, P.C. Employees' Retirement Plan	D–559
Shrewsbury Pizzaria, Inc. Pension Plan and Trust	D–567
Gary Levinson, M.D., A Professional Corporation, Profit Sharing Retirement Plan	D–575
Panlaqua Medical Ltd. Pension Plan and Trust	D–581
Northeast Missouri Assoc., Inc.	D–597
Dr. Carreno Associated	D–623

The applications for individual exemption contain common representations, which are summarized below, with regard to the transaction described in the proposed class exemption. All transactions referred to in the individual exemption applications will be exempted if they satisfy the terms and conditions of the class exemption. Interested persons are referred to the applications on file with the Agencies for the complete representations of the applicants.

Under the provisions of section 3.04 of ERISA Proc. 75–1 and Rev. Proc. 75–26, an application for an individual exemption would not ordinarily be considered separately if a class exemption which would encompass the transaction described in the application for an individual exemption is under consideration by the Agencies. Accordingly, the Agencies are notifying directly each applicant for an individual exemption listed below of the fact that such applicant's application is not being considered separately from this class exemption and that, following the disposition of this proposed class exemption such application would ordinarily be closed and, therefore, such applicant's comments with respect to this class exemption are sought by the Agencies.

Summary of Representations. 1. Plan participants would incur hardship or economic loss if the exemption is not granted because they may be denied the increased insured death benefits that may have been available in the life insurance contracts transferred to the plan. In addition, the plan would incur the increased costs involved in purchasing new life insurance policies. These costs may include substantial initial sales commissions and higher premium payment rates than those paid personally by participants or employers on previously purchased policies. If new policies are purchased, minimal cash values will accrue to the benefit of participants in the early years of such policies. This may, in certain types of plans, ultimately result in a smaller amount of plan assets being available for retirement benefits, or retirement benefits being set at a lower level.

2. The rights of the plan participants and beneficiaries will be protected because the death benefits provided by the life insurance policies will be payable to the beneficiaries designated by the plan participants.

3. The individual life insurance contracts shall be transferred for their cash surrender value which is easily determinable at any time during the life of the policy.

4. Prior to the enactment of the Act, the sale, transfer or exchange of individual life insurance contracts from participants and employers to plans was a common practice.

Section 3.01 of ERISA Procedure 75–1 and Rev. Proc. 75–26 provide that the Agencies may initiate an exemption proceeding on their own motion. Section 408(a) of the Act and section 4975(c)(2) of the Code provide that the Agencies may not grant an exemption unless they find that such exemption is, inter alia, administratively feasible. There have been a substantial number of applications filed seeking individual exemptions for transactions of the subject type, but no individual applicant or association or organization representing parties in interest or disqualified persons with respect to such transactions has requested a class exemption. However, due to the apparent lack of potential for abuse in such transactions and because it appears to be administratively feasible to do so, the Agencies on their own motion have determined to group such applications in a class and to publish notice of an appropriate proposed class exemption for comment.

In making their determination to propose the subject class exemption on their own motion, the Agencies have assumed the existence of certain facts and situations. These assumptions, summarized below, are based in part on representations contained in applications for individual and class exemptions relating to similar, but not identical transactions[1] and on knowledge acquired by the Agencies in the course of their administration of the Act and the Code. The Agencies, however, request the comments of interested persons with respect to the correctness of these assumptions.

[1] See, American Council on Life Insurance (D–231) class exemption application and the following individual applications:

Name	*Number*
McElhinney & Kirk, Inc. Pension Plan	D–157
Provident Life and Accident Insurance Company	D–167
Office Systems, Inc. Pension Trust	D–179
The Bishopric Products Company Pension Plan #1	D–212
WIPO, Inc. Pension Plan	D–219
Maher Terminals Pension Plan	D–254
B & L Disposal Pension Plan Trust	D–285
Reno Disposal Pension Plan Trust	D–286
First National Bank, Evergreen, Employees' Pension Trust	D–337
Security Life Prototype Retirement Plan C (as adopted by Golden State Bank)	D–338
Pension Plan and Trust of Art Theater Guild, Inc. and Affiliates	D–357
Rinaldi Press Inc. Employees Pension Plan	D–388
Data-Design Laboratories Retirement Pension Plan	D–398
Lee Air Conditioners, Inc., Thrift and Profit Sharing Plan	D–403
Gibson Employees Pension Plan	D–413
Blackhawk Foundation Company, Inc. Pension Plan	D–425
Retirement Plan for the Employees of West Texas Equipment Company	D–429
Cory's Gasoline Stations, Inc Pension Plan and Pension Trust Agreement	D–438
International Travel Brokers Inc. Employees' Pension Plan	D–514

Many pension and profit-sharing plans, particularly those of small employers, provide a pre-retirement death benefit through the purchase of individual life insurance contracts issued on the lives of plan participants. On retirement, the cash surrender value of the policies may be supplemented by monies accumulated on the participants' behalf in a side or auxiliary fund maintained under the plan.

Often, plan participants already own individual life insurance contracts on their own lives when they become plan participatnts or when the trustees determine to fund benefits, in whole or in part, through individual life insurance contracts. In addition, it is not uncommon for employers to maintain individual life insurance contracts on the lives of employees who are participants in the employer's retirement plan.

Prior to the enactment of the Act, it was common for participants and employers to sell or otherwise transfer such contracts to their defined contribution plans. This does not appear to have been a common practice for defined benefit plans. Accordingly, the proposed exemption, if granted, would be limited to cases where the policies are sold or otherwise transferred to defined contribution plans by parties in interest or disqualified persons for the cash surrender value of the policy (the amount the owner would receive if the owner surrendered the policy to the issuing insurance company). The Agencies request the comments of interested persons as to the unavailability of the proposed class exemption with respect to defined benefit plans; whether there is a need for an exemption for transactions involving defined benefit plans; and the conditions and safeguards under which such an exemption would be appropriate.

The proposed exemption relates not only to the prohibitions contained in section 406(a) of the Act and sections 4975(c)(1)(A) through (D) of the Code, but also to the prohibitions contained in section 406(b)(1) and (2) of the Act and section 4975(c)(1)(E) of the Code inasmuch as some of the parties who might be transferring such insurance contracts may be fiduciaries with respect to the plans. The proposed exemption, if granted, will be effective January 1, 1975.

Name	*Number*
Profit Sharing Trust of Hynson, Wescott & Dunning Inc. Employees	D–518
James P. Gills, M.D., P.A. Pension Trust	D–540
Pension Plan and Trust of Family Dollar Stores, Inc.	D–552
Short-Orlando & Associates Pension Plan	D–564
George A. Dean, M.D., Howard B. Schwartz, M.D., P.C. Pension Trust	D–565
Boston Precision Parts Co., Inc. Employees' Pension Trust	D–588
The Nielsen Lithographing Company Employees' Profit-Sharing Retirement Plan	D–589
Myers Group, Inc. Retirement Plan	D–591

A question has been raised under section 406(a)(1) of the Act and section 4975(c)(1) of the Code as to whether a participant or an employer may contribute an individual life insurance contract to a plan in lieu of or in conjunction with its normal cash contribution. The class exemption set forth below is not intended to reflect a decision on this question by the Agencies. Rather the class exemption is proposed, in part, to eliminate the uncertainty that may exist in this area and the adverse effects to plans and their participants and beneficiaries that may be caused by such uncertainty. Thus, to the extent that such a contribution is a prohibited transaction, the exemption sets forth certain conditions under which individual life insurance contracts may be contributed to a plan.

It should be noted that the proposed exemption does not provide any relief from or relaxation of the requirements set forth in section 401(a)(4) of the Code. In order for a plan to qualify under section 401(a) of the Code, section 401 (a)(4) of the Code provides that the contributions or benefits provided under such plan must not discriminate either in form or in operation in favor of employees who are officers, shareholders, or highly compensated. A condition has been included in the proposed exemption imposing a similar non-discrimination requirement for employee welfare benefit plans which desire to purchase life insurance contracts from plan participants.

Further, it should be noted that under section 408(d) of the Act no exemption may be granted under section 408(a) of the Act for transactions of the type described herein between a plan and certain persons such as an owner-employee as defined in section 401(c)(3) of the Code, or a shareholder employee as defined in section 1379 of the Code. This pending class exemption is intended, however, to be applicable to such persons for purposes of section 4975 of the Code.

The individual applicants propose that notice of the exemption requests be provided to all present participants in their individual plans in the form of a written summary and description of the transaction. However, because all participants under defined contribution plans could conceivably be considered interested persons, the only practical form of notice is publication in the FEDERAL REGISTER.

Income Tax Consequences. For Federal income tax purposes, the value of an insurance policy is not the same as, and may exceed, its cash surrender value. See Rev. Rul. 59–195, 1959–1 C.B. 18. The Federal income tax consequences of such a transfer must be determined in accordance with generally applicable rules.

General information. The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the plan's participants and beneficiaries and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) The pending exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code.

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Agencies must find that the exemption is administratively feasible, in the interest of the plan or plans and of their participants and beneficiaries, and protective of the rights of participants and beneficiaries of such plan or plans.

(4) The pending exemption, if granted, will be supplemental to, and not in derogation, of any other provisions of the Act and the Code, including statutory exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is in fact a prohibited transaction.

(5) If granted, the pending class exemption will be applicable to a particular transaction only if the transaction satisfies the conditions specified in the class exemption.

(6) The applications for exemption referred to herein are available for public inspection at the Freedom of Information Reading Room, Internal Revenue Service, Room 1565, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, and at the Public Documents Room of the Pension and Welfare Benefit Programs, Room N–4677, U.S. Department of Labor, 200 Constitution Avenue N.W., Washington, D.C. 20210.

All interested persons are invited to submit written comments on the pending class exemption set forth herein. In order to receive consideration, such comments should be received by the Internal Revenue Service on or before February 22, 1977. In addition, any interested person may submit a written request that a hearing be held relating to the pending class exemption. Such written request must be received by the Internal Revenue Service on or before February 22, 1977, and should state the reasons for such person's request for a hearing and the nature of such person's interest in the pending class exemption.

All written comments and all requests for a hearing (preferably six copies) should be addressed to Internal Revenue Service, Employee Plans Division, Pro-

hibited Transactions Staff, Washington, D.C. 20224, Attention: E:EP:PT. All such comments will be made part of the record, and will be available for public inspection at the Freedom of Information Reading Room, Internal Revenue Service, Room 1565, 1111 Constitution Avenue N.W., Washington, D.C. 20224 and at the Public Documents Room of the Pension and Welfare Benefit Programs, Room N-4677, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Pending Exemption. Based on the applications and assumptions hereinabove described the Agencies have under consideration the granting of the following class exemption, under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975) and Rev. Proc. 75-26, 1975-1 C.B. 722 so that, effective January 1, 1975, the restrictions of sections 406(a) and 406(b) (1) and (2) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the transfer of an individual life insurance contract to a plan from a plan participant on whose life the contract was issued or to the transfer of an individual life insurance contract to a plan from an employer of plan participants who contributes an individual life insurance contract with respect to such participant's life to the plan, provided that:

1. The plan is a defined contribution plan within the meaning of section 3(34) of the Act and section 414(i) of the Code or is an employee welfare benefit plan within the meaning of section 3(1) of the Act.

2. The plan pays or exchanges no more than the cash surrender value for the contract.

3. Such transfer does not involve any contract which is subject to a mortgage or similar lien which the plan assumes.

4. Such transfer does ont contravene any provision of the plan or trust document.

5. With regard to any plan which is an employee welfare benefit plan, such plan must not, with respect to such sale, discriminate in form or in operation in favor of plan participants who are officers, shareholders, or highly compensated employees.

Signed at Washington, D.C., this 14th day of January, 1977.

DONALD C. ALEXANDER,
Commissioner of Internal Revenue.

WILLIAM J. CHADWICK,
Administrator of Pension and Welfare Benefit Programs, U.S. Department of Labor.

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EMPLOYEE BENEFIT PLANS

Pendency of Proposed Class Exemption Involving the Transfer of Individual Life Insurance Contracts and Annuities From Employee Benefit Plans to Plan Participants (Application No. D-281)

Notice is hereby given of the pendency before the Department of Labor and the Internal Revenue Service (hereinafter collectively referred to as the agencies) of a proposed class exemption from the restrictions of sections 406(a) and 406(b) (1) and (2) of the Employee Retirement Income Security Act of 1974 (the Act) and from the taxes imposed by section 4975 (a) and (b) of the Internal Revenue Code of 1954 (the Code), by reason of section 4975(c)(1) (A) through (E) of the Code, for the sale of individual life insurance contracts and annuities by employee benefit plans to plan participants insured under such policies for the cash surrender value of such policies. No exemption is being proposed for the sale of such contracts or annuities by plans to employers. The Agencies request the comments of interested persons as to the unavailability of the proposed class exemption with respect to the sale of insurance contracts or annuities by plans to employers; whether there is a need for an exemption for such transactions; and the conditions and safeguards, under which an exemption for such transactions would be appropriate.

This exemption is proposed pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975) and Rev. Proc. 75-26, 1975-1 C.B. 722. It is based upon the representations contained in the application for class exemption filed by the American Council of Life Insurance (Application No. D-281). Numerous applications have also been received for individual exemptions covering transactions of the type described in this proposed class exemption.[1]

All such transactions will be exempted if they satisfy the terms and conditions of the proposed class exemption. Under the provisions of section 3.04 of ERISA Proc. 75-1 and Rev. Proc. 75-26, an application for an individual exemption would not ordinarily be considered separately if a class exemption which would encompass the transaction described in the application for an individual exemption is under consideration by the Agencies. Accordingly, the Agencies are notifying directly each applicant for an individual exemption listed in footnote 1 of this proposed class exemption of the fact that such applicant's application is not being considered separately from this class exemption, and that, following the disposition of this proposed class exemption, such application would ordinarily be closed, and, therefore, such applicant's comments with respect to this class exemption are sought by the Agencies.

Summary of Representations. The American Council of Life Insurance (the "applicant") requested a class exemption with respect to all sales of individual life insurance policies or annuity policies (or portions thereof) by employee pension benefit plans to participants who are insured under the policies in situations where the policies would otherwise be surrendered by the plan. The exemption would be limited to cases in which a policy is sold to a participant party-in-interest or disqualified person for the cash surrender value of the policy (the amount the plan would receive if it surrendered the policy to the insurance company) and would cover not only the prohibitions contained in section 406(a) of the Act and 4975(c)(1) (A) through (D) of the Code but also the prohibition contained in sections 406(b) (1) and (2) of the Act and 4975(c)(1)(E) of the Code, inasmuch as some of the participants who might purchase such insurance contracts or annuities may be fiduciaries with respect to the plan involved. The cash position of the plan would not be affected in any manner by whether the policy would be sold to the participant or surrendered to the insurance company. The requested exemption would be effective January 1, 1975.

[1] Applications have been received from: McElhinney & Kirk, Inc. Pension Plan, D-157; Provident Life and Accident Insurance Company, D-167; Office Systems, Inc. Pension Trust, D-179; The Bishopric Products Company Pension Plan No. 1, D-212; WIPO, Inc. Pension Plan, D-219; Maher Terminals Pension Plan, D-254; B & L Disposal Pension Plan Trust, D-285; Reno Disposal Pension Plan Trust, D-286; First National Bank, Evergreen, Employees' Pension Trust, D-337; Security Life Prototype Retirement Plan C (as adopted by Golden State Bank), D-338; Pension Plan and Trust of Art Theater Guild, Inc. and Affiliates, D-357; Rinaldi Press Inc. Employees Pension Plan, D-388; Data-Design Laboratories Retirement Pension Plan, D-396; Lee Air Conditioners, Inc., Thrift and Profit Sharing Plan, D-403; Gibson Employees Pension Plan, D-413; Blackhawk Foundation Company, Inc. Pension Plan, D-425; Retirement Plan for the Employees of West Texas Equipment Company, D-429; Cory's Gasoline Stations, Inc. Pension Plan and Pension Trust Agreement, D-438; International Travel Brokers Inc. Employees' Pension Plan, D-514; Profit Sharing Trust of Hynson, Westcott & Dunning D-518; James P. Gills, M.D., P.A. Pension Trust, D-540; Pension Plan and Trust of Family Dollar Stores, Inc., D-552; Short-Orlando & Associates Pension Plan, D-564; George A. Dean, M.D., Howard B. Schwartz, M.D., P.C. Pension Trust, D-565; Boston Precision Parts Co., Inc. Employees' Pension Trust, D-588; The Nielsen Lithographing Company Employees' Profit-Sharing Retirement Plan, D-589; and Myers Group, Inc. Retirement Plan, D-591.

The applicant, which states that it is a trade association with a membership of 378 life insurance companies which, in the aggregate, account for 90 percent of the life insurance force in the United States and hold 99 percent of the assets of insured pension plans, has made the following representations in support of its application for exemption:

Many pension and profit sharing plans, particularly those of small employers, are funded in whole or in part by the purchase of individual life insurance or annuity policies on the lives of the plan's participants.[2] For example, one very common method of funding a defined benefit pension plan which includes a preretirement death benefit is for the plan to purchase a life insurance policy, providing the prescribed level of death benefits, on the life of each participant. On retirement, the cash value of the policy, supplemented, if necessary, by monies from a side or auxiliary fund maintained under the plan, is used to provide the retirement benefits called for under the plan.

However, there are various situations under which the plan will not continue the policy in effect until retirement. Historically, many plans have, in these situations, permitted the insured participant to purchase the policy (or a portion thereof) instead of the plan surrendering it.

A common reason why a participant may want to purchase a policy from a plan and keep it in force on his own is to preserve any life insurance protection provided by the policy in a case where he has a medical impairment and may be currently uninsurable or would be otherwise unable to replace that insurance in the open market at standard rates. In the case of annuity contracts with no life insurance protection, a purchase may be desirable from the participant's standpoint in order, for example, to preserve a valuable contract option that may no longer be available or to avoid a higher first year expense loading that would be payable if he purchased a new policy.

Two examples of situations where plans commonly permit participants to purchase policies on their lives are:

Example 1. A participant terminates service without vested rights or with only partially vested rights. He may be permitted to purchase the policy for its cash value or, if he is partially vested, for the portion of the cash value in which he has no vested rights. If he does not purchase the policy, the plan will surrender it and apply the proceeds (in excess of those in which the participant is vested) under the forfeiture provisions of the plan.

Example 2. A plan decides to convert its funding method from individual policies to a group contract. Participants may be permitted to purchase the individual policies on their lives for the cash value. Otherwise, the plan will surrender the policies. In either event, the monies derived from the surrender or sale of the individual contracts will be transferred to the group contract.[3]

Because such sales of policies by plans to participants recur on a continuous basis, there have undoubtedly been sales of the type described prior to the date of the application.

If the exemption is not granted, certain plan participants will lose valuable life insurance protection or other benefits which cannot be replaced in the open market either because the participant is medically impaired or the options are no longer available. Because a policy sale subject to the exemption may be made only in a situation where the plan would otherwise surrender the policy and the measure of the required consideration is based on an objective standard—the cash surrender value which is stated in the policy—the plan will be in precisely the same financial position whether the sale is made or the policy is surrendered by the plan.

Because all participants under individual policy pension and profit sharing plans conceivably could be considered interested persons, the only practical form of notice is publication in the FEDERAL REGISTER.

It should be noted that the proposed exemption does not provide any relief from or relaxation of the requirements set forth in section 401(a)(4) of the Code. In order for a plan to qualify under section 401(a) of the Code, section 401(a)(4) of the Code provides that the contributions or benefits provided under such plan must not discriminate either in form or in operation in favor of employees who are officers, shareholders, or highly compensated. A condition has been included in the proposed exemption imposing a similar non-discrimination requirement for employee welfare benefit plans which desire to make sales of life insurance contracts or annuities to plan participants.

Further, it should be noted that under section 408(d) of the Act no exemption may be granted under section 408(a) of the Act for a transaction of the type described herein between a plan and certain persons, such as an owner-employee as defined in section 401(c)(3) of the Code, or a shareholder employee, as defined in section 1379 of the Code. This pending class exemption is intended, however, to be applicable to such persons for purposes of section 4975 of the Code.

Income Tax Consequences. For Federal income tax purposes, the value of an insurance policy is not the same as, and may exceed, its cash surrender value. See Rev. Rul. 59-195, 1959-1 C.B. 18. Therefore, for Federal income tax purposes, a purchase of an insurance policy at its cash surrender value by a participant may be a purchase of property for less than its fair market value. The Federal income tax consequences to participants of such a bargain purchase must be determined in accordance with generally applicable rules. Any income realized by a participant upon such a purchase under the conditions of this pending class exemption, however, will not be deemed a distribution of benefits from the plan to such participant for purposes of subchapter D of Chapter I of the Internal Revenue Code of 1954, relating to qualified pension, profit-sharing, and stock bonus plans.

General Information. The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of Section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the plan participants and beneficiaries and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) The pending exemption, if granted, will not extend to transactions prohibited under sections 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code.

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department and the Service must find that the exemption is administratively feasible, in the interest of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan.

(4) The pending exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is in fact a prohibited transaction.

(5) If granted, the pending class exemption will be applicable to a particular transaction only if the transaction satisfies the conditions specified in the class exemption.

(6) The applications for exemption referred to herein are available for public inspection at the Freedom of Infor-

[2] It is noted that life insurance contracts may be purchased by a plan qualified under section 401(a) of the Code only to the extent that the pre-retirement death benefit provided by the plan is incidental to its primary benefit. See § 1.401-1(b)(1)(i) of the Income Tax Regulations.

[3] Other examples of situations where plans commonly permit participants to purchase policies on their lives, which were set forth in other applications for exemption, and which would be covered by the terms of the proposed exemption if the conditions set forth therein are met, are conversion of the funding medium of a plan from insurance to another funding medium and the termination of a plan.

mation Reading Room, Internal Revenue Service, Room 1565, 1111 Constitution Avenue, N.W., Washington, D.C. 20224 and the Public Documents Room of Pension and Welfare Benefit Programs, Room N-4677, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210.

All interested persons are invited to submit written comments on the pending class exemption set forth herein. In order to receive consideration, such comments must be received by the Department on or before February 22, 1977. In addition, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, the Department and the Service are required to offer an opportunity for a public hearing where a pending exemption relates to section 406(b) of the Act and section 4975(c)(1) (E) or (F) of the Code. Any interested person may submit a written request that a hearing be held relating to the pending class exemption. Such written request must be received by the Department on or before February 22, 1977 and should state the reasons for such person's request for a hearing and the nature of such person's interest in the pending class exemption.

All written comments and all requests for a hearing (preferably six copies) should be addressed to Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, Washington, D.C. 20216, Attention: Application No. D-281. All such comments and all requests for hearing will be made part of the record and will be available for public inspection at the Public Documents Room of Pension and Welfare Benefit Programs, Room N-4677, 200 Constitution Avenue, NW., Washington, D.C. 20210, and the Freedom of Information Reading Room, Internal Revenue Service, Room 1565, 1111 Constitution Avenue, NW., Washington, D.C. 20224.

Pending Exemption. Based on the application herein before described, the Service and the Department have under consideration the granting of the requested exemption, under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975) and Rev. Proc. 75-26, 1975-1 C.B. 722, so that, effective January 1, 1975, the restrictions of sections 406(a) and (b)(1) and (2) of the Act and the taxes imposed under sections 4975(a) and (b) of the Code, by reason of sections 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale of an individual life insurance or annuity contract by an employee benefit plan to a participant under such plan, if

(1) Such participant is the insured under the contract;

(2) The contract would, but for the sales, be surrendered by the plan; and

(3) The amount received by the plan as consideration for the sale is at least equal to the amount necessary to put the plan in the same cash position as it would have been in if it had retained the contract, surrendered it, and made any distribution owing to the participant of his vested interest under the plan.

(4) With regard to any plan which is an employee welfare benefit plan, such plan must not, with respect to such sale, discriminate in form or in operation in favor of plan participants who are officers, shareholders, or highly compensated employees.

Signed at Washington, D.C., this 14th day of January, 1977.

WILLIAM J. CHADWICK,
Administrator of Pension and Welfare Benefit Programs, U.S. Department of Labor.

DONALD C. ALEXANDER,
Commissioner of Internal Revenue.

[FR Doc.77-1708 Filed 1-19-77;8:45 am]

federal register

FRIDAY, JANUARY 21, 1977

PART IV



FEDERAL ELECTION COMMISSION

■

ADVISORY OPINIONS

Index

FEDERAL ELECTION COMMISSION

[Notice 1977-3]

ADVISORY OPINIONS ISSUED BY THE FEDERAL ELECTION COMMISSION

Index

Today, the Federal Election Commission publishes an index for all 1975 and 1976 advisory opinions which have been issued by the Commission through December 30, 1976.

For a full text of any of the entries included in this index, you may write to the Information Office, Federal Election Commission, 1325 K Street, N.W., Washington, D.C. 20463, or call Area Code 202-382-4733. When ordering any of these items, please specify and order only by Advisory Opinion number.

This is the fourth publication of this index. Its purpose is to assist those who have a current need to be up on Federal election campaign laws and policies issued by the Commission. The Commission welcomes comments on the format and contents of this index, and any suggestions for change to make it more beneficial to its users.

Dated: January 17, 1977.

JOAN D. AIKENS,
Commissioner,
Federal Election Commission.

SUBJECT INDEX TERMS

This list represents index terms used in the subject index to FEC opinions. When searching for opinions on a subject, it might be useful to glance through this list first.

Accountant's fees; see attorneys'/accountants' fees.
Accounts.
Administrative expenses.
Advertising/solicitation.
Allocation.
Appearances by candidate.
Attorneys'/accountants' fees.
Authorized committees/agents.
Banks; see Corporation/labor union/bank.
Cash contributions; see contributions.
Cash, petty; see petty cash fund.
Common control.
Communication exemption (2 USC s. 431(f)(4)(C)).
Conduit; see intermediary.
Conferences, educational; see educational conferences.
Constitutent services costs; see office accounts.
Contribution.
Conventions, national; see nominating conventions, national.
Corporate facilities/goods.
Corporation/labor union/bank.
Credit; see debts.
Debts.
Delegate selection; see nominating conventions, national.
Depository.
Deposits for services.
Dual candidacy.
Earmarking.
Educational conferences.
Election.
Excess funds.
Expenditures.
Family of candidate.
Foreign nationals.
Filing; see reporting.
Franking accounts.
Fundraising.
Get-out-the-vote drives; see voter registration drives.
Gifts.
Government contractors.
Honorarium.
Immediate family funds; see family of candidate.
Independent expenditures; see expenditures—independent.
In-kind contributions; see contribution—in-kind.
Intermediary or conduit.
Intern programs.
Labor unions; see corporation/labor union/bank.
Legislative hearings.
Loan/endorsement.
Local party; see national/state/local party.
Matching funds; see public financing.
Membership organization.
Multi-candidate committee.
National convention; see nominating convention, national.
National/state/local party.
Newsletter accounts; see franking accounts.
Nominating conventions, national.
Office accounts.
Officers of political committees; see political committees.
Opinion polls; see polling.
PACs; see political action committees.
Partnerships.
Personal assets.
Personal services (voluntary); see volunteer services.
Petition effort; see election.
Petty cash fund.
Political action committees.
Political committees.
Polling.
Preemption of state law.
Primary election; see election.
Public funding.
Public utility holding companies; see corporation/labor union/bank.
Raffles; see corporate facilities/goods; fundraising.
Reporting.
Requirements relating to campaign advertising; see advertising/solicitation.
Royalties.
Run-off election; see election.
Separate, segregated funds; see accounts: political action committees.
Sole proprietorship.
Solicitation; see advertising/solicitation; political action committees.
Spouse; see family of candidate.
Special election; see election.
State law; see preemption of state law.
State party; see national/state/local party.
Telethon.
Television appearances; see appearances by candidate.
Transfers.
Trade associations.
Travel expenses.
Trustee plan.
Volunteer services.
Voter registration drives.

CUMULATIVE INDEX—JANUARY 1977

SUBJECT INDEX TO 1975-76 OPINIONS

(ADVISORY OPINIONS)

NOTE.—Numbers of opinions beginning with the digits "75" are 1975 opinions; digits "76" stand for 1976 opinions.

ACCOUNTANT'S FEES

See: Attorneys'/accountants' fees.

ACCOUNTS

Explanation of depository and petty cash fund, AO75/44.

Separate state account for corporate contributions, AO75/59.

Separate state and federal committees vs. total disclosure: political committee, AO75/20; state party committee, AO75/2, 95.

See also: Allocation; fundraising; petty cash fund; family of candidate; transfers.

ADMINISTRATIVE EXPENSES

Allocation as per federal/state support, AO75/21.

Corporation may pay administrative costs of political action committees, AO75/23, 36.

See also: Corporation/labor union/bank; debts; contribution—In-kind.

ADVERTISING/SOLICITATION

"Expenditure" if (1) appears at time of candidacy and (11) clearly identifies by unambiguous reference, AO75/98.

Name of chairman, treasurer not necessary in disclaimer, AO76/35.

Name of chairman, treasurer on billboards (2 USC § 441d), AO75/67.

Solicitation definition: informing persons of a fundraising activity is a solicitation, AO76/27.

See also: Franking accounts; fundraising; expenditures, independent.

ALLOCATION

Any accounting method which yields allocations reflecting billable time spend by worker on two campaigns acceptable, AO75/61.

No allocation of costs of educational party conference on campaign techniques among participating candidates, AO75/87 (NRCC).

Of contributions/expenditures between primary and general election efforts, AO75/53,120.

Post-nomination contributions related to general election, AO76/44.

See also: Administrative expenses; appearances by candidate; educational conferences; fundraising; partnerships; voter registration drives.

APPEARANCES BY CANDIDATE

Appearances before substantial number of people in electorate: costs are presumable expenditures, AO75/108,125 (travel from office account).

Party building function, AO75/72,108; 76/17.

Televised appearance: compensation not honorarium or contribution, AO75/46.

Televised newsletter of Congressman in nonelection year not expenditure, AO75/107.

See also: Common control; contribution; honorarium; volunteer services.

ATTORNEYS'/ACCOUNTANTS' FEES

Campaign contributions/expenditures, AO-75/27.

See also: Litigation costs; partnerships.

AUTHORIZED COMMITTEES/AGENTS

Duties, AO75/16,44.

Expenses incurred are authorized expenditures, AO75/22,44.

Officer of two fundraising committees, AO75/35.

BANKS

See: Corporation/labor union/bank.

CASH CONTRIBUTIONS

See: Contributions.

CASH, PETTY

See: Petty cash fund.

COMMON CONTROL

Control of ownership by political party, political committee, or candidate (2 U.S.C. s.431(f)(4)(A)), AO75/143.

"Dominion and control," AO75/32, 108.

Donation to third party sponsoring candidate appearance not contribution if no common control, AO75/108.

For purposes of contribution/expenditure limits: Political committee independence, AO75/45; state local parties' independence, AO75, 2, 29.

COMMUNICATION EXEMPTION (2 U.S.C. § 431(f)(4)(C))

Information expenses to committee members, AO75/20.

Newsletter of state/local party, AO75/2.

CONDUIT

See: Intermediary.

CONFERENCES, EDUCATION

See: Educational conferences.

CONSTITUENT SERVICE COSTS

See: Office accounts.

CONTRIBUTION

Anonymous cash contributions: Record-keeping requirements, AO75/140.

Carryover, carryback, AO75/74.

Direct donation is not expenditure, but contribution, AO75/120.

Dominion and control, AO75/32, 108.

Donation to third party sponsoring candidate appearance not contribution if no common control, AO75/108.

Escrowed contributions, AO75/129.

In-kind contribution: Bona fide gifts, AO75/20; public facilities may be offered without charge, AO75/1.

See also: Attorneys'/accountants' fees; advertising/solicitation; corporation facilities/goods; expenditures—independent; fundraising; gifts; national/state/local party; travel expenses; volunteer services.

Purpose test, AO75/1,81.

Refund of prohibited contribution is permissible use of campaign funds. AO76/6.

To unvictorious candidate attributable to $25,000 annual, AO75/74.

Wages for party-building activities paid to field worker who is also candidate are not contributions, AO76/17.

See also: Accounts; advertising/solicitation; allocation; common control; corporation/labor union/bank; corporate facilities/goods; debts; dual candidacy; earmarking; educational conferences; excess funds; family of candidate; franking accounts; fundraising; Government contractors; honorarium; litigation costs; loan/endorsement; national/state/local party; nominating convention, national—delegate selection; office accounts; partnerships; political action committees; political committees; polling; preemption of state law; public funding; reporting; sole proprietorship; tax; transfers; trustee plan; volunteer services.

CONVENTIONS, NATIONAL

See: Nominating conventions, national.

CORPORATE FACILITIES/GOODS

Computer, AO75/14.

Nominating convention's use of facilities: see nominating conventions, national.

"Normal and usual charge," AO75/94.

Restaurant, typewriters, airplanes, AO75 94.

Vendor of food/beverage, AO75/94.

See also: Administrative expenses; contribution—in-kind; corporation/labor union/bank; fundraising; nominating convention, national; travel expenses; volunteer services.

CORPORATION/LABOR UNION/BANK

Corporation/Labor union: corporation treasury money may not be used to raise funds from the general public, AO76/18; incorporation exclusively for political liability purposes, AO75/16,37; leave of absence payment to candidate is prohibited contribution. AO76/70; nonprofit incorporated professional organization, AO75/75; payment for members of Congress to attend courses not an unlawful contribution, AO76/98; payment of production costs of fundraising item is a prohibited contribution, AO76/18,50; prohibited contribution is made if corporation deviates from normal course of business and deviation has effect of extending candidates contract with corporation (billboards), AO76/86; state election contribution allowed only: AO75/59; twice-yearly solicitation under 441b(b)(4)(B); corporation soliciting employees is restricted to twice-yearly procedure, AO76/4.

In general: refund of prohibited contribution is premissable use of campaign funds. AO76/6; stockholder, officer, employee in individual capacity, AO75/31.

See also: Administrative expenses; advertising/solicitation; corporate facilities/goods; debts; educational conferences; excess funds; franking accounts; Government contractors; loan/endorsement; membership organization; nominating convention, national; political action committees; political committees; public funding; trade association; trustee plan; volunteer services.

CREDIT

See: Debts

DEBTS

Amounts in dispute must be reported. AO76/85.

Discharged by an adjudication of bankruptcy, AO75/102.

Incurred from January 1973 through December 1974, AO75/6, 52, 57, 60, 64, 68, 82, 88, 106.

Incurred prior to January 1, 1973, AO75 5.

Pledges for contribution, AO75/44.

Reporting of short-term or long-term debts, AO75/44.

Settlement: with corporate creditor, AO75 39, 50, 102.

Transfer of outstanding obligation (for loans made by candidate) to candidate's campaign committee is allowed, AO76/60.

Treatment of outstanding obligation, AO75/18,28,102, AO76/68.

See also: Excess funds; family of candidate; Government contractors; litigation costs; loan/endorsement; personal assets; tax; transfers.

DELEGATE SELECTION

See: Nominating conventions, national.

DEPOSITORY

Transfer of funds from political committee to savings account need not be transferred to national or state bank, AO75/25.

See also: Accounts; petty cash fund; political committee; public funding; reporting; transfers.

DUAL CANDIDACY

Any accounting method which yields allocations reflecting billable time spent by worker on two campaigns acceptable, AO75/61.

Congress/Senate limits, AO75/11.

Establish two separate committees, AO75 11.

Senate/Presidential limits, AO75/11.

See also: Allocation; family of candidate; personal assets; transfers.

EARMARKING

"Unearmarked" to committee not attributable to candidate if (i) not single-candidate (ii) not principal campaign committee for authorized (iii) no knowledge, AO75/32,48,81, 129.

"Unearmarked" to multi-candidate committee not attributable to candidate, AO75/74, 129.

See also: Political committees; transfers.

EDUCATIONAL CONFERENCES

Agricultural, AO75/14.

Independent expenditure for educational seminars for dairy farmers, AO75/20.

No allocation of costs of educational party conference on campaign techniques among participating candidates, AO75/87 (NRCC).

See also: Appearances by candidate; corporation labor union/bank; office acounts.

ELECTION

Convention or caucus: party convention held to endorse candidate, under circumstances whereby a candidate may be considered party nominee, is a separate election, AO76/58.

Primary: party caucus or convention which does not select nominee is part of primary election, AO75/105,54; petition effort, AO75/53,44; unopposed candidate for primary election, AO75 9.

See also: Allocation.

EXCESS FUNDS

After liquidation of debt, turned over to principal campaign committee—reporting, AO75,60; authorized in writing, AO75/82,88.

Any "lawful purpose": computer terminal, AO75 51 AO76/57; employee compensation, AO76 90.

Transferred to office account, AO75/144.

See also: Candidacy, nominating convention, national; personal assets; transfers

EXPENDITURES

Any expense "made for purpose" is expenditure (especially travel, advertising), AO75 30, 81, 98.

Direct donation not expenditure, AO75 120.

Disbursements made and reported by campaign committee as expenditures are deemed for the purpose of influencing candidate's election, AO76/17.

Gift to state candidates may be "expenditure" under certain conditions, AO75/111.

See also: Advertising/solicitation; appearances by candidate; authorized committees/agents; educational conferences; fundraising; voter registration drives.

News story, commentary, editorial exception (2 U.S.C. s. 431(f)(4)(A)), AO75/143.

No restrictions on use to which campaign funds may be put, AO76/53, 64.

See also: Advertising/solicitation; allocation; appearances by candidate; attorney's/accountants' fees; authorized committee/agent; candidacy; communication exemption; dual candidacy; educational conferences; franking account; fundraising; litigation costs; national/state/local parties; nominating conventions, national—delegate selection; office accounts; personal assets; political committees; polling; preemption of state law; public funding; reporting; transfers; travel expenses; voter registration drives.

FAMILY OF CANDIDATE

Immediate family funds: contribution to candidate, AO75/85; contribution to candidate made before January 30, 1976, need not be returned if over $1,000 limit so long as not over $25,000 aggregate, AO76/74; contribution to candidate made between January 30, 1976, and May 11, 1976, need not be returned if over $1,000 limit so long as not over $25,000 aggregate, AO76/26; dual President/Senate candidate, AO75/11; limit applicable to pre-1975 campaign debts, AO75/6/106; loans, AO75/57.

Spouse: contribution limit, AO75/31.

FOREIGN NATIONALS

Green card holders are not foreign nationals, AO76 4,9.

FILING

See: Reporting.

FRANKING ACCOUNTS

Corporate contributions prohibited, AO75/7.
Costs of preparing frankable material not expenditure, AO75/3.
Costs of tabulating responses to questionnaires sent under the frank not considered a contribution if not made for primary purpose of influencing on election, AO75/132.
Questionnaire mailed under frank as contribution, AO75/14.
See also: Office accounts.

FUNDRAISING

Corporation's payment of production costs of fundraising item is a prohibited contribution, AO76/18, 50.
Costs as contributions/expenditures, AO75/15, 22, 49, 62, 97 76/50.
Items included in fundraising costs, AO75/47, 78, 97.
Payment out of campaign funds for the printing of labels by a computer firm would be proper under the Act, AO76/32.
Political committee's operation of business to raise "profits"—reporting, AO75/15.
Raffle legitimate activity, AO75/60.
20 percent exemption from expenditure limitation: in general, AO75/62,97; need not be prorated state-by-state for Presidential statewide limits, except where targeted, AO75/33.
Use of lists of contributions on reports filed with Secretary of State, AO75/124.
See also: Accounts; advertising/solicitation; authorized committees/agents; political committees—officers; reporting.

GET-OUT-THE-VOTE DRIVES

See: Voter registration drives

GIFTS

"Bona fide" not in-kind contributions, AO75/20.
To charity not honorarium or contribution, AO75/55.
See also: Expenditures; contributions—in-kind.

GOVERNMENT CONTRACTORS

Employee contribution in individual capacity, AO75/31.
No difference between negotiated or competitive bid, AO75/110.
Scope: Applies to construction contracts, AO75/110; does not apply to person holding a Federal-aid construction contract with non-Federal agency, AO75/110: Federal elections only, AO75/99, 110.
See also: Debts.

HONORARIUM

"Acceptance" where active or constructive receipt, AO75/8, 55, 89, 93.
Agent's or speaking bureau's fees, AO75/84.
As contributions: No longer contributions under 4411, AO75/119; test and reporting under 1974 amendments, AO75/8, 20, 63.
Award in recognition of public achievements, AO75/85.
Contract for televised commentary stipends, AO75/46.
Royalty for book not honorarium, AO75/77.
Travel and subsistence expenses, AO75/8, 13.
See also: Appearances by candidate; gifts.

IMMEDIATE FAMILY FUNDS

See: Family of candidate.

IN-KIND CONTRIBUTIONS

See: Contributions—in-kind.

INTERMEDIARY OR CONDUIT

Committee serving as a conduit must register and report, AO76/51.

INTERN PROGRAMS

Corporation interns assigned to congressional offices, committees, AO75/100.
Interns' time not a contribution—in-kind so long as they are engaged in pursuit of legislative business or they receive no compensation, AO75/100.

LABOR UNIONS

See: Corporation/labor/union/bank.

LEGISLATIVE HEARINGS

Reimbursed travel, AO75/20.

LOAN/ENDORSEMENT

As "contribution", AO75/4,57.
Existence of written instrument determinative of loan, AO75/69.
Promissory note is "loan" and therefore contribution, AO75/50.
Remains contribution to extent of unpaid balance, AO75/69.
See also: Debts; family of candidate personal assets; tax; telethon.

LOCAL PARTY

See: National, state/local party

MATCHING FUNDS

See: Public Financing.

MEMBERSHIP ORGANIZATION

Unincorporated division of an incorporated membership organization is not an appropriate entity to establish and administer a separate segregated fund unless that fund is designated for the corporation, AO76/73.

MULTI-CANDIDATE COMMITTEE

PACS (see also Political Action Committees): Multi-candidate PAC's may give $15,000 to national political party committee, AO76/41.
See also: Political committees

NATIONAL CONVENTION

See: Nominating convention, national.

NATIONAL/STATE/LOCAL PARTY

Contribution limit: County committee, AO75/29.
Definition of national party, AO76/95.
Direct donation of money not party expenditure under s. 441a(d), AO75/120.
Expenditure limit—s. 441a(d), AO75/2, 120.
See also: Accounts; appearances by candidate; common control; communication exemption; debts; election; nominating convention, national—delegate selection; political committee; reporting; telethon; transfers.

NEWSLETTER ACCOUNTS

See: Franking accounts.

NOMINATING CONVENTIONS, NATIONAL

Defraying delegate costs with public money by national parties (and state and local parties), AO75/91.
Delegate selection: Selection (in general), AO75/12.
"Extraordinary and unforeseen circumstances", AO75/91.
Municipal corporation contribution, AO75/1, 47.
Private corporation contributions—to party convention committee, AO75/1, 47.
Scope of "convention expenses" AO75/1, 47.
See also: Attorneys'/accountants' fees; excess funds; public funding; transfers.

OFFICE ACCOUNTS

Appropriated funds—expenses of mobile office used during but not for the campaign not attributable to contribution/expenditure limits, AO76/44.
Generally, AO75/14
Reporting obligations, AO75/7.
See also: Account; appearances by candidate; franking accounts; polling; transfers; travel expenses.

OFFICERS OF POLITICAL COMMITTEES

See: Political committees.

OPINION POLLS

See: Polling.

PACS

See: Political action committees

PARTNERSHIP

Counts against each independent partner's limit in proportion to share of profits, AO75/17, 104.
Partner makes in individual capacity, AO75/31.
Partnership agreements to allocate—necessary provisions, AO75/104.
Statutory maximum limit for a partnership is $1,000, AO75/17.
See also: Corporation/labor union/bank: political action committees.

PERSONAL ASSETS

Advance to political campaign committee by candidate, AO75/57,111.
Applicable to dual Senate/Presidential candidate, AO75/11.
Limitations applicable to pre-1975 debts (unconstitutionality of 18 USC s.608(a)), AO75/65.
See also: Debts; excess funds; litigation costs; loan/endorsement; preemption of State law; transfer; travel expenses.

PERSONAL SERVICES (VOLUNTARY)

See: Volunteer services.

PETITION EFFORT

See election.

PETTY CASH FUND

No check to the order of "cash" may be made for over $100, AO75/44.
See also: Accounts.

POLITICAL ACTION COMMITTEES

Establishment, administration, AO75/23, 36.
Multi-candidate PACs may give $15,000 to national political party committee, AO76/41.
One political committee may not serve as the separate, segregated fund of more than one sponsoring corporation or labor organization, AO76/73.
Partnership, sole proprietor may not establish PAC, AO75/31.
Unlawful to make a contribution or expenditure by money obtained in a commercial transaction, AO76/18.
See also: Corporation/labor union/bank: membership organization; multi-candidate committee; trade association; trustee plan

POLITICAL COMMITTEES

Administrative expenses, see administrative expenses.
"Affiliated committees" and connected organizations" defined, AO75/44.
Definition: Committee organized to assure "option of alternative independent slate of electors" within definition, AO75/81.
Group of individuals acting in concert who are likely to assert their association when contributing and who collect and distribute checks in a batch to candidates or committees is a political committee, AO76/51.
Research committees funded solely by legislatively appropriated funds are not political committees required to register and report, AO76/34.
Officers: National multi-candidate committee can establish State committees which have the same treasurer, AO75/45.
Individuals serving as officers of more than one fundraising committee, AO75/36.
Principal campaign committee: Candidate must designate committee even if committee makes no contributions or expenditures, AO76/100.
May give "occasional, isolated, incidental" support to other Federal candidates, AO76/5.
May make unlimited contributions to non-Federal candidates, AO76/5.
May pay for candidate's living expenses, AO76/53.
May purchase auto for candidate, AO76/64.
May rent office space in candidate's private home, AO76/53.
See also: Reporting.
Termination, AO75/28, 102
See also: Accounts; administrative expenses; common control; communication exemption; corporation/labor union/bank; dual candidacy; earmarking; excess funds; fund raising; personal assets; polling; reporting; transfers; travel expenses.

POLLING

Expenditure for "attitudinal research" from office account, AO75/7.
See also: Candidacy.

PREEMPTION OF STATE LAW

Ballot access, AO76/8.
Establishment of committees, AO76/8.
Qualifying of candidate, date and place of election, AO75/124, 76/8.

PRIMARY ELECTION

See Election.

PRINCIPAL CAMPAIGN COMMITTEE

See Political committees.

PUBLIC FUNDING

Defraying delegate costs with public money, AO75/91.
See also: Accountants'/attorneys' fees; nominating convention, national; transfers.

PUBLIC UTILITY HOLDING COMPANIES

See: Corporation/labor union/bank.

RAFFLES

See: Corporate facilities/goods; fundraising.

REPORTING

Anonymous cash contribution, AO75/140.
Expenditures must be reported even if other than for the purpose of influencing an election, AO76/64.
"Less than $1,000 in quarter" notification by political committee, AO75/16.
Monthly reporting for Presidential candidates, AO75/44.
Record-keeping of purchasers of tickets to fundraiser, AO75/60,97; concert fundraiser, AO75/49 76/62.
Use of contributor lists on reports filed with Secretary of State, AO75/124.
Waive for candidate reporting, AO75/124.
See also: Accounts; corporation/labor union/bank; debts; excess funds; fundraising; honorarium; nominating convention, national; office accounts; political committees; preemption of state law; transfers; travel expenses.

REQUIREMENTS RELATING TO CAMPAIGN ADVERTISING

See: Advertising/solicitation.

ROYALTIES

As contributions: Books, AO75/77; candidate's image, AO75/15.

RUN-OFF ELECTION

See: Election.

SEPARATE, SEGREGATED FUND

See: Accounts; political action committees.

SOLE PROPRIETORSHIP

Contributions in individual capacity, AO75/31.

SOLICITATION

See: Advertising solicitation; political action committee.

SPOUSE

See Family of candidate.

SPECIAL ELECTION

See: Election

STATE LAW

See: Preemption of state law.

STATE PARTY

See: National state local party

TELETHON

Guarantee endorsement of loan to telethon, AO75/4.

TELEVISION APPEARANCES

See: Appearances by candidate

TRADE ASSOCIATION

Solicitations under 441(b)(4). Informing persons of a fundraising activity is a solicitation: permission from member corporations to solicit must be obtained prior to solicitation, AO76/27, 96.

TRANSFERS

Between campaign committees for dual candidate, AO75/11.
From: political campaign committee to another account (savings account, office account), AO75/10, 41, 144 76/25; previous Federal account to political campaign committee, AO75/10, 26, 40, 66; primary to general election account, AO75/53; state election account to principal campaign committee; generally, AO75/10, 66.
See also: Accounts; common control; excess funds; political committees.

TRAVEL EXPENSES

Cost of travel (to a fundraiser) supported by individual is an in-kind contribution: not a contribution or expenditure if traveler is not a candidate, AO75/123.
"Expenditure" if candidate and campaign-related activities (speeches, meetings with advisors), AO75/98.
Reimbursement by political campaign committee to volunteer, AO75/97.
Reimbursement by political committee to members for attending election—related activities, AO75/20.
Reimbursement to candidate by political campaign committee is expenditure, AO75/30.
Related to party building activities are not expenditures, AO75/72.
See also: Appearances by candidate; contributions—in-kind; corporation/labor union/bank; dual candidacy; excess funds; honorarium, legislative hearings; national state local party.

TRUSTEE PLAN

Establishment, administration AO75/23

VOLUNTEER SERVICES

Entertainment and services not contribution, AO75/97.
On employee time—in-kind? AO75/94
Use of workers receiving Social Security funds, AO75/124.
Volunteer intern in Congressional office—college credit no treimbursement, AO75/100.
See also: Contribution—in-kind; travel expenses.

VOTER REGISTRATION DRIVES

Allocation of expenses as per state federal support, AO75/21.
Partisan as independent expenditure AO75/20.
See also: Communications exemption.

U.S. CODE SECTION INDEX TO 1975-76 OPINIONS (ADVISORY OPINIONS)

NOTE.—Numbers of opinions beginning with the digits "75" are 1975 opinions; digits "76" stand for 1976 opinions.

Code section	*Advisory opinions*
2 U.S.C. section:	
431(a)	75/12
431(a)(2)	76/58.
431(b)	
431(c)	76/68.
431(d)	75/4,81 76/51.
431(e)	75/15,63.
431(e)(1)	
431(e)(3)	
431(e)(4)	76/70.
431(e)(5)	
431(e)(5)(1)	75/119.
431(f)	76/17.
431(f)(2)	76/85.
431(f)(4)(A)	75/143.
431(f)(4)(C)	
431(k)	76/95.
431(m)	76/95.
432(a)	
432(b)	75/49.
432(c)	76/62.
432(c)(2)	75/140.
432(e)	Unauthorized activities; notice [deleted in 1976 amendments]
432(e)(1)	75/44.
432(f)	76/5,100
433	75/16.
433(a)	
433(c)	
433(d)	
434	75/18,102,144.
434(a)(1)(C)	75/4 76/64.
434(b)	75/16.
434(b)(1)	75/10,140
434(b)(2)	76/25.
434(b)(4)	75/40. 75/144.
434(b)(6)	76/62.
434(b)(12)	75/18, 76/85.
434(b)(13)	75/20.
434(c)(2)	
434(e)	75/12
435	
435(b)	76/35.
436(b)	75/18
436(b)(1)	76/100.
436(c)	75/18.
437(1)	
437a	Reports by certain persons [deleted in 1976 amendments]
437b	
437b(a)	75/41, 76/25.
437b(a)(2)	75/2.
437b(b)	75/44
437f(a)	
438(a)(4)	75/124.
439	
439(a)	75/144.
439a	75/7,10,14,51,64,82,88 76/57,90.
439b	
441a [18 U.S.C. s. 608]	
441a(a). [18 U.S.C. s. 608 (b)]	75/2,9,14,106,108.
441a(a)(1). [18 U.S.C. s. 608 (b)(1)]	75/5,6,10,26,44,52,54,62, 65,81,82,87,132,76/17
	75/11,17,48,74.

Code section	Advisory opinions
2 U.S.C. section—continued	
441a(a)(1)(A), [18 U.S.C. s. 608(b)(1)]	76/26,68,74.
441a(a)(2), [18 U.S.C. s. 608(b)(2)]	75/3,11,32,45,74,120,129.
441a(a)(2)(B)	76/41.
441a(a)(3), [18 U.S.C. s. 608(b)(3)]	75/48,74, 76/26,68,74.
441a(a)(6), [18 U.S.C. s. 608(b)(5)]	65,81,82,87,132. 76/17.
441a(a)(8), [18 U.S.C. s. 608(b)(6)]	75/32,48,60, 76/51.
441a(b), [18 U.S.C. s. 608(c)]	75/7,10,15,22,27,28,30, 54,78,87,98.
441a(b)(1)(A), [18 U.S.C. s 608(c)(1)(A)]	75/11,33.
441a(b)(2)(B) [18 USC s.608(c)(2)(B)]	75/12 44
441a(d) [18 USC s. 608(f)]	
441a(d)(3) [18 USC s.608(f)(3)]	75/2,29
441a(d)(3)(B) [18 USC s. 608(f)(3)(B)]	
441b [18 USC s 610]	75/1,7,13,14,16,21,23,27, 39,47,50,59,75,86,94, 123 76/98
441b(a)	76/50.
441b(b)(2)	76/50,70.
441b(b)(2)(C)	76/73.
441b(b)(3)(A)	76/18.
441b(b)(4)	76/18,73.
441b(b)(4)(A)(i)	76/73.
441b(b)(4)(C)	76/27.
441b(b)(4)(D)	76/27,73,96.
441c [18 USC s.611]	75/31,99,110
441d [18 USC s. 612]	75/67, 76/35.
441e	76/9.
441f [18 USC s. 614]	75/104.
441i [18 USC s. 616]	75/8,20,46,55,63,77,84,85, 89,93,119.
451	
453	75/124, 76/8.
15 U.S.C. section 791(h)	
18 U.S.C. section 591(a)	75/1,44,54,105
591(a)(2)	
591(b)	
591(e)	75/15,63,87,94.
591(e)(1)	75/4.
591(e)(4)	
591(e)(5)	
591(e)(5)(A)	75/20,97
591(e)(5)(D)	75/97.
591(e)(5)(E)	
591(f)	75/12,15,22,87,95,107.
591(f)(4)	75/62.
591(f)(4)(B)	75/20
591(f)(4)(C)	75/2.
591(f)(4)(H)	75/33,78.
591(f)(4)(I)	
604	76/53.
608 *see* 2 USC s. 441a.	
608(a)—Personal funds of candidate and family [deleted in 1976 amendments].	75/30,65, 76/26,74.
608(a)(1)	75/5,6,11.
608(a)(3)	75/57,111.
608(a)(4)	75/57.
608(b) *see* 2 USC s.441a(a).	
608(b)(1) *see* 2 USC s.441a(a)(1).	
608(b)(2) *see* 2 USC s.441a(a)(2).	
608(b)(3) *see* 2 USC s.441a(a)(3).	
608(b)(5) *see* 2 USC s.441a(a)(6).	
608(b)(6) *see* 2 USC s.441a(a)(8).	
608(c) *see* 2 USC s.441a(b).	
608(c)(1)(A) *see* 2 USC s.441a(b)(1)(A).	
608(c)(1)(C)	75/11,53
608(c)(1)(E)	75/3
608(c)(2)(B) *see* 2 USC s.441a(b)(2)(B).	
608(e)—Expenditures relative to clearly identified candidate [deleted in 1976 amendments].	75/12,15,20.
608(f) *see* 2 USC s.441a(d).	
608(f)(3) *see* 2 USC s.441a(d)(3).	
608(f)(3)(B) *see* 2 USC s.441a(d)(3)(B).	
610 *see* 2 USC s.441b.	
611 *see* 2 USC s.441c.	
612 *see* 2 USC s.441d.	
614 *see* 2 USC s.441f.	
616 *see* 2 USC s.441i.	
26 U.S.C. section 9008(b)(1)	
9008(d)	75/1,91.
9008(d)(1)	
9008(e)	75/1.
9008(g)	75/1.
9012(e)	
9033	
39 U.S.C. section 3210	
3210(f)	75/3,7,14.

PROPOSED-REGULATION INDEX TO 1975–76 OPINIONS (ADVISORY OPINIONS)

NOTE: Numbers of opinions beginning with the digits "75" are 1975 opinions; digits "76" stand for 1976 opinions.

Proposed regulation	Advisory opinion
100.4	76/27.
100.4(a)(5)(iii)	75/132.
102.4	76/70.
102.11	76/90.
104	76/100.
104.2(b)(11)	76/64.
109.4	76/85.
110.1(g)	76/35.
110.6	76/68.
114	76/51.
114.7(c)	76/18,86.
114.8	76/73.
114.8(d)(2)	76/73,96.
114.8(d)(3)	76/27.

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FRIDAY, JANUARY 21, 1977

PART V



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

■

COASTAL ZONE MANAGEMENT RESEARCH AND TECHNICAL ASSISTANCE

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[15 CFR Part 933]

RESEARCH AND TECHNICAL ASSISTANCE

Eligibility, Guidelines and Procedures

The National Oceanic and Atmospheric Administration (NOAA) hereby proposes to adopt regulations pursuant to section 310 Of the Coastal Zone Management Act of 1972, as amended (16 U.S.C. 1451 et seq.), hereinafter referred to as the "Act," for the purpose of defining procedures by which NOAA will operate the national research and technical assistance program established in subsection 310(a) of the Act and by which States can apply for and receive the research and technical assistance grants established in subsection 310(b) of the Act and for meeting other provisions of section 310.

Section 310 provides:

(a) The Secretary may conduct a program of research, study, and training to support the development and implementation of management programs. Each department, agency, and instrumentality of the executive branch of the Federal Government may assist the Secretary, on a reimbursable basis or otherwise in carrying out the purposes of this section, including, but not limited to, the furnishing of information to the extent permitted by law, the transfer of personnel with their consent and without prejudice to their position and rating, and the performance of any research, study, and training which does not interfere with the performance of the primary duties of such department, agency or instrumentality. The Secretary may enter into contracts or other arrangements with any qualified person for the purposes of carrying out this subsection.

(b) The Secretary may make grants to coastal states to assist such states in carrying out research, studies, and training required with respect to coastal zone management. The amount of any grant made under this subsection shall not exceed 80 per centum of the cost of such research, studies, and training.

(c)(1) The Secretary shall provide for the coordination of research, studies, and training activities under this section with any other such activities that are conducted by, or subject to the authority of, the Secretary.

(c)(2) The Secretary shall make the results of research conducted pursuant to this section available to any interested person.

To implement this new section, contained in Pub. L. 94–370, signed on July 26, 1976, NOAA proposes a new Part 933.

Part 933 will enhance State efforts to develop and implement coastal zone management programs by supporting necessary research, study and training at State, regional, and national levels. Grants awarded to States will enable them to deal directly and immediately with research and training needs which arise as they develop and/or implement management programs, while the national program will address those broader research and training needs which are regional or national in scope.

The basic intent of subsections 310 (a) and (b) of the Act is to fund research, study, and training which supports the development and implementation of State coastal zone management programs. However, there is a significant difference in focus between the two subsections in that State grants pursuant to subsection 310(b) will be awarded to State coastal zone management agencies for the purpose of meeting State-specific research, study and training needs, while the national program pursuant to subsection 310(a) will work with a variety of entities and will endeavor to address needs which are regional or national in scope.

Subpart A of Part 933, entitled General, contains a discussion of the basic intent of section 310 of the Act, and definitions of the terms "Act," "Secretary," "Associate Administrator," and "person."

Subpart B of Part 933, entitled National Research and Technical Assistance Program, contains a discussion of the entities eligible for funding under subsection 310(a), the types of funding arrangements which may be utilized, and the appropriate uses of these funds. Entities eligible for funding are all those mentioned in the definition of the term "person" in subsection 304(13) of the Act. This term includes other Federal agencies, State and local governments as well as a variety of other entities. Funding arrangements which may be used in addition to contracts include both cost-reimbursable and non-reimbursable arrangements with other Federal agencies as well as grants to State or other units of government or educational or non-profit institutions, if appropriate.

Research which can be funded under this subsection includes studies, experiments, and other analyses related to State management program development and administration, but with broader application than research funded under subsection 310(b). The term "broader application" is intended to imply both a broader geographic coverage and a broader range of problems. Training which can be funded under subsection 310(a) is not limited solely to the short-term professional skill development contemplated under subsection 310(b). It may include curriculum development, the testing of new approaches to education and training, and exploration of the relationship of coastal zone management to other related fields.

Subpart C of Part 933, entitled Operation of the National Research and Technical Assistance Program, establishes the guidelines and procedures under which the national research and technical assistance program will be operated. Each fiscal year, NOAA's Associate Administrator for Coastal Zone Management will develop an annual plan which sets out research and training priorities. He/she will then solicit proposals or make other arrangements, as appropriate, to accomplish the tasks described in the annual plan. Because of the variety of funding arrangements available under this subsection, application procedures will vary.

Subpart D of Part 933, entitled State Research and Technical Assistance Grants, contains a discussion of the entities eligible for funding under subsection 310(b), the appropriate uses of these funds, and priorities which will be used to determine funding. To be eligible for grants, a State must either be making adequate progress toward the development of a management program or be administering an approved management program. The applicant for funds must be the State agency responsible for developing or administering the management program although these funds may be subcontracted to another entity.

Research which can be funded under this subsection includes studies, experiments, and other analyses of short term duration which can be expected to show results within one year's time. Such research is to be derived from State program needs and is to utilize existing materials to the extent possible. Training which can be funded under this subsection includes the education or other development of such personnel as may be needed to efficiently and effectively develop and/or administer State management programs or to administer coastal energy impact funds.

High funding priority will be given to those research, study and or training activities which most directly support management program development or implementation. Those states which are experiencing difficulty in achieving program approval or in implementing management programs will be given priority over those States which do not appear to be experiencing such difficulty.

Subpart E of Part 933, entitled Applications for State Research and Technical Assistance Grants, contains a discussion of a grantee's administrative and fiscal responsibilities, application procedures for amending approved applications.

Prior to issuance of these proposed regulations, NOAA distributed widely a draft paper on section 310(b)—State Grants for Research and Technical Assistance. Comments were received questioning the requirement (in the draft paper) that States apply for research and training grants at the same time that they apply for section 305 or 306 grants, and also questioning whether research in estuarine sanctuaries, approved pursuant to section 315(1) of the Act, could be funded under subsection 310(b) of the Act.

In response to State comments that tying subsection 310(b) applications to the section 305 or 306 grant applications was unnecessarily restrictive and might not enable States to best respond to research, study and training needs as they arose, regulations permit submission of applications at any time during the fiscal year.

In response to State questions about estuarine sanctuary research, the proposed regulations provide that such research can be funded if it can be shown to be related to program administration.

NOAA has reviewed these proposed regulations pursuant to the National Environmental Policy Act of 1969 and has determined that promulgation of these regulations will have no significant impact on the environment.

Compliance with Executive Order 11821. The economic and inflationary impact of these proposed regulations has been evaluated in accordance with OMB Circular A–107 and it has been determined that no major inflationary impact will result.

NOAA invites public comment on these proposed regulations so that they may be modified, where necessary and legally permissible, to reflect fully the needs of the public and parties affected by provisions. Written comments should be submitted to the Office of Coastal Zone Management, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, Page Building 1, 3300 Whitehaven St., N.W., Washington, D.C. 20235 on or before February 21, 1977. Following the close of the comment period, and after review of comments, the Associate Administrator for Coastal Zone Management, National Oceanic and Atmospheric Administration, may amend these proposed regulations to reflect necessary and permissible changes. The Associate Administrator shall then have final regulations published in the FEDERAL REGISTER.

Dated: January 17, 1977.

T. P. GLEITER,
Assistant Administrator for Administration.

In consideration of the foregoing, Part 933 is proposed as follows:

PART 933—RESEARCH AND TECHNICAL ASSISTANCE

Subpart A—General

Sec.
933.1 Basic purposes.
933.2 Definitions.

Subpart B—National Research and Technical Assistance Program

933.10 General.
933.11 Eligible entities and arrangements.
933.12 Use of funds.

Subpart C—Operation of National Research and Technical Assistance Program

933.20 General.
933.21 Annual plan.
933.22 Funding arrangements.

Subpart D—State Grants for Research and Technical Assistance

933.30 General.
933.31 Eligible entities.
933.32 Use of funds.
933.33 Funding priorities.

Subpart E—Application for State Research and Technical Assistance Grants

933.50 General.
933.51 Applicant responsibility.
933.52 Application procedures.
933.53 Approval of applications.
933.54 Amendments.

AUTHORITY: Sec. 310, Coastal Zone Management Act of 1972 (Pub. L. 92–583, 86 Stat. 1280, as amended by Pub. L. 94–370, 90 Stat. 1013).

Subpart A—General

§ 933.1 Basic purposes.

(a) This section sets forth the basic purposes for which the national research and technical assistance program, pursuant to subsection 310(a) of the Act, will be operated, and for which State research and technical assistance grants, pursuant to subsection 310(b) of the Act, will be awarded. The basic intent of both subsections is to fund research, study, and training which supports the development and administration of State coastal zone management programs. However, there is a significant difference in focus between the two subsections in that State grants pursuant to subsection 310(b) will be awarded to State coastal zone development or management agencies for the purpose of meeting State-specific research and training needs, while the national program pursuant to subsection 310(a) will work with a variety of entities and will endeavor to address needs which are regional or national in scope.

(b) *Comment.* Statutory Citation. Subsection 310(a):

The Secretary may conduct a program of research, study, and training to support the development and implementation of management programs. * * * The Secretary may enter into contracts or other arrangements with any qualified person for the purposes of carrying out this subsection.

(c) *Comment.* Statutory Citation. Subsection 310(b):

The Secretary may make grants to coastal states to assist such states in carrying out research, studies, and training required with respect to coastal zone management.

§ 933.2 Definitions.

(a) The term "Act" means the Coastal Zone Management Act of 1972, as amended.

(b) The term "Secretary" means the Secretary of Commerce or his/her designee. Delegations of authority from the Secretary to the Administrator, National Oceanic and Atmospheric Administration (NOAA), have been duly executed by Amendment 5 of Department of Commerce Organization Order 25–5A, dated October 13, 1976 and from the Administrator to the Associate Administrator for Coastal Zone Management, by NOAA Circular 76–82, effective October 13, 1976.

(c) The term "Associate Administrator" means the Associate Administrator for Coastal Zone Management, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

(d) The term "person" is as defined in subsection 304(13) of the Act and means "any individual; any corporation, partnership, association, or other entity organized or existing under the laws of any state: the Federal Government; any state, regional, or local government; or any entity of any such Federal, state, regional, or local government."

Subpart B—National Research and Technical Assistance Program

§ 933.10 General.

(a) The national research and technical assistance program established pursuant to subsection 310(a) of the Act is a program utilizing contracts and other arrangements to support regional and national research, study and training activities which assist State efforts to develop and, or administer coastal zone management programs.

(1) This program will be conducted so as to complement and support work being done by States using grants under sections 305 or 306 of the Act.

(2) Research, study and training efforts will be expected to address the needs of a group of States, a region, or the entire nation or the administration of the national coastal zone management program.

(b) The national research and technical assistance program is differentiated from the interstate grant program, pursuant to section 309 of the Act, by the former's emphasis on technical research, study and training. The interstate program by contrast, focuses upon regional cooperation and coordination with particular attention directed toward the development of common or unified coastal zone policies.

§ 933.11 Eligible entities and arrangements.

(a) The Associate Administrator will enter into contracts or make other arrangements with any qualified person for the performance of work pursuant to subsection 310(a) of the Act.

(1) It should be noted that the term "person" as defined in section 933.2 includes other Federal agencies, State and local governments, as well as a variety of other entities.

(2) For purposes of this subsection, other arrangements include both cost-reimbursable and non-reimbursable arrangements with other Federal agencies. Such arrangements shall include the use of the provisions of the Intergovernmental Personnel Act of 1970 (Pub. L. 91–648; Pub. L. 93–638) both for purposes of training and to provide technical assistance. Other arrangements may also include grants with State agencies or other units of government, or with educational or non-profit institutions, or contracts with persons as defined in subsection 304(13) of the Act, as appropriate and necessary to the accomplishment of national research and training needs as identified by the Associate Administrator pursuant to section 933.21 of these regulations.

§ 933.12 Use of funds.

(a) Research under subsection 310(a) shall include studies, pilot or demonstration projects, or other analyses complimenting or enhancing development and administration of the State coastal management programs, but with broader application than research funded pursuant to subsection 310(b). The term "broader application" is intended to imply both a broader geographic coverage and a broader range of problems.

(1) Research and studies funded under subsection 310(a) can be expected to:

(i) Supplement and enhance work geared towards management program development and administration;

(ii) Aid in the resolution of coastal zone management issues;

(iii) Have application to a group of states, a region, or the entire nation;

(iv) Assist in resolving issues in the administration of the national coastal zone management program; and

(v) Where appropriate, be transferable or usable beyond the study area.

(2) In contrast to State grants pursuant to subsection 310(b), these efforts will not necessarily focus on technical and site-specific studies.

(b) Training under subsection 310(a) need not be limited solely to the short-term, professional skill development anticipated pursuant to subsection 310(b).

(1) Training may include, but is not limited to, the following.

(i) Curriculum development at the high school, college, and graduate school levels;

(ii) Testing of new approaches to education and training;

(iii) Internships; and

(iv) Exploration of the relationship of coastal zone management to other related fields.

(2) Training funded pursuant to subsection 310(a) will be expected to meet the needs of or be tarnsferrable to a group of States or to the nation.

(c) Subsection 310(a) funds may not be used for the following purposes:

(1) State management program activities,

(2) Construction,

(3) Land acquisition.

Subpart C—Operation of National Research and Technical Assistance Program

§ 933.20 General.

This section establishes the guidelines and procedures under which the Associate Administrator will operate the national research and technical assistance program established pursuant to subsection 310(a) of the Act. Each fiscal year, the Associate Administrator will develop an annual plan which sets out research and training priorities. He/she will then solicit proposals or make other arrangements, as appropriate, to accomplish the tasks described in the annual plan. Because of the variety of funding arrangements available to the Associate Administrator pursuant to subsection 310(a), the specific application procedures will vary depending on the nature of appropriate arrangements, and will be in accordance with prescribed procedures applicable to the Federal Government or pursuant to Department of Commerce or NOAA administrative procedures.

§ 933.21 Annual plan.

(a) The Associate Administrator will develop an annual plan for the national research and technical assistance program.

(1) This plan will indicate those issues, subjects, and areas which he/she believes should be the subject of research, study or training in that year and will assign relative priorities to the proposed studies.

(2) Where possible, the plan will also indicate the means by which the Associate Administrator intends to accomplish such studdies (i.e., by request for proposals, transfer of funds to other Federal agencies, grants, etc.) and the timing of such actions.

(b) The priorities expressed in this plan, together with any other relevant information, will be made available to all interested parties at the beginning of each fiscal year.

(c) In order to be responsive to State, regional, and national coastal zone management issues and needs, and to avoid duplication of research being conducted by others, the plan will be developed in consultation with coastal States, other Federal agencies, and other interested parties.

(d) This plan may be revised throughout the course of a year to reflect newly emergent or unanticipated national research, study or training needs.

§ 933.22 Funding arrangements.

(a) To accomplish the national research and technical assistance program, the Associate Administrator may utilize any appropriate procedures, which may include:

(1) Competitive procurement,

(2) Sole source procurement,

(3) Grants to state agencies or other units of government, or educational or non-profit institutions,.

(4) Cooperative agreements,

(5) Cost-reimbursement of other Federal agencies, and

(6) Personnel transfers on a reimbursable or non-reimbursable basis.

(b) As a general rule, no more than ten percent of the funds available in any fiscal year shall be allocated to fund projects or proposals that are not responsive to the annual national research and technical assistance plan developed pursuant to § 933.21.

Subpart D—State Grants for Research and Technical Assistance

§ 933.30 General.

(a) The State research and technical assistance program, pursuant to subsection 310(b) of the Act, is a program of grants to States to support research, study and training activities which improve State capability to develop and/or administer coastal zone management programs.

(1) Research, study and training grant applications should develop from needs identified or problems experienced during program development and/or administration.

(2) Applications should be justified in terms of the usefulness of the anticipated results to basic program efforts.

(b) Because of the highly applied nature of research conducted pursuant to subsection 310(b) of the Act, it may be difficult to judge whether an activity is most appropriately funded pursuant to subsection 310(b) or pursuant to sections 305 and 306 of the Act.

(1) Generally speaking, those activities which are essential to meeting the criteria for program approval or which are integral to operating an approved program should be funded pursuant to sections 305 and 306 of the Act.

(2) Those activities which enhance or improve a State's ability to meet the criteria for approval or to operate an approved program should be funded pursuant to subsection 310(b).

(3) It is anticipated that research and studies funded pursuant to section 310 (b) will be more technical in nature or more geographically specific than those activities typically funded pursuant to sections 305 and 306 of the Act.

§ 933.31 Eligible entities.

To be eligible for grants pursuant to subsection 310(b), a State must either be making adequate progress toward the development of a coastal zone management program pursuant to section 305 of the Act or be operating an approved management program pursuant to section 306 of the Act.

§ 933.32 Use of funds.

(a) For purposes of subsection 310(b), research shall include studies, pilot or demonstartion projects, or other analyses of short term duration which can be expected to show results within one year's time. Such research or studies shall be derived from State coastal zone management program development and/or administration needs and shall utilize existing materials to the extent possible.

(1) Such research and studies will tend to focus more on technical and site-specific issues rather than on institutional and managerial issues.

(2) Research and studies related to the coastal energy impact program, established pursuant to section 308 of the Act, may be funded pursuant to subsection 310(b) of the Act if such research and studies are clearly related to a State's ongoing management program efforts and if such research and studies are not otherwise fundable pursuant to section 308 or sections 305 and 306 of the Act.

(3) Research and studies related to or conducted within an estuarine sanctuary established pursuant to section 315(1) of the Act may be funded under subsection 310(b) if such research and studies can be shown to be related to program administration, and otherwise meet the criteria set forth in these regulations.

(b) For purposes of subsection 310(b), training shall refer to the education or other development of such personnel as may be needed to efficiently and effectively develop and/or administer State coastal zone management programs or to administer coastal energy impact funds.

(1) In general, such training should be of short term duration and should be directed toward the development of specific job-related skills.

(2) Such training may be for, but not limited to, the following types of expertise at both the State and local levels: permit reviewers and inspectors, law enforcement officers, natural resource managers, economists, fiscal officers, planners, and persons with specialized training in the natural sciences.

(c) Grants issued pursuant to subsection 310(b) of the Act may not be used for the following purposes:

(1) Basic and/or long-term research or education efforts;

(2) State management program administration activities;

(3) Construction;

(4) Land acquisition; or

(5) Permanent equipment acquisitions, unless susch acquisitions can also be used for program development and/or administration purposes.

§ 933.33 Funding priorities.

(a) The Associate Administrator will not establish priorities between nor allocate funds specifically to research and study activities on the one hand or training activities on the other.

(b) Highest funding priority will be given to those research and/or training activities which directly support program development and/or administration.

(c) Those States which are experiencing difficulty in achieving program approval or in implementing management programs will be given priority over States which do not appear to be experiencing such difficulty.

(d) Lower funding priority will be given to the following:

(1) Activities which have a continuing funding dimension and a long time frame for completion; and

(2) Institutional and/or management studies more appropriately funded pursuant to sections 305 and 306 of the Act;

Subpart E—Application for State Research and Technical Assistance Grants

§ 933.50 General.

(a) The purpose of this section is to define the procedures by which grantees apply for and administer grants under the Act and to provide guidelines regarding the content of applications for State research and technical assistance grants pursuant to subsection 310(b) of the Act. These procedures shall be used and interpreted in conjunction with the Grants Management Manual for Grants under the Coastal Zone Management Act, hereinafter referred to as the "Manual." The Manual incorporates a wide range of Federal requirements, including those established by the Office of Management and Budget, the General Services Administration, the Department of the Treasury, the General Accounting Office, and the Department of Commerce.

(b) Applications for grants under subsection 310(b) of the Act will be accepted by the Associate Administrator at any time during the fiscal year provided that they contain the information required pursuant to § 933.52.

(c) States are encouraged to submit applications for grants under subsection 310(b) at the same time that they submit applications for grants under sections 305 or 306 in order to enable the Associate Administrator to review more comprehensively State management program efforts and to expedite processing at both the State and Federal levels.

(d) States may submit more than one subsection 310(b) application per year if research or technical assistance needs arise that were not anticipated at the time of first application for subsection 310(b) funds.

(e) An application need not contain both research and training elements.

(f) Grants shall not exceed eighty per centum of the total cost of the proposed research and/or training. Federal funds received from other sources cannot be used to match subsection 310(b) grants. Match provided by the applicant may consist of cash or in-kind services as provided in the Manual.

(g) Costs claimed as charges to the grant project must be beneficial and necessary to the objectives of the grant project. As used herein the terms "costs" and "grant project" pertain to both the Federal grant and the matching share. The allowability of costs will be determined in accordance with the provisions of FMC 74-4: Cost Principles Applicable to Grants and Contracts with State and Local Governments.

(h) Grants shall be made for a maximum of one year's duration.

§ 933.51 Applicant responsibility.

(a) The application shall designate the entity to receive and administer grants pursuant to subsection 310(b). The applicant for such grants must be that entity designated by the Governor pursuant to 15 CFR 920.52 where a State is developing a coastal management program or that entity designated by the Governor pursuant to 15 CFR 923.62 where a coastal State is administering an approved management program. This entity may, in turn, pass through funds to, or subcontract with, other entities.

(b) The grantee will be administratively and fiscally responsible for all aspects of the grant, including any subcontracts made by the grantee.

§ 933.52 Application procedure.

(a) All applications are subject to the provisions of OMB Circular A-95 (revised).

(b) The Form SF-424, Application for Federal Assistance (Non-Construction Programs), constitutes the formal application and must be submitted sixty days prior to the desired grant beginning date. The application must be accompanied by evidence of compliance with requirements of OMB Circular A-95, including the resolution of any problems raised about the proposed project. The Associate Administrator will not accept applications that are substantially deficient in adherence to A-95 requirements.

(c) In Part IV, Program Narrative, of the Form SF-424, the applicant shall respond to the following requirements:

(1) A description of the work program to be undertaken during the grant period. This work program shall include:

(i) A precise description of each major research or study task to be undertaken, including an explanation of the need for this task, how it will be accomplished, what existing material it builds on, what results are expected, and how these results will be used in the management program.

(ii) A precise description of each major training task to be undertaken, including an explanation of the need for this training, how it will be accomplished, what existing efforts it builds on, who will benefit from it, and how these benefits will relate to the management program.

(iii) For each task, identify any "Other Entities," as defined in the "Manual," that will be allocated responsibility for carrying out all or portions of the task, and indicate the estimated cost of any subcontract for each allocation. Identify, if any, that portion of the task that will be carried out under contract with consultants and indicate the estimated cost of such contract(s). Where all or part of the work is to be subcontracted, the extent and nature of grantee supervision should be indicated.

(iv) For each task indicate the estimated total cost. Also indicate the estimated total months of effort, if any, allocated to the task from the applicant's staff.

(2) The sum of all tasks in subparagraph (1) above should equal the total estimated grant project cost.

(3) Using two categories, Professional and Clerical, indicate the total number of personnel in each category on the applicant's staff that will be assigned to the grant project. Also indicate the number assigned full-time and the number assigned less than full-time in the two categories. Additionally, indicate the number of new positions created in the two categories as a result of the grant project. Indicate total personnel costs.

§ 933.53 Approval of applications.

(a) An application for a state research, study and/or training grant which complies with the policies and requirements of the Act and the guidance contained in this subpart shall be approved by the Associate Administrator, assuming available funding.

(b) Should an application be found deficient, the Associate Administrator will notify the applicant in writing as to the manner in which the application fails to conform to the requirements of the Act or this subpart. Conferences may be held on these matters. Corrections to the application will provide the basis for resubmittal of the application for further consideration and review.

(c) The Associate Administrator may, upon finding extenuating circumstances relating to application for State research, study and/or training grants, waive appropriate administrative requirements contained herein.

§ 933.54 Amendments.

(a) Amendments to an approved application must be submitted to the Associate Administrator prior to initiation of the contemplated change. Requests for substantial changes should be discussed with the Associate Administrator well in advance. While all amendments must be approved in writing by the NOAA Grants Officer, approval may be presumed for minor amendments if the grantee has not been notified of objections within thirty (30) working days of the date of postmark of the request.

§ 933.55 Copies of products.

(a) In order to insure the ability of the Associate Administrator to make the results of research conducted pursuant to this subsection available to any interested person, grantees shall supply the

Associate Administrator with five (5) copies of any products, reports, studies, etc. financed in whole or in part by subsection 310(b) monies. Such products shall be received by the Associate Administrator no later than three months after the expiration date of the grant.

(b) *Comment.* Statutory Citation, subsection 310(c)(2):

The Secretary shall make the results of research conducted pursuant to this section available to any interested person.

(1) At least one of the copies received by the Associate Administrator shall be transmitted to the National Technical Information Service for purposes of assuring general availability to interested parties.

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FRIDAY, JANUARY 21, 1977

PART VI



DEPARTMENT OF JUSTICE

DEPARTMENT OF LABOR

CIVIL SERVICE COMMISSION

■

QUESTIONS AND ANSWERS ON THE FEDERAL EXECUTIVE AGENCY GUIDELINES ON EMPLOYEE SELECTION PROCEDURES

DEPARTMENT OF JUSTICE

Office of the Deputy Attorney General

QUESTIONS AND ANSWERS ON THE FEDERAL EXECUTIVE AGENCY GUIDELINES ON EMPLOYEE SELECTION PROCEDURES

Introduction

NOTE: This document is issued jointly by the Department of Justice, the Department of Labor, and the Civil Service Commission. It was originally published in the FEDERAL REGISTER of Wednesday, January 19, 1977, and is reprinted here for the convenience of users who may be following the issuances of the Department of Labor and the Civil Service Commission on the assigned day of the week publication schedule (see 41 FR 32914, Aug. 6, 1976).

The problems addressed by the Federal Executive Agency Guidelines on Employee Selection Procedures (41 FR 51734 et seq., Nov. 23, 1976) are numerous and important, and some of them are complex. The history of the development of those guidelines is set forth in the introduction to them (41 FR 51734–35). The experience of the Department of Labor in administering its earlier Testing and Selection Order (41 CFR Part 60–3) has been that a series of answers to commonly asked questions is helpful in providing guidance not only to employers and other users, but also to psychologists and others who are called upon to conduct validity studies, and to compliance officers and other Federal personnel who have enforcement responsibilities.

The three Federal agencies issuing the guidelines—the Departments of Justice and Labor and the Civil Service Commission—seeking to benefit from the experience of the Department of Labor, and recognizing that the goal of a uniform position on these issues can best be achieved through a common interpretation of the same guidelines, have decided to issue the following Questions and Answers. The material included is intended to interpret and clarify the provisions of the guidelines. The questions selected are commonly asked questions in the field and those suggested by the guidelines themselves and by the extensive comments received on the various sets of proposed guidelines prior to their adoption. Terms are used in the questions and answers as they are defined in the guidelines.

The three agencies recognize that additional questions may be appropriate for similar treatment at a later date, and contemplate working together to provide additional guidance in interpreting the guidelines. Users and other interested persons are invited to submit additional commonly recurring questions they believe warrant answers, and any comments on the questions and answers set forth below to the appropriate issuing agency.

HAROLD R. TYLER, JR.,
Deputy Attorney General.

LAWRENCE Z. LORBER,
Deputy Assistant Secretary, Director, Office of Federal Contract Compliance Programs.

JAMES C. SPRY,
Executive Assistant to the Commissioners, United States Civil Service Commission.

JANUARY 17, 1977.

1. Q. What is the purpose of the Guidelines?

A. The Guidelines are designed to aid in the achievement of our Nation's goal of equal employment opportunity without discrimination on the grounds of race, color, sex, religion or national origin, by providing a set of principles governing use of employment selection procedures that is consistent with applicable legal and psychological standards, is workable, and which the adopting agencies will apply in the discharge of their respective responsibilities. The Guidelines deal only with this one aspect of the overall equal employment opportunity question and do not purport to provide guidance for anything other than use of selection procedures.

2. Q. What is the basic principle of the guidelines?

A. Selection procedures which have an adverse impact on members of a racial, sex or ethnic group and thus operate to exclude them disproportionately are unlawfully discriminatory unless the user validates the procedure in accord with the Guidelines, or the user otherwise justifies them in accord with Federal law. See § 3.[1] The basis for this principle was adopted by the Supreme Court unanimously in *Griggs* v. *Duke Power Co.*, 401 U.S. 424, and was ratified and endorsed by the Congress when it passed the Equal Employment Opportunity Act of 1972.

3. Q. What is adverse impact, and how is it measured?

A. Adverse impact is a substantially different rate of selection in hiring, promotion or other employment decision) which works to the disadvantage of members of a racial, sex or ethnic group. § 4b. Rate of selection for each group is determined by dividing the number of applicants selected from that group by the total number of applicants from that group and by comparing the results with the result derived in the same way for the group with the highest selection rate. For example, a user may have had over a six month period 120 applicants, 80 white, and 40 black; of whom 60 were hired, 48 whites, and 12 blacks. The selection rate for white applicants was thus 48/80=60%; while that for black applicants was 12/40=30%. In this example, the selection process adversely affected the employment opportunities of blacks because their selection rate (30%) was only one half that of whites (60%).

4. Q. What is a substantially different rate of selection?

A. The Guidelines adopt a 4/5 (80%) Rule of thumb for guidance and operational use. See § 4b. If the selection rate for a group is within 4/5 or 80% of the rate for the group with the highest rate, the enforcement agency will generally not consider adverse impact to exist. In the prior example, the selection rate for blacks was 30%, while that for whites was 60%; so that the black selection rate was 1/2 or 50% of the highest group and there was adverse impact. If, on the other hand, there were 120 applicants, of which 80 were white and 40 black, and the user had selected 42 whites and 18 blacks, the selection rate for blacks would be 18/40 or 45%, while that for whites would be 42/80 or 52.5%. Because the selection rate for blacks as compared to that for whites is 45/52.5 or 85.4% (i.e., more than 80% (or 4/5)), the difference in impact would not be regarded as substantial in the absence of additional information.

5. Q. Does the 4/5 rule of thumb mean that the Guidelines will tolerate up to 20% discrimination?

A. No. The 4/5 rule of thumb speaks only to the question of adverse impact, and is not intended to resolve the ultimate question of unlawful discrimination. Regardless of the amount of difference in selection rates, unlawful discrimination may be present, and may be demonstrated through appropriate evidence. The 4/5 rule merely establishes a numerical basis for drawing initial inference and for requiring additional information.

With respect to adverse impact, the Guidelines expressly state (§ 4b) that differences in selection rates of less than 20% may still amount to adverse impact where the differences are significant in both statistical and practical terms. In the absence of differences which are large enough to meet the 4/5ths rule of thumb or a test of statistical significance, there is no reason to assume that the differences are reliable, or that they are based upon anything other than chance.

Two examples will be illustrative. If, for the sake of illustration we assume that nationwide statistics show that use of an arrest record would disqualify 10% of all Spanish-surnamed persons but only 4% of all Anglo persons, the "selection rate" for that selection procedure is 90% for Spanish-surnamed Americans and 96% for Anglos. Therefore, the 4/5 rule of thumb would not indicate the presence of adverse impact (90% is approximately 94% of 96%). But in this example, the sample is large enough to be statistically significant, and the difference (Spanish-surnamed Americans are 2½ times as likely to be disqualified as Anglos) is large enough to be practically significant. Thus, the enforcement agencies would consider use of arrest record alone as having an adverse impact. See *Gregory* v. *Litton Industries*, 472 F.2d 631 (9th Cir., 1972).

Similarly, a difference of more than 20% in rates may not provide a basis for finding adverse impact if the numbers are very small. For example, if the employer selected three men and one woman from an applicant pool of 20 men and 10 women, the 4/5 rule would indicate adverse impact (selection rate for women is 10%; for men 15%; 10/15 or 66⅔% is less than 80%), yet the numbers are so small that a difference in one person hired would show an adverse impact the other way. In these circumstances, the enforcement agency would not require validity evidence in the absence of additional information.

6. Q. Is adverse impact determined on the basis of the overall selection process or for the components in that process?

A. Adverse impact is determined first for the overall selection process for each job category. If there is no adverse impact from the selection process, there is no obligation under the Guidelines to validate the selection procedures used for that job. If the overall selection process has an adverse impact, the adverse impact of the individual selection procedures should be analysed. For any selection procedure in the process having an adverse impact which the user continues to use, the user is expected to have evidence of validity satisfying the guidelines. § 4b and § 5c.

7. Q. If adverse impact is determined initially on the basis of the overall selection process, does this allow discrimination in one selection procedure to be balanced by another discriminatory procedure?

A. No. As shown above (see answer to Question 5), discrimination and adverse impact have different meanings; and these Guidelines do not permit any kind of discrimination. There are, moreover, many methods of determining proficiency. In some cases, proficiency may be best demonstrated by a written examination, while for others a review of experience or an interview, or a combination of all three may be best. Many employers and other users are utilizing alternative or combinations of approaches. Where the overall selection process of a user results in equal employment opportunities for members of racial, sex or ethnic groups for a job, the Guidelines reflect the position that it would be inappropriate for the federal enforcement agencies to expend their limited enforcement resources examining the validity of each procedure utilized in the process.

8. Q. Is the user obliged to keep records which show whether its selection procedures have an adverse impact on race, sex or ethnic groups?

A. Yes. Under the Guidelines the user is obliged to maintain evidence indicating the impact (if any) which their selection procedures have on identifiable racial, sex or ethnic groups. § 4 a and b. If the selection procedure does have an adverse impact on one or more such groups, the user is expected to maintain documentation evidence showing the validity of the procedure. § 13a.

9. Q. What is the relationship between affirmative action and the requirements of the Guidelines?

A. The two subjects are different, although related. The Guidelines state that compliance with these Guidelines does not relieve users of any affirmative action obligations they may have. § 11. The Guidelines, however, encourage the development and effective implementation of affirmative action plans or programs in two ways. First, the Guidelines state (§ 4c) that in determining whether to institute action against a user on the basis of a selection procedure which has adverse impact and which has not been validated, the enforcement agency will take into account the general equal employment opportunity posture of the user with respect to the job classifications for which the procedure is used and the progress which has been made in carrying out any affirmative action program. If the user has demonstrated over a substantial period of time that it is in fact providing equal employment opportunity in the job or job groups in question, the enforcement agency will generally exercise its discretion by not initiating enforcement proceedings. Secondly, the Guidelines encourage affirmative action programs by stating (§ 11) that nothing in them is intended to preclude the use of selection procedures, consistent with Federal law, which assist in the achievement of affirmative action objectives.

10. Q. Does the language of § 4c and § 11 concerning non-discrimination in the making of employment decisions prevent the adoption of effective affirmative action programs?

A. No. The Equal Employment Opportunity Coordinating Council has adopted a policy statement on affirmative action programs (41 Fed. Reg., Sept. 13, 1976). A copy of that statement is attached hereto and incorporated herein. The language of § 4c and § 11 is based upon and merely intended as a reminder of the non-discrimination provisions contained in Title VII and Executive Order 11246. The policy statement on affirmative action contains a similar prohibition for the same reason. The kind of color conscious affirmative action steps outlined in the Coordinating Council's policy statement do not, in the judgment of the enforcement agencies, violate the language of § 4c or § 11 of the Guidelines. This view is consistent with the well established principle that affirmative action programs of this kind do not violate the comparable anti-preference provisions of Title VII or Executive Order 11246.

11. Q. If it is not feasible or appropriate to validate a selection procedure, what obligations does the user of such a procedure have?

A. The Guidelines recognize that it is not always feasible or appropriate to utilize the validation techniques of the psychological profession as contemplated by the Guidelines. If the procedure cannot be validated because it is informal, unstandardized or unscored, the user should insofar as possible eliminate adverse impact, or if feasible modify the procedure to one which is formal, scored or quantified, and then validate the procedure in accord with these Guidelines. If it is not feasible to validate a standardized selection procedure, the user should either adopt an alternative procedure to eliminate adverse impact or modify the procedure to eliminate the adverse impact. The continued use of either a standardized or unstandardized procedure may also be permitted if the user can otherwise justify such use in accord with the federal law. See § 3b.

12. Q. How can users justify continued use in accord with federal laws of a procedure which has an adverse impact and which it is not feasible or appropriate to validate?

A. That subject is one to which the Guidelines are not addressed. In *Griggs* v. *Duke Power Co.*, 401 U.S. 424, the Supreme Court indicated that the burden on the user was a heavy one, but that the selection procedure could be used if there was a "business necessity" for its continued use. The federal agencies will consider evidence which shows "business necessity" to justify continued use of a selection procedure. Evidence of any other justification would have to be considered on a case by case basis.

13. Q. Do the Guidelines apply to the selection procedures utilized by state and local government licensing and certification boards and agencies?

A. The Guidelines neither broaden nor narrow the coverage of the underlying federal law. The Guidelines state however that licensing and certification are employment decisions to the extent that they may be covered by federal law. The courts are divided on that question. The Department of Justice has taken the position that at least some kinds of licensing and certification which deny persons access to employment opportunity may be enjoined in an action brought pursuant to Section 707 of the Civil Rights Act of 1964, as amended. See, *United States* v. *North Carolina*, 400 F. Supp. 343 (E.D. N.C. 1975) (three judge court) (certification of teachers).

14. Q. Where can a user obtain a "certification of validity"?

A. The federal enforcement agencies do not recognize any certification of validity or validation. See § 7a. If a user's selection procedures have an adverse impact, the user is expected to produce evidence of the validity of the procedure, not a certificate that they have been validated. Thus, the assertion by anyone, including a State employment service representative, that a test battery or other selection procedure has been vali-

[1] Section references throughout these questions and answers are to the Sections of the Federal Executive Agency Guidelines on Employee Selection Procedures (herein referred to as "Guidelines") that were published by the Department of Labor, Department of Justice and the U.S. Civil Service Commission on November 23, 1976, at 41 FR 51734 et seq. In the Department of Labor issuance, the section references are preceded by an additional reference to "§ 60–3" (thus, the reference here to § 3 refers to § 60–3.3 in the Labor Department's issuance).

dated is not sufficient to satisfy the Guidelines.

15. Q. What is the relationship between the Guidelines and other statements of psychological principles, such as the Standards for Education and Psychological tests published by the American Psychological Association (Wash., D.C., 1974) (hereinafter "APA Standards")?

A. The Guidelines are designed to be consistent with the generally accepted standards of the psychological profession. However, to the extent that there may be differences between particular provisions of the Guidelines and expressions of principles found elsewhere, the Guidelines will be given precedence by the enforcement agencies. With respect to any matters not addressed by the Guidelines, users are, of course, free to follow the standards of the profession so long as doing so is consistent with applicable equal employment opportunity requirements.

16. Q. When should a validity study be carried out?

A. The Guidelines call for a validation study whenever a selection procedure has adverse impact on any racial, sex or ethnic group. If a selection procedure has adverse impact, its use in making employment decisions without adequate evidence of validity would be inconsistent with the Guidelines. Waiting until a selection procedure is challenged increases the risk that the user will be found to be discriminating and be liable for back pay awards, plaintiffs' attorneys fees, loss of Federal contracts or grants and the like. Validation studies begun on the eve of litigation have seldom been found to be adequate. Users of selection procedures should consider the potential benefit to their employment systems and the savings in resources which can result from having a validation study completed or well under way before the procedures are administered for use in employment decisions. Public merit systems typically have a special obligation to validate selection procedures regardless of any expectation that adverse impact may result.

17. Q. Are there any special requirements as to who is allowed to perform a validity study?

A. No, a validity study is judged on its own merits, and may be performed by a member of the user's staff, a consultant, or any person knowledgeable of the principles of validity research. However, it is the user's responsibility to see that the study meets these Guidelines which are based upon professionally accepted standards.

18. Q. Can a selection procedure be a valid predictor of performance on a job in a certain location and be invalid for predicting success on a different job or the same job in a different location?

A. Yes. Differences in job duties, locations or study samples can affect validity, so that a selection procedure found to have validity in one situation may not have validity in different circumstances. Conversely, a selection procedure not found to have validity in one situation may have validity in different circumstances.

19. Q. Does the way a selection procedure is used affect its validity?

A. Yes. Selection procedures which have been properly validated can be used in improper ways. For this reason selection procedures must be administered and scored in a standardized manner during the research and must continue to be administered and scored in the same way while being used operationally. § 5d. A selection procedure which has been validated as predicting success on one job might be invalid for predicting success on another job.

Even if the selection procedure is properly administered and scored and the same job is involved, it may be used improperly. For instance, it would be improper to use a selection procedure to rank applicants if the validity study only supported the use of minimum acceptance levels ("pass/fail"). The validity study should reflect the way the selection procedure will be used in practice.

20. Q. Is the user of a selection procedure required to develop the procedure from scratch?

A. No, a selection procedure developed elsewhere may be used. However, the user has the obligation to show that its use for the job in question is consistent with the Guidelines.

21. Q. Is evidence that a selection procedure which has been validated in one context has validity in another context (validity generalization) alone sufficient justification for its use elsewhere (transportability)?

A. No. The conditions governing transportability are stated in § 6 of the Guidelines. While some degree of validity generalization is necessary for transportability, it is not sufficient.

Validity generalization refers to the degree to which the results of a criterion-related validity study conducted on a selection procedure in one situation lead to inferences concerning the degree of validity of that selection procedure or similar selection procedures in other situations. Transportability refers to the permissible use of a selection procedure in more than one context. Validity generalization is a statistical concept concerning validity evidence, while transportability is a judgment concerning use of selection procedure.

22. Q. Under what circumstances can a criterion-related validity study done elsewhere be used as sufficient validity evidence to meet the Guidelines (on other than an interim basis)?

A. A validity study done elsewhere may be used as sufficient evidence if four conditions are met (see § 6b):

1. The weight of the evidence from one or more studies must show that the procedure was valid in its use elsewhere.

2. The job(s) for which the selection procedure will be used must closely match the job(s) in the original study as shown by a comparison of results (in terms of job duties) of the job analyses in both contexts.

3. A fairness study must be contained in the original evidence for those groups constituting a significant factor in the user's labor market (see Answer to Questions 31–34 below).

4. There are no variables in the other study or studies which are likely to affect validity or fairness significantly (see Answer to Question 23 below).

23. Q. Under what circumstances can a selection procedure supported either by criterion-related validity evidence obtained elsewhere or by a partially completed validity study be used on an interim basis?

A. Interim use of criterion-related validity evidence is permitted in three situations:

1. If it is technically feasible for a user to conduct an internal validity study and there are significant differences between the research sample in a study done elsewhere and the user's job applicants in terms of such variables as age, education, job experience, etc., the selection procedure may only be used on an interim basis pending an internal validity study.

2. If validity evidence obtained elsewhere does not contain an investigation of fairness the selection procedure may only be used on an interim basis until evidence of fairness or unfairness is shown either from other sources or the user's own study.

3. If a user has substantial validity evidence either from other sources or from studies being conducted by or for the user, but which are not in complete compliance with the Guidelines, the selection procedure may be used only on an interim basis pending completion of validity studies.

24. Q. What are the potential consequences to a user when a selection procedure is used on an interim basis?

A. The fact that the Guidelines permit interim use of a selection procedure does not immunize the user from liability for back pay, attorney fees and the like, should use of the selection procedures later be found to be in violation of the Guidelines (e.g., because of a showing of unfairness), and for this reason users should take steps to come into full and complete compliance with the guidelines as soon as possible. It is also appropriate for users to consider ways of minimizing adverse impact during the period of interim use.

25. Q. Under what circumstances may a validity study conducted cooperatively among users or in different units of a multi-unit organization be used in locations not included in the validity study?

A. A selection procedure supported by validity evidence obtained from a cooperative or multi-unit study may be used in new situations where the conditions described in the answer to Question 22 are met, and where there are no significant diferences between the applicant populations and the research subjects in such characteristics as age, education, job experience, or the like.

26. Q. How does a user choose which validation strategy to use?

A. A user should select the validation strategy which is most appropriate for the type of selection procedure, the job, and the employment situation. Content validity by itself is inappropriate where the selection procedures are measures of aptitude or personality traits, and for jobs in which the employee is expected to gain the measured skills or knowledges while on the job. In such circumstances criterion-related or construct validation strategies should be used. On the other hand where the selection procedures are work samples or measures of fully developed skills or knowledges, content validity is appropriate although criterion-related validation techniques could be used where technically feasible. Where a sample of sufficient size cannot be obtained, where appropriate measures of employee proficiency to be used as criteria cannot be developed, or where there is a severe range restriction in scores on selection procedures, and this range restriction cannot be reduced or appropriately corrected, criterion-related validity may be technically infeasible.

27. Q. Why don't the Guidelines contain a preference for criterion related validity over content or construct validity?

A. Generally accepted principles of the psychological profession do not recognize any such preference, but contemplate the use of criterion related, content, or construct validity strategies as appropriate. APA Standards, E, pp. 25–26; *Washington* v. *Davis*, ____ U.S. ____, 44 U.S.L.W. 4789, fn. 13. Moreover, the Guidelines normally require criterion related evidence as a component part of any construct validity study § 12d. With respect to content validity, where the content of the selection procedure closely matches the behaviors or activities required for job performance, as in a typing test for typists or a truck driving test for truck drivers, a content validity approach is the most appropriate way of showing validity. Because the Guidelines make it clear that content validity by itself is not appropriate for aptitude, intelligence, personality or interest tests (§ 12c(1)), and that evidence of content validity depends upon the closeness of the resemblance between work behavior and the selection procedure, there is no need or justification for a general preference for criterion related validity over content validity. All three strategies are empirically based. Construct validity requires empirical research evidence, which is normally criterion-related, linking the selection procedure to the job, while content validity requires a factually based linkage of the selection procedure to the activities of the job.

28. Q. Is the use of a content validity strategy appropriate for measuring in the selection process skills or knowledges which are taught in a training academy after initial employment?

A. No. The Guidelines state (§ 12c(1)) that content validity is not appropriate where the slection procedure involves knowledges, skills, or abilities which the employee will be expected to learn "on the job." The phrase "on the job" is intended to apply to training which occurs after hiring, promotion or the like.

29. Q. Is a full job analysis necessary for all validity studies?

A. It is required for all content and construct studies, but not for all criteria in a criterion related study. See § 12a, and § 12b(3). Proper measures of the results or outcomes of job behaviors such as production rate or error rate may be used without a full job analysis where a review of information about the job shows that these criteria are important to the employment situation of the user. Similarly, measures such as absenteeism, tardiness or turnover may be used if these behaviors are shown by a review of information about the job to be important in the specifics situation. A standardized rating of overall job performance may be used if the user can demonstrate its appropriateness for the specific job and employment situation through a study of the job. Measures of overall job performance should be carefully developed and standardized, and their use should be carefully controlled. See, *Albemarle Paper Co.* v. *Moody*, 422 U.S. 405 (1975).

30. Q. Under what circumstances may success in training be used as a criterion in criterion-related validity studies?

A. Success in training is an appropriate criterion when: (1) The job analysis shows that success in training is necessary for successful job performance or related to increasing proficiency on the job; and (2) training success is properly measured. § 12b(3). Where the measure of success in training is a paper and pencil test, the measure should be carefully developed to ensure that factors which are not job related do not unfairly inflate or depress the measures of training success and to ensure that the measures are in fact job related. § 12b(3).

31. Q. What does "unfairness of a selection procedure" mean?

A. When a specific score on a selection procedure has a different meaning in terms of expected job performance for members of one racial, sex or ethnic group than the same score does for members of another group, the use of that selection procedure may be unfair for members of one of the groups. See § 14 (k). For example, if members of one group have an average score of 40 on the selection procedure, but perform on the job as well as another group which has an average score of 50, then the selection procedure is unfair to the members of the lower scoring group. (The concept of test fairness has sometimes been referred to as differential validity or differential prediction).

32. Q. When should the user investigate the question of fairness?

A. Fairness should be investigated generally at the same time that a criterion-related validity study is conducted, or as soon thereafter as feasible.

33. Q. Why do the Guidelines require that users look for evidence of unfairness?

A. The consequences of using unfair selection procedures are severe in terms of discriminating against applicants on the basis of race, sex or ethnic group membership, or in terms of perpetuating the effects of past discrimination. Accordingly, these studies should be performed routinely where technically feasible and appropriate, even if the probability of finding unfairness is small. See *Albemarle Paper Co.* v. *Moody*, 422 U.S. 405, 435. Moreover, the APA Standards published in 1974 call for the investigation of test fairness in criterion related studies wherever feasible (pp. 43–44).

34. Q. What should be done if a selection procedure is unfair for one or more groups in the relevant labor market?

A. The user has three options. See, § 12b(7)(iv). First, the selection instrument may be replaced by another validated instrument which is fair to all groups. Second, the selection instrument may be revised to eliminate the sources of unfairness. For example, certain items may be found to be the only ones which cause the unfairness to a particular group, and these items may be replaced by others. Finally, revisions may be made in the use of the selection procedure to ensure that the probability of being selected is compatible with the probability of successful job performance.

35. Q. If there are not enough members of an adversely affected race, sex or ethnic group in the potential research sample to make it feasible to study test fairness, should the group still be included in the sample?

A. Yes, normally the study should be conducted on a sample which is representative of the expected candidates for the job in question. However, there may be situations in which the members of the race, sex or ethnic group available for the study are so dissimilar from other persons in the sample that the information should not be combined for data analyses.

36. Q. Do the Guidelines require a search for alternative selection procedures?

A. The Guidelines provide that while a validity study is being conducted, the user should attempt to find and apply procedures that have as little adverse impact as possible. However, once that effort has been made and the chosen procedure has been studied and shown to be valid, the Guidelines do not require the user to search further for altefnative procedures. The Guidelines do call for a user to take steps to ensure that selection procedures are kept current, and to investigate any alternative procedures shown to have at least equal validity and less adverse impact. The obligation to investigate alternative procedures is greater when the user is in an interim use status.

37. Q. What does a user do if there are not enough persons in a job to conduct a criterion related study?

A. There are a number of options the user should consider, depending upon the particular facts and circumstances.

1. Changing the procedure so as to eliminate adverse impact;

2. Validating the procedure through a content validity strategy, if appropriate (see § 12c and answer to Question 25 and 27);

3. Using a selection procedure validated elsewhere in conformity with the

Guidelines (see § 6 and answers to Questions 22–24);

4. Engaging in a cooperative study with other facilities or users (in cooperation with such users either bilaterally or through industry or trade association), or participating in research studies conducted by the state employment security system. Where different locations are combined, care is needed to insure that the jobs studied are in fact the same and that the study is adequate and in conformity with the Guidelines (see § 6);

5. Combining essentially similar jobs into a single study sample may in some circumstances be consistent with the Guidelines (see § 5g and § 12b).

38. Q. If a user has previously engaged in discrimination against members of a racial, sex or ethnic group, is the user precluded from making its selection procedures more stringent?

A. In such circumstances, the Guidelines provide (§ 9) that the user should afford those members of the group discriminated against, who were available in the relevant job market during the period of discriminatory practices, an opportunity to qualify under the less stringent procedures, unless the user demonstrates that the more stringent procedures are required for the safety or efficiency of the operation. The user is not precluded from using the more stringent procedures for all other persons.

39. Q. If a user has all selection procedures administered by an employment agency or a consultant, does that relieve the user of responsibilities under the Guidelines?

A. No. The user remains responsible for the selection procedures utilized by others on behalf of the user. It is therefore expected that the user will have sufficient information available to show: (a) what selection procedures are being used on its behalf; (b) the adverse impact of those procedures, and evidence of the validity of any such procedures; and (c) the number of persons by race, sex and ethnic group referred, and the total number considered for referral or for job applications.

[FR Doc.77-1932 Filed 1-18-77;9:05 am]

Title 41—Public Contracts and Property Management

CHAPTER 60—OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS, EQUAL EMPLOYMENT OPPORTUNITY, DEPARTMENT OF LABOR

PART 60-3—GUIDELINES ON EMPLOYEE SELECTION PROCEDURES

CROSS REFERENCE: For a document issued by the Department of Justice, the Department of Labor, Office of Federal Contract Compliance Programs, and the Civil Service Commission on the subject of questions and answers on the Federal Executive Agency Guidelines on Employee Selection Procedures (41 FR 51744) see FR Doc. 77-1932 also appearing in this Part VI of the issue.

CIVIL SERVICE COMMISSION

EMPLOYEES SELECTION PROCEDURE GUIDELINES

Appendices to Federal Personnel Manual Supplements

CROSS REFERENCE: For a document issued by the Department of Justice, the Department of Labor, Office of Federal Contract Compliance Programs, and the Civil Service Commisison on the subject of questions and answers on the Federal Executive Agency Guidelines on Employee Selection Procedures (41 FR 51752) see FR Doc. 77-1932 also appearing in this Part VI of the issue.

federal register

FRIDAY, JANUARY 21, 1977

PART VII



DEPARTMENT OF LABOR

Employment Standards Administration

MINIMUM WAGES FOR FEDERAL AND FEDERALLY ASSISTED CONSTRUCTION

General Wage Determination Decisions

DEPARTMENT OF LABOR

Employment Standards Administration

MINIMUM WAGES FOR FEDERAL AND FEDERALLY ASSISTED CONSTRUCTION

General Wage Determination Decisions

General Wage Determination Decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed in construction activity of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determinations by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of Part 1 of Subtitle A of Title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates, (37 FR 21138) and of Secretary of Labor's Orders, 12–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General Wage Determination Decisions are effective from their date of publication in the FEDERAL REGISTER without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

MODIFICATIONS AND SUPERSEDEAS DECISIONS TO GENERAL WAGE DETERMINATION DECISIONS

Modifications and Supersedeas Decisions to General Wage Determination Decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the Modifications and Supersedeas Decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of Part 1 of Subtitle A of Title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates, (37 FR 21138) and of Secretary of Labor's Orders 13–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in foregoing General Wage Determination Decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and Supersedeas Decisions are effective from their date of publication in the FEDERAL REGISTER without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Office of Special Wage Standards, Division of Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rule-making procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Wage Determination Decision.

MODIFICATIONS TO GENERAL WAGE DETERMINATION DECISIONS

The numbers of the decisions being modified and their dates of publication in the FEDERAL REGISTER are listed with each State.

Alabama:	
AL76–1134	Dec. 3, 1976.
California:	
CA76–5120; CA76–5121	Dec. 28, 1976.
Illinois:	
IL76–2076; IL76–2080	Aug. 13, 1976.
IL76–2128	Oct. 22, 1976.
IL76–2145	Dec. 3, 1976.
IL76–2153	Nov. 26, 1976.
Iowa:	
IA76–4147	Sept. 10, 1976.
IA76–4150	Sept. 17, 1976.
IA76–4173; IA76–4174	Oct. 15, 1976.
IA76–4185	Nov. 19, 1976.
Louisiana:	
LA76–4187	Do.
Michigan:	
MI76–2139	Do.
Mississippi:	
MS76–1020	Jan. 30, 1976.
New Jersey:	
NJ76–3248; NJ76–3249	Oct. 1, 1976.
Oklahoma:	
OK76–4017	Feb. 6, 1976.
OK76–4138	July 30, 1976.
OK76–4160	Oct. 1, 1976.
Puerto Rico:	
PR76–3089; PR75–3090; PR 75–3091	Aug. 8, 1975.
Texas:	
TX76–4049	Feb. 20, 1976.
TX76–4116	July 16, 1976.
TX76–4164; TX76–4168; TX76–4169; TX76–4170; TX76–4171	Oct. 8, 1976.
TX76–4183	Nov. 12, 1976.
TX76–4192	Dec. 17, 1976.
TX76–4193; TX76–4194; TX76–4195; TX76–4197	Dec. 28, 1976.
Virginia:	
AP–805	May 4, 1973.

SUPERSEDEAS DECISIONS TO GENERAL WAGE DETERMINATION DECISIONS

The numbers of the decisions being superseded and their dates of publication in the FEDERAL REGISTER are listed with each State.

Supersedeas Decision numbers are in parentheses following the numbers of the decisions being superseded.

Alaska:	
AK77–5002 (AK77–5009)	Jan. 4, 1977.
Florida:	
AR–4050 (FL77–1003)	Nov. 15, 1974.
Iowa:	
IA76–4099 (IA77–4004)	June 18, 1976.
Nebraska:	
NE76–4180 (NE77–4003)	Oct. 29, 1976.
New Hampshire:	
NH76–2093 (NH77–2001)	July 30, 1976.
NH76–2113 (NH77–2002)	Sep. 17, 1976.
Ohio:	
OH76–2070 (OH77–2005)	June 4, 1976.
OH76–2077 (OH77–2005)	June 18, 1976.
OH76–2086, OH76–2088 (OH77–2005)	July 30, 1976.
OH76–2087 (OH77–2005)	July 23, 1976.
OH76–2115 (OH77–2005)	Sept. 24, 1976.
OH76–2118 (OH77–2005)	Oct. 1, 1976.
South Carolina:	
SC76–1037 (SC77–1008)	Mar. 5, 1976.
Texas:	
TX76–4128 (TX77–4007)	July 23, 1976.
TX76–4152 (TX77–4006)	Sept. 24, 1976.
TX76–4157 (TX77–4005)	Oct. 1, 1976.
Washington:	
AQ–1109 (WA77–5008)	May 24, 1974.

Signed at Washington, D.C., this 14th day of January 1977.

RAY J. DOLAN,
Assistant Administrator,
Wage and Hour Division.

MODIFICATIONS P. 2

	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION NO. CA76-5120 - Mod. #1 (41 FR 56556-December 28, 1976) Imperial, Inyo, Kern, Los Angeles, Mono, Orange, Riverside, San Bernardino, San Luis Obispo, Santa Barbara and Ventura Counties, California					
Change:					
Bricklayers; Stonemasons:					
Los Angeles County (except Cities of Santa Monica, Malibu, Venice, Pasadena, South Pasadena, Arcadia, Monrovia and South of Rosecrans Blvd., including Long Beach)	$ 10.80	.95	$1.15		.30
Santa Barbara and San Luis Obispo Counties	10.47	1.05	1.30		.01
Ventura County	10.97	.85	1.20		.02
DECISION NO. CA76-5121 - Mod. #1 (41 FR 56566-December 28, 1976) Imperial, Kern, Los Angeles, Orange, Riverside, San Bernardino, San Luis Obispo, Santa Barbara and Ventura Counties, California					
Change:					
Bricklayers; Stonemasons:					
Los Angeles County (except Cities of Santa Monica, Malibu, Venice, Pasadena, South Pasadena, Arcadia, Monrovia and South of Rosecrans Blvd., including Long Beach)	$10.80	.95	$ 1.15		.30
Santa Barbara and San Luis Obispo Counties	10.47	1.05	1.30		.01
Ventura County	10.97	.85	1.20		.02

MODIFICATIONS P. 1

	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
Decision # AL76-1134 - Mod. # 2 (41 FR 53239 - December 3, 1976) Lawrence, Limestone and Morgan Counties, Alabama.					
Change:					
Laborers (Lawrence County)					
Laborers, mason tenders, plasterer tenders	5.15	.20	.30		
Air tool operator (jackhammer; vibrator) mortar mixers, pipe layers	5.35	.20	.30		.05
Sheet metal workers	9.75	.65	.70		

MODIFICATIONS P. 3

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION #IL76-2078 - Mod. #1					
(41 FR 34493 - August 13, 1976)					
Madison & St. Clair Counties, Illinois					
CHANGE:					
Boilermakers	$10.90	.65	1.20		.03
Bricklayers: Madison County					
Alton & Granite City and Vicinities					
Building Construction:					
Bricklayers, Stonemasons, Pointers-Cleaners-Caulkers	9.65		.75	1.00	.05
Residential Construction:	8.80		.75	1.00	.05
Edwardsville, Marine, Highland & Troy					
Bricklayers, Stonemasons, Marble-Tile-Terrazzo Workers, Pointers, Caulkers & Cleaners	9.95	.50	.75	1.00	
Bricklayers: St. Clair County					
East St. Louis & Vicinity					
Bricklayers, Stonemasons, Marble-Tile-Terrazzo Workers, Pointers-Cleaners-Caulkers	9.95	.50	.75	1.00	
Belleville & Vicinity					
Bricklayer & Stonemasons	11.00		.30	1.00	
Electricians:					
Alton & Vicinity in Madison County	11.60	.40	1%+.30	6%	.3 of 1%
St. Clair County & the Remaindar of Madison County	11.23	4%	1%+.65	6%	.25%
Plumbers & Steamfitters:					
Alton & Northern part of Madison County; north of Mitchell	12.00	.48	.96	.40	

MODIFICATIONS P. 4

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION #IL76-2080 - Mod. #1					
(41 FR 34475 - August 13, 1976)					
Bond, Calhoun, Clinton, Greene, Jersey, Monroe, Montgomery, Randolph & Washington Counties, Illinois					
CHANGE:					
Boilermakers	$10.90	.65	1.20		.03
Bricklayers:					
Montgomery County					
Bricklayers, Stonemasons, Marble-Tile-Terrazzo Workers, Cement Masons, Plasterers, Pointers, Cleaners & Caulkers					
Hillsboro & East Thereof	9.75		.25		
Bricklayer, Stonemasons, Pointers-Cleaners & Caulkers					
Remainder of the County	9.65		.75	1.00	.05
Calhoun & Jersey Counties					
Bricklayers, Stonemasons, Marble-Tile & Terrazo Workers	9.65		.75	1.00	.05
DECISION #IL76-2145 - Mod. #2					
(41 FR 53251 - December 3, 1976)					
Champaign, Clark, Coles, Cumberland, DeWitt, Douglas, Edgar, Macon, Moultrie, Piatt, Shelby & Vermilion Counties, Illinois					
CHANGE:					
Electricians:					
Clark & Edgar Counties	11.00	.40	1%+.50		.01

MODIFICATIONS P. 5

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION #IL76-2128 - Mod. #1					
(41 FR 46823 - October 22, 1976)					
Christian, DeWitt, Macon, Macoupin, Moultrie, Piatt & Shelby Counties, Illinois					
CHANGE:					
Bricklayers & Stonemasons:					
Macoupin County:					
East ½ of County, including Gillespie, Banid, Mt. Olive & Staunton	$9.65		.75	1.00	.05
Plumbers & Steamfitters:					
Macon, DeWitt & Moultrie Counties; Twps. of Pana, Assumption & Radford in Christian County; West of Route #105 in Piatt County	11.25	.35	.75		.1%
Power Equipment Operators:					
Moultrie County					
Class I	11.00	.40	.75		.13
Class II	10.95	.40	.75		.13
Class III	10.75	.40	.75		.13
Class IV	7.25	.40	.75		.13

MODIFICATIONS P. 6

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION #IL76-2153 - Mod. #2					
(41 FR 52253 - November 26, 1976)					
Clay, Crawford, Edwards, Effingham, Fayette, Hamilton, Jasper, Jefferson, Lawerence, Marion, Richland, Wabash, Wayne & White Counties, Illinois					
CHANGE:					
Linemen:					
Portion north of Avens, Bear Grove, Sefton & Sharon Twps. in Fayette County					
Groundman Equip. Operator Class 1	$9.85	.35	1%		.5%
Groundman Truck Driver:					
W/Winch	7.38	.35	1%		.5%
WO/Winch	7.03	.35	1%		.5%
Groundman Class "A"	6.71	.35	1%		.5%
Power Equipment Operators:					
Remainder of Counties					
Class I	11.00	.40	.75		.13
Class II	10.95	.40	.75		.13
Class III	10.75	.40	.75		.13
Class IV	7.25	.40	.75		.13

MODIFICATIONS P. 7

	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION NO. IA76-4147 Mod. #3 (41 FR 38716 - Sept. 10, 1976) Dubuque County (City of Dubuque & abutting municipalities), Iowa					
Change: Building, Water Treatment Plants, & Sewage Disposal Plants Construction:					
Electricians	$10.32	.30	17+.25		1%
Plumbers & Steamfitters	10.92	.50	.30		.08
DECISION NO. IA76-4150 - Mod. #1 (41 FR 40393 - Sept. 17,1976) Polk County, Iowa					
Change: Building, Water Treatment Plants, & Sewage Disposal Plants Construction:					
Sheet Metal Workers	$10.27	.50	.66		.07
DECISION NO. IA76-4173 - Mod. #1 (41 FR 45805 - Oct. 15, 1976) Story County (City of Ames and abutting municipalities), Iowa					
Change: Building, Water Treatment ~~Plants & Sewage Disposal~~ Plants Construction:					
Sheet Metal Workers	$10.27	.50	.66		.07

MODIFICATIONS P. 8

	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION NO. IA76-4174 - Mod. #2 (41 FR 45808 - Oct. 15, 1976) Webster County (City of Fort Dodge), Iowa					
Change: Building, Water Treatment Plants & Sewage Disposal Plants Construction:					
Electricians	$10.05	.40	1%		1%
DECISION NO. IA76-4185 - Mod. # 1 (41 FR 51285 - Nov. 19, 1976) Pottawattamie County (City of Council Bluffs & the area within 3 miles from the City limits) Iowa					
Change: Building Construction:					
Electricians	$11.83	.58	17+.55		4%

MODIFICATIONS P. 9

	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION #LA76-4187 - Mod. #3 (41 FR 51288 - November 19, 1976) Statewide Louisiana					
Change:					
Carpenters:					
Zone 7	$ 8.30				
Zone 8	8.65	.35	.30		.04
Zone 9	8.30				
Zone 11	7.25				
Glaziers:					
Zone 2	7.45				.01
Lathers:					
Zone 3	9.985	.30			.01
Zone 4	10.05				
Zone 5	7.90				.01
Millwrights:					
Zone 5	9.05				
Zone 6	9.35	.35	.30		.04
Zone 7	9.05				
Zone 10	8.15				
Painters:					
Zone 1:					
Group 1	9.41				
Group 2	9.535				
Group 3	9.61				
Group 4	9.755				
Group 5	9.895				
Zone 4:					
Group 1	7.35				
Group 2	7.72				
Zone 6:					
Group 1	7.50				
Group 2	8.00				
Group 3	8.50				
Zone 7:					
Group 1	8.35		.30		.025
Group 2	8.80		.30		.025
Group 3	9.05		.30		.025
Group 4	9.15		.30		.025

MODIFICATIONS P. 10

DECISION #LA76-4187 (CONT'D)	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
Painters (Cont'd):					
Zone 8:					
Group 1	$ 7.05				
Group 2	8.05				
Group 3	7.55				
Piledrivermen:					
Zone 5	8.80				
Zone 6	8.90	.35	.30		.04
Zone 7	8.80				
Zone 10	8.15				
Plasterers:					
Zone 2	7.75				.01
Zone 7	9.05			1.00	
Plumbers & pipefitters:					
Zone 3	9.95	.45	.55		.10
Zone 5	8.74	.40	.50	.95	.09
Power Equipment Operators (Highway Construction):					
Group 1:					
Zone 3	8.73	.25	.48		.05
Zone 4	8.91	.25	.48		.05
Group 2:					
Zone 3	8.97	.25	.48		.05
Zone 4	9.16	.25	.48		.05
Group 3:					
Zone 3	8.48	.25	.48		.05
Zone 4	8.66	.25	.48		.05
Group 4:					
Zone 3	7.47	.25	.48		.05
Zone 4	7.48	.25	.48		.05
Group 5:					
Zone 3	6.91	.25	.48		.05
Zone 4	6.90	.25	.48		.05
Group 6:					
Zone 3	6.22	.25	.48		.05
Zone 4	6.22	.25	.48		.05
Group 7:					
Zone 3	5.90	.25	.48		.05
Zone 4	5.90	.25	.48		.05
Group 8:					
Zone 3	7.47	.25	.48		.05
Zone 4	7.48	.25	.48		.05

MODIFICATIONS P. 11

DECISION #LA76-4187 (CONT'D)	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
Power Equipment Operators (Highway Construction) (Cont'd):					
Group 9:					
Zone 3	$ 7.72	.25	.48		.05
Zone 4	7.73	.25	.48		.05
Group 10:					
Zone 3	6.15	.25	.48		.05
Zone 4	6.15	.25	.48		.05
Roofers:					
Zone 3:					
Roofers	8.16	.35	.50		.04
Roofers' helpers	5.34	.35	.50		.04
Zone 4:					
Roofers, steep	7.35				
Roofers, flat	7.10				
Roofers, kettlemen	6.85				
Roofers' helpers	5.80				
Zone 5:					
Roofers	8.10		.20		.02
Kettlemen	5.62		.20		.02
Roofers' helpers	4.85		.20		.02
Sheet metal workers:					
Zone 4	9.65	3%+.40	.25		.07
Soft floor layers:					
Zone 5	8.30				
Zone 6	8.65	.35	.30		.04
Zone 7	8.30				

MODIFICATIONS P. 12

DECISION #MI76-2139 - Mod. #4 (41 FR 51313 - November 19, 1976) Macomb, Monroe, Oakland, Washtenaw & Wayne Counties, Michigan	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
Bricklayers & Stonemasons:					
Washtenaw County	$13.62		.90		
Cement Masons:					
Washtenaw County	13.42		.90		
Plasterers:					
Remainder of Counties & Remainder of Monroe County	11.65		.65		
Sheet Metal Workers:					
Remainder of Counties	10.135	.90+.70	10%	11%	.11
Truck Drivers:					
Building & Heavy Construction					
Pole Trailers; Low Boys; Straddle Carrier; Double Bottoms & Special Load Permits	9.44	a20.00	a25.00		
Semi-Drivers	9.34	a20.00	a25.00		
All Other Truck Drivers	9.19	a20.00	a25.00		
Power Equipment Operators:					
Building & Heavy Construction					
Class A	11.27	.80	.85	11%	.05
Class B	11.05	.80	.85	11%	.05
Class C	10.82	.80	.85	11%	.05
Class D	10.52	.80	.85	11%	.05
Class E	9.51	.80	.85	11%	.05
Class F	8.75	.80	.85	11%	.05
Laborers: Building & Heavy Wayne, Oakland & Macomb Cos:					
Group 1	8.48	.75	.70	.75	
Group 2	8.56	.75	.70	.75	
Group 3	8.66	.75	.70	.75	
Group 4	8.71	.75	.70	.75	
Group 5	8.73	.75	.70	.75	
Group 6	8.81	.75	.70	.75	
Group 7	8.86	.75	.70	.75	
Group 8	9.23	.75	.70	.75	
Decision # MS76-1020 - Mod. 5. (41 FR 4780 - January 30, 1976) Hancock, Harrison, Jackson, and Pearl River Counties, Mississippi.					
Add:					
Laborers:					
Pipelayers (concrete and clay	$5.20	.15	.15		

MODIFICATIONS P. 13

DECISION #NJ76-3248 - Mod. #4 (41 FR 43598 - October 1, 1976) Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, Monmouth, Ocean, and Salem Counties, New Jersey	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Laborers, Heavy & Highway Construction:					
Zone 1					
Group 1	$ 8.25	.60	1.00	d	.10
Group 2	7.95	.60	1.00	d	.10
Group 3	7.90	.60	1.00	d	.10
Group 4	7.75	.60	1.00	d	.10
Group 5	7.65	.60	1.00	d	.10
Group 6	7.40	.60	1.00	d	.10
Group 7	7.35	.60	1.00	d	.10
Group 8	7.25	.60	1.00	d	.10
Zone 2					
Group 1	8.75	.60	1.00	d	.10
Group 2	8.60	.60	1.00	d	.10
Group 3	8.35	.60	1.00	d	.10
Group 4	8.30	.60	1.00	d	.10
Group 5	8.20	.60	1.00	d	.10
Group 6	8.10	.60	1.00	d	.10
Group 7	7.85	.60	1.00	d	.10
Group 8	7.70	.60	1.00	d	.10
Group 9	7.65	.60	1.00	d	.10
Free Air Tunnel Jobs					
Group 1	9.12	.60	1.00	d	.10
Group 2	8.72	.60	1.00	d	.10
Group 3	8.56	.60	1.00	d	.10
Group 4	8.05	.60	1.00	d	.10
Laborers, Asphalt Construction					
Street:					
Head rakers	7.90	.60	1.00	d	.10
Rakers & screed men	7.75	.60	1.00	d	.10
Tampers, smoothers, kettlemen, painters, shovelers & rollers boys	7.50	.60	1.00	d	.10
Plant:					
Scale mixer & burner men	7.75	.60	1.00	d	.10
Feaders & dust men	7.50	.60	1.00	d	.10

MODIFICATIONS P. 14

DECISION #NJ76-3249 - Mod. #4 (41 FR 43613 - October 1, 1976) Bergen, Essex, Hudson, Hunterdon, Middlesex, Morris, Passaic Somerset, Sussex, Union, & Warren Counties, New Jersey	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Laborers, Heavy & Highway Construction:					
Group 1	$ 8.75	.60	1.00	e	.10
Group 2	8.60	.60	1.00	e	.10
Group 3	8.35	.60	1.00	e	.10
Group 4	8.30	.60	1.00	e	.10
Group 5	8.20	.60	1.00	e	.10
Group 6	8.10	.60	1.00	e	.10
Group 7	7.85	.60	1.00	e	.10
Group 8	7.70	.60	1.00	e	.10
Group 9	7.65	.60	1.00	e	.10
Free Air Tunnel Jobs:					
Group 1	9.12	.60	1.00	e	.10
Group 2	8.72	.60	1.00	e	.10
Group 3	8.56	.60	1.00	e	.10
Group 4	8.05	.60	1.00	e	.10
Laborers, Asphalt Construction					
Zone 2 - STREET					
Head rakers	7.90	.60	1.00	e,	.10
Rakers & screed men	7.75	.60	1.00	e	.10
Tampers, smoothers, kettlemen, painters, shovelers & roller boys	7.50	.60	1.00	e	.10
Zone 2 - PLANT					
Scale mixer & burner men	7.75	.60	1.00	e	.10
Feaders & dust men	7.50	.60	1.00	e	.10

MODIFICATIONS P. 15

DECISION NO. OK76-4017 - Mod. #6
(41 FR 3548 - February 6, 1976)
Pittsburg County, Oklahoma

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
ASBESTOS WORKERS	$10.80	.35	.60		.015
BOILERMAKERS	10.00	.35	1.00		.02
BRICKLAYERS-Stonemasons	9.25	.45	.40		.05
CARPENTERS:					
Carpenters	7.35	.25	.25		
Millwrights-Piledrivermen	8.15	.25	.25		
ELECTRICIANS:					
Electricians	9.65	.46	12+.40	.30	.07
Cable splicers	9.90	.46	12+.40	.30	.07
GLAZIERS	8.42	.40	.30		.01
IRONWORKERS	9.60	.45	.65		.12
LABORERS:					
Group I	5.85	.25	.30		
Group II	6.15	.25	.30		
Group III	6.35	.25	.30		
POWER EQUIPMENT OPERATORS:					
Group I	10.10	.45	.50		.12
Group II	9.85	.45	.50		.12
Group III	9.60	.45	.50		.12
Group IV	9.35	.45	.50		.12
Group V	9.10	.45	.50		.12
Group VI	8.85	.45	.50		.12
Group VII	8.45	.45	.50		.12
Group VIII	8.35	.45	.50		.12
Group IX	8.15	.45	.50		.12
Group X	7.85	.45	.50		.12
ROOFERS	8.80	.45	.25		.04
SOFT FLOOR LAYERS	7.71		.25	.70+a	.03
PAID HOLIDAYS:					
a - 6 PAID HOLIDAYS - New Year's Day; Memorial Day; July 4th; Labor Day; Thanksgiving Day and Christmas Day..					
TRUCK DRIVERS:					
Group I	8.03				
Group II	8.13				
Group III	8.23				
Group IV	8.18				
Group V	8.33				
PLUMBERS-Pipefitters	10.60	.55	.80		.15

MODIFICATIONS P. 16

DECISION NO. OK76-4138 - Mod. #3
(41 FR 32182 - July 30, 1976)
Comanche County, Oklahoma

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
ASBESTOS WORKERS	$10.70	.40	.60		.02
BOILERMAKERS	10.00	.35	1.00		.02
BRICKLAYERS-Stonemasons	8.85	.45	.30		.10
CARPENTERS:					
Carpenters	7.70	.35	.25		.04
Millwrights-Piledrivermen	8.20	.35	.25		.04
Power saw operator	7.825	.35	.25		.04
LABORERS:					
Group I	5.65	.25	.30		
Group II	5.90	.25	.30		
Group III	6.50	.25	.30		
IRONWORKERS	9.60	.45	.65		.12
PLUMBERS-Pipefitters	10.27	.60	.75		.10
ROOFERS	8.80	.45	.25		.04
POWER EQUIPMENT OPERATORS:					
Group I	10.10	.45	.50		.12
Group II	9.85	.45	.50		.12
Group III	9.60	.45	.50		.12
Group IV	9.35	.45	.50		.12
Group V	9.10	.45	.50		.12
Group VI	8.85	.45	.50		.12
Group VII	8.45	.45	.50		.12
Group VIII	8.35	.45	.50		.12
Group IX	8.15	.45	.50		.12
Group X	7.85	.45	.50		.12

MODIFICATIONS P. 17

DECISION NO. OK76-4160 - Mod. #1
(41 FR 43629 - October 1, 1976)
Garfield County, Oklahoma

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
ASBESTOS WORKERS	$10.70	.40	.60		.02
BOILERMAKERS	10.00	.35	1.00		.02
BRICKLAYERS-Stonemasons	8.45				
CARPENTERS:					
Carpenters	8.10				
Millwrights-Piledrivermen	8.65				
GLAZIERS	8.60				
IRONWORKERS	9.60	.45	.65		.12
LABORERS:					
Group I	5.50	.25	.30		
Group II	5.70	.25	.30		
Group III	6.35	.25	.30		
POWER EQUIPMENT OPERATORS:					
Group I	10.10	.45	.50		.12
Group II	9.85	.45	.50		.12
Group III	9.60	.45	.50		.12
Group IV	9.35	.45	.50		.12
Group V	9.10	.45	.50		.12
Group VI	8.85	.45	.50		.12
Group VII	8.45	.45	.50		.12
Group VIII	8.35	.45	.50		.12
Group IX	8.15	.45	.50		.12
Group X	7.85	.45	.50		.12
PLUMBERS-Pipefitters	10.27	.60	.75		.10
ROOFERS	8.80	.45	.25		.04

MODIFICATIONS P. 18

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION NO. PR75-3090-Mod. #2 (40 FR33643-August 8, 1975) Puerto Rico, Island Wide Change: Laborers	$2.10				
DECISION NO. PR75-3091-Mod. #2 (40 FR 33644-August 8, 1975) Puerto Rico, Island Wide Change: Laborers	$2.10				
DECISION NO. PR75-3089-Mod. #1 (40 FR 33643-August 8, 1975) Puerto Rico, Island Wide Change: Laborers	$2.10				

MODIFICATIONS P. 19

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION #TX76-4049 - Mod. #4 (41 FR 7921 - February 20, 1976) Tom Green County, Texas					
Change:					
Carpenters	$ 7.85				.02
Ironworkers:					
Ironworkers	8.23	.55	1.00		.10
On jobs 30 miles or more from the city of San Angelo	8.355	.55	1.00		.10
DECISION #TX76-4118 - Mod. #4 (41 FR 29605 - July 16, 1976) Ector & Midland Counties, Texas					
Change:					
Asbestos workers	9.85	.55	.45		.07
Electricians:					
Zone 1	8.70	.60	1%		1/10%
Zone 2	9.00	.60	1%		1/10%
Ironworkers:					
Structural; Ornamental; Reinforcing	8.23	.55	1.00		.10
All ironworkers on jobs 30 miles or more from Terminal (midway Odessa-Midland)	8.355	.55	1.00		.10
DECISION #TX76-4164 - Mod. #1 (41 FR 44665 - October 8, 1976) Howard County, Texas					
Change:					
Ironworkers, structural & ornamental	8.23	.55	1.00		.10

MODIFICATIONS P. 20

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION #TX76-4168 - Mod. #6 (41 FR 44671 - October 8, 1976) Armstrong, Carson, Castro, Childress, Collingsworth, Dallam, Deaf Smith, Donley, Gray, Hansford, Hartley, Hemphill, Hutchinson, Lipscomb, Moore, Ochiltree, Oldham, Potter, Randall, Roberts, Sherman, Swisher & Wheeler Counties, Texas					
Change:					
Asbestos workers	$ 9.85	.55	.45		.07
Carpenters:					
Zone 2:					
Carpenters	8.82	.38	.40		.07
Millwrights	9.32	.38	.40		.07
Glaziers	6.75				
Lathers	9.55				.01
Line Construction:					
Zone 2:					
Lineman; Operator	11.26		1%		1/2%
Cable splicer	12.39		1%		1/2%
Groundman, 1st 6 months	6.76		1%		1/2%
Groundman, 2nd 6 months	7.32		1%		1/2%
Groundman, 1 year & over	7.88		1%		1/2%
Marble masons (exterior)	9.30		.30		
Plasterers	9.55				.01
Power Equipment Operators:					
Group 1	8.75	.40	.50		.10
Group 2	8.25	.40	.50		.10
Group 3	6.30	.40	.50		.10

MODIFICATIONS P. 21

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION #TX76-4169 - Mod. #5 (41 FR 44662 - October 8, 1976) Bowie County, Texas					
Change:					
Carpenters:					
Carpenters	$ 7.70				.01
Millwrights	9.60				.04
Piledrivermen	8.30				.01
Ironworkers	9.75	.45	.50		.04
Plumbers & pipefitters	10.00	.40	.55		.05
Soft floor layers	7.70				.01
DECISION #TX76-4170 - Mod. #3 (41 FR 44674 - October 8, 1976) Brazos County, Texas					
Change:					
Line Construction:					
Lineman & cable splicer	11.62	.40	1%		1/2%
Groundman (1st 6 months)	4.07	.40	1%		1/2%
Groundman (2nd 6 months)	4.88	.40	1%		1/2%
Groundman	6.74	.40	1%		1/2%
Plasterers	9.70	.77	.30		.02
Sheet metal workers	10.18	.275	.595	.32	.06

MODIFICATIONS P. 22

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION #TX76-4171 - Mod. #2 (41 FR 44664 - October 8, 1976) Taylor County, Texas					
Change:					
Electricians:					
Electricians	$ 8.85	.60	1%		1/4%
Cable splicers	9.10	.60	1%		1/4%
Line Construction:					
Lineman	8.85	.60	1%		1/4%
Cable splicers	9.10	.60	1%		1/4%
Groundman (over 1 year of experience)	6.64	.60	1%		1/4%
Groundman (under 1 year of experience)	5.31	.60	1%		1/4%
Equipment operator	7.26	.60	1%		1/4%
Flat bed truck driver	5.49	.60	1%		1/4%
Painters:					
Brush, tape & bedding, paperhanger	7.00		.20		
Spray	7.875		.20		
Plumbers & pipefitters	8.05	.25	.55		.03
DECISION #TX76-4183 - Mod. #3 (41 FR 50191 - November 12, 1976) Collin, Dallas, Denton, Ellis, Grayson, Hood, Hunt, Johnson, Kaufman, Palo Pinto, Rockwall, Tarrant & Wise Counties, Texas					
Change:					
Carpenters:					
Zone 1:					
Carpenters	9.425	.30	.30		.005
Millwrights	9.825	.30	.30		.005
Piledrivermen	9.925	.30	.30		.005
Line Construction:					
Linemen; Linemen operators	11.26		1%		1/2%
Cable splicers	12.39		1%		1/2%
Groundman, 1st 6 months	6.76		1%		1/2%
Groundman, 2nd 6 months	7.32		1%		1/2%
Groundman, 1 year & over	7.88		1%		1/2%
Sheet metal workers:					
Zone 2	9.675	.45	.33		.055

MODIFICATIONS P. 23

	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION #TX76-4192 - Mod. #1 (41 FR 55289 - December 17, 1976) Jefferson & Orange Cos., Texas					
Change:					
Boilermakers	$10.00	.50	1.00		.02
Lathers	9.985	.30			.01
Plasterers	9.70	.77	.30		.02
DECISION #TX76-4193 - Mod. #1 (41 FR 56594 - December 28, 1976) Bee, Kleberg & Nueces Cos., Texas					
Change:					
Laborers:					
Group 1	4.80	.28	.10		
Group 2	5.00	.28	.10		
Group 3	5.15	.28	.10		
Group 4	5.25	.28	.10		
Painters:					
Brush	7.53	.25	.25		2/10%
Spray	7.93	.25	.25		2/10%
Sign	7.78	.25	.25		2/10%
Sheet metal workers	8.67	.23	.275		.01
DECISION #TX76-4194 - Mod. #1 (41 FR 56596 - December 28, 1976) El Paso County, Texas					
Change:					
Sheet metal workers	9.17	3%+.51	.385		.025

MODIFICATIONS P. 24

	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION #TX76-4195 - Mod. #1 (41 FR 56598 - December 28, 1976) Galveston & Harris Cos., Texas					
Change:					
Line Construction:					
Lineman & cable splicer	$11.62	.40	1%		1/2%
Groundman (1st 6 months)	4.07	.40	1%		1/2%
Groundman (2nd 6 months)	4.88	.40	1%		1/2%
Groundman	6.74	.40	1%		1/2%
Marble masons:					
Galveston County	9.26				
Plasterers	9.70	.77	.30		.02
Sheet metal workers:					
Galveston County	9.27	.60	.25		.10
Harris County	10.18	.275	.595	.32	.06
Terrazzo workers:					
Galveston County	9.26				
Tile setters:					
Galveston County	9.26				
DECISION #TX76-4197 - Mod. #1 (41 FR 56602 - December 28, 1976) Lubbock County, Texas					
Change:					
Asbestos workers	9.85	.55	.45		.07
Bricklayers & stonemasons	9.25		.30		.03
Carpenters	8.27	.38	.40		.01
Electricians:					
Electricians	9.05	.60	1%		1/10%
Cable splicers	9.30	.60	1%		1/10%
Ironworkers:					
Structural; Ornamental; Reinforcing	8.23	.55	1.00		.10
All ironworkers on jobs 30 miles or more from the city of Lubbock	8.355	.55	1.00		.10

MODIFICATIONS P. 25

DECISION #TX76-4197 (CONT'D)	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
Laborers:					
Group 1	$ 4.925	.275	.20		
Group 2	5.20	.275	.20		
Group 3	5.125	.275	.20		
Group 4	5.275	.275	.20		
Group 5	5.525	.275	.20		
Line Construction:					
Linemen	9.05	.60	1%		
Operators	80%JR	.60	1%		
Groundmen (more than 1 year experience)	55%JR	.60	1%		
Groundmen (less than 1 year experience)	50%JR	.60	1%		
Flat bed truck driver	70%JR	.60	1%		
Power Equipment Operators:					
Group 1	7.20	.30	.50		.10
Group 2	8.10	.30	.50		.10
Group 3	8.50	.30	.50		.10
DECISION #AP-805 - Mod. #3 (38 FR 11279 - May 4, 1973) The Counties of Accomack, Greensville, Isle of Wight, James City, Nansemond, Northampton, Southampton, Surry, Sussex, and York. The independent Cities of Emporia, Franklin, Suffolk, and Williamsburg, Virginia					
Change: Mod. #3 published on November, 12, 1976, in Volume 41 of the Federal Register page #50122 to read Mod. #4.					

SUPERSEDEAS DECISION

STATE: Alaska COUNTIES: Statewide
DECISION NUMBER: AK77-5009 DATE: Date of Publication
Supersedes Decision No. AK77-5002 dated January 4, 1977, in 42 FR 992
DESCRIPTION OF WORK: Building Construction (including residential construction consisting of single family homes and garden type apartments up to and including 4 stories), Heavy and Highway Construction and Dredging.

AREA I (North of the 63rd Parallel) AREA II (South of the 63rd Parallel and West of the 141st Meridian) AREA III (East of the 141st Meridian)	Basic Hourly Rates	Fringe Benefits Payments H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$ 17.61	.44	.97		.10
BOILERMAKERS	16.285	.775	1.00	.50	.02
BRICKLAYERS; Blocklayers; Stonemasons	15.68	.90	2.25		.09
CARPENTERS:					
Area I					
Carpenters	15.83	.65	1.50		.10
Powder actuated tool operator	16.05	.65	1.50		.10
DeWalt or similar type saw operator; Marlite and Acoustical; Fire or Floor Repair work applicators; Nailing Machine Operator; Saw Filer	16.11	.65	1.50		.10
Millwrights	16.22	.65	1.50		.10
Piledrivermen	15.67	.65	1.50		.10
Areas and II and III					
Journeyman Carpenters	15.21	.65	1.50		.15
Acoustical and Marlite Applicators; Floor Workers; Radial air saw operators; Fire and Flood Workers	15.59	.65	1.50		.15
Millwrights	15.74	.65	1.50		.15
Piledrivermen	15.67	.65	1.50		.15
CEMENT MASONS:					
Cement Masons, paving (concrete), Curb, Gutter and Sidewalks	14.38	.60	2.35		.15
Operating Screeding and Rodding Machines, Application of all Composition, Mastic, Epoxy, and Plaster Materials	14.91	.60	2.35		.15
Hand powered Grinder	14.91	.60	2.35		.15
Form Setters	14.53	.60	2.35		.15
CULINARY WORKERS:					
Baker of combination Cook-Baker, Head Cook; Working Camp Manager	13.21	.50	2.00		.04

	Basic Hourly Rates	Fringe Benefits Payments H & W	Pensions	Vacation	Education and/or Appr. Tr.
CULINARY WORKERS: (Cont'd)					
Cook	12.85	.50	2.00		.04
Butcher	11.96	.50	2.00		.04
Head Waiter or Head Waitress	11.47	.50	2.00		.04
Head Bullcook	11.37	.50	2.00		.04
Camp Worker (waiter, Waitress, Bullcook, General Helper, miscellaneous worker); Bartender		11.21	.50	2.00	
ELECTRICIANS:					
Electricians; Equipment Operators; Technicians	16.95	.70	1%+2.00		.15
Cable Splicers	18.70	.70	1%+2.00		.15
ELEVATOR CONSTRUCTORS	15.715	.495	.32	2%+a	.02
ELEVATOR CONSTRUCTORS' HELPERS	70%JR	.495	.32	2%+a	.02
ELEVATOR CONSTRUCTORS' HELPERS (PROB.)	50%JR				
GLAZIERS:					
Area I	14.35	.65	1.00		
Areas II and III	14.57	.65	1.00		.10
IRONWORKERS:					
Bender Opeator; Bridge; Fence Erector; Machinery Mover; Ornamental; Reinforcing; Sheeter; Structural	15.80	.80	1.75		.18
LATHERS	16.66	.60		1.08	.04
LINE CONSTRUCTION:					
Groundmen	14.95	.70	1%+2.00		.15
Equipment Operators; Linemen; Technicians	16.95	.70	1%+2.00		.15
Cable Splicers	18.70	.70	1%+2.00		.15
MARBLE SETTERS; Terrazzo Workers	15.68	.90	2.25		.09
PAINTERS:					
Area I					
Zone I (Within a 10 mile radius of the Fairbanks P. O. including Ft. Wainwright)					
Zone 2 (Beyond 10 miles and up to 40 miles radius of the Fairbanks P. O. including Eielson Air Force Base and all the Sites within this territory)					

	Basic Hourly Rates	Fringe Benefits Payments H & W	Pensions	Vacation	Education and/or Appr. Tr.
PAINTERS: (Cont'd)					
Zone 3 (Beyond 40 miles radius of the Fairbanks P. O.)					
Zone 1 and 3:					
Brush; Paperhangers	16.85	.65	1.60		.05
Carpet and Tile	16.87	.65	1.60		.05
Swing Stage, Sign Painters; Utilidors	17.10	.65	1.60		.05
Hand Tapers	17.12	.65	1.60		.05
Structural Steel; Sand Blasters; Spray Painters; Towers, stacks, bridges, and flagpoles up to and including 40 feet	17.35	.65	1.60		.05
Buffer Operator	17.38	.65	1.60		.05
Machine Tapers	17.52	.65	1.60		.05
Hardwood Floor Finishers	17.60	.65	1.60		.05
Epoxy applicators and spray steel	17.85	.65	1.60		.05
Swing and boom spray	18.10	.65	1.60		.05
Zone 2:					
Brush; Paperhangers	17.70	.65	1.60		.05
Swing Stage; Sign Painters; Utilidors	17.95	.65	1.60		.05
Tapers, hand	17.97	.65	1.60		.05
Structural steel, Sand blasters; Spray painters; Towers, stacks, bridge and flagpoles up to and including 40 feet	18.20	.65	1.60		.05
Hardwood Floor Finishers	18.45	.65	1.60		.05
Tapers, machine	18.47	.65	1.60		.05
Spray Steel; Epoxy Applicator	18.70	.65	1.60		.05
Swing and boom spray	18.45	.65	1.60		.05
Buffer Operator	18.23	.65	1.60		.05
Zones 1, 2, and 3:					
Height Pay: All work on any form of scaffolding or staging over 40 ft. will be paid $.25 more per hour, and for every additional 20 ft. $.25 more per hour will be paid to the employee. The height of work shall be determined from the ground to the point of hook-up.					

	Basic Hourly Rates	Fringe Benefits Payments H & W	Pensions	Vacation	Education and/or Appr. Tr.
PAINTERS: (Cont'd)					
Areas II and III					
Hardwood floor sander or finisher; Paperhangers; Sign, brush and roller painters	15.65	.60	1.50		.20
Swing Stage	16.05	.60	1.50		.20
Structural steel; Tapers and Drywall sander	16.05	.60	1.50		.20
Pot Tenders; Sandblasters; Spray	16.25	.60	1.50		.20
Epoxy and tar applicator	16.65	.60	1.50		.20
Steeplejack; Towers painters	17.45	.60	1.50		.20
Height Pay: All classifications, with the exception of steeple jacks and tower painters, a $.25 hourly premium shall be paid for swing stage work on a structure with height in excess of 40 ft. an additional $.25 per hourly height pay shall be paid for each additional 50 ft. theresfter. Height pay on all towers and steeplejack work shall start at the 150 ft. level. $.50 per hour above the scale shall be paid for each additional 100 ft.					
PLASTERERS	15.50	.60	2.35		.15
PLUMBERS; Steamfitters:					
Area I	17.42	.85	1.30		.45
Area II	16.85	.73	1.40		.15
Area III	15.20	1.00	1.20		.10
ROOFERS:					
Area I	15.60	.90	2.00		.10
Areas II and III	15.30	.90	2.00		.10
SHEET METAL WORKERS:					
Area I	17.49	.57	1.00		.17
Area II and III	17.61	.61	.75		.15

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
SOFT FLOOR LAYERS:					
Area I	$ 16.11	.65	1.50		.10
Areas II and III	15.59	.65	.50	4%	.20
SPRINKLER FITTERS	14.82	.60	.90		.08
TERRAZZO WORKERS' AND TILE SETTERS' HELPERS	12.83	.90	2.25		.09
TILE SETTERS	15.01	.90	2.25		.09
RIGGERS: Welder: Receive rates for craft performing operation to which rigging or welding is incidental.					

FOOTNOTE:
a. Employer contributes 4% of basic hourly rate for over 5 years' service and 2% basic hourly rate for 6 months to 5 years' service as Vacation Pay Credit. Six Paid Holidays: A through F.

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F. Christmas Day.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LABORERS					
Group 1	$ 13.10	.60	2.25		.09
Group 2	13.27	.60	2.25		.09
Group 3	13.31	.60	2.25		.09
Group 4	13.34	.60	2.25		.09
Group 5	13.38	.60	2.25		.09
Group 6	13.39	.60	2.25		.09
Group 7	13.44	.60	2.25		.09
Group 8	13.52	.60	2.25		.09
Group 9	13.77	.60	2.25		.09
Group 10	13.80	.60	2.25		.09
Group 11	13.88	.60	2.25		.09
Group 12	13.90	.60	2.25		.09
Group 13	13.91	.60	2.25		.09
Group 14	14.02	.60	2.25		.09
Group 15	14.14	.60	2.25		.09
Group 16	14.27	.60	2.25		.09
Group 17:					
Class A	13.10	.60	2.25		.09
Class B	13.29	.60	2.25		.09
Class C	13.60	.60	2.25		.09
Class D	14.16	.60	2.25		.09
Class E	14.31	.60	2.25		.09
Class F	14.55	.60	2.25		.09

LABORERS

Group 1: Building Laborers; Carpenters Tenders; Material Handlers and Hook Tenders; Form Strippers; Signalmen; Riggers; Sandblast Pot Tender; Saw Tenders; General Labor; Dump Man; Pit Man; Brush Cutters; Ditch Diggers; Monolithic Workers; Dryer Man; Window Cleaner; Utiliwalk and Utilidor

Group 2: Base and Floor Machine Man

Group 3: Choke Setters

Group 4: Concrete Labor including Vibratorman; Power Butty and Concrete Powsr Saw; Curb and Gutterman; General Crew (including Plant Crew) Asphalt

Group 5:Pneumatic or Power Tools

Group 6: Stake Hopper; Grademan; Steampoint or Water Jet Operator

Group 7: Tank Cleaner

Group 8: Jackhammer Operator and Pavement Breaker; Chuck Tender (Wagon and Air Track Drills)

Group 9: Mason Tender and Mud Mixers

Group 10: Gunnits Operator; Pipelayers; Culvert and Multiplate; High Scaler; Sloper (over 20 feet); Chain and Power Saws; Sack or bulk; Sewer Pipelayer; Sewer Caulkers; Timberman; All Monolithic Crews; Pipe Builders; Sandblasters

Group 11: Asphalt Rakers

Group 12: Tenders; Plasterers; Bricklayers; Cement Finisher; Burning and Cutting Torch (except intermittent torch work)

Group 13: Wagon Driller

Group 14: Timber Faller; Air Track Wagon Driller

Group 15: Chain Saw Filer

Group 16: High Riggers and Tree Topper, Powderman

Group 17: TUNNEL OR SHAFT
Class A: Topman and Bull Gang; Brakeman
Class B: Muckers, Laborers; Nippers
Class C: Chuck Tender
Class D: Retimberman
Class E: Miners, Shafts and Raises
Class F: Powderman

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS					
Group 1	$ 13.83	.90	$ 2.50		.15
Group 2	14.72	.90	2.50		.15
Group 3	13.76	.90	2.50		.15
Group 4	13.89	.90	2.50		.15
Group 5	14.78	.90	2.50		.15
Group 6	15.56	.90	2.50		.15
Group 7	14.15	.90	2.50		.15
Group 8	13.32	.90	2.50		.15
Group 9	14.21	.90	2.50		.15
Group 10	14.48	.90	2.50		.15
Group 11	13.97	.90	2.50		.15
Group 12	16.31	.90	2.50		.15
Group 13	13.84	.90	2.50		.15
Group 14	14.24	.90	2.50		.15
Group 15	13.74	.90	2.50		.15
Group 16	14.27	.90	2.50		.15
Group 17	14.57	.90	2.50		.15
Group 18	12.71	.90	2.50		.15
Group 19	13.21	.90	2.50		.15
Group 20	14.16	.90	2.50		.15
Group 21	13.48	.90	2.50		.15
Group 22	12.81	.90	2.50		.15
Group 23	13.25	.90	2.50		.15
Group 24	13.42	.90	2.50		.15
Group 25	17.08	.90	2.50		.15
Group 26	17.75	.90	2.50		.15
Group 27	14.41	.90	2.50		.15
DREDGING					
Group 1	12.28	.75	2.00		
Group 2	12.41	.75	2.00		
Group 3	13.34	.75	2.00		
Group 4	13.40	.75	2.00		
Group 5	13.46	.75	2.00		
Group 6	13.97	.75	2.00		
Group 7					
(a)	14.75	.75	2.00		
(b)	15.50	.75	2.00		

POWER EQUIPMENT OPERATORS

Group 1: Batch Plant Operator; Batch and Mixer, 200 yards per hour and under; Loaders; Elevating - Athey, Barber Greene and similar types; Overhead and front-end, under 2½ yards; Mixers; Concrete Mixers and Batch, 200 yards per hour and under; Pumps; Fuller Kenyon, Pumpcrete and Concrete, Rollers, Tampers and Vibrators: on Plant or Road Mix materials; Tractor, Farmall types, 50 h.p. and over; Trenching Machines, under 16 inches

Group 2: Batch Plant Operator; Batch and Mixers, over 200 yards; Derricks, all; Drilling Machines, Core, Cable Rotary and Exploration; Mixers: Mobile type with hoist combination; Mucking Machines, Mole, Tunnel Drill and/or Shield

Group 3: Brooms, Power Wayne, Saginaw and similar types; Bulldozers, under D6 or similar; Post Hole Diggers, mechanical; Saws, Concrete; Scrapers; Carryall type, single; Wodwell Sno-cat

Group 4: Bulldozers: D6 through D9 or similar; Bump Cutter (Concut Christenson or similar types); Conveyors

Group 5: Bulldozers: TC 12, Quad 9, Fay Dozers, Linked Pusher, H.D. 41 and/or similar; Bulldozers engaged in Yo Yo Operation; Cableways and Highlines, 3 yards and under; Cranes: "A" Frame Trucks, Deck Winches, single power drum; "A" Frame Trucks; Helicopter; Deck Winches (double power drum); Crawler, truck type, Floating Locomotive, Whirley, either 3 yards and under or 150 boom including jibs and under 45 tons and under; Hydralifts or Transporter, Hyster Cat Cranes and attachments, Sidebooms 45 tons and under; Fork Lifts with power broom and swing attachment; Loaders: Overhead and Front-end, 2½ yards and under 4 yards; Motor Patrol Graders: Over Model 14 or similar types; Piledriver Engineers, L. B. Foster Puller or similar paving breaker; Power Plant Turbine Operators; 300 K.W. on highway or airfield construction projects or Quarry operators); Sauerman-Bagley; Shovels: Crawler and truck type, all attachments, 3 yards and under; Sub Grader (Gurries, C.M.I. and similar types); Tractors, Farmall type, used as Backhoes, Rubber-tired (Ford, Ferguson, Case and similar types); Tournapulls; Caterpillar, Euclid Scrapers and similar type equipment, over 25 yards through 40 yards; Hover Crafts, Flex Craft, Helicopter; Transporter; Cableways; Rollegon, Dredge Barge Cable; Highline or Cable Car, Boat Coxswain

POWER EQUIPMENT OPERATORS (Cont'd)

Group 6: Cableways and Highways, over 3 yards; Cranes: Crawler, truck type, Floating, Locomotive, Whirley, either over 3 yards and under 6 yards, over 150' boom, including jibs or over 45 tons; Tower Cranes, Pecco, Lorraine, Bucyrus and similar types; Hyster Cat Cranes and attachments, Sidebooms over 45 tons through 100 tons; Loaders: Overhead and Front-end, 4 yards up to and including 10 yards; Shovels: Crawler and truck type, all attachments, 3 yards and under 6 yards; Tournapulls, Caterpillar, Euclid Scrapers and similar type equipment over 40 yards through 55 yards; Slip Form Paver, C.M.I. and similar types

Group 7: Cement Hogs; Locomotives: Rod and Geared Engines

Group 8: Compressors: Excavating; Locomotives: Dinkey (air, steam, gas, and electric) Speeders

Group 9: Compressors: Steel Erection including Sandblasting, Painting or same, Pile Driving, Hoists on Steel Erection (Towermobiles and Air Tuggers); Loaders: Fork Lifts with tower; Scrapers: Carryall, Tandem

Group 10: Conveyors, Beltcrete with power pack and similar; Loader: Elevating Belt type, Euclid and similar types

Group 11: Cranes: "A" Frame Trucks, Deck Winches, single power drum; Crushers, rock, washing and screening plants; Hoist Air Tuggers, Elevators; Motor Patrol Graders: Model 14 or similar types and under; Power Plant Turbine Operators: under 300 K.W.; Shovels; Tournapulls, Caterpillar, Euclid, Scrapers and similar type equipment 25 yards and under

Group 12: Cranes: Crawler, truck type, Floating, Locomotive, Whirley, either 6 yards or over, or over 200' of boom including jibs or over 150 tons; Hyster Cat Cranes and attachments, Sidebooms over 100 tons; Loaders: Overhead and Front-end, over 10 yards; Shovels: Crawler and truck type, all attachments, 6 yards and over; Tournapulls, Caterpillar, Euclid, Scrapers and similar type equipment over 55 yards through 70 yards

Group 13: Finishing Machine Operator, Concrete Paving, Sidewalk Curb and Gutter Machine; Screen Man or Slurry Operator; Spreaders - Blaw Knox, Cedarapids, Barber Greene, Railroad Wing Spreader or similar types

Group 14: Loaders: Elevating Grader type, Dumor and similar types

Group 15: Loaders: Fork Lifts or Lumber Carrier (on construction job site)

POWER EQUIPMENT OPERATORS (Cont'd)

Group 16: Mechanics, Welders, Machinists, heavy duty

Group 17: Mechanic; Leadman

Group 18: Mechanics' Helpers, heavy duty (shop)

Group 19: Mechanic, light duty; Rollers, Tampers and Vibrators: Other than plants or road mix (where towed, to pay rate or equipment used to pull); Tractors, Farmall type less than 50 h.p.

Group 20: Mixers, Asphalt Mixer

Group 21: Oil, Blower Distributors

Group 22: Grade Checkers - Oiler combination); Safety Observer or Oiler Rigger

Group 23: Journeyman Equipment Service Oilers and Fireman; Oiler, either over 3 yards to over 150' boom or over 45 tons

Group 24: Pumps: Water

Group 25: Tournapulls, Caterpillar, Euclid Scrapers and similar type equipment over 70 yards through 85 yards

Group 26: Tournapulls, Caterpillar, Euclid Scrapers and similar type equipment, over 85 yards through 100 yards

Group 27: Trenching Machines: 16 inches and over or Remote controlled underwater Trenching

POWER EQUIPMENT OPERATORS - DREDGING

Group 1: Assistant Mate (Deckhand)

Group 2: Fireman; Oiler

Group 3: Assistant Engineer (electric, diesel, steam of booster pumps); Mates and Boatmen

Group 4: Engineer Welder; Craneman

Group 5: Assistant Engineer (electric generator operator for primary pump, power barge, or dredge)

Group 6: Leverman, Hydraulic

Group 7: Leverman, Dipper
(a): 5 yards and under
(b): Over 5 yards

TRUCK DRIVERS	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Group 1	$ 13.22	.88	3.00		.10
Group 2	13.28	.88	3.00		.10
Group 3	12.75	.88	3.00		.10
Group 4	13.60	.88	3.00		.10
Group 5	14.00	.88	3.00		.10
Group 6	14.31	.88	3.00		.10
Group 7	14.60	.88	3.00		.10
Group 8	14.91	.88	3.00		.10
Group 9	15.22	.88	3.00		.10
Group 10	15.53	.88	3.00		.10
Group 11	15.84	.88	3.00		.10
Group 12	16.15	.88	3.00		.10
Group 13	16.45	.88	3.00		.10
Group 14	13.74	.88	3.00		.10
Group 15	12.47	.88	3.00		.10
Group 16	12.90	.88	3.00		.10
Group 17	13.58	.88	3.00		.10
Group 18	13.84	.88	3.00		.10
Group 19	14.11	.88	3.00		.10
Group 20	14.38	.88	3.00		.10
Group 21	14.55	.88	3.00		.10
Group 22	13.52	.88	3.00		.10
Group 23	12.64	.88	3.00		.10

TRUCK DRIVERS

Group 1: Buggymobile; Hyster Operators (handling aggregate), Lumber Carrier

Group 2: Semi or truck and trailer; Dumpsters; Batch Trucks over 5 yards; Dump Trucks, over 5 yards up to and including 10 yards; Fuel Truck; Greasers of Grease Trucks; Flat Beds, dual rear axle; Ready Mix: Over 3 yards up to and including 5 yards; Water Wagon, semi; Water Wagon, dual axle; Winch Trucks; Flat Bed including "A" Frame manufactures rating over 5 tons; Bull Lifts and Fork Lifts over 5 tons; Front End Loader with Forks; Partsman and Outside Expeditor; Bus Operator, over 30 passengers, Track Truck Equipment; (All Terrain Vehicles, Form Distributor Truck, double axle; Loadmaster (air and water operstions); Air cushion or similar type vehicle; Fire Trucks - double axle

Group 3: Batch Truck up to and including 5 yards; Dump Trucks (including Rockbuggy and Trucks with pups) up to and including 5 yards; Flat Beds, single rear axle; Water Wagon, single axle; Winch Truck, Flat Bed including "A" Frame manufactured rating 5 tons and under; Bull Lifts and Fork Lifts up to and including 5 tons; Bus Operator, up to 30 passengers; Form Distributor Truck, single axle, Hydro Seeder, single axle, Team Drivers (horses, Mules and similar equipment); Vacuum Trucks and Truck Sweepers - single axle; Fire Trucks - single axle; Ambulance

Group 4: Dump Trucks over 10 yards up to and including 20 yards; Tire Services Man; Lowbed heavy-duty Trailer; Oiler Distributor Drivers; Ready Mix: Compactor (when pulled by rubber-tired equipment)

Group 5: Dump Trucks over 20 yards up to and including 30 yards

Group 6: Dump Trucks over 30 yards up to and including 40 yards

Group 7: Dump Trucks over 40 yards up to and including 50 yards

Group 8: Dump Trucks over 50 yards up to and including 60 yards

Group 9: Dump Trucks over 60 yards up to and including 70 yards

Group 10: Dump Trucks over 70 yards up to and including 80 yards

Group 11: Dump Trucks over 80 yards up to and including 90 yards

TRUCK DRIVERS (Cont'd)

Group 12: Dump Trucks over 90 yards up to and including 100 yards

Group 13: Dump Trucks over 100 yards (above scales to be paid on actual water level measurements)

Group 14: Turn-O-Wagoner DW-10 when not self-loading

Group 15: Gravel Spreader Box Operator on Truck; Pickup (pilot Cats all light-duty vehicles); Warehouseman Class 2: Farm Type rubber-tired tractor (material hauling); Swampers and Riggers

Group 16: Ready Mix: Up to and including 3 yards

Group 17: Ready Mix: Over 5 yards up to and including 7 yards

Group 18: Ready Mix: Over 7 yards up to and including 9 yards

Group 19: Ready Mix: Over 9 yards up to and including 12 yards

Group 20: Ready Mix: 13 yards and over

Group 21: Ready Mix, semi with double bowl mixer

Group 22: Water Wagon, when pulled by Euclid or similar type equipment

Group 23: Warehouseman - Class 1

SUPERSEDEAS DECISION

STATE: Florida COUNTY: Dade
DECISION NUMBER: FL77-1003 DATE: Date of Publication
Supersedes Decision No. AR-4050 dated November 15, 1974 in 39 FR 40404.
DESCRIPTION OF WORK: Residential construction consisting of single family homes and garden type apartments up to and including 4 stories.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Air conditioning mechanics	5.52	1.08	1.00		.09
Block masons	9.70	.60	.54		.04
Bricklayers	9.70	.60	.54		.04
Carpenters	8.70	.70	.55		.02
Cement masons	9.70	.60	.54		.04
Drywall finishers	9.00	.45	.40		.02
Electricians	9.19				
Elevator constructors	9.34	.495	.32	.06	.02
Elevator constructors' helpers	7.51	.495	.32	.06	.02
Glaziers	7.73				
Insulators	7.50	.70	.55		.01
Ironworkers	9.45	.75	.43		.04
Laborers:					
Mason tenders	6.60	.55	.30		
Pipelayers	6.70				
Plasterer tenders	6.70				
Unskilled	6.19				
Lathers	9.40	.75	.10		.01
Painters	6.61				
Plasterers	9.70	.60	.54		.04
Plumbers	9.55				
Roofers	7.61				
Sheet metal workers	10.55	.75	.50		.10
Soft floor layers	8.49				
Tile setters	9.70	.60	.54		.04
Truck drivers	6.58				
POWER EQUIPMENT OPERATORS:					
Backhoe	8.36				
Bulldozer	7.06	.50	.45		.05
Crane	9.50	.50	.45		.05
Forklift	7.93				
Loader	7.06	.50	.45		.05
Motor grader	7.31	.50	.45		.05
Oiler	7.46	.50	.45		.05
Roller	6.36	.50	.45		.05
Trenching machine	8.01				

SUPERSEDEAS DECISION

STATE: Iowa COUNTY: Cerro Gordo (City of Mason City)
DECISION NO.: IA77-4004 DATE: Date of Publication
Supersedes Decision No. IA76-4099, dated June 18, 1976, in 41 FR 24844
DESCRIPTION OF WORK: Building Construction (excluding single family homes and garden type apartments up to and including 4 stories), Heavy and Highway Construction.

BUILDING, WATER TREATMENT PLANTS & SEWAGE DISPOSAL PLANTS CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$10.20	.63	.685		
BOILERMAKERS	10.30	.85	1.00		.02
BRICKLAYERS & STONEMASONS	8.74		.50		
CARPENTERS:					
Carpenters	8.87		.20		.01
Millwrights; Piledrivermen	9.12		.20		.01
CEMENT MASONS	9.25				
ELECTRICIANS	10.45	.45	1%		1%
GLAZIERS	7.75	.50	.25		
IRONWORKERS	9.525	.40	.745		.025
LABORERS:					
GROUP 1 - Construction laborers; Tenders; Power tools, barco operators; Mortar mixers; Concrete saw; Sand point setter	6.89	.30	.30		
GROUP 2 - Caissons, after 6 ft. depth; Dynamite men; Gunniting-nozzle man and backup man; Laborers working on swinging stage work, wood hoist, towers, scaffolds or ladders at a height of 35 ft. or over	7.14	.30	.30		
GROUP 3 - Laborers working on swinging stage work, wood hoist towers, scaffolds or ladders at a height of 75 ft. or over	7.39	.30	.30		
LINE CONSTRUCTION:					
GROUP 1 - Cable splicers; Lineman; Welders; Technicians; All rigs setting assembled "H" fixtures and steel transmission structures	8.75	.35	1%	a	1/2%
GROUP 2 - Groundman; Truck driver (without winch); Experienced (not less than 6 months)	5.69	.35	1%	a	1/2%
GROUP 3 - Groundman; Truck driver (with winch)	5.86	.35	1%	a	1/2%
GROUP 4 - Blaster; Special equipment operations (hole digging machines, all tractors, transmission line pole hauling & setting equipment other than assembled "H" fixtures).	7.00	.35	1%	a	1/2%
GROUP 5 - Groundman-1st 6 mos.	4.81	.35	1%	a	1/2%

DECISION NO. IA77-4004

BUILDING, WATER TREATMENT PLANTS & SEWAGE DISPOSAL PLANTS CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PAINTERS:					
Brush	$ 6.37		.20		
Tapers	6.47		.20		
Spray	6.87		.20		
PLASTERERS	8.50				
PLUMBERS & STEAMFITTERS	9.85		.55		.02
ROOFERS	7.22				
SHEET METAL WORKERS	8.63	.40	.35		.06
SOFT FLOOR LAYERS	7.29		.20		.01
SPRINKLER FITTERS	11.23	.60	.90		.08
WELDERS - receive rate prescribed for craft performing operation to which welding is incidental.					

FOOTNOTE:
a-Seven paid holidays - A thru G.

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day; G-Friday After Thanksgiving

DECISION NO. IA77-4004

BUILDING, WATER TREATMENT PLANTS & SEWAGE DISPOSAL PLANTS CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS					
GROUP 1	$9.56	.50	.50		.05
GROUP 2	9.435	.50	.50		.05
GROUP 3	8.59	.50	.50		.05
GROUP 4	8.265	.50	.50		.05

POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITIONS

GROUP 1 - Cranes, including those being used as backhoe, dragline, clamshell, etc.; Tower cranes; Truck cranes & cherry pickers 12½ton & over rated capacity; Derricks; Piledrivers and extractors; Caisson rigs; Side boom and winch truck used for erection of structural steel and moving and setting of heavy machinery; 3 drum hoist; Welders; Mechanics; Locomotive; Dredge (lavermen)
GROUP 2 - 1 and 2 drum hoists; Air and electric tuggers (on power plants or setting steel or grating); Economobiles; Plant mixers; Farm type tractors (with loaders, backhoes, attachments, etc.); Scrapers (tournapull, etc.); Endloaders; Dredge (engineer); Side boom and winch truck other than Group No. 1; Motor patrol; Bulldozers; Push cat; Truck cranes & cherry pickers (under 12½ ton); Concrete mixers (1 yard and over); Ditching machine (8" and over); Fork lifts (on steel erection and machinery moving or hoisting above one complete story); Concrete pump; Dewatering pumps; Temporary hoist cage operated; Second man on locomotive; Vibrating concrete spreader (Gomaco, C-450 or equal)
GROUP 3 - Tractors (under 35 HP) with or without attachments; Endloaders (under 35 HP) with ot without attachments; Air compressors (one or a combination of 250 cfm or more); Pumps 3" or over; Welding machines 600 amps or combination thereof; Conveyors; Firemen (Boiler); Generator (75 KW & over); Fork lifts (other than above Group No. 2); Gunnite machine; Self-propelled rollers; Stump chippers; Self-propelled tampers; Air and electric (other than above); Ditching machine under 8"
GROUP 4 - Oilers; Mechanical heaters; Truck crane drivers; Permanent elevators

DECISION NO. IA77-4004

HEAVY & HIGHWAY CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CARPENTERS & PILEDRIVERMEN	$ 6.25	.31			
CEMENT MASONS	6.00				
LABORERS:					
Group 1	5.15	.30	.10		
Group 2	4.90	.30	.10		
Group 3	4.65	.30	.10		
Group 4	4.50	.30	.10		
Group 5	4.40	.30	.10		

LABORERS (HEAVY & HIGHWAY CONSTRUCTION) CLASSIFICATION DEFINITIONS

GROUP 1 - Sandblasters; Powderman and blaster; Pipelayer, sewer, water, telephone conduits, etc.; Sewer utility man; Gunnite nozzleman; Diamond and core drills, powered by air; All work performed by laborers working from a bos'n chair, swinging stage, life belt, tag line or block and tackle; Drill operator of air tracs, wagon drills and similar drills

GROUP 2 - Tree climber; Form setters; Rakers; Boxtenders; Asphalt curb machines; Potmen (not mechanical); Bull float, hand operated; Scalars; Timbermen; Underpinning and shoring; Caissons (over 12 ft.); Grade checker and cutting torches on demolition work

GROUP 3 - Power buggyman; Concrete and paving sawman; Form liner, expansion joint assembler; Bottom man; Caulker and jointer and painter; Timber and chain-saw man; Mechanical grouters; Automatic concrete power curbing machines; Stresser or stretcherman on post-tension or pre-stressed concrete (on or off the job); Powdermen helpers

GROUP 4 - Form tamper; Air, gas and electric tool operator, vibrator, barco hammer, paving breaker, spader, tamper, electric drills, hammer and jack hammer; Tree groundmen; Chuck tender; Drill helpers, tool room men and checkers; Sandblaster helper; Concrete processing material and monitors; Cement finishers' helpers; Stringman on paving work

GROUP 5 - Fence erectors; Handling and placing of metal mesh, dowel bars, reinforcing bars and chairs; Dumpmen and spotters; Carrying reinforcing rods; Corrugated culvert pipe; Concrete drainage pipe; Stake chaser, seeding, mulching and planting of trees, shrubs and flowers; Water boy; Common laborers; Rodmen; Tending to carpenters; Hot asphalt labor

DECISION NO. IA77-4004

HEAVY & HIGHWAY CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS:					
Group 1	$ 7.30	.40	.40		.03
Group 2	6.90	.40	.40		.03
Group 3	6.50	.40	.40		.03
TRUCK DRIVERS	5.94	.35			

POWER EQUIPMENT OPERATORS (HEAVY & HIGHWAY CONSTRUCTION) CLASSIFICATION DEFINITIONS

GROUP 1 - Power Shovel, Crane, Backhoe and Dragline; Central Mix Plant Operator; Dredge Engineer; Dredge Leverman; Paver or Spreader Operator; Hoisting Engineer (Steel Erection); Motor Patrol; Piledriver Machine; Concrete Mixer; Tow or Push Boat Operator; Master Mechanic; C.M.I. Paver; C.M.I. Subgrader (or equivalent); Asphalt Plant; Front Endloader; Scraper; Bulldozer; Push cat; Tractor Pulling Scraper; Sideboom Tractor; Churn or Rotary Drill; Trenching Machine (Cleveland 80 or similar capacity); Asphalt Laydown; Asphalt Screed; Asphalt Heater-Planer Unit; Asphalt Roller; Self-Propelled Elevating Grader or similar machine; Spreader(Concrete); Horizontal Boring Machine; Mechanics-Welders; Group Equipment Greaser; Concrete Pump; Self-Propelled Curb Machine

GROUP 2 - Concrete Curb Breaker; Concrete Widening Machine; Paving Breaker; Barber-Greene, Haiss Loader or similar machine; Tractor Pulling Ripper, Disc, Sheepsfoot or Flat Roller; Self-Propelled Sheepsfoot Roller; Self-Propelled Roller (other than asphalt); Distributor; Screening and Washing Plant; Self-Propelled Vibrating Compactor; Trenching Machine (other than above); Steel Placing Machine; Conveyor; Finishing Machine (on concrete); Flexplane; Bull Float; Form Grader

GROUP 3 - Boiler; Mechanical Broom; Oiler or Mechanics Helper or Group Greaser Helper; Farm-type Tractor (pulling disc, harrow or roller); Welding Machine; Pump Operator (other than dredge); Room and Winch Truck; Compressor; Tank Car Heater (combination boiler and booster); Pumps on Well Points and Deep Wells for Dewatering; Truck Crane Combination Driver-Oiler; Concrete Curbing Machine; Safety Boat Operator; Batch Plant (Dry)

SUPERSEDEAS DECISION

STATE: Nebraska COUNTIES: Douglas and Sarpy
DECISION NUMBER: NE77-4003 DATE: Date of Publication
Supersedes Decision No. NE76-4180 dated October 29, 1976 in 41 FR 47810
DESCRIPTION OF WORK: Building Construction (including single family homes and garden type apartments up to and including 4 stories)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$11.87	.40	.51		.015
BOILERMAKERS	10.30	.85	1.00		.02
BRICKLAYERS, Stonemasons	9.43	.50	.40	.75	
CARPENTERS:					
Carpenters	9.16	.50	.40	.60	.05
Millwrights	9.41	.50	.40	.60	.05
Piledrivermen	9.285	.50	.40	.60	.05
CEMENT MASONS	9.82	.50	.40		
DRYWALL:					
Tapers and Finishers	9.65	.40	.50		.04
ELECTRICIANS	11.83	.58	1%+.55		.06
ELEVATOR CONSTRUCTORS	10.99	.545	.35	3%+a	.02
ELEVATOR CONSTRUCTORS' HELPERS	70%	.545	.35	3%+a	.02
ELEVATOR CONSTRUCTORS' HELPERS (PROB.)	50%				
GLAZIERS	10.55	.55	.35	.50	.01
IRONWORKERS	8.88	.50	.55	1.00	.05
LABORERS:					
Common Laborers	6.92	.50	.40	.25	.05
Buggymobile Operators, Mortar Mixers, Mason Tenders	7.065	.50	.40	.25	.05
Pipelayers	7.20	.50	.40	.25	.05
Plasterers Tenders	7.235	.50	.40	.25	.05
LATHERS	8.35	.50	1.00		
MARBLE SETTERS, Tile and Terrazzo Workers	9.45	b	.25		
MARBLE, Tile and Terrazzo Workers Helpers'	7.15	b			
PAINTERS:					
Brush	9.20		.35		.02
Structural Steel and Paperhangers	9.50		.35		.02
Spray, Swing Stage, hazardous and Sandblasting	9.75		.35		.02
PLASTERERS	9.68	.50	.40		
PLUMBERS	11.19	.60	.75		.10
ROOFERS:					
Composition	8.68	.15	.20	.20	.01
Slate; Tile	8.98	.15	.20	.20	.01
ROOFERS HELPERS	50%	.15	.20	.20	.01
SHEET METAL WORKERS	11.14	.50		6%	.06
SOFT FLOOR LAYERS	9.65			C.	.05
SPRINKLER FITTERS	10.55	.50	.80		.08

DECISION NO. NE77-4003

LINE CONSTRUCTION:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Linemen	$9.51	.45	1%		1/2%
Cable Splicers	9.91	.45	1%		1/2%
Truck Driver	6.67	.45	1%		1/2%
Equipment Operators	8.94	.45	1%		1/2%
Groundmen:					
(Inexperienced) 1st 6 months	3.17	.45	1%		1/2%
(Inexperienced) 2nd 6 months	4.67	.45	1%		1/2%
Theresefter	6.20	.45	1%		1/2%
POWER EQUIPMENT OPERATORS:					
Group 1	8.01	.50	.40		
Group 2	8.11	.50	.40		
Group 3	8.36	.50	.40		
Group 4	9.50	.50	.40		
Group 5	9.60	.50	.40		
Group 6	9.85	.50	.40		

POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITION

Group 1: Oilers; Greasers; Mechanics helpers

Group 2: Oiler drivers (motor truck crane)

Group 3: Conveyors; Heaters; Tractors, 35 HP or under; Air Compressors; Pump and welding machine operator

Group 4: Bulldozers; Forklifts; Concrete Pumps; Tractors over 35 HP; one drum hoists; Straddle Trucks; Spread Oiler

Group 5: Blades; End Loaders; Self Propelled Scrapers

Group 6: Two drum hoists; Trenching Machines; Pile drivers; Dredges; Heavy duty mechanics; Shovels; Draglines; Clamshells; Orange Peels; Cranes; Derricks; Backhoes; Winch Trucks and side booms or cat booms; Locomotives; Firemen used on high pressure boilers in construction work; Economobile; Electric Hammers and extractors

DECISION NO. NH77-2003

	Basic Hourly Rates	Fringe Benefits Payments H & W	Pensions	Vacation	App. Tr.
TRUCK DRIVERS:					
Single Axle	$8.025	.50	.40		
Tandem Axle	8.10	.50	.40		
Lowboy, Trailer	8.225	.50	.40		
Lumber carriers	8.40	.50	.40		
Welders: Receive rate prescribed for craft performing operation to which welding is incidental.					

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day;
E-Thanksgiving Day; F-Christmas Day; G- Christmas Eve; H- Day after Thanksgiving.

FOOTNOTES:

a. Employer contributes 4% basic hourly rate for over 5 years' service and 2% basic hourly rate for 6 months to 5 years' service as Vacation Pay Credit. Also 6 paid holidays - A through F

b. Employer agrees to provide one-half cost of a Health and Welfare Plan (one-half cost to be paid by employee) which will provide benefits at least equal to the Omaha Construction Industry Health and Welfare Plan shall pay $0.20 per hour in cash.

c. Eight paid Holidays, A thru H; also employees with one years' continuous service with the same employer, but less than 4 years shall receive 1 week's paid vacation; after 4 year's continuous service with the same employer shall receive 2 weeks paid vacation.

SUPERSEDEAS DECISION:

STATE: New Hampshire
DECISION NUMBER: NH77-2001
Supersedes Decision No. NH76-2093, dated July 30, 1976 in 41 FR 32162.
DESCRIPTION OF WORK: Building, Heavy and Highway Construction

COUNTY: Hillsboro
DATE: Date of Publication

6-MH-1-2-3-F

BUILDING, HEAVY & HIGHWAY CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$10.26	.80	.80		.01
BOILERMAKERS	10.00	.60	10%		.01
BRICKLAYERS, CEMENT MASONS, MARBLE SETTERS, PLASTERERS, STONE MASONS, TERRAZZO WORKERS, AND TILE SETTERS:					
Hillsboro, Antrim, Hancock, N. Branch, Bennington, Hillsboro Upper and Lower Villages	8.19	.55	.40		.01
Remainder of County	7.20	.45	.35		.01
CARPENTERS:					
Pelham & Greenville Carpenters & Soft Floor Layers	10.00	.60	1.00		.07
Millwrights	10.28	.60	.50		.07
Remainder of County:					
Carpenters & Soft Floor Layers	7.35	.55	.60		.01
Piledrivermen & Millwrights	8.20	.55	.60		.01
ELECTRICIANS:					
Pelham	10.02	.35	1%+.20		.02
Remainder of County	10.10	.40	1%		.03
ELEVATOR CONSTRUCTORS:					
Constructors	10.665	.495	.32	4%+a+b	.02
Helpers	7.465	.495	.32	4%+a+b	.02
Helpers (Prob.)	5.33	.495	.32	4%+a+b	.02
GLAZIERS	7.87	.52	.59		.03
IRONWORKERS:					
Structural, Ornamental & Reinforcing	9.70	.70	1.00		.02
LABORERS: (Building):					
Common Laborers	6.16	.60	.70		.10
Plasterers tenders	6.31	.60	.70		.10
Pipelayers, fence & guard rail erectors	6.41	.60	.70		.10
Drillers, pavement breakers, pneumatic tool ops., Chipping gun Operator, Blasters, and powdermen	6.66	.60	.70		.10
All other pneumatic tool operators on boiler & stack work	7.06	.60	.70		.10
LABORERS: (Heavy & Highway):					
Laborers & Pipelayers	5.91	.50	.45		.10
Pneumatic tool ops., drillers, pavement breakers, electric chipping hammers	6.41	.50	.45		.10
Blaster & powdermen	6.66	.50	.45		.10

DECISIONNO. NH77-2001

Building, Heavy & Highway Construction	Basic Hourly Rates	Fringe Benefits Payments H & W	Pensions	Vacation	Education and/or Appr. Tr.
LEAD BURNERS	$ 9.25	.35		c	.01
LINE CONSTRUCTION:					
Linemen	9.34	.65	1%	d	3/8of1%
Equipment Operator	8.74	.65	1%	d	3/8of1%
Groundman	6.36	.65	1%	d	3/8of1%
Driver Groundman	7.38	.65	1%	d	3/8of1%
MARBLE SETTERS HELPERS	5.05	.15	.10		
PAINTERS:					
Brush	6.90	.25			
Paperhangers	7.15	.25			
Spray & Sandblasting	8.40	.25			
Open Structural Steel	8.15	.25			
Enclosed Structural Steel & Steeple jack	7.90	.25			
PLUMBERS AND STEAMFITTERS:					
Hudson and Pelham	10.52	1.10	.60		.02
Remainder of County	9.90	.53	.55		.02
ROOFERS:					
Roofers	6.65				
Helpers	5.80				
SHEET METAL WORKERS	8.92	.45	.35		.02
SPRINKLER FITTERS	10.21	.60	.90		.08
TERRAZZO WORKERS' HELPERS	7.40	.20	.10		
TILE SETTERS' HELPERS	7.94	.40	.25		
Welders receive rate prescribed for craft performing operation to which welding is incidental.					

PAID HOLIDAYS: A-New Year's Day; B-Memorial Day; C-Independence Day; D—Labor Day; Thanksgiving Day; E-Christmas Day.

FOOTNOTES:

a. Employer contributes 4% basic hourly rate for 5 years or more of service or 2% basic hourly rate for 6 months to 5 years of service as vacation pay credit.
b. Holidays: A through F.
c. Holidays: A through F, Washington's Birthday, Good Friday & Christmas Eve providing employee has worked 45 full days during the 120 calendar days prior to the holiday, and the regular scheduled work days immediately preceding and following the holiday.
d. Holidays: B through F provided the employee has been employed 5 working days prior to the holiday and provided the employee works the scheduled work days immediately preceding and following the holiday.

DECISION NO. NH77-2001

M .E. 1-PEO Q 1 of 1

POWER EQUIPMENT OPERATORS BUILDING CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS 1	$ 9.00	.85	.75	a	.05
CLASS 2	8.75	.85	.75	a	.05
CLASS 3	8.55	.85	.75	a	.05
CLASS 4	7.975	.85	.75	a	.05
CLASS 5	7.95	.85	.75	a	.05
CLASS 6	7.30	.85	.75	a	.05
CLASS 7	7.50	.85	.75	a	.05
CLASS 8	10.00	.85	.75	a	.05
CLASS 9	9.50	.85	.75	a	.05

CLASS 1 - Shovel, crane, dragline, derrick, backhoe, elevator which Chicago boom, gradall, elevating grader, dront end loader 6 yds. and over, cherry picker, pile driving rigs, concrete road pavers,a ll three drum hoisting and Trenching machines.
CLASS 2 - Rotary drill with mounted compressor, compressor house (3-6 compressors), rock and earth boring machines excluding McCarthy and similar drills, graders, 4 yds. and over front end loader, two drum hoists, high fork lifts with capacity of 15' & over, scrapers, sonic hammer, vibratory hammer.
CLASS 3 - Bulldozers, push cats, scrapers (tractor drawn), asphalt paver, front end loader 3/4 yds. to 4 yds., well driller, mechanics, pumpcrete machines, concrete pumps and similar type pumps, engineer or firemen on high pressure boiler (on job), self loading batch plant, well point operators including installing, engineer-in-charge of powered grease truck, all automatic elevators permanent or temporary operated manually or by remote controls
CLASS 4 - Single drum hoist, self-powered roller, self-propelled compactors, power pavement breakers, concrete pavement finishing machines, two bag mixers with skip, front end loaders under 3/4 yds. McCarthy and similar drills, batch plant not self loading, bulk cement plants, self-propelled material spreaders, A-frame trucks, fork lifts up to 15'.
CLASS 5 - Compressor 315 cubic ft. and over, (one or two), pumps (4 inches & over total discharge) when total discharge is over 12 inches, classification 3 will be paid, tractor (without blade or bucket) drawing roller compactors or other machines.
CLASS 6 - Compressors (up to 315 cubic feet) small mixers, pumps (up to 4 inches), power heaters, welding machines (When 3 or more heaters or welding machines are used on one job, classsification 4 rate will be paid), conveyor oiler including helpers on grease trucks and grease trucks with hand greasing equipment.
CLASS 7 - Oilers on truck cranes and gradalls.
CLASS 8 - Cranes with boom lengths of 200 feet or more
CLASS 9 - Crane with boom length of 150 feet or more

PAID HOLIDAYS: A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day;F-Christmas Day

FOOTNOTE: A. Holidays: A through F, Veterans Day, Washinton's Birthday and Columbus

DECISION NO. NH77-2001

NH 2-PEO-2-3-R

POWER EQUIPMENT OPERATORS HEAVY & HIGHWAY COSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS 1	$ 8.75	.80	.75	a	.05
CLASS 2	8.50	.80	.75	a	.05
CLASS 3	8.30	.80	.75	a	.05
CLASS 4	7.75	.80	.75	a	.05
CLASS 5	7.425	.80	.75	a	.05
CLASS 6	6.90	.80	.75	a	.05
CLASS 7	9.25	.80	.75	a	.05

CLASS 1 - Shovels, Crawler & Truck Cranes, Derricks, Backhoes, Trenching Machines, Elevating Graders, Gradall,Piledrivers, Concrete Pavers, Engineers on site processing plant, Dragline, Clamshell, Cableways.
CLASS 2 - Rotary drill (with mounted compresaor), Compressor house (3 to 6 compressors) Rock and earth boring machine (excluding McCarthy and similar drills), Grader, Front end loader (4 yds. or over)
CLASS 3 - Bulldozer, Push Cats, Scraper (Self propelled or tractor drawn), Self-powered Asphalt paver, (Front end loader 3/4 to4 yds.), Mechanics, Well driller, Pumpcrete machine, Engineer or Fireman on high pressure boiler (on job) Self-loading Batch plant (on job), Well point operators.
CLASS 4 - Hoists, Conveyors, Self-powered rollers and Compactors, Self-propelled Material spreader, Self-powered concrete finishing machine, Mixers (2 bag with skip), front end loader (under 3/4 yd.), McCarthy & similar drills, Batch plant (not a self-loading), Bulk cement plant.
CLASS 5 - Compressor (315 C.F. or over-One or two),Pump 4" or over, Tractor without blades, Drawing sheeps-foot,rubber roller or other type compactor including machines for pulverizing and aerating soil
CLASS 6 - Compressor (up to 315 C.F.), Small mixers with skip, Oiler, Pumps up to 4", Grease truck, Power heaters, Welding machines (When 3 or more welding machines Class 4 rate applied),A-Frame, Forklifts, (Where grease truck contains powered grease equipment, engineer in charge shall be paid Class 3 rate)
CLASS 7 - Crane with boom length of 200 feet or more including jib.

PAID HOLIDAYS: A-New Year's Day; B-Memorial Day; C-Independence Day; E-Thanksgiving Day; F-Christmas Day

FOOTNOTE: a. Holidays: A through F; Washington's Birthday; Veteran's Day; Columbus Day

DECISION NO. NH77-2001

NH 5-PEO-4-F 1 of 1

POWER EQUIPMENT OPERATORS MARINE CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS 1	$ 6.335	.275	.30	a	.02
CLASS 2	6.285	.275	.30	a	.02
CLASS 3	6.215	.275	.30	a	.02
CLASS 4	5.965	.275	.30	a	.02
CLASS 5	5.755	.275	.30	a	.02
CLASS 6	5.23	.275	.30	a	.02
CLASS 7	4.555	.275	.30	a	.02
CLASS 8	5.18	.275	.30	a	.02
CLASS 9	4.605	.275	.30	a	.02

Booms over 150' including jib-additional $.25 per hour.
Booms over 185' including jib-additional $.50 per hour.
Booms 220' including jib-additional $.75 per hour.
Booms over 275' including jib-additional $1.00 per hour.

CLASS 1 - Power shovel, crane, truck crane, derrick, cherry picker, pile driver, 2 or more drum machine, lightner, derrick boat, trenching machine, mechanical hoist, pavement breaker, cement concrete paver, dragline, hoisting engine, pumpcrete machine, elevating grader, shovel dozer (except when pushing front end loader (except when pushing), backhoe, gradall, cableway, boring machine, rotary drill, post hole hammer, post hole digger, for, lift
CLASS 2 - Swinger engine
CLASS 3 - Sonic or vibratory hammer, grader, scraper (over 21 yds. struck), tandem scraper concrete pump, Bulldozer, scraper (21 yds. struck or less).
CLASS 4 - Portable steam boiler, portable steam generator, roller, tractor, mechanic (maintenance), concrete mixer with side loader.
CLASS 5 - Assistant engineer (fireman).
CLASS 6 - Pump, compressor, welding machine, heater (power driven), valve controlling permanent plant (air or steam), wellpoint system, auger (powered by independent engine and attached to pile driver), hydraulic saw, generator, lighting plant, syphon, pulsometer, concrete mixer.
CLASS 7 - Oiler (other than truck crane and gradall).
CLASS 8 - Oiler on scow.
CLASS 9 - Oiler on truck crane and gradall.

PAID HOLIDAYS: (WHERE APPLICABLE)
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

FOOTNOTE: a. Holidays: A through F; Washington's Birthday,Patriot's Day, Columbus Day; & Veteran's Day; Provided the employee has worked 3 days during the week in which the holidays falls and is available for work the days preceding the holidays.

DECISION NO. NH77-2001

NH 1-TD-1-2-3-K

TRUCK DRIVERS	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS 1	$ 4.71	.45	.25	a	
CLASS 2	4.94	.45	.25	a	
CLASS 3	5.17	.45	.25	a	

CLASS 1 - Two Axle equipment
CLASS 2 - Three axle equipment including low beds
CLASS 3 - Special earth hauling equipment other than conventional type on the road truck and semitrailers trailer dumps.

PAID HOLIDAYS: A-New Year's Day; B-Memorial Day; C-Independence Day; D- Labor Day; E-Thanksgiving Day; F-Christmas Day.

FOOTNOTE: a Holidays: A through F, plus Washington's Birthday, Veteran's Day and Columbus Day; (provided employee works two days in the calendar week in which the holiday falls; reports for work the last day assigned prior to the holiday and the first assigned following the holiday).

SUPERSEDEAS DECISION

STATE: New Hampshire COUNTY: Merrimack
DECISION NO.: NH77-2002 DATE: Date of Publication
Supersedes Decision No. NH76-2113, dated September 17, 1976 in 41 FR 40396.
DESCRIPTION OF WORK: Building Construction, (excluding single family homes and garden type apartments up to and including 4 stories), heavy, highway, and marine construction.

BUILDING, HEAVY & HIGHWAY CONSTRUCTION:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$10.26	.80	.80		.01
BOILERMAKERS	10.00	.60	10%		.01
BRICKLAYER, CEMENT MASONS, MARBLE SETTERS, PLASTERERS, STONE MASONS, TERRAZZO WORKERS, & TILE SETTERS	8.19	.55	.40		.01
CARPENTERS	7.45	.55	.50		.01
Millwrights & Piledrivers	8.30	.55	.50		.01
ELECTRICIANS:					
Bookset	10.10	.40	1%		.03
Remainder of County	9.50	.60	1%+.50		.02
ELEVATOR CONSTRUCTORS:					
Constructors	10.665	.495	.32	4%+a+b	.02
Helpers	7.465	.495	.32	4%+a+b	.02
Helpers (Prob.)	5.33	.495	.32	4%+a+b	.02
GLAZIERS	7.87	.52	.59		.03
IRONWORKERS, Structural, Ornamental and Reinforcing	9.70	.70	1.00		.02
LABORERS:					
Building:					
Laborers	6.16	.60	.70		.10
Plasterers' tenders	6.31	.60	.70		.10
Pipelayers, fence & guard rail erectors	6.41	.60	.70		.10
Pneumatic tool ops., pavement breakers, drillers, chipping gun ops., powdermen & Blasters, Boiler and Stack work	6.66	.60	.70		.10
All other pneumatic tool ops. on boiler and stack work	7.06	.60	.70		.10
Heavy and Highway:					
Laborers and pipelayers	5.91	.50	.45		.10
Pneumatic tool ops., drillers, concrete vibrators, & electric chipping machines	6.41	.50	.45		.10
Blasterers and powdermen	6.66	.50	.45		.10
LEAD BURNERS	9.25	.35		c	.01
LINE CONSTRUCTION:					
Linemen	9.34	.65	1%	d	3/8of1%
Equipment groundman	8.74	.65	1%	d	3/8of1%
Groundman	6.36	.65	1%	d	3/8of1%
Drivers groundman	7.38	.65	1%	d	3/8of1%

DECISION NO. NH77-2002

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PAINTERS:					
Brush	$ 6.90	.25			
Open structural steel work to 25'	8.15	.25			
Enclosed structural steel work & steeplejack	7.90	.25			
Paperhangers	7.15	.25			
Spray & Sandblasting	8.40	.25			
PLUMBERS AND STEAMFITTERS	9.90	.53	.55		.02
ROOFERS:					
Roofers	6.65				
Roofer's Helpers	5.80				
SHEET METAL WORKERS	8.92	.45	3%+.35		.02
SOFT FLOOR LAYERS	6.56	.25	.20		.01
SPRINKLER FITTERS	10.21	.60	.90		.09
Welders - receive rate prescribed for craft performing operation to which welding is incidental.					

PAID HOLIDAYS:

A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

FOOTNOTES:

a. Employer contributes 4% basic hourly rate for 5 years or more of service or 2% basic hourly rate for 6 months to 5 years of service as Vacation Pay Credit.

b. Holidays: A through F

c. Holidays: A through F; Washington's Birthday, Christmas Eve and Good Friday, providing employee has worked 45 full days during the 120 calendar days prior to the holiday, and the regular scheduled work days immediately preceding and following the holiday

d. Holidays: B through F, provided the employee has been employed 5 working days prior to the holiday and provided the employee works the scheduled work days immediately preceding and following the holiday.

DECISION NO. NH77-2002

NH 1-PEO Q

POWER EQUIPMENT OPERATORS BUILDING CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS 1	$ 9.00	.85	.75	a	.05
CLASS 2	8.75	.85	.75	a	.05
CLASS 3	8.55	.85	.75	a	.05
CLASS 4	7.975	.85	.75	a	.05
CLASS 5	7.95	.85	.75	a	.05
CLASS 6	7.30	.85	.75	a	.05
CLASS 7	7.50	.85	.75	a	.05
CLASS 8	10.00	.85	.75	a	.05
CLASS 9	9.50	.85	.75	a	.05

CLASS 1 - Shovel, crane, dragline, derrick, backhoe, elevator which Chicago boom, gradall, elevating grader, dront end loader 6 yds. and over, cherry picker, pile driving rigs, concrate road pavers, all three drum hoisting and Trenching machines.
CLASS 2 - Rotary drill with mounted compressor, compressor house (3-6 compressors), rock and earth boring machines excluding McCarthy and similar drills, graders, 4 yds. and over front end loader, two drum hoists, high fork lifts with capacity of 15' & over, scrapers, sonic hammer, vibratory hammer.
CLASS 3 - Bulldozers, push cats, scrapers (tractor drawn), asphalt paver, front end loader 3/4 yds. to 4 yds., well driller, mechanics, pumpcrete machines, concrete pumps and similar type pumps, engineer or firemen on high pressure boiler (on job), self loading batch plant, well point operators including installing, engineer-in-charge of powered grease truck, all automatic elevators permanent or temporary operated manually or by remote controls
CLASS 4 - Single drum hoist, self-powered roller, self-propelled compactors, power pavement breakers, concrete pavement finishing machines, two bag mixers with skip, front end loaders under 3/4 yds. McCarthy and similar drills, batch plant not self loading, bulk cement plants, self-propelled material spreaders, A-frame trucks, fork lifts up to 15'.
CLASS 5 - Compressor 315 cubic ft. and over, (one or two), pumps (4 inches & over total discharge) when total discharge is over 12 inches, classification 3 will be paid, tractor (without blade or bucket) drawing roller compactors or other machines.
CLASS 6 - Compressors (up to 315 cubic feet) small mixers, pumps (up to 4 inches), power heaters, welding machines (When 3 or more heaters or welding machines are used on one job, classification 4 rate will be paid), conveyor oiler including helpers on grease trucks and grease trucks with hand greasing equipment.
CLASS 7 - Oilers on truck cranes and gradalls.
CLASS 8 - Cranes with boom lengths of 200 feet or more
CLASS 9 - Crane with boom length of 150 feet or more

PAID HOLIDAYS: A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day

FOOTNOTE: A. Holidays: A through F, Veterans Day, Washinton's Birthday and Columbus

DECISION NO. NH77-2002

NH 2-PEOp2-3-R

POWER EQUIPMENT OPERATORS HEAVY & HIGHWAY COSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS 1	$ 8.75	.80	.75	a	.05
CLASS 2	8.50	.80	.75	a	.05
CLASS 3	8.30	.80	.75	a	.05
CLASS 4	7.75	.80	.75	a	.05
CLASS 5	7.425	.80	.75	a	.05
CLASS 6	6.90	.80	.75	a	.05
CLASS 7	9.25	.80	.75	a	.05

CLASS 1 - Shovels, Crawler & Truck Cranes, Derricks, Backhoes, Trenching Machines, Elevating Graders, Dradall, Piledrivers, Concrete Pavers, Engineers on site processing plant, Dragline, Clamshell, Cableways.
CLASS 2 - Rotary drill (with mounted compressor), Compressor house (3 to 6 compressors) Rock and earth boring machine (excluding McCarthy and similar drills), Grader, Front end loader (4 yds. or over)
CLASS 3 - Bulldozer, Push Cats, Scraper (Self propelled or tractor drawn), Self-powered Asphalt paver, (Front end loader 3/4 to4 yds.), Mechanics, Well driller, Pumpcrete machine, Engineer or Fireman on high pressure boiler (on job) Self-loading Batch plant (on job), Well point operators.
CLASS 4 - Hoists, Conveyors, Self-powered rollers and Compactors, Self-propelled Material spreader, Self-powered concrete finishing machine, Mixers (2 bag with skip), front end loader (under 3/4 yd.), McCarthy & similar drills, Batch plant (not a self-loading), Bulk cement plant.
CLASS 5 - Compressor (315 C.F. or over-one or two), Pump 4" or over, Tractor without blades, Drawing sheepa-foot, rubber roller or other type compactor including machines for pulverizing and aerating soil
CLASS 6 - Compressor (up to 315 C.F.), Small mixers with skip, Oiler, Pumps up to 4", Grease truck, Power heaters, Welding machines (When 3 or more welding machines Class 4 rate applied), A-Frame, Forklifts, (Where grease truck contains powered grease equipment, engineer in charge shall be paid Class 3 rate)
CLASS 7 - Crane with boom length of 200 feet or more including jib.

PAID HOLIDAYS: A-New Year's Day; B-Memorial Day; C-Independence Day; E-Thanksgiving Day; F-Christmas Day

FOOTNOTE: a. Holidays: A through F; Washington's Birthday; Veteran's Day; Columbus Day

DECISION NO. NH77-2002

NH 5-PED-4-F

POWER EQUIPMENT OPERATORS MARINE CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS 1	$ 6.335	.275	.30	a	.02
CLASS 2	6.285	.275	.30	a	.02
CLASS 3	6.215	.275	.30	a	.02
CLASS 4	5.965	.275	.30	a	.02
CLASS 5	5.755	.275	.30	a	.02
CLASS 6	5.23	.275	.30	a	.02
CLASS 7	4.555	.275	.30	a	.02
CLASS 8	5.18	.275	.30	a	.02
CLASS 9	4.605	.275	.30	a	.02

Booms over 150' including jib-additional $.25 per hour.
Booms over 185' including jib-additional $.50 per hour.
Booms 220' including jib-additional $.75 per hour.
Booms over 275' including jib-additional $1.00 per hour.

CLASS 1 - Power shovel, crane, truck crane, derrick, cherry picker, pile driver, 2 or more drum machine, lightner, derrick boat, trenching machine, mechanical hoist, pavement breaker, cement concrete paver, dragline, hoisting engine, pumpcrete machine, elevating grader, shovel dozer (except when pushing front end loader (except when pushing), backhoe, gradall, cableway, boring machine, rotary drill, post hole hammer, post hole digger, for, lift
CLASS 2 - Swinger engine
CLASS 3 - Sonic or vibratory hammer, grader, scraper (over 21 yds. struck), tandem scraper concrete pump, Bulldozer, scraper (21 yds. struck or less).
CLASS 4 - Portable steam boiler, portable steam generator, roller, tractor, mechanic (maintenance), concrete mixer with side loader.
CLASS 5 - Assistant engineer (fireman).
CLASS 6 - Pump, compressor, welding machine, heater (power driven), valve controlling pernament plant (air or steam), wellpoint system, auger (powered by independent engine and attached to pile driver), hydraulic saw, generator, lighting plant, syphon, pulsometer, concrete mixer.
CLASS 7 - Oiler (other than truck crane and gradall).
CLASS 8 - Oiler on scow.
CLASS 9 - Oiler on truck crane and gradall.

PAID HOLIDAYS: (WHERE APPLICABLE)
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

FOOTNOTE: a. Holidays: A through F; Washington's Birthday, Patriot's Day, Columbus Day; & Veteran's Day; Provided the employee has worked 3 days during the week in which the holidays falls and is available for work the days preceding the holidays.

DECISION NO. NH77-2002

NH 1-TD-1-2-3-K

TRUCK DRIVERS	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS 1	$ 4.71	.45	.25	a	
CLASS 2	4.94	.45	.25	a	
CLASS 3	5.17	.45	.25	a	

CLASS 1 - Two Axle equipment
CLASS 2 - Three axle equipment including low beds
CLASS 3 - Special earth hauling equipment other than conventional type on the road truck and semitrailers trailer dumps.

PAID HOLIDAYS: A-New Year's Day; B-Memorial Day; C-Independence Day; D- Labor Day; E-Thanksgiving Day; F-Christmas Day.

FOOTNOTE: a Holidays: A through F, plus Washington's Birthday, Veteran's Day and Columbus Day; (provided employee works two days in the calendar week in which the holiday falls; reports for work the last day assigned prior to the holiday and the first assigned following the holiday).

SUPERSEDEAS DECISION

STATE: OHIO
DECISION NUMBER: OH77-2003
COUNTIES: *See Below
DATE: Date of Publication
Supersedes Decision Nos.: OH76-2070 dated June 4, 1976, in 41 FR 22730; OH76-2077 dated June 18, 1976, in 41 FR 24849; OH76-2086 dated July 30, 1976, in 41 FR 32169; OH76-2087 dated July 23, 1976, in 41 FR 30559; OH76-2088 dated July 30, 1976, in 41 FR 32089; OH76-2115 dated September 24, 1976, in 41 FR 42129; & OH76-2118 dated October 1, 1976, in 41 FR 43633.
DESCRIPTION OF WORK: Building Construction (excluding single family homes and garden type apartments up to and including 4 stories)

DECISION NO. OH77-2005

*Clark, Franklin, Greene, Lawrence, Licking, Madison, Montgomery, Muskingum, Pickaway, Pike, Ross, & Scioto	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS:					
Clark, Greene, & Montgomery Cos.	$11.17	.50	.75		.01
Franklin, Licking, Madison, Muskingum, Pickaway, & Ross Cos	11.32	.30	.85		.02
Lawrence, Pike, & Scioto Cos.	11.05	.50	.70		.03
BOILERMAKERS	9.40	.75	1.00	1.40	.02
BRICKLAYERS; Caulkers; Cleaners; Marble setters; Pointers; Stonemasons; Terrazzo workers; & Tile setters:					
Clark Co.	10.10				
Franklin, Madison, & Pickaway Cos.:					
Bricklayers; Caulkers; Cleaners; Pointers; & Stonemasons	10.04	.80	.70		.02
Marble setters; Terrazzo workers; & Tile setters	10.25				
Greene, & Montgomery Cos.:					
Bricklayers; Caulkers; Cleaners Pointers; & Stonemasons	10.05	.55	.75		.01
Marble setters; Terrazzo workers; & Tile setters	9.11	.55	.25		
Lawrence Co.	9.00				
Licking & Muskingum Cos.	9.68	.45	.50		.02
Pike & Ross Cos.:					
Bricklayers; Caulkers; Cleaners Pointers; & Stonemasons	10.30				
Scioto Co.:					
Bricklayers; Caulkers; Cleaners Marble setters; Pointers; & Stonemasons	9.90				
CARPENTERS; Millwrights; Piledrivermen; & Soft floor layers:					
Clark, Franklin, Licking, Madison, Muskingum, & Pickaway:					
Carpenters; Soft floor layers	9.67	.40	.50		.02
Millwrights; Piledrivermen	10.27	.40	.50		.02
Greene, & Montgomery Cos.:					
Carpenters; & Piledrivermen	9.60	.60	1.00		.05
Millwrights	9.69	.60	.72		.05
Soft floor layers	8.85	.60	.60		.05

CARPENTERS (CONT'D):	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Lawrence, Pike, Ross, & Scioto Cos.:					
Carpenters; Soft floor layers	$9.72	.40	.50		.03
Piledrivermen	10.01	.40	.50		.03
Millwrights	10.79	.40	.37		.03
CEMENT MASONS:					
Clark Co.	10.10				
Franklin, Licking, Madison, Muskingum, Pickaway, & Ross Cos.	9.55	.50	.20		.03
Greene, & Montgomery Cos.	9.28	.50	.50		.07
Lawrence Co.	9.00				
Pike & Scioto Cos.	10.92				
ELECTRICIANS:					
Clark, & Madison (Twps. of Paint, Pike, Somerford, Stokes, & Union) Cos.	10.09	.45	1%+.65		.04
Franklin, Madison (E. portion), Pickaway (N. & centrel portions)	10.98	.28	1%+.60		.03
Greene, & Montgomery Cos.:					
Electrical communications installers - Zone I (within 11 mile radius of 3rd & Main Street, Dayton)	11.08	.45	1%+1.00		.5%
Electrical communications installers - Zone II (beyond 11 mile radius of 3rd & Main Street, Dayton)	11.31	.45	1%+1.00		.5%
Lawrence Co.	10.37	.50	1%+.45	1.00	.04
Licking Co.	10.30	.28	1%+.60		.03
Muskingum Co.	10.00	.28	1%+.60		.03
Pickaway (S. part), Pike (N. part), & Ross Cos.	10.95	.29	1%		.02
Pike (S. part), & Scioto Cos.	10.50	.50	1%+.40	.52	.04
ELEVATOR CONSTRUCTORS:					
Clark, Franklin, Licking, Madison, Muskingum, Pickaway, & Ross Cos.:					
Elevator constructors	11.16	.545	.35	4%+a+b	.02
Helpers	70%JR	.545	.35	4%+a+b	.02
Helpers (Prob.)	50%JR				
Greene, & Montgomery Cos.:					
Elevator constructors	10.635	.545	.35	4%+a+b	.02
Helpers	70%JR	.545	.35	4%+a+b	.02
Helpers (Prob.)	50%JR				

DECISION NO. OH77-2005

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ELEVATOR CONSTRUCTORS (CONT'D):					
Lawrence, Pike, & Scioto Cos.:					
Elevator constructors	$10.945	.545	.35	4%+a+b	.02
Helpers	70%JR	.545	.35	4%+a+b	.02
Helpers (Prob.)	50%JR				
GLAZIERS:					
Clark, & Montgomery Cos.	9.48		.50		.01
Franklin, Licking, Madison, Muskingum, Pickaway, Pike, & Ross Cos.	9.77	.57			.005
Lawrence, & Scioto Cos.	9.50		.20		
IRONWORKERS:					
Clark (W 3/4), Greene, & Montgomery Cos.:					
Within 15 mile radius of Local Union #290 office	10.51	.75	1.05		.04
Beyond 15 mile radius of Local Union #290 office	10.66	.75	1.05		.04
Clark (E. 1/4), Muskingum, Pike, & Ross Cos.	10.60	.75	1.35		.05
Franklin Co.	10.35	.75	1.35		.05
Lawrence, & Scioto Cos.	10.26	.65	.70		.01
Licking, Madison, & Pickaway Cos.	10.50	.75	1.35		.05
LATHERS:					
Clark, Franklin, Licking, Madison, Muskingum, & Pickaway Cos.	10.25		.10		.01
Greene, & Montgomery Cos.	10.29		.20		.01
Lawrence Co.	9.315		.10		
LEADBURNERS	10.75	.40		c	.01
LINE CONSTRUCTION:					
Clark Co.:					
Cable splicers & Linemen	9.11	.35	1%		.25%
Equipment operators:					
0 to 1/2 yr.	5.49	.35	1%		.25%
1/2 yr. to 1 yr.	6.54	.35	1%		.25%
1 yr. or more	7.66	.35	1%		.25%
Groundmen or Truck drivers:					
0 to 1 yr.	4.47	.35	1%		.25%
1 yr. or more	5.27	.35	1%		.25%

DECISION NO. OH77-2005

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LINE CONSTRUCTION (CONT'D):					
Franklin Co.:					
Cable splicers & Linemen	$9.20	.35	1%		1/2%
Equipment operators:					
0 to 1/2 yr.	5.87	.35	1%		1/2%
1/2 to 1 yr.	7.00	.35	1%		1/2%
1 yr. or more	8.20	.35	1%		1/2%
Groundmen or Truck drivers:					
0 to 1 yr.	4.78	.35	1%		1/2%
1 yr. or more	5.64	.35	1%		1/2%
Greene, & Montgomery Cos.:					
Linemen within 11 mile radius of 3rd & Main Street, Dayton	11.08	.45	1%+1.00		1/2%
Linemen beyond 11 mile radius of 3rd & Main Street, Dayton	11.31	.45	1%+1.00		1/2%
Lawrence, Pike (Twps. of Camp Creek, Marion, Newton, Scioto, Sunfish, & Union), & Scioto Cos.:					
Linemen; & Operators: All mechanized equipment	10.48	.45	1%+.40	1.00	1/2%
Cable splicers	11.53	.45	1%+.40	1.00	1/2%
Groundmen	8.38	.45	1%+.40	1.00	1/2%
Licking Co.:					
Cable splicers; Equipment ops.; & Linemen	10.83	.35	1%		1/2%
Groundman:					
0 to 6 mos.	5.51	.35	1%		1/2%
After 6 mos.	5.87	.35	1%		1/2%
After 12 mos.	6.26	.35	1%		1/2%
After 18 mos.	6.62	.35	1%		1/2%
Madison Co.(Twps. of Darby, Canaan, Monroe, Deer Creek, Jefferson, Fairfield, Oak Run, Range, & Pleasant); & Pickaway Co.(Twps. of Darby, Circleville, Harrison, Jackson, Madison, Monroe, Muhlenberg, Scioto, Walnut, & Washington):					
Cable splicers; Equipment ops.; Linemen	11.56	.35	1%		1/2%
Groundmen:					
0 to 6 mos.	5.51	.35	1%		1/2%
After 6 mos.	5.87	.35	1%		1/2%
After 12 mos.	6.26	.35	1%		1/2%
After 18 mos.	6.62	.35	1%		1/2%

DECISION NO. OH77-2005

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LINE CONSTRUCTION (CONT'D):					
Muskingum Co.:					
Cable splicer; Equipment ops.; & Linemen	$10.53	.35	1%		1/2%
Groundmen:					
0 to 6 mos.	5.51	.35	1%		1/2%
After 6 mos.	5.87	.35	1%		1/2%
After 12 mos.	6.26	.35	1%		1/2%
After 18 mos.	6.62	.35	1%		1/2%
Pickaway (Twps. of Deer Creek, Perry, Pickaway, Salt Creek, & Wayne), Pike (N. part), & Ross Cos.:					
Equipment ops. & Linemen	10.95	.28	1%		.02
Truck drivers	6.47	.28	1%		.02
Groundmen	6.17	.28	1%		.02
MARBLE SETTERS' HELPERS; Terrazzo Workers' Helpers; & Tile Setters' Helpers:					
Franklin, Madison, & Pickaway Cos.:					
Marble setters' helpers; Terrazzo workers' helpers; & Tile setters' helpers	8.15				
Terrazzo base grinders	8.50				
Terrazzo floor grinders	8.30				
Greene, & Montgomery Cos.:					
Marble setters' helpers; Terrazzo workers' helpers; & Tile setters' helpers	8.14				
Base machine	8.98				
Lawrence, & Scioto Cos.:					
Marble setters' helpers	9.635				
Terrazzo workers' helpers & grinders	9.385				
Terrazzo base grinders	10.005				
Tile setters' helpers	9.535				
PAINTERS:					
Clark Co.:					
Brush; Paperhangers (Tools furnished)	7.80	.10	.25		
Swing stage	8.15	.10	.25		
Spray	8.50	.10	.25		
Structural steel	8.35	.10	.25		

DECISION NO. OH77-2005

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PAINTERS (CONT'D):					
Franklin, Madison, & Pickaway Cos.:					
Brush; Paperhanger; Roller; & Wall washing	$9.45	.55	.30		
Spray	9.95	.55	.30		
Structural steel; & Swing stage	9.75	.55	.30		
Sandblasting; Steamcleaning; & Water tanks	10.15	.55	.30		
Drywall tapers & Finishers	9.85	.55	.30		
Greene & Montgomery Cos.:					
Brush; & Roller	10.55	.40	.40		.02
Scaffolds; Structural steel; & Swing stage	10.95	.40	.40		.02
Sandblasting; Spray; & Steam-cleaning	11.05	.40	.40		.02
Paperhangers	10.80	.40	.40		.02
Spackling & Finishing; & Taping	10.90	.40	.40		.02
Steeple jack work	11.30	.40	.40		.02
Lawrence Co.:					
Brush; Roller	7.65				
Drywall taping; & Structural steel	8.50				
Spray	9.00				
Paperhangers; & Wallwashing	8.15				
Licking & Muskingum Cos.:					
Brush; & Paperhangers	7.00				
Structural steel	7.65				
Spray	7.45				
Smoke stacks; Tanks; & Water towers	7.65				
Pike, & Scioto Cos.:					
Brush; Paperhangers; Tapers; Wall covering, washing; Exterior buildings under 40'	10.20		.40		
Rollers; Floor sanding; Power tools	10.45		.40		
Sandblasting; Steamcleaning; Hazardous material; & Burning	11.20		.40		
Ross Co.:					
Brush; Roller; & Taping	8.25				
Structural steel	8.50				
Sandblast; & Spray	9.00				

DECISION NO. OH77-2005

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PLASTERERS:					
Clark, Greene, & Montgomery Cos.	$10.45				
Franklin, Licking, Madison, Muskingum, Pickaway, & Ross Cos.	9.54	.50	.30		.02
Lawrence Co.	9.00				
Pike, & Scioto Cos.	10.92				
PLUMBERS; & Steamfitters:					
Clark, Greene (Twps. of Cedarville, Ross, Jefferson, Ceasar Creek, & New Jasper), Madison (W. of Rte. #38 incl. city of London) Cos.	11.01	.58	.80		.04
Franklin, Madison (E. of Rte #38 not incl. city of London), Pickaway, & Ross Cos.	11.82	.55	.80		.05
Greene (exclu. Twps. of Cedarville, Ross, Jefferson, Ceasar Creek, & New Jaspar), & Montgomery Cos.	11.41	.55	.80		.03
Lawrence, Pike, & Scioto Cos.	10.87	.55	.75		
Licking Co.	11.47	.55	.80		.05
Muskingum Co.	11.32	.35	.35		.08
ROOFERS:					
Clark, Greene, & Montgomery Cos.:					
Composition, damp, & waterproof workers	10.05	.80	.50		
Slate, Tile, & Asbestos	10.27	.80	.50		
Helpers:					
1st yr.	60%JR	.80	.50		
2nd yr.	70%JR	.80	.50		
3rd yr.	80%JR	.80	.50		
4th yr.	90%JR	.80	.50		
Franklin, Licking, Madison, Pickaway, & Ross Cos.	10.545	.60	.65		.02
Lawrence, Muskingum, Pike, & Scioto Cos.	10.45		.40		
SHEET METAL WORKERS:					
Clark, Greene, & Montgomery Cos.	10.72	.50	.74		.15
Franklin, Lawrence, Licking, Madison, Muskingum, Pickaway, Pike, Ross, & Scioto Cos.	10.42	.45+d	.80		.05
SPRINKLER FITTERS	12.05	.60	.90		.08

DECISION NO. OH77-2005

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; & F-Christmas Day

FOOTNOTES:
a. 6 paid holidays: A through F
b. Employer contributes 4% of regular hourly rate to vacation pay credit for employee who has worked in business more than 5 years. Employer contributes 2% of regular hourly rate to vacation pay credit for employee who has worked in business less than 5 years.
c. 9 paid holidays: A through F, plus Washington's Birthday, Good Friday, & Christmas Eve, providing employee has worked 45 full days during the 120 calendar days prior to the holiday, and the regular scheduled work days immediately preceding and following the holiday.
d. 3% of gross earnings to SASHI

DECISION NO. OH77-2005

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LABORERS:					
Clark Co.:					
Laborers general; Carpenters tenders; Vibrator; Air spade & other small tools; Sewer pipe layer & Bottom man; Asphalt raker & tamper; Waterboy; Flagman & Signalman	$6.28	.45	.20		.02
Plasterers' tenders; Mason tenders; Mortar mixers; Air & machine driven tool ops.; Jackhammer; Barko & chain saw; Wagon drill; Hand spikers; Power concrete & buggies; Powder man & blaster; Gunnite machine op. & nozzle man; Miners for tunnels & caissons; Muckers for tunnels & caissons	6.53	.45	.20		.02
Franklin Madison & Pickaway Cos.:					
Common laborers; Carpenter tenders; Pouring of all concrete; Cleaning debris; Cleaning of all material; General clean up; Landscape; Sod layers; Salamander; Flagmen; Wire mesh handlers or setters; Loading & unloading all trucks; Handling & conveying all material; Washing of all windows; A man on bucket pouring concrete; Conveyor belt	7.69	.55	.40		.05
Brick tender; Stone mason tender; Plasterers' tenders; Morter mixers & Operator; Cement mason tender; All scaffold builders (swinging scaffolds); Jack hammer op.; Air or electrical pneumatic tool op.; Power driven tools; Power buggy ops.; Power wheelbarrow ops.; Asphalt &					

DECISION NO. OH77-2005

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LABORERS (CONT'D):					
blacktop rakers; Wall wrecker & bar man on demolition; Sand & vacuum cleaning; Gunite nozzle man; Wagon & churn drill ops.; Concrete saw op. & brush feeders on pulverizers; Pipelayers; Bottom man; Laser gun. Burners; Sandblasting of concrete; Vibrator man; Signal man; Caisson bottom man; & Forklift op.	7.89	.55	.40		.05
Greene & Montgomery Cos.:					
Unskilled	7.94	.55	.40		.05
All machine & Power driven tools; Power buggies; Vibrators; Chipping hammers, & railroad spikers by hand; Swinging scaffold over 15'	8.09	.55	.40		.05
Jackhammer; Air drill; Sand blaster; Sewer pipe layers; Man-hole builders, & Bottom men	8.14	.55	.40		.05
Caisson work; Scaffold with power tools	8.19	.55	.40		.05
Torch man on wrecking	8.24	.55	.40		.05
Caisson work with jackhammer	8.39	.55	.40		.05
Gunnite op.; Wagon drill op.; & blaster-powder man	8.44	.55	.40		.05
Tenders to bricklayers & masons	8.57	.55	.40		.05
Tenders to lathers & plasterers	8.61	.55	.40		.05
Lawrence, Pike, & Scioto Cos.:					
Common laborers; Signalmen	7.27	.55	.40		.05
Sheeting & Shoring men	7.37	.55	.40		.05
Bottom men; Carpenters' tenders; Mason tenders; Morter mixers; Plasterers' tenders; & Sewer pipe layers	7.42	.55	.40		.05

DECISION NO. OH77-2005

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LABORERS (CONT'D):					
Air & machine driven tool op.; Asphalt rakers & smoothers; Burning & cutting torches; Chain saws; & Powered concrete buggies	$7.52	.55	.40		.05
Gunnite machine op.; Gunnite nozzlemen; Powdermen & blasters	7.84	.55	.40		.05
Licking Co.:					
Brick tender; Stonemason tender; Plasterer tender; Mortar mixer & operator; Cement mason tender; All scaffold builders; Swinging scaffolds; Jackhammer ops.; Air or electrical pneumatic tool ops.; Power driven tools; Power buggy ops.; Fork lift ops.; Power wheelbarrow ops.; Asphalt & blacktop rakers; Wall wrecker & bar man on demolition; Sandblasting; Welders on demolitions; Gunite nozzle man; Wagon & churn drill ops.; Concrete saw ops.; Brush feeders on pulverizers; Pipe layers; Bottom man; Laser gun; Burners; Sandblasting of concrete; Vibrator man	7.79	.55	.40		.05
Common laborers; Carpenter tender; Pouring of all concrete; Cleaning of all material; General clean-up incl. vacuum cleaning; Landscape; Sod layers; All portable heaters; Loading & unloading all trucks; Handling & conveying all materials; Washing of all windows; A man on bucket pouring concrete; Conveyor belt; Water pumps up to & incl. 4" intake	7.57	.55	.40		.05

DECISION NO. OH77-2005

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LABORERS (CONT'D):					
Muskingum Co.:					
Planters (landscape); Tree trimmers; Plumbers' helpers; Carpenters' tenders; Building & construction laborers	$7.77	.55	.40		.05
Air & machine driven tool ops.; Asphalt plant aggremeter ops.; Asphalt plant mixer men; Brick slingers; Car pushers & tunnel laborers; Caulkers; yarners & Wrenchmen; Cement handlers; Concrete puddlers (behind mixers); Curb cutters & setters; Hand spikers ops.; Jackhammer ops.; Muckers; Mason tenders; Mortar mixers; Pipe layers; Proportioning plant ops.; Pump men (under 4"); Road form setters; Sewer bottom men; Stone mason tenders; Sheeting & shoring men; Vibrator op.; Plasterers' tenders; Cutting with burning torches; Dumpmen (batch trucks)	8.02	.55	.40		.05
Brick droppers; Lock tenders; Powdermen or blasters	8.02	.55	.40		.05
Ross Co.:					
Brick tenders; Stonemasons' tenders; Plasterers' tenders; Mortar mixer & ops.; Cement masons' tenders; All scaffold builders (Swinging scaffolds), Jackhammer ops.; Air or electrical pneumatic tool ops.; Power driven tools; Power buggy ops.; Fork lift ops.; Power wheelbarrow ops.; Asphalt & blacktop rakers; Wall wrecker & bar man on demolition; Sandblasting; Welders on demolition; Gunite					

DECISION NO. OH77-2005

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LABORERS (CONT'D):					
nozzle man; Wagon & churn drill ops.; Concrete saw ops.; Brush feeders on pulverizers; Pipe layers; Bottom man; Laser gun; Burners; Sandblasting of concrete; Vibrator man; Carpenters' tenders	7.46	.55	.40		.05
Common laborers; Pouring of all concrete; Cleaning debris; Clean-up incl. vacuum cleaning; Landscape; Sod layers; Loading & unloading all trucks; Handling & conveying all materials; Washing of all windows; A man on bucket pouring concrete; Conveyor belt; All water pumps up to & incl. 3" intake	7.26	.55	.40		.05
TRUCK DRIVERS:					
Franklin & Pickaway Cos.:					
Dump & Straight	8.06	$17.00a			
Tandem & Semi-farm tractor	8.16	17.00a			
Lowboy	8.26	17.00a			
Footnote: a. Per week per employee					
Greene & Montgomery Cos.:					
General	6.03	$19.00a	$8.00a	b	
Footnotes: a. Per week per employee b. 1 yr. of employment - 1 wk's vac., 7 yrs. of employment - 2 wks' vac. providing the employee has been on payroll for 8 months during the previous 12 month period.					

DECISION NO. OH77-2005

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
TRUCK DRIVERS (CONT'D):					
Lawrence(West of Coal Grove & W. of State, Rte. #75), Pike, Ross, & Scioto Cos.:					
Jeep; Station wagons; Pickups; Fuel trucks; Dumps to & incl. 2 tons; Bus drivers (incl. all equipment used for hauling men & materials)	$7.48	$16.50a			
Dumps over 2 tons; Tandems; Semi-tractor; Lowboys; Fork lifts (incl. mason tending work); Euclids	8.40	16.50a			
Footnote: a. Per week per employee					

Page 15

DECISION NO. OH77-2005

POWER EQUIPMENT OPERATORS	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP A	$11.11	.46	1.00		.11
GROUP B	10.95	.46	1.00		.11
GROUP C	10.59	.46	1.00		.11
GROUP D	9.81	.46	1.00		.11
GROUP E	9.48	.46	1.00		.11
GROUP F	8.03	.46	1.00		.11

CLASSIFICATION DEFINITIONS

GROUP A: A-frame; Air compressor on steel erection; All rotary drills used on caisson work for foundations & sub-structure work; Boiler operator or compressor operator (when compressor or boiler is mounted on crane, piggyback op.); Boom trucks; Cableways; Cherry pickers; Combination concrete mixer & tower; Concrete pumps; Cranes; Derricks; Draglines; Elevating grader or Euclid loader; Floating equipment; Gradalls; Helicopter op. hoisting building materials; Helicopter winch operator hoisting builders material; Hoes; Hoisting engines (2 or more drums); Lift slab or panel jack operators; Locomotives; Maintenance engineer (mechanic or welder); Mixer paving (multiple drum); Mobile concrete pumps w/booms; Panelboard (all types on site); Piledriver; Power shovels; Side booms; Slip form pavers; Straddle carriers (building construction on site); Tower derricks; Trench machines (over 24" wide)

GROUP B: Asphalt paver; Bulldozer; CMI type equipment; End loaders; Kohlman type loaders (dirt loading); Mucking machines; Power grader; Power scoops; Power scrapers; Push cats

GROUP C: Air compressor (pressurizing shafts or tunnels); All asphalt rollers; Fork lifts; Hoist (1 drum); House elevators; Man lift; Power boilers (over 15 lbs., pressure); Pump op. installing or operating well points or other type of dewatering system; Pumps (4" & over discharge); Submersible pumps (4" & over discharge); Trenchers (24" & under)

GROUP D: Compressors on building construction; Conveyors (building material); Gunite machines; Mixers (cap. more than 1 bag); Mixers (1 bag cap. side 1 loaders); Post driver; Post hole digger; Pavement breaker (hydraulic or cable); Road widening trencher; Rollers; Welder op.

GROUP E: Back fillers & tampers; Batch plant; Bar & joint installing machine; Bullfloats; Burlap & curing machines; Clefplanes; Concrete spreading machines; Crushers; Drum fireman (asphalt); Farm type tractor (pulling attachments); Finishing machines; Form trenchers; High pressure pumps (over ½' discharge); Hydro seeders; Self-propelled power spreaders; Self-propelled sub-grader; Tire repairman; Tractors pulling sheep foot roller or grader; Vibratory compactors (with internal power)

GROUP F: Oiler; Helper; Signalman; Light plant operator; Power driven heaters (oil fired); Power boilers (less than 15 lbs., pressure); Pumps (under 4" discharge); Submersible pumps (under 4" discharge)

SUPERSEDEAS DECISION

STATE: South Carolina
DECISION NUMBER SC77-1008
Supersedes Decision No. SC76-1037 dated March 5, 1976 in 41 FR 9801.
DESCRIPTION OF WORK: Building Construction (excluding single family homes and garden type apartments up to and including 4 stories.)

COUNTIES: Lexington & Richland
DATE: Date of Publication

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Asbestos workers	6.70				
Bricklayers	6.00				
Carpenters	5.14				
Cement masons	4.83				
Electricians	5.50				
Elevator constructors	6.955	.495	.32	4%+a&b	.02
Elevator constructors' helpers	4.87	.495	.32	4%+a&b	.02
Elevator constructors' helpers (probationary)	3.48				
Glaziers	4.65				
Ironworkers	5.94				
Laborers:					
Unskilled	3.04				
Mason tenders	3.18				
Lathers	6.02				
Millwrights	6.50				
Painters, brush	4.52				
Painters, spray	5.00				
Piledriverman	7.25				
Plasterers	5.25				
Plumbers & fitters	7.89	.28	.30		.03
Roofers	4.52				
Sheet metal workers	5.86				
Sprinkler fitters	8.52	.50	.80		.08
Truck drivers	3.22				
Welders - rate for craft.					
Power Equipment Operators:					
Asphalt distributors	3.65				
Backhoes	4.25				
Bulldozers	4.26				
Cranes, derricks, draglines	5.00				
Finishing machines	4.00				
Front end loaders	3.75				
Hoists	5.25				
Motor graders	5.50				
Pan operators	3.75				
Trenching machines	4.52				

SC77-1008 P. 2

PAID HOLIDAYS: (Where applicable)
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

FOOTNOTES:
a. Holidays: A through F.

b. Employer contributes 4% basic hourly rate to employee with 5 or more years of service or 2% basic hourly rate to employee with 6 months to 5 years of service as Vacation Pay Credit.

SUPERSEDEAS DECISION

STATE: Texas

COUNTIES: Bell, Bosque, Coryell, Falls, Hill & McLennan

DECISION NO.: TX77-4005

DATE: Date of Publication

Supersedes Decision No. TX76-4157, dated October 1, 1976, in 41 FR 43649

DESCRIPTION OF WORK: Building Construction, (excluding single family homes and garden type apartments up to and including 4 stories). (See current heavy & highway general wage determination for Paving & Utilities Incidental to Building Construction in Bosque, Falls, Hill & McLennan Counties).

BUILDING CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS:					
ZONE 1 - Bell, Coryell & Falls Counties	$ 9.88	.42	.60		.08
ZONE 2 - Bosque, Hill & McLennan Counties	9.38	.325	.685		.025
BOILERMAKERS	10.00	.50	1.00		.02
BRICKLAYERS	8.60		.55		.03
CARPENTERS:					
ZONE 1 - Bell & Coryell Counties:					
Carpenters	8.20				
Millwrights	8.45				
ZONE 2 - Bosque, Falls, Hill & McLennan Counties:					
Carpenters	8.45				
Millwrights	8.85				
CEMENT MASONS	8.69	.40	.30		
ELECTRICIANS:					
ZONE 1 - Bosque, Falls, Hill & McLennan Counties; Parts of Bell & Coryell Counties north of Cowhouse Creek	9.55		1%		1/4%
ZONE 2 - Parts of Bell & Coryell Counties south of Cowhouse Creek	10.60		1%		.8%
ELEVATOR CONSTRUCTORS	9.33	.545	.35	4%+a+b	.02
ELEVATOR CONSTRUCTORS' HELPERS	70%JR	.545	.35	4%+a+b	.02
ELEVATOR CONSTRUCTORS' HELPERS (PROB.)	50%JR				
GLAZIERS	6.90				
IRONWORKERS	9.00	.55	.80		.12
LABORERS:					
Unskilled	2.97				
Mason tenders	3.55				
Mortar mixers	3.55				
LATHERS	8.30			.80	.05
LINE CONSTRUCTION:					
Linemen; Limemen operators	11.26		1%		1/2%
Cable splicer	12.39		1%		1/2%
Groundman, 1st 6 months	6.76		1%		1/2%
Groundman, 2nd 6 months	7.32		1%		1/2%
Groundman, 1 year & over	7.88		1%		1/2%

DECISION NO. TX77-4005

BUILDING CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PAINTERS:					
GROUP 1 - Brush	$ 6.80				.04
GROUP 2 - Boiler pipes & steel, structural steel, window jacks, roofs, stage work, smoke stack, water towers, boatswain chair	7.30				.04
GROUP 3 - Ames tools for dry walls	7.40				.04
GROUP 4 - Spray work & self feeding rollers	7.55				.04
GROUP 5 - Steam cleaning, sand-blasting & hazardous work	7.90				.04
PLASTERERS	9.54	.35	.20		.01
PLUMBERS & PIPEFITTERS:					
ZONE 1 - Area within a 35 mile radius of Waco, including Temple, Marlin, Clifton & Hillsboro	8.26	.30	.30		.03
ZONE 2 - All other areas	8.66	.30	.30		.03
ROOFERS:					
GROUP 1 - Slate, tile, asbestos roofing & siding	6.45				.03
GROUP 2 - Composition, built-up, damp & waterproofing	6.30				.03
GROUP 3 - Kettlemen	4.725				.03
SHEET METAL WORKERS:					
ZONE 1 - Within a radius of 20 miles from the McLennan County Courthouse, Waco	8.91				.05
ZONE 2 - Over 20 miles but less than 45 miles	9.41				.05
ZONE 3 - Over 45 miles	9.91				.05
SPRINKLER FITTERS	10.90	.60	.90		.08
TRUCK DRIVERS	2.80				
WELDERS - receive rate prescribed for craft performing operation to which welding is incidental.					

DECISION NO. TX77-4005

BUILDING CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.

FOOTNOTES:
a - 1st 6 mos. - none; 6 mos. to 5 yrs. - 2%; over 5 yrs. - 4% of basic hourly rate
b - Paid Holidays A thru F

PAID HOLIDAYS
A-New Years' Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day

DECISION NO. TX77-4005

BUILDING CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS					
GROUP 1	$ 8.63		.40		
GROUP 2	7.56		.40		
GROUP 3	6.34		.40		
GROUP 4	6.23		.40		

POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITIONS

GROUP 1 - Heavy Duty Mechanic; Blade Grader - Self-propelled; Bull Clam; Back Filler; Derricks, power operated (all types); Dragline; Push Cat Operator; Euclid Operator; Bull Dozer and all types of Cat Tractors; Cable-Way; Back Hoe; Crane, Power Operated (all types); Elevating Grader, self-propelled; Hoist, Motor-Driver, two drums or more; Mix Mobile; High-Lifts & Loaders, over 1/3 cu. yd. capacity; Winch Truck; Locomotive; Mixer, 14 cu. ft. or over; Paving Mixer (all sizes); Scraper; Trenching Machine (all sizes); Gradell; Foundation Boring Machine; Scoopmobile; Shovel, power operated; Pump Crete Machines; Clam Shell Operator; Rock Crusher Operated on Job; Welding Machine, 6 to 12; Two 125 cu. ft. Compressors; Well points, including installations

GROUP 2 - Blade Grader, Towed; Flex Plane; Form Grader; Mixer, less than 14 cu. ft.; Pulsometer; Truck Crane Driver & Oiler, Combination man; Gasoline or Diesel Driven Welding Machine, 3 to 6; Hoist, Single Drum; Pump, 2½ in. or larger; Pneumatic Roller; High-Lifts & Loaders, 1/3 cu. yd. or less; Forklift, 1500 lbs. capacity or less; Air Compressors, anytime there are two or more attachments operating on a 125 cu. ft. compressor, a light equipment operator shall be employed. One 125 cu. ft. air compressor and one welding machine requires no operator. One 125 cu. ft. compressor and two welding machines or any 2 air compressors equivalent to a 125 cu. ft. air compressor requires a light equipment operator

GROUP 3 - Fireman

GROUP 4 - Oiler

Page 5

DECISION NO. TX77-4005

INCIDENTAL PAVING & UTILITIES (BELL & CORYELL COUNTIES)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Air Tool Man	$ 3.00				
Asphalt Hesterman	3.25				
Asphalt Raker	3.90				
Batching Plant Scaleman	4.15				
Carpenter	4.10				
Carpenter Helper	3.00				
Concrete Finisher (Paving)	4.25				
Concrete Finisher Helper (Paving)	3.30				
Concrete Finisher (Structures)	4.25				
Concrete Finisher Helper (Structures)	3.00				
Concrete Rubber	3.35				
Electrician	6.00				
Electrician Helper	4.00				
Form Builder (Structures)	4.25				
Form Builder Helper (Structures)	3.35				
Form Setter (Paving and Curb)	3.85				
Form Setter (Structures)	4.25				
Form Setter Helper (Structures)	3.00				
Laborer, Common	2.50				
Laborer, Utility Man	3.00				
Mechanic	4.45				
Mechanic Helper	3.65				
Oiler	3.65				
Serviceman	3.30				
Painter (Structures)	5.25				
Pipelayer (Concrete & Clay)	3.50				
Pipelayer Helper (Concrete & Clay)	3.25				
Plumbers:					
Zone 1 - 35 miles from Waco, Texas including town of Temple	8.26	.30	.30		.03
Zone 2 - all area not included in Zone 1	8.66	.30	.30		.03
Powderman	4.00				
Reinforcing Steel Setter (Structures)	4.00				
Reinforcing Steel Setter Helper	2.75				
Sign Erector	3.25				
Sign Erector Helper	3.00				
Spreader Box Man	4.00				
Swamper	3.30				

Page 6

DECISION NO. TX77-4005

INCIDENTAL PAVING & UTILITIES (BELL & CORYELL COUNTIES)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Power Equipment Operators:					
Asphalt Distributor	$ 3.85				
Asphalt Paving Machine	4.00				
Broom or Sweeper Operator	3.15				
Bulldozer, 150 HP and Less	3.75				
Bulldozer, over 150 HP	4.00				
Concrete Paving Curing Machine	3.50				
Concrete Paving Saw	3.50				
Crane, Clamshell, Backhoe, Derrick, Dragline, Shovel (less than 1½ CY)	4.00				
Crane, Clamshell, Backhoe, Derrick, Dragline, Shovel (1½ CY and Over)	4.25				
Crusher or Screening Plant Op.	4.00				
Foundation Drill Op. (Crawler Mounted)	3.50				
Foundation Drill Op. (Truck Mounted)	5.35				
Foundation Drill Op. Helper	3.00				
Front End Loader (2½ CY & Less)	3.75				
Front End Loader (Over 2½ CY)	4.00				
Motor Grader Op., Fine Grade	5.00				
Motor Grader Operator	4.25				
Roller, Steel Wheel (Plant-Mix Pavements)	3.25				
Roller, Steel Wheel (Other-Flat Wheel or Tamping)	3.25				
Roller, Pneumatic(Self-Propelled)	3.20				
Scrapers (17 CY and Less)	3.75				
Scrapers (Over 17 CY)	4.00				
Tractor (Crawler Type) 150 HP and Less	3.50				
Tractor (Crawler Type) over 150 HP	4.25				
Tractor (Pneumatic) 80 HP & Less	2.75				
Tractor (Pneumatic) over 80 HP	3.75				
Traveling Mixer	3.60				
Trenching Machine, Light	3.25				
Trenching Machine, Heavy	4.00				
Wagon Drill, Boring Machine or Post Hole Driller Operator	3.60				
Truck Drivers:					
Single Axle, Light	3.15				
Lowboy-Float	3.35				
Weighman (Truck Scales)	2.50				
Welder	4.35				
Welder Helper	3.25				

SUPERSEDEAS DECISION

STATE: Texas COUNTY: Travis
DECISION NO.: TX77-4006 DATE: Date of Publication
Supersedes Decision No. TX76-4152, dated September 24, 1976, in 41 FR 42152.
DESCRIPTION OF WORK: Building Construction (excluding single family homes and garden type apartments up to and including 4 stories). (See current heavy & highway general wage determination for Paving & Utilities Incidental to Building Construction).

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$ 9.88	.42	.60		.08
BOILERMAKERS	10.00	.50	1.00		.02
BRICKLAYERS & STONEMASONS	9.29	.45	.30		.04
CARPENTERS:					
Carpenters	9.41	.38	.40		.04
Millwrights	9.66	.38	.40		.04
CEMENT MASONS	8.69	.40	.30		
ELECTRICIANS & CABLE SPLICERS	10.60		1%		.8%
ELEVATOR CONSTRUCTORS	8.79	.495	.32	4%+a+b	.02
ELEVATOR CONSTRUCTORS' HELPERS	70%JR	.495	.32	4%+a+b	.02
ELEVATOR CONSTRUCTORS' HELPERS (PROB.)	50%JR				
GLAZIERS	7.81		.20		.01
IRONWORKERS	9.00	.55	.80		.12
LABORERS:					
GROUP 1 - General laborer and pier hole men	5.355	.275	.30		.02
GROUP 2 - Mason tender; Pipelayer (concrete & clay); Cement finisher tender; Scaffold builder; Gunnite & cement work mixer & power tool operator	5.505	.275	.30		.02
GROUP 3 - Plaster tender; Hod carrier; Mortar mixers; Lather tender; Water or damp proofers	5.68	.275	.30		.02
GROUP 4 - Gunnite over 1½" thick; Nozzlemen; Machine operator; Powderman & blaster	5.755	.275	.30		.02
LATHERS	9.825				.01
LINE CONSTRUCTION:					
Linemen	10.20	.40	1%		1/2%
Groundman	5.61	.40	1%		1/2%
Groundmen (1st year)	5.10	.40	1%		1/2%
MARBLE SETTERS	7.95				
MARBLE SETTERS' HELPERS	5.37				

Page 2

DECISION NO. TX77-4006

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PAINTERS:					
GROUP 1 - Brush; Taping & floating of sheetrock	$ 7.95				
GROUP 2 - Paperhangers; Chipper, burner, torch; Skeleton steelwork erected	8.20				
GROUP 3 - Spray; Steam cleaning, sand blast & other powered equipment	8.45				
Swinging stage, bosun chair, window jack or scaffold (above 2nd floor) - 25c per hour above all base rates					
PLASTERERS	9.54	.35	.20		.01
PLUMBERS & STEAMFITTERS	9.70	.30	.35		.05
ROOFERS:					
Roofers	5.23				.01
Kettlemen	5.08				.01
SHEET METAL WORKERS	9.75	3%+.30	.50		.07
SOFT FLOOR LAYERS	9.17	.35	.45		.09
SPRINKLER FITTERS	10.90	.60	.90		.08
TERRAZZO WORKERS	7.95				
TERRAZZO WORKERS' HELPERS:					
Terrazzo helpers	5.37				
Floor machine operators	5.57				
Base machine operators	5.72				
TILE SETTERS	7.95				
TILE SETTERS' HELPERS	5.37				
WELDERS - receive rate prescribed for craft performing operation to which welding is incidental.					

FOOTNOTES:
a - 1st 6 mos. - none; 6 mos. to 5 yrs. - 2%; over 5 yrs. - 4% of basic hourly rate
b - Paid Holidays A thru F

PAID HOLIDAYS
A-New Years' Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day

DECISION NO. TX77-4006

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS					
GROUP 1	$ 8.63		.40		
GROUP 2	7.56		.40		
GROUP 3	6.34		.40		
GROUP 4	6.23		.40		

POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITIONS

GROUP 1 - Heavy Duty Mechanic; Blade Grader - Self-propelled; Bull Clam; Back Filler; Derricks, power operated (all types); Dragline; Push Cat Operator; Euclid Operator; Bull Doser and all types of Cat Tractors; Cable-Way; Back Hoe; Crane, Power Operated (all types); Elevating Grader, self-propelled; Hoist, Motor Driven, two drums or more; Mix Mobile; High-Lifts & loaders, over 1/3 cu. yd. capacity; Winch Truck; Locomotive; Mixer, 14 cu. ft. or over; Paving Mixer (all sizes); Scraper; Trenching Machine (all sizes); Gradall; Foundation Boring Machine; Scoopmobile; Shovel, Power Operated; Pump Crete Machine; Clam Shell Operator; Rock Crusher, Operated on Job; Welding Machine, 6 to 12, Two 125 cu. ft. Compressors; Well Pointe, including installations

GROUP 2 - Blade Grader, Towed; Flex Plane; Form Grader; Mixer, less than 14 cu. ft.; Pulsometer; Truck Crane Driver & Oiler, Combination man; Gasoline or Diesel Driven Welding Machine, 3 to 6; Hoist, Single Drum; Pump, 2½ in. or larger; Pneumatic Roller; High-Lifts & Loader, 1/3 cu. yd. or less; Forklift, 1500 lbs. capacity or less; Air Compressors, anytime there are two or more attachments operating on a 125 cu. ft. compressor, a light equipment operator shall be employed. One 125 cu. ft. air compressor and one welding machine requires no operator. One 125 cu. ft. compressor and two welding machines or any 2 air compressors equivalent to a 125 cu. ft. air compressor requires a light equipment operator

GROUP 3 - Firemen

GROUP 4 - Oiler

SUPERSEDEAS DECISION

STATE: Texas COUNTY: Wichita
DECISION NO.: TX77-4007 DATE: Date of Publication
Supersedes Decision No. TX76-4128, dated July 23, 1976, in 41 FR 30566.
DESCRIPTION OF WORK: Building Construction (excluding single family homes and garden type apartments up to and including 4 stories). (See current heavy & highway general wage determination for Paving & Utilities Incidental to Building Construction).

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$ 9.38	.325	.685		.025
BOILERMAKERS	10.00	.50	1.00		.02
BRICKLAYERS & STONEMASONS	9.64		.30		.05
CARPENTERS:					
Carpenters	8.82	.38	.40		.07
Millwrights	9.32	.38	.40		.07
CEMENT MASONS	8.20				
ELECTRICIANS:					
ZONE 1 - Worker performed within a road mile radius from the Local Union 681 business office up to 30 miles:					
Electricians	9.60	.30	1%		1/4%
Cable splicers	9.85	.30	1%		1/4%
ZONE 2 - All work performed beyond Zone 1:					
Electricians	9.95	.30	1%		1/4%
Cable splicers	10.20	.30	1%		1/4%
ELEVATOR CONSTRUCTORS	9.33	.545	.35	4%+a+b	.02
ELEVATOR CONSTRUCTORS' HELPERS	70%JR	.545	.35	4%+a+b	.02
ELEVATOR CONSTRUCTORS' HELPERS (PROR.)	50%JR				
GLAZIERS	4.97				
IRONWORKERS:					
Structural; Ornamental; Reinforcing	8.23	.55	1.00		.10
Ironworkers on jobs 30 miles or more from the city of Wichita Falls	8.355	.55	1.00		.10
LABORERS:					
GROUP 1 - General laborers	4.90	.275	.20		
GROUP 2 - Pipelayer (concrete & clay); Power buggy operator; Gunite mixer; Cement work mixer; Power tool operator; Ball hole man (piers)	5.025	.275	.20		
GROUP 3 - Mason tender; Mason morter mixer; Plasterer tender; Hod carrier; Plasterer morter mixer; Gunite over 1½" thick; Nozzleman & machine operator	5.15	.275	.20		
GROUP 4 - Powderman, blaster	5.40	.275	.20		

DECISION NO. TX77-4007

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LATHERS	$ 7.65				.01
LINE CONSTRUCTION:					
Lineman; Lineman operator	11.26		1%		1/2%
Cable splicer	12.39		1%		1/2%
Groundman, 1st 6 months	6.76		1%		1/2%
Groundman, 2nd 6 months	7.32		1%		1/2%
Groundman, 1 year & over	7.88		1%		1/2%
MARBLE SETTERS	8.61				
PAINTERS:					
Brush	7.50				
Spray	8.50				
PLASTERERS	9.07				.01
PLUMBERS & PIPEFITTERS:					
ZONE 1 - Within 25 miles of Wichita Falls City limits	9.15	.35	.55		.02
ZONE 2 - Between 25 and 40 miles of Wichita Falls City limits	9.65	.35	.55		.02
ZONE 3 - Between 40 and 70 miles of Wichita Falls City limits	9.95	.35	.55		.02
ZONE 4 - Between 70 and 100 miles of Wichita Falls City limits	10.25	.35	.55		.02
ZONE 5 - Over 100 miles of Wichita Falls City limits	10.55	.35	.55		.02
ROOFERS	5.42				
SHEET METAL WORKERS	9.72				.03
SOFT FLOOR LAYERS	5.50				
TERRAZZO WORKERS	7.50				
TILE SETTERS	6.50				
TRUCK DRIVERS	2.30				
WELDERS - receive rate prescribed for craft performing operation to which welding is incidental.					

FOOTNOTES:
a - 1st 6 mos. - none; 6 mos. to 5 yrs. - 2%; over 5 yrs. - 4% of basic hourly rate
b - Paid Holidays A thru F

PAID HOLIDAYS
A-New Years' Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day

DECISION NO. TX77-4007

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS					
GROUP 1	$ 7.20	.30	.50		.10
GROUP 2	8.10	.30	.50		.10
GROUP 3	8.50	.30	.50		.10

POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITIONS

GROUP 1 - Oiler-Fireman

GROUP 2 - Air Compressors, Pumps, Welding Machines, Throttle Valves, Light Plants (3 to 6 machines); Conveyor; Wagon Drill; Elevators Building; Form Graders; Hoist, Single Drum; Ford Tractor including blade and mower on rear; Mixers less than 14 cubic feet; Screening Plants; Crushing Plants; Fork Lifts (short, under 25 feet); Concrete Pumps (all types); Bobcat type equipment; Ford tractor or like with any attachments (except blade and mower on rear); All other equipment of similar nature coming under the Light Equipment Class, when power operated

GROUP 3 - Backhoe; Drilling Machines (all types); Scoopmobiles; Hoists, two drums or more; Fork Lifts (over 25 feet); Winch Truck; Six Wheel Truck, when used continuously for 5 days; Mixermobile; Locomotives; Mixers, 14 cubic feet or over; Blade Graders, self-propelled; Cableways; Cranes-power operated (to 100 feet of boom); Derricks, power operated (all types); Gradall; Hy-Ho; Hop-To; Paving Mixer (all types); File Drivers; Mobile Concrete Mixers over 14 cu. ft.; Bulldozers, Loaders, Tractovators; Scrapers and Pulls; Welders; Trenching Machines; Roller, ten tons or over; Air Compressors, Pumps, Welding Machines and Light Plants (7 to 12 Machines); Air compressor & Air Tugger; Boilers, two or more fired by one man; Heavy Duty Mechanic; All other equipment of similar nature coming under the Heavy Equipment Class, when power operated

SUPERSEDEAS DECISION

STATE: Washington
COUNTY: Yakima
DECISION NUMBER: WA77-5008
DATE: Date of Publication
Supersedes Decision No. AQ-1109 dated May 24, 1974, in 39 FR 18416
DESCRIPTION OF WORK: Residential construction consisting of single family homes and garden type apartments up to and including 4 stories.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
BRICKLAYERS	$7.00				
CARPENTERS	7.96	.50	.60		.01
CEMENT MASONS	7.00	.50	.50		.01
ELECTRICIANS	6.44	.35	1%+.40		.02
LABORERS:					
General Laborer	4.98	.45	.50		.03
Mortar Man and Hod Carrier	5.28	.45	.50		.03
PAINTERS, Brush	7.05				
PLUMBERS	9.00				
ROOFERS	6.95	.20	.20		
SHEET METAL WORKERS	7.65	.32	.50		
SOFT FLOOR LAYERS	8.14	.56	.60	.28	.02
TAPERS	9.67	.40	.70		.02

[FR Doc.77-1733 Filed 1-19-77;8:45 am]

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PAGES
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federal register

MONDAY, JANUARY 24, 1977

highlights

PRESIDENTIAL PROCLAMATION OF PARDON.... 4391

EXECUTIVE ORDER RELATING TO PROCLAMATION OF PARDON..... 4393

PART I:

MEDICAID
HEW/SRS terminates payment for inpatient services in certain institutions; effective 4–25–77..... 4125

EDUCATIONAL AGENCIES AND INSTITUTIONS
HEW/OE request comments by 2–23–77 on collection of information and data..... 4219

NONGOVERNMENTAL GRANTEES
HEW amends grant provisions; comments by 3–10–77 .. 4137

FOSTER GRANDPARENT AND SENIOR COMPANION PROGRAMS
ACTION revises schedule of income eligibility levels.. 4159

TELECOMMUNICATIONS
HEW proposes grant program supporting demonstrations of social service applications; comments by 3–10–77 4135

FOREIGN EXCHANGE
Treasury revises reporting requirements; effective 1–24–77 4121

INSURED LOANS
USDA/FmHA provides management assistance to individual applicants and borrowers; effective 1–24–77.. 4111

INTERNATIONAL CARGO SECURITY
Treasury/CS provides for use of certain security seals; effective 4–25–77.... 4120

LAND MOBILE RADIO SYSTEMS
FCC publishes interim licensing criteria for U.S./Canada border vicinity 4158

THIRD CLASS MAIL
PS delays compliance date for bulk rate preparation requirements 4228

STAMPS
PS provides for single national policy on release, sale, and discontinuance; effective 1–21–77..... 4123

RECLOSABLE PLASTIC BAGS
ITC issues determination..... 4222

CONTINUED INSIDE

reminders

(The items in this list were editorially compiled as an aid to FEDERAL REGISTER users. Inclusion or exclusion from this list has no legal significance. Since this list is intended as a reminder, it does not include effective dates that occur within 14 days of publication.)

Rules Going Into Effect Today

CPSC—Banned hazardous substances; modification or replacement..... 55869; 12–23–76

DOT/FAA—Airworthiness directives; Beech..... 55331; 12–20–76

Alteration of restricted area; Las Vegas, Nev..... 52858; 12–2–76

Decision; noise; propeller-driven small airplanes submitted to the FAA by EPA..... 56056; 12–23–76

ICC—Exemptions; air terminal areas; Miami and Fort Lauderdale, Fla. 45011; 10–14–76

Treasury/CS—Grand Rapids, Mich., Erie, Pa.; customs duties..... 55871–72; 12–23–76

List of Public Laws

NOTE: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's LIST OF PUBLIC LAWS.

AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The six-month trial period ended August 6. The program is being continued on a voluntary basis (see OFR notice, 41 FR 32914, August 6, 1976). The following agencies have agreed to remain in the program:

Monday	Tuesday	Wednesday	Thursday	Friday
NRC	USDA/ASCS		NRC	USDA/ASCS
DOT/COAST GUARD	USDA/APHIS		DOT/COAST GUARD	USDA/APHIS
DOT/NHTSA	USDA/FNS		DOT/NHTSA	USDA/FNS
DOT/FAA	USDA/REA		DOT/FAA	USDA/REA
DOT/OHMO	CSC		DOT/OHMO	CSC
DOT/OPSO	LABOR		DOT/OPSO	LABOR
	HEW/FDA			HEW/FDA

Documents normally scheduled on a day that will be a Federal holiday will be published the next work day following the holiday.

Comments on this program are still invited. Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408.

ATTENTION: For questions, corrections, or requests for information please see the list of telephone numbers appearing on opposite page.

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FEDERAL REGISTER, Daily Issue:	
Subscriptions and distribution.....	202–783–3238
"Dial · a · Regulation" (recorded summary of highlighted documents appearing in next day's issue).	202–523–5022
Scheduling of documents for publication.	523–5220
Copies of documents appearing in the Federal Register.	523–5240
Corrections	523–5286
Public Inspection Desk.....	523–5215
Finding Aids.....	523–5227
Public Briefings: "How To Use the Federal Register."	523–5282
Code of Federal Regulations (CFR)..	523–5266
Finding Aids.....	523–5227

PRESIDENTIAL PAPERS:	
Executive Orders and Proclamations.	523–5233
Weekly Compilation of Presidential Documents.	523–5235
Public Papers of the Presidents....	523–5235
Index	523–5235
PUBLIC LAWS:	
Public Law dates and numbers.....	523–5237
Slip Laws.....	523–5237
U.S. Statutes at Large.....	523–5237
Index	523–5237
U.S. Government Manual.....	523–5230
Automation	523–5240
Special Projects.....	523–5240

HIGHLIGHTS—Continued

MEETINGS—

CAB: Commuter Airline Association of America, 2–2–77 4178

CRC: State Advisory Committees:
- Delaware, 2–9–77..... 4185
- Illinois, 2–8–77..... 4185
- Indiana, 2–13 and 2–14–77..... 4185
- Iowa, 2–11–77..... 4185
- Kentucky, 2–10–77..... 4185
- Minnesota, 2–11 and 2–12–77..... 4186
- New Hampshire, 2–15–77..... 4186
- Oklahoma, 2–10 and 2–11–77..... 4186
- Vermont, 2–21–77..... 4186

Commerce/DIBA: Computer Systems Technical Advisory Committee (Licensing Procedures Subcommittee), 2–8–77..... 4186

DOD: Defense Science Board, 2–16 and 2–17–77..... 4188
- Defense Science Board, Task Force on Nuclear Proliferation, 2–14 and 2–15–77..... 4188
- Defense Science Board, Task Force on Verification, 2–11–77 4188
- Army: Armed Forces Epidemiological Board, Ad Hoc Subcommittee on Influenza, 2–9–77..... 4187

EPA: Science Advisory Board's Environmental Health Advisory Committee, Study Group on Mutagenicity Testing, 2–10–77..... 4190

HEW/NIH: Sickle Cell Disease Advisory Committee, 2–8 and 2–9–77..... 4219

ITC: Government in the Sunshine, 1–24, 2–1, and 2–3–77..... 4221, 4222

NFAH: Education Programs Panel, 2–14–77..... 4222

NRC: Reactor Safeguards Advisory Committee, Subcommittee on Regulatory Activities, 2–9–77..... 4226
- Reactor Safeguards Advisory Committee, Subcommittee on Seismic Activity, 2–8 and 2–9–77..... 4227

NSF: Science Education Directorate's Program Review, 2–1–77..... 4223

PART II:

PROFESSIONAL STANDARDS REVIEW ORGANIZATIONS —
HEW/PHS proposes procedures for assumption of certain review responsibilities, acceptance of conclusive claims payment determinations, and correlation of certain functions; comments by 3–25–77..... 4255

PART III:

NATIONAL FLOOD INSURANCE PROGRAM
HUD/FIA publishes list of eligible communities, and final flood elevation determinations..... 4263

PART IV:

CONTRACT MARKETS
CFTC revises policy statement on indemnification of certain officers, directors, and officials..... 4281

PART V:

NONDISCRIMINATION
DOT/FRA issues provisions for federally assisted railroad programs; effective 1–17–77..... 4285

PART VI:

SITE AND NEIGHBORHOOD STANDARDS
HUD proposes revision for certain subsidized housing; comments by 3–2–77..... 4295

PART VII:

EXECUTIVE ORDERS AND PRESIDENTIAL PROCLAMATIONS
The President issues Proclamations 4481, 4482 and Executive Orders 11958, 11959, 11960, 11961, 11962, 11963, 11964, 11965, 11966..... 4305

PART VIII:

BUDGET RESCISSIONS AND DEFERRALS
OMB publishes rescission proposals and new deferrals.. 4333

PART IX:

PRESIDENTIAL PROCLAMATION OF PARDON.... 4391

EXECUTIVE ORDER RELATING TO PROCLAMATION OF PARDON..... 4393

contents

THE PRESIDENT

Proclamations

American Heart Month 4307
Dried milk mixtures, imports; limitation 4309
Pardon, Presidential Proclamation of 4391

Executive Orders

Agricultural trade development and assistance, reporting functions; authority delegation 4325
Arms export controls; administration 4311
Convention on the International Regulations for Preventing Collisions at Sea, 1972; implementation 4327
Foreign assistance and related functions; administration 4315
Generalized System of Preferences, eligible articles; modification 4317
Humanitarian Service Medal; establishment 4329
International investment surveys; delegations of authority 4321
President's Advisory Board on International Investment; establishment 4323
Public international organizations; entitlement to privileges, exemptions, and immunities 4331
Pardon, Executive order relating to Proclamation of 4393

EXECUTIVE AGENCIES

ACTION

Notices

Foster grandparent and senior companion programs; income eligibility levels; schedules 4159

AGRICULTURAL MARKETING SERVICE

Rules

Lemons grown in California and Arizona 4111

Proposed Rules

Milk marketing orders:
Ohio Valley 4127

AGRICULTURE DEPARTMENT

See also Agricultural Marketing Service; Farmers Home Administration; Federal Crop Insurance Corporation; Forest Service.

Notices

Committees; establishment, renewals, etc.:
U.S. Meat Animal Research Center Advisory Committee 4160

ARMY DEPARTMENT

Notices

Meetings:
Epidemiological Board, Armed Forces 4187

ARTS AND HUMANITIES, NATIONAL FOUNDATION

Notices

Meetings:
Education Programs Panel 4222

CIVIL AERONAUTICS BOARD

Rules

Charters:
Supplemental air transportation certificates, conditions and limitations; editorial amendment 4118
Trips and special services; editorial amendment 4117
Military transportation; exemption of air carriers; reasonable level of compensation, etc.; editorial amendment 4118

Notices

Fares, domestic passenger; increase; various passengers 4181
Meetings:
Commuter Airline Association of America 4178
Hearings, etc.:
Ephrata-Moses Lake deletion case 4183
International Air Transport Association (2 documents) 4184
Las Vegas-Dallas/Fort Worth nonstop service investigation 4184
Seaboard World Airlines, Inc. 4178
United Air Lines, Inc. (2 documents) 4179, 4180
World Airways 4181

CIVIL RIGHTS COMMISSION

Notices

Meetings; State advisory committees:
Delaware 4185
Illinois 4185
Indiana 4185
Iowa 4185
Kentucky 4185
Minnesota (2 documents) 4185
New Hampshire 4186
Oklahoma 4186
Vermont 4186

COMMERCE DEPARTMENT

See Domestic and International Business Administration; Foreign Trade Zones Board.

COMMODITY FUTURES TRADING COMMISSION

Rules

Commodity Exchange Act regulations, etc.:
Floor brokers and futures commission merchants, trading standards, and records; extension of comment period 4120

Proposed Rules

Commodity Exchange Act regulations, etc.:
Futures commission merchants, trading standards, and records; extension of comment period; cross reference 4134

Notices

Officers, directors, et al., of exchanges; indemnification; revised policy statement 4281

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Proposed Rules

Termination of transfers and licenses covering extended renewal term; extension of comment period 4134

CUSTOMS SERVICE

Rules

Financial and accounting procedures and transportation in bond, etc.:
Customs seals 4120

DEFENSE DEPARTMENT

See also Army Department.

Notices

Meetings:
Science Board Advisory Committee 4188
Science Board task forces (2 documents) 4188

DOMESTIC AND INTERNATIONAL BUSINESS ADMINISTRATION

Notices

Meetings:
Computer Systems Technical Advisory Committee; Licensing Procedures Subcommittee 4186

EDUCATION OFFICE

Notices

Information collection and data acquisition activity; description; inquiry 4219

ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION

Rules

Procurement; unsolicited proposals 4124

ENVIRONMENTAL PROTECTION AGENCY

Rules

Air quality, pollution, and pollutants; new source review:
South Carolina; authority delegation 4124

Proposed Rules

Air quality implementation plans; various States, etc.:
Alabama 4134
North Carolina 4135

Notices

Air pollution; standards of performance for new stationary sources:
South Carolina; authority delegation 4188

Meetings:
Science Advisory Board's Environmental Health Advisory Committee, Study Group on Mutagenicity 4190
Pesticide chemicals; tolerances, exemptions, etc.; petitions:
BASF Wyandotte Corp.; correction 4188

FARMERS HOME ADMINISTRATION

Rules

Loan and grant programs (individual):
Management assistance to individual borrowers and applicants 4111

Notices

Disaster and emergency areas:
North Dakota 4159
South Dakota 4159

FEDERAL AVIATION ADMINISTRATION

Rules

Airworthiness directives:
Beech 4116
Boeing (2 documents) 4113, 4115
Cessna (2 documents) 4115, 4116
Control zones and transition areas (2 documents) 4117
Noise standards:
Propeller-driven small airplanes; correction 4113
VOR Federal airways, jet routes, area high routes, and reporting points; correction 4117

Proposed Rules

Airport aid program; nondiscrimination; correction 4134
Transition areas (4 documents) 4132, 4133

Notices

Area navigation policy statement; correction 4228

FEDERAL COMMUNICATIONS COMMISSION

Proposed Rules

FM broadcast stations; table of assignments:
Georgia 4157
Public safety radio services:
Land mobile radio systems, private; interconnection with public telephone network; extension of time 4158

Notices

Domestic public radio services; applications accepted for filing 4176
Emergency Broadcast System; closed circuit test 4177
FM and TV translator applications ready and available for processing 4177
Land mobile radio systems in US/Canada border vicinity; interim licensing criteria 4178
Hearings, etc.:
American Telephone and Telegraph Co 4160

FEDERAL CROP INSURANCE CORPORATION

Rules

Crop insurance, various commodities:
Sugar beets, correction 4111

FEDERAL HOUSING COMMISSIONER—OFFICE OF ASSISTANT SECRETARY FOR HOUSING

Proposed Rules

Subsidized housing; site and neighborhood standard 4296

FEDERAL INSURANCE ADMINISTRATION

Rules

Flood Insurance Program, National:
Areas eligible for sale of insurance 4264
Flood Insurance Program, National; flood elevation determinations, etc.:
California (2 documents) 4266, 4267
Missouri 4267
New Jersey 4264
North Carolina 4265
Oklahoma 4265
Pennsylvania 4265
Texas (2 documents) 4265, 4266
Wisconsin 4268

Proposed Rules

Flood Insurance Program, National; flood elevation determinations, etc.:
Colorado 4269
Illinois (4 documents) 4269, 4274, 4275
Iowa 4275
Massachusetts (2 documents) 4275, 4276
Minnesota 4276
Missouri 4269
New Jersey (2 documents) 4276, 4277
New York (6 documents) 4269–4271
North Carolina 4277
Pennsylvania (8 documents) 4271–4273, 4277, 4278
Tennessee 4274
Virginia (3 documents) 4278, 4279
Wisconsin (2 documents) 4279, 4280

FEDERAL MARITIME COMMISSION

Notices

Casualty and nonperformance, certificates:
Armadores Regina Magna S.A. 4190
Hellenic Mediterranean Lines Co. Ltd 4191
Freight forwarder licenses:
Joseph, Gerson M., et al 4191
Agreements filed, etc.:
Chicago Regional Port District Transoceanic Terminal Corp. and Calumet Barge Terminal, Inc. 4190

FEDERAL POWER COMMISSION

Notices

Hearings, etc.:
American Electric Power Service Corp. 4191
Arkansas Louisiana Gas Co 4191
Arkansas Oklahoma Gas Corp., et al 4192
Arkansas Power & Light Co 4192
Baca Gas Gathering System, Inc. 4193
Bangor Hydro Electric Co 4193
Blue Dolphin Pipe Line Co 4193
Boston Edison Co 4194
Cleveland Electric Illuminating Co., et al 4194
Columbia Gas Transmission Corp. 4195
Connecticut Light and Power Co. (2 documents) 4196
Consolidated Gas Supply Corp 4196
Continental Oil Co., et al 4195
Dorfman Production Co., Operator 4197
El Paso Electric Co 4197
Gas Gathering Corp 4198
Great Lakes Gas Transmission Co. 4198
Interstate Power Co 4198
Iowa Power and Light Co 4199
Iowa Public Service Co 4199
Kansas City Star Co 4199
Lac Vieux Desert Riparian Owners Association, Inc. and Wisconsin Valley Improvement Co. 4200
Mishawaka, City of, et al. v. American Electric Power Co., et al 4194
Mississippi River Transmission Corp. (2 documents) 4200, 4201
Montana-Dakota Utilities Co 4201
Natural Gas Pipe Line Co. of America (3 documents) 4202, 4204
Nevada Irrigation District 4204
New England Power Co 4204
Niagara Mohawk Power Corp 4205
Northern Natural Gas Co 4205
Northern States Power Co. (Wisconsin) 4205
Northwest Pipeline Corp 4205
Orange and Rockland Utilities, Inc. and Rockland Electric Co. 4206
Pacific Indonesia LNG Co 4207
Panhandle Eastern Pipe Line Co. 4207
Portland General Electric Co 4208
Public Service Co. of New Hampshire 4208
Shield, Fred W 4198
Southern Natural Gas Co 4208
Tenneco LNG, Inc 4209
Tenneco Oil Co 4209
Texas Power & Light Co 4209
Transcontinental Gas Pipe Line Corp. 4212
Transwestern Pipeline Co 4210
Union Electric Co. (2 documents) 4210
United Gas Pipe Line Co. and Mid Louisiana Gas Co 4210
United Gas Pipe Line Co 4211
Virginia Electric and Power Co. 4211
Wisconsin Public Service Corp 4211
Wisconsin Valley Improvement Co. 4212

FEDERAL RAILROAD ADMINISTRATION

Rules

Railroad Revitalization and Regulatory Reform Act of 1976:
Nondiscrimination in railroad financial assistance programs; affirmative action requirement 4285

Notices

Petitions for exemptions, etc.:
Sierra Railroad Co 4228

CONTENTS

FEDERAL RESERVE SYSTEM

Notices

Applications, etc.:
Bancorp of Wisconsin 4213
Mountain Financial Services, Inc 4213
Seilon, Inc 4214

FEDERAL TRADE COMMISSION

Rules

Prohibited trade practices:
American Academy of Orthopaedic Surgeons 4118
American College of Obstetricians and Gynecologists 4119

FOREIGN-TRADE ZONES BOARD

Notices

Foreign-trade zone applications:
Portsmouth, Va 4187
Shenandoah, Ga 4186

FOREST SERVICE

Notices

Environmental statements; availability, etc.:
Boise and Payette National Forests, South Fork Salmon River Planning Unit, Idaho 4160

GENERAL ACCOUNTING OFFICE

Notices

Regulatory reports review; proposals 4215

GENERAL SERVICES ADMINISTRATION

Notices

Authority delegations:
Defense Secretary 4215

HEALTH, EDUCATION AND WELFARE DEPARTMENT

See also Education Office; Health Services Administration; National Institutes of Health; Public Health Service; Social and Rehabilitation Service.

Proposed Rules

Grants, administration:
Nongovernmental grantees, extension of applicability and general revision 4137
Telecommunications technologies, social service application demonstrations 4135

HEALTH SERVICES ADMINISTRATION

Notices

Professional Standards Review Organizations; nominations, designations, etc.:
California (2 documents) 4215, 4218
New Jersey 4217
New York 4216
North Carolina 4216
Virginia (2 documents) 4216, 4217

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

See also Federal Housing Commissioner—Office of Assistant Secretary for Housing; Federal Insurance Administration.

Proposed Rules

Low-income housing:
Housing assistance payments program; Section 8 new construction and substantial rehabilitation projects 4300

INTERIOR DEPARTMENT

See Land Management Bureau; Reclamation Bureau.

INTERNAL REVENUE SERVICE

Rules

Income taxes:
Investment credit for movie and television films; correction 4121
Various elections under Tax Reform Act of 1976; correction 4121

INTERNATIONAL TRADE COMMISSION

Notices

Import investigations:
Reclosable plastic bags 4222
Meetngs (3 documents) 4221, 4222

INTERSTATE COMMERCE COMMISSION

Rules

Practice rules and list of forms:
Application protests 4126

Notices

Fourth section applications 4229
Hearing assignments 4229

LAND MANAGEMENT BUREAU

Notices

Oil and gas leasing; Outer Continental Shelf 4221
Withdrawal and reservation of lands, proposed, etc.:
Idaho 4220

LIBRARY OF CONGRESS

See Copyright Office.

MANAGEMENT AND BUDGET OFFICE

Notices

Budget rescissions and deferrals 4333

NATIONAL INSTITUTES OF HEALTH

Notices

Meetings:
Sickle Cell Disease Advisory Committee 4219

NATIONAL SCIENCE FOUNDATION

Notices

Science Education Directorate's Program Review 4223

NUCLEAR REGULATORY COMMISSION

Notices

Applications, etc.:
Arkansas Power and Light Co., et al 4223
Consolidated Edison Co. of New York, Inc 4225
Consumer Power Co 4224
Florida Power and Light Co 4224
Houston Lighting and Power Co., et al 4225
Indiana and Michigan Electric Co. et al 4225
Public Service Co. of Indiana, Inc 4226
Virginia Electric and Power Co. 4226
Westinghouse Electric Corp 4226
Meetings:
Reactor Safeguards Advisory Committee, Subcommittee on Regulatory Activities 4226
Reactor Safeguards Advisory Committee, Subcommittee on Seismic Activity 4227

POSTAL SERVICE

Rules

Inspection service, philately, and special cancellations:
Commemorative stamps and new stamp issues; single national policy 4123

Notices

Preparation requirements for bulk rate third class mail; erroneous interpretation and delayed compliance date 4228

POSTAL SERVICE COMMISSION

Notices

Public service costs; hearing 4184

PUBLIC HEALTH SERVICE

Rules

Grants:
Regional medical programs; CFR correction 4125

Proposed Rules

Professional standards review:
Claims payment, conclusive effect of PSRO determinations 4259
Medicare, Medicaid, and Title V agencies; correlation of functions with PSROs 4260
Organizations designated as conditional PSROs; assumption of review responsibility 4256

RECLAMATION BUREAU

Notices

Environmental statements; availability, etc.:
Coronado Project, Ariz 4220

SOCIAL AND REHABILITATION SERVICE

Rules

Medical assistance programs:
Inpatient services in certain institutions; payment termination 4125

TRANSPORTATION DEPARTMENT

See Federal Aviation Administration; Federal Railroad Administration.

TREASURY DEPARTMENT

See also Customs Service; Internal Revenue Service.

Rules

Foreign exchange; reporting requirements 4121

Notices

Committees; establishment, renewals, etc.:
Private Philanthropy and Public Needs Advisory Committee; appointment of members 4228
Tax treaties, income; various countries; list 4229

"THE FEDERAL REGISTER—WHAT IT IS AND HOW TO USE IT"

Briefings at the Office of the Federal Register

(For Details, See 41 FR 46527, Oct. 21, 1976)

RESERVATIONS: DEAN L. SMITH, 523–5282

list of cfr parts affected in this issue

The following numerical guide is a list of the parts of each title of the Code of Federal Regulations affected by documents published in today's issue. A cumulative list of parts affected, covering the current month to date, follows beginning with the second issue of the month.

A Cumulative List of CFR Sections Affected is published separately at the end of each month. The guide lists the parts and sections affected by documents published since the revision date of each title.

3 CFR

PROCLAMATIONS:
4423 (See Proc. 4482) 4309
4481 4307
4482 4309
4483 4391

EXECUTIVE ORDERS:
10900 (Amended by EO 11963) 4325
10973 (Amended by EO 11959) 4315
11501 (Revoked by EO 11958) 4311
11718 (Revoked by EO 11966) 4331
11888 (Amended by EO 11960) 4317
11958 4311
11959 4315
11960 4317
11961 4321
11962 4323
11963 4325
11964 4327
11965 4329
11966 4331
11967 4393

7 CFR

401 4111
910 4111
1924 4111

PROPOSED RULES:
1033 4127

14 CFR

36 4113
39 (5 documents) 4113–4116
71 (3 documents) 4117
75 4117
207 4117
208 4118
288 4118

PROPOSED RULES:
71 (4 documents) 4132, 4133
152 4134

16 CFR

13 (2 documents) 4118, 4119

17 CFR

1 4120
155 4120

PROPOSED RULES:
1 4134
155 4134

19 CFR

18 4120
24 4120

24 CFR

1914 4264
1916 (3 documents) 4264, 4265
1917 (7 documents) 4265–4268

PROPOSED RULES:
200 4296
800 4300
881 4300
1917 (33 documents) 4269–4280

26 CFR

7 (2 documents) 4121

31 CFR

128 4121

37 CFR

PROPOSED RULES:
201 4134

39 CFR

233 4123
257 4123
258 4124

40 CFR

52 4124
60 4124
61 4124

PROPOSED RULES:
52 (2 documents) 4134, 4135

41 CFR

9–4 4124

42 CFR

56b 4125

PROPOSED RULES:
101 (3 documents) 4256–4260

45 CFR

249 4125

PROPOSED RULES:
63 4135
74 4137

47 CFR

PROPOSED RULES:
73 4157
89 4158

49 CFR

265 4286
1100 4126

CUMULATIVE LIST OF PARTS AFFECTED DURING JANUARY

The following numerical guide is a list of parts of each title of the Code of Federal Regulations affected by documents published to date during January.

1 CFR

PROPOSED RULES:
442 ... 1267

3 CFR

EXECUTIVE ORDERS:
10480 (Amended by EO 11956) ... 2947
10900 (Amended by EO 11963) ... 4325
10973 (Amended by EO 11959) ... 4315
11490 (Amended by EO 11953) ... 2491
11501 (Revoked by EO 11958) ... 4311
11651 (Amended by EO 11951) ... 1453
11718 (Revoked by EO 11966) ... 4331
11724 (Superseded by EO 11954) ... 2297
11793 (Revoked by EO 11957) ... 3295
11821 (Amended by EO 11949) ... 1017
11888 (Amended by EO 11960) ... 4317
11921 (See EO 11953) ... 2491
11949 ... 1017
11950 ... 1451
11951 ... 1453
11952 ... 2293
11953 ... 2491
11954 ... 2297
11955 ... 2499
11956 ... 2947
11957 ... 3295
11958 ... 4311
11959 ... 4315
11960 ... 4317
11961 ... 4321
11962 ... 4323
11963 ... 4325
11964 ... 4327
11965 ... 4329
11966 ... 4331
11967 ... 4393

PROCLAMATIONS:
4423 (See Proc. 4482) ... 4309
4481 ... 4307
4482 ... 4309
4483 ... 4391

5 CFR

213 ... 1455, 2949, 3297, 3827
610 ... 3297
1410 ... 2299

7 CFR

1 ... 743
2 ... 2968
26 ... 1019
55 ... 2969
56 ... 2970
59 ... 2971
70 ... 2971
210 ... 2971
226 ... 1475
354 ... 1475
401 ... 4111
601 ... 3845
718 ... 2973
722 ... 1476
726 ... 2300
729 ... 749
730 ... 2301
905 ... 1022
907 ... 1230, 2665, 3845, 3846
910 ... 1476, 2977, 3297, 4111
917 ... 3625
928 ... 1, 2, 2665
930 ... 3626
959 ... 2308

7 CFR—Continued

971 ... 2666, 3626
981 ... 3159, 3847
1430 ... 3
1473 ... 2977
1701 ... 3847
1822 ... 1023, 2051
1843 ... 1231
1845 ... 2308
1924 ... 4111

PROPOSED RULES:
52 ... 3178
270 ... 1479
271 ... 1479
272 ... 780, 2328
275 ... 1479
661 ... 3311
730 ... 780
967 ... 2691
987 ... 2503
1033 ... 4127
1063 ... 1356
1070 ... 1356
1078 ... 1356
1079 ... 1356
1205 ... 2503
1421 ... 2328
1434 ... 2980
1473 ... 2977
1488 ... 3849
1701 ... 1479

8 CFR

204 ... 3626
212 ... 3627
214 ... 3627

9 CFR

73 ... 2949, 3297
97 ... 1455
113 ... 750, 1456
317 ... 3298
319 ... 751, 3298
381 ... 2949

PROPOSED RULES:
92 ... 1483, 3859

10 CFR

100 ... 2051
140 ... 46
Ch. II ... 1036
203 ... 3814
212 ... 1036, 1456, 2308

FEA RULINGS:
1977-1 ... 3628

PROPOSED RULES:
2 ... 3178
51 ... 3178
212 ... 2646
215 ... 3652

11 CFR

PROPOSED RULES:
1 ... 3810
3 ... 3810

12 CFR

4 ... 2950
16 ... 2200, 3299
202 ... 1242, 2950
206 ... 3171

12 CFR—Continued

207 ... 968
211 ... 752
212 ... 2951
213 ... 752
220 ... 1038
221 ... 968
224 ... 968
225 ... 752, 1263, 2951
226 ... 753, 1264, 2650, 3827
227 ... 2950
265 ... 2501, 2950
563 ... 2952
570 ... 2952
601 ... 2666
704 ... 1458

PROPOSED RULES:
226 ... 780, 1268
505b ... 2503
523 ... 2338
545 ... 2328
564 ... 2328
604 ... 55, 2078

13 CFR

309 ... 753

PROPOSED RULES:
112 ... 2506
121 ... 2505, 2980

14 CFR

25 ... 2052
36 ... 4113
37 ... 19
39 ... 1217, 1218, 2053–2055, 3870, 3828, 4113–4116
71 ... 300, 2055, 2056, 3170, 3171, 3829, 4117
73 ... 300, 3829
75 ... 300, 4117
97 ... 1219, 2056, 3171
207 ... 4117
208 ... 4118
221a ... 1220
241 ... 1219
288 ... 3299
302 ... 2667
378a ... 2309
385 ... 1220, 2667, 2668
1214 ... 3829

PROPOSED RULES:
39 ... 1268–1270
71 ... 1270, 1271, 2078, 2079, 3179, 3861–3863, 4132, 4133
91 ... 3863
152 ... 2850, 4134
239 ... 2693
288 ... 1271
298 ... 2692
310b ... 2995
370 ... 2995
399 ... 3180

15 CFR

369 ... 2057
371 ... 1222
377 ... 1222
931 ... 1164

PROPOSED RULES:
920 ... 2507
933 ... 4046

16 CFR

2 ... 3300
13 ... 3–5, 3636, 3640, 3833, 4118, 4119
1201 ... 1428

PROPOSED RULES:
1 ... 2980
4 ... 2079
438 ... 1483
447 ... 2694
450 ... 1038
801 ... 3181, 3655
1301 ... 1484

17 CFR

1 ... 2628, 4120
155 ... 4120
180 ... 3433
200 ... 753
211 ... 2058
240 ... 753, 754, 2060, 3301
241 ... 759
276 ... 2953

PROPOSED RULES:
1 ... 4134
155 ... 4134
239 ... 3312
240 ... 781, 782, 3312
249 ... 782
270 ... 3312
275 ... 3312

18 CFR

2 ... 2954
11 ... 1226
141 ... 6
154 ... 2954
300 ... 2668

PROPOSED RULES:
1 ... 2079
2 ... 2329
3 ... 2079
154 ... 1272
157 ... 56

19 CFR

4 ... 3160
6 ... 2309
10 ... 2309, 2310, 3161
18 ... 4120
24 ... 4120
153 ... 2501
172 ... 3161

PROPOSED RULES:
1 ... 2329
113 ... 2330
201 ... 805

20 CFR

401 ... 3640
404 ... 2062
405 ... 1028
416 ... 2062
422 ... 3640
614 ... 1459
656 ... 3440
701 ... 3847
702 ... 3847

PROPOSED RULES:
416 ... 2079, 3316

21 CFR

2 ... 1459
4 ... 3108
8 ... 1459
102 ... 761
121 ... 1460, 1461, 3302
314 ... 1624, 1638, 3109
320 ... 1624, 1638
510 ... 3837
514 ... 3109
520 ... 1462, 3838
522 ... 3838
540 ... 1462
548 ... 3838
555 ... 3838
558 ... 761, 1463, 2312

PROPOSED RULES:
1 ... 2330
3e ... 1483
11 ... 806
18 ... 2330
121 ... 1483
128d ... 807
369 ... 2330
500 ... 2330
510 ... 2981
701 ... 2330
740 ... 2330
801 ... 2330

22 CFR

41 ... 2501
42 ... 2501

23 CFR

625 ... 6, 3642
712 ... 7

24 CFR

200 ... 3838
201 ... 3839
203 ... 762
207 ... 764, 2954
213 ... 764, 2954
221 ... 765, 2954
231 ... 766, 2954
241 ... 763, 3162
280 ... 960
1905 ... 3162
1914 ... 2193, 4264
1916 ... 4264, 4265
1917 ... 2063–2068, 4265–4268
3282 ... 2576

PROPOSED RULES:
200 ... 4296
201 ... 1487
242 ... 3655
279 ... 3112
406 ... 2796
501 ... 1488
570 ... 3292, 3437
800 ... 4300
866 ... 3181
881 ... 4300
1917 ... 2082, 4269–4280

25 CFR

PROPOSED RULES:
221 ... 3319
504 ... 3864

26 CFR

1 ... 767, 1195, 1463, 2501, 3839
7 ... 1469, 1471, 2954, 4121
41 ... 2671
48 ... 2671
142 ... 2677
154 ... 2312
404 ... 1029, 2313

PROPOSED RULES:
1 ... 57, 2694, 3181, 3866
54 ... 1488
301 ... 1038, 1489

27 CFR

170 ... 3840
194 ... 3840
201 ... 3840

28 CFR

0 ... 3163

PROPOSED RULES:
32 ... 1390

29 CFR

15 ... 769
60 ... 3440
94 ... 1656, 2426
95 ... 2427
96 ... 2428
97 ... 1656
98 ... 2428
99 ... 773, 2430
511 ... 2313
609 ... 2954
613 ... 3303
672 ... 2955
673 ... 2955
720 ... 3303
1601 ... 3163
1910 ... 2956, 3304
1926 ... 2956
1952 ... 2313
2608 ... 2677
2610 ... 2678

PROPOSED RULES:
90 ... 2981
215 ... 3319
1910 ... 808, 1742, 1806
2550 ... 1488, 1618, 3871

30 CFR

100 ... 1214
211 ... 3642

PROPOSED RULES:
11 ... 2986
77 ... 2800
211 ... 1489, 2082
251 ... 3321

31 CFR

1 ... 2311
13 ... 3841
51 ... 2196, 2422
101 ... 1471
128 ... 4121
210 ... 9
515 ... 1472

32 CFR

40 ... 3646
256 ... 773
2000 ... 2679

PROPOSED RULES:

242a ... 1492
903 ... 2085
1482 ... 3322

33 CFR

40 ... 10
92 ... 2681
117 ... 3841
159 ... 11
183 ... 2681, 2682
204 ... 3646
265 ... 3841

PROPOSED RULES:

110 ... 3871
114 ... 3181
115 ... 3181
161 ... 3182
209 ... 2572

34 CFR

Ch. I ... 12
232 ... 1478

36 CFR

212 ... 2957
221 ... 2957
231 ... 2957
251 ... 2957
261 ... 2957
262 ... 2961
271 ... 2962
272 ... 2962
291 ... 2962
295 ... 2962
606 ... 1473

PROPOSED RULES:

7 ... 3655, 3656
16 ... 812
17 ... 812

37 CFR

201 ... 2962

PROPOSED RULES:

1 ... 2632
3 ... 2632
5 ... 2632
201 ... 4134

38 CFR

0 ... 2314
3 ... 2089
17 ... 2316

39 CFR

111 ... 3470
233 ... 4123
257 ... 4123
258 ... 4124
3002 ... 3646

PROPOSED RULES:

1 ... 2699
2 ... 2699
3 ... 2699
4 ... 2699

39 CFR—Continued

PROPOSED RULES—Continued

5 ... 2699
6 ... 2699
7 ... 2699
8 ... 2699

40 CFR

6 ... 2450
52 ... 3841, 4124
60 ... 1214, 4124
61 ... 1215, 4124
86 ... 1122, 1150
129 ... 2588, 2617
136 ... 3306
190 ... 2858
220 ... 2468
221 ... 2470
222 ... 2471
223 ... 2474
224 ... 2474
225 ... 2475
226 ... 2475
227 ... 2476
228 ... 2482
229 ... 2489
409 ... 3164
430 ... 1398
440 ... 3165
455 ... 2316

PROPOSED RULES:

22 ... 1492
52 ... 1273, 1494, 2705, 3657, 4134, 4135
60 ... 2842
80 ... 3183
85 ... 1044
180 ... 815
201 ... 2330
202 ... 2330
260 ... 2331
1516 ... 1044

41 CFR

3-3 ... 2683
3-4 ... 2684
3-16 ... 2684
3-50 ... 2684
9-4 ... 4124
9-7 ... 2963
9-15 ... 2963
9-51 ... 2684
Ch. 14 ... 1215
14-1 ... 1215
14-10 ... 1215
60-1 ... 3458
60-2 ... 3461
60-3 ... 3825
60-30 ... 3462, 4057
60-741 ... 3307
101-1 ... 12
101-25 ... 1030
101-26 ... 1032
101-28 ... 2317
101-38 ... 1477

PROPOSED RULES:

3-1 ... 1273
101-17 ... 816

42 CFR

56b ... 4125
100 ... 4024
122 ... 4024
123 ... 4028

42 CFR—Continued

PROPOSED RULES:

54b ... 2986
101 ... 2994, 4256-4260

43 CFR

4 ... 1216
419 ... 3307
2650 ... 779
3100 ... 1032
4110 ... 778
4120 ... 778

PUBLIC LAND ORDER:

5561 (Amended by PLO 5612) ... 2684
5611 (Corrected by PLO 5612) ... 2684
5612 ... 2706

PROPOSED RULES:

29 ... 3660
2400 ... 3657
3520 ... 2684
3800 ... 1045

45 CFR

177 ... 2963
185 ... 3842
193 ... 1190
233 ... 3307
248 ... 2684
249 ... 4125
250 ... 779
304 ... 3843
1005 ... 3165
1050 ... 3272
1068 ... 3165
1336 ... 3782

PROPOSED RULES:

Subtitle A ... 3325
46 ... 2792, 3076
63 ... 4135
74 ... 4137
153 ... 3792
158 ... 2086
Ch. II ... 2445
201 ... 3664
205 ... 2440
249 ... 3325, 3665
250 ... 2331, 3328
304 ... 3663
504 ... 3872
706 ... 2708
1480 ... 1045
1703 ... 3667

46 CFR

536 ... 1473

PROPOSED RULES:

10 ... 3186
12 ... 1278
502 ... 817
531 ... 3186

47 CFR

0 ... 3166, 3167
1 ... 3166-3168, 3308
13 ... 1231
15 ... 1231, 3308
21 ... 1232
73 ... 1233, 2502, 3167, 3308, 3646, 4157
74 ... 2069
76 ... 3308

47 CFR—Continued

81 ... 1474
83 ... 1231, 1474
87 ... 3168, 3308
89 ... 4158
97 ... 3166, 3167

PROPOSED RULES:

64 ... 1278
73 ... 1278, 1279, 2086, 3186
74 ... 2087
76 ... 3670
83 ... 2088
89 ...
97 ... 2089

49 CFR

Ch. V ... 2864
25 ... 12
99 ... 3118
173 ... 2071, 2688
174 ... 2071
178 ... 2688
218 ... 2318, 3843
221 ... 2321, 3843
225 ... 1221
231 ... 1222
265 ... 4286
310 ... 2964

49 CFR—Continued

501 ... 3843
571 ... 3844
630 ... 3772
1033 ... 2965, 3309, 3310, 3844
1047 ... 19
1056 ... 3169
1100 ... 4126
1241 ... 1474
1249 ... 1474
1250 ... 1474
1251 ... 1474

PROPOSED RULES:

Subtitle A ... 2868
173 ... 2709
179 ... 2709
228 ... 2994
230 ... 2994
267 ... 2507
523 ... 2092
571 ... 3187
1251 ... 2092

50 CFR

17 ... 2071, 2965
26 ... 1033, 2689, 2690, 3845
32 ... 2690

50 CFR—Continued

33 ... 1034, 2690, 3845
216 ... 1034, 3845
260 ... 2326
261 ... 2326
262 ... 2326
263 ... 2326
264 ... 2326
265 ... 2326
266 ... 2326
267 ... 2326
268 ... 2326
269 ... 2326
270 ... 2326
271 ... 2326
272 ... 2326
273 ... 2326
274 ... 2326
275 ... 2326
276 ... 2326
277 ... 2326
278 ... 2326
279 ... 2326
601 ... 2968
602 ... 2968

PROPOSED RULES:

17 ... 2101, 2102, 2507
216 ... 1049

FEDERAL REGISTER PAGES AND DATES—JANUARY

Pages	Date
1-741	Jan. 3
743-1015	4
1017-1194	5
1195-1450	6
1451-2049	7
2051-2291	10
2293-2497	11
2499-2664	12
2665-2946	13
2947-3157	14
3159-3294	17
3295-3624	18
3625-3826	19
3827-4109	21
4110-4394	24

rules and regulations

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

Title 7—Agriculture

CHAPTER IV—FEDERAL CROP INSURANCE CORPORATION, DEPARTMENT OF AGRICULTURE

PART 401—FEDERAL CROP INSURANCE

Subpart—Regulations for the 1969 and Succeeding Crop Years

CLOSING DATES; CORRECTION

In FR Doc. 76-34536, appearing at page 51582 in the FEDERAL REGISTER of November, 23, 1976, paragraph (a) of § 401.103, appearing at the left hand column of page 58583, under the heading "Sugar Beets" is corrected to read as follows:

§ 401.104 Application for insurance.

(a) * * *

(Closing Dates).

* * * * * *

Sugar beets:	
Imperial County, Calif.----	Aug. 31.
All other States----------	Apr. 15.

WARREN E. DIRKS,
Manager, Federal Crop Insurance Corporation.

[FR Doc.77-2097 Filed 1-21-77;8:45 am]

CHAPTER IX—AGRICULTURAL MARKETING SERVICE (MARKETING AGREEMENTS AND ORDERS; FRUITS, VEGETABLES, NUTS), DEPARTMENT OF AGRICULTURE

[Lemon Regulation 76]

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

Limitation of Handling

PREAMBLE

This regulation fixes the quantity of California-Arizona lemons that may be shipped to fresh market during the weekly regulation period January 23-29, 1977. It is issued pursuant to the Agricultural Marketing Agreement Act of 1937, as amended, and Marketing Order No. 910. The quantity of lemons so fixed was arrived at after consideration of the total available supply of lemons, the quantity of lemons currently available for market, the fresh market demand for lemons, lemon prices, and the relationship of season average returns to the parity price for lemons.

§ 910.376 Lemon Regulation 76.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 910, as amended (7 CFR Part 910), regulating the handling of lemons grown in California and Arizona, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and upon the basis of the recommendations and information submitted by the Lemon Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such lemons, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) The need for this regulation to limit the quantity of lemons that may be marketed during the ensuing week stems from the production and marketing situation confronting the lemon industry.

(i) The committee has submitted its recommendation with respect to the quantity of lemons it deems advisable to be handled during the ensuing week. Such recommendation resulted from consideration of the factors enumerated in the order. The committee further reports the demand for lemons is easier this week due to the extremely cold weather. Average f.o.b. price was $5.13 per carton the week ended January 15, 1977 compared to $4.99 per carton the previous week. Track and rolling supplies at 100 cars were up 20 cars from last week.

(ii) Having considered the recommendation and information submitted by the committee, and other available information, the Secretary finds that the quantity of lemons which may be handled should be fixed as hereinafter set forth.

(3) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this regulation until 30 days after publication hereof in the FEDERAL REGISTER (5 U.S.C. 553) because the time intervening between the date when information upon which this regulation is based became available and the time when this regulation must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The committee held an open meeting during the current week, after giving due notice thereof, to consider supply and market conditions for lemons and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such meeting was held; the provisions of this regulation, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such lemons; it is necessary, in order to effectuate the declared policy of the act, to make this regulation effective during the period herein specified; and compliance with this regulation will not require any special preparation on the part of persons subject hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on January 18, 1977.

(b) *Order.* (1) The quantity of lemons grown in California and Arizona which may be handled during the period January 23, 1977, through January 29, 1977, is hereby fixed at 180,000 cartons.

(2) As used in this section, "handled", and "carton(s)" have the same meaning as when used in the said amended marketing agreement and order.

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674)

Dated: January 19, 1977.

CHARLES R. BRADER,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc.77-2346 Filed 1-21-77;8:45 am]

CHAPTER XVIII—FARMERS HOME ADMINISTRATION, DEPARTMENT OF AGRICULTURE

SUBCHAPTER A—GENERAL REGULATIONS

PART 1802—SUPERVISION OF BORROWERS

SUBCHAPTER I—LOAN AND GRANT PROGRAMS (INDIVIDUAL)

[FmHA Instruction 1924-B]

PART 1924—MANAGEMENT ASSISTANCE TO BORROWERS (INDIVIDUAL)

Subpart B—Management Assistance to Individual Borrowers and Applicants

On pages 50272-50274 of the FEDERAL REGISTER dated November 15, 1976, there was published a notice of proposed rulemaking to establish under Chapter XVIII, Title 7, Subchapter I—"Loan and Grant Programs (Individual)," a new Part 1924, "Management Assistance to Borrowers (Individual)," in the Code of Federal Regulations. Subpart B, "Management Assistance to Individual Borrowers and Applicants," (§§ 1924.51-1924.100) of this new Part 1924 is consolidated, transferred and redesignated from various sections and units of Subparts A through F of Part 1802, of this Chapter XVIII, and has been revised including a change in title. These changes are to clarify the regulations on manage-

ment assistance to individual borrowers and to provide for the assistance to better fulfill the particular needs of the borrower and protect the interest of the Government.

Interested persons were given until December 15, 1976, to submit written comments, suggestions or objections regarding the proposed amendments. All comments submitted were given due consideration and with minor editorial changes, the proposed new Subpart B of Part 1924 is hereby adopted and is set forth below.

Accordingly, 7 CFR Chapter XVIII is amended as follows:

1. Subparts A through F of 7 CFR Part 1802 are removed.

2. A new Subchapter I, consisting at this time of Subpart B to new Part 1924, is added as follows:

Subpart B—Management Assistance to Individual Borrowers and Applicants

Sec.

1924.51 General.
1924.52 —1924.54 [Reserved].
1924.55 Management assistance.
1924.56 Credit counseling.
1924.57 Planning.
1924.58 Record keeping.
1924.59 Supervision.
1924.60 Analysis.
1924.61 Nonfarm enterprises.
1924.62 State supplements.
1924.63 —1924.100 [Reserved].

AUTHORITY: 7 U.S.C. 1989; 42 U.S.C. 1480; 42 U.S.C. 2492; 5 U.S.C. 301; Sec. 10 Pub. L. 93-357, 88 Stat. 392; delegation of authority by the Sec. of Agri., 7 CFR 2.23, delegation of authority by the Asst. Sec. for Rural Development, 7 CFR 2.70; delegations of authority by Dir., OEO 29 FR 14764, 33 FR 9850.

Subpart B—Management Assistance to Individual Borrowers and Applicants

§ 1924.51 General.

This Subpart sets forth policies for providing management assistance to individual applicants and borrowers. The term "individual" as used in this Subpart also applies to farming partnerships and corporations receiving Emergency (EM) and Soil and Water (SW) loans. This subpart pertains to all insured loans that depend on farm income for loan repayment, and also provides for the necessary supervision and appropriate credit counseling for Rural Housing (RH) loans not dependent on farm income for loan repayment.

§§ 1924.52–1924.54 [Reserved]

§ 1924.55 Management assistance.

Management assistance includes the following:

(a) Credit counseling with applicants and borrowers.

(b) Planning of farm operations with applicants and borrowers.

(c) Record keeping by borrowers.

(d) Borrower supervision, by Farmers Home Administration (FmHA).

(e) Analysis of borrower operations and/or enterprises by the borrower and FmHA.

§ 1924.56 Credit counseling.

The County Supervisor will provide credit counseling to applicants and borrowers, including individual RH applicants and borrowers, regarding prudent use of credit in making profitable adjustments in operations, sources of available credit, general conditions under which credit is usually available, and methods of presenting requests for credit to lenders.

(a) In credit counseling with applicants who do not qualify for FmHA loans, the County Supervisor will:

(1) Explain why the applicant does not meet FmHA eligibility requirements and, if appropriate, why other credit should be available.

(2) Advise applicants on adjusting plans of operation and credit requests.

(b) In credit counseling with eligible applicants and borrowers the County Supervisor will:

(1) Assist in planning for the use of FmHA and other credit.

(2) Advise the applicant or borrower of FmHA's policy with respect to the use of other credit and assist in the determination of the amount of other credit best suited for the applicant or borrower.

§ 1924.57 Planning.

(a) *Purpose.* Provide a basis for:

(1) Attaining specific production and financial management objectives.

(2) Applicant or borrower management decisions.

(3) FmHA credit and management assistance determinations.

(b) *Responsibility of applicant or borrower.* Applicant or borrower will complete the plans required by FmHA. This will require giving thorough consideration to:

(1) Analyzing total resources available and their use.

(2) Adjustments, improvements, practices, and capital requirements needed for a successful operation.

(3) Determining the gross income, expenses, and net income that can reasonably be expected from the operation.

(c) *Responsibility of County Supervisor.* County Supervisor will assist the applicant or borrower in completing the plans required through:

(1) Stressing the need to correlate long-time and annual plans when both are being developed.

(2) Use of key farm management and financial management practices. These will be established for major farm enterprises, and will be updated annually. Key management practices not already established in an operation will be considered and incorporated into the operation when developing long-time and annual plans.

(3) Requiring applicants when developing their long-time and annual plans to fully utilize plans developed, if any, with the assistance of the Soil Conservation Service (SCS), the Extension Service (ES), or other agency or farm management service.

(4) Planning for the appropriate use of income with the applicant. Priorities for the use of income follow:

(i) Family living and farm operating expenses.

(ii) Payment of scheduled debt installments.

(iii) Payment of delinquencies on secured debts, followed by payments on delinquent unsecured debt.

(iv) Proper use of anticipated remaining income to increase cash reserve, or to make necessary capital purchases.

(v) Advance payments on chattel and real estate debts.

(5) Determining the feasibility of the plans. After considering inventory changes, the net income and cash flow should be sufficient to enable the applicant to:

(i) Pay all operating expenses.

(ii) Meet necessary payments on debts.

(iii) Maintain necessary livestock, farm and home equipment, and buildings to the extent that such items have not been provided for in the operating expenses.

(iv) Have a reasonable standard of living.

(d) *Long-time plans (Form FmHA 431–1, "Long-Time Farm and Home Plan").* The long-time plan reflects the long-time aims and objectives of families. It will be required of each applicant or borrower engaged in farming who is receiving a loan when the major adjustments or improvements needed will not be completed the first full crop year. The long-time plan, when developed, will be completed before preparing the annual plan, and revised as conditions require.

(e) *Annual plans (Form FmHA 431–2, "Farm and Home Plan").* An annual plan will be required of each applicant or borrower engaged in farming who receives an FmHA loan or funds from other credit sources as a result of FmHA executing either a subordination agreement or a lien waiver. Also, an annual plan for a typical year will be required when installments are deferred for more than one year or when major adjustments are being made to the operation. The annual plan will cover the 12 month period (or crop year) which most accurately reflects the annual production cycle of the operation.

(1) Complete annual plans will be required for those borrowers:

(i) Receiving initial loans.

(ii) Receiving subsequent FmHA loans or funds from other credit sources under FmHA subordination agreements or lien waivers.

(2) Interim plans may be developed for the remainder of the current years operation to supplement an annual plan for the following year in those cases where the annual plan alone would not be sufficient to accurately show the complete cycle of operation. This plan will show the planned use of income to be received from livestock and crops held for sale, and cash on hand at that time.

(f) *Documentation and revision of plans.* (1) Plans will be documented in sufficient detail to adequately reflect the overall condition of the operation.

(2) Initial and subsequent plans will be revised whenever significant changes in the borrower's operation occur during the year, including change in use of loan funds or loan amount.

The plan will be marked "Revision" and changes noted by crossing out any

original estimates and inserting new estimates immediately above. The borrower will initial and date major revisions to the plan.

§ 1924.58 Record keeping.

(a) *Purpose.* All borrowers engaged in farming must maintain and use the appropriate type of farm records which after the loan is made will enable:

(1) Borrowers to make management decisions and to analyze their farming operations.

(2) FmHA to determine eligibility for loan assistance and assist the borrowers in analyzing their farming operations and in making prudent management decisions.

(b) *Responsibilities.* (1) Borrowers must select and maintain a record keeping system which adequately meets the needs of their farming operations and FmHA requirements.

(2) County Supervisors will assist borrowers in selecting, establishing, and maintaining record keeping systems. Such systems may include the farm record book (Form FmHA 432–1, "Farm Family Record Book") available through FmHA, other record books, or a suitable system offered by a farm management service, State Extension Service, or commercial record keeping or accounting service.

(3) The system selected must provide, as a minimum, a record of the annual cash flow, beginning and end of year balance sheets, and an income statement. Borrowers receiving EM loans of $250,000 or more will be required to use a record keeping system or accounting service which provides, as a minimum, a monthly cash flow statement, beginning and end of year balance sheets, and an income statement.

§ 1924.59 Supervision.

(a) *Purpose.* Supervision will be given by the County Supervisor to protect the Government's interest and to assist the borrower in accomplishing the purpose of the loan.

(b) *Responsibility of County Supervisor.* The County Supervisor will determine and select the appropriate method of supervision to be used in assisting each borrower.

(c) *Supervisory methods.* Supervision may be given through farm visits, review of farm records, collateral inspections, meetings with borrowers on an individual or group basis, letters, telephone, media releases, etc. Cash flow analysis and enterprise analysis should also be used as supervisory methods when applicable. A complete record of each visit, meeting, or other contact will be made in the case file running record, underscoring those items which require followup action.

(d) *Farm visits.* (1) A minimum of one visit a year will be made by the County Supervisor to borrowers who have been indebted for less than one full crop year, or classified as problem cases. Borrowers who have been delinquent more than 1 year will be visited by the County Supervisor, accompanied by the District Director, unless this requirement is waived in writing by the State Director on an individual borrower basis following a review of the annual county delinquent and problem case review. In cases involving borrowers with RH loans on nonfarm tracts, periodic inspection ordinarily will be made only if foreclosure action is likely to be taken, the property has been abandoned, or when necessary to protect the interest of the Government.

(2) Visits will be coordinated with inspections of security property required for the FmHA loan or loans owed by the borrower.

(3) The County Supervisor will use the following priorities in scheduling routine visits:

(i) Problem case borrowers.

(ii) Initial borrowers.

(iii) Borrowers receiving annual production type loans.

(iv) Other borrowers.

§ 1924.60 Analysis.

(a) *Purpose.* Analysis by the County Supervisor assists the borrower in a review and evaluation of the farm operation to determine progress, problems, and corrective actions needed.

(b) *Responsibility of County Supervisor.* The County Supervisor will:

(1) Adjust the analysis to the needs of each borrower and FmHA.

(2) Determine the date and place of the analysis, and scheduling the analysis at the time of year when the most effective results will be obtained.

(3) Document and report the results of the analysis.

(i) Assist the borrower in completing the "actual" plan for the current year if necessary, and in recording a complete plan for the next year.

(ii) Obtain copy of completed plans. Make a complete entry in the case file running record of results and agreements reached during the analysis, underscoring those items requiring followup action.

(c) *Conducting analysis.* An analysis will be conducted for borrowers:

(1) Seriously delinquent or problem cases.

(2) Experiencing financial and/or production management problems.

(3) Reorganizing or implementing a major change in operations which has not been completed.

(4) At the end of the first full crop year after receiving an initial Operating loan and each year thereafter until the County Supervisor determines the borrower is conducting the operation satisfactorily.

§ 1924.61 Nonfarm enterprises.

This is any business enterprise which supplements farm income by providing goods or services for which there is a need and a reasonably reliable market. The same general policies covered in this Subpart for giving management assistance to an applicant or borrower on farm loans will be followed in dealing with an applicant or borrower on nonfarm enterprise loans. The appropriate plans and record book will be substituted for the nonfarm enterprise. Form FmHA 431–4, "Business Analysis Nonagricultural Enterprise," and FmHA 432–10, "Business and Family Record Book," available at most FmHA offices can be used for these purposes.

§ 1924.62 State supplements.

The State Director may supplement this Subpart as necessary to:

(a) Assure that each area included under the heading of management assistance will be carried out uniformly and effectively and to assign responsibilities to District Directors and other members of the State staff.

(b) Obtain information needed in the State about the performance of individual borrowers and the results of management assistance carried out in each County Office.

(c) Assure key farm management and financial management practices are established, and kept current in each County Office.

§ 1924.63–1924.100 [Reserved]

Effective date: This regulation shall become effective January 24, 1977.

Dated: January 6, 1977.

FRANK B. ELLIOTT,
Administrator,
Farmers Home Administration.

[FR Doc.77-1962 Filed 1-21-77;8:45 am]

Title 14—Aeronautics and Space

CHAPTER I—FEDERAL AVIATION ADMINISTRATION

[Docket No. 13243; Amdt. 36-6]

PART 36—NOISE STANDARDS: AIRCRAFT TYPE AND AIRWORTHINESS CERTIFICATION

Noise Regulations for Propeller-Driven Small Airplanes Submitted to the FAA by the Environmental Protection Agency; Notice of Decision

Correction

In FR Doc. 76–37649 appearing on page 56056 in the issue of Thursday, December 23, 1976, on page 56064, the third column, paragraph numbered (2) should read as follows:

Section F36.111 Flight procedures.

* * * * *

(b) * * *

(2) At stabilized speed with propellers synchronized and with the airplane in cruise configuration, except that if the speed at the power setting prescribed in this paragraph would exceed the maximum speed authorized in level flight, accelerated flight is acceptable.

[Docket No. 75-NW-23-AD, Amdt. 39-2812]

PART 39—AIRWORTHINESS DIRECTIVES

Boeing 707–300, –400, –300B, –300C Series Airplanes

A proposal to amend Part 39 of the Federal Aviation Regulations by adding an airworthiness directive applicable to the Boeing 707 –300, –400, –300B, –300C series airplanes was published in 41 FR 29714 and 41 FR 41711. There has been significant cracking in the upper wing skin and rear spar of these airplanes that

results in loss of strength in the wing. Interested persons have been afforded an opportunity to participate in the making of the amendment. Comments were received from the Air Transport Association of America and The Boeing Company, as well as from two foreign operators.

Several comments were made concerning the fact that reference had been made to Boeing Service Bulletin No. (S.B.) 3280 which had not as yet been received by the airlines. The NPRM comment period was extended to allow interested parties time to review the service bulletin.

One operator suggested that the X-ray inspections of paragraph A be increased to 530 landings in conjunction with a suggested visual inspection to be conducted at 265 landings rather than the proposed 400 landing X-ray inspection. The 400 landing inspection interval has been changed to 500 landings. If an operator shows that his inspection methods, techniques, or experience are adequate to elevate the repetitive inspection intervals, he may do so with approval of the Chief, Engineering and Manufacturing Branch, FAA Northwest Region upon contacting his FAA Principal Maintenance Inspector per paragraph H of the AD. Additionally, if an operator can show that aircraft used exclusively in passenger service should have different inspection intervals, this may be accommodated upon adequate substantiation in accordance with paragraph H of this AD.

Another comment suggests that the paragraph dealing with terminating action be clarified and note that inspections required by paragraph A.1., B.1.a., and B.1.b. need not be accomplished after S.B. 2607 or S.B. 2427, Part X(a), have been accomplished. FAA believes the AD is clear as written.

An operator objected to paragraph D of the NPRM requiring him to contact the FAA Northwest Region if he had accomplished modifications or repairs which interfered with the required inspections. Paragraph C of the AD now provides an alternative means of inspection and contacting the FAA Northwest Region is not necessary.

An operator suggests that the AD incorporate provisions for flying airplanes with cracks present in accordance with FAR 21.197. The AD has been modified accordingly.

An operator objected that the NPRM required accomplishment of S.B. 2607 together with S.B. 2892, Revision 1. The AD has been modified for clarity. Upon accomplishment of the modifications in accordance with S.B. 2607 Part V, or VI, the mandatory inspections noted in the AD are terminated. Additionally, termination is possible if an airplane has been modified in accordance with S.B. 2427, Part X(a), (Drawing 65-62721) and S.B. 2892, Revision 1 adding the longer splice angles at the fuel filler cap area. The FAA recognizes that the accomplishment of S.B. 2607 without the accomplishment of S.B. 2892, Revision 1, and the oversizing of S.B. 3239, may result in fatigue service lives less than that of the adjoining structure. The FAA feels, however, that the operators who have made these modifications are aware of the possible need for additional work and will inspect in accordance with the maintenance procedures which will locate small fatigue cracks should they occur. If subsequent service experience shows evidence of further significant cracking, additional mandatory corrective action may be necessary.

Another comment stated that the inclusion in the AD of the inspections and rework of S.B. 2892, the oversizing of the fasteners in the fuel filler cap fitting, and the inspections of the wing skin outboard of the beavertail stringers 1 through 12, is not supported by service experience. During the FAA/Industry January 1976 meeting, as noted in the Notice of Proposed Rulemaking, FAA desired to combine existing mandatory inspections of this wing skin with additional problem areas. These areas are included in the AD as they have in fact shown adverse service experience.

An operator suggested that his X-ray inspections be used for inspecting the wing skin and upper rear spar chord in areas where external splice plates make the use of low frequency eddy current inspections impractical. If any operator desires to use radiographic procedures, he can submit his proposal to the Chief, Engineering and Manufacturing Branch, FAA Northwest Region as noted in the AD.

An operator suggested that some unique modifications should be considered equivalent to terminating action specified by S.B. 2427, Part X(a) (Drawing 65-62721). Paragraph G of the AD provides for approval of unique modifications.

An operator suggested that higher inspection thresholds should be allowed for aircraft which have had taper-lock fasteners installed, wing skins and stringers oversized, in accordance with S.B. 2892 and S.B. 2626. FAA recognizes such modifications and the AD gives appropriate credit.

It was suggested that the AD incorporate the inspections of AD 74-15-03 which requires eddy current inspection of four critical fasteners in the stringer splice area of stringers 10 and 11. FAA does not agree.

An operator questioned the need for the inspections and modifications under the beavertail from stringer 12 to 14. The FAA has eliminated this requirement from the AD.

(Secs. 313(a), 601, 603, Federal Aviation Act of 1958, (49 U.S.C. 1354(a), 1421, 1423); sec. 6 (c), Department of Transportation Act (49 U.S.C. 1655(c)).)

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (31 FR 13697), § 39.13 of the Federal Aviation Regulations is amended by adding the following new airworthiness directive:

BOEING. Applies to Model 707 -300, -400, -300B, -300C series airplanes certificated in all categories listed in Boeing Service Bulletin No. (S.B.) 3168 with more than 5000 landings.

Compliance required as indicated unless already accomplished.

A. Within the next 250 landings unless accomplished within the last 250 landings and at intervals thereafter not to exceed 500 landings, accomplish the following:

1. X-ray inspect the wing skin under the beavertail for cracks from the rear spar through stringer No. 12 and the rear spar chord and the adjacent wing skin from the side of the body to W.S. 197 in accordance with S.B. 3168, Revision 1.

2. Wing skins and rear spar chords found cracked are to be repaired prior to further flight in accordance with S.B. 2427 or S.B. 2607. Inspections are to continue until terminating action per paragraph F of this AD has been accomplished.

B. Within the next 600 landings unless accomplished within the last 600 landings and at intervals thereafter not to exceed 1200 landings, accomplish the following:

1. Using low frequency eddy current or X-ray inspection techniques described in S.B. 3280, inspect the following areas for cracks:

a. Rear spar upper chord and wing skin along the rear spar from wing station 197 to 270.

b. Wing skin and upper flange of the stringers from rear spar through stringer No. 12, outboard (only) of the beavertail at the stringer splice fasteners as described in S.B. 3280.

c. Wing skin and upper flanges of stringer Nos. 10 and 11 at the right and left hand fuel filler cap fittings at W.S. 298 as described in S.B. 3280.

2. Wing skins, rear spar upper chords, stringers and stringer splices found cracked are to be repaired prior to further flight in accordance with S.B. 3280. Inspections are to continue until terminating action of paragraph F of this AD is accomplished.

C. If rear spar and/or adjacent upper wing skin repairs or modifications interfere with any of the inspections of paragraph A or B of this AD, inspect as follows for cracks:

1. At the intervals specified in paragraph A or B of this AD (as apropriate to the area in which the required inspections are interfered with), eddy current inspect the wing skin in the area adjacent to the repairs.

2. At intervals not to exceed 4800 landings, visually inspect the exposed wing skin and exposed upper rear spar chord from inside and outside the wing.

D. For aircraft having the fastener holes oversized in the fuel filler cap area per Boeing Service Bulletin 2892, the inspections of paragraph B.1.c. of this AD may be deferred until the accumulation of 8000 landings after the oversizing.

E. For aircraft having the fastener holes oversized outboard, under and through the beavertail in accordance with S.B. 2626, Revision 2, the inspections of paragraph B.1.b. of this AD and the inspections of paragraph A.1 of this AD forward of the rear spar to stringer 12, may be deferred until the accumulation of 5000 landings after the oversizing.

F. Terminating action for this AD is:

1. Installation of a new wing skin and associated structure in accordance with S.B. 2607, Parts V or VI, or

2. Installation of external doublers in accordance with S.B. 2427, Part X(a) Drawing 65-62721, and the installation of the longer stringer splice angles at the fuel filler cap fittings in accordance with S.B. 2892, Revision 1.

G. For airplanes with rear spar and/or upper wing skins already modified in accordance with S.B. 2427, Part X(a) Drawing 65-62302, or S.B. 2606, Revision 2, and 2626, Revision 2 and 2731, or similar repairs the threshold for the inspections of paragraph A, B.1.a., and B.1.b., of this AD may be deferred upon submittal of airplane serial number, specific applicable modification accomplished, number of flights when modification was made and current number of flights, to the Chief, Engineering and Manufacturing Branch, FAA Northwest Region.

H. Upon request of the operator, an FAA Principal Maintenance Inspector, subject to prior approval of the Chief, Engineering and Manufacturing Branch, FAA Northwest Region, may adjust the repetitive inspection intervals in this AD, if the request contains substantiating data to justify the increase for that operator.

I. Airplanes requiring repair or modification prior to the next flight may be flown in accordance with FAR 21.197 and 21.199 to a base where corrective action can be taken.

The manufacturer's specifications and procedures identified and described in this directive are incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). References herein to manufacturer's service bulletins are current at the time of issuance of this directive. In each instance where the directive requires compliance with one or more such service bulletins, the requirements of the directive may also be met by compliance with later FAA approved revisions of the applicable service bulletins, or in a manner approved by the Chief, Engineering and Manufacturing Branch, FAA Northwest Region.

All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. The documents may also be examined at FAA Northwest Region, 9010 East Marginal Way South, Seattle, Washington.

This supersedes AD 68-7-3 (Amendment 39-571), AD 68-16-3 (Amendment 39-629), and paragraph (a) of AD 64-11-1 (Amendment 39-629).

This amendment becomes effective February 22, 1977.

NOTE.—An evaluation of the anticipated impacts has been made, and it is expected that the final regulation is neither costly nor controversial. The preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107 is not required.

Issued in Seattle, Wash., January 12, 1977.

C. B. WALK, Jr.,
Director, Northwest Region.

NOTE.—The incorporation by reference provisions in the document were approved by the Director of the Federal Register on June 19, 1967.

[FR Doc.77-2072 Filed 1-21-77;8:45 am]

[Docket No. 76-NW-18-AD; Amdt. 39-2811]

PART 39—AIRWORTHINESS DIRECTIVES

Boeing Model 727 -100 and -200 Series Airplanes

A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive requiring enlargement of the static port sensing holes from 0.047" dia. to 0.125" dia. on all Boeing Model 727 -100 and -200 series airplanes was published in 76 FR 28418.

Interested persons have been afforded an opportunity to participate in the making of the amendment. No objections were raised to the enlargement of the static port holes. However, the Air Transport Association (ATA) objected to the proposed 2000 hour compliance time stating that the tooling, precision and care needed to enlarge the static port holes required this work be accomplished at the operator's major maintenance base. To schedule aircraft into these maintenance bases and meet the proposed 2000 hours compliance time would require special aircraft routing and possible flight cancellations.

The FAA agrees that it is highly desirable to extend the compliance time to 3000 hours so that the static port holes may be enlarged by competent personnel at a major maintenance base to preclude degradation of a critical system that could affect information to both airspeed and altimeter systems.

(Secs. 313(a), 601, 603, Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421, 1423); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)).)

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (31 FR 13697), § 39.13 of the Federal Aviation Regulations is amended by adding the following new airworthiness directive:

BOEING. Applies to Boeing Model 727-100 and -200 series airplanes certificated in all categories with 0.047" dia. static sensing holes.

Compliance required within 3000 hours time in service after the effective date of this AD unless already accomplished.

To prevent fluctuations in airspeed and altitude information due to water being ingested and retained in the static port fittings, enlarge the static port sensing holes from 0.047" dia. to 0.125" dia. in accordance with Boeing Service Bulletin 727-34-94 (to be released) or later FAA approved service bulletins, or in a manner approved by the Chief, Engineering and Manufacturing Branch, FAA Northwest Region.

Boeing 727-100 airplanes already incorporating Boeing S.B. 727-25-42, Revision 1, dated March 4, 1968, with elbow fitting MS 21908D6, and Boeing S.B. 727-34-57, dated April 7, 1968, enlarging the static sensing holes, are in compliance with this AD.

The manufacturer's specifications and procedures identified and described in this directive are incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1).

All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. The documents may also be examined at FAA Northwest Region, 9010 East Marginal Way, South, Seattle, Washington.

NOTE.—An evaluation of the anticipated impacts has been made and it is expected that the final regulation is neither costly nor controversial. The preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107 is not required.

This amendment becomes effective February 22, 1977.

Issued in Seattle, Wash., on January 12, 1977.

C. B. WALK, Jr.,
Director, Northwest Region.

NOTE.—The incorporation by reference provisions in the document were approved by the Director of the Federal Register on June 19, 1967.

[FR Doc.77-2076 Filed 1-21-77; 8:45 am]

[Docket No. 76-CE-7-AD, Amdt. 39-2810]

PART 39—AIRWORTHINESS DIRECTIVES

Cessna 210 Series Airplanes

Amendment 39-2517 (41 FR 7936), as revised by Amendments 39-2556 (41 FR 11811), 39-2686 (41 FR 33245), and 39-2767 (41 FR 49804), AD 76-04-01, is an Airworthiness Directive (AD), applicable to certain Cessna 210 series airplanes having Electrol manufactured Cessna P/N 1280102 -1 and -2 or 1280501 -1 and -2 main landing gear actuator assemblies. AD 76-04-01 requires the installation of Cessna Service Kit 1209005-1 R/L (improved spindle shafts in the aircraft's main landing gear actuators) in accordance with Cessna Service Letter SE75-21. The compliance time for AD 76-04-01 was revised in Amendment 39-2767 to within 100 hours' time in service after February 26, 1976, or February 1, 1977, whichever occurs later. The last two revisions to AD 76-04-01 were the result of parts unavailability. Information now received from the manufacturer shows that it is unable to supply a sufficient number of parts until April 1, 1977, which will not permit AD accomplishment for all aircraft prior to exhausting the current compliance time specified in AD 76-04-01. Even the April 1, 1977, date is contingent on owners/operators ordering the necessary parts on a timely basis. In addition, it is advantageous for owners/operators to comply with both ADs 76-04-01 and 76-14-07 at the same time. The latter AD, also applicable to Cessna 210 series airplanes, requires in part the installation of improved landing gear saddle fittings by April 1, 1977, or within 100 hours' time in service after August 16, 1976, whichever occurs later. Consequently the agency must weigh the alternatives of extending compliance for AD 76-04-01 to prevent the economic hardship that would result from grounding aircraft and/or causing the disassembly of the landing gear on two different occasions in order to comply with both ADs versus the remote possibility of an adverse effect on safety that could result from extending AD 76-04-01's compliance time. In order to afford relief without unduly compromising safety the agency believes it is in the public interest to again amend AD 76-04-01 to extend its compliance time to April 1, 1977, and permit affected aircraft to be operated in the normal manner until the actuators have been modified. With this revision, the FAA believes it has allowed ample time for all concerned to comply with AD 76-04-01. Accordingly, we anticipate no further extension of the compliance date

and the manufacturer and owners/operators are hereby put on notice to act expeditiously.

Since this amendment is relieving in nature, notice and public procedure hereon are not necessary and the amendment may become effective in less than thirty (30) days.

The FAA has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107.

In consideration of the foregoing and pursuant to the authority delegated to me by the Administrator 14 CFR 11.89 (31 FR 13697), § 39.13 of Part 39 of the Federal Aviation Regulations, Amendments 39-2686, 39-2767, AD 76-04-01, is revised in the following respects:

1. In the paragraph immediately preceding Note 1, delete the date "February 1, 1977", and insert in its place the date "April 1, 1977,".

2. In Note 3 delete the date "October 31, 1976." and insert in its place the date "April 1, 1977.".

This amendment, 39-2810, becomes effective January 27, 1977, and supplements Amendments 39-2686 and 39-2767.

(Secs. 313(a), 601, 603, Federal Aviation Act of 1958, (49 U.S.C. 1354(a), 1421, 1423), sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)).)

Issued in Kansas City, Mo., on January 12, 1977.

C. R. MELUGIN, Jr.,
Director, Central Region.

[FR Doc.77-2077 Filed 1-21-77;8:45 am]

[Docket No. 76-CE-34-AD; Amdt. 39-2813]

PART 39—AIRWORTHINESS DIRECTIVES

Certain Beech Model Airplanes

A proposal to amend Part 39 of the Federal Aviation Regulations to include an Airworthiness Directive (AD) applicable to Beech Models E55, E55A, A56TC, 58, 58A, 60, A60, 65-B80, 70, B90, C90, E90, 95-B55, 95-B55A, 100 and A100 airplanes which are equipped with non-explosion proof wing tip strobe lights, was published in the FEDERAL REGISTER on November 18, 1976 (41 FR 50840, 50841). This proposal, if adopted, would require that strobe light systems having strobe lights that are not explosion proof be deactivated until the lights are replaced with explosion proof strobe lights.

Interested persons have been afforded the opportunity to participate in the making of the amendment. Two comments were received, both of which were from strobe light manufacturers. While neither commentator objected to the proposal, both submitted part numbers of additional wing tip strobe lights which are explosive proof and which may be installed in the above referenced airplanes. The FAA agrees that the strobe lights identified by the manufacturers, if installed on the subject aircraft, should be identified in the Final Rule and are excepted from its applicability.

Although this amendment modifies the original proposal, it provides clarification, is relieving in nature and is in the interest of safety. Accordingly, no further notice and public procedure hereon are necessary.

The FAA has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107.

In consideration of the foregoing and pursuant to the authority delegated to me by the Administrator, 14 CFR 11.89 (31 FR 13697), § 39.13 of Part 39 of the Federal Aviation Regulations is amended by adding the following new AD.

BEECH. Applies to the following Beech Models and Serial Numbers of airplanes if equipped with wing tip strobe lights, except those airplanes having Grimes Manufacturing Company (Grimes) P/Ns 30-1467-1, 30-1467-3, 30-1467-5, 30-0467-5, 30-0531-1 or 30-0692-1, Symbolic Displays P/N 701148-7-2, and Whelen Engineering Company P/Ns A429, A429PR, A429PG, A430, A450, A460, A460A, or A500 wing tip strobe lights installed.

Models:	*Serial Nos.*
E55 and E55A	TE-768 through TE-903.
A56TC	TG-84 through TG-94.
58 and 58A	TH-1 through TH-302.
60 and 60A	P-3 through P-222.
65-B80	LD-270 through LD-480.
70	LB-1 through LB-35.
B90 and C90	LJ-318 through LJ-502.
E90	LW-1.
95-B55 and 95-B55A.	TC-1299 through TC-1525
100 and A100	B-1 through B-157.

Compliance: Required as indicated, unless already accomplished.

To preclude wing tip explosion, within the next 100 hours' time in service after the effective date of this AD, accomplish the following:

1. Visually inspect the wing tip strobe lights to determine whether Grimes P/N 30-0669-1 or Hoskins P/N 30-0187-21 strobe lights or any other strobe lights other than those excepted above are installed.

2. On those airplanes having non-explosion proof strobe lights such as Grimes Manufacturing Co. P/N 30-0669-1, Hoskins P/N 30-0187-21 or strobe lights other than those excepted by this AD, deactivate the strobe light system by installing a guard over the switch, by pulling and blocking the circuit breaker so that it cannot be inadvertently reset, or by any other suitable means.

3. Systems having Grimes Manufacturing Co. P/N 30-0669-1 or Hoskins P/N 30-0187-21 strobe lights, may be reactivated upon the installation of either Grimes Manufacturing Company P/N 30-1467-1 explosion proof strobe lights in accordance with Beechcraft Service Instructions 0800-362 or later approved revisions, or upon the installation of any explosion proof strobe lights excepted by this AD.

4. Do not reactivate strobe light installations, other than those modified per Paragraph 3, until data showing that the strobe lights are explosion proof have been submitted to and approved by the Chief, Engineering and Manufacturing Branch or Division of the FAA Region issuing the original strobe light approval.

5. Any equivalent method of compliance with this AD must be approved by the Chief, Engineering and Manufacturing Branch, FAA, Central Region.

This amendment becomes effective February 24, 1977.

(Secs. 313(a), 601, 603, Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421, 1423); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)).)

Issued in Kansas City, Mo., on January 13, 1977.

C. R. MELUGIN, Jr.,
Director, Central Region.

[FR Doc.77-2078 Filed 1-21-77;8:45 am]

[Docket No. 76-CE-27-AD, Amdt. 39-2815]

PART 39—AIRWORTHINESS DIRECTIVES

Cessna 401, 402 and 411 Series Airplanes

A proposal to amend Part 39 of the Federal Aviation Regulations to include an Airworthiness Directive (AD) applicable to Cessna 401, 402 and 411 series airplanes was published in the FEDERAL REGISTER on October 18, 1976 (41 FR 45848). The proposed AD would require repetitive eddy curent inspections in accordance with Cessna Service Letter ME76-19 to detect fatigue cracks that may have developed in critical areas of the wing front spar lower cap on these series airplanes and the repair or replacement of cracked components pursuant to instructions provided by the manufacturer.

Interested persons were afforded an opportunity to participate in the making of the amendment. No adverse comments were received.

The FAA has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107.

In consideration of the foregoing and pursuant to the authority delegated to me by the Administrator 14 CFR 11.89 (31 FR 13697), § 39.13 of Part 39 of the Federal Aviation Regulations is amended by adding the following new AD.

CESSNA. Applies to 401, 402 and 411 Series Airplanes.

Compliance: Required as indicated, unless already accomplished.

To detect fatigue cracks in critical components of the wing structure, accomplish the following:

(A) On all 401 and 402 series airplanes: Within 200 hours' time in service after the effective date of this AD on aircraft with 10,800 or more hours' time in service, or upon the accumulation of 11,000 hours' time in service for aircraft with less than 10,800 hours' time in service and at each 1,000 hours' time in service interval thereafter, and

On all 411 series airplanes: Within 200 hours' time in service after the effective date of this AD on aircraft with 8,800 or more hours' time in service or upon the accumulation of 9,000 hours' time in service for aircraft with less than 8,800 hours' time in service and at each 1,000 hours' time in service interval thereafter. Inspect the front wing spar lower cap and wing front spar root attach fittings for fatigue cracks using eddy current inspection methods at ten (10) locations along the wing front spar lower cap (5 locations on the right wing and 5 identical locations on the left wing) in accordance with Cessna Service Letter ME76-19, dated August 23, 1976, or later approved revisions. The ten locations are clearly defined in said service letter.

(B) If cracks are found as a result of any inspection performed pursuant to Paragraph A, prior to further flight, contact Cessna Aircraft Corporation for repair or replacement instructions approved in accordance with its Delegation Option Authorization and satisfactorily perform said instructions.

(C) Inspection intervals set forth in Paragraph A may be adjusted up 50 hours' time in service to 250 hours and 1,050 hours' respectively to allow said inspections to be performed at regularly scheduled inspections or maintenance periods.

(D) Any equivalent method of compliance with this AD must be approved by the Chief, Engineering and Manufacturing Branch, FAA, Central Region.

This amendment becomes effective February 28, 1977.

(Secs. 313(a), 601, 603, Federal Aviation Act of 1958, (49 U.S.C. 1354(a), 1421, 1423); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)))

Issued in Kansas City, Mo., on January 14, 1977.

C. R. MELUGIN, Jr.,
Director, Central Region.

[FR Doc.77-2079 Filed 1-21-77;8:45 am]

[Airspace Docket No. 76-PC-5]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

Revocation of Control Zone and Transition Area

The purpose of this amendment to Part 71 of the Federal Aviation Regulations is to revoke the Johnston Island, Johnston Atoll control zone and transition area.

The control tower at this location has been decommissioned and the terminal operations have been reduced to the extent that the control zone and transition area are no longer required.

Since this action involves, in part, the revocation of designated controlled airspace outside the United States the Administrator has consulted with the Secretary of State and the Secretary of Defense in accordance with the provisions of Executive Order 10854.

Because this airspace is no longer used for the purpose for which it was designated, it is a minor matter in which the public would have no particular desire to comment. For this reason, notice and public procedure thereon are unnecessary.

Since this action returns airspace to public use and it is desirable to incorporate this change in the regulations to correctly reflect current airspace use, good reason exists for making this change effective on less than 30 days notice.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective on January 24, 1977, as hereinafter set forth.

In § 71.171 (42 FR 355) Johnston Island, Johnston Atoll title and text is deleted.

In § 71.181 (42 FR 440) Johnston Island, Johnston Atoll title and text is deleted.

(Secs. 307(a), 1110, Federal Aviation Act of 1958, (49 U.S.C. 1348(a), 1510), Executive Order 10854 (24 FR 9565); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)))

Issued in Washington, D.C., on January 13, 1977.

WILLIAM E. BROADWATER,
Chief, Airspace and Air Traffic Rules Division.

[FR Doc.77-2073 Filed 1-21-77;8:45 am]

[Airspace Docket No. 76-PC-6]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

Revocation of Control Zone and Transition Area

The purpose of this amendment to Part 71 of the Federal Aviation Regulations is to rescind the control zone and transition area at Wake Island.

The control tower at this location has been decommissioned for some time and the terminal operations have been reduced to the extent that the control zone and transition area are no longer justified as an airspace assignment.

Since this action involves, in part, the revocation of designated controlled airspace outside the United States the Administrator has consulted with the Secretary of State and the Secretary of Defense in accordance with the provisions of Executive Order 10854.

Because this airspace is no longer used for the purpose for which it was designated, it is a minor matter in which the public would have no particular desire to comment. For this reason, notice and public procedure thereon are unnecessary.

Since this action returns airspace to public use and it is desirable to incorporate this change in the regulations to correctly reflect current airspace use, good reason exists for making this change effective on less than 30 days notice.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective on January 24, 1977, as hereinafter set forth.

In § 71.171 (42 FR 355) Wake Island title and text is deleted.

In § 71.181 (42 FR 440) Wake Island title and text is deleted.

(Sec. 307(a), 1110, Federal Aviation Act of 1958 (49 U.S.C. 1348(a), 1510), Executive Order 10854 24 FR 9565); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c))

Issued in Washington, D.C., on January 13, 1977.

WILLIAM E. BROADWATER,
Chief, Airspace and Air Traffic Rules Division.

[FR Doc.77-2074 Filed 1-21-77;8:45 am]

[Airspace Docket No. 76-SW-48]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

Alteration of Airways, Jet Routes and Area High Routes; Correction

In FR Doc. 76-37737 appearing at page 55863 in the FEDERAL REGISTER of December 23, 1976, paragraph 3. in § 75.100 is corrected in the third line of that paragraph by deleting "INT Humble 347°" and substituting "INT Humble 349°".

Issued in Washington, D.C., on January 12, 1977.

WILLIAM E. BROADWATER,
Chief, Airspace and Air Traffic Rules Division.

[FR Doc.77-2075 Filed 1-21-77;8:45 am]

CHAPTER II—CIVIL AERONAUTICS BOARD

SUBCHAPTER A—ECONOMIC REGULATIONS

[Regulation ER-963, Amdt. 7]

PART 207—CHARTER TRIPS AND SPECIAL SERVICES

Editorial Amendment

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. January 18, 1977.

Effective: February 14, 1977.

Adopted: January 18, 1977.

Part 207 of the Board's Economic Regulations provides for charter trips by U.S. certificated scheduled air carriers. This editorial amendment is being issued to correct a reference in § 207.11(b)(3) to Part 297, and particularly § 297.23 of the same chapter. The Board, by adoption of ER-917, dated June 27, 1975, consolidated, recodified, and revised Parts 296 and 297 of the Economic Regulations. The consolidation was accomplished by revising Part 296 to include the substantive content of Parts 296 and 297 and by republishing the revised Part 296. Therefore, § 207.11(b)(3) is being amended to reflect the consolidation of Part 297 into Part 296, and particularly § 297.23 into § 296.41.

This editorial amendment is issued by the undersigned pursuant to delegation of authority from the Board to the General Counsel, in 14 CFR § 385.19, and shall become effective on February 14, 1977. Procedures for review of this amendment are set forth in Subpart C of Part 385 (14 CFR §§ 385.50 through 385.54).

Accordingly, the Board hereby revises § 207.11(b)(3) to read as follows:

§ 207.11 Charter flight limitations.

* * * * * * *

(b) * * *

* * * * * * *

(3) By an air freight forwarder or international air freight forwarder hold-

ing a currently effective operating authorization under Part 296 of this subchapter for the carriage of property in air transportation; by a person authorized by the Board to transport by air used household goods of personnel of the Department of Defense; or, with respect to flights from the United States in foreign air transportation, by a foreign air freight forwarder holding a currently effective foreign air carrier permit issued by the Board under section 402 of the Act, and, with respect to flights to the United States in foreign air transportation, by any foreign air freight forwarder who has complied with the provisions of § 296.41 of this chapter;

* * * * *

(Sec. 204(a), Federal Aviation Act of 1958, as amended, 72 Stat. 743 (49 U.S.C. 1324). Reorganization Plan No. 3 of 1961, 75 Stat. 837, 26 FR 5989 (49 U.S.C. 1324 (note)).)

By the Civil Aeronautics Board:

JAMES C. SCHULTZ,
General Counsel.

[FR Doc.77-2168 Filed 1-21-77;8:45 am]

[Reg. ER-984, Amdt. 7]

PART 208—TERMS, CONDITIONS, AND LIMITATIONS OF CERTIFICATES TO ENGAGE IN SUPPLEMENTAL AIR TRANSPORTATION

Charter Flight Limitations

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., January 18, 1977.

Effective: February 14, 1977.

Adopted: January 18, 1977.

Part 208 of the Board's Economic Regulations provides for charter trips by U.S. supplemental air carriers. This editorial amendment is being issued to correct a reference in § 208.6(b)(3) to Part 297, and particularly § 297.23 of the same chapter. The Board, by adoption of ER-917, dated June 27, 1975, consolidated, recodified, and revised Parts 296 and 297 of the Economic Regulations. The consolidation was accomplished by revising Part 296 to include the substantive content of Parts 296 and 297 and by republishing the revised Part 296. Therefore, § 208.6(b)(3) is being amended to reflect the consolidation of Part 297 into Part 296, and particularly §§ 297.23 into 296.41.

This editorial amendment is issued by the undersigned pursuant to delegation of authority from the Board to the General Counsel, in 14 CFR 385.19, and shall become effective on February 14, 1977. Procedures for review of this amendment are set forth in Subpart C of Part 385 (14 CFR 385.50 through 385.54).

Accordingly, the Board hereby amends § 208.6(b)(3) to read as follows:

§ 208.6 Charter flight limitations.

* * * * * *

(b) * * *

(3) By an air freight forwarder or international air freight forwarder holding a currently effective operating authorization under Part 296 of this subchapter for the carriage of property in air transportation; by a person authorized by the Board to transport by air used household goods of personnel of the Department of Defense; or, with respect to flights from the United States in foreign air transportation, by a foreign air freight forwarder holding a currently effective foreign air carrier permit issued by the Board under section 402 of the Act, and, with respect to flights to the United States in foreign air transportation, by any foreign air freight forwarder who has complied with the provisions of § 296.41 of this chapter;

* * * * *

(Sec. 204(a), Federal Aviation Act of 1958, as amended, 72 Stat. 743; (49 U.S.C. 1324). Reorganization Plan No. 3 of 1961, 75 Stat. 837, 26 FR 5989; (49 U.S.C. 1324 (note)).)

By the Civil Aeronautics Board.

JAMES C. SCHULTZ,
General Counsel.

[FR Doc.77-2167 Filed 1-21-77;8:45 am]

[Regulation ER-982, Amdt. 56]

PART 288—EXEMPTION OF AIR CARRIERS FOR MILITARY TRANSPORTATION

Editorial Amendment

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., January 18, 1977.

Effective: February 14, 1977.

Adopted: January 18, 1977.

By ER-962, adopted July 27, 1976, 41 FR 32208, the Board amended Part 288 of the Economic Regulations (14 CFR Part 288) establishing new rates for foreign and overseas air transportation services performed by air carriers for the Department of Defense (DOD) and procured by the Military Airlift Command (MAC). Subsequently the Board issued Order 76-12-35, December 7, 1976, announcing its disposition of a petition for reconsideration of ER-962 and including its determination to amend ER-962 by revising the effective date thereof to July 27, 1976.

This Editorial Amendment is being issued in order to have reflected in the codification of the Board's Economic Regulations said revised effective date of the regulation promulgated by ER-962.

This Editorial Amendment is issued by the undersigned pursuant to delegation of authority from the Board to the General Counsel, in 14 CFR 385.19, and shall become effective on February 14, 1977. Procedures for review of this amendment are set forth in Subpart C of Part 385 (14 CFR 385.50 through 385.54).

Accordingly the Board hereby amends ER-962 by revising the effective date thereof to July 27, 1976.

(Sec. 204(a), Federal Aviation Act of 1958, as amended, 72 Stat. 743 (49 U.S.C. 1324). Reorganization Plan No. 3 of 1961, 75 Stat. 837, 26 FR 5989 (49 U.S.C. 1324 (note)).)

By the Civil Aeronautics Board:

JAMES C. SCHULTZ,
General Counsel.

[FR Doc.77-2169 Filed 1-21-77;8:45 am]

Title 16—Commercial Practices

CHAPTER I—FEDERAL TRADE COMMISSION

[Docket No. C-2856]

PART 13—PROHIBITED TRADE PRACTICES, AND AFFIRMATIVE CORRECTIVE ACTIONS

American Academy of Orthopaedic Surgeons

Subpart—Combining or conspiring: § 13.430 To enhance, maintain or unify prices; § 13.470 To restrain or monopolize trade. Subpart—Corrective actions and/or requirements: § 13.533 Corrective actions and/or requirements; 13.533-53 Recall of merchandise, advertising material, etc. Subpart—Maintaining resale prices: § 13.1155 Price schedules and announcements.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45.)

In the Matter of the American Academy of Orthopaedic Surgeons, a Corporation

Consent order requiring a Chicago, Ill., professional association, among other things to cease publishing, promulgating and participating in the development of relative value scales which have the effect of establishing prices for medical and surgical services. Respondent is required to permanently cancel, repeal, abrogate and withdraw any and all relative value scales heretofore developed or disseminated and send copies of this order to association members and certain third-party payers together with a request for the return of all copies of relative value scales in their possession.

The order to cease and desist, including further order requiring report of compliance therewith, is as follows: [1]

ORDER

I

A. The term "relative value scale" means any list or compilation of surgical and/or medical procedures and/or services which sets forth comparative numerical values for such procedures and/or services, without regard to whether those values are expressed in monetary or non-monetary terms.

B. The term "AAOS" means the American Academy of Orthopaedic Surgeons.

C. The term "Effective date of this order" means the date of service of this order.

II

It is ordered that AAOS, its successors, or assigns, and its officers, agents representatives and employees, directly or through any corporation, subsidiary, division, or other device, shall:

A. Cease and desist from directly or indirectly initiating, originating, developing, publishing, or circulating the whole or any part of any proposed or existing relative value scale(s); *Provided, however,* That nothing contained herein shall prohibit AAOS from furnishing testimony to any government body, committee, or instrumentality, or from furnishing to any third party or government body, committee, or instrumentality such information as may be requested; to the extent, however, that such information or testimony may bear directly or indirectly on compensation levels for orthopaedic services or procedures, it shall be limited to historical data, free of editing or interpretation, and shall be completely described as to methodology.

C. Permanently cancel, repeal, abrogate, and withdraw any and all relative value scales which it has heretofore developed, published, circulated, or disseminated;

D. Within thirty (30) days after the effective date of this order, distribute by first class mail a copy of the Commission's Complaint and order in this matter, as well as a letter, in the form shown in Appendix "A" to this order, to each of its Fellows and to each of the third-party payers and others listed in Appendix "B" to this order, instructing such third-party payers and others to return to AAOS all copies of AAOS relative value scales in their possession.

III

It is further ordered that AAOS shall notify the Commission at least thirty (30) days prior to any proposed change in its organization which might affect compliance obligations under this order, such as, but not limited to, dissolution, the emergence of a successor corporation, and the creation and/or dissolution of subsidiaries.

IV

It is further ordered that AAOS shall within sixty (60) days after the effective date of this order, file with the Commission a written report showing in detail the manner and form of its compliance with each of the provisions of the order.

V

Nothing in this order shall be construed to exempt The American Academy of Orthopaedic Surgeons from complying with the antitrust laws or the Federal Trade Commission Act. The fact that any activity is not prohibited by this order shall not bar a challenge to it under such laws.

The Decision and Order was issued by the Commission December 14, 1976.

JOHN F. DUGAN,
Acting Secretary.

[FR Doc.77-2060 Filed 1-21-77;8:45 am]

[1] Copies of the Complaint, Decision and Order, and Appendices filed with the original document.

[Docket No. C-2855]

PART 13—PROHIBITED TRADE PRACTICES, AND AFFIRMATIVE CORRECTIVE ACTIONS

American College of Obstetricians and Gynecologists

Subpart—Combining or conspiring: § 13.430 To enhance, maintain or unify prices; § 13.470 To restrain or monopolize trade. Subpart—Corrective actions and/or requirements: § 13.533 Corrective actions and/or requirements; 13.533-53 Recall of merchandise, advertising material, etc. Subpart—Maintaining resale prices: § 13.1155 Price schedules and announcements.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45.)

In the Matter of the American College of Obstetricians and Gynecologists, a Corporation

Consent order requiring a Chicago, Ill., professional association, among other things to cease publishing, promulgating and participating in the development of relative value scales which have the effect of establishing prices for medical and surgical services. Respondent is required to permanently cancel, repeal, abrogate and withdraw any and all relative value scales heretofore developed or disseminated and send copies of this order to association members and certain third-party payers together with a request for the return of all copies of relative value scales.

The order to cease and desist, including further order requiring report of compliance therewith, is as follows: [1]

ORDER

I

A. The term "relative value scale" means any list or compilation of surgical and/or medical procedures and/or services which sets forth comparative numerical values for such procedures and/or services, without regard to whether those values are expressed in monetary or non-monetary terms.

B. The term "ACOG" means the American College of Obstetricians and Gynecologists.

C. The term "effective date of this order" means the date of service of this order.

It is ordered that ACOG, its successors, or assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division, or other device, shall:

A. Cease and desist from directly or indirectly initiating, originating, developing, publishing, or circulating the whole or any part of any proposed or existing relative value scale(s); *Provided, however,* That nothing contained herein shall prohibit ACOG from furnishing testimony to any government body, committee, or instrumentality, or from furnishing to any third party or government body, committee, or instrumentality such information as may be requested; to the extent, however, that such information or testimony may bear directly or indirectly on compensation levels for obstetrical or gynecological services or procedures, it shall be limited to historical data, free of editing or interpretation, and shall be completely described as to methodology;

C. Permanently cancel, repeal, abrogate, and withdraw any and all relative value scales which it has heretofore developed, published, circulated, or disseminated;

D. Within thirty (30) days after the effective date of this order, distribute by first class mail a copy of the Commission's complaint and order in this matter, as well as a letter, in the form shown in Appendix "A" to this order, to each of its Fellows and to each of the third-party payers and others listed in Appendix "B" to this order, instructing such third-party payers and others to return to ACOG all copies of ACOG relative value scales in their possession.

III

It is further ordered that ACOG shall notify the Commission at least thirty (30) days prior to any proposed change in its organization which might affect compliance obligations under this order, such as, but not limited to, dissolution, the emergence of a successor corporation, and the creation and/or dissolution of subsidiaries.

IV

It is further ordered that ACOG shall, within sixty (60) days after the effective date of this order, file with the Commission a written report showing in detail the manner and form of its compliance with each of the provisions of the order.

V

Nothing in this order shall be construed to exempt the American College of Obstetricians and Gynecologists from complying with the antitrust laws or the Federal Trade Commission Act. The fact that any activity is not prohibited by this order shall not bar a challenge to it under such laws.

The Decision and Order was issued by the Commission December 14, 1976.

JOHN F. DUGAN,
Acting Secretary.

[FR Doc.77-2061 Filed 1-21-77;8:45 am]

[1] Copies of the Complaint, Decision and Order, and Appendices filed with the original document.

Title 17—Commodity and Securities Exchanges

CHAPTER 1—COMMODITY FUTURES TRADING COMMISSION

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

PART 155—TRADING STANDARDS

Trading Standards for Floor Brokers and Futures Commission Merchants and Records of Cash Commodity and Futures Transactions; Extension of Comment Period

The Commodity Futures Trading Commission ("Commission") announced today the extension of the comment period from January 21, 1977 to February 22, 1977 for new Part 155, Trading Standards; amendments to § 1.35, Records of Cash Commodity and Futures Transactions; and proposed amendments to §§ 1.35 and 155.3 of the regulations under the Commodity Exchange Act, as amended ("Act"). In addition, the implementation date for new Part 155 was deferred from February 14, 1977 to March 16, 1977. The June 13, 1977 implementation date for the amendments to regulation 1.35 was not changed.

On December 23, 1976, the Commission adopted a new Part 155, establishing trading standards for floor brokers and for those futures commission merchants which are members of a contract market. 41 FR 56134 (December 23, 1976). The scheduled effective date for Part 155 was listed in the FEDERAL REGISTER release as February 14, 1977.

In that release, the Commission also announced the adoption of certain amendments to the recordkeeping requirements imposed upon contract markets by § 1.35. These amendments require contract markets, among other things, to maintain a record of the time sequence of transactions on the contract market. The amendments to § 1.35 are scheduled to take effect on June 13, 1977.

While the Commission determined to adopt these rules in the form as published, the Commission announced that it would "consider any comments on the new regulations submitted by interested persons on or before January 21, 1977, in determining whether any further or different actions should be taken with respect to any of the matters dealt with in these regulations." 41 FR 56144.

In a separate FEDERAL REGISTER release issued the same day as the newly adopted regulations, the Commission proposed certain additional amendments to regulations 1.35 and 155.3. 41 FR 55887 (December 23, 1976). These proposed amendments would (i) extend the requirements of regulation 155.3 to futures commission merchants which are not members of any contract market; (ii) require each member of a contract market to make a specific written record of all orders he receives on the floor of the contract market, for the account of another person, including the date and time to the nearest minute each order is received, where such orders are not received in appropriate written form; and (iii) require each contract market to adopt a rule requiring that certain information on the opposite sides of each trade accurately correspond before the trade is accepted for clearance by the clearing organization which clears trades for the contract market. The Commission announced that it would consider all comments pertaining to the proposed rules which it received on or before January 21, 1977.

Interested persons have requested that the Commission extend the effective date of newly adopted Part 155 and the amendments to §1.35 and that the comment period for these regulations and the proposed amendments to §§ 1.35 and 155.3 be extended as well.[1] Accordingly, the Commission believes that it is appropriate to defer the effective date of Part 155 to March 16, 1977, and the comment period on the newly adopted regulations and the proposed regulations to February 22, 1977. However, the Commission does not believe it is necessary or appropriate to defer the effective date of the amendments to § 1.35 beyond the June 13, 1977 effective date announced in the FEDERAL REGISTER release of December 23, 1976. 41 FR 56144.

Issued in Washington, D.C. on January 19, 1977, by the Commission.

WILLIAM T. BAGLEY,
Chairman, Commodity Futures Trading Commission.

[FR Doc.77-2282 Filed 1-21-77;8:45 am]

Title 19—Customs Duties

CHAPTER I—UNITED STATES CUSTOMS SERVICE, DEPARTMENT OF THE TREASURY

[TD. 77-30]

PART 18—TRANSPORTATION IN BOND AND MERCHANDISE IN TRANSIT

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

Security of International Cargo Transported in Bond

The President, in Executive Order No. 11836, dated January 27, 1975 (40 FR 4255), directed the Secretary of the Treasury, to, among other things, foster the security of international cargo in Customs custody within ports of entry and in its movement and storage in bond.

In response to this Executive Order, Customs has reevaluated the present metal strap seal for in-bond cargo. Use of this type of seal was first approved for Customs use in 1912 (T.D. 32294), and is designed more to indicate a violation of the integrity of the transport unit than to offer physical protection to the contents of the shipment. Customs has extensively examined security seals. These examinations have included laboratory tests and fields evaluations of several high security seals which were found in laboratory tests to be very effective in preventing the theft of cargo.

[1] Several contract markets stated that the proximity of the publication date with the national holidays made it difficult to adopt the exchange rule changes necessitated by the new regulations and to comment on the new regulations and the proposed amendments to the new regulations within the alloted time.

Seals which tests show provide both accountability and sufficient physical protection for cargo have been approved by Customs as high security seals. The names and addresses of manufacturers whose seals have been approved by Customs as high security seals may be obtained from district directors of Customs as provided for in § 24.13a(b) of the Customs Regulations (19 CFR 24.13a(b)).

In order to further respond to Executive Order No. 11836, on March 23, 1976, a notice of proposed rulemaking was published in the FEDERAL REGISTER (41 FR 12017), which proposed to amend § 18.4(a)(1) of the Customs Regulations (19 CFR 18.4(a)(1)) to provide that conveyances or compartments in which bonded merchandise is transported shall be sealed with high security red in-bond Customs seals, or if incapable of being so sealed, with red in-bond Customs seals, with certain exceptions presently provided in that section. It was also proposed that high security red in-bond seals be stamped and purchased in the same manner as red in-bond seals, the stamp and purchase of which is provided for in paragraphs (b) and (c), and (f), of § 24.13 respectively. Further, it was proposed to amend § 24.13(f) by substituting the words "district director" for the word "collector" wherever it appears and to provide that the price charged for high security red in-bond seals sold by district directors shall be the current manufacturer's list price for the quantity purchased.

Interested persons were given 60 days from the date of publication of the notice to submit relevant data, views, or arguments regarding the proposed amendments. After consideration of all comments received, the wording of § 18.4(a)(1) has been changed to specify that only conveyances or compartments in which carload lots of bonded merchandise are transported shall be sealed with high security red in-bond Customs seals. Less than carload lots need not be sealed in this manner.

Accordingly, the proposed amendments, modified to include this change, are adopted as set forth below.

Effective date: In order to permit carriers to utilize existing stocks of strap seals, these amendments shall not become effective until April 25, 1977.

VERNON D. ACREE,
Commissioner of Customs.

Approved: January 11, 1977.

JERRY THOMAS,
Under Secretary of the Treasury.

Section 18.4(a)(1) is amended to read as follows:

§ 18.4 Sealing conveyances and compartments; labeling packages; warning cards.

(a)(1) Except as provided in section 123.33 of this chapter, conveyances or compartments in which carload lots of bonded merchandise are transported shall be sealed under Customs supervision with high security red in-bond Customs seals, or if incapable of being so sealed, with red in-bond Customs seals. When the compartment or conveyance cannot be effectively sealed, as in the case of merchandise shipped in open cars or barges, or on the decks of vessels, or when it is known that any seals would necessarily be removed outside the jurisdiction of the United States for the purpose of discharging or taking on cargo, or when it is known that the breaking of the seals will be necessary to ventilate the hatches, or in other similar circumstances, such sealings may be waived with the consent of the carrier and an appropriate notation of such waiver shall be made on the manifest. The Commissioner of Customs may authorize the waiver of sealing of conveyances or compartments in which bonded merchandise is transported in other cases when in his opinion the sealing thereof is unnecessary to protect the revenue or to prevent violations of the Customs laws and regulations.

* * * * *

The first sentence of paragraph (b) and paragraph (f) of § 24.13 is amended to read as follows:

§ 24.13 Car, compartment, and package seals; kind, procurement.

* * * * *

(b) Red in-bond and high security red in-bond seals used for sealing imported merchandise shipped between ports in the United States shall be stamped "U.S. Customs in Bond." * * *

* * * * *

(f) In-bond seals may be purchased only by a Customs bonded carrier, by a nonbonded carrier permitted to transport articles in accordance with section 553 of the Tariff Act of 1930, as amended (19 U.S.C. 1553), or in the case of red in-bond and high security red in-bond seals, by the carrier's commercial association or comparable representative approved by the district director. In-transit seals may be purchased by a bonded or other carrier of merchandise or, in the case of blue in-transit seals, by the carrier's commercial association or comparable representative approved by the district director. Except for uncolored in-transit seals, uncolored Customs seals may not be purchased by private interests and shall be furnished by district directors for authorized use without charge. In-bond and in-transit seals sold by district directors shall be charged for at the rate of 10 cents per seal, except for high security red in-bond seals which shall be charged for at the current manufacturer's list price for the quantity purchased.

(R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624).)

[FR Doc.77-2171 Filed 1-21-77;8:45 am]

Title 26—Internal Revenue

CHAPTER I—INTERNAL REVENUE SERVICE, DEPARTMENT OF THE TREASURY

SUBCHAPTER A—INCOME TAX

[T.D. 7449]

PART 7—TEMPORARY INCOME TAX REGULATIONS UNDER THE TAX REFORM ACT OF 1976

Election To Have Investment Credit for Movie and Television Films Determined in Accordance with Previous Litigation

Correction

In FR Doc. 76-38099, appearing at page 56629, in the issue of Wednesday, December 29, 1976, the filing time which now reads "4:45 pm", should read "4:44 pm".

[T.D. 7450]

PART 7—TEMPORARY INCOME TAX REGULATIONS UNDER THE TAX REFORM ACT OF 1976

Various Elections

Correction

In FR Doc. 77-703, appearing at page 1469 in the issue for Friday, January 7, 1977, the table in § 7.0(a) should read as set forth below:

Section	Description of election	Availability of election
	(1) FIRST CATEGORY	
167(o) of Code	Substantially rehabilitated historic property.	Additions to capital account occurring after June 30, 1976, and before July 1, 1981.
172(b)(3)(E) of Code	Forego of carryback period	Any taxable year ending after December 31, 1975.
191(b) of Code	Amortization of certain rehabilitation expenditures.	Additions to capital account occurring after after June 14, 1976, and before June 15, 1981.
402(e)(4)(L) of Code	Lump sum distributions from qualified plans.	Distributions and payments made after December 31, 1975, in taxable years beginning after such date.
451(e) of Code	Livestock sold on account of drought	Any taxable year beginning after December 31, 1975.
812(b)(3) of Code	Forego of carryback period by life insurance companies.	Any taxable year ending after December 31, 1975.
819A of Code	Contiguous country branches of domestic life insurance companies.	All taxable years beginning after December 31, 1975.
825(d)(2) of Code	Forego of carryback period by mutual insurance companies.	Any taxable year ending after December 31, 1975.
911(e) of Code	Foregoing of benefits of section 911	All taxable years beginning after December 31, 1975.
	(2) SECOND CATEGORY	
185(d) of Code	Amortization of railroad grading and tunnel bores.	All taxable years beginning after December 31, 1974.
528(c)(1)(E) of Code	Certain homeowners associations	Any taxable year beginning after December 31, 1973.
1057 of Code	Transfer to foreign trusts etc	Any transfer of property after October 2, 1975.
6013(g) of Code	Joint return for nonresident alien	All taxable years ending on or after December 31, 1975.
6013(h) of Code	Joint return for year in which nonresident alien becomes resident.	Any taxable year ending on or after December 31, 1975.

Title 31—Money and Finance: Treasury

CHAPTER I—MONETARY OFFICES, DEPARTMENT OF THE TREASURY

PART 128—TRANSACTIONS IN FOREIGN EXCHANGE, TRANSFERS OF CREDIT, AND EXPORT OF COIN AND CURRENCY

Additional Statutory Authority; Form Revisions

The Department of the Treasury herewith promulgates amendments to the Treasury Regulations on the reporting of transactions in foreign exchange, transfers of credit, and the export of coin or currency by financial institutions and other reporting firms governed by the provisions of Part 128. The amendments acknowledge the effects of the International Investment Survey Act of 1976, 90 Stat. 2059, 22 U.S.C. 3101 note, as providing additional authority for the collection of data pursuant to Subpart B, and as modifying the provisions for disclosure of such data to other Federal agencies, redesignate the Treasury Foreign Exchange (TFEX) reporting system as the Treasury International Capital (TIC) reporting system to describe more aptly the nature of the data collected and redesignate the Treasury Foreign Exchange forms as Treasury International Capital forms.

In addition, certain TIC (formerly TFEX) forms have been consolidated or otherwise revised: the country stubs of TIC Forms B-1, B-2, and B-3 shall now include those geographical data formerly reported on Forms B-1a, B-2a, and B-3a; the data formerly reported separately on Forms S-1, S-1a, and S-2 shall now be reported on a new Form S; the country stub of Form C-1/2 has been expanded so as to be identical with the stubs on the S and B series reports.

The amendments add TIC Form S to the TIC reporting system and delete Forms B–1a, B–2a, B–3a, S–1, S–1a, and S–2. In addition, the amendments correct a typographical error appearing in the last sentence of § 128.2(c) of Subpart A in the 1976 edition of the CFR, where the word "at" should be replaced by the word "as."

The Department finds that notice and public procedures under the provisions of 5 U.S.C. 553 are not necessary in this case since the amendments pertain only to rules of agency procedure, are minor in scope, and serve generally to reduce the reporting burden upon the public. In addition, there is good cause to make the amendments effective immediately on January 24, 1977. The amendments shall apply to all reports filed as of January 31, 1977, and for any period ending after January 31, 1977.

The text of the amendments is as follows:

1. Section 128.2 (a) and (c) are amended to read as follows:

§ 128.2 Reports.

(a) In order to effectuate the purposes of the Emergency Banking Act of 1933 (12 U.S.C. 95a), Executive Order 6560 of January 15, 1934 (Part 127 of this chapter), and the International Investment Survey Act of 1976 (90 Stat. 2059, 22 U.S.C. 3101 note), and in order that information requested by the International Monetary Fund under the articles of agreement of the Fund may be obtained in accordance with section 8(a) of the Bretton Woods Agreements Act (sec. 8(a) 59 Stat. 515; 22 U.S.C. 286f and Executive Order No. 10033, 14 FR 561; 3 CFR, 1949 Supp.), every person subject to the jurisdiction of the United States engaging (1) in any transaction in foreign exchange; (2) in any transfer of credit between any person within the United States and any person outside of the United States; or (3) in the export or withdrawal from the United States of any currency or silver coin which is legal tender in the United States, shall furnish information relative thereto to such extent and in such manner and at such intervals as is required by report forms and instructions prescribed in Subpart B of this part.

* * * * *

(c) All persons required to report, other than banks and banking institutions, shall furnish the reports required under Subparts B and C of this part to the Federal Reserve Bank of New York. Banks and banking institutions shall furnish the required reports to the Federal Reserve Bank of the district in which such bank or banking institution has its principal place of business in the United States. In the event that any person required to report has no principal place of business within a Federal Reserve district, the information shall be furnished directly to the Office of the Assistant Secretary for International Affairs, Department of the Treasury, Washington, D.C. 20220 or to such agency as the Department of the Treasury may designate.

2. Section 128.3 is revised to read as follows:

§ 128.3 Use of information reported.

The information reported on the forms required under Subparts B and C will not be disclosed publicly by the Department of the Treasury or by any other Federal agency having access to the information as provided herein. Data reported on these forms may be published or released in the aggregate in a manner which will not reveal the amounts reported by any individual reporting bank or nonbanking firm. The Department may furnish to other Federal agencies data reported on these forms to the extent permitted by the Federal Reports Act, 44 U.S.C. 3501, et seq. In addition, the Department may furnish other Federal agencies data reported on the forms required under Subpart B to the extent permitted by the International Investment Survey Act of 1976, 22 U.S.C. 3101 note, et seq.

3. Section 128.11 is amended by revising the section heading and the text to read as follows:

§ 128.11 International Capital Form B–1: "Short-term" liabilities to "foreigners."

On this form banks and banking institutions in the United States are required to report monthly to a Federal Reserve bank "short-term" liabilities to "foreigners" or assets held on behalf of "foreigners" which represent claims on institutions or individuals in the United States, as of the last day of business of the month.

4. Section 128.11a is revoked as follows:

§ 128.11a [Deleted]

5. Section 128.12 is amended by revising the section heading and the text to read as follows:

§ 128.12 Supplement to International Capital Form B–1: "Short-term" dollar liabilities to "foreigners" in countries not listed separately on Form B–1.

On this form banks and banking institutions in the United States are required to report twice a year, as of April 30 and December 31, to a Federal Reserve bank "short-term" dollar liabilities to "foreigners" in countries not listed separately on Form B–1.

6. Section 128.13 is amended by revising the section heading and the text to read as follows:

§ 128.13 International Capital Form B–2: "Short-term" claims on "foreigners."

On this form banks and banking institutions in the United States are required to report monthly to a Federal Reserve bank "short-term" assets owned by the reporter or held for the account of domestic customers which represent claims on "foreigners," as of the last day of business of the month.

7. Section 128.13a is revoked as follows:

§ 128.13a [Deleted]

8. Section 128.14 is amended by revising the section heading and text to read as follows:

§ 128.14 International Capital Form B–3: "Long-term" liabilities to, and claims on, "foreigners."

On this form banks and banking institutions in the United States are required to report monthly to a Federal Reserve bank "long-term" liabilities to, and claims on, "foreigners" acquired or held, either in the United States or abroad, by reporting organizations for their own account or for the account of others, as of the last day of business of the month.

9. Section 128.14a is revoked as follows:

§ 128.14a [Deleted]

10. Section 128.15 is amended by revising the section heading and text to read as follows:

§ 128.15 International Capital Form C–1/2: Liabilities to, and claims on, "foreigners."

On this form exporters, importers, industrial and commercial concerns and other nonbanking institutions in the United States are required to report quarterly, as of the last day of business of the quarter, to the Federal Reserve Bank of New York, "short-term" and certain other liabilities to, and claims on, "foreigners" acquired or held, either in the United States or abroad, by the reporting organizations for their own account or for the account of others.

11. Section 128.16 is amended by revising the section heading and text to read as follows:

§ 128.16 International Capital Form C–3: "Short-term" liquid claims on "foreigners."

On this form exporters, importers, industrial and commercial concerns and other nonbanking institutions in the United States are required to report monthly to a Federal Reserve Bank of New York data on a portion of their claims on "foreigners," as of the last day of business of the month.

12. Section 128.17 is amended by revising the section heading and text to read as follows:

§ 128.17 International Capital Form S: Purchases and sales of "long-term" securities by "foreigners."

On this form banks and banking institutions, brokers and dealers in the United States are required to report monthly to a Federal Reserve bank transactions in "long-term" and certain other securities executed in the United States for account of "foreigners" and by "foreign official institutions" and transactions in "long-term" securities executed abroad for their own account and for the account of their domestic customers.

13. Section 128.17a is revoked as follows:

§ 128.17a [Deleted]

15. Section 128.19 is revoked as follows:

§ 128.19 [Deleted]

Effective date: January 24, 1977.

GERALD L. PARSKY,
Assistant Secretary for International Affairs.

[FR Doc.77-2129 Filed 1-21-77; 8:45 am]

Title 39—Postal Service

CHAPTER I—UNITED STATES POSTAL SERVICE

COMMEMORATIVE STAMPS AND NEW STAMP ISSUES

Miscellaneous Amendments

AGENCY: U.S. Postal Service.

ACTION: Final rule.

SUMMARY: The primary purpose of this document is to revise the regulations of the Postal Service on commemorative stamps and new stamp issues. Among other things, the revisions provide for a single national policy, set by the Stamps Division at Headquarters of the Postal Service, concerning the release, sale, and discontinuance of postage stamps and stamp products. A number of minor, technical, and conforming amendments are also made to the regulations.

EFFECTIVE DATE: January 21, 1977.

FOR FURTHER INFORMATION CONTACT:

Paul J. Kemp, 202–245–4638.

Accordingly, 39 CFR is amended as follows:

PART 233—INSPECTION SERVICE AUTHORITY

§ 233.1 [Amended]

1. In paragraph (b)(2) of § 233.1 by deleting the period at the end thereof and inserting "(see 243.419 of the Postal Service Manual)." in lieu thereof.

PART 257—PHILATELY

2. By revising §§ 257.1 and 257.2 to read as follows:

§ 257.1 Policy.

There shall be a single national policy relative to the release, sale and discontinuance of postage stamps and stamp products. All policy matters shall be set by the Stamps Division, Headquarters, Washington, D.C. 20260. The standardization of policy relating to sales will provide a high degree of integrity to the program with resultant stimulated sales at a minimum of cost. All post offices shall comply with the national philatelic policies as set forth in this Part 257.

§ 257.2 Commemorative Stamps.

(a) *Purpose.* Commemorative stamps are issued in limited quantities to focus attention on historical places, events or personages. The Postal Service encourages the widespread use of these stamps to promote our ideals, progress, and heritage reflected by the stamps. They do not replace regular stamps of the same class, but are provided upon request, when available.

(b) *Commemorative Stamp Supplies.* Periodically evaluate the philatelic demand and, when necessary, forward a separate requisition for stock needed in addition to the automatic distribution. Postmasters should when necessary reduce the quantity of stamps received automatically to preclude costly overstocking and subsequent destruction. Sectional centers designated to distribute accountable paper shall make certain that less-than-bulk quantities of stamps are supplied to post offices to permit sales the day after the official first-day sale, in accordance with instructions issued in the Postal Bulletin.

(c) *Sale Of Commemorative Stamps.* Place commemorative stamps on sale at all offices on the general release date in accordance with the following schedule:

(1) *Plate Number Blocks and Marginal Markings.* Plate number blocks are the stamps located on one corner of a sheet of stamps with a plate number(s) printed on the margin. The plate blocks may include as few as four stamps where a single number appears or as many as 20 where multiple numbers or other markings such as Mr. ZIP and Mail Early appear. There shall be no wholesale removal of plate number blocks in advance from a large number of sheets for the benefit of individual purchasers. Plate blocks may be laid aside, however, as sheets are broken for regular sale purposes and may be sold as an accommodation to local stamp collectors.

(2) *Regular Stamp Windows.* Place commemorative stamps on regular sale, holding aside only enough for the local philatelic demand. Sell all stock within 60 days if possible. Offer any remaining commemorative stamps, including those previously set aside for philatelic use, to all customers in place of other sheet stamps. An exception would be a commemorative stamp issued for a special areawide event which is being celebrated beyond the 60-day period. It is the Postal Service's intent that all commemorative stamps be sold and none destroyed.

(3) *Philatelic Windows and Postal Stores*—(i) *Time On Sale.* Those offices with full or part-time philatelic windows may keep an issue on sale until the Philatelic Sales Branch publishes in the Postal Bulletin a notice of its removal from sale. Upon notification, immediately withdraw and sell the stock for regular postage purposes for a period of 30 days. After 30 days any remaining stock shall be handled in accordance with section 224, Handbook F–1, *Financial and Cost Controls.*

(ii) *Stamp Credit-Accountability.* Philatelic outlets should maintain a good working level of stamp stock and accountable paper to encourage philatelic interest and be able to readily meet the needs of collectors. In this regard, philatelic outlets are authorized stamp credits of $50,000 to $125,000. Under no circumstances shall the stamp credit exceed $125,000.

(iii) *Plate Numbers.* The sale of plate numbers and marginal markings at philatelic outlets shall be restricted as follows:

Denomination	*Minimum purchase*
1 cent to 16 cents, inclusive.	Full panes of each.
18 cents to 50 cents, inclusive.	Strips of 20 stamps each.
60 cents	Strip of 10 stamps.
$1 to $5, inclusive	4 stamps each.

(iv) *Availability of Back-Issue Commemoratives.* Post offices which maintain or establish special philatelic windows should request the Stamp Management Branch, U.S. Postal Service, Washington, D.C. 20260, to keep them informed of available back-issue commemoratives. Lists of available back issues will periodically appear in the Postal Bulletin.

(v) *Packaged Stamps.* Philatelic windows, postal stores, stamp collecting centers, and the Philatelic Sales Branch may sell stamps previously withdrawn from sale provided the stamps are incorporated in a philatelic product such as the mint set or collecting kit.

(4) *Outside Sales of Commemorative Stamps.* Do not accept mail orders for postage stamps from customers outside the limits of the area served by your post office. Return any such requests to the sender calling attention to the services provided by the Philatelic Sales Branch, Washington, D.C. 20265.

(d) *Announcement Of New Issues.* New stamp and other special issues are announced by notices displayed in the post office lobbies, in the Postal Bulletin, and through the press and philatelic periodicals.

(e) *First-Day Sale.* A post office or post offices selected because of some historical connection with the person, event, or place being commemorated may be authorized to have exclusive sale of a new stamp on its first day of sale. All other post offices may sell the stamp the following day.

(f) *First-Day Covers.*—(1) *Description.* A first-day cover is an envelope, post card, or other mailing piece bearing a new stamp; a new postal card; a new stamped envelope; or a new aerogramme, cancelled with a special die reading "First Day of Issue" and dated to show the first day of issue.

(2) *Requests.* (i) Customers who want first day cancellations of a new stamp have two options:

(A) They may buy and affix their own newly issued stamps to their envelopes and mail them to the postmaster at the city of issuance for cancellation; or (B) They may submit their envelopes with proper remittance to cover the cost of the stamps desired and the Postal Service will affix and cancel the stamps. Remittance should be made by money order, cashiers, certified, or personal check made payable to U.S. Postal Service. Do not send cash. Postage stamps, as well as foreign coins and currency will not be accepted.

All covers must bear addresses and must be postmarked no later than 15 days from the date of issuance to qualify for cancellation service.

(ii) Cover envelopes should be of ordinary letter-size and must be properly addressed low and to the left. Place a filler of postal card thickness in each envelope, and either turn in the flaps or seal it. Endorse the envelope enclosing the covers to the postmaster, "First-Day Covers". If applicable, put a pencil notation in the upper right corner of each cover to show the number of postage stamps to be placed there.

(iii) With orders for first-day covers, do not include requests for uncanceled stamps.

(iv) The Philatelic Sales Branch does not service first-day covers.

PART 258—SPECIAL CANCELLATIONS

3. In paragraph (a) of § 258.1 by revising the first sentence thereof to read as follows:

§ 258.1 Authorization.

(a) Special canceling machine die hubs may be used only in post offices having 190 or more revenue units. • • •

• • • • • •

4. In paragraph (b)(1) of § 258.4 by revising the first sentence thereof to read as follows:

§ 258.4 Disposition.

• • • • • •

(b) *Unserviceable die hubs.* (1) Authorized post offices having 950 or more revenue units shall order replacement repair parts for a die hub that is used annually, from the Western Area Supply Center, Repair Parts Section, Topeka, Kansas 66624, on Form 4984, "Repair Parts Requisition," if the die hub can be repaired at the post office. • • •

• • • • • •

(39 U.S.C. 401, 404(4), 404(5))

ROGER P. CRAIG,
Deputy General Counsel.

[FR Doc.77-2107 Filed 1-21-77;8:45 am]

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER C—AIR PROGRAMS

[FRL 673-6]

NEW SOURCE REVIEW

Delegation of Authority to the State of South Carolina

The amendments below institute certain address changes for reports and applications required from operators of new sources. EPA has delegated to the State of South Carolina authority to review new and modified sources. The delegated authority includes the reviews under 40 CFR Part 52 for the prevention of significant deterioration. It also includes the review under 40 CFR Part 60 for the standards of performance for new stationary sources and review under 40 CFR Part 61 for national emission standards for hazardous air pollutants.

A notice announcing the delegation of authority is published elsewhere in the notices section of this issue of the FEDERAL REGISTER. These amendments provide that all reports, requests, applications, submittals, and communications previously required for the delegated reviews will now be sent to the Office of Environmental Quality Control, Departpartment of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina 29201, instead of EPA's Region IV.

The Regional Administrator finds good cause for foregoing prior public notice and for making this rulemaking effective immediately in that it is an administrative change and not one of substantive content. No additional substantive burdens are imposed on the parties affected. The delegation which is reflected by this administrative amendment was effective on October 19, and it serves no purpose to delay the technical change of this addition of the State address to the Code of Federal Regulations.

This rulemaking is effective immediately, and is issued under the authority of sections 101, 110, 111, 112, and 301 of the Clean Air Act, as amended, 42 U.S.C. 1857c-5, 6, 7 and 1857g.

Dated: January 11, 1977.

JOHN A. LITTLE,
Acting Regional Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

DELEGATION OF AUTHORITY FOR PREVENTION OF SIGNIFICANT DETERIORATION TO THE STATE OF SOUTH CAROLINA

Part 52 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

Subpart PP—South Carolina

1. Section 52.2131 is amended by adding a new paragraph (c) as follows:

§ 52.2131 Significant deterioration of air quality.

• • • • • •

(c) All applications and other information required pursuant to § 52.21 from sources located in the State of South Carolina shall be submitted to the Office of Environmental Quality Control, Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina 29201, instead of the EPA Region IV office.

• • • • • •

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

DELEGATION OF AUTHORITY TO THE STATE OF SOUTH CAROLINA

2. Part 60 of Chapter I, Title 40, Code of Federal Regulations, is amended by revising subparagraph (PP) of § 60.4(b) to read as follows:

§ 60.4 Address.

• • • • • •

(b) • • •

(A)-(OO) • • •

(PP) State of South Carolina, Office of Environmental Quality Control, Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina 29201.

• • • • • •

PART 61—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS

DELEGATION OF AUTHORITY TO THE STATE OF SOUTH CAROLINA

3. Part 61 of Chapter I, Title 40, Code of Federal Regulations, is amended by revising subparagraph (PP) of § 61.04(b) to read as follows:

§ 61.04 Address.

• • • • • •

(b) • • •

(A)-(OO) • • •

(PP) State of South Carolina, Office of Environmental Quality Control, Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina 29201.

• • • • • •

[FR Doc.77-1969 Filed 1-21-77;8:45 am]

Title 41—Public Contracts and Property Management

CHAPTER 9—ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION

[ERDA-PR Temporary Reg. No. 26]

PART 9-4—SPECIAL TYPES AND METHODS OF PROCUREMENT

Subpart 9-4.52—Unsolicited Proposals

JANUARY 17, 1977.

• 1. *Purpose.* To revise ERDA-PR Temporary Regulation No. 21 to reinstate the applicability of ERDA-PR 9-4.51 to certain proposals. •

ERDA-PR Temporary Regulation No. 21, dated July 23, 1976, 41 FR 30330, was issued for the purpose of expanding and clarifying the policies and procedures concerning the receipt, evaluation, acceptance or rejection of unsolicited proposals. Its provisions were expanded to encompass all unsolicited proposals from whatever source obtained (e.g. educational institutions). Such sources had for many years prior to the issuance of ERDA-PR Temporary Regulation No. 21 been treated under Subpart 9-4.51 entitled Research Agreements and Contracts with Educational Institutions. However, after approximately six months of experience with ERDA-PR Temporary Regulation No. 21 in the processing of unsolicited proposals submitted by such sources, it has been determined that the provisions of ERDA-PR Subpart 9-4.51 are a more appropriate mechanism for processing these proposals. Therefore, effective immediately, the provisions of ERDA-PR Subpart 9-4.51 are reinstated as previously applicable. However, for the purpose of establishing a central control point for accountability, tracking and reporting, educational institutions are instructed to submit their proposals directly to:

Office of University Programs, U.S. Energy Research and Development Administration, Washington, DC 20545.

Other organizations, such as not-for-profit organizations which can be treated in the same manner as educational institutions (e.g. charitable institutions which conduct education and training activities, or whose facilities are used in joint programs with universities for such purposes; hospitals conducting research activities of interest to ERDA) should submit their proposals directly to:

Division of Procurement, C-167, Proposal Coordination Section, U.S. Energy Research and Development Administration, Washington, DC 20545.

2. Effective date. This revision to ERDA-PR Temporary Regulation No. 21 is effective on January 24, 1977. Interested persons may submit comments on this regulation to: Director of Procurement, Attention: M. Kestenbaum, U.S. Energy Research and Development Administration, Washington, DC, 20545. Comments received on or before February 28, 1977, will be considered in determining whether changes to this revision are advisable.

3. Expiration date. This devision will remain in effect until canceled or until its provisions are incorporated into a permanent ERDA Procurement Regulation.

4. Explanation of change. ERDA-PR Temporary Regulation No. 21 is hereby revised by making the changes described in the following paragraphs:

a. At 41 FR 30331 in § 9-4.5203, *Procedure*, delete lines 5 through 9 starting with "In the event of • • • proposals are concerned."

b. At 41 FR 30332 in § 9-4.5203-1(b)(9), Notice of program interest, delete "'Guide for the Submission of Research Proposals from Educational Institutions' (available from ERDA, Office of University Programs, Washington, DC, 20545); and".

c. At 41 FR 30332 in § 9-4.5203-3, Submission of proposals, in the sixth line, delete "both" and put a period after "Procurement". Delete remainder of that second sentence and all the third sentence of that paragraph.

d. At 41 FR 30332 in § 9-4.5203-3(a), in the first line delete ", except those from educational institutions," and delete the last sentence of that paragraph, "Unsolicited proposals from • • • Washington, DC 20545."

(Sec. 105, Energy Reorganization Act of 1974 (Pub. L. 93-438).)

M. J. TASHJIAN,
Director of Procurement.

[FR Doc.77-2115 Filed 1-21-77;8:45 am]

Title 42—Public Health

CHAPTER I—PUBLIC HEALTH SERVICE, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

PART 56b—GRANTS FOR REGIONAL MEDICAL PROGRAMS

CFR Correction

The authority for Part 56b appearing on page 316 of 42 CFR revised as of October 1, 1976 is incorrect. The correct text is set forth below:

AUTHORITY: Sec. 215, 58 Stat. 690, as amended, sec. 906, 79 Stat. 930; 42 U.S.C. 216, 299f. Interpret or apply secs. 900, 901, 902, 903, 904, 905, 909, 79 Stat. 926, 927, 928, 929, 930; 42 U.S.C. 299, 299a, 299b, 299c, 299d, 299e, 2991.

Title 45—Public Welfare

CHAPTER II—SOCIAL AND REHABILITATION SERVICE (ASSISTANCE PROGRAMS), DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

PART 249—SERVICES AND PAYMENT IN MEDICAL ASSISTANCE PROGRAMS

Termination of Payment for Inpatient Services in Certain Institutions

SRS is amending 45 CFR 249.10 by adding a new paragraph (d)(3). This new paragraph establishes rules to govern the continuation of Federal Financial Participation (FFP) in payments to States for certain inpatient services in institutions and facilities which no longer meet standards for accreditation and certification, as defined and required by Federal law and regulations. This disqualification of institutions causes, in most instances, hardships and chaos for both the Medicaid recipient and State agencies because:

(1) Federal matching funds are immediately cut off; and

(2) States must immediately relocate recipients in qualified institutions and facilities.

The purpose of this new regulation is to provide for a period, not to exceed 30 days from the effective date on which an institution or facility is determined not in compliance with Federally-defined qualifying standards for accreditation or certification, in which Federal matching may continue. However, there must be a bona fide effort on the part of the State to make other arrangements for care of these institutionalized recipients. The basis for this new regulation is the Secretary's determination that States should be allowed a reasonable period in which to provide for the orderly transfer of such individuals to other fully qualified institutions and facilities.

Existing regulations for skilled nursing facilities and intermediate care facilities contain a similar provision allowing for a 30-day period from the termination of their provider agreements to make arrangements for alternate care.

This new paragraph (d)(3) also includes a provision for retroactive application where loss of qualification occurred prior to the effective date of this regulation (Subparagraph (iv)), in order that States will not be penalized unfairly in these situations.

The following services are affected by this regulation:

(1) Inpatient hospital services (45 CFR 249.10(b)(1));

(2) Inpatient hospital services for individuals age 65 or over in institutions for mental diseases (45 CFR 249.10(b)(14)); and

(3) Inpatient psychiatric facility services for individuals under age 22 (45 CFR 249.10(b)(16)).

In response to the Notice of Proposed Rulemaking, published on June 18, 1976 in the FEDERAL REGISTER (41 FR 24717), SRS received 14 comment letters: 9 from State agencies and 5 from providers and provider-organizations. Although all those responding agreed with the intent of the regulation, the major area of concern expressed was that the proposed 30-day period would be insufficient to provide for relocation of recipients.

Recommendations included extending the time period to 60 days, 90 days, and 120 days.

One primary objective of SRS, in the area of regulations, has been to have, where possible, similar provisions under Medicaid and Medicare, since many facilities participate in both programs. In most instances, the 30-day period for continuation of FFP after loss of accreditation or certification, provided for under existing Medicaid and Medicare regulations, has proved adequate for relocation of recipients. The 30-day time frame would also appear to lessen the likelihood of abuse; i.e., there should be no unnecessary delay in relocating recipients from disqualified to qualified facilities. Therefore, the 30-day time period is retained in the regulation.

One suggestion was made that in instances when a hospital appeals a determination of disqualification, FFP should continue until an administrative decision is reached. This suggestion was not accepted because, when an institution or facility is disqualified, the health and safety of the patients can no longer be assured and continuing payments beyond the 30-day period would not be justified. To reiterate, this regulation is to provide States a reasonable time period in which to relocate recipients from disqualified to qualified facilities. In essence, the facility or institution has received a final determination of disqualification.

It was suggested that the regulation specify that concurrent notification of decisions be made to the single State agency (Medicaid) and the State agency (Certification and Licensure), in order to assure timely notice of loss of accreditation. This would require administrative procedures rather than a regulatory mandate. Therefore, a mechanism at the Federal level is being established in order to achieve this objective. Accordingly, the proposed regulation is hereby adopted with clarifying changes in format.

Section 249.10, Part 249, Chapter II, Title 45 of the Code of Federal Regulations is revised by adding new § 249.10(d)(3).

§ 249.10 Amount, duration, and scope of medical assistance.

• • • • • •

(d) *General provisions.* • • •

(3) *Continuation of Federal financial participation under specified conditions.* (i) FFP may be continued for the following services provided for eligible individuals:

(A) Inpatient hospital services, other than services in an institution for tuberculosis or mental diseases (paragraph (b)(1) of this section);

(B) Inpatient hospital services, skilled nursing facility services, and intermediate care facility services for individuals 65 years of age or over in institutions for tuberculosis or mental diseases (paragraph (b)(14)(i) of this section); and

(C) Inpatient psychiatric facility services for individuals under the age of 21 (paragraph (b)(16) of this section);

in institutions or facilities which, on or after April 25, 1977, met the applicable definition, but later no longer meets it.

(ii) FFP may be continued for a period not to exceed 30 days from:

(A) The effective date of termination by the Social Security Administration of the facility's provider agreement under title XVIII of the Act;

(B) The date of termination by the single State agency of the provider agreement in those institutions and facilities which participate under title XIX of the Act only;

(C) With respect to patients under 21 in a psychiatric facility, the earlier of either the effective date of loss of accreditation by the Joint Commission on Accreditation of Hospitals (JCAH), or the termination by the State title XIX agency of the provider agreement with respect to these services.

(iii) The continuation of FFP is applicable only:

(A) For payments in behalf of individuals admitted to the institution or facility before loss of qualification as determined under paragraph (d)(3)(i) of this section; and

(B) If the State makes a reasonable effort to facilitate the orderly transfer of such individuals to alternate care.

(iv) When an institution's or facility's loss of qualification occurred on or prior to April 25, 1977, FFP is available after the date of such loss only:

(A) When the State continued to claim FFP in payments to such institution or facility; and

(B) When the SRS Regional Commissioner has, by written notification to the single State agency, authorized such continuation, and for such period as the SRS Regional Commissioner has specified. In no event may the period of continuation extend beyond 45 days from the date of such notification or 30 days after April 25, 1977, whichever is earlier. The requirements in paragraph (d)(3)(iii) are not applicable.

(Sec. 1102, 49 Stat. 647 (42 U.S.C. 1302).)

Effective date: The regulations in this section will be effective April 25, 1977.

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program.)

Answers to specific questions may be obtained by calling Emily Nichols, 202-245-0701.

NOTE.—The Social and Rehabilitation Service has determined that this document does not require preparation of an inflationary Impact Statement under Executive Order 11821 and OMB Circular A-107.

Dated: December 17, 1976.

ROBERT FULTON,
Administrator, Social and Rehabilitation Service.

Approved: January 18, 1977.

MARJORIE LYNCH,
Acting Secretary.

[FR Doc.77-2157 Filed 1-21-77;8:45 am]

Title 49—Transportation

CHAPTER X—INTERSTATE COMMERCE COMMISSION

SUBCHAPTER B—PRACTICE AND PROCEDURE

[Ex Parte No. 55 (Sub-No. 14)]

PART 1100—GENERAL RULES OF PRACTICE

Processing of Specified Proceedings; Adoption of Amended Rules; Correction

By notice published in the FEDERAL REGISTER (41 FR 53,798-53,802 (1976)) the Interstate Commerce Commission announced that it has adopted certain amended rules designed to improve and expedite the processing of specified proceedings. The purpose of this document is to notify interested persons that paragraph (e)(3) of amended § 1100.247, appearing at 41 FR 53,800-53,801, contains an inadvertent inclusion, namely: "* * * Protestants shall name the carrier(s) with whom interline operations shall be performed and shall specifically detail the operation that can be performed thereunder."

The above-quoted phrase should be excised from the amended rule so that, as corrected, paragraph (e)(3) of § 1100.247 reads as follows:

§ 1100.247 Special rules governing notice of filing of applications by motor carriers of property or passengers and brokers under sections 206 (except section 206(a)(6) relating to certificates of registration), 209 and 211, by water carriers under sections 302(e), 303, and 309, and by freight forwarders under section 410 of the Interstate Commerce Act, and certain other procedural matters with respect thereto. (Rule 247)

* * * * *

(e) * * *

(3) A protest against any application shall set forth specifically the grounds upon which it is made and contain a detailed statement of the protestant's interest in the proceeding (including a copy of only the specific portions of its pertinent authority and including direct operations held by virtue of the gateway elimination regulations either published in the FEDERAL REGISTER as letter-notices or granted in separate gateway elimination certificates, which protestant believes to be in conflict with that sought in the application, and describing in detail the method (whether by joinder, interline, or other means) by which protestant would use such authority to provide all or part of the service proposed), shall request an oral hearing if one is desired, and shall specify with particularity the facts, matters, and things relied upon, but shall not include issues or allegations phrased generally. Protests phrased in general terms and not complying with these specifications may be rejected.

* * * * *

ROBERT L. OSWALD,
Secretary.

[FR Doc.77-2149 Filed 1-21-77;8:45 am]

proposed rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 1033]

[Docket No. AO-166-A49]

MILK IN THE OHIO VALLEY MARKETING AREA

Decision on Proposed Amendments to Marketing Agreement and to Order

A public hearing was held upon proposed amendments to the marketing agreement and the order regulating the handling of milk in the Ohio Valley marketing area. The hearing was held, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice (7 CFR Part 900), at Columbus, Ohio, on May 4, 1976, pursuant to notice thereof issued on March 30, 1976 (41 FR 14192).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Deputy Administrator, Program Operations, on October 27, 1976 (41 FR 47940) filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision containing notice of the opportunity to file written exceptions thereto.

The material issues, findings and conclusions, rulings, and general findings of the recommended decision are hereby approved and adopted and are set forth in full herein, subject to the following modifications:

1. Under "1. Enabling handlers to make payments to nonmember producers", three paragraphs are added immediately following the 9th paragraph.

2. Under "3. Modification of the pooling procedure to consider as one plant the operation of two or more distributing plants for purposes of pool qualifications", a paragraph is added following the 11th paragraph.

3. Under "5. Classifying in Class III the skim milk and butterfat in products containing less than 6.5 percent nonfat milk solids", five paragraphs are added immediately following the 3rd paragraph.

The material issues on the record relate to:

1. Payment procedures which would permit handlers to make payments to nonmember producers directly rather than through the market administrator.

2. Procedure for pooling a plant that qualified under the Ohio Valley order and another order in the same month.

3. Modification of the pooling procedure to consider as one plant the operation of two or more distributing plants for purposes of pool qualification.

4. Inclusion of interplant transfers of packaged fluid milk products as a route disposition from the transferor-plant for purposes of determining such plant's status as a pool plant.

5. Classifying in Class III the skim milk and butterfat in products containing less than 6.5 percent nonfat milk solids.

6. Classifying in Class III the skim milk and butterfat in products in hermetically sealed containers.

7. Conforming changes.

This decision deals with all the above issues except Issue No. 2. The latter issue was dealt with separately in a prior partial decision on this record.

FINDINGS AND CONCLUSIONS

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. *Enabling handlers to make payments directly to nonmember producers.* Under certain conditions payments for producers' milk for whom a cooperative is not receiving payment from the market administrator should be made by the market administrator to the handler who receives such producers' milk for distribution to the producers. The producers to whom this would apply are generally only those who are not members of a cooperative. Of the 6,279 producers on the market in February 1976, 752 were not members of a cooperative.

Under the present order, handlers must pay all order obligations for milk to the market administrator. Payment is then made by him, in terms of the uniform price, directly to producers or to a cooperative for the milk of those producers for whom the cooperative is authorized to collect payment.

A handler who receives milk from more than 150 nonmember producers proposed that a handler, if he so requested, receive from the market administrator the payments due his nonmember producers. The handler would then pay such producers directly. Proponent contended that the present provision, which was adopted in 1970 and which requires the market administrator to pay nonmember producers directly, interferes with the normal handler-producer relations that have been built up over a number of years. Also, enabling him to pay his nonmember producers directly, he held, would facilitate the money transactions between him and his producers. The proponent handler must now issue separate checks to each of his producers for his payments to them in excess of the order's uniform price. This, he contends, is confusing to producers since they receive this third check in addition to the two (a partial and a final payment) received directly from the market administrator. If he were permitted to pay his producers directly, as proposed, the amount in excess of the order's uniform price that he pays them could be included in the check for the final payment to such producers under the order rather than issuing them additional checks.

Prior to the dates when payments are due under the order, the proponent handler (and apparently others receiving milk from nonmember producers) advances funds to some producers and pays producers' creditors (e.g., for assignments and hauling). The amounts thus paid by a handler, which are deducted from his payment obligation to the market administrator for producer milk, are in turn deducted by the market administrator from the payments for milk due the producer. Proponent handler claimed that enabling him to make payments directly to his producers (instead of having the market administrator making such payments) could avoid much of the confusion that he now claims exists.

The spokesman for a cooperative that supplies milk to the proponent handler expressed the view that it is inequitable not to allow handlers to pay nonmember producers directly while cooperatives may pay their producers directly.

A handler who receives milk from 42 nonmember producers and three of those producers testified in support of the proposal. They contended that if producers were paid by the handler instead of by the market administrator, the producers would receive their payments more promptly than at present. The producers stated that the checks mailed to them from the market administrator's office are often delayed and that any questions regarding them must involve extensive correspondence with the market administrator. Producers expressed the view that if the handler were allowed to pay them directly, they would be assured of being paid promptly because the checks could be hand-delivered to them by the handler. Also, they claimed, any questions regarding payments for their milk could be readily resolved locally with the handler instead of through time-consuming correspondence with the market administrator.

A handler receiving milk from about 100 nonmember producers also supported the proposal. He indicated, however, that if a handler who elected to pay producers directly became delinquent in making such payments, that handler should be precluded from continuing to make such direct payments until he subsequently established over a reasonable period of time a record of compliance with the order's payment provisions.

The major cooperatives in the market opposed any order change that would enable a proprietary handler to pay his nonmember producers directly. In their

view, the present system is operating satisfactorily and should not be disturbed. However, they held that if the proposed change is adopted, appropriate safeguards should be provided to assure that the payments to nonmembers are being made on time. They also urged (if the proposal is adopted) that any handler who became delinquent in his payments to the market administrator or to nonmember producers not be eligible to receive payments from the market administrator to make such direct payments until he had made such payments when due for several consecutive months.

It is reasonable that handlers be permitted to receive payment from the market administrator for distribution to nonmember producers. Although opposed by cooperatives, it was not established that the change adopted herein would adversely affect any producers or handlers on the market. On the other hand, enabling a handler to pay his nonmember producers directly will facilitate the money transactions between them.

In its exceptions, the federation of major cooperatives in the market argued that since it is opposed to enabling a proprietary handler to pay producers and because the number of producers it represents is substantially greater than those supplying the handlers who supported the payment proposal here adopted, the proposal should be denied. It would be inconsistent with the intent of the Act, and with the Department's regulations governing the procedure for amending marketing orders, to amend an order on the basis that more people favored an action rather than on the basis of the record evidence of the hearing.

Another argument by the federation against permitting a handler to pay nonmember producers directly is its claim that it is illegal for a hauler to hand-deliver to producers a payment due from the handler. Nothing in the provisions here adopted provides that payments to producers must be delivered by a hauler. The order only requires that a handler must make the payments due producers under the order by specified dates. The manner in which a handler transmits payments to producers is not specified in the order.

The cooperatives' exceptions suggested that permitting proprietary handlers to pay producers as adopted herein will enable such handlers to obtain milk from producers at prices less than what other handlers must pay and, additionally, will enable such handlers to take producers away from cooperatives by offering the producers something in excess of the order's minimum prices. Whether or not a handle elects to pay his nonmember producers directly, the amount of money that he must pay the producers in accordance with the terms of the order will in no way be affected. Also, the extent to which a handler pays his producers in excess of the minimum prices provided by the order compared to such amounts in excess of the minimums paid by cooperatives is outside the scope of the order and is not a matter that can be considered as being affected by the order change provided in this decision.

It is necessary, however, that appropriate safeguards be provided to assure that such payments to producers are made when due. Otherwise, the order could place those handlers who are in compliance with the payment provisions at a competitive disadvantage with those delinquent handlers who are using money due producers as a free source of funds for operating expenses.

A handler who the market administrator determines is delinquent in any payment obligations under the order should not be eligible to receive money from the market administrator for payment to producers. Any transfer of money by the market administrator to a handler in this circumstance would remove much of the incentive for a handler to consistently comply with the order's payment requirements. So that there might be a reasonable demonstration of compliance with the order, a delinquent handler should not be eligible to pay his producers until he has met all prescribed payment obligations for three consecutive months.

3. *Modification of the pooling procedure to consider as one plant the operation of two or more distributing plants for purposes of pool qualifications.* The operator of two or more distributing plants should be permitted to consider them collectively as one plant for the purpose of meeting the total monthly route disposition percentage requirement (50 percent in September-February and 45 percent in other months) for pooling a single plant. Each plant in such a unit would have to meet individually the present requirement that at least 15 percent of the total monthly route disposition from a plant be made in the marketing area. It was not proposed that this latter requirement be changed.

The handler who proposed unit pooling operates six pool distributing plants. He contended that requiring him to qualify each plant separately necessitates his making uneconomic movements of milk between plants. Proponent handler claimed that the pooling provisions unwarrantedly set a higher performance standard to qualify his total operation for pooling than is required of an operation comparable to it in a single plant. Allowing him to qualify his plants as a unit, he argued, would put him on essentially the same basis as a handler, operating one plant.

The handler maintains a substantial manufacturing operation at one of his six distributing plants. Cottage cheese, a principal product made at that plant (in New Bremen, Ohio), is produced there for other plants. The other five plants are essentially Class I operations. Each of the six plants meets individually the pooling requirement that at least 15 percent of its total monthly route disposition is in the marketing area. Based on the total quantities of milk physically handled at each plant, all plants except the New Bremen plant easily meet the total monthly route disposition percentage requirement (50 percent in September-February and 45 percent in other months) for pooling.

In order to keep the New Bremen plant pooled, the handler regularly diverts milk to such plant from his other distributing plants rather than associating the milk directly with the New Bremen plant. This is because the diverted milk is considered as a receipt of producer milk at the pool plant from which diverted and is not counted as a receipt at the New Bremen plant in calculating its total route disposition percentage for pooling. In reality, a substantial proportion of the diverted milk received at the New Bremen plant is actually a regular part of that plant's milk supply.

The handler's pooling efforts are further complicated by the order requirement that at least two days' production of a producer be physically received at a pool plant during the month to qualify his remaining production for diversion to other plants. This makes it necessary for producers whose milk regularly goes to the New Bremen plant by diversion to deliver at least two days' production during the month to other pool distributing plants.

Providing for unit pooling will eliminate the shifting of loads of producers' milk between a multi-plant operator's various plants, which is now done to insure the pooling of all the handler's plants. With unit pooling, it will be possible to assign producers regularly to plants where it is most practicable for them to deliver. The increased record-keeping necessitated by producers delivering to a number of plants during the month would be eliminated.

The shifting of producers' deliveries between a multi-plant operator's plants solely for the purpose of qualifying such plant individually, and the added record-keeping caused by it, is of no practical benefit to handlers or producers. Removing the need for this burdensome practice will facilitate the movement of milk from producers' farms to plants where it is actually needed.

Also, the proposal here adopted, by affording him greater flexibility in operating his plants than is now possible under the order, will enable a multi-plant operator to obtain the optimum utilization of the facilities available at each plant. In effect, it will enable him to achieve an economy of scale comparable to that which would be realized by maintaining his total operation in one plant.

A multi-plant handler may find it impractical and uneconomical to maintain at each of his plants the equipment necessary to process and package (and in each container size) all fluid milk products and other dairy products (e.g., sour cream, cottage cheese, eggnog) commonly distributed to retail and wholesale outlets from such plants. In fact, confining certain specialized operations (e.g., cottage cheese manufacture) to one plant may at times be the only economically feasible means that justifies the investment required to install and maintain the equipment and facilities needed for such specialized operations.

Presently, under the order, a multi-plant operator is placed at a disadvantage vis-a-vis a single plant operator. That is, to insure pool plant status for all his plants he may be forced to fragment his other than Class I operations among his various plants or to resort to a program of moving milk between his plants solely for the purpose of qualifying them. Neither of these alternatives, which result in increased costs to a handler, actually serves any useful purpose.

Although a federation of the market's cooperatives did not testify in opposition to the proposal, its spokesman suggested that adopting it could result in attaching unneeded additional milk to the pool. However, it is not apparent that the proposed unit pooling could provide a means of pooling any significant quantities of additional milk. Although unit pooling would provide a handler more flexibility in directing the movement of milk from producers' farms to his various plants, the handler's potential for associating milk supplies with the market actually would be no greater whether he qualifies his distributing plants individually or on a combined basis.

In its exceptions to the recommended decision, the federation of cooperatives suggested that the provision here adopted does not give equal consideration to single plant operators who also process large amounts of Class II and Class III items in conjunction with their fluid milk operations. On the contrary, only by permitting the operator of two or more distributing plants to consider them as a unit for pooling purposes, as provided in this decision, will it be possibe for him to qualify his total operation for pooling on the same basis that single plant operators qualify their total operations for pooling.

The order accords pool plant status for the month to a distributing plant that failed to meet the total route disposition percentage requirement for pooling if it met that requirement in the three immediately preceding months. This provision, which was adopted to deal with a single plant operation, should not be applicable for the month to a plant that qualified for pooling within a unit in any of the three immediately preceding months. Since the route disposition from such a plant would have been used as a basis to qualify collectively it and and all other plants in the unit, one or more of which apparently would not qualify individually as a pool plant, such plant cannot be reasonably considered as having met the same conditions that a single plant must have met for three consecutive months as a basis for pooling in the following month.

4. *Inclusion of interplant transfers of packaged fluid milk products as a route disposition from the transferor-plant for determining such plant's status as a pool plant.* Packaged fluid milk products transferred to a distributing plant from a plant from which no fluid milk products are distributed to wholesale or retail outlets in the marketing area should not be considered as a route disposition from the transferor-plant in determining its pool plant status. Such transfers to a distributing plant from any plant are now counted as a route disposition in the marketing area from the transferor-plant to the extent of the in-area disposition of the transferee-plant. If the in-area disposition thus assigned to the transferor-plant is at least 15 percent of its total route disposition, and it otherwise meets the order's monthly total route disposition requirement for pooling (50 percent of its receipts in September–February and 45 percent in other months), the plant qualifies as a pool plant.

A handler proposed that packaged fluid milk products received at a distributing plant from a plant having no distribution in the marketing area be considered an interplant transfer instead of as a route disposition from the transferor-plant in determining its pool plant status. Except for the single purpose of qualifying a distributing plant as a pool plant, such packaged fluid milk products moved between plants are now handled as an interplant transfer.

Cooperatives opposed the handler proposal. They were concerned that it might result in providing a competitive advantage to a nonpool plant from which packaged fluid milk products were transferred to a pool plant. However, their spokesman did not explain how such an advantage could be realized.

Until recently, milk in gallon containers distributed on routes from the proponent handler's Beckley, West Virginia, pool plant was packaged at his plant in Radford, Virginia, a plant from which no fluid milk products are distributed to wholesale or retail outlets in the marketing area. Since these packaged transfers were considered as a route disposition in the Ohio Valley marketing area from the Radford plant in determining its pool status and since they represented more than 15 percent of the Radford plant's total route disposition, it qualified as a pool plant.

When the equipment for packaging milk in gallon containers was moved from Radford to the Beckley plant, the Radford plant became a nonpool plant and its packaged gallon container requirements have since been received from the Beckley plant. The intent of the handler's proposal is to enable him to again package milk in gallon containers for his Beckley and Radford operations at his Radford plant without this affecting the nonpool plant status of the Radford plant.

The present provision was adopted a number of years ago because custom-bottling for other handlers in this market is a substantial part of some plants' operations compared to their own route disposition. In this circumstance, such plants can not always meet the route disposition percentage requirements for pooling without being credited with the route disposition of the handlers for whom they custom-bottle. Counting the custom-packaged fluid milk products as a route disposition from the plant where packaged (the transferor-plant) assures the pooling of such plant.

When the provision that considers transfers of packaged milk as a route disposition from the transferor-plant to qualify it as a pool plant was adopted, it did not contemplate packaged transfers to a pool plant from a nonpool plant (e.g., Radford). Regulating such a plant, from which no fluid milk products are distributed to wholesale or retail outlets in the marketing area, is not necessary to insure the integrity of the regulation. A plant from which a limited quantity of packaged fluid milk products is transferred to a pool distributing plant cannot reasonably be considered an integral part of the regulated market. This would not be the case, however, if a substantial portion of the fluid milk products processed at the plant were transferred to pool distributing plants. In that circumstance, it could qualify for pooling as a supply plant in the same manner as a plant from which bulk fluid milk products are shipped to pool distributing plants.

Under Ohio Valley and all other Federal orders with marketwide pooling, when fluid milk products transferred to pool plants during the month are insufficient to qualify the transferor-plant as a pool plant, such transfers are considered as a receipt of other source milk at the pool plants. On such transfers classified in Class I, a pool plant operator is required to pay the producer-settlement fund the difference between the Class I price and uniform price value for such milk. This compensatory payment rate has been found as a reasonable and equitable basis for removing any price advantage that a pool plant operator may have for obtaining milk from an unregulated plant rather than from producers or from a regulated plant.

5. *Classifying in Class III the skim milk and butterfat in products containing less than 6.5 percent nonfat milk solids.* The order should specify that the skim milk and butterfat in a product containing less than 6.5 percent nonfat milk solids shall be classified in Class III. The present order specifies no minimum percentage of nonfat milk solids as a basis for determining the classification of skim milk and butterfat in the product. In the absence of a designated classification, such a product is now classified as Class I.

The handler who proposed the order change here adopted supplies lowfat milk to a bottler for use in the production of a beverage comparable to soda pop. The beverage, which contains a very limited amount of milk solids, is sold in competition with soda pop. Providing a Class III classification for the skim milk and butterfat used to produce that product will enable the bottler to continue to use dairy products and to compete more equitably with the manufacturers of similar products.

Fluid products that contain only minimal amounts of nonfat milk solids are not milk products and are not considered as being competitive with fluid milk products. It is appropriate, therefore, to provide a reasonable basis to exclude

such products from the fluid milk product definition and to classify in Class III the skim milk and butterfat used in their manufacture. Excluding from the fluid milk product definition (and including in the Class III classification) the skim milk and butterfat in a product containing less than 6.5 percent nonfat milk solids is an appropriate standard for this purpose.

The major cooperatives in the market excepted to classifying in Class III the skim milk and butterfat in products containing les than 6.5 percent nonfat milk solids. They claimed that "there is no easy way to test for milk solids" and that enforcing the provision would not be feasible.

All handlers must account on their monthly reports to the market administrator for the disposition of the skim milk and butterfat in all milk and milk products received during the month. Each handler is required to maintain complete and accurate records of the quantities of skim milk and butterfat used to produce the various products produced in his plant, or moved to other plants. The handler's records are audited regularly by the market administrator to verify the utilizations claimed by the handler. Also, in verifying the utilizations claimed by the handler on his reports, the market administrator routinely runs laboratory tests to confirm the quantities of butterfat and nonfat milk solids claimed to have been used in the production of the various products.

Through these procedures, the market administrator should be able to ascertain whether a beverage intended as a non-fluid milk product contains less than 6.5 percent nonfat milk solids. To deny a Class III classification for the skim milk and butterfat used to produce a product containing less than 6.5 percent nonfat milk solids, based on the assertion that there is no easy or practical way to test for nonfat milk solids, is not justified.

The provision here adopted is the same as that adopted for 39 orders in the Assistant Secretary's February 2, 1974, decision (39 FR 8452) of which official notice is taken.

6. *Classifying in Class III the skim milk and butterfat in products in hermetically sealed containers.* No change should be made in the classification of skim milk and butterfat in sterilized products in hermetically sealed containers.

The order excludes dietary products and infant formulas in hermetically sealed containers from the fluid milk product definition. The skim milk and butterfat in such products are classified in Class III. In all other instances, skim milk and butterfat are classified on the same basis whether or not the end product is sterilized and packaged in a hermetically sealed containef.

A handler proposed that the skim milk and butterfat in all products in hermetically sealed containers be excluded from the fluid milk product defihition. This would have the effect of classifying in Class III the skim milk and butterfat in fluid milk products packaged in hermetically sealed containers for which a Class I classification is now specified in the order.

Milk transferred from proponent's and other handlers' pool plants to a nonpool plant is used in the manufacture of a variety of food products. The milk products made at the nonpool plant, all of which are sterilized and packaged in hermetically sealed containers, include a beverage that is marketed for medicinal purposes. Since this beverage falls in the category of a fluid milk product under the order, the skim milk and butterfat in it are classified in Class I.

The product in question is sold for fluid consumption. The production of it apparently requires milk comparable in quality to that in Class I fluid milk products. It is not a manufactured milk product for which a Class II or Class III classification is provided.

The operator of the nonpool plant contended that since all milk products made in his plant are sterilized and packaged in hermetically sealed containers, they are not competitive with unsterilized products. Accordingly, he argued, any sterilized fluid milk product made at his plant should be classified in Class III and not in Class I, as now provided in the order.

The packaging of fluid milk products in hermetically sealed containers, or the sterilization of such products, does not change the form or purpose of such products. As in the case of the unsterilized fluid milk products that they resemble, such products are disposed of in fluid form for fluid consumption as a beverage.

Returns to producers for milk disposed of in the form of fluid milk products should be the same whether such products are sterilized or unsterilized. Such products in either form are marketed for the same or a comparable beverage use. Classifying all such products in Class I assures that returns from producer milk used in sterilized fluid milk products will contribute on the same basis as returns from producer milk used in unsterilized fluid milk products toward inducing an adequate supply of milk for fluid use. Except for dietary products and infant formulas the uniform classification plan for 39 orders, adopted in the Assistant Secretary's February 2, 1974, decision (39 FR 8452), removed any exception to a Class I classification of a fluid milk product that was sterilized or packaged in a hermetically sealed container.

The record of this hearing affords no basis for providing a classification of fluid milk products packaged in hermetically sealed containers different from that which has been found to be appropriate in this and other orders. Accordingly, the proposal to classify the skim milk and butterfat in fluid milk products packaged in hermetically sealed containers in Class III is denied.

7. *Conforming changes.* In § 1033.12 (b) of the order, the term "dairy farmers" should be replaced with the word "producers" and in § 1033.60(g), the term "nonpool plants" should be replaced with the term "unregulated plants". These changes were requested by the Dairy Division to clarify the order language. The wordings adopted will not result in any different application of the order provisions wherein the changes are made. They will, however, remove any ambiguity in the interpretation of the order that might result from the present language.

In § 1033.12(b), which is the definition of a pool supply plant, the word "producers" (which is defined in the order) designates more specifically than "dairy farmers" those persons a specified percentage of whose total deliveries to a supply plant must be transferred to pool distributing plants to qualify the supply plant for pooling.

Paragraph (g) in § 1033.60 is a step in computing the compensatory payment obligation of a handler on milk received from unregulated plants. The present reference to "nonpool plants" instead of "unregulated plants" is technically incorrect. This paragraph has no application to milk received from other order plants, which are nonpool plants but which are not unregulated plants.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the tentative marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

Rulings on Exceptions

In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions received was carefully and fully considered in conjunction with the record evidence. To the extent that the findings and conclusions, and the regulatory provisions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

Marketing Agreement and Order

Annexed hereto and made a part hereof are two documents, a Marketing Agreement regulating the handling of milk, and an Order amending the order regulating the handling of milk in the Ohio Valley marketing area which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered, That this entire decision, except the attached marketing agreement, be published in the FEDERAL REGISTER. The regulatory provisions of the marketing agreement are identical with those contained in the order as hereby proposed to be amended by the attached order which is published with this decision.

Determination of Producer Approval and Representative Period

November 1976 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the order, as amended and as hereby proposed to be amended, regulating the handling of milk in the Ohio Valley marketing area is approved or favored by producers, as defined under the terms of the order (as amended and as hereby proposed to be amended), who during such representative period were engaged in the production of milk for sale within the aforesaid marketing area.

Inflation Impact Statement. The United States Department of Agriculture has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A–107.

Signed at Washington, D.C. on January 17, 1977.

RICHARD L. FELTNER,
Assistant Secretary.

Order[1] amending the order, regulating the handling of milk in the Ohio Valley marketing area.

Findings and Determinations

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings.* A public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Ohio Valley marketing area. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure (7 CFR Part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area, and the minimum prices specified in the order as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activities specified in, a marketing agreement upon which a hearing has been held.

Order relative to handling. It is therefore ordered that on and after the effective date hereof the handling of milk in the Ohio Valley marketing area shall be in conformity to and in compliance with the terms and conditions of the order, as amended, and as hereby amended, as follows:

The provisions of the proposed marketing agreement and order amending the order contained in the recommended decision issued by the Deputy Administrator, Program Operations, on October 27, 1976, and published in the FEDERAL REGISTER on (41 FR 47940) shall be and are the terms and provisions of this order, amending the order, and are set forth in full herein.

1. Section 1033.7 is revised as follows:

§ 1033.7 Fluid milk product.

"Fluid milk product" means the following products or mixtures in either fluid or frozen form, including such products or mixtures that are flavored, cultured, modified (with added nonfat milk solids), concentrated, or reconstituted: Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, milk shake mixes containing less than 20 percent total solids, and mixtures of cream and milk or skim milk containing less than 10.5 percent butterfat. The term "fluid milk product" shall not include eggnog, yogurt, frozen desserts, frozen dessert mixes, dietary products and infant formulas in hermetically sealed metal or glass containers, evaporated or condensed milk or skim milk in plain or sweetened form, any product containing six percent or more nonmilk fat (or oil), and any product that contains by weight less than 6.5 percent nonfat milk solids.

2. Section 1033.8 is revised as follows:

§ 1033.8 Route disposition.

"Route disposition" means a delivery, either directly or through any distribution facility (including disposition from a plant store or by a vendor or vending machine), of a fluid milk product classified as Class I pursuant to § 1033.41(a), except a delivery to a plant. However, for the single purpose of determining the qualification of a plant as a pool distributing plant, packaged fluid milk products transferred as Class I milk from a plant (except a plant from which no fluid milk products are distributed to wholesale or retail outlets in the marketing area) to another plant shall be considered as route disposition of the transferor-plant and shall be considered as route disposition in the marketing area to the extent of the transferee-plant's route disposition in the marketing area.

3. In § 1033.12, paragraph (a)(2)(i), (ii), and (iii) is revised as follows:

§ 1033.12 Pool plant.

* * * * * * *

(a) * * *

(2) * * *

(i) Both such route disposition and receipts shall be exclusive of filled milk and of packaged fluid milk products received from other plants if priced as Class I milk under this or any other Federal order;

(ii) A distributing plant (except a plant that qualified under paragraph (a)(2)(iii) of this section) that does not meet such percentage requirement in the current month shall not be disqualified under this subparagraph as a pool plant if such percentage was met in each of the three immediately preceding months; and

(iii) Two or more plants of a handler may be considered as a unit for the purpose of meeting the percentage requirement under this subparagraph in any month for which the handler notifies the market administrator that they should be so considered.

* * * * * * *

4. In § 1033.12, paragraph (b) is amended by replacing the words "dairy farmers" with the word "producers".

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

5. In § 1033.41, paragraph (c)(1) is revised as follows:

§ 1033.41 Classes of utilization.

* * * * * *

(c) * * *

(1) Skim milk and butterfat used to produce butter, nonfat dry milk, dry whole milk, dry whey, dry buttermilk, casein, cheese (except cottage cheese and cottage cheese curd), frozen cream, milk shake mixes containing 20 percent or more total solids, frozen desserts, frozen dessert mixes, dietary products and infant formulas in hermetically sealed metal or glass containers, evaporated or condensed milk or skim milk in plain or sweetened form, any product containing six percent or more nonmilk fat (or oil), and any product that contains by weight less than 6.5 percent nonfat milk solids.

* * * * * *

§ 1033.60 [Amended]

6. In § 1033.60, paragraph (g) is amended by replacing the words "nonpool plants" with the words "unregulated supply plants".

7. In § 1033.72, a new paragraph (c-1) is added as follows:

§ 1033.72 Payments from the producer-settlement fund.

* * * * * *

(c-1) In making payments to producers pursuant to paragraphs (a) and (b) of this section, the market administrator shall pay, on or before the day prior to the dates specified in such paragraphs, to each handler who so requests for milk received by the handler from producers for whom a cooperative association is not collecting payments pursuant to paragraph (c) of this section an amount equal to the sum of the individual payments otherwise due them by the respective dates specified in paragraphs (a) and (b) of this section. Any handler who the market administrator determines is or was delinquent with respect to any payment obligation under this order shall not be eligible to participate in this payment arrangement until the handler has met all prescribed payment obligations for three consecutive months. In making payments to producers pursuant to this paragraph, the handler shall furnish each producer the following information:

(1) The identity of the handler and the producer and the month to which the payment applies;

(2) The total pounds and, with respect to final payments, the average butterfat content of the milk for which payment is being made;

(3) The minimum rate of payment required by the order and the rate of payment used if such rate is other than the applicable minimum rate;

(4) The amount and nature of any deductions from the amount otherwise due the producer; and

(5) The net amount of payment to the producer.

* * * * * *

[FR Doc.77-2175 Filed 1-21-77;8:45 am]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Part 71]

[Airspace Docket No. 70-SW-62]

TRANSITION AREA

Proposed Designation

The Federal Aviation Administration is considering amending Part 71 of the Federal Aviation Regulations to designate a transition area at McGehee, Ark.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to Chief, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101. All communications received on or before February 23, 1977, will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Chief, Airspace and Procedures Branch. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official docket will be available for examination by interested persons at the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, Fort Worth, Texas. An informal docket will also be available for examination at the Office of the Chief, Airspace and Procedures Branch, Air Traffic Division.

It is proposed to amend Part 71 of the Federal Aviation Regulations as hereinafter set forth.

In § 71.181 (42 F.R. 440), the following transition area is added:

MCGEHEE, ARK.

That airspace extending upward from 700 feet above the surface within a 6.5-statute-mile radius of McGehee Municipal Airport, McGehee, Ark. (latitude 33°37'15" N., longitude 91°22'00" W.).

The transition area will provide controlled airspace for aircraft executing a proposed VOR/DME instrument approach procedure to McGehee Municipal Airport. Coincident with this action, the airport will be changed from VFR to IFR.

The FAA has determined that this document does not contain a major proposal requiring preparation of an Inflationary Impact Statement under Executive Order 11821 and OMB Circular A-107.

This amendment is proposed under the authority of section 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348) and of section 6(c) of the Department of Transportation Act (49 U.S.C. 1655 (c)).

Issued in Fort Worth, Texas, on January 11, 1977.

PAUL J. BAKER,
Director, Southwest Region.

[FR Doc. 77-2080 Filed 1-21-77;8:45 am]

[14 CFR Part 71]

[Airspace Docket No. 76-SW-64]

TRANSITION AREA

Proposed Alteration

The Federal Aviation Administration is considering amending Part 71 of the Federal Aviation Regulations to alter the Dallas-Fort Worth. Tex., transition area.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to Chief, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101. All communications received on or before February 23, 1977, will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Chief, Airspace and Procedures Branch. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official docket will be available for examination by interested persons at the Office of the Regional Council, Southwest Region, Federal Aviation Administration, Fort Worth, Texas. An informal docket will also be available for examination at the Office of the Chief, Airspace and Procedures Branch, Air Traffic Division.

It is proposed to amend Part 71 of the Federal Aviation Regulations as hereinafter set forth.

In § 71.181 (42 F.R. 440), the Dallas-Fort Worth, Tex., transition area is amended to read, in part, by deleting: "to latitude 32°44'00" N., longitude 96°26'-00" W.; to latitude 32°34'00" N., longitude 96°37'00" W.; and substituting therefor: "to latitude 32°44'00" N., longitude 96°26'00" W.; to latitude 32°41'-00" N., longitude 96°29'30" W.; to latitude 32°37'30" N., longitude 96°30'15" W.; to latitude 32°37'45" N., longitude 96°32'45" W.; to latitude 32°34'00" N., longitude 96°37'00" W.;".

Alteration of the transition area is necessary to provide controlled airspace for a standard instrument approach procedure (NDB-A,, Original) to the Hudson Airport, Mesquite, Tex.

This notice will also apprise airspace users of a proposal to change the airport category from VFR to IFR operations.

The FAA has determined that this document does not contain a major proposal requiring preparation of an Inflationary Impact Statement under Executive Order 11821 and OMB Circular A-107.

This amendment is proposed under the authority of section 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348) and of section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Fort Worth, Texas, on January 11, 1977.

PAUL J. BAKER,
Acting Director, Southwest Region.

[FR Doc.77-2081 Filed 1-21-77;8:45 am]

[14 CFR Part 71]

[Airspace Docket No. 76-SW-63]

TRANSITION AREA

Proposed Alteration

The Federal Aviation Administration is considering amending Part 71 of the Federal Aviation Regulations to alter the Monroe, La., transition area.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to Chief, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101. All communications received on or before February 23, 1977, will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Chief, Airspace and Procedures Branch. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official docket will be available for examination by interested persons at the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, Fort Worth, Texas. An informal docket will also be available for examination at the Office of the Chief, Airspace and Procedures Branch, Air Traffic Division.

It is proposed to amend Part 71 of the Federal Aviation Regulations as hereinafter set forth.

In § 71.181 (42 FR 440), the Monroe, La., transition area is amended as follows:

MONROE, LA.

That airspace extending upward from 700 feet above the surface within a 20-mile radius of the Monroe Municipal Airport (latitude 32°30'30" N., longitude 90°02'20" W.); and within an 8.5-mile radius of Morehouse Memorial Airport, Bastrop, La. (latitude 32° 45'25" N., longitude 91°52'50" W.); and within an 8.5-mile radius of Rayville Municipal Airport, Rayville, La. (latitude 32°29' 00" N., longitude 91°46'15" W.).

The proposed alteration will provide the necessary controlled airspace required for radar operations that will be conducted upon completion of the radar installation at the Monroe Municipal Airport.

The FAA has determined that this document does not contain a major proposal requiring preparation of an Inflationary Impact Statement under Executive Order 11821 and OMB Circular A-107.

This amendment is proposed under the authority of section 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348) and of section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Fort Worth, Tex., on January 11, 1977.

PAUL J. BAKER,
Acting Director, Southwest Region.

[FR Doc.77-2082 Filed 1-21-77;8:45 am]

[14 CFR Part 71]

[Airspace Docket No. 76-AL-12]

TRANSITION AREA

Proposed Alteration

The Federal Aviation Administration (FAA) is considering an amendment to Part 71 of the Federal Aviation Regulations that would alter the Yakataga, Alaska, transition area.

Interested persons may participate in the proposed rulemaking by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number and be submitted in triplicate to the Director, Alaskan Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, 632 Sixth Avenue, Anchorage, Alaska 99501. All communications received on or before February 23, 1977, will be considered before action is taken on the proposed amendment. The proposal contained in this notice may be changed in the light of comments received.

An official docket will be available for examination by interested persons at the Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket, AGC-24, 800 Independence Avenue, S.W., Washington, D.C. 20591. An informal docket also will be available for examination at the office of the Regional Air Traffic Division Chief.

Request for copies of this notice of proposed rulemaking should be addressed to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, S.W., Washington, D.C. 20591.

As part of this proposal relates to the navigable airspace outside the United States, this notice is submitted in consonance with the ICAO International Standards and Recommended Practices.

Applicability of International Standards and Recommended Practices by the Air Traffic Service, FAA, in areas outside domestic airspace of the United States is governed by Article 12 of and Annex 11 to the Convention on International Civil Aviation, which pertain to the establishment of air navigation facilities and services necessary to promoting the safe, orderly, and expeditious flow of civil air traffic. Their purpose is to insure that civil flying on international air routes is carried out under uniform conditions designed to improve the safety and efficiency of air operations.

The International Standards and Recommended Practices in Annex 11 apply in those parts of the airspace under the jurisdiction of a contracting state, derived from ICAO, wherein air traffic services are provided and also whenever a contracting state accepts the responsibility of providing air traffic services over high seas or in airspace of undetermined sovereignty. A contracting state accepting such responsibility may apply the International Standards and Recommended Practices to civil aircraft in a manner consistent with that adopted for airspace under its domestic jurisdiction.

In accordance with Article 3 of the Convention on International Civil Aviation, Chicago, 1944, state aircraft are exempt from the provisions of Annex 11 and its Standards and Recommended Practices. As a contracting state, the United States agreed by Article 3(d) that its state aircraft will be operated in international airspace with due regard for the safety of civil aircraft.

Since this action involves, in part, the designation of navigable airspace outside the United States, the Administrator has consulted with the Secretary of State and the Secretary of Defense in accordance with the provisions of Executive Order 10854.

The proposed amendment would delete the Yakataga, Alaska, Transition Area and substitute the following:

That airspace extending upward from 700 feet above the surface within a 5-mile radius of the Yakataga Airport (Lat. 60°04'57" N., Long. 142°29'30" W.); within 3 miles each side of the 268°T (240°M) bearing from the Yakataga NDB, extending from the 5-mile radius area to 18 miles west of the NDB.

The proposed 700 feet transition area would accommodate the revised instrument approach procedure predicated on the 268°T (240°M) bearing of the Yakataga NDB. The 1200 feet transition area would no longer be required.

This amendment is proposed under the autority of section 307(a) and 1110 of the Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1510), Executive Order 10854 (24 FR 9565) and section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Washington, D.C., on January 12, 1977.

WILLIAM E. BROADWATER,
Chief, Airspace and Air Traffic Rules Division.

[FR Doc.77-2083 Filed 1-21-77;8:45 am]

[14 CFR Part 152]

[Docket No. 16419; Notice No. 77-1]

AIRPORT AND AIRWAY DEVELOPMENT ACT AMENDMENTS OF 1976: CIVIL RIGHTS

Notice of Proposed Rule Making

Correction

In FR Doc. 77-1245, appearing at page 2850 in the issue for Thursday, January 13, 1977, the next to last line of § 152.151 on page 2851, second column, should read, "action may not be brought against the".

COMMODITY FUTURES TRADING COMMISSION

[17 CFR Parts 1 and 155]

TRADING STANDARDS AND RECORDS OF CASH COMMODITY AND FUTURES TRANSACTIONS

Proposed Amendments; Extension of Comment Period

NOTE.—For a document extending the comment period on a proposal appearing at 41 FR 55887, December 23, 1976 see FR Doc. 77-2282 appearing in the Rules and Regulations section in this issue.

LIBRARY OF CONGRESS

Copyright Office

[37 CFR Part 201]

[Docket RM 76-1]

TERMINATION OF TRANSFERS AND LICENSES COVERING EXTENDED RENEWAL TERM

Extension of Comment Period

This notice extends the period for public comments in response to the notice, published November 15, 1976 (41 FR 50300), proposing a new regulation to govern the form, content, manner of service, and recordation of notices of termination of transfers and licenses of the renewal term of copyright as extended by Pub. L. 94-553 (90 Stat. 2541).

(NOTE.—The notice published on November 15, 1976 also proposed a new regulation pertaining to the filing of agreements between copyright owners and public broadcasting entities, an amendment of the Copyright Office regulation prohibiting the use of Office records for the purpose of compiling mailing lists, and technical corrections of other regulations. These proposals are not subject to this extension.)

A number of comments were received by the Copyright Office in response to the earlier notice. The purpose of this extension is to permit comment upon, reply to, or reconciliation of the comments already received, particularly those pertaining to the following matters:

1. Whether the list of elements required as "contents" of the notice of termination in proposed regulation § 201.10 (b) should be expanded, contracted, or otherwise modified;

2. Issues arising in cases where a further transfer has been made by the original grantee or grantees; and

3. Whether the method of service prescribed in proposed regulation § 201.10 (d) should be modified.

Copies of the comments received in response to the earlier notice are available for public inspection and copying between the hours of 8 a.m. and 4 p.m., Monday through Friday, in the Public Information Office of the Copyright Office, Room No. 101, Crystal Mall Building No. 2, 1921 Jefferson Davis Highway, Arlington, Virginia.

The comment period is hereby extended to February 15, 1977. Submissions made in response to this notice should be addressed to the Office of the General Counsel, Copyright Office, Washington, D.C. 20559.

Dated: January 9, 1977.

BARBARA RINGER,
Register of Copyrights.

Approved by:

DANIEL J. BOORSTIN,
Librarian of Congress.

[FR Doc.71-2318 Filed 1-21-77;8:45 am]

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 52]

[FRL 674-1]

ALABAMA: PROPOSED PLAN REVISION

Approval and Promulgation of Implementation Plans

On May 31, 1972 (37 FR 10847) the Administrator approved the Alabama plan to attain and maintain the National Ambient Air Quality Standards. Numerous revisions have been made in the original plan since that date to improve its effectiveness. On June 30, 1976, and October 28, 1976, the State of Alabama submitted, for EPA's approval, further changes in the Alabama State implementation plan. These changes involve standards of performance for new stationary sources and continuous in-stack monitoring of stationary sources. The purpose of this notice is to announce these revisions as proposed rulemaking and to solicit comment on them.

On May 25, 1976, after notice and public hearing, the Alabama Air Pollution Control Commission acted to incorporate by reference in its Air Pollution Control Rules and Regulations the Environmental Protection Agency's Standards of Performance for New Stationary Sources, including the requirements for continuous monitoring (40 CFR Part 60, Section 60.2, Definitions of Subpart A and Subparts D through Y and AA). In submitting these revisions, Alabama also requested delegation of responsibility for enforcement of the Federal new source performance standards, and on September 20, 1976 (41 FR 40467), this authority was delegated.

On October 6, 1975, the Environmental Protection Agency promulgated revisions in 40 CFR Part 51, Requirements for Preparation, Adoption and Submittal of Implementation Plans. Section 51.19 was expanded to require States to revise their implementation plans to include a mechanism for requiring certain specified categories of existing stationary sources to monitor emissions on a continuous basis. States are required to revise their plans to include legally enforceable procedures to require emission monitoring, recording, and reporting for at least the following source categories: coal and oil-fired steam generators of more than 250 million BTU per hour heat input, nitric acid plants, sulfuric acid plants, and petroleum refinery fluid bed catalytic cracking unit catalyst regenerators.

After proper notice and public hearing, the Alabama Air Pollution Control Commission revised its regulations on October 26, 1976, to satisfy the revised requirements of 40 CFR 51.19. No provision was made for the continuous monitoring of nitrogen oxide emissions from fossil fuel-fired steam generators and nitric acid plants since no Air Quality Control Regions in Alabama are required to develop a control strategy for nitrogen dioxide. Also, opacity monitoring for existing petroleum refinery fluid bed catalytic cracking unit catalyst regenerators is not required in the proposal since no units of greater than 20,000 barrels per day of fresh feed capacity exist in Alabama. The exclusions above are provided for an Appendix P to 40 CFR Part 51. Fossil fuel-fired steam generators and sulfuric acid plants which are constructed after August 17, 1971, are required to install, calibrate, operate and maintain all monitoring equipment necessary for continuously monitoring pollutants. The fossil fuel-fired steam generators with an annual capacity factor greater than thirty percent, and a heat input greater than 250 million BTUs per hour, shall conform to the monitoring requirements set forth in Appendix P to 40 CFR Part 51, and in the performance specifications of Appendix B to 40 CFR Part 60. When gaseous fuel or an oil and gas mixture is burned and the source complies with particulate matter and opacity regulations, these requirements do not apply. Sulfuric acid plants with greater than 300 tons per day production capacity, the production being expressed as 100 percent acid, shall conform to the monitoring procedures in Appendix B to 40 CFR Part 60 and minimum specifications in Appendix P to 40 CFR Part 51.

The Director of the Commission may exempt any source from these requirements if the source is scheduled for permanent shutdown by October 6, 1980, with the appropriate legal guarantees. He may also grant extensions to those unable to meet 18-month time frame.

Copies of the information submitted by Alabama and the Alabama plan itself may be examined by the public during normal hours at the following locations:

Air Programs Branch, Air and Hazardous Materials Division, Environmental Protection Agency, 345 Courtland Street NE., Atlanta, Georgia 30308.

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460.

Alabama Air Pollution Control Commission, State of Alabama Department of Public Health, 645 South McDonough Street, Montgomery, Alabama 36104.

Interested persons are encouraged to submit written comments on the Alabama plan revisions. To be considered, such comments must be received on or before February 23, 1977 and should be addressed to Eliot Cooper of the Agency's Region IV Air Programs Branch in Atlanta (see address above). After carefully weighing relevant comments received and all other information available to him, the Administrator will take approval/disapproval action on these changes in the Alabama plan.

(Section 110 of the Clean Air Act (42 U.S.C. 1857c-5))

Dated: January 13, 1977.

JOHN A. LITTLE,
Acting Regional Administrator.

[FR Doc.77-1972 Filed 1-21-77;8:45 am]

[40 CFR Part 52]

[FRL 673-8]

NORTH CAROLINA: PROPOSED PLAN REVISIONS

Approval and Promulgation of Implementation Plans

On May 31, 1972 (37 FR 10859), the Administrator approved the North Carolina plan to attain and maintain the national ambient air quality standards in that State. The State subsequently made a number of revisions in the plan's regulations to improve its effectiveness. On October 21, 1976, after notice and public hearing, the North Carolina Environmental Management Commission of the North Carolina Department of Natural and Economic Resources adopted additional changes in its air pollution control regulations. These changes include: (1) Copies of Referenced Federal Regulations (two new regulations, one in Emission-Control Standards Section, one in Air Contaminants; Monitoring, Reporting Section); (2) Amendments to Episode Criteria; (3) Series of Minor Amendments to Air Pollution Control Requirements Subchapter with exception of Emission Control Standards Section; (4) Amendments to Particulates from Miscellaneous Industrial Processes; (5) Amendments to (Permit) Applications; (6) (Post Attainment Policy) Extensions, Modifications; (7) Amendments to Control and Prohibition of Open Burning.

Item (1) given notice where referenced sections of the Code of Federal Regulations are available for public inspection.

Item (2) changes oxidant emergency levels to conform with the Environmental Protection Agency (EPA) regulatory requirements and North Carolina legislative changes. These levels are: 200 μg/m3 (0.1ppm), 1-hour average (alert); 800 μg/m3 (0.4ppm), 1-hour average (warning); and 1000 μg/m3 (0.5 ppm), 1-hour average (emergency).

Item (3) are corrections and clarifications and are not policy or procedural changes in the Emission Control Standards Section.

Item (4) slightly modifies the applicable sources and clarifies other aspects of particulates from Miscellaneous Industrial Processes Emission Control Standards.

Item (5) subjects to public comment permit applications and ambient effect analyses for sources on EPA's list to be reviewed for Prevention of Significant Deterioration, as a minimum.

Item (6) sets forth requirements and procedures for extensions and modifications in extraordinary cases.

Item (7) clarifies the exception for fire-fighting instruction and training from Control and Prohibition of Open Burning Emission Control Standards.

Copies of the information submitted by North Carolina may be examined by the public during normal business hours at the following locations:

Air Programs Branch, Air and Hazardous Materials Division, Environmental Protection Agency, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30308.

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

North Carolina Department of Natural and Economic Resources, Division of Environmental Management, 216 West Jones Street, Raleigh, North Carolina 27611.

Interested persons are encouraged to submit written comments on the North Carolina plan revisions. To be considered, such comments must be received on or before February 23, 1977, and should be addressed to Eliot Cooper of the Agency's Region IV Air Programs Branch in Atlanta (see address above). After carefully weighing relevant comments received and all other information available to him, the Administrator will take approval/disapproval action on these changes in the North Carolina plan.

(Section 110 of the Clean Air Act (42 U.S.C. 1857c-5))

Dated: January 13, 1977.

JOHN A. LITTLE,
Acting Regional Administrator.

[FR Doc.77-1974 Filed 1-21-77;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Assistant Secretary for Planning and Evaluation

[45 CFR Part 63]

TELECOMMUNICATIONS DEMONSTRATIONS

Grant Regulations

Section 392A of the Communications Act of 1934, as amended by Section 8 of the Educational Broadcasting Facilities and Telecommunications Demonstrations Act of 1976, (47 U.S.C. 392a), establishes a program to promote the development of telecommunications facilities and services for the transmission, distribution, and delivery of health, education, and public or social service information. The Secretary of Health, Education, and Welfare (hereafter the Secretary) is authorized to make grants to, and enter into contracts with public and private non-profit agencies, organizations, and institutions for the purpose of carrying out telecommunications demonstrations. The Secretary is also authorized to prescribe the regulations, terms, and conditions governing the selection, award, and administration of such grants (use of the *contract* as opposed to the *grant* authority is not planned). This authority has been delegated to the Assistant Secretary for Planning and Evaluation (hereafter the Assistant Secretary).

Therefore, pursuant to Section 392A of the Act, the Assistant Secretary, with the approval of the Secretary, is establishing rules and procedures for the award of grant assistance. This is being done by amending 45 CFR Part 63, Grant Programs Administered by the Assistant Secretary for Planning and Evaluation. The principal effect of those regulations is to adopt, with minor changes, 45 CFR Part 74, Administration of Grants, which establishes uniform administrative standards and cost principles for HEW grants.

This notice does not constitute a solicitation of grant proposals. Any such solicitation will be published at a later date.

Regulations governing the Educational Broadcasting Facilities Program, which is also authorized by Section 392 of Pub. L. 94-309, can be found in 47 CFR Part 153.

The following brief analysis of the proposed regulations summarizes the intent of the various paragraphs.

The purpose of the changes described in paragraphs 2, 4, 5, 6, 7, 8, and 10 is merely to make the editorial changes in format and wording of 45 CFR Part 63 to accommodate the additional provisions necessary for the Telecommunications Demonstrations.

The language of paragraph 3, explaining the overall objective of the Telecommunications Demonstrations Program is taken verbatim from Section 392A of the Communications Act of 1934.

Paragraph 9 establishes the criteria which will be used for review and evaluation of grant applications in conjunction with any supplemental criteria which may be published later in a solicitation for grant applications.

Paragraph 11 sets forth restrictions on the use of funds, requirements for coordination with the Federal Communications Commission and a definition of "non-broadcast telecommunications facilities."

Interested persons are invited to submit written comments, suggestions, or objections regarding these provisions to the Office of the Assistant Secretary for Planning and Evaluation, Attention: Grants Officer, Room 422E, D/HEW, 200 Independence Avenue, SW, Washington, D.C. 20201. Comments received in response to this notice will be available for public inspection at the above office on Mondays through Fridays between 9:00 a.m. and 5:30 p.m. All relevant materials

received on or before March 10, 1977, will be considered. If no substantial comments are received, these regulations will take effect immediately upon republication in the FEDERAL REGISTER as final rules.

NOTE.—It is hereby certified that this proposal has been screened pursuant to Executive Order No. 11821, and does not require an Inflation Impact Evaluation.

Dated: January 3, 1977.

WILLIAM A. MORRILL,
Assistant Secretary for Planning and Evaluation.

Dated: January 18, 1977.

MARJORIE LYNCH,
Acting Secretary of Health, Education, and Welfare.

Therefore, it is proposed to amend 45 CFR Part 63 as follows:

PART 63—GRANT PROGRAMS ADMINISTERED BY THE OFFICE OF THE ASSISTANT SECRETARY FOR PLANNING AND EVALUATION

1. By amending § 63.1 as follows:

a. By revising the second sentence of paragraph (a);

b. By revising the heading of paragraph (c); and

c. By adding a new paragraph (c)(2).

§ 63.1 Purpose and scope.

(a) • • • Such grants include those under section 232 of the Community Services Act (42 U.S.C. 2835), section 1110 of the Social Security Act (42 U.S.C. 1310), section 392A of the Communications Act of 1934, and such other authority as may be delegated to the Assistant Secretary for policy research activities. • • •

• • • • • •

(c) *Objectives*—(1) *Policy Research.* • • •

(2) *Telecommunications Demonstrations.* The overall objective of the Telecommunications Demonstrations Program is to promote the development of nonbroadcast telecommunications facilities and services for the transmission, distribution, and delivery of health, education, and social service information.

§ 63.2 [Amended]

2. By adding after the words "Projects Eligible" in paragraph (b) of § 63.2 a new subparagraph heading as follows:

(b) • • • (1) *Policy Research.* • • •

3. By adding to paragraph (b) § 63.2 a new paragraph to read as follows:

(b) • • •

(2) *Telecommunications Demonstrations.* Any projects which meet the special criteria in § 63.6(c) shall be eligible for a telecommunications demonstration grant.

§ 63.6 [Amended]

4. By revising the last sentence of paragraph (a) of § 63.6 to read as follows:

(a) • • • Such supplements may modify the criteria in paragraphs (b) and (c) of this section to provide greater specificity or otherwise improve their applicability to a given announcement or solicitation.

• • • • • •

7. By revising the heading of paragraph (b) of § 63.6 to read as follows:

• • • • • •

(b) *Criteria for Evaluation of Policy Research Projects.* • • •

8. By adding after the end of paragraphs (b)(8) of § 63.6 the word "and"; deleting the word "and" from the end of paragraph (b)(9) and inserting in lieu thereof a period; and by redesignating paragraph (b)(10) as paragraph (d) and inserting as a heading thereof (d) *Applicants Performance on Prior Award.*

9. By inserting, after paragraph (b) of § 63.6 a new paragraph (c) to read as follows:

(c) *Criteria for Evaluation of Telecommunications Demonstrations Projects.* Review of applications for Telecommunications Demonstrations grants will take into account such factors as are listed in paragraphs (c)(1) through (10) of this section. Each applicant must include in the application, prior to final evaluation by ASPE, documentation indicating specifically and separately how and to what extent each of these criteria have been or will be met:

(1) That the project for which application is made demonstrate innovative methods or techniques of utilizing nonbroadcast telecommunications equipment or facilities to satisfy the purpose of this authority;

(2) That the project will have original research value which will demonstrate to other potential users that such methods or techniques are feasible and cost-effective;

(3) That the services to be provided are responsive to local needs as identified and assessed by the applicant;

(4) That the applicant has assessed existing telecommunications facilities (if any) in the proposed service area and explored their use of interconnection in conjunction with the project;

(5) That there is significant local commitment (e.g., evidence of support, participation, and contribution by local institutions and agencies) to the proposed project, indicating that it fulfills local needs, and gives some promise that operational systems will result from successful demonstrations and will be supported by service recipients or providers;

(6) That demonstrations and related activities assisted under this section will remain under the administration and control of the applicant;

(7) That the applicant has the managerial and technical capability to carry out the project for which the application is made;

(8) That the facilities and equipment acquired or developed pursuant to the applications will be used substantially for the transmission, distribution, and delivery of health, education, or social service information, and that use of such facilities and equipment may be shared among these and additional public or other services;

(9) That the provision has been made to submit a summary and factual evaluation of the results of the demonstration at least annually for each year in which funds are received, in the form of a report suitable for dissemination to groups representative of national health, education, and social service telecommunications interests; and,

(10) That the project has potential for stimulating cooperation and sharing among institutions and agencies, both within and across disciplines.

§ 63.16 [Amended]

10. By adding at the end of § 63.16 the following: ", except as specified in § 63.23 of this subpart."

11. By adding a new section at the end of subpart B to read as follows:

§ 63.23 Broadcast and Telecommunications Demonstrations Grants.

The provision of this section apply only to grants awarded under authority of 392A of the Communications Act of 1934.

(a) Funds provided under the Telecommunications Demonstrations Program shall be available to support the planning, development, and acquisition or leasing of facilities and equipment necessary to the demonstration. However, funds shall not be available for the construction, remodeling, or repair of structures to house facilities or equipment acquired or developed with such funds, except that such funds may be used for minor remodeling which is necessary for and incident to the installation of such facilities or equipment.

(b) Funds shall not be available for the development of programming materials or content.

(c) The funding of any demonstration under this authority shall continue for not more than three years from the date of the original grant or contract.

(d) The use of equipment in demonstration projects shall be subject to the rules and regulations of the Federal Communications Commission (FCC), an grant funds may not be expended or obligated for purchase, lease, or use of such equipment prior to appropriate and necessary coordination by the grantee with the Commission. In particular:

(1) Any FCC authorization or authorizations required for the project must be on file with the FCC.

(2) If the project is to be associated with an existing telecommunications activity requiring an FCC authorization, such operating authority for that activity must be current and valid.

(3) For any project requiring a new or modification of an existing authorization(s) from the FCC, the applicant must file with the Secretary of Health, Education, and Welfare a copy of each FCC application and any amendments thereto.

(4) For any project requiring a new or modification of an existing authorization(s) from the FCC, the applicant must file with the FCC a copy of the application to the Secretary for a telecommunications demonstration grant.

(5) If the applicant fails to file a required application or applications by the closing date established pursuant to these regulations, or if the FCC returns, dismisses, or denies an application required for the project, or any part thereof, or for the operation of any facility with which the project is associated, the Secretary may return the application for Federal assistance.

(e) For the purposes of this program, the term 'non-broadcast telecommunications facilities' includes but is not limited to, cable television systems, communications satellite systems and related terminal equipment, and other methods of transmitting, emitting, or receiving images and sounds or intelligence by means of wire, radio, optical, electromagnetic, and other means (including non-broadcast utilization of telecommunications equipment normally associated with broadcasting use).

(f) Each applicant shall provide such information as the ASPE deems necessary to make a Federal assessment of the impact of the project on the quality of the human environment in accordance with section 102(2)(C) of the National Environmental Policy Act of 1969 (including the National Historical Preservation Act and other environmental acts). (42 U.S.C. 4332(2)(C)).

[FR Doc.77-2156 Filed 1-21-77;8:45 am]

Office of the Secretary

[45 CFR Part 74]

ADMINISTRATION OF GRANTS

Proposed Amendments Primarily To Implement OMB Circular No. A–110

Background. On July 30, 1976, the Office of Management and Budget (OMB), at 41 FR 32016, published OMB Circular No. A–110, "Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations—Uniform Administrative Requirements." For grants to those types of organizations, the circular prescribes policies to be followed in a number of areas of general grants administration (e.g., reporting by grantees, payment methods, treatment of grant-related income). Essentially, the circular extends to grants to nongovernmental organizations the same policies, with some modifications, as have already been promulgated for grants to States and local governments by Federal Management Circular (FMC) 74–7 (formerly OMB Circular No. A–102). The objectives of both these circulars are to standardize and simplify grants administration and to place greater reliance on the grantees' own management systems.

OMB Circular No. A–110 is addressed to Federal agencies. The policies it promulgates must be incorporated, with such modifications or additions as appropriate, into regulations and other legally binding issuances of Federal agencies. As the first and principal step to accomplish this, the Department of Health, Education, and Welfare (HEW) proposes to amend, as set forth below, its Departmentwide grants administration regulation in 45 CFR Part 74. As soon as possible after these amendments are issued in final form, HEW will issue conforming amendments to its individual grant program regulations.

Changes: 1. Extension of Applicability to Nongovernmental Organizations. Part 74 currently applies by its own terms to grants to States, local governments, and Federally recognized Indian tribal governments, that is, to grants subject to FMC 74–7. HEW granting agencies, however, have had the option to apply all or portions of Part 74 to their grants to nongovernmental organizations as well, and this option has been widely exercised.

Now that Part 74 is to be used to implement the new OMB Circular No. A–110 as well as FMC 74–7, the amendments being proposed will extend the mandatory applicability of the part to grants to the nongovernmental grantees that are subject to the new circular. Because HEW granting agencies, as explained above, have to a large extent already extended the applicability of Part 74 to their grants to those organizations, this change will have much less impact on the grantee community than would otherwise be the case.

Because of differences between the two circulars, it will not always be possible to apply the same rules to grants to nongovernmental organizations as to grants to governments. Where a provision is intended to apply to one class of grants and not the other, the provision will so state. In accordance with the two circulars, grants to government-operated hospitals and grants to government-operated institutions of higher education are made subject to the same rules as grants to nongovernmental organizations (see § 74.4).

Changes: 2. Adoption of OMB Circular No. A–110 Changes. Most of the changes in the proposed amendments are simply adoptions of provisions in OMB Circular No. A–110 that differ, in one way or another, from their counterparts in FMC 74–7. Many of these differences between the two circulars represent merely a clearer way of expressing the same intent, and are not substantive changes. Of those that are substantive, most result in less restrictive requirements on grantees or more options available to granting agencies in selecting rules that best fit the programs for which they are responsible. Examples of substantive difference are:

(a) It is specified that the periodic audits grantees are required to have performed need include only a sampling of Federal grants.

(b) A liberalization is made in the exception which allows grantees to use or sell, without compensation to the Federal Government, nonexpendable personal property acquired under a grant when the property can no longer be used for Federally sponsored activities. The exception is made to apply to property with a unit acquisition cost of up to $1,000 rather than just to property costing less than $500 per unit and used four years or more.

(c) Granting agencies may approve counting the full value of donated property for cost-sharing or matching purposes in some circumstances where previously only amounts equal to depreciation or use charges were allowed.

The majority of the substantive differences between OMB Circular No. A–110 and FMC 74–7 are not based on differences in the types of grantees affected by the two circulars. Rather, the A–110 provisions are intended to be improvements over their counterparts in FMC 74–7. Accordingly, and with the concurrence of OMB, the proposed amendments apply most of these improvements to all classes of grantees.

Changes: 3. Changes Based on HEW Experience. HEW has now had over three years' experience administering grants pursuant to Part 74. As would be expected, a number of problems in Part 74 have been identified by grantees and others. Many of the changes in the proposed amendments represent attempts to solve these problems. In some cases, an existing provision is clarified or modified to ensure that its intent is understood and achieved; in other cases, a provision is added to deal with a situation or aspect not now adequately covered. Examples are:

(a) The definition of "grantee" is revised to make clear that the term means the entire legal entity receiving the grant, not just the particular component (such as a welfare department of a State, or a school of medicine of a university) named in the award document. This clarification, it is hoped, will help clarify other provisions in Part 74. For example, the Procurement Standards in Subpart P apply to the procurement of goods and services by the grantee from third parties and not to transfers of goods and services within the grantee. Therefore, it should become clear that those standards do not apply to the acquisition by one component of goods or services from another component of the same legal entity.

(b) In the subpart on grant-related income (Subpart F), provisions are added dealing with (1) income earned from copyrighted works developed under a grant other than income specifically in the form of copyright royalties and (2) income earned after the period of grant support from a residual inventory of tangible personal property acquired primarily for sale or rental rather than for use in the supported activities.

(c) A provision is added (§ 74.54) explaining how to determine to what grant period or funding period a third-party in-kind contribution is to be credited for the purpose of counting its value toward satisfying cost-sharing or matching requirements.

Change: 4. Extension of Applicability to Subrecipients. OMB Circular No. A–110 makes clear that a number of the Government-wide policies it promulgates are intended to be applied to subrecipients, that is, to subgrantees and to contractors under grants. Accordingly, these proposed amendments extend the provisions implementing those policies to

all or certain classes of such subrecipients. In addition, in a number of cases, it has been found necessary to add amplifying provisions dealing specifically with the requirements of a policy as they affect subrecipients.

In developing the proposed provisions for subrecipients, HEW has attempted to keep requirements to a minimum and as simple and nonrestrictive as possible. In particular, an attempt has been made not to intrude into the relationship between the grantee and its subrecipients and to allow the grantee to maintain all its customary prerogatives. For example, the property rules (Subpart O) provide that, in the case of real or tangible personal property acquired by subrecipients, the division of the non-Federal share of the market value or proceeds from sale of the property upon disposition shall be determined by the non-Federal parties involved and not by rules prescribed by the Federal Government.

Treatment of Options. The degree of latitude allowed Federal agencies by OMB Circular No. A–110 and FMC 74–7 varies from area to area. In some areas, such as standards for grantee financial management systems, agencies are flatly prohibited from imposing additional requirements on grantees unless the requirements are pursuant to applicable Federal statutes. In other areas, such as treatment of royalties earned on copyrighted works developed under a grant, virtually unlimited discretion is allowed. In still other areas, such as treatment of general program income, a limited number of specific alternatives are provided.

The amendments being proposed continue the current practice of passing down to individual HEW granting agencies most of the options, alternatives, and other choices explicitly stated or clearly implied in the circulars. A granting agency may exercise its options in these discretionary policy areas by setting a single rule for grants under all its programs, by setting different rules for different programs or for different classes of grants, or by making individual decisions on a grant-by-grant basis. In almost all cases, the amendments set forth a back-up policy that will govern if a granting agency remains silent on the question involved.

The purpose of passing down the options to granting agencies is to ensure that the granting agencies are able to adopt policies in these areas that are responsive to the specific needs of their grantees or grant programs. These options are of the kind that are best exercised in the light of the particular circumstances involved or the particular objectives of the grant programs or grants affected. In some cases, the diversity of grant programs administered by HEW would, in fact, make it impossible to establish a single policy that would be appropriate and effective for all HEW grants. For example, the circulars permit Federal agencies to allow or to prohibit counting towards satisfying a cost-sharing or matching requirement costs which are financed by program income earned by the grantee. A decision on this matter which would be appropriate in one HEW program may defeat the very purposes for the cost-sharing requirement in another.

Exceptions to Treatment of Options. In a few cases, however, the amendments being proposed would eliminate an option now available to HEW granting agencies. For example, Part 74 now allows granting agencies to require that grantees obtain their prior approval before making transfers among direct cost object class categories in a grant budget if the cumulative amount of those transfers would exceed an amount specified by Part 74. Because this option has proven of limited value as a tool for exercising proper stewardship of grant funds and because HEW wishes, wherever feasible, to place greater reliance on grantees to manage their own projects, it is proposed to eliminate this option.

Another example pertains to the option Part 74 now gives granting agencies of reserving the right to require grantees to transfer to the Federal Government or to a third party named by the Federal Government any item of nonexpendable personal property (equipment) acquired under a grant which cost $1,000 or more. This right is seldom exercised in HEW, and for the most part only where a grant project is transferred from one institution to another, as may occur when the principal investigator of a research project transfers to another institution. Although the right is infrequently exercised, it is believed prudent for a granting agency to always reserve it, simply as a precaution. Consequently, those amendments include a blanket reservation of the right for all HEW granting agencies for all covered grants. (See § 74.135 in the proposed amendments.)

Issues. In the immediately succeeding sections of this preamble, several significant issues in grants administration are identified. Each of these issues falls within the scope of Part 74 but, HEW believes, is now not adequately resolved in that part. In addition, each of these issues arises in an area in which OMB Circular No. A–110 and FMC 74–7 appear to permit a degree of discretion on the part of Federal agencies. HEW is therefore including in the proposed amendments changes to Part 74 which it hopes will effect significant improvements in that part's treatment of the issues. Comments would be particularly welcome in regard to these issues and HEW's proposed treatment of them in Part 74.

Issue No. 1. Income Earned on Cost-Reimbursement Basis. In some cases, grantees (or subgrantees) may earn income from activities supported by a grant. For example, under certain circumstances, a grantee will charge fees for services whose costs are borne by the grant. Subpart F of Part 74 sets forth policy governing how such program income is to be used and accounted for.

In some cases, a grantee or subgrantee may provide services to a third party under a cost-type contract awarded by that party. Under this type of contract, the purchaser's payments are based on the actual costs incurred by the grantee or subgrantee in providing the services, with or without an increment above costs for profit. Thus, some or all of this income could be identified as applicable to specific costs that could also be borne by the grant. The issue is what effect such income should have on the grant.

HEW proposes to treat this type of income (i.e., reimbursements for the actual costs of services sold) in the same way as general program income earned on a lump sum basis without regard to actual costs (e.g., from a fixed price contract). Under this approach, the disposition of the income would depend upon which of two alternatives is prescribed by the granting agency for general program income. Under one alternative, the income must be applied to allowable costs of the grant-supported project in the period in which earned; since these costs would be offset by the income, they would not in effect be borne by the grant. Under the second alternative, a more liberal one, the income must be applied to costs of activities that further the objectives of the Federal legislation under which the grant was made, but not necessarily to the allowable costs of the particular project supported by the grant.

If, under that second alternative, the grantee applies the income to costs of a different project, some of the costs that were used to calculate the income from the cost-type procurement contract could be borne by the grant. This may create a situation in which it appears at first glance that the grantee is unjustly enriched by being paid twice for the same costs—once from the granting agency and once from the third-party purchaser of the services.

In reality, however, there would be no such unjust enrichment; the income from the contract, although calculated on the basis of costs borne by the grant, would actually be applied to other costs as permitted by the more liberal income alternative of the grant.

An alternative approach was considered under which all costs that are used to calculate the amount of the payments from the cost-type contract would be unallowable as charges to the grant. This approach was rejected because, in effect, it requires that the income be used for those costs, thus unnecessarily negating the more liberal alternative in Subpart F. This would amount to an indirect or hidden penalty merely for having agreed to a cost-type, rather than fixed-price, contract for sale of the services to the third-party. The main difference between the two types of contracts lies in how the parties determine the amounts to be paid for the services. This difference does not seem to warrant treating income from the two types of contracts differently.

Issue No. 2. Replacement of Property. Subpart O of Part 74 implements the government-wide rules concerning nonexpendable personal property (i.e., equipment) acquired under a grant. These rules require that the property be used in the grantee's Federally sponsored activities as long as there is a need for the property in those activities. When an item of property can no longer be so used, rules concerning disposition of property must be observed. For items of property originally costing over a specified amount ($1,000 in the proposed amendments) the rules will result either (1) in the grantee's compensating the Federal Government for the Federal share of the current fair market value or proceeds from sale of the property or (2) in the grantee's shipping or otherwise disposing of the property in accordance with the granting agency's instructions.

A serious problem resulting from these rules has come to HEW's attention. The problem arises when the item of property is no longer efficient or serviceable but otherwise continues to be needed in the grantee's Federally supported activities. Ordinarily, one would expect a well-managed organization to trade the property in for a replacement, or sell it and apply the proceeds towards the cost of its replacement. However, the current regulation, if literally interpreted, requires that the disposition rules be followed before any trade-in or sale can take place. These disposition rules, by requiring the grantee either to compensate the Federal Government or to dispose of the property as instructed, obviously can prevent or discourage the grantee from making the trade-in or sale.

HEW proposes to explicitly permit replacement of nonexpendable personal property subject to certain requirements and to treat such replacement as not subject to the disposition rules. Under the proposed procedure, the Federal share in the property replaced would be transferred, with suitable adjustment, to the replacement property, and the replacement property would be subject to the same rules that applied to the property replaced.

HEW is not aware of any plausible alternative treatment of this issue other than retention of the current rules that do not provide for replacement of property.

Issue No. 3. Federal Share of Property. Several of the rules in Subpart O, Property, of Part 74 require a determination of the Federal share of real property or of tangible personal property (equipment and supplies) acquired under a grant. In certain situations, this Federal share figure (which is usually expressed as a percentage) will be applied against the market value of the property or the proceeds from sale of the property in order to determine how much money is due the Federal Government upon disposition of the property.

OMB Circular No. A–110, in effect, equates the Federal share of property to "the percentage of Federal participation in the cost of the original project or program." The intent seems clear: to ensure that the Federal share of the property is computed fairly and is independent of whether the accounting system of the grantee charges the acquisition cost of the item of property to Federal funds or to cost sharing or matching. However, HEW believes that the rule given in the circular needs considerable amplification in order to provide for all the situations in which it is necessary to determine the Federal share of property. For example, provision must be made for property acquired by subgrantees and for replacement property. In addition, HEW feels that, when Federal funds and required cost sharing or matching account for only a portion of the project or program, it should not be necessary for the grantee to report or account for the voluntary additional cost sharing or overmatching merely to calculate the Federal share in property acquired in whole or in part under the grant.

HEW is proposing a set of rules for calculating the Federal share which it believes will achieve the desired objectives. These rules together with their rationale are set forth beginning at § 74.142 of the proposed amendments. HEW believes that these rules will resolve the issue of how to calculate the Federal share of real or tangible property acquired under a grant in a manner that is correct and fair to everyone concerned.

Two aspects of this issue deserve special attention. The first is the question whether the values of third-party in-kind contributions should be included in the calculations of the non-Federal share of property acquired under a grant. The proposed amendments exclude them since such contributions do not make the donor a party to the acquisition of the property and are not part of the funds used for the actual outlays of the grantee.

The second aspect deserving attention relates to costs financed by program income but not counted towards satisfying a cost-sharing or matching requirement of the grant. The proposed rules for calculating the Federal and non-Federal shares treat such costs always like costs not for the grant-supported activity. In addition, the opening section of the proposed subpart on property, § 74.130, applies the subpart only to property whose cost was borne by a grant or used to meet a cost-sharing or matching requirement of a grant. The results will be as follows:

(1) If the entire acquisition cost of property is treated as borne by program income and not counted towards a cost-sharing or matching requirement, the grantee will not have any obligation to the Federal Government with respect to the property. There will be no Federal share in the property.

(2) If part of the acquisition cost of property is so treated, the Federal share in the property will be reduced accordingly.

Consistency with OMB Circular A–90. Transmittal Memorandum No. 1, dated September 7, 1976, of Office of Management and Budget Circular No. A–90 requires Federal agencies to perform a review of any policies and administrative regulations on the acquisition or use of computer systems by State or local governments where such systems are financed in whole or in part with Federal funds. Accordingly, HEW has reviewed the Procurement Standards set forth in tentative form in Subpart P and the Principles for Determining Costs Applicable to Grants and Contracts with State and Local Governments set forth in Appendix C. Both Subpart P and Appendix C of this regulation were found to be consistent with the requirements of OMB Circular No. A–90.

Comments. Consideration will be given to any comments submitted to the Deputy Assistant Secretary for Grants and Procurement Management, Department of Health, Education, and Welfare, 200 Independence Avenue, SW, Washington, D.C. 20201 on or before March 10, 1977. Comments received will be available for public inspection in Room 517D of the Department's Offices at 200 Independence Avenue, SW, Washington, D.C. on Monday through Friday of each week from 9 a.m. to 5:30 p.m. (area code 202–245–8901).

Interested persons are reminded that, as explained above, much of the following Part 74 is derived from Government-wide policies from which HEW cannot unilaterally deviate. Consequently, the Department's discretion to act on any comments which take issue with provisions required by OMB circulars may be limited to referral of those comments to Federal officials who are in a position to change the circulars.

For statutory reasons, when these proposed amendments are issued in final form, they will not become effective for programs administered by the Office of Education (OE) and the National Institute of Education (NIE) until adopted or implemented in regulations issued by, respectively, the Commissioner of Education and the Director of the National Institute of Education, with the approval of the Secretary of Health, Education, and Welfare.

INFLATION IMPACT. The Department of Health, Education, and Welfare has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular No. A–107.

Dated: January 18, 1977.

MARJORIE LYNCH,
Acting Secretary of Health, Education, and Welfare.

Part 74 of Title 45, Code of Federal Regulations, is amended by revising Subparts A through Q and reserving new Subparts R and S, as follows:

Subpart A—General

Sec.
74.1 Purpose and scope of this part.
74.2 Scope of subpart.
74.3 Definitions.
74.4 Applicability of this part.
74.5 Appeals.
74.6 Deviations.
74.7 Special grant conditions.

Subpart B—Cash Depositories

74.10 Physical segregation and eligibility.
74.11 Checks-paid basis letter of credit.
74.12 Minority-owned banks.

Subpart C—Bonding and Insurance

74.15 General.
74.16 Construction and facility improvement.
74.17 Loan guarantees.
74.18 Fidelity bonds.
74.19 Source of bonds.

Subpart D—Retention and Access Requirements for Records

Sec.
74.20 Applicability.
74.21 Length of retention period.
74.22 Starting date of retention period.
74.23 Substitution of microfilm.
74.24 Access to records.
74.25 Restrictions on public access.

Subpart E—Waiver of Single State Agency Requirements [Reserved]

Subpart F—Grant-Related Income

74.40 Scope of subpart.
74.41 Meaning of program income.
74.42 General program income—meaning and basic rule.
74.42a General program income—restrictive alternative.
74.42b General program income—liberal alternative.
74.42c General program income—use for cost sharing or matching.
74.43 Proceeds from sale of real property and of tangible personal property acquired for use.
74.44 Royalties and other income earned from copyrights or copyrighted materials.
74.45 Royalties and other income earned from patents or from inventions.
74.46 Proceeds earned after the support period from tangible personal property acquired for sale or rental.
74.47 Records for program income.
74.48 Interest earned on advances of grant funds.

Subpart G—Cost Sharing and Matching

74.50 Scope of subpart.
74.51 Definitions.
74.52 Basic rule: Costs and contributions acceptable.
74.53 Qualifications and exceptions.
74.54 Timing of third-party in-kind contributions.
74.55 Valuation of third-party in-kind contributions.
74.56 Supporting records for third-party in-kind contributions.

Subpart H—Standards for Grantee and Subgrantee Financial Management Systems

74.60 Scope of subpart.
74.61 Standards.

Subpart I—Financial Reporting Requirements

74.70 Scope of subpart.
74.71 Definitions.
74.72 Authorized forms and instructions.
74.73 Financial Status Report.
74.74 Report of Federal Cash Transactions.
74.75 Request for Advance or Reimbursement.
74.76 Outlay Report and Request for Reimbursement for Construction Programs.

Subpart J—Monitoring and Reporting of Program Performance

74.80 Scope of subpart.
74.81 Monitoring by grantees.
74.82 Performance reports for nonconstruction grants.
74.83 Performance reports for construction grants.
74.84 Significant developments between scheduled reporting dates.
74.85 Site visits.

Subpart K—Grant Payment Requirements

74.90 Scope of subpart.
74.91 Definitions.
74.92 Payment methods for nonconstruction grants.
74.93 Payment methods for construction grants.
74.94 Withholding of payments.
74.95 Requesting advances or reimbursements.
74.96 Consolidation of payments.
74.97 Requests for reimbursement: Prompt payment.

Subpart L—Budget Revision Procedures

74.100 Scope of subpart.
74.101 Budget.
74.102 Nonconstruction grants.
74.103 Construction grants.
74.104 Construction and nonconstruction work under the same grant.
74.105 Authorized funds exceeding grantee needs.
74.106 Method of requesting approvals.
74.107 Notification of approval or disapproval.

Subpart M—Grant Closeout, Suspension, and Termination

74.110 Definitions.
74.111 Closeout.
74.112 Violation of grant terms and conditions.
74.113 Suspension.
74.114 Termination.

Subpart N—Forms for Applying for Grants

74.120 Scope of subpart.
74.121 Authorized forms and instructions.
74.122 Preapplications for Federal Assistance.
74.123 Notice of Preapplication Review Action.
74.124 Application for Federal Assistance (Nonconstruction Programs).
74.125 Application for Federal Assistance (for Construction Programs).
74.126 Application for Federal Assistance (Short Form).

Subpart O—Property

74.130 Scope of subpart.
74.131 General.
74.132 Definitions.
74.133 Real property.
74.134 Nonexpendable personal property—title.
74.135 Nonexpendable personal property—Federal right to require transfer.
74.136 Nonexpendable personal property—use.
74.137 Nonexpendable personal property—replacement.
74.138 Nonexpendable personal property—disposition.
74.139 Nonexpendable personal property—procedural requirements.
74.140 Exemptions for nonexpendable personal property acquired under grants subject to certain statutes.
74.141 Expendable personal property.
74.142 Federal share of property—general.
74.143 Federal share of property acquired by a grantee.
74.144 Federal share of property acquired by a subgrantee.
74.145 Federal share of property acquired by a cost-type procurement contractor under a grant or subgrant.
74.146 Federal share of property acquired only in part under a grant.
74.147 Federal share of replacement property.
74.148 Federal share of property under annual grants.
74.149 Division of non-Federal share of market value or proceeds.
74.150 Inventions and patents.
74.151 Copyrights.
74.152 Right of grantees to impose additional requirements.

Subpart P—Procurement Standards

Sec.
74.160 Scope of subpart; terminology.
74.161 General.
74.162 Code of conduct.
74.163 Free Competition.
74.164 Procedural requirements.
74.165 Requirement for governments to use formal advertising.
74.166 Contract and subgrant provisions.

Subpart Q—Cost Principles

74.170 Scope of subpart.
74.171 Grants to governmental organizations.
74.172 Grants to institutions of higher education.
74.173 Grants to hospitals.
74.174 Grants to other nonprofit organizations.
74.175 Subgrants and cost-type contracts.
74.176 Costs allowable with approval.

Subpart R—[Reserved]

Subpart S—Construction Grants [Reserved]

Appendix A—[Reserved]
Appendix B—[Reserved]
Appendix C—Principles for determining costs applicable to grants and contracts with State and local governments.
Appendix D—Part I—Principles for determining costs applicable to research and development under grants and contracts with educational institutions. Part II—Principles for determining costs applicable to training and other educational services under grants and contracts with educational institutions.
Appendix E—Principles for determining costs applicable to research and development under grants and contracts with hospitals.
Appendix F—Principles for determining costs applicable to grants and contracts with nonprofit institutions.

AUTHORITY: 5 U.S.C. 301.

Subpart A—General

§ 74.1 Purpose and scope of this part.

This part establishes uniform requirements for the administration of HEW grants and principles for determining costs applicable to activities assisted by HEW grants.

§ 74.2 Scope of subpart.

This subpart sets forth (a) general rules and regulations pertaining to this Part 74 (definitions, purpose and scope, applicability, and appeals) and (b) procedures for control of deviations from the part.

§ 74.3 Definitions.

As used in this part, the words defined in this section shall have the meanings set forth below.

"Cost-type contract" means a contract or subcontract in which the contractor or subcontractor is paid on the basis of the costs it incurs, except that the term does not include such subcontracts under a non-cost-type contract or subcontract.

"Expenditure report" means: (1) For nonconstruction grants, the "Financial Status Report" (or other report equivalent thereto); (2) for construction grants, the "Outlay Report and Request for Reimbursement for Construction Programs" (or other report equivalent thereto). (See Subpart I of this part.)

"Federally recognized Indian tribal government" means the governing body or a governmental agency of any Indian tribe, band, nation, or other organized group or community (including any Native village as defined in section 3 of the Alaska Native Claims Settlement Act, 85 Stat. 688) certified by the Secretary of the Interior as eligible for the special programs and services provided by him through the Bureau of Indian Affairs. However, for policies applicable to tribal government hospitals and institutions of higher education, see § 74.4, "Applicability of this part."

"Government" means a State or local government or a Federally recognized Indian tribal government. However, for policies applicable to government hospitals and institutions of higher education, see § 74.4, "Applicability of this part."

"Grant" means money, or property provided in lieu of money, paid or furnished by the Federal Government to an eligible recipient under programs that provide financial assistance. The term includes such financial assistance when provided by contract, but does not include any Federal procurements subject to the procurement regulations in 41 CFR, nor does it include technical assistance which provides services instead of money or other assistance in the form of revenue sharing, loans, loan guarantees, interest subsidies, insurance, or direct appropriations. Also, the term does not include a fellowship or other award of a fixed amount of funds which the recipient is not required to account for on an actual cost basis.

"Grantee" means the organization or person to which a grant is made and which is accountable to the Federal Government for the use of the funds provided. The grantee is the entire legal entity even though a particular component of the entity may be designated in the award document. For example, a grant award document may name as the grantee an agency of a State, or one school or campus of a university. In such cases, the granting agency usually intends that the named component assume primary or sole responsibility for administering the grant-assisted project or program. Nevertheless, the naming of a component of a legal entity as the grantee in a grant award document shall not be construed as relieving the whole legal entity from accountability to the Federal Government for the use of the funds provided. (This definition is not intended to affect the eligibility provisions of grant programs in which eligibility is limited to organizations, such as State welfare departments, which may be only components of a legal entity.) The term "grantee" does not include any secondary recipients such as subgrantees, contractors, etc., who may receive funds from a grantee pursuant to a grant.

"Granting agency" means any of the following organizations which are authorized to make grants:

(a) *Public Health Service agencies.* However, the Public Health Service may elect to treat the Public Health Service as a single granting agency.

(b) *Education agencies.* However, the Education Division may elect to treat the Education Division as a single granting agency.

(c) Other principal operating components of HEW.

(d) The Office of the Assistant Secretary for Planning and Evaluation.

"HEW" means the U.S. Department of Health, Education, and Welfare.

"Local government" means a local unit of government including specifically a county, municipality, city, town, township, local public authority, school district, special district, intrastate district, council of governments (whether or not incorporated as a nonprofit corporation under State law), "sponsor or sponsoring local organization" of a watershed project (as defined in 7 CFR 620.2, 40 FR 12472, March 19, 1975), any other regional or interstate government entity, or any agency or instrumentality of a local government. However, for policies applicable to government hospitals and institutions of higher education, see § 74.4, "Applicability of this part."

"OGPM" means the Office of Grants and Procurement Management, which is an organizational component within the Office of the Secretary of Health, Education, and Welfare, reporting to the Assistant Secretary for Administration and Management.

"OMB" menas the Office of Management and Budget within the Executive Office of the President.

"State" means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State exclusive of local governments. However, for policies applicable to government hospitals and institutions of higher education, see § 74.4, "Applicability of this part."

"Subgrant" means money, or property provided in lieu of money paid or furnished by a grantee to an eligible recipient as financial assistance under a grant. The term also includes such financial assistance paid or furnished under a Federal grant by the recipient of such a subgrant, and so on. The term includes financial assistance when provided by contract, but does not include procurements; nor does it include any form of assistance which is excluded from the definition of "grant" in this section.

"Subgrantee" means the organization or person to which a subgrant is made and which is accountable to the party awarding the subgrant for the use of the funds provided. The subgrantee is the entire legal entity even though a particular component of the entity may be designated in the subgrant award document.

"Terms and conditions" of a grant or subgrant means all legally binding requirements imposed on the grant or subgrant by statute, regulations, the award document, or otherwise.

§ 74.4 Applicability of this part.

Except where inconsistent with Federal statutes, regulations, or other terms and conditions of a grant, this part is applicable to all HEW grants except when the grantee is a Federal agency, foreign government or organization, international organization such as the United Nations, profit-making organization, or individual. Note, however, that some portions have a more limited applicability as stated therein. Where that limited applicability specifies governmental or nongovernmental organizations, hospitals and institutions of higher education operated by a government shall be subject to the policies prescribed for nongovernmental organizations.

§ 74.5 Appeals.

Attention is called to the fact that, in accordance with Part 16 of this title, grantees may formally appeal certain postaward administrative decisions made by HEW officials.

§ 74.6 Deviations.

(a) Except as provided in § 74.7, a deviation shall be considered to be either of the following, unless required by Federal legislation without allowance of agency discretion:

(1) Use of any policy, procedure, form, standard, or grant condition which is inconsistent with an applicable provision of this part, or

(2) Failure to use any applicable policy, procedure, form, standard, or grant condition which is required by this part.

(b) In order to maintain uniformity to the greatest extent feasible, deviations shall be kept to a minimum. A deviation, whether proposed by an applicant for a grant, a grantee, or an official of the granting agency, may be authorized only when it is necessary to meet programmatic objectives, or to conserve grant funds, or when it is otherwise essential in the public interest.

(c) Deviations from Subparts B through P, inclusive, of this part may be made on an HEW grant, or a class of HEW grants, only when authorized by both:

(1) The head of the granting agency or other officials if designated in or pursuant to formal deviation control procedures established by the agency, and

(2) OGPM

(d) Deviations from Subpart Q of this part and Appendices C, D, E and F to this part may be made only as follows:

(1) In individual cases (i.e., where only a single grant is involved) deviations may be authorized by the head of the granting agency or by other officials if designated in or pursuant to formal deviation control procedures established by the agency.

(2) Deviations in classes of cases may be authorized only by the head of the granting agency or other officials if designated in or pursuant to formal deviation control procedures, established by the agency and approved by OGPM, which shall include appropriate provisions for approval by the Division of Financial Management Standards and Procedures, in the Office of the Assistant Secretary, Comptroller.

§ 74.7 Special grant conditions.

(a) Without regard to the deviation control procedures of § 74.6, special grant conditions more restrictive than those prescribed in this Part 74 may be imposed to protect the Federal Govern-

ment's interest when the granting agency has determined that the grantee:

(1) Is financially unstable,

(2) Has a history of poor performance, or

(3) Has a management system which does not meet the standards of this part.

(b) When special conditions are imposed under paragraph (a) of this section, the grantee will be notified in writing:

(1) Why the special conditions were imposed and

(2) What corrective action is needed.

Furthermore, in accordance with OMB Circular A-110, OMB and other Federal agencies in a granting relationship with the grantee will be provided copies of the notice to the grantee.

Subpart B—Cash Depositories

§ 74.10 Physical segregation and eligibility.

Except as provided in § 74.11, HEW will not:

(a) Require separate bank accounts for HEW grant funds which are provided to a grantee or subgrantee;

(b) Establish any eligibility requirements for cash depositories in which HEW grant funds are deposited by grantees or their subgrantees.

§ 74.11 Checks-paid basis letter of credit.

A separate bank account shall be used when payments under letter of credit are made on a "checks-paid" basis in accordance with agreements entered into by a grantee, the Federal Government, and the banking institutions involved. A checks-paid basis letter of credit is one under which funds are not drawn from the Treasury until the grantee's checks have been presented to its bank for payment.

§ 74.12 Minority-owned banks.

Consistent with the national goal of expanding opportunities for minority business enterprises, grantees are encouraged to use minority-owned banks. OGPM will furnish grantees, upon request, a list of minority-owned banks.

Subpart C—Bonding and Insurance

§ 74.15 General.

In administering HEW grants, grantees shall observe their regular requirements and practices with respect to bonding and insurance. HEW will not imoose additional bonding and insurance requirements, including fidelity bonds, except as provided in §§ 74.16 through 74.19.

§ 74.16 Construction and facility improvement.

The recipient of an HEW grant which requires contracting for construction or facility improvement (including any HEW grant which provides for alterations or renovations of real property) shall follow its own requirements and practices relating to bid guarantees, performance bonds, and payment bonds except for contracts exceeding $100,000. For contracts exceeding $100,000, the granting agency may determine that the grantee's bonding provisions adequately protect the Federal Government's interest; otherwise the minimum requirements shall be as follows:

(a) A bid guarantee from each bidder equivalent to five percent of the bid price. The bid guarantee shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(b) A performance bond on the part of the contractor for 100 percent of the contract price. A performance bond is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under the contract.

(c) A payment bond on the part of the contractor for 100 percent of the contract price. A payment bond is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

§ 74.17 Loan guarantees.

Where in connection with an HEW grant, HEW also guarantees the payment of money borrowed by the grantee, the granting agency may at its discretion require adequate bonding and insurance if the bonding and insurance requirements of the grantee are not deemed adequate to protect the interests of the Federal Government.

§ 74.18 Fidelity bonds.

If the grantee is a nongovernmental organization, the granting agency may require adequate fidelity bond coverage where the absence of coverage of any of the grant-supported activities jeopardizes the Federal Government's interest.

§ 74.19 Source of bonds.

Any bonds obtained pursuant to §§ 74.16(a) through (c), 74.17, or 74.18 shall be obtained from companies holding certificates of authority as acceptable sureties (31 CFR Part 223).

Subpart D—Retention and Access Requirements for Records

§ 74.20 Applicability.

(a) Except as provided in paragraph (b) of this section, this subpart applies to all financial records, supporting documents, statistical records and other records of grantees, of subgrantees, and of contractors and subcontractors under grants and subgrants, which:

(1) Are required by the terms and conditions of an HEW grant, or

(2) May otherwise reasonably be considered as pertinent to an HEW grant.

(b) This subpart is not applicable to records maintained by the recipient under a grant of:

(1) Any contract or subcontract of $10,000 or less, or

(2) Any contract or subcontract awarded using the formal advertising method of procurement, whether or not required to be so awarded, or

(3) Any subcontract awarded under a contract or subcontract described in paragraph (b)(2) of this section.

§ 74.21 Length of retention period.

(a) Except as provided in paragraphs (b) and (c) of this section, records shall be retained for three years from the starting date specified in § 74.22.

(b) If any litigation, claim, negotiation, audit or other action involving the records has been started by or on behalf of the Federal Government before the expiration of the three-year period, the records shall be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular three-year period, whichever is later.

(c) In order to avoid duplicate record-keeping, granting agencies may make special arrangements with grantees to retain any records which are continuously needed for joint use. The granting agency will request transfer of records to its custody from grantees when it determines that the records possess long-term retention value. When the records are transferred to or maintained by HEW, the three-year retention requirement is not applicable to the grantee.

§ 74.22 Starting date of retention period.

(a) *General.* Except for records covered by paragraphs (b) through (d) of this section, where HEW grant support is continued or renewed on an annual or essentially annual basis, the retention period for each year's records starts from the date of submission to HEW of the grantee's annual or last expenditure report for that year; in all other cases the retention period starts from the date of submission to HEW of the grantee's final expenditure report.

(b) *Records for nonexpendable property.* The retention period for records for nonexpendable personal property required by § 74.139 starts from the date of disposition of the property. However, for property that has been replaced pursuant to § 74.137, the retention period starts from the date of disposition of the replacement property. Date of disposition is defined in § 74.138(c).

(c) *Records pertaining to certain classes of income.* For records required by § 74.47 that relate to classes of program income subject to §§ 74.44 and 74.46, the three-year retention period starts from the end of the grantee's fiscal year in which the income is earned or, in the case of income earned by a subgrantee, from the end of the subgrantee's fiscal year in which the income is earned.

(d) *Records for indirect cost rate proposals, etc.*—(1) *Applicability.* This paragraph applies to records supporting (i) indirect cost rate proposals, (ii) cost allocation plans pursuant to Appendix C to this part, (iii) hospital patient care rate proposals, and (iv) any similar accounting computations of the rate at which a particular group of costs is chargeable to HEW grants or to a subgrant, contract, or subcontract under an HEW grant. This includes, but is not limited to, computer usage chargeback

rate computations and composite fringe benefit rate computations.

(2) *If submitted to the Federal Government.* If the proposal, plan, or other computation is required to be submitted to the Federal Government to form the basis for negotiation of the rate, then the three-year retention period for its supporting records starts from the date of such submission.

(3) *If not submitted to the Federal Government.* If the proposal, plan, or other computation is not required to be submitted to the Federal Government for negotiation purposes, then the three-year retention period for its supporting records starts from the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

§ 74.23 Substitution of microfilm.

Microfilm or other adequate copies may be substituted for the original records.

§ 74.24 Access to records.

(a) HEW and the Comptroller General of the United States, or any of their authorized representatives, shall have the right of access to any books, documents, papers, or other records of the grantee which are pertinent to a specific HEW grant, in order to make audit, examination, excerpts, and transcripts.

(b) In the case of a subgrant under an HEW grant, HEW, the Comptroller General of the United States, the grantee, any intermediate subgrantee, or any of their authorized representatives shall have the right of access to any books, documents, papers, or other records of the subgrantee which are pertinent to the HEW grant, in order to make audit, examination, excerpts, and transcripts.

(c) Except as provided in § 74.20(b), in the case of a contract (or subcontract) under an HEW grant, HEW, the Comptroller General of the United States, the grantee, any intermediate subgrantee, contractor, or subcontractor, or any of their authorized representatives shall have the right of access, to any books, documents, papers, or other records of the contractor or subcontractor which are pertinent to the HEW grant, in order to make audit, examination, excerpts, and transcripts.

§ 74.25 Restrictions on public access.

Unless otherwise required by law, HEW will not place restrictions on grantees which will limit public access to records covered by this subpart except after a determination that the records must be kept confidential and would have been excepted from disclosure under Part 5 of this title, "Availability of information to the public pursuant to Pub. L. 90-23," if the records had belonged to HEW.

Subpart E—Waiver of Single State Agency Requirements—[Reserved]

Subpart F—Grant-Related Income

§ 74.40 Scope of subpart.

This subpart sets forth policies and requirements relating to (a) program income and (b) interest and other investment income earned on advances of grant funds.

§ 74.41 Meaning of program income.

(a) For the purposes of this part, program income means gross income earned by a grantee or a subgrantee from activities supported in whole or in part by a grant or subgrant. It includes but is not limited to such income in the form of fees for services rendered, proceeds from sale of tangible personal or real property, usage or rental fees, and patent or copyright royalties.

(b) Program income does not include interest or investment income earned on advances of grant or subgrant funds. (See § 74.48.)

(c) Revenues raised by a government grantee or subgrantee under its governing powers, such as taxes, special assessments, levies, and fines, shall be considered program income only if the revenues are specifically earmarked for the project supported by the grant or subgrant in accordance with the terms and conditions of the grant. Otherwise, the revenues shall not be considered grant-related, and the grantee shall have no obligation to the Federal Government with respect to the revenues.

(d) If income meets the definition in the preceding paragraphs of this section, it shall be considered program income regardless of the method used to calculate the amount—whether, for example, by a cost-reimbursement method or fixed price arrangement. Nor will the fact that the income is earned by the grantee or subgrantee from a Federal procurement contract or from a procurement contract under a Federal grant awarded to another party affect the income's classification as program income.

(e) For the purposes of this subpart, program income is divided into a number of classes, which are treated in separate sections of the subpart.

§ 74.42 General program income—meaning and basic rule.

(a) General program income means all program income earned by a grantee during the period of grant support or by a subgrantee during the period of subgrant support, other than the special classes of such income treated in §§ 74.43 (a), 74.44, and 74.45.

(b) General program income shall either be:

(1) Applied to the grantee's or subgrantee's allowable costs (as determined by the cost principles specified in Subpart Q of this part) during the grant or subgrant funding period in which the income was earned; or

(2) Used for any purposes that further the objectives of the Federal legislation under which the grant was made.

(c) If the granting agency does not specify which alternative is to apply, the alternative in paragraph (b)(1) of this section shall apply.

§ 74.42a General program income—restrictive alternative.

(a) If the alternative in § 74.42(b)(1) applies, the amount of the general program income shall be deducted from the grantee's or subgrantee's allowable costs along with other deductions that may be required (such as the amount of costs paid by cash donations from third parties or by other Federal grants) for the purpose of determining the maximum amount of those costs which may be borne by Federal funds under the grant or subgrant.

(b) If the alternative in § 74.42(b)(1) applies to a discretionary grant, any general program income earned by the grantee in excess of the amount estimated in the approved application shall not be used to expand the scope of the grant-supported project unless so authorized by the granting agency. This requirement for Federal granting agency authorization to use income to expand a project's scope shall not apply to income earned by a subgrantee in a subgrant project unless so specified by the granting agency.

§ 74.42b General program income—liberal alternative.

(a) If the alternative in § 74.42(b)(2) applies, the requirement in that paragraph shall be satisfied by use of the income to defray costs that meet all of the following requirements:

(1) The costs must be incurred for projects or activities that further the objectives of the Federal legislation under which the grant was made, although not necessarily for the particular project or activity for which the grant that gave rise to the income was awarded.

(2) The costs must be reasonable and allocable to the projects or activities involved, although they need not necessarily be kinds of costs that would permissible as charges to the grant. For example, construction of a building to house the project or similar projects could meet this requirement even where such construction would not be a permissible charge to the grant itself.

(3) The costs must be incurred before the expiration of three years

(i) From the date of submission to HEW of the grantee's final expenditures report, or

(ii) Where grant support is continued or renewed on an annual or essentially annual basis, from the date of submission to HEW of the grantee's annual expenditures report for the year in which the income was earned or, in the case of subgrantee income, the year in which the grantee awarded the subgrant which, directly or through a lower tier subgrant, gave rise to the income.

(b) (1) Pursuant to paragraph (a) of this section, the grantee may elect to apply some or all of the income to allowable costs during the grant or subgrant funding period in which the income was earned. Such costs should be included in the total project costs reported by the grantee to the granting agency, and an equivalent amount of income should be deducted from total project costs on the appropriate line of the financial report.

(2) Any other costs defrayed by the program income pursuant to paragraph (a) of this section should not be reported

as part of total project costs, nor should an equivalent amount of income be deducted on account of those other costs. However records for those other costs shall be maintained, retained and made available as required by §§ 74.47(c) and Subpart D of this part.

(c) If the alternative in § 74.42(b)(2) applies, grantees may impose more stringent policies with respect to general program income earned by their subgrantees: *Provided*, That all the requirements in paragraph (a) of this section are, as a minimum, satisfied.

§ 74.42c General program income—use for cost sharing or matching.

A rule governing the use of allowable costs financed by general program income to meet a cost-sharing or matching requirement is set forth in § 74.53(c).

§ 74.43 Proceeds from sale of real property and of tangible personal property acquired for use.

(a) The following kinds of program income shall be governed by the rules in Subpart O of this part:

(1) Proceeds from the sale of real property purchased or constructed under a grant or subgrant.

(2) Proceeds from the sale of tangible personal property fabricated or purchased under a grant or subgrant and intended primarily for use in the grant or subgrant-supported activity or project rather than for sale or rental.

(b) Proceeds from the sale or rental of merchandise inventory or other tangible personal property fabricated or purchased under a grant or subgrant and intended primarily for such sale or rental is subject to §§ 74.42–74.42c, if earned during the period of grant or subgrant support, or to § 74.46, if earned after that period. An example of such proceeds is the income earned from the sale of merchandise fabricated in a grant-supported workshop.

§ 74.44 Royalties and other income earned from copyrights or copyrighted materials.

(a) This section applies to the following kinds of program income:

(1) Royalties, license fees, and other income earned by a grantee or subgrantee from a copyright on a work developed under a grant or subgrant.

(2) Proceeds in forms other than specifically copyright earnings received by a grantee or subgrantee from the sale, rental, dissemination, exhibition, or broadcast of materials embodying a copyrighted work developed under the grant or subgrant. In determining the amount of such proceeds to be treated as program income, there shall be deducted from the gross proceeds any fabrication, dissemination or other costs which are incurred by the grantee or subgrantee in generating the proceeds but which are neither borne by the HEW grant nor counted towards satisfying a cost-sharing or matching requirement of the grant.

(b) Except as otherwise provided in the terms and conditions of the grant, there shall be no obligation to HEW with respect to such income.

§ 74.45 Royalties or equivalent income earned from patents or from inventions.

Disposition of royalties or equivalent income earned on patents or inventions arising out of activities assisted by a grant shall be governed by determinations made or agreements entered into pursuant to the Department's patent regulations. (See Parts 6 and 8 of this title.) If such a determination or agreement does not provide for the disposition of the royalties or equivalent income, the disposition shall be in accordance with the grantee's own policies.

§ 74.46 Proceeds earned after the support period from tangible personal property acquired for sale or rental.

(a) Some grants and subgrants support the fabrication or purchase of tangible personal property primarily for sale or rental rather than for use in the supported activities. This section applies to proceeds earned by a grantee or subgrantee after the period of grant or subgrant support from any residual inventory of such property (other than proceeds from copyrighted materials subject to § 74.44).

(b) The proceeds shall be used for any purposes that further the objectives of the Federal legislation under which the grant was made. This requirement shall be satisfied by use of the proceeds to defray costs that (1) meet the requirements in §§ 74.42b(a)(1) and 74.42b(a)(2) and (2) are incurred before the expiration of three years from the end of the grantee's fiscal year in which the proceeds are earned or, if the proceeds are earned by a subgrantee, from the end of the subgrantee's fiscal year in which the proceeds are earned. Grantees may impose more stringent policies with respect to such proceeds earned by their subgrantees provided that the requirement in this paragraph is satisfied as indicated.

§ 74.47 Records for program income.

(a) This section applies to the following classes of program income: (1) General program income subject to §§ 74.42–74.42c; (2) royalties and other income from copyrights subject to § 74.44 where there is an obligation to HEW with respect to such income; and (3) property proceeds subject to § 74.46.

(b) A grantee or subgrantee shall maintain records identifying the source and amounts of all program income subject to this section.

(c) If, pursuant to § 74.42b or other portions of this subpart, the income is applied to costs other than the allowable costs of the grant or subgrant supported project or activity which gave rise to the income, the record shall also identify the purposes and specific costs to which the income is applied and shall include source documentation for those costs.

(d) Records required by this section shall be subject to the retention and access requirements of Subpart D of this part.

§ 74.48 Interest earned on advances of grant funds.

(a) Except where provided otherwise by Federal statute, interest and other investment income earned by grantees on advances of HEW grant funds shall be remitted by check to the Department of Health, Education, and Welfare.

(b) Except as otherwise provided by Federal statute, interest and other investment income earned by a subgrantee on advances from an HEW grantee shall, to the extent that the subadvances are attributable to advances of HEW grant funds to the grantee, be remitted by check to the Department of Health, Education, and Welfare.

(c) For statutory exemptions from accountability for interest earned on advances of grant funds, attention is directed to the following:

(1) The Intergovernmental Cooperation Act of 1968, which provides that States, as defined in the Act, shall not be held accountable for interest earned on funds from a grant-in-aid, as defined in the Act, pending their disbursement for program purposes.

(42 U.S.C. 4213.)

(2) The Indian Self-Determination and Education Assistance Act, which provides that Indian tribal organizations, as defined in the Act, shall not be held accountable for interest earned on payments of a grant awarded pursuant to certain sections of the Act, pending their disbursement by such organization.

(25 U.S.C. 450j(b).)

Subpart G—Cost Sharing and Matching

§ 74.50 Scope of subpart.

This subpart sets forth rules relating to the satisfaction of requirements for cost sharing or matching on projects or activities supported by HEW grants.

§ 74.51 Definitions.

For purposes of this subpart:

"Cost sharing and matching" means, in general, that portion of the costs of a grant-supported project or activity not borne by the Federal Government.

"Expendable Personal property" means all tangible personal property other than "nonexpendable personal property" as defined in this section.

"Nonexpendable personal property" shall have the same meaning given to that term in § 74.132, except that instead of "acquisition cost," the word "fair market value at the time of donation" shall be substituted.

"Third-party in-kind contributions" means property or services provided without charge by non-Federal third parties directly benefiting and specifically identifiable to a grant-supported project or activity. The term does not include allowable costs which are incurred by subgrantees (or cost-type procurement contractors under the grant) but which are not borne by the grant.

§ 74.52 Basic rule: Costs and contributions acceptable.

With the exceptions and qualifications listed in § 74.53, a cost-sharing or matching requirement may be satisfied by either or both of the following:

(a) Allowable costs incurred by the grantee (or by subgrantees or cost-type procurement contractors under the grant) which are not borne by the grant.

(b) The value of third-party in-kind contributions applicable to the grant-period or funding period to which the cost-sharing or matching requirement applies.

§ 74.53 Qualifications and exceptions.

(a) *Costs paid by third-party cash donations or assistance funds from other Federal grants.* Allowable costs that are financed by cash contributions from non-Federal third parties may count toward satisfying a cost-sharing or matching requirement. However, costs (or third-party in-kind contributions) which are paid by funds received as assistance under another Federal grant may not count towards satisfying a cost-sharing or matching requirement unless such counting is authorized by Federal law.

(b) *Costs or contributions counted towards other Federal cost-sharing requirements.* Neither costs nor the values of third-party in-kind contributions may count towards satisfying a cost-sharing or matching requirement of an HEW grant if they have been or will be counted towards satisfying a cost-sharing or matching requirement of another Federal grant, a Federal procurement contract, or any other award of Federal funds.

(c) *Costs financed by general program income.* Costs financed by general program income, as defined in § 74.42, shall not count towards satisfying a cost-sharing or matching requirement of the HEW grant supporting the activity giving rise to the income unless the terms and conditions of that grant so provide.

(d) *Records.* Neither costs nor third-party in-kind contributions shall count towards satisfying a cost-sharing or matching requirement unless they are verifiable from the grantee's or subgrantee's records.

(e) *Standards for third-party in-kind contributions.* Third-party in-kind contributions shall count towards satisfying a cost-sharing or matching requirement only if they are necessary for proper and efficient accomplishment of project activities. In addition, such contributions shall count only where, if the grantee or subgrantee were required to pay for them, the payments would be allowable costs. For example, entertainment costs are not allowable; therefore, third-party in-kind contributions of entertainment shall not count as cost-sharing or matching.

§ 74.54 Timing of third-party in-kind contributions.

(a) Except as explained in the succeeding paragraphs of this section, a third-party in-kind contribution shall be considered as applying to the grant period or funding period in which the service or property constituting the contribution is provided.

(b) A third-party in-kind contribution provided to a project supported by a subgrant shall be considered as applying to the HEW grant period or funding period in which the subgrant was awarded.

(c) In some cases, a third party providing property or services pursuant to a fixed-price type of procurement contract under a grant or subgrant may make an in-kind contribution by providing without charge a portion of the property or services contracted for. In such a case, the contribution shall be considered as applying to the HEW grant period or funding period during which the contract was awarded or, in the case of a contract under a subgrant, the HEW grant period or funding period in which the subgrant giving rise to the contract was awarded.

§ 74.55 Valuation of third-party in-kind contributions.

For the purpose of cost-sharing or matching requirements, third-party in-kind contributions shall be valued as follows:

(a) *Volunteer services.* Services provided by volunteers shall be valued at rates consistent with those paid by the grantee or subgrantee to its own employees for similar work. If the grantee or subgrantee does not have employees performing similar work, the rates shall be consistent with those ordinarily paid by other employers for similar work in the labor market in which the grantee or subgrantee competes for services. In either case, a reasonable amount for fringe benefits may be included in the valuation.

(b) *Employees of other organizations.* When an employer other than the grantee, a subgrantee, or a cost-type procurement contractor under the grant furnishes free of charge the services of an employee, these services shall be valued at the employee's regular rate of pay (exclusive of the employer's fringe benefits and overhead costs) provided these services are in the same line of work for which the employee is normally paid. If these services are in a different line of work, paragraph (a) of this section shall apply.

(c) *Donated expendable personal property.* Donated expendable personal property, as defined in § 74.51, shall be valued at the fair market value of the property at the time of donation.

(d) *Donated nonexpendable personal property, buildings, and land.* If the donor transfers title to nonexpendable personal property, as defined in § 74.51, or to buildings or land, the amount that shall be allowed for purposes of cost-sharing or matching shall depend upon the purpose of the grant, as follows:

(1) *Grants for capital expenditures.* If the purpose of the grant is to assist the grantee or subgrantees in the acquisition of equipment, buildings, or land, the total fair market value of the property at the time of donation may be claimed as cost sharing or matching.

(2) *Grants for current operations.* If the purpose of the grant is to support activities that require the use of equipment, buildings or land:

(i) Except as provided in paragraph (d)(2)(ii) of this section, no amount of cost sharing or matching may be claimed for the donated land. Also except as provided in paragraph (d)(2)(ii) of this section, the donated nonexpendable personal property or buildings will not be treated as third-party in-kind contributions. Instead, depreciation or use allowances based on the fair market value of the donated nonexpendable personal property or buildings at the time of donation will constitute allowable costs incurred by the grantee or subgrantee. Such depreciation or use allowances will be determined and allocated in accordance with the cost principles specified by Subpart Q of this part, in the same manner as depreciation or use charges for property purchased by the grantee or subgrantee, and therefore usually will be treated as indirect costs.

(ii) If the granting agency approves, the fair rental rate for the donated land and the full fair market value at the time of donation of the donated nonexpendable personal property or buildings may be claimed as cost sharing or matching in the form of third-party in-kind contributions. Ordinarily, the granting agency will give its approval only where it would have approved an actual purchase of the property or rental of the land as an allowable cost.

(e) *Loaned space and nonexpendable personal property.* If only the use of space in a building or nonexpendable property is donated and the donor retains title, the contribution shall be valued at the fair rental rate of the space or property.

(f) *Appraisal of real property.* Paragraphs (d) and (e) of this section require that, in certain cases, a determination be made of (1) the fair market value of land or of a building or (2) the fair rental rate of land or of space in a building. In these cases, the granting agency shall have the right to require, as a precondition to allowability for cost-sharing or matching purposes, that the fair market value or fair rental rate be determined by a certified real property appraiser or a representative of the U.S. General Services Administration and that the value or rate be certified by the responsible official of the grantee.

(g) *Other contributions.* The values placed on other kinds of third-party contributions shall be reasonable and justifiable.

§ 74.56 Supporting records for third-party in-kind contributions.

(a) Grantees and subgrantees shall maintain records supporting the values placed on all third-party in-kind contributions.

(b) Volunteer services shall be documented and, to the extent feasible, supported by the same methods used by the grantee or subgrantee for its employees performing similar services.

Subpart H—Standards for Grantee and Subgrantee Financial Management Systems

§ 74.60 Scope of subpart.

This subpart prescribes standards for financial management systems of grant-supported activities conducted by grantees and their subgrantees. Neither the Department nor its granting agencies will impose additional standards unless specifically provided for in the applicable statutes (e.g., the Joint Funding Simplification Act, Pub. L. 93–510) or elsewhere in this part. However, suggestions and assistance may be provided in establishing or improving financial management systems when needed or requested.

§ 74.61 Standards.

Grantee financial management systems for grants and subgrantee financial management systems for subgrants shall provide for:

(a) Accurate, current, and complete disclosure of the financial results of each grant project or program in accordance with the financial reporting requirements of the grant, and for each subgrant in accordance with the grantee's requirements. Except when specifically required by law, HEW will not require financial reporting on the accrual basis from organizations whose records are not maintained on that basis. However, when accrual reporting is required by law, organizations whose records are not maintained on that basis will not be required to convert their accounting systems to the accrual basis; they may develop the accrual information through an analysis of the documentation on hand or on the basis of best estimates.

(b) Records which identify adequately the source and application of funds for grant or subgrant-supported activities. These records shall contain information pertaining to grant or subgrant awards, authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income.

(c) Effective control over and accountability for all grant or subgrant funds, and, in accordance with Subpart O of this part, for all real and personal property that is subject to that subpart. Grantees and subgrantees shall adequately safeguard all such property and shall assure that it is used solely for authorized purposes.

(d) Comparison of actual with budgeted amounts for each grant or subgrant, and, when specifically required by the performance reporting requirements of the grant or subgrant, relation of financial information with performance or productivity data, including the production of unit cost information.

(e) Procedures to minimize the time elapsing between the transfer of funds from the U.S. Treasury and the disbursement by the grantee, whenever cash is advanced by the Federal Government. When advances are made by a letter-of-credit method, the grantee shall make drawdowns as close as possible to the time of making disbursements. Grantees shall require subgrantees to institute analogous procedures when subadvances are made by the grantee.

(f) Procedures for determining the reasonableness, allowability, and allocability of costs in accordance with the applicable cost principles prescribed by Subpart Q of this part and the terms and conditions of the grant.

(g) Accounting records which are supported by source documentation.

(h) (1) External or internal audits made by qualified individuals who are sufficiently independent of those who authorize the expenditure of funds to produce unbiased opinions. Auditors shall meet the independence criteria of Chapter 3, part 3, Standards for Audit of Governmental Organizations, Programs, Activities, and Functions, issued by the Comptroller General of the United States.

(2) It is not required that each grant or subgrant awarded to the organization be audited. Rather, audits may, and generally should, be made on an organization-wide basis to ascertain the effectiveness of financial management systems and internal procedures, and to test the fiscal integrity of financial transactions as well as compliance with terms and conditions of awards. Such tests shall include an appropriate sampling of Federal grants (and subgrants) awarded to the organization.

(3) These audits shall be conducted on a continuing basis or at scheduled intervals, usually annually, but not less often than every two years. The frequency of these audits shall be based upon the nature, size, and complexity of the grant-supported activities. These audits will not relieve HEW of its audit responsibilities, but may affect the frequency and scope of Federal audit.

(i) A systematic method to assure timely and appropriate resolution of audit findings and recommendations. A copy of each audit report, and its resolution, shall be furnished to the granting agency upon request.

Subpart I—Financial Reporting Requirements

§ 74.70 Scope of subpart.

This subpart prescribes requirements for grantees to report financial information to granting agencies, and to request advances and reimbursement when a letter-of-credit method is not used, and promulgates standard forms incident thereto.

§ 74.71 Definitions.

As used in this subpart or in the forms identified by this subpart:

"Accrued expenditures" are the charges by the grantee during a given period requiring the provision of funds for: (a) Goods and other tangible property received; (b) services performed by employees, contractors, subgrantees, and other payees; and (c) amounts becoming owed under programs for which no current services or performances are required such as annuities, insurance claims, and other benefit payments.

"Accrued income" is the sum of (a) earnings during a given period from (1) services performed by the grantee; and (2) goods and other tangible property delivered to purchasers; and (b) amounts becoming owed to the grantee for which no current services or performance is required by the grantee.

"Federal funds authorized" represents the total amount of Federal funds obligated by the Federal Government and authorized for use by the grantee. This amount includes any authorized carryover from prior fiscal years of funds unobligated by the grantee.

"In-kind contributions" shall have the meaning given that term in § 74.51.

"Obligations" are the amounts of orders placed, contracts and grants or subgrants awarded, services received, and similar transactions during a given period, which will require payment during the same or a future period.

"Outlays" represent charges made to the grant project or programs. Outlays may be reported on a cash or accrued expenditure basis.

"Program income" shall have the meaning given that term in § 74.41.

"Unobligated balance" is the portion of the Federal funds authorized which has not been obligated by the grantee and is determined by deducting the grantee's cumulative obligations from the cumulative Federal funds authorized.

"Unliquidated obligations," for reports prepared on a cash basis, represent the amount of obligations incurred by the grantee that has not been paid. For reports prepared on an accrued expediture basis, they represent the amount of obligations incurred by the grantee for which an outlay has not been recorded.

§ 74.72 Authorized forms and instructions.

(a) Except as provided in paragraphs (d) and (e) of this section, only those forms specified in §§ 74.73, through 74.76 inclusive, and such supplementary or other forms as may from time to time be authorized by OGPM and OMB, may be used:

(1) For obtaining financial information from grantees for grant programs, or

(2) For requesting advances or reimbursements when letters of credit are not used.

(b) All applicable standard instructions promulgated by OMB for use in connection with the forms specified in §§ 74.73 through 74.76 inclusive shall be followed. Granting agencies may issue substantive supplementary instructions only with the approval of OGPM and OMB. On any report, granting agencies may shade out or instruct the grantee to disregard any line item that the granting agency finds unnecessary for its decision-making purposes.

(c) Grantees shall submit the original and two copies of forms required pursuant to this subpart. However, granting agencies may waive the requirement for the second copy, or both copies, when not needed.

(d) Granting agencies may provide computer outputs to grantees when it will expedite or contribute to the accuracy of reporting. Also, granting agencies may accept the required information from grantees in machine usable format or computer printouts in lieu of prescribed formats.

(e) When a granting agency has determined that a grantee does not meet the standards for financial management systems contained in Subpart H of this part, financial reports may be required with more frequency or more detail (or both), upon written notice to the grantee (without regard to § 74.7) until such time as the standards are met.

§ 74.73 Financial Status Report.

(a) *Form.* Grantees shall use the standard Financial Status Report prescribed by Attachment G of OMB Circular No. A–110 to report the status of funds for all nonconstruction grants. However, at the option of the granting agency, governmental grantees shall use the Financial Status Report form prescribed by Attachment H of General Services Administration Federal Management Circular 74–7. Granting agencies, however, have the option of not requiring the Financial Status Report when the Request for Advance or Reimbursement (see § 74.75) or Report of Federal Cash Transactions (see § 74.74) provides adequate information to meet their needs, except that a final Financial Status Report shall be required at the completion or termination of the grant when the Request for Advance or Reimbursement form is used only for advances.

(b) *Accounting basis.* Each grantee shall report program outlays and program income on the same accounting basis, i.e., cash or accrued expenditure (accrual), which is used in maintaining its accounting records. The basis used by a grantee must be consistent for all HEW grants.

(c) *Frequency.* The granting agencies shall prescribe the frequency of the report for each project or program. However, the report shall not be required more frequently than quarterly or less frequently than annually except as provided in § 74.72(e) and paragraph (a) of this section. If the granting agency does not specify the frequency of the report, it shall be submitted annually. A final report shall be required upon completion or termination of grant support.

(d) *Due date.* When reports are required on a quarterly or semiannual basis, they shall be due thirty days after the end of the specified reporting period. When required on an annual basis, they shall be due 90 days after the end of the grant year. Final reports shall be due 90 days after the completion or termination of grant support. Justified requests from individual grantees for extension of reporting due dates will be approved whenever feasible.

§ 74.74 Report of Federal cash transactions.

(a) *Form.* When funds are advanced to grantees through letters of credit or with Treasury checks, each grantee shall submit the Report of Federal Cash Transactions prescribed by Attachment G of OMB Circular No. A–110. However, at the option of the responsible HEW finance officer, governmental grantees shall use the Report of Federal Cash Transactions form prescribed by Attachment H of General Services Administration Federal Management Circular 74–7. The Report of Federal Cash Transactions will be used by HEW financial officers to monitor cash advanced to grantees and to obtain disbursement or outlay information for each grant from the grantees. The format of the report may be adapted as appropriate when reporting is to be accomplished with the assistance of automatic data processing equipment, provided that the information to be submitted is not changed in substance.

(b) *Forecasts of Federal cash requirements.* Forecasts of Federal cash requirements may be required in the "Remarks" section of the report.

(c) *Cash in hands of secondary recipients.* When considered necessary and feasible by the responsible HEW finance officer, grantees may be required to report the amount of cash advances in excess of three days' requirements in the hand of subgrantees or other secondary recipients, and to provide short narrative explanations of actions taken by the gantee to reduce the excess balances.

(d) *Frequency and due date.* Grantees shall submit the Report of Federal Cash Transactions no later than 15 working days following the end of each quarter. However, where a letter of credit authorizes advances at an annualized rate of one million dollars or more, the responsible HEW financial officer may require the reports to be submitted within 15 working days following the end of each month.

(e) *Waiver.* HEW finance officers may waive the requirement for submission of the Report of Federal Cash Transactions when a grantee's monthly advances do not exceed $10,000: *Provided*, That such advances are monitored through other forms authorized pursuant to this subpart, or in the HEW finance officer's opinion, the grantee's accounting controls are adequate to minimize excessive Federal advances.

§ 74.75 Request for Advance or Reimbursement.

(a) (1) When letters of credit or predetermined automatic Treasury check advances are not used, grantees shall submit their requests for advance payments or reimbursements under nonconstruction grants on the Request for Advance or Reimbursement form prescribed by Attachment G of OMB Circular No. A–110. However, at the option of the responsible HEW finance officer, governmental grantees shall use the Request for Advance or Reimbursement form prescribed by Attachment H of General Services Administration Federal Management Circular 74–7.

(2) Additionally, grantees shall use these forms when requesting Treasury check advance under construction grants (see § 74.76(b)(4)) and may be required to use these forms when requesting reimbursements under construction grants (see § 74.76(a)(1)).

(b) Grantees will be authorized to submit their requests no less often than monthly.

§ 74.76 Outlay Report and Request for Reimbursement for Construction Programs.

(a) *Construction grants paid by reimbursement method.* (1) Requests for reimbursement under construction grants shall be submitted on the Outlay Report and Request for Reimbursement for Construction Programs form prescribed by Attachment G of OMB Circular No. A–110. However, at the option of the granting agency, governmental grantees shall use the Outlay Report and Request for Reimbursement for Construction Programs form prescribed by Attachment H of General Services Administration Federal Management Circular 74–7. Granting agencies may, however, prescribe the Request for Advance or Reimbursement form specified in § 74.75 instead of these forms.

(2) Grantees will be authorized to submit no less often than monthly their requests for reimbursement under construction grants.

(b) *Construction grants paid by letter of credit or Treasury check advance.* (1) When a construction grant is paid by letter of credit or Treasury check advances, the grantee shall report its outlays to the granting agency using an Outlay Report and Request for Reimbursement for Construction Programs form in accordance with paragraph (a)(1) of this section. The grantee should leave blank those items on the form which are applicable only when requesting reimbursement.

(2) The spaces on the form for certifying signatures should be left blank. Instead:

(i) The following certification, signed on behalf of the grantee by an authorized official of the grantee organization, should be submitted to the granting agency with the outlay report:

I certify that to the best of my knowledge and belief the accompanying report is correct and complete and that all outlays reported therein are for the purposes set forth in the grant award documents.

(ii) Information as to percentage of project completion and certification thereof should be submitted independently of the outlay report, at such times and by such means as may be prescribed by the granting agency.

(3) Frequency and due date shall be governed by § 74.73 (c) and (d).

(4) When a construction grant is paid by Treasury check advances based on periodic requests from the grantee, the advances shall be requested on the form specified in § 74.75. In these cases, the granting agency may waive the Outlay Report and Request for Reimbursement entirely if the latter's more detailed outlay information is not needed.

(5) Where a construction grant is paid by letter of credit or predetermined automatic Treasury check advances, requests for payments are not submitted to the granting agency. In these cases the granting agency may substitute the Financial Status Report specified in § 74.73

for the Outlay Report and Request for Reimbursement.

(c) *Accounting basis.* The accounting basis for the Outlay Report and Request for Reimbursement for Construction Programs shall be governed by § 74.73 (b).

Subpart J—Monitoring and Reporting of Program Performance

§ 74.80 Scope of subpart.

This subpart sets forth the procedures for monitoring and reporting program performance under HEW grants. These procedures are designed to place substantial reliance on grantees to manage the day-to-day operations of their grant-supported activities.

§ 74.81 Monitoring by grantees.

Grantees shall monitor the performance under grant-supported activities to assure that adequate progress is being made towards achieving the goals of the grant. This review shall be made for each program, function, or activity of each grant as set forth in the approved grant application or State plan, or the grant award document.

§ 74.82 Performance reports for nonconstruction grants.

(a) Where the granting agency determines that performance information sufficient to meet its programmatic needs will be available from subsequent applications, the granting agency will require the grantee to submit a performance report only upon completion or termination grant support. This report will be due on the same date as the final Financial Status Report (or other financial report equivalent thereto) unless a different due date is specified by the granting agency. Note that the "Application for Federal Assistance (Nonconstruction Programs)" prescribed by Subpart N of this part, when used to request continued support, provides information substantially equivalent to a performance report.

(b) Except as provided in paragraph (a) of this section, or as otherwise authorized by OGPM, granting agencies may require grantees to submit performance reports in the same frequency, and with the same due dates, as is authorized for the Financial Status Report by Subpart I of this part. If the granting agency does not specify the frequency of the performance report, it shall be submitted annually. When performance reports and Financial Status Reports are required with the same frequency, they shall cover the same time periods. Otherwise the time periods covered by performance reports and Financial Status Reports shall be coordinated to facilitate comparability of performance information with financial information.

(c) The content of performance reports shall conform to any instructions issued by the granting agency, including, to the extent appropriate to the particular grant, a brief presentation of the following for each program, function, or activity involved:

(1) A comparison of actual accomplishments to the goals established for the period. Where the output of grant programs can be readily quantified, such quantitative data should be related to cost data for computation of unit costs.

(2) Reasons for slippage in those cases where established goals were not met.

(3) Other pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

§ 74.83 Performance reports for construction grants.

In general, granting agencies rely heavily on on-site technical inspection and certified percentage-of-completion data to keep themselves informed as to progress under construction grants. Therefore formal performance reports from grantees to supplement those sources of information shall be required only if considered necessary by the granting agency, and in no case more frequently than quarterly.

§ 74.84 Significant developments between scheduled reporting dates.

Between the scheduled performance reporting dates, events may occur which have significant impact upon the grant-supported activity. In such cases, the grantee shall inform the granting agency as soon as the following types of conditions become known:

(a) Problems, delays, or adverse conditions which will materially impair the ability to attain the objectives of the grant. This disclosure shall be accompanied by a statement of the action taken, or contemplated, and any Federal assistance needed to resolve the situation.

(b) Favorable developments or events which enable meeting time schedules and goals sooner or at less cost than anticipated or producing more beneficial results than originally projected.

§ 74.85 Site visits.

Site visits may be made by representatives of HEW to:

(a) Review program accomplishments and management control systems.

(b) Provide such technical assistance as may be required.

Subpart K—Grant Payment Requirements

§ 74.90 Scope of subpart.

This subpart sets forth HEW's methods of making grant payments to grantees. These methods will minimize the time elapsing between the disbursement by a grantee and the transfer of funds from the United States Treasury to the grantee, whether such disbursement occurs prior to or subsequent to the transfer of funds.

§ 74.91 Definitions.

As used in this subpart:

"Advances by Treasury check" is a payment made by a Treasury check to a grantee, upon its periodic request or through the use of predetermined payment schedules, before payments are made by the grantee.

"Letter of credit" is an instrument certified by an authorized Federal official which authorizes a grantee to draw funds when needed from the Treasury, through a Federal Reserve Bank and the grantee's commercial bank.

"Percentage of completion method" refers to a system under which payments are made to the recipient of a construction grant according to a schedule which relates the amount and timing of each payment primarily or solely to the actual percentage of completion of the construction work under the grant rather than to the grantee's actual rate of disbursements.

"Reimbursement by Treasury check" is a payment made to a grantee with a Treasury check upon request for reimbursement from the grantee.

§ 74.92 Payment methods for nonconstruction grants.

(a) Letters of credit will be used to pay HEW grantees when all of the following conditions exist:

(1) There is or will be a continuing relationship between the grantee and the responsible HEW finance office for at least a twelve-month period and the total amount of advances to be received from the responsible HEW finance office is $250,000 or more, ($120,000 for certain jointly funded projects).

(2) The grantee has maintained, or demonstrated to HEW the willingness and ability to maintain procedures that will minimize the time elapsing between the transfer of funds from the Treasury and their disbursement by the grantee, and

(3) The grantee's financial management system meets the standards for fund control and accountability prescribed in Subpart H of this part.

(b) Advances by Treasury check will be used, in accordance with the provisions of Treasury Circular No. 1075, when the grantee meets all of the requirements specified in paragraph (a) of this section except those in paragraph (a) (1) of this section.

(c) Reimbursement by Treasury check will be the preferred (although not mandatory) method when the grantee does not meet the requirements specified in either or both of paragraph (a) (2) and (a) (3) of this section. However, determinations to use the reimbursement by Treasury check method on these grants may be made only by or with the concurrence of the Assistant Secretary, Comptroller, Department of Health, Education, and Welfare, or his designees. This method may also be used when the major portion of the program is accomplished through private market financing or Federal loans, and the Federal grant assistance constitutes a minor portion of the program.

(d) Grantees will be authorized to submit no less often than monthly their requests for advances or reimbursements when letters of credit or predetermined automatic Treasury check advances are not used.

§ 74.93 Payment methods for construction grants.

(a) Reimbursement by Treasury check shall be the preferred method when the grantee does not meet the requirements specified in § 74.92(a) (2) and (3), and may be used for any other HEW construction grant except where HEW has entered into an agreement with a grantee to use a letter of credit for all HEW grants, including construction grants.

(b) When the reimbursement by Treasury check method is used, grantees will be authorized to submit no less often than monthly their requests for reimbursement.

(c) When the reimbursement by Treasury check method is not used, § 74.92 (a) and (b) shall be applicable to the construction grant. Implementing procedures under § 74.92 (a) and (b) will be insofar as possible the same for construction grants as for nonconstruction grants awarded to the same grantee.

(d) The percentage of completion method will not be used to pay HEW construction grants.

§ 74.94 Withholding of payments.

Unless otherwise required by law, payments for proper charges incurred by grantees will not be withheld unless the grant is suspended pursuant to § 74.113, or the grantee is indebted to the United States, and collection of the indebtedness will not impair the accomplishement of the objectives of any project or program sponsored by the United States. When a grant is suspended, payment adjustments will be made in accordance with § 74.113. When an indebtedness is to be collected, HEW may, upon reasonable notice to the grantee, withhold from the grantee the right to receive payments under any or all grants or require appropriate accounting adjustments to recorded grant cash balances for which the grantee is accountable to the Federal Government, in order to liquidate the indebtedness.

§ 74.95 Requesting advances or reimbursements.

Subpart I of this part sets forth the procedures and forms for requesting advances or reimbursements.

§ 74.96 Consolidation of payments.

When the letter-of-credit procedure is used, the grantee will to the extent feasible be issued a single or consolidated letter-of-credit to cover anticipated cash needs for all HEW grants. Similarly, to the extent feasible, when the advance by Treasury check method is used, advances will be consolidated.

§ 74.97 Requests for reimbursement: Prompt payment.

When the reimbursement by Treasury check method is used, the grantee will be paid as promptly as possible, ordinarily within thirty days after receipt of a proper request for reimbursement.

Subpart L—Budget Revision Procedures

§ 74.100 Scope of subpart.

(a) This subpart sets forth criteria and procedures to be followed by grantees in requesting deviations from budgets and requesting approvals for budget revisions.

(b) For those State plans or other grants which do not involve a "budget" as defined in § 74.101, only § 74.105 is applicable. However, such grants are nevertheless subject to the prior approval requirements set forth in the cost principles in Appendices C, D, E, and F to this part.

§ 74.101 Budget.

(a) The term "budget" as used in this subpart means the financial plan approved by the granting agency for carrying out the purposes of the grant. Except for research grants, the budget may cover either (1) the sum of the Federal and non-Federal shares, or (2) only the Federal share, when specified by the granting agency in its grant application instructions. For research grants the budget shall cover only the Federal share.

(b) The granting agency will require that the budget be related to performance for program evaluation purposes whenever appropriate.

§ 74.102 Nonconstruction grants.

(a) For budget revisions on nonconstruction grants, grantees shall obtain prior approval, in writing, from granting agencies whenever:

(1) The revision will result from changes in the scope or the objective of the grant-supported project.

(2) The revision will result from transferring to a third party, by subgranting, contracting or other means, substantive grant-supported activities.

(3) The revision will involve transfer of amounts budgeted for indirect costs to absorb increases in direct costs.

(4) The revision will involve additional costs requiring approval under the cost principles prescribed in Subpart Q of this part. (See § 74.176.)

(5) The grantee is a nongovernmental organization and the revision will involve transfer of amounts previously budgeted for student support (tuition waivers, stipends and other payments to trainees).

(6) The revision will involve:

(i) Budgeting funds for research patient care (when no such costs had been previously budgeted), or

(ii) Increasing the amounts previously budgeted for research patient care.

(7) The revision will consist of adding funds for any purpose or type of cost that was expressly disapproved as a special condition of the grant.

(b) Except as provided in § 74.104, other changes to nonconstruction grant budgets do not require HEW approval.

(c) Paragraphs (a) (3), (a) (5) and (a) (6) (ii) of this section may be waived by the granting agency.

§ 74.103 Construction grants.

For construction grants, grantees shall request prior approvals promptly from granting agencies for budget revisions whenever the revision will result from changes in the scope or the objective of the grant-supported project.

§ 74.104 Construction and nonconstruction work under the same grant.

When a grant provides support for both construction and nonconstruction work, the granting agency may require the grantee to obtain prior approval from the granting agency before making any fund or budget transfers between the two types of work.

§ 74.105 Authorized funds exceeding grantee needs.

For both construction and nonconstruction grants grantees shall notify the granting agency promptly whenever the amount of Federal authorized funds is expected to exceed the needs of the grantee by more than $5,000 or 5 percent of the Federal grant, whichever is greater. This notification will not be required if applications for additional funding are submitted for continuing grants, and such applications include the grantee's estimate of what the unobligated balance of Federal authorized funds will be at the end of the current period.

§ 74.106 Method of requesting approvals.

When requesting approval for budget revisions, grantees shall use the budget forms which were used in the grant application. However, grantees may request by letter the approvals required by the § 74.102(a) (4).

§ 74.107 Notification of approval or disapproval.

Within 30 days from the date of receipt of the request for budget revisions, the granting agency shall review the request and notify the grantee whether or not the budget revisions have been approved. If the revisions is still under consideration at the end of 30 days, the granting agency shall inform the grantee in writing as to when the grantee may expect the decision.

Subpart M—Grant Closeout, Suspension, and Termination

§ 74.110 Definitions.

As used in this subpart:

"Date of completion" means the date when all work under a grant is completed or the date in the grant award document, or any supplement or amendment thereto, on which Federal assistance ends.

"Grant closeout" means the process by which a granting agency determines that all applicable administrative actions and all required work of the grant have been completed by the grantee and the granting agency.

"Suspension" means an action by a granting agency which temporarily suspends Federal assistance under the grant pending corrective action by the grantee or pending a decision to terminate the grant by the granting agency.

"Termination" means the cancellation of Federal assistance, in whole or in part, under a grant at any time prior to the date of competion. The following do not constitute termination:

(a) Withdrawal of funds awarded on the basis of the grantee's underestimate of the unobligated balance in a prior period;

(b) Failure on the part of the granting agency to ward a continuation, extension, renewal, supplemental, or other additional grant;

(c) Withdrawal of the unobligated balance as of the end of a grant budget period because a continuation, renewal, or extension grant will not be made;

(d) Annulment, i.e. voiding, of a grant upon determination that the award was obtained fraudulently, or was otherwise illegal or invalid from inception.

§ 74.111 Closeout.

(a) Each grant shall be closed out as promptly as is feasible after completion or termination.

(b) In closing out HEW grants, the following shall be observed:

(1) Upon request, the granting agency shall make, or arrange for, prompt payment to the grantee for allowable reimbursable costs not covered by previous payments.

(2) The grantee shall immediately refund or otherwise dispose of in accordance with instructions from the granting agency or the HEW financial officers representing the granting agency, any unencumbered balance of cash advanced to the grantee.

(3) The grantee shall submit within 90 days of the date of completion or termination, all financial, performance, and other reports required as a condition of the grant. The agency may grant extensions when requested by the grantee.

(4) The granting agency shall make a settlement for any upward or downward adjustment of the Federal share of costs, to the extent called for by the terms and conditions of the grant.

(c) (1) The closeout of a grant shall not affect the retention period for, or Federal rights of access to, grant records pursuant to Subpart D of this part.

(2) If a grant is closed out without audit on behalf of the Federal Government, the granting agency retains the right to disallow and recover an appropriate amount after fully considering any recommended disallowances resulting from a subsequent audit on behalf of the Federal Government.

(3) The closeout of a grant does not affect the grantee's responsibilities with respect to property pursuant to subpart O of this part, or with respect to any program income for which the grantee is still accountable pursuant to Subpart P of this part.

(d) (1) With respect to each grant, there shall be payable to the Federal Government the total sum of:

(i) Any grant funds paid to the grantee by the Federal Government in excess of the amount to which the grantee is finally determined to be entitled pursuant to the terms and conditions of the grant,

(ii) Any interest or other investment income earned on advances of grant funds which is due to the Federal Government pursuant to § 74.48,

(iii) The Federal share of any program income for which the grantee is accountable pursuant to Subpart F of this part, but which is not used or otherwise disposed of in accordance with the requirements of that subpart,

(iv) Any amounts due the Federal Government pursuant to Subpart O of this part, and

(v) Any other amounts finally determined to be due to the Federal Government pursuant to the terms and conditions of the grant.

(2) The total sum payable pursuant to paragraph (d)(1) of this section shall constitute a debt owed by the grantee to the Federal Government, and shall, if not paid upon demand, be recovered from the grantee or its successors or assignees by set-off or other action as provided by law.

§ 74.112 Violation of grant terms and conditions.

When a grantee has materially failed to comply with the terms and conditions of a grant, the granting agency may suspend the grant, in accordance with § 74.113, terminate the grant for cause, as provided in § 74.114, or take such other remedies as may be legally available and appropriate in the circumstances.

§ 74.113 Suspension.

(a) When a grantee has materially failed to comply with the terms and conditions of a grant, the granting agency may, upon written notice to the grantee, suspend the unused balance of the grant in whole or in part. Notice of suspension will contain a statement of the reasons for that action and any corrective action required of the grantee, and shall be given as far in advance of the effective date of the suspension as is reasonable considering the granting agency's responsibilities to protect the Federal Government's interest. Suspensions shall remain in effect until the grantee has taken corrective action satisfactory to the granting agency, or given evidence satisfactory to the granting agency that such corrective action will be taken, or until the granting agency terminates the grant.

(b) Except as authorized by the granting agency, new obligations incurred by the grantee during the suspension period will not be allowable. Any new obligations not authorized by the granting agency at the same time as or after it gives notice will be made solely at the grantee's own risk; the granting agency need not allow costs which result from them. In any case, however, necessary and otherwise allowable costs which the grantee could not reasonably avoid during the suspension period will be allowed if they result from obligations properly incurred by the grantee before the effective date of the suspension and not in anticipation of suspension or termination. At the discretion of the granting agency, third-party in-kind contributions applicable to the suspension period may be allowed in satisfaction of cost sharing or matching requirements.

(c) Appropriate adjustments to payments under the suspended grant will be made either by withholding subsequent payments or by not allowing the grantee credit for disbursements made in payment of unauthorized obligations incurred during the suspension period.

§ 74.114 Termination.

(a) *Termination for cause.* The granting agency may terminate any grant in whole, or in part, at any time before the date of completion, whenever it determines that the grantee has materially failed to comply with the terms and conditions of the grant. The granting agency shall promptly notify the grantee in writing of the determination and the reasons for the termination, together with the effective date. Payments made to grantees or recoveries by granting agencies under grants terminated for cause shall be in accordance with the legal rights and obligations of the parties.

(b) *Termination on other grounds.* (1) Except as provided in paragraph (a) of this section, grants may be terminated in whole or in part only as follows:

(i) By the granting agency with the consent of the grantee, in which case the two parties shall agree upon the termination conditions, including the effective date and in the case of partial terminations, the portion to be terminated, or

(ii) By the grantee, upon written notification to the granting agency, setting forth the reasons for such termination, the effective date, and in the case of partial terminations, the portion to be terminated. However, if, in the case of a partial termination, the granting agency determines that the remaining portion of the grant will not accomplish the purposes for which the grant was made, the granting agency may terminate the grant in its entirety pursuant to either paragraph (a) or paragraph (b)(1)(i) of this section.

(2) When a grant is terminated pursuant to paragraph (b)(1) of this section, the grantee shall not incur new obligations for the terminated portion after the effective date, and shall cancel as many outstanding obligations as possible. The granting agency shall allow full credit to the grantee for the Federal share of the noncancellable obligations properly incurred by the grantee prior to termination.

Subpart N—Forms for Applying for Grants

§ 74.120 Scope of subpart.

(a) This subpart promulgates forms and instructions to be used by governmental organizations (except hospitals and institutions of higher education operated by a government) in applying to HEW for grants. This subpart is not applicable, however, to those formula grant programs which do not require applicants to apply to HEW for funds on a project basis.

(b) This subpart permits granting agencies to prescribe the form of applications by nongovernmental organizations (including hospitals and institutions of higher education operated by a government), but prescribes the use of a standard facesheet for certain of these applications.

§ 74.121 Authorized forms and instructions.

(a) *Governmental organizations.* (1) In applying to HEW for grants, governmental organizations shall use only the forms specified in §§ 74.122 through 74.126 inclusive, and such supplementary or other forms as may from time to time be prescribed by the granting agency with the approval of OGPM and OMB.

(2) Governmental applications shall submit the original and two copies of their applications. However, granting agencies may waive the requirement for the second copy, or both copies, when not needed.

(3) Governmental applicants shall follow all applicable standard instructions promulgated by OMB for use in connection with the forms specified in § 74.122 through § 74.26, inclusive. Granting agencies may promulgate substantive supplementary instructions only with the approval of OGPM and OMB.

(4) Except as provided by § 74.106 all requests by governmental grantees for renewals, revisions continuations, and augmentations (i.e., supplements) to approved grants shall be submitted on the same form as the original application. For those purposes, only the SF 424 and the affected pages of the forms should be submitted.

(b) *Nongovernmental organizations.* Nongovernmental organizations shall use application forms prescribed by the granting agency, except that the facesheet of such applications shall be Standard Form 424 for grants under programs covered by Attachment A, Part 1, of OMB Circular No. A-95.

§ 74.122 Preapplications for Federal Assistance.

(a) The Preapplication for Federal Assistance form prescribed by Attachment M of General Services Administration Federal Management Circular 74-7 shall be used to:

(1) Establish communication between the applicant and the granting agency;

(2) Determine the applicant's eligibility;

(3) Determine how well the project can compete with similar applications from others; and

(4) Eliminate any proposals which have little or no chance for Federal funding before applicants incur significant expenditures for preparing an application.

(b) Preapplication shall be mandatory when the potential applicant is a governmental organization and the proposed project would require more than $100,000 of Federal funding for construction, land acquisition, or land development. The granting agency may require preapplications from any type of organization, for any type of project, and irrespective of the amount of estimated Federal funding. In addition any governmental organization has the right to submit a preapplication even when not required by the granting agency.

§ 74.123 Notice of Preapplication Review Action.

The Notice of Preapplication Review Action form prescribed by Attachment M of General Services Administration Federal Management Circular 74-7 will be used by granting agencies to inform the applicant of the results of the review of the preapplications submitted to them. The granting agency will send a notice to the applicant originally within 45 days of the receipt of the preapplication form. When the review cannot be made within 45 days, the applicant will be informed by letter as to when the review will be completed.

§ 74.124 Application for Federal Assistance (Nonconstruction Programs).

The Application for Federal Assistance (Nonconstruction Programs) form prescribed by Attachment M of General Services Administration Federal Management Circular 74-7 shall be used by governmental organizations in applying for any grant to which this subpart is applicable except where a form specified in § 74.125 or § 74.126 is to be used.

§ 74.125 Application for Federal Assistance (for Construction Programs).

The Application for Federal Assistance (for Construction Programs) form prescribed by Attachment M of General Services Administration Federal Management Circular 74-7 shall be used by governmental organizations in applying for any grant whose purpose is solely or primarily construction, land acquisition, or land development.

§ 74.126 Application for Federal Assistance (Short Form).

The Application for Federal Assistance (Short Form) form prescribed by Attachment M of General Services Administration Federal Management Circular 74-7 shall be used by governmental organizations in applying for any single-purpose, one-time grant of less than $10,000 not requiring clearinghouse approval, an environmental impact statement, or the relocation of persons, businesses, or farms. Granting agencies may, at their discretion, authorize or prescribe this form for applications for larger amount.

Subpart O—Property

§ 74.130 Scope of subpart.

(a) This subpart sets forth requirements relating to real property and tangible personal property, part or all of the acquisition cost of which is either borne as a direct cost by a grant or counted as a direct cost towards satisfying a cost-sharing or matching requirement of a grant. The subpart does not apply to (1) real property or tangible personal property for which only depreciation or use allowances are charged, or (2) real property or tangible personal property which is donated as a third-party in-kind contribution (as defined in § 74.51), or (3) tangible personal property acquired primarily for sale or rental rather than for use in the supported activities (see § 74.46).

(b) This subpart also sets forth or references policies relating to intangible personal property arising out of activities assisted by a grant.

§ 74.131 General.

Grantees, subgrantees, and cost-type contractors under a grant managing property subject to this subpart may follow their own property management policies and procedures, provided they observe the requirements of this subpart. With respect to such property, granting agencies will not impose any requirements not authorized by this part unless specifically required by Federal law.

§ 74.132 Definitions.

As used in this subpart:

"Acquisition" of property includes purchase, construction, or fabrication of property.

"Acquisition cost" of an item of purchased nonexpendable personal property means the net invoice price of the property, including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Other charges such as the cost of installation, transportation, taxes, duty or protective in-transit insurance, shall be included in or excluded from the unit acquisition cost in accordance with the regular accounting practices of the organization purchasing the property.

"Expendable personal property" means all tangible personal property other than nonexpendable personal property.

"Nonexpendable personal property" means tangible personal property having a useful life of more than one year and an acquisition cost of $300 or more per unit except that organizations subject to Cost Accounting Standards Board (CASB) regulations may use the CASB standard of $500 or more per unit and useful life of two years. An organization may use its own definition of nonexpendable personal property provided that such definition would at least include all tangible personal property as defined herein.

"Personal property" means property of any kind except real property. It may be tangible—having physical existence, or intangible—having no physical existence, such as patents, inventions, and copyrights.

"Real property" means land, including land improvements, structures and appurtenances thereto, but excluding movable machinery and equipment.

"Replacement property" means nonexpendable personal property purchased to take the place of other nonexpendable personal property. To qualify as replacement property, it must serve the same function as the property replaced and must be of the same nature or character, although not necessarily of the same grade or quality.

§ 74.133 Real property.

Except as otherwise provided by Federal law, real property to which this subpart applies shall be subject to the following requirements, in addition to any other requirements imposed by the terms and conditions of the grant:

(a) *Title.* Title to real property acquired by the grantee or by the recipient of a cost-type procurement contract awarded by the grantee shall vest in the grantee upon acquisition. Title to real property acquired by a subgrantee or by the recipient of a cost-type procurement contract awarded by a subgrantee shall vest in the subgrantee upon acquisition. The grantee, or the subgrantee through the grantee, may request approval from the granting agency to transfer title to an eligible third party for continued use for authorized purposes in accordance with paragraph (b) of this section. If such approval is permissible under Federal law and is given, the terms of the transfer shall provide that the transferee shall assume all the rights and obligations of the transferor set forth in this section.

(b) *Use.* The property shall be used for the originally authorized purpose as long as the property is needed for that purpose. When the property is no longer so needed, the grantee, or the subgrantee through the grantee, may request approval of the granting agency to use the property for other purposes. Use for other purposes shall be limited to:

(1) Projects or activities supported by other Federal grants or assistance agreements.

(2) Projects or activities not supported by other Federal grants or assistance agreements but having, nevertheless, purposes consistent with those of the legislation under which the original grant was made.

(c) *Disposition.* When the real property is no longer to be used as provided in paragraph (b) of this section, the grantee, or the subgrantee through the subgrantee, shall follow the disposition instructions of the granting agency or its successor agency. Those instructions will provide for one of the following alternatives:

(1) The property shall be sold under guidelines provided by the granting agency, and the Federal Government shall be paid an amount computed by multiplying the Federal share of the property times the proceeds from sale (after deducting actual and reasonable selling and fix-up expenses, if any, from the sales proceeds). Proper sales procedures shall be used that provide for competition to the extent practicable and result in the highest possible return.

(2) The grantee or subgrantee shall be permitted the option either to sell the property in accordance with paragraph (c)(1) of this section or to retain title. If title is retained, the Federal Government shall be paid an amount computed by multiplying the fair market value of the property by the Federal share of the property.

(3) The grantee or subgrantee shall transfer title to the property to the Federal Government in accordance with instructions provided by the granting agency and the grantee shall be entitled to be paid an amount computed by multiplying the current fair market value of the property by the non-Federal share of the property.

§ 74.134 Nonexpendable personal property—title.

Title to nonexpendable personal property acquired by a grantee shall vest in the grantee upon acquisition. Title to such property acquired by a subgrantee or a cost-type procurement contractor under a grant or subgrant shall vest, upon acquistion, in the grantee, subgrantee, contractor, or an intermediate awarding party, as the non-Federal parties involved may determine.

§ 74.135 Nonexpendable personal property—Federal right to require transfer.

For items of nonexpendable personal property having a unit acquisition cost of $1,000 or more, the granting agency shall have the right to require transfer of the property, including title to the property, to the Federal Government or to a non-Federal party named by the granting agency when such party is eligible under law to be furnished the property. This right will normally be exercised by HEW granting agencies only when the project or activity for which the property was acquired is transferred from one grantee to another. The right is subject to the following conditions:

(a) In order to exercise the right, the granting agency must issue disposition instructions to the grantee, or to the subgrantee or contractor through the grantee, before other permissible disposition of the property takes place and not later than the 120th day after the end of Federal grant support for the project or activities for which it was acquired. If the granting agency fails to issue disposition instructions within that time, the right shall lapse.

(b) If the right is exercised, the grantee shall be entitled to be paid any reasonable shipping or storage costs incurred, plus an amount computed by multiplying the current fair market value of the property by the non-Federal share of the property.

§ 74.136 Nonexpendable personal property—use.

(a) Nonexpendable personal property which has not been transferred pursuant to § 74.135 shall be used in the project or activity for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds. When no longer needed for the original project or activity, the property shall be used in other projects or activities having a need for the property and currently or previously sponsored by the Federal Government, in the following order of priority:

(1) Projects or activities currently or previously sponsored by the granting agency which awarded the grant under which the property was acquired.

(2) Projects or activities currently or previously sponsored by other Federal agencies.

(b) During the time that nonexpendable personal property is held for use in the project or activity for which it was acquired, the grantee, subgrantee, or contractor shall make it available for use in other projects or activities which it conducts if such other use will not interfere with the work on the project or activity for which the property was originally acquired. First preference for such other use shall be given to other projects or activities currently or previously sponsored by the same granting agency which awarded the grant under which the property was acquired; second preference shall be given to projects or activities currently or previously sponsored by other Federal agencies; and third preference shall be given to projects or activities not currently or previously approved by the Federal Government.

§ 74.137 Nonexpendable personal property—replacement.

(a) Nonexpendable personal property which is being used in accordance with § 74.136 or which is exempt from that section but still subject to the right in § 74.135 may be traded in for replacement property, as defined in § 74.132. Alternatively, the property may be sold separately and the proceeds applied to the purchase price of such replacement property: *Provided, however,* That the time interval between sale of the property and purchase or firm order for the replacement property will not exceed 30 days or any longer interval authorized by the granting agency.

(b) If the property is traded in, the amount received for trade-in will be considered to be the difference between the amount that would have been paid for the replacement property without a trade-in and the amount actually paid with the trade-in. This amount plus the additional outlay will constitute the full acquisition cost of the replacement property for the purposes of paragraph (d) of this section and § 74.147.

(c) Except as provided in § 74.140, if the property replaced is sold separately and the proceeds from sale exceed the acquisition cost of the replacement property, the granting agency shall be paid an amount calculated by multiplying the excess proceeds by the Federal share of the property replaced.

(d) Replacement property acquired pursuant to this section shall be subject to the same use, disposition, and other provisions of this subpart that would apply to the property replaced. Where applicability of a provision depends upon the acquisition cost of property, the acquisition cost of the original property shall be used to determine whether the provision applies unless the additional outlay for the replacement property, if any, is also supported by an HEW grant. In the latter case, the full acquisition cost of the replacement property (the amount for the replaced property plus

the additional outlay) shall be used to determine whether the provision applies.

§ 74.138 Nonexpendable personal property—disposition.

When nonexpendable personal property can no longer be used as provided in § 74.136, disposition of the property shall be made as follows:

(a) *Property with a unit acquisition cost of less than $1,000.* The property may be sold or used for other activities without compensation to the Federal Government. In the case of property acquired under a subgrant or cost-type contract, the non-Federal parties involved shall determine amongst themselves who shall have the right to sell or use the property.

(b) *Property with a unit acquisition cost of $1,000 or more.* The property may be retained for other uses, provided the granting agency or its successor is paid an amount calculated by multiplying the current fair market value of the property by the Federal share of the property. In the case of property acquired under a subgrant or cost-type contract, the non-Federal parties involved shall determine amongst themselves who shall have the first option to retain the property. If the property has further use value but is not needed by any of the parties involved, the grantee shall request disposition instructions from the granting agency. Normally, the granting agency will issue instructions to the grantee within 120 days after receipt of the request. The following procedures shall govern:

(1) If the grantee is so instructed or if disposition instructions are not issued within the 120 day period, the property shall be sold and the granting agency shall be paid an amount calculated by multiplying the sales proceeds by the Federal share of the property. However, $100 or 10 percent of the total sales proceeds, whichever is greater, may be deducted and retained from that amount for selling and handling expenses.

(2) If the grantee is instructed to have the property shipped elsewhere, the grantee shall be entitled to be paid any reasonable shipping or interim costs incurred, plus an amount computed by multiplying the current fair market value of the property by the non-Federal share of the property.

(3) If the grantee is instructed to dispose of the property otherwise, the grantee shall be entitled to be reimbursed by the granting agency for any costs incurred in such disposition.

(c) *Date of disposition.* (1) Disposition of property subject to Paragraph (a) of this section shall be considered to occur on the date the property can no longer be used in projects or activities currently or previously sponsored by the Federal Government.

(2) Disposition of property subject to paragraph (b) of this section shall be considered to occur on the earliest of the following: (i) The date the Federal Government is compensated for its share of the fair market value or (ii) the date the property is determined to have no further use value or (iii) the date the property leaves the physical possession of the grantee and the subgrantees or contractors, if any, who acquired or used the property. However, replacement of property pursuant to § 74.137 will not be considered a disposition of the property that was replaced.

§ 74.139 Nonexpendable personal property—procedural requirements.

Procedures for managing nonexpendable personal property subject to this subpart shall, as a minimum, meet the requirements listed in this section. These requirements shall be observed until the date of disposition of the property, determined in accordance with § 74.138(c), or until the property is replaced pursuant to § 74.137. In addition, the property records required by paragraph (a) of this section shall be subject to the retention and access requirements of Subpart D of this part. In the case of property in the hands of subgrantees or cost-type contractors, the grantee is responsible for ensuring that these requirements are met, regardless of whether the procedures themselves are performed by the contractor, subgrantee or grantee or by a combination of the parties involved.

(a) Property records shall be maintained accurately and shall include:

(1) A description of the property, including manufacturer's model number, if any.

(2) An identification number, such as the manufacturer's serial number.

(3) Identification of the grant under which the property was acquired.

(4) Whether title vests in the grantee, subgrantee, or contractor.

(5) Acquisition date and unit acquisition costs. If replacement property, a cross reference to the property records of the property replaced.

(6) The Federal share of the property as determined in accordance with §§ 74.142 through 74.148.

(7) Location, use and condition of the property and the date this information was reported.

(8) Ultimate disposition data, including date of disposition and selling price or the method used to determine current fair market value if the granting agency was compensated for the Federal share of that value. If the property was replaced pursuant to § 74.137, in lieu of the preceding disposition data, data on the trade-in or sale and a cross reference to the property records of the replacement property.

(b) A physical inventory of property shall be taken and the results reconciled with the property records at least once every two years to verify the existence, current utilization, and continued need for the property. Any differences between quantities determined by the physical inspection and those shown in the accounting records shall be investigated to determine the causes of the differences.

(c) A control system shall be in effect to insure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft of nonexpendable personal property shall be investigated and fully documented.

(d) Adequate maintenance procedures shall be implemented to keep the property in good condition.

(e) Where sale of the property is authorized or required, proper selling procedures shall be established which will provide for competition to the extent practicable and result in the highest possible return.

§ 74.140 Exemptions for nonexpendable personal property acquired under grants subject to certain statutes.

Some Federal statutes (e.g., Pub. L. 83–934, 42 U.S.C. 1892) provide that, in grants for the conduct of certain specified activities at certain specified kinds of institutions or organizations, granting agencies shall have authority to vest title to equipment purchased with the grant funds in such an institution or organization without further obligation to the Federal Government or on such terms and conditions as deemed appropriate. Nonexpendable personal property purchased by such an institution or organization under a grant subject to such a statute shall be exempt from §§ 74.136, 74.137(c), 74.138, and 74.139. For the purposes of § 74.135(a), disposition of such property shall be considered to take place when the property is no longer needed for the project or activities for which it was acquired.

§ 74.141 Expendable personal property.

(a) Title to expendable personal property acquired by a grantee shall vest in the grantee upon acquisition. Title to such property acquired by the recipient of a subgrant or of a cost-type procurement contract awarded under a grant or subgrant shall vest in the grantee, the recipient, or an intermediate awarding party, as the non-Federal parties involved may determine.

(b) If there is a residual inventory of such property exceeding $1,000 in total aggregate fair market value upon termination or completion of the grant, subgrant, or cost-type contract for which it was acquired and the property is not needed for any other project or activity, currently or previously sponsored by the Federal Government the property shall either be retained for use in other activities or be sold. In either case, the granting agency shall be paid an amount computed by multiplying the current fair market value or the proceeds from sale by the Federal share of the property. If the property is sold, ten percent of the proceeds may be deducted and retained from the amount otherwise due the granting agency, for selling and handling expenses.

§ 74.142 Federal share of property—general.

(a) Several sections of this subpart require a determination of the Federal (or non-Federal) share of real or tangible personal property. Sections 74.143 through 74.148 set forth rules by which such a determination shall be made.

These rules are intended to produce equitable results that are independent of whether the accounting system of the grantee or any other party involved charges the acquisition cost of an item of property to HEW funds, to required cost-sharing or matching, or partly to each. To this end, the rules provide that the Federal share of property shall be the same as the granting agency's share of the acquiring party's total costs under the grant.

(b) In all calculations pursuant to these rules, the value of third-party in-kind contributions (as defined in Subpart G of this part) is excluded, since those contributions do not make the donor a party to the acquisition of the property and are not part of the Federal and non-Federal funds used for the actual outlays of the acquiring party.

(c) These calculations also exclude project costs which are neither borne by an HEW grant nor required to meet a cost-sharing or matching requirement of an HEW grant. The purpose of this exclusion is to make it unnecessary for the grantee or others to report or account for such costs merely in order to calculate the Federal and non-Federal shares in property. It is, of course, recognized that a portion of the acquisition cost of property acquired for a project may constitute voluntary cost-sharing or overmatching, or may otherwise neither be borne by a grant nor counted towards a cost-sharing or matching requirement of a grant. Accordingly, provision is made for appropriate reductions to the Federal share of the property in such cases. (See § 74.146).

§ 74.143 Federal share of property acquired by a grantee.

Except as explained in § 74.146 through 74.148, the Federal share of real or tangible personal property acquired by a grantee shall be the same as the granting agency's share of the grantee's costs under the grant and shall be calculated as follows:

(a) Determine the total costs incurred by the grantee which were either borne by the grant or counted toward meeting a cost-sharing or matching requirement of the grant. Include costs incurred by subgrantees only to the extent they were paid for by the grantee.

(b) Divide the figure determined in accordance with paragraph (a) of this section into the amount of those costs borne by the HEW grant.

§ 74.144 Federal share in property acquired by a subgrantee.

Except as explained in § 74.146 through 74.148, the Federal share of real or tangible personal property acquired by a subgrantee shall be the same as the granting agency's share of the subgrantee's costs under the grant and shall be calculated as follows:

(a) Determine the granting agency's share of the grantee's costs in accordance with § 74.143.

(b) Determine the grantee's share of the subgrantee's costs. Exclude all subgrantee costs that are not ultimately borne by or counted towards a cost-sharing or matching requirement of the HEW grant.

(c) Multiply the ratios obtained in paragraphs (a) and (b) of this section. For example, if the granting agency bears 50 percent of the grantee's costs under the grant (paragraph (a)) and the grantee bears 50 percent of the subgrantee's costs under the HEW grant (paragraph (b)), the Federal share of the subgrantee's costs and of property acquired by that subgrantee shall be 25 percent.

(d) If the property was acquired under a lower tier subgrant (i.e., a subgrant under a subgrant), continue the preceding procedure as far as necessary by multiplying the share last obtained times the subgrantee's share of the costs of the lower tier subgrantee.

§ 74.145 Federal share of property acquired by a cost-type procurement contractor under a grant or subgrant.

The Federal share of real or tangible personal property acquired by the recipient of a cost-type procurement contract awarded by the grantee or a subgrantee shall be determined as if the contractor were a subgrantee.

§ 74.146 Federal share of property acquired only in part under a grant.

If only a portion of the acquisition cost of an item of real or tangible personal property is borne by a grant or counted toward meeting a cost-sharing or matching requirement of a grant, the Federal share in that item of property shall be calculated as follows:

(a) Divide the total acquisition cost of the property into the amount of that cost borne by the grant or counted toward meeting a cost-sharing or matching requirement of the grant. For example, if the property cost $10,000 and $5,000 of that cost was neither borne by the grant nor required to meet a cost sharing or matching requirement then count only one-half.

(b) Multiply the ratio obtained in paragraph (a) of this section by the Federal share of the costs of the grantee, subgrantee, or cost-type contractor determined in accordance with §§ 74.143–74.145.

§ 74.147 Federal share of replacement property.

The Federal share of replacement property shall be calculated as follows:

(a) Determine the Federal share in the property replaced.

(b) Divide the full acquisition cost of the replacement property into the amount received for trade-in of the property replaced or the proceeds from sale of that property (less any reasonable and necessary selling expenses).

(c) Multiply the ratios obtained in paragraphs (a) and (b) of this section.

(d) If the additional outlay for the replacement property is also supported by an HEW grant, determine the Federal share in the property resulting from that support (calculated as explained in § 74.146) and add that share ratio to the share ratio calculated in paragraph (c) of this section.

§ 74.148 Federal share of property under annual grants.

Where grant support is continued or renewed on an annual or essentially annual basis, the Federal share of real property or tangible personal property shall be based on grantee costs pertaining to (a) the grant funding period or periods in which the grantee incurs the obligation or obligations resulting in the acquisition of the property or (b) in the case of property acquired under a subgrant, the grant funding period in which the grantee awards the subgrant which, directly or through another subgrant, gives rise to the acquisition of the property.

§ 74.149 Division of non-Federal share of market value or proceeds.

In the case of real property or tangible personal property acquired under a subgrant or cost-type contract under a grant, the division of the non-Federal share of the market value or proceeds from sale of the property among the grantee, the recipient of the subgrant or contract, and any intermediate recipients, upon disposition of the property pursuant to this subpart, shall be a matter for the non-Federal parties involved to determine.

§ 74.150 Inventions and patents.

HEW's regulations on inventions and patents arising out of activities assisted by a grant are set forth in Parts 6 and 8 of this title.

§ 74.151 Copyrights.

(a) When copyrightable material is developed in the course of or under a grant or subgrant to a government, the government which developed the work is free to copyright it or to permit others to do so.

(b) Unless otherwise provided by the terms and conditions of the HEW grant, when copyrightable material is developed in the course of or under a grant or subgrant to a nongovernmental organization, the grantee or subgrantee which developed the work is free to copyright it or to permit others to do so.

(c) If the work is developed under a subgrant, the subgrantee's rights pursuant to paragraphs (a) and (b) of this section shall be subject to any prohibitions or restrictions of the grantee which may have been part of the terms of the subgrant.

(d) If any material developed in the course of or under a grant or subgrant is copyrighted, HEW shall have a royalty-free, nonexclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, the work for Government purposes.

§ 74.152 Right of grantees to impose additional requirements.

With respect to any property subject to this subpart which is acquired or developed under a subgrant or a contract under a grant or subgrant, the grantee is not prohibited by this subpart from imposing additional requirements not inconsistent with the requirements in this subpart or in other terms and conditions

of the grant. For example, the grantee may prohibit subgrantees from using real property acquired under a subgrant for any project or activity other than the one originally authorized unless the grantee, as well as the granting agency, gives its approval (see § 74.133(b)).

Subpart P—Procurement Standards

§ 74.160 Scope of subpart; terminology.

(a) This subpart provides standards for use by grantees and subgrantees in establishing procedures for the procurement of supplies, equipment, construction, and other services whose cost is either borne as a direct cost by a grant or counted as a direct cost towards satisfying a cost-sharing or matching requirement of a grant. Except where stated otherwise (see § 74.166), this subpart does not apply to the awarding of subgrants.

(b) The standards in this subpart are intended to insure that materials and services procured under HEW grants and subgrants are obtained in an effective manner and in compliance with the provisions of applicable Federal law and Executive Orders.

(c) The term "procuring party," as used in this subpart, means the grantee or the subgrantee, whichever is making a procurement that is subject to this subpart.

§ 74.161 General.

(a) Procuring parties may use their own procurement policies, provided that procurements and procedures subject to this subpart are made in accordance with the standards set forth in this subpart.

(b) The standards contained in this subpart do not relieve the procuring party of the contractual responsibilities arising under its contracts. The procuring party is the responsible authority, without recourse to HEW, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements that are subject to this subpart. This includes but is not limited to: Disputes, claims, protests of award, source evaluation, or other matters of a contractual nature. Matters concerning violation of law are to be referred to such local, State, or Federal authority as may have proper jurisdiction.

§ 74.162 Code of conduct.

(a) The procuring party shall maintain a code or standards of conduct that shall govern the performance of its officers, employees or agents engaged in the awarding and administration of contracts that are subject to this subpart. The code or standards shall provide for disciplinary actions to be applied for violations of the code or standards by the procuring party's officers, employees, or agents. For governmental procuring parties, such disciplinary actions are required only to the extent otherwise permissible under the government's laws, rules, or regulations, but, to the extent so permissible, shall also include disciplinary actions to be applied for violations by contractors or their agents.

The procuring party's officers, employees or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or potential contractors.

(c) No employee, officer, or agent of a nongovernmental procuring party shall participate in the selection, award, or administration of a contract subject to this subpart where, to his or her knowledge, any of the following has a financial interest in that contract:

(i) The employee, officer, or agent;

(ii) Any member of his or her immediate family;

(iii) His or her partner;

(iv) An organization in which any of the above is an officer, director, or employee;

(v) A person or organization with whom any of the above individuals is negotiating or has any arrangement concerning prospective employment.

§ 74.163 Free competition.

(a) All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition.

(b) The procuring party should be alert to organizational conflicts of interest or noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. In particular, a contractor that develops or drafts specifications, requirements, a statement of work, an invitation for bids or a request for proposals for a particular procurement by a nongovernmental procuring party should be excluded from competing for that procurement.

(c) Solicitations shall clearly set forth all requirements that the bidder/offerer must fulfill in order for his bid/offer to be evaluated. Awards shall be made to the responsible bidder/offeror whose bid/offer is responsive to the solicitation and is most advantageous to the procuring party, price and other factors considered. Factors such as discounts, transportation costs, and taxes may be considered in determining the lowest bid. Any and all bids/offers may be rejected when it is in the procuring party's interest to do so, and, in the case of governmental procuring parties, such rejections are in accordance with the government's applicable law, rules, or regulations.

§ 74.164 Procedural requirements.

The procuring party shall establish procurement procedures which provide for as a minimum, the following:

(a) Proposed procurement actions shall follow a procedure to assure that unnecessary or duplicative items are not purchased. Where appropriate, an analysis shall be made of lease and purchase alternatives to determine which would be the most economical, practical procurement.

(b) Solicitations for goods and services shall be based upon a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. "Brand name or equal" description may be used as a means to define the performance or other salient requirements of a procurement, and when so used, the specific features of the named brand which must be met by bidders/offerors should be clearly specified.

(c) Where applicable, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e (b)) shall be observed.

(d) Positive efforts shall be made by procuring parties to utilize small business and minority-owned business sources of supplies and services. Such efforts should allow these sources the maximum feasible opportunity to compete for contracts subject to this subpart.

(e) The type of procuring instruments used, e.g., fixed-price contracts, cost reimbursable contracts, purchase orders, incentive contracts, shall be determined by the procuring party but must be appropriate for the particular procurement and for promoting the best interest of the grant project or program involved. The "cost-plus-a-percentage-of-cost" method of contracting shall not be used.

(f) Contracts shall be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past performance, financial and technical resources or accessibility to other necessary resources.

(g) The following shall be subject to prior approval at the discretion of the granting agency if the aggregate expenditure is expected to exceed $5,000: (1) Any proposed sole source contract; (2) any proposed contract to be awarded by a nongovernmental procuring party where only one bid or proposal has been received.

(h) Nongovernmental procuring parties should make some form of price or cost analysis in connection with every negotiated procurement action. Price analysis may be accomplished in various ways, including the comparison of price quotations submitted, market prices and similar indicia, together with discounts. Cost analysis is the review and evaluation of each element of cost proposed by the offeror to determine reasonableness, allocability and allowability.

(i) Procurement and files for purchases in excess of $10,000 shall include the following:

(1) Basis for contractor selection;

(2) Justification for lack of competition when competitive bids or offers are not obtained;

(3) Basis for award cost or price.

(j) A system for contract administration shall be maintained to ensure contractor conformance with terms, conditions and specifications of the contract, and to ensure adequate and timely followup of all purchases.

§ 74.165 Requirement for governments to use formal advertising.

(a) Except as provided in paragraph (b) of this section, in making procurements that are subject to this section, governmental procuring parties shall use the formal advertising method of procurement, involving adequate purchase descriptions, sealed bids, and public openings of bids.

(b) Procurements may be negotiated if it is not practicable or feasible to use formal advertising. Generally, such procurements may be negotiated if one or more of the following conditions prevail:

(1) The public exigency will not permit the delay incident to advertising.

(2) The material or service to be procured is available from only one person or firm.

(3) The aggregate amount involved does not exceed $10,000.

(4) The contract is for personal or professional services, or for any service to be rendered by a university, college, or other educational institution.

(5) The material or services are to be procured and used outside the limits of the United States and its possessions.

(6) No acceptable bids have been received after formal advertising.

(7) The purchases are for highly perishable materials or medical supplies, for material or services where the prices are established by law, for technical items or equipment requiring standardization and interchangeability of parts with existing equipment, for experimental, developmental or research work, for supplies purchased for authorized resale, or for technical or specialized supplies requiring substantial initial investment for manufacture.

(8) Formal advertising is otherwise not practicable or feasible, and negotiation is authorized by applicable State, local, or tribal law, rules, or regulations.

(c) Notwithstanding the existence of circumstances justifying negotiation, competition shall be obtained to the maximum extent practicable.

(d) For every negotiated procurement in excess of $10,000 by a governmental procuring party, written justification for the use of negotiation in lieu of formal advertising shall be included in the government's procurement records and files, in addition to the information required by § 74.164(l). The justification may be on a class basis, i.e., covering a group of related or similar contracts, or it may be on an individual contract basis.

§ 74.166 Contract and subgrant provisions.

(a) *Scope.* (1) This section sets forth requirements relating to provisions that must be included in contracts for procurements that are subject to this part. The requirements shall also apply to subcontracts of any tier under such contracts, and the term "contracts" in this section shall be construed as including subcontracts.

(2) Certain requirements in this section also apply to subgrants and so state.

(b) *General.* All contracts and subgrants shall contain sufficient provisions to define a sound and complete agreement.

(c) *Administrative remedies for violations.* Contracts in excess of $10,000 shall contain contractual provisions or conditions that will allow for administrative, contractual or legal remedies in instances in which contractors violate or breach contract terms, and provide for such remedial actions as appropriate.

(d) *Termination provisions.* Contracts in excess of $10,000 shall contain suitable provisions for termination by the awarding party, including the maner by which termination will be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

(e) *E.O. 11246.* Where applicable, construction contracts in excess of $10,000 shall contain a provision requiring compliance with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60).

(f) *Copeland Act.* Contracts or subgrants in excess of $2,000 for construction of repair shall include a provision for compliance with the Copeland "Anti-Kick Back" Act (18 U.S.C. 874) as supplemented in Department of Labor regulation (29 CFR Part 3). All suspected or reported violations shall be reported to the granting agency by the grantee or through the grantee and any intermediate awarding parties.

(g) *Davis-Bacon Act.* When required by the Federal legislation governing the grant program, all construction contracts in excess of $2,000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276 a to a7) as supplemented by Department of Labor regulations (29 CFR Part 5). All suspected or reported violations shall be reported to the granting agency by the grantee or through the grantee and any intermediate awarding parties.

(h) *Contract Work Hours and Safety Standards Act.* All contracts subject to the Contract Work Hours and Safety Standards Act (40 U.S.C. 327 et seq.) shall include a provision requiring the contractor to comply with the applicable sections of the Act and the Department of Labor's implementing regulations (29 CFR Parts 5 and 1926).

(i) *Inventions and patents.* Contracts or subgrants which may give rise to inventions subject to Parts 6 and 8 of this title shall include a provision requiring compliance with those parts.

(j) *Clean Air and Water Acts.* Contracts and subgrants in excess of $100,000 shall contain provisions requiring compliance with all applicable standards, order, or regulations issued pursuant to the Clean Act of 1970 (42 U.S.C. 1857 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) as amended. Violations shall be reported in writing by the party awarding the contract or subcontract to the appropriate regional office of the Environmental Protection Agency, and a copy of the report shall be submitted to the granting agency through the intermediate awarding parties, if any.

Subpart Q—Cost Principles

§ 74.170 Scope of subpart.

This subpart establishes the principles to be used (except to the extent inconsistent with an applicable Federal statute or regulation) in determining costs applicable to HEW grants, and to subgrants or cost-type contracts under HEW grants.

§ 74.171 Grants to governmental organizations.

The principles to be used in determining the allowable costs of activities conducted or administered by governmental organizations under grants (and subgrants or cost-type contracts awarded to them under grants) are set forth in Appendix C to this part.

§ 74.172 Grants to institutions of higher education.

(a) *Research and development.* The principles for determining the allowable costs of research and development work performed by institutions of higher education (other than profit-making institutions) under grants (and subgrants or cost-type contracts awarded to them under grants) are set forth in Part I of Appendix D to this part.

(b) *Training and other educational services.* The principles for determining the allowable costs of training and other educational services provided by institutions of higher education (other than profit-making institutions) under grants (and subgrants or cost-type contracts awarded to them under grants) are set forth in Part II of Appendix D to this part.

(c) *Other activities.* Appendix D to this part shall be used as a guide for determining the allowable costs of other activities conducted by institutions of higher education (other than profit-making institutions) under grants (and subgrants or cost-type contracts awarded to them under grants).

§ 74.173 Grants to hospitals.

(a) *Research and development.* The principles for determining the allowable costs of research and development work performed by hospitals under grants (and subgrants or cost-type contracts awarded to them under grants) are set forth in Appendix E to this part.

(b) *Other activities.* Appendix E to this part shall be used as a guide for determining the allowable costs of other activities conducted by hospitals under grants (and subgrants or cost-type contracts awarded to them under grants).

§ 74.174 Grants to other nonprofit organizations.

(a) *Nonconstruction.* The principles for determining the allowable costs of activities conducted by nonprofit organizations other than institutions of higher education, hospitals, and governmental organizations under nonconstruction grants (and nonconstruction subgrants or cost-type contracts awarded to them under grants) are set forth in Appendix F to this part.

(b) *Construction.* Appendix F to this part shall be used as a guide for determining the allowable costs of work under construction grants to nonprofit organizations (other than institutions of higher education, hospitals and governmental organizations) and any construction subgrants or cost-type contracts awarded to such nonprofit organizations under grants.

§ 74.175 Subgrants and cost-type contracts.

(a) It should be noted that the cost principles applicable to a subgrantee or cost-type contractor under an HEW grant will not necessarily be the same as those applicable to the grantee. For example, where a State government awards a subgrant or cost-type contract to an institution of higher education, Appendix D to this part would apply to the costs incurred by the institution of higher education, even though Appendix C would apply to the costs incurred by the State.

(b) The principles to be used in determining the allowable costs of work performed by commercial organizations other than hospitals under cost-type contracts awarded to them under HEW grants are set forth in 41 CFR Subpart 1–15.2.

§ 74.176 Costs allowable with approval.

Each set of cost principles identifies certain costs that are allowable to the extent that they are approved by the granting agency. The following procedures govern approval of these costs.

(a) When costs are treated as indirect costs (or are allocated pursuant to a government-wide cost allocation plan), acceptance of the costs as part of the indirect cost rate or cost allocation plan shall constitute approval.

(b) When the costs are treated as direct costs, they must be approved in advance by the granting agency. If the costs are specified in the grant budget, approval of the budget shall constitute approval of the costs. If they are not specified in the budget, the grantee shall obtain specific prior approval in writing from the granting agency.

(c) A granting agency may conditionally waive the requirement for its approval of the costs. The condition will be that the grantee establish adequate safeguards to ensure that a meaningful review of the propriety of the costs is conducted by an appropriate grantee official prior to the incurrence of the costs. Such a waiver shall apply only to the requirement for granting agency approval. If, upon audit or otherwise, it is determined that the costs do not meet other requirements or tests for allowability specified by the applicable cost principles, such as reasonableness and necessity, the costs may be disallowed.

Subpart R—[Reserved]

Subpart S—Construction Grants—[Reserved]

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[FR Doc. 77-2155 Filed 1-21-77;8:45 am]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 73]

[Docket No. 21048; RM-2370]

FM BROADCAST STATION IN ADEL, GEORGIA

Proposed Change in Table of Assignments

Adopted: January 13, 1977.

Released: January 18, 1977.

1. *Petitioner, Proposal and Comments.* (a) Notice of Proposed Rule Making is given concerning the amendment of the FM Table of Assignments (§ 73.202(b) of the Commission's Rules and Regulations) as concerns Adel, Georgia.

(b) A "Petition for Rule Making" and amendment were filed by Timberland Communications, Inc. ("petitioner"), through counsel, proposing the assignment of either Channel 221A or Channel 237A to Adel, Georgia. Timberland had initially requested Channel 249A. As a result of Commission action in Docket No. 19551 assigning Channel 249A to Ocilla, Georgia, Timberland amended its proposal. The Broadcast Good Music! Committee, one of the parties in Docket 19551, supra, appealed the Commission's decision to Federal Court.[1] Good Music! then filed a Request for Stay with the Commission regarding matters in this Notice, stating that is felt the Channel 237A proposal for Adel could prove to be mutually exclusive with its appeal and could create a multiplicity of litigation. Resolution of the petition to stay became unnecessary when Good Music! reversed its position and agreed not to object to issuance of this Notice.[2] As will be indicated in the comments below, these associated controversies need not be considered in this Notice, since Channel 221A can be assigned to Adel thereby avoiding the peripheral issues which would arise if Channel 237A were considered at this time as a possible alternative.[3]

3. *Community Data.* (a) *Location.* Adel is located in the south-central region of Georgia approximately 209 kilometers (130 miles) south of Macon, 344 kilometers (214 miles) south of Atlanta and 233 kilometers (145 miles) northwest of Jacksonville, Florida.

(b) *Population.* Adel, 4,972; Cook County, 12,129 (1970 U.S. Census figures).

(c) *Local Broadcast Service.* Daytime-only AM Station WBIT (Class III, D) licensed to petitioner is the only AM aural service licensed to the community. Adel is also within the 1 mV/m contour of Moultrie FM Station WMTM and Valdosta FM Stations WGOV and WAFT.

(d) *Economic Data.* The city of Adel, seat of Cook County, was incorporated in 1919 and currently has 18 manufacturing industries within its area employing over 1,600 persons. The city has two industrial areas which it hopes will attract new industry, and a five-million dollar expansion by the Weyerhauser Company is pointed to by petitioner as evidence of the city's growth potential. Petitioner indicates that between 1960 and 1970, Adel's population increased 15.1 percent and Cook County's population increased 2.6 percent. Petitioner's data would appear to indicate a growing community with only limited aural service which needs a first local full-time FM service to serve the needs of its citizens and to further stimulate its planned economic growth. For these reasons, a rule making proceeding would be appropriate to more thoroughly consider these needs.

4. *Preclusion Studies.* Preclusion is not ordinarily considered in the context of a first Class A assignment to a community without an FM channel assignment. However, because a Channel 221A assignment could potentially affect otherwise possible educational FM service, petitioner should furnish data showing the preclusionary effect, if any, of assigning Channel 221A to Adel upon the future assignment of educational stations on Channels 218, 219 and 220.

5. *Comments.* Since there possibly remains a question of where Channel 237A should ultimately be assigned,[4] we believe that the assignment of Channel 221A should be proposed for Adel. Although either channel may be assigned to Adel now without affecting any existing FM assignment, we believe it best to avoid the possible delay which could be caused by considering all the issues of a Channel 237A assignment, and this Notice is directed only to those issues involving a Channel 221A assignment.

PROPOSED AMENDMENT TO THE FM TABLE OF ASSIGNMENTS

6. Accordingly, the Commission proposes to amend the FM Table of Assignments (§ 73.202(b) of the Commission's Rules and Regulations) with regard to the community listed below as follows:

City	Channel No.	
	Present	Proposed
Adel, Ga.		221A

7. *Authority.* The Commission's authority to institute rule making proceedings; showings required, cut-off procedures and filing requirements are contained in the attachment and are incorporated by reference herein.

8. *Comments and Replies.* Interested persons and parties may file comments

[1] The U.S. Court of Appeals, D.C. Circuit, Case No. 75–1926, affirmed the Commission's action on October 29, 1976.

[2] Letter dated June 3, 1976, to the Commission from attorneys for Good Music!

[3] Additionally, an alleged "counterproposal" was filed by a Mr. John W. Davidson proposing Channel 237A to McRae, Georgia. Since the distance between McRae and Adel is 121 kilometers (75 miles) and is beyond the 105 kilometers (65 miles) Class A cochannel separation required, both communities could have Channel 237A assigned (absent other conflicts), and Mr. Davidson's filing will be treated as a separate request for rule making for McRae.

[4] Hawkinsville, Ocilla and McRae, Georgia, all had expressed an interest in Channel 237A.

on or before February 28, 1977, and reply comments on or before March 21, 1977.

FEDERAL COMMUNICATIONS COMMISSION,
WALLACE E. JOHNSON,
Chief, Broadcast Bureau.

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and § 0.281(b)(6) of the Commission's Rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. *Showings required.* Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build the station promptly. Failure to file may lead to denial of the request.

3. *Cut-off procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of Commission Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If filed later than that, they will not be considered in connection with the decision in this docket.

4. *Comments and reply comments; service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the notice of proposed rule making to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission Rules.)

5. *Number of copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public inspection of filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc.77-2101 Filed 1-21-77;8:45 am]

[47 CFR Part 89]

PUBLIC LAND MOBILE RADIO SYSTEMS

Interconnection Policies; Order Extending Time for Filing Reply Comments

Adopted: January 13, 1977.

Released: January 17, 1977.

In the matter of amendment of part 89 (Class A only) of the Commission's rules to prescribe policies and regulations to govern "interconnection" of private land mobile radio systems with the public, switched, telephone network,[1] Docket No. 20846.

1. In response to a petition filed by Airsignal International, Inc., and for the reasons set forth therein: *It is ordered,* Pursuant to authority contained in section 4(i) of the Communications Act of 1934, as amended, and in § 0.331 of the Commission's rules, That the time for filing Reply Comments in the above-entitled proceeding is extended to February 1, 1977.

ARLAN K. VAN DOORN,
Acting Chief, Safety and Special Radio Services Bureau.

[FR Doc.77-2102 Filed 1-21-77;8:45 am]

[1] See 41 FR 25840, June 22, 1976 and 41 FR 35863, August 25, 1976.

notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ACTION

FOSTER GRANDPARENT AND SENIOR COMPANION PROGRAMS

Income Eligibility Level

This notice revises the schedule of income eligibility levels for individuals and families for the Foster Grandparent Program and the Senior Companion Program published in the FEDERAL REGISTER of July 30, 1976 (41 FR 31962). The revised schedule is based on poverty figures effective May 5, 1976, obtained from the Community Services Administration Income Poverty Guidelines dated March 31, 1976, and Department of Labor Consumer Price Index for October 1976, dated November 19, 1976. The amounts include state supplements to the Federal Supplemental Security Income (SSI) Program, effective August 9, 1976.

These ACTION programs are authorized pursuant to section 211 of the Domestic Volunteer Service Act of 1973, Pub. L. 93-113, 87 Stat. 402. Pursuant to section 421(4) of Pub. L. 93-113, 87 Stat. 414, the income eligibility levels are determined by the currently applicable guideline published by the Community Services Administration, pursuant to section 625 of the Economic Opportunity Act of 1974, as amended (42 USC 2971(a)), and increased by the amounts individual states supplement the Federal Supplement Security Income (SSI) Program, permitting ACTION, in accordance with section 421(4) of Pub. L. 93-113, to take into consideration existing poverty guidelines as appropriate to local situations. Section 625 permits the OEO poverty guideline to be adjusted for cost-of-living changes.

The income eligibility levels will be reviewed at least once a year, and similar schedules will be prepared to reflect any changes required as a result of that review.

Pursuant to section 420 of Pub. L. 93-113, this policy will become effective on January 24, 1977.

ACTION schedule of income eligibility levels for foster grandparents or senior companions

State	Individuals	Family of 2	Family of 3
Alabama	$2,885	$3,815	$4,785
Alaska	5,630	7,640	8,795
Arizona	2,885	3,810	4,735
Arkansas	2,885	3,810	4,735
California	4,185	7,050	7,975
Colorado	3,285	5,610	6,535
Connecticut	3,945	4,530	5,455
Delaware	2,885	3,810	4,735
District of Columbia	2,885	3,810	4,735
Florida	2,885	3,810	4,735
Georgia	2,885	3,810	4,735
Hawaii	3,515	4,685	5,735
Idaho	3,645	4,410	5,745
Illinois	3,010	3,810	4,735
Indiana	2,885	3,810	4,735
Iowa	2,885	3,810	4,735
Kansas	2,885	3,810	4,735
Kentucky	2,885	3,810	4,735
Louisiana	2,885	3,810	4,735
Maine	3,005	2,990	4,915
Maryland	2,885	3,830	4,735
Massachusetts	4,260	5,950	6,875
Michigan	3,175	4,245	5,170
Minnesota	3,225	4,255	5,180
Mississippi	2,885	3,810	4,735
Missouri	2,885	3,810	4,735
Montana	2,885	3,810	4,735
Nebraska	3,665	4,700	5,625
Nevada	3,460	4,975	5,875
New Hampshire	2,950	3,810	4,735
New Jersey	3,150	3,930	4,855
New Mexico	2,885	3,810	4,735
New York	3,615	4,720	5,645
North Carolina	2,885	3,810	4,735
North Dakota	2,885	3,810	4,735
Ohio	2,885	3,810	4,735
Oklahoma	3,150	4,305	5,320
Oregon	3,030	3,930	4,855
Pennsylvania	3,275	4,395	5,320
Rhode Island	3,260	4,520	5,445
South Carolina	2,885	3,810	4,735
South Dakota	2,885	3,810	4,735
Tennessee	2,885	3,810	4,735
Texas	2,885	3,810	4,735
Utah	2,885	3,810	4,735
Vermont:			
Area 1	3,275	4,330	5,255
Area 2	3,275	4,570	5,495
Virginia	2,885	3,810	4,735
Washington:			
Area 1	3,295	4,240	5,165
Area 2	3,100	3,885	4,810
West Virginia	2,885	3,810	4,735
Wisconsin	3,715	5,075	5,975
Wyoming	2,885	3,810	4,735
Puerto Rico	2,885	3,180	4,735
Virgin Islands	2,885	3,810	4,735

For families of more than three persons in the household, add the appropriate supplement for each member over three as follows:

	Per person
In the 48 contiguous States	$925
Alaska	1,155
Hawaii	1,060

Revision based on Community Services Administration Income Poverty Guidelines effective May 5, 1976, DHEW Supplemental Security Income Summary dated August 9, 1976, and DOL Consumer Price Index for October 1976.

RONALD E. GEREVAS,
Acting Deputy Director.

[FR Doc.77-1961 Filed 1-21-77;8:45 am]

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

[Notice of Designation Number A366]

NORTH DAKOTA

Designation of Emergency Areas

The Secretary of Agriculture has determined that farming, ranching, or aquaculture operations have been substantially affected in the following North Dakota Counties as a result of drought during the 1976 crop year.

Dickey	McIntosh
Emmons	Ransom
La Moure	Richland
Logan	Sargent

Therefore, the Secretary has designated this area as eligible for emergency loans pursuant to the provisions of the Consolidated Farm and Rural Development Act, as amended by Pub. L. 94-68, and the provisions of 7 CFR 1832.3(b).

Applications for emergency loans must be received by this Department no later than March 7, 1977, for physical losses and October 5, 1977, for production losses, except that qualified borrowers who receive initial loans pursuant to this designation may be eligible for subsequent loans. The urgency of the need for loans in the designated area makes it impracticable and contrary to the public interest to give advance notice of proposed rulemaking and invite public participation.

Done at Washington, D.C., this 18th day of January 1977.

FRANK B. ELLIOTT,
Administrator,
Farmers Home Administration.

[FR Doc.77-2070 Filed 1-21-77;8:45 am]

[Notice of Designation Number A367]

SOUTH DAKOTA

Designation of Emergency Areas

The Secretary of Agriculture has determined that farming, ranching, or aquaculture operations have been substantially affected in the following South Dakota Counties as a result of drought during the 1976 crop year.

Aurora	Hyde
Beadle	Jerauld
Brookings	Kingsbury
Brown	Lake
Brule	Lyman
Buffalo	McCook
Campbell	McPherson
Clark	Marshall
Codington	Mellette
Corson	Miner
Davison	Potter
Day	Roberts
Dewey	Sanborn
Deuel	Shannon
Douglas	Spink
Edmunds	Stanley
Faulk	Sully
Grant	Todd
Gregory	Tripp
Hamlin	Walworth
Hand	Washbaugh
Hanson	Ziebach
Hughes	

Therefore, the Secretary has designated this area as eligible for emergency loans pursuant to the provisions of the Consolidated Farm and Rural Develop-

ment Act, as amended by Pub. L. 94–68, and the provisions of 7 CFR 1832.3(b).

Applications for emergency loans must be received by this Department no later than March 7, 1977, for physical losses and October 5, 1977, for production losses, except that qualified borrowers who receive initial loans pursuant to this designation may be eligible for subsequent loans. The urgency of the need for loans in the designated area makes it impracticable and contrary to the public interest to give advance notice of proposed rulemaking and invite public participation.

Done at Washington, DC, this 18th day of January 1977.

FRANK B. ELLIOTT,
Administrator
Farmers Home Administration.

[FR Doc.77–2071 Filed 1–21–77;8:45 am]

Forest Service

SOUTH FORK SALMON RIVER PLANNING UNIT

Availability of Draft Environmental Statement

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, the Forest Service, Department of Agriculture, has prepared a draft environmental statement for the South Fork Salmon River Planning Unit, Boise National Forest and Payette National Forest, Idaho. The Forest Service report number is USDA–FS–DES (Adm) R4–77–2.

The environmental statement identifies and evaluates the probable effects of the land use plan for the South Fork Salmon River Planning Unit on the Boise and Payette National Forests in south-central Idaho. The purpose of the plan is to allocate National Forest lands within the unit to specific resource uses and activities; establish management objectives; document management direction, decisions, and necessary coordination between resource uses and activities; and provide for the protection, use, and development of the various resources within the planning unit. All resource activities will be monitored so that tolerable levels of sedimentation will not be exceeded in the South Fork Salmon River.

This draft environmental statement was transmitted to CEQ on January 13, 1977.

Copies are available for inspection during regular working hours at the following locations:

USDA, Forest Service, South Agriculture Bldg., Room 3230, 12th St. and Independence Ave., S.W., Washington, D.C. 20250.
Regional Planning Office, USDA, Forest Service, Federal Building, Room 4120, Ogden, Utah 84401.
Forest Supervisor, Boise National Forest, 1075 Park Boulevard, Boise, Idaho 83706.
Forest Supervisor, Payette National Forest, Forest Service Building, P.O. Box 1026, McCall, Idaho 83638.
District Forest Ranger, Krassel Ranger District, McCall, Idaho 83638.
District Forest Ranger, Cascade Ranger District, Cascade, Idaho 83611.

A limited number of single copies are available upon request to Forest Supervisor Edward C. Maw, Boise National Forest, 1075 Park Boulevard, Boise, Idaho 83706 and Forest Supervisor William B. Sendt, Payette National Forest, Forest Service Building, P.O. Box 1026, McCall, Idaho 83638.

Copies of the environmental statement have been sent to various Federal, State, and local agencies as outlined in the CEQ Guidelines.

Comments are invited from the public, and from State and local agencies which are authorized to develop and enforce environmental standards, and from Federal agencies having jurisdiction by law or special expertise with respect to any environmental impact involved for which comments have not been requested specifically.

Comments concerning the proposed action and requests for additional information should be addressed to Forest Supervisor Edward C. Maw, Boise National Forest, 1075 Park Boulevard, Boise, Idaho 83706 and/or Forest Supervisor William B. Sendt, Payette National Forest, Forest Service Building, P.O. Box 1026, McCall, Idaho 83638. Comments must be received by March 15, 1977, in order to be considered in the preparation of the final environmental statement.

VERN HAMPRE,
Regional Forester.

JANUARY 13, 1977.

[FR Doc.77–2059 Filed 1–21–77;8:45 am]

Office of the Secretary

U.S. MEAT ANIMAL RESEARCH CENTER ADVISORY COMMITTEE

Renewal

Pursuant to the provisions of Pub. L. 92–463, the Federal Advisory Committee Act, and OMB Circular A–63, notice is hereby given of the renewal of the U.S. Meat Animal Research Center Advisory Committee (Agricultural Research Service, U.S. Department of Agriculture). The Committee provides advice and counsel concerning matters vital to the interests of the Department of Agriculture and the beef cattle, sheep and swine industries. The Committee reviews the character of research in progress and brings to the attention of the Department researchable problems confronting the beef cattle, sheep and swine industries, which is clearly in the public interest. The Committee provides counsel on the identification of high priority problems for which the resources of the U.S. Meat Animal Research Center are uniquely adapted for gaining solutions.

Membership on the Committee includes representatives of all segments of the beef cattle, sheep and swine industries, including service industries as well as representatives from State agricultural experiment stations.

The effectiveness of the Department's research program at the U.S. Meat Animal Research Center will be enhanced by having this advice and counsel which is not available in any other way.

Further information concerning this Committee may be obtained by contacting the Director, U.S. Meat Animal Research Center, P.O. Box 166, Clay Center, Nebraska 68933.

Done at Washington, D.C., this 18th day of January, 1977.

JOHN A. KNEBEL,
Secretary.

[FR Doc.77–2174 Filed 1–21–77;8:45 am]

FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 20288; FCC 77–35]

AMERICAN TELEPHONE AND TELEGRAPH CO.

Final Decision and Order re Tariff Investigation

Adopted: January 5, 1977.

Released: January 17, 1977.

In the matter of American Telephone and Telegraph Company Investigation into the lawfulness of Tariff F.C.C. No. 267, offering a Dataphone Digital Service Between Five Cities.

TABLE OF CONTENTS

INTRODUCTION
DECISION
I. Reasonableness of Rates
A. AT&T's market projections.
B. Costs.
1. LRIC cost study.
2. FDC cost studies.
a. Hybrid FDC method 1.
b. Hybrid FDC method 7.
c. Conclusion.
3. Non-compensatory rates.
4. Rate structure.
5. Competitive service ratemaking principles.
6. Docket No. 18128 considerations.
C. Conclusions.
II. Like Services
III. Channel Service Unit/Data Service Unit
IV. Anticompetitive Practices
V. Resale
VI. Remedies
VII. Procedural Questions
CONCLUSIONS
APPENDIX I
APPENDIX II

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INTRODUCTION

1. This proceeding is concerned with the lawfulness of American Telephone and Telegraph Company's (AT&T) Tariff F.C.C. No. 267 which enunciates the rates, practices and regulations for Dataphone Digital Service (DDS). This private line service offering of interstate digital data communications within and between specified metropolitan areas in the continental United States utilizes a technique called data under voice (DUV). This method of transmitting digital signals employs a portion of the radio relay frequency spectrum which allegedly has been otherwise normally unused. DDS provides two-way transmission of digital signals at synchronous speeds at 2.4, 4.8, 9.6 or 56 kilobits per second (Kbps).[1] AT&T is presently authorized to provide DDS over a 24 city network. An application for authority to extend the service to an additional 40 cities (W–P–C–433) has been filed.[2] AT&T plans to eventually operate a nationwide end-to-end DDS network serving 96 cities.

2. The subject tariff became effective, after several postponements, on December 15, 1974. We initiated this investigation into the lawfulness of Tariff 267 by Memorandum Opinion and Order, 50 FCC 2d 501 (1974) (hereinafter "Designation Order"). The following issues were designated for hearing:

(1) Whether the charges, classifications, practices, and regulations published in the aforesaid tariffs are or will be unjust and unreasonable within the meaning of section 201(b) of the Act.

(2) Whether such charges, classifications, practices, and regulations will, or could be applied to, subject any person or class of persons to unjust or unreasonable discrimination or give any undue or unreasonable preference or prejudice to any person, class of persons, or locality, within the meaning of section 202(a) of the Act.

(3) Whether the tariff schedules conform to the requirements of section 203 of the Act and Part 61. (47 CFR Part 61) of our rules implementing that section.

(4) If any such charges, classifications, practices, or regulations are found to be unlawful, whether the Commission, pursuant to Section 205 of the Act, should prescribe charges, classifications, practices and regulations for the service governed by the tariffs, and if so, what should be prescribed.

(5) Whether Dataphone Digital Service, as reflected in the tariff filing described herein, involves rates or practices which may be anticompetitive or otherwise unlawful.

(6) Whether Dataphone Digital Service, as reflected in the tariff filing described herein, represents a just and reasonable discrete classification of service within the meaning of Section 201(b) of the Act.

(7) Whether the rate making principles, including allocations of costs, used by AT&T in deriving its proposed rates for Dataphone Digital Service, are appropriate to the types of competitive services proposed in the tariff filing described herein, and whether the costs derived therefrom justify the charges for the proposed service.

(8) Whether the terms and conditions for resale and shared use, as reflected in the tariff filing described herein, are just and reasonable.

[1] A related service offering at 1.544 megabits per second is at issue in Docket No. 20690.

[2] We partially held that application in abeyance pending improvement in DDS earnings and completion of the present proceeding. See 60 FCC 2d 835 (1976).

3. In the Designation Order, we also instructed AT&T to file at regular intervals reports regarding costs, revenues and operating experience associated with the provision of DDS as a condition to the grant of AT&T's section 214 applications. AT&T did not keep records of actual costs as called for in our Order. However, AT&T did submit several studies of its investment and expenses for DDS. Included was a 1975 year-end study employing three fully distributed cost (FDC) studies. Also submitted were two separate FDC studies incorporating refinements to the data base, one using alleged embedded investments in 24 cities to allocate certain expense accounts and the other using nationwide averages for the allocation.

4. Several parties in addition to AT&T, including the Trial Staff of the Commission's Common Carrier Bureau (Trial Staff), Data Transmission Company (Datran)[3] and the Independent Data Communications Manufacturers Association (IDCMA), participated in the "paper" proceeding[4] specified by the Designation Order. An Initial Decision (ID), FCC 76D–34 (released July 2, 1976), appended hereto, was issued by the Administrative Law Judges on June 22, 1976. The ID found that DDS and AT&T's private line analog data service are not like communications services within the meaning of section 202(a) of the Communications Act, 47 U.S.C. 202 (a). This finding was based on the technological differences utilized by the two services to perform the common function of data transmission. The ID concluded that three separate reasons existed for declaring AT&T's DDS rates unlawful. First, the ID found the rates to be unjust and unreasonable, pursuant to section 201(b) of the Communications Act, 47 U.S.C. 201(b), on the basis that AT&T's estimated projected annual revenues for DDS appeared to be overstated and its net investment and expenses understated. Second, the ID concluded that the DDS rates were discriminatory under section 202(a) of the Act. The ID based its conclusions on the following factors: The rates for the higher speeds were disproportionately higher than for the lower speeds; costs of providing the four speeds of service were distributed in a discriminatory manner resulting in unjustified advantage to low speed users; and the resale and shared use restrictions were unjustified and discriminatory. Finally, the ID found AT&T's rates were predatory and anticompetitive based on what the ID considered to be AT&T's deliberate attempt to justify a non-compensatory rate by understating costs using the long run incremental cost (LRIC) study method, its failure to account for research and development costs, and its treatment of the DUV spectrum as a "free economic good."

5. The ID found insufficient material in the record to prescribe rates for DDS. However, the ID did state that AT&T should be required to file a new tariff to continue its DDS offering and set forth the following general prescriptions to be applicable to such a tariff filing (para. 128): (a) Any restructuring of Tariff 267 rates should be reasonably related to the costs of providing that service; (b) under any restructuring, each rate element should be reasonably related to the cost of providing that element of service; (c) the rates for DDS equipment marketed by AT&T in competition with customer-provided equipment must be based on the full cost of that equipment; (d) interconnection of DDS customer-provided equipment is to be made through the same means at a uniform interface or connecting arrangement; and (e) Bell must eliminate the unjust, and unreasonable shared use and resale provisions of Tariff 267. The ID stated that AT&T's tariff should be accompanied by a fully distributed cost study based on one year of reasonably current historical DDS operating experience. Prior to the submission of a new DDS tariff, the ID concluded that AT&T should file interim rates no lower than those for its private line data services offered under its Tariff F.C.C. No. 260.

6. Exceptions to the ID were filed by AT&T, the Trial Staff, Datran, IDCMA, the Department of Defense (DOD), Telenet Communications Corporation (Telenet), Aeronautical Radio, Inc. (ARINC), the Associated Press (AP) and United Press International, Inc. (UPI). In summary, the Trial Staff excepts to the ID finding that DDS and analog data services are not like services. AT&T takes exception to the ID's ruling that revenues are overstated and investments and expenses understated. Further, AT&T maintains that its estimates of demand

[3] On August 19, 1976, Datran filed an application seeking authority for an indefinite emergency discontinuance of all its common carrier services. The Commission conditionally granted Datran's request in its Order and Certificate, 60 FCC 2d 958 (1976). Datran discontinued all service on September 15, 1976. Datran also filed a voluntary petition in bankruptcy with the U.S. District Court for the Eastern District of Virginia. On August 27, 1976, the Court appointed Stanley J. Samorajczyk Receiver in Bankruptcy for Datran. Mr. Samorajczyk was later elected Trustee by Datran's creditors. We will fully consider Datran's position and arguments found in the record of this proceeding, despite what has transpired affecting Datran's status.

[4] The presiding Administrative Law Judges criticized the use of the "paper" hearing in this case (Initial Decision, fn. 13) as not providing satisfactory opportunity for development of testimony and cross-examination of witnesses. We specified the procedures to be followed in this hearing with the explanation that we were continuing to experiment with procedures under which to conduct "paper" proceedings. Designation Order, 50 FCC 2d at 515, fn. 17. It was anticipated that supplemental oral procedures, rather than multiple interrogatories, would be utilized in instances to which the ID refers. See 50 FCC 2d at 515. However, oral procedures involving witnesses were not used, only conferences without witnesses. In the future, we will expect a mixture of written and oral procedures to be used in such cases as appropriate. We are continuing to identify and utilize the most effective methods of conducting hearings so that a full record might be developed with minimal expense to the parties and in order to conduct and complete rate proceedings expeditiously.

and revenues are sound and its cost data is accurate. AT&T also excepts to the ID finding that its DDS rate structure is discriminatory, arguing that the relationship of rates to speed is proper and that the resale and shared use issue has been determined in a separate proceeding. In several specific objections, Datran takes exception to what it considers the ID's failure to adequately adjust AT&T's understated costs and overstated revenues. IDCMA excepts to the ID finding that a 9.5 percent rate of return is sufficient for DDS and claims that such a rate of return will result in cross-subsidization from monopoly services. UPI contends that the DDS rates are neither too low nor unlawful.

7. AT&T takes exception to the determination that its DDS rates are predatory. On the other hand, the Trial Staff and Datran except to the ID finding on the basis that it should be strengthened to find an attempt to monopolize the data market. In support of its contention, AT&T maintains that alternative use of the LRIC method was not precluded by the Designation Order, a position supported by a majority of the other parties to this proceeding. AT&T further contends that both its LRIC and FDC studies support a finding that its rates are compensatory, but Datran argues that AT&T did not conduct any actual FDC studies. AT&T and DOD take exception to the ID's use of FDC Method 1 as being unjustified. The ID's treatment of DUV is excepted to by AT&T on the one hand, claiming that it considered DUV as a free economic good only in the LRIC study, and by Datran on the other to the extent that the ID refers to DUV as "normally unused." Datran and IDCMA take exception to the ID's refusal to prescribe rates and argues that the record is satisfactory for prescription. In regard to the ID's interim rate guidelines, both Datran and IDCMA contend that they should be more specific. ARINC and AP argue that the interim rates should be lower. Finally, Datran and Telenet maintain that AT&T should be required to offer DDS only through a separate subsidiary. Requests for oral argument made by Datran, DOD and IDCMA were denied by the Commission. FCC 76–857 (released September 14, 1976).[5]

[5] On November 24, 1976, AT&T filed a petition to defer the issuance of our decision in this proceeding pending refinement of the proper cost study procedures and forecasting techniques set forth in the "Final Decision" in Docket No. 18128, FCC 76–886 (released October 1, 1976). AT&T maintains that failure to await these procedures and techniques may result in a DDS decision inconsistent with the guidelines. We find no merit in AT&T's contentions and are denying its petition herein. Based on the record in this proceeding, we are able to conclude that AT&T's DDS rates are unjust and unreasonable and otherwise unlawful, independent of any determination reached in Docket 18128. However, we also find that the DDS rates are inconsistent with the requirements set forth in Docket 18128.

DECISION

8. As modified herein, and in consideration of the exceptions thereto, we essentially affirm the findings and conclusions of the Initial Decision.

I. REASONABLENESS OF RATES

9. AT&T has supplied cost and revenue information for DDS as part of its direct case in this proceeding. We are presented with the question of whether this information as well as that adduced elsewhere in the record of this proceeding meets the burden imposed upon AT&T of showing that its DDS tariff (Tariff F.C.C. No. 267) is just and reasonable and free of unlawful discrimination within the meaning of sections 201(b) and 202(a) of the Communications Act.[6] Our determination of the appropriate cost and revenue information is central to the disposition of Issues 1, 2, 3 and 7 of this proceeding, which will be considered herein.[7]

A. AT&T MARKET PROJECTIONS

10. The revenue projections made by AT&T were based on two market studies formulated through the use of a computerized market simulator. The model was designed to quantitatively estimate the market for DDS at various test rates for the years 1974, 1975 and 1976, assuming digital data networks comprising 24 cities by the end of the first year, 60 by the second and 96 by the third. These market quantities were then used as inputs in developing an engineering plan of the network and the corresponding plant configurations required to provide DDS at the various test rates. The requisite investments and associated expenses were then determined for each of these plant quantities. Thus, the reliability of AT&T's simulation model is crucial to the evaluation of both AT&T's revenue forecasts and its cost forecasts.

11. In order to determine the validity of the model, forecasted and actual results must be compared.[8] A comparison can be made between annualized monthly recurring revenues Bell actually received from DDS rates for December, 1975 representing one year of actual operation with annualized monthly recurring DDS revenues as estimated by AT&T's simulator for the first year of operation for 24 cities. To some extent, such a comparison indicates the reasonableness and reliability of the simulator's forecasts.[9] Tabulated below are both the estimated and actual monthly recurring revenues annualized for the initial year for 24 cities. Total annualized revenues and annualized revenues by speed are given. The percent difference between the actual and the forecasted revenues are also shown.

[6] For appropriate burden of proof tests, see Decision in Docket No. 19989 (WATS), 59 FCC 2d 671 (1976), and Interim Decision in Docket No. 19919 (High Density—Low Density), 55 FCC 2d 224 (1975).

[7] See para. 2, supra, for a description of these issues.

[8] The record in this proceeding limits our evaluation of output to this type of comparison. The ID delineated the infirmities of this approach (fn. 33). We recognize such shortcomings, but find that in the instant proceeding that properly made comparisons of projected and actual results can yield valuable information concerning the reliability of AT&T's simulation model.

[9] Insuring that rate levels and rate structure are just and reasonable involves comparing annual data, whether actual or forecasted, and not an annualization of one month of a year. Because AT&T has only forecasted annualized revenues with its simulator, to make any comparisons of actual and forecasted revenues acceptable, we are forced to use annualized data. This, however, should not be construed as general acceptance of this practice. See paragraph 20, infra.

	DDS revenues [1] (In thousands)				
	Total	2.4 Kbps	4.8 Kbps	9.6 Kbps	56 Kbps
Forecasts	13,833	8,551	1,977	1,691	1,615
Actuals	2,267	133	575	1,290	268
Percent difference	510	6,329	244	31	503

[1] Forecasts were taken from A.T. & T.'s March 1974 simulation run and are for recurring digital revenues only. Actuals were taken from A.T. & T.'s Jan. 22, 1976, filing, transmittal No. 12497, of recurring revenues for DDS at tariff 267 rates.

12. AT&T has alleged that these tremendous differences between actual and forecasted revenues are due to unforeseen factors outside its control, these factors including: (1) Deferral of the effective date of the initial DDS tariff by seven months; (2) delay in the approval of the nineteen city DDS Section 214 application; (3) use of higher Tariff No. 260 rates for the first year for nineteen cities; (4) delay of the still-pending 40 city DDS Section 214 application (W–P–C–433); (5) lowering of Datran's competitive rate and its bulk rate tariff offering.

13. In examining these alleged external influences, it should be noted that in February, 1975, when asked about the effect of the delay in the implementation of DDS on Bell's original plans, Bell stated:

> At the present time, it is not expected that network expansion will be significantly delayed so as to substantially affect the revenues at the end of 1976.

This statement was made after AT&T was aware of all the above external factors except Datran's "bulk rate offering," which became effective October 22, 1975, and delay in grant of the 40 city application.

14. The deferral of the DDS tariff by seven months to December, 1974 has no effect on the revenue comparison since we used December, 1975 revenue data, which follows one year of actual operation. In regard to alleged delays in the approval of the nineteen city DDS section 214 applications, we note that AT&T received section 214 authority at the same time we designated Tariff No. 267 for hearing in December, 1974. Thus, we authorized the additional nineteen cities at the beginning of the first year of operation for DDS. All 24 cities assumed to be in operation at the end of the first year by AT&T's simulator were in fact in operation by October of the first year. The use of the higher Tariff 260 rates applied only to the additional nineteen cities for the lower speeds (2.4 Kbps and 4.8 Kbps). On the average, these Tariff 260 rates for 2.4 Kbps were approximately 32 percent higher than Tariff 267 rates (and 1 percent higher for 4.8 Kbps).[10] In no case were these rates more than 93 percent higher. For this 32 percent differential to account for the 6,329 percent difference in forecasted over actual 2.4 Kbps use would imply a price elasticity of demand for DDS well in excess of any reasonable estimate, including AT&T's apparent implicit use of 2 to 2.5.[11]

15. The alleged delay of the 40 city DDS application has no bearing on our revenue comparisons since we are comparing actual and forecasted revenues for 24 cities only. Likewise, Datran's lowered rates should have no effect on the forecasts since the rates were only lowered to a level consistent with that assumed by Bell's simulation model. As to Datran's bulk rate offering, we have been unable to detect any decline in the rate of growth in monthly recurring DDS revenues after the introduction of Datran's bulk rate offering.[12] Therefore, we must conclude that the above external factors have had no material effect on actual DDS revenues.[13]

[10] These percentages were calculated on the basis of an average length of haul for 2.4 Kbps of 242 miles and 880 miles for 4.8 Kbps. These average lengths of haul are those reported by AT&T in Transmittal No. 12497, January 22, 1976, Vol. 10, p. 53, and are for year end 1975.

[11] Assuming a price elasticity of demand of 2.5 and an average increase in price of 32 percent, a decrease in demand of 80 percent would result. Thus, annualized recurring 2.4 Kbps revenues would have been about $300,000, still leaving a 2,750 percent difference between actuals and forecasted 2.4 Kbps revenues.

[12] Prior to October, 1975, DDS recurring revenues were growing approximately $21,600 per month and between October, 1975 and July, 1976 at $30,400 per month.

[13] In its Exceptions to the ID, AT&T makes a comparison between actual revenues and what it characterizes as first year on-net revenues to allegedly demonstrate the reliability of its forecasts. AT&T defines on-net services as services wholly contained in the DDS expansion plan and on-net to off-net services as services partially contained in the digital network. These on-net revenue figures do not appear in the record before their introduction in AT&T's Exceptions. Additionally, there is no substantiation of these figures and no indication of whether the model might generate such figures. Assuming, arguendo, that these new revenue figures are accurate, we arrive at a contradiction, as AT&T in its initial filing stated it did not anticipate introduction of on-net to off-net service until early in the second year of operation. This service was not actually introduced until September, 1976. Yet AT&T maintains in its Exceptions that the recurring revenue projections for the first year of operation (1975) contain a substantial amount of on-net to off-net revenues, i.e., the difference between forecasted recurring DDS revenues and the alleged on-net only revenues.

[14] This is especially true for DDS which is a new service with no historical background.

16. Our concern with the accuracy of AT&T's DDS market forecast is based on the fact that such forecasts play a key role in the DDS rate making process. First, forecasted market quantities help to determine facilities requirements and hence investment and expenses of offering the service. See paragraph 10, supra. Second, market forecasts in the form of revenue projections are instrumental along with cost data in determining whether the revenues at the filed rates will meet projected costs.[14] In general, whenever a carrier overstates its investment and expenses accordingly, the filed rate will tend to appear to be compensatory (based on the revenue projections) when in fact it may not be compensatory. We have considered the practical effects of overstating market forecasts on rate making in a hypothetical situation. For an explanation of this example see Appendix II.

17. Based on our analysis, we do not believe that the external factors cited by AT&T (see paragraph 12, supra) could have accounted fully or even materially for the discrepancies found. Because AT&T's simulator represents an abstraction of the actual process which determines the market for DDS, the accuracy and the reasonableness of the simulator's forecasts will be a function of the degree to which it mimics reality. The specific techniques utilized by AT&T in devising its model, as well as our evaluation of the individual objections and criticism of the inputs and outputs of the model are treated more fully in Appendix I, attached hereto. Of the three input variables whose inclusion in the model we question (stimulation effect, buy-up factor, and effect of satellite competition), all tend to overstate DDS demand and hence revenues. Also, the exclusion of a variable indicative of the effect of the national economy leads to the overstatement of DDS demand and revenues. Finally, all the input parameter values we question, with the possible exception of the maturation factor, tend to overstate DDS demand and revenues.

18. In addition, to its modeling techniques, in 1972 AT&T directly and indirectly contacted an estimated 98 percent of the potential customers for a service such as DDS in an effort to verify the market appropriateness of its current Digital Data System. While this market survey, known as "Project A," was never completed, it apparently reached the vast majority of potential customers.

19. *Conclusions.* We find that AT&T's simulation model is not substantiated to our satisfaction and its demand forecasts cannot be considered as accurate or reasonable. Nearly every practice associated with AT&T's simulator led to an overstatement of DDS demand and revenues. Such a finding is reinforced by the fact that in 1972, through "Project A," AT&T contacted the vast majority of potential DDS customers, and presumably was reasonably aware of the demand for DDS. Yet its simulation model overstates this demand.

20. *Guidelines.* Based on the foregoing we will expect AT&T in future submissions of market demand models to fully support the necessity and sufficiency of the input variables used and provide reasonable supporting evidence regarding parameter values. We will also require AT&T to utilize sensitivity analysis tests and internal consistency tests in the manner described in Appendix I for future DDS simulation models. Finally, we will require AT&T to provide actual and annual demand and revenue data in future DDS submissions.

B. COSTS

1. *LRIC Cost Study.* 21. An LRIC analysis was submitted by AT&T in purported justification of its proposed Tariff No. 267 rates. The ID gave no consideration to this study (para. 23 and fn. 12), claiming that the Commission in the Designation Order had limited submissions to FDC studies. Several parties except to this ruling as an incorrect interpretation of the Designation Order. We must reverse the ID's ruling. The Designation Order indicated that LRIC studies would be relevant evidence in this proceeding and that the question of the validity of LRIC or FDC studies in developing rate levels for discrete classes of service would be resolved in Docket Nos. 18128 and 19129. 50 FCC 2d at 509.

22. Although we have reached a decision in Docket 18128, we will consider the validity of AT&T's LRIC study independently of those determinations. We find, inter alia, the following infirmities in using AT&T's LRIC analysis of record as justification for the filed DDS rates: (1) AT&T's treatment of the DUV portion of the spectrum as a free economic good; (2) use of outmoded cost and engineering data;[15] (3) overstatement of demand and revenue projections, resulting in biased contribution and burden tests (see para. 19, supra); and (4) improper use by AT&T of its own rate-making principles by filing Test Rate 6, instead of the indicated Test Rate 8, which is 20 percent higher than the filed rate (see para. 26, infra). Thus, we find AT&T's use of LRIC analysis as justification for DDS rates to be improper.

23. In its LRIC analysis, AT&T treated the data under voice (DUV) portion of this spectrum as a free economic good. AT&T emphasizes that it did not consider DUV to be a free economic good in

[15] In our discussion concerning AT&T's alleged FDC studies we shall note that AT&T used projected costs for DDS. To the extent that AT&T's LRIC costs are reflected in the FDC projections concerning special plant cost we find that the criticism therein are applicable here. (See paras. 27–52, infra).

its FDC studies. To the extent that the ID indicates AT&T did otherwise (paragraphs 45–46), we reverse such findings.

24. Because of the significant ratemaking principles involved, the question of whether AT&T accorded proper treatment to DUV in its LRIC study for DDS must be considered. In support of its position, AT&T cites economic reasons for considering DUV as a free economic good in its LRIC study. These reasons are based on the assumption of AT&T's Council of Economic Advisors that if the marginal opportunity costs [16] are zero, then the marginal and incremental costs also would be zero. AT&T concedes, however, that non-economic considerations indicate that the use of DUV should not be treated as a free economic good.

25. We find that AT&T should not have treated DUV as a free economic good in its LRIC analysis. We note that an internal AT&T memorandum of record herein (AT&T Response of August 1, 1975 to Datran's Request, at 555) indicates that it was unsure of the proper treatment of DUV on an incremental cost basis. The important question is whether the DUV spectrum incurs any significant opportunity costs. According at AT&T's own technical journals, of which we take official notice, the DUV spectrum can be used for services other than DDS.[17] Based on this fact, the DUV spectrum for DDS presents an opportunity cost. Since the alternative uses of DUV are analog service, AT&T's LRIC study for DDS should have assigned a proper share of the incremental joint and common costs entailed in providing the total network serving the 96 cities to the DUV technology.

26. Based on the foregoing, we conclude that AT&T's revenue forecasts are overstated and its LRIC costs are improper. This overstatement of revenues and improper use of LRIC costs have resulted in the appearance of justified rates which were in fact not justified.

2. FDC Cost Studies. 27. In its direct case, AT&T submitted two DDS cost studies which it characterizes as fully distributed cost (FDC) studies. Since DDS was a new service at the time the studies were conducted, no actual or historical costs were available. Instead, AT&T used projected costs for both FDC studies. One study purportedly uses allocation methods similar to FDC Method 1 and the other uses methods similar to FDC Method 7. The ID found that DDS rates should be "solidly premised on a reasonably accurate revenue projection and an acceptable Method 1 Fully Distributed Cost Study." (para. 49). Thus, the ID did not consider AT&T's FDC Method 7 study. Various parties, including AT&T and DOD, take exception to the ID's finding. In addition, many aspects of the ID's evaluation of DDS investment and expense figures are the subject of exceptions by several parties.

28. The AT&T FDC studies are more accurately characterized as hybrid cost studies. They are based, in part, on the following: historical cost information for some investment items, LRIC data for other investment items, estimates for several expense categories derived from existing service classifications other than DDS, and historical cost information where the costs were incurred in several different years. AT&T's FDC data was developed on the assumption that it would serve 96 cities in 1976. This assumption has proven to be incorrect.

29. We will assess the validity of both AT&T's FDC cost studies by first examining the investment data and then the expense data. Our discussion will be limited to the major items of investment and expense disputed by the parties.

a. *Hybrid FDC Method 1*—30. *Investments.* Several areas concerning AT&T's investment data are in dispute. These include the following: allocation of common plant; assignment of obsolete nonfungible plant; impact of inflation and Western Electric Company price increases; fill factor for interexchange (IX) plant; local loop investment; nine city Digital Serving Area (DSA) sample; and depreciation reserve.

31. AT&T allocated its investment in common plant by relying on TELPAK factors or ratios. The ID rejected the use of TELPAK ratios for DDS on the basis that TELPAK is not representative of DDS (paras. 83–86).[18] Specifically, the ID's determination was founded on the fact that TELPAK is a bulk rate, quantity discount service, that it, until recently, has earned a low rate of return based on FDC–1 analysis, and that its ratios are based on obsolete data and questionable estimating techniques. The Trial Staff and other parties have maintained in this proceeding that AT&T's use of TELPAK ratios bears no reasonable relationship to an appropriate assignment of these investment items to DDS. They also argued for development of allocation factors specifically for DDS. On the other hand, AT&T claimed that the use of TELPAK ratios is reasonable since TELPAK and DDS have fundamentally similar service characteristics in that both are line haul/service terminal (inter-DSA/digital access line (DAL)) type offerings. We conclude that the use of TELPAK ratios in determining the allocation of common plant for DDS is inappropriate. Even if it is assumed that DDS and TELPAK have similar service characteristics, we do not find the relevance to the allocation of plant overhead. DDS and TELPAK employ plant overhead in differing mixes. Since DDS employs a new technology and, according to AT&T, comprises a digital network separate and distinct from the analog system of which TELPAK is a part, it is unlikely that two such distinct networks would employ the same mix of plant overhead. AT&T has not shown that such is the case.

32. The question of the proper treatment for the allocation of obsolete nonfungible plant has been raised. The Trial Staff and Datran argue that such costs should be assigned to the service which caused its obsolescence. AT&T argues that while such a procedure is appropriate in LRIC, it is not in FDC. We affirm the ID finding (fn. 42) that the record contains no convincing evidence that modems and echo suppressors will be made obsolete by DDS. Given the availability of off-net analog extensions and the expected continued growth of analog data communication services, we are skeptical of any claimed obsolescence of modems and echo suppressors. Since we are not convinced that such equipment will become obsolete, it is unnecessary for us at this time to reach, as the ID apparently has, any decision as to how obsolescence costs should be treated.[19]

33. Another area of contention is the adequacy of general inflationary trends and Western Electric price increases of 1975 (averaging 5.1 percent) and 1976 (averaging 4.0 percent). The record demonstrates that AT&T did not take into account inflation in its forecast of expected DDS costs.[20] This failure to account for the severe inflation of the past few years plus the failure to employ current cost information has caused AT&T to substantially understate the investment costs of DDS.

34. AT&T also failed to adequately account for the Western Electric price increases. AT&T suggests that an average 4 percent increase overall in Western Electric prices in January 1976, which allegedly translates into a 2 percent increase in annual costs, is covered by a 3 percent increase in DDS rates. This argument obfuscates the pertinent issue. In this proceeding, our concern is not with the average overall increase in Western Electric prices, but with the increase in specific Western Electric prices for goods and services used for DDS. We are also concerned with why AT&T failed to forecast any increases in DDS equipment prices and installation charges. We affirm the ID finding (paragraph 77) that it was incumbent upon AT&T to fully develop such increased costs in formulating its tariff, and that AT&T has not justified its failure to do so.

35. AT&T used a 90 percent fill factor in its allocation of common inter-exchange (IX facility radio relay costs to DUV channels used to transmit DDS intercity. This figure for the ratio of supergroup to mastergroup is unsubstantiated, but AT&T claims that the necessary studies would be time consuming and unwarranted. The Trial Staff and Datran argue that AT&T's figure is overstated and thus understates the amount of common IX plan allocated to DDS. The ID (paragraph 73) found that AT&T has not shown that its allocation of common IX plant for DDS is just and reasonable. We affirm this findnig of the ID. However, while we are skeptical of such a high fill factor, we have no method of determining an appropriate fill from the record in this proceeding. Thus, we reject AT&T's unsupported fill factor assumption. Because of the critical nature of the fill factor in allocation of common IX plant,[21] we will require AT&T in all future DDS tariff filings to provide a detailed justification using appropriate traffic engineering data and techniques for any proferred fill factors.

36. AT&T stated that its cost for local loop equipment is $309.36 for each DDS station and over $13 million for all 43,000 stations. These figures are based on 1969 cost data, which partially relied on 2-wire loops. DDS stations require 4-wire loops. The ID (paragraph 70) found AT&T's loop investment to be understated but did not speculate as to the extent of the understatement. AT&T excepts to this finding on the basis that its use of 1969 cost data to determine the loop investment is proper. Upon consideration of the record, we find that the ID's determination should be affirmed. We cannot accept at face value justification based on data that was five years old at the time of filing, given the well documented recent inflationary trends in equipment prices. Also, we cannot accept the inclusion of cost data for 2-wire loops when 4-wire loops are necessary for the service. Further, we note that AT&T presented 2 and 4 wire loop costs separately in its January 1975 filing, but has given us no documented studies of either 2-wire or 4-wire loop costs. Finally, we do not find the doubling of 2-wire costs to be representative of 4-wire costs. As AT&T's own data demonstrates, this can either lead to an overstatement or an understatement of 4-wire loops costs, but not to the actual costs of 4-wire loops. The above factors in the aggregate result in substantial understatement of local loop investments.

37. AT&T utilized a 9 city sample of the 96 city DDS network for 1976 in costing the Digital Serving Area (DSA) portion of the network. The ID (paragraphs 79–80) found this sample to be unrepresentative and to understate unit costs and hence total costs.[22] AT&T acknowledged its 9 city sample was not randomly generated, but defends it as being representative of the 96 DSAs. AT&T argues that the 9 DSAs selected are representative of the 96 DSAs essentially on the basis of the total stations terminated and the DAL–1/DAL–2 station ratio. AT&T also alludes to a study in which 46 DSAs were analyzed and used to cost the entire 96 cities. On the basis of this 46 city sample, AT&T concludes that with a confidence level of 95 percent the total investment derived by analyzing each of the 96 DSAs would yield a figure which would not be statistically different from the one derived from the 9 city sample. While AT&T's criteria for selecting its 9 city sample may be useful in sizing the cities as to whether or not they are large, medium or small, we agree with the ID (paragraphs 79–80) that this is irrelevant to the representativeness of the sample.

38. The ID (paragraphs 79–80) found that AT&T employed a biased, unrepresentative sample to develop total DSA costs which resulted in a substantial but undetermined understatement of DSA costs. Based on the relevant data available, as discussed below, we affirm the ID's finding that the sample was faulty. AT&T's 9 city sample consists of 3 large DSAs, 3 medium and 3 small. In order to determine the representativeness of the 3 city subsamples submitted, the characteristics on which the DSA portion of the network is costed were analyzed. According to AT&T, data inputs for the DSA investment model include: DSA station and mileage summary; DSA equipment count summary; material pricelist; unit cost file; and capacity cost assignments. Of these data inputs only the DSA station and mileage summary and the DSA equipment count summary would seem to vary between DSAs. Thus, we examined the number of DAL–1 and DAL–2 terminations per DSA, route miles per DSA, and number of DAL–2 end offices to determine whether AT&T's 3 city subsamples are representative of total DDS costs. While the record contains information on the number of DAL–1 and DAL–2 terminations, there is no direct evidence available on the other two factors. Logically, we would expect that as the number of DAL–2 terminations increase so would the number of DAL–2 terminations to total terminations as an indirect test for the number of DAL–2 end offices in 3 city samples versus those in the relevant DSA classifications. We also note that AT&T's only use of total terminations in its classification of DSAs assumes a similar distribution of DALs within a DSA classification and that this assumption is not supported in the record.

39. Using AT&T's classification of DSAs as large, medium, or small and its forecasted number of DAL–1 and DAL–2 terminations by DSA for 1976 at the filed rate, the following table compares the average number of DAL–1 and DAL–2 terminations for the 3 city subsamples with the corresponding averages for all the DSAs by size.

	Average number of terminations				
	Total	DAL–1	DAL–2	Percent DAL–1	Percent DAL–2
Large DSA's:					
3 city sample	2,954	2,228	726	75.4	24.6
7 city total	2,309	1,348	961	58.4	41.6
Percent difference	27.9	65.3	(24.5)		
Medium DSA's:					
3 city sample	1,010	577	433	57.1	42.9
18 city total	755	498	257	66.0	34.0
Percent difference	33.8	15.9	68.5		
Small DSA's:					
3 city sample	240	155	85	64.6	35.4
71 city total	195	151	44	77.4	22.6
Percent difference	23.1	2.6	93.2		

40. It is now evident that AT&T's samples overstated the average number of total DAL and DAL–1 terminations. Since unit costs would be lower the higher the use for cities of similar size (i.e., number of DAL terminations), AT&T's sample tends to understate the unit costs associated with the DAL–1 portion of DSA costs. This leads to an overall understatement of DSA costs because DAL–1 costs comprise the largest portion of total DSA costs. Also, a comparison of the percentage of DAL–2 terminations to total terminations shows wide variations between AT&T's sample and the relevant universe.

41. A number of criticisms have been leveled at the AT&T derived depreciation reserve. Datran points to an apparent inconsistency between claimed depreciation expense and claimed reserve and maintains that AT&T has improperly allocated the common portion of the system depreciation reserve to DDS. IDCMA claims that AT&T failed to recognize competitive pressure and depreciate equipment more rapidly. The question of the appropriate service life and method of depreciation to be applied to equipment used for competitive services is of such fundamental nature that it is best resolved in a separate

[16] Various parties of this proceeding have attempted to apply their concept of opportunity costs to support their individual economic arguments. Thus, the meaning of opportunity costs has become somewhat unclear. (See ID, fn. 22). We consider the proper definition to be the standard economic one, which states that the opportunity cost of a productive factor is the maximum value that this factor could produce in an alternative use.

[17] In effect, DUV creates a "T carrier" in an allegedly normally unused portions of the microwave spectrum. This "T carrier" can be used to provide analog, as well as digital service. A.T. & T. has engineered the equipment to carry analog and digital signals over the same facility. V. I. Johannes, "The Evolving Digital Network," 54 "Bell Laboratories Record" (November, 1976) 269, 271. See also N. R. Snow, ed., "Digital Data Systems," 54 "Bell System Technical Journal" (May–June, 1975) 811, 875.

[18] While the ID's discussion of the appropriateness of TELPAK ratios for DDS specifically referred to expenses, the findings are of a general nature and are applicable to investment allocations.

[19] This question is more appropriately addressed in our development of revised FDC–7 and FDC–1 methodologies in the aftermath of our decision in Docket No. 18128.

[20] Concern over the inadequate treatment of inflation is also present throughout the ID's discussion of investment and expense data.

[21] Simply changing the fill factor assumption from 90 percent to 80 percent increases the amount of common interexchange plant allocated to DDS by $3.1 million for 96 cities in 1976 using AT&T data from its January 1975 filing.

[22] We note that the ID (paragraph 78) incorrectly characterizes the 9 city sample as being used to project investment and revenue requirements for the entire 96 city DD network. In fact, this sample was used only for the DSA portion of the 96 city DDS network.

proceeding.[23] We find AT&T's use of TELPAK ratios to allocate the common portion of the system depreciation reserve to DDS is inappropriate. See paragraph 47, *supra*.

42. In summary, we find that through AT&T's practices found unsupportable herein, AT&T has substantially understated the costs of providing DDS to 96 cities in 1976 at forecasted demand. Furthermore, the use of a hypothetical network of 96 cities by AT&T for costing and revenue purposes prevents us from making any determination as to the actual costs of providing DDS in the authorized 24 cities for a specific test year on the basis of the record in this proceeding. Because cost and demand characteristics differ between the 96 city hypothetical network and the authorized 24 city network, such data cannot be found to comply with the requirement of our rules that actual costs be filed. We will therefore require AT&T to file actual and future costs on a basis consistent with the geographical coverage of the tariff under consideration to comply with § 61.38 of the Rules.

43. *Expenses.* AT&T's expense data has been challenged on the grounds of the methodology used and the type of information employed. More specifically, exception is taken to the expense methodology on the basis that AT&T failed to properly include research and development (R&D) and start-up expenditures, that it applied its expense factors to inappropriately derived revenue and investment data, and that it failed to take into account inflationary tendencies in forecasting expense data. Exception is taken to AT&T's informational base on the grounds that it contains outmoded data, inappropriate TELPAK ratios for some expense items and that it derives annual expense data in contrast to annualized revenue data derived from the market simulator.

44. AT&T states that DDS R&D and start-up expenditures are included in the allocated general expenses. Thus, it claims that it has allocated a portion of total R&D and start-up expenditures to DDS. Several parties have objected to this procedure on the grounds that it ignores start-up costs and R&D expenditures for DDS that were incurred before the service was authorized, that it does not explicitly account for such expenditures, and that the form of aggregate allocation is inappropriate and R&D expenses and start-up costs should be directly attributed where possible. We recognize that present accounting methods do not adequately address these criticisms. Thus, we reach no finding as to the amount of AT&T's R&D and start-up costs for DDS. However, we note that there is record evidence that AT&T did not fully account for all relevant R&D expenditures in relation to DDS.[24]

45. AT&T derived expense data by applying factors to various revenue and investment items, which we already found to be inappropriately derived and have rejected. See paragraph 31, *supra*. Thus, the expense data must similarly be rejected. Furthermore, because the bulk of expenses were derived from vastly understated investment items, we find that AT&T's expense data is generally understated. Additionally, the failure of AT&T to take into account inflation leads to an understatement of its forecasted DDS expense. See paragraph 33, *supra*.

46. We have already found (paragraphs 34, 36 *supra*) that AT&T employed outmoded information in several instances. Its derivation of DDS expenses is no exception. The use of factors that can in some cases (e.g., service revenue accounting expense) be traced back to the original seven way cost study in 1964 nullifies any claims AT&T could have of using current historical data or being truly forecasting expenses for DDS. Thus, we find that the use of outmoded data taken from a variety of past years is sufficient cause in itself to reject AT&T's claimed expenses for DDS as being unjust and unreasonable.

47. AT&T used historic ratios of the TELPAK service category to forecast certain DDS expenses. AT&T claims that the use of TELPAK ratios is more appropriate than voice private line ratios. Even if this is the case, it ignores the real issue of why AT&T failed to develop specific ratios for DDS.[25] The answer to this question is not found in the record. Since such ratios were not developed for DDS, we must consider the appropriateness of AT&T's use of TELPAK ratios. We affirm the ID's finding that TELPAK ratios are inappropriate. Our decision is based on the fact that TELPAK is a bulk offering while DDS is not, that TELPAK has historically earned a low return and that the particular ratios employed are based on obsolete data and improper estimating techniques.

48. We finally must consider whether the information used to derive AT&T's DDS expenses yields annualized expenses in the same sense that AT&T's simulator yields annualized revenues. AT&T claims that it derived annualized expenses. On the other hand, Datran and others argue that AT&T derives annual expense data.[26] We find that annualized data is inappropriate for use in determining test year cost and revenue data for ratemaking purposes. Therefore, we will require AT&T to provide both revenues and expenses on a consistent *annual* basis in future DDS rate filings. If AT&T also wishes to supply annualized data, it may do so provided it is done on a well documented, consistent basis. The need for annual data becomes readily apparent as one attempts to track forecasted data with actuals. Annual data provide the basis upon which overall revenue requirements are generally calculated. It is essenital that this Commission have such data by service on an annual basis in order to insure that a carrier's overall revenue requirement has a reasonable opportunity of being attained.[27]

49. We have already found that AT&T's costing methodology generally leads to an understatement of DDS investment costs at a given level of demand. In addition, we have found AT&T's forecasted demand for DDS was overstated. It follows that any use of expense to investment or revenue ratios to calculate DDS expenses must be rejected. We have also expressed considerable doubt concerning the appropriateness of the ratios used in this case and their meaning. Consequently, we find that AT&T has understated the costs both investment and expenses, of providing DDS at forecasted demand levels.

b. *Hybrid FDC Method 7.* 50. While none of the parties extensively analyzed AT&T's FDC–7 in terms of investment items, the special plant cost and many common costs of FDC–7 are identical to AT&T's FDC–1. Thus, many of the criticisms of FDC–1 are applicable to FDC–7. The principal differences between FDC–7 and FDC–1 are in the areas of plant under construction, miscellaneous plant (land, buildings, furniture and vehicles), and the 10th FDC–7 category concerning the treatment of non-directly attributable IX plant.

51. Under FDC–7, plant under construction is allocated to DDS on the basis of the expected increases in revenues by service. The basis upon which AT&T has allocated plant under construction is questionable since the forecasted revenue increases are not substantiated. AT&T's assumption for an expected 30 percent growth in revenues for DDS between 1976 and 1977 is without foundation in the record. AT&T has also substantially

[23] The subject of investigation of Docket No. 20188 is A.T. & T.'s proposed Equal Life Group (ELG) approach to depreciation. In addition, we have a consultant contract outstanding to investigate the general question of depreciation rules and policies for the telecommunications industry.

[24] AT&T claimed in rebuttal testimony that $715,000 of R&D expenditures were allocated to DDS. The record discloses that at a minimum of $2.6 million of identifiable R&D expenditures are associated with the provision of DDS. AT&T Response to Datran 1st Interrogatories, Q1(B)(1), p. 151. We are further examining the question of treatment of R&D expenditures in our revisions to the Uniform System of Accounts.

[25] A related question is the appropriateness of the use of ratios at all in forecasting future expenses. The use of fixed ratios by AT&T in forecasting costs entails the implicit assumption that expenses do not vary over time or that they vary exactly in the same manner as the particular revenue or investment item on which an expense item is derived. This implicit assumption seems particularly inappropriate when considering maintenance expenses. To assume that maintenance of a particular capital good does not vary over time flies in the face of common sense and the typical failure rates assumed by practicing engineers.

[26] AT&T annualized DDS revenues by multiplying projected December revenues by 12. For a growing service such a procedure yields a higher revenue estimate than the use of annual data, the sum of 12 consecutive months; hence, the concern over whether or not AT&T has annualized its expenses in a manner consistent with its annualization of DDS revenues.

[27] "F.P.C. v. Hope Natural Gas Company," 320 U.S. 591 (1944).

overstated DDS revenues in 1976, thereby overstating the potential dollar revenue growth of DDS. Therefore, we can accept neither AT&T's FDC–7 estimate of plant under construction allocated to DDS nor the associated interest during construction revenues. Additionally, we find our criticism of AT&T's FDC–1 in paras. 31, 33, 34, 37–41 *supra*, to be equally applicable to AT&T's FDC–7 study. Hence, for the above reasons, we find that AT&T's FDC–7 study is unacceptable and fails to adequately reflect the true costs of DDS.

c. *Conclusions.* 52. AT&T has allegedly performed two fully distributed cost studies using forecasted cost data for both studies. One study purportedly uses allocation methods similar to FDC Method 1, while the other purportedly uses allocation methods similar to FDC Method 7.[28] AT&T's revenue forecasts have been found to be overstated and, as we have found, AT&T's forecasted costs are understated at the forecasted level of demand. This overstatement of revenues and understatement of costs have enabled AT&T to apparently justify rates for DDS which are in fact not justified.

3. *Non-Compensatory Rates.* 53. The record in this proceeding is not adequate to support a finding that the DDS rates are compensatory. However, additional information, of which we take official notice, on file with the Commission is relevant to this issue. This information consists of the various AT&T supplied cost studies filed in connection with its 40 city DDS section 214 application (W–P–C–433). The probative value of the studies [29] in this proceeding is enhanced by the fact that the studies are for the 24 cities in service for test year 1975, the first year of operation. In addition, these studies employ results from a special engineering study of the DSA portion of the existing 24 cities, rather than a biased sample of 9 DSAs, as AT&T did here. See paragraph 40, *supra*. The use of nationwide factor file for FDC–1 also minimizes the problem we found (paragraph 31, *supra*) with the use of TELPAK ratios. Thus, we find these additional Section 214 cost studies to be a significant improvement over the FDC studies provided by AT&T in this proceeding.

54. As we noted in our "Memorandum Opinion and Order," 60 FCC 2d 835 (1976), the FDC studies supplied in connection with the Section 214 applications show a low earnings ratio ranging from −0.75 percent to 4.2 percent. The results are as follows: [30]

[28] These FDC Method 1 and 7 studies utilize the methodology used prior to our Docket 18128 Decision. Pursuant to that Decision, revised methodologies for both are being developed.

[29] While these studies have certain deficiencies as well, see 60 FCC 2d 835 (1976), we find the results to be of sufficient probative value for use in this Decision.

[30] AT&T also recently provided in summary form tentative results of FDC–1 and FDC–7 studies for October 1976. These tentative results are summarized below. November 22, 1976 letter to Chief, Cost Analysis Branch, Common Carrier Bureau, from Gordon B. Evans, AT&T, in connection with W–P–C–433.

[Dollar amounts in thousands]

	FDC 1	FDC 7
Net investments	$42,08	$40,36
Net expenses	$6,68	$6,57
Income	$5,67	$8,82
Net operating income/net investment (percent)	0.07	2.3

Summary of cost of service results for DDS annualized Dec. 31, 1975

[Dollar amounts in thousands]

	FDC-1 [1]	FDC-7 [2]
Plant in service	$35.5	$35.6
Plant under construction	$1.6	$3.8
Other investments	$0.5	$0.3
Gross investment	$45.4	$39.7
Depreciation reserve	$3.7	$4.0
Net investment	$36.7	$35.7
Operating revenues	$3.9	$3.9
Other income	$0.1	$0.3
Total revenues	$4.0	$4.2
Expenses, income charges and other taxes	$5.7	$4.2
Federal income tax	($1.5)	($1.0)
Net operating earnings	($0.2)	$1.0
Ratio of net operating (percent)	(0.75)	2.80

[1] May 25, 1976, letter to Chief, Common Carrier Bureau from Robert E. Sageman, assistant vice president, A.T. & G., in connection with W–P–C–433.
[2] Mar. 31, 1976, letter to Chief, Common Carrier Bureau from T. W. Scandlyn, assistant vice president, A.T. & T., in connection with W–P–C–433. Adjusted for subsequent reports.

55. It is evident that 1975 DDS rates do not generate sufficient revenues to cover all costs, including cost of capital, regardless of the FDC methodology used. Tentative results provided by AT&T for October 1976 show similar results. Thus, nearly two years of operation have failed to show any improvement in the earnings results of DDS. While we would not necessarily expect a new service to immediately earn a reasonable rate of return, we do expect improvements in earnings ratio over time if rates are to be compensatory. That DDS has failed to exhibit such trends we find to be sufficient reason to reach the finding that present DDS rates are non-compensatory and will continue to be non-compensatory in the foreseeable future.

4. *Rate Structure.* 56. AT&T's rate structure for DDS is delineated in the ID (paras. 27–38). Essentially, the rate structure embodies a four-speed service offering with the rates for the various rate elements increasing as the speed of service increases. While the ID considered the differences in rates for the four speeds of DDS and the justification for these variations in the context of section 202(a) discrimination, we find it is proper to examine the rate structure on the basis of whether it is just and reasonable, pursuant to section 201(b) of the Act.[31] We are concerned whether the rate for each speed of DDS is reasonably related to the cost of providing that speed of service, or whether deviation from such costs is reasonably justified by AT&T.

57. AT&T has alleged that the DDS rate structure was devised with two major objectives in mind. First, individual rate elements should correspond to *identifiable* cost producing elements. Second, the rate structure should be easy to understand and administer. Various other parties to this proceeding contend that AT&T has failed to select rates for the various DDS rate elements that bear a reasonable relationship to cost. The ID upheld this position (paragraph 94). AT&T takes exception and argues that it is inappropriate to consider the rates for DDS by rate elements. Instead, AT&T argues that the correct rates are those of the end-to-end service, which combine a number of rate elements. AT&T further asserts that, taken as a whole, the rates for each speed show a profitable revenue/cost relationship.

58. AT&T has admitted that it departed from a strict cost-relationship in setting DDS rates. In essence, AT&T alleges that rates for 2.4 Kbps rate elements were set at levels fairly close to the estimated corresponding costs [32] and that rates for the higher speeds were then selected primarily to maintain a reasonable progression of rates with increasing speed. AT&T felt that "market forces" would be dominant in determining the specific rate element levels at each of the different speeds. Thus, it opted to maintain a reasonable progression of rates with increasing speed and discounted the fact that its own analysis indicated little increase in cost with increase in speed, particularly for DALs.

59. We uphold the findings of the ID (Paragraph 94) that rates should bear a reasonable relationship to cost.[33] We have recently determined in our Docket 18128 Decision that the relevant costs to be considered should be fully distributed costs rather than incremental costs. The evidence of record indicates that AT&T set DDS rates for 2.4 Kbps rate elements on the basis of incremental costs only and for other speeds on an orderly progression from the 2.4 Kbps rates.

30. We conclude that the rates for the 2.4 Kbps rate elements are not adequately cost justified. We also find that the departures from cost based rates for the other DDS speeds are unsubstantiated. AT&T's position that only end-to-end DDS rates are significant is invalid, since a user may not require all of the rate elements included in the end-to-end rate. AT&T's rates should be based on the costs of providing the individual

[31] We therefore reverse the ID's finding that AT&T's DDS rate structure is discriminatory, in violation of section 202(a) of the Act.

[32] Corresponding costs were determined using LRIC, not FDC, analysis.

[33] Decision in Docket No. 19989 (WATS), 59 FCC 2d 671 (1976), and Interim Decision in Docket No. 19919 (Hi-Lo), 55 FCC 2d 224 (1975). We do not, however, totally reject the employment of the "value of service" concept in every instance. Certain circumstances may be appropriate for a deviation from cost of service pricing. However, we are unconvinced that there is any need for an "orderly progression" in rates for this service, or that any other justification exists for departure from cost-based pricing by rate element.

elements of the service. If AT&T elects to establish rates that depart from such costs, it must fully justify its variations. Claims that factors such as "market forces" are predominate and require an alternative to cost related ratemaking cannot be accepted without substantiation. We also find no validity in AT&T's argument that an orderly progression in DDS rates by speed is necessary or warranted, absent cost justification.

5. *Competitive Service Ratemaking Principles*—61. In *Specialized Common Carrier Services*, 29 FCC 2d 870 (1971), we set forth our policy of "full and fair competition" for specialized services. Private Line services, including DDS, fall within this policy. We recognized potential problems associated with the emerging rivalry between established common carriers (ECCs) and the emerging specialized common carriers (SCCs). In such situations, we were and continue to be concerned with avoiding imposing a "protective umbrella" over the SCCs on one hand and preventing anticompetitive pricing practices by the ECCs on the other. These ratemaking concerns not only apply to interservice pricing but intraservice rate structures as well.

62. We must consider whether AT&T employed ratemaking principles in devising its DDS rates that had an anticompetitive effect. We are concerned here with ratemaking principles applicable to subservices within a dedicated private line digital service. This rapid development by AT&T of this new service has raised several novel problems, such as how shall the cost of developing and implementing new services and technologies be allocated among ratepayers and on what basis should rates for a new competitive service be developed. While the former issue is before us in other proceedings,[34] we will consider the question of the appropriate pricing methods for a new service such as DDS herein.

63. In determining proper pricing for a new service, we must consider the basis on which to determine the lawfulness of rate element prices. We are concerned that the DDS network, in terms of information flow, is utilized as efficiently as possible and that any economies of a digital technology should accrue to the public. We are further concerned that, insofar as possible, the service is not priced so as to discriminate unreasonably against or to give an undue preference to any group of users. We affirm the ID finding (paragraph 94) that the best way to achieve the above objectives is for all subservices and rate elements of the DDS tariff to bear a reasonable relationship to costs. We therefore require AT&T to specify and justify the costs of providing each speed of service and each rate element in order that we can determine if these objectives are met[35] and whether or not each rate element is necessarily compensatory.

64. A number of alternatives to solving the question of pricing a new competitive service have been proposed in this proceeding. One involves the use of the economic concept of opportunity costs in setting rates. The ID found (fn. 22) that the hypothetical nature of opportunity cost is an inappropriate method for determining the reasonableness of rates. We affirm this position.[36] Since opportunity cost does not represent an actual expenditure, it is an inappropriate standard to be used in rate determinations. However, this does not mean that the notion of opportunity cost and the consideration of alternative uses of resources may not be considered in facility authorizations and in analysis of the reasonableness of management decisions on selection of service offerings. Consideration of section 214 applications will thus include a determination, where appropriate, of alternative uses of the facilities.

65. Another alternative to the competitive service pricing issue is the establishment of a separate subsidiary or subsidiaries for AT&T's competitive services in order to prevent the possibility of cross-subsidization between monopoly and competitive services. Since the record in this proceeding does not in any material fashion address this issue, we conclude that there is insufficient information to find that the formation of separate subsidiaries for AT&T's competitive services would be in the public interest.

66. In conclusion, we find that reliance on cost of service principles is the appropriate standard in determining the appropriate rate levels and rate structures for competitive searvices like DDS. We reject the use of opportunity costs as relevant in determining the cost of service.

6. *Docket No. 18128 Considerations*. 67. We have now rendered our Final Decision in Docket No. 18128, FCC 76–886 released October 1, 1976) (hereinafter Docket 18128 Decision). That proceeding addressed the issue of the general lawfulness of overall rate levels and interservice rate level relationships of AT&T's major categories of interstate service.

68. We have already considered the validity of AT&T's DDS cost data and rate structure data independently of the outcome of Docket 18128. We will also evaluate the DDS cost data and rate structure in light of our Docket 18128 Decision. In so doing, however, we acknowledge that the parties to the instant proceeding did not have the benefit of the Docket 18128 Decision.

69. We will first consider the utilization of AT&T's LRIC methodology for DDS. In Docket 18128, we rejected the LRIC methodology as inadequate to support rates for AT&T's private line services. In this proceeding, AT&T has acknowledged that the DDS LRIC study is methodologically consistent with the LRIC studies set forth in Docket Nos. 18128 and 18684. Although DDS was not explicitly considered in Docket 18128, we find that the same reasoning employed in rejecting AT&T's LRIC analysis as justification for private line service rate levels is applicable to DDS.[37]

70. We also must consider the question which arises in pricing a new service such as DDS of the relevant revenue requirement and the period in which the service should achieve that rate level. In Docket 18128, we determined that each of AT&T's major classes of service should earn the same rate of return within the range prescribed for the firm as a whole (presently 9.5–10 percent), based on a FDC methodology as provided therein.[38] DDS is a new data communications service offering and it is assumed that its demand will increase over time. Thus, we would not expect DDS to earn a 9.5–10 percent return during its start-up period. However, in accordance with our guidelines in Docket 18128 concerning departures from the authorized return levels, we expect DDS to earn such a rate of return as well as to recover any shortfalls from various years within a reasonable time, such time specified in the rate filing.

71. In view of the above findings and our finding in Docket 18128, we will require AT&T in the future to file rates for DDS on the basis of the revised methodologies and procedures as specified for other services in our Docket 18128 Decision. Additionally, if any future rate filings during the start-up period of the DDS offering show a shortfall in DDS revenues, AT&T must demonstrate that the filed rates will recoup such shortfall

[34] See para. 44, *supra*.

[35] See fn. 30, *supra*.

[36] We do not, however, accept the ID's definition of opportunity costs. As stated in fn. 17, *supra*, we consider opportunity cost to be the maximum value that the productive factor could produce in an alternative use. Other parties propose that since DUV can be used for voice, opportunity costs should be considered here. Although we recognize the alternative uses of DUV (see paragraph 26, *infra*.), we reject the concept of opportunity costs.

[37] In Docket 18128, we stated the following:

We have found above that a strict marginal costing approach to pricing cannot be practically implemented under real-world telecommunications industry conditions. We have also found that Bell's LRIC analysis is neither theoretically acceptable nor commensurate with our statutory mandate to ensure just, reasonable and non-discriminatory rates. We must accordingly conclude that LRIC cannot be used to determine whether the return levels for Bell's major interstate categories of service are just and reasonable within the meaning of section 201(b)." Para. 183. See also paragraphs 112–137 for detailed discussion of LRIC.

Additionally, we rejected DOD's LRAC concept:

"DOD" has proposed the use of long-run average costs (LRAC) as the appropriate reference point for determining compensatory rates which are not a burden on other services • • • We reject LRAC for many of the reasons that led us to reject LRIC." Fn. 77.

[38] IDCMA and others have alleged that DDS is a new competitive service and hence is inherently more risky than MTS or WATS. Our Docket 18128 Decision rejects a so called risk premium for competitive services. We shall continue to follow that policy at this time. Only when it can be demonstrated on the record that the overall riskiness of AT&T has been increased by a particular service to a material degree will we consider the necessity of a "risk premium" for that service.

and become fully compensatory within a reasonable time.

C. CONCLUSIONS

72. Accordingly, we must find that AT&T's Tariff FCC No. 267 rates for DDS are unjust and unreasonable and thus are in violation of section 201(b) of the Act based on the evidence of record as discussed in sections A and B above. AT&T's DDS tariff can also be found at variance with the guidlines set forth in our Docket 18128 Decision.

II. LIKE SERVICES

73. The ID found that DDS is a discrete classification of service within section 201(b) of the Act and that DDS and Tariff 260 private line analog data services are not like communications services within the meaning of section 202(a). This conclusion was based on the finding that while the ultimate function of the two services is the same, the manner of transmitting data is different. Thus, the ID's determination would permit AT&T to continue to have separate rate structures for the two services. The Trial Staff takes exception to this ruling, arguing that the proper test for determining whether two services are like communications services was properly enunciated but improperly applied by the ID. The Trial Staff asserts that a correct determination depends upon whether the customer perceives the two services to be functionally the same, rather than upon the manner of performing the function.

74. We recognize that DDS clearly involves the use of different technology than that employed for analog data transmission, and features some different technical characteristics (e.g., lower error rates, synchronous transmission). Moreover, DDS requires the use of different access equipment from analog systems. Such technological changes, however, are frequently incorporated into the telecommunications network simply as an improvement in and under the same tariff as existing services. For example, existing private line as well as MTS services employ transmission technologies ranging from open wire analog systems through various T-carrier digital systems, microwave radio relay systems, L-type coaxial cable, and satellites—all offered under a single tariff at composite rates.

75. Accordingly, while we agree that DDS might well be considered a new and separate classification of service, we also find some merit in the Trial Staff's position that a major faetor in such a determination must be the customer's perception of the service. There is no evidence in this proceeding that the differing technological approaches and performance characteristics of DDS are perceived by the users as a significant basis for preferring this service offering to conventional analog data transmission services. Instead, the primary basis for preference appears to be the substantial cost savings which result from the lower tariff charges for this offering.

75a. This is seen most clearly in AT&T's own studies submitted in this proceeding which projected a high cross-elastic effect between DDS and certain Series 3000 (single voice-grade) and 5000 (Telpak bulk) services in its Tariff FCC No. 260, which offer analog data services over voice-grade channels. In the first year of operation, AT&T projected that over 70 percent of its DDS revenue would represent a loss to these two analog services. By the third year, DDS was expected to develop some additional independent market, but about 60 percent of the DDS revenue was projected to be a loss to Series 3000 and 5000 services (AT&T Ex. 9, p. 3 and Ex. 9, p. 40). The actual first-year losses have proved to be somewhat less, primarily because we required DDS to be offered at voice-grade rates during that period, thus minimizing the cost advantages of DDS. Thus, it appears that the customers' primary attraction to DDS is cost savings, rather than differences in the services offered.

75b. While DDS uses a different transmission technology from analog services, this is insufficient justification to find that the services are unlike. Traditionally, communications carriers have not differentiated between services which offer the customer a similar function using different technologies (in this case, carrying data between two points at discrete speeds). For example, international services using satellites and cables; domestic message telecommunications service calls by satellite or terrestrial; domestic communications using coaxial cable, microwave radio, or other facilities are not offered as "unlike" services at different rates. Similarly, while DDS and analog data services use different transmission technologies, they perform a similar communications function, are perceived by the customer as similar services and their demand appears to be highly crosselastic. Accordingly, we find the services to be like services within the meaning of section 202(a) of the Act.

76. Pursuant to section 202(a), however, AT&T may not classify DDS and like analog services as separate services at different tariff rates unless it can justify this discrimination in rates between like services. Here, we find such justification. While we cannot find support in the record as to the actual costs of providing DDS, we can find that AT&T has shown that the costs of providing DDS are potentially different from analog. Specifically, DDS utilizes 4-wire local distribution facilities, whereas analog services require only 2-wire loops. Also DDS requires utilization of a Data Service Unit (DSU) while analog data services use more expensive data set or "modem" equipment. Thus the technological differences, facilities and equipment needed to provide the services convince us that there are at least potential cost differences in the provision of DDS and analog data services.

77. Based on the potential cost differences acknowledged above, we can tentatively accept the service offered pursuant to AT&T's Tariff 267 as a separate classification of service priced at a different rate from like analog services. However, when AT&T files its new tariff in compliance with this Decision, it must fully justify that DDS and analog data services in fact have significant cost differences. Such a showing must be of sufficient detail and in accordance with the standards set forth above.

III. CHANNEL SERVICE UNIT/DATA SERVICE UNIT

78. The ID considered the functions of the Channel Service Unit (CSU) and the Data Service Unit (DSU) utilized in the DDS network and determined that AT&T should unbundle the CSU charges from the rates for the Digital Access Line in the DDS tariff (paragraphs 102–105). The issues of the actual functions of the CSU and DSU and whether the charge for the CSU should properly be included in the basic DDS rate were not designated as issues in this proceeding.[39] See Designation Order, 50 FCC 2d 501 (1974). Rather, these questions were raised by IDCMA during the course of the proceeding, but we did not enlarge the issues to include them, pursuant to § 1.229 of our rules.

79. Since we had not specifically designated the issue, the burden of proving that the inclusion of CSU charges in the basic DDS rate structure is not discriminatory did not rest with AT&T in this proceeding, and therefore AT&T cannot be held responsible for its failure to supply the information which IDCMA requested in this area. Thus, the evidence of record is not sufficient to reach a determination on the CSU/DSU question and we do not find that it is necessary to do so in this decision. Therefore, we are vacating the ID's finding in this regard (paragraph 105).

80. However, we find that IDCMA has raised a significant question as to the bundling of rates, whether the functions of the CSU can reasonably be provided by customer-supplied equipment and if so, whether such equipment must be certified by the Commission pursuant to Part 68 of our rules. We shall therefore require AT&T to address these issues when it files a new, full, tariff offering for DDS meeting the guidelines specified herein.

[39] IDCMA objects to the absence in the ID of a ruling on the "no-mix" issue which it claims to be discriminatory. This refers to a prohibition in pertinent AT&T tariffs of the use of customer-provided modems on analog extensions of DDS. Although AT&T has removed the prohibitions from its tariffs, IDCMA continues to object because of its concern that AT&T has not given assurances that it will not alter its techniteal data for the off-net-adaptor (required for such extensions) so as to make customer-provided modems incompatible. We do not share IDCMA's concern. Even while the prohibitions were effective, we declined to designate this as an issue in this proceeding. In addition, we find no provision in AT&T's Tariff No. 267 under which IDCMA could allege discrimination. Finally, the removal of the "no-mix" rule from Tariffs 260 and 267 negates any validity to IDCMA's claim.

IV. ANTICOMPETITIVE PRACTICES

81. Several parties[a] have taken exception to the various aspects of the ID's determination that DDS rates and practices are anticompetitive and otherwise unlawful. See ID, paragraphs 109–118. In light of these exceptions we will thoroughly consider this issue in order to dispel any areas of confusion or uncertainty. At the outset of this discussion, it should be noted that our decision herein is neither seasoned with public interest cliches nor garnished with antitrust platitudes. This decision is restricted to the interpretation and enforcement of policies and rules adopted by this Commission pursuant to the Communications Act of 1934.

82. Essentially, our discussion herein involves an interpretation of what we meant by "full and fair competition." As indicated in the Designation Order, 50 FCC 2d at 507, the principal issue squarely presented before the Commission is the interpretation of language in the *Specialized Common Carrier* decision; which reads in relevant part, 29 FCC 2d at 915:

> Our objective [is] to promote and maintain an environment within which existing and any new carriers shall have an opportunity to compete fairly and fully in the sale of specialized services • • • [t]here should not be any protective umbrella for new entrants or any artificial bolstering of operations that cannot succeed on their own merits.

We intend here to examine the question of anticompetitive practices from the standpoint of our statutory mandate to make available an efficient communications system of reasonable cost, consistent with the public convenience and necessity, rather than within the structures of antitrust regulations and case law. See "U.S. v. Philadelphia National Bank," 379 U.S. 321 (1963). However, to the extent that certain principles are relevant, though not determinative of the issues herein, they are referred to for guidance. See, "Northern Natural Gas Co. v. FPC," 399 F. 2d 953 (1968). In this way, we hope to make the "full and fair competition" obligations of the carriers consistent with similar obligations imposed pursuant to the antitrust laws. See, "Macon Products Corp. v. ATT," 359 F. Supp. 873 (C.D. Calif. 1973); "Carterfone," 13 FCC 2d 420 (1968), 14 FCC 2d 571 (1968); "Carter v. ATT," 250 F. Supp. 188 (N.D. Tex), *aff'd*, 365 F. 2d 486 (5th Cir. 1966), *cert. denied*, 385 U.S. 1008 (1967; "Chastain v. ATT," 351 F. Supp. 1320 (1972), 401 F. Supp. 151 (D.D.C. 1975), 43 FCC 2d 1079 (1973), 49 FCC 2d 749 (1974), *review pending sub. nom. ATT v. FCC*, No. 74–2101, (D.C. Cir.). It is our conclusion that we are obligated pursuant to the express language of section 205 of the Act to enforce those policies adopted by this Commission and affirmed by the courts.

83. The Designation Order and the ID set forth the same jurisdictional basis and factual context within which the anticompetitive issue is to be resolved.[b] In our Designation Order ,we stated, in reference to the particular applicability of the "full and fair competition" standard to the case before us, that:

> • • • We cannot conclude, on the basis of the material now before us, that the DDS tariff proposals are predatory, anticompetitive or otherwise unlawful because of their competitive impact. Rather, we conclude that a substantial question exists as to the appropriateness of the proposed rates, and as to their potential anticompetitive impact. While we have no intention of creating a protective umbrella over the newly emerging competitive carriers, neither can we ignore the enormous market power and influence of AT&T. Particularly, because of its unique position in the provision of communications services, we have a responsibility to assure ourselves that its competitive efforts are legitimate ones, free of predatory or anticompetitive aspects. (50 FCC 2d at 509.)
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> • • • We consider it imperative and in the public interest that the effective competition for data communications services not be eliminated through the institution by AT&T of rates and conditions which may be predatory, anticompetitive or otherwise unlawful. (50 FCC 2d at 511.)

The ID continued in this same vein.

> • • • as early as June 3, 1971, the Commission recognized the danger that an established carrier, such as AT&T, who furnished monopoly services could use its monopoly position to enhance its competitive position in this relatively new and expanding data transmission field. (Para. 8)

84. To the extent indicated herein, we affirm the finding of the ID that the DDS rates, and certain practices associated therewith, are of an anticompetitive nature, in direct contravention of our policies favoring fair competition. We have found, both in the "Specialized Common Carrier" decision, *supra*, and as a result of our economic analysis in our First Report in Docket No. 20003, FCC 76–879 (released September 27, 1976), that significant public benefits result from competition in the provision of private line services. Among these benefits are a wider choice of carriers and services, including innovation in the provision of private line services. Further, innovative delivery systems can produce lower rates for customers of these services. Where the rates of one carrier for a service are so low as to constitute an anticompetitive practice, however, customers of that service may temporarily benefit from lower rates. This, however, is an immediate burden on ratepayers of other services, whose rates must subsidize the anticompetitive rates, and an ultimate detriment to the subsidized service's customers, who will be deprived of the benefits of competition. We find, according to the facts delineated herein, that the unreasonably low price of the DDS service and the methods used in setting that price, could deprive the public of the benefits of competition and are contrary to the public interest.

85. Specifically, we agree with the Trial Staff that even if "[w]e cannot find the market simulations were deliberately deceptive" (ID, paragraph 116), there is sufficient evidence in other internal AT&T documents, which explicitly indicates that AT&T was aware of the fact that DDS, at least initially, would not meet the overall rate of return requirement and moreover, would require a subsidy from monopoly services. In AT&T's response of August 15, 1975 (pp. 382–83), to Datran's Fifth Interrogatories, it stated: "Most importantly, Bell's lower, competitive PL rates will produce shifts from the more profitable MTS service to a less profitable service." A service offering being non-compensatory *per se* does not contravene our rules.[c] In "American Satellite Corp.," 55 FCC 2d 1, 2–3 (1975), we stated that a new service in its early stages may not be compensatory, but we specifically noted that had ASC been a monopoly service supplier, our concern over the possible anticompetitive implications of a non-compensatory service would have been different.

86. In addition, according to AT&T's second market study, it could have minimized the non-compensatory nature of the service. According to its rate filing, AT&T's Test Rate 8 and 9 for DDS would have yielded a greater revenue contribution than Test Rate 6, which was ultimately selected. In this study filed in January, 1975, which corrected the previously misstated Datran prices and geographic coverage, and added the alleged satellite data service "competitive threat,"[d] Test Rate 6 yielded incremental revenues of $20.8 million, in contrast with Test Rate 8 and 9 which yielded incremental revenues of $24.1 million and $22.7 million, respectively. In our Docket 18128 Decision (para. 100), we stated: "[F]inally, within the context of fair competition the RD objects to any pricing approach that will not tend to provide maximum amelioration and coverage of revenue shortfalls that necessarily result from full cost pricing departures." We recognize that the question of costing methodology has been resolved in Docket 18128; however, we refer to the aforementioned language because of its objective, which we adopted in our Final Decision in Docket 18128, of reducing revenue shortfalls, which would reduce the amount by which a service offering is non-compensatory.

87. Datran contends that AT&T's possession of Datran's "Preliminary Rate Schedule"[e] and its simultaneous use of significantly lower Datran rates in its market simulator are further evidence of Bell's disregard of our policy of "full and fair competition." An AT&T memo dated November, 1973, stated that Datran's "Preliminary Rate Schedule" indicated that Datran's end-to-end charges for 2.4 Kbps service would be "almost double" those in AT&T's Test Rate 6. Thus, AT&T had the actual rate schedule in its possession, but chose not to use those rates, but rather lower ones, in its simulation. If AT&T had any question as to whether or not Datran's test rates were subject to change, it could have resolved the issue in a manner that avoided the question of fair competition.

88. Moreover, we have found that Bell's rates were below cost, and were thus effectively anticompetitive. See "Ben-Hur Coal Company v. Wells," 242 F. 2d 481 (1957) and "United States v. National Dairy Corp.," 372 U.S. 29 (1963); 15 U.S.C. 13a, c. 592, 49 Stat. 527, (June 19, 1936). We have already concluded that AT&T priced DDS below costs, using both the LRIC and FDC costing methods.[f] We also found that Bell's pricing below cost is a direct consequence of its understatement of cost and overstatement of demand.[g] See paragraphs 42, 52, *supra*. For example, a comparison of AT&T's forecasts in the record and actual revenues, as given in its Transmittal No. 12497, filed January 22, 1976, indicates that total DDS revenues were overestimated by 510 percent. This overstatement is partially attributable to AT&T's use of annualized revenues instead of actuals. In addition, AT&T's estimation of demand was skewed by its failure to account for the impact of the recent economic recession on demand.

89. According to AT&T, DDS employs a digital network, founded in a new technology, separate and distinct from the analog system of which TELPAK is a part. Consequently, we found the use of TELPAK ratios resulted in an unjustified statement items (paragraph 47). In addition, we concluded that an understatement of costs resulted from AT&T's failure to account for inflationary trends, and its exclusion of most research and development, and start-up costs associated with DDS (paragraph 44). Moreover, we noted that since the fill factor has a critical function in the allocation of common interexchange plant, the use of high and unsubstantiated fill factors contributed to the understatement of costs (paragraph 35). For instance, a change in the fill factor assumption from 90 percent to 80 percent would result in an increase in the amount of common interexchange plant allocated to DDS by $3.1 million for 96 cities in 1976, using AT&T's data from its January, 1975 tariff filing. AT&T provided no reason for its selection of a 90 percent fill factor, and asserted that the necessary studies to find the accurate fill factor would be too time consuming and unwarranted and thus refused to file them.

90. We find that the resolution of the issue herein is consistent with and integrally related to Commission policy enunciated in numerous decisions.[h] The economic ramifications of this policy were examined recently in the "Matter of Economic Implications and Interrelationships Arising From Policies and Practices Relating to Customer Interconnection, Jurisdictional Separations and Rate Structures, Docket No. 20003," FCC 76–879 (released October 1, 1976).[i]

In these cases, we stated our intention to follow a liberal policy of "open-entry" in this area and, "the findings and philosophy reflected in our Specialized Common Carrier decision are relevant and apposite here and support a competitive environment for the development and sales of the type of services proposed. See generally, Kestenbaum, Competition in Communications, 16 Antitrust Bulletin 769, 771–77 (1971). Mewer, Recent Federal Actions Affecting Long Distance Telecommunications: A Survey of Issues Concerning the Microwave Specialized Common Carrier Industry, 43 Geo. Wash. L. Rev. 878 (1975).

[i] As a result of our study in Docket 20003, we concluded that no economic justification existed for a change in our policies regarding private line competition. We found that at the end of 1975, nine specialized common carriers were operational, with operating revenues of $34,944,000, as contrasted with Bell's private line operating revenues of $1,479,473,000. We made mention of the fact that these carriers were concentrating on the market for point-to-point analog transmission channels. However, these analog channels could easily be configured into private line data networks, by the use of terminal and modem equipment currently available from interconnect suppliers. Thus, we found that the telephone industry, including AT&T and the independent telephone companies, have been experiencing a period of record growth in revenues and earnings, even despite the recent inflationary and recessionary trends in the economy. During the second quarter of 1976, operating revenues for these companies representing more than 95 percent of the industry were up 11–18 percent over the same quarter in 1975—an amount typical of the past several years. For the same period, net income was up 12–22 percent over the corresponding 1975 results, while earnings per share were up 15–20 percent. Furthermore, th telephone companies dominate the industry by a wide margin, receiving $35.1 billion, or about 97 percent of total industry revenues, in 1975. Even in the private line and terminal quipmnt markets, (the only areas open to competition) the telephone industry received $4.1 billion or 95.5 percent as compared with $194 million, or 4.5 percent for the competitive industry.

[j] Justice Frankfurter, at page 93, writing for the majority in RCA, states that where the Commission has favored competition, it has relied not upon competition for its own sake but upon specific findings that public interest benefits—such as better service, lower costs and wider consumer choices—would result. Cf. "Domestic Communications Satellite," 35 FCC 2d 844, 38 FCC 2d 665 (1972).

[k] We note that our Designation Order required AT&T to permit resale and shared use of DDS by all communications common carriers. AT&T filed its Tariff F.C.C. No. 260 offering DDS facilities for use by other common carriers. The question presented here is whether the public DDS tariff, F.C.C. No. 267, must permit unlimited resale and sharing.

In reaching the conclusions adopted in those decisions, we did so under the legal standards established in "FCC v. RCA",[j] 346 U.S. 86 (1953), "U.S. v. RCA", 358 U.S. 334 (1959), as well as in "Hawaiian Telephone v. FCC", 498 F. 2d 771 (1974). Our decisions herein is limited to a factual determination of whether or not certain conduct of AT&T associated with its DDS tariff is of an anticompetitive nature, in contravention of Commission Rules and Regulations.

91. AT&T's actions herein evidence a clear contravention of Commission policies. We find Bell's conduct an impediment to competition in the private line data communications market, in contravention of the competitive policy we adopted in the "Specialized Common Carrier" decision. We make no finding as to predatory or anticompetitive intent in relation to this service offering. A finding on this question is unnecessary for the performance of our regulatory duties which, in this case, are to determine the lawfulness of the subject tariff.

V. RESALE AND SHARED USE

92. The provisions of AT&T's Tariff 267 restrict resale of DDS to Composite Data Service Vendors (CDSVs) (Sec. 2.2.5 (A)) and prohibit shared use by all communications common carriers (Sec. 2.2.5(B)(2)).[k] Based on the record of this proceeding, the ID found these pro-

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[a] AT&T, Datran, the TFial Staff, DOD and Telenet.

[b] Pursuant to our authority in sections 4(i) and 201(b) of the Act, we adopted the rule of "full and fair competition" announced in the Specialized Common Carrier decision, *supra*.

[c] Two competitive necessity criteria have been accepted in justification of rates which are not fully compensatory. See TELPAK, 38 FCC 370 (1964), 37 FCC 1111 (1964), aff'd sub nom. "American Trucking Assn., v. FCC," 377 F.2d 121 (D.C. Cir. 1966), cert. denied, 386 US 943 (1967).

[d] In our Docket 18128 Decision, we noted that even in the more established market of the TELPAK offering, growth in specialized carriers and satellites is not a sufficient competitive threat to Bell. "While growth in specialized carriers and satellites might justify such a competitive response in the future, this uncertain probability is not sufficient to justify the present TELPAK offering.

[e] This schedule, which was apparently taken from Datran's marketing brochures, was set out in an internal memorandum which, it appears, was written by the official of AT&T whose job it is to determine the competitors' rates.

[f] Below cost sales *per se* are not condemned when made in furtherance of a legitimate commercial objective, such as the liquidation of excess, obsolete, or perishable merchandise, or the need to meet a lawful, equally low price of a competitor, because such below cost sales are neither "unreasonably low" nor made with predatory intent. See "Hershel California Fruit Products Co. v. Hunts Food, Inc.," 111 F. Supp. 732 (1953). We find no such mitigating circumstances in the case before us.

[g] We note that AT&T had, at one time, initiated a 98 percent sample of the potential data communications market to determine the expected demand for DDS. The project, known as "Project A," was apparently abandoned at some stage, and no results have been reported. We have two difficulties with the report of this project. First, it appears to be a preselling of DDS, which in itself is anticompetitive. Second, the study was apparently partly conducted, but we have no way of knowing whether the partial results are consistent with the overstated demand projections submitted in this proceeding.

[h] See Specialized Common Carrier, supra, aff'd Washington Utilities and Transportation Commission v. FCC, 513 F. 2d 1142 (1974); Cf. Bell Telephone of Pennsylvania v. FCC, 503 F. 2d 1250 (1974); cert. denied, 423 U.S. 896; Cf. American Trucking Association v. FCC, 37 F. 2d 121 (1966); compare, Land Mobile Service Between 806 and 960 MHz, Docket No. 18262, 46 FCC 2d 752, 760–61 (1974) (in order to avoid the danger of anticompetitive action on the part of the wireline companies, the Commission required these companies engaging in land mobile services to establish a wholly separate operating company); Cf. Packet Communications, Inc., 43 FCC 2d 922 (1973), Graphnet Systems, Inc., 44 FCC 2d 800 (1974) and Telenet Communications Corp., 46 FCC 2d 860 (1974).

visions to be unjust and unreasonable. AT&T contends that no need exists to consider the ID's finding on the resale and shared use issue, since the lawfulness of these Tariff 267 provisions has been determined in the Commission's "Report and Order" in Docket No. 20097, 60 FCC 2d 261 (1976). AT&T has filed petitions for stay and reconsideration of that decision.

93. We acknowledge that the lawfulness of the resale and shared use provisions in Tariff 267 was considered as part of our general policy determination in Docket No. 20097. 60 FCC 2d at 295. We found therein that the restrictions in the resale provisions of Tariff 267 are unduly discriminatory and that the tariff should allow unlimited sharing and resale of DDS to be just and reasonable. 60 FCC 2d at 296.[51] As we stated in the Designation Order, the technical and economic aspects of more widespread resale and shared use for DDS would be considered in this investigation independently from the policy determinations in Docket No. 20097. 50 FCC 2d at 512.

94. Since, as we have found in Docket No. 20097, unlimited resale and shared use of all competitive services is generally deemed just and reasonable and in the public interest, a tariff provision restricting such use must be judged on the basis of whether unlimited resale or sharing would result in public detriment. AT&T has provided no information or data in this proceeding to demonstrate any such adverse effect. In addition, AT&T did not allege that it would experience negative economic impact or that technological problems would result from unlimited resale and shared use of DDS.

95. AT&T's Tariff F.C.C. No. 268 contains the rates and conditions of service for digital facilities provided to other common carriers (OCCs). Tariff 268 provides for unlimited resale and shared use of DDS by the OCCs, as required by our facility authorizations, and has been in effect since February 16, 1975. Yet AT&T has alleged neither adverse economic impact nor technological problems resulting from the effectuation of this provision. The difference in the resale and shared use provisions in Tariff Nos. 267 and 268 clearly demonstrates that the customers of the same AT&T provided service are subject to dissimilar resale and shared use policies, pursuant to the two tariffs.

96. We conclude that AT&T has failed to demonstrate that any public benefit results from its restricted resale and shared use provisions. Likewise, AT&T has not shown that any economic or technological problems would result if the limitations were removed. Also, the difference in treatment of Tariff 267 and 268 customers is clearly discriminatory. On the basis of these findings, we are prescribing the resale and shared use provisions of AT&T's Tariff 268 (Sec. 2.2.1 (A)) for AT&T's Tariff 267 to replace the present restricted use provisions (Sec. 2.2.5 (A) and (B)).[52]

[51] Our decision ordered the subject common carriers to revise their tariffs and to eliminate restriction on the resale and shared use inconsistent with our policies. The deadline for filing such revisions has been deferred.

VI. Remedies

97. As we have found, the present DDS rates are unjust and unreasonable, in violation of Section 201(b) of the Act. Further, from the cost studies submitted in compliance with our initial grant and filed in support of W–P–C–433, the application to expand the facilities, we have found that the rates are not compensatory under a fully distributed cost analysis. We therefore find that the rates for DDS are unreasonably low and are being cross-subsidized by users of other AT&T services.

98. In other recent rate proceedings in which we have found the rates unreasonable, "Hi-Lo," 58 FCC 2d 362 (1976), and "WATS," 59 FCC 2d 671 (1976), we have permitted AT&T to file new rates and have retained the existing rates until the new filing becomes effective. In these other cases we found the rates unjustified, but the information in the record was insufficient even to find whether rates were to low or too high. In this case, however, we cannot justify retention of rates found to be unlawfully low for the period of time required for AT&T to prepare a full rate filing.

99. Further, we must agree with the ID that we have too little information of any probative value to enable us to prescribe new rates, even for an interim period.[53] However, it is clear that we cannot permit the service to continue to be offered at such an unreasonably low rate that the users of other services are clearly burdened.

100. We further cannot accept the recommendation in the ID that we prescribe the rates for comparable analog services for the interim until AT&T submits a new rate filing. As noted, we have no record on which to determine that those rates would be any more reasonable for this service than the existing rates. Further, the present rates for analog services (at 2.4, 4.8 and 9.6 Kbps) are at issue in our Docket No. 20814, and the overall rate levels of such private line services have themselves been found to be deficient in Docket 18128, *supra*.

101. Therefore, until such time as AT&T can prepare and file a new tariff offering for DDS which meets the criteria established in Docket 18128 and herein,[54] it can offer DDS only at rates which are designed to earn no less than 9.5 percent, the presently authorized rate of return of the Bell System (57 FCC 2d 960 (1976)). In calculating this return, AT&T shall use the Fully Distributed Cost, Method 7, allocations on which it based its FDC–7 special studies filed on March 31, 1976. For the purpose of this filing, since we realize that preparation of a new market study is very time-consuming, we will accept an assumption of the present market and rate of growth during the period in which the interim rates are in effect. We shall also not require AT&T to furnish the extensive cost justification normally required for a tariff filing. The filing may include the use of costs as specified in the special cost studies which have been filed or are presently being prepared, that the rates filed will be compensatory within the interim period.

102. If AT&T does not submit an acceptable replacement filing which becomes effective within sixty days after publication of this Decision in the Federal Register, its Tariff FCC No. 267 will be cancelled. If the carrier wishes to offer an end-to-end digital service after that date, it may do so within the present rate structure of its Tariff FCC No. 260, Series 2000, 3000 and 8000.

103. We believe that the requirement outlined above will permit AT&T to continue to offer DDS while not burdening its customers for other services by a service which is not compensatory. We also find this will accomplish the same result as that sought to be accomplished by the ID while retaining DDS as a separate classification of service.

VII. Procedural Questions

104. Several procedural matters have been raised which require our attention. The Trial Staff, Datran and IDCMA take exception to the ID (para. 26, fn. 15) insofar as it granted AT&T's motions to strike portions of their Proposed Findings and Conclusions. AT&T's motions were initially denied by decision of the Administrative Law Judges, FCC 76M–452 (released April 9, 1976), on the basis that the alleged frailties in the Proposed Findings should properly be treated in AT&T's Reply Findings. AT&T then incorporated its motions into its Reply Findings and the ID denied the motions only to the extent that the material AT&T sought to have stricken was incorporated in the ID.

105. The Trial Staff and IDCMA both argue that the lack of specificity of the ID ruling in question creates uncertainty as to which portions of the Proposed Findings are incorporated or stricken. The Trial Staff also asserts that the lack of reasons for striking given in the ID raises questions of denial of due process. All three parties claim that AT&T's motions are without merit since they do not indicate specific substantive or procedural defects in the Proposed Findings. The parties further maintain that their pleadings did not constitute new evidentiary material, but regardless, they argue that AT&T had the opportunity to respond in its Reply. On the other hand, AT&T maintains that it has demonstrated the Proposed Findings in question were not based on evidence of record and should be stricken.

[52] If AT&T can specifically justify different conditions or rates for OCCs based on costs or other criteria, we will reconsider our prescription.

[53] We note again that AT&T was required as a condition to its section 214 grant to report costs of providing DDS, a condition that was not met for over one year. If AT&T had in fact reported its costs from the first, as required, we may have had a sufficient record from which to determine reasonable rates.

[54] We expect such a filing to be made at the time AT&T submits its other rate filings in compliance with the Docket 18128 Decision.

106. The disposition of AT&T's motions to strike has created some confusion. The terminology used by the Administrative Law Judges gives the impression that if a specific finding was not stricken, it was accepted and incorporated in the ID. We do not find that this conclusion necessarily follows. It is not apparent from the ruling in question whether any material whatsover was stricken. However, upon review of the Proposed Findings and AT&T's motion, it is evident that the ID ruling does not result in material being stricken which is considered controlling in the disposition of any issues in this proceeding. Thus, we find nothing to warrant the striking of the Proposed Finding of the Trial Staff, Datran or IDCMA. We will therefore reverse the ID insofar as it granted any portion of AT&T's motions to strike.

107. In addition, IDCMA raises objections to two rulings of the Administrative Law Judges during the course of this proceeding: a September 19, 1975 decision disallowing several of IDCMA's final interrogatories; and a December 8, 1975 ruling not requiring AT&T to supply certain cost data specified by IDCMA. IDCMA neither alleges nor demonstrates any harm or injury resulting from the two rulings. Also IDCMA does not show how the outcome of this proceeding would be changed if the rulings had been reversed. Thus, we will deny as moot IDCMA's exceptions to the rulings in question.

Conclusions

108. We have set forth above our reasons for finding that AT&T's Tariff FCC No. 267 is unjust and unreasonable. We have found that AT&T substantially overstated the market for DDS and that the resultant revenue projections and demand forecasts were likewise overstated and unsubstantiated. In reaching these results, AT&T employed unjustified market simulation methodology to forecast demand and revenues for DDS. We have also determined that AT&T understated the costs, including both investment and expenses, of providing DDS. This conclusion was based on our evaluation of AT&T's LRIC and FDC–1 and FDC–7 studies, which utilized projected costs. We have found these studies to be methodologically deficient in many important respects. Since these studies were based on overstated revenue forecasts and understated costs, we found that AT&T's DDS rates were inadequately justified and that they were clearly non-compensatory.

109. We further found the DDS rate structure to be unjust and unreasonable. Specifically, we determined that the various rate elements of the service or individual speeds of service were not adequately cost justified. Further, we found that AT&T did not substantiate the lawfulness of its orderly progression in rates by speed, as a departure from cost-based rates. Additionally, we found that reliance on cost of service principles is the appropriate standard for determining the proper DDS rate level and rate structure, and rejected the use of opportunity costs for this purpose.

110. We also independently considered the effect of our Decision in Docket 18128 on the subject DDS tariff. On the basis of our rejection of the use of LRIC studies for determining private line service rate levels in Docket 18128, we have found AT&T's LRIC analysis as a means of justifying the DDS rate level to be inappropriate. In accordance with our Docket 18128 Decision, we also have found that DDS should earn a rate of return within the range prescribed for AT&T as a whole within a reasonable time, as well as recover revenue shortfalls incurred during the developmental stage of service within a specified time.

111. We have also stated our finding that DDS and analog data service are like communication services within the meaning of section 202(a), but that sufficient evidence of record existed to accept tentatively AT&T's service offered pursuant to its Tariff No. 267 as a separate classification of service until AT&T files a new permanent DDS tariff.

112. We have also set forth our reasons for determining that the DDS rates and certain associated practices of AT&T were anticompetitive in effect and in violation of our policies of "full and fair competition."

113. We have found the restricted resale and shared use provisions of AT&T's Tariff 267 are unjustified and discriminatory in relation to the different resale provisions found in AT&T's Tariff 268. We have prescribed the resale and shared use provisions of Tariff 268 for Tariff 267 to replace present restricted use provisions.

114. Finally, we have found that the rates for DDS are unreasonably low and are being cross subsidized by users of other AT&T services. Therefore, we found that AT&T can continue to offer DDS only at rates which are designed to earn a rate of return of no less than 9.5 percent, calculated on present FDC–7 allocations. However, we found that such interim rates can remain in effect only until such time as AT&T files fully justified rates, in accordance with the criteria established herein and in Docket 18128.

115. The Commission will stop short of a legal sanction but is duly noting the fact that AT&T has clearly disregarded its specific order to retain and report on a regular basis its actual costs of providing DDS. The lack of probative cost data is a significant factor in our inability to determine just and reasonable rates for this service.

116. Accordingly, we conclude that the rates and conditions of AT&T's Tariff FCC No. 267, as specified herein, are unjust, unreasonable and unlawful, in violation of section 201(b) of the Communications Act. We further conclude that the public interest would be served only by eliminating the cross-subsidization inherent in the unreasonably low tariff at the earliest practicable time. Accordingly, we require AT&T to file an interim tariff offering Dataphone Digital Service at rates designed to yield a 9.5 percent return, as provided herein, no later than February 22, 1977, effective on thirty days' notice. We also require AT&T to develop a fully justified tariff for the service offering which it must file no later than the time it submits the other private line tariff filings in compliance with our Decision in Docket No. 18128, FCC 76–886 (released October 1, 1976). The DDS filing must meet the requirements of that Decision as well as the following guidelines.

117. In terms of Market and Demand Data, AT&T should provide the following:

(1) Market quantities for DDS by rate element and speed. These should include one year of actual results by month and three years of year-end projections. This information should be on a consistent time frame with cost information as provided below. Tariff No. 268 quantities should be reported separately.

(2) DDS operating revenues by rate element and speed, including one year of actual revenues by month and three years of projected annual revenues. Revenues should indicate recurring and nonrecurring revenues separately. Tariff 268 revenues should be reported separately.

(3) The number of digroups between each pair of DSA's and corresponding fill by speed, including year-end actuals and year-end projections for 3 years reported for a time frame consistent with other requirements herein.[55]

(4) The number of DAL–2 end offices and associated market quantities by DSA, including year-end projections for 3 years reported for a time frame consistent with other requirements herein.

(5) Reports of any unmet demand within existing network because of insufficient facilities.

(6) Projections and results of tests as provided in Appendix I for computerized market simulator, if employed.

(7) Present market quantities for other private line data services in a disaggregated form which shall be comparable to DDS market quantities.

(8) The amount of revenues foregone by existing services due to DDS as well as market quantities, including total annual amounts for actuals and 3 year projections.[56]

118. In terms of cost data, AT&T shall provide the following information:

(1) Investment and expense data by rate element and speed, including annual actuals as well as 3 year annual projections. Directly attributable as well as any non-directly attributable costs shall be provided.

(2) Justification of any proffered facility fills and accompanying engineering support data.

(3) Cost projections should reflect and separately account for:

(i) Increases in market quantities;

(ii) Increases due to inflationary trends;

[55] This will assist us in determining the feasibility of permitting expansion of the service beyond existing points.

[56] Items 7 and 8 may be supplied in a form similar to that in AT&T's initial tariff § 61.38 filing.

(iii) Cross-elastic demand and cost effects of rate changes in DDS and other services;

(iv) Directly attributable and non-directly attributable cost.

(4) Cost and revenue projections for DDS network in-place or to be in-place at time tariff changes are to become effective.

(5) All costs should be annual data.

(6) If cost ratios are employed they should be separately developed for DDS and fully supported. Support shall include source of information used as well as actual figures used to derive cost ratios. Ratios should also reflect annual data. Justification should be provided for the ratios for each year so employed.

119. All of the above requested market and cost information shall be provided at the time AT&T files DDS rates in accordance with revised FDC–7 and revised FDC–1 methodologies and in all subsequent filings.

120. We also require AT&T to fully justify that DDS and analog data services are in fact reasonable separate classifications.

121. *Accordingly, it is ordered,* That, pursuant to section 201(b) of the Communications Act, 47 U.S.C. 201(b), AT&T's Tariff FCC No. 267 is found unlawful as indicated herein, and is null and void.

122. *It is further ordered,* That, pursuant to section 408 of the Communications Act, 47 U.S.C. 408, this Decision shall become effective March 22, 1977, insofar as it relates to cancellation of the existing tariff.

123. *It is further ordered,* That AT&T shall file an interim tariff no later than February 22, 1977, on thirty days' notice, as provided herein.

124. *It is further ordered,* That AT&T shall subsequently file a fully justified tariff, as specified herein.

125. *It is further ordered,* That Docket No. 20288 is terminated.

126. *It is further ordered,* That all outstanding interlocutory motions are dismissed as moot.

FEDERAL COMMUNICATIONS[*] COMMISSION,
VINCENT J. MULLINS,
Secretary.

APPENDIX I—AT&T'S MARKET SIMULATION MODEL

1. AT&T submitted two market simulation studies, one filed in March, 1974 and the other in January, 1975. In order to quantitatively estimate the market for DDS, AT&T first identified that portion of the existing Bell System interstate communications market which it felt could potentially use DDS. The Bell System 1972 Interstate Private Line Inventory was the primary data source used in making this determination. After identifying this potential market for DDS, AT&T estimated the shifts from AT&T's other services to DDS that would occur at each of the proposed test rates. Next, AT&T estimated the market for DDS in the presence of competing carriers.[1] The test rates for 2.4, 4.8, 9.6 and 56 Kbps were simulated independently. The results of these separate runs were then adjusted by market distribution factors combined with factors for estimated growth rates, simulation effects, and maturation lags, in order to size the individual results according to the mix of speeds estimated to exist for the year under study.

2. The second study modified the inputs used for the first and recomputed revenues. Changes included the following:

a. The addition of Test Rate 11 (TR 11), reflecting rate levels generally 30 percent higher than TR 6 (the tariffed rates), to replace TR 10.

b. Use of actual, current rates and geographical locations of service for Datran, MCI, and SPCC as reflected in their respective tariffs.

c. Additional input to reflect alleged competitive impact of domestic satellites.

d. Modem run only for 1976 and 96 cities.

For a detail tabulation of the input variables to Bell's market simulation, see Table I below.

TABLE I—INPUT VARIABLES TO BELL MARKET SIMULATION

I. Identity of Potential Users:
  A. Private Line Customers.
    1. Low Speed (2.4 Kbps) Users.
    2. Medium Speed (4.8 and 9.6 Kbps) Users.
    3. High Speed (56 Kbps) Users.
  B. Common Users.
II. Growth Rates for Industry:
  A. User Base Growth Rates.
    1. Private Line Customers.
      a. Low.
      b. Medium.
      c. High.
    2. Common Users.
  B. Geographic Patterns for Network Expansion.
  C. Speed Mix Characteristics of Demand.
  D. User Adoption Rates (Maturation Factor).
  E. Stimulation Effect.
III. Behavior of Competitors:
  A. Geographical Coverage.
  B. Tariffs for Datran and Other SCC's.
IV. Behavior of Potential Customers:
  A. Total Charges.
  B. Buy-up Factor.
  C. Price Trade-offs Between Dataphone Digital Service and Specialized Common Carrier Services.
  D. Price Trade-offs Between Bell System Analog Users and Datran.
V. Elements of the Tariffs:
  A. DAL's in DSA's.
    1. DAL 1.
    2. DAL 2.
  B. Channels Between Cities.
  C. Miscellaneous Elements.
    1. DSU.
    2. MSA.
    3. Off-Net Extension Adaptor.
    4. Maintenance of Service Charge.

3. *Validation of Bell's Market Simulation.* It is crucial that we examine the structure, assumptions, and limitations of AT&T's model to evaluate whether the simulator is a reasonable approximation of reality.

4. While no single method exists to determine the reasonableness of a simulation model, a variety of tests can be used to evaluate both the inputs and outputs and then reach a determination as to the validity of the model. The procedures we will use in evaluating these input variables as well as the model's outputs are contained in Table II, below. While these procedures are drawn substantially from the Trial Staff's findings, we note that no conflicting findings on this particular matter were offered by any of the parties involved. The ID also supports this approach. In addition, we note that AT&T has supplied no information in this proceeding indicating the procedures used to validate its simulation model. Hence, we find that AT&T has failed to meet its burden of demonstrating the reliability and reasonableness of its market projection for DDS.

5. *Simulation Input.* We will first examine the necessity and sufficiency of the input variables and then the reasonableness of their parameter values. However, our discussion will be limited to those inputs disputed by the parties involved in this proceeding. The disputed input variables include the stimulation effect, the buy up factor, the behavior of competitors as it relates to satellite communication, and the omission of an explicit variable reflecting the influence of national economic conditions on demand for DDS.

6. The stimulation effect was included in the model, because, in Bell's judgment, DDS with its better quality of performance would be certain to stimulate growth above and beyond the "normal" growth rate experienced in the data communications market. The Trial Staff, as well as other parties have argued that no empirical evidence supports the existence of such a factor, let alone its assumed magnitude. While we do not doubt the offering of DDS will generate new customers for that service and siphon off customers from other data communications services, it does not necessarily follow that the existence of DDS will stimulate interest in other data communications services, especially in light of the magnitude of AT&T's assumed shift of present data service customers to DDS.

TABLE II.—PROCEDURES TO EVALUATE SIMULATIONS

I. Validation of Simulation Input Data:
  A. Appropriateness of Input Variables.
    1. Necessity of input variables.
    2. Sufficiency of input variables.
  B. Appropriateness of Assumptions Regarding Parameter Values of Input Variables.
    1. Relevance of supporting data to input variables.
    2. Accuracy of supporting data.
II. Validation of Simulation Output Data:
  A. Comparisons with Real World Process.
  B. Sensitivity Analyses of Output to Systematic Changes in Input Variables.
  C. Stability Tests of Simulation.
  D. Internal consistency of intermediate outputs.
III. Validation of Simulation Model:
  A. Acceptable Results for I and II above.
  B. "Theoretical" Soundness of Model.
  C. Proper Implementation of Model.

7. AT&T included a buy-up factor because it assumed customers would be willing to pay a premium for DDS with its better performance and improved reliability. The Trial Staff and others argue that findings from a Bell study undermine this assumption. Because no details as to how Bell conducted this study are available, we cannot accurately judge the results. However, we do acknowledge the possibility of a buy-up factor for new customers. We would not, however, expect the buy-up factor to have as significant an effect on present data communications users because of potentially costly system reconfigurations in switching from an analog to digital network and capital expenditures for digital terminal equipment by customers having their own equipment. Hence, while a buy-up factor in some form may be necessary, AT&T has neither justified its present form nor provided an acceptable justification for its magnitude.

8. AT&T also included the competitive effect of satellite data communications on DDS as an input. This was justified by evidence that devices are being developed to improve the transmission capabilities of data over satellites and protocols which would support full-duplex operations on satellites would be available prior to 1976. Datran, among others, argues an alleged ½ second delay associated with satellite transmission combined with the current inefficiencies of line protocols presently in use will inhibit the movement of data communications users to satellite facilities until about 1980. We find that the problems raised by Datran with respect to satellite transmission protocols were capable of being resolved in the 1974–1976 time frame. However, we also affirm the ID's finding (paragraph 64) that widespread use of satellites for data communications was not likely during the time frame under consideration.[2] We regard as suspect the inclusion of the satellite effect only in the second model, even though domestic satellites were beginning to offer services by March 1974. Inclusion of this alleged competitive threat would tend to support a lower "optimum" test rate than would otherwise be the case.

9. AT&T has argued that while the simulation model does not explicitly include an input variable reflecting the impact of national economic conditions on the demand for DDS, such a variable was implicitly considered in the formulation of expected growth rates for the various data services. The Trial Staff and others argue that such a factor must be explicitly taken into account, especially considering the recessionary conditions of the past few years. We cannot determine from the record whether AT&T did implicitly account for general economic conditions. Given their importance on the potential demand for DDS, we find that it is incumbent upon AT&T to specifically account for such conditions. We also find that AT&T's simulation model is deficient with respect to the appropriateness of its input variables for the reasons stated above.

10. Disputes among the parties exist concerning the appropriate parameter values of input variables. The parameter values in dispute include: (1) Medium speed user base growth rate; (2) common user base growth rate; (3) speed mix; (4) maturation factor; (5) SCC's tariffs; (6) price trade-offs of customers; (7) SCC's geographical coverage; (8) AT&T's share of DSU market; (9) stimulation effect; (10) buy-up factor; and (11) presence of satellite competition.

11. In order to estimate the rate of growth in demand for the medium speed DDS market, AT&T relied on estimates furnished by several independent research firms. These estimates indicated the growth potential for data communication based on the expected number of data terminals to be in use in the future. AT&T also used the historical rate of growth in the April Bell System Interstate Data Revenues for 1968–1973, as inputs into the selection of a medium speed user base growth rate. Accordingly, AT&T determined that a mid-range growth of 30 percent per year for 1974 through 1976 was appropriate. The Trial Staff and others argue that this growth is significantly overstated and cite April to April growth rates for 1973–74 and 1974–75 of 14 and 17 percent respectively as evidence of this overstatement.

12. A more fundamental criticism of the estimate is Bell's choice of information for estimating this expected growth rate. First, AT&T relies on outside studies whose accuracy and rigor were not evaluated by Bell. Second, AT&T neither adjusted its own revenue data to take into account rate increases nor used 12 month data, which would yield more stable and accurate results than the arbitrary examination of a single month per year. Finally, AT&T ignored 1974 data for interstate Data Revenues which showed a significant difference between its estimated growth for 1974 of 30 percent and actual growth of approximately 14 percent (unadjusted for rate changes). Due to apparently wide year to year fluctuations in the growth of the data communications market, the selection and use of a single figure for the expected future growth rate is inexact. Based on our own analysis, we find the growth rate for 1974 to 1976 to be between 15 and 30 percent, with the most likely value being 25 percent. Therefore, even though AT&T's estimated growth rate of 30 percent is at the upper limit of our zone of reasonableness, AT&T's support for such a figure is unsubstantiated.

13. The common user (Message Toll Telephone Service (MTS) and Wide Area Telecommunications Service (WATS)) base growth rate was also estimated by AT&T to be 30 percent per year from 1974 through 1976. The Trial Staff and others argue that since these common users were expected to switch only to the lower speeds of DDS, a more reasonable estimate of the common user base growth rate would be the growth rate assumed by AT&T for potential private line customers of low speed DDS, which was between 10 and 13 percent. While we have doubts as to the relevance of an assumption which presumes MTS and WATS customers to be potential customers of DDS,[3] WATS as a whole has grown approximately 30 percent per year. Since AT&T assumes that all potential switches will occur from WATS to DDS, we conclude that the assumed base growth rate for common users is reasonable. However, we are still doubtful of the relevance of considering monopoly service users for an acknowledged private line service.

14. The market distribution factors for 1974 through 1976 were estimated from information initially gathered in a 1970 data study which attempted to inventory the data communications market in 1970 and forecast it for the next five years. See paragraph 1, supra. The Trial Staff objects to the use of these factors and argues that "actual" results should be considered. However, the Trial Staff mistakenly considers the actual results to be the actual speed mix for all of DDS. Therefore, based on this erroneous assumption, comparison between the actual speed mix and AT&T's market distribution factors reflects a substantial difference. We cannot accept this as a valid comparison. AT&T never intended that its market distribution factors be indicative of the ultimate speed mix for DDS. These factors were merely an intermediate input in the determination of the ultimate mix. See paragraph 1, supra. However, Datran's comparison of AT&T's forecasted and actual distribution for 24 cities during the first year of DDS operation is as follows:

[In percent]

	2.4 Kbps	4.8 Kbps	9.6 Kbps	56 Kbps
Forecasted	62.1	14.3	12.[illegible]	11.[illegible]
Actual	5.8	23.4	56.0	11.[illegible]

We recognized the problems of comparing actual and forecasted results.[4] However, in this case, the actual results are at such variance with AT&T's forecasts that they suggest problems with the way in which the forecasted speed mix was derived.[5]

15. AT&T argued that potential users will not necessarily switch to DDS when it first becomes economically attractive. We find that this lagged condition seems likely; however, we find no justification for the reasonableness of the quantification of this maturation factor.

16. AT&T's assumptions concerning Datran's rates have been a point of contention in this proceeding.[6] In its initial simulation run, AT&T assumed lower rates for Datran's competitive services than those actually proposed by Datran. In its second run, AT&T used Datran's filed rates, but introduced a new variable to reflect alleged widespread satellite competition for data services. We have already determined that it was improper to consider potential effects on DDS within the 1974–1976 time frame. We now find that AT&T's treatment of Datran's rates constitute an improper justification of AT&T's proposed DDS rates.

17. AT&T assumes that customers would pay a 6 percent premium over Bell's analog services for Datran's all digital service. The Trial Staff and others argue that since this premium is similar to the buy-up factor, it too should be eliminated. We reject AT&T's use of a 6 percent premium on Datran's digital services on the basis that the figure was unsubstantiated in the record.

18. AT&T's estimates of the geographical coverage of the SCC's for 1974, 1975 and 1976 relied on filings with the Commission for microwave station construction applications and filed tariffs for those SCCs already in operation. Datran, among others, has argued that AT&T made overly optimistic assump-

[*] Commissioner Lee absent.

[1] Throughout this analysis, AT&T assumed that end-to-end communications charges are the major determinants in a customer's choice between available alternatives. AT&T also assumed that the services to be provided by DDS would be similar in operation to private line data communication services presently available.

[2] The facts to date have substantiated this contention. There is little evidence of widespread use of domestic satellites to transmit data.

[3] First Report in Docket No. 20003, FCC 76–879 (released October 1, 1976).

[4] We have noted and rejected AT&T's assertions as to why the actual revenue distribution differs significantly from forecasted distribution. See Decision, paragraphs 13–15.

[5] The use of outmoded 1970 data and projections and the inclusion of data terminals used at speeds of 200 to 1500 Kpbs as being representative of 2.4 Kbps DDS users are indicative of AT&T's bias in its determination of market distribution factors. The application of these factors, which heavily favored 2.4 Kpbs users, only to Series 3000—Type 3002 service (admitted by Bell to be principally composed of medium speed users) also biased the ultimate results of the model.

[6] AT&T's use of lower rates for its principal competitor, Datran, enables AT&T to justify lower rates for itself. This is a result of AT&T's ratemaking philosophy of setting rates to yield as large a contribution above relevant costs as practical, taking into account market conditions, rate relationships and other ratemaking factors. Thus, AT&T assumptions as to Datran's rates are crucial to AT&T's selection of DDS rates.

tions concerning service to intermediate cities on backbone rates, interconnection among the various SCCs, grant of construction applications, the availability of construction funds to SCCs, and the interval for completion of construction. We find that these assumptions have led AT&T to overestimate potential SCC competition. By overstating potential SCC competition, AT&T could more readily justify a lower "optimum" than would otherwise be the case.

19. AT&T assumed that its share of the market for Data Service Units (DSUs) would be 100 percent in the first year, 90 percent the second, and 80 percent the third. Furthermore, it assumed share of the DSU market would be the same regardless of the test rates. The latter assumption appears reasonable since the price of the DSU was the same for each test rate. However, we find AT&T's assumption as to its market share for DSUs to be without substantiation.

20. Since we have rejected herein AT&T's particular use of a stimulation effect, buy-up factor, and the presence of satellite competition, we need not reach the question of the reasonableness of the parameter values for these inputs.

21. *Simulation—Output.* We will examine how sensitivity analysis, stability tests, and internal consistency tests could have been used to evaluate the appropriateness of AT&T's present input data.[7]

22. If AT&T had conducted sensitivity analyses of the effects of systematic changes in the input data on the stimulator's output, a considerable amount of the controversy surrounding the validation of this input data would have been mooted. In other words, if the results of the simulator were insensitive to certain input data, then these input data would not require close scrutiny, thereby enabling all parties in this proceeding, including AT&T, to concentrate on validating those inputs to which the model was particularly sensitive. Computerized sensitivity analysis is a relatively simple and well established procedure, but AT&T chose not to perform such analyses, thus denying the other parties and the Commission data necessary to review the DDS tariff. The performance of stability tests and the examination of the internal consistence of intermediate outputs would not only have aided the Commission in determining the reasonableness of the simulator, but also could have proven useful to Bell management in its own evaluation of the simulator.

APPENDIX II

The effects of overstating market forecasts on rate making can be aptly illustrated with a hypothetical example. We will utilize a situation where a common carrier is providing the interexchange portion of a service. The carrier's market forecasts indicate that at a price of $10 per circuit-mile demand will be 100 circuit-miles. We assume either that the minimum amount of interexchange plant installed is 100 circuit-miles or that the carrier believes its market forecast and installs 100 circuit-miles. Based on a unit investment cost at $11 per circuit-mile and expenses at $9 per circuit-mile (for a total investment of $1,100 and total expense of $900), an average rate of return (using an 11 year life for plant and straight line depreciation) of 9.53 percent is calculated. If the carrier's market forecast proves to be actually overstated by 15 percent, at a price equal to $10 per circuit-mile, only 85 circuit-miles are demanded. However, the carrier has already installed 100 circuit-miles, hence investment and the majority of investment related expense remain constant. Revenues decline from $1000 to $900 while expenses only declined from $900 to $850, and the average rate of return is now zero percent. Thus, by overstating demand by only 15 percent, the filed rate of $10 per circuit-mile provides the carrier's investors with no return on their capital, and the service is non-compensatory.

The calculations for the examples are as follows:

Assume:
Filed Rate = P = $10/circuit-mile
Forecasted demand = Q_D = 100 circuit miles
Quantity supplied = Q_S = 100 circuit-miles
Actual demand = Q_A = 85 circuit-miles
Unit Investment Costs = I_1 = $11/circuit-mile
Unit Expense for 100 circuit-miles = E_1 = $9/circuit-mile
Unit Expense for 85 circuit-miles = E_2 = $8.50/circuit-mile

(1) Forecasted Demand:
Total Revenue (TR) = $P_1 \times Q_D$ = ($10/circuit-mile) × (100 circuit-miles) = $1,000
Total Expenses (TE) = $E_1 \times Q_S$ = ($9/circuit-mile) × (100 circuit-miles) = $900
Gross Investment = $I_1 \times Q_S$ = ($11/circuit-mile) × (100 circuit-miles) = $1,100
Net Investment = Gross Investment − Depreciation Reserve = 1,100 − 100 = 1000
Average Net Investment = (1,00+1000) ÷ 2 = $1,050

$$\text{Average Rate of Return} = \frac{TR - TE}{\text{Net}} = \frac{1000 - 900}{1050} = 9.53\%$$

(2) Actual Demand:
Total Revenue = $P_1 \times Q_A$ = ($10/circuit-mile) × (85 circuit-miles) = $850
Total Expenses = $E_2 \times Q_A$ = $850

$$\text{Average Rate of Return} = \frac{850 - 850}{1050} = 0.0\%$$

[FR Doc 77-1925 Filed 1-21-77;8:45 am]

[7] We note that AT&T's claim that sensitivity analysis is valid only for stochastic models is without foundation.

[Report No. 841]

COMMON CARRIER SERVICES INFORMATION

Applications Accepted for Filing

JANUARY 17, 1977.

The applications listed herein have been found, upon initial review, to be acceptable for filing. The Commission reserves the right to return any of these applications, if upon further examination, it is determined they are defective and not in conformance with the Commission's rules and regulations or its policies.

Final action will not be taken on any of these applications earlier than 31 days following the date of this notice, except for radio applications not requiring a 30 day notice period (See 309(c) of the Communications Act), applications filed under Part 68, applications filed under Part 63 relative to small projects, or as otherwise noted. Unless specified to the contrary, comments or petitions may be filed concerning radio and section 214 applications within 30 days of the date of this notice and within 20 days for Part 68 applications.

In order for an application filed under Part 21 of the Commission's rules (Domestic Public Radio Services) to be considered mutually exclusive with any other such application appearing herein, it must be substantially complete and tendered for filing by whichever date is earlier: (a) The close of business one business day preceding the day on which the Commission takes atcion on the previously filed application; or (b) within 60 days after the date of the public notice listing the first prior filed application (with which the subsequent application is in conflict) as having been accepted for filing. In common carrier radio services other than those listed under Part 21, the cut-off date for filing a mutually exclusive application is the close of business one business day preceding the day on which the previously filed application is designated for hearing. With limited exceptions, an application which is subsequently amended by a major change will be considered as a newly filed application for purposes of the cut-off rule. (See §§ 1.227(b)(3) and 21.30(b) of the Commission's rules.)

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS,
Secretary.

APPLICATIONS ACCEPTED FOR FILING

DOMESTIC PUBLIC LAND MOBILE RADIO SERVICE

20560–CD–P–(4)–77, The Pacific Telephone and Telegraph Company (KMD991). C.P. to change antenna system operating on 152.69 and 152.72 MHz and for additional facilities to operate on 152.78. Base and 158.04 MHz. Test located at 516 Third Street, Santa Rosa, Calif.

20561–CD–AL–77, Harrington Broadcasting Co. Consent to Assignment of License from Harrington Broadcasting Co., assignor to Petoskey Mobile Telephone Company, assignee. Station: KWH309, Emmet, Mich.

20562–CD–P–77, Northern Illinois Radio Phone and Paging Systems, Inc. (KSB590). C.P. for additional facilities to operate on 152.06 MHz at a new Loc. No. 5: 1100 ft. West of Martin Road on Southside of Street (Rt. No. 120), McHenry, Ill.

20563–CD–P–77, Messages By Radio, Inc. (new). C.P. for a new station to operate on 152.21 MHz to be located at 248 Tate Avenue. Buchanan, N.Y.

20564–CD–P–(2)–77, Northern Illinois Radio Phone and Paging Systems, Inc. (KTS200). C.P. to change antenna system and replace transmitter operating on 158.70 MHz at Loc. No. 1: 2526 North Harlem Aevenue, Elmwood Park; and to change antenna system operating on 158.70 MHz at Loc. No. 2: 1741 South O'Plane Road, Warren Township, Ill.

20565–CD–P–77, Radio Relay New York Corp. (KEC745). C.P. for additional facilities to operate on 35.22 MHz at a new Loc. No. 13: 20 Exchange Place, New York, N.Y.

20566–CD–P–77, Radio Relay Corp.-Michigan (KGI774). C.P. to relocate facilities and operate on 35.22 MHz at a new Loc. No. 10: 2000 Inkster Road, Inkster, Mich.

20567–CD–P–77, Radio Dispatch Company (KGI774). C.P. to relocate facilities and change antenna system operating at 152.06 MHz to be located at 18th and Walnut Streets, Philadelphia, Pa.

20568–CD–P–77, American Mobile Radio, Inc. (KMD344). C.P. for additional facilities to operate on 35.58 MHz at a new Loc. No. 2: San Pedro Hill, San Pedro, Calif.

20569–CD–P–77, Portable Communications, Inc. (KEK289). C.P. for additional facilities to operate on 454.325 MHz at a new Loc. No. 5: 740 Werner Road, Attica, N.Y.

20570–CD–P–(2)–77, Patterson Anserphone Communication Enterprises, Inc. d/b/a Answerphone (KIG841). C.P. for additional facilities to operate on 454.125 and 454.175 MHz at a new Loc. No. 4: 4812 Six Forks Road, Raleigh, N.C.

20571–CD–P–77, Radio Broadcasting Company (KWU290). C.P. for additional facilities to operate on 158.70 MHz at Loc. No. 5: 11 South Monroe Street, Hammonton, N.J.

20573–CD–TC–77, Phenix Communications Company, Inc. Consent to Transfer of Control from J. Frank Snellings, Jr. and Bertha Mae Snellings, transferor, to Reginald R. Cain, Jr. and Evelyn S. Cain, transferees. Station: KIJ351, Phenix City, Ala.

20574–CD–TC–(2)–77, Phenix Communications Co. of Georgia, Inc. Consent to Transfer of Control from J. Frank Snellings, Jr. and Bertha Mae Snellings, transferors, to Reginald R. Cain, Jr. and Evelyn S. Cain, transferees. Stations: KTS264, Columbus, Ga. and KUO603, Phenix City, and Columbus, Ga.

20575–CD–P–77, S. F. McNeill d/b/a Communication Specialists Co. (new). C.P. for a new station to operate on 152.24 MHz to be located at 3330 Wrightsville Avenue, Wilmington, N.C.

20576–CD–P–(3)–77, Beep Communications Systems, Inc. (new). C.P. for a new station to operate on 454.175, 454.200 and 454.225 MHz to be located at North Beacon Mtn., Beacon, N.Y.

20577–CD–P–77, Beep Communications Systems, Inc. (KEK287). C.P. for additional facilities to operate on 454.225 MHz at a new Loc. No. 3: 1 Strawberry Hill Court, Stamford, Conn.

20578–CD–P–77, Communications Engineering, Inc. (KWU236). C.P. for additional facilities to operate on 158.70 MHz to be located at 3201 C Street, Anchorage, Alaska.

20579–CD–AL–77, Alden Seitz and David K. Seitz d/b/a Mobilfone Exchange of Sandusky Consent to Assignment of License from Alden Seitz and David K. Seitz d/b/a Mobilfone of Sandusky, Assignor to David K. Seitz d/b/a Mobilfone Exchange of Sandusky, assignee. Station: KLF529, Columbus, Ohio.

RURAL RADIO

60133–CR–P/L–77, Pacific Northwest Bell Telephone Company (new). C.P. for a new Rural Subscriber station to operate on 157.86 MHz to be located 12 Miles West of Bend, Elk Lake, Oreg.

60134–CR–P–77, Hawaiian Telephone Company (new). C.P. for a new Central Office station to operate on 454.50 MHz to be located at 3038 Kuhio Highway, Lihue, Hawaii.

60135–CR–P–77, Hawaiian Telephone Company (new). C.P. for a new Rural Subscriber station to operate on 459.5 MHz to be located 2.40 miles NNW of Lihue Post Office, Lihue, Hawaii.

POINT TO POINT MICROWAVE RADIO SERVICE

979–CF–P–77, New York Telephone Company (KEF76), 413 East Fayette Street, Syracuse, N.Y. Lat. 43°02'55" N.—Long. 76°08'51" W. C.P. to add new point communication on frequencies 11605H, 11445V MHz toward Granby, N.Y., on azimuth 322.6 degrees.

890–CF–P–77, same (new), County Line Road, Granby, N.Y. Lat. 43°14'01" N.—Long. 76°20'29" W. C.P. for a new station on frequencies 11155H, 10995V MHz toward Syracuse, N.Y., on azimuth 142.4 degrees and 10955H, 10875V MHz toward Scriba, N.Y., on azimuth 334.1 degrees.

981–CF–P–77, same (new), Bryns Road, Scriba, N.Y. Lat. 43°25'48" N.—Long. 76°28'21" W. C.P. for a new station on frequencies 11405H, 11325V MHz toward Granby on azimuth 154.0 degrees, and 11365H, 11285V MHz toward Oswego, N.Y., on azimuth 306.2 degrees.

982–CF–P–77, same (new), 235 West Third Street, Oswego, N.Y. Lat. 43°27'00" N.—Long. 76°30'36" W. C.P. for a new station on frequencies 10915H, 10835V MHz toward Scriba, N.Y., on azimuth 126.2 degrees.

991–CF–P–77, American Telephone and Telegraph Company (KKN23), 1407 Jefferson Street, Houston, Tex. Lat. 29°44'45" N.—Long. 95°21'56" W. C.P. to add frequency 3890.0V MHz toward Fairbanks, Tex.

992–CF–P–77, same (KGP78), 2.4 miles north of Fairbanks, Tex. Lat. 29°52'03" N.—Long. 95°31'18" W. C.P. to add frequencies 3930.0V MHz toward Houston. Tex., 3930.0H MHz toward Spring, Tex.

993–CF–P–77, same (KGP77), 2.2 miles south-southwest of Spring, Tex. Lat. 30°02'54" N.—Long. 95°25'54" W. C.P. to add frequency 3890.0H MHz toward Fairbanks, Tex.

1001–CF–P–77, Millington Telephone Company, Inc. (new), Woodstock, 6 miles southwest Millington, Tenn. Lat. 35°17'47" N.—Long. 89°58'30" W. C.P. for a new station on frequencies 11345.0V MHz toward Memphis, Tenn., on azimuth 201.9 degrees and 11345.0V MHz toward Kerrville, Tenn., on azimuth 43.5 degrees.

1002–CF–P–77, same (new), 0.8 mile north of Kerrville, Tenn. Lat. 35°23'35" N.—Long. 89°51'47" W. C.P. for a new station on frequencies 11135.0V MHz toward Woodstock on azimuth 223.5 degrees, 10975.0V MHz toward Shelby Forest on azimuth 246.4 degrees, 10975.0V MHz toward Munford on azimuth 35.9 degrees, 10775.0V MHz toward Rosemark on azimuth 112.4 degrees and 10775.0V MHz toward Millington on azimuth 211.4 degrees.

1003–CF–P–77, same (new), 4880 Navy Road, Millington, Tenn. Lat. 35°20'31" N.—Long. 89°54'04" W. C.P. for a new station frequency 11665.0V MHz toward Kerrville, Tenn., on azimuth 31.3 degrees.

1004–CF–P–77, Millington Telephone Company, Inc. (new), Shelby Forest, 0.2 miles south of Cuba, Tenn. Lat. 35°20'54" N.—Long. 89°59'16" W. C.P. for a new station on frequency 11385.0V MHz toward Kerrville, Tenn., on azimuth 216.0 degrees.

1005–CF–P–77, same (new), Munford, Tenn. Lat. 35°26'56" N.—Long. 89°48'49" W. C.P. for a new station on frequency 11385.0V MHz toward Kerrville, Tenn., on azimuth 216.0 degrees.

1006–CF–P–77, same (new), Rosemark, Tenn. Lat. 35°21'43" N.—Long. 89°46'16" W. C.P. for a new station on frequency 11665.0V MHz toward Kerrville, Tenn., on azimuth 292.5 degrees.

MAJOR AMENDMENT

4965–CF–P–76, Northwestern Telephone Systems, Inc. (KPG64), Blacktail, Mont. Application amended to decrease emission designator from 33000F9 to 30000F9 for frequencies 11445V, 11685H MHz toward Charlo, Mont.

CORRECTIONS

219–CF–MP–77, American Microwave & Communications, Inc. (KQL 46), 0.5 mile West of Covington, Mich. (Lat. 46°32'02" N.—Long. 88°32'37" W.). This entry appearing in Public Notice of November 8, 1976, is corrected to read as follows: Construction permit to replace transmitters, change polarity and change frequencies to 6276.8H, 6308.4V, 6338.1H and 6397.4H MHz toward Bergland, Mich., on azimuth 281.7 degrees, to change polarity of frequencies to 6276.8H, 6338.1H, 6397.4H and to delete frequency 6308.4V MHz toward Houghton, Mich., on azimuth 356.4 degrees.

580–CF–P–77, Yankee Microwave (KYZ 85), Mt. Washington, Sargents Purchase, N.H. (Lat. 44°16'13" N.—Long. 71°18'13" W.). This entry appearing in Public Notice of December 13, 1976 is revised to read as follows: 6212.1H MHz toward Manchester, N.H. on azimuth 189.0 degrees and to delete 6212.1V MHz toward Saddleback, N.H., on azimuth 176.2 degrees.

508–CF–P/L–77, RCA Alaska Communications, Inc. (new), Tok Cathedral, Alaska. Correct file number to read 509–CF–P/L–77 for this entry. All other particulars remain as reported on Public Notice number 835. dated December 6, 1976.

Add: 508–CF–P/L–77, RCA Alaska Communications, Inc. (new), 794th ACWSQDN, APO Seattle, Cape Newenham, Alaska. Lat. 58°37'39" N.—Long. 162°04'25" W. C.P. for a new station on frequency 810 MHz toward Bethel, Alaska on azimuth 2.0 degrees. (This entry was inadvertently omitted from the December 6, 1976 Public Notice.)

[FR Doc.77-2106 Filed 1-21-77;8:45 am]

[FCC 77-40]

EMERGENCY BROADCAST SYSTEM SCHEDULED

Closed Circuit Test

JANUARY 18, 1977.

A test of the Emergency Broadcast System (EBS) has been scheduled for Thursday, January 27, 1977 between 2:03:30 and 2:09:00 p.m., Washington D.C. time. Only ABC, CBS, NBC, IMN, MBS, and NPR radio network affiliates and UPI–Audio clients will participate. Television networks are not participating in this test.

Network affiliates will be notified of the test procedures via their network beginning four days in advance of the test. Test messages will also be run by AP and UPI radio press wire services for four days in advance of the test to issue wide dissemination of the test announcement and schedule.

Final evaluation of the January test is scheduled to be made by the end of February 1977.

THIS IS A CLOSED CIRCUIT TEST AND WILL NOT BE BROADCAST OVER THE AIR

Action by the Commission January 12, 1977. Commissioners Wiley (Chairman), Hooks, Quello, Washburn, Fogarty and White.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS,
Secretary.

[FR Doc.77-2104 Filed 1-21-77;8:45 am]

FM AND TV TRANSLATOR APPLICATION READY AND AVAILABLE FOR PROCESSING

Adopted: January 6, 1977.

Released: January 17, 1977.

Notice is hereby given pursuant to § 1.572(c) and 1.573(d) of the Commission's rules, that on March 2, 1977, the TV and FM translator applications listed below will be considered as ready and available for processing. Pursuant to §§ 1.227(b)(1) and 1.519(b) of the Commission's rules, an application, in order to be considered with any application appearing on the attached list or with any other application on file by the close of business on March 1, 1977, which involves a conflict necessitating a hearing with any application on this list, must

be substantially complete and submitted for filing at the offices of the Commission in Washington, D.C., by the close of business on March 1, 1977.

The attention of any party in interest desiring to file pleadings concerning any pending TV and FM translator application, pursuant to section 309(d) (1) of the Communications Act of 1934, as amended, is directed to § 1.580(i) of the Commission's rules for provisions governing the time for filing and other requirements relating to such pleadings.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS,
Secretary.

FM TRANSLATOR APPLICATIONS

BPFT-370 (new), Oshkosh, Omro and Winneconne, Wisconsin, Oshkosh Christian Business Men's Committee Req: Channel 221, 92.1 MHz, 1 watt. Primary: WRVM (FM), Suring, Wis.

BPFT-372 K221AE, Stanford, Mont., Stanford TV Association. Req: Change frequency to Ch-285, 104.9 MHz and change primary station to KLCM-FM, Lewiston, Mont.

BPFT-373 (new), Lead, S. Dak., Great Plains Leasing Corp. Req: Channel 288, 105.5 MHz, 1 watt. Primary: KKLS-FM, Rapid City, S. Dak.

BPFT-374 (new) Deadwood, S. Dak., Great Plains Leasing Corp. Req: Channel 296, 107.1 MHz, 1 watt. Primary: KKLS-FM, Rapid City, S. Dak.

BPFT-375 (new), Grand Marais, Minn., Stereo Broadcasting, Inc. Req: Channel 296, 107.1 MHz, 10 watt. Primary: WAKX, Duluth, Minn.

BPFT-377 (new), Moab, Utah, Mesa Broadcasting Company (KQIX-FM). Req: Channel 296, 107.1 MHz, 10 watt. Primary: KQIX, Grand Junction, Colo.

BPFT-378 (new), West Palm Beach, Fla., Regional Arts Productions, Inc. Req: Channel 272, 107.1 MHz, 1 watt. Primary WTMI, Miami, Fla.

BPFT-379 (new), Leadville, Colo., Lake County TV-FM, Inc. Req: Channel 276, 103.1 MHz, 1 watt. Primary: KRDO, Colorado Springs, Colo.

Application deleted from Public Notice released November 5, 1976 (Mimeo 74188, 41 FR 50690).

BPFT-351 (new), Oshkosh, Omro, Winneconne, Wisconsin, Oshkosh Christian Business Men's Committee. Req: Channel 252A, 98.3 MHz, 1 watt. Primary: WRVM FM), Suring Wis.

(Assigned new file number BPFT-370.)

UHF TV TRANSLATOR APPLICATIONS

BPTT-3134 (new), Baudette, Minn., Lake of the Woods County. Req: Channel 55, 716-722 MHz, 100 watt. Primary: KTHI, Fargo-Grand Forks, N.D.

BPTT-3135 (new), Grygla, Minn., Lake of the Woods County. Req: Channel 57, 728-734 MHz, 100 watt. Primary: WDAZ, Devils Lake, N. Dak.

BPTT-3136 (new), Grygla, Minn., Lake of the Woods County. Req: Channel 59, 740-746 MHz, 100 watt. Primary: KTHI, Fargo-Grand Forks, N. Dak.

BPTT-3137 (new), Williams, Minn., Lake of the Woods County. Req: Channel 61, 752-758 MHz, 100 watt. Primary: WDAZ, Devils Lake, N. Dak.

BPTT-3138 (new), Williams, Minn., Lake of the Woods County. Req: Channel 63, 764-770 MHz, 100 watt. Primary: KTHI, Fargo-Grand Forks, N. Dak.

BPTT-3139 (new), Norris Camp, Minn., Lake of the Woods County. Req: Channel 67, 788-794 MHz, 100 watt. Primary: WDAZ, Devils Lake, N. Dak.

[FR Doc.77-2105 Filed 1-21-77;8:45 am]

VICINITY OF U.S./CANADA BORDER

Interim Criteria for Licensing Land Mobile Radio Systems in 806-890 MHz Band

By exchange of letters between the Commission and the Department of Communications of Canada, an interim arrangement has been agreed to for licensing U.S. land mobile systems in the 806-890 MHz band within 250 miles from the U.S./Canada border.

The interim arrangement had been worked out by a joint group of staff members from Canada's Department of Communications and from the Commission. This Joint FCC/DOC working group has been exploring possible alternatives for sharing the use of the frequencies in the 806-890 MHz band by the two countries along the border.

The 806-890 MHz band is allocated to the land mobile services in the U.S. In Canada, it is allocated for television broadcasting.

The interim arrangement provides for licensing U.S. land mobile radio stations so as to fully protect Canadian television assignments in the band and to preserve the opportunity for possible use of some of this spectrum for land mobile purposes closer to the border in Canada as well as in the United States.

The criteria for authorizing U.S. land mobile stations are as follows: 1. Base stations will not be authorized in areas closer than 100 miles from the U.S./Canadian border.

2. Within a zone 100 miles and 125 miles from the border, base stations will be authorized only after specific arrangements have been made between the Commission and the Department of Communications of Canada for the specific geographic areas.

3. Within the zone 125 miles and 145 miles from the border, base stations may be authorized with the maximum of 500 watts ERP at 500 feet effective antenna height, or the equivalent.

4. Beyond 145 miles from the border, base stations may be authorized with the power and antenna heights permitted by the rules (1000 watts ERP at 1000 feet effective antenna height, for "urban conventional" and "trunked" stations, and 500 watts ERP at 500 feet effective antenna height, or the equivalent, for "suburban conventional" stations).

5. Mobile stations will be authorized to operate at distances of 90 miles or more from the border. The maximum ERP for mobile units operating within the zone between 90 and 145 miles from the border must not exceed 200 watts. Land mobile systems will normally employ a duplex channeling plan so as to prevent mobile-to-mobile operations closer than 90 miles to the border.

6. Mobile units operating further than 145 miles from the border will be authorized to operate with powers prescribed by the rules.

7. All land mobile stations within 250 miles from the border will be authorized on condition that they cause no harmful interference to Canadian television stations operating in the 806-890 MHz band. Land mobile stations will not be afforded protection from interference from Canadian television stations.

8. For information purposes only, the Commission will notify the Department of Communications of land mobile radio assignments in the band within 250 miles from the border.

This is an interim arrangement between the Commission and the Department of Communications, and it is anticipated that discussions will continue looking towards a mutually beneficial, overall solution.

This action was taken by the Commission. Commissioner Lee was absent.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS,
Secretary.

[FR Doc.77-2103 Filed 1-21-77;8:45 am]

CIVIL AERONAUTICS BOARD

COMMUTER AIRLINE ASSOCIATION OF AMERICA

Meeting

Notice is hereby given that a presentation will be made by Commuter Airline Association of America on Wednesday, February 2, 1977, at 3:00 p.m. (local time), in Room 1027, Universal Building, 1825 Connecticut Avenue, N.W., Washington, D.C., regarding the problem facing the commuter airlines.

Dated at Washington, D.C., January 17, 1977.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc.77-2050 Filed 1-21-77;8:45 a.m.]

[Docket No. 27557; Order 77-1-101]

SEABOARD WORLD AIRLINES, INC.

Order of Investigation and Suspension Regarding North Atlantic Cargo Charter Transfer Rules

Adopted by the Civil Aeronautics board) proposes a cargo charter transfer on the 6th day of January, 1977.

By tariff revisions filed December 20, 1976 for effectiveness January 19, 1977, Seaboard World Airlines, Inc. (Seaboard) proposes a cargo charter transfer rule which would permit the carrier to transfer U.S./Europe cargo shipments, already contracted to be carried on chartered aircraft, to Seaboard's regular scheduled service at the prevailing mileage-based charter rates.[1] Complaints requesting suspension of the filing pending investigation have been submitted by Pan American World Airways, Inc. (Pan American), Trans World Airlines, Inc. (TWA), The Flying Tiger Line Inc. (Tiger), Trans International Airlines, Inc. (TIA), and World Airways, Inc. (World).

In support of its proposal, Seaboard submits that the tariff rule would maintain the basic distinction between charter and scheduled service traffic and rates, while permitting the movement of charter-rated shipments on scheduled flights without impairing scheduled service availability; that Seaboard could operate more efficiently by maximizing productivity and reducing fuel consumption; that the decision whether charter-rated cargo will be carried on a scheduled or charter flight would lie entirely with the carrier, subject only to the prior consent of the charterer; and that neither the rates nor services received by either scheduled or charter shippers will be affected by the transfer facility.[2] Finally, Seaboard has submitted data based on average scheduled and charter flights showing that, on a scheduled B-747F flight with a load factor of 64.2 percent from scheduled freight, the carrier would achieve a revenue improvement of 54 to 68 percent by carrying additional cargo transferred from a DC-8 charter contract; and states that such an improvement on many flights could be of significant help in offsetting the severe cost escalations and depressed traffic experienced in North Atlantic freighter operations.

The complainants generally assert, *inter alia*, that Seaboard's tariff filing merely reflects an illegal practice Seaboard has followed for years and which is the subject of pending enforcement proceedings[3] and Seaboard cannot legitimize practices which violate the Act and the Board's Regulations simply by filing them in a tariff; that the Board has already denied a Seaboard petition for rulemaking and waiver intended to accomplish the same end, and concurrently expanded the issues in Docket 27557, Transatlantic FAK Container and Charter Freight Rates Investigation, to cover the issues raised by Seaboard's proposal which, therefore, are already under investigation;[4] and that in Order 76-9-128, September 14, 1976, the Board suspended a similar charter transfer facility proposed for use in North Atlantic passenger service by Pan American, and accordingly should not permit a "part charter" proposal to become effective in cargo service having just suspended a similar one in passenger operations. TIA contends further that, although Seaboard justifies its proposal on the basis that it will improve earnings, in fact Seaboard's current disappointing economic results reflect yield dilution attributable to its long-standing practice of illegally carrying charter shipments on scheduled service.

Upon consideration of the proposed rule, the complaints and all other relevant matters, the Board concludes that the proposal may be unjust, unreasonable, unjustly discriminatory, unduly preferential, unduly prejudicial, or otherwise unlawful and should be suspended pending investigation.

As indicated in the complaints, Order 76-9-157 denied a rulemaking petition by Seaboard seeking authority, by waiver or amendment of the Board's Economic Regulations, to accomplish the same result now sought through a tariff rule, i.e., to transport charter-sized shipments in scheduled service at planeload charter rates. Although Seaboard's petition was denied, the central issue it raised, i.e., "the economics of charter-rating very large cargo shipments on scheduled service in North Atlantic markets," was included by Order 76-9-157 as an additional issue in Docket 27557, Transatlantic FAK Container and Charter Freight Rates Investigation.

Although the proposed tariff rule raises issues central to the overall question of the costs attributable to large-volume cargo shipments in transatlantic service and the pricing decisions most appropriate to reflect such costs. Seaboard has provided no estimate in its tariff justification of the overall effect its proposal is expected to have on costs, load factors or revenue.[5] Absent such basic data, and in view of our prior consideration of this issue, the Board concludes that the carrier has not shown that its novel proposal, which represents a fundamental change in the traditional pattern of scheduled and charter operations, should become effective without investigation.

The investigation in Docket 27557 already includes the issues presented by Seaboard's proposed tariff rule. The matter was generally considered at that time and a determination was made that it should be set down for hearing. We reaffirm our prior finding and accordingly the investigation ordered herein will be consolidated with the ongoing one in Docket 27557.

Accordingly, pursuant to the Federal Aviation Act of 1958, and particularly sections 102, 204(a), 403, 404, 801 and 1002(j) thereof,

It is ordered, That: 1. An investigation be instituted to determine whether the provisions of Rule No. 2(h) on 8th Revised Page 3 to Charter Tariff No. ICH-1, C.A.B. No. 23 issued by Seaboard World Airlines, Inc., and rules, regulations, or practices affecting such provisions, are or will be unjust, unreasonable, unjustly discriminatory, unduly preferential, unduly prejudicial, or otherwise unlawful, and, if found to be unlawful, to take appropriate action to prevent the use of such provisions or rules, regulations, or practices;

2. Pending hearing and decision by the Board the tariff provisions specified in ordering paragraph one above are suspended and their use deferred to and including January 18, 1978, unless otherwise ordered by the Board; and that no change be made therein during the period of suspension except by order or special permission of the Board;

3. The investigation ordered herein be consolidated with that in Docket 27557;

4. This order shall be submitted to the President[6] and shall become effective on January 19, 1977;

5. The investigation ordered herein be assigned for hearing before an administrative law judge of the Board at a time and place hereafter to be designated;

6. Except to the extent granted herein, the complaints of Pan American World Airways, Inc., Trans World Airlines, Inc., The Flying Tiger Line Inc., Trans International Airlines, Inc., and World Airways, Inc. in Dockets 30274, 30263, 30276, 30272, and 30275 be and hereby are dismissed; and

7. Copies of this order be filed in the aforesaid tariffs and be served upon Seaboard World Airlines, Inc., Pan American World Airways, Inc., Trans World Airlines, Inc., The Flying Tiger Line Inc., Trans International Airlines, Inc., and World Airways, Inc.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc 77-2051 Filed 1-21-77;8:45 am]

[Docket No. 30335; Order 77-1-92]

UNITED AIR LINES, INC.

Order Granting Emergency Exemption

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 14th day of January, 1977.

United Air Lines, Inc. (United) by application filed January 12, 1977 in Docket 30335, requests an emergency exemption from the requirements of Order 74-12-109[1] for a period not to exceed 31 days to permit it to file fares tariffs in 42 markets constructed on a fare formula lower than the formula used on the remainder of its system. The application is conditioned on prior Board withdrawal of the suspension imposed by Order 76-12-16[2] of a general fare increase marked to become effective January 15, 1977.

In support of its application United states that if the Board withdraws the suspension imposed by Order 76-12-16 United will have higher fares than its competitors in 42 markets; that the requested exemption is necessary for the

[1] Seaboard World Airlines, Inc., Tariff C.A.B. No. 23, 8th Revised Page 3 and Original Page 3-A.

[2] Charges for shipments would be assessed as at present according to the appropriate rate tariffs. Seaboard also asserts that a charter shipper may sometimes receive faster service by having his shipment transferred to scheduled service; and that scheduled shippers will receive no worse service than at present since their consignments would have priority over charter-rated shipments in loading.

[3] Citing the November 22, 1976 Initial Decision of Administrative Law Judge Backley in Dockets 27036 and 27104, Seaboard World Airlines, Inc. Enforcement Proceeding.

[4] Order 76-9-157, September 29, 1976.

[5] The supporting data submitted by Seaboard in support of its proposal are largely limited to showing that on a per scheduled flight basis, total revenue would be considerably improved if a charter load were also carried in addition to regular scheduled traffic.

[6] This order was submitted to the President on January 7, 1977.

[1] December 27, 1974; Phase 9 of the Domestic Passenger-Fare Investigation (DPFI).

[2] December 3, 1976.

carrier to maintain its "existing competitive posture"; that it requests it be permitted to file the lower fares at the time the suspension order is lifted because some of the competing carriers have on file tariffs which can be amended in no less than 30 days; that the Board has previously granted such relief in Order 76–2–98 when confronted with "substantially similar facts"; and that the Board already has under study a proposal that would permanently implement the form of relief sought herein.[3]

Upon review of the statements contained in the application we find that enforcement of the prohibition [4] against filing individual fares tariffs inconsistent with the formula used to construct fares over the bulk of the carrier's system, insofar as it would prevent United or any other certificated carrier from matching specific fares of competitors who decline to adopt the two-percent general domestic passenger-fare increase marked to become effective on January 15, 1977, would be an undue burden on the carrier by reason of the limited extent of and unusual circumstances affecting its operations and is not in the public interest. Also, in view of the emergency nature of the request, we will act upon the application prior to the expiration of the normal period for filing answers.

A permanent mechanism for resolving the problem of carrier differences in implementing general fare increases is presently under review.[5] Since grant of the temporary relief at issue herein will not prejudice that proceeding, and since the circumstances in this case appear to be substantially similar to those for which we found a similar emergency exemption warranted in February, 1976,[6] we shall grant United's application. We remind the carriers that, as we have previously indicated, for future ratemaking purposes the Board will treat the present increase as though it had been in effect by all carriers in all markets from the date implemented by even a single carrier. Because we expect our findings on the permanent mechanism to issue shortly, we will limit our exemption authorization to the requested period of 31 days from the date of adoption of this order. Although only United has requested exemption relief, we will include all carriers in order to avoid any additional last-minute requests. We shall also require all carriers to file in Docket 30335 a list of all markets, together with the appropriate shortest authorized mileages, in which the carrier elects to file fares constructed on the basis of a fare formula lower than the formula reflecting the January 15, 1975 two percent general fare increase. This filing requirement does not apply to those carriers electing to forego the two percent increase altogether.

Accordingly, pursuant to the Federal Aviation Act of 1958, as amended, and particularly section 416(b) thereof.

[3] Order 76–8–18, August 4, 1976.
[4] Phase 9, DPFI, p. 175.
[5] Order 76–8–18, August 4, 1976.
[6] Order 76–2–98, February 25, 1976

It is ordered, That:

1. The U.S. trunkline and local service carriers be and they hereby are exempted from the requirements of Order 74–12–109 for a period of 31 days from the date of adoption hereof to the extent necessary to permit them to file tariffs containing fares in selected markets constructed on a fare formula lower than the formula used on the remainder of their systems where such action is necessary to maintain or return to a previously existing competitive posture; and

2. To the extent not granted herein, the application in Docket 30335 be and it hereby is denied.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc.77–2052 Filed 1–21–77;8:45 am]

[Docket No. 22859; Order 77–1–82]

UNITED AIR LINES, INC.

Order of Suspension Regarding Domestic Air Freight Rates

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 14th day of January, 1977.

By tariff revisions marked [1] to become effective January 17 and 31, 1977, United Air Lines, Inc. (United) proposes, among other things, to establish L–3 and L–11 regular and daylight general commodity container air freight rates and charges from Salt Lake City, Utah, and Norfolk/Newport News and Richmond, Virginia, to numerous destinations. Part of the movements will be performed through substitute motor carrier service by trucking Salt Lake City shipments to Denver, Colardo, and Norfolk and Richmond shipments to Washington, D.C.

United asserts, inter alia, that the proposal would make the benefits of wide-body aircraft lower-deck container service available at the three origins; that these containers cannot now be accommodated from these origins since the carrier offers no wide-body service from the cities; that the proposed charges are equal to United's current charges from Denver and Washington, respectively, plus an amount to cover the cost of the substitute truck service from the origin to the respective airport city; that the combining of airport-to-airport container charges with substitute truck charges is consistent with the opinion set forth in Order 75–3–37, Substitution of Other Service for Air Transportation Rule Proceeding, Docket 19797; and that the level of the proposed charges are all below the Bureau of Economics' industry-average costs updated for the year ended June 30, 1976.

The proposed rates and charges all come within the scope of the Domestic Air Freight Rate Investigation (DAFRI), Docket 22859, and their lawfulness will be determined in that proceeding. The issue now before the Board is whether to suspend the proposal or to permit it to become effective pending the decision in that investigation.

As indicated by United, none of the proposed rates and charges exceed the industry-average costs of such traffic as developed in DAFRI and updated for the year ended June 30, 1976. However, many of the proposed standard service and daylight time-of-tender charges out of these cities exceed the bulk charges for the same weight. For example, from Norfolk to Los Angeles United proposes $442 for an L–3 with a minimum weight of 1,100 pounds, about 7 percent above the current bulk charge of $414 for shipments of the same size. Container premiums in other markets encompassed by this proposal range between 2 and 15 percent over the bulk charges. We believe that shipper-loaded containers have lower terminal handling costs and represent significant cost reductions as compared with bulk shipments of similar weight, which reductions should be reflected in rates to the shipper. Consequently, charging more for container shipments than bulk shipments in the same market fails to give proper recognition to the cost differences involved, and raises significant questions of undue preference and prejudice.

United states that combining its airport-to-airport container charges with the substitute truck charges is consistent with the decision in the Substitute Service case, Order 75–3–37. However, that decision does not prescribe the combining of air and motor charges or any other formula as required to arrive at the charge for such substitute service transportation. In fact, a central issue in the case was the propriety of charging air rates where service was by substitute service means. The formulation cited by United may be appropriate in the case of a joint truck-air rate but that is not the case here where the service is United's, in part through a trucker agent. In such cases, the acceptable rates are those which would apply were United providing all the service.

Upon consideration of the above and other relevant factors, the Board finds that a considerable number of the proposed minimum charges per container as specified in Appendices A and B, should be suspended.[2] All other rates and charges out of Salt Lake City, Norfolk/Newport News, and Richmond do not exceed those for bulk shipments of similar size and will be permitted.

Accordingly, pursuant to the Federal Aviation Act of 1958, and particularly Sections 204(a), 403, 404, and 1002 thereof,

It is ordered, That: 1. Pending hearing and decision by the Board, the rates, charges, and provisions described in Appendix A hereto are suspended, and their use deferred to and including April 16, 1977; and the rates, charges, and provisions described in Appendix B [3] hereto are suspended, and their use deferred to and including April 30, 1977, unless otherwise ordered by the Board, and that no change be made therein during the period of suspension, except by order or special permission of the Board; and

2. Copies of this order shall be filed with the tariff and served upon United Air Lines, Inc.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc.77–2053 Filed 1–21–77;8:45 am]

[Docket Nos. 30356, 27693; Order 77–1–94]

WORLD AIRWAYS

Order Regarding Transcontinental Low-Fare Route Proceeding

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 14th day of January, 1977.

By Order 75–7–2, July 1, 1975, the Board announced that it would set the application of World Airways in Docket 27693 for expedited hearing, if it first found that the Federal Aviation Act does not prohibit supplemental air carriers from acquiring scheduled authority. After briefs and oral argument on this threshold question, the Board in Order 76–1–88, January 23, 1976, determined that it did not have the legal authority to issue a route certificate to a supplemental air carrier without requiring the surrender of the carrier's supplemental authority. Accordingly, World's application was dismissed. The applicant appealed and on December 8, 1976, the United States Court of Appeals for the District of Columbia Circuit reversed Order 76–1–88 and remanded the case for hearing.

With the threshold impediment removed, the application is hereby set for expedited hearing as announced in Order 75–7–2. Like the Chicago Midway Low-Fare Route Proceeding recently set for hearing in Docket 30277,[1] this case is also unique and complex but its implications are somewhat different from those of Chicago Midway. We have, therefore, decided to follow similar procedures by issuing a second order which will (a) define the scope of the proceeding, and (b) designate the route and rate issues to be resolved, including the relationship of World's fare proposal to the requirements of the Domestic Passenger Fare Investigation.[2]

In order to expedite the case and eliminate any unnecessary procedural steps, all other applications, motions to consolidate and comments regarding this order must be filed within 30 days of the service date of this order. Answers to motions filed pursuant to this directive will be due 14 days thereafter. Environmental evaluations pursuant to Part 312 of the Procedural Regulations shall be filed by World and any other applicant for authority within 90 days of the date of service of this order.

Accordingly, it is ordered, That: 1. A proceeding to be known as the Transcontinental Low-Fare Route Proceeding, Docket ——, be and it hereby is instituted and set for hearing before an administrative law judge of the Board at a time and place to be designated hereafter;

2. The application of World Airways, Inc. in Docket 27693 be and it hereby is restored to its place on the Board's docket and consolidated for hearing with the proceeding instituted by paragraph 1 above;

3. Applications, motions to consolidate and comments regarding this order shall be filed within 30 days of the service date of this order;

4. Answers in response to pleadings filed pursuant to paragraph 3 above shall be filed within 14 days thereafter;

5. World Airways and any other applicant for authority shall file an environmental evaluation within 90 days of the service date of this order; and

6. A copy of this order shall be served upon all parties in Docket 27693.

This order shall be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc.77–2054 Filed 1–21–77;8:45 am]

[Docket Nos. 30149, 30079, 30197; Order 77–1–93]

VARIOUS CARRIERS

Order Dismissing Complaints Regarding Domestic Passenger Fare Increase

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 14th day of January, 1977.

By tariff revisions [1] marked to become effective January 15, 1977, nine trunkline carriers—American Airlines, Inc. (American), Braniff Airways, Inc., Continental Air Lines, Inc., Eastern Air Lines, Inc. (Eastern), Northwest Airlines, Inc., Pan American World Airways, Inc., Trans World Airlines, Inc. (TWA), United Air Lines, Inc. (United), and Western Air Lines, Inc.—and five local service carriers—Allegheny Airlines, Inc., Frontier Airlines, Inc., Hughes Air Corp. d/b/a Hughes Airwest, North Central Airlines, Inc., and Piedmont Aviation, Inc.— propose to increase passenger fares in the 48-contiguous states and the District of Columbia by two percent. In support, the carriers assert, inter alia, that cost inflation has continued unabated and must be offset by a fare increase; that a two-percent increase over present fares appears justified even under the Board's ratemaking methodology; and that with various modifications to the Board's overly stringent analysis, an increase in excess of six percent could be justified.

The National Passenger Traffic Association, Inc. (NPTA) has complained against the proposals alleging that a two-percent fare increase over the present level would violate the 12.0-percent rate of return standard and would contribute to overall inflation when the economy has been considered by many to be in a "pause." In addition NPTA alleges that the domestic trunklines have experienced substantially increased net operating revenues and that this favorable trend should continue into the future; and that the Board's evaluation should not be based upon speculative increases in cost beyond the tariff effective date.

In answer the carriers state that NPTA has once again failed to acknowledge that the Board's ratemaking standards adjust for changes in traffic and financial results, and that even with currently improved results, a fare increase is required under the Board's ratemaking methodology.[2] The carriers further contend that NPTA's arguments about the Board's ratemaking standards are not based upon any analysis of their reasonableness, but merely upon a desire to minimize airline fares, regardless of the increase in unit costs.

Upon consideration of the proposals, the complaints and answers thereto, and all relevant matters, the Board finds that the complaints do not set forth sufficient facts to warrant investigation and consequently the request for suspension will be denied and the complaints dismissed.

By Order 76–12–16, December 3, 1976 the Board suspended certain of the proposed increases, those which had a tariff effective date prior to the travel effective date of January 15, 1977, in order to evaluate industry revenue need based upon the most current data available, that for the year ended September 30, 1976. We have now completed this analysis, and the results appear in Appendix A[2a]. Our assessment indicates that the industry ratemaking rate of return as of the tariff effective date of January 15, 1977 equals 10.0 percent. Including the two-percent increase proposed herein raises the return to 11.8 percent. We therefore find that the proposed increase appears warranted after inclusion of all ratemaking standards, the estimated revenue production of present fares, and current unit cost levels.[3]

The carriers have raised several issues which would have the Board alter its

[1] Revisions to Airline Tariff Publishing Company, Agent, Tariff C.A.B. No. 227

[2] In addition, while they do not exceed the bulk charges for the same weight, for technical reasons a number of daylight container charges would be suspended where the standard service charges are suspended because they exceed bulk charges.

[3] Appendix A and B filed as a part of the original document.

[1] Order 76–12–149, December 28, 1976.

[2] A staff evidence request will be appended to the order and the parties will be directed to submit comments thereon prior to the prehearing conference. All parties will be free to seek modification or expansion of the request. Because of the need in this case for further expert analysis of the facts and legal issues, no staff component will become a party to the proceeding until the second order has been issued.

[1] Revisions to Airline Tariff Publishing Company, Agents, Tariff C.A.B. 259.

[2] American, Eastern, TWA, and United have submitted answers to NPTA's complaints.

[2a] Appendices A through D are filed as a part of the original document.

[3] Appendix B sets forth the new Phase-9 fare formula.

assesment of general fare increase proposals as set forth below.

Discount Fare Adjustment

Several of the carriers argue that the Board should modify its adjustment for discount fare passengers. They contend that since every discount fare now offered must bear an expiry date no longer than 18-months into the future, the Board's policy effectively precludes the carriers from purchasing additional equipment for the purpose of handling discount fare passengers. The carriers allege that the Board's current discount fare policy is therefore short-term in nature and that present discount fares cannot burden the full-fare passengers. American has also asserted that the discount fare adjustment results in a double elimination of investment and interest expense in that any excess capacity is eliminated by the load factor standard.

The rationale for the Board's discount fare policies was explained in great detail in Phase 5 (Discount Fares) of the Domestic Passenger-Fare Investigation, Docket 21866-5, Order 72-12-18 at pages 40-58. The carriers have presented no arguments that would warrant a reconsideration of that decision at this late date. There is nothing new about the requirement that discount fares must be marked to expire 18 months from the effective date of the tariff. This standard was adopted in Phase 5 to allow the Board to monitor the short-run effects of discount fares, and to provide a vehicle for terminating any fare which the carrier concluded has served its short-run objectives. It does not address the problem that discount fares debase the overall yield of the carriers and would inevitably lead to higher normal fares, since the discounts are not cost-based, and indeed the cost of carrying discount traffic is virtually identical to the cost of carrying normal fare traffic. In order to prevent this burden on full fares, the Board in Phase 5 adopted the discount fare adjustment, which removes the impact of discount fares in computing the full fare level. This adjustment is used in conjunction with the 18 month expiration date requirement, not as an alternative.[4] While the carriers are correct in arguing that discount fares have not burdened normal fare traffic, this result has been achieved only because of the Board's insistence on effectuating the Phase 5 adjustment. American's argument that the Board's discount fare methodology results in a double elimination of investment and interest expense is simply incorrect. The carrier fails to consider that the load factor standard represents a standard for full fare traffic, and that the capacity disallowance included in the discount fare adjustment is therefore an integral part of bringing capacity into line with full fare demand.

Elimination of Interest and Investment

The carriers again argue that the Board employs inconsistent methodologies for eliminating interest and investment, pointing out that while the Board makes an adjustment equal to 75 percent of the ASM percentage reduction for the standard load factor adjustment,[5] and adjustment equal to 100 percent of the ASM percentage reduction is made for the discount fare adjustment and when annualizing past fare increases. However, the Board has previously stated, Order 76-4-182, April 30, 1976, that the differnt treatment of interest and investment reflects the fact that of the various adjustments—utilization, load factor, standard seating, discount fare, and fare annualization—only the latter two involve an adjustment to traffic, whereas the other three adjustments affect only aircraft capacity. Hence, our treatment of interest and investment is limited to that related to flight equipment in the case of the first three adjustments, i.e., 75 percent of a relative proportion of total interest and investment, but includes 100 percent of a relative proportion of interest and investment for the discount fare and fare annualization adjustments since both traffic and capacity are affected by them.

Reduction in Non-Capacity Costs

Both American and Eastern assert that the Board's current methodology of reducing noncapacity costs in conjunction with a fare increase is not consistent with the Board's decision in Phase 7 of the DPFI. There the Board's methodology reduced only capacity costs related to the reduction on capacity due to the loss in traffic resulting from application of an elasticity factor of −0.7. The Board did not adjust non-capacity costs in that decision, state the carriers, and followed this practice for the first two years following the Phase-7 decision. The carriers point out that presently, the Board's methodology eliminates not only capacity costs but also noncapacity or traffic-related costs. American alleges that the loss of traffic as a result of a fare increase is clearly temporary with traffic ultimately returning to the previous level as a result of normal growth; and that it is impossible for carriers to actually reduce non-capacity expense in proportion to the traffic decrease since many items of expense do not vary with short-term variations in traffic.

The carrier's arguments rest upon a footnote in the Board's decision (Order 71-4-59 and 71-4-60, April 9, 1971, mimeo. p. 52) which stated that "An additional cushion is provided by the recognition of normal non-capacity costs as forecast without any adjustment for cost savings related to loss of traffic resulting from the fare increase." However, the Board went on to say that this "* * * treatment combined with the use of a lower interim load-factor standard provides sufficient and adequate accommodation of the short and long-term factors and is appropriate for the phase-in period." We are now well beyond that "phase-in period" as we have employed our method of assessing revenue need for years.[6] The methodology now reflects the full cost adjustment associated with a reduction of traffic stemming from a fare increase.[7] While American correctly points out that due to the fixed nature of some portion of this cost element, a carrier cannot fully reduce the noncapacity cost in line with a reduction in traffic over the short-run, the Board's assessment is based upon the long-run unit costs of providing air service and therefore reflects the full, long-run savings in noncapacity costs in its evaluation. We realize that normal growth will bring traffic back to the level prior to the fare increase; nevertheless, traffic demand is lower after an increase than it would have been if no increase had been imposed. In our view, the current methodology correctly adjusts present cost levels for the full, long-range savings due to a reduction in traffic.

Utilization Adjustment

TWA and other carriers again criticize the Board's use of a utilization adjustment which, the carriers assert, works only to penalize the carriers; which is not economically feasible to implement due to an inability to make the required changes in fleet size to avoid the adjustment; and which creates a dilemma for the carriers between trying to meet the 1972 level by operating more hours, but in so doing, lowering load factors and creating a greater disallowance under the standard load-factor adjustment. American, in addition, argues that the Board's original purpose for the utilization adjustment was the abnormally low utilization rates experienced after the carriers grounded aircraft during the fuel crisis of 1974. American asserts that the fuel crisis is long past and that it is now time for the Board to stop making this adjustment since there is nothing abnormal about current utilization levels.

[4] In any event, the 18-month criterion for setting expiry dates has not altered the tendency of discount fares to become embedded in the fare-structure over the long-term. As the table in Appendix C points out, since the year ended March 31, 1975 when discount fare traffic was at a low of 24 percent of total coach traffic, the discount traffic share has risen to a point that today one of every three passengers traveling in the coach section of the aircraft is paying less than a cost-based fare.

[5] TWA has argued that in calculating the standard load factor adjustment the methodology should be altered to reduce capacity expense at a rate equal to 85 percent of the ASM reduction. The carrier supports this assertion from an alleged finding in the Night Coach Fare Investigation (NCFI) which found that "in the long-run, variable costs are estimated to be approximately 85 percent of total costs." Irrespective of TWA's reference to testimony in the NCFI, a basic principle of economics states that all costs are variable in the long-run. In our opinion, the reduction of capacity costs should be equal to the full reduction in ASM's.

[6] The long-term load factor standard of 55 percent has been utilized by the Board in lieu of the interim standard of 52.5 percent since September 1973.

[7] It should be noted that the final rate of return is unaffected by the elasticity computations as performed. The sole purpose of this computation is to show the impact of price changes on the level of traffic.

The necessity for the adjustment to utilization rates (and for that matter, any other variable which the Board may conclude results from abnormal conditions) stemmed from the significant distortion in then current utilization rates resulting from the carriers' reaction to the fuel embargo. As the Board explained when it first made the adjustment,[8] the prior methodology made no adjustment to account for higher load factors resulting from reduced frequencies and aircraft utilization resulting from the fuel crisis rather than from traffic growth as had been contemplated in the DPFI. The Board deemed such an adjustment in these atypical circumstances wholly consistent with the fundamental DPFI principal to protect the normal-fare level from the burden of excess capacity. While it is true that industry load factors no longer reflect abnormal operations due to the fuel crisis, current utilization rates of various aircraft types have not returned to 1972 levels. The Board has made an adjustment for the difference in utilization rates in our analysis of the instant proposals. As the results in Appendix A indicate, the proposed increase appears warranted regardless of the utilization adjustment, and therefore, the Board will reserve judgment on this question until a later date.

Cost-Escalation Factor

By Order 76-4-182, April 30, 1976, the Board requested comments with respect to the cost-escalation factor used in the Board's fare level evaluation methodology. This was done in response to carrier allegations that the Board's approach, i.e., adjusting base period average unit costs to the estimated level as of the tariff effective date, fails to recognize that costs continue to rise after the tariff becomes effective due to inflationary pressures and, as a result, that revenues lag behind expenses after a fare increase until such time as the carriers can gain a further fare increase. In response to the Board's request, nine carriers and four non-carrier parties submitted comments. In general, the carriers favor an approach which would adjust the cost-escalation factor to a point beyond the tariff effective date, principally because of the revenue lag resulting from the current methodology. Noncarrier parties, on the other hand, generally oppose any such approach, essentially due to the speculation involved in estimating costs beyond the tariff effective date. The comments are summarized in Appendix D.

The Board has now considered these comments and other matters, and has decided against any approach which would adjust the cost-escalation factor beyond the tariff effective date. A number of considerations move the Board to this conclusion. At the outset and in order to place the matter in perspective, we note that the attrition related to inflation beyond the tariff effective date represents only a small portion of the carriers' overall revenue need, less than one-half of one percent based upon the current level of cost inflation. The major cause of the carriers' actual ROI shortfall is a continuing full-fare load factor substantially below 55 percent. This is reflected in the load factor and discount fare adjustments which presently increase the ratemaking ROI by more than five points. Secondly, whatever the magnitude of the inflation problem in the past, the cost factor and hence the revenue shortfall involved has declined significantly. Furthermore, the Board's cost factor methodology, assumes a straight line trend in cost inflation, notwithstanding that in recent periods the trend in fact has been declining.

Opponents of adjusting the cost factor beyond the tariff effective date have presented various arguments, which include the high risk of error which could result in excessive fares, the problem of cross-subsidization since today's passenger would have to pay for tomorrow's inflation, and the effect of such a policy to feed inflation. Without necessarily accepting all or any of these points, the fact of the matter is that embodying future costs into present fares raises a number of such serious questions. In the absence of compelling need, which does not appear to be present here, we do not believe speculative costs should be built into the rate base.

There is, however, an element of revenue lag, and resulting ROI deficiency, which is caused by factors other than inflation, and which we believe can be alleviated without risk of overstating revenue need. For example, during the past year various fare increase proposals were suspended because they would have resulted in an ROI in excess of 12 percent, and other proposals which were permitted did not raise the ROI to 12 percent despite rather determined carrier efforts to increase fares to the maximum permissible under the present methodology. It appears likely that both results stemmed from failure to use the most up-to-date data.

The Board has determined to take steps to minimize this problem. First, we intend to issue press releases promptly each quarter which reflect our computation of actual 48-state results so that the carriers and the public will have the benefit of the most current data available. Secondly, notwithstanding prompt release of industry data via press releases, we recognize that the timing of fare increase proposals might be such, due to the tariff filing notice requirements, that the Board will be able to base its decision on more current data than is available to the carriers. For this reason, once a proposal is deemed to be excessive on the basis of more current data than available to the carriers at the time their proposal was submitted, the Board will consider permitting on short notice fare increases to which the carriers are entitled under established standards. We believe short notice may be justified, under particular circumstances, in view of the substantial adjustments made under the Board's ratemaking methodology in order to protect the travelling public from excessive fares. We would emphasize that we will consider fare increases on short notice only in instances when the carriers have proposed even greater increases on statutory notice with full opportunity for complaints and answers.

Accordingly, pursuant to the Federal Aviation Act of 1958, and particularly sections 204(a), 403, 404, and 1002 thereof,

It is ordered, That:

1. The complaints in Dockets 30079 and 30197 are hereby dismissed;

2. The investigation ordered in Docket 30149 is hereby vacated for travel commencing on and after January 15, 1977; and

3. Copies of this order be served upon all certificated scheduled carriers operating between points within the 48-contiguous states and the District of Columbia, and the National Passenger Traffic Association, Inc.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.[9]

PHYLLIS T. KAYLOR,
Secretary.

CHAIRMAN ROBSON AND VICE CHAIRMAN O'MELIA CONCURRING AND DISSENTING IN PART

We concur fully in the Board's actions with the single exception of its determination not to adjust the cost-escalation factor to any point beyond the tariff effective date. We do not dismiss as frivolous the arguments against introducing speculative cost-determining features into our fare level evaluation methodology, and we concede that the other steps which the Board is taking will help to ameliorate the lag problem. Nonetheless, we believe that adjusting the cost-escalation factor to a point somewhat beyond the tariff effective date is the most straightforward way to deal with cost-revenue lag in an inflationary environment, is a faithful execution of our rate-setting formula, may reduce the frequency of carrier requests for fare changes, and can be applied consistently with our public responsibilities.

JOHN E. ROBSON.
RICHARD J. O'MELIA.

[FR Doc 77-2055 Filed 1-21-77;8:45 am]

[8] Orders 75-6-72, June 13, 1975, and 75-6-99, August 19, 1975.

[9] Robson, chairman, and O'Melia, vice chairman, filed the attached concurrence and partial dissent.

[Docket 29684]

EPHRATA–MOSES LAKE DELETION CASE

Notice of Hearing

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that a hearing in the above-entitled proceeding will be held on February 22, 1977, at 9:30 a.m. (local time), in the Ephrata City Council Chambers, Ephrata City Hall, First and A Streets, S.W., Ephrata, Washington, 98823, before Administrative Law Judge Ronnie A. Yoder.

For information concerning the issues involved and other details in this proceeding, interested persons are referred

to the prehearing conference report served November 11, 1976, and other documents which are in the docket of this proceeding on file in the Docket Section of the Civil Aeronautics Board.

Dated at Washington, D.C., January 17, 1977.

RONNIE A. YODER,
Administrative Law Judge.

[FR Doc.77-2159 Filed 1-21-77;8:45 am]

[Docket 29445]

LAS VEGAS-DALLAS/FORT WORTH NONSTOP SERVICE INVESTIGATION

Notice of Hearing

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that a hearing in the above-entitled proceeding will be held on March 8, 1977 at 10 a.m. (local time) at the Airport Conference Room, Mezzanine Floor, Terminal Building, McCarran International Airport, Las Vegas, Nevada 89111. At the conclusion of the hearing in Las Vegas, the hearing will be recessed until March 15, 1977 at 10 a.m. (local time) in Room 1003, Hearing Room A, Universal Building North, 1875 Connecticut Avenue, N.W., Washington, D.C.

The civic parties will be heard in alphabetical order in Las Vegas. The remainder of the parties will be heard in Washington, D.C.

For details of the issues involved in this proceeding, interested persons are referred to the Prehearing Conference Report, served November 4, 1976, and other documents which are in the docket of this proceeding on file in the Docket Section of the Civil Aeronautics Board.

Dated at Washington, D.C., January 17, 1977.

WILLIAM H. DAPPER,
Administrative Law Judge.

[FR Doc.77-2158 Filed 1-21-77;8:45 am]

GENERAL COMMODITY RATES

[Docket 27573; Agreement C.A.B. 26320; Order 77-1-54]

Agreement Adopted by Traffic Conference 3 of the International Air Transport Association

JANUARY 11, 1977.

Issued under delegated authority.

An agreement has been filed with the Board pursuant to section 412(a) of the Federal Aviation Act of 1958 (the Act) and Part 261 of the Board's Economic Regulations between various air carriers, foreign air carriers and other carriers embodied in the resolutions of Traffic Conference 3 of the International Air Transport Association (IATA). The agreement, adopted by mail vote, has been assigned the above C.A.B. agreement number.

The agreement would establish general commodity rates between Port Moresby and Kagoshima. The rates are combinable with rates to/from U.S. points and thus have indirect application in air transportation as defined by the Act.

Pursuant to authority duly delegated by the Board in the Board's Regulations 14 CFR 385.14, it is not found that resolution 300 (Mail 87) 553, incorporated in Agreement C.A.B. 26320 as indicated, and which has indirect application in air transportation as defined by the Act, is adverse to the public interest or in violation of the Act.

Accordingly, *It is ordered* That:

Agreement C.A.B. 26320 be and hereby is approved.

Persons entitled to petition the Board for review of this order pursuant to the Board's Regulations, 14 CFR 385.50, may file such petitions within ten days after the date of service of this order.

This order shall be effective and become the action of the Civil Aeronautics Board upon expiration of the above period, unless within such period a petition for review thereof is filed or the Board gives notice that it will review this order on its own motion.

This order will be published in the FEDERAL REGISTER.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc.77-2160 Filed 1-21-77;8:45 am]

[Docket 27573; Agreement C.A.B. 26353; Order 77-1-52]

SPECIFIC COMMODITY RATES

Agreement Adopted by the Joint Traffic Conferences of the International Air Transport Association; Order

JANUARY 11, 1977.

Issued under delegated authority.

An agreement has been filed with the Board pursuant to section 412(a) of the Federal Aviation Act of 1958 (the Act) and Part 261 of the Board's Economic Regulations between various air carriers, foreign air carriers, and other carriers embodied in the resolutions of the Traffic Conference 3 of the International Air Transport Association (IATA), and adopted pursuant to the provisions of Resolution 590 dealing with specific commodity rates.

The agreement names an additional specific commodity rate as set forth below, reflecting a reduction from general cargo rates, and was adopted pursuant to unprotested notices to the carriers and promulgated in IATA letter dated December 30, 1976.

Description and rate:	*Specific commodity item No.*
Dogs, 416 cents per kg.,[1] minimum weight 100 kgs. from Sydney to Guam	1020

[1] Based on the 021b rate 1 U.K. pence equals USD .02605.

Pursuant to authority duly delegated by the Board in the Board's Regulations, 14 CFR 385.14, it is not found that the subject agreement is adverse to the public interest or in violation of the Act, provided that approval is subject to the conditions hereinafter ordered.

Accordingly, *It is ordered*, that:

Agreement 26363, is approved, provided that (a) approval shall not constitute approval of the specific commodity descriptions contained therein for purposes of tariff publications; (b) tariff filings shall be marked to become effective on not less than 30 days' notice from the date of filing; and (c) where a specific commodity rate is published for a specified minimum weight at a level lower than the general commodity rate applicable for such weight, and where a general commodity rate is published for a greater minimum weight at a level lower than such specific commodity rate, the specific commodity rate shall be extended to all such greater minimum weights at the applicable general commodity rate level.

Persons entitled to petition the Board for review of this order, pursuant to the Board's Regulations, 14 CFR 385.50, may file such petitions within ten days after the date of service of this order.

This order shall be effective and become the action of the Civil Aeronautics Board unless within such period a petition for review is filed or the Board gives notice that it will review this order on its own motion.

This order will be published in the FEDERAL REGISTER.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc.77-2161 Filed 1-21-77;8:45 am]

COMMISSION ON POSTAL SERVICE

PUBLIC SERVICE COSTS OF POSTAL SERVICE

Additional Hearing

Under section 7(c)(1) of the Postal Reorganization Act Amendments of 1976, Pub. L. 94-421, 90 Stat. 1309, the Commission on Postal Service gives notice of its intention to hold a hearing in Portland, Oregon, on February 4, 1977. This notice will supplement earlier notices of December 22, 1976 (41 FR 55738) and January 17, 1977 (42 FR 3191) that announced hearings to be held between January 18 and February 10, 1977, in 20 other cities throughout the nation, including Washington, D.C.

Members of the public are invited to appear before the Commission to address the five issues of postal policy enumerated in the FEDERAL REGISTER notice of (41 FR 51435-51436). Generally, these issues concern the definition and quantification of the public service costs of postal service to the American public, postal rates and classifications, and the impact of new and developing electronic communication systems upon the Postal Service. Persons wishing to testify should notify the Commission as soon as possible at the following address:

Commission on Postal Service, 1750 K Street, N.W., Suite 801, Washington, D.C. 20006.

Individuals testifying for themselves are to bring three copies of their testimony with them to the hearing. Organizations and businesses will be required to file 15 advance copies of their testimony at least 10 days before the hearing. Those copies should be mailed to the above address.

Each person notifying the Commission of his intent to testify will be informed by the Commission of the time and place of the hearing at which the person intends to testify.

By the Commission.

DAVID MINTON,
Executive Director.

JANUARY 18, 1977.

[FR Doc.77-2173 Filed 1-21-77;8:45 am]

COMMISSION ON CIVIL RIGHTS

DELAWARE ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Delaware Advisory Committee (SAC) of the Commission will convene at 12:00 noon and end at 2:00 p.m. on February 9, 1977, at the Y.M.C.A., 11th and Washington Streets, Wilmington, Delaware.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Mid-Atlantic Regional Office of the Commission, 2120 L Street, N.W., Room 510, Washington, D.C. 20037.

The purpose of this meeting is review of proposals for committee study.

This meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., January 17, 1977.

ISAIAH T. CRESWELL, JR.,
Advisory Committee Management Officer.

[FR Doc.77-2118 Filed 1-21-77;8:45 am]

ILLINOIS ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Illinois Advisory Committee (SAC) of the Commission will convene at 10:30 a.m. and end at 3:00 p.m. on February 8, 1977, at 230 South Dearborn Street, Room 3280, Chicago, Illinois 60604.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Midwest Regional Office of the Commission, 230 South Dearborn Street, 32nd Floor, Chicago, Illinois 60604.

The purpose of this meeting is to develop plans for 1977-78 program activities. Report on the program planning and evaluation training program.

This meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., January 17, 1977.

ISAIAH T. CRESWELL, JR.,
Advisory Committee Management Officer.

[FR Doc.77-2119 Filed 1-21-77;8:45 am]

INDIANA ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Indiana Advisory Committee (SAC) of the Commission will convene at 7:00 p.m. and end at 10:00 p.m. on February 13, 1977, and reconvene at 9:00 a.m. and end at 12:00 noon on February 14, 1977, at the Ramada Inn, Conference Room, 1530 North Meridian, Indianapolis, Indiana 46202.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Midwest Regional Office of the Commission, 230 South Dearborn Street, 32nd Floor, Chicago, Illinois 60604.

The purpose of this meeting is to review status of ERA ratification in Indiana; plan employment study and other business.

This meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D. C., January 17, 1977.

ISAIAH T. CRESWELL, JR.,
Advisory Committee Management Officer.

[FR Doc.77-2120 Filed 1-21-77;8:45 am]

IOWA ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Iowa Advisory Committee (SAC) of the Commission will convene at 10:00 a.m. and end at 3:00 p.m. on February 11, 1977, at the Holiday Inn, Blackhawk Room, 1050 6th Avenue, Des Moines, Iowa.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Central States Regional Office of the Commission, Old Federal Office Bldg., Room 3103, 911 Walnut Street, Kansas City, Missouri 64106.

The purpose of this meeting is to begin planning SAC activities for the year of 1977.

This meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., January 17, 1977.

ISAIAH T. CRESWELL, JR.,
Advisory Committee Management Officer.

[FR Doc.77-2121 Filed 1-21-77;8:45 am]

KENTUCKY ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Kentucky Advisory Committee (SAC) will convene at 5:30 p.m. and end at 9:30 p.m. on February 10, 1977, at the Galt House, Fourth Street at River Road, Commissioner's Room, 2nd Floor, Louisville, Kentucky 40201.

The purpose of this open meeting is to continue plans for the State Police project and to receive report from subcommittee on interviews and statistical data.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Southern Regional Office of the Commission, Citizens Trust Bank Bldg., Room 362, 75 Piedmont Avenue, NE., Atlanta, Georgia 30303.

This meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., January 17, 1977.

ISAIAH T. CRESWELL, JR.,
Advisory Committee Management Officer.

[FR Doc. 77-2122 Filed 1-21-77; 8:45 am]

MINNESOTA ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Minnesota Advisory Committee (SAC) of the Commission will convene at 7:00 p.m. and end at 9:00 p.m. on February 11, 1977, at the Holiday Inn, 161 St. Anthony, St. Paul, Minnesota 55403.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Midwest Regional Office of the Commission, 230 South Dearborn Street, 32nd Floor, Chicago, Illinois 60604.

The purpose of this meeting will be American Indian Sub-committee review and prepare for March Hearing.

This meeting will be conducted pursuant to the Rules and Regulations of the Commission.

Dated at Washington, D.C., January 17, 1977.

ISAIAH T. CRESWELL, JR.,
Advisory Committee Management Officer.

[FR Doc. 77-2123 Filed 1-21-77;8:45 am]

MINNESOTA ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Minnesota Advisory Committee (SAC) of the Commission will convene at 9:30 a.m.

and end at 12:00 noon on February 12, 1977 at the Holiday Inn, 161 St. Anthony, St. Paul, Minnesota 55403.

Persons wishing to attend this open meeting should contact the Committee Chairperson or the Midwest Regional Office of the Commission, 230 South Dearborn Street, 32nd Floor, Chicago, Illinois 60604.

The purpose of this meeting will be for the subcommittee's report on American Indian Study and Police Community Relation Study.

This meeting will be conducted pursuant to the Rules and Regulations of the Commission.

Dated at Washington, D.C., January 17, 1977.

ISAIAH T. CRESWELL, JR.,
Advisory Committee Management Officer.

[FR Doc.77-2124 Filed 1-21-77;8:45 am]

NEW HAMPSHIRE ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a planning meeting of the New Hampshire Advisory Committee (SAC) of the Commission will convene at 7:30 p.m. and end at 10:00 p.m. on February 15, 1977, at the New Hampshire Highway Hotel, Concord, New Hampshire.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Northeast Regional Office of the Commission, 26 Federal Plaza, Room 1639, New York, New York 10007.

The purpose of this meeting is to discuss status of all subcommittees.

This meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., January 17, 1977.

ISAIAH T. CRESWELL, JR.,
Advisory Committee Management Officer.

[FR Doc.77-2126 Filed 1-21-77;8:45 am]

OKLAHOMA ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a factfinding meeting of the Oklahoma Advisory Committee (SAC) of the Commission will convene at 9:00 a.m. and end at 2:00 p.m. on February 10, 1977, and reconvene at 9:00 a.m. and end at 5:00 p.m. on February 11, 1977, at the Sequoyah Underground Auditorium State Capitol, 2401 Lincoln, Oklahoma City, Oklahoma 73105.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Southwest Regional Office of the Commission, New Moore Building, Room 231, 106 Broadway, San Antonio, Texas 78205.

The purpose of this meeting will be to invite State officials and private citizens to give information on the State's equal employment and affirmative action efforts, State's merit system and its impact on minorities and women.

This meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., January 17, 1977.

ISAIAH T. CRESWELL, JR.,
Advisory Committee Management Officer.

[FR Doc.77-2125 Filed 1-21-77;8:45 am]

VERMONT ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Vermont Advisory Committee (SAC) of the Commission will convene at 7:30 p.m. and end at 11:00 p.m. on February 21, 1977, at the Tavern Motor Inn, Montpelier, Vermont.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Northeast Regional Office of the Commission, 26 Federal Plaza, Room 1639, New York, New York 10007.

The purpose of this meeting is to discuss status of subcommittees.

This meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., January 17, 1977.

ISAIAH T. CRESWELL, JR.,
Advisory Committee Management Officer.

[FR Doc.77-2127 Filed 1-21-77;8:45 am]

DEPARTMENT OF COMMERCE

Domestic and International Business Administration

LICENSING PROCEDURES SUBCOMMITTEE OF THE COMPUTER SYSTEMS TECHNICAL ADVISORY COMMITTEE

Open Meeting

Pursuant to Sec. 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. I (Supp. V, 1975), notice is hereby given that a meeting of the Licensing Procedures Subcommittee of the Computer Systems Technical Advisory Committee will be held on Tuesday, February 8, 1977, at 1:00 p.m. in Room 3817, Main Commerce Building, 14th and Constitution Avenue, N.W., Washington, D.C.

The Computer Systems Technical Advisory Committee was initially established on January 3, 1973. On December 20, 1974 and January 13, 1977, the Assistant Secretary for Administration approved the recharter and extension of the Committee, pursuant to Secretary 5(c)(1) of the Export Administration Act of 1969, as amended, 50 U.S.C. App. Sec. 2404(c)(1) and the Federal Advisory Committee Act. The Licensing Procedures Subcommittee of the Computer Systems Technical Advisory Committee was initially established on February 4, 1974. On July 8, 1975, the Director, Office of Export Administration, approved the reestablishment of this Subcommittee, pursuant to the charter of the Committee.

The Committee advises the Office of Export Administration, Bureau of East-West Trade, with respect to questions involving technical matters, worldwide availability and actual utilization of production and technology, and licensing procedures which may affect the level of export controls applicable to computer systems, including technical data related thereto, and including those whose export is subject to multilateral (COCOM) controls. The Licensing Procedures Subcommittee was formed to review the procedural aspects of export license applications within the Office of Export Administration and recommend areas where improvements can be made.

The agenda for the meeting is:

(1) Opening remarks by the Subcommittee Chairman.

(2) Presentation of papers or comments by the public.

(3) Discussion of work program for 1977.

The meeting will be open for public observation and a limited number of seats will be available. To the extent time permits members of the public may present oral statements to the Subcommittee. Written statements may be submitted at any time before or after the meeting.

Copies of the minutes of the meeting will be available upon written request addressed to the Freedom of Information Officer, Room 3012, Domestic and International Business Administration, U.S. Department of Commerce, Washington, D.C. 20230.

For further information, contact Mr. Charles C. Swanson, Director, Operations Division, Office of Export Administration, Domestic and International Business Administration, Room 1617M, U.S. Department of Commerce, Washington, D.C. 20230, telephone: A/C 202-377-4196.

Dated: January 19, 1977.

RAUER H. MEYER,
Director, Office of Export Administration, Bureau of East-West Trade, U.S. Department of Commerce.

[FR Doc.77-2252 Filed 1-21-77;8:45 am]

Foreign Trade Zones Board

[Order No. 115]

GEORGIA FOREIGN TRADE ZONE

Resolution and Order Approving Application for a Foreign-Trade Zone in Shenandoah, Coweta County, Georgia

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter hereby orders:

After consideration of the application of the Georgia Foreign Trade Zone, Inc., a Georgia non-profit public corporation, filed with the Foreign-Trade Zones Board (the Board) on July 30, 1976, requesting a grant of authority for establishing, operating and maintaining a foreign-trade zone in the new town of Shenandoah, Coweta County, Georgia, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

Since the proposal involves an industrial park type zone that envisages the construction of buildings by parties other than the grantee, this approval includes the authority to the grantee to permit the erection of such buildings, pursuant to Section 400.815 of the Board's regulations, as are necessary to carry out the zone proposal, providing that prior to its granting such permission it shall have the concurrences of the local District Director of Customs, the U.S. Army District Engineer, when appropriate, and the Board's Executive Secretary. Further, the grantee shall notify the Executive Secretary for approval prior to the commencement of any manufacturing operation within the zone. The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

TO ESTABLISH, OPERATE, AND MAINTAIN A FOREIGN-TRADE ZONE IN SHENANDOAH, COWETA COUNTY, GEORGIA

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u), (hereinafter referred to as "the Act"), the Foreign-Trade Zones Board (hereinafter referred to as "the Board") is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Georgia Foreign Trade Zone, Inc. (hereinafter referred to as "the Grantee"), has made application (filed July 30, 1976) in due and proper form to the Board requesting the establishment, operation, and maintenance of a foreign-trade zone in Shenandoah, Coweta County, Georgia;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and

Whereas, the Board has found that the requirements of the Act and the Board's regulations (15 CFR Part 400) are satisfied;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing, operating, and maintaining a foreign-trade zone, designated on the records of the Board as Zone No. 26, at the location mentioned above and more particularly described on the maps and drawings accompanying the application requesting authority for a foreign-trade zone in Shenandoah, Georgia, marked as Exhibits IX and X, said grant being subject to the provisions, conditions, and restrictions of the Act and the regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also to the following express conditions and limitations, to-wit:

Operation of the foreign-trade zone shall be commenced by the Grantee within a reasonable time from the date of issuance of the grant, and prior thereto the Grantee shall obtain all necessary permits from Federal, State, and municipal authorities.

The Grantee shall allow officers and employees of the United States free and unrestricted access to and throughout the foreign-trade zone in the performance of their official duties.

The Grantee shall notify the Executive Secretary of the Board for approval prior to the commencement of any manufacturing operations within the zone.

The grant shall not be construed to relieve the Grantee from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said zone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the District Army Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer, Elliott L. Richardson, at Washington, D.C., this 17th day of January 1977 pursuant to Order of the Board.

FOREIGN-TRADE ZONES BOARD,
ELLIOTT L. RICHARDSON,
Chairman and Executive Officer.
JOHN J. DA PONTE, JR.,
Executive Secretary.

[FR Doc.77-2177 Filed 1-21-77;8:45 am]

[Order No. 114]

VIRGINIA PORT AUTHORITY

Approval of Application to Relocate Foreign-Trade Zone No. 20 in Portsmouth, Virginia

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), and the Foreign-Trade Zones Board Regulations (15 CFR Part 400), The Foreign-Trade Zones Board (the Board) has adopted the following Order:

Whereas, the Virginia Port Authority, Grantee of Foreign-Trade Zone No. 20, Portsmouth, Virginia, has made application (filed October 18, 1976) for authority to relocate Foreign-Trade Zone No. 20 from its present site at the Portsmouth Marine Terminal to 2400 Wesley Street, Portsmouth;

Whereas, public notice of the application has been given and full opportunity has been afforded all interested parties to be heard (41 FR 46651, October 22, 1976);

Whereas, an Examiners Committee has investigated the proposal and recommends approval of the application; and

Whereas, the Board has found that the requirements of the Foreign-Trade Zones Act, as amended, and the Foreign-Trade Zones Board Regulations are satisfied and that the proposal is in the public interest;

Now, therefore, the Board hereby approves the relocation of Foreign-Trade Zone No. 20 from its present site at the Portsmouth Marine Terminal to its new site at 2400 Wesley Street, Portsmouth, Virginia.

The Grantee shall notify the Board's Executive Secretary for approval prior to the commencement of any manufacturing operation within the zone.

Signed at Washington, D.C. this 17th day of January 1977.

ELLIOT L. RICHARDSON,
Secretary of Commerce, Chairman and Executive Officer, Foreign-Trade Zones Board.

JOHN J. DA PONTE, JR.,
Executive Secretary, Foreign-Trade Zones Board.

[FR Doc.77-2176 Filed 1-21-77;8:45 am]

DEPARTMENT OF DEFENSE

Department of the Army

ARMED FORCES EPIDEMIOLOGICAL BOARD

Open Meeting

1. In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463) announcement is made of the following committee meeting:

Name of committee: ad hoc subcommittee on Influenza of the Armed Forces Epidemiological Board.

Date of meeting: February 9, 1977.

Place and time: Room 3092, Walter Reed Army Institute of Research, Washington, D.C. 0900–1630.

Proposed Agenda: The purpose of this meeting is to review the DHEW and DOD epidemiological data regarding the association of influenza immunizations and Guillain-Barré Syndrome and to discuss prospective and retrospective studies needed to investigate this relationship. Immunization of active duty personnel and recruits during 1977 and 1978 will be discussed.

2. This meeting will be open to the public but limited by space accommodations. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. Interested persons wishing to participate should advise the Executive Secretary, DASG-AFEB, Room 1B472 Pentagon, Washington, D.C. 20310.

DUANE G. ERICKSON,
LTC, MSC, United States Army, Executive Secretary.

JANUARY 18, 1977.

[FR Doc.77-2112 Filed 1-21-77;8:45 am]

Office of the Secretary

DEFENSE SCIENCE BOARD TASK FORCE ON VERIFICATION

Meeting

The Defense Science Board Task Force on Verification will meet in closed session on 11 February 1977, at 1500 Wilson Boulevard, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Director of Defense Research and Engineering on overall research and engineering and to provide long range guidance in these areas to the Department of Defense.

The Task Force will examine trends in verification technology applicable to insuring foreign compliance with arms control agreements.

In accordance with Section 10(d) of Appendix I, Title 5, United States Code, it has been determined that this Task Force meeting concerns matters listed in Section 552(b) of Title 5 of the United States Code, specifically Subparagraph (1) thereof, and that accordingly this meeting will be closed to the public.

MAURICE W. ROCHE,
Director, Correspondence and Directives, Office of the Assistant Secretary of Defense (Comptroller).

JANUARY 18, 1977.

[FR Doc.77-2056 Filed 1-21-77;8:45 am]

DEFENSE SCIENCE BOARD

Notice of Advisory Committee Meeting

The Defense Science Board will meet in closed session on 16-17 February 1977 at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Director of Defense Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense.

A meeting of the Board has been scheduled for 16-17 February 1977 to discuss interim findings and tentative recommendations resulting from ongoing Task Force activities associated with Strategic, Tactical, Intelligence/Command, Control and Communication, and Technology issues. The Board will also discuss plans for future consideration of scientific and technical aspects of specific strategies, tactics, and policies as they may affect the U.S. national defense posture.

In accordance with Section 10(d) of Appendix I, Title 5, United States Code, it has been determined that this Defense Science Board meeting concerns matters listed in Section 552(b) of Title 5 of the United States Code, specifically subparagraph (1) thereof, and that accordingly this meeting will be closed to the public.

MAURICE W. ROCHE,
Director, Correspondence and Directives, Office of the Assistant Secretary of Defense (Comptroller).

JANUARY 18, 1977.

[FR Doc.77-2057 Filed 1-21-77;8:45 am]

DEFENSE SCIENCE BOARD TASK FORCE ON NUCLEAR PROLIFERATION

Meeting

The Defense Science Board Task Force on Nuclear Proliferation will meet in closed session on 14-15 February 1977, at 1500 Wilson Boulevard, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Director of Defense Research and Engineering on overall research and engineering and to provide long range guidance in these areas to the Department of Defense.

The Task Force will examine trends in nuclear proliferation that bear on our national security interests. They will examine estimates of technical capabilities, military/political intentions, and resource available for countries that may acquire nuclear devices in the next decade.

In accordance with Section 10(d) of Appendix I, Title 5, United States Code, it has been determined that this Task Force meeting concerns matters listed in Section 552(b) of Title 5 of the United States Code, specifically Subparagraph (1) thereof, and that accordingly this meeting will be closed to the public.

MAURICE W. ROCHE,
Director, Correspondence and Directives, Office of the Assistant Secretary of Defense (Comptroller).

JANUARY 18, 1977.

[FR Doc.77-2058 Filed 1-21-77;8:45 am]

ENVIRONMENTAL PROTECTION AGENCY

[FRL 671-1; PF58]

PESTICIDE AND FOOD ADDITIVE PETITIONS

Filing

Correction

In FR Doc. 77-1319 appearing at page 3191 in the issue of Monday, January 17, 1977 the following correction should be made:

On page 3191, third column, first paragraph relating to BASF Wyandotte Corp., insert the following between the fifth and sixth lines, "cide bentazon (3-isopropyl-1H-2, 1, 3-ben-".

[FRL 673-7]

PREVENTION OF SIGNIFICANT DETERIORATION, STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES AND NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS

Delegation of Authority to State of South Carolina

On December 5, 1974 (39 FR 42510), and June 12, 1975 (40 FR 25004) and September 10, 1975 (40 FR 42011), pursuant to section 110 of the Clean Air Act, as amended, the Administrator promulgated regulations for the prevention of significant air quality deterioration (PSD). On December 23, 1971 (36 FR 24876) and March 8, 1974 (39 FR 9808), and August 6, 1974 (39 FR 33152), and September 23, 1975 (40 FR 43850), and January 15, 1976 (41 FR 2231, 2332), and January 26, 1976 (41 FR 3826), pursuant to section 111 of the Clean Air Act, as amended, the Administrator promulgated regulations establishing standards of performance for five categories, seven categories, one category, five categories, four categories, and one category of new stationary sources (NSPS), respectively. On April 6, 1973 (38 FR 8820) and May 3, 1974 (30 FR 15396), and October 14, 1975 (40 FR 48291), pursuant to section 112 of the Clean Air Act, as amended, the Administrator promulgated national emission standards for three hazardous air pollutants (NESHAPS). Section 301 in conjunction with sections 101 and 110 authorizes the Administrator to delegate his authority to implement and enforce PSD to any State which has submitted adequate implementation and enforcement procedures. Sections 111(c) and 112(d) direct the Administrator to delegate his authority to implement and enforce NSPS and NESHAPS to any State which has submitted adequate procedures. Nevertheless, under sections 111(c)(2) and 112(d)(2), the Administrator is not prohibited from enforcing the standards.

During discussions held in the spring of 1975 with regard to the fiscal year 1976 program plan, EPA furnished to the State of South Carolina information setting forth the requirements for an adequate procedure for implementing and enforcing the standards for PSD, NSPS, and NESHAPS. On April 23, 1976, Mr. John E. Jenkins, Jr., Deputy Commissioner, Office of Environmental Quality Control, South Carolina Department of Health and Environmental Control submitted to the EPA Regional Office a request for delegation of authority. On August 10, 1976, Mr. Jenkins submitted information on his agency's procedures and resources for implementation and enforcement of PSD, NSPS, and NESHAPS. Included in the second submittal were copies of State procedures and legal determinations by the State Attorney General's office which provide the State with the requisite authority to enforce the Federally promulgated PSD, NSPS, and NESHAPS. After a thorough review of the request and information submitted, the Regional Administrator has determined that for the source categories set forth in the following official letters to the Deputy Commissioner the Office of Environmental Quality Control, delegation is appropriate subject to the conditions set forth in detail in this letter:

OCTOBER 19, 1976

MR. JOHN E. JENKINS,
P.E., Deputy Commissioner, Office of Environmental Quality Control, Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina 29201.

DEAR MR. JENKINS: This is in response to your letters of April 23, 1976, and August 10, 1976, requesting delegation of Federal authority for implementation and enforcement of the Standards of Performance for New Stationary Sources (NSPS), the National Emission Standards for Hazardous Air Pollutants (NESHAPS), and the Prevention of Significant Deterioration (PSD) program.

We have reviewed the pertinent laws of the State of South Carolina and the rules and regulations thereof, and have determined that they provide an adequate and effective procedure for implementation and enforcement of the NSPS, NESHAPS and PSD by the State of South Carolina. Therefore, pursuant to section 111 and section 112 of the Clean Air Act (1970), as amended, Pub. L. 91-604, we hereby delegate our authority for implementation and enforcement of the NSPS and NESHAPS to the State of South Carolina as follows:

A. Authority for all sources located in the State of South Carolina subject to the standards of performance for new stationary sources promulgated in 40 CFR Part 60 and amendments thereto as published in the FEDERAL REGISTER as of the date of this letter. The categories of new sources covered by this authority are: Fossil fuel-fired steam generators; incinerators; portland cement plants; nitric acid plants; sulfuric acid plants, asphalt concrete plants; petroleum refineries; storage vessels for petroleum liquids; secondary brass and bronze ingot production plants; iron and steel plants; sewage treatment plants; secondary lead smelters; phosphate fertilizer plants; primary aluminum plants; coal preparation plants; electric arc furnaces; and primary copper, zinc and lead smelters.

B. Authority for all sources located in the State of South Carolina subject to the national emission standards for hazardous air pollutants promulgated in 40 CFR Part 61 and amendments thereto as published in the FEDERAL REGISTER as of the date of this letter. The three hazardous air pollutants covered by this authority are: Asbestos; beryllium; and mercury.

This delegation is based upon the following conditions:

1. Existing quarterly reports normally submitted to EPA through program plan reporting will be expanded to contain pertinent information relating to the status of sources subject to 40 CFR Parts 60 and 61. As a minimum, the following information should be provided to EPA: The names, address, type and size of each facility subject to the standards; the compliance status of each facility with accompanying explanations of noncompliance where applicable; notice of enforcement actions brought against facilities subject to 40 CFR Parts 60 and 61; surveillance actions undertaken for each facility; and the results of all reports relating to emissions data.

2. Enforcement of NSPS and NESHAPS in the State of South Carolina will be the primary responsibility of the Office of Environmental Quality Control. If the State determines that such enforcement is not feasible and so notifies EPA, or where the State acts in a manner inconsistent with the terms of this granted authority, EPA will exercise its concurrent enforcement authority pursuant to section 113 of the Clean Air Act, as amended, with respect to sources within the State of South Carolina subject to the NSPS and NESHAPS.

3. Acceptance of this delegation of presently promulgated NSPS and NESHAPS does not commit the State of South Carolina to request or accept enforcement authority of future standards and requirements. A new request for enforcement authority will be required for any standards not included in Paragraphs A and B above.

4. This enforcement authority to the State of South Carolina does not include the authority to implement and enforce NSPS (40 CFR Part 60) and NESHAPS (40 CFR Part 61) for sources owned or operated by the United States, which are located in the State. This condition in no way relieves any Federal facility from meeting the requirements of 40 CFR Parts 60 and 61.

5. The State of South Carolina will at no time grant a waiver of compliance with NESHAPS (40 CFR Part 61). The State of South Carolina will at no time grant a variance or other temporary or permanent exemption from compliance with NSPS (40 CFR Part 60) and NESHAPS (40 CFR Part 61) regulations. Should the State grant such a variance or other exemption, EPA will consider the source receiving the variance or exemption to be in violation of the applicable Federal regulations and may initiate enforcement action against the source pursuant to section 113 of the Clean Air Act. The granting of such variances by the State shall also constitute ground for revocation of the pertinent portion of the delegation by EPA.

6. If at any time there is a conflict between a State regluation and a Federal regulation (40 CFR Parts 60 and 61); the Federal regulation must be applied if it is more stringent than that of the State. If the State does not have the authority to enforce a Federal regulation that is more stringent than the applicable State regulation, the pertinent portion of the delegation may be revoked.

7. Performance tests shall be conducted in accordance with the procedures set forth in 40 CFR Parts 60 and 61 unless alternate methods or procedures are approved by the EPA Administrator. Although the Administrator retains the exclusive right to approve equivalent and alternate test methods as specified in 40 CFR 60.8(b) (2) and (3), and 61.14, the State may approve minor changes in methodology provided these changes are reported to EPA. The Administrator also retains the right to change an opacity standard as specified in 40 CFR 60.11(e).

8. Alternatives to continuous monitoring procedures or reporting requirements, as outlined in 40 CFR 60.13(h)(i), may be approved by the State with the prior concurrence of the EPA Administrator.

9. If the Regional Administrator determines that the State procedure for enforcing or implementing the NSPS or NESHAPS is inadequate, or is not being effectively carried out, this delegation may be revoked in whole or part. Any such revocation shall be effective as of the date specified in a Notice of Revocation to the Office of Environmental Quality Control.

10. Information shall be made available to the public in accordance with 40 CFR 60.9 (b) and 61.15(b). Any records, reports, or information provided to, or otherwise obtained by, the State in accordance with the provisions of these Sections shall be made available to the designated representative of EPA upon request.

The State and EPA will develop a system of communication sufficient to guarantee a program that includes the items described below:

a. Each agency is informed of the current compliance status of subject sources in the State of South Carolina;

b. Prior EPA concurrence is obtained on any matter involving interpretaion of 40 CFR Parts 60 and 61 (including unique questions of applicability of the standards); and

c. Enforcement actions (including requests for information and enforcement actions based thereon) already initiated by EPA prior to this delegation, shall be completed by EPA.

Also, pursuant to 40 CFR 52.21 (1975), as amended in the FEDERAL REGISTER as of the date of this letter, we hereby delegate our authority for implementation and enforcement of the Federal PSD program to the State of South Carolina as follows:

A Authority for all sources located in the State of South Carolina subject to review for the prevention of significant air quality deterioration promulgated in 40 CFR 52.21, as of the date of this letter. The categories of new sources covered by the delegation are: Fossil-fuel fired electric plants of more than 100 million Btu per hour heat input; coal cleaning plants; kraft pulp mills; portland cement plants; primary zinc smelters; iron and steel mills; primary aluminum ore reduction plants; primary copper smelters; municipal incinerators capable of charging more than 250 tons of refuse per 24-hour day; sulfuric acid plants; petroleum refineries; lime plants; phosphate rock processing plants; by-product coke oven batteries; sulfur recovery plants; carbon black plants (furnace process); primary lead smelters; fuel conversion plants; and ferroalloy production facilities.

B. The delegation is based upon the following conditions: 1. Quarterly reports (or other reports as required by the Regional Administrator) will be submitted to EPA by the State of South Carolina as specified in 40 CFR 51.7.

2. Enforcement of PSD in the State of South Carolina will be the primary responsibility of the Office of Environmental Quality Control. If the State determines that such enforcement is not feasible and so notifies EPA, or where the State acts in a manner inconsistent with the terms of this granted authority, EPA will exercise its concurrent enforcement authority pursuant to Section 113 of the Clean Air Act, as amended, with respect to sources within the State of South Carolina subject to PSD requirements.

3. Acceptance of this delegation of presently promulgated PSD regulations does not commit the State of South Carolina to request or accept enforcement authority for future standards and requirements. A new request for enforcement authority will be required for any standards not included in Paragraph A above.

4. This enforcement authority to the State of South Carolina does not include the authority to implement and enforce PSD for sources owned or operated by the United States, which are located in the State. This condition in no way relieves any Federal facility from meeting the requirements of 40 CFR 52.21.

5. If at any time there is a conflict between a State regulation and a Federal regulation (40 CFR 52.21), the Federal regulation must be applied if it is more stringent than that of the State. If the State does not have the authority to enforce a Federal regulation, the pertinent portion of the delegation may be revoked.

6. If the Regional Administrator determines that the State procedure for enforcing or implementing PSD is inadequate, or is not being effectively carried out, this delegation may be revoked in whole or in part. Any such revocation shall be effective as of the date specified in a Notice of Revocation to the Office of Environmental Quality Control.

7. Any determination of "Best Available Control Technology" for any source category not covered by a New Source Performance Standard must be concurred in by EPA prior to the issuance of the final determination.

The State and EPA will develop a system of communication sufficient to guarantee a program that includes the items described below:

(a) Each agency is informed of the current compliance status of subject sources in the State of South Carolina;

(b) Prior EPA concurrence is obtained on any matter involving interpretation of 40 CFR 52.21 (including unique questions of applicability of the standards);

(c) Immediate notification is provided to the State upon the submittal of completed PSD application by any source owned or

operated by the United States which is located in the State; and

(d) Enforcement actions (including requests for information and enforcement actions based thereon) already initiated by EPA prior to this delegation, shall be completed by EPA.

A notice announcing this delegation will be published in the FEDERAL REGISTER in the near future. The notice will state, among other things, that, effective immediately, all reports required pursuant to NSPS, NESHAPS, and PSD by sources located in the State of South Carolina should be submitted to the Office of Environmental Quality Control, South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina 29201. Any such reports which have been or may be received by EPA, Region IV will be promptly transmitted to the State agency.

Since this delegation is effective immediately, there is no requirement that the State notify EPA of its acceptance. Unless EPA receives from the State written notice of objectives within 10 days from the date of receipt of this letter, the State will be deemed to have accepted all of the terms of the delegation.

Sincerely yours,

JACK E. RAVAN,
Regional Administrator.

Therefore, pursuant to the authority delegated to him by the Administrator, the Regional Administrator notified the Deputy Commissioner of the Office of Environmental Quality Control on October 19, 1976, that authority to implement and enforce Prevention of Significant Deterioration (PSD), New Source Performance Standards (NSPS), and National Emission Standards for Hazardous Air Pollutants (NESHAPS) was delegated to the State of South Carolina.

Copies of the request for delegation of authority are available for public inspection at the Environmental Protection Agency, Region IV Office, 345 Courtland Street, NE., Atlanta, Georgia 30308.

Effective immediately, all reports required pursuant to the delegated Prevention of Significant Deterioration (PSD), New Source Performance Standards (NSPS), and National Emission Standards for Hazardous Air Pollutants (NESHAPS) should not be submitted to the EPA Region IV Office, but instead should be submitted to the State agency at the following address:

Office of Environmental Quality Control, Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina 29201.

Applications for PSD, NSPS, and NESHAPS review in process at the time of this delegation shall be processed through to completion by the EPA Region IV Office.

(Secs. 101, 110, 111, 112, 301, Clean Air Act, as amended (42 U.S.C. 1857, 1857c-5, 6, 7, g.))

Dated: January 11, 1977.

JOHN A. LITTLE,
Acting Regional Administrator.

[FR Doc 77-1971 Filed 1-21-77;8:45 am]

[FRL 674-5]

ENVIRONMENTAL HEALTH ADVISORY COMMITTEE STUDY GROUP ON MUTAGENICITY TESTING

Meeting

Notice is hereby given that a meeting of the Study Group on Mutagenicity Testing of the Science Advisory Board's Environmental Health Advisory Committee will be held at 9:00 a.m. on February 10, 1977 in Conference Room A (Room 1112), Crystal Mall Building No. 2, 1921 Jefferson Davis Highway, Arlington, Virginia.

The purpose of the meeting will be (1) to review and comment on the scientific aspects of further revisions of portions of draft EPA Guidelines for the registration of pesticides relating to mutagenicity testing and (2) to discuss approaches presently contemplated by the Agency for the evaluation of test data relating to mutagenicity.

The meeting will be open to the public. Any member of the public wishing to attend or submit a paper should contact the Secretariat, Science Advisory Board (A-101), U.S. Environmental Protection Agency, Washington, DC 20460, by c.o.b. February 7, 1977. Please call Ms. Carol Luszcz on (703) 557-7720.

THOMAS D. BATH,
Staff Director,
Science Advisory Board.

JANUARY 17, 1977.

[FR Doc.77-2178 Filed 1-21-77;8:45 am]

FEDERAL MARITIME COMMISSION

ARMADORES REGINA MAGNA S.A.

Order of Revocation

In the matter of Certificate of financial responsibility for indemnification of passengers for nonperformance of transportation No. P-132. Armadores Regina Magna S.A., trading as Chandris Cruises, c/o Chandris (London) Services Ltd., 5 St. Helen's Place, Bishopsgate, London EC3A 6BJ, England.

Whereas, Armadores Regina Magna S.A. trading as Chandris Cruises has ceased to operate the passenger vessel Regina Magna to and from United States ports.

It is ordered, That Certificate (Performance) No. P-132 issued to Armadores Regina Magna S.A. trading as Chandris Cruises covering the REGINA MAGNA be and is hereby revoked effective January 14, 1977.

It is further ordered, That a copy of this Order be published in the FEDERAL REGISTER and served on certificant.

By the Commission, January 14, 1977.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.77-2110 Filed 1-21-77;8:45 am]

CHICAGO REGIONAL PORT DISTRICT

Notice of Agreements Filed

Notice is hereby given that the following agreements have been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreements at the Washington office of the Federal Maritime Commission, 1100 L Street, N.W., Room 10126; or may inspect the agreements at the Field Offices located at New York, N.Y., New Orleans, Louisiana, San Francisco, California, and Old San Juan, Puerto Rico. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, on or before February 14, 1977. Any person desiring a hearing on the proposed agreements shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreements (as indicated hereinafter) and the statement should indicate that this has been done.

Notice of Agreement Filed by:

Maxim M. Cohen, General Manager, Chicago Regional Port District, Butler Drive—Lake Calumet Harbor, Chicago, Illinois 60633

Agreement No. T-3401, between the Chicago Regional Port District (Port) and Transoceanic Terminal Corporation (TOT), provides for the Port's 10-year lease to TOT of certain premises of Lake Calumet, Chicago, Illinois, to be used for the purpose of operating a ship, barge, railroad and truck terminal and warehouse thereon, and handling goods and merchandise in connection therewith.

As compensation, TOT shall pay Port $54,500.00 per annum the first 60 months and thereafter, $57,225.00 per annum. In addition to the fixed rent, TOT shall pay Port an annual volume usage charge equal to 50 percent of the dockage and wharfage collected for tonnage handled at the transit shed located on the leased premises, up to a maximum of $10,000 per annum. All charges are to be those assessed under the Port's tariff.

Agreement No. T-3401-1, between TOT and Calumet Barge Terminal, Inc., (CBT) is an assignment of lease whereby TOT in return for the consideration of $1.00, assigns to CBT those premises leased to TOT under FMC Agreement No. T-3401.

By Order of the Federal Maritime Commission.

Dated: January 18, 1977.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.77-2108 Filed 1-21-77;8:45 am]

HELENIC MEDITERRANEAN LINES CO. LTD.

Order of Revocation

In the matter of certificate of financial responsibility for indemnification of passengers for nonperformance of transportation No. P-111. The Hellenic Mediterranean Lines Co. Ltd., (The Hellenic Mediterranean Lines), Electric Railway Station Building, P.O. Box 57, Piraeus, Greece.

Whereas, The Hellenic Mediterranean Lines Co. Ltd. (The Hellenic Mediterranean Lines) has ceased to operate the passenger vessel *Aquarius* to and from United States ports; and

Whereas, Certificate (Performance) No. P-111 issued to The Hellenic Mediterranean Lines Co. Ltd. (The Hellenic Mediterranean Lines) has been returned for revocation.

It is ordered, That Certificate (Performance) No. P-111 covering the Aquarius be and is hereby revoked effective January 14, 1977.

It is further ordered, That a copy of this Order be published in the FEDERAL REGISTER and served on certificant.

By the Commission, January 14, 1977.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.77-2111 Filed 1-21-77;8:45 am]

INDEPENDENT OCEAN FREIGHT FORWARDER LICENSE

Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as independent ocean freight forwarders pursuant to Section 44(a) of the Shipping Act, 1916, (Stat. 552 and 46 U.S.C. 841(b)).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to communicate with the Director, Bureau of Certification and Licensing, Federal Maritime Commission, Washington, D.C. 20573.

Gerson M. Joseph, 5263 SW 40th Ave., Fort Lauderdale, FL 33314.

GCS Charter and Shipping Agency, 61 Broadway, Suite 3029, New York, NY 10006. Officer: Robert J. McLean, President.

Suddath Van Lines, Inc., P.O. Box 6699, Jacksonville, FL 32205. Officers: A. Q. Bell, President; Richard E. Oehsler, Vice President; Michael C. Richardson, Vice President; Richard H. Suddath, Chairman of the Board; J. B. G. Hill, Vice President; Robert F. Bartlett, Secretary/Treasurer; Robert J. Price, Controller; Julia F. Murray, Assistant Secretary; Barbara S. Suratt, Director.

Trimodal Inc., 1346 Washington Blvd., Stamford, CT 06902. Officers: Basil B. Jones, President/Treasurer; Diane Cuiffo, Secretary; Olive Chalner, Vice President.

W. F. Whelan Company, International Terminal, Detroit Metropolitan Airport, Detroit, MI 48242. Officers: W. F. Whelan, President; K. J. Whelan, Secretary; R. B. Golibart, Vice President; C. Piggot, Director.

Pedro Quiros, 6215 W. 20th Ave., Apt. 221, Hialeah, FL 33012.

Norgen Custom Brokers, Inc., 161-15 Rockaway Blvd., Jamaica, NY 11434. Officers: Jose E. Negron, President; Efrain Negron, Vice President; Carmen McConnon, Secretary/Treasurer; Spiro E. Efstathiadis, Vice President; John Gilligan, Vice President.

Ethel E. Brinson, 1601 West Edgar Road, P.O. Box 653, Linden, NJ 07036.

Herbert Miles Frank, 170 Broadway, #815, New York, NY.

By the Federal Maritime Commission.

Dated: January 17, 1977.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.77-2109 Filed 1-21-77;8:45 am]

FEDERAL POWER COMMISSION

AMERICAN ELECTRIC POWER SERVICE CORP.

[Docket No. ER77-143]

Changes in Rates and Charges

JANUARY 13, 1977.

Take notice that American Electric Power Service Corporation (AEP) on January 11, 1977, tendered for filing on behalf of its affiliate, Indiana & Michigan Electric Company (Indiana Company), Modification No. 7 dated December 15, 1976, to the Operating Agreement dated June 1, 1968, between Indiana & Michigan Electric Company and Central Illinois Public Service Company, designated I & M's Rate Schedule FPC No. 67.

Section 1 of Modification No. 7 provides for an increase in the Demand Charge for Short Term Power from $0.50 to $0.60 per kilowatt per week and Section 4 provides for an increase in the Demand Charge for Limited Term Power from $2.75 to $3.25 per kilowatt per month. Section 2 of Modification No. 7 provides for an increase in the transmission charge for third party Short Term Power transactions from $0.125 per kilowatt per week to $0.15 per kilowatt per week and Section 5 provides for an increase in the transmission charge for third party Limited Term transactions from $0.55 per kilowatt per month to $0.65 per kilowatt per month, both schedules proposed to become effective January 8, 1977.

The Company states that since the use of Short Term and Limited Term Power cannot be accurately estimated, it is impossible to estimate the increase in revenues resulting from the Modification.

The Company states that copies of the filing were served upon Central Illinois Public Service Company, the Public Service Commission of Indiana, the Michigan Public Service Commission and the Illinois Commerce Commission.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE, Washington, DC 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before February 2, 1977. Protests will be considered by the Commission in determining the appropriate action to be taken. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-2011 Filed 1-21-77;8:45 am]

[Docket No. RP76-10, (PGA)]

ARKANSAS LOUISIANA GAS CO.

Pipeline Rates: Settlement

JANUARY 12, 1977.

On July 26, 1976, Arkansas Louisiana (Arkla) filed a revised settlement proposal which would dispose of all issues in the above-referenced proceeding. The revised settlement incorporates certain changes to the previous settlement certified on February 25, 1976, by the Presiding Judge to the Commission. For the reasons set forth below, the Commission shall accept and approve the revised proposed stipulation and agreement.

This proceeding was initiated on September 15, 1975, when Arkla tendered for filing an increase in rates to be effective November 1, 1975, which would add $5,700,000 annually to company revenues for jurisdictional sales and service based on the 12-month period ended June 30, 1975, as adjusted. This filing proposed to increase the price of gas to the one customer served under Rate Schedule X-26, Cities Service Gas Company (Cities). The filing also included a proposed purchased gas adjustment clause in order to permit the pass-on of increases in purchased gas costs to Cities in accordance with Commission regulations. By order issued October 31, 1975, the Commission suspended for one day Arkla's PGA clause applicable to Cities, allowed it to become effective on November 2, 1975, subject to refund, and set the matter for hearing. The Commission also granted Cities' petition to intervene in the proceeding. Subsequently, the Commission instituted an investigation into the operation of Arkla's effective PGA under its G-2 rate schedule and consolidated the investigation with the Docket No. RP76-10 proceeding. Arkla's rate proceeding in Docket No. RP76-10 is still pending for hearing and is not affected by the present settlement, which pertains only to Arkla's PGA clauses under Rate Schedules X-26 and G-2.

Following settlement conferences attended by representatives of Arkla, Cities, and the Commission staff, a proposed Settlement Agreement was submitted to the Presiding Judge, who certified it to

the Commission on February 25, 1976. On March 24, 1976, the staff submitted comments in support of the proposed settlement. However, on July 15, 1976, the staff advised the Commission that upon further review the staff believed certain provisions contained in the settlement were not consistent with the Commission's applicable PGA orders, Nos. 452 and 452–A. In light of its objections, the staff requested the Commission to defer ruling on the settlement agreement pending further agreement discussion among the parties.

Following further discussion, Arkla submitted for filing on July 26, 1976, a revised settlement agreement and related revised and substitute tariff sheets.[1] The modified settlement agreement incorporates certain changes to the previous agreement including an adjustment to Arkla's base cost of gas to reflect the elimination of certain company-owned production. It provides for the inclusion in the base cost of gas for PGA purposes the following: (1) the net of non-concurrent exchange gas transactions in Account 806; (2) the net of storage gas transactions in Accounts 808 and 809; (3) system wide cost of purchased gas; and (4) production from post October 7, 1969, leases and new wells and old leases priced on area or nationwide rates. The effect of these changes would reduce the base cost of purchased gas from 26.56¢ per Mcf to 26.08¢ per Mcf as of June 30, 1975.

Public notice of the revised settlement agreement filing was issued on October 22, 1976, providing for comments by interested parties to be submitted on or before November 17, 1976. On November 17, 1976, the staff filed comments recommending that the agreement be approved and adopted.

Upon review of the entire record in this proceeding, the Commission finds that the settlement agreement represents a reasonable resolution of all issues in this proceeding. Accordingly, the proposed revised Stipulation and Agreement shall be incorporated herein by reference, and shall be approved and adopted.

The Commission orders:

(A) The revised Stipulation and Agreement filed by Arkla on July 26, 1976, is incorporated herein by reference, and is approved and adopted.

(B) Arkla's previously designated tariff sheets are hereby accepted for filing and made effective as of November 2, 1975.

(C) Within 15 days from the date of this order Arkla shall refund to Cities all amounts collected in excess of the rates determined in accordance with the terms of the settlement agreement herein approved, together with interest at the rate of 9 percent per annum. Arkla shall thereafter submit a report of the refunds and interest together with a release from Cities.

(D) This order is without prejudice to any findings or orders which have been made or which may hereafter be made by the Commission, and is without prejudice to any claims or contentions which may be made by the Commission, its Staff or any party or person affected by this order in any proceeding now pending or hereafter instituted by or against Arkla or any person or party.

(E) Upon compliance by Arkla with the terms of this order, this proceeding shall be terminated.

(F) The Secretary shall cause prompt publication of this order to be made in the FEDERAL REGISTER.

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc 77–1976 Filed 1–21–77;8:45 am]

[1] First Revised Sheet Nos. 12A, 12B, 12C, 12D and Original Sheet No. 12E to First Revised Volume No. 1; Substitute Third Revised Sheet No. 185, Substitute First Revised Sheet Nos. 186, 187 and 188, and Substitute Original Sheet Nos. 188A, 188B, and 188C to Original Volume No. 3.

[Docket No. CP77–114]

ARKANSAS OKLAHOMA GAS CORP., ET AL.

Application

JANUARY 11, 1977.

Take notice that on January 4, 1977, Arkansas Oklahoma Gas Corporation (Ark-Okla), 115 North 12th Street, Fort Smith, Arkansas 72901, Mississippi River Transmission Corporation (Mississippi), 9900 Clayton Road, St. Louis, Missouri 63124, and Arkansas Louisiana Gas Company (Arkla), P.O. Box 1734, Shreveport, Louisiana 71151, filed a joint application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the tri-party exchange of natural gas among Ark-Okla, Mississippi and Arkla, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that Ark-Okla presently serves five communities on its eastern system in Randolph and Clay, Counties, Arkansas, with gas purchased from Mississippi. It is further stated that in 1973, Ark-Okla reached the Contract Demand it has under its Service Agreement with Mississippi, and Mississippi continues to be unable to increase Ark-Okla's Contract Demand. Ark-Okla proposes to alleviate this shortage in its eastern operations by means of a three-company exchange wherein Ark-Okla would deliver up to 1,000 Mcf of gas per day from its U.S.A. No. 1–8 Well in Sebastian County, Arkansas to Arkla, which would deliver equivalent volumes to Mississippi at its Sherrill connection in Jefferson County, Arkansas. Mississippi, it is stated, would deliver equivalent amounts of gas on a best-efforts basis to Ark-Okla at an existing delivery point near Pocahantas, Arkansas.

The Applicants state that they intend the transaction to be a straight gas-for-gas exchange with no monetary compensation being paid by or to any party. It is also stated that Ark-Okla would be responsible for the cost of any additional facilities required to effect the exchange.

It is asserted that the agreement would become effective on the date of first delivery and would continue for an initial period of two years, being extended on a year-to-year basis thereafter.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 1, 1977, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearings will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77–2029 Filed 1–21–77;8:45 am]

ARKANSAS POWER & LIGHT CO.

[Docket Nos. E–8071, E–8142, E–8250, ER76–110]

Filing

JANUARY 13, 1977.

Take notice that on December 28, 1976, Arkansas Power & Light Company (AP&L) tendered for filing sheets revising the compliance report filed pursuant to the Order issued November 15, 1976, approving a Settlement Agreement reached in the above numbered dockets. AP&L states that the revised data sheets reflect corrections to billing for service to April 30, 1976 which was corrected on the Present Rate but not on the Settlement Rate or Prior Rate, causing the billings on each of the two latter rates to be $750.00 less than applicable. AP&L further states that the amount of $777.37 overpaid to Benton, including interest, will be added to their next billing.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 25, 1977. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77–1987 Filed 1–21–77;8:45 a.m.]

[Docket No. CP77–117]

BACA GAS GATHERING SYSTEM, INC.

Application

JANUARY 11, 1977.

Take notice that on January 5, 1977, Baca Gas Gathering System, Inc. (Applicant), 1200 Hartford Building, Dallas, Texas 75201, filed in Docket No. CP77–117 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon by sale to Panhandle Eastern Pipe Line Company (Panhandle) all of its plant, equipment, rights-of-way, franchises, consents and interests in natural gas contracts, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it is engaged in the transportation and sale of natural gas in interstate commerce by means of its gas gathering system in Baca County, Colorado, which gathers and transports gas to Morton County, Kansas, where it is delivered and sold for resale to Panhandle, Applicant's sole customer. It is further stated that Applicant has been relatively ineffective in acquiring new gas supplies and that it is unlikely that Applicant will be able to acquire supplies to be sold and delivered to Panhandle. It is asserted that the abandonment and sale of Applicant's facilities would allow Panhandle to acquire new reserves and to stimulate additional drilling in the vicinity of the pipeline. It is further asserted that no natural gas service would be terminated or interrupted if this abandonment is permitted and Panhandle's application in Docket No. CP77–91 to acquire said facilities is granted.

Applicant seeks permission and approval to abandon by sale to Panhandle the following:

(a) *Equipment.* All of Applicant's plant and equipment consisting of field pipelines, field compressor station equipment, field measuring and regulating equipment, miscellaneous equipment and intangible plant costs.

(b) *Rights-of-way.* Applicant's right, title and interest in and to fee simple interests, easements, rights-of-way and surface leases incidental to the use of the aforementioned equipment.

(c) *Franchises and Consents.* All of Applicant's franchises and consents incidental to that of a gas pipeline business.

(d) *Applicant's Contracts.* All of Applicant's interest in (i) gas purchases contracts with producers with respect to contract acreage, or any contracts with producers hereinafter entered into in the ordinary course of business; (ii) the "Irrigation Gas Contract" dated July 1, 1967, between Applicant and Baca Irrigation Gas Co.; (iii) the Gas Contract between Applicant and Panhandle dated August 6, 1964, as amended; (iv) the "Anadarko Contract," which is a gas processing and conditioning agreement between Applicant and Anadarko Production Company, dated April 1, 1967, as amended.

It is stated that pursuant to a sales agreement dated October 8, 1976, Panhandle would pay Applicant $400,000 for the facilities plus a sum equal to all right-of-way and construction costs paid or incurred from the date of the sales agreement.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 2, 1977, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77–2027 Filed 1–21–77;8:45 am]

[Docket Nos. ER76–496 and ER76–396]

BANGOR HYDRO ELECTRIC CO.

Certification of Settlement Agreement

JANUARY 12, 1977.

Take notice that on January 4, 1976, the Presiding Administrative Law Judge certified to the Commission for its disposition a proposed settlement agreement between Bangor Hydro Electric Company and Eastern Maine Electric Cooperative, Inc., the only intervenor in these proceedings. The proposed settlement agreement would resolve all matters between the parties in these proceedings. The proposed settlement rates would reduce the originally requested annual rate increase of $175,838 (24 percent) to approximately $101,000 (14 percent) for service to the affected wholesale customers.

Any person desiring to be heard as to said settlement agreement should file comments with the Federal Power Commission, 825 North Capitol Street, N.W., Washington, D.C. 20426, on or before January 27, 1976. Copies of the settlement are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77–2028 Filed 1–21–77;8:45 am]

[Docket No. CP77–96]

BLUE DOLPHIN PIPE LINE CO.

Application

JANUARY 11, 1977.

Take notice that on December 17, 1976, Blue Dolphin Pipe Line Company (Applicant), P.O. Box 2099, Houston, Texas 77001, filed in Docket No. CP77–96 an application pursuant to Section 7(c) of the Natural Gas Act and § 157.7(c) of the Regulations thereunder (18 CFR 157.7 (c)), for a certificate of public convenience and necessity authorizing the construction, for a 12-month period commencing January 1, 1977, and operation of facilities to make miscellaneous rearrangements on its system, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

The stated purpose of this budget-type application is to augment Applicant's ability to act with reasonable dispatch in making miscellaneous rearrangements which would not result in any material change in the service presently rendered by Applicant.

Applicant states that the total cost of the proposed facilities would not exceed $10,000.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 31, 1977, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be

taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-1991 Filed 1-21-77;8:45 am]

[Docket No. ER76-445]

BOSTON EDISON CO.

Electric Rates: Acceptance Subject to Refund

JANUARY 12, 1977.

On September 1, 1976, Boston Edison Company (Edison) tendered for filing Supplements to Third Revised Sheet No. 11 to Rate Schedule FPC Nos. 47, 48, 49 and 51 (Revised Rate S-3A) for service to the Towns of Concord, Norwood, Reading and Wellesley (Concord et al.). Edison states that the purpose of the filing is to reflect revisions in the base energy charge and the fuel adjustment factor contained in Edison's fuel adjustment clause filed on January 2, 1976 (as completed on January 30, 1976), in response to Commission Order No. 517. The tariff sheets which Edison here proposes to supplement were accepted for filing and suspended until March 1, 1976, subject to refund by Commission order issued February 27, 1976. The tariff was effective for the locked-in period March 1, 1976, through July 23, 1976.

Edison requests that the supplements be made effective retroactively, subject to refund, for the entire locked-in period. Edison states that it will refund the difference between the revenues collected under the original Order No. 517 filing and the revised filing upon issuance of the Commission order accepting this filing, offset by amounts Edison claims are owed by Concord et al. due to an inadvertent underbilling of November 1975 fuel adjustment revenues.

Edison advises that the base cost of fuel has been changed to reflect actual rather than estimated 1975 experience. The base cost of fuel has been increased from 15.4640 mills/kWh to 16.1490 mills/kWh. In addition to increasing the base cost of fuel, Edison has decreased the energy charges in the present rate to reflect the lower fuel costs.

The proposed revisions result in a reduction in charges of $275,537 for the locked-in period. If coupled with the offsetting underbilling in fuel adjustment revenues of $65,735, the net refund to the four customers would amount to $209.802.

Edison states that the changes effected by its filing are consistent with certain recommendations contained in intervenor (Reading) testimony in Docket No. ER76-445. Edison indicated that the proposed changes will simplify the issues in that docket, and are, within the context of an Order 517 filing, fair and reasonable.

Notice of Applicant's tendered filing was issued on September 23, 1976, with protests or petitions to intervene due on or before October 13, 1976. On October 13, 1976, the Towns of Norwood, Conford, and Wellesley (Towns) filed a "Response" opposing Edison's filing to the extent it uses underbillings as an offset to overcharges. On November 3, 1976, Edison filed an answer to the "Response."

In their "Response," the Towns assert that Ediston's remedy for the undercollection is with the S-3 proceeding, Docket No. E-8855, rather than the instant docket. Edison submits that the present proceeding is the appropriate one for the issue of underbilling for November 1975, that the matter is an integral part of the September 1, 1976, filing and should be heard and decided as part of that filing.

By the offset of $65,735, Edison proposes to recover from the customers the amount by which fuel clause collections for November 1975 were below the level of the filed, effective rate.

The record shows that Edison's Revised Rate S-3A together with explanatory testimony with respect to the November 1975 underbilling, was received in evidence in Docket No. ER76-445. Any questions with respect to Edison's entitlement to the amount sought to be recovered by the offset should be addressed in the ongoing proceeding. Edison offers to make further refunds if the offset is ultimately found to be wholly or partially unauthorized.

Accordingly, we shall accept for filing, subject to refund, the revised Rate S-3A in Docket No. ER76-445, effective for the locked-in period and order refunds. of the difference between the amounts collected under the original Order No. 517 filing and the amounts that would have been collected under revised Rate S-3A, plus interest at 9 percent per annum computed on the gross amount of the refund, less the offset proposed by Edison.

The Commission finds: Good cause exists to accept Edison's revised Rate S-3A as described above, subject to refund, with an effective date of March 1, 1976. Any questions with respect to Edison's entitlement to the proposed offset for November 1975 underbillings should be addressed in the ongoing proceeding.

The Commission orders:

(A) The proposed revised Rate S-3A is hereby accepted for filing subject to refund in the ongoing proceedings effective as of March 1, 1976.

(B) Edison shall refund the difference between the amounts collected under the original Order No. 517 filing and the amounts that would have been collected under revised Rate S-3A, plus interest at 9 percent per annum computed on the gross amount of the refund, less the offset proposed by Edison.

(C) Within 30 days of the date of this Order, Edison shall report to the Commission the dates and amounts of refunds paid to each customer affected by the revised rate. A copy of such report shall also be furnished to each State Commission within whose jurisdiction the wholesale customers distribute and sell electric energy at retail.

(D) The Secretary shall cause prompt publication of this order to be made in the FEDERAL REGISTER.

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 77-2034 Filed 1-21-77;8:45 am]

[Docket Nos. E-9548 and E-9549]

CITY OF MISHAWAKA, INDIANA, ET AL. V. AMERICAN ELECTRIC POWER CO., ET AL.

Offer of Settlement

JANUARY 13, 1977.

Please take notice that in a letter dated January 6, 1977, addressed to Staff Counsel in the captioned Dockets, counsel for Indiana & Michigan Electric Company (I&M) proposed an Offer of Settlement of the captioned Dockets pursuant to § 1.18 of the Commission's Rules of Practice and Procedure. According to I&M, its Offer of Settlement disposes of all of the issues in the captioned Dockets. Copies of I&M's letter of January 6, 1977 and the attachments thereto are available for inspection in the offices of the Commission.

Any party desiring to file comments with respect to the Offer of Settlement may do so and all such comments, if any, shall be filed on or before January 26, 1977. Comments so filed, if any, will be considered by the Commission in determining what action it should take on the Offer of Settlement, but will not serve to make the party filing such comments an intervenor herein. Persons wishing to become parties shall, unless they have already done so, file a petition to intervene.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 77-2015 Filed 1-21-77;8:45 am]

[Docket No. ER77-73]

THE CLEVELAND ELECTRIC ILLUMINATING CO., ET AL.

Supplements to Interconnection Agreement

JANUARY 13, 1977.

Take notice that on November 22, 1976, the CAPCO Group filed Appendices 3 and 4 as supplements to Schedule E of the CAPCO Basic Operating Agreement dated as of January 1, 1975 which is filed with the Commission under the following Rate Schedule designations:

Company:		Rate schedule
The Cleveland Electric Illuminating Co	FPC	No. 13
Duquesne Light Co	FPC	No. 14
Ohio Edison Co	FPC	No. 120
Pennsylvania Power Co	FPC	No. 29
The Toledo Edison Co	FPC	No. 20

Appendix 3 and Appendix 4 to Schedule E of the CAPCO Basic Operating Agreement provide the basis for the determination of charges applicable to Unit Capacity and Energy transactions by the CAPCO member companies from Bruce Mansfield Unit No. 1 and Beaver Valley Unit No. 1, respectively. The services and compensation for Unit Capacity and Energy transactions from base load CAPCO Units are set forth generally in Schedule E, with specific charges from particular CAPCO Units being set forth in Appendices to Schedule E as the particular Unit comes into commercial operation. It is requested that Appendix 3 become effective on April 5, 1976 and Appendix 4 become effective on October 1, 1976.

Any person desiring to be heard or to make any protest with reference to the subject matter of this Notice should, on or before February 4, 1977, file with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, petitions to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules. The documents referred to herein are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-2007 Filed 1-21-77;8:45 am]

[Docket No. RP73-65 (PGA77-2)]

COLUMBIA GAS TRANSMISSION CORP.

Proposed Changes in FPC Gas Tariff

JANUARY 13, 1977.

Take notice that Columbia Gas Transmission Corporation (Columbia) on December 29, 1976, tendered for filing proposed changes in its FPC Gas Tariff, Original Volume No. 1. The proposed changes to be effective February 1, 1977, provide for a purchased gas adjustment to reflect increased costs of gas purchased from pipeline suppliers of $48,211,562.

Copies of the filing were served upon the company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, Union Center Plaza Building, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.10). All such petitions or protests should be filed on or before January 28, 1977. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commisison and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc 77-1986 Filed 1-21-77;8:45 am]

[Docket Nos. RI76-35, CI76-804; RI76-51, CI76-805; RI76-42, CI76-802]

CONTINENTAL OIL CO. ET AL.

Special Relief Proceeding

JANUARY 13, 1977.

Background. By motion of November 15, 1976, as amended November 23, 1976, Getty Oil Company (Getty) requests permission to reinstate its petition for special relief filed in Docket No. RI76-42, which was previously consolidated by Commission order of April 28, 1976, with applications for certificates of public convenience and necessity and special relief of Continental Oil Company (Continental), Docket No. RI76-35, and Cities Service Oil Company (Cities Service), Docket No. RI76-51. By Commssion order of October 15, 1976, Getty's petition for special relief was permitted to be withdrawn at its request and its Docket No. RI76-42 was severed from the consolidation. Such order also issued Getty a temporary certificate, subsequently rejected by Getty, to sell the gas involved at the national rate. By its motion, as amended, Getty also seeks to reconsolidate its special relief petition with Docket No. RI76-35, et al. Getty bases its request on the ground that the national rate applicable to its gas was substantially reduced by Commission Opinion No. 770-A[1] issued shortly after it withdrew its petition.[2] Getty asks that its petition be deemed a petition for special relief at the rates sought by Continental and Cities Service. It further states that if readmitted to Docket No. RI76-35 et al., it would take the record as it finds it and rely on the evidence presented by Continental and Cities Service. It does not request further hearing, reopening of the record, or opportunity to file briefs. It adopts the position and arguments contained in the briefs of Continental and Cities Service.

In a response to Getty's motion, as amended, filed by the Commission Staff on December 8, 1976, Staff stated it had no objection to the granting of Getty's motion provided that the record could be reopened for the limited purpose of receiving into evidence a discounted cash flow analysis, attached to Staff's motion as an appendix, along with the motion itself, which explains that analysis. The motion and analysis present Staff's rate recommendation for Getty's gas, 129.72 cents per Mcf, as opposed to a 160.0 cents per Mcf rate which it recommends for gas from Continental and Cities Service. Staff states that this difference relates entirely to the fact that Getty received a larger advance payment than Continental and Cities Service, which makes a difference under its theory of the case, and that Staff's analysis does nothing more than restate its discounted cash flow analysis applicable to Continental and Cities Service (Staff Exhibit No. 17), with the different advance payment put in. Staff further states that it is informed that Getty, Continental, Cities Service, Tennessee Gas Pipeline Company (the purchaser), and Public Service Commission of the State of New York have no objection to this procedure.

On another matter, Staff moves that the certificate dockets involved in this proceeding be formally consolidated herein. In this connection Staff states:

> These dockets were created for administrative purposes after the other dockets were consolidated and set for hearing. This is a matter of administrative convenience only and does not affect this proceeding in any substantive way.

Discussion and Conclusions. We are in general agreement with Getty's and Staff's motions. We also believe the certificate dockets should be consolidated herewith to reflect more clearly that all aspects, certificate as well as rate, of the applications of Continental, Cities Service, and Getty are before the Presiding Administrative Law Judge for decision and disposition.

Upon full consideration of this matter, and it appearing that there be no objection, the Commission finds that Staff's and Getty's motions should be granted.

The Commission orders:

(A) Getty's certificate and special relief application filed in Docket No. RI76-42 is hereby reconsolidated with Continental Oil Company, et al, Docket No. RI76-35, et al. Its petition for special relief is reinstituted and deemed to be a petition for special relief at the rates sought, and on the evidence presented by

[1] Opinion And Order On Rehearing Modifying In Part Opinion No. 770 And Granting Petitions For Intervention, Docket No. RM75-14, issued November 5, 1976, which modified Opinion No. 770, Opinion And Order Prescribing Uniform National Rate For Sales Of Natural Gas Dedicated To Interstate Commerce On Or After January 1, 1973, For The Period January 1, 1975, To December 31, 1976, issued July 27, 1976.

[2] Getty states that if its motion is granted, it will withdraw its rejection of a temporary certificate of public convenience and necessity issued it by the Commission on October 15, 1976, and accept such certificate pending disposition of its petition for special relief. Getty states that deliveries have not been initiated under this certificate.

Continental and Cities Service in RI76-35, et al. The Presiding Administrative Law Judge is directed to consider and determine Getty's certificate and special relief application concurrently with those of Continental and Cities Service in Docket No. RI76-35, et al.

(B) The Presiding Administrative Law Judge is hereby directed to reopen the record in Docket No. RI76-35, et al., for the limited purpose of receiving into evidence the response and motion filed herein by the Commission Staff on December 8, 1976, along with the appendix thereto.

(C) The following certificate dockets are hereby consolidated with this proceeding:

CI76-804 (Continental Oil Company)
CI76-805 (Cities Service Oil Company)
CI76-802 (Getty Oil Company)

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-2043 Filed 1-21-77;8:45 am]

[Docket No. ER77-133]

CONNECTICUT LIGHT & POWER CO.

Purchase Agreement

JANUARY 13, 1977.

Take notice that on January 3, 1977, the Connecticut Light and Power Company (CL&P) tendered for filing a proposed Purchase Agreement with Respect to Various Gas Turbine Units, dated November 30, 1976 between (1) CL&P and The Hartford Electric Light Company (HELCO), and (2) Littleton Electric Light and Water Department (LEL&WD).

CL&P states that the Purchase Agreement provides for a sale to LEL&WD of a specified percentage of capacity and energy from five gas turbine generating units (Norwalk Harbor, Devon, South Meadow 10, Middletown and Torrington Terminal) during the period from December 1, 1976 to December 31, 1976 together with related transmission service.

CL&P states that questions as to LEL&WD's Capability Responsibility Obligation, under the terms of the New England Power Pool (NEPOOL) Agreement, during the Term of this Purchase Agreement affected the amounts of gas turbine capacity that could be purchased by LEL&WD and thus delayed execution of the agreement until a date which prevented the filing of such rate schedule more than thirty days prior to the proposed effective date.

CL&P therefore requests waiver of the notice requirement pursuant to § 35.11 and requests that the rate schedule filed herein be permitted to become effective on December 1, 1976.

CL&P states that the capacity charge for the proposed service was a negotiated rate, the monthly transmission charge is equal to one-twelfth of the annual average unit cost of transmission service on the Northeast Utilities (NU) system determined in accordance with § 13.9 of the New England Power Pool (NEPOOL) Agreement and the uniform rules adopted by the NEPOOL Executive Committee, multiplied by the number of kilowatts of winter capability which LEL&WD is entitled to receive, reduced to give due recognition of the payments made by LEL&WD for transmission services on intervening systems, and the variable maintenance charge was arrived at through negotiations.

CL&P requests an effective date of December 1, 1976 for the LEL&WD agreement.

HELCO has filed a certificate of concurrence in this docket.

CL&P states that copies of this rate schedule have been mailed or delivered to CL&P, Hartford, Connecticut; HELCO, Hartford, Connecticut; and LEL&WD, Littleton, Massachusetts.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 24, 1977. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-2010 Filed 1-21-77;8:45 am]

[Docket No. ER77-134]

CONNECTICUT LIGHT & POWER CO.

Amendment to Purchase Agreement

JANUARY 13, 1977.

Take notice that on January 3, 1977, the Connecticut Light and Power Company (CL&P) tendered for filing a proposed Amendment to Purchase Agreement with respect to Various Gas Turbine Units (II) (Amendment), dated October 1, 1976 between (1) CL&P, the Hartford Electric Light Company (HELCO) and Western Massachusetts Electric Company (WMECO), and (2) Vermont Electric Cooperative, Inc. (VEC).

CL&P states that the Amendment provides for a change in the Percentages of Capability to be purchased by VEC for the period from April 1, 1976 to November 30, 1976 and extends the terms of the First and Second Capability Periods.

CL&P states that although the parties agreed to the principals of the First Capability Period at an early date, the details of the Second Capability Period were not decided until a date which prevented the execution and filing of the Amendment with the Commission until this date.

CL&P requests waiver of the notice requirement pursuant to § 35.11 and requests that the Amendment be permitted to become effective on November 1, 1976.

HELCO and WMECO have filed certificates of concurrence in this docket.

CL&P states that copies of this rate schedule have been mailed or delivered to CL&P, Hartford, Connecticut; HELCO, Hartford, Connecticut; WMECO, West Springfield, Massachusetts; and VEC, Johnson, Vermont.

CL&P also states that no facilities are to be installed or modified in order to supply the service to be furnished under the Amendment.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 24, 1977. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-2008 Filed 1-21-77;8:45 am]

[Docket No. RP72-157 (PGA77-4)]

CONSOLIDATED GAS SUPPLY CORP.

Proposed Changes in FPC Gas Tariff

JANUARY 13, 1977.

Take notice that Consolidated Gas Supply Corporation (Consolidated) on December 30, 1976 tendered for filing proposed changes in its FPC Gas Tariff, Second Revised Volume No. 1, pursuant to its PGA clause for rates to be effective February 1, 1977. The proposed rate increase would generate $30.5 million annually in additional jurisdictional revenues.

Consolidated states that the PGA filing was triggered by rate increases filed by Tennessee Gas Pipeline Company, Texas Eastern Transmission Corporation, Transcontinental Gas Pipeline Corporation, and Texas Gas Transmission Corporation, all for effectiveness February 1, 1977.

Consolidated is requesting a waiver of any of the Commission's Rules and Regulations in order to permit the proposed rates shown on Nineteenth Revised Sheet Nos. 8 and 9 to become effective February 1, 1977.

Copies of this filing were served upon Consolidated's jurisdictional customers, as well as interested State Commissions.

Any persons desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 28, 1977. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-2013 Filed 1-21-77;8:45 am]

[Docket No. RI77-20]

DORFMAN PRODUCTION CO.

Petition for Special Relief

JANUARY 13, 1977.

Take notice that on December 27, 1976, Dorfman Production Company, Operator, 1848 Mercantile Dallas Building, Dallas, Texas 75201, filed a petition for special relief in Docket No. RI77-20 pursuant to § 2.76 of the Commission's General Policy and Interpretations (18 CFR 2.76).

Petitioner seeks authorization to charge 65.94 cents per Mcf for the sale of gas to United Gas Pipe Line Company from 16 wells located in the Willow Springs Field, Gregg County, Texas. Petitioner also seeks authorization to charge 72.6842 cents per Mcf for the sale of gas to Texas Eastern Transmission Corporation from 3 wells located in the same field. In consideration for the increased rates, petitioner proposes to perform substantial workovers of the wells. Petitioner is currently receiving an average rate of 40 cents per Mcf for the subject gas.

Any person desiring to be heard or to make any protest with reference to said petition should on or before February 4, 1977, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining to make the protestants parties to the proceeding. Any party wishing to become a party to a proceeding, must file a petition to intervene in accordance with the Commission's Rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-2009 Filed 1-21-77;8:45 am]

[Docket No. ES77-9]

EL PASO ELECTRIC CO.

Application

JANUARY 12, 1977.

Take notice that on January 3, 1977, El Paso Electric Company (Company) filed a petition with the Federal Power Commission seeking an order declaring that the Company, as a result of the transaction described below, will not involve the issue of any security, or assumption of any obligation or liability as a guarantor, endorser, surety, or otherwise in respect of any security of another person, within the meaning of Section 204 of the Federal Power Act, or alternatively, that the Commission authorize the Company to enter into the transaction if the Commission concludes that approval under Section 204 is warranted.

The Company is incorporated under the laws of the State of Texas with its principal business office at El Paso, Texas, and is engaged in the electric utility business in the States of Texas and New Mexico in an area in the Rio Grande Valley extending approximately 110 miles northwesterly from El Paso to the Caballo Dam in New Mexico and 120 miles southeasterly from El Paso to Van Horn, Texas, with a population of approximately 480,000 of whom 356,000 reside in metropolitan El Paso.

The Company proposes to discontinue the direct purchase and storage of fuel oil inventory, which ties up substantial amounts of the Company's capital. Instead, the following arrangement is proposed:

(a) An independent trust (the "Trust") to be known as Big Bend Resources Trust will be established by Bradford Trust Company, a New York corporation, for the purpose of making payments to the supplier, Southern Union Oil Products Company, taking title to the fuel oil on delivery, paying the cost of transportating the fuel oil, holding the fuel oil in storage and selling it to the Company upon request. Bradford is to be creator of the Trust.

(b) The Company and the Trust will enter into a ten-year Fuel Supply Agreement under which the Trust will agree to make payments of the purchase price for fuel oil delivered and to pay the expenses related to the transportation thereof from point of delivery to the storage facilities.

(c) Under the Fuel Supply Agreement the Trust will agree to sell fuel oil to the Company upon request, and the Company will agree to purchase all of the fuel oil owned by the Trust at or prior to the termination of the Agreement on December 31, 1986. The Company will agree to pay a purchase price for the fuel oil equivalent to the Trust's costs related thereto. The Trust's costs will include the purchase price paid to the supplier, payments made in respect to transportation, administration expenses, taxes, fees of the Trustees and costs and expenses incurred under the credit arrangements between the Trust and the lenders. The purchase price to the Company will be calculated in terms of a price per barrel of fuel oil.

(d) The Trust will issue a ten-year note or notes to institutional investors in the amount of approximately $7,000,000 which will be placed by an investment banker. These funds, plus additional funds borrowed by the Trust from commercial banks, if needed, will be used to purchase the Company's present inventory currently valued at approximately $7,000,000. The Trust will purchase the Company's existing inventory at the Company's present book value. The Trust will obtain additional funds as required to finance future oil purchases by issuing time drafts which may be "accepted" by bank or group of banks (bankers acceptances). The Company will not guarantee the debt securities issued by the Trust.

(e) At the termination of the transaction on December 31, 1986, the Company will purchase the remainnig fuel oil held by the Trust at a price equal to the Trust's cost of such fuel oil plus any unamortised transaction costs.

(f) The Company and the Trust will also enter into an agreement pursuant to which the Company will grant to the Trust the irrevocable right to use the storage facilities of the Company cost free for the purpose of storing fuel oil delivered for the account of the Trust until such time as it is sold to the Company under the Fuel Supply Agreement.

(g) The Trust will appoint the Company as its Agent for the performance of all obligations required to be performed under the Fuel Supply Agreement other than paying the purchase price for the fuel oil, paying for its transportation, and holding the accompanying title thereto.

The Company states that the proposed arrangement is advantageous to it for the following reasons:

(1) It immediately frees up approximately $7 million for use by the Company;

(2) It provides a relatively inexpensive source of funds (possibly less than normal bank borrowings over a ten-year period) which is supplemental to other financings and need not impose upon existing lines of credit;

(3) It diminishes, by the amount of this financing, the necessity for the Company's line banks to provide funds under existing credit lines, which is attractive to both the Company and its banks; and

(4) It provides the Company with the flexibility to adjust fuel oil reserves upward or downward as required.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 28, 1977, file with the Federal Power Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to the proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules. The application is on file with the Commission and available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-2039 Filed 1-21-77;8:45 am]

[Docket No. RI77-15]

FRED W. SHIELD

Petition for Special Relief

JANUARY 11, 1977.

Take notice that on December 7, 1976, Fred W. Shield (Petitioner), Milam Building, San Antonio, Texas 78205, filed a petition for special relief in Docket No. RI77-15, seeking a rate increase from 37.6323 cents per Mcf to 51.72 under Order No. 481. The price increase is in consideration for the installation of compression facilities to serve the Heard Ranch Field, Bee County, Texas.

Any person desiring to be heard or to make any protest with reference to said petition should on or before February 4, 1977, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding, or to parficipate as a party in any hearing therein, must file a petition to intervene in accordance with the Commission Rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-2026 Filed 1-21-77;8:45 am]

[Docket No. CP77-107]

GAS GATHERING CORP.

Application

JANUARY 11, 1977.

Take notice that on December 13, 1976,[1] Gas Gathering Corporation (Applicant), P.O. Box 519, Hammond, Louisiana 70401, filed in Docket No. CP77-107 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of up to 5,000 Mcf of natural gas per day to Transcontinental Gas Pipe Line Corporation (Transco) for the account of Southern Natural Gas Company (Southern), for a period of one year from date of first delivery, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to transport for Southern pursuant to an agreement dated November 17, 1976, a maximum of 5,000 Mcf of gas per day, less shrinkage, purchased by Southern from American Quasar Petroleum Company of New Mexico and Southland Royalty Company. It is stated that such gas would be exclusively from American Quasar Petroleum Company's (Quasar) Grief Brothers' No. 1 Well, located in St. Martin Parish, Louisiana. Applicant asserts that it would transport such gas from the outlet of Southern's American Quasar meter to Transco's Sherbourne Meter Station located in Pointe Coupee Parish, Louisiana, on a pressure base of 15.025 psia and for a transportation charge of 4.0 cents per Mcf. It is further stated that for any shrinkage resulting from Applicant's processing exceeding 5.5 percent, Applicant would reimburse Southern for all shrinkage in excess of 5.5 percent at the rate at which Southern pays the producers for such gas.

Applicant states that Quasar has installed approximately one mile of two-inch pipeline to deliver such gas to Applicant's meter station, and the cost to Applicant of tieing in Quasar's delivery line would be less than $1,000.00.

It is asserted that in the event Southern commences deliveries of gas produced from the Quasar Well into its own pipeline facilities prior to the end of the 12-month term of said agreement, Southern would continue to pay Applicant the 4.0 cents per Mcf transportation charge based on actual daily volumes delivered from the Quasar Well as measured by Southern's Quasar meter, until the expiration of said 12-month term.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 4, 1977, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-2001 Filed 1-21-77;8:45 am]

[1] The application was initially tendered for filing on December 13, 1976, however, the fee required by § 159.1 of the Regulations under the Natural Gas Act (18 CFR 159.1) was not paid until January 6, 1977; thus, filing was not completed until the latter date.

[Docket No. RP72-140 (PGA77-2)]

GREAT LAKES GAS TRANSMISSION CO.

Proposed Changes in PGA Gas Tariff

JANUARY 13, 1977.

Take notice that Great Lakes Gas Transmission Company (Great Lakes), on December 30, 1976, tendered for filing Twenty-Second Revised Sheet No. 57, to its FPC Gas Tariff, First Revised Volume No. 1, proposed to be effective February 15, 1977.

Great Lakes states that the cost of gas purchased from TransCanada Pipelines Limited, its sole supplier of natural gas, is reduced as a result of the recent decrease in the conversion rate between United States and Canadian currency.

Great Lakes also states that copies of this filing have been served upon its customers and the Public Service Commissions of Minnesota, Wisconsin and Michigan.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, N.E. Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 28, 1977. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 77-2012 Filed 1-21-77;8:45 am]

[Docket No. ES77-8]

INTERSTATE POWER CO.

Application

JANUARY 11, 1977.

Take notice that on December 29, 1976, an application was filed with the Federal Power Commission pursuant to Section 204(a) of the Federal Power Act by Interstate Power Company (Applicant), seeking an order authorizing the issuance of not exceeding 200,000 additional shares of its presently authorized Common Stock, par value $3.50 per share, pursuant to its Employee and Stockholder Automatic Dividend Reinvestment and Stock Purchase Plan ("Plan").

Applicant is incorporated under the laws of the State of Delaware, with its principal business office in Dubuque, Iowa, and is engaged principally in the electric utility business in northern and northeastern Iowa, in southern Minnesota and a few small communities in Illinois.

Applicant proposes to issue and sell to its employees and stockholders a sufficient number of additional shares of its Common Stock to satisfy its obligations under the Plan.

The purpose of the Employee and Stockholder Dividend Reinvestment and Stock Purchase Plan is to provide employees and registered holders of shares of Common Stock with a convenient method of investing case dividends and/or optional payments of not less than $25 nor more than $3,000 per quarter in additional shares of Common Stock at a price equal to market value, without payment of any brokerage commission or service charge.

According to the application, the net proceeds to be received by the Applicant from the issuance and sale of the shares of the additional Common Stock will be used by the Applicant to discharge a portion of the indebtedness on short-term borrowings made by the Applicant which were used to pay for a portion of its construction program and for other corporate purposes.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 27, 1977, file with the Federal Power Commission, Washington, D.C., 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules. The application is on file with the Commission and available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc 77-1998 Filed 1-21 77;8:45 am]

[Docket No. ES77-6]

IOWA POWER & LIGHT CO.

Application

JANUARY 11, 1977.

Take notice that on December 30, 1976, Iowa Power and Light Company (Applicant) filed an application with the Federal Power Commission for an order pursuant to Section 204(a) of the Federal Power Act authorizing the Applicant to enter into Loan Agreements to borrow the proceeds from the sale of, to provide for the payment of, Pollution Control Revenue Bonds to be issued by the City of Council Bluffs, Iowa: authorizing the proposed issuance of Additional First Mortgage Bonds and unsecured promissory notes by the Applicant to provide for the payment of such Pollution Control Revenue Bonds; authorizing the Applicant to execute and deliver letters to said City and underwriters to induce the issuance and sale of said Pollution Control Bonds; and exempting the transaction from the competitive bidding requirements of § 34.1(a) of the Commission's Regulations under the Federal Power Act.

The Applicant is an operating electric and gas utility, primarily engaged in the generation, transmission, distribution and sale at retail of electric energy and in purchase, distribution and sale at retail of natural gas in central and southwestern Iowa.

Applicant states that the First Mortgage Bonds and Notes are to be issued, and Loan Agreements are to be entered into and Inducement Letters are to be executed and delivered, in connection with the sales by the City of Council Bluffs, Iowa, of $18 million aggregate principal amount of its Series 1977-A and $1 million aggregate principal amount of its Series 1977-B Bonds. Pursuant to the Loan Agreements, the proceeds from the sale of the Series 1977-A and Series 1977-B Bonds will be borrowed by the Applicant to finance part of the cost of Applicant's undivided interest in certain pollution control facilities at Unit No. 3 of the Council Bluffs Power Station in Council Bluffs, Iowa.

Any person desiring to be heard or to make any protest with reference to the application should on or before January 28, 1977, file with the Federal Power Commission, Washington, D.C. 20426 petitions or protests in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make protestants parties to the proceedings. Persons wishing to become parties to a proceeding or to participate as a party in any hearing herein must file petitions to intervene in accordance with the Commission's Rules. The application is on file with the Commission and is available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-1995 Filed 1-21-77;8:45 am]

[Docket No. E-9130]

IOWA PUBLIC SERVICE CO.

Application

JANUARY 13, 1977.

Take notice that on January 10, 1977, Iowa Public Service Company (Applicant) filed an application pursuant to Section 204 of the Federal Power Act seeking authority to issue $50 million of short-term unsecured promissory notes to commercial banks and commercial paper dealers. All proposed notes are to be issued on or before March 31, 1978 and will bear final maturity dates not later than March 31, 1979.

The application states that the bank notes will bear interest at the prime rate in effect at the lending bank at the date of each borrowing. The commercial paper, having maturities not to exceed nine months, will be sold directly to commercial paper dealers and will bear interest rates determined by the market conditions at the time of each borrowing. The aggregate amount of commercial paper outstanding at any one time will not exceed 25% of the Applicant's gross operating revenues for the twelve months ending December 31, 1976.

Applicant proposes to use the funds for construction or acquisition of permanent improvements, extensions and additions to Applicant's property and/or to pay off maturing short-term loans. Its estimated construction expenditures for the year 1977 are $96,600,000.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 4, 1977, file with the Federal Power Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules. The application is on file with the Commission and is available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc 77-2005 Filed 1-21-77;8:45 am]

[Project No. 2640]

KANSAS CITY STAR CO.

Application for Use of Project Property

JANUARY 12, 1977.

Public notice is hereby given that application for approval of use of project property was filed on October 14, 1976, and supplemented on November 4, November 11, and November 16, 1976, under the Federal Power Act (16 U.S.C. 791a-825r) by The Kansas City Star Company, Flambeau Paper Division (correspondence to: Mr. Norman G. Hoefferle, President, The Flambeau Paper Company, Park Falls, Wisconsin 54552) for its constructed Upper Hydro-Electric Project, FPC No. 2640, located on the North Fork of the Flambeau River in the City of Park Falls, Price County, Wisconsin. The Licensee seeks permission to construct a fire access road, bridge, and blow tank along the west bank of the powerplant headrace, within the project boundary.

The access road would extend 230 feet along the canal and would require riprapping of that section of the canal bank. The bridge, 15 feet in width and 90 feet in length, would be supported over the water on bearing piles and would connect the access road with the blow tank. The blow tank would be built partly on shore and partly on sand and/or gravel fill placed behind sheet piling in the headrace. Maximum dimensions of the blow tank foundation and necessary working area would be 47 feet by 27 feet. The blow tank and access road would be integral portions of Licensee's proposed counter-current, pulp-washing installation, which is necessary in order to comply with the pollution abatement program ordered by the Wisconsin Department of Natural Resources (Permit No. 0003212) to meet the prescribed pol-

lution limits set by the United States Environmental Protection Agency by June 30, 1977. The effluent from the treatment plant will be discharged into the powerhouse intake just above the No. 1 water wheel by a pipeline about 388 feet long which will be located within the project boundary.

Applicant has requested the shortened procedures pursuant to § 1.32(b) of the Commission's Regulations under the Federal Power Act.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 28, 1977, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules. The application is on file with the Commission and is available for public inspection.

Take further notice that, pursuant to the authority contained in and conferred upon the Federal Power Commission by Sections 308 and 309 of the Federal Power Act (16 U.S.C. 825g and 825h) and the Commission's Rules of Practice and procedure, specifically § 1.32(b), as amended by Order No. 518, a hearing may be held without further notice before the Commission on this application if no issue of substance is raised by any request to be heard, protest or petition filed subsequent to this notice within the time required herein. If an issue of substance is so raised, further notice of hearing will be given.

Under the shortened procedure herein provided for unless otherwise advised, it will be unnecessary for applicant or initial pleader to appear or be represented at the hearing before the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-2033 Filed 1-21-77;8:45 am]

[Docket No. E-9567]

LAC VIEUX DESERT RIPARIAN OWNERS ASSOCIATION, INC. v. WISCONSIN VALLEY IMPROVEMENT CO.

Public Hearing Session

JANUARY 13, 1977.

By letter issued December 17, 1976, the Federal Power Commission directed that a public hearing session be held in the vicinity of Lac Vieux Desert Reservoir of FPC Project No. 2113 for the purpose of receiving statements of position from interested members of the public regarding matters raised in the April 23, 1976 complaint filed by the Lac Vieux Desert Riparian Owners Association, Inc. against the Wisconsin Valley Improvement Company, Licensee for the Lac Vieux Desert Reservoir, said reservoir being located in Vilas County, Wisconsin and Gogebic County, Michigan and constituting the headwaters of the Wisconsin River.

In accordance with such direction, Commission staff counsel will convene a public session in the vicinity of the project at the Court House in Eagle River, Wisconsin beginning at 10:00 a.m., on March 24, 1977, and continuing thereafter until concluded so that members of the public, including parties to this proceeding, may be afforded an opportunity to state their views orally and in writing and to have their positions and statements considered along with the pleadings filed in this proceeding.

This proceeding was initiated when Complainant alleged (1) that Licensee's failure to draw down the water level of the reservoir in accordance with provisions of the license has caused riparian lands to be eroded, damaged, destroyed, or submerged by ice and waters of the reservoir; (2) that excessively high and fluctuating water levels maintained by Licensee have prevented the reproduction of wild rice, thus depriving the reservoir of nutrients and permitting an abnormal weed-growth; (3) that Licensee's operation of the lift-gate type dam of Lac Vieux Desert Reservoir annually causes a substantial kill-off of the fish population by trapping fish in the water escaping under high pressure from the gate at the foot of the dam; and (4) that Licensee has at times completely closed the lift-gate at the dam, thus permitting no water to pass into the Wisconsin River in violation of the rights of riparain owners below the dam.

By way of relief, Complainant requested that (1) Licensee be required to remove the existing lift-gate type dam and, in lieu thereof, construct a spill-way type dam and fish ladder; (2) that Licensee be required to maintain a constant, stabilized water level of 16.5 inches above 0.0 gage; (3) that future operation and maintenance of the dam be conducted under the direct supervision of a Federal officer for the protection of wildlife and riparian property; and (4) that, in the alternative, future operation and maintenance of the dam be conducted by the Federal Government.

In order to avoid possible confusion and to insure that all parties desiring to be heard are afforded the opportunity to state their positions, it is necessary that the following procedures be observed at the public session:

All those desiring to be heard, or wishing to submit written statements, should, prior to the convening of the session at 10:00 a.m., fill out cards or slips with their names, addresses, and organization, if any, and give such cards to the Commission staff counsel. Blank cards will be made available for that purpose at the entrance of the court room. Parties will be called in the order in which their cards are received.

When a party's name is called, he will please come forward, identify himself and give the reporter a copy of the written statement, if any. If an oral statement is to be given, kindly state your name, address, and organization, if any. In order to conserve time, it would be desirable in cases where a written statement is to be submitted, to confine oral remarks to substantive matters since the entire remarks will be reported in the transcript by the transcription of the written statements. The reporter is being directed to copy all written statements into the record as though read. The statements made at the public session will have the same effect and the same weight as if they were copied into the record. They do not constitute evidence and the parties giving statements will not be subject to cross-examination.

In the event that any party desiring to make a statement is unable to be present at the time his name is called, he may leave a copy of his statement with the reporter and such statement will be copied into the record as though read or presented orally. If for any reason any party desiring to be heard is unable to attend this public session in person, he may submit a written statement to be received no later than April 4, 1977, by the Secretary, Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426 and such statement will be made a part of the record of the public session.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-1985 Filed 1-21-77;8:45 am]

[Docket No. CP77-106]

MISSISSIPPI RIVER TRANSMISSION CORP.

Application

JANUARY 11, 1977.

Take notice that on December 22, 1976, Mississippi River Transmission Corporation (Applicant), 9900 Clayton Road, St. Louis, Missouri 63124, filed in Docket No. CP77-106 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of natural gas pipeline facilities and the sale of natural gas, all as more fully set forth in the application, which is on file with the Commission and open to public inspection.

Applicant requests authorization to construct and operate approximately 12.3 miles of 6-inch trunk pipeline running from a point in the Little Washita Area, Grady County, Oklahoma, to a point of connection with an existing 8-inch pipeline of Natural Gas Pipeline Company of America (Natural) in Grady County, Oklahoma. Applicant also requests authorization to sell natural gas to Natural in accordance with the provisions of a November 18, 1976, Gas Transportation and Sales Agreement between Natural and Applicant.

It is stated that Applicant would deliver gas from the Little Washita Area to Natural at a side tap to be installed by Natural on its 8-inch Chitwood pipeline in Grady County, Oklahoma. It is further stated that the maximum volume of gas which Natural is obligated to receive at the point of receipt is 15,000 Mcf per day. Natural would redeliver to Applicant at an existing gas sales point in Clinton County, Illinois, or at Applicant's option, at an existing point of interconnection in Randolph County, Arkansas, seventy-five percent of the volumes of gas delivered by Applicant to Natural at the point of receipt in Grady County, Oklahoma, and the remaining twenty-five percent of the volumes would be sold to Natural. Applicant states that for the transportation service to be performed by Natural Applicant would pay Natural 15 cents per Mcf of gas redelivered. It is further stated that Applicant would sell to Natural twenty-five percent of the volumes delivered at the point of receipt of Grady County, Oklahoma, at a price equal to the product of the volume of such gas times the volume-weighted average purchase price per Mcf paid by Applicant for such gas. The estimated initial price which Applicant would charge for gas sold to Natural would be $1.54 per Mcf, it is said.

It is stated that the total estimated cost of the 6-inch trunkline and appurtenant facilities is $645,000. Applicant indicates that this cost would be financed initially from available funds and/or shortterm borrowings. Any gathering facilities required to be installed by Applicant in order to effectuate this proposal would be constructed under Applicant's budget-type authorization for gas purchase facilities, it is said.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 1, 1977, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-2028 Filed 1-21-77;8:45 am]

[Docket No. RP72-149 (PGA77-4)]

MISSISSIPPI RIVER TRANSMISSION CORP.

Proposed Change in Rates

JANUARY 13, 1977.

Take notice that Mississippi River Transmission Corporation ("Mississippi") on December 27, 1976, submitted for filing Fifty-Third Revised Sheet No. 3A to its FPC Gas Tariff, First Revised Volume No. 1, to become effective February 1, 1977.

The instant filing is being made pursuant to the provisions of Mississippi's purchased gas cost adjustment clause to track a rate change filing of Trunkline Gas Company made pursuant to the terms of the PGA provisions of its tariff and the Advance Payment and Transportation Tracking provisions of its Agreement as to Rates and Related Matter at Docket No. RP74-89.

Mississippi submitted schedules containing computations supporting the rate changes to be effective February 1, 1977. Mississippi states that copies of its filing were served on Mississippi's jurisdictional customers and the State Commissions of Arkansas, Illinois and Missouri.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 28, 1977. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene unless such petition has previously been filed. Copies of the filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-1988 Filed 1-21-77;8:45 am]

[Docket No. CP75-154]

MONTANA-DAKOTA UTILITIES CO.

Amendment to Application

JANUARY 13, 1977.

Take notice that on December 27, 1976, Montana-Dakota Utilities Co. (Applicant), 400 North Fourth St., Bismarck, North Dakota 58501, filed in Docket No. CP75-154 an amendment to its pending application for a certificate of public convenience and necessity filed pursuant to Section 7(c) of the Natural Gas Act on November 20, 1974. The amendment requests a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities in the state of Montana, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

Applicant states that in its application filed November 20, 1974, in the instant docket, it sought authorization to construct and modify certain facilities in Fallon, Wilbaux, Valley, Dawson, and McCone Counties, Montana, at an estimated cost of $6,830,000. Further, Applicants requested authorization to transport natural gas, by exchange, for Kansas-Nebraska Gas Company, Inc. (K-N). On July 3, 1975, the Commission granted Applicant temporary authorization for the transportation and exchange of natural with K-N. Applicant was not authorized to construct facilities nor were facilities required for receipt of initial, temporary volumes.

Applicant proposes in its amendment a revised construction program to be carried out in lieu of its original proposal in its application filed November 20, 1974. Applicant now proposes the following:

1. Construction and operation of two gas engine driven compressors (900 HP total) and related facilities at a new compressor station to be located in Sec. 22, T.25 N., R. 49 E., near Vida in McCone County, Montana.

2. Construction and operation of two additional gas engine driven compressors (1,080 HP total) and related facilities at the new Vida compressor station.

3. Construction and operation of two gas engine driven compressors (900 HP total) and related facilities at the existing Saco compressor station located in Valley County, Montana.

4. Uprating of three existing compressors including headers, piping and valves for 400 psig operation at the Saco compressor plant.

5. Uprating of the existing 8-inch transmission line from the Fort Peck compressor plant in Valley County, Montana, to Morgan Creek Junction in Dawson County, Montana, for 800 psig operation.

6. Uprating of the existing 10-inch and 8-inch parallel transmission lines between the Saco compressor plant and the Fort Peck compressor plant for 400 psig operation.

Applicant states that the new Vida compressor station would be constructed and the first two compressors (900 HP total) would be installed in 1977 and the remaining construction and improvements would be carried out in 1978. Applicant estimates that total cost its proposal would be $1,854,000 to be financed by funds generated internally and/or short-term bank notes.

Applicant states that the facilities proposed in the instant amendment would permit it to take an average of 10,000 Mcf of natural gas from K-N in the summer of 1977 and 12,000 Mcf in the winter of 1977 with the proposed Vida sta-

tion in operation. With all the facilities in operation in 1978 the capacity would be increased so as to allow for the receipt of an estimated average of 14,000 Mcf of gas from K–N in the summer and 17,000 Mcf of gas in a winter month. It is indicated that the gas purchased from and transported by exchange for K–N under the Commission's temporary authorization granted July 3, 1975, was from production developed by K–N in fields located in the Bowdoin area of Phillips and Valley Counties, Montana. Applicant states that the temporary authorization permitted and K–N to evaluate well production data so as to design better the facilities required for implementation of Applicant's commitment under a sale, transportation and exchange agreement entered into by it and K–N. It is indicated that the facilities proposed in the instant amendment would allow Applicant to conform to the intent of the agreement and at the same time be less expensive than those originally proposed.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before February 4, 1977, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any persons wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules. Persons who already have filed in the subject docket need not do so again.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-2004 Filed 1-21-77;8:45 am]

[Docket No. CP76-517]

NATURAL GAS PIPE LINE CO. OF AMERICA

Additional Storage Service

JANUARY 13, 1977.

On September 9, 1976, Natural Gas Pipe Line Company of America (Natural) filed an application in Docket No. CP76-517, pursuant to Section 7(c) of the Natural Gas Act, for a certificate of public convenience and necessity authorizing the construction and operation of transmission and storage facilities to enable Natural to provide an additional storage service to its customers under proposed new Rate Schedule LS–2. In order to provide its customers with additional flexibility in the operation of their systems and to enhance reliability of service to the ultimate consumer, Natural proposes to expand its storage fields in Iowa and Illinois to increase daily withdrawal capacity by 124,000 Mcf in order to provide the proposed new LS–2 service to its customers. A total of 100 days' top storage withdrawal will be available for the period beginning December 1 of each year and continuing through March 31, of the next year with the maximum available to each customer being a hundred times its contracted daily withdrawal quantity. To enable Natural to provide this lease storage service. Natural proposes to allocate from the existing entitlements of participating customers the following:

(1) 12,400,000 Mcf of top storage gas each year;
(2) 3,100 Mcf of fuel gas each year; and
(3) 24,000,800 Mcf of cushion gas for the first year of LS–2 service only.

The service agreements covering the LS–2 service would be for a period of 10 years commencing April 1, 1977, but would be cancellable on one year's notice by Natural if, in its judgment, the severity of curtailment on its system required it. Upon termination of the LS–2 service, cushion gas would be returned to Natural's customers. It is proposed that the LS–2 service would be offered to all customers, allocating the 124,000 Mcf per day among them prorata to their existing daily contract quantities under Rate Schedules DMQ–1 and G–1 and that the volumes not accepted would then be re-offered to those customers who did not elect to participate in the LS–2 storage service until the total volume is contracted.

In addition, Natural requested that the inventory limitations of the storage fields, imposed as conditions to certificate authorization, heretofore issued, be increased to designated levels set forth in the application. Natural also proposes to construct and operate several additional small gathering lines in order to connect injection-withdrawal wells and other miscellaneous facilities—all such construction and operation as outlined in the application.

The estimated cost of these facilities, excluding cushion gas which will be provided by the participating customers, is approximately $23,575,000. Pursuant to § 2.55(a) of the Commission's General Policy and Interpretations, Natural also proposes to construct and operate six observation wells, dehydration units and other miscellaneous facilities at a cost of approximately $1,609,000. It is indicated that these costs would be financed with funds obtained from interim and permanent financing.

This application was noticed on September 22, 1976, (41 FR 43,464 (October 1, 1976)). General Motors Corporation (GM) filed a protest, petition to intervene and request for hearing on October 15, 1976. Petitions for leave to intervene in support of Natural's application were filed by several of Natural's customers planning to participate in the proposed new storage service, Peoples Gas Light and Coke Company (Peoples), North Shore Gas Company (North Shore), Iowa-Illinois Gas and Electric Company, and Iowa Power and Light Company (Iowa). Petitions to intervene out-of-time were filed by Iowa Electric Light and Power Company, Interstate Power Company, and the City of Chicago. On November 1, Peoples and North Shore jointly and Natural filed answers in opposition to GM's petition to intervene.

In order to reflect a minor modification in the facilities and provide additional information, Natural filed an amendment to its initial application on November 18, 1976. Subsequently on December 9, 1976, Natural filed a request for a temporary certificate to commence construction and operation of the facilities to provide the LS–2 service prior to March 15, 1977. Natural alleged that an emergency exists in that if temporary authorization is not granted, the currently available supply from Peoples' SNG plant may be diverted to a lower priority summer interruptible market. Information subsequently received by our staff indicates that this supply may not be available. We therefore find that it would be more appropriate to review the question of whether temporary authorization should be granted, in March, 1977 when the amount of available supply is ascertainable.

We find these proceedings should be set for hearing. GM's pleadings raise the issue of whether a pipeline, which is presently curtailing its firm customers, should be permitted to increase its storage capacity from storage to meet the additional demands of its distributor customers resulting from their attachment of new high-priority customers. We believe that this question should be explored at a hearing. While the Commission has consistently required pipelines to husband existing supplies of gas through the use of storage and has favored the development of new storage projects to assist pipelines in meeting existing peak day requirements, the question of whether pipelines should be permitted to increase storage to meet the demands of new high-priority customers has not been resolved. If gas supplies continue to decline, then all increased storage capability will ultimately be needed to meet the demands of existing customers. However, if growth occurs in the interim, the new customers will be assigned to the appropriate curtailment priorities with existing customers and curtailed proportionately. This could lead to a situation where other existing high-priority users, such as industrial feedstock consumers, are curtailed significantly in advance of the date that they would otherwise be curtailed because a pipeline has used its expanded storage capability to permit its distributors to add new residential and small commercial customers.

Because growth is a factor in these proceedings, we believe the hearing established below should address the question of whether Natural should be permitted to increase its storage capability to satisfy additional demands represented by growth and, if the question is answered negatively, what conditions should be attached to any permanent certificates issued in these proceedings to prohibit such use. Thus, the hearing prescribed in these consolidated proceedings is to develop a record regarding the following issues:

i. How is the public convenience and necessity advanced by the construction and operation of these proposed facilities?

ii. What customers and which markets will be served if the proposed facilities are constructed?

iii. What effect would the construction and operation of the proposed facilities have on existing customers?

iv. Who should pay the cost of the proposed facilities and service?

v. Describe the impact of diverting additional gas supplies to storage during the summer period on existing customers.

vi. Will any existing customers of Natural receive less gas on an annual and peak day basis as a result of the proposed facilities?

vii. If new customers are proposed to be served, identify these customers and their peak day and annual requirements according to the priorities prescribed in 18 C.F.R. § 2.78(a) (1).

viii. Does the continued addition of new customers advance the public interest?

ix. What conditions, if any, should be attached to the permanent certificates, if any, issued in these proceedings?

The responses to these issues should give consideration to the Commission's determination in Northern Natural Gas Company, Opinion No. 773, — F.P.C. — (August 13, 1976), wherein we stated (id. at 2–3):

> In general, we agree with the conclusion of the Administrative Law Judge, that a pipeline presently curtailing existing customers should not be authorized to attach new customers regardless of the priority of use to which the new customers would put any natural gas which they receive. In the absence of some compelling public interest consideration, existing customers should not be cut off in order that new customers may receive service who had never previously received natural gas deliveries. In addition we agree with the Judge that the de minimis nature of the proposed new service cannot be controlling since one de minimis approval after another can accumulate to the point where there is a substantial effect on the other customers of the pipeline. We further agree with the Judge that the availability of alternate fuels is not controlling where the customers' facilities for using gas or other fuels have not yet even been installed and no determination on either an absolute or economic basis can be made.

The Commission finds:

(1) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that a public hearing be held on the matters involved and the issues presented in these proceedings as hereinbefore described.

(2) Participation in these proceedings by aforementioned intervenors may be in the public interest. Permitting the filing of the late petitions to intervene will not delay the proceedings and may be in the public interest.

The Commission orders:

(A) The proceedings in Docket No. CP76–517 are hereby set for hearing and disposition.

(B) Pursuant to the authority of the Natural Gas Act, particularly Sections 4, 5 and 15 thereof, the Commission's Rules of Practice and Procedure (18 CFR Part 1, and the Regulations under the Natural Gas Act (18 CFR Chapter I, Subchapter E), a prehearing conference shall be held on March 7, 1977, commencing at 10:00 a.m. in a hearing room of the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, to discuss procedural issues and the clarification of issues.

(C) An Administrative Law Judge, to be designated by the Chief Administrative Law Judge for that purpose. (See Delegation of Authority, 18 CFR 3.5(d)), shall preside at the prehearing conference in this proceeding, with authority to establish and change all procedural dates, and to rule on all motions (with the sole exception of petitions to intervene, motions to consolidate and sever, and motions to dismiss), as provided for in the Rules of Practice and Procedure.

(D) The direct case of Natural, including testimony on the issues raised by this order, shall be filed and served on all parties, the Presiding Administrative Law Judge, and the Commission Staff on or before February 4, 1977. All supporting intervenors shall file testimony and exhibits comprising their cases in chief on or before February 18, 1977.

(E) The above-mentioned intervenors are permitted to intervene in the instant consolidated proceeding subject to the rules and regulations of the Commission: *Provided, however,* That participation of such intervenors shall be limited to matters affecting asserted rights and interests as specifically set forth in the petitions to intervene; and *Provided, further,* That the admission of such intervenors shal not be construed as recognition by the Commission that they might be aggrieved because of any order of the Commission entered in the proceeding.

(F) The Secretary shall cause prompt publication of this order in the FEDERAL REGISTER.

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-1984 Filed 1-21-77;8:45 am]

[Docket No. CP74-134]

NATURAL GAS PIPELINE CO. OF AMERICA

Petition to Amend

JANUARY 11, 1977.

Take notice that on December 27, 1976, Natural Gas Pipeline Company of America (Petitioner), 122 South Michigan Avenue, Chicago, Illinois 60603, filed in Docket No. CP74–134 a petition to amend the Commission's order issued pursuant to Section 7(c) of the Natural Gas Act on May 29, 1975 (53 FPC——), in the instant docket so as to authorize the operation of three additional exchange points and an increase in maximum daily exchange volumes in accordance with the gas exchange agreement dated June 29, 1973, as amended, between Petitioner and Northern Natural Gas Company (Northern), all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

It is stated that on May 29, 1975, the Commission authorized the exchange of up to 2,000 Mcf of natural gas per day between Petitioner and Northern at two exchange points, one in Wheeler County, Texas, and one in Carson County, Texas. It is also stated that the Commission in a temporary certificate issued April 8, 1976, permitted the exchange of gas at additional exchange points in Hansford County, Texas, and Beaver County, Oklahoma.

Petitioner proposes, pursuant to a further amendment dated September 9, 1976, to the subject Gas Exchange Agreement, to:

(1) Add a new exchange point (Kirtley Exchange Point) in Beckham County, Oklahoma, for deliveries to Petitioner from Northern from the Kirtley Well.

(2) Add a new exchange point for deliveries from Northern to Petitioner, if required to eliminate an imbalance of exchange volumes owed to Petitioner, at a mutually agreeable point in Carson County, Texas (Carson Exchange Point No. 2).

(3) Add a new exchange point in Woodward County, Oklahoma (Stricker Exchange Point), for deliveries to Northern from Petitioner from the Stricker Well.

(4) Increase maximum daily volumes for exchange from 2,000 Mcf per day to 5,000 Mcf per day.

Petitioner states that it has requested authorization in Docket No. CP76–528 to construct a tap connection on its pipeline in Beckham County, Oklahoma, to effectuate a transportation service for Panhandle Eastern Pipe Line Company, which point would be utilized as an exchange point with Northern (Kirtley Exchange Point). It further states that any facilities required at the proposed Stricker and Carson No. 2 Exchange Points would be constructed under Petitioner's currently effective Gas Purchase Facilities Budget Authorization.

It is asserted that the amended agreement between Petitioner and Northern is mutually beneficial in that it continues to provide a means for each party to connect remote sources of gas supply into their respective systems while obviating the necessity to construct and operate extensive and/or duplicate facilities otherwise required if they were to proceed independently. Petitioner further states that the exchange would have no effect on any of the other sales or services it now renders nor would there by any change in its operation.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before January 31, 1977, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the

Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-1990 Filed 1-21-77;8:45 am]

[Docket No. CP77-111]

NATURAL GAS PIPELINE CO. OF AMERICA

Application

JANUARY 12, 1977.

Take notice that on December 28, 1976, Natural Gas Pipeline Company of America (Applicant), 122 South Michigan Avenue, Chicago, Illinois 60603, filed in Docket No. CP77-111 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the establishment of a new delivery point to take natural gas from Colorado Interstate Gas Company (CIG) and the construction and operation of facilities necessary therefor, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it and CIG have entered into a letter agreement, dated November 22, 1976, whereby a new delivery point for gas from CIG to Applicant, to be designated CIG's Willis Meter Station, would be established in Sec. 3, Camp County School Survey, Wheeler County, Texas. CIG would deliver up to 20,000 Mcf of natural gas per day to Applicant at the new point. Applicant states that deliveries would be made under CIG's effective Rate Schedule F-1 and that, therefore, Applicant would receive no additional volumes of gas from CIG than presently are authorized and contracted for.

Applicant proposes to construct and operate a 6-inch tap connection on its existing 12-inch pipeline in Wheeler County. The estimated cost of construction is $11,600 which would be reimbursed to Applicant by CIG. Applicant indicates that the new delivery point is required to allow CIG to deliver gas purchased by CIG from production in the Lott Area of Wheeler County.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 1, 1977, filed with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own revelw of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-1982 Filed 1-21-77;8:45 am]

[Project No. 2266]

NEVADA IRRIGATION DISTRICT

Application for Amendment of License

JANUARY 12, 1977.

Public notice is hereby given that application has been filed under the Federal Power Act (16 U.S.C. 791a-825r) by Nevada Irrigation District (correspondence to: Albert W. Scurr, General Manager, Nevada Irrigation District, P.O. Box 1019, Grass Valley, California 95945; and David Minasian, Esq., Minasian, Minasian, Minasian, Spruance and Baber, Attorneys at Law, P.O. Box 1679, Oroville, California 95965) for amendment of license for Project No. 2266, known as the Yuba-Bear Hydroelectric Project located on the Middle and South Yuba and Bear Rivers and their tributaries in Sierra, Nevada and Placer Counties, California.

By its application, Nevada Irrigation District proposes to construct a powerhouse adjacent to its existing Rollins Reservoir dam licensed as part of the Yuba-Bear Hydroelectric Project. The 50-foot by 44.5-foot outdoor type powerhouse would contain one generating unit with an installed capacity of 11,000 kW. A 9-foot diameter penstock approximately 500 feet long would be constructed in an existing tunnel beneath the dam. A substation would be constructed adjacent to the powerhouse to provide power to Pacific Gas and Electric Company's transmission system.

Any person desiring to be heard or to make any protest with reference to said application, should on or before February 28, 1977, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own revelw of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-1982 Filed 1-21-77;8:45 am]

[Project No. 2266]

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Any person desiring to be heard or to make any protest with reference to said application, should on or before February 28, 1977, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and conferred upon the Federal Power Commission by Sections 308 and 309 of the Federal Power Act (16 U.S.C. 825g, 825h) and the Commission's Rules of Practice and Procedure, specifically § 1.32(b) (18 CFR 1.32(b)) as amended by Order No. 518, a hearing may be held without further notice before the Commission on this application if no issue of substance is raised by any request to be heard, protest or petition filed subsequent to this notice within the time required herein and if the applicant or initial pleader requests that the shortened procedure of 1.32(b) be used. If an issue of substance is raised or applicant or initial pleader fails to request the shortened procedure further notice of hearing will be given.

Under the shortened procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant or initial pleader to appear or be represented at the hearing before the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-2035 Filed 1-21-77;8:45 am]

[Docket No. ER77-130]

NEW ENGLAND POWER CO.

Filing

JANUARY 12, 1977.

Take notice that on January 3, 1977, New England Power Company (NEPCO) tendered for filing a proposed rate schedule for 11 Transmission Contracts between NEPCO and Montaup Electric Company, Newport Electric Corporation, Town of Danvers, Mass., Town of Marblehead, Mass., Town of Middleborough, Mass., Town of Middleton, Mass., City of Peabody, Mass., Town of Shrewsbury, Mass., Town of Wakefield, Mass., Inhabitants of the Town of Boylston, Mass., and Town of West Boylston, Mass. (Receivers), respectively.

The Transmission Contracts provide for transmission by NEPCO across its system of Receivers' purchases from Maine Electric Power Company (MEPCO) of various entitlements to the power MEPCO receives under a Unit Participation Agreement dated November 15, 1971, between New Brunswick Electric Power Commission and MEPCO.

NEPCO requests waiver of the notice requirements so as to permit the Transmission Contracts to become effective as of May 24, 1976, in accordance with their terms. NEPCO states that a copy of this filing was mailed to the parties to the Transmission Contracts.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE, Washington, DC 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 24, 1977. Protest will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-1977 Filed 1-21-77;8:45 am]

[Docket No. ER77-135]

NIAGARA MOHAWK POWER CORP.

Cancellation

JANUARY 12, 1977.

Take notice that Niagara Mohawk Power Corporation, on January 5, 1977, tendered for filing proposed changes in its FPC Electric Service Tariff, No. 94. The proposed change is the cancellation of the transmission agreement between Niagara Mohawk Power Corporation and Consolidated Edison Company of New York, Inc. for the transmission of up to 150 Mw of power from Niagara Mohawk Power Corporation's transmission connections with Rochester Gas and Electric Corporation and Niagara Mohawk Power Corporation's transmission interconnections with Consolidated Edison Company of New York, Inc.'s Pleasant Valley Substation.

The transmission agreement between Niagara Mohawk Power Corporation and Consolidated Edison Company of New York, Inc. was effective October 26, 1975 and terminated October 30, 1976.

Copies of the filing were served upon Consolidated Edison Company of New York, Inc.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 31, 1977. Protests will be considered in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-1978 Filed 1-21-77;8:45 am]

[Docket No. CP77-99]

NORTHERN NATURAL GAS CO.

Application

JANUARY 11, 1977.

Take notice that on December 17, 1976, Northern Natural Gas Company (Applicant), 2223 Dodge Street, Omaha, Nebraska, filed in Docket No. CP77-99 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of a new 2,100 horsepower compressor station (Stevens County No. 5) and 6.1 miles of 16-inch pipeline to connect such station to Applicant's existing Stevens County No. 1 gathering system in Stevens County, Kansas, all as more fully set forth in the application on file with the Commission and open to public inspection.

It is stated that the proposed compressor station would compress gas produced from 39 wells in Applicant's Hugoton System, which are presently connected via Applicant's 14-inch and 16-inch gathering lines to the suction side of Stevens County No. 1 compressor where recent declines in the flowing wellhead pressure require the lowering of the gathering line pressure to enable Applicant to maintain production volumes from these wells. Applicant states that the proposed Stevens County No. 5 gathering compressor station would permit a subsystem delivery capability of 32,000 Mcf per day and would result in a total delivery of 1,069,000 Mcf per day at the discharge of existing field service compressor facilities located at Stevens County No. 1.

Applicant proposes to construct and operate two 1,050 horsepower compressor units and 6.1 miles of 16-inch pipeline at an estimated cost of $2,740,000. Applicant states that if the additional horsepower is not available during the 1977-78 heating season, its wintertime deliverability would be reduced approximately 17,000 Mcf per day, which volumes cannot be made up from other sources of supply, and there would be an even greater reduction in deliverability during the 1978-79 heating season.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 31, 1977, filed with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-1997 Filed 1-21-77;8:45 am]

[Docket No. ER77-96]

NORTHERN STATES POWER CO. (WISCONSIN)

Tariff Change

JANUARY 12, 1977.

Take notice that Northern States Power Company (Wisconsin) on December 6, 1976, tendered for filing proposed changes in its FPC Electric Service Tariff FPC Rate Schedule No. 42, Supplement No. 5. The proposed changes are requested to alter its agreement with the Village of Cadott, Wisconsin, and are proposed to be effective as of January 1, 1977.

This Agreement was renegotiated at this time to recognize the change in delivery voltage from 2,400 volts to 4.160 volts at the request of the Village of Cadott.

Copies of the filing were served upon the Village of Cadott.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 31, 1977. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-2031 Filed 1-21-77;8:45 am]

[Docket No. CP73-332]

NORTHWEST PIPELINE CORP.

Petition To Amend

JANUARY 11, 1977.

Take notice that on December 23, 1976, Northwest Pipeline Corporation (Peti-

tioner), P.O. Box 1526, Salt Lake City, Utah 84110, filed in Docket No. CP73-332 a petition to amend the Commission's orders issued pursuant to Section 7(c) of the Natural Gas Act on September 9, 1976 (56 FPC ——), December 17, 1976 (56 FPC ——), and February 26, 1975 (54 FPC ——), in the instant docket so as to 1) excise Docket No. CP73-332 from the orders issued September 9, 1976, and December 17, 1976, and 2) amend the pricing conditions of the order issued February 26, 1975, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioner states that the Commission affirmed an Initial Decision, with modification, approving the short-term import from Canada of additional natural gas volumes from Westcoast Transmission Company Limited (Westcoast), up to 55,000 Mcf per day, in Docket No. CP73-332, at an average border price ranging from $1.61 to $1.91 per Mcf over the life of the contract, subject to certain carrying costs and currency exchange rates. It is further stated that Westcoast's Export License GL-41 was amended October 8, 1974, to permit the exemption of these short-term, emergency gas purchases from the general pricing provisions affecting Canadian natural gas exports, continuing even with the increase of the Canadian border price from $1.00 per Mcf to $1.40 and $1.60 per Mcf. Petitioner asserts that the National Energy Board (NEB), by Order No. AO-11-GL-41, revoked the previous pricing exemption and made Petitioner's subject gas volumes subject to the general border prices of $1.60 per Mcf effective September 10, 1976, and $1.94 per Mcf effective January 1, 1977, and the Commission by its orders of September 9, 1976, and December 17, 1976, approved such increases.

Petitioner further states that the border price exemption was reinstated by NEB in its Order of October 21, 1976, for gas authorized to be imported by Petitioner under the 1974 Temporary Agreement. It is indicated that said order required that the amount paid Pan-Alberta Gas Ltd. (Pan-Alberta) would be the amount provided in the Temporary Agreement adjusted by an additional amount of 14.07 cents and 23.109 cents per million Btu's, effective October 1, 1976, and January 1, 1977, respectively. It is stated that Pan-Alberta has agreed that in view of this provision, and the fact that it was unable to deliver full contract quantities during the 1975-76 heating season, that it would reduce its other charges to Westcoast, which are passed on to Petitioner, to the extent required so that the total amount due Pan-Alberta and Westcoast over the term of the 1974 Temporary Agreement would not exceed $1.91 per Mcf, assuming that the full volumes are delivered for the period October 1, 1976, through April 1, 1977.

Petitioner states that although Pan-Alberta has agreed to limit Petitioner's costs to $1.91 per Mcf based on full contract deliveries from October 1, 1976, through the term of the Agreement, Petitioner was unable to take full contract volumes during October 1976, which resulted from the fact that gas may be imported under the 1974 Temporary Agreement only to the extent that Westcoast cannot deliver, from its own gas supply sources in British Columbia, the full contract volumes at Sumas, Washington, under its GL-41 export authorization. It is stated that Westcoast had a gas supply available in excess of Petitioner's requirements at the Sumas import point during certain days in October and, therefore, Petitioner was unable to import the full volumes available under the 1974 Temporary Agreement, and as a result Petitioner estimates the average cost of all volumes of gas actually imported for the term of the 1974 Temporary Agreement would be $1.96 per Mcf if full deliveries can be taken during the remaining months of the term. The Petitioner states that if it was unable to take gas for an additional 15 days, the unit cost would increase to $2.05 per Mcf, and since it is impossible to predict with certainty the volumes that will be imported, Petitioner requests an order from the Commission allowing it to pay up to $2.05 per Mcf in lieu of the previously authorized $1.91 per Mcf of gas.

Accordingly, Petitioner requests the aforementioned orders be amended and that Petitioner be authorized to continue to import gas under the 1974 Temporary Agreement at an average culminative price of up to $2.05 per Mcf. Further, Petitioner requests that said authorization be effective September 10, 1976.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before January 31, 1977, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-1996 Filed 1-21-77;8:45 am]

[Docket Nos. E-8999 and E-9000, E-9001]

ORANGE & ROCKLAND UTILITIES, INC. AND ROCKLAND ELECTRIC CO.

Electric Rates: Settlement

JANUARY 10, 1977.

On November 24, 1976, Orange and Rockland Utilities, Inc. (Orange and Rockland) and Rockland Electric Company (Rockland Electric) filed a Settlement Agreement (Agreement). For the reason set forth below, the Commission approves the Agreement which effectively terminates this proceeding.

Proceedings were initiated on August 30, 1974, when Orange and Rockland tendered for filing proposed amendments to its contract with its wholly-owned subsidiary, Pike County Light and Power Company (Pike County) in Docket No. E-8999 and amendments to its contract with its other wholly-owned subsidiary Rockland Electric in Docket No. E-9000. Orange and Rockland's contracts with Pike County and Rockland Electric cover its wholesale sales to those subsidiaries and are filed with the Commission as rate schedules. The proposals included a request to change the return on equity to 14 percent, a request that the rate of return be automatically adjusted as of the end of the preceding year to reflect changes in embedded cost of debt and preferred stock capital, and a request to change the method of computing working capital.

On the same date, Rockland Electric filed a fuel adjustment clause and an increase in its rates to its wholesale customer, the Board of Public Works in the Borough of Park Ridge (Park Ridge) in Docket No. E-9001. The requested effective date in all cases was November 1, 1974, except in Docket No. E-9001 for which an effective date of October 1, 1974, was requested subsequent to the August 30 filing.

By order issued on September 27, 1974, the Commission accepted and suspended the proposed rates in Docket Nos. E-8999 and E-9000 for one day, permitted them to go into effect on November 2, 1974, subject to refund, ordered a hearing, and consolidated the two dockets for the purpose of hearing and decision. By order issued in Docket No. E-9001 on the same date, the Commission permitted the intervention of Park Ridge and the Public Advocate of the State of New Jersey, Division of Rate Counsel (the Public Advocate), accepted and suspended the proposed rates, permitting them to become effective on November 15, 1974, but refused to permit the proposed fuel adjustment clause to become effective because it reflected the total cost of economy purchases, rather than merely the fuel component thereof, and ordered a hearing.

By order issued on October 25, 1974, the Commission denied a Rockland Electric request in E-9001 for a shortened suspension period and accepted for filing Rockland Electric's revised fuel adjustment clause which was permitted to become effective on November 1, 1974, without suspension and not subject to refund. By order issued on December 2, 1974, the Commission granted a request filed by Park Ridge that a limited examination of the lawfulness of the proposed fuel adjustment clause be included at the hearing.

On February 7, 1975, the Commission ordered consolidation of the three proceedings, permitting Park Ridge and the Public Advocate to intervene in Docket Nos. E-8999 and E-9000. By order of October 14, 1975, the Commission ordered Rockland Electric to refund to Park Ridge the amounts attributable to inclusion of construction work in progress in the rate base.

Hearings before an Administrative Law Judge were held on August 26 and October 8, 1975. On July 19, 1976, an Initial Decision in the combined proceeding was issued.

Public notice of the filing on November 24, 1976, of the proposed Settlement Agreement was issued on November 30, 1976, with comments due by December 14, 1976. On December 14, 1976, the Commission Staff filed comments supporting the Agreement. No other comments were received.

Based on our review of the Settlement Agreement and record in these proceedings, we conclude that the Agreement represents a reasonable resolution of the issues in the proceedings in the public interest, and that the settlement should be approved accordingly.

The Commission finds: The Settlement Agreement filed in this docket on November 24, 1976, should be approved and made effective, as hereinafter ordered.

The Commission orders: (A) the Settlement Agreement filed with the Commission in this proceeding on November 24, 1976 is incorporated herein by reference, accepted and approved.

(B) Within 30 days of the date of issuance of this order, Orange and Rockland and Rockland Electric shall file revised tariff sheets to effectuate the provisions of the Agreement and upon acceptance by the Commisison of the filing of the revised tariff sheets, Orange and Rockland and Rockland Electric shall make refunds to Park Ridge, as a lump sum payment, of all amounts collected in excess of the settlement rates provided for in the Agreement and approved herein. Said refunds shall be made in accordance with the terms of the Agreement and shall bear interest at the rate of 9 percent per annum.

(C) Within 15 days after refunds are made, Orange and Rockland and Rockland Electric shall file a refund report with the Commission, shall serve a copy thereof upon all affected customers, and shall furnish a copy to each State Commission within whose jurisdiction the wholesale customers distribute and sell electric energy at retail.

Such report shall show monthly billing determinants and revenues under prior, present and settlement rates; the monthly settlement rate increase; the monthly refund; and the monthly interest computation together with a summary of such information for the total refund period.

(D) This order is without prejudice to any findings or orders which have been made or which may hereafter be made by the Commission, and is without prejudice to any claims or contentions which may be made by the Commission, its Staff, or any party or person affected by this order in any proceeding now pending or hereafter instituted by or against Orange and Rockland and Rockland Electric or any other person or party.

(E) The Secretary shall cause prompt publication of this order to be made in the FEDERAL REGISTER

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-1992 Filed 1-21-77;8:45 am]

[Docket No. CP74-160, etc.]

PACIFIC INDONESIA LNG CO.

Amendment

JANUARY 12, 1977.

Take notice that on December 21, 1976, Pacific Indonesia LNG Company (Applicant), 720 West Eight Street, Los Angeles, California 90017, filed in Docket No. CP74-160, et al., an amendment to its pending applications in Docket Nos. CP 74-160 and CP74-207 pursuant to sections 3 and 7(c) of the Natural Gas Act so as to authorize the sale of regassified LNG to Pacific Gas and Electric Company (PG&E) and Southern California Gas Company (SoCal), all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

It is stated that on September 30, 1973, Applicant filed an application in Docket No. CP74-160 requesting authorization pursuant to section 3 of the Natural Gas Act to import LNG from the Republic of Indonesia. It is further stated that on February 15, 1974, Applicant filed an application pursuant to section 7(c) of the Natural Gas Act for authorization to construct and operate facilities necessary to receive, store and regasify the LNG and to sell the resultant natural gas to SoCal for resale. It is stated that on March 31, 1975, Applicant in Docket Nos. CP74-160 and CP74-207, filed amendments to its pending applications which reflected: (1) A change in the purchase price of the LNG; and (2) The fact that Applicant no longer would construct or operate facilities for the receipt, storage and regasification of LNG or for its delivery to SoCal. On September 17, 1974, as supplemented on March 31, 1975, Western LNG Terminal Company (Western Terminal), an affiliate of Applicant, filed an application in Docket No. CP75-83 pursuant to section 7(c) of the Natural Gas Act for authorization to construct and operate facilities at Oxnard, California, for the receipt, storage, and regasification of the LNG to be imported by Applicant and for the delivery of the resultant natural gas to SoCal for Applicant's account, it is said.

By the subject amendment Applicant seeks authorization to sell 50 percent of its available resultant natural gas to SoCal and 50 percent to PG&E pursuant to the Agreement among Applicant, PG&E and SoCal dated January 27, 1976. It is stated that SoCal and PG&E would purchase such gas totaling approximately 190,000,000 Mcf per year for a term equivalent to that of Applicant's contracted term of LNG purchase. It is further stated that no additional facilities are required as a result of the January 27, 1976, agreement and that existing interconnections are sufficient to move PG&E's share of the gas to PG&E's system either through delivery or exchange of equivalent volumes.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before February 1, 1977, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules. Persons who have heretofore filed need not do so again.

KENNETH F. PLUMB,
Secretary.

[FR Doc 77 1979 Filed 1-21-77;8:45 am]

[Docket No. CP77-113]

PANHANDLE EASTERN PIPE LINE CO.

Application

JANUARY 12, 1977.

Take notice that on December 30, 1976, Panhandle Eastern Pipe Line Company (Applicant), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP77-113 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of up to 35 Mcf of natural gas per day on an interruptible basis for Cabot Corporation (Cabot), and the exchange and transportation of up to 30 Mcf of gas with Cities Service Gas Company (Cities) for the account of Cabot, for a period of two years from the date of first delivery, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to transport for Cabot, pursuant to an agreement dated May 11, 1976, up to 35 Mcf per day from Cabot's No. 2-34 Barby Ranch Unit Well in Beaver County, Oklahoma, and up to 30 Mcf of gas per day from Cities, for the account of Cabot, from an existing point of interconnection of the facilities of Applicant and Cities located in Grant County, Kansas.

It is asserted that Applicant would redeliver such gas to Cabot's Satellite Division plant located in Kokomo, Indiana, an existing direct industrial customer of Kokomo Gas and Fuel Company (Kokomo), who in turn is an existing resale customer of Applicant, at an existing point of delivery between Kokomo and Applicant, and to Cabot's Cab-O-Sil plant an existing direct industrial cus-

tomer of Applicant located near Tuscola, Illinois, at an existing point of delivery to Cabot in Douglas County, Illinois.

Applicant, it is stated, would redeliver the stated volumes less 10 percent reduction for fuel usage, and Cabot would pay Applicant a monthly charge of $442.00, subject to an upward or downward adjustment of 22.36 cents per Mcf to be applied to any deficiency or excess in volumes transported.

Applicant states that the exchange of gas with Cities is pursuant to an exchange agreement dated July 20, 1976, which agreement provides no reimbursement other than the exchange of gas volumes between parties.

It is stated that Cabot's Cab-O-Sil plant anticipates an approximate curtailment of 26 percent over the next twelve months, and Cabot has advised Applicant that the gas to be transported is to be used as Category 2 process gas for the manufacturing of a water repellent compound manufactured through silicone dioxide combustion. It is further stated that Applicant's deliveries to Kokomo are being curtailed by 30 percent because of a gas supply deficiency, and short-term emergency supplementary supplies can no longer be relied upon by Kokomo. Said gas, it is stated, is required for use as a Category 2 process gas for the manufacturing of high performance alloys.

Applicant states that its facilities are adequate to handle the volumes to be transported for Cabot, and that no new facilities are required to perform this transportation and exchange service.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 31, 1977, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-1981 Filed 1-21-77;8:45 am]

[Docket No. ER77-131]

PORTLAND GENERAL ELECTRIC CO.

Rate Filing

JANUARY 12, 1977.

Take notice that Portland General Electric Company (PGE) on January 3, 1977, tendered for filing in accordance with section 35 of the Commission's regulations a Rate Schedule designated ICP Service Rate Schedule PGE-1 which provides for sale of non-firm energy to utilities that are parties to the Intercompany Pool Agreement (Revised), dated September 1, 1973, or to other utilities.

This Tariff applies to deliveries of non-firm energy at such time and in such amounts as PGE, in its sole discretion, makes available. PGE states that the Tariff is intended to achieve fuel-saving and cost benefits between PGE and any interested purchasers.

Copies of this filing were served upon the Public Utility Comimssioner of Oregon and the following potential purchasers: Pacific Power & Light Company, Puget Sound Power & Light Company, The Washington Water Power Company, The Montana Power Company, Idaho Power Company, Utah Power Company, Pacific Gas and Electric Company, and Southern California Edison Company.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 25, 1977. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-2037 Filed 1-21-77;8:45 am]

[Docket No. ER76-505]

PUBLIC SERVICE CO. OF NEW HAMPSHIRE

Settlement Agreement

JANUARY 13, 1977.

Take notice that on January 6, 1977, Public Service Company of New Hampshire (PSNH) filed a Revised Settlement Agreement in the referenced proceeding. PSNH states that the Revised Settlement Agreement resolves all issues in this docket. PSNH filed also a motion to withdraw a proposed partial settlement agreement certified to the Commission on November 3, 1976. The Revised Settlement Agreement, according PSNH, produces a revenue increase of $3,861,474 on a 1976 test year basis.

Any person desiring to be heard or to protest said settlement agreement should file comments with the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before February 4, 1977. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this agreement are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-2003 Filed 1-21-77;8:45 am]

[Docket No. RP75-84]

SOUTHERN NATURAL GAS CO.

Order Approving Rate Settlement

JANUARY 11, 1977.

On November 9, 1976, the Presiding Administrative Law Judge certified to the Commission a proposed settlement agreement in the above-entitled proceeding together with the entire record relating thereto. The settlement, if approved, would resolve all issues in the proceeding except those pertaining to advance payments, which are reserved for hearing and formal decision. For the reasons stated below, the settlement agreement shall be approved.

This proceeding was initiated on March 31, 1975, when Southern Natural Gas Company (Southern) tendered for filing a proposed general rate increase amounting to approximately $91.1 million annually based on costs and sales volumes for calendar year 1974, as adjusted. On May 15, 1975, the Commission by order suspended Southern's proposed increase for five months, following which it became effective, subject to refund, on October 16, 1975. In accordance with conditions contained in the suspension order, Southern submitted revised rates purporting to reflect the "United"[1] method of cost classification for purposes of rate design, and reducing the amount of the proposed rate increase from $91.1 to $65.2 million annually. The settlement agreement would allow an increase in Southern's of $32.7 million, representing a further reduction of $32.5 million from the restated rates claimed by Southern.

Notice of the settlement agreement was issued on November 16, 1976, providing for comments by interested parties to be submitted on or before November 30, 1976. No comments opposing the settlement have been received.

The settlement rates and refunds are predicated upon the settlement cost of service set forth on Appendix C of the settlement agreement. The settlement cost of service includes a rate of return of 10.08 percent on Southern's net investment rate base and a return of 12.75 percent on common equity. The settlement cost of service and rate of return appear reasonable and are approved.

The settlement provides for two sets of rates, as shown on Appendices A and B of the settlement. The Appendix B rates are to be effective from October 16, 1975, through July 15, 1976. The Appendix A rates are to be effective commencing July 16, 1976. The differences between the appendix A and B rates are due to changes in Southern's cost of gas, the elimination of the depletion allowance, and the surcharge to recover demand charge credits.

Other important provisions of the settlement agreement are as follows:

Article IV provides for functional depreciation rates to be utilized by Southern of 3.85 percent for onshore transmission plant, 4.25 percent for underground storage, and 7.35 percent for gas supply transmission and gathering facilities. The settlement depreciation rates cannot be changed prior to October 16, 1977.

Article V provides for additional refunds if Southern's total sales for the 12 month period ending September 30, 1977, exceed the test period sales or if sales to Southern's direct customers and rate schedule "AO" customers exceed the test period sum of sales to these customers.

Article VI prescribes the procedures for hearing and decision on the reserved advance payments issues. These issues shall be disposed of as a result of the hearings held before the Presiding Judge on October 28, 1976.

Article VII provides that for the period November 28, 1975, through December 31, 1977, Southern shall give demand charge credits to its rate schedule "OCD" and "OCDL" customers to the extent requirements within contract demand are curtailed. In addition, Southern shall recover the credits given through a surcharge to its commodity rate under its "OCD", "OCDL", "AO", and "AOL" rate schedules. The surcharge will be computed by dividing the credits given by the sum of the sales under the "CD" and "AO" rate schedules and Southern's direct sales. Southern's small general service customers will not be liable for any recovery of demand charge credits. The computations will be made every six months to coincide with Southern's PGA rate adjustments.

Article VIII of the settlement permits Southern to recover carrying charges of 9 percent per annum on unrecovered purchased gas costs, and requires interest of 9 percent on credit balances in the deferred purchased gas cost account. Southern is limited to semi-annual PGA filings to be effective January 1 and July 1 of each year. The carrying charge provision is subject to the Commission's final determination of this issue in Docket No. R-406 and is proposed to be effective on the date of the Commission's order approving the settlement or December 1, 1976, whichever is sooner.

Based upon a review of the entire record of this proceeding, including the settlement agreement, and the evidence, pleadings, and other materials submitted by the parties, the Commission finds the settlement agreement represents a reasonable resolution of the issues in this proceeding in the public interest, and that the agreement should accordingly be approve and adopted.

The Commission finds. It is in the public interest and in carying out the provisions of the Natural Gas Act that the proposed settlement agreement be approved and adopted as hereinafter ordered.

The Commisison orders: (A) the settlement agreement certified to the Commission on November 9, 1976, in this proceeding, is incorporated herein by reference and is approved and adopted.

(B) Proposed § 17.4(3) of Southern's tariff is approved to be effective as of December 1, 1976.

(C) Within 15 days of the issuance of this order, Southern shall file revised tariff sheets in accordance with the terms of the settlement agreement and of this order.

(D) Within 30 days from the date of this order, Southern shall make refunds to its customers pursuant to the settlement, and shall submit a report thereof to the Commission.

(E) This order is without prejudice to any findings or orders which have been made or which may hereafter be made by the Commission, and is without prejudice to any claims or contentions which may be made by the Commission, the staff or any other party or person affected by this order in any proceeding now pending or hereinafter instituted by or against Southern or any other person or party.

(F) The Secretary shall cause prompt publication of this order to be made in the FEDERAL REGISTER.

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77 1989 Filed 1-21-77;8:45 am]

[Docket No. CP76-16]

TENNECO LNG, INC.

Extension of Time

JANUARY 11, 1977.

On December 29, 1976, Tenneco LNG, Inc., filed a motion to extend the time for filing comments on Staff's Draft Environmental Impact Statement, in the above-designated proceeding. The motion states that Staff has no objection to the requested extension.

Upon consideration, notice is hereby given that the time for filing comments is extended to and including February 14, 1977.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-2030 Filed 1-21-77;8:45 am]

[Docket No. CI76-753]

TENNECO OIL CO.

Application for Optional Procedural Certification

JANUARY 13, 1977.

Take notice that on November 18, 1976, Tenneco Oil Company (Tenneco Oil) filed an amendment to its September 3, 1976 application for a certificate of public convenience and necessity filed pursuant to § 2.56a of the Commission's General Policy and Interpretations. Tenneco Oil requests certification under § 2.75 for natural gas from Eugene Island Block 367, offshore Louisiana, at an initial rate of $2.8037 per Mcf with escalations of 5 cents per Mcf at the end of each contract year.

The subject gas will be produced by Tenneco Exploration, Ltd. and Tenneco Exploration II, Ltd. and sold to Tenneco Oil for resale to Tennessee Gas Pipeline Company, less one-fourth (¼), which amount Tenneco Oil proposes to transport onshore for its own uses.

Any person desiring to be heard or to make any protest with reference to said petition should on or before February 7, 1977, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any party wishing to become a party to a proceeding, or to participate as a party in any hearing therein, must file a petition to intervene in accordance with the Commission's rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-2002 Filed 1-21-77;8:45 a.m.]

[Docket No. E-9578]

TEXAS POWER & LIGHT CO.

Petition to Institute Investigation to Determine Jurisdiction

JANUARY 11, 1977.

Take notice that on December 22, 1976, Tex-La Electric Cooperative, Inc. (Tex-La) tendered for filing a petition requesting the Commission to investigate to determine whether rates for electric power sales for resale of Texas Power and Light Company are subject to the jurisdiction of the Commission.

The cooperative states that a copy of this petition was hand-delivered to the Vice-President of Texas Power and Light Company.

Any person desiring to be heard or to protest said petition should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or

[1] United Gas Pipe Line Company, Opinion No. 671, (50-FPC 1348).

before January 25, 1977. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a petition to intervene. Copies of this petition are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-1994 Filed 1-21-77;8:45 am]

[Docket No. CP76-107]

TRANSWESTERN PIPELINE CO.

Petition to Amend

JANUARY 12, 1977.

Take notice that on December 27, 1976, Transwestern Pipeline Company (Petitioner), P.O. Box 2521, Houston, Texas 77001, filed in Docket No. CP76-107 a petition to amend the Commission's order issued pursuant to section 7(c) of the Natural Gas Act on April 2, 1976 (55 FPC), as amended on November 3, 1976 (56 FPC), in the instant docket so as to authorize the transportation of gas for Pacific Interstate Transmission Company (Pacific Interstate) from three additional wells, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioner states that it was authorized by the Commission's order issued April 2, 1976, to transport natural gas in interstate commerce for the account of Pacific Interstate, which gas Pacific Interstate is purchasing from Pacific Lighting Gas Development Company (PLGD) and is selling to its sole customer, Pacific Lighting Service Company (Service Company). It is stated that the Commission in its order issued November 3, 1976, authorized the transportation of gas by Petitioner to Service Company for the account of Pacific Interstate from four additional wells in Petitioner's supply area.

Petitioner states that it has entered into an agreement with Pacific Interstate to further amend the Transportation Agreement between them dated September 29, 1975, so as to include the transportation of gas from three additional wells to Service Company for the account of Pacific Interstate, and requests authorization for this transportation service. It is stated that Pacific Interstate would purchase such natural gas from PLGD from the following wells:

(1) The Nash No. 3 Well, Eddy County, New Mexico;

(2) The O. R. Tipps No. 1 Well, Roberts County, Texas;

(3) The University "21-2" No. 1 Well, Winkler County, Texas.

It is stated that Petitioner would transport the gas described herein through its existing main line system and would deliver it to Service Company at an existing interconnection between the two companies' systems at the Arizona-California border near Needles, California; hence, no new facilities are required. It is further stated that the proposed transportation service would be rendered in accordance with Petitioner's Rate Schedule TP-1, and Petitioner is still obligated to transport on a best-efforts basis no more than 25,000 Dth of gas per day as stated in the Transportation Agreement dated September 29, 1975.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before February 1, 1977, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc 77-1980 Filed 1-21-77;8:45 am]

[Docket No. ER77-132]

UNION ELECTRIC CO.

Filing of Boundary Line Agreement

JANUARY 12, 1977.

Take notice that on January 3, 1977, Union Electric Company (Union) tendered for filing a new Boundary Line Agreement dated December 20, 1976, between the City of Farmington, Mo. and Union. Said Agreement modifies rate and termination provisions under the existing agreement dated December 5, 1960. It raises the rate for energy delivered from 1.25¢ to 2.12¢ per kilowatt hour.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 31, 1977. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are available for public inspection at the Federal Power Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-2036 Filed 1-21-77;8:45 am]

[Docket No. ER77-137]

UNION ELECTRIC CO.

Filing of Revisions to Interchange Agreement

JANUARY 13, 1977.

Take notice that on January 7, 1977, Union Electric Company (Union) tendered for filing an Amendment and revised Schedule II to the Interchange Agreement dated November 1, 1967 between Kansas City Power & Light Company and Union. Said changes add "Excess Energy" to the Interchange Agreement and revise certain rates under such agreement.

The rates provided for in revised Schedule II are identical to rates accepted for filing by the Commission as supplement No. 10 to Union's Rate Schedule FPC No. 67 (Docket No. ER76-667).

Copies of the Amendment and revised Schedule II have been sent to Kansas City Power & Light Company, Kansas City, Missouri, and to the Missouri Public Service Commission, Jefferson City, Missouri.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.3 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 28, 1977. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are available for public inspection at the Federal Power Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-2006 Filed 1-21-77;8:45 am]

[Docket No. CP77-95]

UNITED GAS PIPE LINE CO. AND MID LOUISIANA GAS CO.

Application

JANUARY 11, 1977.

Take notice that on December 17, 1976, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77001, and Mid Louisiana Gas Company (Mid Louisiana), 300 Poydras Street, New Orleans, Louisiana 70130, filed a joint application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the relocation of an existing exchange point of United's Baton Rouge-New Orleans pipeline, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that United and Mid Louisiana presently exchange gas in accordance with an Exchange Agreement between them dated March 26, 1968, as amended, filed as United's Rate Schedule X-24 and Mid Louisiana's Rate Schedule X-3. United and Mid Louisiana propose, by letter agreement dated September 22, 1976, to amend further the Exchange Agreement to provide for relocation of the Inniswold Plantation exchange point from its present location at Mile Post 10.84 on United's Baton Rouge-New Orleans 18-inch Main Line to Mile Post 15.42 on the same line. United states that it is willing to relocate this exchange point and to maintain the maximum daily delivery obligation of 1,000 Mcf.

It is asserted that relocation of such delivery point would involve the movement of a meter station owned by Mid Louisiana from Mile Post 10.84 to Mile Post 15.42. United, it is further stated, would relocate said facilities and Mid Louisiana would reimburse United for its costs incurred in such relocation.

Relocation of the exchange point, it is stated, would assist Mid Louisiana in the maintenance of pressures required to serve the distributor in the area, Gulf Station Utilities Company, by placing the exchange point approximately 4.6 miles nearer the center of the Inniswold Plantation system load.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 31, 1977, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-1999 Filed 1-21-77;8:45 am]

[Docket No. CP77-110]

UNITED GAS PIPE LINE CO.

Application

JANUARY 11, 1977.

Take notice that on December 27, 1976, United Gas Pipe Line Company (Applicant), P.O. Box 1478, Houston, Texas 77001, filed in Docket No. CP77-110 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon approximately 2.0 miles of 6-inch pipeline located in Angelina County, Texas, by sale to Entex, Inc. (Entex), all as more fully set forth in the application on file with the Commission and open to public inspection.

Applicant proposes to abandon 2.0 miles of pipeline connecting the Lufkin Town Border Station No. 1 with Applicant's Waskom-Goodrich 22-inch main line. It is indicated that Applicant owns a parallel 8-inch line which is adequate to maintain service between its main line and the town border station. Applicant would sell subject facilities to Entex for $14,000. It is further indicated that as partial consideration for the purchase of the pipeline, Entex would operate and maintain, on behalf of and at no cost to Applicant, an odorizing unit to be installed by Applicant on Applicant's 8-inch line which runs parallel to the subject pipeline. It is stated that Entex would be able to utilize the subject pipeline as part of its gas distribution system.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 1, 1977, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-2000 Filed 1-21-77;8:45 am]

[Docket No. ER77-129]

VIRGINIA ELECTRIC AND POWER CO.

Tendered Revised Contract Supplements

JANUARY 12, 1977.

Take notice that on December 30, 1976, Virginia Electric and Power Company (VEPCO), tendered for filing revised supplements to contracts between VEPCO and Community Electric Cooperative. VEPCO states that the revised contract supplements correct certain items to reflect changes made in the past at various delivery points as set forth below:

Delivery point	Present FPC No.	Proposed FPC No.	Item corrected
Blackcreek	77-12	77-29	5(2),5,5
Capron	77-16	77-30	5,(2),5,5
Courtland	77-15	77-31	5,5
Lummis	77-11	77-32	5,5
Paran	77-20	77-33	5,5
Sadlers	77-21	77-34	5,5
Windsor	77-14	77-35	4,5(2),5,5

VEPCO states that the revised contract supplements are intended to supersede the listed FPC Rate Schedules and requests that the revised supplements be allowed to become effective on December 1, 1976, the requested effective date.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 26, 1977, file with the Federal Power Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules. The application is on file with the Commission and is available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-2032 Filed 1-21-77;8:45 am]

[Docket No. ER76-150]

WISCONSIN PUBLIC SERVICE CORP.

Order Approving Settlement

JANUARY 10, 1977.

On September 25, 1975, Wisconsin Public Service Corporation (WPS) submitted for filing changes in its FPC Electric Tariff Rate for electric service to eight municipal customers. WPS subse-

quently completed its filing on November 21, 1975. The proposed rates would increase revenues from jurisdictional sales by $1,186,277 based on a twelve month test period ending August 31, 1976.

By order issued December 19, 1975, the Commission accepted WPS's filing and suspended the proposed rates until February 22, 1976, subject to refund. As a result of settlement negotiations between WPS and its wholesale customers, an uncontested agreement was reached, which was submitted to the Commission on October 1, 1976, with revised rate schedules intended to reflect the terms of the proposed agreement.

Based on our review of the record in these proceedings, including the settlement agreement itself, we conclude that the settlement agreement represents a reasonable resolution of the issues in the proceeding in the public interest, and that accordingly the settlement should be approved.

The Commission finds: The settlement agreement submitted to the Commission in this docket should be approved and made effective, as hereinafter ordered.

The Commission orders: (A) The settlement agreement submitted to the Commission in this docket on October 1, 1976, is incorporated herein by reference, accepted and approved.

(B) The revised tariff sheets submitted to the Commission in this docket on October 1, 1976, concurrently with the settlement agreement, are hereby accepted for filing to become effective in conformity with the terms of the agreement approved herein.

(C) Within 30 days from the date of issuance of this order, WPS shall refund all amounts collected in excess of the settlement rates with interest at 9 percent per annum.

(D) Within 15 days after refunds are made, WPS shall file a refund report with the Commission, shall serve a copy thereof upon all affected customers, and shall furnish a copy to each State Commission within whose jurisdiction the wholesale customers distribute and sell electric energy at retail. Such report shall show monthly billing determinants and revenues under prior, present and settlement rates; the monthly settlement rate increase; the monthly refund; and the monthly interest computation together with a summary of such information for the total refund period.

(E) This order is without prejudice to any findings or orders which have been made or which may hereafter be made by the Commission, and is without prejudice to any claims or contentions which may be made by the Commission, its Staff, or any party or person affected by this order in any proceeding now pending or hereafter instituted by or against WPC or any other person or party.

(F) The Secretary shall cause prompt publication of this order to be made in the FEDERAL REGISTER.

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-1993 Filed 1-21-77;8:45 am]

[Project No. 2113]

WISCONSIN VALLEY IMPROVEMENT CO.

Application for Change in Land Rights

JANUARY 13, 1977.

Public notice is hereby given that an application for change in land rights was filed on September 27, 1976, under the Federal Power Act (16 U.S.C. 791a–825r) by the Wisconsin Valley Improvement Company (Correspondence to: Mr. L. L. Sheerar, Secretary, Wisconsin Valley Improvement Company, 501 Jefferson Street, Box 988, Wausau, Wisconsin 54401) for the Big Eau Pleine Reservoir of Project No. 2113, said reservoir being located in Marathon County, Wisconsin on the Wisconsin River, a navigable waterway of the United States.

Wisconsin Valley Improvement Company, Licensee for Project No. 2113, proposes to convey a 60-foot strip of land (approximately 0.80 acre) in Bergen Township to Marathon County so that the County Highway Department may realign the approaches to the existing Moon Bridge, thereby improving a site where numerous traffic accidents have occurred.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 23, 1977, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules. The application is on file with the Commission and is available for public inspection.

Take further notice, that, pursuant to the authority contained in and conferred upon the Federal Power Commission by sections 308 and 309 of the Federal Power Act (16 U.S.C. 825g, 825h) and the Commission's rules of practice and procedure, specifically § 1.32(b) (18 CFR 1.32(b)), as amended by Order No. 518, a hearing may be held without further notice before the Commission on this application if no issue of substance is raised by any request to be heard, protest or petition filed subsequent to this notice within the time required herein, and if the applicant requests that the shortened procedure of § 1.32(b) be used. If an issue of substance is so raised or applicant fails to request the shortened procedure, further notice of hearing will be given.

Under the shortened procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing before the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-2014 Filed 1-21-77;8:45 am]

[Docket No. CP76-138]

TRANSCONTINENTAL GAS PIPE LINE CORP.

Petition to Amend

JANUARY 19, 1977.

Take notice that on January 14, 1977, Transcontinental Pipe Line Corporation (Petitioner), P.O. Box 1396, Houston, Texas 77001, filed in Docket No. CP76–138 a petition to amend the Commission's order of December 22, 1975, issued in the instant docket pursuant to Section 7(c) of the Natural Gas Act and 2.79 of the Commission's General Policy and Interpretations (18 CFR 2.79) so as to authorize the addition of one Cannon Mills Company (Cannon) facility in Maiden, North Carolina, to the existing transportation arrangement, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioner states that it is presently authorized to transport up to 1,500 Mcf of natural gas per day on an interruptible basis for Cannon to Public Service Company of North Carolina, Inc. (Public Service), a resale customer of Petitioner, for use in two Cannon facilities in North Carolina. It stated that Petitioner collects as initial charge of 22.0 cents per Mcf for all quantities transported and delivered to Public Service for Cannon's account and retains 3.8 percent of the volumes received for transportation to Public Service as makeup for compressor fuel and line loss.

Petitioner by its petition to amend requests authorization to add an additional Cannon facility in Maiden, North Carolina, to be served under the transportation arrangement authorized by the Commission order of December 22, 1975, pursuant to Petitioner's Rate Schedule X–81. It is stated that the Maiden, North Carolina, facility would be served from the same 1,500 Mcf of gas per day presently authorized to be transported. Deliveries would be made by Petitioner to Piedmont Natural Gas Company (Piedmont), an existing customer of Petitioner under Rate Schedule CD–2. It is indicated that a transportation agreement among Petitioner, Piedmont, and Cannon would be entered into in the near future and the deliveries by Petitioner to Piedmont would be made at existing delivery points to Piedmont.

The petition to amend indicates that Cannon requires at its Maiden facility 73 Mcf of gas on an average day and 135 Mcf of gas on a peak day. The gas would be used to resin treat fabric and in bulking operations. These are said to be process applications which require precise temperature control and a clean burning fuel.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before February 3, 1977, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-2319 Filed 1-19-77;3:53 pm]

FEDERAL RESERVE SYSTEM

BANCORPORATION OF WISCONSIN

Formation of Bank Holding Company

Bancorporation of Wisconsin, West Allis, Wisconsin, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company through acquisition of 80 percent or more of the voting shares of West Allis State Bank, West Allis, Wisconsin and Southwest Bank, New Berlin, Wisconsin. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 to be received no later than February 10, 1977.

Board of Governors of the Federal Reserve System, January 17 1977.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc.77-2094 Filed 1-21-77;8:45 a.m.]

MOUNTAIN FINANCIAL SERVICES, INC.

Order Approving Acquisition of Bank and Engaging in Insurance Agency Activities

Mountain Financial Services, Inc., Denver, Colorado, a bank holding company within the meaning of the bank Holding Company Act, has applied for the Board's approval under Section 3(a)(3) of the Act (12 U.S.C. Section 1842(a)(3)) to acquire 98 per cent or more of the voting shares of Southeast State Bank, Denver, Colorado ("Bank"). Applicant has also applied, pursuant to Section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. Section 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to engage de novo in the sale as agent of credit life, credit accident and health insurance directly related to extensions of credit by Bank. Such activities have been determined by the Board to be closely related to banking (12 CFR 225.4(a)(9)).

Notice of the applications, affording opportunity for interested persons to submit comments and views, has been given in accordance with Sections 3 and 4 of the Act. The time for filing comments and views has expired, and the Board has considered the applications together with all comments received, in light of the factors set forth in Section 3(c) of the Act, and the considerations specified in Section 4(c)(8) of the Act.

Applicant presently controls only one bank subsidiary, located in the Denver banking market[1] (the relevant market), with aggregate deposits of approximately $5.1 million.[2] Applicant is among the smaller banking organizations in Colorado. Acquisition of Bank (deposits of $3.8 million) would result in Applicant's controlling 0.11 per cent of total commercial bank deposits in the State. Accordingly, acquisition of Bank would not have a significant effect upon the concentration of banking resources in Colorado.

Bank ranks 51st out of the 54 banking organizations competing in the Denver market, with 0.1 per cent of total deposits in commercial banks in the market. As indicated above, Applicant is represented in the Denver banking market; however, upon consummation of the subject proposal Applicant will rank only 42nd in the Denver market, and will control only 0.2 per cent of market deposits. It is the Board's view that consummation of the proposal would not have any significant adverse effect on existing competition in view of the relevant sizes of these organizations and their small market shares; furthermore, no significant future competition would be eliminated by approval of this application. Accordingly, on the basis of the facts of record, the Board concludes that competitive considerations are consistent with approval.

The financial and managerial resources and future prospects of Applicant, its subsidiary bank, and Bank are satisfactory. As a result of consummation of this proposal, Bank's financial and managerial resources and future prospects will be somewhat strengthened. Accordingly, considerations relating to banking factors are consistent with approval of the application. Considerations relating to convenience and needs are also regarded as being consistent with approval of the application to acquire Bank. Accordingly, it is the Board's judgment that the proposed acquisition of Bank would be in the public interest and the application should be approved.

In connection with the application to acquire Bank, Applicant has also applied, pursuant to § 225.4(a)(9)(ii)(a) of Regulation Y, to engage de novo in the sale as agent of credit life and credit accident and health insurance directly related to extensions of credit by Bank. Approval of the application to engage in such activities would insure a convenient source of credit related insurance services to Bank's customers. It does not appear that Applicant's engaging in such activities would have any significant adverse effect on existing or potential competition. Furthermore, there is no evidence in the record indicating that consummation of the approval would result in any undue concentration of resources, unfair competition, conflicts of interests, unsound banking practices, or other adverse effects on the public interest.

Based upon the foregoing and other considerations reflected in the record, the Board has determined, in accordance with the provisions of section 4(c)(8), that consummation of this proposal can reasonably be expected to produce benefits to the public that outweigh possible adverse effects, and the application to engage in the above-described insurance activities should be approved.

Accordingly, the applications are approved for the reasons summarized above. The acquisition of Bank shall not be made before the thirtieth calendar day following the effective date of this Order. The acquisition of Bank and commencement of credit related insurance activities shall be made not later than three months after the effective date of this Order, unless such period is extended for good cause by the Board or by the Federal Reserve Bank of Kansas City pursuant to delegated authority. The determination as to Applicant's insurance activities is subject to the conditions set forth in § 225.4(c) of Regulation Y and to the Board's authority to require reports by, and make examinations of, holding companies and their subsidiaries and to require such modification or termination of the activities of a bank holding company or any of its subsidiaries as the Board finds necessary to assure compliance with the provisions and purposes of the Act and the Board's regulations and orders issued thereunder, or to prevent evasion thereof.

By order of the Board of Governors,[3] effective January 14, 1977.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[1] The Denver market is approximated by Adams, Arapahoe, Denver, and Jefferson Counties and the Broomfield portion of Boulder County.

[2] All banking data are as of December 31, 1975.

[3] Voting for this action: Vice Chairman Gardner and Governors Wallich, Coldwell, Partee and Lilly. Absent and not voting: Chairman Burns and Governor Jackson.

[FR Doc 77-2095 Filed 1-21-77;8:45 am]

SEILON, INC.

Order Denying Retention of Additional Shares of Bank Holding Company

Seilon, Inc., Toledo, Ohio, a bank holding company within the meaning of the Bank Holding Company Act, has applied for the Board's approval under section 3(a)(3) of the Act (12 U.S.C. 1842(a)(3)) to retain 5509 voting shares (approximately .42 per cent) of Nevada National Bancorporation, Reno, Nevada ("NNB"), a one-bank holding company that controls Nevada National Bank, Reno, Nevada ("Bank").[1]

Notice of the application, affording opportunity for interested persons to submit comments and views, has been given in accordance with Section 3(b) of the Act. The time for filing comments and views has expired, and the Board has considered the application and all comments received, including those submitted by the Comptroller of the Currency, in light of the factors set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Seilon currently owns 39.4 per cent of the voting shares of NNB, a one-bank holding company that owns 100 per cent of the voting shares (less directors' qualifying shares) of Bank.[2] Bank (deposits of $192.6 million) is the fourth largest of eight commercial banking organizations in Nevada and through its 24 banking offices, controls approximately 10.2 per cent of the total deposits held by commercial banks in that State.[3] Inasmuch as Seilon's proposal involves the retention of voting shares of a bank holding company that it already controls, the proposed retention would eliminate neither existing nor potential competition, and would not increase the concentration of banking resources in any relevant area. Therefore, competitive considerations are consistent with approval of the application.

The Board has indicated on previous occasions that it believes a bank holding company should constitute a source of both financial and managerial strength to its subsidiary bank(s). Accordingly, in acting upon any application under the Act, the Board will closely examine the financial condition, managerial resources, and future prospects of an applicant and its subsidiary bank(s) with these factors in mind. Based upon an evaluation of such factors with respect to this application the Board has determined that denial of this application is warranted.

[1] Formerly known as First Bancorporation

[2] Seilon became a bank holding company on December 31, 1970, by virtue of its ownership of 36.5 per cent of the voting shares of NNB and the 1970 Amendments to the Act. Seilon engages, through its subsidiaries, in various activities including banking and personal property leasing. In addition, it engages in manufacturing, selling, and distributing agricultural machinery in the United States and abroad, which activities are impermissible for bank holding companies and must be divested by December 31, 1980 pursuant to § 4(a)(2) of the Act.

[3] All banking data are as of December 31, 1975, unless otherwise indicated

With respect to the financial resources and future prospects associated with this application, the Board notes the continued existence of some of the same concerns that it expressed in its Order of July 20, 1972, denying Seilon's application to acquire up to an additional 63.5 per cent of NNB.[4] In this regard, Seilon's overall financial condition still does not permit it to be a source of financial strength to Bank. Rather, based upon an examination of all the facts of record, the Board concludes that Seilon, through NNB, has sought to improve its overall financial condition at the expense of Bank through liberal dividends drawn from Bank. It appears that such a continued program could hinder Bank's financial condition. Therefore, the Board concludes that banking factors weigh against approval of this application.

With respect to the managerial resources associated with this application, the Board is concerned, as it was in its denial Order in 1972, with absentee management of the nature involved in Seilon's structure. Furthermore, as the Board has previously indicated, the reference to "managerial resources" does not refer solely to the business abilities of management or to its past financial success or failure but also to management's disposition to conduct the affairs of the bank holding company in accordance with the requirements of law.[5]

Section 3(a)(3) of the Act states that it shall be unlawful, except with the prior approval of the Board "for any bank holding company to acquire direct or indirect ownership or control of any voting shares of any bank if, after such acquisition, such company will directly or indirectly own or control more than 5 per centum of the voting shares of such bank. * * *"

It appears from the facts of record in this case that Seilon, without prior Board approval, acquired 5,509 voting shares of NNB that are the subject of this retention application in settlement of a lawsuit threatened by two shareholders of NNB. These voting shares were acquired, at a cost of $52,500, in three installments over a one-year period.[6] It appears that at the time of the acquisition in question, Seilon was fully aware of the Act's requirement of prior Board approval. Despite this knowledge, and without any obligation to do so, Seilon acquired the 5,509 voting shares of NNB. In its application, Seilon has stated that:

> We were familiar as our application in 1971 [to acquire an additional 63.5 per cent of the voting shares of NNB] indicates that tender offers or market purchases of First Bancorporation [now known as NNB] common stock by Seilon required the prior approval of the Federal Reserve System. We were not aware that the . . . Act went so far as to prohibit management from exercising its responsibilities in the resolution of litigation by requiring the prior approval of the Federal Reserve where the acquisition of a miniscule number of shares is a part of a larger settlement of litigation problem

In assessing the managerial resources of an applicant the Board must consider all the factors that bear upon the management's competence, quality, and disposition to conduct in accordance with the requirements of law the affairs of any bank holding company seeking to acquire, or to retain, control of a bank or of any other bank holding company. The Board previously has stated that when it comes to the Board's attention that an acquisition has been made, or activities have been commenced, without the requisite prior approval of the Board, whether or not such violation of the law appears to have been "willful," such conduct may reflect so adversely upon the managerial factors in connection with an application for permission to retain the illegally acquired shares or activity that the conduct, in and of itself, constitutes grounds for denial of such an application.

Section 3(a) of the Act is explicit that prior Board approval is required for *any* acquisition by a company of voting shares of a bank in which it owns less than a majority interest if, thereafter, that company will own or control more than 5 per cent of the bank's voting shares. While the Board recognizes that Seilon was desirous of avoiding potential legal expenses in the defense of a threatened lawsuit, the Board notes that the two shareholders involved were shareholders of NNB and not of Seilon and that Seilon was not obligated to acquire the shares in question. In view of the fact that Seilon was fully aware of the Act's requirement of prior Board approval in 1972 when it sought to acquire 63.5 per cent of NNB's voting shares; that the Board had issued an order in 1972 denying Seilon's previous application because of less than satisfactory financial and managerial considerations at that time; and that Seilon was unable to substantiate its position that acquisitions of small amounts of shares in settlement of threatened lawsuits were exempt from the Act's prior approval requirements; the Board concludes that insofar as this application is concerned the management of Seilon has not demonstrated a disposition to conform the conduct of Seilon's affairs to the requirements of the Act. As was mentioned earlier, section 3(a) of the Act is explicit as to acquisitions of voting shares for which prior Board approval is required. When an acquisition of voting shares is made without obtaining such prior Board approval, under circumstances such as those presented here, the Board believes that it should not approve an application to retain the illegally acquired shares and, thereby, allow the offending party to reap the fruits of its violation.

There is evidence in the record that the convenience and needs of the community are currently being adequately served by Bank. Therefore, within the context of this application, these considerations are not sufficient to outweigh the adverse managerial and banking factors associated with this proposal. Accordingly, it is the Board's judgment that approval of the application would not be in the public interest and that the application should be denied.

On the basis of the record, and in light of the factors set forth in § 3(c) of the Act, the application is denied for the reasons summarized above. Seilon is hereby ordered to take all necessary steps to divest the 5,509 voting shares of NNB that were illegally acquired by Seilon no later than thirty days after the effective date of this order.

By order of the Board of Governors,[7] effective January 14, 1977.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc.77-2096 Filed 1-21-77;8:45 am]

[4] 37 F.R. 15052 (1972); 58 Federal Reserve *Bulletin* 729 (August 1972).

[5] See the Board's order dated July 29, 1976, denying the application by Florida National Banks of Florida, Inc., Jacksonville, Florida, to acquire Citizens Bank of Bunnell, Bunnell, Florida. 41 F.R. 33334 (1976); 1976 Federal Reserve Bulletin 696. As originally enacted, section 3(c)(3) of the Bank Holding Company Act provided that among the factors to be considered by the Board is the "character of [the] management." Also see Senate Report No. 1095, 84th Cong., 1st Sess., at page 10, accompanying the 1956 Act. The present § 3(c) of the Act includes the same standard without any substantive change in its meaning having been made by the 1966 Amendments to the Act that brought this section into harmony with the Bank Merger Act. The Federal Home Loan Bank Board has had occasion in a similar context to consider the scope of the "managerial resources" standard as contained in that section of the National Housing Act dealing with savings and loan holding companies. (12 U.S.C. § 1730a(e)(2)). The Bank Board concluded that its standard was adopted from the Bank Holding Company Act and that the phrase "managerial resources" encompasses considerations relating to the integrity of management. Opinion and Order of the Federal Home Loan Bank Board in the matter of the Joint Applications of Fidelity Financial Corporation and Fidelity Savings and Loan Association, Sacramento, California, and Six Rivers Savings and Loan Association, Eureka, California (Resolution No. 73-1772, December 7, 1973), at page 20

[6] The shares were purchased as follows: 2,369 shares on November 1, 1973; 1,570 shares on May 1, 1974; and 1,570 shares on November 1, 1974.

GENERAL ACCOUNTING OFFICE

REGULATORY REPORTS REVIEW

Receipt of Report Proposal

The following request for clearance of a report intended for use in collecting information from the public was received by the Regulatory Reports Review Staff, GAO, on January 13, 1977. See 44 U.S.C. 3512 (c) and (d). The purpose of publishing this notice in the FEDERAL REGISTER is to inform the public of such receipt.

The notice includes the title of the request received; the name of the agency sponsoring the proposed collection of information; the agency form number, if applicable; and the frequency with which the information is proposed to be collected.

Written comments on the proposed FEA request are invited from all interested persons, organizations, public interest groups, and affected businesses. Because of the limited amount of time GAO has to review the proposed request, comments (in triplicate) must be received on or before February 11, 1977, and should be addressed to Mr. John M. Lovelady, Acting Assistant Director, Regulatory Reports Review, United States General Accounting Office, Room 5033, 441 G Street, NW, Washington, DC 20548.

Further information may be obtained from Patsy J. Stuart of the Regulatory Reports Review Staff, 202-275-3532.

FEDERAL ENERGY ADMINISTRATION

FEA is requesting clearance of Form U516-S-1, State Energy Conservation Plan Report. Form U516-S-1 is a revision of Form U516-S-0, Application Form for Financial Assistance to States for Development of a State Energy Conservation Plan. The Energy Policy and Conservation Act, Title III, Part C (Pub. L. 94-163) signed into law on December 22, 1975, requires in part, for the creation of the State Energy Conservation Program and authorizes financial and technical assistance to participating States. Form U516-S-1 is required for States to receive Federal financial assistance in implementing a State energy conservation plan report. Section 362(b) of EPCA requires that within six months after its enactment, FEA establish State energy conservation plan guidelines for the preparation of a State energy conservation plan report. The application form (U516-S-1) for providing financial assistance to the States is a necessary part of the State plan report as the States will use this form to provide FEA with a detailed State energy conservation plan report. The State Energy Conservation Plan Report guidelines must be completed within five months after the guidelines are printed. Form U516-S-1, State Energy Conservation Plan Report (adapted from Standard Form 424, Federal Assistance, consisting of four parts) has been revised in that Part IV has been modified to satisfy FEA's requirements for more definitive information and unnecessary information has been blocked out in Part III, Budget Information. Potential respondents to Form U516-S-1 are estimated by FEA to be approximately 56 (United States and Territories) and reporting burden is estimated to be 120 hours per response.

NORMAN F. HEYL,
Regulatory Reports Review Officer.

[FR Doc.77-2088 Filed 1-21-77;8:45 am]

GENERAL SERVICES ADMINISTRATION

[Federal Property Management Regs.; Temporary Reg. F-410]

SECRETARY OF DEFENSE

Delegation of Authority

1. *Purpose.* This regulation delegates authority to the Secretary of Defense to represent the consumer interests of the executive agencies of the Federal Government in an electric and gas rulemaking proceeding.

2. *Effective date.* This regulation is effective immediately.

3. *Delegation.* a. Pursuant to the authority vested in me by the Federal Property and Administrative Services Act of 1949, 63 Stat. 377, as amended, particularly sections 201(a)(4) and 205(d)(40 U.S.C. 481(a)(4) and 486(d)), authority is delegated to the Secretary of Defense to represent the consumer interests of the executive agencies of the Federal Government before the Hawaii Public Utilities Commission (Docket No. 2793) in proceedings involving an investigation of rate schedules of electric and gas utilities in the State of Hawaii.

b. The Secretary of Defense may redelegate this authority to any officer, official, or employee of the Department of Defense.

c. This authority shall be exercised in accordance with the policies, procedures, and controls prescribed by the General Services Administration, and shall be exercised in cooperation with the responsible officers, officials, and employees thereof.

WALLACE H. ROBINSON, JR.,
Acting Administrator of General Services.

JANUARY 11, 1977.

[FR Doc.77-2062 Filed 1-21-77;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Health Services Administration

CALIFORNIA PSRO AREA XXIII: RESULTS OF NOTIFICATION

Notice to Physicians Regarding Agreement To Designate Professional Standards Review Organizaiton

On November 23, 1976, the Secretary of Health, Education, and Welfare published in the FEDERAL REGISTER a notice in which he announced his intention to enter into an agreement with the California PSRO Area XXIII designating it as the Professional Standards Review Organization for PSRO Area XXIII of the State of California, which area is designated a Professional Standards Review Organization Area in 42 CFR 101.7.

Such notice was also published in three consecutive issues of the *Los Angeles Times* on November 23, 24, and 25, 1976. In addition, copies of the notice were mailed to organizations of practicing doctors of medicine or osteopathy, including the appropriate State and County medical and specialty societies, and hospitals and other health care facilities in the area, with a request that each such society or facility inform those doctors in its membership or on its staff who are engaged in active practice in PSRO Area XXIII of the State of California of the contents of the notice.

The notice requested that any licensed doctor of medicine or osteopathy engaged in active practice in PSRO Area

[7] Voting for this action: Vice Chairman Gardner and Governors Wallich, Coldwell, Jackson, and Partee. Absent and not voting: Chairman Burns and Governor Lilly.

XXIII of the State of California who objects to the Secretary entering into an agreement with the California PSRO Area XXIII on the grounds that such organization is not representative of doctors in PSRO Area XXIII of the State of California, mail such objection in writing to the Secretary, Department of Health, Education, and Welfare, P.O. Box 1588, FDR Station, New York, New York 10022 on or before December 23, 1976.

After reviewing the final tabulation of objections from doctors of medicine or osteopathy in PSRO Area XXIII of the State of California, the Secretary has determined, pursuant to 42 CFR 101.105, that not more than 10 percentum of the doctors engaged in the active practice of medicine or osteopathy in PSRO Area XXIII of the State of California have expressed timely objection to the Secretary entering into an agreement with the California PSRO Area XXIII. Therefore, the Secretary will proceed to enter into an agreement with the California PSRO Area XXIII designating it as the Professional Standards Review Organization for PSRO Area XXIII of the State of California.

Dated: January 18, 1977.

JOHN H. KELSO,
Acting Administrator,
Health Services Administration.

[FR Doc.77-2246 Filed 1-21-77;8:45 am]

NEW YORK PSRO AREA XIV: RESULTS OF NOTIFICATION

Notice to Physicians Regarding Agreement To Designate Professional Standards Review Organization

On November 23, 1976, the Secretary of Health, Education, and Welfare published in the FEDERAL REGISTER a notice in which he announced his intention to enter into an agreement with the PSRO of Queens County, Inc., designating it as the Professional Standards Review Organization for PSRO Area XIV of the State of New York, which area is designated a Professional Standards Review Organization Area in 42 CFR 101.36.

Such notice was also published in three consecutive issues of *The New York Times* and the *New York Post* on November 23, 24, and 25, 1976. In addition, copies of the notice were mailed to organizations of practicing doctors of medicine or osteopathy, including the appropriate State and County medical and specialty societies, and hospitals and other health care facilities in the area, with a request that each such society or facility inform those doctors in its membership or on its staff who are engaged in active practice in PSRO Area XIV of the State of New York of the contents of the notice.

The notice requested that any licensed doctor of medicine or osteopathy engaged in active practice in PSRO Area XIV of the State of New York who objects to the Secretary entering into an agreement with the PSRO of Queens County, Inc., on the grounds that such organization is not representative of doctors in PSRO Area XIV of the State of New York, mail such objection in writing to the Secretary, Department of Health, Education, and Welfare, P.O. Box 1588, FDR Station, New York, New York 10022 on or before December 23, 1976.

After reviewing the final tabulation of objections from doctors of medicine or osteopathy in PSRO Area XIV of the State of New York, the Secretary has determined, pursuant to 42 CFR 101.105, that not more than 10 percentum of the doctors engaged in the active practice of medicine or osteopathy in PSRO Area XIV of the State of New York have expressed timely objection to the Secretary entering into an agreement with the PSRO of Queens County, Inc. Therefore, the Secretary will proceed to enter into an agreement with the PSRO of Queens County, Inc., designating it as the Professional Standards Review Organization for PSRO Area XIV of the State of New York.

Dated: January 18, 1977.

JOHN H. KELSO,
Acting Administrator,
Health Services Administration.

[FR Doc.77-2248 Filed 1-21-77;8:45 am]

NORTH CAROLINA PSRO AREA II: RESULTS OF NOTIFICATION

Notice to Physicians Regarding Agreement to Designate Professional Standards Review Organization

On November 23, 1976, the Secretary of Health, Education, and Welfare published in the FEDERAL REGISTER a notice in which he announced his intention to enter into an agreement with the Piedmont Medical Foundation, Inc., designating it as the Professional Standards Review Organization for PSRO Area II of the State of North Carolina, which area is designated a Professional Standards Review Organization Area in 42 CFR 101.37.

Such notice was also published in three consecutive issues of the *Winston-Salem Journal, Winston-Salem Sentinel,* and the *Statesville Record and Landmark* on November 23, 24, and 25, 1976. In addition, copies of the notice were mailed to organizations of practicing doctors of medicine or osteopathy, including the appropriate State and County medical and specialty societies, and hospitals and other health care facilities in the area, with a request that each such society or facility inform those doctors in its membership or on its staff who are engaged in active practice in PSRO Area II of the State of North Carolina of the contents of the notice.

The notice requested that any licensed doctor of medicine or osteopathy engaged in active practice in PSRO Area II of the State of North Carolina who objects to the Secretary entering into an agreement with the Piedmont Medical Foundation, Inc., on the grounds that such organization is not representative of doctors in PSRO Area II of the State of North Carolina, mail such objection in writing to the Secretary, Department of Health, Education, and Welfare, P.O. Box 1583, FDR Station, New York, New York 10022 on or before December 23, 1976.

After reviewing the final tabulation of objections from doctors of medicine or osteopathy in PSRO Area II of the State of North Carolina, the Secretary has determined, pursuant to 42 CFR 101.105, that not more than 10 percentum of the doctors engaged in the active practice of medicine or osteopathy in PSRO Area II of the State of North Carolina have expressed timely objection to the Secretary entering into an agreement with the Piedmont Medical Foundation, Inc. Therefore, the Secretary will proceed to enter into an agreement with the Piedmont Medical Foundation, Inc., designating it as the Professional Standards Review Organization for PSRO Area II of the State of North Carolina.

Dated: January 18, 1977.

JOHN H. KELSO,
Acting Administrator,
Health Services Administration.

[FR Doc.77-2249 Filed 1-21-77;8:45 am]

VIRGINIA PSRO AREA II: RESULTS OF NOTIFICATION

Notice to Physicians Regarding Agreement To Designate Professional Standards Review Organization

On November 23, 1976, the Secretary of Health, Education, and Welfare published in the FEDERAL REGISTER a notice in which he announced his intention to enter into an agreement with the Northern Virginia Foundation for Medical Care designating it as the Professional Standards Review Organization for PSRO Area II of the State of Virginia, which area is designated a Professional Standards Review Organization Area in 42 CFR 101.52.

Such notice was also published in three consecutive issues of the Northern Virginia Sun, Washington Star, Alexandria Gazette, and the Washington Post on November 23, 24, and 25, 1976. In addition, copies of the notice were mailed to organizations of practicing doctors of medicine or osteopathy, including the appropriate State and County medical and specialty societies, and hospitals and other health care facilities in the area, with a request that each such society or facility inform those doctors in its membership or on its staff who are engaged in active practice in PSRO Area II of the State of Virginia of the contents of the notice.

The notice requested that any licensed doctor of medicine or osteopathy engaged in active practice in PSRO Area II of the State of Virginia who objects to the Secretary entering into an agreement with the Northern Virginia Foundation for Medical Care on the grounds that such organization is not representative of doctors in PSRO Area II of the State of Virginia, mail such objection in writing to the Secretary, Department of Health, Education, and Welfare, P.O. Box 1588, FDR Station, New York, New York 10022 on or before December 23, 1976.

After reviewing the final tabulation of objections from doctors of medicine or osteopathy in PSRO Area II of the State of Virginia, the Secretary has determined, pursuant to 42 CFR 101.105, that not more than 10 percentum of the doctors engaged in the active practice of medicine or osteopathy in PSRO Area II of the State of Virginia have expressed timely objection to the Secretary entering into an agreement with the Northern Virginia Foundation for Medical Care. Therefore, the Secretary will proceed to enter into an agreement with the Northern Virginia Foundation for Medical Care designating it as the Professional Standards Review Organization for PSRO Area II of the State of Virginia.

Dated: January 18, 1977.

JOHN H. KELSO,
Acting Administrator,
Health Services Administration.

[FR Doc.77-2250 Filed 1-21-77;8:45 am]

VIRGINIA PSRO AREA V: RESULTS OF NOTIFICATION

Notice to Physicians Regarding Agreement To Designate Professional Standards Review Organization

On November 23, 1976, the Secretary of Health, Education, and Welfare published in the FEDERAL REGISTER a notice in which he announced his intention to enter into an agreement with the Colonial Virginia Foundation for Medical Care designating it as the Professional Standards Review Organization for PSRO Area V of the State of Virginia, which area is designated a Professional Standards Review Organization Area in 42 CFR 101.52.

Such notice was also published in three consecutive issues of the Newport News Press, Newport News Times-Herald, and the Norfolk Virginian-Pilot on November 23, 24, and 25, 1976. In addition, copies of the notice were mailed to organizations of practicing doctors of medicine or osteopathy, including the appropriate State and County medical and specialty societies, and hospitals and other health care facilities in the area, with a request that each such society or facility inform those doctors in its membership or on its staff who are engaged in active practice in PSRO Area V of the State of Virginia of the contents of the notice.

The notice requested that any licensed doctor of medicine or osteopathy engaged in active practice in PSRO Area V of the State of Virginia who objects to the Secretary entering into an agreement with the Colonial Virginia Foundation for Medical Care on the grounds that such organization is not representative of doctors in PSRO Area V of the State of Virginia, mail such objection in writing to the Secretary, Department of Health, Education, and Welfare, P.O. Box 1588, FDR Station, New York, New York 10022 on or before December 23, 1976.

After reviewing the final tabulation of objections from doctors of medicine or osteopathy in PSRO Area V of the State of Virginia, the Secretary has determined, pursuant to 42 CFR 101.105, that not more than 10 percentum of the doctors engaged in the active practice of medicine or osteopathy in PSRO Area V of the State of Virginia have expressed timely objection to the Secretary entering into an agreement with the Colonial Virginia Foundation for Medical Care. Therefore, the Secretary will proceed to enter into an agreement with the Colonial Virginia Foundation for Medical Care designating it as the Professional Standards Review Organization for PSRO Area V of the State of Virginia.

Dated: January 18, 1977.

JOHN H. KELSO,
Acting Administrator,
Health Services Administration.

[FR Doc.77-2251 Filed 1-21-77;8:45 am]

Health Services Administration

POLL OF PHYSICIANS IN PSRO AREA VII OF THE STATE OF NEW JERSEY

Announcement of Results to Physicians

On July 30, 1976, the Secretary of the Department of Health, Education, and Welfare published in the FEDERAL REGISTER a notice in which he announced his intention to enter into an agreement with the Central New Jersey Professional Standards Review Organization, Inc., designating it as the Professional Standards Review Organization for PSRO Area VII located in the State of New Jersey, which area is designated a Professional Standards Review Organization Area in 42 CFR 101.34.

Such notice was also published in three consecutive issues of the Newark Star Ledger and the Trentonian on July 30, 31, and August 2, 1976. In addition, copies of the notice were mailed to organizations of practicing doctors of medicine or osteopathy, including the appropriate State and County medical and specialty societies, and hospitals and other health care facilities in the area, with a request that each such society or facility inform those doctors in its membership or on its staff who are engaged in active practice in PSRO Area VII of the State of New Jersey of the contents of the notice.

The notice requested that any licensed doctor of medicine or osteopathy engaged in active practice in PSRO Area VII of the State of New Jersey who objected to the Secretary entering into an agreement with the Central New Jersey Professional Standards Review Organization, Inc., on the grounds that such organization is not representative of doctors in PSRO Area VII of the State of New Jersey, mail such objection in writing to the Secretary of the Department of Health, Education, and Welfare, P.O. Box 1588, FDR Station, New York, New York 10022, on or before August 30, 1976.

After reviewing the final tabulation of objections from doctors of medicine or osteopathy in PSRO Area VII of the State of New Jersey, the Secretary determined, pursuant to 42 CFR 101.105, that more than 10 percentum of the doctors engaged in the active practice of medicine or osteopathy in PSRO Area VII of the State of New Jersey had expressed timely objection to entering into an agreement with the Central New Jersey Professional Standards Review Organization, Inc.

Therefore, on November 1, 1976, in accordance with 42 CFR 101.106, the Secretary of the Department of Health, Education, and Welfare published in the FEDERAL REGISTER a notice announcing a poll to be conducted of all doctors of medicine or osteopathy engaged in active practice in PSRO Area VII of the State of New Jersey to determine whether the Central New Jersey Professional Standards Review Organization, Inc., was representative of such doctors in the area.

Such notice was also published in the Newark Star Ledger and the Trentonian on November 1, 1976. In addition, copies of the notice were mailed to organizations of practicing doctors of medicine or osteopathy, including the appropriate State and County medical and specialty societies, and hospitals and other health care facilities in the area, with a request that each such society or facility inform those doctors in its membership or on its staff who are engaged in active practice in PSRO Area VII of the State of New Jersey of the contents of the notice.

The notice stated that a ballot was to be mailed to each such doctor on which he was to indicate whether in his opinion the Central New Jersey Professional Standards Review Organiaztion, Inc., was or was not representative of the doctors of medicine or osteopathy engaged in active practice in PSRO Area VII of the State of New Jersey. The notice also requested that any licensed doctor of medicine or osteopathy engaged in active practice in PSRO Area VII of the State of New Jersey who had not received a ballot by November 6, 1976, might request in writing a ballot from the Secretary of Health, Education, and Welfare, P.O. Box 1588, FDR Station, New York, New York 10022. According to the notice, only those ballots postmarked no later than December 1, 1976, and returned in the stamped self-addressed envelope provided to each individual doctor would be considered valid.

A ballot and envelope together with a letter of explanation was mailed to each individual doctor of medicine or osteopathy who the Secretary determined, pursuant to 42 CFR 101.103, to be engaged in the active practice of medicine or osteopathy in the PSRO area.

The counting of the ballots took place in a proceeding open to the public at the City Council Chambers, Trenton City Hall, 319 East State Street, Trenton, New Jersey 08608, on December 9, 1976.

After reviewing the final tabulation of valid ballots received from doctors of medicine or osteopathy in PSRO Area VII of the State of New Jersey, the Secretary has determined, pursuant to 42 CFR

101.107, that more than 50% of the doctors responding to the poll indicated that the Central New Jersey Professional Standards Review Organization, Inc., was not representative of the medical and osteopathic communities. Therefore, the Secretary will not designate the Central New Jersey Professional Standards Review Organization, Inc., as a conditional Professional Standards Review Organization for PSRO Area VII of the State of New Jersey.

Any doctor in the area who files a written request for a recount for purposes of challenging the eligibility of a physician to participate in the poll shall identify the particular physician and state the reasons that form the basis for the challenge. If the total number of ballots challenged and/or the total number of ballots found to be invalid do not exceed the difference between the number of tabulated ballots which indicate that the organization is representative of the doctors in the area and the number of tabulated ballots which indicate that the organization is not representative of the doctors in the area, the Secretary will so state in a notice in the FEDERAL REGISTER and the results of the polling will be final. If the total number of ballots challenged and/or the total number of ballots found to be invalid do exceed the difference between the number of tabulated ballots which indicate that the organization is representative of the doctors in the area and the number of tabulated ballots which indicate that the organization is not representative of the doctors in the area, a recount will be conducted.

If five doctors file written requests for a recount on or before February 3, 1977 for purposes of obtaining a second tabulation of the ballots, a recount shall be conducted without a reverification of the ballots.

Dated: January 18, 1977.

JOHN H. KELSO,
Acting Administrator,
Health Services Administration.

[FR Doc.77-2247 Filed 1-21-77;8:45 am]

POLL OF PHYSICIANS IN PSRO AREA XVI OF THE STATE OF CALIFORNIA

Announcement of Results to Physicians

On August 16, 1976, the Secretary of the Department of Health, Education, and Welfare published in the FEDERAL REGISTER a notice in which he announced his intention to enter into an agreement with the Organization for Professional Standards Review of Santa Barbara and San Luis Obispo Counties, designating it as the Professional Standards Review Organization for PSRO Area XVI of the State of California, which area is designated a Professional Standards Review Organization Area in 42 CFR 101.7.

Such notice was also published in three consecutive issues of the San Barbara News-Press and the San Luis Obispo Telegram-Tribune on August 16, 17, and 18, 1976. In addition, copies of the notice were mailed to organizations of practicing doctors of medicine or osteopathy, including the appropriate State and County medical and specialty societies, and hospitals and other health care facilities in the area, with a request that each such society or facility inform those doctors in its membership or on its staff who are engaged in active practice in PSRO Area XVI of the State of California of the contents of the notice.

The notice requested that any licensed doctor of medicine or osteopathy engaged in active practice in PSRO Area XVI of the State of California who objected to the Secretary entering into an agreement with the Organization for Professional Standards Review of Santa Barbara and San Luis Obispo Counties, on the grounds that such organization is not representative of doctors in PSRO Area XVI of the State of California, mail such objection in writing to the Secretary of the Department of Health, Education, and Welfare, P.O. Box 1588, FDR Station, New York, New York 10022, on or before September 15, 1976.

After reviewing the final tabulation of objections from doctors of medicine or osteopathy in PSRO Area XVI of the State of California, the Secretary determined, pursuant to 42 CFR 101.105, that more than 10 percentum of the doctors engaged in the active practice of medicine or osteopathy in PSRO Area XVI of the State of California had expressed timely objection to entering into an agreement with the Organization for Professional Standards Review of Santa Barbara and San Luis Obispo Counties.

Therefore, on November 1, 1976, in accordance with 42 CFR 101.106, the Secretary of the Department of Health, Education, and Welfare published in the FEDERAL REGISTER a notice announcing a poll to be conducted of all doctors of medicine or osteopathy engaged in active practice in PSRO Area XVI of the State of California to determine whether the Organization for Professional Standards Review of Santa Barbara and San Luis Obispo Counties, was representative of such doctors in the area.

Such notice was also published in the Santa Barbara News-Press and the San Luis Obispo County Telegram-Tribune on November 1, 1976. In addition, copies of the notice were mailed to organizations of practicing doctors of medicine or osteopathy, including the appropriate State and County medical and specialty societies, and hospitals and other health care facilities in the area, with a request that each such society or facility inform those doctors in its membership or on its staff who are engaged in active practice in PSRO Area XVI of the State of California of the contents of the notice.

The notice stated that a ballot was to be mailed to each such doctor on which he was to indicate whether in his opinion the Organization for Professional Standards Review of Santa Barbara and San Luis Obispo Counties, was or was not representative of the doctors of medicine or osteopathy engaged in active practice in PSRO Area XVI of the State of California. The notice also requested that any licensed doctor of medicine or osteopathy engaged in active practice in PSRO Area XVI of the State of California who had not received a ballot by November 6, 1976, might request in writing a ballot from the Secretary of Health, Education, and Welfare, P.O. Box 1588, FDR station, New York, New York 10022. According to the notice, only those ballots postmarked no later than December 1, 1976, and returned in the stamped self-addressed envelope provided to each individual doctor would be considered valid.

A ballot and envelope together with a letter of explanation was mailed to each individual doctor of medicine or osteopathy whom the Secretary determined, pursuant to 42 CFR 101.103, to be engaged in the active practice of medicine or osteopathy in the PSRO area.

The counting of the ballots took place in a proceeding open to the public at the City Council Chambers, Santa Barbara City Hall, Santa Barbara, California on December 13, 1976.

After reviewing the final tabulation of valid ballots received from doctors of medicine or osteopathy in PSRO Area XVI of the State of California, the Secretary has determined, pursuant to 42 CFR 101.107, that more than 50 percent of the doctors responding to the poll indicated that the Organization for Professional Standards Review of Santa Barbara and San Luis Obispo Counties, was representative of the doctors in the area. Therefore, the Secretary intends to enter into an agreement designating the Organization for Professional Standards Review of Santa Barbara and San Luis Obispo Counties as a conditional Professional Standards Review Organization for PSRO Area XVI of the State of California.

Any doctor in the area who files a written request for a recount for purposes of challenging the eligibility of a physician to participate in the poll shall identify the particular physician and state the reasons that form the basis for the challenge. If the total number of ballots challenged and/or the total number of ballots found to be invalid do not exceed the difference between the number of tabulated ballots which indicate that the organization is representative of the doctors in the area and the number of tabulated ballots which indicate that the organization is not representative of the doctors in the area, the Secretary will so state in a notice in the FEDERAL REGISTER and the result of the polling will be final. If the total number of ballots challenged and/or the total number of ballots found to be invalid do exceed the difference between the number of tabulated ballots which indicate that the organization is representative of the doctors in the area and the number of tabulated ballots which indicate that the organization is not representative of the doctors in the area, a recount will be conducted.

If five doctors file written requests for a recount on or before February 3, 1977 for purposes of obtaining a second tabulation of the ballots, a recount shall be conducted without a reverification of the ballots.

Dated: January 18, 1977.

JOHN H. KELSO,
Acting Administrator,
Health Services Administration.

[FR Doc.77-2245 Filed 1-21-77;8:45 am]

National Institutes of Health

SICKLE CELL DISEASE ADVISORY COMMITTEE

Meeting

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Sickle Cell Disease Advisory Committee, National Heart, Lung, and Blood Institute, February 8 and 9, 1977. The meeting will be held in Conference Room 9, C-Wing, on February 8, and Conference Room 10, C-Wing, on February 9. The entire meeting will be open to the public from 8:30 a.m. to 5:00 p.m. on both days, to discuss recommendations on the implementation and evaluation of the Sickle Cell Disease Program. Attendance by the public will be limited to space available.

Mr. York Onnen, Chief, Public Inquiries and Reports Branch, NHLBI, Building 31, Room 5A03, (301) 496-4236, will provide summaries of the meeting and rosters of committee members.

Mr. Howard F. Manly, Executive Secretary, Sickle Cell Disease Advisory Committee, NHLBI, NIH, Building 31, Room 4A29, (301) 496-6931, will furnish substantive program information.

SUZANNE L. FREMEAU,
Committee Management Officer,
National Institutes of Health.

JANUARY 18, 1977.

[FR Doc.77-2202 Filed 1-21-77;8:45 am]

Assistant Secretary for Education

NATIONAL CENTER FOR EDUCATION STATISTICS

Comments on Collection of Information and Data Acquisition Activity

Pursuant to Section 406(g)(2)(B), General Education Provisions Act, notice is hereby given as follows:

The U.S. Office of Education has proposed collections of information and data acquisition activities which will request information from educational agencies or institutions.

The purpose of publishing this notice in the FEDERAL REGISTER is to afford each educational agency or institution subject to a request under the proposed collection of information and data acquisition activities and their representative organizations an opportunity, during a 30-day period before transmittal to the Director of the Office of Management and Budget, to comment to the Administrator of the National Center for Education Statistics on the collections of information and data acquisition activities.

Descriptions of the proposed collections of information and data acquisition activites follow below.

Written comments on the proposed activity are invited. Comments must be received on or before February 23, 1977 and should be addressed to Administrator, National Center for Education Statistics, Attn.: Manager, Information Acquisition, Planning, and Utilization, Room 3001, 400 Maryland Avenue, S.W., Washington, D.C. 20202.

Further information may be obtained from Elizabeth M. Proctor of the National Center for Education Statistics, 202-245-1022.

Dated: January 17, 1977.

MARIE D. ELDRIDGE,
Administrator, National Center
for Education Statistics.

DESCRIPTION OF A PROPOSED COLLECTION OF INFORMATION AND DATA ACQUISITION ACTIVITY

1. Title of proposed activity:

Career Education Evaluation: Collection of Input and Process Data.

2. Agency/bureau/office:

U.S. Office of Education/Office of Career Education.

3). Agency form numbers:

OE541-1; OE541-2; OE541-3; and OE541-4.

4. Legislative authority for this activity:

(b) It is the purpose of this section to assist in achieving the policies set forth in subsection (a) by—

(3) Assessing the status of career education programs and practices • • •

(4) Providing for the demonstration of the best career education programs and practices by the development and testing of exemplary programs and practices • • • • (Pub. L. 93-380, 20 U.S.C. 1865, Section 406).

Each application • • • must set forth a detailed plan which includes:

• • • • • •

(d) A specific plan to be utilized in evaluating the accomplishment of each of the process and learner outcome objectives listed pursuant to § 160d.6(b)(1), including

(1) The criteria of success for evaluating each objective;

(2) The evaluation design to be used for each objective;

(3) The data collection instruments or other techniques to be used for each objective;

(4) The data analysis to be conducted for each objective;

(5) The dates by which data on the various objectives will be available; and

(6) The evaluation resources of personnel and budget that will be utilized; • • •"

(45 CFR Part 160d.6)

5. Voluntary/obligatory nature of response:

Voluntary

6. How information to be collected will be used:

Evaluation: the data will be used to evaluate the effectiveness of each of the 15 exemplary career education projects participating in the study as well as to test evaluation methods and techniques for future use in other career education projects funded by the Office of Career Education. Data will be used to determine the extent to which project learner outcome objectives have been achieved and the extent to which various process and input factors in each project contribute to the attainment of learner outcomes.

7. Data acquisition plan:

a. Method of collection: Group administration to students; individual administration to teachers, counselors, and building administrators.

b. Time of collection: Spring, 1977.

c. Frequency: One-time data collection

8. Respondents:

a. Type: Students, public elementary secondary schools.

b. Number: Sample—15,000.

c. Estimated average man-hours per respondent: 0.5.

a. Type: Teachers, elementary/secondary.

b. Number: Sample—1,931.

c. Estimated average man-hours per respondent: 0.5.

a. Type: Counselors, elementary/secondary.

b. Number: Sample—262.

c. Estimated average man-hours per respondent: 0.5.

a. Type: School administrators and supervisors.

b. Number: Sample—106.

c. Estimated average man-hours per respondent: 0.5.

9. Information to be collected:

a. Students: information will be collected on student background characteristics (e.g. age, sex, ethnicity, and socioeconomic status), in-school and out-of-school experiences related to career education (e.g. curriculum activities, work experience, etc), and student career aspirations and expectations.

b. Teachers: information will be collected on teacher background characteristics, educational and related work experiences, career education activities conducted for students, and attitudes towards career education.

c. Counselors: information will be collected on counselor background characteristics, educational and related work experiences, career education activities conducted for students, and attitudes toward career education.

d. School administrators and supervisors: information will be collected on administrator background characteristics, characteristics of school and school programs, educational and related work experience, career education activities engaged in, and attitudes toward career education.

DESCRIPTION OF A PROPOSED COLLECTION OF INFORMATION AND DATA ACQUISITION ACTIVITY

1. Title of proposed activity:

The Status of Physical Education in the Public Schools in the Coterminous United States (A survey of certain practices and conditions in local school districts).

2. Agency bureau/office:

U.S. Office of Education, Bureau of Elementary and Secondary Education.

3. Agency form number:

OE 548.

4. Legislative authority for this activity:

The Commissioner shall:

(1) Prepare and disseminate to State and local educational agencies and institutions information concerning applicable programs. • • •

(3) Collect data and information on applicable programs for the purpose of obtaining objective measurements on the effectiveness of such programs in achieving their purposes; and (4) prepare and publish an annual report • • • on (a) the condition of education in the nation, (b) developments in the administration, utilization and impact of applicable programs, (c) results of investigations and activities by the Office of Education. • • •" (General Education, Provisions Act, Sec. 422(a), 20 U.S.C. 1231a.)

5. Voluntary/obligatory nature of response:

Voluntary

6. How information to be collected will be used:

The study will provide descriptive data that will establish a baseline for determining the present status of physical education programs and will provide analytical potential for program improvement and for future trends. It will, also, provide a screening and ranking of basic problems in the field as seen by the educators who are most directly involved in administering and supervising local programs of physical education, the directors of physical education in local school districts.

The information to be derived will be used by the U.S. Office of Education, the American Alliance for Health, Physical Education and Recreation, the Society of State Directors, HPER, the President's Council on Physical Fitness and Sports, the National Council of City and County Directors of HPER and other sponsors of a national conference.

This conference is designed to implement recommendations stemming from the 1st International Conference of Ministers and Senior Officials Responsible for Physical Education and Sport in the Education of Youth, sponsored by UNESCO, 5–10 April 1976. The national implementation conference will be held in late Spring 1977. An international symposium will be held in conjunction with this meeting.

The above mentioned organizations will also use the study results to sharpen their efforts to improve school programs of physical education and to promote innovative and exemplary programs throughout the nation. The President's Council on Physical Fitness and Sports is particularly interested in having up-to-date information. Certain basic questions on physical education programs for handicapped children will engender baseline information that will be useful in implementing the new Education Of All Handicapped Children Act, Pub. L. 94–142 and in making comparisons in later years.

7. Data acquisition plan:

A. Method of collection: Mail and personal interview.
B. Time of collection: Spring, 1977.
C. Frequency: One-time study.

8. Respondents:

A. Type: Local Educational Agencies (directors of physical education).
B. Number: 689.
C. Estimated average man-hours per respondent: 1.5 man-hours.

9. Information to be collected:

a. The characteristics of local directors of physical education—age, sex, title, educational and professional experience.

b. The nature and scope of the directors' responsibilities, i.e., subject fields (physical education, health education, athletics, safety, etc.) and the percent of time devoted to administrative supervisory, coaching, and/or teaching duties, as well as the percent of time the directors would prefer to spend in such duties.

c. Number and percent of boys and girls enrolled in physical education classes by grade level in both required and elective programs.

d. Identification by grade level of type of teacher, i.e., certified specialist, non-specialist or combination.

e. Indication of the increase or decrease of time allotted for required and elective programs of physical education since 1970.

f. Reasons, if any, for exemption from the physical education requirement by grade level.

g. Identification by grade level of special programs designed for students who are physically underdeveloped or who have handicap or learning disability.

h. Identification of districts, by grade level, which evaluate the physical fitness level of students, type of test(s) used and availability of districts norms.

i. Expression of respondent opinion about results of two previous national surveys of youth fitness.

j. A description of impending changes or other aspects of school district physical education programs not covered in the survey questionnaire.

k. How directors of physical education perceive the status of their programs as viewed by various groups. These groups are administrators, parents, students, other teachers and physical education teachers.

l. How directors of physical education view public or "consumer demands" for programs.

m. How directors of physical education perceive different groups, such as administrators, parents and students, as potential supporters of or obstacles to the maintenance and/or improvement of current programs.

n. A paired comparison technique which ranks and scales ten major problem areas. These problem areas are (1) discipline/student conduct, (2) adequacy of equipment/supplies, (3) adequacy of facilities, (4) status of physical education in total school program, (5) staff/teachers, (6) legal liability, (7) relationships with athletics, (8) accountability/evaluation, (9) Title IX regulations, and, (10) provision for needs of special students such as handicapped or physically underdeveloped.

[FR Doc.77-2049 Filed 1-21-77;8:45 am]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Serial No. I-7435]

IDAHO

Partial Termination of Proposed Withdrawal and Reservation of Lands

JANUARY 14, 1977.

Notice of an application, Serial No. I-7435, for withdrawal and reservation of lands was published as FR Doc. No. 74-2518 on page 3977 of the issue for January 31, 1974. The Energy Research and Development Administration, formerly the Atomic Energy Commission, has cancelled its application insofar as it involved the lands described below. Therefore, pursuant to the regulations contained in 43 CFR, Subpart 2091, such lands will be at 10:00 a.m. on February 18, 1977 relieved of the segregative effect of the above-mentioned application.

The lands involved in this notice of termination are:

BOISE MERIDIAN, IDAHO

T. 13 S., R. 26 E.,
Sec. 35, all.
T. 14 S., R. 26 E.
Sec. 1, S½;
Sec. 2, all;
Secs. 11 to 14 inclusive, 23-26 inclusive and 35.
T. 14 S., R. 27 E.,
Sec. 18, W½SE¼, SE¼SW¼;
Sec. 19, all;
Sec. 30, lots 1 to 4 inclusive, E½W½, W½E½, E½NE¼, NE¼SE¼;
Sec. 31, lots 1 to 4 inclusive, E½W½, NW¼NE¼.
T. 15 S., R. 25 E.,
Sec. 34, E½, NW¼, N½SW¼, SE¼SW¼;
Sec. 34, all.
T. 15 S., R. 26 E.,
Secs. 1, 2 and 11;
Sec. 12, N½NW¼, SW¼NW¼;
Sec. 14, NW¼NE¼, NW¼, NW¼SW¼;
Secs. 15 and 21;
Sec. 22, NW¼NE¼, NW¼, NW¼SW¼;
Sec. 28, NW¼NE¼, NW¼;
Sec. 29, lots 1 to 6 inclusive, W½NE¼, NW¼, N½SW¼, NW¼SE¼;
Sec. 31, all;
Sec. 32, N½NW¼, SW¼NW¼;
Sec. 33, S½SE¼;
Sec. 34, S½S½;
Sec. 35, S½S½.
T. 15 S., R. 27 E.,
Sec. 6, lots 3 to 7 inclusive, SE¼NW¼, NE¼SW¼;
Sec. 7, lots 1, 2, and 3;
Sec. 30, SE¼NE¼, E½SE¼;
Sec. 31, lots 1 and 2, E½NW¼, W½NE¼.
T. 16 S., R. 25 E.,
Sec. 1, lots 1 to 4 inclusive;
Sec. 2, lots 1 to 4 inclusive;
Sec. 3, lots 1 to 4 inclusive;
Sec. 10, S½, S½N½, N½NW¼;
Sec. 11, S½, SW¼NW¼;
Sec. 12, S½.
T. 16 S., R. 26 E.,
Secs. 3 and 4;
Sec. 5, SE¼NE¼, SW¼NW¼, S½;
Sec. 6, lots 6 and 7, SE¼NE¼, E½SW¼, SE¼.

The area described aggregates 20,559.17 acres.

VINCENT S. STROBEL,
Chief, Branch of L&M Operations.

[FR Doc.77-2063 Filed 1-21-77;8:45 am]

Bureau of Reclamation

CORONADO PROJECT

Public Hearing on Draft Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Department of the Interior has prepared a draft environmental statement for the Coronado Project. This statement (INT DES 77-2), filed with the Council on Environmental Quality on January 14, 1977, is available to the public as specified in the notice of availability.

Public hearings will be held at the following locations to receive views and comments from interested organizations or individuals relating to the environmental impact of the project.

Place	Address	Date	Time
St. John's, Ariz.	Community Building	Feb. 23, 1977	2 to 5 p.m. and 6:30 p.m.
Kearny, Ariz.	Cafeteria, Ray Unified School District	Feb. 24, 1977	2 to 5 p.m. and 6:30 p.m.
Phoenix, Ariz.	Auditorium, Maricopa County Board of Supervisors, 205 West Jefferson.	Feb. 25, 1977	2 to 5 p.m. and 6:30 p.m.

Oral statements at the hearings will be limited to periods of 10 minutes. Speakers will not trade their time to obtain a longer oral presentation: however, the person authorized to conduct the hearings may allow any speaker to provide additional comment after all persons wishing to comment have been heard. Speakers will be scheduled according to the time preferences mentioned in their letters or telephone requests whenever possible. Any scheduled speaker not present when called will lose his or her position in the scheduled order and will not be called again until the end of the order. Requests for scheduled presentations will be accepted up to 4:00 p.m. on February 18, 1977; any subsequent requests will be handled on a first-come-first-served basis following the scheduled presentations.

Organizations or individuals desiring to present statements at the hearings should contact Regional Director Manuel Lopez, Jr., Bureau of Reclamation, P.O. Box 427, Boulder City, Nevada 89005, telephone (702) 293–8464, and announce their intentions to participate. Written comments from those wishing to supplement their oral presentations at the hearings should be received by March 7, 1977, for inclusion in the hearing record.

Dated: January 18, 1977.

E. F. SULLIVAN,
Acting Commissioner of Reclamation.

[FR Doc.77-2201 Filed 1-21-77;8:45 am]

Bureau of Land Management

OUTER CONTINENTAL SHELF; ALASKA

Oil and Gas Lease Sale No. CI, February 23, 1977

On January 19, 1977, a notice appeared in the FEDERAL REGISTER 42 FR 3804, announcing the above outer continental shelf oil and gas lease sale in the lower Cook Inlet.

In order to clarify any confusion that might have been caused by the presentation of paragraph 12, Tract Descriptions, beginning on page 3804, interested parties are advised that the tract descriptions appearing on page 3807 under the heading OCS OFFICIAL PROTRACTION DIAGRAM, AFOGNAK NO 5-4 should appear as part of paragraph 12 in sequence immediately following Tract No. CI-145 on page 3806. The affected tracts are CI-146 through CI-152.

It should also be noted that the sentence beginning on the 25th line of the middle column on page 3804 should read as follows: "The form for this statement appears in paragraph 17."

Dated: January 21, 1977.

CURT BERKLUND,
Director, Bureau of Land Management.

[FR Doc.77-2388 Filed 1-21-77;10:50 am]

[USITC SE-77-4]

INTERNATIONAL TRADE COMMISSION

MEETING

Interested members of the public are invited to attend and to observe the meeting of the United States International Trade Commission to be held on January 24, 1977, beginning at 9:30 a.m., in the Hearing Room of the United States International Trade Commission, 701 E Street, N.W., Washington, D.C. 20436. The Commission plans to consider the following agenda items in open session:

1. Agenda for meetings during the week of February 7, 1977;
2. Minutes;
3. Reorganization—discussion of items the Commission needs to act on before February 4, 1977, such as the filling of positions which are vacant or about which there is a question as to their status—e.g., the selection procedure for the positions of Investigator, GS-14 and below, and additional vacant positions such as the Deputy General Counsel;
4. Status report on self-initiated studies;
5. Review of position descriptions in the Office of the General Counsel;
6. Sugar (Inv. TA-201-16)—briefing by the staff (to be held after 3 p.m., EST);
7. Appeal, pursuant to the Freedom of Information Act, filed by Mr. James M. Goldberg of the law firm of London and Goldberg;
8. Footwear (Inv. TA-201-18)—further consideration of the Commission's determination if necessary;
9. Further consideration of revisions to the Commission Policy Manual;
10. Any items left over from previous agenda.

If you have any questions concerning the agenda for the January 24, 1977, Commission meeting, please contact the Secretary to the Commission at (202) 523-0161. Access to documents to be considered by the Commission at the meeting is provided for in Subpart C of the Commission's rules (19 CFR 201.17-201.21).

On the authority of 19 U.S.C. 1335 and in conformity with proposed 19 CFR 201.39(a), when a person's privacy interests may be directly affected by holding a portion of a Commission meeting in public, that person may request the Commission to close such portion to public observation. Such requests should be communicated to the Office of the Chairman of the Commission.

Pursuant to the specific exemptions of 5 U.S.C. 552b(c)(2) and (6), on the authority of 19 U.S.C. 1335, and in conformity with proposed 19 CFR 201.37(b)(2) and (6), Commissioners Parker, Moore, Bedell, and Ablondi voted to hold the portion of the January 24, 1977, meeting with respect to item No. 3 on reorganization in closed session. Commissioners Minchew and Leonard voted against closing this portion to the public.

A majority of the entire membership of the Commission felt that this portion of the meeting should be closed to the public since: (1) the discussion would only concern internal personnel practice and procedures; and (2) the information discussed in such portion would be likely to disclose information of a personal nature which could constitute a clearly unwarranted invasion of personal privacy.

Those persons expected to be present at this closed portion, and their corresponding affiliations, are listed as follows:

Daniel Minchew, Chairman; Joseph O. Parker, Vice Chairman; Will E. Leonard, Commissioner; George M. Moore, Commissioner; Catherine Bedell, Commissioner; Italo H. Ablondi, Commissioner; Kenneth R. Mason, Secretary; E. Bernice Morris, Staff Assistant; Russell N. Shewmaker, General Counsel; Rhond Roth, Attorney-Adviser (if the General Counsel is not available); Charles R. Ramsdale, Acting Director, Personnel; Norma H. Warbis, Personnel Management Specialist (If Mr. Ramsdale is not available); and Bruce N. Hatton, Assistant to Commissioner Leonard.

The General Counsel to the Commission certified that it is his opinion that the Commission's action in closing this portion of its meeting of January 24, 1977, was properly taken by a vote of a majority of the entire membership of the Commission pursuant to 5 U.S.C. 552b(d)(1) and in conformity with proposed 19 CFR 201.37(d). The discussion to be held in closed session is within the specific exemptions of 5 U.S.C. 552b(c)(2) and (6) and proposed 19 CFR 201.37(b)(2) and (6).

By order of the Commission.

Issued: January 17, 1977.

RUSSELL N. SHEWMAKER,
General Counsel.
KENNETH R. MASON,
Secretary.

[FR Doc.77-2098 Filed 1-21-77;8:45 am]

[USITC SE-77-5]

MEETING

Interested members of the public are invited to attend and to observe the

meeting of the United States International Trade Commission to be held on February 1, 1977, beginning at 9:30 a.m., in the Hearing Room of the United States International Trade Commission, 701 E Street, N.W., Washington, D.C. 20436. The Commission plans to consider the following agenda items in open session:

1. Agenda for future meetings;
2. Minutes;
3. Reorganization:
4. Vote on Sugar (Inv. TA-201-16)—after 3 p.m.;
5. Stainless steel pipes—vote on whether to institute an investigation pursuant to section 337;
6. Items left over from previous agenda.

If you have any questions concerning the agenda for the February 1, 1977, Commission meeting, please contact the Secretary to the Commission at (202) 523-0161. Access to documents to be considered by the Commission at the meeting is provided for in Subpart C of the Commission's rules (19 CFR 201.17-201.21).

On the authority of 19 U.S.C. 1335 and in conformity with proposed 19 CFR 201.39(a), when a person's privacy interests may be directly affected by holding a portion of a Commission meeting in public, that person may request the Commission to close such portion to public observation. Such requests should be communicated to the Office of the Chairman of the Commission.

By order of the Commission.

Issued: January 17, 1977.

KENNETH R. MASON,
Secretary.

[FR Doc.77-2099 Filed 1-21-77;8:45 am]

[USITC SE-77-6]

MEETING

Interested members of the public are invited to attend and to observe the meeting of the United States International Trade Commission to be held on February 3, 1977, beginning at 9:30 a.m., in the Hearing Room of the United States International Trade Commission, 701 E Street, N.W., Washington, D.C. 20436. The Commission plans to consider the following agenda items in open session:

1. Reorganization.

If you have any questions concerning the agenda for the February 3, 1977, Commission meeting, please contact the Secretary to the Commission at (202) 523-0161. Access to documents to be considered by the Commission at the meeting is provided for in Subpart C of the Commission's rules (19 CFR 201.17-201.21).

On the authority of 19 U.S.C. 1335 and in conformity with proposed 19 CFR 201.39(a), when a person's privacy interests may be directly affected by holding a portion of a Commission meeting in public, that person may request the Commission to close such portion to public observation. Such requests should be communicated to the Office of the Chairman of the Commission.

Issued: January 17, 1977.

By order of the Commission.

KENNETH R. MASON,
Secretary.

[FR Doc.77-2100 Filed 1-21-77;8:45 am]

[337-TA-22]

RECLOSABLE PLASTIC BAGS

Commission Determination and Order

On the basis of the record in investigation No. 337-TA-22, Reclosable Plastic Bags, the United States International Trade Commission,[1] under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and the Administrative Procedure Act (5 U.S.C. 551 et seq.)—

1. Determines that there are violations of section 337 in the unlicensed importation into the United States of reclosable plastic bags by reason of their having been made in accordance with claims 1 and/or 2 of the U.S. Patent No. 3,198,228 (which reissued as U.S. Patent Re. 28,969 on September 21, 1976) and in their unlicensed sale by the owner, importer, consignee, or agent of either, the effect or tendency of which is to substantially injure an industry, efficiently and economically operated, in the United States;

2. Determines that there is no violation of section 337 in the importation of reclosable plastic bags into the United States which allegedly infringe U.S. Trademark Reg. No. 946,120, since the effect or tendency of such alleged infringement is not to substantially injure or destroy an industry, efficiently and economically operated, in the United States, to prevent the establishment of such an industry, or to restrain or monopolize trade and commerce in the United States;

3. Finds as a result of the determination of violation, and after considering the effect of an exclusion upon the public health and welfare, competitive conditions in the U.S. economy, the production of like or directly competitive articles in the United States, or U.S. consumers, that the articles concerned, reclosable plastic bags made in accordance with claims 1 and/or 2 of U.S. Patent No. 3,298,228 (Re. 28,969) should be excluded from entry into the United States for the term of this patent;

4. Determines that the bond provided for in subsection 337(g)(3) is to be as prescribed by the Secretary of the Treasury in the amount of 100 percent of the value of the articles concerned, f.o.b. foreign port.

Accordingly, it is ordered—

1. Articles made in accordance with claims 1 and/or 2 of U.S. Patent No. 3,198,228 (Re. 28,969) shall upon the publication of this notice in the FEDERAL REGISTER and until the expiration of such patent be excluded from entry into the United States except (1) as provided in paragraph 2 below of this order or (2) as such importation is under sublicense of the exclusive U.S. licensee of said patent.

2. Notwithstanding the foregoing from the day after the day this order is received by the President pursuant to section 337(g) of the Tariff Act of 1930, as amended, until such time as the President approves or disapproves this Commission action (but in any event, no later than sixty (60) days after such day of receipt), the articles concerned shall be entitled to entry under bond in the amount of one hundred per centum (100%) of the value, f.o.b. foreign port, of the articles concerned.

3. This order will be published in the FEDERAL REGISTER and served upon each party of record in this investigation and upon the U.S. Department of Health, Education, and Welfare, the U.S. Department of Justice, the Federal Trade Commission, and the Secretary of the Treasury.

Issued: January 17, 1977.

By order of the Commission.

KENNETH R. MASON,
Secretary.

[FR Doc.77-2066 Filed 1-21-77;8:45 am]

[1] Commissioner Ablondi dissents from this determination and order except as to par. 2 of the determination.

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

ADVISORY COMMITTEE EDUCATION PROGRAMS PANEL

Meeting

JANUARY 12, 1977

Pursuant to the provisions of the Federal Advisory Committee Act. (Pub. L. 92-463) notice is hereby given that a meeting of the Education Programs Panel will convene at 9:00 a.m. in Room 1023 at 806 Fifteenth Street, NW., Washington, D.C. on February 14, 1977.

The purpose of the meeting is to review Humanities Institutes applications submitted to the National Endowment for the Humanities for grants to educational instittuions ad nnon-profit organizations.

Because the proposed meeting will consider financial information and personnel and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated August 13, 1973, I have determined that the meeting would fall within exemptions (4) and (6) of 5 U.S.C. 552(b) and that it is essential to close the meeting to protect the free exchange of internal views and to avoid interference with operation of the Committee.

It is suggested that those desiring more specific information contact the Advisory Committee Management Officer, Mr. John W. Jordan, 806 Fifteenth Street, NW., Washington, D.C. 20506, or call area code 202-382-2031.

JOHN W. JORDAN,
Advisory Committee Management Officer.

[FR Doc.77-2093 Filed 1-21-77;8:45 am]

NATIONAL SCIENCE FOUNDATION

SCIENCE EDUCATION DIRECTORATE

Program Review

Dr. Harvey Averch, Assistant Director for Science Education at NSF, will present the Science Education Directorate's Program Review at 2 p.m. on February 1, 1977, in Room 540 at 1800 G Street, N.W., Washington, D.C.

The Review discusses different strategies of Federal assistance used in science education over the last 17 years, and examines the performance of the present strategy in relation to expected conditions in the science education system. The Review concludes with an analysis of issues and options for science education.

The presentation is open to all interested parties, but due to space limitations, persons wishing to attend should call Myrna Wright, 282-7922, for a reservation.

HARVEY AVERCH,
Assistant Director, for Science Education.

JANUARY 14, 1977.

[FR Doc.77-2152 Filed 1-21-77;8:45 am]

NUCLEAR REGULATORY COMMISSION

ARKANSAS POWER AND LIGHT CO., ET AL.

All Nuclear Power Reactors Having an Operating License Request for Action

Notice is hereby given that by petition dated January 3, 1977, Robert D. Pollard filed a request for action regarding all nuclear power reactors having an operating license. The requested action would affect:

ARKANSAS POWER & LIGHT CO.

Arkansas Unit 1 (License No. DPR-51), Pope County, Arkansas. PDR—Arkansas Polytechnic College, Russellville, Arkansas 72801.

BALTIMORE GAS & ELECTRIC CO.

Calvert Cliffs Units 1 and 2 (License Nos. DPR-53 and DPR-69), Calvert County, Maryland. PDR—Calvert County Library, Prince Frederick, Maryland 20678.

BOSTON EDISON CO.

Pilgrim 1 (License No. DPR-35), Plymouth County, Massachusetts. PDR—Plymouth Public Library, North Street, Plymouth, Massachusetts.

CAROLINA POWER & LIGHT CO.

Brunswick 1 and 2 (License Nos. DPR-71 and DPR-62), Brunswick County, North Carolina. PDR—Southport—Brunswick County Library, 109 W. Moore Street, Southport, North Carolina 28461.

H. B. Robinson (Licensed No. DPR-23), Darlington County, South Carolina. PDR—Hartsville Memorial Library, Home & Fifth Avenues, Hartsville, South Carolina 29550.

COMMONWEALTH EDISON CO.

Dresden 1, 2 and 3 (License Nos. DPR-2, DPR-19 and DPR-25), Grundy County, Illinois. PDR—Morris Public Library, 604 Liberty Street, Morris, Illinois 60451.

Quad-Cities 1 and 2 (License Nos. DPR-29 and DPR-30), Rock Island County, Illinois. PDR—Moline Public Library, 504—17th Street, Moline, Illinois 61265.

Zion Units 1 and 2 (License Nos. DPR-39 and DPR-48), Lake County, Illinois. PDR—Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

CONNECTICUT YANKEE ATOMIC POWER CO.

Haddam Neck (License No. DPR-61), Middlesex County, Connecticut. PDR—Russell Library, 119 Broad Street, Middletown, Connecticut 06457.

CONSOLIDATED EDISON CO. OF NEW YORK

Indian Point Units 1, 2 and 3 (License Nos. DPR-5, DPR-26 and DPR-64), Westchester County, New York. PDR—Hendrick Hudson Free Library, 31 Albany Post Road, Montrose, New York 10548.

CONSUMERS POWER CO.

Big Rock Point (License No. DPR-6), Charlevoix County, Michigan. Charlevoix Public Library, 107 Clinton Street, Charlevoix, Michigan 49720.

Palisades (License No. DPR-20), Van Buren County, Michigan. PDR—Kalamazoo Public Library, 315 South Rose Street, Kalamazoo, Michigan 49006.

DAIRYLAND POWER COOPERATIVE

LaCrosse (License No. DPR-45), Monroe County, Wisconsin. PDR—LaCrosse Public Library, 800 Main Street, LaCrosse, Wisconsin 54601.

DUKE POWER CO.

Oconee Units 1, 2, and 3 (License Nos. DPR-38, DPR-47 and DPR-55), Oconee County, South Carolina. PDR—Oconee County Library, 201 S. Spring Street, Walhalla, South Carolina 29691.

DUQUESNE LIGHT CO.

Beaver Valley 1 (License No. DPR-66), Beaver County, Pennsylvania. PDR—Beaver Area Memorial Library, 100 College Avenue, Beaver, Pennsylvania 15009.

FLORIDA POWER CORP.

Crystal River 3 (License No. DPR-72), Citrus County, Florida. PDR—Crystal River Public Library, Crystal River, Florida 32629.

FLORIDA POWER & LIGHT CO.

St. Lucie 1 (License No. DPR-67), St. Lucie County, Florida. PDR—Indian River Junior College Library, 3209 Virginia Avenue, Ft. Pierce, Florida 33450.

Turkey Point 3 and 4 (License Nos. DPR-31 and DPR-41), Dade County, Florida. PDR—Environmental & Urban Affairs Library, Florida International University, Miami, Florida 33199.

GEORGIA POWER CO.

Edwin I. Hatch 1 (License No. DPR-57), Appling County, Georgia. PDR—Appling County Public Library, Parker Street, Baxley, Georgia 31513.

INDIANA AND MICHIGAN ELECTRIC CO.

D. C. Cook 1 (License No. DPR-58), Berrien County, Michigan. PDR—Maude Reston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

IOWA ELECTRIC LIGHT & POWER CO.

Duane Arnold (License No. DPR-49), Linn County, Iowa. PDR—Cedar Rapids Public Library, 426 Third Avenue, S.E., Cedar Rapids, Iowa 52401.

JERSEY CENTRAL POWER & LIGHT CO.

Oyster Creek 1 (License No. DPR-16), Ocean County, New Jersey. PDR—Ocean County Library, 15 Hooper Avenue, Toms River, New Jersey 08753.

MAINE YANKEE ATOMIC POWER CO.

Maine Yankee (License No. DPR-36), Lincoln County, Maine. PDR—Wiscasset Public Library Association, High Street, Wiscasset, Maine 04578.

METROPOLITAN EDISON CO.

Three Mile Island 1 (License No. DPR-50), Dauphin County, Pennsylvania. PDR—Government Publications Section, State Library of Pennsylvania, Box 1601 (Education Building), Harrisburg, Pennsylvania 17126.

NEBRASKA PUBLIC POWER DISTRICT

Cooper Station (License No. DPR-46), Nemaha County, Nebraska. PDR—Auburn Public Library, 118-15th Street, Auburn, Nebraska 68305.

NIAGARA MOHAWK POWER CORP.

Nine Mile Point 1 (License No. DPR-63), Oswego County, New York. PDR—Oswego City Library, 120 E. Second Street, Oswego, New York 13126.

NORTHEAST NUCLEAR ENERGY CO.

Millstone 1 and 2 (License Nos. DPR-21 and DPR-65), New London County, Connecticut. PDR—Waterford Public Library, Rope Ferry Road, Route 156, Waterford, Connecticut 06385.

NORTHERN STATES POWER CO.

Monticello (License No. DPR-22), Wright County, Minnesota. PDR—Environmental Conservation Library, Minneapolis Public Library, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Prairie Island 1 and 2 (License Nos. DPR-42 and DPR-60), Goodhue County, Minnesota. PDR—Environmental Conservation Library, Minneapolis Public Library, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

OMAHA PUBLIC POWER DISTRICT

Fort Calhoun (License No. DPR-40), Washington County, Nebraska. PDR—Blair Public Library, 1665 Lincoln Street, Blair, Nebraska 68008.

PACIFIC GAS & ELECTRIC CO.

Humboldt Bay (License No. DPR-7), Humboldt County, California. PDR—Humboldt County Library, 636 F Street, Eureka, California 95501.

PHILADELPHIA ELECTRIC CO.

Peach Bottom 2 and 3 (License Nos. DPR-44 and DPR-56), York County, Pennsylvania. PDR—Martin Memorial Library, 159 East Market Street, York, Pennsylvania 17401.

PORTLAND GENERAL ELECTRIC CO.

Trojan (License No. NPF-1), Columbia County, Oregon. PDR—Columbia County Courthouse, Law Library, Circuit Court Room, St. Helens, Oregon 97051.

POWER AUTHORITY OF THE STATE OF NEW YORK

Fitzpatrick (License No. DPR-59), Oswego County, New York. PDR—Oswego City Library, 120 East Second Street, Oswego, New York 13126.

PUBLIC SERVICE CO. OF COLORADO

Fort St. Vrain (License No. DPR-34), Weld County, Colorado. Greeley Public Library, City Complex Building, Greeley, Colorado 80631.

PUBLIC SERVICE ELECTRIC & GAS CO.

Salem (License No. DPR-70), Salem County, New Jersey. PDR—Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079.

ROCHESTER GAS & ELECTRIC CORP.

R. E. Ginna 1 (License No. DPR-18), Wayne County, New York. PDR—Lyons Public Library, 67 Canal Street, Lyons, New York 14489 and Rochester Public Library, 115 South Avenue, Rochester, New York 14627.

SACRAMENTO MUNICIPAL UTILITY DISTRICT

Rancho Seco (License No. DPR-54), Sacramento County, California. PDR—Sacramento City-County Library, 828 I Street, Sacramento, California 95814.

SOUTHERN CALIFORNIA EDISON CO.

San Onofre 1 (License No. DPR-13); San Diego County, California. DPR—Mission Viejo Branch Library, 24851 Christanta Drive, Mission Viejo, California.

TENNESSEE VALLEY AUTHORITY

Browns Ferry, 1, 2 and 3 (License Nos. DPR-33, DPR-52, DPR-68), Limestone County, Alabama. DPR—Athens Public Library, South and Forrest, Athens, Alabama 35611.

VERMONT YANKEE NUCLEAR POWER CORP.

Vermont Yankee (License No. DPR-28), Windham County, Vermont. PDR—Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont 05301.

VIRGINIA ELECTRIC & POWER CO.

Surry Units 1 and 2 (License Nos. DPR-32 and DPR-37), Surry County, Virgina. DPR—Swem Library, College of William & Mary, Williamsburg, Virginia 23185.

WISCONSIN MICHIGAN POWER CO.

Point Beach Units 1 and 2 (License Nos. DPR-24 and DPR-27), Manitowoc County, Wisconsin. PDR—Document Department, University of Wisconsin—Stevens Point Library, Stevens Point, Wisconsin 54481.

WISCONSIN PUBLIC SERVICE CORP.

Kewaunee (License No. DPR-43), Kewaunee County, Wisconsin. PDR—Kewaunee Public Library, 314 Milwaukee Street, Kewaunee, Wisconsin 54216.

YANKEE ATOMIC ELECTRIC CO.

Yankee Rowe (License No. DPR-3), Franklin County, Massachusetts. PDR—Greenfield Public Library, 402 Main Street, Greenfield, Massachusetts 05181.

In accordance with the procedures specified in 10 CFR 2.206 appropriate action will be taken on this request within a reasonable time.

Preliminary evaluation by Staff shows that no immediate action is necessary.

A copy of the request is available for inspection in the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. 20555, and at the above mentioned Local Public Document Rooms.

For the Nuclear Regulatory Commission.

Dated at Bethesda, Maryland this 14th day of January, 1977.

BEN C. RUSCHE,
Director, Office of Nuclear Reactor Regulation.

[FR Doc.77-2047 Filed 1-21-77;8:45 am]

[Docket Nos. 50-329 and 50-330]

CONSUMERS POWER CO. MIDLAND PLANT, UNIT NOS. 1 AND 2

Availability of Draft Supplement to Final Environmental Statement for Midland Plant, Unit Nos. 1 and 2

Notice is hereby given that a Draft Supplement to the Final Environmental Statement prepared by the Commission's Office of Nuclear Reactor Regulation related to the continuance of construction of the Midland Plant, Unit Nos. 1 and 2, in Midland County, Michigan, by the Consumers Power Company, is available for inspection by the public in the Commission's Public Document Room at 1717 H Street, N.W., Washington, D.C., and in the Grace Dow Memorial Library, 1710 West St. Andrews Road, Midland, Michigan. The draft supplemental statement is also being made available at the Office of Intergovernmental Relations, Department of Management and Budget, 2nd Floor, Lewis Cass Building, Lansing, Michigan 48909. Requests for copies of the Draft Supplement to the Final Environmental Statement should be addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Site Safety and Environmental Analysis.

In March 1972 the Atomic Energy Commission (now the Nuclear Regulatory Commission) issued a Final Environmental Statement for the Midland Plant, Unit Nos. 1 and 2 (37 FR 7012) (copies of the FES (NUREG-0149) may be purchased from the National Technical Information Service, Springfield, Virginia 22161, at a cost of $10.75 for printed copy or $3.00 for microfiche). The purpose of this supplement to the Final Environmental Statement is to respond to the July 21, 1976 rulings of the U.S. Court of Appeals for the District of Columbia remanding to the NRC for further proceedings the Commission's orders granting construction permits for the Midland Plant, Unit Nos. 1 and 2. This supplement to the FES was prepared to assess energy conservation as an alternative to plant construction, to reevaluate the need for power in light of any changed circumstances concerning Dow Chemical Company's need for process steam, and to restrike the cost/benefit balance in light of these matters and the incremental environmental effects of nuclear waste disposal and waste reprocessing attributable to Midland. In addition, the staff considered whether any unanticipated significant adverse effects have occurred to date as a result of construction activities thus far.

Interested persons may submit comments on the Draft Supplement to the Final Environmental Statement for the Commission's consideration. Federal and State agencies are being provided with copies of the draft supplemental statement (local agencies may obtain these documents upon request). Comments are due by March 7, 1977. Comments by Federal, State and local officials or other persons received by the Commission will be made available for public inspection at the Commission's Public Document Room in Washington, D.C., and the Grace Dow Memorial Library, Midland, Michigan. Upon consideration of comments submitted with respect to the draft supplemental statement, the Commission's staff will prepare a final supplemental statement, the availability of which will be published in the FEDERAL REGISTER.

Comments on the Draft Supplement to the Final Environmental Statement from interested persons or the public should be addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Site Safety and Environmental Analysis.

Dated at Rockville, Maryland this 13th day of January 1977.

For the Nuclear Regulatory Commission.

WM. H. REGAN, JR.,
Chief, Environmental Projects Branch 2, Division of Site Safety and Environmental Analysis.

[FR Doc.77-2018 Filed 1-21-77;8:45 am]

[Docket No. 50-335]

FLORIDA POWER & LIGHT CO.

Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 11 to Facility Operating License No. DPR-67, issued to Florida Power & Light Company (the licensee), which revised the Technical Specifications for operation of the St. Lucie Plant Unit No. 1 (the facility) located in St. Lucie County, Florida. The amendment is effective as of its date of issuance.

The amendment revises the Control Element Assembly (CEA) Block Circuit surveillance requirements.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated July 9, 1976, (2) Amendment No. 11 to License No. DPR-67, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the Indian River Junior College Library, 3209 Virginia Avenue, Ft. Pierce, Florida 33450. A single copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Maryland, this 10th day of January 1977.

For the Nuclear Regulatory Commission.

DENNIS L. ZIEMANN,
Chief, Operating Reactors Branch No. 2, Division of Operating Reactors.

[FR Doc.77-2023 Filed 1-21-77;8:45 am]

[Docket Nos. 50-498A, 50-499A]

HOUSTON LIGHTING AND POWER CO. ET AL.

Order Regarding Oral Argument

JANUARY 13, 1977.

In the matter of Houston Lighting and Power Company, the City of San Antonio, the City of Austin, and Central Power and Light Company (South Texas Project, Unit Nos. 1 and 2).

Oral argument on the staff's appeal from the Licensing Board's September 9, 1976 order, as clarified in a November 15, 1976 order, is hereby calendared for 10 a.m. on Wednesday, February 2, 1977, in the Commission's Hearing Room, 5th floor, East-West Towers, 4350 East West Highway, Bethesda, Maryland. A total of one hour is allotted to each side for the presentation of argument. The Secretary to this Board is to be notified, by letter mailed no later than January 25, 1977, of the names of counsel intending to participate in the argument.

It is so ordered.

For the Atomic Safety and Licensing Appeal Board.

MARGARET E. DU FLO,
Secretary to the Appeal Board.

[FR Doc.77-2025 Filed 1-21-77;8:45 am]

[Docket No. 50-247]

INDIAN POINT NUCLEAR GENERATING UNIT NO. 2

Availabilty of Supplemental Partial Initial Decision and Issuance of Amendment to Facility Operating License No. DPR-26

Pursuant to the National Environmental Policy Act of 1969 and the United States Nuclear Regulatory Commission's Regulations in 10 CFR Part 51, notice is hereby given that a Supplemental Partial Initial Decision dated December 27, 1976, has been issued by the Atomic Safety and Licensing Board in the above captioned proceeding authorizing issuance of a license amendment to the Consolidated Edison Company of New York, Inc., for operation of Indian Point Nuclear Generating Unit No. 2, located in Westchester County, New York.

The Supplemental Partial Initial Decision is available for inspection by the public in the Commission's Public Document Room at 1717 H Street, N.W., Washington, D.C., and in the Hendrick Hudson Free Library, 31 Albany Post Road, Montrose, New York 10548. The Supplemental Partial Initial Decision is also being made available at the New York State Division of the Budget, State Capital, Albany, New York 12224, and the Tri-State Regional Planning Commission, 1 World Trade Center, 56 South Street, New York, New York 10048.

Any decision or action taken by the Atomic Safety and Licensing Board in connection with the Supplemental Partial Initial Decision may be reviewed by the Atomic Safety and Licensing Appeal Board.

Pursuant to the above mentioned Supplemental Partial Initial Decision, the Nuclear Regulatory Commission (the Commission) has issued Amendment No. 27 to Facility Operating License DPR-26 to Consolidated Edison Company of New York, Inc., for operation of a pressurized water nuclear reactor known as the Indian Point Nuclear Generating Unit No. 2. The license is amended by a change which states that the final termination date of one-through cooling is May 1, 1980.

The Commission has made appropriate findings as required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations in 10 CFR Chapter 1, which are set forth in the license amendment. The application for the license amendment complies with the standards and requirements of the Act and the Commission's rules and regulations.

The license amendment is effective as of its date of issuance.

Copies of the (1) Supplemental Partial Initial Decision dated December 27, 1976 and (2) Amendment No. 27 to Facility Operating License DPR-26 are available for public inspection at the above designated locations in Washington, D.C., and New York. Single copies of both items may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Site Safety and Environmental Analysis.

Dated at Bethesda, Maryland, this 12th day of January 1977.

For the Nuclear Regulatory Commission.

ROBERT W. REID,
Chief, Operating Reactors Branch No. 4, Division of Operating Reactors.

[FR Doc.77-2020 Filed 1-21-77;8:45 am]

[Docket No. 50-315]

INDIANA AND MICHIGAN ELECTRIC CO. AND INDIANA AND MICHIGAN POWER CO.

Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 17 to Facility Operating License No. DPR-58, issued to Indiana and Michigan Electric Company and Indiana and Michigan Power Company (the licensees), which revised the Technical Specifications for operation of the Donald C. Cook Nuclear Plant Unit No. 1 (the facility), located in Berrien County, Michigan. The amendment is effective as of the date of its issuance.

The amendment changed the Appendix B Technical Specifications to substitute an annual Environmental Operating Report for the presently required semi-annual report and to eliminate certain beach erosion monitoring requirements at the D.C. Cook plant site.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate finding as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR § 51.5(d)(4), an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the August 2, 1976 letters of application for amendment, and (2) Amendment No. 17 to License No. DPR-58. Both of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., and at the Maude Preston Palinske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085. A single copy of item (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Maryland, this 6th day of January 1977.

For the Nuclear Regulatory Commission.

DENNIS L. ZIEMANN,
Chief, Operating Reactors Branch No. 2, Division of Operating Reactors.

[FR Doc.77-2022 Filed 1-21-77;8:45 am]

[Docket Nos. STN 50-546, STN 50-547]

PUBLIC SERVICE COMPANY OF INDIANA, INC.

Notice of Evidentiary Hearing on Environmental Issues

In the matter of Public Service Company of Indiana, Inc. (Marble Hill Nuclear Generating Station, Units 1 and 2).

An evidentiary hearing on environmental issues will be held at the Madison-Jefferson County Public Library, 420 West Main Street, Madison, Indiana. The hearing will begin at 9:30 a.m. (local time) on February 15, 1977. It is anticipated that it will continue for two weeks.

The public is invited to attend. Limited appearance statements will be called for at the commencement of the proceeding. Oral statements will be limited to five (5) minutes each but a written statement without limitation on length may be submitted to the Board.

It is so ordered.

Dated at Bethesda, Maryland, this 12th day of January 1977.

For the Atomic Safety and Licensing Board.

ELIZABETH S. BOWERS,
Chairman.

[FR Doc.77-2024 Filed 1-21-77;8:45 am]

[Dockets Nos. 50-280 and 50-281]

VIRGINIA ELECTRIC & POWER CO.

Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendments No. 27 to Facility Operating Licenses Nos. DPR-32 and DPR-37, issued to Virginia Electric & Power Company (the licensee), which revised Technical Specifications for operation of the Surry Power Station Units Nos. 1 and 2 (the facilities) located in Surry County, Virginia. The amendments are effective as of the date of issuance.

The amendments revise the Technical Specifications to remove temporary restrictions, imposed by the Commission's Amendments No. 7 dated June 16, 1975, on power operation of certain valve motor operators in emergency core cooling system pipe lines.

The application for the amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments. Prior public notice of these amendments was not required since the amendments do not involve a significant hazards consideration.

The Commission has determined that the issuance of these amendments will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement, or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of these amendments.

For further details with respect to this action, see (1) the application for amendments dated June 30, 1976, as supplemented October 28, 1976, (2) Amendments No. 27 to Licenses Nos. DPR-32 and DPR-37, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the Swem Library, College of William & Mary, Williamsburg, Virginia.

A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Maryland, this 6th day of January 1977.

For the Nuclear Regulatory Commission.

ROBERT W. REID,
Chief, Operating Reactors Branch No. 4, Division of Operating Reactors.

[FR Doc.77-2021 Filed 1-21-77;8:45 am]

[Docket No. 50-576]

WESTINGHOUSE ELECTRIC CORP.

Application for and Consideration of Issuance of Facility Export License

Please take notice that Westinghouse Electric Corporation, Pittsburgh, Pennsylvania, has submitted to the Nuclear Regulatory Commission an application for a license to authorize the export of a pressurized water reactor with a thermal power level of 2,785 megawatts to Spain and that the issuance of such license is under consideration by the Nuclear Regulatory Commission.

No license authorizing the proposed reactor export will be issued until the Nuclear Regulatory Commission determines that such export is within the scope of and consistent with the terms of an applicable agreement for cooperation arranged pursuant to Section 123 of the Atomic Energy Act of 1954, as amended (Act), nor until the Nuclear Regulatory Commission has found that:

(a) The application compiles with the requirements of the Act, and the Commission's regulations set forth in 10 CFR, Chapter 1, and

(b) The reactor proposed to be exported is a utilization facility as defined in said Act and regulations.

In its review of applications solely to authorize the export of production or utilization facilities, the Nuclear Regulatory Commission does not evaluate the health and safety characteristics of the facility to be exported. Consequently, there are no safety analysis or Advisory Committee on Reactor Safeguards reports.

Unless on or before February 23, 1977, a request for a hearing is filed with the Nuclear Regulatory Commission by the applicant, or a petition for leave to intervene is filed by any person whose interest may be affected by the proceeding, the Director of the Office of International Programs may, upon the determinations and findings noted above, cause to be issued to Westinghouse Electric Corporation a facility export license and may cause to be published in the FEDERAL REGISTER a notice of issuance of the license. If a request for a hearing or a petition for leave to intervene is filed within the time prescribed in the notice, the Nuclear Regulatory Commission will issue a notice of hearing or an appropriate order.

A copy of the application is on file in the Nuclear Regulatory Commission's Public Document Room located at 1717 H Street, NW., Washington, D.C.

Dated at Bethesda, Maryland, this 10th day of January 1977.

For the Nuclear Regulatory Commission.

MICHAEL A. GUHIN,
Assistant Director, Export/Import and International Safeguards, Office of International Programs.

[FR Doc.77-2019 Filed 1-21-77;8:45 am]

ADVISORY COMMITTEE ON REACTOR SAFEGUARDS SUBCOMMITTEE ON REGULATORY ACTIVITIES

Meeting

In accordance with the purposes of Sections 29 and 182 b. of the Atomic Energy Act (42 U.S.C. 2039, 2232 b.), the Advisory Committee on Reactor Safeguards Subcommittee on Regulatory Activities will hold a meeting on February 9, 1977 in Room 1046, 1717 H Street, N.W., Washington, D.C. 20555.

The agenda for the above meeting will be as follows:

Wednesday, February 9, 1977

(A) *8:45 a.m. until about 11:00 a.m.* (Open).

The Subcommittee will hear presentations from the NRC Staff and will hold discussions with this group pertinent to the following items:

(1) Regulatory Guide 1.118, "Periodic Testing of Electric Power and Protection Systems."

(2) Regulatory Guide 1.119, Revision 1, "Surveillance Program for New Fuel Assembly Designs."

(3) A Working Paper, Regulatory Guide 1.XX, "Site Investigations for Foundations of Nuclear Power Facilities."

(B) *11:00 a.m. until the close of business.* (Open).

The Subcommittee will hear presentations from the NRC Staff and will hold discussions with this group pertinent to activities which affect the current licensing process or reactor operations, including those relating to the following:

(1) Practices and Procedures for Correction of ECCS Errors for Operating Power Plants.

Other matters which may be of a predecisional nature relevant to reactor operation or licensing activities may be discussed during this session.

Portions of this session may be closed if required to discuss proprietary material related to the design, construction, or operation of specific equipment.

I have determined, in accordance with Subsection 10(d) of Public Law 92-463, that it may be necessary to close portions of the meeting as noted above to protect proprietary data under 5 U.S.C. 552(b)(4).

Practical considerations may dictate alterations in the above agenda or schedule. The Chairman of the Subcommittee is empowered to conduct the meeting in a manner that, in his judgment, will facilitate the orderly conduct of business, including provisions to carry over an incompleted open session from one day to the next.

The Advisory Committee on Reactor Safeguards is an independent group established by Congress to review and report on each application for a construction permit and on each application for an operating license for a reactor facility and on certain other nuclear safety matters. The Committee's reports become a part of the public records. Although ACRS meetings are ordinarily open to the public and provide for oral or written statements to be considered as a part of the Committee's information gathering procedure concerning the health and safety of the public, they are not adjudicatory type hearings such as are conducted by the Nuclear Regulatory Commission's Atomic Safety & Licensing Board as part of the Commission's licensing process. ACRS meetings do not normally treat matters pertaining to environmental impacts outside the safety area.

With respect to public participation in the open portion of the meeting, the following requirements shall apply:

(A) Persons wishing to submit written statements regarding Regulatory Guides 1.118 and 1.119 may do so by providing a readily reproducible copy to the Subcommittee at the beginning of the meeting. Such comments shall be based upon documents on file and available for public inspection at the NRC Public Document Room, 1717 H St., N.W., Washington, DC 20555.

Persons desiring to mail written comments may do so by sending a readily reproducible copy thereof in time for consideration at this meeting. Comments postmarked no later than February 2, 1977 to Mr. G. R. Quittschreiber, ACRS, NRC, Washington, DC 20555 will normally be received in time to be considered at this meeting.

(B) Those persons wishing to make an oral statement at the meeting should make a written request to do so, identifying the topics and desired presentation time so that appropriate arrangements can be made. The Committee will receive oral statements on topics relevant to the Committee's purview at an appropriate time chosen by the Chairman of the Subcommittee.

(C) Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the Office of the Executive Director of the Committee (telephone 202/634-1374, Attn: Mr. G. R. Quittschreiber) between 8:15 a.m. and 5:00 p.m., EST.

(D) Questions may be propounded only by members of the Subcommittee and its consultants.

(E) The use of still, motion picture, and television cameras, the physical installation and presence of which will not interfere with the conduct of the meeting, will be permitted both before and after the meeting and during any recess. The use of such equipment will not, however, be allowed while the meeting is in session.

(F) Persons with agreements or orders permitting access to proprietary information may attend portions of ACRS meetings where this material is being discussed upon confirmation that such agreements are effective and relate to the material being discussed.

The Executive Director of the ACRS should be informed of such an agreement at least three working days prior to the meeting so that the agreement can be confirmed and a determination can be made regarding the applicability of the agreement to the material that will be discussed during the meeting. Minimum information provided should include information regarding the date of the agreement, the scope of material included in the agreement, the project or projects involved, and the names and titles of the persons signing the agreement. Additional information may be requested to identify the specific agreement involved. A copy of the executed agreement should be provided to Mr. G. R. Quittschreiber of the ACRS Office, prior to the beginning of the meeting.

(G) A copy of the transcript of the open portion(s) of the meeting where factual information is presented and a copy of the minutes of the meeting will be available for inspection at the NRC Public Document Room, 1717 H St., NW., Washington, D.C. 20555 on or after February 16, 1977, and May 9, 1977, respectively.

Copies may be obtained upon payment of appropriate charges.

JOHN C. HOYLE,
Advisory Committee Management Officer.

JANUARY 19, 1977.

[FR Doc.77-2289 Filed 1-21-77;8:45 am]

ADVISORY COMMITTEE ON REACTOR SAFEGUARDS SUBCOMMITTEE ON SEISMIC ACTIVITY

Meeting

In accordance with the purposes of Sections 29 and 182b of the Atomic Energy Act (42 U.S.C. 2039, 2232b.), the ACRS Subcommittee on Seismic Activities will meet on February 8 and 9, 1977 at the Ramada Inn, 8400 Wisconsin Avenue, Bethesda, Maryland 20014. The purpose of this meeting is to discuss recent seismic related developments, ground motion for seismic design, soil-structure interaction, and to review seismic related matters referred to the ACRS by the NRC.

The agenda for this meeting shall be as follows:

Tuesday, February 8, and Wednesday, February 9, 1977 from 8:30 a.m. until approximately 9:00 p.m. each day, or until conclusion of business on February 9. (Open)

The two-day meeting will include presentations by invited speakers. Topics will concern recent seismic related developments, ground motion for seismic design, and soil-structure interaction. In addition, the Subcommittee will review seismic related matters referred to the ACRS by the NRC.

The Subcommittee may caucus to determine whether matters have been adequately covered and whether they are ready for review by the full Committee. During the session Subcommittee members and consultants will discuss their opinions and recommendations on these matters.

Practical considerations may dictate alterations in the above agenda or schedule. The Chairman of the Subcommittee is empowered to conduct the meeting in a manner that, in his judgment, will facilitate the orderly conduct of business, including provisions to carry over an incompleted open session from one day to the next.

The Advisory Committee on Reactor Safeguards is an independent group established by Congress to review and report on each application for a construction permit and on each application for an operating license for a reactor facility and on certain other nuclear safety matters. The Committee's reports become a part of the public record. Although ACRS meetings are ordinarily open to the public and provide for oral or written statements to be considered as a part of the Committee's information gathering procedure concerning the health and safety of the public, they are not adjudicatory type hearings such as are conducted by the Nuclear Regulatory Commission's Atomic Safety & Licensing Board as part of the Commission's licensing process. ACRS meetings do not normally treat matters pertaining to environmental impacts outside the safety area.

With respect to public participation in the open portion of the meeting, the following requirements shall apply:

(a) Persons wishing to submit written statements regarding the agenda may do so by providing a readily reproducible copy to the Subcommittee at the beginning of the meeting. Comments should be limited to safety related areas within the Committee's purview.

Persons desiring to mail written comments may do so by sending a readily reproducible copy thereof in time for consideration at this meeting. Comments postmarked no later than February 1, 1977 to Mr. Thomas G. McCreless, ACRS, NRC, Washington, DC 20555, will normally be received in time to be considered at this meeting.

(b) Persons desiring to make an oral statement at the meeting should make a written request to do so, identifying the topics and desired presentation time so

that appropriate arrangements can be made. The Subcommittee will receive oral statements on topics relevant to its purview at an appropriate time chosen by the Chairman.

(c) Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call on February 7, 1977 to the Office of the Executive Director of the Committee (telephone 202/634-1374, Attn: Mr. Thomas G. McCreless) between 8:15 a.m. and 5:00 p.m., est.

(d) Questions may be propounded only by members of the Subcommittee and its consultants.

(e) The use of still, motion picture, and television cameras, the physical installation and presense of which will not interfere with the conduct of the meeting, will be permitted both before and after the meeting and during any recess. The use of such equipment will not, however, be allowed while the meeting is in session.

(f) A copy of the transcript of the portion(s) of the meeting where factual information is presented and a copy of the minutes of the meeting will be available for inspection on or after February 15, and May 2, 1977, respectively, at the NRC Public Document Room, 1717 H St., N.W., Washington, DC 20555.

Copies may be obtained upon payment of appropriate charges.

JOHN C. HOYLE,
Advisory Committee Management Officer.

JANUARY 18, 1977.

[FR Doc.77-2290 Filed 1-21-77;8:45 am]

POSTAL SERVICE

PREPARATION REQUIREMENTS FOR BULK RATE THIRD-CLASS MAIL

Erroneous Interpretation of Packaging Requirements; Delayed Compliance Date

In the Postal Bulletin of December 30, 1976, the Postal Service published a notice on preparation of bulk third-class mail, which stated, among other things, that in order to be eligible for acceptance, bulk third-class mail must be presorted by ZIP Codes in packages and sacks in accordance with 134.43, Postal Service Manual. The pieces in a bulk third-class mailing must be faced, correctly oriented for reading of the addresses, and secured in ZIP Coded packages in a manner which will preserve the facing and ZIP Coded sortation during handling.

Placing non-packageable items loose in sacks or other containers is not sufficient to meet prescribed bulk rate preparation requirements. Such mailings are properly chargeable with postage at the single third-class rate.

Managers of bulk mail acceptance units must give this matter close supervision to protect postal revenues.

The above Postal Bulletin notice merely served as a reminder to postal managers of the long-standing presorting, ZIP Coding, and packaging requirements of 134.43 of the Postal Service Manual, requirements that were put into effect on January 1, 1967, after a public rulemaking proceeding, see 30 FR 8477 (July 2, 1965). It appears now that some postal customers and post offices interpreted these requirements erroneously and accepted improperly prepared and packaged pieces at the bulk third-class rate for many years. In addition, we have now determined it is possible to prepare cylindrical packages and mailing tubes in accordance with § 134.43, Postal Service Manual, and if such items are correctly packaged they may be accepted at the bulk rates. Therefore, in view of these circumstances, and to mitigate the effect of an otherwise sudden insistence on following Postal Service packaging requirements, the Postal Service will permit mailers who have been operating under such erroneous interpretations to continue to do so until April 14, 1977, at which time all post offices will enforce all third-class bulk rate mail preparation requirements fully in accordance with 134.43 of the Postal Service Manual.

ROGER P. CRAIG,
Deputy General Counsel.

[FR Doc.77-1663 Filed 1-21-77;8:45 am]

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[FRA Waiver Petition No. HS-77-1]

SIERRA RAILROAD CO.

Petition for Exemption from Hours of Service Act

The Sierra Railroad Company has petitioned the Federal Railroad Administration pursuant to 45 U.S.C. 64a(e) for an exemption, with respect to certain employees, from the Hours of Service Act, as amended, 45 U.S.C. 61-64(b).

Interested persons are invited to participate in this proceeding by submitting written data, views, or comments. Communications should be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Attention: FRA Waiver Petition No. HS-77-1, Room 5101, 400 Seventh Street, S.W., Washington, D.C. 20590. Communications received before March 10, 1977, will be considered before final action is taken on this petition. All comments received will be available for examination by interested persons during business hours in Room 5101, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590.

Issued in Washington, D.C., on January 13, 1977.

DONALD W. BENNETT,
Chairman, Railroad Safety Board.

[FR Doc.77-2668 Filed 1-21-77;8:45 am]

Federal Aviation Administration

RNAV POLICY STATEMENT

Correction

In FR Doc. 77-841 appearing on page 2738 in the issue of Thursday, January 13, 1977 on page 2739, the first full paragraph should be corrected to read as follows:

To be responsive to current and near-term RNAV users, the FAA will determine RNAV user needs and take positive steps to facilitate RNAV use within the existing air traffic control environment. This will include:

Eliminating existing RNAV routes which do not respond to user requirements.
Establishing, on a case-by-case basis, RNAV routes with the accompanying RNAV transition segments, SIDs and STARs.
Promoting the establishment of RNAV approaches at noninstrumented airports.
Establishing a continuing program to educate pilots, air traffic controllers, flight service specialists and flight standards specialists about RNAV and its capabilities.
Developing a national waypoint system to facilitate pilot selection of direct routes.
Development and promulgation of RNAV avionics minimum performance standards.

DEPARTMENT OF THE TREASURY

Office of the Secretary

ADVISORY COMMITTEE ON PRIVATE PHILANTHROPY AND PUBLIC NEEDS

Appointment of Members

Secretary of the Treasury William E. Simon announced on January 6, 1977 the appointment of members of the Advisory Committee on Private Philanthropy and Public Needs. Appointments are subject to tax and security checks. Members will serve two-year terms without pay.

The Committee will advise the Treasury Department on tax aspects of private philanthropy, standards for philanthropic institutions, and needed information and data on private giving and philanthropic activities. Establishment of the Committee was announced in the FEDERAL REGISTER of November 29, 1976 (41 FR 52352).

C. Douglas Dillon, former Treasury Secretary and Chairman of the Metropolitan Museum of Art in New York is Chairman of the Committee. Committee Sponsor is Treasury Deputy Secretary George Dixon. Committee Coordinator is Gabriel Rudney of the Treasury Department.

The Committee is expected to meet quarterly. Meetings will be open to the public. Public notice of pending meetings will be published in the FEDERAL REGISTER.

Members of the Advisory Committee, in addition to Mr. Dillon, are:

William Aramony (National Executive, United Way, Washington, D.C.).
Robert Biendon (Vice President, Robert Wood Johnson Foundation, Princeton, New Jersey).
Kingman Brewster (President, Yale University, New Haven, Connecticut).
David Cohen (Executive Director, Common Cause, Washington, D.C.).
Leonard Conway (President, Youth Project, Washington, D.C.).
Bruce Dayton (Chairman, Executive Committee and Chief Financial Officer, Dayton Hudson Corporation, Minneapolis, Minnesota).
Pablo Eisenberg (President, Center for Community Change, Washington, D.C.).
John Filer (Chairman, Aetna Life and Casualty Company, Hartford, Connecticut).
Marion Fremont-Smith (Partner, Choate, Hall and Stewart, Boston, Massachusetts).
Mary Gardiner Jones (President, National Consumers League, Washington, D.C.).
James Joseph (President, Cummins Engine Foundation, Columbus, Indiana).
Vilma Martinez (President, Mexican-American Legal Defense and Education Fund, San Francisco, California).
Walter McNerney (President, Blue Cross Association, Chicago, Illinois).
John Nolan (Partner, Miller and Chevalier, Washington, D.C.).
Ernest Osborne (President, Sachem Fund, New Haven, Connecticut).
Alan Pifer (President, Carnegie Corporation, New York, New York).
George Romney (President, National Center for Voluntary Action, Washington, D.C.).
William Matson Roth, (President, San Francisco Museum of Art, San Francisco, California).
Eleanor Sheldon (President, Social Science Research Council, New York, New York).
Leonard Silverstein (Partner, Silverstein and Mullens, Washington, D.C.).
Thomas Troyer (Partner, Caplin and Drysdale, Washington, D.C.).
Wes Uhlman (Mayor, City of Seattle, Washington).
Paul Ylvisaker (Dean, Harvard Graduate School of Education, Boston, Massachusetts).
H. J. Zoffer (Dean, Graduate School of Business, University of Pittsburgh, Pittsburgh, Pennsylvania).

GEORGE H. DIXON,
Deputy Secretary of the Treasury.

[FR Doc.77-2128 Filed 1-21-77;8:45 am]

U.S.A. AND ITALY TO NEGOTIATE REVISED INCOME TAX TREATY

Announcement

The Treasury Department today announced that representatives of the United States and Italy will meet in Rome during the week of February 14, 1977 to renegotiate the income tax treaty between the two countries.

The existing income tax treaty was signed in 1955 and has been in effect since 1956. During the past 20 years, many tax treaty concepts have been modified, particularly as a result of the work of the Fiscal Committee of the Organization for Economic Cooperation and Development (OECD). Consequently, the 1955 U.S.A.-Italy treaty is now outmoded in a number of respects. Moreover, the extensive changes in Italian income tax law, effective in January 1947, raised doubts about the continued applicability of the treaty, which has continued in effect under the terms of an interim agreement negotiated in December 1974 pending renegotiation of the treaty.

The new treaty will be based on the draft U.S.A. model income tax treaty published by the Treasury Department on May 18, 1976 it will also take into account the OECD Model Draft as well as other recent treaties concluded by the United States and Italy.

Interested persons are invited to submit comments in writing by February 11, 1977 to the Assistant Secretary for Tax Policy, U.S. Treasury Department, Room 3108, Washington, D.C. 20220.

CHARLES I. KINGSON,
Acting International Tax Counsel.

[FR Doc.77-2069 Filed 1-21-77;8:45 am]

INTERSTATE COMMERCE COMMISSION

[Notice No. 309]

ASSIGNMENT OF HEARINGS

JANUARY 18, 1977.

Cases assigned for hearing, postponement, cancellation or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the Official Docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested.

MC 141663, Robert E. Moore, d b a Moore Trucking Company, now assigned February 15, 1977 at Greensboro, N.C., will be held in Court No. 1, 3rd Floor, U.S. Post Office & Courthouse Building.
MC 138627 (Sub-No. 11), Smithway Motor Xpress, Inc., now assigned February 1, 1977, at Kansas City, Mo. is canceled and application dismissed.
MC 142066 (Sub-No. 1), Theophane Lawrence Schlegal and Diana Gayle Schlegal d/b/a Central Pacific Freight Lines, now being assigned March 8, 1977 (1 day) at Port Orford, Oregon, in the City Hall Council Chambers 555 West 20th Street and continued to March 9, 1977 (2 days) at Brookings, Oregon, in the City Hall Council Chambers, 898 Elk Drive.
MC 142134, Donald J. Bryden, dba Bryden Trucking now being assigned March 8, 1977 (1 day) at Seattle, Washington in a hearing room to be later designated.
MC 124004 Sub 34, Richard Dahn, Inc., now being assigned March 15, 1977, at the Office of Interstate Commerce Commission, Washington, D.C.
MC 124896 Sub 15, Williamson Truck Lines, Inc., now being assigned March 16, 1977, at the Office of Interstate Commerce Commission, Washington, D.C.
MC 103066 Sub 46 Stone Trucking Company, now being assigned April 6, 1977, at the Office of Interstate Commerce Commission, Washington, D.C.
MC 140563 Sub 7, W. T. Myles Transportation Co., now being assigned March 8, 1977, at the Office of the Interstate Commerce Commission, Washington, D.C.
MC 115311 Sub 195, J & M Transportation Co., Inc., now being assigned February 22, 1977, at the Office of the Interstate Commerce Commission, Washington, D.C.
MC 124939 (Sub-No. 9), Food Haul, Inc., now being assigned for continued hearing on February 7, 1977, at the Offices of the Interstate Commerce Commission, Washington, D.C.
MC 544 (Sub-No. 1), Vancouver Portland Bus. Co., now assigned February 14, 1977, at Portland, Oreg., is canceled and application dismissed.
MC 74321 (Sub-No. 123), B. F. Walker, Inc., now assigned March 8, 1977, at Seattle, Washington, is canceled and application dismissed.
MC 115860 (Sub 10), Dalby Transfer and Storage, Inc. now being assigned April 25, 1977 (1 week) at Denver, Colorado in a hearing room to be later designated.
MC 113658 Sub 11, Scott Truck Line, Inc now being assigned April 20, 1977 (3 days) at Denver, Colorado in a hearing room to be later designated.
MC 142162, Bralen Trucking Co., Inc. now being assigned April 18, 1977 (2 days) at Denver, Colorado in a hearing room to be later designated.
No. 36451, Colorado Intrastate Freight Rates and Charges—1976, now being assigned April 12, 1977 (4 days) at Denver, Colorado in a hearing room to be later designated.

ROBERT L. OSWALD,
Secretary.

[FR Doc.77-2151 Filed 1-21-77;8:45 am]

FOURTH SECTION APPLICATIONS FOR RELIEF

JANUARY 18, 1977.

An application, as summarized below, has been filed requesting relief from the requirements of Section 4 of the Interstate Commerce Act to permit common carriers named or described in the application to maintain higher rates and charges at intermediate points than those sought to be established at more distant points.

Protests to the granting of an application must be prepared in accordance with Rule 40 of the General Rules of Practice (49 CFR 1100.40) and filed on or before February 8, 1977.

FSA No. 43304—*Beet or Cane Sugar from Points in Washington.* Filed by Trans-Continental Freight Bureau, Agent, (No. 514), for interested rail carriers. Rates on sugar, beet or cane, in carloads, as described in the application, from Scalley, Sugar Spur, and Toppenish, Washington, to points in Illinois, Indiana, Iowa, Kentucky, Missouri and Wisconsin. Grounds for relief—Returned shipments and rate relationship. Tariff—Supplement 44 to Trans-Continental Freight Bureau, Agent, tariff 2-N, I.C.C. No. 1935. Rates are published to become effective on February 15, 1977.

FSA No. 43305—*Soybeans and Related Articles to Snowflake, Arizona.* Filed by Trans-Continental Freight Bureau, Agent, (No. 515), for interested rail carriers. Rates on soybeans and soybean cake or meal, in bulk, in covered hopper cars, as described in the application, from points in Colorado, Kansas, Louisiana, Nebraska, Oklahoma and Texas, to Snowflake, Arizona. Grounds for relief—Motor carrier competition. Tariff—Supplement 238 to Trans-Continental Freight Bureau, Agent, tariff 45-N, I.C.C. No. 1850. Rates are published to become effective on February 17, 1977.

By the Commission.

ROBERT L. OSWALD,
Secretary.

[FR Doc.77-2150 Filed 1-21-77;8:45 am]

federal register

MONDAY, JANUARY 24, 1977

PART II

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Public Health Service

■

PROFESSIONAL STANDARDS REVIEW ORGANIZATIONS

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Public Health Service

[42 CFR Part 101]

CONDITIONAL PROFESSIONAL STANDARDS REVIEW ORGANIZATIONS

Assumption of Review Responsibility

Notice is hereby given that the Assistant Secretary for Health of the Department of Health, Education, and Welfare, with the approval of the Secretary of Health, Education, and Welfare, proposes to add a new Subpart D to Part 101 of Title 42, Code of Federal Regulations.

Sections 1152(a) and 1154 of the Social Security Act authorize the Secretary to designate qualified organizations as Professional Standards Review Organizations (PSROs) for a conditional period not to exceed two years. Section 1154(b) of the Act authorizes the Secretary to require a conditional PSRO to perform such duties and functions during the conditional period of that PSRO, as he determines the organization is capable of performing. The purpose of the proposed Subpart D is to implement section 1154(b) of the Act by requiring all conditional PSROs to assume review responsibility on a gradually increasing basis during the conditional period. Such review responsibility will include the authority to make review determinations which, with respect to the provision of health care services subject to PSRO review, will be conditions for the payment or denial of claims under Medicare and Medicaid, as specified in new Subpart E of Part 101. However, pursuant to section 1158(a) of the Act, PSRO determinations will be advisory for the purposes of payment for Title V Maternal and Child Health and Crippled Children's programs) funds.

Conditional PSROs will assume review responsibility only with regard to the issues of medical necessity, quality and level of care which are specified in clauses (A), (B) and (C) of section 1155(a)(1) of the Act and only in those health care institutions where they have assumed review responsibility in accord with a timetable for phasing-in review responsibility which will be approved by the Secretary. These regulations will apply to assumption of PSRO review in all such health care institutions. Each PSRO's formal plan and the comments of Medicare and Medicaid fiscal agents, as well as other relevant factors concerning the PSRO, will be evaluated by the Secretary to determine if the PSRO is capable of performing these functions prior to approving its assumption of such responsibilities.

The Secretary's decision to have conditional PSROs assume review responsibility is consistent with section 1154(b) of the Act and with the legislative history of the PSRO statute which states:

> Medicare and Medicaid claims paying agencies would be expected to abide by final decisions of the PSRO during this trial period. Placing reliance on the PSRO decision during the trial period is necessary to permit accurate appraisal of the effectiveness with which the conditionally approved PSRO could be expected to exercise the review function in the absence of concurrent review by others (Sen. Rpt. 92-1230, 92 Cong., 2d Sess., p. 261 (1972))

Sections 101.402 and 101.406 of the proposed Subpart D provide for a determination of capability by the Secretary at the time of conditional designation, approval of the PSRO's phase-in timetable, and certain notification requirements designed to inform health care institutions, appropriate administrative agencies and the public of the schedule for assumption of review responsibility by PSROs. The PSRO is to develop administrative procedures under section 101.405 necessary for coordinating PSRO activities with those of Medicaid and Title V State agencies, Medicare fiscal agents and health care institutions. Such administrative procedures may be incorporated in memoranda of understanding or agreements, at the option of the fiscal agents and institutions, within the time period specified in § 101.405. However, in the case of review functions which are to be delegated to health care institutions pursuant to section 1155(e) of the Social Security Act, the institution is required to enter into an agreement with the PSRO regarding the delegated review functions and procedures before the institution may begin review under the authority of the PSRO. If no agreement is reached in this case, the PSRO is required to begin review in accordance with applicable regulations of this Part. Regulations which set forth in detail the delegation of review process will be issued in proposed form in the near future.

The proposed regulations also provide for monitoring of PSRO activities (§ 101.409), and for reevaluation of the PSRO's capability to exercise review responsibility (§ 101.410). Medicare intermediaries will be routinely assisting the Secretary, at the request of the Secretary, by monitoring PSRO review and through the performance of other related functions. However, because of the strong financial interest which the States have in assuring that an effective review system exists because of the expenditure of State funds under Title XIX of the Social Security Act, provision is made under § 101.409 for a temporary suspension of PSRO authority by the Secretary, pending a full reevaluation of PSRO capability, where the State provides reasonable documentation that PSRO determinations, and not other factors, have had a detrimental impact either on State Medicaid expenditures or on the quality of care received by Medicaid patients. If such a temporary suspension of PSRO authority is in effect, the PSRO's determinations will be only advisory to Medicaid State agencies and Medicare fiscal agents for purposes of claims payment. However, in order to prevent the need for reestablishing utilization review committees, which would be an unnecessary and costly duplication of review during a period of only temporary suspension of PSRO authority, the provisions of Title XIX and Title XVIII relating to utilization review and control, physician certifications, and State agency surveys and certifications, will be deemed to be satisfied by such advisory review by the PSRO during the period of suspension.

Interested persons are invited to submit written comments, suggestions or objections concerning Subpart D to the Director, Bureau of Quality Assurance, Health Services Administration, Room 16A-55, 5600 Fishers Lane, Rockville, Maryland 20852, on or before March 25, 1977. All comments received in timely response to this Notice will be considered and will be available for public inspection in the above-named office during reguar business hours.

It is proposed to make Subpart D effective upon republication in the FEDERAL REGISTER.

The Department of Health, Education, and Welfare has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107.

Dated: November 18, 1976.

THEODORE COOPER,
Assistant Secretary for Health.

Approved: January 11, 1977.

MARJORIE LYNCH,
Acting Secretary.

Subpart D—Assumption of Review Responsibility by Conditional PSROs

Sec.

101.401 Definitions.
101.402 Evaluation of capability.
101.403 Notification of determination of capability.
101.404 Assumption of review responsibility according to timetable.
101.405 Establishment of administrative procedures.
101.406 Notification prior to assumption of review responsibility.
101.407 Revision of phase-in timetable.
101.408 Public inspection of timetable.
101.409 Monitoring.
101.410 Reevaluation of capability.

AUTHORITY: Secs. 1152(a), 1154(b), 1155(a)(1), (2), 1164, 1165, Social Security Act, 86 Stat. 1430, 1432, 1433, 1442, 1443, (42 U.S.C. 1430c-1(a), 3(b), 4(a)(1), (2), 13, and 14); sec. 1102 of the Social Security Act, 49 Stat. 647 as amended (42 U.S.C. 1302)

Subpart D—Assumption of Review Responsibility by Conditional PSROs

§ 101.401 Definitions.

As used in this subpart: (a) "Act" means the Social Security Act, as amended (42 U.S.C. Chapter 7).

(b) "Conditional PSRO" means a Professional Standards Review Organization designated on a conditional basis pursuant to sections 1152(a) and 1154 of the Act.

(c) "Formal plan" means the plan submitted to the Secretary prior to designation of a conditional PSRO, detailing the tasks necessary for the orderly assumption and implementation of the responsibilities of such conditional PSRO, including a phase-in timetable.

(d) "Review responsibility" means (1) the responsibility of a PSRO to perform duties and functions prescribed under Title XI, Part B of the Act and the regulations of this part in accord with the phase-in timetable approved by the Secretary and (2) the authority of a PSRO to make determinations in specified health care institutions under sections 1155(a)(1) and (2) of the Act which, with respect to issues arising under sections 1155(a)(1) and (2) of the Act, are conclusive under the Act, pursuant to section 1158 of the Act and Subpart E of this Part.

(e) "Health care institution" means an organization involved in the delivery of health care services or items for which reimbursement may be made in whole or in part under the Act.

(f) "Medicaid State agency" means an agency which is established or designated under section 1902(a)(5) of the Act to administer a State plan to provide medical assistance under Title XIX of the Act.

(g) "Medicare fiscal agents" means intermediaries which are parties to agreements entered into by the Secretary pursuant to section 1816 of the Act and carriers which are parties to contracts entered into by the Secretary pursuant to section 1842 of the Act.

(h) "Phase-in timetable" means a schedule, contained in the PSRO's formal plan and updated as necessary, specifying the estimated times when a conditional PSRO will assume review responsibilities in particular health care institutions, whether such review is to be performed by the conditional PSRO or by a health care institution under delegation from the PSRO pursuant to section 1155(e) of the Act.

(i) "Secretary" means the Secretary of Health, Education, and Welfare and any other officer or employee of the Department of Health, Education, and Welfare to whom the authority involved has been delegated.

(j) "State survey agency" means an agency performing provider surveys under section 1864(a) of the Act.

(k) "Title V State agency" means an agency which is established or designated pursuant to section 505(a)(2) of the Act to administer the State plan under Title V of the Act.

§ 101.402 Evaluation of capability.

At that time that the Secretary reviews each formal plan to determine whether to designate an organization as a conditional PSRO, the Secretary will evaluate the capability of such organization to exercise review responsibility. Such evaluation will be based upon the following criteria:

(a) The formal plan submitted by the organization to the Secretary;

(b) Comments and recommendations submitted by the appropriate Medicaid and Title V State agencies and Medicare fiscal agents pursuant to the request of the Secretary which will be made at the time he receives a formal plan for conditional designation; and

(c) Other relevant factors, as determined by the Secretary.

§ 101.403 Notification of designation and capability.

Notification to an organization of the determination of the Secretary as to whether it is designated as a conditional PSRO will be made in writing and will include notification of the Secretary's determination of its capability to exercise review responsibility pursuant to its approved formal plan.

§ 101.404 Assumption of review responsibility according to timetable.

A conditional PSRO which has been found by the Secretary to be capable of exercising review responsibility and has been so notified pursuant to § 101.403, shall assume review responsibility in particular health care institutions in accordance with such notification (whether review is to be performed by the PSRO or under delegation from the PSRO by a review committee pursuant to section 1155(e)), in accordance with its approved phase-in timetable and the requirements of this subpart.

§ 101.405 Establishment of administrative procedures.

(a) *Procedures for State Medicaid and Title V State agencies and Medicare fiscal agents*—(1) *Development.* Each conditional PSRO, at least 90 days prior to the earliest date in the conditional PSRO's phase-in timetable for assumption of review functions in any health care institution, shall (i) develop proposed administrative procedures for correlation of PSRO activities with those of Medicaid and Title V State agencies and Medicare fiscal agents, and (ii) provide copies of such administrative procedures to the Secretary for review and comment and to the appropriate Medicaid and Title V State agencies, Medicare fiscal agents and State survey agency for review and comment.

(2) *Content.* The administrative procedures developed by a PSRO under paragraph (a)(1) of this section shall include:

(i) Procedures for informing such agencies and agents of PSRO approval or disapproval of health care services and items;

(ii) Other matters, consistent with Title XI, Part B of the Act, which the PSRO deems necessary for correlation of PSRO activities with those of such agencies and agents.

(3) *Procedures for comment and Memoranda of Understanding.* (i) A Medicaid or Title V State agency or Medicare fiscal agent may comment upon the administrative procedures developed by a conditional PSRO under paragraph (a)(1) of this section within 30 days after receipt of such procedures. The PSRO shall consider any such timely comments and make such modifications to its administrative procedures as the conditional PSRO deems appropriate and shall forward a copy of such revised procedures to the appropriate State agencies and fiscal agents.

(ii) If a Medicaid or Title V State agency or Medicare fiscal agent wishes to incorporate the PSRO's administrative procedures into the form of a written memorandum of understanding with the conditional PSRO, the agency or agent shall so notify the PSRO. In such case, the PSRO and the agency or agent shall negotiate in good faith in an effort to reach written agreement on the PSRO's administrative procedures.

(4) *Approval of Secretary.* Each conditional PSRO, at least 30 days prior to the date in its phase-in timetable for its first assumption of review functions shall submit copies of its administrative procedures (modified as appropriate) or a written memorandum of understanding to the Secretary for approval. The appropriate Medicaid and Title V State agencies and Medicare fiscal agents may submit comments on the administrative procedures to the Secretary for his consideration, not less than 10 days prior to the date scheduled for the first assumption of review functions. If the Secretary does not disapprove the administrative procedures or the memorandum of understanding prior to the date in such phase-in timetable for the first assumption of review functions, then the PSRO shall utilize such administrative procedures or memorandum of understanding. If the Secretary disapproves the administrative procedures or the memorandum of understanding either prior to or after such date, the Secretary shall so notify the PSRO, and the appropriate Medicaid and Title V State agencies and Medicare fiscal agents, stating the reasons therefor, and will require the conditional PSRO to revise its administrative procedures or modify its phase-in timetable or both in accordance with a timetable specified by the Secretary.

(5) *Modification.* The administrative procedures developed under paragraphs (a)(1) through (a)(4) of this section may be modified, with the approval of the Secretary, either: (i) By a revised memorandum of understanding between the conditional PSRO and the appropriate Medicaid or Title V State agencies or Medicare fiscal agents; or (ii) by the conditional PSRO after providing such agencies or agents the opportunity for comment.

(6) *Previously approved procedures.* Paragraphs (a)(1) through (a)(4) of this section shall not apply in the event that, prior to the adoption of this regulation, a conditional PSRO (i) has already assumed review responsibility in accordance with a phase-in timetable approved by the Secretary in a health care institution and (ii) is utilizing administrative procedures (including memoranda of understanding) between the conditional PSRO and the appropriate Medicaid and Title V State agencies and Medicare fiscal agents which have been approved by the Secretary. However, such previously adopted procedures may be revised by the PSRO at any time in accord with paragraphs (a)(1) through (a)(5) of this section.

(7) *Current procedures available.* A copy of each set of current administrative procedures (including memoranda of understanding) utilized by the conditional PSRO under this section shall be

maintained by the conditional PSRO on file and be available for public inspection in its principal business office.

(b) *Procedures for health care institutions.*—(1) *Development of procedures and other requirements prior to initiation of PSRO review.* Prior to the initiation of review in any health care institution, each PSRO shall, in accordance with applicable regulations of this part:

(i) Notify such institution in a timely manner of the procedures and requirements for delegation of review functions pursuant to section 1155(e) of the Act and the factors and process which the PSRO will utilize for evaluating the capability of the institutional review committee to perform review functions. An example of the notification letter, including the written evaluation factors, shall be submitted to the Secretary for his approval prior to use;

(ii) Evaluate the capability of a health care institution which seeks to obtain a delegation of PSRO review functions; and

(iii) Develop models of procedures for the coordination of PSRO and institutional administrative and review activities in (A) institutions to which all review functions have been delegated, (B) institutions in which review activities are apportioned between the PSRO and the institutions, and (C) institutions in which the PSRO performs all the review functions. Copies of the models of procedures shall be submitted to the Secretary for his approval at least 90 days prior to the earliest date in the PSRO's phase-in timetable for the first assumption of review functions. Each PSRO shall provide copies of its approved administrative and review procedures to all area health care institutions at least 60 days prior to the earliest date when the PSRO is to assume review activities in any institution under the approved phase-in timetable.

(2) *Consultation with nondelegated institutions.* At least 45 days before the conditional PSRO assumes review responsibility in any institution to which it does not propose to delegate any of its review functions, the conditional PSRO shall provide such institution an opportunity for consultation regarding the approved administrative and review procedures. After consideration of any comments made during consultation, the PSRO shall make such modifications in the administrative and review procedures as the PSRO deems appropriate for that institution, and may incorporate such procedures in a written agreement with the institution. However, such modifications or agreements shall not be inconsistent with the model approved by the Secretary pursuant to paragraph (b)(1) of this section and shall include provisions for administrative resolution of disputes and such other provisions as are required in the applicable regulations of this part.

(3) *Agreements with delegated institutions.* Where a conditional PSRO proposes to delegate all or part of its review functions to a health care institution, the PSRO and the institution, prior to such delegation, shall enter into an agreement incorporating procedures for coordination of conditional PSRO and institutional administrative and review activities which are not inconsistent with the procedures in the model approved by the Secretary. Such agreement shall include provisions for administrative resolution of disputes and such other provisions as are required in the applicable regulations of this Part. Where such agreement cannot be accomplished, the PSRO shall initiate review in the institution by the date for the assumption of review functions in the institution by the PSRO.

(4) *Modification.* The administrative procedures developed under paragraphs (b)(1) through (b)(3) of this section may be modified, with the approval of the Secretary, either by a revised agreement between the conditional PSRO and the institution, or by the PSRO after providing the institution with an opportunity for comment.

(5) *Previously approved procedures.* Paragraphs (b)(1) through (b)(4) of this section shall not apply to administrative and review procedures (including agreements) utilized by conditional PSROs in health care institutions which were approved by the Secretary prior to the effective date of this subpart. However, such previously adopted procedures may be revised by the PSRO at any time in accord with subparagraphs (b)(1) through (b)(4) of this section.

§ 101.406 Notification prior to assumption of review responsibility.

(a) *Notice to health care institutions and public of designation and timetable.* Each conditional PSRO which has been approved under § 101.403 shall, within 30 days of such notification, provide a copy of its approved phase-in timetable to each health care institution listed in its phase-in timetable and publish a notice in at least one local newspaper of general circulation in the PSRO area indicating (1) that the conditional PSRO has been found capable by the Secretary to exercise review responsibility, as defined in this subpart, in designated health care institutions in the PSRO area, (2) that the conditional PSRO will assume review responsibility according to a phase-in timetable approved by the Secretary, which is available for public inspection in the principal business office of the conditional PSRO, and (3) that the conditional PSRO will publish the exact dates upon which it will assume review responsibility in particular institutions pursuant to paragraph (c) of this section.

(b) *Fiscal and survey agency notices.* The Secretary will notify the appropriate Medicaid, State survey and Title V State agencies, and the Medicare fiscal agents of (1) the PSRO's approved phase-in timetable at the time of designation of such PSRO and (2) any revision in the approved timetable at the time the PSRO notifies the Secretary of such revisions in accordance with § 101.407.

(c) *Notices of exact date of assumption of resonsibility.* At least 30 days prior to assumption of review responsibility in any health care institution, whether such review is to be performed by the PSRO or by an institutional review committee, each conditional PSRO shall (1) publish a notice in at least one local newspaper of general circulation in the PSRO area of the date on which the conditional PSRO will assume review responsibility and (2) notify the health care institution and the Secretary of such date. The Secretary will in turn notify the appropriate Medicaid and Title V State agencies and Medicare fiscal agents when it receives notification from each PSRO pursuant to this paragraph.

(d) *Notice required for previously designated PSROs.* Conditional PSROs designated prior to the effective date of this subpart shall, to the extent they have not already complied with the requirements of paragraph (a) of this section, within 30 days after the effective date of this Subpart, notify health care institutions and the public in accordance with paragraph (a)(1) of this section that they have been found capable by the Secretary. Such notices shall also state that the conditional PSRO has assumed review responsibility in accordance with a phase-in timetable approved by the Secretary, which is available for public inspection in the principal business office of the PSRO.

(e) *Notice of delay in assumption of responsibility.* (1) If a conditional PSRO does not assure review responsibility in accord with the notice given in paragraph (c) of this section, it shall, prior to the date prescribed therein, notify the health care institution involved, the appropriate Medicaid and Title V State agencies and Medicare fiscal agents and the Secretary that it is unable to assume responsibility at such time and state the reasons for its inability to do so. The provisions of Titles XVIII and XIX of the Act specified in Subpart F of this part shall continue to be applicable with respect to such institution until such time as the PSRO assumes review responsibility in the institution.

(2) Where the Secretary has been notified pursuant to paragraph (e)(1) of this section, he will take such action as he deems necessary, which may include, but is not limited to, revision of the phase-in timetable pursuant to § 101.407, monitoring arrangements under § 101.409, or, reevaluation of the capability of the PSRO under § 101.410.

§ 101.407 Revision of phase-in timetable.

(a) Where a conditional PSRO anticipates a delay of more than 90 days in meeting the estimated date for the assumption of review responsibility in any health care institution, the conditional PSRO shall, prior to such estimated date, notify the Secretary of such anticipated delay and request a revision in the approved phase-in timetable for such conditional PSRO.

(b) The Secretary may, at any time after designation, revise the approved phase-in timetable of any conditional PSRO, in accordance with a request

under paragraph (a) of this section or on the basis of his reevaluation of the capability of the conditional PSRO in accordance with § 101.410.

§ 101.408 Public inspection of timetable.

Each conditional PSRO shall maintain its current approved phase-in timetable on file for public inspection at the principal business office of the conditional PSRO during regular business hours.

§ 101.409 Monitoring.

(a) The Secretary may arrange to have Medicare fiscal agents or Medicaid or Title V State agencies assist him in monitoring the activities of a conditional PSRO. Where such arrangements are made, the conditional PSRO shall take all necessary and appropriate actions to facilitate such monitoring activities.

(b) Where a Medicare fiscal agent or a Medicaid or Title V State agency finds, in the course of monitoring a conditional PSRO, that problems appear to exist in the effectiveness of conditional PSRO review, the fiscal agent or agency shall so notify the conditional PSRO and meet with the conditional PSRO to discuss methods for improving the effectiveness of conditional PSRO review. The Medicare fiscal agent or Medicaid or Title V State agency shall promptly notify the Secretary of any serious problems regarding the effectiveness of conditional PSRO review, and shall further notify the Secretary of the results of its meeting with the conditional PSRO to resolve such problems. The Secretary will consider such information in evaluating the need for a reevaluation of the conditional PSRO's capability pursuant to § 101.410, or other appropriate action.

(c) Where, pursuant to paragraph (b) of this section, a Medicaid State agency and conditional PSRO have not been successful in resolving any problems regarding the appropriateness of PSRO review, the State may file a written complaint with the Secretary requesting either corrective action by the Secretary or, where the State believes the problems have a serious impact upon the administration of the State Medicaid program, a temporary suspension of the conditional PSRO's authority to make determinations which are conclusive for purposes of payment under the Act. Pending a reevaluation of the conditional PSRO's capability pursuant to § 101.410, the Secretary will temporarily suspend such PSRO authority in full or in part as he deems appropriate when the Secretary determines that the State has provided reasonable documentation that the PSRO's review determinations, and not other factors, have caused either of the following:

(1) A detrimental impact on State Medicaid expenditures; or

(2) A detrimental impact on the quality of care received by Medicaid patients. Where a conditional PSRO's authority is temporarily suspended by the Secretary, the PSRO shall continue its review activities. During such period of suspension, the PSRO's determinations shall not be conclusive for purposes of payment under the Act but shall be only advisory to Medicaid State agencies and Medicare fiscal agents, and the provisions of Titles XVIII and XIX of the Act, relating to utilization review and control, physician certifications, and State agency surveys and certifications, shall be deemed to be satisfied.

§ 101.410 Reevaluation of capability.

(a) *Reevaluation factors.* The Secretary may at any time, pursuant to section 1154(b) of the Act, reevaluate the capability of a conditional PSRO to exercise review responsibility. Such reevaluation will be based upon:

(1) The progress of the PSRO in carrying out its formal plan;

(2) Any comments or recommendations submitted by Medicaid or Title V State agencies or Medicare fiscal agents; and

(3) Other relevant factors as determined by the Secretary.

(b) *Notice of tentative determination and intended action.* If, after such reevaluation, the Secretary has reason to believe that the conditional PSRO is not performing in a satisfactory manner the duties and functions which it was found capable of performing, then the Secretary shall notify the conditional PSRO of the grounds for such belief and of the action which the Secretary proposes to take regarding the conditional PSRO. Such action may include:

(1) Placing restrictions upon the exercise of review responsibility or the performance of certain duties and functions by the conditional PSRO, including revision of the conditional PSRO's phase-in timetable;

(2) Requiring the conditional PSRO to take corrective action, including the acceptance of technical assistance to improve its performance;

(3) Suspending the authority of the PSRO to make conclusive determinations pursuant to Subpart E of this part for a period of time. During such period of suspension, the PSRO shall continue its review activities, the PSRO's determinations shall not be conclusive for purposes of payament under the Act but shall be only advisory to Medicaid State agencies and Medicare fiscal agents, and the provisions of Titles XVIII and XIX of the Act, relating to utilization review and control, physician certifications and State agency surveys and certifications, shall be deemed to be satisfied.

(4) Terminating the agreement with the conditional PRSO upon 90 days notice to the PSRO, pursuant to section 1154(c) of the Act;

(5) Such other action as the Secretary may deem appropriate.

(c) *Notice to fiscal agencies.* The Secretary will, as soon as practicable, notify the appropriate Medicaid and Title V State agencies and Medicare fiscal agents, and affected health care institutions, of his belief under paragraph (b) of this section and any action he intends to take pursuant thereto, and solicit their comments on the action he proposes to take.

(d) *Informal meeting and decision.* The notice to the conditional PRSO under paragraph (b) of this section shall offer the conditional PSRO an opportunity to submit written material and to meet informally with an official designated by the Secretary to show cause why the action proposed by the Secretary should not be taken. If the conditional PSRO does not submit written material or request an informal meeting within 14 days after receipt of the Secretary's notice, the Secretary's tentative decision shall become final and he will so notify the PSRO, Medicaid and Title V agencies, and Medicare fiscal agent(s), and state the basis for his decision. If the conditional PSRO submits written material within 14 days, the Secretary will consider this material prior to making a final decision. If the conditional PSRO requests an informal meeting within 14 days after receipt of the Secretary's notice, such a meeting will be scheduled as soon as practicable. After such meeting, the official designated by the Secretary will render promptly a recommended decision to the Secretary. The Secretary will adopt, revise or set aside the recommended decision and will notify the PSRO, appropriate Medicaid and Title V agencies and Medicare fiscal agent(s) of such decision and the basis for such decision.

[FR Doc.77-1948 Filed 1-21-77;8:45 am]

[42 CFR Part 101]

PROFESSIONAL STANDARDS REVIEW ORGANIZATIONS

Conclusive Effect of Determinations on Claims Payment

Notice is hereby given that the Assistant Secretary for Health of the Department of Health, Education, and Welfare, with the approval of the Secretary of Health, Education, and Welfare, proposes to add a new Subpart E to Part 101 of Title 42, Code of Federal Regulations.

The proposed Subpart E would require Medicare fiscal agents and State Medicaid agencies, within their respective areas of responsibility, to accept as conclusive in institutions in which the PSRO has assumed review responsibility, disapprovals by a PSRO of health services as being medically unnecessary, of inadequate quality or provided at an inappropriate level of care. Those PSRO determinations, in accordance with sections 1155 and 1158 of the Social Security Act (42 U.S.C. 1320c–4 and 7) will, except as provided in section 1159 (42 U.S.C. 1320c–8), constitute the conclusive determination on those medical issues in connection with items or services for which payment of Federal funds may be made under the Act.

As a corollary, the claims for payment must be accompanied or supported by evidence of PSRO review and approval, routine certification, or other appropriate actions by the PSRO indicating that the services have not been disap-

proved and the payment agencies will accept the PSRO determinations on those medical issues. However, PSROs will not review services where the Secretary has made a determination under section 1862(d) of the Act to exclude services rendered by a provider or health care practitioner from coverage under Title XVIII of the Act or to terminate a provider's agreement.

The State Medicaid agencies are also bound by PSRO decisions under section 1164 of the Act, which makes the provisions of Title XI, Part B, directly applicable to the State Medicaid plans.

Subpart E thus represents a change in the general status of utilization review decisions under the Social Security Act, since unlike the findings of utilization review committees under both the present utilization review regulations of Titles XVIII and XIX (20 CFR 405.1035; 45 CFR 250.20) and the proposed utilization review regulations (41 FR 13452, 13457, March 30, 1976), the findings of the PSROs will always be conclusive upon Medicare fiscal agents and Medicaid State agencies.

Separate regulations implementing the provisions of section 1158(a) of the Act, which authorizes payment of Federal funds for services which have been disapproved by a PSRO when the Secretary has determined that the claimant is without fault, are under development and will be published for public comment in the FEDERAL REGISTER.

Interested persons are invited to submit written comments, suggestions or objections concerning Subpart E to the Director, Bureau of Quality Assurance, Health Services Administration, Room 16-A-55, 5600 Fishers Lane, Rockville, Maryland 20852, on or before March 25, 1977. All comments received in timely response to this Notice will be considered and will be available for public inspection in the above-named office during regular business hours.

It is proposed to make Subpart E effective upon republication in the FEDERAL REGISTER.

The Department of Health, Education, and Welfare has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107.

Dated: November 18, 1976.

THEODORE COOPER,
Assistant Secretary for Health.

Approved: January 11, 1977.

MARJORIE LYNCH,
Acting Secretary.

Subpart E—Conclusive Effect of PSRO Determinations on Claims Payment

Sec.
101.501 Definitions.
101.502 PSRO action as condition of payment of claims.
101.503 Effect of PSRO disapproval of services.
101.504 Effect of affirmative PSRO determinations.
101.505 Coverage determinations.

AUTHORITY: Sec. 1154(b), 1155(a)(1), 1158, 1164, Social Security Act, 86 Stat. 1432, 1433, 1437, 1442; (42 U.S.C. 1320c 3(b), 4, 7, 13); sec. 1102, Social Security Act, 49 Stat. 647, as amended (42 U.S.C. 1302)

Subpart E—Conclusive Effect of PSRO Determinations on Claims Payment

§ 101.501 Definitions.

As used in this subpart:

(a) "Act" means the Social Security Act, as amended (42 U.S.C. Chapter 7).

(b) "Review responsibility" means (1) the responsibility of a PSRO to perform duties and functions prescribed under Title XI, Part B of the Act and the regulations of this part in accord with the phase-in timetable approved by the Secretary; and (2) the authority of a PSRO to make determinations in specified health care institutions under sections 1155(a) (1) and (2) of the Act which, with respect to issues arising under sections 1155(a) (1) and (2) of the Act, are conclusive under the Act, pursuant to section 1158 of the Act and this subpart.

(c) "Medicare fiscal agents" means intermediaries which are parties to agreements entered into by the Secretary pursuant to section 1816 of the Act and carriers which are parties to contracts entered into by the Secretary pursuant to section 1842 of the Act.

(d) "Medicaid State Agency" means an agency which is established or designated under section 1902(a)(5) of the Act to administer a State plan to provide medical asistance under Title XIX of the Act.

(e) "PSRO" means a Professional Standards Review Organization which is conditionally or unconditionally designated.

(f) "Title V State agency" means an agency which is established or designated pursuant to section 505(a)(2) of the Act to administer the State plan under Title V of the Act.

§ 101.502 PSRO action as condition of payment.

No Federal funds appropriated under Title XVIII or XIX of the Act shall be used (directly or indirectly) for the payment of any claim for services or items provided in a health care institution where a PSRO is exercising review responsibility for such institution unless (a) the claim for payment is accompanied or supported by evidence of PSRO review and approval, routine certification, or other appropriate action indicating that the services or items have not been disapproved; or (b) such services or items have been approved pursuant to section 1159 and the applicable regulations of this part.

§ 101.503 Effect of PSRO disapproval of services.

(a) Except as provided in section 1159 of the Act and the applicable regulations of this part, no Federal funds appropriated under Title XVIII or XIX of the Act for the provision of health care services or items shall be used (directly or indirectly) for the payment, under such titles or any program established pursuant thereto, of any claim for the provision of health care services or items (unless the Secretary, pursuant to applicable regulations of this part, determines that the claimant is without fault), if:

(1) The provision of such services or items is subject to review by a PSRO under Title XI, Part B of the Act;

(2) The PSRO has disapproved of the services or items giving rise to such claim; and

(3) The PSRO has notified the practitioner or provider who provided, or proposed to provide, such services or items, and the individual who received, or was proposed to receive, such services or items, of its disapproval of the provision of such services or items.

(b) Wherever any PSRO disapproves of any health care services or items, the PSRO shall, after giving the notifications required under paragraph (a) of this section, promptly notify the Medicaid or Title V State agency or Medicare fiscal agent having responsibility for acting upon claims for payment for or on account of such services or items in accordance with the regulations of this Part.

§ 101.504 Effect of affirmative PSRO determinations.

Where a PSRO is exercising review responsibility, no Medicare fiscal agent or Medicaid State agency shall deny the payment of Federal funds for a claim for the provision of health care services or items under Title XVIII or XIX of the Act which are subject to such review, on the grounds that such services were not medically necessary, or were not of a quality which meets professionally recognized standards of health care, or were provided inappropriately on an inpatient basis, or could have been provided more economically in an inpatient health care facility of a different type, unless such services or items have been disapproved by the PSRO or disapproved under section 1159 of the Act.

§ 101.505 Coverage determinations.

Nothing in this subpart shall be construed as precluding the Secretary, a Medicare fiscal agent, or a Medicaid State agency, in the proper exercise of its duties and functions, from reviewing claims for benefits under Titles XVIII and XIX of the Act, or from determining whether they meet the coverage requirements of such Titles XVIII and XIX, in accordance with the implementing regulations of Titles XVIII and XIX and the applicable regulations of this Part providing for the correlation of these functions with those functions of the PSRO under Title XI, Part B of the Act.

[FR Doc.77-1949 Filed 1-21-77;8:45 am]

[42 CFR Part 101]

PROFESSIONAL STANDARDS REVIEW ORGANIZATIONS

Correlation of Functions Under Title XI, Part B of the Social Security Act With Other Provisions of the Act

Notice is given that the Assistant Secretary for Health of the Department of Health, Education, and Welfare, with the approval of the Secretary of Health, Education, and Welfare, proposes to add a new Subpart F, entitled "Correlation of Functions Under Title XI, Part B of the Social Security Act with Other Provisions of the Act."

The purpose of the present proposal is to correlate, under section 1165 of the Social Security Act (the Act), the various activities of professional Standards Review Organizations (PSROs) with those of the Medicare, Medicaid and Title V agencies and other organizations having review-related functions. In some cases this correlation will require that the PSRO's activities replace those of other agencies. For example, since section 1155(a)(1) of the Act provides that each PSRO will assume exclusive "responsibility" in its area for the review of the medical necessity, quality and appropriate level of care of health services and items which may be paid for under the Act "notwithstanding any other provisions of law," the PSRO's review activities will replace the present utilization review activities of Title XVIII and XIX agencies in those institutions for which a PSRO has assumed responsibility.

On the other hand, in accord with section 1158 of the Act, PSRO activities will replace the present claims payment functions of Medicare and Medicaid agencies only insofar as a PSRO's determinations of medical necessity, quality and level of care will be conclusive with regard to these issues. Pertinent coverage regulations and guidelines, such as relate to the number of hospital days covered or the reasonableness of charges, will continue to apply to payment determinations, and claims payment agencies will not be precluded from rendering coverage and reimbursement determinations with regard to issues which are not the subject of the PSRO determinations.

Similarly, physician certifications required under Title XI will be performed in lieu of similar requirements under Titles XVIII and XIX of the Act, but pertinent coverage regulations and guidelines authorized under those provisions of the Act will continue to apply to payment determinations.

Regulations are under development regarding the relationship of PSRO review and physician certifications to physician certifications made pursuant to section 1814(h) of the Act (relating to "presumed coverage" of a Medicare beneficiary in a skilled nursing facility). In the interim, Subpart F clarifies that, as is the case with an adverse finding by a skilled nursing facility's utilization review committee when the care is not subject to PRSO review, the beneficiary is not eligible for a period of "presumed coverage" in a skilled nursing facility when a PSRO determines that the skilled nursing care to which the physician certifies is not medically necessary.

Survey and monitoring responsibilities of State survey agencies and claims payment agencies, to assure that utilization review functions are being conducted in health care institutions in accordance with section 1861(k) of the Act will no longer be applicable under the law where PSROs are exercising review responsibilities in such institutions.

Finally, since section 1159(c) of the Act provides for an exclusive hearing procedure on PSRO issues, other hearing procedures provided under the Act on the issues of medical necessity, quality and appropriate level of care will be superseded by the procedures of section 1159 of the Act.

It should be noted that, since section 1158 of the Act makes clear that PSRO determinations are to be advisory for purposes of services provided under Title V of the Act, none of the provisions of Title V will be superseded in health care institutions where PSROs perform review and both the PSRO and Title V review systems may operate simultaneously.

It should also be noted that the correlation of PSRO activities with activities of other agencies with respect to particular institutions will only take place at the time PSROs assume review responsibility with regard to those institutions. With respect to institutions where PSROs have not yet begun to function, the Medicare and Medicaid claims payment agencies will continue to exercise all those functions required of them under the Act.

Interested persons are invited to submit written comments, suggestions or objections concerning Subpart F to the Director, Bureau of Quality Assurance, Health Services Administration, Room 16A55, 5600 Fishers Lane, Rockville, Maryland 20852, on or before March 25, 1977. All comments received in timely response will be considered and will be available for public inspection in the above-named office during regular business hours.

It is proposed to make Subpart F effective upon republication in the FEDERAL REGISTER.

The Department of Health, Education, and Welfare has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107.

Dated: November 18, 1976.

THEODORE COOPER,
Assistant Secretary for Health.

Approved: January 11, 1977.

MARJORIE LYNCH,
Acting Secretary.

Subpart F—Correlation of Functions Under Title XI, Part B of the Social Security Act With Other Provisions of the Act

Sec.
101.601 Definitions.
101.602 Applicability.
101.603 Correlation of Title XI functions with Title XVIII functions.
101.604 Correlation of Title XI functions with Title XIX functions.
101.605 Continuation of functions not assumed by PSROs.

AUTHORITY: Sections 1154(b), 1155(a)(1), 1158, 1164 and 1165 of the Social Security Act, 86 Stat. 1432, 1433, 1437, 1442, and 1443, (42 U.S.C. 1320c-3(b), 4, 7, 13, 14); Section 1102 of the Social Security Act, 49 Stat. 647, as amended (42 U.S.C. 1302).

Subpart F—Correlation of Functions Under Title XI, Part B of the Social Security Act With Other Provisions of the Act

§ 101.601 Definitions.

As used in this subpart:

(a) "Act" means the Social Security Act, as amended (42 U.S.C. Chapter 7).

(b) "PSRO" means a Professional Standards Review Organization which is conditionally or unconditionally designated.

(c) "Review responsibility" means (1) the responsibility of a PSRO to perform duties and functions prescribed under Title XI, Part B of the Act and the regulations of this Part in accord with the phase-in timetable approved by the Secretary and (2) the authority of a PSRO to make determinations in specified health care institutions under sections 1155(a) (1) and (2) of the Act which, with respect to issues arising under sections 1155(a) (1) and (2) of the Act, are conclusive under the Act, pursuant to section 1158 of the Act and Subpart E of this Part.

(d) "Health care institution" means an organization involved in the delivery of health care services or items for which reimbursement may be made in whole or in part under the Act.

§ 101.602 Applicability.

The provisions of this Subpart shall be applicable only to health care services and items provided by or in those health care institutions in which a PSRO has assumed review responsibility in accordance with the applicable provisions of this Part.

§ 101.603 Correlation of Title XI functions with Title XVIII functions.

(a) *Utilization review activities.* The review activities of PSROs under section 1155(a) of the Act shall be in lieu of the utilization review and evaluation activities required of health care institutions under sections 1861(e)(6), 1861(j)(8), 1861(j)(12), 1861(k) and 1865 of the Act.

(b) *Certifications.* (1) The certifications made by attending physicians under section 1156(d) of the Act with regard to the issue of medical necessity of health care services, shall be in lieu of the physician certifications required under sections 1814(a)(2)(A), (B), (C), and (E), 1814(a)(3), and 1835(a)(2)(B) of the Act. However, pertinent coverage regulations and guidelines authorized and established pursuant to the provisions of title XVIII of the Act cited above shall continue to apply to payment determinations.

(2) A Medicare beneficiary is not eligible for a period of presumed coverage under section 1814(h) of the Act when a PSRO determines that the care specified in section 1814(a)(2)(C) of the Act is not medically necessary or appropriate.

(c) *Payment determinations by Medicare intermediaries and carriers.* Determinations of PSROs under section 1155 (a) of the Act with regard to the medical necessity, quality and appropriate level of care of health care services, shall be conclusive with regard to these issues on decisions of Medicare intermediaries and carriers under sections 1814(a)(4), 1814(a)(5), 1814(a)(6), 1862(a)(1) and 1862(a)(9) of the Act. However, pertinent coverage regulations and guidelines authorized and established pursuant to the provisions of title XVIII of the Act cited above shall continue to apply to payment determinations, and claims payment agencies shall not be precluded from rendering coverage and reimbursement determinations with regard to issues which are not the subject of such PSRO determinations.

(d) *Survey, compliance and assistance activities.* The activities of PSROs in performing review directly in health care institutions under section 1155(a) of the Act and the monitoring activities of PSROs in assuring compliance with requirements of Title XI, Part B of the Act in health care institutions which are delegated review responsibilities under section 1155(e)(1) of the Act shall be in lieu of the survey, compliance and assistance activities required of State survey agencies under section 1864(a) with respect to sections 1861(e)(6), 1861(j)(8), 1861(j)(12), and 1861(k) of the Act, and intermediaries and carriers under sections 1816(b)(1)(B), and 1842(a)(2)(A) and (B) of the Act. The Secretary will notify appropriate State survey agencies, intermediaries, and carriers of all health care institutions for which a PSRO has assumed review responsibility.

(e) *Review and appeals activities.* Pursuant to section 1159(c) of the Act, any reviews or appeals of PSRO determinations provided under section 1159 (a) and (b) of the Act shall be in lieu of appeals provided under sections 1842 (b)(3)(C) and 1869(b) of the Act with respect to the issues of medical necessity, quality and level of care of health care services as determined by such PSRO.

§ 101.604 Correlation of Title XI functions with Title XIX functions.

(a) *Review activities.* The review activities of PSROs under section 1155(a) of the Act shall be in lieu of the medical, utilization and independent professional review activities required under sections 1902(a)(26), 1902(a)(30), 1902(a)(31), 1903(g)(1) and 1903(i)(4) of the Act.

(b) *Certifications.* Certifications made by attending physicians under section 1156(d) of the Act shall be in lieu of physician certifications required under section 1903(g)(1)(A) of the Act.

(c) *Payment determinations.* Determinations of PSROs under section 1155 (a) of the Act, with regard to the medical necessity, quality and appropriate level of care of health care services, shall be conclusive with regard to these issues on decisions of State Medicaid agencies under section 1903(g) and 1903(i)(4) of the Act. However, such PSRO determinations shall not preclude appropriate coverage determinations under the provisions of Title XIX of the Act with regard to issues which are not the subject of such PSRO determinations.

(d) *Survey and compliance activities.* The activities of PSROs in performing review directly in health care institutions under section 1155(a) of the Act, and the monitoring activities of PSROs in assuring compliance with the requirements of Title XI, Part B of the Act in health care institutions which are delegated review responsibilities under section 1155(e)(1) of the Act, shall be in lieu of the validation procedures performed by the Secretary under section 1903(g)(2) of the Act and the survey procedures required of State survey agencies under section 1902(a)(33) of the Act.

(e) *Review and appeals activities.* Pursuant to section 1159(c) of the Act, any reviews or appeals of PSRO determinations provided under sections 1159 (a) and (b) of the Act shall be in lieu of fair hearings before State agencies provided under section 1902(a)(3) of the Act with respect to the issues of medical necessity, quality and level of care of health care services as determined by such PSRO.

§ 101.605 Continuation of functions not assumed by PSROs.

Any of the duties and functions of a PSRO under Title XI, Part B of the Act for which responsibility has not been assumed by a PSRO shall be performed in the manner and to the extent otherwise provided for under the law.

[FR Doc.77-1950 Filed 1-21-77;8:45 am]

federal register

MONDAY, JANUARY 24, 1977

PART III

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Federal Insurance Administration

NATIONAL FLOOD INSURANCE PROGRAM

Communities Eligible for Sale of Insurance and Final and Proposed Flood Elevation Determinations

Title 24—Housing and Urban Development

CHAPTER X—FEDERAL INSURANCE ADMINISTRATION, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

SUBCHAPTER B—NATIONAL FLOOD INSURANCE PROGRAM

[Docket No. FI-2642]

PART 1914—COMMUNITIES ELIGIBLE FOR THE SALE OF INSURANCE

Status of Participating Communities

• *Purpose.* The purpose of this notice is to list those communities wherein the sale of flood insurance is authorized under the National Flood Insurance Program (42 U.S.C. 4001–4128). •

Insurance policies can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurers Association servicing company for the state (addresses are published at § 1912.5, 24 CFR Part 1912).

The Flood Disaster Protection Act of 1973 (Pub. L. 93–234) requires the purchase of flood insurance as a condition of receiving any form of Federal or Federally related financial assistance for acquisition or construction purposes in a flood plain area having special hazards within any community identified for at least one year by the Secretary of Housing and Urban Development. The requirement applies to all identified special flood hazard areas within the United States, and no such financial assistance can legally be provided for acquisition or construction except as authorized by section 202(b) of the Act, as amended, unless the community has entered the program. Accordingly, for communities listed under this Part no such restriction exists, although insurance, if required, must be purchased.

The Federal Insurance Administrator finds that delayed effective dates would be contrary to the public interest. The Administrator also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

Section 1914.6 of Part 1914 of Subchapter B of Chapter X of Title 24 of the Code of Federal Regulations is amended by adding in alphabetical sequence new entries to the table. In each entry, a complete chronology of effective dates appears for each listed community. The date that appears in the fourth column of the table is provided in order to designate the effective date of the authorization of the sale of flood insurance in the area under the emergency or the regular flood insurance program. These dates serve notice only for the purposes of granting relief, and not for the application of sanctions, within the meaning of 5 U.S.C. 551. The entry reads as follows:

§ 1914.6 List of eligible communities.

State	County	Location	Effective date of authorization of sale of flood insurance for area	Hazard area identified	Community No.
•	•	•	•	•	•
Georgia	Cherokee and Pickens	Nelson, city of	Jan. 1, 1977, emergency	Apr. 11, 1975	130296
Maine	Washington	Harrington, town of	do	Feb. 21, 1975	230314
Michigan	Macomb	Utica, city of	do	Oct. 17, 1975	260648
Pennsylvania	Lehigh	Coopersburg, borough of	do	Nov. 19, 1976	420587
Do.	Jefferson	Perry, township of	do	Jan. 10, 1975	422444
Do.	Crawford	Venango, township of	do	May 31, 1974	421574A
				June 11, 1976	
•	•	•	•	•	•
Alabama	Cullman	Cullman, city of	Feb. 19, 1974, emergency; Jan. 14, 1977, regular	Aug. 9, 1974	010209B
Connecticut	New Haven	Prospect, town of	July 1, 1975, emergency; Feb. 4, 1977, regular	June 21, 1974	090151A
Delaware	New Castle	Delaware City, city of	Dec. 17, 1973, emergency; Feb. 16, 1977, regular	Apr. 5, 1974	100022B
				Dec. 19, 1975	
Georgia	Columbia	Grovetown, city of	June 1, 1976, emergency; Jan. 28, 1977, regular	Aug. 1, 1975	130285A
Do.	do.	Harlem, city of	Mar. 1, 1976, emergency; Jan. 28, 1977, regular	July 18, 1975	130286A
North Carolina	New Brunswick	Yaupon Beach, town of	Dec. 19, 1973, emergency; Feb. 16, 1977, regular	June 28, 1974	370030B
				June 25, 1976	
Pennsylvania	Clinton	Lockhaven, city of	Nov. 17, 1972, emergency; Feb. 2, 1977, regular	Apr. 12, 1974	420328A
Do.	Northumberland	Rush, township of	Nov. 11, 1974, emergency; Jan. 28, 1977, regular	Sept. 6, 1974	421943B
				June 18, 1976	
•	•	•	•	•	•
Indiana	Floyd	New Albany, city of	Dec. 28, 1976, suspended; withdrawn	Feb. 15, 1974	180082A
				Jan. 30, 1976	
Iowa	do.	Charles City, city of	Dec. 29, 1976, suspended; withdrawn	Feb. 2, 1977	190128
Louisiana	Jefferson	Westwego, city of	Dec. 28, 1976, suspended; withdrawn	July 16, 1976	220094
Missouri	Calloway	Cedar City, city of	Dec. 29, 1976, suspended; withdrawn	Oct. 18, 1974	290050
New Jersey	Morris	Randolph, township of	Dec. 28, 1976, suspended; withdrawn	Feb. 15, 1974	340358
North Carolina	Beaufort	Washington, city of	Dec. 29, 1976, suspended; withdrawn	Feb. 20, 1973	370017A
				June 18, 1976	
Ohio	Cuyahoga	Mayfield, village of	Dec. 28, 1976, suspended; withdrawn	Nov. 23, 1973	390116A
				June 18, 1976	
South Carolina	Horry	Surfside Beach, town of	do	June 14, 1974	450111A
				June 25, 1976	
Texas	Atascosa and Bexar	Lytle, city of	Dec. 29, 1976, suspended; withdrawn	Aug. 2, 1974	480692A
				July 18, 1975	

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended (42 U.S.C. 4001–4128); and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, Feb. 27, 1969) as amended 39 FR 2787, Jan. 24, 1974.

Issued: January 10, 1977.

J. ROBERT HUNTER,
Acting Federal Insurance Administrator.

[FR Doc.77-1770 Filed 1-21-77;8:45 am]

[Docket No. FI-2134]

PART 1916—CONSULTATION WITH LOCAL OFFICIALS

Final Flood Elevation Determinations for Borough of Highlands, New Jersey

On August 4, 1976, at 41 FR 32585, the Federal Insurance Administrator published a notification of modification of the base (100-year) flood elevations in the Borough of Highlands, New Jersey. Since that date, ninety days have elapsed; and the Federal Insurance Administrator has evaluated requests for changes in the base flood elevations, and after consultation with the Chief Executive Officer of the community, has determined no changes are necessary. Therefore, the modified flood elevations are effective as of June 30, 1976 and amend the Flood Insurance Rate Map which was in effect prior to that date.

The modifications are pursuant to section 206 of the Flood Disaster Protection

Act of 1973 (Pub. L. 93–234) and are in accordance with the National Flood Insurance Act of 1968, as amended, (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90–448) 42 U.S.C. 4001–4128, and 24 CFR Part 1916.

For rating purposes, the new community number is 345297A and must be used for all new policies and renewals.

Under the above-mentioned Acts of 1968 and 1973, the Administrator must develop criteria for flood plain management. In order for the community to continue participation in the National Flood Insurance Program, the community must use the final flood elevations to carry out the flood plain management measures of the Program. These modified elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

The numerous changes made in the base flood elevations on the Highlands Flood Insurance Rate Map make it administratively infeasible to publish in this notice all of the base flood elevation changes contained on the Highlands map.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; (42 U.S.C. 4001–4128); and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974)

Issued: January 4, 1977.

J. ROBERT HUNTER,
Acting Federal Insurance Administrator.

[FR Doc.77-1766 Filed 1-21-77;8:45 am]

[Docket No. FI-2134]

PART 1916—CONSULTATION WITH LOCAL OFFICIALS

Final Flood Elevation Determinations for City of Winston-Salem, North Carolina

On August 4, 1976, at 41 FR 32585, the Federal Insurance Administrator published a notification of modification of the base (100-year) flood elevations in the City of Winston-Salem, North Carolina. Since that date, ninety days have elapsed; and the Federal Insurance Administrator has evaluated requests for changes in the base flood elevations, and after consultation with the Chief Executive Officer of the community, has determined no changes are necessary. Therefore, the modified flood elevations are effective as of June 30, 1976 and amend the Flood Insurance Rate Map which was in effect prior to that date.

The modifications are pursuant to section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234) and are in accordance with the National Flood Insurance Act of 1968, as amended, (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90–448) 42 U.S.C. 4001–4128, and 24 CFR Part 1916.

For rating purposes, the new community number is 375360D and must be used for all new policies and renewals.

Under the above-mentioned Acts of 1968 and 1973, the Administrator must develop criteria for flood plain management. In order for the community to continue participation in the National Flood Insurance Program, the community must use the final flood elevations to carry out the flood plain management measures of the Program. These modified elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

The numerous changes made in the base flood elevations on the Winston-Salem Flood Insurance Rate Map make it administratively infeasible to publish in this notice all of the base flood elevation changes contained on the Winston-Salem map.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001–4128); and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974)

Issued: January 4, 1977.

J. ROBERT HUNTER,
Acting Federal Insurance Administrator.

[FR Doc.77-1767 Filed 1-21-77;8:45 am]

[Docket No. FI-2145]

PART 1916—CONSULTATION WITH LOCAL OFFICIALS

Final Flood Elevation Determinations for the City of Tulsa, Oklahoma

On August 4, 1976, at 41 FR 32585, the Federal Insurance Administrator published a notification of modification of the base (100-year) flood elevations in the City of Tulsa, Oklahoma. Since that date, ninety days have elapsed; and the Federal Insurance Administrator has evaluated requests for changes in the base flood elevations, and after consultation with the Chief Executive Officer of the community, has determined no changes are necessary. Therefore, the modified flood elevations are effective as of July 30, 1976 and amend the Flood Insurance Rate Map which was in effect prior to that date.

The modifications are pursuant to section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234) and are in accordance with the National Flood Insurance Act of 1968, as amended, (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90–448) 42 U.S.C. 4001–4128, and 24 CFR Part 1916.

For rating purposes, the new community number is 405381C and must be used for all new policies and renewals.

Under the above-mentioned Acts of 1968 and 1973, the Administrator must develop criteria for flood plain management. In order for the community to continue participation in the National Flood Insurance Program, the community must use the final flood elevations to carry out the flood plain management measures of the Program. These modified elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

The numerous changes made in the base flood elevations on the Tulsa Flood Insurance Rate Map make it administratively infeasible to publish in this notice all of the base flood elevation changes contained on the Tulsa map.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001–4128); and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974)

Issued: January 7, 1977.

J. ROBERT HUNTER,
Acting Federal Insurance Administrator.

[FR Doc. 77-1768 Filed 1-21-77;8:45 am]

[Docket No. FI-947]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Correction of Final Flood Elevation for the Township of Lower Macungie, Lehigh County, Pennsylvania

The final notice published on August 12, 1976, at 41 FR 34023 in the FEDERAL REGISTER, showing a Base Flood Elevation of 311 feet at Weidas Mill Bridge, 319 feet at Riverdale Farm Bridge and 333 feet at the Pennsylvania Turnpike (extended), should have been 310 feet, 318 feet and 332 feet respectively. The width of the 100-year flood boundary remains unchanged.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001–4128); and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974)

Issued: January 4, 1977.

J. ROBERT HUNTER,
Acting Federal Insurance Administrator.

[FR Doc.77-1760 Filed 1-21-77;8:45 am]

[Docket No. FI-2277]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Correction of the Final Flood Elevation for the City of Leon Valley, Bexar County, Texas

The final notice published on December 16, 1976, at 41 FR 55088 in the FEDERAL REGISTER, only showed elevations in

feet above Mean Sea Level along Huebner Creek. Elevations (msl) at various locations along additional sources of flooding are shown in the table below:

Source of flooding	Location	Elevation in feet above mean sea level
Drain 1	William Rancher Rd.	836
	Grass Hill Dr.	828
	Aids Dr.	806
Drain 1A	Seneca Dr.	815
	Kinman Dr.	823
	Mary Jamison Dr.	853
Drain 2	Evening Sun Dr.	829
	Seneca Dr.	851
Drain 3	Stirrup Lane	834
	Forest Meadow Dr.	854
	Forest Mont Dr.	865
	Forest Ridge Dr.	887
Zarzamora Creek	I-410 (service road)	818
	Bandera Rd.	816
Drain 4	I-410	826
	Wurzbach Rd.	851

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 F.R. 17804, November 28, 1968), as amended 42 U.S.C. 4001–4128); and Secretary's delegation of authority to Federal Insurance Administrator, 34 F.R. 2680, February 27, 1969, as amended by 39 F.R. 2787, January 24, 1974)

Issued: January 4, 1977.

J. ROBERT HUNTER,
Acting Federal
Insurance Administrator.

[FR Doc.77-1761 Filed 1-21-77;8:45 am]

[Docket No. FI-2277]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Correction of the Final Flood Elevation for City of Conroe, Montgomery County, Texas

The final notice published on December 1, 1976, at 41 FR 42668 in the FEDERAL REGISTER shows the Base Flood Elevations at various locations, column I. These Base Flood Elevations should be corrected to reflect changes as shown in column II.

Source of flooding	Location	Elevation in feet above mean sea level	
		Col. I	Col. II (should be)
West Fork, West Branch of Alligator Creek.	Upstream side of I-45	205	205
	Upstream side of Wilson	199	199
West Branch of Alligator Creek.	Centerline of I-45 (north crossing)	185	185
Live Oak Branch	Centerline of State Highway 105	185	187
	Greenway Dr.	182	182
North Fork of Stewarts Creek.	Hilbig Rd.	216	218
	East Semands St. (extended)	188	188
Stewarts Creek	Upstream side of East Davis St.	179	179
	F Ave.	175	174
	Silverdale Dr. (extended)	168	167
Possum Branch	Airport Rd.	181	193
	East Phillips St.	188	188
Alligator Creek	Centerline of Cartwright Rd.	235	235
	Pacific St.	211	212
	North Thompson St.	203	203
	Cable St. (extended)	180	180
	I-45 centerline	174	174
	Santa Fe RR	169	170

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001–4128); and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974.)

Issued: January 4, 1977.

J. ROBERT HUNTER,
Acting Federal
Insurance Administrator.

[FR Doc.77-1762 Filed 1-21-77;8:45 am]

[Docket No. FI-2296]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation for City of Livermore, California

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917 (§1917.10)), hereby gives notice of the final determinations of flood elevations for the City of Livermore, California under § 1917.8 of Title 24 of the Code of Federal Regulations.

The Administrator, to whom the Secretary has delegated the statutory authority, has developed criteria for flood plain management in flood-prone areas. In order to continue participation in the National Flood Insurance Program, the City must adopt flood plain management measures that are consistent with these criteria and reflect the base flood elevations determined by the Secretary in accordance with 24 CFR Part 1910.

In accordance with Part 1917, an opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. Pursuant to §1917.8, no appeals were received from the community or from individuals within the community. Therefore, publication of this notice is in compliance with §1917.10.

Final flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations are available for review at City Hall, 2550 First Street, Livermore, California 94550.

Accordingly, the Administrator has determined the 100-year (i.e., flood with one percent chance of annual occurrence) flood elevations as set forth below:

Source of flooding	Location	Elevation in feet above mean sea level	Width from shoreline or bank of stream (facing downstream) to 100-yr flood boundary (feet)	
			Right	Left
Arroyo Mocho	Southern Pacific RR	450	40	40
	South edge of Stanley Blvd	452	1,670	50
	West edge of Holmes St.	472	60	0
Arroyo Las Positas	West side of Airway Blvd	381	50	800
	West edge of Bluebell Dr.	501	20	35
	West edge of Heather Lane	512	150	30
	Along north edge of Frontage Rd.	535	70	580
Altamont Creek	Along north edge of Bluebell Dr.	500	880	150
	West edge of Vasco Rd.	536	910	40
Arroyo Seco	South side Highway 50	506	90	90
	Lucille St.	551	0	0

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001–4128); and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974.)

Issued: December 16, 1976.

HOWARD B. CLARK,
Acting Federal
Insurance Administrator.

[FR Doc.77-1763 Filed 1-21-77;8:45 am]

[Docket No. FI-2322]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation for City of Fullerton, California

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917 (§1917.10)), hereby gives notice of the final determinations of flood elevations for the City of Fullerton, California under § 1917.8 of Title 24 of the Code of Federal Regulations.

The Administrator, to whom the Secretary has delegated the statutory authority, has developed criteria for flood plain management in flood-prone areas. In order to continue participation in the National Flood Insurance Program, the City must adopt flood plain management measures that are consistent with these criteria and reflect the base flood elevations determined by the Secretary in accordance with 24 CFR Part 1910.

In accordance with Part 1917, an opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. Pursuant to §1917.8, no appeals were received from the community or from individuals within the community. Therefore, publication of this notice is in compliance with §1917.10.

Final flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations are available for review at City Hall, 303 West Commonwealth, Fullerton, California 92632.

Accordingly, the Administrator has determined the 100-year (i.e., flood with one percent chance of annual occurrence) flood elevations as set forth below:

Source of flooding	Location	Depth in feet above mean sea level
Sheet flooding	Numerous small areas throughout the city.	Up to 3 ft.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; (42 U.S.C. 4001–4128); and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974.)

Issued: December 16, 1976.

HOWARD B. CLARK,
Acting Federal
Insurance Administrator.

[FR Doc.77-1764 Filed 1-21-77;8:45 am]

[Docket No. FI-2296]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation for City of Eureka, Missouri

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917 (§ 1917.10)), hereby gives notice of the final determinations of flood elevations for the City of Eureka, Missouri under § 1917.8 of Title 24 of the Code of Federal Regulations.

The Administrator, to whom the Secretary has delegated the statutory authority, has developed criteria for flood plain management in flood-prone areas. In order to continue participation in the National Flood Insurance Program, the City must adopt flood plain management measures that are consistent with these criteria and reflect the base flood elevations determined by the Secretary in accordance with 24 CFR Part 1910.

In accordance with Part 1917, an opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. Pursuant to § 1917.8, no appeals were received from the community or from individuals within the community. Therefore, publication of this notice is in compliance with § 1917.10.

Final flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations are available for review at City Hall, 108 South Central Avenue, Eureka, Missouri 63025.

Accordingly, the Administrator has determined the 100-year (i.e., flood with one percent chance of annual occurrence) flood elevations as set forth below:

Source of flooding	Location	Elevation in feet above mean sea level	Width from shoreline or bank of stream (facing downstream) to 100-yr flood boundary (feet)	
			Right	Left
Cliffe Creek	Forby Rd. M 1.862 (extended)	473	120	60
	State Route 109	442	250	(1)
Meramec River	North Pacific RR. bridge (downstream side).	444	(1)	2,180
Flat Creek	Stonebridge Dr. (extended across South Pacific RR. tracks).	452	(1)	750
	Bald Hill Rd.	452	1,450	800

[1] Outside corporate limits.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001–4128); and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974.)

Issued: December 21, 1976.

HOWARD B. CLARK,
Acting Federal
Insurance Administrator.

[FR Doc.77-1765 Filed 1-21-77;8:45 am]

[Docket No. FI-2301]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation for County of Waupaca, Wisconsin

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917 (§ 1917.10)), hereby gives notice of the final determinations of flood elevations for Waupaca County, Wisconsin under § 1917.8 of Title 24 of the Code of Federal Regulations.

The Administrator, to whom the Secretary has delegated the statutory authority, has developed criteria for flood plain management in flood-prone areas. In order to continue participation in the National Flood Insurance Program, the County must adopt flood plain management measures that are consistent with these criteria and reflect the base flood elevations determined by the Secretary in accordance with 24 CFR Part 1910.

In accordance with Part 1917, an opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. Pursuant to § 1917.8, no appeals were received from the community or from individuals within the community. Therefore, publication of this notice is in compliance with § 1917.10.

Final flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations are available for review at Waupaca County, 109 South Main Street, Waupaca, Wisconsin 54981.

Accordingly, the Administrator has determined the 100-year (i.e., flood with one percent chance of annual occurrence) flood elevations as set forth below:

Source of flooding	Location	Elevation in feet above mean sea level	Width from shoreline or bank of stream (facing downstream) to 100-yr flood boundary (feet)	
			Right	Left
Little Wolf River	CTH P	1,058	500	50
	Culvert Bridge	923	150	150
	CTH C	867	50	200
	Kretchmer Rd.	855	200	100
	STH 22	830	25	50
	STH 54	782	50	100
	Ostrander Rd.	771	20	50
South Branch Little Wolf River.	CTH Q	906	50	100
	STH 49	899	200	80
Crystal River	STH 22 Bridge	973	20	10
	Sanders Rd.	860	50	10
	Rural Rd.	856	50	10
	Parfreyville Rd.	851	100	50
	Shadow Rd.	835	100	50
Waupaca River	Weyauwega corporate limits (downstream).	759	50	20
Wolf River	500 line railroad bridge	757	6,200	10,300
Pigeon River	A centerline extended west from Stenbrook Rd.	812	100	600
	Section line between land secs. 21 and 22	809	50	50

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; (42 U.S.C. 4001–4128); and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974.)

Issued: December 21, 1976.

HOWARD B. CLARK,
Acting Federal
Insurance Administrator.

[FR Doc.77-1769 Filed 1-21-77;8:45 am]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Federal Insurance Administration

[24 CFR Part 1917]

[Docket No. FI-2656]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for the City of Ferguson, Missouri

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917 (§ 1917.4(a)), hereby gives notice of his proposed determinations of flood elevations for the City of Ferguson, Missouri.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the City of Ferguson must adopt sound flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at City Hall, 110 Church Street, Ferguson, Missouri 63135.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mayor Charles H. Grimm, 110 Church Street, Ferguson, Missouri 63135. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

Source of flooding	Location	Elevation in feet above mean sea level
Maline Creek	Glen Owen Ave.	462
	West Florissant Rd.	469
	Wabash R.R.	477
	Bermuda Dr.	485
	Wabash R.R.	486
	Florissant Rd.	489
Ferguson Park Branch.	Highmont Dr.	480
	Forestwood Dr.	484
	Chambers Rd.	511
	Averill Rd.	512
	Roberts Rd.	526
Ball Creek	Elkan Dr.	493
	Woodstock Rd.	497
Ferguson Branch	Paul St.	489
	Adams St.	491
	Wabash R.R.	500
	Church St.	503
	Darst Rd.	511
	Chambers Rd.	517
	Royal Rd.	520
	Thoroughman Rd.	521
	Robert Dr.	528
	Scott Dr.	537

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; (42 U.S.C. 4001–4128); and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974)

Issued: November 1, 1976.

J. ROBERT HUNTER,
Acting Federal
Insurance Administrator.

[FR Doc.77-1744 Filed 1-21-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2657]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for Village of Itasca, Du Page County, Illinois

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917 (§ 1917.4(a)) hereby gives notice of his proposed determinations of flood elevations for the Village of Itasca, Du Page County, Illinois.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the Village must adopt flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at the Village Hall, 100 North Walnut Street, Itasca.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mr. William F. Everham, President of the Board of Trustees, 100 North Walnut Street, Itasca. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

Source of flooding	Location	Elevation in feet above mean sea level
Spring Brook	Rohlwing Rd.	699
	Valley Rd.	699
	Walnut Ave.	699
	Prospect Ave.	681
Salt Creek	Thorndale Ave.	682
	Industrial Rd. (extended).	681
Meacham Creek	Medinah Rd.	716
	Corporate limits	716
Devon Ave. tributary.	North corporate limit (Devon Ave.)	686
	Pierce Rd.	687

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; (42 U.S.C. 4001–4128); and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974.)

Issued: January 4, 1977.

J. ROBERT HUNTER,
Acting Federal
Insurance Administrator.

[FR Doc.77-1745 Filed 1-21-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2578]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for City of Brighton, Colorado; Correction

The name and address of the Mayor of the City of Brighton, Colorado in the notice published on December 30, 1976 at 41 FR 56960 in the FEDERAL REGISTER should be corrected as follows: Mayor Guy R. Sanders, Municipal Building, 365 Main Street, Brighton, Colorado 80601.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 F.R. 17804, November 28, 1968), as amended; (42 U.S.C. 4001–4128); and Secretary's delegation of authority to Federal Insurance Administrator 34 F.R. 2680, February 27, 1969, as amended by 39 F.R. 2787, January 24, 1974)

Issued: December 27, 1976.

HOWARD B. CLARK,
Acting Federal
Insurance Administrator.

[FR Doc.77-1746 Filed 1-21-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2651]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for Town of Gorham, Ontario County, New York

The Federal Insurance Administrator, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90–448), (42 U.S.C. 4001–4128), and 24 CFR Part 1917 (§ 1917.4(a)) hereby gives notice of his proposed determinations of flood elevations for the Town of Gorham, Ontario County, New York.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the Town must adopt flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed flood elevations (100-year flood) are listed below for selected locations. Maps and other information show-

ing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at the entrance to Town Hall on the bulletin board, South Street, Gorham, New York.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mr. Robert Watkins, Town Supervisor of Gorham, R.D. 1, P.O. Box 108, D. Stanley, New York 14561. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

Source of flooding	Location	Elevation in feet above mean sea level
Flint Creek	Tile Yard Rd.	861
	Lake to Lake Rd.	867
	Con Rail	872
	East Swamp Rd.	879
Canandaigua Lake.	Fisher Gully	867
	Jones Rd. (extended)	868
	Gage Gully	868
	Deers Run	868
	Turner Rd (extended).	885

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by 30 FR 2787, January 24, 1974)

Issued: January 4, 1977.

J. ROBERT HUNTER,
Acting Federal Insurance Administrator.

[FR Doc.77-1747 Filed 1-21-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2652]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for Village of Lloyd Harbor, Suffolk County, New York

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917 (§ 1917.4(a)) hereby gives notice of his proposed determinations of flood elevations for the Village of Lloyd Harbor, Suffolk County, New York.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the Village must adopt flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at the Village Hall, 32 Middle Hollow Road, Huntingdon, New York.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mayor William H. Miller, 32 Middle Hollow Road, Huntingdon, New York 11743. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

Source of flooding	Location	Elevation in feet above mean sea level
Long Island Sound.	----------	[1] 12

[1] Uniform.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974)

Issued: January 4, 1977.

J. ROBERT HUNTER,
Acting Federal Insurance Administrator.

[FR Doc.77-1748 Filed 1-21-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2653]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for Town of Riverhead, Suffolk County, New York

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917 (§ 1917.4(a)) hereby gives notice of his proposed determinations of flood elevations for the Town of Riverhead, Suffolk County, New York.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the Town must adopt flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at the Town Clerk's office on the bulletin board, 200 Howell Avenue, Riverhead, New York.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mr. Allen M. Smith, Town Supervisor of Riverhead, 200 Howell Avenue, Riverhead, New York 11901. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

Source of flooding	Location	Elevation in feet above mean sea level
Long Island Sound.	Entire coastline	11
Peconic River estuary.	Grangabel Park to Indian Island County Park.	9
Great Peconic Bay (Flanders Bay).	Entire coastline	8

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974)

Issued: January 4, 1977.

J. ROBERT HUNTER,
Acting Federal Insurance Administrator.

[FR Doc.77-1749 Filed 1-21-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2654]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for Village of Sag Harbor, Suffolk County, New York

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917 (§ 1917.4(a)) hereby gives notice of his proposed determinations of flood elevations for the Village of Sag Harbor, Suffolk County, New York.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the Village must adopt flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at the Village Clerk's Office on the Bulletin Board, Main Street, Sag Harbor, New York.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Honorable Harry Fick, Mayor of Sag Harbor, PO Box 660, Sag Harbor, New York 11963. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

Source of flooding	Location	Elevation in feet above mean sea level
Gardiner's Bay	Entire coastline	+9.0

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974.)

Issued: January 4, 1977.

J. ROBERT HUNTER,
Acting Federal Insurance Administrator.

[FR Doc.77-1750 Filed 1-21-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2655]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for Village of Sodus Point, Wayne County, New York

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917 (§ 1917.4(a)) hereby gives notice of his proposed determinations of flood elevations for the Village of Sodus Point, Wayne County, New York.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the Village must adopt flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at the entrance of the Village Clerk's office, Lake Road, Sodus Point, New York.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify the Honorable Raymond Zeitler, Mayor of Sodus Point, 4th Street, Sodus Point, New York 14555. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

Source of flooding	Location	Elevation in feet above mean sea level
Lake Ontario	West of North Ontario St.	253
	East of 7th St.	251
Sodus Bay	Wickham Blvd.	250
	Margaretta Rd. (extended).	250
	Central Ave. (extended).	251
	South corporate limits.	250

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974.)

Issued: January 4, 1977.

J. ROBERT HUNTER,
Acting Federal Insurance Administrator.

[FR Doc 77-1751 Filed 1-21-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2650]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for Village of Bemus Point, Chautauqua County, New York

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917 (§ 1917.4(a)) hereby gives notice of his proposed determinations of flood elevations for the Village of Bemus Point, Chautauqua County, New York.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the Village must adopt flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at the Village Hall on the Bulletin Board, 13 Alburtus Avenue, Bemus Point, New York 14712.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Honorable Thom E. Shagla, Mayor of Bemus Point, Bemus Point, New York 14712. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

Source of flooding	Location	Elevation in feet above mean sea level
Chautauqua Lake.	Lincoln Rd.	1,310.5
	Springbrook Ave.	1,310.5
	Liberty St. (extended).	1,310.5
	Grove Ave. (extended).	1,310.5
	Bemus St. (extended).	1,310.5
	North corporate limits.	1,310.5

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 F.R. 17804, November 28, 1968), as amended; (42 U.S.C. 4001-4128); and Secretary's delegation of autority to Federal Insurance Administrator 34 F.R. 2680, February 27, 1969, as amended by 39 F.R. 2787, January 24, 1974)

Issued: January 4, 1977.

J. ROBERT HUNTER,
Acting Federal Insurance Administrator.

[FR Doc.77-1752 Filed 1-21-77;8:45 a.m.]

[24 CFR Part 1917]

[Docket No. FI-2649]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for Township of Whitemarsh, Montgomery County, Pennsylvania

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917 (§ 1917.4(a)) hereby gives notice of his proposed determinations of flood elevations for the Township of Whitemarsh, Montgomery County, Pennsylvania.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the Township must adopt flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at the Township Building, Whitemarsh Township, Joshua Road, La Fayette Hill, Pennsylvania.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mr. John Plonski, Township Manager, Whitemarsh Township, Joshua Road, La Fayette Hill, Pennsylvania 19444. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

Source of flooding	Location	Elevation in feet above mean sea level
Schuylkill River	Downstream corporate limits.	56.7
	Harts Lane (extended).	58.0
	Andorra Creek (confluence).	61.6
	Upstream corporate limits.	64.0
Wissahickon Creek.	Downstream corporate limits.	141.1
	Stenton Ave	142.8
	Reading R R (Con-Rail bridge).	148.7
	Skippack Pike	155.8
	Pennsylvania Turnpike (Route 276).	158.0
	Morris Rd	164.8
	Upstream corporate limits.	165.3

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; (42 U.S.C. 4001–4128); and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974).

Issued: January 4, 1977.

J. ROBERT HUNTER,
Acting Federal Insurance Administrator.

[FR Doc.77-1753 Filed 1-21-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2648]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for Borough of Scottdale, Westmoreland County, Pennsylvania

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917 (§ 1917.4(a)) hereby gives notice of his proposed determinations of flood elevations for the Borough of Scottdale, Westmoreland County, Pennsylvania.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the Borough must adopt flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at the Borough Hall, 10 Mount Pleasant Road, Scottdale.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mayor Frederick L. Eberharter, PO Box 67, Scottdale, Pennsylvania 15683. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

Source of flooding	Location	Elevation in feet above mean sea level
Jacobs Creek	Upstream corporate limits (upper reach).	1,050
	Downstream corporate limits (uuper reach).	1,050
	U.S. Highway 119	1,043
	Downstream corporate limits (lower reach).	1,041
Stauffer Run	Upstream corporate limits.	1,052
	Stauffer Ave./ Orchard Ave.	1,052
	Scottdale Ave	1,051

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; (42 U.S.C. 4001–4128); and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974.)

Issued: January 4, 1977.

J. ROBERT HUNTER,
Acting Federal Insurance Administrator.

[FR Doc.77-1754 Filed 1-21-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2647]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for Borough of New Britain, Bucks County, Pennsylvania

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917 (§ 1917.4(a)) hereby gives notice of his proposed determinations of flood elevations for the Borough of New Britain, Bucks County, Pennsylvania.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the Borough must adopt flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at the Borough Hall, 76 Keeley Avenue, New Britain.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mayor John A. Mueller, 76 Keeley Avenue, New Britain, Pennsylvania 18901. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

Source of flooding	Location	Elevation in feet above mean sea level
Neshaminy Creek.	Downstream corporate limits.	232
	South Landis Mill Rd. (extended).	232
	Upstream corporate limits.	233
Cooks Run	Confluence with Neshaminy Creek.	232
	Tamenend Ave. and corporate limits.	244
	Corporate limits and Con Rail.	249
	Wooden Bridge	259
	Stone Bridge	265
	U.S. Route 202 Bridge.	270
	Corporate limits	277

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 F.R. 17804, November 28, 1968), as amended; (42 U.S.C. 4001–4128); and Secretary's delegation of authority to Federal Insurance Administrator 34 F.R. 2680, February 27, 1969, as amended by 39 F.R. 2787, January 24, 1974)

Issued: January 4, 1977.

J. ROBERT HUNTER,
Acting Federal Insurance Administrator.

[FR Doc. 77-1755 Filed 1-21-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2646]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for Township of Nether Providence, Delaware County, Pennsylvania

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917 (§ 1917.4(a)) hereby gives notice of his proposed determinations of flood elevations for the Township of Nether Providence, Delaware County, Pennsylvania.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the Township must adopt flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at the Township Building on the Bulletin Board, 214 Sykes Lane, Wallingford, Pennsylvania 19086.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mr. Charles A. Waters, Township Secretary of Nether Providence, 214 Sykes Lane, Wallingford, Pennsylvania 19086. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

Source of flooding	Location	Elevation in feet above mean sea level
Crum Creek	Chester Rd	43
	Yale Ave	53
	Con Rail bridge	67
	Wallingford Rd	73
	Baltimore Pike	83
	Septa Trolley	85
	Paper Mill Rd	88
	Beatty Rd	101
	Upstream corporate limits.	117
Ridley Creek	East 26th St	22
	Irwins Mill Dam	23
	Providence Rd	25
	Chestnut Parkway	29
	Chester Park Dam	33
	Chester Park Dr	39
	Brookhaven Rd	49
	Sacksville Rd	61
Vernon Run	Con Rail bridge	185
	Walker Lane	185

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; (42 U.S.C. 4001–4128); and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974)

Issued: January 4, 1977.

J. ROBERT HUNTER,
Acting Federal Insurance Administrator.

[FR Doc.77-1758 Filed 1-21-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2645]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for Borough of Conshohocken, Montgomery County, Pennsylvania

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917 (§ 1917.4(a)) hereby gives notice of his proposed determinations of flood elevations for the Borough of Conshohocken, Montgomery County, Pennsylvania.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the Borough must adopt flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at the Borough Hall, 8th Avenue & Fayette Street, Conshohocken.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mayor John F. Di Jiosia, 8th Avenue and Fayette Street, Conshohocken, Pennsylvania 19428. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

Source of flooding	Location	Elevation in feet above mean sea level
Schuylkill River	East corporate limits	64
	Fayette St	67
	Plymouth Dam	69
	West corporate limits	70
Plymouth Creek	Reading R.R.	65
	Elm St	69
	West corporate limits	75

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; (42 U.S.C. 4001–4128); and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974.)

Issued: January 4, 1977.

J. ROBERT HUNTER,
Acting Federal Insurance Administrator.

[FR Doc.77-1757 Filed 1-21-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2644]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for Borough of Ambler, Montgomery County, Pennsylvania

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917 (§ 1917.4(a)) hereby gives notice of his proposed determinations of flood elevations for the Borough of Ambler, Montgomery County, Pennsylvania.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the Borough must adopt flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at the Bulletin Board in the Borough Hall, 31 East Butler Avenue, Ambler.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mayor George E. Saurman, 31 East Butler Avenue, Ambler, Pennsylvania 19002. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

Source of flooding	Location	Elevation in feet above mean sea level
Wissahickon Creek.	Stuart Farm Creek	167
	Tannery Run	179

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; (42 U.S.C. 4001–4128); and Secretary's delegation

of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by FR 39 2787, January 24, 1974).

Issued: January 4, 1977.

J. ROBERT HUNTER,
Acting Federal Insurance Administrator.

[FR Doc.77-1758 Filed 1-21-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2643]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for City of Sparta, White County, Tennessee

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917 (§ 1917.4(a)) hereby gives notice of his proposed determinations of flood elevations for the City of Sparta, White County, Tennessee.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the City must adopt flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at City Hall on the bulletin board, P.O. Box 30, Sparta, Tennessee.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Honorable Herman Cowden, Mayor of Sparta, P.O. Box 30, Sparta, Tennessee. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

Source of flooding	Location	Elevation in feet above mean sea level
Calfkiller River	Louisville & Nashville RR.	857
	U.S. Route 70	860
	West Bronson St. (extended).	863
	North Church St. (extended).	865
	Wagner St. (extended)	867
Town Creek	Mayberry St.	855
	St. Louis R R	857
	U.S. Route 111	896
	U.S. Route 70 (upstream of bridge).	906

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974)

Issued: January 4, 1977.

J. ROBERT HUNTER,
Acting Federal Insurance Administrator.

[FR Doc.77-1759 Filed 1-21-77; 8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2597]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for Village of Addison, Dupage County, Illinois

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917 (§ 1917.4(a)) hereby gives notice of his proposed determinations of flood elevations for the Village of Addison, Dupage County, Illinois.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in indentified flood hazard areas. In order to participate in the National Flood Insurance Program, the Village must adopt flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at the bulletin board in the front entrance at the Village Hall, 130 West Army Trail Road, Addison, Illinois 60101.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mr. K. Arthur Naumann Village President of Addison, 130 West Army Trail Road, Addison, Illinois 60101. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

Source of flooding	Location	Elevation in feet above mean sea level
Salt Creek	Elizabeth Dr.	677
	Irving Park Rd.	680

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974)

Issued: December 21, 1976.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.77-1771 Filed 1-21-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2596]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for City of Wood Dale, Dupage County, Illinois

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917 (§ 1917.4(a)) hereby gives notice of his proposed determinations of flood elevations for the City of Wood Dale, Dupage County, Illinois.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the City must adopt flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at the lobby on the bulletin board at 404 North Wood Dale Road, Wood Dale, Illinois.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify the Honorable Jerry Greer, Mayor of Wood Dale, 404 North Wood Dale Road, Wood Dale, Illinois 60191. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

Source of flooding	Location	Elevation in feet above mean sea level
Salt Creek	North of Armitage Ave.	674
	South of Fullerton Ave.	675
	Interstate Route 20	675
	Army Trail Rd. (extended).	676
	Confluence with Westwood Creek.	676
	Addison Ave.	676
	Rozanne Dr.	676
	Lincoln St.	677
	Highview Ave.	679
	Lake St.	680
	Mill Rd.	684
	Country Club Dr.	689
	North of Rose Ave. near Addison's northern corporate limits.	692

tice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

Source of flooding	Location	Elevation in feet above mean sea level
West Fork Middle Branch Chicago River.	Lake-Cook Rd. (a/k/a County Line Rd.).	653
	Central Ave.	656
	Deerfield Rd.	658
	Juniper Ct.	659
	Hazel Ave.	660
	Wilmot Rd.	661
	Montgomery Dr.	664
Middle Fork North Branch Chicago River.	Deerfield Dr.	654

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974)

Issued December 21, 1976.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.77-1772 Filed 1-21-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2595]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for Village of Deerfield, Illinois

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917 (§1917.4(a)), hereby gives notice of his proposed determinations of flood elevations for the Village of Deerfield, Illinois.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the Village of Deerfield must adopt sound flood plain management measures that are consistent with the flood evelations determined by the Secretary.

Proposed flood elevations (100-year flood) are listed below for selected locations. Map and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at Village Hall, 850 Waukegan Road, Deerfield, Illinois 60015.

Any person having knowledge, information, or wishing to make comment on these determinations should immediately notify Mayor Bernard Forrest, Village Hall, 850 Waukegan Road, Deerfield, Illinois 60015. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

Source of flooding	Location	Elevation in feet above mean sea level
Cedar River	Edgewood Rd.	737.0
	1st Ave.	732.0
	8th Ave.	729.0
Prarie Creek	J St.	727.0
	6th St.	728.0
	Bowling St.	725.0
	C St.	724.0
Dry Creek	Bowman Rd.	824.5
	Northbrook Dr.	821.0
	Council St.	815.0
Indian Creek	30th St.	761.0
	24th St.	761.0

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974)

Issued: December 17, 1976.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.77-1773 Filed 1-21-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2504]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for City of Cedar Rapids, Iowa

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917 (§ 1917.4 (a)), hereby gives notice of his proposed determinations of flood elevations for the City of Cedar Rapids, Iowa.

Under these Acts, the Administrator, to whom the Secertary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the City of Cedar Rapids must adopt sound flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed flood elevations (100-year flood) are listed below for selected locations. Map and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at City Hall, May's Island, 3rd Floor, Cedar Rapids, Iowa 52401.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mayor Donald Canney, City Hall, May's Island, 3rd Floor, Cedar Rapids, Iowa 52401. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974)

Issued: December 17, 1976.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.77-1774 Filed 1-21-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2593]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for Town of Berkley, Massachusetts

The Federal Insurance Administrator in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917 (§ 1917.4(a)), hereby gives notice of his proposed determinations of flood elevations for the Town of Berkley, Massachusetts.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the Town of Berkley must adopt sound flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed flood elevations (100-year flood) are listed below for selected locations. Map and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at Town Hall, Rural Route 1, Berkley, Massachusetts 02780.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mr. George Moitoza, Chair-

man, Board of Selectmen, Town Hall, Rural Route 1, Berkley, Massachusetts 02780. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

Source of flooding	Location	Elevation in feet above mean sea level
Taunton River	Berkley Bridge	15
Assonet River	Corporate limits	15

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 F.R. 17804, November 28, 1968), as amended; (42 U.S.C. 4001–4128); and Secretary's delegation of authority to Federal Insurance Administrator 34 F.R. 2680, February 27, 1969, as amended by 39 F.R. 2787, January 24, 1974)

Issued: December 17, 1976.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.77-1775 Filed 1-21-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2592]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for Town of Abington, Massachusetts

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917 (§ 1917.4 (a)), hereby gives notice of his proposed determinations of flood elevations for the Town of Abington, Massachusetts.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the Town of Abington must adopt sound flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed flood elevations (100-year flood) are listed below for selected locations. Map and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at Town Hall, 10 Railroad Street, Abington, Massachusetts 02351.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mr. Francis J. Giniewicc, Chairman, Board of Selectmen, Town Hall, 10 Railroad Street, Abington, Massachusetts 02351. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

Source of flooding	Location	Elevation in feet above mean sea level
Shumatuscacant River.	Summer St.	81
	Center St.	88
	Central Ave.	89
	Adams St.	104
	Wales St.	117
	Washington St.	108
	Lincoln St.	123
	Randolph St.	124
	Summit St.	150

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; (42 U.S.C. 4001–4128); and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974.)

Issued: December 21, 1976.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.77-1776 Filed 1-21-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2591]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for County of Carver, Minnesota

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917 (§ 1917.4 (a)), hereby gives notice of his proposed determinations of flood elevations for the County of Carver, Minnesota.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the County of Carver must adopt sound flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed flood elevations (100-year flood) are listed below for selected locations. Map and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at Carver County Courthouse, 600 East 4th Street, Chaska, Minnesota 55318.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mr. William J. Snyder, County Auditor, 600 East 4th Street, Chaska, Minnesota 55318. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

Source of flooding	Location	Elevation in feet above mean sea level
South Fork Crown River.	Watertown downstream city limit.	936
	Minnesota Highway 25 downstream.	942
	Minnesota Highway 25 upstream.	944
	U.S. Highway 7 downstream.	948
	U.S. Highway 7 upstream.	949
	Minnesota Highway 25 upstream.	951
	County State Aid Highway 30 downstream.	952

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; (42 U.S.C. 4001–4128); and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974)

Issued: December 21, 1976.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.77-1777 Filed 1-21-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2590]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for Town of Harrison, New Jersey

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917 (§ 1917.4(a)), hereby gives notice of his proposed determinations of flood elevations for the Town of Harrison, New Jersey.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the Town of Harrison must adopt sound flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed flood elevations (100-year flood) are listed below for selected locations. Map and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at Town Hall, 318 Harrison Avenue, Harrison, New Jersey 07029.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mayor Frank E. Rodgers, Town Hall, 318 Harrison Avenue, Harrison, New Jersey 07029. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

Source of flooding	Location	Elevation in feet above mean sea level
Passaic River	4th St.	10
	Penn Central RR.	10
	Essex St.	10
	Bergen St.	10
	Harrison Ave.	10

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; (42 U.S.C. 3001–4128); and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974)

Issued: December 21, 1976.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.77-1778 Filed 1-21-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2589]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for Township of Hanover, Morris County, New Jersey

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917 (§ 1917.4(a)) hereby gives notice of his proposed determinations of flood elevations for the Township of Hanover, Morris County, New Jersey.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the Township must adopt flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at the General Office at the Municipal Building, 1000 Route 10, Whippany, New Jersey.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify the Honorable Saverio C. Iannacone, Mayor of Hanover, P.O. Box 250, Whippany, New Jersey. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

Source of flooding	Location	Elevation in feet above mean sea level
Whippany River	Route 10	182
	Whippany Rd.	188
	Parsippany Rd.	207
	Eden Lane	245
	Cedar Knolls Rd.	253
	Hanover Ave.	268
Stony (Malapardis) Brook.	Parsippany Rd.	206
	Mount Pleasant Ave.	212
	State Highway 10	229
	Jefferson Rd.	256
Unnamed tributary to Whippany River.	Morristown & Erie RR.	265
	East Frederick Pl.	267
	do.	270
	Ridgedale Ave.	272

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; (42 U.S.C. 4001–4128); and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974).

Issued: December 21, 1976.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.77-1779 Filed 1-21-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2588]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for City of Greenville, North Carolina

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917 § 1917.4(a)), hereby gives notice of his proposed determinations of flood elevations for the City of Greenville, North Carolina.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the City of Greenville must adopt sound flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed flood elevations (100-year flood) are listed below for selected locations. Map and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at City Hall, Greenville, North Carolina 27834.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mayor Percy R. Cox, P.O. Box 1905, Greenville, North Carolina 27834. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

Source of flooding	Location	Elevation in feet above mean sea level
Tar River	Greenville Blvd., NE.[1]	21
	North Green St.[1]	22
Green Mill Run	5th St.[1]	21
	Elm St.	29
	14th St.	35
	Evans St.	38
	Memorial Dr.[1]	40
	SR 1135	60
North Fork Green Mill Run.	N. & S. RR.[1]	63
	SR 1203[1]	65
Fornes Run	14th St.	39
	South Elm St.[1]	53
Parkers Creek and laterial No. 1.	SR 1530	23
	North Green St.	24
Parkers Creek and laterial No. 2.	NC 30	23
	North Green St.	24
Hardeen Creek	N. & S. RR.[1]	24
Bells Branch	Oxford Rd.	20
	N. & S. RR.[1]	47
	York Rd.	56
Rowdy Branch	10th St.[1]	21
	South Wright Rd.	36
	N. & S. RR.[1]	63
Meeting House Branch.	do.[1]	33
	King George Rd.	37

[1] Downstream side of the road.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; (42 U.S.C. 4001–4128); and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974)

Issued: December 21, 1976.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc 77-1780 Filed 1-21-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2587]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for Township of Lower Gwynedd, Montgomery County, Pennsylvania

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of

1968 Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917 (§ 1917.4(a)) hereby gives notice of his proposed determinations of flood elevations for the Township of Lower Gwynedd, Montgomery County, Pennsylvania.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the Township must adopt flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at the Township Building on the bulletin board, Box 293, Bethlehem Pike, Spring House, Lower Gwynedd, Pennsylvania.

And person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mr. George H. Adams, Secretary Treasurer of the Board of Supervisors of Lower Gwynedd, P.O. Box 293, Bethlehem Pike Spring House, Lower Gwynedd, Pensylvania. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

Source of flooding	Location	Elevation in feet above mean sea level
Wissahickon Creek.	Western corporate limits.	270
	U.S. Route 202	262
	Con Rail	251
	Plymouth Rd	246
	Gypsy Hill Rd. (extended).	243
	Grasshopper Lane (extended).	235
	Southern corporate limits.	226
	Trewellyn Ave. (extended).	214
	Southern corporate limits.	208

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; (42 U.S.C. 4001–4128); and Secretary's delegation of authority to Federal Insurance Administrator 34 F.R. 2680, February 27, 1969, as amended by 39 F.R. 2787, January 24, 1974)

Issued: December 21, 1976.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.77–1781 Filed 1–21–77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI–2586]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for Township of Upper Merion, Montgomery County, Pennsylvania

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917 (§ 1917.4(a)) hereby gives notice of his proposed determinations of flood elevations for the Township of Upper Merion, Montgomery County, Pennsylvania.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the Township must adopt flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at the bulletin board in the Township Building, 175 West Valley Forge Road, King of Prussia, Pennsylvania.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mr. Robert W. Geerdes, Township Manager, 175 West Valley Forge Road, King of Prussia, Pensylvania 19406. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

Source of flooding	Location	Elevation in feet above mean sea level
Schuylkill River	South corporate limits.	71
	Reading R.R. bridge (Con Rail).	72
	Pennsylvania Turnpike 276.	74
	Reading R.R. bridge (Con Rail).	79
	Route 363	84
	West corporate limits	93
Trout Creek	Reading R.R. (Con-Rail).	84
	Valley Forge Rd	89
Trout Creek—Continued	Reading R.R. (Con-Rail).	89
	Moore Rd	95
	Route 363	99
	Valley Forge State Park boundary.	106

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; (42 U.S.C. 4001–4128); and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974)

Issued: December 17, 1976.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.77–1782 Filed 1–21–77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI–2585]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for Town of Buchanan, Botetourt County, Virginia

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90–448), 42 U.S.C. 4001–4128, andw 24 CFR Part 1917 (§ 1917.4(a)) hereby gives notice of his proposed determinations of flood elevations for the Town of Buchanan, Botetourt County, Virginia.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the Town must adopt flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at the Municipal Building, Buchanan.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mayor J. Stull Carson, Buchanan, Virginia 24066. The period for comment will be ninety days following the second pupblication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

Source of flooding	Location	Elevation in feet above mean sea level
James River	East corporate limits	832
	1 mile upstream of Route 11.	837
Purgatory Creek	Downstream of Diversion Dam.	832
	Just upstream of Diversion Dam.	850
	North corporate limit	881

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; (42 U.S.C. 4001–4128); and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974).

Issued: December 17, 1976.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.77–1783 Filed 1–21–77;8:45 am]

[Docket No. FI–2584]

[24 CFR Part 1917]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for Town of Brookneal, Campbell County, Virginia

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917 (§ 1917.4(a)) hereby gives notice of his proposed determinations of flood elevations for the Town of Brookneal, Campbell County, Virginia.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the Town must adopt flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at the Town Hall, Brookneal.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mr. Frank Moon, Superintendent of Public Utilities, Town of Brookneal, Brookneal, Virginia 24528. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

Source of flooding	Location	Elevation in feet above mean sea level
Roanoke River	Southwest corporate limits.	391
	North side of U.S. 501	390
	Carolina Ave. (extended).	390
	Southeast corporate limits.	389
Falling River	North side of Virginia 40.	393
	820 ft north of Virginia 40.	393
	Southeast corporate limits.	392

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; (42 U.S.C. 4001–4128); and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974)

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HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.77–1784 Filed 1–21–77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI–2583]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for City of South Boston, Independent City, Virginia

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917 (§ 1917.4(a)) hereby gives notice of his proposed determinations of flood elevations for the City of South Boston, Independent City, Virginia.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the City must adopt flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at the Municipal Building, South Boston, Virginia.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mr. J. A. Houghton, City Manager, P.O. Box 417, South Boston, Virginia 24592. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

Source of flooding	Location	Elevation in feet above mean sea level
Dan River	Upstream corporate limits.	338
	U.S. Highway 501 (Watkins Bridge).	335
	State Highway 304 (John Randolph Bridge).	333
	Downstream corporate limits.	332
Poplar Creek	Upstream corporate limits.	361
	Poplar Creek St	340
	Summit Dr	340
Balmoral Creek	Cavalier Blvd	356
	Beechmont Rd	362
	Sutpain Rd	350
Reedy Creek	Ridge St	370
	College St	364
	State Highway 304	341
	Downstream corporate limits.	332
Rocky Branch	State Highway 304 west.	371
	State Highway 304 east.	360
	Eastover Rd	342
	Downstream corporate limits.	342

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; (42 U.S.C. 4001–4128); and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974).

Issued: December 21, 1976.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.77–1785 Filed 1–21–77;8:45 a.m.]

[24 CFR Part 1917]

[Docket No. FI–2582]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for City of Ashland, Wisconsin

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917 (§ 1917.4(a)), hereby gives notice of his proposed determinations of flood elevations for the City of Ashland, Wisconsin.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the City of Ashland must adopt sound flood plain management

measures that are consistent with the flood elevations determined by the Secretary.

Proposed flood elevations (100-year flood) are listed below for selected locations. Map and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at City Hall, Courthouse, Ashland, Wisconsin 54806.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mayor Bruce Hendrickson, City Hall, Courthouse, Ashland, Wisconsin 54806. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

Source of flooding	Location	Elevation in feet above mean sea level
Bay City Creek	U.S. Highway 13	676
	Foot bridge near 5th Ave.	660
	C. & N.W. R.R.	635
	Soo Line R.R.	622
	2d St.	616
	U.S. Highway 2	614
	C. & N.W. R.R.	605
Unnamed tributary No. 1.	6th St.	645
	U.S. Highway 2	623
Unnamed tributary No. 2.	Toll road	638
	U.S. Highway 2	622
	Lakeshore Rd.	613

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; (42 U.S.C. 4001–4128); and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974)

Issued: December 21, 1976.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.77-1786 Filed 1-21-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2581]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for City of Berlin, Wisconsin

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90-448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917 (§ 1917.4(a)), hereby gives notice of his proposed determinations of flood elevations for the City of Berlin, Wisconsin.

Under these Act, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the City of Berlin must adopt sound flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed flood elevations (100-year flood) are listed below for selected locations. Map and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at City Hall, 108 North Capron Street, Berlin, Wisconsin, 54923.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mayor Gordon Jodarski, City Hall, 108 North Capron Street, Berlin, Wisconsin 54923. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

Source of flooding	Location	Elevation in feet above mean sea level
Fox River	Wisconsin St.	756
	Huron Ave.	759
Barnes Creek	Washington St. (downstream side).	758
	Hunter St. (downstream side).	762
Winchell Springs Creek.	SR 49 (downstream side).	760
	Ripon Rd.	761

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001–4128); and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974.)

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HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.77-1787 Filed 1-21-77;8:45 am]

federal register

MONDAY, JANUARY 24, 1977

PART IV

COMMODITY FUTURES TRADING COMMISSION

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CONTRACT MARKETS

Revised Statement of Policy on Indemnification of Officers, Directors and Other Officials

COMMODITY FUTURES TRADING COMMISSION

CONTRACT MARKETS

Revised Statement of Policy Regarding Indemnification

The Commodity Futures Trading Commission today modified its policy statement regarding indemnification of officers, directors and other officials of contract markets.

On July 16, 1976, the Commission published in the FEDERAL REGISTER a statement of policy regarding indemnification of officers, directors and other officials of contract markets and futures commission merchants. See 41 FR 29474 (July 16, 1976). In that statement, the Commission expressed the view that it would be against public policy, as expressed in the Commodity Exchange Act, as amended ("Act"), 7 U.S.C. 1–22 (Supp. V, 1975), for a contract market or futures commission merchant directly or indirectly to indemnify its officials for certain civil penalties imposed by the Commission under section 6b of the Act. The Commission also stated that it would be the Commission's policy to consider all the facts and circumstances surrounding the participation of individual officials in alleged violations of the Act before taking enforcement action against individual officials, and to impose civil penalties on individual officials only in those cases involving "culpable conduct." The Commission took no position with respect to indemnification of officials for other expenses, such as liabilities arising out of civil proceedings instituted by private parties or legal fees incurred defending various types of legal proceedings.

On August 9, 1976, the Commission published in the FEDERAL REGISTER a request for public comment on its policy regarding indemnification and on certain related subjects, such as: (1) Whether it would be appropriate to adopt rules concerning indemnification in circumstances having regulatory implications; (2) whether it would be against public policy to allow indemnification of exchange officials for liabilities arising out of civil proceedings instituted by private parties; (3) whether it would be against public policy to allow indemnification of exchange officials for legal fees incurred in the unsuccessful defense of an action brought by the Commission pursuant to section 6b of the Act; and (4) whether it would be appropriate to hold a public hearing on the issue of indemnification. In that notice the Commission stated that its policy regarding indemnification would remain in effect, notwithstanding its request for comments. See 41 FR 33321 (August 9, 1976).

This release supplements the Commission's prior announcements by notifying the public that the Commission has determined to modify its policy regarding indemnification in light of the comments which it has received. Since what constitutes "culpable conduct" cannot be determined in the abstract, the Commission has decided that it will separately determine, in each case in which a civil penalty is imposed on an individual official, whether or not indemnification in that case would violate public policy. Otherwise, the Commission has not changed its original policy regarding indemnification. That is, the Commission takes no official position at this time with respect to indemnification for other expenses, such as liabilities arising out of civil proceedings instituted by private parties; however, the Commission wishes to make clear that it does not believe that indemnification for legal fees would be against public policy, even when the fees are incurred in the unsuccesful defense of an action brought by the Commission.

Set forth below is a discussion regarding the comments received by the Commission in response to its policy statement and the changes which have been made in the policy statement as a result of those comments and further consideration by the Commission.

I. SUMMARY OF COMMENTS ON AND CHANGES IN THE COMMISSION'S POLICY STATEMENT

Eight commodity exchanges and three futures commission merchants submitted written comments. These commentators unanimously opposed the Commission's policy on indemnification and proffered a number of legal and policy-oriented arguments against it.

A. COMMENTS ON POLICY REGARDING INDEMNIFICATION FOR CIVIL PENALTIES IMPOSED BY THE COMMISSION

There were basically three criticisms of the Commission's policy regarding indemnification of exchange officials for certain civil penalties imposed pursuant to section 6b of the Act. These comments may be summarized briefly as follows:

1. A PROHIBITION OF INDEMNIFICATION IS MORE LIKELY TO DISCOURAGE INDIVIDUALS FROM SERVING AS EXCHANGE OFFICIALS THAN IT IS TO STIMULATE DILIGENCE ON THE PART OF EXCHANGE OFFICIALS

Most commentators maintained that the Commission's policy probably would discourage individuals from serving as exchange officials and would make those who do serve overly cautious. They also disagreed with the Commission's conclusion that indemnification for civil penalties would undermine the prophylactic and deterrent effect of the civil penalty authorized by section 6b of the Act. A variety of arguments were made in this connection, but the thrust of most of the comments was that there is no need to use the threat of a civil penalty to stimulate diligence because (1) the officials of contract markets have sufficient dedication to discharge their responsibilities without a threat of penalty and (2) those officials who do not discharge their responsibilities can be removed from office or denied indemnification under standards contained in state laws governing indemnification of corporate officials.

2. THERE IS LITTLE LEGAL AUTHORITY TO SUPPORT THE COMMISSION'S POSITION REGARDING INDEMNIFICATION FOR CIVIL PENALTIES

A number of commentators expressed their view that nothing in the Act or its legislative history indicates Congress intended the Commission to have any authority with respect to indemnification of exchange officials and that the subject seems to be outside the scope of the general rule-making authority granted to the Commission by section 8a(5) of the Act. They also observed that the Commission's policy regarding indemnification is broader than that adopted by the Securities and Exchange Commission or any other government agency and that it conflicts with more liberal state law provisions governing indemnification of corporate officials.

3. THE COMMISSION'S STATEMENT THAT IT WOULD NOT IMPOSE CIVIL PENALTIES ON EXCHANGE OFFICIALS UNLESS "CULPABLE CONDUCT" IS INVOLVED, DOES NOT AMELIORATE THE PROBLEMS CREATED BY ITS POLICY STATEMENT ON INDEMNIFICATION

The principal concern of commentators apparently was that the Commission might impose a civil penalty on an official for "unintentional," technical-type violations of a regulation. The commentators were not assuaged by the Commission's statement that it would impose civil penalties on individual officials only in those cases involving culpable conduct, primarily because the term "culpable conduct" was not defined. These commentators also expressed concern that the mere existence of the statement would have an in terrorem effect and discourage (1) high caliber management from serving as exchange officials and (2) insurance underwriters from providing so-called Directors and Officers liability (D&O) insurance, even for civil penalties that might be imposed where there is no evidence of culpable conduct.

4. THE COMMISSION SHOULD RETRACT OR MODIFY ITS POLICY REGARDING INDEMNIFICATION

Most commentators suggested that, in view of the criticisms outlined above, the Commission should retract its policy statement. Other commentators suggested modifications that would, in their view, make the policy more consistent with the practical needs of the commodities industry. For example, several commentators suggested that the Commission adopt certain state law standards governing the propriety of indemnification so that officials could be indemnified for civil penalties if they acted in good faith, in a manner reasonably believed by them to be in or not opposed to the best interest of their employer. Other commentators suggested that the Commission define the term "culpable conduct" and proffered a variety of definitions. In this connection, one commentator suggested that the Commission adopt the following approach:

(a) Do *not* oppose indemnification in every instance of civil penalties. Rather the Commission should limit its opposition to those instances of civil penalties where the Commission makes a formal finding that the official has engaged in conduct so detrimental as to not permit indemnification.

(b) Either eliminate the phrase "culpable conduct" which has no established legal meaning, and replace it with language such as "derelection of duty or gross negligence or willful misconduct in the performance of his duties;" or alternatively, define the phrase "culpable conduct" as being generally the same as dereliction of duty or guilty of willful misconduct or gross negligence.

B. CHANGES IN POLICY REGARDING INDEMNIFICATION FOR CIVIL PENALTIES IMPOSED BY THE COMMISSION

The Commission was not persuaded that it should retract its policy statement regarding indemnification for civil penalties.

(1) To begin with, the Commission is satisfied, as a legal matter, that it has statutory authority to prohibit indemnification for civil penalties imposed on exchange officials by the Commission. For example, section 8a(5) of the Act authorizes the Commission "* * * to make and promulgate such rules and regulations as, in the judgment of the Commission, are reasonably necessary to effectuate any of the provisions or to accomplish any of the purposes of [the Act] * * *."[1] And, section 6b of the Act provides that:

> * * * if any contract market, or any director, officer, agent or employee of any contract market * * * is violating or has violated any of the provisions of this Act or any of the rules, regulations, or orders of the Commission thereunder, the Commission may, upon notice and hearing and subject to appeal * * * assess a civil penalty of not more than $100,000 for each violation * * *. In determining the amount of the money penalty assessed under this section, the Commission shall consider the appropriateness of such penalty to the net worth of the offending person and the gravity of the offense, and in the case of a contract market shall further consider whether the amount of the penalty will materially impair the contract market's ability to carry on its operations and duties.[2]

The Commission believes, that, in certain situations, a prohibition of indemnification will be necessary to effectuate the provisions of, and to accomplish the purposes of, section 6b of the Act.

(A) The Commission's ability to impose a civil penalty on an individual official would be eliminated, as a practical matter, if contract markets were free to indemnify any official for the amount of any civil penalty that might be imposed by the Commission. That would, in effect, render a nullity that part of section 6b which authorizes the Commission to impose a civil penalty on either a contract market *or* any director, officer, agent or employee of a contract market, a result which Congress could not have intended. And, since the Commission would be unable to determine whether an exchange official or the exchange would pay a particular civil penalty imposed on an exchange official, there would be a risk that the amount of the penalty would not be "appropriate," as required by section 6b. There is, moreover, nothing in the Act or its legislative history that suggests that Congress intended to give exchanges the authority, through indemnification, to undermine a Commission determination that a particular exchange official should pay a civil penalty.

(B) In the Commission's view, the primary purpose of section 6b civil penalties is to deter violations of the Act. While most exchange officials may in fact be sufficiently dedicated to discharge their responsibilities under the Act without the threat of a civil penalty, the Commission is convinced that the possibility of imposition of a civil penalty for violations of the Act is an important factor in assuring compliance in some cases and that if exchange officials know they need not pay a civil penalty imposed by the Commission, the prophylactic and deterrent effect of section 6b would be undermined.

(2) Secondly, the Commission is satisfied that its position on indemnification for certain civil penalties imposed under section 6b is basically sound as a matter of regulatory policy. The Commission was surprised by comments suggesting that it abandon its policy because prohibiting indemnification of exchange officials for civil penalties would discourage individuals from serving as exchange officials. The point that commentators apparently overlooked or misunderstood is the applicability of the policy statement only to a limited type of situation; that is, when the Commission finds after notice and opportunity for hearing, that a particular exchange official is violating or has violated the Act or the regulations thereunder and that his conduct was "culpable" in the sense that such conduct is of the type included within the phrases, "gross negligence, willful misconduct or dereliction of duty,"[3] and the Commission then determines to impose a civil penalty on that particular official, after considering the appropriateness of the penalty in light of his net worth and the gravity of the offense. The Commission took no position with respect to indemnification of exchange officials for other expenses, such as liabilities arising out of civil proceedings instituted by private parties or legal fees incurred defending various types of legal proceedings.[4] It seems unlikely that prohibiting indemnification for civil penalties imposed by the Commission in the situation described above would discourage high caliber management from serving as exchange officials. Accordingly, the Commission is not persuaded that it should retract its policy statement. The Commission is concerned, however, that its policy regarding indemnification may be misunderstood. For that reason, the Commission has decided to modify its statement of policy regarding indemnification.

The Commission was persuaded by commentators that it should clarify the situations in which it would consider indemnification for a civil penalty to be against public policy. Since the term "culpable conduct" is not susceptible of precise definition,[5] the Commission has decided that it will determine, in each case in which a civil penalty is imposed on an individual official, whether or not indemnification would violate public policy. Thus, if the Commission determines that a particular official is guilty of gross negligence, willful misconduct or dereliction of duty, the Commission would consider indemnification for a civil penalty imposed on that official to be against public policy. The Commission will make an independent determination—in the administrative proceeding in which the civil penalty is imposed—whether indemnification for the civil penalty would violate public policy under the particular circumstances, and if indemnification would violate public policy, the Commission will include a statement to that effect in its order imposing the penalty. If the Commission finds, on the other hand, that indemnification would not violate public policy

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[1] 7 U.S.C. 12a(5) (Supp. V, 1975).

[2] 7 U.S.C. 13a (Supp. V, 1975) (emphasis added).

[3] The phrases "gross negligence, willful misconduct or dereliction of duty" are meant to convey their broadest legal construction, not the interpretation of those specific phrases by any contract market or the application thereof by any rule of such contract market.

[4] As discussed below, the Commission did not intend, by requesting public comment on indemnification for certain legal fees, to suggest that it might prohibit contract markets or futures commission merchants from reimbursing officials for legal fees incurred in the unsuccessful defense of an action brought by the Commission. To make this clear, the Commission has stated below its view that indemnification for legal fees would not violate public policy.

[5] As noted above, several commentators suggested that the Commission adopt certain state law standards governing the propriety of indemnification so that officials could be indemnified for civil penalties if they "acted in good faith, in a manner reasonably believed by them to be in or not opposed to the best interests of the corporation." The Commission disagrees. The good faith of an official or the best interests of the corporation may be relevant in considering the propriety of indemnification for certain liabilities, but the Commission believes that a different standard should be used in deciding whether an official is to be indemnified for a civil penalty imposed by the Commission for a violation of the Act. It is possible, for example, that the "best interests of the corporation" might be found by a sympathetic board of governors to dictate a course of action by an official that is at variance with the requirements of the Act. The Commission believes that to be consistent with the purpose of section 6b—to stimulate diligence on the part of exchange officials—the propriety of indemnification must depend upon the efforts of the official to discharge his responsibilities under the Act, whether or not that seems to be in the best interest of the corporation.

This is not to say that the Commission intends to hold exchange officials to unrealistically high standards of conduct in determining whether or not indemnification for a civil penalty would violate public policy. Nor does the Commission intend to intervene in exchange determinations to indemnify officials in situations having no impact on the Commission's regulatory responsibilities. However, the Commission believes that exchange officials have certain responsibilities to the public and will not favor indemnification for civil penalties in situations where an official's conduct evidences gross negligence or willful misconduct or dereliction of duty in discharging responsibilities under the Act.

in a particular case, it will not oppose indemnification if the contract market or futures commission merchant wishes to reimburse the official for the amount of the civil penalty in that case.

The Commission believes that this case-by-case approach will clarify those circumstances in which it considers indemnification to be against public policy. In this way, the Commission hopes to ameliorate the two major problems which commentators said might be created by the Commission's policy: (1) that it would discourage individuals from serving as exchange officials; and (2) that it would discourage commercial insurers from underwriting D&O policies routine civil penalties.

The Commission agrees with all the commentators who said that its policy on indemnification should not be codified into regulations at this time.

II. Summary of Comments Regarding Indemnification for Other Legal Expenses

A. Comments on Policy Regarding Indemnification for Other Legal Expenses

Most of the commentators also responded to the Commission's request in the August 9, 1976 FEDERAL REGISTER notice for comments on, among other things: (1) whether it would be against public policy to allow indemnification of exchange officials for liabilities arising out of civil proceedings instituted by private parties; and (2) whether it would be against public policy to allow indemnification of exchange officials for legal fees incurred in the unsuccessful defense of an action brought by the Commission pursuant to section 6b of the Act.[6] These comments may be summarized briefly as follows:

1. The Commission Should Not Prohibit Indemnification of Officials for Liabilities Arising Out of Civil Proceedings Instituted by Private Parties

Most of the commentators said it would be a mistake to prohibit indemnification of officials for liabilities arising out of civil proceedings instituted by private parties. A variety of reasons were suggested, but most commentators said that these expenses should not be treated as penalties because the amount of the expense generally would not depend upon the gravity of the violation or the culpability of the official and because individuals would be reluctant to serve as exchange officials if there was a risk that they might be held personally liable for potentially large sums of money required to compensate injured traders.

2. Legal Fees Should Be Subject to Indemnification in All Cases

Most commentators said that the public interest would be better served by allowing indemnification for legal fees, even when they are incurred in the unsuccessful defense of an action brought against individual exchange officials by the Commission, for the reasons, among others, that (1) the amount of legal fees depends upon the quality and complexity of the legal representation, not the gravity of the violation or the culpability of the defendant, and (2) that indemnification would encourage a vigorous defense against possibly frivolous claims.

B. No Changes Were Made in Policy Regarding Indemnification for Other Legal Expenses

The Commission has not changed its original policy regarding indemnification for liabilities other than section 6b civil penalties. In other words, the Commission takes no position at this time with respect to indemnification for other expenses, such as liabilities arising out of civil proceedings instituted by private parties or legal fees incurred defending various types of legal proceedings.

The Commission believes the propriety of indemnification for liabilities incurred in private civil actions—such as suits under the Commodity Exchange Act for damages sustained by injured traders as a result of an action taken by an exchange official—can only be viewed in the context of the actual cases as they arise. Consequently, the Commission does not believe the propriety of indemnification in these circumstances is susceptible to treatment by a regulation or policy statement of general applicability and is willing generally to leave such matters to the determination of the exchanges themselves.[7]

However, the Commission has proposed a rule that would, if adopted, require contract markets to notify the Commission if an official of a contract market is to be indemnified for liabilities arising from private civil actions. See 41 Fed. Reg. 37597 (September 7, 1976). In this way, the Commission will be able to review the propriety of indemnification for these expenses on a case-by-case basis. And, if the Commission strongly believes, because of the nature of the particular case, that there should be no indemnification in that case, it may institute separate administrative proceedings against the official or it may seek to participate as *amicus curiae*, or to intervene, in the proceedings.[8]

The Commission also wishes to make clear that, by requesting public comment on indemnification for certain legal fees, it did not intend to suggest that it might prohibit contract markets or futures commission merchants from reimbursing officials for legal fees incurred in the unsuccessful defense of an action brought by the Commission. In general, the Commission shares the view of the commentators that legal fees should not be treated as a penalty, since the amount of the fees usually depends upon the quality and complexity of the legal representation, not the gravity of the violation or the culpability of the defendant. The Commission therefore does not believe it would be against public policy, as expressed in the Act, for a contract market or futures commission merchant to indemnify an official for legal fees, including fees incurred in the unsuccessful defense of an action brought by the Commission.

As noted above, the Commission is satisfied that no public interest would be served by holding further hearings on the subject of indemnification. However, interested persons may submit written comments on the Commission's revised policy regarding indemnification. All comments should be addressed to Commodity Futures Trading Commission, 2033 "K" Street, N.W., Washington, D.C. 20581, ATTN: Secretariat. Copies of all comments received will be available for public inspection at the Commission's office in Washington, D.C.

Issued in Washington on January 18, 1977.

WILLIAM T. BAGLEY,
Chairman.

[FR Doc.77-2045 Filed 1-21-77;8:45 am]

[6] The Commission also specifically requested comment on whether it would be appropriate to hold a public hearing on the issue of indemnification. All the commentators said that the Commission should hold a hearing on indemnification. In this way, they suggested, the Commission could gather empirical evidence about the number of exchange officials who might be expected to resign in the face of the Commission's policy on indemnification. The Commission is satisfied, however, that no public interest would be served by holding further hearings on the subject of indemnification since the written comments covered the subject exhaustively.

[7] Unlike civil penalties imposed under section 6b, amounts paid as a settlement or judgment in a particular private action may be based in part on the need to compensate injured traders and in part on the need to deter conduct violative of the Act. The mixed character of these awards is one of the principal obstacles to treating indemnification in these circumstances under a regulation or policy statement of general applicability.

[8] In reviewing the propriety of indemnification in any case, the Commission will be primarily concerned with the impact of indemnification on the Commission's regulatory responsibilities. For example, the Commission might oppose indemnification of an exchange official for amounts paid as a settlement or judgment in a private civil action based on a violation of the Act if it appears that the official's conduct amounts to gross negligence, willful misconduct or dereliction of duty in discharging his responsibilities under the Act. The Commission does not intend to intervene in exchange determinations to indemnify officials in situations having no impact on the Commission's regulatory responsibilities.

federal register

MONDAY, JANUARY 24, 1977

PART V



DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

NONDISCRIMINATION IN FEDERALLY ASSISTED RAILROAD PROGRAMS

Implementation of Railroad Revitalization and Regulatory Reform Act of 1976

Title 49—Transportation

CHAPTER II—FEDERAL RAILROAD ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

PART 265—NONDISCRIMINATION IN FEDERALLY ASSISTED RAILROAD PROGRAMS

Implementation of Railroad Revitalization and Regulatory Reform Act of 1976

This Part 265 implements section 905 of the Railroad Revitalization and Regulatory Reform Act of 1976 ("Act") to ensure that no person in the United States shall, on the grounds of race, color, national origin, or sex be excluded from participation in, or denied the benefits of, or be subjected to discrimination under, any project, program or activity funded in whole or in part through financial assistance under the Act, or any provision of law amended by the Act, and to require recipients of such financial assistance and certain of their contractors and subcontractors to take affirmative action to ensure that minority persons and minority businesses have a fair opportunity to participate in employment and contractual opportunities which may result from projects, programs and activities funded by such assistance.

Proposed regulations implementing section 905 of the Act were published in the FEDERAL REGISTER on October 22, 1976 (41 FR 46612). Interested persons were invited to submit on or before November 26, 1976, their written comments on the proposed regulations and comments were received. As a result of consideration of these comments by the Federal Railroad Administration ("FRA"), several changes have been made in the regulations, each of which will be noted in succeeding paragraphs.

In addition to numerous technical comments, the substantive public comments related to the following general areas: (A) duplicative and possibly conflicting equal opportunity requirements of the proposed regulations in light of the Civil Rights Act of 1964, and Executive Order 11246; (B) potential conflict of the requirements of the proposed regulations with provisions of existing collective bargaining agreements; and (C) authority to impose affirmative action requirements. In addition, the National Railroad Passenger Corporation ("Amtrak") denies that section 905 of the Act, and any regulations issued thereunder, reach section 601 of the Rail Passenger Service Act, which is the prime source of federal financial assistance to Amtrak.

A. DUPLICATIVE EQUAL OPPORTUNITY REQUIREMENTS

Many commenters noted the provisions of the Civil Rights Act of 1964, Executive Order 11264, and regulations issued pursuant thereto, and complained of the necessity of complying with more than one set of regulations dealing with the same area. Potential conflicts in enforcement were cited along with the possibility that two agencies implementing similar bodies of law, may have differing interpretations or policies which would unduly complicate or confuse the responsibilities of those covered by the regulations. It was urged that compliance with the affirmative action requirements of E.O. 11246 be deemed to satisfy the requirements of the proposed regulations. It was also urged that the handling of all Federal equal opportunity programs be consolidated in one agency, especially in the areas of alleged discrimination in employment.

The scope of section 905 of the Act is broader than Titles VI and VII of the Civil Rights Act of 1964, and E.O. 11246. Section 905 applies to sex discrimination and to loan guarantees, while Title VI does not. As is discussed later, the proposed regulations under section 905 require affirmative action in areas of minority employment and minority business while E.O. 11246 and regulations issued thereunder only apply to employment. In addition, E.O. 11264 and its implementing regulations apply only to government contracts, or programs involving federally assisted construction projects, whereas section 905 applies to any type of Federal financial assistance provided under the particular programs covered by section 905. Consequently, there is a need for a body of regulations implementing section 905 because existing regulations in this area do not cover all situations to which section 905 applies. FRA, by delegation from the Secretary, has the congressionally imposed responsibility to ensure that the provisions of section 905 are applied to covered financial assistance programs. While FRA should make every effort consistent with its responsibility to coordinate its requirements with those of other agencies, it must retain the final responsibility for actions taken under section 905.

In an effort to avoid duplication, or conflicting requirements, and to consolidate equal opportunity programs to the maximum extent possible, FRA has coordinated its proposed regulations dealing with employment with the General Services Administration which is the compliance agency for railroads under E.O. 11246. As a consequence, all affirmative action plans for employment will be developed in accordance with the regulations of the Department of Labor at 41 CFR 60–2. In addition, railroad applicants will be required to develop their analysis by establishment and by job classification in accordance with the requirements of the Joint Reporting Committee of the Equal Employment Opportunity Commission and the Department of Labor.

Applicants for financial assistance and their contractors which have previously furnished another agency with a written affirmative action program, may, of course, use such a written program (updated if necessary) as a basis for compliance with this part. If the previously furnished program meets all of the requirements of this part it will be accepted by the Administrator. Because FRA has final responsibility as noted above, acceptance by another agency under a separate authority cannot be deemed or presumed to indicate acceptance by the Administrator.

B. POTENTIAL CONFLICT OF PROPOSED REGULATIONS WITH EXISTING COLLECTIVE BARGAINING AGREEMENTS

Many commenters were concerned with the stated policy of FRA that conflicting provisions of existing collective bargaining agreements will not be an excuse for a recipient's failure to live up to affirmative action requirements (see § 265.7(a)(2)(iv) of proposed regulations). Some see irreconcilable conflicts which may require an applicant to forego federal financial assistance, while others view this policy as requiring carriers to alter unilaterally collective bargaining agreements in contravention of the Railway Labor Act.

FRA believes that commenters in this regard have misunderstod the impact of the proposed regulations. At the outset it should be noted that private contractual arrangements cannot be used to thwart public policy. *Contractors Ass'n of Eastern Pa. v. Secretary of Labor*, 442 F. 2d 159 (3d Cir. 1971). The potential conflict as perceived by FRA would come about when, based on a review and analysis of utilization of minority employees, underutilization is established, and goals and timetables to overcome the underutilization are imposed by the Administrator as a condition to the receipt of federal financial assistance. The establishment of such goals and time tables with respect to utilization of minority employees may conflict with existing collective bargaining agreements to the extent that such agreements would require the applicant to hire or rehire furloughed employees before any person is newly hired. FRA does not perceive this conflict as irreconcilable, nor have the comments from labor organizations stated that any such conflict is irreconcilable. FRA believes that as a result of good faith negotiations among the applicant, the Administrator, and any affected labor organizations, accommodations can be reached where the interests of each party can be substantially achieved.

Insofar as the Railway Labor Act is concerned, the regulations in no way abrogate the provisions of that Act. Any amendments to existing collective bargaining agreements made to accommodate the requirements of the Administrator would, of course, be made pursuant to that Act.

C. AUTHORITY TO REQUIRE AFFIRMATIVE ACTION

Certain commenters questioned the authority of FRA to require affirmative action pursuant to section 905 of the Act. Noting the similarity of section 905(a) to Title VI of the Civil Rights Act of 1964, and suggesting that under Title VI an agency does not have the authority to establish appropriate affirmative action requirements, it is argued that no such authority exists under section 905. FRA disagrees. Title VI does not so limit an agency administering a Federal financial assistance program. *Contractors Ass'n of Eastern Pa. v. Secretary of Labor, supra.* Further, section 905 differs from Title VI in that section 905(d) authorizes the Secretary of Transportation to "* * * prescribe such regulations and take such actions as are necessary to monitor, enforce, and *affirmatively* carry out the purposes of this section [905]" (italics added). In FRA's view such a grant of authority clearly authorizes, indeed mandates, the requirements contained in these regulations for affirmative action programs.

Again noting the similarity between section 905(a) of the Act and Title VI, it was argued that FRA has no authority to require affirmative action with respect to minority business enterprises, since Title VI has not been interpreted as authorizing or requiring the promulgation of requirements with respect to minority businesses. While FRA is not aware of any judicial determination of Title VI in this regard, it does not interpret section 905 as being limited to equal opportunity in employment. Rather section 905 is intended to reach all manifestations of discrimination and assure that no person is denied the benefits of the programs covered by section 905. The affirmative action requirements with respect to minority business are consistent with the intent of Congress, especially in light of section 906 of the Act which established the Minority Business Resource Center. However, it should be made clear that affirmative action requirements for minority businesses are established pursuant to section 905 of the Act, and not section 906 as some commenters apparently believed.

APPLICABILITY OF SECTION 905 OF THE ACT TO SECTION 601 OF THE RAIL PASSENGER ACT

Amtrak argues that section 601 of the Rail Passenger Service Act ("RPSA") was not amended by the Act, and consequently section 905 and regulations promulgated thereunder do not apply to section 601 of the RPSA. FRA disagrees. Section 905(b) of the Act provides that financial assistance provided by the Act, *or provisions of law amended by the Act*, is subject to the basic nondiscrimination provision set forth in section 905(a) (italics added). Section 704(b) of the Act provides:

> No funds appropriated under this section or pursuant to section 601 of the Rail Passenger Service Act may be used to subsidize any operating losses of commuter rail or rail freight services.

In FRA's view, this provision substantively amended section 601 by placing the limitation on the use of section 601 grant funds. Such an amendment is clearly within the scope of section 905 coverage, particularly considering its remedial purpose warranting a liberal construction of its language.

OTHER SUBSTANTIVE COMMENTS

Commenters expressed concern with the cost of preparing and complying with affirmative action programs, and delays in procuring goods and services caused by applying such programs to contractors and subcontractors of a recipient. Considering the administrative burden such requirements would impose on recipients and the government, section 265.11 will be amended to require contractors to develop and implement affirmative action plans in accordance with this part over a period of time. It will not be required that such plans receive the prior approval of the Administrator before contracts may be awarded.

One commenter suggested adding a provision providing for labor organization participation in compliance proceedings where the matter could affect persons who are covered by collective bargaining agreements. The adopted regulations will be revised to make clear that labor organizations may present their views in such matters where their interests may be affected.

Several commenters suggested that procurement information required by the proposed regulations or requested by the Minority Business Resource Center be treated confidentially upon request of applicant where necessary to protect trade secrets or competitive position. An appropriate provision will be added to the adopted regulations to afford such protection to the extent permitted by the Freedom of Information Act (5 U.S.C. 552) and applicable case law.

Several commenters suggested that affirmative action programs be developed and maintained after the award of financial assistance, or that any conflict between the requirements of the Administrator and the provisions of collective bargaining agreements be resolved after such award. To ensure that section 905 of the Act, and these regulations are fully implemented, and in recognition of the very little time available for such action once an award has been made, FRA deems it appropriate that such actions be taken before financial assistance is awarded.

Objection was made to the requirement that recipients monitor the equal opportunity requirements of their contractors. FRA believes that recipients of federal financial assistance have the responsibility to monitor the activities of contractors which are paid from such assistance since the recipients, not FRA, are in privity with the contractors. However, it should be understood that the term "monitor" does not include enforcement actions but rather is limited to actions necessary to determine from time to time whether the contractor is in compliance and if not to report the appropriate facts to the Administrator.

Several commenters urged that in reviewing utilization of minority employees, the classification by "job categories" be eliminated, or be related to the classifications established by the Department of Labor pursuant to E.O. 11246. Any classification of job categories which fully reflects the organizational structure of the applicant, recipient, or contractor and in the aggregate includes all of its employees may be used by an applicant, recipient or contractor. However, as previously discussed, railroads will be required to undertake their review by establishment and by job categories as required by the Joint Reporting Committee.

The propriety of forbidding a recipient from entering into a contract with a "debarred" contractor was questioned where such contractor will not be performing a contract which is part of a project, program or activity receiving federal financial assistance. The regulations are modified to limit this prohibition to the project, program, or activity which is receiving Federal financial assistance.

Several commenters objected to the notice posting requirements which would advise employees and applicants for employment of the equal opportunity requirements of recipients established by the proposed regulations, since they are required, in many cases, to post similar notices pursuant to E.O. 11246. FRA will in establishing the content of such notice, make every effort to eliminate any duplication of material contained in other required notices. Nevertheless, since the requirements of section 905 of the Act and these regulations differ in several significant ways from other affirmative action requirements, the additional notice will be necessary.

Several concerns were expressed in regard to affirmative action in utilization of minority business enterprises. Concern was expressed that the affirmative action requirements would compel a recipient to purchase goods and services on less than a sound business basis. A railroad company observed that very few minority businesses offered goods and services of the type it sought. Nothing in the required affirmative action program will compel a recipient to contract with a business that cannot deliver the type of goods or services sought. What the affirmative action program does, however, is to require recipients and contractors to develop an awareness of the need to assist minority businesses in getting into the mainstream of commerce, take positive steps to utilize minority businesses, tailor its requirements to meet the particular problems generally associated with minority businesses (e.g. smallness), and expand the scope of traditional thinking by considering the utilization of minority businesses in such fields as legal, financial, insurance and economic services, engineering, real estate, banking and the like. Such an expanded approach will go far in implementing section 905 of the Act.

CHANGES IN PROPOSED REGULATIONS

Based on the public comment to the proposed regulations and further analysis by FRA, the following changes have been made to the proposed rules:

(1) The definition of "Minority Business" in section 265.5(j) has been changed to mean a business which has at least 50% of its equity owned by a minority group person or persons, or if less than 50%, controlled by such a person or

persons, and such other organizations which the Administrator determines to be bona-fide minority businesses;

(2) Section 265.7(a) has been amended to make clear that existing financing agreements are to be amended to include the nondiscrimination clauses;

(3) Section 265.7(a)(11) and 265.13(c)(1) are amended to allow certain procurement information furnished by applicants to be treated confidentially upon request and to the extent permitted by law;

(4) New nondiscrimination clauses (14) and (15) are added to § 265.7 to exact an agreement from the recipient to (a) comply with the written affirmative action program as approved by the Administrator; and (b) notify the Administrator of any discrimination complaints filed against recipient;

(5) Section 265.11 is amended (a) to require the submission of two copies of written affirmative action programs; (b) to eliminate the requirement that contractors and subcontractors submit their affirmative action programs to the Administrator for approval, although such programs are to be developed and maintained; and (c) in cases of contractors and subcontractors which have less than fifty employees, to require the development only of affirmative action plans for minority businesses;

(6) Section 265.13(b) is amended (a) to require applicants or recipients to indicate in their written affirmative action programs the number of jobs which will be established or filled during the program period as a result of the project, program or activity receiving financial assistance; (b) to show the source of employee comparison data; and (c) to require adherence to 41 CFR 60-2 in developing written affirmative action plans for employment.

(7) Section 265.13(c)(1) is amended to highlight the need to furnish data on potential contracts for professional and financial services.

(8) Section 265.23 is amended to allow participation by affected labor organizations in compliance proceedings, and to allow the Administrator to suspend financial assistance during such proceedings in instances other than when hearings are accorded.

(9) A new § 265.23 has been added to elicit information necessary to assess the impact of the project, program or activity for which financial assistance is sought, to the extent such information is not contained in the application.

Since this part is a matter relating to loans, grants, benefits and contracts, this part is effective January 17, 1977.

In consideration of the foregoing, Chapter II of Title 49 of the Code of Federal Regulations is amended by adding a new part 265 reading as follows:

Subpart A—General

Sec.
265.1 Purpose.
265.3 Applicability.
265.5 Definitions.

Subpart B—Requirements

265.7 Nondiscrimination clauses.
265.9 Affirmative action program—general.
265.11 Submission of affirmative action program.
265.13 Contents of affirmative action program.
265.15 Implementation and maintenance of affirmative action program.
265.17 Review of affirmative action program.

Subpart C—Compliance

265.19 Compliance information.
265.21 Conduct of investigations.
265.23 Procedure for effecting compliance.
265.25 Other information.

AUTHORITY: Sec. 905 of the Railroad Revitalization and Regulatory Reform Act of 1976, Pub. L. No. 94-210 (90 Stat. 31); Regulations of the Office of the Secretary of Transportation, 49 CFR 1.49(u).

Subpart A—General

§ 265.1 Purpose.

The purpose of this part is to effectuate the provisions of section 905 of the Railroad Revitalization and Regulatory Reform Act of 1976 (hereinafter referred to as the "Act") to ensure that no person in the United States shall, on the grounds of race, color, national origin, or sex be excluded from participation in, or denied the benefits of, or be subjected to discrimination under, any project, program or activity funded in whole or in part through financial assistance under the Act, or any provision of law amended by the Act. Nothing contained in these regulations is intended to diminish or supersede the obligations made applicable by either Title VI of the Civil Rights Act of 1964, (42 U.S.C. 2000d), or Executive Order No. 11246, (42 USCA 2000e (note)). Subsection (d) of section 905 of the Act authorizes the Secretary to prescribe such regulations and take such actions as are necessary to monitor, enforce, and affirmatively carry out the purposes of that section. This authority, coupled with the provisions of section 906 of the Act, which requires the establishment of a Minority Resource Center, which is authorized to encourage, promote and assist in the participation by minority business enterprises in the restructuring, improvement, revitalization and maintenance of our Nation's railroads, provides the basis for requirements for the development of affirmative action programs by recipients of Federal financial assistance and certain of their contractors to insure that minorities and minority businesses are afforded ample consideration with respect to employment and contractual opportunities produced as a result of the implementation of the Act and other provisions of law amended by the Act.

§ 265.3 Applicability.

This part applies to any project, program, or activity funded in whole or in part through financial assistance provided under the Act, and to any activity funded under any provision of the Regional Rail Reorganization Act of 1973, as amended (45 U.S.C. 701 et seq.) or the Rail Passenger Service Act, as amended (45 U.S.C. 501 et seq.) amended by the Act including the financial assistance programs listed in Appendix A. It applies to contracts awarded to implement the Northeast Corridor Project and to financial assistance programs administered by the United States Railway Association.

§ 265.5 Definitions.

As used in this part, unless the context indicates otherwise:

(a) "Act" means the Railroad Revitalization and Regulatory Reform Act of 1976 (Pub. L. No. 94-210).

(b) "Administrator" means the Federal Railroad Administrator or his delegate.

(c) "Affirmative action program" means the program described in § 265.9 through § 265.15 of this part.

(d) "Agency" means the Federal Railroad Administration.

(e) "Applicant" means persons applying for financial assistance under any of the Rail Acts.

(f) "Contractor" means a prime contractor or a subcontractor who will be paid in whole or in part directly or indirectly from financial assistance provided under the Rail Acts.

(h) "Includes" means includes but not limited to.

(i) "Minority" means women, Blacks, Hispanic Americans, American Indians, American Eskimos, American Orientals and American Aleuts.

(j) "Minority Business" means a business organization having at least 50 percent of its equity (exclusive of any equity interest held by any governmental agency) owned by minority group persons, or where less than 50 percent, the organization is controlled by such persons, or such other organizations as the Administrator determines to be a bona-fide minority business organization.

(k) "Minority Business Resource Center" means the Minority Resource Center established in the Department of Transportation pursuant to section 906 of the Act.

(l) "Rail Acts" means the Railroad Revitalization and Regulatory Reform Act of 1976, the Regional Rail Reorganization Act of 1973, as amended (45 U.S.C. 701 et seq.) and the Rail Passenger Service Act, as amended (45 U.S.C. 501 et seq.).

(m) "Recipient" means a person who receives financial assistance under any of the Rail Acts except under section 602 of the Rail Passenger Service Act, as amended (45 U.S.C. 501 et seq.).

(n) "Underutilization" means the condition of having fewer minority employees in a particular job group or fewer awards of contracts to minority businesses than would reasonably be expected by their availability for such jobs or awards.

SUBPART B—REQUIREMENTS

§ 265.7 Nondiscrimination clauses.

(a) Each agreement for financial assistance made under any provision of the Rail Acts shall include, or, in the case of agreements made prior to the effective date of this part, shall be amended to include, the following clauses:

(1) As a condition to receiving Federal financial assistance under the Railroad Revitalization and Regulatory Reform Act of 1976 ("Act"), or the provisions of the Regional Rail Reorganization Act of 1973, as amended (45 U.S.C. 701 et seq.), or the Rail Passenger Service Act or 1970, as amended (45 U.S.C. 501 et seq.) amended by the Act (collectively called, together with the Act, the "Rail Acts"), the recipient hereby agrees to observe and comply with the following:

(i) No person in the United States shall on the ground of race, color, national origin or sex be excluded from participation in, or denied the benefits of, or be subjected to discrimination under, any project, program, or activity funded in whole or in part through such assistance.

(2) The following specific discriminatory actions are prohibited:

(i) A recipient under any project, program or activity to which these clauses apply shall not, directly or through contractual or other arrangements, on the ground of race, color, national origin, or sex:

(A) Deny a person any service, financial aid, or other benefit provided under such project, program or activity;

(B) Provide any service, financial aid, or other benefit to a person which is different, or is provided in a different manner, from that provided to others under such project, program or activity;

(C) Subject a person to segregation or separate treatment in any matter related to his receipt of any service, financial aid or other benefit under such project, program or activity;

(D) Restrict a person in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid or other benefit under such project, program or activity; or

(E) Deny a person an opportunity to participate in such project, program or activity through the provision of services or otherwise or afford him an opportunity to do so which is different from that afforded others under such project, program or activity.

(ii) A recipient, in determining the types of services, financial aid, or other benefits, or facilities which will be provided under any such project, program or activity or the class of persons to whom, or the situations in which such services, financial aid, other benefits, or facilities will be provided under any such project, program or activity, or the class of persons to be afforded an opportunity to participate in any such project, program or activity shall not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting persons to discrimination because of their race, color, national origin, or sex, or have the effect of defeating or substantially impairing accomplishment of the objectives of the project, program or activity, with respect to individuals of a particular race, color, national origin or sex.

(iii) In determining the site or location of facilities, a recipient shall not make selections with the purpose or effect of excluding persons from, denying them the benefits of, or subjecting them to discrimination under any project, program or activity to which these clauses apply on the grounds of race, color, national origin or sex, or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of these clauses.

(iv) The recipient shall not discriminate against any employee or applicant for employment because of race, color, national origin or sex. Except as otherwise required by the regulations or orders of the Administrator, the recipient shall take affirmative action to insure that applicants for employment are employed, and that employees are treated during employment, without regard to their race, color, national origin or sex. Such action shall include, but not be limited to the following: employment, promotion, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The recipient agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the agency's representative setting forth the provisions of these nondiscrimination clauses. The recipient understands and agrees that it shall not be an excuse for the recipient's failure to provide affirmative action that the labor organizations with which the recipient has a collective bargaining agreement failed or refused to admit or qualify minorities for admission to the union, or that the provisions of such agreements otherwise prevent recipient from implementing its affirmative action program.

(v) The recipient shall not discriminate against any business organization in the award of any contract because of race, color, national origin or sex of its employees, managers or owners. Except as otherwise required by the regulations or orders of the Administrator, the recipient shall take affirmative action to insure that business organizations are permitted to compete and are considered for awards of contracts without regard to race, color, national origin or sex.

(3) As used in these clauses, the services, financial aid, or other benefits provided under a project, program, or activity receiving financial assistance under the Rail Acts include any service, financial aid, or other benefit provided in or through a facility funded through financial assistance provided under the Rail Acts.

(4) The enumeration of specific forms of prohibited discrimination does not limit the generality of the prohibition in paragraph (a)(1)(i) of this section.

(5) These clauses do not prohibit the consideration of race, color, national origin or sex if the purpose and effect are to remove or overcome the consequences of practices or impediments which have restricted the availability of, or participation in, recipient's operations or activities on the grounds of race, color, national origin or sex. Where prior discriminatory or other practice or usage tends, on the grounds of race, color, national origin or sex, to exclude individuals or businesses from participation in, to deny them the benefits of, or to subject them to discrimination under any project, program or activity to which these clauses apply, the recipient must take affirmative action to remove or overcome the effects of the prior discriminatory practice or usage. Even in the absence of prior discriminatory practice or usage to which this part applies, the recipient is expected to take affirmative action to insure that no person is excluded from participation in or denied the benefits of the project, program or activity on the grounds of race, color, national origin or sex, and that minorities and minority businesses are afforded a reasonable opportunity to participate in employment and procurement opportunities that will result from financial assistance provided under the Rail Acts.

(6) The recipient agrees to take such actions as are necessary to monitor its activities and those of its contractors who will be paid in whole or in part with funds provided by the Rail Acts, or from obligations guaranteed by the Administrator pursuant to the Rail Acts, except obligations guaranteed under section 602 of the Rail Passenger Service Act, in order to carry out affirmatively the purposes of paragraph (1) above, and to implement the affirmative action program developed and implemented pursuant to 49 CFR 265.

(7) The recipient shall, in all advertisements for employees, or solicitations for services or materials from business organizations placed by or on behalf of the recipient, in connection with any project, program or activity funded in whole or in part with financial assistance under the Rail Acts, state that all applicants for employment will receive consideration for employment, and all business organizations will receive consideration for an award of a contract, without regard to race, color, national origin or sex.

(8) The recipient shall send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice to be provided by the agency's representative, advising the labor organization or workers' representative of the recipient's commitments under section 905 of the Act, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(9) The recipient shall comply with all provisions of section 905 of the Act, the Civil Rights Act of 1964, any other Federal civil rights act, and with the rules, regulations, and orders issued under such acts.

(10) The recipient shall furnish all information and reports required by the rules, regulations, and orders of the Administrator, and will permit access to its books, records, and accounts by the Administrator for purposes of investigation to ascertain compliance with rules, regulations, and orders referred to in paragraph (9) hereof.

(11) Recipient shall furnish such relevant procurement information, not in-

cluded in its affirmative action program, as may be requested by the Minority Business Resource Center. Upon the request of the recipient, the Center shall keep such information confidential to the extent necessary to protect commercial or financial information or trade secrets to the extent permitted by law.

(12) In the event of the recipient's noncompliance with the nondiscrimination clauses of this agreement, or with the provisions of section 905 of the Act, the Civil Rights Act of 1964, or with any other Federal civil rights act, or with any rules, regulations, or orders issued under such acts, this contract will, after notice of such noncompliance, and after affording a reasonable opportunity for compliance, be canceled, terminated, or suspended in whole or in part and the recipient may be declared ineligible for further Federal financial assistance in accordance with procedures authorized in section 905 of the Act, or as otherwise provided by law.

(13) The recipient shall not enter into any contract or contract modification whether for the furnishing of supplies or services or for the use of real or personal property, including lease arrangements, or for construction, in connection with a project, program or activity which receives financial assistance under the Rail Acts with a contractor debarred from or who has not demonstrated eligibility for Federal or federally assisted contracts, and will carry out such sanctions and penalties for violation of this part as may be imposed upon contractors and subcontractors by the Administrator or any other authorized Federal official. The recipient shall insure that the clauses required by 41 CFR § 60–1.46 implementing executive Order No. 11246 will be placed in each non-exempt federally assisted construction contract.

(14) The recipient agrees to comply with and implement the written affirmative action program as approved by the Administrator pursuant to section 265.17 of Title 49 CFR.

(15) The recipient agrees to notify the Administrator promptly of any law suit or complaint filed against the recipient alleging discrimination on the basis of race, color, national origin or sex.

(16) The recipient shall include the preceding provisions of paragraphs (1) through (15) in every contract or purchase order, whether for the furnishing of supplies or services or for the use of real or personal property, including lease arrangements, or for construction relating to projects, programs or activities financed in whole or in part under the Rail Acts. The recipient shall cause each such contractor or vendor to include the provisions of paragraphs (1) through (15) in every subcontract. The recipient will take such action with respect to any such contract or purchase order as the Administrator may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event the recipient becomes involved in, or is threatened with, litigation with a contractor or vendor as a result of such direction by the Administrator, the recipient may request the United States to enter into such litigation.

§ 265.9 Affirmative action program—General.

Recipients of financial assistance under the Rail Acts and their contractors, as specified herein, shall develop and maintain an affirmative action program to insure that persons and businesses are not discriminated against because of race, color, national origin or sex in programs, projects and activities financed in whole or in part through financial assistance provided under the Rail Acts, and that minorities and minority businesses receive a fair proportion of employment and contractual opportunities which will result from such programs, projects and activities.

§ 265.11 Submission of affirmative action program.

(a) Each application for financial assistance under any of the Rail Acts shall, as a condition to its approval and the extension of any financial assistance pursuant to the application, contain or be accompanied by two copies of a written affirmative action program for review by and approval of the Administrator. Recipients that have already entered into an agreement or other arrangement providing for such assistance shall, within 60 days after the effective date of this part, develop and submit to the Administrator two copies of a written affirmative action program for review by and approval of the Administrator and thereafter maintain such program.

(b) (1) Beginning 30 days after the effective date of this part, and until 120 days after such date, each recipient shall require any contractor, as a condition to an award of a contract for $50,000 or more for services or products on a project receiving federal financial assistance under a program covered by section 905 of the Act:

(i) To furnish to the recipient a written assurance that it will, within 90 days after the date of the award, develop and maintain a written affirmative action program meeting the requirements of this part for the project, program or activity covered by the contract,

(ii) To require each of its subcontractors receiving an award of a subcontract for $50,000 or more within 120 days after the effective date of this part, to furnish to the contractor as a condition to such an award the written assurance described in clause (i) of this paragraph.

(2) Beginning 120 days after the effective date of this part, each recipient shall require as a condition to the award of a contract or subcontract of $50,000 or more that the contractor or subcontractor furnish a certificate to the recipient or contractor as appropriate that a written affirmative action program meeting the requirements of this part has been developed and is being maintained.

(3) Notwithstanding paragraphs (1) and (2) of this subsection, each contractor or subcontractor having a contract of $50,000 or more but less than 50 employees shall be required to develop and maintain a written affirmative action program only for contracts in accordance with § 265.13(c) of this part.

(4) A recipient or contractor shall not procure supplies or services in less than usual quantities or in a manner which is intended to have the effect of avoiding the applicability of this paragraph.

§ 265.13 Contents of affirmative action program.

(a) *General.* A prerequisite to the development of a satisfactory affirmative action program is the identification and analysis of problem areas inherent in minority employment and utilization of minority businesses, and an evaluation of opportunities for utilization of minority group personnel and minority businesses. Therefore, an affirmative action program to guarantee employment and contractual opportunities shall provide for specific actions keyed to the problems and needs of minority persons and minority businesses including, where there are deficiencies based on past practices, and with respect to future plans for hiring and promoting employees or awarding contracts, the development of specific goals and timetables for the prompt achievement and maintenance of full opportunities for minority persons and minority businesses with respect to programs, projects and activities subject to this part.

(b) *Employment practices.* (1) The affirmative action program for employment showing the level of utilization of minority employees, and establishing a plan to insure representative opportunities for employment for minority persons shall be developed in accordance with the regulations of the Department of Labor at 41 CFR 60–2.

(2) Railroad applicants or recipients shall develop their program for each establishment in their organization and by job categories in accordance with the requirements of the Joint Reporting Committee of the Equal Employment Opportunity Commission and the Department of Labor. Other applicants, recipients or contractors may use any program format or organization which has been approved for use by other Federal agencies enforcing equal opportunity laws.

(3) The affirmative action program shall show the source of statistical data used.

(4) The affirmative action program shall include a listing by job category of all jobs which may be established or filled by the applicant, recipient or contractor as a result of the project, program or activity funded by federal financial assistance under the Rail Acts for the first five years of such project, program or activity or the period during which such project, program or activity will be undertaken, whichever is the lesser ("program period").

(5) The affirmative action program shall set forth in detail a plan to insure that with respect to the project, program or activity financed in whole or in part through financial assistance under the Rail Acts, minority persons have an opportunity to participate in employment in proportion to the percentage of the minority work force in the area where the applicant's, recipient's or contractor's operations are located as compared to the total work force, and that such minority persons have an equal opportunity for promotion or upgrading. Where appropriate because of prior underutilization of minority employees, the program shall establish specific goals and timetables to utilize minority employees in such projects, programs or activities in the above-mentioned proportion.

(c) *Contracts.* (1) The affirmative action program shall include details of proposed contracts in excess of $10,000 to be awarded in connection with projects, programs and activities funded in whole or in part through financial assistance under the Rail Acts, including contracts for professional and financial services, for the program period. The details shall include a description of the services or products which will be sought including estimated quantities, the location where the services are to be provided, the manner in which proposals will be solicited (e.g., cost plus fixed fee, fixed price), the manner in which contracts will be awarded (e.g., competitive or sole source). The plan shall also give details as to bidding procedures, and information as to other qualifications for doing business with the applicant, recipient or contractor. Upon request by the applicant, recipient or contractor, any information submitted to the Administrator shall be kept confidential to the extent permitted by law.

(2) The affirmative action program shall review the procurement practices of the applicant, recipient or contractor for the full year preceding the date of the submission of the affirmative action program and evaluate the utilization of minority business in its procurement activities. Such evaluation of utilization of minority businesses shall include the following:

(i) An analysis of awards of contracts to minority businesses during such year describing the nature of goods and services purchased and the dollar amount involved; and

(ii) A comparison of the percentage of awards of contracts to minority businesses (by number of contracts and by total dollar amount involved) to the total procurement activity of the applicant, recipient or contractor for said year.

(3) The affirmative action program shall set forth in detail applicant's, recipient's or contractor's plan to insure that minority businesses are afforded a fair and representative opportunity to do business with applicant, recipient or contractor (both in terms of number of contracts and dollar amount involved) for the program period. Such plan shall identify specific actions to be taken to:

(i) Designate a liaison officer who will administer the minority business program;

(ii) Provide for adequate and timely consideration of the availability and potential of minority businesses in all procurement decisions;

(iii) Assure that minority businesses will have an equitable opportunity to compete for contracts, by arranging solicitation time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation of minority businesses and by assisting minority businesses who are potential contractors in preparing bid materials and in obtaining and maintaining suitable bonding coverage in those instances where bonds are required;

(iv) Maintain records showing that the policies set forth in this part are being complied with;

(v) Submit quarterly reports of the records referred to in subparagraph (iv) above in such form and manner as the Administrator may prescribe; and

(vi) Where appropriate because of prior underutilization of minority businesses, establish specific goals and timetables to utilize minority businesses in the performance of contracts awarded.

(d) *Successor organizations.* Where applicant, recipient or contractor is a successor organization, its affirmative action program shall review the hiring and procurement practices of its predecessor organization or organizations.

§ 265.15 Implementation and maintenance of affirmative action program.

The affirmative action program with respect to employment and procurement practices shall set forth in detail applicant's, recipient's or contractor's program to implement and maintain its recommended action program to insure that persons and businesses are not discriminated against because of race, color, national origin or sex, and that minorities and minority businesses have equal employment and contractual opportunities with applicant, recipient or contractor. In developing its maintenance program for employment, applicants, recipients and contractors shall follow the applicable regulations of the Department of Labor implementing Executive Order 11246 at 41 CFR 60–2, Subpart C, which provisions may also be helpful in implementing and maintaining applicant's, recipient's or contractor's procurement program.

§ 265.17 Review of affirmative action program.

(a) Except as provided for contractors and subcontractors in § 265.11(b), each affirmative action program to be acceptable must have the written approval of the Administrator.

(b) The Administrator recognizes that there may be some exceptional situations where the requirements of § 265.13 through § 265.15 may not fulfill the affirmative action objectives sought or that those objectives may be better achieved through modified or different requirements. Accordingly, the applicant, recipient or contractor may request approval for modified or different requirements that embody the objectives of § 265.13 through § 265.15. Such a request must include detailed showings that the particular situation is exceptional and that the modified or different proposals substantially comply with the objectives of this part. If the Administrator determines that the requirements for a detailed justification have been met, he may waive or modify these requirements or impose different requirements as he deems necessary to further the objectives sought herein.

Subpart C—Compliance

§ 265.19 Compliance information.

(a) Each recipient and contractor shall keep such records and submit to the Administrator complete and accurate reports, at such times, and in such form, and containing such information as the Administrator may determine to be necessary to enable him to ascertain whether the recipient or contractor has complied or is complying with this part. These records shall show in connection with the project, program or activity funded in whole or in part through financial assistance under the Rail Acts:

(1) Procedures which have been adopted to comply with the policies set forth in this part, including the establishment of a source list of minority businesses;

(2) Specific efforts to identify and award contracts to minority businesses; and

(3) Awards to minority businesses on the source list required in paragraph (1) of this subsection.

(b) Each recipient and contractor shall permit access by the Administrator during normal business hours to such of its books, records, accounts and other sources of information and its facilities as may in the opinion of the Administrator be necessary to ascertain compliance with this part.

(c) Each recipient and contractor shall make available to participants, beneficiaries and other interested persons, such information regarding the provisions of this part and the applicability to the program, project or activity under which the recipient received financial assistance from the Rail Acts or under which the contractor is awarded a contract and make such information available to them in such manner as the Administrator finds necessary to apprise such persons of the protections against discrimination assured them by the Act and this part.

§ 265.21 Conduct of investigations.

(a) The Administrator shall from time to time review the practices of recipients and contractors to determine whether they are complying with this part. The Administrator shall to the fullest extent practicable seek the cooperation of recipients and contractors in obtaining compliance with this part and shall provide assistance and guidance to recipients and contractors to help them comply voluntarily with this part. As required by § 265.7(a)(6) of this part recipients and contractors shall from time to time review the practices of their contractors

and subcontractors to determine whether they are complying with this part.

(b) Any person who believes himself or herself or any other person to be subjected to discrimination prohibited by this part, may file with the Administrator a written complaint. A complaint must be filed not later than sixty (60) days after the date complainant discovers the alleged discrimination, unless the time for filing is extended by the Administrator.

(c) The Administrator will make a prompt investigation in cases where a compliance review, report, complaint or other information indicates a possible failure to comply with this part.

(d) (1) If an investigation pursuant to paragraph (c) of this section indicates a failure to comply with this part, the Administrator shall within ten (10) days after such determination so inform the recipient or contractor in writing of the specific grounds for alleging noncompliance and the matter shall be resolved by informal means whenever possible. The notice shall provide that, if it has been determined that the matter is not resolved by informal means within thirty (30) days after the delivery of the notice, action will be taken as provided for in § 265.23.

(2) If an investigation does not warrant action pursuant to subparagraph (1) of this paragraph, the Administrator shall within ten (10) days after such determination so inform the recipient, or contractor and the complainant, if any, in writing.

(e) No recipient, contractor or other person shall intimidate, threaten, coerce or discriminate against any individual for the purpose of interfering with any right or privilege secured by section 905 of the Act or this part, or because he or she made a complaint, testified, assisted or participated in any manner in an investigation, proceeding or hearing under this part. The identity of complainants shall be kept confidential at their election during the conduct of any investigation, proceeding or hearing under this part. But when such confidentiality is likely to hinder the investigation the complainant will be advised for the purpose of waiving the privilege.

§ 265.23 Procedures for effecting compliance.

(a) Whenever the Administrator determines that any recipient, or contractor has failed to comply with the provisions of this part, or with any Federal civil rights statute, or with any order or regulation issued under such a statute, and such failure has not been resolved by informal means pursuant to § 265.21 of this part, the Administrator shall within ten (10) days after such determination notify such recipient or contractor, and the appropriate labor organization if the matter may appear to affect a person who is covered by a collective bargaining agreement, in writing of the specific grounds for alleging noncompliance, and the right of such persons to respond to such determination in writing or to request an informal hearing. Where the Administrator determines that substantial noncompliance exists and it is unlikely that compliance will be obtained, or that lack of good faith exists, or that other good cause exists, he may order that further financial assistance be suspended in whole or in part pending a final decision in the matter. Subject to the provisions of paragraphs (b) through (e) of this section, the recipient or contractor shall have sixty (60) days from the date of delivery of the notice within which to comply. The recipient or contractor may be entitled to additional time if it is demonstrated that compliance is not possible within the sixty day period and that the necessary initial curative actions were undertaken promptly and have been diligently prosecuted toward completion. The Administrator shall specify the last day upon which curative action must be completed to his satisfaction. Unless the Administrator determines that compliance cannot be reasonably attained, failure to take curative action shall be grounds for the Administrator to:

(1) Direct that no further Federal financial assistance be provided to the recipient;

(2) Refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted;

(3) Exercise the powers and functions provided by Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*); or

(4) Take such other actions as may be provided by law or this part.

(b) Persons receiving notification and a directive pursuant to paragraph (a) of this section may within thirty (30) days after receipt respond to the notice in writing in lieu of requesting an informal hearing as specified in subsection (c). The Administrator will make a determination as to compliance within thirty (30) days after receipt of such written response, and advise the person in writing of his determination. If the Administrator determines that compliance is reasonably attainable and that such person has failed to comply with the provisions of this part or with his determination within 30 days after receipt of his determination, the Administrator shall pursue the remedies set forth in the last sentence of subsection (a) of this section.

(c) Persons receiving notification and a directive pursuant to subsection (a) of this section may within ten (10) days after receipt request an informal hearing in lieu of filing a written response as specified in subsection (b). The Administrator may, in his discretion, grant a request for an informal hearing for the purpose of inquiring into the status of compliance of such person. The Administrator will advise persons subject to his directive in writing as to the time and place of the informal hearings and may direct such persons to bring specific documents and records, or furnish other relevant information concerning their compliance status. When so requested, such person shall attend and bring the requested information. The time and place so fixed shall be reasonable and shall be subject to change for cause. The complainant, if any, shall be advised of the time and place of the hearing. The failure of such person to request a hearing or to appear at a hearing for which a date has been set shall be deemed to be a consent to the applicability of the procedures set forth in subsection (a) of this section.

(d) The hearing shall be conducted by a hearing officer appointed by the Administrator. Such hearings shall commence within twenty (20) days from the date the hearing is granted and shall be concluded no later than thirty (30) days from the commencement date. Parties to informal hearings may be represented by counsel or other authorized representative and shall have a fair opportunity to present any relevant material. Formal rules of evidence will not apply to such proceedings.

(e) *Decisions and notices.* (1) Within ten (10) days after the conclusion of such hearings, the hearing officer will advise the Administrator, in writing, of his views and recommendations as to compliance with this part and a copy of such decision shall be sent by registered mail, return receipt requested, to the recipient or contractor and participating labor organization. If the hearing officer in his decision determines that the recipient or contractor is in noncompliance with this part, he may, if he determines that it is unlikely that compliance will be obtained, or that a lack of good faith exists, or for other good cause, order that further financial assistance, be suspended in whole or in part, pending a decision by the Administrator in the matter.

(2) The recipient, contractor or labor organization may file exceptions to the hearing officer's decision, with his reasons therefor, with the Administrator within thirty (30) days of receipt of the initial decision. Within twenty (20) days, after the time for filing exceptions, the Administrator shall determine, in writing, whether or not the parties involved are in compliance with this part. A copy of the Administrator's decision will be given to the recipient, contractor, labor organization, if appropriate, and to the complainant, if any.

(3) If the Administrator determines that compliance can reasonably be attained, his decision shall provide that if such person fails or refuses to comply with the decision of the Administrator within thirty (30) days after receipt of the decision, the Administrator shall:

(i) Direct that no further Federal assistance be provided to such a person;

(ii) Refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted;

(iii) Exercise the powers and functions provided by Title VI of the Civil Rights Act of 1964; and/or

(iv) Take such other actions as may be provided by law or this part.

(4) A recipient or contractor adversely affected by a decision of the Administrator issued under paragraph (a) or (b) of this section shall be restored to full eligibility to receive Federal assistance

or award of a federally assisted contract if the recipient or contractor takes complete curative action to eliminate the noncompliance with this part and if the recipient or contractor provides reasonable assurance that the recipient or contractor will fully comply with this part.

§ 265.25 Other information.

(a) Each person required to submit a written affirmative action program pursuant to this part shall include as an appendix thereto, the following information except to the extent such information is already provided as part of the application for financial assistance;

(1) A brief description of other pending applications to other federal agencies for financial assistance, and of federal assistance being provided at the time of submission of the affirmative action program;

(2) A statement of any civil rights compliance reviews regarding applicant or recipient conducted in the two year period before the application, or affirmative action program; the name of the agency or organization performing the review, and the findings of the review;

(3) Where the project, program or activity receiving financial assistance will require the relocation of persons and businesses, a description of the requirements and steps used or proposed to guard against unnecessary impact on persons on the basis of race, color, or national origin;

(4) Where the project, program or activity receiving financial assistance will result in the construction of new facilities or expansion of existing facilities, a description of the requirements and steps used or proposed to guard against unnecessary impact on persons on the basis of race, color or national origin.

(5) Where (3) and (4) above are applicable, additional data such as demographic maps, racial composition of affected neighborhoods, or census data should be provided where necessary or appropriate to evaluate the impact of projects, programs and activities referred to in (3) and (4) above.

Dated: January 17, 1977.

ASAPH H. HALL,
Administrator,
Federal Railroad Administration.

APPENDIX A

The following are the financial assistance programs to which this part applies:

(a) *Railroad Revitalization and Regulatory Reform Act of 1976,* (1) purchase of redeemable preference shares or trustee certificates pursuant to section 505;

(2) guarantee of obligations, the proceeds of which will be used to acquire, or rehabilitate or improve rail facilities, or equipment, pursuant to section 511; and

(3) grants and contracts made to implement the Northeast Corridor project under section 704.

(b) *Regional Rail Reorganization Act of 1973, as amended,* (1) loans made by the United States Railway Association (USRA) pursuant to section 211;

(2) purchase of securities of the Consolidated Rail Corporation pursuant to section 216; and

(3) grants to States, or local or regional authorities for rail continuation assistance under section 402.

(c) *Department of Transportation Act,* (1) grants to States for rail freight assistance programs under section 5 (sec. 803 of the Railroad Revitalization and Regulatory Reform Act of 1976); and

(2) grants under section 4(1) for the planning, preservation and conversion of rail passenger terminals of historical or architectural significance.

(d) *Rail Passenger Service Act,* (1) grants to Amtrak under section 601.

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MONDAY, JANUARY 24, 1977

PART VI



DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

■

Site and Neighborhood Standards for Subsidized Newly-Constructed or Substantially-Rehabilitated Housing

Section 8 Housing Assistance Payment Program—New Construction and Substantial Rehabilitation

Notice of Proposed Rulemaking

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[24 CFR Part 200]

[Docket No. R–77–432]

SITE AND NEIGHBORHOOD STANDARDS FOR SUBSIDIZED NEWLY-CONSTRUCTED OR SUBSTANTIALLY-REHABILITATED HOUSING

Notice of Proposed Rule Making

The Department of Housing and Urban Development is proposing to establish uniform site and neighborhood standards for housing that is newly constructed, substantially rehabilitated, or purchased for use as low rent public housing, and for which HUD assistance is provided in the form of annual contributions, interest reduction payments, rent supplements, below market interest rate insured mortgages or loans, or housfng assistance payments.

The standards would replace 24 CFR Part 200. References are made to these standards in other regulations of the Department. See, *e.g.*, 24 CFR 886.203(a)(2). No change in the regulations governing the Section 202 program for elderly housing (Sec. 202 of the Housing Act of 1959, 12 U.S.C. 1701q) is required because those regulations require compliance with either 24 CFR 880.112 or 881.112. See 24 CFR 885.3.

The proposed regulations would provide uniform criteria for evaluating proposed locations for assisted housing with the aim of ensuring that housing opportunities for lower income and minority households are available in a wide range of locations. The Department has concluded that the best approach to this complex issue of site selection is to allow full and open public discussion by those affected by the proposed regulations before these standards are finalized. Accordingly, the Department presents these regulations not as the Department's conclusion as to the final form the standards should take, but as an option whose specificity will give form and substance to a discussion of the issues involved.

In order to assist the public in commenting on these regulations, this preamble will present a history of the site selection issue and a summary of the provisions of the proposed regulations so that public comments can respond to how these regulations may impact on individual projects or communities.

I. Background

One of the statutory responsibilities of the Department in administering its housing and community development programs is the furthering of fair housing goals (Sec. 808(d)(5) of Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3608(d)(5)), and the "reduction of the isolation of income groups within communities and geographical areas and the promotion of an increase in the diversity and vitality of neighborhoods through the spatial deconcentration of housing opportunities for persons of lower income." Sec. 101(c)(6), Housing and Community Development Act of 1974 (42 U.S.C. 5301(c)(6)).

Although federally assisted housing constitutes a relatively small portion of the nation's housing stock, it is an important source of housing opportunities for lower income and minority families. Thus, promoting the provision of assisted housing in a wide variety of locations is an essential element in the fair housing goal which finds expression throughout the Department's programmatic responsibilities, and which goes beyond assisted housing to include, for example, the enforcement of Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3604–3619); the Community Development Block Grant Program and the related review of local Housing Assistance Plans; and HUD's recently implemented program to provide supplemental allocations of housing assistance, comprehensive planning, and community development funds to areas which have developed housing allocation plans to increase the geographic choice of housing opportunities for lower income families throughout a metropolitan area. See 24 CFR Part 891.

The Department's experience has indicated the need for uniform site and neighborhood standards which clearly articulate the Department's policy of promoting fair housing through the development of assisted housing at locations which broaden the housing opportunities available to lower-income families. The lack of a simple set of uniform criteria applicable to all federally assisted housing programs, and the ambiguity of present requirements have resulted in inconsistent and uneven application of the current standards.

The development of such site and neighborhood standards for federally assisted housing is a difficult and complex task because of the need to balance a number of significant and competing social goals. The goal of dispersing assisted housing must be measured against the need to provide resources to rehabilitate the housing and to improve the quality and viability of the neighborhoods in which lower income families already live. In addition, federal intervention in locally determined land use or in locally devised community development strategies, through the imposition of site and neighborhood standards, may conflict with other statutory or Departmental policies which encourage increased discretion for local governmental officials. Finally, the location of assisted housing should be considered in relation to such concerns as racial imbalances in the public schools, neighborhood transition, and the availability of transportation and social services. These proposed regulations are being published for comment in order to focus discussion on such specific issues so that the Department may make a fully informed decision on a uniform set of standards.

II. History

Since the inception of Low Rent Public Housing in 1937, the earliest of the federally-assisted housing programs, standards of one type or another have been applied by HUD and its predecessor agency, the Public Housing Administration, to the selection of sites. However, those early standards did not reflect a concern for the impact of site selection on housing opportunities for minority families. By the mid-1960's, it became evident that much of the public housing available to minorities was being constructed in areas of minority concentration. Responding to this pattern, pursuant to authority conferred by Executive Order 11063 of 1962 (42 U.S.C. 1982 note), and the Civil Rights Act of 1964 (see particularly 42 U.S.C. 2000d), the Department added a site standard in 1967 which addressed the responsibility of local housing authorities to provide for a balanced distribution of public housing projects within the locality, in order to promote housing opportunities for minorities outside as well as inside "areas of racial concentration." Criterion 2g of Par. 205.1 of the Low-Rent Public Housing Manual.

In 1970, the Department undertook to modify its site selection system to reflect the requirements of Section 808 of Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3608) that the Secretary administer HUD programs "in a manner affirmatively to further the policies of this Title."

The development of these new site selection standards was hastened by the United States Court of Appeals decision in *Shannon* v. *HUD*, 436 F. 2d 809 (C.A. 3, 1970), which held that the Department "must utilize some institutionalized method whereby, in considering site selection or type selection, it has before it the relevant racial and socio-economic information necessary for compliance with its duties under the 1964 and 1968 Civil Rights Act." Observing that desegregation is not the only goal of the national housing policy, the Court left room for HUD to approve proposals which might add to racial concentration in "instances where a pressing case may be made for the rebuilding of a racial ghetto," so long as HUD carefully weighed the alternatives and made an informed judgment that "the need for physical rehabilitation or additional minority housing at the site in question clearly outweights the disadvantages of increasing or perpetuating racial concentration."

In January 1972, HUD published its revised Project Selection Criteria (24 CFR Part 200, Subpart N) which established a formal system for evaluating proposed sites for assisted housing. These new guidelines provided criteria for assessing sites for both public housing and FHA-insured assisted housing, primarily Section 236 (see 12 U.S.C. 1715z–1). Factors included not only the question of minority concentration, but also the overall need for the proposed housing project, the availability of community services, the undue concentration of subsidized units without regard to racial concentration, the environmental impact of the project, the availability of minority job opportunities, the capacity of the

sponsor and quality of the prospective management of the project.

The Project Selection Criteria were intended: (a) to expand existing site selection criteria to reflect the requirements of Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3604–3619), and to implement the President's related directive that "the administrator of a housing program should include, among the various criteria by which applications for assistance are judged the extent to which a proposed project, or the overall development plan of which it is a part, would, in fact, open up new housing opportunities that would contribute to decreasing the effects of past housing discrimination (June 11, 1971 statement of the President on Federal policies relating to equal housing opportunity, p. 12); (b) to give priority to projects which provided geographic dispersal, small size and low density, a special mix and good design and management; (c) to assist in the selection of public housing applications which best met this objective; (d) to enable HUD Field Offices to eliminate clearly unacceptable proposals prior to performing the detailed processing required by each program; and (e) to assure that those proposals which met the broad-based criteria reflecting the basic concerns of the Department were given a priority for funding.

The criteria prohibited locating a project in an area of minority concentration unless the project was necessary to meet an "over-riding need" for housing in the area, or "sufficient and comparable" opportunities for assisted housing existed outside the areas of minority concentration.

The 1972 Project Selection Criteria were not applicable to rehabilitation projects, Indian Reservation housing, Section 235 existing housing, public housing acquisition or leasing of fewer than 25 units, and new construction projects of fewer than five dwelling units.

Section 201(a) of the Housing and Community Development Act of 1974 (88 Stat. 653) created the Section 8 (Rental Subsidy) Housing Assistance Payments Program (see 42 U.S.C. 1437f), which is now the Department's primary housing assistance program. The 1974 Act states as statutory purposes the "reduction of the isolation of income groups within communities and geographical areas" and the "spatial deconcentration of housing opportunities for persons of lower incomes." Section 101(c)(6), (42 U.S.C. 5301(c)(6)). It also requires that a community, as a condition to receiving its Community Development Block Grant, prepare a housing assistance plan (HAP) which must identify the general locations of proposed housing for lower-income persons, with the objective of "promoting greater choice of housing opportunities and avoiding undue concentrations of assisted persons in areas containing a high proportion of low income persons". Section 104(a)(4)(C), 42 U.S.C. 5304(a)(4)(C).

The site and neighborhood standards established for the Section 8 New Construction and Substantial Rehabilitation programs (see 24 CFR 880.112 and 881.112 respectively) closely paralleled the standards established in 1972 for the public housing programs, including the 1974 revised standards for the Section 23 program, which was the predecessor to Section 8. The present Section 8 site selection regulations state:

> The site shall promote greater choice of housing opportunities and avoid undue concentration of assisted persons in areas containing a high proportion of low-income persons. 24 CFR 880.112(c) and 881.112(c).

This Section 8 standard repeats the statutory language (Sec. 104(a)(4)(C)(ii) of the HCD Act of 1974, 42 U.S.C. 5304(a)(4)(C)(ii) with respect to the objectives of the "general locations" requirement of the local Housing Assistance Plans. A related regulatory requirement imposed pursuant to the HCD Act (24 CFR 880.112(f) and 881.112(e)) requires that "the site * * * comply with any applicable conditions in the Local Housing Assistance Plan, approved by HUD."

The standard contained in the earlier Project Selection Criteria concerning areas of racial concentration was rephrased in the regulations for Section 8 New Construction to require that the site shall not be located in areas of minority concentration unless there are "sufficient, comparable opportunities existing for housing for minority families, * * * outside areas of minority concentration, or * * * the project is necessary to meet overriding housing needs." 24 CFR 880.112(c)(1). The Section 8 Substantial Rehabilitation regulations require only that the site be "suitable from the standpoint of facilitating and furthering compliance with * * * applicable" fair housing requirements. 24 CFR 881.112(b).

The regulations for the "Section 8 Housing Assistance Payments Program—Additional Assistance Program for Projects Insured or Formerly Insured by HUD", 24 CFR Part 886, published in the FEDERAL REGISTER on August 4, 1976 (41 FR 32686), incorporated only those site and neighborhood standards in § 881.112 which require assisted units to qualify as decent safe and sanitary housing, but not the provisions concerning minority concentrations. The same standard was applied to the program developed for "PHA Acquisition of HUD-Owned Properties and Properties with HUD-Insured and HUD-Held Mortgages" (24 CFR Part 845) published in the FEDERAL REGISTER as an Interim Rule on June 9, 1976. (41 FR 23292). The minority concentration criteria were not applied to these programs because they only provide additional assistance to existing lower income HUD-insured or HUD-subsidized projects.

Section 8 existing housing (24 CFR Part 882) is not subject to the present or proposed site-selection standards because that program is based on a shopping or "finders-keepers" principle under which families select the location of their own housing. Departmental regulations for the Traditional Public Housing Program (proposed Part 841 of 24 CFR) which were published for comment on November 18, 1976 at 41 FR 50947 provide that the 1972 Project Selection Criteria will continue to apply pending the establishment of new site and neighborhood standards.

III. Major Issues Posed by the Proposed Site and Neighborhood Standards

A. *Minority Concentrations.* One of the difficult issues which these proposed site-selection standards address is that of under what circumstances subsidized housing may be located in areas with substantial concentrations of racial minorities. The policy which these proposed standards are intended to serve is to ensure that people of all races have a variety of housing opportunities available to them. If comparable housing is available to minorities inside and outside an area of racial concentration, so that minority families have the option of living in either environment, then such a policy is satisfied. See § 200.704(d)(1)(ii). If the policy to be served were to mandate the broad geographic dispersal of minority families, as opposed to housing opportunities, more restrictive stndards would be necessary.

An "area of minority concentration" has been defined in the proposed regulations as an area in which more than 40 percent of the residents are minority citizens or one in which minorities make up a significantly greater proportion of the residents than is true of the locality as a whole. This provision prevents the location of additional assisted housing in an area which already houses a disproportionate share of the locality's minority residents even though the proportion of minority residents in the area does not exceed 40 percent. See § 200.704(a)(1).

The proposed regulation also contains an exception which will avoid imposing an unfair penalty on those localities which presently have a large percentage of minority residents. For example, § 200.704(d)(2) allows approval of a proposed site in an area of minority concentration if sites outside such areas cannot feasibly be made available for assisted housing. This provision, which may be criticized by some as a loophole, avoids the anomaly of barring any assisted housing in a community in which all available sites are in areas with greater than 40 percent minority populations.

Under the proposed regulations, a site is to be considered available if assisted housing would be an incompatible land use, or would frustrate other legitimate land-use or growth-management policies. § 200.704(d)(2). Thus, for example, a site would be unavailable if it were in the midst of a high traffic industrial area or where the physical infrastructure and public services in undeveloped open space or a single-family neighborhood could not accommodate high-density lower-income housing, without an unconscionably high public investment. The proposed regulation specifically provides that sites shall not be considered unavailable for low-income housing if their unavailability is the result of dis-

criminatory zoning or other discriminatory practices. § 200.704(d)(2). The question of what constitutes discriminatory zoning is an unsettled area of case law. The Department specifically requests comments on the types of justifications that could be adopted to assist in determining whether sites are unavailable for the purpose of this provision.

Moreover, areas of minority concentration may be particularly susceptible to neighborhood preservation or renewal programs of which assisted housing is an integral part. Accordingly, sites which are otherwise unacceptable may be approved under the specific conditions described in § 200.704(d)(3), if they are in an area which is the target of concentrated local neighborhood preservation or revitalization efforts. This exception would be invoked only where the community has sites available outside areas of minority concentration and its annual allocation of assisted housing for the relevant year is too small to provide the assisted housing needed to implement the preservation plan to be balanced by comparable housing outside areas of minority concentration. The relevant local government must fully support such an exemption and demonstrate its continuing commitment to the revitalization of the area.

Regardless of whether housing is subject to this preservation area exception, whenever it is to be constructed in an area of minority concentration, a positive finding must be made by HUD that the project will improve rather than impair the physical and social quality of the neighborhood. § 200.704(e).

B. *Racially Mixed Areas.* Racially mixed areas present an issue of particular sensitivity. Because the racial balance in a neighborhood is often very delicate, under these proposed regulations a project site should not be approved in such an area when it would cause a rapid and massive turnover of the residents in the surrounding neighborhood, with the physical decline and disinvestment that may attend such transitions. § 200.704(b). On the other hand, a rapid increase in the number of minority residents in an area is not per se to be avoided. There is no reason to avoid the proportion of minorities in a neighborhood quintupling from 3 to 15 percent, for example. Nor is an increase in the number of minorities in a neighborhood from 25 to 35 percent, because of the racial makeup of a project, necessarily to be avoided, if the project does not significantly and adversely affect the stability of the racially-integrated surrounding neighborhood.

Section 200.704(b) is intended only to reach the situation where the proposed project's likely effect on the surrounding neighborhood will be to cause precipitious racial transition that results in the neighborhood becoming an area of undue minority concentration. Thus, the regulation focuses only on those neighborhoods which, while not yet having a 40 percent minority population, do have, for example, a 30 percent minority population, or a trend of racial transition which will soon result in the neighborhood becoming an area of minority concentration.

A related provision, § 200.704(c), provides that a site in a racially-mixed area should not be approved where it would cause a significant and disproportionate share of the locality's minority students to be concentrated in one or more public schools serving the site. Because patterns of residential segregation and *de facto* school segregation are integrally related, the location of assisted housing should avoid exacerbating racial imbalances in public schools.

Again, however, this provision should not be misused to bar assisted housing and minority families from predominately non-minority neighborhoods. Its purpose is to avoid the location of assisted housing recreating a pattern of *de facto* school segregation, which a court or community has tried to remedy.

C. *Areas with a Concentration of Assisted Housing.* Site-selectiton criteria also must deal with the problem of areas with a significant concentration of lower-income families in federally assisted housing. The proposed standards seek to avoid concentrations of assisted housing which congregate large number of low-income families in particular neighborhoods, since such concentrations may lead to serious management problems in the assisted housing stock. Proposed project sites are to be approved in areas of concentrations of assisted housing only when a positive finding can be made that the project will improve, rather than impair the physical and social quality of the neighborhood. § 200.704(e).

Because of its unique characteristics and the needs of its occupants, however, elderly housing is exempted from the provision designed to avoid concentrations of assisted housing. § 200.704(a)(3)(ii). While concentrating large numbers of assisted low-income families can have serious social and economic repercussions, these problems have not arisen with regard to housing for the elderly. Elderly housing may presently be located in a single section of a city that is ideal for such housing and the presence of additional elderly housing may result in even better services and facilities being provided. Requiring a new elderly project to be located in another section of the locality, where there is not a concentration of elderly housing, could result in a significantly less satisfactory living environment.

D. *Standards for Rehabilitation.* Another basic question concerns whether to exempt or impose a different—presumably lesser—standard for substantial rehabilitation projects, as compared to new construction. The goals of rehabilitating blighted, abandoned or substandard dwellings in central city areas where low-income families live must be weighed against the goal of expanding housing opportunities outside of areas of minority or assisted-housing concentration. In these proposed regulations, the tension between balanced housing opportunities and neighborhood preservation is struck not through a distinction between rehabilitating or building a similar structure on the same site, but rather by the aforementioned local neighborhood preservation exemption to both minority concentration and assisted housing concentration requirements. § 200.704(d)(3).

E. *A healthy living environment.* Sites in areas both of minority concentration and with undue concentrations of assisted housing are not to be approved unless a determination is made that approval of the site will be likely to improve, rather than impair, the physical and social quality of the area. § 200.704(e). Thus, sites for assisted housing must be accessible to employment opportunities. § 200.710. The chance for gainful employment is as important to a lower-income family as is subsidized housing. The requirement that the proposed site be convenient to places of employment is to be applied less rigorously to elderly housing. Although employment opportunities may not be an important to the elderly, sites for elderly housing must be convenient to other supporting social services, such as basic comercial and medical facilities, because the elderly often do not have access to private automobile transportation and may even find dependence on public transportation for these necessities of life unduly burdensome.

F. *Federal and Local Government Roles.* The final tension inherent in the site selection issue is the role of Federal and local governments in balancing competing interests, and determining sites for assisted housing. While the Federal Government has an historic role in assuring the rights of minority and lower income families, local governments have been given an increasing role in determining the use of Federal funds within their jurisdictions. Local officials have the greatest capacity for assessing local needs, coordinating the impact of differing Federal programs on those needs, leveraging public and private resources, and responding to public concerns.

The regulations emphasize the critical role of local government in the decision-making process. Section 200.716 provides that a site must comply with any applicable conditions in the HUD-approved Local Housing Assistance Plan. Section 200.718 also requires that the views and recommendations of the Chief Executive Officer of the unit of general local government reviewing the site pursuant to Section 213 of the Housing and Community Development Act of 1974 (42 U.S.C. 1439) and 24 CFR Part 891 must be carefully considered in approving a site. The matters on which comments are requested from local Chief Executive Officers go considerably beyond the question of consistency with the HAP and include comments with respect to the standards proposed by these regulations. The proposed regulations also require that sites must be consistent with any applicable areawide housing opportunity plan or development plan for a new community.

G. *Miscellaneous Provisions.* Other new provisions in these regulations clarify that approval of a site as meeting these standards does not substitute for or imply HUD review and approval of the site as meeting HUD requirements with respect to the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347), other related statutes or Executive Orders, or the standards (e.g., those relating to marketability) applicable to the particular housing program.

Interested persons are invited to comment on the proposed revised site and neighborhood standards by submitting written data, views and arguments. Comunications should be identified by the above docket number and title and should be filed with the Rules Docket Clerk, Office of the Secretary, Room 10141, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410. All relevant material received on or before March 2, 1977 will be considered before adoption of the final rule. Copies of comments submitted will be available for public inspection during normal business hours at the above address.

A Finding of Inapplicability of the National Environmental Policy Act has been made. A copy of the Finding is available for public inspection in the Office of the Rules Docket Clerk during regular business hours at the address set forth above.

In addition, a Finding of Inapplicability of Inflation Impact Statement requirements has been made in accordance with relevant procedures. A copy of this Finding is available for inspection in the Office of the Rules Docket Clerk during regular business hours at the address set forth above.

Accordingly, it is proposed that Chapter II of 24 CFR be amended as follows:

1. Subpart N is revised to read:

Subpart N—Site and Neighborhood Standards for Subsidized Housing

Sec.

200.700 Site and neighborhood standards.
200.702 Requirements as to size, terrain and utilities.
200.704 Equal housing opportunity requirements.
200.706 Environmental requirements.
200.708 Accessibility to community facilities.
200.710 Accessibility to employment opportunities.
200.712 Compliance with relocation requirements.
200.714 Sites in flood zones.
200.716 Consistency with plans.
200.718 Local government comment.
200.720 Other site related reviews.

Subpart N—Site and Neighborhood Standards for Subsidized Housing

AUTHORITY: Sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d)); sec. 5(b) and 8 U.S. Housing Act of 1937 (42 U.S.C. 1437c(b) and 1437f).

§ 200.700 Site and neighborhood standards.

Proposed sites for new construction and substantial rehabilitation projects, and projects acquired for use as low rent public housing without rehabilitation, must be approved by HUD as meeting the standards set forth in this Subpart.

§ 200.702 Requirements as to size, terrain and utilities.

(a) The site must be adequate in size, exposure and contour to accommodate the number and type of units proposed; and adequate utilities (water, sewer, gas and electricity) and adequate paved streets shall be available to service the site.

§ 200.704 Equal housing opportunity requirements.

The site and neighborhood must be suitable from the standpoint of facilitating and furthering full compliance with the applicable provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et. seq.*), Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3604–3619), Executive Order 11063 (42 U.S.C. 1982 note), the Housing and Community Development Act of 1974 (see particularly 42 U.S.C. 5301–5320), and HUD regulations issued pursuant thereto.

(a) *Determination of minority concentration or racial mixture.* In furtherance of the objectives of the statutes and the Executive Order enumerated in this section, HUD shall determine:

(1) *Whether the site is in an area of minority concentration.* In making such determination, the area to be considered shall be the census tract in which the site is located or such other area for which reliable data as to racial composition is available and which HUD determines, on the basis of functional considerations (i.e., location of neighborhood facilities such as schools, shopping centers, churches, etc.) to be more appropriate. An area shall be determined to be an area of minority concentration if minority residents constitute (i) more than 40 percent of the residents of the area or (ii) a significantly greater proportion of the residents of the area than the proportion of minority residents of the locality as a whole.

(2) *Whether the site is in a racially mixed area.* An area, as determined pursuant to paragraph (a)(1) of this section shall be determined to be a racially mixed area if it contains both minority and non-minority residents and minority residents constitute a significant percent but less than 40 percent of the total residents of the area.

(3) *Whether a site is in an area of undue concentration of federally-assisted housing.* The area, as determined pursuant to paragraph (a)(1), of this section shall be determined to be an area of undue concentration of federally-assisted housing if a substantial number of the housing units in the area (generally over 40 percent) consist of housing (i) constructed, rehabilitated or purchased, leased (exclusive of units leased under the Section 8 Existing Housing Program (24 CFR Part 882) under the U.S. Housing Act of 1937 (42 U.S.C. 1437f)), Sections 221(d)(3) BMIR, 235, or 236 of the National Housing Act (12 U.S.C. 1715L(d)(3), 1715z and 1715z–1), Section 101 of the Housing and Urban Development Act of 1965, (12 U.S.C. 1701s), or Section 515 of the Housing Act of 1949 (42 U.S.C. 1485) and (ii) intended for occupancy by other than elderly households.

(b) *Unacceptability if ratio of minority residents would be increased significantly.* A site in a racially mixed area shall not be approved if the proposed project would result in a significant and rapid increase in the proportion of minority to non-minority residents in the area causing it to become an area of minority concentration in which minority residents would constitute more than 40 percent of the residents of the area.

(c) *Unacceptability due to disproportionate concentration of minority students in public schools.* A site in a racially mixed area or area of minority concentration shall not be approved if the proposed project would distort a voluntary or court-imposed plan adopted by the school system or locality to assure equality of educational opportunity in its public schools, by causing a significant and disproportionate concentration of the locality's minority students in one or more of the public schools serving the site.

(d) *Approval of site in an area of minority concentration.* A site located in an area of minority concentration may be approved if one of the following determinations is made:

(1) *Sufficient and comparable opportunities for assisted housing are available outside areas of minority concentration.*

(i) Housing in the jurisdiction of the unit of general local government (or such wider area as may be covered by an areawide housing opportunity plan) constructed or rehabilitated under one or more of the statutory provisions cited in paragraph (a)(3) of this section is located in areas which are not areas of minority concentration. Such housing must be comparable in tenure (owner, renter), size (bedroom distribution), and number of assisted units to the tenure, size and number of assisted units located in areas of minority concentration; and must have units presently available or scheduled to be available within a waiting period of not more than twelve months in a number and type approximating the number and types of units proposed to be constructed or rehabilitated at the site in question;

(ii) Housing to be constructed or rehabilitated under the statutory provisions cited in paragraph (a)(3) of this section has been approved for development (e.g., fund reservation) within the jurisdiction of the unit of general local government (or such wider area as may be covered by an areawide housing opportunity plan) in areas which are not areas of minority concentration. The proposed tenure, size and number of such units must approximate the proposed tenure, size and number of units to be constructed or rehabilitated at the site in question and must be scheduled to be available for occupancy within twelve months of the anticipated completion of the proposed project; or

(2) *There are no sites which are available or which feasibly can be made available for housing constructed or rehabili-*

tated under the statutory provisions cited in Par. (a)(3) *within the jurisdiction of the unit of general local government in areas which are not areas of minority concentration.* Zoning and other land use controls intended to avoid incompatible land uses or to prevent unwarranted development of land before supporting facilities are available or to implement similar legitimate land-use policies are acceptable reasons for the unavailability of sites. However, sites shall not be considered unavailable if their unavailability is the result of discriminatory zoning or other discriminatory practices.

(3) *The site is an integral part of an overall local strategy for the preservation or revitalization of the immediate neighborhood.* This exception is applicable only when the overall level of housing assistance available to the locality makes impractical satisfaction in the same fiscal year of both the requirements of paragraph (d)(1)(ii) of this section and the local government's preservation program. In seeking this exemption, a unit of general local government must explain its overall preservation strategy; describe the concentrated efforts and expenditure of funds being undertaken to improve the neighborhood; demonstrate its continuing commitment to the renewal, revitalization or preservation of the area through such activities as urban renewal, the federal urban homesteading demonstration program, concentrated expenditures of community development block grant funds, or similarly focused neighborhood improvement programs; and indicate how its program is likely to achieve long-term economic viability and increased racial or economic integration for the neighborhood in which the site is located.

(e) *Approval of site likely to improve quality of area.* A site in an area of minority concentration or in an area of undue concentration of housing constructed or rehabilitated under the statutory provisions cited in paragraph (a)(3) of this section shal not be approved unless HUD determines that the approval of the site will be likely to improve rather than impair the physical and social quality of the area in which the site is located.

§ 200.706 Environmental requirements.

The site must be free from adverse environmental conditions, natural or manmade, such as instability, septic tank failures, sewage hazards, earthquake faults, mudslides, harmful air pollution, smoke or dust, excessive noise or vibration, heavy vehicular or aircraft traffic, rodent or vermin infestation, or fire or explosion hazards, or such conditions must be eliminated, substantially mitigated or corrected by the completion date of the project. The neighborhood must not be one which is seriously detrimental to the health or well being of the project residents or in which other undesirable elements predominate, such as dangerously high crime rate, unless there is actively in progress a concerted program to remedy these problems.

§ 200.708 Accessibility to community facilities.

The housing must be accessible to social, recreational, educational, commercial and health facilities and services that are at least equivalent to those typically found in neighborhoods consisting largely of unsubsidized standard housing of similar market rents. Housing for the elderly must be accessible to public or similar transportation facilities, other than dependence on the private automobile ownership of project residents, and also must be reasonably accessible to basic commercial and medical services.

§ 200.710 Accessibility to employment opportunities.

Travel time and cost via public transportation or private automobile, from the neighborhood to places of employment providing a range of jobs for lower-income workers, must not be excessive. While elderly housing should not be isolated from employment opportunities, application of this standard to a proposed site or project intended for occupancy by elderly persons shall take into account the more limited employment opportunity needs of elderly persons.

§ 200.712 Compliance with relocation requirements.

The project may not be built or rehabilitated on a site which has occupants unless applicable relocation requirements are met.

§ 200.714 Sites in flood zones.

The project may not be built or rehabilitated in an area that has been identified by HUD as having special flood hazards and in which the sale of flood insurance has been made available under the National Flood Insurance Act of 1968 (42 U.S.C. 4001–4027) unless the project is covered by flood insurance as required by the Flood Disaster Protection Act of 1973 (42 U.S.C. 4101–4128), and it meets any relevant HUD standards and local requirements.

§ 200.716 Consistency with plans.

The site shall comply with any applicable conditions in the Local Housing Assistance Plan approved by HUD, any applicable areawide housing allocation plan and/or any applicable Development Plan for a new community approved under Title VII of the HUD Act of 1970 (42 U.S.C. 4501–4532) or Title IV of the HUD Act of 1968 (42 U.S.C. 3901–3914). Where the unit of general local government is a participating jurisdiction in an areawide housing opportunity plan pursuant to 24 CFR 886.301, the site shall be consistent with the plan.

§ 200.718 Local government comment.

Approval of a site as meeting the requirements of this Subpart shall take into account the views of the Chief Executive Officer of the unit of general local government in connection with its review of the project pursuant to Section 213 of the Housing and Community Development Act of 1974 (42 U.S.C. 1439) and 24 CFR Part 891. The views and recommendations of the Chief Executive Officer of the unit of general local government in whose jurisdiction the site is located, together with any factual evidence he submits in support of his recommendations, shall be carefully considered in making the determinations required under §§ 200.704 and 200.716.

§ 200.720 Other site related reviews.

Approval by HUD of a site as meeting the standards set forth in this Subpart shall not substitute for or imply HUD review and approval of the site as meeting HUD requirements with respect to the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347), The National Historic Preservation Act of 1966 (16 U.S.C. 470–470n), other related statutes or Executive Orders, or the applicable housing program under which the proposed project is to be constructed or rehabilitated.

Issued at Washington, D.C. January 12. 1977.

CARLA A. HILLS,
Secretary of Housing and Urban Development.

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Office of the Secretary

[24 CFR Parts 880 and 881]

[Docket No. R-77-437]

SECTION 8 HOUSING ASSISTANCE PAYMENT PROGRAM

New Construction and Substantial Rehabilitation

PROPOSED RULE MAKING

Concurrently with the publication of this Notice of Proposed Rulemaking, the Department is proposing to amend Chapter II Part 200 Subpart N of this Title by revising Site and Neighborhood Standards for subsidized housing. As explained in the preamble to that proposed revision the new Site and Neighborhood Standards are intended to provide uniform criteria for evaluating proposed assisted housing locations with the aim of insuring that housing opportunities for lower income and minority house holders are available in a wide range of locations. These proposed amendments of Parts 880 and 881 are intended to accomplish the same uniformity of standards for the Section 8 New Construction and Substantial Rehabilitation Programs as is contemplated for subsidized housing under the proposed revision of Part 200.

The major issues posed by Site and Neighborhood Standards, e.g., minority concentrations, racially mixed areas, areas with a concentration of assisted housing, standards for rehabilitation, healthy living environment, and roles of Federal and local government are each discussed extensively in the preamble to the proposed amendment to Part 200.

Interested persons are invited to comment on these proposed revised Site and Neighborhood Standards by submitting written data, views and arguments. Communications should be identified by the above docket number and title and should be filed with the Rules Docket Clerk, Office of the Secretary, Room 10141, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410. All relevant material received on or before March 2, 1977, will be considered before adoption of the final rule. Copies of comments submitted will be available for public inspection during normal business hours at the above address.

Accordingly, it is proposed: 1. to amend Part 880 by substituting the following table of contents and by revising the Part to read as set forth hereinafter:

Sec.

880.112 Site and neighborhood standards.
880.112a Requirements as to size, terrain and utilities.
880.112b Equal housing opportunity requirements.
880.112c Environmental requirements.
880.112d Accessibility to community facilities.
880.112e Accessibility to employment opportunities.
880.112f Compliance with relocation requirements.
880.112g Sites in flood zones.
880.112h Consistency with plans.
880.112i Local government comment.
880.112j Other site related reviews.

AUTHORITY: Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

§ 880.112 Site and neighborhood standards.

Sites proposed for use for housing pursuant to this Part must be approved by HUD as meeting the standards set forth in §§ 880.112 through 880.112j. Reference in any other Part to § 880.112 of this Part shall include reference to §§ 880.112 through 880.112j of this Part.

§ 880.112a Requirements as to size, terrain and utilities.

The site must be adequate in size, exposure and contour to accommodate the number and type of units proposed; and adequate utilities (water, sewer, gas, and electricity) and adequate paved streets shall be available to service the site.

§ 880.112b Equal housing opportunity requirements.

The site and neighborhood must be suitable from the standpoint of facilitating and furthering full compliance with the applicable provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), Title VIII of the Civil Rights Acts of 1968 (42 U.S.C. 3604–3619), Executive Order 11063 (42 U.S.C. 1982 note). The Housing and Community Development Act of 1974 (see particularly 42 U.S.C. 5301–5309), and HUD regulations issued pursuant thereto.

(a) *Determination of minority concentration or racial mixture.* In furtherance of the objectives of the foregoing statutes and Executive Order HUD shall determine:

(1) *Whether the site is in an area of minority concentration.* In making such determination, the area to be considered shall be the census tract in which the site is located or such other area for which reliable data as to racial composition is available and which HUD determines, on the basis of functional considerations (i.e., location of neighborhood facilities such as schools, shopping centers, churches, etc.) to be more appropriate. An area shall be determined to be an area of minority concentration if minority residents constitute (i) more than 40 percent of the residents of the area or (ii) a significantly greater proportion of the residents of the area than the proportion of minority residents of the locality as a whole.

(2) *Whether the site is in a racially mixed area.* An area, as determined pursuant to paragraph (a)(1) of this section, shall be determined to be a racially mixed area if it contains both minority and non-minority residents and minority residents constitute a significant percent but less than 40 percent of the total residents of the area.

(3) *Whether the site is in an area of undue concentration of federally-assisted housing.* The area, as determined pursuant to paragraph (a)(1) of this section, shall be determined to be an area of undue concentration of federally-assisted housing if a substantial number of the housing units in the area (generally over 40 percent) consist of housing (i) constructed, rehabilitated, purchased or leased (inclusive of units leased under the Section 8 Existing Housing Program (24 CFR Part 882)) under the U.S. Housing Act of 1937 (42 U.S.C. 1437f), Sections 221(d)(3) BMIR, 235 or 236 of the National Housing Act (12 U.S.C. 1715L (d)(3), 1715z and 1715z-1), Section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s), or Section 515 of the Housing Act of 1949 (42 U.S.C. 1485) and (ii) intended for occupancy by other than elderly households.

(b) *Unacceptability if ratio of minority residents would be increased significantly.* A site in a racially mixed area shall not be approved if the proposed project would result in a significant and rapid increase in the proportion of minority to non-minority residents in the area causing it to become an area of minority concentration in which minority residents would constitute more than 40 percent of the residents of the area.

(c) *Unacceptability due to disproportionate concentration of minority students in public schools.* A site in a racially mixed area or area of minority concentration shall not be approved if the proposed project would distort a voluntary or court-imposed plan adopted by the school system or locality to assure equality of educational opportunity in its public schools, by causing a significant and disproportionate concentration of the locality's minority students in one or more of the public schools serving the site.

(d) *Approval of site in an area of minority concentration.* A site located in an area of minority concentration may be approved if one of the following determinations is made.

(1) *Sufficient and comparable opportunities for assisted housing are available outside areas of minority concentration.*

(i) Housing in the jurisdiction of the unit of general local government (or such wider area as may be covered by an areawide housing opportunity plan) constructed under one or more of the statutory authorities cited in paragraph (a)(3) of this section, is located in areas which are not areas of minority concentration. Such housing must be comparable in tenure (owner, renter), size (bedroom distribution), and number of assisted units to the tenure, size and number of assisted units located in areas of minority concentration; and must have units presently available or scheduled to be available within a waiting period of not more than twelve months in a number and type approximating the number and type of units proposed to be constructed at the site in question:

(ii) Housing to be constructed or rehabilitated under any of the statutory provisions cited in paragraph (a)(3) of this section has been approved for development (e.g., fund reservation) within the jurisdiction of the unit of general local government (or such wider area as may be covered by an areawide housing opportunity plan) in areas which are not areas of minority concentration. The proposed tenure, size and number of such units must approximate the proposed tenure, size and number of units to be constructed at the site in question and must be scheduled to be available for occupancy within twelve months of the anticipated completion of the proposed project; or

(2) *There are no sites which are available or which feasibly can be made available for housing constructed pursuant to this Part within the jurisdiction of the unit of general local government in areas which are not areas of minority concentration.* Zoning and other land use controls intended to avoid incompatible land uses to prevent unwarranted development of land before supporting facilities are available or to implement similar legitimate land-use policies are acceptable reasons for the unavailability of sites. However, sites shall not be considered unavailable if their unavailability is the result of discriminatory zoning or other discriminatory practices; or

(3) *The site is an integral part of an overall local strategy for the preservation or revitalization of the immediate neighborhood.* This exception is applicable only when the overall level of housing assistance available to the locality makes impractical satisfaction of the requirements of paragraph (d)(1)(ii) of this section and the local government's preservation program. In seeking this exemption, a unit of general local government must explain its overall preservation strategy; describe the concentrated efforts and expenditure of funds being undertaken to improve the neighborhood; demonstrate its continuing commitment to the renewal, revitalization or preservation of the area through such activities as urban renewal, the federal urban homesteading program, con-

centrated expenditures of community development block grant funds, or similarly focused neighborhood improvement programs; and indicate how its program is likely to achieve long-term economic viability and increased racial or economic integration for the neighborhood in which the site is located.

(e) *Approval of site is likely to improve quality of area.* A site in an area of minority concentration or in an area of undue concentration of housing constructed or rehabilitated under the statutory provisions cited in paragraph (a)(3) of this section shall not be approved unless HUD determines that the approval of the site will be likely to improve rather than impair the physical and social quality of the area in which the site is located.

§ 880.112c Environmental requirements.

The site must be free from adverse environmental conditions, natural or man-made, such as instability, septic tank failures, sewage hazards, earthquake faults, mudslides, harmful air pollution, smoke or dust, excessive noise or vibration, heavy vehicular or aircraft traffic, rodent or vermin infestation, or fire or explosion hazards, or such conditions must be eliminated, substantially mitigated or corrected by the completion date of the project. The neighborhood must not be one which is seriously detrimental to the health or well being of the project residents or in which other undesirable elements predominate, such as a dangerously high crime rate, unless there is actively in progress a concerted program to remedy these poblems.

§ 880.112d Accessibility to community facilities.

The housing must be accessible to social, recreational, educational, commercial and health facilities and service that are at least equivalent to those typically found in neighborhoods consisting largely of unsubsidized standard housing or similar market rents. Housing for the elderly must be accessible to public or similar transportation facilities, other than dependence on the private automobile ownership of project residents, and also must be reasonably accessible to basic commercial and medical services.

§ 880.112e Accessibility to employment opportunities.

Travel time and cost via public transportation or private automobile, from the neighborhood to places of employment providing a range of jobs for lower-income workers, must not be excessive. While elderly housing should not be isolated from employment opportunities, application of this standard to a proposed site for elderly persons shall take into acount the more limited employment opportunity needs of elderly persons.

§ 880.112f Compliance with relocation requirements.

The project may not be built on a site which has occupants unless applicable relocation requirements are met.

§ 880.112g Sites in flood zones.

The project may not be built in an area that has been identified by HUD as having special flood hazards and in which the sale of flood insurance has been made available under the National Flood Insurance Act of 1968 (42 U.S.C. 4001–4027) unless the project is covered by flood insurance as required by the Flood Disaster Protection Act of 1973 (42 U.S.C. 4101–4128) and it meets any relevant HUD standards and local requirements.

§ 880.112h Consistency with plans.

The site shall comply with any applicable conditions in the Local Housing Assistance Plan approved by HUD, any applicable areawide housing allocation plan and/or any applicable Development Plan for a new community approved under Title VII of the Housing and Urban Development Act of 1970 (42 U.S.C. 4501–4532), or Title IV of the Housing and Urban Development Act of 1968 (42 U.S.C. 3901–3914). Where the unit of general local government is a participating jurisdiction in an areawide housing opportunity plan pursuant to 24 CFR 886.301, the site shall be consistent with the plan.

§ 880.112i Local government comment.

Approval of a site as meeting the requirements of §§ 880.112 through 880.112j shall take into account the views of the Chief Executive Officer of the unit of general local government in connection with its review of the project pursuant to section 213 of the Housing and Community Development Act of 1974 (42 U.S.C. 1439) and 24 CFR Part 891. The views and recommendations of the Chief Executive Officer of the unit of general local government in whose jurisdiction the site is located, together with any factual evidence he submits in support of his recommendations, shall be carefully considered in making the determination required under §§ 880.112b and 880.112h.

§ 880.112j Other site related reviews.

Approval by HUD of a site as meeting the standards set forth in §§ 880.112 through 880.112i shall not substitute for or imply HUD review and approval of the site as meeting requirements with respect to the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347), the National Historic Preservation Act of 1966 (16 U.S.C. 470–470n), or other related statutes or Executive Orders, or other requirements of this Part.

2. To amend Part 881 by substituting the following table of contents and by revising the Part to read as set forth hereinafter:

Sec.
881.112 Site and neighborhood standards.
881.112a Requirements as to size, terrain and utilities.
881.112b Equal housing opportunity requirements.
881.112c Environmental requirements.
881.112d Accessibility to community facilities.
881.112e Accessibility to employment opportunities.
881.112f Compliance with relocation requirements.
881.112g Sites in flood zones.
881.112h Consistency with plans.
881.112i Local government comment.
881.112j Other site related reviews.

AUTHORITY: (Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d)).

§ 881.112 Site and neighborhood standards.

Sites proposed for use for housing pursuant to this Part must be approved by HUD as meeting the standards set forth in any other Part to § 881.112 of this Part shall include reference to §§ 880.112 through 880.112j of this chapter.

§ 881.112a Requirements as to size, terrain and utilities.

The site must be adequate in size, exposure and contour to accommodate the number and type of units proposed; and adequate utilities (water, sewer, gas, and electricity) and adequate paved streets shall be available to service the site.

§ 881.112b Equal housing opportunity requirements.

The site and neighborhood must be suitable from the standpoint of facilitating and furthering full compliance with the applicable provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*), Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3604–3619), Executive Order 11063 (42 U.S.C. 1982 note), The Housing and Community Development Act of 1974 (see particularly 42 U.S.C. 5301–5309), and HUD regulations issued pursuant thereto.

(a) *Determination of minority concentration.* In furtherance of the objectives of the foregoing statutes and Executive Order HUD shall determine:

(1) *Whether the site is in an area of minority concentration.* In making such determination, the area to be considered shall be the census tract in which the site is located or such other area for which reliable data as to racial composition is available and which HUD determines, on the basis of functional considerations (i.e., location of neighborhood facilities such as schools, shopping centers, churches, etc.) to be more appropriate. An area shall be determined to be an area of minority concentration if minority residents constitute (i) more than 40 percent of the residents of the area or (ii) a significantly greater proportion of the residents of the area than the proportion of minority residents of the locality as a whole.

(2) *Whether the site is in a racially mixed area.* An area, as determined pursuant to paragraph (a)(1) of this section, shall be determined to be a racially mixed area if it contains both minority and non-minority residents and minority residents constitute a significant percent but less than 40 percent of the total residents of the area.

(3) *Whether the site is in an area of undue concentration of federally-assisted housing.* The area, as determined pursuant to paragraph (a)(1) of this section, shall be determined to be an area of undue concentration of federally-assisted housing if a substantial number of the housing units in the area (generally over 40 percent) consist of housing (i) constructed, rehabilitated, purchased, or leased (inclusive of units leased under the Section 8 Existing Housing Program (24 CFR Part 882)) under the U.S. Housing Act of 1937 (42 U.S.C. 1437f), Sections 221(d)(3) BMIR, 235 or 236 of the National Housing Act (12 U.S.C. 1715L(d)(3), 1715z and 1715z–1), Section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s), or section 515 of the Housing Act of 1949 (42 U.S.C. 1485) and (ii) intended for occupancy by other than elderly households.

(b) *Unacceptability if ratio of minority residents would be increased significantly.* A site in a racially mixed area shall not be approved if the proposed project would result in a significant and rapid increase in the proportion of minority to non-minority residents in the area causing it to become an area of minority concentration in which minority residents would constitute more than 40 percent of the residents of the area.

(c) *Unacceptability due to disproportionate concentration of minority students in public schools.* A site in a racially mixed area or area of minority concentration shall not be approved if the proposed project would distort a voluntary or court-imposed plan adopted by the school system or locality to assure equality of educational opportunity in the public schools, by causing a significant and disproportionate concentration of the locality's minority students in one or more of the public schools serving the site.

(d) *Approval of site in an area of minority concentration.* A site located in an area of minority concentration shall not be approved unless one of the following determinations is made.

(1) *Sufficient and comparable opportunities for assisted housing are available outside area of minority concentration.* (i) Housing in the jurisdiction of the unit of general local government (or such wider area as may be covered by an areawide housing opportunity plan), or rehabilitated under one or more of the statutory authorities cited in paragraph (a)(3) of this section, is located in areas which are not areas of minority concentration. Such housing must be comparable to tenure (owner, renter), size (bedroom distribution), and number of assisted units to the tenure, size and number of assisted units located in areas of minority concentration; and must have units presently available or scheduled to be available within a waiting period of not more than twelve months in a number and type approximating the number and type of units proposed to be rehabilitated at the site in question.

(ii) Housing to be constructed or rehabilitated under any of the statutory provisions cited in paragraph (a)(3) of this section has been approved for development (e.g., fund reservation) within the jurisdiction of the unit of general local government (or such wider area as may be covered by an areawide housing opportunity plan) in areas which are not areas of minority concentration. The proposed tenure, size and number of such units must approximate the proposed tenure, size and number of units to be rehabilitated at the site in question and must be scheduled to be available for occupancy within twelve months of the anticipated completion of the proposed project; or

(2) *There are no sites which are available or which feasibly can be made available for housing rehabilitated pursuant to this Part within the jurisdiction of the unit of general local government in areas which are not areas of minority concentration.* Zoning and other land use controls intended to avoid incompatible land uses or to prevent unwarranted development of the land before supporting facilities are available or to implement similar legitimate land-use policies are acceptable reasons for the unavailability of sites. However, sites shall not be considered unavailable if their unavailability is the result of discriminatory zoning or other discriminatory practices; or

(3) *The site is an integral part of an overall local strategy for the preservation of revitalization of the immediate neighborhood.* This exception is applicably only when the overall level of housing assistance available to the locality makes impractical satisfaction of the requirements of paragraph (d)(1)(ii) of this section and the local government's preservation program. In seeking this exemption, a unit of general local government must explain its overall preservation strategy; describe the concentrated efforts and expenditure of funds being undertaken to improve the neighborhood; demonstrate its continuing commitment to the renewal, revitalization or preservation of the area through such activities as urban renewal, the federal urban homesteading program, concentrated expenditures of community development block grant funds, or similarly focused neighborhood improvement programs; and indicate how its program is likely to achieve long-term economic viability and increased racial or economic integration for the neighborhood in which the site is located.

(e) *Approval of site is likely to improve quality of area.* A site in an area of minority concentration or in an area of undue concentration of housing constructed or rehabilitated under the statutory provisions cited in Par. (a)(3) shall not be approved unless HUD determines that the approval of the site will be likely to improve rather than impair the physical and social quality of the area in which the site is located.

§ 881.112c Environmental requirements.

The site must be free from adverse environmental conditions, natural or man-made, such as instability, septic tank failures, sewage hazards, earthquake faults, mudslides, harmful air pollution, smoke or dust, excessive noise or vibration, heavy vehicular or aircraft traffic, rodent or vermin infestation, or fire or explosion hazards, or such conditions must be eliminated, substantially mitigated or corrected by the completion date of the project. The neighborhood must not be one which is seriously detrimental to the health or well being of the project residents or in which other undesirable elements predominate, such as a dangerously high crime rate, unless there is actively in progress a concerted program to remedy these problems.

§ 881.112d Accessibility to community facilities.

The housing must be accessible to social recreational educational, commercial and health facilities and services that are at least equivalent to those typically found in neighborhoods consisting largely of unsubsidized standard housing or similar market rents. Housing for the elderly must be accessible to public or similar transportation facilities, other than dependence on the private automobile ownership of project residents, and also must be reasonably accessible to basic commercial and medical services.

§ 881.112e Accessibility to employment opportunities.

Travel time and cost via public transportation or private automobile, from the neighborhood to places of employment providing a range of jobs for lower-income workers, must not be excessive. While elderly housing should not be isolated from employment opportunities, application of this standard to a proposed site for elderly persons shall take into account the more limited employment opportunity needs of elderly persons.

§ 881.112f Compliance with relocation requirements.

The project may not be rehabilitated on a site which has occupants unless applicable relocation requirements are met.

§ 881.112g Sites in flood zones.

The project to be rehabilitated may not be located in an area that has been identified by HUD as having special flood hazards and in which the sale of flood insurance has been made available under the National Flood Insurance Act of 1968 (42 U.S.C. 4001–4027) unless the project is covered by flood insurance as required by the Flood Disaster Protection Act of 1973 (42 U.S.C. 4101–4128) and it meets any relevant HUD standards and local requirements.

§ 881.112h Consistency with plans.

The site shall comply with any applicable conditions in the Local Housing Assistance Plan approved by HUD, any applicable areawide housing allocation plan and/or any applicable Development Plan for a new community approved under Title VII of the Housing and Urban Development Act of 1970 (42 U.S.C. 4501–4532), or Title IV of the Housing and Urban Development Act of 1968 (42 U.S.C. 3901–3914). Where the unit of general local government is a participating jurisdiction in an areawide housing oppor-

tunity plan, pursuant to 24 CFR 886.301, the site shall be consistent with the plan.

§ 881.112i Local government comment.

Approval of a site as meeting the requirements of §§ 880.112 through 880.112j shall take into account the views of the Chief Executive Officer of the unit of general local government in connection with its review of the project pursuant to Section 213 of the Housing and Community Development Act of 1974 (42 U.S.C. 1439) and 24 CFR Part 891. The views and recommendations of the Chief Executive Officer of the unit of general local government in whose jurisdiction the site is located, together with any factual evidence he submits in support of his recommendations, shall be carefully considered in making the determinations required under §§ 880.112b and 880.112h.

§ 881.112j Other site related reviews.

Approval by HUD of a site as meeting the standards set forth in §§ 880.112 through 880.112i shall not substitute for or imply HUD review and approval of the site as meeting requirements with respect to the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347), the National Historic Preservation Act of 1966 (16 U.S.C. 470–470n), or other related statutes or Executive Orders, or other requirements of this Part.

(Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535 (d)).

Issued at Washington, D.C. January 12, 1977.

CARLA A. HILLS,
Secretary of Housing and Urban Development.

[FR Doc.77-2084 Filed 1-21-77;8:45 am]

federal register

MONDAY, JANUARY 24, 1977
PART VII

THE PRESIDENT

GERALD R. FORD

AMERICAN HEART MONTH
Presidential proclamation 4307

DRIED MILK MIXTURES
Presidential proclamation limiting importation into the United States 4309

ADMINISTRATION OF ARMS EXPORT CONTROLS
Executive order 4311

ADMINISTRATION OF FOREIGN ASSISTANCE
Executive order 4315

GENERALIZED SYSTEM OF PREFERENCES
Executive order modifying designation of eligible articles 4317

INTERNATIONAL INVESTMENT SURVEYS
Executive order delegating Presidential authority 4321

PRESIDENT'S ADVISORY BOARD ON INTERNATIONAL INVESTMENT
Executive order establishing the Board 4323

AGRICULTURAL TRADE DEVELOPMENT AND ASSISTANCE
Executive order delegating Presidential authority for reporting functions 4325

CONVENTION ON THE INTERNATIONAL REGULATIONS FOR PREVENTING COLLISIONS AT SEA, 1972
Executive order implementing the Convention 4327

HUMANITARIAN SERVICE MEDAL
Executive order establishing the medal 4329

PUBLIC INTERNATIONAL ORGANIZATIONS
Executive order designating organizations entitled to enjoy certain privileges, exemptions, and immunities 4331

presidential documents

Title 3—The President

PROCLAMATION 4481

American Heart Month, 1977

By the President of the United States of America

A Proclamation

For over three decades, diseases of the heart and blood vessels have constituted one of our Nation's most serious health problems. Cardiovascular diseases affect more than 29 million Americans, especially among the elderly, and are the direct cause of more than half of all deaths occurring each year in the United States. While their economic toll in terms of lost wages, productivity, and cost of medical care can be estimated at nearly $44 billion annually, the toll in terms of human suffering can never be measured.

America's continuing determination to meet any challenge to the well-being of its people is illustrated by the dedication that has characterized its efforts to control these disorders. Sustained research and clinical advances since 1950 have contributed substantially to declining mortality rates for stroke, rheumatic fever, coronary and congenital heart disease, and hypertension. Our investment in research, public and professional education, and community service activities has been rewarded. In that same time, the mortality rate in the United States from all heart and blood vessel diseases has declined by 30 percent. In 1975, deaths in this country from major cardiovascular diseases dropped below one million for the first time since 1967.

This multi-faceted assault on heart and blood vessel diseases has been led by the National Heart, Lung, and Blood Institute, a federal agency, and by the American Heart Association, a private health organization funded through contributions from citizens across the country. Their successful efforts illustrate what can be achieved when public and private institutions—and the American people as well—join forces against a common threat.

In recognition of the necessity for constant vigilance against the ravages of cardiovascular disease, and to encourage still greater efforts to combat its threat to the Nation's health, the Congress, by joint resolution approved December 30, 1963 (77 Stat. 843; 36 U.S.C. 169b) has requested the President to issue annually a proclamation designating February as American Heart Month.

NOW, THEREFORE, I, GERALD R. FORD, President of the United States of America, do hereby proclaim the month of February, 1977, as American Heart Month. I invite the Governors of the States, the Commonwealth of Puerto Rico, the officials of other areas subject to the jurisdiction of the United States, and the American people, to join with me in reaffirming our commitment to resolving the nationwide problem of cardiovascular disease.

IN WITNESS WHEREOF, I have hereunto set my hand this nineteenth day of January, in the year of our Lord nineteen hundred seventy-seven, and of the Independence of the United States of America the two hundred and first.

Gerald R. Ford

[FR Doc.77-2297 Filed 1-19-77;3:26 pm]

Proclamation 4482 • January 19, 1977

Import Limitation on Dried Milk Mixtures

By the President of the United States of America

A Proclamation

Import quota limitations have been imposed on certain dairy products, including dried milk, pursuant to the provisions of Section 22 of the Agricultural Adjustment Act, as amended (7 U.S.C. 624). Those limitations are set forth in Part 3 of the Appendix to the Tariff Schedules of the United States, which schedules are hereinafter referred to as TSUS, under items 950.01, 950.02, and 950.03, and relate to products classified for tariff purposes under items 115.45, 115.50, 115.55, 115.60, and 118.05 of Schedule 1 of the TSUS.

The Secretary of Agriculture advised me that he had reason to believe that dried milk, containing not over 5.5 percent butterfat by weight, mixed with other ingredients (hereinafter referred to as dried milk mixtures) and thus classified for tariff purposes under items of the TSUS other than the items referenced above, are being, or are practically certain to be, imported under such conditions and in such quantities as to render or tend to render ineffective, or materially interfere with, the price support program now conducted by the Department of Agriculture for milk, or to reduce substantially the amount of products processed in the United States from domestic milk.

The Secretary of Agriculture also recommended that there be an increase in the monetary limitation in headnote 2(b) of Part 3 of the Appendix to the TSUS, which makes the quota restrictions provided for in Part 3 inapplicable to articles (except cotton and cotton waste) with an aggregate value of not over $10 in any shipment, if imported as samples for taking orders, for the personal use of the importer, or for research.

The Secretary of Agriculture further determined and reported to me that a condition existed with respect to dried milk mixtures which required emergency treatment and, as a result, Presidential Proclamation No. 4423 of March 26, 1976, was issued placing import restrictions upon certain dried milk mixtures without awaiting the recommendations of the United States International Trade Commission, hereinafter referred to as the Commission, such restrictions to continue in effect pending the report and recommendations of the Commission and action thereon by the President.

Under the authority of said Section 22, I requested the Commission to make an investigation with respect to these matters. The Commission has made its investigation and has reported to me its findings and recommendations.

On the basis of the information submitted to me, I find and declare that:

(a) The dried milk mixtures, upon which a limitation is hereinafter imposed, are being imported or are practically certain to be imported into the United States under such conditions and in such quantities as to render or tend to render ineffective, or materially interfere with, the price support program now conducted by the Department of Agriculture for milk, or to reduce substantially the amount of products processed in the United States from domestic milk;

(b) for the purpose of the first proviso of Section 22(b) of the Agricultural Adjustment Act, as amended, there is no representative period for imports of the said dried milk mixtures;

(c) the imposition of the import limitation hereinafter proclaimed is necessary in order that the entry, or withdrawal from warehouse, for consumption of such dried milk mixtures will not render or tend to render ineffective or materially interfere with, the price support program now conducted by the Department of Agriculture for milk, or reduce substantially the amount of products processed in the United States from domestic milk; and

(d) the monetary limitation in headnote 2(b) of Part 3 of the Appendix to the TSUS, which makes the quota restrictions provided for in Part 3 inapplicable to articles (except cotton and cotton waste) with an aggregate value of $10 in any shipment, if imported as samples for taking orders, for the personal use of the importer, or for research, should be increased to $25 and that such increase will not result in imports which will tend to render ineffective, or materially interfere with, any price support program now conducted by the Department of Agriculture, or to reduce substantially the amount of any product processed in the United States from any agricultural commodity or product thereof with respect to any price support program which is being undertaken.

NOW, THEREFORE, I, GERALD R. FORD, President of the United States of America, by virtue of the authority vested in me by Section 22 of the Agricultural Adjustment Act, as amended, and Section 604 of the Trade Act of 1974 (88 Stat. 2073, 19 U.S.C. 2483), do hereby proclaim as follows:

1. Item 950.19 of Part 3 of the Appendix to the Tariff Schedules of the United States is amended to read as follows:

"	Articles	Quota Quantity
950.19	Dried milk (described in items 115.45, 115.50, 115.55, and 118.05) which contains not over 5.5 percent by weight of butterfat and which is mixed with other ingredients, including but not limited to sugar, if such mixtures contain over 16 percent milk solids by weight, are capable of being further processed or mixed with similar or other ingredients and are not prepared for marketing to the retail consumers in the identical form and package in which imported; all the foregoing mixtures provided for in items 182.98 and 493.16, except articles within the scope of other import restrictions provided for in this part . . .	None

2. Headnote 2(b) of Part 3 of the Appendix to the Tariff Schedules of the United States is amended to read as follows:

"(b) commercial samples of cotton or cotton waste of any origin in uncompressed packages each weighing not more than 50 pounds gross weight; and articles (except cotton and cotton waste) with an aggregate value of not over $25 in any shipment, if imported as samples for taking orders, for the personal use of the importer, or for research;".

3. This proclamation shall be effective on the third day following the day it is published in the FEDERAL REGISTER.

IN WITNESS WHEREOF, I have hereunto set my hand this nineteenth day of January, in the year of our Lord nineteen hundred seventy-seven, and of the Independence of the United States of America the two hundred and first.

Gerald R. Ford

[FR Doc.77-2394 Filed 1-21-77;10:38 am]

Executive Order 11958 • January 18, 1977

Administration of Arms Export Controls

By virtue of the authority vested in me by the Constitution and statutes of the United States of America, including the Arms Export Control Act, as amended (22 U.S.C. 2751 *et seq.*), and Section 301 of Title 3 of the United States Code, and as President of the United States of America, it is hereby ordered as follows:

SECTION 1. *Delegation of Functions.* The following functions conferred upon the President by the Arms Export Control Act (22 U.S.C. 2751 *et seq.*), hereinafter referred to as the Act, are delegated as follows:

(a) Those under Section 3 of the Act, with the exception of subsections (a)(1), (b), (c)(3) and (c)(4), to the Secretary of State: *Provided,* That the Secretary of State, in the implementation of the functions delegated to him under Sections 3 (a) and (d) of the Act, is authorized to find, in the case of a proposed transfer of a defense article or related training or other defense service by a foreign country or international organization not otherwise eligible under Section 3(a)(1) of the Act, whether the proposed transfer will strengthen the security of the United States and promote world peace.

(b) Those under Section 5 to the Secretary of State.

(c) Those under Section 21 of the Act, with the exception of the last sentence of subsection (d) and all of subsection (h), to the Secretary of Defense.

(d) Those under Section 22(a) of the Act to the Secretary of Defense.

(e) Those under Section 23 of the Act, with the exception of the function of certifying a rate of interest to the Congress as provided by paragraph (2) of that Section, to the Secretary of Defense.

(f) Those under Section 24 of the Act to the Secretary of Defense.

(g) Those under Section 25 of the Act to the Secretary of State. The Secretary of Defense and the Director of the Arms Control and Disarmament Agency, within their respective areas of responsibility, shall assist the Secretary of State in the preparation of materials for presentation to the Congress under that Section.

(h) Those under Section 34 of the Act to the Secretary of State. To the extent the standards and criteria for credit and guaranty transactions are based upon national security and financial policies, the Secretary of State shall obtain the prior concurrence of the Secretary of Defense and the Secretary of the Treasury, respectively.

(i) Those under Section 35(a) of the Act to the Secretary of State.

(j) Those under Sections 36(a) and 36(b)(1) of the Act, except with respect to the certification of an emergency as provided by subsection (b)(1), to the Secretary of Defense. The Secretary of Defense, in the implementation of the functions delegated to him under Sections 36(a) and (b)(1) shall consult with the Secretary of State, who shall, with respect to matters related to subparagraphs (D) and (I) of Section 36(b)(1), consult with the Director of the Arms Control and Disarmament Agency. With respect to those functions under Sections 36(a) (5) and (6), the Secretary of Defense shall consult with the Director of the Office of Management and Budget.

(k) Those under Sections 36 (c) and (d) of the Act to the Secretary of State.

(l) Those under Section 38 of the Act:

(1) to the Secretary of State, except as otherwise provided in this subsection. Designations, including changes in designations, by the Secretary of State of items or categories of items which shall be considered as defense articles and defense services subject to export control under Section 38 shall have the concurrence of the Secretary of Defense;

(2) to the Secretary of the Treasury, to the extent they relate to the control of the import of defense articles and defense services. In carrying out such functions, the Secretary of the Treasury shall be guided by the views of the Secretary of State on matters affecting world peace, and the external security and foreign policy of the United States. Designations including changes in designations, by the Secretary of the Treasury of items or categories of items which shall be considered as defense articles and defense services subject to import control under Section 38 of the Act shall have the concurrence of the Secretary of State and the Secretary of Defense;

(3) to the Secretary of Commerce, to carry out on behalf of the Secretary of State, to the extent such functions involve Section 38(e) of the Act and are agreed to by the Secretary of State and the Secretary of Commerce.

(m) Those under Section 39(b) of the Act to the Secretary of State. In carrying out such functions, the Secretary of State shall consult with the Secretary of Defense as may be necessary to avoid interference in the application of Department of Defense regulations to sales made under Section 22 of the Act.

(n) Those under Sections 42 (c) and (f) of the Act to the Secretary of Defense.

SEC. 2. *Coordination.* (a) In addition to the specific provisions of Section 1 of this Order, the Secretary of State and the Secretary of Defense, in carrying out the functions delegated to them under this Order, shall consult with each other and with the heads of other departments and agencies, including the Secretary of the Treasury, the Administrator of the Agency for International Development, and the Director of the Arms Control and Disarmament Agency, on matters pertaining to their responsibilities.

(b) In accordance with Section 2(b) of the Act and under the directions of the President, the Secretary of State, taking into account other United States activities abroad, shall be responsible for the continuous supervision and general direction of sales and exports under the Act, including but not limited to, the negotiation, conclusion, and termination of international agreements, and determining whether there shall be a sale to a country and the amount thereof, and whether there shall be delivery or other performance under such sale or export, to the end that sales and exports are integrated with other United States activities and the foreign policy of the United States is best served thereby.

SEC. 3. *Allocation of Funds.* Funds appropriated to the President for carrying out the Act shall be deemed to be allocated to the Secretary of Defense without any further action of the President.

SEC. 4. *Revocation.* Executive Order No. 11501, as amended, is revoked; except that, to the extent consistent with this Order, all determinations, authorizations, regulations, rulings, certificates, orders, directives, contracts, agreements, and other actions made, issued, taken or entered into under the provisions of Executive Order No. 11501, as amended, and not revoked, superseded or otherwise made inapplicable, shall continue in full force and effect until amended, modified or terminated by appropriate authority.

Gerald R. Ford

THE WHITE HOUSE,
January 18, 1977.

[FR Doc.77-2298 Filed 1-19-77;3:27 pm]

Executive Order 11959 • January 18, 1977

Administration of Foreign Assistance and Related Functions

By virtue of the authority vested in me by the Constitution and statutes of the United States of America, including Section 621 of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2381), and Section 301 of Title 3 of the United States Code, and as President of the United States of America, Executive Order No. 10973, as amended, is hereby further amended as follows:

SECTION 1. Section 101 is amended by striking out "and (6)" and inserting in lieu thereof "(6) sections 413(b) and 607 of the International Security Assistance and Arms Export Control Act of 1976 (90 Stat. 761, 768; 22 U.S.C. 2431, note 2394a), and (7)".

SEC. 2. Section 105 is revoked and the following new section is substituted therefor:

"Sec. 105. *Allocation of Foreign Assistance.* In carrying out the functions conferred upon the President by section 653 of the Act, the Secretary of State shall consult with the Director of the Office of Management and Budget.".

SEC. 3. Subsection (c) of Section 201 is revoked.

SEC. 4. Section 202 is amended to read as follows:

"Sec. 202. *Reports and Information.* In carrying out the functions under sections 514(e) and 634(b) of the Act delegated to him by section 201 of this order, the Secretary of Defense shall consult with the Secretary of State.".

SEC. 5. Section 203 is amended to read as follows:

"Sec. 203. *Exclusions from Delegation to Secretary of Defense.* The following described functions conferred upon the President by the Act are excluded from the functions delegated by the provisions of section 201(a) of this order:

"(a) Those under section 502(B)(a)(3) of the Act, except to the extent they relate to functions under the Act administered by the Department of Defense.

"(b) Those under sections 504(a), 505(a) relating to other provisions required by the President, and 505(d), (e), and (g) of the Act.

"(c) Those relating to consent under sections 505(a) (1) and (4) of the Act.

"(d) Those under sections 505(b) (1), (2), and (3) of the Act to the extent that they pertain to countries which agree to the conditions set forth therein.

"(e) Those of negotiating, concluding and terminating international agreements.".

SEC. 6. Section 301 is amended to read as follows:

"Sec. 301. *Department of the Treasury.* There are delegated to the Secretary of the Treasury the functions conferred upon the President by the third sentence of section 102(d) as it relates to international development organizations in which the United States is represented by the Secretary of the Treasury, section 301(e)(3) as it relates to organizations referred to in section 301(e)(2), the second sentence of section 612(a), section 634(f), and section 634(g) of the Act. The Secretary of the Treasury shall continue to administer any open special foreign country accounts established pursuant to former section 514 of the Act as enacted by section 201(f) of Public Law 92-226 (86 Stat. 25) and repealed by Section 12(b)(5) of Public Law 93-189 (87 Stat. 722).".

SEC. 7. Section 401 is amended as follows:

(a) Subsection (a) is amended:

(1) by inserting "505(c)" immediately after "504(b)"; and

(2) by inserting "620(x), 620A" immediately after "620(d)"; and

(3) by striking out "and 633(b)" and inserting in lieu thereof "633(b), 662(a), and 663(b)".

(b) Subsection (c) is amended:

(1) by striking out "481" and inserting in lieu thereof "481(a), 504(a)(6)"; and

(2) by inserting "505(d)(2)(A), 505(d)(3)" immediately after "505(b)(4),"; and

(3) by striking out "and 634(c)" and inserting in lieu thereof "634(c), 663(a) and 669(b)(1)".

(c) Subsection (d)(1) is amended to read as follows:

"(d)(1) Those under section 503(a) which relate to findings: *Provided,* That the Secretary of State in the implementation of the functions delegated to him under section 505(a)(1), (a)(4) and (e) of the Act, is authorized to find, in the case of a proposed transfer of a defense article or related training or a related defense service by a foreign country or international organization to a foreign country or international organization not otherwise eligible under section 503(a) of the Act, whether the proposed transfer will strengthen the security of the United States and promote world peace.".

Gerald R. Ford

THE WHITE HOUSE,
January 18, 1977.

[FR Doc.77-2299 Filed 1-19-77;3:28 pm]

Executive Order 11960 • January 19, 1977

Amending the Generalized System of Preferences

By virtue of the authority vested in me by the Constitution and statutes of the United States of America, including Title V and Section 604 of the Trade Act of 1974 (88 Stat. 2066, 19 U.S.C. 2461 *et seq.*; 88 Stat. 2073, 19 U.S.C. 2483), and as President of the United States of America, in order to adjust the designation of eligible articles, taking into account information and advice received in fulfillment of the requirements of Sections 503(a) and 131-134 of the Trade Act of 1974, it is hereby ordered as follows:

SECTION 1. In order to subdivide existing items for purposes of the Generalized System of Preferences, the Tariff Schedules of the United States (TSUS) are modified as provided in Annex I, attached hereto and made a part hereof.

SEC. 2. Annex II of Executive Order No. 11888 of November 24, 1975, as amended, is further amended as provided in Annex II, attached hereto and made a part hereof.

SEC. 3. Annex III of Executive Order No. 11888, as amended, is further amended as provided in Annex III attached hereto and made a part hereof.

SEC. 4. General Headnote 3(c)(iii) of the TSUS, as amended, is further amended as provided in Annex IV, attached hereto and made a part hereof.

SEC. 5. The amendments made by this Order shall be effective with respect to articles both: (1) imported on or after January 1, 1976, and (2) entered for consumption, or withdrawn from warehouse for consumption, on or after March 1, 1977.

Gerald R. Ford

THE WHITE HOUSE,
January 19, 1977.

ANNEX I

GENERAL MODIFICATIONS OF THE TARIFF SCHEDULES OF THE UNITED STATES

NOTES:

1: Bracketed matter is included to assist in the understanding of proclaimed modifications.

2. The following items, with or without preceding superior descriptions, supersede matter now in the Tariff Schedules of the United States (TSUS). The items and superior descriptions are set forth in columnar form and material in such columns is inserted in the columns of the TSUS designated "Item", "Articles", "Rates of Duty 1", and "Rates of Duty 2", respectively.

Subject to the above notes the TSUS is modified as follows:

1: Item 121.57 is superseded by:

	[Leather, in the rough, partly finished, or finished:]		
	[Other:]		
	[Other:]		
	[Not fancy:]		
"121.55	Buffalo	5% ad val.	25% ad val.
121.58	Other	5% ad val.	25% ad val."

2. Item 135.40 is superseded by:

	[Vegetables, fresh, chilled, or frozen : : ::]		
	"Carrots:		
135.41	Under 4 inches long	6% ad val.	50% ad val.
135.42	Other	6% ad val.	50% ad val."

3. Item 137.85 is superseded by:

	[Vegetables, fresh, chilled, or frozen : : ::]		
	[Other:]		
"137.71	Brussels sprouts	25% ad val.	50% ad val."
137.86	Other	25% ad val.	50% ad val.

4: Conforming change: Headnote 1 of subpart C, part 12, Schedule 1 is modified by substituting therein "168.52" for "168.50."

5. Item 389.60 is superseded by:

	[Articles not specially provided for, of textile materials:]		
	[Other articles, not ornamented:]		
	[Of man-made fibers:]		
	"Other:		
389.61	Artificial flowers	25¢ per lb. + 15% ad val.	45¢ per lb. + 65% ad val.
389.62	Other	25¢ per lb. + 15% ad val.	45¢ per lb. + 65% ad val."

6.(a) Item 403.60 is superseded by:

	[Cyclic organic chemical products : : ::]		
	"Other:		
403.58	Ethoxyquin (1, 2-Dihydro-6-ethoxy-2, 2, 4-trimethylquinoline)	1.7¢ per lb. + 12.5% ad val.	7¢per lb. + 40% ad val.
403.61	Other	1.7¢ per lb. + 12.5% ad val.	7¢ per lb. + 40% ad val."

(b) Conforming change: Headnote 1 of subpart B, part 1, Schedule 4 is modified by substituting therein "403.61" for "403.60."

7: Item 403.80 is superseded by:

	[All other products : : ::]		
	"Other:		
403.81	Maleic anhydride	1.7¢ per lb. + 12.5% ad val.	7¢ per lb. + 40% ad val.
403.82	Other	1.7¢ per lb. + 12.5% ad val.	7¢ per lb. + 40% ad val."

8. Item 642.10 is superseded by:

	[Strands, ropes, cables, and cordage : : ::]		
	[Not fitted with fittings and not made up into articles:]		
	[Not covered with textile or other non-metallic material:]		
	[Wire strand:]		
"642.09	Of copper	7.5% ad val.	35% ad val.
642.11	Other	7.5% ad val.	35% ad val."

ANNEX II

Annex II to Executive Order No. 11888, as amended by Executive Orders Nos. 11906 and 11934, is amended by adding, in numerical sequence, the following TSUS item numbers:

100.73	121.55	125.20	135.60	389.61	792.70
111.10	125.01	125.50	136.10	403.58	799.00
111.60	125.10	131.80	136.40	403.81	
121.35	125.15	135.41	177.40	642.09	

ANNEX III

Annex III to Executive Order No. 11888, as amended by Executive Orders Nos. 11906 and 11934, is amended by adding, in numerical sequence, the following TSUS item numbers:

136.50 137.71 140.21 176.49

ANNEX IV

General Headnote 3(c)(iii) of the TSUS as amended by Executive Orders Nos. 11906 and 11934, is amended by adding, in numerical sequence, the following TSUS item numbers and countries set opposite these numbers:

136.50	Lebanon
137.71	Mexico
140.21	Mexico
176.49	Republic of China

[FR Doc.77-2300 Filed 1-19-77;3:29 pm]

Executive Order 11961 • January 19, 1977

Administration of the International Investment Survey Act of 1976

By virtue of the authority vested in me by the International Investment Survey Act of 1976 (90 Stat. 2059, 22 U.S.C. 3101), and section 301 of title 3 of the United States Code, and as President of the United States of America, it is hereby ordered as follows:

SECTION 1. All the functions vested in the President by the International Investment Survey Act of 1976 (90 Stat. 2059, 22 U.S.C. 3101), hereinafter referred to as the Act, are hereby delegated to the Director of the Office of Management and Budget, hereinafter referred to as the Director. The Director may, from time to time, designate other officers or agencies of the Federal Government to perform any or all of the functions hereby delegated to the Director, subject to such instructions, limitations, and directions as the Director deems appropriate.

SEC. 2. Subject to the provisions of section 1 of this order, and in the absence of any contrary delegation or direction by the Director, the Secretary of the Treasury, with respect to portfolio investment, shall perform the functions set forth in sections 4(a) (1), (2), (4) and 4(c) of the Act.

SEC. 3. Subject to the provisions of section 1 of this order, and in the absence of any contrary delegation or direction by the Director, the Secretary of Commerce, with respect to direct investment, shall perform the functions set forth in sections 4(a) (1), (2), (4) and 4(b) of the Act.

SEC. 4. Subject to the provisions of section 1 of this order, and in the absence of any contrary delegation or direction by the Director, the Council on International Economic Policy shall perform the function of making periodic reports to the Committees of the Congress as set forth in Section 4(a) (3) of the Act.

Gerald R. Ford

THE WHITE HOUSE,
January 19, 1977.

[FR Doc.77-2301 Filed 1-19-77;3:30 pm]

Executive Order 11962 • January 19, 1977

Establishing the President's Advisory Board on International Investment

By virtue of the authority vested in me by the Constitution and statutes of the United States of America, including section 8(a) of the International Investment Survey Act of 1976 (90 Stat. 2064, 22 U.S.C. 3107), and as President of the United States of America, in accordance with the provisions of the Federal Advisory Committee Act (5 U.S.C. App. I), it is hereby ordered as follows:

SECTION 1. (a) There is hereby established the President's Advisory Board on International Investment, hereinafter referred to as the Board, which shall be composed of not more than fifteen members who shall be appointed by the President. Each member shall serve for a term limited to the remaining life of the Board as determined at the time of appointment.

(b) The President shall designate a Chairman and Vice Chairman from among the members.

SEC. 2. (a) Whenever requested, the Board shall advise the Executive Director of the Council on International Economic Policy, hereinafter referred to as the Executive Director, the Director of the Office of Management and Budget, and the heads of other agencies, with respect to matters relating to the performance of their functions under the International Investment Survey Act of 1976 (90 Stat. 2059, 22 U.S.C. 3101).

(b) In making its recommendations, the Board shall give due consideration to the usefulness of data to be collected as compared to the burden imposed on those who are to furnish the data.

SEC. 3. (a) The Executive Director shall, to the extent permitted by law, provide administrative and staff services, support, and facilities for the Board.

(b) The Executive Director shall appoint an Executive Secretary for the Board.

SEC. 4. Members of the Board may be compensated for their services in accord with 5 U.S.C. 3109, and may, to the extent permitted by law, be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law (5 U.S.C. 5702 and 5703) for persons in the government service employed intermittently.

SEC. 5. Notwithstanding the provisions of any other Executive order, the functions of the President under the Federal Advisory Committee Act (5 U.S.C. App. I), except that of reporting annually to the Congress, which are applicable to the Board, shall be performed by the Executive Director in accordance with guidelines and procedures established by the Office of Management and Budget.

SEC. 6. The Board shall terminate on December 31, 1978, unless sooner extended.

Gerald R. Ford

THE WHITE HOUSE,
January 19, 1977.

[FR Doc.77-2302 Filed 1-19-77;3:31 pm]

Executive Order 11963 • January 19, 1977

Delegating Reporting Functions Under the Agricultural Trade Development and Assistance Act of 1954, as Amended

By virtue of the authority vested in me by Section 408 of the Agricultural Trade Development and Assistance Act of 1954, as amended (7 U.S.C. 1736b), Section 301 of Title 3 of the United States Code, and as President of the United States of America, it is hereby ordered as follows:

SECTION 1. Executive Order No. 10900, as amended, is further amended by adding to Section 1 thereof a new subsection (d) as follows:

"(d) The Secretary of Agriculture, after consultation with the Secretary of State, Secretary of the Treasury, Administrator of the Agency for International Development, Chairman of the Council of Economic Advisers, Director of the Office of Management and Budget, Chairman of the Council on International Economic Policy and the Assistant to the President for National Security Affairs, shall transmit to the Congress all reports required by Section 408 of the Act (7 U.S.C. 1736b, 1970 ed., Supp. V)."

SEC. 2. Executive Order No. 10900, as amended, is further amended by revoking Section 5 thereof and redesignating Sections 6, 7 and 8 as Sections 5, 6 and 7 respectively.

Gerald R. Ford

THE WHITE HOUSE,
January 19, 1977.

[FR Doc.77-2395 Filed 1-21-77;10:39 am]

Executive Order 11964 • January 19, 1977

Implementation of the Convention on the International Regulations for Preventing Collisions at Sea, 1972

By virtue of the authority vested in me by the Constitution and statutes of the United States of America, including Section 301 of Title 3 of the United States Code, and as President of the United States of America and Commander-in-Chief of the Armed Forces, in order to provide for the coming into force on July 15, 1977, of the Convention on the International Regulations for Preventing Collisions at Sea, 1972 (Senate Executive W, 93d Cong., 1st Sess.), it is hereby ordered as follows:

SECTION 1. (a) With respect to vessels of special construction or purpose, the Secretary of the Navy, for vessels of the Navy, and the Secretary of the Department in which the Coast Guard is operating, for all other vessels, shall determine and certify, in accord with Rule I of the International Regulations for Preventing Collisions at Sea, 1972, hereinafter referred to as the International Regulations, as to which such vessels cannot comply fully with the provisions of any of the International Regulations with respect to the number, positions, range or arc of visibility of lights or shapes, as well as to the disposition and characteristics of sound-signalling appliances, without interfering with the special function of the vessel.

(b) With respect to vessels for which a certification is issued, the Secretary issuing the certification shall certify as to such other provisions which are the closest possible compliance by that vessel with the International Regulations.

(c) Notice of any certification issued shall be published in the FEDERAL REGISTER.

SEC. 2. The Secretary of the Navy is authorized to promulgate special rules with respect to additional station or signal lights or whistle signals for ships of war or vessels proceeding under convoy, and the Secretary of the Department in which the Coast Guard is operating is authorized, to the extent permitted by law, including the provisions of Title 14 of the United States Code, to promulgate special rules with respect to additional station or signal lights for fishing vessels engaged in fishing as a fleet. In accord with Rule I of the International Regulations, the additional station or signal lights or whistle signals contained in the special rules shall be, as far as possible, such as they cannot be mistaken for any light or signal authorized by the International Regulations. Notice of such special rules for fishing vessels shall be published in the FEDERAL REGISTER.

SEC. 3. The Secretary of the Navy, for vessels of the Navy, and the Secretary of the Department in which the Coast Guard is operating, for all other vessels, are authorized to exempt, in accord with Rule 38 of the International Regulations, any vessel or class of vessels, the keel of which is laid, or which is at a corresponding stage of construction, before July 15, 1977, from full compliance with the International Regulations, provided that such vessel or class of vessels complies with the requirements of the International Regulations for Preventing Collisions at Sea, 1960. Notice of any exemption granted shall be published in the FEDERAL REGISTER.

SEC. 4. The Secretary of the Department in which the Coast Guard is operating is authorized, to the extent permitted by law, to promulgate such rules and regulations that are necessary to implement the provisions of the Convention and International Regulations. He shall cause to be published in the FEDERAL REGISTER any implementing regulations or interpretive rulings promulgated pursuant to this Order, and shall promptly publish in the FEDERAL REGISTER the full text of the International Regulations.

Gerald R. Ford

THE WHITE HOUSE,
January 19, 1977.

[FR Doc.77-2396 Filed 1-21-77;10:40 am]

Executive Order 11965 • January 19, 1977

Establishing the Humanitarian Service Medal

By virtue of the authority vested in me as President of the United States of America, and as Commander in Chief of the Armed Forces, it is hereby ordered as follows:

SECTION 1. There is hereby established a Humanitarian Service Medal with accompanying ribbons and appurtenances for award by the Secretary of Defense or the Secretary of Transportation with regard to the Coast Guard when not operating as a Service in the Navy. Individuals eligible for the medal are members of the Armed Forces of the United States (including Reserve Components) who, subsequent to April 1, 1975, distinguished themselves by meritorious participation in a military act or operation of a humanitarian nature. The Secretary of Defense and the Secretary of Transportation for the Coast Guard will determine types of acts or operations that warrant award of the medal.

SEC. 2. The Humanitarian Service Medal and ribbons and appurtenances thereto shall be of appropriate design approved by the Secretary of Defense and shall be awarded by the Secretary of Defense and the Secretary of Transportation for the Coast Guard under uniform regulations, as prescribed by the Secretary of Defense. The regulations shall place the Humanitarian Service Medal in an order of precedence immediately after the Vietnam Service Medal.

SEC. 3. No more than one Humanitarian Service Medal shall be awarded to any one person, but for each subsequent participation in a humanitarian act or operation justifying such an award, a suitable device may be awarded to be worn with that medal as prescribed by appropriate regulations of the Military Departments.

SEC. 4. The Humanitarian Service Medal or device may be awarded posthumously, and when so awarded, may be presented to such representative of the deceased as may be deemed appropriate by the Secretary of Defense or the Secretary of Transportation.

Gerald R. Ford

THE WHITE HOUSE,
January 19, 1977.

[FR Doc.77-2397 Filed 1-21-77;10:41 am]

Executive Order 11966 • January 19, 1977

Designating Certain Public International Organizations Entitled To Enjoy Certain Privileges, Exemptions, and Immunities

By virtue of the authority vested in me by Section 1 of the International Organizations Immunities Act (59 Stat. 669, 22 U.S.C. 288), and as President of the United States of America, having found that the United States participates in the following organizations, it is hereby ordered as follows:

SECTION 1. The International Development Association, in which the United States participates pursuant to the Act of Congress approved June 30, 1960 (74 Stat. 293, 22 U.S.C. 284) and the Articles of Agreement of the International Development Association (11 U.S.T. 2284, T.I.A.S. 4607), is hereby designated as a public international organization entitled to enjoy the privileges, exemptions, and immunities conferred by the International Organizations Immunities Act, provided that, this designation shall not affect in any way the applicability of Section 3, Article VIII, of the Articles of Agreement of the International Development Association.

SEC. 2. The International Centre for Settlement of Investment Disputes, in which the United States participates pursuant to the Act of Congress approved August 11, 1966 (80 Stat. 344, 22 U.S.C. 1650) and the Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (17 U.S.T. 1270, T.I.A.S. 6090), is hereby designated as a public international organization entitled to enjoy the privileges, exemptions, and immunities conferred by the International Organizations Immunities Act.

SEC. 3. The International Telecommunications Satellite Organization (INTELSAT), in which the United States participates pursuant to the authority of the Communications Satellite Act of 1962 (76 Stat. 419, 47 U.S.C. 701–744) and in accord with the Agreement Relating to the International Telecommunications Satellite Organization (INTELSAT) and the Operating Agreement signed pursuant thereto (TIAS 7532), is hereby designated as a public international organization entitled to enjoy the privileges, exemptions, and immunities conferred by the International Organizations Immunities Act.

SEC. 4. Executive Order No. 11718 of May 14, 1973, is revoked.

SEC. 5. This Order shall be effective as of November 24, 1976.

Gerald R. Ford

THE WHITE HOUSE,
January 19, 1977.

[FR Doc.77–2398 Filed 1–21–77;10:42 am]

federal register

MONDAY, JANUARY 24, 1977

PART VIII

OFFICE OF MANAGEMENT AND BUDGET

■

BUDGET RESCISSIONS AND DEFERRALS

OFFICE OF MANAGEMENT AND BUDGET

BUDGET RESCISSIONS AND DEFERRALS

To the Congress of the United States:

In accordance with the Impoundment Control Act of 1974, I herewith propose nine new rescissions totalling $1,001.3 million and report eight new deferrals totalling $273.4 million in budget authority developed in connection with the 1978 budget. In addition, I am reporting $70.6 million in increases to five deferrals previously transmitted.

The rescission proposals pertain to programs of the Departments of Commerce, Defense, State, and Transportation as well as the Small Business Administration and an International Security Assistance program.

The new deferrals involve programs of the Departments of Commerce and Transportation and the Energy Research and Development Administration while the increases to existing deferrals relate to the Departments of Agriculture, Defense, and Transportation.

I urge the Congress to act favorably on the rescission proposals.

Gerald R. Ford

The White House, *January 17, 1977.*

SUMMARY OF SPECIAL MESSAGE
(in thousands of dollars)

Rescission #	Item	Budget Authority
	Funds Appropriated to the President:	
	International Security Assistance	
R77-5	Foreign military credit sales.....	41,500
	Commerce:	
	U.S. Travel Service	
R77-6	Salaries and expenses.....	525
	National Oceanic and Atmospheric Administration	
R77-7	Operations, research, and facilities.....	1,500
	Defense-Military:	
R77-8	Retired Pay, Defense.....	143,600
R77-9	Shipbuilding and Conversion, Navy....	721,000
R77-10	Other Procurement, Air Force.....	14,350
	State:	
R77-11	Contributions for international peacekeeping activities.....	12,000
	Transportation:	
	Coast Guard	
R77-12	Retired pay.....	6,803
	Other Independent Agencies:	
	Small Business Administration	
R77-13	Business loan and investment fund..	60,000
	Subtotal, rescission proposals.....	1,001,278
Deferral #		
	Agriculture:	
	Foreign Agricultural Service	
D77-2A	Salaries and expenses (special foreign currency program).....	1,743
	Forest Service	
D77-5A	Miscellaneous permanent appropriations, Licensee programs.....	239
	Commerce:	
	General Administration	
D77-45	Special foreign currency program...	654

Deferral #	Item	2 Budget Authority
	National Oceanic and Atmospheric Administration	
D77-46	Operations, research, and facilities	7,500
	Maritime Administration	
D77-47	Ship construction	200,900
	Defense-Military:	
D77-10B	Military construction	387,652
	Transportation:	
	Federal Aviation Administration	
D77-24A	Civil supersonic aircraft development termination	8,080
D77-25A	Facilities and equipment (Airport and airway trust fund)	287,095
	Federal Highway Administration	
D77-48	Trust fund share of other highway programs	31,250
	Energy Research and Development Administration:	
D77-49	Operating expenses (Energy Extension Service)	7,500
D77-50	Operating expenses (magnetic fusion energy)	12,000
D77-51	Operating expenses (program support-community operations)	5,400
D77-52	Operating expenses (biomedical and environmental research)	8,200
	Subtotal, deferrals	958,213
	Total, rescissions and deferrals	1,959,491

SUMMARY OF SPECIAL MESSAGES
FOR FY 1977
(Amounts in thousands of dollars)

	Rescissions	Deferrals
Seventh special message:		
New items	1,001,278	273,404
Changes to amounts previously submitted	---	70,606
Effect of the seventh special message	1,001,278	344,010
Previous special messages	99,100	6,704,130
Total amount proposed in special messages	1,100,378 (in 13 rescission proposals)	7,048,140 (in 52 deferrals)

NOTE: All amounts listed represent budget authority except for $134,807,092 consisting of two general revenue sharing deferrals of outlays only (D77-26 and D77-27A). Reports for D77-26 and D77-27A are included in the special messages of October 1, 1976, and December 3, 1976, respectively.

Rescission Proposal No: R77-5

PROPOSED RESCISSION OF BUDGET AUTHORITY

Report Pursuant to Section 1012 of P.L. 93-344

Agency Funds Appropriated to the President	New budget authority (P.L. 94-441) $ 740,000,000
Bureau International Security Assistance	Other budgetary resources ---
Appropriation title & symbol Foreign Military Credit Sales, 1977 1171082	Total budgetary resources 740,000,000
	Amount proposed for rescission $ 41,500,000
OMB identification code: 11-1082-0-1-052	Legal authority (in addition to sec. 1012): ☒ Antideficiency Act ☐ Other
Grant program ☐ Yes ☒ No	
Type of account or fund: ☒ Annual ☐ Multiple-year (expiration date) ☐ No-year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other

Justification

Pursuant to Public Law 90-629, the Foreign Military Sales Act, approved October 22, 1968, as amended (including Title II of Public Law 94-329, the International Security Assistance and Arms Export Control Act of 1976, approved June 30, 1976), and Executive Order No. 11501 of December 22, 1969, as amended, the Secretary of Defense, under the continuous supervision and general direction of the Secretary of State, uses appropriated funds to make loans to friendly foreign countries and international organizations to finance procurement of defense articles and defense services from the United States and to guarantee loans made by private U.S. financial institutions or the Federal Financing Bank for the same purpose.

Public Law 94-441, the "Foreign Assistance and Related Programs Appropriations Act, 1977," approved October 1, 1976, appropriated $740,000,000 for the period October 1, 1976, through September 30, 1977, "to enable the President to carry out the provisions of the Foreign Military Sales Act" (now known as the Arms Export Control Act). On December 3, 1976, all of the appropriated $740,000,000 was reported as deferred (D77-38) pending the approval of specific loans to eligible countries by the Departments of State, Defense, and the Treasury.

The President has determined that $41.5 million of the $740.0 million in available budget authority will not be required to carry out the full objectives and scope of the Foreign Military Credit Sales program for which it was provided. Therefore, a rescission of that amount is proposed. The $41.5 million in excess budget authority results from changes in program plans that place increased reliance on guaranteed loans rather than direct credit during fiscal year 1977. Under the guarantee program, funds equal to 10% of the face value of loans are obligated to guarantee loans provided to foreign aid recipients by the Federal Financing Bank or private lending institutions. In contrast, the full face value of the loans is obligated by the U.S. Government in direct credit transactions. The program would be operating at its full authorized level ($2,022.1 million) if the rescission is accepted.

R77-5

Estimated Effects

The planned 1977 program of $2,022.1 million would not be affected by this rescission proposal because the proposal is concerned only with a change in the method of financing the loans--not in the level of loans.

Outlay Effect (Estimated in millions of dollars) 1/

Comparison with the President's 1978 budget:

1. Budget outlay estimate for 1977	575.0
2. Outlay savings, if any, included in the estimate	15.0

Current outlay estimate for 1977:

3. Without rescission	590.0
4. With rescission	575.0
5. Current outlay savings (line 3-line 4)	15.0

Outlay savings for 1978	10.0
Outlay savings for 1979	10.0
Outlay savings for 1980	6.5

1/ The outlay savings listed are savings from on-budget outlays. The shift from direct loans to loan guarantees results in a corresponding shift from on-budget to off-budget (Federal Financing Bank) outlays in the same amount as the "outlay savings" when the loans are made by the Federal Financing Bank.

R77-5

TITLE II - FOREIGN MILITARY CREDIT SALES

Foreign Military Credit Sales

Of the funds appropriated under this head in the Foreign Assistance and Related Programs Appropriations Act, 1977, $41,500,000 are rescinded.

Rescission Proposal No: R77-6

PROPOSED RESCISSION OF BUDGET AUTHORITY

Report Pursuant to Section 1012 of P.L. 93-344

Agency Department of Commerce	New budget authority (P.L. 94-362) $14,470,000
Bureau United States Travel Service	Other budgetary resources 0
Appropriation title & symbol: Salaries and expenses 1370700	Total budgetary resources 14,470,000
	Amount proposed for rescission $525,000
OMB identification code: 13-0700-0-1-403	Legal authority (in addition to sec. 1012): ☐ Antideficiency Act
Grant program ☐ Yes ☒ No	☐ Other
Type of account or fund: ☒ Annual ☐ Multiple-year (expiration date) ☐ No-year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other

Justification

The budget authority available to date in 1977 for the activities of the U.S. Travel Service (USTS) totals $14.5 million. The proposed rescission, if accepted, would reduce the amounts available for the Special Markets program and Industry and State programs.

Funds available for the Industry and State programs are utilized, in part, to support the development of a domestic tourism program. In 1977, budget authority of $1.5 million was made available for this purpose. $500,000 of this amount is proposed for rescission. The domestic tourism industry has agreed in principle with the Secretary of Commerce on the development of a domestic tourism program which would provide $1.0 million in Federal "seed" money to be matched by the industry. The industry has accepted this level of financial commitment as appropriate for developmental purposes. A plan for 1977 is estimated not to be in place until April 1977.

Funds available for the Special Markets program are utilized to support the development of tour packages which encourage travel to the U.S. During 1977 five European special markets will be added to the three primary USTS markets to provide coverage to four-fifths of the Visit USA travelers from Europe. The proposed rescission includes $25,000 in funds available for this program which are not required to support planned field visits to these special markets. $300,000 will remain available for contacting travel representatives in these markets to promote the development of low cost tour packages.

R77-6

2

Estimated Effects

The proposed rescission will have no adverse effects on planned USTS activities in the above two areas. Efforts will continue with industry toward the development of a domestic program in 1977 and contracts for development of tour packages in the five special European markets will be carried out.

Outlay Effect (estimated in millions of dollars):

Comparison with President's 1978 budget:	
1. Budget outlay estimate for 1977	13.8
2. Outlay savings, if any, included in the budget outlay estimate	0.5
Current Outlay Estimates for 1977	
3. Without rescission	14.3
4. With rescission	13.8
5. Current outlay savings (line 3 - line 4)	0.5

R77-6

TITLE III - DEPARTMENT OF COMMERCE

United States Travel Service

Salaries and expenses

Appropriations provided under this head in the Departments of State, Justice, and Commerce, the Judiciary, and Related Agencies Appropriation Act, 1977, are rescinded in the amount of $525,000. Of the appropriations remaining, not less than $1,000,000 shall be available for the domestic tourism promotion program.

Rescission Proposal No: R 77-7

PROPOSED RESCISSION OF BUDGET AUTHORITY

Report Pursuant to Section 1012 of P.L. 93-344

Agency Department of Commerce	New budget authority (P.L. 94-362) $ 566,215,000 1/
Bureau National Oceanic and Atmospheric Administration	Other budgetary resources 62,781,270
Appropriation title & symbol Operations, Research, and Facilities 13X1450 (OCEANLAB)	Total budgetary resources 628,996,270
	Amount proposed for rescission $ 1,500,000
OMB identification code: 13-1450-0-1-306	Legal authority (in addition to sec. 1012): ☐ Antideficiency Act
Grant program ☐ Yes ☒ No	☐ Other
Type of account or fund: ☐ Annual ☐ Multiple-year (expiration date) ☒ No-year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other

Justification:

The proposed rescission, if accepted, would decrease the funds available in 1977 to the Operations, research and facilities appropriation of the National Oceanic and Atmospheric Administration by $1,500,000. The funds, available until expended, were provided for the design and engineering studies preliminary to construction, in future years, of an underwater mobile laboratory, OCEANLAB.

Rescinding these funds in 1977 will avoid initiating the expenditure of an estimated total of $21.5 million over the next five years for full construction and operation of an OCEANLAB, and allow further careful review and consideration of any need for acquisition of an underwater laboratory. No specific missions have been identified for an exploratory facility such as the proposed OCEANLAB. Prior to construction and operation of such an expensive piece of scientific equipment, the specific types of studies required and the Federal objectives that would be accomplished should be identified. In addition, it is not now apparent that the proposed OCEANLAB is the most cost-effective means for obtaining necessary information.

Estimated Effects:

Rescission of the available funding in 1977 for design and engineering studies for an underwater mobile laboratory will have no impact on on-going programs. However, in the future some research on fish stocks may not be possible without the advanced capabilities envisioned for OCEANLAB. At the same time, the Executive Branch will be able to review and document the needs and users of the proposed facility, and actually estimate the benefits from the proposed facility against the likely costs of the program.

1/ Does not include $55,000 transfer to General Administration, Department of Commerce for water resources planning activity.

R77-7

2

Outlay Effect (estimated in millions of dollars)

Comparison with President's 1978 Budget:	
1. Budget outlay estimate for 1977	$575.0
2. Outlay savings, if any, included in the budget outlay estimate	0.7
Current Outlay Estimates for 1977	
3. Without rescission	575.7
4. With rescission	575.0
5. Current outlay savings (line 3 minus line 4)	0.7
Outlay Savings for 1978	0.8

R77-7

National Oceanic and Atmospheric Administration

Operations, Research, and Facilities

Of the amount appropriated under this head in the Departments of State, Justice, and Commerce, the Judiciary, and Related Agencies Appropriation Act, 1977, $1,500,000 provided for studies (including surveys, mission analyses, cost analyses, and initiation of a design and engineering study) for an underwater ocean laboratory are rescinded.

Rescission Proposal No: R77-8

PROPOSED RESCISSION OF BUDGET AUTHORITY

Report Pursuant to Section 1012 of P.L. 93-344

Agency Department of Defense	New budget authority (P.L. 94-419) $8,381,700,000
Bureau Office of the Secretary of Defense	Other budgetary resources ____
Appropriation title & symbol Retired Pay, Defense 9770030	Total budgetary resources 8,381,700,000
	Amount proposed for rescission $ 143,600,000
OMB identification code: 97-0030-0-1-051	Legal authority (in addition to sec. 1012): [X] Antideficiency Act [ ] Other ____
Grant program [ ] Yes [X] No	
Type of account or fund: [X] Annual [ ] Multiple-year ____ (expiration date) [ ] No-year	Type of budget authority: [X] Appropriation [ ] Contract authority [ ] Other ____

Justification

The amount expected to be obligated is $143.6 million below the Fiscal Year 1977 Appropriation as a result of lower than anticipated Consumer Price Index (CPI) adjustments, the effect of the new method for adjusting annuities, and net strength and rate changes. Therefore, rescission of $143.6 million is proposed under provisions of the Antideficiency Act (31 U.S.C. 665).

Estimated Effects

There is no programmatic effect of this rescission proposal since the funds cannot be obligated.

Outlay Effect

There is no outlay effect of this proposal since the funds cannot be used.

R77-8

DEPARTMENT OF DEFENSE - MILITARY

TITLE II

RETIRED MILITARY PERSONNEL

Retired Pay, Defense

Of the amount appropriated under this head in the Department of Defense Appropriation Act, 1977, $143,600,000 is rescinded.

Rescission Proposal No: R77-9

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

Agency Department of Defense	New budget authority (P.L. 94-419) $6,195,000,000
Bureau	Other budgetary resources
Appropriation title & symbol: Shipbuilding and Conversion, Navy 177/11611	Total budgetary resources 6,195,000,000
	Amount proposed for rescission $ 721,000,000
OMB identification code: 17-1611-0-1-051	Legal authority* (in addition to sec. 1012): ☐ Antideficiency Act
Grant program ☐ Yes ☒ No	☐ Other
Type of account or fund: ☐ Annual ☒ Multiple-year 1981 (expiration date) ☐ No-year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other

Justification

The funds proposed for rescission were appropriated for procurement of long lead-time components for the CVN 71 nuclear aircraft carrier ($350.0 million) and the U.S.S. Long Beach conversion program ($371.0 million). This rescission proposal results from a Presidential decision not to procure the CVN 71 or to convert the Long Beach in the 1978-1982 period. This decision resulted from a review of the five-year Navy shipbuilding program, which was based on a National Security Council study on U.S. strategy and naval force requirements.

Estimated Effects

This rescission proposal would reduce 1977 budget authority by $721 million, less any amount unrecoverable, and result in outlay reductions of $51 million in 1977 and $132 million in 1978 with the remainder of the reductions occurring in later years.

Outlay Effects (estimated in millions of dollars)
Comparison with the President's 1978 budget:

1. Budget outlay estimate for 1977	$2,983.0
2. Outlay savings, if any, included in the budget outlay estimate	51.0

R77-9
2

Current outlay estimate for 1977:

3. Without rescission	3,034.0
4. With rescission	2,983.0
5. Current outlay savings (line 3 - line 4)	51.0
Outlay savings for 1978	$132
Outlay savings for 1979	144
Outlay savings for 1980	144

R77-9

DEPARTMENT OF DEFENSE - MILITARY

TITLE IV

PROCUREMENT

Shipbuilding and Conversion, Navy

Of the funds appropriated under this head in the Department of Defense Appropriation Act, 1977, $721,000,000 are rescinded.

Rescission Proposal No: R77-10

PROPOSED RESCISSION OF BUDGET AUTHORITY

Report Pursuant to Section 1012 of P.L. 93-344

Agency: Department of Defense	New budget authority (P.L.) $
Bureau: Department of the Air Force	Other budgetary resources 213,817,857
Appropriation title & symbol: Other Procurement, Air Force 575/73080	Total budgetary resources 213,817,857
	Amount proposed for rescission $ 14,350,000
OMB identification code: 57-3080-0-1-051	Legal authority (in addition to sec. 1012): ☐ Antideficiency Act
Grant program ☐ Yes ☒ No	☐ Other
Type of account or fund: ☐ Annual ☒ Multiple-year 1977 (expiration date) ☐ No-year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other

Justification

Funds provided to the Other Procurement, Air Force account have been used to terminate the Advanced Logistics System (ALS). The Department of Defense has determined--after the settlement of contracts for the termination of the ALS--that there is $14.4 million remaining which it does not plan to obligate. Since there is no intention to obligate these funds and they will lapse under present plans, they are being proposed for rescission. The House Appropriation Committee, in House Report (94-5) (pages 163-165), concurs in the view that any funds which remain after termination costs have been met should be permitted to lapse.

Estimated Effects

This rescission proposal has no programmatic effects since the funds are excess to program requirements.

Outlay Effects

There is no outlay effect of this proposed rescission.

R77-10

DEPARTMENT OF DEFENSE-MILITARY

TITLE IV

PROCUREMENT

Other Procurement, Air Force

Of the funds appropriated under this head in the Department of Defense Appropriation Act, 1975, $14,350,000 are rescinded.

Rescission Proposal No: R77-11

PROPOSED RESCISSION OF BUDGET AUTHORITY

Report Pursuant to Section 1012 of P.L. 93-344

Agency: Department of State	New budget authority (P.L. 94-362): $40,000,000
Bureau: International Organization Affairs	Other budgetary resources:
Appropriation title & symbol: Contributions for International Peacekeeping Activities 1971124	Total budgetary resources: 40,000,000
	Amount proposed for rescission: $12,000,000
OMB identification code: 19-1124-0-1-152	Legal authority (in addition to sec. 1012): [X] Antideficiency Act
Grant program: [ ] Yes [X] No	[ ] Other
Type of account or fund: [X] Annual	Type of budget authority: [X] Appropriation
[ ] Multiple-year (expiration date)	[ ] Contract authority
[ ] No-year	[ ] Other

Justification:

Public Law 94-37, approved June 19, 1975, "authorized to be appropriated to the Department of State such sums as may be necessary from time to time for payment by the United States of its share of the expenses of the United Nations peacekeeping forces in the Middle East, as apportioned by the United Nations in accordance with article 17 of the United Nations Charter, notwithstanding the limitation on contributions to international organizations contained in Public Law 92-544 (86 Stat. 1109, 1110)." The 1977 Budget contained an estimate of $45,000,000 for the U.S. share of those expenses to be paid from funds appropriated for fiscal year 1977. The Foreign Relations Authorization Act, Fiscal Year 1977, (Public Law 94-350, approved July 12, 1976) authorized to be appropriated to the Department of State for fiscal year 1977 for "International Organizations and Conferences", $342,460,453, an amount sufficient to allow $45,000,000 to be appropriated for "Contributions for international peacekeeping activities."

The Department of State Appropriation Act, 1977 (Title I, Public Law 94-362, approved July 14, 1976) appropriated $40,000,000 for fiscal year 1977 "for payments, not otherwise provided for, by the United States for expenses of United Nations peacekeeping forces in the Middle East". From these funds the State Department will pay the U.S. assessed share (approximately 29%) of the expenses of the United Nations Emergency Force (UNEF) in the Sinai and the United Nations Disengagement Observer Force (UNDOF) on the Golan Heights through October 24, 1977. The amount of the appropriation was based on the best estimate, at the time of congressional action, of the U.S. assessed share of the expenses of both peacekeeping forces for the twelve month period ending as indicated above.

On December 21, 1976, the United Nations General Assembly approved a resolution which definitively established these peacekeeping budgets at substantially lower levels than anticipated, resulting in a total U.S. assessment of $28,000,000. Accordingly, the President has determined that part of the budget authority will not be required to carry out the full objectives or scope of the program for which it is provided, and a rescission of $12,000,000 is proposed. These funds have been reserved for savings under the Antideficiency Act (31 U.S.C. 665).

Estimated Effects:

The proposed rescission will have no programmatic effects.

Outlay Effect:

There is no outlay effect of this deferral because the funds would not be used if made available.

R77-11

INTERNATIONAL ORGANIZATIONS AND CONFERENCES

Contributions for International Peacekeeping Activities

Of the funds appropriated under this head in the Departments of State, Justice, and Commerce, and Judiciary, and Related Agencies Appropriation Act, 1977, $12,000,000 are rescinded.

Rescission Proposal No: R77-12

PROPOSED RESCISSION OF BUDGET AUTHORITY

Report Pursuant to Section 1012 of P.L. 93-344

Agency: Department of Transportation	New budget authority (P.L. 94-387): $147,103,000
Bureau: U.S. Coast Guard	Other budgetary resources:
Appropriation title & symbol: Retired Pay 6970241	Total budgetary resources: 147,103,000
	Amount proposed for rescission: $6,803,000
OMB identification code: 69-0241-0-1-406	Legal authority (in addition to sec. 1012): [X] Antideficiency Act; [ ] Other
Grant program: [ ] Yes [X] No	
Type of account or fund: [X] Annual; [ ] Multiple-year ____ (expiration date); [ ] No-year	Type of budget authority: [X] Appropriation; [ ] Contract authority; [ ] Other

Justification

Funds totalling $147,103,000, were appropriated in the Department of Transportation and Related Agencies Appropriation Act, 1977, for payment of retired pay for military personnel of the U.S. Coast Guard and U.S. Coast Guard Reserve and members of the former Lighthouse Service. In addition, this appropriation provides for annuities payable to beneficiaries of retired military personnel under the retired serviceman's family protection plan (10 U.S.C. 1431-1446) and survivor benefit plan (10 U.S.C. 1447-1455).

Lower-than-expected cost-of-living adjustments will result in the development of $6.8 million in budget authority that is excess to requirements and will--if not rescinded--lapse at the end of fiscal 1977. These funds have been reserved for savings under the Antideficiency Act (31 U.S.C. 665).

Estimated Effects

This rescission proposal would have no programmatic effect on the Coast Guard retirement program.

Outlay Effect

There is no outlay effect of this rescission proposal because the funds will lapse if they are not rescinded.

R77-12

DEPARTMENT OF TRANSPORTATION

COAST GUARD

Retired Pay

Of the funds appropriated under this head in the Department of Transportation and Related Agencies Appropriation Act, 1977, $6,803,000 are rescinded.

Rescission Proposal No: R77-13

PROPOSED RESCISSION OF BUDGET AUTHORITY

Report Pursuant to Section 1012 of P.L. 93-344

Agency Small Business Administration	New budget authority (P.L. 94-362) $601,600,000
Bureau	Other budgetary resources 539,633,992
Appropriation title & symbol	Total budgetary resources 1,141,233,992
Business Loan Investment Fund 73X4154 (Section 7(a) Regular Business Loan Program)	Amount proposed for rescission $60,000,000
OMB identification code: 73-4154-0-3-403	Legal authority (in addition to sec. 1012): ☐ Antideficiency Act
Grant program ☐ Yes ☒ No	☐ Other
Type of account or fund: ☐ Annual ☐ Multiple-year (expiration date) ☒ No-year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other

Justification

The Regular Business Loan program pursuant to section 7(a) of the Small Business Act, as amended (15 U.S.C. 636), provides direct and guaranteed loan assistance to those small businesses which are unable to obtain financing in the private credit market on reasonable terms. Since 1975, the private credit market has been improving and providing small business with greater access to debt financing at lower interest rates. It is expected that these credit conditions will continue in 1977 and 1978. The Congress added $95 million to the 1977 budget request of $100 million for the 7(a) direct loan program in the State, Justice, and Commerce, the Judiciary, and Related Agencies Appropriation Act, 1977, (enacted in July, 1976). A current assessment is that $60 million of these funds are not now needed in light of present credit market conditions and are, therefore, proposed for rescission. This proposal would reduce the loan level for this program in 1977 from $195 million to $135 million. The proposed revision in the 1977 direct loan level is in line with the level requested for 1978.

Estimated Effects

This proposal will result in approximately 1,400 fewer direct loans to small businesses in 1977. However, the revised program level of $135 million would still provide over 3,200 direct loans to small businesses in 1977 as compared to 2,673 loans actually approved in 1976. The revised program level also represents a 20 percent increase (+$23 million) above the $112 million in direct loan funds provided in 1976.

R77-13

Outlay Effect (estimated in millions of dollars)

Comparison with President's 1978 Budget	
1. Budget outlay estimate for 1977	$335.3
2. Outlay savings, if any, included in the budget outlay estimate	42.0
Current Outlay Estimates for 1977	
3. Without rescission	$377.3
4. With rescission	335.3
5. Current outlay savings (line 3 - line 4)	42.0
Outlay Savings for 1978	18.0

R77-13

SMALL BUSINESS ADMINISTRATION

Business Loan and Investment Fund

Of the funds appropriated under this head in the Departments of State, Justice, and Commerce, the Judiciary, and Related Agencies Appropriation Act, 1977, $60,000,000 are rescinded.

D77-2A

SUPPLEMENTARY REPORT
Report Pursuant to Section 1014 (c) of P.L. 93-344

This supplementary deferral report revises a previously submitted deferral report, Deferral No. D77-2, transmitted in a special message to Congress on October 1, 1976.

The amount to be deferred in FY 1977 for the Special Foreign Currency Program account of the Foreign Agricultural Service is now $1,742,928, an increase of $133,320 over the previously proposed deferral of $1,609,608. This change reflects an adjustment in unobligated balances brought forward on October 1, 1976, from an estimated to an actual basis.

Deferral No: D77-2A

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

Agency U.S. Department of Agriculture	New budget authority (P.L. ———) $ ——— Other budgetary resources *2,242,928
Bureau Foreign Agricultural Service	Total budgetary resources *2,242,928
Appropriation title & symbol Special Foreign Currency Program 12X2901	Amount to be deferred: Part of year $ ——— Entire year *1,742,928
OMB identification code: 12-2901-0-1-352	Legal authority (in addition to sec. 1013): ☒ Antideficiency Act
Grant program ☐ Yes ☒ No	☐ Other ———
Type of account or fund: ☐ Annual ☐ Multiple-year ——— (expiration date) ☒ No-year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other ———

Justification

Title I, Sec. 104 of P.L. 480, the Agricultural Trade Development and Assistance Act of 1954 authorizes the use of foreign currencies (acquired from the sale of U.S. farm products under Title I) to carry out programs for developing new markets for U.S. agricultural commodities. The funds appropriated are used to purchase excess foreign currencies necessary to carry out the program. The funds are available until expended, and the unused balance is carried over into the next year. The amount of funds used each year is dependent upon the availability of the U.S.-owned currencies and the availability of worthwhile market development projects in the foreign countries. Current indications are that no more than $500 thousand of the reserved balances brought forward can be utilized effectively in FY 1977. This deferral action is taken under provisions of the Antideficiency Act (31 USC 665) that authorize the establishment of reserves for contingencies.

Estimated Effects

No programmatic or budgetary impact results from this deferral action. Since the funds are used to purchase currencies already owned by the U.S., any outlays shown under this account would be offset by the receipt of a like amount in another account.

Outlay Effects

There is no outlay effect of this deferral because the funds would not be used if made available.

* Revised from previous report.

D77-5A

SUPPLEMENTARY REPORT
Report Pursuant to Section 1014(c) of P.L. 93-344

This report revises Deferral No. D77-5, transmitted to the Congress on October 1, 1976, and printed as House Document No. 94-650.

This revision reflects a change in the amount deferred from $145,665 to $239,139. This increase in the deferral of $93,474 results from an identical increase in the unobligated balance (from an estimate made in the connection with initial apportionment for 1977 to the actual unobligated balance carried in 1977).

Deferral No: D77-5A

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

Agency: Department of Agriculture	New budget authority (18 USC 711): $280,000
Bureau: Forest Service	Other budgetary resources: * 234,139
Appropriation title & symbol: Licensee Programs, Forest Service 12X5214	Total budgetary resources: * 514,139
	Amount to be deferred: Part of year: $ ____
	Entire year: * 239,139
OMB Identification code: 12-5214-0-2-302	Legal authority (in addition to sec. 1013): [X] Antideficiency Act
Grant program: [ ] Yes [X] No	[ ] Other ____
Type of account or fund: [ ] Annual	Type of budget authority: [X] Appropriation
[ ] Multiple-year ____ (expiration date)	[ ] Contract authority
[X] No-year	[ ] Other ____

* Justification:

Royalties collected under licenses for use of the characters "Smokey Bear" and "Woodsy Owl" are permanently appropriated and utilized for furthering the nationwide forest fire prevention campaign and promoting the wise use of the environment as provided by the Act of May 23, 1952 (18 USC 711), and for Woodsy Owl, 31 USC 488b-3--6. The total budgetary resources available in this program for fiscal year 1977 consist of $234,139 in actual receipts earned in fiscal year 1976 and transition quarter and $280,000 in receipts anticipated for fiscal year 1977. In keeping with routine financial management practices maintained over the years, $239,139 of the total budgetary resources available has been reserved. The reserve is justified on two grounds.

First, the reserve contributes to a consistent, stable program level from year to year which, in turn, promotes more efficient operations. The fiscal year 1977 program is being funded, in part, from reserved balances carried forward from last year. The 1978 program will be partially funded by the estimated receipts being deferred in fiscal year 1977.

* Revised from previous report.

D77-5 A

2

Second, reservation of funds is required to avoid the possibility of a violation of the Antideficiency Act (31 USC 665, (a), (b), (h)). A violation of the sections cited could occur if all the estimates of receipts now deferred were made available and obligated while estimated receipts were not fully realized.

This reserve action is taken under provisions of the Antideficiency Act that authorize the establishment of reserves for contingencies (31 USC 665(c) (2)).

Estimated Effects:

The funds made available are sufficient to carry out 1977 program objectives. If the deferred funds were made available for use and obligated in 1977, the 1978 program level would be below that conducted in the current year because some portion of 1977 receipts normally carried forward into the next fiscal year would not be available.

Release of deferred funds would necessitate development of a plan for an expanded 1977 program.

Outlay Effect

No effect on outlays results from this deferral action.

Deferral No: D77-45

DEFERRAL OF BUDGET AUTHORITY

Report Pursuant to Section 1013 of P.L. 93-344

Agency: Department of Commerce	New budget authority (P.L. _____) $ _____
Bureau: General Administration	Other budgetary resources 1,540,063
Appropriation title & symbol: Special Foreign Currency 13X0160	Total budgetary resources 1,540,063
	Amount to be deferred: Part of year $ _____
	Entire year 654,000
OMB identification code: 13-0160-0-1-403	Legal authority (in addition to sec. 1013): [X] Antideficiency Act
Grant program [ ] Yes [X] No	[ ] Other _____
Type of account or fund: [ ] Annual; [ ] Multiple-year _____ (expiration date); [X] No-year	Type of budget authority: [X] Appropriation; [ ] Contract authority; [ ] Other _____

Justification

This account is used to supplement the activities of Domestic and International Business Administration, the National Bureau of Standards, and the National Oceanic and Atmospheric Administration by providing U.S.-owned foreign currencies in those countries where the Department of the Treasury determines that the supply of currencies is in excess of the normal requirements of the U.S. Government. In fiscal year 1977, the "excess" currency countries are: Burma, Guinea, India, Pakistan, Tunisia and Egypt.

There is a total of $1,540,063 in unobligated balances, available until expended, remaining in this account. An estimated $886,063 will be needed during fiscal 1977. The remaining funds of $654,000 are to be deferred throughout fiscal 1977 for use in future years. These funds have been reserved for contingencies under the Antideficiency Act (31 U.S.C. 665).

Estimated Effects

None. Planned activities in 1977 can be conducted within the amount made available. The funds remaining after 1977 will be used to meet future requirements.

Outlay Effects

There is no outlay effect of this deferral.

Deferral No: D77-46

DEFERRAL OF BUDGET AUTHORITY

Report Pursuant to Section 1013 of P.L. 93-344

Agency: Department of Commerce	New budget authority (P.L. 94-362): $ 566,215,000 1/
Bureau: National Oceanic and Atmospheric Administration	Other budgetary resources: 62,781,270
Appropriation title & symbol: Operations, Research and Facilities (Ship Construction) 13X1450	Total budgetary resources: 628,996,270
	Amount to be deferred: Part of year: $ ____ Entire year: 7,500,000
OMB identification code: 13-1450-0-1-306	Legal authority (in addition to sec. 1013): ☐ Antideficiency Act ☐ Other ____
Grant program: ☐ Yes ☒ No	
Type of account or fund: ☐ Annual ☐ Multiple-year ____ (expiration date) ☒ No-year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other ____

Justification

This deferral of $7.5 million will delay funding until 1978 for the construction of two new (Class IV) fishery research vessels provided in the Departments of State, Justice, and Commerce, the Judiciary, and Related Agencies Appropriation Act, 1977 (P.L. 94-362). The funds are available until expended. Construction of the two new research vessels was provided for in order to give the National Oceanic and Atmospheric Administration (NOAA) additional ship-days to conduct the expanded fisheries resources conservation, assessment, and management efforts required by section 304 of the United States Fisheries Management and Conservation Act of 1976, (P.L. 94-265). The deferral is appropriate because this expenditure of funds is not actually needed at this time to provide the additional ship-days.

Estimated Effects

The construction delay should have no adverse impact on the fisheries resource program in that the need for additional days at sea can be met by five other existing NOAA ships which will be upgraded.

1/ Does not include $55,000 transfer to General Administration, Department of Commerce for water resources planning activity.

D77-46

2

Outlay Effect (estimated in millions of dollars)

Comparison with President's 1978 Budget:	
1. Budget outlay estimate for 1977	$572.7
2. Outlay savings, if any, included in the budget outlay estimate	3.8
Current Outlay Estimate for 1977	
3. Without deferral	576.5
4. With deferral	572.7
5. Current outlay savings (line 3 minus line 4)	3.8
Outlay Savings for 1978	-0.1
Outlay Savings for 1979	-3.7

Deferral No: D77-47

DEFERRAL OF BUDGET AUTHORITY

Report Pursuant to Section 1013 of P.L. 93-344

Agency Department of Commerce	New budget authority (P.L. _____) $ _____
Bureau Maritime Administration	Other budgetary resources 362,811,241
Appropriation title & symbol	Total budgetary resources 362,811,241
Ship Construction 13X1708	Amount to be deferred: Part of year $ _____
	Entire year 200,900,000
OMB identification code: 13-1708-0-1-406	Legal authority (in addition to sec. 1013): [X] Antideficiency Act
Grant program [X] Yes [ ] No	[ ] Other _____
Type of account or fund: [ ] Annual	Type of budget authority: [X] Appropriation
[ ] Multiple-year _____ (expiration date)	[ ] Contract authority
[X] No-year	[ ] Other _____

Justification

This appropriation, available until expended, provides subsidies to U.S. shipyards for the construction and reconstruction of ships for foreign trade.

The deferral is based on the current projections of realizable demand for U.S. shipbuilding. Anticipated new subsidized shipbuilding contracts through the end of fiscal 1977 can be funded within the $161,911,241 apportioned for this period.

The amount being deferred has been reserved for contingencies under the Antideficiency Act (31 U.S.C. 665).

Estimated Effects

The deferral will not delay planned construction or conversion of subsidized ships and will not affect the international competitive position of U.S. shipyards.

Outlay Effect

There is no outlay effect of this deferral.

D77-10B

SUPPLEMENTARY REPORT

Report Pursuant to Section 1014(c) of P.L. 93-344

This report revises Deferral No. D77-10A transmitted to the Congress on December 3, 1976, and printed in the Federal Register of December 8, 1976, (Volume 41, No. 237, Part II).

This revision reflects a net increase of $51,768,837 in the amount to be deferred in fiscal year 1977 for the Military Construction and Family Housing, Defense appropriations. The increase is due to cost savings generated by favorable bids that were experienced during fiscal year 1976. The total amount now deferred is $387,651,837.

The decrease of $371,399,937 in total budgetary resources is the difference between the estimated and actual unobligated balances brought forward on October 1, 1976.

Deferral No: D77-10B

DEFERRAL OF BUDGET AUTHORITY

Report Pursuant to Section 1013 of P.L. 93-344

Agency: Department of Defense	New budget authority (P.L. 94-367): $3,451,306,000
Bureau:	Other budgetary resources: 2,974,575,746*
Appropriation title & symbol: See Coverage section below	Total budgetary resources: 6,425,881,746*
	Amount to be deferred: Part of year: $ 387,651,837*
	Entire year:
OMB identification code: See Coverage section below	Legal authority (in addition to sec. 1013): [X] Antideficiency Act
Grant program: ☐ Yes ☒ No	☐ Other
Type of account or fund: [X] Annual; ☐ Multiple-year (expiration date); [X] No-year	Type of budget authority: [X] Appropriation; ☐ Contract authority; ☐ Other

Coverage Account title	Appropriation Symbol	OMB Identification code 1/	Amount Deferred *
Military Construction, Army	21X2050	21-2050-0-1-051	$135,550,000
Military Construction, Navy	17X1205	17-1205-0-1-051	74,527,904
Military Construction, Air Force	57X3300	57-3300-0-1-051	41,380,000
Military Construction, Defense Agencies	97X0500	97-0500-0-1-051	11,138,000
Military Construction, Army National Guard	21X2085	21-2085-0-1-051	42,054,000
Military Construction, Air National Guard	57X3830	57-3830-0-1-051	21,240,000
Military Construction, Army Reserve	21X2086	21-2086-0-1-051	31,422,000
Military Construction, Naval Reserve	17X1235	17-1235-0-1-051	14,491,000
Military Construction, Air Force Reserve	57X3730	57-3730-0-1-051	8,504,933
Family Housing, Defense	97X0700	97-0701-0-1-051	7,344,000
Family Housing, Defense	9770700	97-0701-0-1-051	-0-
			387,651,837

Justification

The above amounts in the listed no-year appropriations are currently deferred under provisions of the Antideficiency Act (31 U.S.C. 665) which authorizes the establishment of reserves for contingencies.

* Revised from previous report.

D77-10B

2

Justification (continued)

Due to the long period of time required to construct facilities, the Congress makes appropriations for this purpose available until expended. The above funds are deferred due to administrative delays, such as project designs not being completed and incomplete coordination of projects with either other Federal agencies or local government agencies. Funds will be apportioned for individual projects throughout the year upon completion of project design and/or coordination.

Estimated effects

These deferrals have no programmatic or budgetary effect because the funds could not be obligated at this time, even if they were made available.

Outlay effect

There is no outlay effect resulting from this deferral since the funds could not be used if made available.

D77-24A

SUPPLEMENTARY REPORT

Report Pursuant to Section 1014(c) of P.L. 93-344

This report revises Deferral No.D77-24, transmitted to the Congress on October 1, 1976, and printed as House Document No.94-650.

This revision reflects a change in the amount deferred from $463,585 to $8,080,232. This increase in the deferral results from an identical increase in the unobligated balance available to this program. The actual unobligated balance that developed was $7,616,647 higher than had been originally estimated because of a deobligation of funds.

Deferral No: D77-24A

DEFERRAL OF BUDGET AUTHORITY

Report Pursuant to Section 1013 of P.L. 93-344

Agency: Department of Transportation Bureau: Federal Aviation Administration	New budget authority (P.L. ——) $ -0- Other budgetary resources * 8,116,232 Total budgetary resources * 8,116,232
Appropriation title & symbol Civil Supersonic Aircraft Development Termination, 69X0106 Civil Supersonic Aircraft Development, 69X1358	Amount to be deferred: Part of year $ -0- Entire year * 8,080,232
OMB identification code: 69-0106-0-1-405 Grant program ☐ Yes ☒ No	Legal authority (in addition to sec. 1013): ☒ Antideficiency Act ☐ Other
Type of account or fund: ☐ Annual ☐ Multiple-year ——— (expiration date) ☒ No-year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other

* Coverage	Total Budgetary Resources	Amount Deferred
Civil Supersonic Aircraft Development Termination	$ 812,283	$ 776,283
Civil Supersonic Aircraft Development	7,303,949	7,303,949
Total	$8,116,232	$8,080,232

Justification

This account finances the termination of the supersonic transport development program. The total cost of settlement of contractor claims and closeouts, airline refunds, completion of specifically designated technology programs, and necessary governmental administrative costs incidental to these activities is included. These funds were appropriated by the Department of Transportation and Related Agencies Appropriation Acts, 1971 and 1972. Because of the difficulty in ending such a complex and massive undertaking, termination has taken a number of years. Settlement is being accomplished as quickly as possible consistent with the legitimate claims of the contractors and the protection of government interests.

Estimated Effects

This deferral action has no programmatic effect.

Outlay Effect

There is no outlay effect of this deferral because the funds would not be used if made available.

* Revised from previous report.

D77-25A

SUPPLEMENTARY REPORT

Report Pursuant to Section 1014(c) of P.L. 93-344

This report revises Deferral No. D77-25, transmitted to the Congress on October 1, 1976, and printed as House Document No. 94-650.

This revision reflects a change in the amount deferred from $276,101,000 to $287,095,484. This increase in the deferral of $10,994,484, results from an identical increase in the unobligated balance (from an estimate made in connection with initial apportionment for 1977 to the actual unobligated balance carried into 1977).

Deferral No: D77-25A

DEFERRAL OF BUDGET AUTHORITY

Report Pursuant to Section 1013 of P.L. 93-344

Agency Department of Transportation	New budget authority (P.L. 94-387) $200,000,000
Bureau Federal Aviation Administration	Other budgetary resources *294,495,484
Appropriation title & symbol Facilities and equipment (Airport and airway trust fund) 69X8107 695/78107 696/88107 697/98109	Total budgetary resources *494,495,484
	Amount to be deferred: Part of year $ ____ Entire year *287,095,484
OMB identification code: 69-8107-0-7-405	Legal authority (in addition to sec. 1013): ☒ Antideficiency Act ☐ Other ____
Grant program ☐ Yes ☒ No	
Type of account or fund: ☐ Annual 695/78107 Sept 30, 1977 1/ 696/88107 Sept 30, 1978 ☒ Multiple-year 697/98109 Sept 30, 1979 (expiration date) ☒ No-year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other ____

Justification

Funds from this account are used to procure specific Congressionally-approved facilities and equipment for the expansion and modernization of the national airway system. Projects financed from this account include construction of buildings and purchase of new equipment for new or improved air traffic control towers, automation of the enroute airway control system, and expansion and improvement in the navigational and landing aid systems. These funds were appropriated in the Department of Transportation and Related Agencies Appropriation Acts of 1977 and prior years. The estimated total cost for each project is traditionally included in the budget submission and appropriation for the year in which it is requested. Because of the lengthy procurement and construction time for interrelated new facilities and complex equipment systems, it is not possible to obligate all funds necessary to complete each project in the year funds are appropriated. Therefore, it is necessary to apportion funds so that sufficient resources will be available in future periods to complete these projects. This deferral action is consistent with the Congressional intent to provide multi-year funding for the total costs of these projects and is taken under provisions of the Antideficiency Act (31 U.S.C. 665) which authorize the establishment of reserves for contingencies.

* Revised from previous report.

1/ None of these funds are deferred.

D77-25 A

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Estimated Effects

This deferral action is consistent with normal operations for this program. The amount deferred could not be economically used if made available in fiscal 1977 because of the planned multi-year procurement, construction and installation cycle.

Outlay Effect

There is no outlay effect of this deferral because the funds would not be used if made available.

Deferral No: D77-48

DEFERRAL OF BUDGET AUTHORITY

Report Pursuant to Section 1013 of P.L. 93-344

Agency: Department of Transportation Bureau: Federal Highway Administration Appropriation title & symbol: Trust Fund Share of other Highway Programs (Great River Road) 69x8009	New budget authority (P.L. ——— ——— ———) $ ——— Other budgetary resources $91,003,333 1/ Total budgetary resources $91,003,333 1/ Amount to be deferred: Part of year $ ——— Entire year $31,250,000
OMB identification code: 69-8009-0-7-404 Grant program ☒ Yes ☐ No	Legal authority (in addition to sec. 1013): ☐ Antideficiency Act ☐ Other ———
Type of account or fund: ☐ Annual 9-30-77 ...$9,753,333 9-30-78 ...$25,000,000 ☒ Multiple-year 9-30-79 ...$25,000,000 9-30-80 ...$31,250,000 2/ ☐ No-year (expiration date)	Type of budget authority: ☐ Appropriation ☒ Contract authority ☐ Other ———

Justification

The National Scenic and Recreational Highway (Great River Road) was authorized by the Federal-Aid Highway Act of 1973 for the purpose of constructing or reconstructing a two-lane scenic highway in the ten states bordering the Mississippi River. The Great River Road spans over 2,000 miles.

The contract authority provided for this program is liquidated through both the Highway Trust Fund and the General Fund. A total of $121,250,000 in contract authority has been made available through FY 1977 for the program. Of this total, $90,000,000 was made available in the Federal-Aid Highway Act of 1973, and $31,250,000 (the amount to be deferred) was made available in the Federal-Aid Highway Act of 1976. The Highway Trust Fund Share of the $121,250,000 total is $91,250,000, with the balance of $30,000,000 constituting the General Fund Share. The table below displays the origin of the $121,250,000 in contract authority provided through 1977.

1/ This amount is the portion of "Trust Fund Share of other Highway Programs" made available for the Great River Road. Total funds available to the "Trust Fund Share of Other Highway Programs" is $141,097,124.

2/ This amount is deferred.

D77-48
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($ in thousands)

Origin of Contract Authority	1974	1975	1976	TQ	1977	Total
1973 Highway Act:						
Trust Fund	10,000	25,000	25,000	--	--	60,000
General Fund	10,000	10,000	10,000	--	--	30,000
1976 Highway Act:						
Trust Fund	--	--	--	6,250	25,000	31,250
Totals	20,000	35,000	35,000	6,250	25,000	121,250

In fiscal year 1976, $90,000,000, the full amount of contract authority available at that time, was apportioned for use and allotted to the States (with the exception of a $10 million DOT discretionary reserve).3/ However, as of September 30, 1976, the States had obligated only $370,000 ($246,667 Trust Fund and $123,333 General Fund).

A deferral of the $31,250,000 of contract authority provided by the 1976 Highway Act is proposed for several reasons:

-- State plans for fiscal year 1977 indicate that no more than $34,630,000 will be obligated, falling far short of exhausting the original $90 million of contract authority provided in the 1973 Highway Act. The additional $31,250,000 provided in the 1976 Highway Act is clearly not needed at this time and should be deferred.

-- Present plans envision using only the original $90 million authorized by the 1973 Highway Act.4/ These funds are to be applied to engineering and design and to congressionally-expressed emphasis areas. As noted in House conference Report No. 94-1017, these emphasis areas include "acquisition of areas of archaeological, scentific, or historical importance, necessary easements for scenic purposes, and the construction of roadside rest areas and other appropriate facilities."

The Department of Transportation is currently gathering data on the costs of these emphasis areas. If it is apparent that costs associated with the types of activities mentioned above exceed $90 million, additional contract authority may be proposed for obligation up to a maximum of the additional funding provided in the 1976 Highway Act.

Outlay Effect

There is no outlay effect of this deferral because the funds would not be expected to be used if made available.

3/ Some States may be unable to obligate, in a timely fashion, all funds allocated to them. Therefore, if DOT allocated the entire $90.0 million among the States, some of the funds might lapse. The DOT discretionary reserve was established to provide the balance of funds to those States which have made the most progress in obligating their allocated funds (and, thereby, reducing the risk of a funding lapse).

4/ A general provision is being proposed in the 1978 budget that would permit obligational control at the $90 million level.

Deferral No: D77-49

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

Agency: Energy Research and Development Administration
Bureau:
Appropriation title & symbol: Operating Expenses 89X100

New budget authority (P.L. 94-355 & P.L. 94-373): $4,668,838,000
Other budgetary resources: 1,577,109,000
Total budgetary resources: 6,245,947,000

Amount to be deferred:
Part of year: $
Entire year: 7,500,000

OMB identification code: 89-0100-0-1-999

Grant program: ☐ Yes ☒ No

Type of account or fund:
☐ Annual
☐ Multiple-year _____ (expiration date)
☒ No-year

Legal authority (in addition to sec. 1013):
☐ Antideficiency Act
☐ Other _____

Type of budget authority:
☒ Appropriation
☐ Contract authority
☐ Other _____

Justification

This deferral withholds funding for an Energy Extension Service provided in the Department of the Interior and Related Agencies Appropriation Act, 1977 (P.L. 94-373). Because the fiscal 1977 authorization legislation for the Energy Research and Development Administration has not been enacted, there does not now exist a sufficient legislative basis on which to apportion funds for an Energy Extension Service.

Estimated Effects

Initiation of an Energy Extension Service will be delayed until such time as a necessary legislative authorization is enacted into law. Congressional disapproval of the deferral will not result in initiation of the program because of the lack of authorizing legislation.

Outlay Effect

There is not expected to be an outlay effect of this deferral. An Energy Extension Service is not now included in the 1977 ERDA Operating expenses outlay estimate. Adjustments to outlays would need to be considered if the program becomes authorized.

Deferral No: D77-50

DEFERRAL OF BUDGET AUTHORITY

Report Pursuant to Section 1013 of P.L. 93-344

Agency: Energy Research and Development Administration	New budget authority (P.L. 94-355 &P.L. 94-373): $4,668,838,000
Bureau	Other budgetary resources: 1,577,109,000
Appropriation title & symbol: Operating Expenses 89X0100	Total budgetary resources: 6,245,947,000
	Amount to be deferred: Part of year: $ ____
	Entire year: 12,000,000
CFL identification code: 89-0100-0-1-999	Legal authority (in addition to sec. 1013): ☐ Antideficiency Act
Grant program: ☐ Yes ☒ No	☐ Other ____
Type of account or fund: ☐ Annual ☐ Multiple-year ____ (expiration date) ☒ No-year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other ____

Justification

This action defers $12.0 million in budget authority provided for lower-priority long lead-time research activities in the Magnetic Fusion Energy program until an assessment of the most appropriate timing for these activities is completed. The funds could be more usefully applied once an assessment is made of what information is required and when it is required to most efficiently meet the objectives of the magnetic fusion energy program.

Estimated Effects

The 1977 Magnetic Fusion Energy program is planned for a level of $224 million in outlays. The effects on program outlays of this deferral are as follows:
Outlays for confinement systems will be reduced by $1.0 million to a level of $85.2 million; development and technology efforts will be reduced by $3.5 million to a level of $48.0 million; applied plasma physics research will be reduced by $.5 million to a level of $47.4 million; and reactor projects will be reduced by $1.0 million to a level of $43.6 million. This overall reduction of 2.6 percent in the level of effort for the Magnetic Fusion Energy program in FY 1977, maintains an increase of $85 million (or a 60 percent increase) over the FY 1976 level and will not delay the potential availability of fusion-generated commercial electrical power.

D77-50

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Outlay Effect (in millions of dollars)

Comparison with President's 1978 Budget:	
1. Budget outlay estimate for 1977	$4217.6
2. Outlay savings, if any, included in the budget outlay estimate	6.0
Current Outlay Estimates for 1977:	
3. Without deferral	4223.6
4. With deferral	4217.6
5. Current outlay savings (line 3 - line 4)	$ 6.0
Outlay savings for 1978	$ -6.0

Deferral No: D77-51

DEFERRAL OF BUDGET AUTHORITY

Report Pursuant to Section 1013 of P.L. 93-344

Agency: Energy Research and Development Administration	New budget authority (P.L. 94-355 & P.L. 94-373): $4,668,838,000
Bureau:	Other budgetary resources: 1,577,109,000
Appropriation title & symbol: Operating Expenses 89X0100	Total budgetary resources: 6,245,947,000
	Amount to be deferred: Part of year: $ ____
	Entire year: 5,400,000
OMB identification code: 89-0100-0-1-999	Legal authority (in addition to sec. 1013): ☐ Antideficiency Act
Grant program: ☐ Yes ☒ No	☐ Other ____
Type of account or fund: ☐ Annual ☐ Multiple-year ____ (expiration date) ☒ No-year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other ____

Justification

This deferral delays funding for Program Support-Community Operations provided by the Public Works for Water and Power Development and Energy Research Appropriation Act, 1977, (P.L. 94-355). These funds are being deferred because this special assistance--intended to be provided to the cities of Oak Ridge, Tennessee, Los Alamos, New Mexico, and Richland, Washington, and the counties around Oak Ridge and Los Alamos--is not presently needed.

Of the amount deferred, $1.7 million was to be provided for the schools at Oak Ridge, Los Alamos, and Richland in the event that funds made available to these schools in the past through the School assistance for federally-affected areas (impact aid) program of the Department of Health, Education, and Welfare would not be available. Impact aid funds will be available so that the substitute amounts will not be needed this year.

The remainder of the deferral ($3.7 million) was intended for special payments to the city of Oak Ridge and the counties around Oak Ridge and Los Alamos. The payments are not needed by the counties in fiscal 1977. These communities will receive sufficient special aid in 1977 through the Atomic Energy Act of 1954, as amended, (42 U.S.C. 2208) (Section 168) from payments intended to offset the loss of tax revenues incurred because of the presence of ERDA facilities. (Tax Loss provisions) These counties have not

qualified for payments intended to offset any extra costs to the communities incurred because of the presence of ERDA facilities (Special Burden provisions). In addition, the special payment to Oak Ridge, Tennessee, is reduced because recent tax receipts from Japanese facilities of $2.2 million offset the need for Federal assistance in fiscal 1977.

Estimated Effects

The $1.7 million provided as a substitute for impact aid and the remaining $3.7 million--which in the absence of this deferral would be distributed--will be available to finance general requirements of the program in 1978.

Outlay Effect (in millions of dollars)

Comparison with President's 1978 Budget:	
1. Budget outlay estimate for 1977	$4,217.6
2. Outlay savings, if any, included in the budget outlay estimate	5.4
Current Outlay Estimates for 1977:	
3. Without deferral	4,223.0
4. With deferral	4,217.6
5. Current outlay savings (line 3 - line 4)	$ 5.4
Outlay savings for 1978	-5.4

Deferral No: D77-52

DEFERRAL OF BUDGET AUTHORITY

Report Pursuant to Section 1013 of P.L. 93-344

Agency Energy Research and Development Administration	New budget authority (P.L. 94-355 & P.L. 94-373) $4,668,838,000
Bureau	Other budgetary resources 1,577,109,000
Appropriation title & symbol: Operating Expenses 89X0100	Total budgetary resources 6,245,947,000
	Amount to be deferred: Part of year $; Entire year 8,200,000
OMB identification code: 89-0100-0-1-999	Legal authority (in addition to sec. 1013): ☐ Antideficiency Act ☐ Other
Grant program ☐ Yes ☒ No	
Type of account or fund: ☐ Annual ☐ Multiple-year (expiration date) ☒ No-year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other

Justification

This deferral delays $8.2 million (from a total of $189.2 million in budget authority available for this program) for the biomedical and environmental research program provided in the Public Works for Water and Power Development and Energy Research Appropriation Act, 1977. The deferral reduces by half the funds available for the environmental policy analysis function, the National Coal Utilization Assessment, and multi-technology integrated assessments. The environmental policy analysis function is intended to review the impact on the energy supply of proposed environmental legislation, government policies, and regulations. The activity is not presently defined well enough to make the best use of all the available funds. It is appropriate that full-funding for this activity be delayed while plans for the efficient use of the deferred funds are developed. Funds for use in developing the National Coal Utilization Assessment and multi-technology integrated assessments are deferred because (1) the coal utilization study, as presently planned, is too broad in scope to achieve optimal benefits and (2) acceptably firm program plans for the multi-technology studies do not exist.

Estimated Effects

The effects of this deferral are as follows:

--The environmental policy analysis function will not, as the result of the funds deferred, have full-funding until the activities to be performed are more adequately defined. Plans that allow for the efficient use of the deferred funds are not expected to be developed before 1978. The deferral will result in a shift in emphasis away from longer-term studies and support for the National Laboratories toward shorter-term, in-house reviews of environmental regulatory, policy, and legislative proposals.

D77-52

2

--The scope of the National Coal Utilization Assessment will be reduced in order to meet only those information needs unfulfilled by earlier studies. The multi-technology studies will be slowed while firm program plans--including the formation of clearly-defined objectives--are developed and reviewed. Regional environmental analyses will be somewhat slowed by this deferral as will liaison efforts by ERDA with the State and regional environmental and energy agencies.

Outlay Effect (in millions of dollars)

Comparison with President's 1978 Budget:	
1. Budget outlay estimate for 1977	$4,217.6
2. Outlay savings, if any, included in the budget outlay estimate	6.2
Current Outlay Estimates for 1977:	
3. Without deferral	4,223.8
4. With deferral	4,217.6
5. Current outlay savings (line 3 - line 4)	$ 6.2
Outlay savings for 1978	-6.2

[FR Doc.77-2236 Filed 1-19-77;11:58 am]

federal register

MONDAY, JANUARY 24, 1977

PART IX



THE PRESIDENT

JIMMY CARTER

PRESIDENTIAL PROCLAMATION OF PARDON OF JANUARY 21, 1977

EXECUTIVE ORDER RELATING TO PROCLAMATION OF PARDON

Title 3—The President

PROCLAMATION 4483

GRANTING PARDON FOR VIOLATIONS
OF THE SELECTIVE SERVICE ACT,
AUGUST 4, 1964 TO MARCH 28, 1973

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

Acting pursuant to the grant of authority in Article II, Section 2, of the Constitution of the United States, I, Jimmy Carter, President of the United States, do hereby grant a full, complete and unconditional pardon to: (1) all persons who may have committed any offense between August 4, 1964 and March 28, 1973 in violation of the Military Selective Service Act or any rule or regulation promulgated thereunder; and (2) all persons heretofore convicted, irrespective of the date of conviction, of any offense committed between August 4, 1964 and March 28, 1973 in violation of the Military Selective Service Act, or any rule or regulation promulgated thereunder, restoring to them full political, civil and other rights.

This pardon does not apply to the following who are specifically excluded therefrom:

2

(1) All persons convicted of or who may have committed any offense in violation of the Military Selective Service Act, or any rule or regulation promulgated thereunder, involving force or violence; and

(2) All persons convicted of or who may have committed any offense in violation of the Military Selective Service Act, or any rule or regulation promulgated thereunder, in connection with duties or responsibilities arising out of employment as agents, officers or employees of the Military Selective Service system.

IN WITNESS WHEREOF, I have hereunto set my hand this 21st day of January, in the year of our Lord nineteen hundred and seventy-seven, and of the Independence of the United States of America the two hundred and first.

Jimmy Carter

[FR Doc.77-2467 Filed 1-21-77;1:04 pm]

EXECUTIVE ORDER 11967

RELATING TO VIOLATIONS OF THE SELECTIVE SERVICE ACT, AUGUST 4, 1964 TO MARCH 28, 1973

The following actions shall be taken to facilitate Presidential Proclamation of Pardon of January 21, 1977:

1. The Attorney General shall cause to be dismissed with prejudice to the government all pending indictments for violations of the Military Selective Service Act alleged to have occurred between August 4, 1964 and March 28, 1973 with the exception of the following:

(a) Those cases alleging acts of force or violence deemed to be so serious by the Attorney General as to warrant continued prosecution; and

(b) Those cases alleging acts in violation of the Military Selective Service Act by agents, employees or officers of the Selective Service System arising out of such employment.

2. The Attorney General shall terminate all investigations now pending and shall not initiate further investigations alleging violations of the Military Selective Service Act between August 4, 1964 and March 28, 1973, with the exception of the following:

(a) Those cases involving allegations of force or violence deemed to be so serious by the Attorney General as to warrant continued investigation, or possible prosecution; and

JC

(b) Those cases alleging acts in violation of the Military Selective Service Act by agents, employees or officers of the Selective Service System arising out of such employment.

3. Any person who is or may be precluded from reentering the United States under 8 U.S.C. 1182(a)(22) or under any other law, by reason of having committed or apparently committed any violation of the Military Selective Service Act shall be permitted as any other alien to reenter the United States.

The Attorney General is directed to exercise his discretion under 8 U.S.C. 1182(d)(5) or other applicable law to permit the reentry of such persons under the same terms and conditions as any other alien.

This shall not include anyone who falls into the exceptions of paragraphs 1(a) and (b) and 2(a) and (b) above.

4. Any individual offered conditional clemency or granted a pardon or other clemency under Executive Order 11803 or Presidential Proclamation 4313, dated September 16, 1974, shall receive the full measure of relief afforded by this program if they are otherwise qualified under the terms of this Executive Order.

THE WHITE HOUSE,
January 21, 1977.

Jimmy Carter

[FR Doc.77-2468 Filed 1-21-77;1:05 pm]
FEDERAL REGISTER, VOL. 42, NO. 15—MONDAY, JANUARY 24, 1977

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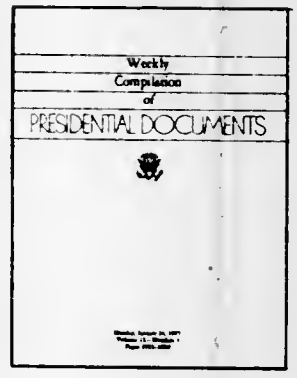
Administration of Jimmy Carter

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highlights

PART I:

MANDATORY PETROLEUM ALLOCATION REGULATIONS

FEA adopts emergency amendment on volumetric limitation imposed on use of propane and butane peak shaving 4422

FEA adopts emergency rule regarding limitation of naphtha that can be used for synthetic natural gas (SNG) plant feedstock use..... 4421

MANDATORY PETROLEUM PRICE REGULATIONS

FEA exempts motor gasoline and clarifies domestic crude oil regulations (3 documents)..... 4409, 4416, 4419

MIDDLE DISTILLATE FUELS

FEA solicits comments by 1-31-77 and announces hearing on 1-28 and 1-29-77 on supply and price levels..... 4525

ONSHORE OIL AND GAS OPERATIONS

Interior/GS formalizes its procedures for reporting and accounting for royalties; comments by 5-1-77..... 4546

COAL

Interior/GS proposes requirements for underground operations; comments by 3-1-77..... 4492

Interior/GS amends certain mining operations..... 4441

Interior/GS proposes mining operating Cooperative Agreement with North Dakota; comments by 2-21-77.... 4493

Interior/BLM adopts regulations on leasing surface management 4441

FEDERALLY-OWNED COAL DEPOSITS

Interior/BLM provides for issuance of exploration licenses; effective 1-19-77..... 4457

COAL MINE HEALTH AND SAFETY

Interior/MESA requires ground check circuit equipment and announces technology seminars..... 4550

PETROLEUM RESERVE IN ALASKA

Interior/BLM/GS notice of memorandum of understanding 4542, 4546

PROCEDURE AND ADMINISTRATION

Treasury/IRS adopts temporary regulations relating to disclosures of returns and return information to and by officers and employees of the Department of Justice and other Federal agencies in connection with preparation for certain administrative and judicial proceedings; effective 1-1-77..... 4438

CONTINUED INSIDE

reminders

(The items in this list were editorially compiled as an aid to FEDERAL REGISTER users. Inclusion or exclusion from this list has no legal significance. Since this list is intended as a reminder, it does not include effective dates that occur within 14 days of publication.)

Rules Going Into Effect Today

NOTE: There were no items eligible for inclusion in the list of RULES GOING INTO EFFECT TODAY.

List of Public Laws

This is a continuing numerical listing of public bills which have become law, together with the law number, the title, the date of approval, the U.S. Statutes citation, and the price. The list is kept current in the FEDERAL REGISTER and copies of the laws may be obtained from the U.S. Government Printing Office.

S.J. Res. 12..... Pub. Law 95–1
To authorize the United States Secret Service to continue to furnish protection to certain former Federal officials or members of their immediate families (Jan. 19, 1977; 91 Stat. 3) Price: $.35

AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The six-month trial period ended August 6. The program is being continued on a voluntary basis (see OFR notice, 41 FR 32914, August 6, 1976). The following agencies have agreed to remain in the program:

Monday	Tuesday	Wednesday	Thursday	Friday
NRC	USDA/ASCS		NRC	USDA/ASCS
DOT/COAST GUARD	USDA/APHIS		DOT/COAST GUARD	USDA/APHIS
DOT/NHTSA	USDA/FNS		DOT/NHTSA	USDA/FNS
DOT/FAA	USDA/REA		DOT/FAA	USDA/REA
DOT/OHMO	CSC		DOT/OHMO	CSC
DOT/OPSO	LABOR		DOT/OPSO	LABOR
	HEW/FDA			HEW/FDA

Documents normally scheduled on a day that will be a Federal holiday will be published the next work day following the holiday.

Comments on this program are still invited. Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408.

ATTENTION: For questions, corrections, or requests for information please see the list of telephone numbers appearing on opposite page.

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FEDERAL REGISTER, Daily Issue:	
Subscriptions and distribution.....	202–783–3238
"Dial · a · Regulation" (recorded summary of highlighted documents appearing in next day's issue).	202–523–5022
Scheduling of documents for publication.	523–5220
Copies of documents appearing in the Federal Register.	523–5240
Corrections	523–5286
Public Inspection Desk.....	523–5215
Finding Aids.....	523–5227
Public Briefings: "How To Use the Federal Register."	523–5282
Code of Federal Regulations (CFR)..	523–5266
Finding Aids.....	523–5227
PRESIDENTIAL PAPERS:	
Executive Orders and Proclamations.	523–5233
Weekly Compilation of Presidential Documents.	523–5235
Public Papers of the Presidents....	523–5235
Index	523–5235
PUBLIC LAWS:	
Public Law dates and numbers.....	523–5237
Slip Laws.....	523–5237
U.S. Statutes at Large.....	523–5237
Index	523–5237
U.S. Government Manual.....	523–5230
Automation	523–5240
Special Projects.....	523–5240

Treasury/IRS issues temporary regulations relating to disclosures after December 31, 1976 by officers and employees of Federal agencies of returns disclosed to such officers and employees by the Secretary before January 1, 1977 for a purpose not involving tax administration 4437

INCOME TAX
IRS regulations relating to community trust's governing body and effect of restrictions and conditions..... 4436

MATERNAL AND CHILD HEALTH
HEW/HSA announces availability of project grants for sudden infant death syndrome information and counseling 4538

CENTRAL OFFICE EQUIPMENT
USDA/REA modifies purchasing and installation procedures; comments by 2–24–77..... 4489

HOURS OF SERVICE ACT
DOT/FRA issues interim interpretation concerning individuals engaged in installing, repairing or maintaining signal systems; effective 1–25–77..... 4464

LOAN DISBURSEMENT SYSTEM
USDA/FmHA regulates nationwide implementation of the multiple advance feature for certain loan types; effective 1–25–77 4401

RECORDS AND TESTIMONY
Interior proposes confidential treatment of mineral resource data and information; comments by 2–24–77.... 4496

DESIGN, ART AND ARCHITECTURE IN TRANSPORTATION
DOT solicits comments by 3–25–77 on encouragement of utilization..... 4568

FISH FILLETS
Commerce/NOAA issues interim grade standards; comments by 2–28–77..... 4468

WHEAT
USDA/CCC revises loan and purchase rates for 1976 crop 4397

ACTIONS IMPACTING ENVIRONMENT
EPA notice of availability of comments on statements.... 4514

HISTORIC PLACES
Interior/NPS notification of pending nominations to National Register..... 4552

WILD FREE-ROAMING HORSE AND BURROS ACT
Interior/BLM proposes use of helicopters and motorized vehicles in management operations; comments by 4–22–77 4500

RADIO FREQUENCY
FCC issues regulations on low power communication devices 4461

PERIODIC REPORTS AND PROXY DISCLOSURE
SEC amends report forms..... 4424

MEETINGS—
CRC: New York Advisory Committee, 2–9–77..... 4506
Commerce/DIBA: Computer Systems Technical Advisory Committee, 2–10–77..... 4507
Computer Systems Technical Advisory Committee, Foreign Availability Subcommittee, 2–9–77..... 4508
Computer Systems Technical Advisory Committee, Hardward Subcommittee, 2–9–77..... 4508
DOD: Advisory Group on Electron Devices, Working Group A, 2–15–77..... 4517
AF: USAF Scientific Advisory Board, (2 documents), 2–15, 2–16 and 2–18–77..... 4516, 4517
USAF Scientific Advisory Board, Space and Missile Systems Organization Advisory Group, Air Force Systems Command, 2–14 and 2–15–77.. 4517
HEW/ADAMHA: Research Scientist Development Review Committee, 2–10 thru 2–12–77..... 4534
FDA: Advisory Committee, 2–11 and 2–12–77..... 4535

NIH: Allergy and Immunology Research Committee, 3–3 and 3–4–77 4539
Animal Resources Advisory Committee, 3–1 and 3–2–77 4539
Board of Scientific Counselors, Division of Cancer Biology and Diagnosis, 3–11 and 3–12–77 4538
Board of Scientific Counselors, NINCDS, 4–14 and 4–15–77 4540
Breast Cancer Task Force Project Presentations, 3–9–77 4540
Breast Cancer Virus Workshop and Bason Pfizer Monkey Virus and Related Viruses, 3–28 and 3–29–77 4540
Population Research Committee, 3–3 and 3–4–77 4542
Minority Access to Research Careers Review Committee, 2–28 thru 3–1–77 4541
Neurological and Communicative Disorders and Stroke Science Information Prorgram Advisory Committee, 3–10 and 3–11–77 4542
"Tumor Viral Immunology" Workshop, 3–8 and 3–9–77 4542
Labor/BLS: Business Research Advisory Council's Committee on Economic Grorwth, 2–22–77 4553
OSHA: National Advisory Committee on Occupational Safety and Health, Subgroups on Standards and Policy/Budget, 2–17–77 4554
NRC: Advisory Committee on Reactor Safeguards, 2–10 thru 2–12–77 4564
NSF: Advisory Panel for Psychobiology, 2–10 and 2–11–77 4564
Advisory Panel for Systematic Biology, 2–10 and 2–11–77 4564
Federal Scientific and Technical Information Managers', 2–9–77 4564
Sensory Physiology and Perception Advisory Panel, 2–7 and 2–8–77 4564
TPO: Electromagnetic Radiation Management Advisory Council, 2–9 and 2–10–77 4566

AMENDED MEETING—

ITC: Government in the Sunshine, 1–24–77 4553

RESCHEDULED MEETINGS—

DOD: Advisory Group on Electron Devices, Working Group C, 2–16–77 4517
HEW/NIH: Diagnostic Research Advisory Group, 2–17–77 4541

MEETING—CHANGE OF LOCATION

Commerce/National Fire Prevention and Control Administration: Advisory Committee on Fire Training and Education for the National Academy for Fire Prevention and Control, 1–31 and 2–1–77 4512

CANCELLED MEETING—

HEW/NIH: Committee on Cancer Immunodiagnosis, 2–28 thru 3–3–77 4540

PART II:

PROFESSIONAL STANDARDS

HEW/PHS proposes procedures for review of hospital services (3 documents); comments by 3–28–77 ..... 4524, 4632, 4637

PART III:

FLOOD ELEVATION DETERMINATIONS

HUD/FIA proposed determinations for various communities (21 documents) 4641–4649

PART IV:

RAILROAD ASSISTANCE

DOT/FRA issues procedures for calculating internal rate of return on projects; effective 1–25–77 and proposes standards under Section 505 of the Railroad Revitalization and Regulatory Reform Act of 1976 (3 documents); comments by 2–24–77 ..... 4652, 4660

PART V:
TEMPORARY EMPLOYMENT OF ALIENS

Labor/ETA amends labor certification process in agricultural and logging occupations; comments by 2–24–77 4669

PART VI:

PROFESSIONAL STANDARDS REVIEW ORGANIZATIONS

HEW/PHS issues procedures for hearings and appeals; effective 1–25–77 4675

PART VII:

ADMINISTRATIVE FUNCTIONS, PRACTICES AND PROCEDURES

HEW/FDA issues general provisions; effective 2–24–77 .. 4679

PART VIII:

SERVICES TO MIGRANT AND SEASONAL FARMWORKERS

Labor/ETA establishes employment service complaint system; effective 2–24–77 4721

PART IX:

CONDOMINIUM DOCUMENTATION

HUD/CA&RF proposes policies for legal documents; comments by 4–1–77 4739

PART X:

FISHERY CONSERVATION ZONE

State publishes applications for permits to fish off coasts of United States 4745

contents

AGRICULTURAL MARKETING SERVICE
Rules
Onions grown in So. Tex 4395
Oranges (navel) grown in Ariz. and Calif 4395
Proposed Rules
Beef research and information; filing of exceptions invited 4484
Milk marketing orders:
New York-New Jersey area 4471
Notices
Committees; establishment, renewals, etc.:
Plant Variety Protection Board 4503

AGRICULTURE DEPARTMENT
See also Agricultural Marketing Service; Commodity Credit Corporation; Farmers Home Administration; Forest Service; Rural Electrification Administration.
Rules
Authority delegations by Secretary and General Officers:
Judicial officer 4395
Notices
Meetings:
National Meat and Poultry Inspection Advisory Committee 4503

AIR FORCE DEPARTMENT
Notices
Meetings:
Scientific Advisory Board (3 documents) 4516, 4517

ALCOHOL, DRUG ABUSE, AND MENTAL HEALTH ADMINISTRATION
Notices
Meetings:
Research Scientist Development Review Committee 4534

BLIND AND OTHER SEVERELY HANDICAPPED, COMMITTEE FOR PURCHASE FROM
Notices
Procurement list, 1977; additions and deletions 3 documents) 4512, 4513

CIVIL AERONAUTICS BOARD
Notices
Hearings, etc.:
International Air Transport Association (5 documents) 4504, 4506

CIVIL RIGHTS COMMISSION
Notices
Meetings:
New York Advisory Committee 4506

COMMERCE DEPARTMENT
See also Domestic and International Business Administration; Economic Development Administration; National Fire Prevention and Control Administration; National Oceanic and Atmospheric Administration.
Notices
Committees; establishment, renewals, etc.:
Weather Modification Board 4512

COMMODITY CREDIT CORPORATION
Rules
Loan and purchase programs:
Wheat 4397

CONSUMER AFFAIRS AND REGULATORY FUNCTIONS, OFFICE OF ASSISTANT SECRETARY
Notices
Condominium documentation; proposed policies 4739

CONSUMER PRODUCT SAFETY COMMISSION
Notices
Flammable Fabrics Act; California exemption from preemption; hearings 4513

DEFENSE DEPARTMENT
See also Air Force Department.
Notices
Meetings:
Electron Devices Advisory Group (2 documents) 4517

DOMESTIC AND INTERNATIONAL BUSINESS ADMINISTRATION
Notices
Meetings:
Computer Systems Technical Advisory Committee (3 documents) 4507, 4508
Scientific articles; duty free entry:
Bowman Gray School of Medicine 4506
Carnegie Institution of Washington 4507
Cornell University Medical College 4508
National Institutes of Health et al 4509
Southern Illinois University School of Medicine 4510
University of California 4510
University of Iowa 4510
University of Massachusetts Medical School 4510
Veterans Administration Hospitals (2 documents) 4511

ECONOMIC DEVELOPMENT ADMINISTRATION
Notices
Import determination petitions:
Flower Handbag Mfg. Corp 4512

EDUCATION OFFICE
Proposed Rules
Emergency school aid:
Discriminatory assignment of students to classes; ineligibility waivers 4501

EMPLOYMENT AND TRAINING ADMINISTRATION
Rules
Migrant and seasonal farmworkers; employment service complaint system, monitoring, and enforcement 4721
Proposed Rules
Aliens; labor certification process for temporary agricultural and logging employment in U.S. 4669
Notices
Employment transfer and business competition determinations; financial assistance applications 4553

ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION
Notices
Environmental statements; availability, etc.:
Idaho National Engineering Laboratory, Idaho 4518
Nevada Test Site, Nye County, Nev 4518
Oak Ridge National Laboratory; Management of Intermediate Level Radioactive Waste 4517

ENVIRONMENTAL PROTECTION AGENCY
Proposed Rules
Air quality implementation plans; various States, etc.:
Alabama 4496
Notices
Environmental statements; availability, etc 4519

ENVIRONMENTAL QUALITY COUNCIL
Notices
Environmental statements; availability, etc 4514

FARMERS HOME ADMINISTRATION
Rules
Loan disbursement system; multiple advance feature; nationwide implementation 4401
Real estate loans and grants:
Association loans and grants; community facilities, development, conservation, utilization; water and waste disposal; correction 4409
Notices
Disaster and emergency areas:
Louisiana 4503
Texas 4503

FEDERAL COMMUNICATIONS COMMISSION
Rules
Radio frequency devices:
Low power communication devices; certification and specifications 4461

Notices

Hearings, etc.:
Mobile Signal Co., Inc. and Midwest Corp. 4524

FEDERAL ENERGY ADMINISTRATION

Rules

Petroleum allocation and price rules, mandatory:
Motor gasoline, allocation exemption 4416
Motor gasoline, price exemption 4419
Petroleum allocation regulations, mandatory:
Naphtha, use for synthetic natural gas plant feedstock 4421
Propane and butane peak shaving use limitation; waiver 4422
Rulings:
Crude oil, domestic; mandatory petroleum price regulations 4409

Proposed Rules

Petroleum price regulations, mandatory:
Crude oil, imputed stripper well; production and sale 4491

Notices

Middle distillate fuels, supply and price levels; hearing 4525

FEDERAL INSURANCE ADMINISTRATION

Proposed Rules

Flood Insurance Program, National; flood elevation determinations, etc.:
Connecticut 4643
Florida (2 documents) 4645, 4646
Georgia (2 documents) 4643, 4646
Kansas 4644
Massachusetts 4647
Michigan (2 documents) 4644, 4645
Minnesota 4646
Mississippi (2 documents) 4642, 4694
Missouri 4642
New Jersey (2 documents) 4642, 4648
New York (2 documents) 4648, 4649
North Carolina (2 documents) 4647, 4648
Ohio 4649
West Virginia 4647

FEDERAL MARITIME COMMISSION

Notices

Casualty and nonperformance; certificates:
Pacific Far East Line, Inc. 4527
Oil pollution; certificates of financial responsibility 4526
Agreements filed, etc.:
Pacific Coast-Europe Rate Agreement 4527
Puerto Rico Ports Authority and Universal Shipping, Inc. 4528
West Coast United States & Canada/India, Pakistan, Ceylon & Burma Rate Agreement 4528

FEDERAL POWER COMMISSION

Notices

Hearings, etc.:
Coastal States Gas Producing Co., et al. 4529
Florida Gas Transmission Corp. 4530
Gulf Oil Corp. 4531
J. L. Trittipo, Inc., et al. 4532
Stewart Green Oil & Gas, Inc. 4533

FEDERAL RAILROAD ADMINISTRATION

Rules

Hours of service of railroad employees; signal service; policy statement 4464
Railroad Revitalization and Regulatory Reform Act of 1976:
Internal rate of return on projects; calculation procedures (2 documents) 4652

Proposed Rules

Railroad Revitalization and Regulatory Reform Act of 1976:
Applications under section 505 4660

Notices

Authority delegations:
Deputy Administrator, et al. 4567

FEDERAL RESERVE SYSTEM

Notices

Applications, etc.:
Commercial Bank 4533
Montgomery Bancorporation, Inc 4534

FOOD AND DRUG ADMINISTRATION

Rules

Administrative practices and procedures, authority delegations, etc.:
Conduct of agency business with public; requests, challenges, etc 4679
Public hearings before advisory committees; guidelines; correction 4436

Notices

Committees; establishment, renewals, etc.:
Medical Radiation Advisory Committee 4538
Human drugs:
Arginine glutamate; efficacy study, exemption revocation 4537
Arginine glutamate; hearing on proposed approval withdrawal 4536
Meetings:
Dentifrice and Dental Care Panel; cancellation 4536
FDA/NIDA Drug Abuse Research Advisory Committee, et al. 4535

FOREST SERVICE

Notices

Environmental statements; availability, etc.:
Bankhead National Forest, Timber Management Plan, Ala 4503

GEOLOGICAL SURVEY

Rules

Coal mining operation regulations:
Surface management 4441

Proposed Rules

Coal mining operating regulations:
Cooperative agreement; North Dakota 4493
Underground operations; mining plan for Federal coal leases 4492

Notices

Oil and gas operations:
Alaska National Petroleum Reserve exploration program; memorandum of understanding with BLM; cross reference 4546
Royalty accounting reports; onshore leases 4546

HEALTH, EDUCATION, AND WELFARE DEPARTMENT

See also Alcohol, Drug Abuse, and Mental Health Administration; Education Office; Food and Drug Administration; Health Services Administration; National Institute of Education; National Institutes of Health; Public Health Service.

Rules

Privacy rights of parents and students; education records; correction 4460

HEALTH SERVICES ADMINISTRATION

Notices

Sudden infant death syndrome; availability of grants 4538

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

See Consumer Affairs and Regulatory Functions, Office of Assistant Secretary; Federal Insurance Administration.

INTERIOR DEPARTMENT

See also Geological Survey; Land Management Bureau; Mining Enforcement and Safety Administration; National Park Service.

Proposed Rules

Records and testimony; mineral resource data, confidential treatment 4496

INTERNAL REVENUE SERVICE

Rules

Income taxes:
Community trusts 4436
Procedure and administration:
Disclosure of returns and return information by Federal agencies (2 documents) 4437, 4438

INTERNATIONAL TRADE COMMISSION

Notices

Import investigations:
Stainless steel pipe and tube, welded 4553
Sunshine Act; amended notice 4553

INTERSTATE COMMERCE COMMISSION

Rules

Railroad car service orders, various companies:
Baltimore and Ohio Railroad Co. and Chesapeake and Ohio Railway Co 4467

Notices

Abandonment of railroad services, etc.:
Bangor and Aroostook Railroad Co 4569
Burlington Northern, Inc. 4569
Maine Central Railroad Co. 4570
Fourth section applications for relief 4569
Hearing assignments 4568
Meeting:
Condition of intercity bus industry 4569
Motor carriers:
Temporary authority terminations 4571
Transfer proceedings (2 documents) 4570, 4571

JUSTICE DEPARTMENT

Rules

Organization, functions, and authority delegations:
Policy and Planning Office; Federal Justice Research Program 4440

LABOR DEPARTMENT

See also Employment and Training Administration; Labor Statistics Bureau; Occupational Safety and Health Administration; Wage and Hour Division.

Notices

Adjustment assistance:
Barash, P. J., Associates, Inc. 4560
Berman Manufacturing Co., Inc 4555
Bethlehem Steel Corp. 4555
Birwin Trousers, Inc. 4556
Crescent Machine & Nipple Co. 4556
Gibson, Inc. 4557
Glass Dimensions, Inc. 4557
Grossman Clothing Co., Inc. 4557
International Shoe Co. 4558
Janowitch, M., & Sons 4559
Liberty Trucking Co. 4559
Republic Steel Co. 4560
Rutter-Rex, J. H., Manufacturing Co., Inc 4558
Sportswear Manufacturing Co., Inc 4561
U-Brand Corp. 4562
U.S. Steel Corp. (2 documents) 4562
Willoform Manufacturing Co., Inc 4563

LABOR-MANAGEMENT RELATIONS, SERVICES OFFICE

Proposed Rules

Urban mass transportation systems, financing; applications and certification of acceptable employee protective arrangements; correction 4492

LABOR STATISTICS BUREAU

Notices

Meetings:
Business Research Advisory Council, Economic Growth Committee 4553

LAND MANAGEMENT BUREAU

Rules

Minerals leasing:
Coal leasing, competitive 4442
Coal deposits, Federally-owned, exploration licenses 4457
Environment and safety; surface management for Federal coal leases 4441

Proposed Rules

Grazing administration:
Horses and burros, wild free-roaming; protection, management, and control; helicopter use for transporting captured animals, etc. 4500

Notices

Oil and gas operations:
Alaska National Petroleum Reserve exploration program; memorandum of understanding with Geological Survey 4542

MINING ENFORCEMENT AND SAFETY ADMINISTRATION

Notices

Coal mine health and safety:
Ground check circuits for three-phase alternating current low- and medium-voltage resistance grounded circuits 4550
Hearings, etc.:
Zippertubing Co.; coal mine trailing cable splices; acceptance rescinded 4551

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Notices

Meetings:
Research and Technology Advisory Council 4563

NATIONAL FIRE PREVENTION AND CONTROL ADMINISTRATION

Notices

Meetings:
Fire Prevention and Control National Academy, Fire Training and Education Advisory Committee 4512

NATIONAL INSTITUTE OF EDUCATION

Notices

Committees; esetablishment, renewals, etc.:
Panel for the Review of Laboratory and Center Operations 4536

NATIONAL INSTITUTES OF HEALTH

Notices

Committees; establishment, renewals, etc.:
Annual reports, filing of 4538
Digestive Diseases National Commission 4541
National Arthritis Advisory Board 4541
National Diabetes Advisory Board 4541
Meetings:
Allergy and Immunology Research Committee 4539
Animal Resources Advisory Committee 4539
Breast Cancer Task Force Project Presentations 4540
Breast Cancer Virus Workshop on Mason Pfizer Monkey Virus and Related Viruses 4540
Cancer Immunodiagnosis Committee cancellation 4540
Diagnostic Research Advisory Group 4541
Minority Access to Research Careers Review Committee 4541
Neurological and Communicative Disorders and Stroke Science Information Program Advisory Committee 4542
Population Research Committee 4542
Scientific Counselors Board (2 documents) 4540
Tumor Viral Immunology Workshop 4542

NATIONAL PARK SERVICE

Notices

Historic Places National Register; pending nominations 4552

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Rules

Fishery products, processed:
Fillets, standards for; interim regulations 4468

NATIONAL SCIENCE FOUNDATION

Notices

Meetings:
Federal Scientific and Technical Information Managers 4564
Psychobiology Advisory Panel 4564
Sensory Physiology and Perception Advisory Panel 4564
Systematic Biology Advisory Panel 4564

NUCLEAR REGULATORY COMMISSION

Notices

Meetings:
Reactor Safeguards Advisory Committee 4564

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

Notices

Meetings:
Occupational Safety and Health National Advisory Committee, Subgroups on Standards and Policy/Budget 4554
State plans; development, enforcement, etc.:
Washington 4554

OHIO RIVER BASIN COMMISSION

Notices

Environmental statements; availability, etc.:
Great Miami River Basin Comprehensive Coordinated Joint Plan 4566

PENSION BENEFIT GUARANTY CORPORATION

Rules

Plan assets, allocation; correction 4440

PUBLIC HEALTH SERVICE

Rules

Professional standards review:
Hearings and appeals, interim, of PSRO determinations 4675

Proposed Rules

Professional standards review:
Hospital review 4624
Hospital review committees, utilization of 4632
Review norms for PSRO's 4637

CONTENTS

RURAL ELECTRIFICATION ADMINISTRATION

Proposed Rules

Rural telephone program:
Central office equipment purchasing and installing 4489

SECURITIES AND EXCHANGE COMMISSION

Rules

Securities Exchange Act:
Corporate disclosure system; forms, rules, and schedules, proxies, etc 4424

Notices

Self-regulatory organizations; proposed rule changes:
Midwest Stock Exchange, Inc .. 4436
New York Stock Exchange, Inc. 4567

Hearings, etc.:
ECI Industries 4566

SMALL BUSINESS ADMINISTRATION

Notices

Disaster areas:
Minnesota 4567
Wisconsin 4567

STATE DEPARTMENT

Notices

Fishing permits, applications from Poland and German Democratic Republic 4745

TELECOMMUNICATIONS POLICY OFFICE

Notices

Meetings:
Electromagnetic Radiation Management Advisory Council 4566

TRANSPORTATION DEPARTMENT

See also Federal Railroad Administration.

Notices

Design, art and architecture; transportation systems; inquiry 4568

TREASURY DEPARTMENT

See Internal Revenue Service.

WAGE AND HOUR DIVISION

Rules

Puerto Rico; wage orders; certain industries:
Tobacco manufactures 4440

"THE FEDERAL REGISTER—WHAT IT IS AND HOW TO USE IT"

Briefings at the Office of the Federal Register

(For Details, See 41 FR 46527, Oct. 21, 1976)

RESERVATIONS: DEAN L. SMITH, 523–5282

list of cfr parts affected in this issue

The following numerical guide is a list of the parts of each title of the Code of Federal Regulations affected by documents published in today's issue. A cumulative list of parts affected, covering the current month to date, follows beginning with the second issue of the month.

A Cumulative List of CFR Sections Affected is published separately at the end of each month. The guide lists the parts and sections affected by documents published since the revision date of each title.

7 CFR
2 4395
907 4395
959 4395
1421 4397
1803 4901
1821 4405
1822 4406
1823 (2 documents) 4408, 4409
PROPOSED RULES:
1002 4471
1260 4484
1701 4489

10 CFR
Ch. II 4409
210 (2 documents) 4416, 4417
211 (3 documents) 4416, 4426, 4422
212 4417
PROPOSED RULES:
212 4491

17 CFR
240 4424

20 CFR
601 4724
602 4724
603 4724
604 4724
651 4724
652 4727
653 4727
654 4731
655 4731
656 4731
657 4731
658 4731
PROPOSED RULES:
655 4670

21 CFR
1 4697
2 (2 documents) 4436, 4697
6 4712
8 4712
10 4712
11 4713
80 4713
90 4713
100 4713
102 4713
121 4713
310 4714
314 4714
501 4716
503 4716
508 4717
514 4717
564 4717
570 4717
571 4717
601 4718
701 4718
809 4719

24 CFR
PROPOSED RULES:
1917 (21 documents) 4641–4649

26 CFR
1 4436
404 (2 documents) 4437, 4438

28 CFR
0 4440

29 CFR
657 4440
2608 4440
PROPOSED RULES:
215 4492

30 CFR
211 4441
PROPOSED RULES:
211 (2 documents) 4492, 4493

40 CFR
PROPOSED RULES:
52 4496

42 CFR
101 4676
PROPOSED RULES:
101 (3 documents) 4624, 4632, 4637

43 CFR
3040 4441
3041 4442
3500 (2 documents) 4451, 4457
3520 4452
9230 4457
PROPOSED RULES:
2 4496
4700 4500

45 CFR
99 4460
PROPOSED RULES:
185 4501

47 CFR
15 4461

49 CFR
Ch. II 4464
258 4652
260 4652
1033 4467
PROPOSED RULES:
258 4660

50 CFR
263 4468

CUMULATIVE LIST OF PARTS AFFECTED DURING JANUARY

The following numerical guide is a list of parts of each title of the Code of Federal Regulations affected by documents published to date during January.

1 CFR

PROPOSED RULES:
442 ... 1267

3 CFR

EXECUTIVE ORDERS:
10480 (Amended by EO 11956) ... 2947
10900 (Amended by EO 11963) ... 4325
10973 (Amended by EO 11959) ... 4315
11490 (Amended by EO 11953) ... 2491
11501 (Revoked by EO 11958) ... 4311
11651 (Amended by EO 11951) ... 1453
11718 (Revoked by EO 11966) ... 4331
11724 (Superseded by EO 11954) ... 2297
11793 (Revoked by EO 11957) ... 3295
11821 (Amended by EO 11949) ... 1017
11888 (Amended by EO 11960) ... 4317
11921 (See EO 11953) ... 2491
11949 ... 1017
11950 ... 1451
11951 ... 1453
11952 ... 2293
11953 ... 2491
11954 ... 2297
11955 ... 2499
11956 ... 2947
11957 ... 3295
11958 ... 4311
11959 ... 4315
11960 ... 4317
11961 ... 4321
11962 ... 4323
11963 ... 4325
11964 ... 4327
11965 ... 4329
11966 ... 4331
11967 ... 4393

PROCLAMATIONS:
4423 (See Proc. 4482) ... 4309
4481 ... 4307
4482 ... 4309
4483 ... 4391

5 CFR

213 ... 1455, 2949, 3297, 3827
610 ... 3297
1410 ... 2299

7 CFR

1 ... 743
2 ... 2968, 4395
26 ... 1019
55 ... 2969
56 ... 2970
59 ... 2971
70 ... 2971
210 ... 2971
226 ... 1475
354 ... 1475
401 ... 4111
601 ... 3845
718 ... 2973
722 ... 1476
726 ... 2300
729 ... 749
730 ... 2301
905 ... 1022
907 ... 1230, 2665, 3845, 3846, 4395
910 ... 1476, 2977, 3297, 4111
917 ... 3625
928 ... 1, 2, 2665
930 ... 3626

7 CFR—Continued

959 ... 2308, 4395
971 ... 2666, 3626
981 ... 3159, 3847
1421 ... 4397
1430 ... 3
1473 ... 2977
1701 ... 3847
1803 ... 4401
1821 ... 4405
1822 ... 1023, 2051, 4406
1823 ... 4408, 4409
1843 ... 1231
1845 ... 2308
1924 ... 4111

PROPOSED RULES:
52 ... 3178
270 ... 1479
271 ... 1479
272 ... 780, 2328
275 ... 1479
661 ... 3311
730 ... 780
967 ... 2691
987 ... 2503
1002 ... 4471
1033 ... 4127
1063 ... 1356
1070 ... 1356
1078 ... 1356
1079 ... 1356
1205 ... 2503
1260 ... 4484
1421 ... 2328
1434 ... 2980
1473 ... 2977
1488 ... 3849
1701 ... 1479, 4489

8 CFR

204 ... 3626
212 ... 3627
214 ... 3627

9 CFR

73 ... 2949, 3297
97 ... 1455
113 ... 750, 1456
317 ... 3298
319 ... 751, 3298
381 ... 2949

PROPOSED RULES:
92 ... 1483, 3859

10 CFR

100 ... 2051
140 ... 46
Ch. II ... 1036, 4409
203 ... 3814
210 ... 4416, 4417
211 ... 4416, 4421, 4422
212 ... 1036, 1456, 2308, 4417

FEA RULINGS:
1977-1 ... 3628

PROPOSED RULES:
2 ... 3178
51 ... 3178
212 ... 2646, 4491
215 ... 3652

11 CFR

PROPOSED RULES:
2 ... 3810
3 ... 3810

12 CFR

4 ... 2950
16 ... 2200, 3299
202 ... 1242, 2950
206 ... 3171
207 ... 968
211 ... 752
212 ... 2951
213 ... 752
220 ... 752
221 ... 968
224 ... 968
225 ... 752, 1263, 2951
226 ... 753, 1264, 2650, 3827
227 ... 2950
265 ... 2501, 2950
563 ... 2952
570 ... 2952
601 ... 2666
704 ... 1458

PROPOSED RULES:
226 ... 780, 1268
505b ... 2503
523 ... 2338
545 ... 2328
564 ... 2328
604 ... 55, 2078

13 CFR

309 ... 753

PROPOSED RULES:
112 ... 2506
121 ... 2505, 2980

14 CFR

25 ... 2052
36 ... 4113
37 ... 19
39 ... 1217, 1218, 2053–2055, 3870, 3828, 4113–4116
71 ... 300, 2055, 2056, 3170, 3171, 3829, 4117
73 ... 300, 3829
75 ... 300, 4117
97 ... 1219, 2056, 3171
207 ... 4117
208 ... 4118
221a ... 1220
241 ... 1219
288 ... 3299
302 ... 2667
378a ... 2309
385 ... 1220, 2667, 2668
1214 ... 3829

PROPOSED RULES:
39 ... 1268–1270
71 ... 1270, 1271, 2078, 2079, 3179, 3861–3863, 4132, 4133
91 ... 3863
152 ... 2850, 4134
239 ... 2693
288 ... 1271
298 ... 2692
310b ... 2995
370 ... 2995
399 ... 3180

15 CFR

369 ... 2057
371 ... 1222
377 ... 1222
931 ... 1164

PROPOSED RULES:
920 ... 2507
933 ... 4046

16 CFR

2 ... 3300
13 ... 3–5, 3636, 3640, 3833, 4118, 4119
1201 ... 1428

PROPOSED RULES:
1 ... 2980
4 ... 2079
438 ... 1483
447 ... 2694
450 ... 1038
801 ... 3181, 3655
1301 ... 1484

17 CFR

1 ... 2628, 4120
155 ... 4120
180 ... 3433
200 ... 753
211 ... 2058
240 ... 753, 754, 2060, 3301, 4424
241 ... 759
276 ... 2953

PROPOSED RULES:
1 ... 4134
155 ... 4134
239 ... 3312
240 ... 781, 782, 3312
249 ... 782
270 ... 3312
275 ... 3312

18 CFR

2 ... 2954
11 ... 1226
141 ... 6
154 ... 2954
300 ... 2668

PROPOSED RULES:
1 ... 2079
2 ... 2329
3 ... 2079
154 ... 1272
157 ... 56

19 CFR

4 ... 3160
6 ... 2309
10 ... 2309, 2310, 3161
18 ... 4120
24 ... 4120
153 ... 2501
172 ... 3161

PROPOSED RULES:
1 ... 2329
113 ... 2330
201 ... 805

20 CFR

401 ... 3640
404 ... 2062
405 ... 1028
416 ... 2062
422 ... 3640
614 ... 1459
601 ... 4724
602 ... 4724

20 CFR—Continued

603 ... 4724
604 ... 4724
651 ... 4724
652 ... 4727
653 ... 4727
654 ... 4731
655 ... 4731
656 ... 3440
657 ... 4731
658 ... 4731
701 ... 3847
702 ... 3847

PROPOSED RULES:
416 ... 2079, 3316
655 ... 4670

21 CFR

1 ... 4697
2 ... 1459, 4436, 4697
4 ... 3108
6 ... 4712
8 ... 1459, 4712
10 ... 4712
11 ... 4713
80 ... 4713
90 ... 4713
100 ... 4713
102 ... 761
121 ... 1460, 1461, 3302, 4713
310 ... 4714
314 ... 1624, 1638, 3109, 4714
320 ... 1624, 1638
501 ... 4716
503 ... 4716
508 ... 4717
510 ... 3837
514 ... 3109, 4717
520 ... 1462, 3838
522 ... 3838
540 ... 1462
548 ... 3838
555 ... 3838
558 ... 761, 1463, 2312
564 ... 4717
570 ... 4717
571 ... 4717
601 ... 4718
701 ... 4718
809 ... 4719

PROPOSED RULES:
1 ... 2330
3e ... 1483
11 ... 806
18 ... 2330
121 ... 1483
128d ... 807
369 ... 2330
500 ... 2330
510 ... 2981
701 ... 2330
740 ... 2330
801 ... 2330

22 CFR

41 ... 2501
42 ... 2501

23 CFR

625 ... 6, 3642
712 ... 7

24 CFR

200 ... 3838
201 ... 3839
203 ... 762
207 ... 764, 2954

24 CFR—Continued

213 ... 764, 2954
221 ... 765, 2954
231 ... 766, 2954
241 ... 763, 3162
280 ... 960
1905 ... 3162
1914 ... 2193, 4264
1916 ... 4264, 4265
1917 ... 2063–2068, 4265–4268
3282 ... 2576

PROPOSED RULES:
200 ... 4296
201 ... 1487
242 ... 3655
279 ... 3112
408 ... 2796
501 ... 1488
570 ... 3292, 3437
800 ... 4300
866 ... 3181
881 ... 4300
1917 ... 2082, 4269–4280, 4641–4649

25 CFR

PROPOSED RULES:
221 ... 3319
504 ... 3864

26 CFR

1 ... 767, 1195, 1463, 2501, 3839, 4436
7 ... 1469, 1471, 2954, 4121
41 ... 2671
48 ... 2671
142 ... 2677
154 ... 2312
404 ... 1029, 2313, 4437, 4438

PROPOSED RULES:
1 ... 57, 2694, 3181, 3866
54 ... 1488
301 ... 1038, 1489

27 CFR

170 ... 3840
194 ... 3840
201 ... 3840

28 CFR

0 ... 3163, 4440

PROPOSED RULES:
32 ... 1390

29 CFR

15 ... 769
60 ... 3440
94 ... 1656, 2426
95 ... 2427
96 ... 2428
97 ... 1656
98 ... 2428
99 ... 773, 2430
511 ... 2313
609 ... 2954
613 ... 3303
657 ... 4440
672 ... 2955
673 ... 2955
720 ... 3303
1601 ... 3163
1910 ... 2956, 3304
1926 ... 2956
1952 ... 2313
2608 ... 2677, 4440
2610 ... 2678

29 CFR—Continued

PROPOSED RULES:

90 ... 2981
215 ... 3319, 4492
1910 ... 808, 1742, 1806
2550 ... 1488, 1618, 3871

30 CFR

100 ... 1214
211 ... 3642, 4441

PROPOSED RULES:

11 ... 2986
77 ... 2800
211 ... 1489, 2082, 4492, 4493
251 ... 3321

31 CFR

1 ... 2311
13 ... 3841
51 ... 2196, 2422
101 ... 1471
128 ... 4121
210 ... 9
515 ... 1472

32 CFR

40 ... 3646
256 ... 773
2000 ... 2679

PROPOSED RULES:

242a ... 1492
903 ... 2085
1482 ... 3322

33 CFR

40 ... 10
92 ... 2681
117 ... 3841
159 ... 11
183 ... 2681, 2682
204 ... 3646
265 ... 3841

PROPOSED RULES:

110 ... 3871
114 ... 3181
115 ... 3181
161 ... 3182
209 ... 2572

34 CFR

Ch. I ... 12
232 ... 1478

36 CFR

212 ... 2957
221 ... 2957
231 ... 2957
251 ... 2957
261 ... 2957
262 ... 2961
271 ... 2962
272 ... 2962
291 ... 2962
295 ... 2962
606 ... 1473

PROPOSED RULES:

7 ... 3655, 3656
16 ... 812
17 ... 812

37 CFR

201 ... 2962

37 CFR—Continued

PROPOSED RULES:

1 ... 2632
3 ... 2632
5 ... 2632
201 ... 4134

38 CFR

0 ... 2314
3 ... 2069
17 ... 2316

39 CFR

111 ... 3470
233 ... 4123
257 ... 4123
258 ... 4124
3002 ... 3646

PROPOSED RULES:

1 ... 2699
2 ... 2699
3 ... 2699
4 ... 2699
5 ... 2699
6 ... 2699
7 ... 2699
8 ... 2699

40 CFR

6 ... 2450
52 ... 3841, 4124
60 ... 1214, 4124
61 ... 1215, 4124
86 ... 1122, 1150
129 ... 2588, 2617
136 ... 3306
190 ... 2858
220 ... 2468
221 ... 2470
222 ... 2471
223 ... 2474
224 ... 2474
225 ... 2475
226 ... 2475
227 ... 2476
228 ... 2482
229 ... 2489
409 ... 3164
430 ... 1398
440 ... 3165
455 ... 2316

PROPOSED RULES:

22 ... 1492
52 ... 1273, 1494, 2705, 3657, 4134, 4135, 4496
60 ... 2842
80 ... 3183
85 ... 1044
180 ... 815
201 ... 2330
202 ... 2330
260 ... 2331
1516 ... 1044

41 CFR

3-3 ... 2683
3-4 ... 2684
3-16 ... 2684
3-50 ... 2684
9-4 ... 4124
9-7 ... 2963
9-15 ... 2963
9-51 ... 2684
Ch. 14 ... 1215
14-1 ... 1215
14-10 ... 1215
60-1 ... 3458
60-2 ... 3461

41 CFR—Continued

60-3 ... 3825
60-30 ... 3462, 4057
60-741 ... 3307
101-1 ... 12
101-25 ... 1030
101-26 ... 1032
101-28 ... 2317
101-38 ... 1477

PROPOSED RULES:

3-1 ... 1273
101-17 ... 816

42 CFR

56b ... 4125
100 ... 4024
101 ... 4676
122 ... 4024
123 ... 4028

PROPOSED RULES:

54b ... 2986
101 ... 2994, 4256-4260, 4624, 4632, 4637

43 CFR

4 ... 1216
419 ... 3307
2650 ... 779
3040 ... 4441
3041 ... 4442
3100 ... 1032
3500 ... 4451, 4457
3520 ... 4452
4110 ... 778
4120 ... 778
9230 ... 4457

PUBLIC LAND ORDER:

5561 (Amended by PLO 5612) ... 2684
5611 (Corrected by PLO 5612) ... 2684
5612 ... 2706

PROPOSED RULES:

2 ... 4496
29 ... 3660
2400 ... 3657
3520 ... 2684
3800 ... 1045
4700 ... 4500

45 CFR

99 ... 4460
177 ... 2963
185 ... 3842
193 ... 1190
233 ... 3307
248 ... 2684
249 ... 4125
250 ... 779
304 ... 3843
1005 ... 3165
1050 ... 3272
1068 ... 3165
1336 ... 3782

PROPOSED RULES:

Subtitle A ... 3325
46 ... 2792, 3076
63 ... 4135
74 ... 4137
153 ... 3792
158 ... 2086
185 ... 4501
Ch. II ... 2445
205 ... 2440
249 ... 3325, 3665
250 ... 2331, 3328
304 ... 3663

45 CFR—Continued

PROPOSED RULES—Continued

504 ... 3872
706 ... 2708
1480 ... 1045
1703 ... 3667

46 CFR

536 ... 1473

PROPOSED RULES:

10 ... 3186
12 ... 1278
502 ... 817
531 ... 3186

47 CFR

0 ... 3166, 3167
1 ... 3166-3168, 3308
13 ... 1231
15 ... 1231, 3308, 4461
21 ... 1232
73 ... 1233, 2502, 3167, 3308, 3646, 4157
74 ... 2069
76 ... 3308
81 ... 1474
83 ... 1231, 1474
87 ... 3168, 3308
89 ... 4158
97 ... 3166, 3167

PROPOSED RULES:

64 ... 1278
73 ... 1278, 1279, 2086, 3186
74 ... 2087
76 ... 3670
83 ... 2088
89
97 ... 2089

49 CFR

Ch. II ... 4464
Ch. V ... 2864
25 ... 12
99 ... 3118
173 ... 2071, 2688
174 ... 2071
178 ... 2688
218 ... 2318, 3843
221 ... 2321, 3843
225 ... 1221
231 ... 1222
258 ... 4652
260 ... 4652
265 ... 4286
310 ... 2964
501 ... 3843
571 ... 3844
630 ... 3772
1033 ... 2965, 3309, 3310, 3844, 4467
1047 ... 19
1056 ... 3169
1100 ... 4126
1241 ... 1474
1249 ... 1474
1250 ... 1474
1251 ... 1474

PROPOSED RULES:

Subtitle A ... 2868
173 ... 2709
179 ... 2709
228 ... 2994
230 ... 2994
258 ... 4660

49 CFR—Continued

PROPOSED RULES—Continued

267 ... 2507
523 ... 2092
571 ... 3187
1251 ... 2092

50 CFR

17 ... 2071, 2965
26 ... 1033, 2689, 2690, 3845
32 ... 2690
33 ... 1034, 2690, 3845
216 ... 1034, 3845
260 ... 2326
261 ... 2326
262 ... 2326
263 ... 2326, 4468
264 ... 2326
265 ... 2326
266 ... 2326
267 ... 2326
268 ... 2326
269 ... 2326
270 ... 2326
271 ... 2326
272 ... 2326
273 ... 2326
274 ... 2326
275 ... 2326
276 ... 2326
277 ... 2326
278 ... 2326
279 ... 2326
601 ... 2968
602 ... 2968

PROPOSED RULES:

17 ... 2101, 2102, 2507
216 ... 1049

FEDERAL REGISTER PAGES AND DATES—JANUARY

Pages	Date
1-741	Jan. 3
743-1015	4
1017-1194	5
1195-1450	6
1451-2049	7
2051-2291	10
2293-2497	11
2499-2664	12
2665-2946	13
2947-3157	14
3159-3294	17
3295-3624	18
3625-3826	19
3827-4109	21
4110-4394	24
4395-4808	25

rules and regulations

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

Title 7—Agriculture

SUBTITLE A—OFFICE OF THE SECRETARY OF AGRICULTURE

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

Revision of Delegations of Authority to the Judicial Officer

Paragraph (a) of § 2.35 of Part 2, Subtitle A, Title 7, Code of Federal Regulations, is amended to align the authority of the Judicial Officer with the recently adopted "Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes" (7 CFR Part 1, Subpart H), published in the FEDERAL REGISTER on January 4, 1977 (42 FR 743). The paragraph is revised to read as follows:

§ 2.35 Delegations of authority to the Judicial Officer.

• • • • • •

(a) Pursuant to the provisions of the Act of April 4, 1940 (7 U.S.C. 450c–450g), and Reorganization Plan No. 2 of 1953 (5 U.S.C. 1970 Ed., Appendix, p. 550), the Judicial Officer is hereby authorized to perform any regulatory function as defined in the said Act, which the Secretary of Agriculture is or hereafter may be authorized or required by law to perform, in acting as final deciding officer in adjudication proceedings subject to 5 U.S.C. 556 and 557; in other adjudication proceedings which are or may be made subject to the "Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes" set forth in 7 CFR Part 1, Subpart H; in rate proceedings under the Packers and Stockyards Act; and in reparation proceedings under statutes administered by the Department. As used herein the term "Judicial Officer" shall mean any person or persons so designated by the Secretary of Agriculture. The provisions of the delegation shall not be construed to limit the authority of the Judicial Officer to perform any functions, in addition to those defined in the said Act of April 4, 1940, which from time to time may be assigned by the Secretary to him.

• • • • • •

Effective date: This amendment shall become effective on February 1, 1977.

Dated: January 18, 1977.

JOHN A. KNEBEL,
Secretary of Agriculture.

[FR Doc.77-2241 Filed 1-24-77;8:45 am]

CHAPTER IX—AGRICULTURAL MARKETING SERVICE (MARKETING AGREEMENTS AND ORDERS; FRUITS, VEGETABLES, NUTS), DEPARTMENT OF AGRICULTURE

[Navel Orange Reg. 396, Amdt. 1]

PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

Limitation of Handling

This regulation increases the quantity of California-Arizona Navel oranges that may be shipped to fresh market during the weekly regulation period January 14–20, 1977. The quantity that may be shipped is increased due to improved market conditions for Navel oranges. The regulation and this amendment are issued pursuant to the Agricultural Marketing Agreement Act of 1937, as amended, and Marketing Order No. 907.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 907, as amended (7 CFR Part 907), regulating the handling of Navel oranges grown in Arizona and designated part of California, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and upon the basis of the recommendations and information submitted by the Navel Orange Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such Navel oranges, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) The need for an increase in the quantity of oranges available for handling during the current week results from changes that have taken place in the marketing situation since the issuance of Navel Orange Regulation 396 (42 FR 2665). The marketing picture now indicates that there is a greater demand for Navel oranges than existed when the regulation was made effective. Therefore, in order to provide an opportunity for handlers to handle a sufficient volume of Navel oranges to fill the current market demand thereby making a greater quantity of Navel oranges available to meet such increased demand, the regulation should be amended, as hereinafter set forth.

(3) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking procedure, and postpone the effective date of this amendment until 30 days after publication thereof in the FEDERAL REGISTER (5 U.S.C. 553) because the time intervening between the date when information upon which this amendment is based became available and the time when this amendment must become effective in order to effectuate the declared policy of the act is insufficient, and this amendment relieves restriction on the handling of Navel oranges grown in Arizona and designated part of California.

(b) *Order, as amended.* The provisions in paragraph (b)(1) (i), (ii), and (iii) of § 907.696 (Navel Orange Regulation 396 (42 FR 2665)) are hereby amended to read as follows:

§ 907.696 Navel Orange Regulation 396.

• • • • • •

(b) • • • (1) • • •

(i) District 1: 1,094,000 cartons;

(ii) District 2: 216,000 cartons;

(iii) District 3: 40,000 cartons.

• • • • • •

(Secs. 1–19, 48 Stat. 31, as amended; (7 U.S.C. 601-674).)

Dated: January 19, 1977.

CHARLES R. BRADER,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc.77-2238 Filed 1-24-77;8:45 am]

PART 959—ONIONS GROWN IN SOUTH TEXAS

Handling Requirements

This regulation, designed to promote orderly marketing of South Texas onions, imposes minimum grade, size and container standards and requires inspection of fresh market shipments to keep undesirable onions from being shipped to consumers.

Notice of rulemaking with respect to a proposed handling regulation, to be effective under Marketing Agreement No. 143 and Order No. 959, both as amended (7 CFR Part 959), regulating the handling of onions grown in the production area, was published in the December 16, 1976 FEDERAL REGISTER (41 FR 54948). This program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.). The notice afforded interested persons until January 3, 1977, to file written comments. None was filed.

Findings. After consideration of all relevant matters, including the proposal set forth in the aforesaid notice which was recommended by the South Texas Onion Committee, established pursuant to said marketing agreement and order, it is hereby found and determined that

the handling regulation, as hereinafter set forth, will tend to effectuate the declared policy of the act.

The recommendations of the committee reflect its appraisal of the expected volume and composition of the 1977 early spring crop of South Texas onions and of the marketing prospects for the shipping season which is expected to begin about March 7.

The grade and size requirements are similar to last season's and are designed to prevent onions of poor quality or undesirable sizes from being distributed in fresh market channels.

Thus, only onions that contain not more than 20 percent defects of U.S. No. 1 grade and are not packed or loaded on Sunday except for export may be shipped from March 7 through May 14, 1977. Again this season in order to provide more orderly marketing from all districts, the inspection and container requirements will be extended through June 11, 1977.

The container requirements should prevent the use of off-size or deceptive containers which could adversely affect the reputation and returns of South Texas onions. However, it will not preclude the use of containers customarily packed for the retail trade. The prohibition on packaging and loading onions on Sunday is recommended principally to provide more orderly marketing by tailoring shipments from the production area more closely to the ability of receiving markets to accept marketings. However, this season handlers may, with approval of the committee, grade, package and load onions on Sunday for export: *Provided*, That they shut down packing and loading operations on the first working day after shipment for the same length of time as they operated on Sunday. This should prevent handlers who ship on Sunday for export from gaining a competitive advantage due to longer packing hours over handlers who do not have export orders.

Exceptions are provided to certain of these requirements to recognize special situations in which such requirements would be inappropriate or unreasonable. Up to 100 pounds of onions may be handled, other than for resale, per day without regard to requirements of this section in order to avoid placing an unreasonable burden on persons handling noncommercial quantities of onions.

The requirements with respect to special purpose shipments will allow the shipment of onions for experimental purposes or the use of containers including bulk bins which have been the subject of test shipments during past seasons, and should encourage exports by allowing the use of containers required for such purposes. Shipments for relief or charity are exempt from inspection and assessment requirements since no useful purpose would be served by regulating such shipments.

The regulation is as follows:

§ 959.317 Handling regulation.

During the period March 7 through June 11, 1977, no handler may package or load onions on any Sunday, except in accordance with paragraph (f) of this section, or handle any lot of onions grown in the production area, except red onions, unless such onions meet the assessment requirements of § 959.217 and the requirements of paragraphs (a), (b), (c) and (d) of this section, or unless such onions are handled in accordance with the provisions of paragraphs (e) or (f) of this section except that the grade and size requirements of paragraphs (a) and (b) and the Sunday packaging prohibition shall terminate at 11:59 p.m. on May 14, 1977.

(a) *Grade requirements.* Not to exceed 20 percent defects of U.S. No. 1 grade. In percentage grade lots, tolerances for serious damage shall not exceed 10 percent including not more than 2 percent decay. Double the lot tolerance shall be permitted in individual packages in percentage grade lots. Application of tolerances in U.S. onion standards shall apply to in-grade lots.

(b) *Size requirements.* (1) "Small"—1 to 2¼ inches in diameter, and limited to whites only;

(2) "Repacker"—1¾ to 3 inches in diameter, with 60 percent or more 2 inches in diameter or larger;

(3) "Medium"—2 to 3½ inches in diameter; or

(4) "Jumbo"—3 inches or larger in diameter.

(5) Tolerances for size in the U.S. onion standards shall apply except that for "repacker" and "medium" sizes not more than 20 percent, by weight, of onions in any lot may be larger than the maximum diameter specified. Application of tolerances in the U.S. onion standards shall apply.

(c) *Container requirements.* (1) 25-pound bags, with an average net weight in any lot of not more than 27½ pounds per bag, and with outside dimensions not larger than 29 inches by 31 inches; or

(2) 50-pound bags, with an average net weight in any lot of not more than 55 pounds per bag, and with outside dimensions not larger than 33 inches by 39½ inches.

(3) These container requirements shall not be applicable to onions sold to Federal agencies.

(d) *Inspection.* (1) No handler may handle any onions regulated hereunder, except pursuant to paragraphs (e) or (f)(3) of this section, unless an appropriate inspection certificate has been issued with respect thereto and the certificate is valid at the time of shipment.

(2) No handler may transport or cause the transportation by motor vehicle of any shipment of onions for which an inspection certificate is required unless each such shipment is accompanied by a copy of the inspection certificate applicable thereto or by documentary evidence on forms furnished by the committee identifying truck lots to which a valid inspection certificate is applicable and a copy of such inspection certificate or committee document, upon request, is surrendered to authorities designated by the committee.

(3) For purposes of operation under this part each inspection certificate or committee form required as evidence of inspection is hereby determined to be valid for a period not to exceed 72 hours following completion of inspection as shown on the certificate.

(e) *Minimum quantity exemption.* Any handler may handle, other than for resale, up to, but not to exceed 100 pounds of onions per day without regard to the requirements of this section, but this exemption shall not apply to any shipment or any portion thereof of over 100 pounds of onions.

(f) *Special purpose shipments and culls.* (1) Onions may be handled in containers customarily packed for the retail trade and in other designated special purpose containers as follows:

(i) Each handler desiring to make such shipments shall first apply to the committee for and obtain a Certificate of Privilege to make such shipments.

(ii) After obtaining an approved Certificate of Privilege, each handler may handle onions packed in 2, 3 or 5-pound containers customarily packed for the retail trade, or 50-pound cartons, if they meet the grade, size, and inspection requirements of paragraphs (a), (b) and (d) of this section and if they are handled in accordance with the reporting requirements established in subparagraph (2) of this paragraph on such shipments: *Provided*, That shipments of 2, 3 and 5-pound containers shall not exceed 10 percent of a handler's total weekly onion shipments, and provided further that shipments of 50-pound cartons shall not exceed 10 percent of a handler's total weekly onion shipments of all onions allowed to be marketed under this section.

(iii) The average gross weight per lot of onions packed in master containers shall not exceed 115 percent of the designated net contents.

(iv) The average net weight per lot of 50-pound cartons shall not exceed 55 pounds.

(2) *Reporting requirements for shipments in designated special purpose containers.* Each handler who handles shipments of onions in containers customarily packed for the retail trade and in other designated special purpose containers, shall report thereon to the committee, the inspection certificate numbers, the grade and size of onions packed, and the size of the containers in which such onions were handled. Such report, in accordance with § 959.80 shall be furnished to the committee in such manner, on such forms and at such times as it may prescribe. Also, each handler of such shipments of onions shall maintain records of such marketings, pursuant to § 959.80(c). Such records shall be subject to review and audit by the committee to verify reports thereon.

(3) *Experimental shipments.* Upon approval of the committee, onions may be shipped in bulk bins with inside dimensions of 47 inches x 37½ inches x 36 inches deep and having a volume of 59,440 cubic inches, or similar containers. Each container shall have a new perforated 2-mil polyethylene liner. Also, onions may be shipped in 40-pound cartons, but not to exceed 4,000 cartons. Such experimental shipments shall be exempt from paragraph (c) of this section but shall not exceed ten percent of a handler's total weekly onion shipments and shall be handled in accordance with safeguard provisions of § 959.54 and this paragraph. Also, the receiver must agree to furnish the committee with a report on the arrival condition of each shipment. Further, upon approval of the committee, onions may be shipped for other experimental purposes exempt from regulations issued pursuant to §§ 959.42, 959.52 and 959.60, provided they are handled in accordance with safeguard provisions of § 959.54.

(4) *Export shipments.* Upon approval of the committee, the prohibition against packaging or loading onions on any Sunday may be modified or suspended to permit the handling of onions for export. If a handler, with approval of the committee, grades, packages and ships onions for export on any Sunday, such handler shall on the first workday following shipment of the onions, cease all grading, packaging and shipping operations for the same length of time as the handler operated grading, packaging and shipping operations on Sunday.

(5) *Onions failing to meet requirements.* Onions failing to meet the grade, size, and container requirements of this section, and not exempt under paragraph (e) of this section, may be handled only pursuant to § 959.126. Culls may be handled pursuant to § 959.126(a)(1). Shipments for relief or charity may be handled without regard to inspection and assessment requirements.

(g) *Definitions.* "U.S. onion standards" mean the United States Standards for Grades of Bermuda-Granex-Grano Type Onions (§§ 51.3195–51.3209 of this title), or the United States Standards for Grades of Onions (Other Than Bermuda-Granex-Grano and Creole Types) (§§ 51.2830–51.2854 of this title), whichever is applicable to the particular variety, or variations thereof specified in this section. The term "U.S. No. 1" shall have the same meaning as set forth in these standards.

All other terms used in this section shall have the same meaning as when used in Marketing Agreement No. 143, as amended, and this part.

(Secs. 1–19, 48 Stat. 31, as amended (7 U.S.C. 601–674).)

Dated: January 19, 1977, to become effective March 7, 1977.

CHARLES R. BRADER,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

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CHAPTER XIV—COMMODITY CREDIT CORPORATION, DEPARTMENT OF AGRICULTURE

SUBCHAPTER B—LOANS, PURCHASES, AND OTHER OPERATIONS

[CCC Grain Price Support Regs., 1976 Crop Wheat Supp., Amdt. 1]

PART 1421—GRAINS AND SIMILARLY HANDLED COMMODITIES

Subpart—1976 Crop Wheat Loan and Purchase Program

On October 13, 1976, Acting Secretary Knebel announced the 1977-crop wheat loan rate, an increase over the 1976-crop wheat loan rate. He further announced that the 1977-crop wheat loan rate would be immediately applicable to the 1976-crop of wheat. Premiums and discounts will remain unchanged.

Additional disbursements on 1976-crop wheat loans already made will be available retroactively for those producers who want their loans increased to the new rates.

Producers who wish to secure loans or adjust present loans at the new rate for 1976 wheat can do so by contacting their local Agricultural Stabilization and Conservation Service Office or Agricultural Service Center.

Under conditions of exceptionally heavy demand for credit in a very limited and overly tight money market, the new loan rates will better assist the producers in holding wheat for improved market prices. In light of this current trend, the 1976-crop national average loan and purchase rate revision is being made now to give farmers timely assistance in the orderly marketing of this year's record crop of wheat.

In order to show the new loan rates, 7 CFR 1421.488(a), published in the FEDERAL REGISTER at 41 FR 35702 and effective as to the 1976 crop of wheat, is revised to read as follows:

§ 1421.488 Loan and purchase rates.

(a) *Basic loan and purchase rates (counties).* Basic rates per bushel for loan and settlement purposes for wheat are established for wheat grading U.S. No. 1 and are as follows:

ALABAMA

County	Rate per bushel	County	Rate per bushel
Mobile	$2.42	All other counties	$2.23

ARIZONA

County	Rate per bushel
All counties	$2.28

ARKANSAS

County	Rate per bushel
All counties	$2.24

CALIFORNIA

County	Rate per bushel	County	Rate per bushel
Alameda	$2.44	Kern	$2.39
Alpine	2.36	Kings	2.36
Amador	2.39	Lake	2.32
Butte	2.33	Lassen	2.21
Calaveras	2.39	Los Angeles	2.44
Colusa	2.38	Madera	2.37
Contra Costa	2.39	Marin	2.37
El Dorado	2.38	Mariposa	2.37
Fresno	2.34	Mendocino	2.26
Glenn	2.32	Merced	2.40
Humboldt	2.21	Modoc	2.21
Imperial	2.36	Monterey	2.34
Inyo	2.32	Napa	2.38
Barbara	$2.34	Santa Clara	2.38
Placer	2.38	Santa Cruz	2.39
Plumas	2.21	Shasta	2.22
Riverside	2.36	Sierra	2.23
Sacramento	2.44	Siskiyou	2.21
San Benito	2.37	Solano	2.39
San Bernardino	2.45	Sonoma	2.36
San Diego	2.44	Stanislaus	2.41
San Francisco	2.44	Sutter	2.38
San Joaquin	2.44	Tehama	2.28
San Luis Obispo	2.33	Tulare	2.36
San Mateo	2.44	Tuolumne	2.37
Santa		Ventura	2.41
		Yolo	2.39
		Yuba	2.38

COLORADO

County	Rate per bushel	County	Rate per bushel
Adams	$2.10	La Plata	$2.01
Alamosa	2.07	Larimer	2.10
Arapahoe	2.10	Las Animas	2.13
Archuleta	2.04	Lincoln	2.10
Baca	2.13	Logan	2.10
Bent	2.10	Mesa	2.01
Boulder	2.09	Moffat	2.07
Chaffee	2.07	Montezuma	2.01
Cheyenne	2.11	Montrose	2.01
Conejos	2.07	Morgan	2.10
Costilla	2.07	Otero	2.10
Crowley	2.10	Ouray	2.01
Custer	2.09	Phillips	2.10
Delta	2.01	Pitkin	2.01
Denver	2.10	Prowers	2.12
Dolores	2.01	Pueblo	2.10
Douglas	2.10	Rio Blanco	2.04
Eagle	2.04	Rio Grande	2.07
Elbert	2.10	Routt	2.07
El Paso	2.10	Saguache	2.07
Fremont	2.09	San Miguel	2.01
Garfield	2.04	Sedgwick	2.10
Grand	2.07	Summit	2.04
Huerfano	2.11	Teller	2.09
Jackson	2.07	Washington	2.10
Jefferson	2.09	Weld	2.10
Kiowa	2.11	Yuma	2.11
Kit Carson	2.11		

CONNECTICUT

County	Rate per bushel
All counties	$2.25

DELAWARE

County	Rate per bushel
All counties	$2.28

FLORIDA

County	Rate per bushel
All counties	$2.22

GEORGIA

County	Rate per bushel
All counties	$2.22

IDAHO

County	Rate per bushel	County	Rate per bushel
Ada	$2.20	Gem	$2.20
Adams	2.20	Gooding	2.20
Bannock	2.18	Idaho	2.28
Bear Lake	2.16	Jefferson	2.15
Benewah	2.31	Jerome	2.20
Bingham	2.16	Kootenai	2.29
Blaine	2.16	Latah	2.31
Boise	2.20	Lemhi	2.15
Bonner	2.23	Lewis	2.28
Bonneville	2.15	Lincoln	2.19
Boundary	2.21	Madison	2.15
Butte	2.15	Minidoka	2.19
Camas	2.17	Nez Perce	2.13
Canyon	2.20	Oneida	2.19
Caribou	2.17	Owyhee	2.19
Cassia	2.19	Payette	2.20
Clark	2.13	Power	2.19
Clearwater	2.29	Shoshone	2.29
Custer	2.15	Teton	2.14
Elmore	2.19	Twin Falls	2.20
Franklin	2.19	Valley	2.19
Fremont	2.14	Washington	2.20

ILLINOIS

County	Rate per bushel	County	Rate per bushel
Adams	$2.26	Bond	$2.32
Alexander	2.29	Boone	2.34

ILLINOIS—Continued

County	Rate per bushel	County	Rate per bushel
Brown	$2.26	Logan	$2.28
Bureau	2.32	McDonough	2.28
Calhoun	2.33	McHenry	2.34
Carroll	2.31	McLean	2.30
Cass	2.28	Macon	2.28
Champaign	2.32	Macoupin	2.32
Christian	2.30	Madison	2.33
Clark	2.28	Marion	2.32
Clay	2.28	Marshall	2.31
Clinton	2.32	Mason	2.26
Coles	2.28	Massac	2.28
Cook	2.34	Menard	2.26
Crawford	2.27	Mercer	2.30
Cumberland	2.28	Monroe	2.33
De Kalb	2.34	Montgomery	2.32
DeWitt	2.28	Morgan	2.30
Douglas	2.29	Moultrie	2.29
DuPage	2.34	Ogle	2.32
Edgar	2.30	Peoria	2.30
Edwards	2.28	Perry	2.32
Effingham	2.30	Piatt	2.28
Fayette	2.31	Pike	2.27
Ford	2.32	Pope	2.26
Franklin	2.32	Pulaski	2.29
Fulton	2.30	Putnam	2.31
Gallatin	2.25	Randolph	2.33
Greene	2.32	Richland	2.27
Grundy	2.34	Rock Island	2.31
Hamilton	2.26	Saint Clair	2.33
Hancock	2.26	Saline	2.26
Hardin	2.25	Sangamon	2.30
Henderson	2.28	Schuyler	2.26
Henry	2.31	Scott	2.28
Iroquois	2.34	Shelby	2.30
Jackson	2.31	Stark	2.30
Jasper	2.27	Stephenson	2.33
Jefferson	2.32	Tazewell	2.28
Jersey	2.33	Union	2.29
Jo Daviess	2.31	Vermilion	2.33
Johnson	2.29	Wabash	2.27
Kane	2.34	Warren	2.30
Kankakee	2.34	Washington	2.32
Kendall	2.34	Wayne	2.28
Knox	2.30	White	2.25
Lake	2.34	Whiteside	2.32
LaSalle	2.34	Will	2.34
Lawrence	2.27	Williamson	2.30
Lee	2.33	Winnebago	2.33
Livingston	2.33	Woodford	2.30

INDIANA

Adams	$2.27	Howard	$2.26
Allen	2.27	Huntington	2.26
Bartholomew	2.27	Jackson	2.28
Benton	2.32	Jasper	2.33
Blackford	2.27	Jay	2.27
Boone	2.26	Jefferson	2.30
Brown	2.27	Jennings	2.28
Carroll	2.30	Johnson	2.26
Cass	2.30	Knox	2.27
Clark	2.32	Kosciusko	2.30
Clay	2.28	Language	2.28
Clinton	2.26	Lake	2.34
Crawford	2.32	La Porte	2.34
Daviess	2.28	Lawrence	2.28
Dearborn	2.27	Madison	2.27
Decatur	2.27	Marion	2.27
De Kalb	2.27	Marshall	2.30
Delaware	2.27	Martin	2.28
Dubois	2.29	Miami	2.26
Elkhart	2.29	Monroe	2.27
Fayette	2.27	Montgomery	2.28
Floyd	2.32	Morgan	2.26
Fountain	2.30	Newton	2.33
Franklin	2.27	Noble	2.27
Fulton	2.30	Ohio	2.27
Gibson	2.27	Orange	2.30
Grant	2.26	Owen	2.27
Greene	2.28	Parke	2.30
Hamilton	2.27	Perry	2.28
Hancock	2.27	Pike	2.28
Harrison	2.32	Porter	2.34
Hendricks	2.26	Posey	2.25
Henry	2.27	Pulaski	2.33

INDIANA—Continued

County	Rate per bushel	County	Rate per bushel
Putnam	$2.26	Tipton	$2.26
Randolph	2.27	Union	2.27
Ripley	2.27	Vanderburgh	2.27
Rush	2.27	Vermillion	2.30
Saint Joseph	2.32	Vigo	2.29
Scott	2.30	Wabash	2.26
Shelby	2.27	Warren	2.32
Spencer	2.28	Warrick	2.28
Starke	2.33	Washington	2.30
Steuben	2.27	Wayne	2.27
Sullivan	2.28	Wells	2.27
Switzerland	2.28	White	2.32
Tippecanoe	2.29	Whitley	2.26

IOWA

Pottawattamie	$2.34	All other counties	$2.22

KANSAS

Allen	$2.29	Linn	$2.32
Anderson	2.32	Logan	2.12
Atchison	2.34	Lyon	2.27
Barber	2.18	McPherson	2.21
Barton	2.18	Marion	2.21
Bourbon	2.30	Marshall	2.27
Brown	2.32	Meade	2.15
Butler	2.22	Miami	2.33
Chase	2.25	Mitchell	2.21
Chautauqua	2.25	Montgomery	2.27
Cherokee	2.27	Morris	2.25
Cheyenne	2.11	Morton	2.14
Clark	2.15	Nemaha	2.29
Clay	2.23	Neosho	2.28
Cloud	2.23	Ness	2.17
Coffey	2.30	Norton	2.18
Comanche	2.16	Osage	2.30
Cowley	2.22	Osborne	2.21
Crawford	2.28	Ottawa	2.22
Decatur	2.14	Pawnee	2.18
Dickinson	2.22	Phillips	2.18
Doniphan	2.32	Pottawatomie	2.29
Douglas	2.33	Pratt	2.18
Edwards	2.18	Rawlins	2.11
Elk	2.25	Reno	2.21
Ellis	2.18	Republic	2.23
Ellsworth	2.21	Rice	2.21
Finney	2.13	Riley	2.27
Ford	2.16	Rooks	2.19
Franklin	2.33	Rush	2.18
Geary	2.25	Russell	2.19
Gove	2.16	Saline	2.22
Graham	2.18	Scott	2.12
Grant	2.12	Sedgwick	2.21
Gray	2.15	Seward	2.14
Greeley	2.10	Shawnee	2.31
Greenwood	2.25	Sheridan	2.15
Hamilton	2.12	Sherman	2.10
Harper	2.20	Smith	2.21
Harvey	2.21	Stafford	2.18
Haskell	2.13	Stanton	2.12
Hodgeman	2.17	Stevens	2.14
Jackson	2.31	Sumner	2.21
Jefferson	2.33	Thomas	2.12
Jewell	2.22	Trego	2.18
Johnson	2.34	Wabaunsee	2.28
Kearny	2.12	Wallace	2.10
Kingman	2.21	Washington	2.25
Kiowa	2.18	Wichita	2.11
Labette	2.27	Wilson	2.27
Lane	2.16	Woodson	2.28
Leavenworth	2.34	Wyandotte	2.34
Lincoln	2.21		

KENTUCKY

Jefferson	$2.33	All other counties	$2.25

LOUISIANA

East Baton Rouge	$2.43	Saint Charles	$2.43
Jefferson	2.43	West Baton Rouge	2.43
Orleans	2.43	All other counties	2.28

MAINE

County	Rate per bushel	County	Rate per bushel
All counties			$2.22

MARYLAND

Baltimore City	$2.41	All other counties	$2.28

MASSACHUSETTS

All counties	$2.24

MICHIGAN

Alcona	$2.17	Keeweenaw	$2.18
Alger	2.18	Lake	2.19
Allegan	2.26	Lapeer	2.25
Alpena	2.14	Leelanau	2.16
Antrim	2.14	Lenawee	2.29
Arenac	2.18	Livingston	2.26
Baraga	2.18	Luce	2.18
Barry	2.25	Mackinac	2.18
Bay	2.22	Macomb	2.28
Benzie	2.17	Manistee	2.18
Berrien	2.30	Marquette	2.18
Branch	2.27	Mason	2.21
Calhoun	2.26	Mecosta	2.22
Cass	2.27	Menominee	2.18
Charlevoix	2.13	Midland	2.22
Cheboygan	2.13	Missaukee	2.17
Chippewa	2.18	Monroe	2.31
Clare	2.20	Montcalm	2.23
Clinton	2.23	Montmorency	2.14
Crawford	2.17	Muskegon	2.23
Delta	2.18	Newaygo	2.21
Dickinson	2.18	Oakland	2.28
Eaton	2.25	Oceana	2.21
Emmet	2.11	Ogemaw	2.18
Genessee	2.25	Ontonagon	2.18
Gladwin	2.20	Osceola	2.19
Gogebic	2.18	Oscoda	2.17
Grand Traverse	2.17	Otsego	2.14
Gratiot	2.23	Ottawa	2.23
Hillsdale	2.28	Presque Isle	2.13
Houghton	2.18	Roscommon	2.17
Huron	2.24	Saginaw	2.25
Ingham	2.25	Saint Clair	2.28
Ionia	2.23	Saint Joseph	2.27
Iosco	2.18	Sanilac	2.25
Iron	2.18	Schoolcraft	2.18
Isabella	2.22	Shiawassee	2.25
Jackson	2.26	Tuscola	2.25
Kalamazoo	2.26	Van Buren	2.26
Kalkaska	2.17	Washtenaw	2.28
Kent	2.23	Wayne	2.28
		Wexford	2.17

MINNESOTA

Aitkin	$2.44	Itasca	$2.42
Anoka	2.44	Jackson	2.38
Becker	2.34	Kanabec	2.43
Beltrami	2.37	Kandiyohi	2.42
Benton	2.43	Kittson	2.28
Big Stone	2.35	Koochiching	2.38
Blue Earth	2.42	Lac Qui Parle	2.36
Brown	2.42	Lake of the Woods	2.32
Carlton	2.44	Le Sueur	2.44
Carver	2.44	Lincoln	2.34
Cass	2.40	Lyon	2.37
Chippewa	2.38	McLeod	2.44
Chisago	2.44	Mahnomen	2.34
Clay	2.32	Marshall	2.31
Clearwater	2.36	Martin	2.40
Cottonwood	2.39	Meeker	2.44
Crow Wing	2.42	Mill Lacs	2.43
Dakota	2.44	Morrison	2.42
Dodge	2.44	Mower	2.42
Douglas	2.39	Murray	2.37
Faribault	2.41	Nicollet	2.44
Fillmore	2.40	Nobles	2.36
Freeborn	2.40	Norman	2.32
Goodhue	2.44	Olmsted	2.42
Grant	2.37	Otter Tail	2.37
Hennepin	2.44	Pennington	2.33
Houston	2.37	Pine	2.43
Hubbard	2.37	Pipestone	2.34
Isanti	2.44		

MINNESOTA—Continued

County	Rate per bushel	County	Rate per bushel
Polk	$2.33	Stevens	$2.38
Pope	2.40	Swift	2.38
Ramsey	2.44	Todd	2.40
Red Lake	2.33	Traverse	2.34
Redwood	2.40	Wabasha	2.43
Renville	2.42	Wadena	2.38
Rice	2.44	Waseca	2.43
Rock	2.34	Washington	2.44
Roseau	2.29	Watonwan	2.41
Saint Louis	2.44	Wilkin	2.34
Scott	2.44	Winona	2.41
Sherburne	2.44	Wright	2.44
Sibley	2.44	Yellow Medicine	2.38
Stearns	2.42		
Steele	2.42		

MISSISSIPPI

Harrison	$2.43	All other counties	$2.24
Jackson	2.43		

MISSOURI

Adair	$2.21	Linn	$2.27
Andrew	2.32	Livingston	2.28
Atchison	2.27	McDonald	2.22
Audrain	2.26	Macon	2.24
Barry	2.22	Madison	2.26
Barton	2.26	Maries	2.27
Bates	2.30	Marion	2.25
Benton	2.26	Mercer	2.25
Bollinger	2.26	Miller	2.23
Boone	2.23	Mississippi	2.28
Buchanan	2.34	Moniteau	2.21
Butler	2.25	Monroe	2.25
Caldwell	2.31	Montgomery	2.29
Callaway	2.25	Morgan	2.24
Camden	2.24	New Madrid	2.28
Cape Girardeau	2.27	Newton	2.22
Carroll	2.29	Nodaway	2.30
Carter	2.23	Oregon	2.21
Cass	2.31	Osage	2.25
Cedar	2.25	Ozark	2.17
Chariton	2.27	Pemiscot	2.26
Christian	2.19	Perry	2.25
Clark	2.22	Pettis	2.26
Clay	2.32	Phelps	2.24
Clinton	2.32	Pike	2.28
Cole	2.24	Platte	2.32
Cooper	2.23	Polk	2.24
Crawford	2.26	Pulaski	2.22
Dade	2.24	Putnam	2.23
Dallas	2.21	Ralls	2.25
Daviess	2.29	Randolph	2.24
De Kalb	2.31	Ray	2.32
Dent	2.24	Reynolds	2.24
Douglas	2.19	Ripley	2.23
Dunklin	2.26	Saint Charles	2.32
Franklin	2.32	Saint Clair	2.27
Gasconade	2.29	Saint Genevieve	2.27
Gentry	2.28	Saint Francis	2.27
Greene	2.22	Saint Louis	2.32
Grundy	2.26	Saline	2.27
Harrison	2.28	Schuyler	2.19
Henry	2.29	Scotland	2.19
Hickory	2.26	Scott	2.28
Holt	2.30	Shannon	2.21
Howard	2.23	Shelby	2.24
Howell	2.17	Stoddard	2.27
Iron	2.26	Stone	2.22
Jackson	2.34	Sullivan	2.24
Jasper	2.25	Taney	2.19
Jefferson	2.29	Texas	2.20
Johnson	2.30	Vernon	2.28
Knox	2.21	Warren	2.31
Laclede	2.21	Washington	2.27
Lafayette	2.32	Wayne	2.25
Lawrence	2.22	Webster	2.20
Lewis	2.23	Worth	2.28
Lincoln	2.30	Wright	2.20

MONTANA

County	Rate per bushel	County	Rate per bushel
Beaverhead	$2.14	Madison	$2.21
Big Horn	2.15	Meagher	2.19
Blaine	2.16	Mineral	2.21
Broadwater	2.20	Missoula	2.21
Carbon	2.16	Musselshell	2.16
Carter	2.16	Park	2.20
Cascade	2.19	Petroleum	2.16
Chouteau	2.19	Phillips	2.15
Custer	2.15	Pondera	2.19
Daniels	2.14	Powder River	2.15
Dawson	2.16	Powell	2.21
Deer Lodge	2.21	Prairie	2.16
Fallon	2.17	Ravalli	2.19
Fergus	2.18	Richland	2.16
Flathead	2.22	Roosevelt	2.15
Gallatin	2.21	Rosebud	2.14
Garfield	2.14	Sanders	2.21
Glacier	2.19	Sheridan	2.15
Golden Valley	2.18	Silver Bow	2.21
Granite	2.21	Stillwater	2.18
Hill	2.17	Sweet Grass	2.19
Jefferson	2.21	Teton	2.19
Judith Basin	2.18	Toole	2.18
Lake	2.21	Treasure	2.15
Lewis and Clark	2.19	Valley	2.14
Liberty	2.18	Wheatland	2.19
Lincoln	2.22	Wibaux	2.17
McCone	2.15	Yellowstone	2.16

NEBRASKA

Adams	$2.21	Jefferson	$2.26
Antelope	2.29	Johnson	2.27
Arthur	2.12	Kearny	2.19
Banner	2.09	Keith	2.12
Blaine	2.19	Keya Paha	2.21
Boone	2.29	Kimball	2.09
Box Butte	2.09	Knox	2.29
Boyd	2.26	Lancaster	2.30
Brown	2.19	Lincoln	2.16
Buffalo	2.22	Logan	2.16
Burt	2.34	Loup	2.19
Butler	2.31	McPherson	2.15
Cass	2.33	Madison	2.29
Cedar	2.30	Merrick	2.26
Chase	2.11	Morrill	2.09
Cherry	2.15	Nance	2.27
Cheyenne	2.09	Nemaha	2.27
Clay	2.22	Nuckolls	2.21
Colfax	2.31	Otoe	2.30
Cuming	2.33	Pawnee	2.29
Custer	2.19	Perkins	2.11
Dakota	2.33	Phelps	2.18
Dawes	2.09	Pierce	2.29
Dawson	2.21	Platte	2.29
Deuel	2.10	Polk	2.28
Dixon	2.30	Red Willow	2.14
Dodge	2.33	Richardson	2.30
Douglas	2.34	Rock	2.22
Dundy	2.11	Saline	2.26
Fillmore	2.24	Sarpy	2.34
Franklin	2.19	Saunders	2.33
Frontier	2.14	Scotts Bluff	2.09
Furnas	2.17	Seward	2.29
Gage	2.27	Sheridan	2.10
Garden	2.10	Sherman	2.22
Garfield	2.23	Sioux	2.07
Gosper	2.17	Stanton	2.31
Grant	2.12	Thayer	2.24
Greeley	2.25	Thomas	2.16
Hall	2.23	Thurston	2.33
Hamilton	2.25	Valley	2.22
Harlan	2.16	Washington	2.34
Hayes	2.13	Wayne	2.30
Hitchcock	2.13	Webster	2.21
Holt	2.26	Wheeler	2.25
Hooker	2.13	York	2.26
Howard	2.23		

NEVADA

County	Rate per bushel	County	Rate per bushel
All counties			$2.20

NEW HAMPSHIRE

All counties	$2.24

NEW JERSEY

All counties	$2.28

NEW MEXICO

All counties	$2.25

NEW YORK

Albany	$2.41	All other counties	$2.26
New York City	2.41		

NORTH CAROLINA

All counties	$2.22

NORTH DAKOTA

Adams	$2.16	McLean	$2.16
Barnes	2.29	Mercer	2.16
Benson	2.22	Morton	2.19
Billings	2.16	Mountrail	2.15
Bottineau	2.16	Nelson	2.26
Bowman	2.16	Oliver	2.17
Burke	2.14	Pembina	2.17
Burleigh	2.20	Pierce	2.19
Cass	2.31	Ramsey	2.24
Cavalier	2.23	Ransom	2.32
Dickey	2.29	Renville	2.16
Divide	2.13	Richland	2.33
Dunn	2.16	Rolette	2.19
Eddy	2.25	Sargent	2.32
Emmons	2.23	Sheridan	2.19
Foster	2.26	Sioux	2.18
Golden Valley	2.15	Slope	2.16
Grand Forks	2.30	Stark	2.16
Grant	2.18	Steele	2.29
Griggs	2.29	Stutsman	2.27
Hettinger	2.16	Towner	2.20
Kidder	2.23	Traill	2.30
La Moure	2.27	Walsh	2.29
Logan	2.25	Ward	2.15
McHenry	2.17	Wells	2.23
McIntosh	2.25	Williams	2.14
McKenzie	2.14		

OHIO

Adams	$2.28	Hardin	$2.31
Allen	2.29	Harrison	2.32
Ashland	2.32	Henry	2.30
Ashtabula	2.34	Highland	2.28
Athens	2.31	Hocking	2.31
Auglaize	2.28	Holmes	2.32
Belmont	2.32	Huron	2.31
Brown	2.28	Jackson	2.28
Butler	2.28	Jefferson	2.32
Carroll	2.32	Knox	2.32
Champaign	2.28	Lake	2.34
Clark	2.28	Lawrence	2.28
Clermont	2.28	Licking	2.32
Clinton	2.28	Logan	2.28
Columbiana	2.33	Lorain	2.32
Coshocton	2.32	Lucas	2.31
Crawford	2.28	Madison	2.28
Cuyahoga	2.32	Mahoning	2.34
Darke	2.28	Marion	2.31
Defiance	2.28	Medina	2.32
Delaware	2.31	Meigs	2.28
Erie	2.31	Mercer	2.28
Fairfield	2.31	Miami	2.28
Fayette	2.28	Monroe	2.32
Franklin	2.31	Montgomery	2.28
Fulton	2.30	Morgan	2.32
Gallia	2.28	Morrow	2.32
Geauga	2.34	Muskingum	2.32
Greene	2.28	Noble	2.32
Guernsey	2.32	Ottawa	2.31
Hamilton	2.28	Paulding	2.28
Hancock	2.31	Perry	2.31

OHIO—Continued

County	Rate per bushel	County	Rate per bushel
Pickaway	$2.31	Summit	$2.32
Pike	2.28	Trumbull	2.34
Portage	2.32	Tuscarawas	2.32
Preble	2.28	Union	2.31
Putnam	2.30	Van Wert	2.28
Richland	2.32	Vinton	2.31
Ross	2.31	Warren	2.28
Sandusky	2.31	Washington	2.32
Scioto	2.28	Wayne	2.32
Seneca	2.31	Williams	2.28
Shelby	2.28	Wood	2.31
Stark	2.32	Wyandot	2.31

OKLAHOMA

Adair	$2.26	Le Flore	$2.28
Alfalfa	2.24	Lincoln	2.28
Atoka	2.28	Logan	2.27
Beaver	2.19	Love	2.28
Beckham	2.27	McClain	2.28
Blaine	2.27	McCurtain	2.28
Bryan	2.28	McIntosh	2.28
Caddo	2.28	Major	2.26
Canadian	2.28	Marshall	2.28
Carter	2.28	Mayes	2.26
Cherokee	2.26	Murray	2.28
Choctaw	2.28	Muskogee	2.28
Cimarron	2.18	Noble	2.26
Cleveland	2.28	Nowata	2.26
Coal	2.28	Okfuskee	2.28
Comanche	2.28	Oklahoma	2.28
Cotton	2.28	Okmulgee	2.28
Craig	2.26	Osage	2.26
Creek	2.27	Ottawa	2.26
Custer	2.27	Pawnee	2.26
Delaware	2.26	Payne	2.27
Dewey	2.26	Pittsburg	2.28
Ellis	2.21	Pontotoc	2.28
Garfield	2.26	Pottawatomie	2.28
Garvin	2.28	Pushmataha	2.28
Grady	2.28	Roger Mills	2.25
Grant	2.24	Rogers	2.26
Greer	2.28	Seminole	2.28
Harmon	2.28	Sequoyah	2.28
Harper	2.19	Stephens	2.28
Haskell	2.26	Texas	2.19
Hughes	2.28	Tillman	2.28
Jackson	2.28	Tulsa	2.26
Jefferson	2.28	Wagoner	2.26
Johnston	2.28	Washington	2.26
Kay	2.25	Washita	2.27
Kingfisher	2.27	Woods	2.24
Kiowa	2.28	Woodward	2.24
Latimer	2.28		

OREGON

Baker	$2.31	Lake	$2.26
Benton	2.37	Lincoln	2.27
Clackamas	2.44	Lane	2.35
Clatsop	2.51	Linn	2.38
Columbia	2.51	Malheur	2.21
Coos	2.17	Marion	2.42
Crook	2.35	Morrow	2.38
Curry	2.16	Multnomah	2.51
Deschutes	2.35	Polk	2.40
Douglas	2.21	Sherman	2.40
Gilliam	2.40	Tillamook	2.44
Grant	2.35	Umatilla	2.37
Harney	2.21	Union	2.33
Hood River	2.46	Wallowa	2.31
Jackson	2.21	Wasco	2.42
Jefferson	2.38	Washington	2.44
Josephine	2.21	Wheeler	2.37
Klamath	2.29	Yamhill	2.42

PENNSYLVANIA

Philadelphia	$2.41	All other counties	$2.26

RHODE ISLAND

All counties	$2.25

SOUTH CAROLINA

Charleston	$2.41	All other counties	$2.22

SOUTH DAKOTA

County	Rate per bushel	County	Rate per bushel
Aurora	$2.29	Jackson	$2.20
Beadle	2.28	Jerauld	2.29
Bennett	2.16	Jones	2.22
Bon Homme	2.32	Kingsbury	2.29
Brookings	2.32	Lake	2.31
Brown	2.28	Lawrence	2.14
Brule	2.26	Lincoln	2.34
Buffalo	2.26	Lyman	2.23
Butte	2.14	McCook	2.32
Campbell	2.21	McPherson	2.25
Charles Mix	2.28	Marshall	2.32
Clark	2.28	Meade	2.15
Clay	2.34	Mellette	2.21
Codington	2.32	Miner	2.30
Corson	2.18	Minnehaha	2.33
Custer	2.08	Moody	2.33
Davison	2.32	Pennington	2.15
Day	2.32	Perkins	2.15
Deuel	2.35	Potter	2.23
Dewey	2.18	Roberts	2.34
Douglas	2.28	Sanborn	2.29
Edmunds	2.25	Shannon	2.15
Fall River	2.08	Spink	2.28
Faulk	2.27	Stanley	2.22
Grant	2.35	Sully	2.23
Gregory	2.25	Todd	2.20
Haakon	2.21	Tripp	2.23
Hamlin	2.31	Turner	2.33
Hand	2.28	Union	2.34
Hanson	2.29	Walworth	2.23
Harding	2.15	Washabaugh	2.20
Hughes	2.24	Yankton	2.30
Hutchinson	2.31	Ziebach	2.16
Hyde	2.26		

TENNESSEE

Shelby	$2.34	All other counties	$2.23

TEXAS

County	Rate per bushel	County	Rate per bushel
Andrews	$2.26	Dallas	$2.37
Archer	2.31	Dawson	2.26
Armstrong	2.26	Deaf Smith	2.26
Atascosa	2.40	Delta	2.36
Bailey	2.26	Denton	2.35
Bandera	2.36	De Witt	2.42
Bastrop	2.40	Dickens	2.26
Baylor	2.30	Dimmit	2.34
Bee	2.48	Donley	2.26
Bell	2.40	Eastland	2.30
Bexar	2.40	Edwards	2.30
Blanco	2.38	Ellis	2.37
Borden	2.26	El Paso	2.26
Bosque	2.37	Erath	2.35
Bowie	2.33	Falls	2.39
Brazos	2.45	Fannin	2.33
Briscoe	2.26	Fisher	2.27
Brown	2.34	Floyd	2.26
Burleson	2.45	Foard	2.26
Burnet	2.38	Frio	2.36
Caldwell	2.40	Gaines	2.26
Calhoun	2.44	Galveston	2.50
Callahan	2.30	Garza	2.26
Carson	2.26	Gillespie	2.34
Castro	2.26	Glasscock	2.26
Chambers	2.50	Goliad	2.44
Cherokee	2.42	Gray	2.26
Childress	2.28	Grayson	2.33
Clay	2.32	Grimes	2.45
Cochran	2.26	Guadalupe	2.40
Coke	2.27	Hale	2.26
Coleman	2.31	Hall	2.26
Collin	2.35	Hamilton	2.37
Collingsworth	2.26	Hansford	2.28
Comal	2.40	Hardeman	2.28
Comanche	2.35	Harris	2.50
Concho	2.32	Hartley	2.23
Cooke	2.33	Haskell	2.28
Coryell	2.39	Hays	2.40
Cottle	2.26	Hemphill	2.23
Crosby	2.26	Hill	2.37
Colberson	2.26	Hockley	2.26
Dallam	2.23	Hood	2.34
		Howard	2.26

TEXAS—Continued

County	Rate per bushel	County	Rate per bushel
Hudspeth	$2.26	Parker	$2.34
Hunt	2.36	Parmer	2.26
Hutchinson	2.23	Pecos	2.26
Irion	2.28	Potter	2.26
Jack	2.32	Presidio	2.26
Jackson	2.40	Randall	2.26
Jeff Davis	2.26	Real	2.32
Jefferson	2.46	Red River	2.33
Johnson	2.36	Reeves	2.26
Jones	2.28	Refugio	2.47
Karnes	2.44	Roberts	2.23
Kaufman	2.38	Robertson	2.42
Kendall	2.38	Rockwall	2.36
Kent	2.26	Runnels	2.30
Kerr	2.34	San Patricio	2.50
Kimble	2.32	San Saba	2.35
King	2.26	Schleicher	2.28
Kinney	2.30	Scurry	2.27
Knox	2.28	Shackelford	2.30
Lamar	2.33	Sherman	2.23
Lamb	2.26	Somervell	2.34
Lampasas	2.39	Stephens	2.31
Limestone	2.39	Sterling	2.27
Lipscomb	2.23	Stonewall	2.26
Live Oak	2.46	Sutton	2.28
Llano	2.36	Swisher	2.26
Loving	2.26	Tarrant	2.37
Lubbock	2.26	Taylor	2.28
Lynn	2.26	Terry	2.26
McCulloch	2.34	Throckmorton	2.30
McLennan	2.39	Tom Green	2.29
Martin	2.26	Travis	2.40
Mason	2.34	Uvalde	2.33
Maverick	2.30	Van Zandt	2.38
Medina	2.36	Victoria	2.44
Menard	2.32	Waller	2.45
Midland	2.26	Ward	2.26
Milam	2.43	Wharton	2.45
Mills	2.35	Wheeler	2.26
Mitchell	2.27	Wichita	2.30
Montague	2.32	Wilbarger	2.30
Moore	2.23	Williamson	2.40
Motley	2.26	Wilson	2.42
Navarro	2.38	Wise	2.33
Nolan	2.37	Yoakum	2.26
Nueces	2.50	Young	2.31
Ochiltree	2.23	Zavala	2.34
Oldham	2.26		
Palo Pinto	2.32		

UTAH

All counties	$2.20

VERMONT

All counties	$2.24

VIRGINIA

Chesapeake (Norfolk)	$2.41	All other counties	$2.24

WASHINGTON

Adams	$2.36	Lewis	$2.46
Asotin	2.33	Lincoln	2.34
Benton	2.38	Mason	2.40
Chelan	2.38	Okanogan	2.34
Clallam	2.30	Pacific	2.43
Clark	2.51	Pend Oreille	2.23
Columbia	2.37	Pierce	2.51
Cowlitz	2.51	San Juan	2.32
Douglas	2.36	Skagit	2.40
Ferry	2.28	Skamania	2.46
Franklin	2.37	Snohomish	2.45
Garfield	2.37	Spokane	2.33
Grant	2.36	Stevens	2.28
Grays Harbor	2.43	Thurston	2.45
Island	2.32	Wahkiakum	2.45
Jefferson	2.32	Walla Walla	2.37
King	2.51	Whatcom	2.37
Kitsap	2.33	Whitman	2.34
Kittitas	2.40	Yakima	2.38
Klickitat	2.42		

WEST VIRGINIA

All counties	$2.27

WISCONSIN

Douglas	$2.44	All other counties	$2.22

WYOMING

All counties	$2.11

Since the 1976 crop of wheat has already been harvested in the wheat producing area and the provisions of this amendment are needed to carry out the loan program more effectively, compliance with the notice of proposed rulemaking would be impracticable and contrary to the public interest. Therefore, this amendment is issued without following such procedure.

(Secs. 4 and 5, 62 Stat. 1070, as amended (15 U.S.C. 714b and c); Secs. 107, 401, 63 Stat. 1051, as amended (7 U.S.C. 1445a, 1421))

Effective date: January 25, 1977.

Signed at Washington, D.C., on Jan. 14, 1977.

KENNETH E. FRICK,
Executive Vice President,
Commodity Credit Corporation.

[FR Doc.77-2172 Filed 1-24-77;8:45 am]

CHAPTER XVIII—FARMERS HOME ADMINISTRATION, DEPARTMENT OF AGRICULTURE

SUBCHAPTER A—GENERAL REGULATIONS

[FmHA Instructions 402.1, 443.1, 444.1, 444.4, 444.5, 444.8, 441.2]

LOANS AND GRANTS

Miscellaneous Amendments

On December 20, 1976, a document was published in the FEDERAL REGISTER (41 FR 55359–55365) proposing to review Part 1803, including a change in title, and numerous miscellaneous amendments to various Parts 1821, 1822, and 1832 of Title 7, Chapter XVIII, in the Code of Federal Regulations, to implement the multiple advance feature of the Loan Disbursement System (LDS) nationwide. This new method of disbursing loan and grant funds applies to the following loan types: Section 502 and 504 Rural Housing loans for construction and repair work, Farm Ownership, Individual Soil and Water, Recreation and Emergency, and enables the Farmers Home Administration to disburse loan and grant funds as they are needed, rather than disbursing them in a lump sum and allowing them to remain idle in a supervised bank account. Also, the multiple advance feature greatly reduces the need for supervised bank accounts as required by Part 1803 published at 35 FR 16399, as amended at 36 FR 17832 and 40 FR 16334. However, supervised bank accounts may still be used when needed.

The notice of proposed rulemaking document published in summary form at 40 FR 49577 dated October 23, 1975, proposing to revise Part 1803, "Supervised Bank Accounts," and a Supplemental Notice published at 40 FR 52854 dated November 13, 1975, indicating that a multiple advance feature of LDS would be field tested before nationwide implementation have been considered in the rule as set forth below. Accordingly, Part 1803, is revised and various sections of Parts 1821, 1822, and 1832, are amended as follows:

PART 1803—LOAN AND GRANT DISBURSEMENT

Sec.
1803.1 General.
1803.2 Policies governing disbursement of funds.
1803.3 Procedures to follow in fund disbursement.
1803.4 Establishing supervised bank accounts.
1803.5 Pledging collateral for deposit of funds in supervised bank account.
1803.6 Authority to establish supervised bank accounts, deposit loan checks and other funds, countersign checks, close accounts, and execute all forms in connection with supervised bank account transactions.
1803.7 Deposits.
1803.8 Withdrawals.
1803.9 County Office records.
1803.10 Reconciliation of accounts.
1803.11 Closing accounts.
1803.12 Request for withdrawals by State Director.

AUTHORITY: 7 U.S.C. 1989, 42 U.S.C. 1480, 42 U.S.C. 2942, 5 U.S.C. 301, sec. 10 Pub. L. 93–357, 88 Stat. 392, delegation of authority by the Secretary of Agriculture, 7 CFR 2.23, delegation of authority by the Assistant Secretary for Rural Development, 7 CFR 2.70, delegation of authority by Director, OEO 29 FR 14764, 33 FR 9850.

§ 1803.1 General.

This Part prescribes the policies and procedures of the Farmers Home Administration (FmHA) to be followed in the disbursement of funds under the Loan Disbursement System (LDS) and in establishing and using supervised bank accounts. The LDS system provides for funds on an as needed basis to substantially reduce interest costs to FmHA borrowers, U.S. Treasury, and FmHA.

(a) *Form FmHA 440–1*, "Request for obligation of Funds," provides for: (1) the obligation only, (2) obligation and check request for the full amount of the loan or grant, and (3) obligation and check request for a partial amount of the loan or grant. The instructions on when and how to use this form are contained in the Forms Manual Insert (FMI) for this form.

(b) *Form FmHA 440–57*, "Acknowledgment of obligated Funds/Check Request," provides for: (1) the initial loan amount check, (2) all subsequent loan checks, (3) making corrections on the data in the loan account as reflected on the form, (4) notifying the Finance Office of the loan closing date and the loan amortization effective date, and (5) providing requested information from the Finance Office. The instructions on when and how to use this form are contained in the Forms Manual Insert for this form.

(c) See applicable regulations for procedures to follow if checks are lost or destroyed.

(d) Borrowers as referred to in this Part include both loan and grant recipients. They are referred to as depositors in the deposit agreements hereinafter described. References herein and in deposit agreements to "other lenders" include lenders and grantors other than FmHA.

(e) Banks referred to in this Part are those in which deposits are insured by the Federal Deposit Insurance Corporation (FDIC).

(f) Supervised bank accounts referred to in this Part are bank accounts established through deposit agreements entered into between either (1) the borrower, the United States of America acting through the FmHA, and the bank on Form FmHA 402–1, "Deposit Agreement," or (2) the borrower, FmHA, other lenders, and the bank on Form FmHA 402–5, "Deposit Agreement (Non-FmHA Funds)."

(g) Form FmHA 402–1 provides for the deposit of funds in a supervised bank account as security for payment of the borrower's indebtedness to FHA and to assure the performance of the borrower's obligations to FHA in connection with a loan and grant.

(h) Form FmHA 402–5 provides for the deposit of funds advanced by other lenders as security for payments of the indebtedness to them and to assure the performance of the borrower's obligation to them in connection with a loan and grant are made in a separate supervised bank account.

(i) "Interest-Bearing Deposit Agreement," available in all FmHA offices provides for the deposit of loan or grant funds that are not required for immediate disbursement in specified interest-bearing deposits, and it is executed in conjunction with Form FmHA 402–1 or Form FmHA 402–5.

§ 1803.2 Policies Governing Disbursement of Funds.

(a) The partial advance feature of the LDS will be utilized whenever possible in accordance with the specific program procedures, except where prohibited by State statutes. The capability to request Treasury Checks on an as needed basis reduces the need for supervised bank accounts. Therefore, supervised bank accounts will be used only in rare instances, e.g.:

(1) When a construction loan is made and the construction is substantially complete, but a small amount is being withheld pending completion of landscaping or some similar item, or a small amount of funds usually not to exceed $2,000, is not disbursed at loan closing. In this case, the amount of funds not disbursed will be requested from the Finance Office using Form FmHA 440–57, or issued by the Finance Office when the predetermined amortization effective date occurs, and placed in a supervised bank account for future disbursement as appropriate.

(2) When a large number of checks will be issued in the construction of a dwelling or other development, as for

example under the "borrower method" of construction or in Operation (OL) loans and Emergency (EM) loans. In such cases, installment checks will continue to be requested from the Finance Office as necessary and deposited in a supervised bank account and disbursed to suppliers, sub-contractors, etc., as necessary. When the construction process requires several checks to be issued at one time the LDS system can still be utilized. Those County Offices authorized to request checks by telephone may request more than one check at a time. The offices not authorized to use the telephone method for requesting checks will use Form FmHA 440–57 to request one check at a time. If more than one check is required, a Form FmHA 440–57 will be prepared for each check.

(3) Association loan and grant funds made on a multiple advance basis need not be deposited in a supervised bank account unless required by State statutes or otherwise determined necessary by the State Director.

(4) Supervised bank accounts will be used only when necessary to assure the correct expenditure of all or a part of loan and grant funds, borrower contributions, and borrower income. Such accounts will be limited in amount and duration to the extent feasible through the prudent disbursement of funds and the prompt termination of the interests of FmHA funds and other lenders when the accounts are no longer required.

(5) Income from the sale of security property or Economic Opportunity (EO) property or the proceeds from insurance on such property will be deposited in a supervised bank account under Form FmHA 402–1 when the County Supervisor determines that it is necessary to do so to assure that the funds will be available for replacement of the property.

(6) When a borrower has clearly demonstrated inability to handle his financial affairs, all or part of his income or other funds may be deposited in the supervised bank account under Form FmHA 402–1 or Form FmHA 402–5 if the County Supervisor determines that such an arrangement is necessary to provide guidance in major financial management practices essential to the borrower's success, subject to the following requirements.

(i) This supervisory technique will be used for a temporary period to help the borrower learn to properly manage his financial affairs. Such a period will not exceed one year unless extended by the District Director; and

(ii) The borrower is agreeable to such an arrangement.

(7) In exceptional cases when the unincorporated EO cooperative or association borrower cannot obtain a position fidelity bond, its income may be deposited as provided for in §§ 1803.5 and 1803.2(f) if another lender is involved.

(b) For all construction loans, and those loans to be advanced in increments, only the actual amount to be disbursed at loan closing will be requested either through the initial submission of Form FmHA 440–1 or through Form FmHA 440–57. Subsequent checks will be ordered as needed by submitting Form FmHA 440–57 to the Finance Office.

(c) Program instructions and FMI's provide information as to the type of note to be utilized and the method of handling advances and the interest accrued thereon. For individual loan programs, interest will accrue from date of the check or date of loan closing whichever occurs later. For association and organization type loans, interest will accrue from the date the check is delivered to the borrower.

(d) For all loan accounts, when the total amount has not been advanced at the amortization effective date, as defined in the forward the remaining ballance to the County Supervisor for appropriate action, unless the County Supervisor notifies the Finance Office of other arrangements.

(e) When a check cannot be negotiated within 20 working days from the date of the check, the County Supervisor will return the check(s) with Form FmHA 440–10, "Cancellation of Loan or Grant Check and/or Obligation," in accordance with applicable regulations.

(f) Funds provided to an FmHA borrower by another lender (through subordination agreements by the FmHA or under other arrangements between the borrower, FmHA, and other lender) that are not used immediately after the loan or grant closing will be deposited in a supervised bank account under Form FmHA 402–5, provided:

(1) The County Supervisor determines such action is necessary to protect FmHA's interest and to assure that the funds will be used for the purposes planned, (2) The other lender is unwilling to control the use of such funds, and (3) The other lender is agreeable to the use of the FHA supervised bank account.

(g) The debt instruments executed at the time of loan closing constitutes an obligation on the part of the Government to disburse all funds at one time or in multiple advances provided the funds are for purposes authorized by the Government at the time of loan closing. This obligatory commitment takes priority over any intervening liens or advances by other creditors regardless of the provisions of the State laws involved.

§ 1803.3 Procedures to follow in fund disbursement.

(a) The County Supervisor will determine during loan approval the amount(s) of loan check(s)—full or partial—and forward such request to the Finance Office by complying with the FMI for Form FmHA 440–1 and Form FmHA 440–57.

(b) *Counties using the telephone to request subsequent advances* will call the designated telephone number provided by the Finance Office and request all subsequent checks by providing the information required on a Form FmHA 440–57.

(c) When check(s) are delivered to the County Office, the County Supervisor will assure himself that the name of the borrower and the amount(s) of check(s) coincide with the request on file. The County Supervisor should assure himself that the check is properly endorsed to insure payment to the intended recipient. An example of such a restrictive endorsement is:

"Pay to the order of (3rd party payee)"—(Contractor, Developer, Sub-Contractor, Building Supply House, etc.) for the purpose of ----------.

(d) *When necessary and only under the circumstances* as listed in paragraph II the County Supervisor will establish or cause to be established a supervised bank account.

§ 1803.4 Establishing supervised bank accounts.

(a) Each borrower will be given an opportunity to choose the bank in which his supervised bank account will be established, provided the bank is a member of the FDIC.

(b) When accounts are established, it should be determined that:

(1) The bank is fully informed concerning the provisions of Form FmHA 402–1 and/or Form FmHA 402–5, and

(2) Agreements are reached with respect to the services to be provided by the bank including the frequency and method of transmittal of bank statements, and

(3) Agreement is reached with the bank regarding the place where the counter-signature will be on checks, particularly those drawn on banks under electronic checking systems.

(c) When possible, County Supervisor will make arrangements with banks which are members of the FDIC under which they will waive service charges in connection with supervised bank accounts established in such banks. However, there is no objection to the payment by the borrower of a reasonable charge for such service.

(d) If the amount of Association, Watershed (WS), Organizational Rural Rental Housing (RRH), Rural Renewal (RN), Resource Conservation and Development (RCD), EO loans to a Cooperative Association, Rural Cooperative Housing (RCH), or Organizational Labor Housing (LH) loan funds and grant funds plus any borrower contributions and funds from other sources to be deposited in the supervised bank account will exceed $40,000 the bank will be required to pledge collateral for the excess over $40,000 before the deposit is made (see § 1803.5 of this Chapter). In addition, a pledge of collateral for any excess over $40,000 in a supervised bank account may be required for other types of loans or grants in amounts in excess of the State Director's approval authorization when determined necessary by the National Office on an individual case basis.

(e) Only one supervised bank account will be established for any borrower regardless of the amount or source of funds, except for RRH loans separate accounts will be established for each project.

(f) When a supervised bank account is established, an original and two copies of Form FmHA 402–1 or Form FmHA 402–5, and the Interest-Bearing Deposit Agreement available in all FmHA offices, when applicable, will be executed by the borrower, the bank, and a County Office employee. The original will be retained in the borrower's case file, one executed copy will be delivered to the bank, and one executed copy to the borrower. An extra copy of the Interest-Bearing Deposit Agreement will be prepared and attached to the certificate passbook, or other evidence of deposit representing the interest-bearing deposit.

(1) If an agreement on Form FmHA 402–1 or Form FmHA 402–5 has previously been executed and Form FmHA 402–6, "Termination of Interest in Supervised Bank Account," has not been executed with respect to it, a new agreement is not required when additional funds are to be deposited unless requested by the bank.

(2) When the note and security instrument are signed by two joint borrowers or by both husband and wife, a joint survivorship supervised bank account will be established from which either can withdraw funds if State laws permit such accounts. In such cases both parties will sign the Deposit Agreement(s).

§ 1803.5 Pledging collateral for deposit of funds in supervised bank account.

(a) Funds in excess of $40,000 for borrowers referred to in § 1803.4(d) deposited in supervised bank accounts, must be secured by pledging acceptable collateral with the Federal Reserve Bank in an amount not less than the excess.

(b) As soon as it is determined that the loan will be approved and the applicant has selected or tentatively selected a bank for the supervised bank account, the County Supervisor will contact the bank to determine:

(1) That the bank selected is a bank that is insured by the FDIC.

(2) Whether the bank is willing to pledge collateral with the Federal Reserve Bank under Treasury Circular No. 176 to the extent necessary to secure the amount of funds being deposited in excess of $40,000.

(c) If the bank is agreeable to pledging collateral, the County Supervisor should complete a form letter available in all FmHA offices in an original and three copies, the original and one copy for the National Office, the second copy for the State Office, and the third copy for the County Office. The form letter should be forwarded to the National Office at least 30 days before the date of loan closing.

(d) The National Office will arrange for the Treasury Department have the bank designated as a depositary unless already designated, and to have collateral pledged.

(e) If, two days before loan closing, the State Director has not received a copy of the Treasury Department's letter to the bank confirming the pledge of collateral, he should contact the National Office, Attention: Financial Support Division.

(f) When the amount of the deposit in the supervised bank account has been reduced to a point where the bank desires part or all of its collateral released, it should write to the Treasury Department, Domestic Banking Staff Bureau of Government Operations, Washington, D.C. 20226, requesting the release and stating the balance in the supervised bank account.

§ 1803.6 Authority to establish supervised bank accounts, deposit loan checks and other funds, countersign checks, close accounts, and execute all forms in connection with supervised bank account transactions.

County Supervisors are authorized to establish supervised bank accounts, deposit loan checks and other funds, countersign checks, close accounts, and execute all forms in connection with supervised bank account transactions and redelegate this authority to authorized collection officers under their supervision who are considered capable of exercising such authority. State Directors will make written demand upon the bank for withdrawals as outlined in § 1803.12 of this Chapter.

§ 1803.7 Deposits.

(a) *Deposits by FmHA Personnel.* (1) Checks made payable solely to the Federal Government, or any agency thereof, and a joint check when the Treasurer of the United States a joint payee, may not be deposited in a supervised bank account.

(2) FmHA personnel will accept funds for deposit in a borrower's supervised bank account ONLY in the form of a check or money order endorsed by the borrower "For Deposit Only," or a check drawn to the order of the bank in which the funds are to be deposited or a loan check drawn on the U.S. Treasury.

(i) A joint check that is payable to the borrower and FmHA will be endorsed by the County Supervisor as provided in Part 1862 of this Chapter.

(ii) Ordinarily, when deposits are to be made from funds which are received as the result of consent or subordination agreements or assignments of income, the check should be drawn to the order of the bank in which the supervised bank account is established or jointly to the order of the borrower and the FmHA. All such checks should be delivered or mailed to the County Office.

(iii) If direct or insured loan funds (other than OL, EM, or EO loan funds) or borrower contributions are to be deposited in a supervised bank account, such funds will be deposited on the date of loan closing afer it has been determined that the loan can be closed. However, if it is impossible to deposit the funds on the day the loan is closed due to reasons such as distance from the bank or banking hours, the funds will be deposited on the first banking day following the date of loan closing.

(iv) Grant funds will be deposited when such funds are delivered.

(v) When funds from any source are deposited by FmHA personnel in a supervised bank account, a deposit slip will be prepared in an original and two copies and distributed as follows: Original to the bank, one copy to the borrower, and one copy for the borrower's case folder. The name of the borrower, the source of funds, and "Subject to FmHA Countersignature", and if applicable, the account number will be entered on each deposit slip.

(vi) A loan or grant check drawn on the U.S. Treasury may be deposited in a Supervised Bank Account without endorsement by the borrower when it will facilitate delivery of the check and is acceptable to the bank. The borrower will be notified immediately of any deposit made and will be furnished a copy if the deposit of this nature is made, the following endorsement will be used:

"For deposit only in the supervised bank account of ----------
(Name of borrower)
in the ----------
(Name of bank and address
---------- pursuant
when necessary for identification)
to Deposit Agreement dated----------."

(vii) Accounts established through the use of an Interest-Bearing Deposit Agreement will be in the name of the depositor and the Government.

(b) *Deposits by Borrowers.* Funds in any form may be deposited in the supervised bank account by the borrower if authorized by the FmHA provided the bank has agreed that when a deposit is made to the account by other than FmHA personnel, the bank will promptly deliver or mail a copy of the deposit slip to the FmHA County Office.

(1) A loan or grant check drawn on the U.S. Treasury may be deposited in a supervised bank account by a borrower, provided the following endorsement is used and is inserted thereon prior to delivery to the borrower for signature:

"For deposit only in my supervised bank account in the ----------
(name of bank and address
---------- pursuant
when necessary for identification)
to Deposit Agreement dated----------."

(2) Funds other than loan or grant funds may be deposited by the borrower in those exceptional instances where an agreement is reached between the County Supervisor and the borrower whereby the borrower will make deposits of income from any source directly into the supervised bank account. In such instances the borrower will be instructed to prepare the deposit slip in the manner described in § 1803.6(a)(v) of this chapter.

§ 1803.8 Withdrawals.

(a) The County Supervisor will not countersign checks on the supervised bank account for the use of funds unless the funds deposited by the borrower from other sources were cash deposits or checks which the County Supervisor

knows to be good or until he knows that the deposited checks have cleared.

(b) Withdrawals of funds deposited under Form FmHA 402–1 or Form FmHA 402–5 are permitted only by order of the borrower and countersignature of authorized FmHA personnel or upon written demand on the bank by the State Director of the FmHA.

(c) Upon withdrawal or maturity of interest-bearing accounts established through the use of an Interest-Bearing Deposit Agreement, such funds will be credited to the supervised bank account established through the use of Form FmHA 402–1 or Form FmHA 402–5.

(d) The issuance of checks on the supervised bank account will be kept to the minimum possible without defeating the purpose of such accounts. When major items of capital goods are being purchased, or a limited number of relatively costly items of operating expenses are being paid, or when debts are being refinanced, the checks will be drawn to the vendors or creditors. If minor capital items are being purchased or numerous items of operating and family living expenses are involved as in connection with a monthly budget, a check may be drawn to the borrower to provide the funds to meet such costs.

(1) A check will be issued payable to the appropriate payee but will never be issued to "cash". The purpose of the expenditure will be clearly shown on Form FmHA 402–2, "Statement of Deposits and Withdrawals," and indicated on the face of the check. When checks are drawn in favor of the borrower to cover items too numerous to identify, the expenditure will be identified on the check if space permits as "miscellaneous."

(2) Normally, OL and EM loan funds will not be withdrawn from the supervised bank account until the lien search has been made and the determination reached that the required security has been obtained. This applies also to withdrawal of funds in secured individual loan cases. However, in those instances when the applicant is unable to pay for the lien search and filing fees from his own funds, a check for this purpose may be drawn on the supervised bank account to meet these loan making requirements.

(3) Ordinarily, a check will be countersigned before it is delivered to the payee. However, in justifiable circumstances such as when excessive travel on the part of the borrower or the County Supervisor would be involved or purchases would be prevented, and the borrower can be relied upon to select goods and services in accordance with the plans, a check may be delivered to the payee by the borrower before being countersigned.

(i) When a check is to be delivered to the payee before being countersigned, the County Supervisor must make it clear to the borrower and to the payee, if possible, that the checks will be countersigned only if the quantity and quality of items purchased are in accordance with approved plans.

(ii) Checks delivered to the payee before countersignature will bear the following legend in addition to the legend for countersignature: "Valid only upon Countersignature of Farmers Home Administration."

(iii) The check must be presented by the payee or his representative to the County Office of the FmHA servicing the account for the required countersignature.

(iv) Such check must be accompanied by a bill of sale, invoice, or receipt signed by the borrower identifying the nature and cost of the goods or services purchased or similar information must be indicated on the check.

(4) For real estate loans or grants, whether the check is delivered to the payee before or after countersignature, the number and date of the check will be inserted on all bills of sale, invoices, receipts, and itemized statements for materials, equipment, and services.

(5) Bills of sale, and so forth, may be returned to the borrower together with the canceled check for the payment of the bill.

(6) Checks to be drawn on a supervised bank account will bear the legend:

Countersigned, not as co-maker or endorser.

(Title)

Farmers Home Administration.

§ 1803.9 County office records.

A record of funds deposited in a supervised bank account will be maintained on Form FHA 402–2 in accordance with instructions for its preparation available at all FmHA Offices. The record of funds provided for operating purposes by another creditor or grantor will be on a separate Form FHA 402–2 so that they can be clearly identified.

§ 1803.10 Reconciliation of accounts.

(a) A bank statement will be obtained periodically in accordance with established banking practices in the area. If requested by the bank, a supply of addressed, franked envelopes will be provided for use in mailing bank statements and canceled checks for supervised bank accounts to the County Office. Bank statements will be reconciled promptly with County Office records. The persons making the reconciliation will initial the record and indicate the date of the action.

(b) All banks statements and canceled checks will be forwarded immediately to the borrower when bank statements and County Office records are in agreement. If a transmittal is used, Form FHA 140–4, "Transmittal of Documents," is prescribed for that purpose.

§ 1803.11 Closing accounts.

When FmHA loan or grant funds or those of another lender have all been properly expended or withdrawn, Form FmHA 402–6 may be used to give the consent of FmHA (and of another lender, if involved) to close the supervised bank account in the following situations:

(a) When FHA loan funds in the supervised bank account of a borrower have been reduced to $100 or less, and a check for the unexpended balance has been issued to the borrower to be used for authorized purposes.

(b) For all loan accounts, except association loans, after completion of authorized loan fund expenditures, and after promptly refunding any remaining unexpended loan funds on the borrower's loan account with FmHA or another lender, as appropriate.

(c) For association loan and grant accounts, when the funds have been expended in accordance with the requirements of Subparts A and I of this chapter the supervised bank account will be closed within 90 days following completion of development unless an extension of time is authorized in writing by the District Supervisor. If the borrower will not agree to closing the account. The County Supervisor will request the State Director to make demand upon the bank in accordance with § 1803.12.

(d) Promptly (1) upon the death of a borrower, except when the loan is being continued with a joint debtor, or (2) when a borrower is in default and it is determined that no further assistance will be given, or (3) when a borrower is no longer classified as "active."

(1) Deceased borrowers.

(i) Ordinarily, upon notice of the death of a borrower, the County Supervisor will request the State Director to make demand upon the bank for the balance of deposit and apply all of the balance after payment on any bank charges to the borrower's FmHA indebtedness. When the State Director approves continuation with a survivor, the Supervised bank account of a deceased borrower may be continued with a remaining joint debtor who is liable for the loan and agrees to use the unexpended funds as planned, provided:

(A) The account is a joint survivorship supervised bank account, or

(B) If not a joint survivorship account, the bank will agree to permit the addition of the surviving joint debtor's name to the existing signature card and Form FmHA 402–1 and/or Form FmHA 402–5 and continue to disburse checks out of the existing account upon FmHA's countersignature and the joint debtor's signature in place of the deceased borrower, or

(C) The bank will permit the State Director to withdraw the balance from the existing supervised bank account with a check jointly payable to the FHA and the surviving joint debtor and deposit the money in a new supervised bank account with the surviving joint debtor, and will disburse checks from this new account upon the signature of such survivor and the countersignature of an authorized FHA official.

(ii) The State Director, before applying the balance remaining in the supervised bank account to the FmHA indebtedness, is authorized upon approval by the Office of the General Counsel (OGC) to release any unobligated balances thereof made by other lenders to the FmHA borrower for specific operating purposes in accordance with subordination agreements or other arrangements between the FmHA, the lender, and the borrower.

(iii) The State Director, upon the recommendation of an authorized representative of the estate of the deceased borrower and the approval of the OGC, is authorized to approve the use of deposited funds for the payment of commitments for goods delivered or services performed in accordance with the deceased borrower's plans approved by FmHA.

(2) *Borrowers in Default.* Whenever it is impossible or impractical to obtain a signed clerk from a borrower whose supervised bank account is to be closed, the County Supervisor will request the State Director to make demand upon the bank for the balance on deposit in the borrower's supervised bank account for application as appropriate:

(i) To the borrower's FHA indebtedness, or

(ii) As refunds of any unobligated advances provided by other lenders which were deposited in the account, or

(iii) For the return of FmHA grant funds to the FmHA Finance Office, or

(iv) For the return of grant funds to other grantors.

(3) *Reclassified Borrowers.* When a borrower's loan has not been paid in full, but the borrower is no longer classified as "active."

(4) *Paid up Borrowers.* A paid up borrower is one who has a balance remains in the supervised bank account and has repaid his entire indebtedness to FmHA and has properly expended all funds advanced by other lenders. In such cases the County Supervisor will (a) notify the borrower in writing that the interests of in the account FmHA and the other lender, if any, in the account have been terminated, and (b) inform the borrower of the balance remaining in the bank account.

§ 1803.12 Request for withdrawals by State Directors.

When the State Director is requested to make written demand upon the bank for the balance on deposit in the supervised bank account, or any part thereof, the request will be accompanied by the following information:

(a) Name of borrower as it appears on Form FHA 402–1 and/or Form FHA 402–5.

(b) Name and location of the bank.

(c) Amount to be withdrawn for refund to another lender of any balance that may remain of funds received by the borrower from such lender as a loan or grant or under a subordination agreement or other arrangement between the FmHA, the other lender, and the borrower.

(d) Amount to be withdrawn, excluding any bank charges, for a refund of FmHA's or other lender's loans or grants.

(e) Other pertinent information including reasons for the withdrawal.

PART 1821—FARM PURCHASE AND DEVELOPMENT LOANS TO INDIVIDUALS

Subpart A—Farm Ownership Loan Policies, Procedures, and Authorizations

1. The introductory paragraph and paragraph (b) of 31821.16 are revised to read as follows:

§ 1821.16 Deferred payments.

Payments may be deferred when income is not available to meet regular installments. Deferment may be up to the end of the second full crop year from the date of the loan providing there is:

* * * * *

(b) A new system of farming or nonfarm enterprise is being established that will require substantial improvements, such as land clearing, draining, leveling, irrigating, basic fertilizing, seeding, other land development, soil improvement, and extensive nonfarm facilities. Deferred payment alternate III on Form FmHA 440–16, "Promissory Note," is authorized for FO loans. Refer to the Form Manual insert for preparing the form.

2. Paragraph (d)(1) and (d)(3) of § 1821.20 are revised to read as follows:

§ 1821.20 Loan approval.

* * * * *

(d) *Distribution of docket forms and loan approval.* * * *

(1) *To the finance office.* Form FmHA 440–1 (copy). After Form FmHA 440–1 is processed in the Finance Office it will return to the County Office a copy of Form FmHA 440–57, "Acknowledgement of Obligated Funds/Check Request," Form FmHA 443–12 (Original), Form FmHA 494–19 (Original when required).

* * * * *

(3) *To the State Office.* If a loan is approved in the State Office, a copy of Form FmHA 440–1 will be retained in the State Office unless exempted by State Supplements and a copy of Form FmHA 443–12 will be retained. If the loan is approved in the County Office, a conformed copy of Form FmHA 440–1 will be sent to the State Office for retention unless exempted by State Supplements and a copy of Form FmHA 443–12 will be sent to the State Office for retention; also, a copy of Form FmHA 492–19 when required by FmHA regulations.

* * * * *

3. Section 1821.21 is revised to read as follows:

§ 1821.21 Requesting title service and accepting option:

When the loan is approved, the County Supervisor will see that title service is requested in accordance with Part 1807 of this Chapter. If this has not already been done, and where land is being acquired also see that Form FmHA 440–35, "Acceptance of Option," is completed, signed, and mailed to the seller. However, in connection with the acceptance of an option on a subdivision, Form FmHA 443–10, "Acceptance of Option by Assignee (Land to be Subdivided)," and Form FmHA 443–11, "Acceptance of Option to Buyer (Land to be Subdivided)," will be used, as appropriate. When the acceptance of option letter has been mailed to the seller, the borrower will arrange with the seller, in consultation with the County Supervisor, to occupy and operate the farm as soon as practicable. Agreements will be in writing and cover such subjects as disposition of growing crops, rentals, payment of maintenance cost, and other pertinent points. The following forms will be used for this purpose, as appropriate:

Form FmHA 443–5, "Short-Term Lease of Optioned Land," Form FmHA 443–6, "Short-Term Lease (Between Purchaser and Seller)," Form FmHA 443–8, "Agreement (Between Seller, Purchaser, and Tenant)."

4. Section 1821.22 (a) and (b)(2) are revised and read as follows:

§ 1821.22 Actions subsequent to loan approval.

(a) *Requesting check.* If real estate will not be taken as security or if real estate is taken as security and satisfactory title evidence is obtained prior to loan approval or when the County Supervisor is reasonably certain that satisfactory title evidence can be obtained so the loan can be closed within 15 days from the date of the check request, loan funds may be requested at the time of loan approval by entering the amount needed in block 21 of Form FmHA 440–1. If funds are not requested when the loan is approved, advances in the amount needed will be requested by using Form FmHA 440–57 in accordance with the FMI. The original 440–57 will be retained in the County Office and a copy sent to the Finance Office. The initial loan advance will be requested when loan approval conditions can be met, satisfactory title to real estate security can be provided, and a date has been set for loan closing.

(1) When all loan funds can be disbursed at or within 15 days after loan closing or if the amount of funds that cannot be disbursed does not exceed $2,000, the total amount of the loan will be requested in a single advance.

(2) When loan funds cannot be disbursed as outlined in subparagraph 1 above, the amount needed to meet the needs of the borrower will be requested by submitting a copy of Form FmHA 440–57 to the Finance Office. The amount of the advances should be as near as possible to meet the needs of borrowers so that the amount in the supervised bank account will be kept at a minimum. The Finance Office will continue to supply Form FmHA 440–57 until the entire loan has been disbursed. The County Supervisor should inform borrowers of their responsibility of notifying the County Office of amounts needed on a timely basis.

(b) *Handling loan checks.*

* * * * *

(2) If a loan check is received and the loan cannot be closed within 20 working days from the date of the check, the County Supervisor will take appropriate

action in accordance with FmHA regulations.

* * * * *

PART 1822—RURAL HOUSING LOANS AND GRANTS

Subpart A—Section 502 Rural Housing Loan Policies, Procedures, and Authorizations

1. Section 1822.7(n) is revised to read as follows:

§ 1822.7 Special requirements.

* * * * *

(n) *Mutual self-help housing loans.* Applicants who are unable to build modest dwellings by customary methods, because of limited income and repayment ability, may build their homes by participating in a mutual self-help housing project. The County Supervisor will not approve RH loans or proceed in the development of a self-help project without prior approval of the State Director. He will, therefore, submit complete information about each family in the proposed self-help project to the State Office for review and request authority to proceed. Information submitted will include items such as the family's size, income, age of family members who will work on the dwelling, the size and cost of the planned dwelling, estimated savings, and the amount of the needed loan. Exhibit A, "Mutual Self-Help Housing Guidelines," will be used as a guide for developing self-help projects and counseling with participating families. The County Supervisor, in counseling with families participating in self-help housing projects, will determine the anticipated time required for construction and the extent to which the borrower will be able to meet loan payments during this period. If the applicants will not have enough income to meet payments of interest accruing at the note rate of interest, or regular amortized loan payments during the construction period, interest and principal payments will be deferred and interest accruing during the construction period will be added to the principal and scheduled for repayment in regular amortized installments over the remaining term of the loan.

* * * * *

2. Section 1822.13, paragraphs (c)(3)(i)(A) and (c)(3)(ii) are revised to read as follows:

§ 1822.13 Loan approval.

* * * * *

(c) * * *
(3) * * *
(i) * * *
(A) *Form FmHA 440–1.* (copy)

* * * * *

(ii) *To the State Office.* If the loan is approved by the County Supervisor, an unsigned copy of Form FmHA 440-1 will be sent to the State Office unless exempted by State instructions, and a copy of Form FmHA 444–2 will be sent to the State Office. If the loan is approved in the State Office, an unsigned copy of Form FmHA 440–1 and a copy of Form FmHA 444–2 will be retained in the State Office.

* * * * *

3. Section 1822.14, paragraph (a) introductory text is revised; paragraphs (a)(1) and (a)(2) are added; and paragraph (b)(2) is revised to read as follows:

§ 1822.14 Actions subsequent to loan approval.

(a) *Requesting check.* When the loan has been approved, approval conditions can be met, any necessary curative actions have been taken to provide a satisfactory title to any real estate security, and a tentative date has been set for loan closing, the County Supervisor or his delegate will complete the original and copy of Form FmHA 440–57 in accordance with the Forms Manual Insert (FMI) and send the copy to the Finance Office. If real estate will not be taken as security or if real estate is taken as security and satisfactory title evidence is obtained prior to loan approval, or when the County Supervisor is reasonably certain that satisfactory title evidence can be obtained so the loan can be closed within 15 days from the date of the check request, the loan check may be requested at the time of loan approval by entering the amount of the check requested in the appropriate block of Form FmHA 440–1.

(1) If all the loan funds will be disbursed at or within 15 days after loan closing or in cases where the amount of funds that cannot be disbursed at loan closing does not exceed $4,000, the total amount of the loan will be requested in a single advance.

(2) If loan funds cannot be disbursed in accordance with time frame in paragraph (a)(1) of this section, the County Supervisor will enter in the appropriate block of Form FmHA 440–1 the amount of the loans funds to be disbursed at loan closing. Additional loan funds will be requested when and in amounts needed by submitting a completed copy of Form FmHA 440–57 to the Finance Office, or by telephone request if the additional funds cannot be received by the day needed using mail service. The County Supervisor should work with developers and others to be sure that funds will be available when needed and, at the same time, to keep the future advances to a reasonable minimum. Any loan funds not requested by the date reported to the Finance Office as the "amortization effective date" for the loan will be disbursed by the Finance Office to the County Office by check dated on the amortization effective date. The check will be deposited in the borrower's supervised bank account if it cannot be endorsed directly to a payee within 20 working days from the date of the check.

* * * * *

(b) *Handling loan checks.*

* * * * *

(2) If a loan Treasury check is received and the loan cannot be closed within 20 working days from the date of the check, the County Supervisor will take appropriate action in accordance with FmHA regulations.

* * * * *

In § 1822.15, paragraphs (b)(2) and (b)(3) are revised and completely restructured to read as follows:

§ 1822.15 Loan closing actions.

* * * * *

(b) * * *

(2) *Promissory note.* Form FmHA 440–16, "Promissory Note," will be used for loans made under this subpart. The note will be prepared and signed in accordance with Part 1807 of this chapter, concerning cosigners, § 1822.10(b)(5), and the FMI.

(i) The payment alternatives of the note will be completed in accordance with the FMI and the following:

(A) Payments of principal and interest will be deferred during the period the dwelling is not expected to be suitable for occupancy as a residence because of construction or repairs to be made. In such cases, accrued interest is added to principal and repaid in regular amortized installments (payment alternative II) after the deferment period.

(B) Payments of principal but not interest may be deferred on subsequent loans when authorized by the Administrator in accordance with Section 1822.17. Payments of principal and interest and principal only may be deferred on RHD loans in accordance with Section 1822.16.

(C) Payments will not be deferred if the dwelling is suitable to be occupied as the borrower's residence when the loan is closed.

(ii) The payment provision of the note will be completed in accordance with the FMI and the following:

(A) The monthly payment provision will be used for all borrowers who regularly receive monthly income and who can repay the loan in 12 equal monthly payments.

(B) The annual payment provision will be used only for borrowers who do not regularly receive monthly income. If installments are not to be deferred, the following provisions apply.

(*1*) The amount of the first installment will be determined by the County Supervisor after considering the immediate debt-paying ability of the borrower. The amount of the first installment may be less, but not more, than a regular annual installment.

(*2*) The amount of the first installment may not be less than the amount equal to interest on the loan from the date of loan closing to January 1 of the calendar year following the calendar year in which the loan is closed.

(*3*) Form FmHA 440–9 should be used to supplement this payment provision to facilitate servicing of loans for borrowers who pay more than one time a year.

(3) *Collection of first installment.* If the annual payment provision of the note is used and payments are not deferred, the first installment of a loan closed during December will be collected at the time of loan closing.

5. Section 1822.16(f) is revised to read as follows:

§ 1822.16 Rural Housing disaster loans.

* * * * *

(f) *Deferred payments.* The initial payments of principal and interest or principal only may be deferred so as not to become due until as late as the third January 1 after the date of loan closing subject to all of the following conditions.

* * * * *

Subpart C—Farm Labor Housing Loan Policies, Procedures and Authorizations

6. In § 1822.74, paragraphs (a), (b)(1) and (b)(3) are revised and read as follows:

§ 1822.74 Action subsequent to loan approval.

(a) *Requesting the check.* * * *

(1) In those cases where relatively large amounts of funds are to be expended for purchase of real estate or for other reasons, separate checks for such purposes may be ordered and endorsed by the borrower to the seller or other appropriate party. This will preclude the necessity for depositing such loan funds in the supervised bank account and reduce the amount of required collateral.

(2) Multiple advances may be used for all loans in accordance with Part 1803 of this chapter. Except as indicated in paragraph (a)(1) of this section, advances will be made only as needed to cover disbursements required by the borrower for a 30-day period. Normally, the advances should not exceed 24 in number or extend longer than 2 years beyond loan closing. Generally contracts provide that a percentage will be retained to assure that the construction will be completed in accordance with the contract documents. The County Supervisor will be sure that these funds are withheld and included in the last advance.

(i) For multiple advances to public bodies whose loans will be secured by bonds, instructions will be provided by the National Office in their letter of authorization.

(ii) For all loans other than public bodies:

(A) Advances will be requested in sufficient amounts to insure that ample funds will be on hand to pay costs of construction, land purchase, legal, engineering or architectural costs, interest, and other expenses, as needed. The borrower will prepare Form FmHA 440–11, "Estimate of Funds Needed For 30-day period." This form will be approved by the County Supervisor. After the County Supervisor determines that the estimate prepared by the borrower is adequate, he will request the advance by indicating the amount of the immediate need on Form FmHA 440–57 in accordance with the FMI and forward it to the Finance Office, St. Louis, Missouri. As an example, for a loan of $200,000 the advances may be made as follows: Assuming that the loan will be closed on July 1, the borrower will complete Form FmHA 440–11 in sufficient time so that the funds will be available on the day of loan closing. The estimates should be broken down for the first advance in a manner similar to the following:

Construction	$43,000
Land acquisition	10,000
Engineering or architectural	14,000
Legal	3,000
Total	70,000

An advance in the amount of $70,000 would then be available on July 1, the date of loan closing. The second advance will also be based on the borrower's estimate prepared on Form FmHA 440–11, and will be prepared in sufficient time so that the estimate amount of funds will be available on August 1. This estimate of funds might be broken down as follows:

Construction	$19,000
Engineering phase	400
Total	19,400

A copy of Form FmHA 440–57 specifying the amount then will be forwarded to the Finance Office. The same routine will be followed for each advance until the project is completed. Loan funds for the payment of interest due on each January 1 will be requested in sufficient time to be available in the December advance.

(B) Any deviation from the multiple advance procedure must have the prior approval of the National Office.

(b) *Handling the loan check.* (1) Any loan check to be deposited in the supervised bank account will be deposited in accordance with Part 1803 of this chapter.

* * * * *

(3) If a loan check other than a check from a private lender is received and the loan cannot be closed within a reasonable amount of time, no more than 20 working days from the date of the check, the County Supervisor will take appropriate action in accordance with FmHA regulations.

* * * * *

7. In § 1822.75, paragraphs (c)(1), (2), (3), (4), and (5) are revised to read as follows:

§ 1822.75 Loan closing.

* * * * *

(c) *Promissory note and insurance endorsement.*

(1) The total amount to be shown in the note will be the amount of the loan appearing on Form FmHA 440–1.

(2) Payments on LH loans will be scheduled in accordance with the FMI for Form FmHA 440–16, "Promissory Note." Any funds included in the loan for the payment of interest will be collected and applied as a regular payment at the time of loan closing. Scheduled principal installments during the first or first and second years after loan closing may be deferred. Interest payments may not be deferred.

(3) Form FmHA 440–16, "Promissory Note," will be used. Preparation will be in accordance with the FMI.

(4) For a loan to a public body whose obligations bear interest exempt from Federal income taxation, the forms of obligation and insurance endorsement will be determined in accordance with Part 1811 of this chapter.

(5) The note will be signed in accordance with Part 1807 of this chapter.

* * * * *

Subpart D—Rural Rental Housing Policies, Procedures, and Authorizations

8. In § 1822.88, paragraph (b) is revised to read as follows:

§ 1822.88 Special conditions.

* * * * *

(b) *Deferred principal payments.* When necessary and advisable, smaller than regular payments of principal or no payments of principal may be provided for the first and second year after loan closing. However, accrued interest must be paid according to the regular installment schedule.

* * * * *

9. In § 1822.93, paragraphs (b)(2) and (b)(3) are revised to read as follows:

§ 1822.93 Loan approval.

* * * * *

(b) *Loan approval action.*

* * * * *

(2) *Approval or disapproval of a loan.*

(i) Approval. When a loan is approved, the approval official will:

(A) Sign the original and one copy of Form FmHA 440–1 and insert his title in the space provided. Indicate on all copies any conditions that must be met at or before the time of the loan is closed. Such conditions could include the amount of surety fidelity bond coverage, other insurance, the title evidence, and any other special requirements. If more space is needed, the form will be supplemented by a memorandum.

(B) Prepare a completed Form FmHA 071–1 and handle in accordance with FmHA Instruction 2015–C.

(C) Forward an executed Form FmHA 440–1 to the applicant in accordance with the Forms Manual Insert (FMI) and FmHA Instruction 2015–C.

(ii) Disapproval. If a loan is disapproved after the docket has been developed, the reason for such action will be shown on the original Form FmHA 440–1. Form FmHA 440–1 will be initialed and dated. The County Supervisor will notify the applicant of the disapproval of the loan and the reasons therefor. The disapproved docket will then be handled in accordance with appropriate FmHA regulations.

* * * * *

(3) *Distribution of items.* After the loan is approved, the contents of the docket will be distributed as follows:

(i) To the Finance Office. Form FmHA 444–5 (original), and Form FmHA 440–1, (copy). After being processed, an original and copy of Form FmHA 440–57, "Acknowledgement of Obligated Funds/Check Request," will be processed and distributed by the Finance Office.

(iii) To the State Office. One copy of Form FmHA 440–1 and one copy of Form FmHA 444–5.

(iii) To the County Office. One copy of Form FmHA 440–1 and the remainder of the loan docket.

(iv) To the OGC. For a loan to an organization, or for a loan to an individual in special cases, the approved loan docket, including any title evidence, will be sent to the OGC for preparation of closing instructions and any special legal documents required for closing. A certified copy of a required loan resolution or the original executed, witnessed loan agreement must be supplied by the applicant in time to be included in the loan docket. No docket will be considered which fails to include such a required resolution or agreement. The OGC will route the docket, including closing instructions and any such legal documents, to the County Office through the State Office for review and for inclusion of any further instructions needed in closing the loan.

(v) To the National Office a copy of Form FmHA 444–5.

10. In § 1822.95, paragraph (c) (1), (2), (3), (4), and (5) are revised to read as follows:

§ 1822.95 Loan closing.

* * * * *

(c) *Promissory note.*

(1) The total amount to be shown in the note will be shown on Form FmHA 440–1. The note will be dated the date of loan closing except as authorized in § 1807.2(f)(8) of this chapter.

(2) Payments on RRH loans will be scheduled on the note in accordance with the Forms Manual Insert (FMI). Monthly payments will be implemented. As provided in § 1822.88(b) the monthly principal installments during the first or the first and second years after loan closing may be deferred. Interest payments may not be deferred.

(3) Form FmHA 440–16, "Promissory Note," will be used. Instructions for preparation for monthly installments in the FMI will be followed.

(4) The note(s) will be signed in accordance with the FMI and Part 1807 of this chapter.

(5) Any funds included in the loan for the payment of interest will be collected and applied as a regular payment at the time of loan closing.

* * * * *

Subpart G—Rural Housing Site Loan Policies, Procedures, and Authorizations

11. § 1822.272(a)(1) is revised to read as follows:

§ 1822.272 Approval or disapproval of a loan.

(a) * * *

(1) Sign the original and one copy of completed Form FmHA 440–1 and insert his title in the space provided.

* * * * *

12. § 1822.274, paragraph (c) is revised and restructured to read as follows:

§ 1822.274 Loan closing.

* * * * *

(c) *Promissory note.* Form FmHA 440–16, "Promissory Note," will be used. Instructions for preparation will be in accordance with the FMI and the following:

(1) The total amount to be shown in the note will be the amount of the loan shown on Form FmHA 440–1. The note will be dated the date of the loan closing. Items (1) through (6b) will be completed in accordance with the FMI for the note. Immediately after the item (6b) following the words "Per Annum" delete the period and type, "Shall be paid at the end of two years from the date of this note," except that prepayments may be made as provided herein below.

(2) The note will be signed in accordance with Part 1807 of this chapter and the FMI for the Form FmHA 440–16.

(3) The note will be signed in accordance with Part 1807 of this chapter and the FMI Form FmHA 440–16, FMI.

(4) Payments shall not be deferred.

* * * * *

13. In § 1822.278, paragraphs (e) and (f) are revised to read as follows:

§ 1822.278 Special requirements for RHS section 523 loans (loans to Organizations providing sites for self-help housing).

* * * * *

(e) *Multiple advances.* These loans may be disbursed over a period not to exceed 18 months from the date of the first advance.

(f) *Note forms.* Form FmHA 440–16, "Promissory Note," will be used. See § 1822.274(c).

* * * * *

PART 1832—EMERGENCY LOANS

Subpart A—Emergency Loan Policies, Procedures, and Authorizations

1. Section 1832.29 is added and reads as follows:

§ 1832.29 Loan fund disbursement.

EM loan funds will be disbursed as provided in Part 1803 of this chapter.

(a) Loan funds may be requested as follows:

(1) An immediate advance of all loan funds may be requested by using Form FmHA 440–1, "Request for obligation of funds," at the time the loan is obligated or by using Form FmHA 440–57, "Acknowledgment of obligated funds/check request," at a later date.

(2) An initial partial advance, may be requested by using Forms FmHA 440–1 or FmHA 440–57. One or more subsequent advances may be requested by using Form FmHA 440–57.

(b) When an actual loss loan is made to an applicant for expenditures he has already made, the loan check may be turned over directly to him after such prior expenditures have been reasonably verified by the borrower's county case file.

2. In § 1832.30, paragraphs (a) through (e) are revised to read as follows:

§ 1832.30 Loan docket forms.

(a) *Promissory Note(s).* One or more notes will be prepared for the full amount of the loan, rounded to the nearest $10. Each scheduled installment will include interest in addition to principal unless deferment of principal is authorized in accordance with § 1832.21(c). The first installment may not be less than the amount equal to interest on the loan from the estimated date or actual date of closing to installment due date.

(1) Form FmHA 441–1, "Promissory Note," will be used when a loan is scheduled for payment in unequal annual installments, or within one full crop year after loan closing.

(2) Form FmHA 440–16, "Promissory Note," will be used when a loan is scheduled for payment in equal annual installments of three years or more. Also, this note may be used when the first two installments are unequal and the balance consists of equal installments.

(3) When the applicant is partnership, the promissory note(s) will be executed so as to evidence the liability of the partnership as well as each partner as an individual. This will be accomplished by typing the name of the partnership above the space provided for signatures and having the note executed by each member of the partnership both as a partner and as an individual. To evidence the liability of the partnership, the words "As Partners" will be typed immediately beneath the name of the partnership and each partner will sign thereunder. To evidence partners' liability as individuals, the words "As Individuals" will be typed at the top of the blank space to the left of the lines for signatures, and each partner will sign thereunder, along with his spouse if required by State Supplements or loan closing instructions.

(4) When the applicant is a corporation, the promissory note(s) will be executed by the corporation acting through its appropriate officials and, in order to evidence their personal liability for the debt, by the principal stockholders as individuals. To evidence the principal stockholders' liability as individuals each principal stockholder will sign the note(s) except in unusual circumstances including legal disability, absence from the country, or legal justification. Their spouses will also sign the note if required by State Instructions or loan closing instructions.

(b) *Form FmHA 440–1, "Request for Obligation of Funds."* This form is used to obligate loan funds to provide certain statistical information about the loan and applicant and to request all or part of the loan funds obligated.

(1) EM loans approved for borrowers presently indebted for an EM loan, but having NEW qualifying losses from a subsequent major or natural disaster for which a MDDN, PEDN, SDDN, or SDAN has been assigned, will show the new appropriate disaster designation number. This number will be used for all subsequent EM loans approved unless the borrower has new qualifying losses from a different disaster for which another disaster designation number has been assigned.

(2) The Finance Office will not process Form FmHA 440–1 for EM loans that are not coded with a disaster designation number.

(c) *Form FmHA 441–5, "Subordination Agreement."* When a subordination agreement is required on crops, livestock, farm equipment, and other chattel property, including items which have become personal property through execution of a severance agreement, Form FmHA 441–5, or other form approved by the State Director with the advice of the OGC, where Form FmHA 441–5 is not legally sufficient, will be used. Subordinations will be for a specified amount of money rather than for a specific period of time.

(d) *Form FmHA 440–6, "Severance Agreement."* This form will be used when required by State Instructions.

(e) *Form FmHA 440–26, "Consent and Subordination Agreement."* Unless otherwise provided by a State Supplement this form, rather than a severance agreement, will be used in Uniform Commercial Code (UCC) States when a security interest is taken in property after it has become a fixture.

* * * * *

3. In § 1832.31, the listing for Form FmHA 440–1 should read as follows:

* * * * *

440–1 Request for obligation of funds, 5, 2-O&C[1] 1–0, 1–C, State director.

* * * * *

4. Section 1832.36 (c) is revised to read as follows:

§ 1832.36 Loan closing.

* * * * *

(c) *Supervised bank accounts.* EM loan funds will only be deposited in a supervised bank account as provided in Part 1803 of this chapter.

(7 U.S.C. 1989, 42 U.S.C. 1480, 42 U.S.C. 2942, 5 U.S.C. 301, Section 10 P.L. 93–357, 88 Stat. 392, delegation of authority by the Secretary of Agriculture, 7 CFR 2.23, delegation of authority by the Assistant Secretary for Rural Development, 7 CFR 2.70, delegations of authority by Director, OEO 29 FR 14764, 33 FR 9850.)

Effective date: These regulations will become effective on January 25, 1977.

Dated: January 19, 1977.

FRANK B. ELLIOTT,
Administrator,
Farmers Home Administration.

[FR Doc.77–2303 Filed 1–24–77;8:45 am]

SUBCHAPTER B—LOANS AND GRANTS PRIMARILY FOR REAL ESTATE PURPOSES

[FmHA Instruction 442.12]

PART 1823—ASSOCIATION LOANS AND GRANTS—COMMUNITY FACILITIES, DEVELOPMENT, CONSERVATION, UTILIZATION

Grants for Facilitating Development of Private Business Enterprises and Community Water and Waste Disposal Facilities

DISBURSEMENT OF GRANT FUNDS—CORRECTION

In FR Doc. 76–38119 appearing at page 56626 in the FEDERAL REGISTER of December 29, 1976, the introductory text of § 1823.460 is corrected in the last sentence by adding a comma and the words ", signed statements from other lenders and the applicant showing that such financing is not" immediately following the word "available" and immediately before the word "at."

As corrected, the entire introductory text for § 1823.460 follows:

§ 1823.460 Grant closing and delivery of funds.

Closing is the process by which FmHA determines that applicable administrative actions and required work of the grantee have been completed and delivers the grant funds. If all or a portion of the grant is for construction, the grant will not be closed and funds will not be delivered before construction is completed; however, in exceptional cases grants may be closed at an earlier date with prior concurrence of the National Office. In such exceptional cases, State Directors will forward their recommendations for fund disbursal and the following information to the National Office for concurrence before grant closing or commencement of construction, whichever comes first: The applicant's certification that it has no other resources to pay for completion of the construction; and if interim financing cannot be used due to legal reasons, an opinion from the State Attorney General to that effect, provided by the applicant; or when interim financing is not otherwise available, signed statements from other lenders and the applicant showing that such financing is not available at reasonable rates and terms.

* * * * *

(7 U.S.C. 1989; delegation of authority by the Sec. of Agri., 7 CFR 2.23; delegation of authority by the Asst. Sec. for Rural Development, 7 CFR 2.70.)

Effective date: This correction shall become effective January 25, 1977.

Dated: January 18, 1977.

FRANK B. ELLIOTT,
Administrator,
Farmers Home Administration.

[FR Doc.77–2370 Filed 1–24–77;8:45 am]

Title 10—Energy

CHAPTER II—FEDERAL ENERGY ADMINISTRATION

[FEA Ruling 1977–2]

DOMESTIC CRUDE OIL

Further Clarifications to Mandatory Petroleum Price Regulations

I. BACKGROUND

On August 20, 1976, the Federal Energy Administration ("FEA") issued a Notice entitled "Clarifications to Mandatory Petroleum Price Regulations Applicable to Domestic Crude Oil" (41 FR 36172, August 26, 1976). In the August 20 Notice FEA adopted certain regulatory amendments designed to improve the incentives offered under the two tier pricing system. FEA also set forth its conclusions with respect to a variety of technical issues that had arisen in connection with FEA's implementation of the crude oil pricing policy of the Energy Policy and Conservation Act ("EPCA," Pub. L. 94–163). The conclusions with respect to these issues were subsequently contained in "FEA Ruling 1977–1" (42 FR 3628, January 19, 1977). Among the specific issues addressed in the August 20 Notice were the definitions of "property" and "posted price"; whether a well is properly classified as an oil well for purposes of the stripper well property rule; and the partial rescission and modification of "FEA Ruling 1975–15" (including the issue whether a property's producing patterns have been "significantly altered" for purposes of treating a unitized property as a single property under the price regulations.

Although the August 20 Notice addressed many of the issues raised in connection with the price regulations applicable to first sales of domestic crude oil, it was recognized and expressly noted in the August 20 Notice itself, that there might remain some issues that justify further consideration. Accordingly, further comments were requested addressed to the way in which the issues considered in the August 20 Notice were resolved, or to any other issue not specifically considered in that Notice that might need clarification and resolution.

FEA has received written comments specifically in response to the request in the August 20 Notice—and several other comments of a less formal nature—which indicate the need for additional technical clarification of some of the issues addressed in the August 20 Notice. These comments also illustrate the need to clarify a number of issues not otherwise previously resolved. Accordingly, the purpose of this Ruling is to resolve as many as possible of the remaining issues that have arisen with respect to the price regulations applicable to first sales of domestic crude oil. Some of these issues relate to past applications of the definition of property, while others of these issues relate to the reservoir definition of property adopted by FEA effective September 1, 1976. Conclusions stated in this Ruling with respect to past applications of the definition of property will be applied from August 1973 forward. Clarifications stated in this Ruling with respect to the reservoir definition of property which was adopted effective September 1, 1976, will be applied from September 1, 1976 forward.

II. PAST APPLICATIONS OF THE DEFINITION OF "PROPERTY"

As indicated above, comments have been received from interested parties raising several issues with respect to certain conclusions contained in the August 20 Notice (and later restated in "FEA Ruling 1977–1"), which justify further clarification at this time.

A. CONTINUATION AFTER SEPTEMBER 1, 1976 OF PAST APPLICATIONS OF THE DEFINITION OF "PROPERTY"

In "Ruling 1977–1," FEA set forth its conclusions with respect to certain past applications of the definition of property in which departures from a literal application of the "premises described by

an oil and gas lease" concept were permissible. As proper departures from a literal interpretation, FEA discussed generally (1) situations in which a single oil and gas instrument might convey more than one right to produce, which might properly have been treated as more than one "property"; (2) situations in which premises subject to a single right to produce could properly have been segregated into two or more properties for purposes of the price regulations; and (3) situations in which two or more single rights to produce (or parts of two or more single rights to produce) could properly have been aggregated into a single property for purposes of the price regulations. Specific examples of each of these situations were given in "Ruling 1977–1".

Several producers have requested FEA to clarify whether determinations of property status, made in accordance with the clarifications set forth in "Ruling 1977–1," may continue to be used after September 1, 1976.

FEA will permit producers to continue such determinations after September 1, 1976, insofar as they were made in accordance with the clarifications contained in "Ruling 1977–1." Those clarifications are applicable to the definition of property as it was adopted by the Cost of Living Council ("CLC") in August 1973, and which remained substantially unchanged until its amendment by FEA effective September 1, 1976. Moreover, the September 1 amendment did not alter the basic property definition, which continues to provide in part:

> "Property" means the right to produce domestic crude oil, which arises from a lease or from a fee interest * * *.

The substantive effect of the September 1 amendment was to provide an option, whereby producers:

> May treat as a separate property each separate and distinct producing reservoir subject to the same right to produce crude oil, provided that such reservoir is recognized by the appropriate governmental regulatory authority as a producing formation that is separate and distinct from, and not in communication with, any other producing formation.

Accordingly, the September 1 amendment merely provided an option whereby producers might, in certain circumstances on or after September 1, 1976, make property determinations from that time forward on a reservoir-by-reservoir basis. Inasmuch as FEA made no substantive change in the basic property definition as it had existed since promulgation by CLC in August 1973, the clarifications contained in "Ruling 1977–1" continue to be valid with respect to construing "the right to produce crude oil." Therefore, FEA will, after September 1, 1976, continue to recognize property determinations which comport with those clarifications.

Where a producer's historical and consistent property determinations comport with the clarifications contained in "Ruling 1977–1", such determinations, of course, are required to be continued by the producer after September 1, 1976, and may be altered only to the extent that for each such property, the producer may, but is not required to, treat each separate and distinct producing reservoir as a separate property after September 1, 1976, if such reservoir meets the separate reservoir criteria as set forth in the September 1 amendment and further clarified in Part III of this Ruling.

Inasmuch as the clarifications to past applications of property have been recognized by FEA as appropriate departures from a literal application of the "premises described by an oil and gas lease" concept only to the extent that such determinations were employed by a producer historically and consistently since the inception of price regulations when such determinations were first required to be made, such departures are generally not permitted to be adopted for the first time subsequent to FEA's issuance of the August 20 Notice, where the clarifications were first announced. However, FEA recognizes that some producers departed from historical and consistent "property" determinations that would have comported with the clarifications set forth in the August 20 Notice in order to make property determinations based upon a more literal application of the "premises described by an oil and gas lease" concept. Where this was done at the outset under CLC regulations, or where it was done later in response to a CLC, FEO or FEA compliance action, FEA will permit such determinations to be readopted effective September 1, 1976.

B. SEGREGATION OF PREMISES SUBJECT TO A SINGLE RIGHT TO PRODUCE, ACCORDING TO SEVERANCE TAX OR ROYALTY OWNER ACCOUNTABILITY

1. *Royalty owner accountability.* FEA indicated in "Ruling 1977–1" that:

> Where the payment of revenues to state tax authorities or to royalty owners requires separate accounting for production from identified portions of a premises subject to a single right to produce, and where such portions of the premises have consistently and historically been treated as separate properties, such separate treatment may appropriately be continued.

FEA has received a number of inquiries regarding this clarification, specifically with regard to division orders. Although there was no specific discussion of this issue in "Ruling 1977–1," FEA understands division orders generally to be a means whereby the purchasers of crude oil from a property are authorized to distribute the payment for purchases of crude oil produced and sold from the property among the various interest holders who are entitled to such distribution.

Inasmuch as FEA understands the typical division order to act primarily as a means to protect the purchaser against the possibility that payment for crude oil produced and sold from a certain property might be improperly distributed—rather than as an instrument which acts to segregate a premises subject to a single right to produce—the language above was not intended to suggest that the treatment by a producer of each division order as establishing a separate property was appropriate under the price regulations. Moreover, the language above referred only to royalty owners (and not to overriding royalty owners, working interest owners, or other interest owners) and therefore takes into account only the situation in which an operator is required, under a single oil and gas lease, to account separately to different royalty owners (whose interests are limited to specific identified portions of the premises, as delineated in the oil and gas lease) for production from corresponding identified portions of the premises granted in a single oil and gas lease.

To illustrate, such an instance might exist where "O," the owner of an oil and gas interest in Blackacre granted a working interest in Blackacre to a producer "P," reserving a royalty interest in production from the North half of Blackacre to "O's" daughter, and reserving a royalty interest in production from the South half of Blackacre to "O's" son, and where P has historically and consistently treated the North and South halves of Blackacre as separate properties. In this instance, therefore, when originally making property determinations, P might appropriately have determined that for purposes of the price regulations, the North half of Blackacre constituted one property, and the South half of Blackacre constituted a separate property, because of the requirement to account for production from the North half of Blackacre to one royalty owner and the requirement to account for production from the South half of Blackacre separately to a different royalty owner. On the other hand for example, where several small tracts (each having different royalty interests) have been aggregated under a single lease granting a single operating interest in order to meet minimum well spacing requirements, the single premises granted in the lease should have been treated as a single property regardless that payment was made to different royalty owners and accounted for separately on the basis of their proportionate interests in that premises. The mere existence of separate royalty owners and a requirement to account to them separately for their proportionate interests does not satisfy the requirement that there be " * * * separate accounting for production from identified portions of a premises * * *." In other words, with respect to royalty owner accountability, it is only where production and sale of crude oil from an identified portion of a premises subject to a single right to produce entails no duty to account to royalty owners of another identified portion of the premises that separate properties may exist.

2. *Severance tax accountability.* With respect to separate accounting for severance tax purposes, FEA understands that it might be necessary in some instances for a producer to account separately for different types of crude oil produced and sold from different specified portions of a tract in order to determine liability for severance taxes to the state in which the property is located.

It is FEA's understanding that although this is not usually the case, it may be necessary in isolated cases where the severance tax is more in the nature of an ad valorem real estate tax, the rate of which varies according to the value of the crude oil produced and sold from the property. In such a situation, where the imposition of an ad valorem tax has required the producer separately to account for production from separately identified portions of a premises subject to the same right to produce crude oil, and where the producer has since the inception of price regulations consistently treated such distinct portions of the premises as separate properties, such separate property treatment may appropriately be continued. On the other hand, where a severance tax is determined merely by applying a fixed tax rate to total production volume (normally on a firm-wide basis), separate property treatment would not have been appropriate unless "different rates of tax were applied to identified portions of a particular premises."

With respect to severance tax accountability, then, the mere fact that total tax liability may be determined by cumulating production figures that are required to be reported on a well-by-well basis does not mean that there is severance tax accountability on a well-by-well basis. Such separate accountability exists only where separate accounting for production from identified portions of a premises is required in order to determine a severance tax liability which is different from that which would have resulted had there not been such separate accounting.

C. SEPARATE GEOLOGICAL STRUCTURES

FEA made it clear in "Ruling 1977–1" that prior to September 1, 1976:

> A premises which contains multiple reservoirs but which is subject to a single right to produce may not, simply by virtue of the existence of separate reservoirs, be treated as comprising multiple "properties."

Notwithstanding this clear prohibition against separate reservoir treatment before September 1, 1976, FEA has received further comments since August 20, 1976 which indicate that some parties have perceived a conflict between this policy and the discussion in "Ruling 1977–1" involving segregation of a premises subject to a single right to produce in the case of "very large tracts," where FEA indicated that:

> Separate geological formations subject to the same right to produce which have been developed and produced separately, and which have historically and consistently been accounted for separately may continue to be so regarded.

By this language FEA did not intend to imply that separate reservoir treatment was proper in every case before September 1, 1976. Rather, this discussion recognizes that in certain instances extremely large tracts—sometimes large fee interests, but more commonly large state-owned leases—were developed and produced pursuant to a single lease or fee interest under circumstances that made treatment of separate geological formations as separate properties appropriate.

The term "geological formation" was used in this regard to signify not an individual producing reservoir, but a number of producing reservoirs, usually of common characteristics. This term should be understood in this context to be equivalent to the term "geological structure," which has been defined as:

> Layers of sedimentary rock which have been displaced from the horizontal by various forces of nature. Five general categories of structures are recognized: (1) Faults, (2) anticlines, (3) monoclines, (4) synclines, and (5) domes. ("Williams and Myers, Manual of Oil and Gas Terms" at 199.)

FEA will not permit, before September 1, 1976, the treatment of separate reservoirs as separate properties except in those cases where such treatment was permitted by express FEA order or interpretation, as indicated in "Ruling 1977–1." In order further to eliminate any confusion that might exist with respect to geological formations, a technical amendment to the definition of property will be made effective September 1, 1976, to eliminate any reference in that definition to producing "formation."

III. SEPTEMBER 1, 1976 AMENDMENT TO THE DEFINITION OF "PROPERTY"

As FEA indicated in the August 20 Notice, FEA's initial consideration of a reservoir property definition led to the conclusion that the advantages of permitting producers to make property determinations on a reservoir-by-reservoir basis were largely outweighed by the attendant administrative complexity associated with FEA having to (a) make reservoir determination in the first instance, and/or (b) verify asserted determinations previously made by others. FEA's further consideration of this issue resulted in adoption of a system that would permit FEA to "defer to other expert agencies to make reservoir-by-reservoir determinations" (41 FR 36179). Therefore, the September 1, 1976 definition of property permits producers to treat as separate properties, each separate and distinct producing reservoir underlying a tract, to the extent that the reservoir is recognized by the appropriate governmental regulatory authority, and production has been consistently and historically reported as such.

A. RESERVOIR RECOGNITION BY THE APPROPRIATE GOVERNMENTAL REGULATORY AUTHORITY

In requiring governmental recognition of a reservoir before a producer may treat that reservoir as a separate property under the September 1, 1976 amendment, FEA sought to adopt a system whereby FEA auditors could have at their disposal easily understandable records from which could be determined the limits of each producing property. Moreover, the requirement that production must have been reported to the governmental authority on the basis of its reservoir determination, is intended to ensure a necessary supplemental means for FEA to verify production and sales volumes used to determine volumes of upper and lower tier crude oil. By itself, however, the mere requirement by a state or other regulatory authority for producers to report on a reservoir-by-reservoir basis does not constitute "recognition by the governmental authority."

FEA understands that most states in which crude oil is produced in significant volumes have historically regulated the production of crude oil for various reasons, principally to ensure the conservation of the state's natural resources. In this regard, most producing states have empowered regulatory bodies to govern the drilling of wells and the production of oil and gas. In many instances, the state regulatory body limits well density and will not permit the drilling of additional producing wells into a reservoir that has already been developed. Inasmuch as development drilling and production are typically regulated on a reservoir-by-reservoir basis, most state regulatory bodies make some determination with respect to whether production from a new well will affect production from a developed reservoir. Where controlled, rates of production are typically set by the state, and these rates are determined on a reservoir-by-reservoir basis, and production volumes are reported to the state by the producer on a basis that production from each reservoir on each lease can be determined.

What constitutes "recognition" by the appropriate governmental authority will be a matter for resolution on a case-by-case basis by FEA regional officials who are in a position to be more familiar with state practices in their region. Generally, however, the following guidelines shall be used in making such determinations. The mere requirement that a producer must report to the regulatory body on the basis of separate reservoirs does not constitute government recognition. Rather, before a producer may treat a producing reservoir as an FEA property, there must have been some review by the appropriate regulatory body of factual considerations leading to a determination by the regulatory body that the reservoir is separate and distinct from, and not in communication with, any other reservoir subject to the same right to produce. Such determination by the regulatory body must be signified by an affirmative action: the mere receipt by the regulatory body of production or other types of reports, for example, does not constitute the requisite affirmative action.

In some states, the state regulatory body may conduct a formal proceeding to establish the limits of producing reservoirs. At such proceedings, evidence is taken from interested parties, a hearing is held, and after thorough considera-

tion of the record, the state issues an order setting forth its determination as to the physical limits of the reservoir. The state's determination contained in such an order would constitute the requisite affirmative action.

FEA recognizes, however, that not all states have such thorough procedures for making reservoir determinations. Nevertheless, in most states some review of factual considerations is made by the regulatory body, and some affirmative determination (usually contained in an order) as to the limits of the reservoir are made. Where such review is undertaken, FEA will recognize a subsequent affirmative determination by the state as "state recognition" of the existence of a separate reservoir. Provided also that the producer is required to report production volumes to the state on the basis of that determination, the producer may, effective September 1, 1976, treat the reservoir as a separate property.

With regard to properties not subject to the jurisdiction of any state regulatory body, a similar determination by an other governmental authority (e.g., the United States Geological Survey) will be recognized by FEA as "governmental recognition" so long as the determination satisfies the guidelines set forth above.

B. THE REQUIREMENT THAT EACH RESERVOIR BE SEPARATE AND DISTINCT AND NOT IN COMMUNICATION WITH ANY OTHER RESERVOIR SUBJECT TO THE SAME RIGHT TO PRODUCE

The principal objective in permitting producers to treat separate reservoirs as separate properties is to maximize the incentive to increased production by allowing:

> Decisions regarding the exploration for and development of crude oil reserves [to be] made on an individual reservoir basis without regard to the happenstance of production characteristics of other reservoirs underlying the same tract. (41 FR at 36178.)

That is, FEA believes that over the remaining term of crude oil price controls mandated by the EPCA the incentives intended under the two tier price system will work best to the extent that producers are able to make economic determinations and production decisions on the basis of separate producing entities. Inasmuch as FEA also believes that in the absence of crude oil price controls such decisions would be made on a reservoir-by-reservoir basis, the rewards offered under the two tier system of price controls should be structured accordingly

Therefore, for example, FEA believes that where a producer is faced with the expenditure of large sums of capital to initiate measures designed to increase production from one producing reservoir—or to develop new reserves subject to the same right to produce—the producer should be permitted to measure the benefits of such a decision against the real risks, and should not be required to take into account the production characteristics of other producing entities, "the production from which is not physically affected by actions taken with respect to the producing entity under consideration."

The same rationale, however, does not apply where production from two or more reservoirs (that are otherwise separate and distinct) is commingled in the well bore, because the production characteristics become interrelated. For this reason, the September 1 amendment permits a producer to treat as separate properties separate and distinct producing reservoirs only to the extent that they continue not to be in communication with each other. Accordingly, a producer may not treat as separate properties two or more otherwise seperate and distinct producing reservoirs if production from those reservoirs is commingled in the well bore. To the extent that commingled production is begun from two or more reservoirs subsequent to a post-September 1, 1976 determination by the producer to treat the reservoirs as separate properties, the producer must, as of the date that commingled production is begun, treat the two or more reservoirs as a single property. Where this is required, the BPCL for the single property (consisting of the two or more reservoirs with commingled production) will be determined as the sum of the BPCL's for all the reservoirs from which production is commingled. Moreover, the property (consisting of two or more reservoirs with commingled production) will be determined to have a current cumulative deficiency, if any, equal to the sum of the current cumulative deficiency as of the date production is commingled for all the reservoirs from which production is commingled.

In this context of determining two or more reservoirs to be separate and distinct, FEA will recognize production not to be "commingled" in a particular well where the well meets the test of a "multiple completion well" as set forth in "FEA Ruling 1975–12" (40 FR 40828, September 4, 1975), i.e., where:

> (a) The well consists of two (or more) separate tubing strings run inside the casing, each of which carries crude oil from a separate and distinct producing reservoir, and
>
> (b) The production capabilities of each reservoir are unaffected by any change in the production level of any other reservoir producing through the same well.

Additionally, for purposes of determining if two or more reservoirs are "separate and distinct and not in communication with each other," FEA will recognize production not to be commingled—even though produced through a single well—where production from one reservoir is carried through a tubing string and production from a separate and distinct reservoir is carried through the annulus between that tubing string and the casing: *Provided*, That the production capabilities of each reservoir are unaffected by any change in the production level of any other reservoir being produced through the same well: *And provided further*, That production from each reservoir can be separately measured at the wellhead. Where two otherwise separate and distinct producing reservoirs are produced through a multiple completion well that meets either test set forth above, either or both of the reservoirs may be treated as a stripper well property to the extent that production levels of 10 barrels or less per well per day are sustained from that reservoir for 12 consecutive months following a determination to treat the separate reservoirs as separate properties. (See Part III.E. below.) However, the recognition of two reservoirs as separate and distinct (where crude oil is produced through the annulus between a tubing string and the casing), does not affect the test announced in "FEA Ruling 1975–12" for determining when a multiple completion well may be treated as two or more producing wells for purposes of the stripper well property rule, where the reservoirs are not treated as separate properties. In the case of a multiple completion well that produces from two separate reservoirs not treated as separate properties, the multiple completion well may be treated as two or more producing wells for purposes of the stripper well property rule only if it meets the standards set forth in "FEA Ruling 1975–12."

The requirement that two or more otherwise separate and distinct producing reservoirs be treated as a single property because of commingled production applies on a property-by-property basis. That is, where production from two or more otherwise separate and distinct reservoirs is determined to be commingled with respect to a particular property, a producer from a second property may nevertheless treat those same reservoirs as separate properties, so long as production from those reservoirs is not commingled on the second property.

Finally, FEA will not consider production from two or more otherwise separate and distinct reservoirs to be commingled where the reservoirs are produced through different wells but such production is commingled into a single tank battery, provided that production is separately measured at the wellhead, or that production volumes are allocated back to each well based on regular well tests.

C. TREATMENT OF SEPARATE RESERVOIRS AS SEPARATE PROPERTIES

With respect to the treatment of separate reservoirs as separate properties, FEA has not required that such decisions be made immediately for every property. To the contrary, producers are permitted to make separate reservoir determinations at any time on or after September 1, 1976. Of course, post-September 1, 1976 determinations to treat separate reservoirs as separate properties must become effective from the first day of the month in which such a decision is made and may not be applied retroactively beyond the two-month recertification restriction of 10 CFR 212.72. Under no circumstances are such determinations permitted to affect volumes of crude oil produced and sold prior to the September 1, 1976 effective date of the amendment to the definition of property.

Once a producer has elected to treat separate reservoirs subject to a single right to produce as separate properties, such a decision shall be effective from

that time forward with respect to all of the separate and distinct producing reservoirs subject to the same right to produce. To permit the selective segregation of individual reservoirs subject to the same right to produce might encourage selective recalculation of base production control levels ("BPCL") solely to increase levels of new crude oil without promoting any increase in crude oil production.

Moreover, the decision to segregate all of the producing reservoirs subject to the same right to produce, is one that, once made for a particular property, is not subject to modification throughout the duration of price controls applicable to the first sale of domestic crude oil. Purchasers as well as producers must be able to function under a system of price regulation with an adequate degree of finality. To permit the continual redesignation of properties (with the accompanying recomputations of BPCL's) would unnecessarily complicate the operation of the two tier pricing system without providing any discernible additional incentives to producers to increase domestic production. As only one example, such a practice would involve a multitude of additional certifications, and would defeat the purpose of certification requirements intended to be made one time for each property.

The only exception to this policy will be, as indicated above, where commingled production begins subsequent to a post-September 1, 1976 determination to treat separate reservoirs as separate properties, or where two or more reservoirs are subsequently unitized. Where such commingled production is begun for two or more, but less than all, of the reservoirs subject to the same right to produce, only those commingled reservoirs must then be aggregated to form a single property, and all other separate and distinct reservoirs must continue to be treated as separate FEA properties.

Accordingly, for each property, effective September 1, 1976, each producer may treat each separate and distinct producing reservoir as a separate property. To the extent that a single property consists of several reservoirs, only some of which are commingled, the producer may treat the non-commingled reservoirs as separate properties (if all such reservoirs are so treated), and if so, production from commingled reservoirs must be aggregated and treated as a separate property (or properties, if there is more than one set of commingled reservoirs). Moreover, to the extent that the property consists of what the producer believes to be more than one separate and distinct reservoir (only some of which are recognized by the appropriate governmental authority) the decision to treat any one governmentally-recognized reservoir as a separate property must include all such governmentally-recognized reservoirs. Any other production from the property, even if believed by the producer to be from separate and distinct reservoirs, must, in the absence of governmental recognition, be aggregated and treated as if from a single property.

The decision to redesignate properties on the basis of separate and distinct producing reservoirs need not be made for all of a producer's properties. For any particular property, however, a producer must treat separate and distinct reservoirs as separate properties according to the requirements set forth above, if the producer elects so to treat any one separate reservoir. Once separate reservoir designations are made for a specific property, any newly-developed producing reservoir must be designated as a separate property.

D. DETERMINATION OF BASE PRODUCTION CONTROL LEVELS ON A RESERVOIR-BY-RESERVOIR BASIS

In the August 20 Notice, FEA set forth guidelines for recalculating BPCL's for properties redesignated on or after September 1, 1976 on a reservoir-by-reservoir basis. Those guidelines did not, however, address the treatment of current cumulative deficiencies in making such recalculations. The failure of FEA in the August 20 Notice specifically to address the treatment of cumulative deficiencies has generated sufficient comment from interested parties to justify the following, more detailed guidelines, which are to be used by producers that elect to treat separate reservoirs as separate properties in determining BPCL's for those reservoir-properties.

As of the effective date upon which a producer elects to redesignate a particular property on the basis of each separate and distinct reservoir encompassed by that property, the producer must determine a BPCL for each reservoir. This is done generally by making "attributed" calculations for each reservoir as if the reservoir had been a separate property since the inception of the price regulations (i.e., by calculating attributed volumes of new, released and old crude oil for each reservoir for every month from August 1973 to the effective date that the reservoir is treated as a separate property). It should be emphasized that these calculations of attributed volumes are done only for the purpose of determining a BPCL and a cumulative deficiency (if any) for each reservoir-property; no recertification of any volumes of new, released, or stripper well crude oil is intended and none will be permitted.

1. *Reservoirs from which no crude oil was produced in 1972.* As FEA stated in the August 20 Notice, any reservoir from which no crude oil was produced in 1972 will, as of the effective date that the producer elects to treat that reservoir as a separate property, have a BPCL of zero. This result is reached because, had the reservior been treated as a separate property since the inception of price regulations, that "property" would have produced and sold all new crude oil. Inasmuch as the "property" would have produced and sold no old crude oil in 1975, its BPCL effective February 1, 1976, would also have been zero.

Accordingly, for any reservoir that did not produce crude oil in 1972, the BPCL for that reservoir-property will be zero. Inasmuch as production of crude oil could not at any time have been less than the reservoir-property's BPCL, there can be no cumulative deficiency for such reservoir-property.

2. *Reservoirs from which crude oil was produced in 1972.* For any reservoir from which crude oil was produced in 1972, the producer must, as of the effective date that the reservoir is treated as a separate property, determine a BPCL. This will be accomplished as follows:

a. The producer must establish an "attributed BPCL." The initial step in determining a reservoir-property's attributed BPCL is to determine the actual production and sale of crude oil from the reservoir for every month in 1972.

b. Based on those figures, the producer must then establish the attributed volumes of new and released crude oil for the reservoir-property, for each month from August 1973 through January 1976. This is accomplished by comparing actual production and sale volumes for the reservoir for every month during that period with the attributed BPCL. For any month (during that period) in which production and sale from that reservoir did not exceed the attributed BPCL, an attributed cumulative deficiency will exist. Any volumes of attributed cumulative deficiencies must be accounted for in subsequent months in determining volumes of attributed new and attributed released crude oil.

c. The producer must then establish an attributed BPCL based upon average monthly production and sale of attributed old crude oil for the reservoir-property in 1975.

d. The producer will then be able to compare the attributed 1972 BPCL with the attributed 1975 BPCL. The lower attributed BPCL may then be adopted as the reservoir-property BPCL for the period commencing with February 1, 1976 and thereafter.

e. Using the reservoir-property BPCL, the producer should determine attributed volumes of new and old crude oil for every month during the period from February 1, 1976 to the effective date that the reservoir is treated as a separate property. The reservoir-property begins on February 1, 1976 with no attributed cumulative deficiency. However, once attributed new crude oil was "produced and sold" from the reservoir after February 1, 1976, and the actual monthly production and sale of crude oil from the reservoir subsequently fell below the attributed BPCL, an attributed cumulative deficiency must be accounted for. Any attributed cumulative deficiency existing on the effective date that the reservoir is treated as a separate property must then be accounted for before any new crude oil may be sold from that reservior-property. (The use of 1972 or 1975 as the reservoir-property's BPCL may

be done for each reservoir independently, but calculations of attributed volumes of new crude oil must be made as if a BPCL selection had occurred on February 1, 1976. That is, calculations of attributed cumulative deficiencies subsequent to February 1, 1976 may be made based upon either year. However, once those calculations are made, the same base year (either 1972 or 1975) must continue to be used thereafter to determine actual volumes of new and old crude oil.)

B. TREATMENT OF SEPARATE RESERVOIRS AS STRIPPER WELL PROPERTIES

Effective September 1, 1976, prices charged in the first sale of crude oil produced and sold from a stripper well property are exempt from the price regulations applicable to first sales of domestic crude oil. A "stripper well property" is defined in 10 CFR 212.54 as:

> a "property" whose average daily production of crude oil (excluding condensate recovered in non-associated production) per well did not exceed 10 barrels per day during any preceding consecutive 12-month period beginning after December 31, 1972.

Section 212.54 was adopted by FEA on October 29, 1976 (41 FR 40319, November 3, 1976) to implement the congressional policy, set forth in the Energy Conservation and Production Act ("ECPA," Pub. L. 94–385), of promoting continued production of crude oil from marginal properties. In this regard, FEA indicated in the October 29 Notice that:

> as evidenced in the ECPA legislative history, the Congress has intended to *prolong* the production of crude oil from properties that produce 10 barrels per well per day or less, and *not to generate development of new stripper well properties.* (Emphasis added, 41 FR at 48321.)

Accordingly, FEA made it clear that newly-developed properties must establish a 12-month history of marginal production before they may be treated as stripper well properties.

FEA believes that the same policy is appropriately applied to newly-designated properties, whose property status is predicted upon a reclassification, on or after September 1, 1976, by the producer.

The September 1 amendment to the definition of property was designed to ensure that the incentives intended under the two tier price system would be maximized over the remainder of the term of crude oil price controls mandated by EPCA. Accordingly, the option to treat separate reservoirs as separate properties is intended to provide producers with additional incentives, though additional revenues, to increase production, and not to promote property reclassifications solely to achieve stripper well property status.

To the extent that an individual reservoir-property sustains production levels of 10 barrels or less per well per day for a period of 12 consecutive months after being designated a property, that reservoir-property would, of course, qualify as a stripper well property.

IV. UNITIZED PROPERTIES

In order to resolve certain issues that have arisen with respect to the price regulations applicable to unitized properties, it is necessary to review several actions that have been taken by FEA in this regard.

A. RULING 1975–15

On August 31, 1975, FEA issued "Ruling 1975–15" (40 FR 40832, September 4, 1975) addressed to those cases where, due to a change or restructuring since 1972 of the right to produce crude oil, guidance concerning application of the definition of "property" would be required in determining BPCL's. In particular, "Ruling 1975–15" stated that:

> • • • where a unit consists of several leases that were unitized in 1973, the property consists of the unit, and the BPCL is the total 1972 monthly production from all the several leases that now comprise the unit. (40 FR at 40832.)

In response to comments urging reconsideration of "Ruling 1975–15," FEA, on February 1, 1976 (in connection with the first stage rulemaking to implement the pricing policy of the EPCA) rescinded that part of the Ruling which required producers of unitized properties to total all the BPCL's of the participating leases and to treat the unit as a single property as of the date of unitization. Instead, producers of unitized properties were permitted to continue to determine quantities of upper tier crude oil on a lease-by-lease basis until the actual implementation of enhanced recovery operations or until such time as there has been "a significant alteration in producing patterns," whichever occurred first. The February 1 Notice did not define "a significant alteration in producing patterns" but indicated instead that a Ruling would follow, to set forth objective criteria to be used in determining when a significant alteration of producing patterns has occurred on a unitized property. (Those objective criteria were subsequently set forth in the August 20 Notice.) With respect to "enhanced recovery units" required to establish a unit BPCL on or after February 1, 1976, FEA adopted in the February 1 Notice a new unitized property rule (10 CFR 212.75) which provided a means for preserving under the unit BPCL the benefits of the stripper well status of any leases included in the unit. Section 212.75 was subsequently amended, effective September 1, 1976, to provide a rule whereby unit BPCL's established on or after that date are permitted to reflect upper tier crude oil volumes previously produced and sold from the previously separate properties which comprise the unit. The result of these actions concerning unitized properties can be summarized as follows:

1. *All unitized properties required to establish a unit BPCL on or after September 1, 1976.* A unit base production control level must, in general be established as of the effective date of unitization, and the producer must treat the unit as a single property. Section 212.75 provides an exception to this requirement where (1) the producer has certified to FEA[1] its intention to continue to determine volumes of upper, lower and stripper well crude oil separately for all properties that constitute the unitized property, and (2) the unitized property has not sustained a significant alteration in producing patterns. A significant alteration in producing patterns is defined in § 212.75 as the occurrence of either (a) the application of extraneous energy sources by the injection of liquids or gases into the reservoir, or (b) the increase in production allowables for any property that comprises the unitized property. Once a significant alteration in producing patterns has occurred, a unitized BPCL must be established.

Regardless whether established as of the effective date of unitization or as of the time that a significant alteration in producing patterns occurs, a unit BPCL established on or after September 1, 1976 is the sum of (1) the total average monthly production and sale of old crude oil during the 12-month period immediately preceding the establishment of a unit BPCL, from all the properties that constitute the unitized property, plus (2) the average monthly production and sale of crude oil during the 12-month period immediately preceding the establishment of a unit BPCL, from all stripper well properties—qualified as such prior to the establishment of a unit BPCL—that constitute the unitized property.

Once a unit BPCL has been established, it may be eligible for adjustment under § 212.76. In determining upper tier crude oil volumes each month following the establishment of a unit BPCL, the producer measures the entire current monthly production and sale of crude oil from the unit and compares that volume against the unit BPCL. Current monthly production and sale volumes in excess of the unit BPCL qualify for treatment each month as new crude oil produced and sold from the unitized property unless there is a cumulative deficiency.

Section 212.75 also contains provisions for determining volumes of imputed new crude oil and volumes of imputed stripper well crude oil produced and sold each month for a unitized property for which a unit BPCL is established on or after September 1, 1976. Volumes of imputed new crude oil may be sold each month at a price not to exceed the upper tier ceiling price; volumes of imputed stripper well crude oil may be sold each month at exempt prices. Imputed new crude oil is a number equal to the average monthly production and sale of new (and released, if any) crude oil during the 12-month period immediately preceding the establishment of a unit BPCL, from all the properties that comprise the unitized property. Imputed stripper well crude oil is a number equal to the average monthly production and sale of crude oil during the 12-month period immediately preceding the establishment of a unit BPCL, from all previously qualified stripper well properties that constitute the unitized property. In the case of some stripper well properties, the 12-month period immediately preceding the establishment of a unit BPCL may include some period of time (up to eleven months) during which the stripper well property had not yet qualified as such.

2. *Enhanced recovery unitized properties required to establish a unit BPCL on or after February 1, 1976 and before September 1, 1976.* Section 212.75, adopted on February 1, 1976, is applicable only to enhanced recovery unitized properties which established a unit BPCL on or after February 1, 1976. Section 212.75(a) required that the unitized property be treated as a single FEA property and a unit BPCL established "as of the date of implementation of enhanced recovery operations on a unit or as of the date production patterns with respect to individual leases within a unit are substantially altered (which ever date occurs first) • • •." However, § 212.75 did not, until September 1, 1976, contain a definition of "significant alteration in producing patterns." Accordingly, for any enhanced recovery unit formed during that time the producer was permitted to continue determinations of upper and lower tier crude oil volumes on a lease-by-lease basis until such time as enhanced recovery operations had begun. After such an occurrence, however, the unitized property was required to be treated as a single property and a unit BPCL had to be established. The unit BPCL was determined to be the sum of (1) the total average production and sale of old crude oil during the 12-month period immediately preceding the establishment of a unit BPCL, for all properties that constitute the unitized property, plus (2) the average monthly production and sale of crude oil during the 12-month period immediately preceding the establishment of a unit BPCL, from all previously-qualified stripper well properties that constitute the unit. After a unit BPCL had been established, the producer was required to compare the total production and sale of crude oil from the unitized property with the unit BPCL to determine current volumes of new crude oil. Section 212.75 as in effect from February 1, 1976 until August 31, 1976, contained a provision, similar to the current provisions for imputed stripper well crude oil, whereby certain previously-qualified volumes of stripper well crude oil could be sold from the unit each month as upper tier crude oil. It did not, however, include a provision similar to the current provision for imputed new crude oil.

With respect to any enhanced recovery unitized property formed during the period February 1, 1976 to September 1, 1976, for which a unit BPCL was not established, the current definition of "significant alteration in producing patterns," adopted in the August 20 Notice and effective September 1, 1976 is applicable effective September 1, 1976. Accordingly, if such an alteration in producing patterns (as that term is now defined in § 212.75) did occur prior to September 1, 1976, the unitized property must be treated as a single property and a unit BPCL must be established under § 212.75 as of September 1, 1976, if the producer had not begun to treat the unit as a single property as of the time that a significant alteration in producing patterns occurred. If such an alteration in producing patterns has not occurred as of September 1, 1976, but does occur subsequent to September 1, 1976, the unitized property must at that time be treated as a single property and a unit BPCL must be established, and the provisions of § 212.75 then in effect shall apply. Of course, once a unit BPCL has been established, it may be eligible for adjustment under § 212.76.

3. *All unitized properties required to establish a unit BPCL prior to February 1, 1976 and unitized properties required to establish a unit BPCL prior to September 1, 1976.* Determinations of new, released and stripper well crude oil for units formed prior to the date on which unit BPCL regulations were adopted (February 1, 1976 for enhanced recovery units and September 1, 1976 for all units) are subject to the provisions of "FEA Ruling 1975–15" as modified on February 1, 1976. Accordingly, all such units formed during or after 1972 were required to calculate a BPCL by aggregating the BPCL's of all the participating properties at such time as significant changes in the unit's producing patterns occurred (and with respect to enhanced recovery unitized properties beginning February 1, 1976, as of the date of implementation of enhanced recovery operations). To the extent that a unit BPCL was required to be established prior to the effective date of any applicable unit BPCL regulation, the aggregation of BPCL's pursuant to "Ruling 1975–15" did not afford any means to reflect the prior stripper well lease status or production and sale of volumes of new or released crude oil of the previously separate properties which comprise the unit. Although a regulatory definition of "significant alteration in producing patterns" was not provided until September 1, 1976, that definition will be considered as guidance in audits and compliance cases in determining whether a significant alteration has occurred with respect to such units. FEA will, however, on a case-by-case basis, permit unit operators to justify the establishment of the date of significant alteration in producing patterns in such units on reasonable bases other than those specified by the present definition. If no such alteration has occurred as of September 1, 1976, determinations of upper tier and stripper well crude oil volumes may continue to be made on a lease-by-lease basis until such time as a significant alteration does occur, at which time the unitized property must be treated as a single property and a unit BPCL must be established. As of the time that a unit BPCL is established, the provisions of § 212.75 then in effect are applicable, and the unitized property may be eligible for a BPCL adjustment pursuant to § 212.76.

B. UNITIZATION OF TWO OR MORE PREVIOUSLY-QUALIFIED STRIPPER WELL PROPERTIES

Effective February 1, 1976 (with respect to enhanced recovery units for which a unit BPCL is established after that time) and effective September 1, 1976 (with respect to any unitized property for which a unit BPCL is established after that time), § 212.75 provides a mechanism to ensure that producers of crude oil from previously-qualified stripper well properties will not be deterred for economic reasons from entering the unit. This mechanism provides generally that an amount equal to current volumes of crude oil produced from participating stripper well properties may continue to be sold from the unit as stripper well crude oil after the establishment of a unit BPCL. (A similar rule, effective September 1, 1976, is designed to encourage producers of new crude oil to participate in the unitization.)

FEA has determined that this mechanism is the most effective method to remove the disincentive to unitization by producers of stripper well crude oil. The unit BPCL regulations do not, however, permit the unitized property to qualify as a stripper well property until the unitized property itself has sustained an average daily production of 10 barrels or less per well for 12 consecutive months following the establishment of a unitized BPCL. There are basically two reasons for this policy.

First, as noted above, FEA believes that the concept of "imputed stripper well crude oil" is adequate to ensure the participation in a unitized project and continued production of crude oil from previously-qualified stripper well properties.

Second, to permit a unit to qualify as a stripper well property on the basis of the production characteristics of its participating properties would likely encourage the selective unitization of marginal and non-marginal properties merely to obtain exempt stripper well property status for other than truly marginal properties. Such a result would obviously not comport with the congressional policy behind the exemption contained in the Energy Conservation and Production Act (ECPA, Pub. L. 94–385).

The only appropriate exception to this policy would appear to be for a unitized property in which all participating properties have previously qualified as stripper well properties. In such case, under a proposal set forth in a contemporaneous Notice of Proposed Rulemaking, the unitized property would be treated as a stripper well property as of the effective date of unitization.

[1] Such certifications should be made pursuant to 10 CFR 205.90 and filed with the Deputy Assistant Administrator for Compliance, FEA, 2000 M Street, N.W., Washington, D.C. 20461.

V. Applicability of the Stripper Well Property Rule to Condensate Produced From Gas Wells

Since January 1, 1975, a producer may not include gas wells in the calculation of a property's per-well average daily production to determine whether the property qualifies as a stripper well property. (40 FR 40818, September 4, 1975.) In order to resolve the uncertainty that had arisen due to diverse state criteria for classifying producing wells as either gas wells or oil wells, FEA undertook in the August 20 Notice to provide a functional test whereby producers might be able to determine whether a particular well may be considered an "oil well" for purposes of the stripper well property rule, regardless whether the particular well has been classified as a gas well for other purposes by the state regulatory authority.

FEA preliminarily concluded in the April 13 Notice that the inclusion of a well for purposes of determining stripper well property qualification is only prohibited to the extent that the well provides only non-associated production of natural gas and condensates, and that if a well produces some crude oil, the well would qualify as an oil well for purposes of the stripper well property rule. After soliciting comments on this distinction, FEA concluded in "FEA Ruling 1977–1" that:

> If a well produces from an associated reservoir (i.e., a reservoir in which gas occurs in association with crude oil), that well may be included to determine if the property is a stripper well property only if crude oil is produced from that well. If only condensate is produced, in association with the gas, the well may not be included to determine if the property is a stripper well property. On the other hand, if a well is producing non-associated gas (i.e., free gas not in contact with crude oil in the reservoir), or only natural gas (even if from an associated gas reservoir), that well may not be included as a producing well because it does not produce crude oil.

FEA has continued to receive inquiries, however, concerning the crude oil/condensate distinction, which suggest that there is an inconsistency between the distinction drawn in "Ruling 1977–1" and the definition of "crude oil" in 10 CFR 212.31, which includes condensate:

> "Crude oil" means a mixture of hydrocarbons that existed in liquid phase in underground reservoirs and remains liquid at atmospheric pressure after passing through surface separating facilities. *"Crude oil" includes condensate recovered in associated and non-associated production by mechanical separators, whether located on the lease, at central field facilities, or at the inlet side of a gas processing plant.* (Emphasis added.)

The definition of "crude oil" in § 212.31 includes condensate in recognition of the treatment of condensate as crude oil by producers on a historical pricing basis. (See 40 FR 40818, September 4, 1975.) However, FEA recognizes that some gas wells produce condensate, which under the § 212.31 definition is treated as "crude oil" for purposes of Subpart D, but which does not constitute crude oil for purposes of the crude oil/condensate distinction which is used to differentiate oil wells from gas wells for purposes of stripper well property qualification.

Thus, a distinction between crude oil and condensate is necessary for purposes of determining whether the particular well from which the condensate is produced may be counted in determining the property's per-well average daily production for purposes of the stripper well property rule. For all other purposes, condensate, whether recovered in associated or non-associated production, is treated as crude oil under Subpart D in determining a first sale price.

FEA understands that associated production occurs if hydrocarbons in both liquid and gaseous states exist together in one reservoir. Thus, a reservoir in which gas occurs in solution with crude oil would produce crude oil and gas in "associated" production. An oil reservoir having a gas cap normally produces crude oil and gas in associated production but could (in theory though not ordinarily in practice) produce crude oil and gas in either associated or nonassociated production depending on the manner in which the well has been completed in the reservoir. Non-associated production is understood to occur when both liquid and gaseous hydrocarbons are jointly produced from a reservoir in which they exist in the reservoir only in a gaseous state.

The further tests described below are not fully definitive, but should in most circumstances provide an adequate basis for distinguishing "associated" from "non-associated" production for purposes of determining if the particular well may be included in determining a property's per-well average daily production. Generally, each of the following tests should indicate whether the condensate is recovered in "associated production."

A. *Phase test.* FEA does not expect that a phase test will actually be conducted for each well, or reservoir, and none is required. However, if such tests have been conducted or if phase behavior is inferable from other relevant well or reservoir data, a valid determination can probably be made. If as the hydrocarbon stream rises from the reservoir to the surface a bubble point occurs, (that is, the entrained dissolved gas separates from the liquid into bubbles), the joint production of oil and gas is said to be "associated." If, under production conditions of pressure reduction at reservoir temperature the hydrocarbon stream exhibits a dewpoint, the joint production of fluid and gas is said to be "non-associated."

B. *Production method test.* If the hydrocarbon stream is raised to the surface by pumping, the joint production of liquid and gas is almost surely "associated." If the stream rises to the surface by its own underground pressure, the joint production is more likely "non-associated" than "associated." This delineation is particularly true for old wells and reservoirs, which generally correspond to marginal situations.

C. *Gravity test.* If the production at the surface is a single liquid stream having a gravity of 45° API or lighter, that stream would be generally deemed pure condensate (although FEA recognizes that there are a few crude oils in the 50° to 60° range), and the production would be deemed to be "non-associated." If production at the surface consists of two streams, one having a gravity heavier than 45° API (crude oil) and the other 45° API or lighter (condensate), that joint production would indicate "associated" production.

David G. Wilson,
Acting General Counsel,
Federal Energy Administration.

January 19, 1977.

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PART 210—GENERAL ALLOCATION AND PRICE RULES

PART 211—MANDATORY PETROLEUM ALLOCATION REGULATIONS

Exemption of Motor Gasoline from Mandatory Petroleum Allocation Regulations

Introduction

On November 19, 1976, the Federal Energy Administration ("FEA") issued a notice of proposed rulemaking and public hearing (41 FR 51832, November 24, 1976) to amend 10 CFR Parts 210, 211 and 212 to exempt motor gasoline (as defined in 10 CFR 211.51 and 212.31 of the Mandatory Petroleum Allocation and Price Regulations) and to establish a special motor gasoline set-aside for the transitional period following decontrol. The proposal was based on tentative conclusions set forth in a document dated November 16, 1976, entitled "Preliminary Findings and Views Concerning the Exemption of Motor Gasoline from the Mandatory Petroleum Allocation and Price Regulations" ("Preliminary Findings").

Concurrent with the issuance of this amendment exempting motor gasoline from the Mandatory Petroleum Allocation Regulations, a separate amendment is being issued to exempt motor gasoline from the Mandatory Petroleum Price Regulations. Both amendments are being submitted for Congressional review, as Energy Actions Nos. 8 and 9, respectively, pursuant to section 551 of the Energy Policy and Conservation Act, Pub. L. 94–163 ("EPCA"), and in accordance with section 102 of the Energy Conservation and Production Act, Pub. L. 94–385 ("EPCA"), which in effect requires that FEA submit separate energy actions to the Congress when proposing the exemption of a refined petroleum product from both price and allocation regulations, but does not prohibit concurrent submissions of such separate energy actions.

Written comments on the exemption proposal and on the Preliminary Findings were invited through December 15, 1976 and public hearings were held on December 14 and 15, 1976 in Washington, D.C.; Atlanta, Georgia; Chicago, Illinois; Dallas, Texas; Denver, Colorado; New York, N.Y.; and San Francisco, California. As of December 31, 1976, 307 parties had submitted oral and written comments in response to the proposed exemption. Those offering comments included major integrated refining companies, large and small independent refining companies, branded and nonbranded wholesale gasoline distributors, retail sales outlets, trade associations, consumer groups and governmental representatives.

A substantial majority of those commenting agreed with FEA that motor gasoline should be exempted from FEA's allocation and price regulations. This support was based generally upon agreement with FEA's conclusions as to supply and demand projections, competition, and other findings and views set forth in the Preliminary Findings. In particular, there was widespread agreement that competition has been keeping retail gasoline prices below the maximum prices allowed under the Mandatory Petroleum Price Regulations. Most marketers commenting also favored the establishment of a mechanism to assure them a source of supply during the transition following the exemptions. Certain comments at the December hearings noted that the Preliminary Findings, issued contemporaneously with the exemption proposal, were not consistent with data from the economic forecasting firm, Data Resources, Inc. ("DRI"), whose macroeconomic model drives FEA's short-term petroleum demand model. DRI released revised economic forecasts, on which these comments were based, after the analysis for the Preliminary Findings was completed. Information derived from the most recent DRI "Cyclelong" forecast has, however, now been incorporated into FEA's current findings and views. After carefully considering all the comments and making the appropriate revisions to the data supporting its proposed findings, FEA has concluded that its initial view that motor gasoline should be exempted from regulations is correct.

No information or data were presented in this proceeding which significantly alter FEA's Preliminary Findings and Views. FEA does not anticipate that supply shortages will occur or that motor gasoline prices will rise to higher levels than if controls were continued. In any event, FEA has standby authority under section 12(f) of the Emergency Petroleum Allocation Act of 1973 (EPAA) to reimpose controls (on a temporary or permanent basis) if necessary to attain the objectives set forth in section 4(b)(1) of the EPAA. Therefore, FEA hereby adopts the proposed amendments exempting motor gasoline from the Mandatory Petroleum Allocation Regulations.

In the exemption proposal, FEA requested comments on the appropriate lead time which should be provided before the decontrol amendment would become effective so as to assure a smooth transition to a decontrolled market. FEA proposed an effective date of the first day of the month following the first full month subsequent to the expiration of the Congressional review period. The fifteen day review period under section 551 of the EPCA will expire shortly after February 1, 1977. Upon consideration of the comments received on this issue, FEA has concluded that it would be appropriate to provide for an effective date of March 1, given that firms will have more than a month's notice of FEA's exemption proposals. Therefore, unless disapproved by either House of Congress under section 551 of the EPCA, this exemption will be effective March 1, 1977.

Findings and Views

In addition to this amendment exempting motor gasoline from the Mandatory Petroleum Allocation Regulations and the concurrent amendment exempting motor gasoline from the Mandatory Petroleum Price Regulations, FEA has prepared its findings and views supporting these amendments as required by section 12 of the EPAA, based upon its consideration of the comments of those persons who participated in the rulemaking and other information available to FEA. These findings and views are set forth in a single document dated January 14, 1977 and entitled "Findings and Views Concerning the Exemption of Motor Gasoline from the Mandatory Petroleum Allocation and Price Regulations" (the "Findings and Views"). The findings and views set forth therein may be summarized, in part, as follows:

(1) Motor gasoline is no longer in short supply; anticipated supplies of motor gasoline will be sufficient to meet the demand over the near term.

(2) Exemption of motor gasoline from the Mandatory Petroleum Allocation and Price Regulations will not have an adverse impact on the supply of any other refined product. With projected expansions, domestic refining capacity is projected to be more than adequate to meet demand.

(3) Competition and market forces are adequate to protect consumers following exemption of motor gasoline from regulation.

(4) Exemption of motor gasoline from regulation will not result in inequitable prices for any class of end-user. FEA does not expect that exemption of motor gasoline from price controls would lead to any price increases over and above those that would be experienced under continued regulation.

> Adequate refinery capacity to meet all refined product requirements should guarantee continued competition in the refining segment of the industry. The large number of independent and small refiners now competing successfully in the motor gasoline market indicates that sufficient competition exists to protect consumers.

(5) Exemption of motor gasoline from the price and allocation regulations is consistent with the attainment of the objectives set forth in section 4(b)(1) of the EPAA.

> Since an adequate supply is anticipated, continued allocation and pricing controls over motor gasoline are not necessary to protect the public health, safety and welfare, and the national defense (section 4(b)(1)(A)); the maintenance of all public services (section 4(b)(1)(B)); the mantenance of agricultural operations (section 4(b)(1)(C)); or the maintenance of exploration for and production or extraction of fuels and minerals (section 4(b)(1)(G)).
>
> Adequate supply and the positive effects of competition should insure that the exemption is consistent with: The equitable distribution of crude oil, residual fuel oil and refined petroleum products at equitable prices (section 4(b)(1)(F)); preservation of an economically sound and competitive petroleum industry (section (4)(b)(1)(D)); economic efficiency (section 4(b)(1)(H)); and minimization of economic distortions, inflexibility, and interference with market mechanisms (section 4(b)(1)(I)).
>
> The exemption should have no adverse effect on the allocation of suitable types of crude oil to U.S. refineries (section 4(b)(1)(E)).

The Findings and Views also state FEA's views concerning the potential economic impacts of exempting motor gasoline from the Mandatory Petroleum Allocation and Price Regulations. Because no supply, demand or price impacts are anticipated as a result of the exemption, it is not expected that there will be any significant state or regional impacts resulting from the proposed exemption. In particular, no undue adverse impact is expected on any governmental units. In addition, FEA anticipates no adverse economic impacts on the availability of consumer goods or services, the Gross National Product, small business or the supply and availability of energy resources as fuel or feedstock for industry. FEA expects that the exemption will not adversely affect the competitive viability of independent refiners and marketers. The exemption is likewise expected not to cause an adverse effect on employment or consumer prices. FEA's assessment of the effects of the exemption on the rate of unemployment in the U.S., on the Consumer Price Index and on the implicit price deflator for the Gross National Product are set forth in detail in the Findings and Views.

Special Rule No. 4

While FEA did not and does not expect supply dislocations to occur as a result of motor gasoline decontrol, Special Rule No. 4, as proposed in the November 19 notice, was designed as a safeguard against the same type of potential supply dislocations which prompted the adoption of Special Rule No. 3, following the exemption of middle distillates. In the proposal, FEA sought to insure that no marketer of gasoline would lose its supply source without adequate time to arrange for a new supplier during the transitional period following the removal of controls. As proposed, Special Rule No. 4 permitted marketers who have made diligent unsuccessful efforts to obtain supplies of motor gasoline to be assigned

as much as their previously authorized base period use from the special set-aside. These assignments could have been made for periods of up to three months if required to permit the marketers to make their own supply arrangements or for longer if required to preclude hardships to consumers. The proposal also allowed assignments to be made directly to consumers under the same hardship criteria that currently exist for motor gasoline in the state set-aside program. As proposed, the set-aside for each prime supplier constituted three percent of the estimated portion of its total supply of motor gasoline for the particular month to be sold into the distribution system of a state for consumption therein. FEA also proposed that the motor gasoline special set-aside be administered by State Offices, which currently are authorized to administer both the state set-aside for motor gasoline and the special set-aside for middle distillates.

As a result of evaluating marketers' comments, FEA has concluded that the proposed Special Rule No. 4 may not be a fully adequate safeguard to assure continued supply. As adopted, therefore, Special Rule No. 4 provides greater protection for independent marketers than the initial proposal. Special Rule No. 4 now contains a double type of supply guarantee for all wholesale purchasers. Under the transition assignment program, to terminate motor gasoline supplier/wholesale purchaser relationships prior to March 1, 1978, all suppliers will be required to provide at least 90 days notice to any wholesale purchaser (commencing no earlier than the effective date of this amendment) before terminating the supply relationship with that purchaser. Any such termination may be effective only at the end of a period corresponding to a base period coinciding with or following the end of the ninety day notice period. If the purchaser is unable, after a diligent effort, to obtain a supply of motor gasoline equal to its base period use, it may apply at least thirty days prior to the date on which the termination is to become effective to the FEA Regional Office for the region where it is located, to continue its supplier/purchaser relationship with its base period supplier for three additional months. The wholesale purchaser may reapply to the FEA Regional Office for two additional continuation orders for three month periods if it remains unable to find alternative sources of supply. A purchaser which chooses not to receive product from its base period supplier during any three month period, however, will be assumed to have an alternative source of supply and not be eligible to apply for a further transition assignment as to the volume of product not lifted, unless such failure to lift is due to factors beyond the control of the purchaser and FEA determines that the purchaser's inability to obtain that volume would impose an undue hardship on that purchaser. The notification and transition assignment period will provide a maximum of four three month periods of assured supply. In any event, no assignment under Special Rule No. 4 will extend beyond one year from March 1, 1977, the announced effective date of this exemption.

Special Rule No. 4 also provides that if FEA fails to act on an application for continuation of a supplier/purchaser relationship that was filed in a timely fashion, that is, at least thirty days prior to the date on which a termination following ninety days' notice was to take effect or a prior continuation order was to expire, the supplier/purchaser relationship will not end but will automatically continue for an additional month pending FEA action on the application. Moreover, if a late-filed application has not been acted on by FEA on the termination date, Special Rule No. 4 authorizes FEA to issue a temporary continuation order for one month pending final action on the application if the applicant shows good cause for the late filing.

Inasmuch as prices will no longer be subject to controls during this period if the exemption with regard to price is not disapproved, Special Rule No. 4 also prevents circumvention of the transition assignment procedures set forth above by requiring that prices charged to wholesale purchasers, including marketers, receiving product under Special Rule No. 4 shall be nondiscriminatory. Suppliers must make gasoline available to purchasers which are assigned to them pursuant to Special Rule No. 4 on the same terms and conditions under which they make gasoline available to other similarly situated purchasers. In other words, suppliers may not discriminate against purchasers solely because they are assigned purchasers. The same definition of "discrimination" applies for purposes of the Special Rule as currently is used in § 210.62(b).

Special Rule No. 4 further provides the additional protection of a continuing, but gradually diminishing, operation of the state set-aside for motor gasoline for nine months following decontrol, which would be available to resellers, as well as end-users which can demonstrate hardship or emergency requirements. The decreasing volumes available in the set-aside are based on FEA's view that, as the transition to a normally functioning decontrolled market continues, a decreasing number of end-users and wholesale purchasers, including marketers, have the potential of being faced with hardship and emergency requirements. For the first three months following decontrol, the set-aside for each prime supplier would constitute three percent of the estimated portion of its total supply of motor gasoline for each particular month to be sold into the distribution system of a state for consumption therein. For the next succeeding three months the set-aside would constitute two percent and, for the following three months, one percent, after which time it will terminate. Aside from modifying the state set-aside percentage and making it available to resellers (e.g., independent retail marketers) as well as end-users, all other current procedures governing use of the state set-aside would remain in effect.

FEA intends to issue guidelines pursuant to Special Rule No. 4 to provide both FEA and the public greater guidance on the operation of the provisions of the Rule. These guidelines would explain in greater detail such matters as what efforts FEA would deem to constitute a "diligent unsuccessful effort to locate an alternate source of supply" and how the non-discrimination requirements would apply in particular situations.

Section 12(f) of the EPAA provides that following the exemption of any product from regulation, FEA shall have the authority at any time to reimpose allocation controls if necessary to attain the objections of the EPAA. For this reason, FEA is adopting amendments which exempt motor gasoline from the general allocation regulations but which do not delete those regulations from the Code of Federal Regulations. They are in effect converted to standby status, so that, in the event of shortages or other occurrences which might require reimposition of controls, they may, with appropriate modifications, be quickly put into effect.

(Emergency Petroleum Allocation Act of 1973, Pub. L. 93–159, as amended, Pub. L. 93–511, Pub. L. 94–99, Pub. L. 94–133, Pub. L. 94–163, and Pub. L. 94–385; Federal Energy Administration Act of 1974, Pub. L. 93–275, as amended, Pub. L. 94–385; Energy Policy and Conservation Act, Pub. L. 94–163, as amended, Pub. L. 94–385; E.O. 11790, 39 FR 23185; E.O. 11933, 41 FR 36641)

In consideration of the foregoing, Parts 210 and 211 of Chapter II, Title 10 of the Code of Federal Regulations, are amended as set forth below, effective March 1, 1977, unless this amendment is disapproved by either House of Congress pursuant to the review procedures set forth in Section 551 of the EPCA or withdrawn by the President prior to Congressional approval or disapproval during the 15-day period provided for Congressional review in section 551 of the EPCA.

Issued in Washington, D.C., January 19, 1977.

DAVID G. WILSON,
Acting General Counsel.

1. Section 210.35 is amended by adding paragraph (h) (1) to read as follows:

§ 210.35 Exempted products.

* * * * *

(h) (1) Motor gasoline as defined in § 211.51 of this chapter is exempt from the provisions of Part 211 of this chapter (except as set forth in Special Rule No. 4 to Subpart A of Part 211 of this chapter).

2. Section 211.1 is amended in paragraph (b) by adding new subparagraph (10) to read as follows:

§ 211.1 Scope.

* * * * *

(b) *Exclusions.* * * *

(10) Notwithstanding the other provisions of this part, including Subpart F, motor gasoline is excluded from this part (except as set forth in Special Rule No. 4 to Subpart A of this Part 211).

3. The Appendix to Subpart A of Part 211 is amended by the addition of a Special Rule No. 4 to read as follows:

SPECIAL RULE NO. 4

1. *Scope.* Notwithstanding the exemption of motor gasoline from the Mandatory Petroleum Allocation Regulations, this Special Rule provides for a continuation of the State set-aside program for motor gasoline for the months March 1977 through November 1977, as set forth below, and the establishment of a transitional assignment program for motor gasoline for the months March 1977 through February 1978.

2. *Provision for motor gasoline set-aside.* (a) Notwithstanding the provisions of paragraph (h) of § 210.35 and of subparagraph (10) of paragraph (b) of § 211.1, the set-aside established for motor gasoline for assignment by State Offices in accordance with the provisions of §§ 211.17 and 211.107(a) and Subpart Q of the Federal Energy Administration Administrative Procedures and Sanctions (10 CFR 205.210 et seq.) is hereby continued for the months March 1977 through November 1977, except as modified herein.

(b) In addition to those wholesale-purchaser consumers and end-users eligible to receive an assignment from the State set-aside, and those wholesale purchaser-resellers seeking an assignment to enable them to supply such wholesale purchaser-consumers and end-users under 10 CFR 205.211 (a), any wholesale purchaser-reseller which is experiencing a hardship due to its inability to obtain an adequate supply of motor gasoline may apply for and receive an assignment of motor gasoline in accordance with the provisions of § 211.17 and 10 CFR 205.210 et seq.

(c) The State set-aside percentage level for motor gasoline will be three percent for the months March, April, and May 1977, two percent for June, July, and August 1977, and one percent for September, October, and November 1977.

3. *Transitional assignment program.* Notwithstanding any contrary provisions of Parts 205 and 211 of this chapter, assignments of base period suppliers and base period use for wholesale purchasers of motor gasoline shall be made in accordance with the provisions of this Special Rule.

(a) No supplier/wholesale purchaser relationship in effect under § 211.9 of this part as of February 28, 1977, may be terminated before March 1, 1978 by a supplier except upon written notice to the wholesale purchaser given at least ninety (90) days prior to the date on which the supplier intends to terminate the supply relationship. A termination under this paragraph (a) may only be effective at the end end of the period corresponding to a base period coinciding with or following the expiration of the ninety (90) day notice period. Any such ninety (90) day period may not begin prior to March 1, 1977.

(b) Any wholesale purchaser which has received a notice from its supplier under paragraph (a) above shall make a diligent effort to locate an alternate source of supply. If its effort is unsuccessful it may apply to the appropriate FEA Regional Office for a continuation of its current supplier/purchaser relationship, but any such application shall be made at least thirty (30) days prior to the date on which the termination under paragraph (a) is to become effective. The applicant shall certify to the FEA that it has made a diligent unsuccessful effort to locate an alternate source of supply and shall set forth in its application (i) the name and address of its base period supplier; (ii) its base period use with that supplier for each period corresponding to a base period; and (iii) the names and addresses of other suppliers contacted with respect to the applicant's efforts to locate an alternate source of supply, the volumes requested from each such other supplier, and the dates of those contacts. The applicant shall send a copy of its application to its base period supplier.

(c) If FEA determines that an applicant has made a diligent unsuccessful effort to locate an alternate source of supply, FEA shall order a continuation of the applicant's existing supplier/purchaser relationship for a period of three consecutive periods corresponding to a base period. While a continuation order is in effect, the wholesale purchaser shall again make a diligent effort to locate an alternate source of supply. If the wholesale purchaser is again unsuccessful, it may again apply for a continuation in accordance with paragraph (b) above.

(d) If FEA fails to take action on a timely filed application under paragraph (b) or (c) prior to the date upon which the termination of the supplier/purchaser relationship which is the subject of the application is to become effective, the supplier/purchaser relationship shall be automatically extended for a period of one (1) month pending FEA action on the application. If FEA fails to take action on a late filed application under paragraph (b) or (c) prior to the date upon which the termination of the supplier/purchaser relationship which is the subject of the application is to become effective, FEA may issue a temporary continuation order for a period of one (1) month pending FEA action on the application upon a showing by the applicant of good cause for the late filing.

(e) FEA may issue with respect to any supplier/purchaser relationship no more than three (3) continuation orders. In no event may the provisions of a continuation order be effective beyond February 28, 1978.

(f) The failure of any wholesale purchaser to purchase its full allocation entitlement from its base period supplier without the written consent of that supplier in any three (3) month period shall disqualify any such purchaser from being eligible for issuance of a further continuation order covering volumes in excess of the percentage of the allocation entitlement lifted in the previous three (3) month period, unless such failure to purchase is due to factors beyond the control of that wholesale purchaser and FEA determines that such disqualification would impose an undue hardship on that wholesale purchaser.

4. *Non-discrimination requirement.* To prohibit any form of discrimination (including price discrimination) which has the effect of circumventing, frustrating, or impairing the objectives, purposes and intent of this Special Rule, the requirements of paragraph (b) of § 210.62 of this chapter shall continue to apply to suppliers to which an authorizing document is presented pursuant to the continuation of the motor gasoline set-aside under this Special Rule, to suppliers which are subject to a continuation order under the transitional assignment program of this Special Rule, and to all suppliers which are still supplying purchasers because they have failed to give notice of intent to terminate supplies or such termination has not yet become effective.

[FR Doc.77-2269 Filed 1-19-77;2:10 p.m.]

PART 210—GENERAL ALLOCATION AND PRICE RULES

PART 212—MANDATORY PETROLEUM PRICE REGULATIONS

Exemption of Motor Gasoline From Mandatory Petroleum Price Regulations

INTRODUCTION

On November 19, 1976, the Federal Energy Administration ("FEA") issued a notice of proposed rulemaking and public hearing (41 FR 51832, November 24, 1976) to amend 10 CFR Parts 210, 211 and 212 to exempt motor gasoline (as defined in 10 CFR 211.51 and 212.31 of the Mandatory Petroleum Allocation and Price Regulations) and to establish a special motor gasoline set-aside for the transitional period following decontrol. The proposal was based on tentative conclusions set forth in a document dated November 16, 1976, entitled "Preliminary Findings and Views Concerning the Exemption of Motor Gasoline from the Mandatory Petroleum Allocation and Price Regulations" ("Preliminary Findings").

Concurrent with the issuance of this amendment exempting motor gasoline from the Mandatory Petroleum Price Regulations, a separate amendment is being issued to exempt motor gasoline from the Mandatory Petroleum Allocation Regulations. Both amendments are being submitted for Congressional review, as Energy Actions Nos. 9 and 8, respectively, pursuant to section 551 of the Energy Policy and Conservation Act, Pub. L. 94–163 ("EPCA"), and in accordance with section 102 of the Energy Conservation and Production Act, Pub. L. 94–385 ("ECPA"), which in effect requires that FEA submit separate energy actions to the Congress when proposing the exemption of a refined petroleum product from both price and allocation regulations, but does not prohibit concurrent submissions of such separate energy actions.

Written comments on the exemption proposal and on the Preliminary Findings were invited through December 15, 1976 and public hearings were held on December 14 and 15, 1976 in Washington, D.C.; Atlanta, Georgia; Chicago, Illinois; Dallas, Texas; Denver, Colorado; New York, N.Y.; and San Francisco, California. As of December 31, 1976, 307 parties had submitted oral and written comments in response to the proposed exemption. Those offering comments included major integrated refining companies, large and small independent refining companies, branded and non-branded wholesale gasoline distributors, retail sales outlets, trade associations, consumer groups and governmental representatives.

A substantial majority of those commenting agreed with FEA that motor gasoline should be exempted from FEA's allocation and price regulations. This support was based generally upon agree-

ment with FEA's conclusions as to supply and demand projections, competition, and other findings and views set forth in the Preliminary Findings. In particular, there was widespread agreement that competition has been keeping retail gasoline prices below the maximum prices allowed under the Mandatory Petroleum Price Regulations. Most marketers commenting also favored the establishment of a mechanism to assure them a source of supply during the transition following the exemptions. Certain comments at the December hearings noted that the Preliminary Findings, issued contemporaneously with the exemption proposal, were not consistent with data from the economic forecasting firm, Data Resources, Inc. ("DRI"), whose macroeconomic model drives FEA's short-term petroleum demand model. DRI released revised economic forecasts, on which these comments were based, after the analysis for the Preliminary Findings was completed. Information derived from the most recent DRI "Cycle-long" forecast has, however, now been incorporated into FEA's current findings and views. After carefully considering all the comments and making the appropriate revisions to the data supporting its proposed findings, FEA has concluded that its initial view that motor gasoline should be exempted from regulations is correct.

No information or data were presented in this proceeding which significantly alter FEA's Preliminary Findings and Views. FEA does not anticipate that supply shortages will occur or that motor gasoline will rise to higher levels than if controls were continued. In any event, FEA has standby authority under section 12(f) of the Emergency Petroleum Allocation Act of 1973 (EPAA) to reimpose controls (on a temporary or permanent basis) if necessary to attain the objectives set forth in section 4(b)(1) of the EPAA. Therefore, FEA hereby adopts the proposed amendments exempting motor gasoline from the Mandatory Petroleum Price Regulations.

In the exemption proposal, FEA requested comments on the appropriate lead time which should be provided before the decontrol amendment would become effective so as to assure a smooth transition to a decontrolled market. FEA proposed an effective date of the first day of the month following the first full month subsequent to the expiration of the Congressional review period. The fifteen day review period under section 551 of the EPCA will expire shortly after February 1, 1977. Upon consideration of the comments received on this issue, FEA has concluded that it would be appropriate to provide for an effective date of March 1, given that firms will have more than a month's notice of FEA's exemption proposals. Therefore, unless disapproved by either House of Congress under section 551 of the EPCA, this exemption will be effective March 1, 1977.

Findings and Views

In addition to this amendment exempting motor gasoline from the Mandatory Petroleum Price Regulations and the concurrent amendment exempting motor gasoline from the Mandatory Petroleum Allocation Regulations, FEA has prepared its findings and views supporting these amendments as required by section 12 of the EPAA, based upon its consideration of the comments of those persons who participated in the rulemaking and other information available to FEA. These findings and views are set forth in a single document dated January 14, 1977 and entitled "Findings and Views Concerning the Exemption of Motor Gasoline from the Mandatory Petroleum Allocation and Price Regulations" (the "Findings and Views"). The findings and views set forth therein may be summarized, in part, as follows:

(1) Motor gasoline is no longer in short supply; anticipated supplies of motor gasoline will be sufficient to meet the demand over the near term.

(2) Exemption of motor gasoline from the Mandatory Petroleum Allocation and Price Regulations will not have an adverse impact on the supply of any other refined product. With projected expansions, domestic refining capacity is projected to be more than adequate to meet demand.

(3) Competition and market forces are adequate to protect consumers following exemption of motor gasoline from regulation.

(4) Exemption of motor gasoline from regulation will not result in inequitable prices for any class of end-user. FEA does not expect that exemption of motor gasoline from price controls would lead to any price increases over and above those that would be experienced under continued regulation.

Adequate refinery capacity to meet all refined product requirements should guarantee continued competition in the refining segment of the industry. The large number of independent and small refiners now competing successfully in the motor gasoline market indicates that sufficient competition exists to protect consumers.

(5) Exemption of motor gasoline from the price and allocation regulations is consistent with the attainment of the objectives set forth in section 4(b)(1) of the EPAA.

Since an adequate supply is anticipated, continued allocation and pricing controls over motor gasoline are not necessary to protect the public health, safety and welfare, and the national defense (Section 4(b)(1)(A)); the maintenance of all public services (section 4(b)(1)(B)); the maintenance of agricultural operations (section 4(b)(1)(C)); or the maintenance of exploration for and production or extraction of fuels and minerals (section 4(b)(1)(G)).

Adequate supply and the positive effects of competition should insure that the exemption is consistent with: the equitable distribution of crude oil, residual fuel oil and refined petroleum products at equitable prices (section 4(b)(1)(F)); preservation of an economically sound and competitive petroleum industry (section 4(b)(1)(D)); economic efficiency (section 4(b)(1)(H)); and minimization of economic distortions, inflexibility, and interference with market mechanisms (section 4(b)(1)(I)).

The exemption should have no adverse effect on the allocation of suitable types of crude oil to U.S. refineries (section 4(b)(1)(E)).

In connection with FEA's projection that no price increase will occur solely as a result of the exemption from the price regulations, it should be noted that FEA expects that upon decontrol the additional costs of refining unleaded gasoline over the costs of producing leaded gasoline will be more accurately reflected in the prices of unleaded gasoline. FEA has estimated that a price differential of up to two cents per gallon could result. However, even if price controls were to continue, FEA has on this same date issued a regulatory change which permits refiners to reflect the difference in refining costs between these two grades of motor gasoline in the prices charged for these products.

The Findings and Views also state FEA's views concerning the potential economic impacts of exempting motor gasoline from the Mandatory Petroleum Allocation and Price Regulations. Because no supply, demand or price impacts are anticipated as a result of the exemption, it is not expected that there will be any significant state or regional impacts resulting from the proposed exemption. In particular, no undue adverse impact is expected on any governmental units. In addition, FEA anticipates no adverse economic impacts on the availability of consumer goods or services, the Gross National Product, small business or the supply and availability of energy resources as fuel or feedstock for industry. FEA expects that the exemption will not adversely affect the competitive viability of independent refiners and marketers. The exemption is likewise expected not to have an adverse effect on employment or consumer prices. FEA's assessment of the effects of the exemption on the rate of unemployment in the U.S., on the Consumer Price Index and on the implicit price deflator for the Gross National Product are set forth in detail in the Findings and Views.

Post Exemption Monitoring of Gasoline Prices

FEA intends to issue shortly for comment a method of monitoring prices of motor gasoline to assure the continued reasonableness of price levels following the effective date of the exemption of motor gasoline from price and allocation controls. FEA will request written comments and hold public hearings with respect to the specific features of the price monitoring system.

The monitoring system which FEA intends to adopt provides for the monthly measurement of average actual gasoline prices, calculating prices on both a national and regional basis through the end of the 1977 summer driving season. Actual prices would be compared with price indices representing the average price levels FEA believes would have prevailed had gasoline continued under price controls, with sufficient flexibility to allow for statistical error, inherent deficiencies in the operation of the price index, seasonal price adjustments and short term market aberrations. The proposed price monitoring system will provide for remedial action in the event the actual average prices exceed by two cents the appropriate price index.

Section 12(f) of the EPAA provides that following the exemption of any product from regulation, FEA shall have the authority at any time to reimpose price controls if necessary to attain the objectives of the EPAA. For this reason, FEA is adopting amendments which exempt gasoline from the price regulations but which do not delete those regulations from the Code of Federal Regulations. They are in effect converted to standby status, so that, in the event of shortages or other occurrences which might require reimposition of controls, they may, with appropriate modifications, be quickly put into effect.

(Emergency Petroleum Allocation Act of 1973, Pub. L. 93-159, as amended, Pub. L. 93-511, Pub. L. 94-99, Pub. L. 94-133, Pub. L. 94-163, and Pub. L. 94-385; Federal Energy Administration Act of 1974, Pub. L. 93-275, as amended, Pub. L. 94-385; Energy Policy and Conservation Act, Pub. L. 94-163, as amended, Pub. L. 94-385; E.O. 11790, 39 FR 23185; E.O. 11933, 41 FR 36641)

In consideration of the foregoing, Parts 210 and 212 of Chapter II, Title 10 of the Code of Federal Regulations, are amended as set forth below, effective March 1, 1977, unless this amendment is disapproved by either House of Congress pursuant to the review procedures set forth in section 551 of the EPCA or withdrawn by the President prior to Congressional approval or disapproval during the 15-day period provided for Congressional review in section 551 of the EPCA.

Issued in Washington, D.C., January 19, 1977.

David G. Wilson,
Acting General Counsel.

1. Section 210.35 is amended by adding subparagraph (2) to paragraph (h) to read as follows:

§ 210.35 Exempted products.

• • • • • •

(h) • • •

(2) Gasoline as defined in § 212.31 of this chapter is exempt from the provisions of Part 212 of this chapter.

2. Section 212.31 is amended in the definition of "covered products" to read as follows:

§ 212.31 Definitions.

• • • • • •

"Covered products" means aviation fuel (kerosene-type), aviation gasoline, butane, crude oil, natural gas liquids, natural gasoline, and propane. A blend of two or more particular covered products is considered to be that particular covered product constituting the major proportion of the blend.

• • • • • •

3. Subpart C of Part 212 is amended by adding a new § 212.58 as follows:

§ 212.58 Gasoline.

The prices charged for gasoline are exempt from the provisions of this part.

[FR Doc.77-2286 Filed 1-19-77;2:39 pm]

PART 211—MANDATORY PETROLEUM ALLOCATION REGULATIONS

Emergency Amendment on Use of Naphtha for Synthetic Natural Gas Plant Feedstock Use

The Federal Energy Administration ("FEA") hereby adopts on an emergency basis an amendment, effective immediately, to § 211.29 of the Mandatory Petroleum Allocation Regulations (10 CFR Part 211). The purpose of this amendment is to make explicit FEA's intent to limit the volumes of naphtha that can be used for synthetic natural gas (SNG) plant feedstock use.

FEA's allocation program regulates the use of petroleum feedstocks for SNG manufacture. 10 CFR 211.29 sets forth the basic rule that

> • • • a firm which purchases crude oil and allocated products for use as feedstock in a synthetic natural gas plant which has requirements that exceed its base period volume or which has no base period volume may seek an adjustment to its base period volume or establishment of a base period volume only upon application to the FEA National Office • • •

10 CFR 211.29 also states the criteria to be considered by FEA in processing an application for assignment or adjustment, and these criteria are further discussed in Special Rule No. 1 to Subpart A, Part 211. In addition to 10 CFR 211.29 and the Special Rule, FEA has issued a Statement of Policy setting forth the FEA's general policy regarding the use of liquid petroleum feedstocks for the production of SNG.

Prior to the exemption of naphtha from the Mandatory Petroleum Allocation Regulations for all uses except for SNG feedstock use, an allocation level of one hundred percent of base period use was provided for naphtha for SNG plant feedstock use. Under FEA's mandatory allocation regulations before the exemption of naphtha, allocation levels for naphtha were not subject to an allocation fraction. Because of the peculiar role of naphtha in internal refinery operations, particularly the use of naphthas for gasoline blending, the calculation of an allocation fraction for that product was impracticable, and the provisions of § 211.10(g) governing surplus product were not applied to naphtha. Thus, access to volumes and sources of naphtha for purchasers of naphtha for SNG feedstock use was only expressly authorized as permitted under FEA orders and regulations, other than § 211.10(g), and an effective use limitation of one hundred percent of base period use therefore applied. The exemption of naphtha from the allocation program, except for naphtha allocated under §§ 211.29 and 211.183(b)(2), did not change FEA's view that an implicit use limitation existed for naphtha.

Nevertheless, since the use limitation for naphtha is not explicitly stated in FEA regulations as it is for propane and butane for use as SNG feedstocks, and since there are no present regulations governing the distribution of naphtha which is excess to a refiner's needs, certain questions with respect to the existence of the limitation have been brought to FEA's attention. FEA is therefore adopting this amendment to provide explicitly that SNG manufacturers are limited to volumes of naphtha for SNG feedstock use equivalent to one hundred percent of base period use. In those instances where FEA has not yet established a base period use of naphtha, the purchaser is limited to use of those volumes specifically permitted by FEA orders. This clarification of FEA's intentions is consistent with the manner in which FEA has historically administered § 211.29 with respect to naphtha allocations.

As indicated at the time naphtha was exempted from the allocation regulations (except for those sections pertaining to SNG feedstock), FEA is preparing a programmatic environmental impact statement (EIS) on its regulations affecting SNG. Until the completion of the EIS, FEA intends to maintain the operation of its SNG program as it has previously been in effect. After a comprehensive evaluation of the EIS, FEA will determine whether the continued allocation of naphtha for SNG plant feedstock use would be appropriate.

FEA believes that this amendment must be issued on an emergency basis to ensure continued compliance with FEA's SNG allocation program. Specifically, it is essential that the existence of this use limitation be made explicit to prevent an unauthorized increase in consumption of naphtha for SNG manufacture, which might otherwise occur subsequent to the exemption from the Mandatory Petroleum Allocation Regulations of naphtha for all uses except SNG plant feedstock, and which would be in violation of the regulation and underlying policies set forth in § 211.29, Special Rule No. 1 and the Statement of Policy. If this amendment were to be adopted after notice and a hearing, the use limitation on naphtha would not have been made explicit until the current heating season was almost over. FEA therefore finds that strict compliance with the notice requirements of section 7(i)(1)(B) of the Federal Energy Administration Act of 1974, as amended ("FEAA"), Pub. L. 93-275, Pub. L. 94-385, will cause serious harm and injury to the public health, safety and welfare, and the notice requirements of that section are hereby waived.

As required by section 7(c)(2) of the FEAA, a copy of this emergency amendment was submitted to the Administrator of the Environmental Protection Agency for his comments concerning the impact of this proposal on the quality of the environment. The Administrator had no comments.

In accordance with Executive Order 11821 and OMB Circular A-107, FEA is considering the inflationary impact of this proposal.

Because this amendment is being issued on an emergency basis, an opportunity for oral presentation of views is not possible prior to its implementation. A public hearing, however, will be held beginning at 9:30 a.m., on February 24, 1977, in Room 2105, 2000 M Street NW.,

Washington, D.C., to receive comments from interested persons. Any person who has an interest in the subject of the hearing, or who is a representative of a group or class of persons which has an interest in the subject of the hearing, may make a written request for an opportunity to make an oral presentation. Such a request should be directed to Executive Communications, FEA, 1200 Pennsylvania Avenue, NW., Washington, D.C. 20461, and must be received before 4:30 p.m., e.s.t., February 2, 1977. Such a request may be hand delivered to Room 3309, Federal Building, 1200 Pennsylvania Avenue NW., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., e.s.t., Monday through Friday, except Federal holidays. The person making the request should be prepared to describe the interest concerned; if appropriate, to state why he or she is a proper representative of a group or class of persons which has such an interest; and to give a concise summary of the proposed oral presentation and a phone number where he or she may be contacted through February 4, 1977. Each person selected to be heard will be so notified by the FEA before 5:30 p.m., e.s.t., February 4, 1977, and must submit 50 copies of his or her statement to Office of Allocation Regulation Development, FEA, Room 2214, 2000 M Street NW., Washington, D.C. 20461, before 9:00 a.m., e.s.t., February 23, 1977.

The FEA reserves the right to select the persons to be heard at the hearing, to schedule their respective presentations, and to establish the procedures governing the conduct of the hearing. Each presentation may be limited, based on the number of persons requesting to be heard.

An FEA official will be designated to preside at the hearing. It will not be a judicial or evidentiary-type hearing. Questions may be asked only by those conducting the hearing, and there will be no cross-examination of persons presenting statements. Any decision made by the FEA with respect to the subject matter of the hearing will be based on all information available to the FEA. At the conclusion of all initial oral statements, each person who has made an oral statement will be given the opportunity, if he or she so desires, to make a rebuttal statement. The rebuttal statements will be given in the order in which the initial statements were made and will be subject to time limitations.

Any interested person may submit questions, to be asked of any person making a statement at the hearing, to Executive Communications, FEA, before 4:30 p.m., e.s.t., February 22, 1977. Any person who makes an oral statement and who wishes to ask a question at the hearing may submit the question, in writing, to the presiding officer. The FEA or the presiding officer, if the question is submitted at the hearing, will determine whether the question is relevant, and whether time limitations permit it to be presented for answers.

Any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer.

A transcript of the hearing will be made and the entire record of the hearing, including the transcript, will be retained by the FEA and made available for inspection at the FEA Freedom of Information Office, Room 2107, Federal Building, 1200 Pennsylvania Avenue, N.W., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Anyone may buy a copy of the transcript from the reporter.

Interested persons are invited to submit data, views, or arguments with respect to this emergency amendment to Executive Communications, Federal Energy Administration, Box KE, Washington, D.C. 20461.

Comments should be identified on the outside envelope and on documents submitted to Executive Communications, FEA, with the designation "Use Limitation—SNG Feedstocks." Fifteen copies should be submitted. All comments received by February 22, 1977, and all relevant information, will be considered by the Federal Energy Administration.

Any information or data considered by the person furnishing it to be confidential must be so identified and submitted in writing, in accordance with the procedures stated in 10 CFR 205.9(f). The FEA reserves the right to determine the confidential status of the information or data and to treat it according to its determination.

(Emergency Petroleum Allocation Act of 1973, P.L. 93-159, as amended P.L. 93-511, P.L. 94-99, P.L. 94-133, P.L. 94-163, P.L. 94-385; Federal Energy Administration Act of 1974, P.L. 93-332, P.L. 94-385; E.O. 11790 (39 FR 23185).)

In consideration of the foregoing, Part 211 of Chapter II, Title 10 of the Code of Federal Regulations, is amended as set forth below, effective immediately.

Issued in Washington, D.C., January 19, 1977.

DAVID G. WILSON,
Acting General Counsel.

1. Section 211.29 is revised by redesignating paragraphs (a), (b), (c) and (d) thereof as subparagraphs (1), (2), (3) and (4), respectively, by designating the introductory paragraph thereof as paragraph (a), and by adding a new paragraph (b), to read as follows:

§ 211.29 Synthetic natural gas production.

* * * * *

(b) Unless directed by FEA upon application pursuant to Subpart G of Part 205 of this chapter, no supplier shall supply and no wholesale purchaser or end-user shall accept or use naphtha in excess of one hundred percent of base period use for synthetic natural gas plant feedstock use.

[FR Doc.77-2285 Filed 1-19-77;2:30 pm]

PART 211—MANDATORY PETROLEUM ALLOCATION REGULATIONS

Emergency Amendment Authorizing Waiver of Propane and Butane Peak Shaving Use Limitation

The Federal Energy Administration ("FEA") hereby adopts on an emergency basis amendments to the Mandatory Petroleum Allocation Regulations, 10 CFR Part 211, with respect to the volumetric limitation imposed on the use of propane and butane for peak shaving. The amendments adopted today are effective immediately.

In light of the severely cold winter weather that many parts of the nation are experiencing, gas utilities are faced with extremely large demand for natural gas to meet the requirements of their highest priority customers. Because of this increased demand for natural gas and also because of equipment breakdowns resulting from the cold weather, the FEA has received a large number of requests from gas utilities for permission to use propane for peak shaving in excess of the use limitations imposed by FEA Regulations. These applications must currently be processed as applications for exception from the regulations. Since evaluation of an application for exception is frequently a somewhat lengthy process, there may well be instances in which FEA could not provide relief promptly, with the result that some high priority customers such as hospitals and schools would have to be curtailed pending final FEA action on a meritorious application. This emergency amendment is being issued to provide FEA with the authority to waive the peak shaving use limitations set forth in §§ 211.83(c)(2)(v) and 211.93(c)(2)(iv) for propane and butane respectively, without requiring a utility to obtain an exception to the regulations.

In September 1975, FEA issued an amendment to § 211.10(g)(8) to allow imported non-Canadian propane and butane to be employed for certain uses (other than gas utility or synthetic natural gas feedstock use) without regard to use limitations contained in that section (40 FR 40821, September 4, 1975). At that time, FEA retained in § 211.10(g)(8) the limitation on the use of propane or butane for gas utility or synthetic natural gas feedstock use to one hundred percent (100) of base period use. In the preamble to that amendment, FEA stated:

[T]here are certain gas utilities which by reason of the very high level of residential use of natural gas and the inability of their customers to convert to use of substitute fuels in the near term should be permitted to acquire and use supplies of non-Canadian propane and butane in excess of base period use. For this reason, FEA has retained authority in §§ 211.10(g)(8), 211.86 and 211.96 to permit relaxation of the use limitation and inventory accumulation restrictions otherwise applicable to gas utilities. Gas utilities may petition for relief pursuant to these sections and Subpart G of Part 205 of the FEA procedural regulations. Such a petition will not be treated as an exception request and should be submitted to the Assistant Administrator for Regulatory Programs. * * * (40 FR 40821, September 4, 1975).

Thus, FEA intended to retain its flexibility to respond to applications for permission to exceed the use limitation by providing that the volumetric limitation could be waived if "directed by FEA upon application pursuant to Subpart G of Part 205 of this chapter." FEA has now determined, however, that by not including the same procedure in the use limitations for peak shaving contained in §§ 211.83(c)(2)(v) and 211.93(c)(2)(iv) of the Mandatory Petroleum Allocation Regulations, FEA may have limited its authority under the regulations to allow a gas utility to exceed its base period use, except through the exceptions process.

The volumetric portion of the use limitation for peak shaving in 10 CFR § 211.83(c)(v) provides:

The use of propane for peak shaving by gas utilities during any consecutive twelve month period beginning after January 1, 1974, is limited to the volume of propane equal to one hundred (100) percent of that volume which a gas utility contracted for or purchased for delivery during the period April 1, 1972 through March 31, 1973, regardless of whether that volume was used during the period.

The same use limitation is provided in § 211.93(c)(2)(iv) for butane.

Therefore, under current regulations, FEA may waive the use limitation of § 211.10(g)(8) but may permit gas utilities to exceed their base period use of propane or butane for peak shaving only by the increment which would bring the total amount to that for which they contracted or which they purchased for delivery in the base period. For some utilities this relief would be inadequate. FEA has therefore determined that the same waiver procedure should be available in §§ 211.83(c)(2)(v) and 211.93(c)(2)(iv) as appears in § 211.10(g)(8). By including the procedure in each of the cited sections, FEA is providing a means of expeditiously responding to applications for waiver with an adequate remedy in cases where relief is warranted.

In connection with the issuance of these amendments, FEA is soliciting comments on the criteria which should apply to the issuance of waivers of the volumetric limitations of propane and butane for peak shaving by gas utilities and on whether FEA should issue either regulations or guidelines in this regard. Prior to the development of regulations or guidelines, FEA intends to examine all the relevant circumstances surrounding each application before granting a waiver.

These amendments are being issued on an emergency basis so that FEA may respond expeditiously to requests from gas utilities for additional propane or butane to help meet the demands of their high priority customers during the current heating season, without requiring the utilities to go through the exceptions process. If these amendments were not adopted until after notice and a hearing, they would not be effective until after the coldest portion of the heating season, long after most of the requests for additional peak shaving material should have been acted upon. FEA therefore finds that strict compliance with the notice requirements of section 7(i)(1)(B) of the Federal Energy Administration Act of 1974, as amended, ("FEAA"), Pub. L. 93-275, Pub. L. 94-385, will cause serious harm and injury to the public health, safety and welfare, and the notice requirements of that section are hereby waived.

Section 7(c)(1) of the FEAA provides that FEA shall, before promulgating proposed regulations affecting the quality of the environment, provide a period of not less than five working days during which the Administrator of the Environmental Protection Agency ("EPA") may provide written comments concerning the impact of such regulations on the quality of the environment. Such comments are required to be published concurrently with or as part of the notice of proposed rulemaking.

Under section 7(c)(2) of the FEAA, the prior review required by section 7(c)(1) may be waived for a period of 14 days if there is an emergency situation which requires taking action at a date earlier than would permit the EPA the five day opportunity for prior comment required under section 7(c)(1). Notice of any such waiver must be given to the EPA and filed with the FEDERAL REGISTER with the notice of proposed or final FEA action and must include an explanation of the reasons for such waiver together with supporting data and factual background information.

Pursuant to section 7(c)(2) of the FEAA, FEA hereby waives the requirements of section 7(c)(1) of the FEAA concerning prior review by EPA of the environmental impact of this proposed rulemaking. This waiver is based on an emergency situation which, as explained above, mandates that FEA be able immediately to determine whether to permit gas utilities to use propane or butane for peak shaving in excess of their base period use to serve high priority customers who might otherwise be curtailed. A copy of this emergency amendment has been sent concurrent with its issuance to the Administrator for his comments.

In accordance with Executive Order 11821 and OMB Circular A-107, FEA is considering the inflationary impact of this proposal.

Because this amendment is being issued on an emergency basis, an opportunity for oral presentation of views is not possible prior to its implementation. A public hearing, however, will be held beginning at 9:30 a.m., on February 16, 1977, in Room 2105, 2000 M Street NW., Washington, D.C., to receive comments from interested persons. Any person who has an interest in the subject of the hearing, or who is a representative of a group or class of persons which has an interest in the subject of the hearing, may make a written request for an opportunity to make an oral presentation. Such a request should be directed to Executive Communications, FEA, 1200 Pennsylvania Avenue NW., Washington, D.C. 20461, and must be received before 4:30 p.m., e.s.t., February 3, 1977. Such a request may be hand delivered to Room 3309, Federal Building, 1200 Pennsylvania Avenue, NW., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., e.s.t., Monday through Friday, except Federal holidays. The person making the request should be prepared to describe the interest concerned; if appropriate, to state why he or she is a proper representative of a group or class of persons which has such an interest; and to give a concise summary of the proposed oral presentation and a phone number where he or she may be contacted through February 4, 1977. Each person selected to be heard will be so notified by the FEA before 5:30 p.m., e.s.t., February 4, 1977, and must submit 50 copies of his or her statement to Office of Allocation Regulation Development, FEA, Room 2214, 2000 M Street NW., Washington, D.C. 20461, before 9:00 a.m., e.s.t., February 15, 1977.

The FEA reserves the right to select the persons to be heard at the hearing, to schedule their respective presentations, and to establish the procedures governing the conduct of the hearing. Each presentation may be limited, based on the number of persons requesting to be heard.

An FEA official will be designated to preside at the hearing. It will not be a judicial or evidentiary-type hearing. Questions may be asked only by those conducting the hearing, and there will be no cross-examination of persons presenting statements. Any decision made by the FEA with respect to the subject matter of the hearing will be based on all information available to the FEA. At the conclusion of all initial oral statements, each person who has made an oral statement will be given the opportunity, if he or she so desires, to make a rebuttal statement. The rebuttal statements will be given in the order in which the initial statements were made and will be subject to time limitations.

Any interested person may submit questions, to be asked of any person making a statement at the hearing, to Executive Communications, FEA, before 4:30 p.m., e.s.t., February 11, 1977. Any person who makes an oral statement and who wishes to ask a question at the hearing may submit the question, in writing, to the presiding officer. The FEA or the presiding officer, if the question is submitted at the hearing, will determine whether the question is relevant, and whether time limitations permit it to be presented for answers.

Any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer.

A transcript of the hearing will be made and the entire record of the hearing, including the transcript, will be retained by the FEA and made available

for inspection at the FEA Freedom of Information Office, Room 2107, Federal Building, 1200 Pennsylvania Avenue, N.W., Washington, D.C., between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Anyone may buy a copy of the transcript from the reporter.

Interested persons are invited to submit data, views, or arguments with respect to this emergency amendment to Executive Communications, Federal Energy Administration, Box KH, Washington, D.C. 20461.

Comments should be identified on the outside envelope and on documents submitted to Executive Communications, FEA, with the designation "Propane and Butane Peak Shaving Limitation." Fifteen copies should be submitted. All comments received by February 11, 1977, and all relevant information, will be considered by the Federal Energy Administration.

Any information or data considered by the person furnishing it to be confidential must be so identified and submitted in writing, in accordance with the procedures stated in 10 CFR 205.9(f). The FEA reserves the right to determine the confidential status of the information or data and to treat it according to its determination.

(Emergency Petroleum Allocation Act of 1973, Pub. L. 93-159, as amended Pub. L. 93-511, Pub. L. 94-99, Pub. L. 94-133, Pub. L. 94-163, Pub. L. 94-385; Federal Energy Administration Act of 1974, Pub. L. 93-275, as amended, Pub. L. 94-332, Pub. L. 94-385; E.O. 11790 (39 FR 23185)).

In consideration of the foregoing, Part 211 of Chapter II, Title 10 of the Code of Federal Regulations, is amended as set forth below, effective immediately.

Issued in Washington, D.C., January 18, 1977.

DAVID G. WILSON,
Acting General Counsel.

1. Section 211.83 is amended by revising paragraph (c)(2)(v) to read as follows:

§ 211.83 Allocation levels.

* * * * * * *

(c) *Allocation levels subject to an allocation fraction.* * * *

(2) * * *

(v) *Peak shaving for gas utilities.* Unless directed by FEA upon application pursuant to Subpart G of Part 205 of this chapter, the use of propane for peak shaving by gas utilities during any consecutive twelve month period beginning after January 1, 1974, is limited to the volume of propane equal to one hundred (100) percent of that volume which a gas utility contracted for or purchased for delivery during the period April 1, 1972 through March 31, 1973, regardless of whether that volume was used during the period. Propane shall not be used for peak shaving as long as the gas utility continues service during such peak shaving usage to interruptible industrial customers (other than for process fuel, plant protection fuel, or raw material) or to any nonresidential customer who can use a fuel other than natural gas, propane or butane; and

* * * * * * *

2. Section 211.93 is amended by revising paragraph (c)(2)(iv) to read as follows:

§ 211.93 Allocation levels.

* * * * * * *

(c) *Allocation levels subject to an allocation fraction.* * * *

(2) * * *

(iv) *Peak shaving for gas utilities.* Unless directed by FEA upon application pursuant to Subpart G of Part 205 of this chapter, the use of butane for peak shaving by gas utilities during any consecutive twelve month period beginning after January 1, 1974 is limited to the volume of butane equal to one hundred (100) percent of that volume which a gas utility contracted for or purchased for delivery during the period April 1, 1972 through March 31, 1973, regardless of whether that volume was used during the period. Butane shall not be used for peak shaving as long as the gas utility continues service during such peak shaving usage to interruptible industrial customers (other than for process fuel, plant protection fuel, or raw material) or to any nonresidential customer who can use a fuel other than natural gas propane or butane; and

* * * * * * *

[FR Doc.77-2243 Filed 1-19-77;12:26 pm]

Title 17—Commodity and Securities Exchanges

CHAPTER II—SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 34-13156, 35-19853, IC-9604, AS-206]

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

Adoption of Amendments of Certain Forms and Related Rules

The Securities and Exchange Commission today announced that it has adopted amendments to certain of its rules, schedules and reporting forms under the Securities Exchange Act of 1934 (the "Exchange Act") (15 U.S.C. 78a et seq., as amended by Pub. L. No. 94-29 (June 4, 1975)) which will (1) provide for more timely filing of reports on Form 8-K (17 CFR 249.308) by amending General Instruction B to Form 8-K and Rules 13a-11 (17 CFR 240.13a-11) and 15d-11 (17 CFR 240.15d-11); (2) decrease the number of items of information required to be included in reports on Form 8-K (17 CFR 249.308) by approximately 62 percent by transferring certain items to the Form 10-Q (17 CFR 249.308a); (3) revise two of the items retained in the Form 8-K and four of those transferred to the Form 10-Q; (4) provide for different filing requirements as to Parts I and II of the Form 10-Q by revising Rules 13a-13 (17 CFR 240.13a-13) and 15d-13 (17 CFR 240.15d-13); (5) add three new items to Form 10-K (17 CFR 249.310) and revise one item of the Form 10-K to require disclosure of items of information previously required in reports on Form 8-K filed during the fourth quarter of the fiscal year for which no report on Form 10-Q is required; and (6) revise Item 5 of Schedule 14A to Regulation 14 under the Exchange Act (17 CFR 240.14a-101) to conform to the amendment to Item 1 of Form 8-K. Forms 8-K, 10-Q and 10-K are the general forms for, respectively, current, quarterly and annual reports filed pursuant to Section 13 or 15(d) of the Exchange Act, and Regulation 14 specifies the information required to be set forth in proxy and information statements filed pursuant to Section 14 of that Act. Schedule 14A is also applicable to the solicitation of proxies under the Public Utility Holding Company Act of 1935 (15 U.S.C. 79a et seq., as amended by Pub. L. No. 94-29 (June 4, 1975)) and the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq., as amended by Pub. L. 94-29 (June 4, 1975)).

This release contains a general discussion of the purpose and effect of the amendments and of the consideration given to the comments received on the proposed amendments. Comments of a general nature are discussed in the General Statement, and specific comments are discussed within the brief synopses of the principal amendments. Attention is directed to the text of the amendments for a more complete understanding.

GENERAL STATEMENT

Notice of the proposed amendments to Forms 8-K, 10-Q and 10-K and to Schedule 14A was published on July 12, 1976 in Securities Exchange Act Release No. 12619 [41 FR 29784, July 19, 1976]. Comments on the proposed amendments were received from 60 interested parties, and changes have been made to reflect a number of the suggestions made by the commentators.

In Exchange Act Release No. 12619, the Commission stated that the proposals therein represented a step forward in the efforts to further simplify and rationalize the corporate disclosure system under the federal securities laws and to provide more meaningful information to investors. Although a few commentators suggested that these goals would be more fully achieved through the elimination of the Form 8-K and the transfer of all of the items of the Form 8-K to the Form 10-Q,[1] the Commission believes that registrants should describe in reports on Form 8-K certain matters about which investors might not otherwise receive adequate and reasonably current information. Accordingly, the Form 8-K has been retained to serve as the report for disclosure of changes in control of the registrant (Item 1), acquisition and disposition of significant amounts of assets (Item 2), the appointment of a receiver of the registrant in a bankruptcy or similar proceeding (Item 3), and changes in a registrant's certifying accountant (Item 4). The voluntary disclosure item has been retained in the Form 8-K as Item 5 because the Commission believes that registrants may wish to describe certain material events in the monthly report. In order to provide for more current reporting of events of major significance to investors, the Form 8-K and Rules 13a-11 and 15d-11 have been amended to require registrants to file reports on Form 8-K within fifteen days after the occurrence of a reportable event.

The Commission believes that the amendments which are adopted today should reduce the number of reports on Form 8-K required to be filed and, therefore, should result in a significant savings of costs and time to registrants and the Commission. Registrants are reminded, however, of the obligations of publicly held companies to make full and prompt announcements of material facts regarding the company's financial condition, notwithstanding their compliance with the reporting requirements of the Exchange Act. The Commission believes that these amendments do not in any way affect the responsibility of management to make such announcements. The failure of companies to make prompt and accurate disclosure of both favorable and unfavorable information to security holders and the investing public may violate the Exchange Act and, in the case of an issuer making a continuous offering of its shares, may also violate the Securities Act of 1933 if the prospectus is not appropriately updated. Therefore, corporate managements are urged once again to review their policies with respect to corporate disclosure and endeavor to set up procedures which will insure that prompt disclosure be made of all material corporate developments.[2]

During the past several months, the Commission has accelerated further its program to integrate, streamline and update the corporate disclosure system it administers under the Securities Act and the Exchange Act. The adoption of these amendments is a significant step forward in these efforts. The Commission has also adopted a revised Form S-8 in Securities Act Release No. 5767 (November 22, 1976 (41 FR 52662) and has adopted amendments to Forms S-7 and S-16 which make these forms available to more registrants in Securities Act Release No. 5791 (December 20, 1976 (41 FR 56301). Public comments have been invited on the following additional proposals: (1) The adoption of a new registration form to permit use of an abbreviated prospectus with certain business combination transactions in Securities Act Release No. 5744 (October 4, 1976) (41 FR 43876); (2) the amendment of the rules relating to tender offers, in Securities Act Release No. 5731 (August 6, 1976 (41 FR 33004); (3) the amendment of Form S-16 to broaden the availability of the form to a limited category of large companies for the registration of certain primary offerings of securities in Securities Act Release No. 5792 (December 20, 1976) (41 FR 56331). The Commission announced it is reviewing the procedures available to small issuers to raise capital, and proposals may be published soon soliciting comments on simplifying these procedures.

[1] These commentators expressed support for the recommendations of the so-called Wheat Report that the Form 8-K be substantially eliminated and that most of the 8-K items be included in a quarterly report. See "Report and Recommendations to the Securities and Exchange Commission from the Disclosure Policy Study, Disclosure to Investors, A Reappraisal of Administrative Policies under the 1933 and 1934 Acts" (March 1969) at pp. 356-364.

[2] *See* Securities Act Release No. 5092 (October 15, 1970), 35 FR 16733 (October 29, 1970).

I. AMENDMENTS RELATING TO THE TIME FOR FILING REPORTS ON FORM 8-K

Securities Exchange Act Rules 13a-11 and 15d-11 have been amended to delete the specific requirement relating to the time for filing reports on Form 8-K and to refer instead to the filing requirements set forth in the form itself. General Instruction B to the form has been amended to require that reports on Form 8-K be filed within fifteen days after the occurrence of an event specified in the form or within ten days after the end of the month during which occurred an event reported pursuant to Item 5, the voluntary disclosure item. Registrants are encouraged, however, to file all reports on Form 8-K as soon as practicable regardless of these filing requirements. Registrants may continue to report more than one event in a report on Form 8-K provided there is compliance with the requirements of the form relating to the time for filing the report.

The Commission has considered the objections to the proposed filing requirement of ten days after the occurrence of the reportable event which were raised by many of the commentators but believes that any inconvenience to registrants will be more than offset by the benefits to investors from more timely reporting. In addition, the Commission believes that upon the occurrence of any one of the four events requiring current disclosure registrants should have knowledge of the event and access to most of the information required to be set forth in response to the applicable item. In order to alleviate any difficulties which registrants might encounter as a result of weekends, holidays or the mail service, the Commission has adopted the filing date of fifteen days after the occurrence of the reportable event rather than the proposed ten days after the occurrence of the event.

In light of the proposed earlier filing date for reports on Form 8-K, the Commission has also amended General Instruction B to provide registrants with an additional 30 days after the report is filed in which to file the auditor's letter required by Item 6(b) when the registrant reports a change in its certifying accountant.

The Commission has not adopted, however, the proposal to permit registrants to file within 60 days after the report is filed the financial statements required to be included in reports pursuant to Item 2 of Form 8-K. The Commission believes that the proposed revision is unnecessary because of the provisions of Rule 12b-25 under the Exchange Act (17 CFR 240.12b-25) relating to requests for extension of time for furnishing information. Rule 12b-25 provides for an automatic 30-day extension of time unless the Commission enters an order denying the application or notifies the registrant that the application has been denied within 15 days after the application on Form 12b-25 (17 CFR 249.322) is filed. An additional 30 days in which to file the required information may be available upon separate application.

II. AMENDMENTS RELATING TO THE ELIMINATION OF ITEMS FROM FORM 8-K

The amendments authorized today eliminate the following information items from Form 8-K: Item 3 (Legal Proceedings), Item 4 (Changes in Securities), Item 5 (Changes in Security for Registered Securities), Item 6 (Defaults Upon Senior Securities), Item 7 (Increase in Amount of Securities Outstanding), Item 8 (Decrease in Amount of Securities Outstanding), Item 9 (Options to Purchase Securities), Item 10 (Extraordinary Item Charges and Credits, other Material Charges and Credits to Income of an Unusual Nature, Restatements of Capital Share Account), and Item 11 (Submission of Matters to a Vote of Security Holders). To the extent that any of the events previously reported pursuant to these former 8-K items, such as material legal proceedings, constitutes an event of material importance to security holders in the opinion of the registrant, it may be reported under the new Item 5 of the Form 8-K, the voluntary disclosure item. The items remaining in Form 8-K have been renumbered.

A. ELIMINATION OF ITEM 6 (DEFAULTS UPON SENIOR SECURITIES)

In Securities Exchange Act Release No. 12619, the Commission proposed to retain in revised form previously numbered Form 8-K Items 6 and 10. It was proposed that Item 6 be revised to require disclosure of non-compliance with the terms for payment of principal and interest on senior securities. Upon reconsideration of the proposal and after review of the comments, the Commission has transferred the unrevised former 8-K Item 6 to the Form 10-Q. The proposed revision would not have fully achieved the objective of requiring early disclosure of significant liquidity difficulties and the quarterly report is the more appropriate report for disclosure of defaults upon senior securities.

B. ELIMINATION OF ITEM 10 OF THE FORM 8-K RELATING TO MATERIAL CHARGES AND CREDITS

Former Item 10 of Form 8-K required disclosure of material charges and credits to income of an unusual or infrequent nature and direct charges and credits to retained earnings. The objectives of the item were to require appropriate and timely reporting of events or trans-

actions which had a material impact upon the registrant's financial position or results of operations. The Commission continues to believe that disclosure of such information is necessary. However, it believes that the objective is achieved without the necessity for specific requirements in Forms 8–K, 10–Q and 10–K. The Commission has, therefore, determined to eliminate Item 10 and not transfer the item to the Form 10–Q.

The Commission believes that Item 10 of Form 8–K is now unnecessary because the information previously required by that item has become a part of other regulations subsequently adopted by the Commission and/or revisions to generally accepted accounting principles. The Commission believes that Accounting Principles Board Opinions No. 28 (Interim Financial Reporting) and No. 30 (Reporting the Results of Operations) and Accounting Series Releases No. 159 (Textual Analysis of Summary of Earnings or Operations) (39 FR 31896) and No. 177 (Interim Financial Reporting, including Instruction 5 to Form 10–Q, Management's Analysis of Quarterly Income) (40 FR 46107), provide an appropriate framework or requirements for the disclosure of material charges and credits.

Accounting Principles Board Opinion No. 30 requires that disclosure of the nature and financial effects of unusual or infrequently occurring items on the fact of the income statement. In addition, the management discussion and analysis of the statement of operations required by ASR 159 requires a discussion of material facts, whether favorable or unfavorable, which in the opinion of the management may make the historical operations or earnings not indicative of current or future operations or earnings. The Commission believes that these disclosure requirements encompass reporting the nature of a charge or credit, the reasons for a charge or credit, and an analysis of the components of the charge or credit, including information as to the types of items written off and provision made for future expenses. They also encompass the reporting of the timing of significant future cash requirements or recoveries.

The Commission also believes that provisions for future charges and the changes in such provisions are subject to the reporting requirements of Schedule XII of Regulation S–X (Valuation and Qualifying Accounts and Reserves) (17 CFR 210.12–13). Major components of such reserves should be set forth separately in Schedule XII.

By eliminating the specific material charges and credits item from the forms, the Commission does not believe the requirements for such disclosures have been lessened nor does it believe that the timeliness or quality of disclosures regarding material events or transactions of registrants will be diminished. The Commission again reminds registrants of their responsibilities under the Securities Acts for full and timely disclosure of material charges and credits in the absence of specific requirements in its forms. The Commission intends to monitor compliance with the disclosure requirements for these forms and will take further action in appropriate circumstances.

III. Amendments Relating to the Transfer of Items From the Form 8–K to the Form 10–Q

A. Amendments to Form 10–Q for quarterly reports under section 13 or 15 (d) of the Securities Exchange Act

The information called for by the items which have been eliminated from the Form 8–K will be reported in quarterly reports on Form 10–Q, with the exception of Items 9 (Options to Purchase Securities) and 10 (Extraordinary Item Charges * * *). Item 9 has not been included in Form 10–Q because the disclosure it calls for already is required in annual reports on Form 10–K and in proxy and information statements filed pursuant to Section 14 of the Securities Exchange Act; Item 10 has not been transferred to the Form 10–Q for the reasons discussed above.

The amendments to Form 10–Q provide for a two part report. Part I contains the quarterly financial information and Part II, which is deemed to be a "filed" document and subject to the liability provisions of Section 18 of the Exchange Act, contains the following items of information: (1) The information reported pursuant to the seven items being transferred to the Form 10–Q from the Form 8–K; (2) a new Item 8 which enables a registrant voluntarily to include in its quarterly report any information not otherwise called for by Form 10–Q which the registrant deems of material importance to security holders; (3) a new Item 9 relating to reports on Form 8–K, if any, which have been filed by registrant during the quarter covered by the report; and (4) appropriate instructions as to required exhibits. The General Instructions to Form 10–Q have been amended to reflect the reorganization of the form into the two parts and to include instructions appropriate to the information required by new Part II of the form.

New Item 8 of Part II of Form 10–Q, which permits registrants to report matters of material importance to security holders, is similar to former Item 13 of Form 8–K and to Item 5 of the amended form. It differs from the 8–K item in that it provides for disclosure of events "not previously reported in a report on Form 8–K."

In addition, new Item 9 of Part II of Form 10–Q requires registrants to file certain necessary exhibits to the other items of Part II and state whether any reports on Form 8–K have been filed during the quarter covered by the report, listing the dates of any such reports, the items reported and any financial statements filed. This amendment is intended to provide users of the reporting system with a convenient reference to determine whether a registrant has filed any reports on Form 8–K.

B. Amendments to Securities Exchange Act Rules 13a–13 (17 CFR 240.13a–13) and 15d–13 (17 CFR 240.15d–13)

In connection with the transfer of items from the Form 8–K to the Form 10–Q, the Commission has adopted certain technical amendments to Rules 13a–13 and 15d–13 under the Exchange Act in order to set forth the persons required to file pursuant to and the nature of the filing requirements of Parts I and II of the form.

Rules 13a–13 and 15d–13 have been amended to revise the exemption contained therein from the requirement to file quarterly reports on Form 10–Q. All life insurance companies and holding companies, regardless of the effect on such companies of the amendments announced in Accounting Series Release No. 197 (41 FR 42645), and certain mining companies henceforth will be required to file quarterly reports on Part II of Form 10–Q to report the occurrence of any one or more of the events specified in Part II and to state whether or not any reports on Form 8–K have been filed. These companies have been required to file current reports on Form 8–K and, therefore, the amendment merely preserves the status quo. The exemption from the requirements to file quarterly and current reports on Forms 10–Q and 8–K formerly available to certain investment companies and foreign private issuers has not been affected by the amendments announced today.

Secondly, in order to retain the requirement that public utilities, common carriers and pipeline carriers report the information called for by the items which have been transferred from the Form 8–K to the 10–Q, Rules 13a–13 and 15d–13 have been amended to provide that those corporations which are regulated by the Civil Aeronautics Board, the Federal Communications Commission, the Federal Power Commission or the Interstate Commerce Commission may file their reports submitted to such agencies in lieu only of Part I of the form.[3]

Securities Exchange Act Rules 13a–13 and 15d–13 have provided prior to their amendment that the quarterly reports are not deemed to be "filed" for the purpose of Section 18 of the Exchange Act or otherwise subject to the liabilities of that section.[4] Section 18 has been applicable to the information reported on Form 8–K and, accordingly, the Commission has amended Rules 13a–13 and 15d–13 to extend Section 18 liability to the information required by Part II of the Form 10–Q.

[3] In Securities Exchange Act Release No. 12769 (September 3, 1976) (41 FR 39050), the Commission proposed amendments to Rules 13a–13 and 15d–13 to require registrants subject to the jurisdiction of the above federal agencies to file annual reports on Form 10–K and quarterly financial reports on Form 10–Q; these proposals are still pending.

[4] The basis stated for the determination that Section 18 should not apply to the quarterly financial information was that "interim earnings figures can frequently be arrived at only by the use of reasonable estimates or on the basis of certain assumptions * * *" *See* Securities Exchange Act Release No. 5129 (January 27, 1955), 20 FR 771 (February 4, 1955).

C. Amendments to Form 10–K for annual reports pursuant to section 13 or 15(d) of the Securities Exchange Act

Reports on Form 10–Q are not required for the fourth quarter of a registrant's fiscal year, and the Form 10–K has not previously required the disclosure of certain of the events reportable under the items contained in new Part II of the Form 10–Q. Therefore, in order to provide for prompt reporting of the information called for by these items concerning events occurring during registrant's fourth quarter, the Commission has amended the Form 10–K to require disclosure of the following matters unless previously reported in a report on Form 10–Q:

(1) The institution and termination of material legal proceedings (revised Item 5);

(2) Increases and decreases in registered debt securities and in indebtedness (revised Item 6);

(3) Changes in securities and changes in security for registered securities (new Item 7);

(4) Defaults upon senior securities (new Item 8); and

(5) Submission of matters to a vote of security holders (new Item 10).[5]

Item 6 has been amended further to eliminate former paragraph (b) which required disclosure relating to securities sold by registrants in reliance upon Section 4(2) of the Securities Act of 1933 (the "Securities Act") (15 U.S.C. 77a et seq. as amended by Pub. L. No. 94–29 (June 4, 1975)). The Commission believes that this paragraph is unnecessary because disclosure of sales of securities in reliance upon Section 4(2) is required already by other provisions. All issuances of equity securities are reported under paragraph (a) of Item 6. In addition, all increases in the amount outstanding of debt securities will be reported in quarterly reports on Form 10–Q (or in annual reports on Form 10–K when the transactions occurred during the fourth quarter of registrant's fiscal years) if the aggregate amount of all such increases not previously reported exceeds five percent of the outstanding securities of the class. In lieu of former paragraph (b) of Item 6, new paragraph (b) requires registrants to list and briefly discuss increases and decreases in the amount outstanding of debt securities and indebtedness which were previously reported in quarterly reports on Form 10–Q. The Commission believes that this amendment will make disclosure in the Form 10–K more complete while eliminating disclosure of less significant transactions and unnecessary repetition of previously disclosed information.

In addition, a new item has been adopted in Form 10–K requiring registrants to state whether any reports on Form 8–K have been filed during the last quarter of the period covered by the report and to list the items reported and financial statements filed, and the dates of the reports. Certain technical amendments to the Form 10–K have also been adopted to renumber the prior 10–K items and references to items contained therein, and to list the exhibits required by the new items of the form. (New Item 13(b) Reports on Form 8–K).

III. Amendments to Form 8–K for Current Reports Under Section 13 or 15(d) of the Securities Exchange Act and to Schedule 14A to Regulation 14 Under the Securities Exchange Act

A. Amendment to item 1 of Form 8–K (changes in control of registrant) and to item 5 of Schedule 14A to Regulation 14 (voting securities and principal holders thereof)

The Commission has revised Item 1 of Form 8–K to expand the disclosure heretofore required to be reported concerning changes in control of registrants and to conform the disclosure requirements of the item to the existing requirements of Item 5 (e) and (f) of Schedule 14A to Regulation 14 under the Securities Exchange Act, applicable to proxy and information statements. The revised item will require disclosure of (1) the identity of the person or persons from whom control was assumed and (2) a description of any arrangements, including a pledge of securities of the registrant or any of its parents, which might result in a change in control of the registrant.

The Commission has also amended Item 1 of Form 8–K and Item 5 of Schedule 14A[6] to require the following additional disclosure concerning changes in control: (1) The amount and source of the consideration used by the person or persons who acquired control; (2) the terms of any loans or pledges obtained by the new control group for the purpose of acquiring control and the names of the lenders or pledgees; and (3) a description of any arrangements or understandings among members of both the former and new control group and their associates with respect to election of directors or other matters. If the source of all or any part of the consideration paid by the person(s) who acquired control is a loan made in the ordinary course of business by a bank as defined in Section 3(a)(6) of the Act, the revised items permit the registrant to delete the name of the bank provided a request for confidentiality has been made pursuant to Section 13(d)(1)(B) of the Act by the person(s) who acquired control.[7]

Certain commentators questioned the need for requiring disclosure of changes in control of registrants in reports on the Form 8–K in view of the filing requirements of Section 13(d) of the Exchange Act. It is the Commission's belief that a change in control of a registrant is an important event about which current information should be readily available to investors. The Schedule 13D (17 CFR 240.13d–101) is not an adequate substitute for the report on Form 8–K for the following reasons: (1) Section 13(d) is not applicable to the acquisition of securities of a company which files reports under the Exchange Act pursuant to Section 15(d) of the Act; (2) many, if not most, of the acquisitions of securities reported in accordance with Section 13(d) do not result in changes in control of the registrant; and (3) changes in control are not always the result of an acquisition of securities. Accordingly, Item 1 has been retained in the Form 8–K.

In addition, various commentators noted that the disclosure required by the item may be unavailable to the management. Rule 12b–21 under the Exchange Act (17 CFR 240.12b–21) relates to those instances when information is unknown to the registrant; therefore, these items have not been amended to state that information need be given only insofar as it is known or reasonably available to management.

B. Amendment to item 2 of Form 8–K (acquisition or disposition of assets)

In order to provide for reporting of more complete information concerning acquisitions or dispositions of significant amounts of assets, otherwise than in the ordinary course of business, the Commission has amended Item 2 of Form 8–K to require disclosure of the source of the funds used by the registrant or its subsidiary in making an acquisition. If all or any part of the consideration is a loan made in the ordinary course of business by a bank as defined in Section 3(a)(6) of the Act, the revised item permits the registrant to delete the name of the bank provided a request for confidentiality has been made pursuant to Section 13(d)(1)(B) of the Act by the person(s) who acquired control.[8] The proposed revision to require disclosure of management's reasons for acquiring or disposing of the assets has been deleted upon its reconsideration by the Commission.

C. Addition of new item 3 to Form 8–K (bankruptcy or receivership)

The Commission has adopted a new Item 3 to Form 8–K to require reporting of information concerning the appointment of a receiver for the registrant or its parent in a proceeding under the

[5] These matters have heretofore been reported in reports on Form 8–K under Items 10, 3, 7 and 8, 4 and 5, 6, and 11 respectively. For a discussion of the amendments of some of these items in Part II of the Form 10–Q, see the discussion in Section IV.

[6] The Commission recently has proposed for comment certain amendments to Item 5 of Schedule 14A which would require more disclosure regarding the background of the management of publicly-held companies. See Securities Act Release No. 5728 (November 2, 1976), 41 FR 4949 (November 9, 1976).

[7] If a request for confidentiality has not been made pursuant to Section 13(d)(1)(B) of the Act, registrant may request confidentiality of the identity of the bank pursuant to the provisions of Rule 24b–2 of the Act (17 CFR 240.24b–2).

[8] See also note 7 supra.

Bankruptcy Act or in any other proceeding under State or Federal law in which a court or governmental body has assumed jurisdiction over substantially all of the assets or business of the registrant or its parent, or if such jurisdiction has been assumed by leaving the existing directors and officers in possession, but subject to the supervision and control of a court or governmental body. The Commission believes that the availability of this information in the Commission's public files will be useful to investors.

D. AMENDMENT TO INSTRUCTION 4 OF THE INSTRUCTION RELATING TO THE FILING OF FINANCIAL STATEMENTS OF BUSINESSES ACQUIRED

Instruction 4 relating to the financial statements required when an acquisition of a business is reported pursuant to item 2 has been amended to clarify when the Commission may grant a waiver from the requirement to furnish financial statements. In addition, the instruction has been revised to state that requests for relief should be filed as a part of the report on Form 8–K and to set forth the information to be included together with such a request.

The Commission may grant relief from the provisions relating to the required financial statements if the statements are not reasonably available to the registrant, because the obtaining thereof would involve unreasonable effort or expense or practicable difficulties. When a request for relief is submitted, the Commission considers the reasons advanced by the registrant and the magnitude of the acquisition based on the financial data submitted.

The Commission believes that these amendments will facilitate the consideration of requests for relief in the future.

E. TECHNICAL AMENDMENTS

The new item and the items which have been retained in the Form 8–K as well as the instructions to the required exhibits have been renumbered and revised to reflect the above-outlined changes, the deletion of Items 9 and 10 and the transfer of former Items 3, 4, 5, 6, 7, 8 and 11 to the Form 10–Q. The cover page of the form has been amended to add a line for disclosure of the registrant's former name or former address if they have been changed since the registrant's last report was filed. General Instruction E has been deleted because Rule 12b–23 under the Exchange Act (17 CFR 240.12b–23) clearly discusses incorporation by reference.

IV. AMENDMENTS TO ITEMS OF THE FORM 8–K TRANSFERRED TO NEW PART II OF FORM 10–Q

A. ITEM 1, PART II OF FORM 10–Q (LEGAL PROCEEDINGS) (FORMERLY ITEM 3 OF FORM 8–K)

The Commission has transferred to the Form 10–Q in revised form previously numbered Item 3 of the Form 8–K. This item has been revised to require registrants to describe the disposition of previously reported legal proceedings.

B. ITEM 4 (INCREASE IN AMOUNT OUTSTANDING OF SECURITIES OR INDEBTEDNESS) AND ITEM 5 (DECREASE IN AMOUNT OUTSTANDING OF SECURITIES OR INDEBTEDNESS) OF PART II OF FORM 10–Q (FORMERLY ITEMS 7 AND 8 OF FORM 8–K)

Former Items 7 and 8 of the Form 8–K relating to disclosure of increases and decreases in securities outstanding have been transferred to Part II of the Form 10–Q in revised form. The items have been revised to reflect the staff's interpretation that increases and decreases in commercial loans must be reported thereunder.

A few commentators questioned the applicability of prior Form 8–K Items 7 and 8 to various types of commercial loans, such as revolving credit agreements, citing cases which hold that commercial loans are not securities. In view of their observations and in order to clarify the extent of disclosure which the Commission believes should be required by these items, the captions and the text of the items in the Form 10–Q have been revised to require disclosure of fluctuations in the amount outstanding of indebtedness as well as securities. Obligations which mature not later than one year from the date of issuance are excluded from the applicability of the items.

In addition, the items have been revised in order to require disclosure only of significant increases and decreases of indebtedness. A new instruction applicable to these items has been adopted which permits registrants to classify all of their indebtedness (including short term indebtedness) into convertible long term debt and other indebtedness for the purpose of determining whether the aggregate amount of all changes in the amount of one of these two classes of indebtedness, including changes not previously reported, exceeds five percent of the outstanding debt in the class.

The required disclosure with respect to increases and decreases in the amount of equity securities will be the same as that required by former Items 7 and 8 of the Form 8–K.

The Commission believes that the narrative disclosure relating to increases and decreases in commercial debt is necessary in Part II of the Form 10–Q despite the opinion expressed by certain commentators that the expanded balance sheet disclosure required in the quarterly report should be sufficient. The information which must be disclosed pursuant to Items 5 and 6 of Part II of the Form 10–Q is more complete than the information which is required by Part I of the form.

C. TECHNICAL AMENDMENTS

The instructions to Part I and the items and the instructions in Part II of the Form 10–Q have been numbered, revised or drafted to reflect the above-outlined changes and the reorganization of the form into 2 parts. Former General Instruction M to the Form 10–Q has been deleted because similar disclosure is now required in Part II of the revised form.

The text of amendments is set forth below:

1. Rule 13a–11 (§ 240.13a–11) is amended by revising paragraph (a) to read as follows:

§ 240.13a–11 Current reports on Form 8–K (§ 249.308 of this chapter).

(a) Except as provided in paragraph (b) of this section, every registrant subject to § 240.13a–1 shall file a current report on Form 8–K within the period specified in that form unless substantially the same information as that required by Form 8–K has been previously reported by the registrant.

* * * * *

2. Rule 13a–13 (§ 240.13a–13) is revised to read as follows:

§ 240.13a–13 Quarterly reports on Form 10–Q (§ 249.308a of this chapter).

(a) Except as provided in paragraphs (b) and (c) of this section, every issuer which has securities registered pursuant to section 12 of the Act and which is required to file annual reports pursuant to section 13 of the Act on Form 10–K (§ 249.310 of this chapter), 12–K (§ 249.312 of this chapter) or U5S (§ 249.450 of this chapter) shall file a quarterly report on Form 10–Q (§ 249.308a of this chapter) within the period specified in General Instruction A to that form, for each of the first three fiscal quarters of each fiscal year of the issuer, commencing with the first such fiscal quarter which ends after securities of the issuer become so registered.

(b) The provisions of this rule shall not apply to the following issuers:

(1) Investment companies required to file quarterly reports pursuant to § 240.13a–12; or

(2) Foreign private issuers required to file reports pursuant to § 240.13a–16.

(c) Part I of the quarterly report on Form 10–Q need not be filed by the following issuers:

(1) Life insurance companies and holding companies having only life insurance subsidiaries for quarters in fiscal years ending on or before December 25, 1978, if they do not meet the tests specified in § 210.3–16(t)(1)(i)(B);

(2) Mutual life insurance companies; or

(3) Mining companies not in the production stage but engaged primarily in the exploration for or the development of mineral deposits other than oil, gas or coal, if all the following conditions are met:

(i) The registrant has not been in production during the current fiscal year or the two years immediately prior thereto; except that being in production for an aggregate period of no more than eight months over the three-year period shall not be a violation of this condition.

(ii) Receipts from the sale of mineral products or from the operations of mineral producing properties by the registrant and its subsidiaries combined have not exceeded $500,000 in any of the most recent six years and have not aggregated more than $1,500,000 in the most recent six fiscal years.

(d) Public utilities, common carriers and pipeline carriers which submit financial reports to the Civil Aeronautics Board, the Federal Communications Commission, the Federal Power Commission or the Interstate Commerce Commission may, at their option, in lieu of furnishing the information called for by Part I of Form 10–Q, file as exhibits to reports on this form copies of their reports submitted to such Board or Commission for the preceding fiscal quarter or for each month of such quarter, as the case may be, together with copies of their quarterly reports, if any, for such periods sent to their stockholders.

(e) Notwithstanding the foregoing provisions of this section, the financial information required by Part I of Form 10–Q, or financial information submitted in lieu thereof pursuant to paragraph (d) of this section, shall not be deemed to be "filed" for the purpose of section 18 of the Act or otherwise subject to the liabilities of that section of the Act but shall be subject to all other provisions of the Act.

3. Rule 15d–11 (§ 240.15d–11) is amended by revising paragraph (a) to read as follows:

§ 240.1d–11 Current reports on Form 8–K (§ 249.308 of this chapter).

(a) Except as provided in paragraph (b) of this section, every registrant subject to § 240.15d–1 shall file a current report on Form 8–K within the period specified in that form unless substantially the same information as that required by Form 8–K has been previously reported by the registrant.

* * * * *

4. Rule 15d–13 (§ 240.15d–13) is revised to read as follows:

§ 240.15d–13 Quarterly reports on Form 10–Q (§ 249.308a of this chapter).

(a) Except as provided in paragraphs (b) and (c) of this section, every issuer which has securities registered pursuant to the Securities Act of 1933 and which is required to file annual reports pursuant to section 15(d) of the Securities Exchange Act of 1934 on Forms 10–K (§ 249.310 of this chapter), 12–K (§ 249.312 of this chapter) or U5S (§249.450 of this chapter) shall file a quarterly report on Form 10–Q (§ 249.308a of this chapter) within the period specified in General Instruction A to that form, for each of the first three fiscal quarters of each fiscal year of the issuer, commencing with the first such fiscal quarter which ends after securities of the issuer become so registered.

(b) The provisions of this rule shall not apply to the following issuers:

(1) Investment companies required to file quarterly reports pursuant to §240.15d–12; or

(2) Foreign private issuers required to file reports pursuant to §240.15d–16.

(c) Part I of the quarterly report on Form 10–Q need not be filed by the following issuers:

(1) Life insurance companies and holding companies having only life insurance subsidiaries for quarters in fiscal years ending on or before December 25, 1978, if they do not meet the tests specified in § 210.3–16(t)(1)(i)(B);

(2) Mutual life insurance companies; or

(3) Mining companies not in the production stage but engaged primarily in the exploration for or the development of mineral deposits other than oil, gas or coal, if all the following conditions are met:

(i) The registrant has not been in production during the current fiscal year or the two years immediately prior thereto; except that being in production for an aggregate period of no more than eight months over the three-year period shall not be a violation of this condition.

(ii) Receipts from the sale of mineral products or from the operations of mineral producing properties by the registrant and its subsidiaries combined have not exceeded $500,000 in any of the most recent six years and have not aggregated more than $1,500,000 in the most recent six fiscal years.

(d) Public utilities, common carriers and pipeline carriers which submit financial reports to the Civil Aeronautics Board, the Federal Communications Commission, the Federal Power Commission or the Interstate Commerce Commission may, at their option, in lieu of furnishing the information called for by Part I of Form 10–Q, file as exhibits to reports on this form copies of their reports submitted to such Board or Commission for the preceding fiscal quarter or for each month of such quarter, as the case may be, together with copies of their quarterly reports, if any, for such periods sent to their stockholders.

(e) Nothwithstanding the foregoing provisions of this section, the financial information required by Part I of Form 10–Q, or financial information submitted in lieu thereof pursuant to paragraph (d) of this section, shall not be deemed to be "filed" for the purpose of section 18 of the Act or otherwise subject to the liabilities of that section of the Act but shall be subject to all other provisions of the Act.

5. Section 249.308 is amended by revising Form 8–K to read as follows:

§ 249.308 Form 8–K, for current reports.

* * * * *

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 8–K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported) ----------

(Exact name of registrant as specified in its charter)

(State or other jurisdiction of incorporation)

(Commission File Number)	(IRS Employer Identification No.)

(Address of principal executive offices)	(Zip Code)

Registrant's telephone number, including area code----------

(Former name or former address, is changed since last report.)

GENERAL INSTRUCTIONS

A. *Rule as to Use of Form 8–K.*

Form 8–K shall be used for current reports under Section 13 or 15(d) of the Securities Exchange Act of 1934, filed pursuant to Rule 13a–11 [17 CFR 240.13a–11] or Rule 15d–11 [17 CFR 240.15d–11].

B. *Events to be Reported and Filing of Reports.*

A report on this form is required to be filed upon the occurrence of any one or more of the events specified in the items of this form. Reports are to be filed within 15 days after the occurrence of the earliest event required to be reported. However, reports which disclose events pursuant to Item 5 may be filed within 10 days after the close of the month during which the event occurred. If the letter from the independent accountants to be furnished pursuant to Item 4(d) is unavailable at the time of filing, it shall be filed within thirty days thereafter. Moreover, if substantially the same information as that required by this form has been previously reported by the registrant, an additional report of the information on this form need not be made. The term "previously reported" is defined in Rule 12b–2 [17 CFR 240.12b–2].

C. *Application of General Rules and Regulations.*

(a) The General Rules and Regulations under the Act [17 CFR Part 240] contain certain general requirements which are applicable to reports on any form. These general requirements should be carefully read and observed in the preparation of filing of reports on this form.

(b) Particular attention is directed to Regulation 12B [17 CFR 240.12b–1 et seq.] which contains general requirements regarding matters such as the kind and size of paper to be used, the legibility of the report, the information to be given whenever the title of securities is required to be stated, and the filing of the report. The definitions contained in Rule 12b–2 should be especially noted. See also Regulations 13A [17 CFR 240.13a–1 et seq.] and 15D [17 CFR 240.15d–1 et seq.].

D. *Preparation of Report.*

This form is not to be used as a blank form to be filled in, but only as a guide in the preparation of the report on paper meeting the requirements of Rule 12b–12 [17 CFR 240.12b–12]. The report shall contain the numbers and captions of all applicable items, but the text of such items may be omitted, provided the answers thereto are prepared in the manner specified in Rule 12b–13 [17 CFR 240.12b–13]. All items which are not required to be answered in the particular report may be omitted and no reference thereto need be made in the report. All instructions should also be omitted.

E. *Signature and Filing of Report.*

Three complete copies of the report, including any financial statements, exhibits or other papers or documents filed as a part thereof, and five additional copies which need not include exhibits, shall be filed with the Commission. At least one complete copy of the report, including any financial statements, exhibits or other papers or documents filed as a part thereof, shall be filed with each exchange on which any class of securities of the registrant is registered. At least one complete copy of the report filed with the Commission and one such copy filed with

each exchange shall be manually signed. Copies not manually signed shall bear typed or printed signatures.

INFORMATION TO BE INCLUDED IN THE REPORT

Item 1. Changes in Control of Registrant.

(a) If, to the knowledge of management, a change in control of the registrant has occurred, state the name of the person(s) who acquired such control; the amount and the source of the consideration used by such person(s); the basis of the control; the date and a description of the transaction(s) which resulted in the change in control; the percentage of voting securities of the registrant now beneficially owned directly or indirectly by the person(s) who acquired control; and the identity of the person(s) from whom control was assumed. If the source of all or any part of the consideration used is a loan made in the ordinary course of business by a bank as defined by Section 3(a)(6) of the Act, the identity of such bank shall be omitted provided a request for confidentiality has been made pursuant to Section 13(d)(1)(B) of the Act by the person(s) who acquired control. In lieu thereof, the material shall indicate that disclosure of the identity of the bank has been so omitted and filed separately with the Commission.

Instructions. 1. State the terms of any loans or pledges obtained by the new control group for the purpose of acquiring control, and the names of the lenders or pledgees.

2. Any arrangements or understandings among members of both the former and new control groups and their associates with respect to the election of directors or other matters shall be described.

(b) Describe any contractual arrangements, including any pledge of securities of the registrant, or any of its parents, known to management, the operation of the terms of which may at a subsequent date result in a change in control of the registrant.

Instruction. Paragraph (b) does not require a description of ordinary default provisions contained in the charter, trust indentures or other governing instruments relating to securities of the registrant.

Item 2. Acquisition or Disposition of Assets.

If the registrant or any of its majority-owned subsidiaries has acquired or disposed of a significant amount of assets, otherwise than in the ordinary course of business, furnish the following information:

(a) The date and manner of the acquisition or disposition and a brief description of the assets involved, the nature and amount of consideration given or received therefor, the principle followed in determining the amount of such consideration, the identity of the person(s) from whom the assets were acquired or to whom they were sold and the nature of any material relationship between such person(s) and the registrant or any of its affiliates, any director or officer of the registrant, or any associate of any such director or officer. If the transaction being reported is an acquisition, identify the source(a) of the funds used unless all or any part of the consideration used is a loan made in the ordinary course of business by a bank as defined by Section 3(a)(6) of the Act in which the identity of such bank shall be omitted provided a request for confidentiality has been made pursuant to Section 13(d)(1)(B) of the Act. In lieu thereof, the material shall indicate that the identity of the bank has been so omitted and filed separately with the Commission.

(b) If any assets so acquired by the registrant or its subsidiaries constituted plant, equipment or other physical property, state the nature of the business in which the assets were used by the person(s) from whom acquired and whether the registrant intends to continue such use or intends to devote the assets to other purposes, indicating such other purposes.

Instructions. 1. No information need be given as to (i) any transaction between any person and any wholly-owned subsidiary of such person; (ii) any transaction between two or more wholly-owned subsidiaries of any person; or (iii) the redemption or other acquisition of securities from the public, or the sale or other disposition of securities to the public, by the issuer of such securities.

2. The term "acquisition" includes every purchase, acquisition by lease, exchange, merger, consolidation, succession or other acquisition; provided, that such term does not include the construction or development of property by or for the registrant or its subsidiaries or the acquistion of materials for such purpose. The term "disposition" includes every sale, disposition by lease, exchange, merger, consolidation, mortgage, or hypothecation of assets, assignment, whether for the benefit of creditors or otherwise, abandonment, destruction, or other disposition.

3. The information called for by this item is to be given as to each transaction or series of related transactions of the size indicated. The acquisition or disposition of securities shall be deemed the indirect acquisition or disposition of the assets represented by such securities if it results in the acquisition or disposition of control of such assets.

4. An acquisition or disposition shall be deemed to involve a significant amount of assets (i) if the registrant's and its other subsidiaries' equity in the net book value of such assets or the amount paid or received therefor upon such acquisition or disposition exceeded 10 percent of the total assets of the registrant and its consolidated subsidiaries, (ii) if it involved the succession to or disposition of a business which would meet the test of a significant subsidiary, or (iii) if it involved the acquisition or disposition of an interest in a business which would meet the test of a significant subsidiary and would be required to be accounted for by the equity method.

5. Where assets are acquired or disposed of through the acquisition or disposition of control of a person, the person from whom such control was acquired or to whom it was disposed of shall be deemed the person from whom the assets were acquired or to whom they were disposed of, for the purposes of this item. Where such control was acquired from or disposed of to not more than five persons, their names shall be given; otherwise it will suffice to identify in an appropriate manner the class of such persons.

6. Attention is directed to the requirements in Item 6 of the form with respect to the filing of financial statements for businesses acquired and to the filing of copies of the plans of acquisition or disposition as exhibits to the report.

Item 3. Bankruptcy or Receivership.

If a receiver, fiscal agent or similar officer has been appointed for a registrant or its parent, in a proceeding under the Bankruptcy Act or in any other proceeding under State or Federal law in which a court or governmental agency has assumed jurisdiction over substantially all of the assets or business of the registrant or its parent, or if such jurisdiction has been assumed by leaving the existing directors and officers in possession but subject to the supervision and orders of a court or governmental body, identify the proceeding, the court or governmental body, the date jurisdiction was assumed, the identity of the receiver, fiscal agent or similar officer and the date of his appointment.

Item 4. Changes in Registrant's Certifying Accountant.

If an independent accountant who was previously engaged as the principal accountant to audit the registrant's financial statements resigns (or indicates he declines to stand for reelection after the completion of the current audit) or is dismissed as the registrant's principal accountant, or another independent accountant is engaged as principal accountant, or if an independent accountant on whom the principal accountant expressed reliance in his report regarding a significant subsidiary resigns (or formally indicates he declines to stand for re-election after the completion of the current audit) or is dismissed or another independent accountant is engaged to audit that subsidiary:

(a) State the date of such resignation (or declination to stand for re-election), dismissal or engagement.

(b) State whether in connection with the audits of the two most recent fiscal years and any subsequent interim period preceeding such resignation, dismissal or engagement there were any disagreements with the former accountant on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure, which disagreements if not resolved to the satisfaction of the former accountant would have caused him to make reference in connection with his report to the subject matter of the disagreement(s); also, describe each such disagreement. The disagreements required to be reported in response to the preceding sentence include both those resolved to the former accountant's satisfaction and those not resolved to the former accountant's satisfaction. Disagreements contemplated by this rule are those which occur at the decisionmaking level; i.e., between personnel of the registrant responsible for presentation of its financial statements and personnel of the accounting firm responsible for rendering its report.

(c) State whether the principal accountant's report on the financial statements for any of the past two years contained an adverse opinion or a disclaimer of opinion or was qualified as to uncertainty, audit scope, or accounting principles; also describe the nature of each such adverse opinion, disclaimer of opinion, or qualification.

(d) The registrant shall request the former accountant to furnish the registrant with a letter addressed to the Commission stating whether he agrees with the statements made by the registrant in response to this item and, if not, stating the respects in which he does not agree. The registrant shall file a copy of the former accountant's letter as an exhibit with all copies of the Form 8-K required to be filed pursuant to General Instruction F.

Item 5. Other Materially Important Events.

The registrant may, at its option, report under this item any events, with respect to which information is not otherwise called for by this form, which the registrant deems of material importance to security holders.

Item 6. Financial Statements and Exhibits.

List below the financial statements and exhibits, if any, filed as a part of this report.

(a) Financial statements of businesses acquired.

Instructions. 1. Businesses for Which Statements are Required.

The financial statements specified below shall be filed for any business the succession to which or the acquisition of an interest in which is required to be described in answer to Item 2 above.

2. Statements Required.

(a) There shall be filed a balance sheet of the business as of a date reasonably close to the date of acquisition. This balance sheet need not be audited, but if it is not audited there shall also be filed an audited balance sheet as of the close of the preceding fiscal year.

(b) Income and source and application of funds statements of the business shall be filed for each of the last three full fiscal years and for the period, if any, between the close of the latest of such fiscal years and the date of the latest balance sheet filed. These income and source and application of funds statements shall be audited up to the date of the audited balance sheet.

(c) If the business was in insolvency proceedings immediately prior to its acquisition, the balance sheets required above need not be audited. In such case, the income and source and application of funds statements required shall be audited to the close of the latest full fiscal year.

(d) Except as otherwise provided in this instruction, the principles applicable to a registrant and its subsidiaries with respect to the filing of individual, consolidated and group statements in an original application or annual report shall be applicable to the statements required by this instruction.

3. Application of Regulation S-X.

Regulation S-X governs the examination and the form and content of the statements required by the preceding instruction, including the basis of consolidation, and prescribes the statements of other stockholders' equity to be filed. No supporting schedules need be filed. A manually signed accountant's report should be provided as required by Rule 2-02(a) of Regulation S-X [17 CFR 210.2-02(a)].

4. Filing of Other Financial Information in Certain Cases.

The Commission may, upon the written request of the registrant and where consistent with the protection of investors, permit the omission of one or more of the financial statements herein required or the filing in substitution therefor of appropriate statements of comparable character. If the required audited financial statements are not reasonably available to the registrant, because the obtaining thereof would involve unreasonable effort, expense or practicable difficulties. A request for such relief shall be filed as a part of the report. If an extension of time has been granted pursuant to Rule 12b-25 [17 CFR 240.12b-25], a request for relief shall be filed as a part of an amendment to the initial report within the additional time provided under said rule. The request shall set forth the following information:

(a) The reason(s) for the unavailability of the audited financial statements;

(b) The estimated costs of the audit;

(c) An explanation of any other practical auditing problems;

(d) A letter from the registrant's independent auditors confirming the above representation; and

(e) A tabular presentation of the following items of information, comparing the acquired business(es) with the registrant on a consolidated basis (excluding the acquired business(es)): (1) gross sales and operating revenues; (2) net income; (3) total assets; (4) total stockholder equity; and (5) total purchase price compared to total assets of registrant.

The Commission may also by informal written notice require the filing of other financial statements in addition to, or in substitution for, the statements herein required in any case where such statements are necessary or appropriate for an adequate presentation of the financial condition of any person whose financial statements are required, or whose statements are otherwise necessary for the protection of investors.

(b) Exhibits. Subject to the rules as to incorporation by reference, the following documents shall be filed as exhibits to this report:

1. Copies of any plan of acquisition or disposition described in answer to Item 2, including any plan of reorganization, readjustment, exchange, merger, consolidation or succession in connection therewith.

2. Letters from the independent accountants furnished pursuant to Item 4(d).

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

Date ---------- ----------
(Registrant)

(Signature)[1]

6. Section 249.308a is amended by amending Form 10-Q to read as follows:

§ 249.308a Form 10-Q, for quarterly reports under section 13 or 15(d) of the Securities Exchange Act of 1934.

* * * * *

GENERAL INSTRUCTIONS

A.-C. [No change.]

D. *Incorporation by Reference.*

(a) If the registrant makes available to its stockholders or otherwise publishes, within the period prescribed for filing the report, a financial statement containing the information required by this form, the information called for may be incorporated by reference to such published statement provided copies thereof are filed as an exhibit to Part I of the report on this form.

(b) Other information may be incorporated by reference in answer or partial answer to any item or items of Part II of this form in accordance with the provisions of Rule 12b-23.

E. *Signature and Filing of Report.*

Eight copies of the report shall be filed with the Commission. At least one copy of the report shall be filed with each exchange on which any class of securities of the registrant is listed and registered. At least one copy of the report filed with the Commission and one copy filed with each such exchange shall be manually signed on the registrant's behalf by a duly authorized officer of the registrant and by the principal financial officer or chief accounting officer of the registrant. Copies not manually signed shall bear typed or printed signatures.

PART I. FINANCIAL INFORMATION

Instruction 1. Persons for Whom the Financial Information Is To Be Given.

(a) The required information is to be given as to the registrant or, if the registrant includes consolidated financial statements in its annual reports filed with the Commission, it shall be given for the registrant and its consolidated subsidiaries. If the information is given for the registrant and its consolidated subsidiaries, it need not be given separately for the registrant.

(b) Summarized income statement information shall be given separately as to each subsidiary not consolidated or 50 percent or less owned persons or as to each group of such subsidiaries or fifty percent or less owned persons for which separate individual or group statements are required to be included in the registrant's annual reports filed with the Commission. It need not be furnished, however, for any such subsidiary or person which would not be required pursuant to Rule 13a-13 or 15d-13 to file quarterly financial information if it were a registrant.

Instruction 2. Preparation of Financial Information.

This part requires only the items of information specified. The information is not required to be audited and may carry a notation to that effect and any other qualification considered necessary or appropriate. Amounts may be stated in thousands or hundred thousands of dollars provided it is stated that such has been done. Losses or other negative amounts shall be indicated clearly in the caption and the amounts shown in brackets or parentheses.

Instruction 3. Delay in Filing Financial Information.

The information required may be omitted with respect to foreign subsidiaries not consolidated or other foreign persons if it is impracticable to furnish it within the time specified for filing the report, provided it is indicated that such information has been omitted and the omitted information is furnished by amendment when available. Apart from the foregoing, any request for extension of time for the filing of the report or the furnishing of any of the required information shall be made pursuant to Rule 12b-25.

Instructions 4 and 5. [No change from former Instructions H and I of Form 10-Q.]

Instruction 6. Other Financial Information.

The registrant may furnish any additional information related to the periods being reported on which, in the opinion of management, is of significance to investors, such as the seasonality of the company's business, major uncertainties currently facing the company, significant accounting changes under consideration and the dollar amount of backlog of firm orders.

Instructions 7 and 8. [No change from former Instructions K and L of Form 10-Q.]

Instruction 9. Exhibits.

List below the following documents, if any, cited as a part of Part I of this report:

1. Financial information filed in lieu of the information required by this form in accordance with General Instruction D.

2. Letters from the independent accountants furnished pursuant to Instruction 4(f).

3. Statements setting forth the computation of per share earnings furnished in accordance with Instruction 4(g).

4. Letters from the independent accountant furnished pursuant to Instruction 7.

PART II. OTHER INFORMATION

Instruction. The report shall contain the item numbers and captions of all applicable items of Part II, but the text of such items may be omitted provided the responses clearly indicate the coverage of the item. Any item which is inapplicable or to which the answer is negative may be omitted and no reference thereto need be made in the report. If substantially the same information has been previously reported by the registrant, an additional report of the information on this form need not be made. The term "previously reported" is defined in Rule 12b-2 [17 CFR 240.12b-2].

Item 1. Legal Proceedings

(a) Briefly describe any material legal proceedings, other than ordinary routine litigation incidental to the business, to which the registrant or any of its subsidiaries has become a party or of which any of their property has become the subject. Include the name of the court or agency in

[1] Print name and title of the signing officer under his signature.

which the proceedings are pending, the date instituted, the principal parties thereto, a description of the factual basis alleged to underlie the proceedings and the relief sought.

(b) If any such proceeding previously reported has been terminated, identify the proceeding, give the date of termination and describe the disposition thereof with respect to the registrant and its subsidiaries.

Instructions. 1. If the business ordinarily results in actions for negligence or other claims, no such action or claim need be described unless it departs from the normal kind of such actions.

2. No information need be given with respect to any proceeding which involves primarily a claim for damages if the amount involved, exclusive of interest and costs, does not exceed 10 percent of the current assets of the registrant and its subsidiaries on a consolidated basis. However, if any proceeding presents in large degree the same issues as other proceedings pending or known to be contemplated, the amount involved in such other proceedings shall be included in computing such percentage.

3. Notwithstanding the foregoing instructions, any bankruptcy, receivership or similar proceeding with respect to the registrant or any of its significant subsidiaries shall be described. Any proceeding to which any director, officer or affiliate of the registrant, any principal holder of equity securities of the registrant or any associate of any such director, officer or security holder, is a party adverse to the registrant or any of its subsidiaries shall also be described.

4. Notwithstanding the foregoing, administrative or judicial proceedings arising under any Federal, State or local provisions regulating the discharge of materials into the environment or otherwise relating to the protection of the environment shall not be deemed "ordinary routine litigation incidental to the business" and shall be described if such proceeding is material to the business or financial condition of the registrant or if it involves primarily a claim for damages and the amount involved, exclusive of interest and costs, exceeds 10 percent of the current assets of the registrant and its subsidiaries on a consolidated basis. Any such proceedings by governmental authorities shall be deemed material and shall be described whether or not the amount of any claim for damages involved exceeds 10 percent of current assets on a consolidated basis and whether or not such proceedings are considered "ordinary routine litigation incidental to the business"; provided, however, that such proceedings which are similar in nature may be grouped and described generically stating: the number of such proceedings in each group; a generic description of such proceedings; the issues generally involved; and, if such proceedings in the aggregate are material to the business or financial condition of the registrant, the effect of such proceedings on the business or financial condition of the registrant.

Item 2. Changes in Securities.

(a) If the constituent instruments defining the rights of the holders of any class of registered securities have been materially modified, give the title of the class of securities involved and state briefly the general effect of such modification upon the rights of holders of such securities.

(b) If the rights evidenced by any class of registered securities have been materially limited or qualified by the issuance or modification of any other class of securities, state briefly the general effect of the issuance or modification of such other class of securities upon the rights of the holders of the registered securities.

Instruction. Working capital restrictions and other limitations upon the payment of dividends are to be reported hereunder.

Item 3. Changes in Security for Registered Securities.

If there has been a material withdrawal or substitution of assets securing any class of registered securities of the registrant, furnish the following information:

(a) Give the title of the securities.

(b) Identify and describe briefly the assets involved in the withdrawal or substitutions.

(c) Indicate the provision in the underlying indenture, if any, authorizing the withdrawal or substitution.

Instruction. This item need not be answered where the withdrawal or substitution is made pursuant to the terms of an indenture which has been qualified under the Trust Indenture Act of 1939.

Item 4. Defaults Upon Senior Securities.

(a) If there has been any material default in the payment of principal, interest, a sinking or purchase fund installment, or any other material default not cured within 30 days, with respect to any indebtedness of the registrant or any of its significant subsidiaries exceeding 5 percent of the total assets of the registrant and its consolidated subsidiaries, identify the indebtedness and state the nature of the default. In the case of such a default in the payment of principal, interest, or a sinking or purchase fund installment, state the amount of the default and the total arrearage on the date of filing this report.

Instruction. This paragraph refers only to events which have become defaults under the governing instruments, *i.e.*, after the expiration of any period of grace and compliance with any notice requirements.

(b) If any material arrearage in the payment of dividends has occurred or if there has been any other material delinquency not cured within 30 days, with respect to any class of preferred stock of the registrant which is registered or which ranks prior to any class of registered securities, or with respect to any class of preferred stock of any significant subsidiary of the registrant, give the title of the class and state the nature of the arrearage or delinquency. In the case of an arrearage in the payment of dividends, state the amount and the total arrearage on the date of filing this report.

Instruction. Item 4 need not be answered as to any default or arrearage with respect to any class of securities all of which is held by, or for the account of, the registrant or its totally held subsidiaries.

Item 5. Increase in Amount Outstanding of Securities of Indebtedness.

If the amount outstanding of securities or indebtedness of the registrant has been increased through the issuance of any new class of securities or indebtedness or through the issuance of reissuance of any additional securities or indebtedness of a class outstanding, and the aggregate amount of all such increases not previously reported exceeds 5 percent of the outstanding securities or indebtedness of the class, furnish the following information:

(a) Title of class, the amount outstanding as last previously reported, and the amount presently outstanding (as of a specified date);

(b) A brief description of the transaction(s) resulting in the increase and a statement of the aggregate net cash proceeds or the nature and aggregate amount of any other consideration received or to be received by the registrant;

(c) The names of the principal underwriters, if any, indicating any such underwriters which are affiliates of the registrant;

(d) A reasonably itemized statement of the purposes so far as determinable, for which the net proceeds have been or are to be used and the approximate amount used or to be used for each such purpose;

(e) A statement as to whether or not any such securities were registered under the Securities Act of 1933; if not, an indication of the exemption claimed and the facts relied upon to make the exemption available; and

(f) If the securities were capital shares, a statement of the amount of the proceeds credited or to be credited to any account other than the appropriate capital share account.

Instructions. 1. For the purpose of responding to this item, the registrant may treat each of the following as a single class of indebtedness: (i) convertible long term debt; and (2) other indebtedness.

2. This item does not apply to notes, drafts, bills of exchange, bankers' acceptances or other obligations which mature not later than 1 year from the date of issuance. No report need be made where the amount not previously reported, although in excess of 5 percent of the amount outstanding, does not exceed $50,000 face amount of indebtedness or 1,000 shares or other units.

3. This item includes the reissuance of treasury securities and securities held for the account of the issuer thereof. The extension of the maturity date of indebtedness shall be deemed to be the issuance of new indebtedness for the purpose of this item. In the case of such an extension, the percentage shall be computed upon the basis of the principal amount of the indebtedness extended.

Item 6. Decrease in Amount Outstanding of Securities or Indebtedness.

If the amount outstanding of any class of securities or indebtedness of the registrant has been decreased through one or more transactions and the aggregate amount of all such decreases not previously reported exceeds 5 percent of the amount of securities or indebtedness of the class previously outstanding, furnish the following information:

(a) Title of the class, the amount outstanding as last previously reported, and the amount presently outstanding (as of a specified date).

(b) A brief description of the transaction(s) involving the decrease and a statement of the aggregate amount of cash or the nature and aggregate amount of any other consideration paid or to be paid by the registrant in connection with such transaction or transactions.

Instruction. Instructions 1 and 2 to Item 5 shall also apply to this item. THis item need not be answered as to decreases resulting from ordinary sinking fund operations, similar periodic decreases made pursuant to the terms of the constituent instruments, decreases resulting from the conversion of securities or decreases resulting from the payment of indebtedness at maturity.

Item 7. Submission of Matters to a Vote of Security Holders.

If any matter has been submitted to a vote of security holders, through the solicitation of proxies or otherwise, furnish the following information:

(a) The date of the meeting and whether it was an annual or special meeting.

(b) If the meeting involved the election of directors, state the name of each director elected at the meeting and the name of each other director whose term of office as a director continued after the meeting.

(c) Briefly describe each other matter voted upon at the meeting and state the number of affirmative votes and the number of negative votes cast with respect to each such matter.

Instructions. 1. If any matter has been submitted to a vote of security holders otherwise than at a meeting of such security holders, corresponding information with respect to such submission shall be furnished. The solicitation of any authorization or consent (other than a proxy to vote at a stockholders' meeting) with respect to any matter shall be deemed a submission of such matter to a vote of security holders within the meaning of this item.

2. Paragraph (a) need be answered only if paragraph (b) or (c) is required to be answered.

3. Paragraph (b) need not be answered if (i) proxies for the meeting were solicited pursuant to Regulation 14 under the Act, (ii) there was no solicitation in opposition to the management's nominees as listed in the proxy statement, and (iii) all of such nominees were elected. If the registrant did not solicit proxies and the board of directors as previously reported to the Commission was re-elected in its entirety, a statement to that effect in answer to paragraph (b) will suffice as an answer thereto.

4. Paragraph (c) need not be answered as to procedural matters or as to the selection or approval of auditors.

5. If the registrant has published a report containing all of the information called for by this item, the item may be answered by a reference to the information contained in such report, provided copies of such report are filed as an exhibit to the report on this form.

Item 8. Other Materially Important Events.

The registrant may, at its option, report under this item any events, not previously reported in a report on Form 8–K, with respect to which information is not otherwise called for by this form but which the registrant deems of material importance to security holders.

Item 9. Exhibits and Reports on Form 8–K [17 CFR 249.308]

(a) Exhibits. List below the documents, if any, filed as a part of this report. Subject to the rules as to incorporation by reference, the following documents shall be filed as exhibits:

1. Copies of the amendments to all constituent instruments and other documents described in answer to Item 2.

2. Copies of all constituent instruments defining the rights of the holders of any new class of securities referred to in answer to Item 5.

3. Copies of the text of any proposal described in answer to Item 7.

4. Copies of any published report furnished in response to Item 7. (See Item 7, Instruction 5.)

5. Copies of any material amendment to the registrant's charter or by-laws not otherwise required to be filed.

(b) Reports on Form 8–K. State whether any reports on Form 8–K have been filed during the quarter for which this report is filed, listing the items reported, any financial statements filed, and the dates of any such reports.

SIGNATURES [1]

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

---------- (Registrant)

Date ---------- ----------
(Signature) [2]

Date ---------- ----------
(Signature) [2]

[1] See General Instruction E.

[2] Print name and title of the signing officer under his signature.

7. Section 249.310 is amended by amending Form 10–K.

§ 249.310 Form 10–K, annual report pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934.

* * * * *

GENERAL INSTRUCTIONS

A.–G. [No change.]

H. *Omission of Information Previously Filed.*

(a) Except as provided in paragraph (b) below, the information called for by Part I of this form (Items 1 through 13) is to be furnished by all registrants required to file a report on this form. Part II (Items 14 through 18) may be omitted from the report by any registrant which, since the close of the fiscal year, has filed with the Commission a definitive proxy statement pursuant to Regulation 14A, or a definitive information statement pursuant to Regulation 14C, which involved the election of directors, or which files such a proxy or information statement not later than 120 days after the close of the fiscal year.

(b) If the information called for by Items 4, 5 or 12 would be unchanged from that given in a previous report, a reference to the previous report which includes the required information will be sufficient. Copies of such previous report need not be filed with the report currently being filed on this form.

PART I

Item 1. [No change.]

Item 2. Summary of Operations

* * * * *

Instructions. 1.–5. [No change.]

6. For any previously reported material charge or credit to income of an unusual or infrequent nature in which an amount of cost was estimated to be incurred in the fiscal year being reported on or the prior fiscal year, summarize such transaction and state the amounts of such estimated cost and the amounts of the actual cost incurred in such periods, the reasons for differences between estimated and actual amounts, if any, and provide a detailed reconciliation showing all chages and credits to any reserve provided.

Items 3. and 4. [No change.]

Item 5. Legal Proceedings

(a) Briefly describe any material pending legal proceedings, other than ordinary routine litigation incidental to the business, to which the registrant or any of its subsidiaries is a party or of which any of their property is the subject. Include the name of the court or agency in which the proceedings are pending, the date instituted, the principal parties thereto, a description of the factual basis alleged to underlie the proceeding and the relief sought. Include similar information as to any such proceedings known to be contemplated by governmental authorities.

(b) If any material legal proceeding which was previously reported or which became reportable during the fourth quarter of registrant's fiscal year was terminated during such quarter, give the date of termination and describe the disposition thereof with respect to the registrant and its subsidiaries.

Instructions. 1. If the business ordinarily results in actions for negligence or other claims, no such action or claim need be described unless it departs from the normal kind of such actions.

2. No information need be given with respect to any proceeding which involves primarily a claim for damages if the amount involved, exclusive of interest and costs, does not exceed 10 percent of the current assets of the registrant and its subsidiaries on a consolidated basis. However, if any proceeding presents in large degree the same issues as other proceedings pending or known to be contemplated, the amount involved in such other proceedings shall be included in computing such percentage.

3. Notwithstanding Instructions 1 and 2, any material bankruptcy, receivership, or similar proceeding with respect to the registrant or any of its significant subsidiaries shall be described. Any material proceedings to which any director, officer or affiliate of the registrant, any security holder named in answer to Item 14(a), or any associate of any such director, officer or security holder, in a party, or has a material interest, adverse to the registrant or any of its subsidiaries shall also be described.

4. Notwithstanding the foregoing, administrative or judicial proceeding arising under any Federal, State or local provisions regulating the discharge of materials into the environment or otherwise relating to the protection of the environment shall not be deemed "ordinary routine litigation incidental to the business" and shall be described if such proceeding is material to the business or financial condition of the registrant or if it involves primarily a claim for damages and the amount involved, exclusive of interest and costs, exceeds 10 percent of the current assets of the registrant and its subsidiaries on a consolidated basis. Any such proceedings by governmental authorities shall be deemed material and shall be described whether or not the amount of any claim for damages involved exceeds 10 percent of current assets on a consolidated basis and whether or not such proceedings are considered "ordinary routine litigation incidental to the business"; provided, however, that such proceedings which are similar in nature may be grouped and described generically stating: the number of such proceedings in each group; a generic description of such proceedings; the issues generally involved; and, if such proceedings in the aggregate are material to the business or financial condition of the registrant, the effect of such proceedings on the business or financial condition of the registrant."

Item 6. Increases and Decreases in Outstanding Securities and Indebtedness.

(a) Give the following information as to all increases and decreases during the fiscal year in the amount of equity securities of the registrant outstanding:

(1) The title of the class of securities involved;

(2) The date of the transaction;

(3) The amount of securities involved and whether an increase or decrease; and

(4) A brief description of the transaction in which the increase or decrease occurred.

If previously reported, the description may be incorporated by a specific reference to the previous filing.

Instruction. The information shall be prepared in the form of a reconciliation between the amounts shown to be outstanding on the balance sheet to be filed with this report and the amounts shown on the registrant's balance sheet for the previous year. The exercise of outstanding options or warrants (separately by class or type of option or warrant), conversions of previously issued convertible securities (separately by class of security) and the issuance of options may be grouped together showing the dates between which all such transactions occurred. If the information called for has been previously reported on Form 10–Q it may be incorporated by a specific reference to the previous filing.

(b) Increases and decreases in the amount outstanding of debt securities and indebtedness which were previously reported in reports on Form 10–Q should be listed and briefly discussed with appropriate cross references to the earlier disclosure.

(c) If, during the fourth quarter of registrant's fiscal year, the amount of debt securities or indebtedness outstanding has been increased or decreased through one or more transactions, and the aggregate amount of all such increases or decreases not previously reported exceeds 5% of the outstanding securities or indebtedness of the affected class, furnish, the following information:

(1) Title of class, the amount outstanding as last previously reported, and the amount presently outstanding (as of a specified date);

(2) A brief description of the transaction or transactions resulting in the change;

(3) If an increase in securities or indebtedness is reported, furnish: (i) a statement of the aggregate net cash proceeds or the nature and aggregate amount of any consideration received or to be received by the registrant; (ii) the names of the principal underwriters, if any, indicating any such underwriters which are affiliates of the registrant; (iii) a reasonably itemized statement of the purposes, so far as determinable, for which the net proceeds have been or are to be used and the approximate amount used or to be used for each such purpose; and (iv) a statement as to whether or not any such securities were registered under the Securities Act of 1933; if not, an indication of the exemption claimed and the facts relied upon to make the exemption available; and

(4) If a decrease in securities or indebtedness is reported, a statement of the aggregate amount of cash or the nature and aggregate amount of any other consideration paid or to be paid by the registrant in connection with such transaction or transactions.

Instructions. 1. For the purposes of responding to paragraph (b) the registrant may treat each of the following as a single class of indebtedness: (1) convertible long term debt, and (2) other indebtedness.

2. This paragraph does not apply to notes, drafts, bills of exchange, bankers' acceptances, or other obligations which mature not later than 1 year from the date of issuance. No report need be made where the amount not previously reported, although in excess of 5 percent of the amount outsfanding, does not exceed $50,000 face amount of indebtedness or 1,000 shares or other units.

3. This paragraph includes the reissuance of treasury securities and securities held for the account of the issuer thereof. The extension of the maturity date of indebtedness shall be deemed to be the issuance of new indebtedness for the purpose of this paragraph. In the case of such an extension, the percentage shall be computed upon the basis of the principal amount of the indebtedness extended.

4. This paragraph need not be answered as to decreases resulting from ordinary sinking fund operations, similar periodic decreases made pursuant to the terms of the constituent instruments, decreases resulting from the conversion of securities or decreases resulting from the payment of indebtedness at maturity.

Item 7. Changes in Securities and Changes in Security for Registered Securities.

General Instruction. No response to this item is required if the information called for herein has been previously reported in a report on Form 10–Q.

(a) If the constituent instruments defining the rights of the holders of any class of registered securities have been materially modified, give the title of the class of securities involved and state briefly the general effect of such modification upon the rights of holders of such securities.

(b) If the rights evidenced by any class of registered securities have been materially limited or qualified by the issuance or modification of any other class of securities, state briefly the general effect of the issuance or modification of such other class of securities upon the rights of the holders of the registered securities.

Instruction. Working capital restrictions and other limitations upon payment of dividends are to be reported hereunder.

(c) If there has been a material withdrawal or substitution of assets securing any class of registered securities of the registrant, furnish the following information:

1. Give the title of the securities.

2. Identify and describe briefly the assets involved in the withdrawal or substitutions.

3. Indicate the provision in the underlying indenture, if any, authorizing the withdrawal or substitution.

Instruction. This paragraph need not be answered where the withdrawal or substitution is made pursuant to the terms of an indenture which has been qualified under the Trust Indenture Act of 1939.

Item 8. Defaults upon Senior Securities.

General Instruction. No response to this item is required if the information called for herein has been previously reported in a report on Form 10–Q.

(a) If there has been any material default in the payment of principal, interest, a sinking or purchase fund installment, or any other material default not cured within 30 days, with respect to any indebtedness of the registrant or any of its significant subsidiaries exceeding 5 percent of the total assets of the registrant and its consolidated subsidiaries, identify the indebtedness and state the nature of the default. In the case of such a default in the payment of principal, interest or a sinking or purchase fund installment, state the amount of the default and the total arrearage on the date of filing this report.

Instruction. This paragraph refers only to events which have become defaults under the governing instruments, i.e., after the expiration of any period of grace and compliance with any notice requirements.

(b) If any material arrearage in the payment of dividends has occurred or if there has been any other material delinquency not cured within 30 days, with respect to any class of preferred stock of the registrant which is registered or which ranks prior to any class of registered securities, or with respect to any class of preferred stock of any significant subsidiary of the registrant, give the title of the class and state the nature of the arrearage or delinquency. In the case of an arrearage in the payment of dividends, state the amount and the total arrearage on the date of filing this report.

Instruction. Item 8 need not be answered as to any default or arrearage with respect to any class of securities all of which is held by, or for the account of, the registrant or its totally held subsidiaries.

Item 9. Approximate Number of Equity Security Holders.

[No change from former Item 7 of Form 10–K.]

Item 10. Submission of Matters to a Vote of Security Holders.

If any matter has been submitted to a vote of security holders, through the solicitation of proxies or otherwise, furnish the following information if not previously disclosed in a report on Form 10–Q:

(a) The date of the meeting and whether it was an annual or special meeting.

(b) If the meeting involved the election of directors, state the name of each director elected at the meeting and the name of each other director whose term of office as a director continued after the meeting.

(c) Briefly describe each other matter voted upon at the meeting and state the number of affirmative votes and the number of negative votes cast with respect to each such matter.

Instructions. 1. If any matter has been submitted to a vote of security holders otherwise than at a meeting of such security holders, corresponding information with respect to such submission shall be furnished. The solicitation of any authorization or consent (other than a proxy to vote at a stockholders' meeting) with respect to any matter shall be deemed a submission of such matter to a vote of security holders within the meaning of this item.

2. Paragraph (a) need be answered only if paragraph (b) or (c) is required to be answered.

3. Paragraph (b) need not be answered if (i) proxies for the meeting were solicited pursuant to Regulation 14 under the Act, (ii) there was no solicitation in opposition to the management's nominees as listed in the proxy statement, and (iii) all of such nominees were elected. If the registrant did not solicit proxies and the board of directors as previously reported to the Commission was re-elected in its entirety, a statement to that effect in answer to paragraph (b) will suffice as an answer thereto.

4. Paragraph (c) need not be answered as to procedural matters or as to the selection or approval of auditors.

5. If the registrant has published a report containing all of the information called for by the item, the item may be answered by a reference to the information contained in such report, provided copies of such report are filed as an exhibit to the report on this form.

Item 11. Executive Officers of Registrant.

[No change from former Item 8 of Form 10–K.]

Item 12. Indemnification of Directors and Officers.

[No change from former Item 9 of Form 10–K.]

Item 13. Financial Statements, Exhibits filed, and Reports on Form 8–K.

(a) List all of the following documents filed as a part of the report:

1. All financial statements.

2. All exhibits, including those incorporated by reference.

Instruction. Where any financial statement or exhibit is incorporated by reference, the incorporation by reference shall be set forth in the list required by this Item. See Rule 12b–23 [17 CFR 240.12b–23]

(b) Reports on Form 8–K. State whether any reports on Form 8–K have been filed during the last quarter of the period covered by this report, listing the items reported, any financial statements filed and the dates of any such reports.

PART II

[The items and references to item numbers within the items in Part II have been renumbered.]

Item. 14. [No change from former Item 11 of Form 10–K.]

Item 15. Directors of the Registrant.

NOTE.—Paragraph (c) of Item 15 also applies to executive officers of the registrant.

* * * * *

Instruction. 1. Instruction 2 to Item 11 shall also apply to this item.

[No change in remainder from former Item 12.]

Item 16. Remuneration of Directors and Officers.

* * * * *

Instructions. 1.–3. [No change from Intions 1.–3. to paragraph (a) of former Item 13.]

4. Do not include remuneration paid to a partnership in which any director or officer was a partner, but see Item 18.

[No change in remainder from former Item 13.]

Item 17. Options Granted to Management to Purchase Securities.

Furnish the following information, in substantially the tabular form indicated, as to all options to purchase any securities from the registrant or any of its subsidiaries which were granted to or exercised by the following persons since the beginning of the fiscal year, and as to all options held by such persons as of the latest practicable date regardless of when such options were granted: (i) each director and officer named in answer to Item 16(a)(1), naming each such person; and (ii) all directors and officers of the registrant as a group, without naming them:

* * * * *

Instructions. 1.–2. No change from Instructions 1.–2. of former Item 14.]

3. (i) Where the total market value on the granting dates of the securities called for by all options granted during the period specified does not exceed $10,000 for any officer or director named in answer to Item 16(a)(1) or $40,000 for all officers and directors as a group, this item need not be answered with respect to options granted to such person or group. (ii) Where the total market value on the dates of purchase of all securities purchased through the exercise of options during the period specified does not exceed $10,000 for any such person or $40,000 for such group, this item need not be answered with respect to options exercised by such person or group. (iii) Where the total market value as of the latest practicable date of the securities called for by all options held at such time does not exceed $10,000 for any such person or $40,000 for such group, this item need not be answered with respect to options held as of the specified date by such person or group.

[No change in remainder from former Item 14 of Form 10–K]

Item 18. Interest of Management and Others in Certain Transactions.

(a) [No change from paragraph (a) of former Item 15.]

(1) [No change from subsection (a)(1) of former Item 15.]

(2) Any security holder named in answer to Item 14(a).

(3) [No change from subsection (a)(3) of former Item 15.]

Instructions. 1. (No change from Instruction 1 to paragraph (a) of former Item 15.)

2. No information need be given in response to this item as to any remuneration or other transaction reported in response to Items 16 or 17, or as to any transaction with respect to which information may be omitted pursuant to Instruction 2 to Item 16(b), the instruction to Item 16(c), or Instruction 2 or 3 to paragraph (b) of this item.

3.–7. [No change from Instructions 3.–7. to paragraph (a) of former Item 15.]

(b) [No change from paragraph (b) of former Item 15.]

(c) [No change from paragraph (c) of former Item 15.]

(1) [No change from subsection (c)(1) of former Item 15.]

(2) Any security holder named in answer to Item 14(a).

[No change in remainder from former Item 15.]

SIGNATURES

[No change.]

INSTRUCTIONS AS TO FINANCIAL STATEMENTS

[No change.]

INSTRUCTIONS AS TO EXHIBITS

Subject to Rule 12b–32 regarding the incorporation of exhibits by reference, the following exhibits shall be filed as a part of the report:

A. Copies of all amendments or modifications, not previously filed, to all exhibits previously filed (or copies of such exhibits as amended or modified).

B. Copies of all contracts and other documents of a character required to be filed as an exhibit to an original registration statement on Form 10 which were executed or in effect during the fiscal year and not previously filed.

C. Copies of the exhibits called for by Instructions 3, 4(d) and 5 to Item 2.

D. Copies of all constituent instruments defining the rights of the holders of any new class of securities referred to in answer to Item 6(c).

E. Copies of the amendments to all constituent instruments and other documents described in answer to Item 7.

F. Copies of the text of any proposal described and copies of any published report furnished in response to Item 10.

8. Section 240.14a–101 is amended by amending Item 5 of Schedule 14A to read as follows:

§ 240.14a–101 Schedule 14A. Information required in proxy statement.

* * * * *

Item 5. Voting securities and principal holders thereof.

* * * * *

(e) If, to the knowledge of the persons on whose behalf the solicitation is made, a change in control of the issuer has occurred since the beginning of its last fiscal year, state the name of the person(s) who acquired such control, the amount and the source of the consideration used by such person or persons; the basis of the control, the date and a description of the transaction(s) which resulted in the change of control and the percentage of voting securities of the issuers now beneficially owned directly or indirectly by the person(s) who acquired control; and the identity of the person(s) from whom control was assumed. If the source of all or any part of the consideration used is a loan made in the ordinary course of business by a bank as defined by Section 3(a)(6) of the Act, the identity of such bank shall be omitted provided a request for confidentiality has been made pursuant to Section 13(d)(1)(B) of the Act by the person(s) who acquired control. In lieu thereof, the material shall indicate that the identity of the bank has been so omitted and filed separately with the Commission.

Instructions. 1. State the terms of any loans or pledges obtained by the new control group for the purpose of acquiring control, and the names of the lenders or pledgees.

2. Any arrangements or understandings among members of both the former and new control groups and their associates with respect to election of directors or other matters should be described.

(f) Describe any contractual arrangements, including any pledge of securities of the issuer, or any of its parents, known to the persons on whose behalf the solicitation is made, the operation of the terms of which may at a subsequent date result in a change in control of the issuer.

Instruction. Paragraph (f) does not require a description of ordinary default provisions contained in the charter, trust indentures or other governing instruments relating to securities of the issuer.

* * * * *

(Secs 13, 14(a), 15(d), 23(a), 48 Stat. 894, 895, 901; sec. 203(a), 49 Stat. 704; secs. 3, 8, 49 Stat. 1377, 1379; secs. 4, 5, 6, 78 Stat. 569, 570–574; sec. 2, 82 Stat. 454; secs. 1, 2, 84 Stat. 1497; secs. 10, 18, 89 Stat. 119, 155 (15 U.S.C. 78m, 78n(a), 78o(d), 78w(a)); Secs. 12(e), 20(a), 49 Stat. 823, 833 (15 U.S.C. 79l(e), 79t(a)); Secs. 20(a), 38(a), 54 Stat. 822, 841 (15 U.S.C. 80a–20(a), 80a–37(a)).)

DATE OF EFFECTIVENESS

The amendments to Rules 13a–11 and 15d–11, to the Form 8–K, and to Schedule 14A shall be effective for events which occur subsequent to February 28, 1977. The amendments to Rules 13a–13 and 15d–13 and to Form 10–Q shall be effective for quarterly periods beginning after December 31, 1976. The amendments to the Form 10–K shall be effective for reports filed for periods beginning after March 31, 1976.

STATUTORY AUTHORITY FOR AMENDMENTS

The foregoing amendments are adopted pursuant to Sections 13, 14(a), 15(d) and 23(a) of the Securities Exchange Act of 1934, Sections 12(e) and 20(a) of the Public Utility Holding Company Act of 1935, and Sections 20(a) and 38(a) of the Investment Company Act of 1940. Pursuant to Section 23(a) of the Securities Exchange Act, the Commission has considered the effect that the proposed amendments would have on competition and has concluded that, to the extent the amendments impose burdens on competition, such burdens are necessary and appropriate in furtherance of the purposes of the securities laws.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

JANUARY 13, 1977.

[FR Doc.77–2225 Filed 1–24–77;8:45 am]

Title 21—Food and Drugs

CHAPTER I—FOOD AND DRUG ADMINISTRATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

SUBCHAPTER A—GENERAL

[Docket No. 76N-0414]

PART 2—ADMINISTRATIVE FUNCTIONS, PRACTICES, AND PROCEDURES

Subpart D—Public Hearing Before a Public Advisory Committee

ESTABLISHMENT OF PROCEDURES; CORRECTION

In FR Doc. 76-34666, appearing at page 52148 in the FEDERAL REGISTER of Friday, November 26, 1976, on page 52164, in § 2.340 List of standing advisory committees, paragraph (c)(17)(ii) is corrected in the sixth line by changing the word "allergenic" to read "allergic."

Dated: January 17, 1977.

JOSEPH P. HILE,
Associate
Commissioner for Compliance.

[FR Doc.77-2087 Filed 1-24-77;8:45 am]

Title 26—Internal Revenue

CHAPTER I—INTERNAL REVENUE SERVICE, DEPARTMENT OF THE TREASURY

SUBCHAPTER A—INCOME TAX

[T.D. 7465]

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Community Trust's Governing Body; Effect of Restrictions and Conditions

By notice of proposed rulemaking appearing in the FEDERAL REGISTER for November 17, 1976 (41 FR 50698), amendments to Income Tax Regulations (26 CFR Part 1) were proposed under section 170(b)(1)(A) of the Internal Revenue Code of 1954, relating to the definition of a community trust, and section 507(b)(1) of the Code, relating to the termination of private foundation status. After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, certain changes were made, and the proposed amendments of the regulations, subject to the changes, are adopted by this document.

These final regulations contain rules relating to the powers that the governing body of a community trust must possess, such as, the power to modify restrictions and conditions on the distributions from funds to specified distributees and the power to replace any participating trustee, custodian, or agent.

In addition, these final regulations provide guidance under § 1.507-2(a)(8) (relating to the effect of restrictions and conditions upon the distribution of net assets by a private foundation terminating its status as such) with regard to donor advice pertaining to distributions made by a public charity from the donor's fund to specified distributees.

ADOPTION OF AMENDMENTS TO THE REGULATIONS

In view of the foregoing, the Income Tax Regulations (26 CFR Part 1) are amended as follows:

Paragraph 1. Section 1.170A-9(e)(11) is amended by revising paragraph (e)(11)(iv), by adding a heading to paragraph (e)(11)(v)(A) and by adding paragraph (e)(11)(v)(B), (C), (D), (E) and (F) to read as follows:

§ 1.170A-9 Definition of section 170(b)(1)(A) organizations.

* * * * *

(e) *Definition of section 170(b)(1)(A)(vi) organization.* * * *

(11) *Community trusts; requirements for treatment as a single entity.* * * *

(iv) *Common instrument.* All funds of the organization must be subject to a common governing instrument or a master trust or agency agreement (herein referred to as the "governing instrument"), which may be embodied in a single document or several documents containing common language. Language in an instrument of transfer to the community trust making a fund subject to the community trust's governing instrument or master trust or agency agreement will satisfy the requirements of paragraph (e)(11)(iv) of this section. In addition, if a community trust adopts a new governing instrument (or creates a corporation) to put into effect new provisions (applying to future transfers to the community trust), the adoption of such new governing instrument (or creation of a corporation with a governing instrument) which contains common language with the existing governing instrument shall not preclude the community trust from meeting the requirements of such paragraph (e)(11)(iv).

(v) *Common governing body*—(A) *In general.* * * *

(B) *Powers of modification and removal.* Except as provided in paragraph (e)(11)(v)(C) of this section, the governing body must have the power in the governing instrument, the instrument of transfer, the resolutions or by-laws of the governing body, a written agreement, or otherwise—

(*1*) To modify any restriction or condition on the distribution of funds for any specified charitable purposes or to specified organizations if in the sole judgment of the governing body (without the necessity of the approval of any participating trustee, custodian, or agent), such restriction or condition becomes, in effect, unnecessary, incapable of fulfillment, or inconsistent with the charitable needs of the community or area served;

(*2*) To replace any participating trustee, custodian, or agent for breach of fiduciary duty under State law; and

(*3*) To replace any participating trustee, custodian, or agent for failure to produce a reasonable (as determined by the governing body) return of net income (within the meaning of paragraph (e)(11)(v)(F) of this section) over a reasonable period of time (as determined by the governing body).

The fact that the exercise of any such power in paragraph (e)(11)(v)(B) (*1*), (*2*) or (*3*) of this section is reviewable by an appropriate State authority will not preclude the community trust from meeting the requirements of paragraph (e)(11)(v)(B) of this section.

(C) *Transitional rule.* (*1*) Notwithstanding paragraph (e)(11)(v)(B) of this section, if a community trust meets the requirements of paragraph (e)(11)(v)(C)(*2*) of this section, then in the case of any instrument of transfer which is executed before July 19, 1977 and is not revoked or amended thereafter (with respect to any dispositive provision affecting the transfer to the community trust), and in the case of any instrument of transfer which is irrevocable on January 19, 1982, the governing body must have the power to cause proceedings to be instituted (by request to the appropriate State authority)—

(*i*) To modify any restriction or condition on the distribution of funds for any specified charitable purposes or to specified organizations if in the judgment of the governing body such restriction or condition becomes, in effect, unnecessary, incapable of fulfillment, or inconsistent with the charitable needs of the community or area served; and

(*ii*) To remove any participating trustee, custodian, or agent for breach of fiduciary duty under State law.

The necessity for the governing body to obtain the approval of a participating trustee to exercise such a power shall be treated as not preventing the governing body from having such power, unless (and until) such approval has been (or is) requested by the governing body and has been (or is) denied.

(*2*) Paragraph (e)(11)(v)(C)(*1*) of this section shall not apply unless the community trust meets the requirements of paragraph (e)(11)(v)(B) of this section, with respect to funds other than those under instruments of transfer described in the first sentence of such paragraph (e)(11)(v)(C)(*1*), by January 19, 1978, or such later date as the Commissioner may provide for such community trust, and unless the community trust does not, once it so complies, thereafter solicit for funds that will not qualify under the requirements of such paragraph (e)(11)(v)(B).

(D) *Inconsistent State law.* (*1*) For purposes of paragraph (e)(11)(v)(B)(*1*), (*2*), or (*3*) or (C)(*1*) (*i*) or (*ii*) or (E) of this section, if a power described in such a provision is inconsistent with State law even if such power were expressly granted to the governing body by the governing instrument and were accepted without limitation under an instrument of transfer, then the community trust will be treated as meeting the requirements of such a provision if it meets such requirements to the fullest extent possible consistent with State law (if such power is or had been so expressly granted).

(*2*) For example, if, under the conditions of paragraph (e)(11)(v)(D)(*1*) of this section, the power to modify is inconsistent with State law, but the power to institute proceedings to modify, if so expressly granted, would be consistent with State law, the community trust will be treated as meeting such requirements to the fullest extent possible if the governing body has the power (in the governing instrument or otherwise) to institute proceedings to modify a condition or restriction. On the other hand, if in such a case the community trust has only the power to cause proceedings to be instituted to modify a condition or restriction, it will not be treated as meeting such requirements to the fullest extent possible.

(*3*) In addition, if, for example, under the conditions of paragraph (e)(11)(v)(D)(*1*) of this section, the power to modify and the power to institute proceedings to modify a condition or restriction is inconsistent with State law, but the power to cause such proceedings to be instituted would be consistent with State law, if it were expressly granted in the governing instrument and if the approval of the State Attorney General were obtained, then the community trust will be treated as meeting such requirements to the fullest extent possible if it has the power (in the governing instrument or otherwise) to cause such proceedings to be instituted, even if such proceedings can be instituted only with the approval of the State Attorney General.

(E) *Exercise of powers.* The governing body shall (by resolution or otherwise) commit itself to exercise the powers described in paragraph (e)(11)(v)(B), (C) and (D) of this section in the best interests of the community trust. The governing body will be considered not to be so committed where it has grounds to exercise such a power and fails to exercise it by taking appropriate action. Such appropriate action may include, for example, consulting with the appropriate State authority prior to taking action to replace a participating trustee.

(F) *Reasonable return.* In addition to the requirements of paragraph (e)(11)(v)(B), (C), (D) or (E) of this section, the governing body shall (by resolution or otherwise) commit itself to obtain information and take other appropriate steps with the view to seeing that each participating trustee, custodian, or agent, with respect to each restricted (within the meaning of paragraph (e)(13)(x) of this section) trust or fund that is, and with respect to the aggregate of the unrestricted trusts or funds that are, a component part of the community trust, administers such trust or fund in accordance with the terms of its governing instrument and accepted standards of fiduciary conduct to produce a reasonable return of net income (or appreciation where not inconsistent with the community trust's need for current income), with due regard to safety of principal, in furtherance of the exempt purposes of the community trust (except for assets held for the active conduct of the community trust's exempt activities). In the case of a low return of net income (and, where appropriate, appreciation), the Internal Revenue Service will examine carefully whether the governing body has, in fact, committed itself to take the appropriate steps.

* * * * *

Paragraph 2. Section 1.507-2(a)(8) is amended by revising paragraph (a)(8)(iv)(A) to read as follows:

§ 1.507-2 Special rules; transfer to or operations as, public charity.

(a) *Transfer to public charities.* * * *

(8) *Effect of restrictions and conditions upon distributions of net assets.* * * *

(iv) *Adverse factors.* The presence of any of the following factors will be considered as preventing the transferee "from freely and effectively employing the transferred assets, or the income derived therefrom, in futherance of its exempt purposes" (within the meaning of paragraph (a)(8)(i) of this section):

(A) *Distributions.* (*1*) With respect to distributions made after April 19, 1977, the transferor private foundation, a disqualified person with respect thereto, or any person or committee designated by, or pursuant to the terms of an agreement with, such a person (hereinafter referred to as "donor"), reserves the right, directly or indirectly, to name (other than by designation in the instrument of transfer of particular section 509(a)(1), (2), or (3) organizations) the persons to which the transferee public charity must distribute, or to direct the timing of such distributions (other than by direction in the instrument of transfer that some or all of the principal, as opposed to specific assets, not be distributed for a specified period) as, for example, by a power of appointment. The Internal Revenue Service will examine carefully whether the seeking of advice by the transferee from, or the giving of advice by, any donor after the assets have been transferred to the transferee constitutes an indirect reservation of a right to direct such distributions. In any such case, the reservation of such a right will be considered to exist where the only criterion considered by the public charity in making a distribution of income or principal from a donor's fund is advice offered by the donor. Whether there is a reservation of such a right will be determined from all of the facts and circumstances, including, but not limited to, the facts contained in paragraph (a)(8)(iv)(A)(*2*) and (*3*) of this section.

(*2*) The presence of some or all of the following factors will indicate that the reservation of such a right does not exist:

(*i*) There has been an independent investigation by the staff of the public charity evaluating whether the donor's advice is consistent with specific charitable needs most deserving of support by the public charity (as determined by the public charity);

(*ii*) The public charity has promulgated guidelines enumerating specific charitable needs consistent with the charitable purposes of the public charity and the donor's advice is consistent with such guidelines;

(*iii*) The public charity has instituted an educational program publicizing to donors and other persons the guidelines enumerating specific charitable needs consistent with the charitable purposes of the public charity;

(*iv*) The public charity distributes funds in excess of amounts distributed from the donor's fund to the same or similar types of organizations or charitable needs as those recommended by the donor; and

(*v*) The public charity's solicitations (written or oral) for funds specifically state that such public charity will not be bound by advice offered by the donor.

(*3*) The presence of some or all of the following factors will indicate the reservation of such a right does exist:

(*i*) The solicitations (written or oral) of funds by the public charity state or imply, or a pattern of conduct on the part of the public charity creates an expectation, that the donor's advice will be followed;

(*ii*) The advice of a donor (whether or not restricted to a distribution of income or principal from the donor's trust or fund) is limited to distributions of amounts from the donor's fund, and the factors described in paragraph (a)(8)(iv)(A)(*2*) (*i*) or (*ii*) of this section are not present;

(*iii*) Only the advice of the donor as to distributions of such donor's fund is solicited by the public charity and no procedure is provided for considering advice from persons other than the donor with respect to such fund; and

(*iv*) For the taxable year and all prior taxable years the public charity follows the advice of all donors with respect to their funds substantially all of the time.

* * * * *

(Sec. 7805 Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).)

DONALD C. ALEXANDER,
Commissioner of
Internal Revenue.

Approved: January 19, 1977.

CHARLES M. WALKER,
Assistant Secretary of the
Treasury.

[FR Doc.77-2372 Filed 1-19-77;5:07 pm]

SUBCHAPTER F—PROCEDURE AND ADMINISTRATION

[T.D. 7464]

PART 404—TEMPORARY REGULATIONS ON PROCEDURE AND ADMINISTRATION UNDER THE TAX REFORM ACT OF 1976

Disclosure of Returns and Information

Temporary regulations relating to disclosures after December 31, 1976 by officers and employees of Federal agencies of returns and return information (including taxpayer return information) disclosed to such officers and employees

by the Secretary before January 1, 1977 for a purpose not involving tax administration.

This document contains temporary regulations on procedure and administration (26 CFR Part 404) under section 6103(a) of the Internal Revenue Code of 1954, as added by section 1202 of the Tax Reform Act of 1976 (Pub. L. 94-455, 90 Stat. 1667) in order to provide rules governing disclosures after December 31, 1976 of returns and return information (including taxpayer return information), as defined in section 6103(b) (1), (2), and (3), disclosed before January 1, 1977, by the Secretary to officers and employees of Federal agencies for a purpose not involving tax administration.

Prior to its amendment by Section 1202 of the Tax Reform Act of 1976, effective as of January 1, 1977, section 6103(a) authorized the disclosure of Federal tax data by the Secretary to Federal agencies for nontax related purposes as provided by orders of the President and implementing rules and regulations prescribed by the Secretary and approved by the President. The temporary regulations provide that returns and return information so disclosed by the Secretary to a Federal agency before January 1, 1977 pursuant to the authority of prior law (and orders of the President and implementing rules and regulations) may, with one restriction, be disclosed after December 31, 1976 by such agency for any purpose authorized by such prior law (and orders, rules, and regulations). The restriction on such further disclosure would be use of such returns or return information after December 31, 1976, by, or on behalf of, the Federal agency in an administrative or judicial proceeding. Such use would be restricted to an administrative or judicial proceeding described in section 6103 (i) (4) and then only if the requirements of section 6103(i) (4) are first met.

These temporary regulations are effective as of January 1, 1977.

ADOPTION OF AMENDMENT TO THE REGULATIONS

In order to prescribe temporary regulations on procedure and administration relating to disclosures after December 31, 1976 by officers and employees of Federal agencies of returns and return information (including taxpayer return information) disclosed to such officers and employees by the Secretary before January 1, 1977, for a purpose not involving tax administration pursuant to the authority of section 6103 of the Internal Revenue Code of 1954 (or any order of the President under section 6103 or rules and regulations thereunder prescribed by the Secretary and approved by the President) before amendment of such section by section 1202 of the Tax Reform Act of 1976 (Pub. L. 94-455, 90 Stat. 1667), the following temporary regulations are hereby adopted:

§ 404.6103(a)-1 Disclosures after December 31, 1976 by officers and employees of Federal agencies of returns and return information (including taxpayer return information) disclosed to such officers and employees by the Secretary before January 1, 1977 for a purpose not involving tax administration.

(a) *General rule.* Except as provided by paragraph (b) of this section, a return or return information (including taxpayer return information), as defined in section 6103(b) (1), (2), and (3) of the Internal Revenue Code, disclosed by the Secretary before January 1, 1977, to an officer or employee of a Federal agency (as defined in section 6103(b) (9)) for a purpose not involving tax administration (as defined in section 6103 (b) (4)) pursuant to the authority of section 6103 (or any order of the President under section 6103 or rules and regulations thereunder prescribed by the Secretary and approved by the President) before amendment of such section by Section 1202 of the Tax Reform Act of 1976 (Pub. L. 94-455, 90 Stat. 1667) may be disclosed by, or on behalf of, such officer, employee, or agency after December 31, 1976, for any purpose authorized by such section (or such order or rules and regulations) before such amendment.

(b) *Exception.* Notwithstanding the provisions of paragraph (a) of this section, a return or return information (including taxpayer return information) disclosed before January 1, 1977, by the Secretary to an officer or employee of a Federal agency for a purpose unrelated to tax administration as described in paragraph (a) may, after December 31, 1976, be disclosed by, or on behalf of, such agency, officer, or employee in an administrative or judicial proceeding only if such proceeding is one described in section 6103(i) (4) and if the requirements of section 6103(i) (4) have first been met.

Because of the need for immediate guidance with respect to the provisions contained in this Treasury decision, it is found impracticable to issue it with notice and public procedure thereon under subsection (b) of section 553 of title 5 of the United States Code or subject to the effective date limitation of subsection (c) of that section.

(This Treasury decision is issued under the authority contained in sections 6103(q) and 7805 of the Internal Revenue Code of 1954 (90 Stat. 1685, 68A Stat. 917; 26 U.S.C. 6103 (q), 7805).)

DONALD C. ALEXANDER,
Commissioner of Internal Revenue.

Approved: January 19, 1977.

CHARLES M. WALKER,
Assistant Secretary of the Treasury.

[FR Doc.77-2364 Filed 1-19-77;4:51 pm]

[T.D. 7463]

PART 404—TEMPORARY REGULATIONS ON PROCEDURE AND ADMINISTRATION UNDER THE TAX REFORM ACT OF 1976

Disclosure of Returns and Information

In the matter of temporary regulations relating to disclosures of returns and return information to and by officers and employees of the Department of Justice and other Federal agencies in connection with preparation for certain administrative and judicial proceedings (or investigations which may result in such proceedings).

This document contains temporary regulations on procedure and administration (26 CFR Part 404) under section 6103(h) (2) and (i) (1) and (2) of the Internal Revenue Code of 1954, as added by section 1202 of the Tax Reform Act of 1976 (Pub. L. 94-455, 90 Stat. 1674) in order to provide rules governing disclosures of returns and return information (including taxpayer return information), as defined in section 6103(b) (1), (2), and (3), to and by officers and employees of the Department of Justice and other Federal agencies in connection with preparation for certain administrative and judicial proceedings (or investigations which may result in such proceedings).

The temporary regulations describe the circumstances and conditions under which returns and return information may be disclosed to and by officers and employees of the Department of Justice and other Federal agencies in connection with preparation for, or investigations which may result in, proceedings involving tax administration (as defined in section 6103(b) (4)) and proceedings pertaining to the enforcement of specifically designated Federal criminal statutes (not involving tax administration) to which the United States or a Federal agency is or may be a party.

These temporary regulations are effective as of January 1, 1977.

ADOPTION OF AMENDMENT TO THE REGULATIONS

In order to prescribe temporary regulations on procedure and administration relating to disclosures of returns and return information (including taxpayer return information) to and by officers and employees of the Department of Justice and other Federal agencies in connection with preparation for certain administrative and judicial proceedings (or investigations which may result in such proceedings) under section 6103(h) (2) and (i) (1) and (2) of the Internal Revenue Code of 1954, as added by section 1202 of the Tax Reform Act of 1976 (Pub. L. 94-455, 90 Stat. 1674), the following temporary regulations are hereby adopted and added to Part 404 of Title 26 of the Code of Federal Regulations:

§ 404.6103(h)(2)-1 Disclosure of returns and return information (including taxpayer return information) to and by attorneys and other officers and employees of the Department of Justice or other Federal agencies in preparation for proceeding or investigation involving tax administration and certain other matters.

(a) *Disclosure of returns and return information (including taxpayer return information) to and by attorneys of the Department of Justice.* (1) Returns and return information (including taxpayer return information), as defined in section 6103(b) (1), (2), and (3) of the Internal Revenue Code, shall, to the extent provided by subparagraphs (A), (B), and (C) of paragraph (2) of section 6103(h) and subject to the requirements of section 6103(h)(3), be open to inspection by or disclosure to attorneys of the Department of Justice (including United States attorneys) personally and directly engaged in, and for their necessary use in, preparation for any proceeding (or for their necessary use in an investigation which may result in such a proceeding) before a Federal grand jury or any Federal or State court in a matter involving tax administration (as defined in section 6103(b)(4)), including any such proceeding (or any such investigation) also involving the enforcement of a related Federal criminal statute which has been referred by the Secretary to the Department of Justice.

(2) Returns and return information (including taxpayer return information) inspected by or disclosed to attorneys of the Department of Justice as provided in paragraph (a)(1) of this section may also be used by such attorneys, or disclosed by them to other attorneys (including United States attorneys and supervisory personnel, such as Section Chiefs, Deputy Assistant Attorneys General, Assistant Attorneys General, the Deputy Attorney General, and the Attorney General) of the Department of Justice where necessary in connection with preparation for any proceeding (or with an investigation which may result in such a proceeding) described in paragraph (a)(1) of this section or any proceeding (or investigation) involving any other matter related to tax administration or involving any matter brought before a Federal grand jury or Federal court pertaining to enforcement of a specific Federal criminal statute (other than one described in paragraph (a)(1) of this section) to which the United States is or may be a party, provided that such proceeding (or investigation) involves or arises out of the particular facts and circumstances giving rise to the proceeding (or investigation) described in paragraph (a)(1) of this section.

(b) *Disclosure of returns and return information (including taxpayer return information) by attorneys of the Department of Justice.* (1) Returns and return information (including taxpayer return information), as defined in section 6103(b) (1), (2), and (3) of the Code, inspected by or disclosed to attorneys of the Department of Justice as provided by paragraph (a) of this section may be disclosed by such attorneys to other persons, including, but not limited to, persons described in paragraph (b)(2) of this section but only to the extent necessary in connection with the proper preparation for a proceeding (or in connection with an investigation which may result in such a proceeding) described in paragraph (a). Such disclosures may include, but are not limited to, disclosure where necessary—

(i) To properly accomplish any purpose or activity of the nature described in § 404.6103(k)(6)-1 which is essential to proper preparation for such proceeding (or to such investigation);

(ii) To properly interview, consult, depose, or interrogate or otherwise obtain relevant information from, the taxpayer to whom such return or return information relates (or such taxpayer's legal representative) or from any witness who may be called to give evidence in the proceeding; or

(iii) To properly conduct negotiations concerning, or obtain authorization for, settlement or disposition of the proceeding, in whole or in part, or stipulations of fact in connection with the proceeding.

Disclosure of a return or return information to a person other than the taxpayer to whom such return or return information relates or such taxpayer's legal representative to properly accomplish any purpose or activity described in this paragraph should be made, however, only if such purpose or activity cannot otherwise properly be accomplished without making such disclosure.

(2) Among those persons to whom returns and return information may be disclosed by attorneys of the Department of Justice as provided by paragraph (b) (1) of this paragraph are—

(i) Other officers and employees of the Department of Justice, such as, personnel of an office, board, division, or bureau of such department (for example, the Federal Bureau of Investigation or the Drug Enforcement Administration), clerical personnel (for example, secretaries, stenographers, docket and file room clerks, and mail room employees) and supervisory personnel (such as supervisory personnel of the Federal Bureau of Investigation or the Drug Enforcement Administration);

(ii) Officers and employees of another Federal agency (as defined in section 6103(b)(9)) working under the direction and control of any such attorney of the Department of Justice; and

(iii) Court reporters.

§ 404.6103(i)-1 Disclosure of returns and return information (including taxpayer return information) to and by officers and employees of the Department of Justice or another Federal agency in preparation for proceeding or investigation involving enforcement of Federal criminal statute not involving tax administration.

(a) *Disclosure of returns and return information (including taxpayer return information) to attorneys of the Department of Justice or another Federal agency.* Returns and return information (including taxpayer return information), as defined in section 6103(b) (1), (2), and (3) of the Internal Revenue Code, shall, to the extent provided by paragraphs (1), (2), and (3) of section 6103(i) and subject to the requirements of such paragraphs (1) and (2), be open to inspection by or disclosure to attorneys of the Department of Justice (including United States attorneys) or of another Federal agency (as defined in section 6103(b)(9)) personally and directly engaged in, and for their necessary use in, preparation for any administrative or judicial proceeding (or their necessary use in an investigation which may result in such a proceeding) pertaining to enforcement of a specifically designated Federal criminal statute not involving or related to tax administration to which the United States or such agency is or may be a party.

(b) *Disclosure of returns and return information (including taxpayer return information) by attorneys of the Department of Justice or another Federal agency.* (1) Returns and return information (including taxpayer return information), as defined in section 6103(b) (1), (2), and (3) of the Code, disclosed to attorneys of the Department of Justice or other Federal agency (as defined in section 6103(b)(9)) as provided by paragraph (a) of this section may be disclosed by such attorneys to other persons, including, but not limited to, persons described in paragraph (b)(2) of this section, but only to the extent necessary in connection with the proper preparation for a proceeding (or in connection with an investigation which may result in such a proceeding) described in paragraph (a). Such disclosures may include, but are not limited to, disclosures where necessary—

(i) To properly obtain the services of persons having special knowledge or technical skills (such as, but not limited to, handwriting analysis, photographic development, sound recording enhancement, or voice identification);

(ii) To properly interview, consult, depose, or interrogate or otherwise obtain relevant information from, the taxpayer to whom such return or return information relates (or such taxpayer's legal representative) or any witness who may be called to give evidence in the proceeding; or

(iii) To properly conduct negotiations concerning, or obtain authorization for, disposition of the proceeding, in whole or in part, or stipulations of fact in connection with the proceeding.

Disclosure of a return or return information to a person other than the taxpayer to whom such return or return information relates or such taxpayer's legal representative to properly accomplish any purpose or activity described in this paragraph should be made, however, only if such purpose or activity cannot otherwise properly be accomplished without making such disclosure.

(2) Among those persons to whom returns and return information may be

disclosed by attorneys of the Department of Justice or other Federal agency as provided by paragraph (b)(1) of this section are—

(i) Other officers and employees (including attorneys) of the Department of Justice (including an office, board, division, or bureau of such department, such as the Federal Bureau of Investigation or the Drug Enforcement Administration) or other Federal agency described in paragraph (b)(1) of this section, such as clerical personnel (for example, secretaries, stenographers, docket and file room clerks, and mail room employees) and supervisory personnel (for example, in the case of the Department of Justice, Section Chiefs, Deputy Assistant Attorneys General, Assistant Attorneys General, the Deputy Attorney General, the Attorney General, and supervisory personnel of the Federal Bureau of Investigation or the Drug Enforcement Administration);

(ii) Officers and employees of another Federal agency (as defined in section 6103(b)(9)) working under the direction and control of such attorneys of the Department of Justice or other Federal agency described in paragraph (b)(1) of this section; and

(iii) Court reporters.

Because of the need for immediate guidance with respect to the provisions contained in this Treasury decision, it is found impracticable to issue it with notice and public procedure thereon under subsection (b) of section 553 of title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

(This Treasury decision is issued under the authority contained in sections 6103(q) and 7805 of the Internal Revenue Code of 1954 (90 Stat. 1685, 68A Stat. 917; 26 U.S.C. 6103(q), 7805).)

DONALD C. ALEXANDER,
Commissioner of Internal Revenue.

Approved: January 19, 1977.

CHARLES M. WALKER,
Assistant Secretary of the Treasury.

[FR Doc.77-2365 Filed 1-19-77;4:51 pm]

Title 28—Judicial Administration

CHAPTER I—DEPARTMENT OF JUSTICE

[Order No. 678-77]

PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

Subpart B—Office of the Attorney General

ADMINISTRATION OF THE FEDERAL JUSTICE RESEARCH PROGRAM

This order amends the functions of the Office of Policy and Planning by assigning to it responsibility for the administration of the Federal Justice Research Program.

By virtue of the authority vested in me by 28 U.S.C. 509, 510, and 5 U.S.C. 301, Subpart B of Part 0 of Chapter I of Title 28, Code of Federal Regulations, is amended as follows:

1. Paragraph (d) of § 0.6 is redesignated paragraph (e).

2. A new paragraph (d) of § 0.6 is inserted immediately after paragraph (c), to read as follows:

§ 0.6 Office of Policy and Planning.

* * * * *

(d) Administer the Federal Justice Research Program, a departmental program for the conduct, by contract or otherwise, of research bearing upon federal civil and criminal justice.

Dated: January 14, 1977.

EDWARD H. LEVI,
Attorney General.

[FR Doc.77-2192 Filed 1-24-77;8:45 am]

Title 29—Labor

CHAPTER V—WAGE AND HOUR DIVISION, DEPARTMENT OF LABOR

PART 657—TOBACCO MANUFACTURES INDUSTRY IN PUERTO RICO

Wage Order

Pursuant to sections 5, 6, and 8 of the Fair Labor Standards Act of 1938 (52 Stat. 1062, 1064, as amended (29 U.S.C. 205, 206, 208)), including the Fair Labor Standards Amendments of 1974 (Pub. L. 93-259; 88 Stat. 55), and Reorganization Plan No. 6 of 1950 (3 CFR 1949-53 Comp., p. 1004), and by means of Administrative Order No. 647 (41 FR 40254), the Seretary of Labor appointed and convened Industry Committee No. 137 for Tobacco Manufactures Industry, referred to the Committee the question of the minimum rate or rates of wages to be paid under section 6 of the Act to such employees, and gave notice of a hearing to be held by the Committee.

Subsequent to an investigation and a hearing conducted pursuant to the notice, the Committee has filed with the Administrator of the Wage and Hour Division of the Department of Labor a report containing its finding of fact and recommendations with respect to the matters referred to it.

Accordingly, as authorized and required by section 8 of the Fair Labor Standards Act of 1938, Reorganization Plan No. 6 of 1950, and 29 CFR 511.18, the recommendations of Industry Committee 137 are hereby published, amending §§ 657.2 (a)(1), (a)(2), (a)(3), and (a)(5) of Part 657, Title 29, Code of Federal Regulations. The other wage rates have heretofore reached the mainland rates and are continued.

As amended § 657.2 reads as follows:

§ 657.2 Wage rates.

* * * * *

(a) *Pre-1961 coverage classifications.*
* * *

(1) *Filler tobacco processing classification.* (i) The minimum wage for this classification is $1.56 an hour through April 30, 1977. Under section 6(c) of the Act, the rate is increased $.15 on May 1, 1977, and an additional $.15 on May 1 of each succeeding year until the mainland rate is reached.

* * * * *

(2) *Wrapper type tobacco processing classification.* (i) The minimum wage for this classification is $1.85 an hour through April 30, 1977. Under section 6(c) of the Act, the rate is increased $.15 on May 1, 1977, and an additional $.15 on May 1 of each succeeding year until the mainland rate is reached.

* * * * *

(3) *Machine threshing, other operations classification.* (i) The minimum rate for this classification is $2.07 an hour through April 30, 1977. Under section 6(c) of the Act, the rate is increased $.15 on May 1, 1977, and an additional $.15 on May 1 of each succeeding year until the mainland rate is reached.

* * * * *

(5) *Other products and activities classification.* (i) The minimum rate for this classification is $2.13 an hour through April 30, 1977. Under section 6(c) of the Act, the rate is increased $.15 on May 1, 1977, and an additional $.15 on May 1 of each succeeding year until the mainland rate is reached.

* * * * *

(Secs. 5, 6, 8, 52 Stat. 1062 and 1064, as amended (29 U.S.C. 205, 206, 208).)

Effective date: The effective date of these amendments is February 10, 1977.

Signed at Washington, D.C., on this 14th day of January 1977.

RONALD J. JAMES,
Administrator, Wage and Hour Division, United States Department of Labor.

[FR Doc.77-2135 Filed 1-24-77;8:45 am]

CHAPTER XXVI—PENSION BENEFIT GUARANTY CORPORATION

PART 2608—INTERIM REGULATION ON ALLOCATION OF ASSETS

Amendment to Allow Subclasses

Correction

In FR Doc. 77-1132 appearing on page 2677 in the issue of Thursday, January 13, 1977 on page 2678, 1st column, the 2nd paragraph, beginning with the amendatory language, the document should be corrected to read as follows:

In consideration of the foregoing part 2608 of Chapter XXVI, Title 29, is amended as follows:

1. Sections 2608.7(b)(1)(i)(C) and (b)(2)(i)(A) are revised to read:

§ 2608.7 Priority category 2 benefits.

* * * * *

(b) * * *
(1) * * *
(i) * * *

* * * * *

(C) Interest, if any, on the sum of the amounts determined under paragraphs (b)(1)(i)(A) and (B) of this section compounded annually at the applicable rate under section 204(c)(2)(C)(iii) of the Act, from the beginning of the first plan year to which section 204(c) of the Act applies to the earlier of the participant's retirement date or the date of plan termination.

* * * * *

(2) * * *
(i) * * *

(A) Add accumulated employee contributions computed under paragraph (b)(1) of this section and interest at the applicable rate on such contributions under section 204(c)(2)(C)(iii) of the Act from the date of plan termination to the date on which the participant would attain normal retirement age.

2. Section 2608.10(a) is revised to read:

§ 2608.10 Priority category 5 benefits.

(a) Priority category 5 benefits consist of all nonforfeitable benefits payable with respect to a participant in a plan, other than benefits derived from voluntary employee contributions assigned to priority category 1 and all benefits assigned to priority categories 2, 3 or 4. The only benefits payable as annuities contained in this section are those benefits payable as annuities to which a participant is entitled under § 2605.5 of this chapter.

* * * * *

Title 30—Mineral Resources

CHAPTER II—GEOLOGICAL SURVEY, DEPARTMENT OF THE INTERIOR

PART 211—COAL MINING OPERATING REGULATIONS

Surface Management; Final Regulations

On December 6, 1976, the Department of the Interior proposed several changes in the regulations contained in 30 CFR Part 211 as part of its efforts to comply with the requirements of the Federal Coal Leasing Amendments Act of 1975, 90 Stat. 1083. The proposed changes were published in 41 FR 53360 (1976). This rulemaking adopts final changes based on that proposed rulemaking. The changes from the original proposal are explained in a related rulemaking that amends Title 43 CFR. That rulemaking is published today in the FEDERAL REGISTER at page 4442. This rulemaking notice also contains several changes in the regulations in 30 CFR Part 211 that were not previously proposed. The changes are minor and are made to clarify existing requirements or to conform the language of minor provisions of the regulations to the intent of the drafters. The Department believes it is unnecessary to publish these changes as proposed rulemaking because they are minor, do not change existing right or impose new requirements. Comments on these latter changes may be directed to the Director, U.S. Geological Survey, The National Center, Reston, Virginia, 22092. Appropriate action will be taken on any comments.

Under the authority granted to the Secretary of the Interior, Title 30 CFR Part 211 is amended to read as follows:

§ 211.1 [Amended]

1. The thirteenth line of 30 CFR 211.1(b) is amended by the insertion of "economic" between "maximum" and "recovery."

§ 211.2 [Amended]

2. 30 CFR 211.2(r) is amended as follows:

(r) *Lessee* means any person or persons, partnership, association, corporation, public body, or governmental entity to whom a coal lease is issued, subject to the regulations in this Part, or an assignee of such a lease under an approved assignment.

3. 30 CFR 211.2(s) is amended by the substitution of a comma for the period at the end and the addition of the following: "or any person, association, corporation, public body, or governmental entity to whom an exploration license is issued pursuant to section 201(b) of Title 30 of the United States Code."

§ 211.10 [Amended]

4. The first sentence in 30 CFR 211.10(a)(1) is amended to read as follows:

(a) *General.* (1) Before conducting any operation on leased, permitted, or licensed land other than casual use, the operator shall submit to the Mining Supervisor, and obtain his approval of an exploration or mining plan; on any lease issued or readjusted after August 4, 1976, the first mining plan shall be submitted to the Mining Supervisor not later than three years after the effective date of the lease or three years after the date of readjustment, whichever is later.

5. 30 CFR 211.10(c)(6) is amended to read as follows:

(ii) The method of mining, including mining sequence and proposed production rate; the plan for any lease issued or readjusted after August 4, 1976, must provide for the mining of all the reserves of the logical mining unit of which the lease is a part in a period of not more than forty years; that period shall begin on the date of approval of the first mining plan for that logical mining unit.

6. 30 CFR § 211.10(d)(1) is amended by adding a sentence after the last sentence of that paragraph which says: "Where the land involved in the mining plan is under the surface jurisdiction of an agency other than the Department of the Interior, that other agency must consent to the terms of the approval of the mining plan."

§ 211.40 [Amended]

7. Title 30 CFR § 211.40(a)(12) is amended by adding a new subsection (iii) to read as follows:

(iii) For the purpose of paragraph (a)(12)(i) hereof, "access roads" shall not include temporary roads constructed within a working pit for the purpose of use by equipment and personnel for access to the coal being mined.

§ 211.5 [Amended]

8. Title 30 CFR § 211.5(c)(1)(i) is amended to read as follows:

(i) Approval of a new mining plan, or any major modification thereof, and approval of any modification to a previously approved mining or exploration plan which contains a request for a variance pursuant to § 211.74 hereof.

Dated: January 19, 1977.

THOMAS S. KLEPPE,
Secretary of the Interior.

[FR Doc.77-2257 Filed 1-24-77;8:45 am]

Title 43—Public Lands: Interior

CHAPTER II—BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

SUBCHAPTER C—MINERALS MANAGEMENT (3000)

PART 3040—ENVIRONMENTAL AND SAFETY

Subpart 3041—Surface Management

This rulemaking adopts as final two conforming changes to Title 43 CFR Subpart 3040. The first of the changes is directly related to actions that the Department of the Interior has taken under 30 CFR 211.75(a). Under that section, the Department may, under certain circumstances adopt the requirements of a state's reclamation law as Federal. The Department has taken this action in Wyoming, 41 FR 53793, and proposed to do so in Montana, 41 FR 39036. The amendment made in this rulemaking codifies the Department's stated position that the requirements of 43 CFR subpart 3041 are effected by adoption of State law as Federal law. The second amendment in this rulemaking clarifies that the definition of access roads in 43 CFR § 3041.2-2(f)(12) does not include temporary roads in the mining pit. The Department has already made a similar amendment to the requirement on this point in 30 CFR 211.40(a)(12). The Department has not published either of these regulations as proposed rulemaking because it has concluded that publication as a proposed rule is unnecessary because of the minor nature of these changes. Comments on these changes may be filed with the Director, Bureau of Land Management, (210), Washington, D.C. 20240, and the Department will take appropriate action on any comments.

Under the authority granted to the Secretary of the Interior, Subpart 3041 of Title 43 CFR is amended to read as follows:

* * * * *

1. Title 43 CFR § 3041.2-2(f) is amended by adding after "subpart" and before ":", the following, "except as otherwise provided by the action of the Secretary under 30 CFR § 211.75(a)."

2. Title 43 CFR § 3041.2-2(f)(12), is amended by adding a new paragraph (f)(12)(iii), as follows:

§ 3041.2-2 Obligations and standards of performance.

* * * * *

(f) * * *
(12) * * *

(iii) For the purpose of paragraph (f)(12)(i) of this section, "access roads" shall not include temporary roads constructed within a working pit for the pur-

pose of use by equipment and personnel for access to the coal being mined.

Dated: January 19, 1977.

THOMAS S. KLEPPE,
Secretary,
Department of the Interior.

[FR Doc.77-2259 Filed 1-24-77;8:45 am]

COMPETITIVE COAL LEASING SURFACE MINING REGULATIONS: COAL

Final Regulations

This rulemaking notice discusses and adopts as final rules proposals that were made in three separate rulemaking notices: (1) proposed revisions to the Energy Minerals Activity Recommendation System (EMARS), 41 FR 47258; proposed revisions to miscellaneous regulations, 41 FR 48124; and proposed revisions to surface management coal mining operating regulations, 41 FR 53360. Each of these proposals was made to ensure that the Department of the Interior's coal leasing and management regulations conformed to the requirements of the Federal Coal Leasing Amendments Act of 1975 (FCLAA), 90 Stat. 1083, Because these three sets of proposed regulations are closely related, the Department is publishing the final rulemaking for each in this consolidated proceeding.

The Department has fully considered all of the comments that were received during the comment periods for these regulations, and has considered to the extent possible comments received after that time. This notice discusses those comments that the Department feels are of the greatest public interest. The Department has made several changes in the proposed regulations in response to the comments that were received. The notice discusses most of these important changes. These changes have also forced the Department to renumber the proposed regulations. Consequently, the section numbers in this rulemaking may not correspond to those in the proposals.

DISCUSSION OF CHANGES AND COMMENTS

1. *Confusion Over the Relationship Between EMARS and the Surface Management Regulations in 43 CFR Part 3040.* Although the Department intended that EMARS should contain the major set of requirements for competitive coal leasing, the regulations in 43 CFR Part 3040 also have contained language that is related to leasing procedures. The final rulemaking clarifies the role of both sets of regulations by removing all leasing aspects of Part 3040 and, where necessary, placing the appropriate language in the EMARS subpart, 3525. Part 3040 retains its intended function of establishing standards and procedures for the surface management of future and existing federal coal leases. To ensure that the changes made in Part 3040 are understood, this rulemaking notice reprints that entire subpart as revised. The changes made in Part 3040 are not substantive changes and do not affect or change the standards or procedures that will be used. Although this revision of Part 3040 was not included in the earlier proposals, the Department has concluded that it is unnecessary to publish them as proposed rulemaking because they make no changes in the prior standards and are essentially a recodification of the existing regulations. The public is encouraged to bring to the attention of the Department any deficiencies in the changes. If further amendments are required, the Department will make the necessary changes at an appropriate time.

The major change in subpart 3041 is the removal of the section on lease applications. The EMARS regulations, in section 3525.9, now list the exclusive requirements for coal lease applications. A person who wishes to file an application for a competitive coal lease will have to comply with this section. The application procedures in other parts of 43 CFR Part 3500, such as § 3521.2–2, do not apply to competitive coal leasing. The procedures in subpart 3525 do apply. The revised application procedures also make explicit what was implicit in previous regulations: the Department will only accept competitive lease applications for short-term competitive lease sales. Section 3525 of the final regulations restates the short-term leasing criteria that the Department adopted in May 1973, and that Secretary Kleppe reaffirmed his policy statement in January 1976. The criteria require that the coal to be leased will be used to maintain an existing operation or be used as a reserve for production in the near future for a new mine. Under the second standard, operation must be scheduled to commence within 3 years, and delivery of the coal must be expected to commence in 5 years. Short-term leases will be issued in compliance with all of the EMARS procedures except for nominations and the coal lease schedule. Except for those situations, the Department, under EMARS, will rely on nominations (and competitive coal lease applications on file) to indicate the need for additional coal leasing. To help ensure that nominations will be requested with sufficient frequency, the final regulations specifically authorize any person to ask for a call for nominations. This request is informational only, and does not trigger any Bureau action.

One other change was made in the regulations in Part 3040. Existing 3040 regulations refer to "leases, permits or licenses." Since Congress repealed the Department's authority to issue prospecting permits, the references throughout that part to permits have been deleted. (The references in Part 211 have been retained since they deal with post-issuance matters.)

2. *Clarification of EIS Requirements.* One comment requested the Department to clarify whether under EMARS, the Department would prepare an EIS on both a coal lease and a mining plan. The Department has been preparing impact statements when it proposes to approve mining plans that will significantly affect the environment. However, all of the mining plans to date cover leases for which no EIS was done prior to lease issuance. Where the Department has prepared an impact statement prior to lease issuance, it does not expect it will have to do a second statement at the mine plan stage since the impacts of mining will have been adequately considered in the leasing EIS.

3. *Special Leasing Opportunities.* The preamble to the draft regulations stated that the Department would choose a reasonable number of tracts for special leasing opportunities on an ad hoc basis. Comments on this proposal were generally favorable, and the final regulations retain this flexibility. The proposed regulations had a requirement that the Department would hold a special leasing opportunity sale only if a public body nominated tracts in a state. Because the Department wishes to promote this anti-monopoly aspect of EMARS system, the nomination requirement has been eliminated. The Department will consider timely post-nomination requests for special leasing opportunities to the extent that it is feasible. The Department urges public bodies to participate extensively in the nomination process since it is the major way the Department receives information on the need for federal coal leasing.

Several comments inquired whether a public body which has or will engage in a joint venture with a private company qualifies for the special leasing opportunity. Each situation will require separate analysis. In general, arrangements of that type will be satisfactory if there is no attempt to circumvent the obligation to use the federal coal for the benefit of the members of the public body. For example, a public body would not be disqualified from participating in a special leasing opportunity if it intended to burn the coal from a federal lease in a plant controlled by a private corporation if the power delivered to the public body was essentially equivalent to the coal it supplied to the power plant.

A comment by a coal association suggests that where both public bodies and others nominate a tract, public bodies should have to bid against private bodies and that "[t]he special leasing opportunity would derive from the fact that if a public body were willing to pay more than the highest bid made by a private company, the public entity would be allowed to lease the tract." This suggestion would negate totally the leasing preference granted in the Act and has been rejected. Some of the comments suggested that the definition of public bodies proposed in 43 CFR 3500.0–5 was too broad, others that it was too narrow. The Department has reviewed the legislative history of the Act and has concluded that although the term "public bodies" was directed primarily at rural electric cooperatives and other consumer-controlled utilities, it is broad enough to encompass a broad range of non-profit organizations. The final regulations have been amended by adding general language to include organizations similar to the ones actually named in section 3500.0–5.

Finally, one comment expressed concern whether public bodies could bid in regular lease sales. The clear answer to that question is that they may bid in both special and regular sales.

4. *Disqualification of Holder of Federal Leases for 10 Years.* Section 3525. 3, as proposed, codifies the requirement in the FCLAA that disqualifies certain holders of federal coal leases from participating in competitive lease sales. One comment correctly noted that the proposed regulation omitted the statutory exception for operations that are interrupted by strikes, the elements or casualties not attributable to the lessee, or where advance royalities are being paid. The final regulations correct this omission, and renumber the proposed section as 3525.4.

5. *Attorney General Consultation.* Several comments suggested that due process and the FCLAA required the Department to hold a hearing prior to rejecting a coal lease on the basis of a determination by the Attorney General that the lease issuance would create a situation inconsistent with the anti-trust laws. The Department does not agree and has not changed this requirement. The purpose of the hearing requirement in section 15 of the FCLAA is to establish the procedures that will permit the Secretary to issue a lease despite an adverse recommendation by the Attorney General. The Secretary is not required to hold a hearing prior to rejecting a bid, in this and other situations, because the bidders do not have the type of interest protected by the due process clause of the Constitution. Also, the Departments of Interior and Justice are still determining what information a bidder must submit, and consequently, the regulations remain general on that point. The regulations have been changed in one respect. The proposed regulation stated that the Secretary could not act until 30 days after he requested the advice of the Attorney General, but did not state whether the Attorney General's failure to respond on time permitted the Secretary to issue the lease. The final regulations state that the Secretary may proceed with the issuance of a lease if the Attorney General does not respond to the request for an opinion in 30 days. Finally, the regulations clarify that the Department may offer a lease to the second high bidder if, for any reason, the high bidder is unable to receive the lease.

6. *Deferment of Bonus Payment.* Several of the comments suggested that the Department should defer the bonus payments for a 10-year period. The Department has decided to retain the 5-year schedule, as proposed, because it feels it is a good balance between the need to promote competition by reducing front-end costs and the need to have sufficient holding costs to deter speculative holdings of leases. However, the final rules contain one change from the rule proposed on deferred payment sales. The proposed rule stated that at least 50 per cent of all sales would be on a deferred payment basis. To maximize the opportunity of small businesses to compete for federal coal leases, section 3525.7 of the final regulations requires that all competitive lease sales be on a deferred payment basis.

7. *Confidentiality of Information.* Some of the comments requested that the Department omit the language in the proposed section 3525.10(f), and substitute the language in section 3520.1–2(f) of the regulations adopted on June 1, 1976, 41 FR 22053. Both sections state how information submitted under the EMARS will be treated under the Freedom of Information Act. The former section merely states that the Department will treat information in accordance with the Freedom of Information Act. The latter section states which specific type of information will be withheld from disclosure. The final regulations, section 3525.8(f), retain the language in the October 28. 1976 proposal. There are two reasons for this decision. First, the Department is currently preparing and will publish shortly extensive Freedom of Information regulations for mineral information. These regulations, if adopted, would permit the Department to adjudicate whether information is subject to disclosure at the time of its submission. Second, the Department's authority to withhold the information specified in the June 1, 1976, regulations has been challenged in a Freedom of Information suit which is currently pending before the Department. For both of these reasons, the Department prefers to leave its regulations in a general format.

8. *Limitation of Overriding Royalties.* One comment suggested that the Department institute limitations on overriding royalties to limit speculation in federal coal leases. The Department has regulations on this topic that are found in 43 CFR § 3503.3–2(c) (3) (i). If the Department determines that the limitations in this section are inadequate to prevent speculation in federal coal leases, it may reduce the limits in the section. The final rulemaking does not change the requirements of the existing regulations.

9. *Land-use Plans.* Several comments requested additional clarification of the requirements for a land-use plan. Some of the comments also suggested that the Department's Management Framework Plans were not plans which complied with the requirements of the Federal Coal Leasing Amendments Act. The Department has taken steps in these final regulations to clarify what minimum requirements are necessary to have an adequate land-use plan. The Federal Coal Leasing Amendments Act does not explain what is meant by the term "comprehensive land-use plans." Language in the legislative history of the Act suggests that the definition of a comprehensive land-use plan should be taken from what was eventually passed as the Federal Land Policy and Management Act of 1976, 90 Stat. 2743, S. Rep. No. 94–296, 94th Cong., 1st Sess. 14 (1975). The Department is required by that Act to use a land-use planning system that conforms to its requirements. Since the Department will use the same planning system for coal leasing as well as other activities, the Department has included in the EMARS regulations a list of the planning system requirements of the Federal Land Policy and Management Act. These are included in section 3525 of the final regulations.

The Department reiterates its conclusion that the Department's existing planning processes meet the requirements of both the Federal Coal Leasing Amendments Act and the Federal Land Policy and Management Act. The legislative history of both Acts confirms that Congress was both aware of and satisfied with the Department's planning system. 122 Cong. Rec. E. 3667 (daily ed. June 29, 1976); H. Rep. No. 94–1163, 94th Cong., 2d Sess. 5 (1976). The only real changes that will be required in the Department's planning system are the addition of specific figures on underground and surface coal deposits and a more formalized public participation process. The Department will also propose for adoption as formal regulations, the procedures and requirements of its planning system. The Department is now preparing proposed land-use planning regulations. These final regulations drop the reference to the Management Framework plans, and instead refer to a land-use planning system.

10. *Hearings and Meetings.* Several comments criticized the Department's proposed EMARS regulations for their failure to comply with the hearing requirements of the Federal Coal Leasing Amendments Act. In particular, criticism was directed at the use of the term "meeting" to describe the opportunity for public input prior to the adoption of a land-use plan. Traditionally, the Department has used the term "hearing" to denote a proceeding conducted by an Administrative Law Judge, and the term "meeting" to denote a proceeding that is conducted by other employees. Despite the Department's past practice, the final regulations do call for a "hearing" before a land-use plan is adopted if one is requested. The regulations go on to define the requirements of a hearing. Only two requirements are present. First, the Department (or the other agency which prepares a land-use plan) must allow the orderly presentation of testimony by those who wish to do so. Second, if a request is made in advance of the hearing, a complete transcript of the hearing must be made. The hearing described by the regulations is not a formal adversary proceeding that requires findings of fact or a recommended decision and does not have to be conducted by an Administrative Law Judge. Its sole function is to ensure that the agency which prepares the plan has given the public an adequate opportunity to comment on the proposed action. The regulations explicitly exempt from this more formal hearing procedure land-use plans which were adopted prior to the enactment of the Federal Coal Leasing Amendments Act if the public had an adequate opportunity to comment on the adoption of the plan.

The final regulations also clarify the requirements of the hearing that is to be conducted on the proposed lease tracts prior to a final decision. Under the final regulations. this hearing will be conducted on the record, and held after the

environmental analysis process has been completed, after the technical examination has been completed, but before the Bureau of Land Management has made recommendations on a proposed coal lease schedule to the Secretary. The regulations do not require the use of an Administrative Law Judge, although one may be used.

11. *Lease modifications.* A request was made that § 3524.2–1(a), which provides that the modification of a lease by adding contiguous coal deposits shall not exceed 160 acres or the same number of acres as that in the original lease, be modified by adding the words "whichever is less." This suggestion was adopted to clarify the intent of the section.

The proposed regulations did not require that a lease modification change the terms at the original lease and a suggestion was made to modify § 3524.2–1(c) to provide that the Secretary prescribe terms and conditions applicable to all the acreage in a modified lease. The Department has revised the section to make that requirement mandatory. The language of section 13 of the Federal Coal Lease Amendments Act states that the modified lease (the original lease plus the added acreage) must have lease terms consistent with the Act.

12. *Use of Rentals as a set-off against royalties.* Prior to the enactment of the Federal Coal Leasing Amendments Act, the Mineral Leasing Act and the Department's regulations required rentals to be credited against royalties that were owed for that year. The Federal Coal Leasing Amendments Act repealed that authority and the final regulations, in 43 CFR 3503.3–1 reflect that loss of authority. The Department will continue to allow holders of leases issued before August 4, 1976, to retain this offset until their leases are readjusted.

13. *Preliminary Plans.* The revised regulations also clarify that the requirement to submit a preliminary plan is limited to those who file an application for a lease. Nominators are not required to submit a preliminary plan. The information required by a preliminary plan is a good guide, however, to the type of information that the Bureau desires to receive under the nomination process.

14. *Nominations.* The final regulations retain the one-tier nomination system that was adopted in the June 1, 1976, regulations even though the response to the one-tier system has not been entirely favorable. The one-tier system, which was instituted at the request of the Western Governor's Regional Energy Policy Organization, does give the public opportunity to comment on the industry nominations after the nominations process has been held. This opportuntiy comes at the public meeting that will be held after the nominations are received (which may be combined with the hearing on adoption of a land-use plan) but before the Department chooses proposed coal lease tracts for environmental analysis. This is now included in 43 CFR 3525.9(i). The public may also comment on the nominations through the normal land-use planning process, and at the hearings on environmental impact statements, and at the final hearing prior to the Secretary's decision whether to adopt a coal lease schedule. The Department has concluded that because these opportunities are available, the one-tier system is satisfactory.

15. *Reasonable Prices.* One comment asserted that the Department was not fulfilling its responsibility under section 30 of the Mineral Leasing Act to ensure that coal from federal leases was sold at reasonable prices. As the comment noted, the Department has reserved in its leases the right to take adequate measures to ensure the sale of coal from federal coal leases at reasonable prices. The Department believes this protects the public interest, sufficiently for the present.

16. *Notice of availability of Exploration Plans.* The December 6, 1976, notice proposed that the notice of availability procedures in 30 CFR § 211.5 apply to exploration plans. Several adverse comments were received on this point, and the final rulemaking omits this requirement because the Department has concluded that the procedures of the section are not appropriate for exploration plans.

17. *Fair Market Value Determinations.* Comments received on the October proposed EMARS regulations included requests for more information on procedures for fair market value determinations. The long-standing method for determination of resource value in sales or leasing of onshore minerals is comparative sales. Under the comparative sales approach, the value of the property up for lease is inferred from recent sales of similar properties in the same area. Due to the long pause in Federal coal leasing and to the dominance of Federal coal in many areas, there have not been enough recent sales to allow use of the comparative sales method at least in the initial coal lease sales. To supplement the comparative sales method, the Department is currently developing at the Geological Survey a discounted cash flow (DCF) model for estimating the value of coal offered for lease. Using projections of future coal prices and estimates of coal production costs, the value of a coal tract can be estimated. The method would employ probabilistic techniques to take account of coal price uncertainties. This method of estimating coal resource value is similar to the Monte Carlo techniques now used for OCS resource value estimation.

The coal DCF model now under development is being tested in prototype situations and in short-term criteria lease sales. Because the best method for fair market value determination is still being examined, it is inappropriate at this time to make commitments to any particular method, and the final regulations are general on this point.

18. *Intertract Competition.* Two commenters stated their concern that intertract competition was authorized but no explanation was given as to how it would work. Intertract competition is a method of competitive bidding that can be employed where there is more federal coal acceptable for development in a sale area than the government has determined is suitable for lease in a given lease sale. Under intertract competition, bidders will be requested to submit bids on the tracts acceptable for development, but bids will be accepted only for tracts with the relative highest bids (a per ton basis), such that the total of leased coal equals the government's lease sale target. The purposes of intertract competition are to maintain strong bigging competition in western coal areas with highly fragmented coal and surface ownership and to determine which tracts will be leased to the basis of the size of industry bids. Although it is under active consideration for use in suitable circumstances, no determination has been made by the Department to employ intertract competition. Before a lease sale would be conducted under intertract competition, the Department would issue a full set of procedures and groundrules. Under the authority delegated to the Secretary of the Interior, Titles 30 [1] and 43 CFR are amended as follows:

PART 3040—ENVIRONMENT AND SAFETY

1. Subpart 3041, in Title 43, Part 3040 is revised as follows:

Subpart 3041—Environment and Safety

Sec.

3041.0–1 Pupose.
3041.0–2 [Reserved]
3041.0–3 Authorities.
3041.0–4 Responsibilities.
3041.0–5 Applicability.
3041.0–6 Definitions.
3041.0–7 Use of surface.
3041.1 [Reserved]
3041.1–1 [Reserved]
3041.1–2 [Reserved]
3401.2 Technical examination/environmental analysis.
3041.2–1 Technical examination/environmental analysis report.
3041.2–2 Obligations and standards of performance.
3041.3 Compliance or performance bond.
3041.4 Procedures and public participation.
3041.5 Completion of operations and abandonment.
3041.6 Reports.
3041.7 Notice of noncompliance: Revocation.
3041.8 Variances.

§ 3041.0–1 Purpose.

(a) The purpose of this subpart is to establish rules and regulations to be followed in the management of the federally-owned coal estate consistent with the policies, goals, and objectives established by the Acts cited in § 3041.0–3 of this Subpart, regardless of surface ownership, to ensure effective and reasonable regulation of surface coal mining operations in accordance with the requirements hereof, as an appropriate and necessary means to minimize so far as practicable the adverse social, economic and environmental effects of such operations.

[1] The amendments to 30 CFR relating to this rulemaking can be found in FR Doc. 77–2257, at page 4441 of this issue of the FEDERAL REGISTER.

§ 3041.0–2 [Reserved]

§ 3041.0–3 Authorities.

The regulations contained in this Subpart are issued pursuant to the Mineral Leasing Act of February 25, 1920, as amended (30 U.S.C. 181–287), and the Mineral Leasing Act for Acquired Lands (30 U.S.C. 351–359), and in accordance with the policies set forth in the National Environmental Policy Act of 1969, as amended, (42 U.S.C 4321–47). Regulations governing the issuance of Federal coal leases and licenses are found in 43 CFR 3500 of this Chapter. Regulations governing operations conducted on lands subject to lease, permit, or license are found in 30 CFR 211. Regulations setting forth the general and basic policies for disposal and management of the public lands are found in 43 CFR 1725 of this Chapter.

§ 3041.0–4 Responsibilities.

(a) The Bureau of Land Management (BLM) exercises at the Bureau level the Secretary's discretionary authority to determine whether or not mineral leases and licenses are to be issued in accordance with 43 CFR Part 3500. The BLM is responsible for issuing coal leases and licenses, and is the office of record in mineral leasing matters.

(b) The Geological Survey (GS) exercises the Secretary's authority regarding operations conducted within the area of operations by permittees, lessees, and licensees and determines the action to be taken by them from the standpoint of the development, conservation, and management of mineral resources under the jurisdiction of the Department. The Geological Survey is responsible for all geologic, engineering, and economic value determinations for the Department's mineral leasing program. These determinations include: the mineral characteristics of lease and permit areas; parceling; appropriate resource evaluation; reserves; investments, diligent development, and minimum production requirements; and all other terms and conditions relating to mineral operations under leases and licenses.

(c) The BLM or other Federal surface managing agency, in consultation with the GS and the surface owner if other than the United States, formulates the requirements to be incorporated in leases and licenses for the protection of the surface and nonmineral resources and for reclamation, using the reclamation obligations and standards of performance contained in § 3041.2–2 of these regulations and in 30 CFR Part 211.40.

(d) The GS reviews and approves exploration and mining plans, and authorizes the abandonment of operations, in consultation with the BLM or other appropriate Federal surface managing agency, and the surface owner, if other than the United States, on the adequacy of the surface use, environmental protection, and reclamation aspects of such plans and will not grant approval if inconsistent with the BLM's or other Federal surface managing agency's recommendations without further discussions and referrals for resolution pursuant to 30 CFR Part 211.

(e) As to the lands outside of the area of operations, the authorized officer of the BLM or other appropriate Federal surface managing agency is responsible for conducting compliance examinations and for assuring compliance by the lessee or licensee with the requirements of this Subpart, and the terms and conditions of a lease or license and for reporting noncompliance to the Mining Supervisor for appropriate action. As to the lands inside the area of operations the GS examines operations to ensure compliance by the lessee or licensee with the terms and conditions set forth in the provisions of any lease or license or any approved mining or exploration plan. GS refers to BLM any instance of noncompliance with lease terms which may require cancellation action, and BLM may initiate such action. With respect to approval of access roads, pipelines, utility routes and other surface uses outside the area of operations, the BLM, or other Federal surface managing agency, has the primary responsibility but obtains the recommendations of the GS before taking final actions. Except as may be expressly provided for in § 3041.7 of this Subpart and 30 CFR Part 211.72, orders to operators for any remedial action are the exclusive responsibility of the Geological Survey.

(f) Subject to the supervisory authority of the Secretary, the regulations in this Subpart shall be administered by the Director, Bureau of Land Management through the authorized officers having jurisdiction over the lands subject to these regulations and authorized to perform the duties described. Prior to issuance of any coal lease or license, the authorized officer shall consult with and accept and consider recommendations from the Mining Supervisor, the Federal surface managing agency when other than the BLM, or the surface owner, as to the terms and conditions required to achieve the purpose of this Subpart. Any disagreements that cannot be resolved between the GS and BLM arising in connection with any such issuance of a lease or license will be referred for resolution to the appropriate Assistant Secretaries or to the Under Secretary of the Department of the Interior. Leases issued for lands, the surface of which is under the jurisdiction of any Federal agency other than the Department of the Interior, shall contain the terms and conditions prescribed by that agency with respect to the use and protection of the nonmineral interests in those lands.

§ 3041.0–5 Applicability.

(a) This Subpart sets forth regulations governing reclamation standards, use of surface, bond requirements, and reports relating to leases and licenses issued by the BLM with respect to Federal coal deposits located on public domain and acquired lands of the United States and reserved Federal coal deposits underlying lands the surface of which is privately owned. These regulations do not govern the leasing or development of coal deposits owned by Indians and subject to the Trust protection of the United States, which are controlled by regulations found in 25 CFR Chapter 1.

(b) The provisions of this Subpart shall become effective upon the date of publication in the FEDERAL REGISTER (January 25, 1977) as final rulemaking, except as hereinafter provided.

(1) Existing operations.

(i) On and after 180 days from the effective date of this Subpart, the provisions of § 3041.2–2(f) shall apply to all existing operations with respect to lands from which the overburden has not previously been removed, provided, however, that this subparagraph shall not be deemed or construed so as to apply the requirements of subparagraphs 3041.2–2(f) (1) and (2), hereof to any operation for which a mining plan has been approved on or before the effective date of this Subpart and for which a variance pursuant to the provisions of subparagraph 3041.2–2(f)(2) would be required.

(ii) On or before 18 months from the effective date of this Subpart, the operator of each existing operation shall have submitted and shall have obtained the approval of a plan or modification thereof which shall comply with all applicable provisions of this Subpart, provided, however, that if the Director of the GS determines that a proposed new plan or modification of an existing plan was prepared and submitted in timely fashion, taking into account the complexity of the operation and of the plan or modification involved, but that administrative delay thereafter has prevented approval within the time specified, the time for compliance with this paragraph may be extended by order of the Director of the GS for an amount of time equal to the duration of such delay.

(iii) For the purpose of this paragraph, the term "existing operation" shall mean:

(A) All operations for which a plan has been approved on or before the effective date of this Subpart, and

(B) All operations with respect to which a proposed plan has been submitted to the Department on or before the effective date of this Subpart, and with respect to which proposed plan the Department has on that date either completed its environmental impact analysis and determined that no environmental impact statement under Section 102(2)(C) of the National Environmental Policy Act is necessary, or has determined that such a statement is necessary and has commenced, and expended substantial resources of the Department in the preparation or completion of, such a statement.

(iv) On or before 90 days from the effective date of this Subpart, the Director of the Geological Survey shall review all proposed plans which have been submitted to the Department on or before the effective date of this Subpart and, after consultation with appropriate Federal surface managing agencies, publish in the FEDERAL REGISTER a list which shall identify each such proposed plan

and whether it will be considered to cover an existing operation.

(2) All operations or proposed operations not included in the definition of "existing operation" in the preceding paragraph shall be considered to be new operations, and shall be subject to the provisions of this Subpart upon the effective date hereof.

(3) The provisions of § 3041.7(c) of this Subpart shall apply immediately upon the effective date of this Subpart.

(c) To the maximum extent possible, all environmental impact statements and all approvals of plans covering existing operations which are pending before the Department on the effective date of this Subpart shall take into account and shall reflect and implement the provisions and purposes hereof; provided, however, that nothing in this subparagraph shall be construed to relieve any operator of the obligation imposed by subparagraph (b) (1) (i) of this section.

(d) Nothing in this Subpart shall be deemed or construed as increasing or diminishing any rights not in conflict with Federal law held by any person, including any surface owner or entryman, arising under the laws of any State and relating to the giving or withholding of consent to, or consultation in connection with, entry to any land for the purpose of conducting operations subject to this Subpart.

§ 3041.0–6 Definitions.

As used in this Subpart, the following terms shall have the following meanings:

(a) *"Acid or toxic producing materials"* means natural or disturbed earth materials having chemical and physical characteristics that, under mining or postmining conditions of drainage, exposure, or other processes, may produce effluents that contain chemical constituents, such as acids, bases, or metallic compounds, in sufficient concentration to individually or in combination adversely affect the environment.

(b) *"Affected lands"* means any lands affected or to be affected by exploration, development, and mining operations and the construction of facilities necessary and related to such operations.

(c) *"Approximate original contour"* means the surface configuration achieved by backfilling and grading of the mined area so that it closely resembles the surface configuration of the land prior to mining (although not necessarily the original elevation) and blends into and complements the drainage pattern and topography of the surrounding terrain.

(d) *"Area of operations"* means that area of the leased or licensed lands which is required for exploration, development, producing, and processing operations, including all related surface structures and facilities, and which is delineated on a map or plat that is made a part of the approved exploration or mining plan.

(e) *"Authorized officer"* means any officer designated by any Federal surface managing agency to exercise its authority in matters relating to coal leases and licenses and to the provisions of this Subpart.

(f) *"Coal"* includes coal of all ranks from lignite to anthracite.

(g) *"Compaction"* means the reduction of porous spaces among the particles of soil and rock generally caused by running heavy equipment over the earth materials, as in the process of leveling the overburden material on strip mine spoil piles or banks, for the purpose of increasing the bearing capacity and stability of the earth materials.

(h) *"Contemporaneously as practicable"* means with respect to reclamation of mined or otherwise disturbed areas, the commencement, conduct and completion of reclamation activity as soon after disturbance as possible, without undue physical interference with ongoing operations, leaving a minimum of land unreclaimed, consistent with the objectives of environmental protection set forth in this Subpart.

(i) *"Daylighting"* is a term used to define the surface mining procedure for exposing an underground mined area to remove remaining coal.

(j) *"Director"* means the Director of the Bureau of Land Management, U.S. Department of the Interior.

(k) *"Exploration"* means the detailed investigation and acquisition of data pertaining to a mineral deposit, including activities for identifying regions or specific areas in which deposits are most likely to occur, and activities used to establish the nature of a coal deposit preparatory to mining.

(l) *"Exploration plan"* means a detailed plan submitted to the Mining Supervisor for approval before exploration operations commence showing the location and type of exploration work to be conducted, environmental protection procedures, roads, and reclamation procedures to be followed upon completion of such operations.

(m) *"General Coal Mining Order"* means a formal numbered order issued by the Mining Supervisor, with the prior approval of the Division Chief, and published, after opportunity for public comment, in the FEDERAL REGISTER, which implements the regulations in this Part and applies to coal mining and related operations in a specified geographic area.

(n) *"Impoundment"* means an artificially built, dammed, or excavated place for the retention of water or sediments. A permanent impoundment is one that is intended to remain after final abandonment of the operation, and shall be identified as such in approved plan.

(o) *"Leased lands, leased premises, or leased tract"* means lands embraced within a coal lease and subject to the regulations in this Subpart.

(p) *"Lessee"* means any person or persons, partnership, association, corporation, public body or governmental entity to whom a coal lease is issued, subject to the regulations in this Subpart, or an assignee of such lease under an approved assignment.

(q) *"Licensee"* means any individual, association or individuals, or municipality to whom a coal license is issued pursuant to the provisions of Section 208 of Title 30 of the United States Code, or any person, association, corporation, public body or governmental entity to whom an exploration license is granted under section 201(b) of Title 30 of the United States Code.

(r) *"Logical mining unit"* means an area of land designated as such by the Geological Survey pursuant to applicable Departmental regulations.

(s) *"Methods of operation"* means the method and manner by which any activities are performed by the operator, as described in an exploration or mining plan.

(t) *"Mine"* means an underground or surface excavation and the surface or underground support facilities that contribute directly or indirectly to coal mining, preparation, and handling.

(u) *"Mining plan"* means a detailed plan for development of the coal resource submitted to the Mining Supervisor for approval prior to commencement of any mining operation, showing the proposed location, method, and extent of mining and all related activities necessary and incidental to such operation, including steps to be taken to reclaim disturbed areas, to mitigate adverse impacts, and to otherwise meet the performance standards and requirements set forth in this Subpart.

(v) *"Mining Supervisor"* means the Area Mining Supervisor, Conservation Division, Geological Survey, or District Mining Supervisor or other subordinate acting under his direction.

(w) *"Notice of Availability"* means a formal notification, by the appropriate Federal officer, to appropriate Federal, state and local agencies and interested individuals or groups of individuals, of the availability for inspection of information, data, proposed plans or modifications, thereof, pending decisions and other documents subject to such notice. Any such notice shall include the nature of the information, data, plan or modification, decision or other document involved; the name and mailing address of any applicant; the nature, location (county, township, range and section), duration and brief description of any proposed operations; the date upon which any proposed action might be taken; and, when appropriate, a specific time limit for public review, comment or request for any departmental action, including the holding of any public meeting. For the purpose of ensuring appropriate distribution of such notices, there shall be maintained at each office of a Mining Supervisor or authorized officer of the Department of the Interior a mailing list which shall consist of the names and mailing addresses of all appropriate Federal, state or local agencies and any individuals or groups of individuals who have requested in writing to be included on such lists. All notices of availability shall be mailed to such agencies, individuals or groups at the addresses indicated on such lists.

(x) *"Notice of noncompliance"* means a written notice of operator noncompliance issued pursuant to Section 211.72 of 30 CFR Part 211.

(y) *"Operator"* means a lessee or licensee, or one conducting operations on

lands under the authority of the lessee or licensee.

(z) *"Overburden"* means the earth, soil, rock, and other natural materials which lie above the coal being mined.

(aa) *"Permanent abandonment"* means the cessation of exploration or mining or other operations set forth in an approved plan on all or any portion of lands covered by a lease or license and subject to the provisions of this Subpart, where it is the intent of the operator not to continue operations at the mine or portion thereof.

(bb) [Omitted].

(cc) [Omitted].

(dd) *"Pollution"* means man-made or man-induced adverse alteration of the chemical, physical, biological, and radiological integrity of land, water or air, which reduces, or has the potential of reducing the beneficial uses of these resources.

(ee) *"Post mining land use"* means that use which will be made of affected lands after mining and reclamation is completed and which is specified in a mining or exploration plan approved pursuant to 30 CFR 211.

(ff) *"Preliminary data"* means data, consisting of maps and text, submitted by an applicant for a lease or license to the authorized officer of the BLM, which describes the applicant's proposal in the detail necessary to allow the authorized officer to conduct a technical examination and environmental analysis as described in § 3041.2.

(gg) *"Preparation"* means any crushing, sizing, cleaning, drying, mixing or other processing of coal to prepare it for market which is conducted on lands subject to this Subpart.

(hh) *"Reclamation"* means the process of returning affected lands to a stable condition and form consistent with their premining productivity and use, or other approved post mining land use.

(ii) *"Road"* means any open way for passage or travel upon which to transport people, equipment, materials, or coal, which is constructed, improved or maintained by the operator and which is used to service the pit, bench, underground mine workings, loading facilities or exploration activities.

(jj) *"Secretary"* means the Secretary of the Interior.

(kk) *"Significant vegetation"* means farm crops, including grasses and forbs, that are integral parts of agriculture or ranching operations and the natural vegetation of forests or meadows with significant recreational, watershed, agricultural, or wildlife habitat value.

(ll) *"Spoil"* means soil, rock, and other earth materials that are broken, moved, dumped, or otherwise significantly disturbed during surface coal mining operations subject to this Subpart.

(mm) *"Subsidence"* means a lowering of surface elevations over an underground mine caused by loss of support and subsequent caving of strata lying above the mine.

(nn) *"Surface owner"* means an entryman, or a person or persons who hold legal title to the land surface.

(oo) *"Topsoil"* means natural earth materials at or vertically adjacent to the land surface with physical and chemical characteristics suitable for support of vegetation.

(pp) *"Valley floors"* means the channelways, floodplains, and adjacent low terraces of streams that are flooded during periods of high flow and that are underlain by unconsolidated stream-laid deposits. Excluded are higher terraces and slopes underlain by colluvial and other surficial deposits normally occurring along valley margins.

(qq) *"Waste"* means solid or liquid refuse, rubbish, or other valueless material which is produced by or in connection with coal mining operations, including exploration, production, development, preparation and other related activities, and which has no useful purpose in connection with any remaining operations.

§ 3041.0–7 Use of surface.

(a) The operator shall be entitled to use only so much of the surface of the lands subject to a lease or license as is deemed necessary and has been designated in an approved plan. This Subpart shall not be construed to authorize any use of the Federal lands for a power generation plant or a commercial or industrial facility. Separate permits for such uses must be obtained from the appropriate agency. The operator shall not be entitled to use any mineral materials subject to the Materials Act except as provided by Part 3600 of this Chapter.

(b) Operations conducted in connection with other authorized uses on the same lands shall not unreasonably interfere with or endanger operations conducted in connection with uses authorized under this Chapter, nor shall operations authorized and conducted pursuant to this Chapter unreasonably interfere with or endanger operations under any lease, permit, license, or other use authorized pursuant to the provisions of any other Act.

§ 3041.1 [Reserved]

§ 3041.1–1 [Reserved]

§ 3041.1–2 [Reserved]

§ 3041.2 Technical examination/environmental analysis.

The appropriate authorized officer, with the assistance of the Mining Supervisor, shall make a technical examination and environmental analysis of the area covered by a competitive coal lease application or on Bureau motion, pursuant to the provisions of this section.

(a) The technical examination shall include:

(1) An examination of the technical aspects of the proposed operations set forth in any preliminary data and information; and

(2) An evaluation of the impacts of such operations or, if on BLM motion, the effect of coal leasing and development, on other land uses, resources, or land management programs on or adjacent to the area.

(b) The environmental analysis shall include an analysis of the impact of the proposed operations set forth in any preliminary data and information and of alternatives thereto, or, if on BLM motion, the impacts of coal leasing and development on the living and nonliving components of the environment.

§ 3041.2–1 Technical examination/environmental analysis report.

(a) Following completion of the technical examination and environmental analysis described in the preceding Section, the authorized officer shall prepare a report which sets forth recommendations as to (1) land which should be excluded from any lease or license in order to avoid mining where reclamation is not attainable or assured, or in recognition of other exclusive land use management priorities; (2) measures required to comply with the reclamation and performance standards set forth in this Subpart; (3) necessary conditions and amounts of bonds to cover estimated reclamation costs for areas that will be disturbed during the initial 5-year period of the lease, permit, of license; (4) any additional, more stringent requirements needed in the lease or license pursuant to § 3041.1(e) of this Subpart.

(b) If it is recommended that a specific area within the applied for lands be excluded from a lease or license, or modification thereof, the report shall set forth with reasonable specificity the facts upon which such recommendation is based.

§ 3041.2–2 Obligations and standards of performance.

(a) Any operator who accepts a coal lease or license shall comply with, and be bound by, the general obligations and standards of performance set forth in this section and such additional and more stringent specific requirements as may be contained in the terms and conditions of such lease or license.

(b) If the appropriate authorized officer of the BLM determines that an approved exploration or mining plan should be required to be revised or supplemented to adjust to changed conditions or to correct oversights, he may propose such revision or supplement to the Mining Supervisor for action pursuant to the provisions of 30 CFR Part 211 relating to changes in plans.

(c) Surface coal mining operations shall be conducted so as to assure the extraction of the coal resource to the maximum extent possible, taking into account existing technology, commercially available equipment, the cost of production, and the quality and quantity of the coal resource, so that future environmental disturbance through the resumption of mining will be minimized.

(d) The operator shall, in accordance with the terms and conditions of the lease or license (1) take visual resources identified by the Federal surface managing agency into account in the planning, design, location, and construction of facilities on the affected lands; and (2) take such action as may be needed to

minimize, control, or prevent damage to the recreational, cultural, scientific, historical and known or suspected archeological and paleontological values of the land contained therein.

(e) The following performance standards shall be applicable to the surface effects of underground mining.

(1) Each operator of an underground coal mine shall adopt measures consistent with feasible known technology in order to prevent or, in those instances where the mining method used requires planned subsidence in a predictable and controlled manner, control subsidence; maximize mine stability; and maintain the value and use of surface lands.

(2) Where pillars or panels are not removed and controlled subsidence is not part of the mining plan, pillars or panels of adequate dimensions shall be left to assure stability giving due consideration of the thickness and strength characteristics of the coal beds and of the strata above and immediately below the coal bed.

(f) The following performance standards shall be applicable to all coal exploration, development, mining, preparation, handling, and reclamation operations on the surface of lands subject to this Subpart:

(1) The operator shall reclaim affected lands pursuant to his approved plan, as contemporaneously as practicable with operations, to a condition capable of supporting all practicable uses which such lands were capable of supporting immediately prior to any exploration or mining, or equal or better uses that have been approved in accordance with this Subpart.

(2) The operator shall replace overburden and waste materials in the mined area by backfilling (compacting, where necessary, to ensure stability or to prevent leaching of toxic materials), grading or other means, so as to cover all acid-forming or other toxic materials and eliminate highwalls and spoil piles and restore the approximate original contour. Where the thickness of the coal deposits relative to the volume of overburden is large and where the overburden and other spoil and waste materials are either insufficient or more than sufficient to restore the approximate original contour, the operator shall, in order to provide adequate drainage, backfill, grade, and where necessary, compact, using all available overburden or spoil material, to obtain the lowest practicable grade, which shall in any event be less than the angle of repose. Excess overburden or other spoil material shall be fully reclaimed in accordance with the requirements of this Subpart. Variance from the requirements of subparagraphs (1) and (2) of this paragraph may be allowed in an approved mining plan if the Director of the Geological Survey, with the concurrence of the Director of the Bureau of Land Management or the comparable appropriate authorized officer, determines that unusual physical conditions at the site, such as steeply dipping coal beds or multiple seam mining, exist, and such conditions make backfilling pursuant to such requirements impracticable as a result of the volume of material excavated or environmentally undesirable as a result of the duration of the operation.

(3) The operator shall stabilize and protect all surface areas, including spoil piles, affected by the coal mining and reclamation operation, to effectively control slides, erosion, subsidence, and attendant air and water pollution.

(4) The operator shall remove topsoil separately, for replacement on the backfill area, and if not so utilized immediately, segregate it in a separate pile from other spoil. When topsoil is not to be replaced on a backfill area within a time short enough to avoid deterioration, the operator shall establish and maintain an approved quick growing vegetative cover or employ other approved measures so that the topsoil is protected from wind and water erosion and establishment of noxious plant species, and is in a condition for sustaining vegetation when used during reclamation. If topsoil is of insufficient quantity or of poor quality for sustaining vegetation, and if other excavated materials can be shown to be more suitable for revegetation, then the operator may be authorized in the approved plan to remove, segregate, protect, and utilize in a like manner such other materials.

(5) The operator shall ensure that water impoundments, water retention facilities, dams, or settling ponds have been set forth in an approved plan, and ensure that:

(i) Any such facility is adequate for its intended purposes and the quality and quantity of impounded water will be suitable for its intended use.

(ii) Any such facility is designed, located, built, used, and maintained in accordance with sound engineering standards and practices and applicable Federal and State laws and regulations, to ensure that such facilities will have necessary stability with an adequate margin of safety.

(iii) Final grading will provide adequate safety and access for proposed or reasonably anticipated water users.

(iv) Such facilities will not have a significant adverse impact on the water resources utilized by adjacent or surrounding landowners for agricultural, industrial, recreational, or domestic uses, provided, however, that this subparagraph shall not be deemed or construed to increase or diminish any property rights to any water held by any person.

(v) No mine or processing waste is used in the construction of such facilities unless authorized in the approved plan.

(6) The operator shall cover or plug all auger mine holes with noncombustible and, where necessary to minimize control or prevent harmful drainage, impervious material.

(7) The operator shall utilize the best practicable commercially available technology to minimize, control or prevent disturbances of the prevailing quality, quantity and flow of water in surface and ground water systems, and of the prevailing erosion and deposition conditions at the mine site and in affected offsite areas, both during and after coal mining operations and reclamation, by:

(i) Controlling acid or toxic drainage and the adverse consequences thereof by such measures as, but not limited to, diverting surface runoff water away from disturbed areas; excluding oxygen from, or restricting the flow of water through acid or toxic-producing minerals; treating drainage to reduce acid or toxic content which adversely affects downstream water upon being released to water courses; and casing, sealing, or otherwise treating drill holes, shafts, and wells to keep acid or toxic drainage from entering ground and surface waters.

(ii) Conducting surface mining operations so as to minimize, control, or prevent (A) contributions of suspended solids to streamflow or runoff outside the mining site above natural levels under seasonal flow conditions as measured for a period and at sites determined by the Mining Supervisor, in consultation with the appropriate authorized officer, and (B) except where specifically authorized in an approved plan, deepening or enlarging of stream channels where operations include the discharge of water from mines.

(iii) Removing or modifying siltation structures after disturbed areas are revegetated and stabilized unless otherwise authorized by the Mining Supervisor in an approved plan, with the concurrence of the appropriate authorized officer, provided, however, that any siltation structure retaining water shall, in any event, be subject to the requirements of § 3041.-2-2(f)(5) of this Subpart.

(iv) Protecting the quality, quantity and flow, including depth of flow, of upstream and downstream surface and ground water resources of those valley floors which provide water sources that support significant vegetation or supply significant quantities of water for other purposes, by such measures as, but not limited to, relocating and maintaining the gradients of stream, avoiding mining installing, reestablishing or replacing acquifers or acquicludes, and replacing soils, provided, however, that this subparagraph shall not be deemed or construed to increase or diminish any property rights to any water held by any person.

(8) The operator shall: (i) Treat or dispose of all rubbish and noxious substances in a manner designed to minimize, control or prevent air and water pollution and the hazards of ignition and combustion.

(ii) Dispose of all waste resulting from the mining and preparation of coal in a manner designed to minimize, control or prevent air and water pollution and hazards of ignition and combustion. Where surface disposal of solid wastes in areas other than the mine workings or other excavations has been authorized in the approved plan, stabilize such waste including, where necessary, constructing waste piles in compacted layers with the use of incombustible and impervious materials; shape waste piles

to be compatible with the natural surroundings and terrain; cover with topsoil or other suitable material in accordance with subparagraph (f)(4) of this section; and revegetate in accordance with subparagraph (f)(13) of this section. All impoundments of liquid wastes shall comply with the requirements of subparagraph (f)(5) of this Section. Waste containing coal in such quantity that it may be later separated from the waste by washing or other means shall be stored separately.

(9) Except as provided herein, the operator shall not conduct excavation, drilling, or blasting operations within 200 feet of an active or abandoned underground mine. Where it can be established by certified maps or inspection of such an underground mine that such activities may be conducted without danger of interference with, or penetration of, an underground mine, they may be authorized in an approved plan to be conducted up to but not less than 25 feet from such underground mine provided that nothing in this paragraph shall preclude daylighting or similar surface coal mining activities intended to improve resource recovery, abate water pollution, or eliminate public hazards resulting from such underground mines.

(10) To prevent personal injury or damage to public and private property, the operator shall use explosives only in accordance with all applicable Federal and State laws and an approved plan and shall:

(i) Provide adequate advance written notice, by publication and/or posting of planned blasting schedules, to local governments and to residents who might be affected by the use of such explosives, and maintain a log of the magnitudes and times of blasts for a period of at least two years.

(ii) Limit the size, timing, and frequency of blasts, as determined by the physical conditions of the site.

(11) The operator shall design to applicable standards, construct, maintain and, when no longer necessary and unless otherwise authorized in an approved plan, remove, all roads, pipelines, powerlines and similar utility access facilities and associated bridges, culverts and ditches, into and across the site of operations, in a manner that will minimize control or prevent erosion and siltation, fugitive dust, pollution of water, damage to fish or wildlife or their habitat and public or public property.

(12) (i) Roads shall not be surfaced with any acid or toxic producing material. No access roads will be constructed unless (A) the operator shall have first submitted a surveyed profile accompanied by typical cross-sections of the road and ditches, showing pipe, entrance, exit channels and sediment control structures and other structures or configurations to be used on the road to meet performance standards and (B) the location shall have been marked and inspected, and approved by the Mining Supervisor, in consultation with the appropriate authorized officer and the surface owner, if other than the United States.

(ii) No access road shall be constructed in a stream, nor shall any stream or stream bed be used as an access road. Insofar as possible, all roads shall be located on benches, ridges, and flatter slopes to enhance stability and minimize disturbance. Stream fordings shall be avoided and the normal seasonal flow and the normal seasonal sediment load shall not be detrimentally affected by access roads in a continuous fashion that results in harm to the aquatic ecosystem. Provided, however, that nothing in this subparagraph shall be construed to prohibit relocation or alteration of such beds or channels pursuant to the provisions of this Subpart and as set forth in an approved plan.

(13) (i) The operator shall, except where other reclamation based upon post-mining land use and not requiring revegetation pursuant to the requirements of this section is expressly provided for in an approved plan, establish on regarded areas and all other affected lands a diverse vegetative cover, native to the area and capable of regeneration and plan succession at least equal in density and permanence to the natural vegetation provided, however, that the Mining Supervisor, with the concurrence of the appropriate authorized officer may allow the use of approved mixtures of introduced or native species where preferable to achieve quick cover or assure successful revegetation. In approving such mixture, preference will be given to non-toxious species.

(ii) The operator's responsibility and liability under his performance bond for revegetation of each planting area shall extend until such time as the appropriate authorized officer, in consultation with the Mining Supervisor and the surface owner, if other than the United States, determines that successful revegetation in compliance with subparagraph (i) of this subsection has occurred, provided, however, that this period shall extend for a minimum of five full years after the first planting, and for a total period of liability not to exceed 10 years from the original planting; and further provided that,

(A) Where the appropriate officer, in consultation with the Mining Supervisor, determines that natural conditions such as annual precipitation, soil characteristics and native vegetation are stable and favor rapid revegetation, and that revegetation pursuant to subparagraph (i) of this subsection is likely to occur before the expiration of such minimum period, he may specify in the lease, permit, or license that such minimum period will not apply with respect to some or all of the lands included in such lease, permit or license; and

(B) Where during any such minimum period such authorized officer, in consultation with the Mining Supervisor and the surface owner, if other than the United States, determines that natural conditions such as annual precipitation and soil characteristics are sufficiently unstable so as to favor only slow and uncertain revegetation, he may recommend to the Mining Supervisor that the liability of the operator be extended for a period of up to five years beyond the period initially established, if the financial liability that would be incurred by the operator as a result is reasonably commensurate with the increased probability of successful revegetation.

(iii) During the relevant period of liability, the Mining Supervisor and the appropriate authorized officer shall jointly inspect and evaluate the revegetated areas pursuant to subparagraph 3041.6 (b)(2) hereof.

(14) The operator shall: (i) Except as provided in subparagraph (ii) hereof, allow public access to and upon Federal lands subject to his lease, permit, or license for all lawful and proper purposes, except where such access would unduly interfere with his authorized use.

(ii) Regulate public access, vehicular traffic, and wildlife or livestock grazing in all areas of active operations, including lands undergoing reclamation, in order to protect the public, wildlife and livestock from hazards associated with such operations, and to protect revegetated areas from unplanned and uncontrolled grazing. For this purpose, the operator shall provide warning signs, fencing, flagmen, barricades, and other safety and protective measures as may be neeessary.

(15) Coal storage areas shall be designed and maintained so as to eliminate fire hazards from spontaneous combustion and other accidential ignition. If a coal seam exposed by surface mining or an accumulation of slack coal or combustible waste becomes ignited during the term of a lease, the operator shall immediately take all necessary steps to extinguish the fire.

(16) Upon completion or temporary or permanent abandonment of mining operations in all or any part of a strip pit, the face of the coal shall be covered with noncombustible material that will effectively protect the coal bed from becoming ignited.

(17) The driving of any underground openings by auger or other methods from any strip pit shall not be undertaken except as specifically approved by the Mining Supervisor, in an approved plan.

§ 3041.3 Compliance or performance bond.

(a) The provisions of Subpart 3504 of this Chapter are hereby made applicable to this subpart. In addition each compliance bond will be conditioned upon faithful compliance with the regulations in this subpart and any additional terms and conditions of the lease or license.

(b) Prior to issuing a lease or license, the authorized officer, after consultation with the Mining Supervisor, shall ensure that the amount of the compliance bond or bonds to be furnished is sufficient to ensure reclamation in accordance with the performance and reclamation standards in § 3041.2-2, and with the terms and conditions of the lease or license.

(c) An application for a lease or license may be denied any applicant or offeror who has previously forfeited a bond because of failure to comply with an approved plan unless the affected lands covered by such plan have been re-

claimed without cost to the Federal Government. Nothing in this subparagraph shall be deemed to modify or limit any discretionary authority of the authorized officer of the BLM otherwise to deny for cause any application for a lease or license.

(d) Once a lease or license has been issued the authorized officer, after consulting with and receiving the recommendation to increase or to release in whole or in part any compliance bond or bonds so that the amount of the compliance bond or bonds will at all times be sufficient to cover the estimated costs of completion of the remaining reclamation requirements of the approved plan and of the terms and conditions of the lease or license.

§ 3041.4 Procedures and public participation.

Written findings. Except as may be otherwise expressly set forth in this Subpart, decisions and determinations of any appropriate authorized officer acting pursuant to this Subpart or to 30 CFR Part 211 with respect to issuance of leases, approval of mining plans or modifications thereof, and abandonment of operations shall be in writing, shall set forth with reasonable specificity the facts and the rationale upon which such decisions or determinations are based, and shall be available for public inspection during normal business hours at the offices of such officer.

§ 3041.5 Completion of operations and abandonment.

(a) *Grading and backfilling.* Upon completion of backfilling and grading as required by the approved plan and prior to replacing topsoil and revegetation, the operator shall submit a report thereon, in duplicate, to the Mining Supervisor and request inspection for approval. Whenever it is determined by such inspection that the backfilling and grading has met the requirements of the approved plan, the Mining Supervisor shall recommend to the appropriate authorized officer release of an appropriate amount of the compliance bond for the area satisfactorily backfilled and graded.

(b) *Temporary abandonment.* In areas in which there are no current operations, but operations are to be resumed under an approved plan, the operator shall substantially backfill, fence, protect, or otherwise effectively close all surface openings, auger holes, areas prone to subsidence, and surface facilities or workings which are a hazard to people or animals. Conspicuous signs shall be posted prohibiting entrance of unauthorized persons. All such protective measures shall be maintained in a secure condition until such operations are resumed or permanently abandoned.

(c) *Permanent abandonment.* Before permanent abandonment of exploration or mining operations, all openings and excavations, including water discharge points, shall be closed or backfilled, or otherwise permanently dealt with in accordance with sound engineering practices and according to the approved plan. Drill holes, trenches, and other excavations for exploration, development or prospecting shall be abandoned in such a manner as to protect the surface and not to endanger any present or future underground operations or any deposit of oil, gas, other mineral resources, or ground water. Methods of abandonment shall be approved in advance by the Mining Supervisor in an approved plan, and may include backfilling, regrading, revegetation, cementing, and capped casing, or combinations of these, or other methods. Reclamation and clean-up of surface areas around and near permanently abandoned underground or surface mines, including, except where otherwise expressly provided in an approved plan, removal of equipment and structures related to the mining operation, shall commence without delay following cessation of mining operations. Areas affected by access roads will be graded, drained, and revegetated in accordance with the approved Mining Plan and therein approved post mining land use prior to bond release. In the event that access or haul roads are intended to remain after abandonment of the operation, pursuant to § 3041.2–2(f)(11) of this Subpart, they must be designed and constructed so as to be permanently stabilized using adequate drains, water barriers, and other practices.

(d) *Notice of abandonments release of bond.* (1) Not less than 30 days prior to cessation or abandonment of operations, the operator shall submit to the Mining Supervisor, in duplicate, a notice of his intention to cease or abandon operations, together with a statement of the exact number of acres affected by his operations, the extent and kind of reclamation accomplished, and a statement as to the structures and other facilities that are to be removed from or remain on the leased or licensed lands.

(2) Upon receipt of such notice, the Mining Supervisor and the appropriate authorized officer or officers shall promptly make a joint inspection to determine whether all operations have been completed in accordance with the terms and conditions of all leases, permits, and licenses, and with the requirements of approved operating plan. Where the operator has compiled with all such terms, conditions and requirements and the regulations of this Subpart the Mining Supervisor shall recommend to the appropriate authorized officer that the appropriate period of bonded liability be terminated.

(3) When the surface of lands in a lease permit or license is not owned by the United States the Mining Supervisor shall notify the surface owner and solicit and take into account his comments before recommending to the appropriate authorized officer that the period of such bond liability be terminated.

§ 3041.6 Reports.

(a) *Operations.* The operator shall file with the Mining Supervisor within 30 days after the end of each calendar year, and within 30 days after any temporary or permanent abandonment of operations, a report, in duplicate, containing the following with respect to his operations or the operations subject to such abandonment.

(1) Serial number of the lease, permit, or license and a description of the lands affected by operations.

(2) The number of acres disturbed and the number of acres reclaimed, including areas on which revegetation is being conducted.

(3) A description of the reclamation work remaining to be done on lands disturbed.

(b) *Revegetation.* (1) The operator shall file a report, in duplicate with the Mining Supervisor within 30 days after each planting is completed. The report shall: (i) Identify the lease or license; (ii) Show the types of planting or seeding, including mixtures and amounts; (iii) Show the date of planting or seeding; (iv) Identify or describe the planted or seeded lands; (v) Describe any surface manipulation, mulching, fertilization, and irrigation procedures, if any, and contain such other information as may be considered relevant.

(2) The Mining Supervisor and the authorized officer of the Federal surface managing agency shall, as soon as possible after each full growing season, jointly inspect and evaluate the revegetated areas to determine, in consultation with the surface owned if other than the United States, whether satisfactory vegetative growth has been established, or whether additional revegetation efforts should be ordered pursuant to 30 CFR 211.62(b)(2).

§ 3041.7 Notice of noncompliance; Revocation.

(a) The appropriate authorized officer and the Mining Supervisor shall have the right to enter upon the lands subject to this Subpart under lease or license, at any reasonable time.

(b) If an appropriate authorized officer discovers that an operator is conducting on lands subject to this subpart activities which are not in compliance with the requirements of a least or license, applicable regulations, or an approved plan and such activities do not threaten immediate and serious damage to the environment, resources, or the health and safety of the public, such authorized officer shall or, in the case of an appropriate authorized officer of any Federal surface managing agency not in the Department of the Interior, may refer the matter to the Mining Supervisor for remedial action pursuant to 30 CFR 211.72(a).

(c) If an appropriate authorized officer discovers that an operator is conducting on lands subject to this subpart activities which are not in compliance with the requirements of a lease or license, applicable regulations or an approved plan and such activities threaten immediate and serious damage to the environment, resources, or the health and safety of the public, and the Mining Supervisor is not available for appropriate remedial action pursuant to 30 CFR 211.72(c), such authorized officer may order the immediate cessation of such activities and shall promptly notify the Mining Supervisor. Upon such notification, the Mining Supervisor shall order immediate remedial action pursuant to 30 CFR 211.72(c).

(d) Failure of the operator to take action in accordance with an order for cessation of activities issued pursuant to paragraph (c) of this section, or with a written notice of noncompliance issued by the Mining Supervisor in accordance with the provisions of 30 CFR 211.72 shall be grounds for suspension of the operation and for possible cancellation of the lease, permit, or license in accordance with the regulations in 43 CFR 3500 of this Chapter.

§ 3041.8 Variances.

(a) Variances from compliance with the performance standards set forth in this subpart may be allowed as part of an approved mining plan under either of the following circumstances:

(1) Where an applicant states in a proposed plan or modification thereof that he cannot meet a performance standard specified in subparagraphs 3041.2–2(f) (2), (4), (6), (11), (12) or (13) of this subpart, he may request a variance from such performance standard where such variance would be compatible with the approved post mining land use, and shall support his request with appropriate information demonstrating the need therefor. The Mining Supervisor, after consultation with the appropriate authorized officer and the surface owner, if other than the United States, may approve or disapprove such variance, and shall advise the applicant and approve or disapprove the proposed plan or modification accordingly;

(2) Where an applicant proposes a post-mining land use that is substantially different from the land use immediately prior to any exploration and mining, the Mining Supervisor, with the concurrence of the appropriate authorized officer and after consultation with the surface owner, if other than the United States, may approve a mining plan containing variances from the performance standards of 30 CFR 211 and § 3041.2–2(f) hereof, provided that:

(A) After consultation with the appropriate land use planning agencies, if any, the proposed development is deemed to constitute an equal or better economic or public use of the affected land, as compared with the premining use.

(B) The granting of such variance is essential to achieving the proposed post mining land use.

(C) The applicant presents specific plans for the proposed post mining land use and appropriate assurances that such use will be: (i) Compatible with adjacent land uses; (ii) Supported by commitments and assured of investment from public agencies where appropriate; (iii) Practicable with respect to private financial capability for completion of the proposed development; (iv) Planned pursuant to a schedule made part of the proposed mining plan so as to integrate the mining operation and reclamation with the post mining land use; (v) Designed by qualified personnel in conformance with professional standards in order to assure the stability, drainage, and configuration necessary for the intended use of the site.

(D) To the degree possible and taking into account the subjective nature of the assessment, the applicant has considered the impact of the proposed land use on the aesthetic character of the area by consulting with inhabitants of the area, and utilizing expertise in the landscape and geomorphologic fields.

(b) Any application for a variance pursuant to paragraph (a) of this section shall demonstrate that any proposed disturbance of land above a highwall will facilitate compliance with the environmental protection and performance standards set forth in this subpart.

(c) Any application for variance pursuant to paragraph (a) of this section which proposes to place spoil or other material on the downslope below the bench used to mine an area classed as "steep slope," shall demonstrate to the satisfaction of Mining Supervisor that the permanent or temporary sediment loads in the receiving drainages and reclamation to the post-mining land use will not have significant adverse effects upon the aesthetics of the area.

(d) All variances granted pursuant to this section shall be reviewed by the Mining Supervisor and the appropriate authorized officer not more than three years after granting of the variance and incorporation in the mining plan, to ensure that the development is proceeding in accordance with the terms of the approved plan and the terms and conditions of any lease, permit, or license.

(e) An operator may apply for a variance pursuant to the provisions of paragraph (a) of this section only by submitting a new or revised mining plan to the Mining Supervisor for approval pursuant to the provisions of 30 CFR 211. Minor changes of operations which do not involve violations of the performance standards set forth in this subpart, and the granting of a variance pursuant to the description in § 3041.2–2(a)(2) of this subpart, will not be deemed to be subject to or require compliance with the provisions of this section.

(f) If the Director of the GS determines that a decision to grant a variance would constitute a major Federal action significantly affecting the quality of the human environment, and that an environmental impact statement as required by Section 102(2)(C) of the National Environmental Policy Act has not been prepared with respect thereto, such a statement shall be prepared. If the Mining Supervisor grants a variance pursuant to this Section, he shall notify the appropriate land managing agency or land planning agency for the purpose of determining whether any changes may, as a result of such variance, be required in any land use plan.

PART 3500—LEASING OF MINERALS OTHER THAN OIL AND GAS: GENERAL

2. Section 3500.0–5 of 43 CFR is amended by revising paragraphs (h) and (i) as follows:

§ 3500.0–5 Definitions.

* * * * *

(h) *Public Bodies.* Public bodies are Federal and State agencies, municipalities, and rural electric cooperatives and similar types of organizations, and nonprofit corporations controlled by any of foregoing entities.

(i) *Government entities.* Governmental entities are Federal and State agencies, municipalities and subdivisions thereof, including any corporation primarily acting as an agency or instrumentality of a State, which produces electrical energy for sale to the public.

3. 43 CFR 3501.1–4 paragraphs (b)(1)(i) and (ii) are revised to read as follows:

§ 3501.1–4 Acreage limitations.

* * * * *

(b) * * *

(1) *Coal.* (i) No person, association, or corporation, or any subsidiary, affiliate, or persons controlled by or under common control with such person, association, or corporation shall take, hold, own or control at one time Federal coal leases or permits on an aggregate of more than 46,080 acres in any one State, and in no case on an aggregate of more than 100,000 acres in the United States.

(ii) No person, association, or corporation holding, owning or controlling Federal coal leases or permits (by itself or through any subsidiary, affiliate, or person under common control with it) on an aggregate of more than 100,000 acres in the United States on August 4, 1976, shall be required to relinquish any lease or permit which it held on that date, but it shall not be permitted to take, hold, own or control any further Federal coal leases or permits until such time as its holding, ownership, or control of Federal leases or permits has been reduced below an aggregate of one hundred thousand acres within the United States.

* * * * *

4. 43 CFR 3501.1–5 is revised to read as follows:

§ 3501.1–5 Exceptions.

(a) *All leaseable minerals except coal.* No lands within the boundaries of the following areas in the public domain shall be leased under the provisions of this Part:

(1) National parks and monuments.

(2) Indian reservations.

(3) Incorporated cities, towns, and villages.

(4) Naval petroleum and oil shale reserves.

(5) Lands acquired under the act of March 1, 1911 (36 Stat. 961; 16 U.S.C. 513–519) known as the Appalachian Forest Reserve Act, or other acquired lands.

(b) *Coal.* No coal leasing shall be permitted on the public domain within the areas set forth in 43 CFR 3535.4.

5. 43 CFR 3501.2–1 is revised to read as follows:

§ 3501.2 Acquired lands.

§ 3501.2–1 Lands and deposits not subject to leasing.

(a) *All leaseable minerals except coal.* The following acquired lands are not subject to leasing:

(1) Lands acquired for the development of their mineral deposits;

(2) Lands acquired by foreclosure or otherwise for resale;

(3) Lands acquired as surplus under the Surplus Property Act of October 3, 1944 (58 Stat. 765; 50 U.S.C. 1611, et seq.);

(4) Lands in incorporated cities, towns, and villages;

(5) Lands in national parks and monuments; and

(6) Lands which are tide lands or submerged coastal lands within the Continental Shelf adjacent or littoral to any part of land within the jurisdiction of the United States.

(b) *Coal.* No coal leasing shall be permitted on acquired lands within the areas set forth in 43 CFR 3525.4.

6. 43 CFR 3502.9 is amended to read as follows:

§ 3502.9 Public Bodies.

§ 3502.9–1 Coal.

(a) To obtain a coal lease on a tract set aside pursuant to 30 U.S.C. 201(a) a public body must submit:

(1) Evidence of the manner in which it is organized;

(2) Evidence that it is authorized to hold a lease or permit;

(3) Evidence that the action proposed has been duly authorized by its governing body; and

(4) A definite plan to produce energy solely for its own use or for sale to its members or customers (except for short-term sales to others).

(b) To obtain a license to mine coal pursuant to 30 U.S.C. 208, a municipality must submit:

(1) Evidence of the manner in which it is organized;

(2) Evidence that it is authorized to hold a license; and

(3) Evidence that the action proposed has been duly authorized by its governing body.

(c) To obtain a coal lease pursuant to 30 U.S.C. 352 on a tract of acquired lands set apart for military or naval purposes, a governmental entity must submit:

(1) Evidence of the manner in which it is organized, including the state in which it is located;

(2) Evidence that it is authorized to hold a lease;

(3) Evidence that the action proposed has been duly authorized by its governing body; and

(4) Evidence that it is producing electricity for sale to the public in the state where the lands to be leased is located.

(d) Where the material required in paragraphs (a), (b) and (c) of this section has previously been filed, a reference by serial number of the record in which it has been filed, together with a statement as to any amendments, will be accepted.

7. 43 CFR Subpart 3503 is amended by adding a new § 3503.3–3 to read as follows:

§ 3503.3–3 Coal.

(a) A coal lease shall require payment of a royalty of not less than 12½ per centum of the value of the coal removed from a surface mine.

(b) A coal lease shall require payment of a royalty of not less than 8 per centum of the value of the coal removed from an underground mine, except that the authorized officer may determine a lesser amount if conditions warrant.

(c) The value of coal removed from a mine is defined for royalty purposes in 30 CFR 211.63.

8. 43 CFR § 3503.3–1(b) is amended by revising paragraph (1) to read as follows:

§ 3503.3–1 General statement rentals.

* * * * *

(b) *Leases*—(1) *Coal.* Annual rental per acre or fraction thereof for coal leases shall not be less than 25 cents for the first year, not less than 50 cents for the second through fifth years and not less than $_____ for each and every year thereafter during the continuance of the lease.

(i) *Leases issued before August 4, 1976.* The rental paid for any year shall be credited against the royalties for that year until the lease is readjusted.

(ii) *Leases issued or adjusted after August 4, 1976.* Rental payments may not be credited against royalties.

§§ 3505.1–1, 3505.2–1 through 3505.2–4 [Reserved]

9. 43 CFR Subpart 3505 is amended by revoking and reserving §§ 3505.1–1, 3505.2, 3505.2–1, 3505.2–2, 3505.2–3, and 3505.2–4.

§§ 3511.2–1 and 3511.2–2 [Amended]

10. 43 CFR Subpart 3511 is amended by revoking and reserving paragraph (b)(1) of § 3511.2–1(b)(1) and § 3511.4–4.

PART 3520—PREFERENCE RIGHT AND COMPETITIVE LEASES

Operator questions order of sections:

11. Section 3520.0–3 is revised as follows:

§ 3520.0–3 Authorities.

(a) *Public domain and acquired lands.* The Secretary is authorized to divide into leasing units and award leases of mineral lands and mineral deposits owned by the United States as set forth in § 3500.1–1 subject to the provisions of the Mineral Leasing Act, as amended and supplemented, and the Mineral Leasing Act for Acquired Lands as set forth in § 3500.0–3. Coal leasing is governed by the application procedures in 43 CFR Subpart 3525. Other leaseable minerals are covered by the procedures in 43 CFR Subpart 3521.

14. Section 3521.2–1 is revised as follows:

§ 3521.2–1 Application or Bureau motion.

(a) *Application.* (1) *Forms.* (i) Where filed and copies. An application for a lease must be filed in duplicate in the proper office. No specific form is required. Competi-coal lease applications will be accepted only as authorized by 43 CFR Subpart 3525. The application should include the information set forth in (ii) to (v) of this subparagraph.

(ii) The applicant's name and address.

(iii) State of citizenship and qualifications.

(iv) A complete and accurate description of the lands for which the lease is desired. See § 3501.1–3.

(v) Evidence that the land is valuable for the mineral for which application is made, with a statement as to the character, extent and mode of occurrence of the deposit.

(2) *Additional Statements Required.* The contemplated investment for the development and purchase of equipment of a producing mine of a stated average daily output. Phosphate. To the extent such information is known to the applicant, a description of the phosphate and associated or related mineral deposits in the land based upon such actual examination as can be effected without an injury to the land or deposits (such examination shall not be deemed a trespass), giving nature and extent of the deposits; an outline in general terms of the proposed method of mining and processing the same; the proposed investment in mining operations thereon, and processing facilities therefor.

(3) Evidence showing in sufficient detail that:

(i) The amount of phosphate lands, Federal and non-Federal, held by him, together with the lands described in the application are necessary for his proposed development plan.

(ii) He intends to explore, mine and develop the property in good faith.

(iii) His proposed operations of the property will be in accordance with good conservation practice and this additional development is needed in order to supply an existing demand which cannot otherwise be reasonably met.

12. Section 3521.2–2 is revised as follows:

§ 3521.2–2 Qualifications.

(a) Compliance with Subpart 3502 is required.

(b) Bureau motion. (1) Bureau of Land Management responsibility.

(2) Geological Survey responsibility.

(c) *Leasing Units.* (1) *Phosphate.* If the authorized officer shall determine, after consultation with the Mining Supervisor of the Geological Survey that specific lands or deposits, not under an outstanding permit or application for preference right lease, which constitute an acceptable leasing unit are subject to phosphate lease, they will be offered for such lease on the terms and conditions to be specified in the notice of lease offer to the qualified person who offers the highest bonus by competitive bidding equal to the fair market value of the mineral deposit either at public auction

or by sealed bids as provided in the notice of lease offer.

(2) *Solid (hardrock) minerals.* Any qualified person may file an application for the competitive offering of such deposits. Leasing units may not exceed, in reasonably compact form, 2,560 acres of land described in the manner required by this section. The authorized officer may prescribe a lesser area for any mineral deposit if the Geological Survey reports that such lesser area is adequate for a logical leasing unit.

(i) *Exception.* (a) *Phosphate.* In a notice for a phosphate lease, the detailed statement will set forth that the terms of minimum production will not be reduced or waived at the lessee's request as provided in § 3503.3–2(b)(3), (d), (e), or upon a satisfactory showing that market conditions are such that the lessee cannot operate except at a loss.

(b) *Asphalt.* All leases will be issued through competitive bidding only in the same manner as that provided for in Subpart 3120.

(c) *Publication.* Notice of offer of lands or deposits for lease by competitive bidding will be by publication once a week, or for such other period as may be deemed available, in a newspaper of general circulation in the county in which lands are situated.

13. The following sections are repealed and reserved: 43 CFR § 3520.0–4, 43 CFR § 3520.1–2, 43 CFR § 3520.1–3, 43 CFR § 3521.1–4, 43 CFR § 3521.1–5.

14. Title 43 CFR § 3520.2–1 is amended to read as follows:

§ 3520.2–1 Duration of Leases.

Leases shall be issued for indeterminate periods subject to readjustment or renewal at the end of the first 20-year period upon such terms and conditions as may be incorporated in each lease or prescribed in general regulations issued by the Secretary of the Interior, including covenants relative to mining methods, waste, period of preliminary development and minimum production (a) *Exceptions.* (1) *Asphalt.* Asphalt leases are issued for 10 years and so long thereafter as the lessee complies with the terms and conditions of the lease.

(2) *Solid (hardrock) minerals.* The lease will be issued for a period not exceeding 20 years the term to be determined upon the advice of the agency having jurisdiction over the surface and the U.S. Geological Survey.

(3) *Coal leases issued or readjusted after August 4, 1976.* The term of the lease shall be twenty years, and as long thereafter as the lessee is producing coal annually in commercial quantities.

§ 3524.1–1 [Reserved]

15. 43 CFR Subpart 3524 is amended by revoking and reserving § 3524.1–1.

16. 43 CFR 3524.2–1 is amended to read as follows:

§ 3524.2–1 Coal.

(a) *Application.* A lessee may obtain modification of his lease to include coal lands or coal deposits contiguous to those embraced in his lease if the authorized officer determines that it would be in the interest of the United States to do so. In no event shall the total area added by such modifications to an existing coal lease exceed one hundred sixty acres or the same number of acres as that in the original lease, whichever is less. The lessee shall file his application for modification in duplicate in the proper land office, describing the additional lands desired, and the needs and reasons for and the advantage to the lessee of such modification.

(b) *Availability*—(1) *Noncompetitive.* Upon determination by the authorized officer that the modification is justified and that the interest of the United States is protected, the lease will be modified without competitive bidding to include such part of the land or deposits as he shall prescribe.

(2) *Competitive.* If it is determined that the additional lands or deposits can be developed as part of an independent operation or that there is a competitive interest in them, they will be offered as provided in Subpart 3520.

(c) *Terms and conditions.* The authorized officer shall require changes in the terms and conditions of the original lease to make them consistent with the modified lease. Before a lease is modified under paragraph (a) or (b) of this section, the lessee shall file his written acceptance of the conditions imposed in the modified lease and the written consent of the surety under the bond covering the original lease to the modification of the lease and to extension of the bond to cover the additional land.

17. A new Subpart, 3525, is added to Title 43 CFR as follows:

Subpart 3525—Energy Minerals Activity Recommendation System (EMARS)

Sec.
3525.1 Authority.
3525.2 Objectives and policy.
3525.3 Competitive leases: procedures.
3525.4 Qualified applicants.
3525.5 Lands subject to leasing.
3525.6 Special leasing opportunities.
3525.7 Deferred bonus payment policy.
3525.8 Request for information on areas of interest.
3525.9 Applications: short-term sales.
3525.10 Preliminary data.
3525.11 Land-use plans.
3525.12 Land-use plans: availability.
3525.13 Consent to leasing: Federal surface managing agency.
3525.14 Consultation with Governors.
3525.15 Notice of lease sale.
3525.16 Consultation with Attorney General.
3525.17 Award of leases.
3525.18 Compliance with Notice of Competitive Lease Offer.
3525.19 Procedures and public participation.

Subpart 3525—Energy Minerals Activity Recommendation System (EMARS)

§ 3525.1 Authority.

(a) *Acts.* (1) The Act of February 25, 1920, 41 Stat. 437, as amended by the Act of June 3, 1948, 62 Stat. 248, the Act of September 9, 1959, 73 Stat. 490, the Act of August 31, 1964, 78 Stat. 710, and the Act of August 4, 1976, 90 Stat. 1083, 30 U.S.C. 201(a).

(2) The Act of August 7, 1947, 61 Stat. 913, and the Act of August 4, 1976, 90 Stat. 1090, 30 U.S.C. 352.

(b) *Actions Authorized.* The Secretary may issue coal leases through competitive bidding.

§ 3525.2 Objectives and policy.

(a) The objectives of the Department's coal leasing process called Energy Minerals Activity Recommendation System (EMARS), include: the orderly and timely development of federally-owned coal; appropriate uses of the resources; effective environmental protection; and a fair market return to the public for the resources sold. The program consists of three principal elements: nominations; multiple resource land-use planning; and environmental analysis. Nominations provide the first indication of tracts which should or should not be leased. The nominations received are then compared with resource values through the Bureau's land-use planning process, including Management Framework Plans. From these phases, proposed tract recommendations will be made and environmental analyses will be undertaken on the proposed coal lease tracts. The integration of these three elements, i.e., nominations, multiple resource land-use planning, and environmental analysis—each of which will be undertaken with State and public participation—will produce specific coal lease recommendations for Secretarial decision.

(b) It is the policy of the Department to encourage the development of Federally-owned coal, where such development is authorized, through a program that will provide for the protection, orderly development and conservation of Federal mineral and nonmineral resources in a manner that will avoid, minimize or correct adverse impacts on society and the environment resulting from coal development, without undue duplication or administrative delay by Federal officers. It is also the policy of the Department to issue leases for coal only where reclamation of the affected lands to the standards set forth in 43 CFR Part 3040 is attainable and assured and a reclamation program will be undertaken as contemporaneously as practicable with operations.

§ 3525.3 Competitive leases: Procedures.

(a) *Establishment of leasing tracts.* General coal land or deposits shall be divided into suitable leasing tracts and leased competitively. The Energy Minerals Activity Recommendation System (EMARS) shall be used to identify tracts suitable for leasing through nominations and multiple-use land management planning. All competitive lease sales, except those that qualify under the short-term leasing criteria, will be on Bureau motion.

(b) *Selection of proposed tracts.* (1) *Bureau Motion.* Proposed tracts will be selected by the Bureau of Land Management and United States Geological Survey field offices, with participation from affected State governments, and other surface management agencies, if other than the Bureau of Land Management, based upon relevant information including information from the ap-

propriate land-use plan, from nominations and from competitive coal lease applications on file.

(2) *Selection of Proposed Tracts: Short-term Sale.* Proposed tracts for short-term sales will be selected using the same criteria as Bureau motion tracts. Prior to selecting a proposed short-term tract the Bureau must determine that the application meets the short-term leasing criteria.

(3) No lands may be included in a proposed tract unless: (i) the land is included in a completed land-use plan and leasing is compatible with the plan; (ii) the lands have been included in a known recoverable coal resource area (KRCRA);

(iii) the lands have been identified by BLM as potential leasing tracts or included in a short-term lease application.

(4) *Tract Selection Factors.* The selection of proposed lease tracts will include consideration of such factors as: depth, quality, thickness and extent of the coal resource; water resource availability; relationship to existing communities: potential impacts on economic structure (e.g., employment, available services, etc.); service and access corridors; aesthetic qualities such as scenic, cultural, Wildlife, and vegetative values; rehabilitation potential and Coal Resources Regulations Guideline No. 1 (41 FR 43722).

(c) *Compliance with NEPA.* The National Environmental Policy Act will be complied with as follows: If several proposed leasing units have significant related characteristics and would sustain similar or related environmental impacts, as determined by the Secretary, they may be covered by a single regional environmental impact statement. Where leasing actions are adequately covered in a regional impact statement, no additional impact statement need be prepared. A public hearing will be held after publication of a draft regional environmental assessment or an impact statement, as appropriate, will be prepared for proposed leasing actions not included in a regional impact statement. The Department will provide public notice and an opportunity for a public meeting on an environmental assessment for a coal leasing proposal that indicates that an environmental impact statement is not required.

(d) *Technical examinations.* A technical examination in accordance with the procedures in 43 CFR 3041.2 and 3041.2–1 will be completed on each unit after completion of the final environmental impact statement or environmental analysis to identify specific reclamation requirements and tracts requiring special environmental consideration and to prepare bonding requirements and stipulations to minimize impacts upon-the environment and other resources, lands uses, or programs. Reclamation requirements will be imposed in accordance with 43 CFR 3041. The technical examination will include an evaluation of the proposed leasing unit to balance the value of the coal against the cost of mining, the cost of mitigation of environmental damage, and the significance of unmitigable damages. The Bureau will obtain from the Geological Survey an evaluation and comparison of the effects of recovering coal by deep mining, by surface mining, and by other methods to determine which method or methods achieves the maximum economic recovery of the proposed tract.

(e) *Recommendation of tentative coal lease tracts.* (1) After the BLM has completed the actions required by paragraphs (a)–(e) of this section, after State government and surface management agency consultation, and after holding a public hearing, on the record, in the area which may be affected by the proposed coal lease sale, the State Director will recommend suitable tentative coal lease tracts to the Director. The Director will consolidate approved field recommendations into a proposed Coal Lease Sale Schedule for review and approval by the Secretary.

(2) The Director's recommendation, and the Secretary's final approval, shall include a written synopsis of earlier analyses which evaluates and compares:

(i) The effects of recovering coal by deep mining, by surface mining and by any other method to determine which method or methods or sequence of methods achieves the maximum economic recovery of the coal within the proposed leasing tract, and

(ii) The effects which mining the proposed lease might have on an impacted community or area, including impacts on the environment, on agriculture and other activities, and on public services.

§ 3525.4 Qualified applicants.

Leases may be issued to qualified applicants listed in Subpart 3502 of this chapter unless:

(a) The qualified applicant, or any subsidiary, affiliate, or person controlled by or under the common control of the qualified applicant holds a lease or leases to coal deposits issued by the United States and has held the lease for 10 years and is not producing coal in commercial quantities.

Exceptions. A lessee is not disqualified from holding a lease if either production is interrupted by strikes, the elements, or casualties not attributable to the lessee, or the Secretary has suspended the requirement of continued operation upon payment of advance royalties.

(1) The 10-year period referred to in paragraph (a) of this section shall begin on August 4, 1976, or the date the lease is issued, whichever is later.

(2) For the purpose of this paragraph, production of coal in commercial quantities means production adequate to meet the requirement for continuous operation as defined in § 3500.0–5(g) of this chapter.

(b) The qualified applicant holds or controls more than 46,080 acres of Federal coal leases in any one state or 100,000 acres of Federal coal leases in the entire United States.

§ 3525.5 Lands subject to leasing.

(a) The Secretary may issue coal leases on all lands owned by the United States except lands in the:

(1) National Park System;

(2) National Wildlife Refuge System;

(3) National Wilderness Preservation System;

(4) National System of Trails;

(5) Wild and Scenic Rivers System, including study rivers designated under section 5(a) of the Wild and Scenic Rivers Act;

(6) Incorporated cities, towns and villages; and

(7) Tide lands, submerged coastal lands within the Continental Shelf adjacent or littoral to any part of land within the jurisdiction of the United States.

(8) Lands acquired by the United States for the development of mineral deposits, for foreclosure or otherwise for resale, or reported as surplus property pursuant to the provisions of the Surplus Property Act of 1944.

(b) (1) The Secretary may issue coal leases with the consent of the Secretary of Defense on acquired lands set apart for military or naval purposes only if the leases are issued to a governmental entity, including any corporation primarily acting as an agency or instrumentality of a State, which

(i) Produces electrical energy for sale to the public; and

(ii) Is located in the State in which the leased lands are located.

(2) A government entity is located in a State if its production facilities are in that State, and the coal produced from the lease will be used in the State.

(c) The regulations in Subpart 3525 of Title 43 CFR do not apply to the leasing and development of coal deposits owned by Indians and subject to the trust protection of the United States. Regulations governing those deposits are found in 25 CFR Chapter I.

§ 3525.6 Special leasing opportunities.

(a) The Secretary shall, under the procedures established under this subpart, reserve and offer a reasonable number of coal lease tracts within competitive lease sales each year as special leasing opportunities. Except for the limitation on bidding contained in paragraph (b) of this section, all of the requirements of this subpart apply to special leasing opportunities including the requirement that the coal be leased at its fair-market value.

(b) Only public bodies, including Federal agencies, rural electric cooperatives, or non-profit corporations controlled by any of these entities which have a definite plan to produce energy for their own use or for sale of their members or customers will be eligible to bid for leases designated as special leasing opportunities. Evidence of qualification to bid for leases designated as special leasing opportunities must be filed with the Department at least 60 days prior to a sale.

(c) The Secretary may designate certain coal lease tracts as special leasing opportunities only if a public body has requested, in the nomination or elsewhere, that the procedures of this section apply.

(d) Leases issued under this Section may be assigned only to another public body.

§ 3525.7 Deferred Bonus Payment Policy.

All competitive coal lease sales shall be held on a deferred bonus payment basis. In a deferred bonus payment the lessee shall pay the bonus payment in five (5) equal installments: The first installment shall be made as required by § 3525. The balance shall be paid in equal annual installments due and payable on the first four anniversary dates of the lease. If a lease is relinquished or otherwise terminated, the unpaid remainder of the bid shall be immediately payable to the United States.

§ 3525.8 Request for information on areas of interest.

(a) *Purpose.* This section establishes a procedure by which industry, the general public, and State and local governments can inform the Department of the Interior of their views on coal leasing in particular areas. The Department will incorporate the information it receives into its internal planning processes for Federal coal leasing tract selections. Except for short-term leasing applications, nominations are the primary source of information on the need for additional coal leasing.

(b) *Description of process.* The Director will request information on an annual basis, or as necessary. Any person may file with the Bureau, a statement with supporting information, asking the Director to make a request for nominations. The Bureau is not required to act on the statement. The Request for Information on Areas of Interest will consist of two types.

(1) *Industry nominations.* Nominations from industry of tracts of land that the Department should or should not make available for coal leasing including, as appropriate, statements describing why the tracts should or should not be leased.

(2) *Areas of public concern.* Concurrently with Industry Nominations, State and local governments and the general public are requested to submit Areas of Public Concern covering tracts of land that the Department should or should not make available for coal leasing including, as appropriate, statements describing why the tracts should or should not be leased.

(c) *Use of nominations.* Information obtained through the nominations process will be analyzed and compared with multiple resource opportunities identified in the land-use planning process. Proposed coal lease tracts will then be developed on the basis of nominations and multiple resource information.

(d) *Description of nominations.* All nominations or statements of information for or opposed to leasing shall: (1) (i) Describe the lands by legal subdivisions, section, township, and range; or in the case of land covered only by protracted surveys, by section, township, and range according to an approved protraction diagram; or

(ii) Use the Bureau of Land Management's Surface/Minerals Management Quads (minerals ownership maps) to indicate nominated areas. A readily discernible line on these maps conforming to legal subdivision and section lines will be accepted as the description required in paragraph (d)(1)(i) of this section. The maps are available for sale at BLM State and most District Offices.

(2) Describe reasonably compact areas, which will be assumed to include all Federal coal within the boundaries described, and may not exceed 25,000 acres.

(e) *Multiple nominations.* If a person submits two or more nominations for leasing or two or more nominations against leasing, choices shall be ranked in order of importance and shall be numbered consecutively. Nominations should be ranked on a nationwide basis.

(f) *Inspection and copying.* The procedures in 43 CFR Part 2 govern the public inspection and copying of information submitted under this section.

(g) *Notice of requests for nominations on areas of interest.* (1) Notice of each Request for Information on Areas of Interest will be published in the FEDERAL REGISTER and in a newspaper(s) of general circulation in the State affected and will specify the area or areas covered by the call, the size and raking of nominations, the period of time within which to submit nominations, and the addresses to which the nominations are to be submitted.

(2) *Lands Eligible for Nominations.* Nominations will be accepted only for those lands that are eligible for coal leasing. Lands not subject to leasing include (i) lands listed in § 3525.5; (ii) lands withdrawn from coal leasing or otherwise not subject to the provisions of the Mineral Leasing Act; (iii) land subject to a coal lease, permit or preference right lease application; and (iv) areas designated by BLM as primitive areas.

(h) *Areas nominated in national forest system.* The authorized officer will notify the Secretary of Agriculture of all lands nominated for leasing that are in the National Forest System.

(i) *Meeting on Nominations.* Prior to the selection of proposed tracts, the Bureau will hold a public meeting on nominations if the public has not had an opportunity to comment on the nominations in the land-use planning process.

§ 3525.9 Applications: Short-term sales.

Applications for coal leases will be accepted only if the applicant shows that (a) the coal is needed to maintain an existing mining operation, or (b) the coal is needed as a reserve for production in the near future.

§ 3525.10 Preliminary data.

(a) Any application for coal lease filed pursuant to the regulations in this Chapter shall contain preliminary data to assist the authorized officer in making a technical evaluation and environmental analysis as described in § 3041.2.

(b) Such preliminary data shall include: (1) Such map, or maps, as may be available from State or Federal sources, on which shall be shown the topography of the land applied for, and on which the applicant shall show physical features and natural drainage patterns and existing roads, vehicular trails, and utility systems; the location of any proposed exploration operations, including seismic lines, drill holes, to the extent known, the location of any proposed mining operations and facilities, trenches, access roads or trails, and support facilities incidental thereto, including the approximate location and aerial extent of the areas to be used for pits, overburden, and tailings; and the location of water sources or other resources which may be used in the proposed operations or facilities incidental thereto.

(2) A narrative statement, including:

(i) The anticipated scope, method, and schedule of exploration operations, including the types of exploration equipment to be used.

(ii) The method of mining anticipated, including the best available estimate of the mining sequence and production rate to be followed.

(iii) The relationship, if any, between the mining operations anticipated on the lands applied for and existing or planned mining operations, or facilities incidental thereto, on adjacent Federal or non-Federal lands.

(iv) A brief description, including suitable maps or aerial photographs as appropriate, of the existing land use within and adjacent to the lands applied for; and of known geologic, visual, cultural, or archaeological features; and the known habitat of fish and wildlife, particularly threatened and endangered species, that may be affected by the proposed or reasonably anticipated exploration or mining operations.

(v) A brief description of the proposed measures to be taken to maximize control, or prevent fire, soil erosion, pollution of surface and ground water, damage to fish and wildlife or other natural resources, air and noise pollution, and hazards to public health and safety; to reclaim the surface; and to otherwise meet applicable laws and regulations, which the applicant wishes to have considered by the authorized officer.

(c) The applicant shall not enter upon the land for any operational purpose, except for casual use, without prior authorization. Casual use, as used in this section, means activities which do not cause significant surface disturbance or damage to lands, resources, and improvements, such as activities which do not include (1) the use of heavy equipment or explosives, or (2) vehicular movement off established roads and trails which causes such disturbance.

(d) The authorized officer, after reviewing the preliminary data contained in an application, and at any time during a technical examination and environmental analysis, may request additional information from the applicant.

§ 3525.11 Land-use plans.

(a) *Preparation of a land-use plan.* The Secretary may not issue a lease for coal deposits unless the lands containing coal deposits have been included in a comprehensive land-use plan and the sale is compatible with the plan. A comprehensive land-use plan shall:

(1) Use and observe the principles of multiple use and sustained yield set forth in the Federal Land Policy and Management Act of 1976;

(2) Use a systematic interdisciplinary approach to achieve integrated consideration of physical, biological, economic, and other sciences;

(3) Give priority to the designation and protection of areas of critical environmental concern;

(4) Rely, to the extent it is available, on the inventory of the public lands, their resources, and other values;

(5) Consider present and potential uses of the public lands;

(6) Consider the relative scarcity of the values involved and the availability of alternative means (including recycling) and sites for realization of those values;

(7) Weigh long-term benefits to the public against short-term benefits;

(8) Provide for compliance with applicable pollution control laws, including State and Federal air, water, noise, or other pollution standards or implementation plans; and

(9) Assess the amount of coal deposits contained in the land and shall, based on available information, identify the amount of coal that is recoverable by deep mining operations and the amount that is recoverable by surface mining operations.

(b) *Agency to prepare land-use plans.* (1) The Bureau of Land Management will prepare plans for land under its jurisdiction in accordance with its procedures.

(2) The Department of Agriculture and other federal agencies with jurisdiction over lands where there is interest in coal mining will prepare land-use plans for those lands.

(3) If the Secretary finds that because of non-Federal interest in the surface, or because the coal resources are insufficient to justify the costs of a Federal comprehensive land use-plan, in an area, he may lease lands in that area if the lands containing the coal deposits have been included in either a comprehensive land-use plan prepared by the State within which the lands are located, or a land-use analysis prepared by the Secretary of the Interior.

(c) *Consultation and public hearing.* A plan will not be adequate for the purposes of this section unless the agency that prepares the plan has:

(1) Consulted appropriate State and local governments and the general public during the preparation of a plan; and

(2) Provided an opportunity for a public hearing on a proposed plan prior to its adoption if requested by any person who may be adversely affected by the adoption of the plan.

(d) *Hearing Requirements.* The agency that conducts the hearing shall: (1) Publish a notice of the hearing in a newspaper of general circulation at least once in each of two consecutive weeks in the affected geographical area;

(2) Provide an opportunity for testimony by anyone who desires to do so;

(3) Compile a complete transcript of the hearing if a request for a transcript is filed, in writing, at least 10 days prior to the hearing;

(4) Plans adopted prior to August 9, 1976 will be considered adequate if the public had an adequate opportunity to comment on the plan prior to its adoption, even if a formal hearing was not held.

§ 3525.12 Land-use plans: availability.

The Bureau's land-use plan and multiple land-use management plans of other Federal agencies, as appropriate, will be available for inspection at the appropriate Bureau or agency office. Upon the request of the Governor of a State affected by coal lease actions, the State Director will make available for his review the land-use plans for that State, and, as appropriate, adjacent States.

§ 3525.13 Consent to leasing: Federal surface managing agency.

(a) The Secretary may not issue leases for lands the surface of which is under the jurisdiction of any agency other than the Department of the Interior unless the Federal agency has consented to the issuance of the lease, but any lease shall contain terms and conditions as the head of the agency may prescribe for the use and protection of the nonmineral interests in those lands.

(b) The Secretary must accept the conditions prescribed by the surface managing agency, but may prescribe additional terms and conditions that are consistant with the terms proposed by the surface managing agency to protect the interests of the United States and to safeguard the public welfare.

§ 3525.14 Consultation with Governors.

(a) *General consultation.* Prior to offering a coal lease for competitive sale, the Secretary shall consult the Governor of the State in which the land to be leased is located.

(b) *Consultation for surface mining proposals in national forest.* (1) Prior to offering a coal lease in a National Forest where the method of mining which achieves maximum economic recovery of the coal resources is surface mining, the Secretary shall submit the lease proposal to the Governor of the State in which the coal deposits are found.

(2) The Secretary may not issue a lease in a National Forest for a lease which the method of mining that achieves maximum economic recovery is surface mining until at least 60 days after he notifies the Governor of the lease proposal.

(3) If the Governor fails to object to the lease proposal in 60 days, the Secretary may issue the lease. If within the sixty-day period the Governor notifies the Secretary, in writing, that he objects to the lease proposal, the Secretary may not approve the lease for six months from the date the Governor objects to the lease.

(4) The Governor may, during this six-month period, submit a written statement of reasons why the lease should not be issued, and the Secretary shall, on the basis of this statement, reconsider the lease proposal.

§ 3525.15 Notice of lease sale.

(g) *Notice of lease sale.* (1) Publication. Prior to the lease sale, the Authorized Officer shall publish in the FEDERAL REGISTER and in a newspaper(s) of general circulation in the county affected by the sale a notice of the proposed sale. The newspaper notice shall be published once a week for three consecutive weeks.

(2) The notice will show the time and place of sale whether the sale will be at public auction or by sealed bids, the description of the land, and the place where a detailed statement of the terms and conditions of the lease offer and the obligations of the successful bidder to pay for publication of that notice may be obtained.

(3) It will also contain a statement that sealed bids may not be modified or withdrawn unless the modifications or withdrawals are received prior to the time fixed for opening of the bids.

(4) The detailed statement will set forth the terms and conditions of the sale, including the manner in which the bids may be submitted.

(5) The detailed statement will also contain a warning to all bidders against violation of 18 U.S.C. 1860, which prohibits unlawful combination or intimidation of bidders.

(6) The detailed statement will specify that the Government reserves the right to reject any and all bids. If the sale is by public auction, the statement of terms and conditions of the sale will also specify that sealed bids may be submitted. If any bid be rejected, the deposit will be returned.

(7) The detailed statement will also contain a request for comments on the fair market value of the tracts to be sold. The notice shall state the address to where the comments on fair market value should be submitted.

§ 3525.16 Consultation with Attorney General.

(a) Subsequent to a lease sale, but prior to issuing a lease, the Secretary shall notify the Attorney General of the proposed lease issuance, the proposed lessee, normally the high bidder in a sale, and other relevant information. The Secretary may not issue a lease until 30 days after he notifies the Attorney General.

(b) The Secretary shall not issue the lease to the proposed lessee if, during this 30-day period, the Attorney General notifies the Secretary that the proposed lease issuance would create or maintain a situation inconsistent with the antitrust laws, which means:

(1) The Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," approved July 2, 1890 (15 U.S.C. 1 et seq.), as amended;

(2) The Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (15 U.S.C., et seq.), as amended;

(3) The Federal Trade Commission Act (15 U.S.C. 41, et seq.), as amended;

(4) Sections 73 and 74 of the Act entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes," approved August 27, 1894 (15 U.S.C. 8 and 9), as amended; or

(5) The Act of June 19, 1936, chapter 592 (15 U.S.C. 13, 13a, 13b, and 21a)."

(c) If the Attorney General notifies the Secretary that a lease should not be issued the Secretary may:

(1) Reject all other bids or may request the Attorney General in accordance with paragraph (a) of this section to consider the issuance of the proposed lease to the next qualified high bidder; or

(2) Issue the lease if, after he conducts a public hearing on the record in accordance with the Administrative Procedures Act, he determines that: (i) Issuance of the lease is necessary to carry out the purposes of the Federal Coal Leasing Amendments Act of 1975; (ii) Issuance of the lease is consistent with the public interest; and (iii) There are no reasonable alternatives to the issuance of the lease that are consistent with the Federal Coal Leasing Amendments Act of 1975, the antitrust laws and the public interest.

(d) If the Attorney General does not give a written reply to the notification in paragraph (a) of this section within 30 days, the Secretary may issue a lease without waiting for the advice of the Attorney General.

§ 3525.17 Award of leases.

(a) *Pre-sale evaluation.* Before the lease sale, the U.S. Geological Survey, considering public comments on fair market value and available geotechnical, engineering and economic data, shall make a coal resource economic evaluation of each tract to be sold and shall submit it to the authorized officer.

(b) *Notification of award.* Bids will be received only until the hour on the date specified in the notice of competitive leasing. All bids submitted after the hour will be rejected. The authorized officer will read all sealed bids. If the procedure calls for sealed bids followed by oral bids the oral bidding will begin at the level of the highest sealed bid received. After the oral bidding has ceased, the highest bid will be announced. The high bidder will be required to comply with 43 CFR § 3421.2–4 and 43 CFR § 3521.4–2. No decision to accept or reject any bid will be made at this time. The sale will be adjourned and the sale panel will convene to determine if the bid adequately reflects fair market value considering, among other factors, comments on fair market value. The recommendations of the panel will be sent to the authorized officer who, after the Department complies with § 3525.17 of this subpart, will make the final decision to accept a bid or reject all bids, as soon as possible after the sale date. The successful bidder will be notified in writing. The Department reserves the right to reject any and all bids but will not accept any bids which are less than the fair market value of the tract. The Department also reserves the right to offer a lease to the second high bidder if the successful bidder fails to execute the lease.

(c) *Intertract competition.* The use of bidding competition between tracts (intertract bidding) is hereby authorized when and if the Bureau of Land Management and the U.S. Geological Survey determine it is needed in the public interest. The authorization to utilize intertract competition does not preclude the use of any other form of competitive bidding procedure.

§ 3525.18 Compliance with notice of competitive lease offer.

(a) *Action by successful bidder.* Four copies of the lease will be sent to the successful bidder, who will be required not later than the 30th day after his receipt thereof, to execute them, pay the balance of the bonus bid or the first payment of the deferred bonus payment on the first year's rental, and file a bond as required by Subpart 3504.

(b) *Death of bidder.* If the bidder dies before the lease is issued, there must be compliance with § 3502.8 of this chapter.

§ 3525.19 Procedures and public participation.

(a) *Written findings.* Except as may be otherwise expressly set forth in this subpart, decisions and determinations of any appropriate authorized officer acting pursuant to this subpart with respect to issuance of leases, shall be in writing, shall set forth with reasonable specificity the facts and the rationale upon which such decisions or determinations are based, and shall be available for public inspection during normal business hours at the offices of such officer.

(b) *Availability of documents.* Except for documents which are subject to withholding under the Freedom of Information Act, any application for a lease, together with the proposed terms, conditions, and special stipulations and any preliminary data submitted under this subpart shall be available for public inspection in the appropriate BLM office. To allow for such public inspection, a notice of the availability of any such documents shall be prepared by the appropriate officer of the BLM and promptly posted at his office and mailed to the surface owner, if other than the United States, to appropriate Federal and State agencies, and to the clerk or other appropriate officer in the county in which the proposed operation is located for posting or publication in accordance with the procedures of that office. No final action with respect to such documents shall be taken for a period of 30 days after such posting and mailing. A copy of such notice shall be published by the applicant in a local newspaper of general circulation in the locality of the proposed operation at least once a week for four consecutive weeks.

(c) Where a hearing under this subpart has been held on the record, a complete transcript, of the hearing, including any written comments submitted for the record, shall be kept and maintained available to the public during normal business hours at the appropriate Federal office under whose auspices such meeting is conducted, and shall be furnished at cost to any interested party.

Dated: January 18, 1977.

THOMAS S. KLEPPE,
Secretary
Department of the Interior

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CHAPTER II—BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

PART 3500—LEASING OF MINERALS OTHER THAN OIL AND GAS; GENERAL

PART 9230—TRESPASS

Exploration Licenses for Federally-Owned Coal Deposits

These regulations provide for the issuance of licenses to explore Federally-owned coal deposits subject to lease pursuant to 43 CFR Part 3500.

Section 4 of the Federal Coal Leasing Amendments Act of 1975 (Pub. L. 94–377, 90 Stat. 1039) amended section 2(b) of the Mineral Leasing Act of 1920 (30 U.S.C. 201(b)) to provide for the issuance of exploration licenses for federally-owned coal. In November 5, 1976, the Department published a notice of proposed rulemaking to implement section 4 of the new Act, 41 F.R. 48754. Comments have been received and carefully considered, and the regulations are included in this notice as a final rulemaking.

The most significant change to be made since the regulations were published in draft is in the section controlling the submission and treatment of data collected during exploration, 43 CFR § 3507.4. The statute requires the Department to treat data as confidential until the applicable land is leased or until disclosure would not damage the competitive position of the licensee, whichever is sooner. The proposed regulations repeated this requirement but limited the period of confidentiality to five years. Several commentators stated that if land was not leased within five years, the competitive position of a licensee would usually be damaged. For this reason, the five-year limitation has been deleted.

Other commentators expressed concern with the same section because it provides that only "resource data" (data relating primarily to coal deposits) as opposed to environmental data would be treated as confidential. However, the statute does not make this distinction in requiring "all data" to be treated as confidential. Accordingly, the section has been amended to eliminate the distinction and follow the wording of the statute more closely. The Department points out that in most cases the disclosure to the public of environmental information would not damage the competitive position of a licensee and, as

permitted by the statute, it will be disclosed when that finding is made.

Many comments were received in response to § 3507.3–1(d) of the proposal, which provides for participation in exploration licenses. Many commentators urged that the subsection be deleted because the requirement to explore jointly with others would reduce the incentive to explore. Nevertheless, the Department has decided not to delete the subsection. If parties are induced to group together, fewer exploration programs are apt to be conducted in any single area and any toll on the environment is therefore apt to be less.

Many commentators urged that 43 CFR § 3507.3–2(b) be modified so as to allow for an extension of the term of a license beyond two years. The Department believes that this suggested change would conflict with a provision in the statute that limits the term of a license to "not more than two years." There is no authority in the statute to extend that 2-year term. Accordingly, the Department has not modified the subsection as suggested. It should be noted that the provision for issuance of another license covering the same land at the end of the initial license's 2-year term serves the same purpose as an extension.

There was some concern expressed over the restrictive interpretation of "substantial disturbance" and "reasonable amounts" found in 43 CFR §§ 3507.0–5(j), 3507.0–5(k), and 3507.3–3(c). It is the Department's position that the statute is intended to allow exploration of coal deposits "without substantial disturbance to the natural land surface." So-called "test burns," involving the extraction of several thousand tons of coal, would be outside the scope of the statute. Accordingly, these provisions have not been changed

Two commentators suggested that land subject to outstanding prospecting permits or preference right lease applications be excluded from exploration activities. The statute does not provide for this limitation; it prohibits only the issuance of exploration licenses for lands for which coal leases have been issued. While no amendment has been made, however, the Department points out that if lands subject to a license are leased, those lands shall thereafter be excluded from the license.

Some commentators objected to 43 CFR § 3507.3–6 of the proposed regulations which provides that a licensee may be required to collect and submit ground water data to the authorized officer. The objections were based on a feeling that the collection of hydrologic data might be costly and beyond the scope of an exploration program. The Department feels that hydrologic data often provides valuable environmental information that can bear on the advisability of opening an area for coal leasing. For this reason, it is not considered to be beyond the scope of an exploration program. The Department has therefore not modified this section of the regulations.

On the basis of the foregoing:

1. 43 CFR Part 3500 be amended by adding a new Subpart 3507 to read as follows:

Subpart 3507—Coal Exploration Licenses

Sec.

3507.0–1 Purpose.
3507.0–2 Objective.
3507.0–3 Authority.
3507.0–4 Responsibilities.
3507.0–5 Definitions.
3507.1 Lands subject to exploration license.
3507.2 Prelicensing procedures.
3507.2–1 Environmental review.
3507.2–2 Cultural resources.
3507.2–3 Threatened or endangered species.
3507.2–4 Surface management agency.
3507.3 Licenses.
3507.3–1 Applications for license.
3507.3–2 Issuance and termination of license.
3507.3–3 Rights under license.
3507.3–4 Operating regulations.
3507.3–5 Surface protection and reclamation.
3507.3–6 Ground water data.
3507.3–7 Bonds.
3507.4 Use of data.
3507.5 Use of surface.

Subpart 3507—Coal Exploration Licenses

§ 3507.0–1 Purpose.

This subpart provides for the issuance of licenses for exploring federally-owned coal deposits subject to disposal pursuant to this Part 3500, regardless of surface ownership.

§ 3507.0–2 Objective.

The objective of this subpart is to allow private parties to explore federally-owned coal deposits in order to obtain geological, environmental, and other pertinent data concerning the deposits and the lands in which they lie.

§ 3507.0–3 Authority.

The authority for this subpart is found in section 2(b) of the Mineral Leasing Act of February 25, 1920, as amended by section 4 of the Federal Coal Leasing Amendments Act of 1975, 90 Stat. 1083, 1085, 30 U.S.C. 201(b).

§ 3507.0–4 Responsibilities.

(a) The Bureau of Land Management (BLM) exercises at the Bureau level the Secretary's discretionary authority to determine whether exploration licenses are to be issued, and is responsible for issuing and cancelling exploration licenses and terminating the period of liability of bonds. The regulations in this Subpart shall be administered by the Director through the State Director and the authorized officer, subject to the supervisory authority of the Secretary. The proper BLM office is also the office of record.

(b) The Geological Survey exercises the Secretary's authority regarding operations conducted within the area of operations by the licensee, and is responsible for all geological, economic, and engineering determinations for the Department's coal leasing program.

(c) The authorized officer in consultation with the Geological Survey, and where appropriate, the surface management agency and the surface owner if other than the United States, formulates the requirements to be incorporated in exploration licenses for the protection of the surface resources, for reclamation, using as guidelines the surface operating and reclamation performance standards in Subpart 3041 of this chapter and 30 CFR Part 211, and for the bonding requirements.

(d) The Geological Survey, after consultation with the authorized officer, and where appropriate, the surface management agency and the surface owner, if other than the United States, reviews and concurs in exploration plans and recommends termination of the period liability of the bond upon the completion of exploration operations.

§ 3507.0–5 Definitions.

(a) "Coal deposit" means all federally-owned deposits which are subject to disposal under applicable law, except those held in trust for Indians.

(b) "Exploration" means drilling, excavating, and geophysical or geochemical surveying operations designed to obtain detailed data on the physical and chemical characteristics of coal deposits and their environment including the strata above the deposit, the hydrologic conditions associated with the deposit, and any other information that may be necessary to prepare a complete resource evaluation of the land.

(c) "Surface management agency" means the Federal ageny or authorized officer thereof other than the Bureau of Land Management having jurisdiction over the surface of lands containing coal deposits subject to this part.

(d) "Exploration plan" means a detailed plan showing the location and type of exploration work to be conducted, environmental protection procedures, present and proposed roads, as well as reclamation and abandonment procedures to be followed upon completion of such operations.

(e) "Exploration license" means a license issued by the authorized officer to permit the exploration of federally-owned coal deposits under terms and conditions that will protect the surface and subsurface resources and the environment, and provide for the reclamation of any damage caused by such exploration.

(f) "Participate" means to have or take part or share with others in an exploration license.

(g) "Participant" means a person who participates or shares in an exploration license.

(h) "Reasonable amount of coal for analysis and study" means only that amount of coal necessary to establish whether or not a federally owned deposit can be economically extracted and the removal of which does not cause substantial disturbance to the natural land surface.

(i) "Substantial disturbance to the natural land surface" means disturbance of the surface other than that necessary for the mere location of potential coal deposits and for the access to those deposits necessary to determine their location and quality by operations such as surface sampling or drilling geologic study and exploration holes. These operations shall extend only to the degree and extent necessary to determine the nature of the overlying strata and the depth, thickness, shape, grade, and quality of the coal deposit.

§ 3507.1 Lands subject to exploration license.

(a) Exploration licenses may be issued for:

(1) Lands administered by the Secretary subject to coal leasing;

(2) National forest lands or other lands administered by the Secretary of Agriculture through the Forest Service subject to coal leasing;

(3) Coal deposits in lands which have been conveyed by the United States subject to a reservation to the United States or mineral deposits, to the extent that those deposits are subject to lease pursuant to this Part 3500; and

(4) Coal or lignite deposits in acquired lands set apart for military or naval purposes.

(b) No exploration license will be issued for any land on which a coal lease has been issued.

§ 3507.2 Prelicensing procedures.

§ 3507.2–1 Environmental review.

Before the issuance of an exploration license:

(a) The authorized officer or, where the surface is not administered by BLM, the surface management agency shall, in accordance with 43 CFR §§ 3041.2 and 3041.2–1 and using the exploration plan submitted by the applicant, make an environmental analysis and technical examination of the potential effect of such exploration on the resources of the area and its environment, including fish and other aquatic resources, wildlife habitats and populations, visual resources, recreation, cultural, and other resources in the affected area. The applicant shall not begin exploration until an environmental analysis is accomplished and the exploration plan has been approved.

(b) If the authorized officer or, where the surface is not administered by BLM, the surface management agency determines that an environmental impact statement is required by the National Environmental Policy Act of 1969 (43 U.S.C. 4321–4327), he will take necessary steps to prepare such a statement.

§ 3507.2–2 Cultural resources.

If lands in the National Register or nominated for inclusion in the National Register contain cultural resources which might be affected by the issuance of an exploration license, no license for such lands will be authorized until there has been compliance with Section 106 of the Historic Preservation Act (80 Stat. 917; 16 U.S.C. 470f) and Section 2(b) of E.O. 11593 of May 13, 1971, (36 FR 8921 (16 U.S.C. 470 fn)).

§ 3507.2–3 Threatened or endangered species.

The authorized officer shall not issue an exploration license if he determines pursuant to the Act of December 28, 1973 (87 Stat. 884, 16 U.S.C. 1531–1543) that the existence of any threatened or endangered species of fauna or flora will be jeopardized and that critical habitat would be destroyed or adversely modified to a significant degree by the exploration activities authorized by that license. In making this determination, the authorized officer shall consult the surface management agency, if the surface is not managed by BLM.

§ 3507.2–4 Surface management agency.

The authorized officer shall issue an exploration license covering lands the surface of which is under the jurisdiction of any Federal agency other than the Bureau of Land Management only upon such conditions as the surface management agency may prescribe with respect to the use and protection of the nonmineral interests in those lands.

§ 3507.3 Licenses.

§ 3507.3–1 Applications for license.

(a) *Applications.* Exploration license applications shall be submitted to the authorized officer and shall be subject to the following requirements:

(1) No specified form of application is required.

(2) Each application shall identify the tract or tracts to be explored described by legal description (or, if unavailable, by metes and bounds).

(3) Each application shall contain three copies of an exploration plan which complies with the requirements of 30 CFR 211.10.

(4) Each application with supporting documents shall be filed in the proper BLM Office, together with a nonrefundable $250 license fee.

(5) A separate application shall be filed for exploration in each State.

(b) *Qualified persons.* Any person qualified to hold leases or contracts issued pursuant to this Part 3500 may apply for an exploration license.

(c) *Call for applications.* Nothing in this subpart shall preclude the authorized officer from issuing a call for an expression of interest in exploration licenses for a given area.

(d) *Participation.* Applicants for licenses shall be required, after approval of the plan and prior to issuance, to afford other parties an opportunity, on a pro rata cost sharing basis, to participate in the approved exploration plan. Upon notice that a license will be issued to him an applicant must publish a "Notice of Invitation," approved by the authorized officer, once every week for four consecutive weeks in at least one newspaper of general circulation in the area where the lands covered by the license application are situated. This notice must contain an invitation to the public to participate in the proposed exploration program. Copies of published Notices of Invitation must be filed with the authorized officer upon each publication for posting in the proper BLM Office. Any person who elects to participate in the exploration programs shall notify in writing the authorized officer and the applicant. Upon the applicant's compliance with the requirements of this section, all else being regular, the authorized officer may issue the exploration license.

§ 3507.3–2 Issuance and termination of license.

(a) *General.* No person may conduct exploration without a lease unless he has been issued an exploration license. An exploration license shall not be required for "casual use" as defined in 30 CFR § 211.10(a). The issuance of exploration licenses under this Subpart is discretionary with the authorized officer. An exploration license shall confer no right to a lease.

(b) *Duration.* Exploration licenses may be issued for not more than two years, including the time for clean up and restoration. The authorized officer shall designate the date on which operations may begin.

(c) *Relinquishments.* A licensee may, subject to his own and his surety's continued obligation to comply with the terms and conditions and special stipulations of the license, the plan, and the regulations, relinquish an exploration license for all or any portion of the lands embraced in it. A relinquishment must be filed in the proper BLM Office.

(d) *Revocation.* An exploration license may be revoked for noncompliance with the terms of the license, the plan, or the regulations, after the licensee has been given a notice of violation and the licensee has failed to correct the violations within the period prescribed in the notice.

(e) *Exploration Plan.* The approved exploration plan will be dated, attached, and made a part of each license issued.

(f) *Modifications.* When unforeseen conditions that could result in signficant disturbance or damage are encountered or when geologic or other physical conditions warrant a modification in the approved exploration plan, (1) the authorized officer, after consultation with the Mining Supervisor and, where appropriate, the surface management agency, may adjust the terms and conditions of the license or, (2) the Mining Supervisor, after consultation with the authorized officer, and where appropriate, the surface management agency, may approve changes in the exploration plan.

(g) *Different States.* A separate exploration license is required for exploration in each State.

(h) *Extensions.* Exploration licenses may not be extended. Exploration operations may not be conducted after a license has expired. The licensee may apply for a new license as described in § 3507.3–1. A new license may be issued simultaneously with the termination of the existing license.

§ 3507.3–3 Rights under licenses.

(a) The issuance of an exploration license shall confer the right to perform exploration operations in accordance with the specific terms and conditions of the license, the approved plan, and the regulations.

(b) The issuance of exploration licenses shall not preclude the issuance of

coal leases at such time and places and to such persons as are deemed appropriate, subject to applicable regulations, and, if a coal lease is issued for lands embraced in an exploration license, those lands shall be eliminated from the license upon the effective date of the lease.

(c) A licensee may not remove for sale any coal from the deposits subject to his license, but he may remove a reasonable amount of coal for analysis and study.

§ 3507.3–4 Operating regulations.

The licensee shall comply with all regulations of the Secretary of the Interior, including the provisions of the operating regulations of the Geological Survey (30 CFR Part 211). Copies of the operating regulations may be obtained from the Mining Supervisor. The licensee shall allow inspection of the premises and operations by duly authorized representatives of the Secretary and, where appropriate, any surface management agency, and shall provide for the free ingress and egress of Government officers and persons using the lands under authority of the United States.

§ 3507.3–5 Surface protection and reclamation.

(a) The authorized officer shall include in each exploration license requirements and stipulations to protect the environment and other resources and to ensure reclamation of the land disturbed by exploration.

(b) A licensee may not cause substantial disturbance to the natural land surface.

§ 3507.3–6 Ground water data.

The applicant may be required to collect and report ground water data to the authorized officer.

§ 3507.3–7 Bonds.

(a) The provisions of the regulations in Subpart 3504 of this part are hereby made applicable to these regulations. The holding of an adequate compliance bond will be a condition of the exploration license.

(b) Prior to issuing an exploration license the authorized officer after consultation with the Mining Supervisor and, where appropriate, the surface management agency, the surface owner, shall ensure that the amount of the compliance bond or bonds to be furnished is sufficient to ensure compliance with the terms and conditions of the license and regulations, but in no event shall the amount of such bond be less than $5,000.

(c) Upon completion of an exploration and reclamation program which is in compliance with the terms and conditions of the exploration license, the approved plan, and the regulations, or upon discontinuance of exploration operations and completion of such reclamation as may be needed to the satisfaction of the authorized officer and, where appropriate, the surface management agency, the authorized officer will terminate the period of liability of the compliance bond. Where the surface of the land being explored is in private ownership, the authorized officer shall not terminate the period of liability under the compliance bond until he has received written acknowledgement from the surface owner of his satisfaction with the reclamation of the surface. In the event the licensee and surface owners are unable to reach agreement on the adequacy of the reclamation the authorized officer shall make the final determination. He will terminate the period of liability under the compliance bond after determining that the terms and conditions and special stipulations of the license, the approved plan, and the regulations have been met.

§ 3507.4 Use of data.

The licensee shall furnish to the Mining Supervisor copies of all data (including but not limited to, geological, geophysical, and core drilling analyses) obtained during exploration. The licensee shall submit such data and, where appropriate, the methods by which the data were gathered, at such time and in such form as required by the Mining Supervisor, the authorized officer, or surface management agency, or as specified in this Subpart the license, or the plan. The confidentiality of all data so obtained shall be maintained until after the areas involved have been leased or until such time as the Mining Supervisor determines that making the data available to the public would not damage the competitive position of the licensee, whichever comes first.

§ 3507.5 Use of surface.

(a) A licensee shall be entitled to use for exploration purposes only so much of the surface of the licensed lands as is authorized in the approved exploration plan.

(b) Operations under these regulations shall not unreasonably interfere with or endanger operations under any other authorized use pursuant to the provisions of any other Act.

(c) The licensee shall comply with all applicable Federal, State and local laws and regulations including the regulations in Parts 3041, 3500, 3600 of this chapter and 30 CFR Parts 211 and 231.

(d) Any person who willfully conducts coal exploration on lands subject to this subpart without an exploration license shall be subject to the provisions of § 9239.5–3(f) of this chapter.

2. Paragraph (b)(3) of 43 CFR 9239.0–3 be amended to read as follows:

§ 9239.0–3 Authority.

* * * * * *

(b) * * *

(3) *Coal trespass.* 18 U.S.C. 1851; 30 U.S.C. 201(b)(4).

3. 43 CFR 9239.5–3 be amended by adding a new paragraph (f) to read as follows:

§ 9239.5–3 Coal.

* * * * * *

(f) *Penalties for unauthorized exploration for coal.* (1) Any person who willfully conducts coal exploration for commercial purposes without an exploration license issued under Subpart 3507 of this chapter shall be subject to a fine of not more than $1,000 for each day of violation.

(2) All data collected by said person on any Federal lands as a result of such violations shall immediately be made available to the Secretary, who shall make the data available to the public as soon as possible.

(3) No penalty under this section may be assessed unless such person is given notice and opportunity for a hearing with respect to such violation pursuant to Part 4 of this chapter.

Effective: January 19, 1977.

Dated: January 19, 1977.

THOMAS S. KLEPPE,
Secretary,
Department of the Interior.

[FR Doc.77–2261 Filed 1–24–77;8:45 am]

Title 45—Public Welfare

SUBTITLE A—DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE, GENERAL ADMINISTRATION

PART 99—PRIVACY RIGHTS OF PARENTS AND STUDENTS

On June 17, 1976, final regulations were published in the FEDERAL REGISTER at 41 FR 24662 setting forth the requirements to be met by an educational agency or institution to protect the privacy of parents and students under section 438 of the General Education Provisions Act, as amended (added by section 513 of Pub. L. 93–380 and amended by section 2 of Pub. L. 93–568). Due to an inadvertent drafting error § 99.32 of those regulations require technical corrections in order to bring it into conformity with the statutory requirement upon which it is based.

Accordingly, the purpose of this correction notice is to make technical changes in the regulations of June 17, 1976.

The Department finds that there is good cause to dispense with proposed rule-making procedures as unnecessary, since the correction notice makes only technical changes to change incorrect wording and restore omissions. Furthermore, to delay the effective date of these changes might result in an unnecessary expenditure on the part of educational agencies and institutions; specifically, with respect to the requirement that a record be kept of certain requests for disclosure of education records, even though an accounting need not be made for the actual disclosure of information pursuant to these requests. As modified, § 99.32 will relieve educational agencies and institutions of keeping a record of requests for disclosure in those areas where they are not required to record actual disclosures.

Section 99.32 of Title 45 of the Code of Federal Regulations is amended as follows:

1. The title of § 99.32 is revised to read as follows:

§ 99.32 Record of requests and disclosures required to be maintained.

2. Paragraph (b) of § 99.32 is revised to read as follows:

(b) Paragraph (a) of this section does not apply:

(i) to requests by or disclosure to a parent of a student or an eligible student;

(ii) to requests by or disclosures to school officials under § 99.31(a)(1);

(iii) if there is written consent of a parent of a student or an eligible student, or

(iv) to requests for or disclosure of directory information under § 99.37.

3. Paragraph (c) is amended by inserting the phrase "requests and" before the word "disclosures".

Effective date: These amendments take effect on January 25, 1977.

Dated: January 17, 1977.

THOMAS S. MCFEE,
Deputy Assistant Secretary for Management Planning and Technology.

[FR Doc.77–2226 Filed 1–24–77;8:45 am]

Title 47—Telecommunication

CHAPTER I—FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 20119; FCC 77–50]

PART 15—RADIO FREQUENCY DEVICES

Low Power Communication Devices

Adopted: January 13, 1977.

Released: January 19, 1977.

By the Commission: Commissioner Lee absent.

1. The Commission has received two timely filed petitions and three letters requesting reconsideration of the revised rules adopted February 4, 1976, by the Report and Order[1] in the above described proceeding. The letters are being considered part of this proceeding, since they deal with the same questions raised in the petitions. Petitions were filed by Radio Communications Co., Inc. (Radcom) and Teletronics United Inc. (Teletronics).[2] Letters were received from Barrett Electronics Corp., (Barrett), Gutzmer International Inc. (Gutzmer) and Mr. Bruce D. Ross, a private consultant in electronics.

2. Teletronics, Gutzmer, Radcom and Ross stated that they are either manufacturing and marketing or in the design stage of producing a cordless telephone terminal device.[3] They allege that the new rules are not satisfactory to permit the continued marketing of their devices and therefore request reconsideration of these rules. Barrett claims that the channelization of the frequencies has placed a severe restriction on the marketability of low power communication devices[4] used to control material handling equipment used by the grocery industry.

3. The new rules adopted in this proceeding that, among other things, shifted low power voice-operated communication devices, such as toy walkie-talkies, from the 27 MHz band to a new band at 49 MHz, went into effect on March 18, 1976. The rules in effect prior to March 18, 1976, permitted the operation of a low power communication device on any frequency in the 26.97–27.27 MHz band—a band that coincides with the band allocated for the Class D Citizen Radio Service commonly referred to as the CB band. The principal technical restrictions for operating a low power communication device in this band were a power and antenna limitation of 100 milliwatts and 1.5 meters, respectively. Toy walkie-talkies are the most prevalent example of devices operating under these provisions. Because of enforcement and interference problems between transmitters licensed in the Class D Citizen Radio Service and toy walkie-talkies which operate without an individual license, the Commission shifted low power voice-operated devices from the CB band to 49 MHz.[5] Non-voice operated devices were permitted to remain in the 27 MHz band under more restrictive technical requirements.

PETITIONS FOR A CORDLESS TELEPHONE TERMINAL DEVICE

4. Teletronics manufacturers and markets a cordless telephone terminal device under the trade name of PortaCall. The system is comprised of a base unit that interfaces with the interstate telephone network and a mobile unit that can be carried from place to place. The battery-operated mobile unit and base units contain a telephone handset and cradle unit fitted with a low power transmitter. To permit duplex operation, i.e., a continuous conversation between sender and receiver, two frequencies separated by at least 150 kHz are required. According to Teletronics this is a critical operating requirement. Under the previous provisions at 27 MHz, Teletronics claimed that it was possible to operate up to five PortaCall systems in the same area at the same time without causing interference to one another and still avoid the most active citizens band channels. With respect to its interference potential, Teletronics argued that it was to their advantage to avoid CB channels, since PortaCall systems operate with low power and are more susceptible to receiving harmful interference than causing harmful interference. It should also be noted that the propensity for the interception of communications, as with any radio transmitter, is a possibility with the use of these devices.

5. According to Teletronics, cordless telephone terminal devices serve the public in a number of useful ways. For example an individual who is confined to a wheel chair, or otherwise has difficulty in moving rapidly to a telephone, is thereby provided with communications capability to deal with personal and emergency situations which are not possible with cord bound phones. It is also argued that these systems provide additional flexibility for many thousands of people who are required to stay by a telephone terminal. The extended range, which is advertised to be 300 feet in most operating environments, allows these individuals to receive important (and in some cases emergency) phone calls no matter where they may be as long as they are within the bounds of the system.

6. In their initial filing, Teletronics stated: "We find the shift to the 49.82 to 49.90 MHz band attractive in principle in that it will allow more reliable and secure short range communications without the present legal and illegal interference from Citizen Band users. However, the proposal (new rules) requiring that operation be confined to five defined 20 kHz channels inhibits certain developments in progress that could enable us [Teletronics] to shift to the 49 MHz band with little cost penalty and major performance advantage." Their initial petition concludes by requesting the Commission to allow the simultaneous use of two adjacent channels with a total bandwidth of 35 kHz to allow the operation of a single carrier time shared duplex communication.

7. In a subsequent supplemental filing, Teletronics stated "* * * after extensive evaluation it has been determined that the current allocation at 49.82–49.90 MHz places serious limitations that would result in its (Teletronics) demise." Moreover, the petition asserts that even if a satisfactory 49 MHz PortaCall could be developed, it would not likely be marketable due to its increased cost and single system limitation, i.e., only one system could be operated in one given area at a time. The net result of limiting such devices to the 49 MHz band, according to Teletronics, would be the cessation of their manufacture and use.

8. In its supplemental filing Teletronics suggested that the true answer to the dilemma presented to the cordless telephone industry lies in an allocation of more frequencies. This can be accomplished by permitting cordless telephones to continue to operate in the 27 MHz band with the same technical requirements as adopted for non-voice devices under Section 15.116 of the new rules adopted in this proceeding.[6] A claim is also made that the cordless phones would not be confused with the licensed Class

[1] 41 FR 7394, February 18, 1976.

[2] A supplement to the Teletronics petition for reconsideration was subsequently received and accepted on the basis of the justifications presented in a separate pleading "Motion for leave to file a supplemental Petition for Reconsideration."

[3] A cordless telephone terminal device is customer provided ancillary equipment which is connected to the telephone network through interface equipment.

[4] A low power communication device complying with both the technical and certification requirements of Subpart D of Part 15 may be operated without an individual license for any legitimate purpose.

[5] Report and Order in Docket No. 20119 at paragraph 1.

[6] Non-voice (i.e., radio control) devices operating under the new requirements (§ 15.116), among other things, are restricted to six 20–kHz channels in the 26.99–27.26 MHz band and field strength limits of 10,000 μV/m at 3 meters. It would appear that Teletronics is requesting the Commission to amend the rules in Part 15 to permit cordless telephones to operate under these same provisions.

D Citizen Stations since the cordless phone operates on different frequencies (Class C frequencies) and its transmissions are preceded with a tone signal for dialing purposes. This, coupled with Porta-Call's low power and field strength limitations, practically eliminates the possibility of interference it is asserted.

9. Gutzmer International Inc., also a manufacturer of personal communication devices including cordless telephone equipment, submitted two letters supporting the Teletronics petition. The modus operandi of the Gutzmer system is slightly different from that of Teletronics in that the base station of the Gutzmer system uses carrier current techniques at frequencies just above the standard AM Broadcast Band.[7] Its mobile unit operates at 27 MHz under the interim provisions of § 15.115 of the rules. In addition to supporting Teletronics petitions, Gutzmer emphasized the need for additional frequencies if the portable telephone industry is to grow, otherwise usage density (i.e., the number of systems in a given area) becomes high enough to cause interstation interference. Even under the previous rules in Part 15, Gutzmer says there isn't sufficient spectrum to promote growth and additional frequencies would be needed in a couple of years in any case. It claims that further studies are under way but the immediate need is a relaxation of the new rules adopted in this proceeding.

10. Gutzmer in their first correspondence requested the following technical specifications as an immediate but temporary solution for allowing the continued development and manufacture of cordless telephone extensions:

Continued operation at 27 MHz with 100 milliwatt power to the final on the six Class C Citizen Radio Station Channels.

Continued operation at 1.7 MHz using carrier current technique.

30,000 μV/m at 3 meters instead of 10,000 μV/m at 3 meters for devices at 49 MHz.

11. The second letter from Gutzmer revises their original request and asks for a higher level of radiated signal at 27 MHz. Gutzmer states that after extensive evaluation, the 10,000 μV/m at 3 meters, (which is the level of radiated signal requested by Teletronics in their Supplemental Petition) is too low to provide an operating range of 100 meter (300 feet) for a cordless telephone. A sample calculation based on a number of assumptions ostensibly shows that an order of magnitude increase of radiated signal is required to obtain a 100 meter operating distance. No measurement data is provided. Based on these calculations, Gutzmer requests that its portable phone be permitted 100,000 μ/Vm at 3 meters, which they claim is equivalent to the 100 milliwatt limit under the previous provisions.

12. The relief sought by cordless telephone terminal equipment manufacturers puts the Commission in somewhat of a quandary. On one hand, we are faced with diluting, if not abandoning, the original stated purpose of this proceeding.[8]

On the other hand, if we insist on the immediate removal of all voice-operated low power communication devices from the CB Band, it may cause the demise of these manufacturers. In part, this is due to the fact that cordless telephone equipment was designed to operate under rules which were never intended to provide for a reliable communication service. It appears that the proposal to make changes in the 27 MHz band did not come to the attention of these manufacturers until after the revised rules were promulgated. Accordingly, the Commission was not made aware of their needs when it adopted the Report and Order in Docket No. 20119. When the revised rules did come to their attention, the petitioner realized that they could not operate under the new rules and that they no longer had a marketable system.

13. The statements and claims made by the manufacturers of this equipment raise a number of questions which cannot be addressed in this reconsideration. A basic question that needs to be answered relates to the public interest aspect of the cordless equipment under our obligation to assure efficient use of the limited radio spectrum. Another is: Should such cordless equipment be operated under Part 15 or should it be licensed? These questions can only be answered in a formal rule making proceeding with adequate opportunity for all interested parties to participate and make their views known to the Commission.

14. Inasmuch as these questions cannot possibly be answered here and since at the same time we do not desire the demise of these manufacturers without giving them a reasonable opportunity to develop alternatives, the Commission is hereby granting temporary relief for manufacturers of cordless telephone terminal devices. A new § 15.114 is added to provide for the operation of such devices for a limited period of three years during which a petition for permanent regulations can be received and considered. The temporary regulations are essentially the same as those in § 15.116 which regulate the operation of non-voice devices, except that the permitted field strength has been increased from 10,000 to 50,000 μV/m at 3m in response to the Gutzmer pleading. The text of these new regulations is set out in the Appendix.[9]

15. During this 3 year period, the cordless telephone equipment industry may petition the Commission to amend the rules to make special provisions for their devices. This must be accompanied by a positive showing why it is in the public interest to do so. Any such petition should be submitted promptly, but in no event later than 9 months after release of this order, to allow adequate time for normal rule making process. The industry is also put on notice that the Commission does not anticipate extending the temporary regulations adopted herein beyond the three years specified. Also, the industry is reminded that the responsibility is theirs and not the Commission's for making a showing that such rules are necessary and in the public interest. Such a determination has not been made here.

Petitions Re Restrictions in the 49 MHz Band

16. Radio Communications Co., Inc., (Radcom) another manufacturer of such cordless equipment, in its petition requests reconsideration of the requirement in § 15.118(d) that a device operating under the new provisions at 49 MHz must be completely self-contained with the antenna permanently attached and the microphone built into the box containing the device. Radcom states that they contemplate redesign of their system, which operates under the old provisions at 27 MHz, to use the new frequencies at 49 MHz. Although not explicitly stated, the petition implies that the restriction in § 15.118(d) would preclude their type of device, since the microphone which is in a telephone handset, is separated by a connecting wire from the box housing the transmitter. Whether the firm is able to produce a marketable system at 49 MHz is not clear from the petition.

17. In a similar vein, Mr. Bruce D. Ross, a private consultant, states that he is in the process of designing a cordless telephone equipment and that the new rules, particularly § 15.118(d), are unnecessary. Mr. Ross argues that there are man configurations and services that should be allowed, but are presently excluded by the built-in microphone and no remote control rule. Most of these, he states, could be used in commercial applications; such as, desk top sets with microphones or handsets on cords, wall mounted sets with handsets, fork truck, scooter, bicycle and hard hat mounted units for use inside factories and construction sites, telephone operator type headsets. If the intent of the requirement is curtailment of the range by preventing the device to be mounted on tall poles, this can be accomplished by more direct rules, he argues. He also recommends that prohibition of remote operation, restrictions on modulation and channel specfications be deleted. No justification is provided for these recommendations.

18. With respect to the self-contained restriction in § 15.118, the Commission agrees, in part with Radcom and Mr. Ross that a requirement for a built-in microphone would preclude many types of useful devices. The intent of this restriction is to insure that the radiated signal from the device, hence its interference potential, is not increased by attachment of external antennae and microphones. Since this can be accomplished by limiting the microphone cable length and by requiring the device be tested with the permanently attached microphone cable orientated so as to produce maximum radiation, we are revising this restriction accordingly.

Barrett Petition for Additional Radio Control Frequencies

19. Barrett Electronics Corporation, in their petition, states that the rule changes in this proceeding will preclude a material handling equipment that they have been manufacturing and marketing to the grocery industry for over 20 years. The system they are producing is described as a radio remote controlled tractor-trailer train which is used by wholesale grocery warehouses for order selections. The train operator wearing a small transmitter on his belt controls the tractor from the various positions adjacent to the vehicle as he finishes each loading operation.

20. To insure that each operator controls only his particular tractor, Barrett designs each system (transmitter-tractor combination) to operate on a separate frequency and have a range of approximately 30 feet. Because some warehouses utilize up to 50 trains, 50 separate frequencies are used with the present equipment operating under the interim provisions of Section 15.115 of the rules with a 5 kHz spacing between each channnel over the entire band, 26.97–27.27. The petition states that this type of operation is obviously not feasible on the 5 channels at 49 MHz, nor is it on the 6 channels in the 27 MHz under the new provisions. Electronic schemes to reduce the number of channels, such as time division or synchronous operation, Barrett claims have not proved feasible. Redesigning the equipment to operate in the licensed Business Radio Service is also not acceptable, because of the limited number of channels available, Barrett asserts. Distributing the system over all bands available, licensed or unlicensed is costly and entirely unsatisfactory to the petitioner. Barrett concludes by requesting that instead of the present unlicensed operation anywhere in the CB band, licensed low power (100 milliwatts) limited bandwidth operation be allowed, with 5 kHz spacing throughout the entire 26.97–27.27 MHz band.

21. Barrett's request for a number of frequencies spaced 5 kHz apart over the entire CB band to provide for the licensed operation of remote control devices is outside the scope of this proceeding. To accomplish this, a new rule making proceeding must be initiated to amend the present rules to make additional frequencies available for remote control operation in the 27 MHz band. However, it is not apparent that new rules are necessary in this instance, since the present rules appear to accommodate the type of operation described by Barrett. For instance, a transmitter licensed for use in the Business Radio Service under Part 91 of the rules with an output power of 200 milliwatts may operate on almost any frequency allocated for use in the Business Radio Service with minimum technical restrictions. Eligibility requirements for licensing in this service are minimal and certainly within the realm of most small businesses. A second possibility in the Business Radio Service is use of the offset frequencies at 450–470 MHz (band).

22. Notwithstanding these alternatives, there are eleven frequencies available for remote operation without an individual license at 27 MHz and 49 MHz,[11] provided the device complies with both the technical and certification requirements of Subpart D of Part 15 of FCC Rules. A suitable coding scheme, similar to the type used by most door opener controls, could accommodate several controllers on each frequency.

Extension of Interim Requirements

23. The rules adopted in this proceeding allow a 7 year period for amortization of devices operating in the 27 MHz band under the previous provisions in Part 15. Manufacture and marketing must cease March 18, 1977 and March 18, 1978, respectively. Inasmuch as several petitioners must modify their present equipment in accordance with the rules appended hereto, the Commission is extending the 7 year amortization period under the interim provisions in Section 15.115 for an additional six months. This is to allow these manufacturers the time needed to produce equipment under these modified requirements.

24. In view of the foregoing, the Commission finds that it is in the public interest to amend Section 15.118(e), in the manner described herein, to extend the date for manufacturing low power communication devices in the CB Band for six months, and to permit continued manufacture of cordless telephone terminal devices under restricted conditions for a period of 3 years, pursuant to the discussion in paragraph 12 above. Pursuant to the authority contained in Section 4(i), 302 and 303(r) of the Communications Act of 1934, as amended *it is ordered*, That effective February 28, 1977, Part 15 is amended as set forth below.

25. *It is further ordered*, That to the extent indicated above, the subject petitions are granted and in all other respects, denied.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082. Sec. 302, 82 Stat., 290; 47 U.S.C. 154, 302, 303.)

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS,
Secretary

Part 15 is amended as follows:

1. A new § 15.114 is added to read as follows:

§ 15.114 Interim requirements for cordless telephone terminal devices operating between 26.97–27.2 MHz.

A low power communication device used as a cordless telephone terminal device that complies with all the requirements of paragraphs (a) through (i) may be operated until January 1, 1986. Manufacture, importation and marketing of such a device shall cease January 1, 1980, April 1, 1980 and January 1 1981, respectively.

(a) The device may only be used as a cordless telephone terminal device.

(b) The device shall operate on one or more of the following frequencies:

26.995 MHz	27.145 MHz
27.045 MHz	27.195 MHz
27.095 MHz	27.255 MHz

(c) Frequency tolerance of carrier: ±0.01%. This tolerance shall be maintained for a temperature variation of −20° to +50°C at normal supply voltage and for a variation in the primary supply from 85% to 115% of the rated supply voltage at a temperature of 20°C.

(d) The authorized band shall be 20 kHz centered on the frequencies listed in paragraph (b) of this section.

(e) Emissions within the authorized band shall not exceed 50,000 μV/m when measured at 3 meters in accordance with a procedure approved by the Commission.

(f) Emissions between 10 kHz and 50 kHz from the carrier frequency shall not exceed 1000 μV/m at 3 meters.

(g) Emissions greater than 50 kHz from the carrier frequency shall not exceed 300 μV/m at 3 meters. The spectrum shall be scanned from 10 kHz to 1000 MHz and all emissions from the device shall be scanned from 10 kHz to 100 MHz exceeding 30 μV/m at 3 meters shall be reported.

(h) If the device is designed to operate from commercial power lines, the RF energy fed back into the power lines shall not exceed 100 microvolts on any frequency below 25 MHz when measured in accordance with the procedure in IEEE Standard 213 (See § 15.75 of this Part).

(i) The device shall be registered pursuant to the procedures in Subpart L of Part 2 of this Chapter demonstrating that the device complies with the requirements in Part 68 of this Chapter.

2. The headnote and introductory text of § 15.115 are revised to read as follows:

§ 15.115 Interim requirements for operation between 26.97–27.27 MHz.

A low power communications device complying with all the provisions of par-

[7] Presently these aystems operate under the provision in § 15.7 of the rules, which limits the radiated energy from the system to 15 μV/m at a distance of $\lambda/2\pi$. The Notice of Proposed Rule Making in FCC Docket No. 20780 (41 FR 17938) proposed to revise § 15.7. If revised as proposed the subject systems would be redefined as a low power communication device.

[8] See paragraph 3, supra.

[9] Although there are no requirements on the receiver part of these systems at present, this is subject to change in another rule making proceeding in FCC Docket No. 20746 (41 FR 13375, 58 FCC 2nd 5, page 839).

[10] Inasmuch as cordless phones are attached to the telephone network, they must be separately registered with the Commission pursuant to Part 68 and Subpart L of Part 2 of FCC Rules.

[11] Six frequencies are available to non-voice operation at 27 MHz and five frequencies at 49 MHz making a total of 11 frequencies available under Part 15 for remote operation.

agraphs (a) through (d) of this section may be operated until September 18, 1983. Manufacture and importation of such a device shall cease September 18, 1977 and October 18, 1977, respectively. Applications for certification of such a device will not be accepted by the Commission after June 18, 1977. Marketing of such a device shall be terminated not later than September 18, 1978.

* * * * *

3. Paragraph (e) of § 15.118 is revised to read as follows:

§ 15.118 Technical Specifications for the band 49.82–49.90 MHz.

* * * * *

(e) The device shall, with the exception of the microphone, be completely self-contained with the antenna permanently attached to the enclosure containing the device. The microphone may be external to the device, provided it is permanently attached to the enclosure with a cable not longer than 1.5 meters.

* * * * *

4. Paragraph (d) of § 15.119 is revised to read as follows:

§ 15.119 Alternative technical specifications for the band 49.82–49.90 MHz.

* * * * *

(d) The device shall, with the exception of the microphone, be completely self-contained with the antenna permanently attached to the enclosure containing the device. The microphone may be external to the device, provided it is permanently attached to the enclosure with a cable not longer than 1.5 meters.

* * * * *

[FR Doc.77-2339 Filed 1-24-77;8:45 am]

Title 49—Transportation

CHAPTER II—FEDERAL RAILROAD ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[FRA Docket No. HS-4, Notice No. 6]

HOURS OF SERVICE ACT

Signal Service: Interim Statement of Agency Policy and Interpretation

On September 28, 1976, the Federal Railroad Administration (FRA) published in the FEDERAL REGISTER a proposed statement of agency policy and interpretation concerning the Hours of Service Act, as amended (45 U.S.C. 61–64b; hereinafter "Act") (41 FR 42692). Public comments were requested to be submitted by October 29, 1976. Subsequent notices extended the comment period through December 7, 1976 (see 41 FR 48163, November 2, 1976; 41 FR 52351, November 29, 1976; 41 FR 54047, December 7, 1976). FRA administers and enforces the Act under section 6(f)(3)(A) of the Department of Transportation Act (49 U.S.C. 1655(f)(3)(A)) and a delegation from the Secretary of Transportation (49 CFR 1.49(d)).

Having analyzed the comments received in light of the express purpose of the Act, its legislative history, case law, and prior administrative interpretations, FRA has decided to issue interim interpretations concerning the limitations on hours of service of individuals engaged in installing, repairing or maintaining signal systems (section 3A of the Act). A final statement of policy and interpretation addressing the balance of the statute will be published in the very near future.

Eleven individuals or organizations submitted comments on the segment of the proposed statement dealing with signal service. A joint submission by the organization representing the great majority of common carriers by railroad and the principal labor union representing employees affected by section 3A of the Act was particularly helpful. FRA has adopted much of the substance of that joint submission in preparing the interim interpretations. Other comments have been considered and incorporated to the extent appropriate.

The interim interpretations set forth below are designed to implement safety policy considerations within the framework of the Act, guarding against excessive periods of work while permitting enough flexibility to assure that systems vital to the safety and efficiency of rail transportation are properly maintained. FRA is issuing interim interpretations at this time because of the complexity of the administrative problems involved in applying the amended statute to the variety of factual situations possible. These interpretations may be modified as knowledge is gained of the various practical situations that may arise under the Act. This will permit FRA to assess the actual application of the Act to persons in signal service. If it becomes evident that the intent of the Act is not achieved by these interpretations, then FRA may be required to issue interpretations based on a more strict reading of the statute.

In making their joint submission, industry and labor representatives noted their intention to seek legislative action to address possible deficiencies in the Act and clarify its intended application. FRA has been mindful of the likelihood of such action in preparing these interim interpretations.

Covered service. Six commenters addressed the issue of the scope of covered signal service. One commenter urged that all maintenance of way employees have a role in the installation, maintenance or repair of signal systems and that a tired or fatigued person working any place on the signal system is a danger to the integrity of the entire system. An organization representing electrical workers detailed the tasks which are the responsibility of its members on some railroads but which are listed in the legislative history as duties of "signalmen". The commenter objected to the use of the term "signalman" to identify members of other crafts and concluded by arguing that the Act should be construed to apply only to such tasks as are uniformly assigned to the signal craft on all railroads across the country.

FRA is convinced by the language of the legislative history and the stated purpose of the Hours of Service Act that the proper benchmark for application of the Act must be found in the relationship of the particular function or service to the safety of the devices and systems which Congress deemed to fall under the general rubric of "signal systems". That is, covered service cannot be defined by reference to the craft which owns the contractual right to a particular task on one or more railroads. Rather, the focus must be safety of railroad operations as it is affected by the readiness of individuals who work on the identified devices and systems. Therefore, the discussion of covered service which appears in the interim interpretations is substantially unchanged from the discussion in the notice of interpretations. A commenter has noted that, through inadvertent error, the words "train control and cab signal systems, interlocking systems" were omitted from the quotation taken from House Report 94–1166. The quotation has been corrected in the present document.

Two commenters urged that the construction of signal systems should be distinguished from the "installation" of signal systems. The commenters believe that the latter term should be read to mean "activation". No basis appears in the legislative history for making such a distinction. While it is true that normal testing procedures should limit potential hazards deriving from defects in construction, Congress may well have assumed that some problems could go undetected as a result of faulty testing or that a lack of durability could be caused by poor workmanship. Indeed, the Committee on Interstate and Foreign Commerce of the House stated in its report on the legislation "A signalman who worked excessive hours in either the "construction" or maintenance of signal systems may make errors in the intricate wiring or adjustment of those devices which would circumvent the safety functions of the system." (Emphasis added.) H.R. Rep. No. 94–1166 (1976) at page 13. Two commenters stressed the use of subsequent component tests as a basis for excluding work done in carrier signal shops from the coverage of the Act. Again, there would seem to be insufficient basis for distinguishing between repairs on components in the field and repairs effected in a carrier shop. One commenter would exclude testing and inspection functions from covered service. FRA believes that testing and inspection are an important and integral part of overall system maintenance.

Limitations on hours. One commenter suggested that the text point out more strongly that a new 24-hour period may begin after any 8-hour period of release. Additional examples have been added which point out this fact.

Duty time. Perhaps the most difficult problem posed by the general language of section 3A of the Act is the definition of time on duty. Individuals who work on signal systems often spend much of their compensated time traveling for the carrier's purposes. Since such travel inevitably adds to fatigue and detracts from time available for rest, and since the provision on commingled service contemplates that noncovered service will

normally be counted with covered service in computing total time on duty, clearly time spent in transportation before covered service and enroute between work sites must be recognized to be on-duty time. Similarly, travel from a work site to headquarters by on-track vehicle involves potential peril to train operations and to the individuals themselves and must be viewed as time on duty. However, as one commenter pointed out, highway travel back to the headquarters or residence after work is complete, by itself, involves no hazard to the safety of train operations. Further, travel to the residence (directly or via the headquarters) following a period of covered service closely resembles deadheading or a combination of deadheading and commuting.

As recommended in the joint industry/labor submission, FRA has revised the discussion and examples concerning travel time from the work site to the headquarters or residence outside the regular work day.

Both industry and employee representatives have urged that, while all travel time within regular assigned work hours should be acknowledged to be time on duty, time spent in transportation from a work site to the headquarters or residence outside regularly assigned hours should be treated neither as time on duty nor as time off duty. That is, the employee should be considered to have been "released" for purposes of the prohibition on excess service; but the employee would not be considered "off duty" for purposes of the required period of release of 8 or 10 hours. In the text below, FRA authorizes this treatment of transportation time following any period of covered or commingled service outside regularly scheduled hours. That is, during the next months FRA will not assert statutory penalties involving alleged violations where such time is used in computing excess service and no violation would exist absent the addition of such time. However, FRA will monitor implementation of this approach during the period these interim interpretations are under study.

Effective periods of release. Because many employees who work on signal systems perform overtime service outside their regularly assigned hours, and because the Act does not expressly articulate the requirements for effective periods of release, both FRA and the commenters have experienced difficulty in fashioning principles of general application concerning when time available for rest may be considered off-duty time and when the continuity of service is broken. The question of continuity is important because it may determine whether an employee is required to have 10 rather than 8 hours off following a period of 12 hours service. Obviously, any period considered off-duty time would not count toward the 12-hour maximum.

After review of all comments and in light of specific recommendations by representatives of the industry and affected employees, FRA has decided to modify its position on periods of release. It has been determined that regularly assigned meal periods should be treated as off-duty time but should not be viewed as interrupting the essential continuity of service. Similarly, other periods of release during which the employee is entirely free of responsibilities to the carrier are treated as off-duty time. However, only periods of 1 hour or more would be recognized as effective breaks in the continuity of service.

One commenter urged that transportation time to or from a food service facility should not be counted as time on duty. While FRA believes that a strong case can be made that such time, which is expended in part for the convenience of the carrier, should be treated as on-duty time, FRA recognizes that such a view may be impractical as applied in many situations. Thus, where the employee has the option to eat his lunch at the site (by use of a lunch box or other arrangement), the entire meal period may be treated as time off duty.

It should be stressed that, with the exception of assigned meal periods, all compensated time during a scheduled work tour is considered time on duty. A carrier may not stretch the permitted 12-hour work period by creating breaks in a regular work day which do not afford meaningful periods of relaxation.

Emergencies. Several commenters seriously questioned the proposed interpretation of the special emergency provision for signal service and urged a more liberal reading of the statute. The commenters noted, for instance, that there may be no way in many instances to ascertain whether a false restrictive indication involves a hazard to train operations without first calling a signal maintainer to investigate the situation.

FRA appreciates that the section 3A(f) "emergency situation" is a broader concept than the section 5(d) "casualty or unavoidable accident or * * * act of God". That is, an emergency permitting service up to 16 hours may be a less extraordinary event than an act of God permitting service in excess of 16 hours. By the same token, FRA is concerned that the exception not be read in a way which will largely consume the rule.

The joint submission of industry and employee representatives implicity recognized that many potential safety problems associated with false restrictive conditions and device malfunctions may be eliminated through temporary measures such as operation at restricted speed; but the submission noted that certain other conditions might produce service disruptions or secondary safety problems rising to the level of emergencies. The text below reflects an FRA determination that conditions producing material disruptions of service may be legitimate emergencies within section 3A(f).

As noted above, FRA has decided to issue the interpretations which appear below as operative interim interpretations pending review of their effectiveness in carrying out the statutory design and purpose. Therefore, FRA hereby reopens for comment its Docket No. HS–4 on an indefinite basis and invites further public comment on the proper application of section 3A of the Act. FRA will publish a notice in the future renewing the invitation for comments and setting a date for closing of the comment period.

Comments should refer to Docket No. HS–4 and should be submitted in triplicate to the Docket Clerk Office of Chief Counsel (RCC–1), Federal Railroad Administration, 400 7th Street, SW., Washington, D.C. 20590.

In consideration of the foregoing, the following statement constitutes the policy of FRA concerning the administration and enforcement of section 3A of the Hours of Service Act, as amended (45 U.S.C. 63a), and is effective on January 25, 1977. This statement should be read in conjunction with the final statement of policy on the balance of the statute, including general provisions, which will be published in the very near future.

INTERIM STATEMENT OF AGENCY POLICY AND INTERPRETATION: SECTION 3A OF THE HOURS OF SERVICE ACT

(Act of March 4, 1907, 34 Stat. 1415, as amended (45 U.S.C. 61–64b); sec. 6(f)(3)(A) of Pub. L. 89–670, 80 Stat. 940 (49 U.S.C. 1655(f)(3)(A)); § 1.49(d) of the Regulations of the Secretary of Transportation (49 CFR 1.49(d).)

The discussion below describes the policy of the Federal Railroad Administration (FRA) concerning the administration and enforcement of section 3A of the Hours of Service Act (45 U.S.C. 63a). Section 3A establishes maximum hours of service and required periods of release for individuals employed by common carriers who are engaged in installing, repairing or maintaining signal systems.

Section 3A was added to the Act by section 4(d) of the Federal Railroad Safety Authorization Act of 1976, Pub. L. No. 94–348, 90 Stat. 819. This amendment became effective July 8, 1976.

COVERED SERVICE

The legislative history of section 3A establishes that Congress intended to make subject to the Act all those persons who work on "signal systems," and that this term was meant to refer to a variety of technologies bearing on the safety of railroad operations. The House committee report on the 1976 amendments contains the following statement, which was repeated on the Senate floor during the debate on passage in that body and which sets forth the congressional understanding of the term "signal systems":

The duties of signalmen encompass the construction, installation, repair, maintenance, testing and inspection of signal systems. These signal systems include automatic block signal systems, traffic control systems, train stop, train control and cab signal systems, interlocking systems, railhighway grade crossing protection, automatic classification yards, hot box detectors, broken

flange detectors, and other similar devices, appliances and systems. H.R. Rep. No. 94–1166 (1976) at pg. 12. See 122 Cong. Rec. S 10376 (daily ed. June 24, 1976).

This explanation of the language of the statute stands as the basic guide to the types of duties covered by this amendment. The reference to "automatic classification yards" is to retarder mechanisms and related control systems.

On many railroads certain of the functions described by Congress as relating to signal systems are performed by persons who are assigned to other departments within the carrier's organization, persons who may not be affiliated with the labor union which represents "signalmen" as that term is commonly employed. It is neither practical nor realistic to vary the application of the Act from one railroad to another, based on which craft has the contractual right to particular work of the individual carrier. Thus, the only reasonable construction of the statute in light of the legislative purpose is that any employee who performs work on one or more of the enumerated systems during a twenty-four hour period is covered by and subject to the Act. In the discussion below, individuals covered by the statute are referred to as "signalmen" for purposes of convenience only. That term is meant to include all individuals engaged in installing, repairing or maintaining signal systems.

It should be noted that certain related work will have such a minimal relation to traditional signal duties as to put it outside the scope of covered service. For instance, an individual responsible for track maintenance whose only signal-related work is the replacement of insulation at rail joints would not be covered by the Act.

In keeping with the functional approach of the Act, employees are subject to the Act only if they perform covered service. Work in the nature of digging ditches into which signal cables are to be laid, putting up poles (without installing signal lines), and driving signal department vehicles is not covered service under the Act. Of course, if an individual performing non-covered service also engages in covered service during the twenty-four hour period, then the individual will be subject to the Act with respect to "on-duty" time and required off-duty periods.

LIMITATIONS ON HOURS

No individual employed by a common carrier in installing, repairing or maintaining signal systems may be required or permitted to work in excess of twelve continuous hours. After working twelve continuous hours, an individual must be given at least ten consecutive hours off duty before being permitted to return to work.

No individual engaged in covered work may be required or permitted to continue on duty or go on duty unless he has had "at least eight consecutive hours off duty within the preceding twenty-four hours." The clear spirit and intent of the quoted language lead to the conclusions that:

(1) When the time on duty is broken or interrupted by off-duty periods of less than 8 consecutive hours, the individual may be on duty up to a maximum of 12 hours during a 24 hour period, so long as such individual has had a statutory off-duty period of at least 8 or 10 consecutive hours immediately prior to reporting for work.

(2) After completing the 12 hours of broken duty, or at the end of the 24 hour period, whichever occurs first, the employee may not be required or permitted to continue on duty or to go on duty until he has had at least 8 consecutive hours off duty.

(3) The 24-hour period referred to in paragraphs 1 and 2 above shall begin when an employee reports for work immediately after his having had a statutory off-duty period of 8 or 10 hours.

The provision on emergencies, discussed below, may extend the permissible time on duty referred to above.

The following examples illustrate the effect of the limitations on hours of service in situations similar to those likely to be encountered on many railroads. For simplicity, the examples assume no regularly assigned meal periods during the stated hours, no emergencies, and no travel time. As used throughout these interim interpretations, "regular duty tour" refers to any scheduled period of service. It is to be distinguished from trouble calls, when the employee is called without prior warning to perform a particular task.

EXAMPLE A

Facts: Regular duty tour, 7:00 a.m.–3:00 p.m. (8 hours). Trouble call, 10:00 p.m.–1:00 a.m. (3 hours).

Effect of law: The individual may not return to his regular job until 9:00 a.m., since he must have 8 consecutive hours off duty before commencing a new 24-hour period. (Note that the individual had not had 8 consecutive hours off duty between his release at 3:00 p.m. and the trouble call). On these facts the employee could take a short trouble call if he could complete it by 7:00 a.m. However, if he returned home at 7:00 a.m., he could not return to work before 3:00 p.m.

EXAMPLE B

Facts: Regular duty tour, 7:00 a.m.–3:00 p.m. (8 hours). Trouble call, 11:00 p.m.–1:00 a.m. (2 hours).

Effect of law: The individual may return to work at 7:00 a.m., his normal starting time, since he did have 8 consecutive hours off duty prior to the 11:00 p.m. trouble call, which commenced a new 24-hour period. However, the individual would be limited to 10 hours of work, since he has already worked 2 hours in the new 24-hour period.

EXAMPLE C

Facts: Work, 7:00 a.m.–3:00 p.m. (8 hours). Off duty, 3:00 p.m.–11:00 p.m. (8 hours). Work, 11:00 p.m.–7:00 a.m. (8 hours). Off duty, 7:00 a.m.–3:00 p.m. (8 hours). Work, 3:00 p.m.–11:00 p.m. (8 hours).

Effect of law: No violation of law because a new 24-hour period commences when the employee reports for work after each 8-hour period off duty. At the end of the last 8-hour work period, the employee has an additional 4 hours that he may work in other than emergency service under the law during the 24-hour period which began at 3:00 p.m.

EXAMPLE D

Facts: Regular duty tour, 7:00 a.m.–3:00 p.m. (8 hours). Trouble call 1, 10:00 p.m.–12:00 midnight (2 hours). Trouble call 2, 5:00 a.m.–6:00 a.m. (1 hour).

Effect of law: The individual may not return to his regular duty tour until 2:00 p.m., since he must have 8 consecutive hours off duty before a new 24-hour period would commence. Note that on these facts the employee could take a short trouble call if he could complete it by 7:00 a.m. However, if he returned home at 7:00 a.m. he could not return to work before 3:00 p.m.

EXAMPLE E

Facts: Regular duty tour, 7:00 a.m.–3:00 p.m. (8 hours). Trouble call 1, 10:00 p.m.–12:00 midnight (2 hours). Trouble call 2, 6:00 a.m.

Effect of law: The individual must be released from duty at 7:00 a.m. since the 24-hour period which commenced at 7:00 a.m. the previous day has now expired. He must have 8 consecutive hours off duty before returning to work.

DUTY TIME

The Act provides that time on duty commences when an individual reports for duty and terminates when the individual is finally released from duty.

Uniform and consistent administration of the Act requires that a fixed, known standard be enunciated for the treatment of time spent in transportation for the carrier's purposes. FRA has determined that the following discussion fairly interprets the intent of the Act while providing objective standards applicable to most common situations. For purposes of the following, compensated travel time means time spent in transportation for the carrier's purposes, which is compensated by the employer.

1. *Commuting distinguished from travel for employer.* Normal commuting between the individual's residence and his normal "headquarters" or "regular reporting point" is not time on duty for any purpose. This principle applies only to commuting associated with a regular work day, irrespective of the method by which the employee commutes. By contrast, compensated travel time to an initial work site other than the individual's headquarters in connection with a regular work day is considered time on duty. Customarily, signal maintainers and other employees engaged in this work will report to headquarters before going to a work site on the line of railroad. However, in those instances where an employee is permitted to utilize some of his compensated time traveling directly from his residence to a work site where covered service is performed, that compensated time is counted as time on duty under the Act. It is administratively impracticable to distinguish between work sites which are relatively close to the residence and those distant from the residence.

Example 1–A. Signalman A operates out of a headquarters point to which he normally reports at the beginning of a regular work day. As a matter of personal preference, Signalman A chooses to live 1 hour's drive from headquarters. His transportation time between his home and the headquarters point at the beginning and end of the regular work day is counted as part of his required off-duty period of 8 or 10 hours.

Example 1–B. Signalman A, whose regular work day begins at 7:00 a.m., goes directly to a work site on a given day instead of reporting to headquarters. Signalman A leaves his home at 6:30 a.m. and drives to the work site, arriving at 7:45 a.m. He is paid from 7:00 a.m. until he goes off duty. Signalman A is on duty for purposes of the Act commencing at 7:00 a.m. It is immaterial whether he drove to the work site in his personal automobile or a carrier-provided truck.

2. *Transportation during and following regular work day.* All time spent in transportation during a regular work day is normally on-duty time. Time spent in non-rail transportation returning to headquarters or the individual's residence after the expiration of the regular work day is neither time on duty nor time off duty, even though such time may be paid for. Time spent in transportation by on-track vehicle is always time on duty.

Example 2–A. Signalman B reports to headquarters for a regular work day, 7:00 a.m.–3:00 p.m., and rides or drives to work site where covered service is performed, commencing at 7:40 a.m. He departs work site at 2:20 p.m. and rides or drives back to headquarters where he is relieved at 3:00 p.m. Signalman B has been on duty a total of 8 hours.

Example 2–B. Signalman B reports to headquarters for a regular work day, 7:00 a.m.–3:00 p.m., and rides or drives to work site where covered service is performed, commencing at 7:40 a.m. He departs work site at 3:00 p.m. and rides or drives back to headquarters where he is relieved at 3:40 p.m. Signalman B has been on duty a total of 8 hours from 7:00 a.m. to 3:00 p.m. Off-duty time commences at 3:40 p.m.

Example 2–C. Signalman B reports to headquarters for a regular work day, 7:00 a.m.–3:30 p.m., and rides or drives to work site where covered service is performed, commencing at 7:40 a.m. He departs work site at 2:50 p.m. and rides or drives back to headquarters where he is relieved at 3:30 p.m. Signalman B has been on duty a total of 8 hours from 7:00 a.m. until 3:00 p.m. Off-duty time commenced at 3:30 p.m.

Example 2–D. A signal gang travels to a work site remote from individual residences. The carrier houses the crew in a motel (or other facility), which is treated as the tie-up point for the gang. The gang has had a statutory off-duty period and departs the motel at 7:30 a.m. for a work site, works continuously until 7:30 p.m. and returns to the tie-up point arriving at 8:00 p.m. Members of the gang have been on duty for 12 hours for purposes of the Act and must have 10 consecutive hours off duty before returning to work. The travel time to the tie-up point from 7:30 p.m. to 8:00 p.m. is considered neither on-duty time nor off-duty time; consequently, the 10 consecutive hours off duty commenced on arrival at the tie-up point at 8:00 p.m.

3. *Trouble calls.* As a general rule, all compensated time from the time an individual receives a trouble call until he has completed the work for which he was called with be considered time on duty. Of course, this assumes the individual actually begins service for the carrier immediately and that there are no diversions for personal reasons. If an individual devotes only 2 hours to a call for which he receives 2 hours and 40 minutes pay under a collective bargaining agreement, only the actual time worked (2 hours) is counted for purposes of the Act. Travel time on return from an individual's work site to his headquarters or his home outside his assigned hours (except any part of said time performed in or on an on-track vehicle traveling on rails); prior to receiving an off-duty period, is not counted as either off-duty time or on-duty time.

Example 3–A. Signalman C, after returning home following a regular work day of 8 hours, receives a trouble call at 10:00 p.m. The work location is some distance from his residence. Signalman C immediately puts on work clothing and departs for the work site and completes repairs by 11:30 p.m. He arrives home at midnight having consumed 30 minutes on the return trip. He has been on duty 9½ hours (8 plus 1½ hours). His off-duty time began at 12:00 midnight, when he returned home and had an opportunity for meaningful rest.

Example 3–B. Signalman C, after returning home following a regular work day of 8 hours, receives a trouble call at 10:00 p.m. The work location is some distance from his residence. Signalman C immediately puts on work clothing and departs for his headquarters and takes an on-track vehicle and drives it over the rails to the work site. He completes repairs by 11:30 p.m. He arrives at his headquarters at midnight after driving the on-track vehicle over the rails, having consumed 30 minutes on the return trip. Taking a direct route, he arrives home at 12:15 a.m. Signalman C was on duty until his arrival at headquarters at midnight. If Signalman C is compensated in some way for the drive to his residence, then the period from 12:00 to 12:15 a.m. is counted neither as on-duty time nor as off-duty time.

As a general rule, on-duty time ceases with the employee's release. (Where travel prior to the end of the work day is involved, see paragraph 2 above.) With respect to trouble calls, on-duty time ceases with completion of the work (paragraph 3 above). On-duty time begins again at the commencement of the employee's next regular work day or with the receipt of a trouble call (paragraph 3 above).

EFFECTIVE PERIODS OF RELEASE

In order to qualify as off-duty time, a period of release must provide a meaningful opportunity for relaxation. In addition, the employee must be free of all responsibilities to the carrier, including any duty to remain at a particular location.

Because of the unique characteristics of signal service, regularly assigned meal periods are not computed as on-duty time but do not break the continuity of service. This is true regardless of the duration of the meal period. Thus, service through a scheduled work tour is deemed to be continuous for purposes of the 10-hour release requirement if the only non-duty period is a regularly assigned meal period. Of course, the 10-hour release requirement would come into play only if the continuous service (less the meal period) totaled 12 hours.

EXAMPLE A

Facts: Regular duty tour, 7:00 a.m.–12:00 noon. Assigned meal period, 12:00 noon–12:30 p.m. Regular duty tour continued, 12:30–3:30 p.m. Additional service, 3:30–7:30 p.m.

Effect of law: The individual has worked 12 continuous hours and must be afforded 10 consecutive hours off duty.

EXAMPLE B

Facts: Regular duty tour, 7:00 a.m.–12:00 noon. Assigned meal period, 12:00 noon–12:30 p.m. Regular duty tour continued, 12:30–3:30 p.m. Trouble call, 4:30 p.m.–8:30 p.m.

Effect of law: The individual has worked a total of 12 hours in broken service and must be afforded 8 consecutive hours off duty before being permitted to return to work.

All other non-duty periods of less than one hour during which there is an opportunity for relaxation and during which the individual is free of responsibilities to the carrier are excepted from the computation of on-duty time. However, such periods of less than one hour are not deemed to interrupt the continuity of service. Conversely, periods, of one hour or more which are available for rest and during which the individual is free of responsibilities are considered off-duty time and do break the continuity of service.

EXAMPLE C

Facts: Regular duty tour, 7:00 a.m.–12 noon. Assigned meal period, 12:00 noon–1:00 p.m. Regular duty tour continued, 1:00–4:00 p.m. Trouble call, 4:30 p.m.–8:30 p.m. Travel on return from trouble call, 8:30 p.m.–9:00 p.m.

Effect of law: The individual has been on duty 12 continuous hours (5+3+4) and must receive 10 consecutive hours off duty. The 30-minute period between the close of the scheduled duty tour and the trouble call is not counted toward time on duty but does not interrupt the essential continuity of service. The off-duty period begins at 9:00 p.m.

EXAMPLE D

Facts: Scheduled duty tour, 7:00 a.m.–12:00 noon. Assigned meal period, 12:00 noon–12:30 p.m. Scheduled duty tour continued, 12:30 p.m.–3:30 p.m. Trouble call, 5:30 p.m.–9:30 p.m. Travel on return from trouble call, 9:30 p.m.–10:00 p.m.

Effect of law: The individual has been on duty 12 hours in broken service (5+3+4) and must receive 8 consecutive hours off duty. The off-duty period begins to run at 10:00 p.m.

EMERGENCIES

Section 3A(f) of the Act provides that an individual engaged in installing, repairing, or maintaining signal systems may work up to 4 additional hours within a 24-hour period when an actual emergency exists and the work of the individual is related to such emergency. This means that during an ongoing emergency the individual may work up to 16 hours consecutively or in the aggregate. An emergency ceases to exist when the signal systems are restored to service.

An emergency for purposes of signal service is considered to be any condition causing a material disruption of service or constituting a significant safety hazard. Examples of emergencies include (1) false proceed indications, (2) malfunctioning grade crossing protection devices, and (3) false restrictive conditions that materially disrupt service or which may cause a significant safety hazard. An emergency is to be distinguished from an extraordinary event under section 5(d) of the Act which may render the limitations of the Act inapplicable. For instance, an unusually severe ice storm might rise above an emergency and qualify as an "act of God" permitting service in excess of 16 hours. However, judicial pronouncements on section 5(d) have made it clear that, even in the presence of an "act of God" or other extraordinary event the carrier must employ due diligence to avoid or limit excess service.

It is important to remember that the existence of a bona fide emergency does not excuse the failure to provide a proper off-duty period after the emergency is over. In addition, the existence of a continuing emergency will not always justify working an employee a full 16 hours.

Consider the following:

EXAMPLE

Facts: Work: 7:00 a.m.–3:00 p.m. (8 hours). Trouble call 10:00 p.m.–12:00 midnight (2 hours). Emergency call (valid continuing emergency) 3:00 a.m.

Effect of law: The individual must be released for 8 hours off duty not later than 7:00 a.m., even though at that time he has worked only 14 hours total. The reason for this is that the 24 hour period which commenced at 7:00 a.m. the previous day has now expired.

NOTE.—These interim interpretations should be read in conjunction with the final statement of agency policy and interpretation on the balance of the Hours of Service Act which will be issued in the very near future.

Issued at Washington, D.C., on January 18, 1977.

ASAPH H. HALL,
Administrator.

[FR Doc.77-2197 Filed 1-24-77;8:45 am]

CHAPTER X—INTERSTATE COMMERCE COMMISSION

SUBCHAPTER A—GENERAL RULES AND REGULATIONS

[Service Order No. 1256]

PART 1033—CAR SERVICE

The Baltimore and Ohio Railroad Co. and the Chesapeake and Ohio Railway Co. Authorized To Select Certain Cars of Coal To Be Unloaded by Port Coal Dumping Machines

At a Session of the Interstate Commerce Commission, Railroad Service Board, held in Washington, D.C., on the 17th day of January, 1977.

It appearing, that, there are massive accumulations of carloads of coal for transshipment by water awaiting unloading by the coal dumping machines of The Baltimore and Ohio Railroad Company (B&O) at its Curtis Bay coal piers at Baltimore, Maryland, and by The Chesapeake and Ohio Railway Company (C&O) at its coal piers at Newport News, Virginia; that because of extreme cold and high moisture content, many of these carloads of coal are so deeply frozen that they cannot be unloaded at rates in excess of five cars per hour; that other carloads of coal are available which are not so deeply frozen which can be unloaded without excessive delay for thawing and loosening; that the normal practice of the B&O and C&O is to unload cars on a sequential basis determined by the arrival of the vessel designated by the transshipper to receive the coal; that such practice results in excessive delays to cars of coal which are unfrozen or only partially frozen on arrival thereby causing these cars also to become deeply frozen; that the transshipment of coal from railroad cars to vessels has been drastically reduced because of these conditions; that the B&O and C&O are unable to supply sufficient cars to coal mines, thereby forcing some mines to close or severely to curtail operations resulting in the unemployment of coal miners, railroad employees and others engaged in the mining and transporting of coal; that several thousand carloads of coal awaiting movement are being stored at points as far distant as 300 miles from the ports; that such practices are resulting in serious congestion and are interfering with the normal flows of other types of traffic; that the prompt unloading of coal less deeply frozen or unfrozen without regard to the normal sequence of unloading will enable the B&O and C&O to reduce the backlog of cars awaiting unloading, thereby making these cars available to shippers and reducing congestion at various points between the coal fields and the ports; that the severity of the operating and car supply problems caused by the continued attempt to unload frozen coal on the normal sequential basis requires immediate modification; that in the opinion of the Commission an emergency exists; that notice and public procedure herein are impracticable and contrary to the public interest; and that good cause exists for making this order effective upon less than thirty days' notice.

It is ordered, That:

§ 1033.1256 The Baltimore and Ohio Railroad Company and the Chesapeake and Ohio Railway Company authorized to select certain cars of coal to be unloaded by port coal dumping machines.

(a) The Baltimore and Ohio Railroad Company (B&O) and The Chesapeake and Ohio Railway Company (C&O), be, and they are hereby, authorized to select for unloading by the coal dumping machines of the B&O at Curtis Bay, Baltimore, Maryland, and by the coal dumping machines of the C&O at Newport News, Virginia, carloads of coal consigned to such ports for transshipment to vessels, which, in the judgment of the carrier, may be unloaded more promptly than other carloads of coal which are more deeply frozen regardless of the normal sequence of unloading.

(b) *Application.* The provisions of this order shall apply to intrastate, interstate, and foreign traffic.

(c) *Effective date.* This order shall become effective at 12:01 a.m., January 19, 1977.

(d) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., February 28, 1977.

(Secs. 1, 12, 15, and 17(2), 24 Stat. 379, 383, 384, as amended; 49 U.S.C. 1, 12, 15, and 17(2). Interprets or applies Secs. 1(10–17), 15(4), and 17(2), 40 Stat. 101, as amended, 54 Stat. 911; 49 U.S.C. 1(10–17), 15(4), and 17(2).)

It is further ordered, That copies of this order shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association; and that notice of this order shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing it with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members Joel E. Burns, Lewis R. Teeple, and Thomas J. Byrne.

ROBERT L. OSWALD,
Secretary.

[FR Doc.77-2345 Filed 1-24-77;8:45 am]

Title 50—Wildlife and Fisheries

CHAPTER II—NATIONAL MARINE FISHERIES SERVICE, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT OF COMMERCE

PART 263—UNITED STATES STANDARDS FOR GRADES OF FISH FILLETS

Subpart A—United States General Standards for Fish Fillets

The National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), proposes to issue interim regulations to amend Title 50, Code of Federal Regulations, by the addition of a new Subpart A to Part 263. The purpose of this proposed amendment is to issue U.S. general standards for grades of fish fillets.

The scope of the proposed general standards cover fresh or frozen fish fillets of any commercial marine or fresh water species except those fillets covered by specific U.S. Standards for Grades as follows:

PART 263

Subpart B—U.S. Standards for Grades of Cod Fillets
Subpart C—U.S. Standards for Grades of Flounder and Sole Fillets
Subpart D—U.S. Standards for Grades of Haddock Fillets
Subpart E—U.S. Standards for Grades of Ocean Perch and Pacific Ocean Perch Fillets

The intent of the proposed general standards is to allow for the systematic differentiation of the quality of fish fillets into three categories, U.S. Grades A, B, and C, and subsequently to permit identification of such quality levels on the product or product label for the benefit of the consumer and the industry.

Issuance of general standards is expected to facilitate trade in fish fillets of all commercial species, not just those currently covered by specific standards. This will allow consumers to select purchases of any fish fillet on the basis of identified quality.

It is the policy of the Department of Commerce, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions, or objections with respect to the proposed amendments on or before February 28, 1977, to the Director, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C. 20235.

Because of the high level of interest expressed for the availability of this document, NMFS intends to allow the use of the proposed interim general standards for fish fillets in its voluntary program of fishery products inspection and certification commencing on January 25, 1977.

The amendments are proposed pursuant to 16 U.S.C. 742e; D.O.O. 25–5A, subsection 3.01 K(A); and D.O.O. 25–5B, section 12.

Accordingly, Title 50 Chapter II, Part 263 of the Code of Federal Regulations is hereby proposed to be amended by the addition of a new Subpart A to read as follows:

Subpart A—U.S. General Standards for Grades of Fish Fillets

Sec.
263.101 Scope and product description.
263.102 Product forms.
263.103 Grades.
263.104 Grade determination.

AUTHORITY: 16 U.S.C. 742e; D.O.O. 25–5A, subsection 3.01K(A); and D.O.O. 25–5B, section 12.

Subpart A—U.S. General Standards for Grades of Fish Fillets

§ 263.101 Scope and product description.

This standard shall apply to fillets of fish that are fresh or frozen of any species suitable for use as human food and processed and maintained in accordance with good manufacturing procedures. It does not apply to products covered by Subparts B, C, D, and E of Part 263. Fillets are slices of fish of irregular size and shape which are removed from the carcass by cuts made parallel to the backbone and sections of such fillets cut so as to facilitate packing.

§ 263.102 Product forms.

(a) *Types.*
(1) Fresh.
(2) Frozen individually (IQF); glazed or unglazed.
(3) Frozen solid packs; glazed or unglazed.
(b) *Styles.* (1) Single.
(i) Skin-on.
(ii) Skin-on scaled.
(iii) Skin-on (white side only).[1]
(iv) Skin-off (skinless).
(2) Butterfly.

The fillets may be labeled as boneless, provided that boning has been completed.

§ 263.103 Grades.

(a) U.S. Grade A. Fish fillets shall (1) Possess good flavor and odor characteristic of the species and
(2) Comply with the limits for defects for U.S. Grade A quality as outlined in § 263.104.

(b) U.S. Grade B Fish fillets shall. (1) Possess reasonably good flavor and odor characteristic of the species and
(2) Comply with the limits for defects for U.S. Grade B quality in accordance with § 263.104.

(c) U.S. Grade C. Fish fillets shall. (1) Possess minimal acceptable flavor and odor characteristic of the species with no objectionable off-flavors or off-odors and
(2) Exceed the limits for defects for U.S. Grade B quality in accordance with § 263.104.

§ 263.104 Grade determination.

(a) *Procedures for grade determination.* The grade shall be determined by evaluating the product in the frozen, and/or thawed, and cooked states. Each defect is classified as to its relative severity as minor, major, or serious in accordance with paragraphs (d), (e), and (f) of this section. Odor and flavor are evaluated in accordance with paragraph (c) of this section. Tolerance for the various defects is set for each grade classification according to group species.

(b) *Sampling.* Sampling is to be done in accordance with the Regulations Governing Processed Fishery Products, Title 50, Chapter II, Subchapter G, § 260.61, Tables II or V, where applicable. When sampling for Military procurement, sampling shall be in accordance to Military Standard 105. The sample unit shall be the container and its entire contents for containers up to 10 pounds. A representative 3 pound sample unit for containers over 10 pounds shall be used.

(c) *Evaluation of flavor and odor.* (1) Evaluation of flavor and odor on each of the sample units shall be carried out only by those trained to do so. For evaluation of the odor of raw fillets the thawed fillets should be broken and the broken flesh held close to the nose immediately to detect off odor.

(2) If raw odor evaluation indicates any non-characteristic and/or off-odors, the sample unit or parts thereof shall be cooked by any of the following methods for verification of results of raw odor evaluation:

(i) Baked method. Package the product in aluminum foil. Place the packaged product on a flat cookie sheet or shallow flat-bottom pan of sufficient size so that the packages can be evenly spread on the sheet or pan. Place the pan and frozen contents in a properly ventilated oven preheated to 400° F until the internal temperature of the product reaches 160° F.

(ii) Boil in bag method. Insert the thawed unseasoned sample into a boilable film-type pouch. Fold open end of the pouch over a suspension bar. Clamp in place to provide a loose seal after evacuating the air by immersing the pouch into boiling water. Cook the contents until the internal temperature of the product reaches 160° F.

(iii) Steam method. Wrap the sample in a single layer of aluminum foil and place on a wire rack suspended over boiling water in a covered container. Steam the packaged product until the internal temperature of the product reaches 160° F.

(d) *Examination for physical defects.* Each sample unit shall be examined for defects using the list of defect definitions that follow. Defects will be categorized as minor, major, and serious according to Table 1 of this standard.

(e) *Definition of defects in fillets.* (1) "Abnormal condition" means that the normal physical and/or chemical structure of the fish flesh has been sufficiently changed so that the usability and/or desirability of the flesh is adversely affected. It includes but is not limited to the following:

(i) Jellied—refers to the abnormal condition wherein a fish fillet is partly or wholly characterized by a gelatinous, glossy, translucent appearance.

(ii) Milky—refers to the abnormal condition wherein a fish fillet is partly or wholly characterized by a milky-white, excessively mushy, pasty, or fluidized appearance.

(iii) Chalky—refers to an abnormal condition wherein a fish fillet is partly or wholly characterized by a dry, chalky, granular appearance, and fiberglass structure.

The intensity of abnormal conditions is defined as follows:

(A) Moderate—refers to a condition that is distinctly noticeable but does not seriously affect the appearance, desirability, and/or the eating quality of the product.

(B) Excessive—refers to a condition which is both distinctly noticeable and seriously objectionable.

(2) Appearance defects—refers to the color of the fish flesh and to the degree of surface dehydration of the product.

(i) Color defects—refers to any readily discernable abnormal coloration including bruises, blood spots, browning, yellowing, and melanin spotting. Each square inch (6.5 cm^2) of affected area is counted as one instance as determined by a transparent grid of 1 inch squares.

The extent of appearance defects is defined as follows:

(A) Slight—2–4 instances.
(B) Moderate—5–6 instances.
(C) Excessive—over 6 instances.

(ii) Dehydration—refers to loss of moisture from fish fillet surfaces during frozen storage.

(A) Slight dehydration—is surface color masking affecting more than 5 percent of area which can be readily removed by scraping with a blunt instrument.

(B) Moderate dehydration—is deep color masking penetrating the flesh affecting less than 5 percent of area and requiring a knife or other sharp instrument to remove.

(C) Excessive dehydration—is deep color masking penetrating the flesh affecting more than 5 percent of area and requiring a knife or other sharp instrument to remove.

(3) Workmanship defects refers to (i) Cutting and trimming imperfections ragged edges, holes, tears, and improper or misplaced cuts. Each square inch (6.5 cm^2) of affected area is counted as one instance whether it is full or fractional. "Ragged edges" refers to the irregular or shredded appearance of the fillet edge.

(ii) Scales, fins, or pieces of fins or extraneous material.

(A) Scales (skin-off) scaled fillets—An occurrence of attached or loose scales in any sample unit up to 1 square inch (6.5 cm^2) is counted as one instance. Each additional 1 square inch (6.5 cm^2) is an additional instance.

(B) Fins—Any fin or parts of any fin up to 1 square inch (6.5 cm^2) in area shall be considered one instance of fin.

(C) Extraneous material means any piece of foreign matter on the fillet or elsewhere in the package. Each occurrence is considered one instance.

The extent of workmanship defects is defined as follows:

Slight degree—1–2 instances.
Moderate degree—3–4 instances.
Excessive degree—Over 4 instances.

(4) Bones (for Fillets not designated as boneless) refers to a bone that after the product has been cooked is capable of piercing or hurting the palate. Each area of one inch square (6.5 cm^2) which contains a bone or a cluster of bones shall be regarded as one instance of bones.

The amount of bones is defined as follows:

Slight—1 instance.
Moderate—2–4 instances.
Excessive—Over 4 instances.
If labeled boneless, no bones shall be permitted.

(5) Skin—this includes exterior skin and black membrane (belly lining).

(i) For skinless fillets, each piece of skin up to 1 square inch (6.5 cm^2) and every additional complete 1 square inch (6.5 cm^2) thereafter shall be considered an instance.

(ii) In the case of skin-on or skinless fillets, each piece of black membrane (belly lining) up to 1 square inch (6.5 cm^2) thereafter shall be considered an instance.

The amount of skin is defined as follows:

Slight degree—1 instance.
Moderate degree—2–4 instances.
Excessive degree—Over 4 instances.

(6) Size of fillets—Refers to the freedom from undesirably small pieces of fil-

[1] Flatfish only.

lets. Undesirably small shall mean any piece of fillet weighing less than 1 ounce (30 grams) per container.

Moderate degree—2 pieces.
Excessive—Over 2 pieces.

(7) "Texture defects"—Refers to the texture of the cooked fish—not characteristic of the species.

(i) Slight—fairly firm, does not form a fibrous mass in the mouth, moist but not mushy.

(ii) Moderate—moderately tough or rubbery, has noticeable tendency to form a fibrous mass in the mouth. moist but not mushy.

(iii) Excessive—excessively tough or rubbery, has marked tendency to form a fibrous mass in the mouth, or is very dry or very mushy.

(f) *Categorization of physical defects.* Instances shall be assessed on a per pound basis for physical defects, except for defects relating to abnormal conditions, texture, dehydration and sizes of fillets.

TABLE 1.—*Defect table*

Defect description	Classification		
	Minor	Major	Serious
1. Abnormal condition:			
Moderate		2	
Excessive			4
2. Appearance:			
(a) Color defects:			
Slight (2 to 4 instances)	1		
Moderate (5 to 6 instances)		2	
Excessive (over 6 instances)			4
(b) Dehydration:			
Slight moderate	1	(1)	
Moderate excessive		2	
Excessive excessive		(1)	4
3. Workmanship defects:			
(a) Cutting and trimming			
(b) Scales, fins, extraneous material:			
Slight (1 to 2 instances)	1	2	
Moderate (3 to 4 instances)		2	
Excessive (over 4 instances)			4
4. Bones:			
Slight (1 instance)	1		
Moderate (2 to 4 instances)		2	
Excessive (over 4 instances)			4
5. Skin and membrane:			
Slight (1 instance)	1		
Moderate (2 to 4 instances)		2	
Excessive (over 4 instances)			4
6. Size of fillets:			
Moderate (2 instances)		2	
Excessive (over 4 instances)			4
7. Texture:			
Slight	1		
Moderate		2	
Excessive			4

[1] Less than 5 pct.

Tolerances for various defects

Combined minor and major defects	Serious defects	Group species [1]
U.S. grade A:		
Up to 4 points	None	Groundfish.
Up to 5 points	do	Flatfish.
Up to 6 points	do	Redfish.
Up to 6 points	do	Herring and others.
U.S. grade B:		
Up to 8 points	do	Groundfish.
Up to 10 points	do	Flatfish.
Up to 12 points	do	Redfish.
Up to 12 points	do	Herring and others.
U.S. grade C: Exceeds tolerances for U.S. grade B, but is suitable for human consumption.		

[1] Groundfish (white fish) includes cusk, ocean catfish, pollock, hake, whiting, and ling. Flatfish includes Greenland turbot and halibut. Redfish includes rockfish, and sea bream. Herring and others includes sardines, pilchards, sprats, and mackerel.

(g) *Grade assignment.* Each sample unit will be assigned the grade into which it falls in accordance with the tolerance contained in Table 1 for Group Species. The grade to be assigned a lot is the grade indicated by the average of the total scores, provided the number of sample units in the next lower grade for both physical defects and flavor and odor does not exceed the acceptance number of indicated in the sampling plans contained in § 260.61.

Dated: January 17, 1977.

ROBERT W. SCHONING,
Director, National Marine Fisheries Service.

[FR Doc.77-2193 Filed 1-24-77;8:45 am]

proposed rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 1002]

[Docket No. AO-71-A72]

MILK IN THE NEW YORK-NEW JERSEY MARKETING AREA

Decision on Proposed Amendments to Marketing Agreement and to Order

A public hearing was held upon proposed amendments to the marketing agreement and the order regulating the handling of milk in the New York-New Jersey marketing area. The hearing was held, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice (7 CFR Part 900), at New York, New York, on September 16, 1976, pursuant to notice thereof issued on August 26, 1976 (41 FR 36668).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Deputy Administrator, Program Operations, on November 30, 1976 (41 FR 53346), filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision containing notice of the opportunity to file written exceptions thereto.

The material issues, findings and conclusions, rulings, and general findings of the recommended decision are hereby approved and adopted and are set forth in full herein subject to the following modifications:

1. Under the heading "1. *Partial payments to producers and cooperative associations.*", three new paragraphs are added at the end of the discussion.

2. Under the heading "2. *Due dates for the payment of certain obligations.*":

a. Paragraph 4 is changed.

b. Two new paragraphs are added after paragraph 13.

c. A new paragraph is added after paragraph 17.

d. Paragraph 20 is changed.

e. Two new paragraphs are added after paragraph 21.

f. Paragraphs 22 and 23 are changed, and two new paragraphs are added after paragraph 23.

The material issues on the record of the hearing relate to:

1. Partial payments to producers and cooperatives; and

2. The dates by which payments should be made to producers and cooperatives, and to and from the producer-settlement fund.

FINDINGS AND CONCLUSIONS

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. *Partial payments to producers and cooperative associations.* The New York-New Jersey order (Order 2) should not be amended to require handlers to make a partial payment for milk received from producers and cooperatives during the first 15 days of the month.

Amendments requiring partial payments for milk were proposed by a group of nine cooperatives representing about 30 percent of the market's producers. As propdsed, handlers would be required to pay not less than the preceding month's Class II price for milk received from cooperatives and producers during the first 15 days of the month. Such payments to cooperatives would be due by the 5th day of the following month and payments to individual producers would be due on the 7th day.

The witness for proponents contended that adoption of the proposal would assure a uniform and more orderly system of partial payments for all producers and Cooperative associations supplying the market. He indicated that for those producers not now receiving partial payments the order changes would reduce the period of time some must wait to be paid for at least a portion of their deliveries to handlers. The witness also contended that mandatory partial payments would eliminate certain handler inequities which he alleged exist under the voluntary partial payment practices that now prevail in the market. The spokesman asserted that such inequities contribute to market disorder by creating competitive advantages for some handlers. The witness also claimed that order-imposed partial payments would help reduce the risk of losses by cooperatives and producers if a handler became financially unable to pay for his milk receipts.

In support of partial payments, the witness pointed out that such payments are required under most other Federal orders. He contended that adoption of partial payments for the New York-New Jersey market would better align the payment provisions of Order 2 with other orders, thereby promoting greater intermarket equity for handlers, producers, and cooperative associations.

Mandatory partial payments were opposed by several handlers on the basis that most cooperatives and producers now receive partial payments at rates that generally exceed the proposed rate. The handlers contended that producers are satisfied with the current partial payment practices. The spokesman for a major cooperative association indicated that there appeared to be little need at this time for establishing prescribed partial payment procedures for the market.

The evidence adduced at the hearing indicates that most of the handlers in the market are making partial payments to producers and cooperatives that supply them milk. However, payment practices do vary. For example, various cooperatives bill handlers for partial payments on the basis of class prices, estimated class prices, or estimated blend prices. The dates on which such billings are submitted and the subsequent payments received also vary. In the case of nonmembers, some handlers make partial payments to just those producers who request them, while others make partial payments to all producers from whom they receive milk. Also, the date on which such partial payments are made may vary from handler to handler by several days.

Partial payment practices in this market clearly lack uniformity. Yet, aside from that expressed by the proponent cooperatives, there appears to be little dissatisfaction with the present voluntary arrangements. Although one handler expressed concern about handler equity, he nevertheless was opposed to having the order require partial payments. Handler spokesman otherwise did not express concern that certain handlers might gain a competitive advantage by not making partial payments, or by making such payments at lower rates than paid by other handlers. Also, the record provides no evidence that producers or cooperatives that wish to receive a partial payment for milk are unable to obtain such payments.

As pointed out by witnesses, recent legislation applicable in the State of New York is tending to result in somewhat greater uniformity of payment practices in the Order 2 market. Under the New York State Security Fund Law for assuring payments to producers, handlers who make semi-monthly payments in a prescribed manner are entitled to a reduction in the amount of the surety bond or other security filed by them in lieu of making payments to the security fund. It is recognized that this applies only to handlers receiving milk from New York producers. Nevertheless, such legislation apparently is lessening the differences in payment practices in this market.

The fact that other Federal orders require partial payments in itself provides no basis for adopting similar provisions in the Order 2 market. There was no demonstration, however, that the lack of prescribed partial payment requirements in this market is causing problems for handlers or producers because of the application of such payment requirements in other markets.

The record in this proceeding does not provide a compelling basis for concluding that partial payment provisions are es-

sential to maintain stable and orderly marketing conditions in the Order 2 market. Accordingly, such provisions should not be adopted.

In their exceptions to the recommended decision, the proponent cooperative contended that the Department erred in concluding that mandatory partial payments should not be adopted on the basis of this proceeding. They stated that because of proposed order changes that would affect the payment schedule of handlers, some handlers have indicated their intention to cease their current practice of making voluntary partial payments to cooperatives. Proponents indicated that if this alleged threat materializes handlers would then be in a position to make partial payments to nonmembers only, thereby further undermining the strength of cooperatives in this market. Also, the cooperatives argued that the Department relied on "self-serving, unsworn statements by handlers in opposition" to the partial payment proposal, and that evidence of non-uniform voluntary partial payments was disregarded.

It is recognized, as stated in the recommended decision, that volutary partial payment practices lack uniformity. This does not necessarily mean, however, that partial payments thus should be mandated by the order. In view of opposition to such provisions, their adoption should be based on a demonstrated need, which we believe is lacking. The absence of a compelling need tends to be supported by the lack of widespread support among producers in this market for the adoption of the proposal.

The alleged threats that voluntary partial payments may be discontinued do not appear in the record and thus may not serve as a basis for concluding that partial payments should be mandatory. The decision must be based, as this decision is, solely on the basis of testimony by witnesses who were under oath at the hearing.

2. *Due dates for the payment of certain obligations.* The dates by which certain payments under the order are to be made should be changed as follows: (1) Handler payments to cooperatives for milk purchased at class prices should be received by such cooperatives by the 19th day after the month in which the milk was delivered; (2) Handler payments to the producer-settlement fund should be received by the market administrator by the 21st day of the month; and (3) Payments to handlers from the producer-settlement fund should be made by the market administrator by the 22nd day of the month. If the due date for payments to or from the producer-settlement fund falls on a Saturday or Sunday or a national holiday, such payment should not be due until the next day the market administrator's office is open for public business.

The order also should be clarified with respect to the handling of producer-authorized deductions from payments for their milk, and with respect to the collection of lump-sum payments at the blend price by a cooperative on behalf of its member producers.

Handler payments to cooperatives at class prices currently are required by the 15th day of the month, and payments to and from the producer-settlement fund are due on the 18th and 20th days, respectively. Handler payments to producers and cooperatives at the uniform price, which would not be changed, are due on the 25th day of the month.

The group of nine cooperatives referred to under Issue No. 1 proposed that handlers pay cooperatives for milk purchased at class prices by the 16th day of the month following the month of delivery, rather than on the 15th day. These cooperatives also proposed that the due date for paying producers and cooperatives at the uniform price be changed from the 25th to the 22nd day of the month. Another group of cooperatives proposed that handler payments to cooperatives at class prices be due by the 19th instead of the 15th day of the month. Also, they proposed that payments to and from the producer-settlement fund be made by the 20th and 21st days, respectively, of each month, rather than on the 18th and 20th days.

In the case of both groups, the basic thrust of their proposals was a reduction in the amount of time between payments to cooperatives at class prices and payments to individual producers and cooperatives at the blend price. Presently, the time between payment dates is 10 days, the difference between the 15th and the 25th days of the month. Both groups contended that the 10-day difference in payment dates tends to provide handlers with an economic incentive to buy milk from nonmember producers rather than from cooperatives that are selling milk at class prices, since the cooperatives must be paid 10 days earlier.

While the cooperatives were in agreement on the need for reducing the 10-day difference in payment dates, the two groups proposed different sets of dates to accomplish this. The witness for the nine cooperatives indicated that producers should be paid as soon as possible and urged that the final payment date be advanced from the 25th to the 22nd day of the month. It was his position that the current deadline (the 25th) provides an unjustified extension of credit to handlers. Also, he claimed that an earlier payment date would be somewhat more in line with the payment deadlines under other Federal orders. The witness indicated, on the other hand, that the final payment date should not be advanced more than 3 days because of problems associated with adjustments in other payment dates. In this regard, he urged that payments to cooperatives at class prices be due on the 16th rather than the 15th day of the month so that handlers would have an additional day for making their payments.

Witnesses for the other cooperatives stressed that the payment dates must be structured so as to afford handlers a reasonable opportunity to comply with the regulations. They indicated that requiring payments to cooperatives at class prices and to producers at the blend price on the 19th and 25th days, respectively, would best accommodate the existing settlement arrangements in the market. They pointed out, however, that if these dates are adopted corollary changes would need to be made in the dates by which payments to and from the producer-settlement fund must be made.

The order prescribes various dates throughout the month for actions that must be completed. The present sequence begins with the announcement of class prices by the 5th day of each month. Handlers' reports of receipts and utilization must be mailed to the market administrator by the 8th day, or physically delivered to him by the 10th day. By the 15th day of the month the market administrator announces the uniform price, with his billings to handlers mailed immediately thereafter. Handler payments to cooperatives for milk purchased at class prices also are due on the 15th day. Handler obligations to the producer-settlement fund are due by the 18th, followed by payments to other handlers from the fund by the 20th. Finally, handler payments to producers are due by the 25th day of the month. It is within the context of this sequence of dates that the proposed changes must be considered.

It is necessary that the payment dates prescribed in the order allow adequate time for the required transfers of money. Otherwise, handlers could be placed in the position of being unable to comply with the order simply because the dates are not realistic in view of mailing times and other factors that affect the payment of obligations. The changes in dates adopted herein are intended to provide handlers a reasonable opportunity to comply with the order in making the required payments.

Basically, the various payment dates must be coordinated with the date for announcing the uniform price to producers. Presently, the market administrator must announce this price by the 15th day of the month. It is only then that the obligations to and from the producer-settlement fund can be determined and final payments made to producers and cooperatives.

With this announcement date for the blend price, it is not reasonable to require that payments to the producer-settlement fund be completed before the 21st day of the month. Once the uniform price has been announced, the market administrator must then notify handlers of their obligation to the producer-settlement fund. The handlers in turn must submit their payments to the market administrator. Thus, in setting the date for such payments, it is necessary that adequate recognition be given to the time needed to carry out these steps.

Customarily, both the notification to handlers and the payments to the producer-settlement fund are done by mail. Although other procedures could be used that would involve less time, it is more convenient for both the handlers and the market administrator to rely upon the mail service. This necessarily requires, then, that handlers be given until the 21st of the month to get their payments to the market administrator. Payments not received by the market administrator by the close of business on the 21st day would be considered late.

Payments to handlers from the producer-settlement fund should then be made by the market administrator by the 22nd day of the month. This will provide 3 days for handlers to receive their money from the producer-settlement fund and, in turn, make final payments to producers by the 25th day.

A group of cooperatives took exception to specifying the 21st and 22nd days of the month as the dates for making payments to and from the producer settlement fund. They would prefer the 20th and 21st days, as they proposed at the hearing, on the basis that cooperatives otherwise may not receive payments from the producer-settlement fund in time for the payments by the cooperatives to reach their member producers by the 25th of the month.

If the latter dates were adopted, cooperatives receiving class price payments from handlers would have only one day in which to make their payments to the producer-settlement fund, since such handler payments would not have to reach the cooperative until the 19th day. This would provide insufficient time for cooperatives to then get their payments to the market administrator.

The dates when payments to and from the producer-settlement fund are due occasionally will fall on weekends or holidays when the market administrator's office is not open for public business. On such occasions, the due date should be the next day that the market administrator's office is open for business. The order should provide, however, that if payments to the market administrator are so delayed, payments by the market administrator to handlers also may be delayed by the same number of days.

From a review of the various procedures just outlined, it is evident that final payments to producers and cooperatives at the blend price should not be required before the 25th day of the month. Requiring such payments at an earlier date would not permit the timely completion of the various payment procedures necessary under the order.

It is possible, however, to accommodate the desire of the cooperatives to reduce the time between payments to cooperatives at class prices and payments to producers and cooperatives at the blend price. The order requires that when a cooperative in its capacity as a handler sells milk to other handlers, it must account to the pool at the classified use value of the milk. If the value of the milk at class prices exceeds its value at the uniform price, the cooperative must pay the difference to the producer-settlement fund. It is essential, then, that the cooperative receive payment for the milk from handlers at the appropriate class prices in time to make the necessary payment to the producer-settlement fund.

As provided herein, handlers (including cooperatives) would not be required to get their payments to the market administrator until the 21st day of the month. Accordingly, cooperatives that must submit payments to the market administrator need not receive payments from their handler-buyers until the 19th of the month, rather than on the 15th as the order now provides. Under such scheduling, cooperatives should be able to make their payments to the producer-settlement fund on a timely basis. At the same time, such scheduling would reduce from 10 days to 6 days the difference in time between payments to cooperatives at class prices and final payments to producers at the blend price.

The order language accompanying the recommended decision did not specifically state that handler payments to cooperatives at class prices and to the producer settlement fund must be received by the recipients by the due date, as was indicated in the findings. The order should be specific in this regard, as reflected in the revised order language accompanying this decision.

On the basis of questions raised at the hearing relative to various payment practices in the market, certain clarifying changes should be made in the order in conjunction with the handling of the principal issues of this proceeding. The record indicates that some handlers receive milk from producers who are members of a cooperative association that is not acting as the handler for such milk. However, rather than paying the individual producers, the handler pays the cooperative an amount equal to the total amount due the individual producers at the blend price. The cooperative, in turn, distributes the funds to its member producers.

The order lacks specific provisions for the accommodation of this payment practice. Accordingly, the order should clearly specify that a cooperative may collect from handlers on behalf of its members the total amount due such producers at the blend price. Such payments should be subject to the following conditions: (1) The cooperative has been authorized by each such producer to collect payment for his milk delivered to the handler; (2) The cooperative has requested the handler in writing to make such payment to the cooperative; and (3) The cooperative has certified to the market administrator in writing that it has authority to collect payments for milk on behalf of its member producers.

At the hearing a witness suggested that lump-sum payments to cooperatives at the blend price be required two days earlier than the final payments to individual producers. He contended that cooperatives need to receive such payments from handlers in time for the cooperatives to make payments to members on the same date that proprietary handlers pay their producers.

The order should provide that payments to cooperatives that are collecting on behalf of their members be made by the same date that final payments are due individual producers—the 25th day of the month. As indicated earlier, the market administrator's payments to handlers from the producer-settlement fund would not be required until the 22nd day. In most cases, this schedule would not provide sufficient time for handlers to receive their payments from the market administrator and pay the cooperatives on the 23rd of the month.

Cooperatives took exception to this conclusion in the recommended decision. They claimed that cooperatives need to receive their money from handlers by the 25th day to cover the cooperatives' payments to producers on that date. Otherwise, they contended, cooperatives may need to seek short-term commercial loans in order to pay their member producers on the 25th when other producers in the market are paid.

With the other payment dates adopted herein, there is no practicable way to provide assurance that cooperatives will receive lump-sum payments by the 25th of the month. Under the adopted timetable, it is possible that payments to handlers from the producer settlement fund might not be made until the 24th. This could occur when the due date for making payments to the producer settlement fund falls on a Saturday. In such situations, payment to the market administrator would not be due until Monday, the 23rd, and payments from the producer settlement fund would then be due on the 24th. Handlers should not be required to pay cooperatives in advance of the date that the handlers themselves can expect to receive payment from the market administrator.

Another issue raised at the hearing was the procedure for handling producer-authorized deductions from blend price payments to producers. Handlers are making payments to third parties on behalf of producers and deducting such amounts when making payment for milk received from the producers. Amounts covering the value of supplies purchased from the handler also are being deducted from producer payments. The order lacks specific language concerning the treatment of such deductions. Accordingly, the order should clearly provide for producer-authorized deductions. Deductions for assignments and supplies should be allowed, however, only if the producer has authorized the handler in writing to make such deductions and such authorization is retained by the handler for verification by the market administrator.

Exception was taken by cooperatives to the statement in the recommended decision that handlers are expected to pay the amounts deducted from producers' returns to the assignees by the time payment is made to producers. The cooperatives took the view that a few days of leeway in this regard is reasonable because rigid compliance with the payment date would interfere with the scheduled use of computers in preparing payments to producers. Moreover, it was claimed that the order language does not reflect this expectation.

A producer's written authorization or a handler to deduct monies for payment to an assignee does not relieve the handler of his obligation to make full payment or milk received from producers by the date specified in the order. The

minimum payment requirement of the order would not be fully met if handlers were permitted to delay payments to assignees to some time after such monies otherwise would be due producers. If such such requirements are not met, inequities may arise among competing handlers. Thus, the date set forth in the order for handler payments to producers must apply also to the payment by handlers of third-party assignments. This is implied in the order language prescribing the payment requirements of handlers.

In conjunction with other changes adopted herein, the date by which handlers are required to pay their administrative assessment to the market administrator also should be changed. Such payments are now due on the 18th day of the month, which is the same date that handler payments to the producer-settlement fund are now due. As described earlier, the latter payments would not be due under the changes adopted herein until the 21st day of the month. No purpose would be served by requiring handlers to make separate payments to the administrative expense and producer-settlement funds on different dates. Accordingly, payments to the administrative expense fund should be due on the same date that payments to the producer-settlement fund are due.

In conjunction with other proposed changes to the section of the order dealing with class prices, it also was proposed that a proviso applicable to the Class I-A milk price be removed because it no longer is operative.

The proviso, adopted effective February 11, 1975, provided that the Class I-A price for the remainder of February 1975 and for March 1975 be based on the basic formula price for the preceding month, rather than for the second preceding month. The proviso's application thus was limited to that period of time. Since no purpose would be served by retaining order language no longer in effect, the proviso should be delcted.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conculsions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

At the hearing, a representative of several handlers requested a deferral of the decision on the issues being considered so that handlers could have an opportunity to submit other proposals for consideration. This request was renewed in the handlers' brief.

The record in this proceeding does not demonstrate a need for granting the request. There has been no showing of how the submission of additional proposals would be helpful to a full review of the issues under consideration. Also, the handlers in question have not demonstrated how they would be adversely affected should the Department not grant their request. Accordingly, their request is denied.

General Findings

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the tentative marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

Rulings on Exceptions

In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions received was carefully and fully considered in conjunction with the record evidence. To the extent that the findings and conclusions, and the regulatory provisions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

Marketing Agreement and Order

Annexed hereto and made a part hereof are two documents, a Marketing Agreement regulating the handling of milk, and an Order amending the order regulating the handling of milk in the New York-New Jersey marketing area which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered, That this entire decision, except the attached marketing agreement, be published in the FEDERAL REGISTER. The regulatory provisions of the marketing agreement are identical with those contained in the order as hereby proposed to be amended by the attached order which is published with this decision.

Referendum Order To Determine Producer Approval; Determination of Representative Period; and Designation of Referendum Agent

It is hereby directed that a referendum be conducted and completed on or before the 30th day from the date this decision is issued, in accordance with the procedure for the conduct of referenda (7 CFR 900.300 et seq.), to determine whether the issuance of the attached order as amended and as hereby proposed to be amended, regulating the handling of milk in the New York-New Jersey marketing area is approved or favored by producers, as defined under the terms of the order (as amended and as hereby proposed to be amended), who during the representative period were engaged in the production of milk for sale within the aforesaid marketing area.

The representative period for the conduct of such referendum is hereby determined to be August 1976.

The agent of the Secretary to conduct such referendum is hereby designated to be Norman K. Garber.

The United States Department of Agriculture has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107.

Signed at Washington, D.C., on January 19, 1977.

RICHARD L. FELTNER,
Assistant Secretary.

Order amending the order, regulating the handling of milk in the New York-New Jersey marketing area.

Findings and Determinations

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings.* A public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the New York-New Jersey marketing area. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure (7 CFR Part 900).

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area, and the minimum prices specified in the order as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

Order relative to handling. It is, therefore, ordered that on and after the effective date hereof the handling of milk in the New York-New Jersey marketing area shall be in conformity to and in compliance with the terms and conditions of the order, as amended, and as hereby amended, as follows:

The provisions of the proposed marketing agreement and order amending the order contained in the recommended decision issued by the Deputy Administrator, Program Operations, on November 30, 1976, and published in the FEDERAL REGISTER on December 6, 1976, (41 FR 53346) shall be and are the terms and provisions of this order, amending the order, and are set forth in full herein, subject to the following modifications:

Changes are made in §§ 1002.50a (introductory text) and 1002.85.

1. In § 1002.50a, the introductory text and paragraph (a) are revised to read as follows:

§ 1002.50a Class prices.

For pool milk received during each month from dairy farmers or cooperative associations of producers, each handler shall pay per hundredweight not less than the prices set forth in this section, subject to the differentials and adjustments in §§ 1002.51 and 1002.81. Any handler who purchases or receives milk during any month from a cooperative association of producers which is also a handler but which does not operate the plant or the unit receiving the milk from producers shall pay the cooperative association on or before the 19th day of the following month for such milk at not less than the class prices pursuant to this section, subject to the differentials and adjustments set forth in §§ 1002.51, 1002.81 and 1002.82(b) applicable at the location where the milk was received from producers. Any handler who purchases or receives milk during any month from a cooperative association of producers which is also a handler and which operates the plant or the unit receiving the milk from producers shall pay the cooperative association on or before the 19th day of the following month for such milk at not less than the class prices pursuant to this section, subject to the differentials and adjustments set forth in §§ 1002.51, 1002.81, and 1002.82(b) applicable at the plant at which the milk was first received. Such payments to a cooperative association shall be deemed not to have been made until the payments have been received by the cooperative association.

(a) For Class I-A milk the price shall be the basic formula price for the second preceding month plus $2.40.

* * * * *

2. In § 1002.80, paragraphs (a), (b), (c), and (d) are redesignated as paragraphs (c), (d), (e), and (f), respectively, the introductory text of the section is designated as paragraph (a) and is revised, and a new paragraph (b) is added to read as follows:

§ 1002.80 Time and rate of payments.

(a) On or before the 25th day of each month, each handler shall make payment pursuant to paragraphs (b), (c), (d), (e), and (f) of this section to each producer for all pool milk delivered by such producer during the preceding month at not less than the uniform price, subject to the following adjustments:

(1) Appropriate differentials set forth in §§ 1002.81 and 1002.82;

(2) Proper deductions for the month that were authorized in writing by producers from whom the handler received milk; and

(3) For milk received in a bulk tank unit, there may be deducted, as proper and as authorized in writing by the producer, or by a cooperative association authorized to act on behalf of such producer, a tank truck service (transportation) charge of up to 10 cents per hundredweight, which in no event shall exceed in the case of Class II milk on which a transportation credit is applicable pursuant to § 1002.55 the actual transportation costs in excess of 10 cents and otherwise actual transportation costs, and in either circumstance only to the extent transportation was actually provided by the handler or at his expense. Any such deduction with respect to bulk tank milk must be made by the handler not later than the date on which the producer is required to be paid for the milk involved. If authorization for such deduction is canceled by the producer or by the cooperative by notifying the handler in writing, such cancellation shall be effective on the first day of the month following its receipt by the handler.

(b) Upon receipt of a written request from a cooperative association which the market administrator determines is authorized by its producer-members to collect payment for their milk, each handler, on or before the date on which the payments are otherwise due individual producers, shall pay the cooperative association for milk received during the month from the producer-members of such association an amount equal to not less than the total amount otherwise due such producer-members as determined pursuant to paragraph (a) of this section.

* * * * *

3. Section 1002.85 is revised to read as follows:

§ 1002.85 Payments to the producer-settlement fund.

On or before the 21st day of each month, each handler shall make full payment to the market administrator of the debit balance, if any, of such handler shown on the last statement of account rendered pursuant to § 1002.84. Payments to the market administrator shall be deemed not to have been made until such payments have been received by the market administrator. If the date by which such payments must be received by the market administrator falls on a Saturday or Sunday or a national holiday, such payments shall not be due until the next day that the market administrator's office is open for public business.

4. Section 1002.86 is revised to read as follows:

§ 1002.86 Payments out of the producer-settlement fund.

(a) On or before the 22nd day of each month, the market administrator shall make payment to each handler of the credit balance, if any, of such handler shown on the last statement of account rendered pursuant to § 1002.84. If the date by which such payments are to be made falls on a Saturday or Sunday or a national holiday, such payments need not be made until the next day that the market administrator's office is open for public business. If payments to the producer-settlement fund under § 1002.85 were delayed because the due date fell on a Saturday or Sunday or a national holiday, payments under this paragraph may be delayed by the same number of days.

(b) If the balance in the producer-settlement fund is insufficient to make the full payment required under paragraph (a) of this section, the market administrator shall reduce uniformly the payments to each handler and shall complete such payments as soon as the necessary funds are available. No handler who, on the 25th day of the month, has not received such payments in full from the market administrator shall be deemed to be in violation of §§ 1002.80 through 1002.82 if he reduces his total payments to producers for milk delivered by such producers during the preceding month by not more than the amount of the reduction in payment from the producer-settlement fund.

5. Section 1002.90 is revised to read as follows:

§ 1002.90 Payment by handlers.

As his pro rata share of the expense of administration of this part, each handler shall, on or before the date specified for making payment to the producer-settlement fund pursuant to § 1002.85, pay to the market administrator a sum not exceeding 4 cents per hundredweight on the total quantity of pool milk received from dairy farmers at plants or from farms in a unit operated by such han-

dler, directly or at the instance of a cooperative association of producers and on the quantity for which payment is made pursuant to § 1002.70(d)(2), the exact amount to be determined by the market administrator subject to review by the Secretary. This section shall not be deemed to duplicate any similar payment by any handler under an order issued by the Commissioner of Agriculture and Markets of the State of New York, or the Director of the Division of Dairy Industry of the New Jersey Department of Agriculture, with respect to the marketing area. Whenever verification by the market administrator discloses an error in the payment made by any handler, such error shall be adjusted not later than the date next following such disclosure on which payments are due pursuant to this section.

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Agricultural Marketing Service

[7 CFR Part 1260]

[Docket No. BRIA-1]

BEEF RESEARCH AND INFORMATION

Recommended Decision and Opportunity To File Written Exceptions

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision concerning a proposed national research and information order for cattle, beef, and beef products.

Interested persons may file written exceptions to the recommended decision with the Hearing Clerk, United States Department of Agriculture, Washington, D.C. 20250, no later than February 24, 1977. The exceptions should be filed in quintuplicate. All written submissions made pursuant to this notice will be made available for public inspection at the Office of the Hearing Clerk during regular business hours.

This notice of filing of the recommended decision and of opportunity to file exceptions thereto is issued pursuant to the provisions of the Beef Research and Information Act (7 U.S.C. 2901 et seq.) and the applicable rules of practice and procedure (7 CFR Part 1260) governing proceedings to formulate an order under the Act, which were published in the FEDERAL REGISTER, June 23, 1976, 41 FR 25881.

PRELIMINARY STATEMENT

The public hearing, on the record of which the recommended decision was formulated, was held at Dallas, Texas, September 14 and 15; Pittsburgh, Pennsylvania, September 28; Atlanta, Georgia, September 30; Denver, Colorado, October 5 and 6; San Francisco, California, October 7; and Des Moines, Iowa, October 12 and 13, 1976. Briefs, proposed findings, and conclusions were received until November 15, 1976. This hearing was held pursuant to notice thereof which was published in the FEDERAL REGISTER, August 17, 1976, 41 FR 34772.

MATERIAL ISSUES

The material issues presented on the record of hearing are as follows: (1) The need for the Proposed Research and Information Order to effectuate the declared policy and purposes of the Act; and (2) The determination of the specific terms and provisions of the Proposed Order necessary to effectuate the declared policy and purposes of the Act, including:

(a) Definitions of terms used therein which are necessary and incidental to achieve the objectives of the Order;

(b) The establishment, maintenance, composition, powers, duties, procedures, and operation of a Board which shall be the administrative agency for this Order;

(c) The authority for establishing and financing the development and implementation of programs and projects of research, information, education, and promotion to improve, maintain, and develop domestic and foreign markets for cattle, beef, and beef products;

(d) The establishment and maintenance of an effective working relationship with State beef boards, beef councils, or other beef promotion entities organized to conduct programs with objectives similar to those of this Order;

(e) The procedures to levy assessments on the sales of cattle, to make refunds of assessments to producers who request them, and to incur necessary expenses;

(f) The provisions concerning record-keeping requirements and reports by slaughterers; and

(g) The need for additional terms and conditions as set forth in §§ 1260.181 through 1260.187 of the Order which are necessary to effectuate provisions of the Act.

FINDINGS AND CONCLUSIONS

Cattle are produced in all 50 States and cattle, beef, and beef products move in interstate and foreign commerce and those which do not move in such channels of commerce directly burden or affect interstate commerce of cattle, beef, and beef products. The record is replete with testimony that such commerce in cattle, beef, and beef products is commonplace. Therefore, it is found that the right to exercise Federal jurisdiction with respect to the Order set forth herein is established.

The findings and conclusions on the material issues are based on the evidence presented at the hearing and the record thereof and are as follows:

(1) *Need for the Order.* Beef is the major source of protein in the diet of most U.S. citizens. Beef supplies are currently at record levels and U.S. per capita beef consumption in 1976 totaled more than 8 pounds above the former record established in 1975. Large increases in beef output during 1975 and 1976 were due largely to unusually high cow and heifer slaughter. During the past 3 years, beef producers have been caught in a severe price-cost squeeze. In response to this extremely unfavorable situation, cattlemen have reduced cow herds, sharply curtailing the nation's production potential for future years.

The U.S. cattle cycle typically encompasses a period of approximately 10 years, which usually includes a period of about 7 years of increasing numbers followed by about 3 years of decline. There is a need to eliminate or at least moderate the recurring 10-year cattle cycle. A more stable beef production pattern would result in less variation in prices to consumers and more consistent returns to producers. Funding from assessments under this Order could be used to provide improved market information at all levels, which could aid the nation's nearly 2 million producers in being more responsive to consumer demand.

During the past 50 years the U.S. cattle herd has more than doubled, but inventory growth has been marked by alternate periods of expansion and liquidation. The number of cattle and calves on U.S. farms and ranches grew from 57 million head in 1928 to a peak of nearly 132 million head on January 1, 1975. Numbers have consistently peaked at about 10-year intervals followed by inventory declines of up to 12 percent in succeeding years. U.S. per capita consumption of beef and veal during the past 50 years has ranged from about 53 pounds in 1932 to an estimated 132 pounds during 1976. However, as herds were being rebuilt following periods of inventory liquidation, per capita consumption declined as much as 22 percent from the level attained in an earlier year.

These large fluctuations are caused by large numbers of individual cattle producers responding independently but similarly to price incentives. Cattlemen tend to retain larger numbers of cows and heifers for breeding when calves are selling at profitable levels. This practice tends to restrict concurrent beef supplies while increasing beef output prospects for future years. In the early stages of an expansion phase of the cattle cycle, inventories grow but slaughter supplies remain relatively stable as increased retention of females tends to offset the effect of larger calf crops. Eventually, however, the full impact of a larger breeding herd is reflected in larger slaughter and prices begin to decline. As profits turn to losses, cow and heifer slaughter increases, further boosting beef output. The increased supplies soon put additional pressure on prices and significant losses to producers result. After the cow herd is diminished and calf crops decline, however, smaller beef supplies and higher prices return. With improved profitability the expansion phase of the cycle begins anew.

Biological factors are a major cause of alternate periods of overproduction and underproduction in the beef industry. Roughly 3 years transpire between the time a producer decides to retain a heifer for replacement and the date the beef from her offspring is purchased by the consumer. Thus, unprofitable price levels for a sustained period do not result in a reduction in beef output until a few years later. Losses continue until the adjustment can be accomplished.

Changes in cow numbers are a major determinant of future beef supplies and cattlemen favor an improved cow-herd size awareness program. Cow numbers increased rapidly during the early 1970's, jumping from 48 million head on January 1, 1969, to a peak of 56.7 million head on January 1, 1975. From January 1, 1972, through January 1, 1975, cow numbers grew at an annual rate of 4 percent, or over 2 million head per year. As usually happens when the rate of expansion exceeds the normal year-to-year increase in demand for beef, which is 1 to 2 percent, excess beef output and unprofitable price levels resulted.

As losses to producers mounted during 1974 and 1975, cow slaughter rates increased dramatically and numbers of heifer replacements entering the herd dropped sharply. Cow slaughter reached a record of almost 12 million head in 1975, nearly doubling the 6 million head killed during 1973. The cow inventory dropped nearly 2 million head during 1975 to 54.8 million on January 1, 1976. Since cow slaughter during 1976 totaled almost 11 million head and the number of heifer replacements continued to decline, another significant drop in cow numbers will undoubtedly be reflected in the January 1, 1977, inventory.

The downturn in the total cattle inventory during the current cycle is unusually sharp, reflecting the severe financial stress the cattle industry experienced during 1974–1976. On January 1, 1976, cattle numbers totaled 128 million head, down nearly 4 million head from peak levels a year earlier, and the January 1, 1977, inventory is expected to total only 120–122 million head. With the exception of several months during 1975, the cattle feeding segment of the industry has suffered severe losses, often over $100 per head marketed, since late 1973. Cow-calf producers generally have sold calves and yearlings for less than the cost of production since mid-1974. As a result, many cattlemen have been forced into bankruptcy and those remaining have sharply higher mortgages on their farms and ranches and greatly increased overall debt.

One significant measure of the turnaround experienced by the industry was the drop in inventory value. From January 1, 1974, to January 1, 1975, the average value per head of cattle in the United States dropped 46 percent from $293 to $159, and the value of the total inventory dropped from over $37 billion to only $21 billion.

Cattle producers have repeatedly indicated that they want a self-help program and not Federal monetary assistance. There are no price support programs for cattle or beef to moderate the cyclical ups and downs. A desirable goal of the programs made possible by assessments under the Order is to assist in alleviating the problems which result from the cyclical nature of beef production by providing improved information to aid in making production decisions.

Beef producers have been conducting beef education, information, and promotion programs for a number of years, often relying on either voluntary or mandatory State collection systems. Funding levels in relation to sales value are lower than expenditures for many other raw agricultural products, and are extremely low when compared to expenditures for competing manufactured food products. Twenty-eight major beef producing States have organizations which collect funds, primarily for State promotion activities. Some of the money collected at the State level is forwarded to the National Live Stock and Meat Board to be used, along with other voluntary contributions, in national education, information, promotion, and research efforts. But such efforts have been relatively small in size and scope due to funding limitations.

The Proposed Order would provide the industry with sufficient funding to carry out a coordinated program of education, promotion, and research for the entire cattle and beef industry. Such a program, operated on a national basis, would minimize duplication of effort among the various State groups and would be far more efficient and effective than previous fragmented programs.

Numerous areas of research concerning cattle and beef have potential for benefiting both producers and consumers but presently lack funding. There are identifiable research needs for production research, marketing research, product or market research, and foreign market research. Examples of some current research needs are:

Production research. Studies should be designed to speed genetic improvement of the nation's cattle herds and to improve the rate of gain on grass and in the feedlot. Gaining a clearer understanding of protein synthesis would provide a step toward improving the growth process. Increasing the emphasis on finding solutions to animal health problems, such as brucellosis and internal parasites, could lead to reduced death losses and lower production costs.

Marketing research. More efficient beef marketing procedures and techniques would not only benefit producers but would also help consumers obtain quality beef at reasonable prices. Improved efficiency and reductions in the cost of distribution, cost reduction in the labor-intensive processing segment of the industry, and reducing product loss in the distribution chain could be studied to help reach that goal.

Product or market research. There is a need to more accurately identify the quantities and types of cattle and beef products desired by the retail customer. Methods of marketing beef have not kept pace with consumer desires and buying habits and new beef products should be developed to meet the changing consumer preferences. With a growing share of meals eaten away from home, appropriate beef products must be developed to meet the needs of this growing market. Studies should be initiated to find beef products and cooking methods consistent with the limited time available for meal preparation. Also, research directed toward developing processing methods to produce more desirable products from the less desirable portions of the carcass is necesary to more efficiently utilize the whole carcass.

Foreign market research. Determining the wants and needs of potential foreign customers for beef and methods to fulfill those needs is necessary for effective foreign market development. U.S. exports of beef and veal in recent years have been less than one-half of 1 percent of commercial production while comparable U.S. imports averaged 7 to 8 percent of commercial production. The United States enjoys a competitive advantage over all other nations in the production of large quantities of high-quality beef. With increasing affluence around the world, there is considerable potential for substantial increases in U.S. beef exports if the appropriate market knowledge is developed.

The record reveals a need to communicate factual information to consumers about the nutritional properties of beef. Consumers understand that beef is high in protein, but often do not understand its many other significant contributions to health needs. For instance, there are high iron and B vitamin contents in beef, and the life-saving drug insulin is a beef byproduct. Educational programs could provide information to consumers on many topics concerning beef, with particular attention directed to those issues involving nutrition and health. Nutrition and health information developed for use in elementary schools has been well received. However, funds to reproduce this information and to distribute it to schools have been limited; consequently, only a small percentage of the nation's schools have had access to this information. Similar funding problems have limited the distribution of meat nutrition, purchasing, and cooking information to high school and college classes in nutrition, food, and home economics.

Adoption of a beef research and information order has been endorsed in concept by 81 State and national cattle organizations. The record evidence establishes a need for financing research to find more efficient methods to produce and market a relatively stable supply of beef at fair prices to consumers with reasonable returns to producers. The evidence also shows that research and information funded under the Order will be beneficial to the beef industry and consumers as well. Consumers would benefit from the increased efficiency in production and marketing, a more stable supply of beef, more stable beef prices, and increased nutrition and health information.

It is concluded from the record evidence that the beef industry needs a research and information program and that the Order, by providing such a program, would effectuate the declared policy of the Act.

(2) *Terms and provisions of the Order.*

(a) *Definitions.*—"Act" is defined to provide the correct legal citation for the statute pursuant to which the Order may be put into effect and operated. The inclusion of this definition makes it unnecessary to refer to such law and statutory citation each time reference is made to the Act in the provisions of the Order. "Act" also is defined to include any amendments that may be made to the Beef Research and Information Act (7 U.S.C. 2901 et seq.).

"Fiscal Period" is defined as the 12-month period corresponding with the USDA's fiscal year. The Beef Board is required to submit to the Secretary, for his approval, budgets on a fiscal period basis containing anticipated expenses and disbursements in the various areas expenditures are authorized. The Board's fiscal period is the same as USDA's fiscal year. However, the Beef Board, with the approval of the Secretary, may select some other 12-month period as its fiscal year if necessary.

"Beef Board" or "Board" is defined as the administrative agency or body charged by the Act with the duty to administer the Order. Producer assessments finance the activities authorized and the administrative agency is composed of beef producers, selected by the Secretary from nominations submitted by eligible organizations, associations, general farm organizations, cooperatives, or unaffiliated producers.

The Board shall elect an "Executive Committee" of 7 to 11 Board members who are generally representative of the cattle industry. This Committee has the authority to hire a staff to handle administrative matters, to make policy recommendations to the Board, and to administer the terms of the Order under the direction of the Board and within the policies determined by the Board.

"Producer" is defined in the Order to identify the persons responsible for payment of assesments under the Order. In addition, producers have the right to vote in any referendum on the Order and are eligible to serve on the Board and to nominate others to serve on the Board.

The term "producer" includes any person who owns or acquires ownership of cattle other than one who acquires cattle solely for the purpose of slaughter, except that a person may not qualify as a producer based on sales transactions in which his only share in the proceeds is a sales commission, handling fee, or other fee. However, the period of ownership may be short. For example, a cattle trader or any other person who assumes ownership of cattle, even if the cattle are resold the same day, would qualify as a producer.

The term "producer" does not include a person who acquires cattle solely for the purpose of slaughter. Packers who purchase all their cattle solely for the purpose of slaughter are performing no producer function and do not qualify as producers, even though it is recognized that in normal trade practice such cattle sometimes remain in the feedlot or packer's lot for several days before slaughter. However, a cattle slaughterer or packer who has cattle on feed or buys or owns cattle for purposes other than immediate slaughter qualifies as a producer.

"Producer organization" or "eligible organization" is defined to include producer organizations, associations, general farm organizations, and cooperatives representing cattle producers in a geographic area. The final determination of whether an organization is an eligible organization rests with the Secretary of Agriculture.

"Research" is defined to include any type of systematic study or investigation intended to advance the desirability, marketability, production, or quality of cattle, beef, or beef products. It includes market research, production research, and other basic research as well as the evaluation of the relative effectiveness of such studies and investigations.

The Board may enter into contracts, with the approval of the Secretary, for the purpose of carrying out authorized activities. The term "Contracting Party" is defined to include any individual, group of individuals, partnership, corporation, association, cooperative, or other entity, public or private, with which the Beef Board may enter into a contract or agreement in the manner provided in the Order.

"Marketing year" means the calendar year ending on December 31 unless some other consecutive 12-month period is designated by the Board and approved by the Secretary. The calendar year is the appropriate period to be designated the marketing year since most marketing statistics applicable to the Order are maintained on a calendar year basis.

"Part" refers to 7 CFR Part 1260, containing rules, regulations, orders, supplemental orders, amendments, and similar matters concerning the Beef Research and Information Act. The term "subpart" is used when referring to a portion or segment of Part 1260.

(b) *Beef Board.* A "Beef Board" is established to act as the administrative body for this Order as specified in Section 8 of the Act. It is composed of producers appointed by the Secretary from nominations submitted either by eligible producer organizations in specified geographic areas or in a direct manner by producers not represented by eligible organizations in such areas. Each member has an alternate to serve in his stead as necessary.

Membership. Members of the Beef Board shall be selected to reflect the varied character of the cattle and beef industry. Cattle are produced in all 50 States, although the concentration varies greatly in different States as does the position of producers in the production chain. Some are engaged primarily in the production of calves from either commercial or purebred herds, while another large section of the industry is involved in feedlot operations. Many producers keep only dairy animals which are used primarily for the production of milk, although such operations also add substantially to the beef supply. There are many combinations of these different functions and related interests in individual production units. There also is a wide range in the size of production units.

The Act specifies that the Beef Board shall consist of not more than 68 members. A Board of this size was constituted so that there may be sufficient representation for all geographic areas and for the multifarious interests of producers. It is intended that the result will be widespread participation of producers in the management of the programs authorized by the Act and the Order.

The stated purpose of the Act is to enable cattle producers, through a Board composed of producers, to establish, finance, and carry out a coordinated program of research, producer and consumer information, and promotion to improve, maintain, and develop markets for cattle, beef, and beef products.

There was testimony recommending that consumers should be included as members of the Beef Board. The legislative history of the Act demonstrates that Congress considered this point extensively. However, the final version of the Act specifies that the Beef Board shall be composed of producers. The conference report indicates that Congress intended for the Beef Board to seek consumer input and it was recommended that the Secretary appoint five consumer representatives to serve in advisory capacities. Record evidence indicates that such a practice would be advisable in order to obtain consumer views on programs of the Board.

A partnership, cooperative, corporation, or similar business entity is to be considered a producer for the purpose of determining who is required to pay assessments and who is eligible to vote in any referendum held pursuant to the Act. However, only individual producers will be nominated and appointed to membership on the Beef Board.

There was testimony proposing that only producers who receive a majority of their income from the production of cattle should be eligible to serve on the Beef Board. Further, it was recommended that elected or appointed local, State, or Federal government officials and executives or officers of organizations which contract with the Beef Board should be prohibited from serving as members of the Board. Rather than outlining such restrictions on Board membership in the Order, producers in selecting nominees and the Secretary in appointing Board members should ascertain that they are active, representative producers.

Term of office. The term of office for Board members and their alternates is 3 years as provided in the Act. Such a period of time is necessary to permit a member to become familiar with the programs and operations of the Board and to make an effective contribution. Initial appointments shall be, proportionately, 1, 2, and 3 year terms, giving staggered terms for Board members to prevent the possibility that all terms would expire at the same time and providing continuity of program efforts and program direction. The Secretary shall determine which initial members shall serve for 1, 2, and 3 year terms on a random basis, though assuring that the terms of members from a geographic area with multiple representation expire at different times.

No member may serve more than 6 consecutive years on the Beef Board, except that members appointed to the initial Board for terms of 1 or 2 years are eligible to serve 2 additional terms. This provision would serve to utilize the experience acquired and enhance the development of an effective program.

Certification of organizations. Record evidence shows that there are many organizations representing cattle producers throughout the country. The Secretary is charged with the responsibility to set the criteria to be used in determining the eligibility of organizations to nominate members of the Board and has the final authority to make the determination.

Representatives of general farm organizations expressed concern about whether such organizations would be eligible to nominate members to the Board. Further testimony suggested that accurate information necessary to establish the eligibility of general farm organizations to nominate members would not be available, such as the proportion of members producing cattle and the number of cattle they produce. However other testimony indicates that such organizations normally could provide the data required to meet the needs for certification. It is concluded that general farm organizations should be certified if they meet the criteria established.

Record testimony shows that many of the producer organizations intending to nominate Board members are State organizations, but there also may be some regional organizations participating. A regional organization should be certified to nominate members to the Board in any geographic area in which it meets the established criteria. Similarly, a State organization should be certified to nominate members in a geographic area, even though the area may include other States, if it meets the established criteria.

An organization may file a request for certification to nominate members to the Board at any time. However, the certification of an organization should not be open-ended, since the membership, program objectives, geographic area covered, and other characteristics of an organization may shift. Accordingly, an organization is required to request recertification each time it wishes to nominate a member of the Board.

Nominations. Orderly procedures are established for producer organizations, associations, general farm organizations, cooperatives, and producers not represented by such organizations within a geographic area, as determined by the Secretary, to submit nominations for Board members and alternates to the Secretary. It is essential that the nominations and appointments be completed in a timely fashion, but adequate time must be provided for producers to consider and select their nominees and for the Secretary to make the appointments. A final Order establishing a Beef Board becomes effective only upon approval by producers voting in a referendum. Nominations shall be submitted to the Secretary within 90 days after it is determined that the results of the referendum favor the Order, but the Secretary may prescribe a longer period if necessary.

Eligible organizations in each geographic area may caucus to jointly nominate qualified individuals for each member and each alternate member to be appointed to the Board. If they do not caucus or if they fail to agree on nominees, each eligible organization is authorized to submit nominations for each position to be filled. The Secretary also is required to determine whether a substantial number of producers are not members of or their interests are not represented by any eligible organization and, if so, provide a manner for such producers to submit nominations. The 90-day period between approval of the Order and the deadline for submitting nominations is necessary to permit the Department to certify eligible organizations and establish procedures by which producers not represented by an organization may submit nominations. This period of time should be sufficient for all certified organizations to caucus, make their selections, and submit their nominations to the Secretary and for producers not represented by such organizations to submit nominations. However, the Secretary may prescribe a longer period if necessary.

After the initial Board has been established, nominations for subsequent appointments of Board members and alternates should be submitted sufficiently in advance to permit the Secretary to select the members, to inform them of their selection, and to obtain acceptance of such appointments before the beginning of the term of office for which they are being appointed. It is necessary to make these subsequent appointments in a timely fashion in order that operations of the Board can continue without interruption when normal changes in membership of the Board occur. Therefore, submission of nominations to the Secretary for subsequent Board members and alternates shall be at least 60 days prior to the expiration of the terms of members and alternates previously appointed to the Board. Other aspects of the nomination procedures for these appointments to the Board are the same as those for nominating members and alternates to the initial Board.

Section 8 of the Act provides that Board members and alternates be named from specified geographic areas designated to reflect, to the extent practicable, the proportion of cattle in each such geographic area. Organizations representing cattle producers normally are organized and operate on a statewide basis, although there also are regional or national organizations, often formed by an affiliation of similar State organizations. Statistics measuring cattle production are available on a State by State basis. Accordingly, to the extent practicable, a State is the geographic area used for determining representation on the Board, with each major cattle producing State entitled to at least one Board member and one alternate. The geographic areas for the initial Board and the number of Board members for each are listed in § 1260.138(e) of the Order.

January 1 inventory numbers of cattle and calves on farms, published annually by the Department of Agriculture, are generally considered the best available measure of the proportion of cattle in the various States. In determining this initial distribution of membership, a geographic area is defined as a State or combination of States with 500,000 head of cattle or more. Each such geographic area is entitled to one Board member and alternate plus an additional member and alternate for each additional 2.5 million head of cattle. Use of this definition accomplishes the objective of providing separate representation on the Board for most States, recognizing the usual boundaries of producer organizations and the similarity of interests of producers within many States.

Important considerations in combining States which have to few cattle to qualify as a geographic area are geographic location and similarity of interests, among other factors. To the extent possible, a geographic area containing several States includes those which are contiguous and which have similar interests. The practical problems of caucusing and reaching agreement on nominations then are simplified.

California and Hawaii were combined to form a geographic area with two Board members and two alternates in the Proposed Order published and subjected to hearing. Spokesmen for California cattlemen testified at the hearing that California should be designated a geographic area by itself, since under the proposed guidelines the State would be entitled to two Board members without the addition of another State. A representative of Nevada cattlemen testified that it would be acceptable to combine Nevada and Hawaii. In a subsequent brief, the proponents recommended that Hawaii be included with Maryland, Delaware, New Jersey, and the District of Columbia to form a geographic area. A spokesman for Hawaii cattlemen filed a brief with the same recommendation. Such a combination would not follow the principle outlined with respect to geographic location. Accordingly, Hawaii is included with Nevada to form a geographic area rather than with California.

The record contains a suggestion that each State be assigned one Board member in establishing the initial Board until records are developed on assessments from the various States for use in determining representation. However, it is found that, with the wide differences in cattle numbers among the various States, adoption of such a plan would not provide representation on the Board accurately reflecting the proportion of cattle in each geographic area.

The basis of determining the makeup of the initial Board cannot be permanent. Representation must be reviewed periodically to take into account shifts in cattle production. Accordingly, the Board is required to review the distribution of membership within 5 years of the establishment of the initial Board and subsequently at any time not to exceed 5 years from the date of the last review. Assessments, cash receipts from the sales of cattle, cattle numbers, and other factors which are found feasible to reflect the proportion of cattle in each geographic area may be considered by the

Board in determining the need for changes in geographic areas when updating representation on the Board. The Board shall cause regular review to be made of geographic areas and redefine the geographic areas as necessary, subject to the approval of the Secretary. Such changes will be made at the expiration of the terms of members in order to effect the changes in an orderly fashion.

Appointments. The Order provides that the Secretary will select and appoint Board members and an alternate for each from nominations submitted, providing representation on the Board by geographic area. Written notice of their acceptance of the appointment will be submitted to the Secretary promptly by member and alternate designates.

Vacancies. The nomination and appointment procedures for individuals to fill unexpired terms when vacancies occur are the same as those specified for the normal appointment and reappointment of members and alternates. It is important that vacancies be filled promptly in order to maintain full membership and representation on the Board and a minimum of disruption. Accordingly, nominations to fill vacancies are to be submitted to the Secretary within 60 days of the time the vacancy occurs. Such a period provides a reasonable amount of time for the selection of nominees. However, should a vacancy occur within 6 months of the expiration of the term of a Board member or alternate, the Secretary need not fill the vacancy.

Alternate members. Each Board member has an alternate designated to serve in his place as necessary. On occasions, a Board member may find it necessary to be absent from Board meetings. An alternate member should be available so that the business affairs of the Board will not be impaired. The alternate member will serve at Board meetings in the absence of the member. Also, in the event of a vacancy on the Board for any reason, the alternate will act until a successor is appointed. Alternate members do not automatically serve in place of Board members on committees and other special assignments unless specifically selected to do so by the Board. The Board is not precluded from assigning other duties to alternates in addition to their responsibility to serve in the absence of Board members. The same criteria and procedures are used for nominating and appointing alternates as those for Board members. Alternates also are limited to 6 consecutive years of service as an alternate. However, nothing precludes an alternate from replacing or succeeding a member and that alternate is permitted to serve up to two terms as a Board member, without regard to the length of time served as an alternate.

Procedure. The Board should adopt bylaws governing its organization and operation. However, the method of voting in decisions of the Board and quorum requirements are specified in the Order. The presence of a majority of the members and alternates acting for members constitutes a quorum. On any vote taken by the Board, a majority of those present and voting must concur before any action can be taken. All votes cast at an assembled meeting shall be cast in person with no proxy voting permitted.

It is necessary that the Board adopt procedures which will assure that it operates properly and efficiently and it should schedule regular meetings. However, there may be instances when it is necessary to transact routine, noncontroversial business or take rapid action at times when it would be expensive and unnecessary to call an assembled meeting. Therefore, the Board is authorized to vote by telephone, telegraph, or other means of communication in such instances. However, any such vote by telephone shall be confirmed promptly in writing. The Board should have authority to determine when it will be necessary to transact business without calling an assembled meeting.

Compensation. Board members and alternates serve without compensation, but it is appropriate that members and alternates be reimbursed for necessary and reasonable expenses incurred when performing authorized Board business. The Board, with the approval of the Secretary, shall set standard procedures governing reimbursement, including the forms to be used, receipts or other documentation required, and the limits of reasonable expenses.

Powers. The Board must have the powers specified in Section 8 of the Act in order to effectively provide administrative direction of the program. The Board has the power to administer all terms and provisions of the Order and carry out the plans and programs authorized by the Act. The Board is empowered to develop rules and regulations necessary for implementing and operating the program and submit them to the Secretary for approval and issuance. Such rules and regulations are necessary to set the procedures under which the Board exercises its responsibilities. They govern the method of collecting assessments, the refund procedures, the actions to be taken to implement specific programs, the records that must be kept by slaughterers and others, and the related provisions necessary to meet the requirements of the Order.

Violations of the rules and regulations issued pursuant to the Order may occur and the Board has the power to investigate alleged violations. Procedures established for handling such violations should assure fair and equitable treatment in all instances. The Board should take all reasonable steps to settle violations and in the event that settlement cannot be reached, report violations to the Secretary for appropriate action.

Problems may arise or conditions may change within the industry that would necessitate amendments to the Order. The Board should maintain regular surveillance of the need for amendments and has the power to recommend amendments of the Order to the Secretary when it deems that such action is necessary.

Duties. The duties of the Board as set forth in the Order are necessary for the discharge of its responsibilities. The stated duties provide authority and guidance concerning many details common to the operation of an administrative entity such as the Board. They include the duty to meet and organize, elect officers, and establish committees and subcommittees of Board members as necessary to handle the affairs of the Board. Bylaws should be adopted governing the conduct of business by the Board. The Board also has authority to appoint advisory committees, which would include persons who are not members of the Board, in order to gain added expert advice and counsel on problems, procedures, and programs. Such committees can act in an advisory position only; final decisions and actions are reserved to the Board, and only the Board may take action authorizing the expenditure of funds. The Board has the authority to reimburse advisory committee members for travel and other expenses arising from their assignments.

The Act provides that the Beef Board shall appoint from its members an Executive Committee of not less than 7 nor more than 11 members. In view of the authorized maximum size of the Beef Board, 68 members, an Executive Committee is necessary to provide more efficient and effective administration of the programs. The Beef Board shall delegate to the Executive Committee authority to employ staff members, specifying their duties and compensation, and to administer the provisions of the Order under the direction of the Board and within policies established by the Board. The Board should establish and maintain an effective managerial team composed of the Executive Committee and the administrative staff of the Board.

A major duty of the Board is the development of plans and programs to implement the Order. Since the level of anticipated funding is relatively large for programs of this nature and should provide for a comprehensive program, the Board has authority to initiate contracts or agreements with other organizations to conduct program activities. Contractors are required to provide plans for each project or program, outline procedures to be followed, and submit a detailed estimate of the costs. Further, contractors are required to keep adequate records and submit regular reports of their activities on a project showing progress made, disbursement of funds, and any other relevant information required by the Board or the Secretary. Contracts and agreements of the Board may become effective only upon approval of the Secretary. In addition to contracting with others, the Board has authority to conduct program activities on its own if such an approach can be shown to be more effective or efficient in furthering the purposes of the Act and Order.

The Board shall prepare a budget of its anticipated income and expenses each fiscal period and submit it to the Secretary for approval. The Secretary should specify the date for submission of the budget for his approval, allowing adequate time for review prior to the beginning of the fiscal period. In addition to income and expenses, the budget statement should show program plans, the distribution of anticipated expenses for each major program category, the estimated cost for administration, and detailed justification of the plans. The Board is required to submit copies of the budget to the House Committee on Agriculture and the Senate Committee on Agriculture and Forestry.

Other duties of the Board which are outlined in the Order are those necessary to assure that it operates in a business-like fashion. They involve requirements for maintaining records and submitting reports of activities as required by the Secretary, making annual reports of activities to producers and the public, accounting for funds received and expended each fiscal period, and initiating an annual audit of its financial status by an outside party. Further, the Board is required to give the Secretary the same notice of meetings as is given Board members and to provide any other information pertaining to the Order which the Secretary requests.

(c) *Programs and Projects.* The Board has the authority to determine the type of research, market development, education, producer information, consumer information, promotion, and advertising charged with the responsibility of initiating and recommending to the Secretary the establishment of such projects as are authorized by the Act. The projects and programs should be designed to assist, improve, or promote the production, sale, marketing, processing, distribution, and utilization of cattle, beef, and beef products. The authority is broad and flexible to enable the Board to use the most efficient and effective methods of carrying out the purposes of the Act. Emphasis should be placed on developing a coordinated national program, with activities designed to complement the efforts of groups, organizations, or agencies which are currently engaged in research and promotion activities.

The Board has the authority to recommend programs designed to expand sales in foreign markets for cattle, beef, and beef products. This area of activity should include steps to increase sales to present overseas customers as well as to develop new outlets and tailor products to their needs. Cooperative efforts with existing programs of this nature conducted by Federal and State governments and private interests may prove to be an effective approach.

Programs or projects conducted by the Board shall be periodically reviewed to determine if each such plan or project contributes to an effective and coordinated program of research, information, education, and promotion. Upon such review the Board shall terminate any program or project which it determines does not further the purposes of the Act.

The provision of the Order and Act that no advertising or promotion shall make any reference to private brand names of cattle, beef, or beef products is necessary to avoid discrimination. The Board represents all interests in the industry and therefore must be fair to all segments and elements of the cattle industry. Prohibition of the use of false or unwarranted claims in behalf of cattle, beef, or beef products or false or unwarranted statements with respect to the attributes or uses of competing products is also necessary for proper administration of the Order.

An ample and stable supply of beef for consumers is clearly in the public interest. Maintenance and expansion of existing markets and the development of new markets, both at home and abroad, are essential if the cattle industry is to be healthy enough to supply the needs of consumers. Therefore, the Order provides the necessary authorizations for research and information designed to accomplish this objective. It enables the Board to undertake production research, marketing research, product or market research, and other research designed to improve efficiency throughout the production and marketing chain from the earliest stages of production up to the time the product reaches the consumer. In addition, information derived from research and other factual information would be made available to both producers and consumers.

The Board may either perform research or information work within its own organization, or it may contract for such research, market development, education, producer information, consumer information, promotion, and advertising projects and programs with public and private research and development agencies which are capable of performing the work needed. While the projects and programs must be submitted to the Secretary for approval, it is recognized that study and planning may be involved in the development of such activities. Therefore, reasonable expenses which may be incurred by the Board in connection with such development should be authorized as part of the annual plan or budget even though prior to the time such projects are submitted.

(d) *State beef councils.* The effectiveness of a new national program of research and information activities for cattle and beef will depend, in part, on its relationship to existing programs operating in several States. The stated purpose of the Act is to enable the development of an effective and continuous program of research, consumer information, producer information, and promotion designed to strengthen the cattle and beef industry's position in the marketplace and maintain and expand domestic and foreign markets and uses for United States beef. Further, Section 16 of the Act states that nothing in the Act shall be construed to preempt or interfere with the workings of any beef board, beef council, or other beef promotion entity organized and operating within and by authority of any of the several States. Record evidence shows that 28 States have programs similar to the national program which would be established by an Order under thes Beef Research and Information Act. Also, there is a national effort of this nature, currently operating on a voluntary basis, conducted by industry interests through the National Live Stock and Meat Board. A portion of the funds collected in connection with several of the State programs presently is being forwarded to the National Live Stock and Meat Board.

State programs differ widely in several characteristics, but especially with respect to the basis for the assessments, the assessment rate, the method of collection, the mandate under which the State program operates, the availability of refunds, and the composition of the administrative body of the program. Testimony received at the hearing indicates that the anticipated effect on existing State programs of the initiation of a new national program varies widely. Representatives of some State programs indicated that they expected their local effort to continue with little change. Others indicated that their program would be likely to either diminish considerably or end because producers would not be willing to pay an increased assessment necessary to operate both State and national programs. Such testimony indicates that a new national program under the Beef Research and Information Act may interfere with the operation of some State programs in such instances. There is abundant evidence throughout the record that it may be desirable to keep viable State programs active in a coordinated, cooperative effort as part of a new national program in order to achieve maximum overall effectiveness of the effort. Such an approach would provide continuity available from ongoing State programs, minimize duplication of effort, and assure that the total effort was directed toward common goals. Spokesmen familiar with existing State programs pointed out the need for local contacts in order to have effective educational activities, particularly those conducted through the schools. Feedback from producers through cooperating State programs also might help achieve a successful national program. Some State representatives felt that there should be no overlap between current State programs and a new national program. They felt that assessments for State programs should be phased out and that such programs should continue to operate only as a part of the national effort. In essence, such an approach could result in using the State organization only as an administrative entity of the national program without the State organization conducting any local program activities. The Board should continually analyze the results of cooperative relationships with the various State programs and select the most effective approach in each case.

Record evidence supports permitting the Beef Board to allocate up to 10 percent of the net assessments paid by producers in a State for return to the qualifying State beef board, beef council, or other beef promotion entity. Although current programs in some States are funded at a higher level and some at a lower level than such funds would pro-

vide, all State programs would be accorded equal treatment by making up to 10 percent of the funds generated in the State for the national program available for use in the State. Such a provision helps assure the continuation of State programs by providing funds, upon the proper showing of program need and objectives.

Many producers testified that the Order should guarantee that at least 10 percent of the assessments from a State would be returned to help fund its State beef council, if requested. However, such a provision would be an undue restriction on the Board in that needs for funds may change over the years in many States and other States may demonstrate acceptable plans for less than the 10 percent level of funding. Still other States may decide that the national program better serves their purposes. Further, the Order contains a provision that allows State promotion entities to be eligible to be awarded contracts by the Board for program activities. These funds would be in addition to any funds returned to the States from the allocation of up to 10 percent of net assessments. Thus, a State promotion board, upon demonstration of need and an acceptable program, could receive further funding.

The Board is given flexibility with respect to the use of funds, including those which may be made available to support State programs, in order to achieve maximum effectiveness of the total national program. Testimony at the hearing indicates that assessments in some State programs would diminish rapidly and that funds from the national program would be needed in many States soon after the national program began. Accordingly, the Board may enter into agreements allocating funds to State programs as soon as possible during the first year on the basis of estimated net assessments in the State.

The amount of funds available for return to a qualifying State organization is based on net assessments contributed to the program by producers in that State. Refunds made to producers in the State would be subtracted from the estimated total assessments paid by producers in the State to compute net assessments. Accurate records of assessments on a State by State basis will be difficult or impractical to compile, since under the value-added concept the assessments remitted to the Board at the time cattle are slaughtered may also include assessments paid by several previous owners. The record includes considerable testimony showing that many cattle change ownership several times during their lifetime and often move from State to State. Extensive recordkeeping would be necessary to accurately credit the assessments paid by producers in each State. Data on the cash receipts from the sale of cattle by producers in each State, published by the U.S. Department of Agriculture, may provide the best available estimate of total assessments obtained from each State. It was also suggested in testimony that the number of cattle fed in a State and the size of the basic cow herd should be considered to help determine net assessments. Finally, testimony was presented proposing that the Order explicitly show the manner in which net assessments for a State would be computed. However, it is preferable for the Board to spell out such procedures in the rules which it adopts, thereby maintaining the option of seeking improvements, from time to time, in the basis for accurately reflecting the net assessments paid by producers in each State.

To qualify to receive funds from those assessments which may be made available for distribution to States, a State beef board, beef council, or other beef promotion entity must demonstrate ability to provide research, information, education, or promotion consistent with the purposes of the Order. The State entity should have goals and purposes complementary to the goals and purposes of the Act and the Order and must submit budgets and plans for research, information, education, or promotion programs for which the funds will be used and also submit reports to the Board on use of the funds. An eligible State organization should be organized under legislative authority in the State or by State charter. If more than one State entity requests funds, the one most qualified to fulfill the purposes of the Act and the Order will be selected by the Beef Board, subject to the approval of the Secretary.

Record evidence shows considerable concern that the use of funds returned to States would be unduly controlled by the Board and the Secretary. It was suggested that an organization should be able to qualify merely by demonstrating that it has goals complementary to those of the Order rather than be required to submit specific plans and programs for which the funds would be used and to report how the funds were used. However, the requirements should be the same as for other contractors and are not meant to result in submission of State entities to undue controls. Rather, they are necessary to assure that the Board and the Secretary exercise their responsibilities under the Act.

(e) *Assessments, Refunds, Expenses. Assessments.* The Act provides that funding for activities under this Order shall be acquired from assessments levied on producers of cattle, which will be collected from producers by producer-buyers and slaughterers, and that the slaughterers shall remit the assessments to the Board. Assessments levied on producers are based on the commercial value of cattle at the time of sale, normally the sale price. In order for each producer to pay his fair share of the assessment on cattle owned by two or more producers, a value-added procedure is employed.

The rate of assessment will be established each fiscal year by the Board, subject to the approval of the Secretary. Such rate of assessment may not exceed the statutory maximum of one-half of 1 percent of the value of the cattle sold. A rate of three-tenths of 1 percent of the value of cattle sold should provide sufficient funds to carry out the policy and purposes of the Act at this time while not creating an undue burden on producers. Section 1260.162 of the Order specifies that assessments may not exceed three-tenths of 1 percent of the value of cattle sold during the first 3 years that assessments are collected. Some producer testimony recommended a one-tenth of 1 percent assessment rate for the first year or more, or a plan whereby the rate would be increased periodically in the early years of the program. Reasons given for this position included: (1) Some producers, especially feeders, would pay a relatively larger share of the assessments since they would have to pay the total assessment on cattle they owned at the time the program began, even though they owned the cattle only a short time; (2) time is required to develop the administrative details of a new program and initiate projects to effectively use the funds; and (3) a lower initial rate would help reduce any disruption of existing State programs caused by the beginning of a new national program. However, the bulk of the testimony supported the assessment rate shown in the Order. Further, under the Order, the Board has flexibility to set the assessment rate at less than three-tenths of 1 percent if it finds that conditions warrant a lesser rate.

The cattle industry includes numerous classes of producers, such as dairy cattle producers, purebred or breeding stock producers, cow-calf producers, stocker-growers, traders, and cattle feeders. Each represents a segment of the industry or a stage in the production process. Most cattle slaughtered are owned by two or more producers prior to slaughter and some change hands several times.

The evidence indicates that for all producers to pay their fair share of assessments, a value-added concept should be employed—that is, each producer should pay an assessment based on the increase in value of cattle under his ownership. The value-added concept operates as follows:

Assuming an assessment rate of three-tenths of 1 percent of the sales price, a cow-calf man who sells a calf to a stocker-grower for $100 would be assessed three-tenths of 1 percent of the sales price or $.30. The cow-calf man could pay the stocker-grower $.30 or the stocker-grower could deduct $.30 from the $100 sales price and pay the cow-calf man $99.70 rather than $100. In either case, the cow-calf man would have paid an assessment based on the value added to the animal during his ownership. If the stocker-grower sold the animal to a feeder for $200, he would either pay the feeder three-tenths of 1 percent of the sales price ($.60) or the feeder would deduct $.60 from the $200 sales price and pay the stocker-grower only $199.40. In either instance, the $.60 assessment would include $.30 from the $100 increase in value during the cow-calf man's period of ownership and $.30 from the $100 increase in value during the stocker-grower's period of ownership. If the feeder later sells the animal to a slaughterer for $400, the slaughterer would collect from the feeder, or deduct from his $400 check, three-tenths of 1 percent of the sales value or $1.20. The slaughterer would forward the $1.20 to the Beef Board. Each of the producers would have contributed his fair share based on the value added during his ownership—$.30 each from the cow-calf man and the stocker-grower and $.60 from the feeder.

If no sales transaction occurs at the point of slaughter or other transfer, a fair commercial market value shall be attributed to the cattle for purposes of determining the assessment. For example, packer-owned cattle from feedlots will be assessed at the point of slaughter based on market prices of similar cattle. Cattle traded for other cattle or for merchandise also would be assessed on commercial market value. Similarly, cattle customs slaughtered for home consumption would be assigned a fair commercial market value for assessment purposes. However, cattle slaughtered for an individual's own home consumption are exempt from the assessment if the individ-assessment on such cattle until time of slaughter.

Most cattle increase in value rather consistently from birth to slaughter. Thus, under the value-added system of assessments, the final assesment remitted to the Beef Board by the slaughterer will exceed any previous assessment for the bulk of all cattle slaughtered. However, if the value of cattle involved in a sales transaction declines during a person's period of ownership, the total assessment paid by previous producers will not be passed on in the normal manner. A decline in value could be due to factor such as death loss, weight loss, or decline in market price. Detailed procedures for the collection of assessments due the Board but not passed along in the normal manner under such circumstances should be provided in the rules and regulations of the Board.

Further, since many cattle kept for breeding and milk production achieve a value for these purposes which is higher than their slaughter value, the Order specifies that the Beef Board may provide for an adjustment in the value of these cattle for assessment purposes so as not to exceed their value in the commercial slaughter market chain, or the Board may exempt collection of the assessment on such cattle until time of slaughter.

Some hearing evidence indicated that purebred cattle and cattle kept for dairy purposes should be exempt from assessment until slaughter. The exemption of such cattle until slaughter would reduce administrative problems, it was argued. However, testimony from producers of purebred and dairy cattle indicated that they wished to pay their fair share of assessments levied on the industry. In addition, proponents testified that determination by the buyer and seller of the commercial market value of breeding cattle would not be difficult. To maintain the flexibility necessary under the Order, the Beef Board will determine and specify in the regulations of the Board whether assessments on breeding cattle, including cattle kept for milk production, will be based on the estimated commercial value or whether such cattle will be exempt until slaughter. If assessments are based on estimated commercial value and difficulties arise, the Beef Board may amend the regulations and exempt breeding and dairy cattle from assessment until slaughter.

Slaughterers will be required to remit assessments to the Board, including assessments due at time of slaughter on cattle of their own production, in accordance with regulations developed by the Board. Assessments due on cattle slaughtered must be paid to the Board regardless of whether the assessment has been collected from the producer. Similarly, throughout the production chain, collection or deduction of assessments with transfer of ownership will be self-enforcing, since a producer-buyer who fails to collect the assessment on a transaction will be obligated to pay, as a producer-seller, an assessment based on the total commercial value of the transaction rather than only the assessment based on the value added during his ownership. In all transactions in which a slaughterer or producer-buyer has collected or deducted an assessment from a producer, the producer-seller should be given a receipt showing the amount deducted or collected.

The Beef Board is authorized to set aside funds in an operating reserve and to budget for such a reserve. It would be impractical to operate without a reasonable reserve. Research opportunities, the need for increased promotion, and other opportunities may develop suddenly. Without available funds it would not be possible to take advantage of such opportunities and to fulfill such needs, and a reserve fund is necessary for such purposes. The amount of the reserve fund will be determined by the Board with the approval of the Secretary. However, the reserve fund should not exceed approximately the average yearly collections of the Board.

Refunds. Refunds of assessments to producer-sellers who request them are provided in the Order. Any producer against whose cattle any assessment is made and collected from him—and who is not in favor of supporting the programs—shall have the right to receive a refund of such assessment from the Beef Board. However, no producer may receive a refund of the portion of the assessment which he collected from other producers. Regulations will be issued controlling the method of obtaining a refund, including a requirement of proof that the producer-seller paid the assessment for which the refund is claimed. A refund request must be submitted within 60 days after the end of the month in which the transaction occurred.

The Act and the Order provide that the refund be made by the Board within 60 days after the submission of proof satisfactory to the Board that the producer-seller paid the assessment for which refund is sought, but no producer shall claim or receive a refund of any portion of an assessment which he collected from other producers. The refund provision is essential to the voluntary concept of the Order, in that no producer is forced to financially support the Order if he does not favor it. The Board should make refund forms readily available to producers and each producer who asks for a refund must individually request it, i.e., he must submit the refund request. Marketing agencies, cooperatives, brokers, or others shall not be allowed to request refunds on behalf of producers. Slaughterers shall not be entitled to refunds even if they submit funds to the Board in the amount of a producer's assessment without collecting the assessments from the producer. But a slaughterer who is also a producer and has paid the assessment as a producer is entitled to request and receive a refund.

Expenses. Board expenses shall be paid from assessments received and any other funds which accrue to the Board. The Board may incur expenses which are found by the Secretary to be reasonable for the functioning and maintenance of the Board and necessary for the Board to exercise its powers and duties.

The Act and its legislative history make it clear that included in the expenses of the Board will be a reimbursement to the Secretary for such expenses, excluding salaries, as the Secretary determines were incurred by the Government in preparation of an original order and for the conduct of the referendum. In a brief, the opinion was expressed that the Secretary should be reimbursed for the conduct of the referendum but not for expenses incurred in preparation of an original order. However, the conference report of April 15, 1976, (House of Representatives Report No. 94–1044), clearly lists a number of costs for which the Secretary is to be reimbursed which are necessary costs in preparation of an original order. It is therefore found that such costs must be reimbursed.

The Act also requires that, after the Order becomes effective, all administrative costs, including salaries, which the Secretary determines were incurred by the Government under the Order shall be reimbursed by the Beef Board. In a brief, the opinion was expressed that Government salaries should not be reimbursed by the Beef Board. However, the legislation is clear that administrative costs of the Government are to be reimbursed. Therefore, it is found that the Secretary shall be reimbursed for all costs, including salaries, that he determines are incurred by the Government under the Order.

(f) *Records and Reports.* The Act imposes requirements on slaughterers to keep records and make such reports as necessary to the effectuation, administration, and enforcement of the Act and the Order or regulations issued pursuant to it. The Board has authority, with approval of the Secretary, to establish regulations requiring slaughterers to keep necessary books and records and to report to the Board periodically as the Board determines is necessary. Details on the information needed in records and reports and the frequency and timing of reports are to be estabished by the Board

and shown in the regulations. Record evidence shows some concern that unduly burdensome requirements may be imposed on slughterers. It was suggested that existing records systems of the industry should be utilized to the extent possible, and the Board should be cognizant of this recommendation when formulating regulations for approval by the Secretary.

All books and records required under the regulations must be made available by slaughterers for inspection by representatives of the Board or the Secretary as necessary to verify reports on assessments made and forwarded to the Board. These records are to be retained at least 2 years beyond the marketing year of their applicability. Such a time period is necessary to permit to completion of authorized audits, investigations, or other actions that may be necessary in administering and enforcing the provisions of Order and the Act.

Representatives of the Board or the Secretary, while acting in their official capacities, on occasion are likely to have access to records and accounts of slaughterers, producers, and others which may reveal trade secrets. The Act requires that the confidential nature of such business records be protected. Therefore, the Order provides that information obtained from books, records, and reports required of slaughterers, and information about refunds made to producers, shall be kept confidential by employees of the Board and of the Department of Agriculture. Also, any such information which becomes available to contracting parties should be kept confidential by officers and employees of such parties. However, the Secretary retains the authority to permit disclosure of such information, but only in a suit or administrative hearing relevant to the Order brought at the direction, or upon the request, of the Secretary of Agriculture, or to which any officer of the United States is a party.

It should be recognized that some information about the program may be of interest and benefit to the general public. Accordingly, the Order does not prohibit (1) the issuance of general statements concerning the number of persons subject to the Order or statistical data collected which do not identify the information furnished by any person; (2) the publication, as approved by the Secretary, of general statements relating to refunds made by the Beef Board which do not identify any person to whom a refund is made; or (3) the publication by direction of the Secretary of the name of any person violating the Order, together with a statement of the provisions of the Order violated.

(g) *Other Terms and Conditions.* Record evidence shows concern that patents, copyrights, inventions, and publications developed through the use of funds collected under the Order should be the property of the Beef Board to use for the benefit of the entire cattle industry. In a brief, proponents suggested that a section be added to the Order to outline such a provision. Accordingly, a new section is included in the Order as shown in § 1260.181. It provides that any patents, copyrights, inventions, or publications developed through the use of funds collected under the Order shall be the property of the Beef Board and any benefits or income from the use of such patents, copyrights, inventions, or publications shall inure to the benefit of the cattle industry. In the event of termination of the Order, control of such holdings and other assets would revert to the Secretary to be used for the benefit of the industry as specified in the Order.

The record shows a need for several other miscellaneous terms and conditions as shown in §§ 1260.182 through 1260.187 of the Order. Each section sets forth certain rights, obligations, privileges, or procedures which are necessary and appropriate for the effective operation of the Order. These provisions are incidental to, and not inconsistent with, the terms and conditions of the Act, are necessary to effectuate the other provisions of the Order, and are supported by the record evidence.

RULINGS ON BRIEFS, PROPOSED FINDINGS, AND CONCLUSIONS

At the close of the hearing, the Administrative Law Judge fixed November 15, 1976, as the final date for interested parties to file briefs, proposed findings, and conclusions based on the evidence received at the hearing. Eight briefs were filed on behalf of the following parties: Ed Grady, Manager, Information Division, Minnesota Farm Bureau Federation, St. Paul, Minnesota; Jack Russ, Director, California Cattlemen's Association, Sacramento, California; J. F. Goold, Executive Vice-President, League of California Milk Producers, Sacramento, California; James K. Kreutz, Attorney, Beef Development Taskforce, Denver, Colorado; Stephen F. Krut, Assistant Executive Director, National Association of Meat Processors, Elizabethtown, Pennsylvania; B. H. Jones, Executive Vice-President, National Livestock Feeders Association, Omaha, Nebraska; J. Gordon Cran, President, Hawaii Cattlemen's Council, Inc., Honolulu, Hawaii; and John Lewis, Director, California Farm Bureau Federation, Berkeley, California.

Several of the briefs reiterated points made by witnesses at the hearing or were copies of statements presented at the hearing. The points in each of the briefs were carefully considered along with the record evidence received at the hearing in making the findings and conclusions set forth herein as discussed in this recommended decision. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions as set forth herein, requests to make such findings or reach such conclusions are denied for the reasons previously cited in this decision.

GENERAL FINDINGS

On the basis of the evidence presented at the hearing and the record thereof, it is found that: 1. The Beef Research and Information Order and all of the terms and conditions thereof as hereinafter set forth will tend to effectuate the declared policy of the Act; and

2. The following terms and conditions of the Order are recommended as a detailed means of carrying out the declared policy of the Act with respect to the development of effective and continuous coordinated programs of research, consumer information, producer information, and promotion for cattle, beef, and beef products with adequate financing through assessments on the sales of cattle.

RECOMMENDED BEEF RESEARCH AND INFORMATION ORDER

The following national Research and Information Order is recommended as the appropriate means by which the foregoing conclusions may be carried out.

A new subpart is added to Part 1260 of Title 7, CFR as follows:

PART 1260—BEEF RESEARCH AND INFORMATION

Subpart—Beef Research and Information Order

DEFINITIONS

Sec.
1260.101 Secretary.
1260.102 Act.
1260.103 Person.
1260.104 Cattle.
1260.105 Beef.
1260.106 Beef products
1260.107 Fiscal period.
1260.108 Beef Board or Board.
1260.109 Executive Committee.
1260.110 Producer.
1260.111 Producer-buyer.
1260.112 Producer-seller.
1260.113 Slaughterer.
1260.114 United States.
1260.115 Marketing.
1260.116 Commerce.
1260.117 Producer organization or eligible organization.
1260.118 Producer information.
1260.119 Consumer information.
1260.120 Promotion.
1260.121 Research.
1260.122 Transaction.
1260.123 Contracting party.
1260.124 Marketing year.
1260.125 Part and subpart.

BEEF BOARD

1260.136 Establishment and membership.
1260.137 Term of office.
1260.138 Nominations.
1260.139 Appointments.
1260.140 Acceptance.
1260.141 Vacancies.
1260.142 Alternate members.
1260.143 Procedure.
1260.144 Compensation and reimbursement.
1260.145 Powers of the Board.
1260.146 Duties of the Board.

RESEARCH, INFORMATION, EDUCATION, AND PROMOTION

1260.151 Research, information, education and promotion.

STATE BEEF COUNCILS

1260.156 Continuity.
1260.157 Qualifications.

EXPENSES AND ASSESSMENTS

1260.161 Expenses.
1260.162 Assessments.
1260.163 Producer refunds.
1260.164 Influencing governmental action.

REPORTS, BOOKS, AND RECORDS

1260.171 Reports.
1260.172 Books and records.
1260.173 Confidential treatment.

CERTIFICATION OF ORGANIZATIONS

1260.176 Certification of organzations.

MISCELLANEOUS

1260.181 Patents, copyrights, inventions, and publications.
1260.182 Suspension and termination.
1260.183 Proceedings after termination.
1260.184 Effect of termination or amendment.
1260.185 Amendments.
1260.186 Personal liability.
1260.187 Separability.

AUTHORITY: Beef Research and Information Act (7 U.S.C. 2901 et seq.).

DEFINITIONS

§ 1260.101 Secretary.

"Secretary" means the Secretary of Agriculture or any other officer or employee of the Department of Agriculture to whom there has heretofore been delegated, or to whom there may hereafter be delegated, the authority to act in his stead.

§ 1260.102 Act.

"Act" means the Beef Research and Information Act (7 U.S.C. 2901 et seq.) and any amendments thereto.

§ 1260.103 Person.

"Person" means any individual, group of individuals, partnership, corporation, association, cooperative, or any other entity.

§ 1260.104 Cattle.

"Cattle" means live domesticated bovine quadrapeds.

§ 1260.105 Beef.

"Beef" means the flesh of cattle.

§ 1260.106 Beef products.

"Beef products" means products produced in whole or in part from cattle, exclusive of milk and products made therefrom.

§ 1260.107 Fiscal period.

"Fiscal period" is the 12-month budgetary period and means the USDA's fiscal year unless the Beef Board, with the approval of the Secretary, selects some other 12-month period.

§ 1260.108 Beef Board or Board.

"Beef Board" or "Board" or other designatory term adopted by such Board means the administrative body established pursuant to § 1260.136.

§ 1260.109 Executive Committee.

"Executive Committee" means those members of the Beef Board, from 7 to 11 in number, who are elected by the Board to administer the provisions of this subpart under the supervision of the Board and within the policies determined by the Board.

§ 1260.110 Producer.

"Producer" means any person who owns or acquires ownership of cattle other than one who acquires cattle solely for the purpose of slaughter: *Provided*, That a person shall not be considered to be a producer if his only share in the proceeds of a sale of cattle or beef is a sales commission, handling fee, or other service fee.

§ 1260.111 Producer-buyer.

"Producer-buyer" means a producer who buys cattle.

§ 1260.112 Producer-seller.

"Producer-seller" means a producer who sells cattle.

§ 1260.113 Slaughterer.

"Slaughterer" means any person who slaughters cattle including cattle of his own production.

§ 1260.114 United States.

"United States" means the 50 States of the United States of America and the District of Columbia.

§ 1260.115 Marketing.

"Marketing" means the sale or any other disposition of cattle, beef, or beef products in any channel of commerce.

§ 1260.116 Commerce.

"Commerce" means interstate, foreign, or intrastate commerce.

§ 1260.117 Producer organization or eligible organization.

"Producer organization" or "eligible organization" means any organization which has been certified by the Secretary pursuant to this subpart.

§ 1260.118 Producer information.

"Producer information" means facts, data, and other information that will assist producers in making decisions that lead to increased efficiency, lower cost of production, a stable supply of cattle, and the development of new markets.

§ 1260.119 Consumer information.

"Consumer information" means facts, data, and other information that will assist consumers and other persons in making evaluations and decisions regarding the purchasing, preparation, and utilization of beef and beef products.

§ 1260.120 Promotion.

"Promotion" means any action to advance the image or desirability of beef and beef products.

§ 1260.121 Research.

"Research" means any type of systematic study or investigation to advance the desirability, marketability, production, or quality of cattle, beef, and beef products, and includes the evaluation of such studies or investigations.

§ 1260.122 Transaction.

"Transaction" means any transfer of ownership of cattle or beef through a sale, trade, or other means of exchange.

§ 1260.123 Contracting party.

"Contracting party" means any individual, group of individuals, partnership, corporation, association, cooperative, or other entity, public or private, with which the Beef Board may enter into a contract or agreement pursuant to § 1260.146(e).

§ 1260.124 Marketing year.

"Marketing year" means the calendar year ending on December 31 or any other consecutive 12-month period designated by the Board, with the approval of the Secretary.

§ 1260.125 Part and subpart.

"Part" means 7 CFR Part 1260, containing rules, regulations, orders, supplemental orders, and similar matters concerning the Beef Research and Information Act. "Subpart" refers to any portion or segment of this part.

BEEF BOARD

§ 1260.136 Establishment and membership.

There is hereby established a Beef Board composed of not more than 68 producers, each of whom shall have an alternate, appointed by the Secretary from nomination submitted by eligible producer organizations within geographic areas certified pursuant to § 1260.176 or by producers in a manner authorized by the Secretary pursuant to § 1260.138(a).

§ 1260.137 Term of office.

The members of the Board and their alternates shall serve for terms of 3 years, except appointments to the initial Board shall be, proportionately, for terms of 1, 2, and 3 years. Each member and alternate member shall continue to serve until his successor is appointed by the Secretary and has accepted. No member or alternate member shall serve more than 6 consecutive years: *Provided*, That those members and alternate members appointed to the initial Board for 1 or 2 year terms are eligible to serve two additional consecutive terms.

§ 1260.138 Nominations.

All nominations to the Beef Board authorized under § 1260.136 shall be made in the following manner:

(a) Within 90 days of the announcement of approval of this Order, or a longer period if so prescribed by the Secretary, nominations shall be submitted to the Secretary for each member and each alternate member to be appointed for each geographic area as specified in paragraph (d) of this section by eligible organizations, certified pursuant to § 1260.176: *Provided*, That if there is no eligible organization certified for a geographic area, or if the Secretary determines that a substantial number of producers are not members of, or their interests are not represented by, any such eligible organization, then nominations shall be submitted in a manner authorized by the Secretary;

(b) After the establishment of the Board, the nominations for subsequent Board members and alternates shall be submitted to the Secretary not less than 60 days prior to the expiration of the terms of the members and alternates previously appointed to the Board;

(c) Where there is more than one eligible organization within a geographic area, they may caucus for the purpose of jointly nominating qualified persons for each member and for each alternate member to be appointed. If joint agreement is not reached with respect to any such nominations, or if no caucus is held within a defined geographic area, each eligible organization may submit to the Secretary nominations for each appointment to be made;

(d) For purposes of nominating members and their alternates to the Board, the United States shall be divided into geographic areas so as to reflect the proportion of cattle in each geographic area: *Provided*, That each designated geographic area shall be entitled to at least one member on the Board and one alternate member;

(e) The initial geographic areas and the number of members and alternates on the Beef Board from each area shall be: Alabama 1, Arizona 1, Arkansas 1, California 2, Colorado 2, Florida 1, Georgia 1, Idaho 1, Illinois 2, Indiana 1, Iowa 3, Kansas 3, Kentucky 2, Louisiana 1, Michigan 1, Minnesota 2, Mississippi 1, Missouri 3, Montana 2, Nebraska 3, New Mexico 1, New York 1, North Carolina 1, North Dakota 1, Ohio 1, Oklahoma 3, Oregon 1, Pennsylvania 1, South Carolina 1, South Dakota 2, Tennessee 2, Texas 7, Utah 1, Virginia 1, West Virginia 1, Wisconsin 2, Wyoming 1. Additional geographic areas, comprised of combined States, shall be: Nevada-Hawaii 1, Washington-Alaska 1, Maryland-Delaware-New Jersey-District of Columbia 1, Maine-Vermont-New Hampshire-Massachusetts-Rhode Island-Connecticut 1; and

(f) After the establishment of the Board, the geographic areas provided for in paragraph (d) of this section, including the area distribution of members of the Board and their alternates, shall be reviewed within 5 years and at any time not to exceed 5 years from the date of the last review by the Board. The Board shall redefine the geographic areas, subject to the approval of the Secretary, if it finds that the existing geographic areas do not properly reflect the proportion of cattle in each geographic area: *Provided*, That each such area shall be represented by at least one Board member.

§ 1260.139 Appointments.

From the nominations made pursuant to § § 1260.136 and 1260.138, the Secretary shall appoint the members of the Board and an alternate for each member on the basis of the representation provided for in § § 1260.136, 1260.137 and 1260.138.

§ 1260.140 Acceptance.

Any person appointed by the Secretary as a member or as an alternate member of the Board shall notify the Secretary of his acceptance in a manner prescribed by the Secretary.

§ 1260.141 Vacancies.

To fill any vacancy occasioned by the death, removal, resignation, or disqualification of any member or alternate member of the Board, a successor for the unexpired term of such member or alternate member of the Board shall be nominated and appointed in a manner specified in §§ 1260.1336, 1260.137, 1260.138(b), and 1260.140, except that replacement of a Board member or alternate with an unexpired term of less than 6 months is not necessary.

§ 1260.142 Alternate members.

An alternate member of the Board, during the absence of the member for whom he is the alternate, shall act in the place and stead of such member of the Board at meetings and perform such other duties as assigned. In the event of the death, removal, resignation, or disqualification of a member, his alternate shall act for him at Board meetings until a successor for such member is appointed.

§ 1260.143 Procedure.

(a) A majority of the members of the Board, including alternates acting for members of the Board, shall constitute a quorum, and any action of the Board shall require the concurring votes of at least a majority of those present and voting. At assembled meetings all votes shall be cast in person.

(b) For matters which do not require deliberation and the exchange of views, and in matters of an emergency nature when there is not enough time to call an assembled meeting of the Board, the Board may also take action upon the concurring votes of a majority of its members by mail, telegraph, or telephone, but any such telephone vote shall be confirmed promptly in writing.

§ 1260.144 Compensation and reimbursement.

The members of the Board and alternates shall serve without compensation but shall be reimbursed for necessary and reasonable expenses incurred by them in the performance of their duties under this subpart.

§ 1260.145 Powers of the Board.

The Board shall have the following powers:

(a) To supervise the administration of this subpart in accordance with its terms and conditions;

(b) To make rules and regulations to effectuate the terms and provisions of this subpart;

(c) To receive, investigate, and report to the Secretary complaints of violations of the provisions of this subpart; and

(d) To recommend to the Secretary amendments to this subpart.

§ 1260.146 Duties of the Board.

The Board shall have the following duties: (a) To meet and organize and to select from among its members a chairman and such other officers as may be necessary, to select committees and subcommittees of Board members, and to adopt such rules for the conduct of its business as it may deem advisable. The Board also may establish advisory committees of persons other than Board members;

(b) To appoint from its members an Executive Committee, consisting of not less than 7 nor more than 11 members, and to delegate to the Committee authority to employ a staff and administer the terms and provisions of the subpart under the direction of the Beef Board and within the policies determined by the Board. The membership of the Executive Committee shall be generally representative of the cattle industry and shall reflect, to the extent practicable, the same geographic distribution of membership as the Beef Board itself;

(c) To develop and submit to the Secretary plans or projects, together with the Board's recommendations with respect to the approval thereof by the Secretary;

(d) To prepare and submit to the Secretary for his approval budgets on a fiscal period basis of its anticipated expenses and disbursements in the administration of this subpart, including probable costs of each research, information, advertising, promotion, and developmental plan or project. The Board shall also submit informational copies of such budgets to the House Committee on Agriculture and the Senate Committee on Agriculture and Forestry;

(e) To enter into contracts or agreements, with the approval of the Secretary, with appropriate contracting parties for the development and carrying out of the projects and programs of the Board as authorized by § 1260.151, and for the payment of the costs thereof with funds accruing pursuant to the administration of this subpart: *Provided*, That nothing in this subpart shall preclude the Board from conducting projects or activities on its own to effectuate the intent and purposes of the Act. Any such contract or agreement shall also provide that such contracting parties shall develop and submit to the Board a plan or project, together with a budget or budgets which shall show the estimated cost to be incurred for such plan or project, and that any such plan or project shall become effective upon approval by the Secretary. Any such contract or agreement shall also provide that the contracting parties shall keep accurate records of all of their activities with respect to the contract or agreement and make periodic reports to the Board of activities carried out, an accounting for funds received and expended, and such other reports as the Secretary or Board may require;

(f) To maintain such books and records and prepare and submit such reports from time to time to the Secretary as he may prescribe and to make appropriate accounting with respect to the receipt and disbursement of all funds entrusted to it;

(g) To prepare and make public, at least each fiscal period, a report of activities carried out and an accounting for funds received and expended;

(h) To cause its books to be audited by a public accountant at least once each fiscal period and at such other times as

the Secretary may request and to submit a copy of each such audit to the Secretary;

(i) To give the Secretary the same notice of meetings of the Board as is given to members in order that he or his representative may attend such meetings; and

(j) To submit to the Secretary such information pertaining to this subpart as he may request.

RESEARCH, INFORMATION, EDUCATION, AND PROMOTION

§ 1260.151 Research, information, education, and promotion.

(a) The Beef Board shall in the manner prescribed in § 1260.146 provide for: (1) The establishment, issuance, effectuation, and administration of plans or projects for advertising, promotion, education, producer information, and consumer information with respect to the use of cattle, beef, and beef products and for the disbursement of necessary funds for such purposes;

(2) The establishment and carrying on of research, market development projects, and studies with respect to the production, sale, processing, distribution, marketing, or utilization of cattle, beef, and beef products and the creation of new products thereof, in accordance with section 7(b) of the Act, to the end that the production, marketing, and utilization of cattle, beef, or beef products may be encouraged, expanded, improved, or made more efficient and/or acceptable and the data collected by such activities may be disseminated, and for the disbursement of necessary funds for such purposes; and

(3) The development and expansion of foreign markets and uses for cattle, beef, or beef products.

(b) Each program or project authorized under paragraph (a) of this section shall be periodically reviewed or evaluated by the Board to insure that each such plan or project contributes to an effective and coordinated program of research, information, education, and promotion. If it is found by the Board that any such program or project does not further the purposes of the Act, then the Board shall terminate such program or project.

(c) No reference to a private brand or trade name shall be made if the Secretary determines that such reference will result in undue discrimination against the cattle, beef, or beef products of other persons in the United States. No such advertising, consumer education, or sales promotion program shall make use of claims in behalf of cattle, beef, or beef products, or statements with respect to quality, value, or use of any competing product if the Secretary determines them to be false or misleading.

STATE BEEF COUNCILS

§ 1260.156 Continuity.

The Beef Board may allocate up to 10 percent of net assessments from each State for use during the next fiscal year by the qualifying State beef council, beef board, or other beef promotion entity: *Provided*, That during the first year, the Beef Board may estimate the net assessments from each State and upon request from such entity provide up to 10 percent of estimated net assessments. The amount of net assessments from each State shall be computed by the Beef Board to reflect total assessments in such State less a deduction for refunds to producers in such State. Any request for funds shall be made by a State beef promotion entity which meets the qualifications specified in § 1260.157.

§ 1260.157 Qualifications.

To qualify for the receipt of funds pursuant to § 1260.156, a State beef board, beef council, or other beef promotion entity shall (a) be organized pursuant to legislative authority within the State or be organized by State charter, (b) have goals and purposes complementary to the goals and purposes of the Act, and (c) demonstrate ability to provide research, information, education, or promotion consistent with the Act and this subpart. The request from a State beef promotion entity for such funds shall show plans or projects and estimated costs of activities for which the funds will be used. The contract or agreement for such funds shall provide that the State promotion entity shall keep accurate records of all activities with respect to the contract or agreement and make periodic reports to the Board of activities carried out, an accounting for funds received and expended, and such other reports as the Board or the Secretary may require. In no event shall more than one such entity qualify within a State. If more than one entity applies for qualification within a State, the Beef Board shall choose, subject to the approval of the Secretary, the one most qualified to fulfill the purposes of the Act and this subpart.

EXPENSES AND ASSESSMENTS

§ 1260.161 Expenses.

(a) The Board is authorized to incur such expenses as the Secretary finds are reasonable and likely to be incurred by the Board for its maintenance and functioning and to enable it to exercise its powers and perform its duties in accordance with the provisions of this subpart. Such expenses shall be paid from assessments received pursuant to § 1260.162 and other funds available to the Board.

(b) The Board shall reimburse the Secretary, from producer assessments, for all the expenses and expenditures, excluding salaries, which the Secretary determines were incurred by the Government in the preparation of an original order and the conduct of the referendum considering its approval.

(c) The Board shall reimburse the Secretary, from producer assessments, for administrative costs, including salaries, which the Secretary determines are incurred by the Government with respect to this subpart.

§ 1260.162 Assessments.

(a) Each producer-seller, upon sale or transfer of ownership of any cattle, except as provided below, shall pay to the producer-buyer or slaughterer thereof, pursuant to regulations issued by the Board, and such producer-buyer or slaughterer shall collect from the producer-seller an assessment based on the value of the cattle involved in the transaction as follows:

(1) The Beef Board, with the approval of the Secretary, shall set the amount of assessment, not to exceed five-tenths of 1 percent of the sale price;

(2) The assessment rate for the first three years shall not exceed three-tenths of 1 percent of the sale price;

(3) In the event that no sales transaction occurs at the point of slaughter or other transfer, a fair commercial market value shall be attributed to the cattle for the purpose of determining the assessment;

(4) Cattle slaughtered for his own home consumption by a producer who has been the sole owner of such cattle shall not be subject to assessments provided in this subpart;

(5) The Beef Board may provide for the adjustment of the value of breeding cattle or classes of breeding cattle, including those used in milk production, so as not to exceed commercial market value, or it may exempt collection of the assessment on such cattle until time of slaughter;

(6) Each slaughterer shall remit assessment(s) collected to the Beef Board at such times and in such manner as prescribed by regulations issued by the Board, including any assessment(s) due at time of slaughter on cattle of his own production;

(7) Failure of the slaughterer to collect the assessment(s) on each animal shall not relieve the slaughterer of his obligation to remit the assessment(s) to the Beef Board as required in this subpart; and

(8) The Beef Board may collect directly from any producer any assessment(s) that he collected under the provisions of this subpart or otherwise due which were not passed along in the manner set forth in this subpart due to the loss in value of the cattle or due to the export of the cattle or due to other reasons.

(b) The Beef Board may accumulate a reasonable reserve of approximately the average yearly collections to maintain continuity of programs and fulfill other obligations and expenses.

§ 1260.163 Producer refunds.

Any producer-seller on whose cattle an assessment is made and collected from him under the authority of the Act shall have the right to remand and receive from the Beef Board a refund of such assessment upon submission of proof satisfactory to the Board that the producer-seller paid the assessment for which refund is sought. Any such demand shall be made by such producer-seller in accordance with regulations and on a

form prescribed by the Board and approved by the Secretary. Such demands shall be made within 60 days after the end of the month in which the transaction occurred upon which said refund is based. Refund shall be made within 60 days after the submission of proof satisfactory to the Board that the producer-seller paid the assessment for which refund is sought: *Provided*, That no producer shall claim or receive a refund of any portion of an assessment which he collected from other producers.

§ 1260.164 Influencing governmental action.

No funds collected by the Board under this subpart shall in any manner be used for the purpose of influencing governmental policy or action except as provided in this subpart.

REPORTS, BOOKS, AND RECORDS

§ 1260.171 Reports.

Each slaughterer subject to this subpart shall be required to report to the Beef Board periodically such information as may be required by regulations established by the Board.

§ 1260.172 Books and records.

Each slaughterer shall maintain and make available for inspection by the Beef Board and the Secretary such books and records as are necessary to carry out the provisions of this subpart and the regulations issued thereunder, including such records as are necessary to verify any reports required. Such records shall be retained for at least two years beyond the marketing year of their applicability.

§ 1260.173 Confidential treatment.

All information obtained from such books, records, or reports required to be maintained under §§ 1260.171 and 1260.172 and all information obtained by the Beef Board pertaining to producer refunds made pursuant to § 1260.163 shall be kept confidential by all employees of the Beef Board, all employees of the Department of Agriculture, and all officers and employees of contracting parties, and only such information so furnished or acquired as the Secretary deems relevant shall be disclosed by them, and then only in a suit or administrative hearing brought at the direction, or upon the request, of the Secretary of Agriculture, or to which any officer of the United States is a party, and involving this subpart: *Provided, however*, That nothing in this subpart shall be deemed to prohibit (a) the issuance of general statements based upon the reports of the number of persons subject to this subpart or statistical data collected therefrom, which statements do not identify the information furnished by any person, (b) the publication of general statements relating to refunds made by the Beef Board during any specific period, which statements do not identify any person to whom refunds are made, or (c) the publication by direction of the Secretary of the name of any person violating this subpart, together with a statement of the particular provisions violated by such person.

CERTIFICATION OF ORGANIZATIONS

§ 1260.176 Certification of organizations.

(a) Any producer organization within a geographic area designated pursuant to §§ 1260.136 and 1260.138 may request the Secretary to certify its eligibility to represent cattle producers to participate in nominating members and alternate members to represent such geographic area on the Beef Board. Such eligibility shall be based, in addition to other available information, upon a factual report submitted by the organization which shall contain information deemed relevant and specified by the Secretary for the making of such determination, including but not limited to the following:

(1) Geographic area covered by the organization's active membership;

(2) Nature and size of the organization's active membership, proportion of total of such active membership accounted for by producers of cattle, and the volume of cattle produced by the organization's active membership in each such State or applicable geographic area(s);

(3) The extent to which the cattle producer membership of such organization is represented in setting the organization's policies;

(4) Evidence of stability and permanency of the organization;

(5) Sources from which the organization's operating funds are derived;

(6) Functions of the organization; and

(7) The organization's ability and willingness to further the aims and objectives of the Act.

(b) The primary consideration in determining the eligibility of an organization shall be whether its producer membership consists of a substantial number of producers who produce a substantial volume of cattle in the geographic area subject to the provisions of this subpart.

(c) The Secretary shall certify any organization which he finds to be eligible under this section and his determination shall be final. After the original certification of an organization, such organization shall request recertification at any time it wishes to nominate a member to the Board and the Secretary may require recertification at any time.

§ 1260.181 Patents, copyrights, inventions, and publications.

Any patents, copyrights, inventions or publications developed through the use of funds collected under the provisions of this subpart shall be the property of the Beef Board, and shall, along with any rents, royalties, residual payments, or other income from the rental, sale, leasing, franchising, or other uses of such patents, copyrights, inventions, or publications, inure to the benefit of the cattle industry. Upon termination of this subpart, § 1260.183 applies to determine disposition of all such property.

§ 1260.182 Suspension and termination.

(a) The Secretary shall, whenever he finds that this subpart or any provision thereof obstructs or does not tend to effectuate the declared policy of the Act, terminate or suspend the operation of this subpart or such provision.

(b) The Secretary may conduct a referendum at any time, and shall hold a referendum on request of 10 percent or more of the number of cattle producers voting in the referendum approving this subpart, to determine whether cattle producers favor the termination or suspension of this subpart, and the Secretary shall suspend or terminate such subpart 6 months after he determines that its suspension or termination is approved or favored by a majority of the producers of cattle voting in such referendum who, during a representative period determined by the Secretary, have been engaged in the production of cattle and who produced more than 50 percent of the volume of the cattle produced by the cattle producers voting in the referendum.

§ 1260.183 Proceedings after termination.

(a) Upon termination of this subpart, the Beef Board shall recommend not more than five of its members to the Secretary to serve as trustees, for the purpose of liquidating the affairs of the Beef Board. Such persons, upon designation by the Secretary, shall become trustees of all of the funds and property then in the possession or under control of the Board, including claims for any funds unpaid or property not delivered or any other claim existing at the time of such termination.

(b) The said trustees shall: (1) continue in such capacity until discharged by the Secretary; (2) carry out the obligations of the Beef Board under any contracts or agreements entered into by it pursuant to § 1260.146(e); (3) from time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the Board and of the trustees, to such person as the Secretary may direct; and (4) upon the direction of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title and right to all of the funds, property, and claims vested in the Board or the trustees pursuant to this subpart.

(c) Any person to whom funds, property, or claims have been transferred or delivered pursuant to this subpart shall be subject to the same obligations imposed upon the trustees.

(d) Any residual funds or property not required to defray the necessary expenses of liquidation shall be turned over to the Secretary to be utilized, to the extent practicable, in the interest of continuing one or more of the beef research or information programs hitherto authorized.

§ 1260.184 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant thereto, or the issuance of any amendment to either thereof, shall not:

(a) Affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this subpart or any regulation issued thereunder;

(b) Release or extinguish any violation of this subpart or any regulation issued thereunder; or

(c) Affect or impair any right or remedies of the United States, or of any person, with respect to any such violation.

§ 1260.185 Amendments.

Amendments to this subpart may be proposed, from time to time, by the Board or by an organization certified pursuant to Section 15 of the Act, or by any interested person affected by the provisions of the Act, including the Secretary.

§ 1260.186 Personal liability.

No member, alternate member, or employee of the Beef Board shall be held personally responsible, either individually or jointly with others, in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, of such member, alternate, or employee except for acts of dishonesty or willful misconduct.

§ 1260.187 Separability.

If any provision of this subpart is declared invalid or the applicability thereof to any person or circumstances is held invalid, the validity of the remainder of this subpart or the applicability thereof to other persons or circumstances shall not be affected thereby.

Single copies of this notice of recommended decision may be obtained from the Hearing Clerk, Room 112–A, Administration Building, United States Department of Agriculture, Washington, D.C. 20250, or may be there inspected.

Signed at Washington, D.C., on January 18, 1977.

DONALD E. WILKINSON,
Administrator.

[FR Doc.77-2240 Filed 1-24-77;8:45 am]

Rural Electrification Administration

[7 CFR Part 1701]

RURAL TELEPHONE PROGRAM

Purchasing and Installing Central Office Equipment

Notice is hereby given that, pursuant to the Rural Electrification Act, as amended (7 USC 901 et seq.), including the amendment thereto enacted by Pub. L. 93–32, REA proposes to revise REA Bulletin 384–1 (Telephone), Purchasing and Installing Central Office Equipment. The proposed revised bulletin modifies the procedures whereby an REA Telephone Borrower may purchase central office equipment. On issuance of REA Bulletin 384–1, revised January 1977, Appendix A to Part 1701 will be modified accordingly.

Persons interested in the proposed revision may submit written data, views or comments to the Director, Telephone Operations and Standards Division, Rural Electrification Administration, Room 1355, South Building, U.S. Department of Agriculture, Washington, D.C. 20250, on or before February 24, 1977. All written submissions made pursuant to this notice will be made available for public inspection at the Office of the Director, Telephone Operations and Standards Division, during regular business hours.

The text of the proposed revision is as follows:

REA BULLETIN 384–1

Subject: Purchasing and Installing Central Office Equipment:

I. *Purpose.* To set forth the methods and procedures to be employed by borrowers in purchasing and installing the following central office equipment with REA loan funds:

A. Dial Central Office Equipment.

B. Automatic Toll Ticketing Equipment.

C. Automatic Number Identification Equipment.

D. Toll Office Equipment.

E. Private Automatic Branch Exchange (PABX) Equipment.[1]

F. Miscellaneous Equipment (Traffic Recording, Loop Treatment, Remote Alarm Reporting, Etc.).[1]

II. *General.* A. Materials and equipment must meet the standards and general specifications approved by REA. Materials and equipment included in REA Bulletin 344–2, "List of Materials Acceptable for Use on Telephone Systems of REA Borrowers," have been accepted as meeting these requirements. If the equipment being considered is not included in the "List of Materials" but has been generally approved for field trial installations, the borrower must in each instance obtain field trial approval from REA prior to entering into any agreement with a supplier.

B. Only new equipment shall be purchased unless otherwise approved by REA in specific cases.

C. All purchases of materials and equipment are subject to the "Buy American" provision. See REA Bulletin 344–3.

D. Appendix A is attached and provides an abbreviated summary of the procedures covered in detail in this bulletin.

III. *Contract Documents.* REA Bulletin 384–3, "Central Office Equipment Contracts and Specifications," lists the contracts and specifications which are currently available as well as the source of supply for these documents. Two types of contracts are available for the purchase of central office equipment.

A. REA Form 525 provides for the furnishing, delivery, and installation of the equipment and consists of the following:

1. Notice and Instructions to Bidders.
2. Proposal and Acceptance.
3. Form of Contractor's Bond.
4. Specifications:

a. Central Office Dial Equipment: (Direct Acting):

(1) REA Form 558a, General Specifications.

(2) REA Form 558b, Installation.

(3) REA Form 558c, Detailed Central Office Requirements (one required for each central office location).

(4) REA Form 810, Central Office Equipment Engineering Information.

b. Central Office Dial Equipment (Common Control):

(1) REA Form 524a, General Specifications.

(2) REA Form 524b, Installation.

(3) REA Form 524c, Detailed Common Control Central Office Equipment Requirements (one required for each central office location).

(4) REA Form 524d, Detailed Common Control Central Office Equipment Requirements (Information supplied by Bidder).

(5) REA Form 810, Central Office Equipment Engineering Information.

c. Toll Office Equipment—When toll board equipment is required, the following specifications shall be attached to and made a part of the contract:

(1) REA Form 542a, General Specifications.

(2) REA Form 542b, Installation.

(3) REA Form 542c, Detailed Toll Office Equipment Requirements.

d. Direct Distance Dialing Equipment—When direct distance dialing (automatic toll ticketing) equipment is required, the following specifications shall be attached to and made a part of the contract:

(1) REA Form 538a, General Specifications.

(2) REA Form 538b, Installation.

(3) REA Form 538c, Detailed Direct Distance Dialing Equipment Requirements.

(4) REA Form 538d, Detailed Direct Distance Dialing Equipment Requirements (Information supplied by Bidder).

e. Automatic Number Identification Equipment-CAMA—When CAMA-ANI equipment is required, the following specifications shall be attached to and made a part of the contract:

(1) REA Form 537a, General Specifications.

(2) REA Form 537b, Installation.

(3) REA Form 537c, Detailed ANI Equipment Requirements.

(4) REA Form 810, Central Office Equipment Engineering Information.

f. Private Automatic Branch Exchange Equipment—PABX—When PABX equipment is required, the following specifications shall be attached to and made a part of the contract:

(1) REA Form 528a, General Specifications.

(2) REA Form 528b, Installation.

(3) REA Form 528c, Detailed PABX Equipment Requirements.

(4) REA Form 528d, PABX Special Features.

(5) REA Form 528e, Detailed PABX Equipment Requirements (Information supplied by Bidder).

g. Miscellaneous Equipment—When miscellaneous equipment such as traffic recording equipment, loop treatment equipment, remote alarm reporting equipment, etc., is to be purchased with loan funds, the following shall be attached to and made part of the contract:

(1) A functional specification describing the requirements for the particular application.

(2) The supplier's technical proposal including a list of materials.

B. REA Form 545 provides for the furnishing and delivery of the equipment and is used when the installation is to be made by other than the supplier. It consists of the following:

1. Notice and Instruction to Bidders.
2. Proposal and Acceptance.
3. Specifications: Same as listed under "A", above, except part "b", Installation, will not be used.

C. REA Form 238, "Construction/Equipment Contract Amendment," should be used

[1] The procedure set forth in this bulletin for the purchase of equipment covered in E and F above shall be used only when this equipment is being purchased under contract terms. Usually this type of equipment will be purchased on a purchase order basis as explained in Bulletin 344–1.

* Supersedes March 24, 1958, issue.

when an amendment to either Form 525 or Form 545 is required.

IV. *Purchasing Central Office Equipment.* A. Central office equipment (direct acting or common control) may be purchased by the competitive bid procedure or by negotiation, at the borrower's option. The procedure as set forth below in V,A (Competitive) or V,B (Negotiation) shall be followed, depending upon the method selected. In either case, prior to requesting proposals from suppliers, REA must be notified of the method of procurement and approval of the plans and specifications must be obtained from REA. If the competitive bid method is followed, negotiations after the bid opening will not be permitted. When common control equipment is to be purchased by competitive bidding it is recommended that a two-step procedure similar to that set forth in paragraph V,A,4 be used.

B. When a borrower considers foreign equipment under either plan, selection of the foreign equipment may be made only if it meets the "Buy American" requirements. It will be necessary in those instances to obtain two or more domestic proposals for comparable equipment for the purpose of making a "Buy American" comparison. An exception to this would be the case where a domestically equivalent product is not available. (See REA Bulletin 344–3).

V. *Procedure.* A. Competitive Bidding:

1. After approval by REA of the specifications and equipment requirements, the Owner, or its engineer, sends out two copies of the "Notice and Instructions to Bidders" accompanied by two complete copies of the proposal and specifications to each supplier. The documents for this purpose are prepared by the Owner's engineer. The "Notice and Instructions to Bidders" is dated at the time it is signed and sent out. No less than three Bidders capable of preparing a responsive bid will be invited to bid.

2. The Bidder prepares its proposal entering the required information thereon and signs and dates same. One copy of the completed proposal is sent to the borrower and one copy is retained by the Bidder for its record.

3. The proposals of the Bidders, on the date of bid opening, are reviewed by the Owner and its engineer. Prior REA approval of the award of the contract is not required where the contract is awarded under the following conditions:

a. Award is made to the lowest responsive Bidder, and

b. A minimum of three bids are received, and

c. The amount of the bid is not in excess of the amount established in the loan budget for central office equipment, and

d. The bid contains no irregularities except minor ones which may be waived by the Owner.

In such cases, the Owner's engineer is to immediately send to REA a tabulation of the bid results for all Bidders by exchanges, the recommendation of the engineer, and a statement of the Owner (in case of a cooperative, the statement should be in the form of a board resolution) concerning the award of the contract. Prior receipt of this information by REA will allow prompt approval of the executed copies of the contract when they are received.

Prior REA approval of the award of a contract is required where conditions (a) to (d), above, have not been met. In such cases, the results of the bid opening, the recommendation of the Owner's engineer and a statement from the Owner (in case of a cooperative, the statement should be in the form of a board resolution) recommending the award of the contract are to be sent to REA for review and approval.

4. Procurement of common control equipment may be by a "Two-Step Competitive Bid" in which case:

a. The notice and instructions to Bidders must set forth the method of evaluating bids and must require the submission of equipment lists and traffic calculations with the bids.

b. Standard REA Contract Forms 525 or 545, as appropriate, shall be used, except that the "Notice and Instructions to Bidders" shall state that prior to the bid opening a technical evaluation will be conducted with each supplier to resolve any questions related to the technical proposal submitted by the supplier. The suppliers' technical proposals should be requested for presentation 30 days in advance of the bid opening to enable sufficient time to make the technical evaluation.

c. A sufficient number of firms (at least three) shall be invited to bid to assure adequate competition. A list of the firms invited to bid shall be sent to REA well in advance of the bid opening date.

d. Suppliers' technical proposals received by the Owner should be considered by representatives from the board of directors of the borrower, the manager, and the borrower's engineer. The REA field engineer may attend these evaluations as an observer where requested by the borrower.

e. Upon completion of technical discussions, sealed bids will be solicited from those Bidders whose technical proposals were found to meet the plans and specification requirements. When bids are solicited from less than three Bidders capable of making a responsive bid, prior REA approval must be obtained. The award will then be made to the low Bidder.

5. When the successful Bidder has been determined, and approved by REA, if necessary, the Owner's engineer then prepares two counterpart copies of the proposal and specifications and has the Owner sign and date the acceptance in the original and two counterpart copies.

6. The engineer then sends the three copies of the contract to the Bidder. The Bidder executes the two counterpart copies using the same date as the original proposal. When the contract includes installation of the equipment by the Bidder, the Bidder also has the three copies of the Contractor's Bond, pages 9 and 10, REA Form 525, completely executed. The date of the contract to be inserted in the bond on page 9 is the date of acceptance of the proposal as shown on page 8. The bond is dated on page 10, which date should always be subsequent to the date of the contract. (The signature of a resident agent of the surety is required in some studies.)

7. The Bidder then sends the three complete contracts to the Owner's engineer for final review and submission to REA for approval.

8. Upon approval of the contract by REA, notice is given to the Bidder, Owner, and the Owner's engineer and two copies of the contract are returned to the Owner. One copy is then sent by the Owner to the Bidder.

B. Negotiation. 1. Quotations from at least three suppliers shall be secured. If three cannot be secured, waiver of this requirement must be obtained from REA. The "three proposal" requirement would not apply when negotiating for an office of the same type as an existing one in the borrower's system. The suppliers should be advised that the award may be based upon factors other than low price. REA approval will be conditioned upon the borrower obtaining prices in line with current competitive prices.

2. The Bidders prepare their proposals, entering the required information thereon and sign and date same. One copy of the completed proposal is to be sent to the borrower and one copy retained by each Bidder for its record. Technical presentations and subsequent evaluations similar to those outlined under V,A,4,d should be made. The "two-step" procedure is not necessary if the negotiation is for an additional office of the same type as an existing one in the borrower's system.

3. When a quotation is accepted by the Owner, the Owner's engineer sends to REA the quotation accepted, a tabulation of the other quotations received, the engineer's recommendation to the Owner, and a statement of the Owner (in case of a cooperative, the statement should be in the form of a board resolution) concerning the acceptance of the proposal. The engineer's recommendation should include complete justification for the selection made.

4. Following approval by REA of the Owner's selection, the Owner's engineer then prepares two counterpart copies of the proposal and specifications, and has the Owner sign and date the acceptance in the original and two counterpart copies.

5. The engineer then sends the three copies of the contract to the Bidder. The Bidder executes the two counterpart copies using the same date as the original proposal. When the contract includes installation of the equipment by the Bidder, the Bidder also has the three copies of the Contractor's Bond, pages 9 and 10, REA Form 525, completely executed. The date of the contract to be inserted in the bond on page 9 is the date of acceptance of the proposal as shown on page 8. The bond is dated on page 10, which date should always be subsequent to the date of the contract. (The signature of a resident agent of the surety is required in some states.)

6. The Bidder then sends the three complete contracts to the Owner's engineer for final review and submission to REA for approval.

7. Upon approval of the contract by REA, notice is given to the Bidder, Owner, and Owner's engineer and two copies of the contract are returned to the Owner. One copy is then sent by the Owner to the Bidder.

C. Contract Amendments: The borrower's engineer should prepare equipment contract amendments on REA Form 238, "Construction or Equipment Contract Amendments,":

1. As soon as it has been determined that a change in the specifications is necessary or desirable which increases the contract price by more than $2500, or

2. Whenever a substantial change in the design or type of materials to be used in the installation under the contract is proposed, whether or not the contract price is changed.

Prior REA approval of such amendments is required before any such changes are initiated. Whenever a change has been made in the specifications which did not require prior REA approval under conditions "1" or "2" above, a final contract amendment shall be prepared and submitted to REA with the final documents. When an amendment by itself or together with preceding amendments increases the initial contract price by an amount which exceeds 20 percent of the initial contract price, an extension to the bond covering the amount of the increase shall be executed (see REA Bulletin 381–9).

D. Additions: Where additions to existing central office equipment installations are required:

1. When it is determined what additional equipment is required, a quotation is requested from the supplier. This request should be based on the original installation specifications. The General Specifications (558a, 524a, 528a, 542a, 538a or 537a) should not be used when purchasing additions.

2. The borrower prepares a proposal containing an outline of the proposed use of the equipment, the quotation from the supplier and an estimate of the installation cost, and submits to the REA field engineer for approval. The field engineer will either approve or forward it to the Chief, Area Engineering Branch, for approval.

3. After approval of the quotation, the purchase may be made by using either the standard form contract, Form 525 (or 545, not installed), or a purchase order.

4. If the purchase is to be made by contract, three executed copies of the contract with attachments are to be submitted to the Chief, Area Engineering Branch. If satisfactory, REA will approve the contract and return two copies to the borrower.

5. If the purchase is to be made by purchase order, the executed purchase order with attachments is issued to the supplier. Copies of the purchase orders are *not* to be sent to REA (see REA Bulletin 344–1).

This REA bulletin supersedes REA Bulletin 384–1, dated March 24, 1958, and all other material in conflict with its provisions.

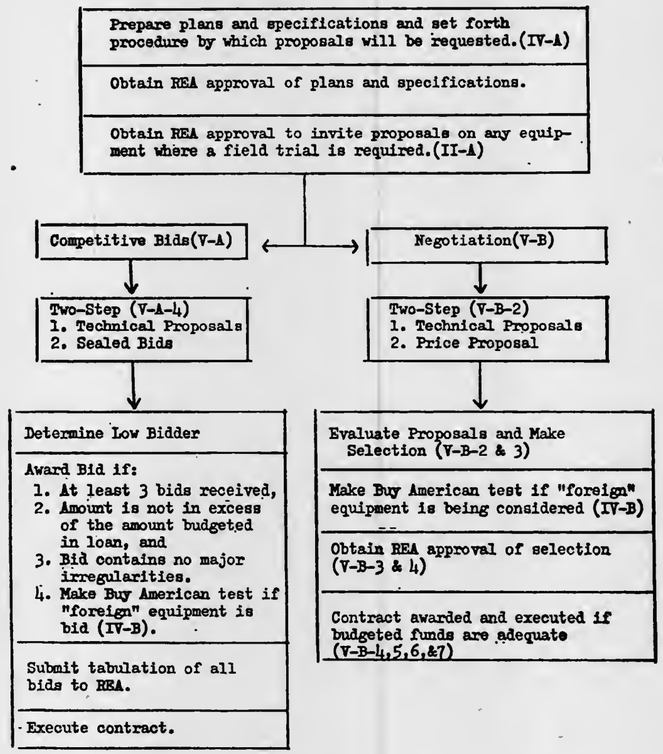
Dated: January 13, 1977.

C. R. BALLARD,
Assistant Administrator—Telephone.

Bulletin 384-1

APPENDIX A

SUMMARY OF PROCEDURES FOR PURCHASING COMMON CONTROL EQUIPMENT[1]



[1]Procedure is identical for direct acting equipment except the two-step process does not apply.

[FR Doc.77-1967 Filed 1-24-77;8:45 am]

FEDERAL ENERGY ADMINISTRATION

[10 CFR Part 212]

PRODUCTION AND SALE OF "IMPUTED STRIPPER WELL CRUDE OIL" FROM UNITIZED PROPERTIES

Proposed Rulemaking and Public Hearing

The Federal Energy Administration ("FEA") hereby gives notice of a proposed rulemaking and public hearing to consider a proposal to amend 10 CFR 212.75 so as to compute volumes of "imputed stripper well crude oil" produced and sold from unitized properties on a percentage basis. Currently, § 212.75 provides for such computations to be made on the basis of absolute production and sale volumes.

Section 212.75 currently provides that with respect to any unitized property which is comprised of one or more previously qualified stripper well properties and for which the producer has established a unit base production control level, the producer may sell each month a number of barrels of "imputed stripper well crude oil" at prices which are exempt from the provisions of Subpart D. "Imputed stripper well crude oil" is currently defined as:

> A number of barrels of crude oil equal to the total number barrels of crude oil produced during the 12-month period immediately preceding the establishment of a unit base production control level for the unitized property from all stripper well properties that constitute the unitized property, divided by 12 • • •.

On October 29, 1976, in connection with the adoption in final form (effective September 1, 1976) of the stripper well property exemption mandated by the Energy Conservation and Production Act (Pub. L. 94–385), FEA indicated its intention to initiate a rulemaking proceeding to consider modifying the definition of "imputed stripper well crude oil" to be based upon a percentage of the unitized production rather than upon a fixed number of barrels. (Comments received in connection with the rulemaking proceeding to implement the stripper well property exemption urged that stripper well property operators might be deterred from participating in a unitization unless any increased production attributable to the stripper well property is afforded exempt status.)

FEA's preliminary consideration of this concern leads to the conclusion that there may be instances in which certain operators of stripper well properties might be discouraged from participating in a unitized project. For example, if a stripper well property is so strategically located with reference to the underlying reservoir that the operator will benefit from any enhanced recovery operation regardless whether the stripper will property actually participates in the unitization, the operator might be encouraged

not to participate in the unitization because all increased production from his property would qualify as exempt. If the property were to participate in the project, on the other hand, any increased production attributable to the stripper well property would qualify under present regulations, at best, for treatment only as upper tier crude oil.

Accordingly, FEA solicits comments addressed to the need for and feasibility of a unitized property rule which would permit a percentage of increased production from the unit to be sold at exempt prices. Such a percentage might be equal to the percentage of stripper well property production to total production from participating leases over the 12-month period immediately preceding the establishment of a unitized BPCL. However, FEA will consider any reasonable alternative approach that might be suggested in the comments.

WRITTEN COMMENT PROCEDURES

Interested persons are invited to participate in this rulemaking by submitting data, views or arguments with respect to the proposals set forth in this notice to Executive Communications, Room 3309, Federal Energy Administration, Box KD, Washington, D.C. 20461.

Comments should be identified on the outside envelope and on documents submitted to FEA Executive Communications with the designation "Production and Sale of 'Imputed Stripper Well Crude Oil' From Unitized Properties." Fifteen copies should be submitted. All comments received by Thursday, February 10, 1977, before 4:30 p.m., will be considered by the Federal Energy Administration before final action is taken on the proposed amendment.

Any information or data considered by the person furnishing it to be confidential must be so identified and submitted in writing, one copy only. The FEA reserves the right to determine the confidential status of the information or data and to treat it according to its determination.

HEARING PROCEDURES

The public hearing in this proceeding will be held at 9:30 a.m., on Friday, February 11, 1977, and will be continued, if necessary, on Monday, February 14, 1977, in Room 2105, 2000 M Street, NW., Washington, D.C. 20461, in order to receive comments from interested persons on the matters set forth herein.

Any person who has an interest in the proposed amendment issued today, or who is a representative of a group or class of persons that has an interest in today's proposed amendment, may make a written request for an opportunity to make oral presentation. Such a request should be directed to Executive Communications, FEA, and must be received before 4:30 p.m., on Wednesday, January 26, 1977. Such a request may be hand delivered to Room 3309, Federal Building, 12th and Pennsylvania Avenue, N.W., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday. The person making the request should be prepared to describe the interest concerned, if appropriate, to state why he is a proper representative of a group or class of persons that has such an interest, and to give concise summary of the proposed oral presentation and a phone number where he may be contacted through Thursday, February 10, 1977. Each person selected to be heard will be so notified by the FEA before 4:30 p.m., Friday, January 28, 1977 and must submit 100 copies of his statement to Regulations Management, FEA, Room 2214, 2000 M Street, N.W., Washington, D.C. 20461, before 4:30 p.m., Thursday, February 10, 1977.

The FEA reserves the right to select the persons to be heard at these hearings, to schedule their respective presentations, and to establish the procedures governing the conduct of the hearings. The length of each presentation may be limited, based on the number of persons requesting to be heard.

An FEA official will be designated to preside at the hearings. These will not be judicial or evidentiary-type hearings. Questions may be asked only by those conducting the hearings, and there will be no cross-examination of persons presenting statements. Any decision made by the FEA with respect to the subject matter of the hearings will be based on all information available to the FEA. At the conclusion of all initial oral statements, each person who has made an oral statement will be given the opportunity, if he so desires, to make a rebuttal statement. The rebuttal statements will be given in the order in which the initial statements were made and will be subject to time limitations.

Any interested person may submit questions to be asked of any person making a statement at the hearings, to Executive Communications, FEA, before 4:30 p.m., Thursday, February 10, 1977. Any person who wishes to ask a question at the hearings may submit the question, in writing, to the presiding officer. The FEA or the presiding officer, if the question is submitted at the hearings, will determine whether the question is relevant, and whether the time limitations permit it to be presented for answer.

Any further procedural rules needed for the proper conduct of the hearings will be announced by the presiding officer.

A transcript of the hearings will be made and the entire record of the hearings, including the transcript, will be retained by the FEA and made available for inspection at the Freedom of Information Office, Room 2107, Federal Building, 12th and Pennsylvania Avenue, NW., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday. Any person may purchase a copy of the transcript from the reporter.

As required by section 7(c)(2) of the Federal Energy Administration Act of 1974, Pub. L. 93-275, a copy of this notice has been submitted to the Administrator of the Environmental Protection Agency for his comments concerning the impact of this proposal on the quality of the environment. The Administrator had no comments.

This proposal had been reviewed in accordance with Executive Order 11821, issued November 24, 1974, and has been determined not to be of a nature that requires an evaluation of its inflationary impact pursuant to Executive Order 11821.

(Emergency Petroleum Allocation Act of 1973, Pub. L. 93-159, as amended, Pub. L. 93-511, Pub. L. 94-99, Pub. L. 94-133, Pub. L. 94-163, and Pub. L. 94-385; Federal Energy Administration Act of 1974, Pub. L. 93-275, as amended, Pub. L. 94-385; Energy Policy and Conservation Act, Pub. L. 94-163, as amended, Pub. L. 94-385; E.O. 11790, 39 FR 23185.)

In consideration of the foregoing, Part 212 of Chapter II of Title 10 of the Code of Federal Regulations is proposed to be amended as set forth above.

Issued in Washington, D.C., January 19, 1977.

DAVID G. WILSON,
Acting General Counsel,
Federal Energy Administration.

[FR Doc.77-2287 Filed 1-19-77;2:48 pm]

DEPARTMENT OF LABOR

Assistant Secretary of Labor-Management Relations, Office of Labor-Management Relations Services

[29 CFR Part 215]

URBAN MASS TRANSPORTATION ACT OF 1964

Proposed Guidelines

Correction

In FR Doc. 77-1517 appearing at page 3319 of the issue for Tuesday, January 18, 1977:

1. In the fifth and sixth lines of the first paragraph, "states other than local public bodies" should read "states or other local public bodies";

2. In the middle of the third column, page 3320, the section heading reading § 215.66 *Recertifications based on existing agreements"* should read "§ 215.6 *Recertifications based on existing agreements".*

DEPARTMENT OF THE INTERIOR

Geological Survey

[30 CFR Part 211]

COAL MINING OPERATION REGULATIONS: REQUIREMENTS OF A MINING PLAN FOR UNDERGROUND OPERATIONS

Proposed Rulemaking

On May 17, 1976, the Department of the Interior adopted regulations to govern the management and operation of federal coal leases. 41 FR 20252. The regulations that were published on that day contain the requirements for a mining plan for federal coal lessees. 30 CFR § 211.10. The requirements of those regulations were drafted with specific consideration for operations that would use surface mining to remove the coal resources, and contain extensive data-collecting and other requirements that are extremely appropriate to surface mines.

The regulations also apply to underground mines. The Department has now received several applications for approval of mining plans for operations that will be conducted by underground mining. The Department's experience with these plans has demonstrated that many of the requirements of 30 CFR 211.10 are unnecessary to accomplish the purposes of the Department's regulations: development of the nation's coal resources in an environmentally acceptable manner. To relieve the problem of requiring irrelevant information from operators who will be conducting underground operations, the Department is now proposing that the mine plan requirements be amended to reflect the Department's different information needs on underground operations and surface operations.

Comments on this proposed change should be sent in writing to the Director, Geological Survey, the National Center, Reston, Virginia 22092. Comments should be sent to that address by March 1, 1977. The Department will consider all comments received by that date, and will consider all comments received after that date to the extent that is possible.

It is proposed that 30 CFR § 211.10(a)(1) be amended by adding after the last word of the fifth sentence the following:

§ 211.10 Exploration and mining plans.

(a)(1) * * * and shall include all of the information set forth in paragraph (c) of this section for surface mines and all such information relevant to the surface and subsurface impacts of underground or deep mines. * * *

* * * * *

THOMAS S. KLEPPE,
Secretary,
Department of the Interior.

JANUARY 19, 1977.

[FR Doc. 77-2258 Filed 1-24-77;8:45 a.m.]

[30 CFR Part 211]

COAL MINING OPERATIONS REGULATIONS

Adoption of the Cooperative Agreement With North Dakota for Enforcement and Administration of Surface Coal Mine Reclamation Standards

On May 17, 1976, the Department of the Interior adopted new regulations to govern the management of federally-owned coal resources. 41 F.R. 20252 (1976). These regulations authorize the Department to enter into Cooperative Agreements with States in which federal coal leases have been or will be issued for the purpose of avoiding duality in the administration and enforcement of surface coal mining reclamation operations. 30 C.F.R. 211.75.

On October 12, 1976, the Secretary issued a Policy Statement to clarify the intent and meaning of the May 1976 regulations. In a letter to the Governor of North Dakota, the Secretary stated: "I want you to know that I fully accept the premise that State reclamation laws and regulations can apply to the Federal lands * * * [and] * * * In a further effort to ensure cooperation and avoid duplication, we desire to enter into cooperative agreements with the respective States for the administration and enforcement of regulations on Federal lands."

The Secretary and the Governor of North Dakota have completed the negotiation of a Cooperative Agreement as authorized by 30 CFR 211.75(b). The Agreement provides that the State of North Dakota will be the principal entity responsible for the administration and enforcement of surface coal mine reclamation operations on federal coal leases in North Dakota.

The Department of the Interior's surface mining regulations require a federal coal lessee to conduct mining operations in a manner which ensures the effective reclamation of mined lands. After review of State laws and regulations, practices and procedures, the Department has concluded that the State of North Dakota has the authority to, and does in fact, administer its reclamation laws and regulations in a manner that provides the same cedures of the State are as effective as required by Federal law. The Cooperative Agreement commits the State to this degree of environmental protection. The Agreement also recognizes that the procedures of the State are as affective as the procedures of the Department to enforce the requirements of the mining plan. If the State is unable to meet the terms of the Agreement, the Department has the duty to notify the State that it intends to cancel the Agreement. The Agreement calls for an exchange of information between the State and the Department and the Department may conduct inspections to determine whether the State is complying with the provisions of the Agreement.

The Department and the State regard four elements as central to the Agreement: Mine plans, inspections, enforcement provisions, and bonding requirements. The Department believes that the State of North Dakota is capable of administering and enforcing reclamation operations on federal coal leases in North Dakota in such a way that federal interests are protected.

Although the Agreement grants the State of North Dakota the authority for administering and enforcing reclamation operations, we note the following: The Federal Coal Leasing Amendments Act of 1975, Pub. L. 94-377, requires the Secretary to approve the mining plan of a federal lessee. Article IV, section C of the Agreement states that it is the Secretary's duty to review and approve mining plans in addition to the State review and approval. The Agreement does avoid the application of conflicting standards by allowing the submission of one mining plan to both the State and the Department.

Article VII, section A avoids the imposition of double bonds by providing that the Department's bond requirement, if higher than the State's, will only be for the amount of the difference between the two amounts.

This rulemaking takes no action under 30 CFR 211.75(a) and does not affect the requirements of 30 CFR 211.40, or the standards the Department will use to approve a mining plan. In addition, this rulemaking does not explicitly amend 43 CFR Subpart 3041, but the Department wishes to state that the enforcement and administration provisions of that Subpart will be administered consistently with the changes in 30 CFR Part 211 proposed here.

The environmental impacts of this proposed action are discussed in the final Environmental Impact Statement, Surface Management of Coal Resources (43 CFR Subpart 3041) and Coal Mining Operating Regulations (30 CFR Part 211). NEPA does not require and the Department has not prepared a separate impact statement for this action.

The proposal contains the text of the Cooperative Agreement but it also contains proposed technical changes in 30 CFR 211.10 and 211.74 to conform those rules to the adoption of the Cooperative Agreement.

The Department and the State of North Dakota believe that this Agreement can promote both coal production and proper surface coal mine reclamation by eliminating duplication in the administration and enforcement of reclamation laws.

The Department will accept and consider written comments on the proposed rulemaking until February 21, 1977. Comments should be directed to Deputy Under Secretary W. W. Lyons, Chairman, Task Force on the Determination of State Role in Federal Surface Coal Mine Programs, Department of the Interior, Washington, D.C. 20240.

Dated: January 19, 1977.

THOMAS S. KLEPPE,
Secretary of the Interior.

1. It is proposed that 30 CFR § 211.10 be amended by the addition of a new paragraph (e)(4) to read as follows:

§ 211.10 Exploration and mining plans.

* * * * *

(e) *States with 211.75(b) agreements.* * * *

(4) *North Dakota.* A Federal coal lessee in the State of North Dakota who must submit a mining plan or permit under both State and Federal law shall submit, in lieu of the mining plan required by this section, a mining plan containing the information required by:

(i) North Dakota Cent. Code 38-14-04;

(ii) North Dakota Public Service Commission Rules and Regulations for Reclamation of Surface Mined Lands, R38-14-04.1 through R38-14-04.20;

(iii) 30 CFR 211.10(c); and a statement certifying that the information has been given to the North Dakota Public Service Commission and the Department of the Interior.

2. It is proposed that 30 CFR 211.74 be amended by the addition of a new paragraph (g)(4) to read as follows:

§ 211.74 Variances.

• • • • •

(g) *States with 211.75(b) agreements.* • • •

(4) *North Dakota.* A federal coal lessee in the State of North Dakota shall request and receive a variance from a mining plan under the provisions of North Dakota Public Service Commission Rules and Regulations for Reclamation of Surface Mined Lands, R38–14–04.18 and 30 CFR 211.74.

3. It is proposed that the Department enter into and approve a Cooperative Agreement to designate the State of North Dakota as the principal party to enforce surface coal mine reclamation on Federal coal leases in the State of North Dakota, to read as follows:

COOPERATIVE AGREEMENT BETWEEN THE UNITED STATES DEPARTMENT OF THE INTERIOR AND THE STATE OF NORTH DAKOTA under Section 32 of the Mineral Leasing Act of 1920, 30 U.S.C. Section 189, and Section 307 of the Federal Land Policy and Management Act of 1976, and 30 CFR 211.75(b).

THIS AGREEMENT (referred to as the Cooperative Agreement) is made between the STATE OF NORTH DAKOTA acting by and through its Governor and its Public Service Commission (referred to as the State) and the UNITED STATES DEPARTMENT OF THE INTERIOR, acting by and through the Secretary of the Interior or his duly authorized representative (referred to as the Secretary).

ARTICLE I

PURPOSE

This Cooperative Agreement provides for a cooperative program between the United States Department of the Interior and the State of North Dakota with respect to the administration and enforcement of surface coal reclamation requirements conducted under coal leases issued by the Department of the Interior under the Mineral Leasing Act of 1920. The basic purpose of the agreement is to prevent duality of administration and enforcement of surface reclamation requirements by designating the State of North Dakota as the principal entity to enforce reclamation laws and regulations in North Dakota.

ARTICLE II

EFFECTIVE DATE

The Cooperative Agreement is effective on the _____ day of _____, 19___, and remains in effect until terminated as provided in Article IX.

ARTICLE III

REQUIREMENTS FOR COOPERATIVE AGREEMENT

The State of North Dakota affirms that the State will comply with all of the provisions of this Cooperative Agreement and will continue to meet all the conditions and requirements specified in this Article upon which the approval of the Secretary is based.

A. *Responsible Administrative Agency.* The North Dakota Public Service Commission (hereinafter referred to as the State Agency) is, and shall continue to be, the sole agency responsible for administering this Cooperative Agreement on behalf of the State throughout the State of North Dakota.

B. *Authority of State Agency.* The State Agency designated in Paragraph A of this Article has, and shall continue to have, authority to carry out this Cooperative Agreement on behalf of the State throughout the State of North Dakota.

C. *State Reclamation Law.* The State Agency shall ensure that all mining plans covering coal subject to federal lease approved under this agreement shall afford general protection of the environment at least as stringent as would occur under the exclusive application of 30 CFR Part 211, and that the standards used to approve a mining plan of a Federal Lessee will not unreasonably impair coal mining that is in the overriding national interest.

D. *Effective of State Procedures.* The procedures of the State shall be, in the judgment of the Secretary, substantially as effective for the purpose of enforcing the reclamation requirements of 30 CFR Part 211 as the procedures of the Department of the Interior.

E. *Inspection of Mines.* The State affirms that the State Agency will inspect all mines located in the State, in accordance with the minimum schedules in Article V.

F. *Enforcement.* The State affirms that it will enforce the Agreement in a manner that ensures effective environmental protection.

G. *Qualified Personnel.* The State Agency will have an adequate number of fully qualified personnel necessary for the enforcement of this Cooperative Agreement.

H. *Funds.* The State will devote adequate funds for the administration and enforcement of reclamation requirements in the State.

I. *Reports and Records.* The State Agency shall make reports to the Secretary, containing information about its compliance with the terms of this Cooperative Agreement, as the Secretary shall from time to time require. The State Agency and the Secretary shall exchange, upon request, information developed under this Cooperative Agreement.

The Secretary affirms that the Department of the Interior will comply with all of the provisions of this Cooperative Agreement.

ARTICLE IV

MINE PLANS

Federal regulation, 30 CFR 211.10(c), and State laws and regulations require the operator of lands leased, permitted or licensed for coal mining to receive approval of a mining plan, or permit, or amendment thereto, prior to conducting operations.

A. *Contents of Mining Plans and Permits.* The State and the Secretary agree to require a Federal coal lessee who must submit a mining plan or permit application under both State and Federal law, to submit a plan or permit with the following information:

1. The information required by:

a. North Dakota Cent. Code § 38–14–04.

b. North Dakota Public Service Commission Rules and Regulations for Reclamation of Surface Mined Lands, R38–14–04.1 through R38–14–04.20.

c. 30 CFR 211.10(c).

2. A Statement certifying that a copy of the plan or permit has been given to both the State Agency and the Secretary.

If either the State or the Secretary requires the operator to submit additional information, the operator shall submit the information to both the State and the Secretary. The operator will request variance from the mining plan in accordance with 30 CFR 211.74, and shall file the request with the State Agency and the Secretary.

B. *Review of Plan.* The State Agency and the Secretary shall each review and analyze the adequacy of the plan or request for a variance from a plan or changes in an approved plan.

C. *Approval of Mining Plans.* The State Agency shall review the adequacy of the mining plan, any request for a variance, or a request for a change in a mining plan, as provided in North Dakota Public Service Commission Rules and Regulations for Reclamation of Surface Mined Lands, R30–14–04.18, and shall notify the Secretary of its action. The Secretary shall then review and take final action on the mining plan as required by 30 CFR 211.10(d), a request for a variance as required by 30 CFR 211.74, or a change in an approved mining plan which was acted upon by the State Agency. The Secretary shall notify the State Agency of his action, and the State Agency shall reconsider its action if necessary to comply with this Cooperative Agreement.

ARTICLE V

INSPECTIONS

A. The State Agency shall inspect as authorized by North Dakota Cent Code § 38–14–03.1 as frequently as necessary but at least quarterly the operations area of all Federal leases, permits and licenses where operations affecting the reclamation of mined lands are conducted or are to be conducted, for the purpose of determining whether the operator is complying with all requirements of approved mining plans.

B. The State Agency shall subsequent to conducting any inspection, file with the Secretary a copy of their report on (1) the general conditions of the lands under lease permit or license, (2) the manner in which the operations are being conducted, and (3) whether the operator is complying with applicable reclamation requirements. A copy of such report shall be furnished to the operator on request, and shall be made available for public inspection during normal business hours at the offices of the Mining Supervisor.

C. For the purpose of evaluating the manner in which the Cooperative Agreement is being carried out and to ensure that reclamation is being effectively performed, the Secretary may inspect from time to time mines on Federal coal leases within the State of North Dakota. Inspections by the Secretary may be made in association with regular inspection by the State Agency.

D. The Secretary may conduct inspections to determine whether the operator is complying with requirements that are unrelated to reclamation.

ARTICLE VI

ENFORCEMENT

A. If the State Agency determines that the operator is not complying with a requirement that relates to the reclamation of lands disturbed by surface mining, it shall take such steps as required by North Dakota Cent. Code § 38–14–03.1, and § 38–14–12.

B. If, in the judgment of the State Agency, an operator is conducting activities on lands subject to this Agreement which fail to comply with a requirement that relates to reclamation and those activities threaten immediate and serious damage to the environment, the State shall order the immediate cessation of such activities, as authorized by North Dakota Cent. Code § 38–14–03.1.

C. The State shall notify the Secretary of all violations of applicable laws regarding reclamation including violations of Federal laws and regulations or lease terms and of all actions taken under North Dakota Cent. Code § 38–14–03.1, and § 38–14–12.

D. This Article does not limit the Secretary's authority to seek cancellation of a Federal coal lease under Federal laws and regulations, or prevent the Secretary from taking appropriate steps to correct actions that violate Federal law, other than those incorporated in this Agreement, but not State law.

E. Failure to adequately enforce the reclamation laws and regulations shall be grounds for termination of this Cooperative Agreement.

ARTICLE VII

BONDS

A. *Amount and Responsibility.* The State Agency shall require all Federal coal lessees subject to the provisions of 30 CFR Part 211 to submit a bond as required by North Dakota Cent. Code § 38–14–07. The Secretary shall reduce the federal bond required for reclamation purposes under 43 CFR 3041.3, and 30 CFR 211.3 by the amount of the bond required by the State Agency only if the release of all or any portion of the State's bond is conditioned on compliance with the requirements of the approved plan, and the amount released is appropriate to the work completed. Where the surface of the lands is not owned by the United States, the State Agency shall notify the surface owner and solicit and take into account his comments before recommending release of the bond.

B. *Notification.* Prior to releasing the bond required by North Dakota Cent. Code § 38–14–07 for lands the surface of which is owned by the Federal Government, the State Agency shall consult with and seek the advice and consent of the Secretary.

C. *Release of Bond.* The State Agency shall hold the operator responsible and liable for successful reclamation as required by North Dakota Cent. Code § 38–14–07.

ARTICLE VIII

OPPORTUNITY TO COMPLY WITH COOPERATIVE AGREEMENT

The Secretary may, at his sole discretion, and without instituting or commencing proceedings for withdrawal of approval of the Cooperative Agreement, notify the State Agency that it has failed to comply with the provisions of the Cooperative Agreement. The Secretary shall specify how the State has failed to comply and shall specify and state the period of time within which the defects in administration shall be remedied and satisfactory evidence presented to him that the State has remedied the defects in administration and is in compliance with and has met the requirements of the Secretary. Upon failure of the State Agency to meet the requirements of the Secretary within the time specified, the Secretary may institute proceedings for withdrawal of approval of the Cooperative Agreement as set forth in Article IX.

ARTICLE IX

TERMINATION OF COOPERATIVE AGREEMENT

The Cooperative Agreement may be terminated as follows:

A. *Termination by the State.* The Cooperative Agreement may be terminated by the State upon written notice to the Secretary, specifying the date upon which the Cooperative Agreement shall be terminated, but which date of termination shall not be less than 60 days from the date of the notice.

B. *Termination by the Secretary.* The Cooperative Agreement may be terminated by the Secretary whenever the Secretary finds, after giving due notice to the State and affording the State an opportunity for a hearing:

1. That the State has failed to comply substantially with any provision of the Cooperative Agreement; or

2. That the State has failed to comply with any assurance given by the State upon which the Cooperative Agreement is based, or any condition or requirement which is specified in Article III; or

3. That State action unrelated to surface coal mine reclamation will unreasonably and substantially prevent the mining of Federal coal.

C. *Termination by Operation of Law.* This Cooperative Agreement shall terminate by operation of law when no longer authorized by Federal laws and regulations.

D. *Notice of Proposed Termination.* Whenever the Secretary proposes to terminate the Cooperative Agreement he shall:

1. Give written notice to the Governor and to the State Agency specified in Article III;

2. Specify and set out in the written notice the grounds upon which he proposes to terminate the Cooperative Agreement;

3. Specify the date upon which and the place where the State will be afforded an opportunity for hearing and to show cause why the Cooperative Agreement should not be terminated by the Secretary. The date upon which such hearing shall be held shall be not less than 30 days from the date of such notice, and the place of hearing shall be in the State of North Dakota.

4. The Secretary shall also publish a notice in the FEDERAL REGISTER containing the items in 1–3 of this paragraph.

5. Within 30 days of the date of the written notice specifying the date of the hearing, the State shall file a written notice with the Secretary stating whether or not it will appear and participate in the hearing. The notice shall specify the issues and grounds specified by the Secretary for termination which the State will oppose or contest and a statement of its reasons and grounds for opposing or contesting. Failure to file a written notice in the Office of the Secretary within 30 days shall constitute a waiver of the opportunity for hearing, but the State may present or submit before the time fixed for the hearing written arguments and reasons why the Cooperative Agreement should not be terminated, and within the discretion of the Secretary may be permitted to appear and confer in person and present oral or written statements, and other documents relative to the proposed termination.

E. *Conduct of Hearing.* The hearing will be conducted by the Secretary. A record shall be made of the hearing and the State shall be entitled to obtain a copy of the transcript. The State shall be entitled to have legal and technical and other representatives present at the hearing or conference, and may present, either orally or in writing, evidence, information, testimony, documents, records, and materials as may be relevant and material to the issues involved.

F. *Notice of Withdrawal of Approval of Cooperative Agreement.* After a hearing has been held, or the right to a hearing has been waived or forfeited by the State, the Secretary, after consideration of the evidence, information, testimony, and arguments presented to him shall advise the State of his decision. If the Secretary determines to withdraw approval of the Cooperative Agreement, he shall notify the State Agency of his intended withdrawal of approval of the Cooperative Agreement, and afford the State an opportunity to present evidence satisfactory to the Secretary that the State has remedied the specified defects in its administration of the Cooperative Agreement. The Secretary shall state the period of time within which the defects in administration shall be remedied and satisfactory evidence presented to him, and upon failure of the State to do so within the time stated, the Secretary may thereupon withdraw his approval of the Cooperative Agreement without any further opportunity afforded to the State for a hearing.

ARTICLE X

REINSTATEMENT OF COOPERATIVE AGREEMENT

The Cooperative Agreement which has been terminated may be reinstated upon application by the State and upon giving evidence satisfactory to the Secretary that the State can and will comply with all the provisions of the Cooperative Agreement and has remedied all defects in administration for which the Cooperative Agreement was terminated.

ARTICLE XI

AMENDMENTS OF COOPERATIVE AGREEMENT

This Cooperative Agreement may be amended by mutual agreement of the State and the Secretary. An amendment proposed by one party shall be submitted to the other with a statement of the reasons for such proposed amendment. The amendment shall be adopted after rulemaking and the party to whom the proposed amendment is submitted shall signify its acceptance or rejection of the proposed amendment, and if rejected shall state the reasons for rejection.

ARTICLE XII

CHANGES IN STATE OR FEDERAL STANDARDS

The Secretary of the Interior or the State of North Dakota may from time to time revise and promulgate new or revised reclamation requirements or enforcement and administration procedures. The Secretary and the Governor shall immediately inform the other of any final changes in their respective laws or regulations. Each party shall, if it determines it to be necessary to keep this Cooperative Agreement in force, change or revise its respective laws or regulations. For changes which may be accomplished by rulemaking, each party shall have six months in which to make such changes. For changes which require legislative authorization, each party has until the close of its next legislative session at which such legislation can be considered in which to make the changes. If such changes are not made, then the termination provision of Article IX may be invoked.

ARTICLE XIII

QUALIFICATIONS AND EXPERIENCE OF PERSONNEL

The State Agency, under appropriations from the Legislature, shall be adequately staffed with, or have readily available to it, an adequate number of qualified personnel to carry out fully the requirements of the Cooperative Agreement.

ARTICLE XVI

CONFLICT OF INTEREST

No member of the State Agency or agencies responsible for the administration of the State law and rules and regulations relating to this Cooperative Agreement shall participate in the review, analysis, administration, decision-making, or enforcement actions relating to any operation subject to this Cooperative Agreement if such person has, directly or indirectly, any financial interest in a company, partnership, organization, or corporation (parent or subsidiary) which owns, operates or has a financial interest in such operations subject to this Cooperative Agreement.

ARTICLE XV

EQUIPMENT AND LABORATORIES

The State Agency, under appropriations from the Legislature, shall have the equipment, laboratories, and facilities with which all inspections, investigations, studies, tests, and analyses can be performed or determined, and which are necessary to carry out the requirements of the Cooperative Agreement or have access to such facilities and personnel.

ARTICLE XVI

EXCHANGE OF INFORMATION

A *Organizational and Functional Statement.* The State Agency and the Secretary shall advise each other of the organization, structure, functions, and duties of the offices, departments, divisions, and persons within their organizations. Each shall advise promptly the other in writing of changes in personnel, officials, heads of departments or divisions, or a change in the functions or

duties of persons occupying the principal offices within the organization. The State Agency and the Secretary shall advise each other in writing the location of its various offices, addresses, telephone numbers, and the names, locations, and telephone numbers of their respective mine inspectors and the area within the State for which such inspectors are responsible, and shall advise promptly of any changes in such.

B. *Laws, Rules and Regulations.* The State Agency and the Secretary shall provide to each other copies of their respective laws, rules, regulations and standards pertaining to the enforcement and administration of this Cooperative Agreement and promptly furnish copies of any final revision of such laws, rules, regulations, and standards when the revision becomes effective.

ARTICLE XVII

RESERVATION OF RIGHTS

This Cooperative Agreement shall not be construed as waiving or preventing the assertion of any rights the Governor and the Secretary may have under the Mineral Leasing Act, the Constitution of North Dakota or the Constitution of the United States.

STATE OF NORTH DAKOTA,
ARTHUR A. LINK,
Governor of North Dakota.

RICHARD ELKIN,
Chairman, Public Service Commission.

DEPARTMENT OF THE INTERIOR,
THOMAS S. KLEPPE,
Secretary of the Interior.

[FR Doc.77-2260 Filed 1-24-77;8:45 a.m.]

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 52]

[FRL 674-2]

ALABAMA

Approval and Promulgation of Implementation Plans

On May 31, 1972 (37 FR 10847), the Administrator approved the Alabama plan to attain and maintain the National Ambient Air Quality Standards in that State. The State continually revises the plan to improve its effectiveness. On May 25, 1976 after notice and public hearing, the Alabama Air Pollution Control Commission adopted additional changes in its air pollution control regulations. These changes were submitted as proposed implementation plan revisions to the Agency's Region IV office in Atlanta. The purpose of this notice is to describe the proposed changes in the Alabama plan and to invite public comment on them.

Part 5.3, Sulfur Recovery Plants, is replaced by a part titled, "Petroleum Production." This part applies to the regulation for facilities that handle natural gas or refinery gas that contains more than 0.10 grains of hydrogen sulfide per standard cubic foot (SCF). In subpart 5.3.2., No person shall cause or permit the emission of a process gas stream containing more than 0.10 grains hydrogen sulfide per SCF into the atmosphere unless it is properly burned to maintain ground level concentrations of hydrogen sulfide to less than 20 parts per billion beyond plant property limits, averaged over a 30-minute period. In subpart 5.3.3, No person shall cause or permit the sulfur oxide emission from any facility designed to dispose of, or process, natural gas or refinery gas containing more than 0.10 grains hydrogen sulfide per SCF to exceed the following:

CATEGORY I COUNTIES

Available sulfur (long tons per day):	*Permitted emissions of sulfur dioxide*
Up to 5	No limit.
5 to 35	373 lb/h.
35 to 75	0.10 lb SO_2 per pound of sulfur processed.
Over 75	0.08 lb SO_2 per pound of sulfur processed.

CATEGORY II COUNTIES

Up to 10	No limit.
10 to 50	560 lb/h.
50 to 100	0.10 lb SO_2 per pound of sulfur processed.
Over 100	0.08 lb SO_2 per pound of sulfur processed.

The allowable emissions of sulfur dioxide are increased as follows to allow for dry acid gas streams containing less than 60 percent hydrogen sulfide:

Mol percent of hydrogen sulfide tons per day):	*Additonal SO_2 of sulfur dioxide*
50% but less than 60%	.02 lb SO_2 per pound of sulfur processed.
40% but less than 50%	.04 lb SO_2 per pound of sulfur processed.
30% but less than 40%	.06 lb SO_2 per pound of sulfur processed.
20% but less than 30%	.10 lb SO_2 per pound of sulfur processed.
Less than 20%	Must utilize the best available control technology, with consideration to the technical practicability and economic reasonableness of reducing or eliminating the emissions from the facility.

In subparts 5.3.4 (a) and (b), the following counties are classified Category I Counties: Jackson, Jefferson, and Mobile; all other counties are classified as Category II. A new Part 5.5 is added and applies to facilities not regulated by Parts 5.1, 5.2, 5.3, and 5.4. In subpart 5.3.2, No person shall construct and operate a new or modified sulfur compound emission source that does not meet any and all applicable New Source Performance Standards and utilize the best available control technology, with consideration to the technical practicability and economic reasonableness of reducing or eliminating the emissions from the facility. In subpart 5.5.3, No person shall construct and operate a new or modified emission source that will cause or contribute to a condition such that either the primary or the secondary sulfur dioxide ambient air quality standards are exceeded in the area.

Copies of the information submitted by Alabama may be examined by the public during normal business hours at the following locations:

Air Programs Branch, Air and Hazardous Materials Division, Environmental Protection Agency, Region IV, 345 Courtland St. NE., Atlanta, Georgia 30308.

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M St. SW., Washington, D.C. 20460.

Alabama Air Pollution Control Commission, 645 South McDonough St., Montgomery, Alabama 36104.

Interested persons are encouraged to submit written comments on the Alabama plan revisions. To be considered, such comments must be received on or before February 24, 1977, and should be addressed to Eliot Cooper of the Agency's Region IV Air Programs Branch in Atlanta (see address above). After carefully weighing relevant comments received and all other information available to him, the Administrator will take approval/disapproval action on these changes in the Georgia plan.

(Section 110 of the Clean Air Act (42 U.S.C. 1857c-5).)

Dated: January 13, 1977.

JOHN A. LITTLE,
Acting Regional Administrator.

[FR Doc.77-1973 Filed 1-24-77;8:45 am]

DEPARTMENT OF THE INTERIOR

[43 CFR Part 2]

RECORDS AND TESTIMONY

Mineral Resource Data Information; Proposed Rulemaking

The Department of the Interior is considering promulgation of regulations to prescribe rules for the handling of mineral resource data information in the Department's possession which may be entitled to confidential treatment. The primary purpose of the regulation is to establish the substantive criteria which the Department will apply in determining whether mineral resource data and information which it receives is entitled to confidential treatment so that both the submitters of such information and the public are fully informed of the Department's policy.

It is proposed to promulgate a new subpart C of Title 43, Code of Federal Regulations, to contain all substantive Departmental regulations governing the treatment of mineral resource data and information which are entitled to confidential treatment. Existing subparts C, D, and E would be redesignated as D, E, and F. In addition, the new subpart will contain special provisions concerning the confidential treatment of data and information relating to coal as required by the Federal Coal Leasing Amendments Act of 1975 (Pub. L. 94-377). A number of existing regulations relating to confidentiality of mineral resource data and information which appear in Title 43 and Title 30 of the Code of Federal Regulations would be revoked or revised to conform to the new subpart. Notices of these revocations or revisions will be published in the FEDERAL REGISTER when and if the new subpart C is adopted.

Relationship to subpart B. Subpart B contains the Department's general regulations and procedures implementing the Freedom of Information Act, 5 U.S.C. Section 552. Those regulations contain no provisions requiring consultation with persons who may have submitted information either voluntarily or involuntarily which they may regard as entitled to confidential treatment, other than the provision in 43 CFR § 2.13(h) which provides that if a requested record was obtained by the Department from a person or entity outside of the Government the official responsible for processing the request shall seek the views of that person or entity "when it is administratively feasible to do so." Likewise, the existing regulations do not provide any procedures or guidelines for persons wishing to assert a claim of confidentiality, or for advance determination that certain types of mineral resource information is entitled to confidential treatment. The proposed new subpart would thus correct these deficiencies in the Department's present regulations.

Policy pending final promulgation of subpart. The Department will continue to follow the procedures in existing subpart B and other regulations in responding to requests for information, and, where mineral resource data and information is requested, to the extent that it is possible under existing regulations, will follow the general approach in the proposed subpart until the final version is promulgated. Pending final promulgation the Department will not utilize those provisions in the proposed subpart which impose new, affirmative requirements on persons who desire that the Department not release mineral resource information. For example, § 2.22 which requires timely assertion of a claim of confidentiality and contains the consequences of failure to assert such a claim by marking the data and information at the time of submission, will not be relied upon to justify disclosure of mineral resource information over the objections of the submitter. Nor will the Department use the provisions of § 2.24 (d) which require a person to institute an action in court to obtain preliminary injunctive relief within 10 days after being informed that the Department has determined that a claim of confidentiality should be denied and the mineral resource information should be released.

As a matter of policy the Department will require the substantiation of a claim of confidentiality, and will require such substantiation to be furnished quickly in order to process initial determinations and appeals involving Freedom of Information Act requests. Likewise, the substantive criteria in § 2.25 for determining confidentiality of mineral resource information will be applied by the Department prior to final promulgation, as will the provisions in § 2.27 regarding disclosure in special circumstances.

Interested parties may participate in the proposed rulemaking by submitting comments and objections to the Office of the Solicitor, United States Department of the Interior, Washington, D.C. 20240. Comments received on or before February 24, 1977 will be considered before taking final action on the proposal.

W. W. LYONS,
Deputy Under Secretary of the Interior.

JANUARY 29, 1977.

It is proposed to revise 43 CFR Part 2 by redesignating existing subparts C, D and E as D, E, and F and by adding a new subpart C to read as follows:

Subpart C—Confidentiality of Mineral Resource Information

Sec.
2.20 Definitions.
2.21 Applicability of subpart; priority where provisions conflict.
2.22 Notice to be included in requests, demands, and forms; method of asserting confidentiality claim; effect of failure to assert claim at time of submission.
2.23 Initial action by bureaus.
2.24 Final confidentiality determinations.
2.25 Substantive criteria for use in confidentiality determinations.
2.26 Advance confidentiality determinations.
2.27 Disclosure in special circumstances.
2.28 Safeguarding of mineral resources information; penalty for wrongful disclosure.
2.30 Special rules governing certain information concerning coal obtained under the Mineral Leasing Act.

AUTHORITY: 5 U.S.C. 552.

Subpart C—Confidentiality of Mineral Resource Information

§ 2.20 Definitions.

For the purposes of this subpart: (a) "person" means an individual, partnership, corporation, association, or other public or private organization or legal entity, including Federal, State or local governmental bodies and agencies.

(b) "mineral resource data and information" means any geological and geophysical data and information, including maps, which may be used to calculate mineral reserves in place, drill hole data and information, core drilling analyses, geophysical data, processed and reprocessed geophysical information and interpreted geophysical information, and geological data and analyzed and interpreted geological information, and includes trade secrets and commercial or financial information concerning mineral resources, mining methods, mineral beneficiation and processing.

(c) "reasons of confidentiality" include the concept of trade secrecy and other related legal concepts which give or may give persons the right to preserve the confidentiality of mineral resource data and information and to limit its use or disclosure to or by others in order that they may obtain or retain competitive advantages they derive from their rights in the information.

(d) "confidentiality claim" means a claim or allegation that mineral resource data and information are entitled to confidential treatment or a request for a determination that such information is entitled to such treatment.

(e) "voluntary submitted information" means mineral resource data and information in the Department's possession: (1) the submission of which the Department had no statutory or contractual authority to require; and (2) the submission of which was not prescribed by statute or regulations as a condition for obtaining some benefit.

(f) "Bureau" means any constituent bureau or office of the Department of the Interior, including the Office of the Secretary and other Departmental offices.

§ 2.21 Applicability of subpart; priority where provisions conflict.

(a) Sections 2.20 through 2.28 establish basic rules governing confidentiality claims, the handling by the Department of all mineral resource data and information in its possession which are or may be entitled to confidential treatment, and determinations by the Department of whether information is entitled to confidential treatment.

(b) The Mineral Leasing Act of 1920, as amended, contains special provisions concerning the entitlement to confidential treatment of data and information relating to coal. Section 2.30 prescribes special rules relating to the treatment to be given certain categories of mineral resource data and information obtained by the Department under the Act's provisions.

(c) The basic rules of §§ 2.20 through 2.28 govern except to the extent that they are modified or supplanted by the special rules of § 2.30 respecting coal resources. In the event of a conflict between the provisions of the basic rules and those of a special rule respecting coal, the provision of the special rule shall govern.

(d) The subpart does not apply to questions concerning entitlement to confidential treatment of mineral resource information which concerns an individual solely in his personal, as opposed to his business capacity.

§ 2.22 Notice to be included in requests, demands, and forms; method of asserting confidentiality claim; effect of failure to assert claim at time of submission.

(a) *Notice.* Whenever an authorized representative of a bureau makes a written request or demand that a person furnish mineral resource data and information, which in the bureau's opinion, are likely to be regarded by the submitter as entitled to confidential treatment under this subpart, or whenever a bureau prescribes a form for use in furnishing such information, the request, demand or form shall include or enclose a notice which—

(1) States that the person may, if he desires, assert a confidentiality claim covering part or all of the data and information, in the manner prescribed in paragraph (b) of this section, and that data and information covered by such claim will be disclosed by the Department only to the extent and by means of the procedures set forth in this subpart; and

(2) States that if no such claim accompanies the data and information when they are received by the Depart-

ment, they may be made available to the public by the Department without further notice to the person.

(b) *Method of asserting claim.* A person submitting mineral resource data and information to the Department may assert a confidentiality claim by placing on (or attaching to) the data and information at the time of submission to the Department, a cover sheet, a stamped or typed legend, or other suitable form of notice employing language such as "trade secret," "proprietary," or "company confidential". Allegedly confidential portions of otherwise non-confidential documents should be clearly identified, and may be submitted separately to facilitate identification and handling. If confidential treatment is desired only until a certain date or the occurrence of a certain event, the notice should so state.

(c) *Failure to assert claim.* If information was submitted to a bureau, on or after the effective date of this subpart, in response to a request or demand (or on a prescribed Departmental form) which contained the substance of the notice required by paragraph (a) of this section, and if no confidentiality claim accompanied the data and information when they were received by the bureau, the notice to the submitter required by § 2.23(c)(1) need not be sent.

§ 2.23 Initial action by bureaus.

(a) *Situations requiring action.* This section prescribes the procedures to be followed by bureaus in making an initial determination of whether mineral resource data and information are entitled to confidential treatment. Actions shall be taken under this section whenever a bureau:

(1) receives a request under 5 U.S.C. 552 for the release of mineral resource data and information; in such a case the bureau shall issue an initial determination within the period of time specified in § 2.16 of this Part; or

(2) desires to determine whether mineral resource data and information are entitled to confidential treatment, even though no request for the release of the information has been received.

(b) *Confidentiality determinations.* Whenever a request for release of information under 5 U.S.C. 552 is received the bureau shall—

(1) first determine whether there has been a previous determination of confidentiality issued by the Office of the Solicitor acting under this subpart, or by a Federal court, holding that the data and information requested are entitled to confidential treatment. If such a determination has been made the bureau shall inform the requester that the request is denied; or

(2) if no previous determination of confidentiality has been made, examine the information and its records to determine whether an assertion of confidentiality has been made as provided in § 2.22(b). If a claim of confidentiality has been asserted the bureau shall take action under paragraph (c) of this section.

(c) *Preliminary determination.* Whenever action under this paragraph is required by paragraph (b)(ii) of this section the bureau shall make a determination with respect to the assertion of confidentiality governing the data and information involved. Such determination shall take into account the applicable substantive criteria in § 2.25 and any previously issued determinations which are applicable.

(1) If, in connection with any confidentiality claim, a bureau determines that the information may be entitled to confidential treatment, the bureau shall—

(i) send to the person asserting a claim of confidentiality concerning the information involved a written notice by certified mail (return receipt requested) stating that a request for the information has been received under 5 U.S.C. § 552; that the bureau is determining under this subpart whether the information is entitled to confidential treatment, and according the person 15 working days from receipt of the written notice within which to send any comments or objections. The notice shall specify that information may be disclosed without further notice if comments are not received within the 15 day period;

(ii) inform the person whose request for release of the information is pending under 5 U.S.C. 552 that the information requested may be entitled to confidential treatment under this subpart and 5 U.S.C. § 552(b)(4) and/or (b)(9); that further inquiry by the Department is necessary before a final determination on the request can be issued; that the request is therefore initially denied, and that after further inquiry a final determination will be issued by the Office of the Solicitor; and

(iii) refer the matter to the appropriate legal office of the Office of the Solicitor.

(2) The written notice required by paragraph (c)(1)(i) of this section shall in addition invite comments on the following points:

(a) the portions of the information which are alleged to be entitled to confidential treatment;

(b) the period of time for which confidential treatment is desired (e.g., until a certain date, until the occurrence of a specified event, or permanently);

(c) the purpose for which the information was furnished to the Department and the approximate date of submission, if known;

(d) measures taken to guard against undesired disclosure of the information to others;

(e) the extent to which the information has been disclosed to others; and the precautions taken in connection therewith;

(f) whether the person asserts that disclosure of the information requested would be likely to result in substantial harmful effects on his competitive position, and if so, what those harmful effects would be, why they should be viewed as substantial, and an explanation of the causal relationship between disclosure and such harmful effects; and

(g) whether the information is voluntarily submitted as defined in § 2.20(e), and if so, whether and why disclosure of the information would tend to lessen the availability of the information in the future.

§ 2.24 Final confidentiality determinations.

(a) The appropriate legal office of the Office of the Solicitor (see subparagraphs (d)(1)(i), (ii), and (iii) of this section) is responsible for making the final administrative determination of whether or not mineral resource information covered by a confidentiality claim is entitled to confidential treatment under this subpart.

(1) Whenever a request under 5 U.S.C. § 552 involves records located in field installations the regional solicitor providing legal services for such installation shall make the final determination.

(2) Whenever a request under 5 U.S.C. 552 involves records located at the headquarters installation of a bureau the associate solicitor providing legal services for such bureau shall make the final determination.

(3) Advance confidentiality determinations under § 2.25 shall be made by the appropriate associate solicitor.

(b) *Comment period; extensions; untimeliness as waiver of claim.*

(1) Any person who has been furnished the notice to comment prescribed by § 2.23(c)(1) shall furnish his comments to the office specified in the notice in a manner calculated to result in receipt of such comments no later than the date specified for receipt in the notice.

(2) The period for submission of comments may be extended if a request for an extension is made and approved by the appropriate office of the Solicitor. Requests for extension will not be approved except in extraordinary circumstances without the consent of the person whose request for release of information under 5 U.S.C. 552 is pending.

(3) If no comments are received within the time specified, in the notice, or within an extended comment period; a claim of confidentiality shall be deemed to be waived and the information shall be considered to be available to the public.

(c) *Determination that information is entitled to confidential treatment.* If the Office of the Solicitor determines that the information involved is entitled to confidential treatment for the full period requested by the person who made the claim, the Department will maintain the information in confidence for such period, subject to disclosure in special circumstances as prescribed in § 2.27 of this subpart.

(d) *Determination that information is not entitled to confidential treatment; notice, waiting period; release of information.* (1) If the Office of the Solicitor determines that a claim of confidentiality should be denied in whole or in part a written notice of denial shall be sent to the person asserting the claim. The notice of denial shall state: (i) The basis for the denial;

(ii) That the denial constitutes final Departmental action concerning the confidentiality claim;

(iii) That the Department will make the information available to the public on the tenth working day after the person's receipt of the written notice unless the Office of the Solicitor has been notified of the commencement of an action in a Federal court to obtain judicial review of the determination and to obtain preliminary injunctive relief against disclosure;

(iv) That the Department may make the information available to the public if the Federal court has denied a motion for a preliminary injunction or has upheld the Department's determination, or whenever the Office of the Solicitor, after reasonable notice, determines that appropriate measures are not being taken to obtain a speedy resolution of the action; and

(v) That the information will not be released to the public prior to the end of the period of temporary entitlement to confidential treatment.

(2) The period of time within which an action to obtain judicial review of a decision denying confidential treatment may be extended if a request for extension is received before the expiration and is approved by the Office of the Solicitor. Extensions will not be approved except in extraordinary circumstances without the consent of any person who has requested release of the information pursuant to 5 U.S.C. 552.

§ 2.25 Substantive criteria for use in confidentiality determinations.

Mineral resource information shall be determined to be entitled to confidential treatment if—

(a) A claim of confidentiality has been asserted which has neither expired by its terms, nor has been waived nor withdrawn;

(b) It has been shown that the person supplying the information to the Department has taken reasonable measures to protect the confidentiality of the information, and that such measures will be continued;

(c) The information is not, and has not been, reasonably obtainable without the person's consent by other persons (other than governmental bodies) by use of legitimate means other than discovery based on a showing of special need in a judicial or quasi-judicial proceeding;

(d) There is no statute specifically requiring disclosure of the information; and

(e) Either—

(1) It has been satisfactorily shown that disclosure of the information is likely to cause substantial harm to a person's competitive position; or

(2) The information is voluntarily submitted information and its disclosure would be likely to seriously impair the Government's ability to obtain the information in the future.

§ 2.26 Advance confidentiality determinations.

(a) An advance determination under this section may be issued by the Office of the Solicitor if—

(1) The Department has requested, or proposes to request that mineral resource information be furnished to it;

(2) There is reason to believe persons required to submit the information will assert that the information if submitted would constitute voluntarily submitted information under § 2.20(e);

(3) There is reason to believe that persons will vountarily submit the information for use by the Department only if the Department first determines that the information is entitled to confidential treatment under this subpart; and

(4) The bureau which desires submission of the information has requested that the Office of the Solicitor issue a determination under this section.

(b) If the Office of the Solicitor determines that the information involved would constitute voluntarily submitted information and that it is entitled to confidential treatment, a notice of such determination shall be published in the FEDERAL REGISTER which describes the information involved, the basis for the conclusion that the information is entitled to confidential treatment, and states that such information will not be released to the public unless or until such time as the determination is modified or revoked.

§ 2.27 Disclosure in special circumstances.

(a) *General.* Mineral resource information which under this subpart is not available to the public may be disclosed to the persons in the manner, and under the circumstances described in this section.

(b) *Disclosure to Congress or the Comptroller General.* Upon receipt of a written request the Department will disclose mineral resource information to either House of Congress, to a committee or subcommittee of Congress, or to the Comptroller General, unless a statute forbids such disclosure. Whenever such disclosure is made the Department will inform the requester of any unresolved claims of confidentiality, and any determination that the information is entitled to confidential treatment.

(c) *Disclosure to other Federal or State agencies.* The Department may disclose mineral resource information to Federal or State agencies if—

(1) It is required by Federal law to disclose such information; or

(2) It receives a written request for disclosure from a duly authorized officer or employee of such agency;

(3) The written request describes the official purpose for which the information is needed;

(4) The requesting agency agrees not to disclose further unless—

(i) The other agency has obtained the consent of the affected person to the proposed disclosure; or

(ii) The other agency has received a written statement from the Solicitor agreeing to the proposed disclosure.

(d) *Court-ordered disclosure.* The Department shall disclose any mineral resource information when so ordered by a Federal court.

(e) *Disclosure within the Department.* A Department office, officer, or employee may disclose any mineral resource information to another Department office, officer, or employee with an official need for the information.

(f) *Disclosure with consent.* Mineral resource information subject to confidential treatment may be disclosed whenever the Department obtains prior consent of each affected person.

§ 2.28 Safeguarding of mineral resource information; penalty for wrongful disclosure.

(a) No Department officer or employee may disclose, or use for his private gain or advantage, any mineral resource information in his possession, or to which he gained access, by virtue of his official position or employment, except as authorized by this subpart.

(b) Department officers or employees who have custody or possession of mineral resource information shall take appropriate measures to protect such information from improper disclosure.

(c) Violation of paragraphs (a) and (b) of this section shall constitute grounds for dismissal, suspension, fine, or other adverse personnel action. Willful violations of paragraph (a) may result in criminal prosecution under 18 U.S.C. 1905 or other applicable statutes.

(d) Each contractor with the Department or any subcontractor of such contractor, and each employee of the contractor or subcontractor, who is furnished mineral resource information by the Department shall use or disclose such information only as permitted by the contract under which the information was furnished. Any violation of this paragraph shall constitute grounds for debarment or suspension of the contractor or subcontractor or the contractors or subcontractor's employee in question. Willful violation of this paragraph may result in criminal prosecution.

§ 2.30 Special rules governing certain information concerning coal obtained under the Mineral Leasing Act.

(a) *Definitions.* As used in this § 2.30:

(1) "Act" means the Mineral Leasing Act of February 25, 1920, as amended by the Act of August 4, 1976, P.L. 94-377 (30 U.S.C. § 181 et seq).

(2) "Exploration license" means a license issued by the Secretary of the Interior to conduct coal exploration operations on lands subject to the Act pursuant to the authority in section 2(b) of the Act, as amended (30 U.S.C. 201 (b)).

(3) "Fair market value of coal to be leased" means the fair market value of coal as determined by the Secretary of the Interior underlying leasing tracts offered in general lease sales or reserved

and offered for lease to public bodies, including Federal agencies, rural electric cooperatives, or non-profit corporations controlled by any of such entities, pursuant to section 2(a) of the Act (30 U.S.C. 201(a)(1)).

(b) *Applicability.* (1) This section applies to the following categories of mineral resource information—

(i) *Category A.* Information and data provided to or obtained by a bureau under section 2(b)(3) of the Act by the holder of a coal exploration license.

(ii) *Category B.* Information and data purchased by a bureau from commercial or other sources pursuant to section 8A (b) of the Act, and information and data developed by the United States Geological Survey under an exploratory program authorized by Section 8A of the Act;

(iii) *Category C.* Information and data obtained from commercial sources while not under contract with the United States Government;

(iv) *Category D.* Information and data provided to the Secretary by a Federal department or agency pursuant to section 8A(e) of the Act; and

(v) *Category E.* The fair market value of coal to be leased and comments received by the Secretary with respect to such value.

(c) *Availability of data and information.* Information obtained by the Department from various sources shall be made available to the public as follows—

(1) *Category A—Information.* All coal data and information in Category A furnished to the Secretary by the holder of an exploration license under Section 2(b)(3) of the Act shall not be disclosed to the public until after the areas to which the data and information pertains have been leased by the Department, or until the Secretary determines that release of the information to the public would not damage the competitive position of the licensee, whichever comes first.

(2) *Category B—Information.* Mineral resource data and information in Category B purchased by a bureau from commercial or other sources shall be made available to the public in accordance with the terms and conditions of the contract or purchase agreement.

(3) *Category C—Information.* Confidential and proprietary data and mineral resource information in Category C purchased from commercial sources not under contract with the United States Government shall not be made available to the public until after the areas to which the information and data pertain have been leased by the Department.

(4) *Category D—Information.* Confidential and proprietary mineral resource data and information in Category D obtained pursuant to section 8A(e) of the Act shall be made available to the public under the terms and conditions agreed to by the head of the department or agency from whom the information is requested.

(5) *Category E—Information.* Category E shall not be made public until the lands have been leased.

[FR Doc 77-2262 Filed 1-24-77;8:45 am]

Bureau of Land Management

[43 CFR Part 4700]

RANGE MANAGEMENT

Wild Free-Roaming Horse and Burro Management

This proposed rulemaking amends 43 CFR Part 4700, "Wild Free-Roaming Horse and Burro Protection, Management, and Control," to implement section 9 of the Wild Free-Roaming Horse and Burro Act (16 U.S.C. 1331–1340) as provided by section 404 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701). This amendment to the Wild Free-Roaming Horse and Burro Act authorizes the use of helicopters or, for the purpose of transporting captured animals, motor vehicles in administering the provisions of the Wild Free-Roaming Horse and Burro Act, as amended (16 U.S.C. 1331-1340). The provision also directs that the use of helicopters and motor vehicles be undertaken (1) in accordance with humane procedures prescribed by the Secretaries of the Interior and Agriculture, (2) under the direct supervision of the appropriate Secretary or a duly authorized officer or employee of their Departments, and (3) only after a public hearing.

This proposed rulemaking establishes the procedures to be used in carrying out the amendment to the Wild Free-Roaming Horse and Burro Act by:

1. Amending the authority section (§ 4700.0–3) to reflect the amendment to the Act of December 15, 1971 (16 U.S.C. 1331–1340).

2. Defining the terms "the Act," "malicious harassment," "captured animal," and "humane procedures."

3. Revising § 4720.2, "Claimed Animals," to exclude the use of helicopters for the gathering operations of claimed animals.

4. Establishing procedures for using fixed-wing aircraft, helicopters, and motor vehicles in management operations.

5. Establishing humane procedures for the use of helicopters and motor vehicles.

Since both the Forest Service and BLM are subject to the provisions of the Wild Free-Roaming Horse and Burro Act as amended by the Federal Land Policy and Management Act of 1976, both Agencies are issuing rulemaking proposals in the FEDERAL REGISTER. During the period allowed for public comment, joint public hearings will be held on the subject of using helicopters and motorized vehicles as proposed in the rulemaking. Written comments and comments received at the hearings will be carefully analyzed prior to final rulemaking. Public meetings will be held in each District prior to a scheduled gathering of wild free-roaming horses or burros. Procedures to be used in the conduct of such roundups, including the use of helicopters, will be discussed at that time.

The hearings listed below are intended to provide the public an opportunity to comment on, and seek answers to questions about, the proposed rules. The hearing schedule is as follows:

State	Date/time (1977)	Place
Arizona	Mar. 2, 1 p.m. to 5 p.m.	Maricopa County Board of Supervisors Auditorium, 205 West Jefferson St., Phoenix, Ariz.
California	Mar. 5, 10 a.m. to 4 p.m.	Yuba Room, Sacramento Community Center, 14th and K Sts., Sacramento Calif.
Colorado	Mar 23, 10 a.m.	City Hall Auditorium, 5th and Rood Sts., Grand Junction, Colo.
Idaho	Mar. 15, 7:30 p.m.	Rodeway Inn, 29th and Chinden Blvd., Boise, Idaho.
Montana	Mar 15, 2 p.m.	Room 152, Library Building, Eastern Montana College, Billings, Mont.
Nevada	Mar. 15, 3 to 5 p.m. and 7 to 9 p.m.	Pioneer Motor Inn, 221 South Virginia, Reno, Nev.
New Mexico	Mar. 3, 7 p.m.	Albuquerque Convention Center, Navajo Nambe Room, Albuquerque, N. Mex.
Oregon	Mar. 2, 7:30 p.m.	Harney County Court House, Burns, Oreg.
Utah	Mar. 2, 7 p.m.	Salt Palace, Room 256, Salt Lake City, Utah.
Wyoming	Mar. 16, 7:30 p.m.	College Meeting Room, Western Wyoming College, Rock Springs, Wyo.

The Department of the Interior has determined that this document does not contain a major proposal requiring preparation of an inflation impact statement under Executive Order 11821 and OMB Circular A–107.

It is hereby determined that the publication of this proposed rulemaking is not a major Federal action significantly affecting the quality of the human environment and that a detailed statement pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(c)) is not required.

In accordance with the Federal Land Policy and Management Act of 1976, interested parties may submit written comments, suggestions, or objections with respect to the proposed rules to the Director (210), Bureau of Land Management, Washington, D.C. 20240, until April 22, 1977.

Copies of comments, suggestions, or objections made pursuant to this notice will be available for public inspection in the Division of Legislation and Regulatory Management, Bureau of Land Management, Room 5555, Interior Building, Washington, D.C., during regular business hours (7:45 a.m.–4:15 p.m.).

It is therefore proposed to revise 43 CFR 4700 in the manner set forth below.

1. Section 4700.0–3 is revised to read as follows:

§ 4700.0–3 Authority.

The Act of December 15, 1971 (16 U.S.C. 1331–1340), as amended, and the Act of June 28, 1934 (43 U.S.C. 314–315r).

2. Section 4700.0–5 is amended by revising paragraph (i) and by adding new paragraphs (k), (l), and (m) to read as follows:

§ 4700.0–5 Definitions.

* * * * *

(i) "Act" means the Act of December 15, 1971 (16 U.S.C. 1331–1340), as amended.

* * * * *

(k) "Malicious harassment" means any intentional act which creates a likelihood of injury, or is detrimental to normal behavior patterns of wild free-roaming horses and burros including feeding, watering, resting, and breeding. Such acts include, but are not limited to, unauthorized chasing, pursuing, herding, roping, or attempting to gather or catch wild free-roaming horses and burros. It does not apply to lawfully conducted activities by or on behalf of the Bureau of Land Management or the Forest Service in implementation or performance of duties and responsibilities under this Act.

(l) "Captured animal" means a wild free-roaming horse or burro taken and held in the custody of the authorized officer. This term does not apply to an animal placed in private custody through a cooperative agreement under § 4740.2 (b) or § 4750.2.

(m) "Humane procedure" means kind and merciful treatment, without causing unnecessary stress or suffering to the animal in all actions involving roundups, other capture operations, handling, transporting, or other involvement with wild free-roaming horses and burros.

3. Section 4720.2 is amended by revising paragraph (a) to read as follows:

§ 4720.2 Claimed animals.

(a) Any person claiming ownership under State branding and estray laws of unbranded or branded horses or burros on public land where such animals are not authorized must present evidence of ownership to justify a roundup before permission will be granted to gather such animals. Claims of ownership with supporting evidence were required to be filed during a 90-day claiming period which expired November 15, 1973. Unauthorized privately owned horses or burros entering onto the public lands after November 15, 1973, may be claimed by filing an application with the District Manager. All written authorizations to gather claimed animals shall be on a form approved by the Director and shall provide for compliance with appropriate provisions of Subpart 4720. After such public notice as the authorized officer deems appropriate to inform interested parties, he may authorize the gathering or roundup. The authorized officer shall provide in the authorization that the gathering or roundup shall be consistent with these regulations and shall exclude the use of aircraft or motor vehicles solely to capture claimed horses or burros; shall establish in the authorization a reasonable period of time to allow the gathering of the claimed animals; and shall provide such other conditions in the authorization which he deems necessary to minimize stress on any associated wild free-roaming horses or burros and to protect other resources.

* * * * *

4. Subpart 4730 is amended by adding §§ 4730.7, 4730.7–1, 4730.7–2 and 4730.7–3 to read as follows:

§ 4730.7 Aircraft and motor vehicles.

§ 4730.7–1 Fixed-wing aircraft.

Fixed-wing aircraft may be used for inventory, observation, and surveillance purposes required for the administration of the Act. Such aircraft use shall be consistent with the Act of September 8, 1959, as amended (18 U.S.C. 41 et seq.). Fixed-wing aircraft shall not be used in connection with capture operations.

§ 4730.7–2 Helicopters.

Helicopters may be used in all phases of the administration of the Act including, but not limited to, inventory, observation, surveillance, and capture operations (see § 4740.4). The authorized officer shall supervise all helicopter use as follows:

(a) The authorized officer shall have the means to communicate with the pilot and be able to direct the use of the helicopter.

(b) The authorized officer shall be able to observe the effects of the use of the helicopter on the well-being of the animals.

§ 4730.7–3 Motor vehicles.

Motor vehicles may be used in the administration of the Act except that such vehicles shall not be used in connection with capture operations for driving or chasing the animals. The use of motor vehicles for the purpose of transporting captured animals is subject to the provisions of § 4740.4(b).

5. Subpart 4740 is amended by adding § 4740.4 to read as follows:

§ 4740.4 Humane use of helicopters and motor vehicles.

(a) The use of helicopters is authorized to locate the animals involved and for related purposes such as to transport personnel and equipment (including veterinarians and medical supplies). The condition of the animals shall be continuously observed by the authorized officer and should signs of unnecessary stress be noted, the source of stress shall be removed so as to allow for recovery. Helicopters may be used in roundups or other capture operations subject to the following humane procedures:

(1) Helicopters shall be used in such a manner that bands or herds will tend to remain together.

(2) The rate of movement shall not exceed limitations set by the authorized officer who shall consider terrain, weather, distance to be traveled, and condition of animals.

(3) The helicopter shall be used to enable the authorized officer to look for the presence of dangerous areas and move the animals away from hazards during the capture operation.

(4) During capture operations, animals shall be moved in such a way as to prevent unnecessary stress.

(b) Motor vehicles may be used for the purposes of transporting captured animals, subject to the following humane procedures:

(1) All such transportation shall be in compliance with appropriate State and Federal laws and regulations applicable to the transportation of animals (horses and burros).

(2) Vehicles shall be in good repair, of adequate rated capacity, and safely operated so as to insure that captured animals are transported without undue risk of injury.

(3) Vehicles shall be inspected and approved by an authorized officer prior to use.

(4) Animals shall be sorted as to age, size, and condition when transporting them so as to minimize, to the extent possible, injury due to fighting and trampling.

(5) The authorized officer shall consider the condition of the animals, weather conditions, type of vehicles, and distance to be transported when planning for the movement of captured animals.

CHRIS FARRAND,
Acting Assistant,
Secretary of the Interior.

JANUARY 19, 1977.

[FR Doc. 77-2316 Filed 1-19-77;3:49 pm]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

[45 CFR Part 185]

EMERGENCY SCHOOL AID

Waivers of Ineligibility for Discriminatory Assignment of Students to Classes

Under the authority of the Emergency School Aid Act (Title VII of Pub. L. 92–318, as amended; 20 U.S.C. 1601–1619), the U.S. Commissioner of Education, with the approval of the Assistant Secretary for Education and the Secretary of Health, Education, and Welfare, proposes to amend the regulation governing approval of waivers of ineligibility in the case of discriminatory assignment of students to classes (45 CFR 185.44(f)(3)) as set forth below.

The Emergency School Aid Act provides desegregation-related financial aid to educational agencies and other organizations. Section 706(d) of the Act (20 U.S.C. 1605(d)) prohibits aid to educational agencies which have engaged in certain prohibited practices, including racially discriminatory assignment of students to classes and other groupings. However, an educational agency found to have engaged in one of these practices may establish its eligibility for aid by applying for a waiver of ineligibility and showing that the practice has ceased to exist and will not reoccur.

The Commissioner has determined that the present regulations are not wholly adequate to ensure the proper corrective action in the case of waivers of ineligibility based on discriminatory assignment of students to groupings (particularly special education classes). The present regulations apply to all racially identifiable groupings that cannot be justified educationally, and do not make it clear that remedies appro-

priate for one kind of grouping (such as unjustified ability grouping) may not be appropriate for another kind (such as unjustified assignment to educable mentally retarded classes). During last year's funding cycle, this deficiency contributed to abrupt changes in the educational programs of educational agencies applying for waivers, and to the possible deprivation of needed services to some of the students affected. Further, the regulations do not expressly take into account statutory requirements pertaining to the proper treatment of handicapped students which have been enacted since the passage of the Emergency School Aid Act in 1972. Nor do the regulations ensure that students reassigned out of discriminatorily-constituted groupings receive special help in adjusting to their new educational settings.

The revised regulations proposed by this document are designed to accomplish three main purposes:

(a) Make it clear that waiver applications in the case of discriminatory assignment of students to special education groupings are not approvable if the applicant disbands the groupings even temporarily and reassigns students in them to regular classes;

(b) Condition the approval of waivers in the case of discriminatory assignment of students to special education groupings on the completion of evaluations and placements required for handicapped students under Pub. L. 94–142 (The Education of all Handicapped Children Act of 1975) and section 504 of Pub. L. 93–112 (The Rehabilitation Act of 1973); and

(c) Require that a student reassigned from any discriminatorily constituted grouping to a new grouping be provided transitional services to help the student adjust to the new grouping. In addition, the revised regulations incorporate other minor and editorial changes.

If you wish to comment on the proposed revised regulations, write or call:

Thomas B. Irvin, Donohue Building, Room 4926, 400 6th St., S.W., Washington, D.C. 20202. (202) 245–9805.

All comments received by 4:30 p.m. Washington, D.C. time on March 11, 1977 will be considered.

The U.S. Office of Education has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A–107.

(Catalog of Federal Domestic Assistance Numbers 13.525, 13.526, 13.528, and 13.529.)

Dated: January 12, 1977.

VIRGINIA Y. TROTTER,
Assistant Secretary for Education.

Approved: January 12, 1977.

DAVID MATHEWS,
Secretary of Health, Education, and Welfare.

Revised 45 CFR 185.44(f)(3) is proposed to read as follows:

§ 185.44 Waiver of ineligibility.

* * * * *

(f) Discrimination against children:

* * * * *

(3) (i) In the case of the assignment of students to racially or ethnically identifiable groups, tracks, or classes which cannot be justified educationally, as described in § 185.43(d)(5), an educational agency shall submit the following information:

(A) If the assignment was to a grouping to provide special education or related services to handicapped students, evidence that the students so assigned have been evaluated and placed in accordance with requirements for evaluation and placement of handicapped students under Pub. L. 94–142 and section 504 of Pub. L. 93–112, and any regulations under those statutes; or

(B) If the assignment was to other groupings, evidence that the students so assigned have been nondiscriminatorily reassigned to groupings that are not racially or ethnically identifiable, or evidence that the students so assigned have been reassigned to groupings in accordance with the criteria in § 185.43(c)(1)–(3).

(ii) If the educational agency reassigns any student to a new grouping under paragraph (f)(3)(i) of this section, it shall also submit evidence that it has made provision for such transitional services as are necessary to enable the student to participate meaningfully in the educational program of the new grouping.

(Pub. Law 92–318, secs. 706(d)(1)–(3).)

[FR Doc.77–2227 Filed 1–24–77;8:45 am]

notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

PLANT VARIETY PROTECTION BOARD

Availability of Report

Notice is hereby given that the report covering activities of the Plant Variety Protection Board, authorized by the Plant Variety Protection Act (7 U.S.C. 2327 et seq.) for the 1975 and 1976 calendar years is available for public inspection and copying in the Office of the Commissioner, Plant Variety Protection Office, Grain and Seed Division, Agricultural Marketing Service, U.S. Department of Agriculture, Room 301, National Agricultural Library, Beltsville, MD 20782.

Dated: January 19, 1977.

WILLIAM T. MANLEY,
Deputy Administrator, Program Operations.

[FR Doc.77–2355 Filed 1–24–77;8:45 am]

Farmers Home Administration

[Designation Number A425]

LOUISIANA

Designation of Emergency Areas

The Secretary of Agriculture has determined that farming, ranching, or aquaculture operations have been substantially affected in Caldwell Parish, Louisiana, as a result of drought June 1 through October 31, 1976.

Therefore, the Secretary has designated this area as eligible for emergency loans pursuant to the provisions of the Consolidated Farm and Rural Development Act, as amended by Pub. L. 94–68, and the provisions of 7 CFR 1832.3(b) including the recommendation of Governor Edwin Edwards that such designation be made.

Applications for emergency loans must be received by this Department no later than March 10, 1977, for physical losses and October 7, 1977, for production losses, except that qualified borrowers who receive initial loans pursuant to this designation may be eligible for subsequent loans. The urgency of the need for loans in the designated area makes it impracticable and contrary to the public interest to give advance notice of proposed rulemaking and invite public participation.

Done at Washington, DC, this 18th day of January, 1977.

FRANK B. ELLIOTT,
Administrator, Farmers Home Administration.

[FR Doc.77–2368 Filed 1–24–77;8:45 am]

[Designation Number A428]

TEXAS

Designation of Emergency Areas

The Secretary of Agriculture has determined that farming, ranching, or aquaculture operations have been substantially affected in Lee County, Texas, as a result of excessive rainfall during the growing season April 1 through June 30, 1976, and again during harvest season September 15 through December 13, 1976.

Therefore, the Secretary has designated this area as eligible for emergency loans pursuant to the provisions of the Consolidated Farm and Rural Development Act, as amended by Pub. L. 94–68, and the provisions of 7 CFR 1832.3(b) including the recommendation of Governor Dolph Briscoe that such designation be made.

Applications for emergency loans must be received by this Department no later than March 10, 1977, for physical losses and October 7, 1977, for production losses, except that qualified borrowers who receive initial loans pursuant to this designation may be eligible for subsequent loans. The urgency of the need for loans in the designated area makes it impracticable and contrary to the public interest to give advance notice of proposed rulemaking and invite public participation.

Done at Washington, DC, this 18th day of January, 1977.

FRANK B. ELLIOTT,
Administrator, Farmers Home Administration.

[FR Doc.77–2369 Filed 1–24–77;8:45 am]

Forest Service

BANKHEAD NATIONAL FOREST TIMBER MANAGEMENT PLAN

Availability of Draft Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Forest Service, Department of Agriculture, has prepared a final environmental statement for the Bankhead National Forest Timber Management Plan, National Forests in Alabama, USDA–FS–RS–FES (Adm.) 76–23.

This unit contains 179,294 acres of National Forest land located in Winston, Lawrence and Franklin Counties. Major actions are harvesting timber products, development and maintenance of wildlife improvements, development of recreation facilities for dispersed recreation and construction and reconstruction of roads.

This final environmental statement was transmitted to CEQ January 17, 1977. Copies are available for inspection during regular working hours at the following locations:

USDA, Forest Service, South Agriculture Bldg., Rm. 3230, 12th St. & Independence Ave., SW., Washington, D.C. 20250.
USDA, Forest Service, 1720 Peachtree Street, NW., Rm. 804, Atlanta, Georgia 30309.
U.S. Forest Service, 1765 Highland Avenue, Box 40, Montgomery, Alabama 36101.

A limited number of single copies are available upon request to Forest Supervisor, National Forests in Alabama, 1765 Highland Avenue, Box 40, Montgomery, Alabama 36101.

Copies of the environmental statement have been sent to various Federal, State and local agencies as outlined in the CEQ guidelines.

Dated: January 17, 1977.

ROBERT F. WILLIAMS,
Regional Environmental Coordinator.

[FR Doc.77–2304 Filed 1–24–77;8:45 am]

Office of the Secretary

NATIONAL MEAT AND POULTRY INSPECTION ADVISORY COMMITTEE

Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that a meeting of the National Meat and Poultry Inspection Advisory Committee will be held on February 9, 1977, beginning at 9 a.m. in Room 4306, South Building, U.S. Department of Agriculture, Washington, D.C.

The purpose of this Committee is to advise and make recommendations to the Secretary of Agriculture regarding operations pertaining to meat and poultry inspection programs pursuant to section 301 of the Federal Meat Inspection Act and section 5 of the Poultry Products Inspection Act. Matters to be discussed will include administrative procedures relating to letters of credit for State funds; cooperative agreements; inplant quality control programs; survey and study of dry sausage; review of the Salmonella Advisory Committee activities; and an update on the recommendations of the Expert Panel on Nitrates and Nitrosamines, contact study of meat and poultry inspection and litigation activities.

This meeting is open to the public, but space and facilities are limited. Comments of interested person may be filed with the Committee before or after the meeting.

Information pertaining to this meeting may be obtained from Dr. James K. Payne, Room 4347, South Building, U.S.

Department of Agriculture, 14th and Independence Avenue, SW., Washington, DC 20250, Area Code (202) 447-6313.

Dated: January 21, 1977.

F. J. MULHERN,
Vice Chairman.

[FR Doc.77-2566 Filed 1-24-77;9:35 am]

CIVIL AERONAUTICS BOARD

[Order 77-1-39; Docket 29123; Agreement C.A.B. 26256; R-1 through R-8]

INTERNATIONAL AIR TRANSPORT ASSOCIATION

Order

Issued under delegated authority January 10, 1977.

An agreement has been filed with the Board pursuant to section 412(a) of the Federal Aviation Act of 1958 (the Act) and Part 261 of the Board's Economic Regulations, between various air carriers, foreign air carriers, and other carriers embodied in the resolutions of Traffic Conference 2 (Europe/Africa/Middle East) of the International Air Transport Association (IATA). The agreement was adopted at the Composite Passenger Traffic Conference held in Miami during September/October 1976, and has been assigned the above C.A.B. agreement number.

We will approve the first- and economy-class fares, which are combinable with fares to/from United States points and thus have indirect application in air transportation as defined by the Act, but will disclaim jurisdiction with respect to creative fares which are not similarly combinable.

Pursuant to authority duly delegated by the Board in the Board's Regulations 14 CFR 385.14:

1. It is not found that the following resolutions, incorporated in Agreement C.A.B. 26256 as indicated, and which have indirect application in air transportation as defined by the Act, are adverse to the public interest or in violation of the Act:

Agreement CAB	IATA No.	Title	Application
26256:			
R-1	001b	TC2—Special Effectiveness Resolution (Tie-in)	2
R-2	002	Standard Readoption Resolution	2
R-3	022b	TC2 (Except Within Europe) Adjustment Factors For Sales of Passenger Air Transportation (New).	2
R-4	052	TC2 First Class Fares	2
R-5	062	TC2 Economy Class Fares	2

2. It is not found that the following resolutions, incorporated in Agreement C.A.B. 26256, affect air transportation within the meaning of the Act:

Agreement CAB	IATA No.	Title	Application
26256:			
R-6	072b	TC2 Creative Fares Except Europe (Readopting and Amending)	2
R-7	075a	TC2 Common Interest Group Fares (Readopting and Amending)	2
R-8	093	TC2 Teachers Fares (Readopting and Amending)	2

Accordingly, *It is ordered*, That:

1. Those portions of Agreement C.A.B. 26256 described in finding paragraph 1 above, which have indirect application in air transportation as defined by the Act, be and hereby are approved; and

2. Jurisdiction be and hereby is disclaimed with respect to those portions of Agreement C.A.B. 26256 described in finding paragraph 2 above.

Persons entitled to petition the Board for review of this order pursuant to the Board's Regulations, 14 CFR 385.50, may file such petitions within ten days after the date of service of this order.

This order shall be effective and become the action of the Civil Aeronautics Board upon expiration of the above period, unless within such period a petition for review thereof is filed or the Board gives notice that it will review this order on its own motion.

This order will be published in the FEDERAL REGISTER.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc.77-2163 Filed 1-24-77;8:45 am]

[Order 77-1-53; Docket 27573; Agreement C.A.B. 26316 R-1 through R-3; Agreement C.A.B. 26325 R-1 through R-3]

INTERNATIONAL AIR TRANSPORT ASSOCIATION

Order

Issued under delegated authority January 11, 1977.

Agreements have been filed with the Board pursuant to section 412(a) of the Federal Aviation Act of 1958 (the Act) and Part 261 of the Board's Economic Regulations between various air carriers, foreign air carriers and other carriers embodied in the resolutions of the Joint Traffic Conferences of the International Air Transport Association (IATA).

The agreements name additional specific commodity rates as set forth below, reflecting reductions from general cargo rates; and were adopted pursuant to unprotested notice to the carriers and promulgated in IATA letters dated December 17 and 23, 1976.

Agreement CAB	Specific commodity Item No.	Description and rate
26316:		
R-1	2206	Clothing, footwear, outerwear, undergarments, finished or semifinished.[1] 310 c/kg minimum weight 500 kg. From New York to Lagos.
R-2	2006	Clothing, footwear, outerwear, undergarments, finished or semifinished.[1] 146 c/kg,[2] minimum weight 200 kg. From Bucharest to New York.
R-3	4375	Totalizators (pari-Mutuel) including ticket rolls. 275 c/kg, minimum weight 1,000 kg. From Sydney to New York.
26325:		
R-1	1407	Floral and nursery stock and seeds, excluding cut flowers. 153 c/kg,[3] minimum weight 200 kg. From Copenhagen to New York.
R-2	3405	Stoves and ranges, pans, kettles and baking tins,[4] 104 c/kg,[3] minimum weight 500 kg. 99 c/kg,[3] minimum weight 1,000 kg. From Paris to New York. 106 c/kg,[3] minimum weight 500 kg. 101 c/kg,[3] minimum weight 1,000 kg. From Lyon to New York.
R-3	4204	Parts of automobiles, motorscooters, motorcycles, bicyles,[4] 145 c/kg, minimum weight 100 kg. 107 c/kg, minimum weight 200 kg. From New York to Budapest.

[1] See applicable tariffs for complete commodity descriptions.
[2] Expires Sept. 30, 1977.
[3] Expires Dec. 31, 1977.
[4] See applicable tariffs for complete commodity descriptions.

Pursuant to authority duly delegated by the Board in the Board's Regulations, 14 CFR 385.14, it is not found that the subject agreements are adverse to the public interest or in violation of the Act, provided that approval is subject to the conditions hereinafter ordered.

Accordingly, *it is ordered*, That:

Agreements C.A.B. 26316, R-1 through R-3 and C.A.B. 26325, R-1 through R-3, are approved, provided that (a) approval shall not constitute approval of the specific commodity description contained therein for purposes of tariff publications; (b) tariff filings shall be marked to become effective on not less than 30 days' notice from the date of filing; and (c) where a specific commodity rate is published for a specified minimum weight at a level lower than the general commodity rate applicable for such weight, and where a general commodity rate is published for a greater minimum weight at a level lower than such specific commodity rate, the specific commodity rate shall be extended to all such greater minimum weights at the applicable general commodity rate level.

Persons entitled to petition the Board for review of this order, pursuant to the Board's Regulations, 14 CFR 385.50, may file such petitions within ten days after the date of service of this order.

This order shall be effective and become the action of the Civil Aeronautics Board unless within such period a petition for review is filed or the Board gives notice that it will review this order on its own motion.

This order will be published in the FEDERAL REGISTER.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc.77-2164 Filed 1-24-77;8:45 am]

[Order 77-1-55; Docket 27573; Agreement C.A.B. 26234]

INTERNATIONAL AIR TRANSPORT ASSOCIATION

Order

Issued under delegated authority January 11, 1977.

An agreement has been filed with the Board pursuant to section 412(a) of the Federal Aviation Act of 1958 (the Act) and Part 261 of the Board's Economic Regulations between various air carriers, foreign air carriers, and other carriers, embodied in the resolutions of Traffic Conference 2 of the International Air Transport Association (IATA). The agreement was adopted at the 38th Meeting of the TC2 Specific Commodity Rates Board in Geneva held November 15-20, 1976.

The agreement would establish several new specific commodity descriptions and change the area of application on several descriptions as well as change the descriptions as shown in the Attachment and establish specific commodity rates for several items to apply between various world markets outside of air transportation (Europe/Africa/Middle East). We will approve the descriptions as shown in the Attachment which have general application within air transportation as defined by the Act but will disclaim jurisdiction with respect to the rates which involve points solely outside of air transportation.

Pursuant to authority duly delegated by the Board in the Board's Regulations, 14 CFR 385.14:

1. It is not found that the specific commodity descriptions incorporated in Agreement C.A.B. 26324, which have general application in air transportation as defined by the Act, are adverse to the public interest or in violation of the Act.

2. It is not found that the specific commodity rates incorporated in Agreement C.A.B. 26324 which involve transportation solely between foreign points affect air transportation within the meaning of the Act.

Accordingly, *it is ordered*, That:

1. Those portions of Agreement C.A.B. 26324 set forth in the Attachment which have general application in air transportation as defined by the Act, be and hereby are approved; and

2. Jurisdiction be and hereby is disclaimed with respect to that portion of Agreement C.A.B. 26324 described in finding paragraph 2 above.

Persons entitled to petition the Board for review of this order, pursuant to the Board's Regulations, 14 CFR 385.50, may file such petitions within ten days after the date of service of this order.

This order shall be effective and become the action of the Civil Aeronautics Board upon expiration of the above period, unless within such period a petition for review thereof is filed or the Board gives notice that it will review this order on its own motion.

This order will be published in the FEDERAL REGISTER.

PHYLLIS T. KAYLOR,
Secretary.

AGREEMENT C.A.B. 26324

Item No.	*Description*
0176	Chocolate and chocolate manufactures.[1]
0230Q	Eggs—fresh.[1]
0306	Fish and fish products.[1]
0326	Fish—excluding live, inedible.[1]
0356	Fish, crabs and or shrimps—excluding fish, live, inedible.[1]
0609	Turkey meat.[1 2]
1435	Carnation and chrysanthemum cuttings.[1]
1436	Carnation and chrysanthemum cuttings.[1]
1926	Artificial sausage casings.
2315	Tee-shirts and slips.[1 2]
2413	Cotton denim outwear.[4]
2811	Blankets, bed sheets, bedspreads, pillowcases, mosquito nets and towels.[4]
4414	Loudspeakers, tape recorders, record players, radios, amplifiers and accessories thereof.[1 2]
4456	Electrical parts for automobiles.[1 2]
4816	Tools consisting of twist drills, masonry drills, milling cutters, reamers, tool bits, hacksaw blades, punches, builders levels, screwdrivers, hammers, pliers, vices, shifting and/or adjustable spanners.[4]
4951	Pneumatic equipment and tools, namely compressors, hoists, rock drill machines, hand-held power tools, centrifugal and reciprocating pumps, steam jet ejectors.[3]
4953	Compressors.[4]
4969	Pistons and piston rings.[4]
5706	Quartz, raw.[1 2]
6112	Plastic sheets in rolls/strips.[4]
6230	Cylinders—empty or filled—with medical gases.[1 2]
7123	Religious books.[4]
7184	Technical documents for drilling operations.[4]
7448	Rubber seals.[3]
7610	Wooden furniture unassembled, plywood, veneer wood, sawn timber.[1 2]
8419	Films and photographs excluding newsreel film and motion picture film, or 35 mm or larger dimensions.[3]
9592	Empty fire extinguishers.[4]
9969	Safety and/or racing helmets, work gloves, safety harnesses used by an individual for construction, building, maintenance and mining.[4]

[1] Area of application changed.
[2] Description changed.
[3] Deleted.
[4] New description.

[FR Doc.77-2165 Filed 1-24-77;8:45 am]

[Order 77-1-85; Docket 29123; Agreement C.A.B. 26211, R-1 through R-8]

INTERNATIONAL AIR TRANSPORT ASSOCIATION

Order

Issued under delegated authority January 14, 1977.

An agreement has been filed with the Board pursuant to section 412(a) of the Federal Aviation Act of 1958 (the Act) and Part 261 of the Board's Economic Regulations between various air carriers, foreign air carriers, and other carriers embodied in the resolutions of Traffic Conference 1 of the International Air Transport Association (IATA). The agreement was adopted at the Composite Passenger Traffic Conference held in Miami, Florida during October 1976.

Agreement C.A.B. 26211, which only affects air transportation indirectly, would establish new fare levels between points within South America effective May 1, 1977 through March 31, 1978. In general, all first-class, economy, and promotional fares would be increased by five percent. However, special fares to/from Venezuela would be increased by seven percent, except for special fares between Venezuela and Brazil which would be increased by the five percent formula. We will approve those portions of the agreement governing fares which are combinable with fares to/from United States points and thus have indirect application in air transportation as defined by the Act. Jurisdiction will be disclaimed on the balance of the resolutions which govern noncombinable fares and thus have no application in air transportation.

Pursuant to authority duly delegated by the Board in the Board's Regulations, 14 CFR 385.14:

1. It is not found that the following resolutions, incorporated in the agreement as indicated and which have indirect application in air transportation as defined by the Act, are adverse to the public interest or in violation of the Act:

Agreement CAB	IATA No.	Title	Application
26211:			
R-1	001h 111	TC1—Special Effectiveness Resolution (Tie-in)	1 (South America).
R-2	002 111	Standard Adoption Resolution	1 (South America).
R-3	051d	TC1 First-Class Fares	1 (South America).
R-4	061d	TC1 Economy-Class Fares	1 (South America).
R-5	070j	TC1 Excursion Fares—Within South America (New)	1.

2. It is not found that the following resolutions, incorporated in the agreement as indicated, affect air transportation within the meaning of the Act:

Agreement CAB	IATA No.	Title	Application
26211:			
R-6	075L	TC1 30-Day Group Excursion Fares (Within South America) (Revalidating and Amending).	1
R-7	084hh	TC1 Group Inclusive Tour Fares—South America (Revalidating and Amending).	1
R-8	084w	TC1 Group Inclusive Tour Fares—Bolivia/Chile/Colombia/Ecuador/Peru.	1

Accordingly, *it is ordered*, That:

1. Those portions of Agreement C.A.B. 26211, described in finding paragraph 1 above and which have indirect application in air transportation as defined by the Act, be and hereby are approved; and

2. Jurisdiction be and hereby is disclaimed with respect to those portions of Agreement C.A.B. 26211 described in finding paragraph 2 above.

Persons entitled to petition the Board for review of this order pursuant to the Board's Regulations, 14 CFR 385.50, may file such petitions within ten days after the date of service of this order.

This order shall be effective and become the action of the Civil Aeronautics Board upon expiration of the above period, unless within such period a petition for review thereof is filed or the Board gives notice that it will review this order on its own motion.

This order will be published in the FEDERAL REGISTER.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc.77-2162 Filed 1-24-77;8:45 am]

[Order 77-1-58; Docket 29123; Agreement C.A.B. 26356]

INTERNATIONAL AIR TRANSPORT ASSOCIATION

Delayed Inaugural Flights Agreement

ORDER

Issued under delegated authority January 11, 1977.

An agreement has been filed with the Board pursuant to section 412(a) of the Federal Aviation Act of 1958 (the Act) and Part 261 of the Board's Economic Regulations between various air carriers, foreign air carriers, and other carriers embodied in the resolutions of Traffic Conference 1 of the International Air Transport Association (IATA). The agreement, adopted by mail vote, has been assigned the above C.A.B. agreement number.

The agreement would permit Ecuatoriana to postpone to a date not later than March 31, 1977, the performance of its inaugural flight between Nassau, Bahamas and Quito, Ecuador.

Pursuant to authority duly delegated by the Board in the Board's Regulations 14 CFR 385.14, it is not found that resolution 100 (Mail 90) 200h incorporated in Agreement C.A.B. 26356 as indicated, is adverse to the public interest or in violation of the Act.

Accordingly, *it is ordered*, That:

Agreement C.A.B. 26356 be and hereby is approved.

Persons entitled to petition the Board for review of this order pursuant to the Board's Regulations, 14 CFR 385.50, may file such petitions within ten days after the date of service of this order.

This order shall be effective and become the action of the Civil Aeronautics Board upon expiration of the above period, unless within such period a petition for review thereof is filed or the Board gives notice that it will review this order on its own motion.

This order will be published in the FEDERAL REGISTER.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc.77-2332 Filed 1-24-77;8:45 am]

COMMISSION ON CIVIL RIGHTS

NEW YORK ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a planning meeting of the New York Advisory Committee (SAC) of the Commission will convene at 4:30 p.m. and end at 7:30 p.m. on February 9, 1977, at the Phelps Stokes Fund, New York, New York 10028.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Northeast Regional Office of the Commission, 26 Federal Plaza, Room 1639, New York, New York 10007.

The purpose of this meeting is to discuss ongoing Asian American project and plans for new project.

This meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

ISAIAH T. CRESWELL, JR.,
Advisory Committee Management Officer.

[FR Doc.77-2333 Filed 1-24-77;8:45 am]

DEPARTMENT OF COMMERCE

Domestic and International Business Administration

BOWMAN GRAY SCHOOL OF MEDICINE

Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR Part 301).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Office of Import Programs, Department of Commerce, Washington, D.C. 20230.

Docket Number: 76-00492. Applicant: Bowman Gray School of Medicine of Wake Forest University, 300 South Hawthorne Road, Winston-Salem, North Carolina 27103. Article: Electron Microscope, Model EM 9S-2. Manufacturer: Carl Zeiss, West Germany. Intended use of article: The article is intended to be used for viewing biological tissue specimens of various types. Research to be conducted will include:

1. The identification and characterization of synaptosomes from specially treated and prepared nervous tissue.

2. The identification of myelin figures by negative staining procedures and research concerning muscle metabolism.

3. Effects of intrauterine devices and prostaglandines on the female reproductive system and regenerative repair in the vertebrate central nervous system.

The article will also play a major role in a training program and will be used as the teaching instrument in an electron microscope course entitled, "Methods in Histological Research—Anatomy 407."

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, was being manufactured in the United States at the time Customs received this application (July 23, 1976).

Reasons: The foreign article is a relatively simple, easy to operate, medium resolution electron microscope designed for confident use by beginning students with a minimum of detailed programming. The article provides 7 Angstroms point to point resolution, an accelerating voltage of 60 kilovolts (KV), and low distortion magnifications from 140-60,000X (Magnifications of 140 to 1000X are within the normal, light microscopic range). Thus the article covers the range of light and electron microscopy. The Department of Health, Education, and Welfare (HEW) advises in its memorandum dated December 10, 1976 that the low distortion, low magnification capabilities available specifically in the optical range at 140X, as well as, simplicity and ease of operation are pertinent to the purposes for which the foreign article is intended to be used. HEW also advises that it knows of no domestic instrument or apparatus which provided the pertinent features of the article at the time customs received this application.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article for such purposes as this article is intended to be used, which was being manufactured in the United States at the time Customs received this application.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

RICHARD M. SEPPA,
Director, Special Imports Programs Division.

[FR Doc.77-2276 Filed 1-24-77;8:45 am]

CARNEGIE INSTITUTION OF WASHINGTON

Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR Part 301).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Office of Import Programs, Department of Commerce, Washington, D.C. 20230.

Docket Number: 76-00523. Applicant: Carnegie Institution of Washington, Department of Embryology, 115 W. University Parkway, Baltimore, Md. 21210. Article: Electron Microscope Model JEM-100S and accessories. Manufacturer: JEOL Ltd., Japan. Intended use of article: The article is intended to be used for studies of DNA molecules, artificial membranes, membranes of cultured cells, and ultrastructure of nerve and muscle cells. The experiments to be conducted will include measuring the length of single- and double-stranded regions of DNA molecules that have been enzymatically digested, observing the fusion of artificial and natural membranes, locating and quantifying specific proteins in nerve and muscle cells, and characterizing the distribution and structure of synapses in the nervous system. The article will also be used for training graduate students and postdoctoral trainees who are working on the research described above.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be use, was being manufactured in the United States at the time the foreign article was ordered (September 9, 1976).

Reasons: The foreign article is equipped with a eucentric side entry goniometer stage with a specified resolving power of 7Å point to point. The Department of Health, Education, and Welfare (HEW) advises in its memorandum dated December 20, 1976 that the eucentric goniometer stage of the article is pertinent to the applicant's studies. HEW further advises that it knows of no domestic instrument which provided the pertinent feature at the time of order.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which was being manufactured in the United States at the time the article was ordered.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

RICHARD M. SEPPA,
Director, Special Import Programs Division.

[FR Doc.77-2277 Filed 1-24-77;8:45 am]

COMPUTER SYSTEMS TECHNICAL ADVISORY COMMITTEE

Open Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. I (Supp. V, 1975), notice is hereby given that a meeting of the Computer Systems Technical Advisory Committee will be held on Thursday, February 10, 1977, at 9:30 a.m. in Room 3817, Main Commerce Building, 14th and Constitution Avenue, NW., Washington, D.C.

The Computer Systems Technical Advisory Committee was initially established on January 3, 1973. On December 20, 1974, and January 13, 1977, the Assistant Secretary for Administration approved the recharter and extension of the Committee, pursuant to Section 5(c)(1) of the Export Administration Act of 1969, as amended, 50 U.S.C. App. Sec. 2404(c)(1) and the Federal Advisory Committee Act.

The Committee advises the Office of Export Administration, Bureau of East-West Trade, with respect to questions involving technical matters, worldwide availability and actual utilization of production and technology, and licensing procedures which may affect the level of export controls applicable to computer systems, including technical data related thereto, and including those whose export is subject to multilateral (COCOM) controls.

The agenda for the meeting is:

(1) Opening remarks by the Chairman.
(2) Presentation of papers or comments by the public.
(3) Reports on the work programs of the Subcommittees:
(a) Technology Transfer;
(b) Foreign Availability;
(c) Licensing Procedures; and
(d) Hardware.

The meeting will be open for public observation and a limited number of seats will be available. To the extent time permits members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

Copies of the minutes of the meeting will be available upon written request

addressed to the Freedom of Information Officer, Room 3012, Domestic and International Business Administration, U.S. Department of Commerce, Washington, D.C. 20230.

For further information, contact Mr. Charles C. Swanson, Director, Operations Division, Office of Export Administration, Domestic and International Business Administration, Room 1617M, U.S. Department of Commerce, Washington, D.C. 20230, telephone: A/C 202-377-4196.

Dated: January 19, 1977.

RAUER H. MEYER,
Director, Office of Export Administration, Bureau of East-West Trade, U.S. Department of Commerce.

[FR Doc.77-2255 Filed 1-24-77;8:45 am]

COMPUTER SYSTEMS TECHNICAL ADVISORY COMMITTEE; FOREIGN AVAILABILITY SUBCOMMITTEE

Open Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. I (Supp. V, 1975), notice is hereby given that a meeting of the Foreign Availability Subcommittee of the Computer Systems Technical Advisory Committee will be held on Wednesday, February 9, 1977, at 1 p.m. in Room 3817, Main Commerce Building, 14th and Constitution Avenue, NW., Washington, D.C.

The Computer Systems Technical Advisory Committee was intially established on January 3, 1973. On December 20, 1974 and January 13, 1977, the Assistant Secretary for Administration approved the recharter and extension of the Committee, pursuant to section 5(c) (1) of the Export Administration Act of 1969, as amended, 50 U.S.C. App. Sec. 2404(c) (1) and the Federal Advisory Committee Act. The Foreign Availability Subcommittee of the Computer Systems Technical Advisory Committee was established on July 8, 1975, with the approval of the Director, Office of Export Administration, pursuant to the charter of the Committee.

The Committee advises the Office of Export Administration, Bureau of East-West Trade, with respect to questions involving technical matters, worldwide availability and actual utilization of production and technology, and licensing procedures which may affect the level of export controls applicable to computer systems, including technical data related thereto, and including those whose export is subject to multilateral (CO COM) controls. The Foreign Availability Subcommittee was formed to ascertain if certain kinds of equipment are available in non-COCOM and Communist bloc countries, and if such equipment is available, then to ascertain if it is technically the same or similar to that available elsewhere.

(1) Opening remarks by the Subcommittee Chairman.

(2) Presentation of papers or comments by the public.

(3) Discuss new work program for 1977.

The meeting will be open for public observation and a limited number of seats will be available. To the extent time permits members of the public may present oral statements to the Subcommittee. Written statements may be submitted at any time before or after the meeting.

Copies of the minutes of the meeting will be available upon written request addressed to the Freedom of Information Officer, Room 3012, Domestic and International Business Administration, U.S. Department of Commerce, Washington, D.C. 20230.

For further information, contact Mr. Charles C. Swanson, Director, Operations Division, Office of Export Administration, Domestic and International Business Administration, Room 1617M, U.S. Department of Commerce, Washington, D.C. 20230, telephone: A/C 202-377-4196.

Dated: January 19, 1977.

RAUER H. MEYER,
Director, Office of Export Administration, Bureau of East-West Trade, U.S. Department of Commerce.

[FR Doc.77-2253 Filed 1-24-77;8:45 am]

COMPUTER SYSTEMS TECHNICAL ADVISORY COMMITTEE; HARDWARE SUBCOMMITTEE OF THE

Open Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. I (Supp. V, 1975), notice is hereby given that a meeting of the Hardware Subcommittee of the Computer Systems Technical Advisory Committee will be held on Wednesday, February 9, 1977, at 9 a.m. in Room 3817, Main Commerce Building, 14th and Constitution Avenue, NW, Washington, D.C.

The Computer Systems Technical Advisory Committee was initially established on January 3, 1973. On December 20, 1974, and January 13, 1977, the Assistant Secretary for Administration approved the recharter and extension of the Committee, pursuant to section 5(c) (1) of the Export Administration Act of 1969, as amended, 50 U.S.C. App. Sec. 2404(c)(1) and the Federal Advisory Committee Act. The Hardware Subcommittee of the Computer Systems Technical Advisory Committee was established on July 8, 1975, with the approval of the Director, Office of Export Administration, pursuant to the charter of the Committee.

The Committee advises the Office of Export Administration, Bureau of East-West Trade, with respect to questions involving technical matters, worldwide availability and actual utilization of production and technology, and licensing procedures which may affect the level of export controls applicable to computer systems, including technical data related thereto, and including those whose export is subject to multilateral (COCOM) controls. The Hardware Subcommittee was formed to continue the work of the Performance Characteristics and Performance Measurements Subcommittee, pertaining to (a) maintenance of the processor performance tables and further investigation of total systems performance; and (b) investigation of array processors in terms of establishing the significance of these devices and determining the differences in characteristics of various types of these devices.

The agenda for the meeting is:

(1) Opening remarks by the Subcommittee Chairman.

(2) Presentation of papers or comments by the public.

(3) Discussion of computer performance measurements.

(4) Discuss new work program for 1977.

The meeting will be open for public observation and a limited number of seats will be available. To the extent time permits members of the public may present oral statements to the Subcommittee. Written statements may be submitted at any time before or after the meeting.

Copies of the minutes of the meeting will be available upon written request addressed to the Freedom of Information Officer, Domestic and International Business Administration, Room 3012, U.S. Department of Commerce, Washington, D.C. 20230.

For further information, contact Mr. Charles C. Swanson, Director, Operations Division, Office of Export Administration, Domestic and International Business Administration, Room 1617M, U.S. Department of Commerce, Washington, D.C. 20230, telephone: A/C 202-377-4196.

Dated: January 19, 1977.

RAUER H. MEYER,
Director, Office of Export Administration, Bureau of East-West Trade, U.S. Department of Commerce.

[FR Doc.77-2254 Filed 1-24-77;8:45 am]

CORNELL UNIVERSITY MEDICAL COLLEGE

Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR Part 301).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the partment of Commerce, at the Office of Import Programs, Department of Commerce, Washington, D.C. 20230.

Docket Number: 76-00510. Applicant: Cornell University Medical College, 525 East 68 Street, New York, New York 10021. Article: Blood Gas Electrode Meter Type D 22—modified for 110 V, 60C current. Manufacturer: L. Escheweiler & Co., West Germany. Intended use of article: The article is a replacement part for an existing blood gas instrument being used for investigation of oxygen and carbon dioxide tension in blood and cerebral spinal fluid.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The application relates to an accessory for an instrument that had been previously imported for the use of the applicant institution. The article is being furnished by the manufacturer which produced the instrument with which the article is intended to be used and is pertinent to the applicant's purposes. The Department of Health, Education, and Welfare advises in its memorandum dated December 10, 1976 that it knows of no domestic instrument of equivalent scientific value to the article for its intended uses.

The Department of Commerce knows of no other similar accessory being manufactured in the United States, which are interchangeable with or can be readily adapted to the instrument with which the foreign article is intended to be used.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

RICHARD M. SEPPA,
Director, Special Import Programs Division.

[FR Doc.77-2273 Filed 1-24-77;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Consolidated Decision on Applications for Duty-Free Entry of Ultramicrotomes

The following is a consolidated decision on applications for duty-free entry of ultramicrotomes pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR Part 301). (See especially § 301.11(e).)

A copy of the record pertaining to each of the applications in this consolidated decision is available for public review during ordinary business hours of the Department of Commerce, at the Special Import Programs Division, Office of Import Programs, Department of Commerce, Washington, D.C. 20230.

Docket Number: 76-00508. Applicant: DHEW, National Institutes of Health, Laboratory of Biophysics, IRP, NINCDS, Marine Biological Laboratory, L-320, Woods Hole, Mass. 02543. Article: Ultramicrotome, Model LKB 8800A with cryokit. Model 14800-1 and accessories. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The article is intended to be used for studies of the nervous system of several species of invertebrates and vertebrates. Special attention will be given to histochemistry with frozen sections.

Investigators will study the subcellular localization of enzymes especially those involved with neurotransmitters metabolism. The distribution of diffusible substances within the cell after being taken up by the cell will also be investigated. Tracing specific synapses and other cell to cell contact with membrane specialization will be conducted after intracellular injection of markers to identified cells. Changes in intracellular spaces and in membrane structure or in membrane interaction between two neighboring cells induced by changes in their biochemical and biophysical environments will also be studied. Application received by Commissioner of Customs: August 12, 1976. Advice submitted by the Department of Health, Education, and Welfare on December 10, 1976.

Docket Number: 76-00527. Applicant: Deborah Heart and Lung Center, Clinical Laboratory, Department of Pathology, Trenton Road, Browns Mills, New Jersey 08015. Article: Ultramicrotome, Model LKB 8800A and accessories. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The article is intended to be used for investigations that will include ultrastructural studies on normal and pathologic plant and animal tissues, developmental studies on fungal systems, cyto and histochemical studies on enzyme and subcellular organelle localization in cells and tissues, membrane interactions at host-parasite interfaces, and subcellular changes in cells induced by changes in their biochemical and physical environments. In addition, the article will be used in the courses Ultrastructure and Cytochemistry which involve a study of general principles on techniques and the use of the electron microscope to study the fine structure of cells and various subcellular organelles and the employment of cytochemical staining methods to localize various enzymes. Application received by Commissioner of Customs: September 3, 1976. Advice submitted by the Department of Health, Education, and Welfare on December 20, 1976.

Docket Number: 76-00529. Applicant: University of Texas System Cancer Center, Department of Laboratory Medicine, 6723 Bertner Drive, Houston, Texas 77025. Article: Ultramicrotome, Model LKB 8800A and accessories. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The article is intended to be used for studies of human hematopoietic tissues including bone marrow and peripheral blood specimens. Investigations will include ultrastructural studies on normal and pathologic hematopoietic tissue for the purpose of diagnostic studies. Application received by Commissioner of Customs: September 3, 1976. Advice submitted by the Department of Health, Education, and Welfare on December 20, 1976.

Docket Number: 76-00532. Applicant: Cornell University Medical College, Department of Pathology, Room C-346, 1300 York Avenue, New York, N.Y. 10021. Article: Ultramicrotome, Model LKB 8900A and accessories. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The article is intended to be used for investigations that will include (1) ultrastructural studies on formal and pathologic plant and animal tissues, developmental studies on fungal systems, cyto and histochemical studies on enzyme and subcellular organelle localization in cells and tissues, membrane interactions at hostparasite interfaces, and subcellular changes in cells induced by changes in their biochemical and physical environments. The article will also be used for educational purposes in the courses Ultrastructure and Cytochemistry which will involve a study of general principles on techniques and the use of the electron microscope to study the fine structures of cells and various subcellular organelles and the employment of cytochemical staining methods to localize various enzymes. Application received by Commissioner of Customs: September 9, 1976. Advice submitted by the Department of Health, Education, and Welfare on December 20, 1976.

Comments: No comments have been received with respect to any of the foregoing applications.

Decision: Applications approved. No instrument or apparatus of equivalent scientific value to the foreign articles for such purposes as these articles are intended to be used, is being manufactured in the United States.

Reasons: Each of the foreign articles provides a range of cutting speeds from 0.1 to 20 millimeters per second. The most closely comparable domestic instrument is the Model MT-2B ultramicrotome which is manufactured by Ivan Sorvall, Inc. (Sorvall). The Model MT-2B has a range of cutting speeds from 0.09 to 3.2 millimeters per second. The conditions for obtaining high-quality sections that are uniform in thickness, depend to a large extent on the hardness, consistency, toughness and other properties of the specimen materials, the properties of the embedding materials, and geometry of the block. In connection with a prior application (Docket Number 69-00665-33-46500), which relates to the duty-free entry of an article that is identical to those to which the foregoing applications relate, the Department of Health, Education, and Welfare (HEW) advised that "Smooth cuts are obtained when the speed of cutting, (among such (other) factors as knife edge condition and angle), is adjusted to the characteristics of the material being sectioned. The range of cutting speeds and a capability for the higher cutting speeds is, therefore, a pertinent characteristic of the ultramicrotome to be used for sectioning materials that experience has shown difficult to section." In connection with another prior application (Docket Number 70-00077-33-46500) which also relates to an article that is identical to those described above, HEW advised that "ultrathin sectioning of a variety of tissues having a wide range in density, hardness etc." requires a maximum range in cutting speed and, further, that the "pro-

duction of ultrathin serial sections of specimens that have a great variation in physical properties is very difficult." Accordingly, HEW advises in its respectively cited memoranda, that cutting speeds in excess of 4 millimeters per second are pertinent to the satisfactory sectioning of the specimen materials and the relevant embedding materials that will be used by the applicants in their respective experiments. For these reasons, we find that the Sorvall Model MT-2B ultramicrotome is not of equivalent scientific value to the foreign articles to which the foregoing applications relate, for such purposes as these articles are intended to be used.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to any of the foreign articles to which the foregoing applications relate, for such purposes as these articles are intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

RICHARD M. SEPPA,
Director, Special Import Programs Division.

[FR Doc 77-2275 Filed 1-24-77;8:45 am]

SOUTHERN ILLINOIS UNIVERSITY SCHOOL OF MEDICINE

Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Material Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR Part 301).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Office of Import Programs, Department of Commerce, Washington, D.C. 20230.

Docket Number 76-00530. Applicant: Southern Illinois University School of Medicine, P.O. Box 3926, Springfield, Ill. 62708. Article: Cryokit, Model LKB 14800-1 for use with LKB Ultratome III. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The article is intended to be used for the study of immune complex localization in kidney disease as well as other biological materials and for microanalysis of biological specimens in the future. Conjugation with various antigens will be carried out on frozen sectioned material for both immunofluorescence and electron microscope studies.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The application relates to an accessory for an instrument that had been previously imported for the use of the applicant institution. The article is being furnished by the manufacturer which produced the instrument with which the article is intended to be used and is pertinent to the applicant's purposes. The Department of Health, Education, and Welfare advises in its memorandum dated December 20, 1976 that it knows of no domestic instrument of equivalent scientific value to the article for its intended uses.

The Department of Commerce knows of no other similar accessory being manufactured in the United States, which are interchangeable with or can be readily adapted to the instrument with which the foreign article is intended to be used.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

RICHARD M. SEPPA,
Director, Special Import Programs Division.

[FR Doc.77-2274 Filed 1-24-77;8:45 am]

UNIVERSITY OF CALIFORNIA

Withdrawal of Application for Duty-Free Entry of Scientific Article

The University of California has withdrawn Docket Number 77-00060 an application for duty-free entry of an Electron Microscope, Model EM 301. Accordingly, further administrative processings will not be taken by the Department of Commerce with respect to this application.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

RICHARD M. SEPPA,
Director, Special Import Programs Division.

[FR Doc.77-2272 Filed 1-24-77;8:45 am]

UNIVERSITY OF IOWA

Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR Part 301).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Office of Import Programs, Department of Commerce, Washington, D.C. 20230.

Docket number: 76-00511. Applicant: The University of Iowa, College of Medicine, Department of Physiology & Biophysics, Iowa City, Iowa 52240. Article: Flow scintillation counting system and accessories. Manufacturer: Berthold Instruments, West Germany. Intended use of article: The article is intended to be used for the study of peptide hormones and blood factors. Specifically, the article will be used for determination of the primary sequence of Somantomedian C isolated from human blood plasma which would allow synthesis of large quantities for clinical treatment of patients having growth hormone deficiencies.

Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States. Reasons: The foreign article provides a small volume (100 microliters) measuring flow cell. The Department of Health, Education, and Welfare (HEW) advises in its memorandum dated December 10, 1976 that the capability described above is pertinent to the applicant's research studies. HEW also advises that it knows of no domestic instrument of equivalent scientific value to the foreign article.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

RICHARD M. SEPPA,
Director, Special Import Programs Division.

[FR Doc.77-2280 Filed 1-24-77;8:45 am]

UNIVERSITY OF MASSACHUSETTS MEDICAL SCHOOL, ET AL.

Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

The following is a consolidated decision on applications for duty-free entry of electron microscopes pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR Part 301). (See especially § 301.11(e).)

A copy of the record pertaining to each of the applications in this consolidated decision is available for public review during ordinary business hours of the Department of Commerce, at the Special Import Programs Division, Office of Import Programs, Department of Commerce, Washington, D.C.

Docket number: 76-00522. Applicant: University of Massachusetts Medical School, Department of Anatomy, 55 Lake Ave., North, Worcester, MA 10605. Article: Electron Microscope, Model JEM-100S and accessories. Manufacturer: Jeol, Japan. Intended use of article: The article is intended to be used for examination of biological tissues which will include both the male and female reproductive system in various stages of differentiation and development, the organ of corti in the inner ear and the nerves leading to that organ, bone and connective tissue under various experimental pathological disease states, kidney following induced experimental disease, lymphoid and blood elements from pathological disease states, both peripheral and central nervous systems from a number of genetic diseases and disorders. Experiments to be conducted will be aimed at determining the structure of cells and the role of various components in the economy of the cell. The article will also be used to teach and train graduate students involved in a new graduate program and to teach microscopy to medical students who elect to do research in microscopy anatomy. Application received by Commissioner of Customs: August 25, 1976. Advice submitted by the Department of Health, Education, and Welfare on: December 20, 1976. Article ordered: August 17, 1976.

Docket number: 76-00526. Applicant: University of Massachusetts Medical School, Department of Pathology, 55 Lake Avenue North, Worcester, MA 01605. Article: Electron Microscope, Model JEM 100S and Haskris recirculating water chiller. Manufacturer: Jeol, Japan. Intended use of article: The article is intended to be used for examination of biological tissues which will include the heart and great vessels of animals with experimental cardiovascular disease, the pancreas, kidneys and skeletal muscle of animals with experimental diabetes, the brain and other tissues after the induction of inflammation. In addition, bone marrow specimens, biopsies of human tumors, kidney and liver biopsies and other tissue specimens obtained for diagnostic and educational purposes will be examined. Experiments to be conducted will be aimed at determining the pathophysiology of inflammation, atherosclerosis, diabetes mellitus and leukemia. Studies of a variety of human tumors will assist in the understanding and treatment of cancer. The article will also be used to teach and train post doctoral fellows, pathology residents and staff as well as to teach microscopy to medical students who elect to do research in pathology. Application received by Commissioner of Customs: September 3, 1976. Advice submitted by the Department of Health, Education, and Welfare on: December 20, 1976. Article ordered: August 17, 1976.

Comments: No comments have been received with respect to any of the foregoing applications. Decision: Applications approved. No instrument or apparatus of equivalent scientific value to the foreign articles, for such purposes as these articles are intended to be used, was being manufactured in the United States at the time the articles were ordered. Reasons: Each foreign article provides distortion free micrographs over a magnification range of 100 to 200,000× without a pole-piece change. The Department of Health, Education, and Welfare (HEW) advises in its respectively cited memoranda that each article's low distortion in the low magnification range is pertinent to each applicant's intended use. HEW further advises that it knows of no domestic instrument which provided the pertinent feature at the time of order.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to any of the foreign articles to which the foregoing applications relate, for such purposes as these articles are intended to be used, which was being manufactured in the United States at the time the articles were ordered.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

RICHARD M. SEPPA,
Director, Special Import Programs Division.

[FR Doc.77-2281 Filed 1-14-77;8:45 am]

VETERANS ADMINISTRATION HOSPITAL—TACOMA

Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR Part 301).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Office of Import Programs, Department of Commerce, Washington, D.C. 20230.

Docket number: 76-00445. Applicant: Veterans' Administration Hospital, American Lake, Tacoma, WA 98493. Article: Microtome, Universal Cut-All, Spare Parts and accessories. Manufacturer: Carl Zeiss, West Germany. Intended use of article: The article is intended to be used to prepare undermineralized human bone biopsies for quantitative histological measurements. Several experimental groups are to be evaluated in order to determine the pathology of bone diseases and to evaluate the efficacy of specific therapeutic programs in controlled studies. Renal bone disease, primarily osteoporosis, and vitamin D deficiency are scheduled for study.

Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States. Reasons: The foreign article is a sophisticated, massive and rigid microtome which is capable of providing 0.1 micron sections of raw bone consistently. The Department of Health, Education, and Welfare (HEW) advises in its memorandum dated December 10, 1976 that the capabilities of the article described above are pertinent to the applicant's intended use. HEW also advises that it knows of no domestic instrument which provides all the pertinent features of the article.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

RICHARD M. SEPPA,
Director, Special Import Programs Division.

[FR Doc.77-2279 Filed 1-24-77;8:45 am]

VETERANS ADMINISTRATION, WADSWORTH HOSPITAL CENTER—LOS ANGELES

Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR Part 301).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Office of Import Programs, Department of Commerce, Washington, D.C. 20230.

Docket number: 76-00533. Applicant: Veterans Administration, Wadsworth Hospital Center, Wilshire and Sawtelle Blvds., Los Angeles, California 90073. Article: Electron Microscope, Model EM 400 with single condenser lens and accessories. Manufacturer: Philips Electronics Instruments NVD, The Netherlands. Intended use of article: The article will be used for studies of the glomerular capillary wall in rats and humans including the arrangement of the glycoprotein macromolecular filaments, 12 Å wide, in the free surface coat of the visceral epithelial cell, the cell-membrane relationships in the vicinity of the glomerular epithelial slit, the relationships between the outer layer of the trilaminar-plasma membrane and the surface coat, and the relationships between the slit membrane and the surface coat. The specific aim of the investigations is to define those factors or influences which prevent, stabilize or heal injury to the glomerulus. The article will also be used for educational purposes in the course Approved Residency in Pathology and a Clinical Laboratory Technological Trainee Program.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, was being manufactured in the United States at the time the foreign article was ordered (March 4, 1976).

Reasons: The foreign article provides a magnification range of 50 to 800,000X and adequate illumination over this range due to built-in electronically ad-

justable anode to shield distance. The Department of Health, Education, and Welfare (HEW) advises in its memorandum dated December 20, 1976 that the capabilities described above are pertinent to the applicant's intended purposes. HEW further advises that it knows of no domestic instrument which provided the pertinent features at the time of order.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which was being manufactured in the United States at the time the article was ordered.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

RICHARD M. SEPPA,
Director, Special Import Programs Division.

[FR Doc.77-2278 Filed 1-24-76;8:45 am]

Economic Development Administration

FLOWER HANDBAG MANUFACTURING CORP.

Petition for a Determination of Eligibility To Apply for Trade Adjustment Assistance

A petition by Flower Handbag Manufacturing Corporation, 25 Hall Street, Brooklyn, New York 11205, a producer of handbags for women and girls, was accepted for filing on January 17, 1977, pursuant to section 251 of the Trade Act of 1974 (Pub. L. 93-618) and § 315.23 of the Adjustment Assistance Regulations for Firms and Communities (13 CFR Part 315). Consequently, the United States Department of Commerce has initiated an investigation to determine whether increased imports into the United States of articles like or directly competitive with those produced by the firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of the petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by the Chief, Trade Act Certification Division, Economic Development Administration, U.S. Department of Commerce, Washington, D.C. 20230, no later than the close of business of February 4, 1977.

JACK W. OSBURN, JR.,
Chief, Trade Act Certification Division, Office of Planning and Program Support.

[FR Doc.77-2190 Filed 1-24-77;8:45 am]

National Fire Prevention and Control Administration

ADVISORY COMMITTEE ON FIRE TRAINING AND EDUCATION FOR THE NATIONAL ACADEMY FOR FIRE PREVENTION AND CONTROL

Meeting Change

The time and place of the Advisory Committee on Fire Training and Education for the National Academy for Fire Prevention and Control meeting, previously announced to be held on January 31 and February 1, 1977, from 8:30 a.m. to 5 p.m., in the Press Room, Washington Hotel, 15th Street at Pennsylvania Avenue NW., Washington, D.C., has been changed to January 31, 1977, 8:30 a.m.-12:15 p.m., at 2400 M Street NW., Room 114, Washington, D.C., 2 p.m.-5 p.m., in the Press Room, Washington Hotel, 15th Street at Pennsylvania Avenue NW., Washington, D.C.; and on February 1, 1977, 8:30 a.m.-4 p.m., in the Capitol Room, Washington Hotel, 15th Street at Pennsylvania Avenue NW., Washington, D.C. The notice of this meeting was previously published in the January 6, 1977, FEDERAL REGISTER, Volume 42, No. 4, pages 1286-87, FR Doc. 77-530. All other information related to this meeting announcement remains as originally published.

Dated: January 19, 1977.

HOWARD D. TIPTON,
Administrator, National Fire Prevention and Control Administration.

[FR Doc.77-2371 Filed 1-24-77;8:45 am]

Office of the Secretary

WEATHER MODIFICATION ADVISORY BOARD

Establishment

In accordance with the provisions of the Federal Advisory Committee Act (5 U.S.C. App I (Supp. V, 1975)) and the Office of Management and Budget Circular A-63 of March 1974, and after consultation with OMB, the Secretary of Commerce has determined that the establishment of the Weather Modification Advisory Board is in the public interest in connection with the performance of duties imposed on the Department by law.

The Board will advise and make recommendations to the Secretary, through the Administrator of the National Oceanic and Atmospheric Administration, on matters of a national policy, a national research and development program, and other aspects of weather modification as outlined in the National Weather Modification Policy Act of 1976 (Pub. L. 94-490), enacted October 13, 1976. The scope of the Board's activities covers research; development; operations; economic, social, environmental, and legal impacts; funding; program management; legislation; regulation; and international implications and agreements.

The Board will consist of about 17 members, with a balanced representation of scientific groups, academia, operators, users, environmentalists, lawyers, consumers, government officials, etc., appointed by the Secretary of Commerce.

The Board will function solely as an advisory body, and in compliance with the provisions of the Federal Advisory Committee Act. Its charter will be filed under the Act.

Interested persons are invited to submit comments regarding the establishment of the Weather Modification Advisory Board. Such comments as well as any inquiries, may be addressed to the Associate Administrator, Environmental Monitoring and Prediction, National Oceanic and Atmospheric Administration, Rockville, Maryland 20852, phone: 301-443-8646.

Dated: January 18, 1977.

JOSEPH E. KASPUTYS,
Assistant Secretary for Administration.

[FR Doc.77-2367 Filed 1-24-77;8:45 am]

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

PROCUREMENT LIST 1977

Proposed Additions

Notice is hereby given pursuant to section 2(a)(2) of Pub. L. 92-28; 85 Stat. 77, of the proposed addition of the following services and commodities to Procurement List 1977, November 18, 1976 (41 FR 50975).

Tax Form Order Fulfillment Services, Buffalo and Western New York, N.Y.
Campground Cleanup and Trash Removal. U.S.D.A., Forest Service, Laramie, Wyoming.

Class 4910

Creeper, Mechanics
4810-00-106-7834

Class 7340

Spoon, Plastic
7340-00-J19-1300

If the Committee approves the proposed additions, all entities of the Government will be required to procure the above services and commodities from workshops for the blind or other severely handicapped.

Comments and views regarding the proposed deletions may be filed with the Committee on or before February 24, 1977. Communications should be addressed to the Executive Director, Committee for Purchase from the Blind and Other Severely Handicapped, 2009 Fourteenth Street North, Suite 610, Arlington, Virginia 22201.

This notice is automatically cancelled six months from the date of this FEDERAL REGISTER.

By the Committee.

C. W. FLETCHER,
Executive Director.

[FR Doc.77-2263 Filed 1-24-77;8:45 am]

PROCUREMENT LIST 1977

Proposed Deletion

Notice is hereby given pursuant to section 2(a)(2) of Pub. L. 92-28; 85 Stat. 77, of the proposed deletion of the following commodity from Procurement List 1977, November 18, 1976 (41 FR 50975).

Class 3990

Pallet, Material Handling
3990-00-935-7960

Comments and views regarding the proposed deletion may be filed with the Committee on or before February 24, 1977. Communications should be addressed to the Executive Director, Committee for Purchase from the Blind and Other Severely Handicapped, 2009 Fourteenth Street North, Suite 610, Arlington, Virginia 22201.

This notice is automatically cancelled six months from the date of this FEDERAL REGISTER.

By the Committee.

C. W. FLETCHER,
Executive Director.

[FR Doc.77-2264 Filed 1-24-77;8:45 am]

PROCUREMET LIST 1977

Deletion

Notice of proposed deletions from Procurement List 1977, November 18, 1976 (41 FR 50975) were published in the FEDERAL REGISTER on December 3, 1976 (41 FR 53126).

Pursuant to the above notice the following service is deleted from the Procurement List:

Keypunch and Verification, Thirty percent of overflow requirements for Interstate Commerce Commission, Washington, D.C.

By the Committee.

C. W. FLETCHER,
Executive Director.

[FR Doc.77-2265 Filed 1-24-77;8:45 am]

CONSUMER PRODUCT SAFETY COMMISSION

PROPOSED EXEMPTION FROM PREEMPTION FOR CALIFORNIA'S CHILDREN'S CLOTHING FLAMMABILITY REGULATIONS

Oral Proceedings

The purpose of this notice is to announce that the Consumer Product Safety Commission will offer interested persons an opportunity for oral presentations concerning the proposed exemption from preemption under section 16(c) of the Flammable Fabrics Act (FFA) (15 U.S.C. 1203(c)) for California's children's clothing flammability regulations. The oral presentations will be in Washington, D.C. on February 7; in San Francisco, California, on February 14; and in Los Angeles, California on February 15. The Commission invites any interested person to submit by February 2 a request to make an oral presentation at any of the three locations.

BACKGROUND

In a letter dated October 25, 1976, the California State Fire Marshal requested the Commission to grant an exemption from preemption under the FFA for its regulations. The Commission published the proposed exemption, with a memorandum from the California State Fire Marshal, in the FEDERAL REGISTER of December 27, 1976 (41 FR 56294), in accordance with section 16 of the FFA (15 U.S.C. 1203) and the Commission's proposed and interim procedures concerning applications for exemption from preemption under the FFA. (July 29, 1976, 41 FR 31569).

The California regulations require items of children's clothing meeting only the criteria of acceptance of Federal Standard CS 191-53 (16 CFR Part 1610) to bear cautionary labeling, when sold or offered for sale in California on or after July 1, 1977. The California regulations also require items of children's clothing sold or offered for sale in California on or after July 1, 1979 to meet the criteria of acceptance stipulated in the Federal flammability standards for children's sleepwear, FF 3-71 (16 CFR Part 1615) and FF 5-74 (16 CFR Part 1616), or any other standard approved by the State Fire Marshal. If the Commission grants the proposed exemption, the California flammability regulations for children's clothing would not be preempted under section 16 of the FFA.

Prior to granting any application for an exemption from preemption under the FFA, the Commission must provide an opportunity for the presentation of written and oral views concerning the proposal, in accordance with Section 16 of the Act and the proposed and interim procedures. In the December 27, 1976 FEDERAL REGISTER notice proposing the exemption, the Commission solicited written comments from interested persons, to be received by the Commission's Office of the Secretary on or before February 25, 1977. In this notice, the Commission is providing for oral proceedings concerning the proposed exemption.

RELEVANT ISSUES TO BE ADDRESSED IN ORAL PRESENTATIONS

Section 16(c) of the FFA permits the Commission to grant an exemption from preemption if: (1) Compliance with the State or local flammability requirement would not cause the fabric, product, or related material to be in violation of the Federal requirement, (2) the State or local flammability requirement provides a significantly higher degree of protection than the Federal requirement, and (3) the State or local requirement would not unduly burden interstate commerce. To assist the Commission in reaching conclusions concerning the degree of protection provided by the California regulations and the extent to which the regulations would burden interstate commerce, the Commission would like oral presentations to address the following questions, in addition to any other relevant matters the participants wish to address:

1. Whether the California regulations concerning the flammability of children's clothing would provide a significantly higher degree of protection from the risk of occurrence of fire with respect to which the Federal standard, CS 191-53, is in effect.

2. Whether the California regulations concerning the flammability of children's clothing would unduly burden interstate commerce, specifically,

(a) Whether it is technologically feasible to comply with the California regulations.

(b) Whether it is economically feasible to comply with the California regulations.

(c) Whether the cost of complying with the California regulations would unduly burden interstate commerce.

(d) The present geographic distribution of the items to which the California regulations would apply, and projections of future geographic distribution.

(e) The probability that other States or local governments will apply for an exemption for a similar flammability standard or other regulation.

(f) Whether there are any particular circumstances affecting the State of California that make it necessary for California to establish its regulations.

PROCEDURES FOR ORAL PROCEEDINGS

The oral proceedings will be informal, nonadversary, legislative type proceedings at which there will be no formal pleadings or adverse parties.

The proceedings will be conducted impartially, thoroughly, and expeditiously to allow interested persons an opportunity for oral presentation of data, views or arguments while preserving the basic informal nature of rulemaking under section 553 of title 5 of the United States Code. The oral presentations will be transcribed. A copy of the transcript for each oral proceeding will be available for examination by interested persons in the Commission's Office of the Secretary shortly after the presentations.

It is anticipated that a Commissioner will preside at each of the oral proceedings. The presiding officer will chair the proceedings; make appropriate provision for testimony, comments, and questions; and will be responsible for the orderly conduct of the proceedings. The presiding officer will have all the powers necessary or appropriate to contribute to the equitable and efficient conduct of the oral proceedings, including the following:

(1) The right to apportion the time of persons making presentations in an equitable manner in order to complete the presentations within the time period allotted for the proceedings.

(2) The right to terminate or shorten the presentation of any party when, in the view of the presiding officer, such presentation is repetitive or is not relevant to the purpose of the proceedings.

(3) The right to confine the presentations to the issues specified in this notice of oral proceeding.

(4) The right to require a single representative to present the views of two or more persons or groups who have the same or similar interests. The presiding officer will have the authority to identify groups or persons with the same or similar interests in the proceedings.

The presiding officer and Commission representatives will have the right to question persons making an oral presentation as to their testimony and any other matter relating to the proposed rule. Persons in attendance may submit questions, in writing, to the presiding officer.

Persons wishing to comment on, or rebut, statements by other participants in

the oral proceedings may do so by sending written comments (preferably in five copies) to the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207 on or before February 25, 1977, which is the deadline for submitting written comments on the proposed exemption. Persons making an oral presentation may also submit, on or before February 25, a written presentation of their views or any other written statement for the record. Materials received by the Office of the Secretary after February 25 will be considered to the extent practicable. Received comments and other relevant material may be seen in the Office of the Secretary, Third Floor, 1111 18th Street NW., Washington, D.C. during working hours Monday through Friday.

REQUESTS TO PARTICIPATE IN ORAL PROCEEDINGS

The February 7 Washington, D.C. proceeding has been tentatively scheduled to begin at 9:30 a.m. at the Commission's third floor hearing room, 1111 18th Street NW., Washington, D.C. The February 14 San Francisco proceeding has been tentatively scheduled to begin at 9:30 a.m. at the Federal Building, 450 Golden Gate Avenue, Room 2007, San Francisco, California. The February 15 Los Angeles proceeding has been tentatively scheduled to begin at 9:30 a.m. at the Patriotic Hall, 1816 Figueroa Street, Los Angeles, California. The locations and times for these proceedings may be confirmed with the Commission's Office of the Secretary. Any changes will be published in the FEDERAL REGISTER and the Commission's public calendar prior to these proceedings.

All persons who wish to make an oral presentation should notify Richard Danca of the Office of the Secretary, CPSC, Washington, D.C. 20207, telephone 202–634–7700, no later than close of business February 2, 1977 for scheduling purposes. Persons wishing to make a presentation should indicate the city in which they desire to make a presentation and the amount of time they request. A summary or outline of each oral presentation should be filed with the Office of the Secretary at least 2 working days prior to the oral presentation.

In order to facilitate presentations by interested persons who are unable to attend during normal working hours, the Commission is willing to provide an opportunity for presentations after 5:00 p.m. If persons wish to make a presentation after 5:00 p.m., they should so notify the Office of the Secretary.

The following persons have already submitted requests to make an oral presentation and need not submit another request: Textile Distributors Association; National Cotton Council of America; Sears, Roebuck and Company; American Apparel Manufacturers Association; National Retail Manufacturers Association; Coalition of Apparel Industries in California; Springs Mills, Inc.; Cotton Incorporated; Man-Made Fiber Producers Association; Inc., National Knitwear Manufacturers Association; American Textile Manufacturers Institute; State Fire Marshall of the State of California. If they have not already done so, these persons should notify the Office of the Secretary of the amount of time they request for a presentation and should indicate the city in which they desire to make a presentation.

Dated: January 19, 1977.

SADYE E. DUNN,
Secretary, Consumer Product Safety Commission.

[FR Doc.77-2235 Filed 1-24-77;8:45 am]

COUNCIL ON ENVIRONMENTAL QUALITY

ENVIRONMENTAL IMPACT STATEMENTS

Receipt

Environmental impact statements received by the Council on Environmental Quality from January 10 through January 14, 1977. The date of receipt fo reach statement is note in the statement summary. Under Council Guidelines the minimum period for public review and comment on draft environmental impact statements in forty-five (45) days from this FEDERAL REGISTER notice of availability. (March 7, 1977). The thirty (30) day period for each final statement begins on the day the statement is made available to the Council and to commenting parties.

Copies of individual statements are available for review from the originating agency. Back copies will also be available at 10 cents per page from the Environmental Law Institute, 1346 Connecticut Avenue, Washington, D.C. 20036.

DEPARTMENT OF AGRICULTURE

Contact: Coordinator of Environmental Quality Activities, Office of the Secretary, U.S. Department of Agriculture, Room 359–A, Washington, D.C. 20250, 202–447–3965.

FOREST SERVICE

Draft

U.S. Borax Mining Access Rd., Quartz Hill Prospect, Alaska, January 12: Proposed, by the United States Borax & Chemical Corporation (in behalf of Pacific Coast Mines, Inc.), is the development of a mining exploration road due east of Ketchikan on the mainland of southeast Alaska. This road is to be used for intensive development drilling of the prospect to depths below 600 feet and for the extraction of about 500 tons of ore for pilot testing (bulk sampling). The greatest adverse impact will be a major development in an otherwise undeveloped area of the Tongass National Forest. Greater pressure will be put on fish and other aquatic life. (ELR Order No. 70047.)

Cannery Creek Timber Sale, Chugach N.F., Alaska, January 12: Proposed is a timber sale near Cannery Creek, Unawik Inlet, Prince William Sound, approximately 70 miles northwest of Cordova, Alaska. The sale is a combination salvage and reservoir right-of-way clearing project for a proposed Alaska Department of Fish and Game salmon hatchery project. The estimated volume is 2,230 MBF which will be coming from 6 clearcut units totalling approximately 166 acres. The gross sale area is 480 acres. The scenic value of the area will be altered by the proposed sale over the next 30 to 40 years. (ERL Order No. 70049.)

Final

Wilderness Suitability, Oregon Dunes N.R.A., Douglas Lane, Coos County, Oreg., January 11: The proposed action is the implementation of a management plan for the Oregon Dunes National Recreation Area, Siuslaw N.F. in Lane, Douglas, and Coos Counties, Oregon. The area will be managed primarily for dispersed use, while providing for a broad spectrum of recreational activities. Existing campgrounds will be retained and a large campground will be provided near Butterfield Lake, as well as 4 primitive hiker-boater camps on Siltcoos Lake, Tahkenitch Lake and the Umpqua River. Impacts on the environment will be beneficial. Comments made by: HUD, USDA, DOT, FPC, DOC, DOI, COE, EPA, State and local agencies, concerning citizens. (ELR Order No. 70042.)

SOIL CONSERVATION SERVICE

Final

Central Madison Watershed Project, Madison County, La., January 10: The proposed project is for watershed protection, flood prevention, and drainage in Madison Parish, Louisiana. Approximately 52 miles of channel work with appurtenant measures will be installed. Land treatment measures will be applied on 38,700 acres of cropland and pastureland, and 16,200 acres will be managed for wildlife habitat. About 796 acres of forestland, 2 acres of wooded channel banks, and 285 acres of open land will be disturbed by construction. Comments made by: COE, DOI, HEW, DOT, OEO, EPA, State and local agencies, concerned citizens. (ELR Order No. 70033.)

DEPARTMENT OF DEFENSE, AIR FORCE

Contact: Dr. Billy Welch, Room 4D 873, The Pentagon, Washington, D.C. 20330, 202–OX 7–9297.

Final

U.S.A.F. Communications Relocation to Scott AFB, St. Clair County, Ill., January 12: Proposed is the relocation of Headquarters Air Force Communications Service and all of its technical units at Richards-Gebaur AFB including four C–140 aircraft to Scott AFB, Illinois (approximately 2,184 military and civilian manpower authorizations), except result of the proposed action, approximately 42 military manpower authorizations) would be relocated to Keesler AFB, Mississippi. As a result of the proposed action, approximately 3,769 military and civilian manpower authorizations and would be deleted from the Richards-Gebaur AFB which would result in a savings of about 1,543 manpower positions. Comments made by: EPA, VA, USDA, DOC, HEW, HUD, State and local agencies, concerned groups and persons. (ELR Order No. 70039.)

DEPARTMENT OF DEFENSE, ARMY CORPS

Contact: Dr. C. Grant Ash, Office of Environmental Policy Development, Attn: DAEN–CWR–P, Office of the Chief of Engineers, U.S. Army Corps of Engineers, 1000 Independence Avenue, S.W., Washington, D.C. 20314, 202–693–6795.

Draft

Redbank and Fancher Creeks Investigation, Fresno County, Calif., January 12: The proposed plan includes construction of flood control facilities east of the Fresno-Clovis metropolitan area in Fresno County, California, to provide increased flood protection to eastern Fresno, Clovis, and surrounding rural and agricultural lands. The plan calls for a dam on Fancher Creek, enlargement of the existing Big Dry Creek project, and construction of three detention basins, one on Pupcreek, one on Redbank Creek, and one on Alluvial Drain. Adverse effects include loss of agricultural land, riparian vegetation, and wildlife habitat. (Sacramento District) (ELR Order No. 70043.)

Charlotte Co. Beach Erosion Control, etc. Study, Charlotte County, Fla., January 10: This statement considers beach fill and periodic nourishment for the northerly 17,400 linear feet (3.3 miles) of Charlotte County on Manasota Peninsula, construction of a 550-foot rubble-mound terminal groin on the southwest tip of the peninsula, and construction of a 700-foot rubble-mound revetment easterly along the north shore of Stump Pass. Adverse effects include temporary degradation of water quality at specific sites. (Jackson District). (ELR Order No. 70028.)

Papillion Creek and Tributaries Lakes (2), Nebraska, January 10: The proposed project is to modify the plan for the Big Papillion Creek portion of the basin to authorize Dam 3A in lieu of Dams 1 through 9. It is also the intent of the District Engineer to complete the development of Dams 16 and 11 as authorized, initiate the construction of Dam 10 as authorized, and defer construction of any of the dams in the West Branch Papillion Creek portion of the basin until a restudy is completed. Adverse impacts include acquisition of 7,656 acres of land, displacement of 62 families, loss of riparian wildlife habitat, and some degradation of downstream and lake water quality. (Omaha District). (ELR Order No. 70026.)

Hudson R. Project, N.E. U.S. Water Supply Study, New York, January 12: Proposed is the construction of a water intake structure, pumping station, water treatment facility and sixty mile tunnel through deep rock for utilizing Hudson River water as a supplement to the existing New York City System when the existing system reservoirs reach predetermined low levels indicative of potential shortages. The project also entails completion of portions of New York City Water Tunnel No. 3 and rehabilitation of an existing pipeline between the New York City System and Nassau County. Impacts associated with operation include minor adverse local effects on water quality. (North Atlantic Division). (ELR Order No. 70040.)

Final

Patchogue River Maintenance Dredging, Middlesex County, Conn., January 13: The proposed action is to conduct maintenance dredging on the Patchogue River Federal Navigation Project in Westbrook, Connecticut. A hydraulic dredge will remove approximately 17,600 cubic yards of sediment to a land disposal area in the mouth of the Patchogue River. Future maintenance will utilize ocean disposal at the Cornfield Shoals dumping ground. Adverse impacts include the continued disruption of benthic communities, increase of solids, nutrients, and chemicals in the water column, and temporary runoff of drainage at the disposal site. Comments made by: EPA, DOC, DOI, DOT, State and local agencies, and concerned citizens. (ELR Order No. 70058.)

ENVIRONMENTAL PROTECTION AGENCY

Contact: Please refer to the separate notice published by EPA in this issue of the FEDERAL REGISTER for the appropriate EPA contact.

Draft

New Milford Wasterwater Collection and Treatment, Connecticut, January 12: This statement proposes the development of a regional wastewater treatment and collection system to serve the towns of New Milford and Brookfield, Connecticut. Included is the expansion in three phases of an already existing system which currently serves only the downtown area of New Milford. The treatment facility will be located in New Milford, on the west bank of the Housatonic River. Limited adverse effects are anticipated. (Region I). (ELR Order No. 70048.)

Final

Exhaust and Crankcase Regulations—1978 Models, January 12: The proposed action is the institution of exhaust and crankcase regulations for 1978 and later model year street-legal motorcycles with displacements greater than 50 cc. Exhaust emission standards for hydrocarbons (HC) will be set at 5 to 14 grams per kilometer with the exact standard being a function of engine displacement. Carbon monoxide (CO) emissions must not exceed 17 g/km for all motorcycles. In 1980 the HC emission standard will be 5 g/km regardless of engine size and the size and the CO emission standard will be reduced to 12 g/km. Environmental effects will be beneficial. Comments made by: DOC, DOT, concerned groups and persons. (ELR Order No. 70038.)

W. Contra Costa Co. Wastewater Program, Contra Costa County, Calif., January 10: Proposed is the development of a wastewater management plan for the Western Contra Costa County area primarily to meet the needs of municipal wastewater dischargers. The objectives relate to upgrading the method of effluent disposal and providing adequate treatment, while enhancing the early reclamation and reuse of wastewater effluent. Adverse effects related to construction will occur mostly along the interceptor routes from Pinole to Richmond and at the dredging sites for submarine outfall extensions. Comments made by: COE, USCS, EPA, HEW, DOI, DOT, AHP, GSA, FPC, State and county agencies, concerned citizens. (ELR Order No. 70032.)

FEDERAL ENERGY ADMINISTRATION

Contact: Mr. Robert Stern, Director, Office of Environmental Impact, Federal Energy Administration, New Post Office Building, Room 7119, 12th and Pennsylvania Avenue, NW, Washington, D.C. 20461, 202–961–8621.

Draft

Central Rock Mine, SPR, Fayette County, Ky., January 12: The proposed project involves the implementation of the Strategic Petroleum Reserve, Title I, Part B, of the Energy Policy and Conservation Act (P.L. 94–163). This action is part of the Early Storage Reserve and proposes to store 14 million barrels of oil in an underground limestone mine located in Lexington, Kentucky. The proposed storage of oil at Central Rock Mine would be implemented at an existing underground limestone mine presently owned and operated by the Central Rock Company. Adverse socioeconomic impacts may result if the limestone mine is closed temporarily. (ELR Order No. 70052.)

Ironton Mine, SPR, Lawrence County, Ohio, January 12: This project involves the implementation of the Strategic Petroleum Reserve, Title I, Part B, of the Energy Policy and Conservation Act of 1975 (Pub. L. 94–163). The present action is part of the Early Storage Reserve and proposes to store 21 million barrels of oil in an underground limestone mine located near Ironton, Ohio. The proposed storage of oil at Ironton Mine would be implemented at an abandoned underground limestone mine presently owned by the Alpha-Portland Cement Company. (ELR Order No. 70053.)

Final

West Hackberry Salt Dome—SPR, Cameron County, La., January 13: Proposed is the implementation of the Strategic Petroleum Reserve (SPR), Title I, Part B, of the Energy Policy and Conservation Act of 1975 through the development of a 60 million barrel crude oil facility at the West Hackberry salt dome. Under the initial phase of the SPR, referred to as the Early Storage Reserve (ESR), 150 million barrels of oil will be stored by 1978. The West Hackberry site, a salt dome with existing cavities located in Cameron Parish, Louisiana, has been identified as a candidate site for the ESR. Adverse effects include the risk of oil spills. Comments made by: AHP, COE, EPA, FPC, HEW, NRC, TVA, DOT, TREA, State and local agencies, organizations and individuals. (ELR Order No. 70060.)

DEPARTMENT OF HUD

Contact: Mr. Richard H. Broun, Director, Office of Environmental Quality, Room 7258, 451 7th Street, S.W., Washington, D.C. 20410, 202–755–6308.

Draft

Vista Verde Subdivision, Dade Co., Dade County, Fla., January 11: Proposed is the development of a subdivision project Vista Verde, located 14 miles northwest of Miami, Florida. The 240-acre project will include 142 single family detached residences, 306 cluster residences, 833 townhouse units, and a 12-acre school-park site. The completion of the development will create additional demand on utilities, and municipal and community services and facilities. Other impacts include increases in surface water run-off, congestion of traffic, and increases in air and noise pollution. (ELR Order No. 70036.)

Sugar Land, 1st Colony Subdivision, Fort Bend County, Tex., January 10: The proposed action is the development of 7,530 acres for multipurpose use in the city of Sugar Land, Texas. The project will include up to 13,200 units under the HUD/FHA home mortgage programs. Plans call for additional construction of a golf course and several lakes. The major impact would be the transition of the area from its present predominantly agricultural state into a planned urban development providing a wide range of living accommodations for 63,000 people. (ELR Order No. 70027.)

Final

St. Charles Communities, Charles County Md., January 12: Proposed is the development of St. Charles Communities, located approximately 25 miles southeast of Washington, D.C. It is bounded on the north and east by Maryland Route 5, on the south by Maryland Route 448, and on the west by U.S. Route 301. Adverse effects of development include the degradation of the Zekiah Swamp. The existing and proposed transportation network for the area may also prove to be inadequate. Comments made by: USDA, COE, DOI, ERDA, EPA, FPC, State and local agencies, concerned citizens. (ELR Order No. 70045.)

Supplement

Merced, Atwater, Castle AFB (S–1), Merced County, Calif., January 13: This statement supplements a draft EIS filed with CEQ in April, 1976, concerning Merced, Atwater, Castle Air Force Base and Environs. It consists of consideration of major areas acceptable for HUD programs, including mortgage insurance. Major potential beneficial impacts result in the availability of mortgage insurance, preservation of select natural areas, and encouragement of residential development in areas of moderate noise levels. Potential adverse impacts are the loss of open space and agricultural land (ELR Order No. 70056.)

DEPARTMENT OF INTERIOR

Contact: Mr. Bruce Blanchard, Director, Environmental Project Review, Room 7260, Department of the Interior, Washington, D.C. 20240, 202–343–3891.

BUREAU OF LAND MANAGEMENT

Draft

San Luis Resource Area, Grazing Management, Colorado, January 10: Proposed is a grazing management program on national resource lands in the San Luis Valley, located in south-central Colorado. The components of the proposal are (1) intensive management of grazing (allotment management plans of AMPs) on 473,916 acres; (2) custodial management of grazing on 16,625 acres; (3) elimination of grazing on 5,930 acres; and (4) continuation of unallotted atatus of range on 19,900 acres. Construction of various range improvements would be required to implement the AMPs, and fencing would be required to eliminate grazing in some areas. (ELR Order No. 70034.)

Final

Northwest Colorado Coal, Routt, Moffat, and Rio Blanco Counties, Colo., January 10: Proposed is the approval by the Department of the Interior of a variety of formal and anticipated proposals relating to the development of Federal coal. The cumulative effects of increased coal exploration and development, additional Federal coal leasing, and right-of-way approval are analyzed on a regional basis. Coal related developments would total 3 mines, 3 power plants, 86 miles of new railroads, 90 miles of new roads, and 350 miles of new powerlines by 1990. Adverse impacts include modification of natural contours, sedimentation, increases in air pollution, and loss of 19,000 acres of habitat. Comments made by: AHP, ERDA, EPA, HEW, HUD, ICC, DLAB, State and local agencies, concerned groups and persons. (ELR Order No. 70030.)

Challis Planning Unit Grazing Program, Custer County, Idaho, January 10: Proposed are domestic livestock management plans for the Challis Unit, which includes 330,617 acres of national resource lands. The plan would include permanent grazing systems, range improvements including water developments, fencing, cattleguards and gates, vegetative manipuation and stock trails. Adverse impacts would include periodic increases of sedimentation in pastures where livestock would be concentrated for early spring use, short-term impacts of vegetation because of plants not being permitted to meet growth requirements, occasional competition of wildlife and wild horses for vegetation, and a decrease of grazing for operators. Comments made by: USDA, EPA, DOI, AHP, State and local agencies, concerned citizens. (ELR Order No. 70035.)

DEPARTMENT OF LABOR

Draft

Occupational Exposure to Cotton Dust, Standard. Proposed is the regulation of employee exposure to cotton dust by prohibiting their exposure to respirable particulates above the concentration limit of 200 $\mu g/m^3$. The proposal also provides for employee exposure measurements, methods of compliance, personal protective equipment, training, work practices, including housekeeping, medical surveillance, and recordkeeping. No adverse impacts on the environment external to the workplace are expected as a result of the promulgation of the proposed standard. (ELR Order No. 70059.)

DEPARTMENT OF TRANSPORTATION

Contact: Mr. Martin Convisser, Director, Office of Environmental Affairs, U.S. Department of Transportation, 400 7th Street, S.W., Washington, D.C. 20590, 202-426-4357.

FEDERAL HIGHWAY ADMINISTRATION

Draft

U.S. 24 Relocation, U.S. 24 Bypass—S.R. 37, Wabash and Huntington Counties, Ind., January 12: Proposed is the relocation of U.S. 24, commencing at the existing intersection with S.R. 13, northeast of the City of Wabash, then northeasterly for between 15.6 and 18.8 miles (subject to the alternate selected) to the existing S.R. 9–S.R. 37 Bypass west of the City of Huntington. Secondary terminal being considered are the west end of the U.S. 24 Bypass around the City of Wabash and eastern termini the west city limits of the City of Fort Wayne. Adverse effects include the relocation of from 3 to 5 families and as many as 10 businesses. (Region 5). (ELR Order No. 70046.)

N. & S. Tigard Exchange, Pacific Hwy—I–5, Clackamas, Multnomah, and Washington Counties, January 12: The proposed action calls for the widening of 1.44 miles of existing four lane freeway to six lanes, completing the six-lane freeway from Salem to Portland. Two safety features are proposed in addition: reconstruction of Haines Interchange and construction of an exclusive 1 truck bypass lane. The bypass lane would join an existing shoulder which would be converted to an exclusive truck climbing lane. Three alternatives are currently under consideration, each having its respective impact. (Region 10). (ELR Order No. 70041.)

Final

Florida Street Extension, Mobile, Mobile County, Ala., January 13: Proposed is the construction of an extension of Florida Street from Government Boulevard to Springhill Avenue in Mobile, Alabama. The project length ranges from 2.2 to 2.4 miles, depending upon the alternative selected. The most significant negative impact of the project is the potential dislocation of approximately 19 families, 13 businesses, and 2 non-profit organizations. Temporary construction disruption would result. Comments made by: DOC, USDA, HUD, HEW, EPA, State and local agencies, concerned citizens. (ELR Order No. 70054.)

Interstate 210, Los Angeles, Los Angeles County, Calif., January 10: The proposed action is the construction of a 5.6-mile segment of I–210 Freeway between 0.1 mile west of Van Nuys Blvd. and 1.0 mile east of Sunland Blvd. in Los Angeles, California. This will be the last link of the 48.7-mile freeway to be completed. Adverse impacts include dislocation of 142 families, taking of 17.704 acres of undeveloped land leased for park purposes from the 1,437 acre Hansen Dam Recreational Area, loss of flood storage capacity in the dam Basin, and loss of wildlife habitat. Comments made by: DOT, HEW, USDA, EPA, COE, DOI, HUD, State and local agencies, concerned citizens. (ELR Order No. 70031.)

U.S. 18 Expressway, Clayton County, Clayton County, Iowa, January 12: Proposed is the construction of a section of the US 18 Arterial in Clayton County. The 4-mile project begins on present U.S. 18 near the western section line of Section 29, T95, R3W, in Clayton Co., and proceeds north to a point in the Basil Giard Claim No. 1 near Station 6390. The section curves northeasterly, then easterly to the new Mississippi River Bridge at Marquet. The acquisition of 140 acres of land, including 95 acres of timber and pastureland and 25 acres of tillable land, will be necessary. Other negative impacts include removal of natural wildlife habitat from the deepest section of the creek valley to the agricultural fields surrounded by woodland. Comments made by: HEW, HUD, DOI, EPA, State and local agencies, concerned citizens. (ELR Order No. 70044.)

I–471, from I–275 to Cincinnati, Campbell and Kenton Counties, Ky., January 12: The proposed action is construction of a north-south interstate connector between I–275 and Cincinnati. The 3.51-mile facility is to be a 6-lane divided highway from Lexington Avenue in Newport south to U.S. 27 in the vicinity of Moock Road and the Intersection with U.S. 27 at Sunset Avenue. Adverse impacts will be displacement of residents and businesses, increases in air and noise pollution, and disruption of wildlife. (Region 4) Comments made by: HEW, HUD, EPA, DOC, DOI, USDA, State and local agencies, concerned citizens. (ELR Order No. 70037.)

S.R. 61, Oliver Springs-S.R. 61, Anderson and Roane Counties, Tenn. The proposed project is a relocation of State Route around the northern portion of Oliver Springs, Tennessee. The 2.2-mile project begins on the southwest side of Oliver Springs and extends to existing S.R. 61, southeast of Oliver Springs. The facility will be a 5-lane city-type cross section for the first part and then a 4-lane divided facility for the last portion. Negative effects include the displacement of residences and businesses, introduction of noise and air pollution, soil erosion and siltation of water courses, a visual impact on the community, and a potential for side slope instability. (Region 4) Comments made by: HUD, DOI, FPC, DOT, COE, EPA, HEW, State and local agencies, concerned citizens. (ELR Order No. 70050.)

U.S. 2 Belknap Viaduct, Superior, Douglas County, January 13: The proposed project involves replacement of the Belknap Street Viaduct which carries local and USH 2 traffic in the City of Superior, Douglas County, Wisconsin. The new structure would be a 4-lane bridge and would be from 1500 to 1900 feet long, depending upon its new location. Adverse effects include right of way requirements; disruption of families, business, and wildlife in the center drainage area; and damages to haul roads not designed for heavy loads. Comments made by: EPA, DOI, HEW, HUD, DOT, State and local agencies, concerned citizens. (ELR Order No. 70055.)

NUCLEAR REGULATORY COMMISSION

Contract: Mr. Benard Rersche, Director of Division of Reactor Licensing, P–722, NRC, Washington, D.C. 20555, 301–492–7373.

Supplement

Midland Plant, Units 1 and 2 (S–1), Midland County, Mich., January 13: This statement supplements a final EIS filed with CEQ in March, 1972. The proposed action is the continuance of the construction permits issued on December 15, 1972 to Consumers Power Company for the construction of Midland Plant Units 1 and 2. The Midland Plant Units 1 and 2 will have two pressurized water reactors that will generate about 1,300 megawatts of electricity for distribution to the applicant's system. In addition, up to about 4,000,000 pounds per hour of steam are designated to be delivered to the Dow Chemical Company. (ELR Order No. 70057.)

DAVID TUNDERMAN,
Acting General Counsel.

[FR Doc.77-2271 Filed 1-24-77;8:45 am]

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF SCIENTIFIC ADVISORY BOARD

Meeting

JANUARY 6, 1977.

The USAF Scientific Advisory Board Space and Missile Systems Organization Advisory Group, Air Force Systems Command, will hold meetings on February 14, 1977 from 8:30 a.m. to 5 p.m and February 15, 1977 from 8:30 a.m. to 1 p.m. at the Los Angeles Air Force Station, California in the Command Presentation Center, Building 105.

The Group will receive classified briefings and hold classified discussions on selected space programs.

The meetings concern matters listed in section 552(b) of Title 5, United States Code, specifically subparagraph (1) thereof, and that accordingly the meetings will be closed to the public.

For further information contact the Scientific Advisory Board Secretariat at 202–697–8404.

FRANKIE S. ESTEP,
Air Force Federal Register Liaison Officer, Directorate of Administration.

[FR Doc.77-2191 Filed 1-24-77;8:45 am]

USAF SCIENTIFIC ADVISORY BOARD

Meeting

JANUARY 13, 1977.

The USAF Scientific Advisory Board ad hoc Committee on the EF–111A will hold meetings at Kirtland AFB, New Mexico on February 15 and 16, 1977 from 9 a.m. to 5 p.m. each day.

The Committee will receive classified briefings and hold classified discussions on the EF–111A.

The meetings concern matters listed in section 552(b) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly the meetings will be closed to the public.

For further information contact the Scientific Advisory Board Secretariat at (202) 697–8404.

FRANKIE S. ESTEP,
Air Force Federal Register Liaison Officer, Directorate of Administration.

[FR Doc.77-2306 Filed 1-24-77;8:45 am]

USAF SCIENTIFIC ADVISORY BOARD

Meeting

JANUARY 17, 1977.

The USAF Scientific Advisory Board ad hoc Committee on Aeronomy will hold a meeting on February 18, 1977 in the Pentagon.

The Committee will have a working session to discuss and complete work on the final draft report on the study of Aeronomy.

The meeting will be open to the public.

For further information contact the Scientific Advisory Board Secretariat at (202) 697–4648.

FRANKIE S. ESTEP,
Air Force Federal Register Liaison Officer, Directorate of Administration.

[FR Doc.77-2307 Filed 1-24-77;8:45 am]

Office of the Secretary

DOD ADVISORY GROUP ON ELECTRON DEVICES

Advisory Committee Meeting

Working Group A (Mainly Microwave Devices) of the DoD Advisory Group on Electron Devices (AGED) will meet in closed session at 201 Varick Street, New York, NY 10014 on 15 February 1977.

The purpose of the Advisory Group is to provide the Director of Defense Research and Engineering, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group A meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. The microwave area includes programs on developments and research related to microwave tubes, solid state microwave, electronic warfare devices, millimeter wave devices, and passive devices. The review will include details of classified defense programs throughout.

In accordance with section 10(d) of Appendix I, Title 5, United States Code, it has been determined that this Advisory Group meeting concerns matters listed in section 552(b) of Title 5 of the United States Code, specifically subparagraph (1) thereof, and that accordingly, this meeting will be closed to the public.

MAURICE W. ROCHE,
Director, Correspondence and Directives, OASD (Comptroller).

JANUARY 19, 1977.

[FR Doc.77-2335 Filed 1-24-77;8:45 am]

DOD ADVISORY GROUP ON ELECTRON DEVICES

Advisory Committee Meeting

Working Group C (Mainly Imaging and Display) of the DOD Advisory Group on Electron Devices (AGED) will meet in closed session at the Institute for Defense Analysis, 400 Army Navy Drive, Arlington, Virginia 22202, on 16 February 1977 vice the 27 January 1977 meeting which was cancelled.

The purpose of the Advisory Group is to provide the Director of Defense Research and Engineering, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group C meeting will be limited to review of research and development programs which the military Departments propose to initiate with industry, universities or in their laboratories. This special device area includes such programs as Infrared and Night Vision Sensors. The review will include classified program details throughout.

In accordance with section 10(d) of Appendix I, Title 5, United States Code, it has been determined that this Advisory Group meeting concerns matters listed in section 552(b) of Title 5 of the United States Code, specifically subparagraph (1) thereof, and that accordingly this meeting will be closed to the public.

MAURICE W. ROCHE,
Director, Correspondence and Directives, OASD (Comptroller).

JANUARY 19, 1977.

[FR Doc.77-2336 Filed 1-24-77;8:45 am]

ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION

[ERDA–1553–D]

MANAGEMENT OF INTERMEDIATE LEVEL RADIOACTIVE WASTE, OAK RIDGE NATIONAL LABORATORY, OAK RIDGE, TENNESSEE

Availability of Draft Environmental Statement

Notice is hereby given that a Draft Environmental Statement, ERDA–1553–D, Management of Intermediate Level Radioactive Waste, Oak Ridge National Laboratory, Oak Ridge, Tennessee, was issued pursuant to the Energy Research and Development Administration's (ERDA) implementation of the National Environmental Policy Act of 1969. The statement was prepared to support an administrative action to select a preferred technique for the management of intermediate level radioactive waste (ILW) and the construction and operation of a facility to implement the technique at the Oak Ridge National Laboratory in Roane County, Tennessee.

Copies of the draft statement have been distributed for review and comment to Federal and Tennessee State and local agencies and other organizations and individuals. Copies of the draft statement are available for public inspection at the ERDA public document rooms at:

ERDA Headquarters, 20 Massachusetts Avenue, Washington, D.C.
Albuquerque Operations Office, Kirtland Air Force Base East, Albuquerque, New Mexico.
Chicago Operations Office, 9800 South Cass Avenue, Argonne, Illinois.
Idaho Operations Office, 550 Second Street, Idaho Falls, Idaho.
Nevada Operations Office, 2753 South Highland Drive, Las Vegas, Nevada.
Oak Ridge Operations Office, Federal Building, Oak Ridge, Tennessee.
Richland Operations Office, Federal Building, Richland, Washington.
San Francisco Operations, 1333 Broadway, Oakland, California.
Savannah River Operations Office, Savannah River Plant, Aiken, South Carolina.

Comments and views concerning the draft statement are requested from other interested agencies, organizations and individuals. Single copies of the draft environmental statement will be furnished for review and comment upon request addressed to W. H. Pennington, Director, Office of NEPA Coordination, U.S. Energy Research and Development Administration, Mail Station E–201, Washington, D.C. 20545, (301) 353–4241. Comments shoud be sent to the same address.

In accordance with guidelines from the Council on Environmental Quality, agencies and members of the public submitting comments on the draft environ-

mental statement should endeavor to make their comments as specific, substantive, and factual as possible without undue attention to matters of form in the impact statement. It would assist in the review of comments if the comments were organized in a manner consistent with the structure of the draft statement. Emphasis should be placed on the assessment of the environmental impacts of the waste management activities, and the acceptability of those impacts on the quality of the environment, particularly as contrasted with the impacts of reasonable alternatives. Commenting entities may recommend modifications and/or new alternatives that will enhance environmental quality and avoid or minimize adverse environmental impacts.

Comments on the draft environmental statement will be placed in the above referenced document rooms and will be considered in the preparation of the final environmental statement if received within 60 days of the date of publication of this notice.

Dated at Germantown, Md., this 18th day of January 1977.

For the Energy Research and Development Administration.

JAMES L. LIVERMAN,
Assistant Administrator for Environment and Safety.

[FR Doc.77-2200 Filed 1-24-77;8:45 am]

[ERDA-1551-D]

NEVADA TEST SITE, NYE COUNTY, NEVADA

Availability of Draft Environmental Impact Statement

Notice is hereby given that a Draft Environmental Impact Statement, ERDA-1551-D, Nevada Test Site, Nye County, Nevada (January 1977), has been issued pursuant to the Energy Research and Development Administration's (ERDA) implementation of the National Environmental Policy Act of 1969. The statement was prepared to support ERDA administrative actions related to the continuation of ERDA's underground nuclear testing program and other activities at the Nevada Test Site for Fiscal Year 1978 and beyond.

Copies of the draft statement have been distributed for review and comment to Federal, State and local agencies and other organizations and individuals. Copies of the draft statement are available for public inspection at the ERDA public document rooms at:

ERDA Headquarters, 20 Massachusetts Avenue, Washington, D.C.
Albuquerque Operations Office, Kirtland Air Force Base East, Albuquerque, New Mexico.
Chicago Operations Office, 9800 South Cass Avenue, Argonne, Illinois.
Idaho Operations Office, 550 Second Street, Idaho Falls, Idaho.
Nevada Operations Office, 2753 South Highland Drive, Las Vegas, Nevada.
Oak Ridge Operations Office, Federal Building, Oak Ridge, Tennessee.
Richland Operations Office, Federal Building, Richland, Washington.
San Francisco Operations, 1333 Broadway, Oakland, California.
Savannah River Operations Office, Savannah River Plant, Aiken, South Carolina.

Comments and views concerning the draft statement are requested from other interested agencies, organizations and individuals. Single copies of the draft environmental statement will be furnished for review and comment upon request addressed to W. H. Pennington, Director, Office of NEPA Coordination, U.S. Energy Research and Development Administration, Mail Station E-201, Washington, D.C. 20545, (301) 353-4241. Comments should be sent to the same address.

In accordance with guidelines from the Council on Environmental Quality, agencies and members of the public submitting comments on the draft environmental statement should endeavor to make their comments as specific, substantive, and factual as possible without undue attention to matters of form in the impact statement. It would assist in the review of comments if the comments were organized in a manner consistent with the structure of the draft statement. Emphasis should be placed on the assessment of the environmental impacts of the NTS activities, and the acceptability of those impacts on the quality of the environment, particularly as contrasted with the impacts of reasonable alternatives. Commenting entities may recommend modifications and/or new alternatives that will enhance environmental quality and avoid or minimize adverse environmental impacts.

Comments on the draft environmental statement will be placed in the above referenced document rooms and will be considered in the preparation of the final environmental impact statement if received within 60 days of the date of publication of this notice.

Dated at Germantown, Md., this 18th day of January 1977.

For the Energy Research and Development Administration.

JAMES L. LIVERMAN,
Assistant Administrator for Environment and Safety.

[FR Doc.77-2198 Filed 1-24-77;8:45 am]

[ERDA-1552-D]

SAFETY RESEARCH EXPERIMENT FACILITIES, IDAHO NATIONAL ENGINEERING LABORATORY, IDAHO

Availability of Draft Environmental Impact Statement

Notice is hereby given that a Draft Environmental Impact Statement, ERDA-1552-D, Safety Research Experiment Facilities, Idaho National Engineering Laboratory, Idaho, was issued pursuant to the Energy Research and Development Administration's (ERDA) implementation of the National Environmental Policy Act of 1969. The statement was prepared in support of legislative action related to the ERDA request for appropriation of funds for Fiscal Year 1978 for the project.

The statement addresses the potential environmental impacts associated with the construction and operation of a new safety test facility and modifications to existing facilities at the Argonne National Laboratory-West which is part of the Idaho National Engineering Laboratory in Butte County, Idaho. The facilities will be used to confirm the calculated safety of liquid metal fast breeder reactor fuel elements under a variety of abnormal conditions.

Copies of the draft environmental statement have been distributed for review and comment to appropriate Federal, Idaho State and local agencies and organizations and individuals who are known to have an interest in this activity. Copies of the statement are available for public inspection in the ERDA public document rooms at:

ERDA Headquarters, 20 Massachusetts Avenue, NW., Washington, D.C.
Albuquerque Operations Office, Kirtland Air Force Base East, Albuquerque, New Mexico.
Chicago Operations Office, 8900 South Cass Avenue, Argonne, Illinois.
Idaho Operations Office, 550 Second Street, Idaho Falls, Idaho.
Nevada Operations Office, 2753 South Highland Drive, Las Vegas, Nevada.
Oak Ridge Operations Office, Federal Building, Oak Ridge, Tennessee.
Richland Operations Office, Federal Building, Richland, Washington.
San Francisco Operations Office, 1333 Broadway, Oakland, California.
Savannah River Operations Office, Savannah River Plant, Aiken, South Carolina.

Comments and views concerning the draft environmental statement are requested from other interested agencies, organizations and individuals. Single copies of the statement will be furnished for review and comment upon request addressed to W. H. Pennington, Director, Office of NEPA Coordination, Mail Station E-201, Energy Research and Development Administration, Washington, D.C. 20545, (301) 353-4241. Comments should be sent to the same address.

In accordance with the guidelines of the Council on Environmental Quality, those submitting comments on the draft environmental impact statement should endeavor to make their comments as specific, substantive, and factual as possible without undue attention to matters of form in the impact statement. However, it would assist in the review of comments if the comments were organized in a manner consistent with the structure of the draft environmental statement. Emphasis should be placed specifically on the assessment of the environmental impacts of the proposed project, and the acceptability of those impacts on the quality of the environment, particularly as contrasted with the impacts of reasonable alternatives to the proposed action. Commenting entities may recommend modifications and/or new alternatives that will enhance environmental quality and avoid or minimize adverse environmental impacts.

Copies of comments received on the draft environmental statement will be placed in the above referenced public

document rooms for inspection and will be considered in the preparation of the final environmental impact statement if received within 60 days of the date of publication of this notice.

Dated at Germantown, Md., this 18th day of January 1977.

For the Energy Research and Development Administration.

JAMES L. LIVERMAN,
Assistant Administrator for Environment and Safety.

[FR Doc. 77-2199 Filed 1-24-77;8:45 am]

ENVIRONMENTAL PROTECTION AGENCY

[FRL 674-6]

AGENCY COMMENTS ON ENVIRONMENTAL IMPACT STATEMENTS AND OTHER ACTIONS IMPACTING THE ENVIRONMENT

Availability

Pursuant to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969, and section 309 of the Clean Air Act, as amended, the Environmental Protection Agency (EPA) has reviewed and commented in writing on Federal agency actions impacting the environment contained in the following appendices during the period of November 1, 1976 and November 30, 1976.

Appendix I contains a listing of draft environmental impact statements reviewed and commented upon in writing during this review period. The list includes the Federal agency responsible for the statement, the number and title of the statement, the classification of the nature of EPA's comments as defined in Appendix II, and the EPA source for copies of the comments as set forth in Appendix VI.

Appendix II contains the definitions of the classifications of EPA's comments on the draft environmental impact statements as set forth in Appendix I.

Appendix III contains a listing of final environmental impact statements reviewed but not commented upon by EPA during this review period. The listing includes the Federal agency responsible for the statement, the number and title of the statement, a summary of the nature of EPA's comments, and the EPA source for copies of the comments as set forth in Appendix VI.

Appendix IV contains a listing of final environmental impact statements reviewed but no commented upon by EPA during this review period. The listing includes the Federal agency responsible for the statement, the number and title of the statement, and the source of the EPA review as set forth in Appendix VI.

Appendix V contains a listing of proposed Federal agency regulations, legislation proposed by Federal agencies, and any other proposed actions reviewed and commented upon in writing pursuant to section 309(a) of the Clean Air Act, as amended, during the referenced reviewing period. The listing includes the Federal agency responsible for the proposed action, the title of the action, a summary of the nature of EPA's comments, and the source for copies of the comments as set forth in Appendix VI.

Appendix VI contains a listing of the names and addresses of the sources of EPA reviews and comments listed in Appendices I, III, IV, and V.

Copies of the EPA Manual setting forth the policies and procedures for EPA's review of agency actions may be obtained by writing the Public Information Reference Unit, Environmental Protection Agency, Room 2922, Waterside Mall SW., Washington, D.C. 20460, telephone 202/755-2808. Copies of the draft and final environmental impact statements referenced herein are available from the originating Federal department or agency.

Dated: January 18, 1977.

REBECCA W. HANMER,
Director,
Office of Federal Activities.

APPENDIX I.—*Draft environmental impact statements for which comments were issued between Nov. 1, 1976, and Nov. 30, 1976*

Identifying No.	Title	General nature of comments	Source for copies of comments
CORPS OF ENGINEERS			
DS-COE-A32043-OO	Red River Waterway, Mississippi River to Shreveport, La., Texas, Texas, Oklahoma, Arkansas.	LO-2	G
D-COE-B35004-CT	Maintenance dredging, Patchogue River, Westbrook, Middlesex County, Conn.	ER-2	B
D-COE-B39005-MA	Cape Cod Canal, Bourne and Sandwich Counties, Mass	LO-1	B
D-COE-B39010-RI	Pawtuxet River watershed, Rhode Island	ER-2	B
D-COE-D07003-DE	Delmarva Power & Light Co., Indian River Power Station Unit No. 4, Millsboro, Sussex County, Del.	LO-2	D
D-COE-D40042-PA	Relocation of U.S. 209, Bushkill to Milford, Tocks Island Project, Pennsylvania.	3	D
D-COE-E32019-FL	Sec. 15 Permit, Punta Gorda Isles, Inc., Construction of Boat Lock, Alligator Creek, Punta Gorda, Charlotte County, Fla.	ER-2	E
D-COE-E35027-NC	Wilmington Harbor, Northeast Cape Fear River, Wilmington and New Hanover Counties, N.C.	ER-2	E
D-COE-E35028-FL	Cross Florida Barge Canal (CFBC) Restudy Report, St. Johns River to Gulf of Mexico, Florida.	EU-2	E
DS-COE-F36010-MI	Flood Control on the Tittabawassee River, Midland County, Mich.	LO-2	F
DS-COE-F36015-MN	Root River Basin, Flood Control, Minnesota	LO-2	F
DS-COE-F36029-MN	Bassett Creek Watershed, Hennepin County, Minn	LO-2	F
D-COE-F67001-WI	Permit, Flambeau Mining Corp., Open Pit Copper Mine, Ladysmith, Rusk County, Wis.	LO-2	F
DS-COE-G36048-TX	Lake Witchita, Holliday Creek, Witchita Falls, Tex	LO-1	G
DS-COE-H36011-IA	Muscatine Island Levee District and Muscatine-Louisa County Drainage District No. 13, Local Flood Protection, Louisa County, Iowa.	ER-2	H
D-COE-K36018-HI	Kapaakea Homestead, Flood Control Project, Molokai, Maui County, Hawaii.	LO-1	J
DS-COE-L36041-WA	Chehalis River Flood Control, South Aberdeen Cosmopolis, Grays Harbor County, Wash.	LO-2	K
DEPARTMENT OF AGRICULTURE			
D-AFH-E28017-NC	Avon Water Project, Cape Hatteras Water Association, Burton, Dare County, N.C., (USDA-FHMA-ADM-NC-76-1).	LO-2	E
D-AFS-D65003-PA	Buzzard Swamp Unit Plan, Allegheny National Forest, Pa	LO-1	D
D-AFS-E65013-AL	Timber Management Plan, William B. Bankhead National Forest, Winston, Lawrence and Franklin Counties, Ala. (USDA-FS-R8-DES-ADM-76-20).	LO-2	E
D-AFS-F65001-WI	Timber Management Plan, Chequamegon National Forest, Ashland, Bayfield, Sawyer, Price, Taylor and Vilas Counties, Wis.	LO-2	F
D-AFS-G65018-LA	Management of Vernon Unit Plan, Kisatchie National Forest, Vernon Parish, La.	LO-1	G
D-AFS-J40027-MT	Buck Creek and Yellow Mules Special Use Road Permit, Burlington Northern, Inc., Gallatin National Forest, Mont.	ER-2	1
D-AFS-J65053-CO	Dolores Planning Unit, San Juan National Forest, Colo	ER-2	1
D-AFS-K65018-CA	Mohawk Land Use Plan, Plumas and Tahoe National Forests, Plumas and Sierra Counties, Calif.	ER-2	J
D-AFS-K65019-CA	Rancheria Planning Unit, Sierra National Forest, Fresno County, Calif.	LO-2	J
D-AFS-L61083-OR	Grande Ronde Planning Unit, Wallowa-Whitman and Umatilla National Forests, Union County, Oreg. (USDA-FS-R6-15).	LO-1	K
D-AFS-L65023-AK	Valley Timber Sale, Chugach National Forest, Alaska (USDA-FS-DES-ADM-76-07).	LO-2	K
D-AFS-L65024-AK	North Irish Creek Timber Sale, Tongass National Forest, Alaska (USDA-FS-R10-DES-ADM-76-04).	LO-2	K
LD-ASC-A69116-OO	Agriculture Conservation Program, Proposed Amendment to Soil Conservation and Domestic Allotment Act.	LO-2	A
D-REA-G07011-NM	Gamerco Coal Mine, McKinley County, N. Mex	LO-1	G
D-SCS-B36010-CT	Avery Brook Watershed, Hartford County, Conn	LO-1	B
DS-SCS-F36044-IL	Little Cache Creek Watershed, Johnson County, Ill	LO-2	F
DEPARTMENT OF COMMERCE			
D-EDA-C64001-NY	1980 Olympic Winter Games, Village of Lake Placid, N.Y	LO-2	C
DEPARTMENT OF DEFENSE			
D-UAF-B11002-ME	Proposed Reduction, Loring Air Force Base, Limestone, Aroostook County, Maine.	ER-2	B
D-UAF-F11004-MI	Proposed Closure of Kincheloe Air Force Base, Mich	LO-2	F
D-UAF-G11002-OO	Proposed Closure of Craig AFB, Ala., and Webb AFB, Tex	LO-1	G
DS-USA-J36037-CO	South Platte River, Chatfield Dam to Denver, Colo	ER-2	1

Identifying No.	Title	General nature of comments	Source for copies of comments
	DEPARTMENT OF INTERIOR		
D-BOR-A86102-OO	Departmental Implementation of Executive Order 11644 Pertaining to use of Off-Road Vehicles (ORV) on the Public Lands (DES-76-27).	ER-1	A
D-IBR-J35001-OO	Savory-Pot Hook Project, Colorado and Wyoming	ER-2	I
D-IGS-J01002-WY	Eagle Butte Mine, Proposed Plan of Mining and Reclamation, Amax Coal Co., Eastern Powder River, Campbell County, Wyo.	ER-3	I
	DEPARTMENT OF TRANSPORTATION		
DS-DOT-A41655-MN	MN-23, Junction MN-24 and MN-212, Renville, Lynon, Yellow Medicine and Chippewa Counties, Minn.	ER-2	F
D-FAA-H51010-NB	Schuyler Municipal Airport, Colfax County, Nebr	LO-2	H
D-FAA-K51008-CA	Ontario International Airport, Development Program, Los Angeles, San Bernardino County, Calif.	ER-2	J
D-FHW-E40086-NC	U.S. 74, Maxton Bypass, Laurinburg Bypass to U.S. 74, Alma, Robeson and Scotland Counties, N.C.	ER-2	E
D-FHW-E40087-NC	N.C.-127 Improvement, Second Avenue N.E. to N.C.-1400, Hickory, Catawba County, N.C. (FHWA-NC-EIS-76-07-D).	LO-2	E
D-FHW-F40076-IN	West 10th Street Bridge, I-465 to West Street, White River, Indianapolis, Marion County, Ind.	LO-2	F
D-FHW-F40077-IN	U.S. 50, Jackson and Lawrence County line, I-65, Jackson County, Ind.	ER-2	F
D-FHW-F40079-IN	U.S. 50, Bryantsville to Lawrence and Jackson County line, Lawrence County, Ind.	ER-2	F
D-FHW-G40057-NM	NM-41, Willard to Estancia, Torrance County, N. Mex.	LO-1	G
DS-FHW-H40057-OO	Abbott Dr., Omaha, Douglas County, Nebraska and Carter Lake, Pottawattamie County, Iowa (FHWA-NEB-EIS-76-08-DS).	3	H
D-FHW-H40062-KS	U.S. 81 Location Study, Ottawa, Cloud and Republic Counties, Kans. (FHWA-KS-EIS-76-05-D).	LO-2	H
D-FHW-J40026-CO	C-082, CO-133 to Aspen, Carbondale East, Eagle, Garfield, Pitkin Counties, Colo.	ER-2	I
D-FHW-L40043-AK	Gravel Extraction, Section 31, Seward Meridian, Alaska	LO-2	K
D-FHW-L40045-WA	Seattle Central Business District Exclusive Bus Lanes, King County, Wash.	LO-1	K
	FEDERAL ENERGY ADMINISTRATION		
D-FEA-G03003-LA	Cote Blanche Mine, Strategic Petroleum Reserve, St. Mary's, La.	LO-2	G
D-FEA-G03004-LA	West Hackberry Salt Dome, Strategic Petroleum Reserve, Cameron, La.	LO-2	G
D-FEA-G03005-LA	Weeks Island Mine, Strategic Petroleum Reserve, Iberia County, La.	LO-2	G
D-FEA-G03006-TX	Bryan Mound Salt Dome, Strategic Petroleum Reserve, Brazoria, Tex.	LO-2	G
D-FEA-G03007-LA	Bayon Choctaw Salt Dome, Strategic Petroleum Reserve, Iberville, La.	LO-2	G
	FEDERAL POWER COMMISSION		
D-FPC-E05008-SC	Santee-Cooper Project, No. 199, Santee and Cooper Rivers, Berkeley, Calhoun, Clarendon, Orangeburg and Sumter Counties, S.C.	ER-2	E
	GENERAL SERVICES ADMINISTRATION		
D-GSA-L81006-AK	Haines Border Station, Haines, Dalton Cache at U.S./Canadian border, Mile 42, Alaska.	LO-1	K
	DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT		
D-HUD-C85013-AK	Monte Brisas Development, Project No. 76-300, Fajardo, P.R.	ER-2	C
D-HUD-D28002-VA	Standardsville Water Main Extension, Standardsville, Va. (CDBG).	LO-2	D
D-HUD-E28016-AL	Union Community Water System, Greene County, Ala. (CDBG).	LO-2	E
D-HUD-E85013-GA	Georgetown Subdivision, Planned Unit Development, Chatham County, Ga. (HUD-R04-EIS-76-16-D).	ER-2	E
D-HUD-E89004-FL	Senior Citizens Center, Bayview Park, Pensacola, Escambia County, Fla. (CDBG).	LO-2	E
D-HUD-G24003-AR	Breckenridge-Union Water System, Jackson County, Ark.	LO-1	G
D-HUD-G85017-TX	Anderson Mill Subdivision, Travis County, Tex.	LO-1	G
D-HUD-G85018-TX	Trailwood Addition Subdivision, Grand Prairie, Dallas County, Tex.	LO-2	G
D-HUD-K89016-CA	Mei Lun Yuen Development, China Town Redevelopment Area, San Francisco, Calif.	LO-2	J
	NATIONAL INSTITUTE OF HEALTH		
RD-NIH-A84024-00	Guidelines for Research Involving Recombinant DNA Molecules.	ER-2	A

	NUCLEAR REGULATORY COMMISSION		
D-NRC-C06006-PR	North Coast Nuclear Plant, Unit 1, Islote Site, Puerto Rico resource Authority, Docket No. 50-376, P.R. (NUREG 0113).	3	C
D-NRC-E06003-TN	Phipps Bend Nuclear Plant, Units 1 and 2, Holston River, Tennessee Valley Authority, Docket Nos. STN-553 and STN 50-554, Hawkins County, Tenn., (NUREG-0098).	LO-2	E
D-NRC-F06004-WI	Koshkonong Nuclear Plant, Units 1 and 2, Wisconsin Utilities Project, Docket Nos. STN 50-502 and STN 50-503, Jefferson County, Wisc. (NUREG-0079).	EU-2	F
	U.S. POSTAL SERVICE		
D-UPS-E81013-GA	U.S. Post Office and Vehicle Maintenance Facility, Atlanta, Fulton County, Ga.	LO-2	E

APPENDIX II—DEFINITIONS OF CODES FOR THE GENERAL NATURE OF EPA COMMENTS

ENVIRONMENTAL IMPACT OF THE ACTION

LO—Lack of Objection

EPA has no objections to the proposed action as described in the draft impact statement; or suggests only minor changes in the proposed action.

ER—Environmental Reservations

EPA has reservations concerning the environmental effects of certain aspects of the proposed action. EPA believes that further study of suggested alternatives or modifications is required and has asked the originating Federal agency to reassess these impacts.

EU—Environmentally Unsatisfactory

EPA believes that the proposed action is unsatisfactory because of its potentially harmful effect on the environment. Furthermore, the Agency believes that the potential safeguards which might be utilized may not adequately protect the environment from hazards arising from this action. The Agency recommends that alternatives to the action be analyzed further (including the possibility of no action at all).

ADEQUACY OF THE IMPACT STATEMENT

Category 1—Adequate

The draft impact statement adequately sets forth the environmental impact of the proposed project or action as well as alternatives reasonably available to the project or action.

Category 2—Insufficient Information

EPA believes that the draft impact statement does not contain sufficient information to assess fully the environmental impact of the proposed project or action. However, from the information submitted, the Agency is able to make a preliminary determination of the impact on the environment. EPA has requested that the originator provide the information that was not included in the draft statement.

Category 3—Inadequate

EPA believes that the draft impact statement does not adequately assess the environmental impact of the proposed project or action, or that the statement inadequately analyzes reasonable available alternatives. The Agency has requested more information and analysis concerning the potential environmental hazards and has asked that substantial revision be made to the impact statement.

APPENDIX III.—*Final environmental impact statements for which comments were issued between Nov. 1, 1976, and Nov. 30, 1976*

Identifying No.	Title	General nature of comments	Source for copies of comments
	CORPS OF ENGINEERS		
F-COE-A39032-IA	Evansdale Local Protection Project, Black Hawk County, Iowa.	EPA's concerns were adequately addressed in the final statement. However, EPA informed the Corps of Engineers that the discharge of water from a borrow pit to the Cedar River will probably require a national pollutant discharge elimination of Public Law 92-500.	H
F-COE-E35023-NC	Maintenance of the Waterway Connecting Pamlico Sound and Beaufort Harbor, N.C.	EPA's concerns were adequately addressed in the final EIS.	E
F-COE-F32014-MI	Maintenance and Dredging, Monroe Harbor, Monroe County, Mich.	EPA's concerns were adequately addressed in the final EIS. EPA recommended that remedial measures be developed and implemented as soon as possible at the old disposal site to prevent adverse water quality effects from lake water overtopping and escaping soil material.	F
	DEPARTMENT OF AGRICULTURE		
F-AFS-J61011-UT	Four Seasons Development, Uinta National Forest, Provo, Utah County, Utah.	EPA's review of the final EIS indicated the EIS was unresponsive to the previous comments made by EPA on the potential air quality and noise impacts of the traffic to be attracted to this development. In addition, EPA recommended further evaluation be performed of the secondary impacts of transportation to the resort, especially air quality and noise impacts.	I
F-SCS-F36036-IN	Rock Creek Watershed, Cass and Carroll Counties, Ind.	EPA's concerns were adequately addressed in the final EIS.	F

DEPARTMENT OF DEFENSE			
FS-UAF-A52015-00	Disposition of Orange herbicide by incineration.	EPA agreed with the USAF that reprocessing herbicide orange was the best available disposal alternative; however, EPA identified several concerns and questions which had not been fully addressed and answered by this amendment. Those points included protection, control and storage of the contaminated residuals, and quality control of the reprocessed herbicide.	A
DEPARTMENT OF THE INTERIOR			
F-BLM-A02100-00	Proposed 1976 oil and gas lease sale No. 44, Outer Continental Shelf, (OCS), Gulf of Mexico, Louisiana and Texas.	EPA's concerns were adequately addressed in the final EIS.	A
F-BLM-A65015-00	Ten Year Timber Management Program, Western United States.	EPA's concerns were adequately addressed in the final EIS. EPA noted that the preparation of this programmatic EIS would not obviate the need for more site specific EIS's.	A
DEPARTMENT OF TRANSPORTATION			
F-DOT-A40960-WI	Stadium Freeway, I-894 to I-94, Milwaukee County, Wisc.	EPA's concerns were adequately addressed in the final EIS.	F
F-FHW-A42410-IL	U.S. 460, IL-15, FA-821, 24th to 13th St., Mt. Vernon, Jefferson County, Ill.	EPA continues to have environmental reservations on the proposed project with regard to excessive noise levels. EPA recommended that soundproofing measures be utilized.	F
F-FHW-A42411-MI	Charlotte to I-96 to northwest of Lansing, I-69, Clinton and Eaton Counties, Mich. (FHW-EIS-MICH-73-03-F).	EPA's concerns were adequately addressed in the final EIS.	F
F-FHW-A42412-WI	U.S. 51, Merrill to CTH "K", Lincoln and Oneida Counties, Wisc.	EPA's concerns were adequately addressed in the final EIS. However, EPA feels qualitative analysis should be provided on the impacts the project will have upon the wetland areas involved.	F
FS-FHW-C40013-VI	Sion Farm to Christiansted Highway, St. Crois, V.I.	EPA's concerns were adequately addressed in the supplement to the final EIS.	C
NF-FHW-F40050-IN	IN-1, Bridge over the Penn Central Railroad, Dearborn, County, Ind.	EPA's concerns were adequately addressed in the final negative declaration.	F
F-FHW-H40029-NB	U.S. 6 and U.S. 34, junction with NB-23, Holdrege, Phelps County, Nebr.	EPA continues to have environmental reservations with the proposed project because projected noise levels at 3 motels, 12 homes and 9 Businesses will exceed FHPM 7-7-3 noise standards. EPA requested the FHWA to contact the people affected by highway noise, inform them of the adverse noise impacts and discuss possible mitigtive actions on an individual basis. In addition, EPA stated the need for an overall assessment of improving the entire segmented approch currently being used.	H
F-FHW-K40019-CA	March Lane Expressway, El Dorado St. to West Lane, Calif.	EPA's concerns were adequately addressed in the final EIS.	J
FEDERAL POWER COMMISSION			
F-FPC-K05002-CA	California Aqueduct Project No. 2426, California.	EPA's continues to have environmental concerns on proposed project relative to algae control, severe silkation, erodion, and turbidity problems, the quality of the reservoir releases, and the generation of power. EPA also expressed concern that the preparation of the EIS as directed by FPC opinion No. 688 has precluded the complete addressing of environmental impacts associated with the project.	J
GENERAL SERVICES ADMINISTRATION			
F-GSA-F81005-WI	U.S. Courthouse, Madison, Dane County, Wisc.	EPA's concerns were adequately addressed in the final EIS. Additionally, EPA offered its assistance to the GSA in establishing a program to recycle paper wastes.	F
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT			
FS-HUD-A35033-NY	Canada New Community, Wayne County, N.Y.	EPA's concerns were adequately addressed in the final EIS.	C
RF-HUD-A36078-00	Revised Flood Plain Management Regulations of the National Flood Insurance Program.	EPA had no objections to the action, but suggested procedures to discourage the unwise use of the flood plain. These included, prohibition of flood water impeding structures in the floodway, protection of wetlands and wildlife habitats within the flood plain, acceleration of the rate mapping program and higher priority to rate mapping in communities undergoing rapid growth.	A

DEPARTMENT OF AGRICULTURE—Continued			
F-HUD-B80007-MA	Fall River Central Business District, Urban Renewal Project, Bristol County, Mass. (HUD-R01-EIS-75-06-F).	Generally, EPA's concerns on air and water quality and noise were adequately addressed in the final EIS. However, the final EIS was deficient in two respects: (1) It did not respond to concerns raised by EPA and the Department of The Interior over the fact that the EIS was prepared after the project was well underway: And, (2) That since the final EIS consisted only of comments, responses, new exhibits, and recommendations, it is apparent that changes were not incorporated into the body of the EIS itself.	B
F-HUD-C85009-NY	Rochester South East Loop Urban Renewal Project No. 175, Monroe County, N.Y.	EPA continues to have environmental reservations on the proposed project. The project as proposed has the potential to significantly increase particulate levels, possibly in violation of ambient air quality standards. In addition, EPA suggested further analysis is necessary to assess the impact upon carbon monoxide concentration.	C
F-HUD-E85012-GA	Bedford-Pine Urban Renewal Area, Atlanta, Fulton County, Ga. (HUD-R04-EIS-75-06-F).	Generally, EPA's concerns were adequately addressed in the final EIS. However, EPA reiterated the need for an analysis for the eight-hour carbon monoxide standard.	E
F-HUD-F85006-MN	Edenvale 11th Addition, Eden Prairie, Minn.	Generally, EPA's concerns were adequately addressed in the final EIS.	F
F-HUD-J85007-CO	Harriman Park and Lakehurst West III Planned Developments, Jefferson County, COLO.	Generally, EPA's concerns were adequately addressed in the final EIS. However, EPA requested the cumulative regional impacts on air and water quality be addressed in more detail.	I
NUCLEAR REGULATORY COMMISSION			
F-NRC-F06001-IN	Marble Hill Nuclear Generating Station Units 1 and 2, Public Service Company of Indiana, Inc. et. al., docket nos. STN 50-546, STN 50-547. Jefferson County, IND). (NUREG-0067).	EPA continues to have environmental reservations on the proposed project. The issue of a continuously operating traveling screen and a fish return system has not been resolved. These concerns will be addressed during subsequent review under section 316(b) of the FWPCA. However, at this time, EPA recommended that the intake be designed to accommodate future measures which may be required to reduce mortality resulting from impingement.	F

APPENDIX IV.—*Final environmental impact statements which were reviewed and not commented on between Nov. 1, 1976. and Nov. 30, 1976*

Identifying No.	Title	Source of review
CORPS OF ENGINEERS		
F-COE-A50129-NC	Replacement of Wilkerson Creek Bridge, Hyde County, N.C.	E
F-COE-D36004-VA	Flood protection measures, Richmond, Va.	D
F-COE-E35020-NC	Navigation improvements Morehead City Harbor, Carteret County, N.C.	E
F-COE-G39001-TX	Neches River and Tributaries, Salt Water Barrier, Beaumont, Jefferson, County, Tex.	G
F-COE-H07001-KS	Nearman Creek Steam-Electric Generating Station, Wyandotte County, Kans.	H
FS-COE-L36033-00	Lower Columbia River Bank Protection Project, Wahkiakum, Colwitz, and Clark Counties, Wash. and Oreg.	K
DEPARTMENT OF AGRICULTURE		
F-AFS-J65004-MT	Multiple Use Plan, Ward-Eagle Planning Unit, Lolo National Forest, Mineral County, Mont.	I
F-AFS-L61049-WA	East Deer Creek Planning Unit, Colville National Forest, Wash.	K
F-AFS-L61051-WA	Upper Lewis River Planning Unit, Gifford Pinchot National Forest, Vancouver, Skamania County, Wash.	K
F-AFS-L61071-OR	Cascade Head Scenic Research Area, Management Plan, Lincoln and Tillamook Counties, Oreg. (USDA-FS-FES-ADM-76-06).	K
F-AFS-L61073-00	Land Use Plan, Lamb-Upper West Branch Planning Unit, Kaniksu National Forest, Pend Oreille County, Wash., and Bonner County, Idaho.	K
DEPARTMENT OF COMMERCE		
F-EDA G[illegible]-AR	Carroll-Boone Regional Water Supply System, Carroll and Boone Counties, Ark.	G
DEPARTMENT OF DEFENSE		
FA-UAF-A10046-00	B-1 Aircraft Development and Procurement	A
FA-USN-A10042-CT	Dredge River Channel, Naval Submarine Base, New London, Groton, Conn.	B
DEPARTMENT OF INTERIOR		
F-BOR-L61050-ID	Proposed Bruneau Wild and Scenic River, Idaho (FES-76-57)	K
F-SFW-E61001-NC	Wildlife Enhancement Project, Mattamuskeet National Wildlife Refuge, Hyde County, N.C.	E

Department of Transportation		
F-FAA-L51002-WA	Lopez Island Airport Improvements, Lopez Island, Wash	K
F-FAA-L51004-WA	Development of Richland Airport, Washington	K
F-FHW-A41876-NB	U.S. 6, West Dodge Rd., 114 to 156th St., Omaha, Douglas County, Nebr	H
F-FHW-B40016-NH	U.S. 202 Relocation, Rindge, Cheshire County, N.H. (FHWA-NH-EIS-76-01-F).	B
F-FHW-G40039-NM	U.S. 133, University Ave., Las Cruces, Dona Ana County, N. Mex	G
F-FHW-I140020-IA	U.S. 61, North-South Facility, IA-561, Davenport, Scott County, Iowa	H
F-FHW-I140035-KS	KS-177 and KS-18 at Manhattan, Riley County, Kans	H
F-FHW-I140048-KS	Grove St., Lewis to Elm, Wichita, Sedgwick County, Kans	H
F-FHW-L40019-00	I-205 Lewis and Clark Highway, Clark County, Washington and Portland, Multnomah County, Oreg.	K
F-HUD-G85014-LA	Alsen-St. Irma Lee Sewage Facilities, Baton Rouge Parish, La. (CDBG)	G

APPENDIX V.—*Regulations, legislation and other Federal agency actions for which comments were issued between Nov. 1, 1976, and Nov. 30, 1976*

Identifying No.	Title	General nature of comments	Source for copies of comments
Department of Commerce			
R-BLM-A03066-AK	43 CFR Part 2360, National Petroleum Reserves in Alaska, Surface Management and protection.	EPA noted that the proposed regulations depend on the effective review of individual plans and the nature and careful use of stipulations being developed by USDI. Accordingly, EPA urges wide distribution plans, accompanied by the stipulations to be imposed, among the public and concerned agencies.	A
R-IGS-A01038-00	30 CFR Part 211, coal mining operations, regulations, adoption of requirements of Montana's Reclamation Laws and Requirements.	EPA generally concurred with the proposed rulemaking. However, EPA suggested the USDI strengthen the rule by adding reference to EPA's "Coal Mining Point Source Category Effluent Guidelines and Standards." (FEDERAL REGISTER dated May 13, 1976.)	A
Department of Transportation			
A-DOT-A03065-AK	Notices, Trans-Alaska Pipeline, anticipated petition for waivers.	EPA advised against the granting of waivers of the applicable DOT regulations for the remaining welds in question. However, if it could be shown by an environmental assessment, that due to the sensitivity of the location of a certain weld, it would clearly be more environmentally beneficial to leave the weld intact, EPA would acknowledge the appropriateness of the waiver.	A
A-UMT-A54036-00	Paratransit Services, proposed policy (UMTA Docket No. 76-05).	EPA commented in favor of UMTA's proposed policy statement which will serve to foster the increased use of paratransit. In addition, EPA asked to be afforded the opportunity to comment on the specific implementing guidance developed for the policy.	A
Federal Energy Administration			
A-FEA-A00040-00	International Energy Agency's long-term cooperation program, request for expression of interest and public comments.	EPA expressed its continued interest in the IEA program and offered assistance to FEA as the program is pursued. EPA recommended the development of IEA projects in pollution control techniques for coal cleaning, coal gasification and coal liquefaction technologies.	A
Department of Housing and Urban Development			
R-HUD-A80140-00	24 CFR Part 600, comprehensive planning assistance, review and approval process Docket No. R-76-310.	Based on the review, EPA recommended that air quality planning be included as a part of the comprehensive plan similar to EPA's "208" Water Quality Planning Program. In addition, EPA suggested a change which would maximize mutual consistency between the plans.	A

APPENDIX VI—SOURCE FOR COPIES OF EPA COMMENTS

A. Public Information Reference Unit (PM-213), Environmental Protection Agency, Room 2922, Waterside Mall, SW, Washington, D.C. 20460.
B. Director of Public Affairs, Region 1, Environmental Protection Agency, John F. Kennedy Federal Building, Boston, Massachusetts 02203.
C. Director of Public Affairs, Region 2, Environmental Protection Agency, 26 Federal Plaza, New York 10007.
D. Director of Public Affairs, Region 3, Environmental Protection Agency, Curtis Building, 6th and Walnut Streets, Philadelphia, Pennsylvania 19106.
E. Director of Public Affairs, Region 4, Environmental Protection Agency, 345 Courtland Street NE, Atlanta, Georgia 30308.
F. Director of Public Affairs, Region 5, Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604.
G. Director of Public Affairs, Region 6, Environmental Protection Agency, 1201 Elm Street, Dallas, Texas 75270.
H. Director of Public Affairs, Region 7, Environmental Protection Agency, 1735 Baltimore Street, Kansas City, Missouri 64108.
I. Director of Public Affairs, Region 8, Environmental Protection Agency, 1860 Lincoln Street, Denver, Colorado 80203.
J. Director of Public Affairs, Region 9, Environmental Protection Agency, 100 California Street, San Francisco, California 94111.
K. Director of Public Affairs, Region 10, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101.

[FR Doc. 77-2179 Filed 1-24-77;8:45 am]

FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 21043, File No. 8296-CM-P-72; Docket No. 21044, File No. 9450-CM-P-72]

MOBIL SIGNAL CO., INC. AND MIDWEST CORP.

Applications for Construction Permits in the Multipoint Distribution Service

1. The Commission has before it the above-referenced applications of Mobile Signal Company, Inc. (Mobile Signal) (File No. 8296-CM-P-72), filed on May 22, 1972 and Midwest Corporation (Midwest) (File No. 9450-CM-P-72), filed on June 27, 1972. Both applications propose Channel 1 operation in the Mobile, Alabama area, and thus are mutually exclusive and require comparative consideration. Both applications have been amended as a result of informal requests of the Commission staff for additional information, and no petitions to deny or other objections to any of the applications have been received.

2. Mobile Signal has only the subject application before the Commission, though two of its principals are corporations engaged in "* * * some significant but non-broadcast aspect of the communications business * * *" One, Signal Engineering and Sales, Inc., is in the design and construction of communications equipment. The other, National Telecommunications Associates, Inc., was formed to provide "* * * consulting, design, or implementation * * * relating to telecommunications, including * * * software * * *" and is expected to assist with operations and arrangement of the proposed station. Louis H. Pfau is a principal of Mobile Signal and its parent corporations as well as signatory to MDS applications in several other cities, including Jackson, Mississippi and Columbus, Georgia. Midwest, owned by APS, Inc., has MDS applications pending in twenty cities, including Winston-Salem and Greensboro, North Carolina, and is permittee in Greenville, South Carolina.

3. Upon review of the captioned applications, we find that both applicants are legally, technically, financially, and otherwise qualified to provide the services which they propose, and that a hearing will be required to determine, on a comparative basis, which of these applications should be granted.

4. Accordingly, *it is hereby ordered*, That pursuant to section 309(e) of the Communications Act of 1934, as amended, and § 0.291 of the Commission's rules, the above-captioned applications are designated for hearing, in a consolidated proceeding, at a time and place to be specified in a subsequent order, to determine, on a comparative basis, which of the above-captioned applications should be granted in order to best serve the public interest, convenience, and necessity. In making such a determination, the following factors shall be considered: [1]

(a) The relative merits of each proposal with respect to service area and efficient frequency use;

(b) The nature of the services and facilities proposed, and whether they will satisfy service requirements known to exist or likely to exist in the Mobile, Alabama area;

(c) The anticipated quality and reliability of the service proposed, including selection of equipment, installation, subscriber security, and maintenance;

(d) The charges, regulations and conditions of the service to be rendered, and their relation to the nature, quality and costs of service; and

(e) The managerial and entrepreneurial qualifications of the applicants.

5. *It is further ordered*, That Mobile Signal Company, Inc., Midwest Corporation, and the Chief, Common Carrier Bureau, are made parties to this proceeding.

6. *It is further ordered*, That parties desiring to participate herein shall file their notices of appearance in accordance with the provisions of § 1.221 of the Commission's rules.

Adopted: December 29, 1976.

Released: January 19, 1977.

JOSEPH A. MARINO,
Deputy Chief,
for Chief, Common Carrier Bureau.

[FR Doc.77-2340 Filed 1-24-77;8:45 am]

FEDERAL ENERGY ADMINISTRATION

SUPPLY AND PRICE LEVELS OF MIDDLE DISTILLATE FUELS

Public Hearing and Opportunity for Comment

The Federal Energy Administration ("FEA") hereby gives notice that it will hold public hearings in Minneapolis, Minnesota, and Boston, Massachusetts, and will also receive written comments, with respect to the current price levels for and the adequacy of supplies of middle distillates. FEA has determined to solicit public comment at this time on these matters to provide the Agency with background information as to any supply or pricing problems that may arise this heating season, particularly in the North Central states and New England, so that the FEA may anticipate and take appropriate action should any such problems develop. FEA will use information received in this proceeding to consider whether any regulatory action is required and, if required, what type of modifications to FEA's regulatory programs would be most appropriate, including, for example, the reimposition of controls on a partial or total basis.

On June 15, 1976, FEA issued amendments to the Mandatory Petroleum Allocation and Price Regulations exempting middle distillates from those regulations (41 FR 24516, 41 FR 24518, June 16, 1976). The amendments became effective July 1, 1976, following Congressional review as provided in section 551 of the Energy Policy and Conservation Act ("EPCA"), Pub. L. 94-163. In response to Congressional concerns related to the exemptions, FEA committed that it would take action following the effectiveness of the exemptions both to assure that no unwarranted price increases would occur once controls were removed and to protect marketers' ability to obtain supplies during the transitional period following removal of controls. These commitments resulted in the adoption of a monitoring system for middle distillate prices (41 FR 41155, September 21, 1976) and Special Rule No. 3 for Subpart A of Part 211, establishing a set-aside program for middle distillates (41 FR 33881, August 11, 1976).

FEA is conducting this inquiry to receive data, views and arguments from the public on whether the exemption of middle distillates continues to be consistent with the objectives of the Emergency Petroleum Allocation Act ("EPAA") and whether any further actions may be necessary to implement FEA's commitments to the Congress. In particular, FEA requests comments on whether the extremely cold weather that has occurred this heating season has either resulted in, or has the potential to result in, inequitable prices for consumers or has created, or has the potential to create, supply dislocations or shortages.

Comments should address particularly the situations in the North Central states and New England. For that reason, FEA is holding the public hearing in each of those regions. Information available to FEA indicates that inventories of No. 1 fuel oil have been reduced to levels that have the potential for creating supply disruptions in the North Central states, primarily due to exceptionally high demand and to certain changes in marketing methods.

In addition, FEA has been monitoring the recent price increases in the areas affected by the severe weather, and wishes to learn whether the increases have taken place principally at the retail level or the wholesale or refiner levels. Comments are specifically invited on whether current price levels are justified, taking into account normal seasonal increases and the higher costs of any imports into the particular region.

Finally, FEA requests comments on whether any specific changes are required in its current regulatory programs For example, FEA is interested in receiving views on whether entitlements benefits should be extended to imported middle distillates.

[1] Consideration of these factors shall be made in light of the Commission's discussion in Peabody Telephone Answering Service, et al., 55 F.C.C. 2d 626 (1975).

PUBLIC HEARINGS AND WRITTEN COMMENT PROCEDURES

The public hearings, will be held in Minneapolis, Minnesota, and Boston, Massachusetts, beginning at 9:30 a.m., local time, on Friday, January 28, 1977, to be continued, if necessary, at 9:30 a.m., local time, Saturday, January 29, 1977. The Minneapolis hearing will be held in Courtroom No. 3, Federal Courthouse, 110 South Fourth Street, Minneapolis, Minnesota. The Boston hearing will be held in Room 208 (P.O.C.H.), John W. McCormick Post Office and Courthouse, Post Office Square, Boston, Massachusetts (use Milk Street entrance).

Any person who has an interest in the subject matter of this notice or who is a representative of a group or class of persons that has an interest in the subject matter of this notice may make a written request for an opportunity to make an oral presentation. Persons requesting time to testify at the Minneapolis hearing should direct their request to FEA Region V, 175 South Jackson Street, Room A-333, Chicago, Illinois 60604, Attention: Richard Williams. Persons requesting time to testify at the Boston hearing should direct their requests to FEA Region I, Room 700, 150 Causeway Street, Boston, Massachusetts 02114, Attention: Diane Novick. Requests to testify must be received before 4:30 p.m. local time, Tuesday, January 25, 1977. Requests should be labeled both on the document and on the envelope "Supply and Price Levels of Middle Distillates."

The person making the request should briefly describe the interest concerned; if appropriate, state why he or she is proper representative of a group or class of persons that has such an interest, and give a concise summary of the proposed oral presentation and a phone number where he or she may be contacted through Wednesday, January 26, 1977. Each person selected to be heard will be so notified by the FEA before 4:30 p.m., January 26, 1977 and must, if feasible, submit 100 copies of his or her statement to FEA at the location of the hearing on the day the statement is scheduled to be delivered.

The FEA reserves the right to select the persons to be heard at these hearings, to schedule their respective presentations, and to establish the procedures governing the conduct of the hearings. The length of each presentation may be limited, based on the number of persons requesting to be heard.

An FEA official will be designated to preside at the hearings. These will not be judicial or evidentiary-type hearings. Questions may be asked only by those conducting the hearings, and there will be no cross-examination of persons presenting statements. Any decision made by the FEA with respect to the subject matter of the hearings will be based on all information available to the FEA. At the conclusion of all initial oral statements, each person who has made an oral statement will be given the opportunity, if he or she so desires, to make a rebuttal statement. The rebuttal state-

ments will be given in the order in which the initial statements were made and will be subject to time limitations.

Any person who wishes to ask a question at the hearings may submit the question, in writing, to the presiding officer. The presiding officer, will determine whether the question is relevant, and whether the time limitations permit it to be presented for answer.

Any further procedural rules needed for the proper conduct of the hearings will be announced by the presiding officer.

A transcript of the hearings will be made and the entire record of the hearings, including the transcript, will be retained by the FEA and made available for inspection at the Freedom of Information Office, Room 2107, Federal Building, 1200 Pennsylvania Avenue, NW., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday. Any person may purchase a copy of the transcript from the reporter.

Interested persons are also invited to participate in this rulemaking by submitting data, views or arguments with respect to the proposals set forth in this notice to Executive Communications, Room 3309, Federal Energy Administration, Box KK, Washington, D.C. 20461. Comments should be identified on the documents and on the envelope "Supply and Price Levels of Middle Distillates." Fifteen copies should be submitted. Comments in this proceeding will be considered if received by January 31, 1977.

Any information or data considered by the person furnishing it to be confidential must be so identified and submitted in accordance with the procedures stated in 10 CFR 205.9(f). FEA reserves the right to determine the confidential status of the information or data and to treat it according to its determination.

Issued in Washington, D.C., January 18, 1977.

DAVID G. WILSON,
Acting General Counsel.

[FR Doc.77-2242 Filed 1-19-77;12:27 pm]

FEDERAL MARITIME COMMISSION

CERTIFICATES OF FINANCIAL RESPONSIBILITY (OIL POLLUTON)

Certificates Issued

Notice is hereby given that the following vessel owners and/or operators have established evidence of financial responsibility, with respect to the vessels indicated, as required by section 311 (p) (1) of the Federal Water Pollution Control Act, and have been issued Federal Maritime Commission Certificates of Financial Responsibility (Oil Pollution) pursuant to Part 542 of Title 46 CFR.

Certificate No.	Owner/operator and vessels
01014---	Robert Bornhofen Reederei: *Max Bornhofen.*
01015---	A/S Rederiet Odfjell: *Bow Sun, Bow Clipper.*
01426---	Kuwait Shipping Co. (S.A.K.): *IBN Albeitar, IBN Bassam.*
01502---	Moore-McCormack Lines, Inc.: *Mormacsea, Mormacsaga, Mormactide, Mormacwave.*
02040---	Odra-Swinoujscie: Manta.
02492---	Interstate and Ocean Transport Co.: *Ocean 255, Interstate 29, Interstate 70, Argoil 175, Interstate 35, Interstate 37, Tide 119, Ocean 155, Atlantic 28, York River, Ocean 190, Interstate 71, Ocean States, Elk River, Interstate 72, Ocean 250, Ocean 135, Ocean 115, Ocean 96, Ocean 90, Ocean 80, Interstate No. 52, Interstate No. 53, Interstate No. 50, Interstate 48, Interstate No. 30, Offshore 2401, Argoil 185, Interstate No. 19, Interstate No. 12, Interstate No. 17, Argoil 150, Argoil 160, Argoil 130, Chem Ten, Chesapeake, Interstate No. 8, Argoil 105, R.T.C. No. 51, Interstate 54, Interstate 55, Interstate 36, Interstate 38, Interstate No. 34, Interstate No. 1.*
02501---	Standard Oil Co. of California: *Chevron Colorado.*
02578---	Waxler Towing Co., Inc.: *PO 1202.*
02864---	Empresa Nacional Del Petroleo S.A.: *Montesa, Alcazar.*
02889---	Showa Kaiun K.K.: *Satsuma Maru.*
02956---	Ashland Oil Inc.: *Ellis 1301.*
02976---	Arthur-Smith Corp.: *EBL 76.*
02982---	The Shipping Corporation of India Ltd.: *Mizoram.*
03069---	Alfred C. Toepfer Schiffahrtsges MBH: *Emma Johanna.*
03315---	Afran Transport Co.: *Afran Coast.*
03453---	Kyosei Kisen Kabushiki Kaisha: *Houshun Maru.*
03484---	Sanko Kisen K.K.: *Zenko Maru.*
03506---	Taiheiyo Kaiun K.K.: *Capella.*
03692---	Marmac Corp.: B-11, GT-118.
03708---	Puget Sound Tug & Barge Co.: *Mohawk.*
03864---	Neptune Shipping Co. Ltd.: *Oro Verde.*
04002---	Compagnie Des Messageries Maritimes: *Pascal, Rousseau.*
04046---	A/S Mosbulkers: *Star Mostangen.*
04124---	Gulf Oil Canada Ltd.: *Gulf Gatineau.*
04128---	Skips A/S Westray: *Bruni.*
04226---	National Marine Service Inc.: *N.M.S. No. 1455, N.M.S. No. 1456.*
04410---	Tenneco Oil Co.: *CTCO-302-6, Tenneco 150.*
04433---	Allied Chemical Corp.: *CC 205.*
04437---	Lebeouf Bros. Towing Co. Inc.: *Joyce O.*
04675---	Naviera Santa Catalina S.A.: *Cimadevilla.*
05047---	PPG Industries Inc.: *PPG-220, PPG-225, PPG-222, PPG-223, PPG-221, PPG-224.*
05149---	The Delta Queen Steamboat Co.: *Mississippi Queen.*
05572---	Lafarge Concrete Ltd.: *Maquinna.*
05579---	Black Sea Shipping Co.: *Yasnogorsk, Izgutty Aytykor, Aleksandr Matrosov.*
05581---	Latvian Shipping Co.: *Jacques Duclos.*
05624---	Perusahaan Pertambangan Minyak Dan Gas Bumi Negara: *Permina 3002.*
06248---	Commercial Corporation Sovrybflot: *Tajphun, Cyklon, Uragan, Khersones, Tarkhankut, Apogey, Inkerman, N. Onilova, Kurs, Zhuckovskij, Orlinoc, Pyatigorsk, General Ostryakov, Kandalakshskiy Zaliv, Alma, Ayu-Dag, Koreiz, Miskhor, Balaklava,*
06311---	Kanal Gyogyo Kabushiki Kaisha: *Tomimaru No. 52, Tomimaru No. 53.*
06429---	Ta Cheng Marine Co. Ltd.: *Great Power.*
07183---	Elenmaris Corp.: *Eleni M.*
08196---	Nordtramp I/S: *Nordkap, Nordtramp, Nordpol.*
08222---	Rail & Water Terminal (Quebec) Inc.: *Mont St. Martin.*
08353---	Hellas Schiffahrts - Agentur GmbH: *Hydra Gale.*
08948---	Veb Deutfracht/Seereederei: *F. Freiligrath, G. Weerth.*
09018---	Sigurd Herlofson & Co. A/S: *Oro Chief.*
10260---	Hollywood Marine Inc.: *S-1513.*
10273---	Namyangsa Co. Ltd.: *Cipsa No. 3.*
10434---	Chelsea Navigation Co. Inc.: *Andreina.*
10729---	Dragon Navigation S.A.: *Seiryu.*
10910---	Naviera Peninsular S.A.: *Azuero Dos.*
11095---	Dong-A General Industrial Co. Ltd.: *No. 507 Haeng Bok.*
11198---	Mochimune Gyogyo Kabushiki Kaisha: *Kyoei Maru No. 5, Kyoei Maru No. 7.*
11264---	Bosma's Scheepvaart & Handelbedrijf N.V.: *Okko Bosma.*
11476---	Transportacion Maritima Peninsular S.A.: *Coloradas.*
11526---	Sockabo Transports Inc.: *Parker 102-25, Parker 103-25.*
11609---	Monarch Cruise Lines Inc.: *Monarch Star.*
11632---	General Overseas Shipping Corp. S.A.: *Saint Iwaki.*
11714---	Global Transport Organisation: *250-2, 250-3, 250-5, 250-4, Mary B VI, PAC 160-2, PAC 160-3, 220, Federal 400-7, Genmar 100, Genmar 101, Genmar 102, Genmar 103, Genmar 104, Sol 252, 205,-1.*
11730---	United Overseas Corp.: *United Overseas I.*
11921---	Point Land Fuel Corp.: *James 711.*
11924---	Ocean Liquid Carriers Ltd.: *Chemist Lutetia.*
11935---	Sunluck Maritime Co. Ltd.: *Sunluck.*
11944---	Namyang Shipping Co. Ltd.: *Acacia No. 5, Acacia No. 6.*
11955---	Loadstar Shipping Co. Inc.: *Kiowa.*
11958---	Taurus Shipping Co. N.V.: *Safocean Adelaide, Straat Amsterdam.*
11808---	Egret Marine Co. Ltd.: *Cumberlandia.*
11831---	Partrederiet for M.S. Scol Rover: *Scol Rover.*
11836---	R/A Trajan: *Sir Charles Hambro, Julian, Fabian, Nerva, Aurelian, Kong Haakon VII, Lucian, Sir Winston Churchill.*
11994---	Artemis Carriers Ltd.: *Anwo Venture.*
12006---	Feng Hwa Fishing Co. Ltd.: *Feng Hwa No. 22.*
12009---	Latypa Shipping Co. S.A.: *Pollux.*
12011---	Partenreederei MS Brunsland: *Brunsland.*
12015---	Wistaria Shipping Co. Pte. Ltd.: *Wistaria Pearl.*

Certificate No.	Owner/operator and vessels
12018---	Sunstar Car Carrier S.A.: *Coral Ace.*
12021---	Coron Bulk Carriers Inc.: *Don Salvador III.*
12023---	Kokusai Shipping K.K.: *Sanwo Maru.*
12025---	SPS Management A/S: *Frendo Partnership, Fellowship, Membership.*
12030---	Atlantic Supply A/S: *Atlantic Fosna.*
12036---	Republic Shipping Co. Ltd. Liberia: *Pallas Athene.*
12040---	Stolt Sincerity Inc.: *Stolt Sincerity.*
12044---	International Iranian Trading Co.: *Capetan Michalis.*
12055---	Ever Moral Line S.A.: *Ever Moral.*
12059---	Zapata Ocean Resources Corp.: *Zapata Discoverer, Zapata Pathfinder.*
12060---	Transmar Shipping Corp.: *Sapphire.*
12062---	Poly Shipping Co.: *Polydora.*
12063---	RKS Supertrans: *Hermes Scan.*
12064---	Dietrich Sander Bereederungs GmbH: *Hede.*
12065---	La Islas Navegacion S.A.: *Altemis Island, Iris Island, Artemis Island.*

By the Commission.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.77-2331 Filed 1-24-77;8:45 am]

PACIFIC COAST-EUROPE RATE AGREEMENT

Agreement Filed

Notice is hereby given that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1100 L Street, NW., Room 10126; or may inspect the agreement at the Field Offices located at New York, N.Y., New Orleans, Louisiana, San Francisco, California and San Juan, Puerto Rico. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C., 20573, on or before February 14, 1977. Any person desiring a hearing on the proposed agreement shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the statement should indicate that this has been done.

Notice of Agreement filed by:

David C. Nolan, Esquire, Graham & James, One Maritime Plaza, San Francisco, California 94111.

Agreement No. 10052-2, among the members of the above-named rate agreement, extends the term of the basic agreement through August 28, 1978.

By order of the Federal Maritime Commission.

Dated: January 19, 1977.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.77-2329 Filed 1-24-77;8:45 am]

[Docket No. 77-1; Certificate (performance) No. P-88]

PACIFIC FAR EAST LINE, INC.

Order of Hearing

In accordance with the provisions of 46 CFR 540.8(a), the Federal Maritime Commission on October 1, 1976, served on Pacific Far East Line, Inc. (PFEL) a Notice of Intention to Revoke Certificate (Performance) No. P-88. In that notice the Commission set forth in detail the reasons for its intention: (a) to revoke the waiver heretofore granted to PFEL as to the amount of working capital required for qualification for a Certificate (Performance) as a self-insurer in accordance with 46 CFR 540.5(d); and (b) to revoke Certificate (Performance) No. P-88 covering the SS *Mariposa* and the SS *Monterey*.

Under the authority granted it by section 3 of Pub. L. 89-777, 46 U.S.C. 817e (d), the Commission issued its General Order 20, (46 CFR 540) which provides that in order to qualify for a Certificate (Performance) for Financial Responsibility, an applicant must maintain financial responsibility coverage for performance in an amount not less than 110 percent of the greatest amount of unearned passenger revenue held by the applicant on any date during the immediately preceding two fiscal years (46 CFR 540.5). Evidence of adequate coverage may be established by one or a combination of methods: insurance, guaranties, escrow accounts, or by qualifying as a self-insurer. In order to qualify for a Certificate (Performance) as a self-insurer, an applicant must demonstrate, among other things, that it has working capital in an amount not less than 110% of the greatest amount of unearned passenger revenue held by it on any date during the immediately preceding two fiscal years, and that it has had continued and stable passenger operations over an extended period of time (46 CFR 540.5(d)). The regulations of the Commission do permit the Commission, for good cause shown, to waive the requirement as to the amount of working capital (46 CFR 540.5(d)).

If an applicant does not establish adequate evidence of financial responsibility by the methods of insurance, guaranties, escrow accounts and/or self-insurance, the regulations of the Commission require the applicant to obtain a surety bond in the required amount of coverage before it may receive a Certificate (Performance) and arrange, offer, advertise or provide passage on its vessels (46 CFR 540.1 and 540.6).

PFEL has at no time qualified for its Certificate (Performance) No. P-88 by the methods of insurance, guaranties, or escrow accounts. It has, however, since November 6, 1970, qualified for its Certificate (Performance) as a self-insurer. Because its working capital had dropped below the required amount, on January 31, 1972, PFEL was granted a waiver of the working capital requirement for self-insurance status. The Commission at that time found the requisite good cause for the waiver in representations made by PFEL that the reduction in its working capital was only temporary in nature.

When it became apparent to the Commission that PFEL's working capital in late 1973 and early 1974 had drastically deteriorated to a deficit in excess of $10,000,000, the Commission explored with PFEL various possible methods of increasing its evidence of financial responsibility in order to avoid, if possible, revocation of the waiver of working capital requirement and/or the Certificate (Performance). In November of 1974, PFEL committed itself to obtain a surety bond in the amount of $300,000 and to increase the amount of that bond by $100,000 per month each month thereafter. Based upon this commitment, and the resulting monthly increase in protection thus made available for the benefit of passengers, the Commission took no action at that time to revoke the waiver of working capital requirement or the Certificate (Performance).

However, circumstances at the present time are substantially different from those which obtained in 1972 and 1974. The alleged temporary reasons given by PFEL for its decline in working capital have long since ended, and PFEL has had a four-year history of financial instability. Furthermore, in March of 1976 PFEL unilaterally and without the consent of the Commission, decided not to further increase the face amount of the bond which had reached a level of $1,900,000. PFEL has since that time declined to further increase the face amount of the bond.

Without a waiver of the working capital requirement it does not appear that PFEL meets the working capital requirement of self-insurer status. 110% of PFEL's highest unearned passenger revenue within its immediately preceding two fiscal years (calendar years 1974 and 1975) is $5,051,539. The working capital of PFEL as of July 2, 1976, according to a company-prepared unaudited, uncertified balance sheet, was $1,849,028. This working capital of PFEL is $3,202,511 less than, and only 35.6% of, that required by the regulation of the Commission. The last audited, certified financial statement of PFEL as of December 31, 1975, shows that the working capital of PFEL was $747,782, an amount $4,303,757 less than,

and only 14.8% of, that required by Commission regulations. Thus, PFEL has apparently not met the working capital requirement for self-insurer status, whether its financial state is measured by either the unaudited, uncertified balance sheet of July 2, 1976 or by the audited, certified statement of December 31, 1975.

Furthermore, the history of PFEL's financial operating results and working capital situation for the years 1972 through 1975 and July 2, 1976, demonstrates drastic fluctuations and indicates that PFEL has apparently not met the requirement for continued and stable passenger operations over an extended period of time.

Based upon the evidence subsequent to January 31, 1972, including the unilateral decision by PFEL not to increase the bond beyond $1,900,000, it now appears that good cause no longer exists for continued waiver of the working capital requirement for PFEL.

In response to the Commission's Notice of Intention to Revoke, PFEL, on October 19, 1976, filed a Request for Hearing and Statement of Position. In accordance with the provisions of 46 CFR 540.8(a), that filing requested a hearing to show, with respect to any intended revocation, suspension, or modification of Certificate (Performance) No. P-88, that the evidence of financial responsibility filed by PFEL with the FMC does meet the requirements of 46 U.S.C. 817e and the provisions of Subpart A of 46 CFR 540.

Now, therefore, it is ordered, Pursuant to 46 CFR 540.8(a), that a hearing is hereby ordered to determine: (a) whether good cause exists for the continued waiver of PFEL's working capital requirement; and (b) whether PFEL's Certificate (Performance) No. P-88 should be revoked for failure to comply with the financial responsibility requirements of 46 U.S.C. 817e and 46 CFR Part 540, Subpart A. Such hearing shall afford PFEL the requested opportunity to demonstrate that good cause exists for the continued waiver of PFEL's working capital requirement and/or that the evidence of its financial responsibility filed with the Commission does meet the requirements of 46 U.S.C. 817e and 46 CFR Part 540, Subpart A, and that PFEL does therefore qualify to retain its existing Certificate (Performance) No. P-88.

It is further ordered, That this proceeding be assigned for public hearing before an Administrative Law Judge of the Commission's Office of Administrative Law Judges and that the hearing be held at a date and place to be determined by the Presiding Administrative Law Judge, but in any event, the hearing shall commence no later than March 28, 1977.

It is further ordered, That PFEL is hereby made a respondent in this proceeding pursuant to Rule 3(a) of the Commission's rules of practice and procedure (46 CFR 502.41).

It is further ordered, That notice of this order be published in the FEDERAL REGISTER and that a copy thereof and notice of hearing be served on respondent.

It is further ordered, That any persons other than respondent who desire to become a party to this proceeding and to participate therein, shall file a petition to intervene in accordance with Rule 5(1) of the Commission's rules of practice and procedure (46 CFR 502.72).

It is further ordered, That all further notices issued by or on behalf of the Commission in this proceeding, including notice and time and place of hearing or prehearing conference shall be mailed directly to all parties of record.

By the Commission.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.77-2330 Filed 1-24-77;8:45 am]

PUERTO RICO PORTS AUTHORITY AND UNIVERSAL SHIPPING, INC.

Agreement Filed

Notice is hereby given that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1100 L Street, N.W., Room 10126; or may inspect the agreement at the Field Offices located at New York, N.Y., New Orleans, Louisiana, San Francisco, California, and Old San Juan, Puerto Rico. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, on or before February 14, 1977. Any person desiring a hearing on the proposed agreement shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the statement should indicate that this has been done.

Notice of Agreement filed by:

Mr. Jose Ysern de la Cruz, Executive Assistant to the Executive Director, Puerto Rico Ports Authority, Commonwealth of Puerto Rico, G.P.O. Box 2829, San Juan, Puerto Rico 00936.

Agreement No. T-3231-1, between the Puerto Rico Ports Authority (Port) and Universal Shipping, Inc. (Universal), modifies the parties' basic agreement providing for Universal's two-year preferential use of certain marine facilities at Isla Grande Pier, San Juan, Puerto Rico, for the docking, mooring, loading and discharge of vessels and the handling and temporary storage of outbound cargo, as well as the exclusive use of 160 square feet of office space. The purpose of the modification is to extend the term of the agreement for an additional two-year period.

By order of the Federal Maritime Commission.

Dated: January 19, 1977.

FRANCES C. HURNEY,
Secretary.

[FR Doc.77-2328 Filed 1-24-77;8:45 am]

WEST COAST UNITED STATES & CANADA/INDIA PAKISTAN, CEYLON AND BURMA RATE AGREEMENT

Agreement Filed

Notice is hereby given that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1100 L Street, NW., Room 10126; or may inspect the agreement at the Field Offices located at New York, N.Y., New Orleans, Louisiana, San Francisco, California and San Juan, Puerto Rico. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C., 20573, on or before February 14, 1977. Any person desiring a hearing on the proposed agreement shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the statement should indicate that this has been done.

Notice of Agreement filed by:

H. P. Blok, Secretary, West Coast United States & Canada/India, Pakistan, Ceylon and Burma Rate Agreement, 417 Montgomery Street, San Francisco, California 94104.

Agreement No. 8760-8 entered into by the member lines of the West Coast United States & Canada/India, Pakistan, Ceylon and Burma Rate Agreement, would amend the "WITNESSETH" article to include Hawaii and Alaska in the scope of the agreement trade area.

By order of the Federal Maritime Commission.

Dated: January 19, 1977.

FRANCES C. HURNEY,
Secretary.

[FR Doc.77-2327 Filed 1-24-77;8:45 am]

FEDERAL POWER COMMISSION

[Docket No. G-7115, et al.]

COASTAL STATES GAS PRODUCING CO., ET AL.

Notice of Applications for Certificates, Abandonment of Service and Petitions To Amend Certificates[1]

JANUARY 7, 1977.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to Section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before February 7, 1977, file with the Federal Power Commission, Washington, D.C. 20462, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure a hearing will be held without further notice before the Commission on all applications in which no petition to intervene is filed within the time required herein if the Commission on its own review of the matter believes that a grant of the certificates or the authorization for the proposed abandonment is required by the public convenience and necessity. Where a petition for leave to intervene is timely filed, or where the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft³	Pressure base
G-7115..... B 9-13-76	Coastal States Gas Producing Co., 5 Greenway Plara East, Houston, Tex. 77046.	Tennessee Gas Pipeline Co., Cologne area, Victoria County, Tex.	(2)	.....
G-8818..... D 12-20-76	The California Co., a division of Chevron Oil Co., 1111 Tulane Ave., New Orleans, La. 70112.	Tennessee Gas Pipeline Co., Charenton and Gillis-English Bayou Fields, St. Mary, St. Martin, and Calcasieu Parishes, La.	(3)	(3)
G-8832..... B 9-13-76	Coastal States Gas Producing Co., 5 Greenway Plara East, Houston, Tex. 77046.	Trunkline Gas Co., Alfred and Presenos Fields, Jim Wells County, Tex.	(4)	.....
G-10012..... G-16094 G-16938 G-18746 B 9-13-76	do.....	Trunkline Gas Co., Hidalgo Field area, Hidalgo County, Tex.	(4)	.....
G-14306..... B 9-30-76	do.....	Natural Gas Pipeline Co., Moos, Neely, Tiger Minerals, West Adami, Maguellitos, Harry, and Charamousca Fields, Duval, Webb, and La Salle Counties, Tex.	(4)	.....
C174-147..... C 12-23-76	Gulf Oil Corp., P.O. Box 2100, Houston, Tex. 77001.	El Paso Natural Gas Co., devonian formation gas-well gas, Lea County, N. Mex.	[5][6][7] 59.2660¢	14.65
C175-742..... C 12-22-76	Marathon Oil Co., 539 South Main St., Findlay, Ohio 45840.	Colorado Interstate Gas Co., Wamsutter area (Tierney Well No. 2), Sweetwater County, Wyo.	[5][6][7] 59.6757¢	.....
C176-341..... B 12-27-76	Ladd Petroleum Corp., 830 Denver Club Bldg., Cenver, Colo. 80202.	Northwest Pipeline Corp., Blanco Pictured Cliffs Field, San Juan County, N. Mex.	(8)	.....
C177-138..... A 12-28-76	Pan Eastern Exploration Co.,[9] P.O. Box 1642, Houston, Tex. 77001.	Panhandle Eastern Pipe Line Co., Beaver County, Okla.	[5][10] 166.1614¢	.....
C177-162..... (C161-1521) F 12-14-76	Cabot Corp. (SW) (successor to Apexco, Inc.), P.O. Box 1101, Pampa, Tex. 79065.	Transwestern Pipeline Co., Barby Ranch No. 1-41 unit well, sec. 8, township 2 north, range 27 ECM, Beaver County, Okla.	[11][12][13] 35.3343¢	.....
C177-165..... A 12-23-76	Highland Resources, Inc., 800 San Jacinto Bldg., Houston, Tex. 77002.	Michigan Wisconsin Pipe Line Co., Eugene Island, offshore Louisiana, block 296.	[5][10] $143.0	14.73
C177-166..... (G-4787) B 12-20-76	Caroline Hunt Sands, 1401 Elm, Dallas, Tex. 75202.	Tennessee Gas Transmission Co., West El Campo, Wharton County, Tex.	(15)	(15)
C177-167..... B 12-16-76	Exxon Corp., P.O. Box 2180, Houston, Tex. 77001.	Skelly Oil Co., Cooper Jal Field, Lea County, N. Mex.	(16)	(16)
C177-168..... A 12-17-76	Ladd Petroleum Corp., 830 Denver Club Bldg., Denver, Colo. 80202.	Colorado Interstate Gas Co., Wild Rose Field, Washakie Basin Sweetwater County, Wyo.	[17][10]	14.65
C177-169..... A 12-17-76	Transwestern Gas Supply Co.,[9] P.O. Box 2521, Houston, Tex. 77001.	Transwestern Pipeline Co., Nash Draw (Atoka) Field, Eddy County, N. Mex.	[5][7][10] 157.7782¢	14.65
C177-170..... A 12-17-76	do.....	Transwestern Pipeline Co., Apollo Field, Winkler County, Tex.	[5][7][20] 154.8302¢	14.65
C177-171..... A 12-17-76	do.....	Transwestern Pipeline Co., St. Clair Field, Roberts County, Tex.	[5][7][10] 154.8302¢	14.65
C177-172..... A 12-20-76	Gas Producing Enterprises, Inc.,[9] P.O. Box 1087, Colorado Springs, Colo. 80944.	Colorado Interstate Gas Co., Hugoton area, Kearny County, Kans.	[5] $1.44	14.73
C177-173..... A 12-20-76	CIG Exploration, Inc.,[9] P.O. Box 1087, Colorado Springs, Colo. 80944.	Colorado Interstate Gas Co., Hugoton area, Kearny and Finney Counties, Kans.	[5] $1.44	14.73
C177-174..... (G-7532) B 12-20-76	Amoco Production Co., 500 Jefferson Bldg., P.O. Box 3092, Houston, Tex. 77001.	El Paso Natural Gas Co., Eumont, et al. fields, Lea County, N. Mex.	(18)	(18)
C177-175..... A 12-22-76	Sohio Petroleum Co., 50 Penn Pl., Suite 1100, Oklahoma City, Okla. 73118.	El Paso Natural Gas Co., Drinkard Field, Lea County, N. Mex.	[21] 155.4119¢ [22] 158.1481¢	14.73
C177-176..... A 12-22-76	American Petrofina Co. of Texas, P.O. Box 2159, Dallas, Tex. 75221.	Texas Gas Transmission Corp., Claiborne and Lincoln Parishes, La.	[5][6] $1.51	14.73
C177-177..... (G-7532) B 12-27-76	Amoco Production Co., P.O. Box 3092, Houston, Tex. 77001.	El Paso Natural Gas Co., Ellnebry Gas Field, Lea County, N. Mex.	(18)	(18)
C177-178..... B 12-27-76	do.....	Skelly Oil Co., Drinkard Field, Lea County, N. Mex.	(18)	(18)
C177-179..... (G-11080) B 12-16-76	Terra Resources, Inc., P.O. Box 2329, Tulsa, Okla. 74101.	Tennessee Gas Pipeline Co., Hagist Ranch Field, Duval County, Tex.	(23)	(23)
C177-180..... (G-11265) B 12-22-76	Getty Oil Co., P.O. Box 1404, Houston, Tex. 77001.	Michigan Wisconsin Pipe Line Co., Holly Beach, Cameron Parish, La.	(15)	(15)
C177-181..... (C171-300) B 12-27-76	Diamond Shamrock Corp., P.O. Box 631, Amarillo, Tex. 79173.	Kansas-Nebraska Natural Gas Co., Inc., Shoshoni unit, Fremont County, Wyo.	(24)	(24)
C177-182..... (G-18162) B 12-27-76	do.....	Colorado Interstate Gas Co., Keyes Field, Cimarron County, Okla.	(25)	(24)

Filing code: A—Initial service.
B—Abandonment.
C—Amendment to add acreage.
D—Amendment to delete acreage.
E—Succession.
F—Partial succession.

See footnotes at end of table.

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft³	Pressure base
CI77-183..... (G-18162) B 12-27-76	...do.....	...do.....	(2a)	(2a)
CI77-184..... C 12-28-76	Pan Eastern Exploration Co.,[4] P.O. Box 1642, Houston, Tex. 77001.	Panhandle Eastern Pipe Line Co., Hemphill County, Tex.	[3] 154.830¢	14.65

[1] Applicant is filing to reflect cessation of gas purchases from various producers.
[2] Leases terminated.
[3] Includes 52.7123¢ base price, plus 4.2743¢ production taxes (7.5005 pct), and 2.2795¢ Btu adjustment.
[4] Applicant is willing to accept a permanent certificate in accordance with opinion No. 770, as amended.
[5] Subject to upward and downward Btu adjustment.
[6] Includes 100-pct reimbursement of taxes.
[7] Applicant is willing to collect the national rate in accordance with opinion No. 770, as amended.
[8] Applicant and purchaser have been unable to connect the Horton No. 6 well (covered by base contract) to purchaser's facilities, and have executed an agreement deleting the 160 acres associated with such well from the contract.
[9] Applicant and purchaser are affiliated.
[10] Plus 0.2946¢ escalation per quarter.
[11] Includes 29.340¢ base rate, plus 2.2685¢ tax reimbursement, plus 3.7838¢ Btu based on 1120.
[12] Subject to downward Btu adjustment.
[13] Applicant proposes to continue service of predecessor Assignor, Apexco, Inc., as to assigned interest of 9.375 pct share of gas produced.
[14] Plus 1¢ escalation per quarter.
[15] Wells plugged and abandoned.
[16] Wells reclassified.
[17] For 4 wells, 19151.69¢; for 1 well, 124.7498¢ at 14.73 lb/in²a.
[18] Subject to upward and downward Btu adjustment; for 4 wells 31.9708¢, for 1 well, 20.7516¢ at 14.73 lb/in²a.
[19] Includes 143.2179¢ base price plus 11.5603¢ taxes.
[20] Includes 143.2179¢ base price plus taxes of 11.6123¢.
[21] Opinion No. 770 rate for gas sales from the Elliott B-12-1 Well No. 2 at 14.73 lb/in²a, adjusted for 1¢ escalations effective Oct. 1, 1976, and Jan. 1, 1977, and is also inclusive of tax reimbursement and a 1.5 ¢/1,000 ft³ gathering allowance.
[22] Opinion No. 699-H rate at 14.73 ¢/1,000 ft³ for gas sales from the W. Gray No. 8 effective Jan. 1 1977 adjusted for tax reimbursement and inclusive of a 1.5 ¢/1,000 ft³ gathering allowance.
[23] Well plugged.
[24] Depleted.

[FR Doc.77-2042 Filed 1-24-77;8:45 am]

[Docket Nos. RP75-1, RP75-53 and RP76-24]

FLORIDA GAS TRANSMISSION CORP.

Order Approving Settlement Agreement

JANUARY 13, 1977.

Certification of a proposed Stipulation and Agreement in Docket No. RP76-24 was made on September 14, 1976, by Presiding Administrative Law Judge Samuel Gordon. This Agreement resolves not only all issues in that docket, but also the reserved issue of rate of return for common equity in Docket Nos. RP75-1 and RP75-53.[1] For the reasons stated herein, the Commission shall approve the Settlement Agreement.

The proposed Settlement Agreement provides that the reserved issue of return on equity in Docket Nos. RP75-1 and RP75-53 will be resolved by providing a return of 13.00% on equity in these two dockets. Resolution of this issue will terminate the proceedings in these dockets. On the basis of this settlement, Florida Gas Transmission Company (Florida Gas) agrees to refund to its Rate Schedule G customers the resulting $557,375 in excess revenues it collected during the locked-in periods covered by Docket Nos. RP75-1 and RP75-53. This refund shall be made with simple interest at a 9% rate per annum.

The proposed Settlement Agreement resolves the return issue in Docket No. RP76-24 by allowing a return on equity of 13.00% with an overall return of 9.83%. In addition, it provides for the refund of excess revenues in the instant docket of $773,629 based upon stipulated test period costs. This reduction provides also a basis for calculation of rate reductions for transportation service rate schedules. Finally, the settlement provides for contingent additional refunds for sales in excess of test period volume of 80,936,300 MMBtu for the period April 15, 1976, through April 14, 1977. Refunds will be calculated by multiplying the excess sales for each rate schedule by the established unit fixed costs for each rate schedule. Refunds of all amounts under the proposed Agreement will be made with simple interest at the rate of 9% per annum.

Aside from these refund provisions, the proposed Agreement provides for the filing of refund reports; reaffirms Florida Gas's obligation to flow through the jurisdictional portion of supplier refunds; provides for an increase in the basic transmission plant depreciation rate to 5.5% with the understanding that approval of the Agreement would indicate approval of this depreciation rate under Section 9 of the Natural Gas Act; and refers to the understanding of all parties that Florida Gas is conforming to the requirements of Section 167(e) of the Internal Revenue Code relating to the normalization method of accounting. The Agreement contains a provision that it requires approval in total and that should approval of the total Agreement be given, Docket Nos. RP75-1, RP75-53 and RP76-24 shall be considered terminated.

Attached as Appendix A hereto is the settlement cost of service for these dockets. The Commission's review of the proposed Agreement and settlement cost of service indicates that it provides a just and reasonable resolution of the contested issues in the dockets covered by the Agreement. Accordingly, the Commission believes that the proposed Agreement should be approved and that these dockets should be terminated, except for the refund obligations.

The Commission orders: (A) The proposed Stipulation and Agreement certified on September 14, 1976, in the referenced dockets is hereby approved. The Agreement is hereby incorporated by reference to this order.

(B) Florida Gas shall file within thirty days of the issuance of this order revised tariff sheets, to be effective April 15, 1976, in accordance with Article IV of the Agreement, to reflect the reduced rates resulting from approval of this Agreement.

(C) Florida Gas shall file a report of refunds within thirty days of the issuance of this order showing refunds required by the Agreement together with interest calculated at the rate of 9% per annum.

(D) This order is without prejudice to any findings or orders which have been made or which may hereafter be made by the Commission, and is without prejudice to any claims or contentions which may be made by the Commission, its Staff or any party or person affected by this order in any proceeding now pending or hereafter instituted by or against Florida Gas or any person or party.

(E) The Secretary shall cause prompt publication of this order to be made in the FEDERAL REGISTER.

By the Commission.

KENNETH F. PLUMB,
Secretary.

Florida Gas Transmission Co.—Cost of service for docket No. RP75-1

Line No.	Description (1)	Amount (2)
	A. Total cost of service—12 mo ended June 30, 1975: [1]	
1	Gas supply expenses	$34,385,296
2	Transmission expenses	8,732,843
3	Sales expenses	233,785
4	Administrative and general expenses	4,912,562
5	Total, operating expenses	48,264,486
6	Depreciation and amortization expenses	13,419,27
	Taxes:	
7	Federal income	10,879,493
8	State income	1,145,611
9	Other than income	2,855,783
10	Return on rate base	22,638,410
11	Other gas revenue, credit	(1,024,070)
12	Total, cost of service	98,178,988
13	B. Jurisdictional portion of total cost of service	78,442,961
14	C. Jurisdictional portion applicable to locked-in period of Jan. 1, 1975, through July 9, 1975	41,970,449

[1] Total cost of service from stipulation and agreement in docket No. RP75-1, dated Oct. 23, 1975, app. A; with return, Federal and State income taxes adjusted to reflect settlement rate of return.

[1] A settlement agreement in Docket No. RP75-1 was approved by Commission order issued February 9, 1976; an agreement in Docket No. RP75-53 was approved by order issued June 7, 1976. In each case, return on common equity was reserved for hearing.

Florida Gas Transmission Co.—Cost of service for docket No. RP75-53

Line No.	Description (1)	Amount (2)
	A. Total cost of service—9 mo Ended Mar. 31, 1976: [1]	
1	Gas supply expenses	$19,402,072
2	Transmission expenses	6,538,766
3	Sales expenses	178,400
4	Administrative and general expenses	4,081,947
5	Total, operating expenses	30,501,185
6	Depreciation and amortization expenses	12,943,475
	Taxes:	
7	Federal income	8,300,898
8	State income	874,085
9	Other than income	2,241,072
10	Return on rate base	16,336,432
11	Other gas revenues, credit	(911,986)
12	Total, cost of service	70,285,161
	B. Jurisdictional portion of total cost of service	63,172,130

[1] Total cost of service from cost of service report dated June 14, 1976, filed pursuant to stipulation and agreement dated Feb. 24, 1976 (art. II and app. A), with return, Federal and State income taxes adjusted to reflect settlement of rate of return.

Florida Gas Transmission Co.—Jurisdictional billing determinants and Revenues related to costs of service

Line No.	Description	1,000,000 Btu volumes	Rates (cents per 1,000,000 Btu)	Revenue
	A. Docket No. RP75-1 locked-in period of Jan. 1, 1975, through July 9, 1975:			
1	Rate schedule G [1]	16,290,744	70.38	$11,315,542
2	Rate schedule I	24,139,382	56.48	13,633,923
3	Total, sales for resale	40,430,126		24,949,465
4	Rate schedule T-1	8,942,853	24.53	2,193,682
5	Rate schedule T-2	17,100,000	32.41	5,542,100
6	Rate schedule T-3	38,000,000	26.64	10,123,200
7	Total, transportation	64,042,853		17,858,982
8	Total, jurisdictional	104,472,979		42,808,447
	B. Docket No. RP75-53 9-mo period of July 1, 1975, through Mar. 31, 1976: [3]			
9	Rate schedule G [1]	27,020,535	73.33	19,611,962
10	Rate schedule I	24,120,028	57.92	13,970,320
11	Total, sales for resale	51,140,563		33,582,292
12	Rate schedule T-1	13,750,000	27.72	3,811,500
13	Rate schedule T-2	24,750,000	36.31	8,986,725
14	Rate schedule T-3	55,000,000	30.02	16,511,000
15	Total, transportation	93,500,000		29,309,225
16	Total, jurisdictional	144,640,563		62,891,507
17	C. Total jurisdictional revenues for docket Nos. RP75-1 and RP75-53.			105,699,954

[1] Rate schedule G revenues at base rate: Less air-conditioning discount (999,228,000,000 Btu at 15¢). Total $149,884.
[2] See cost of service report, schedule 15, p. 1.
[3] Rate schedule G revenues at base rate: Less air-conditioning discount (1,347,947,000,000 Btu at 15¢). Total $202,196.

[FR Doc.77-1983 Filed 1-24-77;8:45 am]

[Docket No. CI77-199]

GULF OIL CORP.

Notice of Application for Abandonment Authorization [1]

JANUARY 12, 1977.

Take Notice that the Applicant listed herein has filed an application or petition pursuant to Section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than 15 days for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said application should on or before January 24, 1977, file with the Federal Power Commission, Wash-

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

ington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time herein, if the Commission on its own review of the matter finds that an abandonment is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on this application if no petition to hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft³	Pressure base
CI77-199..... (CI66-1055) B 12-30-76	Gulf Oil Corp., P.O. Box 3725, Houston, Tex. 77001.	Texas Eastern Transmission Corp., Bethany-Longstreet Field, DeSoto Parish, La.	(1)	.....

[1] Gulf to terminate deliveries to Texas Eastern under American Petrofina rate schedule No. 88 and to commence deliveries of this supply of gas to Texas Eastern under Gulf's rate schedule No. 278.

Filing code: A—Initial service.
B—Abandonment.
C—Amendment to add acreage.
D—Amendment to delete acreage.
E—Succession.
F—Partial succession.

[FR Doc.77-2040 Filed 1-24-77;8:45 am]

[Docket No. CS77-181, et al.]

J. L. TRITTIPO, INC., ET AL.

Applications for "Small Producer" Certificates [1]

JANUARY 12, 1977.

Take notice that each of the Applicants listed herein has filed an application pursuant to Section 7(c) of the Natural Gas Act and Section 157.40 of the Regulations thereunder for a "small producer" certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before February 7, 1977, file with the Federal Power Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on all applications in which no petition to intervene is filed within the time required herein if the Commission on its own review of the matter believes that a grant of the certificates is required by the public convenience and necessity. Where a petition for leave to intervene is timely filed, or where the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No.	Date filed	Applicant
CS77-181..	Dec. 15, 1976	J. L. Trittipo, Inc., 600 Commerce Sq. Charleston, W. Va. 25301.
CS77-182..	do.....	The Stone Oil Corp., 1976 Venture-A, 3100 Fountain Sq. Plaza, Cincinnati, Ohio 45202.
CS77-183.....	do.....	Estate of Jarvis Hunt, deceased, 2447 Santa Clara Ave., Alameda, Calif. 94501.
CS77-184.....	do.....	Charlie Gill, Jr., 6375 River Overlook Dr., N.W., Atlanta, Ga. 30328.
CS77-185.....	do.....	Trepel Petroleum Exploration and Development Corp., 505 Forman Dr., Birmingham, Mich. 84010.
CS77-186.....	do.....	John A. Morgan, 222 N. Michigan Ave., Chicago, Ill. 60601.
CS77-245..	Dec. 28, 1976	Mark Two Ltd., Suite 600, 240 Capitol St., Charleston, W. Va. 25301.
CS77-253..	Dec. 30, 1976	Headco Production Co., 1601 First National Center, Oklahoma City, Okla. 73102.
CS77-254..	Dec. 29, 1976	Edinger Inc., 510 Hightower Bldg., Oklahoma City, Okla. 73102.
CS77-255.....	do.....	Richard R. Steiner and Robert L. Steiner, Steiner Corp., P.O. Box 2317, Salt Lake City, Utah 84110.
CS77-256..	Dec. 30, 1976	Erle P. Halliburton, Jr., 4570 Campus Dr., Suite 6, New Port Beach, Calif. 92660.
CS77-257.....	do.....	Johnny Mitchell, 4025 One Shell Plaza, Houston, Tex. 77002.
CS77-258.....	do.....	David J. Halliburton, 1730 West Olympic Blvd., Suite 406, Los Angeles, Calif. 90015.
CS77-259.....	do.....	Madge W. Lisle, 6412 Hillcrest, Oklahoma City, Okla. 73116.
CS77-260.....	do.....	Third Buttner Trust, Edgar L. Buttner, trustee, 534—20th St., Oakland, Calif.
CS77-261.....	do.....	Third Buttner Trust, Edgar L. Buttner, trustee, 534—20th Street, Oakland, Calif. 94612.
CS77-262.....	do.....	Ergon, Inc., 1220 North 18th St., Suite 210, Monroe, La. 71201.
CS77-263.....	do.....	Theo. N. and Caroline W. Law, Vinson & Elkins, 2100 First City National Bank Bldg., Houston, Tex. 77002.
CS77-264..	Jan. 3, 1977.	Elizabeth Merrick Cox, 425 1st Southwest, Admore, Okla. 73401.
CS77-265.....	do.....	The Northern Trust Co. as Trustee under the Patricia C. Isett, trust, dated Dec. 8, 1972, The Northern Trust Co., 50 South La Salle St., Chicago, Ill. 60675.
CS77-266.....	do.....	National Boulevard Bank of Chicago and Jeanne McKenna Zaccheo, Cotrustees of P. M. Corbett Trust, National Boulevard Bank of Chicago, 400 North Michigan Ave., Chicago, Ill. 60611.
CS77-267.....	do.....	Duncan Corp., 602 Parker Bldg.—S. E. 3d, Tulsa, Okla. 74103.
CS77-268.....	do.....	Edison Dick, 69 West Washington St., Chicago, Ill. 60602.
CS77-269.....	do.....	William C. McKinney, 3360 Old Marietta Rd., Austell, Ga. 30001.
CS77-270.....	do.....	Pickrell Drilling Co., 1400 Vickers—K.S.B. & T. Bldg., Wichita, Kans. 67202.
CS77-271.....	do.....	Dale M. Robinson d/b/a Robinson Oil Co., 1400 Vickers—K.S.B. & T. Bldg., Wichita, Kans. 67202.

[FR Doc.77-2044 Filed 1-24-77;8:45 am]

[Docket Nos. CS77-187, et al.]

STEWART GREEN OIL & GAS, INC., ET AL.

Applications for "Small Producer" Certificates [1]

JANUARY 6, 1977.

Take notice that each of the Applicants listed herein has filed an application pursuant to Section 7(c) of the Natural Gas Act and Section 157.40 of the Regulations thereunder for a "small producer" certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce, all as more fully set forth in the application which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before February 3, 1977, file with the Federal Power Commission, Washington D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will held without further notice before the Commission on all applications in which no petition to intervene is filed within the time required herein if the Commission on its own review of the matter believes that a grant of the certificates is required by the public convenience and necessity. Where a petition for leave to intervene is timely filed, or where the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No.	Date filed	Applicant
CS77-187..	Dec. 15, 1976	Stewart Green Oil & Gas, Inc., 2914 330 5 Avenue, SW., Calgary, Alberta, Canada.
CS77-188.....	do.....	Helen M. Hilseweck, 3709 Colgate, Dallas, Tex. 75225.
CS77-189..	Dec. 16, 1976	Edwin L. Cox, 1300 First National Bank Bldg., Dallas, Tex. 75202.
CS77-190..	Dec. 15, 1976	Jackson Enterprises, 66 S. Kanawha St., Buckhannon, W. Va. 26201.
CS77-191.....	do.....	Bogart Coal & Gas, Route 2, Box 449-35, Buckhannon, W. Va. 26201.
CS77-192..	Dec. 13, 1976	Estate of Marion Lynn Russell, Eminence Star Rt., Garden City, Kans. 67846.
CS77-193..	Dec. 17, 1976	McFadden Oil Corp., 9219 Katy Freeway, Suite 202, Houston, Tex. 77024.
CS77-194.....	do.....	Peter R. Maupin, Petroleum Center No. D-102, 900 Northeast Loop 410, San Antonio, Tex. 78209.
CS77-232..	Dec. 21, 1976	Dorsey Woodruff, R.R. 1 Box 100, Canonsburg, Pa. 15317.
CS77-233..	Dec. 22, 1976	RO-JO Industries, Inc., 3545 Northwest 58th St., Suite 310, Oklahoma City, Okla. 73112.
CS77-234..	Dec. 23, 1976	Kenneth L. Hewitt, 1260 West Wesley Rd., N.W, Atlanta, Ga. 30327.
CS77-235.....	do.....	William W. Hulsey, P.O. Box 25188, Oklahoma City, Okla. 73125.
CS77-236.....	do.....	Edna Cohan, 1985 South Ocean Dr., Hallendale, Fla. 33009.
CS77-237..	Dec. 27, 1976	W.W.F. Oil Corp., 920 Commercial National Bank Bldg., Shreveport, La. 71101.
CS77-238.....	do.....	The Stone Oil Corp., 1976 Venture—K, 3100 Fountain Sq. Plaza, Cincinnati, Ohio 45202.
CS77-239.....	do.....	Sundown Petroleum Corp., Wayside, Tex. 79094.
CS77-240.....	do.....	William A. Holahird, 135 South LaSalle St., Chicago, Ill. 60603.
CS77-241.....	do.....	Ocelot Oil Co., Greenwich Office Park 11, Greenwich, Conn. 06830.
CS77-242.....	do.....	Crawley Petroleum Corp., 415 Hightower Bldg., Oklahoma City, Okla. 73102.
CS77-243.....	do.....	Gifford E. Joseph, 123 Glynn Way, Houston, Tex. 77056.
CS77-244.....	do.....	Allen B. Pease, 3545 Northwest 58th, Suite 420, Oklahoma City, Okla. 73112.
CS77-245.....	do.....	Kenneth L. Hewitt, 1260 West Wesley Rd., N.W., Atlanta, Ga. 30327.
CS77-246.....	do.....	David H. Tripp, 1400 Vickers—K.S.B. & T. Bldg., Wichita, Kans. 67202.
CS77-247.....	do.....	Southwest Petro-Chem (Prod.) Inc., 1400 Vickers—K.S.B. & T. Bldg., Wichita, Kans. 67202.
CS77-248.....	do.....	H. A. Mayor, 1400 Vickers—K.S.B. & T. Bldg., Wichita, Kans. 67202.
CS77-249.....	do.....	Joe S. Johnson, 1400 Vickers—K.S.B. & T. Bldg., Wichita, Kans. 67202.
CS77-250.....	do.....	Phillip B. Hartley, 1400 Vickers—K.S.B. & T. Bldg., Wichita, Kans. 67202.
CS77-251.....	do.....	Vera M. Dornbaugh, 1400 Vickers—K.S.B. & T. Bldg., Wichita, Kans. 67202
CS77-252.....	do.....	Robert Dry, 1400 Vickers—K.S.B. & T. Bldg., Wichita, Kans. 67202.

[FR Doc.77-2041 Filed 1-24-77;8:45 am]

FEDERAL RESERVE SYSTEM

COMMERCIAL BANK, DELPHOS, OHIO

Order Approving Application for Merger of Banks

The Commercial Bank, Delphos, Ohio, (Applicant) a member of bank has applied for approval to the Board of Governors of the Federal Reserve System, pursuant to the Bank Merger Act, (12 USC 1828(c)), to acquire by merger, The Farmers Bank of Elida, Elida, Ohio, (Bank), a nonmember bank, under the name and charter of Applicant. It is proposed that upon consummation of this merger the present office of Bank will be operated as a branch of Applicant.

As required by the Act, notice of the proposed merger, in the form approved by the Board, has been published and the Federal Reserve Bank of Cleveland has requested reports on competitive factors from the Attorney General of the United States, the Comptroller of the Currency, and the Federal Deposit Insurance Corporation. A copy of the application has also been sent to the Superintendent of Banks of Ohio for his comments.

The Federal Reserve Bank of Cleveland has considered the application and all comments and reports in the light of factors set forth in the Act.

Applicant, ranking 131st among banking organizations in Ohio, holds deposits of $23.2 million representing 0.1 percent of total deposits in Commercial banks in the State.[1]

Applicant operates its head office in Delphos, Ohio, and has one branch in town and another branch in Gomer, Ohio, which is located approximately 7 miles east of its head office and 5 miles northeast of Bank. Applicant holds approximately 7.9 percent of total deposits of commercial banks in the Lima banking market (which includes all of Allen County, southern Putnam County and a small portion of eastern Van Wert County) and is the fifth largest of 11 banks in that market.

Bank operates a single banking office in Elida, which is located in the predominately rural northwest section of Allen County, approximately 7 miles from Delphos. Bank holds deposits of $3.2 million and is the smallest bank operating in the Lima market. The merger would eliminate some existing and future competition between Applicant and Bank. Both Applicant and Bank operate in the same banking market and the service area of Bank is entirely contained within that of Applicant. Applicant derives approximately 1.5 percent of its deposit volume and 4.4 percent of its loan volume from Bank's service area, and Bank derives approximately 7.0 percent of its deposit volume and 4.0 percent of its loan volume from the portion of Applicant's service area, which lies outside its own. Consummation of the proposed merger of Applicant with Bank would not materially increase Applicant's share of total deposits in the State and Applicant's share of deposits in the relevant market would increase from 7.9 percent to 9.0 percent. Applicant would retain its present rank in the market.

Although consummation of the proposal would eliminate one banking alternative from the Lima market, it would not significantly increase the concentration of market deposits. Based on these considerations, the proposed merger would have slightly adverse effects on competition in the market.

The financial and managerial resources of Applicant are satisfactory. Bank is in need of leadership and successor management which Applicant would be able to furnish. The future

[1] All deposit data are as of June 30, 1975.

prospects for Applicant after consummation of the proposal appear favorable.

There is no evidence in the record to indicate that the needs of the Allen banking market are not being met at the present time. However, if the merger is approved, Applicant has indicated that it will offer indirect installment loans, more extensive checking account services, and establish Saturday banking hours at Bank. Therefore, considerations relating to the convenience and needs of the communities to be served lend weight toward approval of the application.

It is the judgment of the Federal Reserve Bank of Cleveland that the slightly adverse effect of the proposed merger on existing and future competition are outweighed by the benefits to the banking convenience and needs of the customers to be served by Applicant.

On the basis of the record, the application is approved for the reasons summarized above. The transaction shall not be consummated (a) before the thirtieth calendar day following the effective date of this Order or (b) later than three months after the effective date of this Order, unless such period is extended for good cause by the Board, or by the Federal Reserve Bank of Cleveland, acting pursuant to delegated authority.

By order of the Federal Reserve Bank of Cleveland, acting pursuant to delegated authority, for the Board of Governors of the Federal Reserve System, effective January 13, 1977.

WILLIS J. WINN,
President.

[FR Doc.77-2320 Filed 1-24-77;8:45 am]

MONTGOMERY BANCORPORATION, INC.

Order Approving Formation of Bank Holding Company

Montgomery Bancorporation, Inc., Winchester, Kentucky, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) of formation of a bank holding company through acquisition of 80 percent or more of the voting shares of Montgomery National Bank of Mt. Sterling, Mt. Sterling, Kentucky ("Bank").

Notice of the application, affording opportunity for interested persons to submit comments and views, has been given in accordance with section 3(b) of the Act. The time for filing comments and views has expired, and the Board has considered the application and all comments received in light of the factors set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Applicant is a nonoperating corporation organized under the laws of Kentucky for the purpose of becoming a bank holding company through the acquisition of bank. Upon acquisition of bank, Applicant would hold .15 of one percent of the total deposits in commercial banks in the State.[1] Bank (deposits of approximately $15 million) is the fourth largest of eight commercial banks in the relevant banking market[2] and holds 16.5 percent of total deposits in commercial banks in the market. Four of Applicant's principals in their individual capacities own an aggregate of 46 percent of the voting shares of Clark County National Bank of Winchester, Winchester, Kentucky ("Winchester Bank"), which is located 16 miles west of Bank, in a separate banking market. Since Winchester Bank is located in a separate banking market from that of Bank, it appears that no meaningful competition would be eliminated as a result of consummation of this proposal. Inasmuch as this proposal represents essentially a reorganization of the ownership of Bank from individuals to a corporation owned by the same individuals, the acquisition of Bank by Applicant would not have any significant adverse effect upon either existing or potential competition within the relevant banking market. Accordingly, the Board concludes that competitive considerations are consistent with approval of the application.

The financial and managerial resources and future prospects of Applicant, Winchester Bank, and Bank are regarded as satisfactory. As part of the proposal, Applicant has committed to credit to the income account of Bank all insurance commission income from the sale of credit life and credit accident and health insurance in connection with extensions of credit by Bank. Applicant proposes to service the debt it will incur in acquiring shares of Bank over a twelve-year period, through dividends to be declared by Bank and through the tax benefits to be derived from the filing of consolidated tax returns. In the Board's view, Applicant's earnings prospects appear to be adequate in order to service that debt without impairing the financial condition of Bank.[3] Accordingly, the Board concludes that the banking factors are consistent with approval of the application. Applicant has proposed several improvements in the services offered by Bank including an extension of the business hours of Bank and an increase in the effective interest rate on passbook savings accounts through the implementation of day-of-deposit-to-day-of-withdrawal computation and daily compounding of interest. Considerations with respect to the convenience and needs of the community to be served are regarded as being consistent with approval of the application. Accordingly, it is the Board's judgment that the proposed transaction would be in the public interest and the application should be approved.

On the basis of the record, the application is approved for the reasons summarized above. The transaction shall not be made (a) before the thirtieth calendar day following the effective date of this Order or (b) later than three months after the effective date of this Order, unless such period is extended for good cause by the Board, or by the Federal Reserve Bank of Cleveland, pursuant to delegated authority.

By order of the Board of Governors,[4] effective January 18, 1977.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc.77-2321 Filed 1-24-77;8:45 a.m.]

[1] Deposit data are as of December 31, 1975.

[2] The relevant banking market is approximated by Bath, Menifee, and Montgomery Counties.

[3] In making this determination, the Board specifically considered Applicant's commitment to credit to Bank's income account all commission income derived from the sale of credit life and credit accident and health insurance related to extensions of credit by Bank. Accordingly, this Order is conditioned upon the fulfillment of that commitment.

[4] Voting for this action: Vice Chairman Gardner and Governors Coldwell and Lilly. Voting against this action: Governor Wallich. Absent and not voting: Chairman Burns and Governors Jackson and Partee.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Alcohol, Drug Abuse, and Mental Health Administration

RESEARCH SCIENTIST DEVELOPMENT REVIEW COMMITTEE

Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. Appendix I), announcement is made of the following National Advisory body scheduled to assemble during the month of February 1977:

Research Scientist Development Review Committee, February 10–12; 8:30 a.m., Plaza Room, Dupont Plaza Hotel, Connecticut and Massachusetts Aves., N.W., Washington, D.C. Open—February 10, 11 a.m.–12 noon. Closed—Otherwise. Contact Ms. Jeannette Raley, Parklawn Building, Room 9C–24, 5600 Fishers Lane, Rockville, Maryland 20857, 301–443–4347.

Purpose: The Committee reviews applications for Research Scientist Development Awards, and Research Scientist Awards administered by the National Institute of Mental Health and makes recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 11 to 12 noon, February 10, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of section 552(b)(5) and 552(b)(6), Title 5 U.S. Code and section 10(d) of Pub. L. 92–463 (5 U.S.C. Appendix I).

Substantive information may be obtained from the contact person listed above.

The NIMH Information Officer who will furnish summaries of the meeting and a roster of the committee members is Mr. Edwin Long, Deputy Director, Division of Scientific and Public Information, NIMH, Room 15–105, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, 301–443–3600.

Dated: January 19, 1977.

CAROLYN T. EVANS,
Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc.77-2219 Filed 1-24-77;8:45 am]

Food and Drug Administration

ADVISORY COMMITTEES

Notice of Meetings

This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also sets forth a summary of the procedures governing committee meetings and methods by which interested persons may participate in open public hearings conducted by the committees and is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770–776 (5 U.S.C. App. I)), and the FDA regulations, 21 CFR Part 2, Subpart D, relating to advisory committees. The following advisory committee meetings are announced:

Committee name	Date, time, and place	Type of meeting and contact person
1. FDA/NIDA Drug Abuse Research Advisory Committee.	Feb. 10 and 11; 1 p.m. on Feb. 10; rm. C8895 on Feb. 10, rm. C8861 on Feb. 11, Neuropsychiatric Institute, University of California at Los Angeles, Los Angeles, Calif.	Closed committee deliberations Feb. 10, 9 a.m. to 12 m.; open public hearing Feb. 10, 1 to 2 p.m.; open committee discussion Feb. 10, 2 to 5 p.m., Feb. 11 9 a.m. to 5 p.m., John A. Seigliano, Ph. D., (HFD-123), 5600 Fishers Lane, Rockville, Md. 20857, 301-443-3504.

General function of the committee. Advises the Food and Drug Administration on action to be taken with respect to investigational use of substances with abuse potential. Advises the National Institute on Drug Abuse (NIDA) about supplies of substances for clinical studies and quantities of substances for animal and in vitro studies. Advises FDA and NIDA on development of broad outlines for studies of substances with abuse potential and new methods and tests in animals and man by which the dependence liability of investigational drugs may be estimated.

Agenda—Open public hearing. Any interested person may present data, information, or views, orally or in writing, on issues pending before the committee.

Open committee discussion. Progress reports on cannabis—tolerance and withdrawal properties, psychological effects on flying, use for glaucoma (effect on intra-ocular pressure), use for nausea and vomiting in patients under cancer chemotherapy, and laboratory demonstrations on the effect on driving (using a simulator).

Closed committee deliberations. Report on actions taken on previous committee recommendations, review of investigational new drug (IND) applications and amendments, and staff actions on drug shipments. This portion of the meeting will be closed to protect trade secret data and personal information, disclosure of which would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552(b) (4) and (6)).

Committee name	Date, time, and place	Type of meeting and contact person
2. Neurological Panel	Feb. 11 and 12; on Feb. 11, 9 a.m., rm. 6821, FB-8, 200 C St. SW., Washington, D.C.; on Feb. 12, 9 a.m., rm. 421, Crystal City Marriott Hotel, Arlington, Va.	Open public hearing Feb. 11, 9 to 10 a.m.; open committee discussion Feb. 11, 10 a.m. to 3 p.m.; closed committee deliberations Feb. 11, 3 to 4 p.m.; open committee discussion Feb. 12, 9 a.m. to 4 p.m.; James R. Veale (HFK-450), 8757 Georgia Ave., Silver Spring, Md. 20910, 301-427-7226.

General function of the committee. Reviews and evaluates available data concerning the safety and effectiveness of devices currently in use and makes recommendations for their regulation.

Agenda—Open public hearing. Interested parties are encouraged to present to the executive secretary, information pertinent to classification of devices listed in this announcement or devices previously considered by the panel. Submission of data relative to tentative classification findings is also invited. Those desiring to make formal presentations should notify the executive secretary by February 4, 1977, and submit a brief statement about the evidence or arguments they wish to present, the names and addresses of proposed participants, references to any data to be relied on, and also the approximate time required to make their comments.

Open committee discussion. Review classification recommendations of the November 5, 1976 meeting of the Diagnostic and Monitoring Devices and Instruments Subcommittee; review classification recommendations of the November 6, 1976 meeting of the Surgical Implants and Instruments Subcommittee; classification of the following devices: physiological signal amplifiers; EEG spectrum analyzers; ataxiagraphs; chronaximeters; electronystagmograph units; EEG test signal generator; skin potential measurement devices; temperature measurement devices (direct contact, powered); peripheral autonomic function measuring/monitoring devices; physiological signal conditioners/couplers; spike enhancer; tremor transducers; alpha monitors; EEG monitors; aneurysm clip applicators; ligature passing and knot-tying instruments; shunt

system implantation instruments; microsurgical instruments (excluding optical devices); specialized knives and accessories; rasps; manual retractors and accessories; self-retaining retractors and accessories; manual rongeurs; powered rongeurs; manual saws and accessories; powered saws and accessories; scissors; separators; spatulas; spoons; cottonoid paddies; cotton sponges; gauze sponges; hemostatic clip applicators; clip forming/cutting instruments; clip removal instruments; clip racks; cranial electrotherapy (electrosleep) stimulators; induction coagulation generators; radiofrequency lesion generators; leukotomes; coagulation probes; cryogenic systems; induction coagulation seeds (implantable); lesion temperature monitors; lesion impedance monitors; biofeedback devices; aversive conditioning devices.

Closed committee deliberations. The panel will discuss a proposed regulatory action to be taken by the agency under authority granted under the Food, Drug, and Cosmetic Act as amended. This portion of the meeting will be closed to protect investigatory files compiled for law enforcement purposes (5 U.S.C. 552(b)(7)).

Committee name	Date, time, and place	Type of meeting and contact person
3. Allergenic Extracts Panel	Feb. 11 and 12; 9 a.m., on Feb. 11, 8:30 a.m. on Feb. 12, rm. 130, 6110 Executive Blvd., Rockville, Md.	Open public hearing Feb. 11, 9 to 11 a.m.; open committee discussion Feb. 11, 11 a.m. to 5:30 p.m., Feb. 12, 8:30 to 10 a.m.; closed committee deliberations Feb. 12, 10 a.m. until adjournment; Clay Sisk, (11 FTS-5), 8800 Rockville Pike, Bethesda, Md 20014, 301-443-5455.

General function of the committee. Reviews and evaluates available data concerning the safety and effectiveness of biological products.

Agenda—Open public hearing. Any interested person may present data, information, or views, orally or in writing, on issues pending before the committee.

Open committee discussion. Discussion of alum precipitated allergenic extracts, food extracts for immunotherapy, recommendations for further testing, standardization of allergenic extracts, revision of draft generic statements on several allergenic extracts, and draft label recommendations.

Closed committee deliberations. Review of data submissions from allergenic extract producers on the subject of manufacturing techniques for epidermal allergenic extracts and for food allergenic extracts. This portion of the meeting will be closed to permit discussion of trade secret data (5 U.S.C. 552(b)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairman determines will facilitate the committee's work.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this FEDERAL REGISTER notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairman's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

A list of committee members and summary minutes of meetings may be obtained from the Public Records and Documents Center (HFC-18), 5600 Fishers Lane, Rockville, MD 20857, between the hours of 9 a.m. and 4 p.m., Monday through Friday. The FDA regulations relating to public advisory committees may be found in 21 CFR Part 2, Subpart D, published in the FEDERAL REGISTER of November 26, 1976 (41 FR 52148).

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA), as amended by the Government in the Sunshine Act (Pub. L. 94-409), permit such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably, deliberative sessions to formulate advice and recommendations to the agency on matters that do not independently justify closing.

The Commissioner approves the scheduling of meetings at locations outside of the Washington, D.C., area on the basis of the criteria of § 2.307 (21 CFR 2.307) of FDA's regulations relating to public advisory committees.

Dated: January 18, 1977.

SHERWIN GARDNER,
Acting Commissioner of Food and Drugs.

[FR Doc.77-2402 Filed 1-24-77;8:45 am]

[Docket No. 76N-0403; DESI 11250]

ARGININE GLUTAMATE

Opportunity for Hearing on Proposal To Withdraw Approval of New Drug Application

The Food and Drug Administration is reclassifying the drug arginine gultamate to lacking substantial evidence of effectiveness and offering an opportunity for a hearing on the proposal to withdraw its approval. Persons who wish to request a hearing may do so on or before February 24, 1977.

In a notice (DESI 11250) published in the FEDERAL REGISTER of June 3, 1971 (36 FR 10815), the Food and Drug Administration announced its conclusions that the drug product described below containing arginine glutamate is possibly effective for its labeled indications relating to use in conditions associated with elevated blood ammonia levels.

NDA 11-640; Modumate Solution for Injection containing arginine glutamate; Abbott Laboratories, 14th and Sheridan Rd., North Chicago, Ill. 60064.

Other drugs included in the June 3, 1971 notice are not affected by this notice.

Modumate was subsequently included in the list of drugs that may remain on the market pending completion of scientific studies to determine effectiveness, as announced in the FEDERAL REGISTER of December 14, 1972 (37 FR 26623).

No clinical studies have been undertaken, and on June 29, 1976, Abbott Laboratories requested that approval of the new drug application be withdrawn. No other person has submitted data or protocols or has expressed an intention to perform additional clinical studies on arginine glutamate. Accordingly, in a notice appearing elsewhere in this issue of the FEDERAL REGISTER, the Commissioner of Food and Drugs is revoking the exemption granted in the December 14, 1972 notice for continued marketing of the drug. The drug is now reclassified to lacking substantiial evidence of effectiveness.

On the basis of all of the data and information available to him, the Director of the Bureau of Drugs is unaware of any adequate and well-controlled clinical investigation, conducted by experts qualified by scientific training and experience, meeting the requirements of section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) and 21 CFR 314.111(a)(5), demonstrating the effectiveness of the drug.

Therefore, notice is given to the holder(s) of the new drug application(s) and to all other interested persons that the Director of the Bureau of Drugs proposes to issue an order under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)), withdrawing approval of the new drug application(s) (or if indicated above, those parts of the application(s) providing for the drug product(s) listed above) and all amendments and supplements thereto on the ground that new information before him with respect to the drug product(s), evaluated together with the evidence available to him at the time of approval of the application(s), shows there is a lack of substantial evidence that the drug product(s) will have the effect it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in the labeling.

In addition to the holder of the new drug application specifically named above, this notice of opportunity for hearing applies to all persons who manufacture or distribute a drug product that is identical, related, or similar to the drug product named above, as defined in 21 CFR 310.6. It is the responsibility of every drug manufacturer or distributor to review this notice of opportunity for hearing to determine whether it covers any drug product he manufactures or distributes. Any person may request an opinion of the applicability of this notice to a specific drug product he manufactures or distributes that may be identical, related, or similar to the drug product named in this notice by writing to the Food and Drug Administration, Bureau of Drugs, Division of Drug Labeling Compliance (HFD-310), 5600 Fishers Lane, Rockville, Md. 20857.

In addition to the ground(s) for the proposed withdrawal of approval stated above, this notice of opportunity for hearing encompasses all issues relating to the legal status of the drug product subject to it (including identical, related, or similar drug products as defined in 21 CFR 310.6), e.g., any contention that any such product is not a new drug because it is generally recognized as safe and effective within the meaning of section 201(p) of the act or because it is exempt from part or all of the new drug provisions of the act pursuant to the exemption for products marketed prior to June 25, 1938, contained in section 201(p) of the act, or pursuant to section 107(c) of the Drug Amendments of 1962; or for any other reason.

In accordance with the provisions of section 505 of the act (21 U.S.C. 355) and the regulations promulgated thereunder (21 CFR Parts 310, 314), the applicant(s) and all other persons subject to this notice pursuant to 21 CFR 310.6 are hereby given an opportunity for a hearing to show why approval of the new drug application(s) should not be withdrawn and an opportunity to raise, for administrative determination, all issues relating to the legal status of the drug product named above and of all identical, related, or similar drug products.

If an applicant or any other person subject to this notice pursuant to 21 CFR 310.6 elects to avail himself of the opportunity for a hearing, he shall file (1) on or before February 24, 1977, a written notice of appearance and request for hearing, and (2) on or before March 28, 1977, the data, information, and analyses on which he relies to justify a hearing, as specified in 21 CFR 314.200. Any other interested person may also submit comments on this notice. The procedures and requirements governing this notice of opportunity for hearing, a notice of appearance and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and a grant or denial of hearing, are contained in 21 CFR 314.200.

The failure of an applicant or any other person subject to this notice pursuant to 21 CFR 310.6 to file timely written appearance and request for hearing as required by 21 CFR 314.200 constitutes an election by such person not to avail himself of the opportunity for a hearing concerning the action proposed with respect to such drug product and a waiver of any contentions concerning the legal status of any such drug product. Any such drug product may not thereafter lawfully be marketed, and the Food and Drug Administration will initiate appropriate regulatory action to remove such drug products from the market. Any new drug product marketed without an approved NDA is subject to regulatory action at any time.

A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for the hearing that there is no genuine and substantial issue of fact which precludes the withdrawal of approval of the application, or when a request for hearing is not made in the required format or with the required analyses, the Commissioner will enter summary judgment against the person(s) who requests the hearing, making findings and conclusions, denying a hearing.

All submissions pursuant to this notice shall be filed in quintuplicate with the Hearing Clerk, Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, Md. 20857.

All submissions pursuant to this notice, except for data and information prohibited from public disclosure pursuant to 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the office of the Hearing Clerk during working hours, Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 505, 52 Stat. 1052-1053, as amended (21 U.S.C. 355)), and under authority delegated to the Director of the Bureau of Drugs (21 CFR 5.31) (recodification published in the FEDERAL REGISTER of June 15, 1976 (41 FR 24262).)

Dated: December 30, 1976.

J. RICHARD CROUT,
Director, Bureau of Drugs.

[FR Doc.77-2223 Filed 1-24-77;8:45 am]

ARGININE GLUTAMATE

Drugs for Human Use; Drug Efficacy Study Implementation; Revocation of Exemption

In a notice appearing elsewhere in this issue of the FEDERAL REGISTER, the Food and Drug Administration is reclassifying the possibly effective indication for arginine glutamate (DESI 11250) to lacking substantial evidence of effectiveness and is offering an opportunity for hearing. That drug, described below, has been allowed to remain on the market beyond the time limit established for implementation of the Drug Efficacy Study on the condition that manufacturers undertake additional clinical studies to determine its effectiveness. The temporary exemption to permit continued marketing was announced in a notice published in the FEDERAL REGISTER of December 14, 1972 (37 FR 26623). Since no person has submitted additional data, or expressed an intention to perform such studies, the exemption granted by the December 14, 1972 notice is hereby revoked.

NDA 11-640; Modumate Solution for Injection containing arginine glutamate; Ab-

bott Laboratories, 14th and Sheridan Rd., North Chicago, IL 60064.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 502, 505, 52 Stat. 1050–1053, as amended (21 U.S.C. 352, 355)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1) (recodification published in the FEDERAL REGISTER of June 15, 1976 (41 FR 24262)).

Dated: January 17, 1977.

JOSEPH P. HILE,
Associate
Commissioner for Compliance.

[FR Doc.77-2220 Filed 1-24-77;8:45 am]

DENTIFRICE AND DENTAL CARE PANEL

Cancellation

Pursuant to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, 86 Stat. 770–776 (5 U.S.C. App. I)), the Food and Drug Administration announced in a notice published in the FEDERAL REGISTER on January 18, 1977 (42 FR 3348), public advisory committee meetings and other required information in accordance with provisions set forth in section 10(a)(1) and (2) of the act.

Notice is hereby given that the meeting of the Dentifrice and Dental Care Panel scheduled for February 16 and 17, 1977, Conference Rm. K, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD, is cancelled.

Dated: January 17, 1977.

JOSEPH P. HILE,
Associate
Commissioner for Compliance.

[FR Doc.77-2221 Filed 1-24-77;8:45 am]

MEDICAL RADIATION ADVISORY COMMITTEE

Renewal

Pursuant to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, 86 Stat. 770–776 (5 U.S.C. App. I)), the Food and Drug Administration announces the renewal of the Medical Radiation Advisory Committee by the Secretary, Department of Health, Education, and Welfare, for an additional period of 2 years beyond January 5, 1977.

Authority for this committee will expire on January 5, 1979, unless the Secretary formally determines that continuance is in the public interest.

Dated: January 17, 1977.

JOSEPH P. HILE,
Associate
Commissioner for Compliance.

[FR Doc.77-2086 Filed 1-24-77;8:45 am]

Health Services Administration

PROJECT GRANTS FOR SUDDEN INFANT DEATH SYNDROME INFORMATION AND COUNSELING

Announcement of Availability of Grants

The Bureau of Community Health Services, Health Services Administration, announces that competitive applications for Sudden Infant Death Syndrome Information and Counseling project grants are being accepted under authority of section 1121(b), of the Public Health Service Act.

Section 1121(b) of the Public Health Service Act (42 U.S.C. 300c–11) authorizes grants to public and nonprofit private entities for support of sudden infant death syndrome (SIDS) projects. Grants to eligible applicants may be made by the Secretary for projects which include both: (1) The collection, analysis, and furnishing of information (derived from post mortem examinations and other means) pertaining to the causes of SIDS; and (2) The provision of information and counseling to families affected by SIDS.

Application kits, including all necessary forms, instructions and information may be obtained from, and completed applications returned to, the address below:

Grants Management Branch
Bureau of Community Health Services
Health Services Administration
Public Health Service
Room 7A-39, Parklawn Building
5600 Fishers Lane
Rockville, Maryland 20857

Programmatic information relative to development of an application is available from the Office of Maternal and Child Health, Bureau of Community Health Services, Room 7-15, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland, 20857, telephone number 301–443–6600.

Completed applications must be received by March 1, 1977.

The amount available for grants under this announcement is $250,000.

Dated: January 11, 1977.

JOHN H. KELSO,
Acting Administrator,
Health Services Administration.

[FR Doc.77-2308 Filed 1-24-77;8:45 am]

National Institute of Education

PANEL FOR THE REVIEW OF LABORATORY AND CENTER OPERATIONS

Deadline for Receipt of Documentation to Support Nominations

Notice is hereby given that the Director, National Institute of Education, has established January 31, 1977, as the deadline for the receipt of documentation to support nominations to the Panel for the Review of Laboratory and Center Operations. The deadline for receipt of nominations for the Panel was January 17, 1977.

The initiation for Panel nominations, originally published at 41 FR 53547, December 7, 1976, is authorized pursuant to the provisions of Section 403(f)(3)(A) of the General Education Provisions Act, as amended by the Education Amendments of 1976 (Pub. L. 94-482). In accordance with this statute, the initiation is limited to designated educational laboratories, research and development centers, and to "professional, commercial, scholarly and educational associations, particularly associations or organizations engaged in educational research". For additional information contact:

Steve Scheier, Task Force on Laboratories and Centers, National Institute of Education, 1200 19th Street, NW., Room 714, Washington, D.C. 20208.

Dated: January 18, 1977.

RICHARD S. WERKSMAN,
Committee Management Officer.

[FR Doc.77-2195 Filed 1-24-77;8:45 am]

National Institutes of Health

ADVISORY COMMITTEE REPORTS

Filing of Annual Reports

Pursuant to sections 10(d) and 13 of the Federal Advisory Committee Act, Pub. L. 92-463, notice is hereby given that the annual reports for the committees listed below have been filed with the Library of Congress. Copies are available to the public for inspection at the Library of Congress, Special Forms Reading Room, Main Building, or on weekdays, at the Department Library, North Building, Room 1436, Washington, D.C. 20201, between 9 a.m. and 4:30 p.m.

Advisory Committee to the Director, NIH
Aging Review Committee
Allergy and Immunology Research Committee
Allergy and Immunology Study Section
Animal Resources Advisory Committee
Applied Physiology and Bioengineering Study Section
Arteriosclerosis and Hypertension Advisory Committee
Arteriosclerosis Specialized Centers of Research (SCOR) ad hoc Review Committee
Artificial Kidney-Chronic Uremia Advisory Committee
Bacteriology and Mycology Stud Section
Behaviorial Sciences Research Contract Review Committee
Biochemistry Study Section
Biomedical Communications Study Section
Biomedical Library Review Committee
Biometry and Epidemiology Contract Review Committee
Biophysics and Biophysical Chemistry A Study Section
Biophysics and Biophysical Chemistry B Study Section
Blood Diseases and Resources Advisory Committee
Board of Regents of the National Library of Medicine
Board of Scientific Counselors of the Division of Cancer Treatment.
Board of Scientific Counsels, NCI
Board of Scientific Counselors, NEI
Board of Scientific Counselors, NHLBI
Board of Scientific Counselors, NIA
Board of Scientific Counselors, NIAMDD
Board of Scientific Counselors, NICHD
Board of Scientific Counselors, NIDR
Board of Scientific Counselors, NEIHS
Board of Scientific Counselors, NINCDS
Breast Cancer Diagnosis Committee
Breast Cancer Epidemiology Committee
Breast Cancer Experimental Biology Committee
Breast Cancer Treatment Committee
Cancer Clinical Investigation Review Committee
Cancer Control and Rehabilitation Advisory Committee
Cancer Control Community Activities Review Committee
Cancer Control Grant Review Committee
Cancer Control Intervention Programs Review Committee
Cancer Control Nutrition Scientific Review Committee
Cancer Control Supportive Services Review Committee
Cancer Special Program Advisory Committee
Carcinogenisis Program Scientific Review Committee A
Carcinogenisis Program Scientific Review Committee B
Carcinogenisis Program Scientific Review Committee C
Cardiology Advisory Committee
Cardiovascular and Pulmonary Study Section
Cardiovascular and Renal Study Section
Cell Biology Study Section
Chemical/Biological Information-Handling Review Committee
Clinical Applications and Prevention Advisory Committee
Clinical Cancer Education Committee
Clinical Trials Committee
Clinical Trials Review Committee
Combined Modality Contract Review Committee
Committee on Cancer Immunobiology
Committee on Cancer Immunodiagnosis
Committee on Cancer Immunotherapy
Committee on Cytology Automation
Communicative Disorders Review Committee
Communicative Sciences Study Section
Comprehensive Sickle Cell Centers (CSCC) ad hoc Review Committee
Computer and Biomathematical Sciences Study Section
Contraceptive Development Contract Review Committee
Contraceptive Evaluation Research Contract Review Committee
Dental Caries Program Advisory Committee
Dental Research Institutes and Special Programs Advisory Committee
Developmental Behavioral Sciences Study Section
Developmental Therapeutics Technical Review Committee
Diagnostic Radiology Committee
Diagnostic Research Advisory Group
Diet and Cancer Scientific Review Committee
Diet, Nutrition and Cancer Program Advisory Committee
DCT Drug Development Committee
Endocrinology Study Section
Epidemiology and Disease Control Study Section
Epilepsy Advisory Committee
Experimental Psychology Study Section
Experimental Therapeutics Study Section
Experimental Virology Study Section
General Clinical Research Centers Committee
General Medicine A Study Section
General Medicine B Study Section
General Research Support Advisory Committee
Genetics Study Section
Heart and Lung Research Review Committee A
Heart and Lung Research Review Committee B
Hematology Study Section
Human Embryology and Development Study Section
Immunobiology Study Section
Immunological Sciences Study Section
Infectious Disease Committee
Lipid Metabolism Advisory Committee
Mammalian Cell Lines Committee
Maternal and Child Health Research Committee
Medical Laboratory Sciences Review Committee
Medicinal Chemistry A Study Section
Medicinal Chemistry B Study Section
Mental Retardation Research Committee
Metabolism Study Section
Microbial Chemistry Study Section
Minority Access to Research Careers Review Committee
Molecular Biology Study Section
Molecular Cytology Study Section
Molecular Control Working Group
National Advisory Allergy and Infectious Diseases Council
National Advisory Child Health and Human Development Council
National Advisory Council on Aging
National Advisory Dental Research Council
National Advisory Environmental Health Sciences Council
National Advisory Eye Council
National Advisory General Medical Sciences Council
National Advisory Neurological and Communicative Disorders and Stroke Council
National Advisory Research Resources Council
National Arthritis, Metabolism, and Digestive Diseases Advisory Council
National Bladder Cancer Project Working Cadre
National Commission on Arthritis and Related Musculoskeletal Diseases
National Commission on Diabetes
National Heart, Lung, and Blood Advisory Council
National Large Bowel Cancer Project Working Cadre
National Pancreatic Cancer Project Working Cadre
National Prostatic Cancer Project Working Cadre
Neurological and Communicative Disorders and Stroke Science Information Program Advisory Committee
Neurological Disorders Program Project Review A Committee
Neurological Disorders Program Project Review B Committee
Neurology A Study Section
Neurology B Study Section
Nutrition Study Section
Oral Biology and Medicine Study Section
Pathobiological Chemistry Study Section
Pathology A Study Section
Pathology B Study Section
Periodontal Diseases Advisory Committee
Pharmacology Study Section
Pharmacology-Toxicology Research Program Committee
Physiological Chemistry Study Section
Physiology Study Section
Population Research Committee
Population Research Study Section
Primate Research Centers Advisory Committee
Pulmonary Diseases Advisory Committee
Pulmonary Specialized Centers of Research (SCOR) ad hoc Review Committee
Pulmonary Young Investigator Grant Committee
Radiation Study Section
Recombinant DNA Molecular Program Advisory Committee
Reproductive Biology Study Section
Surgery A Study Section
Surgery B Study Section
Third National Cancer Survey Utilization Advisory Committee
Thrombosis Specialized Centers of Research (SCOR) ad hoc Review Committee
Tobacco Working Group
Toxicology Study Section
Transplantation and Immunology Committee
Tropical Medicine and Parasitology Study Section
Virology Study Section
Virus Cancer Program Advisory Committee
Virus Cancer Program Scientific Review Committee A
Virus Cancer Program Scientific Review Committee B
Vision Research Program Committee
Visual Sciences A Study Section
Visual Sciences B Study Section

Dated: January 13, 1977.

DONALD S. FREDERICKSON,
Director.
National Institutes of Health.

[FR Doc.77-2218 Filed 1-24-77;8:45 am]

ALLERGY AND IMMUNOLOGY RESEARCH COMMITTEE

Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Allergy and Immunology Research Committee, National Institute of Allergy and Infectious Diseases on March 3-4, 1977 at the National Institutes of Health, Building 31B, Conference Room 5, Bethesda, Maryland. This meeting will be open to the public from 9 a.m. to 10 a.m. on March 3 for the discussion of general policy matters and administrative reports. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552(b)(4), 552(b)(5), and 552(b)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463, the meeting of the committee will be closed to the public from 10 a.m. on March 3 to adjournment on March 4 for the review, discussion, and evaluation of individual initial pending and renewal grant applications. The closed portions of the meetings involve solely the internal expression of views and judgments of committee members on individual grant applications containing detailed research protocols, designs, and other technical information; financial data, such as salaries; and personal information concerning individuals associated with the applications.

Mr. Robert L. Schreiber, Chief, Office of Research Reporting and Public Response, NIAID, National Institutes of Health, Building 31, Room 7A32, Bethesda, Maryland 20014, (301) 496-5717, will furnish rosters of committee members, summaries of the meetings, and other information pertaining to the meetings.

(Catalog of Federal Domestic Assistance Program No. 13.855, National Institutes of Health.)

Dated: January 18, 1977.

SUZANNE L. FREMEAU,
Committee Management Officer,
National Institutes of Health.

[FR Doc.77-2210 Filed 1-24-77;8:45 am]

ANIMAL RESOURCES ADVISORY COMMITTEE

Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Animal Resources Advisory Committee, Division of Research Resources, March 1-2, 1977, National Institutes of Health, Building 31, Conference Room 7, Bethesda, Maryland 20014. This meeting will be open to the public on March 1 from 9 a.m. to 10:30 a.m., during which

time there will be a brief staff presentation on the current status of the Animal Resources Program. The Committee will select future meeting dates. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552(b)(4), 552(b)(5) and 552(b)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public from 10:30 a.m. to 5 p.m. on March 1 and from 9 a.m. to adjournment on March 2 for the review, discussion and evaluation of initial pending and renewal research grant applications. The closed portion of the meeting involves solely the internal expression of views and judgments of Committee members on individual grant applications containing detailed research protocols, designs and other technical information; financial data such as salaries; and personal information concerning individuals associated with the applications.

Mr. James Augustine, Information Officer, Division of Research Resources, Building 31, Room 5B39, Bethesda, Maryland 20014, 301/496-5545, will provide summaries of the meeting and rosters of Committee members. Dr. Dennis O. Johnsen, Executive Secretary, Animal Resources Advisory Committee, Building 31, Room 5B33, Bethesda, Maryland 20014, 301/496-5507, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.306, National Institutes of Health.)

Dated: January 18, 1977.

SUZANNE L. FREMEAU,
Committee Management Officer,
National Institutes of Health.

[FR Doc.77-2209 Filed 1-24-77;8:45 am]

BREAST CANCER TASK FORCE PROJECT PRESENTATIONS

Meeting

Notice is hereby given of the Breast Cancer Project Presentations sponsored by the Breast Cancer Task Force, National Cancer Institute, March 9, 1977, Holiday Inn, Versailles Rooms I and II, Bethesda, Maryland.

This meeting will be open to the public from 8:30 a.m. to adjournment on March 9, 1977, for discussion of research projects related to breast cancer. Attendance by the public will be limited to space available.

For additional information, please contact Dr. D. Jane Taylor, Landow Building, Room A-422, Division of Cancer Biology and Diagnosis, National Cancer Institute, National Institutes of Health, Bethesda, Maryland 20014, (301) 496-6718.

Dated: January 13, 1977.

SUZANNE L. FREMEAU,
Committee Management Officer,
National Institutes of Health.

[FR Doc.77-2213 Filed 1-24-77;8:45 am]

BREAST CANCER VIRUS WORKSHOP ON MASON PFIZER MONKEY VIRUS AND RELATED VIRUSES

Meeting

Notice is hereby given of the Breast Cancer Virus Workshop on Mason Pfizer Monkey Virus and Related Viruses sponsored by the Virus Cancer Program, March 28 and 29, 1977, Building 31, Conference Room 9, National Institutes of Health, Bethesda, Maryland.

This meeting will be open to the public on March 28, 1977, from 9 a.m. to 5 p.m. and on March 29, 1977, from 9 a.m. to 5 p.m. for presentation of scientific papers. Attendance by the public will be limited to space available.

Dr. Clarice E. Gaylord, Acting Head, Breast Cancer Virus Studies Section, Collaborative Research Branch, Landow Building, Room C306, Division of Cancer Cause and Prevention, National Cancer Institute, National Institutes of Health, Bethesda, Maryland 20014 (301/496-4533) will provide additional information.

Dated: January 13, 1977.

SUZANNE L. FREMEAU,
Committee Management Officer,
National Institutes of Health.

[FR Doc.77-2216 Filed 1-24-77;8:45 am]

BOARD OF SCIENTIFIC COUNSELORS DIVISION OF CANCER BIOLOGY AND DIAGNOSIS

Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Board of Scientific Counselors, DCBD, National Cancer Institute, March 11 and 12, 1977, Building 31A, Conference Room 11A-10, National Institutes of Health. This meeting will be open to the public on March 11, 1977, from 9 a.m. to 5 p.m. to discuss the scientific research program of the Laboratory of Cell Biology, DCBD. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on March 12, 1977, from 9 a.m. to adjournment, for the review, discussion, and evaluation of individual programs and projects conducted by the National Institutes of Health, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Alan S. Rabson, Director, Division of Cancer Biology and Diagnosis, National Cancer Institute, Building 31, Room 3A03, National Institutes of Health, Bethesda, Maryland 20014 (301/496-4345) will furnish summary minutes, rosters of committee members, and substantive program information.

Dated: January 13, 1977.

SUZANNE L. FREMEAU,
Committee Management Officer,
National Institutes of Health.

[FR Doc.77-2215 Filed 1-24-77;8:45 am]

BOARD OF SCIENTIFIC COUNSELORS, NINCDS

Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute of Neurological and Communicative Disorders and Stroke, National Institutes of Health, April 14 and 15, 1977, in Conference Room 1B07, Bldg. 36, NIH, Bethesda, Maryland 20014. This meeting will be open to the public from 10:30 a.m. to 5 p.m. on April 14th to discuss program planning and program accomplishments. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public from 9 a.m. until the conclusion of the meeting on April 15th for the review, discussion and evaluation of individual programs and projects conducted by the National Institutes of Health, including consideration of personnel qualifications and performance, the competence of individual investigators and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Chief, Office of Scientific and Health Reports, Mrs. Ruth Dudley, Bldg. 31, Room 8A03, NIH, NINCDS, Bethesda, Maryland 20014, telephone 301/496-5751, will furnish summaries of the meeting and rosters of committee members.

The Executive Secretary from whom substantive program information may be obtained is: Dr. Thomas N. Chase, Director of Intramural Research, NINCDS, Bldg. 36, Room 5A05, NIH, Bethesda, Maryland, 20014, telephone 301/496-4297.

(Catalog of Federal Domestic Assistance Program No. 13.356, National Institutes of Health.)

Dated: January 13, 1977.

SUZANNE L. FREMEAU,
Committee Manager Officer,
National Institutes of Health.

[FR Doc.77-2217 Filed 1-24-77;8:45 am]

COMMITTEE ON CANCER IMMUNODIAGNOSIS

Cancellation of Meeting

Notice is hereby given of the cancellation of the meeting of the Committee on Cancer Immunodiagnosis, National Cancer Institute, February 28, 1977, March 1, 1977, March 2, 1977 and March 3, 1977, National Institutes of Health, Building 1, Wilson Hall, which was published in the FEDERAL REGISTER on January 4, 1977 (42 FR 859).

Dated: January 13, 1977.

SUZANNE L. FREMEAU,
Committee Management Officer,
National Institutes of Health.

[FR Doc.77-2207 Filed 1-24-77;8:45 a.m.]

DIAGNOSTIC RESEARCH ADVISORY GROUP

Amended Notice of Meeting

Notice is hereby given of a change in the meeting of February 16, 1977 8:30 a.m. at Building 31-C, Conference Room 9, of the Diagnostic Research Advisory Group, National Cancer Institute, which was published in the FEDERAL REGISTER on January 4, 1977 (42 FR 859).

This committee was to have convened at 8:30 a.m. on February 16, 1977 but has been changed to 8:30 a.m., February 17, 1977, at Building 31-A, Conference Room 8A30.

The meeting will be open to the public from 8:30 a.m. to 10:30 a.m. on February 17, 1977, and closed from 10:30 a.m. to adjournment. Attendance by the public will be limited to space available.

Dated: January 18, 1977.

SUZANNE L. FREMEAU,
Committee Management Officer,
National Institutes of Health.

[FR Doc.77-2206 Filed 1-24-77;8:45 a.m.]

MINORITY ACCESS TO RESEARCH CAREERS REVIEW COMMITTEE

Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Minority Access to Research Careers Review Committee, National Institute of General Medical Sciences, on February 28-March 1, 1977, 9 a.m., National Institutes of Health, Building 31C, Conference Room 8. The Committee will host the Conference of Black Graduate Deans, and will be open to the public on Monday, February 28, 9 a.m. until 12 noon. The meeting will consist of opening remarks, discussion of procedural matters and a seminar of general interest. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552(b)(4), 552(b)(5), and 552(b)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on February 28 from 12 noon to 5 p.m. and on March 1 from 9 a.m. to 5 p.m. for the review, discussion, and evaluation of individual grant applications under the National Research Service Awards Program (42 U.S.C. 4821-1). The closed portion of the meeting involves solely the internal expression of views and judgments of committee members on individual grant applications which contain detailed research protocols, designs, and other technical information; financial data, such as salaries; and personal information concerning individuals associated with the applications.

Mr. Paul Deming, Staff Assistant to the Director, NIGMS, Westwood Building, 5333 Westbard Avenue, Room 9A-05, Bethesda, Maryland 20014, telephone (301) 496-7301, will furnish summary minutes of the meeting and a roster of committee members.

Substantive program information may be obtained from Dr. Prince Rivers, Executive Secretary, Westwood Building, Room 9A-18, Bethesda, Maryland 20014, telephone (301) 496-7357.

(Catalog of Federal Domestic Assistance Programs 13-859, 13-860, 13-861, 13-862, General Medical Sciences.)

Dated: January 18, 1977.

SUZANNE L. FREMEAU,
Committee Management Officer,
National Institutes of Health.

[FR Doc.77-2208 Filed 1-24-77;8:45 am]

NATIONAL ARTHRITIS ADVISORY BOARD

Establishment

The National Institutes of Health announces the establishment on December 16, 1976, of the National Arthritis Advisory Board, under the authority of section 440 of Pub. L. 94-562 (42 U.S. Code 289c-7). This Board is governed by provisions of Pub. L. 92-463 which sets forth standards for the formation and use of advisory committees.

The Board shall review and evaluate the implementation of the Arthritis Plan formulated by the National Commission on Arthritis and Related Musculoskeletal Diseases. In carrying out this function the Board shall advise and recommend to the Congress, the Secretary, and the heads of other appropriate Federal agencies with respect to the Arthritis Plan and the guidelines, policies and procedures of Federal programs relating to arthritis. The Board may collect such data as it deems advisable and necessary to enable it to perform these functions. The data collection responsibilities of the Board and the activities of its subcommittees are intended to allow it to perform the function of assessing the implementation of the Arthritis Plan and in submitting its annual report.

Authority for this Board will expire on September 30, 1980.

Dated: January 14, 1977.

DONALD S. FREDRICKSON,
Director,
National Institutes of Health.

[FR Doc.77-2204 Filed 1-24-77;8:45 am]

NATIONAL COMMISSION ON DIGESTIVE DISEASES

Establishment

The National Institutes of Health announces the establishment on December 16, 1976, of the National Commission on Digestive Diseases, under the authority of section 301 of Pub. L. 94-562 (42 U.S. Code 289a note). This Commission is governed by provisions of Pub. L. 92-463 which sets forth standards for the formation and use of advisory committees.

The Commission shall: conduct a comprehensive study of the present state of knowledge of the incidence, duration, and morbidity of, and mortality rates resulting from digestive diseases and of the social and economic impact of such diseases; evaluate the public and private facilities and resources (including trained personnel and research activities) for the diagnosis, prevention, and treatment of, and research in such diseases; and identify programs (including biological, behavioral, nutritional, environmental, and social programs) in which, and the means by which, improvement in the management of digestive diseases can be accomplished. Each Federal entity administering health programs and activities related to digestive diseases shall, upon request, assist the Commission in carrying out its duties under this paragraph.

Based on the study, evaluation, and identification made pursuant to the above stated function, the Commission shall develop and recommend a long-range plan for the use and organization of national resources to effectively deal with digestive diseases. The plan shall provide for: research studies; investigations; development of preventive measures; detection of digestive disease; evaluation of new and improved methods of screening for digestive diseases; development of criteria for the diagnosis and the clinical management and control of digestive diseases; development of coordinated health care systems; education and training of scientists, clinicians, educators, and allied health professionals; the conduct and direction of field studies and clinical trials; establishment of a standardized nomenclature of all digestive diseases for use in basic and clinical research and to facilitate collaborative studies; and establishment of a system of periodic surveillance of the research potential and research needs in digestive diseases corresponding with the recently completed survey organized by the National Institute of Arthritis, Metabolism, and Digestive Diseases.

The Commission shall within eighteen months following its initial meeting publish and transmit directly to Congress a final report respecting its activities. The Commission shall cease to exist on the thirtieth day following the date of submission of this report.

Dated: January 14, 1977.

DONALD S. FREDRICKSON,
Director,
National Institutes of Health.

[FR Doc.77-2205 Filed 1-24-77;8:45 am]

NATIONAL DIABETES ADVISORY BOARD

Establishment

The National Institutes of Health announces the establishment on December 16, 1976, of the National Diabetes Advisory Board, under the authority of section 201 of Pub. L. 94-562 (42 U.S. Code 289c-3a(a)). This Board is governed by provisions of Pub. L. 92-463 which sets forth standards for the formation and use of advisory committees.

The Board shall review and evaluate the implementation of the long-range plan to combat diabetes mellitus formulated by the National Commission on Diabetes. In carrying out this function the Board shall advise and recommend to the Congress, the Secretary, and the

heads of other appropriate federal agencies. with respect to the guidelines, policies and procedures of federal programs relating to diabetes. The Board may collect such data as it deems advisable and necessary to enable it to perfrom these functions. The Board shall submit to the Secretary and to the Congress an annual report that describes and evaluates the progress made during the year in diabetes research, treatment, education and training, and summarizes and analyzes expenditures made by the federal government for diabetes related activities.

Authority for this Board will expire on September 30, 1980.

Dated: January 14, 1977.

DONALD S. FREDRICKSON,
Director,
National Institutes of Health.

[FR Doc.77-2203 Filed 1-24-77;8:45 am]

NEUROLOGICAL AND COMMUNICATIVE DISORDERS AND STROKE SCIENCE INFORMATION PROGRAM ADVISORY COMMITTEE

Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Neurological and Communicative Disorders and Stroke Science Information Program Advisory Committee, National Institute of Neurological and Communicative Disorders and Stroke, March 10 and 11, 1977, at the National Institutes of Health, Building 31, Room 8A-30, Bethesda, MD 20014.

This meeting will be open to the public on March 10, 1977, from 12:30 p.m. to 5 p.m., and on March 11, 1977, from 9 a.m. until conclusion of the meeting, to discuss the status and plans for the Institute's science information program. Attendance by the public will be limited to space available. In accordance with the provisions set forth in sections 552(b)(4) and 552(b)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on March 10, 1977, from 9:30 a.m. to 12:30 p.m., for the review, discussion, and evaluation of individual contract proposals. The proposals contain information of a proprietary or confidential nature, including financial data, such as salaries, and personal information concerning individuals associated with the proposals.

Mrs. Ruth Dudley, Chief, Office of Scientific and Health Reports, NINCDS, NIH, Building 31, Room 8A-06, Bethesda, Maryland 20014, (301) 496-5751, will provide summaries of the meeting and rosters of committee members.

Mr. Alfred Weissberg, Executive Secretary, NINCDS, NIH, Building 31, Room 8A-03, Bethesda, Maryland 20014, (301) 496-9271, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.854, National Institutes of Health.)

Dated: January 13, 1977.

SUZANNE L. FREMEAU,
Committee Management Officer,
National Institutes of Health.

[FR Doc.77-2214 Filed 1-24-77;8:45 am]

POPULATION RESEARCH COMMITTEE

Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Population Research Committee, National Institute of Child Health and Human Development, on March 3-4, 1977, in the Landow Building, Room C-418, 7910 Woodmont Avenue, Bethesda, Maryland.

The meeting will be open to the public on March 3, from 9 a.m. to 10:30 a.m. to discuss the program status, new developments and projections for population research centers, program projects and national research service award applications. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552(b)(4), 552(b)(5), and 552(b)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on March 3 from 10:30 a.m. to adjournment, on March 4 for the review, discussion and evaluation of individual initial pending and supplemental grant applications. The closed portion of the meeting will involve solely the internal expression of views and judgments of committee members on individual grant applications containing detailed research protocols, designs, and other technical information; financial data, such as salaries; and personal information concerning individuals associated with the applications.

Mrs. Marjorie Neff, Committee Management Officer, NICHD, Building 31, Room 2A-04, National Institutes of Health, Bethesda, Maryland, Area Code 301, 496-1848, will provide a summary of the meeting and a roster of committee members. Dr. William A. Sadler, Executive Secretary of the Population Research Committee, NICHD, Landow Building, Room C-704, National Institutes of Health, Bethesda, Maryland, Area Code 301, 496-6515, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.864, National Institutes of Health.)

Dated: January 18, 1977.

SUZANNE L. FREMEAU,
Committee Management Officer,
National Institutes of Health.

[FR Doc.77-2211 Filed 1-24-77;8:45 am]

TUMOR VIRAL IMMUNOLOGY WORKSHOP

Meeting

Notice is hereby given that the RNA Virus Studies Section, Viral Oncology Program of the Division of Cancer Cause and Prevention, NCI will hold a workshop entitled "Tumor Viral Immunology", March 8 & 9, 1977, from 9 a.m. to 5 p.m. each day at the King and Prince Hotel, St. Simon Island, Georgia.

The main purpose of the workshop is to review the current knowledge and present state of research regarding oncornaviral antigens and immune responses to these antigens. Particular emphasis will be placed on establishing the nomenclature for these antigens. This is not an advisory committee meeting. The workshop will be open to the public but attendance will be limited to available space.

For additional information contact Dr. Wilna Woods, National Cancer Institute, Landow Building, Room C306, 7910 Woodmont Avenue, Bethesda, Maryland 20014, (301) 496-6085.

Dated: January 18, 1977.

SUZANNE L. FREMEAU,
Committee Management Officer,
National Institutes of Health.

[FR Doc.77-2212 Filed 1-24-77;8:45 am]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

NATIONAL PETROLEUM RESERVE IN ALASKA

Memorandum of Understanding

The purpose of this publication is to give notice of a memorandum of understanding (MOU) for cooperative procedures which provides a mechanism to carry out the Secretary's responsibility of continuing the ongoing exploration program of the National Petroleum Reserve in Alaska (NPRA) and to take necessary and appropriate measures to protect the subsistence, environmental, fish and wildlife, historical, and scenic values of the Reserve during such exploration activities. This MOU will cover the limited period and purpose of exploration.

The Naval Petroleum Reserves Production Act of April 5, 1976 (43 U.S.C. 6501 et seq.) (hereafter called the "Act"), transfers the administrative responsibility of the NPRA to the Secretary of the Interior. The Act reserved and withdrew, subject to valid existing rights, all lands within the exterior boundaries of NPRA from all forms of entry and disposition under the public land laws including the mining and mineral leasing laws and all other acts. All uses within the Reserve must be consistent with the purposes of the legislation. The transfer of jurisdiction over the Reserve from the Secretary of the Navy to the Secretary of the Interior as it relates to petroleum exploration is to take effect on June 1, 1977. In order to accomplish his dual responsibilities on the Reserve, the Secretary of the Interior has delegated the management of the continuing exploration program, the enforcement of stipulations related to petroleum exploration, and the operation of the South Barrow gas field or other necessary gas fields as specified in the Act to the U.S. Geological Survey (GS). He has delegated to the Bureau of Land Management (BLM) the surface management and protection of surface values from environmental degradation.

The MOU identifies procedures to facilitate the interfacing of these two secretarial responsibilities delegated to GS and BLM through their respective Assistant Secretaries.

The Act requires the exploration of the Reserve and also mandates that it be accomplished in a manner that requires every precaution be taken to avoid unnecessary surface damage and minimize ecological disturbances throughout the Reserve.

The Act requires that two separate studies be conducted in the Reserve. One study under section 105(b)(1) will determine the best overall procedures to be used in the development, production, transportation, and distribution of petroleum resources. The MOU will allow the coordination of exploration activities that must be carried out to provide for the gathering of data needed to complete the study. The other study under section 105(c) will determine the values of, and best uses for, the lands in the Reserve. Both studies with appropriate recommendations will be forwarded to Congress by January 1, 1980, and April 5, 1979, respectively. Congress will then decide how to develop the known petroleum resources and to protect and preserve the other resource values.

On September 20, 1976, proposed regulations were published in the FEDERAL REGISTER regarding surface management and environmental protection of NPRA. The drafting of these proposed regulations involved considerable input from various local, State, and Federal agencies and other interested parties in Alaska. Following publication, numerous public comments and suggestions were submitted to the Department for consideration.

Due to the mandatory petroleum exploration operations and critical scheduling requirements necessary to conduct these activities, it has been determined that regulations governing these operations and related activities are not appropriate. This does not mean that such exploration activities will be conducted without regard to the environmental values and concerns which are found in the Reserve. The protection of the various resource values as mandated by the Act will be accomplished and facilitated by the cooperative procedures as outlined in the MOU. Briefly, these procedures provide for the preparation of preliminary and final plans; the coordination and consultation with other Federal, State, and local agencies, the Native community, and other interested parties; preparation of stipulations; and inspections to insure full compliance with environmental protection measures and rehabilitation requirements. After Congress determines how future development and production will take place, regulations could, at that time, be developed and issued to provide for the development and production of petroleum resources. Such regulations would come under the provisions of the Administrative Procedures Act.

Uses for other than the petroleum exploration will be authorized under regulations being promulgated in Chapter 2360 of Title 43 of the Code of Federal Regulations.

The legislation does not allow for the development and production of petroleum except on a limited basis from the South Barrow gas field or such other designated fields to supply gas to the Native village of Barrow and installations near Point Barrow.

Those areas that have been identified as having any significant subsistence, recreational, fish and wildlife, historic or scienic values, such as the Utukok River and Teshekpuk Lake areas, shall receive maximum protection to control activities which would unduly disrupt the surface values or disturb the associated fish and wildlife habitat values and related subsistence requirements of the Alaska Natives. Such maximum protection efforts are not intended as a prohibition of exploration activities within such areas, only that such activities are conducted in a manner which will minimize the adverse impact on the environment.

This MOU is effective January 18, 1977.

COOPERATIVE PROCEDURES OF JANUARY 18, 1977 FOR NATIONAL PETROLEUM RESERVE IN ALASKA BETWEEN BUREAU OF LAND MANAGEMENT AND THE U.S. GEOLOGICAL SURVEY

COOPERATIVE PROCEDURES

These procedures provide for the mutual cooperation and interface of authority and responsibility between the U.S. Geological Survey (GS) and the Bureau of Land Management (BLM) concerning petroleum exploration activities (i.e., geophysical and drilling operations) and the protection of the environment during such activities in the National Petroleum Reserve in Alaska (NPRA). This agreement supplements and is consistent with Secretarial Order No. 2948 of October 26, 1972. Such activities will be conducted in those designated Areas of Operations (AO) and other designated sites as identified in the Annual Plan of Operations. The procedures are based upon the following listed documents: Naval Petroleum Reserves Production Act of April 5, 1976 (42 U.S.C. 6501 et seq.); the Secretary's decision of April 6, 1976, as contained in the Executive Secretary's memorandum of April 15, 1976; Cooperative Procedures Agreement between GS and BLM dated August 29, 1975, and Secretrial Order No. 2948, and the reservations, terms, and conditions as stated in documents conveying land to Native corporations located within NPRA and, specifically the agreement of May 14, 1974, between the Department of the Navy, the Arctic Slope Regional Corporation, and four Native village corporations. These procedures may be further constrained by valid existing rights, statute, or court decree that may be applicable to NPRA or a particular site within the boundary of the Reserve.

The Naval Petroleum Reserves Production Act of 1976 assigned to the Secretary of the Interior all responsibilities with respect to any activities related to the protection of environmental, fish and wildlife, historical, or scenic values, as of April 5, 1976, the date of enactment. In addition, it requires that the Secertary assume total jurisdiction over the Reserve on June 1, 1977. This includes the commencement of further petroleum exploration and the assumption of any contracts which may be in effect with respect to such activities within the Reserve.

The Secretary of the Interior has delegated these responsibilities to the Assistant Secretary—Energy and Minerals, and Assistant Secretary—Land and Water Resources. The two Assistant Secretaries have in turn redelegated these assignments to their respective Bureaus.

Briefly, the basic responsibility for each agency is as listed below:

GEOLOGICAL SURVEY

a. The management of the continuing exploration program during the interim between the transfer of jurisdiction from Navy to Interior and the effective date of any legislation for a permanent development and production program.

b. Enforcement of regulations and stipulations issued relating to the exploration of petroleum resources.

c. Operation of the South Barrow gas field

BUREAU OF LAND MANAGEMENT

a. Surface management of NPRA and protection of surface values from environmental degradation.

b. Prepare such rules and regulations as are necessary to carry out the surface management and protection duties.

To carry out these responsibilities, the intent of Congress as stated in the Conference Report of the Act is quite evident. Maximum protection of designated special areas or protection of the remaining area of the Reserve does not imply a prohibition of exploration or related activities. However, it is expected and intended that such exploration operations will be conducted so that every precaution is taken to avoid unnecessary surface damage and to minimize ecological disturbances throughout the Reserve.

The designation of BLM in this agreement shall refer to the responsibilities of the BLM Alaska State Director.

The designation of GS in this agreement shall refer to the responsibilities of the Chief, Office of National Petroleum Reserve in Alaska (ONPRA).

With only those exceptions herein specified, the GS shall be the sole representative of the Secretary with respect to direct contact with the contractor consistent with Section 2(c)(2) of Secretarial Order No. 2948.

For the purpose of this working agreement, the AO and other designated ancillary facility sites shall be outlined on the map enclosed in the approved Annual Plan of Operations. Such sites will involve joint GS/BLM management roles and responsibilities. Operations on that portion of the AO involving exploration (or development and production (as specified in the Act) of the South Barrow gas field, or other designated fields) shall be the exclusive jurisdiction of the GS. All other uses not appurtenant to the petroleum operations will be the exclusive jurisdiction of the BLM. The following general guidelines are provided to describe the exterior boundaries of an AO:

1. *For an exploratory well:* For wells two miles or from the nearest producing well, the AO shall be established as 160 acres if it is an oil resources test and 640 acres if a gas test.

2. *For the South Barrow Gas producing field:* For wells within or adjacent to the South Barrow producing field, or such other designated fields (as specified in the Act), the AO shall embrace the actual acreage then spaced for production from the target reservoir plus, if necessary, the spacing unit for the well then under consideration. However, only the surface use area delineated on the map enclosed in the plan of operations and approved by both the GS and BLM shall be for the exclusive use of the operator while such operations are being conducted thereon

3. *For Geophysical Operations:* For geophysical operations, the AO shall be the entire length of the line to be covered by the geophysical survey and a width as mutually agreed upon. For those areas that are selected for camp sites, the AO shall be established as mutually agreed upon.

Regardless of the AO so established, the GS shall be solely responsible for all petroleum exploration operations conducted thereon, including the enforcement of the surface protection and rehabilitation remedies, as well as on other approved surface

use areas whereon such operations are normally conducted as follows:

a. Well sites—includes the area required for drilling the well, normally 5 to 10 acres. Should a well projected as an oil test be completed as a gas well, or vice versa, any additional surface use required by such completion will be subject to the procedures hereinafter set forth.

b. Tank batteries and treatment area—actual areas are established by the approved plan of operations.

c. Gathering lines to and from the wells to the tank batteries or treatment facilities and access roads covered by the plan of operations.

d. Airport facilities at the well sites.

For surface uses within the AO other than those related to operations, the BLM shall be solely responsible for authorizing such uses and the prospective surface user (resources operators or other parties such as recreationists, special use permittees, etc.) shall submit proposals directly to BLM who shall consult with GS to prevent any surface use conflicts. BLM will not approve any surface use within an AO which is contrary to GS recomendations without further discussions with GS.

All surface use requirements not related to exploration operations outside the limits of established Areas of Operations shall be the sole responsibility of the BLM.

Any unresolved isue between the BLM Alaska State Director and the GS Chief, ONPRA, will be immediately referred to the respective Associate Directors for resolution.

Nothing in this agreement is intended to modify in any manner the present or future cooperative programs of either Agency with States, other public agencies, the Native corporations, or educational institutions. However, any future cooperative programs involving NPRA will have to be within the procedures as established by this agreement.

Nothing in this agreement shall be construed as obligating either party to the expenditure of funds in excess of appropriations authorized by law or otherwise commit either Agency to actions for which it lacks statutory authority.

This agreement shall become effective upon the date subscribed by the last signatory, and shall remain in force until terminated by either Agency upon 90 days written notice. It shall be reviewed by all parties at the end of each fiscal year for adequacy and timeliness. Amendments to existing wording within this agreement may be proposed by either Agency and shall become effective upon joint approval.

A—Preparation of Preliminary Plan

A preliminary plan for the petroleum exploration, production (as specified in the Act), and environmental protection measures will be jointly prepared. The respective Bureaus will cover their areas of responsibility in the preparation of this plan. The plan will cover those activities which are tentatively scheduled for the 12-month period commencing November 1 of the succeeding year. The plan will provide as much advance information and data concerning anticipated operations and mitigating measures as available to facilitate preparation of the Annual Plan of Operations and to meet the critical time frames for such activities.

GS will: 1. Submit information for the preliminary plan to BLM by October 31 of each year, unless otherwise mutually agreed upon.

2. Participate and assist BLM in the consultation with other concerned Federal, State, and local agencies and the Arctic Slope Regional Corporation and affected village corporations as appropriate, and other Native community groups through the North Slope Borough and other interested parties.

BLM will: 1. Ascertain valid existing rights, land ownership patterns, and other constraints that may be associated with the land.

2. Review the submitted data as forwarded by GS and make appropriate and timely comments and input for the preliminary plan.

3. Take appropriate steps to notify, coordinate, and consult with other Federal, State, and local agencies having statutory and regulatory responsibilities, the Arctic Slope Regional Corporation and affected village corporations as appropriate, other Native communities through the North Slope Borough, and other interested parties concerning such preliminary plans.

B—Preparation of Annual Plan of Operations

An Annual Plan of Operations will be developed to facilitate the petroleum exploration program and protection of the environment responsibilities. In developing this plan, each agency recognizes the mandate of Congress regarding the interrelationship between these two responsibilities. This plan will cover site specifics for the ensuring field season.

The following procedures will provide guidance in the development of the plan.

GS will: 1. Prepare a draft Annual Plan of Operation. Such plan will include but is not limited to the following listed information for:

a. Drilling Operations.

(1) A brief description of the type of operations which will be undertaken.

(2) Description of well site layout including equipment and facilities needed.

(3) Map or maps with scale of 1:63,000 or other maps of sufficient detail to allow for adequate evaluation, showing lands to be entered or disturbed by the proposed exploration operations.

(4) The approximate dates of commencement and termination of operations.

(5) Location of access routes and means of access including any construction activities and types of vehicles used.

(6) Location and development of water sources including means of transport.

(7) Location, development, and description of communication sites and facilities.

(8) Type, location, and description of materials sites, including method of material recovery, type of material, estimated quantity, and method and route of transport.

(9) Method of handling waste materials.

(10) Plans for restoration and rehabilitation of the surface.

(11) Airstrips and other aircraft landing sites.

(12) Any standard or special applicable stipulations to be imposed.

(13) Any other facets of the proposed operation which may be of assistance during evaluation of the plan.

b. Geophysical Operations.

(1) The type of geophysical operations or surveys such as reflection or refraction surveys.

(2) The line of shot holes displayed on a map of appropriate scale.

(3) Distance between shot holes.

(4) Depth of shot holes.

(5) The type of tools and associated equipment to be utilized.

(6) The testing, logging, and coring programs to be followed with provisions made for required flexibility.

(7) The anticipated starting date and duration of the operation.

(8) Long and short-term camp sites.

(9) Access routes, airstrips, and other aircraft landing sites.

(10) Construction materials to be utilized during operations and source of such materials.

(11) Disposal of all waste material.

(12) Communication sites.

(13) Any standard or special applicable stipulations to be imposed.

(14) Any other facets of the proposed operation which may be of assistance during evaluation of the plan.

c. Cultural Resource Inventory Reports.

NOTE.—An intensive cultural resource inventory must be conducted on those sites and alternative sites identified for exploration operations that involve surface disturbing activities. This inventory shall be conducted under the requirement of a Federal Antiquities Permit by a qualified professional. The need for an intensive inventory may be waived only if it is determined by BLM that equivalent data are available or that something less than intensive data are available and acceptable. These inventory data should be prepared in the form of a report. See Appendix I for the format of the report.

2. Participate with BLM in the consultation with other concerned Federal, State, and local agencies, the Arctic Slope Regional Corporation, and effected village corporations as appropriate, and other Native community groups through the North Slope Borough and other interested parties.

3. Submit such draft plans to the BLM not later than July 15, unless another date is mutually agreed upon, to allow sufficient time to conduct a field examination, coordinate with other concerned agencies, prepare a joint environmental analysis, assemble and prepare proposed stipulations, and jointly finalize and approve the plan. (See C—Field Investigation.)

BLM will: 1. Upon receipt of the draft Annual Plan of Operations, be responsible for notifying, coordinating, and consulting with other Federal, State, and local agencies having statutory or regulatory responsibilities, the Arctic Slope Regional Corporation, and effected village corporations as appropriate, and other Native communities through the North Slope Borough and other interested parties regarding the plan. The Bureau will review all environmental concerns and recommended stipulations concerning the proposed program from such agencies, Alaska Native interests, and other parties. (See C—Field Investigations.)

2. Review submitted stipulations and, as appropriate, prepare its proposed environmental stipulations to mitigate adverse environmental impacts for inclusion in the plan and submit to GS for joint finalizing action.

GS and BLM will: 1. Jointly prepare an environmental analysis covering all aspects of the Annual Plan of Operations. Basically, each agency will be responsible for their respective areas of expertise (i.e., GS—technical program aspects/BLM—surface management aspects), although some overlap will be required. Guidelines for this joint action, including sharing of professional skills, will be as identified in the Cooperative Procedure Agreement of August 6, 1975, for Coordinating Preparation of Environmental Analysis and Environmental Statement (BLM WO–55).

2. Jointly finalize and approved the Annual Plan of Operations before the date scheduled for commencing exploration operations.

C—Field Investigations

For purposes of indentifying and analyzing the environmental concerns and anticipated impacts regarding proposed exploration operations, field investigations, as needed, will be conducted. Such field examinations will be applicable to the preparation of the preliminary plans and/or Annual Plan of Operations. To the extent possible, they should be conducted jointly when it is determined by either agency that such an examination is necessary.

Because of the high priority of such field investigations, they will be scheduled as early as possible, particularly after GS submits the draft Annual Plan of Operations to BLM. The GS may designate a number of future sites so that they may be inspected at one time.

GS and BLM will jointly: 1. Determine and schedule the date to conduct field investigations.

2. Arrange and conduct field investigations.

BLM will: 1. Make arrangements for other concerned Federal, State, and local agencies and the Arctic Slope Regional Corporation and affected village corporations as appropriate, and other Native communities through the North Slope Borough to participate in the fied investigation.

GS will: 1. Make arrangements for participation of its contractor in the field investigation.

D—Compliance With Terms and Conditions and Emergency Situations

GS will: 1. Conduct inspections to insure that the contractor is in compliance and accordance with terms and conditions of the approved Annual Plan of Operations.

2. Notify and seek BLM assistance and expertise in surface management problems involving noncompliance with terms and conditions or stipulations, rehabilitation measures, or for modifications requested by the contractor.

3. As appropriate, request the BLM to make inspections to assure compliance with the surface protection requirements of the approved Annual Plan of Operations.

4. Seek all available help, including BLM, on major accidents or spills involving flowline or gathering facility spills, breaks in sludge pits, etc. Seek BLM expertise in rehabilitation and clean-up operations.

BLM will: 1. Conduct inspections to insure compliance with the surface protection requirements of the approved Annual Plan of Operations and will note contractor noncompliance therewith. Except in an emergency, no instructions or directions will be given to the contractor or his subcontractors without GS approval.

2. Notify GS immediately of all such incidents of noncompliance with the surface protection requirements of the approved Annual Plan of Operations.

3. Exercise jurisdiction over activities within the area of operations (AO) only in emergency situations, and may issue orders to the operator only under the following circumstances and conditions:

(a) The emergency situation shall be such as to clearly threaten immediate and serious damage to the environment, resources, or the health and safety of the public, and the GS official is not available to take the necessary immediate action.

(b) Order, in such emergency situation, immediate cessation of activities responsible for the emergency situation, such orders to be followed by prompt notification to the GS who will take over jurisdiction and order immediate remedial action.

4. As requested, furnish help during and after the emergency for clean-up operations, and also furnish expertise for any required rehabilitation.

The agency responsible for seeking curative action on instances of noncompliance with the terms and conditions of the approved Annual Plan of Operations will take the necessary action when notified of the noncompliance by the other agency.

E—Maintenance of Field Activities Inside the Area of Operations

GS will: 1. Submit to BLM for review and joint approval an amendment to the Plan of Operations prior to undertaking any new construction, reconstruction, or alteration of facilities, including roads, dams, reservoirs, etc., which will result in additional surface disturbance.

2. Inspect operations to insure that the contractor is in compliance with and is conducting operations in accordance with the stipulations and the approved Annual Plan of Operations.

3. Report to the BLM infrations of stipulations and incidents of noncompliance.

4. Take the appropriate administrative action upon receiving BLM reports of contractor's unauthorized activities outside the area of operations.

5. Furnish BLM with the name, address, and both the office and home numbers of the GS official to contact in case of emergencies or incidents of noncompliance with the surface use and rehabilitation requirements of the approved Annual Plan of Operations.

6. Seek all available help, including BLM, on accidents which might result in damage to other resources. Seek BLM expertise in clean-up operations.

7. Make periodic inspections to assure that the contractor is properly maintaining the facilities.

BLM will: 1. Respond timely to GS's submission after an amended Annual Plan of Operations has been forwarded for additional surface use within an AO by providing its proposed surface protection or rehabilitation requirements and jointly approving the amended plan.

2. Where activities not included in an approved Annual Plan of Operations constitute unauthorized activity on such lands by the contractor, these activities will be reported to GS for the appropriate corrective action.

3. When requested by the GS, assist in resolving noncompliance with terms and conditions or stipulations of any approved Annual Plan of Operations.

4. Make periodic inspections to assure that the contractor is complying with the surface protection and rehabilitation requirements of the approved Annual Plan of Operations and will notify GS when it becomes aware of any operating condition warranting correction. The BLM, on its own initiative, may make recommendations to GS for the maintenance or rehabilitation of existing conditions adversely affecting the surface or other resources within AO.

5. Notify GS of all applications which involve other surface uses of the lands within the AO for GS recommendations prior to approval or disapproval of the application.

F—Surface Use Management Outside the Area of Operation

BLM will: 1. Resolve surface use conflicts to the satisfaction of all users if possible; failing this, BLM will take appropriate steps to eliminate the conflict with priority consideration given to the continued petroleum exploration and/or development and production (as specified in the Act). In that regard the comments and recommendations of the GS will be requested.

2. Work directly with all surface users in the area, including the contractor, regarding maintenance of roads and other support facilities, preventing damage to the surface resources, and encouraging public health and safety awareness.

3. Notify GS of all applications involving lands outside the AO where surface use may cause conflicts. Approval or disapproval of applications will be based upon all considerations including recommendations from the GS.

GS will: 1. Contact BLM immediately if it becomes aware of any conflicts involving surface use.

2. Make recommendations to BLM if production (as specified in the Act) facilities are being vandalized so protection measures, such as limiting or restricting public access into the area, may be initiated.

3. Make recommendations to both the contractor and BLM to improve public health and safety conditions and other conditions such as road maintenance in the general area.

4. Work with BLM to resolve any surface use conflicts which may arise.

G—Abandonment of Drilling and/or Geophysical Operations

GS will: 1. Notify BLM of cancellation or termination of any approved Annual Plan of Operations under which no activity has taken place.

2. Send BLM a copy of all notices of intention to abandon wells, including any special procedures to be required. If the permit is to remain in effect, any proprietary data contained in a notice will be deleted. If that portion of the approved Annual Plan of Operations covering surface rehabilitation does not contain information as to whether the well's casing is to be cut off below the ground surface or the abandonment marker is to be waived, or both, the BLM will be orally contacted for its recommendations.

3. Approve the surface and subsurface plugging program to be followed by the contractor.

4. As necessary, request the BLM work directly with the contractor.

5. Approve the subsequent report of abandonment only after a joint inspection by BLM and GS confirms that surface rehabilitation requirements of the approved Annual Plan of Operations have been completed satisfactorily.

BLM will: 1. Upon request, advise GS if the well's casing should be cut off below ground surface.

2. Upon request, advise the GS whether the required surface abandonment marker should be waived.

3. When requested by GS, work directly with the contractor concerning surface rehabilitation.

4. Notify GS of any failure on the part of the contractor to undertake surface rehabilitation measures which are required by the approved plan of operations.

5. Notify GS of the contractor's satisfactory completion of surface rehabilitation.

H—General

GS will: 1. Coordinate and communicate with the BLM concerning exploration, also development and production (as specified in the Act) plans, and other information requirements prior to submission of preliminary plans and/or the Annual Plan of Operations.

2. To facilitate BLM's monitoring role and responsibilities, make arrangements with GS's contractor to provide (a) billeting for one person at each drilling and geophysical site, (b) two billets and one desk at Lonely Base Camp, and (c) transportation on a need basis for scheduled and unscheduled trips for field investigations, compliance checks, and other matters relating to BLM responsibilities.

BLM will: 1. Coordinate and communicate with the GS prior to submission of the Annual Plan of Operations to expedite BLM's input concerning surface management and environmental concerns and stipulations.

2. Reimburse billeting and transportation expenses provided by GS's contractor.

BLM and GS will: 1. Periodically hold joint meetings with GS's contractor and other involved Federal, State, and local agencies and the Arctic Slope Regional Corporation and

affected village corporations as appropriate, and other Native communities through the North Slope Borough to discuss problems, stipulations, working agreements, and other items of common concern and interest.

2. Meet on a bi-weekly basis at the BLM State Office or the GS ONPRA Office to discuss past and future procedures under these instructions and other matters of mutual concern and interest.

3. Offer suggestions for revision of these procedures to their Washington Offices for improving their workability and to reduce duplication of effort in conducting these cooperative and joint efforts.

Date December 10, 1976.

GEORGE L. TURCOTT,
Associate Director,
Bureau of Land Management.

Date December 16, 1976.

W. A. RADLINSKI,
Associate Director,
Geological Survey.

I concur:

Date January 18, 1977.

JACK HOATON,
Assistant Secretary,
Land and Water Resources.

Date January 18, 1977.

WILLIAM L. FISHER,
Assistant Secretary for
Energy and Minerals.

APPENDIX I

Cultural resource inventory report. The report should contain at a minimum the following:

a. Identification of the Federal Antiquities Permit under which the work was performed.

b. Description of data review and field inventory methods used, intensity of field inventories, the names of individuals employed in the work, and the commencement and termination dates of field inventory.

c. Identification of the project, and the BLM serial case file number, if any, for which the report is being written.

d. A general background discussion of cultural resources of the area.

e. Identification and description of specific cultural resource sites and values found, and evaluation of their significance, and whether such sites might be eligible for placement in the National Register of Historic Places with specific citation to qualifying criteria under 36 CFR 800.10.

f. Site inventory records (BLM Form 6230–2 or other acceptable form) completed for each cultural property inventoried with appropriate maps indicating the location of each site.

g. Suitable maps that clearly define all areas surveyed and intensity of survey in relation to identified cultural resources and the relationship of sites found to the project. Minimum acceptable base map should be with a scale of 1: 63,000 or other maps of sufficient detail.

h. Catalog of all cultural resource objects collected and indication of where they are stored.

i. Identification of the probability of finding additional sites and their probable significance.

j. Identification of the probable direct and indirect effects of the project upon known and unknown cultural resources.

k. Professional recommendations to realistically mitigate the direct and indirect adverse effects upon cultural resources which will result from the project.

[FR Doc.77-2185 Filed 1-24-77;8:45 am]

Geological Survey

NATIONAL PETROLEUM RESERVE IN ALASKA

Memorandum of Understanding

CROSS REFERENCE.—For a document concerning the above entitled matter filed jointly by the Bureau of Land Management and the Geological Survey, see FR Doc. 77-2185 in the notices section of the FEDERAL REGISTER.

LESSEES AND OPERATORS OF FEDERAL ONSHORE OIL AND GAS LEASES

Procedures for Reporting and Accounting for Royalties

Notice is herby given that the Geological Survey has finalized its procedures and reporting forms for reporting and accounting for royalties and other compensation accruing to onshore Federal oil and gas leases. This notice also prescribes certain information which a lessee or operator must provide in support of reports and payments made to the Geological Survey.

On March 1, 1976, the Geological Survey published in the FEDERAL REGISTER (Vol. 41, No. 41, pp. 8802–8805) a notice which set forth its proposed requirements for: (1) The submittal of Monthly Report(s) of Operations (Form 9–329), Monthly Report(s) of Sales and Royalty (Form 9–361), and Rental and Royalty Remittance Advice(s) (Form 9–614–A); (2) the submittal of related supporting documentary evidence and Application(s) for Establishment of Royalty (Form 9–1926); and (3) the procedures for remitting all payments to the Geological Survey. Said Notice solicited the submittal of written comments from interested parties by March 25, 1976. On March 24, 1976, the Geological Survey published in the FEDERAL REGISTER (Vol. 41 41, No. 58, p. 12235) a notice extending the period for written comments to May 1, 1976.

Written and oral comments received by the Geological Survey have been carefully considered in the preparation of this final Notice, whether received before or after May 1, 1976. Comments were received from 13 oil and gas companies and 1 oil and gas association. Even though the industry responses received represent only a small percentage of companies and individuals operating Federal oil and gas leases, those received were very comprehensive. Certain of the comments were adopted or essentially satisfied, and the Geological Survey has made other changes on its own motion.

Many of the comments received concerning the proposed Notice published on March 1, 1976, indicate that certain terms used therein engendered some confusion as to the intent and effect of various provisions of the proposed NTL–1. Therefore, the following general explanatory comments are provided in an attempt to alleviate some of the more repetitive items of concern. However, in the event of a conflict between these general comments and the specific language of NTL–1, the provisions of NTL–1 will prevail.

The terms "lessee" and "operator" are often used almost interchangeably in this and other Notices to Lessees and Operators (NTL's). Although the Geological Survey considers a lessee as ultimately responsible for the proper performance of all obligations established by the lease, NTL–1 recognizes that a lessee may be an operator, a nonoperating working interest owner, or the owner of record title with all operating rights vested in other parties. Thus, NTL–1 should not be inferred as requiring a lessee to submit reports and payments to the Supervisor except when a lessee is also an operator or a nonoperating working interest owner who separately disposes of its proportionate share of jointly owned production or merely elects to make separate payments for said proportionate share.

The requirements of NTL–1 should not be construed as requiring all rental payments due under Federal oil and gas leases to be made to the Geological Survey. However, advance rental payments for those old form leases which are in a producing status, as well as rentals for nonproducing leases which are committed to producing units, are to be made to the Geological Survey. Thus, where rentals are now paid directly to another agency, that practice should be continued unless notification is subsequently received that the lease account has been transferred to the jurisdiction of the Geological Survey.

The provisions of NTL–1 apply only to onshore Federal oil and gas leases, certain private and State lands subject to cooperative agreements to the extent, and only to the extent, provided in such formal agreements and, on rare occasion, to unleased Federal land subject to a formal agreement. The provisions of NTL–1 do not apply to any Indian lands or leases, nor to Outer Continental Shelf lands or leases, nor to any Federal leases for minerals other than oil and gas. However, notice is hereby given of the Geological Survey's intent to publish shortly a final NTL–1A which will set forth the procedures for reporting and accounting for royalties on Indian oil and gas leases, except those on the Osage Indian Reservation. NTL–1A will be identical in all respects to NTL–1, except to recognize certain basic differences between Federal and Indian leases as related to payments, remittance advices, overpayments, royalties on gas production, and reimbursement of taxes paid by a lessee or operator.

All forms described in NTL–1 are to be filed with the appropriate Supervisor's office, regardless of past instructions that required a copy of certain forms to be filed with District offices. Moreover, all other directives concerning the subject matter addressed by NTL–1 are superseded and cancelled by this final NTL–1 to the extent that they conflict therewith. In other words, where a conflict exists, the provisions of the final NTL–1 will prevail.

The principal changes in this final NTL–1 from that proposed on March 1, 1976, are:

Package reporting. The final NTL–1 does not require all reports, documentary evidence, payments, and remittance advices to be filed as a package. However, the Notice does require that the Monthly Report of Sales and Royalty (Form 9–361), with its supporting documentary evidence, be submitted as a package beginning with the report for the production month of April 1977. Payments and related Rental and Royalty Remittance Advices (Form 9–614–A) are to be submitted together as a package beginning with the payments made for the production month of October 1977. The Monthly Report of Operations (Form 9–329) need not accompany either package.

Due date for submittal of continuing monthly reports. The due date for submittal of the Monthly Reports of Sales and Royalty (Form 9–361) and Operations (Form 9–329) has been changed to the 10th day of the second month following the production month. No change was made concerning the submittal of royalty payments which will continue to be due on the last day of the month next following the production month.

Effective dates for mandatory use of revised forms. The effective date for mandatory use of revised Forms 9–329, 9–361, and 9–614–A is established as those submitted for the production month of October 1977.

Time for filing other data. The time for filing Division Orders and Sales Agreements/Contracts was extended from 30 to 60 days following the date of first sales. Further clarification has also been provided in relation to the time frame in which Applications for Establishment of Royalty Values (Form 9–1926) are to be filed.

Division orders. The language concerning Division Orders in the proposed Notice of March 1, 1976, unequivocally required the filing of Division Orders for all leases. Such language has been revised to require the filing of Division Orders only in those instances where used.

Other notices to lessees and operators. All references or citations related to other NTL's have been eliminated in the final NTL–1.

Rental and royalty remittance advice (Form 9–614–A). Operators are encouraged to file separate remittance advices and payments for those rental payments made to the Geological Survey in order to assure proper and timely credit to the appropriate lease account.

Application for establishment of royalty value (Form 9–1926). Provision was made to permit an operator to file one Form 9–1926 for multiple leases so long as the pricing elements applicable to the leases are identical. The Supervisor will advise the applicant by return letter concerning the value(s) established for royalty computation purposes rather than countersigning the application form. After the initial filing of Form 9–1926 for any given lease, it will be necessary to file a new or revised Form 9–1926 for that lease only for major changes such as price deregulation, a change in purchaser, or subsequent opinions, or rulings which affect permitted prices, e.g., a revision of FPC's Opinion 770. It will not be necessary to file a new or revised Form 9–1926 for every price fluctuation such as those due to differences in measured API gravity during separate runs or changes in the calculated Btu content of gas as a result of a subsequent sampling.

Standard conditions applicable to volume measurement. Inasmuch as most of industry and many governmental agencies have adopted 14.73 psia as the pressure base for measuring gas, the Geological Survey is hereby changing from its previous standard pressure base of 15.025 psia to 14.73 psia. Because of this change, standard conditions pertaining to gas measurement are cited in each applicable section of NTL–1. Since no change was made in the standard conditions pertaining to the measurement of crude oil or other liquid hydrocarbons, the present standards have not been repeated in the Notice.

The Geological Survey is fully aware and appreciates the magnitude of the effort required by industry in changing over to the procedures outlined in NTL–1. However, except for the additional requirement that Applications for Establishment of Royalty Values be submitted, the only basic changes from previous procedures are in the format of the monthly reporting forms, the manner of recording data on such forms, and the requirements for certain package submittals. It is believed that once (1) the Applications for Establishment of Royalty Values have been submitted and processed and (2) practical experience has been gained in the use of the revised reporting formats that the new procedures will result in substantial benefits for all concerned.

Because of the significant changes in data format and the procedures for preparing and filing the forms, it is not feasible to implement all provisions of NTL–1 on or immediately following its effective date. Therefore, provisions have been included in NTL–1 to phase in over a 9-month period the various requirements of the new procedures and the use of the revised reporting forms. During this phase-in period, lessees and operators will be furnished a supply of the new reporting forms and will be instructed in their proper use. Also, the system, as established by NTL–1, will continue to be studied with the intent that modifications will be made in the requirements of NTL–1, as warranted. The first such formal review will occur in December of 1977, and all concerned parties are invited and encouraged, prior to that time, to provide constructive comments concerning their practical experience with NTL–1 and the associated reporting forms prior to that time.

The U.S. Geological Survey has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A–107.

W. A. RADLINSKI,
Acting Director.

NOTICE TO LESSEES AND OPERATORS OF FEDERAL ONSHORE OIL AND GAS LEASES (NTL–1)

PROCEDURES FOR REPORTING AND ACCOUNTING FOR ROYALTIES

I. GENERAL

Pursuant to the regulations contained in Title 30 CFR Parts 221 and 223 and the requirements of this Notice, operators of onshore Federal oil and gas leases are required to timely file with the Area Oil and Gas Supervisor (Supervisor) the below defined sales agreements, operations reports, production and sales reports, supporting documentary evidence, remittance advices and royalty payments, and the other items required herein.

Items	Copies required by USGS [1]	Due date
Division orders	2	Within 60 d following the date of 1st sales.
Sales agreements/contracts	1	Within 60 d following the effective date of the contract or the date of 1st sales, whichever occurs 1st. Any amendment to an existing contract must be filed within 60 d following the effective date of the amendment.
Monthly report of operations (form 9–329)	2	Due monthly with the 1st report submitted for the month in which the initial well on, or for the benefit of, a lease is commenced.
Monthly report of sales and royalty (form 9–361).	1	Due monthly with the 1st report submitted for the month in which the 1st well was completed for production on, or for the benefit of, a lease, even if no sales were made.
Purchaser's and gasoline plant statements	1	Evidence to confirm the monthly sale of all lease products must be submitted monthly beginning with the month of 1st sales.
Rental and royalty remittance advice (form 9–614–A).	1	Beginning with the production month of October 1977, 1 copy of the remittance advice, form 9–614–A, must accompany all payments submitted to the supervisor.
Application for establishment of royalty value (form 9–1926).	1	Within 6 months after the effective date hereof for all leases in a producing status at that time or within 60 d following the date of 1st sales, if after June 1, 1977.

[1] Unless otherwise specified by the supervisor.

Inquiries regarding the general requirements of this Notice may be directed to any Supervisor. However, specific questions concerning a particular reporting problem should be directed to the appropriate Supervisor having jurisdiction over the area in which the involved lease, unit area, or communitized tract is situated.

This Notice shall remain in effect until modified or revoked. However, it will be subject to periodic review, the first of which will be completed not later than January 1

1978. Should any of the requirements prove to be inadequate, impractical, or unnecessary for the proper conduct of the Geological Survey's assigned responsibilities in this regard, the Notice will thereafter be revised accordingly.

II. DIVISION ORDERS, SALES AGREEMENTS, AND SALES CONTRACTS

A. *Division orders.* Where a division order is the means by which a sale is consummated of any product produced from, or for the benefit of, a Federal lease, each such division order, properly identified by Federal lease or contract number, must be furnished in duplicate to the Supervisor within sixty (60) days following the date of initial sales. A copy approved by the Supervisor will be returned to the operator. Division orders are approved as a proper means of distributing lease proceeds, and such approval is subject to the condition that nothing contained therein will be construed as affecting the relationship between the lessee (operator) and the Secretary of the Interior. Division orders submitted to the Supervisor need not be signed by working interest owners or other royalty owners under the lease or contract, since the Supervisor's approval is intended only to verify to the party making payment that the Federal Government's royalty interest is correctly stated and to authorize transportation companies and purchasers to receive products from the leased lands.

The due date for royalty payments will be enforced even though a division order is incomplete and purchasers should be advised that nothing contained in a division order may in any way alter the royalty rate specified in a lease. Federal royalties must be released even though other monies are being held in suspense by a purchaser due to an incomplete division order or other irregularities. However, if a purchaser fails to timely release Federal royalties, the operator shall be held responsible for making such payments by the due date.

B. *Sales agreements/contracts.* A copy of each agreement or contract for the disposal of leasehold products must be furnished to the Supervisor within sixty (60) days following the effective date of first sales. Any amendment to the contract must also be forwarded to the Supervisor within sixty (60) days following the effective date of the amendment. Any applicable rulings by the Federal Power Commission or the Federal Energy Administration which are incorporated in, or which affect the prices shown in a contract or amendment, must be cited. All agreements, contracts, supplemental amendments, and citations must identify, by Federal lease(s) or contract number(s), the Federal lease(s) affected or be accompanied by a transmittal letter which provides such information. If a contract, agreement, supplemental amendment, or citation does not apply to all production, wells, or zones on a given lease, that production and wells or zones to which it does apply must be specified.

Operators are advised that the price which the seller agrees to accept and the price which the buyer agrees to pay in any contract or other-arrangement made for the sale or disposal of products from the leased lands shall not be construed as establishing a value that is binding on the Supervisor for royalty computation purposes.

III. GAS AND ASSOCIATED LIQUIDS PRODUCTION, SALES, AND ROYALTY REQUIREMENTS

The value of all produced gas and associated liquid hydrocarbons will be established by the Supervisor. Such value will be based on the Supervisor's estimated reasonable value of both the natural gas and its entrained liquid hydrocarbons with due consideration being given to the highest price paid for a part or for a majority of like quality production in the same field or area, to the price(s) received by the operator, to the Btu content of the gas, and to other relevant matters. Under no circumstances will the royalty value be computed on less than the gross proceeds accruing to the operator from the sale of such leasehold production. Gross proceeds include, but are not limited to, tax reimbursements and payments to the operator for gathering, measuring, compressing, dehydrating, or performing other services necessary to market the production. Likewise, no deduction will be allowed for the cost which an operator occurs by reason of placing the gas in a marketable condition as an operator is obligated to do so at no cost to the lessor.

The weighted average Btu content of all gas produced from, or for the benefit of, each Federal lease or contract must be shown on the Monthly Report of Operations (Form 9-329). The Btu content of the gas should also be shown monthly on the purchaser's statement (includes gas settlement and gasoline plant statements).

The Supervisor may adjust royalty value to reflect the Btu content of the gas regardless of whether the gas is sold on that basis. The Supervisor may also redetermine the value of the gas for royalty purposes at any subsequent date should such action be required to reflect the reasonable value of the gas and its entrained liquid hydrocarbons.

Should the Supervisor elect to compute product value separately on the residue gas and the individual byproducts extracted therefrom, the monthly Form 9-361 must show the 100 percent volumes and values of the residue gas and the liquefiable hydrocarbons recovered, sold, lost, or utilized. Nonhydrocarbon byproducts such as sulfur and carbon dioxide which are extracted for sale must also be reported in the same manner on the monthly Form 9-361. When required by the Supervisor, an annual report must be submitted showing in detail total plant operating costs, gas processed, and the resultant volumes of residue gas and byproducts.

The Supervisor may require an operator to submit additional supporting information to show (1) the value of gas at the wellhead adjusted for its Btu content; (2) the gross proceeds accruing to the operator; or (3) the value of the separate commodities at the tailgate of a field facility and/or gasoline plant.

If an operator is receiving or is entitled to receive an escalated gas price under the provisions of an interstate gas sales contract prior to the approval of said price by the Federal Power Commission, royalty will be calculated on not less than such escalated price. If said price is subsequently disallowed or reduced by the Federal Power Commission, a refund or credit against future royalty accruals will be permitted and may be arranged by application to the Supervisor.

Payments made by a gas purchaser pursuant to a contractual "take-or-pay" clause are subject to royalty under the terms of the lease agreement. The receipt of such monies by the operator and the subsequent recovery of "take-or-pay" gas by the purchaser must be reported and properly identified as such on Form 9-361. Any problems related to computation of such royalties should be referred to the Supervisor.

IV. CRUDE OIL AND CONDENSATE PRODUCTION, SALES, AND ROYALTY REQUIREMENTS

Royalty is due on the value of all crude oil or condensate produced from, or for the benefit of, onshore Federal oil and gas leases. The Supervisor shall establish a value for royalty purposes on crude oil and condensate production for which royalty is due. The royalty value so established will be based on the estimated value of the crude oil or condensate with due consideration given to the highest price paid for a part or for a majority of production of like quality in the same field or area, to the price received by the operator, to posted prices, and to other relevant matters. Under no circumstances will the royalty value be computed on less than the gross proceeds accruing to the operator from the sale of leasehold production or on less than the highest price legally obtainable for production from the lease, unit participating area, or communitized tract. Deduction of transportation charges will not be allowed unless justified in writing and approved by the Supervisor. Generally, the deduction of transportation charges will not be allowed for a field or area in which there is a willing purchaser who would absorb such costs, and provided that the regulations of the Federal Energy Administration do not prohibit the operator from selling to said purchaser.

V. APPLICATION FOR ESTABLISHMENT OF ROYALTY VALUES

A properly completed Application for the Establishment of Royalty Values on Form 9-1926 must be submitted to the Supervisor by August 1, 1977, for those leases in a producing status as of June 1, 1977. Separate applications must be filed by each operator and working interest owner who is responsible for the payment of royalty or other compensation. An operator may file a single application for its leases in the same field or area if they are subject to identical marketing arrangements. However, where upper and lower tier oil or different vintages of gas are involved, the application must be supplemented with appropriate information identifying the production subject to each tier or vintage. For those leases which achieve production after June 1, 1977, the application must be submitted within sixty (60) days following the date of first sales. Failure to file an accurate and complete application within the time allowed will result in the Supervisor establishing a royalty value equal to the highest price paid for like quality production in the field or area, assessing liquidated damages, or taking other appropriate action to bring about compliance.

In the interim period between the filing of an application and final action by the Supervisor, operators may submit payments based on the price(s) paid by their purchasers. The Supervisor will advise the operator by letter of the value(s) which have been established for royalty purposes and the effective date thereof. The difference, if any, between the approved value(s) and the value(s) upon which payments have been made shall be reconciled by the operator within sixty (60) days thereafter. This includes the submittal of amended reports and additional payments, as necessary. Any subsequent adjustments or amendments in the sales arrangements set forth in an Application for Establishment of Royalty Values must be reported promptly to the Supervisor.

VI. MONTHLY REPORTING AND PAYMENT REQUIREMENTS

General. The production and sale or other disposition of all oil, condensate, gas, associated liquid hydrocarbons, and other byproducts produced from, or for the benefit of, onshore Federal leases, and for which the Supervisor requires a separate accounting, must be reported individually on a monthly basis to the Supervisor, unless waived by the Supervisor as hereinafter provided.

Where an operator is solely responsible for the sale or disposition of all production, said operator will be held responsible for the timely submittal of operations reports, sales and royalty reports, remittance advices, and payments as well as for the submittal of purchaser(s) and gasoline plant statements and other supporting documentary evidence to substantiate the reported volume(s) and unit price(s) or value(s) of all production from the lease, unit participation area, or communitized tract.

In those instances where there are multiple operators under a single lease, each operator will be individually responsible for the timely submittal of the foregoing reports, documentary evidence, remittance advices, and payments for that portion of the lease which they operate.

In those joint venture projects (whether conducted on a lease basis or under the terms of an approved communitization or unitization agreement) where the operator sells or otherwise disposes of all production, but each working interest owner elects to make separate payments, the operator is responsible for the timely submittal of all reports and supporting documentary evidence which reflect the disposition of the total production and the value(s) or unit price(s) established by the Supervisor for such production. Each working interest owner, including the operator, will be held accountable for the timely submittal of remittance advices and payments for their proportionate share in the total production. However, in those situations where the operator and individual working interest owners in a joint venture project conducted on a lease basis elect to separately sell or dispose of their proportionate share in that production, the operator must timely submit the operations reports for the lease. Each working interest owner, including the operator, will be held responsible for the timely submittal of sales and royalty reports, supporting documentary evidence, remittance advices, and payments which reflect the disposition of their share in the total production from the lease, and the value(s) or unit price(s) established by the Supervisor for their proportionate share in such production. Where each working interest owner in a joint venture project conducted pursuant to a communitization or unitization agreement elects to separately sell or dispose of its proportionate share in that production, the reporting requirements for each such party are, with one exception, the same as that specified above in regard to individual reporting for joint venture projects conducted on a lease basis. That exception is that the individual Monthly Reports of Sales and Royalty (Form 9-361) must reflect the disposition of the total production from the communitized tract or unit participating area.

Beginning with the production month of April 1977, operators and working interest owners, as applicable, will be required to file for each lease, unit participating area, or communitized tract, for which they have reporting responsibilities, a package submittal which includes the Monthly Report of Sales and Royalty (Form 9-361), purchaser(s) and gasoline plant statements, and other supporting documentary evidence. The initial package report must be received by the Supervisor no later than June 10, 1977. Unless otherwise authorized in writing by the Supervisor, all subsequent package submittals must be received in the office of the Supervisor by the 10th day of the second month next following the production month. However, if said 10th day of the month falls on a nonwork day, the submittal shall be due not later than the last official working day prior thereto.

Beginning with the production month of April 1977, the Monthly Report of Operations (Form 9-329) must also be received by the 10th day of the second month next following the production month unless otherwise modified as specified above but need not accompany the Form 9-361 and its attachments.

Beginning with the production month of April 1977, all royalty payments must be received without exception in the office of the Supervisor by the last day of the month next following the production mouth or the next official working day thereafter if said last day occurs on a nonwork day. Beginning with the production month of October 1977, all payment, including those for royalty must be accompanied by a remittance advice.

All reports, supporting documentary evidence, and payments must be identified by the appropriate Federal lease, unit, or communitization agreement contract number(s), and each report must be signed by an authorized person.

Beginning with the manually prepared data submitted for the production month of October 1977, the use of Forms 9-329, 9-361, and 9-614-A, as revised effective February 1976, will be mandatory.

Operators who currently furnish magnetic tape or key-punched card data to the specifications of the Conservation Division for direct input of charge and/or payment data into the Division's automated data processing system will be permitted to continue that practice; provided, however, that beginning with the production month of April 1977, all reports, including printouts of automated input, supporting documentary evidence, remittance advices, and applicable payments must be submitted to the Supervisor in accordance with the schedule set out above.

Beginning with the production month of October 1977, operators having computer capability will be permitted to submit printouts in lieu of the revised Forms 9-329, 9-361, and 9-614-A provided that such printouts are identical in all respects to said forms.

The following is a detailed explanation of the required monthly items which are to be submitted.

A. *Monthly report of operation (Form 9-329).* A report covering the operations conducted on each well on a lease, unit area, unit participating area, or communitized tract must be filed by the operator each month in duplicate on Form 9-329 or an acceptable computer printout as above defined. This report must be furnished monthly beginning with the month in which the first well is commenced. All wells must be shown on the report until approved by the Geological Survey as plugged and abandoned.

Shut-in, temporarily abandoned, and other inoperative wells must be reported each month even though there may be no operations or production. A separate monthly report is required for each lease, unit area, unit participating area, or communitized tract. The report must be fully completed and provide a detailed breakdown of all production by well and the disposition of all production from the lease, unit participating area, or communitized tract.

Gas volumes shall be reported in MCF (1,000 cubic feet) at a pressure and temperature base of 14.73 psia and 60°F., unless otherwise directed in writing by the Supervisor.

Annual reports may be submitted for shut-in leases provided that prior approval is obtained from the Supervisor. When approved, annual reports must be filed on a lease-year basis and received by the Supervisor no later than 30 days following the end of the lease year. However, monthly reports must be commenced immediately whenever operations and/or production are resumed.

B. *Monthly report of sales and royalty (Form 9-361).* A report on Form 9-361, or an acceptable computer printout as above defined, must be filed monthly, in accordance with the instructions set forth under the general requirements of this Section VI., by each responsible party beginning with the month in which the first well is completed. The initial report must also include those volumes of oil and gas produced during testing and completion operations which are subject to royalty or compensation.

These separate reports must reflect, by individual product, the disposition of the total production from the lease, unit participating area, or communitized tract which is subject to royalty or compensation and the value(s) or unit price(s) established by the Supervisor for each reporting party's proportionate share in such production.

Gas volumes shall be reported in MCF (1,000 cubic feet) at a pressure and temperature base of 14.73 psia and 60°F. unless otherwise directed in writing by the Supervisor.

Each report shall include only the disposition of products for the month being reported. Annual reports on a lease-year basis may be submitted for shut-in leases if prior approval is obtained from the Supervisor, provided that the report is received within thirty (30) days after the end of the lease year.

Leases whose royalty is based on a sliding or step scale rate are affected by the total production, well count, gravity, or number of days in the month, depending on the terms of the lease; accordingly, these items are essential for computing royalties and must be properly reported each month. Title 30 CFR 221 sets forth the criteria for determining monthly the appropriate well count. Other information related to computing royalties for these leases may be obtained from the Supervisor.

The Supervisor will consider proposals for the submittal of magnetic tape or key-punched card data in lieu of Form 9-361, and may be contacted for more information regarding the Division's requirements for this type of reporting.

C. *Purchaser's statements, run tickets, tank tables, and gas plant statements.* All sales of crude oil, condensate, gas, associated liquid hydrocarbons, and other byproducts produced from, or for the benefit of, Federal oil and gas leases, and for which the Supervisor requires a separate accounting, should be confirmed by copies of appropriate purchaser, settlement, or gasoline plant statements properly identified by Federal lease or contract number. In situations where purchaser, settlement, or gasoline plant statements are not available or it is determined that such statements are insufficient to confirm reported volume(s) and value(s), the Supervisor may require that additional documentation be furnished. When required, run tickets, related tank tables, meter proving reports, pipeline run statements issued by common carrier pipelines, gas meter charts, check counterfoils, or other documents that confirm the operator's or working interest owner's reported volumes and receipts must be submitted.

Where purchaser, settlement, pipeline run, or gasoline plant statements are submitted, the operator generally will not be requested to also submit run tickets and related tank tables, gas meter charts, or check counterfoils covering shipments shown on such statements, provided that (1) such documents properly identified by Federal lease or con-

tract number, must be submitted promptly when requested by the Supervisor and (2) all such documents are retained by the operator for a period of not less than six years. Tank tables shall be retained during the life of the tank and for six years thereafter.

D. *Payments.* The Geological Survey is responsible for maintaining the lease accounts of all producing Federal leases, all Federal leases which are subject to compensatory royalty assessments or underground storage agreements. Remittances under such leases for rental, when applicable, or for production royalty, compensatory royalty, minimum royalty, royalty or compensation for lost oil or gas, or fees pursuant to a storage agreement must be made payable to the U. S. Geological Survey.

Advance rental payments must be received in the office of the Supervisor on or before the anniversary date of the lease for those leases whose accounts are maintained by the Geological Survey and which are subject in whole, or in part, to the payment of rental. The due date is critical on many leases which do not include a well capable of production in paying quantities, as all leases requiring the payment of advance rental which are subject to Pub. L. 555 will expire by their own terms if the rental payment is not timely received.

All such separate payments which are made to the Geological Survey must be accompanied by a Rental and Royalty Remittance Advice (Form 9–614–A) that identifies each Federal lease or contract number and, as applicable, the product, month of sale, and the amount attributable to each lease or contract. Operators are encouraged to file a separate payment and remittance advice when submitting advance rentals to assure proper and timely credit to the lease account.

The Supervisor will consider proposals for the submittal of magnetic tape or keypunched card data in lieu of a Rental and Royalty Remittance Advice, Form 9–614–A, and may be contacted for more information regarding the Division's requirements for this type of reporting.

VII. LOAD OIL

Any oil or other liquid hydrocarbons produced from, or for the benefit of, a Federal lease, and which is used for the treatment of a well on or off that lease, is defined as load oil. Royalty is due on all such transfers whether the oil is used on the lease or otherwise, and must be accounted for on the monthly reports, Forms 9–329 and 9–361, as though a sale had occurred.

The value of any such load oil must be equal to the highest net price paid for any regular crude oil or other liquid hydrocarbon run of comparable gravity made from the lease, unit participating area, or communitized tract during the month of the transfer or the actual price received by the operator, whichever is greater.

Where royalty is paid at the time of transfer, a volume of crude oil or other liquid hydrocarbon equal to the volume of the load oil used in the treatment may be recovered and disposed of royalty-free, provided that such recovery is credited against the first production from the treated well after treatment. If an operator fails to request a credit against production immediately after treatment, no such royalty-free recovery will be allowed unless the operator presents evidence, acceptable to the Supervisor, that such delay is justified. The value of load oil recovered shall not exceed the average weighted price of all oil or other liquid hydrocarbons sold from the lease, unit participating area, or communitized tract during the month of recovery.

No credit on royalty will be allowed the operator for recovered load oil unless complete documentation is attached to the Monthly Report of Sales and Royalty (Form 9–361) to substantiate the use and recovery of such load oil. This documentation must include the following information:

A. For transfers between Federal leases:

The Federal lease number from which the oil was produced.

The Federal lease number to which the oil was transferred.

The number and location of the well which was treated.

The volume of oil used in the treatment.

Acceptable evidence to substantiate the recovery of load oil for which a credit is sought.

B. For transfers to a Federal lease from a non-Federal source:

The source from which the oil was obtained.

The name and address of the seller.

Date of purchase.

was transferred.

Transporter.

The Federal lease number to which the oil

The number and location of the well which was treated.

The volume of oil used in the treatment.

Acceptable evidence to substantiate the recovery of load oil for which a credit is sought.

C. Transfers of load oil from a Federal lease to a non-Federal lease are to be reported as a sale, and no subsequent credit will be allowed.

If the required information under item A or B hereof is contained in an affidavit prepared for submittal to the purchaser or to another Federal or State agency, a copy of said affidavit will normally meet the documentation requirements of the Geological Survey.

VIII. OVERPAYMENTS

An overpayment on a Federal lease can be recovered either by requesting a refund from the Supervisor or, with the prior approval of the Supervisor, by withholding an amount equal to the overpayment from subsequent royalties accruing to the lease on which the overpayment was made.

IX. LEASE ACCOUNT ADJUSTMENT

An error on a Monthly Report of Sales and Royalty (Form 9–361) and/or a Rental and Royalty Remittance Advice (Form 9–614–A) requires special attention because of the effect that an adjustment, if not accounted for properly, may have on the minimum royalty obligation of a lease, the royalty rate of a variable royalty rate lease, and because of the problems that may result in reconciling a lease account when monthly royalty charges and payments do not agree.

In order that these problems may be substantially eliminated, it is required that the disposition of each months's production and the corresponding payments be reported separately and not combined with any other month's business. A separate Monthly Report of Sales and Royalty and/or Rental and Royalty Remittance Advice, identified as an "amended" report or advice, will be required to correct any erroneous entry shown on a previous month's report or advice. Amended reports must show the total entry, as corrected, not just the difference between that previously reported and what should have been reported. In other words, where previously reported data is to be corrected, a two-line entry will be required on the amended report or advice. One entry will show the information previously reported as a credit or negative entry and the second entry will show the corrected information as a debit or positive entry.

Unless otherwise directed in writing by the Supervisor, amended reports or advices may include corrections for more than one lease, unit participating area, or communitization tract and may also include corrections covering more than one month. No method different from that prescribed above may be used in making adjustments without the prior approval of the Supervisor.

X. MEASUREMENT AND STORAGE REQUIREMENTS

All production from a lease, unit participating area, or communitized tract shall be gauged or measured according to methods approved by or acceptable to the Supervisor. However, the Supervisor. However, the Supervisor's specific written approval must be obtained prior to installing an ACT meter, commingling production between leases or formations, or the use of common storage or off-lease facilities.

XI. STATEMENT OF ACCOUNT (FORM 9–1424)

Lessees and operators will be provided a Statement of Account (Form 9–1424) recapitulating all transactions affecting each of their leases on a month-to-month basis.

Lessees and operators should review the Statement(s) of Account to ensure that royalty charges and payments are properly accounted for and that the lease account is correct. Any amount shown as owed must be promptly remitted unless there is an apparent error, in which event the discrepancy must be called immediately to the attention of the Supervisor.

XII. NONCOMPLIANCE, VIOLATIONS, AND ASSESSMENT OF LIQUIDATED DAMAGES

Failure to submit properly completed reporting forms, supporting documentary evidence, remittance advices, or payments by the due dates will be considered as incidences of noncompliance and will result in the assessment of liquidated damages or other appropriate action being taken for each violation. When liquidated damages are assessed, the amount of the assessment will be determined in accordance with Title 30 CFR 221.

(Date) (Oil and Gas Supervisor)

(Area)

Approved.

RUSSELL G. WAYLAND,
Acting Chief, Conservation Division

[FR Doc.77–2189 Filed 1–24–77;8:45 am]

Mining Enforcement and Safety Administration

GROUND CHECK CIRCUITS FOR THREE-PHASE ALTERNATING CURRENT LOW- AND MEDIUM-VOLTAGE RESISTANCE GROUNDED CIRCUITS

Technical Seminars

Section 309(c) of the Federal Coal Mine Health and Safety Act of 1969 (30 U.S.C. 869(c)) (§ 75.902, Part 75, 30 CFR) required that within six months of the operative date of the Act that three-phase alternating current low- and medium-voltage resistance-grounded systems shall include a fail-safe grounded check circuit to monitor continuously the grounding circuit to assure continuity of the grounding circuit. That section further recognized that such equipment might not be available and provided that an extension of time, not in excess of 12 months, might be permitted by the Secretary on a mine-by-mine basis if he determined that such equipment was not available.

Early attempts at compliance necessitated installation of a ground check conductor in trailing cables of electric face equipment. The installation of the additional conductor destroyed the electrical symmetry of the cable causing induced currents in the grounding conductor of the cable. This induced current resulted in incentive arcing when the frames of two machines came in contact. Since machine frames come in contact regularly in the face areas of coal mines where methane is most likely to be released, an extremely dangerous condition was created.

On March 23, 1971, the then Assistant Director, Coal Mine Health and Safety, Bureau of Mines, in recognition of the extremely dangerous condition resulting from incendive arcing, issued a memorandum to all coal mine operators suspending installation of ground check circuits which required a ground check conductor trailing cables serving alternating current face equipment.

The intermachine arcing problem has now been solved. Tested and proven equipment is now available that will limit the induced energy in the trailing cable grounding conductor to less than incendive levels. Reliable ground check devices have now been developed by six different manufacturers that will satisfy the requirements of section 75.902, Part 75, 30 CFR. A representative number of ground check devices produced by the six manufacturers have undergone extensive laboratory testing by MESA Technical Support and extensive field testing by industry electrical engineers. The results of these tests indicate that the devices are reliable when properly installed and maintained.

A survey of the six manufacturers of ground check devices indicates that the necessary ground check units can be supplied in sufficient numbers to allow complete industry compliance within six months after orders are received. It is estimated that an additional three months may be needed for modification of power centers and distribution lines to allow installation of the ground check circuits.

In view of the capability that now exists to suppress incentive intermachine arcing and the development of the technology and availability of reliable ground check devices, the memorandum of the Assistant Director of March 23, 1971, is therefore rescinded and revoked and coal mine operators will be required to comply with the provisions of sections 75.902 through 75.902–4, Part 75, 30 CFR on and after December 31, 1977.

Commencing April 1, 1977, MESA inspection personnel, upon observing three-phase alternating current powered face equipment which is being operated and which does not comply with sections 75.902 through 75.902–4 will issue a Safeguard Notice to the operator of the coal mine. The Safeguard Notice will advise the mine operator that the technology and equipment is now readily available for compliance with sections 75.902 through 75.902–4 and that on and after December 31, 1977, the operator shall be required to comply with those standards.

If present forecasts of availability of ground check devices prove to be accurate, failure to have such ground check circuits installed and properly maintained on and after December 31, 1977, will be considered cause for the issuance of a Notice of Violation under section 104 of the Act.

In order to acquaint coal mine operators and the coal mining industry with the availability, technology, and current state of the art of ground check monitoring, a series of technical seminars will be conducted. The date, time and locations of the seminars and seminar program are as follows:

MARCH 8, 1977—9 A.M.

National Mine Health and Safety Academy, Beckley, West Virginia.

MARCH 11, 1977—9 A.M.

Holiday Inn-Airport, 5000 Tenth Ave., North, Birmingham, Alabama.

MARCH 15, 1977—9 A.M.

Bureau of Mines Building, 4800 Forbes Ave., Pittsburgh, Pennsylvania.

MARCH 22, 1977—9 A.M.

Holiday Inn-Airport, 4040 Quebec Blvd., Denver, Colorado.

MARCH 24, 1977—9 A.M.

Holiday Inn-North, 4545 North Lindbergh, Bridgeton (St. Louis), Missouri.

SEMINAR PROGRAM

9:00 a.m.	Introduction.
9:15 a.m.	Design Parameters — U.S. Bureau of Mines and West Virginia University.
10:15 a.m.	Technical Support Evaluation and Acceptance of Ground Check Circuits.
10:45 a.m.	Break.
11:00 a.m.	Industry Test and Evaluation Program.
11:30 a.m.	Development Problems.
12:00 Noon	Lunch.
1:15 p.m.	Manufacturers' Presentations.
3:15 p.m.	Break.
3:30 p.m.	Monitor Test Procedures.
4:00 p.m.	Panel Discussion.
5:00 p.m.	Adjournment.

Interested persons who plan to attend a seminar are requested to notify the Mining Enforcement and Safety Administration, Technical Support, 2239 South Kanawha St., Beckley, West Virginia 25801, Telephone 304–255–1581 of their intention to attend, which seminar they will attend, and the number of persons attending.

Dated: January 17, 1977.

RAYMOND A. PECK, JR.,
Deputy Assistant Secretary of the Interior.

[FR Doc.77–2233 Filed 1–24–77;8:45 am]

Mining Enforcement and Safety Administration

ZIPPERTUBING CO. MINE CABLE SPLICE KIT

Action to Rescind Acceptance

Pursuant to a notice published in the FEDERAL REGISTER for November 19, 1976 (41 FR 51128), a hearing was held by the Mining Enforcement and Safety Administration (MESA) in Pittsburgh, Pa. on December 9, 1976. The purpose of the hearing was to receive relevant evidence concerning whether the acceptance issued for The Zippertubing Co. mine cable splice kit, under Acceptance Number 151–1–MESA, should be rescinded for cause on the grounds that splices prepared using Zippertubing Co. kits were not flame-resistant. The hearing record was held open until December 24, 1976.

Evidence introduced by MESA shows that 19 splices prepared using Zippertubing Co. mine cable splice kits, under Acceptance Number 151–1–MESA, were tested to determine whether the splices met the flame resistance requirements set forth in 30 CFR 18.64. Eighteen of the 19 mine cable splices tested failed to meet those requirements.

Representatives of The Zippertubing Co. did not dispute the findings of MESA regarding the failure of the 18 mine cable splice kits. They offered into the record various documents primarily relating to quality control procedures for their mine cable splice kits. In response to questions at the hearing, The Zippertubing Co. stated that they were unable to explain why the accepted splice kits tested by MESA failed to pass flame resistance tests. However, they agreed to conduct tests in an effort to determine the cause of the failure.

On December 21, 1976, a Western Union Telefax was received by MESA in which The Zippertubing Co. stated that they had "positively been able to identify the cause of the splices failing to meet the flammable requirements." They further stated that one large shipment of a component had been certified to meet Underwriters' Laboratories requirement, but that tests proved that either the fire-retardants were omitted or did not have sufficient quantity to provide satisfactory retardancy. It was noted that materials to substantiate their findings would be forwarded under separate cover for MESA verification. Other steps to be undertaken by The Zippertubing Co. were also outlined. No verification material has been received by MESA as of this date.

In view of the undisputed failure of the Zippertubing Co. mine cable splice kits, I find that under 30 CFR 18.16 cause exists on the stated grounds for rescinding Acceptance Number 151–1–MESA issued for The Zippertubing Co. mine cable splice kits. Because the scope and extent of corrective action, including quality control procedures, require complete retesting and reevaluation, this finding would not have been otherwise, even if The Zippertubing Co. had submitted data or evidence substantiating their December 21, 1976 statement as to the cause of the failures.

If in the future, the cause of the failure is verified and The Zippertubing Co. is prepared to introduce quality control measures necessary to insure the quality of the product, The Zippertubing Co. may submit a new application for acceptance. At that time, thorough review and testing would be performed by

MESA to determine whether an acceptance should be issued.

Accordingly, notice is given that Acceptance Number 151-1-MESA issued for The Zippertubing Co. mine cable splice kit is hereby rescinded, effective on January 31, 1977.

Dated: January 17, 1977.

ROBERT E. BENNETT,
Administrator, Mining Enforcement and Safety Administration.

[FR Doc 77-2317 Filed 1-24-77;8:45 am]

National Park Service

NATIONAL REGISTER OF HISTORIC PLACES

Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before January 17, 1977. Pursuant to section 60.13(a) of 36 CFR Part 60, published in final form on January 9, 1976, written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the Keeper of the National Register, National Park Service, U.S. Department of the Interior, Washington, D.C. 20240. Written comments or a request for additional time to prepare comments should be submitted by February 4, 1977.

WILLIAM J. MURTAGH,
Acting Chief, Office of Archeology and Historic Preservation.

ALASKA

Yukon-Koyukuk Division

Healy vicinity, *Mine Safety Car 5*, E of Healy at Usibelli-Suntrana Spur 99787.

ARIZONA

Gila County

Globe vicinity, *Gila Pueblo*, S of Globe.

CALIFORNIA

Orange County

San Juan Capistrano vicinity, *Hot Springs Road*, CA 74 from Mission San Juan Capistrano E of Hot Springs.

COLORADO

Montezuma County

Cortez, *Anasazi Archeological District*, U.S. 160 (also in Dolores County).

CONNECTICUT

Fairfield County

Norwalk vicinity, *Rock Ledge*, S of Norwalk at 33, 40-42 Highland Ave.

Trumball vicinity, *Kaatz Icehouse*, N Trumball at 255 Whitney Ave.

Litchfield County

Winsted, *Winsted Green Historic District*, U.S. 44 and CT 8.

GEORGIA

Dougherty County

Albany, *Farkas, Samuel, House*, 328 W. Broad Ave.

Albany, *Smith, W. E., House*, 516 Flint Ave.

Murray County

Chatsworth vicinity, *Fort Mountain*, E of Chatsworth off U.S. 76.

Muscogee County

Columbus, *Bullard-Hart House*, 1408 3rd Ave.

Troup County

Mountville vicinity, *Van Boddie, Nathan, House*, W of Mountville on GA 109.

ILLINOIS

Adams County

Quincy, *U.S. Post Office and Courthouse*, 200 N. 8th St.

IOWA

Cass County

Lewis vicinity, *Hitchcock, George B., House*, W of Lewis.

MARYLAND

Carroll County

Westminster vicinity, *Friendship Valley Farm*, 1 mi. S of Westminster at 950 Gist Rd.

Howard County

Ellicott City vicinity, *White Hall*, W of Ellicott City at 4130 Chatham Rd.

Prince Georges County

Brandywine vicinity, *St. Paul's Parish Church* (Baden), SE of Brandywine off MD 381.

MINNESOTA

Chippewa County

Montevideo, *Budd, Charles H., House*, 219 N. 3rd St.

Montevideo, *Chippeaw County Bank*, N. 1st St. and Lincoln Ave.

Koochiching County

International Falls, *Koochiching County Courthouse*, 4th St. and 8th Ave.

Swift County

Appleton, *Appleton City Hall*, 23 S. Miles St.

Appleton, *Benson, Elmer, House*, 150 W. Rooney.

Benson, *Swift County Courthouse*, Idaho Ave. and 14th St.

Washington County

Stillwater, *Chicago, Milwaukee and St. Paul Freight House and Depot*, 233-335 Water St.

MISSISSIPPI

Adams County

Natchez, *Elm Court*, 42 John R. Junkin Dr.

NEW JERSEY

Burlington County

Moorestown vicinity, *Farmer's Hall*, SE of Moorestown on Mt. Laurel Rd.

Pemberton, *Morris Mansion and Mill*, Hanover St.

Camden County

Chesilhurst, *Grant A.M.E. Church*, 4th and Washington Sts.

Cape May County

North Wildwood, *Hereford Lighthouse*, Central Ave.

Essex County

Caldwell, *Caldwell Presbyterian Church Manse*, 207 Bloomfield Ave.

Newark, *Feigenspan Mansion*, 710 High St.

Gloucester County

Clarksboro, *St. Peter's Episcopal Church*, King's Highway.

Hudson County

Jersey City, *Barrow, Dr. William, Mansion*, 83 Wayne St.

Mercer County

Princeton vicinity, *Rogers, John, House*, S of Princeton on S. Post Rd.

Monmouth County

Red Bank vicinity, *Throckmorton, John, Farm*, NW of Red Bank on Oak Hill Rd.

Sussex County

Stanhope, *Plaster Mill*, near Main St. and Kelly Pl.

NEW YORK

Chautauqua County

Fredonia, *Fredonia Commons Historic District*, Main, Temple, Church, Day, and Center Sts. surrounding common.

PENNSYLVANIA

Bucks County

Cornwells Heights, *St. Elizabeth's Convent*, 1663 Bristol Pike.

TENNESSEE

Hickman County

Williamsport vicinity, *Gordon, John, House*, NW of Williamsport off TN 50 (boundary change.

TEXAS

Titus County

Winfield vicinity, *Hale Mound Site*, S of Winfield.

UTAH

Sanpete County

Manti, *Tuttle-Folsom House*, 195 W. 300 North.

VIRGINIA

Henrico County

Varina vicinity, *Varina Plantation*, SE of Varina off VA 5.

WEST VIRGINIA

Berkeley County

Martinsburg vicinity, *Swan Pond*, E of Martinsburg on SR 5/3.

Martinsburg vicinity, *Van Metre Ford Stone Bridge*, E of Martinsburg at Opequon Creek and SR 36.

Hampshire County

Romney, *Wilson-Wodrow-Mytinger House*, 51 W. Gravel Lane.

Monroe County

Union vicinity, *Walnut Grove*, N of Union on U.S. 219.

Pocahontas County

Marlinton, *Pocahontas Times Print Shop*, 810 2nd Ave.

Wood County

Parkersburg, *Julia-Ann Square Historic District*, includes cemetery, and both sides of Juliana, Ann, and 9th Sts.

[FR Doc.77-2117 Filed 1-24-77;8:45 am]

INTERNATIONAL TRADE COMMISSION

[Docket No. 419]

CERTAIN WELDED STAINLESS STEEL PIPE AND TUBE

Change in Procedure for Commission Action

Notice is hereby given that: (1) On January 10, 1977, the Commission issued a Notice Concerning Procedure for Commission Action in response to a complaint filed on November 15, 1976, under section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), concerning welded stainless steel pipe and tube. The notice was published in the FEDERAL REGISTER on January 13, 1977 (42 F.R. 2726), and set January 28, 1977, as the date for oral argument in the proceeding to show cause why an investigation under section 337 should be instituted on the basis of the complaint filed on November 15, 1976.

(2) On January 11, 1977, the Commission received a letter requesting a change in the date for oral argument, which was docketed by the Office of the Secretary as motion No. P-419-1. In response to this request, the Commission hereby orders that the date for oral argument set in paragraph (4) of the notice issued on January 10, 1977, is changed to 10 a.m., e.s.t., on January 26, 1977.

Issued: January 18, 1977.

By order of the Commission.

KENNETH R. MASON,
Secretary.

[FR Doc.77-2186 Filed 1-24-77;8:45 am]

INTERNATIONAL TRADE COMMISSION

[USITC SE-77-4A]

GOVERNMENT IN THE SUNSHINE

Amendment to Notice

The following persons, listed as being reasonably expected to attend the closed portion of the Commission meeting of January 24, 1977, pertaining to reorganization (agenda item No. 3), should not have been listed as being reasonably expected to attend:

Russell N. Shewmaker, General Counsel.
Rhond Roth, Attorney-Advisor.

Accordingly, their names are deleted from the list of persons reasonably expected to attend this discussion.

By order of the Commission.

Issued: January 19, 1977.

KENNETH R. MASON,
Secretary.

[FR Doc.77-2337 Filed 1-24-77;8:45 am]

DEPARTMENT OF LABOR

Bureau of Labor Statistics

BUSINESS RESEARCH ADVISORY COUNCIL'S COMMITTEE ON ECONOMIC GROWTH

Meeting

The BRAC Committee on Economic Growth will meet at 1:30 p.m., February 22, 1977, at the General Accounting Office Building, 441 G Street, NW, Room 4454, Washington, D.C. Agenda for the meeting follows:

1. Status of 1990 Projections.
2. Review of work for the Federal Energy Administration.
3. Review of work for the Environmental Protection Agency.

This meeting is open to the public. It is suggested that persons planning to attend this meeting as observers contact Kenneth G. Van Auken, Executive Secretary, Business Research Advisory Council on Economic Growth (Area Code 202) 523-1559.

Signed at Washington, D.C., this 13th day of January 1977.

JULIUS SHISKIN,
Commissioner of Labor Statistics.

[FR Doc.77-2133 Filed 1-24-77;8:45 am]

Employment and Training Administration

EMPLOYMENT TRANSFER AND BUSINESS COMPETITION DETERMINATIONS UNDER RURAL DEVELOPMENT ACT

Applications

The organizations listed in the attachment have applied to the Secretary of Agriculture for financial assistance in the form of grants, loans, or loan guarantees in order to establish or improve facilities at the locations listed for the purposes given in the attached list. The financial assistance would be authorized by the Consolidated Farm and Rural Development Act, as amended, 7 U.S.C. 1924(b), 1932, or 1942(b).

The Act requires the Secretary of Labor to determine whether such Federal assistance is calculated to or is likely to result in the transfer from one area to another of any employment or business activity provided by operations of the applicant. It is permissible to assist the establishment of a new branch, affiliate or subsidiary, only if this will not result in increased unemployment in the place of present operations and there is no reason to believe the new facility is being established with the intention of closing down an operating facility.

The Act also prohibits such assistance if the Secretary of Labor determines that it is calculated to or is likely to result in an increase in the production of goods, materials, or commodities, or the availability of services or facilities in the area, when there is not sufficient demand for such goods, materials, commodities, services, or facilities to employ the efficient capacity of existing competitive commercial or industrial enterprises, unless such financial or other assistance will not have an adverse effect upon existing competitive enterprises in the area.

The Secretary of Labor's review and certification procedures are set forth at 29 CFR Part 75. In determining whether the applications should be approved or denied, the Secretary will take into consideration the following factors:

1. The overall employment and unemployment situation in the local area in which the proposed facility will be located.
2. Employment trends in the same industry in the local area.
3. The potential effect of the new facility upon the local labor market, with particular emphasis upon its potential impact upon competitive enterprises in the same area.
4. The competitive effect upon other facilities in the same industry located in other areas (where such competition is a factor).
5. In the case of applications involving the establishment of branch plants or facilities, the potential effect of such new facilities on other existing plants or facilities operated by the applicant.

All persons wishing to bring to the attention of the Secretary of Labor any information pertinent to the determinations which must be made regarding these applications are invited to submit such information in writing within two weeks of publication of this notice to: Deputy Assistant Secretary for Employment and Training, 601 D St., NW, Washington, D.C. 20213.

Signed at Washington, D.C. this 17th day of January, 1977.

WILLIAM H. KOLBERG,
Assistant Secretary for Employment and Training.

Applications received during the week ending January 14, 1977

Name of applicant	Location of enterprise	Principal product or activity
Kent Inc. (tenant of Fort Kent)	Fort Kent, Maine	Cut, sew and package infants sleep'n play sets.
Mountaineer Leather, Inc.	Cameron, W. Va.	Sale of leather garments.
Charles County Plant Farms, Inc.	La Plata, Md.	Greenhouse.
Vienna Improvement Corp., Inc.	Parkersburg, W. Va.	Motor hotel.
Liston Foods, Ltd.	Bruceton Mills, W. Va.	Grocery store.
Centennial Development Co.	Williamstown, W. Va.	Transient motor lodge.
Red Oaks Shopping Center, Inc.	Fairlea, W. Va. and Covington, Va.	Lease of rental property.
Brandidge Foods, Inc.	Troy, Ala.	Manufacturing of viscous, liquid salad dressings, mustard, and oil.
Smart-Tops, Inc. (tenant of city of Mount Airy).	Mount Airy, N.C.	Manufacturing of infant hosiery.
LaFayette Health Care Center Ltd. Partnership.	LaFayette, Ga.	Skilled nursing care services.
Carmack, Inc.	Phenix City, Ala.	Manufacturing of gray iron castings.
Adams United Corp.	Morrisville, Fuquay-Variana and Kinston, N.C.	Manufacturing of concrete masonry.
B&H Construction Co., Inc.	New Bern, N.C.	Electrical and mecahnical construction, ace motor rewinding and sales of ace electric equipment.
Moundville Foundry Inc.	Moundville, Ala.	Manufacturing of various classes of grey iron metal castings.
Three Rivers Oil Co., Inc.	Booneville, Miss.	Distributor of petroleum products.
Outdoor Recreation Services, Inc.	Hilton Head Island, S.C.	Recreation theme park.
Sweetwater Carpet Corp.	Ringgold, Ga.	Manufacturing of carpet.
Chaplin Aviation, Inc.	Sheboygan Falls, Wis.	Storage and servicing aircraft fuel sales, avionics, sales and service, and also clerical and management.
Clifford Manufacturing Co.	Marlette, Mich.	Manufacturing of ferrous metal.
Hardwood Specialties Co., Inc.	Bonham, Tex.	Sawmill producing rough saw hardwoods.
John W. Parker	Mexia, Tex.	Buildings for a shopping center.
Kischa Dairy Mart and Motel	Fairfield, Tex.	Restaurant and motel.
Kaiser Aluminum Highway Products (tenant of city of Eunice).	Eunice, La.	Marketing of aluminum.
Rockwall Steel Co.	Terrell, Tex.	Manufacturing of steel library shelving, steel wardrobes, and field erection.
Copper Mountain, Inc.	Copper Mountain, Colo.	Ski center and resort.
Gibson Products of Loveland, Inc.	Loveland, Colo.	Sale of merchandise through discount department store.
Arrow Motel	Montezuma, Colo.	Motel.
Pyrotronics Corp.	Anaheim, Calif.	Manufacturing and wholesale distributor of safe and sane fireworks.
K. J. Industries Inc.	Canby, Oreg.	Manufacturing of steel castings.

[FR Doc.77-2184 Filed 1-24-77;8:45 am]

Occupational Safety and Health Administration

NATIONAL ADVISORY COMMITTEE ON OCCUPATIONAL SAFETY AND HEALTH, SUBGROUPS ON STANDARDS AND POLICY/BUDGET

Meeting

Notice is hereby given that the Subgroups on Standards and Policy/Budget of the National Advisory Committee on Occupational Safety and Health (NACOSH) will meet on February 17, 1977 in Room N-4437, Department of Labor Building, 3rd Street and Constitution Avenue NW., Washington, D.C. 20210.

The National Advisory Committee was established under section 7(a) of the Occupational Safety and Health Act of 1970 to advise the Secretary of Labor and the Secretary of Health, Education, and Welfare on matters relating to the administration of the Act.

The meeting will begin at 9:00 a.m. The public is invited to attend. The Subgroups will develop recommendations on the identification, classification and regulation of potential carcinogens.

For additional information contact:

J. Goodell, Chief, Committee Management Office, Occupational Safety and Health Administration, Department of Labor—OSHA, Room N-3635, Third Street and Constitution Avenue NW., Washington, D.C. 20210. Phone: (202) 523-8024.

Any written data or views concerning this agenda item or suggestions for future agenda items which are received by the Committee Management Office before the meeting, preferably with 20 copies, will be presented to the Subgroups and included in the official record of the meeting.

Anyone wishing to make an oral presentation should notify the Committee Management Office before the meeting. The request should state the amount of time desired, the capacity in which the person will appear, and a brief outline of the content of the presentation. Oral presentations will be scheduled at the discretion of the Subgroup Chairmen, depending on the extent to which time permits.

Official records of the meeting will be available for public inspection at the above address.

Signed at Washington, D.C., this 21st day of January 1977.

J. Goodell,
Executive Secretary.

[FR Doc.77-2452 Filed 1-24-77;8:45 am]

WASHINGTON STATE STANDARDS

Approval

1. *Background.* Part 1953 of Title 29, Code of Federal Regulations prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrators for Occupational Safety and Health (hereinafter called Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On January 26, 1973, notice was published in the FEDERAL REGISTER (38 FR 2421) of the approval of the Washington plan and the adoption of Subpart F to Part 1952 containing the decision.

The Washington plan provides for the adoption of State standards which are at least as effective as comparable Federal standards promulgated under section 6 of the Act.

Sections 1952.120–124 of Subpart F sets forth the State's schedule for the adoption of at least as effective State standards. By letter dated October 4, 1976, John Hillier, Assistant Director, Department of Labor and Industries, to James W. Lake, Regional Administrator, and incorporated as part of the plan, the State submitted State standards comparable to 29 CFR Part 1918, as published in the FEDERAL REGISTER (39 FR 22074) dated June 19, 1974. These standards, which are contained in the Washington Safety Standard for Longshore, Stevedore, and Related Waterfront Operations, WAC 296–56, were promulgated after a public hearing held on December 18, 1973 at Olympia, Washington.

2. *Decision.* Having reviewed the State submission in comparison with the Federal standards, it has been determined that the State standards are at least as effective as the comparable Federal standards and are hereby approved.

The State standards, which are contained in WAC 296–56–401 through 560 generally are comparable to 29 CFR part 1918 as it applies to shoreside employment. In addition, the State on its own initiative has adopted many additional State original standards covering hazards not addressed by the Federal standards. The detailed standards comparison is available at the locations specified below.

3. *Location of supplement for inspection and copying.* A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, Room 6003, Federal Office Building, 909 First Avenue, Seattle, Washington 98174; Department of Labor and Industries, General Administration Building, Olympia, Washington 98504; and the Technical Data Center, Room N3620, 200 Constitution Avenue NW., Washington, D.C. 20210.

4. *Public participation.* Section 1953.2 (c) of this chapter provides that where State standards are identical to or "at least as effective" as comparable Federal standards and have been promulgated

in accordance with State law, approval may be effective upon publication without an opportunity for further public participation. As the standards under consideration are "at least as effective" as the Federal standards and have been promulgated in accordance with State law, including an opportunity for public comment and/or public hearings, they are approved without an opportunity for further public comment.

This decision is effective January 25, 1977.

(Sec. 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667).)

Signed at Seattle, Wash., this sixth day of December 1976.

JOHN A. GRANCHI,
Acting Regional Administrator—OSHA.

[FR Doc.77-2134 Filed 1-24-77;8:45 am]

Office of the Secretary

[TA-W-1,560]

BERMAN MANUFACTURING COMPANY, INC.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On January 10, 1977 the Department of Labor received a petition dated December 23, 1976 which was filed under section 221(a) of the Trade Act of 1974 ("the Act") on behalf of the workers and former workers of Berman Manufacturing Company, Inc., South River, New Jersey (TA-W-1,560). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with women's slacks, jackets, vests, skirts and blouses produced by Berman Manufacturing Company, Inc. or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 4, 1977.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 4, 1977.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210.

Signed at Washington, D.C. this 10th day of January 1977.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.77-2358 Filed 1-24-77;8:45 am]

[TA-W-1211]

BETHLEHEM STEEL CORP., TORRANCE, CALIFORNIA

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-1211: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on October 21, 1976 in response to a worker petition received on October 21, 1976 which was filed on behalf of workers and former workers producing structural steel pieces at the Torrance, California Works of Bethlehem Steel Corporation.

The notice of investigation was published in the FEDERAL REGISTER (41 FR 51136) on November 19, 1976. No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Bethlehem Steel Corporation, its customers, the U.S. International Trade Commission, the U.S. Department of Commerce, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

The Department's investigation revealed that all of the above criteria have been met.

SIGNIFICANT TOTAL OR PARTIAL SEPARATIONS

Employment of production workers declined 34.2 percent in 1975 compared to 1974. The plant was shut down in February 1976.

SALES OR PRODUCTION, OR BOTH, HAVE DECREASED ABSOLUTELY

Sales, in net tons, declined 3.5 percent in 1975 compared to 1974.

Production, in net tons, declined 35.8 percent in 1975 compared to 1974.

Plant sales and production ceased in February 1976.

INCREASED IMPORTS

Imports of structural steel shapes, relative to U.S. shipments, increased from 21.8 percent in the first three months of 1975 to 28.7 percent in the same period of 1976.

CONTRIBUTED IMPORTANTLY

The Torrance Works competed with other companies for subcontracts from general construction firms. A survey of construction firms accounting for over 90 percent of Torrance Works' total sales in 1975 indicated that several of these firms subcontracted to competitors which used imported structural steel pieces.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with structural steel pieces produced at the Torrance Works, Torrance, California plant of Bethlehem Steel Corporation, contributed importantly to the total or partial separation of workers engaged in the production and installation of such structural steel at that plant. In accordance with the provisions of the Act, I make the following certification:

All workers at the Torrance Works, of the Bethlehem Steel Corporation, Torrance California who became totally or partially separated on or after September 19, 1975 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 13th day of January 1977.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc.77-2136 Filed 1-24-77;8:45 am]

[TA-W-1281]

BIRWIN TROUSERS, INC., NEW YORK, NEW YORK

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-1281: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on November 15, 1976 in response to a worker petition received on November 15, 1976 which was filed by the Amalgamated Clothing and Textile Workers Union on behalf of workers and former workers producing men's trousers at Birwin Trousers, Incorporated.

The notice of investigation was published in the FEDERAL REGISTER on December 3, 1976 (41 FR 53083). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Grossman Clothing and Birwin Trousers Inc., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in such workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

The Department's investigation revealed that all four criteria have been met.

SIGNIFICANT TOTAL OR PARTIAL SEPARATIONS

The average number of production workers at Birwin Trousers, Inc. declined 21 percent in 1975 compared to 1974. The average number of production workers declined 3 percent in the first ten months of 1976 compared to the first ten months of 1975.

SALES OR PRODUCTION, OR BOTH, HAVE DECREASED ABSOLUTELY

Production at Birwin Trousers, Inc. declined 9 percent in 1975 compared to 1974. Production declined 3 percent in the first ten months of 1976 compared to the first ten months of 1975.

INCREASED IMPORTS

Imports of men's and boys' tailored suits increased every year from 1971 through 1974, rose 27 percent in 1975 compared to 1974, and increased 7 percent in the first nine months of 1976 compared to the like period of 1975.

The ratio of imports to domestic production increased from 12.3 percent in 1974 to 17.4 percent in 1975 and declined from 19.9 percent in the first half of 1975 to 17.3 percent in the like period of 1976.

CONTRIBUTED IMPORTANTLY

Grossman sells all suit pants produced by Birwin. Customers have decreased purchases of men's clothing from Grossman and have increased purchases of imported men's clothing. In addition, Grossman has received numerous requests since the first quarter of 1976 from the largest importer of men's clothing for credit information on retail customers of Grossman that are placing their first orders for imported clothing.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with men's suit pants produced by Birwin Trousers, Inc. contributed importantly to the total or partial separation of the workers of that plant. In accordance with the provisions of the Act, I make the following certification:

All employees of Birwin Trousers, Inc., New York, New York who became totally or partially separated from employment on or after November 1, 1975 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 14th day of January 1977.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc.77-2137 Filed 1-24-77;8:45 a.m.]

[TA-W-1321]

CRESCENT MACHINE AND NIPPLE CO., ALLEGAN, MICHIGAN

Negative Determination Regarding Eligibility To Apply for Workers Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-1321: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on November 30, 1976 in response to a worker petition received on that date which was filed by the United Steelworkers of America on behalf of workers and former workers producing pipe nipples at Crescent Machine and Nipple Company, Allegan, Michigan.

The notice of investigation was published in the FEDERAL REGISTER on December 14, 1976 (41 FR 54555). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Crescent Machine and Nipple Company, the United Steelworkers of America, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

Without regard to whether any of the other criteria have been met, criterion (2) has not been met.

Crescent Machine and Nipple Company produces primarily pipe nipples at the Allegan, Michigan plant. The company also produces thermal cutting rods, fireplace equipment, and is engaged in a small amount of pipe fabrication.

During the course of the department's investigation it was established that sales, production and employment increased in 1976 compared to 1975. Sales increased nearly 20 percent in 1976 compared to 1975. Production increased 14 percent in 1976 compared to 1975.

Employment increased 12 percent in 1976 compared to 1975. Union officials verified that several workers separated from employment at Crescent Machine in 1975 and 1976 had either returned to work or had been offered the opportunity to return to work by early 1976.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that sales or production, or both, at the Allegan, Michigan plant of Crescent Machine and Nipple Company did not decrease absolutely as required under section 222 of the Act. Therefore eligibility to apply for adjustment assistance is denied.

Signed at Washington, D.C., this 13th day of January 1977.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc.77-2138 Filed 1-24-77;8:45 am]

[TA-W-954]

GIBSON, INC., KALAMAZOO, MICHIGAN

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-954: investigation regarding certification of eligibility to apply for adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on June 29, 1976 in response to a worker petition received on that date which was filed by the United Steelworkers of America on behalf of workers and former workers producing acoustical and electric guitars, mandolins and banjos at the Kalamazoo, Michigan plant of Gibson, Incorporated, a subsidiary of Norlin Music, New York.

The notice of investigation was published in the FEDERAL REGISTER on July 16, 1976 (41 FR 29513). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Norlin Music, Incorporated, the parent firm of Gibson, Incorporated, the customers of Gibson, Incorporated, the Department of Commerce, the International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in such workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threats thereof, and to the decrease in sales or production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

The investigation has revealed that all four of the above criteria have been met.

SIGNIFICANT TOTAL OR PARTIAL SEPARATIONS

The average number of production workers employed at Gibson, Inc., Kalamazoo, Michigan, and Nashville, Tennessee, decreased 18 percent in 1975 compared to 1974, and 9 percent in the first 6 months of 1976 compared to the like period of 1975.

SALES OR PRODUCTION OR BOTH, HAVE DECREASED ABSOLUTELY

Gibson produced fretted musical instruments in the $25 and up wholesale price range. Sales at Gibson, Inc., Kalamazoo, Michigan decreased 15.5 percent in value in 1975 compared to 1974, and 16 percent in value in the first 6 months of 1976 compared to the like period in 1975.

INCREASED IMPORTS

Imports of fretted musical instruments declined both actually and relative to domestic production in every year compared to the previous year from 1972 through 1975, but increased 93 percent in the last 6 months of 1975 compared to the first 6 months of 1975, and 49 percent in the first 6 months of 1976 compared to the like period in 1975.

CONTRIBUTED IMPORTANTLY

Customers surveyed indicated that they have switched purchases from fretted musical instruments produced at Gibson Inc., Kalamazoo, Michigan to imported fretted musical instruments.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imported fretted musical instruments contributed importantly to the total or partial separation of workers at Gibson, Incorporated, Kalamazoo, Michigan. In accordance with the provisions of the Act, I make the following certification:

All workers at the Kalamazoo, Michigan plant of Gibson Incorporated, who became totally or partially separated from employment on or after June 1, 1975 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 15th day of January 1977.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc.77-2139 Filed 1-24-77;8:45 am]

[TA-W-1,558]

GLASS DIMENSIONS, INC.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On January 10, 1977 the Department of Labor received a petition dated December 16, 1976 which was filed under section 221(a) of the Trade Act of 1974 ("the Act") on behalf of the workers and former workers of Glass Dimensions, Inc., Magnolia, Massachusetts (TA-W-1,558). Accordingly, the Director, Officer of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with hand blown glass plant pots produced by Glass Dimensions, Inc. or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of Section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 4, 1977.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 4, 1977.

The petition filed in this case is available or inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210.

Signed at Washington, D.C. this 10th day of January 1977.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.77-2359 Filed 1-24-77;8:45 am]

[TA-W-1282]

GROSSMAN CLOTHING COMPANY, INC., NEW YORK, NEW YORK

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-1282: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on November 15, 1976 in response to a worker petition received on November 15, 1976 which was filed by the Amalgamated Clothing and Textile Workers Union on behalf of workers and former workers producing men's suits and sportcoats at Grossman Clothing.

The notice of investigation was published in the FEDERAL REGISTER on December 3, 1976 (41 FR 53090). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Grossman Clothing Company, its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of

eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in such workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated.

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

The Department's investigation revealed that all four criteria have been met.

SIGNIFICANT TOTAL OR PARTIAL SEPARATIONS

The average number of production workers at Grossman declined 22 percent in 1975 compared to 1974. The average number of production workers declined 3 percent in the first ten months of 1976 compared to the first ten months of 1975.

SALES OR PRODUCTION, OR BOTH, HAVE DECREASED ABSOLUTELY

Production at Grossman declined 23 percent in 1975 compared to 1974. Production declined 1 percent in the first ten months of 1976 compared to the first ten months of 1975.

INCREASED IMPORTS

Imports of men's and boys tailored dress coats and sportcoats increased in each year from 1971 to 1973, declined in 1974 compared to 1973, rose 8 percent in 1975 compared to 1974 and increased 32 percent in the first nine months of 1976 compared to the like period of 1975.

The ratio of imports to domestic production increased from 21.3 percent in 1974 to 30.9 percent in 1975 and rose from 23.8 percent in the first half of 1975 to 30.7 percent in the like period of 1976.

Imports of men's and boys' tailored suits increased every year from 1971 through 1974 rose 27 percent in 1975 compared to 1974 and increased 7 percent in the first nine months of 1976 compared to the like period of 1975. The ratio of imports to domestic production increased from 12.3 percent in 1974 to 17.4 percent in 1975 and declined from 19.9 percent in the first half of 1975 to 17.3 percent in the like period of 1976.

CONTRIBUTED IMPORTANTLY

The Department's investigation indicated that customers have decreased purchases of men's clothing from Grossman and have increased purchases of imported mens' clothing. In addition, Grossman has received numerous requests since the first quarter of 1976 from the largest importer of men's clothing for information on retail customers of Grossman that are placing their first orders for imported men's clothing.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with men's suits and sportcoats produced by Grossman Clothing contributed importantly to the total or partial separations of the workers of that plant. In accordance with the provision of the Act, I make the following certification:

All employees of Grossman Clothing Company, New York, New York who became totally or partially separated from employment on or after November 1, 1975 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 14th day of January 1977.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc.77-2140 Filed 1-24-77;8:45 am]

[TA-W-51]

INTERNATIONAL SHOE CO., PERRYVILLE, MISSOURI

Revised Certification of Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 222 of the Trade Act of 1974 and in acordance with section 223(a) of such Act, on August 4, 1975 the Department of Labor issued a certification of eligibility to apply for adjustment assistance applicable to workers and former workers of the Perryville, Missouri plant of the International Shoe Company (TA-W-51). The notice of certification was published in the FEDERAL REGISTER August 15, 1975 (40 FR 34491).

Further investigation developed evidence that revealed employment and production at the Perryville plant continues to be adversely influenced by imports of articles like or directly competitive with men's footwear produced at the Perryville plant.

Production at the Perryville, Missouri plant declined 12 percent in quantity in the first three quarters of 1976 compared to the same period of 1975. Employment declined 2 percent in the first three quarters of 1976 compared to the same period of 1975.

Imports of men's dress and casual footwear increased absolutely and relatively in the first nine months of 1976 compared to the same period of 1975. The ratio of imports to domestic production increased from 46.1 percent in the first nine months of 1975 to 52.1 percent in the same period of 1976.

Based on additional evidence, a review of the entire record and in accordance with the provision of the Act, I have determined that the termination date included in TA-W-51 Certification, issued on August 4, 1975, should be deleted. Such deletion of the termination date contained in TA-W-51 Certification is hereby made as follows:

All workers of the Perryville, Missouri plant of the International Shoe Company, St. Louis, Missouri who became totally or partially separated from employment related to the production of men's footwear on or after October 3, 1974 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington D.C., this 13th day of January 1977.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

On the basis of a further showing and further investigation by the Office of Trade Adjustment Assistance, the following recommendation is made:

That the Notice of Certification applicable to workers of the Perryville, Missouri plant of International Shoe (TA-W-51) be revised as follows:

"All workers of the Perryville, Missouri plant of the International Shoe Company who became totally or partially separated from employment related to the production of men's footwear on or after October 3, 1974 be certified as eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.".

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

I concur, accept, and adopt the findings of fact and recommendation as set forth herein, except as noted below.

Exceptions:

[FR Doc.77-2141 Filed 1-24-77;8:45 am]

[TA-W-1173]

J. H. RUTTER-REX-MANUFACTURING CO., INC., NEW ORLEANS PLANTS

Negative Determination Regarding Eligibility To Apply for Workers Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-1173: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on October 14, 1976 in response to a worker petition received on that date which was filed on behalf of workers and former workers producing work pants and work shirts at the New Orleans plants of the J. H. Rutter-Rex-Manufacturing Company, Incorporated.

The notice of investigation was published in the FEDERAL REGISTER (41 FR 48811) on November 5, 1976. No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of J. H. Rutter-Rex-Manufacturing Company, Incorporated, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production.

The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

Without regard to whether any of the other criteria have been met, criterion (3) has not been met.

The Department's investigation revealed that the New Orleans plants of the J.H. Rutter-Rex-Manufacturing Company produce work pants and work shirts principally under government contracts issued by the Defense Personnel Support Center in Philadelphia, Pennsylvania.

Production, sales, and employment at the New Orleans plants of the J.H. Rutter-Rex-Manufacturing Company, Incorporated were influenced in 1975 and 1976 by restrictions placed by the Defense Personnel Support Center on its contract bid invitations. Certain contracts issued by the Defense Personnel Support Center have been restricted solely to small business bids. The J.H. Rutter-Rex-Manufacturing Company is not categorized as a small business firm.

The Defense Personnel Support Center restricts all contract bidding on apparel and textile items to domestic suppliers. There is therefore no foreign competition involved in submitting bids and competing for such contracts.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that imports of articles like or directly competitive with work pants and work shirts produced at the New Orleans plants of the J. H. Rutter-Rex-Manufacturing Company, Incorporated, have not increased as required for certification under section 222 of the Trade Act of 1974.

Signed at Washington, D.C., this 13th day of January 1977.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc.77-2142 Filed 1-24-77;8:45 am]

[TA-W-1231]

LIBERTY TRUCKING CO., JANESVILLE, WISCONSIN

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-1231: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on November 8, 1976 in response to a worker petition received on that date which was filed on behalf of workers and former workers at the Janesville, Wisconsin terminal of Liberty Trucking Company who were engaged in providing transportation services to automobile assembly plants.

The Notice of Investigation was published in the FEDERAL REGISTER on November 23, 1976 (41 FR 51632). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Liberty Trucking Company and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production.

The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

If any of the above criteria is not satisfied a negative determination must be made.

Liberty Trucking Company does not produce an article within the meaning of section 222(3) of the Act and this Department has already determined that the performance of services are not covered by the adjustment assistance program. See Notice of Determination in "Pan American World Airways, Incorporated" (TA-W-153, 40 FR 54639). The only question in this case is whether General Motors Corporation, i.e., a firm which produces an article, namely automobiles, and for whom the service is provided, can be considered the "workers' firm". The Department has also previously determined that an independent firm for which such services are provided cannot be considered the "workers' firm." See Notice of Determination in "Nu-Car Driveaway, Incorporated" (TA-W-393, 41 FR 12749).

Liberty Trucking Company is a transport business incorporated in the State of Illinois and licensed and regulated by the State and the Interstate Commerce Commission. Liberty Trucking competed for available business with other carriers in the Janesville, Wisconsin area and each was free to haul for any business requesting their services.

Neither General Motors Corporation, on one hand, nor Liberty Trucking Company on the other, is financially or otherwise involved in the business of the other. Liberty Trucking either owns or leases the facilities necessary to the operation of its business and owns or leases all its trucks and equipment.

The workers upon whose behalf this petition was filed were hired and are paid by Liberty Trucking Company. They are supervised by and subject to the control of Liberty Trucking personnel only. All employment benefits which they enjoy are provided and maintained by Liberty Trucking.

CONCLUSION

After careful review of the issues and facts involved, I have determined that services of the kind provided by Liberty Trucking Company, Janesville, Wisconsin are not "articles" within the meaning of section 222(3) of the Trade Act of 1974, and that General Motors Corporation cannot be considered the "workers' firm." The petition for trade adjustment assistance is, therefore, denied.

Signed at Washington, D.C., this 9th day of January 1977.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[TA-W-1210]

M. JANOWITCH AND SONS, MAHANOY CITY, PENNSYLVANIA

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-1210: investigation regarding eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on October 28, 1976 in response to a worker petition received on October 28, 1976 which was filed on behalf of former workers producing ladies' dresses at the Mahanoy City, Pennsylvania plant of M. Janowitch and Sons.

The notice of investigation was published in the FEDERAL REGISTER on November 23, 1976 (41 FR 51632). No public hearing was requested and none was held.

The information upon which the determination was made was obtained prin-

cipally from officials of M. Janowitch and Sons, its customers, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production.

The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

Without regard to whether any of the other criteria have been met, the fourth criterion has not been met.

The Department's investigation revealed that M. Janowitch and Sons is a contractor producing women's and misses' dresses for one manufacturer. The plant was closed on June 5, 1976 because of problems other than competition for imports. The subject firm's only manufacturer stated that they would still do business with M. Janowitch and Sons if they were open and could meet their requirements. The manufacturer shifted Janowitch's business to other domestic contractors.

CONCLUSION

It is concluded that imports of articles like or directly competitive with women's and misses' dresses produced at the Mahanoy City, Pennsylvania plant of M. Janowitch and Sons did not contribute importantly to the total or partial separation of the works at such plant.

Signed at Washington, D.C., this 12th day of January 1977.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc.77-2144 Filed 1-24-77;8:45 am]

[TA-W-1193]

P. J. BARASH ASSOCIATES, INC., CAMDEN, NEW JERSEY

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-1193: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on October 19, 1976 in response to a worker petition received on October 19, 1976 which was filed on behalf of workers and former workers producing women's dresses at the Camden, New Jersey plant of P. J. Barash Associates, Incorporated.

The Notice of Investigation was published in the FEDERAL REGISTER on November 5, 1976 (41 FR 48816). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of P. J. Barash Associates, Incorporated, its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

The investigation has revealed that although the first three criteria have been met, the fourth criterion has not been met.

SIGNIFICANT TOTAL OR PARTIAL SEPARATIONS

The average number of production workers at P. J. Barash Associates, Incorporated remained the same from 1974 to 1975 and declined 12.5 percent in the first nine months of 1976 compared to the same period in 1975. Average weekly hours declined 3.1 percent from 1974 to 1975 and decreased 5.3 percent in the first nine months of 1976 compared to the same period in 1975.

SALES OR PRODUCTION, OR BOTH, HAVE DECREASED ABSOLUTELY

Company sales decreased 5.4 percent from 1974 to 1975 and declined 31.7 percent in the first nine months of 1976 compared to the same period in 1975.

INCREASED IMPORTS

Imports of women's, misses' and children's dresses have declined each year since 1971 except in 1975 when imports increased over the previous year. The ratio of imports to domestic production was 9.0 percent in 1971, declined to 6.8 percent in 1973, and increased to 7.4 percent in 1975. Imports for the first nine months of 1976 were up by about 0.5 percent over the same period in 1975.

CONTRIBUTED IMPORTANTLY

The investigation revealed that P. J. Barash Associates, Inc., has two customers the larger of which does not import dresses and has reduced its purchases from P. J. Barash in 1975 compared to 1974 and in the first nine months of 1976 compared to the like period in 1975. The remaining customer increased its purchases from P. J. Barash in 1975 compared to 1974 and in the first nine months of 1976 compared to the like period in 1975. The decline in purchases by the non-importing customer was not offset, and this decline accounted for the entire sales decline experienced by P. J. Barash.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with women's dresses which are produced at the Camden, New Jersey plant of P. J. Barash Associates, Incorporated, did not contribute importantly to the total or partial separations of the workers at such plant.

Signed at Washington, D.C., this 13th day of January 1977.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 77-2145 Filed 1-24-77;8:45 am]

[TA-W-804]

REPUBLIC STEEL CORP. CANTON SOUTH PLANT

Revised Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, the Department of Labor issued a notice of negative determination regarding certification of eligibility to apply for worker adjustment assistance on August 20, 1976 (41 FR 37430) applicable to former workers producing stainless steel and alloy steel products at the Canton South plant of Republic Steel Corporation, Canton, Ohio.

At the request of an official of the United Steelworkers of America, a further investigation was instituted by the Director of the Office of Trade Adjustment Assistance. The further investigation developed additional information from company officials and a broader spectrum of the plant's customers concerning the influence of imports on the employment of workers at the plant.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

The investigation has revealed that with respect to the production of stainless steel, all four of the above criteria have been met but that with respect to the production of alloy steel criterion (4) has not been met.

SIGNIFICANT TOTAL OR PARTIAL SEPARATIONS

The average number of production workers at Canton South increased 13.1 percent in 1974 compared with 1973, decreased 34.6 percent in 1975 compared with 1974 and decreased 36.4 percent in the first quarter of 1976 compared with the first quarter of 1975.

SALES OR PRODUCTION, OR BOTH, HAVE DECREASED ABSOLUTELY

Shipments of stainless steel sheet and plate increased 139.2 percent in 1974 compared with 1973, decreased 67.4 percent in 1975 compared with 1974 and decreased 62.8 percent in the first quarter of 1976 compared with the first quarter of 1975. Shipments of alloy steels increased 21.8 percent in 1974 compared with 1973, decreased 36.3 percent in 1975 compared with 1974 and decreased 48.4 percent in the first quarter of 1976 compared with the first quarter of 1975.

INCREASED IMPORTS

Imports of stainless steel sheet and plate decreased 36.5 percent in 1972 compared with 1971, decreased 18.0 percent in 1973 compared with 1972, increased 33.3 percent in 1974 compared with 1973 and increased 3.0 percent in 1975 compared with 1974. The ratios of imports to domestic shipments and consumption increased from 10.4 percent and 9.9 percent, respectively, in 1974 to 21.3 percent and 18.3 percent, respectively, in 1975.

Imports of alloy steel blooms, slabs, billets, ingots, castings and sheet bars decreased 0.6 percent in 1972 compared with 1971, decreased 13.5 percent in 1973 compared with 1972, decreased 37.1 percent in 1974 compared with 1973 and increased 10.0 percent in 1975 compared with 1974. The ratios of imports to domestic shipments and consumption increased from 0.28 percent for each, in 1974 to 0.34 percent for each, in 1975.

CONTRIBUTED IMPORTANTLY

The additional information developed in the investigation revealed that the Canton South plant is part of the fully integrated production operations of Republic Steel's Central Alloy District. The Canton South plant performs various operations on stainless and alloy steel products within the organizational framework of Republic's Central Alloy District. Shipments of stainless steel products are received from other plants within the Central Alloy District including the Canton Works and the Massillon Works and are further processed at the Canton South plant. In addition, stainless steel products at an earlier stage of production are shipped from the Canton South plant to other plants within the Central Alloy District. The majority of processed products and finished products are considered sales of the other plants in the Central Alloy District.

Due to the high degree of integration which exists between the Canton South plant and other plants of the Central Alloy District, the impact of imports on the sales of stainless steel products of the Central Alloy District directly affects the production operations at the Canton South plant. The Department has issued certifications for each of the plants in the Central Alloy District noting that increases of imports of stainless steel like or directly competitive with stainless steel produced at the Canton Works (TA-W-665) and the Massillon Works (TA-W-666) contributed importantly to the total or partial separations of workers at these plants.

Customers indicated that they had not shifted purchases of alloy steels from the Canton South plant to foreign sources. These customers, including commercial aircraft, defense and aerospace contractors and subcontractors, cited slowdowns in commercial aircraft production and delays in the contracting and procurement of certain weapons systems are reasons for reduced purchases of alloy steels from the Canton plant.

CONCLUSION

Based on additional evidence, a review of the entire record and in accordance with the provisions of the Trade Act of 1974, I hereby issue the following certification:

All workers engaged in employment related to the production of stainless steel in the South Jobbing Mill, South Sheet Mills 7, 8, 9 and 12 the South Finishing Department, the Forging Department and the Special Bar Finishing Department and all workers engaged in employment related to the processing of Clad and the finishing of stainless steel at the Canton South plant of Republic Steel Corporation, Canton, Ohio who became totally or partially separated from employment on or after March 20, 1975 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

It is further concluded that increases of imports of alloy steels and stainless steel did not contribute importantly to the total or partial separations of workers in the Vacuum Melt Departments, in Steel Ingot Conditioning nor of employees engaged in employment related to the production of alloy steel at the Canton South plant.

Signed at Washington, D.C., this 13th day of January 1977.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc.77-2146 Filed 1-24-77;8:45 am]

[TA-W-1165]

SPORTSWEAR MANUFACTURING CO., INC.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-1165: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on October 13, 1976 in response to a worker petition received on that date which was filed by the Amalgamated Clothing and Textile Workers Union (ACTWU) on behalf of workers formerly producing men's suits, sportcoats, pants and vests at Sportswear Manufacturing Company, Inc., Brooklyn, New York.

The Notice of Investigation was published in the FEDERAL REGISTER on October 29, 1976 (41 FR 47630). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Sportswear Manufacturing Company, Inc., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in such workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production;

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

The investigation has revealed that all four of the above criteria have been met.

SIGNIFICANT TOTAL OR PARTIAL SEPARATIONS

Average employment of production workers fell 38 percent in 1975 compared to 1974. Although employment rose 13 percent in the first ten months of 1976 compared to the like period of 1975, employment declined 22 percent in the July through October period of 1976 compared to the like period of 1975.

All production workers were separated from employment on or before October 29, 1976 when the company ceased operations.

SALES OR PRODUCTION, OR BOTH, HAVE DECREASED ABSOLUTELY

Unit production fell 25 percent in 1975 compared to 1974 and rose 40 percent in the first ten months of 1976 compared to the like period of 1975.

The increases in employment and production shown when comparing the first ten months of 1976 to the first ten months of 1975 are misleading. Production was temporarily curtailed and employees were laid off for two months in 1975 while the company moved to a new facility.

INCREASED IMPORTS

Imports of men's and boys' tailored dress coats and sportcoats increased each year from 1971 to 1973, declined in 1974 compared to 1973, rose 8 percent in 1975 compared to 1974 and increased 32 percent in the first nine months of 1976 compared to the like period of 1975. The ratio of imports to domestic production increased from 21.3 percent in 1974 to 30.9 percent in 1975 and rose from 23.8 percent in the first half of 1975 to 30.7 percent in the like period of 1976.

Imports of men's and boys' tailored suits increased every year since 1971, rose 27 percent in 1975 compared to 1974 and increased 7 percent in the first nine months of 1976 compared to the like period of 1975. The ratio of imports to domestic production increased from 12.3 percent in 1974 to 17.4 percent in 1975 and declined from 19.9 percent in the first half of 1975 to 17.3 percent in the like period of 1976.

Imports of men's and boys' dress and sport trousers and shorts increased in 1972 compared to 1971, declined in 1973 and 1974, rose 39 percent in 1975 compared to 1974 and increased 41 percent in the first nine months of 1976 compared to the like period of 1975. The ratio of imports to domestic production increased from 18.2 percent in 1974 to 30.3 percent in 1975 and rose from 28.2 percent in the first half of 1975 to 32.0 percent in the like period of 1976.

Imports of men's and boys' tailored suit vests increased every year since 1971, rose 154 percent in 1975 compared to 1974 and increased 114 percent in the first nine months of 1976 compared to the like period of 1975. The ratio of imports to domestic production increased from 12.2 percent in 1974 to 16.3 percent in 1975.

CONTRIBUTED IMPORTANTLY

The parent corporation which received approximately 80 percent of Sportswear Manufacturing Company's production, increased purchases of imported men's suits, sportcoats and pants by more than 100 percent and reduced orders to Sportswear Manufacturing Company, Inc. in 1975 compared to 1974.

The corporation reduced purchases from all sources in 1976 due to its own declining sales. The decline in sales was attributed to competition from other retailers who purchase large quantities of low priced imported men's clothing.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with men's suits, sportcoats, pants and vests produced at Sportswear Manufacturing Company, Inc., Brooklyn, New York, a subsidiary of Robert Hall Clothes, New York, N.Y. did contribute importantly to the total or partial separation of the workers of that company. In accordance with the provisions of the Act, I make the following certification:

All workers engaged in employment related to the production of men's suits, sportcoats, pants and vests at Sportswear Manufacturing Company, Inc., Brooklyn, New York who became totally or partially separated from employment on or after September 29, 1975 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 13th day of January 1977.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc.77-2147 Filed 1-24-77;8:45 am]

[TA-W-918]

U-BRAND CORP., ASHLAND, OHIO

Correction of Certification of Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, on October 18, 1976 the Department of Labor issued a certification of eligibility to apply for adjustment assistance applicable to workers and former workers at the Ashland, Ohio plant (Machine Division) and Shelby, Ohio warehouse of the U-Brand Corporation (TA-W-918). The Notice of Certification was published in the FEDERAL REGISTER on October 29, 1976 (41 FR 47632).

The certification as originally issued excluded workers who were engaged in employment related to the distribution of iron pipe fittings at the Vernon, California warehouse of the U-Brand Corporation.

The certification issued October 18, 1976 is hereby amended to include all workers of the Vernon, California warehouse of the U-Brand Corporation.

Signed at Washington, D.C., this 15th day of January 1977.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc.77-2148 Filed 1-24-77;8:45 am]

[TA-W-1,561]

U.S. STEEL CORP.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On January 10, 1977 the Department of Labor received a petition dated December 23, 1976 which was filed under section 221(a) of the Trade Act of 1974 ("the Act") by the United Steelworkers of America on behalf of the workers and former workers of Duluth, Minnesota plant of U.S. Steel Corporation, Pittsburgh, Pa. (TA-W-1,561). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increase of imports of articles like or directly competitive with coke produced by U.S. Steel Corporation or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 4, 1977.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 4, 1977.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210.

Signed at Washington, D.C. this 10th day of January 1977.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.77-2360 Filed 1-24-77;8:45 am]

[TA-W-1,562]

U.S. STEEL CORP.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On January 10, 1977 the Department of Labor received a petition dated December 23, 1976 which was filed under section 221(a) of the Trade Act of 1974 ("the Act") by the U.S. Steelworkers of America on behalf of the workers and former workers of Rankin, Pennsylvania plant of U.S. Steel Corporation, Pittsburgh, Pa. (TA-W-1,562). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with iron products produced by U.S. Steel Corporation or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 4, 1977.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 4, 1977.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210.

Signed at Washington, D.C. this 10th day of January 1977.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.77-2361 Filed 1-24-77;8:45 am]

[TA-W-1,557]

WILLOFORM MANUFACTURING CO., INC.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On January 1, 1977 the Department of Labor received a petition dated December 1, 1976 which was filed under section 221(a) of the Trade Act of 1974 ("the Act") by the International Ladies' Garment Workers Union on behalf of the workers and former workers of Willoform Manufacturing Co., Inc., New York, New York (TA-W-1,557). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with brassieres and girdles produced by Willoform Manufacturing Co., Inc. or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of Section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 4, 1977.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 4, 1977.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210.

Signed at Washington, D.C. this 1st day of January 1977.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.77-2362 Filed 1-24-77;8:45 am]

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (77-4)]

NASA RESEARCH AND TECHNOLOGY ADVISORY COUNCIL PANEL ON AVIATION SAFETY AND OPERATING SYSTEMS SUBCOMMITTEE ON AVIATION SAFETY REPORTING SYSTEM

Meeting

The NASA Research and Technology Advisory Council (RTAC), Subcommittee on Aviation Safety Reporting System will meet on February 15–16, 1977, at the Ames Research Center, Moffett Field, CA 94035. The meeting will be held in the Committee Room, Administration Building. The meeting is being held at this time to review the operation of the Aviation Safety Reporting System and to plan the one-year evaluation. Members of the public will be admitted on a first come, first served basis up to the seating capacity of the room which is about 25 persons. All visitors must report to the Ames Research Center receptionist in the Administration Building.

The RTAC Subcommittee on Aviation Safety Reporting System serves in an advisory capacity only. The Chairman is Mr. John H. Winant. There are 12 members. The following list sets forth the approved agenda and schedule for the February 15–16, 1977, meeting of the Aviation Safety Reporting System Subcommittee. For further information please contact Mr. E. Gene Lyman, NASA Headquarters, Code RB, Washington, DC 20546 (202–755–2380).

FEBRUARY 15, 1977

Time	*Topic*
9 a.m.	Report of the chairman. (Purpose: To summarize activities relating to the Aviation Safety Reporting System (ASRS) since the last subcommittee meeting.)
9:30 a.m.	Report on the Aviation Safety Reporting System. (Purpose: To describe status of activities pertaining to ASRS operations. Members will comment on these activities and identify items requiring additional attention.)
10:30 a.m.	Review of Aviation Safety Reporting System Reports. (Purpose: To allow members an opportunity to comment on information received and topics requiring special analysis.)
2:30 p.m.	Report of Security Group. (Purpose: To review security aspects of ASRS and to receive members' advice and recommendations concerning ASRS security.)
3:30 p.m.	Review of Aviation Safety Research. (Purpose: To review ongoing aviation safety research studies and to receive members' advice about these studies.)

FEBRUARY 16, 1977

8:30 a.m.	Develop ASRS Evaluation Plan. (Purpose: To develop an approach, schedule, and assign responsibilities for the ASRS one-year evaluation.)
10:30 a.m.	Members' Discussion. (Purpose: To consider total aspects of ASRS and provide advice and recommendations about its operation.)
1 p.m.	Adjourn.

JOHN M. COULTER,
Acting Assistant Administrator for DOD and Interagency Affairs National Aeronautics and Space Administration.

JANUARY 17, 1977.

[FR Doc.77-2187 Filed 1-24-77;8:45 am]

NATIONAL SCIENCE FOUNDATION

ADVISORY PANEL FOR PSYCHOBIOLOGY

Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, the National Science Foundation announces the following meeting:

Name: Advisory Panel for Psychobiology.
Date: February 10 and 11, 1977.
Time and place: 9:00 a.m. to 5:00 p.m. each day; National Science Foundation, 1800 G St. N.W., Washington, D.C. Room 321.
Type of meeting: Part Open (Open 9:00 a.m. to 10:00 a.m., February 11, 1977; remainder Closed).
Contact person: Fred Stollnitz, Program Director for Psychobiology Room 320, National Science Foundation, Washington, D.C. Telephone: (202) 632–4264.
Summary minutes: (open portion). May be obtained from the Committee Management Coordination Staff, Division of Personnel and Management, Room 248, National Science Foundation, Washington, D.C. 20550.
Purpose of panel: To provide advice and recommendations concerning support for research in psychobiology.
Agenda: February 10, 9:00 a.m. to 5:00 p.m., February 11, 10:00 a.m. to 5:00 p.m., closed. The panel will be reviewing and evaluating research proposals and projects as part of the selection process for awards. February 11, 9:00 a.m. to 10:00 a.m., open. The Panel will be discussing methods of assessing the state and outlook of the field of Psychobiology and the role and performance of the Psychobiology Program in supporting it.
Reason for closing: The proposals and projects being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals and projects. These matters are within exemptions (4) and (6) of 5 U.S.C. 552 (b), Freedom of Information Act. The rendering of advice by the panel is considered to be a part of the Foundation's deliberative process and is thus subject to exemption (5) of the Act.
Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92–463. The Committee Management Officer was delegated the authority to make determinations by the Director, NSF, on February 11, 1976.

M. REBECCA WINKLER,
Acting Committee Management Officer.

JANUARY 19, 1977.

[FR Doc.77-2343 Filed 1-24-77;8:45 am]

ADVISORY PANEL FOR SENSORY PHYSIOLOGY AND PERCEPTION

Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, the National Science Foundation announces the following meeting:

Name: Advisory Panel for Sensory Physiology and Perception.
Date and time: February 7 and 8, 1977; 9:00 A.M.–5:00 P.M. each day.
Place: National Science Foundation, 1800 G Street N.W., Washington, D.C. 20550, Room 517.
Type of meeting: Closed.
Contact person: Dr. Terrence R. Dolan, Program Director, Sensory Physiology and Perception, Room 320, National Science Foundation, Washington, D.C. 20550, Telephone: (202) 634–1624.
Purpose of panel: To provide advice and recommendations concerning support for research in sensory physiology and perception.
Agenda: To review and evaluate research proposals and projects as part of the selection process for awards.
Reason for closing: The proposals and projects being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals and projects. These matters are within exemptions (4) and (6) of 5 U.S.C. 552(b), Freedom of Information Act. The rendering of advice by the panel is considered to be a part of the Foundation's deliberative process and is thus subject to exemption (5) of the Act.
Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of P.L. 92–463. The Committee Management Officer was delegated the authority to make determinations by the Director, NSF, on February 11, 1976.

M. REBECCA WINKLER,
Acting Committee Management Officer.

JANUARY 19, 1977.

[FR Doc.77-2267 Filed 1-24-77;8:45 am]

ADVISORY PANEL FOR SYSTEMATIC BIOLOGY

Meeting

In accordance with the Federal Advisory Committee Act., Pub. L. 92–463, the National Science Foundation announces the following meeting:

Name: Advisory Panel for Systematic Biology.
Date and time: February 10 and 11, 1977—8:30 a.m. to 5:00 p.m. each day.
Place: Room 543, National Science Foundation, 1800 G Street, N.W., Washington, D.C. 20550.
Type of meeting: Closed.
Contact person: Dr. John W. Wright, Program Director, Systematic Biology Program, Room 336, National Science Foundation, Washington, D.C. 20550, telephone (202) 632–5846.
Purpose of panel: To provide advice and recommendations concerning support for research in systematic biology.
Agenda: To review and evaluate research proposals and projects as part of the selection process for awards.
Reason for closing: The proposals and projects being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals and projects. These matters are within exemptions (4) and (6) of 5 U.S.C. 552(b), Freedom of Information Act. The rendering of advice by the panel is considered to be a part of the Foundation's deliberative process and is thus subject to exemption (5) of the Act.
Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of P.L. 92–463. The Committee Management Officer was delegated the authority to make determinations by the Director, NSF, on February 11, 1976.

M. REBECCA WINKLER,
Acting Committee Management Officer.

JANUARY 19, 1977.

[FR Doc.77-2344 Filed 1-24-77;8:45 am]

FEDERAL SCIENTIFIC AND TECHNICAL INFORMATION MANAGERS

Meeting

The next meeting of the Federal Scientific and Technical Information Managers will be held on Wednesday, February 9, 1977, from 9:30 a.m.–12 noon, at the Department of Commerce, 14th and Constitution Avenue, NW, Conference Room B–841. The theme of this meeting will be the "Micrographics, Video and Other Image Transfer Developments: Substitutes or Complements for Computer-Based Communication?"

These meetings, sponsored by the National Science Foundation, provide a forum for the interchange of information concerning common problems and coordination in the areas of Federal scientific and technical information and communications.

These meetings are designed solely for the benefit of Federal employees and officers, and do not fall under the provisions of the Federal Advisory Committee Act (P.L. 92–463). However, this meeting is believed to be of sufficient importance and interest to the public to be announced in the FEDERAL REGISTER.

Any persons wishing to attend this meeting or requiring further information should notify Mr. Andrew A. Aines, Division of Science Information, National Science Foundation, 1800 G Street, NW, Washington, DC 20550, telephone: (202) 632–5836.

LEE G. BURCHINAL,
Director, Division of Science Information.

JANUARY 22, 1977.

[FR Doc. 77-2266 Filed 1-24-77;8:45 am]

NUCLEAR REGULATORY COMMISSION

ADVISORY COMMITTEE ON REACTOR SAFEGUARDS NUCLEAR REGULATORY COMMISSION

Notice of Meeting

In accordance with the purposes of Sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b.), the Advisory Committee on Reactor Safeguards will hold a meeting on February 10–12, 1977, in Room 1046, 1717 H Street NW., Washington, D.C.

The agenda for the subject meeting will be as follows:

THURSDAY, FEBRUARY 10, 1977

8:00 A.M.—8:45 A.M.: Executive Session (Closed).—The Committee will discuss the qualifications of candidates nominated for appointment to the ACRS.

8:45 A.M.–9:45 A.M.: Executive Session (Open).—The Committee will hear and discuss the reports of ACRS Subcommittees and consultants who may be present regarding the evaluation of selected safety issues related to light-water reactors. Portions will be closed if necessary to discuss proprietary material or intra-agency memoranda prepared for internal use only.

9:45 A.M.–12:45 P.M. and 1:45 P.M.–4:45 P.M.: Meeting on Evaluation of Selected Safety Issues Related to Light-Water Reactors (Open).—The Committee will hear presentations and hold discussions regarding evaluation of selected safety issues related to light-water reactors.

Portions of this session will be closed if necessary to receive reports from individual NRC employees who will present their personal opinions and recommendations only in confidence. Portions will also be closed if required to review Proprietary Information related to the matters being considered and intra-agency memoranda prepared for internal use only.

4:45 P.M.–6:30 P.M.: Executive Session (Open).—The Committee will hear and discuss reports of ACRS Subcommittees regarding proposed Regulatory Guides and regulatory activities related to the practices and policies for correction of ECCS errors for operating power plants. The Committee will also discuss a proposed revision of its report on the Status of Generic Matters Related to Light-Water Reactors.

FRIDAY, FEBRUARY 11, 1977

8:30 A.M.—11:15 A.M.: Meeting with Members of the NRC Staff.—This portion of the meeting will include sessions with the Executive Director for Operations and other members of the NRC Staff related to current reactor operating experience and licensing actions; evaluation of generic matters related to light-water reactors, including performance of steam generator tubes in pressurized water reactors and evaluation of fuel handling accidents inside containment; and evaluation of safety research data and regulatory requirements of the Federal Republic of Germany. The future schedule for ACRS activities will be discussed. Reports will be made to the Committee regarding the NRC program to evaluate integrity of reactor pressure vessels designed and fabricated to the ASME Boiler and Pressure Vessel Code Sections I and VIII and the NRC program to review environmental phenomena at sites with facilities for processing and fabricating plutonium.

11:15 A.M.–12:00 Noon: Executive Session (Open).—The Committee will hear and discuss the report of the ACRS Subcommittee and consultants who may be present regarding the analytical models formulated to evaluate use of Exxon Nuclear Company Replacement Fuel for Light-Water Reactors. Portions of this session will be closed if required to discuss Proprietary Information related to the design, fabrication, or operation of this fuel.

1:00 P.M.–3:00 P.M.: Meeting Regarding Exxon Nuclear Company, Inc. Replacement Fuel for Light-Water Reactors (Open).—The Committee will hear and discuss information with representatives of the NRC Staff and the Exxon Nuclear Company, Inc., and the Jersey Central Power & Light Company, regarding the ECCS evaluation models for replacement fuel to be used in non-jet pump boiling water reactors and pressurized water reactors with low-pressure containment.

Portions of this session will be closed if required to discuss Proprietary Information related to the design, fabrication or operation of this type fuel.

3:00 P.M.–5:00: Executive Session (Open).—The Committee will hear and discuss the reports of ACRS Subcommittee Chairmen with respect to ACRS activities regarding review of the Zion Nuclear Station, ACRS review of the Clinch River Breeder Reactor, review of sites with environmental phenomena for plutonium processing and fabrication facilities, and ACRS review of the NRC plan to reevaluate siting policy and practices.

5:00 P.M.–6:30: Executive Session (Closed).—The Committee will meet in closed Executive Session to discuss the qualifications of proposed candidates for appointment to the Committee. The Committee will discuss a proposed ACRS report on safeguards provisions at nuclear facilities.

SATURDAY, FEBRUARY 12, 1977

8:30 A.M.–4:30 P.M.: Executive Session (Open).—The Committee will discuss proposed ACRS reports and activities regarding matters considered during this meeting. Portions of this session will be closed if necessary to discuss proprietary material related to the matters being discussed. Portions will also be closed if necessary to discuss information related to safeguards provisions at nuclear facilities and to discuss proposed policy and practice regarding conduct of ACRS activities.

I have determined in accordance with Subsection 10(d) of Public Law 92–463 that it is necessary to close portions of the meeting as noted above to protect material, which has been designated national security information and is classified under E.O. No. 11652 (5 U.S.C. 552(b)(1), to protect proprietary data (5 U.S.C. 552(b)(4)), to protect the confidentiality of intra-agency memoranda prepared for internal agency use only and discussion of information which, if written, would fall within the provisions of exemption 5 of 5 U.S.C. 552(b) (5 U.S.C. 552(b)(5)), to preserve the confidentiality of information related to safeguarding of special nuclear material (5 U.S.C. 552(b)(4)), to protect information provided in confidence by individual members of the NRC Staff (5 U.S.C. 552(b)(5)), and to protect information which, if released, would represent an undue invasion of privacy (5 U.S.C. 552(b)(6)). Separation of factual information and information considered exempt from disclosure under exemption (1), exemption (4), exemption (5), and exemption (6) of 5 U.S.C. 552(b) during these portions of the meeting is not considered practical.

Practical considerations may dictate alterations in the above agenda or schedule. The Chairman of the Committee is empowered to conduct the meeting in a manner that in his judgment will facilitate the orderly conduct of business, including provisions to carry over an incompleted open session from one day to the next.

The Advisory Committee on Reactor Safeguards is an independent group established by Congress to review and report on each application for a construction permit and on each application for an operating license for a reactor facility and on certain other nuclear safety matters. The Committee's reports become a part of the public record. Although ACRS meetings are ordinarily open to the public and provide for oral or written statements to be considered as a part of the Committee's information gathering procedure concerning the health and safety of the public, they are not adjudicatory type hearings such as are conducted by the Nuclear Regulatory Commission's Atomic Safety & Licensing Board as part of the Commission's licensing process. ACRS meetings do not normally treat matters pertaining to environmental impacts outside the safety area.

With respect to public participation in the open portion of the meeting, the following requirements shall apply:

(a) Persons wishing to submit written statements regarding the agenda items may do so by providing a readily reproducible copy to the Committee at the beginning of the meeting. Comments should be limited to safety related areas within the Committee's purview. Persons desiring to mail written comments may do so by mailing a readily reproducible copy thereof in time for consideration at this meeting. Comments postmarked no later than February 2, 1977, to the Executive Director, Advisory Committee on Reactor Safeguards, Nuclear Regulatory Commission, Washington, DC 20555 will normally be received in time to be considered at this meeting. Background information concerning items to be considered at this meeting can be found in documents on file and available for public inspection at the Nuclear Regulatory Commission's Public Document Room, 1717 H Street, NW, Washington, DC 20555 and at the following Public Document Rooms:

OYSTER CREEK NUCLEAR POWER PLANT

Ocean County Library, 15 Hooper Avenue, Toms River, NJ 08753.

D.C. COOK UNIT 1

Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, MI 49085.

(b) Those persons wishing to make oral statements regarding agenda items at the meeting should make a request to do so prior to the meeting, identifying the topics and desired presentation time so that appropriate arrangements can be made. The Committee will receive oral statements in safety related areas within the Committee's purview at an appropri-

ate time chosen by the Chairman of the Committee.

(c) Further information regarding topics to be discussed, whether the meeting or portions of the meeting have been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted therefor, can be obtained by a prepaid telephone call on February 9, 1977, to the Office of the Executive Director of the Committee (Telephone: 202–634–1371) between 8:15 A.M. and 5:00 P.M., Eastern Time. It should be noted that the above schedule is tentative, based on the anticipated availability of related information, etc. It may be necessary to reschedule items to accommodate required changes. The ACRS Executive Director will be prepared to describe these changes on February 9, 1977.

(d) Questions may be propounded only by members of the Committee and its consultants.

(e) The use of still, movie, and television cameras, the physical installation and presence of which will not interfere with the course of the meeting, will be permitted both before and after the meeting and during any recess. The use of such equipment will not, however, be allowed while the meeting is in session.

(f) Persons with agreements or orders permitting access to proprietary information other than safeguards information may attend portions of ACRS meetings where this material is being discussed upon confirmation that such agreements are effective and relate to the material being discussed.

The Executive Director of the ACRS should be informed of such an agreement at least 3 days prior to the meeting so that the agreement can be confirmed and a determination can be made regarding the applicability of this agreement to the material that will be discussed during the meeting. Minimum information provided should include information regarding the date of the agreement, the scope of material included in the agreement, the project or projects involved, and the names and titles of the persons signing the agreement. Additional information may be requested to identify the specific agreement involved. A copy of the executed agreement should be provided to the Executive Director at the beginning of the meeting.

(g) A copy of the transcript of the open portion(s) of the meeting where factual information is presented will be available for inspection during the following workday at the Nuclear Regulatory Commission's Public Document Room, 1717 H Street, NW, Washington, D.C. Copies of the minutes of the meeting will be made available for inspection at the Nuclear Regulatory Commission's Public Document Room, 1717 H Street, NW, Washington, D.C. on or after May 13, 1977. Copies may be obtained upon payment of appropriate charges.

Dated: January 21, 1977.

JOHN C. HOYLE,
Advisory Committee Management Officer.

[FR Doc.77–2389 Filed 1–21–77;1:11 pm]

OFFICE OF TELECOMMUNICATIONS POLICY

ELECTROMAGNETIC RADIATION MANAGEMENT ADVISORY COUNCIL

Meeting

Notice is hereby given that the Electromagnetic Radiation Management Advisory Council (ERMAC) will meet at 9:00 a.m., in room 2010, New Executive Office Building, 17th and H Streets, N.W., Washington, D.C. on Wednesday, February 9, 1977 and on Thursday, February 10, 1977.

The principal agenda items will consist of presentations on research programs being conducted to evaluate the biological effects of nonionizing electromagnetic radiation. On 9 February presentations will be made by the Departments of Air Force and Army and on 10 February by the Environmental Protection Agency.

The meetings will be open to the public; any member of the public will be permitted to file a written statement with the Committee, before or after the meeting.

Information regarding the Committee may be obtained from Lt. Cmdr. Peter S. Labyak, Office of Telecommunications Policy, Washington, D.C. 20504 (telephone: 202/395–4737)

Dated: January 19, 1977.

L. DANIEL O'NEILL,
Advisory Committee Management Officer.

[FR Doc.77–2323 Filed 1–24–77;8:45 am]

OHIO RIVER BASIN COMMISSION

GREAT MIAMI RIVER BASIN COMPREHENSIVE COORDINATED JOINT PLAN REVIEW

Availability of Report

Pursuant to section 204(3) of the Water Resources Planning Act of 1965 (Pub. L. 89–80), the Ohio River Basin Commission has completed a report summarizing the current Comprehensive Coordinated Joint Plan (CCJP) for the Great Miami River Basin portion of the Ohio River Basin. The Report currently is being reviewed by the Governors and the head of each Federal agency, and each interstate agency, from which a member of the Commission has been appointed.

Views, comments and recommendations on the CCJP are requested by April 14, 1977. Copies are available on request to the Ohio River Basin Commission, 36 E. Fourth Street, Suite 208–20, Cincinnati, Ohio 45202.

FRED E. MORR,
Chairman.

[FR Doc.77–2311 Filed 1–24–77;8:45 am]

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

ECI INDUSTRIES

Suspension of Trading

JANUARY 18, 1977.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the securities of ECI Industries being traded on a national securities exchange or otherwise is required in the public interest and for the protection of investors;

Therefore, pursuant to section 12(k) of the Securities Exchange Act of 1934, trading in such securities on a national securities exchange or otherwise is suspended, for the period from 10:00 a.m., e.s.t., on January 18, 1977 through January 27, 1977.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.77–2230 Filed 1–24–77;8:45 am]

[Release No. 34–13172; File No. SR–MSE–76–28]

MIDWEST STOCK EXCHANGE, INC.

Proposed Rule Change; Self-Regulatory Organizations

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94–29, 16 (June 4, 1975), notice is hereby given that on January 3, 1977, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

MSE'S STATEMENT OF THE TERMS OF SUBSTANCE OF THE PROPOSED RULE CHANGE

Article I, Rule 10:

TRANSFERS OF MEMBERSHIP

Rule 10. A membership is a privilege which cannot be transferred until the transferee shall have been elected a member or member organization. All bids for, and offerings of, memberships shall be submitted to and will be processed by the Exchange in accordance with procedures that shall from time to time be established by the Executive Committee. All contracts for the sale of memberships shall be approved by the Exchange. A sale or transfer of a membership without Exchange approval shall confer no rights on the purchaser or transferee to become a member, to exercise any rights of membership or otherwise to deal on or with the Exchange on a basis other than that of a nonmember. Transference pursuant to financing arrangements, whereby the transferor retains the right to reacquire the membership, must be in accordance with the requirements of the Exchange and the terms of all such arrangements must be approved by the Exchange.

MSE'S STATEMENT OF BASIS AND PURPOSE

The basis and purpose of the foregoing proposed rule change is as follows:

The proposed rule change is to provide specific notice in the rules that it is the policy of the Exchange that these financing arrangements must be in accordance with the requirements of the Exchange.

The proposed rule change gives the Exchange the capacity to carry out the purposes of the Act and to comply, and to enforce compliance by its members and persons associated with its members, with the Act, the rules and regulations thereunder.

Comments have neither been solicited nor received.

The Midwest Stock Exchange believes that no burdens have been placed on competition.

On or before March 1, 1977, or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the above-mentioned self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file 6 copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted on or before February 15, 1977.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

JANUARY 14, 1977.

[FR Doc.77–2231 Filed 1–24–77;8:45 am]

[SR–NYSE–76–37]

NEW YORK STOCK EXCHANGE, INC.

Order Approving Rule Change

On June 25, 1976, the New York Stock Exchange, Inc., 11 Wall Street, New York, New York 10005, filed with the Commission, pursuant to section 19(b) of the Securities Exchange Act of 1934 (the "Act"), as amended by the Securities Acts Amendments of 1975, and Rule 19b–4 thereunder, copies of a proposed rule change. The rule change reduces the capital requirements for registered traders from the current initial and maintenance requirements of, respectively, $250,000 and $175,000 over and above any other federal or exchange requirement to a constant minimum requirement of $25,000 over and above any other federal or exchange requirement; and changes the title of "registered traders" to "competitive traders."

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Release No. 34–12555 (June 18, 1976)) and by publication in the FEDERAL REGISTER (41 FR 26287 (June 25, 1976)).

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges and in particular, the requirements of Section 6, and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change filed with the Commission on June 25, 1976, be, and it hereby is, approved.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.77–2232 Filed 1–24–77;8:45 am]

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area No. 1282]

MINNESOTA

Declaration of Disaster Loan Area

Cook County and adjacent counties within the State of Minnesota constitute a disaster area because of physical damage to wells resulting from drought which occurred in the calendar year 1976.

Eligible persons, firms and organizations may file applications for loans for physical damage as a result of drought until the close of business on March 17, 1977 and for economic injury until the close of business on October 17, 1977 at:

Small Business Administration, District Office, Plymouth Building, Room 530, 12 South Sixth Street, Minneapolis, Minnesota 55402.

or other locally announced locations.

Dated: January 14, 1977.

MITCHELL P. KOBELINSKI,
Administrator.

[FR Doc.77–2312 Filed 1–24–77;8:45 am]

[Declaration of Disaster Loan Area No. 1283]

WISCONSIN

Declaration of Disaster Loan Area

Iron County and adjacent counties within the State of Wisconsin constitute a disaster area because of physical damage to wells resulting from drought which occurred in the calendar year 1976.

Eligible persons, firms and organizations may file applications for loans for physical damage as a result of drought until the close of business on March 17, 1977 and for economic injury until the close of business on October 17, 1977 at:

Small Business Administration, District Office, 122 West Washington Avenue, Room 700, Madison, Wisconsin 53703.

or other locally announced locations.

Dated: January 14, 1977.

MITCHELL P. KOBELINSKI,
Administrator.

[FR Doc.77–2313 Filed 1–24–77;8:45 am]

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

DEPUTY DIRECTOR

Delegation of Authority

Effective noon January 20, 1977, and until an Administrator is nominated and confirmed, the Deputy Administrator, Federal Railroad Administration is delegated authority to carry out the duties vested in the Administrator, and in the absence of the Deputy Administrator, the Chief Counsel, Federal Railroad Administration is authorized to carry out the duties of the Administrator, and in the absence of the Deputy Administrator and the Chief Counsel, the Associate Administrator for Policy and Program Development, Federal Railroad Administration is authorized to carry out the duties of the Administrator.

This action is taken under the authority of section 9 of the Department of Transportation Act (49 U.S.C. 1657) and the Regulations of the Secretary of Transportation (49 CFR 1.45(b)).

Issued in Washington, D.C., on January 18, 1977.

ASAPH H. HALL,
Administrator, Federal Railroad Administration.

[FR Doc. 77–2196 Filed 1–24–77;8:45 am]

Office of the Secretary

[OST File No. 49; Notice 77-2]

DESIGN, ART AND ARCHITECTURE IN TRANSPORTATION

Request for Public Comment

The purpose of this notice is to invite public comment on ways to encourage the use of art, good design, and architecture in the development of federally funded transportation projects.

On January 14, 1977, I issued "A Policy Statement on the Use of Design, Art and Architecture in Transportation System." On that same date, I established a task force within the Department of Transportation on the subject of design, art and architecture in transportation. The statement of policy and the memorandum establishing the task force are set forth below.

The Department of Transportation hereby requests comments of the interested public on (1) the policy; (2) matters which commentors believe the task force should consider; (3) the matters which I have specifically asked the task force to consider; and (4) any other suggestions as to how the Department can appropriately improve design, art and architecture in transportation systems.

Comments should be submitted in writing to:

Docket Clerk, OST File No. 49, Office of the General Counsel, Department of Transportation, Washington, D.C. 20590.

Comments received by Friday, March 25, 1977, will be considered; those received after that date will be considered only to the extent feasible. Comments will be available for public inspection and copying in the Office of the Assistant General Counsel for Operations and Legal Counsel, Room 10100 Nassif Building, 400 Seventh Street, SW., Washington, D.C., 9 a.m. to 5:30 p.m. local time, Monday through Friday, except Federal holidays.

For further information, contact:

Charles Ansbacher, White House Fellow, Department of Transportation, Washington, D.C. 20590, (202) 426-4363.

Issued in Washington, D.C. on January 18, 1977.

WILLIAM T. COLEMAN, JR.,
Secretary of Transportation.

A POLICY STATEMENT ON THE USE OF DESIGN, ART AND ARCHITECTURE IN TRANSPORTATION SYSTEMS

JANUARY 14, 1977.

The purpose of this statement is to set forth an explicit Departmental policy with respect to the use and encouragement of art and good design in our Nation's transportation systems. It is our strong conviction that a Nation's public works reflect the strength and depth of its cultural heritage. We need only look at the creations of great nations of antiquity to find examples of their civilization—Athens gives us her places of worship and trade, Rome bequeaths her aqueducts and colosseums, Paris presents her splendor in magnificent boulevards and public museums of unsurpassed beauty. The Parliament Building of London commands our regard for that Nation's splendid history of leadership and commitment to democratic principles.

These examples have been emulated in many instances by our own great country—often as our youthful cities sought to develop their own statement of character and achievement. New York was identified by the majestic height of its Empire State Building and the massively attractive Brooklyn Bridge; San Francisco is the home of the Golden Gate; Washington, like London, is a city planned for its leading governmental role and through its monuments, parks and buildings, constantly reminds us of our great leaders and strong Constitution.

Today, enormous amounts of public funds, collected from our people, flow into the development and continued improvement of our Nation's cities and countryside. Since transportation systems claim a large portion of those funds, we recognize that in the spirit of the past, and with care for the future, the Department of Transportation must make a strong commitment to a policy which will assure that all public funds allocated to transportation be spent with due consideration for their design, artistic and cultural impact.

Thus, as a matter of policy, we believe that a concern for good design is an integral part of responsible planning for safe, efficient and economical transportation systems. To accomplish this objective, the Department proposes to establish a process which will encourage the use of art and good design in the development of Federally funded transportation projects.

In the final analysis, high quality design will accomplish the broadest transportation objectives and may generate benefits which far outweigh any additional costs. Design which provides visual testimony to the Country's respect for the dignity of individuals will become another cherished portion of our Nation's heritage. Emphasis, therefore, must be placed on the choice of plans which embody the finest American architectural, design, and artistic thought.

WILLIAM T. COLEMAN, JR.

JANUARY 14, 1977.

Memorandum to: Commandant, United States Coast Guard, Federal Aviation Administrator, Federal Highway Administrator, Federal Railroad Administrator, Urban Mass Transportation Administrator, Assistant Secretary for Policy, Plans and International Affairs, Assistant Secretary for Environment, Safety and Consumer Affairs, Assistant Secretary for Administration, White House Fellow, Director of Public Affairs.

Subject: Establishment of Task Force on Design, Art and Architecture in Transportation.

I am establishing herewith an ad hoc Task Force on Design, Art and Architecture in Transportation, with the addressees of this memorandum as members. The Task Force will be chaired jointly by the Assistant Secretary for Environment, Safety and Consumer Affairs and the White House Fellow. The purpose of the Task Force is to develop and submit to the Secretary, within six months, a report setting forth proposals for the implementation of the policy which I am issuing today on Design, Art and Architecture in Transportation.

In developing its report, the Task Force should consider the following:

(1) The creation of a National Advisory Board on Design, Art and Architecture in Transportation.

(2) The understanding that the cost of incorporating aesthetic design and art work may be eligible for Department of Transportation assistance at a certain level of funding based on a formula of a project's total budget. This assistance will apply to transportation systems which will be refurbished and modernized, and for new construction.

(3) The establishment of an annual awards program to give recognition to outstanding examples of achievement in design, art and architecture in transportation systems.

(4) The promulgation of regulations regarding procedures which the Department of Transportation grantees should follow to assure that design, art and architecture factors in transportation systems are given due consideration.

(5) Grants be made available to communities for aesthetic environmental enhancement of transportation systems on a one-to-one matching basis, where federal dollars are matched by funds from individuals, neighborhood organizations, or businesses.

The Task Force should evaluate the comments received on the policy, and the foregoing items, in response to a notice in the FEDERAL REGISTER. Also, for the purpose of informing itself more completely, the Task Force is hereby authorized to hold a public hearing and to travel to the extent necessary. In developing its report, the Task Force should review all relevant programs and policies within the Department, as well as elsewhere in the Federal Government, and—on a selected basis—in State and local governments.

WILLIAM T. COLEMAN, JR.

[FR Doc.77-2325 Filed 1-24-77;8:45 a.m.]

INTERSTATE COMMERCE COMMISSION

[Notice No. 310]

ASSIGNMENT OF HEARINGS

JANUARY 19, 1977.

Cases assigned for hearing, postponement, cancellation or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the Official Docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested.

MC 142215, Duke Transportation, Inc. now being assigned March 15, 1977 (3 days) at Baton Rouge, Louisiana in a hearing room to be later designated.

MC 23441 (Sub-No. 21), Lay Trucking Company, Inc. and MC 61592 (Sub-No. 386), Jenkins Truck Line, Inc., now being assigned for continued hearing on February 10, 1977, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 142251, Ill-Mo Air Freight, Inc., application dismissed.

MC 33641 (Sub-No. 126), IML Freight, Inc., now being assigned for continued hearing on April 5, 1977 (4 days), at Boise, Idaho, Bankruptcy Courtroom, U.S. Post Office, Room 214, North 8th and Bannock Streets.

No. 36434, Petition for Declatory Order and Reconsideration (Commuter Fares-Consolidated Rail Corporation, New Jersey and New York) and No. 36474, *Benjamin A. Gilman v. Consolidated Rail Corporation, et al*, now being assigned February 14, 1977 (1 day) at New York, New York; in a hearing room to be later designated.

MC 82841 Sub 177, Hunt Transportation, Inc. now being assigned March 28, 1977 (1 week) at Denver, Colorado in a hearing room to be later designated.

MC 57697 Sub 3, Lester Smith Trucking, Inc. now being assigned March 24, 1977 (2 days) at Denver, Colorado in a hearing room to be later designated.

MC 142574 (Sub 1), Circle C Transportation Company now being assigned March 22, 1977 (2 days) at Denver, Colorado in a hearing room to be later designated.

MC 111611 (Sub-30), Noerr Motor Freight, Inc., now being assigned March 23, 1977 at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 112582 (Sub-45), T. M. Zimmerman Company, now being assigned March 17, 1977 at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 113666 (Sub-109), Freeport Transport, Inc., now being assigned March 24, 1977 at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 118989 (Sub-146), Container Transit, Inc., now being assigned March 9, 1977 at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 140829 (Sub-16), Cargo Contract Carrier Corp., now being assigned March 23, 1977 at the Offices of the Interstate Commerce Commission, Washington, D.C.

ROBERT L. OSWALD,
Secretary.

[FR Doc.77-2351 Filed 1-24-77;8:45 am]

[AB 77 (Sub-No. 1)]

BANGOR AND AROOSTOOK RAILROAD CO.

Abandonment of Lines

JANUARY 13, 1977.

The Interstate Commerce Commission hereby gives notice that its Section of Energy and Environment has concluded that the proposed abandonment by the Bangor and Aroostook Railroad Company of its line between South Lagrange and Packard, a distance of 27.96 miles, in Penobscot and Piscataquis Counties, Maine, if approved by the Commission, does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321, et seq., and that preparation of a detailed environmental impact statement will not be required under section 4332(2)(C) of the NEPA.

It was concluded, among other things, that the environmental impacts of the subject action are considered insignificant because all traffic previously handled over this line has, since November 1974, been diverted to applicant's alternate main line via Brownville, Maine. Consequently, there will be no increases in energy consumption or air pollution which might otherwise occur as a result of diversion of traffic from rail to motor carriers. There are no industrial development plans in the tributary territory which would be dependent on continued rail service over this line. Finally, interest has been expressed in utilizing the abandoned right-of-way for recreational use, and the line has been found to be suitable for other public purposes upon abandonment.

This conclusion is contained in a staff-prepared environmental threshold assessment survey, which is available on request to the Interstate Commerce Commission, Office of Proceedings, Washington, D.C. 20423; telephone 202-275-7011.

Interested persons may comment on this matter by filing their statements in writing with the Interstate Commerce Commission, Washington, D.C. 20423, on or before February 25, 1977.

It should be emphasized that the environmental threshold assessment survey represents an evaluation of the environmental issues in the proceeding and does not purport to resolve the issue of whether the present or future public convenience and necessity permit discontinuance of the line proposed for abandonment. Consequently, comments on the environmental study should be limited to discussion of the presence or absence of environmental impacts and reasonable alternatives.

ROBERT L. OSWALD,
Secretary.

[FR Doc.77-2349 Filed 1-24-77;8:45 am]

[Docket No. AB-6 (Sub-No. 45)]

BURLINGTON NORTHERN, INC.

Abandonment of Lines

JANUARY 13, 1977.

The Interstate Commerce Commission hereby gives notice that its Section of Energy and Environment has concluded that the proposed abandonment by the Burlington Northern, Inc., of its branch line between Sterling and New Raymer, a distance of 34.50 miles, in Logan and Weld Counties, Colo., if approved by the Commission, does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321, et seq., and that preparation of a detailed environmental impact statement will not be required under section 4332(2)(C) of the NEPA.

It was concluded, among other things, that the environmental impacts associated with the abandonment are considered insignificant because diversion of the low volume of traffic presently handled on the line will not cause measurable increases in fuel consumption or air pollution. A developing industrial park adjacent the line west of Shirley would be adversely impacted should the abandonment be approved. Several firms presently considering the park require rail service and would most likely select an alternate location should the abandonment be approved. However, abandonment is not expected to create a serious adverse impact on community and rural development because abandonment will not preclude industrial development by firms which do not require rail service. An alternative granting partial abandonment, and thereby avoiding adverse impacts to the industrial park is included.

The State of Colorado, Department of Highways and the city of Sterling have both indicated an interest in acquiring portions of the right-of-way for either the continued use as a transportation corridor or for utilization as a hike and bike trail.

This conclusion is contained in a staff-prepared environmental threshold assessment survey, which is available on request to the Interstate Commerce Commission. Office of Proceedings, Washington, D.C. 20423; telephone 202-275-7011.

Interested persons may comment on this matter by filing their statements in writing with the Interstate Commerce Commission, Washington. D.C. 20423 on or before February 25, 1977.

It should be emphasized that the environmental threshold assessment survey represents an evaluation of the environmental issues in the proceeding and does not purport to resolve the issue of whether the present or future public convenience and necessity permit discontinuance of the line proposed for abandonment. Consequently, comments on the environmental study should be limited to discussion of the presence or absence of environmental impacts and reasonable alternatives.

ROBERT L. OSWALD,
Secretary.

[FR Doc.77-2348 Filed 1-24-77;8:45 am]

CONDITION OF INTERCITY BUS INDUSTRY

Informal Conference

JANUARY 18, 1977.

Upon consideration of a telegraphic request, the Commission, Division 2, has determined that an informal conference should be held for the purpose of discussing the financial condition of the intercity bus industry.

The informal conference will convene at 10 a.m. on February 2, 1977, at the Office of the Interstate Commerce Commission, Washington, D.C. Parties interested in attending this conference should indicate their intention to participate by notifying the Commission no later than January 26, 1977. Letters of intent to participate should be addressed to the Interstate Commerce Commission, Room 5342, Washington, D.C. 20423.

Notice of this informal conference before Division 2 shall be given to the general public by depositing a copy of this Notice in the Office of the Secretary, Interstate Commerce Commission, Washington, D.C. for public inspection and by delivering a copy of the Notice to the Director, Office of the Federal Register, for publication therein as notice to interested persons.

ROBERT L. OSWALD,
Secretary.

[FR Doc.77-2347 Filed 1-24-77;8:45 am]

FOURTH SECTION APPLICATIONS FOR RELIEF

JANUARY 19, 1977.

An application, as summarized below, has been filed requesting relief from the requirements of section 4 of the Interstate Commerce Act to permit common

carriers named or described in the application to maintain higher rates and charges at intermediate points than those sought to be established at more distant points.

Protests to the granting of an application must be prepared in accordance with rule 40 of the general rules of practice (49 CFR 1100.40) and filed on or before February 9, 1977.

FSA No. 43306—*Joint Rail-Water Container Rates—Lykes Bros. Steamship Co., Inc.* Filed by Lykes Bros. Steamship Co., Inc., (No. 6), for itself and interested rail carriers. Rates on general commodities, from ports in Continental Europe, The United Kingdom, Scandinavia and Denmark, North Spain, Portugal, the Mediterranean and Black Sea, to San Francisco, California.

Grounds for relief—Water competition.

Tariffs—Lykes Bros. Steamship Co., Inc., Eastbound Pacific Coast to Europe tariff No. 1, I.C.C. No. 1, F.M.C. No. 89, and 3 other schedules named in the application. Rates are published to become effective on February 15, 1977.

FSA No. 43307—*Barley or Wheat and Related Articles from Points in Montana.* Filed by North Pacific Coast Freight Bureau, Agent, (No. 77-1), for and on behalf of Chicago, Milwaukee, St. Paul and Pacific Railroad Company. Rates on barley, or wheat and products thereof, in carloads, as described in the application, from specified points in Montana, to specified points in Washington and Oregon.

Grounds for relief—Carrier competition.

Tariff—North Pacific Coast Freight Bureau, Agent, tariff 13-I, I.C.C. No. 1302. Rates are published to become effective on February 19, 1977.

By the Commission.

ROBERT L. OSWALD,
Secretary.

[FR Doc.77-2352 Filed 1-24-77;8:45 am]

[Docket No. AB 83 (Sub-No. 3)]

MAINE CENTRAL RAILROAD CO.

Abandonment of Lines

JANUARY 13, 1977.

The Interstate Commerce Commission hereby gives notice that its Section of Energy and Environment has concluded that the proposed abandonment by the Maine Central Railroad Company of its line between North Anson and Bingham, a distance of 16.00 miles, in Somerset County, Maine, if approved by the Commission, does not constitute a major Federal action, significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321, et seq., and that preparation of a detailed environmental impact statement will not be required under section 4332(2)(C) of the NEPA.

It was concluded, among other things, that the environmental impacts of the proposed abandonment are considered insignificant because traffic over this line, which consists mostly of wood products, has dropped sharply since 1974, when the major shipper ceased operations in Bingham. Local planning agencies have been attempting to attract industrial development in the Bingham area. While abandonment would create an adverse effect to the extent that firms requiring rail service will not choose to locate in the Bingham area, there will not be a serious adverse impact on rural and community development because certain types of industrial development would not be precluded. Furthermore, given the nature of wood cutting operations, abandonment may increase the initial motor carrier haul to a railhead, but the basic modal mix of the movement would not be altered. Finally, no interest has been expressed for use of the right-of-way following abandonment, and the line is not considered suitable for other public purposes.

This conclusion is contained in a staff-prepared environmental threshold assessment survey, which is available on request to the Interstate Commerce Commission, Office of Proceedings, Washington, D.C. 20423; telephone 202-275-7011.

Interested persons may comment on this matter by filing their statements in writing with the Interstate Commerce Commission, Washington, D.C. 20423 on or before February 25, 1977.

It should be emphasized that the environmental threshold assessment survey represents an evaluation of the environmental issues in the proceeding and does not purport to resolve the issue of whether the present or future public convenience and necessity permit discontinuance of the line proposed for abandonment. Consequently, comments on the environmental study should be limited to discussion of the presence or absence of environmental impacts and reasonable alternatives.

ROBERT L. OSWALD,
Secretary.

[FR Doc.77-2350 Filed 1-24-77;8:45 am]

[Notice No. 107]

MOTOR CARRIER BOARD TRANSFER PROCEEDINGS

The following publications include motor carrier, water carrier, broker, and freight forwarder transfer applications filed under section 212(b), 206(a), 211, 312(b), and 410(g) of the Interstate Commerce Act.

Each application (except as otherwise specifically noted) contains a statement by applicants that there will be no significant effect on the quality of the human environment resulting from approval of the application.

Protests against approval of the application, which may include a request for oral hearing, must be filed with the Commission on or before February 24, 1977. Failure seasonably to file a protest will be construed as a waiver of opposition and participation in the proceeding. A protest must be served upon applicants' representative(s), or applicants (if no such representative is named), and the protestant must certify that such service has been made.

Unless otherwise specified, the signed original and six copies of the protest shall be filed with the Commission. All protests must specify with particularity the factual basis, and the section of the Act, or the applicable rule governing the proposed transfer which protestant believes would preclude approval of the application. If the protest contains a request for oral hearing, the request shall be supported by an explanation as to why the evidence sought to be presented cannot reasonably be submitted through the use of affidavits.

The operating rights set forth below are in synopses form, but are deemed sufficient to place interested persons on notice of the proposed transfer.

Correction: No. MC-FC-76814, filed November 3, 1976. Transferee: STROP TRANSPORTATION, INC., 1501 S. Burlington, Hastings, Nebr. 68901. Transferor: Charles R. Strop, doing business as Strop Transportation, 1501 S. Burlington, Hastings, Nebr. 68901. Applicant's representative: Arlyn L. Westergren, Attorney-at-Law, 530 Univac Building, 7100 W. Center Road, Hastings, Nebr. 68106. Authority sought for purchase by transferee of the operating rights of transferor, as set forth in Certificates Nos. MC 134341 (Sub-No. 3) and MC 134341 (Sub-No. 5), issued February 20, 1973, and July 19, 1976, respectively, as follows: Meats, meat products, and meat by-products, and articles distributed by meat packinghouses, as described in Sections A and C of Appendix I to the report in Descriptions in Motor Carrier Certificates, 61 M.C.C. 209 and 766 (except hides and commodities in bulk), from the facilities of Minden Beef Company at Minden, Nebr., to points in Connecticut, Illinois, Indiana, Iowa, Kentucky, Maryland, Massachusetts, Michigan, Missouri, New Jersey, New York, Ohio, Pennsylvania, and Wisconsin, and the District of Columbia; and packinghouse by-products (other than hides), from the plant site of Hastings Hide, Inc., at or near Hastings, Nebr., to Denver, Colo., and Kansas City, Mo.; and hides, from the plant site of Hastings Hide, Inc., located at or near Hastings, Nebr., to Los Angeles, Long Beach, and San Francisco, Calif., Portland, Oreg., and Seattle, Wash.; and those set forth in Permit No. MC 136833, issued June 10, 1974, to Shaw Trucking, Inc., and acquire by transferor herein pursuant to No. MC-F-12387, consummated July 17, 1976, as follows: Motor vehicle and recreational equipment, supplies and accessories, from Wahoo, Nebr., to points in the United States (except Alaska, Hawaii, and Nebraska), and equipment, materials, and supplies (except commodities in bulk), used in the manufacture of the commodities described immediately above, from points

in the United States (except Alaska and Hawaii), to Wahoo, Nebr., limited to a transportation service to be performed under a continuing contract or contracts with Hellstar Corporation, of Wahoo, Nebr. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under Section 210a(b). The purpose of this correction is to include the operating rights under Permit No. MC 136833 in the authority proposed for transfer.

No. MC-FC-76866, filed December 9, 1976. Transferee: HUGH J. RITCHIE and GEORGE J. KROCOS, a partnership, doing business as TRUCKIT, 6463 E. Canning St., Los Angeles, Calif. 90040. Transferor: Joseph Jennard and George Krocos, a partnership, 2332 S. Peck Rd., Suite 194, Whittier, Calif. 90601. Applicants' representative: Hugh J. Ritchie, Attorney at Law, 3200 Wilshire Blvd., Suite 809, Los Angeles, Calif. 90010. Authority sought for purchase by transferee of the operating rights of transferor, as set forth in Permit No. MC 140880 (Sub-No. 1), issued July 30, 1976, as follows: *Foundry compounds and supplies* (except commodities in bulk), over irregular routes, from Georgetown and Danville, Ill., Cleveland, Columbus, Hamilton, and Ashtabula, Ohio, Milwaukee, Wis., and Muse, Pa., to Vernon and City of Commerce, Calif., with restrictions. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under Section 210a(b).

No. MC-FC-76880, filed December 17, 1976. Transferee: FURLOW'S GARAGE, INC., P.O. Box 853, Cumberland, Md. 21502. Transferor: James Neil Furlow, doing business as FURLOW'S GARAGE, P.O. Box 853, Cumberland, Md. 21502. Applicants' representative: Frank B. Hand, Jr. Attorney-at-Law, P.O. Box 187, Berryville, Va. 22611. Authority sought for purchase by transferee of the operating set forth in Certificate No. MC 136969, issued August 30, 1973, to transferor, as follows: Motor vehicles, in towaway service, between points in Pennsylvania, Maryland, Virginia, and West Virginia on and bounded by a line beginning at Uniontown, Pa. and extending along U.S. Highway 40 to junction U.S. Highway 219 near Grantsville, Md., thence north along U.S. Highway 219 to junction Pennsylvania Turnpike, thence along the Pennsylvania Turnpike to junction Interstate Highway 70 near Breezewood, Pa., thence along Interstate Highway 70 to junction Interstate Highway 81 near Hagerstown, Md., thence along Interstate Highway 81 to junction U.S. Highway 50 at Winchester, Va., thence along U.S. Highway 50 to junction U.S. Highway 119 near Grafton, W. Va., thence along U.S. Highway 119 to junction U.S. Highway 40 at Uniontown, Pa. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under Section 210a(b) of the Act.

No. MC-FC-76881, filed December 17, 1976. Transferee: SAWYER TRANSPORTATION, INC., 3535 Wolf Road Saginaw, Mich. 48601. Transferor: Jon C. Sawyer, doing business as Sawyer Transport Co., 3535 Wolf Road, Saginaw, Mich. 48601. Applicants' representative: Karl L. Gotting, Attorney-at-Law, 1200 Bank of Lansing Bldg., Lansing, Mich. 48933. Authority sought for purchase by transferee of the operating rights set forth in Certificate No. MC 138383 (Sub-No. 1), issued July 3, 1974, as follows: Scrap iron and scrap steel, in bump vehicles, between the plant sites of The Tuschman Steel Co., and Kasle Iron and Metals, Inc., at Toledo, Ohio, on the one hand, and, on the other, points in Michigan. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under Section 210a(b) of the Act.

No. MC-FC-76882, filed December 17, 1976. Transferee: BRISTOL BUS CO., INC., 15 Tower St., Bristol, R.I. 02809. Transferor: Leo Raymond Bouffard, 88 Arlington Ave., Warren, R.I. 02885. Transferor's representative: Frank Daniels, Attorney-at-Law, 15 Court Square, Boston, Mass. 02108. Transferee's representative: Emilio D. Iannuccillo, Attorney-at-Law, 825 Hope St., Bristol, R.I. 02809. Authority sought for purchase by transferee of the operating rights of transferor set forth in Certificates Nos. MC 117215 (Sub-No. 1), MC 117215 (Sub-No. 2), and MC 117215 (Sub-No. 3), issued September 9, 1964, April 14, 1966, and June 14, 1972, respectively, as follows: Passengers, in special round-trip operations, beginning and ending at Falls River, Mass., and extending to Central Falls, Pawtucket, Providence and Warren, R.I.; beginning and ending at New Bedford, Mass., and extending to Warren, Providence, and Pawtucket, R.I.; beginning and ending at New Bedford, Mass., and extending to East Providence, R. I.; and beginning and ending at Wareham, Mass., and extending to East Providence, Cranston, and Providence, R.I.; and beginning and ending at Fall River, Mass., and extending to East Providence and Cranston, R.I., all restricted to the transportation of passengers who at the time are traveling for the purpose of participating in games commonly referred to as Beano and Bingo games. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under Section 210a(b) of the Act.

No. MC-FC-76883, filed December 17, 1976. Transferee: GARRETT BROS., INC., 13900 S. Meridian, Oklahoma City, Okla. 73119. Transferor: Trans Western Transports of Oklahoma, Inc., 2705 S. Eastern, Oklahoma City, Okla. 73129. Applicants' representative: G. Timothy Armstrong, Attorney-at-Law, 6161 North May Ave., Oklahoma City, Okla. 73112. Authority sought for purchase by transferee of the operating rights of transferor set forth in Certificate No. MC 74346, issued by the Commission May 6, 1969, to M-G Trucking Co., a corporation, doing business as M-G Trucking Company, Oklahoma City, Okla., and acquired by transferor herein pursuant to No. MC-FC-76384, approved May 17, 1976, and consummated June 25, 1976, as follows: Machinery, materials, supplies, and equipment, incidental to, or used in the construction, development, operation, and maintenance of facilities for the discovery, development, and production of natural gas and petroleum, between points in Oklahoma, Texas, and Kansas. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under section 210a(b).

No. MC-FC-76895, filed December 28, 1976. Transferee: DEAN H. PETERSEN, 2401 Park Avenue, Lincoln, Nebr. 68502. Transferor: Dean H. Petersen & Son, Inc., 367 Garden Street, Bennet, Nebr. 68317. Applicants' representative: Patrick E. Quinn, Attorney-at-Law, P.O. Box 82028, Lincoln, Nebr. 68501. Authority sought for purchase by transferee of the operating rights set forth in Certificate No. MC 134418, issued January 27, 1971, in the name of transferor, as follows: Dairy products, between points in Nebraska, on the one hand, and, on the other, points in Kansas, Missouri, Iowa, Minnesota, and Colorado, restricted against the transportation of shipments originating at the plantsite of Beatrice Foods Co. at Lincoln, Nebr. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under Section 210a(b) of the Act.

ROBERT L. OSWALD,
Secretary.

[FR Doc.77-2353 Filed 1-24-77;8:45 am]

[Notice No. 108]

MOTOR CARRIER TRANSFER PROCEEDINGS

JANUARY 24, 1977.

Application filed for temporary authority under section 210a(b) in connection with transfer application under section 212a(b) in connection with transfer application under section 212a(b) and Transfer Rules, 49 CFR Part 1132:

MC-FC-76925. By application filed January 13, 1977, Ashbourne Transportation, Inc., 7827 Old York Road, Elkins Park, PA., 19117, seeks temporary authority to lease the operating rights of North Penn Bus Lines, Inc., 140 North Ridge Avenue, Ambler, PA., 19002, under section 210a(b). The transfer to Ashbourne Transportation, Inc., of the operating rights of North Penn Bus Lines, Inc., is presently pending.

By the Commission.

ROBERT L. OSWALD,
Secretary.

[FR Doc.77-2354 Filed 1-24-77;8:45 am]

[Notice No. 1]

TEMPORARY AUTHORITY TERMINATION

The temporary authorities granted in the dockets listed below have expired as a result of final action either granting or denying the issuance of a Certificate or Permit in a corresponding application for permanent authority, on the date indicated below:

Temporary authority application	Final action or certificate or permit No.	Date of action
Riss International Corp., MC 200, sub 276	MC 200, sub 277	July 2, 1976
Garrett Freight Lines, Inc., MC 263, sub 203	MC 263, sub 196	July 21, 1976
Younger Brothers, Inc., MC 531, sub 327	MC 531, sub 330	Dec. 13, 1976
Pacific Intermountain Express Co., MC 730, sub 367	MC 730, sub 379	Oct. 4, 1976
Pacific Intermountain Express Co., MC 730, sub 377	MC 730, sub 381	Nov. 10, 1976
Pacific Intermountain Express Co., MC 730, sub 382	MC 730, sub 376	Do.
Greyhound Lines, Inc., MC 1515, sub 207	MC 1515, sub 208	Sept. 14, 1976
The Kaplan Trucking Co., MC 2304, sub 33	MC 2304, sub 34	Oct. 7, 1976
Horn's Motor Express, Inc., MC 2780, sub 4	MC 2780, sub 5	Mar. 29, 1976
A & H Truck Line, Inc., MC 2962, sub 55	MC 2962, sub 56	June 13, 1975
Barnes Truck Line, Inc., MC 7640, sub 47	MC 7640, sub 44	Feb. 9, 1976
George Transfer and Rigging Inc., MC 8535, sub 50	MC 8535, sub 49	Aug. 8, 1975
Western Gillette, Inc., MC 8948, sub 108	MC 8948, sub 106	July 21, 1975
Metropolitan Trucking, Inc., MC-8973, sub 32	MC 8973, sub 29	Feb. 9, 1976
Dba R. O. Wetz Transportation, MC-31438, sub 15	MC 31438, sub 14	Oct. 26, 1976
Carleton G. Whitaker, Inc., MC 88594, sub 22	MC 88594, sub 21	Aug. 17, 1976
Wharton Transport Corp., MC 114848, sub 56	MC 114848, sub 57	Dec. 7, 1976
J & M Transportation Co., Inc., MC 115311, sub 176	MC 115311, sub 180	Dec. 2, 1976
Brooks Armored Car Service, Inc., MC 115601, sub 24	MC 115601, sub 23	Nov. 8, 1976
Contract Freighters, Inc., MC 119399, sub 62	MC 119399, sub 53	Oct. 5, 1976
MonKem Co., Inc., MC 119493, sub 141	MC 119493, sub 142	Nov. 19, 1976
Schwerman Trucking Co., MC 124078, sub 655	MC 124078, sub 618	July 22, 1976
Zeller, Inc., MC 124739, sub 3	MC 124739, sub 4	Dec. 28, 1976
Eastern States Transportation Fa., Inc., MC 125687, sub 16	MC 125687, sub 15	Nov. 3, 1976
D.b.a. Toboll Trucking Co., MC 128993, sub 1	MC 128993	Apr. 22, 1968
Chemical Tank Lines, Inc., MC 129326, sub 18	MC 129326, sub 20	Sept. 24, 1976
D.b.a. James Funch Trucking, MC 133291, sub 2	MC 133291, sub 3	Dec. 17, 1976
Joe Brown Co., Inc., MC 136008, sub 53	MC 136008, sub 52	July 2, 1976
D.b.a. McCorkle Truck Line, MC 136711, sub 20	MC 136711, sub 21	Nov. 15, 1976
Swift Transportation Co., Inc., MC 136818, sub 9	MC 136818, sub 10	Dec. 27, 1976
Mosfort Transportation, MC 138253, sub 3	MC 138253, sub 2	Dec. 15, 1976
Spacemaster Trucking Corp., MC 138482, sub 2	MC 138482, sub 3	Apr. 29, 1976
D.b.a. Transport Steel, MC 140517, sub 1	MC 140517	Sept. 23, 1976
D.b.a. Bentley W. Warren Trucking Co., MC 140608	MC 140608, sub 1	Dec. 10, 1976
Cox Refrigerated Express, Inc. MC 140033 sub 10	MC 140033, sub 7	Apr. 22, 1968

ROBERT L. OSWALD,
Secretary.

[FR Doc.77-2334 Filed 1-24-77;8:45 am]

federal register

TUESDAY, JANUARY 25, 1977

PART II

THE NATIONAL ARCHIVES OF THE UNITED STATES • 1934 •

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Public Health Service

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PROFESSIONAL STANDARDS REVIEW ORGANIZATIONS

Procedures for Review of Hospital Services

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Public Health Service

[42 CFR Part 101]

HOSPITAL REVIEW

Subpart G; Notice of Proposed Rulemaking

Notice is hereby given that the Assistant Secretary for Health of the Department of Health, Education, and Welfare, with the approval of the Secretary of Health, Education, and Welfare, proposes to add a new Subpart G, entitled "Hospital Review," to Part 101 of Title 42, Code of Federal Regulations.

I. PURPOSE OF REGULATIONS

The purpose of the present proposal is to implement sections 1155 and 1156 of the Social Security Act (42 U.S.C. 1320c–4 and 1320c–5). These sections deal with the duties and functions of Professional Standards Review Organizations (PSROs) with respect to the review of health care services and items for which payment may be made under the Social Security Act. Such review will determine if services are or were medically necessary, meet professionally recognized standards of quality, and, where proposed to be provided on an inpatient basis, could, consistent with the provision of appropriate medical care, be effectively provided on an outpatient basis or more economically in an inpatient health care facility of a different type. This propsal sets forth procedures for a review system designed to fulfill the purposes of the hospital review described above. The Secretary will consider alternative approaches to portions of this review system provided they are or have the potential to be as effective and efficient as the corresponding portions of the proposed regulations for conducting hospital review.

II. HISTORY AND STATUTORY BASIS

At present, utilization review activities are required under Titles XVIII, XIX and V of the Social Security Act. Regulations have been proposed to implement these statutory requirements (see 41 FEDERAL REGISTER 13453, March 30, 1976). Title XI, Part B of the Act provides for the establishment of new organizations, the PSROs, and a new system for the review of the medical necessity and appropriateness of services under Titles XVIII and XIX.

The proposed hospital review regulations are based on procedures and requirements which were initially published and distributed by the Secretary as interim guidelines in the PSRO Program Manual of March 1974. The system of review of the medical necessity, quality and appropriateness of health care services proposed in these regulations builds upon the experiences of hospitals, foundations for medical care and Experimental Medical Care Review Organizations (EMCROs) in designing and testing systems for similar types of review.

Under section 1155(a)(1) of the Social Security Act and these proposed PSRO hospital review regulations, the locus of responsibility for health care review determinations is shifted from individual hospitals and third-party payors to local physician organizations, the PSROs, which will assume responsibility for performance of their duties and functions on a gradually increasing basis. Responsibility for any review functions which have not been assumed by a PSRO will remain with those agencies or institutions presently having such responsibility under Titles XVIII and XIX.

III. RELATION TO TITLES XVIII AND XIX

Appropriate regulations under this Part will provide that, to the extent authority for making determinations of medical necessity is vested in the PSROs, it will not be exercised by intermediaries, carriers, State agencies, or other fiscal agents with respect to the provision of items and services subject to review by a PSRO under Part B of Title XI of the Social Security Act. Rather, such organizations will incorporate PSRO determinations of medical necessity into their determinations of coverage and reimbursement under Titles XVIII and XIX of the Social Security Act, as appropriate. On the other hand, it is not the responsibility of PSROs to set national coverage policy in terms of what services are excluded from payment under section 1862 of the Act, and for that reason the Title XVIII coverage exclusion guidelines (Medicare Part A Intermediary Manual, Chapter II Appendices) will remain in effect. In addition, fiscal intermediaries may, in their application of coverage regulations and guidelines, request PSROs to make retrospective determinations of the medical necessity of specific services delivered during both approved and non-approved hospital stays. PSROs should, therefore, be aware of national coverage policies when they make determinations of medical necessity. In brief, it is the PSRO's responsibility to use professional judgment to decide what is medically necessary, and the intermediary's responsibility to apply payment guidelines.

IV. RELATION TO HOSPITALS

In order to obtain reimbursement under Titles XVIII and XIX, hospitals will be expected to cooperate with the PSRO in fulfilling its review responsibilities. PSROs will, however, through the delegation process outlined in Subpart H of this Part, take advantage of the experience hospitals have gained in conducting utilization and other review activities. Hospitals which are found by the appropriate PSRO to be capable of efficiently and effectively conducting the review required by the regulations may continue to do so, as specified more fully in Subpart H of this Part (which is being published in proposed form concurrently with these proposed regulations), although final responsibility for all review activities is assumed by the area-wide PSRO.

V. APPLICATION TO SHORT STAY HOSPITALS

The proposed regulations set out below apply to review of inpatient health care services in short stay hospitals and, in the case of medical care evaluation (MCE) studies, to hospital based outpatient services as well where inclusion is consistent with the objectives of the study. Regulations regarding the review of health care services in long term care institutions and review of ambulatory care services will be proposed in the future.

VI. THE REVIEW SYSTEM

The proposed regulations set forth three major review components in short stay hospitals: 1) concurrent review of the medical necessity and appropriateness of admission to, and continued stay in, a hospital (admission review and continued stay review); 2) MCE studies to assure the quality and improve the nature of the utilization of health care services; and 3) analysis of health care practitioner, institutional, and patient profiles. Concurrent, as well as retrospective, review of services by PSROs is authorized under section 1155(b)(2) of the Social Security Act which expressly provides for review "either before or after, or both before and after, the provision of services." In addition, preadmission review by PSROs is authorized under section 1155(a)(2) of the Social Security Act. These components of the PSRO review system interact to form a comprehensive quality assurance mechanism. Profile analysis, for example, provides a means for judging the effectiveness of a PSRO's or hospital's review program by comparing similar data over time. In addition, by distinguishing between usual practice patterns and those that are consistently aberrant, profile analysis allows the PSRO to modify its admission and continued stay review programs to focus on defined problem situations. The concurrent review component, itself, also frequently identifies potential problems in health care administration and delivery. These can then be topics for more detailed medical care evaluation studies to further define the problem and develop means for its solution.

The accumulation of data through concurrent review, medical care evaluation studies, and profile analysis will enable PSROs to identify areas of practice (e.g., diagnoses, conditions, therapies, and procedures) that demonstrate consistently good performance. On the basis of such adequate data, PSROs are encouraged to focus concurrent review activities to concentrate on problem areas. Such focusing of concurrent review, together with monitoring of other areas, is likely to be the key to PSRO efficiency and effectiveness. Through focusing, PSROs will be able to devote their review resources to priority areas while simultaneously monitoring the effectiveness of the entire system. It should be recognized, however, that focusing of review can occur only if a PSRO has sufficient review capability and data, collected on either a concurrent or retrospective basis, to make the distinction between problem areas and areas of appropriate practice. Until such time as capability and a sufficient data base are established automatic certification of admission of patients in specific categories should not occur. When, however,

the PSRO has established review capability and sufficient data, focusing of review on problem areas and automatic certification of consistently appropriate admissions are encouraged. The Department will develop, within one year, guidelines for the focusing of review activities.

A. APPROACH TO CONCURRENT REVIEW

All Title XVIII, XIX and V patients will be identified by PSRO reviewers at the time of admission. Depending upon the stage of development of the PSRO's review system, one of two approaches will be taken. Where routine concurrent review procedures are to be used, admissions will be subject to screening review using explicit written criteria to determine those cases in which the medical necessity for hospitalization is evident without further review by peer practitioners. For those cases in which this screening process does not clearly establish the need for hospitalization, the determination of the medical necessity and appropriateness of hospital care is made by a peer of the professional ordering hospital admission. Similarly, in cases requiring continued stay review, the need for continued stay in the hospital is periodically assessed using a similar screening and peer review process.

In addition, as noted above, the PSRO will identify situations in which the medical necessity and appropriateness of admission and, in some instances, continued stay, can be automatically certified. In the former instance (automatic admission certification), a length of stay will be assigned to each admission in this category. In the latter instance (automatic certification of the hospitalization), no admission or continued stay review will be conducted. In these, as in all cases, the data necessary to fulfill PSRO reporting requirements and develop profiles will be collected. Further, it should be emphasized that in the case of automatic admission certification and in the more rare case of automatic certification of the hospitalization, the PSRO must have developed sufficient review capability and data base to justify these abbreviated procedures.

Only where it is clear that hospital care is not necessary will the PSRO make an adverse determination. Payment for further hospital care can be denied only if an adverse determination is made by a peer health professional. In any instance where there is reasonable doubt as to the necessity of care at the hospital level, the admission or continued stay should be approved. In this manner the interests of patients in receiving needed health care services are protected, and the judgment of the attending physician or nonphysician health care practitioner with attending privileges is fully considered.

When admission review is conducted, it should generally be initiated as soon as possible following admission and must be completed within three working days of such admission. The Secretary believes that review of the necessity and appropriateness of admission concurrent with admission affords reviewers the best opportunity to consider the unique characteristics of each patient. The ready availability of the medical record and the patient's attending physician will allow review decisions to be based upon the most accurate available information. In order best to judge the necessity and appropriateness of an admission, reviewers should complete their assessment as close to the point of admission as possible, in most cases within one or two days. Thus, the three day allowance should not be interpreted as a guideline for timing of review, but as an upper limit for completion.

It should be clearly understood that a reviewer's decision concerning the necessity and appropriateness of hospital care is based on the types of diagnostic and therapeutic health care services needed by a patient. A diagnosis need not have been established nor must a workup be completed within the three working day timeframe. Approval would be given unless there was no clear reason for continuing a diagnostic workup at the hospital level. This, coupled with the fact that PSROs will, with time, limit their admission review by focusing on problem areas, makes the three working day limit for the vast majority of cases an appropriate balance between the need to review the necessity of admission shortly thereafter and considerations of administrative efficiency.

These regulations also require the review, within three working days of admission, of elective surgical and other major elective diagnostic and therapeutic procedures. Where there is evidence of medically unnecessary or inappropriate utilization of such procedures, developed for example through medical care evaluation studies, profile analysis, or concurrent review, procedure review must take place prior to the performance of the procedure. Where the PSRO has a reasonable belief that utilization is medically unnecessary or inappropriate, review should take place prior to the performance of the procedure. These requirements are intended to assure that patients are afforded the benefits of PSRO screening review, and where necessary, peer review prior to undergoing elective surgical or other elective procedures with the attendant risks of anesthesia, iatrogenic illness, and post-surgical complications. By conducting review prior to the performance of the procedure in the case of known problem areas, the risks of an unnecessary procedure may be avoided and limited program resources will not be wasted.

It is recognized that in some cases (e.g., those scheduled for surgery immediately after admission or the morning after a weekend admission), review prior to the procedure might result in postponement of the provision of services and increased lengths-of-stay solely to enable the PSRO to complete the required review. Since such a result is clearly not the intent of these regulations, where length-of-stay may be increased only because of review, the PSRO should make every reasonable effort to complete review without delaying the procedure, as, for example, by performing review prior to admission.

Explicit written norms, criteria, and standards, adopted by the PSRO in accordance with requirements set forth in instructions and in Subpart I of this Part (which is being published in proposed form concurrently with these proposed regulations) will be utilized in these review activities.

B. MEDICAL CARE EVALUATION (MCE) STUDIES

MCE studies are an exceedingly important component of the PSRO review system. They afford PSROs and hospitals the opportunity to examine well defined areas of practice to identify problems in the quality or administration of health services as well as to document that high quality care is being delivered. These regulations outline a generic approach for conducting MCE studies. This approach—which is well rooted in the past experience of hospital medical audit committees—includes the steps necessary to identify problems (if any), attempt their correction and determine if the corrective action has succeeded.

Additionally, these regulations contain requirements for a minimum number of MCE studies which varies depending upon the number of admissions to the hospital. By requiring more studies in hospitals with more admissions, the benefits of MCE studies can be more uniformly distributed across patients and practitioners.

A principal characteristic of all MCE studies and a requirement of these regulations, is that those practitioners whose delivery of care is to be assessed are involved in the design of the study and in the development of the criteria and standards to be used. This approach helps to assure that the results of the study are more credible and aids in assuring smooth implementation of any necessary corrective action. Also, many groups have found that involvement in the design and conduct of MCE studies, especially the development of criteria and standards, is educational. The interaction of the discussants helps to define acceptable alternative approaches to a clinical problem, highlights the degree to which there is scientific basis for certain practices and increases the awareness of some participants of the need to modify their practice habits.

Over recent years it has also become increasingly apparent that continuing medical education should be linked more closely to the results of the review of health care quality. MCE studies constitute the important first step in this linkage by providing clear definition of the causes of problems in the quality of health care.

Finally, it is important to recognize that MCE studies do not constitute clinical research in the usual investigative sense. Their purpose is to evaluate current local clinical or administrative practices to determine if they match local expectations as defined by criteria. In an MCE study, criteria and standards are to be based on the medical literature (including the results of clinical re-

search) and on the experience of local practitioners.

C. PROFILE ANALYSES

These regulations also provide for data collection, analysis, and development in the form of profiles. Section 155(a)(4) of the Act requires that profiles for patients, physicians, and providers be maintained and reviewed by PSROs. These data sets will compare institutional and physician practice patterns and evaluate these patterns over time. The evaluations will show areas of care on which the PSROs may focus review in order most effectively and efficiently to fulfill their purpose of assuring quality. Problem areas may then be more intensively reviewed by concurrent review mechanisms or MCE studies. Profile analysis also promotes efficiency on a wider scale when PSROs use comparative data in carrying out their responsibilities of assuring appropriate review activities in delegated hospitals. In evaluation of the data from multiple PSROs, ultimately the effects of the entire review system may be analyzed. Thus profile analysis will serve to continuously define problem areas, document quality care, and serve as an overall monitoring system of PSRO review.

VII. ALTERNATIVE PLANS

The Secretary actively encourages PSROs to submit review plans which propose innovative approaches to meet the objectives of concurrent review. Such proposals will be accepted by the Secretary, if they are consistent with the provisions of Title XI, Part B of the Act and if they have been shown to be or have the potential to be equally or more efficient and effective than the concurrent review procedures described in this regulation. If the Secretary approves alternate methods of review, the PSRO directly, or a hospital performing review for the PSRO, may utilize such procedures in lieu of concurrent review. Procedures with potential, but not of proven effectiveness, will be approved in the early stages of the program by the Secretary for implementation in only a limited number of PSRO areas. Those which demonstrate effectiveness can later be more broadly implemented across the PSRO program. Profile analysis must be a part of each PSRO's review system under section 1155(a)(4) of the Social Security Act. MCE studies, because they represent a mechanism to provide an in-depth analysis of the quality and utilization of services and because there is a broad range of acceptable methods for their conduct, must also be included in each PSRO's review system.

VIII. OBJECTIVES AND IMPACT

PSROs are empowered to review the care provided to Medicare, Medicaid, and Title V patients and to determine if (1) the care provided is medically necessary, (2) the quality of care meets professionally accepted standards and (3) the care is to be or was provided in the most economical setting consistent with the health care needs of the patient. Experience from similar past efforts indicated that, at least for the first year or two, PSROs will decrease the number and possibly the length of hospital admissions. This should result in cost savings which may or may not be separately identifiable as they are mixed with the multitude of other factors which influence the level of health expenditures.

After this initial impact, the net effect of PSRO review on expenditures is less predictable. This is particularly true when it is realized that the emphasis of PSRO review will probably change with time. Currently PSROs focus considerable attention to the necessity for hospitalization, but emphasis may gradually shift as review and analysis identify new needs and problem areas.

Medical care evaluation studies, by their general educational effects as well as specific recommendations, are likely to lead to improvement in the quality of care, but effects on expenditures are less predictable.

Therefore, PSROs and all other health care review mechanisms with which we are familiar, have limited, albeit important, responsibilities and effects. In fulfilling these responsibilities, health professionals will broadly assess the quality of care provided by their peers. They will specifically assess the medical necessity of care, the degree to which the health care process and its outcomes comply with local standards, and the appropriateness of the setting. Thus, PSRO review will directly address the quality of patient care. The impact such review will have on health care expenditures is unpredictable but the overall effect of PSROs, under the proposed procedures, is expected to improve the utilization, cost and quality of health care provided under Medicare and Medicaid.

The new regulations policies of the Department issued July 25, 1976, require that this Notice of Proposed Rulemaking (NPRM) have an implementation plan prepared prior to its issuance. In compliance with these requirements, an implementation plan was forwarded to the Secretary, and he has authorized the issuance of this NPRM without the use of a Notice of Intent (NOI) which would otherwise be required by the new policies because:

1. There is an urgent requirement for these regulations.

2. Over an extended period of time there has been significant interaction between the Department and organizations and individuals in the development of this NPRM which has satisfied the spirit and intent of the NOI. Specifications for this NPRM were reviewed by the National Professional Standards Review Council at public meetings and available for public comment at least twice. Draft transmittals presenting policies incorporated in this NPRM have been presented to the National Council, and circulated to all planning and conditional PSROs, and PSRO Support Centers and professional organizations, as well as other organizations that routinely receive PSRO information. In addition, requests by outside organizations for information contained in this NPRM have been fulfilled.

Interested persons are invited to submit written comments, suggestions or objections concerning the proposed regulations to the Director, Bureau of Quality Assurance, Health Services Administration, Room 16A55, 5600 Fishers Lane, Rockville, Maryland 20857, on or before March 28, 1977. All comments received in timely response to this Notice will be considered and will be available for public inspection in the above named office during regular business hours.

It is proposed to make this regulation effective upon republication in the FEDERAL REGISTER.

NOTE.—The Department of Health, Education, and Welfare has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107.

Dated: November 22, 1976.

THEODORE COOPER,
Assistant Secretary for Health.

Approved: January 11, 1977.

MARJORIE LYNCH,
Acting Secretary.

PART 101—PROFESSIONAL STANDARDS REVIEW

It is proposed to issue a new Subpart G of Part 101 of Title 42 as set out below.

Subpart G—Hospital Review

Sec.
101.701 Applicability.
101.702 Definitions.
101.703 Concurrent review.
101.704 Preadmission review.
101.705 Modifications of review activities.
101.706 Physician certification.
101.707 Notice of adverse initial determinations.
101.708 Informing discharge planners.
101.709 Alternate review methods.
101.710 Medical care evaluation studies.
101.711 Profile analysis.
101.712 Involvement of nonphysician health care practitioners.
101.713 Reviewer qualifications.
101.714 Examination of the operation and records of hospitals.
101.715 Refusal of hospital to allow PSRO entry and performance of review.
101.716 Reports to the Secretary.

AUTHORITY: (Sec. 1155 and 1156 of the Social Security Act, sec. 249F(b) of Pub. L. 92-603, 86 Stat. 1433-143 (42 U.S.C. 1320c-4 and 1320c-5), sec. 1102 of the Social Security Act, 49 Stat. 647, as amended (42 U.S.C. 1302).)

Subpart G—Hospital Review

§ 101.701 Applicability.

The provisions of this Subpart are applicable to the exercise by PSROs of their duties and functions under sections 1155 and 1156 of the Social Security Act (42 U.S.C. 1320-c4 and 1320-c5). Unless otherwise indicated, the provisions of this Subpart relating to duties and functions of PSROs shall also apply to hospital review committees performing delegated PSRO review functions pursuant to Subpart H of this Part and section 1155(e) of the Act.

Section 1155(a)(1) of the Social Security Act (42 U.S.C.-c4), which states the general review responsibility of PSROs, provides that notwithstanding any other provisions of law, but consistent with the provisions of Part B of Title XI of the Social Security Act, it shall be the duty and function of each PSRO to assume for its geographic area, at the earliest date practicable, responsibility for the review of the professional activities in such area of physicians and other health care practitioners and institutional and noninstitutional providers of health care services in the provision of health care services and items for which payment may be made (in whole or in part) under the Social Security Act for the purpose of determining whether:

(a) such services and items are or were medically necessary;

(b) the quality of such services meets professionally recognized standards of health care; and

(c) in case such services and items are or were proposed to be provided in a hospital on an inpatient basis, such services and items could, consistent with the provision of appropriate meidcal care, be effectively provided on an outpatient basis or more economically in an inpatient health care facility of a different type.

§ 101.702 Definitions.

As used in this Subpart: (a) "Act" means the Social Security Act, as amended (42 U.S.C. Chap. 7).

(b) "Active staff privileges in a hospital" means that a physician or nonphysician health care practitioner is authorized on a regular, rather than infrequent or courtesy, basis: (1) to order the admission of patients to a hospital; (2) to perform diagnostic services in a hospital; or (3) to care for and treat patients in a hospital.

(c) "Admission review" means a review and an initial determination by a PSRO of the medical necessity and appropriateness of the patient's admission to a hospital level of care.

(d) "Assigned length-of-stay" means the number of days from admission at which the determination of the medical necessity of continued hospital stay would ordinarily be made by the PSRO.

(e) "Certified length-of-stay" means a period of time which a PSRO approves as a medically necessary and appropriate period for a patient to receive inpatient care in a hospital.

(f) "Concurrent review" means admission review and continued stay review.

(g) "Continued stay review" means a review and an initial determination by a PSRO, during a patient's hospitalization, of the medical necessity and appropriateness of continuation of the patient's stay at a hospital level of care.

(h) "Criteria" means predetermined elements of health care, developed by health professionals relying on professional expertise, prior experience and the professional literature, with which aspects of the quality, medical necessity, and appropriateness of a health care service may be compared.

(i) "Elective," when applied to a health care service, means a service that can be delayed without substantial risk to the patient and is not necessary immediately to prevent imminent death or serious impairment of the health of the individual.

(j) "Health care service" means an inpatient service or item for which payment may be made (in whole or in part) under the Act.

(k) "Hospital" means a health care institution or distinct part of a health care institution providing health care services in the PSRO area, as defined in section 1861(e)-(g) of the Act, except that the institution shall not be a Christian Science sanatorium operated, or listed and certified by the First Church of Christ, Scientist, Boston, Massachusetts.

(l) "Initial determination" means a review determination by a PSRO, or by a hospital review committee acting as a delegate of the PSRO under section 1155(e) of the Act, regarding the medical necessity or quality of health care services provided to a patient or the appropriateness of the level of care at which the services are delivered.

(m) "Length-of-stay projection" means a criterion which defines the expected point in time at which patients of similar age and diagnosis or condition would be expected to be ready for discharge. This projection is established by the PSRO based upon an analysis of regional norms and, where available, PSRO area norms for lengths-of-stay.

(n) "Major clinical area" means medicine, surgery, pediatrics, obstetrics and gynecology, or psychiatry.

(o) "Major diagnostic or therapeutic procedure" means a procedure which involves a surgical or anesthetic risk or requires highly trained personnel or requires highly trained personnel or special facilities or equipment.

(p) "Medical care evaluation study" means a process, usually performed retrospectively, in which an in-depth assessment of the quality and/or the nature of the utilization of health care services is conducted, corrective action is taken, where indicated, and a subsequent analysis is made of the impact of the corrective action.

(q) "Nonphysician health care practitioners" means those health professionals who do not hold a Doctor of Medicine or Doctor of Osteopathy degree, meet all applicable State or Federal requirements for practice of their profession, and are actively involved in the delivery of direct patient care or health care services.

(r) "Norms" mean numerical or statistical measures of usual observed performance of health care services.

(s) "Physician" means a doctor of medicine or osteopathy or another individual who is authorized under State or Federal law to practice medicine and surgery, or osteopathy.

(t) "Preadmission review" means a review and an initial determination by a PSRO, prior to a patient's admission to a hospital, of the medical necessity and appropriateness of the patient's elective admission to a hospital level of care.

(u) "Profile" means aggregated data in formats which display patterns of health care services over a defined period of time.

(v) "Profile analysis" means review and analysis of profiles to identify and consider patterns of health care services.

(w) "PSRO" means a Professional Standards Review Organization which is conditionally or unconditionally designated.

(x) "Secretary" means the Secretary of Health, Education, and Welfare and any other officer or employee of the Department of Health, Education, and Welfare to whom the authority involved has been delegated.

(y) "Standards" mean professionally developed expressions of the range of acceptable variation from a norm or criterion.

(z) "Working day" means any one of at least five days of each week (excluding, at the option of each PSRO, legal holidays), in which the necessary personnel are available to perform review in the hospital.

§ 101.703 Concurrent review.

(a) *Admission review.* (1) *Requirement for Review:* (i) Until the PSRO is able to modify its review activities in accordance with § 101.705, each PSRO shall assess the medical necessity and appropriateness of each admission to a hospital of a patient entitled to benefits under the Act. Such assessment shall be accomplished as prescribed in subparagraph (a)(1)(ii) below or as specified in § 104.704.

(ii) The assessment shall consist of screening review and, where necessary, peer review. Screening review shall be conducted by an appropriately trained nonphysician representative of the PSRO or by a physician or an appropriate nonphysician health care practitioner representative of the PSRO using PSRO criteria and standards developed pursuant to Subpart I of this Part to screen cases in order to select those cases requiring peer review.

(iii) Where as a result of the assessment the PSRO determines that such services are medically necessary and appropriately provided at a hospital level of care it shall so certify the admission.

(iv) Where as a result of peer review the PSRO determines that such services are not medically necessary or not appropriately provided at a hospital level of care it shall render and provide notice of an adverse initial determination regarding the patient's admission. Notice of such adverse initial determination shall be provided as prescribed in § 101.707.

(v) In the case of Medicare beneficiaries, PSRO determinations regarding the appropriateness of a particular level of care shall be made in accordance with the level of care definitions in sections 1814 and 1861 of the Act, 20 CFR 405.-116, 405.126-405.128 as amended, and related guidelines of the Secretary.

(vi) Admission review shall be completed within three working days of the admission, including certification as described in (a)(1)(iii) or the provision of adverse notice as described in (a)(1)(iv).

(vii) Where the purpose of admission is for the performance of elective sur-

gery or other elective major diagnostic or therapeutic procedure, review to determine the medical necessity of the surgery or other such procedure shall be completed within three working days of the admission. Where documentation is developed by the PSRO that indicates medically unnecessary or inappropriate utilization of a procedure, review of the medical necessity of that procedure must be completed prior to the procedure. Where a PSRO has a reasonable belief that a procedure is inappropriately utilized, review shall be completed prior to the procedure.

(2) *Initial assigned length-of-stay:* When an admission is certified in accordance with subparagraph (1) of this paragraph, the PSRO shall assign an initial length-of-stay using: (i) Relevant length-of-stay projections developed by the PSRO pursuant to Subpart I of this Part, for groups of patients with the same condition (and modified, as necessary, to reflect the clinical situation of the individual patient who is the subject of the admission review) to indicate the expected point in time that the patient will no longer require a hospital level of care, or;

(ii) Length-of-stay norms, where appropriate, for diagnoses or conditions for which the PSRO has not yet developed length-of-stay projections. In such cases, the initial assigned length-of-stay shall usually be based on the 50th percentile of lengths-of-stay for patients of a similar age and condition. The PSRO may use its own length-of-stay norms if this is justified in accord with § 101.907 of this Part after analysis of corresponding regional norms, or;

(iii) In cases where the diagnosis is unclear at the time of admission, or where length-of-stay projections and norms are unavailable, a reasonable length-of-stay assigned in accordance with the nature of the patient's medical problem and the projected time when the patient's condition will be more fully clarified, or;

(iv) In the case of a PSRO conducting concurrent quality assurance, the expected point in time that a critical procedure or outcome may be expected to occur, as determined by the PSRO.

(3) *Attending physician opportunity to discuss:* If the PSRO has reason to believe that an admission will not be certified it shall promptly notify the patient's attending physician or nonphysician health care practitioner attending the patient and afford him an opportunity, within the period prescribed in subparagraph (a)(1)(vi) of this section, to discuss the matter with the PSRO and explain the nature of the patient's needs for hospital services including all factors which, in his opinion, preclude treatment of the patient as an outpatient or at an alternative inpatient level of care.

(b) *Continued stay review.* (1) *Requirement for review:* (i) Where a patient whose admission has been certified by the PSRO remains in the hospital, the PSRO shall, except as specified in § 101.705, assess the medical necessity and appropriateness for continued hospitalization of such patient. The assessment, consisting of screening review and, where necessary, peer review shall be initiated prior to the last day assigned under the initial assigned length-of-stay and completed by the expiration of the initial assigned length-of-stay period. Screening review shall be conducted by an appropriately trained nonphysician representative or by a physician or an appropriate nonphysician health care practitioner representative of the PSRO using PSRO criteria and standards developed pursuant to Subpart I of this Part to screen cases in order to select those cases requiring peer review.

(ii) Where the PSRO determines that such services are medically necessary and appropriately provided at a hospital level of care, it shall assign a continued length-of-stay by the end of the previously assigned length-of-stay period.

(iii) Where the PSRO determines that such services are not medically necessary or not appropriately provided at a hospital level of care, it shall render and provide notice of an adverse initial determination regarding the patient's continued stay by the last day of the initial assigned length-of-stay period. Notice of such adverse initial determination shall be provided as prescribed in § 101.707.

(iv) In the case of Medicare beneficiaries, PSRO determinations regarding the appropriateness of a particular level of care shall be made in accordance with the level of care definitions in sections 1814 and 1861 of the Act, 20 CFR 405.116, 405.126–405.128 as amended, and pertinent guidelines of the Secretary.

(2) *Duration of continued length-of-stay.* Where the PSRO has determined that a continued length-of-stay shall be assigned, the PSRO shall determine the duration of the continued length-of-stay based upon the expected point in time that the individual patient will no longer require a hospital level of care.

(3) Attending physician opportunity to discuss. If the PSRO has reason to believe that it will not assign a continued length-of-stay, it shall so notify the patient's attending physician or nonphysician health care practitioner attending the patient in accordance with the procedures specified in subparagraph (a)(3) of this section and within the period prescribed in subparagraph (b)(1)(i) of this section.

(4) *Additional continued stay review.* Before the expiration of the continued length-of-stay, each case shall be reviewed again in the manner prescribed in subparagraphs (b)(1) through (b)(3) above, with such reviews being repeated as long as the continued stay is further certified by the PSRO.

(c) *Approval of services incident to hospitalization.* PSRO certification of a patient's admission or continued stay shall (in the absence of specific PSRO review and disapproval of a particular health care service rendered, or proposed to be rendered, during the length of stay certified for such patient) constitute approval of all health care services rendered, or proposed to be rendered, during such certified length of stay. Except as provided under sections 1158 and 1159 of the Act (and in the absence of specific PSRO review and approval of a particular health care service rendered, or proposed to be rendered, during the patient's hospital stay), a PSRO adverse determination of a patient's admission or continued stay shall constitute disapproval of all health care services rendered, or proposed to be rendered, during such patient's hospital stay. Nothing in this section shall be construed as precluding a Medicare fiscal agent or Medicaid State agency, in the proper exercise of its duties and functions, from reviewing claims for benefits under Titles XVIII and XIX of the Act or from determining whether they meet the pertinent coverage requirements established under Titles XVIII and XIX and of the implementing regulations for which such agent or agency has responsibility. In addition, nothing in this section shall be construed as precluding a Medicare fiscal agent or Medicaid State agency from requesting of the PSRO a retrospective determination regarding the medical necessity and appropriateness of specific health care services in the application of coverage requirements and regulations.

(d) *Review in case of delayed identification of eligibility.* In cases of patients whose eligibility for benefits is identified at some point after admission, review of the medical necessity for admission and continued stay shall be conducted as soon as practicable after identification.

§ 101.704 Preadmission review.

(a) *Routine preadmission review.* (1) Each PSRO is authorized to assess the medical necessity and appropriateness, prior to admission, of any health care service which is to be provided to a patient on an elective basis in the hospital. Such assessment shall consist of screening review and, where necessary, peer review. Screening review shall be conducted by an appropriately trained nonphysician representative of the PSRO or by a physician or an appropriate nonphysician health care practitioned representative of the PSRO using PSRO criteria and standards developed pursuant to Subpart I of this Part to screen cases in order to select those cases requiring peer review.

(2) In the case of Medicare beneficiaries, PSRO determinations regarding the appropriateness of a particular level of care shall be made in accordance with the level of care definitions in sections 1814 and 1861 of the Act, 20 CFR 405.116, 405.126–405.128 as amended, and related guidelines of the Secretary.

(b) *Voluntary preadmission review.* Any attending physician proposing to provide to a patient health care services which are subject to the review of the PSRO may, if such services are to be provided on an elective basis, request that the PSRO perform preadmission review in accordance with paragraph (a) of this section. The PSRO shall comply with such request whenever it is feasible.

(c) *Publication.* Prior to exercise of the authority provided under paragraph

(a) of this section, the PSRO shall publish a list of the types and kinds of health care services, by type of diagnosis or problem, or in terms of other relevant information relating to the provision of health care services, which will be subject to preadmission review on a routine basis. Such list shall be revised by the PSRO from time to time as appropriate. A copy of such list, and any subsequent revisions thereof, shall be published in a medical publication of general circulation in the area, and copies provided to the chief of each hospital medical staff for distribution within the hospital. A current copy of such list shall be available for inspection in the PSRO office during regular business hours.

(d) *Additional review procedures.* (1) Where a PSRO determines to certify an admission pursuant to this section, it shall follow those appropriate procedures prescribed for length-of-stay assignment under § 101.703(a)(2), for continued stay review under § 101.703(b) and for approval of services incident to hospitalization under § 101.703(c).

(2) Where a PSRO has reason to believe that the admission will not be certified, it shall follow the discussion procedures specified in § 101.703(a)(3).

(e) *Adverse initial determinations.* Where the PSRO determines that such services are not medically necessary or not appropriately provided at a hospital level of care, it shall promptly render and provide notice of an adverse initial determination. Notice of such adverse initial determination shall be provided as prescribed in § 101.707.

§ 101.705 Modifications of review activities.

(a) Each PSRO, when it has developed the review capability and data base necessary to do so, shall modify the review activities prescribed in § 101.703 and § 101.704 in order to concentrate review efforts in areas where improvement in health care services is needed. Where appropriate, such review activities shall be modified to provide for:

(1) the identification of diagnoses, conditions, elective surgical and other major elective diagnostic and therapeutic procedures, and major clinical areas which shall be automatically certified for admission to the hospital level of care. In such cases a length-of-stay shall be assigned as provided for in § 101.703(a)(2) and continued stay review performed as prescribed in § 101.703(b). The PSRO shall use normative data and prior experience in review, such as concurrent review, the results of medical care evaluation studies or profile analysis, in order to select:

(i) diagnoses and conditions where data are available to demonstrate that the criteria for the presence of the diagnosis or condition are always met;

(ii) elective surgical and other procedures where data is available to demonstrate that such procedures are consistently medically necessary and are performed on a consistently appropriate basis in a particular hospital; and

(iii) major clinical areas where data is available to demonstrate that admissions in such areas are consistently medically necessary and appropriate in a particular hospital.

(2) the identification of diagnoses, conditions, elective surgical and other major elective diagnostic and therapeutic procedures, and major clinical areas of a hospital which shall not be subject to concurrent review and for which the entire hospitalization shall be automatically certified. Such identification shall be based on:

(i) data which demonstrate that admissions and continued stays associated with such diagnoses, conditions, and major clinical areas are consistently medically necessary and appropriate at the hospital level of care; and

(ii) data which demonstrate that elective surgical or other elective procedures are appropriately performed on a consistent basis in a particular hospital, and consistently account for medically necessary and appropriate continued stays following such procedures.

(b) The PSRO shall, through the performance of medical care evaluation studies performed pursuant to §101.710 and profile analysis performed pursuant to § 101.711, assure that admissions and hospitalizations automatically certified as prescribed in paragraph (a) above continue to represent consistently appropriate utilization of health care services provided in hospitals.

(c) Hospitals performing review for the PSRO pursuant to Subpart H of this Part shall modify their review activities as prescribed in paragraphs (a) and (b) above, but only when approved by the PSRO.

§ 101.706 Physician certification.

(a) Each PSRO shall specify the points in time when the attending physician or nonphysician health care practitioner attending the patient will certify the medical necessity for the patient's continued stay in the hospital. The first such certification shall usually be no later than the 50th percentile of lengths-of-stay norms for patients in similar age groups with similar diagnoses. Subsequent certification dates should be established by the PSRO at intervals appropriate to allow the PSRO to evaluate the patient's need for further health care at the hospital level.

(b) Each PSRO shall specify the information which it requires to be included in the medical record, including progress notes and orders, in order to enable the PSRO to evaluate the patient's need for further health care at the hospital level. If a PSRO so specifies, signed and dated continuing progress notes and orders by the attending physician or nonphysician health care practitioner attending the patient which justify the medical necessity for further health care in the hospital (including inpatient diagnostic study and therapeutic services) will suffice to satisfy the physician certification requirement. Alternatively, the PSRO may require a form of physician certification separate from the medical record.

(c) Each PSRO shall develop a mechanism for informing all physicians and nonphysician health care practitioners accorded active staff privileges in hospitals and engaged in professional activities in the PSRO area of the applicable physician certification requirements and shall be responsible for assuring that the certification requirements are being followed. Each PSRO shall also inform all such physician and appropriate nonphysician practitioners of their obligation not to provide unnecessary health care services and of the sanctions under section 1160 of the Social Security Act. Each PSRO shall maintain, at its principal business office, a copy of its physician certification requirements and its procedures for informing physicians and appropriate nonphysician practitioners of their requirements. Each PSRO shall forward its physician certification requirements to the Secretary within 90 days from the effective date of these regulations.

§ 101.707 Notice of adverse initial determinations.

(a) A notice of an adverse initial determination under § 101.703(a)(1), § 101-703(b)(1), § 101.703(c), or § 101.704(e), shall:

(1) Be provided to the patient (and, where appropriate, the patient's next of kin or sponsor), the attending physician, or nonphysician health care practitioner attending the patient, and the authorized representative of the hospital;

(2) Be delivered to each such person in the hospital if the person to be notified is in the hospital where the services are being, or proposed to be, provided, or mailed if the person to be notified is not in such hospital; and

(3) Be provided in writing, although oral notice may suffice if confirmed in writing within two days of delivering the oral notice; and

(4) Contain the following information:

(i) The reason for the determination.

(ii) The date after which the patient's stay in the hospital will not be approved as being medically necessary or appropriate at an in-patient hospital level of care;

(iii) A statement informing the parties and their representatives of their rights to:

(A) A reconsideration of the determination in accord with applicable regulations of this Part if they are dissatisfied with the determination, even if the patient leaves the hospital prior to filing a request for reconsideration or prior to its completion; and

(B) Submit additional documentary information and to make an oral presentation at the reconsideration;

(iv) The various locations for filing a reconsideration request and the applicable time period within which such a request must be filed, as prescribed under applicable regulations of this Part and guidelines published by the Secretary; and

(v) A brief jurisdictional statement concerning the authority of the PSRO and its responsibility for review under the Act.

(b) Notice of an adverse initial determination under § 101.703(a)(1), § 101.703(b)(1), § 101.703(c), or § 101.704(e), shall be provided promptly to: the Medicaid State agency or its designee, in the case of a Medicaid patient; the Medicare intermediary, in the case of a Medicare patient; or the affected State Title V agency, in the case of a Title V patient.

(c) Notice of an adverse initial determination shall be given to the patient (and, where appropriate, the patient's next of kin or sponsor), the attending physician or nonphysician health care practitioner attending the patient, and the authorized representative of the hospital according to the time frame specified below:

(1) Within 3 working days of the admission, under § 101.703(a)(1), or

(2) Prior to the procedure in the case of pre-procedure review under § 101.703(a)(1)(vi), or

(3) By the last day of the approved length-of-stay period under § 101.703(b)(1), or

(4) Prior to the admission under § 101.704.

(d) In the case of a Title V claim, the notice under paragraph (a) above shall explain that the PSRO determination is not conclusive for payment purposes under section 1158 of the Act, and that Title V recipients and providers have no right to reconsideration of such a PSRO determination under section 1159 of the Act.

§ 101.708 Informing discharge planners.

Where a PSRO becomes aware, in the course of review, that a patient or patients may require extended post-hospital care or institutional placement, the PSRO shall promptly inform the attending physician or nonphysician health care practitioner attending the patient and those in the hospital responsible for assisting the attending physician in discharge planning.

§ 101.709 Alternate review methods.

(a) Alternate methods for conducting the requirements set forth in § 101.703 through § 101.705, may be utilized by PSROs if a written plan explaining such methods is approved by the Secretary. The Secretary may approve such alternate review methods which he determines to be consistent with all provisions of Title XI, Part B, of the Act, and which have been shown to be or have the potential to be equal or more efficient and effective than those provided under § 101.703 through § 101.705 of these regulations. Alternate review methods determined by the Secretary to have such potential will be approved by the Secretary for implementation by only a limited number of PSROs. When the efficiency and effectiveness of an alternate method have been demonstrated to the satisfaction of the Secretary, he may approve its use in other PSRO areas.

(b) Alternate review methods proposed by a PSRO to be utilized for its entire area, or portions of its area, or to be utilized by hospitals conducting review for the PSRO pursuant to Subpart H, shall be submitted as a written plan to the Secretary. The written plan shall specify objectives of the alternate approach to concurrent and preadmission review which are consistent with § 101.701 (a), (b) and (c), and shall describe in detail the methods to be used, including the use of norms, criteria and standards; the applicability of the plan to the PSRO area; and the PSRO's plan to utilize hospital review committees, where appropriate, to conduct review for the PSRO pursuant to Subpart H of this Part.

§ 101.710 Medical care evaluation studies.

(a) *Purpose of medical care evaluation studies.* Each PSRO shall perform medical care evaluation studies for the purpose of: (1) Assuring that health care services are appropriate to the patients' needs and are of appropriate quality;

(2) Assuring that health care organization and administration of hospitals support the timely provision of quality care;

(3) Focusing on patterns of service which may require modification in review efforts as described in § 101.703 through § 101.705;

(4) Identifying changes necessary to improve the quality of care and the effectiveness and efficiency of the utilization of services.

(b) *Requirements.* Each PSRO shall be responsible for performing, at a minimum, the following number of medical care evaluation studies in each hospital in its area: (1) In each hospital with less than 2,500 total admissions per year, the PSRO shall perform four medical care evaluation studies per year.

(2) In each hospital with 2,500 to 4,999 total admissions per year, the PSRO shall perform six medical care evaluation studies per year.

(3) In each hospital with 5,000 to 9,999 total admissions per year, the PSRO shall perform eight medical care evaluation studies per year.

(4) In each hospital with 10,000 to 19,999 total admissions per year, the PSRO shall perform ten medical care evaluation studies per year.

(5) In each hospital with 20,000 and over total admissions per year, the PSRO shall perform twelve medical care evaluation studies per year.

For purposes of this section, a year means a calendar year. For purposes of this section, performance of a medical care evaluation study shall include completion of the study through the initiation of corrective action as described in subparagraph (c)(6) of this section. The PSRO shall be responsible for assuring that, for each year, medical care evaluation studies performed shall include study of the care of patients in all major clinical areas in the PSRO area. Medical care evaluation studies which involve more than one hospital shall be counted towards the number of studies required under this section for each such hospital involved in such study.

(c) *Nature of studies.* Each medical care evaluation study shall: (1) focus upon a known or suspected problem area in organization, delivery or outcome of hospital care;

(2) to be carried out in accord with objectives explicitly stated in, and specifically developed for, the study;

(3) utilize criteria and standards as described in paragraph (d) of this section;

(4) where appropriate, include the use of a sample of patients (including patient records) selected from all patients in the hospital. Such sample may include patients other than those covered under Titles XVIII, XIX and V where such access to use of their records is authorized by the hospital;

(5) result in written recommendations, where indicated, to institutions or organizations which provide continuing professional education activities, or to appropriate individuals and organizations responsible for effecting change in the organization and administration of health care delivery in order to improve the quality of care and promote more effective and efficient utilization of facilities and services;

(6) include a plan for follow-up evaluation by the PSRO where indicated, to determine what changes have occurred as a result of action taken pursuant to subparagraph (c)(5) above; and

(7) include such a follow-up evaluation where indicated. The follow-up evaluation shall be done in a reasonable time, but usually no later than one year following the performance of the initial study. The follow-up evaluation shall be limited to relevant key indicators of performance and shall not be counted as a new medical care evaluation study for purposes of fulfilling the requirements in paragraph (b) of this section.

(d) *Use of criteria and standards.* Criteria and standards shall be adopted by the PSRO in accordance with Subpart I of this Part, which relate to the specific objectives of the medical care evaluation study. The criteria and standards shall be used to define the information necessary to identify the degree of conformance between actual performance and that specified in the criteria. A PSRO which identifies a pattern of performance which does not conform to applicable criteria shall subject those services involved in the pattern to further analysis: The identification of such a pattern shall not necessarily constitute a finding by the PSRO that such services were not medically necessary, not of appropriate quality, or not provided at the appropriate level of care.

(e) *Reports to hospitals.* Each PSRO shall provide the written results, including an analysis of such results, of each medical care evaluation study which is pertinent to the operation of a particular hospital to appropriate members of the hospital medical staff, the chief administrative official of the hospital, and the Chairman of the Board of Trustees (or other governing body) of such hospital, in conformity with procedures for confidentiality as specified in applicable regulations of this Part.

§ 101.711 Profile Analysis.

(a) *Types of profiles.* (1) Each PSRO shall be responsible for the periodic development and analysis, in conformity with procedures or confidentiality as specified in applicable regulations of this Part, of profiles of: (i) Health care services for which payment may be made under the Act provided to patients in hospitals in the PSRO area;

(ii) each health care practitioner providing health care services for which payment may be made under the Act in hospitals in the PSRO area; and

(iii) each hospital in the PSRO area providing health care services for which payment may be made under the Act.

(2) Profiles shall be developed using, at a minimum, appropriate data elements collected by the PSRO, which is required to compile PSRO Federal reports and to complete the PSRO Uniform Hospital Discharge Data Set for each patient reviewed.

(b) *Process of profile analysis.* Depending upon the nature of the profile to be analyzed, the process of analysis shall include: (1) Comparison of patterns of care by similar providers (institutions or practitioners);

(2) Comparison of current patterns with those from a previous time period; and

(3) Identification of exceptional patterns using preestablished norms, criteria and standards as points of reference.

(c) *Purposes of analyses.* The profiles shall be analyzed by the PSRO for the purposes of: (1) Focusing on patterns of service which may require modifications in review efforts as described in § 101.703 through § 101.705;

(2) Identifying possible subjects for medical care evaluation studies;

(3) Self-evaluation of the overall performance of the PSRO;

(4) Evaluation of the comparative performance of providers (institutions or practitioners) in the PSRO area;

(5) Monitoring of review activities delegated to hospitals pursuant to Subpart H of this Part; and

(6) Determining whether the care and services ordered or rendered were consistent with the purposes specified in paragraphs (a), (b), and (c) of § 101.701 and the criteria and standards developed under Subpart I of this Part.

(d) *Provision of profiles to hospitals.* Each PSRO shall provide the profiles which are pertinent to the operations of a particular hospital to appropriate members of the hospital medical staff, the chief administrative official of the hospital and the Chairman of the Board of Trustees (or other governing body) of such hospital.

§ 101.712 Involvement of nonphysician health care practitioners.

(a) Each PSRO shall make arrangements to utilize, to the extent necessary and appropriate for the proper performance of its duties and functions, the services of nonphysican health care practitioners in the various areas of health care (including dentistry), which persons shall, to the maximum extent practicable, be individuals engaged in practice within the PSRO area.

(b) Such arrangements shall provide that: (1) Nonphysician health care practitioners are involved in developing the PSRO criteria and standards, selecting norms to be used, developing review mechanisms for the review of care provided by such practitioners, and in the review of such care.

(2) Nonphysician health care practitioners will work with, and make written recommendations, where indicated, to institutions or organizations which provide continuing professional education or to appropriate individuals and organizations responsible for effecting change in the organization and administration of health care delivery in order to assure that review findings of the nonphysician health care practitioners performing PSRO review assist in improving the quality of care and promoting more effective and efficient utilization of health care facilities and services.

§ 101.713 Reviewer qualifications.

(a) *Staff privileges.* (1) Each physician or nonphysician health care practitioner assigned responsibility for making initial or reconsidered determinations concerning health care services provided in a hospital shall have active staff privileges in at least one of the participating hospitals in the PSRO area.

(2) Physicians and nonphysician health care practitioners who do not have active staff privileges in at least one of the participating hospitals in the PSRO area may participate in medical care evaluation studies, criteria development, profile analysis, concurrent review and preadmission review for hospitals in the PSRO area provided that such physicians and nonphysician health care practitioners shall not make initial or reconsidered determinations.

(3) A physician or nonphysician health care practitioner who has active staff privileges in a hospital in the PSRO area shall not have responsibility for making initial or reconsidered determinations concerning health care services provided in the hospitals in which he has staff privileges unless: (i) The hospital in which the physician or nonphysician health care practitioner has staff privileges is operating under a delegation pursuant to section 1155(e)(1) of the Act and Subpart H of this Part, or

(ii) The PSRO finds that such physicians or nonphysician health care practitioners are needed to perform PSRO review because of a lack of alternate physician or appropriate nonphysician health care practitioner reviewers available to perform review in such hospital, and such finding is approved by the Secretary after the PSRO has notified the Secretary of its intention to use such physicians or appropriate nonphysician health care practitioners, and provided its justification therefor.

(b) *Review of services provided directly or in which reviewer was involved.* A physician or nonphysician health care practitioner shall not be permitted to participate in the review of health care services which he provided directly or in the provision of which he was directly or indirectly involved. For purposes of this paragraph, a physician or nonphysician health care practitioner who was directly or indirectly involved shall be any physician who has issued treatment orders or provided consultation regarding the services under review or any nonphysician health care practitioner involved in the formulation or execution of the patient's treatment plan.

(c) *Financial interest.* A physician or nonphysician health care practitioner shall not be permitted to participate in the review of health care services provided in or by a hospital, if he or any member of his family has, directly or indirectly, a financial interest in such hospital.

(1) For purposes of this paragraph, a physician's or nonphysician health care practitioner's family includes only his spouse (other than a spouse who is legally separated from him under a decree of divorce or separate maintenance), children (including legally adopted children), grandchildren, parents and grandparents.

(2) For purposes of this paragraph, a financial interest means an ownership interest in such hospital and includes:

(i) Sole ownership of such hospital;

(ii) A partnership interest in such hospital;

(iii) Any direct stock ownership or debt interest which is convertible to stock or which is secured by stock in such hospital; or

(iv) A controlling interest in an organization which holds any ownership interest in such hospital.

(3) For purposes of this paragraph, an employment relationship does not, in itself, constitute a financial interest.

(d) *Physician review by peers.* No PSRO shall utilize the services of any individual who is not a licensed doctor of medicine or osteopathy to make final PSRO determinations with respect to the professional conduct of, or any act performed by, any other licensed doctor of medicine or osteopathy in the exercise of his professional conduct.

(e) *Physician participation.* Each PSRO shall to the maximum extent consistent with the effective and timely performance of its duties and functions: (1) Encourage all physicians practicing in the area served by the PSRO to participate as reviewers in the PSRO's review activities;

(2) Provide rotating physician participation in review activities on an extensive and continuing basis;

(3) Assure that participation in review activities has the broadest representation feasible in terms of the various types of physician practice in the area served by the PSRO; and

(4) Utilize, whenever appropriate, medical periodicals and similar publications to publicize the functions and activities of PSROs.

(f) *Nonphysician health care practitioners' review of peers.* Where nonphysicians are involved in review (see § 101.712), the PSRO shall utilize only duly

qualified nonphysician health care practitioners who meet all applicable State or Federal requirements for the practice of their profession to make determinations with respect to the professional conduct of, or any act performed by, any other duly qualified peer nonphysician health care practitioner in the exercise of his profession.

§ 101.714 Examination of the operation and records of hospitals.

(a) Each PSRO is authorized to inspect the operation and records pertinent to the health care services rendered to Title V, XVIII or XIX patients of any hospital in the PSRO area in which such services are provided and may require such hospital to provide copies of such records to the PSRO in order to:

(1) Evaluate unusual cases which pre-admission review, concurrent review, medical care evaluation studies, or profile analysis have shown to deviate significantly from the PSRO norms, criteria and standards; and

(2) Evaluate the capability of a hospital to assume delegated PSRO functions and monitor the performance of a hospital which has assumed delegated PSRO functions, pursuant to Subpart H of this Part.

(b) A PSRO may utilize the records of patients other than those covered under Titles XVIII, XIX and V, where access to their records is authorized by the hospital.

(c) In performing an examination a PSRO shall: (1) Limit the inspection to those operations and records of a hospital which are necessary in order to achieve the purposes of paragraph (a) of this section;

(2) Cooperate with agencies performing similar examination functions under Title V, XVIII or XIX of the Act in order to minimize duplication of effort;

(3) Conduct such examinations during the daytime shift of the hospital; and

(4) Maintain written records of such examination in its principal office, and provide written reports to appropriate members of the medical staff of the hospital, the chief administrative official of the hospital and the Chairman of the Board of Trustees (or other governing body) of the hospital which has been inspected, describing the results of the examination and the follow-up necessary.

§ 101.715 Refusal of hospital to allow PSRO entry and performance of review.

The refusal of a hospital in the PSRO area to allow a PSRO to enter and perform all PSRO duties and functions required under this Subpart in such hospital shall constitute grounds for a PSRO to determine that such hospital has violated the obligations imposed under section 1160(a)(1)(C) of the Act, and for the PSRO to report such matter to the Secretary under section 1157 of the Act.

§ 101.716 Reports to the Secretary.

Each PSRO shall submit reports to the Secretary, at such times and in such form as the Secretary may require pursuant to this Subpart, indicating how it has fulfilled the responsibilities specified under this Subpart.

[FR Doc.77-1951 Filed 1-24-77;8:45 am]

[42 CFR Part 101]

RELATIONSHIP OF THE PSRO TO HOSPITALS AND UTILIZATION OF HOSPITAL REVIEW COMMITTEES

Subpart H; Notice of Proposed Rulemaking

Notice is hereby given that the Assistant Secretary for Health of the Department of Health, Education, and Welfare, with the approval of the Secretary of Health, Education, and Welfare, proposes to add a new Subpart H to Part 101 of Title 42, Code of Federal Regulations.

The purpose of the present proposal is to implement the provisions of section 1155(e) of the Social Security Act (42 U.S.C. 1320c-4(e)). This section requires Professional Standards Review Organizations (PSROs) to utilize the services and accept the findings of hospital review committees when and to the extent and for such time as such committees have demonstrated to the PSRO's satisfaction a capacity to conduct effective and timely review so as to aid the PSRO in fulfilling its review responsibilities. The purpose of the requirement is to build upon existing systems of review. Over the last two decades many hospitals have gained considerable experience and expertise in the review of health care. Rather than dismantling these efforts, the PSRO is to capitalize upon them in building its review system. Also, however, it must be recognized that the PSRO program represents a major shift in the locus of responsibility for conducting health care review. Before PSRO, this responsibility rested with individual hospitals, and Medicare and Medicaid agencies. Under PSRO, the responsibility is given to a community based organization which must establish an effective review system for the institutions in its area. Therefore, the decision of a PSRO to delegate review to a hospital must be based upon both the hospital's capability to conduct effective review and the degree to which delegation aids the PSRO in creating an efficient and effective review system.

The PSRO will use the hospital's review committee(s) in the performance of PSRO preadmission and concurrent review, or medical care evaluation (MCE) studies or both where such review committees are willing and have the capacity to effectively perform these functions. However, where the PSRO delegates the performance of either of these review functions to a hospital, the PSRO still retains responsibility to monitor and assure the effective performance of such functions and because responsibility for effective review continues to reside with the PSRO, it is expected to exercise this delegation authority and monitoring activity carefully.

The delegation process will result in the establishment of a relationship between a hospital and a PSRO which will be different for concurrent review than for medical care evaluation studies. When concurrent review is delegated, all the review will be conducted by the hospital with the PSRO using retrospective data analysis and onsite visits to assure that review is being conducted effectively. For MCE studies, however, the PSRO and the hospital will work closely together on some or all of the studies related to that hospital. Thus, while a delegated hospital will conduct some MCE studies independently, it will also work in cooperation with the PSRO when an area-wide or multi-hospital MCE involves the care provided in that hospital. In the hospital which has not been delegated MCE studies, the PSRO must, nevertheless, work closely with the hospital staff in the design of studies, implementation of corrective actions and conduct of follow-up analyses. In both the delegated and nondelegated situation, the PSRO must help to assure that the results of the study and of any necessary corrective actions are made available to the governing board of the hospital to assist the board in meeting its public responsibility to assure the provision of quality care in its institution. This need for a close relationship between a PSRO and hospital results from the fact that early and continuous involvement by those whose care is being assessed by the medical care evaluation process will allow the results of the studies to have their optimum impact.

The proposed regulation outlines the following steps in the delegation process: (1) PSRO notification to hospitals in the PSRO area of the delegation procedures and the factors the PSRO will use to evaluate the hospital's capability; (2) the hospital's expression of interest in obtaining delegation of review functions; (3) the development of a hospital review plan which meets PSRO requirements; (4) the PSRO determination of the hospital's capability to perform delegated review effectively, based on the review plan and utilizing specific evaluation factors; (5) agreement upon administrative procedures by the PSRO and the hospital; and (6) PSRO monitoring of the performance of delegated review functions and periodic reassessment of the hospital's capability to perform such review effectively. In addition, the proposed regulation provides a process for (1) the Secretary's consideration of disapproval of a delegation or investigation of complaints regarding improper rejection of a hospital's proposal for delegation; and (2) for reconsideration by the PSRO of determinations of capability with which a hospital is dissatisfied.

The proposal indicates that eligibility for delegation will not be limited to utilization review committees organized under Title V, XVII and XIX of the Act, but may include other committees of a hospital.

The proposed regulation applies solely to short stay hospitals and regulations will be issued in the future to deal with review in other operating health care facilities or organizations.

The new regulations policies of the Department issued July 25, 1976, require

that this Notice of Proposed Rulemaking (NPRM) have an implementation plan prepared prior to its issuance. In compliance with these requirements, an implementation plan was forwarded to the Secretary and he has authorized the issuance of this NPRM without the use of a Notice of Intent (NOI) which would otherwise be required by the new policies because:

1. There is an urgent requirement for these regulations.

2. Over an extended period of time there has been significant interaction between the Department and organizations and individuals in the development of this NPRM which has satisfied the spirit and intent of the NOI. Specifications for this NPRM were reviewed by the National Professional Standards Review Council at public meetings and available for public comment at least twice. Draft transmittals presenting policies incorporated in this NPRM have been presented to the National Council, and circulated to all planning and conditional PSROs, PSRO Suport Centers and professional organizations, as well as, other organizations that routinely receive PSRO information. In addition, requests by outside organizations for information contained in this NPRM have been fulfilled.

Interested persons are invited to submit written comments, suggestions or objections concerning the proposed regulations to the Director, Bureau of Quality Assurance, Health Services Administration, Room 16A55, 5600 Fishers Lane, Rockville, Maryland 20857, March 28, 1977. All comments received in timely response to this Notice will be considered and will be available for public inspection in the above named office during regular business hours.

It is proposed to make this regulation effective upon republication in the FEDERAL REGISTER.

NOTE.—The Department of Health, Education, and Welfare has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107.

Dated: November 22, 1976.

THEODORE COOPER,
Assistant Secretary for Health.

Approved: January 11, 1977.

MARJORIE LYNCH,
Acting Secretary.

PART 101—PROFESSIONAL STANDARDS REVIEW

It is therefore proposed to issue a new Subpart H of Part 101 of Title 42 as set out below.

Subpart H—The Relationship of the PSRO to Hospitals and Utilization of Hospital Review Committees

Sec.

101.801 Applicability.
101.802 Definitions.
101.803 General requirements.
101.804 Notification to hospitals.
101.805 Letter of interest.
101.806 Delegation review plan.
101.807 Determination of capability.
101.808 Initiation of PSRO review in nondelegated hospitals.
101.809 Agreement with delegated hospitals.
101.810 PSRO monitoring and reassessment of capability.
101.811 Monitoring by the Secretary and disapproval for good cause.
101.812 Time and place of filing request for reconsideration.
101.813 Reconsideration committee.
101.814 Time of reconsideration and notification to hospital.
101.815 Reconsideration proceedings.
101.816 Reconsidered determination and notification.
101.817 Renewal of interest in performing review after a PSRO determination or reconsideration.
101.818 Complaints to the Secretary.
101.819 Reports to the Secretary.
101.820 Previously approved delegations.

AUTHORITY: Sec. 1155(e) of the Social Security Act, Section 249F(b) of Public Law 92-603, 86 Stat. 1435, [42 U.S.C. 1320c-4(e)]; Section 1102 of the Social Security Act, 49 Stat. 647, as amended [42 U.S.C. 1302].

Subpart H—The Relationship of the PSRO to Hospitals and Utilization of Hospital Review Committees

§ 101.801 Applicability.

The provisions of this Subpart are applicable to the exercise by PSROs of their duties and functions under section 1155(e) of the Act [42 U.S.C. 1320c-4(e)] with regard to utilization of the review committees of hospitals.

§ 101.802 Definitions.

As used in this Subpart:

(a) "Act" means the Social Security Act, as amended (42 U.S.C. Chap. 7).

(b) "Active staff privileges in a hospital" means that a physician or nonphysician health care practitioner is authorized on a regular, rather than infrequent or courtesy basis to (1) order the admission of patients to a hospital; or (2) perform diagnostic services in a hospital; or (3) care for and treat patients in a hospital.

(c) "Concurrent review" means admission review and continued stay review.

(d) "Criteria" means predetermined elements of health care, developed by health professionals relying on professional expertise, prior experience and the professional literature with which aspects of the quality, medical necessity, and appropriateness of a health care service or item may be compared.

(e) "Delegation" means the utilization by the PSRO of the services of a hospital and acceptance of the review findings of the hospital's review committee(s) in accordance with section 1155(e) of the Act.

(f) "Health care service" means an inpatient service or item for which payment may be made (in whole or in part) under the Act.

(g) "Hospital" means a health care institution or distinct part of a health care institution providing health care services in the PSRO area as defined in section 1861(e)-(g) of the Act, except that the institution shall not be a Christian Science sanatorium operated, or listed and certified by the First Church of Christ, Scientist, Boston, Massachusetts.

(h) "Hospital review committee" means a committee established by a hospital to serve as the focus for PSRO review which consists of one or more physicians having active staff privileges in such hospital, with the participation of nonphysician health care practitioners, where appropriate.

(i) "Medical care evaluation study" means a process usually performed retrospectively, in which an in-depth assessment of the quality and/or the nature of the utilization of health care services is conducted, corrective action is taken, where indicated, and a subsequent analysis is made of the impact of the corrective action.

(j) "Nonphysician health care practitioners" means those health professionals who do not hold a Doctor of Medicine or Doctor of Osteopathy degree, meet all applicable State or Federal requirements for practice of their profession, and are actively involved in the delivery of direct patient care or health care services.

(k) "Norms" means numerical or statistical measures of usual observed performance of health care services.

(l) "Physician" means a Doctor of Medicine or Osteopathy or another individual who is authorized under State or Federal law to practice medicine and surgery, or osteopathy.

(m) "Profile" means aggregated data in formats which display patterns of health care services over a defined period of time.

(n) "Profile Analysis" means review of profiles to identify and consider patterns of health care services.

(o) "PSRO" means a Professional Standards Review Organization which is conditionally or unconditionally designated.

(p) "Secretary" means the Secretary of Health, Education, and Welfare and any other officer or employee of the Department of Health, Education, and Welfare to whom the authority involved has been delegated.

(q) "Standards" mean professionally developed expressions of the range of acceptable variation from a norm or criterion.

§ 101.803 General requirements.

(a) No PSRO may initiate review in a hospital unless it has notified and evaluated the capability of such hospital to obtain delegation in accord with § 101.803 through § 101.807 of this Subpart.

(b) Such PSRO shall delegate to a hospital, when it has determined that such hospital has demonstrated the willingness and capability to conduct effective and efficient review activities so as to aid the PSRO in the performance of its review responsibilities, the performance of:

(1) Preadmission review and concurrent review, or where the Secretary has approved alternative review activities pursuant to § 101.709 of this Part, such alternative review activities, or

(2) Medical care evaluation studies, or

(3) The review activities described in both subparagraphs (1) and (2) above.

(c) Where the PSRO delegates the performance of one or more of the functions, it shall:

(1) Delegate such functions to the hospital rather than to individual departments or divisions within a hospital;

(2) Perform all those functions which are not delegated to the hospital;

(3) In the delegation of concurrent review or preadmission review delegate both admission and continued stay review;

(4) In the case of delegated medical care evaluation studies delegate all activities related to performance of the study as described in Subpart G of this Part;

(5) Review profiles of all area hospitals at least for the purpose of comparative analysis of hospitals; and

(6) Periodically reassess the hospital review committee's continuing capability to perform effective and efficient review (see § 101.810).

(d) The Secretary may disapprove a delegation of review functions for good cause pursuant to § 101.811.

§ 101.804 Notification to hospitals.

Each PSRO shall notify in writing all hospitals in its area in a timely manner of the requirements of section 1155(e)(1) of the Act, the PSRO hospital review requirements which may be delegated, the factors and the process which the PSRO will utilize for evaluating the capability of a hospital review committee to perform review functions (see § 101.807), and the procedure necessary to apply for a delegation of PSRO functions. An example of the notification letter shall be submitted to the Secretary for his approval prior to use.

§ 101.805 Letter of interest.

(a) A hospital which seeks to obtain a delegation of PSRO review functions shall submit a letter of interest to the PSRO signed by an authorized representative of the hospital medical staff and the chief administrative official of the hospital containing, at a minimum, the following information:

(1) The specific functions for which delegation is sought; and

(2) An expression of the hospital's willingness to accept PSRO evaluation and monitoring of its review activities.

(b) A letter of interest may be accompanied by a delegation review plan as specified in § 101.806.

(c) If a hospital does not forward a letter of interest in response to the PSRO's written notification within thirty calendar days following the PSRO notification, the PSRO shall forward a second written notification in a form similar to the original to such hospital. If the hospital does not respond to the second notification within 10 calendar days, or provides written notification to the PSRO that it does not desire to perform PSRO review functions, the PSRO shall notify the hospital that the PSRO will begin to perform review in the hospital in accordance with applicable regulations of this Part and procedures approved by the Secretary. In such cases, administrative procedures developed by the PSRO, with the consultation of the hospital, shall be executed indicating the scope of PSRO activities in the hospital, as specified in § 101.808.

(d) A hospital review committee may forward a letter of interest to the PSRO at any time. A PSRO which receives such letter later than 10 calendar days following the second notification described in paragraph (c) will proceed to make a determination of capability in accord with the procedures set forth in this Subpart, except that it shall render such a determination within six months from the date of receipt of the delegation review plan, unless the time period specified in § 101.817 is applicable.

§ 101.806 Delegation review plan.

A hospital seeking delegation shall develop a plan describing how it will organize its resources and implement PSRO review functions for which it seeks delegation. Such plan shall be consistent with the PSRO's approved formal plan and shall be submitted to the PSRO no later than 30 days from the date the letter of interest was mailed. The delegation review plan shall include:

(a) A description of the manner in which the hospital will organize itself to conduct the delegated review activities and those activities supportive of delegated review;

(b) A description of the proposed operation of the review effort under the direction of the hospital review committee, including:

(1) The number and types of hospital personnel to be used for each type of review;

(2) The methods of providing for selection, training and reimbursement for review personnel;

(3) The methods of involving nonphysician health care practitioners in review functions;

(4) A description of the proposed use of norms, criteria and standards in review;

(5) Methods by which review findings will lead to appropriate continuing education activities and administrative change;

(6) The functions which the hospital review committee expects to be performed by PSRO personnel for those review functions not delegated;

(c) A description of the proposed relationships with Titles V, XVIII and XIX claims payment agencies, including the mechanisms to be used in notifying these agencies of those delegated review determinations that impact on claims payment;

(d) The methods of providing for data collection, data flow and information release to satisfy PSRO profile and reporting requirements, including a description of the current and proposed relationships of the hospital with hospital discharge abstract data processors;

(e) The number of physicians on the hospital's medical staff who are eligible for PSRO membership, as defined in applicable regulations of the Secretary, and the number who actually are members;

(f) Specific information about the hospital's existing review system, if any, including narrative material concerning operating procedures, results, and follow-up;

(g) Information which characterizes the hospital including number of beds; total admissions each year; Title XVIII, Title XIX, and Title V admissions each year; type of ownership; teaching affiliations; and size and specialization of medical staff.

§ 101.807 Determination of capability.

(a) Each PSRO shall, within 90 calendar days from receipt of such delegation review plan, determine the capability of each review committee of a hospital which forwards a letter of interest and a delegation review plan to such PSRO, except as provided in § 101.805 (d) and § 101.817.

(b) Each PSRO, in making such a determination of capability, shall utilize written evaluation factors which shall be submitted to the Secretary prior to use and no such factors shall be utilized by the PSRO unless approved by the Secretary.

(c) The evaluation factors shall measure the capability of the hospital review committee to effectively and efficiently perform review activities, as prescribed in Subpart G of this Part, so as to aid in accomplishing the purposes described in section 1155(a)(1) of the Act, and shall include, at a minimum the following:

(1) The degree to which the review mechanisms and the organization for review that the hospital proposes provide the hospital with the capability to meet the PSRO program objectives specified in § 101.701 of this Part and the PSRO's approved formal plan;

(2) The PSRO determination of the adequacy of the performance of the hospital in Medicare and Medicaid utilization review activities. In making such a determination, the PSRO shall consider information solicited by the PSRO and received from the Medicare State survey agency and the appropriate Medicare intermediaries and the Medicaid State agency concerning the hospital's past performance in Medicare and Medicaid utilization review and information obtained by the PSRO through site visits to such hospitals;

(3) The degree to which the delegation of one or more functions to the hospital assists the PSRO in fulfilling its objective of establishing an effective and efficient areawide review system;

(4) Membership in the PSRO of at least 25 percent of those physicians with active staff privileges in the hospital who are eligible to be PSRO members; and

(5) The capacity to provide the PSRO with the data required by the PSRO for monitoring of the hospital review activities and the generation of profiles and reports.

(d) Such determination shall be made by an evaluation committee, designated by the governing body of the PSRO, which shall consist of two or more PSRO members. No member of such evaluation committee may participate in a determination of capability of a hospital in which: (1) He has a financial interest as defined in §101.713 of this Part; or

(2) He has active staff privileges as defined in §101.702 of this Part, unless special arrangements are made with the approval of the Secretary to utilize members who have active staff privileges in the hospital due to lack of alternate physicians to conduct the determination.

(e) The PSRO shall provide written notice of the determination of capability to the hospital within 90 days of receipt of the delegation review plan, including in such notice a statement of the reasons for the determination and an explanation of the hospital's right to obtain a reconsideration by the PSRO of any determinations of capability with which the hospital is dissatisfied.

(f) Each PSRO shall maintain a record of the decision and the information which formed the basis for the determination of capability.

(g) Any hospital which is dissatisfied with a PSRO determination of the hospital review committee's capability to perform delegated review effectively, including a determination that the hospital review committee is not performing effectively a review function which has been delegated (see § 101.810), may request a PSRO reconsideration of such determination in accordance with § 101.812. A PSRO may at any time initiate a reconsideration of a determination of capability.

§ 101.808 Initiation of PSRO review in nondelegated hospitals.

(a) Where the PSRO has made a determination not to delegate the performance of review functions to a hospital, or a determination to withdraw delegation of review functions from a hospital (see § 101.810), the PSRO shall, after providing notice to the hospital as specified in § 101.807(e), initiate review functions in such hospital within a reasonable time and in accord with procedures approved by the Secretary and applicable regulations of this Part. The initiation of PSRO review shall not be postponed because of a request for reconsideration by the hospital. Any subsequent request by the hospital to perform delegated review shall be subject to the time period specified in § 101.817 regarding PSRO consideration of the request.

(b) Where the PSRO has made a determination as described in paragraph (a) of this section, or where the PSRO will begin to perform review in a hospital as provided in § 101.805(c), the PSRO shall develop administrative and review procedures, with the consultation of each hospital and the approval of the Secretary in such time and manner as prescribed under applicable regulations of this Part relating to the assumption of review responsibilities by PSROs. Such procedures shall include:

(1) The specific review functions to be performed by the PSRO in the hospital in accord with the approved formal plan of the PSRO, Title XI, Part B of the Act and the regulations of this Part;

(2) The review procedures to be followed by the PSRO in the hospital in accord with the approved formal plan of the PSRO;

(3) A schedule indicating the time for phasing-in of each function;

(4) The norms, criteria and standards to be used by the PSRO in review in accord with Subpart I of this Part;

(5) Mechanisms for notifying the Titles XVIII, XIX, and V payment agencies of review determinations;

(6) PSRO responsibilities for data collection, data flow and information release;

(7) Specifications for the selection, training, and reimbursement of review personnel by the PSRO;

(8) The PSRO's plan for handling reconsiderations and appeals of its review decisions;

(9) The methods for the PSRO to provide profiles, medical care evaluation studies and other pertinent information to the hospital;

(10) The methods of involving nonphysician health care practitioners in review functions; and

(11) A PSRO mechanism for resolving disputes with the hospital regarding PSRO procedures.

§ 101.809 Agreement with delegated hospitals.

Where the PSRO has made a determination pursuant to § 101.807 to delegate the performance of review functions to a hospital, the PSRO and the hospital shall enter into a written agreement signed by the chief administrative official of the PSRO, and an authorized representative of the hospital's medical staff, the chief administrative official of the hospital and the Chairman of the Board of Trustees (or other governing body) for a time period not to exceed one year which shall be renewable. The PSRO shall submit a model of such agreement to the Secretary prior to use. A PSRO may not enter into an agreement with a hospital until the Secretary has approved its model agreement. Each signed agreement shall be retained at the principal offices of the PSRO for public inspection during regular business hours and shall include:

(a) The specific review functions to be performed by the hospital under delegation;

(b) The specific review functions which will not be delegated and will be performed by the PSRO;

(c) Agreement by the hospital that it will perform those functions and responsibilities for which it has received delegation in accord with the requirements placed upon PSROs for such functions and responsibilities under Title XI, Part B of the Act, 42 CFR Part 101, the approved formal plan of the PSRO and the review plan submitted by the hospital under § 101.806;

(d) A schedule indicating the time for phasing-in of each function;

(e) The norms, criteria and standards to be used by the hospital in review in accord with Subpart I of this Part;

(f) Methods of involving the hospital in the PSRO plan for reconsiderations and appeals;

(g) Methods for PSRO monitoring of delegated review functions including inspection of the operation and records of the hospital (see § 101.714 of this Part);

(h) Methods for the PSRO to report profiles, medical care evaluation studies and other pertinent information to the hospital;

(i) Procedures for reassessing the hospital, in accord with § 101.810;

(j) Procedures for the resolution of disputes between the hospital and the PSRO, which shall include agreement that if the hospital and the PSRO are unable to agree upon any item in dispute, such dispute shall be submitted to the Secretary to make a determination to resolve the dispute. Where a dispute is submitted to the Secretary, he will designate an official to make an initial determination within 30 days from the submittal based upon his consideration of any written information submitted by the hospital or the PSRO and any oral presentations made at an informal meeting involving all parties to the dispute, as deemed appropriate by such official. The Secretary will review such initial determination, render a final determination within 60 days from the submittal and notify the PSRO and the hospital of his determination, with a full explanation of the reasons for such determination;

(k) Procedures for the termination of the agreement which shall include provision that the agreement may be terminated by the PSRO upon reassessment in accord with § 101.810, or by the hospital, upon 90 days notice to the PSRO, or by the Secretary, pursuant to § 101.811. Where a PSRO has been so notified it shall initiate review in such hospital as specified in § 101.808; and

(l) Provisions for modification of the agreement with the approval of both parties.

§ 101.810 PSRO monitoring and reassessment of capability.

(a) Each PSRO shall periodically monitor and reassess, by means of analysis of profiles and reports provided by the hospital and on-site inspections, the performance, effectiveness and efficiency of each hospital review committee in its area of delegated functions in order to:

(1) Assure compliance with the agreement described in § 101.809 and the provisions of this Subpart;

(2) Assess the effectiveness and efficiency of the delegated hospital review in terms of the purposes of review as specified in § 101.701 of this Part;

(3) Reassess the appropriateness of continued delegation of the performance of PSRO review functions based upon the capability of the hospital review com-

mittee to perform review in an effective and efficient manner, in accord with written evaluation factors developed by the PSRO and available to all hospitals in the PSRO area. The evaluation factors shall be submitted to the Secretary prior to use and no such factors shall be utilized by a PSRO unless approved by the Secretary. Such evaluation factors for reassessment shall include, at a minimum:

(i) The degree to which the hospital has performed delegated functions in accord with the agreement specified in § 101.809;

(ii) The effectiveness and efficiency of the performance of delegated functions;

(iii) The maintenance of membership in the PSRO of at least 25 percent of those physicians with active staff privileges in the delegated hospital who are eligible to be PSRO members;

(iv) The degree to which delegation arrangements with the hospital are demonstrated to fulfill the PSRO objective of establishing an efficient and effective areawide review system.

(b) Where the PSRO determines that a hospital which has been delegated review functions is not performing such functions effectively, the PSRO shall notify the hospital and the Secretary of such determination as specified in § 101.807(e) and shall initiate review in the hospital as specified in § 101.808.

§ 101.811 Monitoring by the Secretary and disapproval for good cause.

(a) The Secretary will periodically require the PSRO to submit reports indicating those hospitals which have been delegated the performance of review functions and the manner in which they are performing and the Secretary may disapprove for good cause such delegation determinations. The Secretary shall take into consideration any comments submitted by Medicare fiscal agents or State Medicaid or Title V agencies regarding the appropriateness of a delegation of review to a hospital or effectiveness of the performance of delegated review functions by a hospital. For purposes of this Subpart, "good cause" for disapproval of a delegation shall include:

(1) A PSRO determination of capability which does not comply substantially with the procedures of this Subpart;

(2) The hospital's substantial noncompliance with the agreement described in § 101.809 or the provisions of this Subpart; and

(3) The hospital's failure to perform delegated review functions effectively and efficiently so as to aid the PSRO in the performance of its review responsibilities.

(b) Where the Secretary disapproves a delegation of review functions pursuant to paragraph (a) of this section, he will notify the PSRO and the hospital, in writing, providing a statement explaining his disapproval and the cause for such disapproval at least 30 days prior to the effective date of the disapproval. The PSRO and the hospital shall have an opportunity, prior to such effective date, to file a written statement with the Secretary explaining the reasons why such disapproval should not become effective. If no such statement is received prior to the effective date, the disapproval shall be final on the effective date and the hospital shall no longer retain PSRO delegation to perform review. In such case, the PSRO shall initiate review in the hospital as specified in § 101.808. Any subsequent request by the hospital to perform delegated review shall be subject to the time period in § 101.817 regarding PSRO consideration of the request. If the Secretary determines that additional information indicates "good cause" for disapproval does not exist and the disapproval should not become effective, he will withdraw the notice of disapproval.

§ 101.812 Time and place of filing request for reconsideration.

(a) A request by a hospital for reconsideration of a PSRO determination of a hospital capability to perform delegated review functions effectively shall be made in writing by the authorized representative of the hospital medical staff and the chief administrative official of the hospital and filed at the principal office of the PSRO within 60 days from the date of the mailing of the notice of capability by the PSRO to the hospital, unless such time is extended by the PSRO for good cause.

(b) The reconsideration request shall include a statement specifying the particular reasons why the hospital seeks reversal of the determination, including the results of any remedial actions which may have been taken by the hospital to correct deficiencies.

§ 101.813 Reconsideration committee.

The PSRO shall designate a committee of PSRO members, in accord with § 101.807(d), to conduct the reconsideration, except that no PSRO members may serve who participated in the determination of the capability of the hospital which is being reconsidered.

§ 101.814 Time of reconsideration and notification to hospital.

(a) The reconsideration proceedings shall begin not later than 14 calendar days, excluding holidays, from the date of the receipt by the PSRO of the request for reconsideration, or at the option of the hospital, at a later time.

(b) The PSRO shall notify the hospital no less than ten calendar days prior to the reconsideration proceedings of the time and place of the reconsideration proceedings. Such notice shall offer the hospital an opportunity to make an oral presentation and offer additional written information.

§ 101.815 Reconsideration proceedings.

(a) Reconsideration proceedings shall be informal and need not be bound by formal rules of evidence or other formal procedures.

(b) The reconsideration committee shall review the determination of capability, the reasons and information upon which the determination of capability was based, and any additional information submitted to the PSRO by the hospital.

§ 101.816 Reconsidered determination and notification.

(a) The PSRO shall make a reconsidered determination, affirming, modifying or reversing the initial determination of capability, based upon the information reviewed during the reconsideration proceedings.

(b) The PSRO shall provide written notice of the reconsidered determination to the hospital, including a statement of the reasons for the reconsidered determination, within 30 days from the date of the commencement of the reconsideration proceedings.

(c) Each PSRO shall maintain a record of the decision and the information which formed the basis for the reconsidered determination of capability, including a record summarizing the reconsideration proceedings.

§ 101.817 Renewal of interest in performing review after a PSRO determination or reconsideration.

Where a hospital review committee previously has received a negative determination under § 101.807 regarding its capability to perform review effectively, such hospital may at any time formally renew its interest in obtaining a delegation of PSRO review functions by filing a letter of interest pursuant to § 101.805. Such letter of interest shall include any progress which the hospital has made since the determination in effectively performing review functions for which it is seeking delegation. In such cases, the PSRO shall within one year from the date of the filing of the letter of interest, make a new determination of the capability of the hospital to perform review effectively and efficiently.

§ 101.818 Complaints to the Secretary.

(a) A hospital may make a written complaint to the Secretary if it believes that a PSRO has not complied substantially with the requirements of this Subpart or that the PSRO determinations of capability are motivated by nonprofessional prejudice or bias. The complaint shall include a statement of the reasons for such belief.

(b) The Secretary will investigate such complaint and if the Secretary finds that a PSRO has not complied substantially with the requirements of this Subpart or that its determinations of capability are motivated by nonprofessional prejudice or bias, he may take appropriate action to correct the abuse, including termination of the PSRO agreement.

§ 101.819 Reports to the Secretary.

Each PSRO shall submit such reports to the Secretary, as the Secretary shall deem appropriate, indicating the manner in which it has fulfilled its responsibilities under this Subpart.

§ 101.820 Previously approved delegations.

Sections 101.804 through 101.809 of this Subpart shall not apply to delegations or notification and evaluation activities leading to delegation which were effected prior to the effective date of this Subpart under procedures approved by the Secretary.

[FR Doc.77-1952 Filed 1-24-77;8:45 am]

[42 CFR Part 101]

NORMS FOR PSRO HOSPITAL REVIEW

Subpart I; Notice of Proposed Rulemaking

Notice is hereby given that the Assistant Secretary for Health of the Department of Health, Education, and Welfare, with the approval of the Secretary of Health, Education, and Welfare, proposes to add a new Subpart I to Part 101 of Title 42, Code of Federal Regulations.

The new Subpart would implement, in part, the provisions of Section 1156 of the Social Security Act (42 U.S.C. 1320c-5) with regard to the development and application of "professionally developed norms of care, diagnosis and treatment" (i.e. norms, criteria and standards), which must be applied by PSROs as principal points of evaluation in the review of health care services provided in hospitals under Titles V, XVIII and XIX of the Social Security Act. The use of norms, criteria and standards in the PSRO hospital review process grows out of the experiences of medical care foundations, individual hospitals and Experimental Medical Care Review Organizations (EMCROs) in developing such tools for streamlining the review process. The use of explicitly stated norms, criteria and standards as tools for initial screening serves to make the review process more objective and to minimize the demands of the hospital review system on physician time. By using such screening tools, trained nonphysician health care professionals can conduct screening review and identity cases requiring peer review. Norms, criteria, and standards do not constitute absolute definitions of proper utilization and high quality. Most of the care reviewed by the PSRO will fall within the standards set by peer practitioners and will require no further review. Care falling outside that range, however, will then be subject to closer scrutiny by peers to assure that services for Medicare, Medicaid, and Maternal and Child Health/Crippled Children's Services patients are necessary, appropriate and of high quality. It should be emphasized that criteria and standards do not imply the requirement of "cookbook" medicine. The fact that an individual episode of care may fall outside the standard set by the local PSRO does not imply that such care is of inferior quality; rather, it is an indication that closer professional review should be conducted in order to assure appropriateness of the care.

These regulations require that norms and criteria be emloyed in concurrent and preadmission review or in alternate review methods approved by the Secretary, pursuant to Section 101.709 of this Part. Standards are not specifically required in these review processes, but may be employed by PSROs. For example, the screening criteria employed in concurrent or preadmission review generally define elements of medical practice which, in the judgment of local peer practitioners, should be present in either 100 percent or 0 percent of cases. Where such criteria are not met, the case will be referred for peer review. Used in this way, criteria are being employed as standards in the concurrent or preadmission review process.

Only criteria and standards are required to be employed in medical care evaluation studies. The use of norms is not a requirement because when normative data is used in a medical care evaluation study, it is used only after those designing the study have determined that the norm represents a goal to be achieved (that is, the norm is being used as a criterion or standard).

Regional norms, criteria, and standards will be distributed by the National Professional Standards Review Council and will be used as principal points of reference by each PSRO as it establishes norms, criteria (including length-of-stay projections) and standards for its area. Until such time as the National Council distributes such regional norms, criteria and standards, PSROs will be expected to utilize available, statistically valid regional data to develop length-of-stay projections, and available sets of criteria and standards as guides to developing PSRO area criteria and standards. In addition to its responsibility to distribute regional norms, criteria and standards, the National Council will be analyzing the appropriateness of variations among the norms, length-of-stay projections, criteria and standards employed by PSROs. When it distributes the regional norms, criteria and standards, the National Council will use them as principal points of reference in identifying significant variations. As specified in section 1156(a) of the Social Security Act, when the Council determines that the variation in a PSRO's norms, length-of-stay projections, or other criteria or standards is inappropriate, the PSRO may not use those norms, criteria, or standards. A PSRO may use criteria and standards which vary from its areawide criteria and standards for preadmission and concurrent review in hospitals or subareas having limited resources, unusual patient populations, or other characteristics which make the variation appropriate. Such variation would be expected to be the exception, rather than the rule, and each FSRO should consider carefully any request by a hospital to vary from the PSRO areawide criteria and standards used in the concurrent and preadmission review process.

The proposed regulations setting forth the PSRO hospital review process, under Subpart G (published in proposed form at the same time as this Subpart D) provide that length-of-stay norms will be used to assist the PSRO in developing length-of-stay projections which, in turn, assist in setting the time when the next PSRO review must be completed. Criteria will be used in concurrent and preadmission review for screening in order to select from a large number of cases those which require peer review. For example, where a PSRO review coordinator finds that certain physical symptoms or diagnostic test results of a patient are not consistent with the criteria developed by the PSRO for a certain diagnosis, the coordinator would refer the case to a PSRO physician advisor for peer review. When an admission is certified, the coordinator would then set a length-of-stay period at the end of which continued stay review must be completed.

In making this assignment, review coordinators will use length-of-stay projections developed by physicians of the PSRO. In developing such projections, these physicians will use regional and, when available, PSRO length-of-stay information as guides. These projections will assist in assigning certified lengths-of-stay which reflect the point in time that patients with a given diagnosis or undergoing a given procedure should be ready for discharge. These projections would then be available to review coordinators as they screen individual admissions. Because individual patients vary widely in their clinical presentation, it will often be appropriate in individual cases to assign a length-of-stay period shorter or longer than the projected period developed for an aggregate of patients. This may be done by the review coordinator, often with the guidance of the physician advisor. In other instances, a patient will present a problem, rather than a clear diagnosis. In such cases, the length-of-stay assignment should be based on a projection of when the nature of the patient's condition will be more fully clarified. When a patient is admitted with a diagnosis for which the PSRO has not made the projections noted above, it would need to utilize length-of-stay norms in assigning a length-of-stay period. In such cases, review organizations often assign a period based on the 50th percentile of lengths-of-stay for patients of a similar age and condition. Finally, in those instances where a PSRO is conducting concurrent quality assurance, it may wish to assign a length-of-stay period based on the point in time that a critical procedure or outcome may be expected to occur.

Under these regulations and Subpart G, criteria and standards are also established as points of reference for each medical care evaluation study, by the group or committee responsible for the study, in advance of its actual conduct. Patterns of medical care which depart from the previously established criteria and standards are then analyzed to determine the cause of such departure and to assess the need for programs of education or administrative change. In addition, norms, criteria and standards will be applied by each PSRO as points of reference in the analysis of profiles of health services, health care practitioners, and hospitals.

The new regulations policies of the Department issued July 25, 1976, require that this Notice of Proposed Rulemaking

(NPRM) have an implementation plan prepared prior to its issuance. In compliance with these requirements, an implementation plan was forwarded to the Secretary and he has authorized the issuance of this NPRM without the use of a Notice of Intent (NOI) which would otherwise be required by the new policies because:

1. There is an urgent requirement for these regulations.

2. Over an extended period of time there has been significant interaction between the Department and organizations and individuals in the development of this NPRM which has satisfied the spirit and intent of the NOI. Specifications for this NPRM were reviewed by the National Professional Standards Review Council at public meetings and available for public comment at least twice. Draft transmittals presenting policies incorporated in this NPRM have been presented to the National Council, and circulated to all planning and conditional PSROs, PSRO Support Centers and professional organizations, as well as other organizations that routinely receive PSRO information. In addition, requests by outside organizations for information contained in this NPRM have been fulfilled.

Interested persons are invited to submit written comments, suggestions or objections concerning the proposed regulations to the Director, Bureau of Quality Assurance, Health Services Administration, Room 16A55, 5600 Fishers Lane, Rockville, Maryland 20857 on or before March 28, 1977.

All comments received in timely response to this Notice will be considered and will be available for public inspection in the above named office during regular business hours.

It is proposed to make this regulation effective upon republication in the FEDERAL REGISTER.

NOTE.—The Department of Health, Education, and Welfare has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107.

Dated: November 22, 1976.

THEODORE COOPER,
Assistant Secretary for Health.

Approved: January 11, 1977.

MARJORIE LYNCH,
Acting Secretary.

PART 101—PROFESSIONAL STANDARDS REVIEW

It is proposed to issue a new Subpart I of Part 101 of Title 42 as set out below.

Subpart I—Norms for PSRO Hospital Review

Sec.
101.901 Applicability.
101.902 Definitions.
101.903 Application of norms, criteria and standards in the review of services provided in hospitals.
101.904 Regional norms, criteria and standards.
101.905 PSRO establishment of area norms, criteria and standards.
101.906 Technical assistance.
101.907 Approval of significant differences from regional norms, criteria and standards.
101.908 Availability of norms, criteria and standards for inspection.

AUTHORITY: Sec. 1156, Social Security Act, Sec. 249F(b) of Pub. L. 92-603, 86 Stat. 1435-1436, (42 U.S.C. 1320(c)(5)); sec. 1102 of the Social Security Act, 49 Stat. 647, as amended (42 U.S.C. 1302).

Subpart I—Norms for PSRO Hospital Review

§ 101.901 Applicability.

Section 1156 of the Act requires that, in carrying out its review responsibilities as prescribed under Section 1155(a)(1) and (2) of the Act, each PSRO shall apply professionally developed norms of care, diagnosis and treatment based upon typical patterns of practice in its area as principal points of evaluation and review. The regulations of this Subpart are applicable to the development and application of such norms with regard to health care services and items for which payment may be made under the Act which are provided in hospitals for which a PSRO has assumed review responsibility.

§ 101.902 Definitions.

As used in this Subpart:

(a) "Act" means the Social Security Act, as amended (42 U.S.C. Chapter 7).

(b) "Area" means the geographical area within the boundaries of a State, or within the boundaries of one or more counties or other political subdivisions in a State, designated as constituting an area with respect to which a PSRO may be designated, pursuant to Section 1152(a) of the Act.

(c) "Criteria" means predetermined elements of health care, developed by health professionals relying on professional expertise, prior experience and the professional literature, with which aspects of the quality, medical necessity, and appropriateness of health care services may be compared.

(d) "Hospital" means a health care institution or distinct part of a health care institution in the PSRO area as defined in section 1861(e)-(g) of the Act, except that such institution shall not be a Christian Science sanatorium operated, or listed and certified, by the First Church of Christ, Scientist, Boston, Massachusetts.

(e) "Length-of-stay projection" means a criterion which defines the expected point in time at which patients of similar age and diagnosis or condition would be expected to be ready for discharge. This projection is established by the PSRO based upon an analysis of regional norms and, where available, PSRO area norms for lengths-of-stay.

(f) "National Council" means the National Professional Standards Review Council established under Section 1163 of the Act.

(g) "Norms" means numerical or statistical measures of usual observed performance of health care activities.

(h) "Professionally developed norms of care, diagnosis and treatment" means norms, criteria and standards.

(i) "PSRO" means a Professional Standards Review Organization which is conditionally or unconditionally designated.

(j) "Region" means a geographical division, as determined by the Secretary with the advice of the National Council, which is larger than a PSRO area and with respect to which the National Council may distribute norms, criteria, and standards to PSROs within such division.

(k) "Standards" means professionally developed expressions of the range of acceptable variation of performance from a norm or criterion.

(l) "The Secretary" means the Secretary of Health, Education, and Welfare, or any other officer or employee of the Department of Health, Education, and Welfare to whom the authority involved has been delegated.

§ 101.903 Application of norms, criteria and standards in the review of services provided in hospitals.

(a) *Norms and criteria applied in preadmission and concurrent review.* Each PSRO shall, in the preadmission and concurrent review process, as specified in §§ 101.703, 101.704, and 101.705 of this Part:

(1) Apply criteria specifying clinical indications for hospital admission, the appropriate nature of a preadmission work-up and/or the types of services which are most effectively and appropriately provided at a hospital level of care, in accord with §§ 101.703(a)(1)(H), 101.703(b)(1)(i), and 101.704(a)(1).

(2) Apply length-of-stay projections or norms in assigning initial and extended certified length-of-stay periods, in accord with §§ 101.703(a)(2)(i) and (ii) and (b)(2) of this Part.

(3) Identify diagnoses, conditions, clinical areas or procedures which, based upon analysis of normative data and prior experience, will be automatically certified for admission, in accord with § 101.705 of this Part.

(4) Apply length-of-stay norms to specify the time when attending physician certifications are required, in accord with § 101.706(a).

(b) *Norms and criteria applied in alternate review methods.* Where the Secretary has approved an alternate review method, pursuant to § 101.709 of this Part, norms and criteria shall be applied as specified in the approved alternate review plan.

(c) *Criteria and standards applied in medical care evaluation studies.* Each PSRO shall apply criteria and standards in medical care evaluation studies, conducted pursuant to § 101.710 of this Part. Such criteria and standards shall relate to the specific objectives of the medical care evaluation study and shall be used to define the information necessary to identify the degree of conformance between actual performance and that specified in the criteria. The identification of a pattern of performance which does not conform to applicable criteria or standards shall result in those services involved in the pattern being subjected to further analysis through peer review.

(d) *Norms, criteria and standards applied in profile analysis.* Norms, criteria and standards shall be applied by each PSRO as points of reference in the analysis of profiles under § 101.711 of this Part for the purposes stated in § 101.711(c) of this Part.

(e) *Application of PSRO norms, criteria and standards by delegated hospitals.* All hospitals which are delegated review functions under Subpart I of this Part shall apply norms, criteria and standards which are established by the PSRO in the same manner as required of the PSRO under this section, except as specified in § 101.905(e).

§ 101.904 Regional norms, criteria and standards.

(a) The National Council shall provide for the distribution to each PSRO of appropriate regional norms, criteria, and standards to be used by the PSRO as principal points of reference in its establishment of area norms, criteria, including length-of-stay projections, and standards.

(b) The Secretary will, within 30 days from the date of each such distribution, publish a notice in the FEDERAL REGISTER stating that the distribution has been made by the National Council, and that such material will be open to inspection and copying by members of the public at the Office of the Assistant Secretary for Health.

(c) The National Council shall, from time to time, review the material it has distributed, make revisions where appropriate, and distribute revisions to each PSRO. A notice of the availability of such revisions for inspection shall promptly be published by the Secretary in the FEDERAL REGISTER in accord with paragraph (b) of this section.

§ 101.905 PSRO establishment of area norms, criteria and standards.

(a) Each PSRO shall establish written area norms, criteria (including length-of-stay projections), and standards which are required in Subpart G of this Part for preadmission and concurrent review, or for alternate review methods, and for profile analysis, using as principal points of reference such regional norms, criteria and standards as have been distributed under § 101.904 and PSRO area norms which reflect typical patterns of practice in the entire PSRO area.

(b) Each PSRO shall establish written criteria and standards to be used as principal points of reference in conducting medical care evaluation studies as described in § 101.710 of this Part.

(c) Each PSRO shall specify, in the written formal plan to be approved by the Secretary prior to designation of the PSRO, the organizational structure and procedures which the PSRO will employ to establish, disseminate, validate and modify norms, criteria, and standards.

(d) Each PSRO shall periodically reassess, revise and update the norms, criteria and standards currently applied in preadmission and concurrent review, or in an alternate review method established pursuant to § 101.709 of this Part.

(e) Where patterns of practice in certain locations or hospitals are substantially different from patterns in the remainder of the PSRO area, and the PSRO determines that there is a reasonable basis for such difference, such as limited resources, unusual patient populations or other characteristics which make the variation appropriate, the PSRO may establish different criteria (including length-of-stay projections), and standards for use in preadmission and concurrent review to be applicable only to such locations or hospitals in the PSRO area.

§ 101.906 Technical assistance.

The National Council and the Secretary will, upon request, subject to the availability of funds and personnel, provide technical assistance to aid each PSRO in utilizing applicable regional norms, criteria and standards, as principal points of reference in establishing PSRO area norms, criteria and standards.

§ 101.907 Approval of significant differences from regional norms, criteria and standards.

(a) All norms, criteria (including length-of-stay projections), and standards to be employed by each PSRO in the preadmission and concurrent review process, or in an alternate review method established pursuant to § 101.709 of this Part, shall be forwarded by the PSRO to the Secretary upon their establishment and revisions, if they have been made, at least annually thereafter.

(b) Criteria and standards established by the PSRO for use in medical care evaluation studies and norms, criteria and standards for use in profile analysis shall be forwarded by each PSRO to the Secretary on a sample basis in accordance with applicable procedures specified by the Secretary.

(c) The Secretary will review the norms, criteria and standards established and submitted by the PSRO pursuant to paragraph (a) above and identify significant differences from the regional norms, criteria and standards distributed by the National Council. The Secretary will so notify the National Council and the PSRO. Such notice will explain that the PSRO may consult and discuss with the National Council as to whether a reasonable basis exists for usage of such norms, criteria and standards which differ from regional norms, criteria and standards if the PSRO forwards a written request to the National Council within 30 days of the notice.

(d) The National Council shall, after appropriate consultation and discussion with the PSRO, if such consultation and discussion is requested within the time specified, approve or disapprove the PSRO norms, criteria and standards in question based upon its determination as to whether a reasonable basis exists for the usage of such norms, criteria and standards.

(e) Norms, criteria, and standards established and submitted by the PSRO in accordance with § 101.905 and § 101.907(a) may be used by each PSRO in the concurrent and preadmission review process, or in an alternate review method established pursuant to § 101.709 of this Part, unless such norms, criteria and standards have been disapproved by the National Council.

(f) If the National Council disapproves certain PSRO norms, criteria or standards, the PSRO shall make appropriate modifications for review by the Secretary pursuant to paragraphs (a) and (c) of this section.

§ 101.908 Availability of norms, criteria and standards for inspection.

(a) Each PSRO shall disseminate to each hospital in the PSRO area a copy of the norms, criteria (including length-of-stay projections), and standards to be employed by the PSRO and by delegated hospitals in the preadmission and concurrent review process, or in an alternate review method established pursuant to § 101.709 of this Part.

(b) Each PSRO shall publish in local medical periodicals and in one newspaper of general circulation in the area a notice stating that the norms, criteria and standards currently employed by the PSRO in concurrent and preadmission review (or an alternate review method established pursuant to § 101.709 of this Part), in medical care evaluation studies, and in profile analysis are available at the principal office of the PSRO for public inspection.

[FR Doc.77-1953 Filed 1-24-77;8:45 am]

federal register

TUESDAY, JANUARY 25, 1977

PART III

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Federal Insurance Administration

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Determinations for Various Communities

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Federal Insurance Administration

[24 CFR Part 1917]

[Docket No. FI-2544]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for the Borough of East Newark, New Jersey

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917 (§ 1917.4 (a)), hereby gives notice of his proposed determinations of flood elevations for the Borough of East Newark, New Jersey.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the Borough of East Newark must adopt sound flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at Borough Hall, 34 Sherman Avenue, East Newark, New Jersey 07029.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mayor Raymond Graham, Borough Hall, 34 Sherman Avenue, East Newark, New Jersey 07029. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

Source of flooding	Location	Elevation in feet above mean sea level
Passaic River (tidal).	I-280 (downstream side of road).	10
	Central Ave.	10
Passaic River (tidal).	370 ft north along Passaic Ave. from intersection of Central and Passaic Aves.	

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974.)

Issued: November 22, 1976.

J. ROBERT HUNTER,
Federal Insurance Administrator.

[FR Doc.77-1865 Filed 1-24-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2568]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for the City of Aberdeen, Mississippi

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917 (§ 1917.4 (a)), hereby gives notice of his proposed determinations of flood elevations for the City of Aberdeen, Mississippi.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the City of Aberdeen must adopt sound flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed flood elevations (100-year flood) are listed below for selected locations. Map and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at City Hall, Box 31, Aberdeen, Mississippi 39730.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mayor H. A. Miller, City Hall, Box 31, Aberdeen, Mississippi 39730. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

Source of flooding	Location	Elevation in feet above mean sea level
Tombigbee River.	U.S. Highway 45	20[1]
	St. Louis-San Francisco RR.	20[1]
Mattubby Creek	Meridian St.	202
City Ditch	Illinois Central Gulf RR.[1]	203
	do.[2]	204
	Polar St.	206
	Chestnut St.	209
	Locust St.	210
	Meridian St.	211
	Hickory St.	212
	James St.	212
	Madison St.	212
	Jefferson St.	214
	Long St.	215
James Creek tributary No. 1.	Thayer Ave.	210
	Highway No. 25 north.[1]	221
	Old G.M. & O. Rd.[1]	225
	High St.	225
	Glendale Circle	225
	West Parkway	228
	Central St.	234
James Creek tributary No. 2.	Illinois Central Gulf RR.	203
	Junction Meridian and Evergreen St.[2]	213
	Hamilton St.[2]	216

[1] Downstream side.
[2] Upstream side.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974.)

Issued: November 22, 1976.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.77-1850 Filed 1-24-77;8:45 a.m.]

[24 CFR Part 1917]

[Docket No. FI-2557]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for the City of Cabool, Missouri

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917 (§ 1917.4(a)), hereby gives notice of his proposed determinations of flood elevations for the City of Cabool, Missouri.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the City of Cabool

must adopt sound flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at City Hall, 618 Main Street, Cabool, Missouri 65689.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mayor David Rusc, City Hall, 618 Main Street, Cabool, Missouri 65689. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

Source of flooding	Location	Elevation in feet above mean sea level
Big Pine River	Airport Rd.	1,224
	U.S. Route 60 and 63	1,234
	Cedar St.	1,248
	Elm St. and Route E	1,252
	Cannaday Lane	1,268
Unnamed tributary No. 1.	St. Louis & San Francisco RR.	1,246
	Ozark Ave. and U.S. 60.	1,249
	Summit Ave	1,251
	Walnut St.	1,254
	Spruce St.	1,259
	Second St.	1,266
	Cedar St.	1,270
	Third St.	1,272
	Tindel Ter.	1,280
	Sycamore St.	1,289
	Highland St.	1,301
	Meeker St.	1,303
Unnamed tributary No. 2.	Elm St.	1,254
Unnamed tributary No. 3.	St. Louis & San Francisco RR.	1,254
	Elm St. and Route F	1,257
	Main St.	1,262
	Ozark Ave. and U.S. 60.	1,279
	Summit Ave	1,285
	Garst St.	1,297

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974.)

Issued: November 15, 1976.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc 77-1851 Filed 1-24-77;8:45 am]

[24 CFR Part 1917]

(Docket No. FI-2562)

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for the City of Carrollton, Georgia

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917 (§ 1917.4 (a)), hereby gives notice of his proposed determinations of flood elevations for the City of Carrollton, Georgia.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the City of Carrollton must adopt sound flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed flood elevations (100-year flood) are listed below for selected locations. Map and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at City Hall, City Hall Avenue, Carrollton, Georgia 30117.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mayor C. L. Cashan, City Hall, City Hall Avenue, Carrollton, Georgia 30117. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

Source of flooding	Location	Elevation in feet above mean sea level
Beulah Creek	Brumbelow Rd.[1]	986
	do.[2]	989
	Beulah Church Rd.[1]	992
	do.[2]	995
Beulah Creek tributary	Brumbelow Rd.[1]	1,008
	do.[2]	1,011
Buffalo Creek	Georgia Highway 166[1]	992
	do.[2]	995
	Hayes Mill Rd.	997
	Trojan Ave.[1]	1,009
	do.[2]	1,114
	Stadium Dr.[1]	1,114
	do.[2]	1,117
	Roop St.[1]	1,020
	do.[2]	1,021
	U.S. Highway 27	1,022
	Dixie St.	1,022
	Southwire East Mill driveway.	1,036
	Southwire Dam[1]	1,036
	do.[2]	1,042
	Blandenburg Rd.	1,042
	Georgia Highway 16	1,049
Buffalo Creek tributary No. 1.	Stickland Rd.[2]	1,042
	Adamson Ave.[1]	1,054
	do.[2]	1,055
Buffalo Creek tributary No. 2.	Georgia Highway 166	1,044
Chandler's Spring Creek.	Kings Bridge Rd.[1]	989
	do.[2]	992
Curtis Creek	Stewart St.	991
	Lake Carroll Dam[1]	991
	do.[2]	1,006
	Georgia Highway 166	1,007
Curtis Creek tributary No. 1.	Almon Rd[1]	1,007
	do.[2]	1,010
	Georgia Highway 166[1]	1,012
	do.[2]	1,014
	Cedar St.	1,027
	U.S. Highway 27-A[1]	1,072
	do.[2]	1,077
Curtis Creek tributary No. 3	Lakeshore Dr.[1]	1,012
	Abandoned airport runway.[1]	1,012
	Do.[2]	1,022
Little Tallapoosa River.	Lovvorn St.	981
	Alabama St.	984
	Brumbelow Rd.	987
	Center of Georgia RR.	988
	Kings Bridge Rd.	989
	U.S. Highway 27	990
Little Tallapoosa River. tributary.	West White St.[1]	1,035
	do.[2]	1,042
	Cherry Dr.[1]	1,055
	do.[2]	1,057
Tanyard Branch	River Dr.[1]	989
	do.[2]	990
	High St.[1]	1,008
	do.[2]	1,015
	Alabama St.[1]	1,037
	do.[2]	1,041

[1] Downstream side.
[2] Upstream side.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974.)

Issued: December 3, 1976.

J. ROBERT HUNTER,
Federal Insurance Administrator

[FR Doc 77-1868 Filed 1-24-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2550]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for the City of Derby, Connecticut

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917 (§ 1917.4(a)), hereby gives notice of his proposed determinations of flood elevations for the City of Derby, Connecticut.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the City of Derby, Connecticut must adopt sound flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at City Hall, 35 Fifth Street, Derby, Connecticut 06418.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mayor Edward Ceccarelli, City Hall, 35 Fifth Street, Derby, Con-

necticut 06418. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

Source of flooding	Location	Elevation in feet above mean sea level
Housatonic River.	Route 8	21
	PC RR	22
	Bridge St	22
Naugatuck River.	PC RR	26
	Route 34	28
	Division St	30

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974.)

Issued: November 15, 1976.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.77-1855 Filed 1-24-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2547]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for the City of East Tawas, Michigan

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917 (§ 1917.4(a)), hereby gives notice of his proposed determinations of flood elevations for the City of East Tawas, Michigan.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the City of East Tawas must adopt sound flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at City Hall, 120 West Westover Street, East Tawas, Michigan 48730. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

Source of flooding	Location	Elevation in feet above mean sea level
Tawas River	Franklin St	588
Tawas Lake	Tawas Lake Rd	588
Tawas Bay	Newman St	584

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974.)

Issued: November 15, 1976.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.77-1862 Filed 1-24-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2559]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for the City of Laurel, Mississippi

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917 (§ 1917.4(a)), hereby gives notice of his proposed determinations of flood elevations for the City of Laurel, Mississippi.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the City of Laurel, Mississippi must adopt sound flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at City Hall, P.O. Box 647, Laurel, Mississippi 39440.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mayor W. L. Patrick, Jr., City Hall, P.O. Box 647, Laurel, Mississippi 39440. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

Source of flooding	Location	Elevation in feet above mean sea level
Tallahalla Creek	County Rd	224
	I.G.G. RR	226
	Mississippi Highway	227
	U.S. Highway	231
	I-59	234
	U.S. Highway 11	238
Tallahoma Creek	County road	214
	U.S. Highway 84	224
	I.C.G. RR	225
Country Club Tributary No. 1.	Southern RR	216
	Ellisville Blvd	219
	West Dr	223
	Airport Dr	228
	Iris Dr	233
	Grandview Dr	237
	Interstate 59	237
	U.S. Highway 84	238
	I.C.G. RR	271
Country Club Tributary No. 2.	Jefferson St	253
	Congress St	256
	U.S. Highway 84	259
Country Club Tributary No. 3.	Sunset Rd	240
Daphne Park Tributary.	I.C.G. RR	229
	4th Ave	233
	Jefferson St	237
	Maple St	237
	Mason St	245
	Central Ave	255
	6th St	267
	8th St	270
Gardiner Park Tributary.	Arco Lane	231
	Cooks St	233
	Cross St	234
	Front St	238
	Magnolia St	239
	7th St	240
	8th St	242
	10th St	245
	5th Ave	245
	13th St	250
	15th St	254
	18th St	259
	20th St	264
	21st St	269

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974.)

Issued: November 15, 1976.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.77-1849 Filed 1-24-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2560]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for the City of Leawood, Johnson County, Kansas

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917 (§ 1917.4(a)), hereby gives notice of his proposed determinations of flood elevations for the City of Leawood, Johnson County, Kansas.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the City must adopt flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at the City Hall, 9617 Lee Boulevard, Leawood.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify the Honorable Eugene E. Alt, Mayor of Leawood, 9617 Lee Boulevard, Leawood, Kansas 66206. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

Source of flooding	Location	Elevation in feet above mean sea level
Dyke Branch	State line	865
	Lee Blvd	882
	86th St	889
James Branch	104th St	832
	Sagamore Rd	837
	108rd St	840
	Lee Blvd	866
	Belinder Rd	873
	Ensley Lane	878
Indian Creek	State Line Rd	831
	Interstate 435	832
	Tributary No. 1	835
	Tributary No. 2	838
Tomahawk Creek	Indian Creek confluence	841
	119th St	862
	Roe Ave	869
	Nall Ave	876

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974.)

Issued: November 29, 1976.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.77-1853 Filed 1-24-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2546]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for the City of Norton Shores, Michigan

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917 (§ 1917.4(a)), hereby gives notice of his proposed determinations of flood elevations for the City of Norton Shores, Michigan.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the City of Norton Shores must adopt sound flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at City Hall, 4801 Henry Street, Norton Shores, Michigan 49441.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mayor Frank Buck, City Hall, 4801 Henry Street, Norton Shores, Michigan 49441. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

Source of flooding	Location	Elevation in feet above mean sea level
Lake Michigan	Shore end of Seminole Rd.	584
	Shore end of Hendrick Rd.	584
Black Lake	Shore end of Judson Rd.	601
Mona Lake	Shore end of Peninsula Dr.	584
	City park	584

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974.)

Issued: November 15, 1976.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.77-1863 Filed 1-24-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2563]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for the City of Pensacola, Florida

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917 (§ 1917.4(a)), hereby gives notice of his proposed determinations of flood elevations for the City of Pensacola, Florida.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the City of Pensacola must adopt sound flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at City Hall, Pensacola, Florida 32521.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mayor Barney B. Burks, City Hall, P.O. Box 12910, Pensacola, Florida 32521. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

Source of flooding	Location	Elevation in feet above mean sea level
Gulf of Mexico	Langley Ave	10
	Mantalvo	10
	Hyde Park Rd. extended.	9
	9th Ave	9
	Coyle St	9
	"P" St. (Bayou Chico).	8
	"Q" St. (Bayou Chico).	8
	Cervantes St. (Bayou Texa upstream side).	8
	Cervantes St. (Bayou Texa downstream side).	9
	Mallory St. (Bayou Texa).	8
	Hyde Park Rd. (Bayou Texa).	8
	34th St. (Bayou Texa).	7

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974.)

Issued: November 15, 1976.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.77-1867 Filed 1-24-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2549]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for the City of Plantation, Florida

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917 (§ 1917.4(a)), hereby gives notice of his proposed determinations of flood elevations for the City of Plantation, Florida.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the City of Plantation must adopt sound flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed flood elevations (100-year flood) are listed below for selected locations. Map and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at City Hall, 400 Northwest 73rd Avenue, Plantation, Florida 33317.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mayor Frank Veltri, City Hall, 400 Northwest 73rd Avenue, Plantation, Florida 33317. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

Source of flooding	Location	Elevation in feet above mean sea level
Ponding	Northwest 119th Ave. and Northwest 21st Ct.	8
	Northwest 118th Ave. and Northwest 12th St.	8
	Northwest 117th Ave. and Northwest 12th St.	8
	University Dr. and Sunrise Blvd.	8
	Northwest 11th Pl. and Northwest 70th Ave.	8
	Northwest 10th Ct. and Northwest 43d Ave.	7
	Northwest 3d Pl. and Commodore Dr.	7
	Hiatus Rd. and Broward Blvd.	7
	Northwest 46th Ave. and Broward Blvd.	7
	Tara Dr. and East Mount Vernon Dr.	7
	Pine Island Rd. and Peters Rd.	7
	Peters Rd. and East Tropical Way.	7
	Southwest 70th Ter. and Southwest 30th St.	7

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974.)

Issued: November 15, 1976.

J. ROBERT HUNTER,
Federal Insurance Administrator.

[FR Doc.77-1854 Filed 1-24-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2561]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for the City of Riverdale, Georgia

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917 (§ 1917.4(a)), hereby gives notice of his proposed determinations of flood elevations for the City of Riverdale, Georgia.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the City of Riverdale must adopt sound flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed flood elevations (100-year flood) are listed below for selected locations. Map and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at City Hall, 6690 Church Street, Riverdale, Georgia 30274.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mayor Lamar Hutcheson, City Hall, 6690 Church Street, Riverdale, Georgia 30274. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

Source of flooding	Location	Elevation in feet above mean sea level
Stream A	Bixley Dr.	911
	Pineview Ter.	909
Stream B	Voyles Dr.	889
	Riverdale Rd.	847
Stream C	Springdale Dr.	893
	Sherwood-Maye Dr.	879
Stream CT	Roundtree Rd.	903
	Roberts Dr.	901
Stream D	Taylor Rd.	880

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974.)

Issued: November 29, 1976.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.77-1869 Filed 1-24-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2545]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for the City of Sauk Rapids, Minnesota

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917 (§ 1917.4(a)), hereby gives notice of his proposed determinations of flood elevations for the City of Sauk Rapids, Minnesota.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the City of Sauk Rapids must adopt sound flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at City Hall, 104 North Benton Drive, Sauk Rapids, Minnesota 56379.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mayor Bernard Gratzek, City Hall, 104 North Benton Drive, Sauk Rapids, Minnesota 56379. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

Source of flooding	Location	Elevation in feet above mean sea level
Mississippi	Highway 152 bridge	993
	10th St. North	998
County Ditch No. 3	River Ave.	999
	2d Ave. South	1,019
	3d Ave. South	1,020
	7th St. South	1,021

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974.)

Issued: November 15, 1976.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.77-1864 Filed 1-24-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2548]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for the Town of Alford, Massachusetts

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917 (§ 1917.4(a)), hereby gives notice of his proposed determinations of flood elevations for the Town of Alford, Massachusetts.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the Town of Alford must adopt sound flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at Town Hall, Great Barrington, Massachusetts 01230.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mr. L. Schoonmaker, Town Hall, Great Barrington, Massachusetts 01230. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

Source of flooding	Location	Elevation in feet above mean sea level
Green River	Route 71	839
Alford Brook	East Rd.	814

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974.)

Issued: November 11, 1976.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.77-1861 Filed 1-24-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2553]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for the Town of Edenton, North Carolina

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917 (§ 1917.4 (a)), hereby gives notice of his proposed determinations of flood elevations for the Town of Edenton, North Carolina.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the Town of Edenton must adopt sound flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at Town Hall, P.O. Box 300, Edenton, North Carolina 27932.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mayor Roy L. Harrell, Town Hall, P.O. Box 300, Edenton, North Carolina 27932. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

Source of flooding	Location	Elevation in feet above mean sea level
Queen Anne Creek	Norfolk & Southern R.R.	7
	North Carolina Highway No. 32	7
	Paxton Lane	8
	U.S. Highway No. 17	14
	Norfolk & Southern R.R.	20
Northwest Tributary of Queen Anne Creek	Old Hertford Rd.	13
	North Broad St.	14
Filberis Creek	U.S. Highway No. 17	7
	West Albemarle St.	7
Pembroke Creek	U.S. Highway No. 17	7
Northeast Tributary to Pembroke Creek	3,000 ft upstream	7
	6,000 ft upstream	9
	9,000 ft upstream	10

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974.)

Issued: November 11, 1976.

J. ROBERT HUNTER,
Federal Insurance Administrator

[FR Doc.77-1858 Filed 1-24-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2551]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for the Town of Kermit, West Virginia

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968, Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917 (§ 1917.4 (a)), hereby gives notice of his proposed determinations of flood elevations for the Town of Kermit, West Virginia.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the Town of Kermit must adopt sound flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed flood elevations (100-year flood) are listed below for selected locations. Map and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at Town Hall, Kermit, West Virginia 25674.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mayor Callie Preece, Town Hall, Kermit, West Virginia 25674. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

Source of flooding	Location	Elevation in feet above mean sea level
Tug Fork of Big Sandy River	Kentucky St.	625

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Adminis-

trator 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974.)

Issued: November 29, 1976.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.77-1856 Filed 1-24-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2555]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for the Town of Pulteney, Steuben County, New York

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968, Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917 (§ 1917.4(a)) hereby gives notice of his proposed determinations of flood elevations for the Town of Pulteney, Steuben County, New York.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program the Town must adopt flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at the Town Hall, Pulteney.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mr. Fred Wright, Town Supervisor of Pulteney, Hammonds Port, New York. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

Source of flooding	Location	Elevation in feet above mean sea level
Keuka Lake	Northern corporate limits.	721
	Armstrong Rd. extended.	721
	Brown Rd. extended	721
	Southern corporate limits.	721

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974.)

Issued: November 29, 1976.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.77-1860 Filed 1-24-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2543]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for the Town of Tarboro, North Carolina

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917 (§ 1917.4(a)), hereby gives notice of his proposed determinations of flood elevations for the Town of Tarboro, North Carolina.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the City of Tarboro must adopt sound flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at P.O. Box 220, Main Street, Tarboro, North Carolina 27886.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mayor Victor Herring, P.O. Box 220, Main Street, Tarboro, North Carolina 27886. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

Source of flooding	Location	Elevation in feet above mean sea level
Tar River	U.S. 64, bypass	43
	Seaboard Coastline RR.	43
	U.S. 64	43
	North Carolina 44	48
Canal	St. James St.	44
	Baker St.	44
	Clark Dr.	51
	Forest Acres Dr.	52
Hendricks Creek	East Carolina RR.	43
	Wilson St.	45
	Howard Ave.	51
	Sunset Ave.	53
	Fountain St.	58
	Seaboard Coastline RR.	65
Tributary A	Howard Ave.	53
	U.S. 64, bypass	67
	Speight Ave.	79
	Pine St.	80
Tributary B	West Northern Blvd.	65
	U.S. 64, bypass	65

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974.)

Issued: November 1, 1976.

J. ROBERT HUNTER,
Federal Insurance Administrator.

[FR Doc.77-1866 Filed 1-24-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2556]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for the Township of Bernards, New Jersey

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917 (§ 1917.4(a)), hereby gives notice of his proposed determinations of flood elevations for the Township of Bernards, New Jersey.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the Township of Bernards must adopt sound flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed flood elevations (100-year flood) are listed below for selected locations. Map and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at Township Hall, 15 West Oak Street, Basking Ridge, New Jersey 07920.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mayor Robert Deane, Township Hall, 15 West Oak Street, Basking Ridge, New Jersey 07920. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

Source of flooding	Location	Elevation in feet above mean sea level
Passaic River	Bridge at Valley Rd.	217
	Bridge at Lord Stirling Rd.	230
	Bridge at Madisonville Rd.[1]	244
	Bridge at Interstate 287.[1]	253

Source of flooding	Location	Elevation in feet above mean sea level
Penn's Brook	Bridge at North Maple Ave.	25[2]
	Bridge at Berta Place.[2]	290
	Bridge at Berta Place.[1]	296
	Bridge at Cherry Lane.[1]	315
	Bridge at Appletree Lane.[1]	321
Dead River	Bridge at King George Rd.	216
	Bridge at Martinsville Rd.[1]	225
	Bridge at Somerville Rd.[1]	230
	Bridge at Mine Brook Rd.[1]	253
	Bridge at Amin Rd.	267
Harrison Brook	Bridge at Valley Rd.[1]	225
	Bridge at Lyons Rd.[1]	238
	Bridge at Lake Rd.[1]	270
Harrison Brook Branch 1.	Bridge at Valley Rd.[2]	223
	Bridge at Valley Rd.[1]	224
	Bridge at Lurline Dr.[1]	230
Harrison Brook Branch 2.	Bridge at Atlas Rd.[2]	250
	Dam at private road [1]	267

[1] Upstream of bridge.
[2] Downstream of bridge.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974.

Issued: November 29, 1976.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.77-1852 Filed 1-24-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2552]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for the Village of Bay View, Erie County, Ohio

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917 (§ 1917.4(a)) hereby gives notice of his proposed determinations of flood elevations for the Village of Bay View, Erie County, Ohio.

Under these Acts the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the Village must adopt flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at the Village Hall, 304 East Bayview Drive, Bay View Sandusky.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mayor William Ehrnsberger, Village Hall, 304 East Bayview Drive, Bay View Sandusky, Ohio 44870. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

Source of flooding	Location	Elevation in feet above mean sea level
Sandusky Bay	Sunset Plaza	578
	West Cayuga Trail (taken east to west).	578
	West Cherokee Trail	578
	Plaza Drive (taken east to west).	578

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974.)

Issued: November 29, 1976.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.77-1857 Filed 1-24-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2554]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for the Village of Honeoye Falls, Monroe County, New York

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968, Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917 (§ 1917.4(a)) hereby gives notice of his proposed determinations of flood elevations for the Village of Honeoye Falls, Monroe County, New York.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the Village must adopt plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at the Village office, 5 East Street, Honeoye Falls.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mayor William Mantegna, 5 East Street, Honeoye Falls, New York 14472. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

Source of flooding	Location	Elevation in feet above mean sea level
Honeoye Creek	North West corporate limit.	592
	Lehigh Valley RR.	596
	North Main St. (NYS 65).	617
	East St. (NYS 65)	642
	Ontario St.	668

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974.)

Issued: November 29, 1976.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.77-1859 Filed 1-24-77;8:45 am]

federal register

TUESDAY, JANUARY 25, 1977

PART IV

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

■

RAILROAD REVITALIZATION AND REGULATORY REFORM

Procedures for Computing the Internal Rate of Return on Projects

Title 49—Transportation

CHAPTER II—FEDERAL RAILROAD ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Docket No. 76–01]

PART 258—REGULATIONS GOVERNING SECTION 505 OF THE RAILROAD REVITALIZATION AND REGULATORY REFORM ACT OF 1976

Procedures for Computing the Internal Rate of Return on Projects

Section 505(b)(2)(A) of the Railroad Revitalization and Regulatory Reform Act of 1976, as amended ("Act"), requires that the rate of return be considered in evaluating projects under section 505. The purpose of this document is to amend the regulations under section 505 of the Act to provide applicants for Federal financial assistance under that section with uniform guidance regarding: (1) The procedures to be followed in computing the internal rate of return ("IRR") on a project for which assistance is being requested; and (2) the format to be utilized in presenting the steps of that computation.

Part 260 of this chapter is being amended concurrently to provide applicants for Federal financial assistance under section 511 of the Act with the same uniform guidance regarding the computation of IRR on a project for which assistance under that section is being requested. The preamble to those amendments is equally applicable to this document, and is incorporated herein by reference.

The impact of section 505 assistance, including the inflationary impact of the regulations, was fully considered prior to publication of the initial regulations on October 8, 1976. The procedures proposed herein will not affect the overall costs or benefits of the program as it was set forth in the initial regulations. Accordingly, an evaluation of the expected impact of the regulations pursuant to the Department of Transportation Policies to Improve Analysis and Review of Regulations (41 FR 16200) is not required.

In consideration of the foregoing, Part 258 of Chapter II of Title 49 of the Code of Federal Regulations is amended as follows:

1. Paragraph (a)(4)(v) of § 258.7 is revised to read:

§ 258.7 Form and content of application.

(a) • • •
(4) • • •

(v) A detailed statement setting forth the estimated internal rate of return on the project, computed in accordance with the provisions of subpart C of part 260 of this chapter which is hereby incorporated herein by reference. This statement shall follow the procedures and utilize the format required by Subpart C of Part 260 of this chapter. Relevant material presented elsewhere in the application need not be repeated in this statement, but must be explicitly referenced.

• • • • •

Effective date: These amendments to 49 CFR Part 258 become effective January 25, 1977.

Dated: January 19, 1977.

ASAPH H. HALL,
Administrator, Federal Railroad Administration.

[FR Doc.77-2342 Filed 1-24-77;8:45 am]

[Docket No. 76–02]

PART 260—REGULATIONS GOVERNING SECTION 511 OF THE RAILROAD REVITALIZATION AND REGULATORY REFORM ACT OF 1976

Procedures for Computing the Internal Rate of Return on Projects

On October 8, 1976, the Federal Railroad Administrator ("Administrator") published in the FEDERAL REGISTER final regulations under section 505 (41 FR 44570) and section 511 (41 FR 44577) of the Railroad Revitalization and Regulatory Reform Act of 1976, later amended ("Act"), concerning applications for Federal financial assistance. On December 10, 1976, the Administrator published in the FEDERAL REGISTER (41 FR 53996) miscellaneous amendments to the section 511 regulations. The purpose of this document is to amend the regulations under section 511 to provide applicants with uniform guidance regarding: (1) The procedures to be followed in computing the internal rate of return ("IRR") on a project for which assistance is being requested; and (2) the format to be utilized in presenting the steps of that computation.

For approximately a year and a half, the Department of Transportation ("Department") has been examining the manner in which railroads calculate the rate of return on railroad investment projects in order to develop standard procedures for use by the railroad industry. During this period project evaluation in general and IRR in particular were discussed in detail with both senior officials and technical staff at thirteen railroads. Dozens of project analyses done by railroads were examined in great detail. This study, which is continuing, revealed that IRR is widely used by railroads to support their investment decisions, but that the procedures followed and the assumptions used varied considerably among railroads. Such diversity would greatly complicate the task of the Federal Railroad Administration ("FRA") in assessing the projects submitted for financial assistance under section 511 of the Act. Furthermore, not all the procedures followed by railroads in their IRR computations are appropriate for the FRA's purposes. Therefore, these regulations have been developed to promote uniformity in the procedures to be followed and the format to be used by applicants seeking financial assistance under section 511.

Use of the IRR. With respect to projects under section 511, rate of return is useful in determining: (1) Whether the facilities or equipment to be acquired, rehabilitated, improved, constructed, developed or established with the proceeds of the obligation guaranteed will be economically and efficiently utilized (section 511(g)(4)); and (2) whether there is reasonable security and protection for the United States (section 511(g)(5)).

Revisions to these regulations. As previously noted, the Department's study on IRR in the railroad industry is not completed. FRA therefore welcomes comments from railroads and other interested parties regarding these regulations. Changes to these regulations may be made as a result of those comments, the continuing research of the Department, and FRA's experiences in administering the programs under sections 505 and 511.

The impact of section 511 assistance, including the inflationary impact of the regulations, was fully considered prior to publication of the initial regulations on October 8, 1976. The procedures proposed herein will not affect the overall costs or benefits of the program as it was set forth in the initial regulations. Accordingly, an evaluation of the expected impact of the regulations pursuant to the Department of Transportation Policies to Improve Analysis and Review of Regulations (41 FR 16200) is not required.

Since these amendments relate to public benefits and contracts, public notice and an opportunity to comment are not required. These amendments will, therefore, become effective upon publication.

In consideration of the foregoing, Part 260 of Chapter II of Title 49 of the Code of Federal Regulations is amended as follows:

1. Paragraph (a)(7)(i) of § 260.7 is revised and Subpart C is added as follows:

§ 260.7 [Amended].

(a) • • •
(7) • • •

(i) A detailed statement setting forth the estimated internal rate of return on the project, computed in accordance with the provisions of subpart C of this part. This statement shall follow the procedures and utilize the format required by Subpart C. Relevant material presented elsewhere in the application need not be repeated in this statement, but must be explicitly referenced.

Subpart C—Procedures for Computing the Internal Rate of Return on Projects

Sec.
260.31 Applicability.
260.33 Definitions.
260.35 Procedures to be followed and format to be utilized.
Appendix A—Selected cash flow impacts.
Appendix B—Forms to be used in computing IRR
Form I—Analysis of capitalized investment.
Form II—Analysis of sale or retirement of assets.
Form III—Analysis of expenses and contribution to profit.
Form IV—Consolidation of cash flows.
Form V—Computation of IRR.

§ 260.31 Applicability.

This subpart prescribes the procedures to be followed and the format to be utilized in computing the IRR under paragraph (a)(7)(i) of § 260.7 of subpart A of this part.

§ 260.33 Definitions.

As used in this subpart—

(a) Investment means any substantial non-recurring expenditure even if expensed for accounting purposes.

(b) IRR means the estimated internal rate of return on a project for which an application for financial assistance is filed pursuant to this part.

(c) IRS means the Internal Revenue Service.

(d) Project has the meaning set forth in subpart A of this part and for purposes of this subpart shall include as separate projects each part or subpart into which the total project for which the applicant seeks funding may reasonably be divided and for which the cost is considered independent of the remainder of the total project cost. The cost of a part or subpart is independent of the remainder of the total project cost if the cash flow impact upon the applicant resulting from the part or subpart would be approximately the same regardless of whether or not the remainder of the total project were undertaken. The cost of each part or subpart shall comprise all expenditures (including those for which no Federal assistance is requested) necessary to carry out the objectives of that part or subpart.

§ 260.35 Procedures to be followed and format to be utilized.

(a) A narrative discussion of the IRR computation for the project consisting of the following five parts shall be prepared and provided:

(1) *A detailed description of the project.* This description must present the following: the objectives of the project; what assets will be improved, rehabilitated, acquired or constructed; where they will be located; and how they will be used. It must also describe any other work to be done as a part of the project, and any operating changes, including retirement of assets, which will accompany the investment.

(2) *A detailed description of the base case.* The base case is the most favorable alternative action the applicant could take with little or no investment. The description must be comparable in scope to the description of the project. In some cases, the most favorable alternative action may be to do nothing, i.e., making no change in the current situation. In other cases, the applicant may have other alternative actions such as rerouting traffic, changing operating practices (perhaps with an increase in operating costs), or relying more heavily on facilities or equipment belonging to others. If the applicant has considered more than one alternative action (not requiring major investment) to the project, the applicant must describe each of the actions considered and give the rationale for the selection of the base case from among those other actions.

(3) *A discussion of key assumptions.* All general assumptions and those relating only to a particular cash flow impact which substantially affect the IRR should be explained. Assumptions regarding traffic volumes deserve particular attention. The applicant must specify how much traffic is expected if the project and base case are undertaken, and where the difference, if any, between the project and base case is expected to come from (e.g., diverted from truck, diverted from other railroads, generated by the project, etc.). Other key assumptions may relate to actions by third parties, such as regulatory agencies and other railroads.

(4) *A discussion of each of the project's and base case's cash flow impacts.* The applicant must identify all the benefits and costs of the project and base case which will affect its cash flow. For each cost and benefit used in the IRR computations, the applicant must explain why the particular cash flow will result from the project or base case, and how the size of the cash flow and the corresponding measure in physical units were estimated. In addition, the applicant should identify and discuss important costs and benefits which it has not been able to quantify. Since the project will be audited to provide a continuing assessment of the IRR computation, applicant must indicate how an audit trail could best be facilitated. Appendix A of this subpart lists the most common cash flow impacts of railroad investment projects and base case alternatives, indicates the kinds of actions likely to involve each type of cash flow, suggests how each might be measured (both in physical and monetary units), and discusses special problems associated with each. Appendix A is not exhaustive: other cash flow items should be included in the analysis as appropriate.

(5) *A discussion of the principal areas of uncertainty.* This discussion must indicate why particular values might be different from those used in the computation, and the range into which each uncertain value could be expected to fall. It must also indicate the applicant's subjective level of confidence that the computed IRR is a reasonably close prediction of the project's and base case's financial performance. Such a level of confidence may, for example, indicate that a prospective labor saving, although quantifiable, has little likelihood of realization. In some circumstances, the applicant must point out where the IRR fails to incorporate certain important features of the project or the base case, or both. Applicant may enhance its discussion by presenting examples of its own prior experiences with IRR, stating, perhaps, that an audit of past computations has shown marked deviations from actual results regardless of the detail of those computations.

(b) For the project (as it relates to its base case alternative), a thorough presentation of all the computations underlying the IRR using the Forms I–V of Appendix B to this subpart shall be prepared and provided. The computation of the IRR must follow the four steps described below. (This procedure cannot be used if the project consists of replacing an asset, usually equipment, which would otherwise remain in service (at high cost) for only a few more years. In that situation, the lifetime of the project (the new asset) is substantially longer than the lifetime of the base case (the old asset), so that it is not possible to get a differential cash flow in every year of the project's life. A possible approach for handling such cases is to determine the discount rate which gives the same average annual cost per unit of output for both the project and the base case. Because it is expected that very few of the applications will involve such replacements, the procedure for handling them will not be detailed here but will be provided upon request.)

(1) *Step 1: Determination of before-tax cash flows.* The applicant must determine, for each year of the project's expected useful life, up to a maximum of 15 years (unless the cash flow impacts of later years would substantially affect the IRR), both the project's and base case's before-tax cash flow impacts (receipts and disbursements). The cash flow estimates must not include the effects of inflation, but rather must be done in constant dollars. The effects of financing must also be excluded; that is the cash flows must be estimated as if the financing were consummated at no cost.

The various cash flow impacts for this step 1 must be shown on Forms I through V of Appendix B as explained below. On Forms I through V cash flow impacts occurring in the first year of the project and base case are assigned to and recorded in the time period year 1. Cash flows in subsequent years are all assigned to and recorded in the year in which they occur regardless of whether they occur at the beginning or end of the year. For purposes of assigning and recording cash flow impacts of the project and base case, it will be assumed that the project's starting date and thus the commencement of year 1 begins as of the first of the January following the year in which an application for financial assistance is filed.

(i) Capitalized investments which would occur as a part of the project or the base case must be entered in Column 1 of Form I. The capitalized investment includes capitalized engineering work, installation expenditures and other start-up costs allowable in reporting to the IRS. The total investment for the project or base case must be divided into portions which are homogeneous with respect to depreciation method (if depreciable), depreciation period (if depreciable), year in which the assets enter service, and whether the assets qualify for investment tax credit. (If applicant has a considerable tax credit carryforward, the tax credit must be shown only in the year or years it will result in a reduction of tax payments.) A separate form should be completed for each such portion.

(ii) Sales of released assets (as a useful assets or as scrap), which would occur

as a part of the project or the base case, must be entered in Column 1 of Form II. As was the case for capitalized investments, there must be a separate Form II for each portion of the assets sold, such that each portion is homogeneous with respect to tax treatment and year of sale. Form II must also be completed for retirements of assets, even though the sale price is zero, if the retirement will affect the applicant's income taxes and thereby the applicant's cash flow. The sale or retirement of an asset at the end of the project's life, if the cash flow impact is substantial enough to merit inclusion in the computation, must also appear on one or more Forms II. (If a project would continue an asset already owned in its prior use but the base case would put the asset to an alternative use, and if the cash flow from that alternative use is difficult to determine, the applicant may do the analysis as if the asset were to be sold in the base case at its fair market value when put to the alternative use. Similarly, if the base case would continue an asset in its present use but the project would result in the asset being employed in an alternative use, the anticipated cash flow of which would be difficult to determine, the asset in the project may be treated as a sale at fair market value in the IRR computations. In either event, the market value of the asset otherwise put to an alternative use would be entered in Column 1 of a Form II and the asset in its current use (in either the project or base case, as the case may be) would be recorded, as to continuing depreciation and income tax credit, if any, on Form I and, as to expenses and contribution to profit, on Form III. However, whenever possible, the anticipated cash flow of the alternative use, whether in the project or base case, should be entered on Form III rather than treated as a theoretical sale at fair market value.)

(iii) Expense items or contributions to profit which arise by reason of the project or the base case must be documented on Form III for the respective case, with a separate form being used for each item.

Columns 1 and 2 of Form III must be completed unless the difference of column 3 can be ascertained only through a direct computation (as, e.g., car-day savings by reason of track rehabilitation time sensitivity). When practical, expenses and traffic are to be expressed first in physical units (Columns 1, 2 and 3) and then converted to dollars (Column 4). In instances where this is not practical, the applicant may estimate expenses and contribution directly in dollars using only Columns 1, 2, and 4. In Columns 1 and 2, expense items should always be enclosed in parentheses because they represent cash outflows. Thus, positive numbers in Columns 3 and 4 will indicate that the project produces a larger cash inflow (or smaller cash outflow) than the base case.

(2) *Step 2: Determination of after-tax cash flows relating to capital assets.* The applicant must compute the annual after-tax cash flows corresponding to each of the before-tax flows recorded on each Form I and Form II in the previous step. If the applicant expects to pay taxes in some years but not others, the applicant will undoubtedly carry forward (or back) the tax losses and credits from years in which no tax was paid, so as to take full advantage of them. In that case, the applicant must estimate when such tax benefits will actually be received, and include them in the cash flow stream at the appropriate time. State and local taxes should be included unless applicant is unable to estimate a project's or base case's impact on those taxes. The appropriate tax rate for such computations is the applicant's marginal tax rate. This is the rate which would apply to one additional dollar of income earned by the applicant. Normally, the marginal rate will be 48% for Federal taxes except in years in which the applicant does not expect to pay taxes. The average or effective tax rate (found by dividing a firm's actual tax payments by its net income before taxes) is not appropriate for this purpose. If the tax rate assumed is different from 48%, or if the computations assume the applicant will not pay taxes in certain years, then those assumptions must be explained in the discussion of key assumptions. The tax-related computations must be shown on the same forms as were used to record the pre-tax cash flows. Additional working papers should be submitted as necessary to clarify the computations. The computations to be done on the two forms are as follows:

(i) On each Form I, the applicant must indicate in Column 2 the depreciation schedule which it expects to use in reporting to the IRS. In Column 3, the applicant must indicate how much its tax bill will be reduced as a result of the depreciation shown in Column 2. (If the applicant expects to pay taxes every year, Column 3 is simply 48% of Column 2.) In Column 4, the applicant must indicate the tax reduction, if any, it expects from investment tax credit. (The effect of the tax credit must be computed using the flow through method.) Column 5 is the net after-tax cash inflow associated with the investment.

(ii) On each Form II, the applicant must indicate in Column 2 the increase (or decrease) in its Federal income tax payments resulting from the difference between the sale price and the book value of assets to be sold by reason of the project or base case. If an asset is released without a sale or a corresponding write down of book value, Form II is not used, but Form I is used to reflect continuing depreciation as before the release. In Column 3, the applicant must record any recapture of investment tax credit by the IRS. (Such recapture can only occur when an asset is disposed of before it has been in service for seven years.) Finally, Column 4 records the net cash flow in or out.

(3) *Step 3: Determination of aggregate after-tax cash flow.* The applicant must determine the project's aggregate after-tax cash flow using Form IV. This shall be done as follows:

(i) For each year, the corresponding after-tax cash flow (Column 5) on the various Forms I on which the "project" box was checked are summed, and the total entered into Column 1 of Form IV. Then the net after-tax cash flows on the base case Forms I are summed and entered into Column 2 of Form IV.

(ii) Similarly, the project and base case Forms II (Column 4) are consolidated and entered into columns 3 and 4, respectively, of Form IV.

(iii) The Forms III (Column 4) are consolidated into Column 5 of Form IV. The corresponding after-tax cash flow is recorded in Column 6. If the applicant expects to pay taxes every year, Column 6 is simply 52% of Column 5. If applicant expects to pay no taxes, the two columns are identical. If applicant expects to pay taxes in some years but not others, the applicant must incorporate the effects of carrying losses forward (or back) into the estimated after-tax cash flow.

(iv) The aggregate net cash flow for the project relative to the base case is then found and entered in Column 7 of Form IV.

(4) *Step 4: Computation of the IRR.* The applicant must determine the discount rate for which the present value of the differential cash flow stream is zero. That is, the applicant must find the value of r which makes the expression

$$\sum_{i=1}^{n} \frac{c_i}{(1+r)^i}$$

equal to zero. In the above expression, r is the discount rate applied to future cash flows; i is an index denoting a particular year of a project's life; n is the number of years in the project's life; and c_i is the differential cash flow in year i. Computer programs for calculating the rate of return are widely available. If a program is utilized, copies of the printout showing input and output data, and a brief explanation of the program function must be included in the application. If the applicant chooses not to use such a computer program to find the IRR, the applicant may use Form V. If the IRR lies off the graph, it is sufficient to report that the IRR is negative or above 50%. If the nature of the cash flow stream is such that a unique IRR cannot be found, the work done to develop the cash flow stream must be submitted with a note that no IRR could be computed.

(c) Copies of all financial analyses which the applicant did on rejected alternatives to the project, including changes in scale or scope. The applicant need not do any such analyses beyond those already done, nor need the format, assumptions, or procedures used in those analyses be changed to conform to the requirements of these regulations.

(d) A reconciliation between the cash flows used in the IRR computations and all forecasted data presented in the application, both before (for the base case) and after (for the project) giving effect to Federal assistance. This reconciliation must indicate what inflation factor or factors were used in developing the forecasted financial statements as compared to the constant dollar figures used in the IRR computations. The reconciliation must also show how each of the individual parts and subparts of the project relates to the applicant's forecasted financial statements.

APPENDIX A—SELECTED CASH FLOW IMPACTS

Railroad investments usually affect the investor's cash flow by changing some of the following things:

Use of assets.
Contribution from traffic.
Labor requirements.
Locomotive requirements.
Requirements for cars, trailers, and containers.
Maintenance material consumption.
Energy consumption.
Accident rates and severity.
Expenditures needed to meet legal requirements.
Salvage value.
Installation and start up expenses.

While this list is not exhaustive it does identify the most common cash flow impacts.

Some of the items listed, such as start up expenses, are almost always costs of projects or base cases, rather than benefits. Others, such as salvage value, are usually benefits. Most of the items, however, may be either project or base case benefits or costs, depending on the particular situation.

This appendix briefly discusses each of the eleven factors listed above. The discussions include four parts: a list of the kinds of actions which often involve the particular cash flow impact in question: the physical units in which the impact is generally measured; suggestions for converting the physical units to their monetary equivalent; and notes on special characteristics or problems associated with the particular cash flow impact.

USE OF ASSETS

Characteristic Actions: Assets are often released for sale or alternative uses when they are replaced or made unnecessary by new assets. Examples are pole line materials released when microwave is installed; shop equipment released when similar new equipment is acquired; rail replaced by rail in better condition; and land and track materials released when yards, shops, and terminals are made unnecessary by new facilities elsewhere. Some other types of actions, such as line changes and the installation of centralized traffic control, often permits some tract segments to be abandoned, thereby releasing track material for sale or other uses.

On the other hand, some actions involve the use of assets already owned, thereby prohibiting their sale or use of assets already for other purposes. Examples are car modifications and projects involving land and buildings already owned.

Physical Units: Feet (or miles) of rail, number of ties, acres of land, etc.

Monetary Value: The value of an asset released by an action depends on what will be done with it. The value of an asset occupied by an action, on the other hand, depends on what would have been done with it in the absence of the action. Regardless of whether it is the action or its alternative which makes the material available, one must first carefully specify what is assumed to happen to the asset both with and without the action, and identify the factors which change the cash flow stream. Depending on the particular circumstances, any of the following might be involved: payment received from selling the asset; a multi-year stream of income produced by the asset in some use; tax paid on the sale of the asset; expenditure for dismantling and or moving the asset; recapture by the IRS of investment tax credit taken when the asset was purchased (if it had been in use for less than seven years). It is the use of the released asset which values it. Thus, a released asset such as rail which, by cascading, results in the subsequent release of less valuable rail, must be valued in its use and not as the value of subsequently released assets.

In cases in which the asset is transferred to another use which produces income over several years, the effect of releasing the asset extends over several years, and must be expressed as a series of annual cash flows, rather than a lump sum.

Special Features: A common error in project evaluations is to value a used asset at its book value (i.e., purchase price less accumulated depreciation). The book value may be far from the value of the asset on the open market, especially in the case of rail released by track abandonments and land released by the abandonment of facilities in urban areas. The only way the book value of retired assets enters into the cash flow stream is in determining the tax paid on the sale of the asset (or the tax saving if the asset is discarded or sold for less than its book value).

In calculating the tax paid on the sale of a released asset, the ordinary tax rate (48%) should be used, except when the capital gains rate applies.

It is sometimes difficult or impossible to estimate the contribution to profit which a particular asset, such as second hand rail, will produce in an alternative use. In such cases, it is better to do the financial analysis on the assumption that the asset in question would be sold at its fair market value (even though it would in fact be put to an alternative use), rather than leaving the asset out of the computations entirely.

CONTRIBUTION FROM TRAFFIC

Characteristic Actions: Actions which affect the availability and attractiveness of the railroad to shippers. The action may involve giving the shipper better access to the railroad (track extensions and terminal improvements) or better service. Line consolidations, on the other hand, may involve abandonments which deprive some shippers of service, or may result in such degradations in service quality that some shippers switch to other carriers. Faster service can result from more power or improvements in track, yards, terminals, signals, and communication. Another component of service quality, reduced loss and damage to lading, can be occasionally improved by eliminating accidents (wayside warning devices), using specialized cars, and making improvements to yard and terminal facilities. Service quality can also be enhanced by purchases of additional freight cars and trailers, so as to reduce the likelihood of car shortages. Another aspect of service quality is reliability, which may be affected by improvements in yards, terminals, and communications, as well as the elimination of accidents. Still another component of service quality is the cost to the shipper of packing and loading, which may be affected by investments in specialized cars and terminal facilities.

Physical Units: Car-loads.

Monetary Value: The contribution to profit is found by subtracting the variable cost of moving the traffic from the associated revenue. The variable cost is best estimated by a careful study of the operations and costs of the particular movements involved.

Such a study is not practical for certain traffic. In these cases the best alternative may be to estimate the variable cost using system averages, as is done in the Interstate Commerce Commission's Rail Form A Carload Cost Scales, and Rail Revenue Contribution studies. Where appropriate, such system average costs should be adjusted to exclude costs not involved in the particular movement, and to reflect the current, not the historical, costs of assets to be purchased in the future.

Special Features: The contribution from new traffic resulting from an improvement is extremely important, but it is also one of the most difficult of all project benefits to estimate. One major problem is estimating the volume of traffic likely to result from a particular improvment, especially if the improvement affects service quality. A second serious problem is estimating the variable cost of particular movements. (These estimates may be facilitated by a six-part FRA cost study currently in progress.)

LABOR REQUIREMENTS

Characteristic Actions: Labor requirements are often reduced by automation, facility consolidation, faster train running times, reductions in switch engine requirements, and better communications for operations, and reductions in maintenance needs. On the other hand, actions involving new or expanded yards, terminals, or shop facilities may increase manpower requirements.

Physical Units: Man-hours, number of employees.

Monetary Value: The value of labor depends on the particular situation. If the action results in a change in the number of employees or in overtime, hours, the wages and fringe benefits associated with that change directly affects the railroad's cash flow. If an action changes or eliminates work for employees without changing jobs or overtime, the change will affect the railroad's cash flow if either:

The man-hours released or occupied by the change can be used on other profitable tasks which would otherwise not be done, or which would be accomplished by paying overtime or hiring more people; or

The action can be combined with one or more other actions, each of which saves or requires a fraction of an employee, so that the set of actions results in a change in the size of the work force.

In either case, the value of the man-hours released or consumed is the cost of the associated wages and fringe benefits. On the other hand, if the result of the action is simply to give existing employees more (or less) free time on the job, no cash impacts should be attributed to the change in the amount of work.

Special Features: There are several different kinds of labor which a project might affect: road crews, yard crews, maintenance-of-way, shop, inspection, clerical, and other.

Determining the wages and fringe benefits associated with a particular man-hour is often not straightforward because of rules governing employee compensation. The payment of some train crews on a mileage rather than a time basis is an example.

Wage and fringe benefits savings resulting from the elimination of jobs may be at least partially offset by costs incurred as a result of labor protection agreements. Depending on the situation, these costs may be lump-sum or recurring. Determination of employee protection costs is complicated by the fact that the individual who holds a position which is to be eliminated may not be the person who is actually laid off as a result of the elimination. Rather, the person whose job is eliminated may displace a person with less seniority holding a similar job. That person may, in turn, displace another employee and so on.

LOCOMOTIVE REQUIREMENTS

Characteristic Actions: Actions reducing train running time (track upgrading, line changes, signal system improvements, etc.), or which permit moving the same traffic with fewer trains (yard consolidations) or with fewer terminal delays (yard and terminal improvements) can all reduce the number of road engines needed. The number of switch engines needed can be reduced by some types of yard and terminal improvements, such as yard consolidations, track changes, and the installation of weigh-in-motion scales. Actions which lead to increased traffic, such as track extensions, may increase the need for both types of locomotives.

Physical Units: Locomotive-years (or locomotive-hours or locomotive-days). Note that one does not have to save 365 locomotive-days to save a locomotive-year, since locomotives are not available for service 365 days per year because of maintenance work. If a railroad's locomotives were available for service 78% of the time, it would only have to save 285 locomotive-days to save a locomotive-year.

Monetary Value: One way to estimate the value of a locomotive-year is the following four-step process:

1. Estimate the after-tax cash flow stream resulting from owning a locomotive. The components of this stream would be: the investment expenditure; investment tax credit; tax savings from depreciation; normal maintenance; overhauls; and salvage value. The cash flow stream must be in constant dollars of the same base year as would be used in the rest of the IRR computation.

2. Calculating the net present value of the cash flow stream, using the yield on 180-day United States treasury bills as the discount rate.

3. Find a stream of equal annual outlays which produces the same net present value as was found in Step 2. The annual outlay may be found by multiplying the net present value by

$$\frac{r(1+r)^n}{(1+r)^n-1}$$

where r is the yield in Sept 2, and n is the number of equal annual outlays.

4. Find the pre-tax equivalent of the after-tax annual payment found in Step 3, by dividing the after-tax figure by one minus the railroad's marginal tax rate. This is the pre-tax value of a locomotive year, expressed in dollars of the base year chosen in Step 1.

Increased locomotive productivity is somewhat analogous to increased labor productivity (see Labor Requirements) in that it may not always lead to significant cash savings. This is especially true with switch engines, since a decrease in car movements may not reduce the number of engines required if the number of locations which the switch fleet must serve does not also change. On the other hand, reducing the number of locations covered (by consolidating yards, for example) may decrease switch engine requirements. As in the case of increased labor productivity, increased locomotive productivity affects a railroad's cash flow only if a locomotive can be sold (or a purchase avoided) or if the locomotive is able to do other profitable work which would not be done otherwise.

Special Features: The locomotive values computed using the procedure above include maintenance and overhaul expense, but not fuel or other labor expense. Therefore any concomitant change in fuel or labor (except maintenance) should be estimated separately. Care should be taken to exclude changes in locomotive maintenance costs from any other estimates of changes in maintenance costs resulting from the investment project.

REQUIREMENTS FOR CARS, TRAILERS, AND CONTAINERS

Characteristic Actions: Actions which change train running time (such as track upgrading, purchase of additional power, line changes and signal improvements); actions which change the time cars spend in yards, or permit bypassing yards altogether (yard improvements and improved communication systems); actions which change the time cars are out of service for maintenance (shop facilities, car modifications, track upgrading); and actions which affect the turnaround time for cars in terminals.

Physical Units: Car-days.

Monetary Value: The procedure for finding the value of a locomotive-year or day is equally applicable to cars. (See Locomotive Requirements).

Another acceptable approach is to use per diem costs (including incentive per diem) since those charges approximate the cost of ownership. Although incentive per diem is in addition to car ownership costs, its inclusion in the car-day value is justified because it reflects, to some degree, the fact that a railroad sometimes loses business during short peaks in demand, because it is not immediately able to buy or hire the cars necessary to take advantage of a particular business opportunity.

Over the long run, however, a railroad need not continually lose traffic, so long as it is willing to incur the cost of owning a sufficient number of cars. Therefore, it is not appropriate to use the investing railroad's average contribution per car-day to value improved car utilization in IRR calculations. Given that per diem is a satisfactory approximation to the cost of car ownership, there is no need to distinguish between foreign car-days saved and investor car-days saved by an action.

Special Features: The valuation of improved car utilization is complicated by the fact that some projects, such as improvements in classification yards, may affect the entire car fleet, while other projects may affect only certain kinds of cars. For example, it may be that all the cars affected by a particular terminal improvement are refrigerator cars. The car-day value to be used is therefore not necessarily the same in all projects. Rather, it depends on the type of cars involved.

MAINTENANCE MATERIAL CONSUMPTION

Characteristic Actions: Since nearly all assets require maintenance, almost any action involving the acquisition of new assets will lead to expenditures for maintenance materials. On the other hand, actions which involve taking assets out of service, such as replacements, eliminate the need to maintain the retired assets. Improving track conditions may decrease equipment maintenance, while decreasing traffic volumes may decrease track maintenance needs.

Primary Units: List of materials involved (and quantities).

Monetary Value: The value of maintenance materials is the price of those materials (plus freight in and labor added, if any). Where a direct relationship exists between maintenance labor and materials, it may be more convenient to first estimate man-hours and then compute material costs in proportion to the man hours.

Special Features: The material costs (or savings) associated with changes in maintenance may include work equipment, as well as the materials consumed during maintenance.

Usually the best basis for predicting maintenance costs is the maintenance history of similar assets in similar service. Manufacturers can also sometimes provide projections of maintenance expense. To the extent practical, care should be taken to specifically reflect cyclical maintenance (overhauls) by assigning the maintenance costs (or savings) to the years in which they will actually occur, rather than normalizing, or smoothing out, the cash flow stream.

Assets which permit maintenance savings often involve maintenance costs which partially offset those savings.

ENERGY CONSUMPTION

Characteristic Actions: Actions changing locomotive activity or locomotive efficiency. Line changes and locomotive replacements may reduce fuel consumption by road engines. Improvements in yards and terminals, as well as locomotive replacements, may reduce the fuel consumed by switch engines. Improvements in buildings and structures can cut heating costs.

Physical Units: Gallons, kilowatt-hours, etc.

Monetry Value: Found by multiplying the fuel or electricity by the current price per unit.

Special Features: Road engine energy consumption generally varies with gross tonmiles and speed. Yard engines are frequently idling, consuming energy, even when not in use. Thus, energy consumption may vary with the number of switch engine crew shifts rather than the amount of work done. Care should be taken not to count changes in locomotive energy consumption twice, once as a change in locomotive requirements and once as a change in energy consumption.

ACCIDENT RATES AND SEVERITY

Characteristic Actions: Accidents may be reduced by wayside warning detectors (hot box detectors, grade crossing protection, dragging equipment detectors, etc.), lading protection devices, some specially equipped cars, some yard and terminal improvements, and track upgrading.

Physical Units: Accidents (of several different types) per year.

Monetary Value: Only the monetary cost likely to be borne by the railroad would be relevant to the IRR computation. This would include damage to equipment, roadway and lading, and the cost of wreckage removal as well as injury to people. The expected cost of an accident varies drastically, depending on the particular situation.

Special Features: Accidents delay trains and yard and terminal operations. Thus, actions which reduce accidents may also improve car and locomotive productivity. Care should be exercised that such benefits are counted only once.

EXPENDITURES NEEDED TO MEET LEGAL REQUIREMENTS

Characteristic Actions: Actions permitting abandonment of old facilities or equipment may reduce the need for such expenditures. New facilities may make some such expenditures necessary.

Physical Units: List of actions, such as grade crossing protection, water treatment facilities, or the installation of retention toilets, which would be required to bring the facilities or equipment in question up to legal standards.

Monetary Value: The total cost of the improvements including engineering (except engineering work already done), capital expenditure, maintenance, and operation. These expenditures should be offset by the appropriate tax reductions (resulting from depreciation and investment tax credit) which would result from those improvements.

SALVAGE VALUE

Characteristic Actions: Acquisition of new assets or disposal or existing assets.

Physical Units: List of the particular assets involved (such as tamping machine, 500' of 112# rail, etc.)

Monetary Value: The cash flow resulting from disposing of the assets or using them elsewhere. (See Use of Assets).

Special Features: The salvage value of most assets declines as the asset ages. The value of land often remains roughly constant, as does the value of materials in well maintained track. The salvage value of assets which cannot be used for other purposes, such as a culvert, is zero.

When salvage values are small relative to other benefits and costs, and when they are heavily discounted (because they occur far in the future), their impact on the IRR is likely to be negligible. In such cases, the salvage value can be safely ignored.

INSTALLATION AND START-UP EXPENSES

Characteristic Actions: Most fixed facilities.

Physical Units: Man-hours, list of materials required.

Monetary Value: As noted in the discussion of labor requirements the value of the labor depends on the particular situation. The value of the materials would normally be their market price.

Special Features: Often all or part of the expenditures needed to get a new asset in place and operating is capitalized. In such a case, the capitalized portion of the expenditure should be included as part of the investment cost, but not counted again as a start-up expense.

APPENDIX B—FORMS TO BE USED IN COMPUTING IRR

FORM I.—*Analysis of capitalized investment (constant dollars)*

Applicant .....
Project .....
Date .....
Sheet No. ..... of .....

Portion of investment covered by this sheet .....
Depreciation method used ..... Depreciation period .....
This investment would occur in the ☐ Project ☐ Base case (check one)

Year	(1) Amount capitalized	(2) Depreciation	(3) Tax reduction from depreciation	(4) Tax reduction from investment tax credit	(5) Net cash flow in (out)
1					
2					
3					
4					
5					
6					
7					
8					
9					
10					
11					
12					
13					
14					
15					
Totals					

Instructions

Use separate forms for portions of the investment which would receive different tax treatment or which would enter service in different years.

Estimate amounts in cols. 1–4 as would be done in reporting to IRS.

Col. 5 equals col. 3 plus col. 4 minus col. 1.

Applicant .....
Project .....
Date .....
Sheet No. ..... of .....

FORM II.—*Analysis of sale or retirement of assets (constant dollars)*

Assets covered by this sheet .....
Depreciation method used ..... Depreciation period .....
Book value of assets at time of sale .....
This sale would occur in the ☐ Project ☐ Base case (check one)

Year	(1) Sale price	(2) Tax on gain (or tax saving on loss) from disposal	(3) Tax credit recapture	(4) Net cash flow in (out)
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				
11				
12				
13				
14				
15				
Totals				

Instructions

Use a separate form for each portion of the assets which would receive different tax treatment or be disposed of at different times.

Estimate amounts in cols. 1–3 as would be done in reporting to the IRS.

Col. 4 equals col. 1 minus col. 2 (plus col. 2 if a tax saving occurs) minus col. 3.

Applicant .....
Project .....
Date .....
Sheet No. ..... of .....

FORM III.—*Analysis of expenses and contribution to profit (constant dollars)*

Expense or contribution .....
Physical units used ..... Monetary value per physical unit .....

Year	Physical units			Cash difference (in before-tax constant dollars)
	Project	Base case	Difference	
	(1)	(2)	(3)	(4)
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				
11				
12				
13				
14				
15				
Totals				

Instructions

This form applies to all cashflow impacts except capitalized investments and sales or retirements of assets. Use a separate form for each type of expense or contribution to profit.
Col 3 equals col. 1 minus col. 2.
Col. 4 equals col. 3 times monetary value per physical unit.

Applicant .....
Project .....
Date .....
Sheet No. ..... of .....

FORM IV.—*Consolidation of cash flows (constant dollars)*

Year	Form I totals		Form II totals		Form III		Net cash flow in (out)
	Project	Base case	Project	Base case	Before tax totals	After tax	
	(1)	(2)	(3)	(4)	(5)	(6)	(7)
1							
2							
3							
4							
5							
6							
7							
8							
9							
10							
11							
12							
13							
14							
15							
Total							

Instructions

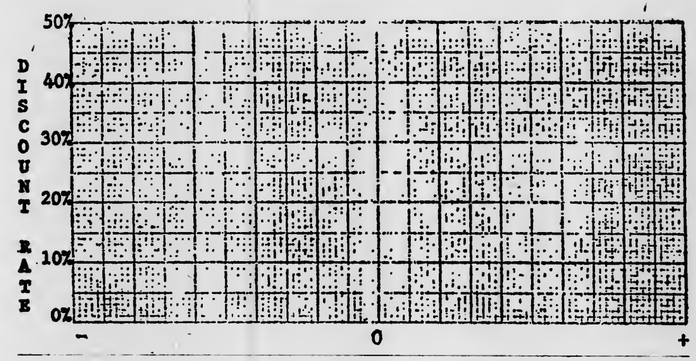
Cols. 1 through 5 are found by summing the right most columns on the indicated forms I–III;
Col. 6 equals col. 5 times (1 minus marginal tax rate) unless taxes will be paid in some years but not others.
Col. 7 equals col. 1 plus col. 3 plus col. 6 minus col. 2 minus col. 4. The subtracting of a (net cash flow out) results in the addition of a positive number.

Date .....
Sheet No. ..... of .....

FORM V.—*Computation of IRR (constant dollars)*

Year	(1) Cash flow	Present value					
		At 10 pct		At 25 pct		At 40 pct	
		(2)		(3)		(4)	
		Factor	Value	Factor	Value	Factor	Value
1		0.909		0.800		0.714	
2		.826		.640		.510	
3		.751		.512		.364	
4		.683		.410		.260	
5		.621		.328		.186	
6		.564		.262		.133	
7		.513		.210		.095	
8		.467		.168		.068	
9		.424		.134		.048	
10		.386		.107		.035	
11		.350		.086		.025	
12		.319		.069		.018	
13		.290		.055		.013	
14		.263		.044		.009	
15		.239		.035		.006	
Total							

INTERPOLATION CHART



PRESENT VALUE OF CASHFLOW STREAM

IRR=——

Instructions

1. Col. 1 is brought from form IV col. 7.
2. Cols. 2, 3, and 4 are found by multiplying col. 1 each time by the indicated factor.
3. Plot totals of cols. 1, 2, 3, and 4 against discount rate used (0, 10, 25, and 40 pct respectively). Applicant must indicate scale on horizontal axis of chart and connect the points in a column (1–4) sequence.
4. IRR is the discount rate corresponding to the point at which the graphical presentation intersects the zero present value ordinate."

Effective date: These amendments to 49 CFR Part 260 become effective January 25, 1977.

Dated: January 19, 1977.

ASAPH H. HALL,
Administrator,
Federal Railroad Administration.

[FR Doc.77-2363 Filed 1-24-77;8:45 am]

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[49 CFR Part 258]

[Docket No. 76-01]

RAILROAD REVITALIZATION AND REGULATORY REFORM ACT OF 1976

Proposed Standards for Evaluation and Other Miscellaneous Amendments

On October 8, 1976, the Federal Railroad Administrator ("Administrator") published in the FEDERAL REGISTER (41 FR 44577) final regulations governing applications under section 505 of the Railroad Revitalization and Regulatory Reform Act of 1976 ("Act"), concerning the purchase of redeemable preference shares. On October 19, 1976, the President signed into law the Rail Transportation Improvement Act ("RTIA"), Pub. L. 94-555, which, among other things, amends sections 505 and 506 of the Act. The purpose of this document is to correct certain technical errors that were contained in the regulations, clarify or revise certain provisions, and amend this part to reflect changes to the Act contained in the RTIA. Major changes in sections 505 and 506 are discussed below.

AMENDMENTS TO SECTIONS 505 AND 506 CONTAINED IN THE RTIA

1. *Distinction between Facilities Rehabilitation and Improvement and Other Projects.* Prior to enactment of the RTIA, section 505(a) of the Act prohibited the Administrator from acting finally on an application for facilities rehabilitation and improvement financing until the date of publication of the Final Standards, Classification and Designation of Lines of Class I Railroads in the United States under section 503 (e) of the Act ("final section 503 report"). Section 212 of the RTIA eliminates this prohibition.

2. *Determination of the Public Interest.* Section 505(b)(2) of the Act sets forth factors which the Administrator must consider in determining the public interest. One of these factors is—

> The availability of funds from other sources at a cost which is reasonable under principles of prudent railroad financial management in light of the railroad's projected rate of return for the project to be financed • • •

Section 216(a)(2) of the RTIA adds as a factor which must be evaluated in determining whether the cost of funds from other sources is reasonable—

> The railroad's rate of return on total capital (represented by the ratio which such carrier's net income, including interest on long-term debt, bore to the sum of average shareholder's equity, long-term debt, and accumulated deferred income tax for fiscal year 1975) as determined in accordance with the uniform system of accounts promulgated by the [Interstate Commerce] Commission • • •

As the information required for this evaluation is available in reports filed with the Interstate Commerce Commission, no changes in the regulations with respect to this additional factor are required.

In determining the public interest under section 505(b)(2) of the Act, the Administrator must also evaluate and consider—

> The public benefits to be realized from the project to be financed in relation to the public costs of such financing and whether the proposed project will return public benefits sufficient to justify the public costs.

Section 216(a)(3) of the RTIA amends section 505(b)(2) of the Act to provide in addition that (except as between applications that would return equal public benefits, where funding priority is to be given to the application that provides safety improvements) in determining the extent to which a project will provide public benefits, the Administrator shall "give the highest priority to projects which will enhance the ability of the applicant carrier or other carriers to provide essential freight services". This requirement has been taken into consideration in the standards for evaluations and determinations under section 505(b)(2) of the Act, which are discussed below.

3. *Standards for Evaluations and Determinations under Section 505(b)(2) of the Act.* Section 212 of the RTIA provides that any regulations published under section 505 of the Act "• • • shall include specific and detailed standards in accordance with which the [Administrator] shall conduct the evaluations and make the determinations required in subsection (b)(2) of [section 505]." The conference report on the RTIA indicates that such standards should "• • • fully explain the rationale for, and method of, defining and determining the elements of the public interest." H.R. Rep. No. 94-1743, 94th Cong., 2d Sess. 47 (1976). These standards are published herein as a new subpart B of this part.

Section 505(b)(2) of the Act, as amended, requires the Administrator to consider the following three factors in determining if the requested financial assistance is in the public interest:

(A) The availability of funds from other sources at a cost which is reasonable under principles of prudent railroad financial management in light of the railroad's projected rate of return for the project to be financed and the railroad's rate of return on total capital for fiscal year 1975;

(B) The interest of the public in supplementing such other funds as may be available for railroad financing; and

(C) The public benefits to be realized from the project to be financed in relation to the public costs of such financing and whether the proposed project will return public benefits sufficient to justify the public costs.

In accordance with section 505(a) of the Act, as amended, these regulations set forth standards by which the Administrator will evaluate each of these factors to determine whether the requested financial assistance is in the public interest. An applicant will receive Federal assistance only if all of the standards have been satisfied. The Administrator will determine the appropriate level of funding for all projects that qualify for assistance. For example, where an applicant applies for funds sufficient to rehabilitate a section of mainline trackage to a physical level adequate to carry high volume of overhead traffic at high speeds, the Administrator may determine that the public interest justifies rehabilitation only to a level adequate to serve traffic originating or terminating on the line. A discussion of the standards proposed under each of the three factors follows below.

A. THE COST OF FUNDS AVAILABLE FROM OTHER SOURCES

Section 258.23 of these regulations proposes evaluation tests by which the Administrator can determine whether the cost of alternative funding from any of three different types of sources is unreasonable under principles of prudent railroad financial management, thus satisfying the first part of the evaluation process. The Administrator will carefully review the statement submitted under § 258.7(a)(7) of this part to determine whether applicant has thoroughly explored all alternative sources of funds, including funds available from affiliated companies or pursuant to arrangements under section 15(19) of the Interstate Commerce Act, 49 U.S.C. 15(19).

The first of the three standards, set forth in § 258.23(b)(1) of the proposed regulations, applies to "borrowed money" and establishes three tests of when the cost of such borrowing is unreasonable. If any of these tests is met, this standard is satisfied. Subparagraph (i)(A) of this standard recognizes that no railroad can remain viable by investing borrowed money at returns which are, on average, less than the concomitant costs. Because the after-tax, internal rate of return on a project (without giving effect to debt service) provides a measure of the maximum cost of capital which may be prudently incurred to finance that project, it would generally be financially imprudent for a railroad to employ borrowed money with an after-tax effective cost higher than a project's internal rate of return. If the interest cost of the money is not higher than the current market yield on debt securities of like tenor of the applicant (or, if none, of debt securities of like tenor of other companies having a Moody's bond rating similar to that of the applicant), however, that cost will not be deemed unreasonable.

Subparagraphs (i)(B) and (C) of this standard recognize that even where the rate of return on a project exceeds the cost of the financing, the cost of borrowing may nonetheless be unreasonable. Thus, under subparagraph (i)(B), if the financial condition and operating results of the applicant (after giving effect to a project's net cash stream) appear inadequate to enable the applicant to service its total debt, the cost of the borrowed money will be deemed unreasonable under principles of prudent railroad financial management. Under subparagraph (i)(C), if the applicant's fiscal 1975 rate of return on total capital, as defined in section 505(b)(2) of the Act, as amended, would be reduced by more than 10 percent as a result of a project whose size is reasonable in comparison to the applicant's total capitalization, the cost will be deemed to be unreasonable. This test may be applicable whether or not the return on the project exceeds the cost of financing. The test is made applicable only to projects whose total cost does not exceed 25 percent of the applicant's total capitalization so that increases in debt load remain at a reasonable level and the standard cannot be satisfied solely because of the magnitude of the project's cost.

The second of the three standards applies to "excess working capital". Working capital is deemed to be "excess" to the extent that (1) it represents an excess of the sum of cash, cash equivalents, and accounts and notes receivable over current liabilities including long-term debt due within one year net of any special funds to be used to pay that debt, and (2) its conversion into less liquid assets is not likely to impair the continuing operations of the railroad. The standard recognizes that every railroad manages its internally available funds to maximize the rate of return on those funds. Such management, whether through short or long range cash planning, establishes for the railroad an opportunity cost theoretically incurred when using such funds to foster internal business growth. The standard defines this opportunity cost as the effective after-tax annual percentage rate of return available on short term securities in which the applicant customarily invests. The cost of excess working capital will be deemed to be unreasonable if (i) the opportunity cost is equal to or greater than the rate of return on the project to be funded and (ii) the use of such excess working capital to finance the project would reduce the applicant's fiscal 1975 rate of return on total capital, as defined in section 505(b)(2) of the Act, as amended, by more than 10 percent.

The third of the three standards applies to "new equity capital" and sets forth different standards for common stock and preferred stock. The cost of new common stock equity is deemed to be unreasonable if the issuance and sale of such common stock would result in dilution of the book value of common stock held by the current shareholders or would reduce the applicant's rate of return on total capital, as defined in section 505(b)(2) of the Act, as amended, by more than 10 percent. The cost of new preferred stock equity is deemed to be unreasonable if the annualized percentage cost of the new issue, including dividends and placement charges, is equal to or greater than the rate of return on the project to be financed or the issuance would reduce the applicant's rate of return on total capital, as defined in section 505(b)(2) of the Act, as amended, by more than 10 percent. However, as provided in § 258.23(b)(3)(iii) of the proposed regulations, the issuance by the applicant of new private equity capital will not be deemed to be unreasonable if the applicant's long-term debt exceeds 67 percent of its total capitalization, regardless of dilutive effects and effects on the applicant's rate of return on total capital.

This standard may require the use of parent company figures if a railroad is a wholly-owned subsidiary. Because a parent company will benefit from improvements in subsidiary operating results, the Administrator will consider the possibility of parent company equity funding, regardless of how it is passed through to its railroad subsidiary, to be a viable source of "new equity capital".

B. THE PUBLIC INTEREST IN SUPPLEMENTING TOTAL RAILROAD FUNDING

Section 505(b)(2)(B) requires the Administrator to consider "the interest of the public in supplementing such other funds as may be available in order to increase the total amount of funds available for railroad financing." In determining whether a specific application is consistent with this overall objective of the Act, it is appropriate that the Administrator be able to evaluate the applicant's long-term role in a viable, efficient, competitive national rail system. Because the nation's railroads are separate, for-profit corporations providing important rail services, the viability of individual carriers is crucial to the overall viability of the system. It is therefore, appropriate that applicants be required to set forth a long-term program to achieve and maintain, without the need for continuing Federal assistance, essential rail services either as a viable business enterprise or through merger or consolidation. The information requirements of the regulations have been revised to require submission of such a program.

By the purchase of redeemable preference shares, the Federal government will be assuming equity ownership in individual corporations, not in the system as a whole. Fiduciary responsibilities, therefore, dictate that care be taken to assure that the applicant be able to redeem the preference shares according to their terms, and the second part of this standard so provides. Finally, because it would clearly not be in the public interest for railroads to undertake financial investments whose burden would undermine the overall financial condition of the corporation, section 258.25(b)(iii) of the proposed regulations provides that the rate of return on the proposed project must equal or exceed the yield applicable on the preference shares.

C. PUBLIC BENEFITS AND COSTS

The third area which the standards address is determination of public benefits and costs associated with each proposed project. Because of the multiplicity of project types and variations between applicants and their markets, the standards establish specific thresholds above which the public benefits associated with proposed projects are substantial and will exceed whatever monetary or social costs are involved, subject to an assessment of its environmental impact.

Consistent with the major thrust of the Act, as amended, the public benefit standards are based on the identification of project categories that will contribute to the establishment and continued maintenance of a high capacity, highly efficient, competitive interstate rail system, in order to provide for essential rail services to meet the current and future needs of the nation for rail transportation. Under section 505(b)(2)(B) of the Act, as amended, discussed above, the Administrator evaluates the applicant carrier and his ability to be a viable element of the national rail system. This section relates the specific project of the applicant to the public interest in strengthening the most significant segments of the national rail network. In this regard, the following four standards, or categories, have been established. If an applicant satisfies any one of these standards, the public benefits of the proposed project will be deemed to justify the public costs.

(1) *Essential Freight Services.* Section 505(b)(2) of the Act provides that (except as between applications that would return equal public benefits, where priority is to be given to the application that provides safety improvements) in determining the extent to which a project will provide public benefits, the Administrator shall "give the highest priority to projects which will enhance the ability of the applicant carrier or other carriers to provide essential freight services". While it could be argued that any service which is economic to the railroad or in demand by shippers is "essential", such an interpretation, by its very breadth, would render the statutory language meaningless as a guide to administrative action.

The proposed standard establishes seven categories of lines that provide essential freight services. Whenever the demand for funds to finance all qualified projects exceeds the availability of appropriated funds, projects which meet this standard will be financed first and in the order in which the category of lines to be rehabilitated or improved is set forth within the standard. The categories are primarily based on the density of traffic that is currently moving on the line or can be demonstrated with specificity to be reasonably likely to move on the line in the immediate future. These categories are set forth in § 258.27(b)(1) of the proposed regulations.

The proposed density standards do not identify an interstate rail system. Rather, the density standards when combined with the other elements of these regulations identify facilities which provide for substantial movements of freight traffic and are likely to survive any future restructuring of the existing system. It must be remembered that section 505 funding is interim in nature, and that subsequent studies will define the rail network essential to the national interest.

Within corridors of consolidation potential, as identified in the final section 503 report, and with regard to certain lower density mainlines, an additional threshold of two million net tons of revenue freight per mile originating or terminating on the line is used to identify lines that warrant investment to meet long-term service needs. Projects which involve a consolidation of lines or coordination of traffic flows are given priority over projects on lines of similar densities which do not involve a consolidation or coordination. Thus, under the proposed standard, the Administrator would not fund a project within a corridor of consolidation potential unless the facility on which funds are to be expended can be supported as a consolidated facility or as a line that will continue to be necessary to carry substantial traffic which originates or terminates on the line.

(2) *Competitive Freight Services.* The presence and viability of rail competition serving major markets is an integral element of a high capacity, highly efficient interstate rail network. On the other hand, rail competition now exists in many economic centers whose traffic base is too small to sustain the ability of even two railroads in the market to compete. The proposed standards, therefore, establish criteria for strengthening competition through two distinct types of assistance.

First, assistance may be given to rehabilitate or improve rail lines in markets where there is a sufficient level of traffic to support competition between two rail carriers. The proposed standard will assure that only those projects which are justified by current traffic levels and the presence of few rail carriers in the market will be funded. The information provided under § 258.7(a)(10) of the proposed regulations will be expected to confirm the strategic role of a carrier in a multi-road market as justification for assistance.

Second, assistance may be given to fund costs associated with the withdrawal of the applicant from a market when the applicant demonstrates his service is uneconomic at current levels of competition. Assistance under this provision may include extraordinary labor costs that result from the withdrawal.

(3) *Special Projects.* Projects which eliminate identifiable and severe public safety hazards will be deemed to have public benefits which justify the public costs.

(4) *Equipment Rebuilding.* Most railroads are able to finance acquisition of new equipment without recourse to Federal assistance programs. For those railroads which cannot obtain private financing of new equipment, the loan guarantee program under section 511 of the Act, as amended, is an available Federal assistance source.

However, because financing of equipment rebuilding, unlike equipment acquisition, may not be available from private sources or appropriate under section 511 of the Act, the fourth standard with respect to public benefits would allow for funding of equipment rebuilding if that equipment is necessary for the applicant to serve adequately current and reasonably prospective traffic which originates or terminates on the lines of the applicant. Rebuilding of locomotives would be allowed where necessary to provide local service and switching.

4. *Order of Funding.* Section 505(b)(2) of the Act requires the Administrator to "* * * act upon each * * * application within 6 months after the date on which all required information is received." Applicants will be notified promptly whether their application is complete and, if not, of the deficiencies. Within 6 months after the date on which the application is complete, the Administrator will determine whether funding of the proposed project is in the public interest.

A determination by the Administrator that the proposed assistance is in the public interest, however, does not automatically mean that the proposed project will be funded. A project will only be funded if there are sufficient appropriated funds available after funding all other projects that have been found to have greater public benefits and thus a higher priority for funding. The order of funding is set forth in § 258.29 of the proposed regulations. It is anticipated that demand for preference share financing will be such that funds will be available only for projects in the higher priority groups.

Fiscal year 1977 appropriated funds become available for commitment on the date of publication of the final standards for evaluations and determinations under section 505 of the Act, as amended, and each application received by that time will be assigned a funding priority based on its relative public benefits. Potential applicants for fiscal year 1977 funds should, therefore, file their applications as soon as possible. Fiscal year 1978 appropriations become available for commitment on October 1, 1977. Projects which have been approved prior to that date will be weighed against each other on that date for available fiscal year 1978 funds.

5. *Priority and Dividend Rate of Redeemable Preference Shares.* The RTIA makes two changes in the characteristics of redeemable preference shares as prescribed in section 506 of the Act. First, section 213 of the RTIA provides that the Administrator may make redeemable preference shares subordinate to any common stock that was issued pursuant to a court-approved reorganization plan under section 77 of the Bankruptcy Act (11 U.S.C. 205) and in exchange for securities that were senior in right to common stock, if the railroad was in reorganization under section 77 prior to February 5, 1976. Second, section 214 of the RTIA modifies the dividend rate payable on preference shares by requiring a minimum of fifteen annual redemption payments (except in the event of prepayment) and providing a maximum yield with respect to those shares which are used solely to reduce the deferred maintenance on facilities. With respect to this latter change, section 214 of the RTIA provides that the yield on such shares shall not be less than the minimum yield that could be calculated under sections 506(a)(3) and (4) of the Act or more than—

Such railroad's rate of return on total capital (represented by the ratio which such carrier's net income, including interest on long-term debt, bore to the sum of the average shareholder's equity, long-term debt, and accumulated deferred income tax credits for the 3 fiscal years preceding the date of submission of the application) as determined in accordance with the uniform system of accounts promulgated by the [Interstate Commerce] Commission in those cases in which such rate of return exceeded such minimum permissible yield.

For the purpose of this section, deferred maintenance is defined as the accumulated physical deterioration in the component parts of a railroad facility, as defined in section 501(3) of the Act, as amended, which causes that facility to fail to meet the standard reasonably necessary to provide adequate freight services. The amount of deferred maintenance that exists on a line is therefore related to the type and density of traffic and the desired quality of service, as well as the previous condition of the facility.

The assessment of the physical condition or remaining useful life of the component parts of a facility and the amount of deferred maintenance in a facility must be based on engineering and maintenance practices customary in the industry. The determination must be made by professionally qualified railroad engineers and managers, projecting the quantities and types of work necessary to restore the facility to a condition adequate to meet current service requirements. The Administrator will review the applicant's submittal in this regard and carefully examine the methodology and assumptions used to calculate the amount and type deferred maintenance associated with a project.

Where it is determined that the proposed Federal assistance is to be "* * * expended solely to reduce deferred maintenance on facilities * * *", a schedule of dividend and redemption payments for the preference shares will be established which produces the maximum yield permissible under section 506(a)(5) of the Act, as amended. In the case of shares whose proceeds result in no reduction in the level of deferred maintenance on facilities, a schedule of dividend and redemption payments will be established which results in a yield that equals the cost of money to the government, except where the public benefits associated with the proposed project clearly warrant a lower yield. In all other cases, the yield will be a weighted average that reflects the portion of total project cost which is expended to reduce deferred maintenance.

REVISIONS NOT REQUIRED BY THE RTIA

Revisions not required by the RTIA are proposed in five areas. First, the requirements of §§258.9 (a) and (b), 258.13, and 258.15 of the regulations will be deleted because they set forth statutorily

prescribed duties or powers of the Administrator or Comptroller General of the United States or deal with matters that are more properly addressed in the financing documents. If an application is approved, purchase of redeemable preference shares will occur in accordance with a financing agreement which will include such terms and conditions as the Administrator deems appropriate, consistent with the purposes of the Act. The terms and conditions that will be imposed as a minimum in the financing documents will be discussed with applicants at an appropriate time during the application process.

Second, it is proposed that renumbered § 258.9 (c), (d) and (e) be revised to require the submission of additional balance sheet or income statement data needed to assess accurately the applicant's financial condition both before and after giving effect to the assistance requested in the application. There has been added to the provisions of § 258.9(c) a requirement that applicants submit the most recent year-end general balance sheet certified by applicant's independent public accountants, if available. Section 258.9(d) has been revised to add the requirements of (1) a submission of applicant's most recent annual income statement certified by applicant's independent public accountants, if available, (2) a spread sheet showing unaudited monthly and year-to-date income statement data for the calendar year in which the application is filed, (3) estimated month-end balance sheets for the months between the date of the unaudited balance sheet presented in Exhibit C and the filing of the application, and (4) a forecasted balance sheet as at the year end for the year in which the application was filed. Section 258.9(e) is amended to add the requirement of forecasted year-end balance sheets for each of the four years subsequent to the year in which the application is filed, both before and after giving effect to the proceeds of the assistance requested in the application. An applicant which does not submit a balance sheet and income statement that have been certified by independent public accountants, as requested in § 258.9 (c) and (d), will be required to supply such statements prior to closing in the event its application for financial assistance is approved, and execution of the financing documents will be contingent upon such certification being satisfactory to the Administrator.

Third, in response to comments by several applicants that more guidance is desired with respect to environmental assessments, § 258.7(a)(8) of the regulations has been revised and an appendix to the regulations has been added which sets forth required environmental information.

Since publication of the initial regulations on October 8, 1976, FRA has published procedures for computing the internal rate of return on proposed projects. Accordingly, § 258.7(a)(4)(v) has been revised to require applicants to follow that methodology.

Finally, a new § 258.7(a)(11) has been added which permits an applicant to supplement his application with any additional information that the applicant feels will assist the Administrator in making the evaluations or determinations required by the Act or otherwise supports the application.

The impact of section 505 assistance, including the inflationary impact of the regulations, was fully considered prior to publication of the initial regulations on October 8, 1976. The standards proposed herein will not affect the overall costs or benefits of the program as it was set forth in the initial regulations. Accordingly, an evaluation of the expected impact of the regulations pursuant to the Department of Transportation Policies to Improve Analysis and Review of Regulations (41 FR 16200) is not required.

Any person or organization may submit written data, views, or comments on these proposed amendments to the Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street, SW., Washington, D.C. 20590. All material received on or before February 24, 1977, will be considered by the Administrator before taking final action on the proposed amendments. To the extent practicable, comments received after that date will also be considered. All comments received will be available for examination during regular business hours in Room 5101, Nassif Building, 400 Seventh Street, SW., Washington, D.C. The proposals contained in this notice may be changed in light of comments received.

In consideration of the foregoing, it is proposed that 49 CFR Part 258 be amended as follows:

1. The heading to the regulations is amended to read:

PART 258—REGULATIONS GOVERNING SECTION 505 OF THE RAILROAD REVITALIZATION AND REGULATORY REFORM ACT OF 1976

Subpart A—Procedures for Applications for Preference Share Financing

Sec.
258.1 Applicability.
258.3 Definitions.
258.5 Eligibility.
258.7 Form and content of application..
258.9 Required exhibits.
258.11 Preapplication and application procedure.
258.13 Information requests.
258.15 Waivers and modifications.

Subpart B—Standards for Evaluations and Determinations Under Section 505(b)(2) of the Act

258.17 Purpose.
258.19 Definitions.
258.21 Evaluation process.
258.23 Cost of funds available from other sources.
258.25 Public interest in supplementing total railroad funding.
258.27 Public benefits and costs.
258.29 Order of funding.
Appendix—Environmental Assessments.

AUTHORITY: Railroad Revitalization and Regulatory Reform Act of 1976, Pub. L. 94-210, as amended; the Department of Transportation Act, 49 U.S.C. 1651 et seq., Regulations of the Office of the Secretary of Transportation, 49 CFR 1.49(u).

§ 258.1 [Amended]

2. In the first sentence of § 258.1, the phrase ", as amended" is inserted after "1976."

3. Section 258.3(a) is revised to read:

§ 258.3 Definitions.

(a) "Act" means the Railroad Revitalization and Regulatory Reform Act of 1976 (Pub. L. 94-210, February 5, 1976), as amended.

4. Section 258.3(g) is deleted, and § 258.3 (h) and (i) are redesignated as § 258.3 (g) and (h), respectively.

5. Section 258.3(j) is deleted, and § 258.3 (k) through (p) are redesignated as § 258.3 (i) through (n), respectively.

6. Section 258.7(a)(4)(v), and (8) are revised to read:

§ 258.7 Form and content of application.

(a) * * *
(4) * * *

(v) Estimated rate of return on the project, calculated in accordance with the methodology set forth in subpart C of part 260 of Title 49 of the Code of Federal Regulations (42 FR _____, January 25, 1977).

* * * * *

(8) Detailed assessment of the impact of the project on the environment, in the general format and including the information set forth in the appendix to this part.

7. The word "and" following the semicolon in § 258.7(a)(9) is deleted, § 258.7 (a)(10) is renumbered as § 258.7(a)(12), and two new sections numbered 258.7(a)(10) and (11) are inserted which read:

(a) * * *

(10) A narrative statement detailing management's long-term program to achieve or maintain applicant's ability to provide essential rail freight services as a viable business enterprise. The statement shall include as a minimum a discussion of each of the elements listed as (i) through (viii) in this section including how each relates to the four year financial forecasts provided in Exhibits E and G of the application. The statement should not be limited, however, to the next four years, but should cover a period sufficient in management's judgment to demonstrate applicant's ability to maintain adequately on a continuing basis plant and equipment and meet all present and future financial obligations.

(i) Applicant's current and prospective traffic base, including by commodity and geographic region major markets served, major interchange points, and market development plans.

(ii) Applicant's current operating patterns, and plans, if any, to enhance its ability to serve the prospective traffic base identified in (a)(i) of this section.

(iii) System-wide plans to maintain (A) equipment and (B) right-of-way by major segments at levels adequate to serve markets and maintain operating patterns discussed in (i) and (ii) above.

(iv) Active or proposed plans, if any, including any application currently pending before the Commission, to seek a corporate merger with another carrier.

(v) Specific plans for rationalization of marginal or uneconomic services including coordination with other carriers in jointly served markets, withdrawal from markets served by two railroads other than the applicant and in which the applicant's services produce marginal or no earnings, and the abandonment of uneconomic facilities.

(vi) Facilities and services not discussed in (v) above that are physically or operationally susceptible to consolidation or coordination with other carriers or internally, and summary of plans or discussions with other carriers regarding same.

(vii) Relationship of current requests for Federal financial assistance to the program discussed in this section, including a specific explanation of the impact of the assistance as stated in the financial forecasts of applicant in Exhibits E and G.

(viii) Any plans to seek further financial assistance from the FRA or assistance from any other public source.

(ix) A full explanation of the methodology and reasoning used in making the analyses specified in this section together with supporting documentation as appropriate.

(11) Any information that the applicant deems appropriate to convey a full and complete understanding of the project and its impact or to assist the Administrator in making the statutorily prescribed determinations; and

§ 258.9 [Amended]

8. Section 258.9(a) and (b) are deleted, and § 258.9 (c) through (l) are redesignated as § 258.9 (a) through (j), respectively, with concomitant changes in the lettering of the exhibits required therein.

9. The portion of renumbered § 258.9 (c) through the colon is revised to read:

* * * * *

(c) *Exhibit* C. A copy of applicant's most recent year-end general balance sheet certified by applicant's independent public accountants, if available, and a copy of applicant's most recent unaudited general balance sheet as of a date no less recent than the end of the third month preceding the date of filing of the application. The unaudited balance sheet shall be presented in account form and detail as required in schedule 200 of the Commission's annual report R–1 or R–2, as appropriate, together with the following schedules (where changes in accounts from the end of the prior year to date of the application have not been significant, copies of the appropriate schedules in the prior year's R–1 or R–2 with marginal notations listing the changes may be submitted).

10. Renumbered § 258.9 (d) and (e) are revised to read:

* * * * *

(d) *Exhibit D.* Applicant's most recent annual income statement certified by applicant's independent public accountants, if available, and a spread sheet showing unaudited monthly and year-to-date income statement data for the calendar year in which the application is filed in account form similar to that required in column (a) of schedule 300 of annual report R–1 or R–2, as appropriate. For those months preceding and ending upon the date of the unaudited balance sheet presented in Exhibit C, the income statement data shall be reported on an actual basis and so noted. For those months between the dates of the unaudited balance sheet and the filing of the application, the income statement data shall be reported on an estimated basis and so noted and shall be submitted in conjunction with corresponding estimated month-end balance sheets. For those months between the dates of the application and the end of the year, the income statement data shall be presented on a forecasted basis and so noted and shall be submitted in conjunction with a forecasted balance sheet as at the year end.

(e) *Exhibit E.* Spread sheets showing for each of the four years subsequent to the year in which the application is filed, both before and after giving effect to the proceeds of the assistance requested in the application:

(1) Forecasted annual income statement data in account form and detail similar to that required in column (a) of schedule 300 of annual report R–1 or R–2 as appropriate; and

(2) Forecasted year-end balance sheets in account form and detail similar to that required in schedule 200 of annual report R–1 and R–2, as appropriate.

These spread sheets shall be accompanied by a statement setting forth the bases for such forecasts.

11. Renumbered § 258.9(f) (1) is amended by inserting the word "unaudited" immediately prior to the words "balance sheets" and by striking "Exhibit E" and inserting in lieu thereof "Exhibit C".

12. Sections 258.13 and 258.15 are deleted, and §§ 258-17 and 259.19 are renumbered as §§ 258.13 and 258.15, respectively.

13. A new Subpart B is added which shall read:

Subpart B—Standards for Evaluation and Determinations Under Section 505(b)(2) of the Act

Sec.
258.17 Purpose.
258.19 Definitions.
258.21 Evaluation process.
258.23 Cost of funds available from other sources.
258.25 Public interest in supplementing total railroad funding.
258.27 Public benefits and costs.
258.29 Order of funding.

(Sec. 505, Railroad Revitalization and Regulatory Reform Act of 1976 (Pub. L. 94–210, as amended).)

Subpart B—Standards for Evaluations and Determinations Under Section 505(b) (2) of the Act

§ 258.17 Purpose.

This subpart prescribes standards in accordance with which the Administrator will make the evaluations and determinations required under section 505(b) (2) of the Act.

§ 258.19 Definitions.

As used in this subpart—

(a) "Consolidation" means the combination of separate rail facilities into fewer facilities and the abandonment of the excess facilities.

(b) "Coordination" means the combination of rail freight traffic flows through the use of joint facilities arrangements or internally that result in a partial or complete discontinuance of service on the less essential facility.

(c) "Corridor of consolidation potential" means a corridor of consolidation potential as identified in the Final Standards, Classification and Designation of Lines of Class I Railroads in the United States, published by the United States Department of Transportation pursuant to section 503(e) of the Act.

(d) "Excess Working Capital" means the amount, if any, by which the current assets of an applicant (consisting of cash, cash equivalents, and accounts and notes receivable) exceeds the sum of (i) current liabilities of the applicant and (ii) long-term debt due within one year, deducting special funds, if any, to be used to pay that debt, and the deployment of which working capital is not likely to impair the continuing operations of the railroad.

(e) "Mainline" means a line that has an overall annual traffic density of at least five million gross ton-miles per mile.

(f) "Ratio" means the applicant's fiscal 1975 rate of return on total capital, represented by the ratio which such applicant's net income, including interest on long-term debt, bore to the sum of average shareholders' equity, long-term debt, and accumulated deferred income tax credits in fiscal year 1975.

(g) "Return" means the anticipated after-tax, internal rate of return on a proposed project, computed in accordance with the methodology set forth in Subpart C of Part 260 of Title 49 of the Code of Federal Regulations (42 FR 4652, January 25, 1977).

§ 258.21 Evaluation process.

(a) Section 505(b) (2) of the Act requires the Administrator to consider the following three factors in determining if financial assistance applied for under this part is in the public interest:

(1) The availability of funds from other sources at a cost which is reasonable under principles of prudent railroad financial management in light of the railroad's projected rate of return for the project to be financed and the applicant's Ratio.

(2) The interest of the public in supplementing such other funds as may be available for railroad financing; and

(3) The public benefits to be realized from the project to be financed in relation to the public costs of such financing and whether the proposed project will return public benefits sufficient to justify such public costs.

(b) In accordance with section 505(a) of the Act, this subpart sets forth standards for each of the three factors listed above, by which the Administrator will

make his determination of whether the requested financial assistance is in the public interest. Except where otherwise stated in this subpart, all of the standards must be satisfied in order for the applicant to qualify for the requested financial assistance. The Administrator retains discretion to determine the appropriate level of funding for all projects that qualify for assistance.

§ 258.23 Cost of funds available from other sources.

(a) *General.* Funds available from other sources may take the form of borrowed money, excess working capital, or new equity capital. Where the form of alternative financing combines one or more of these forms, an analysis of each affected form will be made independently. For example, if convertible debt is available, the cost of such debt will be evaluated against the standards below as if the convertible debt were borrowed money, and as if conversion to new equity capital would occur immediately on issuance. The Administrator will review the statement submitted under § 258.7(a) (7) of this part to determine whether applicant has thoroughly explored all alternative sources of funds, including funds available from affiliated companies or pursuant to transactions under section 15(19) of the Interstate Commerce Act, 49 U.S.C. 15(19).

(b) *Standards.* (1) *Borrowed Money.* The cost of borrowed money will be deemed to be unreasonable under principles of prudent railroad financial management if any of the following is true.

(i) The after-tax, effective, annualized cost (expressed as a percentage and including interest, placement, trustee's and other related charges) of borrowed money (hereafter in this § 258.23(b) (1) referred to as "Cost") is equal to or greater than the Return, and the Cost is higher than the current market yield on debt securities of like tenor of the applicant or, if none, then the market yield on debt securities of like tenor of other companies having a similar Moody's bond rating;

(ii) The financial condition and operating results of the applicant (after giving effect to a project's net cash stream) appear inadequate to enable the applicant to service its total debt; or

(iii) The amount of borrowed money is less than 25% of the denominator of the applicant's Ratio and the borrowing would result in a reduction of more than 10% in the applicant's Ratio, computed by adding an amount equal to the product of the Return and the borrowed money to the numerator of the Ratio, and an amount equal to the product of (I) the borrowed money and (II) the sum of 100% and the spread between the Return and the Cost (computed by subtracting the Cost from the Return) to the denominator of the Ratio.

(2) *Excess Working Capital.* The cost of Excess Working Capital will be deemed to be unreasonable under principles of prudent railroad financial management if (i) the after-tax opportunity cost, expressed as an annual percentage rate representing the return available on short term securities customarily invested in by the applicant (hereafter in this § 258.23(b) (2) referred to as "Cost"), of applicant's Excess Working Capital is equal to or greater than the Return; and (ii) the railroad's Ratio is reduced by more than 10% when an amount equal to the product of the Excess Working Capital to be used for the project and the negative spread between the Return and the Cost (computed by subtracting the Cost from the Return), is added to both the numerator and the denominator of the Ratio.

(3) *New Equity Capital.* (i) *Common Stock.* The cost of new common stock equity will be deemed to be unreasonable under principles of prudent railroad financial management if either of the following is true.

(A) An amount equal to the product of the consideration to be received by the applicant or its holding company upon the issuance and sale of new common stock equity (hereafter in this § 258.23 (b) (3) referred to as "Consideration") and the sum of 100% and the Return is less than an amount equal to the product of the tangible book value per common share immediately prior to the issuance and sale of new common stock equity and the number of shares of common stock to be issued and sold; or

(B) The amount of Consideration is less than 25% of the denominator of the applicant's Ratio and the issuance and sale would result in a reduction of more than 10% in the applicant's Ratio, computed by adding an amount equal to the product of the Return and the Consideration to the numerator of the Ratio, and an amount equal to the product of the Consideration and the sum of 100% and the Return to the denominator of the Ratio.

(ii) *Preferred Stock.* The cost of new preferred stock equity will be deemed to be unreasonable under principles of prudent railroad financial management if either of the following is true.

(A) The effective annualized cost (expressed as a percentage and including dividends and placement charges) of the preferred stock (hereafter in this subparagraph 258.23(b) (3) referred to as "Cost") is equal to or greater than the Return; or

(B) The amount of Consideration is less than 25 percent of the denominator of the applicant's Ratio and the issuance and sale would result in a reduction of more than 10 percent in the applicant's Ratio, computed by adding an amount equal to the product of the Return and the new preferred stock equity to the numerator of the Ratio, and an amount equal to the product of the new preferred stock equity and the sum of 100 percent and the spread between the Return and the Cost (computed by subtracting the Cost from the Return) to the denominator of the Ratio.

(iii) Notwithstanding subdivisions (b) (3) (i) and (ii) of this section, the standard will not be deemed to be satisfied if the applicant's long-term debt prior to the issuance and sale of new equity capital exceeds 67 percent of its total capitalization.

§ 258.25 Public interest in supplementing total railroad funding.

(a) *General.* The standards set forth in paragraph (b) of this section will enable the Administrator to evaluate an applicant's long-term role in a viable national rail system in order to determine that the application is consistent with "the interest of the public in supplementing such other funds as may be available for railroad financing," as stated in section 505(b) (2) (b) of the Act.

(b) *Standards.* (i) Management's long-term program submitted under § 258.7 (a) (10) of this part is reasonably likely to assure that essential rail freight services currently provided by the applicant will continue to be provided by the applicant as a viable business enterprise or by another carrier as the result of a merger of companies or consolidation of lines, and the financing applied for will contribute to that program.

(ii) The applicant is reasonably likely to be able to redeem any preference shares issued to finance the project according to a dividend and redemption schedule which results in a yield as set forth in paragraph (b) (iii) of this section.

(iii) The Return on the proposed project is not less than the yield on the redeemable preference shares, expressed as the effective annual percentage rate applicable from the date of issuance of the shares, which shall be:

(A) in the case of shares whose proceeds are to be expended solely to reduce the level of deferred maintenance on facilities, equal to the applicant's average rate of return on total capital, as defined in section 506(a) (5) of the Act, for the three fiscal years preceding the date of submission of the application;

(B) in the case of shares whose proceeds result in no reduction in the level of deferred maintenance on facilities, equal to the cost of money to the government, except where the public benefits associated with the project clearly warrant a lower yield; and

(C) in all other cases, equal to a weighted average yield determined by applying the yields obtained in paragraphs (b) (iii) (A) and (B) of this section to the appropriate portion of the total project cost. In no event shall the yield under this subparagraph (iii) be lower than the minimum permissible yield determinable under sections 506(a) (3) and (4) of the Act.

§ 258.27 Public benefits and costs.

(a) *General.* Each project for which assistance is sought must satisfy a set of public benefit standards based on national goals and objectives in order to qualify for funding. Public benefits and costs related to rail facility improvements encompass a wide range of values and are not easily quantified. Because of the multiplicity of project types, variations between applicants and their markets, and the difficulty of measuring cer-

tain benefits and costs, consideration of public benefits and costs is accomplished through identification of broad categories of projects for which the public benefits associated with proposed projects are substantial and will equal or exceed whatever monetary and social costs are involved, subject to an assessment of its environmental impact.

(b) *Standards.* The public benefits associated with a proposed project will be deemed to justify the public costs associated with the project if the project satisfies any of the following standards.

(1) *Essential Freight Services.* The proposed project enhances the ability of the applicant or other carriers to provide essential freight services by acquiring by lease, purchase or merger, constructing, rehabilitating, or significantly improving mainlines, including yards or other facilities used primarily to serve traffic moving on such lines, which are:

(i) Located in a corridor of consolidation potential and as a result of a consolidation of mainlines or coordination of traffic of the applicant and at least one other carrier will have a current or reasonably prospective annual traffic density of not less than 20 million gross ton-miles per mile;

(ii) Not located in a corridor of consolidation potential and as a result of a consolidation of mainlines or coordination of traffic by the applicant or between the applicant and at least one other carrier will have a current or reasonably prospective annual traffic density of not less than 20 million gross ton-miles per mile;

(iii) Not located in a corridor of consolidation potential and have a current or reasonably prospective annual traffic density of not less than 20 million gross ton-miles per mile;

(iv) Located in a corridor of consolidation potential and as a result of a consolidation of facilities or coordination of traffic of the applicant and at least one other carrier will have an annual traffic density of not less than two million net tons of revenue freight per mile originating or terminating on the line but have an overall annual traffic density of less than 20 million gross ton-miles per mile;

(v) Not located in a corridor of consolidation potential and have a current or reasonably prospective annual traffic density of not less than two million net tons of revenue freight per mile originating or terminating on the line but have an overall current or reasonably prospective annual traffic density of not less than 20 million gross ton-miles per mile;

(vi) Located in a corridor of consolidation potential and have a current or reasonably prospective annual traffic density of not less than two million net tons of revenue freight per mile originating or terminating on the line; or

(vii) Not located in a corridor of consolidation potential and have a current or reasonably prospective annual traffic density of less than two million net tons of revenue freight per mile originating or terminating on the line, but have an overall current or reasonably prospective annual traffic density of less than 20 million gross ton-miles per mile.

The current annual traffic density of a line under this standard in net tons of revenue freight per mile originating or terminating on the line or gross ton-miles per mile will be deemed to be the average annual traffic density for the three calendar years preceding the filing of the application. In segmenting lines for the purpose of determining traffic density in (iv), (v), (vi) and (vii) above, originating and terminating traffic is measured from its originating or terminating point to the next operationally feasible interchange point consistent with traffic flows. A forecasted level of traffic will be deemed to be "reasonably prospective" under this standard if the increment of traffic above the average annual traffic density for the three calendar years preceding the filing of the application is accounted for by newly generated traffic which applicant demonstrates is the result of an increase in the capacity of shippers or receivers currently located on the line to produce or consume commodities that are traditionally shipped by rail or is the result of new shippers or receivers locating on the line and cannot be shipped by an alternate rail carrier.

(2) *Competitive Freight Services.* The application provides for:

(i) Rehabilitation or improvement of a line of an applicant who is competitive with no more than one rail carrier in the market served by the line and is shown by applicant to be economic in light of the current or reasonably prospective levels of traffic in the market and the number of alternative rail carriers in the market; or

(ii) Financial assistance to enable an applicant to withdraw from a market which has more than two competing rail carriers, where the applicant demonstrates that the reasonably prospective levels of traffic in the markekt are insufficient to enable all of the railroads competing in that market to earn a reasonable rate of return.

(3) *Special Projects.* The proposed project will eliminate identifiable and severe public safety hazards.

(4) *Equipment Rebuilding.* The proposed project provides for rebuilding equipment which the applicant requires in order to serve adequately traffic which originates or terminates on applicant's lines at levels which are consistent with the applicant's average market share in the commodity hauled for the three calendar years preceding the filing of the application or are reasonably prospective as defined in subparagraph (b)(1) of this section, and, in the case of locomotives, are necessary to the performance of local service and switching.

§ 258.29 Order of funding.

(a) Where appropriated funds are inadequate to finance all projects which qualify for Federal assistance, projects will be funded in the order in which the categories in which they fall are set forth in section 258.27 of this subpart; that is, in descending order of priority from § 258.27(b)(1) to § 258.27(b)(4) and within § 258.27(b)(1), from paragraph (i) to paragraph (vii).

(b) Where appropriated funds are adequate to finance some but not all projects which qualify for Federal assistance within any one of the categories described in paragraph (a) of this section, priority for funding will be given to projects that provide safety improvements and signals, including underpasses or overpasses at railroad crossings at which injury or loss of life has frequently occurred or is likely to occur.

(c) As between two projects within the same category, as described in paragraph (a) above, which both either provide or do not provide safety improvements and signals, priority for funding will be given to the project which was first proposed in a complete application.

14. An Appendix is added to Part 258 as follows:

APPENDIX—ENVIRONMENTAL ASSESSMENTS

Part I: Description of the environment in the area of the project before commencement of such project, together with statement of other Federal activities in the area which are known, or should be known, to the applicant. This description shall include, without limitation, the following information:

(A) *Demographic data.* Statement of population and growth characteristics of area and of any population and growth assumptions made by applicant in planning the project. Such statement should use the rates of growth in the projection compiled for the Water Resources Council by the Bureau of Economic Analysis of the Department of Commerce and the Economic Research Service of the Department of Agriculture, commonly referred to as the OBERS projection of regional economic activity in the United States. Applicants should refer to 1972 OBERS projections for economic areas, and provide 1969 data and 1980 projections for the following: population; manufacturing earnings; transportation, communications and public utilities earnings; agriculture, forestry and fisheries earnings; and mining earnings. Information should be provided for economic areas which the applicant's proposal would affect.

(B) *Current land use patterns.* Statement of the project's relationship to proposed land use plans, policies, and controls of affected communities, including, where appropriate, maps or diagrams. Where the project is inconsistent with any such plans, policies, or controls, the statement should describe and explain in detail the reasons for such inconsistency.

(C) *Characteristics of current operations.* The Applicant should indicate the maximum allowable speed and frequency of current rail traffic on any affected line, the number and location of grade crossings, and the length of time such grade crossings are blocked during a typical day. The Applicant should indicate derailments and fatalities or injuries resulting from accidents involving trains and motor vehicles or pedestrians on such lines. The Applicant should also indicate the hours of operation on such lines and noise levels of rail operations at 100' from the right of way. Applicants should refer to the United States Environmental Protection Agency document titled "Information on Levels of Noise Requisite to Protect Public Health and Welfare with an Adequate Margin of Safety", which provides a system of measuring day and night noises on a weighted average.

(D) *Air quality.* The Applicant should indicate the air quality in the region, as found in the state Air Quality Implementation Plans to meet ambient air quality standards. Each state is required to prepare such a plan under the Clean Air Act (42 U.S.C. 1857). Some states are required to have Transportation Control Plans to meet ambient air quality standards where transportation sources pose major air quality problems. Applicants should refer to state air quality agencies or to the Regional Offices of the U.S. Environmental Protection Agency for guidance.

(E) *Wetland or coastal zones.* Location, types, and extent of wetland areas or coastal zones that might be affected by the project.

(F) *Properties and sites of historical or cultural significance.* Identification of districts, sites, buildings and other structures, and objects of historical, architectural, archeological, or cultural significance that may be affected by the project. This should be accomplished by consulting the National Register and applying the National Register Criteria (36 CFR Part 800) to determine which properties that may be affected by the project are included in or eligible for inclusion in the National Register of Historic Places. The National Register is published in its entirety each February in the FEDERAL REGISTER. Monthly additions and listings of eligible properties are published in the FEDERAL REGISTER the first Tuesday of each month. The Secretary of the Interior will advise, upon request, whether properties are eligible for the National Register. Officials designated by their Governors to act as State Historic Preservation Officers responsible for state activities under the National Historic Preservation Act may also be consulted. A listing of these state officials may be found at 36 CFR 60.5(d), or may be obtained from the Director, National Parks Service, U.S Department of the Interior. Washington, D.C 20240.

(G) *Publicly-owned parklands, recreational areas, and waterfowl refuges, and historic sites (45 U.S.C. 1653(f)).* (i) Protected land proposed to be used. Describe any publicly-owned land from a public park, recreation area or wildlife and waterfowl refuge or any land from an historic site or wildlife and waterfowl refuge or any land from an historic site which would be affected or taken by the proposed program or project, including the size of the land proposed to be affected or taken, available activities on the land, use, patronage, unique or irreplaceable qualities, relationship to other similarly used land in the vicinity of the proposed project, and maps, plans, slides, photographs, and drawings in sufficient scale and detail to clearly show proposed project. Include a description of impacts of the proposed project on the land and changes in vehicular or pedestrian access.

(ii) Significant area. Include a statement of the national, State, or local significance of the entire park, recreation area, wildlife or waterfowl refuge, or historic site as determined by the Federal, State or local officials having jurisdiction thereof. In the absence of such a statement, protected land is presumed to be located in an area of national, State or local significance.

Part II: The probable impact of the project on the environment and measures which can be taken to mitigate adverse impacts. The applicant shall (1) assess the positive and negative environmental effects, including primary, secondary, and other foreseeable effects, on each of the areas specified in Part I above, including long-term impacts associated with the increased intensity, if any, of rail operations, and (2) list measures which can be taken to mitigate adverse impacts. Mitigation measures include control of hours of operation, coordination of street blockages with adjacent communities, dust and erosion control measures, and proposed methods of tie disposal. In addition, the applicant shall provide the following.

(A) Statement of the extent to which any of the impacts of the project represent irreversible or irretrievable commitments of resources. This requires identification of the extent to which implementation of the project irreversibly curtails the range of potential uses of the environment. "Resources" include the natural and cultural resources lost or destroyed as a result of the project.

(B) Statement of the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity. This shall include a brief discussion of the extent to which the proposed action involves trade-offs between short-term environmental gains at the expense of long-term losses, or vice versa, and a discussion of the extent to which the proposed action forecloses future options.

(C) Statement of any probable adverse environmental effect which cannot be avoided, such as changes in exposure to noise and changes in level of noise or vibration; water or air pollution; undesirable land use patterns; impacts on public parks and recreation areas, wildlife and waterfowl refuges, or historic sites; damage to life systems; congestion of street traffic in adjacent communities; delays in the provision of essential services (police, fire, ambulance), anticipated changes in accident patterns and other threats to health; and other consequences adverse to the environmental goals set out in section 101(b) of the National Environmental Protection Act, 42 U.S.C. 4331(b). In considering noise levels, applicants should note any conflicts between projected noise levels from rail operations and HUD standards for noise at sensitive sites, such as schools, hospitals, parks and residential locations. (U.S. Department of Housing and Urban Development, "Noise Abatement and Control: Department Policy Implementing Responsibilities and Standards," Departmental Circular 1390.2, Chart: External Noise Exposure Standards for New Construction, April 4, 197.)

(D) Statement of construction impacts, identifying any special problem areas and including: (i) Noise impacts from construction and any specifications setting maximum noise levels;

(ii) Disposal of spoil and effect on borrow areas and disposal sites (include any specifications).

(iii) Measures to minimize effects on traffic and pedestrians.

(iv) Consideration of non-point source pollution such as might result from water runoff.

(E) Statement of any positive or negative impacts on energy supply and natural resource development, including, where applicable, any effect on either the production or consumption of energy or other natural resources. Discuss such effects if they are significant.

(F) Discussion of problems and objections raised by other Federal, State or local agencies, and citizens with respect to impact of the project on the environment.

Part III. Discussion of any alternatives to the project that have been considered with respect to impact on the environment. If cost-benefit analyses have been performed, the extent to which environmental costs have been reflected in the analysis should be stated. Underlying studies, reports, and other information obtained and considered in preparing each section of the statement should be identified. For energy comparisons, a possible source is Oak Ridge National Laboratory Report, "Energy Intensiveness of Passenger and Freight Transport Modes" by Dr. Eric Hirst, April, 1973. For analyzing community impacts, the following report may be useful: "The Impacts on Communities of Abandonment of Railroad Service," July, 1975, prepared for the U.S. Railway Association by the Public Interest Economics Center, Washington, D.C. In examining the environmental effects of highway transport as an alternative to rail service, applicants may wish to use the following publication: "A Study of the Environmental Impact of Projected Increases in Intercity Freight Traffic, August, 1971, prepared for the Association of American Railroads by Battelle, Columbus, Ohio."

(Sec. 505, Railroad Revitalization and Regulatory Reform Act of 1976 (Pub. L. 94-210), as amended.)

Dated: January 19, 1977.

ASAPH H. HALL,
Administrator,
Federal Railroad Administration.

[FR Doc.77-2341 Filed 1-24-77;8:45 am]

federal register

TUESDAY, JANUARY 25, 1977

PART V

THE NATIONAL ARCHIVES OF THE UNITED STATES 1934

DEPARTMENT OF LABOR

Employment and Training Administration

■

TEMPORARY EMPLOYMENT OF ALIENS

Labor Certification Process

DEPARTMENT OF LABOR

Employment and Training Administration

[20 CFR Part 655]

TEMPORARY EMPLOYMENT OF ALIENS

Labor Certification Process for Temporary Agricultural and Logging Employment

Notice is hereby given that the Employment and Training Administration of the Department of Labor is proposing to amend its regulations governing the labor certification process for the temporary employment of aliens in the United States in agricultural (including sheepherding) and logging occupations. The regulations proposed in this document, when finalized, are intended to replace the current regulations at 20 CFR 602.10, 10a and 10b.

Interested persons are invited to submit comments on the proposed regulations to the Assistant Secretary for Employment and Training, Attention: William B. Lewis, Administrator, United States Employment Service, Room 8000, Patrick Henry Bldg., 601 D St., N.W., Washington, D.C. 20213, until February 24, 1977.

Among the proposed changes from the present regulations, are the following substantive changes: 1. The requirements governing sheepherding have been integrated with the requirements for other agricultural occupations.

2. The relationship between employers and their agents, such as associations of employers, have been set forth with greater clarity.

3. The period of recruitment of U.S. workers through the Federal-State employment service system has been lengthened from 60 to 90 days, or longer under certain conditions.

4. Provisions have been added governing fraud and willful misrepresentation with respect to temporary labor certifications and applications therefor.

5. A provision has been added that, if an employer has used foreign workers for each of the previous two years, the labor certification application must include a recruitment plan designed to reduce the employer's dependence on foreign workers.

6. The requirements involving deductions from workers' pay have been simplified.

7. The amount which an employer may charge a worker for providing the worker with three meals per day has been increased.

8. The provisions governing workers' disability insurance have been made clearer and more flexible.

9. The amount of work which an employer must guarantee to offer a worker has been increased from three-fourths of the workdays to at least 5 eight-hour days of work per week.

10. Provision is made for the publication of adverse effect piece rates at a later date.

11. The procedure, which was previously set forth in the Employment Security Manual, whereby, under certain conditions, an employer was permitted to pay less than the adverse effect rate to physically handicapped U.S. workers over 60 and under 18 years of age who could not produce normally, has been set forth in the regulations.

Accordingly, it is proposed to amend Title 20 of the Code of Federal Regulations, by adding a new Part 655 to read as follows:

PART 655—LABOR CERTIFICATION PROCESS FOR THE TEMPORARY EMPLOYMENT OF ALIENS IN THE UNITED STATES

Subpart A—Labor Certification Process for Temporary Agricultutral and Logging Employment

Sec.

655.1 Scope and purpose; definitions.
655.2 Temporary labor certification applications (general).
655.3 Contents of job offers.
655.4 Assurances.
655.5 Recruitment plan.
655.6 Recruitment efforts.
655.7 Action on temporary labor certification applications by the local office.
655.8 Temporary labor certification determinations.
655.9 Adverse effect rates.
655.10 Temporary Labor certification applications involving fraud or willful misrepresentation.
655.11 Invalidation of temporary labor certifications.
655.12 Failure of employers to comply with the regulations under this subpart.
655.13 Petitions for higher meal charges.

AUTHORITY: 8 CFR 214.2(h)(3)(i); Wagner-Peyser Act of 1933, as amended, 29 U.S.C. 49 et seq.

§ 655.1 Scope and purpose; definitions.

(a) Section 214.2(h)(3)(i) of the Immigration and Naturalization Service Regulations (8 CFR 214.2(h)(3)(i)), issued under the Immigration and Nationality Act, requires, in support of a petition for the admission of an alien into the United States to perform certain temporary labor:

Either a certification from the Secretary of Labor or his designated representative stating that qualified persons in the United States are not available and that the employment of the beneficiary will not adversely affect the wages and working conditions of workers in the United States similarly employed, or a notice that such a certification cannot be made shall be attached to every non-immigrant visa petition to accord an alien a classification under Section 101(a)(15)(H)(ii) of the Act.

(b) The temporary labor certification procedure is designed to prevent the use of foreign labor at the expense of the wages and working conditions of United States workers similarly employed. Thus, temporary foreign workers may only be used to meet shortages which occur in a particular occupation or industry. In the long run, normal adjustments in wages and working conditions should bring sufficient United States workers to an occupation.

(c) The regulations in this subpart set forth the process by which temporary labor certifications may be applied for, and by which they may be granted or denied.

(d) *Definitions of terms used in this subpart.* For purposes of this subpart:

"Administrator" means the chief official of the United States Employment Service or the Adminstrator's designee.

"Adverse effect rate" means the wage rate which the Administrator has determined must be offered and paid to foreign and U.S. workers for a particular occupation and/or area so that the wages of similarly employed U.S. workers will not be adversely affected. The Administrator may determine that the prevailing wage rate in the area and/or occupation is the adverse effect rate, or that a wage rate other than the prevailing wage rate is the adverse effect rate.

"Area of intended employment" means the area within normal commuting distance of the place (address) of intended employment. If the place of intended employment is within a Standard Metropolitan Statistical Area (SMSA), any place within the SMSA is deemed to be within normal commuting distance of the place of intended employment.

"Employment and Training Administration (ETA)" means the agency within the Department of Labor (DOL) which includes the United States Employment Service (USES).

"Employer" means a person, firm, corporation or other organization which currently has a location within the United States to which U.S. workers may be referred for employment, and which proposes to employ a full-time worker at a place within the United States or the authorized repersentative of such a person, firm, or corporation. For purposes of this definition an "authorized representative" means an employee of the employer whose position or legal status authorized the employee to act as the agent for the employer in labor certification matters. Neither the term "employer" nor "authorized representative" shall mean an association of employers which acts as the agent of a group of employers for temporary labor certification purposes.

"Job opportunity" means a job opening for employment at a place in the United States to which U.S. workers can be referred.

"Local employment service office" means an office of a State employment service agency which serves a particular geographic area within a State.

"Notice of Findings" means a notice which sets forth the bases upon which a Regional Administrator intends to deny a temporary labor certification unless the bases are satisfactorily rebutted.

"Regional Administrator, Employment and Training Administration (RA)" means the chief official of the Employment and Training Administration (ETA) in a Department of Labor (DOL) regional office.

"Secretary" means the Secretary of Labor, the chief official of the U.S. Department of Labor, or the Secretary's designee.

"Temporary labor certification" means the determination by the Secretary of Labor, pursuant to 8 CFR 214.2(h)(3)(i), that (1) there are not sufficient U.S. workers who are qualified and available to perform the work and (2) the employment of the alien will not adversely affect

the wages and working conditions of similarly employed U.S. workers.

"United States Employment Service (USES)" means the agency of the U.S. Department of Labor, established under the Wagner-Peyser Act of 1933, which is charged with administering the national system of public employment offices and carrying out the functions of the Secretary under the Immigration and Nationality Act.

"United States worker" means any worker who, whether U.S. citizen or alien, is legally permitted to work permanently within the United States.

§ 655.2 Temporary labor certification applications (general).

(a) An agricultural or logging employer anticipates a labor shortage may request a temporary labor certification for temporary foreign workers by filing, or by having an agent file, a temporary labor certification application, signed by the employer, with a local office of a State employment service in the area of intended employment. However, if the temporary labor certification application is filed by an agent, such as an association of employers, the agent may sign the application. If an agent is used, the application must be accompanied by a letter from each employer, signed by the employer, which authorizes the agent to act on the employer's behalf and which states that the employer assumes full responsibility for the accuracy of the application, for all representations made by the agent on the employer's behalf, and for the fulfillment of all legal requirements arising from the temporary labor certification.

(b) Every temporary labor certification application shall include: (1) A copy of the job offer used by the employer (or each employer in the recruitment efforts for both U.S. and foreign workers. The job offer for each employer shall state the number of workers needed by the employer, and shall be signed by the employer. The job offer shall comply with the requirements of § 655.3. If the State agency informs the employer that workers, who are fluent and/or literate in Spanish and who are not substantially fluent and/or literate in English, will be recruited for the job opportunities, a copy of the job offer written in Spanish shall be submitted;

(2) The assurances required by § 655.4 of this subpart;

(3) If applicable, the recruitment plan required by § 655.5; and

(4) Documentation showing the employer's efforts to recruit U.S. workers as required by § 655.6.

(c) A temporary labor certification application shall be filed in sufficient time to allow the local office to attempt to recruit U.S. workers through the Employment Service intrastate and interstate clearance systems for 90 calendar days, unless the RA has notified the employer in writing at least 30 days prior to the filing of the application that more than 90 days will be needed; the RA, however, shall never specify a period in excess of six months, and shall offer the employer assistance in recruiting U.S. workers. This 90-day period (or longer period if applicable) shall be in addition to the time necessary for the employer to secure foreign workers by the date of need if the temporary labor certification is granted. The Department of Labor, however, may grant or deny the temporary labor certification prior to the ending of the 90 calendar days (or longer period if applicable).

§ 6655.3 Contents of job offers.

(a) Each employer's job offer shall state that: (1) The employer will provide housing without charge which will meet either the full set of Department of Labor, Employment and Training Administration standards set forth at 20 CFR Part 620 or the full set of Department of Labor, Occupational Safety and Health Administration standards set forth at 20 CFR 1910.142;

(2) The employer, either on its own or in combination with other employers will provide housing to U.S. workers who are women and to those who need family housing;

(3) (i) If applicable, the worker will be eligible for workers' compensation for injury and disease arising out of and in the course of the worker's employment; or

(ii) If the worker will not be covered by the State workers' compensation law, the employer will provide, at no cost to the worker, insurance covering injury and disease arising out of and in the course of the worker's employment, and that the insurance will provide benefits at least equal to those provided under the State workers' compensation law;

(4) The employer will furnish, without cost to the worker, all tools, supplies and equipment required to perform the work including all necessary protective clothing and special footwear and that, if any of these items are provided by the worker, the employer will reimburse the worker for the cost;

(5) The employer will provide the worker with three meals a day, and shall state the cost to the worker for such meals. The cost shall not be more than $3.25 per day unless the RA has approved a higher cost pursuant to § 655.13.

(6) (i) The employer will provide or pay for the worker's transportation and daily subsistence from the worker's home or place of last employment, whichever is applicable, to the place of employment provided the worker works for 50 percent or more of the contract period, and that the amount of the daily subsistence payment will be at least as much as the amount the employer will charge the worker for three meals a day at the place of employment;

(ii) Whether the employer will advance payment to the worker for the costs of transportation and subsistence en route;

(7) If the worker completes the contract period, the employer will provide or pay for the worker's transportation and daily subsistence from the place of employment to the place from which the employer recruited the worker (home or last place of employment, whichever is applicable) unless the worker has immediately subsequent employment with an employer who has contracted with the worker to pay for the worker's transportation and daily subsistence expenses to that employer's worksite.

(8) The employer will provide transportation between the worker's on-the-job site living quarters and the place where the work is to be performed without cost to the worker, and that all such transportation will be in accordance with all applicable laws and regulations.

(9) The employer, unless the prevailing practice in the area of intended employment is for the employer to pay for all travel time as work-time, will pay the worker the adverse effect rate (or the adverse effect rate's piece rate equivalent) for all travel time to work in excess of one-half hour and for all travel time from work in excess of one-half hour.

(10) (i) The employer guarantees the worker the opportunity to work for 5 eight-hour workdays out of each week, and that, if, under the guarantee or otherwise, the employer affords the worker employment on a day on which the worker refuses to work because of the worker's religious convictions, the employer will not dismiss the worker for not working on that day;

(ii) If the worker is afforded less employment than guaranteed, the worker will be paid an amount equal to the amount which the worker would have earned if the worker had worked for the guaranteed periods;

(iii) If the worker will be paid on a piece rate basis, the employer will use the worker's average hourly earnings to calculate the amount due under the guarantee; and

(iv) That any hours which the worker fails to work when the worker has been afforded the opportunity to do, and all hours of work performed, will be counted in calculating the period of guaranteed employment;

(11) (i) The employer will keep accurate and adequate records of all the worker's earnings and hours of employment, including records showing the nature of the work performed, the number of hours of work offered each day by the employer and worked each day by the worker, the time the worker began and ended each workday, the rate of pay, the amount of work performed, the worker's earnings, and the amount of and reasons for any and all deductions made from the worker's wages;

(ii) If the number of hours worked by the worker is less than the number offered, the records will state the reason therefor;

(iii) The records, including field tally records and supporting summary payroll records, will be made available for inspection and copying by representatives of the Secretary of Labor, and by the worker or the worker's representatives; and

(iv) The employer will retain the records for not less than three years after the completion of the contract;

(12) The employer will furnish to the worker at or before each pay-day, in one or more written statements:

(i) The worker's total earnings for the pay period, broken out by straight-time and overtime;

(ii) The worker's hourly rate or piece rate of pay;

(iii) The hours of employment which have been offered to the worker;

(iv) The hours worked by the worker;

(v) An intemization of all deductions made from the worker's wages; and

(vi) If piece rates are used, the units produced daily;

(13) The employer will comply with all applicable Federal, State and local laws, including employment-related safety and health laws;

(14) (i) If the worker will be paid by the hour, the employer will pay the worker the adverse effect rate; or

(ii) If the worker will be paid on a piece rate basis, the piece rate will be based on the normal efforts of average U.S. workers and will be designed to produce average hourly earnings at least equal to the adverse effect rate, and that, if the piece rate does not result in average hourly earnings at least equal to the adverse effect rate, the worker's pay at each pay period will be supplemented so that the worker's earnings are at least as much as the worker would have earned if the worker had been paid the adverse effect rate;

(15) The frequency with which the worker will be paid (in accordance with the prevailing practice in the area of intended employment, or at least biweekly whichever is more frequent);

(16) If the worker abandons employment before the end of the contract period, or is terminated for cause, the employer will not be responsible for providing or paying for the subsequent transportation of the worker;

(17) (i) If, before the expiration date specified in the work contract, the services of the worker are no longer required for reasons beyond the control of the employer due to a fire or other Act of God which makes the fulfillment of the contract impossible, the employer may terminate the work contract;

(ii) The employer will make efforts to transfer the worker to other comparable employment. If such transfer is not effected, the worker will be returned home or to the worker's last place of employment, whichever is applicable, at the employer's expense; and that

(iii) Any deductions made from the worker's pay by the employer for transportation and subsistence to the place of employment will be refunded to the worker.

(18) The employer will make those deductions from the worker's paycheck which are required by law:

(b) The job offer shall specify all deductions, not required by law, which the employer will make from the worker's paycheck. All deductions shall be reasonable. If the employer intends to deduct the cost of the worker's transportation and daily subsistence to the place of employment, the job offer shall state that the worker will be fully reimbursed for such deductions upon the worker's completion of 50 percent of the worker's contract period.

(c) The job offer shall also contain all the provisions contained in any contract which the employer agreed to in the previous year which conferred benefit upon foreign workers additional to those set forth in paragraphs (a)(1) through (a)(18) and (b) of this section.

(d)(1) The job offer may also contain a provision that physically handicapped U.S. workers over 60 years of age and/or under 18 years of age who are unable to produce normally may be requested or required by the employer to sign written waivers indicating their inability to work with normal speed or effectiveness, that such workers will not receive the piece rate earnings guarantee and that, if they are employed at hourly rates, they will be paid rates as low as 75 percent of the required adverse effect rate, but not less than the applicable Federal or State minimum wage.

(2) If the provision in paragraph (d)(1) of this section is included:

(i) The job offer must also contain provisions that the employer may request a U.S. worker to sign a waiver only after the worker has had average hourly earnings below the hourly standard for no less than 40 hours of work experience at piece rates designed to produce the hourly guarantee; that the 40 hour trial work experience period may begin only after the worker has had 24 hours of training in the activity in question; that the employer will maintain records to demonstrate the worker's earning ability during the 24 hours of training and during the 40 hour trial work experience period; and that, during this 64 hour period, the worker will receive the full hourly adverse effect rate;

(ii) The waiver shall be worded as follows:

I _____ having been given 3 eight
(Employee)
hour days of training and 40 hours work experience as a _____ and being unable to maintain production standards of _____ here-
(Occupation)
(Minimum) (Acceptable per hour or day)
by waive my right to the minimum required rate of $_____ and authorize my employer to reduce my minimum wage to $_____.
(List rate)
(No less than 75 percent of adverse effect rate. (In no case less than the applicable minimum Federal or State wage).)

§ 655.4 Assurances.

As part of the labor certification application the employer shall include assurances signed by the employer, that:

(a) The employer has not within the past year been found by a Court or by a Federal or State enforcement agency to have failed without good cause to comply with an employment contract with a United States or foreign agricultural or logging worker, or to have failed without good cause to comply with applicable Federal, State and local employment-related laws, including health and housing laws and temporary labor certification related requirements, or that, if the employer was so found, the employer has produced conclusive, documented evidence that the violation has been remedied, and assures that it will not violate the law or laws in the future;

(b) The job opportunity is not:

(1) Vacant because the former occupant is on strike or is being locked out in the course of a labor dispute, or

(2) At issue in a labor dispute;

(c) During the period in which foreign workers are scheduled to be employed under the terms of the temporary labor certification:

(1) The wages and working conditions which will be offered and afforded by the employer to any foreign worker will not be higher or more favorable than those offered and afforded to U.S. workers;

(2) The employer will offer and provide employment to any U.S. worker who is qualified and willing to work in the job opportunity (including women) and will offer and provide housing to such a worker and to the worker's family until the time the foreign worker who holds the job opportunity has completed 50 percent of the foreign worker's contract period; and

(3) The employer will provide each U.S. worker with a copy of the worker's employment contract. The employment contract which is provided to the worker shall be written in Spanish if the worker is fluent and/or literate in Spanish but is not substantially literate in English.

§ 655.5 Recruitment plan.

If the employer has made requests for temporary foreign labor for each of the preceding two years, the employer shall submit as part of the temporary labor certification application, a written plan for recruiting and retaining U.S. workers which is designed to reduce the use of temporary foreign workers. If such a recruitment plan was submitted in the previous year, the employer shall submit documents showing the employer's efforts to implement the plan and the results of the implementation.

§ 655.6 Recruitment efforts.

As part of the temporary labor certification application the employer shall include documents clearly showing the employer's efforts to recruit U. S. workers. The documents must show that:

(a) Reasonable efforts have been and will continue to be made by the employer to obtain U.S. workers at wage rates and working conditions no less favorable than those offered to aliens; and

(b) Such efforts included reasonable attempts to use workers who commute on a daily basis between their residences and the place of employment, the use of the Employment Service intrastate and interstate clearance system, and the employer's participation in special youth recruitment programs.

§ 655.7 Action on temporary labor certification applications by the local office.

(a) When a temporary labor certification application is filed with a local employment service office, the local office shall make sure that the application is complete. If the application is not complete, the local office shall return it to the employer and shall advise the employer to re-file it when it is completed.

(b) If the application is complete, the local office, using the information on the application, shall prepare and process an employment service job order. If this job order is discriminatory or otherwise unacceptable as a job order under employment service regulations, the local office shall, as appropriate, either contact the employer to try to remedy the defect or return the application to the employer with instuctions as to how the defect can be remedied.

(c)(1) If the job order is complete, and if it complies with employment service regulations, the State agency shall use the job order to recruit U. S. workers from the local area and through the Employment Service intrastate and interstate clearance systems.

(2) In view of the statutorily established basic function of the employment service as a no-fee labor exchange, that is, as a forum for bringing together employers and job seekers, neither the Department of Labor nor the State employment service agencies are guarantors of the accuracy or truthfulness of information contained on job orders submitted by employers. Nor do such job orders represent an "offer to contract" to which the Employment Service is in any way a party. Nevertheless, if the Department of Labor or a State employment service agency finds probable cause to believe that an employer's job order contains a material representation, the procedures at Subpart F of Part 658 of this Chapter shall be followed (as proposed in the FEDERAL REGISTER on October 5, 1976, at 41 FR 44023).

(d) The State agency shall send the labor certification application to the appropriate Regional Administrator (RA), Employment and Training Administration, together with a statement indicating whether the local office believes the employer has met requirements of this subpart, a report of U.S. worker availability in the area, a description of the recruitment efforts undertaken by the local office on behalf of the employer, and any other information requested by the ETA.

§ 655.8 Temporary labor certification determinations.

(a) The RA shall determine whether the employer has met the requirements of §§ 655.2–655.6. If the RA finds that the employer has complied with those requirements, the RA shall recommend to the Administrator in writing that the temporary labor certification be granted, giving the reasons therefor. If the Administrator objects to the granting of the temporary labor certification based on relevant considerations, the RA shall not grant the temporary labor certification until and unless the objections are resolved.

(b) If the RA believes that the employer's efforts to recruit U.S. workers has not been sufficient or that the temporary labor certification should not be granted for other reasons, the RA shall issue a Notice of Findings, as defined in § 655.1, and shall afford the employer a reasonable time to submit evidence to rebut the bases of the Notice of Findings.

(c) No labor certification shall be granted to any employer if the Immigration and Naturalization Service has notified the Department of Labor that the employer has knowingly had in his employ during the previous 12 months any foreign worker who was not lawfully in the United States, or if the employer, in the previous 12 months, has been found to have violated the Farm Labor Contractor Registration Act or the Federal regulations issued under that Act.

(d) After the labor certification determination has been made the RA shall notify the employer in writing of the decision. If the labor certification is denied, the notice shall state the reasons therefor and the appeal rights of the employer under the Immigration and Naturalization Service regulations.

§ 655.9 Adverse effect rates.

(a) *Schedule of Rates for 1976.*

State:	Rate
Connecticut	2.61
Florida (sugarcane only)	3.04
Maine	2.69
Maryland	2.27
Massachusetts	2.56
New Hampshire	2.82
New York	2.48
Vermont	2.78
Virginia	2.44
West Virginia	2.74

(b) The adverse effect rate for all areas not listed in paragraph (a) of this section, for logging and sheepherding, and for Florida crops other than sugarcane, shall be the prevailing wage rate for the occupation in the area of intended employment.

(c) The Administrator shall review the adverse effect rates annually in the light of changed agricultural and/or similarly skilled non-agricultural wage rates in each State. The Administrator shall periodically publish a schedule containing: (1) The adverse effect rate; and (2) The normal piece-rate production of an average U.S. worker; (3) The adverse effect piece rate, that is, the piece rate by which an average U.S. worker will earn the adverse effect rate.

§ 655.10 Temporary labor certification applications involving fraud or willful misrepresentation.

(a) If possible fraud or willful misrepresentation involving a temporary labor certification application is discovered prior to a final temporary labor certification determination, or if it is learned that an application is the subject of a criminal indictment or information filed in a Court, the RA shall refer the matter to the INS for investigation and shall notify the applicant in writing of this referral. The RA shall continue to process the application and may issue a qualified temporary labor certification.

(b) If a Court finds an applicant innocent of fraud or willful misrepresentation, or if the Department of Justice decides not to prosecute an applicant, the RA shall not deny the temporary labor certification application on the grounds of fraud or willful misrepresentation. The application, of course, may be denied for other reasons pursuant to this subpart.

(c) If a Court or the INS determines that there was fraud or willful misrepresentation involving a temporary labor certification application, the application shall be deemed invalidated, processing shall be terminated, and the application shall be returned to the applicant with with the reason therefore stated in writing.

§ 655.11 Invalidation of temporary labor certifications.

After issuance, temporary labor certifications are subject to invalidation by the INS upon a determination, made in accordance with that agency's procedures or by a Court, of fraud or willful misrepresentation of a material fact involving the temporary labor certification application. If evidence of such fraud or willful misrepresentation becomes known to a Regional Administrator, Employment and Training Administration or to the Administrator, the Regional Administrator or Administrator, as appropriate, shall notify the INS in writing.

§ 655.12 Failure of employers to comply with the regulations under this subpart.

If the Department of Labor or a State employment service agency has probable cause to believe that an employer's job order contains a material misrepresentation, or that an employer has not complied with the terms of a temporary labor certification application or of a certification, the procedures at subpart F of Part 658 of this Chapter shall be followed (as proposed in the FEDERAL REGISTER on October 5, 1976 at 41 FR 44023).

§ 655.13 Petitions for higher meal charges.

(a) An RA may permit an employer to charge workers up to $4.00 for providing them with 3 meals per day if the employer justifies the charge by submitting documentary evidence to the RA.

(b) Evidence submitted shall include the cost of goods and services directly related to the preparation and serving of meals, the number of workers fed, the number of meals served and the number of days meals were provided. The cost of the following items may be included: food; kitchen supplies other than food, such as lunch bags and soap; labor costs which have a direct relation to food service operations, such as wages of cooks and restaurant supervisors; fuel, water, electricity, and other utilities used for the food service operations; other costs directly related to the food service operation. Charges for transportation, depreciation, overhead, and similar charges may not be included. Receipts and other cost records for the representative pay period shall be available for inspection by the Secretary's representatives for a period of 1 year.

Signed at Washington, D.C., this 14th day of January 1977.

WILLIAM H. KOLBERG,
Assistant Secretary for Employment and Training.

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federal register

TUESDAY, JANUARY 25, 1977

PART VI



DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Public Health Service

■

PROFESSIONAL STANDARDS REVIEW ORGANIZATION DETERMINATIONS

Interim Hearings and Appeals

Title 42—Public Health

CHAPTER I—PUBLIC HEALTH SERVICE, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

SUBCHAPTER I—MEDICAL CARE QUALITY AND COST CONTROL

PART 101—PROFESSIONAL STANDARDS REVIEW

Interim Hearings and Appeals of Professional Standard Review Organization Determinations

On February 20, 1976, interim regulations were adopted and published in the FEDERAL REGISTER (41 FR 7878), to provide for hearings and appeals of Professional Standards Review Organizations (PSROs) as required under section 1159(b) of the Social Security Act (42 U.S.C. 1320–8). While the regulations became effective immediately on publication, it was anticipated that appropriate revisions might be suggested by the public and interested persons were invited to submit written comments, suggestions or objections, not later than March 22, 1976, concerning these interim regulations. All comments received with respect to the interim regulations were given consideration.

1. A number of comments objected to the requirement, in § 101.1402(a), that the Statewide Council automatically review every adverse PSRO reconsideration. This comment was adopted and the regulation now requires a dissatisfied party to file a request for Statewide Council Review. It is not reasonable to require the Statewide Council to automatically review cases where no party has expressed an interest in obtaining such review. Moreover, a heavy workload and great expense for the Statewide Council would result from automatic review of every adverse PSRO reconsideration. On the other hand, the burden upon a party of filing a request for a Statewide Council review is minimal. Section 101.1402(a) has been amended accordingly.

2. Comments were received which requested that providers and practitioners be afforded hearings by the Secretary under section 1159(b) of the Social Security Act on adverse PSRO determinations. Section 101.1402(b) makes such hearings available to beneficiaries or recipients only. This language substantially parallels the language in section 1159(b) of the Act. Hence, the statute makes no express provisions for providers and practitioners to obtain Secretarial hearings. At the same time, section 1159(a) expressly affords rights to reconsideration of PSRO determinations to providers and practitioners. The limitation of the rights of such parties to reconsideration under section 1159(a) indicates a deliberate legislative design to omit provider and practitioner appeals under section 1159(b). Finally, under section 1159(c) of the Act, hearings in the PSRO program "shall be in lieu of any review, hearing, or appeal under this Act with respect to the same issue." Therefore, providers and practitioners are entitled neither to hearings under section 1159 of the Social Security Act, nor to hearings "on the same issue" (i.e., medical necessity, quality, and appropriateness of health care) under Title XVIII or XIX of the Act. However, on other issues, such as coverage and reasonable charges, providers and practitioners continue to retain rights to Departmental hearings provided under law. Section 101.1402(b) has not been changed, therefore, to provide appeals to such parties.

3. Comments were received questioning whether there is an appropriate method utilized by the Secretary for selecting impartial medical advisors to the Administrative Law Judges, as required under § 101.1404(b), which assures that the advisors are "impartial." It was suggested that advisors be chosen from a permanent panel created by State and local medical societies and that particular doctors be identified by the societies to be consulted in particular cases. It is not clear how this proposed system would insure impartiality. In contrast, under the regulations adopted, the system to be used is expected to operate to reasonably assure the objective of obtaining impartial advice. Under § 101.1404(b)(3), a professional advisor cannot be consulted if he was directly involved in providing services, he or his family have a financial interest in the institution in which care is provided, he participated in the PSRO or Statewide Council decisions, he has staff privileges at the institution where services are provided, or he is on the governing board of the PSRO or Statewide Council. The enumerated cases were considered to indicate the various factors which would prejudice an advisor to an improper degree. However, in order to insure that other cases of bias may be considered, the regulations have been amended to provide that where a reasonable showing is made to the Administrative Law Judge that an advisor may be biased in a case, the advisor's opinion will not be utilized and the Administrative Law Judge must obtain the advice of another professional advisor. Moreover, the selection process described in Comment 4 assures input from local medical societies and is expected to further insure impartiality.

4. It was suggested that language be added to the regulation to assure that the medical advisor is recognized as a peer of the professional whose services are being reviewed. Since the regulation calls for "*appropriate* professional consultation" (emphasis added), the language is considered sufficient. In fact, the system which is used by the Bureau of Hearings and Appeals to assure the competence and qualifications of advisors will also assure that appropriate peers are utilized to review the work of other physicians. The Bureau has entered into contracts with physicians throughout the country to provide appropriate medical consultation for Administrative Law Judges conducting hearings under various titles of the Social Security Act, including Title XI. These physicians are recommended by medical societies and other physicians. Before the physicians are selected, their background and credentials are closely scrutinized in such publications as the American Medical Association's Directorate of Doctors and in other medical literature relating to specialists prepared by the specialty boards and the American Medical Association. An advisor must be a member, in good standing, of his local medical society. After the physicians credentials are verified, interviews are held with members of the staff at the hospital at which he practices. Most of the advisors are board certified and they represent every medical specialty and geographic locale. The broad expertise and the heterogenous nature of this panel of medical advisors will enable the Administrative Law Judge to obtain a consultant in a hearing involving a PSRO determination who has the appropriate qualifications to be considered a peer of the physician who provided the services in question. At the same time, it is the general practice to utilize an advisor residing and practicing in the same area as the practitioner who rendered the services, assuring that, to that extent, a geographic peer will be consulting in the case. However, since advisors who have precisely the same qualifications as the professional under review, or who reside in the same locality as the professional involved, are not always available to consult, it was not considered appropriate to require specific peer qualifications under the regulations.

5. A suggestion was received that the medical advisors be subject to oral cross examination at the hearings or subjected to questions through a deposition form of proceeding prior to the hearing. Past experience in Title XVIII hearings and the procedures adopted for use in Title XI hearings, indicates that cross examination procedures or similar protections, will be provided. In the majority of Title XVIII cases, the medical advisor has, in fact, appeared and testified before the Administrative Law Judge at the hearing. At such time, the advisor may be examined by the claimant and/or his representative (20 CFR 404.939). Where an advisor's opinion is obtained in writing, the claimant will be afforded an opportunity to examine the opinion and rebut it through additional evidence, oral testimony or a written statement (20 CFR 404.927).

6. Comment was received questioning whether PSRO medical necessity decisions must be accepted by a Medicaid State agency. Under sections 1154(b), 1155(a) and 1158 of the Social Security Act, PSROs, whether conditionally or unconditionally designated, will have final authority for purposes of payment under the Act on issues of medical necessity, quality, and appropriateness of health care services. Medicaid State agencies have been notified of this by the Department, and regulations are under development within the Department to implement these provisions. However, even in the absence of regulations, section 1164 of the Act provides that the provisions of Title XI, Part B of the Act shall apply automatically to Medicaid State plans.

7. Comment was received that rules regarding confidentiality of appeals data should be made a specific requirement

of these regulations. Data acquired or generated by a PSRO in the exercise of its functions is currently prohibited from public disclosure by section 1166 of the Act except where disclosure is necessary to carry out the purposes of Title XI or where disclosure is otherwise authorized by regulations. Regulations to further implement this provision relating to confidentiality of PSRO data are currently under development within the Department. However, disclosure of PSRO data and information which is necessary to carry out PSRO reconsiderations and Secretarial hearings is clearly authorized under section 1166(a)(1) of the Act, without the necessity for regulations.

8. Comment was received recommending that simplified administrative procedures should be included in the final regulations. Although the requirements for conduct of the hearing itself are lengthy and specified in some detail, this is in order to ensure that full due process is accorded the appellant. However, the procedures for requesting a hearing are very simple and should pose no burden or obstacle to the claimant.

9. It was proposed that a controversy involving a claim of $100 would more appropriately be handled at the local level rather than by the Statewide PSRO Council, and that the required amount in controversy for Statewide Council review should be $1000. The right of providers, practitioners, and beneficiaries and recipients to a review by a Statewide Council from an adverse PSRO reconsideration, where a Statewide Council exists and the claim is at least $100, is statutorily mandated by section 1159(b) of the Act and may not be waived or modified by regulation.

10. Comments recommended that the interim regulations should have been published as proposed rulemaking allowing prior public comment rather than as final rules effective upon publication. As explained in the preamble to the interim regulations, since conditional PSROs are currently making determinations which are conclusive for purposes of payment under the Social Security Act, and since rights to reconsideration, hearing and appeal under section 1159 are statutorily required, the Department believes that good cause existed in accord with the Administrative Procedure Act (5 U.S.C. 553) to make these interim regulations effective upon publication. However, public comment on the interim regulations was invited and considered and revisions set out in this Notice are the result of such public input. Moreover, regulations in proposed form setting out more detailed procedures for PSRO reconsiderations, hearings and appeals will be published in proposed form in the future, providing additional opportunity for public comment.

11. Comment was received suggesting that the regulations should require the hearing body to conduct and decide the hearing within a specified limited time from the date of the request. Since the time needed to conduct the hearing will vary depending in part upon the type and extent of evidence the claimant wishes to present at the hearing, this would not be an appropriate rule and could be disadvantageous to claimants. Administrative efforts to increase the number of hearing officials and other actions are expected to reduce unnecessary delays in the hearing process. Hence, no change in the regulation has been made.

12. It was proposed that language regarding continuance of the States' authority to conduct hearings on issues of scope of Medicaid benefits and eligibility should be incorporated not only in the Preamble but also in the body of the regulations. The language of § 101.1401 of the regulations, which provides that these regulations are applicable only to hearings provided by the Secretary with regard to determinations made by a PSRO under section 1155(a) of the Act, clearly delineates the PSRO's authority since section 1155(a) relates only to PSRO determinations of medical necessity, quality, and appropriateness of health care services. Hence, such additional language regarding coverage determinations and hearings would be redundant.

13. Comment was received that there should be two levels of appeal from a PSRO adverse initial determination prior to Statewide Council review; i.e., a reconsideration by a hospital delegated review functions under section 1155(e) of the Act, and another reconsideration by the PSRO. Section 1159(a) of the Act clearly provides for only one reconsideration of an adverse claims decision. To require another reconsideration, where the statute already requires numerous levels of review, including Statewide Council review, a hearing by the Department, and judicial review would be administratively burdensome, time-consuming and confusing to beneficiaries and recipients.

Accordingly, 42 CFR Part 101, Subpart N is revised as set forth below.

Effective Date. This regulation shall become effective January 25, 1977.

NOTE.—The Department of Health, Education, and Welfare has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A–107.

Dated: December 15, 1976.

THEODORE COOPER,
Assistant Secretary for Health.

Approved: January 18, 1977.

MARJORIE LYNCH,
Acting Secretary.

Subpart N—Hearings and Appeals of Professional Standards Review Organization Determinations Interim Regulations

Sec.

101.1401 Applicability of section 1159(b) hearing procedures.
101.1402 Right to reconsideration, review and hearing.
101.1403 Utilization of procedures under Title XVIII, Part A of the Social Security Act.
101.1404 Professional consultation.
101.1405 Determining amount in controversy in case of proposed services.
101.1406 Right to judicial review.

AUTHORITY: Sec. 1159, Social Security Act; sec. 249F, Pub. L. 92–603; 86 Stat. 1429–1445 (42 U.S.C. 1320c–8); sec. 1102 of Social Security Act, 49 Stat. 647 as amended (42 U.S.C. 1302).

§ 101.1401 Applicability.

The regulations of this subpart are applicable to hearings provided by the Secretary pursuant to section 1159(b) of the Social Security Act (hereinafter "the Act") with regard to determinations under section 1155(a) of the Act by a PSRO, including a conditional PSRO, which has assumed full review responsibility in specified health care institutions.

§ 101.1402 Right to reconsideration, review and hearing.

(a) Any beneficiary or recipient who is entitled to benefits under the Act (other than Title V), or a provider or practitioner who is dissatisfied with a determination, with respect to a claim, made by a Professional Standards Review Organization in carrying out its responsibilities for the review of professional activities in accordance with paragraphs (1) and (2) of section 1155(a) of the Act shall, after being notified of such determination, be entitled to a reconsideration thereof by the Professional Standards Review Organization, and, where the Professional Standards Review Organization reaffirms such determination in a State which has established a Statewide Professional Standards Review Council, and where the matter in controversy is $100 or more, such determination shall, upon the written request of the dissatisfied party, be reviewed by professional members of such Council and, if the Council so determines, revised.

(b) Where the determination of a Statewide Professional Standards Review Council is adverse to the beneficiary or recipient (or where there is no such Council in a State and where the matter in controversy is $100 or more), such beneficiary or recipient shall be entitled to a hearing thereon by the Secretary to the same extent as provided in section 205(b) of the Act.

(c) Any review or appeal provided under this section shall be in lieu of any review, hearing or appeal under the Act with respect to the same issue.

§ 101.1403 Utilization of Title XVIII, Part A, hearing procedures.

The procedures specified in § 405.722 (time and place of filing request for hearing), §§ 405.740 through 405.747 (determining amount in controversy), §§ 404.919 through 404.952 and 404.954 through 404.956 (procedures for conduct of hearings and Appeals Council review); §§ 405.750, 404.958, 404.961 through 404.963, and 404.966 (reopening initial or reconsidered determinations and hearings or Appeals Council decisions); and §§ 404.971 through 404.973 (representation of parties) of Title 20 Code of Federal Regulations, except to the extent inconsistent with specific provisions of this Subpart N, shall govern hearings under section 1159(b) of the Act.

§ 101.1404 Professional consultation.

(a) Any decision made by an Administrative Law Judge with regard to a PSRO determination shall be made only after receiving and considering appropriate professional consultation on the matter.

(b) Professional consultation shall be obtained by the Administrative Law Judge, in the form of either testimony or written opinion, from an impartial medical advisor selected by the Social Security Administration in each matter which he is to decide under section 1159(b). Such consultation shall be part of the record, and shall be considered by the Administrative Law Judge along with other evidence of record in deciding the issues before him.

(1) Each party shall have the right to examine all evidence of record, including that obtained from the medical advisor, and to present rebuttal evidence. Such rebuttal evidence shall be made part of the record for consideration.

(2) Such consultation shall be rendered by a licensed doctor of medicine or osteopathy whenever the health care services or items in question were provided or proposed to be provided by another licensed doctor of medicine or osteopathy.

(3) No professional advisor shall be utilized to provide such consultation if: (i) he was directly or indirectly involved in providing the services which are the subject of the hearing; (ii) he or any member of his family has, directly or indirectly, any financial interest in the institution in which such services were provided or were proposed to be provided; (iii) he participated in the PSRO initial or reconsidered determinations or the Statewide Council determination which is the subject of the hearing; (iv) he has staff privileges in the institution in which such services were provided or proposed to be provided; (v) he is a member of the governing body of the PSRO or a member of the Statewide Council which rendered a determination in the matter; or (vi) a reasonable showing is made to the Administrative Law Judge that an advisor may be biased with regard to the case under review. Where a professional advisor is rejected, the Administrative Law Judge shall obtain appropriate professional consultation from another professional advisor who meets the requirements of this Subpart.

§ 101.1405 Determining amount in controversy in case of proposed services.

Where services or items proposed to be provided have been disapproved by the PSRO, the amount in controversy shall be determined upon the basis of reasonable estimates of the amounts which would be charged the individual if such services or items were provided, and shall be computed in accordance with the priciples set forth in section 405.740 of 20 CFR.

§ 101.1406 Right to judicial review.

To the extent authorized by section 1159(b) of the Act, a party to a decision of the Appeals Council (see section 404.960 of 20 CFR), or the decision of an Administrative Law Judge where the request for review by the Appeals Council was denied, may obtain a court review where the amount in controversy after Appeals Council review is $1,000 or more, by filing a civil action in a district court of the United States in accordance with the provisions of section 205(g) of the Act (see § 422.210 of 20 CFR for filing procedure).

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federal register

TUESDAY, JANUARY 25, 1977

PART VII

THE NATIONAL ARCHIVES OF THE UNITED STATES • 1934 •

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

ADMINISTRATIVE FUNCTIONS, PRACTICES, AND PROCEDURES

General Provisions

Title 21—Food and Drugs

CHAPTER I—FOOD AND DRUG ADMINISTRATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

[Docket No. 75N-0001]

ADMINISTRATIVE FUNCTIONS, PRACTICES, AND PROCEDURES

General Provisions

The Food and Drug Administration (FDA) is issuing in final form the general provisions for its administrative functions, practices and procedures. The regulations shall be effective February 24, 1977.

Included within this subpart (21 CFR Part 2, Subpart A) are regulations establishing procedural requirements for public requests for agency action or challenges to agency action, for the issuance of regulations by the agency, for the compilation and maintenance of the administrative record of agency decisions and actions, and, generally, for the conduct of agency business with the public. The regulations include provisions that specify the terms on which FDA officials will meet with members of the public and provisions that govern providing advice and information to the public on agency business. The provisions of Subpart A will apply to all aspects of FDA business unless superseded by other requirements specifically applicable to a particular class of actions or decisions.

The notice of proposed rule making on which these regulations are based was published in the FEDERAL REGISTER of September 3, 1975 (40 FR 40682). In the preamble to that proposal, the Commissioner of Food and Drugs discussed the initial issuance of these and related regulations, published in the FEDERAL REGISTER of May 27, 1975 (40 FR 22950), and subsequent litigation (*American College of Neuropsychopharmacology* v. *Weinberger, et al.*, Civil Action No. 75-1187) that resulted in their withdrawal as a final regulation and republication as a notice of proposed rule making. Other subparts of Part 2 proposed on September 3, 1975, have since been published separately in the FEDERAL REGISTER as final regulations as follows: Subpart C—Public Hearing Before a Public Board of Inquiry, June 28, 1976 (41 FR 26636); Subparts E, F, and G—Procedures for Public and Regulatory Hearings and Regulations Governing Standards of Conduct and Conflict of Interest, November 2, 1976 (41 FR 48258); Subpart B—Formal Evidentiary Public Hearings, November 23, 1976 (41 FR 51706); and Subpart D—Public Hearing Before a Public Advisory Committee, November 26, 1976 (41 FR 52148).

Most of the comments received on the provisions of Subpart A were from manufacturers of regulated products, including industry trade associations, professional associations, consumer groups, and individuals. Approximately 160 comments were received, including several comments on the May 27, 1975 final regulation, which, while subsequently withdrawn, was virtually identical in substance to the September 3, 1975 proposal. A section-by-section discussion of the substantive provisions of the regulations appeared in the preamble to that proposal. A summary of the issues raised by the comments, and the Commissioner's resolution of those issues, are set forth below.

No comments were received regarding § 2.1 Scope (21 CFR 2.1), and it is adopted as proposed.

1. Two comments were received regarding § 2.3 Definitions (21 CFR 2.3), both of which addressed the definition in § 2.3(a)(12) of "interested person." As explained in the preamble to the proposed rule, "interested person" and "any person who will be adversely affected" have been defined broadly to include any person who wishes to participate in any proceeding of FDA. No particular interest, specific economic or other harm, or other indicia of "standing" is required before a person may participate in or challenge any agency action.

One of the comments supported eliminating from the definition of "interested person" the requirement of a specific showing of interest. The other comment objected to the proposed definition as too broad. The comment argued that, by not limiting participation in agency matters to those who can show a definite interest that can be adversely affected, FDA proceedings may become protracted and burdened by numerous parties seeking to participate merely on the grounds that they represent some broad public interest. This, the comment argued, will prevent FDA proceedings from being expeditiously concluded in an orderly manner.

The Commissioner disagrees with this comment and has retained the proposed definition of "interested person" in the final regulation. Contrary to the comment, he maintains that persons espousing only broad interests shared generally by the public are entitled to participate fully in agency proceedings. As noted in the preamble to the proposal, FDA activities cover a broad range and affect every citizen generally, and thus all persons are entitled to participate in, and question, actions of the agency. The Commissioner is not persuaded that many agency actions will be seriously delayed as a result of the broad definition of "interested person," but he concludes that any delay that is likely to occur will be outweighed by the advantages of permitting unimpeded access by all persons to agency proceedings.

2. One comment on § 2.4 Summaries of administrative practices and procedures (21 CFR 2.4) urged that the distribution of the summaries by the Commissioner be wide and systematic so that public awareness would not be left to chance.

While the Commissioner agrees fully with the objective expressed by the comment, he believes it undesirable to modify the provision to impose on the agency what could be viewed as a requirement to establish a special distribution procedure. Every reasonable effort will be made by the agency to distribute the material so that it reaches as many segments of the public as possible.

3. Many comments were received in response to several aspects of § 2.5 Submission of documents to hearing clerk; computation of time; availability for public disclosure (21 CFR 2.5). Several comments objected to the requirement in proposed § 2.5(b) that submissions signed by attorneys or other authorized representatives be accompanied by signed statements of authorization, unless documentation of authorization has previously been submitted as part of the administrative file in the same proceeding. The comments argued, generally, that the requirement was excessive; that it was unwarranted to assume that an attorney would undertake to represent a party before the agency when he was not authorized to do so. Many comments argued that such a requirement was obviously superfluous when the attorney is in-house counsel to a corporation or organization. One comment inquired whether such an attorney, if an officer of the company, would be required to have his authority verified by another officer, and whether the corporate seal must also be affixed. Several comments noted that the Federal courts do not require the verification contemplated by the proposed rule, and thus questioned whether there could be a valid basis for imposition of the requirement by FDA.

After consideration of the comments, the Commissioner has concluded that the requirement should be deleted. He is persuaded by those comments questioning whether unauthorized submissions have been a problem for the agency, and he concedes that they have not. In any event, he believes that sanctions already available, notably 18 U.S.C. 1001 (the "False Reports to the Government Act"), as well as the Canons of Professional Ethics, will adequately ensure that attorneys or others representing parties or interested persons before the agency are authorized to do so.

A conforming change in § 2.130 (21 CFR 2.130), which in part establishes a similar verification requirement for any person representing another in a formal evidentiary public hearing under Subpart B, will be made in a subsequent publication.

4. Several comments objected to the requirement in proposed § 2.5(c) that all data and information referred to or in any way relied upon shall be included in each submission in full and may not be incorporated by reference, and to the requirement in paragraph (c)(1) that a copy of any article or other reference or source be included in each submission.

The comments contended that these companion requirements were unduly burdensome for various reasons. Several urged that submission be considered unnecessary if the material (1) is already available in another agency file, (2) consists of rules, regulations, court decisions, or agency memoranda, or (3) includes general reference materials such as standard medical texts. A comment suggested that incorporation of published sources be permitted unless FDA later notifies the party that the source is not available to the agency. It was pointed out that in a given matter several comments may logically wish to rely on or refer to the same material, and inquired whether the receipt of five copies of the same material with each of numerous submissions was necessary or consistent with agency purposes. Another comment similarly questioned whether requiring receipt of duplicative material was consistent with the avowed limited agency resources, as represented in the preamble to the proposal, and suggested that some discretion be left to the submitting party. One comment urged that the rule be amended to require the submission of only the relevant portions of recognized texts.

The Commissioner advises that, insofar as submissions rely on legal documents, such as FDA documents that are routinely made publicly available (e.g., staff manual guides, hearing transcripts), Federal court cases, or Federal laws or regulations, he has determined that copies of the original material need not be submitted. He considers it appropriate to adopt a similar position for submissions that rely on an established, readily available medical or scientific textbook. Section 2.5(c) of this final regulation reflects these changes. Moreover, in accordance with § 2.1(a), § 2.5 would not change other agency regulations that permit referencing of materials in other types of administrative submissions (e.g., § 310.9 Designated journals (21 CFR 310.9), waiving with respect to the agency's new drug regulations the submission of reprints and summaries appearing in the journals listed).

However, the Commissioner does not agree with other suggestions made in the comments. He advises that the agency cannot, with its limited resources, be left to ferret from its voluminous files documents to which reference is made in submissions. The filing systems used by the Hearing Clerk and most other agency offices require manual searches to locate most materials. The Commissioner advises that § 2.5(c) permits referencing of material in the administrative file of the same proceeding. He finds unworkable, however, the suggestion to allow submissions to be made without referenced documents, if the information (other than those types expressly excepted) is believed to exist in a different agency file. In such cases, the Commissioner concludes that the burden of filing duplicative material is less than the burden on the agency of manually locating identical material in other files, and, if it is not found, of notifying a party at that time to submit it.

In response to the comment urging that the rule be amended to require only the submission of relevant portions of recognized texts (and, presumably, other documents), § 2.5(c)(3) as promulgated provides specifically for the deletion of irrelevant material from references of any type. The Commissioner cautions, however, that material that is relevant but not necessarily supportive of a submission may not be omitted.

5. Several comments objected to the requirement in paragraph (c)(6) of proposed § 2.5, which provides for the rejection of submitted documents that fail to comply with any requirement of the regulations. The Commissioner advised in the preamble to the proposal that strict adherence to the requirements for submissions would be required, and that failure to comply could result in rejection of a submission by the Hearing Clerk, or its exclusion from consideration.

One comment considered the rule too inflexible, and contended that it is unjustified where the flaw is procedural and can be corrected easily. The comment further protested that no time limit was imposed on the Hearing Clerk to reject a document, and that the proposed rule did not provide for deferral of the agency decision in connection with which the document had been submitted until any defect in the submission had been corrected. Similarly, another comment inquired whether the resubmission of a rejected comment must be within the original time specified, referring to proposed § 2.112(c) in Subpart B (21 CFR 2.112(c)), which provides for resubmission of objections or requests for a hearing within the original 30-day time period. One comment suggested that 15 days be allowed from the day of rejection to allow a person to resubmit any rejected comment or other document. Still another comment urged that rejection of a comment be permitted only in the case of a serious failure to comply with reasonable requirements that are authorized by statute. Another comment suggested that the test for rejection should be that the document patently fails to comply substantially with the requirements, and complained that the case cited in the preamble to the proposal, *Municipal Light Boards* v. *Federal Power Commission*, 450 F. 2d 1341 (D.C. Cir. 1971), cert. denied, 405 U.S. 989 (1972), does not authorize rejection of a submission for failure to adhere exactly to formal submission requirements. One comment urged that a right of appeal be provided to permit challenges to the rejection of submissions. A final comment suggested that proposed § 2.5(c)(6) be revised to permit amendment of a submission as a matter of right when the submission is found to be procedurally deficient.

The Commissioner concludes that the provision be promulgated as proposed. He finds insubstantial the comments objecting to the authority of the Hearing Clerk to reject submissions for failure to adhere to the requirements of Part 2. These requirements have been imposed to facilitate agency business by avoiding the submission of requests or comments that are specious, insubstantial, or that fail to contain justification adequate to permit the Commissioner to evaluate properly the request or submission.

The Commissioner advises that the agency is not obliged to provide additional time for resubmission when a submission has been properly rejected. He believes the requirements for submission are precise enough to be met in the first instance—and that persons failing to meet them, rather than the agency, should bear the responsibility for the failure. Moreover, to provide an extended time for filing would clearly promote the filing of insubstantial submissions as a device to obtain additional time. Consequently, he disagrees as well with those comments demanding that an administrative right of appeal or right of resubmission be accorded when a submission is rejected.

The Commissioner also rejects the suggestion that he amend the requirements to permit rejection only when a submission "substantially" departs from the requirements; to do so would also invite the submission of incomplete and inadequate documents. He has essentially in this section reserved the right to reject submissions that are inadequate for the purposes for which they are submitted. At the same time, he advises that submissions will not be rejected frivolously or casually. Nor will rejection automatically preclude consideration when a corrected submission is not filed in a timely fashion. Comment closing dates in informal rule making, for example, indicate only when the Commissioner is no longer legally obligated to consider a comment; they do not prohibit him from considering comments filed late, and he frequently does so. The Commissioner advises that in implementing these requirements he intends to continue to observe a basic policy of fairness in determining whether a submission is acceptable.

6. Several comments objected to the various substantive requirements in § 2.5 for submissions to the Hearing Clerk. Some comments objected to the requirement of proposed § 2.5(a) that submissions be filed in quintuplicate. One urged that a comment or submission should not be rejected for the failure to submit the required number of copies. The comment also noted that the regulations fail to define "submission." Another comment suggested retaining the present practice of specifying the number of copies in each FEDERAL REGISTER notice.

The Commissioner advises that "submission" is intended to have its common dictionary meaning. Those documents that must be "submitted" to the Hearing Clerk for each type of contemplated agency action, moreover, are adequately described in the final regulation, and therefore no special definition of "submission" is necessary.

The Commissioner concludes that the final regulation will retain the specification of the number of copies of a submission, although as a matter of practice the number of copies will, as one of the comments suggested, also be specified in the relevant FEDERAL REGISTER notice. Based on a reassessment of agency needs, the Commissioner has reduced to four the number of copies required to be submitted, except where otherwise specified. A conforming change has been made in § 2.10(b)(4) (21 CFR 2.10(b)(4)) dealing with the submission of comments in response to a proposed regulation.

The question of the number of copies is one with which each Federal agency

must deal. Although agencies do possess duplicating facilities, most are fully utilized in duplicating agency-originated records. That FDA needs several copies of submissions is obvious—copies must not only be on display for public examination but must be forwarded to agency employees and, frequently, to agency counsel for evaluation and action. Many submissions number scores of pages and FDA lacks the resources to duplicate every one received. Because duplicating facilities are widely available, the Commissioner deems it reasonable to expect the public to undertake the task of duplication. Nonetheless, the Commissioner advises that the regulations do provide some exceptions to the general requirement that four copies be submitted. With respect to comments filed in response to proposed rule making, § 2.10 permits individuals to file one copy, on the basis of the Commissioner's experience that submissions by individuals (1) are less frequently received, (2) are submitted by persons often lacking access to duplicating facilities, and (3) are generally shorter than submissions from manufacturers, industry groups, and public interest organizations. Section 2.19(i) (21 CFR 2.19(i)) permits lesser numbers of copies to be submitted; namely, three copies of comments responding to advisory opinions. In this final regulation, that section permits individuals to submit one copy. The Commissioner believes that adequate justification has not been presented to reduce further the numbers of copies required. Rather, he views the requirements as necessary for the efficient conduct of agency business and not significantly burdensome.

In response to a comment inquiring whether comments will be rejected for failure to provide the requisite copies, the Commissioner advises that he will not normally reject these comments, although he has expressly reserved the right to do so. In most situations, where the failure to provide the required copies is not habitual, the Hearing Clerk will merely file the copy received and, depending on its length either request the person making the submission to provide additional copies, or make copies using agency facilities. The rule must permit some flexibility, and the Hearing Clerk will exercise appropriate judgment consistent with maintaining efficiency in the filing of documents.

7. One comment protested the requirement in proposed § 2.5(e) that certain submissions shall be considered filed on the date of receipt. The comment complains that this provides an advantage to persons located in Washington, DC.

The Commissioner advises that the receipt date is considered the filing date for only a small number of actions, e.g., petitions for reconsideration under § 2.8 and requests for administrative stays of action under § 2.9, where a strict filing time is specified to facilitate a prompt administrative decision. Establishing a date other than the receipt date as the day of filing in these limited circumstances would not be workable. The Commissioner views any disadvantage to persons outside the Washington area to be minimal, and to be clearly outweighed by the agency need to act expeditiously in certain limited types of matters.

The Commissioner advises that in most proceedings, except when another date is specified, § 2.5(e), as proposed and finalized, provides that the postmark shall be considered to be the date of filing. This rule applies equally to all persons regardless of their geographic location and the Commissioner finds this rule reasonable.

8. One comment asked implicitly whether proposed § 2.112(c), specifying steps the Hearing Clerk will take in filing objections or requests for hearing, should logically be incorporated into § 2.5. The Commissioner deems the comment to be valid, but advises that, as a matter of drafting preference, the references to "Subpart B of this part" in § 2.5(j) adequately incorporate the appropriate provision of § 2.112 into § 2.5.

9. Some comments objected to certain of the bases for rejecting comments stated in proposed § 2.5(c) (3) and (5). One comment characterized the reference to intemperate matter in § 2.5(c) (5) as vague and suggested deleting the requirement. Another contended that it is impracticable to remove all irrelevant matter as specified in § 2.5(c)(3), arguing that to do so would make many documents unintelligible and put undue emphasis on the matter retained. One comment suggested that what is irrelevant, defamatory, scurrilous or intemperate could vary widely, and argued that the provisions for resubmission were therefore inadequate.

The Commissioner views the issue raised by the comments as having some merit. He believes, however, that although the meaning of these words may vary, the standards can be fairly administered. The Commissioner must retain the ability to reject submissions whose content is clearly inappropriate for a public government file. He believes that proposed § 2.5(c) (3) and (5) contains a reasonably objective statement of criteria to be used, and thus has retained them in the final regulation.

The Commissioner advises that the comment regarding deleting irrelevant material has read the requirement too narrowly. The requirement does not intend that submissions must contain only carefully screened material that eliminates every irrelevancy. He advises, rather, that submissions should not include wholly irrelevant material that can easily be excised before submission, e.g., chapters of a book that are unrelated to the matter at hand. When thus viewed, he believes the requirement to be both necessary and desirable.

10. Comments expressed most concern about the requirement in proposed § 2.5(j) (2) (i) that material consisting of safety and effectiveness data and information or a protocol for a test or study be filed with the Hearing Clerk and be made available for public examination, but not for copying, if such material is submitted: (1) With an objection or request for a hearing filed pursuant to Subpart B of Part 2; (2) at a formal evidentiary public hearing pursuant to Subpart B of Part 2; (3) at a public hearing before a Public Board of Inquiry pursuant to Subpart C of Part 2; (4) at an alternative form of public hearing before a public advisory committee; or (5) at a public hearing before the Commissioner pursuant to § 2.117(a) (2) or (3) (21 CFR 2.117(a) (2) or (3)). Section 2.5(j)(2)(iii) proposed further that such material would be on public display and available for examination only for such time as is necessary to permit public participation in the public hearing, and any related judicial review. Proposed § 2.5(j) (2) (iv) would specify, in addition, that this limited availability would not constitute prior disclosure to the public as defined in § 4.81 (21 CFR 4.81) of the FDA public information regulations under Part 4 (21 CFR Part 4), and would prohibit any such information, if improperly copied, from being resubmitted to the agency in support of a petition or other request.

The many comments on the proposed requirement expressed essentially similar objections. Several comments argued that allowing examination but not copying of confidential safety and effectiveness information would be violative of the relevant statutory provisions prohibiting disclosure of trade secret information, i.e., 18 U.S.C. 1905 and section 301 (j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331(j)) and would be inconsistent with prior agency positions, primarily reflected in its public information regulations, and the new drug regulations under § 314.13 (21 CFR 314.13). The comments insisted that these regulations clearly provide that previously undisclosed safety and effectiveness data, at least insofar as they relate to a product subject to a new drug application (NDA) (or new animal drug application (NADA)), are trade secrets and not subject to public disclosure, citing *Morgan v. FDA*, 495 F. 2d 1075 (D.C. Cir. 1974). The comments insisted, further, that if such information is entitled to confidential treatment, it is entitled to full and not partial confidentiality; that the law does not provide for degrees of nondisclosure; and that making such material available simply for examination cannot fairly be characterized as anything other than disclosure.

One comment suggested that permitting public examination of safety and effectiveness data may result in a court finding that the data no longer retain their trade secret status. Still another comment maintained that submission of trade secret material to a third person destroys trade secret status under common law and may thus influence parties not to submit information because of the likelihood of disclosure.

One comment claimed that the position ignores the competitive value of the information and that even limited exposure to such data can greatly facilitate a competitor's filing an NDA for an identical or similar drug. The comment urged that mere exposure to the results of a competitor's research points to approaches found most effective and eliminates much of the trial and error experienced by the originator of the data. A related comment noted that protocols and test data may often have a commercial value beyond the single product or product class for which they were submitted. Several comments indicated that a mere viewing of such documents, particularly by trained scientists, can yield much information.

Another comment questioned the view stated in the proposal that the only value of the information would be in its resubmission to FDA. The comment contended, as did others, that such data had other commercial value. The comment suggested that the data would be valuable in obtaining product approvals in foreign countries, in designing clinical studies on similar compounds, and in verifying the results of independent research.

Several comments also disputed the representation in proposed § 2.5(j) (2) (iii) that the agency would not accept such material if improperly copied and submitted, pointing out that FDA has already taken the position in the preamble to its public information regulations published in the FEDERAL REGISTER of December 24, 1974 (39 FR 44602) that it could not under present law refuse to approve an identical, similar, or related drug on the basis of information that has been disclosed. Moreover, the comments questioned whether, even if FDA could lawfully refuse to accept such data, it could effectively enforce the ban on copying, or readily determine when wrongfully copied data, effectively disguised, were being resubmitted.

One comment asked whether the agency would, for example, require a second submitter to provide evidence that the information was not obtained by unauthorized copying. One comment pointed out that the rule forced a party to face the penalty of foregoing a hearing, guaranteed him by statute, if he did not wish to disclose his data. A related comment suggested that no need existed for public display of safety and effectiveness data when a hearing involved an NDA. It contended that the principal participants in an NDA hearing are the manufacturer and the agency, and that if the data were available to these parties, there would be no need to make it otherwise available, except through the already established use of summaries. Another comment suggested that the regulations not be finalized unless the FDA public information requirements were upheld in a suit against the regulations brought by the Pharmaceutical Manufacturers Association.

Several comments opposing the adoption of proposed § 2.5(j) (2) suggested alternatives in lieu of the proposed manner of disclosure of the material. One comment suggested maintaining confidentiality by limiting any disclosure to properly concerned parties under appropriate protective orders granted by the administrative law judge or authorized presiding officer. It suggested that such an arrangement has been held valid in a freedom of information context, citing *Porter County, etc., League* v. *U.S. Atomic Energy Commission*, 380 F. Supp. 360 (N.D. Ind. 1974). The comment suggested that where parties were represented by outside counsel, the documents could be disclosed to the counsel with a prohibition against disclosure to the client. The comment insisted that this procedure would both protect confidentiality and permit full participation in the hearing process.

Another comment contended that any need to disseminate safety and effectiveness data could be satisfied through the use of summaries under § 314.14(d) (21 CFR 314.14(d)), dealing with the treatment of such information when part of an NDA, and the agency's public information regulations under Part 4. It concluded that the material in question should thus be treated under proposed § 2.5(j)(3), namely, to permit neither examination nor copying.

One comment suggested that the requirements of proposed § 2.5(j)(3), which would prohibit disclosure except as permitted by the public information regulations, should apply to disclosure where participants are concerned. The comment would, by implication, permit disclosing the material to parties, although it did not specify whether the parties would be able to do more than review the material. The comment would require any party permitted to view the material to sign a statement that all trade secrets and confidential information would be used for the hearing only, and otherwise kept in confidence.

One comment expressed views contrary to the foregoing criticisms of the proposal. The comment protested the ban on copying imposed by proposed § 2.5(j) (2), claiming it to be unwise, unnecessary, and unenforceable. The comment noted anomalies in the requirement: that it would limit access to those who regularly meet or work in Washington or regional headquarters, and would put a premium on an observer's memory. It urged the agency to "go all the way" for convenience and accuracy.

While the Commissioner does not consider each of the objections to the requirements of proposed § 2.5(j) (2) to be valid, he has, upon reconsideration of the issue, determined to withdraw the provision.

The Commissioner agrees that proposed § 2.5(j) (2) is not readily reconcilable with the agency's position under Part 4. The public information regulations assert the traditional position that previously undisclosed full reports of safety and effectiveness data and certain protocols for studies are trade secrets and are thus prohibited from disclosure under both 18 U.S.C. 1905, the basic Federal criminal statute prohibiting the disclosure of trade secrets, and section 301(j) of the act, prohibiting the revealing of any information obtained under sections 404, 406, 505, 506, 507, 510, 512, 513, 514, 515, 516, 519, 520, 704, 706, or 708 of the act (21 U.S.C. 344, 346, 355, 356, 357, 360, 360b, 360c, 360d, 360e, 360f, 360i, 360j, 374, 376, 379) concerning any method or process which as a trade secret is entitled to protection.

Because of the large number of comments addressed to this issue, the Commissioner believes a full discussion of his reasons for modifying the proposal is appropriate. His position in the proposal was not that these materials were no longer trade secrets and were thus subject to disclosure, but rather that by limiting access to them to viewing only, and by precluding their resubmission to the agency by any other party, the agency would protect those interests that gave these materials their trade secret status. The Commissioner believed that this interpretation of the Federal nondisclosure statutes was appropriate, and that making the material so available would enhance the various hearing processes by allowing all participants access to information germane to the hearing.

The Commissioner continues to believe that the public availability of the information in question could enhance the utility and fairness of the public hearings provided for in Part 2. He has changed his position on the basis of three factors: (1) Upon reconsideration, he concludes that Congress has determined that such information may not be disclosed to the general public and that he must abide by that determination even in the context of public hearings, where access to the information may have a demonstrable public benefit; (2) the "look-but-don't-copy-rule," and the concomitant prohibition against resubmission of the material, would invite circumvention through both surreptitious efforts at copying and disguised resubmission, and could not be effectively enforced; (3) the benefit to the hearing process would be problematical. The Commissioner cannot say with assurance that mere access to the data, without copying, would permit the meaningful participation in the hearing process that was the objective of the proposal.

The provision has been modified, as suggested by a comment, to subject previously undisclosed safety and effectiveness data and information, including protocols, in a hearing setting to the restrictions against disclosure in proposed § 2.5(j)(3) (redesignated as paragraph (j)(2) in this final regulation), which will make the information available to all persons in accordance with Part 4, the agency public information regulations. As a practical matter, this will provide for the display of agency-prepared or -approved summaries for unlimited viewing and copying in the office of the Hearing Clerk, or dissemination of such summaries on request.

The Commissioner has also added a new paragraph (j)(3) to § 2.5, to permit disclosure of safety and effectiveness data and information, and otherwise undisclosed protocols for tests and studies, pursuant to a protective order issued by the administrative law judge at a formal evidentiary public hearing pursuant to Subpart B, or by the presiding officer at

a public hearing before a Public Board of Inquiry pursuant to Subpart C, or an alternative form of public hearing before a public advisory committee or a public hearing before the Commissioner pursuant to § 2.117(a) (2) or (3) (21 CFR 2.117(a) (2) or (3)). Any protective order must prohibit the disclosure of such confidential data except insofar as the administrative law judge or other presiding officer determines necessary for the proper conduct of the hearing. Paragraph (j)(3) accordingly permits disclosure only in in camera proceedings from which persons not specifically permitted access to the data would be excluded. The order must specify to whom the information is to be made available, e.g., to parties or participants, or only their counsel. The regulation thus permits the administrative law judge or other presiding officer to fashion a protective order to meet the circumstances of individual proceedings so long as the stated requirements are met. The requirements of proposed § 2.5(j)(2)(iv), prohibiting the resubmission of any material so disclosed, are incorporated into new paragraph (j)(3).

The Commissioner believes the use of protective orders and in camera proceedings meets most of the objections in the comments to the disclosure of this information. He notes that the use of in camera administrative proceedings to protect the confidentiality of information is recognized in the regulations of other agencies, e.g., 16 CFR 3.45, providing for in camera orders in proceedings before the Federal Trade Commission, and he is confident that, consistent with applicable statutes, such orders can be properly used in FDA hearings. For all interested persons not permitted to participate in in camera proceedings held as part of an administrative hearing where confidential safety and effectiveness data are discussed, summaries of such material will be available for inspection and copying in the office of the Hearing Clerk.

The Commissioner has not accepted other recommendations in the comments, e.g., the suggestion that disclosure be limited only to parties to the hearings; such a step would increase the number of persons seeking to become parties to a hearing simply to obtain access to confidential information. He rejects the obvious regulatory response to such a problem—to severely limit who may become a party to individuals, organizations, etc., having a recognizable specified interest in the proceedings—because it is inconsistent with the requirements' overall intent to improve access to FDA proceedings.

Nor does the Commissioner believe that he could lawfully adopt the last suggested alternative: permit copying as well as inspection of the material in question. This would be unauthorized under 18 U.S.C. 1905 and section 301(j) of the act.

11. The final order promulgating the public information regulations under Part 4 advised that confidentiality of documents submitted voluntarily to the Hearing Clerk cannot be established by submitting documents marked "confidential" or bearing some other analogous legend, but rather can be established only through presubmission review of voluntarily submitted documents under § 4.44 (21 CFR 4.44). The Commissioner advises that the personnel of the office of the Hearing Clerk cannot make decisions regarding confidentiality. Again, the Commissioner advises that the presubmission review procedure of § 4.44 must be followed by any member of the public who wishes information submitted voluntarily to the agency in a public proceeding to be held confidential. He has incorporated language to that effect in § 2.5(c)(6). In the absence of an affirmative determination of confidentiality under § 4.44, FDA will continue to make publicly available all materials submitted to the Hearing Clerk, notwithstanding any claims of confidentiality made on the face of a document.

12. Concern was expressed within the agency during the rule making process regarding the need for submissions from standard-setting organizations in which an FDA employee is participating under § 2.21 (21 CFR 2.21). The Commissioner advises that such organizations cannot properly rely on the FDA employee to convey their views regarding an anticipated agency action. Rather, any such group should, regardless of the number or identity of agency employees participating in its activities, offer submissions in its own name in accordance with this subpart whenever the organization wishes to make its views known to the agency.

Section 2.6 Initiation of administrative procedures (21 CFR 2.6) which specifies generally how agency action may be initiated is adopted substantially as proposed. Such action may be initiated (1) by any interested person who petitions the Commissioner in accordance with the requirements of this part or other agency regulations, (2) by the Commissioner, on his own initiative, or (3) when a court refers any such matter to the Commissioner after holding the matter in abeyance, dismissing an action regarding the matter in question, or making other appropriate judicial disposition of the matter.

13. A clarifying change has been made in § 2.6(c). As proposed, the section required the Commissioner to institute a proceeding "* * * whenever any court holds in abeyance or refers any such matter to him for * * * determination and the Commissioner concludes that the making of such a determination is feasible in light of agency priorities and resources." The phrase "holds in abeyance" might be understood to refer to a matter then before the agency and not, as was intended, simply to a matter then before the court. The referral by a court in § 2.6(c) means only those referrals not sought by the Commissioner, which are to be distinguished from referrals discussed in paragraph (b) of § 2.6. The latter result from initiatives by the Commissioner to have a matter within the agency's primary jurisdiction and pending before a court referred to the agency for decision or reconsideration. The language of § 2.6(c) has been clarified to reflect this distinction.

14. The only comment received on proposed § 2.6 urged that § 2.6(a), relating to administrative matters subject to citizen petitions, exclude food additive petitions under § 121.51 (21 CFR 121.51), NDA's under § 314.1 (21 CFR 314.1), and NADA's under § 514.1 (21 CFR 514.1). The comment argued that allowing any person to petition the Commissioner to revoke an NDA could create outside pressures inconsistent with the exercise of sound judgment, and could require that the holder of the NADA spend substantial time answering such a petition, even when the petition was without basis.

The Commissioner disagrees with the comment's contention that any interested person should not be entitled to petition to modify or reverse any agency action, including one that may have initially been taken ex parte, such as the approval of an NDA or NADA. The effects of such actions clearly extend to the public generally, and the public thus is entitled to initiate agency review of such decisions.

The Commissioner also notes that the comment appears to misunderstand the nature of the requirement. The mere submission of a petition under the section does not obligate the Commissioner to undertake agency action apart from reviewing the petition (e.g., § 2.7(e) (21 CFR 2.7(e))). Thus, the mere filing of a petition to revoke an approved NDA would not, as the comment postulates, automatically oblige the holder of the NDA to reply. Such reply would be necessary only if the Commissioner proposes to take an action on the petition adverse to the NDA holder; such action would be proposed only after his decision that the petition was meritorious. The comment is accordingly rejected.

Section 2.7 Citizen petition (21 CFR 2.7) codifies the requirements for citizen petitions, the mechanism by which any member of the public may seek agency action on any matter, except for the referral of matters to a United States attorney for the initiation of court enforcement action and related regulatory activities that are within the exclusive discretion of the Commissioner. As noted in the preamble to the proposed rule, in the past FDA has had no requirements governing the manner in which citizens might petition the agency to undertake agency action. This has resulted in confusion and uncertainty on the part of those who wish to petition the agency, as well as on the part of agency employees, on how to handle particular requests from the public.

15. The final regulation contains a new requirement, not proposed, that a citizen petitioner supply, when specifically requested by the Commissioner following review of the petition, information on the economic consequences of the action requested. Pursuant to Executive Order 11821, OMB Circular No. A-107, and HEW Guidelines, FDA is required

to consider the inflationary impact of legislative proposals and major rules and regulations that it initiates. The Commissioner has therefore added a new paragraph D, to the citizen petition form set forth in § 2.7(b) that requires citizen petitioners, when requested, to submit the type of information required under E.O. 11821 to be considered by executive agencies in assessing the inflationary impact of proposed actions. The submission of information relating to inflationary impact would not be required of every citizen petition. While evaluation of the inflationary impact of agency action is important, the one court that has addressed the issue has held that agency action is not subject to reversal because of alleged deficiencies in an inflation impact statement (*Independent Meat Packers Association v. Butz*, 526 F.2d 228 (8th Cir. 1975)). The Commissioner believes it justifiable, therefore, to elicit such information from petitioners only when he believes that additional information is necessary to evaluate the consequences of acting on a petition. In addition, the Commissioner will take into consideration the ability of the petitioner to provide relevant information and he recognizes that it is incumbent on the agency also to obtain such information from sources other than the petitioner.

16. Proposed § 2.7 does not obligate the Commissioner to respond definitively to citizen petitions within a given time frame, except where time limits are prescribed by statute. Several comments objected to this provision. The comments identified what they considered a lack of fairness, pointing out that other provisions of the proposed regulations (e.g., § 2.11 (21 CFR 2.11)) specify that administrative remedies be exhausted before court review can be obtained. One comment complained that a lack of a definite response period operated to the disadvantage of consumer groups as compared to industry petitioners, contending that in the past, consumer petitions filed with FDA have been forgotten.

The preamble to the proposal identified several reasons why no time period for response by the agency to petitions had been specified and explained that limited agency resources make it impractical for the agency to deal promptly with petitions concerning subjects of low priority. Moreover, the preamble noted that specifying a time period for reply might force the agency to decline requested action simply because it could not act within the time allowed.

After reviewing the various arguments, the Commissioner has determined that the agency should obligate itself to respond to a petitioner, at least preliminarily, within a specified time period. He has determined that such a requirement will on balance enhance agency efficiency in conducting its business. Moreover, the Commissioner believes that the obligation to respond to a citizen petition, when that response is overdue, must be regarded as a priority matter regardless of the petition's content, if the agency is to maintain the public confidence in its ability to deal with the issues within its jurisdiction.

Accordingly, as suggested by some comments, § 2.7(e) has been revised to require that the agency respond within 180 days to any petition submitted under that section. The response shall be either (1) approval, accompanied by some form of implementing action, e.g., the publication of a notice of proposed rule making, (2) denial, constituting final agency action, or (3) a tentative response, indicating why the agency has been unable to reach a decision on the merits of the petition, e.g., because of other agency priorities, a need for additional information, or other stated reason. The tentative response may indicate the likely agency response, and may specify when a definitive response may be given.

The Commissioner believes this modification will eliminate the uncertainty on the part of petitioners that the comments attribute to past agency handling of petitions, and thus responds to what appears to be the major objection raised by the comments.

17. Section 2.7(g), as proposed and as promulgated, permits any petitioner to supplement, amend, or withdraw his petition at any time before referral of the petition for hearing. After such a ruling or referral, however, the petition may be withdrawn only with the approval of the Commissioner. An editorial modification has been made to the section to clarify its meaning.

18. One comment suggested that § 2.7 be modified to state expressly that voluntary withdrawal of a petition shall be without prejudice to its resubmission. The Commissioner concurs that this is consistent with the intent of the section, and has revised § 2.7(g) accordingly. The Commissioner also advises, however, and has modified § 2.7(g) to provide, that when a petition may only be withdrawn with the agency's approval, the petitioner may resubmit it only with the agency's approval.

19. Section 2.7(l) requires the Hearing Clerk to maintain a chronological list of all petitions filed under that section, and under § 2.19, but excludes from the list petitions submitted to other parts of the agency pursuant to § 2.6(a)(1). The list, as proposed, would include for each petition the docket number established by the Hearing Clerk, the date the petition was filed by the Hearing Clerk, the name of the petitioner, and the subject matter involved. One comment suggested that a new item concerning the disposition of the petition be added so that interested persons might more easily determine what action FDA has taken on the petition. The Commissioner concurs with the suggestion and, as promulgated, paragraph (l) has been modified accordingly.

20. One comment urged that if petitions are permitted to be filed elsewhere in the agency and not listed by the Hearing Clerk, the regulation should provide for publication of notice in the FEDERAL REGISTER and direct communication with the holder of any NDA or NADA that is the subject of the petition.

The Commissioner advises that the procedures for revocation of an NDA or NADA are codified in both the Federal Food, Drug, and Cosmetic Act and agency regulations (section 505(e) of the act and § 314.121 (21 CFR 314.121); section 512(e) of the act and § 514.121 (21 CFR 514.121)) and already provide for notification of the holder of an approved NDA or NADA as part of any proceeding for revocation. Accordingly, no amendment to the regulations is necessary.

21. Many comments objected to the requirements in paragraph B of the proposed form for a citizen petition in § 2.7(b) that each petition include "* * * representative data and information known to the petitioner that are unfavorable to the petitioner's position." Some of the comments suggested that this requirement might violate the constitutional protection against self-incrimination, pointing out that a penal sanction may arise from the failure to comply. One comment questioned whether a violation of the False Reports to the Government Act would arise from a failure to provide required adverse information. Another comment maintained that to require a lawyer to include such information might conflict with his professional obligations. Another comment suggested that the adverse information might be misrepresented wittingly or unwittingly. That comment urged that the requirement was inappropriate; that truth in such matters should arise ultimately from the clash of opposing viewpoints. At least one comment attempted to characterize the conflict as one setting industry against consumer, and suggested that while the requirement might be fitting for an industry petition, it would have a "chilling" effect on citizen petitions. Another comment suggested the provision would give the agency an unfair advantage in court, should its decision on the petition be later subject to judicial review. Still other comments argued that the requirement was superfluous, contending that FDA would be obligated in any event to seek out adverse information on its own. A final comment suggested that the requirement, if adopted, should be revised to apply only to scientifically backed data and information, and that it not encompass unsupported lay opinion.

The Commissioner does not accept these arguments, and has promulgated the requirement as proposed. He finds that those comments that attempt to characterize administrative rule making resulting from citizen petitions as a type of litigation, and those that equate requiring inclusion of "unfavorable information" with self-incrimination, misunderstand the nature of administrative rule making. In rule making, the agency is attempting to make judgments about regulatory policy on the basis of all the scientific information that is available on a subject. There is thus no valid analogy between the interests of partici-

pants in a rule making proceeding and the interests of those involved in a criminal trial.

Equally important is the failure of the comments to recognize that divulging adverse information may advance rather than detract from a participant's position. The administrative record of a particular matter may contain information adverse to the Commissioner's decision and still be legally sufficient to support the decision. Indeed, in making many administrative decisions, the Commissioner will often choose between competing versions of the "facts." What the comments overlook is that a decision favorable to a petition that reflects a review of information and arguments both supportive of and adverse to the petition is likely to be credible, and thus ultimately more supportable, than a decision reached on the basis only of supportive information.

The Commissioner also rejects the suggestion that only scientifically backed adverse information should be required to be included. Issues that come before the Commissioner rarely turn on definitive or uncontradicated evidence, and adverse educated opinion, even if lay opinion, should be included if for no other reason than to permit the agency to explore the matter further if it so desires.

22. The Commissioner also rejects comments that protested the proposed requirement that citizen petitions, to be acceptable for requirements were demanding and that their inflexibility would discourage citizens from filing petitions. The comment contended that a document should be accepted as a petition if it includes (1) the word "petition," (2) a statement of the petitioner's request and reasons, and (3) a signature, address, and telephone number. Another comment suggested that a simple letter be accepted when the request cannot be answered simply by letter. A third comment suggested that a petition not be rejected for deficiencies of form until FDA had assisted the petitioner in bringing the petition into conformity.

The requirement that citizen petitions take a particular form and contain specifically prescribed information is not intended to create obstacles to persons who would petition for particular agency action. Given the heavy workload of the agency, the Commissioner believes it necessary to give formal petitions a status different from mere inquiries or suggestions so that he may properly respond. The agency may expend significant resources in responding to citizen petitions and the Commissioner believes it proper for any person requesting agency action to set forth with some completeness the basis for the request. The Commissioner does not find the substantive requirements of § 2.7 onerous, and believes that laymen can readily comply.

Moreover, the regulations are responsive to the comment requesting the agency to assist a petitioner in bringing a petition into compliance. Section 2.5 (c)(6), which applies to citizen petitions filed pursuant to § 2.7, provides, as proposed, that if the Hearing Clerk discerns that a petition or other submission fails to meet formal requirements, the submission will be returned to the petitioner with a copy of the applicable regulations indicating how the document fails to comply, without prejudice to the petitioner's right to resubmit the document in proper form.

23. Many comments also objected to the requirement in proposed § 2.7(b) that each petition contain an environmental impact analysis report in the form specified in § 6.1(g) (21 CFR 6.1 (g)). Some of these comments apparently misunderstood the requirement as relating to an environmental impact statement, for this reference is contained in several of the comments. The Commissioner advises that a full environmental impact statement is not required as part of a citizen petition. The report specified in § 6.1 requires general and nontechnical information on the environmental aspects of contemplated action, some of which will have been provided in other parts of a citizen petition.

Comments from some consumer groups argued that nonindustry petitioners did not have the resources to prepare environmental impact analyses, or urged that the requirement be that such a report be submitted only if the agency should later advise a petitioner of the need for an environmental impact statement. One comment suggested that in such as case the agency should prepare the environmental impact analysis report.

The Commissioner rejects the view that petitions from nonindustry sources should be exempt from the need for environmental evaluation, or that public interest or consumer groups should not conduct the review required in an environmental impact analysis report. The Commissioner regards the information provided in such a report as important in his evaluation of a petition, for the information will help determine whether the agency will be required to prepare, should it decide to undertake the requested action, an environmental impact statement. In cases where the environmental effects of an action will be minimal, the burden of preparing the required report will be correspondingly reduced.

24. A few comments objected to the requirement of proposed § 2.7(b) that a petitioner certify the truthfulness of the information contained in the petition. One comment argued that the requirement creates confusion, because it appears to limit the vigor with which a petitioner may argue against denial of his petition without violating the False Reports to the Government Act. Another comment argued that the proposed certification is unnecessary because § 2.5(1) already provides that all submissions constitute a representation that all statements therein are true and accurate.

The Commissioner has decided to retain the certification requirement in a citizen petition. He views as spurious the argument that the requirement makes impossible the obligation of a petitioner to include information unfavorable to the petition; all that is required is that a petitioner include such information as is known to him. Finally, while the requirement may be technically redundant, its inclusion will remind petitioners to verify the accuracy of their submissions.

Section 2.8 Administrative reconsideration of action (21 CFR 2.8) provides for reconsideration by the Commissioner of any administrative matter on his own initiative, and with respect to a matter initiated under § 2.6(a), on the basis of a petition submitted by any interested person. The section is adopted essentially as proposed.

25. Comments on § 2.8 objected to what they urged were unnecessarily rigid requirements of form for a petition for reconsideration. The Commissioner does not accept the objection. He has specified the form such petitions must take, not out of any preoccupation with form, but because he believes that petitions for reconsideration, given their importance and the need for prompt resolution of the issues they raise, must contain certain requisite information. The minimum requirements are set forth in the section, and the Commissioner finds them to be simple and straightforward. They are not intended to be, nor does the Commissioner find them to be, onerous in any respect.

26. Comments also objected to the requirement in proposed § 2.8(b) that a petition for reconsideration be filed within 30 days of the action that is to be reconsidered. One comment urged that the 30-day provision be extendable for good cause on the basis of new evidence; the comment argued that to require the proceeding to be reopened by the filing of a new petition would be wasteful of the resources of the petitioner and the agency. One comment also urged the addition of language to the section to require that specific notice of the Commissioner's original decision be provided to all parties to an action so that they would be assured of knowing when the 30-day period begins.

The Commissioner believes that the requirement that a petition for reconsideration be filed within 30 days of the action is reasonable. Such a petition seeks immediate review of agency action by the Commissioner on the basis of the same information as was before him at the time of his original decision. The Commissioner regards the need for prompt submission to be self-apparent. The Commissioner also does not accept the suggestion that the 30-day period be made extendable on the basis of new evidence. He advises that reconsideration is limited to the data and information on which the original action was taken. Moreover, to adopt the suggestion would undermine the finality of agency actions.

The Commissioner also rejects the suggestion that all parties to a proceeding be specifically, i.e., personally, notified so that they will know that the 30-day period has begun. The Commissioner advises that he believes publication of a decision in the FEDERAL REGISTER provides adequate notice of when a decision has been made. A conforming change has been made in § 2.8(b) to indicate that, for purposes of computing the 30-day period, the date of publication shall be considered the date of the decision. Where the decision of the agency is not announced by FEDERAL REGISTER publication, the parties involved would be personally notified of the decision, e.g., a denial of a citizen petition under § 2.7 (e). The Commissioner's decision would also be placed in the public file of the matter. The Commissioner does not believe that further notice to the public of agency decisions is legally required, practicable, or necessary.

Section 2.9 Administrative stay of action (21 CFR 2.9) provides a mechanism by which the Commissioner may stay the effective date of any administrative action (but not including court enforcement action) on his own initiative, or on the petition of any interested person. The section is adopted without significant change.

27. One comment objected to what it considered to be unnecessary requirements for the form of these petitions. As stated in his response to similar objections regarding § 2.7 and § 2.8, the Commissioner's insistence on prescribing the form of such petitions arises from the need to assure that they contain adequate information on which to base a judgment. The requirements are not so complicated or rigid that the Commissioner feels obliged to relax them.

28. One comment urged that the proposed 30-day period for response was too short. The comment pointed to the 60-day period generally provided for seeking judicial review, and the 90-day period specified in section 701(f) of the act (21 U.S.C. 701(f)) for seeking judicial review of agency action resulting from proceedings governed by section 701(e) of the act (21 U.S.C. 701(e)).

The Commissioner believes that a 30-day period is adequate for interested persons to seek an administrative stay of agency action. It is important that such requests be reviewed expeditiously so that court review, if desired, will not be unduly delayed. The comment, moreover, fails to distinguish review of administrative action, which normally relates to the merits of the action, from a stay, which only delays implementation of the action. A petition for stay raises issues that ordinarily are far less complex than a challenge to the merits, and the references to the longer statutory periods in the comment are thus not relevant.

29. The Commissioner disagrees with comments urging that the filing of a petition for a stay should automatically stay the action for a period of time after the Commissioner's decision on the petition. These comments also urged that the regulation provide that no final order shall become effective in less than a specified time period. The result of accepting these comments would be that no action of the Commissioner could become effective until affected parties have had time to petition the agency for a stay, and if denied, to seek a stay in the courts. The comments argued, however, that the failure to so provide, given the Commissioner's stated intention to oppose any judicial stay until he has had an opportunity to review such a request administratively, would allow parties to be irreparably harmed by agency decisions without being able to seek judicial review of them.

As stated in the preamble to the proposed rule, the Commissioner's enforcement duties under the regulatory statutes for which he is responsible require that he have discretion to determine when enforcement or other regulatory action is appropriate, subject to judicial review. The requirements of § 2.9 as promulgated do not, in the Commissioner's judgment, deprive any individual of due process, and are fully consistent with applicable law.

30. One comment objected that parties are not apprised quickly when the Commissioner has made a decision, as when publication in the FEDERAL REGISTER is delayed for several days following a decision. Direct mail notice to all parties was requested.

The preamble to the proposed regulation indicates that the day of publication in the FEDERAL REGISTER will be the day of decision for purposes of petitions to stay an administrative action. The Commissioner believes this provision will minimize to the extent practicable the delay inherent in advising an entire nation of an agency decision. Some delay is unavoidable. A conforming change has been made in § 2.9(b).

31. One comment urged that the Commissioner obligate himself to respond to a petition for stay within a specified time period. The Commissioner has obligated himself to respond "promptly," and he believes further specificity is neither practicable nor necessary.

Section 2.10 Promulgation of regulations for the efficient enforcement of the law (21 CFR 2.10) specifies the procedures the Commissioner will utilize in the promulgation of regulations under the basic grant of rule making authority contained in section 701(a) of the Federal Food, Drug, and Cosmetic Act, and the rule making provisions of the Administrative Procedure Act (5 U.S.C. 553). Procedures for the promulgation of regulations pursuant to the more formal requirements of section 701(e) of the act and 5 U.S.C. 556 and 557 are contained in § 2.12 (21 CFR 2.12) and in Subpart B of Part 2, except insofar as those sections incorporate by reference some of these requirements.

32. Section 2.10(g) specifically prescribes what constitutes the record of an administrative proceeding under § 2.10. The proposal incorrectly established as the closing date of the record the day of publication of the final regulation in the FEDERAL REGISTER. This would technically have permitted new information to be submitted after the Commissioner's adoption of a regulation, but before its publication. Any such information, however, must be submitted under a new petition filed in accordance with other sections of these requirements, e.g., § 2.7. Consequently, § 2.10(h) has been revised to provide that the record shall be closed on the date the Commissioner signs a regulation.

33. Section 2.10(e) requires that, when notice and public procedure are not utilized in issuing a regulation, the notice promulgating the regulation shall provide an opportunity for comment to determine whether the regulation should subsequently be modified. In addition, the Commissioner may, in his discretion, similarly permit comment on any final regulation. However, it was the Commissioner's intention that subsequent final regulations based on such comments need not in either case, though, they may, provide additional opportunity for comment or other form of public participation. Section 2.10(e)(1) has been modified to make this clear and a conforming change has been made in § 2.10(f)(10).

34. One comment objected to the predisposition against extensions of the comment period that the Commissioner acknowledged in the preamble to the proposed regulation.

The Commissioner's reasons for limiting extensions of the comment period were explained in the preamble to the proposal. Principal among them is the failure of many people to take the stated time for comment seriously. Nonetheless, the rule specifically allows for extension of the comment period in appropriate, though limited, circumstances.

35. The same comment urged also that the Commissioner not be confined to comments in establishing final rules.

The Commissioner points out that the section does not require him to rely only on comments submitted on the proposal when formulating a final regulation. Section 2.10(f) permits the Commissioner to use a wide range of administrative mechanisms to obtain information on any matter that is the subject of rule making. Moreover, that § 2.10 does not specifically provide for the generation of new information by the agency following the publication of a proposal does not preclude the agency from doing so. The authority to generate this information is implicit in the Commissioner's authority to issue regulations under section 701(a) of the act, and, indeed, is recognized in § 2.10(g)(5), which provides for filing with the Hearing Clerk "all data and information identified or filed by the Commissioner * * * as part of the administrative record supporting the final regulation."

36. Another comment suggested substituting "may" for "shall" in § 2.10(a)(2). The comment argued that not doing so would make the Commissioner's failure to publish a proposal subject to judicial review, and would then invite a court to require publication, a function that should be reserved exclusively for the legislative and executive branches.

The Commissioner does not believe that the language of the section deprives him of the discretion afforded by the law. Rather, the regulation merely specifies in general terms when the Commissioner will view a request for agency action to be sufficiently meritorious (if

consistent with law) to warrant public and agency consideration. The provision does not, as the comment mistakenly assumes, require the Commissioner to finalize such action; § 2.10(c) specifically provides for termination of a rule making proceeding as one possible outcome of review of the entire administrative record based on a proposal.

37. A comment urged that § 2.10 be amended to provide for time limits after the close of the comment period by which the Commissioner must issue a decision. The comment suggested 90 days, with provision for an additional 90 days upon a showing of good cause.

The Commissioner rejects this comment. The timetable for completion of a rule making action must remain subject to his discretion. Apart from judgments about agency priorities, which themselves may result in delays of varying length in concluding some rule making actions (but may frequently result in the expeditious handling of others), it is often not possible to predict how quickly a rule making proceeding can be concluded until after the comments on the proposal have been evaluated. The comments may reveal a need for additional proceedings, which if undertaken may prevent conclusion of the proceeding within any time period previously specified. The Commissioner thus concludes that it would be impracticable to specify such a time period.

38. The same comment also suggested that the regulation should more specifically state those narrow circumstances, e.g., where required by the public health and safety, when opportunity for notice and comment might be waived, and limit use of this procedure to situations in which alternatives such as a shorter comment period will not suffice.

The Commissioner finds the broad language in § 2.10(e)(1), "impracticable, unnecessary, or contrary to the public interest," which mirrors the standard of 5 U.S.C. 553, to be more satisfactory. Whether to dispense with notice and comment, including the use of alternative procedures, is a decision that must largely remain subject to the Commissioner's discretion. The provision would clearly permit such a decision in the situation suggested by the comment, namely, when necessary for the public health and safety.

39. One comment suggested that proposed § 2.10(l), which requires that the Hearing Clerk compile a list of regulations proposed and promulgated, include within the list the disposition of each matter. The Commissioner advises that the intent to include the disposition of each proposal is apparent in the proposed inclusion in the list of regulations "promulgated," for that would be the ordinary disposition of any prior proposed rule. In response to the comment, however, the Commissioner has determined that the list should specifically include the disposition of the petition. This change conforms to a similar change in § 2.7(l).

40. One comment objected to the statement in the preamble that the Commissioner will not take into account the number of comments but will consider, rather, repetitive comments as one. The comment states that this position demonstrates a preconceived agency bias and implies that such comments are not made in good faith.

The Commissioner intends no such implication. His statement means that it is the substance and not merely the number of comments that will be persuasive in formulating final regulations. Many similar conclusory comments will thus be less persuasive in the Commissioner's determinations than smaller numbers of thoughtful and well documented ones. However, § 2.10(c)(1) of the final regulations recognizes that the number of comments may be influential where the degree of public interest in a matter is a legitimate factor to be considered.

41. To conform with existing agency practice, § 2.10(f)(9) has been revised to provide for the publication in the FEDERAL REGISTER, when considered desirable by the Commissioner, of tentative final regulations. The proposal provided only for publication of a notice of availability of the documents.

42. Several comments objected on various grounds to the Commissioner's efforts in § 2.11 Court review of final administrative action; exhaustion of administrative remedies (21 CFR 2.11) to define for agency purposes the doctrine of exhaustion of administrative remedies. They argued that the policies set forth in § 2.11 are determined by statute, case law, and the Federal Rules of Civil Procedure, or by the court hearing a matter, and in any event are not for the Commissioner to determine by regulation. Several comments also contended that the proposal's criteria misstated applicable law.

One comment, addressing the announcement that the Commissioner will oppose requests for a judicial stay when a request for an administrative stay has not been timely filed, suggested that the exhaustion requirement is inapplicable when the administrative remedy is no longer available because it was not invoked in a timely fashion. One comment argued that no new burden would be imposed on the Commissioner if a stay were sought directly from a court, as the administrative record is the same; thus the comment requested that the requirement that a stay be sought first from the Commissioner be made optional.

Still another comment argued that proposed § 2.11(c) is without authority; that section 10(d) of the Administrative Procedure Act (5 U.S.C. 705) plainly authorizes a court to postpone the effectiveness of agency action; and that a court would not likely refuse to grant a stay simply because an administrative stay had not first been requested. Other comments argued that the provision was of no legal effect and suggested that it be revised to make clear its advisory character.

The Commissioner is aware that it is ultimately for a court to determine whether a particular agency action is "final" within the meaning of section 10(c) of the Administrative Procedure Act (5 U.S.C. 704), or whether a plaintiff has properly exhausted his administrative remedies. Nonetheless, the Commissioner believes it entirely proper to attempt, through these procedural regulations, to set forth his view of the most appropriate method of proceeding, to the end of inducing persons wishing to challenge an FDA action to do so at the agency level before seeking court review. This regulation will promote conservation of judicial resources, not only by eliminating the need for review in some cases, but also, when the Commissioner does not change his initial decision, by providing a more complete record for review of agency action. For example, when a party has petitioned for reconsideration or for a stay of agency action, the record before the reviewing court would include, under § 2.11(f), the record of such further proceeding, as well as the record of the initial decision.

The Commissioner considers the described scheme for judicial review to be a fair method of proceeding for all persons. It will encourage persons to participate at the administrative level and to advance all information and arguments at that point, and it will require the agency to identify the information on which it relies and to explain the basis for its reliance. At the same time, the scheme should preclude interposition of technical procedural objections and guarantee to a court a fixed and complete record on which to base review. In this regard, some comments specifically commended the Commissioner's decision not to raise a lack of "standing" as a basis for opposing review of agency decisions.

43. One comment identified three situations in which, it contended, judicial review may be appropriate in the absence of a final decision by the Commissioner. The comment listed: (1) the giving of an advisory opinion pursuant to § 2.19, citing *National Automatic Laundry and Cleaning Council* v. *Schultz*, 443 F.2d 689 (D.C. Cir. 1971); (2) delay of action by FDA so substantial as to constitute denial of the relief requested; and (3) initiation by FDA of a proceeding that it has no statutory authority to conduct.

After considering the comment, the Commissioner has decided to consider advisory opinions issued pursuant to § 2.19 and guidelines issued pursuant to § 2.20 (21 CFR 2.20) to be final agency action. He acknowledges that such opinions and guidelines are binding on the agency until amended or revoked. Although, under §§ 2.19(j) and 2.20(b)(8), they are not legal requirements, the Commissioner maintains that preenforcement review of such actions may be proper in appropriate cases where further administrative proceedings are not likely to clarify the scope or impact of a decision. Advisory opinions and guidelines have accordingly been included within the scope of § 2.11(d).

The other situations cited by the comment, i.e., agency delay and action taken without authority, though potentially subject to judicial review before final action in limited circumstances, are obviously not appropriate to include within § 2.11 for they do not describe types of agency action contemplated by these procedural regulations, e.g., proposed or final regulations, or advisory opinions, but simply state legal reasons why particular agency actions may be held invalid. Accordingly, no change in the regulation has been made to reflect this part of the comment.

44. Two comments stated that § 2.11(d) should include a reference to final regulations promulgated pursuant to § 2.10 within the list of actions considered by the Commissioner to constitute final agency action; and the final regulations have been amended accordingly.

The Commissioner advises that § 2.11(d) should have included final regulations promulgated pursuant to § 2.10, as such regulations are ordinarily subject to immediate judicial review (*Abbott Laboratories* v. *Gardner*, 387 U.S. 136 (1967)). The preamble to the proposal, as one comment points out, refers to final regulations subject to § 2.10, and its omission from § 2.11(d) was thus in error.

45. One comment, reiterating an objection to § 2.9 argued that no final order should become effective for 30 days and that a request for stay within that period should automatically stay such order until 10 days after the Commissioner's decision. As indicated in his response to the comments on § 2.9, the Commissioner concludes that he must retain discretion to determine when an agency action is to become effective. The comment is accordingly rejected.

46. Comments reiterated an additional objection regarding § 2.9, namely that, by failing to require the Commissioner to respond to a petition for a stay within a specified time period, § 2.11 permitted him effectively to delay access to the courts by persons seeking to challenge agency action. One comment added, in an apparent reference to § 2.11(d), that access to the courts could also be limited if the Commissioner decided to reconsider a matter on his own initiative.

As stated in his response to the comments on § 2.9, the Commissioner cannot obligate himself to respond to petitions for a stay within a specified period. He believes it essential to retain discretion to be able to respond to changing demands on the agency in the manner most consistent with the public health and safety. However, the Commissioner advises that his failure to act on a petition for a stay does not limit access to court review of the merits of the original decision. Section 2.11(e) clearly contemplates that a person who desires to challenge any decision by the Commissioner can initiate a suit for review without first petitioning the Commissioner. It is only with respect to an attempt to obtain a stay of FDA action that the regulations require that a request for stay be first submitted to the Commissioner.

Nor would court review on the merits necessarily be delayed if the Commissioner determined on his own initiative to reconsider the matter, as the comment suggested. The reference in § 2.11(d) to petitions for reconsideration (§ 2.9) is intended to indicate only that the Commissioner's action on such a petition is final agency action and independently subject to judicial review.

47. One comment stated that proposed § 2.11(d)(2)(i) is unnecessary in light of the clear statement in the Administrative Procedure Act that actions committed to agency discretion by law are not subject to judicial review. The comment expressed concern that the provision may be interpreted as unduly broadening existing rules in this regard.

The Commissioner believes that the restatement of the statutory standard in these regulations is proper, and that the example of unreviewable decisions cited in § 2.11(d)(2)(i), i.e., whether or not to recommend initiation of civil or criminal enforcement proceedings under sections 302, 303 and 304 of the act (21 U.S.C. 332, 333, 334), falls clearly within his unreviewable discretion.

48. One comment urged that the reference in proposed § 2.11(d)(1)(ii) to "any interested person" should be changed to "any person."

The Commissioner finds the requested change unnecessary. "Interested person" is defined in § 2.3(a)(12) to mean, essentially, "any person."

49. One comment identified two asserted exceptions to the general rule stated in § 2.11(f), which, as promulgated, limits judicial review of agency action to the administrative record made before the agency. The comment argued that review could properly go beyond the administrative record (1) when a court decision subsequent to the initiation of judicial review plainly decides a legal issue that was not raised at the administrative level, and (2) when an issue is purely a matter of statutory construction, does not require the exercise of administrative expertise, and goes to the heart of the agency's statutory authority.

The comment misunderstands the Commissioner's purpose in defining the scope of the administrative record. The record is not intended to embrace all materials relevant to all of the legal objections to an agency action, including the type of legal issues which comprise the examples in the comment. Rather, the record of an administrative proceeding is intended to contain all of the factual information and data that were considered by the Commissioner in reaching his decision. While questions of legal authority may, from time to time, be raised in an administrative proceeding, the Commissioner advises that the regulations do not prohibit new issues of law including, obviously, questions of authority, from being raised in subsequent judicial proceedings.

50. One comment insisted that the procedure contemplated by proposed § 2.11(b), under which the Commissioner may request a court to accept a further explanation of his action without further administrative proceedings, is not generally allowed by courts.

The Commissioner notes that the provision is advisory only. The provision can thus assist the public in obtaining judicial review of agency action. The Commissioner believes that the procedure described is not prohibited by any statute; however, if the procedure were not permitted by a particular court it would not, obviously, be available to the Commissioner in that instance.

51. Two comments on proposed § 2.12 Promulgation of regulations and orders after an opportunity for a formal evidentiary public hearing (21 CFR 2.12) objected to its failure to distinguish between the right to an "opportunity for a hearing," and an unqualified right to a hearing. By treating all requests for formal evidentiary public hearings uniformly, the comments argued, proposed § 2.12 overlooked important differences between the several statutory provisions in the Federal Food, Drug, and Cosmetic Act that require a hearing. The comments objected that, as proposed, § 2.12 would improperly permit use of the summary judgment mechanism upheld in *Weinberger* v. *Hynson, Westcott and Dunning, Inc.*, 412 U.S. 609 (1973), in cases in which it was not legitimately available.

One comment pointed out that certain provisions of the act require "an opportunity for a hearing," e.g., section 505; that others require that "reasonable grounds" must be stated to justify a hearing, e.g., section 507(f); and that still others purport to require a hearing without any qualification, e.g., section 701(e). The comment argued that only in two situations could the Commissioner refuse to hold a required section 701(e) hearing: (1) when objections to the Commissioner's order are a legal nullity, on the basis of *Dyestuffs and Chemicals, Inc.* v. *Fleming*, 271 F.2d 281 (8th Cir. 1959), cert. denied, 302 U.S. 911 (1960), and (2) when the objections relate exclusively to the agency's authority to take an action so that the factual basis for the action is wholly irrelevant. The comment urged that §§ 2.12 and 2.113(b) (21 CFR 2.113(b)) be revised accordingly.

The Commissioner has issued the section as proposed. He concludes that there is no basis for the comment's contention that section 701(e) absolutely guarantees a formal evidentiary public hearing whenever one is requested in a rule making proceeding conducted pursuant to that section. The Commissioner believes the act empowers him in each case to establish reasonable threshold requirements for the holding of a formal evidentiary public hearing, including a hearing on a regulation governed by section 701(e). The basis for this position has been set forth in the preamble to the publication in final form of § 2.113 in Subpart B, and interested persons are referred to the final regulation published in the FEDERAL REGISTER of November 23, 1976 (41 FR 51706) for a full statement of the Commissioner's views on the matter.

Section 2.13 Separation of functions: ex parte communications (21 CFR 2.13)

prescribes the degree to which separation of functions shall be observed between and within agency components in any matter that is subject by statute to an opportunity for a formal evidentiary public hearing and in any matter subject to a public hearing before a Public Board of Inquiry.

52. One comment suggested that proposed § 2.13(d)(3), specifying remedial measures to be taken when oral and written communications are made in contravention of the separation requirements of the section, be revised to require that copies be immediately provided to all parties to the hearing. As proposed, the requirement would have required only the filing of such communications with the Hearing Clerk.

The Commissioner accedes to the request and has modified the final regulation to provide that at the same time such a communication is filed with the Hearing Clerk, it shall also be served on all other participants in the proceeding. This change meets the objective of the comment that all participants be advised of the current status of the proceeding. Because the conduct described in the section is not likely to occur, the Commissioner believes it reasonable to provide for personal service on participants, rather than to force them to periodically examine the administrative file in the office of the Hearing Clerk. Moreover, required service of documents on other participants is already provided for by § 2.13(d)(2), which requires such service for proposals for settlement. The change can therefore be viewed as extending an existing obligation of participants to a hearing rather than as imposing a completely new obligation.

53. A comment suggested that § 2.13(b)(2)(i) and (ii) were inconsistent because the requirements bar, for example, the entire Bureau of Drugs from communicating with the office of the Commissioner after the bureau becomes a party to a hearing, while permitting all members of the Chief Counsel's office to be available to advise the Commissioner except those specifically engaged in the proceeding on behalf of the bureau. A related comment urged that the section be modified to permit a member of an involved bureau who is not personally involved in representing the bureau at the hearing to be free to discuss the matter with the office of the Commissioner. The comment suggested that this would benefit the agency in those situations where all of the agency expertise in a given field is located in a single bureau.

The Commissioner believes that the suggested inconsistency does not actually exist. A direct comparison of the treatment in the provision of the individual bureaus and of the office of the Chief Counsel is not meaningful, for each is organized to perform different functions. A bureau will normally be a party to such a hearing and thus be in the position to advocate a particular position. The Chief Counsel's office, in contrast, is not organized, except for the informal designation of attorneys to advise individual bureaus, into discrete divisions. Perhaps more important, the only attorneys available to represent a bureau and advise the Commissioner are employed in the office of the Chief Counsel. Establishment of ad hoc divisions within the office is the only practicable mechanism for assuring observance of separations of functions and at the same time making legal advice available to the bureau whose decision is the subject of the hearing, and to the Commissioner. Thus, as a general rule, the Commissioner has determined that it is both more convenient and defensible to treat, for purposes of separation of functions, each bureau as a single entity. However, in response to the comment, he is modifying § 2.13 to permit the designation, when he determines that it is necessary to ensure the best use of agency resources in deciding a particular matter, of employees of a bureau to advise him, or members of his office to advise a bureau. Any such designation will be in writing and must be filed with the Hearing Clerk no later than the time the limitations of separation of functions apply in the particular matter. An example of a situation where the procedure might be used is that cited in the comment, i.e., where all agency employees having expertise in a given field work in one bureau, leaving the Commissioner without expert assistance to assist him in deciding the matter.

54. In response to the comment, the Commissioner has modified § 2.13(b)(2)(ii) to provide for the appointment by the Chief Counsel of a "team" of attorneys to advise the Commissioner, rather than to permit that function, as proposed, to pass residually to all attorneys who have not been appointed to represent the bureau in a proceeding.

As a matter of practice the Chief Counsel has been specifically designating attorneys to advise the Commissioner in many matters for which a notice of opportunity for a hearing has been published. This approach has permitted the Chief Counsel to assess the workload of the office and avoid the appointment of an attorney to advise the Commissioner who may have assisted a bureau before the publication of the notice of hearing.

The section as issued in final form also provides that the Chief Counsel will ordinarily advise the Commissioner in a hearing proceeding. The proposal would have required the Chief Counsel to always advise the Commissioner. However, it is possible that the Chief Counsel may become involved in a matter before a notice of opportunity for hearing has been published, such as when he is called upon to advise a bureau on the initiation of a proceeding. In such cases, his subsequent service as an advisor to the Commissioner in the same matter would not be consistent with separation of functions.

The provision has also been modified, consistent with existing practice, to prevent contact on any matter that is the subject of a formal hearing between members of the office of the Chief Counsel who are advising the Commissioner and other members of the office, or any employee of the bureau involved (except one specially designated to assist the Commissioner). Although the proposed rule would have imposed this limitation only on the attorneys assigned to assist the bureau, it is clear that comparable restrictions should be imposed on counsel to the Commissioner, for the requirement is intended to maintain the independence of the Commissioner and his advisors.

55. To make the regulation comprehensive, § 2.13(b)(2)(ii) has been revised to acknowledge the Chief Counsel's specific authority to designate additional attorneys to represent a bureau or to advise the Commissioner. Such designation may be necessary where, for example, an attorney previously designated to advise one or the other is no longer able to serve in that capacity.

56. On September 13, 1976, Pub. L. 90-409, the "Government in the Sunshine Act," (5 U.S.C. 552b note) was signed into law, to become effective on March 12, 1977. The Sunshine Act imposes certain new requirements applicable to the FDA, as well as to other agencies, regarding ex parte communications between Federal officials and persons outside the Federal Government in connection with any administrative hearing subject to 5 U.S.C. 557(a). "Ex parte communication" is defined in new 5 U.S.C. 551(14) as "an oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given, but it shall not include requests for status reports on any matter or proceeding covered by this subchapter."

In sum, the Sunshine Act prohibits the making of ex parte communications by either Federal employees or outside persons within the context of a hearing subject to 5 U.S.C. 557, and requires that any ex parte communications that are made be placed in the public record, either by filing written communications or reducing to writing the substance of any oral communications, as well as any responses, either written or oral, to either of these types of communications. The Sunshine Act further requires each Federal agency to designate a particular time during the administrative process after which the prohibitions shall apply. That time may not be later, however, than the time at which a proceeding is first noticed for a hearing, and must with respect to any person with knowledge that such notice is forthcoming, be no later than the time such knowledge was acquired. The new law specifically provides that an agency may consider, consistent with the interests of justice, a violation of the section as sufficient grounds for a decision adverse to the party committing the violation or causing it to occur. The Commissioner advises, in this regard, that he will consider as a violation of this section, as a "causing to occur" of an ex parte communication, a communication by any government official outside the agency, including members or representatives of members of Congress, made at the knowing behest of any person who would be precluded under the statute from personally making the communication.

The Sunshine Act affects the provisions of proposed § 2.13 that address ex parte communications, with respect to any matter subject to an opportunity for a formal evidentiary public hearing, as listed in § 2.12(c), and any matter subject to a public hearing before a Public Board of Inquiry pursuant to Subpart C of Part 2, and necessitates some revision of them.

Accordingly, the Commissioner has determined to modify § 2.13 (and § 2.3) in the final order as follows:

a. The Sunshine Act's definition of "ex parte communication" has been incorporated into § 2.3.

b. The times at which the prohibition against ex parte communications are to come into play are those proposed in § 2.13 (b) and (c) for the matters referred to in those sections. However a new paragraph (e) has been added, in accordance with the statute, applying the restriction to any person having knowledge that a notice of hearing is to be issued to the time such knowledge is acquired.

c. Paragraph (d) of § 2.13 has been revised to indicate that the prohibitions against making ex parte communications apply to employees of the agency involved in any manner in the decisional process as well as to persons outside the agency.

d. A new paragraph (f) has been added to reflect the statutory provision that the making of a prohibited ex parte communication may, consistent with the interests of justice and the policy of the underlying statute, justify a decision adverse to the person knowingly making or causing the making of such a communication.

No comments were received on proposed § 2.14 Referral by court (21 CFR 2.14) and it is adopted as proposed.

Section 2.15 Meetings and correspondence (21 CFR 2.15) contains requirements for meetings and correspondence between employees of the Food and Drug Administration and any person outside the Department of Health, Education, and Welfare.

57. Several comments were received regarding § 2.15(f)(1), which as proposed would have permitted any meeting initiated by FDA involving only a small number of persons, such as 1 or 2 manufacturers, to be a private meeting, but would have required a meeting involving a large number of persons, e.g., 10 manufacturers of an ingredient, to discuss appropriate testing or labeling, to be a public meeting. The comments criticized the use of the number of persons as the criterion for determining whether a meeting should be public or private, urging in general that the nature or subject matter of the meeting should determine whether it should be private or open. One comment specifically suggested that the number of different interests represented, rather than the number of persons, should determine whether the meeting is to be public or private, but urged also that meetings should be open when closing them might give particular firms a competitive advantage.

Another comment insisted that the 10-person standard was arbitrary, and that whether a meeting should be open or closed should depend on a variety of factors, e.g., the meeting site, the various interests represented, and the subject discussed. The comment stated that where a single industry or group of persons is the focus of the meeting, the willingness of that group to meet in a public forum should weigh heavily in the decision. In general the comments from manufacturers and industry associations argued that private meetings encourage input, but a comment from a consumer group contended that it is important that consumers be present at meetings with industry because proposed § 2.15 failed to require taking transcripts or recordings. One comment asked the reason for subjecting to regulation the issue of whether meetings should be public or private and urged that the decision be left to the discretion of the Commissioner.

The Commissioner has considered the objections to the section, and finds them unpersuasive. Most of the comments appear to have assumed that the requirements of § 2.15(f)(1) apply to all meetings between the FDA and persons outside the Federal government. This is not the case. In contrast with other provisions of § 2.15, paragraph (f)(1) applies only to meetings initiated by FDA. It does not apply to private meetings between the agency and outside persons or groups at the behest of the lattter. Such meetings are subject principally to the requirements of § 2.15(d). The justification for the distinction is reasonable: The agency's initiation of a meeting is generally for the purpose of seeking information on or attempting to resolve an issue regarding a regulatory matter. It would be inappropriate for FDA to seek advice from only one group on a regulatory matter that affects many manufacturers or broad segments of the public.

The "number of persons" criterion in § 2.15(f) should be viewed as an attempt to establish a readily usable "rule of thumb" for determining when an agency-initiated meeting should be open to all. It should be noted that the specific reference in § 2.15(f)(1) to numbers of participants as the criterion is neither absolute nor arbitrary. The language of the paragraph refers to examples of the subject matter of such meetings as well as to the number of persons, and the Commissioner intends that the number of persons shall be merely one guide, rather than a firm rule, for deciding when a meeting should be public. The Commissioner retains discretion to decide whether such a meeting should be open or closed.

The Commissioner also advises that he may follow § 2.15(f)(1) in determining whether to insist that other meetings should be open to the public when opening them will avoid the implication of undue influence in an agency decision or will otherwise further the purposes of the act.

58. One comment urged that proposed § 2.15(f), requiring a written summary to be made of any meeting with a representative of Congress relating to any one of several enumerated matters, be clarified to state that it applies only to FDA employees. The Commissioner believes it obvious that the requirement is applicable only to employees of the agency, and so advises. No change in the language of the provision is necessary.

59. One comment suggested that the language of proposed § 2.15(c), which requires the summarization in writing of any meeting between agency representatives and any person outside the Department relating to a "pending court case," as well as other enumerated subjects, be amended to include specifically an "immediately anticipated court case." The Commissioner advises that an anticipated court case would be included within the reference to "pending court case," and that agency employees have been observing this interpretation in maintaining records of telephone calls and meetings. Therefore, no formal modification of the paragraph is necessary.

60. One comment urged that telephone conversations be subject to the requirements of § 2.15(c) and (d). The Commissioner advises that the definition of "meeting" in § 2.3(a)(24) includes telephone conversations, and that no amendment to paragraph (c) or (d) is called for.

61. One comment directly, and another by implication, questioned the wisdom of requiring the written documentation of all contacts with the agency. Both commented that the requirement discourages such contacts. One comment argued additionally that such memoranda contain only one side of a conversation, and suggested that the section require only the logging of contacts without the description of their substance.

The Commissioner disagrees. Even conceding that some communications to the agency may not be made because of the fear of public disclosure, the Commissioner believes it is essential for the integrity of the regulatory process that records be kept of contacts between agency employees and outside parties. The keeping of such records should increase the reliability of the information that is submitted. Moreover, written documentation is necessary for the preparation of an administrative record should any decision of the Commissioner be subsequently challenged. Most important, the Commissioner believes that public confidence in government can only be maintained if government dealings with the public are, to the extent possible, open and subject to scrutiny. There is no basis for the suggestion that memoranda of these communications prepared by government employees will reflect only one side of such contacts: § 2.15(g) provides that any participant in any meeting under any participant in

any meeting under § 2.15 may submit his own summary of the meeting and that the summary will be made part of the administrative record along with any memoranda prepared by the agency.

62. One comment suggested the deletion of the statement in proposed § 2.15 (a) that meetings and correspondence are not final agency action on the ground that it is overbroad.

The Commissioner disagrees. The statement is not overbroad, for it is difficult to visualize a circumstance in which a meeting or informal correspondence would constitute final agency action, and its inclusion is consistent with the practice of the Commissioner in these regulations of specifying those agency actions that do and do not constitute final agency action for purposes of court review.

Section 2.16 Documentation of significant decisions in administrative files (21 CFR 2.16) provides for the documentation of agency decisions by the employees involved in making them. The section as proposed represented an attempt to protect the rights of agency employees working on a matter by permitting, under paragraph (b)(2)(ii), any employee to record his views in written memoranda that would be included in the file. Proposed § 2.16(e) also guaranteed such employees access to the file as appropriate for the performance of their work, subject to reasonable restrictions to assure the proper cataloging and storage of documents.

63. One comment, submitted by the Review Panel on New Drug Evaluation of the Secretary of Health, Education, and Welfare, suggested that both of these requirements be extended to employees that have been, but may not currently be, working on a particular matter. The panel recommended that an employee's exercise of the right to record his views and to have access to the administrative file on a matter should be consistent with attention to his other assignments.

The Commissioner considers it proper that agency employees who have previously worked on a particular matter not be precluded from further participation in that matter, or denied access to the file. This, indeed, was the intent of the proposal. Not only will such access avoid charges that employees may have been transferred to prevent their continued work on a matter, but it will also make the administrative record of the resolution of controversial issues more complete. As advocated by the comment, § 2.16 (b)(2)(ii) and (e) of the final regulation have been revised to reflect the original intent of the proposal.

64. The Commissioner has clarified the effect of §§ 2.15 and 2.16 regarding the filing of the administrative record in a formal evidentiary public hearing pursuant to § 2.153 of Subpart B (21 CFR 2.153). The clarification is prompted by questions that have arisen in agency preparation for hearings of this type during recent months.

Section 2.16(b) requires that the administrative file of any matter contain the complete documentation of the agency decision (including opinions of consultants and recommendations of individual employees) and reveal any internal differences of opinion. Section 2.15 (c) requires an agency employee to prepare a written summary of any meeting with any person outside the Department which shall be included in the administrative file. Section 2.153 requires the relevant portions of the "administrative record" to be filed with the Hearing Clerk, including all documents in bureau files containing factual data and information, whether favorable or unfavorable to the bureau position.

These provisions do not require the administrative file docketed with the Hearing Clerk to contain memoranda summarizing meetings of bureau counsel with witnesses, or to contain internal agency memoranda setting forth recommendations of agency employees. While such meetings and recommendations clearly are required to be summarized in written form for the administrative file, the regulations are not intended to require all such memoranda to be made public if the matter becomes subject to a formal evidentiary public hearing. The work-product of bureau counsel are obviously protected under the attorney-client privilege and, along with recommendations of employees (as distinguished from scientific or medical data) found in internal agency documents, are not required to be disclosed under Part 4, the agency's public information regulations. Such materials will, however, continue to be prepared and to be placed in the agency administrative file for purposes of judicial or congressional inquiry, or for historical purposes.

The definition of "administrative file" in § 2.3(a)(27) of the final regulation conforms to this position. The proposal has been revised to remove the implication that the administrative record of a matter filed with the Hearing Clerk is necessarily the same as the official administrative file of the matter. The documents comprising the former are, rather, listed variously in other sections of the regulation, e.g., in § 2.8(k), for administrative reconsideration of an action; in § 2.9(h), for an administrative stay of an action, and in § 2.10(f), for regulations promulgated pursuant to that section.

65. No comments were received on proposed § 2.17 Internal agency review of decisions (21 CFR 2.17) which is adopted without change. However, some concern was expressed within the agency that § 2.17(a)(3) imposed the obligation to formally review at a supervisory level the decision of any agency employee at the request of an interested person. The Commissioner advises that no such result is intended. Review of the work of subordinates by agency supervisors is currently a matter of a supervisor's discretion and § 2.17(a)(3) is intended to reflect present agency practice. The provision recognizes that supervisory agency employees will entertain requests from interested persons to review any decision of a subordinate, but that the extent of any review will continue to be determined by the supervisor.

Section 2.18 Dissemination of draft FEDERAL REGISTER notices and regulations (21 CFR 2.18) provides for the discussion, both orally and in writing, of draft, proposed, and final rules and regulations, by representatives of FDA with interested persons, including persons outside the agency.

66. Two comments were received regarding the proposal. One comment criticized the limitations imposed by § 2.18(d) on the discussion of the details of draft notices and regulations and on the dissemination of such drafts before publication in the FEDERAL REGISTER. The comment argued that the prohibition could prevent meaningful participation in drafting complex regulations, where agency knowledge may be inadequate to draft an appropriate proposal. The comment acknowledged that proper information may be supplied by comments after publication, but suggested that there often is reluctance to make major changes in a proposed regulation. The comment contended that allowing informal contacts could often improve a published proposal and thus speed promulgation of a final regulation with a minimum of delay and modification.

The Commissioner points out that § 2.18(d) does not prohibit either the discussion or distribution of draft FEDERAL REGISTER notices. Rather, it imposes restrictions on such discussion and distribution only as necessary to ensure that all interested parties will be treated fairly and afforded uniform access to internal working documents. In situations where expert advice from outside the agency may be needed to develop a proposal, the regulation permits such information to be obtained.

67. The second comment noted that proposed § 2.18(b), although permitting the distribution of draft documents and proposed regulations following FEDERAL REGISTER publication of a notice of availability, did not explicitly permit agency employees to discuss the details of such a draft even after it became publicly available, except with the specific permission of the Commissioner.

The Commissioner acknowledges that the comment has interpreted the proposal correctly. He agrees with the comment that such a restriction on the discussion of details of a draft already publicly available is unnecessary, and believes the public interest will be safeguarded adequately if such discussions are subject only to the other provisions of the section, e.g., § 2.18(i), which applies the requirements of § 2.15 *Meetings and correspondence*, to meetings and correspondence relating to draft FEDERAL REGISTER notices and regulations. While § 2.18 will thus allow for discussion of draft proposed and final regulations and notices that have been made publicly available, it requires that summary memoranda be made of any such discussions for inclusion in the administrative file. The Commissioner regards the preparation of such memoranda in the context of discussions of draft FEDERAL REGISTER notices and regulations as essential; the requirement will assure compilation of

the full administrative record and dispel suspicions of improper influence in the development of agency regulations. The Commissioner has amended § 2.18(b) in the final regulation to allow agency employees and interested persons to discuss without his prior permission draft documents that have been properly made available to the public.

68. A primary concern expressed by many comments on § 2.19 Advisory opinions (21 CFR 2.19) was that opinions by FDA employees that are not advisory opinions do not bind the agency to the interpretation expressed in the opinion. One comment argued that this position is not supported by case law. It rejected the cases cited in the preamble to the proposal regarding the doctrine of estoppel, and cited the following several cases in which various courts have held the government estopped on the basis of advice of an employee: *United States* v. *Wharton*, 514 F. 2d 406 (9th Cir. 1975), *United States* v. *Lazy FC Ranch*, 481 F. 2d 985 (9th Cir. 1973), *United States* v. *Burton*, 472 F. 2d 757 (8th Cir. 1973), and *Moser* v. *United States*, 341 U.S. 41 (1951). The comment contended that, based on these cases, the current rule is that the government will be prevented by estoppel from taking a position inconsistent with advice provided by an employee when the damage to the private party outweighs the loss to the government or any harm to the public interest. The comment concluded by urging that the regulations be recast to state that FDA is not bound by estoppel in any case where the public health or safety would be jeopardized, but that it will take reasonable steps to protect justifiable reliance on advice provided by an agency employee when the public health or safety will not be jeopardized.

Other comments addressed the same issue, through from different perspectives. One comment found proposed § 2.19(k) patently unfair, claiming that the regulation placed agency employees in positions of apparent authority but penalized those who relied on their advice. The same comment and one other argued that the public cannot conduct day-to-day operations by constantly requesting advisory opinions, and suggested that the agency could "grind to a halt" if responding to advisory opinions became a common practice. Both comments noted that much agency business is handled on the basis of "informal advice."

Finally, these comments requested that, should reliance on an agency employee's "informal" opinion result in regulatory action, in no event should a person so relying be subject to criminal prosecution. They urged the adoption of this position as a minimum, if the action ultimately complained of is undertaken in good faith reliance on the information provided by a representative of the agency.

The Commissioner acknowledges that these comments express a legitimate concern, but he believes that the regulation as proposed is proper. The Food and Drug Administration must be able to provide informal advice to interested persons on a staff level. Considerations of the public health and safety, as well as considerations of efficiency, however, prevent the agency from being legally bound by such representations.

The expectation that informal advice would bind the agency is unrealistic in light of the way such advice is generally requested and provided. Even when coordinated within the agency, opinions on the regulatory consequences of particular conduct may not be based on exhaustive inquiry into past agency practice or legislative intent. Moreover, many inquiries request a reply within a short period of time. In addition, circumstances are often described hypothetically, and may omit facts that the agency, in contrast to the person making the inquiry, may consider crucial. Finally, the Commissioner recognizes that some persons will "forum shop" within the agency until they obtain a desired answer. For these several reasons, the Commissioner declines to be bound by the informal responses of agency employees. Section 2.19 provides one broad exception: where a particular inquiry is of broad applicability or importance, the agency will commit its resources to providing its best institutional judgment on a matter through an advisory opinion.

The Commissioner considers the procedure established for obtaining an advisory opinion to be both realistic and fair. The procedure recognizes that, in fact, most actions taken by private firms under the statute are based on expert advice, both technical and legal, obtained outside the agency. Opinions by agency employees as to the legality of such actions are not necessarily accepted at face value, particularly if they conflict with those of the inquirer.

As a practical matter, advice provided informally by FDA employees will generally be correct, and when it is not, action in reliance will not result in the imposition of sanctions without good reason. But the risk that such advice is incorrect cannot readily be shifted to the government, and to the public. Particularly in matters involving individual compliance with the statutes administered by FDA, the ultimate burden must remain on manufacturers and distributors of regulated products. The alternative, which the Commissioner rejects, would be to preclude agency employees from furnishing advice, i.e., to require all inquiries to be subject to the procedures for advisory opinions outlined in § 2.19. This course would not work to the advantage of either the agency or affected persons.

The Commissioner will not rule out the possibility of recommending institution of criminal proceedings when an informal opinion has previously been furnished to a violator. At the same time he advises that recommendation for criminal prosecution is based on all the circumstances surrounding a violation, and it is unlikely that such prosecution would be recommended when the activity giving rise to the violation was the product of good faith reliance on advice given informally by an agency employee. Responsible exercise of the Commissioner's discretion will afford adequate protection in such circumstances.

The Commissioner does not discount the possibility, however remote, that FDA might be held by a court to be estopped by the informal advice of an employee in a given matter. However, he considers the cases cited by the comments regarding application of the doctrine of estoppel to the government to be not relevant to informal advice rendered by FDA employees pursuant to these regulations, for in none of the cases had the agency publicly indicated that informal opinions of employees were not binding, and provided an alternative procedure for obtaining formal binding opinions. More importantly, none of the cases cited involved a government agency that is entrusted to protect health and safety.

69. One comment objected that the form specified in the proposal for requesting advisory opinions is too rigid. The Commissioner disagrees that the form requirements are rigid. They require only that a request indicate that it is seeking an advisory opinion, that it clearly state the question and issue on which the opinion is requested, and that it include a statement of the facts and law relevant to the request. Moreover, the section permits the Commissioner to treat other requests, in his discretion, as requests for advisory opinions.

70. Several comments objected to the Commissioner's proposed decision not to publish advisory opinions in the FEDERAL REGISTER. They argued that it is inconsistent to urge reliance on such opinions and then not publish them. One comment urged that at least a notice of availability should be published, as well as a notice indicating the withdrawal or revocation of any advisory opinion. Another comment pointed out that reporting such opinions in the trade press is of no help to the general public. The comment also argued that the right under § 2.19(d) to comment on advisory opinions becomes illusory when the public is not aware of them.

The Commissioner believes the preamble to the proposal adequately explains the reasons for not publishing each advisory opinion in the FEDERAL REGISTER. The number of opinions makes publication of each one infeasible. Those that are contained in preambles to proposed or final regulations under § 2.19 (d)(1) will be published. Nonetheless, each advisory opinion that is not published will be publicly available and will probably receive wide publicity in the trade press. To further increase public awareness of advisory opinions, moreover, the Commissioner has modified § 2.19(g) in the final regulation to provide that a chronological index of all advisory opinions will be maintained by the Hearing Clerk. The index will include the date of the request for the advisory opinion, the date of the opinion, and identification of the appropriate file.

The Commissioner thus disagrees with the contention that the right to comment on advisory opinions is illusory. Suffi-

ciently wide publicity will be given to FDA advisory opinions so that any person with even a casual interest in the agency will be likely to learn of them. Advisory opinions that are also guidelines will be further disseminated through publication in the FEDERAL REGISTER of a notice of availability under § 2.20(b)(4) and whenever incorporated into the text of a regulation under § 2.20(a).

71. Another comment argued that the failure of the regulation to provide for the publication and indexing of informal opinions might violate paragraph (a)(2)(B) of 5 U.S.C. 552, the Freedom of Information Act. The comment contended that even informal interpretations are likely to be considered "interpretations adopted by the agency," as they are subject to internal review, and can thus fairly be considered to have been adopted by the agency. It cited as support *Tax Analysts and Advocates* v. *IRS*, 362 F. Supp. 1298 (D. D.C. 1973), aff'd, 505 F.2d 350 (D.C. Cir. 1974).

The Commissioner disagrees that informal opinions given by agency employees are subject to 5 U.S.C. 552(a)(2)(B), insofar as that section requires the publicizing and indexing of agency interpretations. Such opinions are not considered interpretations of the agency; they do not bind FDA even for the matters that they address. The Commissioner accordingly concludes that they are subject to the requirements of 5 U.S.C. 552 to the same extent as routine agency correspondence, and are therefore not required to be indexed or publicized. They will, however, be subject to disclosure under 5 U.S.C. 552. Because informal opinions have no binding effect, they will not be used by the agency as precedent for persons other than those to whom they are issued. In this context, the sanctions imposed by 5 U.S.C. 552 for failure to index and publicize documents, namely, that the agency may not rely upon them in other cases, are inapplicable.

The Commissioner advises that he will continue to evaluate whether informal opinions receive sufficient distribution, and may decide, in the future, that some additional mechanism to assure their dissemination is desirable.

72. One comment suggested that proposed § 2.19 should be amended to provide that whenever published, an advisory opinion should reveal the identity of the person requesting the opinion and should set forth a clear statement of the facts on which the opinion is based. It urged also that any opinion state that it is based on the assumption that the facts are as represented.

The Commissioner currently contemplates that these opinions will be unpublished. However, the information requested in the comment will be contained in the request for an opinion filed with the Hearing Clerk, where the responsive opinion would also be filed, and both will be publicly available.

73. One comment suggested that the Commissioner should be authorized to decline to issue an advisory opinion when the request relates to conduct in which the requester is already engaged. The comment argued that issuing an opinion in such circumstances may interfere with enforcement efforts with respect to the practice.

The Commissioner advises that § 2.19(a)(2)(v) authorizes him to refuse to issue an advisory opinion when it would not be in the public interest, and thus provides the authority that the comment advocates. However, the Commissioner reiterates that he may conclude that it is not improper to issue an advisory opinion in such circumstances. The fact that conduct has already commenced is not by itself reason not to issue an advisory opinion; the conduct may be entirely lawful and appropriate.

74. One comment urged that proposed § 2.20 Food and Drug Administration regulations, guidelines, recommendations, and agreements (21 CFR 2.20) provide for full notice and comment proceedings prior to the issuance of a guideline. This comment and one other urged particularly that guidelines for product labels be subject to notice and comment rule making. The comment argued that such guidelines have considerable economic impact because of the significant expense associated with printing and design work. A related comment noted that the Supreme Court has relied heavily on agency guidelines in deciding controversies before it, referring to "*Moody* v. *Albermarle Paper Company*," 422 U.S. 405 (1975), and urged that this too dictated observance of notice and comment rule making procedures in the development of guidelines.

The Commissioner does not agree with these comments. Guidelines ordinarily represent agency interpretations of formal legal requirements, not binding legislative rules. The Commissioner's decision not to commit the agency to provide opportunity for notice and comment in the development of guidelines is consistent with their legal status under these procedural regulations. Section 2.20(b)(8) provides that although guidelines may be relied on by both FDA and persons outside the agency in administrative or court proceedings to illustrate acceptable and unacceptable procedures, they do not establish binding legal requirements. The Commissioner therefore believes it appropriate that the agency retain authority to develop them without prior public participation. The Commissioner disagrees with the reliance on "*Moody* v. *Albermarle Paper Company*," supra. In that case, the Court, while relying on agency guidelines of the Equal Employment Opportunity Commission, explicitly recognized, without criticism, that the guidelines were not administrative regulations promulgated pursuant to formal procedures established by Congress. Thus, the case can be read as support for administrative agencies interpreting statutory provisions under their jurisdiction through guidelines developed without formal public participation.

Moreover, these regulations do not preclude all public participation in the preparation of FDA guidelines. Section 2.20(b)(11) recognizes explicitly that draft guidelines may be disseminated in the same manner as draft FEDERAL REGISTER notices and regulations pursuant to § 2.18. In such cases, the regulations contemplate at least informal public participation through discussion of the substance of the guideline. In addition, § 2.20(b)(7) provides for the submission of comments on a guideline or amended guideline, which are to be specifically considered in determining whether further amendments to the guideline are appropriate. The Commissioner believes that these two provisions allow a degree of public participation in the formulation of guidelines commensurate with their legal status.

75. One comment raised the objection, also directed at § 2.19, that it is unfair to consider as informal the personal opinions of agency employees.

The Commissioner refers to the explanation provided in his discussion of the same comment regarding § 2.19. He there indicated his conclusion that although agency employees ought to be permitted to share their opinions with the public, such opinions cannot formally bind the agency. He believes it is clearly reasonable to limit statements of position that can bind the agency to regulations, advisory opinions, and guidelines.

76. An issue raised within the agency concerns the reliance by FDA on a government procurement standard or other standard as the criterion for determining the legality of a product. The issue is whether the agency may properly so rely if it has not previously complied with the requirements for the issuance of guidelines contained in this section.

The Commissioner advises that he will consider agency reliance on government procurement standards, or other standards, to be subject to prior compliance with the requirements of this section for guidelines, including inclusion in the public file and publication of a notice of availability in the FEDERAL REGISTER.

77. A minor correction has been made in § 2.20(b)(10) in the final regulation. The reference to "this paragraph" is changed to "paragraph (b)(4) of this section." Paragraph (b)(4), requiring the placing of guidelines in a public file in the Hearing Clerk's office and the publication of notice of their availability in the FEDERAL REGISTER, is not intended to apply to analytical methods. While considered to be guidelines under the section, analytical methods are too numerous and complex, and are amended too frequently, to subject them generally to these provisions. The Commissioner may, however, in his discretion, decide that a particular analytical method should be included in the public file.

78. A question has been raised concerning the availability under § 2.20 of draft internal guidelines contained in the FDA Staff Manual. The issue arose as a result of a freedom of information request to the agency for these guidelines.

The Commissioner advises that guidelines in staff manuals are not formal "guidelines" unless there has been compliance with the requirements of § 2.20.

They rarely involve matters of "general applicability," as that term is used in § 2.20, but generally apply to internal agency business. Accordingly, neither § 2.20 nor § 2.18 is applicable to the public availability of draft guidelines of this type. Their availability is subject only to the Freedom of Information Act and FDA public information regulations. Final staff manual guidelines are publicly available under 5 U.S.C. 552(a)(2)(C).

No comments were received regarding § 2.21 Participation in outside standard-setting activities (21 CFR 2.21), and it is issued as proposed.

79. Many comments addressed the requirement in proposed paragraph (b) of § 2.22 Public calendars (21 CFR 2.22) to exempt meetings with the working press from listing on the retrospective public calendar. The preamble to the proposal had requested specifically that comments be submitted on this issue. Most of the comments urged that meetings with the working press be listed on the calendar. Several comments concluded that there was no basis for according special treatment to meetings with the press, particularly where, as in this instance, the press consisted largely of "expensive 'insider' services" that assertedly are oriented toward industry customers and capable of exerting influence on the regulatory process. The failure to list meetings retrospectively, it was argued, would therefore not benefit the public generally, but only the press. One comment stated the exemption would revive the supposedly discredited practice of basing news on "undisclosed sources," and that responsible journalists should not need the anonymity that the proposed rule offered them. Another comment urged that a policy of nondisclosure of press meetings might lead to abuse and encourage damaging leaks.

Several contrary arguments were offered. One comment described the function of the press as seeking out information and reporting it, and contended that the press should be impeded as little as possible in this function. The comment argued that conscientious reporting would be frustrated if reporters had to disclose their sources. The comment argued, further, that agency employees who previously have been willing to discuss matters with reporters would be reluctant to continue doing so if they were required at the same time to disclose publicly that they had met with the press. The comment argued also that the idea of an open calendar is to disclose contacts with government officials by persons seeking to influence actions, a category that does not include members of the press, who do not espouse a particular viewpoint. It was also argued that the listing would not necessarily provide greater protection for trade secrets, whose disclosure would be prohibited. Rather, the information whose distribution would be restricted would likely be of a type that would cause embarrassment or annoyance. Finally, the comment maintained that listing press contacts would hamper press competition, which fosters investigative journalism.

The Commissioner has decided to retain the exception for the listing of press contacts in the retrospective calendar. He concludes that listing such contacts is not necessary to serve the purpose of listing generally, and would be unnecessarily burdensome. He views that purpose as publicizing agency contacts with persons having a direct personal or economic interest in agency decisions. He does not believe that representatives of the press, including representatives of publications that can be characterized as "trade press," fall within this category. Moreover, the Commissioner notes that representatives of the trade press as a matter of practice visit the agency on virtually a daily basis to make routine inquiries. Consequently, their contacts with the various agency officials listed in § 2.22(b)(3) are so numerous as to make recording each contact for the public calendar impractical.

The Commissioner concludes, therefore, that it is appropriate to exclude from listing on the public calendar contacts with various segments of the working press. Consistent with the purposes stated above, however, he is limiting this exclusion to those segments of the working press not considered to be "house organs," i.e., publications published by a company that manufactures or distributes a regulated product or products, or by an industry association. Contacts with representatives of such publications will be listed on the retrospective calendar.

80. One comment urged that proposed § 2.22(b), prescribing requirements for the retrospective public calendar, list meetings with persons outside the executive branch, rather than only those meetings with persons outside the entire Federal government. The Commissioner agrees. He believes there is valid reason to report retrospectively meetings between FDA officials and persons from the legislative or judicial branches of government that are held to discuss positions on regulatory issues pending before the agency. The final regulation has been modified accordingly.

81. Another comment urged that the prospective calendar described in § 2.22(a) be required to list "all meetings with persons outside Government." It argued that without advance notice of such meetings, consumer views would inevitably be presented primarily at separate meetings held subsequently, which would have only limited utility. Moreover, because such meetings are not transcribed or recorded, the comment argued, consumers should have the opportunity to be present at all meetings between the agency and industry representatives to represent consumer interests.

The Commissioner disagrees; the comment misunderstands the purpose of the prospective calendar, which is to list public meetings, conferences, etc., not private meetings. Section 2.15(d) of the regulations acknowledges the right of any person, whether a representative of industry or any other group, to meet privately with representatives of the agency. The Commissioner believes the listing on the retrospective calendar of such meetings that occur with certain agency officials, and the filing of appropriate memoranda summarizing all such meetings in the administrative file, adequately protect the interests of persons not in attendance. Such memoranda, would, except where exempt from disclosure, be publicly available through either the Hearing Clerk or the Public Records and Documents Center. The Commissioner believes these procedures fairly balance consumer interests with the rights of any citizen to meet privately with agency officials.

82. One comment contended that it should be mandatory instead of optional to list telephone calls in the retrospective calendar. It argued that the substance of a meeting or call should determine whether it should be included on the calendar, not whether it was held in person or by telephone. The comment insisted that all telephone calls that could influence agency decisions should be recorded on the calendar.

The Commissioner agrees that it is the substance of a meeting that should determine whether it is included on the calendar. However, he believes the proposed regulation is responsive to the comment. He advises that recording of calls is made optional with agency employees to eliminate the need to list calls that do not bear upon the decisionmaking process of the agency, e.g., calls to establish a time for a meeting. The expectation is that any call affecting a matter of policy will be noted. All such calls must in any event be summarized in written memoranda for inclusion in the administrative file under § 2.15, and such memoranda would be subject to disclosure under the Freedom of Information Act. Listing of telephone calls on the public calendar may, therefore, properly remain optional with individual agency employees.

83. One comment urged that the prospective public calendar be published in the FEDERAL REGISTER. The comment stated that the locations presently specified in § 2.22(a)(2) for public display of the calendar will not assure sufficiently wide dissemination of the information.

The Commissioner does not agree. Publication in the FEDERAL REGISTER is not appropriate for routine matters such as a weekly calendar. The Commissioner believes the provisions made for public display of both the prospective and retrospective public calendars are adequate. Moreover, the Commissioner assures that topical items appearing in the calendar will be noted regularly in the trade press.

84. Section 2.22(b)(3)(ix) in the final regulation has been modified to include, among the agency representatives required to list their attendance at meetings on the public calendar, any representative of the Chief Counsel's office who attends or plans to attend a public meeting on behalf of the Chief Counsel. The organization of the Chief Counsel's office is such that representatives other than the Chief Counsel or Deputy Chief Counsel frequently attend meetings with

members of the public as the designated representative of the office. The effect of the requirement will be to bring to public attention meetings that might otherwise not be reported.

85. Numerous comments on proposed § 2.23 Representation by an organization (21 CFR 2.23) objected to the distinction between "organization" in paragraphs (a) and (c), and "trade association" in paragraph (b). Several comments questioned whether these terms included professional associations, consumer groups, large food cooperatives, etc.

The Commissioner advises that the divergent references to "organization" and "trade association" were inadvertent. As proposed, the section was intended to apply to any organization, including a trade association that represents a "membership," or other clearly defined group appearing before the agency. Thus, professional and trade associations as well as consumer groups having an identifiable membership would be included.

86. A large number of comments objected to the statement in proposed § 2.23(b) that any representation by a trade association in a petition, comment, objection, or otherwise would be treated by FDA as binding on all members except those that had excluded themselves by name. Numerous reasons were offered to support this objection. Many comments urged that the requirement was impracticable; associations, operating within existing resources and prescribed time frames, could not, it was said, determine members' individual views prior to submitting comments. The comments pointed out that associations ordinarily attempt to reflect consensus views, and that if adopted, the rule would dramatically reduce the effectiveness of associations and primarily penalize small companies that rely heavily on associations to express their views. Legal objections were also raised as well. Many comments noted that trade associations have an identity apart from their membership and do not purport to act as agents for each of their members. The comments argued that FDA could not impose an "agency" relationship by regulation.

The Commissioner is persuaded that the proposed regulation should be modified to eliminate the provision that representations, petitions, comments, or objections by trade associations are binding on all members who have not expressly excluded themselves. He is persuaded by the practical difficulties of eliciting the views of an association member within the customary comment period. He also agrees with those comments that contended that organizations, including trade associations, should be entitled to participate in agency proceedings in their own right. Consequently, the final provision does not assert that association views will be binding on association members and does not require exclusion by name of members who do not subscribe to the views of the organization.

87. An equally large number of comments objected to the requirement of proposed § 2.23(b)(1) that any submission by a trade association (or other organization representing the views of its members) be accompanied by a current membership list or that the association have such a list on file in the Hearing Clerk's office. Several associations argued that their membership was simply too large and fluid; others contended that the requirement unlawfully infringed on the constitutional right of persons to petition their government or the right to participate in agency activities under the Administrative Procedure Act and the Federal Food, Drug, and Cosmetic Act. Several comments pointed to cases that have recognized a constitutional right against disclosure of association membership, citing *NAACP* v. *Alabama*, 357 U.S. 449 (1958), *Bates* v. *Little Rock*, 361 U.S. 516 (1960), and later cases, a right that can only be overcome by a compelling governmental interest in disclosure, citing *Gibson* v. *Florida Legislative Investigation Committee*, 372 U.S. 539 (1963). Some associations stated, however, that they had no objection to filing membership lists with the Hearing Clerk.

The Commissioner does not accept the argument that the cited cases, dealing principally with potential restrictions on freedom of expression, preclude requiring disclosure of association membership in the context of administrative proceedings to establish regulations based on information submitted by parties having obvious interests in the outcome. However, because the Commissioner has elected not to consider the positions taken by associations as binding on all members, there is no compelling reason to insist on the submission of membership lists by such organizations, and the proposed requirement is not adopted. Section 2.23(c) of the final regulation requests that such lists be provided on an annual basis to the Hearing Clerk for placement in a special file that will be available for public examination. The Commissioner hopes that organizations participating regularly in agency proceedings will file membership lists for he believes that information concerning the number and identity of members of associations will facilitate his evalution of association comments.

88. Many comments also questioned the requirement in proposed § 2.23(b)(2) that would prohibit a member of a trade association from deriving any rights individually from the filing by its association of an objection or request for hearing pursuant to §§ 2.110 through 2.112. The comments claimed it was inequitable to require members to be bound by association positions and not to provide rights commensurate with the obligation imposed. The Commissioner has retained the proposed provision (§ 2.23(d) in the final regulation), because he no longer intends to consider association members bound by positions taken by their association. However, he has amplified the provision to make clear that association members who wish to file objections or requests for hearing must do so in their own name if they wish to derive any rights therefrom.

89. Many comments challenged the validity of proposed § 2.23(c), in which the Commissioner announced his intention to treat any court proceeding in which an organization participates as a class action, and to assert in any related court case the doctrines of res judicata and collateral estoppel against all organization members except those excluded by name. The comments insisted that class actions must meet specific judicial requirements whose applicability can only be determined in specific proceedings. Other comments questioned the wisdom of including such statements of litigation strategy in these regulations.

The Commissioner acknowledges that whether an organization challenge to FDA regulations or other agency action should be adjudicated as a class action, just as the application of the doctrines of res judicata or collateral estoppel, will ultimately be determined judicially. Nonetheless, he has retained the provision (§ 2.23(e) in the final regulation) to emphasize that the positions stated reflect the agency's posture in court.

No comments were received regarding § 2.24 Settlement proposals (21 CFR 2.24), and it is issued as proposed.

No comments were received regarding § 2.25 Waiver, suspension, or modification of procedural requirements (21 CFR 2.25) and it is issued as proposed.

The proposed regulations on administrative practices and procedures contained proposed conforming changes in numerous existing regulations of the agency. The Commissioner has promulgated some of the proposed conforming regulations at the time of finalizing Subparts B and F of Part 2. In this document, the Commissioner is issuing the remainder of the conforming regulations substantially as proposed, inasmuch as no comments were received on them.

The changes in § 330.10(a)(12) (21 CFR 330.10(a)(12)) set forth in the September 3, 1975 proposal have been incorporated in a final regulation to be published in the FEDERAL REGISTER in the near future.

Section 328.30 Procedure for establishing, amending or repealing standards has been recodified as § 829.30 (recodification published in the FEDERAL REGISTER of February 13, 1976 (41 FR 6907)) and the proposed conforming amendment to the section is finalized in this document under Part 829.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 201 et seq., 52 Stat. 1040 (21 U.S.C. 321 et seq.)), the Public Health Service Act (sec. 1 et seq., 58 Stat. 682. as amended (42 U.S.C. 201 et seq.)), the Comprehensive Drug Abuse Prevention and Control Act of 1970 (sec. 4, 84 Stat. 1241 (42 U.S.C. 257a)), the Controlled Substances Act (sec. 301 et seq., 84 Stat. 1253 (21 U.S.C. 821 et seq.)), the Federal Meat Inspection Act (sec. 409(b), 81 Stat. 600 (21 U.S.C. 679(b)), the Poultry Products Inspection Act (sec. 24(b), 82 Stat. 807 (21 U.S.C. 467f(b)), the Egg Products Inspection Act (sec. 2 et seq., 84 Stat. 1620 (21 U.S.C. 1031 et seq.)), the Federal Import Milk Act (44 Stat. 1101 (21 U.S.C. 141 et seq.)), the Tea Importation Act (21 U.S.C. 41 et seq.), the Federal Caustic Poison Act (44 Stat. 1406 (15 U.S.C. 401–411 notes)), the Fair Packaging and Labeling Act (80 Stat. 1296 (15 U.S.C. 1451 et seq.)), and all other statutory authority delegated to the Commissioner (21 CFR 5.1) (recodification published in the FEDERAL REGISTER of June 15, 1976 (24262)), Chapter I of Title 21 of the Code of Federal Regulations is amended as follows:

PART 1—REGULATIONS FOR THE ENFORCEMENT OF THE FEDERAL FOOD, DRUG, AND COSMETIC ACT AND THE FAIR PACKAGING AND LABELING ACT

1. By revising § 1.1a to read as follows:

§ 1.1a **Foods, drugs, devices, and cosmetics; labeling; procedure for requesting variations and exemptions from required label statements.**

Section 403(e) of the act (in this Part 1, the term "act" means the Federal Food, Drug, and Cosmetic Act) provides for the establishment by regulation of reasonable variations and exemptions for small packages from the required declaration of net quantity of contents. Section 403(i) of the act provides for the establishment by regulation of exemptions from the required declaration of ingredients where such declaration is impracticable, or results in deception or unfair competition. Section 502(b) of the act provides for the establishment by regulation of reasonable variations and exemptions for small packages from the required declaration of net quantity of contents. Section 602(b) of the act provides for the establishment by regulation of reasonable variations and exemptions for small packages from the required declaration of net quantity of contents. Section 5(b) of the Fair Packaging and Labeling Act provides for the establishment by regulation of exemptions from certain required declarations of net quantity of contents, identity of commodity, identity and location of manufacturer, packer, or distributor, and from declaration of net quantity of servings represented, based on a finding that full compliance with such required declarations is impracticable or not necessary for the adequate protection of consumers, and a further finding that the nature, form, or quantity of the packaged consumer commodity or other good and sufficient reasons justify such exemptions. The Commissioner, on his own initiative or on petition of an interested person, may propose a variation or exemption based upon any of the foregoing statutory provisions, including proposed findings if section 5(b) of the Fair Packaging and Labeling Act applies, pursuant to Part 2 of this chapter.

2. By revising § 1.8d(f) to read as follows:

§ 1.8d **Food labeling; information panel.**

• • • • •

(f) If the label of any package of food is too small to accommodate all of the information required by §§ 1.8a, 1.8c, 1.10, 1.13, 1.17, and 1.18, and Parts 80 and 125 of this chapter, the Commissioner may establish by regulation an acceptable alternative method of disseminating such information to the public, e.g., a type size smaller than one-sixteenth inch in height, or labeling attached to or inserted in the package or available at the point of purchase. A petition requesting such a regulation, as an amendment to this paragraph shall be submitted pursuant to Part 2 of this chapter.

PART 2—ADMINISTRATIVE PRACTICES AND PROCEDURES

3. By revising Subpart A of Part 2 to read as follows:

Subpart A—General

Sec.

2.1 Scope.
2.3 Definitions.
2.4 Summaries of administrative practices and procedures.
2.5 Submission of documents to Hearing Clerk; computation of time; availability for public disclosure.
2.6 Initiation of administrative proceedings.
2.7 Citizen petition.
2.8 Administrative reconsideration of action.
2.9 Administrative stay of action.
2.10 Promulgation of regulations for the efficient enforcement of the law.
2.11 Court review of final administrative action; exhaustion of administrative remedies.
2.12 Promulgation of regulations and orders after an opportunity for a formal evidentiary public hearing.
2.13 Separation of functions; ex parte communications.
2.14 Referral by court.
2.15 Meetings and correspondence.
2.16 Documentation of significant decisions in administrative file.
2.17 Internal agency review of decisions.
2.18 Dissemination of draft FEDERAL REGISTER notices and regulations.
2.19 Advisory opinions.
2.20 Food and Drug Administration regulations, guidelines, recommendations, and agreements.
2.21 Participation in outside standard-setting activities.
2.22 Public calendars.
2.23 Representation by an organization.
2.24 Settlement proposals.
2.25 Waiver, suspension, or modification of procedural requirements.

AUTHORITY: Sec. 201 et seq., Pub. L. 717, 52 Stat. 1040 as amended (21 U.S.C. 321 et seq.); sec. 1 et seq., Pub. L. 410, 58 Stat. 682 as amended (42 U.S.C. 201 et seq.); sec. 4, Pub. L. 91–513, 84 Stat. 1241 (42 U.S.C. 257a); sec. 301 et seq., Pub. L. 91–513, 84 Stat. 1253 (21 U.S.C. 821 et seq.); sec. 409(b), Pub. L. 242, 81 Stat. 600 (21 U.S.C. 679(b)); sec. 24(b), Pub. L. 85–172, 82 Stat. 807 (21 U.S.C. 467f (b)); sec. 2 et seq., Pub. L. 91–597, 84 Stat. 1620 (21 U.S.C. 1031 et seq.); secs. 1 through 9, Pub. L. 625, 44 Stat. 1101–1103 as amended (21 U.S.C. 141–149); secs. 1 through 10, Chapter 358, 29 Stat. 604–609 as amended (21 U.S.C. 41–50); sec. 1 et seq., Pub. L. 783, 44 Stat. 1406 as amended (15 U.S.C. 401 et seq.); sec. 1 et seq., Pub. L. 89–775, 80 Stat. 1296 as amended (15 U.S.C. 1451 et seq.).

Subpart A—General

§ 2.1 **Scope.**

(a) Part 2 governs practices and procedures applicable to all petitions, hearings, and other administrative proceedings and activities conducted by the Food and Drug Administration pursuant to the Federal Food, Drug, and Cosmetic Act, the Public Health Service Act, and other laws with respect to which authority has been delegated to the Commissioner of Food and Drugs pursuant to § 5.1 of this chapter, except to the extent that specific provisions in other sections of this chapter state different requirements with respect to a particular matter.

(b) Where a specific provision in another section of this chapter states a different requirement with respect to a particular matter (e.g., the use of a form different from the one specified in § 2.7(b)), the sections in this part shall apply to the extent that they do not conflict with such other provisions (e.g., the requirements for inclusion of all data and information and for translations of foreign language in § 2.5(b) shall apply regardless of which form is used).

§ 2.3 **Definitions.**

(a) As used in this part, the following terms shall have the meanings specified:

(1) "Act" means the Federal Food, Drug, and Cosmetic Act unless otherwise indicated.

(2) "Department" means the United States Department of Health, Education, and Welfare.

(3) "Secretary" means the Secretary of Health, Education, and Welfare.

(4) "Commissioner" means the Commissioner of Food and Drugs, Food and Drug Administration, United States Department of Health, Education, and Welfare, or his designee.

(5) "Agency" means the Food and Drug Administration.

(6) "Person" includes an individual, partnership, corporation, association, or other legal entity.

(7) "Presiding officer" means the Commissioner or his designee or an Administrative Law Judge appointed as provided in 5 U.S.C. 3105.

(8) "Hearing Clerk" means the Hearing Clerk of the Food and Drug Administration, United States Department of Health, Education, and Welfare, Rm. 4–85, 5600 Fishers Lane, Rockville, MD 20857.

(9) "Proceeding" and "administrative proceeding" mean any undertaking to issue, amend, or revoke a regulation or order, or to take or refrain from taking any other form of administrative action.

(10) "Party" means the bureau of the Food and Drug Administration responsible for the matter involved and every person who either has exercised a right to request or has been granted the right by the Commissioner to have a formal evidentiary public hearing pursuant to Subpart B of this part or a regulatory hearing before the Commissioner pursuant to Subpart F of this part, or who has waived any such right in order to obtain the establishment of a Public Board of Inquiry pursuant to Subpart C of this part, and as a result of whose action a formal evidentiary hearing or a regula-

tory hearing before the Commissioner has been granted or a Public Board of Inquiry has been established.

(11) "Participant" means any person participating in any proceeding, including each party and any other interested person.

(12) "Interested person" or "any person who will be adversely affected" means any person who submits a petition or comment or objection or otherwise requests an opportunity to participate in any informal or formal administrative proceeding or court action.

(13) "Public Board of Inquiry" or "Board" means an administrative law tribunal constituted pursuant to the provisions of Subpart C of this part.

(14) "Public advisory committee" or "advisory committee" means any committee, board, commission, council, conference, panel, task force, or other similar group, or any subcommittee or other subgroup thereof, that is not composed wholly of full-time officers or employees of the Federal government and is established or utilized by the Food and Drug Administration to obtain advice or recommendations.

(15) "Formal evidentiary public hearing" means any hearing conducted pursuant to the provisions of Subpart B of this part.

(16) "Public hearing before a Public Board of Inquiry" means any hearing conducted by a Board pursuant to the provisions of Subpart C of this part.

(17) "Public hearing before a public advisory committee" means any hearing conducted by an advisory committee pursuant to the provisions of Subpart D of this part.

(18) "Public hearing before the Commissioner" means any hearing conducted by the Commissioner or his designee pursuant to the provisions of Subpart E of this part.

(19) "Regulatory hearing before the Food and Drug Administration" means any hearing conducted by an authorized employee of the Food and Drug Administration pursuant to the provisions of Subpart F of this part.

(20) "The laws administered by the Commissioner" means all the statutory provisions with respect to which authority has been delegated to the Commissioner pursuant to § 5.1 of this chapter.

(21) "Petition" means any petition, application, or other document requesting the Commissioner to establish, amend, or revoke a regulation or order, or to take or refrain from taking any other form of administrative action, under the laws administered by him.

(22) "Regulation" means any agency rule of general or particular applicability and future effect implementing or applying any law administered by the Commissioner or relating to administrative practices and procedures. Pursuant to § 2.20(a), all agency regulations shall be promulgated in the FEDERAL REGISTER and codified in the Code of Federal Regulations.

(23) "Order" means any final agency disposition, other than the issuance of a regulation, in a proceeding concerning any matter and includes action on any new drug application, new animal drug application, or biological license.

(24) "Meeting" means any oral discussion, whether by telephone or in person.

(25) "Office of the Commissioner" includes the offices of the associate and assistant commissioners and excludes the bureaus, the office of the Executive Director for Regional Operations, and all regional and district offices.

(26) "Administrative action" includes every form and kind of act, including the refusal or failure to act, involved in the implementations of the laws administered by the Commissioner, except that it does not include the referral of apparent violations to United States attorneys for the institution of civil and criminal proceedings and acts preparatory or incidental thereto.

(27) "Administrative file" means the file maintained by the Food and Drug Administration, in which all documents pertaining to an administrative proceeding, including internal working memoranda and recommendations, are retained.

(28) "Food and Drug Administration employee" or "Food and Drug Administration representative" shall be deemed to include members of the Food and Drug Division of the office of the General Counsel of the Department of Health, Education, and Welfare.

(29) "Ex parte communication" means an oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given, but it shall not include requests for status reports on any matter or proceeding.

(b) Any term which is defined in section 201 of the Federal Food, Drug, and Cosmetic Act or Part 1 of this chapter shall have that definition.

(c) Words in the singular form shall be deemed to include the plural, words in the masculine form shall be deemed to include the feminine form, and vice versa, as the case may require.

(d) Whenever any reference is made to this part to any person in the Food and Drug Administration, e.g., the director of a bureau, such reference shall also be deemed to include all persons to whom that person has delegated the specific function involved.

§ 2.4 Summaries of administrative practices and procedures.

The Commissioner shall prepare for public distribution summaries of Food and Drug Administration administrative practices and procedures in terms that are readily understood in order to encourage and facilitate participation in all agency activities.

§ 2.5 Submission of documents to Hearing Clerk; computation of time; availability for public disclosure.

(a) All submissions to the Hearing Clerk of petitions, comments, objections, notices, compilations of data and information, and any other documents pursuant to this part or other sections in this chapter shall be filed in four copies except as otherwise specifically provided in any relevant FEDERAL REGISTER notice or in other sections of this chapter. The Hearing Clerk shall be the agency custodian of such documents.

(b) All such submissions shall be signed by the person making the submission, or by an attorney or other authorized representative on his behalf. Submissions by trade associations shall also be subject to the requirements of § 2.23(b).

(c) All data and information referred to or in any way relied upon in any such submissions shall be included in full and may not be incorporated by reference, unless previously submitted as part of the administrative file in the same proceeding.

(1) A copy of any article or other reference or source cited shall be included, except where the reference or source is:

(i) A reported Federal court case,

(ii) A Federal law or regulation,

(iii) A Food and Drug Administration document that is routinely publicly available, or

(iv) A recognized medical or scientific textbook that is readily available to the agency.

(2) If any part of the material submitted is in a foreign language, it shall be accompanied by an English translation verified under oath to be complete and accurate, together with the name, address, and a brief statement of the qualifications of the person making the translation. Translations of literature or other material in a foreign language shall be accompanied by copies of the original publication.

(3) Where relevant data or information are contained in a document also containing irrelevant matter, the irrelevant matter shall be deleted and only the relevant data or information shall be submitted.

(4) Pursuant to § 4.63 (a) and (b) of this chapter, the names and other information which would identify patients or research subjects shall be deleted from any record before it is submitted to the Hearing Clerk in order to preclude a clearly unwarranted invasion of personal privacy.

(5) Defamatory, scurrilous, or intemperate matter shall be deleted from any record before it is submitted to the Hearing Clerk.

(6) The failure to comply with the requirements of this paragraph or any other requirement in this part shall result in rejection of the submission for filing or, if it is filed, in exclusion from consideration of any portion of the submission which fails to comply. If a submission fails to meet any requirement of this section and such deficiency becomes known to the Hearing Clerk, the Hearing Clerk shall return the submission with a copy of the applicable regulations indicating those provisions not complied with in the submission. A deficient submission may be corrected or supplemented and subsequently filed. The office of the Hearing Clerk is not equipped to make decisions regarding the confidentiality of submitted documents. Persons wishing to voluntarily submit information considered confidential shall do so in accordance with the presubmission review requirements of § 4.44 of this chapter.

(d) The filing of a submission shall mean only that the Hearing Clerk has not determined that it fails to meet the technical requirements for filing established in this section and in any other applicable sections in this chapter, e.g., § 2.7 relating to a citizen petition. The filing of a petition shall not mean or imply that it in fact meets all applicable requirements or that it contains reasonable grounds for the action requested or that the action requested is in accordance with law.

(e) All submissions to the Hearing Clerk shall be considered as submitted on the date on which they are postmarked or, if delivered in person during regular business hours, on the date on which they are so delivered, unless a provision in this part, an applicable FEDERAL REGISTER notice, or an order issued by an administrative law judge specifically states that such documents must be received by a specified date, e.g., § 2.8(g) relating to a petition for reconsideration, in which case they shall be considered submitted on the date actually received.

(f) All such submissions shall be mailed or delivered in person to the Hearing Clerk, Food and Drug Administration, Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20857, except that a submission which is required to be received by the Hearing Clerk by a specified date may be delivered in person to the Food and Drug Administration building in downtown Washington (Rm. 6819, 200 C St., SW., Washington, DC 20201) and shall be considered as received by the Hearing Clerk on the date on which it is logged in at Rm. 6819.

(g) The Food and Drug Administration ordinarily will not acknowledge or give receipt for such documents, except:

(1) Documents delivered in person or submitted by certified or registered mail with a return receipt requested.

(2) Petitions for which acknowledgement of receipt of filing is provided by regulations in this chapter or by customary practice, e.g., § 2.7(c) relating to a citizen petition.

(h) Saturdays, Sundays, and Federal legal holidays shall be included in computing the time allowed for the submission of any document, except that when such time expires on a Saturday, Sunday, or Federal legal holiday, such period shall be extended to include the next following business day.

(i) All submissions to the Hearing Clerk constitute a representation that, to the best of the knowledge, information, and belief of the person making the submission, all statements made in the submission are true and accurate. All such submissions are subject to the False Reports to the Government Act, 18 U.S.C. 1001, under which a willfully false statement is a criminal offense.

(j) The availability for public examination and copying of submissions to the Hearing Clerk shall be governed by the following rules:

(1) Except to the extent provided in paragraphs (j) (2) and (3) of this section, the following submissions, including all supporting material, shall be on public display and shall be available for public examination between the hours of 9 a.m. to 4 p.m., Monday through Friday. Requests for copies of such submissions shall be filed and handled pursuant to the provisions of Subpart C of Part 4 of this chapter.

(i) Petitions.

(ii) Comments on petitions, on documents published in the FEDERAL REGISTER, and on similar public documents.

(iii) Objections and requests for hearings filed pursuant to Subpart B of this part.

(iv) Material submitted at a formal evidentiary public hearing pursuant to Subpart B of this part, a public hearing before a Public Board of Inquiry pursuant to Subpart C of this part, a public hearing before the Commissioner pursuant to Subpart E of this part, or an alternative form of hearing before a public advisory committee pursuant to § 2.117(a) (2).

(v) Material placed on public display pursuant to regulations in this chapter, e.g., agency guidelines filed pursuant to § 2.20(b).

(2) (i) Material prohibited from public disclosure pursuant to § 4.63 of this chapter (clearly unwarranted invasion of personal privacy) as interpreted and applied in Part 4 of this chapter and the regulations referenced therein, and, except as provided in paragraph (j) (3) of this section, material submitted with objections and requests for hearings filed pursuant to Subpart B of this part, or at a formal evidentiary public hearing pursuant to Subpart B of this part, a public hearing before a Public Board of Inquiry pursuant to Subpart C of this part, or an alternative form of public hearing before a public advisory committee or a public hearing before the Commissioner pursuant to § 2.117(a) (2) or (3), of the following types shall not be on public display, shall not be available for public examination, and shall not be available for copying or any other form of verbatim transcription unless they are otherwise available for public disclosure pursuant to the provisions of Part 4 of this chapter and the regulations referenced therein:

(*a*) Safety and effectiveness data and information, which include all studies and tests of an ingredient or product on animals and humans and all studies and tests on the ingredient or product for identity, stability, purity, potency, bioavailability, performance, and usefulness.

(*b*) A protocol for a test or study.

(c) Manufacturing methods or processes, including quality control procedures.

(*d*) Production, sales, distribution, and similar data and information, except any compilation of such data and information aggregated and prepared in a way that does not reveal confidential data and information.

(*e*) Quantitative or semiquantitative formulas.

(*f*) Data and information on design or construction of products.

(ii) Material submitted pursuant to the provisions of paragraph (j) (2) of this section shall be segregated from all other submitted material and clearly so marked. Any person who does not agree that such a submission is properly subject to the provisions of paragraph (j) (2) of this section may request a ruling thereon from the Assistant Commissioner for Public Affairs whose decision on the matter shall be final, subject to judicial review pursuant to § 4.46 of this chapter.

(3) Material listed in paragraph (j) (2) (i) (*a*) and (*b*) of this section may be disclosed pursuant to a protective order issued by the administrative law judge or other presiding officer at any hearing referenced in paragraph (j) (2) (i). The order shall only permit disclosure of the data in camera and only to the extent necessary for the proper conduct of the hearing. The order shall state to whom the information is to be made available (e.g., to parties or participants, or only to counsel for parties or participants), and persons not specifically permitted access to the data shall be excluded from the in camera part of the proceeding. The administrative law judge or other presiding officer may impose other conditions or safeguards with the requirements of this section. The limited availability of material pursuant to this paragraph shall be deemed not to constitute prior disclosure to the public as defined in § 4.81 of this chapter, and no such data and information shall be submitted to or received or considered by the Food and Drug Administration in support of a petition or other request from any other person.

§ 2.6 Initiation of administrative proceedings.

An administrative proceeding under the laws administered by the Commissioner may be initiated in any of the following three ways:

(a) Any interested person may petition the Commissioner to issue, amend, or revoke a regulation or order, or to take or refrain from taking any other form of administrative action, under the laws administered by him. Any such petition shall be either (1) in the form specified in other applicable sections in this chapter, e.g., the form for a food additive petition in § 121.51 of this chapter or for a new drug application in § 314.1 of this chapter or for a new animal drug application in § 514.1 of this chapter, or (2) in the form for a citizen petition in § 2.7.

(b) The Commissioner may on his own initiative institute a proceeding to issue, amend, or revoke a regulation or order, or to take or refrain from taking any other form of administrative action, under the laws administered by him. The Food and Drug Administration has primary jurisdiction to make the initial determination on issues within its statutory mandate, and will request a court to dismiss, or to hold in abeyance its determination of or refer to the agency for administrative determination, any such issue which has not previously been determined by the agency or which, if

it has previously been so determined, the agency concludes should be reconsidered and subject to a new administrative determination. The Commissioner may, in his discretion, utilize any of the procedures established in this part in reviewing and making a determination on any matter on his own initiative.

(c) The Commissioner shall institute a proceeding to determine whether he should issue, amend, or revoke a regulation or order, or take or refrain from taking any other form of administrative action under the laws administered by him, whenever any court, without his initiative, holds in abeyance or refers any such matter to him for an administrative determination and he concludes that such an administrative determination is feasible in light of agency priorities and resources.

§ 2.7 Citizen petition.

(a) The provisions of this section shall apply to any petition submitted by any person, except to the extent that specific provisions in other sections of this chapter state different requirements with respect to a particular matter.

(b) Any petition (including any attachments) shall be submitted in accordance with § 2.5 and in the following form:

(Date)

Hearing Clerk, Food and Drug Administration, Department of Health, Education, and Welfare, Rm. 4–65, 5600 Fishers Lane, Rockville MD 20857.

CITIZEN PETITION

The undersigned submits this petition pursuant to ---------- (relevant statutory sections, if know) of the ---------- (Federal Food, Drug, and Cosmetic Act and/or the Public Health Service Act and/or any other statutory provision with respect to which authority has been delegated to the Commissioner of Food and Drugs pursuant to 21 CFR 5.1) to request the Commissioner of Food and Drugs to ---------- (issue, amend, or revoke a regulation or order or take or refrain from taking any other form of administrative action).

A. Action Requested.

((1) If the petition requests the Commissioner to issue, amend, or revoke a regulation, the exact wording of the existing regulation (if any) and the proposed regulation or amendment requested.)

((2) If the petition requests the Commissioner to issue, amend, or revoke an order, a copy or the exact wording of and citation to the existing order (if any) and the exact wording requested for the proposed order.)

((3) If the petition requests the Commissioner to take or refrain from taking any other form of administrative action, the specific action or relief requested.)

B. Statement of Grounds.

(A full statement of the factual and legal grounds upon which the petitioner relies. Such grounds shall include all relevant data, information, and views on which the petitioner relies, as well as representative data and information known to the petitioner which are unfavorable to the petitioner's position, and shall be submitted in a well-organized format.)

C. Environmental Impact.

(An environmental impact analysis report in the form specified in 21 CFR 6.1(g), except for the types of actions specified in 21 CFR 6.1(e).)

D. Economic Impact.

(The following information is to be submitted only when requested by the Commissioner following review of the petition: A statement of the effect of requested action on (1) cost (and price) increases to industry, government, and consumers; (2) productivity of wage-earners, businesses, or government; (3) competition; (4) supplies of important materials, products, or services; (5) employment; and (6) energy supply or demand.)

The undersigned certifies, that, to the best of his knowledge and belief this petition includes all data, information, and views on which the petition relies, and that it includes representative data and information known to the petitioner which are unfavorable to the petition.

Very truly yours,

(Signature)

(Name of petitioner)

(Mailing address)

(Telephone number)

(c) Any petition which appears to meet the requirements of paragraph (b) of this section and §2.5 shall be filed by the Hearing Clerk, stamped with the date of filing, and assigned a docket number. The docket number shall be used to identify the administrative file established by the Hearing Clerk for all submissions relating to the petition, as provided in this part. All subsequent submissions relating to the matter shall refer to such docket number and shall be filed in such administrative file. Identical, similar, or related petitions may be filed together and given the same docket number. The Hearing Clerk shall promptly notify the petitioner in writing of the filing and docket number of a petition.

(d) Any interested person may submit written comments to the Hearing Clerk on any filed petition, which shall become part of the Administrative file. Such comments shall specify the docket number of the petition and may support or oppose the petition in whole or in part. Any request for alternative or different administrative action shall be in the form of a separate petition.

(e) (1) The Commissioner shall, in accordance with paragraph (e) (2) of the section, review and rule upon every petition filed pursuant to paragraph (c) of this section, taking into consideration (i) the agency resources available to handle the category of subject matter involved, (ii) the priority assigned to the petition in relation both to the category of subject matter involved and the overall work of the agency, and (iii) time requirements established by statute.

(2) A response shall be furnished to each petitioner under this section within 180 days of the receipt of the petition. Such response shall either:

(i) Approve the petition, in which case the Commissioner shall concurrently take appropriate agency action (e.g., the publication of a FEDERAL REGISTER notice) implementing the approval; or

(ii) Deny the petition; or

(iii) Provide a tentative response, indicating why the agency has been unable to reach a decision on the merits of the petition, e.g., because of the existence of other agency priorities, a need for additional information, or other stated reason. The tentative response may also indicate the likely ultimate agency response, and may specify when a final response may be furnished.

(3) The Commissioner may grant or deny such a petition, in whole or in part, and may grant such other relief or take such other action as he may determine to be warranted by the petition. The petitioner shall be notified in writing of the Comimssioner's decision on a petition. Such decision shall be placed in the public docket file in the office of the Hearing Clerk and may also be in the form of a notice published in the FEDERAL REGISTER.

(f) If a petition filed pursuant to paragraph (c) of this section requests the Commissioner to issue, amend, or revoke a regulation, the provisions of § 2.10 or § 2.12 shall also apply.

(g) A petitioner may supplement, amend, or withdraw his petition in writing without agency approval and without prejudice to its resubmission at anytime until the Commissioner rules on the petition, unless the petition has been referred for a hearing under Subparts B, C, D, or E of this part. After a ruling or referral, a petition may be supplemented amended, or withdrawn only with the approval of the Commissioner. The Commissioner may in his discretion approve withdrawal, but with prejudice against resubmission of the petition.

(h) In reviewing any matter which is the subject of a petition filed pursuant to paragraph (c) of this section, the Commissioner may, in his discretion, utilize any of the following procedures.

(1) Conferences, meetings, discussions, and correspondence pursuant to § 2.15.

(2) A formal evidentiary public hearing pursuant to Subpart B of this part.

(3) A public hearing before a Public Board of Inquiry pursuant to Subpart C of this part.

(4) A public hearing before a public advisory committee pursuant to Subpart D of this part.

(5) A public hearing before the Commissioner pursuant to Subpart E of this part.

(6) A regulatory hearing before the Food and Drug Administration pursuant to Subpart F of this part.

(7) A notice published in the FEDERAL REGISTER requesting data, information, and views.

(8) A proposal to issue, amend, or revoke a regulation, in accordance with the provisions of § 2.10 or § 2.110.

(9) Any other specific public procedure established by the provisions in other sections of this chapter and explicitly made applicable to the matter by those provisions.

(i) The record of the administrative proceeding shall consist of the following:

(1) The petition, including all data and information on which it relies, filed by the Hearing Clerk.

(2) All comments received on the petition, including all data or information submitted as a part of such comments.

(3) If the petition resulted in a proposal to issue, amend, or revoke a regulation, all of the documents specified in § 2.10(g).

(4) The record, consisting of any transcripts, minutes of meetings, reports, FEDERAL REGISTER notices, and other documents, resulting from any of the option procedures specified in paragraph (g) of this section, except that it shall not include the transcript of any closed portion of any public advisory committee meeting.

(5) The Commissioner's decision on the petition, including all data and information identified or filed by the Commissioner with the Hearing Clerk as part of the record supporting the decision.

(6) All documents filed with the Hearing Clerk pursuant to § 2.15(h).

(7) If any petition for reconsideration or for a stay of action is filed pursuant to paragraph (j) of this section, the administrative record specified in § 2.8(k) or § 2.9(h) respectively.

(j) The administrative record specified in paragraph (i) of this section shall constitute the exclusive record for the Commissioner's decision. The record of the administrative proceeding shall be closed as of the date of the Commissioner's decision unless some other date for the closing of the record is specified by the Commissioner. Thereafter any interested person may submit a petition for reconsideration pursuant to § 2.8 and a petition for stay of action pursuant to § 2.9. Any person who wishes to rely upon data, information, or views not included in the administrative record shall submit it to the Commissioner with a new petition to modify the decision pursuant to this section.

(k) The provisions of this section shall not apply to the referral of a matter to a United States attorney for the initiation of court enforcement action and related correspondence, or to requests, suggestions, and recommendations made informally in routine correspondence received by the Food and Drug Administration. Such correspondence does not constitute a petition within the meaning of this section unless it purports to meet the requirements of this section. Action with respect to such routine correspondence does not constitute final administrative action which is subject to judicial review pursuant to § 2.11.

(l) The Hearing Clerk shall maintain a chronological list of all petitions filed pursuant to this section and § 2.19, but excluding petitions submitted elsewhere in the agency pursuant to § 2.6(a)(1), showing:

(1) The docket number.

(2) The date the petition was filed by the Hearing Clerk.

(3) The name of the petitioner.

(4) The subject matter involved.

(5) The disposition of the petition.

§ 2.8 Administrative reconsideration of action.

(a) The Commissioner may at any time conclude to reconsider any matter, on his own initiative or on the petition of any interested person.

(b) Any interested person may request reconsideration of any part or all of a decision of the Commissioner on any petition submitted pursuant to § 2.6(a). Any such request shall be submitted in accordance with § 2.5 and in the following form no later than 30 days after the date of the decision involved. In the case of a decision published in the FEDERAL REGISTER, the day of publication shall be the day of decision.

(Date)

Hearing Clerk, Food and Drug Administration, Department of Health, Education, and Welfare, Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20852

PETITION FOR RECONSIDERATION

Docket No. ------

The undersigned submits this petition for reconsideration of the decision of the Commissioner of Food and Drugs in Docket No. ------

A. Decision Involved.

(A concise statement of the decision of the Commissioner which the petitioner wishes to have reconsidered.)

B. Action Requested.

(The decision which the petitioner requests the Commissioner to make upon reconsideration of the matter.)

C. Statement of Grounds.

(A full statement of the factual and legal grounds upon which the petitioner relies. Such grounds shall demonstrate that relevant data, information, and views contained in the administrative record were not previously or not adequately considered by the Commissioner. No new data, information, or views may be included in a petition for reconsideration.)

Very truly yours,

(Signature)

(Name of petitioner)

(Mailing address)

(Telephone number)

(c) A petition for reconsideration relating to a petition submitted pursuant to § 2.6(a)(2) shall be subject to the requirements of § 2.7 (c) and (d), except that it shall be filed in the same docket file as the petition to which it relates.

(d) The Commissioner shall promptly review a petition for reconsideration. The Commissioner may grant such a petition in any proceeding when he determines that it is in the public interest and in the interest of justice. The Commissioner shall grant a petition for reconsideration in any proceeding if he determines that all of the following apply: (1) the petition demonstrates that relevant data, information, or views contained in the administrative record were not previously or not adequately considered by the Commissioner, (2) the petitioner's position is not frivolous and is being pursued in good faith, (3) the petitioner has demonstrated sound public policy grounds supporting reconsideration, and (4) reconsideration is not outweighed by public health considerations or other public interests.

(e) A petition for reconsideration shall be based only on data, information, and views contained in the administrative record on which the Commissioner made his decision. Any interested person who wishes to rely upon data, information, or views not included in such administrative record shall submit it to the Commissioner with a new petition to modify the decision pursuant to § 2.6(a).

(f) The Commissioner's decision on a petition for reconsideration shall be in writing and shall be placed on public display as part of the administrative file on the matter in the office of the Hearing Clerk. A determination to grant reconsideration shall be published in the FEDERAL REGISTER if the Commissioner's original decision was published in the FEDERAL REGISTER. Any other determination to grant or to deny reconsideration may also be published in the FEDERAL REGISTER.

(g) The Commission will consider a petition for reconsideration only if it is submitted within 30 days of the date of the decision involved and before such petitioner brings legal action in the courts to review such action, except that such a petition shall also be considered if the Commissioner has denied a petition for stay of action and such petitioner has petitioned for judicial review of the Commissioner's action and requested the reviewing court to grant a stay pending consideration of such review. A petition for reconsideration submitted later than 30 days after the date of the decision involved shall be denied as untimely. A petition for reconsideration shall be considered as submitted on the day it is received by the Hearing Clerk.

(h) The Commissioner may on his own initiative decide to reconsider all or part of any matter at any time after it has been decided or action has been taken. If review of such matter is pending in the courts, the Commissioner may request that the court refer the matter back to the agency or hold its review in abeyance pending administrative reconsideration. The administrative record of the proceeding shall include all additional documents relating to such reconsideration.

(i) After determining to reconsider a matter, whether on the petition of an interested person or on his own initiative, the Commissioner shall review and rule on the merits of the matter pursuant to § 2.7(e). The Commissioner may reaffirm, modify, or overrule his prior decision, in whole or in part, and may grant such other relief or take such other action as he may determine to be warranted.

(j) The Commissioner's reconsideration of any matter relating to a petition submitted pursuant to § 2.6(a)(2) shall be subject to the provisions of § 2.7(f) through (h), (j), and (k).

(k) The record of the administrative proceeding shall consist of the following.

(1) The record of the original petition specified in § 2.7(i).

(2) The petition for reconsideration, including all data and information on which it relies, filed by the Hearing Clerk.

(3) All comments received on such petition, including all data or information submitted as a part of such comments.

(4) The Commissioner's decision on such petition pursuant to paragraph (f) of this section, including all data and information identified or filed by the Commissioner with the Hearing Clerk as part of the record supporting the decision.

(5) Any FEDERAL REGISTER notices or other documents resulting from such petition.

(6) All documents filed with the Hearing Clerk pursuant to § 2.15(h).

(7) If the Commissioner reconsiders the matter, the administrative record relating to such reconsideration specified in § 2.7(i).

§ 2.9 Administrative stay of action.

(a) The Commissioner may at any time stay (including extend) the effective date of any relevant action pending or following his decision on any matter, on his own initiative or on the petition of any interested person.

(b) Any interested person may request the Commissioner to stay the effective date of any administrative action. Such a stay may be requested for a specific time period or for an indefinite time period. Any such request shall be submitted in accordance with § 2.5 and in the following form no later than 30 days after the date of the decision involved. In the case of a decision published in the FEDERAL REGISTER, the day of publication shall be the day of decision.

(Date)

Hearing Clerk, Food and Drug Administration, Department of Health, Education, and Welfare, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857

PETITION FOR STAY OF ACTION

The undersigned submits this petition requesting that the Commissioner of Food and Drugs stay the effective date of his action with respect to the following matter.

A. *Decision Involved.*

(The specific administrative action being taken by the Commissioner for which a stay is requested, including the docket number or other citation to the action involved.)

B. *Action Requested.*

(The length of time for which the stay is requested, which may be for a specific or indefinite time period.)

C. *Statement of Grounds.*

(A full statement of the factual and legal grounds upon which the petitioner relies for the stay.)

Very truly yours,

(Signature)

(Name of petitioner)

(Mailing address)

(Telephone number)

(c) A petition for stay of action relating to a petition submitted pursuant to § 2.6(a)(2) shall be subject to the requirements of paragraphs (c) and (d) of § 2.7, except that it shall be filed in the same docket file as the petition to which it relates.

(d) Neither the filing of a petition for a stay of action pursuant to this section nor action taken by an interested person in accordance with any other administrative procedure in this part or in any other section of this chapter, e.g., the filing of a citizen petition pursuant to § 2.7 or a petition for reconsideration pursuant to § 2.8 or a request for an advisory opinion pursuant to § 2.18, shall operate to stay or otherwise delay any administrative action by the Commissioner, including enforcement action of any kind, unless one of the following applies:

(1) The Commissioner, in his discretion, determines that a stay or delay is in the public interest and stays the action.

(2) A statutory provision requires that the matter be stayed.

(3) A court orders that the matter be stayed.

(e) The Commissioner shall promptly review a petition for stay of action. The Commissioner may grant or deny such a petition, in whole or in part, and may grant such other relief or take such other action as he may determine to be warranted by the petition. The Commissioner may grant a stay in any proceeding if he determines that it is in the public interest and in the interest of justice. The Commissioner shall grant a stay in any proceeding if he determines that all of the following apply: (1) The petitioner will otherwise suffer irreparable injury, (2) the petitioner's case is not frivolous and is being pursued in good faith, (3) the petitioner has demonstrated sound public policy grounds supporting the stay, and (4) the delay resulting from the stay is not outweighed by public health considerations or other public interests.

(f) The Commissioner's decision on a petition for stay of action shall be in writing and shall be placed on public display as part of the file on the matter in the office of the Hearing Clerk. A determination to grant a stay shall be published in the FEDERAL REGISTER if the Commissioner's original decision was published in the FEDERAL REGISTER. Any other determination to grant or to deny a stay may also be published in the FEDERAL REGISTER.

(g) A petition for a stay of action submitted later than 30 days after the date of the decision involved shall be denied as untimely. A petition for a stay of action shall be considered as submitted on the day it is received by the Hearing Clerk.

(h) The record of the administrative proceeding shall consist of the following:

(1) The record of the proceeding to which the petition for stay of action is directed.

(2) The petition for stay of action, including all data and information on which it relies, filed by the Hearing Clerk.

(3) All comments received on such petition, including all data or information submitted as a part of such comments.

(4) The Commissioner's decision on such petition pursuant to paragraph (e) of this section, including all data and information identified or filed by the Commissioner with the Hearing Clerk as part of the record supporting the decision.

(5) Any FEDERAL REGISTER notices or other documents resulting from such petition.

(6) All documents filed with the Hearing Clerk pursuant to § 2.15(h).

§ 2.10 Promulgation of regulations for the efficient enforcement of the law.

(a) The Commissioner may propose and promulgate regulations for the efficient enforcement of the laws administered by him whenever he concludes that it is necessary or appropriate to do so. The issuance, amendment, or revocation of any such regulation may be initiated in any of the ways specified in § 2.6.

(1) This section shall apply to any regulation (i) not subject to § 2.12 and Subpart B of this part or (ii) if it is subject to § 2.12 and Subpart B of this part, to the extent that those provisions make this section applicable.

(2) A regulation proposed by an interested person in a petition submitted pursuant to § 2.6(a) shall be published by the Commissioner in the FEDERAL REGISTER as a proposal if he determines that:

(i) The petition contains facts demonstrating reasonable grounds for the proposal.

(ii) The petition contains a substantial showing that the proposal is in the public interest and will promote the objectives of the act and the agency.

(iii) The requested proposal is lawful.

(3) The Commissioner may publish two or more alternative proposed regulations on the same subject in order to obtain comment on the different alternatives.

(4) The Commissioner may publish a regulation proposed by an interested person in a petition submitted pursuant to § 2.6(a) together with the Commissioner's preliminary views on the proposal and any alternative proposal.

(b) Except as provided in paragraphs (d) and (e) of this section, any such regulation shall be the subject of a notice of proposed rule making published in the FEDERAL REGISTER.

(1) Such notice shall contain (i) a general statement in the first or second paragraph describing the substance of the document in easily understandable terms, (ii) a preamble which summarizes the proposal and the facts and policy underlying it, (iii) references to all data and information on which the Commissioner relies for the proposal (copies or a full list of which shall be a part of the administrative file on the matter in the office of the Hearing Clerk), (iv) the authority under which the regulation is proposed, (v) either the terms or substance of the proposed regulation or a description of the subjects and issues involved, (vi) a proposed effective date, (vii) a reference to the existence or lack of need for an environmental impact statement pursuant to § 6.3(a)(3) (ii) or (iii) of this chapter, (viii) the time, place, and method for interested persons to submit written comments on the proposal, and a statement that comments shall be submitted in accordance with the requirements of this part and (ix) the docket number of the matter, which shall be used to identify the administrative file established by the Hearing Clerk for all submissions relating to the matter, as provided in this part.

(2) Such proposal shall ordinarily provide 60 days for comment, although the Commissioner may reduce or extend this time period for good cause. In no event shall the time for comment be less than 10 days.

(3) After publication of the notice of proposed rule making, any interested person may request the Commissioner to extend the comment period for an additional specified period of time by submitting a written request to the Hearing Clerk stating the grounds therefor. Such requests shall be pursuant to § 2.9, except that the heading shall be "REQUEST FOR EXTENSION OF COMMENT PERIOD."

(i) Any such request shall demonstrate why comments could not reasonably be submitted within the time permitted, or that important new information will shortly be available, or that sound public policy otherwise supports an extension of the time for comment. The Commissioner may grant or deny such request or may grant an extension for a time period different than that requested. Extensions of time to comment will not ordinarily be granted. An extension of time to comment may be limited to specific persons who have made and justified such a request, but shall ordinarily apply to all interested persons.

(ii) Any extension of time to comment of 30 days or longer shall be the subject of a notice published in the FEDERAL REGISTER and shall be applicable to all interested persons. Any extension of time to comment of less than 30 days shall be the subject either of a letter or memorandum filed with the Hearing Clerk or of a notice published in the FEDERAL REGISTER.

(4) Four copies of all comments shall be submitted to the Hearing Clerk, except that individuals may submit single copies of comments. Comments will be stamped with the date of receipt and will be numbered chronologically.

(5) Persons submitting comments critical of a proposed regulation are encouraged to include alternative wording that they believe would be preferable.

(c) After the time for comment on a proposed regulation has expired, the Commissioner shall review the entire administrative record on the matter, including all comments, and shall terminate the proceeding, issue a new proposal, or promulgate a final regulation, by notice published in the FEDERAL REGISTER.

(1) The quality and persuasiveness of the comments shall determine the Commissioner's decision with respect to such comments. The number or length of comments shall not ordinarily be a significant factor in such decision. However, the number of comments may be material where the degree of public interest is a legitimate factor for consideration.

(2) The decision of the Commissioner with respect to the matter shall be based solely upon the administrative record.

(3) The preamble to a final regulation published in the FEDERAL REGISTER shall contain in the first and second paragraphs reference to prior notices relating to the same matter and a general statement describing the substance of the document in easily understandable terms, and shall summarize each type of comment submitted on the proposal and the Commissioner's conclusions with respect to each such type of comment. The preamble shall contain a thorough and comprehensible articulation of the reasons for the Commissioner's decision on each issue.

(4) The notice promulgating a final regulation published in the FEDERAL REGISTER shall specify the effective date. Such effective date shall be not less than 30 days after the date of publication in the FEDERAL REGISTER, except for:

(i) A regulation that grants an exemption or relieves a restriction.

(ii) Any other regulation where the Commissioner finds, and states in the notice, good cause for an earlier effective date.

(d) The provisions for notice and comment in paragraphs (b) and (c) of this section shall apply to interpretive rules and to rules of agency practice and procedure except as provided in paragraph (e) of this section. The provisions of paragraphs (b) and (c) of this section shall not apply to general statements of policy in the form of informational notices published in the FEDERAL REGISTER or to matters involving agency organization.

(e) The requirements of notice and public procedure in paragraph (b) of this section shall not apply in any of the following situations:

(1) When the Commissioner determines for good cause that they are impracticable unnecessary, or contrary to the public interest. In such cases, the notice promulgating the regulation shall state the reasons for such determination, and shall provide an opportunity for the submission of comments to determine whether the regulation should subsequently be modified or revoked. A subsequent notice based on those comments may; but need not, provide additional opportunity for public comment.

(2) To food additive and color additive petitions, which are subject to the provisions of § 2.110(b)(2).

(3) To new animal drug regulations, which shall be promulgated by notice pursuant to section 512(i) of the act.

(f) In addition to the notice and public procedure required pursuant to paragraph (b) of this section, the Commissioner may, in his discretion, also subject any proposed or final regulation, before or after publication in the FEDERAL REGISTER, to any of the following additional procedures, where they are reasonably applicable to the matter involved:

(1) Conferences, meetings, discussions, and correspondence pursuant to § 2.15.

(2) A formal evidentiary public hearing pursuant to Subpart B of this part.

(3) A public hearing before a public Board of Inquiry pursuant to Subpart C of this part.

(4) A public hearing before a public advisory committee pursuant to Subpart D of this part.

(5) A public hearing before the Commissioner pursuant to Subpart E of this part.

(6) A notice published in the FEDERAL REGISTER requesting data, information and views before the Commissioner determines whether to propose a regulation.

(7) A draft of a proposed regulation placed on public display in the office of the Hearing Clerk. If this procedure is used, the Commissioner shall publish an appropriate notice in the FEDERAL REGISTER stating that the document is available and specifying the time within which comments may be submitted orally or in writing on the draft of the proposed regulation.

(8) A revised proposal published in the FEDERAL REGISTER, which shall be subject to all the provisions in this section relating to proposed regulations.

(9) A tentative final regulation or tentative revised final regulation placed on public display at the office of the Hearing Clerk and, if deemed desirable by the Commissioner, published in the FEDERAL REGISTER. If the tentative regulation is placed on display only, the Commissioner shall publish an appropriate notice in the FEDERAL REGISTER stating that the document is available and specifying the time within which comments may be submitted orally or in writing on the tentative final regulation and shall mail a copy of the tentative final regulation and the FEDERAL REGISTER notice to each person who submitted comments on the proposed regulation if one has been published...

(10) A final regulation published in the FEDERAL REGISTER which provides an opportunity for the submission of further comments, in accordance with paragraph (e)(1) of this section, to determine whether the regulation should subsequently be modified or revoked.

(11) Any other specific public procedure established by the provisions in other sections of this chapter and explicitly made applicable to the matter by the terms of those provisions.

(g) The record of the administrative proceeding shall consist of all of the following:

(1) If the regulation was initiated by a petition, the administrative record specified in § 2.7(i).

(2) If any petition for reconsideration or for a stay of action is filed, the administrative record specified in § 2.8(k) and § 2.9(h) respectively.

(3) The notice of proposed rule making published in the FEDERAL REGISTER, including all data and information identified or filed by the Commissioner with

the Hearing Clerk as part of the administrative record supporting the proposal.

(4) All comments received on the proposal, including all data or information submitted as a part of such comments.

(5) The notice promulgating the final regulation, including all data and information identified or filed by the Commissioner with the Hearing Clerk as part of the administrative record supporting the final regulation.

(6) The transcripts, minutes of meetings, reports, FEDERAL REGISTER notices, and other documents resulting from any of the optional procedures specified in paragraph (f) of this section, except that it shall not include any transcript of any closed portion of any public advisory committee meeting.

(7) All documents submitted to the Hearing Clerk pursuant to § 2.25(h).

(h) The record of the administrative proceeding shall be closed as of the date of the Commissioner's decision unless some other date for the closing of the record is specified by the Commissioner. Thereafter any interested person may submit a petition for reconsideration pursuant to § 2.8 and a petition for stay of action pursuant to § 2.9. Any person who wishes to rely upon data, information, or views not included in the administrative record shall submit it to the Commissioner with a new petition to modify the final regulation.

(i) The Hearing Clerk shall maintain a chronological list of all regulations proposed and promulgated pursuant to this section and § 2.12, but excluding regulations resulting from petitions filed and assigned a docket number pursuant to § 2.7, showing:

(1) The docket number, which in the case of a petition submitted directly to a bureau shall be the number or other designation assigned by the bureau, e.g., the number assigned to a food additive petition.

(2) The name of the petitioner, if any.

(3) The subject matter involved.

(4) The disposition of the petition.

§ 2.11 Court review of final administrative action; exhaustion of administrative remedies.

(a) The provisions of this section shall apply to court review of any final administrative action taken by the Commissioner, including action taken pursuant to §§ 2.6 through 2.10 and § 2.500(b), except action subject to the provisions of § 2.12 and Subpart B of this part.

(b) Any request that the Commissioner take or refrain from taking any form of administrative action shall first be the subject of a final administrative decision based upon a petition submitted to the Commissioner pursuant to § 2.6(a) or, where applicable, a hearing pursuant to § 2.500(b), the Commissioner will request dismissal of such court action or referral to the agency for an initial administrative determination on the grounds of a failure to exhaust the administrative remedies provided in this part, the lack of final agency action as required by 5 U.S.C. 701 et seq., and the lack of an actual controversy as required by 28 U.S.C. 2201.

(c) Any request that any form of administrative action be stayed shall first be the subject of an administrative decision based upon a petition for stay of action submitted to the Commissioner pursuant to § 2.9 before any request is made that a court stay such action. If any court action is filed requesting a stay of any administrative action taken by the Commissioner prior to the Commissioner's decision on a petition submitted in a timely manner pursuant to § 2.9, the Commissioner will request dismissal of such court action or referral to the agency for an initial administrative determination on the grounds of a failure to exhaust the administrative remedies provided in this subpart, the lack of final agency action as required by 5 U.S.C. 701 et seq., and the lack of an actual controversy as required by 28 U.S.C. 2201. If any court action is filed requesting a stay of any administrative action taken by the Commissioner after a petition for a stay of action is denied because it was submitted after expiration of the 30-day time period specified in § 2.9, or after the time for submitting such a petition has expired, the Commissioner will request dismissal of such court action on the ground of a failure to exhaust the administrative remedies set out in this subpart.

(d) The Commissioner's final decision on a petition submitted pursuant to § 2.6(a), on a petition for reconsideration submitted pursuant to § 2.8, on a petition for stay of action submitted pursuant to § 2.9, on any advisory opinion issued pursuant to § 2.19, on any guideline issued pursuant to § 2.20, on any matter involving administrative action which is the subject of an opportunity for a hearing pursuant to § 2.500(b), or the issuance of any final regulation published in accordance with § 2.10, each constitutes final agency action reviewable in the courts pursuant to 5 U.S.C. 701 et seq. and, where appropriate, 28 U.S.C. 2201.

(1) It is the position of the Food and Drug Administration except as otherwise provided in paragraph (d)(2) of this section that:

(i) Any such final agency action exhausts all administrative remedies and is ripe for preenforcement judicial review as of the date of such final decision, unless applicable law explicitly requires that the petitioner take further action before judicial review is available.

(ii) Any interested person is affected by, and thus has standing to obtain judicial review of, such final agency action.

(iii) It is not appropriate to move to dismiss a suit for preenforcement judicial review of such final agency action on the ground that indispensable parties are not joined or that it is an unconsented suit against the United States if such defect could be cured by amending the complaint.

(2) The Commissioner will object to judicial review of any matter if:

(i) The matter is committed by law to the discretion of the Commissioner, e.g., a decision to recommend or not to recommend civil or criminal enforcement action under sections 302, 303, and 304 of the act.

(ii) Review is not sought in a proper court.

(e) Any interested person may request judicial review of any final decision of the Commissioner in the courts without first petitioning the Commissioner for reconsideration or for a stay of action, except that in accordance with paragraph (c) of this section such person shall request a stay by the Commissioner pursuant to § 2.9 before he may request a stay by the court.

(f) The Commissioner will take the position in any action for judicial review under 5 U.S.C. 701 et seq., whether or not it includes a request for a declaratory judgment under 28 U.S.C. 2201, or in any other case in which the validity of administrative action is properly challenged, that the validity of the action shall be determined solely on the basis of the administrative record specified in §§ 2.7(j), 2.8(k), 2.9(h), 2.10(g), and 2.513(c), or the administrative record applicable with respect to any decision or action under the regulations referenced in § 2.500(b), and that additional data, information, or views may not be considered. Any interested person who wishes to rely upon data, information, or views not included in the administrative record shall submit it to the Commissioner with a new petition to modify the action pursuant to § 2.6(a).

(g) The Commissioner requests that all petitions for judicial review of a particular matter be filed in a single United States district court. If such petitions are filed in more than one jurisdiction, the Commissioner shall take appropriate action to prevent a multiplicity of suits in various jurisdictions, such as:

(1) A request for transfer of one or more suits to consolidate separate actions, pursuant to 28 U.S.C. 1404(a) or 28 U.S.C. 2112(a).

(2) A request that actions in all but one jurisdiction be stayed pending the conclusion of one proceeding.

(3) A request that all but one action be dismissed pending the conclusion of one proceeding, with the suggestion that the other plaintiffs intervene in that one suit.

(4) A request that one of the suits be maintained as a class action in behalf of all affected persons.

(h) Upon judicial review of administrative action pursuant to this section:

(1) If a court determines that the administrative record is inadequate to support the action, the Commissioner shall determine whether he wishes to proceed with such action.

(i) If the Commissioner concludes that such action should be pursued, he shall either request that the court remand the matter to the agency to reopen the administrative proceeding and record, or on his own initiative reopen the administrative proceeding and record upon receipt of the court determination. Any such reopened administrative proceeding shall be conducted pursuant to the provisions of this part and in accordance with any directions of the court.

(ii) If the Commissioner concludes that the public interest requires that the action remain in effect pending further administrative proceedings, he shall request that the court not stay the matter in the interim and shall expedite the further administrative proceedings.

(2) If a court determines that the administrative record is adequate, but the rationale for the action requires further elucidation:

(i) The Commissioner shall request either that such further explanation be provided in writing directly to the court without further administrative proceedings, or that the administrative proceeding be reopened pursuant to paragraph (h)(1)(i) of this section.

(ii) If he concludes that the public interest requires that the action remain in effect pending further court or administrative proceedings, he shall request that the court not stay the matter in the interim and shall expedite such further proceedings.

§ 2.12 Promulgation of regulations and orders after an opportunity for a formal evidentiary public hearing.

(a) The Commissioner shall promulgate regulations and orders after an opportunity for a formal evidentiary public hearing, in accordance with the procedures established in Subpart B of this part, whenever all of the following apply:

(1) The subject matter of the regulation or order involved is subject by statute to an opportunity for a formal evidentiary public hearing.

(2) The person requesting such a hearing has a right to an opportunity for a hearing and submits adequate justification for such a hearing as required by §§ 2.110 through 2.115 and other applicable provisions in this chapter, e.g., §§ 314.200; 430.20(b), 514.200, and 601.7(a).

(b) The Commissioner may order a formal evidentiary public hearing on any matter whenever he determines, in his discretion, that it would be in the public interest to do so.

(c) The statutory provisions which permit a person who would be adversely affected by administrative action an opportunity for a formal evidentiary public hearing are as follows (the foregoing list imparts no right to a hearing where no opportunity for a hearing is provided by the statutory sections listed):

(1) Section 401 of the act relating to definitions and standards for food.

(2) Section 403(j) of the act relating to regulations for labeling of foods for special dietary uses.

(3) Section 404(a) of the act relating to regulations providing for emergency permit control.

(4) Section 406 of the act relating to tolerances for poisonous substances in food.

(5) Section 409(c), (d), and (h) of the act relating to food additive regulations.

(6) Section 501(b) of the act relating to tests or methods of assay for drugs described in official compendia.

(7) Section 502(d) of the act relating to regulations designating habit-forming drugs.

(8) Section 502(h) of the act relating to regulations designating requirements for drugs liable to deterioration.

(9) Section 502(n) of the act relating to prescription drug advertising regulations.

(10) Section 506(c) of the act relating to insulin regulations.

(11) Section 507(f) of the act relating to regulations for antibiotic drug certification.

(12) Section 512(n)(5) of the act relating to regulations for animal antibiotic drugs and certification requirements.

(13) Section 706 (b) and (c) of the act relating to regulations for color additives listing and certification.

(14) Section 4(a) of the Fair Packaging and Labeling Act relating to food, drug, device, and cosmetic labeling.

(15) Section 5(c) of the Fair Packaging and Labeling Act relating to additional economic regulations for food, drugs, devices, and cosmetics.

(16) Section 505 (d) and (e) of the act relating to new drug applications.

(17) Section 512 (d), (e), (m)(3), and (m)(4) of the act relating to new animal drug applications.

(18) Section 515(g) of the act relating to device premarket approval applications.

(19) Section 351(a) of the Public Health Service Act relating to plant and product licenses for a biologic.

§ 2.13 Separation of functions; ex parte communications.

(a) The provisions of this section shall apply with respect to any matter which is subject by statute to an opportunity for a formal evidentiary public hearing, as listed in § 2.12(c), and any matter subject to a public hearing before a Public Board of Inquiry pursuant to Subpart C of this part.

(b) In the case of any matter listed in § 2.12(c) (1) through (10) and (12) through (15):

(1) Any interested person may meet or correspond with any representative of the Food and Drug Administration with respect to any such matter prior to publication in the FEDERAL REGISTER of a notice announcing a formal evidentiary public hearing or a public hearing before a Public Board of Inquiry on the matter. The provisions of § 2.15 shall apply to such meetings and correspondence.

(2) Upon publication in the FEDERAL REGISTER of a notice announcing a formal evidentiary public hearing or a public hearing before a Public Board of Inquiry, the following separation of functions shall apply:

(i) The bureau responsible for the matter involved in the hearing shall, as a party to the hearing, be responsible for all investigative functions and for presentation of the position of the bureau at the hearing and in any pleading or oral argument before the Commissioner. Representatives of the bureau shall not participate or advise in any decision except as witness or counsel in public proceedings. There shall be no other communication between representatives of the bureau and representatives of the office of the Commissioner with respect to the matter involved in the hearing prior to the decision of the Commissioner. The Commissioner may, however, when he determines it necessary to ensure the best use of agency resources in deciding a particular matter, designate representatives of a bureau to advise him, or representatives of his office to advise a bureau. The designation shall be in writing and shall be filed with the Hearing Clerk no later than the time specified in paragraph (b)(2) of this section for the application of separation of functions. All members of the Food and Drug Administration other than representatives of the involved bureau (except those specifically designated otherwise) shall be available to advise and participate with the office of the Commissioner in its functions relating to the hearing and the final decision.

(ii) The Chief Counsel for the Food and Drug Administration shall designate members of his office who shall advise and participate with the bureau in its functions in the hearing and members who shall advise the Commissioner in his functions related to the hearing and his final decision. The members of the office of General Counsel designated to advise and participate with the bureau shall not participate or advise in any decision of the Commissioner except as counsel in public proceedings. Such designation shall be in the form of a memorandum filed with the Hearing Clerk and made a part of the administrative record in the proceeding. There shall be no other communication between those members of the office of General Counsel designated to advise the Commissioner and any other other persons in the office of General Counsel or in the involved bureau with respect to the matter involved in the hearing prior to the decision of the Commissioner. The Chief Counsel may in his discretion assign new attorneys to advise either the bureau or the Commissioner at any stage of the proceedings. The Chief Counsel shall ordinarily advise and participate with the office of the Commissioner in its function relating to the hearing and the final decision.

(iii) The office of the Commissioner shall be responsible for the agency review of and final decision on the matter, with the advice and participation of anyone in the Food and Drug Administration other than representatives of the involved bureau and those members of the office of General Counsel who have been designated to assist in the bureau's functions relating to the hearing.

(c) In the case of any matter listed in § 2.12(c) (11) and (16) through (18),

the specific provisions relating to separation of functions set forth in §§ 314.200 (f), 430.20(b)(9), 514.200, and 601.7(a) of this chapter shall be applicable prior to publication in the FEDERAL REGISTER of a notice announcing a formal evidentiary public hearing or a public hearing before a Public Board of Inquiry. Upon publication of any such notice the rules in paragraph (b)(2) of this section shall apply.

(d) Except as provided in paragraph (e) of this section, between the date that separation of functions applies pursuant to paragraph (b) or (c) of this section and the date of the Commissioner's decision on the matter, communication with respect to the matter involved in the hearing shall be restricted as follows:

(1) No person outside the agency shall have any ex parte communication with the presiding officer or any person representing the office of the Commissioner with respect to the matter involved in the hearing. Neither the presiding officer nor any person representing the office of the Commissioner shall have any ex parte communication with any person outside the agency with respect to the matter involved in the hearing. All such communications shall be public communications, as witness or counsel, in accordance with the applicable provisions of this part.

(2) Any participant in the hearing may submit a written communication to the office of the Commissioner with respect to a proposal for settlement. Such written communications shall be in the form of pleadings and shall be served on all other participants and filed with the Hearing Clerk in the same manner as any other pleading.

(3) Any written communication contrary to this section shall immediately be served on all other participants and filed with the Hearing Clerk, and any oral communication contrary to this section shall immediately be recorded in a written memorandum served on all other participants, and filed with the Hearing Clerk to become a part of the administrative record of the proceeding. Any person, including any representative of any participant in the hearing, who is involved in any such oral communication shall, if possible, be made available for cross-examination during the hearing with respect to the substance of that conversation. Rebuttal testimony pertinent to any such written or oral communication shall be permitted. Any cross-examination and rebuttal testimony shall be transcribed and filed in the administrative record of the proceeding.

(e) The prohibitions specified in paragraph (d) of this section shall apply to any person having knowledge of a notice of hearing in advance of publication from the time such knowledge is acquired.

(f) The making of any communication contrary to this section may, consistent with the interests of justice and the policy of the underlying statute, result in a decision adverse to the person knowingly making or causing the making of such a communication.

§ 2.14 Referral by court.

(a) The provisions of this section shall apply whenever any Federal, State, or local court holds in abeyance, or refers to the Commissioner, any matter for an initial administrative determination pursuant to § 2.6(c) or § 2.11(b).

(b) The Commissioner shall promptly agree or decline to accept such referral. Whenever feasible in light of agency priorities and resources, the Commissioner shall agree to accept any such referral and shall institute a proceeding to determine the matter so referred.

(c) In reviewing such a matter, the Commissioner may, in his discretion, utilize any of the following procedures:

(1) Conferences, meetings, discussions, and correspondence pursuant to § 2.15.

(2) A formal evidentiary public hearing pursuant to Subpart B of this part.

(3) A hearing before a Public Board of Inquiry pursuant to Subpart C of this part.

(4) A public hearing before a public advisory committee pursuant to Subpart D of this part.

(5) A public hearing before the Commissioner pursuant to Subpart E of this part.

(6) A regulatory hearing before the Food and Drug Administration pursuant to Subpart F of this part.

(7) A notice published in the FEDERAL REGISTER requesting data, information, and views before the Commissioner makes his decision on it.

(8) Any other specific public procedure established by the provisions in other sections of this chapter and explicitly made applicable to the matter by those provisions.

(d) If the Commissioner's review of the matter results in the proposal of a regulation, the provisions of § 2.10 or § 2.12 shall also apply.

§ 2.15 Meetings and correspondence.

(a) In addition to the public hearings and proceedings established by the provisions of this part and in other sections of this chapter, meetings may be held and correspondence may be exchanged between representatives of the Food and Drug Administration and any interested person outside the Food and Drug Administration with respect to any matter within the jurisdiction of the laws administered by the Commissioner. Action with respect to such meetings and correspondence does not constitute final administrative action which is subject to judicial review pursuant to § 2.11.

(b) The Commissioner may conclude, in his discretion, that it would be in the public interest to hold an open public meeting to discuss a matter (or class of matters) pending before the Food and Drug Administration, at which any interested person may participate.

(1) The Commissioner shall give public notice through the public calendar described in § 2.22(a) of the time and place of the meeting and of the matters to be discussed, and may also publish such notice in the FEDERAL REGISTER.

(2) The meeting shall be conducted informally, i.e., any interested person may attend and participate fully in the discussion without giving prior notice to the agency or requesting time to make a presentation.

(3) No transcript or recording of any such meeting shall be required. A written memorandum summarizing the substance of the meeting shall be prepared by a representative of the Food and Drug Administration.

(c) Any meeting with any person outside the Department, including any person in the executive or legislative branch of the Federal government, relating to a pending court case, administrative hearing, or other regulatory action or decision, which involves more than a brief description of the matter shall be summarized in a written memorandum which shall be filed in the administrative file on the matter.

(d) Every person outside the Federal government has a right to request and obtain a private meeting with a representative of the Food and Drug Administration in agency offices to discuss any matter in which he is interested.

(1) The person requesting such a meeting may be accompanied by a reasonable number of employees, consultants, or other persons with whom he has a commercial arrangement within the meaning of § 4.81(a) of this chapter. Neither the Food and Drug Administration nor any other person may require the attendance of any person who is not an employee of the Executive Branch of the Federal Government without the agreement of the person requesting the meeting. Any person may attend by mutual consent of the person requesting the meeting and the Food and Drug Administration.

(2) The Food and Drug Administration shall determine which representatives of the Food and Drug Administration shall attend the meeting. The person requesting the meeting may request but not require or preclude the attendance of any specific Food and Drug Administration employee.

(3) Whenever appropriate (e.g., the meeting involved a matter covered by paragraph (c) of this section or any other important matter, a decision on an issue, or statements or advice or conclusions to which future reference may be required as part of an administrative record), a written memorandum summarizing the substance of the meeting shall be prepared by a representative of the Food and Drug Administration.

(4) Any person who wishes to attend a specific private meeting, but who is not permitted to attend because the person requesting the meeting or the Food and Drug Administration does not grant permission for such attendance, or because it is conducted by telephone, may request and obtain a separate meeting with the Food and Drug Administration to discuss the same matter or any additional matter.

(e) Food and Drug Administration employees have a responsibility to meet with all segments of the public in order

to promote the objectives of the laws administered by the Food and Drug Administration and the agency. In pursuing this responsibility the following general policy shall apply where agency employees are invited by persons outside the Federal Government to attend or participate in meetings outside agency offices as representatives of the agency.

(1) A person outside the Executive Branch of the Federal Government may invite an agency representative to attend or participate in a meeting outside agency offices. The agency representative is not obligated to attend or participate in any such meeting, but may do so where he concludes that it is in the public interest and will promote the objectives of the act and the agency.

(2) An agency representative may request that any such meeting be an open meeting when he concludes that this would be in the public interest. The agency representative may agree to decline to participate in any such meeting which is held as a private meeting, depending upon which action he concludes will best serve the public interest.

(3) An agency representative shall not knowingly participate in any meeting which is closed on the basis of sex, race, or religion.

(4) Any such meeting, whether open or closed, shall be subject to the requirements of paragraph (d)(3) of this section with respect to memoranda summarizing the substance of the meeting.

(f) Representatives of the Food and Drug Administration may initiate a meeting or correspondence with any person outside the Federal Government with respect to any matter relating to the laws administered by the Commissioner.

(1) Any meeting initiated by the Food and Drug Administration which involves a small number of interested persons, e.g., a meeting with a petitioner or with two manufacturers of a particular product which requires additional testing or with a trade association employee to discuss an industry labeling problem, may be a private meeting. Any meeting initiated by the Food and Drug Administration which involves a large number of interested persons, e.g., 10 manufacturers of an ingredient to discuss appropriate testing or labeling, shall be held as an open conference or meeting pursuant to paragraph (b) of this section.

(2) Whenever appropriate (e.g., the meeting involved a matter covered by paragraph (c) of this section or any other important matter, a decision on an issue, or statements or advice or conclusions to which future reference may be required as part of the administrative record), a written memorandum summarizing the substance of any meeting shall be prepared by a representative of the Food and Drug Administration.

(g) Any person who participates in any meeting described in paragraphs (b) through (f) of this section may prepare and submit to the Food and Drug Administration for inclusion in the administrative file a written memorandum summarizing the substance of the meeting.

(h) All memoranda of such meetings prepared by a representative of the Food and Drug Administration or by any other person and all correspondence which relate to any matter pending before the agency shall promptly be filed in the relevant administrative file of the proceeding.

(i) Any meeting with a representative of Congress relating to a pending or potential investigation, inquiry, or hearing by a congressional committee or a member of Congress shall be summarized in a written memorandum which shall be forwarded to the Food and Drug Administration, Office of Legislative Services. This provision shall not restrict the right of any agency employee to participate in any such meeting.

(j) Any meeting of an advisory committee shall be subject to the requirements of Subpart D of this part.

(k) Pursuant to 42 U.S.C. 2631(a)(8), a log or summary shall be made of all meetings held between representatives of the Food and Drug Administration and representatives of industry and other interested parties with respect to implementation of the Radiation Control for Health and Safety Act of 1968.

§ 2.16 Documentation of significant decisions in administrative file.

(a) The provisions of this section shall apply to every significant Food and Drug Administration decision on any matter under the laws administered by the Commissioner, whether it is raised formally, e.g., by a petition, or informally, e.g., by correspondence.

(b) The Food and Drug Administration employees responsible for handling any matter shall be responsible for assuring the completeness of the administrative file relating to it. Such file:

(1) Shall contain appropriate documentation of the basis for the decision, including relevant evaluations, reviews, memoranda, letters, opinion of consultants, minutes of meetings, and all other written documents pertinent to the matter.

(2) Shall contain the recommendations and decisions of individual employees, including supervisory personnel, responsible for handling the matter.

(i) Such recommendations and decisions shall reveal any significant controversies or differences of opinion and their resolution.

(ii) Any agency employee working on a matter and, consistent with the prompt completion of his other assignments, any agency employee who has worked on a matter shall have the opportunity to record his views on that matter in a written memorandum, which shall be included in the file.

(c) Each written document placed in such an administrative file:

(1) Shall relate to the factual, scientific, legal, or related issues under consideration.

(2) Shall be dated and signed by the author.

(3) Shall be directed to the file, to appropriate supervisory personnel, and to other appropriate employees, and shall show all persons to whom copies were sent.

(4) Shall avoid defamatory language, intemperate remarks, undocumented charges, or irrelevant matters (e.g., personnel complaints).

(5) Shall, if it records the views, analyses, recommendations, or decisions of any agency employee in addition to the author, be given to such other employees.

(6) Shall, once completed (i.e., typed in final form, dated, and signed), not be altered, added to, or removed. Subsequent additions to, or revisions of, any such document shall be accomplished by the preparation of a new document.

(d) Memoranda or other documents prepared by agency employees not contained in the administrative file shall have no status or effect.

(e) All Food and Drug Administration employees working on a matter shall have access to the administrative file on that matter, as appropriate for the conduct of their work. All Food and Drug Administration employees who have worked on a matter shall have access to the administrative file on that matter so long as their attention to their assignments is not impeded. Reasonable restrictions may be placed upon such access to assure the proper cataloging and storage of documents, the availability of the file to others, and the completeness of the file for review.

§ 2.17 Internal agency review of decisions.

(a) Any decision of a Food and Drug Administration employee, other than the Commissioner, on any matter, e.g., an informal opinion on the need for further animal toxicology tests to support a food additive regulation or new drug application, is subject to review by the employee's supervisor under any of the following circumstances:

(1) At the request of the employee.

(2) On the initiative of the supervisor.

(3) At the request of any interested person outside the agency.

(4) As required by duly promulgated delegations of authority.

(b) Such review shall be accomplished by consultation between the employee and the supervisor or by review of the administrative file on the matter, or both. Such review shall ordinarily follow the established agency channels of supervision or review for that matter.

(c) Any interested person outside the agency may request internal agency review of any such decision through the established agency channels of supervision or review for that matter. Personal review of such matters by bureau directors or the office of the Commissioner shall take place for any of the following purposes:

(1) To resolve an issue which cannot be resolved at lower levels within the agency:

(i) Between two parts of a bureau or other component of the agency, or

(ii) Between two bureaus or other components of the agency, or

(iii) Between the agency and an interested person outside the agency.

(2) To review policy matters requiring the attention of bureau or agency management.

(3) In unusual situations requiring an immediate review in the public interest.

(4) As required by duly promulgated delegations of authority.

(d) Internal agency review of any such decision shall be based upon the data and information available in the administrative file. In the event that any interested person presents new data or information not contained in such file, the matter shall be returned to the appropriate lower level within the agency for a reevaluation based upon such new information.

§ 2.18 Dissemination of draft Federal Register notices and regulations.

(a) Any representative of the Food and Drug Administration may discuss orally or in writing with any interested person ideas and recommendations for FEDERAL REGISTER notices or regulations. The Food and Drug Administration welcomes assistance in developing ideas for, and in gathering the data and information to support, notices and regulations.

(b)(1) Once it is determined that a proposed notice or regulation will be prepared, the general concepts may be discussed by a representative of the Food and Drug Administration with any interested person. Details of a draft of a proposed notice or regulation may be discussed with any person outside the Executive Branch of the Federal Government only with the specific permission of the Commissioner.

(2) A draft of a proposed notice or regulation or its preamble, or any portion thereof, may be furnished to an interested person outside the Executive Branch of the Federal Government only if it is made available to all interested persons by a notice published in the FEDERAL REGISTER. A draft of a proposed notice or regulation so made available may, without the prior permission of the Commissioner, be discussed with any interested person to clarify and resolve questions raised and concerns expressed about the proposal.

(c) After publication of a proposed regulation in the FEDERAL REGISTER, and before preparation of a draft of the final regulation, a representative of the Food and Drug Administration may discuss the proposal with any interested person as provided in paragraph (b)(2) of this section.

(d)(1) Details of a draft of a final notice or regulation may be discussed with any interested person outside the Executive Branch of the Federal Government only with the specific permission of the Commissioner.

(2) A draft of a final notice or regulation of its preamble, or any portion thereof, may be furnished to an interested person outside the Executive Branch of the Federal Government only if it is made available to all interested persons by a notice published in the FEDERAL REGISTER, except as otherwise provided in paragraphs (g) and (j) of this section. A draft of a final notice or regulation so made available to any interested person may, without the prior permission of the Commissioner, be discussed with any interested person as provided in paragraph (b)(2) of this section.

(1) The final notice or regulation and its preamble shall be prepared solely on the basis of the administrative record.

(2) If any additional technical information from a person outside the Executive Branch of the Federal government is necessary to draft the final notice or regulation or its preamble, it shall be requested by the Food and Drug Administration in general terms and furnished directly to the Hearing Clerk to be included as part of the administrative record.

(3) If direct discussion by the Food and Drug Administration of a draft of a final notice or regulation or its preamble is required with a person outside the Executive Branch of the Federal Government, appropriate protective procedures will be undertaken to make certain that a full and impartial administrative record is established. Such procedures may include:

(i) The scheduling of an open public meeting conducted pursuant to § 2.15(b) at which any interested person may participate in review of and comment on the draft document.

(ii) The preparation of a tentative final regulation or tentative revised final regulation pursuant to § 2.10(f)(9), on which all interested persons will be given an additional period of time for oral and written comment.

(e) After a final regulation is published in the FEDERAL REGISTER, a representative of the Food and Drug Administration may discuss any aspect of it with any interested person.

(f) In addition to the requirements of this section, the provisions of § 2.13 shall apply to the promulgation of any regulation subject to the provisions of § 2.12 and Subpart B of this part.

(g) A draft of a final food additive, color additive, or new animal drug regulation or a proposed or final antibiotic regulation may be furnished to the petitioner for comment on the technical accuracy of such regulation. Every meeting with a petitioner relating to such a draft shall be recorded in a written memorandum, and all such memoranda and correspondence shall be filed with the Hearing Clerk as part of the administrative record of the regulation, pursuant to the provisions of § 2.15.

(h) Pursuant to 42 U.S.C. 263f, the Commissioner is required to consult with interested persons in the development of, and with the Technical Electronic Product Radiation Safety Standards Committee (TEPRSSC) before prescribing, any performance standard for an electronic product. Accordingly, the Commissioner shall publish in the FEDERAL REGISTER an announcement when a proposed or final performance standard, including any amendment thereof, is being considered for an electronic product, and thereafter any draft of any such document shall be furnished to any interested person upon request and may be discussed in detail with any interested person at any time.

(i) The provisions of § 2.15 shall apply to meetings and correspondence relating to draft FEDERAL REGISTER notices and regulations.

(j) The provisions of this section restricting discussion and disclosure of draft FEDERAL REGISTER notices and regulations shall not apply to those situations covered by §§ 4.83 through 4.89 of this chapter.

§ 2.19 Advisory opinions.

(a) Any person may request an advisory opinion from the Commissioner with respect to any matter of general applicability in which he is interested.

(1) Such request shall be granted whenever feasible.

(2) Such request may be denied if any of the following apply:

(i) The request contains incomplete information on which to base an informed advisory opinion.

(ii) The Commissioner concludes that an advisory opinion cannot reasonably be given on the matter involved.

(iii) The matter is adequately covered by a prior advisory opinion or a regulation.

(iv) The request covers a particular product or ingredient or label and does not raise a policy issue of broad applicability.

(v) The Commissioner otherwise concludes, in his discretion, that an advisory opinion would not be in the public interest.

(b) A request for an advisory opinion shall be submitted in accordance with § 2.5, shall be subject to the provisions of § 2.7(c) through (l), and shall be in the following form:

_____
(Date)

Hearing Clerk, Food and Drug Administration, Department of Health, Education, and Welfare, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857

REQUEST FOR ADVISORY OPINION

The undersigned submits this request for an advisory opinion of the Commissioner of Food and Drugs with respect to _____ (the general nature of the matter involved).

A. *Issues Involved.*

(A concise statement of the issues and questions on which an opinion is requested.)

B. *Statement of Facts and Law.*

(A full statement of all facts and legal points relevant to the request.)

The undersigned certifies that, to the best of his knowledge and belief, this request includes all data, information, and views relevant to the matter, whether favorable or unfavorable to the position of the undersigned, which is the subject of the request.

Very truly yours,

_____
(Signature)

_____
(Person making request)

_____
(Mailing address)

_____
(Telephone number)

(c) The Commissioner may, in his discretion, handle any oral or written request to the agency as a request for an advisory opinion, in which case the request shall be filed with the Hearing Clerk and shall be subject to the provisions of this section.

(d) Any statement of policy or interpretation made in any of the following documents, unless subsequently repudiated by the agency or overruled by a court, shall constitute an advisory opinion:

(1) Any portion of a FEDERAL REGISTER notice other than the text of a proposed or final regulation, e.g., a notice to manufacturers or a preamble to a proposed or final regulation.

(2) Trade Correspondence (T.C. Nos. 1-431 and 1A-8A issued by the Food and Drug Administration between 1938 and 1946.

(3) Compliance Policy Guides issued by the Food and Drug Administration beginning in 1968 and codified in the Compliance Policy Guides manual.

(4) Other documents specifically identified as advisory opinions, e.g., advisory opinions on the performance standard for diagnostic x-ray systems, issued prior to July 1, 1975, and filed in a permanent public file for such prior advisory opinions maintained in the Public Records and Documents Center.

(5) Guidelines issued by the Food and Drug Administration pursuant to § 2.20 (b).

(e) An advisory opinion represents the formal position of the Food and Drug Administration on the matter involved, and except as provided in paragraph (f) of this section obligates the agency to follow it until it is amended or revoked. The Commissioner shall not recommend legal action against any person or product with respect to any action taken in conformity with an advisory opinion which has not been amended or revoked.

(f) In unusual situations involving an immediate and significant danger to health, the Commissioner may take appropriate civil enforcement action contrary to an advisory opinion issued pursuant to this section prior to amending or revoking such advisory opinion as provided in paragraph (g) of this section. Such action shall be taken only with the approval of the Commissioner, which may not be delegated. Appropriate amendment or revocation of the advisory opinion involved shall be expedited.

(g) An advisory opinion may be amended or revoked at any time after it has been issued. Notice of such amendment or revocation shall be given in the same manner in which notice was originally given of the advisory opinion or in the FEDERAL REGISTER, and in any event shall be placed on public display as part of the file on the matter in the office of the Hearing Clerk. The Hearing Clerk shall maintain a separate chronological index of all advisory opinions filed. The index shall specify the date of the request for the advisory opinion, the date of the opinion, and identification of the appropriate file.

(h) Action undertaken or completed in conformity with an advisory opinion issued pursuant to this paragraph which has subsequently been amended or revoked shall remain acceptable to the Food and Drug Administration unless the Commissioner determines that substantial public interest considerations preclude such continued acceptance. Whenever possible, an amended or revoked advisory opinion shall state when it has been determined that action previously undertaken or completed in conformity with a prior advisory opinion does not remain acceptable, and any transition period that may be applicable.

(i) Any interested person may submit written comments on an advisory opinion or modified advisory opinion. Three copies of any comments shall be sent to the Hearing Clerk for inclusion in the public file on the advisory opinion. Individuals may submit only one copy. Such comments shall be considered in determining whether further modification of an advisory opinion is warranted.

(j) An advisory opinion may be used in administrative or court proceedings to illustrate acceptable and unacceptable procedures or standards, but not as a legal requirement.

(k) A statement made or advice provided by an employee of the Food and Drug Administration shall constitute an advisory opinion only if it is issued in writing pursuant to this section. A statement or advice given by a Food and Drug Administration employee orally, or given in writing but not pursuant to this section or § 2.20, is an informal communication that represents the best judgment of that employee at that time but does not constitute an advisory opinion, does not necessarily represent the formal position of the Food and Drug Administration, and thus does not bind or otherwise obligate or commit the agency to the views expressed.

§ 2.20 Food and Drug Administration regulations, guidelines, recommendations, and agreements.

(a) *Regulations.* All Food and Drug Administration regulations having general applicability and legal effect shall be promulgated in the FEDERAL REGISTER pursuant to § 2.10 or § 2.12 and codified in the Code of Federal Regulations. Regulations may contain provisions which will be enforced as legal requirements, or which are intended only as guidelines and recommendations, or both. The dissemination of draft notices and regulations shall be subject to the provisions of § 2.18.

(b) *Guidelines.* All Food and Drug Administration guidelines having general applicability shall be included in the public file of guidelines established by the Hearing Clerk, pursuant to this paragraph, unless they have been published in the FEDERAL REGISTER as regulations pursuant to paragraph (a) of this section.

(1) Guidelines establish principles or practices of general applicability and do not include decisions or advice limited to particular situations. Guidelines relate to such matters as performance characteristics, preclinical and clinical test procedures, manufacturing practices, product standards, scientific protocols, compliance criteria, ingredient specifications, labeling, or other technical or policy criteria. Guidelines state procedures or standards of general applicability that are not legal requirements but that are acceptable to the Food and Drug Administration for a subject matter which falls within the laws administered by the Commissioner, e.g., a protocol for a particular type of animal toxicity test or human clinical trial.

(i) A person may rely upon a guideline with assurance that it is acceptable to the Food and Drug Administration, or may folow different procedures or standards. Where a person chooses to use different procedures or standards, he may, but is in no instance required to, discuss the matter in advance with the Food and Drug Administration to prevent the expenditure of money and effort on activity that may later be determined to be unacceptable.

(ii) Use of testing guidelines established by the Food and Drug Administration assures acceptance of a test as scientifically valid, if properly conducted, but does not assure approval of any ingredient or product so tested. The results of any such test or other available information may require disapproval or that additional testing be undertaken.

(2) A guideline represents the formal position of the Food and Drug Administration on the matter involved, and except as provided in paragraph (b)(3) of this section, obligates the agency to follow it until it is amended or revoked. The Commissioner shall not recommend legal action against any person or product with respect to any action taken in conformity with a guideline issued pursuant to this section that has not been amended or revoked.

(3) In unusual situations involving an immediate and significant danger to health, the Commissioner may take appropriate civil enforcement action contrary to a guideline issued pursuant to paragraph (b) of this section prior to amending or revoking such guideline as provided in paragraph (b)(5) of this section. Such action shall be taken only with the approval of the Commissioner, which may not be delegated. Appropriate amendment or revocation of the guideline involved shall be expedited.

(4) A guideline shall be included in the public file upon approval of the guideline by the relevant bureau director and publication by the Commissioner in the FEDERAL REGISTER of a notice of its availability. The notice shall state (i) the title of the guideline, (ii) the subject matter it covers, and (iii) the office or individual responsible for maintaining the guideline.

(5) A guideline may be amended or revoked upon approval of the amended guideline or revocation of the guideline by the relevant bureau director and publication by the Commissioner in the

FEDERAL REGISTER of a notice of such amendment or revocation. The notice shall state (i) the title of the guideline, (ii) the subject matter it covers, and (iii) the office or individual responsible for maintaining the guideline. All original guidelines and subsequent amendments shall be retained in the public file on a permanent basis so that a complete record of the development of each guideline remains available.

(6) Action undertaken or completed in conformity with a guideline issued pursuant to paragraph (b) of this section which has subsequently been amended or revoked shall remain acceptable to the Food and Drug Administration unless the Commissioner determines that substantial public interest considerations preclude such continued acceptance. Such determination may be made at the time of or subsequent to amendment or revocation of the guideline. Whenever possible, the notice of an amended or revoked guideline published pursuant to paragraph (b)(3) of this section shall state when it has been determined that action previously undertaken or completed in conformity with a prior guideline does not remain acceptable, and any transition period that may be applicable.

(7) The notice of a guideline or amended or revoked guideline published pursuant to paragraph (b) (2) or (3) of this section shall state that any interested person may submit written comments on the guideline or amended guideline. Two copies of any comments shall be sent to the Public Records and Documents Center for inclusion in the public file on the guideline and two copies shall be sent to the office or individual designated in the notice as responsible for maintaining the guideline. Such comments shall be considered in determining whether further amendments to or reinstitution of a guideline are warranted.

(8) A guideline may be used in administrative or court proceedings to illustrate acceptable and unacceptable procedures or standards, but not as establishing a legal requirement.

(9) A statement relating to acceptable procedures or standards given by a Food and Drug Administration employee orally, or in writing but not pursuant to § 2.19 or this section, is an informal communication that represents the best judgment of that employee at that time but does not constitute a guideline, does not necessarily represent the formal position of the Food and Drug Administration, and thus does not bind or otherwise obligate the agency to the views expressed.

(10) Because of the large number of analytical methods involved in Food and Drug Administration activities, their length and complexity, and the volume and frequency of amendment, the provisions of paragraph (b)(4) of this section shall not apply to such material except to the extent that the Commissioner concludes, in his discretion, that particular analytical methods should be included in the public file for a particular purpose. Food and Drug Administration analytical methods are available for public disclosure pursuant to the provisions of Part 4 of this chapter.

(11) The dissemination of draft guidelines shall be subject to the same provisions as the dissemination of draft notices and regulations pursuant to § 2.18.

(c) *Recommendations.* In addition to the guidelines subject to paragraph (b) of this section, the Food and Drug Administration often formulates and disseminates recommendations about matters which are authorized by, but do not involve direct regulatory action under, the laws administered by the Commissioner, e.g., model state and local ordinances, or personnel practices for reducing radiation exposure, issued pursuant to 42 U.S.C. 243 and 263d(b). Such recommendations may, in the discretion of the Commissioner, be handled pursuant to the procedures established in paragraph (b) of this section, except that such recommendations shall be included in a separate public file of recommendations established by the Public Records and Documents Center and shall be separated from the guidelines in the notice of availability published in the FEDERAL REGISTER, or be published in the FEDERAL REGISTER as regulations pursuant to paragraph (a) of this section.

(d) *Agreements.* All formal agreements, memoranda of understanding, or other similar written documents executed by the Food and Drug Administration and another person shall be included in the public file on agreements established by the Public Records and Documents Center pursuant to § 4.108 of this chapter. Any such document not included in the public file shall be deemed to be rescinded and shall have no force or effect whatever.

§ 2.21 Participation in outside standard-setting activities.

(a) *General.* This section applies to participation by Food and Drug Administration employees in any standard-setting activities outside the Food and Drug Administration. Standard-setting activities include such matters as the development of performance characteristics, testing methodology, manufacturing practices, product standards, scientific protocols, compliance criteria, ingredient specifications, labeling, or other technical or policy criteria. The Food and Drug Administration encourages employee participation in outside standard-setting activities that are in the public interest.

(b) *Standard-setting activities by other Federal government agencies.* (1) Any Food and Drug Administration employee may participate in such activities after the approval by the appropriate bureau director or the Commissioner of Form PHS–3763 "Request for approval of appointment as liaison representative."

(2) The Form PHS–3763 and all pertinent background information describing such activities shall be included in the public file on standard-setting activities established in the Public Records and Documents Center.

(3) If any members of the public are invited by the Food and Drug Administration to present views to, or to accompany, the Food and Drug Administration employee at any meeting, such invitations shall be extended to a representative sampling of the public, including consumer groups, industry associations, professional societies, and academic institutions.

(4) A Food and Drug Administration employee appointed as the liaison representative to such an activity shall refer all requests for information about or participation in the activity involved to the group or organization responsible for such activity.

(c) *Standard-setting activities by State and local government agencies and by United Nations organizations and other international organizations and foreign governments pursuant to treaty.* (1) Any Food and Drug Administration employee may participate in such activities after the approval by the appropriate bureau director or the Commissioner of Form PHS–3763.

(2) The Form PHS–3763 and all pertinent background information describing such activities shall be included in the public file on standard-setting activities established in the Public Records and Documents Center.

(3) The availability for public disclosure of records relating to such activities shall be governed by the regulations in Part 4 of this chapter.

(4) If any members of the public are invited by the Food and Drug Administration to present views to, or to accompany, the Food and Drug Administration employee at any meeting, such invitations shall be extended to a representative sampling of the public, including consumer groups, industry associations, professional societies, and academic institutions.

(5) A Food and Drug Administration employee appointed as the liaison representative to such an activity shall refer all requests for information about or participation in the activity involved to the group or organization responsible for such activity.

(d) *Standard-setting activities by private groups and organizations.* (1) Any Food and Drug Administration employee may engage in such activities after the approval by the appropriate bureau director or the Commissioner of Form PHS–3763. A request for such official participation shall be made by the group or organization in writing, shall describe the scope of the activity involved, and shall demonstrate that the minimum standards set out in paragraph (d)(5) of this section are met by the activity involved. Except as provided in paragraph (d)(7) of this section, any such request that is granted shall be the subject of a letter from the Commissioner or the bureau director to the organization stating:

(i) Whether participation by the individual will be as a voting or nonvoting liaison representative.

(ii) That participation by the individual shall not connote Food and Drug Administration agreement with, or endorsement of, any decisions reached.

(iii) That participation by the individual disqualifies him from serving as the deciding official on the standard involved if it should later come before the Food and Drug Administration. The "deciding official" is the person who signs a document ruling upon such standard.

(2) The letter requesting official Food and Drug Administration participation, the Form PHS–3763, and the Commissioner's or bureau director's letter, together with all pertinent background information describing the activities involved, shall be included in the public file on standard-setting activities established in the Public Records and Documents Center.

(3) The availability for public disclosure of records relating to such activities shall be governed by the regulations in Part 4 of this chapter.

(4) A Food and Drug Administration employee appointed as the liaison representative to such an activity shall refer all requests for information about or participation in the activity involved to the group or organization responsible for such activity.

(5) The following minimum standards shall apply to all outside private standard-setting activities in which Food and Drug Administration employees participate.

(i) The activities shall be based upon consideration of sound scientific and technological information, shall permit revision on the basis of new information, and shall be designed to protect the public against unsafe, ineffective, or deceptive products or practices.

(ii) The activities and resulting standards shall not be designed for the economic benefit of any company, group, or organization, shall not be used as devices for such antitrust violations as fixing prices or hindering competition, and shall not involve establishment of certification or specific approval of individual products or services.

(iii) The group or organization responsible for the standard-setting activities shall have a procedure through which any interested person shall have an opportunity to provide information and views on the activities and standards involved, without the payment of fees, and such information and views shall be considered. The manner in which this is accomplished, including whether such presentation shall be in person or in writing, shall be decided by the group or organization responsible for the activities.

(6) Membership of a Food and Drug Administration employee in an organization that also conducts standard-setting activities does not invoke the provisions of this paragraph unless the employee participates in such standard-setting activities. Participation in any standard-setting activity shall be subject to the provisions of this paragraph.

(7) The Commissioner may determine in writing that, because direct involvement by the Food and Drug Administration in a particular standard-setting activity is in the public interest and will promote the objectives of the act and the agency, such participation shall be exempt from the requirements set forth in paragraph (d)(1) (ii) and/or (iii) of this section. Any such determination shall be included in this public file on standard-setting activities established by the Public Records and Documents Center and in any relevant administrative file. Such activities may include the establishment and validation of analytical methods for regulatory use, drafting uniform laws and regulations, and the development of recommendations concerning public health and preventive medicine practices by national and international organizations.

(8) Because of the close daily cooperation between the Food and Drug Administration and the associations of State and local government officials listed below, and the large number of agency employees who are members of or work with these associations, such participation in the activities of these associations shall be exempt from the provisions of paragraphs (d)(1) through (d)(7) of this section, except that a list of all committees and other groups of these associations shall be included in the public file on standard-setting activities established in the Public Records and Documents Center:

(i) Association of Food and Drug Officials.

(ii) International Association of Milk, Food and Environmental Sanitarians, Inc.

(iii) Conference of Radiation Control Program Directors.

(iv) Association of American Feed Control Officials, Inc.

(v) National Environmental Health Association.

(vi) National Conference on Weights and Measures.

(vii) American Public Health Association.

(viii) Conference of State Sanitary Engineers.

(ix) National Conference on Interstate Milk Shipments.

(x) National Shellfish Sanitation Program.

(xi) Interstate Seafood Seminar.

(xii) Association of Official Analytical Chemists.

§ 2.22 Public calendar.

(a) *Prospective public calendar of public proceedings.* (1) A public calendar shall be prepared and made publicly available each week showing, to the extent feasible, for the following 4 weeks all public meetings, public conferences, public hearings, public advisory committee meetings, public seminars, and other public proceedings of the Food and Drug Administration, and other significant public events involving the Food and Drug Administration, e.g., congressional hearings and trial or argument of court cases.

(2) A copy of this public calendar shall be placed on public display in the following places:

(i) Office of the Hearing Clerk.

(ii) Office of the Assistant Commissioner for Public Affairs.

(iii) A central place in each bureau.

(iv) A central place in each field office.

(v) A central place at the National Center for Toxicological Research.

(b) *Retrospective public calendar of meetings.* (1) A public calendar shall be prepared and made publicly available each week showing for the previous week all meetings with persons outside the Executive Branch of the Federal Government and other significant events involving the representatives of the Food and Drug Administration designated

under paragraph (b)(3) of this section, except that telephone conversations shall be included on an optional basis and meetings with the working press, except for "house organs" (i.e., publications of firms that manufacture or distribute regulated products, or industry associations), and with on-site contractors shall not be included. Meetings with members of the judiciary, representatives of Congress, or staffs of congressional committees shall be included when the meeting relates to a pending court case, administrative hearing, or other regulatory action or decision and involves more than a brief description of the matter.

(2) Such calendar shall include all meetings, conferences, seminars, social events sponsored by the regulated industry, and speeches. The calendar shall specify the date, the person involved, and the subject matter involved. Where more than one Food and Drug Administration representative is in attendance, only the presiding or head representative shall report the meeting on the public calendar. If a large number of persons are involved, the name of each need not be specified. Meetings the existence of which would prejudice law enforcement activities (e.g., a meeting with an informant) or invade privacy (e.g., a meeting with a candidate for possible employment in the Food and Drug Administration) shall not be reported.

(3) The following Food and Drug Administration representatives and their deputies shall be subject to the requirements of paragraphs (b) (1) and (2) of this section:

(i) Commissioner of Food and Drugs.
(ii) Deputy Commissioner.
(iii) Associate Commissioners.
(iv) Assistant Commissioners.
(v) Executive Director for Regional Operations.
(vi) Director, Office of Legislative Services.
(vii) Director, National Center for Toxicological Research.
(viii) Bureau Directors.
(ix) Chief Counsel for the Food and Drug Administration, or any representative of his office attending in his behalf.

(4) A copy of this public calendar shall be placed on public display in the following places:

(i) Office of the Hearing Clerk.
(ii) Office of the Assistant Commissioner for Public Affairs.
(iii) A central place in each bureau.
(iv) A central place in each field office.
(v) A central place at the National Center for Toxicological Research.

§ 2.23 Representation by an organization.

(a) An organization may represent its members by filing petitions, comments, and objections, and otherwise participating in any administrative proceeding subject to this part.

(b) Any such petitions, comments, objections, or other representations by an organization shall not abridge the right of any member to take any action of a similar type in its own name.

(c) It is requested that each organization participating in Food and Drug Administration administrative proceedings file annually a current list of all of the members of such organization with the Hearing Clerk for permanent filing.

(d) The filing by an organization of an objection or request for hearing pursuant to §§ 2.110 through 2.112 shall not provide to any member any legal right with respect to such objection or request for hearing that the member may exercise in its own name. Any member of an organization wishing to so file an objection or request for a hearing to obtain legal rights thereunder shall do so in its own name.

(e) In any court proceeding in which an organization participates, the Commissioner will take appropriate legal measures to have the case brought or considered as a class action or otherwise as binding upon all members of the organization except those specifically excluded by name for the reason that the organization does not represent their views. Regardless whether the case is brought or considered as a class action or as otherwise binding upon all members of the organization except those specifically excluded by name, the Commissioner will take the position in any subsequent suit involving the same issues and any member of the organization that such issues are precluded from further litigation by such member pursuant to the doctrines of collateral estoppel or res judicata.

§ 2.24 Settlement proposals.

At any time in the course of any proceeding subject to this part, any person may propose settlement of any of the issues involved. All participants in any proceeding shall have an opportunity to consider any proposed settlement. Unaccepted proposals of settlement and related matters, e.g., proposed stipulations not agreed to, shall not be admissible in evidence in any administrative proceeding of the Food and Drug Administration. The Food and Drug Administration will oppose the admission in evidence of any such information in any court proceeding or in any other administrative proceeding.

§ 2.25 Waiver, suspension, or modification of procedural requirements.

The Commissioner or the presiding officer, with respect to matters pending before him, may on his own initiative or at the request of any participant waive, suspend, or modify any provision in Subparts B through F of this part applicable to the conduct of a public hearing by announcement at the hearing or by notice in advance of the hearing, if he determines that no participant will be prejudiced, the ends of justice will thereby be served, and such action is in accordance with law.

PART 6—ENVIRONMENTAL IMPACT CONSIDERATIONS

§ 6.4 [Amended]

4. In Part 6, by amending § 6.4(a)(2) to change the reference to "§ 2.121" to read "Subpart B of Part 5".

PART 8—COLOR ADDITIVES

5. In Part 8, by revising § 8.12 to read as follows:

§ 8.12 Advisory committee on the applicability of the anticancer clause.

All requests for and procedures governing any advisory committee on the anticancer clause shall be subject to the provisions of Subpart D of Part 2, and particularly §§ 2.360 through 2.364, of this chapter.

§§ 8.13, 8.14 [Revoked]

6. By revoking §§ 8.13 and 8.14.

7. By revising §§ 8.18 and 8.19 to read as follows:

§ 8.18 Petition for exemption from certification.

A manufacturer, packer, or distributor of a color additive or color additive mixture may petition for an exemption from certification pursuant to Part 2 of this chapter. Any such petition shall show why such certification is not necessary for the protection of public health.

§ 8.19 Procedure for objections and hearings.

(a) Objections and hearings relating to color additive regulations under sections 706 (b) and (c) of the act shall be governed by Part 2 of this chapter.

(b) The fees specified in § 8.50 shall be applicable.

§§ 8.20, 8.21 [Revoked]

8. By revoking §§ 8.20 and 8.21.

PART 10—DEFINITIONS AND STANDARDS FOR FOOD

9. In Part 10, by revising § 10.2 to read as follows:

§ 10.2 Procedure for establishing a food standard.

(a) The procedure for establishing a food standard under section 401 of the act shall be governed by Part 2 of this chapter.

(b) Any petition for a food standard shall show that the proposal, if adopted, would promote honesty and fair dealing in the interest of consumers.

(c) Any petition for a food standard shall assert that the petitioner commits himself to substantiate the information in the petition by evidence in a public hearing, if such a hearing becomes necessary.

(d) If a petitioner fails to appear, or to substantiate the information in his petition, at a public hearing on the matter, the Commissioner may either (1) withdraw the regulation and terminate the proceeding or (2) if he concludes that it is in accordance with the requirements of section 401 of the act, continue the proceeding and introduce evidence to substantiate such information.

PART 11—STANDARDS OF QUALITY FOR FOODS FOR WHICH THERE ARE NO STANDARDS OF IDENTITY

10. In Part 11, by revising § 11.1(e) to read as follows:

§ 11.1 General principles.

• • • • • •

(e) The Commissioner of Food and Drugs, either on his own initiative or on behalf of any interested person who has submitted a petition, may establish, amend, or repeal, under Subpart B of this Part, a regulation prescribing a standard of quality for a food pursuant to Part 2 of this chapter.

PART 80—DEFINITIONS AND STANDARDS OF IDENTITY FOR FOOD FOR SPECIAL DIETARY USES

11. In Part 80, by amending § 80.1 (as published in the FEDERAL REGISTER of October 19, 1976 (41 FR 46156)) by revising paragraph (a)(5) to read as follows:

§ 80.1 Dietary supplements of vitamins and minerals.

• • • • • •

(a) • • •

(5) *Amendments to this standard.* Amendment of the permissible combinations of vitamins and/or minerals, as established in paragraph (b) of this section, or of the permitted range of potency for any vitamin(s) or mineral(s) in a dietary supplement as established in paragraph (c) of this section, or any other amendments to this section, may be proposed by the Commissioner of Food and Drugs on his own initiative or upon petition by an interested person in accordance with the procedure set forth in Part 2 of this chapter. Any such petition shall show that such amendment will promote honesty and fair dealing in the interest of consumers.

• • • • • •

PART 90—EMERGENCY PERMIT CONTROL

12. In Part 90, by revising § 90.2(a) to read as follows:

§ 90.2 Establishment of requirements for exemption from section 404 of the act.

(a) Whenever the Commissioner finds after investigation that the distribution in interstate commerce of any class of food may, by reason of contamination with microorganisms during the manufacture, processing, or packing thereof in any locality, be injurious to health, and that such injurious nature cannot be adequately determined after such articles have entered interestate commerce, he shall promulgate regulations in Subpart B of this part establishing requirements and conditions governing the manufacture, processing, or packing of the food necessary to protect the public health. Such regulations may be proposed by the Commissioner on his own initiative or in response to a petition from any interested person pursuant to Part 2 of this chapter.

• • • • • •

PART 100—NUTRITIONAL QUALITY GUIDELINES FOR FOODS

13. In Part 100, by revising § 100.2 to read as follows:

§ 100.2 Petitions.

The Commissioner of Food and Drugs, on his own initiative, on the advice of the National Academy of Sciences or other experts, or on behalf of any interested person who has submitted a petition, may issue a proposal to issue, amend, or revoke a regulation prescribing a nutritional quality guideline for a class of foods, pursuant to Part 2 of this chapter.

PART 102—COMMON OR USUAL NAMES FOR NONSTANDARDIZED FOODS

14. In Part 102, by revising § 102.2 to read as follows:

§ 102.2 Petitions.

(a) The Commissioner of Food and Drugs, either on his own initiative or on behalf of any interested person who has submitted a petition, may publish a proposal to issue, amend, or revoke, under Subpart B of this Part, a regulation prescribing a common or usual name for a food, pursuant to Part 2 of this chapter.

(b) If the principal display panel of a food for which a common or usual name regulation is established is too small to accommodate all mandatory requirements, the Commissioner may establish by regulation an acceptable alternative, e.g., a smaller type size. A petition requesting such a regulation, which would amend the applicable regulation, shall be submitted pursuant to Part 2 of this chapter.

PART 121—FOOD ADDITIVES

15. In Part 121, by revising the introductory text of § 121.40(c)(1) to read as follows:

§ 121.40 Affirmation of generally recognized as safe (GRAS) status.

• • • • • •

(c)(1) Persons seeking the affirmation of GRAS status of substances as provided for in § 121.3(e), except those subject to the NAS–NRC GRAS list survey (36 FR 20546), shall submit a petition for GRAS affirmation pursuant to Part 2 of this chapter. Such petition shall contain information to establish that the GRAS criteria as set forth in § 121.3(b) have been met, in the following form:

• • • • • •

16. By revising § 121.4(b)(1) to read as follows:

§ 121.41 Determination of food additive status.

• • • • • •

(b)(1) The Commissioner, on his own initiative or on the petition of any interested person, pursuant to Part 2 of this chapter, may issue a notice in the FEDERAL REGISTER proposing to determine that a substance is not GRAS and is a food additive subject to section 409 of the act. Any petition shall include all relevant data and information of the type described in § 121.74(b). The Commissioner will place all of the data and information on which he relies on public file in the office of the Hearing Clerk and will include in the FEDERAL REGISTER notice the name of the substance, its known uses, and a summary of the basis for the determination.

• • • • • •

17. By revising § 121.55 to read as follows:

§ 121.55 Procedure for objections and hearings.

Objections and hearings relating to food additive regulations under section 409 (c), (d), or (h) of the act shall be governed by Part 2 of this chapter.

§§ 121.56, 121.57, 121.58, 121.59, 121.60, 121.61, 121.62, 121.63, 121.64, 121.65, 121.66, 121.67, 121.68 121.69, 121.70, 121.71, 121.73 [Revoked]

18. By revoking §§ 121.56, 121.57, 121.58, 121.59, 121.60, 121.61, 121.62, 121.63, 121.64, 121.65, 121.66, 121.67, 121.68, 121.69, 121.70, 121.71, and 121.73.

19. By revising § 121.72(b) to read as follows:

§ 121.72 Adoption of regulation on initiative of Commissioner.

• • • • • •

(b) Action upon a proposal made by the Commissioner shall proceed as provided in Part 2 of this chapter.

20. By revising § 121.74 to read as follows:

§ 121.74 Procedure for amending and repealing tolerances or exemptions from tolerances.

(a) The Commissioner, on his own initiative or on the petition of any interested person, pursuant to Part 2 of this chapter, may propose the issuance of a regulation amending or repealing a regulation pertaining to a food additive or granting or repealing an exception for such additive.

(b) Any such petition shall include an assertion of facts, supported by data, showing that new information exists with respect to the food additive or that new uses have been developed or old uses abandoned, that new data are available as to toxicity of the chemical, or that experience with the existing regulation or exemption may justify its amendment or repeal. New data shall be furnished in the form specified in § 121.51 for submitting petitions.

21. By revising the introductory text of § 121.4000(c) to read as follows:

§ 121.4000 General.

• • • • • •

(c) The Commissioner, on his own initiative or on the petition of any inter-

ested person, pursuant to Part 2 of this chapter, may propose an interim food additive regulation. A final order promulgating an interim food additive regulation shall provide that continued use of the substance in food is subject to each of the following conditions:

* * * * *

PART 310—NEW DRUGS

22. In Part 310, by revising § 310.200 (b) to read as follows:

§ 310.200 Prescription-exemption procedure.

* * * * *

(b) *Prescription-exemption procedure for drugs limited by a new drug application.* Any drug limited to prescription use under section 503(b)(1)(C) of the act shall be exempted from prescription-dispensing requirements when the Commissioner finds such requirements are not necessary for the protection of the public health by reason of the drug's toxicity or other potentiality for harmful effect, or the method of its use, or the collateral measures necessary to its use, and he finds that the drug is safe and effective for use in self-medication as directed in proposed labeling. A proposal to exempt a drug from the prescription-dispensing requirements of section 503(b)(1)(C) of the act may be initiated by the Commissioner or by any interested person. Any interested person may file a petition seeking such exemption, which petition may be pursuant to Part 2 of this chapter, or in the form of a supplement to an approved new drug application.

* * * * *

23. By revising § 310.303(b) to read as follows:

§ 310.303 Continuation of long term studies, records, and reports on certain drugs for which new drug applications have been approved.

* * * * *

(b) A proposal to require additional or continued studies with a drug for which a new drug application has been approved may be made by the Commissioner on his own initiative or on the petition of any interested person, pursuant to Part 2 of this chapter. Prior to issuance of such a proposal, the applicant will be provided an opportunity for a conference with representatives of the Food and Drug Administration. When appropriate, investigators or other individuals may be invited to participate in the conference. All requirements for special studies, records, and reports will be published in § 310.304.

PART 314—NEW DRUG APPLICATIONS

24. In Part 314, by revising the introductory paragraph of § 314.115 to read as follows:

§ 314.115 Withdrawal of approval of an application.

The Commissioner shall notify the person holding an approved new drug application, and all other persons who manufacture or distribute identical, related, or similar drug products as defined in § 310.6 of this chapter, and afford an opportunity for a hearing on a proposal to withdraw approval of the application as provided in section 505(e) of the act and in accordance with the procedure in §§ 314.200 and 314.201, if:

* * * * *

25. By revising § 314.200 to read as follows:

§ 314.200 Notice of opportunity for hearing; notice of participation and request for hearing; grant or denial of hearing.

(a) The notice to the applicant, and to all other persons who manufacture or distribute identical, related, or similar drug products as defined in § 310.6 of this chapter, of an opportunity for a hearing on a proposal by the Director of the Bureau of Drugs to refuse to approve an application or to withdraw the approval of an application will state the reasons for his action and the grounds upon which he proposes to issue his order.

(1) Such notice may be general (i.e., simply summarizing in a general way the information resulting in the notice) or specific (i.e., either referring to specific requirements in the statute and regulations with which there is a lack of compliance, or providing a detailed description and analysis of the specific facts resulting in the notice).

(2) The notice will be published in the FEDERAL REGISTER and will state that the applicant, and other persons subject to the notice pursuant to § 310.6 of this chapter, has 30 days after the date of publication of the notice within which he is required to file a written notice of participation and request for hearing if he elects to avail himself of the opportunity for a hearing. The failure to file such a written notice of participation and request for hearing within that 30 days constitutes an election by the applicant, and other persons subject to the notice pursuant to § 310.6 of this chapter, not to avail himself of the opportunity for a hearing.

(3) It is the responsibility of every manufacturer or distributor of a drug product to review every notice of opportunity for heating published in the FEDERAL REGISTER to determine whether it covers any drug product he manufactures or distributes. Any person may request an opinion of the applicability of such a notice to a specific product he manufactures or distributes that may be identical, related, or similar by writing to the Food and Drug Administration, Bureau of Drugs, Division of Drug Labeling Compliance, HFD-310, 5600 Fishers Lane, Rockville, MD 20857. If such an opinion is requested, the time for filing an appearance and request for hearing and supporting studies and analyses shall begin as of the date or receipt of the opinion from the Food and Drug Administration.

(b) The notice of opportunity for hearing shall be provided to applicants and to other persons subject to the notice pursuant to § 310.6 of this chapter:

(1) To any person who has submitted a new drug application, by delivering the notice in person or by sending it by registered or certified mail to the last address shown in the new drug application.

(2) To any person who has not submitted a new drug application but who is subject to the notice pursuant to § 310.6 of this chapter, by publication of the notice in the FEDERAL REGISTER.

(c)(1) If the applicant, or any other person subject to the notice pursuant to § 310.6 of this chapter, elects to avail himself of the opportunity for a hearing, he shall file with the Hearing Clerk (i) within 30 days after the date of the publication of the notice (or of the date of receipt of an opinion requested pursuant to paragraph (a)(3) of this section) a written notice of participation and request for hearing, and (ii) within 60 days after the date of publication of the notice, unless a different period of time is specified in the notice of opportunity for hearing, the studies on which he relies to justify a hearing as specified in paragraph (d) of this section. The raw data underlying a study submitted may be incorporated by reference from a prior submission as part of a new drug application or other report.

(2) No data or analysis submitted after such 60 days will be considered in determining whether a hearing is warranted unless they are derived from well-controlled studies begun prior to the date of the notice of opportunity for hearing, the results of which were not in existence during that 60 days. Exceptions may be made on the basis of a showing of inadvertent omission and hardship. All studies in progress, the results of which the person requesting the hearing intends later to submit in support of the request for hearing, shall be listed. A copy of the complete protocol, a list of the participating investigators, and a brief status report of the studies shall be included in the submission made pursuant to paragraph (c)(1)(ii) of this section.

(3) Any other interested person who is not subject to the notice of opportunity for hearing may also submit comments on the proposal to withdraw approval of the new drug application. Such comments shall be submitted within the time and pursuant to the requirements specified in this section.

(d) A request for hearing shall be supported by a submission as specified in paragraph (c)(1)(ii) of this section containing the studies (including all protocols and underlying raw data) on which the person relies to justify a hearing with respect to his drug product.

(1) If effectiveness is at issue, a request for hearing shall be supported only by adequate and well-controlled clinical studies meeting all of the precise requirements of § 314.111(a)(5) and, for combination drug products, § 300.50 of this chapter, or by other studies not meeting those requirements for which a waiver has been previously granted by the Food and Drug Administration pursuant to the provisions of § 314.111(a)(5). All adequate and well-controlled clinical studies on the drug product known to the person requesting the hearing shall be submitted. Any unfavorable analyses, views, or judgments with respect to such studies known to such person shall also be submitted. No other data, information, or studies shall be submitted.

(2) Such submission shall include a factual analysis of all studies submitted. If effectiveness is at issue, such analysis shall specify how each such study accords, on a point-by-point basis, with each criterion required for an adequate well-controlled clinical investigation established in § 314.111(a)(5) and, if the product is a combination drug product, with each of the requirements for a combination drug established in § 300.50 of this chapter, or shall be accompanied by an appropriate waiver previously granted by the Food and Drug Administration. If a study deals with a drug entity or dosage form, or condition of use, or mode of administration other than the one(s) in question, such fact(s) shall be clearly stated. Any study conducted on the final marketed form of the drug product shall be so designated.

(3) Such analysis shall be submitted in the following format, except that the required information relating either to safety or to effectiveness shall be omitted if the notice of opportunity for hearing does not raise any issue with respect to that aspect of the drug; and information on compliance with § 300.50 shall be omitted if the drug product is not a combination drug product. Submissions not made in this format or not containing the required analyses will not be considered and will result in denial of a hearing, except that minor technical deficiencies may be excused if it is apparent that a good faith attempt has been made to comply with the requirements of this section and any deficiencies noted are immediately corrected upon request.

I. Safety data.
A. Animal safety data.
1. Individual active component(s).
a. Controlled studies.
b. Partially controlled or uncontrolled studies.
2. Combinations of the individual active components.
a. Controlled studies.
b. Partially controlled or uncontrolled studies.
B. Human safety data.
1. Individual active component(s).
a. Controlled studies.
b. Partially controlled or uncontrolled studies.
c. Documented case reports.
d. Pertinent marketing experiences that may influence a determination as to the safety of each individual active component.
2. Combinations of the individual active components.
a. Controlled studies.
b. Partially controlled or uncontrolled studies.
c. Documented case reports.
d. Pertinent marketing experiences that may influence a determination as to the safety of each individual active components.
II. Effectiveness data.
A. Individual active components: Controlled studies, with an analysis showing clearly how each such study satisfies, on a point-by-point basis, each of the criteria required by § 314.111(a)(5).
B. Combinations of individual active components.

1. Controlled studies, with an analysis showing clearly how such study satisfies, on a point-by-point basis, each of the criteria required by § 314.111(a)(5).

2. An analysis showing clearly how each requirement of § 300.50 of this chapter has been satisfied.

III. A summary of the data and views setting forth the medical rationale and purpose for the drug and its ingredients and the scientific basis for the conclusion that the drug and its ingredients have been proven safe and/or effective for the intended use. If there is an absence of controlled studies in the material submitted, or the requirements of any element of § 300.50 of this chapter or § 314.111(a)(5) have not been fully met, such fact(s) shall be clearly stated, and a waiver obtained pursuant to § 314.111(a)(1) shall be enclosed.

IV. A statement signed by the person responsible for such submission, that it includes in full (or incorporates by reference as permitted in § 314.200(c)(2)) all studies and information specified in § 314.200(d). (Warning: A willfully false statement is a criminal offense, 18 U.S.C. 1001).

(e) A notice of opportunity for hearing encompasses all issues relating to the legal status of the drug product(s) subject to it, including identical, related, and similar drug products as defined in § 310.6 of this chapter. Any contention that any such product is not a new drug because it is generally recognized as safe and effective within the meaning of section 201(p) of the act, or because it is exempt from part or all of the new drug provisions of the act pursuant to the exemption for products marketed prior to June 25, 1938, contained in section 201(p) of the act, or pursuant to section 107(c) of the Drug Amendments of 1962, or for any other reason shall be stated in a notice of appearance and request for hearing pursuant to paragraph (c)(1)(i) of this section and supported by a submission pursuant to paragraph (c)(1)(ii) of this section and shall be the subject of an administrative determination by the Commissioner. The failure of any person subject to a notice of opportunity for a hearing, including any person who manufactures or distributes an identical, related, or similar drug product as defined in § 310.6 of this chapter, to submit a notice of participation and request for hearing or to raise all such contentions on which he relies shall constitute a waiver of any such contentions not so raised.

(1) A contention that a drug product is generally recognized as safe and effective within the meaning of section 201(p) of the act must be supported by submission of the same quantity and quality of scientific evidence as is required to obtain approval of a new drug application for the product, unless a waiver has been obtained from such requirement for effectiveness (as provided in § 314.111(a)(5)) and/or safety for good cause shown. Such submission shall be in the format and with the analyses required by paragraph (d) of this section. The failure to submit such scientific evidence or a submission that is not in the format or does not contain the analyses required by paragraph (d) of this section shall constitute a waiver of any such contention. General recognition of safety and effectiveness shall ordinarily be based upon published studies which may be corroborated by unpublished studies and other data and information.

(2) A contention that a drug product is exempt from part or all of the new drug provisions of the act pursuant to the exemption for products marketed prior to June 25, 1938 contained in section 201(p) of the act, or pursuant to section 107(c) of the Drug Amendments of 1962, shall be supported by submission of evidence of past and present quantitative formulas, labeling, and evidence of marketing, on which reliance is made for such contention. The failure to submit such formulas, labeling, and evidence of marketing in the following format shall constitute a waiver of any such contention.

I. Formulation.
A. A copy of each pertinent document or record to establish the exact quantitative formulation of the drug (both active and inactive ingredients) on the date of initial marketing of the drug.
B. A statement whether such formulation has at any subsequent time been changed in any manner. If any such change has been made, the exact date, nature, and rationale for each change in formulation, including any deletion or change in the concentration of any active ingredient and/or inactive ingredient, shall be submitted, together with a copy of each pertinent document or record to establish the date and nature of each such change including but not limited to the formula which resulted from each such change. If no such change has been made, a copy of representative documents or records showing the formula at representative points in time shall be submitted to support the statement.
II. Labeling.
A. A copy of each pertinent document or record to establish the identity of each item of written, printed, or graphic matter used as labeling on the date the drug was initially marketed.
B. A statement whether such labeling has at any subsequent time been discontinued or changed in any manner. If such discontinuance or change has been made, the exact date, nature, and rationale for each discontinuance or change and a copy of each pertinent document or record to establish each such discontinuance or change shall be submitted, including but not limited to the labeling which resulted from each such discontinuance or change. If no such discontinuance or change has been made, a copy of representative documents or records showing labeling at representative points in time shall be submitted to support the statement.
III. Marketing.
A. A copy of each pertinent document or record to establish the exact date the drug was initially marketed.
B. A statement whether such marketing has at any subsequent time been discontinued. If such marketing has been discontinued, the exact date of each such discontinuance shall be submitted, together with a copy of each pertinent document or record to establish each such date.
IV. Verification.
A statement signed by the person responsible for such submission, that all appropriate records have been searched and to the best of his knowledge and belief it includes a true and accurate presentation of the facts (Warning: A willfully false statement is a criminal offense, 18 U.S.C. 1001).

(3) No drug product, including any active ingredient, which is identical, related, or similar, as defined in § 310.6, to a drug product, including any active ingredient for which a new drug application is or at any time has been effective or deemed approved, or approved under section 505 of the act, will be determined to be exempt from part or all of the new drug provisions of the act.

(4) A contention that a drug product is not a new drug for any other reason must be supported by submission of such factual records, data, and information as is necessary and appropriate to support such contention.

(5) It is the responsibility of every person who manufactures or distributes a drug product in reliance upon a "grandfather" provision(s) of the act to maintain in his files, organized as required by this paragraph, the data and information necessary fully to document and support such status.

(f) Upon receipt of any request for hearing, the Director of the Bureau of Drugs shall prepare an analysis of the request and a proposed order ruling upon the matter. The analysis and proposed order, the request for hearing, and any proposed order denying a hearing and response pursuant to paragraph (g) (2) or (3) of this section, shall be submitted to the office of the Commissioner for independent review and decision. No representative of the Bureau of Drugs shall participate or advise in the review and decision by the Commissioner. The office of the General Counsel shall observe the same separation of functions.

(g) A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing with respect to the particular drug product(s) specified in the request for hearing.

(1) Where a specific notice of opportunity for hearing (as defined in paragraph (a)(1) of this section) is used, it shall state that, if it conclusively appears from the face of the data, information, and factual analyses in the request for the hearing that there is no genuine and substantial issue of fact which precludes the refusal to approve the application or the withdrawal of approval of the application, e.g., no adequate and well-controlled clinical investigations meeting each of the precise elements of § 314.111(a)(5) and, for a combination drug product, § 300.50 of this chapter, showing effectiveness have been identified, or when a request for hearing is not made in the required format or with the required analyses, the Commissioner will enter summary judgment against the person(s) who requests the hearing, making findings and conclusions, denying a hearing. Any such order entering summary judgment shall set forth the Commissioner's findings and conclusions in detail and shall specify why each study submitted fails to meet the requirements of the statute and regulations or why the request for hearing does not raise a genuine and substantial issue of fact or shall specify the requirements of this section with respect to format or analyses with which there is a lack of compliance.

(2) Where a general notice of opportunity for hearing (as defined in paragraph (a)(1) of this section) is used and the Director of the Bureau of Drugs concludes that summary judgment against the person(s) requesting a hearing should be considered, he shall serve upon such person(s) by registered mail a proposed order denying a hearing. Such person(s) shall have 60 days after receipt of such proposed order to respond with sufficient data, information, and analyses to demonstrate that there is a genuine and substantial issue of fact which justifies a hearing.

(3) Where a general or specific notice of opportunity for hearing is used and the person(s) requesting a hearing submits data or information of a type required by the statute and regulations, and the Director of the Bureau of Drugs concludes that summary judgment against such person(s) should be considered, he shall serve upon such person(s) by registered mail a proposed order denying a hearing. Such person(s) shall have 60 days after receipt of such proposed order to respond with sufficient data, information, and analyses to demonstrate that there is a genuine and substantial issue of fact which justifies a hearing.

(4) If review of the data, information, and analyses submitted warrants the conclusion that the ground(s) cited in the notice are not valid, e.g., that substantial evidence of effectiveness exists, the Commissioner shall deny the hearing, enter summary judgment for the person(s) requesting the hearing, and rescind the notice of opportunity for hearing.

(5) If a hearing is requested and is justified the hearing will commence no more than 90 days after the expiration of such 30 days unless the parties otherwise agree in the case of denial of approval, and as soon as practicable in the case of withdrawal of approval.

(6) A hearing shall be granted if there exists a genuine and substantial issue of fact or if the Commissioner concludes, in his discretion, that a hearing would otherwise be in the public interest.

(7) If the manufacturer or distributor of a drug product that may be an identical, related, or similar drug product requests and is granted a hearing the issue whether the product is in fact identical, related, or similar to the drug subject to new drug application is properly encompassed within the hearing.

(8) A request for hearing, and any subsequent grant or denial of a hearing, shall be applicable only to the particular drug product(s) named in such documents.

(h) Any drug product subject to a notice of opportunity for hearing, including any identical, related, or similar drug product as defined in § 310.6 of this chapter, for which an opportunity for a hearing is waived or for which a hearing is denied shall promptly be the subject of a notice withdrawing the new drug application approval and declaring all such products unlawful. The Commissioner may, in his discretion, defer or stay such action pending a ruling on any related request for a hearing or pending any related hearing or other administrative or judicial proceeding.

26. By adding a new § 314.201 to read as follows:

§ 314.201 Procedure for hearings.

Hearings relating to new drugs under section 505 (d) and (e) of the act shall be governed by Part 2 of this chapter.

§§ 314.202, 314.203, 314.204, 314.205, 314.206, 314.220, 314.221, 314.222, 314.230, 314.231, 314.232, [Revoked].

27. By revoking §§ 314.202, 314.203, 314.204, 314.205, 314.206, 314.220, 314.221, 314.222, 314.230, 314.231 and 314.232.

28. By revising § 314.235 to read as follows:

§ 314.235 Judicial review.

(a) The transcript and record shall be certified by the Commissioner. In any case in which the Commissioner enters an order without a hearing pursuant to § 314.200(g), the requests for hearing together with the data and information submitted and the Commissioner's findings and conclusions shall be included in the record certified by the Commissioner.

(b) Judicial review of an order withdrawing approval of a new drug application, whether or not a hearing has been held, may be sought by a manufacturer or distributor of an identical, related, or similar drug product, as defined in § 310.6 of this chapter, in a United States court of appeals pursuant to section 505 (h) of the act.

PART 501—ANIMAL FOOD LABELING

28a. By revising § 501.2(f) to read as follows:

§ 501.2 Information panel of package for animal food.

* * * * *

(f) If the label of any package of food is too small to accommodate all of the information required by §§ 501.4, 501.5, 501.8, and 501.17, the Commissioner may establish by regulation an acceptable alternative method of disseminating such information to the public, e.g., a type size smaller than one-sixteenth inch in height, or labeling attached to or inserted in the package or available at the point of purchase. A petition requesting such a regulation, as an amendment to this paragraph shall be submitted pursuant to Part 2 of this chapter.

PART 503—COMMON OR USUAL NAMES FOR NONSTANDARDIZED FOODS

28b. In Part 503, by revising § 503.22 to read as follows:

§ 503.22 Petitions.

(a) The Commissioner of Food and Drugs, either on his own initiative or on behalf of any interested person who has submitted a petition, may publish a proposal to issue, amend, or revoke, under Subpart B of this part, a regulation prescribing a common or usual name for a food, pursuant to Part 2 of this chapter.

(b) If the principal display panel of a food for which a common or usual name regulation is established is too small to accommodate all mandatory requirements, the Commissioner may establish by regulation an acceptable alternative, e.g., a smaller type size. A petition requesting such a regulation, which would amend the applicable regulation, shall be submitted pursuant to Part 2 of this chapter.

PART 508—EMERGENCY PERMIT CONTROL

28c. In Part 508, by revising § 508.19 (a) to read as follows:

§ 508.19 Establishment of requirements for exemption from section 404 of the act.

(a) Whenever the Commissioner finds after investigation that the distribution in interstate commerce of any class of food may, by reason of contamination with microorganisms during the manufacture, processing, or packing thereof in any locality, be injurious to health, and that such injurious nature cannot be adequately determined after such articles have entered interstate commerce, he shall promulgated regulations in Subpart B of this part establishing requirements and conditions governing the manufacture, processing, or packing of the food necessary to protect the public health. Such regulations may be proposed by the Commissioner on his own initiative or in response to a petition from any interested person pursuant to Part 2 of this chapter.

* * * * *

PART 514—NEW ANIMAL DRUG APPLICATIONS

29. In Part 514, by revising § 514.201 to read as follows:

§ 514.201 Procedure for hearings.

Hearings relating to new animal drugs under section 505 (d), (e), (m)(3), and (m)(4) of the act shall be governed by Part 2 of this chapter.

§§ 514.202, 514.203, 514.204, 514.205, 514.206 514.220, 514.221, 514.222, 514.230, 514.231, 514.232 [Revoked]

30. By revoking §§ 514.202, 514.203, 514.204, 514.205, 514.206, 514.220, 514.221, 514.222, 514.230, 514.231, and 514.232.

31. By revising § 514.235 as follows:

§ 514.235 Judicial review.

(a) The transcript and record shall be certified by the Commissioner. In any case in which the Commissioner enters an order without a hearing pursuant to § 314.200(g) of this chapter, the request(s) for hearing together with the data and information submitted and the Commissioner's findings and conclusions shall be included in the record certified by the Commissioner.

(b) Judicial review of an order withdrawing approval of a new drug application, whether or not a hearing has been held, may be sought by a manufacturer or distributor of an identical, related, or similar drug product, as defined in § 310.6 of this chapter, in a United States court of appeals pursuant to section 505 (h) of the act.

PART 564—DEFINITIONS AND STANDARDS FOR ANIMAL FOOD

31a. In Part 564, by revising § 564.5 to read as follows:

§ 564.5 Procedure for establishing a food standard.

(a) The procedure for establishing a food standard under section 401 of the act shall be governed by Part 2 of this chapter.

(b) Any petition for a food standard shall show that the proposal, if adopted, would promote honesty and fair dealing in the interest of consumers.

(c) Any petition for a food standard shall assert that the petitioner commits himself to substantiate the information in the petition by evidence in a public hearing, if such a hearing becomes necessary.

(d) If a petitioner fails to appear, or to substantiate the information in his petition, at a public hearing on the matter, the Commissioner may either (1) withdraw the regulation and terminate the proceeding or (2) if he concludes that it is in accordance with the requirements of section 401 of the act, continue the proceeding and introduce evidence to substantiate such information.

31b. By adding a new paragraph (1) to § 564.17 to read as follows:

§ 564.17 Temporary permits for interstate shipment of experimental packs of food varying from the requirements of definitions and standards of identity.

* * * * *

(l) Any person who contests denial, modification, or revocation of a temporary permit shall have an opportunity for a regulatory hearing before the Food and Drug Administration pursuant to Subpart F of Part 2 of this chapter.

PART 570—FOOD ADDITIVES

31c. By revising § 570.15(b) to read as follows:

§ 570.15 Adoption of regulation on initiative of Commissioner.

* * * * *

(b) Action upon a proposal made by the Commissioner shall proceed as provided in Part 2 of this chapter.

31d. In Part 570, by revising the introductory text of § 570.35(c)(1) to read as follows:

§ 570.35 Affirmation of generally recognized as safe (GRAS) status.

* * * * *

(c)(1) Persons seeking the affirmation of GRAS status of substances as provided for in § 570.30(e), except those subject to the NAS–NRC GRAS list survey (36 FR 20546), shall submit a petition for GRAS affirmation pursuant to Part 2 of this chapter. Such petition shall contain information to establish that the GRAS criteria as set forth in § 570.30(b) have been met, in the following form:

* * * * *

31e. By revising § 570.38(b)(1) to read as follows:

§ 570.38 Determination of food additive status.

* * * * *

(b)(1) The Commissioner, on his own initiative or on the petition of any interested person, pursuant to Part 2 of this chapter, may issue a notice in the FEDERAL REGISTER proposing to determine that a substance is not GRAS and is a food additive subject to section 409 of the act. Any petition shall include all relevant data and information of the type described in § 571.130(b) of this chapter. The Commissioner will place all of the data and information on which he relies on public file in the office of the Hearing Clerk and will include in the FEDERAL REGISTER notice the name of the substance, its known uses, and a summary of the basis for the determination.

* * * * *

PART 571—FOOD ADDITIVE PETITIONS

31f. By revising § 571.110 to read as follows:

§ 57.110 Procedure for objections and hearings.

Objections and hearings relating to food additive regulations under section 409 (c), (d), or (h) of the act shall be governed by Part 2 of this chapter.

§ 571.120 [Revoked]

31g. By revoking § 571.120.

31h. By revising § 571.130 to read as follows:

§ 571.130 Procedure for amending and repealing tolerances or exemptions from tolerances.

(a) The Commissioner, on his own initiative or on the petition of any interested person, pursuant to Part 2 of this chapter, may propose the issuance of a regulation amending or repealing a regulation pertaining to a food additive or granting or repealing an exception for such additive.

(b) Any such petition shall include an assertion of facts, supported by data, showing that new information exists with respect to the food additive or that new uses have been developed or old uses abandoned, that new data are available as to toxicity of the chemical, or that experience with the existing regulation or exemption may justify its amendment or repeal. New data shall be furnished in the form specified in § 571.1 for submitting petitions.

§§ 571.200, 571.202, 571.203, 571.204, 571.205, 571.206, 571.208, 571.210, 571.212, 571.214, 571.220, 571.221, 571.222, 571.230 571.232, 571.235 [Revoked]

311. By revoking §§ 571.200, 571.202, 571.203, 571.204, 571.205, 571.206, 571.208, 571.210, 571.212, 571.214, 571.220, 571.221, 571.222, 571.230, 571.232, and 571.235.

PART 601—LICENSING

32. In Part 601, by revoking §§ 601.4, 601.5, and 601.6(c), by redesignating the remainder of § 601.6 as § 601.12, by adding new §§ 601.4 through 601.9, and by revising § 601.22 to read as follows:

§ 601.4 Issuance and denial of license.

(a) An establishment or product license shall be issued upon a determination by the Commissioner that the establishment or the product, as the case may be, meets the applicable standards established in this chapter. Licenses shall be valid until suspended or revoked.

(b) If the Commissioner determines that the establishment or product does not meet the standards established in this chapter, he shall deny the application and inform the applicant of the grounds for, and of an opportunity for a hearing on, his decision. If the applicant so requests, the Commissioner shall issue a notice of opportunity for hearing on the matter pursuant to § 2.111(b) of this chapter.

§ 601.5 Revocation of license.

(a) An establishment or product license shall be revoked upon application of the manufacturer giving notice of intention to discontinue the manufacture of all products or to discontinue the manufacture of a particular product for which a license is held, and waiving an opportunity for a hearing on the matter.

(b) If the Commissioner finds that (1) authorized Food and Drug Administration employees after reasonable efforts have been unable to gain access to an establishment or a location for the purpose of carrying out the inspection required under § 600.21 of this chapter, (2) manufacturing of products or of a product has been discontinued to an extent that a meaningful inspection or evaluation cannot be made, (3) the manufacturer has failed to report a change as required by § 601.12, (4) the establishment or any location thereof, or the product for which the license has been issued, fails to conform to the applicable standards established in the license and in this chapter designed to ensure the continued safety, purity, and potency of the manufactured product, (5) the establishment or the manufacturing methods have been so changed as to require a new showing that the establishment or product meets the standards established in this chapter in order to protect the public health, or (6) the licensed product is not safe and effective for all of its intended uses or is misbranded with respect to any such use, he shall notify the licensee of his intention to revoke the license, setting forth the grounds for, and offering an opportunity for a hearing on, the proposed revocation. Except as provided in § 601.6 and in cases involving willfulness, the notification required in this paragraph shall provide a reasonable period for the licensee to demonstrate or achieve compliance with the requirements of this chapter, before proceedings will be instituted for the revocation of the license. If compliance is not demonstrated or achieved and the licensee does not waive the opportunity for a hearing, the Commissioner shall issue a notice of opportunity for hearing on the matter pursuant to § 2.111(b) of this chapter.

§ 601.6 Suspension of license.

(a) Whenever the Commissioner has reasonable grounds to believe that any of the grounds for revocation of a license exist and that by reason thereof there is a danger to health, he may notify the licensee that his license for the establishment or the product is suspended and require that the licensee (1) notify the selling agents and distributors to whom such product or products have been delivered of such suspension, and (2) furnish to the Director, Bureau of Biologics, complete records of such deliveries and notice of suspension.

(b) Upon suspension of a license, the Commissioner shall either (1) proceed pursuant to the provisions of § 601.5(b) to revoke the license, or (2) if the licensee agrees, hold revocation in abeyance pending resolution of the matters involved.

§ 601.7 Procedure for hearings.

(a) A notice of opportunity for hearing, notice of appearance and request for hearing, and grant or denial of hearing for a biological drug pursuant to this Part, for which the exemption from the Federal Food, Drug, and Cosmetic Act in § 310.4 of this chapter has been revoked, shall be subject to the provisions of § 314.200 of this chapter except to the extent that the notice of opportunity for hearing on the matter issued pursuant to § 2.111(b) of this chapter specifically provides otherwise.

(b) Hearings pursuant to §§ 601.4 through 601.6 shall be governed by Part 2 of this chapter.

(c) When a license has been suspended pursuant to § 601.6 and a hearing request has been granted, the hearing shall proceed on an expedited basis.

§ 601.8 Publication of revocation.

Notice of revocation of a license, with statement of the cause therefor, shall be issued by the Commissioner and published in the FEDERAL REGISTER.

§ 601.9 Licenses; reissuance.

(a) *Compliance with standards.* An establishment or product license, previously suspended or revoked, may be reissued or reinstated upon a showing of compliance with required standards and upon such inspection and examination as may be considered necessary by the Commissioner.

(b) *Exclusion of noncomplying location.* An establishment or product license, excluding a location or locations that fail to comply with required standards, may be issued without further application and concurrently with the suspension or revocation of the license for noncompliance at the excluded location or locations.

§ 601.22 Products in short supply; initial manufacturing at other than licensed establishment.

Licenses issued to a manufacturer for an establishment shall authorize persons other than such manufacturer to conduct at places other than such establishment the initial, and partial manufacturing of a product for shipment solely to such manufacturer only to the extent that the names of such persons and places are registered with the Commissioner of Food and Drugs and he finds upon application of such manufacturer, that (a) the product is in short supply due either to the peculiar growth requirements of the organism involved or to the scarcity of the animal required for manufacturing purposes, and (b) such manufacturer has established with respect to such persons and places such procedures, inspections, tests or other arrangements as will assure full compliance with the applicable regulations of this subchapter related to continued safety, purity, and potency. Such persons and places shall be subject to all regulations of this subchapter except §§ 601.1 to 601.6, 601.9, 601.10, 601.20, 601.21, 601.30 to 601.33, and 610.60 to 610.65 of this chapter. Failure of such manufacturer to maintain such procedures, inspections, tests, or other arrangements, or failure of any person conducting such partial manufacturing to comply with applicable regulations shall constitute a ground for suspension or revocation of the authority conferred pursuant to this section on the same basis as provided in §§ 601.6 to 601.8 with respect to the suspension and the revocation of licenses.

§§ 601.40, 601.41, 601.42, 601.43, 601.44 [Revoked].

33. By revoking §§ 601.40 through 601.44.

PART 701—COSMETIC LABELING

34. In Part 701, by revising § 701.3 (b) and (e) to read as follows:

§ 701.3 Designation of ingredients.

* * * * *

(b) The declaration of ingredients shall appear with such prominence and conspicuousness as to render it likely to be read and understood by ordinary individuals under normal conditions of purchase. The declaration shall appear on any appropriate information panel in letters not less than 1/16 of an inch in height and without obscuring design, vignettes, or crowding. In the absence of sufficient space for such declaration on the package, or where the manufacturer or distributor wishes to use a decorative container, the declaration may appear on a firmly affixed tag, tape, or card. In those cases where there is insufficient space for such declaration on the package, and it is not practical to firmly affix a tag, tape, or card, the Commissioner may establish by regulation an acceptable alternate, e.g., a smaller type size. A petition requesting such a regulation as an amendment to this paragraph shall be submitted pursuant to Part 2 of this chapter.

* * * * *

(e) Interested persons may submit a petition requesting the establishment of a specific name for a cosmetic ingredient pursuant to Part 2 of this chapter. The Commissioner may also propose such a name on his own initiative.

PART 809—IN VITRO DIAGNOSTIC PRODUCTS FOR HUMAN USE

35. In Part 809, by revising § 809.30(a) (formerly § 328.30 prior to recodification published in the FEDERAL REGISTER of February 13, 1976 (41 FR 6907)) to read as follows:

§ 809.30 Procedure for establishing, amending or repealing standards.

(a) *Basis for standards and available approaches to developing standards.* Whenever in the judgment of the Commissioner the establishment of a product class standard is necessary to reduce or eliminate unreasonable risk of illness or injury associated with exposure to or use of an in vitro diagnostic product and there are no other more practicable means to protect the public from such risk, he may propose such a standard. In proposing a product class standard he shall consider, and publish in the FEDERAL REGISTER findings on, the degree of risk or injury associated with the use of the product, the availability of information relating to the sciences upon which the products or their uses are based, the approximate number of products subject to the standard, the medical need for the products, and the probable effect of the standard upon the utility, cost, or availability of the product, and available means of achieving the objective of the standard with a minimal disruption of supply and of reasonable manufacturing and other commercial practices. Three procedures are available for developing product class standards and may be proposed on the initiative of the Commissioner or by petition of interested persons, pursuant to Part 2 of this chapter: (1) An existing standard may be utilized. (2) interested persons outside of the Food and Drug Administration may develop a proposed standard or (3) the Food and Drug Administration may develop the standard.

* * * * *

Effective date: These regulations shall be effective February 24, 1977.

Dated: January 14, 1977.

SHERWIN GARDNER,
Acting Commissioner of Food and Drugs.

[FR Doc.77-2224 Filed 1-24-77;8:45 am]

federal register

TUESDAY, JANUARY 25, 1977

PART VIII



DEPARTMENT OF LABOR

Employment and Training Administration

■

MIGRANT AND SEASONAL FARMWORKERS

Employment Service Complaint System, Monitoring, and Enforcement

Title 20—Employees' Benefits

CHAPTER V—EMPLOYMENT AND TRAINING ADMINISTRATION, DEPARTMENT OF LABOR

MIGRANT AND SEASONAL FARMWORKERS

Employment Service Complaint System, Monitoring, and Enforcement

On October 5, 1976, at 41 FR 44014, the Employment and Training Administration of the Department of Labor proposed for 20 CFR Parts 651, 653, and 658 regulations under the Wagner-Peyser Act of 1933, as amended, 29 U.S.C. 49.et seq., governing services to migrant and seasonal farmworkers by the Federal-State public employment service system.

The Department also proposed for 20 CFR Part 658, subpart E, regulations for the establishment and operation of an employment service complaint system for the administrative handling of complaints alleging violations of Employment Service regulations by employers or by the Employment Service.

Finally, the Department proposed for 20 CFR Part 658, subparts F, G, and H regulations governing the monitoring of all Employment Service activities, and the enforcement of Employment Service regulations.

The proposed regulations were part of the Department's continuing effort to publish comprehensive Employment Service regulations which are intended to replace the 4,000 page Employment Security Manual and the multitude of Employment Service directives currently in effect.

The proposed regulations paralleled the court order in the case of *NAACP, Western Region, et al.*, Civil Action No. 2010–72, U.S.D.C., D.C., Aug. 9, 1974 as follows:

1. The proposed 20 CFR Part 653, subpart B, Services for Migrant and Seasonal Farmworkers, (MSFWs) related to Sec. I of the court order, "Provision of Service to Migrant and Seasonal Farmworkers" and to Sec. II of the court order, "Information System".

2. The proposed 20 CFR Part 658, subpart G, Review and Assessment of State Agency Compliance with Employment Service Regulations, related to Sec. III of the court order, "Monitoring", and Sec. V of the court order, "Assurance of State Compliance with Federal Law".

3. The proposed 20 CFR Part 658, subpart E, Employment Service Complaint System, related to Sec. IV of the court order, "Complaint Resolution".

4. The proposed 20 CFR Part 658, subpart H, Federal Application of Remedial Action to State Agencies, related to Sec. V of the court order, "Assurance of State Compliance with Federal Law".

The Department is now publishing the above-described regulations in final form.

These regulations replace Secs. 1765–1769, 2000–2008, and 2056–2059 of the Employment Security Manual. The regulations also replace General Administrative Letter (GAL) 10–75, Field Memorandum (FM) 360–75, and other current directives governing the provision and administration of services to migrant and seasonal farmworkers including the Secretary's "13 Points" of April, 1972 to the extent that the "13 Points" relate to Employment Service activities under the Wagner-Peyser Act.

These regulations supersede the regulations at 20 CFR Parts 601–604 to that extent that the regulations at Parts 601–604 conflict with these regulations. The regulations also supersede all Department of Labor and State agency directives which conflict with the regulations.

Interested persons were invited to submit written comments, data, and arguments on the proposed regulations to the Assistant Secretary for Employment and Training until November 5, 1976. On November 5, 1976 the Department published a notice in the FEDERAL REGISTER extending the comment period to December 6, 1976.

Comments were received from about 75 agencies, organizations and private individuals, including a great many State employment service agencies, several employer organizations and several legal service groups. Comments were received on practically every sentence of Part 653, subpart B—Services for Migrant and seasonal Farmworkers (MSFWs). Comments on Part 658 were mostly general and conceptual in nature rather than specific. The comments were very diverse. Some commentators suggested that the regulations include a number of additional specific protections and benefits for MSFWs. Other commentors stated that many of the provisions and protections included in the proposed regulations were too paternalistic with respect to MSFWs and that, were the Department to require such benefits and protections for MSFWs, other applicant groups might believe themselves shortchanged.

In drafting these final regulations the Department used the following principles:

(1) ES services to MSFWs have traditionally been, and are today, an area of national concern. Because of the migratory nature of MSFW work and MSFW use of the ES interstate clearance system, and because MSFWs are often not working within a State long enough to be eligible for certain State benefits, the Department believes that there is sufficient reason to set forth special regulations on ES services to MSFWs.

(2) It would be self-defeating, however, and a disservice to MSFWs to offer services and benefits to MSFWs, which neither the Department nor the State agencies can realistically provide. Over the last several years the number of MSFWs in the nation has declined substantially. The overall American labor force, however, has increased by many millions. Meanwhile, ES funding has not significantly changed. Nor is there any statutory mechanism for ES funding to automatically increase during periods of high unemployment. The final regulations on services to MSFWs, therefore, were drafted with an eye not only on MSFWs but also on the rest of the American labor force, to which the ES is required by statute to offer service.

(3) The use of the ES system by employers is voluntary (except in the case of certain government contractors and employers seeking to employ foreign workers). If the ES places requirements on employers which the employers consider unreasonable, the employers may take their business elsewhere thus removing their MSFW employees from ES-required benefits and protections. The Department believes that the vast majority of agricultural employers are concerned with the welfare of their MSFW employees. The final regulations on services to MSFWs, therefore, were drafted to contain requirements with respect to employers which the Department believes are reasonably designed to encourage the use of the ES system by employers so that ES-required benefits and services for MSFWs will be able to be extended to the greatest possible number of MSFWs.

The most significant comments, and the Department's response thereto, were as follows:

1. A great many commentators, State agencies, employer groups, and legal service groups, suggested changes to the definitions of "Migrant," "applicant," "seasonal farmworkers" and other definitions. The specific changes suggested were many and diverse. The Department is studying these suggestions and has initially concluded that the definitions can be improved. Nevertheless, because of the complexity of the review process, the extensive change in ETA reporting systems any changes would require, and because of the expense involved, the definitions in the final regulations, with minor clarifications, are the same as in the proposed rulemaking. The Department believes that the definitions are reasonable ones and that they are consistent with present and past practice.

2. Many comments showed that the proposed definition for "intrastate job order" was unsatisfactory for States which use Statewide Job Bank systems. The definition has been clarified to state that a job order is an intrastate order when the order taker determines that workers will be needed who live beyond commuting distance from the worksite.

3. One commentor suggested that counseling, job development and testing be listed as basic services of the ES. This was not accepted. Sec. 3 of the Wagner-Peyser Act mandates the basic service of the ES as a no-fee labor exchange.

4. One commentor suggested that day-hauls be required to offer the full range of ES services. This was not accepted. Not only is this a practical impossibility, but it would negate the entire day-haul concept to change day-hauls into what would in effect be additional local offices. Workers at day-hauls will, however, be informed of the full range of ES services available at local offices.

5. One commentor suggested that "minimum levels" be established for all ES services. This was not accepted except to the extent that minimum requirements are set forth in the regulations. MSFWs, like other job applicants, may or may not need or may or may not desire specific ES services or a specific "level" of services beyond those required to be afforded them in the regulations.

6. Several commentors objected to the terms "if feasible" and "if appropriate" which occurred several times in the proposed rule-making especially with reference to Spanish language requirements. The final regulations avoid the use of these terms whenever possible. Local offices which serve a significant number of MSFWs (such offices will be designated by the ETA national office) must have bilingual (English-Spanish) staff if a substantial portion of the MSFWs they serve are fluent and/or literate in Spanish but are not fluent or literate in English.

7. Many commentors expressed confusion over the proposed "Job Bank information" Section. Most thought it was tautological or, if not tautological, hard to understand. The section has been retitled "job information" and has been clarified and simplified.

8. Many commentors expressed dissatisfaction with the wording of the Waiver Form. Some State agencies suggested meritorious alternate wording. The waiver forms are already in print and being used. However, upon approval of the Administrator, a State agency may use a form it thinks will be clearer to the MSFWs.

9. Some commentors questioned whether State agencies should be permitted to establish day-hauls but not operate them. The final regulations no longer permit a State agency to establish a day-haul without operating it. Further, no referrals may be made to day hauls not operated by the State agency or another State agency.

10. In response to one comment, the day haul section has been clarified to require ES personnel to report apparent law violations to the local office manager.

11. In response to many comments, the outreach section has been amended to preclude political and unionization activities and to omit language which many commentors interpreted as encouraging officious attempts to disrupt the work which the MSFW has scheduled for himself or herself. The MSFW, however, will be informed of ES services such as referral to year round job opportunities and supportive services.

12. In response to several comments, the requirements in the proposed regulations regarding the job description portion of interstate job orders have been extended to intrastate job orders.

13. Two commentors suggested that employers be required to guarantee a certain amount of work to MSFWs. This was rejected as being too much of a burden on employers.

14. One commentor requested that discrimination by "marital status" on job orders be prohibited. This was not accepted. The regulations do prohibit discrimination by sex, but do not go beyond current Federal statutes which do not prohibit discrimination by marital status per se.

15. Some commentors suggested that all MSFWs be given copies of interstate job orders. The Department, however, believes that the present requirement of giving such job orders on request has adequately served both the MSFWs and the administrative process of the Department. Some 19,000 of such job orders were given on request last year. The Department is, however, requiring employers to give a copy of the work contract to all agricultural workers recruited through the ES interstate or intrastate clearance system.

16. One commentor suggested that the "changes in crop situations" section be amended to address changes due to over-recruitment. This has been done.

17. One commentor suggested that field checks be done on all employers to which the ES has referred workers. This was not accepted. The Department believes that field checks are a reasonable service for MSFWs who migrate using the ES clearance system. To expand this to the millions of employers served by the ES including State governments, hospitals, mines, factories, Indian reservations, the military, etc. would be seriously impractical and prohibitively expensive and would involve the ES in enforcement activities expressly committed by Congress and State legislatures to specially authorized, funded and trained enforcement agencies. The Department believes that in requiring field checks for migratory MSFWs, the Department has gone a long way indeed toward reasonably looking after the employment rights of MSFWs, a group for which the Department has a genuine national concern.

18. One commentor suggested that the head of the State agency have overall responsibility for State agency self-monitoring. This has been done.

19. Some commentors suggested that the ES-complaint system handle complaints which are not ES-related, that is, which are not against the ES itself or against an employer for allegedly violating ES regulations. In addition to the legal question as to whether the ES may use Wagner-Peyser funds to finance a complaint system for arguably non-ES related complaints, the ES has to consider that, with present funding and staffing, the ES system serves far less of the general labor force than it could potentially serve. To significantly divert ES funds to handle non-ES related complaints would not best serve the interests of the ES system or of the employers or applicants, including MSFWs.

20. One commentor suggested that the ES fund institutions who would, in turn, bring complaints on behalf of MSFWs against the ES system. This comment was not accepted. The Department believes that legal service groups and even MSFWs themselves are capable of representing the interests of MSFWs.

21. One comment stated that, since the complaint system will handle complaints against employers, a complainant would have to exhaust the system before bringing, for example, a contract action against an employer. The Department, however, intends the complaint system, with respect to complaints against employers, to preclude, before the exhaustion of the complaint system, only court actions alleging an employer's breach of ES regulations.

22. One commentor noted that it is the "outcome of services" such as placement which "actually affect the lives of farmworkers" and objected to the section of the proposed regulations which stated that State agencies do not have substantial control over outcomes. While it may well be true that MSFWs are affected more by outcomes than by anything else, it is also true that State agencies have only indirect control over these outcomes. That is simply the nature of the system set up by the Wagner-Peyser Act and of the nation's free contractual employment system. The Department believes, however, that, if the requirements set forth in the regulations are adhered to, the outcomes for MSFWs will be considerably, if indirectly, enhanced.

23. One commentor asked that judicial review be provided after final DOL action against a State agency. This was not accepted. Judicial review should be determined on a case-by-case basis.

24. Some commentators suggested replacing the complaint system with a compulsory arbitration system. This was not accepted. The complaint system will be concerned, not with the give and take of contractual rights, but with adjudicating violations of Federal regulations. Thus, the procedure set forth in the regulations is a system with the full extent of procedural due process.

25. One commentor suggested that the role of the Governor be more clearly set forth in the regulations. The Department intends to deal with this comment very carefully in its drafting of 20 CFR Part 652—Basic Organization of the ES System and Part 657—Grants to State Agencies.

26. One commentor requested that State agencies be allowed to seek regional office review of State hearing officer decisions. This comment is being held in abeyance. The Department will carefully monitor the complaint system to see whether the regulations should be so amended at a future date.

27. One commentor objected to the language in the proposed rulemaking which stated that the ES complaint system would supersede the system at 29 CFR Part 31. Thus, there will not be two alternate systems for handling complaints alleging unlawful discrimination by race, color or national origin.

28. Some State agencies raised questions on funding and with respect to the Resource Allocation Formula. The Department will continue to work closely with the State agencies on this problem and has sent copies of these comments to the groups who are now engaged in special studies on the funding matter.

29. Some commentors suggested that State agencies be given an opportunity for a hearing whenever any remedial action or disallowance is applied. This suggestion has been accepted. With regard to certain remedial actions, an opportunity for a prior conference with the Assistant Secretary has also been added.

30. At the suggestion of many commentors the requirement that the employer sign an intrastate or interstate job order "in the presence of the order taken" has been omitted.

31. As a result of a great many comments, the term "employer-related complaint" has been dropped. All complaints handled by the ES-complaint system are now called "ES-related" complaints.

32. Many commentors suggested that the ES monitor not only employers but also employees and that the ES refuse to service employees who are truant, tardy, lazy, obstinate, or who say they are qualified for jobs for which they turn out not to be qualified. Although there appears to be a logical symmetry to this request, the Department would like to emphasize that the ES is not an enforcement agency; it is basically, under the statute, a labor exchange agency. The ES enforces only its own regulations. That the regulations on MSFWs place more requirements on employers than do the vast majority of ES regulations comes from the Department's desire to provide reasonable employment protections for this especially vulnerable group of workers. The Department hopes that most employers will understand and accept this reasoning and that they will continue to use the ES and to assist the ES in affording appropriate employment for MSFWs.

33. Many commentors criticized the "full-application-waiver" procedures as being too cumbersome and time consuming and of very little real usefulness to MSFWs. A few commentors, however, suggested that the full procedure be mandated at day hauls. The procedure is substantially the same as in the proposed rule-making. The Department will continue to assess this issue.

34. Many commentors stated that the time limits for handling complaints were too long; many said they were too short. Most commentors, however, did not question them. The final regulations have the same time limits as the proposed rule-making.

35. Many other clarifying, editorial and technical changes have been made.

Accordingly 20 CFR Chapter V is amended, effective February 24, 1977, to read as follows:

PART 601—ADMINISTRATIVE PROCEDURE

§ 601.6 [Amended]

1. In paragraph (b), first paragraph, the phrase "central office of the Administration" is changed to "ETA national office".

2. In paragraph (b), second paragraph, the term "Administration" is changed to "ETA national office".

3. In paragraph (c), the phrase "Director of the Employment Service" is changed to "ETA national office" each time it appears, and the term "Director" is changed to "ETA national office".

§ 601.8 [Amended]

4. The term "Director" is changed to "Secretary".

5. The phrase "Post Office Department" is changed to "U.S. Postal Service" each time it appears.

§ 601.9 [Amended]

6. The phrase "State Audit Branch, Division of Business Management" is deleted.

7. The term "Director" is changed to "ETA".

PART 602—FEDERAL-STATE EMPLOYMENT SERVICE SYSTEM

8. In the table of contents for Part 602, §§ 602.9 and 602.21 are deleted.

§ 602.1 [Amended]

9. In paragraph (a), the words "and all rules, regulations, and standards promulgated thereunder" are deleted.

§ 602.9 [Deleted]

10. § 602.9 is deleted.

§ 602.15 [Amended]

11. The words "ETA 'Standards for a Merit System of Personnel Administration' " are changed to "the Civil Service Commission regulations at 45 CFR Part 70".

§ 602.18 [Amended]

12. In paragraph (a), the term "Director" is changed to "Administrator".

§ 602.21 [Deleted]

13. Section 602.21 *Delegation of Authority*, is deleted.

PART 603—STATE PROGRAM BUDGET PLANS UNDER THE WAGNER-PEYSER ACT

14. The title of the Part is changed to STATE PROGRAM BUDGET PLANS UNDER THE WAGNER-PEYSER ACT.

§ 603.1 [Amended]

15. The phrase "plan of operation", each of the three times it appears, is changed to "program budget plan".

§ 603.2 [Amended]

16. In paragraph (a) the phrase "Title IV of the Servicemen's Readjustment Act of 1944 as amended" is changed to read "38 U.S.C. Chapters 41 and 42".

17. Section 603.3 is revised to read as follows:

§ 603.3 Compliance with USES regulations.

Each State agency shall submit a statement, as part of its State program budget plan, that it will comply with the regulations of the USES at 20 CFR Parts 601–604, 620, 621, 651–658, and at 29 CFR Part 8.

§ 603.5 [Amended]

18. The phrase "plan of operation" is changed to "program budget plan".

PART 604—POLICIES OF THE UNITED STATES EMPLOYMENT SERVICE

19. Paragraphs (b) and (c) are revised to read as follows:

§ 604.2 Clearance.

* * * * *

(b) To recruit qualified workers from local sources before resorting to clearance unless a shortage of local workers is anticipated.

(c) To place into clearance only those job orders which specify at least the applicable Federal or State minimum wage, and to place job orders for agricultural workers into intrastate and interstate clearance in accordance with the regulations at § 653.108 of this Chapter.

* * * * *

§ 604.5 [Amended]

20. Everything after the phrase "and related industries" is deleted.

21. The following new Part 651 is added to Title 20.

PART 651—GENERAL PROVISIONS GOVERNING THE FEDERAL-STATE EMPLOYMENT SERVICE SYSTEM

Sec.

651.1 Scope and purpose of the Federal-State employment service system.
651.2 Basic structure of the employment service system.
651.3 Federal statutes governing the employment service system.
651.4 Executive Orders affecting the employment service system.
651.5 Format of the regulations for the employment service system.
651.6 Consolidated table of contents for Parts 651–658.
651.7 Definitions of terms used in Parts 651–658.

AUTHORITY: Wagner-Peyser Act of 1933, as amended, 29 U.S.C. 49 et seq., unless otherwise noted.

§ 651.1 Scope and purpose of the Federal-State employment service system.

(a) The basic purpose of the Federal-State employment service system is to provide a national system of public employment offices through which no-fee employment services are provided to workers who are seeking employment and to employers who are seeking job applicants. The basic employment service of the employment service system, therefore, is the referral of workers to jobs through the operation, without fee, of a labor-exchange system.

(b) The employment service system also performs other functions related to its basic labor-exchange function. Such ancillary functions include developing job openings, employment counseling and testing, assisting employers with certain employment-related problems, the processing of labor certification applications for the temporary and permanent employment of foreign workers in the United States, the conducting of prevailing wage surveys, and the performance of other employment-related activities as set forth in the regulations at Parts 601–604, 620, 621 and 651–658 of this Chapter and at 29 CFR Parts 8, 26, and 75.

§ 651.2 Basic structure of the employment service system.

(a) Sec. 1 of the Wagner-Peyser Act of 1933 (Act) established as a component of the Department of Labor a United States Employment Service (USES). Sec. 3(a) of the Act sets forth basic responsibility of the USES. It states:

> It shall be the province and duty of the bureau [USES] to promote and develop a national system of employment offices for men, women, and juniors who are legally qualified to engage in gainful occupations, including employment counseling and placement services for handicapped persons, to maintain a veterans' service to be devoted to securing employment for veterans, to maintain a farm placement service, and, in the manner hereinafter provided, to assist in establishing and maintaining systems of public employment offices in the several States and the political subdivisions thereof in which there shall be located a veterans' employment service. The bureau [USES] shall also assist in coordinating the public employment offices throughout the country and in increasing their usefulness by developing and prescribing minimum standards of efficiency, assisting them in meeting problems peculiar to their localities, promoting uniformity in their administrative and statistical procedure, furnishing and publishing information as to opportunities for employment and other information of value in the operation of the system, and maintaining a system for clearing labor between the several States.

(b) Sec. 4 of the Act provides that any State which wishes to receive funds under the Act must, through its legislature, accept the provisions of the Act and must designate or authorize the creation of a State agency vested with all the powers necessary to cooperate with the USES under the Act.

(c) Sec. 8 of the Act requires that State agencies submit to the Secretary of Labor detailed plans for carrying out the provisions of the Act within the State.

(d) Sec. 9 of the Act requires State agencies to make operational and expenditures reports as prescribed by the Secretary of Labor. It requires the Secretary to monitor State agencies operations and expenditures, and authorizes the Secretary to apply remedial actions to State agencies which have violated the Secretary's rules and regulations, after notice to the State agency.

(e) Sec. 11 of the Act establishes a Federal Advisory Council to advise the Secretary on the operation of the employment service system. It also requires that State agencies establish similar advisory councils.

(f) Sec. 12 of the Act authorizes the Secretary to make such rules and regulations as may be necessary to carry out the provisions of the Act.

§ 651.3 Federal statutes governing the employment service system.

(a) The Wagner-Peyser Act of 1933, as amended, 29 U.S.C. 49 et seq., sets forth the basic responsibilities of the employment service system.

(b) In addition to Wagner-Peyser Act responsibilities, the employment service system is governed or affected by the following Federal statutes:

(1) The Social Security Act, Titles III, IX and XII;

(2) 38 U.S.C. Chapters 41 and 42;

(3) Titles VI and VII of the Civil Rights Act of 1964;

(4) Sec. 212(a)(14) of the Immigration and Nationality Act;

(5) The Consolidated Farm and Rural Development Act of 1972; and

(6) The Farm Labor Contractor Registration Act of 1963, as amended.

§ 651.4 Executive Orders affecting the employment service system.

The following Executive Orders have an impact upon the employment service system:

(a) Executive Order 10582—Implementing the Buy American Act;

(b) Executive Order 10650—Relating to the Selection of Persons with Critical Skills for Enlistment in the Ready Reserves;

(c) Executive Order 11190—Relating to the Screening of the Ready Reserve;

(d) Executive Order 11075—Providing for the Implementation of the Trade Expansion Act;

(e) Executive Order 11141—Declaring a Public Policy Against Discrimination on the Basis of Age;

(f) Executive Order 11246—Relating to Equal Employment Opportunity;

(g) Executive Order 11478—Relating to Equal Employment in the Federal Government;

(h) Executive Order 11307—Providing for the Coordination of Federal Programs Affecting Agricultural and Rural Area Development;

(i) Executive Order 11490—Relating to Emergency Preparedness Functions;

(j) Executive Order 11575—Relating to the Disaster Relief Act;

(k) Executive Order 11701—Relating to Employment of Veterans by Federal Agencies and Government Contractors and Subcontractors.

§ 651.5 Format of the regulations for the employment service system.

(a) Part 651 contains the general provisions governing the Federal-State employment service system.

(b) Part 652, when published, will set forth the basic requirements relative to the establishment and organization of State employment service agencies.

(c) Part 653 contains the requirements governing the principal services of the employment service system.

(d) Part 654, when published, will set forth the provisions governing special services of the employment service system.

(e) Part 655, when published, will contain the labor certification process for the temporary employment of foreign workers in the United States.

(f) Part 656 contains the regulations governing the labor certification process for the permanent employment of foreign workers in the United States.

(g) Part 657, when published, will set forth the requirements for State agency program budget plans, including their development, submission, and approval, and the allocation of funds to the State agencies.

(h) Part 658 contains the general administrative provisions of the employment service system, including personnel, fiscal, reporting, and nondiscrimination standards, the employment service complaint system, and monitoring and enforcement standards.

§ 651.6 Consolidated table of contents for Parts 651–658.

The table of contents for Parts 651–658 is as follows:

PART 651—GENERAL PROVISIONS GOVERNING THE FEDERAL-STATE EMPLOYMENT SERVICE SYSTEM

Sec.

651.1 Scope and purpose of the Federal-State employment service system.
651.2 Basic structure of the employment service system.
651.3 Federal statutes governing the employment service system.
651.4 Executive Orders affecting the employment service system.
651.5 Format of the regulations for the employment service system.
651.6 Consolidated table of contents for Parts 651–658.
651.7 Definitions of terms used in Parts 651–658.

PART 652—BASIC ORGANIZATION OF THE EMPLOYMENT SERVICE SYSTEM [RESERVED]

PART 653—SERVICES OF THE EMPLOYMENT SERVICE SYSTEM

SUBPART A—BASIC SERVICES OF THE EMPLOYMENT SERVICE SYSTEM [RESERVED]

SUBPART B—SERVICES FOR MIGRANT AND SEASONAL FARMWORKERS (MSFWS)

Sec.
653.100 Purpose and scope of subpart.
653.101 Provision of services to migrant and seasonal farmworkers (MSFWs).
653.102 Job information.
653.103 MSFW job applications.
653.104 Job applications of MSFW families and crew members.
653.105 Situations requiring neither full applications nor waivers.
653.106 ES day-haul responsibilities.
653.107 Outreach.
653.108 Requirements for intrastate and interstate job orders seeking agricultural workers.
653.109 Changes in crop and recruitment situations.
653.110 Field checks.
653.111 State agency self-monitoring.
653.112 Data collection.
653.113 Disclosure of data.
653.114 State agency staffing requirements.
653.115 State agency program budget plans.

SUBPART C—SERVICES FOR VETERANS

653.200 Purpose and scope of subpart.
653.201 Definitions of terms used in subpart.

FEDERAL ADMINISTRATION

653.210 Role of the Administrator.
653.211 Role of the Veterans Employment Service (VES).
653.212 Role of Regional Administrator (RA).

Sec.
653.213 Assignment and role of Regional Veterans' Employment Representatives (RVERs).
653.214 Assignment and role of State Veterans' Employment Representatives (SVERs).

STANDARDS OF PERFORMANCE GOVERNING STATE AGENCY SERVICES TO VETERANS AND ELIGIBLE PERSONS

653.220 Standards of performance.
653.221 Standards of performance governing State agency services.
653.222 Performance standard on facilities for VES staff.
653.223 Performance standards on reporting.
653.224 Performance standards governing the assignment and role of Local Veterans' Employment Representatives (LVERs).
653.225 Standards of performance governing State agency cooperation and coordination with other agencies and organizations interested in the employment development of veterans and eligible persons.
653.226 Standards of performance governing complaints of veterans and eligible persons.

FEDERAL MONITORING OF STATE AGENCY COMPLIANCE

653.230 Veterans preference indicators of compliance.
653.231 Secretary's annual report to Congress.

PART 654—SPECIAL RESPONSIBILITIES OF THE EMPLOYMENT SERVICE SYSTEM [RESERVED]

PART 655—LABOR CERTIFICATION PROCESS FOR THE TEMPORARY EMPLOYMENT OF ALIENS IN THE UNITED STATES [RESERVED]

PART 656—LABOR CERTIFICATION PROCESS FOR THE PERMANENT EMPLOYMENT OF ALIENS IN THE UNITED STATES

SUBPART A—PURPOSE AND SCOPE OF PART 656

656.1 Purpose and scope of Part 656.
656.2 Description of the Immigration and Nationality Act and of the Department of Labor's role thereunder.

SUBPART B—OCCUPATIONAL LABOR CERTIFICATION DETERMINATIONS

656.10 Schedule A.
656.11 Schedule B.

SUBPART C—LABOR CERTIFICATION PROCESS

656.20 Introduction.
656.21 Basic labor certification application process.
656.22 Applications for labor certifications for Schedule A occupations.
656.23 Applications for labor certifications for Schedule B occupations; requests for waivers from Schedule B.
656.24 Labor certification determinations.
656.25 Procedures following a labor certification determination.
656.26 Administrative-judicial review of denials of labor certification.
656.27 Hearings.
656.28 Document transmittal following the granting of a labor certification.
656.29 Filing of a new application after the denial of a labor certification.
656.30 Validity of and invalidation of labor certifications.
656.31 Labor certification applications involving fraud or willful misrepresentation.
656.32 Fees for services and documents.

SUBPART D—DEFINITIONS

Sec.
656.50 Definitions, for purposes of this Part, of terms used in this Part.

SUBPART F—ADDRESSES OF DEPARTMENT OF LABOR REGIONAL OFFICES

656.60 Addresses of Department of Labor regional offices.

PART 657—PROVISIONS GOVERNING GRANTS TO STATE AGENCIES FOR EMPLOYMENT SERVICES ACTIVITIES (RESERVED)

PART 658—ADMINISTRATIVE PROVISIONS GOVERNING THE EMPLOYMENT SERVICE SYSTEM

SUBPART A—(RESERVED)

SUBPART B—[RESERVED]

SUBPART C—[RESERVED]

SUBPART D—[RESERVED]

SUBPART E—EMPLOYMENT SERVICE COMPLAINT SYSTEM

658.400 Purpose and scope of subpart.
658.401 Types of complaints handled by ES complaint system.

STATE AGENCY ES COMPLAINT SYSTEM

658.410 Establishment of State agency ES complaint systems.
658.411 Initial handling of complaints by the State or local office.
658.412 State agency officials responsible for handling ES-related complaints.
658.413 Action on ES-related complaints concerning employers.
658.414 Action on ES-related complaints concerning the State agency.
658.415 Hearings.
658.416 Decision of the hearing official.

FEDERAL ES COMPLAINT SYSTEM

658.420 Establishment of the ES complaint system at the ETA regional office.
658.421 Handling of complaints by the RA.
658.422 Hearings.
658.423 Decision of the DOL Hearing Officer.

SUBPART F—DISCONTINUATION OF SERVICES TO EMPLOYERS BY THE EMPLOYMENT SERVICE SYSTEM

658.500 Scope and purpose of subpart.
658.501 Informal resolution.
658.502 Discontinuation of services.

SUBPART G—REVIEW AND ASSESSMENT OF STATE AGENCY COMPLIANCE WITH EMPLOYMENT SERVICE REGULATIONS

658.600 Scope and purpose of subpart.
658.601 State agency responsibility.
658.602 ETA national office responsibility.
658.603 ETA regional office responsibility.
658.604 Assessment and evaluation of program performance data.
658.605 Communication of findings to State agencies.

SUBPART H—FEDERAL APPLICATION OF REMEDIAL ACTION TO STATE AGENCIES

658.700 Scope and purpose of subpart.
658.701 State agency violations of ES regulations.
658.702 Initial action by the RA.
658.703 Disallowance of expenditures; corrective action plans.
658.704 Remedial actions.
658.705 Decision to decertify.
658.706 Notice of remedial action.
658.707 Requests for hearings.
658.708 Hearings.
658.709 Conduct of hearings.
657.710 Decision of the Hearing Officer.
658.711 Decision of the Secretary.

§ 651.7 Definitions of terms used in Parts 651–658.

"Administrator, United States Employment Service (Administrator)" shall mean the chief official of the United States Employment Service (USES) or the Administrator's designee.

"Agricultural worker" shall mean a worker, whose primary work experience has been in industries with a Standard Industrial Classification (SIC) of 01–07, except 027, 074, 0752, 0761, and 078, whether alien or citizen, who is legally allowed to work permanently in the United States.

"Applicant" shall mean a person who contacts a local office to seek employment or employability development services.

"Application Card" shall mean the basic local office record for an applicant.

"Day-haul" shall mean the assembly of workers at a pick-up point, transportation of them to agricultural employment, and the return of the workers to the pick up point on the same day.

"DOL" shall mean the Department of Labor.

"D.O.T." shall mean the Dictionary of Occupational Titles, the reference work published by the USES which contains brief, non-technical definitions of U.S. job titles, distinguishing number codes, and worker trait data.

"Employment and Training Administration (ETA)" shall mean the component of the Department of Labor containing the United States Employment Service (USES).

"Employment Service (ES)" shall mean the nationwide system of public employment offices consisting of the United States Employment Service (USES), its grantee State agencies, and the various offices of the State agencies.

"ES" shall mean "employment service".

"ES regulations" shall mean the Federal regulations at 20 CFR Parts 601–604, 620, 621, and 651–658, and at 29 CFR Parts 8, 26 and 75.

"ETA" shall mean the Employment and Training Administration.

"Hearing Officer" shall mean a Department of Labor official, hearing officer or Administrative Law Judge, designated to preside at DOL administrative hearings.

"Interstate job order" shall mean a job order describing one or more hard-to-fill job openings which a State agency uses to request recruitment assistance from other State agencies. Job orders used for day-haul operations which extend across State lines and Job Banks which extend across State lines are not included in this definition.

"Intrastate job order" shall mean a job order describing one or more hard-to-fill job openings, which a local office uses to request recruitment assistance from other local offices within the State. Placement into a Statewide Job Bank system in and of itself does not make a job order an intrastate job order. The job order shall be an intrastate job order only if the job order taker makes the determination that workers are needed from other parts of the State which are not within commuting distance of the worksite.

"Job Bank" shall mean the employment service's computerized job data storage system.

"Job Information Service (JIS)" shall mean a unit or an area within an ES local office where applicants primarily, on a self-service basis or with minimum professional help, can obtain specific and general information on where and how to get a job.

"Local office" shall mean a local employment service office which is part of a State agency. A local office which serves a significant number of MSFWs shall mean a local office which is officially designated as such by the ETA.

"Local office manager" shall mean the ES official in charge of all ES activities in a local office of a State agency.

"Local Veterans' Employment Representative (LVER)" shall mean the local office official designated by the State Director to serve veterans and eligible persons as defined at § 653.201 of this chapter.

"LMI" shall mean labor market information.

"Migrant" shall mean both:

(1) "Migrant Farmworker," that is, a seasonal farmworker whose farmwork experience during the preceding 12 months required travel such that the worker was unable to return to his/her residence (domicile) in the same day; and

(2) "Migrant Food Processing Worker," that is, a person who has had experience during the preceding 12 months doing food processing (as classified in the 1972 Standard Industrial Classification (SIC) definitions 201, 2033, 2035, and 2037 for food processing establishments) for a scheduled period of less than 150 days, provided that it required travel such that the worker was unable to return to his/her residence (domicile) in the same day.

"MSFW" shall mean a migrant or seasonal farmworker.

"RA"; see "Regional Administrator".

"Program Budget Plan (PBP)" shall mean the annual planning document for the SESA required by Sec. 8 of the Wagner-Peyser Act containing the SESA's detailed planning, programming and budget for carrying out employment security activities. For the purpose of ES regulations, this definition shall be restricted to the employment service portion of the PBP.

"Regional Administrator, Employment and Training Administration (RA)" shall mean the chief DOL Employment and Training Administration (ETA) official in each DOL regional office.

"Regional Veterans' Employment Representative (RVER)" shall mean the Federal official designated by the Director, Veterans Employment Service (VES) in each DOL regional office who, under the RA, serves veterans and eligible persons as defined at § 653.201 of this Chapter.

"Seasonal farmworker" shall mean a person who has had at least 25 days experience during the preceding twelve months working for wages in farmwork for a scheduled period of less than 150 consecutive days at any one establishment engaged in agricultural production or agricultural services (as classified in the 1972 Standard Industrial Classification (SIC) definitions included in industries 01 through 07, except 027, 074, 0752, 0761 and 078). Nonmigrant individuals who are full-time students are excluded, as are migrant workers who are full-time students but who travel in organized groups rather than with their families.

(1) For purposes of this definition an "establishment" shall mean an economic unit, generally at a single physical location, where business is conducted or where (or from which) services are performed. (For example, a farm, orchard, ranch, or an organization providing agricultural commodities or services from a single location.) Farm labor contractors and crew leaders are not considered establishments, but the organizations to which they supply workers are to be considered establishments for purposes of this definition.

(2) For purposes of this definition, an individual who is hired repeatedly on a short term basis is a seasonal farmworker even if this results in his/her working for any one agricultural establishment for a period of 150 consecutive days or more.

(3) There are two types of seasonal farmworkers—migrant and non-migrant.

"Secretary" shall mean the Secretary of Labor or the Secretary's designee.

"SESA"; see "State Employment Security Agency".

"Solicitor" shall mean the chief legal officer of the U.S. Department of Labor or the Solicitor's designee.

"State" shall include the fifty states, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands.

"State Administrator" shall mean the chief official of the State Employment Security Agency (SESA).

"State agency" shall mean the State employment service agency designated under section 4 of the Wagner-Peyser Act to cooperate with the USES in the operation of the employment service system.

"State Director" shall mean the chief official of the State employment service agency (State agency).

"State Employment Security Agency (SESA)" shall mean the State agency which, under the State Administrator, contains both the State employment service agency (State agency) and the State unemployment compensation agency.

"State hearing official" shall mean a State official designated to preside at State administrative hearings convened to resolve ES-related complaints pursuant to subpart E of Part 658 of this Chapter.

"United States Employment Service (USES)" shall mean the component of the Employment and Training Admnistration of DOL which was established under the Wagner-Peyser Act of 1933 to promote and develop a national system of public employment service offices.

"Veterans Employment Service (VES)" shall mean the organizational component within the United States Employment Service which is concerned with policies and services relating to employment development on behalf of veterans and eligible persons as defined at § 653.201 of this Chapter.

PART 652—BASIC ORGANIZATION OF THE EMPLOYMENT SERVICE SYSTEM [RESERVED]

22. Part 652 is added and reserved.

PART 653—SERVICES OF THE EMPLOYMENT SERVICE SYSTEM

23. Subpart B is added to Part 653.

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Subpart B—Services for Migrant and Seasonal Farmworkers (MSFWs)

Sec.
653.100 Purpose and scope of subpart.
653.101 Provision of services to migrant and seasonal farmworkers (MSFWs).
653.102 Job information.
653.103 MSFW job applications.
653.104 Job applications of MSFW families and crew members.
653.105 Situations requiring neither full applications nor waivers
653.106 ES day-haul responsibilities.
653.107 Outreach.
653.108 Requirements for intrastate and interstate job orders seeking agricultural workers.
653.109 Changes in crop and recruitment situations.
653.110 Field checks.
653.111 State agency self-monitoring.
653.112 Data collection.
653.113 Disclosure of data.
653.114 State agency staffing requirements.
653.115 State agency program budget plans.

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Subpart B—Services for Migrant and Seasonal Farmworkers (MSFWs)

AUTHORITY: Wagner-Peyser Act of 1933, as amended, 29 U.S.C. 49 *et seq.*, unless otherwise noted.

§ 653.100 Purpose and scope of subpart.

This subpart sets forth the principal regulations of the USES for counseling, testing, and job and training referral services for migrant and seasonal farmworkers (MSFWs) on a basis which is qualitatively equivalent and quantitatively proportionate to services provided to non-MSFWs. It also contains requirements that State agencies establish a system to monitor their own compliance with USES regulations governing services to MSFWs, including the regulations under this subpart.

§ 653.101 Provision of services to migrant and seasonal farmworkers (MSFWs).

(a) Each State agency and each local office shall offer to migrant and seasonal farmworkers (MSFWs) the full range of employment services, benefits and protections, including the full range of counseling, testing, and job and training referral services as are provided to

non-MSFWs. In providing such services, the State agency shall consider and be sensitive to the preferences, needs and skills of individual MSFWs and the availability of job and training opportunities.

(b) Each State agency shall assure that, in a local area, the same local offices, including itinerant and satellite offices, but exclusive of day-haul operations and temporary seasonal facilities, offer service to both non-MSFWs and MSFWs. Separate farm labor service local offices, which offer only farmwork to agricultural workers while another local office serving the same geographic area offers other ES services to other applicants, are prohibited so that all applicants are able to receive employment services on the same basis.

§ 653.102 Job information.

(a) Each State agency shall assure that the same job information, including Job Bank order information, which is regularly provided to areas not containing a significant number of MSFWs, shall be extended into nearby areas which contain a significant number of MSFWs.

(b) State agencies shall assist MSFWs to use job information.

§ 653.103 MSFW job applications.

(a) Every local office shall determine whether or not applicants are MSFWs as defined at § 651.7 of this Chapter.

(b) Except as provided in § 653.105 of this subpart, when an MSFW applies for a job or registers for work at a local office, the local office shall explain to the MSFW orally and/or in writing the benefits which might follow from the filing of a full application, such as counseling, job development and testing. Local offices which serve a significant number of MSFWs shall give or write the explanation in Spanish whenever a significant number of such MSFWs are fluent and/or literate in Spanish but are not fluent or literate in English. Other local offices shall provide such MSFWs with the same services whenever this is feasible.

(c) If the MSFW wishes to file a full application, the local office shall make sure that the application is complete and cludes the significant history of the MSFW's prior employment, training and educational background and a statement of any desired training and/or employment. All applicable items shall be completed according to the ETA instructions for preparation of the application card (ES-511). Additional D.O.T. codes shall be assigned based on the MSFW's work history, training, and skills, knowledges, and abilities, and secondary cards shall be completed and separately filed.

(d)(1) If an MSFW does not wish to file a full application, a partial application shall be taken and the MSFW shall be requested to sign a waiver of additional ES services at that time except for job referral and referral to training or supportive services. In no case may job referral or referral to training or supportive services be refused because an MSFW has waived a full application. The MSFW shall then be offered job referral services and referral to available training and supportive services, with the assistance of a staff member and/or through self-selection in a Job Information Service (JIS), if a JIS is available.

(2) If the waiver form is in English, it shall be worded as follows unless the Administrator has approved a State agency's alternate wording:

WAIVER OF FULL APPLICATION

I have been advised of my right to complete this application and I have been told of the additional services I may get if I do. I do not want these additional services and I do not want to complete the full application at this time.

Date: ----------
Signature of Applicant

Employment Service Representative

(3) If a Spanish waiver form is used, it shall be worded as follows (except that it may be revised to accommodate colloquial differences) unless the Administrator has approved a State agency's alternate wording:

RENUNCIA DE SOLICITUD ENTERA

Me han avisado de mi derecho de llenar todas las partes de esta solicitud y me han informado de los servicios adicionales que pudiera recibir si lo hago. No deseo estos servicios adicionales, ni deseo llenar la solicitud entera a este tiempo.

Fecha: ----------
Firma del Solicitante

Representante del Servicio de Empleo

(4) Local offices, which keep applications in a computer file, shall use an additional hard copy waiver form which shall be signed by the applicant and the interviewer.

(e) If an MSFW does not wish to file a full application or sign a waiver, the interviewer shall try to obtain enough information to complete a partial application and shall then sign the waiver on the ES representative line noting that the applicant did not wish to sign, and, if possible, the reason. The interviewer shall offer to refer the applicant to any available jobs for which the MSFW may be qualified, and shall advise the MSFW that the MFSW may file a full application at any time.

(f) If a partial application is taken, the local office shall assure that the following items are completed on the application card:

(1) Social Security Number;
(2) Applicant Type (new or renewal);
(3) Name;
(4) Address, including name of county, and phone number;
(5) Sex;
(6) Birth date;
(7) Highest school grade completed;
(8) County code;
(9) Group;
(10) Spanish-American;
(11) Seasonal Farmworker/migrant/migrant food processing worker;
(12) Registration date;
(13) Employment status;
(14) Claimant;
(15) Local office; and
(16) Any additional characteristics which apply (such as Veteran, Handicapped, and food stamp).

(g) Partial applications for MSFWs shall be filed in accordance with local office procedures for filing other partial applications.

(h) At least those MSFWs who file full or partial application shall be issued an Identification Card at the initial visit and shall be advised to show it whenever they use employment service facilities or services.

§ 653.104 Job applications of MSFW families and crew members.

(a) Except as provided at §§ 653.103 (e) and 653.105 of this subpart, no local office shall refer an MSFW family or crew unless each working member of the family or crew, and the crew leader or family head (if the crew leader or family head is a working member), has either filed a full application or signed a waiver either at the local office or in the presence of an outreach worker. Local offices, however, may provide general information, such as on types of crops, to crew leaders and family heads prior to the registration of all working members.

(b) No local office shall service a farm labor contractor on a job order for agricultural workers unless the farm labor contractors shows a valid Federal Farm Labor Contractor (FLC) certificate, where required by Federal law, and a valid State certificate where required by State law. If a farm labor contractor is temporarily without his or her valid FLC certificate, the local office shall try to verify the existence of the valid FLC by telephoning the Department of Labor's Employment Standards Administration regional office. The local office, however, shall not serve the farm labor contractor until the existence of the valid FLC is verified.

§ 653.105 Situations requiring neither full job applications nor waivers.

(a) If a MSFW has been referred on an interstate or intrastate order and it is known to the order-holding local office that the MSFW has completed a full application or waiver in the applicant-holding office or elsewhere, an additional application or waiver need not be taken by the order-holding office unless the MSFW requests ES services in addition to referral on the interstate or intrastate job order.

(b) If the State agency is operating a day-haul facility, a full application shall be taken whenever an MSFW requests the opportunity to file a full application unless this is impractical at that time. Waivers need not be obtained. In such cases, a full application shall be taken at the earliest practical time.

§ 653.106 ES day-haul responsibilities.

(a) This section applies not only to MSFWs, but to all workers who use State agency operated day-hauls.

(b) State agencies may establish an agricultural day-haul to facilitate the employment of workers living within daily commuting distance of places of employment. State agency staff shall operate any day-haul established by the State agency. No applicant shall be referred to any day-haul which is not operated by State agency staff.

(c) Before it establishes an agricultural day haul, a State agency shall conduct a survey to determine need and feasibility. The State agency shall document the method and results of the survey.

(d) State agency operated day-hauls may extend across State lines, provided the State agencies involved enter into written working agreements. Such agreements shall provide for offices in each State to communicate directly with each other. Such agreements may provide for the visiting of "demand" State employers by "supply" State agency personnel, the active participation of "demand" State agency personnel in the recruitment and referral activities of the "supply" State, and other arrangements designed to facilitate the flow of labor. State agencies shall secure the written approval of the RA before putting such an interstate agreement into effect, or of both RAs if the States are in different ETA regions.

(e) At State agency operated day-hauls:

(1) Job applications shall be taken pursuant to § 653.105(b) of this subpart. Workers using day-hauls shall be informed of the availability of ES services such as counseling, testing, and referral to jobs, training and supportive services.

(2) Information such as posters and pamphlets concerning the ES complaint procedure, appropriate unemployment compensation programs, wage and hour information, equal opportunity, age discrimination, and worker protection and benefits shall be made available at day-haul facilities. Such posters and pamphlets shall be printed in English and, if the day-haul is used by workers who are fluent and/or literate in Spanish but not in English, in Spanish.

(3) To the extent feasible, job order information shall be used to expose applicants to a wide range of job opportunities, and assistance in the use of such information shall be provided.

(4) In taking employer job orders, ES staff shall record the number of workers needed, the work to be performed, the transportation arrangements, the wages, and the length of the working day and other relevant working conditions. The employer shall be told to notify the day-haul site or appropriate local office of any change in labor needs, working conditions, etc. which would materially affect the job order.

(5) ES staff shall monitor the compliance by employers and their agents and by crew leaders with ES regulations. To the extent of their expertise, they shall also observe the compliance by employers and their agents and by crew leaders with relevant Federal and State laws governing vehicle registration, wages, hours, working conditions, and nondiscrimination. If the ES staff observe an apparent violation of ES regulations, they shall report this to the local office manager and the procedures set forth at subpart F of Part 658 of this Chapter shall be followed. If ES staff observe an apparent violation of laws other than ES regulations, they shall report this to the local office manager and the local office manager shall refer the matter to the appropriate Federal or State enforcement agency.

(f) State agencies are encouraged to develop written agreements with enforcement agencies, in accord with which the enforcement agencies will spot-check for law violations at day-hauls operated by the State agency.

§ 6653.107 Outreach.

(a) State agencies shall operate outreach programs for MSFWs who may be in need of service both in home-base areas while they are in residence and in places along the migrant stream.

(b) The outreach program shall include an active effort to contact MSFWs who do not come to local offices by seeking out such workers in their living areas and/or if possible, in their work places. The program shall also involve developing and improving ES relationships with public and private community agencies, MSFW groups and employers. State agencies shall also explore the possibility of conducting and/or coordinating outreach through public and private community agencies and MSFW groups.

(c) Both home base and in-stream outreach for MSFWs shall attempt to explain to MSFWs available local office services with respect to referral to long-range, year-round employment opportunities, alternatives to seasonal or migratory agricultural work, training opportunities, social services, including Federal and State assistance programs, and with respect to the ES complaint procedures set forth in subpart E of Part 658 of this Chapter. Outreach workers, however, shall not include, as part of their outreach activities, political or unionization activities.

§ 6653.108 Requirements for intrastate and interstate job orders seeking agricultural workers.

(a) This section contains the requirements for intrastate and interstate job orders seeking agricultural workers. This section, therefore, contains requirements which affect not only MSFWs, but which affect all agricultural workers who are recruited through the ES intrastate or interstate clearance systems.

(b) (1) In view of the statutorily established basic function of the employment service as a no-fee labor exchange, that is, as a forum for bringing together employers and job seekers, neither the ETA nor the State agencies are guarantors of the accuracy or truthfulness of information contained on job orders submitted by employers. Nor does any job order accepted of recruited upon by the ES constitute a contractual job offer to which the ETA or a State agency is in any way a party. Nevertheless, if the ETA or a State agency discovers that an employer's job order contains a material misrepresentation, the procedures at Subpart F of Part 658 of this Chapter shall be followed.

(2) As soon as it is administratively convenient, intrastate and interstate job orders shall be amended to include the language of the first two sentences of paragraph (b)(1) of this section.

(c) No local office shall place a job order for agricultural workers into intrastate clearance unless:

(1) The job order does not contain an unlawful discriminatory specification by race, color, religion, national origin, age, sex, citizenship, mental or physical status unrelated to job performance (handicap), or veteran or nonveteran status;

(2) The employer has signed the statement required by paragraph (c)(3) of this section that the job offer states all the material terms and conditions of the employment, including:

(i) The crop;
(ii) The nature of the work;
(iii) The anticipated period and hours of employment;
(iv) The anticipated starting date of employment and the anticipated number of weeks and days thereafter for which work will be available;
(v) The hourly wage rate or the piece rate estimated in hourly wage rate equivalents;
(vi) Any deductions to be made from wages;
(vii) Any non-monetary benefits to be provided by the employer;
(viii) Any days or weeks for which work is guaranteed, and, for each guaranteed week of work, the exclusive manner in which the guarantee may be abated due to weather conditions or other Acts of God beyond the employer's control;
(ix) Any bonus or work incentive payments or other expenses which will be paid by the employer in addition to the basic wage rate, including the anticipated time period(s) within which such payments will be made. No such payments, however, shall be made contingent upon the worker continuing employment beyond the period of employment specified in the job order or, in the case of any worker with children of school age who has migrated away from home with such children, beyond the time needed to return home for the beginning of the school year;
(x) An assurance that the working conditions comply with applicable Federal and State minimum wage, child labor, social security, health and safety, farm labor contractor registration and other employment-related laws; and
(xi) An assurance that the employer will provide a copy of the work contract to the worker, which shall be written in Spanish if the worker is fluent or literate in Spanish but is not fluent or literate in English.

(3) The employer has read the order and has verified that the job order contains all the material terms and conditions of the job, and that all items

therein are actual conditions of the job offer by signing the following statement: "This job offer describes the actual terms and conditions of the employment being offered by me and contains all the material terms and conditions of the job";

(4) The wages and working conditions offered are not less than the prevailing wages and working conditions among similarly employed agricultural workers in the area of intended employment or the applicable Federal or State minimum wage, whichever is higher. If a base rate and a bonus is offered, the base rate must be not less than the prevailing wage rate or applicable Federal or State minimum wage, whichever is higher;

(5) The employer has agreed to provide or pay for the transportation of the workers on at least the same terms as transportation is commonly provided by employers in the area of intended employment to agricultural workers recruited from the same area of supply;

(6) If the workers are to be housed, the employer has signed an assurance that its housing meets the full set of standards set forth at Part 620 of this Chapter or the full set of standards set forth at 29 CFR 1910.142; and

(7) The local office and the employer have attempted and have not been able to obtain sufficient workers within the local labor market area, or the local office anticipates a shortage of local workers.

(d) No State agency shall place a agricultural job order into interstate clearance unless:

(1) It meets the requirements set forth at paragraphs (c)(1) through (c)(5) of this section;

(2) The employer will provide housing for the workers which meets the full set of standards set forth at Part 620 of this Chapter or the full set of standards set forth at 29 CFR 1910.142; and

(3) The State agency and the employer have attempted and have not been able to locate sufficient workers within the State, or the State agency anticipates a shortage of workers within the State.

(e)(1) The local office shall use the agricultural clearance form prescribed by ETA, and shall see that all necessary items on the form are completed, including items on attachments to the form prescribed by ETA.

(2)(i) The original of an interstate agricultural clearance form shall be retained for the order-holding local office files. At a minimum, additional copies of the form with all attachments shall be distributed as follows:

(A) At least one clear copy to each of the State agencies selected for recruitment (areas of supply);

(B) One copy to each applicant-holding ETA regional office;

(C) One copy to the order-holding (area of employment) State office;

(D) Two copies to order-holding ETA regional office, one of which shall be forwarded immediately upon receipt to the ETA national office; and

(ii) One copy of the form with all attachments shall be provided to the referred worker by the applicant-holding office upon the request of the worker.

(f) The local office may place an intrastate or interstate agricultural order for a specific crew leader or worker preferred by the employer provided the order meets ES nondiscrimination criteria. The order would not meet such criteria, for example, if it requested a "white male crew leader" or "any white male crew leader".

(g) Local offices, which serve a significant number of agricultural workers who are fluent and/or literate in Spanish but are not fluent or literate in English, shall us bilingual (English-Spanish) staff to assist such workers to understand the terms and conditions of intrastate and interstate job orders. Other local offices shall provide such workers with the same services if feasible, and/or, to the extent feasible, shall provide such workers with checklists in Spanish showing wage payment schedules, working conditions and other material specifications of the job order. As soon as it is administratively convenient, such checklists shall be amended to include the language of the first two sentences of § 653.108(b)(1) of this subpart.

(h) With respect to intrastate job orders, local offices with access to statewide Job Banks using microfiche viewers shall provide workers with a statement showing wage payment schedules, working conditions, and the other material specifications of the job order. If needed or requested by a worker, a local office, which serves a significant number of agricultural workers who are fluent and/or literate in Spanish but are not fluent or literate in English, shall provide such statements in Spanish. As soon as it is administratively convenient, such statements shall be amended to include the language of the first two sentences of § 653.108(b)(1) of this subpart.

§ 653.109 Changes in crop and recruitment situations.

The labor demand State agency, through the labor supply State agency, shall inform, as quickly as possible, crews and families scheduled through the ES clearance system that a crop is maturing earlier or later than expected or that other material factors including recruitment factors have changed so that the State agencies involved may adjust arrangements on behalf of such crews or families. If weather conditions, over-recruitment or other conditions have eliminated the scheduled job opportunities, the State agencies involved shall make every effort to refer the workers to alternate job opportunities.

§ 653.110 Field checks.

(a) State agencies, through their local offices or otherwise, shall conduct periodic, unannounced field checks on agricultural worksites to which MSFW referrals have been made through the intrastate or interstate clearance system to determine and document whether wages, hours, working and housing conditions are as specified in job orders. If State agency personnel find reason to believe that worksite conditions are not as stated or promised on the job order, the State agency shall follow the procedures set forth at subpart F of Part 658 of this Chapter. If State agency personnel find reason to believe that an employer is violating an employment-related law other than ES regulations, they shall report these findings to the local office manager and the local office manager shall refer the matter in writing to the appropriate Federal or State enforcement agency.

(b) State agencies, to the extent feasible, shall make formal or informal arrangements with appropriate State and Federal enforcement agencies, pursuant to which such agencies will agree to conduct periodic field checks on agricultural worksites to which the State agency has referred MSFWs and to inform the State agency if worksites conditions are not as stated or promised on the job order.

§ 653.111 State agency self-monitoring.

(a) State Directors shall assure that their State agencies monitor their own compliance with the regulations under this subpart on an ongoing basis. The State Director shall have overall responsibility for State agency self-monitoring.

(b) The State Director or State Administrator shall designate a State Monitor Advocate, who shall devote full-time to the duties of the State Monitor Advocate at the State office level unless the Administrator permits the use of a part-time State Monitor Advocate based upon documentary evidence submitted by the State agency showing a paucity of MSFWs and that the duties required of the State Monitor Advocate by ES regulations will be adequately performed by a part-time State Monitor Advocate. The State Monitor Advocate shall:

(1) Review or supervise all aspects of the monitoring;

(2) Participate in on-site local office formal monitoring reviews on a selective basis;

(3) Assure that local offices serving a significant number of MSFWs are reviewed on-site at least once a year, and that, if necessary, those local offices in which significant problems are revealed by required reports, management information, the ES complaint system or otherwise are reviewed as soon as possible;

(4) Participate in arranging cooperative agreements authorized under this subpart between the State agency and enforcement agencies;

(5) Maintain cooperative relationships with organizations involved in MSFW activities including employer organizations;

(6) Review State agency directives which are likely to have a significant impact on MSFWs; and

(7) Review State agency compliance with the data collection requirements of § 653.112 of this subpart.

(c) State agencies shall conduct on-site local office formal monitoring reviews to review services to MSFWs.

(1) Before beginning such a review, the reviewer(s) shall study the data on the local office in required reports and ES complaint system complaints originating from the local office.

(2) The monitoring review format, developed by ETA, shall be used by reviewers as a guideline when they conduct local office on-site formal monitoring reviews.

(3) Upon completion of a local office on-site formal monitoring review, the reviewer(s) shall hold one or more wrap-up sessions with the local office manager and staff to discuss any obvious findings and offer initial recommendations and appropriate technical assistance.

(4) After each review the reviewer(s) shall conduct an in-depth analysis of the review data. The conclusions and recommendations of the reviewer(s) shall be put in writing, shall be sent to the State Monitor Advocate, and shall then be discussed with the official of the State agency with line authority over the local office.

(5) If needed, the State agency shall develop a written corrective action plan. The plan shall direct the local office to correct or to make major steps to correct the problem pursuant to the plan within 30 days or if the plan allows for more than 30 days for full compliance, the length of, and the reasons for, the extended period shall be specifically stated.

(6) State agencies shall be responsible for assuring and documenting that the local office is in compliance within the time period designated in the plan. State agencies shall submit to the appropriate ETA regional offices summary data on the on-site local office formal monitoring reviews, along with a narrative statement of significant overall findings pursuant to ETA instructions.

§ 653.112 Data collection.

State agencies shall: (a) Collect data on MSFWs including data on the number registering for service, referred to jobs, placed in jobs, enrolled in training, receiving counseling, receiving job development, receiving testing, referred to supportive service, receiving some service, placed according to wage rates, and placed according to duration.

(b) Collect data on the number of MSFWs who were served as to whether they were male, female, black, Spanish-American or American Indian.

(c) Provide necessary training to State agency, including local office, personnel to assure accurate reporting of data;

(d) Collect, and submit to the ETA as directed by the ETA, data comparing the quantity and quality of services to MSFWs as compared to services for non-MSFWs; and

(e) Submit additional reports to the ETA at such times and containing such items as the ETA directs.

§ 653.113 Disclosure of data.

(a) State agencies shall disclose to the public, on written request, the data collected by State and local offices pursuant to § 653.112 of this subpart, if possible within 10 working days after receipt of the request.

(b) If a request for data which is held by a State agency is made to the ETA national or regional office, the ETA shall forward the request to the State agency for response by the State agency.

(c) If the requested data cannot be supplied within 10 working days of its receipt by the State agency, the State agency shall respond to the requestor in writing, giving the reason for the delay and specifying the date by which it expects to be able to comply.

(d) State agency intra-agency memoranda and reports (or parts thereof) and memoranda and reports (or parts thereof) between the State agency and the ETA, however, to the extent that they contain statements of opinion rather than facts, may be withheld from public disclosure provided this reason for withholding is given to the requestor in writing. Similarly, documents or parts thereof, which, if disclosed, would constitute an unwarranted invasion of personal or employer privacy, may also be withheld provided the reason is given to the requestor in writing.

§ 653.114 State agency staffing requirements.

State agencies shall assure that bilingual (English-Spanish) regular and outreach staff are assigned to every local office which serves a significant number of MSFWs whenever a substantial portion of such MSFWs are primarily fluent and/or literate in Spanish but are not fluent or literate in English. State agencies shall develop written affirmative action plans as part of their program budget plans to implement this requirement. State agencies shall also undertake affirmative action to recruit MSFWs and persons from MSFW backgrounds for their State agency staffs, and shall include a description of the specific efforts they are planning to make in their program budget plans.

§ 653.115 State agency program budget plans.

Each State agency, in its annual program budget plan, shall describe its plans to carry out the requirements of this subpart in the following year. For example, each State agency shall describe its proposed level of outreach activity, taking into consideration the amount of MSFW employment in the State, the State agency's level of resources, the extent of activities required by ES regulations for other applicants, and other relevant factors. The RA shall review the plan in light of the requirements of this subpart and shall make an initial written determination as to whether or not the program budget plan, including this part of the State agency program budget plan, is acceptable.

PART 654—SPECIAL RESPONSIBILITIES OF THE EMPLOYMENT SERVICE SYSTEM (RESERVED)

24. Part 654 is added and reserved.

PART 655—LABOR CERTIFICATION PROCESS FOR THE TEMPORARY EMPLOYMENT OF ALIENS IN THE UNITED STATES (RESERVED)

25. Part 655 is added and reserved.

PART 656—LABOR CERTIFICATION PROCESS FOR THE PERMANENT EMPLOYMENT OF ALIENS IN THE UNITED STATES

26. Part 656 is added and reserved.

PART 657—PROVISIONS GOVERNING GRANTS TO STATE AGENCIES FOR EMPLOYMENT SERVICES ACTIVITIES (RESERVED)

27. Part 657 is added and reserved.

PART 658—ADMINISTRATIVE PROVISIONS GOVERNING THE EMPLOYMENT SERVICE SYSTEM

28. Part 658 is added as follows:

Subpart A—(Reserved)

Subpart B—(Reserved)

Subpart C—(Reserved)

Subpart D—(Reserved)

Subpart E—Employment Service Complaint System

Sec.

658.400 Purpose and scope of subpart.
658.401 Types of complaints handled by the ES complaint system.

STATE AGENCY ES COMPLAINT SYSTEM

658.410 Establishment of State agency ES complaint systems.
658.411 State agency officials responsible for handling ES-related complaints.
658.412 Initial handling of complaints by the State or local office.
658.413 Action on ES-related complaints concerning employers.
658.414 Action on ES-related complaints concerning the State agency.
658.415 Hearings.
658.416 Decision of the State hearing official.

FEDERAL ES COMPLAINT SYSTEM

658.420 Establishment of the ES complaint system at the ETA regional office.
658.421 Handling of complaints by the RA.
658.422 Hearings.
658.423 Decision of the DOL Hearing Officer.

Subpart F—Discontinuance of Services to Employers by the Employment Service System

Sec.

658.500 Scope and purpose of subpart.
658.501 Informal resolution.
658.502 Discontinuation of services.

Subpart G—Review and Assessment of State Agency Compliance With Employment Service Regulations

658.600 Scope and purpose of subpart.
658.601 State agency responsibility.
658.602 ETA national office responsibility.
658.603 ETA regional office responsibility.
658.604 Assessment and evaluation of program performance data.
658.605 Communication of findings to State agencies.

Subpart H—Federal Application of Remedial Action to State Agencies

658.700 Scope and purpose of subpart.
658.701 State agency violations of ES regulations.
658.702 Initial action by the RA.
658.703 Disallowance of expenditures; corrective action plans.
658.704 Remedial actions.
658.705 Decision to decertify.
658.706 Notice of remedial action.
658.707 Requests for hearings.

Sec.
658.708 Hearings.
658.709 Conduct of hearings.
658.710 Decision of the Hearing Officer.
658.711 Decision of the Secretary.

Subpart E—Employment Service Complaint System

AUTHORITY: Wagner-Peyser Act of 1933, as amended, 29 U.S.C. 49 et seq.; 38 U.S.C. Chapters 41 and 42; unless otherwise noted.

§ 658.400 Purpose and scope of subpart.

This subpart sets forth the regulations governing the employment service complaint system at both the State and Federal levels.

§ 658.401 Types of complaints handled by the ES complaint system.

(a) The types of complaints which shall be handled by the ES complaint system (ES-related complaints) are as follows: (1) Complaints alleging an employer's failure to comply with ES regulations; and (2) Complaints by any individual, organization or employer about employment service actions or omissions under ES regulations.

(b) Complaints by veterans alleging employer violations of the mandatory listing requirements under 38 U.S.C. 2012 shall not be handled under this subpart. The State agency shall handle such complaints under the Department's regulations at 41 CFR Part 60–250.

(c) Complaints alleging employer violations of employment-related State or Federal laws other than ES regulations shall not be handled under the procedures set forth in this subpart. If a State agency or the ETA receives such a complaint, the State agency or ETA shall direct the complainant to the appropriate State or Federal enforcement agency. The State agency need not make a record of such referrals nor is any further action required.

STATE AGENCY ES COMPLAINT SYSTEM

§ 658.410 Establishment of State agency ES complaint systems.

(a) Each State agency shall establish and maintain an employment service complaints system pursuant to this subpart.

(1) State agencies shall ensure that centralized control procedures are established for the handling of complaints and files relating to the handling of those complaints.

(2) State agencies shall ensure that any action taken on a complaint by the responsible official is fully documented in a file containing such information as a copy of the original complaint form, copies of any related correspondence, and a log of related telephone calls.

(b) State agencies shall ensure that information pertaining to use of the complaint system is publicized. This shall include the prominent display of the approved ETA complaint system poster in each local office, satellite office, and at each State agency operated day-haul facility.

§ 658.411 State agency officials responsible for handling ES-related complaints.

(a) *State office level.* The State Director shall have overall responsibility for the operation of the State agency ES complaint system.

(1) The handling of all ES-related complaints received by the State office alleging unlawful discrimination by race, color, religion, national origin, sex, age, citizenship, physical or mental status unrelated to job performance (handicap), or veteran or non-veteran status shall be assigned to a State EEO representative. The handling of all other ES-related complaints received by the State office shall be assigned to a State Monitor Advocate designated by the State Administrator or State Director.

(2) The State Director shall assure that all ES-related complaints, and all correspondence relating thereto are logged with a notation of the nature of each item.

(b) *Local office level.* At the local office level, the local office manager shall be responsible for the overall operation of the ES complaint system. The local office manager shall assure that all ES-related complaints, and all correspondence relating thereto, are logged with a notation of the nature of each item.

(1) All ES-related complaints alleging unlawful discrimination as described in paragraph (a)(1) of this section shall be assigned to a local office EEO representative if the local office has a trained and designated EEO Representative, or, if the local office does not have such a Representative, shall be sent immediately to the State EEO Representative.

(2) All ES-related complaints from veterans, except those from veterans who are MSFW's and ES-related complaints from veterans alleging unlawful discrimination as discrimination as described in paragraph (a)(1) of this section shall be assigned to the Local Veterans' Employment Representative (LVER) if the local office has an LVER. If the local office does not have an LVER, such complaints shall be sent immediately to the State Monitor Advocate.

(3) All ES-related complaints other than those described in paragraphs (b)(1) and (2) of this section may be personally handled by the local office manager or may be assigned by the local office manager to another local office employee.

§ 658.412 Initial handling of complaints by the State or local office.

(a) Whenever any type of complaint by any individual, organization or employer is received by a State or a local office, the responsible official shall determine whether it is an ES-related complaint.

(b) If the complaint is not ES-related, the official shall refer the complainant to an attorney, consumer advocate, enforcement or other public agency or to other appropriate assistance. No written record need be made of such referrals, nor is any further action required.

(c) If the complaint is ES-related complaint, the official shall require the complainant to put the complaint in writing on the ES Complaint Form prescribed or approved by the ETA. The official shall offer to assist the complainant in filling out the form and shall do so if the complainant desires such assistance. If the complainant represents several complainants, all such complainants shall be named on the ES Complaint Form.

(1) The ES Complaint Form shall be used for all ES-related complaints, including complaints by veterans and complaints about discrimination.

(2) A copy of the completed ES Complaint Form shall be given to the complainant.

(d) Whenever an ES-related complaint deals with an employer in another State or another State agency, the State agency shall send the ES Complaint Form to the ETA Regional Office with jurisdiction over the State agency in which it was received for transmission to the other State agency. A copy of the referral letter shall be sent to the complainant.

§ 658.413 Action on ES-related complaints concerning employers.

(a) The State agency official, in handling an ES-related complaint against an employer, shall:

(1) Offer to assist the complainant through the provision of appropriate ES services, such as referral to another job; and

(2) With respect to the employer alleged to have violated ES regulations, follow the procedures set forth at Subpart F of this Part.

(b) The provisions of S 658.414–416 of this subpart are not applicable to ES-related complaints against employers.

§ 658.414 Action on ES-related complaints concerning the State agency.

(a) The State agency official who handles an ES-related complaint from an individual, organization or employer against the State agency shall: (1) Offer the complainant appropriate ES services; and (2) Investigate and attempt to informally resolve the complaint.

(b) If a local office official is attempting to informally resolve a complaint under this section, and if informal resolution has not been achieved within 15 working days, or five working days with respect to complaints by MSFWs, the local office official shall send the complaint to the State office and shall notify the complainant in writing of the referral.

(c) If a State office official is attempting to resolve a complaint under this section, and if informal resolution has not been accomplished within 30 working days (20 working days with respect to complaints by MSFWs) after its receipt by the State office (whether the complaint was received directly or from a local office pursuant to paragraph (b) of this section), the State office shall send a written notice to the complainant, with a copy to the RA, explaining why the complaint has not yet been resolved and offering the complainant a hearing before a State hearing official. The notice shall advise the complainant that the complainant must advise the State office in writing within 30 calendar days of the date of the notice, as to whether the complainant desires a hearing.

(d) If the State office, within 30 calendar days of the notice provided for in paragraph (c) of this section, receives a written request from a complainant, the State office shall refer the complaint to a State hearing official for hearing. The complainant shall then be notified in writing by the State office that:

(1) The complainant will be notified of the date, time and place of the hearing;

(2) The complainant will have opportunity to be represented at the hearing;

(3) The complainant may be represented at the hearing by an attorney or other representative;

(4) The complainant may bring witnesses and/or documentary evidence to the hearing;

(5) The complainant may cross-examine opposing witnesses at the hearing;

(6) The decision on the compaint will be based on the evidence presented at the hearing;

(7) The State hearing official may reschedule the hearing at the request of the complainant, the complainant's representative, or other party; and

(8) The complainant or the complainant's representative may withdraw the request for hearing in writing before the hearing.

§ 658.415 Hearings.

(a) Hearings shall be held by State hearing officials. A State hearing official may be any State official authorized to hold hearings under State law. Thus, they may be, for example, the same referees who hold hearings under the State unemployment compensation law and/or the Work Incentive Program or any official of the State agency, authorized by State law to preside at State administrative hearings.

(b) The State hearing official, upon the referral of a case for a hearing, shall:

(1) Notify all involved parties of the date, time and place of the hearing; and

(2) Re-schedule the hearing, as appropriate.

(c) In conducting a hearing the State hearing official shall:

(1) Regulate the course of the hearing;

(2) Issue subpoenas, if necessary;

(3) Assure that all relevant issues are considered;

(4) Rule on the introduction of evidence and testimony; and

(5) Take any other actions, consistent with due process, which are necessary to insure an orderly hearing.

(d) The testimony at the hearing shall be recorded and may be transcribed when appropriate.

(e) The parties shall be afforded the opportunity to present, examine, and cross-examine witnesses.

(f) The State hearing official may elicit testimony from witnesses, but shall not act as advocate for any party.

(g) The State hearing official shall receive, and make part of the record documentary evidence offered by any party and accepted at the hearing. Copies thereof shall be made available by the party submitting the document to other parties to the hearing upon request.

(h) The case record, or any portion thereof, shall be available for inspection and copying by any party at, prior to, or subsequent to the hearing upon request. Special procedures may be used for disclosure of medical and psychological records such as disclosure to a physician designated by the individual.

(i) The State hearing official shall, if feasible, resolve the dispute by conciliation at any time prior to the conclusion of the hearing.

§ 658.416 Decision of the State hearing official.

(a) The State hearing official may:

(1) Rule that the case is improperly before it, that is, that there is a lack of jurisdiction over the case;

(2) Rule that the complaint has been withdrawn in writing;

(3) Rule that reasonable cause exists to believe that the request has been abandoned or that repeated requests for re-scheduling are arbitrary and for the purpose of unduly delaying or avoiding a hearing; or

(4) Render such other rulings as are appropriate to the issues in question. However, the State hearing official shall not have jurisdiction to consider the validity or constitutionality of ES regulations or of the Federal statutes under which they are promulgated.

(b) Based on the entire record including any evidence provided at the hearing, the State hearing official shall prepare a written decision. The State hearing official shall send a copy of the decision stating the findings and conclusions of law and fact and the reasons therefor to the complainant, the State office, the RA, and the Solicitor of Labor Attn: Associate Solicitor for Employment and Training Legal Services, Department of Labor, Room N2101, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

(c) All decisions of a State hearing official shall be accompanied by a written notice informing the complainant that, if the complainant is not satisfied, the complainant may, within 30 calendar days of the date of the decision, file a complaint in writing with the RA. The notice shall give the address of the RA.

FEDERAL ES COMPLAINT SYSTEM

§ 658.420 Establishment of ES complaint system at the ETA regional office.

(a) Each RA shall establish and maintain an ES complaint system at the DOL regional office level.

(b) The RA shall designate DOL officials to handle ES-related complaints as follows:

(1) The handling of all ES-related complaints alleging discrimination by race, color, religion, national origin, sex, age, citizenship, physical or mental status unrelated to job performance (handicap), or veteran or non-veteran status shall be assigned to a Regional Equal Employment Opportunity Representative (REEOR);

(2) The handling of all ES-related complaints from veterans, except from veterans who are MSFWs, and complaints from veterans about discrimination as described in paragraph (b)(1) of this section shall be assigned to the Regional Veterans' Employment Representative (RVER);

(3) The handling of all ES-related complaints other than those described in paragraphs (b)(1) and (2) of this section, shall be assigned to a Regional Monitor Advocate.

(c) The RA shall assure that all ES-related complaints and all correspondence relating thereto are logged, with a notation of the nature of each item.

§ 658.421 Handling of complaints by the RA.

(a) No ES-related complaint, shall be handled at the ETA regional office level until the complainant has exhausted the State agency administrative remedies set forth at SS 658.410–416 of this subpart. Therefore, if the RA determines that any complainant, who has filed an ES-related complaint with the regional office, has not yet exhausted the administrative remedies at the State agency level, the RA shall inform the complainant in writing that the complainant must first exhaust those remedies before the complaint may be filed in the regional office. A copy of this letter shall be sent to the State Director.

(b) Upon receipt of a complaint by the RA after the exhaustion of State agency administrative remedies, the RA shall send for the complete State agency file, including the original *ES Complaint Form*.

(c) The RA shall review the file in the case and shall determine whether any further investigation or action is appropriate.

(d) If the RA determines that no further action is warranted, the RA shall send this determination in writing to the complainant, and may offer the complainant a hearing before a DOL Hearing Officer provided the complainant requests such a hearing in writing from the RA within 30 calendar days of the date of the RA's offer of hearing.

(e) If the RA determines that further investigation or other action is warranted, the RA shall undertake such an investigation, informal resolution or other action.

(f) If the RA finds reason to believe that an employer has violated ES regulations, the RA shall direct the State agency to follow the procedures set forth at Subpart F of this Part.

(g) If the RA finds reason to believe that a State agency or one of its local offices has violated ES regulations, the RA shall follow the procedures set forth at Subpart H of this Part.

(h) If the complaint is not resolved to the complainant's satisfaction, the RA may offer the complainant in writing a hearing before a DOL Hearing Officer provided the complainant requests such a hearing in writing from the RA within 30 calendar days of the date of the RA's offer of hearing.

(i) If the complainant requests a hearing pursuant to paragraphs (d) or (h) of this section the RA shall:

(1) Send the complainant a written notice containing the statements set forth at § 658.414(d) of this subpart;

(2) Compile four hearing files containing copies of all documents relevant to the case, indexed and compiled chronologically;

(3) Send simultaneously one hearing file to the DOL Chief Administrative Law Judge, 1111 20th Street, N.W., Washington, D.C. 20036, one hearing file to the ETA national office, and one hearing file to the Solicitor of Labor, Attn: Associate Solicitor for Employment and Training, and retain one hearing file.

(j) Upon the receipt of a hearing file, the DOL Hearing Officer designated by the Chief Administrative Law Judge shall notify the complainant, the State agency, the RA, the Administrator, and the Solicitor of the receipt of the case and shall afford them 30 days to submit written evidence and/or legal arguments in the case. After the 30 days elapse, the Hearing Officer shall schedule a hearing.

§ 658.422 Hearings.

(a) The DOL Hearing Officer shall:

(1) Notify all involved parties of the date, time and place of the hearing; and

(2) Re-schedule the hearing, as appropriate.

(b) In conducting a hearing the DOL Hearing Officer shall:

(1) Regulate the course of the hearing;

(2) Issue subpoenas if necessary;

(3) Consider all relevant issues which are raised;

(4) Rule on the introduction of evidence and testimony;

(5) Take any other action, consistent with due process, which is necessary to insure an orderly hearing.

(c) The testimony at the hearing shall be recorded, and shall be transcribed if appropriate.

(d) The parties to the hearing shall be afforded the opportunity to present, examine, and cross-examine witnesses.

(e) The DOL Hearing Officer may elicit testimony from witnesses, but shall not act as advocate for any party.

(f) The DOL Hearing Officer shall receive, and make part of the record, documentary evidence offered by any party and accepted at the hearing. Copies thereof shall be made available by the party submitting the documentary evidence, to any party to the hearing upon request.

(g) The case record, or any portion thereof, shall be available for inspection and copying by any party to the hearing at, prior to, or subsequent to the hearing upon request. Special procedures may be used for disclosure of medical and psychological records such as disclosure to a physician designated by the individual concerned.

(h) The DOL Hearing Officer shall, if feasible, encourage resolution of the dispute by conciliation at any time prior to the conclusion of the hearing.

§ 658.423 Decision of the DOL Hearing Officer.

(a) The DOL Hearing Officer may:

(1) Rule that there is a lack of jurisdiction over the case;

(2) Rule that the complaint has been withdrawn in writing;

(3) Rule that reasonable cause exists to believe that the request has been abandoned or that repeated requests for re-scheduling are arbitrary and for the purpose of unduly delaying or avoiding a hearing; or

(4) Render such other rulings as are appropriate to the issues in question. However, the Hearing Officer shall not have jurisdiction to consider the validity or constitutionality of ES regulations or of the Federal statutes under which they are promulgated.

(b) Based on the entire record including any evidence provided at the hearing, the DOL Hearing Officer shall prepare a written decision. The DOL Hearing Officer shall send a copy of the decision stating the findings and conclusions of law and fact and the reasons therefor to the complainant, the State office, the RA, the Administrator, and the Solicitor.

(c) The decision of the Hearing Officer shall be the final decision of the Secretary.

Subpart F—Discontinuation of Services to Employers by the Employment Service System

AUTHORITY: Wagner-Peyser Act of 1933, as amended, 29 U.S.C. 49 et seq., unless otherwise noted.

§ 658.500 Scope and purpose of subpart.

This subpart contains the regulations governing the discontinuation of services to employers by the employment service system.

§ 658.501 Informal resolution.

(a) Whenever a State agency receives a complaint filed under subpart E of this Part which alleges that an employer has violated ES regulations, and whenever a local office manger or higher State official has reason to believe that an employer has violated ES regulations, a State agency official shall attempt to informally resolve the issue with the employer. If the issue cannot be resolved within 30 calendar days, the State agency official shall refer the matter in writing to the State Director for formal investigation.

(b) The employer shall be notified in writing of the outcome of the State agency investigation. If the case arose through a complaint filed under the ES complaint system at subpart E of this Part, the complainant shall also be notified in writing of the outcome of the investigation. The notice shall also state that, if the complainant is not satisfied, the complainant may file a complaint with the RA. If the State Director determines that a violation of ES regulations has occurred, the employer shall be notified in writing of the determination, the reasons therefor, and that termination of all the ES services to the employer will be initiated in 30 calendar days unless the employer provides conclusive, documented evidence within the 30 day period that it is not in violation or that the violation has been corrected. Notices under this paragraph shall inform the employer that State agency personnel will be available to assist in resolving the dispute during the 30 day period.

§ 658.502 Discontinuation of services.

(a) If the issue has not been resolved within the 30 calendar days described in § 658.501 of this subpart, the State Director shall send a written notice to the employer that all services will be terminated in 15 calendar days unless within that period the employer requests a hearing by mailing a written request for hearing to the State Director, or unless within that period the employer provides conclusive, documented evidence that the violation has been corrected or that the violation does not exist.

(b) Unless otherwise provided in ES regulations, if the employer fails to request a hearing or has not given adequate evidence of correction or non-existence of the violation within the 15 calendar day period, all ES services to the employer shall be terminated until such time as the employer provides conclusive, documented evidence that the violation has been corrected or does not exist.

(c) If the employer makes a timely request for a hearing, the State agency shall follow the procedures set forth at § 658.415–416 of this Part.

Subpart G—Review and Assessment of State Agency Compliance With Employment Service Regulations

AUTHORITY: Wagner-Peyser Act of 1933, as amended, 29 U.S.C. 49 et seq.; 5 U.S.C. 301 et seq.

§ 658.600 Scope and purpose of subpart.

This subpart sets forth the regulations governing review and assessment of State agency compliance with the Employment Service regulations at 20 CFR Parts 601, 602, 603, 604, 620, 621, 651–658 and 29 CFR Part 8.

§ 658.601 State agency responsibility.

(a) Each State agency shall establish and maintain a State agency Self-Appraisal System pursuant to ETA standards, and shall use this system to evaluate and assess its ES program, and to assure its compliance with ES regulations.

(b) Each State Director and local office manager shall assure that their staffs know and carry out ES regulations, including regulations on performance standards and program emphases, and any corrective action plans imposed by the State agency or by the ETA.

(c) Each State Director shall assure that the State agency complies with its approved program budget plan.

(d) Each State Director shall assure to the maximum extent feasible the accuracy of data entered by the State agency into ETA required management information systems. Each State agency shall establish and maintain a data validation system pursuant to ETA instructions. The system shall review every local office at least once every four years. The system shall include the validation of time distribution reports and the review of data gathering procedures.

§ 658.602 ETA national office responsibility.

The ETA national office shall: (a) Monitor ETA regional offices' carrying out of ES regulations;

(b) From time to time, conduct such special reviews and audits as necessary to monitor ETA regional office and State agency compliance with ES regulations;

(c) Offer technical assistance to the ETA regional offices and State agencies in carrying out ES regulations and programs;

(d) Have reports validation surveys conducted in support of resource allocations;

(e) Develop tools and techniques for reviewing and assessing State agency performance and compliance with ES regulations; and

(f) Assign to a National Monitor Advocate the responsibility to:

(1) Develop and maintain monitoring and evaluating instruments for monitoring the delivery of services to migrant and seasonal farmworkers (MSFWs);

(2) Develop and maintain instruments for monitoring and assessing the ES complaint system set forth at Subpart E of this Part;

(3) Provide technical assistance to ETA regional office and State agency staffs for administering the ES complaint system; and

(4) As appropriate, participate in reviews of State agency performance and monitoring reports with respect to services for MSFWs and the ES complaint system.

§ 658.603 ETA regional office responsibility.

(a) The RA shall have responsibility for the regular review and assessment of State agency performance and compliance with ES regulations.

(b) The RA shall review and initially approve annual program budget plans for the State agencies within the region. In reviewing the program budget plans the RA shall consider relevant factors including the following:

(1) State agency compliance with ES regulations;

(2) State agency performance against the goals and objectives established in the previous year's program budget plan;

(3) The effect which economic conditions and other external factors considered by the ETA in the resource allocation process may have had or are expected to have on State agency performance;

(4) State agency adherence to national program emphasis; and

(5) The adequacy and appropriateness of the program budget plan for carrying out ES programs.

(c) The RA shall assess the overall performance of State agencies on an ongoing basis through desk reviews and the use of required reporting systems and other available information.

(d) As appropriate, RAs shall conduct or have conducted:

(1) Comprehensive on-site reviews of State agencies and their offices to review State agency organization, management, and program operations;

(2) Periodic performance reviews of State agency operation of ES programs to measure actual performance against the program budget plan, past performance, the performance of other State agencies, etc.;

(3) Audits of State agency programs to review State agency program activity and to assess whether the expenditure of grant funds has been in accordance with the approved budget. RAs may also conduct audits through other agencies or organizations or may require the State agency to have audits conducted;

(4) Validations of data entered into management information systems to assess;

(i) The accuracy of data entered by the State agencies into management information system;

(ii) Whether the State agencies' data validating and reviewing procedures conform to ETA instructions; and

(iii) Whether State agencies have implemented any corrective action plans required by the ETA to remedy deficiencies in their validation programs;

(5) Technical assistance programs to assist State agencies in carrying out ES regulations and programs; and

(6) Reviews to assess whether the State agency has complied with corrective action plans imposed by the ETA or by the State agency itself.

(e) The RA shall provide technical assistance to State agencies to assist them in carrying out ES regulations and programs;

(f) Each RA shall designate a Regional Monitor Advocate who shall:

(1) Have primary responsibility at the ETA regional level for monitoring the effectiveness of the ES complaint system set forth at Subpart E of this Part, apprising appropriate State and ETA officials of problems with respect to the complaint system, and providing technical assistance to State Monitor Advocates, as appropriate; and

(2) With respect to State agencies' services to MSFWs, provide input to regional reviews of State agency program budget plans, monitor and evaluate State agency services to MSFWs, and participate in on-site local office formal monitoring reviews, as appropriate.

§ 658.604 Assessment and evaluation of program performance data.

(a) State agencies shall compile program performance data required by ETA including statistical information on program operations.

(b) The ETA shall use the program performance data in assessing and evaluating whether the State agencies have complied with ES regulations and their State agency program budget plans.

(c) In assessing and evaluating program performance data, the ETA shall act in accordance with the following general principles:

(1) The fact that the program performance data from a State agency, whether overall or relative to a particular program activity, indicate poor program performance is not in itself a breach of ES regulations or of the State agency's responsibilities under its State agency program budget plan;

(2) Program performance data, however, may so strongly indicate that a State agency's performance is poor that the data may raise a presumption (prima facie case) that a State agency is violating ES regulations or the State agency program budget plan. In such cases, the ETA shall afford the State agency an opportunity to rebut the presumption of poor performance pursuant to the procedures at Subpart H of this Part.

(3) The ETA shall take into account that certain program performance data may measure items over which State agencies have direct or substantial control while other data may measure items over which the State agency has indirect or minimal control.

(i) Generally, for example, a State agency has direct and substantial control over the delivery of employment services such as referrals to jobs, job development contacts, applicant counseling and referrals to supportive services.

(ii) State agencies, however, have only indirect control over the outcome of services. State agencies, for example, cannot guarantee that an employer will hire a referred applicant, nor can they guarantee that the terms and conditions of employment will be as stated on a job order.

(iii) Outside forces, moreover, such as a sudden heavy increase in unemployment rates, a strike by State agency employees, or a severe drought or flood may skew the results measured by program performance data;

(4) The ETA shall consider a State agency's failure to keep accurate and complete program performance data required by ES regulations as a breach of the ES regulations.

§ 658.605 Communication of findings to State agencies.

(a) The RA shall inform State agencies in writing of the results of review and assessment activities and, as appropriate, shall discuss with the State Administrator and the State Director the impact or action required by ETA as a result of review and assessment activities.

(b) The ETA national office shall transmit the results of any review and assessment activities conducted by it to the RA, who shall send the information to the State agency.

(c) Whenever the review and assessment indicates a State agency violation

of ES regulations or of its State agency program budget plan, the RA shall follow the procedures set forth at Subpart H of this Part.

(d) RAs shall follow-up any corrective action plan imposed on a State agency under Subpart H of this Part by further review and assessment of the State agency pursuant to this subpart.

Subpart H—Federal Application of Remedial Action to State Agencies

AUTHORITY: Wagner-Peyser Act of 1933, as amended, 29 U.S.C. 49 et seq.; 5 U.S.C. 301 et seq.

§ 658.700 Scope and purpose of subpart.

This subpart sets forth the procedures which ETA shall follow when State agencies are not adhering to ES regulations.

§ 658.701 State agency violations of ES regulations.

It is the policy of the Employment and Training Administration (ETA) to receive information concerning alleged violations by State agencies of the ES regulations at 20 CFR Parts 601–604, 620, 621, and 651–658 and at 29 CFR Part 8 from any person or organization.

§ 658.702 Initial action by the RA.

(a) Whenever an RA discovers or is apprised of possible State agency violations of ES regulations by the review and assessment activities under subpart G of this Part, required reports, or complaints from individuals, organizations or employers which are filed with ETA after the exhaustion of State agency administrative remedies, the RA shall investigate the matter. If the matter concerns a possible violation of ES regulations by a local office, the RA may refer the matter to the State Director for investigation with instructions that the State Director report the results of the investigation to the RA within a specified time.

(b) When the RA review and/or the investigation is complete, the RA shall prepare written initial findings. If the RA determines that there is no probable cause to believe that a State agency has violated ES regulations, the RA need take no further action. If the RA determines that there is probable cause to believe that a State agency has violated ES regulations, the RA shall follow the procedures set forth in § 658.703 of this subpart.

§ 658.703 Disallowance of expenditures; corrective action plans.

Whenever the RA, in the written initial findings, finds probable cause to believe that a State agency has violated ES regulations, the RA shall send the findings to the State agency, giving the reasons therefor. The State agency shall have 20 working days to comment on the findings, or a longer period if the RA determines that such a longer period is appropriate. After the period elapses, the RA shall prepare written final findings. If, in the final findings, the RA determines that the State agency has not violated ES regulations, the RA need take no further action. If the RA determines that a State agency has violated ES regulations:

(a) If the matter involves the misspending of grant funds, the RA may issue a disallowance of the expenditure and may either demand repayment or withhold future funds in the amount in question. If the RA disallows costs, the RA shall send a written notice of disallowance by registered mail, to the State agency, giving the reasons for the disallowance, informing the State agency that the disallowance is effective immediately and that no more funds may be spent in the unallowed manner, and offering the State agency the opportunity to request a hearing pursuant to § 658.707 of this subpart. The offer, or the acceptance of an offer of a hearing, however, shall not stay the effectiveness of the disallowance.

(b) If the violation does not involve mis-spending of grant funds or the RA judges that the circumstances warrant other action:

(1) The RA shall notify the State agency by registered mail of the specific violation(s) and shall direct the State agency to implement a specific corrective action plan to correct all violations within a specified time. The specified time period shall commence with the date of signature on the registered mail receipt.

(2) When the time period provided for in paragraph (b)(1) of this section elapses, ETA staff shall review the State agency's efforts by follow-up visit or otherwise.

(3) If the RA determines that the State agency has corrected the violation(s), the RA need take no further action except to document that fact.

(4) If the State agency has not corrected the violation(s) and has not made good faith efforts and adequate progress to that end, the RA shall apply remedial actions to the State agency pursuant to § 658.704 of this subpart.

(5) If adequate progress has been made toward correcting the violation(s) so that it appears that the violation(s) will be fully corrected within a reasonable time period, the State agency shall be advised by registered mail of this conclusion, of remaining deficiencies, of further needed corrective action, and that all deficiencies must be corrected within a specified new time period beginning with the date of signature on the receipt.

(6) If the State agency has been given an additional time period pursuant to paragraph (b)(5) of this section, ETA staff shall review the State agency's efforts at the end of the time period by follow-up visit or otherwise. If the State agency has corrected the violation(s), no further action, except to document the fact, need be taken by the RA. If the State agency has not corrected the violation(s), the RA shall apply remedial actions to the State agency pursuant to § 658.704 of this subpart.

§ 658.704 Remedial actions.

If a State agency fails to carry out a corrective action plan imposed under § 658.703 of this subpart, the RA shall apply one or more of the following remedial actions to the State agency:

(a) Imposition of special reporting requirements for a specified period of time;

(b) Restrictions of obligational authority within one or more expense classifications;

(c) Implementation of specific operating systems or procedures for a specified time;

(d) Requirement of special training for State agency personnel;

(e) With the approval of the Assistant Secretary and after affording the State Administrator or State Director the opportunity to request a conference with the Assistant Secretary, elevation of specific decision making functions from the State Director to the RA and/or imposition of Federal staff in key State agency positions;

(f) Funding of the State agency on a quarterly or other short-term basis;

(g) With the approval of the Assistant Secretary and after affording the State Administrator or State Director the opportunity to request a conference with the Assistant Secretary, withholding of funds for a specific function or for a specific geographical area;

(h) Holding of public hearings in the State on the State agency's deficiencies;

(i) Disallowance of funds pursuant to § 658.703(a) of this subpart; or

(j) If the matter is a serious or a continual violation, formal designation of the State agency as out of compliance with ES regulations and initiation of decertification procedures against the State agency. The RA shall initiate decertification by notifying the State agency by registered mail that decertification may be forthcoming, stating the reasons therefor. Whenever such a notice is sent to a State agency, the RA shall prepare five indexed copies containing, in chronological order, all the documents pertinent to the case. One copy shall be retained. Three shall be sent to the ETA national office, and one shall be sent to the Solicitor of Labor, Attention: Associate Solicitor for Employment and Training.

§ 658.705 Decision to decertify.

(a) Upon receipt of a request for decertification, the Assistant Secretary for Employment and Training shall review the case and shall decide whether decertification is appropriate.

(b) If the Assistant Secretary decides that decertification is not appropriate, the Assistant Secretary, if appropriate, shall instruct that an alternate remedial action or actions be applied.

(c) If the Assistant Secretary decides that decertification is appropriate, the Assistant Secretary shall submit the case to the Secretary giving the reasons for the recommendation of decertification. The Secretary shall then decide whether decertification is appropriate or whether other remedial actions should be applied.

§ 658.706 Notice of Remedial Action.

(a) Whenever a decision has been made to apply a remedial action to a State agency, the RA, or the Secretary in cases of decertification, shall send a *Notice of Remedial Action* to the State agency by registered mail.

(b) If the remedial action is decertification, the notice shall state that the decertification will take effect in 30 calendar days unless the State agency requests a hearing in writing by filing the request for hearing pursuant to § 658.707 of this subpart with the Secretary within 30 calendar days of the State agency's receipt of the notice. If a timely request for hearing is filed, decertification shall be stayed pending the outcome of the hearing procedures.

(c) If the remedial action is other than decertification, the notice shall state that the remedial action shall take effect immediately. The notice shall also state that the State agency may request a hearing pursuant to § 658.707 of this subpart by filing a request in writing with the RA pursuant to § 658.707 of this subpart within 30 calendar days of the State agency's receipt of the notice. The offer of hearing, or the acceptance thereof, however, shall not stay the implementation of the remedial action.

(d) The *Notice of Remedial Action* shall set forth the reasons for the remedial action.

§ 658.707 Requests for hearings.

(a) Any State agency which received a *Notice of Remedial Action* under § 658.706 of this subpart or a notice of disallowance under § 658.703 of this subpart may request a hearing on the issue by filing a written request for hearing with the RA (or Secretary in cases of decertification) within 30 calendar days of receipt of the *Notice of Remedial Action* or notice of disallowance stating the reasons the State agency believes the bases of the decision to be wrong, and signed by the State Director or State Administrator.

(b) When an RA receives a request for hearing from a State agency, the RA shall make five indexed and tabulated copies of a file containing, in chronological order, all materials and correspondence relevant to the case. The RA shall retain one file and sent two copies of the appeal file to the ETA national office, one to the Solicitor of Labor, Attention: Associate Solicitor for Employment and Training, and one to the Chief Administrative Law Judge of the Department of Labor.

(c) In decertification cases, the Administrator shall send a copy of the file to the Chief Administrative Law Judge.

§ 658.708 Hearings.

(a) Upon receipt of a hearing file by the Chief Administrative Law Judge, the case shall be docketed and notice sent by registered mail, return receipt requested, to the Solicitor of Labor, Attention: Associate Solicitor for Employment and Training, the Administrator, the RA and the State Director. The notice shall set a time, place and date for a hearing on the matter and shall advise the parties that:

(1) They may be represented at the hearing;

(2) They may present oral and documentary evidence at the hearing;

(3) They may cross-examine opposing witnesses at the hearing; and

(4) They may request re-scheduling of the hearing if the time, place or date set are inconvenient.

(b) The Solicitor of Labor or the Solicitor's designee shall represent the Department at the hearing.

§ 658.709 Conduct of hearings.

(a) The hearing shall be conducted in accordance with Sections 5–8 of the Administrative Procedure Act, 5 U.S.C. 553 et seq.

(b) Technical rules of evidence shall not apply, but rules or principles designed to assure production of the most credible evidence available, and to subject testimony to test by cross-examination, shall be applied if necessary by the Hearing Officer conducting the hearing. The Hearing Officer may exclude irrelevant, immaterial or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties. Opportunity shall be given to refute facts and arguments advanced on either side of the issue. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record.

(c) The general provisions governing discovery as provided in the Rules of Civil Procedure for the United States District Court, Title V, 28 U.S.C., Rules 26 through 37, may be made applicable to the extent that the Hearing Officer concludes that their use would promote the proper advancement of the hearing.

(d) When a public officer is a respondent in a hearing in an official capacity and during its pendency dies, resigns, or otherwise ceases to hold office, the proceeding does not abate and the officer's successor is automatically substituted as a party. Proceedings following the substitution shall be in the name of the substituted party, but any misnomer not affecting the substantive rights of the parties shall be disregarded. An order of substitution may be entered at any time, but the omission to enter such an order shall not affect the substitution.

§ 658.710 Decision of the Hearing Officer.

(a) The Hearing Officer shall have jurisdiction to decide all issues of fact and related issues of law and to grant or deny appropriate motions, but shall not have jurisdiction to decide upon the validity of Federal statutes or regulations.

(b) The decision of the Hearing Officer shall be based on the hearing record, shall be in writing and shall state the factual and legal bases of the decision.

(c) Except when the case involves the decertification of a State agency, the decision of the Hearing Officer shall be the final decision of the Secretary.

(d) If the case involves the decertification of a State agency, the decision of the Hearing Officer shall contain a notice stating that, within 30 calendar days of the decision, the State agency or the Administrator may appeal to the Secretary by sending by registered mail, return receipt requested, a written appeal to the Secretary, care of the Hearing Officer who made the decision.

§ 658.711 Decision of the Secretary.

(a) Upon the receipt of an appeal to the Secretary, the Hearing Officer shall certify the record in the case to the Secretary, who may take additional evidence, provided time to rebut such new evidence is given to the opposing party, or who may make a decision to decertify or not on the basis of the hearing record.

(b) The decision of the Secretary shall be final, shall be in writing, and shall set forth the factual and legal bases for the decision.

Signed at Washington, D.C. this 19th day of January, 1977.

WILLIAM H. KOLBERG,
Assistant Secretary for Employment and Training.

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TUESDAY, JANUARY 25, 1977
PART IX



DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Consumer Affairs and Regulatory Functions

■

CONDOMINIUM DOCUMENTATION

Statement of Proposed Policies

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Consumer Affairs and Regulatory Functions

[Docket No. N-77-684]

CONDOMINIUM DOCUMENTATION

Statement of Proposed Policies

INTRODUCTION

In August, 1975, the U.S. Department of Housing and Urban Development (HUD) organized a Condominium Task Force composed of HUD, Veterans Administration (VA), Federal National Mortgage Association (FNMA) and Federal Home Loan Mortgage Corporation (FHLMC). This action was taken as a result of a Congressionally-mandated study of condominiums and cooperatives which HUD completed in 1975. The study had identified that a major problem confronting consumers, builders, lenders and others was a lack of uniformity in legal and underwriting policies for condominium mortgages insured, guaranteed, or purchased by the four Task Force members. The purpose of the Task Force was to maximize agreement on condominium requirements by the four organizations. It is hoped that the development of more uniform policies among the member organizations will facilitate the purchase, insurance or guarantee of condominium mortgages for those desiring to utilize the services of the member organizations, with resulting direct or indirect benefits for the public.

The U.S. Department of Housing and Urban Development, in its capacity as chair of the Condominium Task Force, publishes for public comment the Task Force's first major document: "Statement of Proposed Policies Relating to Condominium Documentation".

The members of the Task Force intend, through publication of these proposed policies, to reach the broadest possible spectrum of the public, and strongly encourage comment by all interested parties.

TASK FORCE APPROACH

The Task Force is organized into two standing committees. The first, the Legal Committee, deals with matters of legal significance pertaining to insuring, guaranteeing, or purchasing mortgages on condominium units. Most of the matters addressed in this initial statement relate to provisions usually contained in the condominium Decraration or equivalent recorded instrument. It is planned that the Legal Committee next consider issues arising from the application of the present requirements of the member organizations to resales of existing units.

The second committee, the Risk Determination Committee, is charged with seeking maximum agreement among the four members on such risk determination issues as appraisal requirements, architectural considerations and mortgage credit conditions.

It is contemplated that each committee will follow the same general process of issue analysis and development of proposed policies and that on the basis of preliminary agreements reached among the members, public comment will be sought. Following receipt of the comments the member organizations will reconsider the proposed policies and make such changes in their programs as they believe advisable. For example, if the comments do not suggest any sound reasons for not doing so, HUD intends to discontinue requiring use of its model forms for condominium organization. It is contemplated that this process will be an on-going mode of operation for the Task Force.

The applicable regulations and related publications of the Department of Housing and Urban Development and the Veterans Administration and the basic contracts and guides of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation should be consulted for a complete statement of the respective policies of the Task Force member organizations governing their approval of condominiums or unit mortgages.

STATEMENT OF PROPOSED POLICIES FOR CONDOMINIUM DOCUMENTATION

The Task Force considered those elements which should be included in the basic condominium instruments, primarily the Declaration, in order for those instruments to be acceptable to the participants.

The Statement of Proposed Policies represents the current consensus by the four member organizations as to many provisions of legal significance relating to condominium documentation; however, these provisions do not necessarily represent existing policies of the organizations.

This document is not a complete list of legal documentation policies for condominiums. Each member organization is willing to accept the proposed policies as maximum requirements for proposed condominiums or partially sold or completed condominiums where the documents are capable of being amended, leaving to each organization the right to accept a provision less stringent for both proposed or existing units. A condominium document that contains less stringent requirements, though, while acceptable to one organization, may not be acceptable to others. In addition to the proposed policies, each organization has companion policies in complementary areas.

The members also recognize that State laws differ as to the way they treat certain provisions and as to which documents must contain specific provisions. Therefore, the members agree that treatment of the provisions found in the Statement of Proposed Policies is subject to the law of the jurisdiction within which the condominium is located. The Task Force has kept in mind advances in State legislation and the development of a proposed Uniform Condominium Act by the National Conference of Commissioners on Uniform State Laws. The Task Force is also concerned with the issue of adequate disclosure of information to interested parties.

Comments are invited on any topic in the Statement of Proposed Policies or any other topic which falls within the jurisdiction of the Task Force. Suitable justification should be included.

Comment is particularly invited on the subject of condemnation and staged, phased, or expandable developments. Comments on insurance requirements for condominiums from the perspective of the mortgage holder, unit owner, and owners association are also invited.

Comments are also invited on what, if any, additional provisions should be contained in the basic organizational documentation for condominiums.

Comments received prior to April 1, 1977, will be considered by the Task Force members as they re-evaluate the proposed statement. Comments are to be sent to the Rules Docket Clerk, Department of Housing and Urban Development, Room 10141, Washington, D.C. 20410. Comments received will be distributed by HUD to all members of the Task Force.

STATEMENT OF PROPOSED POLICIES RELATING TO CONDOMINIUM DOCUMENTATION

1. Types of condominiums.
2. Estate of unit owner.
3. Condominium documentation:
(a) Compliance with local law; (b) Recordation; (c) Availability.
4. Property description.
5. Declarant's rights and restrictions:
(a) Acts and reserved rights which are usually unacceptable; (b) Reserved rights which are usually acceptable.
6. Transfer of control for single phased condominium regimes.
7. Owners association's rights and restrictions:
(a) Right of entry upon units and common elements; (b) Assessments:
(i) Levy and collection; (ii) Reserves and working capital; (iii) Priority of lien.
8. Unit owners' rights and restrictions:
(a) Obligation to pay expenses; (b) Ingress and egress of unit owners; (c) Easements for encroachments—units and common elements; (d) Right of first refusal; (e) Leasing restrictions.
9. First lien holders' rights:
(a) Notices of action; (b) Inspection of association books and records.
10. Amendment to documents.
11. Condemnation.
12. Rights of action.
13. Staged, phased or expandable developments.

1. TYPES OF CONDOMINIUMS

The following types of basic ownership arrangements are generally acceptable provided they are established in compliance with the condominium enabling statute of the applicable jurisdiction:

(a) Ownership of units by individual owners coupled with an undivided interest in all common elements.

(b) Ownership of units by individual owners coupled with an undivided interest in general common elements and specified limited common elements.

The agencies and corporations will consider for approval, on an individual case basis, an arrangement involving ownership of units by individual owners coupled with an undivided interest in the general common elements and/or limited common elements, with title to additional property for common use vested in an association of unit owners, where such a configuration of ownership is not precluded by the applicable condominium enabling statute. As to this type of ownership arrangement, in addition to compliance with the requirements of the organizations' respective condominium programs there must be compliance with the applicable requirements of the organizations' respective planned unit development (PUD) programs.

The above description of types of ownership arrangements are not intended to exclude other variations. Other forms of ownership may be acceptable, on an individual case basis, to any or all of the agencies and corporations.

2. ESTATE OF UNIT OWNER

The legal estate of each unit owner must generally be held in fee simple or acceptable leasehold estate. The acceptability of leasehold estates varies among the member organizations.

3. CONDOMINIUM DOCUMENTATION

(a) *Compliance with local law.* The declaration, by-laws and other regime enabling documentation shall conform to the condominium enabling statutes governing the establishment and maintenance of condominium regimes within the jurisdiction in which the condominium is located, and to all other laws which apply to each condominium.

(b) *Recordation.* The declaration and all amendments or modifications thereof shall be placed of record in the manner prescribed by the appropriate jurisdiction. If recording of plats, plans, by-laws or equivalent documents and all amendments or modifications thereof is the prevailing practice or is required by law within the jurisdiction where the project is located, then such documents shall be placed of record. If the by-laws are not recorded, then covenants, restrictions and other matters requiring record notice should be contained in the Declaration or equivalent document.

(c) *Availability.* During normal business hours or under other reasonable circumstances, the owners association shall have available for inspection by owners, lenders and prospective purchasers, current copies of the declaration, by-laws and other rules govering the operation of the condominium regime.

4. PROPERTY DESCRIPTION

The description of the units, the common elements, any recreational facilities and other amenities appurtenant to the condominium, and any limited common elements shall be clear and unambiguous and in conformity with the law of the jurisdiction where the project is located.

There must be no ambiguity concerning responsibility for maintenance and repair of any portion of the condominium.

5. DECLARANT'S RIGHTS AND RESTRICTIONS

Any rights reserved by the declarant shall be reasonable and consistent with the overall plan.

(a) *Acts and reserved rights which are usually unacceptable.* The following actions on the part of the declarant, the developer, an affiliate of the declarant, the sponsor of a project, or any other party, (collectively referred to as "declarant") usually would be unacceptable:

(1) Reserving the right to include in the condominium adjoining land without adequate restrictions assuring that its future improvement will be of compatible style, quality, size and cost.

(2) Retaining rights, without adequate restrictions, to change the style, floor plan, size and quality of future buildings to be constructed as part of the condominium projects.

(3) Binding the owners association to any contract or lease which is not bona fide or which is not commercially reasonable to the unit owners at the time entered into under the circumstances then prevailing.

(4) Binding the owners association to any of the following agreements unless the owners association shall have a right of termination thereof which is exercisable at any time without penalty upon not more than 90 days' notice to the other party thereto:

(a) Any management contract, employment contract or lease of recreational or parking areas or facilities;

(b) Any contract or lease, including franchises and licenses, to which a declarant is a party.

As used in the foregoing, "affiliate of a declarant" shall mean any person who controls, is controlled by, or is under common control with, a declarant. A person shall be deemed to control a declarant if that person is a partner, officer, director, or employee of the declarant or if that person directly or indirectly or acting in concert with one or more persons, or through one or more subsidiaries, owns, controls, or holds with power to vote, or holds proxies representing, more than 25 percent of the voting shares of the declarant, or controls in any manner the election of a majority of the directors of the declarant. A person shall be deemed to be controlled by a declarant if that declarant is a partner, officer, director, or employee of the person or if that declarant directly or indirectly or acting in concert with one or more persons or through one or more subsidiaries, owns, controls, or holds with power to vote, or holds proxies representing, more than 25 percent of the voting shares of that person, or controls in any manner the election of a majority of the directors of that person.

(b) *Reserved rights which are usually acceptable.* The following rights in the common elements may usually be reserved by the declarant for a reasonable period of time:

(1) Easement over and upon the common elements and upon lands appurtenant to the condominium for the purpose of completing improvements for which provision is made in the declaration, but only if access thereto is otherwise not reasonably available.

(2) Easement over and upon the common elements for the purpose of making repairs required pursuant to the declaration or contracts of sale made with unit purchasers.

(3) Right to maintain in the common area sales and management offices, model units, and advertising signs during the sales period of the condominium project, such items to be identified in the declaration.

6. TRANSFER OF CONTROL FOR SINGLE PHASED CONDOMINIUM REGIMES

Control of the owners association shall pass to the purchasers of units within the project not later than the earlier of the following: (a) 120 days after the earliest date on which the aggregate voting strength of all purchasers of units to whom title thereto has been conveyed shall comprise at least 75 percent of the total voting strength of the project, or (b) the last date of a specified period of time following the first conveyance of title to a unit within the project, such period of time to be a reasonable period for the particular project and to be subject to approval in each instance by the agency or corporation concerned. The maximum permissible length of the period of time referred to in (b) above usually will be from three to five years. Declarants should provide for and foster early participation of unit owners in the management of the project. The foregoing requirements apply only to transfers of control in single-phased condominium regimes.

7. OWNERS ASSOCIATION'S RIGHTS AND RESTRICTIONS

(a) *Right of entry upon units and common elements.* The owners association shall be granted a right of entry upon the unit premises and any limited common elements to effect emergency repairs and a reasonable right of entry thereupon to effect other repairs, improvements, or replacements, or maintenance deemed necessary.

(b) *Assessments.* (i) *Levy and collection.* The declaration or its equivalent shall describe the authority of the owners association to levy and enforce the collection of general and special assessments for common expenses and shall describe adequate remedies for failure to pay such common expenses. Allocation of common expenses shall be made on an equitable basis. The common expenses assessed against any unit, with interest, costs and reasonable attorney's fees shall be a continuing lien upon such unit until fully paid. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the owner of such unit at the time the assessment fell due. The personal obligation for delinquent assessments shall not pass to successors in title or interest unless assumed by them.

Common expenses as used in this Statement of Policies shall mean expenditures made or liabilities incurred by or on behalf of the owners association, together with any assessments for the creation and maintenance of reserves.

(ii) *Reserves and working capital.* There shall be established an adequate reserve fund for the periodic maintenance, repair and replacement of the common elements, which fund shall be maintained out of regular assessments for common expenses. Additionally, a working capital fund must be established for the initial months of the project operations equal to at least a two months' estimated common area charge for each unit.

(iii) *Priority of lien.* To the extent permitted by applicable law, the declaration shall provide for the subordination of any lien of the owners association for common expense charges and assessments to any first mortgage on any unit recorded prior to the date on which such lien of the association arises. Such a lien for common expense charges and assessments shall not be affected by any sale or transfer of a unit except that a sale or transfer pursuant to a foreclosure shall extinguish a subordinate lien for common expense charges and assess-

ments which became payable prior to such sale or transfer. Any such sale or transfer pursuant to a foreclosure shall not relieve the purchaser or transferee of a unit from liability for, nor the unit so sold or transferred from the lien of, any common expense charges thereafter becoming due.

8. UNIT OWNERS' RIGHTS AND RESTRICTIONS

(a) *Obligation to pay expenses.* The declaration or equivalent document shall establish a duty on each unit owner to pay a pro rata share of common expenses upon being assessed therefor by the owners association. Such a pro rata share shall be clearly described and reasonably related to the percentage of ownership, or value in relation to the overall condominium project, attributable to the unit owned.

(b) *Ingress and egress of unit owners.* There may not be any restriction upon any unit owner's right of ingress and egress to his or her unit. It is recommended that the declaration affirmatively provide for the right of ingress to and egress from such unit, with such right being perpetual and appurtenant to the unit ownership.

Appropriate cross-easements over common elements for unit owners shall be clearly set forth in the declaration.

(c) *Easements for encroachments—units and common elements.* In the event any portion of the common elements encroaches upon any unit or any unit encroaches upon the common elements or another unit as a result of the construction, reconstruction, repair, shifting, settlement or movement of any portion of the improvements, a valid easement for the encroachment and for the maintenance of the same shall exist so long as the encroachment exists. The declaration may provide, however, reasonable limits on the extent of any easement created by the overlap of units, common elements, and limited common elements resulting from such encroachments.

(d) *Right of first refusal.* The right of a unit owner to sell, transfer, or otherwise convey his or her unit in a condominium shall not be subject to any right of first refusal or similar restriction. It is recommended that the declaration affirmatively provide that a unit owner may transfer his or her unit free of any such restriction.

(e) *Leasing restrictions.* (i) All of the agencies and corporations agree that unit owners should be prohibited from leasing their units for less than 30 days, that all leases be in writing and subject to the declaration and by-laws.

(ii) FNMA, HUD and VA agree that unit owners should be prohibited from leasing their units for less than 30 days, but that no prohibition related to the term of a lease shall apply to a lease having a term exceeding six months. The restrictions in this paragraph are not required by FHLMC; however, FHLMC would not object to such restrictions.

(iii) FHLMC deals with items (i) and (ii) above by restricting use of units in condominium regimes through a requirement that at least 80 percent of all units within the regime must be sold to or occupied by unit owners as their primary, year-round residence.

9. FIRST LIEN HOLDERS' RIGHTS

(a) *Notices of action.* A holder or insurer of a first mortgage, upon written request to the owners association, (such request to state the name and address of such holder or insurer and the unit number), will be entitled to timely written notice of:

1. Any proposed amendment of the condominium instruments effecting a change in (1) the boundaries of any unit, (2) the undivided interest in the common elements appertaining to any unit or the liability for common expenses appertaining thereto, (3) the number of votes in the owners association appertaining to any unit or (4) the purposes to which any unit or the common elements are restricted;

2. Any proposed termination of the condominium regime;

3. Any condemnation or eminent domain proceeding affecting the condominium regime or any portion thereof;

4. Any significant damage or destruction to the common elements; and

5. Any default under the declaration or by-laws which gives rise to a cause of action against the owner of a unit subject to the mortgage of such holder or insurer, where the defalut has not been cured in 60 days.

(b) *Inspection of association books and records.* The declaration shall provide that the holder and insurer of the first mortgage on a unit shall be entitled, upon request, to: (a) inspect the books and records of the owners association during normal business hours and (b) require the preparation of and, if preparation is required, receive an annual audited financial statement of the owners association for the immediately preceding fiscal year, except that such statement need not be furnished earlier than 90 days following the end of such fiscal year. The declaration shall also provide that all unit owners have reasonable access to inspect the books, records and financial statements of the owners association, including annual audited financial statements when such are prepared.

10. AMENDMENT TO DOCUMENTS

(a) The consent of all unit owners shall be required for any amendment of condominium instruments effecting a change in (1) the boundaries of any unit, (2) the undivided interest in the common elements appertaining to the unit or the liability for common expenses appertaining thereto, (3) the number of votes in the owners association appertaining to the unit, or (4) the fundamental purposes to which any unit or the common elements are restricted.

(b) The consent of owners of units to which at least 80 percent of the votes of the owners association appertain and the approval of the eligible holders of first mortgages on units to which at least 75 percent of the votes of units subject to a mortgage appertain shall be required to terminate the condominium regime.

(c) Except as provided in (a) and (b) above, the agreement of owners of units to which at least 65 percent of the votes of the owners association appertain and the approval of the eligible holders of the first mortgages on units to which at least 51 percent of the votes of units subject to a mortgage appertain shall be required to amend the condominium declaration or its equivalent; provided, however, that (except as provided in (a) and (b) above) the instruments may otherwise be amended pursuant to specific criteria which are subject to the approval of the agencies and corporations concerned, in order to effectuate a satisfactory plan of expansion or phased development as expressly set forth in the declaration, or where the amendment, by reason of its subject matter, would not reasonably require agreement or approval by owners and first mortgage holders in the percentages provided above. In instances where the condominium instruments are permitted to be amended with less than the above-stated percentage of votes or approvals, the subject matter and manner of effecting such amendment, including the percentage of votes or approvals required, together with any other pertinent criteria, must be clearly and expressly stated in the declaration.

(d) For first mortgagees to be eligible holders under paragraphs (b) and (c) above, they must request notice in accordance with the provisions of Section 9(a).

(e) HUD and VA will accept, but do not require, the provisions of paragraphs (b) and (c) relating to mortgagee approval.

11. CONDEMNATION

The declaration should contain adequate provisions for fair and equitable disposition or distribution of condemnation proceeds, reallocation of interests and restoration and repair of the regime and units therein.

12. RIGHTS OF ACTION

The owners association and any aggrieved unit owner shall be granted a right of action against unit owners for failure to comply with the provisions of the declaration, by-laws, or equivalent documents, or with decisions of the owners association which are made pursuant to authority granted the owners association in such documents. Unit owners shall have similar rights of action against the owners association.

13. STAGED, PHASED, OF EXPANDABLE DEVELOPMENTS

The condominum documents shall disclose in clear and precise terms the proposed improvements and alternatives thereto, a time period for undertaking these improvements and the method and timing of transfer of control. (See also Sections 5 and 6.)

Issued at Washington, D.C., January 18, 1977.

CONSTANCE B. NEWMAN,
Assistant Secretary for Consumer Affairs and Regulatory Functions.

[FR Doc.77-2268 Filed 1-24-77;8:45 am]

federal register

TUESDAY, JANUARY 25, 1977

PART X

DEPARTMENT OF STATE

Office of Fisheries Affairs

APPLICATIONS FOR PERMITS TO FISH OFF THE COASTS OF THE UNITED STATES

Pursuant to Fishery Conservation and Management Act, 1976

PL-77-0001 YC
PL-77-0033

DEPARTMENT OF STATE

Office of Fisheries Affairs

[Public Notice 518]

FISHERY CONSERVATION AND MANAGEMENT ACT OF 1976

Applications for Permits To Fish Off the Coasts of the United Sates

The Fishery Conservation and Management Act of 1976 (Pub. L. 94-265) (the "Act") provides that no fishing shall be conducted by foreign fishing vessels in the Fishery Conservation Zone of the United States after February 28, 1977, except in accordance with a valid and applicable permit issued pursuant to section 204 of the Act.

The Act also requires that all applications for such permits be published in the FEDERAL REGISTER.

Applications for fishing beginning March 1, 1977, have been received from the Governments of Poland and the German Democratic Republic, and are published herewith.

Dated: January 18, 1977.

ALBERT L. ZUCCA,
Director, Office of Fisheries Affairs.

THE UNITED STATES OF AMERICA
DEPARTMENT OF COMMERCE
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

APPLICATION FOR VESSEL PERMITS TO FISH WITHIN THE FISHERY CONSERVATION ZONE OF THE UNITED STATES, OR FOR ANADROMOUS SPECIES OR CONTINENTAL SHELF FISHERY RESOURCES

PL-77-0001 YC

DATE 1-3-77 APPLICATION NO. PL-77-0033
for use of issuing Officer

In accordance with the provision of Section 204 of the Fishery Conservation and Management Act of 1976, (16 U.S.C. 1801-1382), and the governing international fisheries agreement entered into with the Government of the United States of America, which entered into force on _____, date

the government (or competent authority) of Poland

hereby submits this application for permits for fishing vessels under its jurisdiction to fish within the fishery conservation zone of the United States, or beyond that zone for anadromous species or Continental Shelf fishery resources subject to the jurisdiction of the United States.

The following information is submitted in support of this application (Use additional sheets as required).

A completed Fishing Vessel Identification Form for each permit that is requested; and a compilation of data contained in questions 5 and 20 in the attached Fishing Vessel Identification Form.

Submitted January 3, 1977 (Date)

Jozef Soldaczuk
Signature of Authorized Official

Economic Counselor
Title

PL-77-0001 to PL-77-0012

SUMMARY OF APPLICATION FOR FISH QUOTA FOR 1977

NORTH EAST PACYFIC *

STATE : P O L A N D

No	Type of Vessel	Number of Vessel	Hake	Jack makrel	Pollock	Rock -fish	Atkamakrel	Cod	Plaice
1.	Stern trawler B-22	3	5.000	2.000	6.000	1.500	1.500	1.550	3.000
2.	Stern trawler B-419	2	5.000	2.000	3.000	750	1.000	650	1.500
3.	Stern trawler B-414	2	4.000	1.500	2.500	550	900	600	1.300
4.	Stern trawler B-418	3	9.000	3.000	6.000	1.500	1.800	1.500	3.000
5.	Stern-trawler B-417	2	3.000	1.500	2.500	700	800	700	1.200
	Total :	12	26.000	10.000	20.000	5.000	6.000	5.000	10.000

*/ Includring California - Washington, Gulf of Alaska, Berring Sea and Aleutian Islands

PL-77-0001

16. Navigation Equipment: Loran C ( ), Loran A (X), Omega ( ).
Decca (X), Navsat ( ), Radar (X), Fathometer (X).
Other _____

17. Cargo Capacity (MT)

		Cargo Space Number	Name
Salted Fish			
	Freezer	3	I, II, III
Fresh Fish			
	Dry Hold	1	IV
Frozen Fish 870,3	Tanks	4	16SB, 16BB, 17SB, 17BB
Fish Meal 235,0	Other		
Other Fish oil 54			

19. Processing Equipment (Indicate daily capacity,MT)
Line production: Baader - 188 20 t per/day
Baader - 181 15 t per/day
Baader - 150 40 t per/day
Fish meal F.M. - 35 35 t per/day raw met.
Fish oil De Laval 0,5 t per/day
Plate freezers /units 4/ 30 t per/day
20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species	Contemplated Catch (MT)	Gear to be Used
NE Pacyfik	1977	Hake	1.500 ton	Midwater otter trawl
		Jack Mackerel	500 ton	
		Pollock	2.000 ton	Bottom otter trawl
		Attka Mackerel	500 ton	
		Rookfish	500 ton	
		Plaice	1.000 ton	
		Cod	600 ton	

21. Name and Address of Agent appointed to receive any legal process issued in the United States:
Amerpol International Inc. Official Representative
Two World Trade Center, Irenеusz Wrzesiniewski
Suite 2222, New York, N.Y. 10048 Fisheries Attache
Polish Embassy Office
New York

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

Permit Period Application No. PL-77-0001
Applied For: 1977 For Use of Issuing Office

State: P O L A N D

1. Name of Vessel LEPUS
2. Vessel No.: Hull No. GDY-325 Registration No. 44162
3. Name and Address of Charterer
Name FISHING SERVICE ENTERPRISE
Address GDYNIA
Z. W. M. 10
Cable Address
Dalmor - Gdynia
4. Homeport and State of Registry: GDYNIA
5. Type of Vessel stern trawler, B-22
6. Tonnage (Gross) 2691 (Net) 1069
7. Length 87,96 M. 8. Breadth 14,52 M. 9. Draft 5,60 M.
10. Horsepower 2500 shp. 11. Maximum Speed 13,0 kt.
11. Propulsion: Diesel (X), Steam ( ), Diesel/Electric ( ),
Other
13. Date Built 1969
14. Number and Nationality of Personnel 100 Poles
Officers 18 Crew 82 Other (Specify)
15. Communications: VHF-FM (X), AM/SSB, Voice (X). Telegraphy (X).
Other
International Radio Call Sign SQAD
Radio Frequencies Monitored 500 KHz
2506 KHz
Other Working Frequencies
Schedule 20.00 - 22.00 on the zone times

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

PL-77-0002

Permit Period Applied For: 1977

Application No. PL-77-0002 For Use of Issuing Office

State: POLAND

1. Name of Vessel LYRA
2. Vessel No.: Hull No. GDY-323 Registration No. 44147
3. Name and Address of Owner
   Name DEEP SEA FISHERY AND FISHING SERVICE ENTERPRISE
   Address GDYNIA Z. W. M. 10
   Cable Address Dalmor - Gdynia
   Name and Address of Charterer
4. Homeport and State of Registry: GDYNIA
5. Type of Vessel stern trawler, B-22
6. Tonnage (Gross) 2687 (Net) 1066
7. Length 87,96 M. 8. Breadth 14,52 M. 9. Draft 5,60 M.
10. Horsepower 2.500 shp. 11. Maximum Speed 13 kt.
11. Propulsion: Diesel (x), Steam ( ), Diesel/Electric ( ),
    Other
13. Date Built 1968
14. Number and Nationality of Personnel 100 Poles
    Officers 18 Crew 82 Other (Specify)
15. Communications: VHF-FM (x), AM/SSB, Voice (x), Telegraphy (x),
    Other
    International Radio Call Sign SPYZ
    Radio Frequencies Monitored 500 kHz
    Other Working Frequencies 2506 kHz
    Schedule 20,00 - 22,00 on the zone times
16. Navigation Equipment: Loran C ( ), Loran A (X), Omega (X), Decca (X), Navsat ( ), Radar (X), Fathometer (X), Other
17. Cargo Capacity (MT)

		18. Cargo Space Number	Name
Salted Fish	Freezer	3	I, II, III
Fresh Fish	Dry Hold	1	IV
Frozen Fish 870,3	Tanks	4	16SB,16BB,17SB,17BB
Fish Meal 235	Other		
Other Fish oil 54			

19. Processing Equipment (Indicate daily capacity,MT)
    Line production: Baader - 188 20 t per/day
    Baader - 150 40 t per/day
    Baader - 99 50-60 t per/day
    Fish meal F.M. - 35 35 t per/day raw met.
    Fish oil De Laval 0,5 t per/day
    Plate freezers /unite 4/ 30 t per/day
20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species	Contenplated Catch (MT)	Gear to be Used
NE Pacyfik	1977	Hake	1.500 ton	Midwater otter trawl
		Jack Mackerel	500 ton	Bottom otter trawl
		Pollock	2.000 ton	
		Attka Mackerel	500 ton	
		Rockfish	500 ton	
		Plaice	1.000 ton	
		Cod	600 ton	

21. Name and Address of Agent appointed to receive any legal process issued in the United States:
    Amerpol International Inc. Official Reprezentative
    Two World Trade Center, Ireneusz Wrześniewski
    Suite 2222, New York, N.Y. 10048

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

PL-77-0003

Permit Period Applied For: 1977

Application No. PL-77-0003 For Use of Issuing Office

State: POLAND

1. Name of Vessel TUCANA
2. Vessel No.: Hull No. GDY-328 Registration No. 44176
3. Name and Address of Owner
   Name DEEP SEA FISHERY AND FISHING SERVICE ENTERPRISE
   Address GDYNIA Z. W. M. 10
   Cable Address Dalmor - Gdynia
   Name and Address of Charterer
4. Homeport and State of Registry: GDYNIA
5. Type of Vessel stern trawler, B-22
6. Tonnage (Gross) 2691 (Net) 1069
7. Length 87,94 M. 8. Breadth 14,51 M. 9. Draft 5,60 M.
10. Horsepower 2,500 shp. 11. ~~Maximum~~ Speed 14,1 kt.
11. Propulsion: Diesel (x), Steam ( ), Diesel/Electric ( ),
    Other
13. Date Built 1972
14. Number and Nationality of Personnel 100 Poles
    Officers 18 Crew 82 Other (Specify)
15. Communications: VHF-FM (x), AM/SSB, Voice (x), Telegraphy (X),
    Other
    International Radio Call Sign SQDN
    Radio Frequencies Monitored 500 kHz
    Other Working Frequencies 2506 kHz
    Schedule 20,00 - 22,00 on the zone times
16. Navigation Equipment: Loran C ( ), Loran A (X), Omega ( ), Decca (X), Navsat ( ), Radar (X), Fathometer (X), Other
17. Cargo Capacity (MT)

		18. Cargo Space Number	Name
Salted Fish	Freezer	3	I, II, III
Fresh Fish	Dry Hold	1	IV
Frozen Fish 870,3	Tanks	4	16SB,16BB,17SB,17BB.
Fish Meal 235	Other		
Other Fish oil 54			

19. Processing Equipment (Indicate daily capacity,MT)
    Line production: Baader - 188 20 t per/day
    ~~Baader - 181 15 t per/day~~
    ~~Baader - 150 40 t per/day~~
    Fish meal F.M. - 35 35 t per/day raw met.
    Fish oil De Laval 0,5 t per/day
    Plate freezers /unite 4/ 30 t per/day
20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species	Contenplated Catch (MT)	Gear to be Used
NE Pacyfik	1977	Hake	2.000 ton	Midwater otter trawl
		Jack Mackerel	1.000 ton	Bottom ottertrawl
		Pollock	2.000 ton	
		Attka Mackerel	500 ton	
		Rockfish	500 ton	
		Plaice	1.000 ton	
		Cod	350 ton	

21. Name and Address of Agent appointed to receive any legal process issued in the United States:
    Amerpol International Inc. Official Reprezentative
    Two World Trade Center, Ireneusz Wrześniewski
    Suite 2222, New York, N.Y. 10048

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

PL-77-0004

Permit Period Applied For: 1977

Application No. PL-77-0004 For Use of Issuing Office

State: POLAND

1. Name of Vessel PERSEUS
2. Vessel No.: Hull No. GDY-332 Registration No. 44191
3. Name and Address of Owner
   Name DEEP SEA FISHERY AND FISHING SERVICE ENTERPRISE
   Address GDYNIA
   Z. W. M. 10
   Cable Address Dalmor - Gdynia
   Name and Address of Charterer
4. Homeport and State of Registry: GDYNIA
5. Type of Vessel stern trawler, B-419
6. Tonnage (Gross) 2655 (Net) 1128
7. Length 88,14 M. 8. Breadth 15,03 M. 9. Draft 5,60 M.
10. Horsepower 3.600 shp. 11. Maximum Speed 15,4 kt.
11. Propulsion: Diesel ( ), Steam ( ), Diesel/Electric ( ), Other
13. Date Built 1973
14. Number and Nationality of Personnel 85 Poles
    Officers 16 Crew 69 Other (Specify)
15. Communications: VHF-FM (x), AM/SSB, Voice (x), Telegraphy (x), Other
    International Radio Call Sign SQDW
    Radio Frequencies Monitored 500 kHz
    Other Working Frequencies 2506 kHz
    Schedule 20,00 - 22,00 on the zone times
16. Navigation Equipment: Loran C ( ), Loran A (X), Omega ( ), Decca (x), Navsat ( ), Radar (x), Fathometer (x), Other
17. Cargo Capacity (MT)

Salted Fish	
Fresh Fish	
Frozen Fish	890
Fish Meal	192,4
Other Fish oil	35

18. Cargo Space

Number		Name
Freezer	3	I, II, III
Dry Hold	1	IV
Tanks	3	1BB, 2BB, 3SB
Other		

19. Processing Equipment (Indicate daily capacity,MT)

Line production: 2 x Baader - 188		20 t per/day
Baader -181		15 t per/day
Baader - 150		40 t per/day
Fish meal	F.M. - 35	35 t per/day raw mat.
Fish oil	De Laval	0,5 t per/day
Plate freezers /units 4/		35 t per/day

20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species	Contenplated Catch (MT)	Gear to be Used
NE Pacyfik	1977	Hake	3.000 ton	Midwater otter trawl
		Jack Mackerel	1.000 ton	Bottom otter trawl
		Pollock	1.000 ton	
		Attka Mackerel	500 ton	
		Rockfish	500 ton	
		Plaice	500 ton	
		Cod	300 ton	

21. Name and Address of Agent appointed to receive any legal process issued in the United States:
    Amerpol International Inc. Official Reprezentative
    Two World Trade Center, Ireneusz Wrześniewski
    Suite 2222, New York, N.Y.10048

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

PL-77-0005

Permit Period Applied For: 1977

Application No. PL-77-0005 For Use of Issuing Office

State: POLAND

1. Name of Vessel DENEBOLA
2. Vessel No.: Hull No. GDY-333 Registration No. 44192
3. Name and Address of Owner
   Name DEEP SEA FISHERY AND FISHING SERVICE ENTERPRISE
   Address GDYNIA
   Z. W. M. 10
   Cable Address Dalmor - Gdynia
   Name and Address of Charterer
4. Homeport and State of Registry: GDYNIA
5. Type of Vessel stern trawler, B-419
6. Tonnage (Gross) 2653,74 (Net) 1127,6
7. Length 88,22 M. 8. Breadth 15,03 M. 9. Draft 5,60 M.
10. Horsepower 3.600 shp. 11. Maximum Speed 15,4 kt.
11. Propulsion: Diesel (X), Steam ( ), Diesel/Electric ( ), Other
13. Date Built 1974
14. Number and Nationality of Personnel 85 Poles
    Officers 16 Crew 69 Other (Specify)
15. Communications: VHF-FM (x), AM/SSB, Voice (x), Telegraphy (x), Other
    International Radio Call Sign SQDT
    Radio Frequencies Monitored 500 kHz
    Other Working Frequencies 2506 kHz
    Schedule 20,00 - 22,00 on the zone times
16. Navigation Equipment: Loran C ( ), Loran A (X), Omega ( ), Decca (x), Navsat ( ), Radar (x), Fathometer (x), Other
17. Cargo Capacity (MT)

Salted Fish	
Fresh Fish	
Frozen Fish	890
Fish Meal	192,4
Other Fish oil	35

18. Cargo Space

Number		Name
Freezer	3	I, II, III
Dry Hold	1	IV
Tanks	3	1BB, 2BB, 3SB
Other		

19. Processing Equipment (Indicate daily capacity,MT)

Line production: Baader - 188		20 t per/day
Baader -181		15 t per/day
Baader - 189		35 t per/day
Fish meal	F.M. - 35	35 t per/day raw mat.
Fish oil	De Laval	0,5 t per/day
Plate freezers /units 4/		35 t per/day

20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species	Contenplated Catch (MT)	Gear to be Used
NE Pacyfik	1977	Hake	2.000 ton	Midwater otter trawl
		Jack Mackerel	1.000 ton	Bottom otter trawl
		Pollock	2.000 ton	
		Attka Mackerel	500 ton	
		Rockfish	250 ton	
		Plaice	1.000 ton	
		Cod	350 ton	

21. Name and Address of Agent appointed to receive any legal process issued in the United States:
    Amerpol International Inc. Official Reprezentative
    Two World Trade Center, Ireneusz Wrześniewski
    Suite 2222, New York, N.Y.10048.

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

PL-77-0006

Permit Period Applied For: 1977

Application No. PL-77-0006 For Use of Issuing Office

State: POLAND

1. Name of Vessel POLLUX
2. Vessel No.: Hull No. GDY-336 Registration No. 440220
3. Name and address of Owner
   Name DEEP SEA FISHERY AND FISHING SERVICE ENTERPRISE
   Address GDYNIA
   Z. W. M. 10
   Cable Address
   Dalmor - Gdynia
   Name and Address of Charterer
4. Homeport and State of Registry: GDYNIA
5. Type of Vessel stern trawler, B-414
6. Tonnage (Gross) 2584,26 (Net) 1069,6
7. Length 89,01 M. 8. Breadth 15,03 M. 9. Draft 5,60 M.
10. Horsepower 3600 shp. 11. ~~Maximum~~ Speed 15,4 kt.
11. Propulsion: Diesel (X), Steam ( ), Diesel/Electric ( ),
    Other
13. Date Built 1976
14. Number and Nationality of Personnel 85 Poles
    Officers 16 Crew 69 Other (Specify)
15. Communications: ~~VHF-FH (X), AM/SSB~~, Voice (X), Telegraphy (X),
    Other
    International Radio Call Sign SQGL
    Radio Frequencies Monitored 500 kHz
    Other Working Frequencies 2506 kHz
    Schedule 20,00 - 22,00onthe zone times

16. Navigation Equipment: Loran C ( ), Loran A (X), Omega (X), Decca (X), Navsat ( ), Radar (X), Fathometer (X), Other

17. Cargo Capacity (MT)

Salted Fish			
Fresh Fish			
Frozen Fish	792,4		
Fish Meal	234		
Other Fish oil	55		

18. Cargo Space

Number	Name
Freezer 2	I, II
Dry Hold 1	III
Tanks 2	Nr 1, Nr 2
Other	

19. Processing Equipment (Indicate daily capacity,MT)

Line production:	Baader - 188	20 t per/day
	~~Baader - 121~~	~~15 t per/day~~
	Baader - 189	35 t per/day
Fish meal	F.M. - 50	50 t per/day raw mat.
~~Fish oil~~	~~De Laval~~	~~0,5 t per/day~~
Plate freezers /units 5/		45 t per/day

20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species	Contenplated Catch (MT)	Gear to be Used
NE Pacyfik	1977	Hake	3.000 ton	Midwater otter trawl
		Jack Mackerel	1.000 ton	Bottom otter trawl
		Pollock	1.000 ton	
		Attka Mackerel	500 ton	
		Rockfish	250 ton	
		Plaice	500 ton	
		Cod	300 ton	

21. Name and Address of Agent appointed to receive legal process issued in the United States:

Amerpol International Inc. Official Reprezentative
Two World Trade Center, Ireneusz Wrześniewski
Suite 2222, New York, N.Y.10048

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

PL-77-0007

Permit Period Applied For: 1977

Application No. PL-77-0007 For Use of Issuing Office

State: POLAND

1. Name of Vessel GRINWAL
2. Vessel No.: Hull No. SWI - 210 Registration No. 440200
3. Name and Address of Owner
   Name DEEP SEA FISHING COMPANY "ODRA"
   Address 72-602 Swinoujście
   Jana Sołtana 1
   Cable Address
   Odra - Swinoujście
   Name and Address of Charterer
4. Homeport and State of Registry: Swinoujście
5. Type of Vessel stern trawler, B-418
6. Tonnage (Gross) 2475 (Net) 1030
7. Length 88,96 M. 8. Breadth 15,03 M. 9. Draft 6,30 M.
10. Horsepower 2700 shp. 11. Maximum Speed 13,5 kt.
11. Propulsion: Diesel (X), Steam ( ), Diesel/Electric ( ),
    Other
13. Date Built 1973
14. Number and Nationality of Personnel 80 Poles
    Officers 16 Crew 64 Other (Specify)
15. Communications: VHF-FH (X), AM/SSB, Voice (X), Telegraphy (X),
    Other
    International Radio Call Sign SOBZ
    Radio Frequencies Monitored 500 kHz
    Other Working Frequencies 2506 kHz
    Schedule 08,00 - 12,00, 20,00 - 22,00 on the zone times

16. Navigation Equipment: Loran C ( ), Loran A (X), Omega (X), Decca (X), Navsat ( ), Radar (X), Fathometer (X), Other

17. Cargo Capacity (MT)

Salted Fish			
Fresh Fish			
Frozen Fish	900		
Fish Meal	160		
Other Fish oil	35		

18. Cargo Space

Number	Name
Freezer 2	1, 2
Dry Hold 1	
Tanks 3	13, 14, 15
Other	

19. Processing Equipment (Indicate daily capacity,MT)

Baader-33/unit 1/-140 fish/min, filleting line B-181, B-47, Trio- 4-10 tons/day, filleting line B-188, B-413, B-47/units 2/-5-21 tons/day. Plate freezers /units 5/ - 30 tons/day. Fish meal and oil plant F.M.-25, 25 tons/day raw mat.

20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species	Contenplated Catch (MT)	Gear to be Used
NE Pacyfik	1977	Hake	3.000 ton	Midwater otter trawler
		Jack Mackerel	1.000 ton	Bottom otter trawl
		Pollock	2.000 ton	
		Rookfish	500 ton	
		Attka Mackerel	600 ton	
		Cod	500 ton	
		Plaice	1.000 ton	

21. Name and Address of Agent appointed to receive any legal process issued in the United States:

Amerpol International Inc. Official Reprezentative
Two World Trade Center, Ireneusz Wrześniewski
Suite 2222, New York, N.Y.10048

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

PL-77-0008

Permit Period Applied For: 1977

Application No. PL-77-0008 For Use of Issuing Office

State: POLAND

1. Name of Vessel GARNELA
2. Vessel No.: Hull No. SWI - 208 Registration No. 440173
3. Name and Address of Owner / Name and Address of Charterer
   Name: DEEP SEA FISHING COMPANY "ODRA"
   Address: 72-602 Swinoujście
   Jana Sołtana 1
   Cable Address: Odra - Swinoujście
4. Homeport and State of Registry: Swinoujście
5. Type of Vessel stern trawler, B-418
6. Tonnage (Gross) 2501 (Net) 1066
7. Length 88,74 M. 8. Breadth 15,03 M. 9. Draft 6,30 M.
10. Horsepower 2700 shp. 11. Maximum Speed 13,5 kt.
11. Propulsion: Diesel (X), Steam ( ), Diesel/Electric ( ), Other
13. Date Built 1971
14. Number and Nationality of Personnel 80 Poles
    Officers 16 Crew 64 Other (Specify)
15. Communications: VHF-FM (X), AM/SSB, Voice (X), Telegraphy (X), Other
    International Radio Call Sign SQBB
    Radio Frequencies Monitored 500 KHz
    Other Working Frequencies 2506 kHz
    Schedule 08.00-12.00, 20.00-22.00 on the zone times
16. Navigation Equipment: Loran C ( ), Loran A (X), Omega (X), Decca (X), Navsat ( ), Radar (X), Fathometer (X), Other
17. Cargo Capacity (MT)

		18. Cargo Space Number	Name
Salted Fish		Freezer 2	1, 2
Fresh Fish		Dry Hold 1	
Frozen Fish	900	Tanks 3	13, 14, 15
Fish Meal	160	Other	
Other	Fish oil 35		

19. Processing Equipment (Indicate daily capacity,MT)
    Baader-33/unit 1/- 140 fish/min, filleting line B-181, B-47, Trio- 4-10tons/day, filloting line B-188, B-421, B-47/units 2/- 5-21 tons/day. Plate freezers/units 4/-30 tons/day. Fish meal and oil plant F.M.-25, 25 tons/day raw mat.
20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species	Contenplated Catch (MT)	Gear to be Used
NE Pacyfik	1977	Hake	3.000 ton	Midwater otter trawl
		Jack Mackerel	1.000 ton	Bottom otter trawl
		Pollock	2.000 ton	
		Rookfish	500 ton	
		Attka Mackerel	600 ton	
		Cod	500 ton	
		Plaice	1.000 ton	

21. Name and Address of Agent appointed to receive any legal process issued in the United States:
    Amerpol International Inc. Official Reprezentative
    Two World Trade Center, Ireneusz Wrześniewski
    Suite 2222, New York, N.Y.10048

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

PL-77-0009

Permit Period Applied For: 1977

Application No. PL-77-0009 For Use of Issuing Office

State: POLAND

1. Name of Vessel WALEN
2. Vessel No.: Hull No. SWI - 209 Registration No. 440178
3. Name and Address of Owner / Name and Address of Charterer
   Name: DEEP SEA FISHING COMPANY "ODRA"
   Address: 72-602 Swinoujście
   Jana Sołtana 1.
   Cable Address: Odra - Swinoujście
4. Homeport and State of Registry: Swinoujście
5. Type of Vessel stern trawler, B-418
6. Tonnage (Gross) 2475 (Net) 1030
7. Length 88,96 M. 8. Breadth 15,03 M. 9. Draft 6,30 M.
10. Horsepower 2700 shp. 11. Maximum Speed 13,5 kt.
11. Propulsion: Diesel (X), Steam ( ), Diesel/Electric ( ), Other
13. Date Built 1973
14. Number and Nationality of Personnel 80 Poles
    Officers 16 Crew 64 Other (Specify)
15. Communications: VHF-FM (X), AM/SSB, Voice (X), Telegraphy (X), Other
    International Radio Call Sign SQDI
    Radio Frequencies Monitored 500 kHz
    Other Working Frequencies 2506 kHz
    Schedule 08.00-12.00, 20.00-22.00 on the zone times
16. Navigation Equipment: Loran C ( ), Loran A (X), Omega (X), Decca (X), Navsat ( ), Radar (X), Fathometer (X), Other
17. Cargo Capacity (MT)

		18. Cargo Space Number	Name
Salted Fish		Freezer 2	1, 2
Fresh Fish		Dry Hold 1	
Frozen Fish	900	Tanks 3	13, 14, 15
Fish Meal	160	Other	
Other	Fish oil 35		

19. Processing Equipment (Indicate daily capacity,MT)
    Baader-33/unit 1/- 140 fish/min, filleting line B-181, B-47, Trio- 4-10 tons/day, filleting line B-188, B-413, B-47/units 2/- 5-21 tons/day. Plate freezers /units 5/- 30 tons/day, Fish meal and oil plant F.M.-25, 25 tons/day raw mat.
20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species	Contenplated Catch (MT)	Gear to be Used
NE Pacyfik	1977	Hako	3.000 ton	Midwater otter trawl
		Jack Mackerel	1.000 ton	Bottom otter trawl
		Pollock	2.000 ton	
		Rockfish	500 ton	
		Attka Mackerel	600 ton	
		Cod	500 ton	
		Plaice	1.000 ton	

21. Name and Address of Agent appointed to receive any legal process issued in the United States:
    Amerpol International Inc. Official Reprezentative
    Two World Trade Center, Ireneusz Wrześniewski
    Suite 2222, New York, N.Y.10048.

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

PL-77-0010

Permit Period Applied For: 1977

Application No. [illegible] For Use of Issuing Office

State: POLAND

1. Name of Vessel WŁÓCZNIK
2. Vessel No.: Hull No. SWI - 225 Registration No. 440207
3. Name and Address of Owner / Name and Address of Charterer

Name DEEP SEA FISHING COMPANY "ODRA"

Address 72-602 Swinoujście
Jana Sołtana 1.

Cable Address
Odra - Swinoujście

4. Homeport and State of Registry: Swinoujście
5. Type of Vessel stern trawler, B-414
6. Tonnage (Gross) 2584 (Net) 1069
7. Length 88,56 M. 8. Breadth 15,02 M. 9. Draft 5,60 M.
10. Horsepower 3600 shp. 11. Maximum Speed 15 kt.
11. Propulsion: Diesel (x), Steam ( ), Diesel/Electric ( ),
Other
13. Date Built 1975
14. Number and Nationality of Personnel 78 Poles
Officers 16 Crew 62 Other (Specify)
15. Communications: VHF-FM (x), AM/SSB, Voice (x), Telegraphy (x),
Other
International Radio Call Sign SQDC
Radio Frequencies Monitored 500 kHz
Other Working Frequencies 2506 kHz
Schedule 08.00-12.00, 20.00-22.00 on the zone times

PL-77-0010

16. Navigation Equipment: Loran C ( ), Loran A (x), Omega (x), Decca (x), Navsat ( ), Radar (x), Fathometer (x), Other

17. Cargo Capacity (MT)		18. Cargo Space Number	Name
Salted Fish	Freezer	2	1, 2
Fresh Fish	Dry Hold	1	
Frozen Fish 800	Tanks	2	1t, 2t
Fish Meal 180	Other	-	
Other Fish oil 40			

19. Processing Equipment (Indicate daily capacity,MT)
Filleting line Baader-181, Trio- 4-10 ton/day, filleting line B-188, Techmet OFD-1/units 2/- 5-21 tons/day, filleting line B-189, Techmet OFD-1/units 2/- 5-21 tons/day, B-694/unit 1/, B-33/unit 1/- 140 fisch/min.
Plate freezers /units 5/- 45 tons/day.
Fish meal and oil plant F.M.-50, - 50 tons/day raw mat.

20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species	Contenplated Catch (MT)	Gear to be Used
NE Pacyfik	1977	Hake	1.000 ton	Midwater otter trawl
		Jack Mackerel	500 ton	Bottom otter trawl
		Pollock	1.500 ton	
		Rockfish	300 ton	
		Attka Mackerel	400 ton	
		Cod	300 ton	
		Plaice	800 ton	

21. Name and Address of Agent appointed to receive any legal process issued in the United States:

Amerpol International Inc. Official Reprezentative
Two World Trade Center, Ireneusz Wrześniewski
Suite 2222, New York, N.Y. 10048

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

PL-77-0011

Permit Period Applied For: 1977

Application No. [illegible] For Use of Issuing Office

State: POLAND

1. Name of Vessel OTOL
2. Vessel No.: Hull No. SWI- 216 Registration No. 440212
3. Name and Address of Owner / Name and Address of Charterer

Name DEEP SEA FISHING COMPANY "ODRA"

Address 72-602 Swinoujście
Jana Sołtana 1.

Cable Address
Odra - Swinoujście

4. Homeport and State of Registry: Swinoujście
5. Type of Vessel stern trawler, B-417
6. Tonnage (Gross) 2395 (Net) 938
7. Length 89,88 M. 8. Breadth 15,03 M. 9. Draft 6,50 M.
10. Horsepower 3600 shp. 11. Maximum Speed 15,0 kt.
11. Propulsion: Diesel (x), Steam ( ), Diesel/Electric ( ),
Other
13. Date Built 1976
14. Number and Nationality of Personnel 78 Poles
Officers 16 Crew 62 Other (Specify)
15. Communications: VHF-FM (x), AM/SSB, Voice (x), Telegraphy (x),
Other
International Radio Call Sign SQGX
Radio Frequencies Monitored 500 kHz
Other Working Frequencies 2506 kHz
Schedule 08.00-12.00, 20.00-22.00 on the zone times

PL-77-0011

16. Navigation Equipment: Loran C ( ), Loran A (x), Omega (x), Decca (x), Navsat ( ), Radar (x), Fathometer (x), Other

17. Cargo Capacity (MT)		18. Cargo Space Number	Name
Salted Fish	Freezer	2	1, 2
Fresh Fish	Dry Hold	1	
Frozen Fish 810	Tanks	2	19, 20
Fish Meal 180	Other		
Other Fish oil 40			

19. Processing Equipment (Indicate daily capacity,MT)
Baader-33/unit 1/- 140 fish/min., B-694/unit 1/, Techmet/unit 1/, filleting line B-181, Trio- 4-10 tons/day, filleting line B-189, B-423, OFD-1/units 2/- 5-21 tons/day, filleting B-188, B-413, OFD-1 /units 2/- 5-21 tons/day. Plate freezers /units 5/ - 60 tons/day.
Fish meal and oil plant F.M.-50, - 50 tons/day raw mat.

20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species	Contenplated Catch (MT)	Gear to be Used
NE Pacyfik	1977	Hake	2.000 ton	Midwater otter trawl
		Jack Mackerel	1.000 ton	Bottom otter trawl
		Pollock	2.000 ton	
		Rockfish	500 ton	
		Attka Mackerel	600 ton	
		Cod	500 ton	
		Plaice	1.000 ton	

21. Name and Address of Agent appointed to receive any legal process issued in the United States:

Amerpol International Inc. Official Reprezentative
Two World Trade Center, Ireneusz Wrześniewski
Suite 2222, New York, N.Y. 10048

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

PL-77-0012

Permit Period Applied For: 1977

Application No. PL-77-0012 For Use of Issuing Office

State: POLAND

1. Name of Vessel MUSTEL
2. Vessel No.: Hull No. ŚWI - 218 Registration No. 440224
3. Name and Address of Owner
   Name DEEP SEA FISHING COMPANY
   Address 72-602 Swinoujście
   Jana Sołtana 1.
   Cable Address
   Odra - Swinoujście
   Name and Address of Charterer "ODRA"
4. Homeport and State of Registry: Swinoujście
5. Type of Vessel stern trawler, B-417
6. Tonnage (Gross) 2395 (Net) 988
7. Length 89,80 M. 8. Breadth 15,03 M. 9. Draft 6,50 M.
10. Horsepower 3600 shp. 11. Maximum Speed 15,0 kt.
11. Propulsion: Diesel (X), Steam ( ), Diesel/Electric ( ).
    Other
13. Date Built 1977
14. Number and Nationality of Personnel 78 Poles
    Officers 16 Crew 62 Other (Specify)
15. Communications: VHF-FM (X), AM/SSB, Voice (X), Telegraphy (X).
    Other
    International Radio Call Sign SQGP
    Radio Frequencies Monitored 500 kHz
    Other Working Frequencies 2506 kHz
    Schedule 08.00-12.00, 20.00-22.00 on the zone times
16. Navigation Equipment: Loran C ( ), Loran A (X), Omega (X), Decca (x), Navsat ( ), Radar (x), Fathometer (x),
    Other
17. Cargo Capacity (MT)

Salted Fish	
Fresh Fish	
Frozen Fish	810
Fish Meal	180
Other	Fish oil 40

18. Cargo Space

	Number	Name
Freezer	2	1, 2
Dry Hold	1	
Tanks	2	19, 20
Other		

19. Processing Equipment (Indicate daily capacity/MT)
    Bander-33/unit 1/- 140 fish/min., Bander-604/unit 1/, Technmet /unit 1/, filleting line B-181, Trio- 3-10 tons/day, filleting line B-189, B-423, OFD-1/units 2/ 5-21 tons/day, filleting line B-188, B-413, OFD-1/units 2/- 5-21 tons/day. Plate freezers /units 5/ - 60 tons/day. Fish meal and oil plant F.M.-50 - 50 tons/day raw mat.
20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species	Contenplated Catch (MT)	Gear to be Used
NE Pacyfik	1977	Hake	1,000 ton	Midwater otter trawl
		Jack Mackerel	500 ton	Bottom otter trawl
		Pollock	500 ton	
		Rockfish	200 ton	
		Attka Mackerel	200 ton	
		Cod	200 ton	
		Plaice	200 ton	

21. Name and Address of Agent appointed to receive any legal process issued in the United States:
    Amerpol International Inc. Official Reprezentative
    Two World Trade Center, Ireneusz Wrześniewski
    Suite 2222, New York, N.Y. 10048

SUMMARY OF APPLICATION FOR FISH QUOTA FOR 1977

PL-77-0013 to PL-77-0027

STATE: POLAND — NW Atlantic

No	Type of Vessel	Number of Vessel	Mackrel	Herring	Squide	Other
1.	Stern trawlor B-20	5	10.100	2.550	4.310	3.100
2.	Stern trawlor B-18	5	5.600	1.850	3.110	1.750
3.	Stern trawlor B-418	2	2.300	700	1.200	700
4.	Stern trawlor B-414	1	1.100	-	-	325
5.	Stern trawlor B-417	1	1.100	-	-	325
6.	Reefer	1	-	-	-	
	Total	15	20.200	5.100	8.620	6.200

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

Permit Period Applied For: 1977

Application No. PL-77-0013 For Use of Issuing Office

State: POLAND

1. Name of Vessel FOKA
2. Vessel No.: Hull No. ŚWI-195 Registration No. 44039
3. Name and Address of Owner
   Name DEEP SEA FISHING COMPANY
   Address 72-602 Swinoujście
   Jana Sołtana 1.
   Cable Address
   Odra - Swinoujście
   Name and Address of Charterer "ODRA"
4. Homeport and State of Registry: Swinoujście
5. Type of Vessel stern trawler, B-18
6. Tonnage (Gross) 2495 (Net) 1041
7. Length 87,20 M. 8. Breadth 14,17 M. 9. Draft 5,40 M.
10. Horsepower 2250 shp. 11. Maximum Speed 12,6 kt.
11. Propulsion: Diesel (X), Steam ( ), Diesel/Electric ( ).
    Other
13. Date Built 1965
14. Number and Nationality of Personnel 80 Poles
    Officers 16 Crew 64 Other (Specify)
15. Communications: VHF-FM (X), AM/SSB, Voice (X), Telegraphy (X),
    Other
    International Radio Call Sign CSVP
    Radio Frequencies Monitored 500 kHz
    Other Working Frequencies kHz:410,425,454,468,480,512
    Schedule 08.00-1200, 20.00-22.00 on the zone times
16. Navigation Equipment: Loran C ( ), Loran A (X), Omega (X), Decca (x), Navsat ( ), Radar (x), Fathometer (x),
    Other PL-77-0013
17. Cargo Capacity (MT)

Salted Fish	
Fresh Fish	
Frozen Fish	750
Fish Meal	100
Other	Fish oil 50

18. Cargo Space

	Number	Name
Freezer	3	1, 2, 3
Dry Hold	1	
Tanks	3	19, 20, 21
Other		

19. Processing Equipment (Indicate daily capacity,MT)
    Bander-33 /unit 2/ - 140 fish/min.
    Freezing tunnel /unit 1/ - 18 tons/day,
    Plate freezers /units 5/ - 16 tons/day
    Fish meal and oil plant "Dan Thor" /unit 1/- 40 tons/day raw mat
20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species	Contenplated Catch (MT)	Gear to be Used
NW Atlantic	1977	Mackerel	1,100 ton	Midwater otter trawl
		Squid	650 ton	XXXXXXXXXXXXXXXXXX
		Herring	400 ton	
		Other	550 ton	

2 nd Tier about 2.000 ton

21. Name and Address of Agent appointed to receive any legal process issued in the United States:
    Amerpol International Inc. Official Representative
    Two World Trade Center Ireneusz Wrześniewski
    Suite 2222, New York, N.Y. 10048 Fisheries Attache Polish Embassy, Office New York

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

Pl-77-0014

Permit Period Applied For: 1977

Application No. Pl-77-0014 For Use of Issuing Office

State: POLAND

1. Name of Vessel PIETWAL
2. Vessel No.: Hull No. SWI - 197 Registration No. 44037
3. Name and Address of Owner / Name and Address of Charterer

Name DEEP SEA FISHING COMPANY "ODRA"

Address 72-602 Swinoujście
Jana Sołtana 1,

Cable Address
Odra - Swinoujście

4. Homeport and State of Registry: Swinoujście
5. Type of Vessel stern trawler, B-18
6. Tonnage (Gross) 2495 (Net) 1041
7. Length 87,29 M. 8. Breadth 14,17 M. 9. Draft 5,40 M.
10. Horsepower 2250 shp. 11. Maximum Speed 12,5 kt.
11. Propulsion: Diesel (X), Steam ( ), Diesel/Electric ( ), Other
13. Date Built 1965
14. Number and Nationality of Personnel 80 Poles
Officers 16 Crew 64 Other (Specify)
15. Communications: VHF-FH (X), AM/SSB, Voice (X), Telegraphy (X), Other
International Radio Call Sign SNVV
Radio Frequencies Monitored 500 kHz
Other Working Frequencies kHz: 410,425,454,468,480,512
Schedule 08.00-12.00, 20.00-22.00 on the zone times

16. Navigation Equipment: Loran C ( ), Loran A (X), Omega (X), Decca (X), Navsat ( ), Radar (X), Fathometer (X), Other

17. Cargo Capacity (MT)

		18. Cargo Space Number	Name
Salted Fish	Freezer	3	1, 2, 3
Fresh Fish	Dry Hold	1	
Frozen Fish 750	Tanks	3	19, 20, 21
Fish Meal 100	Other		
Other Fish oil 50			

19. Processing Equipment (Indicate daily capacity,MT)
Baader-33/unit 1/- 140 fish/min., Arenco CIM/unit 1/-145 fish/min. Freezing tunnel /unit 1/ - 18 tons/day, plate freezers /units 3/ - 18 tons/day. Fish meal and oil plant /"Dan Thor"/unit 1/ - 50 tons/day raw mat.

20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species	Contemplated Catch (MT)	Gear to be Used
NW Atlantic	1977	Mackerel	1.100 ton	Midwater otter trawl
		Squid	650 ton	XXXXXXXXXXXXXXXXX
		Herring	350 ton	
		Other	350 ton	
		2 nd Tiar about	2.000 ton	

21. Name and Address of Agent appointed to receive any legal process issued in the United States:

Amerpol International Inc. Official Reprezentative
Two World Trade Center Ireneusz Wrześniewski
Suite 2222, New York, N.Y. 10048

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

Pl-77-0015

Permit Period Applied For: 1977

Application No. Pl-77-0015 For Use of Issuing Office

State: POLAND

1. Name of Vessel LANGUSTA
2. Vessel No.: Hull No. SWI - 200 Registration No. 440023
3. Name and Address of Owner / Name and Address of Charterer

Name DEEP SEA FISHING COMPANY "ODRA"

Address 72-602 Swinoujście
Jana Sołtana 1,

Cable Address
Odra - Swinoujście

4. Homeport and State of Registry: Swinoujście
5. Type of Vessel stern trawler, B-18
6. Tonnage (Gross) 2495 (Net) 1041
7. Length 87,27 M. 8. Breadth 14,17 M. 9. Draft 5,40 M.
10. Horsepower 22,50 shp. 11. Maximum Speed 12,5 kt.
11. Propulsion: Diesel (X), Steam ( ), Diesel/Electric ( ), Other
13. Date Built 1966
14. Number and Nationality of Personnel 80 Poles
Officers 16 Crew 64 Other (Specify)
15. Communications: VHF-FH (X), AM/SSB, Voice (X), Telegraphy (X), Other
International Radio Call Sign SNVY
Radio Frequencies Monitored 500 kHz
Other Working Frequencies kHz: 410,425,454,468,480,512
Schedule 08.00-12.00, 20.00-22.00 on the zone times

16. Navigation Equipment: Loran C ( ), Loran A (X), Omega (X), Decca (X), Navsat ( ), Radar (X), Fathometer (X), Other

17. Cargo Capacity (MT)

		18. Cargo Space Number	Name
Salted Fish	Freezer	3	1, 2, 3
Fresh Fish	Dry Hold	1	
Frozen Fish 750	Tanks	3	19, 20, 21
Fish Meal 100	Other		
Other Fish oil 50			

19. Processing Equipment (Indicate daily capacity,MT)
Baader-33/unit 1/ - 140 fish/min., Arenco CIM/CIF/unit 1/- 145 fish/min. Freezing tunnel /unit 1/ - 18 tons/day, plate freezers /units 3/ - 18 tons/day Fish meal and oil plant"Dan Thor"- 30 tons/day raw mat.

20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species	Contemplated Catch (MT)	Gear to be Used
NW Atlantic	1977	Mackerel	1.100 ton	Midwater otter trawl
		Squid	650 ton	XXXXXXXXXXXXXXXXX
		Herring	400 ton	
		Other	350 ton	
		2nd Tiar about	2.000 ton	

21. Name and Address of Agent appointed to receive any legal process issued in the United States:

Amerpol International Inc. Official Reprezentative
Two World Trade Center Ireneusz Wrześniewski
Suite 2222, New York, N.Y. 10048

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

PL-77-0016

Permit Period Applied For: 1977

Application No. PL-77-0016 For Use of Issuing Office

State: POLAND

1. Name of Vessel SEJWAL
2. Vessel No.: Hull No. SWI - 203 Registration No. 440025
3. Name and Address of Owner / Name and Address of Charterer
   Name: DEEP SEA FISHING COMPANY "ODRA"
   Address: 72-602 Swinoujście / Jana Sołtana 1.
   Cable Address: Odra - Swinoujście
4. Homeport and State of Registry: Swinoujście
5. Type of Vessel stern trawler, B-18
6. Tonnage (Gross) 2480 (Net) 1042
7. Length 87,14 M. 8. Breadth 14,17 M. 9. Draft 5,40 M.
10. Horsepower 2250 shp. 11. Maximum Speed 12,5 kt.
11. Propulsion: Diesel (x), Steam ( ), Diesel/Electric ( ), Other
13. Date Built 1968
14. Number and Nationality of Personnel 80 Poles
    Officers 16 Crew 64 Other (Specify)
15. Communications: VHF-FM ( ), AM/SSB, Voice ( ), Telegraphy ( ), Other
    International Radio Call Sign SPYB
    Radio Frequencies Monitored 500 kHz
    Other Working Frequencies kHz: 410,425,454,468,480,512
    Schedule 08.00-12.00, 20.00-22.00 on the zone times
16. Navigation Equipment: Loran C ( ), Loran A (x), Omega (x), Decca (x), Navsat ( ), Radar (x), Fathometer (x), Other
17. Cargo Capacity (MT)

Salted Fish	
Fresh Fish	
Frozen Fish	750
Fish Meal	100
Other	Fish oil 50

18. Cargo Space

	Number	Name
Freezer	3	1, 2, 3
Dry Hold	1	
Tanks	3	19, 20, 21
Other		

19. Processing Equipment (Indicate daily capacity,MT)
    Baador-33 /unit 2/ - 140 fish/min.
    ~~Freezering tunnel /unit 1/ - 18 tons/day~~
    plate freezers /units 3/ - 18 tons/day.
    Fish meal and oil plant F.M.-25, - 25 tons/day raw mat.
20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species	Contemplated Catch (MT)	Gear to be Used
NW Atlantic	1977	Mackerel	1.200 ton	Midwater otter trawl
		Squid	510 ton	XXXXXXXXXXXXXXXXX
		Herring	350 ton	
		Other	350 ton	

2 nd Tiar about 2.000 ton

21. Name and Address of Agent appointed to receive any legal process issued in the United States:
    Amerpol International Inc. Official Reprezentative
    Two World Trade Center Ireneusz Wrześniewski
    Suite 2222, New York, N.Y. 10048

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

PL-77-0017

Permit Period Applied For: 1977

Application No. PL-77-0017 For Use of Issuing Office

State: POLAND

1. Name of Vessel KASZALOT
2. Vessel No.: Hull No. SWI - 202 Registration No. 440025
3. Name and Address of Owner / Name and Address of Charterer
   Name: DEEP SEA FISHING COMPANY "ODRA"
   Address: 72-602 Swinoujście / Jana Sołtana 1.
   Cable Address: Odra - Swinoujście
4. Homeport and State of Registry: Swinoujście
5. Type of Vessel stern trawler, B-18
6. Tonnage (Gross) 2478 (Net) 1041
7. Length 87,05 M. 8. Breadth 14,17 M. 9. Draft 5,40 M.
10. Horsepower 2250 shp. 11. Maximum Speed 12,5 kt.
11. Propulsion: Diesel (x), Steam ( ), Diesel/Electric ( ), Other
13. Date Built 1968
14. Number and Nationality of Personnel 80 Poles
    Officers 16 Crew 64 Other (Specify)
15. Communications: VHF-FM (x), AM/SSB, Voice (x), Telegraphy (x), Other
    International Radio Call Sign SPYL
    Radio Frequencies Monitored 500 kHz.
    Other Working Frequencies kHz: 410,425,454,468,480,512
    Schedule 08.00-12.00, 20.00-22.00 on the zone times
16. Navigation Equipment: Loran C ( ), Loran A (x), Omega (x), Decca (X), Navsat ( ), Radar (X), Fathometer (X), Other
17. Cargo Capacity (MT)

Salted Fish	
Fresh Fish	
Frozen Fish	750
Fish Meal	100
Other	Fish oil 50

18. Cargo Space

	Number	Name
Freezer	3	1, 2, 3
Dry Hold	1	
Tanks	3	19, 20, 21
Other		

19. Processing Equipment (Indicate daily capacity,MT)
    Baador-33/unit 1/- 140 fish/min., Arenco CIM/unit 1/- 145 fish/min, Bibun D'luxe/unit 1/. Freezering tunnel/unit 1/- 18 tons/day, plate freezers/units 3/ - 18 tons/day. Fish meal and oil plant F.M.-25, - 25 tons/day raw mat.
20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species	Contemplated Catch (MT)	Gear to be Used
NW Atlantic	1977	Mackerel	1.100 ton	Midwater otter trawl
		Squid	650 ton	XXXXXXXXXXXXXXXXX
		Herring	350 ton	
		Other	350 ton	

2nd Tiar about 2.000 ton

21. Name and Address of Agent appointed to receive any legal process issued in the United States:
    Amerpol International Inc. Official Reprezentative
    Two World Trade Center Ireneusz Wrześniewski
    Suite 2222, New York, N.Y. 10048

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

PL-77-0018

Permit Period Applied For: 1977

Application No. PL-77-0018 For Use of Issuing Office

State: POLAND

1. Name of Vessel GARNELA
2. Vessel No.: Hull No. SWI - 209 Registration No. 440173
3. Name and Address of Owner / Name and Address of Charterer
   Name: DEEP SEA FISHING COMPANY "ODRA"
   Address: 72-602 Swinoujście
   Jana Sołtana 1.
   Cable Address: Odra - Swinoujście
4. Homeport and State of Registry: Swinoujście
5. Type of Vesael: stern trawler, B-418
6. Tonnage (Gross) 2501 (Net) 1066
7. Length 88,74 M. 8. Breadth 15,03 M. 9. Draft 6,30 M.
10. Horsepower 2700 shp. 11. Maximum Speed 13,5 kt.
11. Propulsion: Diesel (x), Steam ( ), Diesel/Electric ( ), Other
13. Date Built 1971
14. Number and Nationality of Personnel 80 Poles
    Officers 16 Crew 64 Other (Specify)
15. Communications: VHF-FM (x), AM/SSB, Voice (x), Telegraphy (x), Other
    International Radio Call Sign SQBB
    Radio Frequencies Monitored 500 kHz
    Other Working Frequencies kHz: 410,425,454,468,480,512.
    Schedule 08.00-12.00, 20.00-22.00 on the zone times
16. Navigation Equipment: Loran C ( ), Loran A (x), Omega (x), Decca (x), Navsat ( ), Radar (x), Fathometer (x), Other
17. Cargo Capacity (MT)

		18. Cargo Space Number	Name
Salted Fish		Freezer 2	1, 2
Fresh Fish		Dry Hold 1	
Frozen Fish	900	Tanks 3	13, 14, 15
Fish Meal	160	Other	
Other	Fish oil 35		

19. Processing Equipment (Indicate daily capacity,MT)
Baader-33/unit 1/- 140 fish/min., filleting line B-181, B-47, Trio- 4-10 tons/day, filleting line B-188, B-421, B-47/units 2/- 5-21tons/day Plate freezers /units 4/- 30 tons/day.
Fish meal and oil plant F.M.-25, - 25 tons/day raw mat.
20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species	Contenplated Catch (MT)	Gear to be Used
NW Atlantic	1977	Mackerel	1.100 ton	Midwater otter trawl
		Squid	600 ton	
		Herring	350 ton	
		Other	350 ton	

2 nd Tiar about 2.000 ton

21. Name and Address of Agent appointed to receive any legal process issued in the United States:
Amerpol International Inc. Official Reprezentative
Two World Trade Center Ireneusz Wrześniewski
Suite 2222, New York, N. Y. 10048

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

PL-77-0019

Permit Period Applied For: 1977

Application No. PL-77-0019 For Use of Issuing Office

State: POLAND

1. Name of Vessel HUMBAK
2. Vessel No.: Hull No. SWI - 206 Registration No. 440171
3. Name and Address of Owner / Name and Address of Charterer
   Name: DEEP SEA FISHING COMPANY "ODRA"
   Address: 72-602 Swinoujście
   Jana Sołtana 1.
   Cable Address: Odra - Swinoujście
4. Homeport and State of Registry: Swinoujście
5. Type of Vessel: stern trawler, B-418
6. Tonnage (Gross) 2501 (Net) 1066
7. Length 88,75 M. 8. Breadth 15,03 M. 9. Draft 6,30 M.
10. Horsepower 2700 shp. 11. Maximum Speed 13,5 kt.
11. Propulsion: Diesel (x), Steam ( ), Diesel/Electric ( ), Other:
13. Date Built 1971
14. Number and Nationality of Personnel 80 Poles
    Officers 16 Crew 64 Other (Specify)
15. Communications: VHF-FM (x), AM/SSB, Voice (x), Telegraphy (x), Other
    International Radio Call Sign SQBA
    Radio Frequencies Monitored 500 kHz
    Other Working Frequencies kHz: 410,425,454,468,480,512
    Schedule 08.00-12.00, 20.00-22.00 on the zone times
16. Navigation Equipment: Loran C ( ), Loran A (x), Omega (x), Decca (x), Navsat ( ), Radar (x), Fathometer (x), Other
17. Cargo Capacity (MT)

		18. Cargo Space Number	Name
Salted Fish		Freezer 2	1, 2
Fresh Fish		Dry Hold 1	
Frozen Fish	900	Tanks 3	13, 14, 15
Fish Meal	160	Other	
Other	Fish oil 35		

19. Processing Equipment (Indicate daily capacity,MT)
Baader-33/unit 1/- 140 fish/min., filleting line B-181, B-47,Trio- 4-10 tons/day, fillsting line B-188, B-421, B-47 /units 2/- 5-21 tons/day. Plate freezers /units 4/- 30 tons/day.
Fish meal and oil plant F.M.-25, - 25 tons/day raw mat.
20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species	Contenplated Catch (MT)	Gear to be Used
NW Atlantic	1977	Mackerel	1.200 ton	Midwater otter trawl
		Squid	600 ton	
		Herring	350 ton	XXXXXXXXXXXXXXXXXX
		Other	350 ton	

2nd Tiar about 2.000 ton

21. Name and Address of Agent appointed to receive any legal process issued in the United States:
Amerpol International Inc. Official Reprezentative
Two World Trade Center Ireneusz Wrześniewski
Suite 2222, New York, N.Y. 10048

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

PL-77-0020

Permit Period Applied For: 1977

Application No. PL-77-0020 For Use of Issuing Office

State: POLAND

1. Name of Vessel WŁÓCZNIK
2. Vessel No.: Hull No. SWI - 225 Registration No. 440207
3. Name and Address of Owner
   Name: DEEP SEA FISHING COMPANY "ODRA"
   Address: 72-602 Swinoujście, Jana Sołtana 1.
   Cable Address: Odra - Swinoujście
   Name and Address of Charterer
4. Homeport and State of Registry: Swinoujście
5. Type of Vessel: stern trawler, B-414
6. Tonnage (Gross) 2584 (Net) 1069
7. Length 88,56 M. 8. Breadth 15,02 M. 9. Draft 5,60 M.
10. Horsepower 3600 shp. 11. Maximum Speed 15 kt.
11. Propulsion: Diesel (x), Steam ( ), Diesel/Electric ( ), Other
13. Date Built 1975
14. Number and Nationality of Personnel: 78 Polee
    Officers 16 Crew 62 Other (Specify)
15. Communications: VHF-FH (x), AH/SSB, Voice (X), Telegraphy (X), Other
    International Radio Call Sign SQDQ
    Radio Frequencies Monitored 500 kHz
    Other Working Frequencies kHz:410,425,454,468,480,512
    Schedule 08.00-12.00, 20.00-22.00 on the zone times
16. Navigation Equipment: Loran C ( ), Loran A (x), Omega (x), Decca (x), Navsat ( ), Radar (x), Fathometer (x), Other
17. Cargo Capacity (MT)

		18. Cargo Space Number	Name
Salted Fish		Freezer 2	1, 2
Fresh Fish		Dry Hold 1	
Frozen Fish	800	Tanks 2	1t, 2t
Fish Meal	180	Other	
Other	Fish oil 40		

19. Processing Equipment (Indicate daily capacity,MT)
Filleting line B-181, Trio- 4-10 ton/day, filleting line B-188, Technet OFD-1/units/2/- 5-21 tone/day, filleting line B-189, Technet OFD-1/units 2/- 5-21 tons/day, Baader 694/unit 1/, Baader-33/unit 1/- 140 fish/min. Plate freezers /units 5/- 45 tone/day. Fish meal and oil plant F.N.-50, -50 tons/day raw mat.

20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species	Contenplated Catch (MT)	Gear to be Used
NW Atlantic	1977	Maokerel	1.100 ton	Midwater otter trawl
		Other	325 ton	
		2nd Tiar about 1.000 ton		

21. Name and Address of Agent appointed to receive any legal process issued in the United States:
Amerpol International Inc. — Official Reprezentative
Two World Trade Center — Ireneusz Wrześniewski
Suite 2222, New York, N.Y. 10048

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

PL-77-0021

Permit Period Applied For: 1977

Application No. PL-77-0021 For Use of Issuing Office

State: POLAND

1. Name of Vessel OTOL
2. Vessel No.: Hull No. SWI - 216 Registration No. 440212
3. Name and Address of Owner
   Name: DEEP SEA FISHING COMPANY "ODRA"
   Address: 72-602 Swinoujście, Jana Sołtana 1.
   Cable Address: Odra - Swinoujście
   Name and Address of Charterer
4. Homeport and State of Registry: Swinoujście
5. Type of Vessel: stern trawler, B-417
6. Tonnage (Gross) 2395 (Net) 988
7. Length 89,88 M. 8. Breadth 15,03 M. 9. Draft 6,50 M.
10. Horsepower 3600 shp. 11. Maximum Speed 15,0 kt.
11. Propulsion: Diesel (X), Steam ( ), Diesel/Electric ( ), Other
13. Date Built 1976
14. Number and Nationality of Personnel: 78 Polee
    Officers 16 Crew 62 Other (Specify)
15. Communications: VHF-FH (X), AH/SSB, Voice (X), Telegraphy (X), Other
    International Radio Call Sign SQGX
    Radio Frequencies Monitored 500 kHz
    Other Working Frequencies kHz: 410,425,454,468,480,512
    Schedule 08.00-12.00, 20.00-22.00 on the zone times
16. Navigation Equipment: Loran C ( ), Loran A (x), Omega (x), Decca (x), Navsat ( ), Radar (x), Fathometer (x), Other
17. Cargo Capacity (MT)

		18. Cargo Space Number	Name
Salted Fish		Freezer 2	1, 2
Fresh Fish		Dry Hold 1	
Frozen Fish	810	Tanks 2	19, 20
Fish Meal	180	Other	
Other	Fish oil 40		

19. Processing Equipment (Indicate daily capacity,MT)
Baader-33/unit 1/- 140 fish/min. B-694/unit 1/, Technet/unit 1/, filleting lin B-181, Trio- 4-10tons/day, filleting line B-189, B-423, OFD-1/units 2/-5-21ton /day, filleting B-188, B-413, OFD-1/units 2/- 5-21 tons/day. Plate freezers /units 5/- 60 tons/day. Fish meal and oil plant FM-50, - 50 tons/day raw mat.

20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species	Contenplated Catch (MT)	Gear to be Used
NW Atlantic	1977	Maokerel	1.100 ton	Midwater otter trawl
		Other	325 ton	
		2 nd Tiar about 1.050 ton		

21. Name and Address of Agent appointed to receive any legal process issued in the United States:
Amerpol International Inc. — Official Reprezentative
Two World Trade Center — Ireneusz Wrześniewski
Suite 2222, New York, N.Y. 10048

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

L R 4100 PL-77-0022

Permit Period Applied For: 1977 — Application No. PL-77-0022 For Use of Issuing Office

State: POLAND

1. Name of Vessel "KABRYL"
2. Vessel No.: Hull No. SZN-92 Registration No. 440174
3. Name and Address of Owner: Name Deep Sea Fishing Company "Gryf"; Address Pl. Batorego 4, 70-952 Szczecin, Poland; Cable Address Gryfmor - Szczecin — Name and Address of Charterer: none
4. Homeport and State of Registry: Szczecin-Poland
5. Type of Vessel stern trawler B-29
6. Tonnage (Gross) 1435 (Net) 531
7. Length 71,71 M. 8. Breadth 12,72 M. 9. Draft 5,05 M.
10. Horsepower 2,500 shp. 11. Maximum Speed 14,9 kt.
11. Propulsion: Diesel (X), Steam ( ), Diesel/Electric ( ), Other no
13. Date Built 1971
14. Number and Nationality of Personnel 60 Polish
Officers 14 Crew 46 Other (Specify) eventually assistant
15. Communications: VHF-FH (X), AM/SSB, Voice (X), Telegraphy (X), Other no
International Radio Call Sign SQAN
Radio Frequencies Monitored 500 KHz
Other Working Frequencies 410,425,454,468,480,512 KHz
Schedule 8.00 - 12.00, 20.00 -22.00 by zone time
16. Navigation Equipment: Loran C ( ), Loran A ( ), Omega ( ), Decca (x), Navsat ( ), Radar (x), Fathometer (x), Other
17. Cargo Capacity (MT)

		18. Cargo Space	Number	Name
Salted Fish	no	Freezer	2	no 1, no2
Fresh Fish	no	Dry Hold	2	no 3, no 4
Frozen Fish	450	Tanks	1	oil tank no 23
Fish Meal	70	Other	2	refrigerated sea water tanks
Other	fish oil 16		1	ice store room

19. Processing Equipment (Indicate daily capacity,MT)
vertical plate freezer "JACKSTON" 4 units x 7,5 MT/24 hours
filleting machine "BAADER 33" 2 units x 130 fish/min
fish meal factory FM-25, 1 unit x 5 MT/ 24 hours
production of fish oil ALFA LAVAL, 1 unit x 1MT/24hours
20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species	Contemplated Catch (MT)	Gear to be Used
NW Atlantic	1977	Mackerel	2.050 ton	Midwater otter trawl
		Squide	870 ton	
		Other	700 ton	
		2nd Tiar about	2.900 ton	

21. Name and Address of Agent appointed to receive any legal process issued in the United States:
Amerpol International Inc., Two World Trade Center, Suite 2222, New York, N.Y. 10048

Official Representative
Ireneusz Wrześniewski

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

PL-77-0023

Permit Period Applied For: 1977 — Application No. PL-77-0023 For Use of Issuing Office

State: POLAND

1. Name of Vessel "LODOWIK"
2. Vessel No.: Hull No. SZN-81 Registration No. 440153
3. Name and Address of Owner: Name Deep Sea Fishing Company "Gryf"; Address Pl. Batorego 4, 70-952 Szczecin, Poland; Cable Address Gryfmor-Szczecin — Name and Address of Charterer: none
4. Homeport and State of Registry: Szczecin-Poland
5. Type of Vessel stern trawler B-29
6. Tonnage (Gross) 1480 (Net) 584
7. Length 71,94 M. 8. Breadth 12,72 M. 9. Draft 5,05 M.
10. Horsepower 2500 shp. 11. Maximum Speed 14,5 kt.
11. Propulsion: Diesel (X), Steam ( ), Diesel/Electric ( ), Other no
13. Date Built 1969
14. Number and Nationality of Personnel 60 Polish
Officers 14 Crew 46 Other (Specify) eventually assistant
15. Communications: VHF-FH (X), AM/SSB, Voice (X), Telegraphy (X), Other no
International Radio Call Sign SPZB
Radio Frequencies Monitored 500 KHz
Other Working Frequencies ~~410,425,454,468,480,512 KHz~~
Schedule 8.00 - 12.00, 20.00 - 22.00 by zone time
16. Navigation Equipment: Loran C ( ), Loran A ( ), Omega ( ), Decca (x), Navsat ( ), Radar (x), Fathometer (x), Other A/C Enac-Triton
17. Cargo Capacity (MT)

		18. Cargo Space	Number	Name
Salted Fish	no	Freezer	2	no 1, no 2
Fresh Fish	no	Dry Hold	2	no 3, no 4
Frozen Fish	450	Tanks	1	oil tank no 23
Fish Meal	70	Other	2	refrigerated sea water tanks
Other	fish oil 16		1	ice store room

19. Processing Equipment (Indicate daily capacity,MT)
vertical plate freezer "JACKSTON" 4 units x 7,5MT/24 hours
filleting machine "BAADER 33"2units,x 130 fish/min
fish meal factory FM-25, 1 unit x 5 MT/24 hours
production of fish oil ALFA LAVAL, 1 unit x 1 MT/24 hours
20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species	Contemplated Catch (MT)	Gear to be Used
NW Atlantic	1977	Mackerel	2.050 ton	Midwater otter trawl
		Squide	870 ton	
		Other	500 ton	
		2 nd Tiar about	2.800 ton	

21. Name and Address of Agent appointed to receive any legal process issued in the United States:
Amerpol International Inc., Two World Trade Center, Suite 2222, New York, N.Y.10048

Official Representative
Ireneusz Wrześniewski

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

Pl-77-0024

Permit Period Applied For: 1977

Application No. For Use of Issuing Office: Pl-77-0024

State: POLAND

1. Name of Vessel "LASKARA"
2. Vessel No.: Hull No. SZN-79 Registration No. 440152
3. Name and Address of Owner
   Name: Deep Sea Fishing Company "Gryf"
   Address: Pl. Batorego 4, 70-952 Szczecin, Poland
   Cable Address: Gryfmor - Szczecin
   Name and Address of Charterer: none
4. Homeport and State of Registry: Szczecin - Poland
5. Type of Vessel stern trawler B-29
6. Tonnage (Gross) 1479 (Net) 583
7. Length 71,56 M. 8. Breadth 12,72 M. 9. Draft 5,05 M.
10. Horsepower 2.500 shp. 11. Maximum Speed 14,5 kt.
11. Propulsion: Diesel (X), Steam ( ), Diesel/Electric ( ), Other no
13. Date Built 1968
14. Number and Nationality of Personnel 60 Polish
    Officers 14 Crew 46 Other (Specify) eventually assistant
15. Communications: VHF-FM (X), AM/~~SSX~~, Voice (X), Telegraphy (X), Other no
    International Radio Call Sign SPYN
    Radio Frequencies Monitored 500 KHz
    Other Working Frequencies 410,425,454,468,480,512 KHz
    Schedule 8.00 - 12.00, 20.00 - 22.00 by zone time
16. Navigation Equipment: Loran C ( ), Loran A ( ), Omega ( ), Decca (X), Navsat ( ), Radar (X), Fathometer (X), A/C Enac Triton, Other
17. Cargo Capacity (MT)

Salted Fish	no	Freezer	2
Fresh Fish	no	Dry Hold	2
Frozen Fish	450	Tanks	1
Fish Meal	70	Other	2
Other	fish oil 16		1

18. Cargo Space

Number	Name
2	no 1, no 2
2	no 3, no 4
1	oil tank no 23
2	refrigerated sea water tanks
1	ice store room

19. Processing Equipment (Indicate daily capacity, MT)
    vertical plate freezer "JACKSTON" 4 units x 7,5 MT/24 hours
    filleting machine "BAADER 33" 2 units x 130 fish/min
    fish meal factory FM-25, 1 unit x 5 MT/24 hours
    production of fish oil ALFA LAVAL, 1 unit x 1 MT/24 hours
20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species	Contemplated Catch (MT)	Gear to be Used
NW Atlantic	1977	Mackerel	2.050 ton	Midwater otter trawl
		Herring	850 ton	
		Squide	500 ton	
		Other	500 ton	
		2 nd Tiar about 3.150 ton		

21. Name and Address of Agent appointed to receive any legal process issued in the United States:
    Amerpol International Inc., Two World Trade Center, Suite 2222, New York, N.Y. 10048

Official Representative
Ireneusz Wrześniewski

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

Pl-77-0025

Permit Period Applied For: 1977

Application No. For Use of Issuing Office: Pl-77-0025

State: POLAND

1. Name of Vessel "LIKODYN"
2. Vessel No.: Hull No. SZN-82 Registration No. 440154
3. Name and Address of Owner
   Name: Deep Sea Fishing Company "Gryf"
   Address: Pl. Batorego 4, 70-952 Szczecin, Poland
   Cable Address: Gryfmor - Szczecin
   Name and Address of Charterer
4. Homeport and State of Registry: Szczecin - Poland
5. Type of Vessel stern trawler B-29
6. Tonnage (Gross) 1482 (Net) 592
7. Length 71,55 M. 8. Breadth 12,70 M. 9. Draft 5,05 M.
10. Horsepower 2.500 shp. 11. Maximum Speed 14,5 kt.
11. Propulsion: Diesel (X), Steam ( ), Diesel/Electric ( ), Other no
13. Date Built 1968
14. Number and Nationality of Personnel 60 Polish
    Officers 14 Crew 46 Other (Specify) eventually assistant
15. Communications: VHF-FM (X), AM/~~SSX~~, Voice (X), Telegraphy (X), Other no
    International Radio Call Sign SPZE
    Radio Frequencies Monitored 500 KHz
    Other Working Frequencies 410,425,454,468,480,512 KHz
    Schedule 8.00 - 12.00, 20.00 - 22.00 by zone time
16. Navigation Equipment: Loran C ( ), Loran A ( ), Omega ( ), Decca (X), Navsat ( ), Radar (X), Fathometer (X), A/C Enac Triton, Other
17. Cargo Capacity (MT)

Salted Fish	no	Freezer	2
Fresh Fish	no	Dry Hold	2
Frozen Fish	450	Tanks	1
Fish Meal	70	Other	2
Other	fish oil 16		1

18. Cargo Space

Number	Name
2	no 1, no 2
2	no 3, no 4
1	oil tank no 23
2	refrigerated sea water tanks
1	ice store room

19. Processing Equipment (Indicate daily capacity, MT)
    vertical plate freezer "JACKSTON" 4 units x 7,5 MT/24 hours
    filleting machine "BAADER 33" 2 units x 130 fish/min
    fish meal factory FM-25, 1 unit x 5 MT/24 hours
    production of fish oil ALFA LAVAL, 1 unit x 1 MT/24 hours
20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species	Contemplated Catch (MT)	Gear to be Used
NW Atlantic	1977	Mackeral	2.000 ton	Midwater otter trawl
		Herring	850 ton	
		Squide	870 ton	
		Other	700 ton	
		2nd Tiar about 3.500 ton		

21. Name and Address of Agent appointed to receive any legal process issued in the United States:
    Amerpol International Inc., Two World Trade Center, Suite 2222, New York, N.Y. 10048

Official Representative
Ireneusz Wrześniewski

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

PL-77-0026

Permit Period Applied For: 1977

Application No. For Use of Issuing Office PL-77-0026

State: POLAND

1. Name of Vessel "KOREIN"
2. Vessel No.: Hull No. SZN - 91 Registration No. 440165
3. Name and Address of Owner
   Name: Deep Sea Fishing Company "Cryf"
   Address: Pl. Batorego 4,
   70-952 Szczecin, Poland
   Cable Address
   Gryfmor - Szczecin
   Name and Address of Charterer: none
4. Homeport and State of Registry: Szczecin - Poland
5. Type of Vessel stern trawler B-29
6. Tonnage (Gross) 1485 (Net) 570
7. Length 71,76 M. 8. Breadth 12,72M. 9. Draft 5,05 M.
10. Horsepower 2.500 shp. 11. Maximum Speed 14,5 kt.
11. Propulsion: Diesel (X), Steam ( ), Diesel/Electric ( ),
    Other no
13. Date Built 1969
14. Number and Nationality of Personnel 60 Polish
    Officers 14 Crew 46 Other (Specify) eventually assistant
15. Communications: VHF-FM (X), AM/~~XXX~~, Voice (X), Telegraphy (X),
    Other: no
    International Radio Call Sign S P Z'X
    Radio Frequencies Monitored 500 KHz
    Other Working Frequencies 410,425,454,468,480,512 KHz
    Schedule 8.00 - 12.00, 20.00 - 22.00 by zone time

D-X Navigator

16. Navigation Equipment: Loran C ( ), Loran A ( ), Omega ( ),
    Decca (X), Navsat ( ), Radar (X), Fathometer (X),
    Other
17. Cargo Capacity (MT)
    Salted Fish no
    Fresh Fish no
    Frozen Fish 450
    Fish Meal 70
    Other fish oil 16
18. Cargo Space

	Number	Name
Freezer	2	no 1, no 2
Dry Hold	2	no 3, no 4
Tanks		1 oil tank no 23
Other		2 refrigerated sea water tanks
		1 ice store room

19. Processing Equipment (Indicate daily capacity,MT)
    vertical plate freezer "JACKSTON" 4 units x 7,5 MT/24 hours
    filleting machine "BAADER 33" 2 units x 130 fish/min
    fish meal factory FM-25, 1 unit x 5 MT/24 hours
    production of fish oil ALFA LAVAL, 1 unit x 1 MT/24 hours
20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species	Contenplated Catch (MT)	Gear to be Used
NW Atlantic	1977	Mackerel	1.950 ton	Midwater otter trawl
		Herring	850 ton	
		Squide	1.200 ton	
		Other	700 ton	
		2 nd Tiar about 3.700 ton		

21. Name and Address of Agent appointed to receive any legal process issued in the United States:
    Amerpol International Inc., Two World Trade Center,
    Suite 2222, New York, N.Y. 10048
    Official Reprezentative
    Ireneusz Wrześniewski

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

PL-77-0027

Permit Period Applied For: 1977

Application No. PL-77-0027 For Use of Issuing Office

State: POLAND

1. Name of Vessel KASZUBY II
2. Vessel No.: Hull No. Registration No. 440198
3. Name and Address of Owner
   Name: PPURM "TRANSOCEAN"
   Address: 70-952 Szczecin
   Odrowąża 1 P03,631 Poland
   Cable Address
   Transocean - Szczecin
   Name and Address of Charterer
4. Homeport and State of Registry: Szczecin
5. Type of Vessel Reefer
6. Tonnage (Gross) 8033 (Net) 3722
7. Length 146,77 M. 8. Breadth 20,60 M. 9. Draft 7,40 M.
10. Horsepower 4800x2 shp. 11. Maximum Speed 18 kt.
11. Propulsion: Diesel (X), Steam ( ), Diesel/Electric ( ),
    Other
13. Date Built 1976
14. Number and Nationality of Personnel 157 - Poles
    Officers 21 Crew 136 Other (Specify) 4
15. Communications: VHF-FM (X), AM/SSB, Voice (X), Telegraphy (X),
    Other
    International Radio Call Sign SQGG
    Radio Frequencies Monitored 500, 2182
    Other Working Frequencies 480, 2058, 4190, 6295, 8360
    Schedule 17.30-17.35 on the zone times

16. Navigation Equipment: Loran C ( ), Loran A ( ), Omega (X),
    Decca (X), Navsat ( ), Radar (X), Fathometer (X),
    Other
17. Cargo Capacity (MT)
    Salted Fish
    Frosh Fish
    Frozen Fish 5000
    Fish Meal 1400
    Other oil 400
18. Cargo Space

	Number	Name
Freezer	4	I, II, III, IV
Dry Hold or	1	IV
Tanks	1	
Other		

19. Processing Equipment (Indicate daily capacity,MT)
20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species	Contenplated Catch (MT)	Gear to be Used
NW Atlantic	1977			
	January			
	February			

21. Name and Address of Agent appointed to receive any legal process issued in the United States:
    Amerpol International Inc. Official Reprezentative
    Two World Trade Center Ireneusz Wrześniewski
    Suite 2222, New York, N.Y.10048

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

PL-77-0025

Permit Period Applied For: 1977

Application No. For Use of Issuing Office PL-77-0025

State: POLAND

1. Name of Vessel m/s "Buran"
2. Vessel No.: Hull No. _____ Registration No. 110872
3. Name and Address of Owner
   Name PPURM "TRANSOCEAN"
   Address 70-952 Szczecin
   ul.Odrowąża 1, POB.631 Poland
   Cable Address Transocean Szczecin
   Name and Address of Charterer _____
4. Homeport and State of Registry: Szczecin - Poland
5. Type of Vessel Reefer
6. Tonnage (Gross) 5126 (Net) 2492
7. Length 113,35 M. 8. Breadth 17,01 M. 9. Draft 7,30 M.
10. Horsepower 8400 shp. 11. Maximum Speed 18 kt.
11. Propulsion: Diesel (x), Steam ( ), Diesel/Electric ( ), Other _____
13. Date Built 1972
14. Number and Nationality of Personnel 37 - Poles
    Officers 14 Crew 23 Other (Specify) _____
15. Communications: VHF-FH (x), AM/SSB, Voice (x), Telegraphy (x), Other _____
    International Radio Call Sign SQDK
    Radio Frequencies Monitored 500, 2182
    Other Working Frequencies 480, 2058, 4190, 6285, 8380
    Schedule 17.30 - 17.35 on the zone times

16. Navigation Equipment: Loran C (x), Loran A ( ), Omega ( ), Decca (x), Navsat ( ), Radar (x), Fathometer (x), Other LR4100
17. Cargo Capacity (MT)

Salted Fish	_____	Freezer	4
Fresh Fish	_____	Dry Hold	or 1
Frozen Fish	2250	Tanks	1
Fish Meal	750	Other	
Other	oil 100		

18. Cargo Space

Number	Name
4	I,II,III,/IV/
1	/IV/

19. Processing Equipment (Indicate daily capacity,MT)

20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species	Contenplated Catch (MT)	Gear to be Used
NW Atlantic	1977			

21. Name and Address of Agent appointed to receive any legal process issued in the United States:
    Amerpol International Inc. Official Representative
    Two World Trade Center Ireneusz Urzędniewski
    Suite 2222, New York, N.Y.10048

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

PL-77-0027

Permit Period Applied For: 1977

Application No. For Use of Issuing Office PL-77-0027

State: POLAND

1. Name of Vessel m/s "Halniak"
2. Vessel No.: Hull No. _____ Registration No. 110870
3. Name and Address of Owner
   Name PPURM "TRANSOCEAN"
   Address 70-952 Szczecin
   ul. Odrowąża 1, POB.631, Poland
   Cable Address Transocean Szczecin
   Name and Address of Charterer _____
4. Homeport and State of Registry: Szczecin - Poland
5. Type of Vessel Reefer
6. Tonnage (Gross) 5.126 (Net) 2492
7. Length 113,29 M. 8. Breadth 17,02 M. 9. Draft 7,30 M.
10. Horsepower 8400 shp. 11. Maximum Speed 18 kt.
11. Propulsion: Diesel (x), Steam ( ), Diesel/Electric ( ), Other _____
13. Date Built 1971
14. Number and Nationality of Personnel 37 - Poles
    Officers 14 Crew 23 Other (Specify) _____
15. Communications: VHF-FH (X), AM/SSB, Voice (X), Telegraphy (x), Other _____
    International Radio Call Sign SQBJ
    Radio Frequencies Monitored 500, 2182
    Other Working Frequencies 480, 2058, 4190, 6285, 8380
    Schedule 17.30 - 17.35 on the zone times

16. Navigation Equipment: Loran C (x), Loran A ( ), Omega ( ), Decca (X), Navsat ( ), Radar (x), Fathometer (x), Other LR4100
17. Cargo Capacity (MT)

Salted Fish	_____	Freezer	4
Fresh Fish	_____	Dry Hold	or 1
Frozen Fish	2250	Tanks	1
Fish Meal	750	Other	
Other	oil 100		

18. Cargo Space

Number	Name
4	I,II,III,IV
1	IV

19. Processing Equipment (Indicate daily capacity,MT)

20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species	Contenplated Catch (MT)	Gear to be Used
NW Atlantic	1977			

21. Name and Address of Agent appointed to receive any legal process issued in the United States:
    Amerpol International Inc. Official Representative
    Two World Trade Center Ireneusz Urzędniewski
    Suite 2222, New York, N.Y.10048

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

PC-77-0030

Permit Period Applied For: 1977

Application No. PC-77-0030 For Use of Issuing Office

State: POLAND

1. Name of Vessel M/S "Lewanter"
2. Vessel No.: Hull No. _____ Registration No. 110871
3. Name and Address of Owner
   Name PPURM "TRANSOCEAN"
   Address 70-952 Szczecin
   ul.Odrowąża 1, POB. 631, Poland
   Cable Address Transocean Szczecin
   Name and Address of Charterer _____
4. Homeport and State of Registry: Szczecin - Poland
5. Type of Vessel Reefer
6. Tonnage (Gross) 5124 (Net) 2496
7. Length 113,40 M. 8. Breadth 17,01 M. 9. Draft 7,30 M.
10. Horsepower 8400 shp. 11. Maximum Speed 18 kt.
11. Propulsion: Diesel (x), Steam ( ), Diesel/Electric ( ), Other _____
13. Date Built 1972
14. Number and Nationality of Personnel 37 - Poles
    Officers 14 Crew 23 Other (Specify) _____
15. Communications: VHF-FM (X), AM/SSB, Voice (X), Telegraphy (X), Other _____
    International Radio Call Sign SQDC
    Radio Frequencies Monitored 500, 2182
    Other Working Frequencies 480, 2058, 4190, 6285, 8380
    Schedule 17.30 - 17.35 on the zone times
16. Navigation Equipment: LR4100 Loran C (x), Loran A ( ), Onega ( ), Decca (x), Navsat ( ), Radar (x), Fathometer (X), Other _____
17. Cargo Capacity (MT)

		18. Cargo Space Number	Hanc
Salted Fish		Freezer 4	I,II,III,/IV/
Fresh Fish		Dry Hold or 1	/IV/
Frozen Fish	225 0	Tanks 1	
Fish Meal	750	Other	
Other	oil 100		

19. Processing Equipment (Indicate daily capacity,MT)
20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species	Contemplated Catch (MT)	Gear to be Used
NW Atlantic	1977			

21. Name and Address of Agent appointed to receive any legal process issued in the United States:
    Amerpol International Inc. Official Representative
    Two World Trade Center Ireneusz Wrześniewski
    Suite 2222, New York, N.Y.10048

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

PC-77-0031

Permit Period Applied For: 1977

Application No. PC-77-0031 For Use of Issuing Office

State: POLAND

1. Name of Vessel m/s "Pomorze"
2. Vessel No.: Hull No. _____ Registration No. 440145
3. Name and Address of Owner
   Name PPURM "TRANSOCEAN"
   Address 70-952 Szczecin
   ul. Odrowąża 1 POB. 631 Poland
   Cable Address Transocean Szczecin
   Name and Address of Charterer _____
4. Homeport and State of Registry: Szczecin - Poland
5. Type of Vessel Reefer
6. Tonnage (Gross) 13875 (Net) 6444
7. Length 155,16 M. 8. Breadth 21,30 M. 9. Draft 7,80 M.
10. Horsepower 7200 shp. 11. Maximum Speed 15 kt.
11. Propulsion: Diesel (X), Steam ( ), Diesel/Electric ( ), Other _____
13. Date Built 1967
14. Number and Nationality of Personnel 234 - Poles
    Officers 23 Crew 211 Other (Specify) 4
15. Communications: VHF-FM (x), AM/SSB, Voice (x), Telegraphy (x), Other _____
    International Radio Call Sign SPVR
    Radio Frequencies Monitored 500, 2182
    Other Working Frequencies 480, 2058, 4190, 6285, 8380
    Schedule 17.30 - 17.35 on the zone times
16. Navigation Equipment: LJ11 Loran C (x), Loran A ( ), Onega ( ), Decca (X), Navsat ( ), Radar (x), Fathometer (x), Other _____
17. Cargo Capacity (MT)

		18. Cargo Space Number	Hanc
Salted Fish		Freezer 5	I,II,III,IV,V.
Fresh Fish		Dry Hold or 1	V
Frozen Fish	4600	Tanks 2	
Fish Meal	800	Other	
Other	oil 210		

19. Processing Equipment (Indicate daily capacity,MT)
    Freezing plant x 2 = 80 MT
    Arenco CIS - 2, Arenco CIS/CIF - 2 = 75 MT
    Fish meal factory = 14 MT
20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species	Contemplated Catch (MT)	Gear to be Used
NW Atlantic	1977			

21. Name and Address of Agent appointed to receive any legal process issued in the United States:
    Amerpol International Inc. Official Representative
    Two World Trade Center Ireneusz Wrześniewski
    Suite 2222, New York, N.Y.10048

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

PL-77-0053

Permit Period Applied For: 1977

Application No. PL-77-0053 For Use of Issuing Office

State: POLAND

1. Name of Vessel m/s "Wineta"
2. Vessel No.: Hull No. _____ Registration No. 110197
3. Name and Address of Owner
   Name PPURM "TRANSOCEAN"
   Address 70-952 Szczecin
   ul. Odrowąża 1 POB,631 Poland
   Cable Address Transocean Szczecin
   Name and Address of Charterer _____
4. Homeport and State of Registry: Szczecin - Poland
5. Type of Vessel Reefer
6. Tonnage (Gross) 8032 (Net) 3773
7. Length 146,77 M. 8. Breadth 20,60 M. 9. Draft 7,40 M.
10. Horsepower 4800x2 shp. 11. Maximum Speed 18 kt.
11. Propulsion: Diesel (x), Steam ( ), Diesel/Electric ( ), Other _____
13. Date Built 1976
14. Number and Nationality of Personnel 157 - Poles
    Officers 21 Crew 136 Other (Specify) 4
15. Communications: VHF-FM (x), AM/SSB, Voice (x), Telegraphy (x), Other _____
    International Radio Call Sign SQGF
    Radio Frequencies Monitored 500, 2182
    Other Working Frequencies 480, 2058, 4190, 6285, 8380
    Schedule 17.30 - 17.35 on the zone times
16. Navigation Equipment: Loran C ( ), Loran A ( ), Omega (X), Decca (x), Navsat ( ), Radar (x), Fathometer (x), Other _____
17. Cargo Capacity (MT)

Salted Fish	_____	Freezer	4
Fresh Fish	_____	Dry Hold	or 1
Frozen Fish	5000	Tanks	1
Fish Meal	1400	Other	
Other	oil 400		

18. Cargo Space

Number	Name
4	I,II,III,IV
or 1	IV

19. Processing Equipment (Indicate daily capacity,MT) _____
20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species	Contemplated Catch (MT)	Gear to be Used
NE Pacyfic	1977			

21. Name and Address of Agent appointed to receive any legal process issued in the United States:
    Amerpol International Inc. Official Representative
    Two World Trade Center Ireneusz Wrześniewski
    Suite 2222, New York, N.Y.10048

PL-77-0053

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

PL-77-0053

Permit Period Applied For: 1977

Application No. _____ For Use of Issuing Office

State: POLAND

1. Name of Vessel m/s "Duran"
2. Vessel No.: Hull No. _____ Registration No. 110872
3. Name and Address of Owner
   Name PPURM "TRANSOCEAN"
   Address 70-952 Szczecin
   ul.Odrowąża 1, POB.631 Poland
   Cable Address Transocean Szczecin
   Name and Address of Charterer _____
4. Homeport and State of Registry: Szczecin - Poland
5. Type of Vessel Reefer
6. Tonnage (Gross) 5126 (Net) 2402
7. Length 113,35 M. 8. Breadth 17,01 M. 9. Draft 7,30 M.
10. Horsepower 8400 shp. 11. Maximum Speed 18 kt.
11. Propulsion: Diesel ( ), Steam ( ), Diesel/Electric ( ), Other _____
13. Date Built 1972
14. Number and Nationality of Personnel 37 - Poles
    Officers 14 Crew 23 Other (Specify) _____
15. Communications: VHF-FM (x), AM/SSB, Voice (x), Telegraphy (x), Other _____
    International Radio Call Sign SQDK
    Radio Frequencies Monitored 500, 2182
    Other Working Frequencies 480, 2058, 4190, 6285, 8380
    Schedule 17.30 - 17.35 on the zone times
16. Navigation Equipment: Loran C (x), Loran A ( ), Omega ( ), LR4100 Decca (x), Navsat ( ), Radar (x), Fathometer (x), Other _____
17. Cargo Capacity (MT)

Salted Fish	_____	Freezer	4
Fresh Fish	_____	Dry Hold	or1
Frozen Fish	2250	Tanks	1
Fish Meal	750	Other	
Other	oil 100		

18. Cargo Space

Number	Name
4	I,II,III,/IV/
or1	/IV/

19. Processing Equipment (Indicate daily capacity,MT) _____
20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species	Contemplated Catch (MT)	Gear to be Used
NE Pacyfic	1977			

21. Name and Address of Agent appointed to receive any legal process issued in the United States:
    Amerpol International Inc. Official Representative
    Two World Trade Center Ireneusz Wrześniewski
    Suite 2222, New York, N.Y.10048

THE UNITED STATES OF AMERICA
DEPARTMENT OF COMMERCE
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

APPLICATION FOR VESSEL PERMITS TO FISH WITHIN THE FISHERY CONSERVATION ZONE OF THE UNITED STATES, OR FOR ANADROMOUS SPECIES OR CONTINENTAL SHELF FISHERY RESOURCES

GC-77-0001 to GC-77-0027

DATE December 15,1976 APPLICATION NO. ==
for use of issuing Officer

In accordance with the provision of Section 204 of the Fishery Conservation and Management Act of 1976, (16 U.S.C. 1801-1882), and the governing international fisheries agreement entered into with the Government of the United States of America, which entered into force on _____, date

the government (or competent authority) of _____
German Democratic Republic
hereby submits this application for permits for fishing vessels under its jurisdiction to fish within the fishery conservation zone of the United States, or beyond that zone for anadromous species or Continental Shelf fishery resources subject to the jurisdiction of the United States.

The following information is submitted in support of this application (Use additional sheets as required).

A completed Fishing Vessel Identification Form for each permit that is requested; and a compilation of data contained in questions 5 and 20 in the attached Fishing Vessel Identification Form.

Submitted December 20,1976 Date

Signature of Authorized Official

[illegible] Title

GC-77-0001 to GC-77-0027

Annex: Data compilation of questions contsined in Section 5 and 20

No.	Ocean Area	Name of Vessel	Typ of Vessel	Period (from-to)	Species	Contemplated catch (mt)	Gear to be Used
1.	ICNAF-Division 5 Ze	"Magdeburg"	Side Trawler	15.8.-30.9.77	Herring	no catch	only processed to salted fish
2.	ICNAF-Division 5 Ze	"Mansfeld"	Side Trawler	15.8.-30.9.77	Herring	no catch	only processed to salted fish
3.	ICNAF-Division 5 Ze	"Leuna"	Side Trawler	15.8.-30.9.77	Herring	no catch	only processed to salted fish
4.	ICNAF-Division 5 Ze	"Eisenach"	Side Trawler	15.8.-30. 9.77	Herring	no catch	only processed to salted fish
5.	ICNAF-Division 5 Ze	"Gotha"	Side Trawler	15.8.-30.9.77	Herring	no catch	only processed to salted fish
	Subarea 5 and Stat.Area 6	"Gotha"	Side Trawler	1.12.-31.12.77	Mackerel	no catch	only processed to salted fish
6.	ICNAF-Division 5 Ze	"Ölsnitz i.V."	Side Trawler	15.8.-30.9.77	Herring	no catch	only processed to salted fish
7.	ICNAF-Division 5 Ze	"Weimar"	Side Trawler	15.8.-30.9.77	Herring	no catch	only processed to salted fish
	Subarea 5 and Stat.Area 6	"Weimar"	Side Trawler	1.12.-31.12.77	Mackerel	no catch	only processed to salted fish
8.	ICNAF-Division 5 Ze	"Brandenburg"	Side Trawler	17.8.-30.9.77	Herring	no catch	only processed to salted fish
9.	ICNAF-Division 5 Ze	"Gera"	Side Trawler	17.8.-30.9.77	Herring	no catch	only processed to salted fish

GC-77-0001 to GC-77-0027

- 2 -

No.	Ocean Area	Name of Vessel	Typ of Vessel	Period (from-to)	Species	Contemplated catch (mt)	Gear to be Used
10.	ICNAF-Division 5 Ze	"Görlitz"	Side Trawler	16.8.-30.9.77	Herring	no catch	only processed to salted fish
11.	ICNAF-Division 5 Ze	"Cottbus"	Side Trawler	16.8.-30.9.77	Herring	no catch	only processed to salted fish
12.	ICNAF-Division 5 Ze	"Breitling"	Transportvessel	21.8.-30.9.77	Herring	no catch	only handling of salted fish
13.	ICNAF-Division 5 Ze	"A. Becker"	Stern Trawler	15.8.-30.9.77	Herring	490	OTM 2
	Subarea 5 and Stat.Area 6	"A. Becker"	Stern Trawler	1.12.-31.12.77	Mackerel	340	OTM 2
14.	ICNAF-Division 5 Ze	"E.Eisenschneider"	Stern Trawler	19.8.-30.9.77	Herring	490	OTM 2
15.	ICNAF-Division 5 Ze	"Herta Lindner"	Stern-Trawler	19.8.-30.9.77	Herring	490	OTM 2
	Subarea 5 and Stat.-Area 6	"H.Lindner"	Stern-Trawler	1.12.-31.12.77	Mackerel	340	OTM 2
16.	ICNAF-Division 5 Ze	"Rudi Arndt"	Stern Trawler	15.8.-30.9.77	Herring	490	OTM 2
17.	ICNAF-Division 5 Ze	"Grete Walter"	Stern Trawler	17.8.-30.9.77	Herring	470	OTM 2
	Subarea 5 and Stat.Area 6	"G. Walter"	Stern-Trawler	1.12.-31.12.77	Mackerel	340	OTM 2
18.	ICNAF-Division 5 Ze	"Karl-Wolf"	Stern Trawler	15.8.-30.9.77	Herring	475	OTM 2
	Subarea 5 and Stat.Area 6	"K. Wolf"	Stern Trawler	1.12.-31.12.77	Mackerel	340	OTM 2
19.	ICNAF-Division 5 Ze	"Eugen Schönhaar"	Stern Trawler	15.8.-30.9.77	Herring	490	OTM 2
	Subarea 5 and Stat.Area 6	"Eug.Schönhaar"	Stern Trawler	1.12.-31.12.77	Mackerel	340	OTM 2
20.	ICNAF-Division 5 Ze	"Philipp Müller"	Stern Trawler	16.8.-30.9.77	Herring	470	OTM 2
	Subarea 5 and Stat.Area 6	"Ph. Müller"	Stern-Trawler	1.12.-31.12.77	Mackerel	340	OTM 2
21.	ICNAF-Division 5 Ze	"Peter Göring"	Stern Trawler	16.8.-30.9.77	Herring	490	OTM 2
22.	Subarea 5 and Stat.Area 6	"P. Weil "	Stern Trawler	1.12.-31.12.77	Mackerel	340	OTM 2

GC-77-0001 to GC-77-0027

- 3 -

No.	Ocean Area	Name of Vessel	Typ of Vessel	Period (from-to)	Species	Contemplated catch (mt)	Gear to be Used
23.	Subarea 5 and Stat.Area 6	"Walter Dehmel"	Stern Trawler	11.11.-31.12.77	Mackerel	520	OTM 2
24.	ICNAF-Division 5 Ze	"Willi Bredel"	Stern Trawler	17.8.-30.9.77	Herring	470	OTM 2
	Subarea 5 and Stat-Area 6	"Willi Bredel"	Stern Trawler	1.10.-31.12.77	Mackerel	815	OTM 2
25.	Subarea 5 and Stat.Area 6	"Junge Garde"	Base ship	1.12.-31.12.77	-	-	-
26.	Subarea 5 and Stat.Area 6	"Lütten Klein"	Transportvessel	1.11.-31.12.77	-	-	-
27.	Subarea 5 and Stat.Area 6	"Evershagen"	Transportvessel	15.8.-30.9.77	-	-	-

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

GC-77-0001

Permit Period Applied For: 1977

Application No. For Use of Issuing Office

State: German Democratic Republic

1. Name of Vessel: Magdeburg
2. Vessel No.: Hull No. ROS 200 Registration No. 2283
3. Name and Address of Owner / Name and Address of Charterer
   Name: VEB Fischkombinat Rostock
   Address: VEB Fischkombinat
   Rostock, GDR 251 Rostock 5
   Cable Address
   31121 Fiko dd
4. Homeport and State of Registry: Rostock, GDR
5. Type of Vessel: ~~side stern~~ trawler
6. Tonnage (Gross) 671,44 (Net) 238,35
7. Length 54,40 M. B. P. Breadth 9,03 M. Depth 4,50 M.
10. Horsepower 920 shp. 11. Maximum Speed 13 kt.
11. Propulsion: Diesel (1), Steam (-), Diesel/Electric (-),
    Other -
13. Date Built 1954
14. Number and Nationality of Personnel 26, GDR
    Officers 7 Crew 19 Other (Specify) -
15. Communications: VHF-FM (X), MF/SSB, Voice (X), Telegraphy (
    Other -
    International Radio Call Sign DHXI
    Radio Frequencies Monitored 500, 2182
    Other Working Frequencies: 425,434,466,513,[illegible]
    Schedule zone time: 8.00-10.00; 16.00-20.00 o'clock

GC-77-0001

16. Navigation Equipment: Loran C (-), Loran A (1), Omega (-),
    Decca (1), Navsat (-), Radar (2), Fathometer (2),
    Other Direction finder (1)
17. Cargo Capacity (MT) / 18. Cargo Space Number / Size

Salted Fish	130	Freezer	
Fresh Fish		Dry Hold	2 fish room
Frozen Fish		Tanks	
Fish Meal		Other	
Other			

19. Processing Equipment (Indicate daily capacity, MT)
    2 headers, 10 tons/d
20. Fisheries for which Permit is requested:

Ocean Area	Period (From-To)	Species	Contemplated Catch (MT)	
NW-Atlantic ICNAP-Division 5 Ze	15.8. - 30.9.77	-	-	-

21. Name and Address of Agent appointed to receive any legal process issued in the United States:

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

GC-77-0002

Permit Period Applied For: 1977

Application No. For Use of Issuing Office

State: German Democratic Republic

1. Name of Vessel: Mansfeld
2. Vessel No.: Hull No. ROS 209 Registration No. 2283
3. Name and Address of Owner / Name and Address of Charterer
   Name: VEB Fischkombinat Rostock
   Address: VEB Fischkombinat
   Rostock, GDR 251 Rostock 5
   Cable Address
   31121 Fiko dd
4. Homeport and State of Registry: Rostock, GDR
5. Type of Vessel: ~~side stern~~ trawler
6. Tonnage (Gross) 671,44 (Net) 238,35
7. Length 54,40 M. B. P. Breadth 9,03 M. Depth
10. Horsepower 920 shp. 11. Maximum Speed 13 kt.
11. Propulsion: Diesel (1), Steam (-), Diesel/Electric (-),
    Other -
13. Date Built 1955
14. Number and Nationality of Personnel 26, GDR
    Officers 7 Crew 19 Other (Specify) -
15. Communications: VHF-FM (X), MF/SSB, Voice (X), Telegraphy (X
    Other -
    International Radio Call Sign DHXI
    Radio Frequencies Monitored 500, 2182
    Other Working Frequencies 425,434,466,513,[illegible]
    Schedule zone time: 8.00-10.00; 16.00-20.00 o'clock

GC-77-0002

16. Navigation Equipment: Loran C (-), Loran A (1), Omega (-),
    Decca (1), Navsat (-), Radar (2), Fathometer (2),
    Other Direction finder
17. Cargo Capacity (MT) / 18. Cargo Space Number / Size

Salted Fish	130	Freezer	
Fresh Fish		Dry Hold	2 fish room
Frozen Fish		Tanks	
Fish Meal	-	Other	
Other			

19. Processing Equipment (Indicate daily capacity, MT)
    2 headers, 10 tons/d
20. Fisheries for which Permit is requested:

Ocean Area	Period (From-To)	Species	Contemplated Catch (MT)	
NW-Atlantic ICNAP-Division 5 Ze	15.8.- 30.9.77	-	-	-

21. Name and Address of Agent appointed to receive any legal process issued in the United States:

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

GC-77-0003

Permit Period Applied For: 1977

Application No. ~~2/914~~ For Use of Issuing Office

State: German Democratic Republic

1. Name of Vessel Leuna
2. Vessel No.: Hull No. ROS 211 Registration No. 2234
3. Name and Address of Owner
   Name VEB Fischkombinat Rostock
   Address VEB Fischkombinat
   Rostock, GDR 251 Rostock 5
   Cable Address
   31121 Fiko dd
   Name and Address of Charterer
4. Homeport and State of Registry: Rostock, GDR
5. Type of Vessel ~~side stern~~ trawler
6. Tonnage (Gross) 696,39 (Net) 261,59
7. Length 54,56 M. 8. Breadth 9,03 M. 9. Draft 4,00 M.
10. Horsepower 960 shp. 11. Maximum Speed 10 kt.
11. Propulsion: Diesel (1), Steam (-), Diesel/Electric (-),
    Other -
13. Date Built 1954
14. Number and Nationality of Personnel 26, GDR
    Officers 7 Crew 19 Other (Specify) -
15. Communications: VHF-FH (x), AM/SSB, Voice (x), Telegraphy (x
    Other -
    International Radio Call Sign DHXX
    Radio Frequencies Monitored 500, 2182
    Other Working Frequencies 425,454,468,512,2046,2049,2101
    Schedule zone time: 8.00-10.00; 18.00-20.00 o'clock

GC-77-0003

16. Navigation Equipment: Loran C (-), Loran A (1), Omega (-),
    Decca (1), Navsat (-), Radar (2), Fathometer (2),
    Other Direction finder
17. Cargo Capacity (MT)

Salted Fish	130	Freezer	
Fresh Fish		Dry Hold	2
Frozen Fish		Tanks	
Fish Meal	-	Other	
Other			

18. Cargo Space Number: 2 Name: fish rooms
19. Processing Equipment (Indicate daily capacity,MT)
    2 headers, 10 tons/d
20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species	Contenplated Catch (MT)	Gear to be Used
NW-Atlantic ICNAF-Division 5 Ze	15.8.-30.9.77	-	-	-

21. Name and Address of Agent appointed to receive any legal process issued in the United States:

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

GC-77-0004

Permit Period Applied For: 1977

Application No. ~~4/912~~ For Use of Issuing Office

State: German Democratic Republic

1. Name of Vessel Eisenach
2. Vessel No.: Hull No. ROS 212 Registration No. 2239
3. Name and Address of Owner
   Name VEB Fischkombinat Rostock
   Address VEB Fischkombinat Rostock
   GDR 251 Rostock 5
   Cable Address
   31121 Fiko dd
   Name and Address of Charterer
4. Homeport and State of Registry: Rostock, GDR
5. Type of Vessel ~~side~~ stern trawler
6. Tonnage (Gross) 696,39 (Net) 261,59
7. Length 54,56 M. 8. Breadth 9,03 M. 9. Draft 4,00 M.
10. Horsepower 920 shp. 11. Maximum Speed - kt.
11. Propulsion: Diesel (1), Steam (-), Diesel/Electric (-),
    Other -
13. Date Built 1954
14. Number and Nationality of Personnel 26 GDR
    Officers 7 Crew 19 Other (Specify) -
15. Communications: VHF-FH (x), AM/SSB, Voice (x), Telegraphy (x
    Other -
    International Radio Call Sign DHXL
    Radio Frequencies Monitored 500, 2182
    Other Working Frequencies 425,454,468,512,2046,2049,2101
    Schedule zone time: 08.00-10.00, 18.00.-20.00 o'clock

GC-77-0004

16. Navigation Equipment: Loran C (-), Loran A (1), Omega (-),
    Decca (1), Navsat (-), Radar (2), Fathometer (2),
    Other Direction finder
17. Cargo Capacity (MT)

Salted Fish	130	Freezer	
Fresh Fish		Dry Hold	2
Frozen Fish		Tanks	
Fish Meal		Other	
Other			

18. Cargo Space Number: 2 Name: fish rooms
19. Processing Equipment (Indicate daily capacity,MT)
    2 headers, 10 tons/d
20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species	Contenplated Catch (MT)	Gear to be Used
NW-Atlantic ICNAF-Division 5 Ze	15.8.-30.9.77	-	-	-

21. Name and Address of Agent appointed to receive any legal process issued in the United States:

FISHING VESSEL IDENTIFICATION FORM (FOREIGN) GC-77-0005

Permit Period Applied For: 1977 — Application No. For Use of Issuing Office: ~~5/214~~

State: German Democratic Republic

1. Name of Vessel: Gotha
2. Vessel No.: Hull No. ROS 214 — Registration No. 2240
3. Name and Address of Owner — Name and Address of Charterer
   Name: VEB Fischkombinat Rostock
   Address: VEB Fischkombinat Rostock
   GDR 251 Rostock 5
   Cable Address: 31121 Fiko dd
4. Homeport and State of Registry: Rostock, GDR
5. Type of Vessel: ~~Stern~~ trawler
6. Tonnage (Gross) 696,39 (Net) 261,59
7. Length 54,56 M. 8. Breadth 9,03 M. 9. Draft 4,00 M.
10. Horsepower 920 shp. 11. Maximum Speed 10 kt.
11. Propulsion: Diesel (1), Steam (X), Diesel/Electric ( ), Other: -
13. Date Built 1954
14. Number and Nationality of Personnel: 26, GDR
    Officers 7 Crew 19 Other (Specify) -
15. Communications: VHF-FM ( ), AM/SSB, Voice (X), Telegraphy (X)
    Other: -
    International Radio Call Sign: DHXN
    Radio Frequencies Monitored: 500, 2182
    Other Working Frequencies: 425,454,468,512,2046,2049,2101
    Schedule: zone time: 08.00-10.00, 18.00-20.00 o'clock

GC-77-0005

16. Navigation Equipment: Loran C (-), Loran A (1), Omega (-), Decca (1), Navsat (-), Radar (2), Fathometer (1), Other: Direction finder (1)
17. Cargo Capacity (MT) — 18. Cargo Space Number — Name

Salted Fish	130	Freezer	
Fresh Fish		Dry Hold	2 fish rooms
Frozen Fish		Tanks	
Fish Meal		Other	
Other			

19. Processing Equipment (Indicate daily capacity,MT)
    2 headers (10 tons per day)
20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species	Contenplated Catch (MT)	Gear to be Used
NW-Atlantic	15.8.-30.9.77	-	-	-
	1.12.-31.12.77	-	-	-

ICNAF-Division 5 Ze
Subarea 5 and Stat.Area 6

21. Name and Address of Agent appointed to receive any legal process issued in the United States:

FISHING VESSEL IDENTIFICATION FORM (FOREIGN) GC-77-0006

Permit Period Applied For: 1977 — Application No. For Use of Issuing Office: ~~6/209~~

State: German Democratic Republic

1. Name of Vessel: Oelsnitz i.V.
2. Vessel No.: Hull No. ROS 218 — Registration No. 2264
3. Name and Address of Owner — Name and Address of Charterer
   Name: VEB Fischkombinat Rostock
   Address: VEB Fischkombinat Rostock
   GDR 251 Rostock 5
   Cable Address: 31121 Fiko dd
4. Homeport and State of Registry: Rostock, GDR
5. Type of Vessel: ~~Steam~~ trawler
6. Tonnage (Gross) 696,34 (Net) 258,28
7. Length 54,56 M. 8. Breadth 9,03 M. 9. Draft 4,00 M.
10. Horsepower 976 shp. 11. Maximum Speed 10 kt.
11. Propulsion: Diesel (1), Steam (_), Diesel/Electric ( ), Other: -
13. Date Built 1956
14. Number and Nationality of Personnel: 26 GDR
    Officers 7 Crew 19 Other (Specify) -
15. Communications: VHF-FM (X), AM/SSB, Voice (X), Telegraphy (X)
    Other: -
    International Radio Call Sign: DHXR
    Radio Frequencies Monitored: 500, 2182
    Other Working Frequencies: 425,454,468,512,2046,2049,2101
    Schedule: zone time: 08.00-10.00, 18.00- 20.00 o'clock

GC-77-0006

16. Navigation Equipment: Loran C (-), Loran A (1), Omega (-), Decca (1), Navsat (-), Radar (2), Fathometer (2), Other: Direction finder
17. Cargo Capacity (MT) — 18. Cargo Space Number — Name

Salted Fish	130	Freezer	
Fresh Fish		Dry Hold	2 fish rooms
Frozen Fish		Tanks	
Fish Meal		Other	
Other			

19. Processing Equipment (Indicate daily capacity,MT)
    2 headers, 10 tons/d
20. Fisheries for whfch Permit is Requested:

Ocean Area	Period (From-To)	Species	Contenplated Catch (MT)	Gear to be Used
NW-Atlantic	15.8.-30.9.77	-	-	-

ICNAF-Division 5 Ze

21. Name and Address of Agent appointed to receive any legal process issued in the United States:

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

GC-77-0007

Permit Period Applied For: 1977

Application No. ~~7/230~~ For Use of Issuing Office

State: German Democratic Republic

1. Name of Vessel: Weimar
2. Vessel No.: Hull No. ROS 220 Registration No. 2260
3. Name and Address of Owner / Name and Address of Charterer
   Name: VEB Fischkombinat Rostock
   Address: VEB Fischkombinat Rostock
   GDR 251 Rostock 5
   Cable Address: 31121 Fiko dd
4. Homeport and State of Registry: Rostock, GDR
5. Type of Vessel: Side ~~Stern~~ trawler
6. Tonnage (Gross) 696,34 (Net) 258,28
7. Length 54,56 M. 8. Breadth 9,03 M. 9. Draft 4,00 M.
10. Horsepower 920 shp. 11. Maximum Speed - kt.
11. Propulsion: Diesel (1), Steam (-), Diesel/Electric (-),
    Other -
13. Date Built 1956
14. Number and Nationality of Personnel 26GDR
    Officers 7 Crew 19 Other (Specify) -
15. Communications: VHF-FM (x), AM/SSB, Voice (x), Telegraphy x
    Other -
    International Radio Call Sign DHXT
    Radio Frequencies Monitored 500, 2182
    Other Working Frequencies 425,454,468,512,2046,2049,2100
    Schedule zone time: 08.00-10.00, 18.00-20.00 o'clock

GC-77-0007

16. Navigation Equipment: Loran C (-), Loran A (1), Omega (-),
    Decca (1), Navaat (-), Radar (2), Fathometer (2),
    Other Direction finder
17. Cargo Capacity (MT)

Salted Fish	130	Freezer	
Fresh Fish		Dry Hold	2
Frozen Fish		Tanks	
Fish Meal		Other	
Other			

18. Cargo Space — Number: 2 — Name: fish rooms
19. Processing Equipment (Indicate daily capacity,MT)
    2 headers, 10 tons/d
20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species	Contenplated Catch (MT)	Gear to be Used
NW-Atlantic ICNAF-Division 5 Ze Subarea 5 and Stat.Area 6	15.8.-30.9.77 - 1.12.-31.12.77-	-	- -	-

21. Name and Address of Agent appointed to receive any legal process issued in the United States:

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

GC-77-0008

Permit Period Applied For: 1977

Application No. ~~8/231~~ For Use of Issuing Office

State: German Democratic Republic

1. Name of Vessel: Brandenburg
2. Vessel No.: Hull No. ROS 221 Registration No. 2362
3. Name and Address of Owner / Name and Address of Charterer
   Name: VEB Fischkombinat Rostock
   Address: VEB Fischkombinat Rostock, GDR 251 Rostock 5
   Cable Address: 31121 Fiko dd
4. Homeport and State of Registry: Rostock, GDR
5. Type of Vessel: Side ~~Stern~~ trawler
6. Tonnage (Gross) 938,54 (Net) 290,03
7. Length 60,04 M. 8. Breadth 10,32 M. 9. Draft 4,65 M.
10. Horsepower 1.420 shp. 11. Maximum Speed 12 kt.
11. Propulsion: Diesel (2), Steam (-), Diesel/Electric (-),
    Other -
13. Date Built 1959
14. Number and Nationality of Personnel 29, GDR
    Officers 7 Crew 22 Other (Specify) -
15. Communications: VHF-FM (x), AM/SSB, Voice (x), Telegraphy (x)
    Other -
    International Radio Call Sign DHXU
    Radio Frequencies Monitored 500, 2182
    Other Working Frequencies 425,454,468,2046,512,2049,2101
    Schedule zone time: 8.00-10.00; 18.00-20.00 o'clock

GC-77-0008

16. Navigation Equipment: Loran C (-), Loran A (1), Omega (-),
    Decca (1), Navaat (-), Radar (2), Fathometer (2),
    Other Direction finder
17. Cargo Capacity (MT)

Salted Fish	120	Freezer	
Fresh Fish		Dry Hold	2
Frozen Fish		Tanks	2
Fish Meal	40	Other	1
Other	fish oil tank 22		

18. Cargo Space — Number: 2 — Name: fish rooms; Number: 2 — Name: fish oil tanks; Number: 1 — Name: fish meal room
19. Processing Equipment (Indicate daily capacity,MT)
    2 headers, 10 tons/d
20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species	Contenplated Catch (MT)	Gear to be Used
NW-Atlantic ICNAF-Division 5 Ze	17.8.-30.9.77	-	-	-

21. Name and Address of Agent appointed to receive any legal process issued in the United States:

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

GC-77-0009

Permit Period Applied For: 1977

Application No. ~~3/1003~~ For Use of Issuing Office

State: German Democratic Republic

1. Name of Vessel Gera
2. Vessel No.: Hull No. ROS 223 Registration No. 2393
3. Name and Address of Owner — Name and Address of Charterer
   Name VEB Fischkombinat Rostock
   Address VEB Fischkombinat
   Rostock, GDR 251 Rostock 5
   Cable Address
   31121 Fiko dd
4. Homeport and State of Registry: Rostock, GDR
5. Type of Vessel ~~Stern~~ trawler
6. Tonnage (Gross) 942,89 (Net) 291,28
7. Length 60,04 M. 8. Breadth 10,32 M. 9. Draft 4,65 M.
10. Horsepower 1.420 shp. 11. Maximum Speed 12 kt.
11. Propulsion: Diesel (2), Steam (—), Diesel/Electric (—),
    Other —
13. Date Built 1959
14. Number and Nationality of Personnel 29, GDR
    Officers 7 Crew 22 Other (Specify) —
15. Communications: VHF-FM (X), AM/SSB, Voice (X), Telegraphy (X)
    Other —
    International Radio Call Sign DHXY
    Radio Frequencies Monitored 500, 2182
    Other Working Frequencies 425, 454, 468, 512, 2046,2049,2101
    Schedule zone time: 8.00-10.00; 18.00-20.00 o'clock

GC-77-0009

16. Navigation Equipment: Loran C (—), Loran A (1), Omega (—), Decca (1), Navsat (—), Radar (2), Fathometer (2),
    Other Direction finder
17. Cargo Capacity (MT)

Salted Fish	120	Freezer	
Fresh Fish		Dry Hold	2
Frozen Fish		Tanks	2
Fish Meal	40	Other	1
Other	fish oil tank 22		

18. Cargo Space

Number	Name
2	fish rooms
2	fish oil tanks
1	fish meal room

19. Processing Equipment (indicate daily capacity,MT)
    2 headers, 10 tons/d
20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species	Contemplated Catch (MT)	Gear to be Used
NW-Atlantic ICNAF-Division 5 Ze	17.8.-30.9.77	—	—	—

21. Name and Address of Agent appointed to receive any legal process issued in the United States:

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

GC-77-0010

Permit Period Applied For: 1977

Application No. ~~10/224~~ For Use of Issuing Office

State: German Democratic Republic

1. Name of Vessel Görlitz
2. Vessel No.: Hull No. ROS 224 Registration No. 2392
3. Name and Address of Owner — Name and Address of Charterer
   Name VEB Fischkombinat Rostock
   Address VEB Fischkombinat
   Rostock, GDR 251 Rostock 5
   Cable Address
   31121 Fiko dd
4. Homeport and State of Registry: Rostock, GDR
5. Type of Vessel ~~Stern~~ trawler
6. Tonnage (Gross) 942,89 (Net) 291,28
7. Length 60,04 M. 8. Breadth 10,32 M. 9. Draft 4,65 M.
10. Horsepower 1.420 shp. 11. Maximum Speed 12 kt.
11. Propulsion: Diesel (2), Steam (—), Diesel/Electric (—),
    Other —
13. Date Built 1960
14. Number and Nationality of Personnel 29, GDR
    Officers 7 Crew 22 Other (Specify) —
15. Communications: VHF-FM (X), AM/SSB, Voice (X), Telegraphy (X)
    Other —
    International Radio Call Sign DHXV
    Radio Frequencies Monitored 500, 2182
    Other Working Frequencies 425,454,468,2046,2049,2101
    Schedule zone time: 8.00-10.00; 18.00-20.00 o'clock

GC-77-0010

16. Navigation Equipment: Loran C (—), Loran A (1), Omega (—), Decca (1), Navsat (—), Radar (2), Fathometer (2),
    Other Direction finder
17. Cargo Capacity (MT)

Salted Fish	120	Freezer	
Fresh Fish		Dry Hold	2
Frozen Fish		Tanks	2
Fish Meal	40	Other	1
Other	fish oil tank 22		

18. Cargo Space

Number	Name
2	fish rooms
2	fish oil tanks
1	fish meal room

19. Processing Equipment (indicate daily capacity,MT)
    2 headers, 10 tons/d
20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species	Contemplated Catch (MT)	Gear to be Used
NW-Atlantic ICNAF-Division 5 Ze	16.8.-30.9.77	—	—	—

21. Name and Address of Agent appointed to receive any legal process issued in the United States:

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

GC-77-0011

Permit Period Applied For: 1977

Application No. ~~13/225~~ For Use of Issuing Office

State: German Democratic Republic

1. Name of Vessel Cottbus
2. Vessel No.: Hull No. ROS 225 Registration No. 2394
3. Name and Address of Owner / Name and Address of Charterer
   Name: VEB Fischkombinat Rostock
   Address: VEB Fischkombinat Rostock, GDR 251 Rostock 5
   Cable Address: 31121 Fiko dd
4. Homeport and State of Registry: Rostock, GDR
5. Type of Vessel ~~Stern~~ trawler
6. Tonnage (Gross) 942,89 (Net) 291,28
7. Length 60,04 M. 8. Breadth 10,32 M. 9. Draft 4,65 M.
10. Horsepower 1.420 shp. 11. Maximum Speed 12 kt.
11. Propulsion: Diesel (2), Steam (-), Diesel/Electric (-), Other -
13. Date Built 1959
14. Number and Nationality of Personnel 29, GDR
    Officers 7 Crew 22 Other (Specify) -
15. Communications: VHF-FM (x), AM/SSB, Voice (x), Telegraphy (x)
    Other -
    International Radio Call Sign DHXZ
    Radio Frequencies Monitored 500, 2182
    Other Working Frequencies 425, 454, 468, 512, 2046, 2049, 210
    Schedule zone time: 8.00-10.00; 18.00-20.00 o'clock

GC-77-0011

16. Navigation Equipment: Loran C (-), Loran A (1), Omega (-), Decca (1), Navsat (-), Radar (2), Fathometer (2), Other Directien finder
17. Cargo Capacity (MT)

		18. Cargo Space Number	Name
Salted Fish 120	Freezer		
Fresh Fish -	Dry Hold	2	fish rooms
Frozen Fish -	Tanks	2	fish oil tanks
Fish Meal 40	Other	1	fish meal room
Other fish oil tank 22			

19. Processing Equipment (Indicate daily capacity,MT)
    2 headers, 10 tons/d
20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species	Contenplated Catch (MT)	Gear to be Used
NW-Atlantic ICNAF-Division 5 Ze	16.8.-30.9.77	-	-	-

21. Name and Address of Agent appointed to receive any legal process issued in the United States:

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

GC-77-0012

Permit Period Applied For: 1977

Application No. ~~13/218~~ For Use of Issuing Office

State: German Democratic Republic

1. Name of Vessel Breitling
2. Vessel No.: Hull No. ROS 318 Registration No. 2657
3. Name and Address of Owner / Name and Address of Charterer
   Name: VEB Fischkombinat Rostock
   Address: VEB Fischkombinat Rostock, GDR 251 Rostock 5
   Cable Address: 31121 Fiko dd
4. Homeport and State of Registry: Rostock GDR
5. Type of Vessel transport vessel
6. Tonnage (Gross) 2780,42 (Net) 1207,22
7. Length 94,61 M. 8. Breadth 14,03 M. 9. Draft 6,40 M.
10. Horsepower 2800 KW ~~shp~~. 11. Maximum Speed 14 kt.
11. Propulsion: Diesel (1), Steam (-), Diesel/Electric (-), Other -
13. Date Built 1968
14. Number and Nationality of Personnel 61 GDR
    Officers 19 Crew 42 Other (Specify) -
15. Communications: VHF-FM (x), AM/SSB, Voice (x), Telegraphy (x)
    Other -
    International Radio Call Sign DEXN
    Radio Frequencies Monitored 500, 2182
    Other Working Frequencies 425,454,468,512,2046,2049,2101
    Schedule zone time: 06.00-12.00,12.30 -14.30,18.00-20.00 o'clock

GC-77-0012

16. Navigation Equipment: Loran C (-), Loran A (1), Omega (-), Decca (1), Navsat (-), Radar (2), Fathometer (1), Other Direction finder (1)
17. Cargo Capacity (MT)

		18. Cargo Space Number	Name
Salted Fish -	Freezer	3	refrigerating hold
Fresh Fish -	Dry Hold		
Frozen Fish 1700	Tanks		
Fish Meal	Other		
Other			

19. Processing Equipment (Indicate daily capacity,MT)
20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species	Contenplated Catch (MT)	Gear to be Used
NW-Atlantic ICNAF-Division 5 Ze	21.8.-30.9.77	-	-	-

21. Name and Address of Agent appointed to receive any legal process issued in the United States:

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

GC-77-0013

Permit Period Applied For: 1977

Application No. ~~13/401~~ For Use of Issuing Office

State: German Democratic Republic

1. Name of Vessel Artur Becker
2. Vessel No.: Hull No. ROS 401 Registration No. 2533
3. Name and Address of Owner / Name and Address of Charterer
   Name VEB Fischkombinat Rostock
   Address VEB Fischkombinat Rostock
   GDR 251 Rostock 5
   Cable Address 31121 Fiko dd
4. Homeport and State of Registry: Rostock, GDR
5. Type of Vessel stern trawler
6. Tonnage (Grosa) 998,05 (Net) 312,05
7. Length 58,15 M. 8. Breadth 10,62 M. 9. Draft 4,70 M.
10. Horsepower 1500 shp. 11. Maximum Speed 13 kt.
11. Propulsion: Diesel (1), Steam (-), Diesel/Electric (-),
    Other -
13. Date Built 1964
14. Number and Nationality of Personnel 22, GDR
    Officers 7 Crew 15 Other (Specify) _____
15. Communications: VHF-FM (x), AM/SSB, Voice (x), Telegraphy (x)
    Other -
    International Radio Call Sign DAZQ
    Radio Frequencies Monitored 500, 2182
    Other Working Frequencies 425,454,468,512,2046,2049,2191
    Schedule Zone time: 08.00-10.00, 18.00-20.00 o'clock

GC-77-0013

16. Navigation Equipment: Loran C (-), Loran A (1), Omega (-),
    Decca (1), Navsat (-), Radar (2), Fathometer (2),
    Other Autopilot (1), Direction finder (1)
17. Cargo Capacity (MT) / 18. Cargo Space Number / Name

Salted Fish		Freezer	
Fresh Fish	90	Dry Hold	
Frozen Fish		Tanks	
Fish Meal		Other	2 fish storage space
Other			

19. Processing Equipment (Indicate daily capacity, MT)
20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species	Contemplated Catch (MT)	Gear to be Used
NW-Atlantic	15.8.-30.9.77	Herring	490	OTM 2
"	1.12.-31.12.77	Mackerel	340	"
Subarea 5 and Stat.Area 6				

21. Name and Address of Agent appointed to receive any legal process issued in the United States:

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

GC-77-0014

Permit Period Applied For: 1977

Application No. ~~14/404~~ For Use of Issuing Office

State: German Democratic Republic

1. Name of Vessel Elvira Eisenschneider
2. Vessel No.: Hull No. ROS 404 Registration No. 2563
3. Name and Address of Owner / Name and Address of Charterer
   Name VEB Fischkombinat Rostock
   Address VEB Fischkombinat
   Rostock, GDR 251 Rostock 5
   Cable Address 31121 Fiko dd
4. Homeport and State of Registry: Rostock, GDR
5. Type of Vessel stern trawler
6. Tonnage (Gross) 998,05 (Net) 312,02
7. Length 58,99 M. 8. Breadth 10,62 M. 9. Draft 4,70 M.
10. Horsepower 1.500 shp. 11. Maximum Speed 13 kt.
11. Propulsion: Diesel (1), Steam (-), Diesel/Electric (-),
    Other -
13. Date Built 1966
14. Number and Nationality of Personnel 22, GDR
    Officers 7 Crew 15 Other (Specify) -
15. Communications: VHF-FM (X), AM/SSB, Voice (X), Telegraphy (X),
    Other -
    International Radio Call Sign DAZT
    Radio Frequencies Monitored 500, 2182
    Other Working Frequencies 425, 454, 468, 512, 2046, 2049, 2191
    Schedule Zone time: 8.00-10.00; 18.00-20.00 o'clock

GC-77-0014

16. Navigation Equipment: Loran C (-), Loran A (1), Omega (-),
    Decca (1), Navsat (-), Radar (2), Fathometer (2),
    Other Autopilot (1), Direction finder(1)
17. Cargo Capacity (MT) / 18. Cargo Space Number / Name

Salted Fish		Freezer	
Fresh Fish	90	Dry Hold	
Frozen Fish		Tanks	
Fish Meal		Other	2 fish storage space
Other			

19. Processing Equipment (Indicate daily capacity, MT)
20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species	Contemplated Catch (MT)	Gear to be Used
NW-Atlantic ICNAF-Division 5 Ze	19.8.-30.9.77	Herring	490	OTM 2

21. Name and Address of Agent appointed to receive any legal process issued in the United States:

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

GC-77-0015

Permit Period Applied For: 1977

Application No. ~~45/405~~ For Use of Issuing Office

State: German Democratic Republic

1. Name of Vessel Herta Lindnor
2. Vessel No.: Hull No. ROS 405 Registration No. 2565
3. Name and Address of Owner
   Name VEB Fischkombinat Rostock
   Address VEB Fischkombinat Rostock
   GDR 251 Rostock 5
   Cable Address 31121 Fiko dd
   Name and Address of Charterer
4. Homeport and State of Registry: Rostock, GDR
5. Type of Vessel stern trawler
6. Tonnage (Gross) 998,05 (Net) 312,02
7. Length 59,04 M. 8. Breadth 10,62 M. 9. Draft 4,70 M.
10. Horsepower 1500 shp. 11. Maximum Speed 13 kt.
11. Propulsion: Diesel (1), Steam (-), Diesel/Electric (-),
    Other -
13. Date Built 1966
14. Number and Nationality of Personnel 22, GDR
    Officers 7 Crew 15 Other (Specify) -
15. Communications: VHF-FM (X), AM/SSB, Voice (X), Telegraphy (X),
    Other -
    International Radio Call Sign DA2U
    Radio Frequencies Monitored 500, 2182
    Other Working Frequencies 425,454,468,512,2046,2049,2191
    Schedule Zone time:08.00-10.00, 18.00-20.00 o'clock

GC-77-0015

16. Navigation Equipment: Loran C (-), Loran A (1), Omega (-),
    Decca (1), Navsat (-), Radar (2), Fathometer (2),
    Other Autopilot (1), Direction finder (1)
17. Cargo Capacity (MT)
18. Cargo Space — Number — Name

Salted Fish		Freezer	
Fresh Fish	90	Dry Hold	
Frozen Fish		Tanks	
Fish Meal		Other	2 fish storage space
Other			

19. Processing Equipment (Indicate daily capacity,MT)
    -
20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species	Contemplated Catch (MT)	Gear to be Used
NW-Atlantic	19.8.-30.9.77	Herring	490	OTM 2
-"-	1.12.-31.12.77	Mackerel	340	OTM 2
Subarea 5 and Stat.Area 6				

21. Name and Address of Agent appointed to receive any legal process issued in the United States:

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

GC-77-0016

Permit Period Applied For: 1977

Application No. ~~76/410~~ For Use of Issuing Office

State: German Democratic Republic

1. Name of Vessel Rudi Arndt
2. Vessel No.: Hull No. ROS 410 Registration No. 2592
3. Name and Address of Owner
   Name VEB Fischkombinat Rostock
   Address VEB Fischkombinat Rostock
   GDR 251 Rostock 5
   Cable Address 31121 Fiko dd
   Name and Address of Charterer
4. Homeport and State of Registry: Rostock, GDR
5. Type of Vessel stern trawler
6. Tonnage (Gross) 963,63 (Net) 304,43
7. Length 58,96 M. 8. Breadth 10,62 M. 9. Draft 4,70 M.
10. Horsepower 1500 shp. 11. Maximum Speed 13 kt.
11. Propulsion: Diesel (1), Steam (-), Diesel/Electric (-),
    Other -
13. Date Built 1966
14. Number and Nationality of Personnel 22, GDR
    Officers 7 Crew 15 Other (Specify) -
15. Communications: VHF-FM (X), AM/SSB, Voice (X), Telegraphy (X),
    Other -
    International Radio Call Sign DA2Z
    Radio Frequencies Monitored 500, 2182
    Other Working Frequencies 425,454,468,512,2046,2049,2191
    Schedule Zone time: 08.00-10.00, 18.00-20.00 o'clock

GC-77-0016

16. Navigation Equipment: Loran C (-), Loran A (1), Omega (-),
    Decca (1), Navsat (-), Radar (2), Fathometer (2),
    Other Autopilot (1), Direction finder (1)
17. Cargo Capacity (MT)
18. Cargo Space — Number — Name

Salted Fish		Freezer	
Fresh Fish	90	Dry Hold	
Frozen Fish		Tanks	
Fish Meal		Other	2 fish storage space
Other			

19. Processing Equipment (Indicate daily capacity,MT)
    -
20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species	Contemplated Catch (MT)	Gear to be Used
NW-Atlantic	15.8.-30.9.77	Herring	490	OTM 2
ICNAF-Division 5 Ze				

21. Name and Address of Agent appointed to receive any legal process issued in the United States:

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

~~GC-77-0017~~
GC-77-0017

Permit Period Applied For: 1977

Application No. ~~17/412~~ For Use of Issuing Office

State: German Democratic Republic

1. Name of Vessel: Grete Walter
2. Vessel No.: Hull No. ROS 412 Registration No. 2599
3. Name and Address of Owner: Name: VEB Fischkombinat Rostock; Address: VEB Fischkombinat Rostock, GDR 251 Rostock 5; Cable Address: 31121 Fisch-kombinat dd
   Name and Address of Charterer: —
4. Homeport and State of Registry: Rostock, GDR
5. Type of Vessel: stern trawler
6. Tonnage (Gross) 963,63 (Net) 304,43
7. Length 59,06 M. 8. Breadth 10,62 M. 9. Draft 4,70 M.
10. Horsepower 1.500 shp. 11. Maximum Speed 13 kt.
11. Propulsion: Diesel (1), Steam (—), Diesel/Electric (—), Other —
13. Date Built 1966
14. Number and Nationality of Personnel 22, GDR
    Officers 7 Crew 15 Other (Specify) —
15. Communications: VHF-FM (X), AM/SSB, Voice (X), Telegraphy (X), Other —
    International Radio Call Sign DEXB
    Radio Frequencies Monitored 500, 2182
    Other Working Frequencies 425, 454, 468, 512, 2046, 2049, 2191
    Schedule Zone time: 8.00-10.00; 18.00-20.00 o' clock

GC-77-0017

16. Navigation Equipment: Loran C (—), Loran A (1), Omega (—), Decca (1), Navsat (—), Radar (2), Fathometer (2), Other Autopilot (1), Direction finder (1)
17. Cargo Capacity (MT)

		18. Cargo Space Number	Name
Salted Fish		Freezer	
Fresh Fish	90	Dry Hold	
Frozen Fish		Tanks	
Fish Meal		Other	2 fish storage space
Other			

19. Processing Equipment (Indicate daily capacity, MT) —
20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species	Contemplated Catch (MT)	Gear to be Used
NW-Atlantic	17.8.-30.9.77	Herring	470	OTM 2
"	1.12.-31.12.77	Mackerel	340	"

Subarea 5 and Stat.Area 6

21. Name and Address of Agent appointed to receive any legal process issued in the United States: —

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

GC-77-0018

Permit Period Applied For: 1977

Application No. ~~18/413~~ For Use of Issuing Office

State: German Democratic Republic

1. Name of Vessel: Karl Wolf
2. Vessel No.: Hull No. ROS 413 Registration No. 2612
3. Name and Address of Owner: Name: VEB Fischkombinat Rostock; Address: VEB Fischkombinat Rostock, GDR 251 Rostock 5; Cable Address: 31121 Fisch-kombinat dd
   Name and Address of Charterer: —
4. Homeport and State of Registry: Rostock, GDR
5. Type of Vessel: stern trawler
6. Tonnage (Gross) 963,63 (Net) 304,43
7. Length 59,10 M. 8. Breadth 10,62 M. 9. Draft 4,70 M.
10. Horsepower 1.500 shp. 11. Maximum Speed 13 kt.
11. Propulsion: Diesel (1), Steam (—), Diesel/Electric (—), Other —
13. Date Built 1966
14. Number and Nationality of Personnel 22, GDR
    Officers 7 Crew 15 Other (Specify) —
15. Communications: VHF-FM (X), AM/SSB, Voice (X), Telegraphy (X), Other —
    International Radio Call Sign DEXC
    Radio Frequencies Monitored 500, 2182
    Other Working Frequencies 425, 454, 468, 512, 2046, 2049, 2191
    Schedule zone time: 8.00-10.00; 18.00-20.00 o'clock

GC-77-0018

16. Navigation Equipment: Loran C (—), Loran A (1), Omega (—), Decca (1), Navsat (—), Radar (2), Fathometer (2), Other Autopilot (1), Direction finder (1)
17. Cargo Capacity (MT)

		18. Cargo Space Number	Name
Salted Fish		Freezer	
Fresh Fish	90	Dry Hold	
Frozen Fish		Tanks	
Fish Meal		Other	2 fish storage space
Other			

19. Processing Equipment (Indicate daily capacity, MT) —
20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species	Contemplated Catch (MT)	Gear to be Used
NW-Atlantic	16.8.-30.9.77	Herring	475	OTM 2
"	1.12.-31.12.77	Mackerel	340	"

Subarea 5 and Stat.Area 6

21. Name and Address of Agent appointed to receive any legal process issued in the United States: —

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

GC-77-0019

Permit Period Applied For: 1977

Application No. ~~17/416~~ For Use of Issuing Office

State: German Democratic Republic

1. Name of Vessel Eugen Schönhaar
2. Vessel No.: Hull No. ROS 416 Registration No. 2632
3. Name and Address of Owner / Name and Address of Charterer
   Name VEB Fischkombinat Rostock
   Address VEB Fischkombinat Rostock, GDR 251 Rostock 5
   Cable Address 31121 Fisch-kombinat dd
4. Homeport and State of Registry: Rostock, GDR
5. Type of Vessel stern trawler
6. Tonnage (Gross) 998,05 (Net) 312,02
7. Length 59,42 M. 8. Breadth 10,62 M. 9. Draft 4,70 M.
10. Horsepower 1.500 shp. 11. Maximum Speed 13 kt.
11. Propulsion: Diesel (1), Steam (-), Diesel/Electric (-),
    Other -
13. Date Built 1967
14. Number and Nationality of Personnel 22, GDR
    Officers 7 Crew 15 Other (Specify) -
15. Communications: VHF-FM (X), AM/SSB, Voice (X), Telegraphy (X),
    Other -
    International Radio Call Sign DEXF
    Radio Frequencies Monitored 500, 2182
    Other Working Frequencies 425, 454, 468, 512, 2046, 2049, 2191
    Schedule zone time: 8.00-10.00; 18.00-20.00 o'clock

GC-77-0019

16. Navigation Equipment: Loran C (-), Loran A (1), Omega (-),
    Decca (1), Navsat (-), Radar (2), Fathometer (2),
    Other Autopilot (1), Direction finder (1)
17. Cargo Capacity (MT)

Salted Fish		Freezer	
Fresh Fish	90	Dry Hold	
Frozen Fish		Tanks	
Fish Meal		Other	2
Other			

18. Cargo Space — Number: 2; Name: fish storage space
19. Processing Equipment (indicate daily capacity,MT)
20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species	Contemplated Catch (MT)	Gear to be Used
NW-Atlantic	15.8.-30.9.77	Herring	490	OTM 2
-"-	1.12.-31.12.77	Mackerel	340	"

Subarea 5 and Stat.Area 6

21. Name and Address of Agent appointed to receive any legal process issued in the United States:

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

GC-77-0020

Permit Period Applied For: 1977

Application No. ~~20/419~~ For Use of Issuing Office

State: German Democratic Republic

1. Name of Vessel Phillip Müller
2. Vessel No.: Hull No. ROS 419 Registration No. 2639
3. Name and Address of Owner / Name and Address of Charterer
   Name VEB Fischkombinat Rostock
   Address VEB Fischkombinat Rostock, GDR 251 Rostock 5
   Cable Address 31121 Fisch-kombinat dd
4. Homeport and State of Registry: Rostock, GDR
5. Type of Vessel stern trawler
6. Tonnage (Gross) 998,05 (Net) 312,02
7. Length 59,08 M. 8. Breadth 10,62 M. 9. Draft 4,70 M.
10. Horsepower 1.500 shp. 11. Maximum Speed 13 kt.
11. Propulsion: Diesel (1), Steam (-), Diesel/Electric (-),
    Other -
13. Date Built 1967
14. Number and Nationality of Personnel 22, GDR
    Officers 7 Crew 15 Other (Specify) -
15. Communications: VHF-FM (X), AM/SSB, Voice (X), Telegraphy (X),
    Other -
    International Radio Call Sign DEXI
    Radio Frequencies Monitored 500, 2182
    Other Working Frequencies 425, 454, 468, 512, 2046, 2049, 2191
    Schedule zone time: 8.00-10.00; 18.00-20.00 o'clock

GC-77-0020

16. Navigation Equipment: Loran C (-), Loran A (1), Omega (-),
    Decca (1), Navsat (-), Radar (2), Fathometer (2),
    Other Autopilot (1), Direction finder (1)
17. Cargo Capacity (MT)

Salted Fish		Freezer	
Fresh Fish	90	Dry Hold	
Frozen Fish		Tanks	
Fish Meal		Other	2
Other			

18. Cargo Space — Number: 2; Name: fish storage space
19. Processing Equipment (Indicate daily capacity,MT)
20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species	Contemplated Catch (MT)	Gear to be Used
NW-Atlantic	17.8.-30.9.77	Herring	470	OTM 2
-"-	1.12.-31.12.77	Mackerel	340	"

Subarea 5 and Stat.Area 6

21. Name and Address of Agent appointed to receive any legal process issued in the United States:

GC-77-0021

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

Permit Period Applied For: 1977

Application No. 21/421 For Use of Issuing Office

State: German Democratic Republic

1. Name of Vessel: Peter Göring
2. Vessel No.: Hull No. ROS 421 Registration No. 2645
3. Name and Address of Owner: Name: VEB Fischkombinat Rostock; Address: VEB Fischkombinat Rostock, GDR 251 Rostock 5; Cable Address: 31121 Fisch-kombinat dd
   Name and Address of Charterer: —
4. Homeport and State of Registry: Rostock, GDR
5. Type of Vessel: stern trawler
6. Tonnage (Gross) 998,05 (Net) 312,02
7. Length 59,32 M. 8. Breadth 10,62 M. 9. Draft 4,70 M.
10. Horsepower 1.500 shp. 11. Maximum Speed 13 kt.
11. Propulsion: Diesel (1), Steam (–), Diesel/Electric (–), Other: —
13. Date Built: 1968
14. Number and Nationality of Personnel: 22, GDR
    Officers 7 Crew 15 Other (Specify) —
15. Communications: VHF-FM (X), AM/SSB, Voice (X), Telegraphy (X), Other: —
    International Radio Call Sign: DEXK
    Radio Frequencies Monitored: 500, 2182
    Other Working Frequencies: 425, 454, 468, 512, 2046, 2049, 2191
    Schedule: zone time: 8.00-10.00; 18.00-20.00 o'clock

16. Navigation Equipment: Loran C (–), Loran A (1), Omega (–), Decca (1), Navsat (–), Radar (2), Fathometer (2), Other: Autopilot (1), Direction finder (1)
17. Cargo Capacity (MT)

		18. Cargo Space Number	Name
Salted Fish	—	Freezer	
Fresh Fish	90	Dry Hold	
Frozen Fish	—	Tanks	
Fish Meal	—	Other	2 fish storage space
Other	—		

19. Processing Equipment (indicate daily capacity, MT): —
20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species	Contemplated Catch (MT)	Gear to be Used
NW-Atlantic ICNAF-Division 5 Ze	15.8.-30.9.77	Herring	490	OTM 2

21. Name and Address of Agent appointed to receive any legal process issued in the United States: —

GC-77-0022

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

Permit Period Applied For: 1977

Application No. 22/307 For Use of Issuing Office

State: German Democratic Republic

1. Name of Vessel: Peter Nell
2. Vessel No.: Hull No. ROS 307 Registration No. 2470
3. Name and Address of Owner: Name: VEB Fischkombinat Rostock; Address: VEB Fischkombinat Rostock, GDR 251 Rostock 5; Cable Address: 31121 Fiko dd
   Name and Address of Charterer: —
4. Homeport and State of Registry: Rostock, GDR
5. Type of Vessel: stern trawler
6. Tonnage (Gross) 2962,13 (Net) 1319,31
7. Length 81,86 M. 8. Breadth 13,52 M. 9. Draft 5,80 M.
10. Horsepower 2.300 shp. 11. Maximum Speed 11 kt.
11. Propulsion: Diesel (1), Steam (–), Diesel/Electric (–), Other: —
13. Date Built: 1963
14. Number and Nationality of Personnel: 80, GDR
    Officers 16 Crew 64 Other (Specify) —
15. Communications: VHF-FM (X), AM/SSB, Voice (X), Telegraphy (X), Other: —
    International Radio Call Sign: DAZH
    Radio Frequencies Monitored: 500, 2182
    Other Working Frequencies: 425, 454, 468, 512, 2046, 2049, 2191
    Schedule: zone time: 8.00-12.00; 12.30-14.30; 18.00-20.00 o'clock

16. Navigation Equipment: Loran C (–), Loran A (1), Omega (–), Decca (1), Navsat (–), Radar (2), Fathometer (2), Other: Autopilot (1), Direction finder (1)
17. Cargo Capacity (MT)

		18. Cargo Space Number	Name
Salted Fish	—	Freezer	3 refrigerating holds
Fresh Fish	—	Dry Hold	1 fish meal holds
Frozen Fish	594	Tanks	4 fish oil tanks
Fish Meal	132	Other	
Other	fish oil tanks 72		

19. Processing Equipment (indicate daily capacity, MT)
    2x Baader 666 (66 tons per day), 1x Baader 131 (5 tons per day)
    1x Baader 338 (6 tons per day), 5x Baader 47 (6 tons per day)
    3x Baader 150 (6 tons per day), 1x KM 60 (8 tons per day)
    3x Baader 33 (8 tons per day)
20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species	Contemplated Catch (MT)	Gear to be Used
NW-Atlantic Subarea 5 and Stat.Area 6	1.11.- 31.12.77	Mackerel	610	OTM 2

21. Name and Address of Agent appointed to receive any legal process issued in the United States: —

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

GC-77-0023

Permit Period Applied For: 1977

Application No. 21/308 For Use of Issuing Office

State: German Democratic Republic

1. Name of Vessel Walter Dehnel
2. Vessel No.: Hull No. ROS 308 Registration No. 2471
3. Name and Address of Owner
   Name VEB Fischkombinat Rostock
   Address VEB Fischkombinat Rostock, GDR, 251 Rostock 5
   Cable Address 31121 Fisch-kombinat dd
   Name and Address of Charterer
4. Homeport and State of Registry: Rostock, GDR
5. Type of Vessel stern trawler
6. Tonnage (Gross) 2917,64 (Net) 1147,99
7. Length 81,35 M. 8. Breadth 13,52 M. 9. Draft 5,80 M.
10. Horsepower 2.300 shp. 11. Maximum Speed 11 kt.
11. Propulsion: Diesel (1), Steam (-), Diesel/Electric (-), Other -
13. Date Built 1963
14. Number and Nationality of Personnel 80, GDR
    Officers 16 Crew 64 Other (Specify) -
15. Communications: VHF-FH (X), AM/SSB, Voice (X), Telegraphy (X), Other -
    International Radio Call Sign DAZI
    Radio Frequencies Monitored 500, 2182
    Other Working Frequencies 425, 454, 468, 512, 2046, 2191, 2049
    Schedule Zone time: 8.00-12.00; 12.30-14.30; 18.00-20.00 o' clock

GC-77-0023

16. Navigation Equipment: Loran C (-), Loran A (1), Omega (-), Decca (1), Navsat (-), Radar (2), Fathometer (2), Other Autopilot (1); Direction finder (1)
17. Cargo Capacity (MT)

Salted Fish	-	Freezer	3
Fresh Fish	-	Dry Hold	1
Frozen Fish	630	Tanks	4
Fish Meal	132	Other	
Other fish oil tanks 72			

18. Cargo Space

Number	Name
3	refrigerating holds
1	fish meal holds
4	fish oil tanks

19. Processing Equipment (Indicate daily capacity,MT)
    2x Baader 666 (66 tons per day); 5x Baader 47 (6 tons per day)
    1x Baader 338 (6 tons per day); 1x KM 60 (8 tons per day)
    3x Baader 33 (8 tons per day);
    1x Baador 181 (5 tons per day);
20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species	Contemplated Catch (MT)	Gear to be Used
NW-Atlantic Subarea 5 and Stat.Area 6	11.11.-31.12.77	Mackerel	520	OTM 2

21. Name and Address of Agent appointed to receive any legal process issued in the United States:

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

GC-77-0024

Permit Period Applied For: 1977

Application No. 21/313 For Use of Issuing Office

State: German Democratic Republic

1. Name of Vessel Willi Bredel
2. Vessel No.: Hull No. ROS 313 Registration No. 2562
3. Name and Address of Owner
   Name VEB Fischkombinat Rostock
   Address VEB Fischkombinat Rostock, GDR 215 Rostock 5
   Cable Address 31121 Fiko dd
   Name and Address of Charterer
4. Homeport and State of Registry: Rostock, GDR
5. Type of Vessel storn trawler
6. Tonnage (Gross) 3169,34 (Net) 1478,12
7. Length 83,91 M. 8. Breadth 14,23 M. 9. Draft 8,89 M.
10. Horsepower 2.900 shp. 11. Maximum Speed 12 kt.
11. Propulsion: Diesel (1), Steam (-), Diesel/Electric (-), Other -
13. Date Built 1966
14. Number and Nationality of Personnel 80, GDR
    Officers 16 Crew 64 Other (Specify) -
15. Communications: VHF-FH (X), AM/SSB, Voice (X), Telegraphy (X), Other -
    International Radio Call Sign DAZP
    Radio Frequencies Monitored 500, 2182
    Other Working Frequencies 425, 454, 468, 512, 2046, 2049, 2191
    Schedule zone time: 8.00-12.00; 12.30-14.30; 18.00-20.00 o'clock

GC-77-0024

16. Navigation Equipment: Loran C (-), Loran A (1), Omega (-), Decca (1), Navsat (-), Radar (2), Fathometer (2), Other Autopilot (1), Direction finder (1)
17. Cargo Capacity (MT)

Salted Fish	-	Freezer	2
Fresh Fish	-	Dry Hold	3
Frozen Fish	760	Tanks	4
Fish Meal	160	Other	
Other fish oil tanks 90			

18. Cargo Space

Number	Name
2	refrigerating holds
3	fish meal holds
4	fish oil tanks

19. Processing Equipment (Indicate daily capacity,MT)
    1x Baader 666 (66 tons/d); 2x Baador 46 (10 tons/d)
    1x Baader 99 (10 tons/d)
    3x Baader 33 (8 tons/d)
    1x KM 60 (8 tons/d)
20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species	Contemplated Catch (MT)	Gear to be Used
NW-Atlantic Subarea 5 and Stat.Area 6	17.8.-31.12.77	Herring Mackerel	1.285	OTM 2

21. Name and Address of Agent appointed to receive any legal process issued in the United States:

GC-77-0025

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

GC-77-0025

Permit Period Applied For: 1977

Application No. ~~25/317~~ For Use of Issuing Office

State: German Democratic Republic

1. Name of Vessel Junge Garde
2. Vessel No.: Hull No. ROS 317 Registration No. 2605
3. Name and Address of Owner / Name and Address of Charterer
   Name: VEB Fischkombinat Rostock
   Address: VEB Fischkombinat Rostock
   GDR 251 Rostock 5
   Cable Address: 31121 Fiko dd
4. Homeport and State of Registry: Rostock, GDR
5. Type of Vessel base ship
6. Tonnage (Gross) 9641,91 (Net) 4779,43
7. Length 135,96 M. 8. Breadth 21,25 M. 9. Draft 13,09 M.
10. Horsepower 5000 ehp. 11. Maximum Speed 15 kt.
11. Propulsion: Diesel (-), Steam (-), Diesel/Electric (4),
    Other -
13. Date Built 1966
14. Number and Nationality of Personnel 165, GDR
    Officers 25 Crew 140 Other (Specify) ____
15. Communications: VHF-FM (x), AM/SSB, Voice (x), Telegraphy (x),
    Other data transmission device
    International Radio Call Sign DEXM
    Radio Frequencies Monitored 500, 2182
    Other Working Frequencies 425,454,468,512,2046,2049,2101
    Schedule 24 hours

GC-77-0025

16. Navigation Equipment: Loran C (-), Loran A (1), Omega (-),
    Decca (1), Navsat (-), Radar (3), Fathometer (2),
    Other Autopilot (1), Direction finder (2)
17. Cargo Capacity (MT)

		18. Cargo Space Number	Name
Salted Fish	Freezer	3	refrigerating holds
Fresh Fish	Dry Hold	1	fish meal holds
Frozen Fish 4240	Tanks	8	fish oil tanks
Fish Meal 1000	Other		
Other fish oil tanks 520			

19. Processing Equipment (Indicate daily capacity,MT)
    3x Baader 99(10 tons per day),6 x Baader 46 (10 tons per day)
    4x Baader 33(8 tons per day),14x Baader 47 (6 tons per day)
    3x Baader 338(6 tons per day), 3x KM 60 (8 tons per day)
    4x Baader 150(6 tons per day)
20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species	Contemplated Catch (MT)	Gear to be Used
NW-Atlantic Subarea 5 and Stat.Area 6	1.12.- 31.12.77	-	-	-

21. Name and Address of Agent appointed to receive any legal process issued in the United States:

GC-77-0026

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

GC-77-0026

Permit Period Applied For: 1977

Application No. ~~26/319~~ For Use of Issuing Office

State: German Democratic Republic

1. Name of Vessel Lütten Klein
2. Vessel No.: Hull No. ROS 319 Registration No. 2720
3. Name and Address of Owner / Name and Address of Charterer
   Name: VEB Fischkombinat Rostock
   Address: VEB Fischkombinat Rostock
   GDR 251 Rostock 5
   Cable Address: 31121 Fiko dd
4. Homeport and State of Registry: Rostock GDR
5. Type of Vessel transport vessel
6. Tonnage (Gross) 5227,37 (Net) 2541,43
7. Length 122,94 M. 8. Breadth 16,83 M. 9. Draft 7,90 M.
10. Horsepower 8850 ehp. 11. Maximum Speed 15 kt.
11. Propulsion: Diesel (4), Steam (-), Diesel/Electric (-),
    Other -
13. Date Built 1971
14. Number and Nationality of Personnel 61 GDR
    Officers 19 Crew 42 Other (Specify) -
15. Communications: VHF-FM (X), AM/SSB, Voice (X), Telegraphy (X),
    Other -
    International Radio Call Sign DEXO
    Radio Frequencies Monitored 500, 2182
    Other Working Frequencies 425,454,468,512,2046,2049,2101
    Schedule zone time: 08.00-12.00, 12.30-14.30,18.00-20.00 o' clock

GC-77-0026

16. Navigation Equipment: Loran C (-), Loran A (4), Omega (-),
    Decca (1), Navsat (-), Radar (2), Fathometer (1),
    Other Direction finder (1)
17. Cargo Capacity (MT)

		18. Cargo Space Number	Name
Salted Fish	Freezer	4	refrigerating holds
Fresh Fish	Dry Hold		
Frozen Fish 4000	Tanks		
Fish Meal	Other		
Other			

19. Processing Equipment (Indicate daily capacity,MT)
    -
20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species	Contemplated Catch (MT)	Gear to be Used
NW-Atlantic Subarea 5 and Stat.Area 6	Nov./Dez. 77	-	-	-

21. Name and Address of Agent appointed to receive any legal process issued in the United States:

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

GC-77-0027

GC-77-0027

Permit Period Applied For: 1977

Application No. For Use of Issuing Office ~~27/300~~

State: German Democratic Republic

1. Name of Vessel Evershagen
2. Vessel No.: Hull No. R03 320 Registration No. 2724
3. Name and Address of Owner Name and Address of Charterer

   Name VEB Fischkombinat Rostock

   Address VEB Fischkombinat Rostock

   GDR 251 Rostock 5

   Cable Address

   31121 Fiko dd
4. Homeport and State of Registry: Rostock, GDR
5. Type of Vessel transport vessel
6. Tonnage (Gross) 5229,16 (Net) 2522,61
7. Length 122,94 M. 8. Breadth 16,83 M. 9. Draft 7,90 M.
10. Horsepower 8850 shp. 11. Maximum Speed 15 kt.
11. Propulsion: Diesel (4), Steam (–), Diesel/Electric (–),

    Other –
13. Date Built 1971
14. Number and Nationality of Personnel 61 GDR

    Officers 19 Crew 42 Other (Specify) –
15. Communications: VHF-FM (x), AM/SSB, Voice (x), Telegraphy (x),

    Other –

    International Radio Call Sign DEXP

    Radio Frequencies Monitored 500, 2182

    Other Working Frequencies 425,454,468,512,2046,2049,2101

    Schedule zone time: 08.00-12.00, 12.30-14.30, 18.00-20.00 o'clock
16. Navigation Equipment: Loran C (–), Loran A (1), Omega (–),

    Decca (1), Navsat (–), Radar (2), Fathometer (1),

    Other Direction finder (1)
17. Cargo Capacity (MT)

    Salted Fish

    Fresh Fish

    Frozen Fish 4000

    Fish Meal

    Other
18. Cargo Space — Number — Name

    Freezer 4 refrigerating holds

    Dry Hold

    Tanks

    Other
19. Processing Equipment (Indicate daily capacity, MT)

    –
20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species	Contemplated Catch (MT)	Gear to be Used
NW-Atlantic Subarea 5 and Stat.Area 6	15Aug./Sept. 77	–	–	–

21. Name and Address of Agent appointed to receive any legal process issued in the United States:

[FR Doc.77-2170 Filed 1-21-77;8:45 am]

Vol. 42—No. 17
1-26-77

PAGES
4809-5021

federal register

WEDNESDAY, JANUARY 26, 1977

highlights

PART I:

FOREIGN SERVICE AND CIVIL SERVICE RETIREMENT AND DISABILITY SYSTEMS
Executive order conforming the systems; correction..... 4809

EMPLOYEE RETIREMENT INCOME
PBGC proposal on valuation of plan benefits; comments by 2-7-77..... 4862

LEGAL SERVICES
LSC proposal on client grievance procedures; comments by 2-25-77..... 4867
LSC proposed regulations relating to applications for and denial of refunding; comments by 2-25-77..... 4864

ENDANGERED SPECIES
Commerce/NOAA and Interior/FWS issue proposals on interagency cooperation (2 documents), 3-28-77.... 4868, 4873

QUESTIONABLE OR ILLEGAL CORPORATE PAYMENTS AND PRACTICES
SEC proposal to promote reliability of financial information and prevent concealment of improper practices; comments by 3-11-77..... 4854

MANDATORY GASOLINE AND DIESEL FUEL RATIONING
FEA establishes contingency plan..... 4813

FREEDOM OF INFORMATION
FTC rule concerning appeals to the Commission from initial denials; effective 1-26-77..... 4834

DIAGNOSTIC X-RAYS
EPA invites comments by 3-1-77 on radiation protection guidance..... 4884

GOVERNMENT IN SUNSHINE
TVA proposes implementation of act; comments by 2-25-77..... 4859

MINING AND MINING CLAIMS
Interior/NPS issues comprehensive rules; effective 1-26-77..... 4835

CONTINUED INSIDE

AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The six-month trial period ended August 6. The program is being continued on a voluntary basis (see OFR notice, 41 FR 32914, August 6, 1976). The following agencies have agreed to remain in the program:

Monday	Tuesday	Wednesday	Thursday	Friday
NRC	USDA/ASCS		NRC	USDA/ASCS
DOT/COAST GUARD	USDA/APHIS		DOT/COAST GUARD	USDA/APHIS
DOT/NHTSA	USDA/FNS		DOT/NHTSA	USDA/FNS
DOT/FAA	USDA/REA		DOT/FAA	USDA/REA
DOT/OHMO	CSC		DOT/OHMO	CSC
DOT/OPSO	LABOR		DOT/OPSO	LABOR
	HEW/FDA			HEW/FDA

Documents normally scheduled on a day that will be a Federal holiday will be published the next work day following the holiday.

Comments on this program are still invited. Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408.

ATTENTION: For questions, corrections, or requests for information please see the list of telephone numbers appearing on opposite page.

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FEDERAL REGISTER, Daily Issue:	
Subscriptions and distribution	202–783–3238
"Dial - a - Regulation" (recorded summary of highlighted documents appearing in next day's issue).	202–523–5022
Scheduling of documents for publication.	523–5220
Copies of documents appearing in the Federal Register.	523–5240
Corrections	523–5286
Public Inspection Desk	523–5215
Finding Aids	523–5227
Public Briefings: "How To Use the Federal Register."	523–5282
Code of Federal Regulations (CFR)	523–5266
Finding Aids	523–5227
PRESIDENTIAL PAPERS:	
Executive Orders and Proclamations.	523–5233
Weekly Compilation of Presidential Documents.	523–5235
Public Papers of the Presidents	523–5235
Index	523–5235
PUBLIC LAWS:	
Public Law dates and numbers	523–5237
Slip Laws	523–5237
U.S. Statutes at Large	523–5237
Index	523–5237
U.S. Government Manual	523–5230
Automation	523–5240
Special Projects	523–5240

HIGHLIGHTS—Continued

SEWAGE TREATMENT
EPA proposes standards of performance for sludge incinerators; comments by 3–28–77 ... 4863

DISCLOSURE OF INFORMATION
LSC rules on recipient policies; effective 2–25–77 ... 4848

SERIES L 1979 NOTES
Treasury announces interest rate ... 4922

MEETINGS—
Commerce/DIBA: Telecommunications Equipment Technical Advisory Committee, 2–11–77 ... 4881
NOAA: Caribbean Fishery Management Council, 2–14 thru 2–17–77 ... 4882
Mid-Atlantic Fishery Management Council, 2–9 and 2–11–77 ... 4882
FEA: Electric Utilities Advisory Committee, 2–18–77 ... 4886
HEW: National Commission for Protection of Human Subjects of Biomedical and Behavioral Research, 2–11 thru 2–13–77 ... 4904
PHS: National Immunization: Policy Work Groups, 1–25, 1–26, 1–31, 2–5, 2–6, 2–11, 2–12, 2–13, 2–14, 2–21, 2–22, 2–25 and 2–28–77 ... 4903
Interior/NPS: National Capital Memorial Advisory Committee, 2–14–77 ... 4910
Justice/LEAA: Armored Car Committee, 2–10 and 2–11–77 ... 4918
Oceans and Atmosphere National Advisory Committee, 2–14 and 2–15–77 ... 4918
State: Advisory Commission on International Educational and Cultural Affairs, 2–17–77 ... 4920
Government Advisory Committee on International Book and Library Programs, 2–17–77 ... 4920
USDA/FS: Manti Division Grazing Advisory Board, 2–17–77 ... 4876
Ochoco National Forest Grazing Advisory Board, 2–25–77 ... 4876

PART II:

MEDICARE
HEW/SSA proposes updating of fire safety requirements for skilled nursing facilities and hospitals (2 documents); comments by 3–14–77 ... 4966, 4967

PART III:

HEAD START PROGRAM
HEW/OHD issues policy instructions on identification and reporting of child abuse and neglect ... 4969

PART IV:

CHILD WELFARE AND CHILD ABUSE AND NEGLECT
HEW/OHD publishes information on its research and demonstration grants programs ... 4973

PART V:

INTERNATIONAL AIR TRANSPORTATION POLICY
DOT announces plan for implementation and requests public comment by 3–1–77 ... 4977

PART VI:

RAILROADS
DOT/FRA adopts procedures for preparation and submission of merger and consolidation proposals ... 4981

PART VII:

COMMERCIAL TELEVISION
FCC notice of inquiry into network practices and policies on acquisition and distribution of programming ... 4991

PART VIII:

CIGARS
Treasury/ATF rules on taxation; effective 2–1–77 ... 4997

PART IX:

DOMESTIC CRUDE OIL ALLOCATION PROGRAM
FEA issues entitlement notice for November 1976 ... 5013

contents

THE PRESIDENT

Executive Orders

Foreign Service and Civil Service Retirement and Disability Systems; conformity; correction ... 4809

EXECUTIVE AGENCIES

AGENCY FOR INTERNATIONAL DEVELOPMENT

Rules

Procurement ... 4841

AGRICULTURAL MARKETING SERVICE

Rules

Cotton research and promotion order; referendum, supervisory and administrative costs reimbursement ... 4812
Grapefruit grown in Fla ... 4811

AGRICULTURE DEPARTMENT

See Agricultural Marketing Service; Forest Service.

ALCOHOL, TOBACCO AND FIREARMS BUREAU

Rules

Cigars, large; taxation ... 4997

ARMY DEPARTMENT

See Engineers Corps.

CIVIL AERONAUTICS BOARD

Notices

Hearings, etc.:
International Air Transport Association (2 documents) ... 4877, 4879
Pacific Group Fares investigation ... 4879
Southern Airways, Inc., et al ... 4879
Trans-Mediterranean Airways, S.A.L ... 4880

COMMERCE DEPARTMENT

See Domestic and International Business Administration; National Oceanic and Atmospheric Administration.

CONSUMER PRODUCT SAFETY COMMISSION

Notices

Gas furnaces; safety standards; petition denied ... 4882

DEFENSE DEPARTMENT

See Engineers Corps.

DOMESTIC AND INTERNATIONAL BUSINESS ADMINISTRATION

Notices

Meetings:
Telecommunications Equipment Technical Advisory Committee ... 4881
Scientific articles; duty free entry:
Frederick Cancer Research Center ... 4880
Harvard University et al ... 4880

DRUG ENFORCEMENT ADMINISTRATION

Notices

Registration applications, etc.; controlled substances:
Knoll Pharmaceutical Co ... 4918
Turner, Carlton ... 4918

ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION

Rules

Environmental review guidelines ... 4826

ENGINEERS CORPS

Proposed Rules

Navigation regulations:
Cape Fear River, N.C ... 4863
San Francisco Bay, Calif ... 4863

ENVIRONMENTAL PROTECTION AGENCY

Proposed Rules

Air pollution; standards of performance for new stationary sources:
Sewage sludge incinerators ... 4863

Notices

Air pollution; standards of performance for new stationary sources:
Aluminum reduction plants, primary ... 4883
X-rays, diagnostic; radiation protection guidance; inquiry ... 4884

FEDERAL COMMUNICATIONS COMMISSION

Notices

Commercial television network practices; inquiry ... 4991

FEDERAL ENERGY ADMINISTRATION

Rules

Gasoline and diesel fuel rationing regulations, mandatory ... 4813
Rulings:
Cargo sales; covered products ... 4833

Notices

Appeals and applications for exception, etc.: decisions and orders issued by Exceptions and Appeals Office ... 4886
Domestic crude oil allocation program; entitlement notice for November 1976 ... 5013
Environmental statements; availability, etc.:
Cote Blanche Salt Mine storage site ... 4890
Weeks Island Salt Mine storage site ... 4890
Report of oil imports into the U.S. and Puerto Rico ... 4889
Meeting:
Electric Utilities Advisory Committee ... 4886

FEDERAL HIGHWAY ADMINISTRATION

Rules

Engineering and traffic operations:
Traffic operations; definition of "State," etc.; correction ... 4835

FEDERAL POWER COMMISSION

Rules

Policy and interpretations:
Natural gas sales and delivery ... 4834

Notices

Hearings, etc.:
Alabama-Tennessee Natural Gas Co. (2 documents) ... 4893, 4894
American Electric Power Service Corp ... 4894
Arkansas Oklahoma Gas Corp., et al ... 4890
Atlantic Seaboard Corp ... 4895
Benson-Montin-Greer Drilling Corp ... 4890
Bettis, Boyle & Stovall, et al ... 4895
Columbia Gas Transmission Corp ... 4896
Columbia Gas Transmission Corp. and Columbia Gulf Transmission Co ... 4891
Connecticut Light & Power Co ... 4896
Consolidated Gas Supply Corp ... 4896
Continental Oil Co ... 4897
El Paso Natural Gas Co ... 4897
Indiana & Michigan Electric Co ... 4898
Kansas City Power & Light Co ... 4898
Lower Valley Power & Light, Inc ... 4898
Maine Electric Power Co ... 4892
National Fuel Gas Supply Corp ... 4898
New England Power Co. (3 documents) ... 4899
Pennsylvania Electric Co ... 4891
Public Service Co. of Indiana, Inc., et al ... 4899
Pyramid Lake Paiute Tribe of Indians and Sierra Pacific Power Co ... 4892
Southern California Edison Co. (3 documents) ... 4899, 4900
Tenneco Exploration II, Ltd ... 4893
Tenneco Exploration, Ltd ... 4893
Tennessee Gas Pipeline Co. and East Tennessee Natural Gas Co ... 4900
Tennessee Natural Gas Lines, Inc ... 4901
Texas Gas Transmission Corp ... 4901
Transco Gas Supply Co ... 4902
Transcontinental Gas Pipe Line Corp ... 4902

FEDERAL RAILROAD ADMINISTRATION

Rules

Mergers and consolidation proposals ... 4981

FEDERAL RESERVE SYSTEM

Notices

Applications, etc.:
Marshall & Ilsley Corp ... 4902
Spencer Financial Corp ... 4903
Spencer Naticnal Bank Trust ... 4903

FEDERAL TRADE COMMISSION

Rules

Procedures and practice rules:
Records disclosure request; appeals ... 4834

FISH AND WILDLIFE SERVICE

Rules

Fishing:
Choctaw National Wildlife Refuge, Ala., et al ... 4849

Proposed Rules

Endangered and threatened species; fish, wildlife and plants:
Interagency cooperation ... 4868
Public access, entry, use, and recreation:
Back Bay National Wildlife Refuge, Va ... 4872

Notices

Endangered and threatened species; transport of wildlife and plant specimens, standards development; hearing ... 4907
Migratory bird hunting:
Scaup; emergency closure of season ... 4907

FOREST SERVICE

Notices

Environmental statements; availability, etc.:
Bridger-Teton National Forest, Union Pass Planning Unit, Wyo ... 4876
Coconino National Forest, Woods Planning Unit, Ariz ... 4877
Green Mountain National Forest, Timber Management Plan, Vt ... 4876
Meetings:
Manti Division Grazing Advisory Board ... 4876
Ochoco National Forest Grazing Advisory Board ... 4876

GEOLOGICAL SURVEY

Notices

Coal land classification:
Colorado ... 4907
Utah ... 4909
Outer Continental Shelf; oil and gas development:
Gulf of Mexico Area drilling procedures; comment time ... 4909
Phosphate land classification:
Wyoming ... 4910

HEALTH, EDUCATION, AND WELFARE DEPARTMENT

See also Health Resources Administration; Human Development Office; Public Health Service; Social and Rehabilitation Service; Social Security Administration.

Notices

Health professions educational assistance; establishment of rulemaking procedures ... 4903
Meetings:
Protection of Human Subjects of Biomedical and Behavioral Research National Commission ... 4904

HEALTH RESOURCES ADMINISTRATION

Rules

Cost containment and quality control:
Health planning; timely notice of proposed capital expenditures ... 4847

HEARINGS AND APPEALS OFFICE, INTERIOR DEPARTMENT

Applications, etc.:
Art Coal Co., Inc ... 4911
Carbon Fuel Co ... 4912
Lynn Coal Co ... 4913
Republic Steel Corp ... 4911
Tunnelton Mining Co. (3 documents) ... 4913, 4914

HUMAN DEVELOPMENT OFFICE

Notices

Child welfare research and demonstration grants program ... 4973
Head Start programs:
Child abuse and neglect identification and reporting; policy statement ... 4969

INTERIOR DEPARTMENT

See also Fish and Wildlife Service; Geological Survey; Hearings and Appeals Office; Land Management Bureau; Mining Enforcement and Safety Administration; National Park Service.

Notices

Financial interest statements:
Baal, Alvin F ... 4915
Collins, Harley L ... 4915
Cooper, Winston M ... 4915
Garlinghouse, Lester E ... 4916
Guthrie, Bill M ... 4916
Hale, Kenneth M ... 4916
Henne, William P ... 4916
Hulsey, Bill C ... 4916
Kent, Maurice H ... 4916
Loveless, Leon ... 4916
Marchetti, Robert J ... 4916
McMahon, John A ... 4916
Shepperd, S. Riggs ... 4916
Spencer, Keith E ... 4917
Treffinger, Fred M ... 4917
Whitmire, Charles N ... 4917
Winfree, Robert W ... 4917
Grazing of livestock on public lands; 1977 fee schedule ... 4915

INTERNATIONAL TRADE COMMISSION

Notices

Meetings; amendments (2 documents) ... 4917

INTERSTATE COMMERCE COMMISSION

Rules

Railroad car service orders:
Fuel and other essential commodities; movement priorities ... 4849

Notices

Car service rules, mandatory; exemptions ... 4922
Fourth section applications for relief ... 4923
Hearing assignments ... 4922
Motor carriers:
Emergency services; severe winter conditions ... 4922
Rerouting of traffic:
Chesapeake and Ohio Railway Co ... 4923

JUSTICE DEPARTMENT

See Drug Enforcement Administration; Law Enforcement Assistance Administration.

LAND MANAGEMENT BUREAU

Notices

Applications, etc.:
New Mexico (2 documents) ... 4904, 4905
Wyoming ... 4907
Oil and gas leasing; Outer Continental Shelf; correction ... 4907
Opening of public lands:
Oregon ... 4905
Outer Continental Shelf official protraction diagrams; Gulf of Mexico; availability, etc ... 4906

LAW ENFORCEMENT ASSISTANCE ADMINISTRATION

Notices

Meetings:
Private Security Advisory Council, Armored Car Committee ... 4918

LEGAL SERVICES CORPORATION

Rules

Information, disclosure ... 4848

Proposed Rules

Client grievance procedure ... 4867
Refunding, procedures governing applications and denial ... 4864

MANAGEMENT AND BUDGET OFFICE

Notices

Clearance of reports; list of requests (2 documents) ... 4919

MINING ENFORCEMENT AND SAFETY ADMINISTRATION

Notices

National Mine Health and Safety Academy; fee schedule for training and use of space ... 4910

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Proposed Rules

Marine mammals:
Endangered and threatened fish or wildlife; interagency cooperation ... 4873

Notices

Meetings:
Caribbean Fishery Management Council ... 4882
Mid-Atlantic Fishery Management Council ... 4882

NATIONAL PARK SERVICE

Rules

Mining and mining claims ... 4835

Notices

Environmental statements; availability, etc.:
Great Smoky Mountains National Park, Tenn. and N.C. 4910
Meetings:
National Capital Memorial Advisory Committee 4910

OCEANS AND ATMOSPHERE, NATIONAL ADVISORY COMMITTEE

Notices

Meetings 4918

OHIO RIVER BASIN COMMISSION

Notices

Wabash River Basin Comprehensive Coordinated Joint Plan; availability of report 4919

PENSION BENEFIT GUARANTY CORPORATION

Proposed Rules

Plan benefits valuation; interest rates 4862

PUBLIC HEALTH SERVICE

Notices

Organization and functions:
Alcoholism, Drug Abuse, and Mental Health Division 4903
Meetings:
Immunization, National policy 4903

SECURITIES AND EXCHANGE COMMISSION

Proposed Rules

Securities Exchange Act:
Financial information; reliability and prevention of concealment of improper corporate practices 4854

SMALL BUSINESS ADMINISTRATION

Proposed Rules

Small business size standards:
Government procurement bidding; metal office furniture, drapery hardware, etc 4854

Notices

Applications, etc.:
Fourth Street Capital Corp 4920
Professional Capital Corp 4920

SOCIAL AND REHABILITATION SERVICE

Proposed Rules

Medical assistance programs:
Intermediate care facilities; fire safety regulations 4967

SOCIAL SECURITY ADMINISTRATION

Proposed Rules

Aged and disabled, health insurance for:
Skilled nursing facilities and hospitals; life safety requirements 4966

STATE DEPARTMENT

See also Agency for International Development.

Notices

Meetings:
International Book and Library Programs, Government Advisory Committee 4920
International Educational and Cultural Affairs, U.S. Advisory Commission 4920

TENNESSEE VALLEY AUTHORITY

Proposed Rules

Sunshine Act implementation; procedures 4859

TRANSPORTATION DEPARTMENT

See Federal Highway Administration; Federal Railroad Administration.

Notices

International air transportation policy, implementation plan; inquiry 4977

TREASURY DEPARTMENT

See also, Alcohol, Tobacco, and Firearms Bureau.

Notices

Antidumping:
Gelatin, inedible, and animal glue from Federal Republic of Germany 4920
Gelatin, inedible, and animal glue from Netherlands 4921
Gelatin, inedible, and animal glue from Sweden 4921
Gelatin, inedible, and animal glue from Yugoslavia 4921
Notes, Treasury:
L–1979 series 4922

"THE FEDERAL REGISTER—WHAT IT IS AND HOW TO USE IT"

Briefings at the Office of the Federal Register

(For Details, See 41 FR 46527, Oct. 21, 1976)

RESERVATIONS: DEAN L. SMITH, 523–5282

list of cfr parts affected in this issue

The following numerical guide is a list of the parts of each title of the Code of Federal Regulations affected by documents published in today's issue. A cumulative list of parts affected, covering the current month to date, follows beginning with the second issue of the month.

A Cumulative List of CFR Sections Affected is published separately at the end of each month. The guide lists the parts and sections affected by documents published since the revision date of each title.

3 CFR

EXECUTIVE ORDERS:
11952 (Correction) 4809

7 CFR

912 4811
1205 4812

10 CFR

500 4813
711 4826

FEA RULING:
1977–3 4833

13 CFR

PROPOSED RULES:
121 4854

16 CFR

4 4834

17 CFR

PROPOSED RULES:
240 4854

18 CFR

2 4834

PROPOSED RULES:
301 4859

20 CFR

PROPOSED RULES:
405 4966

23 CFR

655 4835

27 CFR

270 4999
275 5002
290 5008
295 5010
296 5011

29 CFR

PROPOSED RULES:
2610 4862

33 CFR

PROPOSED RULES:
207 (2 documents) 4863

36 CFR

9 4836

40 CFR

PROPOSED RULES:
60 4963

41 CFR

7–1 4841
7–3 4841
7–4 4842
4–6 4842
7–7 4842
7–8 4843
7–10 4843
7–12 4843
7–15 4843
7–30 4843

42 CFR

100 4847

45 CFR

1619 4848

PROPOSED RULES:
249 4967
1606 4864
1621 4867

49 CFR

288 4982
1033 4849

50 CFR

33 4850

PROPOSED RULES:
17 4868
26 4872
217 4873
223 4873

CUMULATIVE LIST OF PARTS AFFECTED DURING JANUARY

The following numerical guide is a list of parts of each title of the Code of Federal Regulations affected by documents published to date during January.

1 CFR

PROPOSED RULES:
442 ... 1267

3 CFR

EXECUTIVE ORDERS:
10480 (Amended by EO 11956) ... 2947
10900 (Amended by EO 11963) ... 4325
10973 (Amended by EO 11959) ... 4315
11490 (Amended by EO 11953) ... 2491
11501 (Revoked by EO 11958) ... 4311
11651 (Amended by EO 11951) ... 1453
11718 (Revoked by EO 11966) ... 4331
11724 (Superseded by EO 11954) ... 2297
11793 (Revoked by EO 11957) ... 3295
11821 (Amended by EO 11949) ... 1017
11888 (Amended by EO 11960) ... 4317
11921 (See EO 11953) ... 2491
11949 ... 1017
11950 ... 1451
11951 ... 1453
11952 ... 2293, 4809
11953 ... 2491
11954 ... 2297
11955 ... 2499
11956 ... 2947
11957 ... 3295
11958 ... 4311
11959 ... 4315
11960 ... 4317
11961 ... 4321
11962 ... 4323
11963 ... 4325
11964 ... 4327
11965 ... 4329
11966 ... 4331
11967 ... 4393

PROCLAMATIONS:
4423 (See Proc. 4482) ... 4309
4481 ... 4307
4482 ... 4309
4483 ... 4391

5 CFR

213 ... 1455, 2949, 3297, 3827
610 ... 3297
1410 ... 2299

7 CFR

1 ... 743
2 ... 2968, 4395
26 ... 1019
55 ... 2969
56 ... 2970
59 ... 2971
70 ... 2971
210 ... 2971
226 ... 1475
354 ... 1475
401 ... 4111
601 ... 3845
718 ... 2973
722 ... 1476
726 ... 2300
729 ... 749
730 ... 2301
905 ... 1022
907 ... 1230, 2665, 3845, 3846, 4395
910 ... 1476, 2977, 3297, 4111

7 CFR—Continued
912 ... 4811
917 ... 3625
928 ... 1, 2, 2665
930 ... 3626
959 ... 2308, 4395
971 ... 2666, 3626
981 ... 3159, 3847
1205 ... 4812
1421 ... 4397
1430 ... 3
1473 ... 2977
1701 ... 3847
1803 ... 4401
1821 ... 4405
1822 ... 1023, 2051, 4406
1823 ... 4408, 4409
1843 ... 1231
1845 ... 2308
1924 ... 4111

PROPOSED RULES:
52 ... 3178
270 ... 1479
271 ... 1479
272 ... 780, 2328
275 ... 1479
661 ... 3311
730 ... 780
967 ... 2691
987 ... 2503
1002 ... 4471
1033 ... 4127
1063 ... 1356
1070 ... 1356
1078 ... 1356
1079 ... 1356
1205 ... 2503
1260 ... 4484
1421 ... 2328
1434 ... 2980
1473 ... 2977
1488 ... 3849
1701 ... 1479, 4489

8 CFR

204 ... 3626
212 ... 3627
214 ... 3627

9 CFR

73 ... 2949, 3297
97 ... 1455
113 ... 750, 1456
317 ... 3298
319 ... 751, 3298
381 ... 2949

PROPOSED RULES:
92 ... 1483, 3859

10 CFR

100 ... 2051
140 ... 46
Ch. II ... 1036, 4409
203 ... 3814
210 ... 4416, 4417
211 ... 4416, 4421, 4422
212 ... 1036, 1456, 2308, 4417
500 ... 4813
711 ... 4826

10 CFR—Continued
FEA RULINGS:
1977–1 ... 3628
1977–3 ... 4833

PROPOSED RULES:
2 ... 3178
51 ... 3178
212 ... 2646, 4491
215 ... 3652

11 CFR

PROPOSED RULES:
2 ... 3810
3 ... 3810

12 CFR

4 ... 2950
16 ... 2200, 3299
202 ... 1242, 2950
206 ... 3171
207 ... 968
211 ... 752
212 ... 2951
213 ... 752
220 ... 752
221 ... 968
224 ... 968
225 ... 752, 1263, 2951
226 ... 753, 1264, 2650, 3827
227 ... 2950
265 ... 2501, 2950
563 ... 2952
570 ... 2952
601 ... 2666
704 ... 1458

PROPOSED RULES:
226 ... 780, 1268
505b ... 2503
523 ... 2338
545 ... 2328
564 ... 2328
604 ... 55, 2078

13 CFR

309 ... 753

PROPOSED RULES:
112 ... 2506
121 ... 2505, 2980, 4854

14 CFR

25 ... 2052
36 ... 4113
37 ... 19
39 ... 1217, 1218, 2053–2055, 3870, 3828, 4113–4116
71 ... 300, 2055, 2056, 3170, 3171, 3829, 4117
73 ... 300, 3829
75 ... 300, 4117
97 ... 1219, 2056, 3171
207 ... 4117
208 ... 4118
221a ... 1220
241 ... 1219
288 ... 3299
302 ... 2667
378a ... 2309
385 ... 1220, 2667, 2668
1214 ... 3829

14 CFR—Continued
PROPOSED RULES:
39 ... 1268–1270
71 ... 1270, 1271, 2078, 2079, 3179, 3861–3863, 4132, 4133
91 ... 3863
152 ... 2850, 4134
239 ... 2693
288 ... 1271
298 ... 2692
310b ... 2995
370 ... 2995
399 ... 3180

15 CFR

369 ... 2057
371 ... 1222
377 ... 1222
931 ... 1164

PROPOSED RULES:
920 ... 2507
933 ... 4046

16 CFR

2 ... 3300
4 ... 4834
13 ... 3–5, 3636, 3640, 3833, 4118, 4119
1201 ... 1428

PROPOSED RULES:
1 ... 2980
4 ... 2079
438 ... 1483
447 ... 2694
450 ... 1038
801 ... 3181, 3655
1301 ... 1484

17 CFR

1 ... 2628, 4120
155 ... 4120
180 ... 3433
200 ... 753
211 ... 2058
240 ... 753, 754, 2060, 3301, 4424
241 ... 759
276 ... 2953

PROPOSED RULES:
1 ... 4134
155 ... 4134
239 ... 3312
240 ... 781, 782, 3312, 4854
249 ... 782
270 ... 3312
275 ... 3312

18 CFR

2 ... 2954
11 ... 1226
141 ... 6
154 ... 2954
300 ... 2668

PROPOSED RULES:
1 ... 2079
2 ... 2329, 4834
3 ... 2079
154 ... 1272
157 ... 56
301 ... 4859

19 CFR

4 ... 3160
6 ... 2309
10 ... 2309, 2310, 3161

19 CFR—Continued
18 ... 4120
24 ... 4120
153 ... 2501
172 ... 3161

PROPOSED RULES:
1 ... 2329
113 ... 2330
201 ... 805

20 CFR

401 ... 3640
404 ... 2062
405 ... 1028
416 ... 2062
422 ... 3640
614 ... 1459
601 ... 4724
602 ... 4724
603 ... 4724
604 ... 4724
651 ... 4724
652 ... 4727
653 ... 4727
654 ... 4731
655 ... 4731
656 ... 3440
657 ... 4731
658 ... 4731
701 ... 3847
702 ... 3847

PROPOSED RULES:
405 ... 4966
416 ... 2079, 3316
655 ... 4670

21 CFR

1 ... 4697
2 ... 1459, 4436, 4697
4 ... 3108
6 ... 4712
8 ... 1459, 4712
10 ... 4712
11 ... 4713
80 ... 4713
90 ... 4713
100 ... 4713
102 ... 761
121 ... 1460, 1461, 3302, 4713
310 ... 4714
314 ... 1624, 1638, 3109, 4714
320 ... 1624, 1638
501 ... 4716
503 ... 4716
508 ... 4717
510 ... 3837
514 ... 3109, 4717
520 ... 1462, 3838
522 ... 3838
540 ... 1462
548 ... 3838
555 ... 3838
558 ... 761, 1463, 2312
564 ... 4717
570 ... 4717
571 ... 4717
601 ... 4718
701 ... 4718
809 ... 4719

PROPOSED RULES:
1 ... 2330
3e ... 1483
11 ... 806
18 ... 2330
121 ... 1483

21 CFR—Continued
PROPOSED RULES—Continued
128d ... 807
369 ... 2330
500 ... 2330
510 ... 2981
701 ... 2330
740 ... 2330
801 ... 2330

22 CFR

41 ... 2501
42 ... 2501

23 CFR

625 ... 6, 3642
655 ... 4835
712 ... 7

24 CFR

200 ... 3838
201 ... 3839
203 ... 762
207 ... 764, 2954
213 ... 764, 2954
221 ... 765, 2954
231 ... 766, 2954
241 ... 763, 3162
280 ... 960
1905 ... 3162
1914 ... 2193, 4264
1916 ... 4264, 4265
1917 ... 2063–2068, 4265–4268
3282 ... 2576

PROPOSED RULES:
200 ... 4296
201 ... 1487
242 ... 3655
279 ... 3112
406 ... 2796
501 ... 1488
570 ... 3292, 3437
800 ... 4300
866 ... 3181
881 ... 4300
1917 ... 2082, 4269–4280, 4641–4649

25 CFR

PROPOSED RULES:
221 ... 3319
504 ... 3864

26 CFR

1 ... 767, 1195, 1463, 2501, 3839, 4436
7 ... 1469, 1471, 2954, 4121
41 ... 2671
48 ... 2671
142 ... 2677
154 ... 2312
404 ... 1029, 2313, 4437, 4438

PROPOSED RULES:
1 ... 57, 2694, 3181, 3866
54 ... 1488
301 ... 1038, 1489

27 CFR

170 ... 3840
194 ... 3840
201 ... 3840
270 ... 4999
275 ... 5002
290 ... 5008
295 ... 5010
296 ... 5011

28 CFR
0 ... 3163, 4440
PROPOSED RULES:
32 ... 1390

29 CFR
15 ... 769
60 ... 3440
94 ... 1656, 2426
95 ... 2427
96 ... 2428
97 ... 1656
98 ... 2428
99 ... 773, 2430
511 ... 2313
609 ... 2954
613 ... 3303
657 ... 4440
672 ... 2955
673 ... 2955
720 ... 3303
1601 ... 3163
1910 ... 2956, 3304
1926 ... 2956
1952 ... 2313
2608 ... 2677, 4440
2610 ... 2678
PROPOSED RULES:
90 ... 2981
215 ... 3319, 4492
1910 ... 808, 1742, 1806
2550 ... 1488, 1618, 3871
2610 ... 4862

30 CFR
100 ... 1214
211 ... 3642, 4441
PROPOSED RULES:
11 ... 2986
77 ... 2800
211 ... 1489, 2082, 4492, 4493
251 ... 3321

31 CFR
1 ... 2311
13 ... 3841
51 ... 2196, 2422
101 ... 1471
128 ... 4121
210 ... 9
515 ... 1472

32 CFR
40 ... 3646
256 ... 773
2000 ... 2679
PROPOSED RULES:
242a ... 1492
903 ... 2085
1482 ... 3322

33 CFR
40 ... 10
92 ... 2681
117 ... 3841
159 ... 11
183 ... 2681, 2682
204 ... 3646
265 ... 3841
PROPOSED RULES:
110 ... 3871
114 ... 3181

33 CFR—Continued
PROPOSED RULES—Continued
115 ... 3181
161 ... 3182
207 ... 4863
209 ... 2572

34 CFR
Ch. I ... 12
232 ... 1478

36 CFR
9 ... 4835
212 ... 2957
221 ... 2957
231 ... 2957
251 ... 2957
261 ... 2957
262 ... 2961
271 ... 2962
272 ... 2962
291 ... 2962
295 ... 2962
606 ... 1473
PROPOSED RULES:
7 ... 3655, 3656
16 ... 812
17 ... 812

37 CFR
201 ... 2962
PROPOSED RULES:
1 ... 2632
3 ... 2632
5 ... 2632
201 ... 4134

38 CFR
0 ... 2314
3 ... 2069
17 ... 2316

39 CFR
111 ... 3470
233 ... 4123
257 ... 4123
258 ... 4124
3002 ... 3646
PROPOSED RULES:
1 ... 2690
2 ... 2699
3 ... 2699
4 ... 2699
5 ... 2699
6 ... 2699
7 ... 2699
8 ... 2699

40 CFR
6 ... 2450
52 ... 3841, 4124
60 ... 1214, 4124
61 ... 1215, 4124
86 ... 1122, 1150
129 ... 2588, 2617
136 ... 3306
190 ... 2858
220 ... 2468
221 ... 2470
222 ... 2471
223 ... 2474
224 ... 2474
225 ... 2475

40 CFR—Continued
226 ... 2475
227 ... 2476
228 ... 2482
229 ... 2489
409 ... 3164
430 ... 1398
440 ... 3165
455 ... 2316
PROPOSED RULES:
22 ... 1492
52 ... 1273, 1494, 2705, 3657, 4134, 4135, 4496
60 ... 2842, 4863
80 ... 3183
85 ... 1044
180 ... 815
201 ... 2330
202 ... 2330
260 ... 2331
1516 ... 1044

41 CFR
3-3 ... 2683
3-4 ... 2684
3-16 ... 2684
3-50 ... 2684
7-1 ... 4841
7-3 ... 4841
7-4 ... 4842
7-6 ... 4842
7-7 ... 4842
7-8 ... 4843
7-10 ... 4843
7-12 ... 4843
7-15 ... 4843
7-30 ... 4843
9-4 ... 4124
9-7 ... 2963
9-15 ... 2963
9-51 ... 2684
Ch. 14 ... 1215
14-1 ... 1215
14-10 ... 1215
60-1 ... 3458
60-2 ... 3461
60-3 ... 3825
60-30 ... 3462, 4057
60-741 ... 3307
101-1 ... 12
101-25 ... 1030
101-26 ... 1032
101-28 ... 2317
101-38 ... 1477
PROPOSED RULES:
3-1 ... 1273
101-17 ... 816

42 CFR
56b ... 4125
100 ... 4024, 4847
101 ... 4876
122 ... 4024
123 ... 4028
PROPOSED RULES:
54b ... 2986
101 ... 2994, 4256-4260, 4624, 4632, 4637

43 CFR
4 ... 1216
419 ... 3307
2650 ... 779
3040 ... 4441

43 CFR—Continued
3041 ... 4442
3100 ... 1032
3500 ... 4451, 4457
3520 ... 4452
4110 ... 778
4120 ... 778
9230 ... 4457
PUBLIC LAND ORDER:
5561 (Amended by PLO 5612) ... 2684
5611 (Corrected by PLO 5612) ... 2684
5612 ... 2706
PROPOSED RULES:
2 ... 4496
29 ... 3680
2400 ... 3657
3520 ... 2684
3800 ... 1045
4700 ... 4500

45 CFR
99 ... 4460
177 ... 2963
185 ... 3842
193 ... 1190
233 ... 3307
248 ... 2684
249 ... 4125
250 ... 779
304 ... 3843
1005 ... 3165
1050 ... 3272
1068 ... 3165
1336 ... 3782
1619 ... 4848
PROPOSED RULES:
Subtitle A ... 3325
46 ... 2792, 3076
63 ... 4135
74 ... 4137
153 ... 3792
158 ... 2086
185 ... 4501
Ch. II ... 2445
201 ... 3664
205 ... 2440
249 ... 3325, 3665, 4967
250 ... 2331, 3328
304 ... 3663
504 ... 3872
706 ... 2708
1480 ... 1045
1606 ... 4864
1621 ... 4867
1703 ... 3667

46 CFR
536 ... 1473
PROPOSED RULES:
10 ... 3186
12 ... 1278
502 ... 817
531 ... 3186

47 CFR
0 ... 3166, 3167
1 ... 3166-3168, 3308
13 ... 1231
15 ... 1231, 3308, 4461
21 ... 1232
73 ... 1233, 2502, 3167, 3308, 3646, 4157
74 ... 2069
76 ... 3308
81 ... 1474
83 ... 1231, 1474
87 ... 3168, 3308
89 ... 4158
97 ... 3166, 3167
PROPOSED RULES:
64 ... 1278
73 ... 1278, 1279, 2086, 3186
74 ... 2087
76 ... 3670
83 ... 2088
97 ... 2089

49 CFR
Ch. II ... 4464
Ch. V ... 2864
25 ... 12
99 ... 3118
173 ... 2071, 2688
174 ... 2071
178 ... 2688
218 ... 2318, 3843
221 ... 2321, 3843
225 ... 1221
231 ... 1222
258 ... 4652
260 ... 4652
265 ... 4286
268 ... 4982
310 ... 2964
501 ... 3843
571 ... 3844
630 ... 3772
1033 ... 2965, 3309, 3310, 3844, 4467, 4849
1047 ... 19
1056 ... 3169

49 CFR—Continued
1100 ... 4126
1241 ... 1474
1249 ... 1474
1250 ... 1474
1251 ... 1474
PROPOSED RULES:
Subtitle A ... 2868
173 ... 2709
179 ... 2709
228 ... 2994
230 ... 2994
258 ... 4660
267 ... 2507
523 ... 2092
571 ... 3187
1251 ... 2092

50 CFR
17 ... 2071, 2965
26 ... 1033, 2689, 2690, 3845
32 ... 2690
33 ... 1034, 2690, 3845, 4850
216 ... 1034, 3845
260 ... 2326
261 ... 2326
262 ... 2326
263 ... 2326, 4468
264 ... 2326
265 ... 2326
266 ... 2326
267 ... 2326
268 ... 2326
269 ... 2326
270 ... 2326
271 ... 2326
272 ... 2326
273 ... 2326
274 ... 2326
275 ... 2326
276 ... 2326
277 ... 2326
278 ... 2326
279 ... 2326
601 ... 2968
602 ... 2968
PROPOSED RULES:
17 ... 2101, 2102, 2507, 4868
26 ... 4872
216 ... 1049
217 ... 4873
223 ... 4873

FEDERAL REGISTER PAGES AND DATES—JANUARY

Pages	Date
1-741	Jan. 3
743-1015	4
1017-1194	5
1195-1450	6
1451-2049	7
2051-2291	10
2293-2497	11
2499-2664	12
2665-2946	13
2947-3157	14
3159-3294	17
3295-3624	18
3625-3826	19
3827-4109	21
4110-4394	24
4395-4808	25
4809-5021	26

reminders

(The items in this list were editorially compiled as an aid to FEDERAL REGISTER users. Inclusion or exclusion from this list has no legal significance. Since this list is intended as a reminder, it does not include effective dates that occur within 14 days of publication.)

Rules Going Into Effect Today

NOTE: There were no items eligible for inclusion in the list of RULES GOING INTO EFFECT TODAY.

Next Week's Deadlines for Comments On Proposed Rules

AGRICULTURE DEPARTMENT
- Agricultural Marketing Service—
  - Potatoes, canned white; grade standards; comments by 1–31–77. 53341; 12–6–76
  - Potatoes for chipping; grade standards; comments by 2–1–77. 32896; 8–6–76
- Food and Nutrition Service—
  - Food stamp program, approval of retail food stores, wholesale food concerns, and meal services; comments by 2–3–77.... 780; 1–4–77

COMMERCE DEPARTMENT
- National Oceanic and Atmospheric Administration—
  - Coastal zone management; administrative grants; comments by 2–3–77..... 57004; 12–30–76

COST ACCOUNTING STANDARDS BOARD—
- Home office expenses; allocation; comments by 1–31–77..... 52473; 11–30–76

ENVIRONMENTAL PROTECTION AGENCY
- Approval and promulgation of implementation plans; Utah Transportation Control Plan; comments by 1–31–77. 1494; 1–7–77
- Maryland; Implementation plan; comments by 1–31–77..... 56831; 12–30–76
- Stage II vapor recovery and test procedures; comments by 1–31–77. 1273; 1–6–77
  - [First published at 41 FR 48044, Nov. 1, 1976]
- Tolerances and exemptions from tolerances for pesticide chemicals in or on raw agricultural commodities; comments by 2–3–77..... 815; 1–4–77
- Vapor recovery, gasoline stations; comments by 1–31–77..... 48044; 11–1–76

ENVIRONMENTAL QUALITY, COUNCIL
- Privacy Act; comments by 2–4–77. 1044; 1–5–77

FEDERAL COMMUNICATIONS COMMISSION
- Development of cable television technology and services; partial granting of petitions; comments by 1–31–77. 54506; 12–14–76
- Domestic public land mobile radio service; one-way signalling on primary basis; reply comments by 2–1–77. 54203; 12–13–76
  - [First published at 41 FR 39766, Sept. 16, 1976]
- FM table of assignments; Fort Myers, Fla.; reply comments by 2–2–77. 54203; 12–13–76
- FM table of assignments; Mechanicsville, Va.; comments by 1–31–77. 56677; 12–29–76
- FM table of assignments; Plymouth, Ohio; comments by 1–31–77.... 1279; 1–6–77

FEDERAL DEPOSIT INSURANCE CORPORATION
- Privacy Act implementation; comments by 1–31–77..... 55717; 12–22–76

FEDERAL RESERVE SYSTEM
- Truth in lending, discounts for payment in cash; comments by 2–4–77. 780; 1–4–77
- Truth in lending, finance charges; portion allocation to seller of consumer goods; disclosure of dealer participations; comments by 2–4–77.... 1268; 1–6–77

HEALTH, EDUCATION AND WELFARE DEPARTMENT
- Food and Drug Administration—
  - Fats and oils; label designation; comments by 1–31–77..... 52481; 11–30–76
- National Institutes of Health—
  - Mammalian DNA Fragments; creation of repository bank for storage of fragments; comments by 2–1–77..... 55591; 12–21–76
- Social and Rehabilitation Service—
  - Fair hearings; comments by 1–31–77. 52491; 11–30–76
- Social Security Administration—
  - Medicare reports and records; disclosure of certain information regarding service to beneficiaries in excess of need; comments by 2–4–77..... 55556; 12–21–76

HOUSING AND URBAN DEVELOPMENT DEPARTMENT
- Federal Housing Commissioner, Office of Assistant Secretary for Housing—
  - Mobile home construction and safety standards; modular homes exemptions; comments by 1–31–77. 57014; 12–30–76
  - Section 8 housing assistance payments; requests for rent increase; comments by 1–31–77.... 56829; 12–30–76

INTER-AMERICAN FOUNDATION
- Government in the Sunshine Act; comments by 1–31–77..... 56828; 12–30–76

INTERIOR DEPARTMENT
- Fish and Wildlife Service—
  - Florida Everglade Kite and Dusky Seaside Sparrow; determination of critical habitat; comments by 1–31–77..... 53074; 12–3–76
  - Migratory Birds; areas; steel shot requirement for waterfowl hunting; comments by 1–31–77.... 55901; 12–23–76
- Indian Affairs Bureau—
  - Irrigation operation and maintenance charges; Fort Hall, Idaho; comments by 1–31–77..... 56830; 12–30–76
- Land Management Bureau—
  - Surface management of public land; procedures to minimize adverse environmental impacts; comments by 2–4–77..... 1045; 1–5–77
- National Park Service—
  - Retained rights of use and occupancy of single family noncommercial residential property; comments by 2–3–77..... 812; 1–4–77

INTERNATIONAL TRADE COMMISSION
- Practice and procedures, performance of functions; comments by 2–3–77. 805; 1–4–77

NUCLEAR REGULATORY COMMISSION
- Meetings; public attendance; comments by 2–1–77..... 55881; 12–23–76

REGIONAL ACTION PLANNING COMMISSION
- Economic Development Regions in Puerto Rico, Virgin Islands, California and Texas; implementation of program authority with respect to Public Works and Economic Development Act of 1965; comments by 1–31–77. 55553; 12–21–76

SECURITIES AND EXCHANGE COMMISSION
- Disclosure of management background; uniform reporting requirements; comments by 1–31–77..... 55718; 12–22–76
- Recordkeeping and preservation requirements; comments by 1–31–77. 782; 1–4–77

SMALL BUSINESS ADMINISTRATION
- Shipbuilding and repairing; comments by 2–1–77..... 2505; 1–12–77
  - [First published at 41 FR 50002, Nov. 12, 1976]
- Small business size standards; definition of small farm for the purpose of receiving financial assistance; comments by 1–31–77..... 55202; 12–17–76

STATE DEPARTMENT
- International traffic in arms; significant combat equipment; redefinition; comments by 1–31–77..... 56333; 12–28–76
- Privacy Act policies and procedures; systems exemptions; comments by 1–31–77..... 56827; 12–30–76

TRANSPORTATION DEPARTMENT
- Coast Guard—
  - Benzene carriage requirements; comments by 2–4–77..... 55897; 12–23–76
  - Boating Safety; visual distress signals on boats; comments by 2–1–77..... 42218; 9–27–76
  - Special anchorage areas; Monterey, Calif.; comments by 2–3–77. 55366; 12–20–76
  - Special anchorage areas, Trinidad Bay, Calif.; comments by 2–4–77. 55897; 12–23–76
- Federal Aviation Administration—
  - Flight recorders or cockpit recorders on large airplanes; operation; comments by 1–31–77..... 56827; 12–30–76
  - Flight recorders and cockpit voice recorders; comments by 1–31–77. 56791; 12–30–76
  - VOR Federal airway, California; comments by 1–31–77..... 56826; 12–30–76
- Federal Highway Administration—
  - Nonmetallic fuel tanks; fire resistance test; comments by 2–1–77..... 52500; 11–30–76
  - Value engineering; Federal-aid projects; comments by 2–1–77. 56207; 12–27–76
- Materials Transportation Bureau—
  - Color coding of compressed gas packages; comments by 2–1–77. 52891; 12–2–76
- National Highway Traffic Safety Administration—
  - Federal Motor Vehicle Safety Standards; seat belt enchorages; comments by 1–31–77..... 54959; 12–16–76

Next Week's Meetings

AGRICULTURE DEPARTMENT
- Agricultural Marketing Service—
  - Perishable Agricultural Commodities Act—Industry Advisory Committee, Houston, Tex. (open) 2–5–77. 56681; 12–29–76
  - Regulatory Programs Advisory Committee, Washington, D.C. (open), 2–2 and 2–3–77.... 3189; 1–17–77
  - Shippers Advisory Committee, Lakeland, Fla. (open), 2–1..... 3189; 1–17–77
- Agricultural Research Service—
  - National Plant Genetics Resources Board, Washington, D.C. (open), 2–3–77..... 2105; 1–10–77
- Office of the Secretary—
  - Fowl Plague Subcommittee of the Poultry Health Advisory Committee, Madison, Wis. (open), 2–2–77. 3009; 1–14–77

CIVIL RIGHTS COMMISSION
- Connecticut Advisory Committee, Meriden, Conn. (open), 2–3–77. 56356; 12–28–76

COMMERCE DEPARTMENT
- Domestic and International Business Administration—
  - Export Administration of the President's Export Council Subcommittee, San Francisco, Calif. (partially open), 1–31 and 2–1–77. 3010; 1–14–77
- National Fire Prevention and Control Administration—
  - Fire Training and Education for the National Academy for Fire Prevention and Control Advisory Committee, Washington, D.C. (open), 1–31 and 2–1–77..... 1286; 1–6–77
- National Oceanic and Atmospheric Administration—
  - Gulf of Mexico Fishery Management Council, Brownsville, Tex. (open), 2–2 thru 2–4–77..... 2335; 1–11–77
  - New England Fishery Management Council, Peabody, Mass. (open), 2–1 and 2–2–77.... 2335; 1–11–77
  - Western Pacific Fishery Management Council, Agana, Guam (open), 2–1 thru 2–4–77..... 2336; 1–11–77
- Office of the Secretary—
  - Patent and Trademark Office Advisory Committee, Arlington, Va. (open), 2–4–77..... 62; 1–3–77

CONSUMER PRODUCT SAFETY COMMISSION
- Flammable Fabrics Act National Advisory Commission, Washington, D.C. (open), 2–1 and 2–2–77..... 56883; 12–30–76

DEFENSE DEPARTMENT
- Office of the Secretary—
  - Defense Intelligence Agency Scientific Advisory Committee, Rosslyn, Va. (closed), 1–31–77..... 1055; 1–5–77
  - Defense Intelligence Agency Scientific Advisory Committee, Washington, D.C. (closed), 2–1 and 2–2–77. 54972; 12–16–76
  - Defense Science Board Task Force on Net Technical Assessment, Washington, D.C. (closed), 2–3–77 and 2–4–77..... 55570; 12–21–76, 2524; 1–12–77
  - Electron Devices Advisory Group, New York, N.Y. (closed), 2–4–77. 55930; 12–23–76
  - Low Power Electron Devices Advisory Group, New York, N.Y. (closed), 2–3–77..... 55930; 12–23–76
  - Wage Committee, Washington, D.C. (closed), 2–1 and 2–3–77. 54212; 12–13–76
  - Women in the Services Defense Advisory Committee, Washington, D.C. (open), 2–4–77..... 56379; 12–28–76

ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION
- Energy Conserving Consumer Products, Washington, D.C. 2–3–77..... 67; 1–3–77

ENVIRONMENTAL PROTECTION AGENCY
- Environmental radiation protection; criteria and standards for radioactive wastes, Reston, Va. (open), 2–3 thru 2–5–77..... 2331; 1–11–77
- Science Advisory Board Executive Committee, Subcommittee on Scientific Criteria for Environmental Lead, Arlington, Va. (open), 1–31–77. 1–3–77

FEDERAL ENERGY ADMINISTRATION
- East Coast Natural Gas Distribution, Washington, D.C. (open), 2–1–77. 3207; 1–17–77
- Rate design initiatives Subcommittee of the State Regulatory Advisory Committee, Washington, D.C. (open), 1–31–77..... 1508; 1–7–77

FEDERAL PREVAILING RATE ADVISORY COMMITTEE
- Meeting, Washington, D.C. (closed), 2–3–77..... 3711; 1–19–77

FEDERAL REGISTER OFFICE
- Legal Drafting Workshop, Washington, D.C. (open with restrictions), 1–30 thru 2–1–77..... ...1500; 1–7–77 1500; 1–7–77

HEALTH, EDUCATION, AND WELFARE DEPARTMENT
- Disease Control Center—
  - Coal Mine Health Research Advisory Committee, Rockville, Md. (open), 2–4–77..... 56859; 12–30–76
- Education Office—
  - Women's Education Programs National Advisory Council, Seattle, Wash. (open), 1–30 thru 2–2–77. 1516; 1–7–77
- Food and Drug Administration—
  - Advisory committees, (various cities) (open), 2–3 thru 2–5–77.... 3348; 1–18–77
  - Experimental pathologists training, Little Rock, Ark. (open), 2–2–77. 3355; 1–18–77
- National Institutes of Health—
  - Aging, National Advisory Council, Bethesda, Md. (partially closed), 1–31 and 2–1–77..... 55591; 12–21–76
  - Child Health and Human Development National Advisory Council, Bethesda, Md. (partially closed), 1–31 and 2–1–77..... 55591; 12–21–76
  - Environmental Health Sciences National Advisory Council, Bethesda, Md. (partially open), 1–31 and 2–1–77..... 53710; 12–8–76
  - Experimental Design Subgroup of Clearinghouse on Environmental Carcinogens, Bethesda, Md. (open) with restrictions). 2–3–77. 2357; 1–11–77
  - General Medical Sciences National Advisory Council, Bethesda, Md. (partially open), 2–3 and 2–4–77. 56400; 12–28–76
  - Manpower Subcommittee and Research Subcommittee of the National Heart, Lung, and Blood Advisory Council, Bethesda, Md. (open with restrictions), 2–3 and 2–5–77..... 857; 1–4–77
  - Research Contract Proposals, Review Committees, Bethesda, Md. (closed), 2–3 and 2–4–77. 859; 1–4–77
  - Research Resources National Advisory Council, Bethesda, Md. (open with restrictions), 2–3 thru 2–5–77..... 2357; 1–11–77

Office of the Secretary—
Student Financial Assistance Study Group, Dallas, Tex. (open), 2–4 and 2–5–77.... 56402; 12–28–76

HOUSING AND URBAN DEVELOPMENT DEPARTMENT
Consumer Affairs and Regulatory Functions, Office of Assistant Secretary—
National Mobile Home Advisory Council, Washington, D.C. (open), 2–1 and 2–2–77..... 2123; 1–10–77
National Mobile Home Advisory Council (NMHAC)—Executive Committee, Washington, D.C. (open), 1–31–77..... 2123; 1–10–77

INTERIOR DEPARTMENT
Geological Survey—
Earthquake Studies Advisory Panel, Menlo Park, Calif. (open), 2–4–77. 1522; 1–7–77
National Park Service—
Appalachian National Scenic Trail Advisory Council, Ringwood, N.J. (open with restrictions), 2–4–77. 1522; 1–7–77
Cape Cod National Seashore Advisory Commission, South Wellfleet, Mass. (open), 2–4–77.... 3216; 1–17–77
Gateway National Recreation Area Advisory Commission, New York, N.Y. (open), 2–1–77..... 1308; 1–6–77
North Atlantic Region Advisory Committee, Hyde Park, N.Y. (open), 2–4–77..... 3216; 1–17–77
Southeast Regional Advisory Committee, Everglades National Park and Fort Jefferson National Monument, Fla. (open), 2–1 thru 2–4–77..... 3217; 1–17–77

LABOR DEPARTMENT
Federal Contract Compliance Programs Office—
Higher Education Equal Employment Opportunity Programs Federal Advisory Committee, Washington, D.C. (open), 1–31–77.... 1530; 1–7–77
Occupational Safety and Health Administration—
Occupational Safety and Health National Advisory Committee, Compliance Subgroup, Washington, D.C. (open), 2–2–77.. 56411; 12–28–76
Pension and Welfare Benefit Programs—
Employee Welfare and Pension Benefit Plans Advisory Council, Washington, D.C. (open), 2–4–77. 3364; 1–18–77

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
Research and Technology Advisory Council, Washington, D.C. (open), 2–2 thru 2–4–77..... 2387; 1–11–77
Space Program Advisory Council, Washington, D.C. (open), 2–1 and 2–2–77. 2387; 1–11–77

NATIONAL SCIENCE FOUNDATION
Ecological Sciences Advisory Panel, Washington, D.C. (partially open), 2–2 thru 2–4–77..... 2728; 1–13–77
Memory and Cognitive Processes Advisory Panel, Washington, D.C. (closed), 1–31 and 2–1–77.... 1547; 1–7–77
National Science Board, Washington, D.C. (partially open), 2–3 and 2–4–77. 52728; 12–1–76
Science Education Projects Advisory Panel, Washington, D.C. (closed), 2–3 thru 2–5–77..... 3223; 1–17–77
Science Education Projects Advisory Panel; Comprehensive Assistance to Undergraduate Science Education and Program Subpanel; Los Angeles, Calif. (closed), 1–30 thru 2–1–77. 1548; 1–7–77
Subpanel for National Needs Graduate Traineeship Program, Washington, D.C. (closed), 2–3 thru 2–5–77. 3224; 1–17–77
Subpanel on Field Center Operations of the NSF Chautauqua-Type Short Courses for College Teachers, Washington, D.C. (closed), 2–3 thru 2–5–77..... 3041; 1–14–77
Task Group No. 14, Advisory Committee for Research, Washington, D.C. (open), 2–3 and 2–4–77..... 3382; 1–18–77

NUCLEAR REGULATORY COMMISSION
Reactor Safeguards Advisory Committees, Working Group and Subcommittees (3 documents), 2–1 and 2–2–77..... 3224–6; 1–17–77

PRESIDENT'S COMMITTEE ON SCIENCE AND TECHNOLOGY
Meeting, Washington, D.C. (open), 2–1 and 2–2–77..... 2544; 1–12–77

SMALL BUSINESS ADMINISTRATION
Spokane District Advisory Council, Spokane, Wash. (open), 2–4–77. 3724; 1–19–77

STATE DEPARTMENT
International Intellectual Property Advisory Committee, Washington, D.C. (open), 2–2–77..... 1091; 1–5–77

Next Week's Public Hearings

POSTAL SERVICE COMMISSION
Public service costs of postal service, various cities, 1–31 thru 2–3–77. 55738; 12–22–76

List of Public Laws

NOTE: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's LIST OF PUBLIC LAWS.

presidential documents

Title 3—The President

CORRECTION

Executive Order 11952

Conforming the Foreign Service and Civil Service Retirement and Disability Systems

In section 2(d) of Executive Order 11952, appearing at page 2295 in the FEDERAL REGISTER issue of January 11, 1977, a typographical error resulted in an incorrect reference to "Section 221 of the Foreign Service Act of 1946." The correct reference is "Section 821 of the Foreign Service Act of 1946."

As corrected, the first paragraph of section 2(d) reads as follows:

(d) In accord with Public Law 93–474, Section 821 of the Foreign Service Act of 1946, as amended (22 U.S.C. 1076), shall be deemed to be amended to provide for the recomputation of annuities for nonmarried annuitants, as follows:

rules and regulations

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1516.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

Title 7—Agriculture

CHAPTER IX—AGRICULTURAL MARKETING SERVICE (MARKETING AGREEMENTS AND ORDERS; FRUITS, VEGETABLES, NUTS), DEPARTMENT OF AGRICULTURE

[Docket No. AO–333–A5]

PART 912—HANDLING OF GRAPEFRUIT GROWN IN THE INDIAN RIVER DISTRICT IN FLORIDA

Order Amending Order, as Amended

FINDINGS AND DETERMINATIONS

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and each previously issued amendment thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon a proposed amendment of the marketing agreement, as amended, and Order No. 912, as amended (7 CFR Part 912), regulating the handling of grapefruit grown in the Indian River District in Florida.

Upon the basis of the record it is found that:

(1) The order, as amended, and as hereby further amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the act;

(2) The order, as amended, and as hereby further amended, regulates the handling of grapefruit grown in the production area in the same manner as, and is applicable only to persons in the respective classes of commercial and industrial activity specified in, the marketing agreement and order upon which hearings have been held;

(3) The order, as amended, and as hereby further amended, is limited in its application to the smallest regional production area which is practicable, consistently with carrying out the declared policy of the act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the act;

(4) There are no differences in the production and marketing of grapefruit grown in the production area which make necessary different terms and provisions applicable to different parts of such area; and

(5) All handling of grapefruit grown in the production area is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

(b) *Determinations.* It is hereby determined that:

(1) The "Marketing Agreement, as Amended, Regulating the Handling of Grapefruit Grown in the Indian River District in Florida" upon which the aforesaid public hearing was held has been signed by handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping the grapefruit covered by the said order, as amended, and as hereby further amended) who, during the period August 1, 1975, through July 31, 1976, handled not less than 50 percent of the volume of such grapefruit covered by the said order, as amended, and as hereby further amended, and

(2) The issuance of this amendatory order, amending the aforesaid order, as amended, is favored or approved by at least two-thirds of the producers who participated in a referendum on the question of its approval and who during the period August 1, 1975, through July 31, 1976 (which has been deemed to be a representative period), have been engaged within the Indian River District in Florida, in the production of grapefruit for market, such producers having also produced for market at least two-thirds of the volume of such commodity represented in the referendum.

ORDER RELATIVE TO HANDLING

It is therefore ordered, that on and after the effective date hereof, the handling of grapefruit, shall be in conformity to and in compliance with the terms and conditions of the said order, as amended, and as hereby further amended, as follows:

1. a. Section 912.8 is revised to read as follows:

§ 912.8 Carton or standard packed carton.

"Carton or standard packed carton" means a unit of measure equivalent to four-fifths (⅘) of a United States bushel of grapefruit, whether in bulk or in any container.

b. Paragraph (a) of § 912.41 is revised to read as follows:

§ 912.41 Assessments.

(a) Each handler who first handles fruit shall pay to the committee, upon demand, such handler's pro rata share of the expenses which the Secretary finds will be incurred by such committee for its maintenance and functioning during each fiscal period. Each such handler's share of such expenses shall be that proportion thereof which the total quantity of fruit shipped by such handler as the first handler thereof during the applicable fiscal period is of the total quantity of fruit so shipped by all handlers during the same fiscal period. The Secretary shall fix the rate of assessment per standard packed carton of fruit to be paid by each such handler. The payment of assessments for the maintenance and functioning of the committee may be required under this part throughout the period it is in effect irrespective of whether particular provisions thereof are suspended or become inoperative.

* * * * *

c. Section 912.50 is revised to read as follows:

§ 912.50 Overshipments.

During any week for which the Secretary has fixed the total quantity of grapefruit which may be handled, any person who has received an allotment may handle, in addition to the total allotment available to him, an amount of grapefruit equivalent to 10 percent of such total allotment or 1,000 cartons, whichever is greater: *Provided*, That the Secretary, on the basis of a recommendation of the committee or other available information, may set such amount at any figure not less than 1,000 cartons and not more than 2,000 cartons. Handlers may overship (a) during such week the entire 1,000 cartons or other amount not in excess of 2,000 cartons as may be set by the Secretary, or (b) during two or more consecutive weekly periods when regulations are in effect, any portion of such 1,000 cartons or any other amount set by the Secretary until the accumulated overshipments reach the applicable maximum number of cartons permitted to be overshipped. The quantity of grapefruit so overshipped when regulations are in effect shall be deducted from such person's allotment for the week following the one in which the total permitted overshipment is reached or for the week in which such person makes no shipments of grapefruit. If such person's allotment for such week is an amount less than the excess shipments permitted under this section, the remaining quantity shall be deducted from succeeding weekly allotments issued to such person until such excess has been entirely off-

set: *Provided*, That any time there is no volume regulation in effect it shall be deemed to cancel all requirements to undership allotment because of previous overshipments pursuant to this part.

2. Paragraph (b) of § 912.32 is revised to read as follows:

§ 912.32 Procedure of committee.

• • • • •

(b) For any decision or recommendation with respect to regulations to be effective during any calendar week, nine members shall constitute a quorum and nine concurring votes shall be required: *Provided*, That the quorum necessary to make a recommendation for regulation for any week immediately following three or more continuous weeks of regulation shall be twelve members and twelve concurring votes shall be required. The requirements of this paragraph shall not apply to recommendations to amend an existing regulation.

• • • • •

3. Section 912.24 is amended as follows:

a. Redesignate paragraph (b) as paragraph (c) and insert a new paragraph (b) as follows:

§ 912.24 Nomination of handler members for the Indian River Grapefruit Committee.

(a) • • •

(b) The committee, as soon as practicable after issuance of the amendment to this part and every third year thereafter, not later than the date prescribed in paragraph (a) of this section, shall reallocate the six handler member and six handler alternate member positions for which voting for nominees is to take place. At such meetings, voting for nominees shall be in accordance with representation which may be required as a result of any reallocation. The reallocation of committee member and alternate member positions shall be between handlers affiliated with bona fide cooperative fresh fruit marketing organizations, herein referred to as "cooperative" handlers, and handlers not so affiliated, herein referred to as "independent" handlers, on the basis of the relative amounts of grapefruit shipped by each group during each of the three immediately preceding completed crop years. The committee shall make its recommendation for allocating handler member positions to the Secretary. The following percentages of grapefruit shipments shall be used by the committee as a basis for allocating handler member and alternate member representation: *Provided*, That the committee, with the approval of the Secretary, may modify the percentages and/or allocation, whenever necessary to meet changing circumstances: *Provided*, That in no event shall any group be allocated less than one member.

Percentages of grapefruit shipped previous 3-year-period		Allocation of handler members	
Cooperatives	Independents	Cooperatives	Independents
Under 25	75 and above	1	5
25 through 41.99	58 through 74.99	2	4
42 through 57.99	42 through 57.99	3	3
58 through 74.99	25 through 41.99	4	2
75 and above	Under 25	5	1

• • • • •

b. Section 912.25 is amended to read as follows:

§ 912.25 Selection of handler members of the Indian River Grapefruit Committee.

From the nominations made pursuant to § 912.24, or from other qualified persons, the Secretary shall select six members and six alternate members of the committee. Three such members and their alternates shall be affiliated with bona fide cooperative fresh fruit marketing organizations, and three such members and their alternates shall not be so affiliated: *Provided*, That when membership is reallocated as provided in § 912.24(b), selection shall reflect such reallocation.

(Secs. 1–19, 48 Stat. 31, as amended (7 U.S.C. 601–674).)

Effective Date: February 28, 1977.

Signed at Washington, D.C., on January 21, 1977.

RICHARD L. FELTNER,
Assistant Secretary.

[FR Doc.77–2557 Filed 1–25–77;8:45 am]

CHAPTER XI—AGRICULTURAL MARKETING SERVICE (MARKETING AGREEMENTS AND ORDERS: MISCELLANEOUS COMMODITIES), DEPARTMENT OF AGRICULTURE

[Docket No. CRPA–2]

PART 1205—COTTON RESEARCH AND PROMOTION

Subpart—Cotton Research and Promotion Order

ORDER AMENDING ORDER

On December 6, 1976, there was published in the FEDERAL REGISTER (41 FR 53350) a proposed order amending the Cotton Research and Promotion Order which was annexed to and made a part of the final decision and referendum order of the Secretary of Agriculture. The referendum was conducted among cotton producers during the period December 13–17, 1976 to determine whether the requisite number of producers voting in the referendum favor the issuance of said order amending the Cotton Research and Promotion Order, and such producers favored such issuance. Therefore, it is hereby ordered that at the time hereinafter specified, the aforesaid order amending the Cotton Research and Promotion Order shall become effective.

FINDINGS AND DETERMINATIONS

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and all of said previous findings and determinations are hereby ratified and affirmed except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Cotton Research and Promotion Act, as amended (80 Stat. 279 et. seq., 90 Stat. 991; 7 U.S.C. 2101–2118), and the applicable rules of practice and procedure governing the formulation and amendments of cotton research and promotion orders (7 CFR Part 1205), a public hearing was held upon proposed amendment of the Cotton Research and Promotion Order. Upon the basis of the record thereof it is found that:

(1) The order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the act; and

(2) All cotton produced and handled in the United States is in the current interstate or foreign commerce, or directly burdens, obstructs, or affects interstate or foreign commerce in cotton and cotton products.

(b) *Additional findings.* It is necessary in the public interest to make this order amending the order effective January 26, 1977. Any delay beyond that date would tend to disrupt the procedure for implementing the order amending the order.

In order for the Cotton Board to be ready to start the collection of the supplemental producer assessment as set forth in the order amending the order beginning with the 1977 ginning season, it will be necessary to issue rules and regulations to specify the method of collection, including any procedural changes necessary for collecting the supplemental assessment. These proceedings and actions are expected to take several months.

The provisions of the order amending the order are well known to cotton producers and other interested parties by reason of the public hearing and other procedures previously conducted with respect to the order amending the order, and the publication in the FEDERAL REGISTER of the notice of hearing, and recommended and final decisions (September 3, 1976 (41 FR 37337); November 15, 1976 (41 FR 50270); December 6, 1976 (41 FR 53350), respectively). All producers eligible to vote in the referendum were mailed a summary of the provisions of the order amending the order and copies were available to producers and other interested parties upon request. Compliance with the provisions of this order amending the order will not require advance preparation on the part of persons subject thereto which cannot be completed prior to the effective date of

regulations that may be issued thereunder.

In view of the foregoing, it is hereby found and determined that good cause exists for making this order effective January 26, 1977 and that it would be contrary to the public interest to delay the effective date of this order for 30 days after its publication in the FEDERAL REGISTER (sec. 553(d), Administrative Procedure Act; 5 U.S.C. 551–559).

(c) *Determinations.* It is hereby determined that the issuance of this order amending the Cotton Research and Promotion Order is favored or approved by at least two-thirds of the cotton producers who participated in a referendum on the question of its approval, and who, during calendar year 1976 (the period determined to be a representative period for the purpose of such referendum) were engaged in the production of Upland cotton in the United States for the 1976 crop.

It is therefore ordered, that at the time hereinafter specified, the aforesaid Cotton Research and Promotion Order is hereby amended as follows, shall become effective:

1. Revise § 1205.302 to read:

§ 1205.302 Act.

"Act" means the Cotton Research and Promotion Act, as amended (80 Stat. 279 et seq., 90 Stat. 991; 7 U.S.C. 2101–2118).

§ 1205.327 [Amended]

2. Amend § 1205.327(b) by adding "s" to the word "assessment".

3. Revise § 1205.330 to read:

§ 1205.330 Expenses.

(a) The Board is authorized to incur such expenses as the Secretary finds are reasonable and likely to be incurred by the Board for its maintenance and functioning and to enable it to exercise its powers and perform its duties in accordance with the provisions of this subpart.

(b) The Board shall reimburse the Secretary (1) for expenses up to $200,000 incurred by him in connection with any referendum conducted under the Act and (2) for expenses incurred by the Department of Agriculture for administrative and supervisory costs up to five employee years annually.

(c) The funds to cover such expenses incurred under paragraphs (a) and (b) of this section shall be paid from assessments received pursuant to § 1205.331.

4. Revise § 1205.331 to read:

§ 1205.331 Assessments.

Each cotton producer or other person for whom cotton is being handled shall pay to the handler thereof designated by the Cotton Board pursuant to regulations issued by the Board and such handler shall collect from the producer or other person for whom the cotton, including cotton owned by the handler, is being handled, and shall pay to the Cotton Board, at such times and in such manner as prescribed by regulations issued by the Board, assessments as prescribed in paragraphs (a) and (b) of this section to be used for such expenses and expenditures, including provision for a reasonable reserve, as the Secretary finds are reasonable and likely to be incurred by the Cotton Board and the Secretary under this subpart:

(a) An assessment at the rate of $1 per bale of cotton handled.

(b) A supplemental assessment on cotton handled which shall not exceed one percent of the value of such cotton as determined by the Cotton Board and approved by the Secretary and published in Cotton Board rules and regulations. For the 1977 and subsequent crops of cotton this supplemental assessment shall be at the rate of fourtenths of one percent of the value of cotton: *Provided*, That for any crop of cotton, beginning with the 1978 crop, the rate of the supplemental assessment may be increased or decreased by the Cotton Board with the approval of the Secretary. The Secretary shall prescribe by regulation whether the assessment rate shall be levied on (1) the current value of cotton, or (2) an average value determined from current and/or historical cotton prices and converted to a fixed amount for each bale.

§ 1205.334 [Amended]

5. Amend § 1205.334(c) by adding "s" to the word "assessment".

(Secs. 5 and 10, 80 Stat. 279 et. seq.) 90 Stat. 991 (7 U.S.C. 2101–2118).)

Issued at Washington, D.C. this 21st day of January 1977.

Effective date: January 26, 1977.

RICHARD L. FELTNER,
Assistant Secretary for Marketing and Consumer Services.

[FR Doc.77–2556 Filed 1–25–77;8:45 am]

Title 10—Energy

CHAPTER II—FEDERAL ENERGY ADMINISTRATION

PART 500—MANDATORY GASOLINE AND DIESEL FUEL RATIONING REGULATIONS

Adoption of New Part Establishing Contingency Rationing Plan for Gasoline and Diesel Fuel

On May 25, 1976, the Federal Energy Administration (FEA) issued a notice of proposed rulemaking and public hearing (41 FR 21918, May 28, 1976) to amend Chapter II, Title 10 of the Code of Federal Regulations, to establish a new part setting forth regulations with respect to mandatory gasoline and diesel fuel rationing. Written comments were invited through June 28, 1976. Public hearings were held on June 21, 22 and 24, 1976, in Washington, Atlanta, Kansas City, San Francisco and Anchorage.

One hundred and seven written comments were received in response to the notice of proposed rulemaking and 37 oral presentations were made at the five public hearings. Those making comments included representatives of the travel industry, vehicle rental companies, firms engage in direct sales, refiners and others associated with the petroleum industry, Federal, State and local government, agriculture, transportation industry and firms engaged in energy production.

This contingency rationing plan, required by section 203 of the Energy Policy and Conservation Act (EPCA) (Pub. L. 94–163), if approved by the Congress, would remain in standby status unless the President finds that putting the plan into effect is required by a severe energy supply interruption or in order to fulfill obligations of the United States under the international energy program and transmits such finding to the Congress, together with a statement of the effective date and manner for exercise of such plan. Pursuant to section 203(b) of EPCA, the President would also be required in order to implement a standby rationing plan to find that such plan is necessary to attain, to the maximum extent practicable, the objectives specified in section 4(b)(1) of the Emergency Petroleum Allocation Act of 1973 (EPAA) (Pub. L. 94–163), as amended, and the purposes of the EPCA. For the rationing contingency plan to become effective and be converted from standby status, the President's request to the Congress to put the plan into effect must not be disapproved by either House of Congress. After these steps are completed, the rationing contingency plan would be implemented for the period specified in the plan but for not more than nine months.

The basic provisions of the contingency gasoline and diesel fuel rationing plan adopted today are essentially the same as proposed. FEA will issue ration coupons and ration credits ("ration rights") for each ration period equal to the total estimated available supply of gasoline for the ration period. FEA would then distribute these ration rights through four basic programs. First, FEA would provide ration coupons to all eligible individuals. Second, FEA would provide ration credits to all firms which are engaged in priority activities for which a ration credit level has been established. These ration credits would be in addition to any ration coupons received by a person as an eligible individual. Third, FEA would distribute three percent of all ration rights through the State Hardship Reserves which would be used to meet the needs of certain specified users; e.g., handicapped persons, migrant workers, etc. Fourth, FEA would reserve one percent of the ration rights to distribute itself through the National Ration Reserve.

Persons to whom ration rights are issued would redeem their ration rights for gasoline or could sell them in a ration rights exchange market or give them away.

A supplier of gasoline would be required to collect, redeem, and deposit in the supplier's redemption account ration coupons, ration credit checks or redemption checks for all gasoline sold. Retail sales outlets could agree to supply gasoline to a consumer without ration rights provided the retail sales outlet itself ob-

tained ration rights to cover the transaction within ten days of the sale.

Ration periods for coupons would vary in length depending upon projected supply conditions and other factors and would be announced by FEA's publication of a notice in the FEDERAL REGISTER at least ten days in advance of the ration period. The reason for providing for variable ration periods for coupons is to permit FEA to adjust the number of ration coupons to correspond to the available supply after deduction for the State Hardship Reserves, the National Ration Reserve, and the number of ration credits issued to firms entitled to a ration credit level.

Eligible individuals would apply for ration coupons at issuance points to be designated by FEA, on days designated by FEA. Issuance of ration coupons to eligible individuals would be, for the most part, dependent upon the person's having a valid driver's permit issued by a State. Indians living on reservations under the jurisdiction of the Bureau of Indian Affairs and Alaska Natives may in certain circumstances qualify as eligible individuals even though they do not have driver's permits.

Firms entitled to a ration credit level would be issued ration credits rather than ration coupons. The ration credits would be deposited by FEA each month on the first day of the month in the firm's primary ration credit account maintained with an FEA Regional Processing Center. The firm could then withdraw its ration credits by issuing a ration credit check drawn on its primary ration account to the order of its gasoline supplier. The firm could also issue a ration credit acount for its subsidiaries so that any person; the check could then be deposited in a secondary ration credit account or exchanged for coupons at a ration coupon issuance point. Typically, a firm would open a secondary ration credit account for its subsidiaries so that those subsidiaries could write their own ration credit checks for the purchase of gasoline.

Any firm that was not in operation during a base period could apply to FEA for assignment of a base period use and ration credit allotment. FEA would determine the appropriate base period use, taking into account the typical gasoline or diesel fuel consumption patterns of similar firms.

FEA would establish Regional Processing Centers to perform automated account posting activities in support of the majority of FEA's ration banking activities. FEA would determine the number and location of these Centers, which would serve as sole processing facilities for all ration credit and redemption accounts within given geographic regions. The Regional Processing Centers would establish a check file for each ration credit account. The Centers would arrange to supply the necessary ration credit checks and deposit forms to account owners.

Although not part of the regulations issued today, guidelines are being developed to set forth the procedures which FEA and participating banks and issuance points would follow in carrying out the regulatory program for issuing ration rights and clearing primary and secondary ration credit accounts and redemption accounts. Representatives from the commercial banking industry are assisting in the development of these guidelines.

The functions of the State Rationing Offices and Local Rationing Boards remain essentially as proposed. Hardship allotments could be made by Local Rationing Boards to handicapped persons; low-income, long distance commuters; migrant workers; and, as discussed in more detail below, certain persons engaged in household moves. Other hardship needs could also be handled through the Local Rationing Boards.

The regulations adopted today include the limited diesel fuel rationing program as proposed. Eligible individuals would use their allotments of gasoline ration coupons for their diesel fuel requirements. Firms which have an allocation level under the middle distillate allocation program and which operate diesel-powered vehicles would be issued a diesel fuel entitlement card for each such vehicle, to be used at the time of purchase of diesel fuel at a retail sales outlet. The entitlement card would be linked to a ration credit account maintained by FEA for all firms purchasing diesel fuel at retail sales outlets. A firm having an entitlement card would be able to purchase volumes of diesel fuel comparable to what it would be entitled to receive under the allocation level established in Subpart G of 10 CFR Part 211 (the Mandatory Petroleum Allocation Regulations), but without application of an allocation fraction.

The regulations adopted today contain several modifications to the proposed regulations. The most significant changes are the following:

Relationship of allocation to rationing and maintenance of base period supplier/purchaser relationships. As proposed, the regulations included provisions for the allocation of gasoline from suppliers to wholesale purchaser-resellers utilizing the bulk of the allocation concepts currently contained in 10 CFR Part 211. The existing allocation program would have been substantially modified by eliminating the concept of supplier/purchaser relationships between suppliers and ultimate consumers.

FEA determined that it was preferable to continue to require the maintenance of base period supplier/purchaser relationships between suppliers and bulk purchasers of gasoline. Incorporation of this concept essentially adopts all of 10 CFR Part 211 as it relates to the allocation of motor gasoline. This being so, there is no longer any need to set forth separate gasoline allocation regulations in the Rationing Contingency Plan since the allocation regulations as set forth in 10 CFR Part 211 are adequate.

In reaching the decision to require the maintenance of base period supplier/purchaser relationships between suppliers and bulk purchasers of gasoline, FEA believed that it would make little sense to provide ration rights to bulk purchasers of gasoline without requiring their historical suppliers to supply them with their pro-rata share of gasoline. Therefore, the existing requirement that a bulk purchaser's base period supplier must continue to supply the bulk purchaser is included in the Rationing Contingency Plan. This concept is effectuated by permitting the allocation program in 10 CFR Part 211 to operate as currently in effect and to tie ration credit levels to the allocation levels set forth in Subpart F of the Mandatory Petroleum Allocation Regulations.

It should be noted that the obligation of a supplier to continue to supply its base period customers applies only to those customers which are bulk purchasers as defined in 10 CFR 211.102. Firms (including individuals) which are not bulk purchasers will, of course, be entitled to receive allotments of ration rights, but such purchasers are not entitled to an allocation level and do not have supplier/purchaser relationships which must be maintained for the duration of the Mandatory Petroleum Allocation Program.

In making allotments to firms entitled to a ration credit level, the FEA will deposit ration rights into such firms' primary ration credit accounts in amounts equal to the volume of gasoline those firms would be entitled to receive under the allocation regulations as modified at the time rationing becomes effective, whether or not those firms qualified as bulk purchasers. Also, the number of ration rights allotted to such firms will be calculated without the application of an allocation fraction. For example, a firm entitled to an allocation level of 100 percent of base period use subject to an allocation fraction, which had a base period use of 10,000 gallons of gasoline and whose supplier is applying an allocation fraction of 0.9, would have an allocation entitlement of 9,000 gallons of gasoline (10,000 gallons base period use $\times$0.9 fraction $=$9,000 gallons). The number of ration rights which FEA would allot to that firm, however, would be 10,000 since that is 100 percent of the firm's base period use.

As proposed, the rationing regulations established three gasoline ration credit levels depending on the end use of the gasoline—100 percent of current requirements, 100 percent of base period use, and 90 percent of base period use. The regulations then specified the types of end uses which qualified for each ration credit level. Since the ration credit levels are now tied to the allocation levels, set forth in the Mandatory Petroleum Allocation Regulations, the ration credit to be allotted to a particular firm will be based on the allocation levels in Subpart F of 10 CFR Part 211 as amended at the time rationing begins. Also, the definitions of the various end uses (e.g., Department of Defense use, agricultural production, sanitation services, etc.) shall be the definitions set forth in 10 CFR 211.51 as amended at the start of the rationing program as discussed below.

Definitions and ration credit levels. As indicated above, the definitions of end uses of gasoline for purposes of the rationing regulations shall be the same as set forth for the allocation regulations. It is anticipated that, if the rationing regulations are put into effect, the definitions of the following terms will be changed as indicated.

The definition of "Department of Defense use" would be modified from the proposed definition to substitute "national defense operations" for "strategic defense operations" in recognition of the difficulty of separating strategic activities from other essential national defense activities.

The definition of "agricultural production" would also be modified. The new definition would permit firms producing essential food for human consumption to be eligible for 100 percent of current requirements for gasoline for their essential food producing activities, with non-essential food production and all non-food agricultural activities eligible for 90 percent of base period use. FEA recognizes that the use of Standard Industrial Classification (SIC) codes is an imperfect means of distinguishing essential foods from non-essential foods, but feels that other definitions of essential foods would lead to greater problems of definition and interpretation than the SIC codes.

The definition of "emergency services" would be modified to include emergency road services, including snow removal, and the repair of essential public utilities.

The definition of "passenger transportation services" would be restricted to include only vehicles with a manufacturer's seated-capacity rating of greater than 10 persons, counting the driver. FEA has chosen to exclude taxicabs on the gorunds that taxicabs can achieve gasoline savings through reduced cruising, increased use of taxi stands, and greater use of radio call equipment. Carpool vehicles would benefit from the pooled ration coupon allotments of all drivers sharing the pool vehicle.

The definition of "telecommunications services" would be changed to delete the reference to "periods of substantial disruption of normal service" and to exclude sales and routine administrative activities.

The definition of "sanitation services" would be changed to delete reference to "during emergency conditions."

It is FEA's current view that the definitions described above would read as follows:

"Department of Defense use" means those activities of the United States armed forces directly connected with and essential to national defense operations excluding administrative activities.

"Agricultural production" means: (a) all of the activities classified under the industry code numbers specified below, as set forth in the Standard Industrial Classification Manual, 1972 Edition:

011 Cash Grains (excluding 0119, Cash Grains Not Elsewhere Classified)
0133 Sugar Crops
0134 Irish Potatoes
016 Vegetables and Melons
017 Fruits and Tree Nuts (excluding Vineyards)
0182 Food Crops Grown Under Cover
021 Livestock, except Dairy, Poultry, and Animal Specialties (excluding 0214, Sheep and Goats)
024 Dairy Farms
025 Poultry and Eggs
091 Commercial Fishing (excluding 0919, Miscellaneous Marine Products)
201 Meat Products
202 Dairy Products (excluding 2024, Ice cream and Frozen Desserts)
203 Canned and Preserved Fruits and Vegetables
2041 Flour and Other Grain Mill Products
2043 Cereal Breakfast Foods
2044 Rice Milling (except Brewers' Rice)
2045 Blended and Prepared Flour
205 Bakery Products (except dessert products such as pastries, pies, cookies and cakes)
2061 Cane Sugar, Except Refining Only
2062 Cane Sugar Refining
2063 Beet sugar
209 Miscellaneous Food Preparations and Kindred Products;

(b) The following activities classified in the industry code numbers specified below, but only to the extent that they relate to production (including transportation) of food for human consumption:

0119 Cash Grains, Not Elsewhere Classified
0139 Field Crops, Except Cash Grains, Not Elsewhere Classified
0181 Ornamental Floriculture and Nursery Products (limited to vegetable seed production and growing of fruit stocks)
019 General Farms, Primarily Crop
0214 Sheep and Goats
027 Animal Specialties
029 General Farms, Primarily Livestock
071 Soil Preparation Services
072 Crop Services
0741 Veterinary Services for livestock, Except Animal Specialties
0751 Livestock Services, Except Services for Animal Specialties
076 Farm Labor and Management Services
0849 Gathering of Forest Products, Not Elsewhere Classified (limited to gathering of maple sap)
0919 Miscellaneous Marine Products
092 Fish Hatcheries and Preserves
147 Chemical and Fertilizer Mineral Mining
2046 Wet Corn Milling
2048 Prepared Feeds and Feed Ingredients for Animals and Fowls, Not Elsewhere Classified
207 Fats and Oils
2819 Industrial Inorganic Chemicals, Not Elsewhere Classified
286 Industrial Inorganic Chemicals (limited to pesticides and intermediates for the manufacture of pesticides)
287 Agricultural Chemicals
421 Trucking, Local and Long Distance (limited to trucking of fresh produce, perishable foods, livestock and poultry)
497 Irrigation Systems

"Emergency services" means fire fighting, emergency police activities (excluding routine activities), emergency medical services, emergency repair of essential public utilities, and emergency road services including snow removal.

"Passenger transportation services" means (a) surface passenger-carrying services and facilities (excluding water and rail transportation) which serve the general public, whether publicly or privately owned, excluding vehicles with a maufacturer's seated-capacity rating of ten (10) or fewer persons, counting the driver; (b) bus transportation of pupils to and from school.

"Sanitation services" means the collection and disposal for the general public of solid wastes, whether by public or private entities, and the maintenance, operation and repair of liquid purification and waste facilities. Sanitation services also includes the provision of water supply services by public utilities, whether privately or publicly owned or operated.

"Telecommunications services" means the repair, operation, and maintenance of voice, data, telegraph, video, and similar communications services to the public by a communications common carrier, excluding sales and routine administrative activities.

With respect to regulations dealing with ration credit levels, it was proposed that non-governmental firms not otherwise accorded a ration credit level would be given a level of 90 percent of base period use if they reported gasoline as an expense to the Internal Revenue Service or were engaged in religious, charitable, educational or other eleemosynary activities. Because gasoline is not always reported as a separate expense but rather is included usually in overall business expenses, FEA currently anticipates that the regulations on allocation levels in 10 CFR 211.103 would be amended to provide an allocation level of 90 percent of base period use (subject to an allocation fraction) for nongovernmental uses by firms not otherwise accorded an allocation level which include gasoline as an expense, whether or not separately identified, on schedules or forms filed with the Internal Revenue Service. Ninety percent of base period use (subject to an allocation fraction) would be the allocation level proposed for religious, charitable, educational or other eleomosynary activities not otherwise accorded an allocation level.

It is anticipated that at the time rationing would be put into effect the allocation levels currently in 10 CFR 211.103 for cargo, freight and mail hauling by truck, aviation ground support vehicles and equipment, industrial use, commercial use, governmental use and social service agency use would all be subsumed within the allocation level for all other non-governmental uses not otherwise accorded an allocation level (90 percent of base period use subject to an allocation fraction). Ration credit levels would be the same as the allocation levels without application of a fraction. As in the case of all other currently anticipated amendments to the allocation regulations, these amendments would be subject to public comment and further consideration by FEA before any of them were adopted.

Based on the revised definitions of end use activities described above, it is currently anticipated that the allocation levels in 10 CFR 211.103 would be amended at the time rationing is implemented to reflect the following

changes in order of precedence of end uses:

(1) *One hundred percent of current requirements (not subject to an allocation fraction).* Department of Defense use; Agricultural production; Emergency services; and Passenger transportation services.

(2) *One hundred percent of base period use (subject to an allocation fraction).* Telecommunication services; Sanitation services; and Energy production.

(3) *Ninety percent of base period use (subject to an allocation fraction).* All other government uses; All other uses by firms which include gasoline as an expense, whether or not separately identified, on schedules or forms filed with the Internal Revenue Service; and All other uses for religious, charitable, educational or other eleemosynary purposes not otherwise accorded a ration credit level.

Ration credit levels for all of the foregoing uses would be the same as the suggested allocation levels but without application of an allocation fraction.

The definitions of "firm" and "retail sales outlet", which are adopted in the rationing regulations issued today, would require amendment to conform to the definitions used in the Mandatory Petroleum Allocation Regulations. The definition of "firm" specifies that the various departments, agencies, offices and instrumentalities of the Federal Government are to be treated as separate firms since the Federal Government does not have centralized records with respect to gasoline consumption. The definition of "retail sales outlet" has been narrowed from the meaning originally proposed so as to make it clear that the entity to which that term applies is clearly understood to be the typical service station where sales of gasoline are made to owners of passenger cars and trucks. The term does not refer to rack sales by jobers or refiners to commercial accounts. To qualify as a retail sales outlet, the maximum amount of fuel, either gasoline or diesel fuel, which could be pumped into a vehicle's fuel tanks would be 130 gallons. The volume of 130 gallons was chosen because it was FEA's understanding that that is the maximum fuel tank size of any vehicle for which fuel would be purchased at a service station.

Alaska Natives. In response to a unique situation in the State of Alaska, the definition of the term "eligible individuals" has been modified to include Alaska Natives of at least age 16 who have no driver's permit but who use gasoline in snowmobiles, boats, or other vehicles or tools. Persons other than Alaska Natives who are similarly situated should apply to their local Rationing Board for assistance.

Invalidation of ration coupons. Several comments addressed the proposed provisions as to the invalidation of ration coupons. Under the regulation issued today, FEA could declare a particular series of ration coupons invalid. Invalidation would occur only where there is evidence of counterfeiting or other severe threat to the integrity of a particular ration coupon series. Invalidation would only occur after sufficient advance notification to the public. It is not anticipated that FEA would exercise this authority except in the most severe situation. FEA recognizes that the authority to invalidate a coupon series may affect the operation of the ration rights exchange market. This provision, however, which would be exercised only upon sufficient advance notice and only when the circumstances clearly require its exercise, is essential to protect ration coupon integrity. Since it is unlikely that invalidation would ever be required, it would have minimal impact on the ration rights exchange market.

Base period use for vehicle rental companies. There was considerable comment with respect to the special meaning of "base period use" for vehicle rental companies. As proposed, and adopted, the base period use for a vehicle rental company includes volumes of gasoline purchased or obtained by a vehicle rental company for its direct use but not including any volumes used by the vehicle rental company's customers. Concern was expressed that customers which have long-term leases with vehicle rental companies would not have available the information to determine their base period use for rented vehicles. It was also suggested that vehicle rental companies should be able to include in their base period use those volumes which were supplied to all customers who leased vehicles during the base period since the vehicle rental company supplies the gasoline as part of an overall service. FEA believes that vehicle rental companies should experience little difficulty in supplying base period consumption information to their customers. With this information, the lessee can apply, as would any other firm, to establish a base period use.

To the extent that a vehicle rental company supplies gasoline as part of its overall service to a customer, that vehicle rental company would be acting as a wholesale purchaser-reseller of gasoline. If a vehicle rental company wishes to acquire supplies from its supplier of gasoline to enable the rental company to continue this service activity, the rental company would have to open a redemption account and pay for its purchases like any other wholesale purchaser-reseller.

The regulations permit a vehicle rental company to require advance payment of ration rights by a lessee. For example, a vehicle rental company could require its lease customer to issue to the rental company on the first day of each month a ration credit check for the estimated amount of gasoline the lessee would use during a month. The vehicle rental company would then be able to deposit this ration credit check into its redemption account and still be able to issue a redemption check to its supplier within 10 days of receipt of the gasoline from its supplier. The vehicle rental company would obviously have to adjust the amount of the next succeeding ration credit check to be requested from the customer to reflect the difference in the estimated amount of gasoline for which it received a ration credit check and the actual volumes of gasoline supplied to the customer.

Base period use for firms with independent sales representatives. As proposed, the Rationing Contingency Plan permitted firms having commissioned direct sales representatives to include in their base period uses the volumes of gasoline used in the sales activities of the firms' commissioned direct sales representatives. On the basis of comments received, the regulations adopted today deal with independent sales representatives rather than commissioned sales representatives. The regulation has also been modified to define more precisely the method by which such firms may include their representatives' gasoline volumes in determining base period use. Those representatives associated with the firm during the base period may, if they themselves would otherwise qualify as firms, agree with the firm to have their base period uses included in the firm's base period use provided the representatives certify to the firm in writing the amount of their base period uses and that they have not and will not include such base period uses in any application to any other firm or to FEA.

New representatives may agree with the firm to have base period uses for their needs included in the firm's total base period use. The volume to be included for each such new representative would be the amount of gasoline equal to the average of all other such representatives' base period uses in the same period. Sales representatives who have entered into an agreement pursuant to the special regulation establishing base period use for firms having independent sales representatives would receive their ration rights directly from the firm.

A firm which includes existing and new independent sales representatives in the firm's base period use must submit a monthly report to FEA indicating the number of such representatives included in the firm's base period use, and the corresponding base period gasoline volumes, broken down by market area or other basis to be specified by FEA. The firm must also agree to make its records available at its headquarters office for FEA audit.

Discrimination between purchasers. The proposed regulations included a provision (proposed § 700.51) which would have prohibited a supplier from discriminating between purchasers. This provision has been eliminated since to some extent a supplier must discriminate in favor of its base period customers which are bulk purchasers of gasoline. In addition, FEA believes 10 CFR 210.62 already prohibits discrimination among purchasers of allocated products where such acts would circumvent the objectives of the EPAA. Therefore, the regulations adopted today do not contain an explicit provision against discrimination among purchasers.

A supplier must accept from a consumer valid ration coupons which are tendered as evidence of entitlement to redeem gasoline if they are offered at the time of sale. A firm, including a supplier, may accept a ration credit check, but the burden of accepting a check for which there are insufficient ration credits is on the payee, who will be responsible for acquiring valid ration rights to cover any deficiency. Of course, except for a firm entitled to a ration credit level of 100 percent of current requirements, anyone who issues a ration credit check for which there are insufficient credits in the owner's ration credit account will be in violation of the Mandatory Gasoline and Diesel Fuel Rationing Regulations. See 10 CFR 500.42(e) and 500.43(d).

Procedural amendments. At the time rationing is implemented, in addition to the amendments to the Mandatory Petroleum Allocation Regulations already discussed, amendments would be proposed to the Administrative Procedures and Sanctions, 10 CFR Part 205, to provide the necessary procedures in Subpart Q of that part for the administration of those sections of the rationing program delegated to the various States and Local Rationing Boards. 10 CFR Part 205 would also be amended to subject violations of the rationing program to the various remedial provisions, including sanctions set forth in that part. Public comment would be sought when these amendments are proposed.

Impact on tourism. Representatives of the tourist industry were concerned that the Rationing Contingency Plan would have a severe and adverse impact upon their businesses. FEA agrees that, during a period in which rationing is in effect, it is likely that there would be substantial impact on the tourist industry. However, the cause for the disruption would not be the rationing program, but rather would be the lack of available gasoline and the need to structure that program so that priority uses receive equitable treatment.

FEA believes that the implementation of rationing during a period of shortage will in fact be of value to the tourist industry. Because the issuance of ration coupons and ration credits is determined by the actual supply of gasoline, holders of ration rights will be reasonably certain of finding available supplies as they travel throughout the United States. Thus, the fear of being unable to locate supplies during a trip to another section of the country will be greatly reduced since if one has ration rights, there should be available product wherever he travels. However, the rationing program cannot overcome the probable psychological impact of the shortage on most drivers who will understandably attempt to conserve their ration rights for periods of emergency or other unexpected needs, which in all likelihood will mean that most drivers will not engage in what they perceive to be non-essential activities. FEA emphasizes that this would be a consequence of a gasoline shortage and not of the Rationing Contingency Plan.

Hardship allotments for persons engaged in household moves. Several persons commented that there should be a provision for granting an allotment of ration rights from the State Hardship Reserves for persons who must make household moves. It was pointed out that without such a provision, a household would be forced to use the services of a commercial moving company or would have to absorb the cost of purchasing ration rights on the ration rights exchange market sufficient to meet the needs of the vehicle(s) involved in the move. Since many persons must move themselves because they cannot afford either of these alternatives, they would be effectively barred from moving. To avoid this undesirable result, provisions have been included for such households to seek additional ration rights from the State Hardship Reserves.

Adjustments to base period use. In the proposed regulations, there were provisions that firms entitled to a ration credit level would have their base period uses adjusted downward if their requirements for gasoline decreased by 25 percent as compared to volumes used during the base period. Since the regulations as adopted today tie ration credit levels to allocation levels, it is appropriate that the adjustment for decreased base period use be determined by the provisions of 10 CFR 211.13. Any increase in base period use accorded a firm pursuant to 10 CFR 211.13 would, of course, serve to increase the base period use for purposes of the Rationing Contingency Plan. It is anticipated that if rationing were implemented, FEA would propose to amend 10 CFR 211.13 to increase the threshold for unusual growth from ten percent to twenty percent.

Allocation entitlements for the construction industry would continue to be subject to the special provisions of 10 CFR 211.27. The base period use for allocation purposes which is established for a specific construction project will serve as the base period use for calculation of the ration credit allotment.

Current requirements. In the notice of proposed rulemaking, FEA sought comments with respect to retaining the concept of providing 100 percent of current requirements for selected end uses. Those persons addressing this issue supported the continuation of the concept for those uses of clearly high priority. Therefore, the concept of providing 100 percent of current requirements to certain end-uses will be continued.

To prevent an inequity in the operation of the ration rights exchange market, a new provision has been added to prevent firms entitled to a ration credit level of 100 percent of current requirements from overdrawing their ration credit accounts in excess of their true needs and selling the unneeded volume of ration rights on the ration rights exchange market. As adopted, the regulations provide that the FEA will deposit into the primary ration credit account of a firm entitled to a ration credit level of 100 percent of current requirements a volume of ration credits equal to 100 percent of such firm's base period use. If that firm needs less than 100 percent of its base period use, it, like any other firm, may sell the remaining ration rights on the ration rights exchange market. However, if a firm entitled to 100 percent of current requirements needs greater than 100 percent of its base period use, it may overdraw its account to the extent of its actual needs. The resulting overdraft will be recorded at the FEA Regional Processing Center at which time FEA will credit a supplemental ration credit allotment to the firm's account to offset the overdraft. In succeeding months, FEA will again allot to such firm 100 percent of its base period use, and if necessary, that firm may again overdraw its ration credit account without penalty so long as the overdraft is used to reach 100 percent of the current requirements of that firm. However, any firm which overdraws its ration credit account to meet 100 percent of its current requirements may not thereafter sell any of its ration rights in the ration rights exchange market. FEA will monitor those firms which overdraw their ration credit accounts to assure that such firms are not participating in the ration rights exchange market and need the additional ration rights to satisfy those activities accorded a ration credit level of 100 percent of current requirements.

State and Local Rationing Offices. Although there was some disagreement, there was general acceptance of the proposed regulations which set forth the roles of the State and Local Rationing Office. Therefore, the regulations adopted today are essentially the same as the regulations proposed. The criteria for delegation of authority to State Rationing Offices will not be addressed until the Congress approves the rationing plan. FEA will seek additional public participation in shaping the criteria for delegation of authority to State Rationing Offices after Congressional approval has been obtained for the remainder of the Rationing Contingency Plan.

Mid-period eligibility. It was suggested that there would be an inequity if an eligible individual with a valid driver's permit failed to obtain his ration coupons by the first day of rationing and thereafter was prohibited from obtaining ration coupons for that ration period. To permit flexibility to cope with such a situation, the regulations adopted today permit FEA to declare a grace period during which eligible individuals (including new eligible individuals) will be given additional time to acquire ration coupons for a ration period already in progress, as well as for succeeding ration periods.

Initial redemption account credit. As proposed, the rationing regulations did not address the issue of how a retail sales outlet or other supplier would pay its suppliers for initial deliveries of gasoline. The regulations adopted today provide that an initial redemption account credit would be entered into each redemption account when the redemption account is opened equal to the greater of (1) the amount of an average single delivery during the base year or (2) 10 days' average gasoline receipts during the base year. In addition, within 30 days after the start of rationing, each firm would report its initial inventory levels measured on the first day of rationing before

any sales or deliveries are made. On this report, each supplier would compute its adjusted redemption account credit which would be equal to a volume of an average single delivery received during the base year or ten days' average receipts in the base year, whichever is greater, plus 20 percent of total gasoline inventory capacity, minus inventory on the first day of rationing. If the result of this computation is less than zero, the adjusted redemption account credit would be equal to zero.

Special redemption account. FEA recognizes that there are some suppliers in remote regions in the United States (especially in Alaska) which are subject to infrequent supply schedules or which are in areas subject to highly seasonal demand. These suppliers may apply to FEA for a special redemption account credit if the adjusted redemption account credit computed in accordance with the immediately preceding paragraph is insufficient to cover actual gasoline receipts less the amount of ration credits and redemption checks which are received or expected to be received from customers during the first 20 days of the rationing program.

Sales by retail sales outlets to customers not having ration rights. There was some confusion over the purpose of the provision in the proposed regulations which permits a retail sales outlet to sell gasoline to customers without requiring them to transfer ration rights at the time of sale. The purpose of the provision is to permit a retail sales outlet at its option to make sales to customers without ration rights on the assumption that the retail sales outlet will be able through purchase of ration rights from the ration rights exchange market to cover those transactions. The retail sales outlet must obtain the additional ration rights within 10 days of making a sale to a customer who does not have ration rights. The purpose of the 10-day period is not to permit the customer who purchases from the retail sales outlet to go out and find ration rights and then present them to the retail sales outlet. The customer who purchases from a retail sales outlet without transferring ration rights is under no obligation to return ration rights. Presumably such a customer would have paid the retailer the value of the coupons required for the sale in addition to the cost of the gasoline purchased. The obligation is on the operator of the retail sales outlet to either collect ration rights at the time of sale or to use the ration rights exchange market and obtain the necessary ration rights within 10 days of having made the sale.

Excess acquisition of product. Several suppliers commented that in many cases a wholesale purchaser-reseller picks up product directly from its supplier's storage area without any monitoring by the supplier's personnel. This arrangement permits a customer to overdraw his entitlement in violation of the Mandatory Petroleum Allocation Regulations. It was suggested that liability for such excess acquisitions be placed on the customer and that the supplier be exonerated from any such violations. Existing regulations (10 CFR 211.25) permit suppliers and wholesale purchasers to agree between and among themselves to either borrow from future allocations or defer current allocations, or both, on a volume for volume basis within the total allocations for one calendar year as long as such arrangements do not result in an involuntary reduction in allocations to other wholesale purchasers. FEA does not believe it would be in the best interests of the Mandatory Petroleum Allocation Program to shift responsibility for adherence solely to the purchaser when the obligations should fall equally on seller and purchaser to comply with the regulatory program. If the supplier is concerned that its customers will pick up excess supplies of product, it must exercise prudent judgment and station personnel at its storage area to prevent such violations.

Precedence of delivery. Section 203(a)(1)(B) of the EPCA requires that the gasoline and diesel fuel rationing contingency plan provide, among other things, that there be a system whereby end users may obtain gasoline or diesel fuel in precedence to other classes of end users not similarly situated. In the proposals for the Rationing Contingency Plan, a provision to effectuate this provision of the EPCA was not included. The regulations adopted today contain a provision which requires that suppliers who have customers who would be accorded priority one status under 10 CFR 211.10 (c) of the Mandatory Petroleum Allocation Regulations must arrange mutually acceptable delivery schedules with those customers before making commitments for deliveries to its other customers who are not in priority one status. The adoption of this provision does not preclude States from adopting complementary plans to augment this regulation. See FEA Ruling 1974–6 (39 FR 6111, February 19, 1974).

Restrictions on endorsements. In the proposed regulations there was a total prohibition against endorsement of ration credit checks to third parties. To permit greater flexibility in the rationing program, the regulations adopted today permit endorsement of ration credit checks by the payee to designated ration coupon issuance points when the payee wishes to exchange a ration credit check for ration coupons. Endorsements to other third parties, however, remain prohibited.

Ration credit levels for diesel fuels. As originally proposed, the ration credit levels for those firms which purchase diesel fuel at retail sales outlets were to be equal to the allocation entitlements specified in the allocation regulations for middle distillates. As proposed, the regulations would have required that the ration credit level incorporate the concept of an allocation fraction. Since the FEA would not be aware of the allocation fraction being applied by a particular supplier until after ration credits were allotted each month, the regulations adopted today with respect to ration credit levels for purchasing diesel fuel at retail sales outlets parallel the gasoline rationing program in specifying that the ration credit level for a firm entitled to a ration credit level shall be equal to the volume of diesel fuel to which such firm is entitled under the allocation regulations prior to the application of any allocation fraction.

Banking service fees and secondary ration credit accounts. In its proposed regulations, FEA had included a provision for the collection of fees for opening and maintaining ration bank accounts. The principal purpose of these fees would have been to discourage the indiscriminate opening and excessive use of ration bank accounts. In light of comments received from representatives of the banking industry, FEA has decided to eliminate these fees altogether.

To prevent the excessive use of secondary ration credit accounts the regulations issued today include a provision that a minimum initial deposit of 300 gallons of ration rights will be required to open a secondary ration credit account.

These changes will simplify the banking system required for the rationing program while maintaining a barrier to improper use of ration bank accounts. Participating banks like other program participants will be compensated by FEA for their rationing activities from the per gallon fees collected by FEA on each gallon of gasoline sold.

ENVIRONMENTAL ASSESSMENT

By notice issued August 27, 1976 (41 FR 36823, September 1, 1976) FEA advised interested persons that it had completed an environmental assessment of the Rationing Contingency Plan. Copies of the environmental assessment are available for review and comment as indicated in the August 27, 1976 notice.

ECONOMIC ANALYSIS AND INFLATIONARY IMPACT

As required by section 201(f) of the EPCA, an economic analysis has been prepared with respect to the Rationing Contingency Plan. Copies of this economic analysis are available for public review in the FEA Freedom of Information Office, Room 2107, 1200 Pennsylvania Avenue, N.W., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., e.s.t., Monday through Friday, except Federal holidays.

As required by Executive Order 11821 and Office of Management and Budget Circular A–107, the inflationary impact of the Rationing Contingency Plan has been considered.

(Emergency Petroleum Allocation Act of 1973, Pub. L. 93–159, as amended Pub. L. 93–511, Pub. L. 94–99, Pub. L. 93–133 and Pub. L. 94–163; Federal Energy Administration Act of 1974, Pub. L. 93–275, as amended Pub. L. 94–385; Energy Policy and Conservation Act, Pub. L. 94–163; E.O. 11790 (39 FR 23185); E.O. 11912 (41 FR 15825).)

In consideration of the foregoing, Chapter II of Title 10 of the Code of Federal Regulations is amended to add a new Part 500, as set forth below, subject to the approval by a resolution by each House of Congress in accordance with the procedures specified in in section 552 of the Energy Policy and Conservation Act (Pub. L. 94–163), said Part 500 only to become effective as provided in section 201(b) of that Act.

Issued in Washington, D.C., January 18, 1977.

DAVID G. WILSON,
Acting General Counsel.

10 CFR Chapter II is amended by adding Part 500, to read as follows:

Subpart A—General Provisions

Sec.
500.1 Scope.
500.2 Relationship of subparts.
500.3 General definitions.
500.4 Ration coupons as obligations of the United States, crimes and offenses.

Subpart B—Rationing of Gasoline

500.21 General.
500.22 Ration rights.
500.23 Validity of ration rights.
500.24 Issuance of ration rights to eligible individuals.
500.25 Issuance of ration rights to firms entitled to a ration credit level.
500.26 Calculations.
500.27 Recordkeeping requirements.

Subpart C—Redemption, Validation of Ration Rights, Scrip and Precedence of Delivery

500.31 General.
500.32 Invalidated ration rights.
500.33 Cancelled ration rights.
500.34 Redeemed ration rights.
500.35 Restriction on endorsements.
500.36 Scrip.
500.37 Precedence of delivery.

Subpart D—Ration Credit and Redemption Accounts

500.41 General.
500.42 Primary ration credit accounts.
500.43 Secondary ration credit accounts.
500.44 Redemption accounts.
500.45 Recordkeeping requirements and reports.
500.46 Redemption account credits.

Subpart E—National Ration Reserve

Sec.
500.51 National Ration Reserve.

Subpart F—State Rationing Offices and Local Rationing Boards

500.61 State Rationing Office.
500.62 Local Rationing Boards.
500.63 Hardship applications.
500.64 Selection of Local Rationing Panel and Local Rationing Board Manager.
500.65 State Hardship Reserves.
500.66 Timeliness.
500.67 Appeals.

Subpart G—Diesel Fuel Rationing

500.71 General.
500.72 Issuance of ration rights.
500.73 Redemption.

Subpart A—General Provisions

§ 500.1 Scope.

(a) This part applies to the end-use rationing of gasoline and diesel fuel produced in or imported into the United States.

(b) *Effective date.* The subparts of this part shall become effective severally or in toto on a date or dates to be specified by the Federal Energy Administration and published in the FEDERAL REGISTER, subject to the provisions of section 201 (b) and (c) of the Energy Policy and Conservation Act (Pub. L. 94–163).

(c) *Relationship to other parts.* Unless otherwise specified, the provisions of parts 205, 210 and 211 of this chapter shall apply to this part. The pricing provisions applicable to this part are provided in Part 212 of this chapter.

§ 500.2 Relationship of subparts.

Unless otherwise specified in a particular subpart, the general provisions set forth in this subpart apply to the mandatory rationing of gasoline and diesel fuel.

§ 500.3 General definitions.

For purposes of this part—

"Allotment" means the value in gallons of gasoline or diesel fuel of the ration rights issued to an eligible individual or any firm.

"Base period" means the calendar month in the base year corresponding to the current calendar month.

"Base period use" means base period use as defined in § 500.25(c).

"Base year" means a calendar year to be determined by FEA and published in the FEDERAL REGISTER.

"Bulk purchaser" means bulk purchaser as defined in § 211.102 of this chapter.

"Current requirements" means the amount of gasoline or diesel fuel needed by a firm to meet its present supply requirements for a particular use of those products, but does not include any amounts which the firm (a) purchases or obtains for resale, (b) accumulates as an inventory in excess of that firm's customary inventory maintained according to its normal business practices, or (c) uses in excess of the supply necessary to meet present supply requirements as constrained by the implementation of the energy conservation program required in § 211.21 of this chapter.

"Diesel fuel" means No. 2–D diesel fuel as defined in American Society of Testing and Materials (ASTM) D975–71 and No. 1–D diesel fuel as defined in ASTM D975–71. Excluded from the definition is No. 4–D diesel fuel as defined in ASTM D975–71.

"Eligible individual" means (a) a natural person having a valid motor vehicle operator's permit, other than a learner's permit, issued by a State in his or her name, (b) an Indian residing on a reservation under the jurisdiction of the Bureau of Indian Affairs of the Department of the Interior who has no State driver's permit but who is permitted by the Bureau of Indian Affairs to drive a motor vehicle on the reservation, (c) an Alaska Native of age sixteen (16) or over who has no driver's permit but who uses gasoline in a snowmobile, boat, or other vehicle or tool, or (d) any other natural person designated as an eligible individual by FEA.

"End-user" means end-user as defined in § 211.51 of this chapter.

"FEA" means the Federal Energy Administration or its delegate.

"Firm" means any association, company, corporation, estate, individual, joint-venture, partnership, or sole proprietorship or any other entity however organized including a charitable, educational, or other eleemosynary institution, State and local governments and the various departments, agencies, offices, corporations and other instrumentalities of the Federal Government. The FEA may, in regulations and forms issued in this part, treat as a firm:

(a) A parent and the consolidated and unconsolidated entities (if any) which it directly or indirectly controls, (b) a parent and its consolidated entities, (c) an unconsolidated entity, or (d) any part of a firm.

"Gasoline" means motor gasoline as defined in § 211.51 of Part 211 of this chapter excluding, however, aviation fuels as defined in § 211.142 of this chapter.

"Individual" means a natural person.

"Local Rationing Board" means the group consisting of the Local Rationing Panel, the Local Rationing Board Manager and the Local Rationing Board Staff.

"National Ration Reserve" means the ration rights reserved by FEA for each ration period for distribution to meet special or urgent needs during that ration period pursuant to Subpart E of this part.

"Ration credit level" means ration credit level as defined in § 500.25(d).

"Ration period" means the period from the date on which one ration coupon series becomes valid to the date the immediately following ration coupon series becomes valid.

"Ration rights" means ration coupons and ration credits made available pursuant to Subparts B, E, F, and G which shall be evidence of an eligible individual's or firm's right to purchase specified volumes of gasoline and diesel fuel.

"Rationed product" means gasoline distributed pursuant to Subparts B and F of this part and diesel fuel distributed pursuant to Subparts F and G.

"Retail sales outlet" means a site on which a supplier maintains an on-going business of selling any rationed product to any ultimate consumer, provided that the major activity of that supplier is to supply during the course of any single transaction one hundred thirty (130) gallons or less of a rationed product into supply tanks on a vehicle for use as fuel for that vehicle.

"Scrip" means any certificate, writing or token which represents less than five (5) gallons of a rationed product, and which a retail sales outlet may offer to any firm (including an individual) which has accepted less rationed product than the gallon amount of the ration rights surrendered to the retail sales outlet.

"State" means any one of the fifty States, the District of Columbia, Puerto Rico or any territory or possession of the United States.

"State Rationing Office" means the office established by the Chief Executive of each State to carry out the authorities delegated to that office by FEA pursuant to Subpart F of this part.

"State Hardship Reserves" means the ration rights provided to the State Rationing Offices by FEA for distribution within the States to meet the hardship needs of firms (including individuals)

having needs for rationed products in addition to the amounts, if any, allotted to such firms pursuant to Subparts B and G.

"Supplier" means any firm or any part or subsidiary of any firm other than the Department of Defense which currently, during the base period, or during any period between the base period and the present, supplies, sells, transfers or otherwise furnishes (as by consignment) any allocated or rationed product to wholesale purchasers or end-users, including, but not limited to refiners, importers, resellers, jobbers, and retailers.

"Wholesale purchaser" means wholesale purchaser as defined in § 211.51 of this chapter.

"Wholesale purchaser - consumer" means wholesale purchaser-consumer as defined in § 211.51 of this chapter.

"Wholesale purchaser-reseller" means wholesale purchaser-reseller as defined in § 211.51 of this chapter.

"Vehicle rental company" means a firm which rents or leases motor vehicles to other firms (including individuals) who are bailees of the motor vehicles for the period of the rental or lease.

§ 500.4 Ration coupons as obligations of the United States; crimes and offenses.

(a) Ration coupons are an obligation of the United States within the meaning of 18 U.S.C. 8. The provisions of title 18 of the United States Code, "Crimes and Criminal Procedure," relative to counterfeiting and alteration of obligations of the United States and the uttering, dealing in, etc., of counterfeit obligations of the United States are applicable to ration coupons.

(b) Any firm having custody, care and control of ration coupons shall at all times, in receiving, storing, transmitting, or otherwise handling ration coupons, take all precautions necessary to avoid acceptance, transfer, negotiation, or use of spurious, altered, or counterfeit ration coupons and to avoid any unauthorized transfer, negotiation, or use of ration coupons. Such firms shall also safeguard ration coupons from theft, embezzlement, loss, damage, or destruction.

Subpart B—Rationing of Gasoline

§ 500.21 General.

(a) For the duration of the Mandatory Gasoline Rationing Program, no supplier shall supply and no firm shall obtain gasoline from any supplier without transferring to the supplier within ten (10) days valid ration rights or redemption checks for redemption by the supplier equal on a gallon basis to the amount of gasoline transferred, except that any retail sales outlet may transfer gasoline to any firm (including an individual) other than a supplier without obtaining and redeeming ration rights from such firm if the retail sales outlet agrees to obtain and redeem the appropriate amount of ration rights from any source within ten (10) days of the transaction.

(b) For purposes of this subpart, "ration rights" means ration coupons and ration credits issued pursuant to this subpart.

§ 500.22 Ration rights.

(a) For each ration period, FEA shall issue ration rights equal to the estimated total available supply of gasoline for that ration period, as follows:

(1) One (1) percent shall be reserved for distribution pursuant to Subpart E (the National Ration Reserve).

(2) Three (3) percent shall be reserved for distribution to the States based on population and other relevant factors pursuant to Subpart F.

(3) FEA shall issue ration rights to all firms, but not eligible individuals, each calendar month pursuant to § 500.25 of this subpart. The total amount of ration rights issued to firms in a ration period is determined by adding together the pro-rata shares of all firms' allotments for calendar months which fall wholly or partially within the ration period.

(4) The remaining ration rights not issued according to paragraphs (a) (1) through (3) of this section will be issued to eligible individuals pursuant to § 500.24.

(b) Ration rights issued to firms will be distributed in the form of ration credits deposited into a primary ration credit account for each firm. Ration rights issued to eligible individuals will be distributed in the form of ration coupons. Ration credits may be used directly for gasoline or exchanged for coupons at coupon issuance points designated by FEA. Valid ration coupons may be deposited in ration credit accounts, and be subsequently withdrawn as ration credits.

§ 500.23 Validity of ration rights.

(a) *Ration credits.* Unless withdrawn by FEA, ration credits are valid from the date of issuance by FEA through the end of the Mandatory Gasoline Rationing Program. Ration credits may be accumulated in ration credit accounts or may be withdrawn at any time after their issuance.

(b) *Coupons.* Unless declared invalid by FEA or redeemed or cancelled pursuant to Subparts C and D of this part, ration coupons of any series shall be valid from the first day of the ration period for which they are issued through the end of the Mandatory Gasoline Rationing Program even though the ration period for which the ration coupons were issued has ended. FEA may by advance public notice in the FEDERAL REGISTER declare any series or any portion of a series of ration coupons to be invalid. By notice to any holder of particular ration coupons, FEA may declare any ration coupons held by that holder to be invalid and require that such invalid ration rights be immediately surrendered to FEA.

§ 500.24 Issuance of ration rights to eligible individuals.

(a) *Ration periods.* (1) A ration period shall be designated by FEA at least ten (10) days prior to the first day of that ration period by notice published in the FEDERAL REGISTER. A notice designating a ration period may designate more than one ration period and shall establish the term of each ration period designated in the notice.

(2) FEA may by notice published in the FEDERAL REGISTER advance the commencement date of a previously designated ration period.

(b) *Eligible individual's ration allotment.* (1) For each ration period, FEA shall distribute ration rights to eligible individuals equal to the difference between the total ration rights issued for that ration period minus the ration rights to be distributed pursuant to Subparts E and F and § 500.25 of this subpart.

(2) Each eligible individual shall be entitled to receive ration rights as determined pursuant to § 500.26. FEA shall provide notice of the number of ration rights to be issued each eligible individual for a ration period at least ten (10) days prior to the commencement of the ration period.

(c) *Ration coupons.* A ration coupon shall be redeemable for five (5) gallons of gasoline, unless pursuant to advance notice in the FEDERAL REGISTER FEA orders that a ration coupon shall be redeemable for a different volume of gasoline.

(d) *Distribution of ration rights to eligible individuals.* (1) Each eligible individual may obtain his or her ration allotment at an issuance point designated by FEA. For the first three (3) ration periods, an eligible individual will be required to fill out an application form and present his or her State driver's license. Unless otherwise provided by notice published in the FEDERAL REGISTER, for ration periods subsequent to the first three (3) ration periods an eligible individual will be issued his or her ration allotment for three (3) ration periods upon surrender of an authorization card, as provided by paragraph (e) of this section, issued to that eligible individual which is valid for those three (3) ration periods. FEA by notice will designate the day or days on which eligible individuals may apply for their ration allotments. Upon an eligible individual's presentation of a valid authorization card and delivery of his or her ration allotment for one or more designated ration periods, the eligible individual's authorization card for the series of ration rights issued shall be retained and marked or cancelled at the issuance point.

(2) The procedures of paragraph (d) (1) of this section may be followed by agents of eligible individuals unable to apply personally for ration rights. Such agents must present documents authorizing the agent to act on behalf of a particular eligible individual signed by the eligible individual in accordance with FEA forms and instructions.

(3) Indians residing on reservations under the jurisdiction of the Bureau of Indian Affairs may apply to the Bureau of Indian Affairs for their allotments. Alaska Natives may apply to the State agency for their allotments.

(4) Except as provided in paragraph (d) (5) of this section, any eligible individual who applies for a ration allotment after the start of a ration period will receive no allotment for the ration period in progress, but may be given allotments for the next subsequent ration period or periods.

(5) Notwithstanding the provisions of paragraph (d) (4) of this section, FEA may provide additional time at the beginning of any ration period during which any eligible individual may apply for a ration allotment for that ration period.

(e) *Authorization cards.* (1) Any person who is an eligible individual shall be provided with valid authorization cards by the State agency authorized by FEA to issue and distribute authorization cards to licensed drivers holding driver's licenses from that State.

(2) Each eligible individual shall be issued one authorization card for designated ration periods by the appropriate State agency in accordance with notice given by FEA. No eligible individual shall accept or use more than one authorization card for any designated ration period.

(3) Appropriate State agencies shall be authorized by FEA to issue and distribute authorization cards.

(4) State agencies which enter into agreements with FEA to issue and distribute authorization cards which have been approved by FEA in writing shall do so in accordance with forms and instructions issued by FEA.

(5) *Records and reports.* Each State agency authorized by FEA to issue authorization cards shall keep records and submit such reports and other information as FEA may from time to time require.

(6) *Retention of records.* Each State agency shall retain all records and reports submitted to it for possible FEA audit for a period of three (3) years.

(7) *Lost, stolen, or misplaced authorization cards.* Any eligible individual whose authorization card is lost, stolen or misplaced shall immediately report such fact to the State agency. The State agency may issue to such eligible individual a new authorization card in accordance with procedures developed by the State agency and approved in writing by FEA. Within five (5) days of notification, the State agency must transmit the name and number of the lost, stolen, or misplaced authorization card to FEA.

(8) *Appeals concerning authorization cards.* Any individual aggrieved by any act or omission of the State agency with respect to any authorization card may file an appeal in accordance with the provisions of Subpart Q of Part 205 of this chapter.

(9) Each State agency shall establish procedures approved by FEA to ensure timely distribution of authorization cards to eligible individuals.

§ 500.25 Issuance of ration rights to firms entitled to a ration credit level.

(a) For each calendar month, FEA shall issue and distribute ration credits equal to the sum of the ration credit allotments of all firms entitled to a ration credit level and which have primary ration credit accounts with FEA.

(b) *Allotments.* (1) On the first day of each calendar month a firm entitled to a ration credit level of one hundred (100) percent of current requirements and with a primary ration credit account shall receive from FEA an initial allotment equal to one hundred (100) percent of the firm's base period use. If a firm's current requirements exceed one hundred (100) percent of its base period use, the provisions of § 500.42(f) shall determine the manner in which supplementary allotments shall be made to meet the firm's current requirements.

(2) On the first day of each calendar month a firm entitled to a ration credit level other than one hundred (100) percent of current requirements and with a primary ration credit account shall receive from FEA an allotment equal to the firm's ration credit level multiplied by the firm's base period use.

(c) *Base period use.* (1) Except as otherwise specified in paragraphs (c) (2) and (3) of this section, base period use means base period volume or adjusted base period volume, as appropriate. A wholesale purchaser-consumer's or end-user's base period use is the volume of gasoline purchased or obtained in a base period for a use for which there is a ration credit level, including gasoline used by employees or agents of such a wholesale purchaser-consumer or end-user, provided that the gasoline was used for activities authorized as within the scope of the business activities of that wholesale purchaser-consumer or end-user and the employees or agents were reimbursed for the cost of the gasoline they obtained. In the case of a new wholesale purchaser-consumer or new end-user, base period use means the volume assigned by FEA. Suppliers do not have a base period use for the purposes of this subpart except when acting as a wholesale purchaser-consumer or new end-user, base period use means the volume.

(2) *Vehicle rental companies.* For vehicle rental companies, base period use means the base period volume or adjusted base period volume, as appropriate, used by employees or agents of the firm on firm business. Volumes of gasoline used by customers of the vehicle rental company are not included in the firm's base period use. In those instances where a vehicle rental company has not distinguished between gasoline used by customers and gasoline used by employees and agents of the firm, reasonable estimates based on actual mileage records may be used in establishing the firm's base period use. For the purposes of this part, if a vehicle rental company supplies gasoline for a customer's use, that vehicle rental company shall be deemed to be a wholesale purchaser-reseller for such volumes of gasoline supplied.

(3) *Independent sales representatives.* (i) Any firm using independent sales representatives who are not employees of the firm may include the base period use of such representatives in the firm's base period use provided (A) that each such representative would otherwise qualify as a firm for the purposes of receiving an allotment from FEA, (B) that each such representative certifies the amount of his or her base period use, and that he or she has not and will not include such base period use in any application to any other firm or to FEA, and (C) that the firm agrees to provide each such representative with an amount of ration rights equal to the amount such representative would have received from FEA by separate application for uses connected with carrying out the firm's activities.

(ii) Subject to FEA approval, a firm may also include in its base period use for each new such representative who has no base period use an amount of gasoline equal to the average of all other such representatives' base period uses in the same period.

(iii) Any firm which includes in its base period use the volumes permitted in paragraphs (c) (3) (i) or (ii) of this section must attach to its application and submit monthly thereafter a certification showing the current number of such representatives by market area or other basis established by FEA, and the corresponding volumes associated with such representatives which are included in the firm's base period use.

Each such firm must also maintain records of the names, addresses, and telephone numbers of all such representatives, and must make these records available to FEA upon request by FEA at the firm's principal office address shown on its application form. FEA or its representatives may perform audits of these records to verify their accuracy.

(d) *Ration credit level.* A ration credit level is the percentage of current requirements or of base period use of an end-user or wholesale purchaser-consumer, whether or not a bulk purchaser as defined in § 211.102 of this chapter, that FEA shall use in computing the allotment for such firms each calendar month. The ration credit levels for gasoline shall be the same as the allocation levels for motor gasoline specified in § 211.103 of this chapter without application of an allocation fraction.

(e) *Basis of entitlement to ration credits.* A firm entitled to a ration credit level shall receive ration credits based on its conduct of an ongoing business or maintenance of an established end-use for which there is a ration credit level.

(f) *End-users and wholesale purchaser-consumers as firms.* For purposes of defining an end-user or wholesale purchaser-consumer in this part, a firm shall mean all parts of the parent and the consolidated and unconsolidated entities (if any) which it directly or indirectly controls and which act as ultimate consumers, including all sites, storage tanks and other facilities or entities of the end-user or wholesale purchaser-consumer that use or store gasoline.

(g) *Loss of ration credit entitlement for discontinued activities.* A firm shall not be eligible to receive ration rights based upon discontinued activities and no firm shall accept or use ration rights issued or distributed to that firm or any other firm based upon discontinued activities.

(h) *New wholesale purchaser-consumers and end-users.* Wholesale purchaser-consumers and end-users which did not purchase gasoline during any base period may apply to FEA for assignment of a base period use pursuant to this subpart and to § 211.12(e) of this chapter. In determining base period use for a firm which was not in operation during the base year, FEA shall among other things review the firm's gasoline purchases preceding the firm's application to FEA, the types of vehicles used, and the number of miles driven. FEA will also consider typical consumption patterns of similar firms.

(i) *Adjustments to base period use.* Any firm entitled to a ration credit level which receives an adjustment to its base period use pursuant to § 211.13 and Subpart D of this chapter shall receive an identical adjustment to its base period use for purposes of this part.

(j) *Distribution of ration rights to firms.* (1) Each firm other than a Federal department, agency, office, or other instrumentality, may submit an application for a ration allotment and a primary ration credit account at a participating bank or other initial processing point designated by FEA, during a period to be designated by FEA.

(2) Each Federal department, agency, office or other instrumentality may submit an application for a ration allotment and a primary ration credit account to the FEA National Office.

(3) Following the acceptance and approval of its application by FEA, each firm will receive ration checking materials, forms and instructions to enable it to draw on its primary ration credit account in accordance with Subpart D of this chapter.

§ 500.26 Calculations.

(a) This section establishes the formulae for calculating a firm's ration credit allotments, the total available supply, the adjusting term, and the length of the ration period. A "computation period" is used in these calculations initially, since the precise length of the ration period is not known until the final calculation is made. The first computation period will be 30 days; once rationing has begun the computation period will have the same number of days as the immediately preceding ration period.

(b) For purposes of paragraphs (c)–(i) of this section, the following symbols have the following meanings:

Symbol	Units	Meaning
REF	Gallons	Projected refinery output of gasoline during computation period.
IMP	do	Projected imports of gasoline during computation period.
EXP	do	Projected exports of gasoline during computation period.
LOS	do	Projected losses of gasoline from spillage, evaporation, and casualty losses during computation period.
NEI	Persons	Number of eligible individuals (latest count from State agencies and Bureau of Indian Affairs).
BM,V	Gallons	The base period use of a firm in month *i*.
DM,	Days	Number of days in calendar month *i*.
DM,C	do	Number of days in calendar month *i* which fall within the computation period.
INV	Gallons	Amount of desired gasoline inventory drawdown during computation period from industry and any Government-held (strategic) inventories.
NRR	do	Amount of allotment to be reserved for use in the National Ration Reserve for the upcoming ration period.
ΣSHR	do	Amount of allotment to be provided for the State Hardship Reserves for the upcoming ration period.
CP	Days	Length of the computation period.
BA	Gallons per individual per ration period.	The basic allotment for each eligible individual in a ration period (equal to *NCU*×*VCU*).
NCU	Coupons per ration period	Number of coupons to be given to each eligible individual in a ration period.
VCU	Gallons per coupon	Gallon value of each coupon.
RCL	Fraction expressed as a decimal.	Ration credit level for a firm (90 pct=0.9; 100 pct=1.0)
TAS	Gallons	The total available supply of gasoline to be rationed during a ration period.
ADJ	do	An adjusting term representing errors, roundings, authorized overdrafts, and returned allotments in previous periods.
NAS	do	The net available supply of gasoline during a computation period, equal to the TAS minus amounts necessary for the National Ration Reserve and the State Hardship Reserves.
NDAS	do	The net daily available supply equal to the NAS divided by the number of days in the computation period.
FA,	do	The allotment for the firm in month *i*.
FD,,	do	The weighted average daily allotment for a firm in the computation period.
ΣFD,,	do	The total weighted average daily allotment for all firms in the computation period (computed by adding *FD,,* for all firms).
RP	Days	The length of a ration period.

(c) *Total available supply (TAS).* The total available supply (TAS) of gasoline which can be sold during the computation period is determined from data available on the refining and importing of gasoline, adjusted for exports, losses, and inventory changes.

$$TAS = REF + IMP - EXP - LOS + ADJ + INV$$

(d) *Adjusting term (ADJ).* The adjusting term is the sum of adjustments required as a result of errors, roundings, authorized overdrafts, and unclaimed allotments from previous ration periods.

ADJ equals $\Sigma(TAS_{\text{Current est}} - TAS_{\text{prior est}})$ for all previous ration periods,
plus UNCLAIMED ALLOTMENTS from individuals, especially those with multiple licenses,
plus RETURNED ALLOTMENTS from firms with reduced or eliminated activities,
plus ROUNDING ADJUSTMENT in computing the prior ration period, where ROUNDING ADJUSTMENT equals

$$\frac{RP \text{ Rounded} - RP}{RP} \times BA \times NEI$$

minus Authorized overdrafts by firms entitled to ration credit level of one hundred (100) percent of current requirements.

(e) *Net available supply (NAS).* The net available supply is computed by subtracting from the TAS the allotments necessary to replenish or increase the National Ration Reserve and the State Hardship Reserves.

$$NAS = TAS - NRR - \Sigma SHR$$

(f) *Net daily available supply (NDAS).* The net daily available supply (NDAS) is computed by dividing the NAS by the number of days in the computation period.

$$NDAS = \frac{NAS}{CP}$$

(g) *Allotment for each firm (FA_i).* The monthly allotment for each firm is determined by multiplying the firm's base period use times the appropriate ration credit level.

$$FA_i = BM_iV \times RCL$$

(h) *Average daily allotment for each firm (FD_{cp}).* The average daily allotment for each firm during a computation period is calculated using a weighted average to take into account the fact that a computation period will usually overlap two calendar months.

$$FD_{cp} = \left[\frac{FA_1}{DM_1} \times \frac{DM_1C}{CP}\right] + \left[\frac{FA_2}{DM_2} \times \frac{DM_2C}{CP}\right]$$

(i) *Length of ration period.* The length of the ration period is determined as follows:

$$RP = \frac{BA \times NEI}{NDAS - \Sigma FD_{cp}}$$

The ration period length computed above will be rounded up to the nearest whole day.

§ 500.27 Recordkeeping requirements.

All firms must maintain at their principal business address records on gasoline purchased, supplied, or obtained during each base period and during each month the Mandatory Gasoline Rationing Program is in effect. The records shall be subject to FEA audit and must be retained for three (3) years after the termination of the Mandatory Gasoline Rationing Program.

Subpart C—Redemption, Invalidation of Ration Rights, Scrip and Precedence of Delivery

§ 500.31 General.

(a) Subject to the provisions of § 500.42 (f), ration rights may be freely transferred for or without consideration provided that such ration rights have not been redeemed, cancelled or invalidated by FEA.

(b) No supplier (including a retail sales outlet) shall require any purchaser to purchase ration rights from any firm (including itself) as a condition of transferring gasoline.

(c) For purposes of this subpart, "ration rights" means ration coupons or ration credits issued pursuant to Subpart B of this part.

(d) No supplier, including a retail sales outlet, may refuse to accept valid ration coupons offered as evidence of entitlement to purchase gasoline if such coupons are tendered by a wholesale purchaser-consumer or end-user at the time of sale. A supplier may accept ration credit checks from a wholesale purchaser-consumer or end-user as evidence of entitlement to purchase gasoline, but if there are insufficient ration credits in the ration credit account on which the check is drawn, it shall be the payee's responsibility to secure valid ration rights to cover the deficiency.

§ 500.32 Invalidated ration rights.

Ration rights which have been invalidated by FEA are not transferable for value and shall be surrendered to FEA.

§ 500.33 Cancelled ration rights.

(a) Ration rights which have not been redeemed for gasoline may be deposited into a ration credit account. Such ration rights are cancelled when deposited.

(b) An owner of a ration credit account shall endorse ration rights to be deposited into that ration credit account with the account owner's name and account number, and shall indelibly mark ration rights with the legend "cancelled" at the time of deposit.

§ 500.34 Redeemed ration rights.

(a) Ration rights and redemption checks shall be redeemed by exchanging them for gasoline and shall be surrendered as provided by these regulations.

(b) A supplier (including a retail sales outlet) which accepts ration rights or redemption checks in exchange for gasoline shall redeem such ration rights and redemption checks by indelibly marking them with the supplier's name, its redemption account number and the legend "redeemed".

(c) A supplier (including a retail sales outlet) shall deposit redeemed ration coupons, ration credit checks and redemption checks in its redemption account.

(d) No supplier (including a retail sales outlet) shall accept from any firm ration coupons, ration credit checks or redemption checks marked "redeemed," "cancelled," or "specimen." No supplier shall deposit in its redemption account any redeemed ration rights or redemption checks which the supplier did not redeem for gasoline.

§ 500.35 Restriction on endorsements.

Except when surrendered for ration coupons by the payee at ration coupon issuance points, ration credit checks must be deposited by the payee and may not be endorsed to third parties.

§ 500.36 Scrip.

A retail sales outlet may issue scrip for any unused value on a ration coupon or ration credit check transferred for a purchase of gasoline. The type and form of the scrip are discretionary with the issuer. The scrip must be redeemed upon demand by the retail sales outlet which issued it. Retail sales outlets may agree among themselves to accept scrip issued by other retail sales outlets.

§ 500.37 Precedence of delivery.

Prior to agreeing to any other delivery schedules, suppliers shall first establish mutually satisfactory delivery schedules with all their wholesale purchaser-resellers and bulk purchasers entitled to the first priority level of allocation pursuant to § 211.10(c)(1) of this chapter.

Subpart D—Ration Credit and Redemption Accounts

§ 500.41 General.

(a) FEA shall establish, maintain and administer primary ration credit accounts, secondary ration credit accounts, redemption accounts and any other accounts required by FEA at FEA Regional Processing Centers.

(b) FEA may authorize certain firms to act as participating banks to accept applications to establish primary ration credit accounts, secondary ration credit accounts, redemption accounts and any other accounts required by FEA, to accept deposits into such accounts and to perform such other duties and services as FEA may authorize.

(c) For purposes of this subpart, "ration rights" means ration coupons or ration credits issued pursuant to Subpart B of this part.

(d) Ration credit checks drawn on either primary or secondary ration credit accounts and redemption checks shall only be issued on forms approved and distributed by FEA.

§ 500.42 Primary ration credit accounts.

(a) Upon application by any firm (including an individual) entitled to a ration credit level, and in accordance with forms and instructions to be issued by FEA, FEA shall establish a primary ration credit account for such firm.

(b) On the first day of each calendar month, FEA shall deposit ration credits for that calendar month in a firm's primary ration credit account in an amount equal to the firm's ration credit allotment.

(c) A firm may deposit additional ration rights in its primary ration credit account; *Provided*, That such ration rights have not been previously canceled, redeemed or declared invalid.

(d) A firm may withdraw ration credits from its primary ration credit account by issuing a ration credit check to the order of the firm to which it wishes to transfer ration credits.

(e) Except as provided in paragraph (f) of this section, no firm shall issue a ration credit check drawn upon a primary ration credit account in which there are insufficient ration credits to cover that ration credit check and other outstanding ration credit checks drawn on that account.

(f) Notwithstanding the provisions of paragraph (e) of this section, a firm entitled to a ration credit level of one hundred (100) percent of current requirements may draw upon its primary ration credit account in excess of the balance in that account; *Provided*, That such firm has not previously or shall not in the future transfer ration rights to another firm except to redeem its ration rights for gasoline to be utilized for activities having a ration credit level of one hundred (100) percent of current requirements.

§ 500.43 Secondary ration credit accounts.

(a) Upon application of any firm in accordance with forms and instructions to be issued by FEA, FEA shall establish secondary ration credit accounts for that firm. The minimum initial deposit required to open a secondary ration credit account shall be three hundred (300) gallons.

(b) A firm may deposit ration rights in its secondary ration credit account; *Provided, That* such ration rights have not been previously cancelled, redeemed or declared invalid by FEA.

(c) A firm may withdraw ration credits from its secondary ration credit account by issuing a ration credit check to the order of the firm to which it wishes to transfer ration rights.

(d) No firm shall issue a ration credit check drawn upon a secondary ration credit account in which there are insufficient ration credits to cover that ration credit check and other outstanding ration credit checks drawn on that account.

§ 500.44 Redemption accounts.

(a) Every supplier including every retail sales outlet shall apply to FEA for the establishment of a redemption account in accordance with forms and instructions issued by FEA.

(b) Suppliers shall deposit in their redemption accounts all redeemed ration rights and redemption checks which they have accepted.

(c) Within ten (10) days of purchasing or obtaining gasoline from any supplier, a wholesale purchaser-reseller must issue a redemption check to such supplier drawn on its redemption account in exchange for gasoline received.

(d) Participating banks shall accept redeemed ration rights and redemption checks on behalf of FEA for deposit in a supplier's redemption account.

§ 500.45 Recordkeeping requirements and reports.

Participating banks shall maintain such records and issue such reports as may be required from time to time by FEA.

§ 500.46 Redemption account credits.

(a) Based on information contained in the supplier's application for a redemption account, every supplier shall receive an initial redemption account credit equal to the greater of (1) the amount of an average single delivery during the base year or (2) ten (10) days' average gasoline receipts during the base year, computed by dividing the base year volume by three hundred sixty-five (365) and multiplying the result by ten (10).

(b) Within thirty (30) days from the date ration rights are required for the purchase of gasoline, every supplier shall report in accordance with FEA forms and instructions its initial inventory levels measured on the first day of rationing before any sales or deliveries of gasoline are made. On this report form each supplier must compute its adjusted redemption account credit, which shall be equal to the volume of an average single delivery received during the base year, or ten (10) days' average receipts during the base year, if greater, plus twenty (20) percent of total gasoline inventory capacity, minus inventory on the first day of rationing. If the result is less than zero, the adjusted redemption account credit is equal to zero.

(c) Suppliers which are located in remote areas subject to infrequent or irregular supply schedules, and suppliers in areas subject to highly seasonal demand may apply to FEA for a special redemption account credit, if the adjusted redemption account credit computed according to paragraph (b) above will be insufficient to cover actual gasoline receipts less the amount of ration credits and redemption checks received or expected to be received from customers during the first twenty (20) days of the rationing program.

Subpart E—National Ration Reserve

§ 500.51 National Ration Reserve.

(a) The National Ration Reserve shall be used by FEA to meet national disaster relief needs or for emergency replenishment of a State Hardship Reserve or for any other emergency need at the discretion of the Administrator of the FEA.

(b) Each ration period, one (1) percent of the ration rights issued by the FEA pursuant to Subpart B of this part shall be reserved for distribution at the discretion of the FEA National Office through the National Ration Reserve. The percentage of ration rights to be retained in the National Ration Reserve may be increased or decreased during subsequent ration periods upon notice published in the FEDERAL REGISTER.

Subpart F—State Rationing Offices and Local Rationing Boards

§ 500.61 State Rationing Office.

(a) Any State may apply to the FEA National Office to create a State Rationing Office within the State. The Bureau of Indian Affairs shall be treated as a State Rationing Office with respect to the Indian reservations under its jurisdiction.

(b) After FEA review of the criteria in paragraph (d) of this section and upon certification by FEA, such State Rationing Office will be delegated authority (1) to administer the State Hardship Reserve alloted by FEA to that State, (2) to receive petitions from any user of rationed products with respect to the priority and entitlement of such user under these regulations, and (3) consistent with these regulations and guidelines issued by FEA, to order a reclassification or modification of any prior determination made with respect to such user's rationing priority or rights specified in paragraph (b)(2) of this section subject to review by FEA.

(c) Each State shall maintain a primary ration credit account into which FEA shall deposit each month ration credits equal to that State's Hardship Reserve. No State shall issue a ration credit check drawn upon this ration credit account if there are insufficient ration credits to cover that ration credit and other outstanding ration credit checks drawn on that account.

(d) The State Rationing Office may redelegate the authority given to it by FEA to one or more Local Rationing Boards.

(e) *Criteria for delegation of authority to State Rationing Offices.* [Reserved]

§ 500.62 Local Rationing Boards.

(a) Local Rationing Boards may be established within a State by the State Rationing Office pursuant to § 500.61.

(b) Each Local Rationing Board shall include a Local Rationing Panel selected pursuant to § 500.64.

(c) The Local Rationing Board shall be allotted an equitable portion of the State Hardship Reserve by the State Rationing Office. The Local Rationing Board shall maintain a secondary ration credit account into which it shall deposit the portion of the State Hardship Reserve it receives from time to time. From this secondary account, the Local Rationing Board may issue ration rights to eligible individuals determined to be experiencing hardships pursuant to § 500.63. The Local Rationing Board shall not issue a ration credit check drawn upon its secondary ration credit account if there are insufficient ration credits to cover that ration credit check and other outstanding ration credit checks drawn on that account.

(d) Each Local Rationing Board shall accept hardship applications pursuant to § 500.63 and either approve or disapprove such petitions pursuant to instructions and guidelines to be issued by FEA.

(e) Each week the Local Rationing Board shall report to the State Rationing Office with respect to the preceding week (1) the number of hardship applications received per category of hardship alleged, (2) the disposition made of hardship applications, and (3) the amount of ration rights issued to individuals found to be experiencing hardships.

(f) The Local Rationing Panel shall review and decide all appeals of decisions made by the Local Rationing Board pursuant to § 500.63(d) and in accordance with guidelines to be issued by FEA. The Local Rationing Panel shall also review and decide appeals filed by any person aggrieved by a decision of the Local Rationing Board with respect to any matters redelegated to it by the State Rationing Office pursuant to § 500.61. Appeals from the decision of the Local Rationing Panel may be further appealed pursuant to § 500.67.

(g) The Bureau of Indian Affairs may establish Local Rationing Boards on Indian reservations under its jurisdiction. Such boards will carry out the duties and functions of Local Rationing Boards as set forth in this subpart.

§ 500.63 Hardship applications.

(a) An individual may file a hardship application for rationing rights in addition to the rationing rights, if any, which he or she is entitled to receive pursuant to Subpart B of this part. The application shall be made in accordance with FEA forms and instructions.

(b) Hardship applications will be received by the Local Rationing Board for review and determination if the applicant alleges any one or more of the following hardships:

(1) *Handicapped persons.* Any individual who, by reason of disease, injury, age, congenital malfunction, or other permanent incapacity or disability, is unable without special facilities, planning or design to utilize mass transportation vehicles, facilities and services, who has a substantial, permanent impediment to mobility and whose needs for rationed products exceed the amount, if any, represented by the ration rights issued pursuant to Subpart B of this part may file a hardship application.

(2) *Low-income, long-distance commuters.* Persons who without ration rights in addition to the amount, if any, allotted to them pursuant to Subpart B of this part would be forced to spend over five (5) percent of their adjusted gross incomes purchasing ration rights for travel to and from their place of employment, and for whom carpooling or public transportation is not a reasonable alternative, may file a hardship application.

(3) *Migrant workers.* An individual who holds a drivers licensed by a State, who travels from one agricultural work site to another agricultural work site, and whose needs for rationed products exceed the amount represented by the ration rights, if any, issued pursuant to Subpart B of this part may file a hardship application with the Local Rationing Board which serves the community in which the current work site is located. The applicant should be awarded sufficient ration rights to assist the individual in traveling to his or her next work site.

(4) *Persons engaged in household moves.* Persons who are driving vehicles as part of their own household move and who in order to complete the move will need more than twenty-five (25) percent of the total amount of ration rights for one ration period allotted to all members of the household pursuant to Subpart B of this part may file a hardship application. Rationed products needed by firms engaged in household moving for hire may not be obtained through the Local Rationing Board.

(5) *Other recurring or one-time hardship needs.* Any individual experiencing severe hardships on a recurring or one-time-only basis, who is not specified in paragraphs (b)(1), (2), (3) and (4) above, may file a hardship application. The Local Rationing Board must review and decide any application filed pursuant to this paragraph (b)(5) consistent with the objectives of the Mandatory Gasoline Rationing Program.

(c) *Processing of applications.* (1) The Local Rationing Board may initiate an investigation of any statement in an application, whether written or verbal, and use in its evaluation any relevant facts obtained by such investigation. The Local Rationing Board may solicit and accept submissions from third persons relevant to any application provided that the applicant is afforded an opportunity to respond to all third person submissions. In evaluating an application, the Local Rationing Board may consider any other source of information. The Local Rationing Board on its own initiative may convene a conference, if, in its discretion, it considers that a conference will advance its evaluation of the application.

(2) If the Local Rationing Board determines that there is insufficient information upon which to base a decision and if upon request the necessary additional information is not submitted, the Local Rationing Board may dismiss the application without prejudice. If the failure to supply additional information is repeated or willful, the Local Rationing Board may dismiss the application with prejudice.

(3) After processing, the Local Rationing Board or upon appeal the Local Rationing Panel shall either grant or deny a hardship application. If the application is granted, the Local Rationing Panel or the Local Rationing Board shall determine the amount of ration rights to be granted, shall notify the applicant in writing of the amount determined, and shall issue ration rights to the applicant in that amount. If the Local Rationing Board or the Local Rationing Panel determines that the application is not to be granted, the applicant shall be notified in writing promptly upon such determination.

(d) An applicant who does not receive as many ration rights as he or she applied for or an applicant whose application is not granted may appeal to the Local Rationing Panel. The appeal must be filed within fifteen (15) calendar days of receipt of the notice of determination specified in paragraph (c)(3) of this section. There has not been an exhaustion of administrative remedies until an appeal has been filed and decided, and all further appellate proceedings provided in § 500.67 of this subpart have been completed.

§ 500.64 Selection of Local Rationing Panel and Local Rationing Board Manager.

The Local Rationing Panel shall consist of an odd number of volunteers selected by the local government in which the panel serves in accordance with FEA guidelines. The members of the Local Rationing Panel shall designate one of their members as the individual responsible for calling meetings of the panel to determine local procedures and to carry out the duties of the Local Rationing Panel. The Local Rationing Board Manager shall be selected by the Chief Executive of the State in which the Local Rationing Board is located.

§ 500.65 State Hardship Reserves.

(a) Pursuant to Subpart B of this part, FEA shall distribute ration rights to each State Rationing Office to be used by Local Rationing Boards to meet the needs of approved individual hardship applicants pursuant to § 500.63 of this subpart and to meet the needs of approved hardship applications filed with the State Rationing Office by firms pursuant to paragraph (b) of this section.

(b) *Application by firms experiencing severe hardships.* (1) A firm entitled to a ration credit level, other than as a supplier or a wholesale purchaser-reseller, may file an application with the State Rationing Office for rationing rights in addition to any rationing rights it is entitled to receive pursuant to Subparts B and G of this part. The application shall be made in accordance with FEA forms and instructions.

(i) The State Rationing Office may initiate an investigation of any statement in an application, whether written or verbal, and use in its evaluation any relevant facts obtained by such investigation. The State Rationing Office may solicit and accept submissions from third persons relevant to any application provided that the applicant is afforded an opportunity to respond to all third person submissions. In evaluating an application, the State Rationing Office may consider any other source of information. The State Rationing Office on its own initiative may convene a conference, if, in its discretion, it considers that a conference will advance its evaluation of the application.

(ii) If the State Rationing Office determines that there is insufficient information upon which to base a decision and if upon request the necessary additional information is not submitted, the State Rationing Office may dismiss the application without prejudice. If the failure to supply additional information is repeated or willful, the State Rationing

Office may dismiss the application with prejudice.

(2) The State Rationing Office shall notify the applying firm in writing of the decision made with respect to the application and the amount, if any, of ration rights the firm is to receive from the State Hardship Reserve.

(3) Any firm aggrieved by the decision of the State Rationing Office with respect to its application may appeal that decision pursuant to § 500.67(c) of this subpart.

(c) Each month the State Rationing Office shall report to FEA with respect to the preceding month (1) the number of hardship petitions received per category of hardship alleged, (2) the disposition made of hardship applications, and (3) the amount of ration rights issued from the State's Hardship Reserve.

(d) Within ten (10) days of the end of a ration period, any ration rights remaining in the State Hardship Reserve shall be reported to FEA. FEA may, among other courses of action, add it to the State Hardship Reserve for the next ration period, transfer all or a portion of the balance to another State Hardship Reserve, or treat the balance as an advancement on the State Hardship Reserve for the next ration period.

§ 500.66 Timeliness.

(a) If the Local Rationing Board, the Local Rationing Panel or the State Rationing Office fails to take action on an individual's or a firm's application, respectively, within ten (10) days of filing, the applicant may treat the application as having been denied in all respects and may appeal therefrom as provided in § 500.67.

(b) Notwithstanding paragraph (a) of this section, the Local Rationing Board or the State Rationing Office may temporarily suspend the running of the 10-day period if it finds that additional information is necessary or that the application was improperly filed. The temporary suspension shall remain in effect until the Local Rationing Board or the State Rationing Office serves upon the individual or firm notice that the additional information has been received and accepted or that the application has been properly filed as appropriate. Unless otherwise provided in writing, the 10-day period shall resume running on the first day that is not a Saturday, Sunday, or Federal legal holiday and that follows the day on which the Local Rationing Board or the State Rationing Office serves upon the person the notice described in this paragraph.

§ 500.67 Appeals.

(a) An individual aggrieved by a decision made by a Local Rationing Board may appeal that decision to the Local Rationing Panel pursuant to § 500.63(d).

(b) An individual aggrieved by an appeal decision of a Local Rationing Panel may appeal that decision to the State Rationing Office in accordance with the procedures established by the State office. The appeal shall be filed within fifteen (15) days of serivce of the order from which the appeal is taken. There has not been an exhaustion of administrative remedies until an appeal has been filed and the appellate proceeding is completed by the issuance of an order granting or denying the appeal.

(c) Any person aggrieved by a decision made by a State Rationing Office with respect to any matters coming within the authority delegated to it pursuant to § 500.61 or relating to its decisions on applications for additional ration rights made pursuant to § 500.65 or on an appeal decision made pursuant to paragraph (b) of this section may file an appeal of that decision pursuant to Subpart Q of Part 205 of this chapter.

Subpart G—Diesel Fuel Rationing

§ 500.71 General.

(a) No firm shall obtain diesel fuel at retail sales outlets from any supplier without transferring to the supplier valid ration rights equal on a gallon basis to the amount of diesel fuel transferred and no supplier (including a retail sales outlet) shall transfer diesel fuel at retail sales outlets to any wholesale purchaser-consumer or end-user, without obtaining and redeeming ration rights from such wholesale purchaser-consumer or end-user, except that a supplier at a retail sales outlet may transfer diesel fuel to any firm other than a supplier without obtaining and redeeming ration rights from such firm if the supplier at a retail sales outlet agrees to obtain and redeem the appropriate amount of ration rights from any source and does so within ten (10) days of the transaction.

(b) For purposes of this subpart, "ration rights" means ration coupons issued pursuant to Subparts B and F of this part or charges against a diesel fuel entitlement card issued by FEA pursuant to § 500.72.

§ 500.72 Issuance of ration rights.

(a) Ration coupons issued for gasoline pursuant to the provisions of Subparts B and F of this part may be used to purchase diesel fuel at retail sales outlets in lieu of gasoline at the option of the holder. However, no ration coupon may be used for both gasoline and diesel fuel.

(b) Ration coupons issued pursuant to Subparts B and F of this part which the holder uses to purchase diesel fuel at retail sales outlets shall be valid in the same manner as specified in § 500.23.

(c) A firm which purchases diesel fuel at retail sales outlets may apply to FEA for establishment of a diesel fuel ration credit account and for issuance of a diesel fuel entitlement card which shall enable the holder to purchase diesel fuel at retail sales outlets. The amount of the ration allotment which FEA will make for each diesel fuel primary ration credit account shall be the same as the allocation levels for middle distillate specified in Part 211 of this chapter prior to the application of an allocation fraction.

(d) Firms applying for a diesel fuel entitlement card shall be provided a diesel fuel ration credit account to which FEA will credit in each calendar month the amount of diesel fuel to which the firm is entitled pursuant to paragraph (c) of this section.

(e) A firm which wishes to purchase diesel fuel at retail sales outlets in excess of volumes purchased at retail sales outlets during the base period may petition FEA pursuant to Subpart D of Part 205 to increase the amount of the firm's ration credits to be issued by FEA in a calendar month. A firm which did not purchase diesel fuel at retail sales outlets during a base period may apply for assignment of a base period use pursuant to Subpart C of Part 205.

(f) A firm may apply to FEA for a diesel fuel entitlement card in accordance with FEA forms and instructions. The applicant shall be required to determine its base period use of diesel fuel and to indicate for each period corresponding to a base period how much by volume of its base period use of diesel fuel was purchased at retail sales outlets.

(g) FEA may invalidate any diesel fuel entitlement card by notice to the firm to which it was issued if FEA finds, among other things, that the card is being improperly used or is reported lost or stolen.

(h) Sales to holders of diesel fuel entitlement cards at retail sales outlets of diesel fuel shall be made by imprinting the information on the card on an FEA form which shall, among other information, indicate the volume of diesel fuel sold; the date of sale; the name of the retail sales outlet; and certification by the card holder that he or she is currently authorized by the firm (including an individual) to which the card was issued to use the card for purchases of diesel fuel at retail sales outlets. A copy of the completed form shall be provided to the holder; a second copy held for transmittal to the FEA regional processing center; and a third copy maintained by the retail sales outlet.

§ 500.73 Redemption.

(a) The retail sales outlet of diesel fuel shall collect all ration rights exchanged for diesel fuel and after stamping any ration coupons redeemed for diesel fuel with the legend "redeemed for diesel," keep all such ration rights separate from ration rights exchanged for gasoline. Those ration rights exchanged for diesel fuel shall not be deposited in a wholesale purchaser-reseller's redemption account.

(b) From time to time and upon prior notification by FEA, retail sales outlets of diesel fuel may be required to transmit to a FEA regional processing center all ration rights exchanged for diesel fuel including copies of the transaction forms used by holders of diesel fuel entitlement cards which the owner of the retail sales outlet retained at the time of sale pursuant to § 500.72(h).

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CHAPTER III—U.S. ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION

PART 711—GUIDELINES FOR ENVIRONMENTAL REVIEW

Miscellaneous Amendments

On February 14, 1974, guidelines were promulgated and published in the FEDERAL REGISTER (39 FR 5620) establishing

policies and procedures for the discharge of the responsibilities of the Atomic Energy Commission (AEC)—operations with respect to the National Environmental Policy Act of 1969 (NEPA) and other related authorities. The Energy Research and Development Administration (ERDA), the statutory successor to the operational functions of the AEC as a result of the Energy Reorganization Act of 1974, adopted those guidelines on March 3, 1975 (40 FR 8794). The purpose of those regulations was explained in the preamble to the AEC operations guidelines.

Experience with these guidelines has indicated that certain changes are needed for the sake of clarity, particularly in amending the guidelines to conform to ERDA's organizational structure. Accordingly, Part 711 of Title 10, Code of Federal Regulations is amended as set forth below.

These amendments will apply to all units of ERDA. They will apply to all reviews of proposed actions not yet commenced and will also apply to the maximum extent practicable to reviews currently in process. These amendments are promulgated as final amendments to the guidelines since they are matters relating to agency procedures and the agency desires that these procedures be available immediately for application to the large number of environmental reviews currently in process. For these reasons, the agency has determined that it is not necessary to provide notice of proposed rulemaking, opportunity for public participation or delay of effective date. However, in order to provide the public with an opportunity to comment on these guidelines, interested persons may submit, on or before March 14, 1977, written comments to the Director, Office of NEPA Coordination, Mail Station E-201, U.S. Energy Research and Development Administration, Washington, D.C. 20545. These comments will be considered with respect to the desirability of further amendment of this Part.

These amendments are promulgated under authority provided in Section 105, 88 Stat. 1238 (42 USC 5815), and section 102, 83 Stat. 853 (42 USC 4332) and are effective January 26, 1977. Part 711 is hereby revised to read as follows.

Dated at Germantown, Maryland, this 8th day of December 1976.

For the Energy Research and Development Administration.

JAMES L. LIVERMAN,
Assistant Administrator,
for Environment and Safety.

Subpart A—General

Sec.
711.1 Background.
711.2 Purpose.
711.3 Policy.
711.5 Applicability.
711.7 Definitions.

Subpart B—Environmental Impact Assessments

711.23 Criteria for determining need for environmental impact assessments.
711.25 Content of environmental impact assessments.
711.27 Submission of environmental impact assessments.
711.29 Review of environmental impact assessments.
711.31 Negative declarations.

Subpart C—Environmental Impact Statements

711.41 Criteria for determining need for environmental impact statements.
711.43 Scope of environmental impact statements.
711.45 Timing of environmental impact statements.
711.47 Responsibilities for preparation of environmental impact statements.
711.49 Notice of intent.
711.51 Required lists.
711.53 Submission and review of draft environmental impact statements.
711.55 Public hearings.
711.57 Preparation, review and distribution of final environmental impact statements.
711.65 Timing for proposed ERDA actions.
711.67 Amendments or supplements to final environmental impact statements.
711.69 Review of other agencies' environmental impact statements.

Subpart D—General Guidance for Content of Environmental Impact Statements

711.81 Cover.
711.83 Body of statement.

AUTHORITY: Sec. 105, 88 Stat. 1238 (42 U.S.C. 5815); Sec. 102, 83 Stat. 853 (42 U.S.C. 4332).

Subpart A—General

§ 711.1 Background.

(a) The National Environmental Policy Act of 1969 (NEPA), implemented by Executive Order 11514 (E.O. 11514) dated March 5, 1970 (35 FR 4247), and the Guidelines of the Council on Environmental Quality (CEQ) of August 1, 1973 (40 CFR Part 1500, 38 FR 20550), require that all agencies of the Federal Government prepare detailed environmental statements on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment. The objective of NEPA is to build into the Federal agency decisionmaking process, beginning at the earliest possible point, an appropriate and careful consideration of environmental aspects of proposed actions in order that adverse environmental effects may be avoided or minimized. In addition, section 309 of the Clean Air Act (CAA), as amended, provides that the Administrator of the Environmental Protection Agency (EPA) shall review and comment on any matter relating to EPA's authority contained in such proposed legislation or such other major Federal action. Office of Management and Budget (OMB) Bulletin No. 72-6 of September 14, 1971, and OMB Circular No. A-95 (Revised) of January 2, 1976, provide guidance in connection with the evaluation, review and coordination of Federal projects and activities.

§ 711.2 Purpose.

(a) This Part establishes policy and procedure for discharging the Energy Research and Development Administration's (ERDA) responsibilities with respect to NEPA, E.O. 11514, section 309 of the CAA, OMB Bulletin No. 72-6, OMB Circular No. A-95 (Revised) and the CEQ Guidelines, as they may be amended from time to time. This Part will be reviewed and revised, in consultation with CEQ, to ensure full compliance with these directives. This Part is intended to provide guidance for:

(1) Identifying the agency environmental appraisal process, those ERDA actions requiring environmental impact assessments and statements and the time schedule for appropriate participation prior to agency decision of applicable Federal, State and local governmental units and members of the public;

(2) Obtaining information to allow the potential environmental impact of administrative and legislative actions to receive full consideration in the agency decisionmaking process;

(3) Obtaining information and internal ERDA review required for the preparation of environmental impact assessments and statements;

(4) Designating the ERDA officials who are to be responsible for preparation, review and approval of environmental impact assessments and statements.

§ 711.3 Policy.

(a) Consistent with ERDA's statutory responsibilities and other essential considerations of national policy, ERDA shall conduct its activities in a manner calculated to promote the general welfare, to encourage productive and enjoyable harmony between man and his environment, to minimize damage to the environment, to enhance environmental quality, to restore environmental quality lost previously, and to preserve natural systems and resources to the greatest possible extent.

(b) To this end, ERDA will incorporate into its planning and decisionmaking processes, a careful consideration of the environmental consequences which may be caused by its proposed actions by:

(1) Evaluating both the long-range and short-range implications of such actions to man, including his physical and social surrounding, and to nature;

(2) Exploring, developing and analyzing alternative actions that may avoid, minimize or compensate adverse impacts;

(3) Providing for disclosure of the potential environmental effects of such proposed actions to agency and other decisionmakers, including Congress and the President, and to the public.

§ 711.5 Applicability.

(a) This part applies to all ERDA organizations.

(b) This part covers ERDA administrative actions and legislative proposals, including those actions and proposals sponsored jointly with other agencies. In this latter connection, if an environmental impact assessment or statement is to be prepared, the agencies involved shall determine as early as possible their respective responsibilities the preparation and processing of that document including designation of a single agency to assume leadership responsibilities where appropriate. Where a lead agency prepares the document, the other agencies involved are expected to provide assistance with

respect to their areas of jurisdiction and expertise. Factors relevant in determining an appropriate lead agency include time sequence in which the agencies become involved, the magnitude of their respective involvement, and their relative expertise with respect to the anticipated environmental effects of the proposed action. Whether an assessment or statement is prepared by a lead agency or is prepared jointly by several agencies, the document should:

(1) Evaluate the environmental consequences of the full range of Federal actions involved;

(2) Reflect the views of all participating agencies;

(3) Be prepared before major or irreversible actions have been taken by any of the participating agencies.

(c) This part applies to proposed actions which may have a significant environmental effect even though they arise from projects or programs initiated prior to enactment of NEPA.

(d) The following actions are not subject to the requirements of this part:

(1) Administrative procurements (e.g., general supplies);

(2) Contracts for personal services;

(3) Personnel actions;

(4) Legislative proposals originating in another agency;

(5) Legislative proposals not relating to or affecting matters within ERDA's primary areas of responsibility;

(6) Legislative or administrative actions in the nature of conceptual design, architectural and engineering studies, basic research, and other administrative matters or legislative proposals having no foreseeable impact on the quality of the human environment.

§ 711.7 Definitions.

(a) An "action" as used in this Part is one which may affect the quality of the human environment.

(1) An "administrative action" is an ERDA action, other than a legislative action (as defined herein), which includes but is not necessarily limited to:

(i) A new or continuing project or program, or expansion or revision to a continuing program:

(A) Directly undertaken by ERDA;

(B) Supported in whole or in part through ERDA contracts, grants, loans, guarantees, subsidies, or other forms of financial assistance;

(C) Involving an ERDA lease, permit, or license.

(ii) The establishment or modification by ERDA of rules, regulations, or policies.

(2) A "budgetary action" is a legislative action (as defined herein), involving an ERDA request to Congress for authorization and appropriation of funds for a proposed construction line item, or other proposed major activity or program.

(3) A "legislative action" is a favorable report or recommendation on a proposal for legislation sponsored by ERDA, including a budgetary action as defined herein.

(b) An "environmental development plan" (EDP) is generally anticipated to be the basic ERDA management document for planning, budgeting, managing, and reviewing the broad environmental implications of an ERDA energy research, development and demonstration program.

(c) An "environmental impact assessment" (EIA) is a written document which evaluates the environmental impacts of proposed ERDA actions to assure that environmental values are considered at the earliest meaningful point in the decisionmaking process, and which provides the basis for a determination whether an environmental impact statement will be prepared.

(d) An "environmental impact statement" (EIS) is a written document prepared at the earliest meaningful point in the decisionmaking process which analyzes the environmental impacts associated with a proposed ERDA action and of reasonably available alternatives and reflects responsible public and governmental views and concerns.

(1) A "draft environmental impact statement" (DEIS), is a preliminary statement which is circulated for review and comment outside of ERDA as a vehicle for eliciting additional public and governmental participation in the ERDA environmental review process.

(2) A "final environmental impact statement" (FEIS) is a revised DEIS which considers and evaluates (a) the substantive issues and comments raised and (b) new information developed during the public review period.

(e) A "negative declaration" is a document prepared subsequent to a decision that an environmental impact statement will not be prepared for a proposed action where the action is one which: (1) Has been identified earlier in an EDP or EIA as an action for which a statement would be prepared; (2) Is similar to actions for which ERDA has prepared a significant number of statements; (3) Has previously been announced as being the subject of a statement; or (4) ERDA has determined not to prepare such a statement in response to a request from CEQ to prepare a statement. This document shall set forth the decision and briefly state the reasons therefor.

(f) "Programs" are aggregates of projects which share a common objective or purpose and are so inter-related that planning or decisionmaking with respect to any one component would be likely to significantly affect planning or decisionmaking with respect to any other component.

(g) "Projects" are individualized ERDA actions including, but not limited to, proposed construction of a facility which may, but need not, constitute a part of a larger program.

(h) "Responsible Assistant Administrator" is that Assistant Administrator who has been assigned overall responsibility for the conduct of a program, project, or other ERDA action which may be subject to this Part.

(i) "Appropriate ERDA official" is the program division, field organization, or any other subunit head within ERDA who has been assigned direct responsibility for the conduct of a program, project, or other ERDA action subject to this Part.

(j) "Summary sheet" is a brief summary of the significant aspects of an environmental impact statement which accompanies the EIS. It is prepared in accordance with Appendix I of the CEQ Guidelines (40 CFR 1500).

Subpart B—Environmental Impact Assessments

§ 711.23 Criteria for determining need for environmental impact assessments.

(a) An environmental impact assessment is ordinarily not required for actions and alternatives with respect to which an environmental impact assessment or statement has been formerly prepared by ERDA or another Federal agency and that in the opinion of the AES still reflects a current evaluation of such impacts and issues. In these instances, the relevant assessment or statement should accompany the proposal for such action through the ERDA review and decisionmaking process to the same extent as an assessment or statement prepared under this Part.

(b) The appropriate ERDA officials are responsible for the preparation of environmental impact assessments for all proposed administrative and legislative actions to which this Part is applicable and have not been previously identified as requiring environmental impact statements.

(c) The Assistant Administrator for Environment and Safety (AES), in consultation with the Office of the General Counsel (OGC), may request the responsible Assistant Administrator or appropriate ERDA official to prepare an environmental impact assessment for any proposed ERDA action under their respective jurisdiction, which, in the opinion of the AES, may impact the quality of the environment.

§ 711.25 Content of environmental impact assessments.

(a) Environmental impact assessments (EIA) should be brief, factual documents that evaluate and analyze the environmental consequences of proposed ERDA actions in enough detail to assure that environmental values are considered as early as possible in the decisionmaking process and to provide the factual basis for a determination of the need for the preparation of an environmental impact statement. Assessments should be structured in a manner that is most useful for planning and decisionmaking. EIA's should ordinarily contain the following information:

(1) *Description of the proposed action.* The proposed action should be briefly described and known environmental issues should be identified. Drawings, maps, and charts should be included only if directly pertinent to the assessment.

(2) *Description of the existing environment.* The existing environment affected by the proposed action should be described only in sufficient detail to permit a meaningful evaluation of the potential environmental consequences of the proposed action.

(3) *Potential environmental impacts.* The potential impacts and risks of the proposed action should be assessed, including those adverse impacts which cannot be avoided should the proposal be implemented. The potential cumulative and long-term environmental effects, including any benficial effects should also be evaluated. Any known issue identified in subparagraph (1) above, should be discussed. The risks and effects of significant credible accidents should be evaluated For proposed construction projects, potential impacts in the following three areas should be addressed:

(i) *Construction.* The probable environmental effects that may occur from site preparation, roads, excavation, utilities, parking lots, hauling, clean-up, etc., should be assessed. Included should be the effects of dust, earthmoving, silt, water and noise. Secondary impacts, such as increased labor force and effect on community resources, and new housing and services, should be discussed whenever appropriate.

(ii) *Operation.* The probable environmental impacts from the use of resources, such as materials, supplies, fuel, personnel, and from plant affluents, should be assessed.

(iii) *Site restoration.* The plans, if any, that may be required for site restoration and the resulting impacts should be briefly described.

(4) *Coordination with Federal, state, regional or local plans.* The potential conflicts of the proposed action with Federal, state, regional or local plans and policies and how any conflicts will be mitigated or resolved should be described.

(5) *Description of alternatives.* The reasonably available alternatives to the proposed action should be briefly described.

§ 711.27 Submission of environmental impact assessments.

(a) Environmental impact assessments shall be submitted to the AES through the responsible Assistant Administrator along with a recommendation as to whether an environmental impact statement should be prepared and the reasons therefor. If it is recommended that a statement should be prepared, the transmittal shall include the information specified in § 711.47(b).

§ 711.29 Review of environmental impact assessments.

(a) The AES, in consultation with OGC, shall review environmental impact assessments and accompanying recommendations in accordance with § 711.41 to determine whether proposed actions require the preparation of an environmental impact statement.

(b) If the AES determines that a statement is required, he will so inform the responsible Assistant Administrator who shall cause the preparation of an environmental impact statement in accordance with § 711.47, and Subpart D.

(c) A copy of all environmental impact assessments shall remain on file with AES who shall place copies of unclassified documents in appropriate ERDA public document room(s) for public inspection as soon as possible. Unless or until superseded by an environmental impact statement, environmental impact assessments shall accompany the proposed action through the agency decisionmaking process.

§ 711.31 Negative declarations.

(a) If it is determined that a proposed action does not require the preparation of an environmental impact statement and the proposed action meets the criteria of § 711.7(e), the AES shall so inform the appropriate ERDA official and cause a negative declaration to be prepared which documents the reasons for that determination. Negative declarations shall be published in the FEDERAL REGISTER. No action related to the subject of the negative declaration shall be taken sooner than 15 days following publication in the FEDERAL REGISTER.

(b) Lists of negative declarations shall be provided to CEQ at least quarterly in accordance with 40 CFR 1500.6(e).

Subpart C—Environmental Impact Statements

§ 711.41 Criteria for determining need for environmental impact statements.

(a) An environmental impact statement is ordinarily not required for actions with respect to which an environmental impact statement has been formerly prepared by ERDA or another Federal agency and that in the opinion of the AES still reflects a current evaluation of such impacts and the issues involved in ERDA's implementation of the proposed action. In these instances, the relevant statement should accompany the proposal for such action through the ERDA review and decisionmaking process to the same extent as a statement prepared under this Part.

(b) Environmental impact statements shall be prepared for those proposed actions identified in current environmental development plans as requiring such statements except as provided in § 711.31 and all other major ERDA actions having a potentially significant effect on the quality of the human environment.

(c) In determining what is a "major ERDA action having a potentially significant effect on the quality of the human environment", the following should be considered:

(1) The term "major ERDA actions" implies a threshold of magnitude of ERDA involvement which must be met before a statement is required. The action must be one where there is sufficient ERDA control and responsibility to influence the course of the action. In assessing the nature of the action, the role of ERDA funds, manpower, studies and discretionary decisions should be considered.

(2) The term "significantly affecting the quality of the human environment" implies a threshold of impacts which must be met before a statement is required. In assessing the significance of the impact, the following should be considered:

(i) The overall cumulative impact of the proposed action and related Federal actions;

(ii) The potential for degradation of the quality of the environment, curtailment of the range of beneficial uses of the environment, and the furtherance of short-term to the disadvantage of long-term environmental goals;

(iii) Effects on management, allocation or consumption of important scarce or nonrenewable resources; and

(iv) Whether expected environmental impacts are likely to be controversial.

(3) Significant effects may include secondary effects such as socioeconomic impacts and actions which could have both beneficial and adverse effects. Additional guidance is set forth in the CEQ Guidelines, 40 CFR 1500.6 (a), (b) and (c).

§ 711.43 Scope of environmental impact statements.

(a) Programmatic environmental impact statements. The scope of programmatic environmental impact statements should be determined on a case by case basis. The following is provided as general guidance only:

(1) Environmental impact statements covering a program as defined in § 711.7 (f), generally shall assess all reasonably foreseeable environmental consequences generic to component subprograms, projects, and actions; and shall focus on the cumulative effects of such related activities. In general, an analysis of specific impacts and alternatives dependent upon design, site, or other specific details of component projects or actions should be treated in environmental impact assessments or statements for specific projects or actions.

(2) Environmental impact statements covering technology research, development, demonstration, or commercialization programs generally shall discuss the anticipated impacts of commercial deployment of such technology, including discussion of any major uncertainties with respect to the environmental effects of such deployment.

(b) Project environmental impact statements. Environmental impact statements covering projects ordinarily should focus on the localized environmental impacts of a specific proposed action, such as the construction and operation of a proposed facility at a specific site.

(c) Site environmental impact statements. Environmental impact statements covering a site under ERDA jurisdiction generally should assess collectively the environmental consequences of a number of continuing and/or proposed individual actions such as the operation of facilities at the given site. They should also discuss the interrelationship of the cumulative environmental effects from past activities at the site with those expected from continuing and/or proposed activities at the site.

§ 711.45 Timing of environmental impact statements.

(a) Programmatic environmental impact statements. The planned timing for preparation of a programmatic environmental impact statement shall be determined on a case by case basis and identified as appropriate in the environmental development plan for the specific program.

(1) For research, development and demonstration programs, a programmatic environmental impact statement should be written late enough in the development process to contain meaningful information on the effects of application of the technology. However, it should be written early enough so that the environmental information contained can be factored into the decisionmaking process before the development process has reached a stage of investment or commitment to implementation likely to determine subsequent development or to foreclose or restrict later alternatives. Therefore, the following factors, among others, should be evaluated and periodically reevaluated (particularly when new information becomes available concerning the potential environmental impacts of the program) to determine the appropriate point for preparation of a program statement:

(i) The magnitude of Federal investment in the program.

(ii) The likelihood and proximity of widespread application of the technology;

(iii) The degree and controversial nature of the environmental effects of the program, individually and cumulatively, which are likely to occur in the event the technology were widely applied.

(iv) The pace at which the program is moving from basic research toward demonstration of a viable technology.

(v) The extent to which continued investment in the new technology is likely to foreclose or restrict future alternatives.

(2) For commercialization or other programs not identified in paragraph (a)(1) of this section, a programmatic environmental impact statement should be written late enough in the formulation of the proposed program to contain meaningful information on the likely environmental impacts of implementation but early enough so that the environmental information contained therein can be factored into the decisionmaking process prior to the foreclosure or restriction of reasonable alternatives.

(b) Project environmental impact statements. The environmental impact statement shall be prepared late enough in the development of the proposal to contain meaningful information on the potential localized environmental impacts at the site of the construction and operation of a proposed specific research, development, demonstration, or commercial facility but early enough to provide meaningful environmental input into the decisionmaking process. In all cases, the statement should be prepared before major resources are irrevocably or irreversibly committed and prior to taking an action with respect to the proposed project that has a potential for significant environmental impact.

(c) Legislative actions involving environmental impact statements. To the maximum extent practicable final environmental impact statements should be prepared in time for consideration by the Administrator before submission to the Congress of ERDA legislative actions. In cases where that is not practical and where the scheduling of Congressional hearings on such actions do not allow adequate time for the completion of a final environmental impact statement, a draft environmental impact statement may be furnished to the Congress with transmittal of comments as received. In any event, the text of the final environmental impact statement should be made available (1) when completed and (2) prior to administrative implementation.

§ 711.47 Responsibilities for preparation of environmental impact statements.

(a) Appropriate ERDA officials shall undertake the preparation of environmental impact statements in accordance with § 711.43 and Subpart D for proposed actions identified as requiring the preparation of an EIS (1) in an appropriate environmental development plan, (2) in accordance with § 711.29, or (3) by the AES, after consultation with OGC and the responsible Assistant Administrator.

(b) Before preparation of an environmental impact statement is initiated, the appropriate ERDA official shall submit through the responsible Assistant Administrator the following information to the AES for concurrence:

(1) A description of the proposed action and scope of the document.

(2) An outline of what is intended to be discussed in the statement, including identification of known environmental issues.

(3) The alternatives which will be analyzed.

(4) The anticipated dates of issuance for both draft and final statements.

(5) A description of activities, if any, which will continue, commence or occur with respect to the subject of the document prior to 30 days after issuance of the final environmental impact statement.

(6) Recommendations as to the need for, and composition of, intra-agency or inter-agency task forces to prepare or assist in the preparation of the environmental impact statement and the suggested composition.

(7) A recommendation regarding the desirability of a joint statement with the participation of other agencies in light of § 711.5(b), and, if so, the conditions under which such participation should proceed.

(c) If, after consultation with OGC, the AES concurs in the approach described pursuant to paragraph (b) of this section, he shall advise the appropriate ERDA official to commence preparation of the environmental impact statement and shall publish a notice of intent pursuant to § 711.49. If, after consultation with OGC, the AES does not concur he shall advise the appropriate ERDA official of the modifications which will be required to obtain AES concurrence.

§ 711.49 Notice of intent.

(a) After a determination has been made to prepare an EIS, the responsible Assistant Administrator, at the direction of the AES, shall cause to be submitted to the AES:

(1) A Notice of Intent to prepare an environmental impact statement which:

(i) Describes the proposed action and proposed scope of the document in sufficient detail to promote responsive comment.

(ii) Lists the alternatives to be analyzed.

(iii) Indicates the location(s) of known documentation to be utilized in the preparation of the statement.

(iv) Invites comments and suggestions for consideration in the preparation of the environmental impact statement.

(2) A list of individuals or organizations whom the appropriate ERDA official has identified as having interest in the environmental implications of the subject action.

(b) Whenever practicable, the AES shall cause to be published in the FEDERAL REGISTER the Notice of Intent to prepare the environmental impact statement and shall transmit a copy of that Notice of Intent to appropriate Federal, state, and local agencies and to persons or groups known to be interested in the environmental implications of the proposed action.

§ 711.51 Required lists.

(a) The AES shall be responsible for the preparation and maintenance of:

(1) Lists of actions for which environmental impact statements are being prepared.

(2) Lists of actions for which negative declarations have been prepared.

(3) Lists of persons or groups known to be interested in the environmental implications of specific ERDA actions (interest lists).

(b) The AES shall revise lists (1) and (2) in paragraph (a) of this section at least quarterly and shall transmit a copy of those unclassified lists and subsequent revisions to CEQ.

(c) The AES shall compile list (3) in paragraph (a) of this section from those individuals or groups who have either:

(1) Requested that copies, or notification of availability, of draft environmental impact statements be sent to them.

(2) Commented on a previous draft environmental impact statement.

(3) Participated in a public hearing held on an environmental impact statement.

(4) Been identified by the appropriate ERDA official as having an interest in the environmental implications of a proposed ERDA action.

(d) List (3) in paragraph (a) of this section shall be maintained in accordance with the provisions of the Privacy Act of 1974 (Pub. L. 93-579, 5 U.S.C. 552a).

(e) Individuals or organizations desiring to be placed on specific interest lists or to request copies of environmental impact statements and notifications of intent to prepare such statements should address their requests to:

Director, Office of NEPA Coordination, Energy Research and Development Administration, Washington, D.C. 20545.

§ 711.53 Submission and review of draft environmental impact statements.

(a) Internal review and approval of draft environmental impact statements.

(1) The appropriate ERDA official shall submit the draft environmental impact statement (DEIS) through the responsible Assistant Administrator to the AES for review and approval.

(2) The AES shall be assisted in his review by OGC and an Interdisciplinary Review Committee (IRC), chaired by the Director of the Office of NEPA Coordination, or his representative, and composed of such representatives of ERDA Headquarters and field organizations as the AES deems appropriate.

(b) External review of draft environmental impact statement Upon the completion of ERDA's review, the AES shall make the draft environmental impact statement and Summary Sheet available to the CEQ, and solicit comments from appropriate Federal, state and local agencies and organizations and individuals. He shall publish a FEDERAL REGISTER notice of the public availability and the comment period for the draft environmental impact statement, and make copies available for comment upon request. Copies of the FEDERAL REGISTER notice will be made available to those on the appropriate interest list. Copies of the DEIS will be placed in appropriate places for public inspection.

(c) Commenting entities should endeavor to furnish comments on draft environmental statements which follow the format of the statement wherever practical and should be as specific, substantive and factual as possible without undue attention to matters of form in the statement. They should place emphasis on the environmental impacts of the proposed action and the acceptability of those impacts on the quality of the environment particularly as compared or contrasted with the impacts of reasonably available alternatives. Commenting entities may recommend modifications to the proposed action and/or new alternatives that they believe will enhance environmental quality and avoid or minimize adverse environmental impacts.

(d) Comments on the draft environmental impact statement shall be considered in the final environmental impact statement if received by the Director, Office of NEPA Coordination within the comment period announced in the CEQ and ERDA Notices of Availability of environmental statements in the FEDERAL REGISTER. A 45 calendar day comment period will be used unless a different period is specified in the ERDA's notice of availability of the draft statement covering the proposed action.

(e) The AES, upon request, may grant extensions of time for receipt of comments for such periods as he deems appropriate. In determining the appropriate period for comment or in acting upon an extension request, consideration will be given to the magnitude and complexity of the statement, and the extent of public interest in the proposed action. Where no time extension has been requested and granted and comments are not received within the designated comment period, it shall be conclusively presumed that no comment is to be made.

§ 711.55 Public hearings.

(a) The AES determines, in consultation with the responsible Assistant Administrator and OGC, whether a public hearing would be appropriate and in the public interest considering among other things:

(1) The magnitude of the proposed action in terms of economic costs, the geographic area involved, and the uniqueness or size of the commitment of the resources involved;

(2) The degree of interest in the proposed action, as evidenced by requests from the public and from Federal, state, and local authorities that a hearing be held;

(3) The complexity of the issues and the likelihood that additional information will be of assistance to the agency in fulfilling its responsibilities under NEPA; and

(4) The extent to which public involvement already has been achieved through other means, such as earlier public hearings, meetings with citizen representatives and/or written comments or suggestions on the proposed action.

(b) If it is determined as set forth in the above paragraph that a public hearing is to be held, the AES will issue a notice in the FEDERAL REGISTER at least 15 calendar days prior to the time of such hearing which will:

(1) Identify the subject matter of the hearing;

(2) Announce the date, time and place of such hearing and the procedures to be followed;

(3) Indicate the availability of the draft environmental impact statement, the comments, if any, received to date, and other data, as determined appropriate, for public inspection. The hearing will also be announced through local news media when practicable.

(c) Written notification of the scheduling of a public hearing, providing the information referred to in paragraph (b) of this section, shall be sent to all persons and organizations known to be interested in the action, including those who have commented on the draft environmental impact statement, and those who have requested copies of such statement.

(d) Public hearings will be legislative rather than adjudicatory in nature with no right to formal discovery, subpoena of witnesses, cross-examination of participants, testimony under oath, and other similar formalities more appropriate to an adjudicatory procedure. OGC shall prescribe the detailed procedures to be followed for specific hearings.

(e) Public hearings will be conducted by a Presiding Board appointed by the AES.

(f) After the close of the hearing, a hearing record will be prepared which consists of the transcript of the hearing and all documents, exhibits and other papers received into the record by the Presiding Board. The Presiding Board shall render a report based upon its review of the draft environmental impact statement, the comments received thereon, and the hearing record and shall forward its report, together with the record, to the AES. The report shall (1) identify unresolved issues raised at the hearing which the Presiding Board deems to be material to future decisions concerning the subject matter of the environmental impact statement, and (2) include recommendations concerning the treatment of these issues in the final environmental impact statement in a manner to promote informed decisionmaking. In discharging its functions, however, the Presiding Board shall not undertake to resolve issues or render judgment concerning the proposed action.

(g) The hearing record and the Board report shall be placed in appropriate places for public inspection and considered in the preparation of the final environmental impact statement. The text of the Board report shall be appended to the final statement.

§ 711.57 Preparation, review and distribution of final environmental impact statements.

(a) Preparation of final environmental impact statements. As soon as practicable after the expiration of the written comment period and the closing of the public hearing record, if any, the appropriate ERDA official shall initiate the preparation of the final environmental impact statement and summary sheet, taking into account all substantive written comments received, the hearing record, the Board report and new information developed during the review period. The final environmental impact statement shall include a meaningful, objective and informative treatment of all substantive issues raised, including a description of known responsible views on such issues. The text of all comments received, and the Board report, or summaries thereof, shall be appended to the statement.

(b) Internal review of final environmental impact statements

(1) The appropriate ERDA official shall submit final environmental impact statements (FEIS) through the responsible Assistant Administrator to the AES for review.

(2) The AES shall be assisted in his review by OGC and an Interdisciplinary Review Committee (IRC), chaired by the Director of the Office of NEPA Coordination or his designee.

(3) Upon completion of AES review and approval of the FEIS, the responsi-

ble Assistant Administrator shall transmit the FEIS through the AES to the Administrator for his review and approval for issuance.

(c) Distribution of final environmental impact statements.

(1) Upon receipt of Administrator approval, the AES shall:

(i) Sign the FEIS and distribute the statement and Summary Sheet to CEQ, EPA, and Federal, State and local agencies, and others who submitted timely comments, participated in the public hearing on the draft environmental impact statement, or requested a copy of the FEIS prior to its issuance. In the case of FEISs on legislative actions approved by the Administrator, the AES shall submit the statement to the Congress and the OMB in accordance with OMB Bulletin 72–6.

(ii) Publish a Notice of Availability of the FEIS in the FEDERAL REGISTER which notice shall include the location(s) at which the statement is available for public inspection and where copies can be obtained.

(iii) Transmit copies of the FEIS to appropriate ERDA public document room(s).

§ 711.65 Timing for proposed ERDA actions.

(a) Except in special cases when approval is given after consultation with CEQ, no proposed ERDA action for which an environmental impact statement is prepared shall be taken:

(1) Sooner than 90 calendar days after a draft environmental impact statement has been issued; or

(2) Sooner than 30 calendar days after the final environmental impact statement has been issued. (This period may run concurrently with that in paragraph (a)(1) of this document).

§ 711.67 Amendments or supplements to final environmental impact statements.

(a) Since the ERDA environmental review process is designed to subject ERDA actions to formal review at the earliest stages in their development, it is recognized that additional reviews may be necessary or desirable as the action evolves and matures. Accordingly, whenever substantial new information pertinent to an existing final environmental impact statement becomes available, or whenever substantial modifications of an action covered by such final statement occurs, the appropriate ERDA official shall consult with AES and OGC to determine whether to amend or supplement the existing final environmental impact statement.

(b) When a determination is made to prepare such a supplement or amendment, the resulting document shall be subject to the procedures governing draft environmental impact statements under this Part unless, after consultation with OGC and CEQ, it is determined by the AES that circulation for comment is unnecessary. In that event, the document shall be subject to the procedures governing final environmental impact statements under this part.

§ 711.69 Review of other agencies' environmental impact statements.

(a) The Office of NEPA Coordination shall maintain a list of environmental impact statements received from other agencies for comment and shall identify those environmental impact statements which involve matters of interest to ERDA due to jurisdiction by law, special expertise or otherwise.

(b) Environmental impact statements so identified shall be transmitted to the appropriate ERDA organizational units for review and comment. Review and comment shall be conducted according to the instructions of 40 CFR 1500.9(e). ERDA reviews should identify possible conflicts with known current or future programs, indicate areas of research which are underway or planned by ERDA which may suggest new alternatives, ways to mitigate effects, or gaps in the state of relevant knowledge and offer comments in ERDA areas of jurisdiction by law and special expertise.

(c) Such comments shall be transmitted to the Office of NEPA Coordination who shall coordinate the comments and forward them to the initiating agency and the CEQ.

Subpart D—General Guidance for Content of Environmental Impact Statements

§ 711.81 Cover.

The cover shall indicate the type of statement (draft or final), the official project title and location, the month that the statement is issued, the agency and, for final statements, the signature of the issuing official on the title page.

§ 711.83 Body of statement.

(a) Each environmental impact statement should be prepared in accordance with the precept in section 102(2)(C) of the National Environmental Policy Act of 1969, that all agencies of the Federal government "utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and decisionmaking which may have an impact on man's environment." The statement should be a factual and objective evaluation of actions and their reasonable alternatives in light of environmental considerations. The presentation should be (1) concise, including or referencing relevant data, information, and analyses necessary to permit independent evaluation and appraisal of the environmental effects of the proposed ERDA action and its reasonable alternatives, and (2) structured in a manner that is most useful for planning and decisionmaking. Statements should not be drafted in a style which requires extensive scientific or technical expertise to comprehend and should focus on environmental issues relevant to the proposed action. Underlying studies, reports and other information obtained and considered in preparing the statement should be identified at appropriate points in the text. Highly technical and specialized analyses and data should be avoided in the text but should be attached as appendices or referenced with footnotes. Where there are references to documents not likely to be easily accessible, such as internal studies or reports, the statement should summarize wherever practicable and indicate how such information may be obtained. Many evaluations of environmental impact will involve measurements, analyses, calculations, and design drawings much too voluminous to be included in an environmental impact statement of workable length. In these cases, it will not be possible for the reader to make a completely independent evaluation of environmental impact from the statement itself. However, it should be possible for the reader to understand, from the text combined with the appendices and references, the types of impact which have been considered, the general methods of evaluation used and the types of data behind them, and the factual conclusions reached.

(b) Each statement shall disclose and evaluate the environmental trade-offs of proposed actions and of reasonably available alternatives in sufficient detail to permit an independent appraisal of the environmental aspects of the proposed action in relationship to alternatives.

(c) Each statement shall discuss or refer to responsible views regarding the environmental impacts of the proposed action. Substantive suggestions and comments made by other Federal, State, and local agencies and by private organizations and individuals prior to preparation of the environmental impact statement (draft or final) shall be identified and analyzed in the appropriate sections of the draft statement. Similarly, substantive comments received as a result of review of the draft statement shall be considered in the preparation of the final statement.

(d) Environmental impact statements ordinarily should contain the following information:

(1) *Summary.* The salient information and factual conclusions of the environmental statement should be concisely summarized at the beginning of the document. Emphasis should be on any unresolved environmental issues and on factual conclusions concerning the significance of the impacts associated with the proposed action and the relative merits of alternatives.

(2) *Description of proposed action.* The proposed action, its purpose and the policy objectives and tangible benefits both short- and long-term, sought to be realized by implementation of the proposed action should be briefly described. Among factors to be described are the location and duration of the proposed action; historical information necessary to place the proposed action in proper perspective; its relationship to other projects or programs of the Federal Government; and an overall physical description if appropriate, emphasizing features with environmental significance. The environmental controls and other mitigating measures, including plans for site restoration, that are designed into the proposed action should also be described.

(3) *A characterization of the existing environment likely to be affected by the proposed action.* A brief overview of the environmental features of the areas likely to be affected by the proposed action should be described in order to provide a baseline for analysis of environmental impacts. Wherever appropriate, an identification should be made of population and growth characteristics of the affected areas and of the current uses of such areas. Detailed descriptions of the existing environment should be either included in an appendix to the statement or referenced in the text, when necessary for a thorough understanding of the environmental implications of a proposed action. The amount of detail provided should be commensurate with the extent of the expected impact of the action, and the amount of information required at the particular level of environmental analysis.

(4) *Potential environmental impacts of the proposed action.* The probable environmental impacts of the proposed action (assuming implementation of proposed mitigating measures) should be analyzed in order to determine what, if any, environmental issues may be involved in the proposed action. In so doing, the analysis should describe those effects on the environment, beneficial as well as adverse, which could be caused by the proposed action, evaluate the magnitude and importance of each such effect, and identify the time frames in which these effects are anticipated. Any unknowns as to the probable environmental impacts should be clearly identified. The probable primary (direct) as well as secondary (indirect) environmental consequences should be assessed. In this context, "secondary" consequences refer to associated investments and changed patterns of social and economic activities likely to be induced by the proposed action. Such secondary effects, through their impacts on existing community facilities and activities and through changes in natural conditions, may be more substantial than the primary effects of the proposed action. The extent to which the proposal will conform or conflict with any applicable Federal, State, or local statutes, regulations, standards limitations, and policies respecting environmental quality (air and water quality, wastes, pesticides, etc.) should be discussed. The risks attributable to accidental or intentional environmental destruction as well as to normal operations should also be assessed. Risks should be expressed in terms of probability of occurrence and magnitude of consequences to the extent practicable.

(5) *Unavoidable adverse environmental effects.* Adverse environmental effects that cannot be avoided should the proposed action, with its environmental protection strategy, be implemented, and the magnitude and importance of each such effect, should be briefly summarized.

(6) *Irreversible and irretrievable commitment of resources.* The extent to which the proposed action would consume, destroy, or transform scarce or nonrenewable resources, thus curtailing the diversity and range of potential uses of the environment should be summarized. In this context, "resources" means labor and materials devoted to the proposed action as well as natural and cultural resources.

(7) *Relationship of land use plans, policies, and controls.* For project or site statements, there should be an evaluation of how the proposed action may conform or conflict with the objectives and specific terms of approved or proposed Federal, State, and local land use plans, policies and controls, if any, for the affected area.

(8) *The relationship between short-term uses of the environment and the maintenance and enhancement of long-term productivity.* The extent to which the proposed action would constrain the diversity and range of potential uses of the environment, including nonutilitarian preservation, should be briefly discussed. The cumulative and long-term environmental effects of the proposed action should be assessed from the perspective that each generation is trustee of the environment for succeeding generations. This involves consideration of the present condition and use of the site of the proposed action, its use if the proposed action is implemented, and the long-term prospects for other uses. A brief assessment should be made of the extent to which the proposed action involves trade-offs between short-term gains at the expense of long-term losses, or vice versa, and a discussion of the extent to which the proposed action and its alternatives foreclosed future options. In this context, short-term and long-term do not refer to any fixed periods but should be viewed in terms of the environmentally significant consequences of the proposed action.

(9) *Alternatives.* A rigorous exploration and factual evaluation of the environmental impacts of the full range of reasonable available alternatives to the proposed action should be presented. In particular, reasonable alternatives to the proposed action that might be specifically formulated to enhance environmental quality or to avoid, mitigate, or compensate for some of the adverse environmental effects should be discussed, e.g., environmental protection strategies beyond those designed in the proposal. The specific alternative of taking no action should always be evaluated. Examples of other alternatives include: the alternative of postponing action pending further study; alternatives requiring actions of a significantly different nature which would provide similar benefits with different environmental impacts; alternatives related to different designs or details of the proposed action which would have different environmental impacts, and alternatives to provide for compensation of fish and wildlife loss, including the acquisition of land, waters, and interests therein. In each case, the analysis of alternatives should be sufficiently detailed to permit comparative evaluation of the environmental trade-offs of the proposed action and each reasonable alternative. Where an existing impact statement already contains an analysis of an alternative(s), its treatment of the alternative(s) may be summarized and incorporated by reference provided that such treatment is current and relevant to the precise objective of the proposed action. The range of alternatives should not be limited to measures which the agency has authority to adopt but should include a meaningful discussion of all reasonable alternatives to the proposed action. A more detailed analysis should be made of the environmental impact of alternatives that can be implemented within the same time frame as the proposed action than for those alternatives within different time frames.

(10) *Environmental trade-off analysis.* At the conclusion of the statement there should be a synthesis of the information contained in the body of the statement and analysis of the environmental trade-offs associated with the proposed action and reasonably available alternatives. This analysis should be sufficiently detailed to permit an independent evaluation of the effects associated with the proposed action and each reasonably available alternative so that an informed judgment can be made about the wisdom of undertaking the proposed action rather than one of the alternatives (including the alternative of no action).

[FR Doc.77-2542 Filed 1-25-77;8:45 am]

CHAPTER II—FEDERAL ENERGY ADMINISTRATION

[Ruling 1977-3]

CARGO SALES

Ruling

Facts. Firm A is a reseller of covered products, engaged principally in the resale of those products through several terminals, which receive covered products and from which sales are made and products distributed.

In addition to these sales, Firm A is engaged in buying and reselling cargo lots of covered products, a practice known in the industry as "trading". Typically, a transaction of this type involves an agreement between Firm A and Firm B for a specified quantity of product to be furnished to Firm B at a set price on a specific date. Firm A arranges to purchase the product from Firm C for delivery to Firm B. The product never physically enters into Firm A's terminal or distribution system. Firm B is not a regular purchaser from Firm A's terminal.

Firm A made sales of this type prior to May, 1973 and such sales have always been accounted for as separate transactions under Firm A's historical accounting system. Traditionally, these purchases and resales have had a lower margin than those made within Firm A's normal distribution system.

They are high volume sales and the cargoes involved are always identifiable with a specific purchaser. Prices charged in such resales have always been determined exclusively with respect to the cost of the cargo concerned and without regard to the cost or selling prices of product held in inventory by Firm A in its terminals. "Trading" transactions of the nature described above often oc-

curred quite rapidly, with particular cargoes being purchased and resold on the same day, sometimes within less than an hour.

Issue. May Firm A, under the Mandatory Petroleum Price Regulations applicable to resellers of covered products (Subpart F of 10 CFR, Part 212) and prior to the adoption of the "separate inventory" rule effective May 1, 1976, calculate the increased costs of the cargo sold to Firm B separately from the increased costs of the same product purchased and held for resale through its normal terminal and distribution system?

Ruling. Firm A may, prior to the adoption of the "separate inventory" regulations, separately calculate the increased costs of the cargo lot of product purchased and resold to Firm B.

Maximum prices are determined by resellers pursuant to § 212.93(a) which has always provided that "[a] seller may not charge a price for an item . . . which exceeds the weighted average price at which the item was lawfully priced by the seller in transactions with the class of purchaser concerned on May 15, 1973, plus an amount which reflects, on dollar-for-dollar basis, the increased product costs concerned." Section 212.92 defines "increased product costs" as "the difference between the weighted average unit cost of a product in inventory and the weighted average unit cost of that product in inventory on May 15, 1973." Pursuant to an amendment adopted effective May 1, 1976 (41 FR 19110, May 10, 1976), "product in inventory" is defined in § 212.92 as:

> . . . at the option of the seller concerned, either: (1) the entire, undivided stock of a covered product, no matter where located, purchased and held for resale by the seller concerned; or (2) that portion of the total stock of a covered product purchased and held for resale by the seller concerned which constitutes a separate inventory under generally accepted accounting principles consistently and historically applied by the seller concerned . . . .

Under that definition, the cargo lot of product sold to Firm B would represent a "separate inventory," as to which a separate calculation of increased costs of product would be permitted.

Prior to the May 1, 1976 amendment, the price regulations applicable to resellers did not include a definition of "product in inventory." In adopting the May 1, 1976 "separate inventory" amendment, FEA stated:

> Prior to today's amendment, FEA interpreted "product in inventory" to mean the seller's entire undivided stock of a product held for resale.

Even under that interpretation, however, it is not appropriate to regard the cargo lot, in the circumstances described above, as constituting a part of Firm A's "entire undivided stock of a product held for resale." This is because cargo lot resales of the type in which Firm A was engaged have, by their particular nature, never been part of a seller's stock of a product held for resale through the seller's normal distribution system but, of practical necessity, have always been accounted for separately.

The cargo sales represent isolated transactions. Firm A's cost and pricing decisions with regard to the purchases and resales made in the normal distribution system have always been made without taking into account the cost or price of purchases and resales such as the one to Firm B. Indeed, because of the relative speed with which such "trading" transactions often took place, it would have been impracticable, if not impossible, for Firm A to derive a weighted average cost of its terminal inventories, together with the cargo lot in question, prior to the resale of the cargo lot. This is particularly true when such transactions involve several different cargo lots on the high seas which may or may not be in transit at the same time depending on shipment delays caused by weather or other factors.

Moreover, because such cargo lots were purchased and priced for resale without regard to the cost of Firm A's product held for resale in terminals, to have made such a weight-averaging could have seriously distorted Firm A's pricing with respect to its terminal sales. The historically lower margin on this type of sale, reflecting the lower costs associated with these resales, is further indication of the difference in treatment accorded these sales.

DAVID G. WILSON,
Acting General Counsel,
Federal Energy Administration.

JANUARY 20, 1977.

[FR Doc.77-2430 Filed 1-24-77;11:47 am]

Title 16—Commercial Practices

CHAPTER I—FEDERAL TRADE COMMISSION

SUBCHAPTER A—ORGANIZATION, PROCEDURES AND RULES OF PRACTICE

PART 4—MISCELLANEOUS RULES

Requests for Disclosure of Records

The Federal Trade Commission's current regulations concerning requests for disclosure of records are set forth in § 4.11 of its procedures and rules of practice (16 CFR 4.11).

At present § 4.11(a)(2)(i)(A) allows a requester 30 days to appeal the Secretary's initial determination of an access request. Where access is granted in part and denied in part, a requester is frequently forced to appeal before he has the opportunity to review all the records to which he has been granted access.

As amended § 4.11(a)(2)(i)(A) would allow for an appeal anytime from the Secretary's initial determination up to 30 days after the last record has been made available.

In light of the foregoing, the Federal Trade Commission announces the following amendment, which is effective on January 26, 1977.

§ 4.11 Requests for disclosure of records.

(a) * * *

(2) *Appeals to the Commission from initial denials.*—(i) *Form and contents; time of receipt.* (A) If the Secretary denies an initial request for records in its entirety, the requester may, within 30 days of the date of the Secretary's determination, appeal such denial to the Commission. If the Secretary denies an initial request in part, the time for appeal shall not expire until 30 days after the date of the letter notifying the requester that all records to which access has been granted have been made available. The appeal shall be in writing and should include a copy of the initial request and a copy of the Secretary's response, if any. The appeal shall be addressed as follows:

> Freedom of Information Act Appeal, Office of General Counsel, Federal Trade Commission, 6th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580.

(15 U.S.C. 46(g), 5 U.S.C. 552.)

By direction of the Commission dated January 19, 1977.

JOHN F. DUGAN,
Acting Secretary.

[FR Doc.77-2484 Filed 1-25-77;8:45 am]

Title 18—Conservation of Power and Water Resources

CHAPTER I—FEDERAL POWER COMMISSION

[Docket No. CP77-116]

PART 2—GENERAL POLICY AND INTERPRETATIONS

Interpretive Order

JANUARY 14, 1977.

By telegrams of December 23, 1976, Houston Pipe Line Company (Houston) proposed to sell and deliver up to 150,000 Mcf per day of natural gas commencing January 6, 1977, to United Gas Pipe Line Company (United) at or near the tailgates of the Katy Gas Plant, Waller County, Texas, the Karon Gas Plant, Live Oak County, Texas, and the TCB Gas Plant, Jim Wells County, Texas, pursuant to a contract dated December 21, 1976, and to sell and deliver up to 85,000 Mcf per day of natural gas commencing January 6, 1977, to Transcontinental Gas Pipe Line Corporation (Transco), acting as agent for certain of its distribution customers, at or near the tailgate of the Pledger Gas Plant, Brazoria County, Texas, pursuant to a contract dated December 2, 1976. At the time of the telegrams Houston had been selling and delivering approximately 150,000 Mcf per day of natural gas to Transco at the points at which it proposed to sell and deliver gas to United and had been delivering approxmiately 85,000 Mcf per day of natural gas at the point it proposed to sell and deliver gas to United. Said sales and deliveries were made pursuant to § 2.68 of the Commission's general policy and interpretations (18 CFR 2.68). Houston seeks Commission assurance that upon commencement of the deliveries under the December 21, 1976, and December 2, 1976, contracts, Houston, an intrastate natural gas pipeline company, would not lose its otherwise exempt status under section 1(b) of the Natural Gas Act.

By order issued January 5, 1977, the Commission provided for the development of an administrative hearing record on questions related to the Houston proposal. That order also provided that the otherwise non-jurisdictional status of Houston and any producers supplying Houston under the Natural Gas Act would not be affected by continued deliveries of natural gas by Houston to United or Transco, during the period the Commission would consider the instant matter on its merits and until 24 hours after the issuance of a Commission opinion on the matter. The Commission's hearing in this matter was conducted on January 13 and 14, 1977.

The record amply demonstrates the existence of emergency conditions on the Transco and United systems and the necessity of these pipelines being able to avail themselves of § 2.68(a) procedures. We do have before the Commission an administrative record which indicates that numerous other natural gas pipelines are now facing, or shortly will face, natural gas supply shortfalls to meet high priority loads. Clearly, emergency conditions may vary from system to system depending upon operating factors. In order to mitigate the severity of the current supply situation of these systems, including the need for delivery, storage injection and replenishment,[1] we recognize that a number of pipelines will apply § 2.68 (a) or (b) self-help procedures with increasing frequency for the remainder of the winter heating season of 1977, i.e., for the period ending March 31, 1977, and beyond.

In the context of the Houston, Transco and United proposal, the Commission finds the § 2.68(a) procedures appropriate for this and similar circumstances. In doing so, we also recognize that, in some cases, pipelines and their non-jurisdictional suppliers may not have new or separate source contracts, but rather may have continuing sales arrangements. For the latter type transactions, § 2.68(b) procedures would be appropriate. In that respect, it should be noted that prior interpretations of § 2.68(b) permit certain roll-over operations.[2] Section 2.68 (a) and (b) procedures are alternative, and one does not limit the other. Being self-help measures, the affected systems may utilize one or both.

As a part of this proceeding, the Commission was advised by numerous members of the Congress,[3] that the Congress would undertake a reassessment of the Natural Gas Act in light of current regulatory jurisdiction of this Commission and state regulatory agencies. The Commission will report to Congress and make available copies of the administrative hearing record to the standing Committees with legislative responsibilities over this Commission, the Senate Committee on Commerce and the House Committee on Interstate and Foreign Commerce.

The Commission finds. (1) There is an existing natural gas supply emergency on the systems of United Gas Pipe Line Company and Transcontinental Gas Pipe Line Corporation, contributed to and exacerbated by severe weather conditions, as demonstrated by the record evidence developed at the public hearings held before this Commission on January 13 and 14, 1977.

(2) The sales and deliveries under the contract of December 21, 1976, between Houston and United and the contract of December 2, 1976, between Houston and Transco are emergency sales and deliveries to be initiated within the contemplation of § 2.68(a) of the Commission's general policy and interpretations.

(3) Emergencies exist on the systems of United and Transco such that supplies of natural gas are required from Houston, within the contemplation of § 2.68 (a) of the Commission's general policy and interpretations, for periods of 60-days.

The Commission orders. The status of Houston, of otherwise being exempt from the provisions of the Natural gas Act pursuant to section 1(b) thereof, will not be jeopardized by the initiation of sales and deliveries of natural gas to United and Transco, pursuant to contracts of December 21, 1976, and December 2, 1976, respectively, within the contemplation of § 2.68(a) of the Commission's general policy and interpretations.

By the Commission.[4]

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-2429 Filed 1-25-77;8:45 am]

[1] See Nueces Industrial Gas Company, 46 F.P.C. 873, 877 (1971); and General Counsel letter to Richard A. Rosan, Esq., Columbia Gas System Service Corporation, dated November 19, 1976.

[2] Since February 7, 1975, the Commission has permitted at least 9 roll-over operations pursuant to § 2.68(b) including: Llanco, Inc., issued February 7, 1975. Panhandle Eastern Pipeline, issued January 9, 1975. City of Columbia, Kentucky, issued July 17, 1975. City of Norris, Illinois, issued July 14, 1975.

[3] The following members of Congress testified before the Commission: Senator Strom Thurmond, South Carolina; Senator Ernest F. Hollings, South Carolina; Senator Jesse Helms, North Carolina; Senator Robert Morgan, North Carolina; Congressman L. H. Fountain, North Carolina; Congressman Robert E. Bauman, Maryland; Congressman James G. Martin, North Carolina. These members of Congress urged the Commission to approve the proposed transaction due to the potential impact of the shortfall of supplies in the southeastern part of the United States. Recognizing the critical national emergency, they expressed their concern on the issues of pricing, supply shortfall, unemployment, and conservation and their expectation of Congressional action.

[4] Filed as part of the original document.

Smith, Commissioner, would make an explicit condition of this interpretation the Commission's intent to examine the § 2.68 transactions made pursuant to this order on or before the end of the winter heating season and, therefore, concurs in its issuance.

Title 23—Highways

CHAPTER I—FEDERAL HIGHWAY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

SUBCHAPTER G—ENGINEERING AND TRAFFIC OPERATIONS

PART 655—TRAFFIC OPERATIONS

Highway Safety Improvement Program; Correction

In FR Doc. 76-35716 appearing at page 53003 in the issue for Friday, December 3, 1976, the amendment to § 655.507 should read:

The third sentence in § 655.507 is amended by striking the period at the end thereof and adding the following: "and 203 of the Highway Safety Act of 1973, as amended."

Issued on: January 14, 1977.

D. H. ANDERS,
Acting Chief Counsel.

[FR Doc.77-2527 Filed 1-25-77;8:45 am]

Title 36—Parks, Forests, and Public Property

CHAPTER I—NATIONAL PARK SERVICE, DEPARTMENT OF THE INTERIOR

PART 9—MINING AND MINING CLAIMS

Comprehensive Regulations

On November 11, 1976, the Department of the Interior published in the FEDERAL REGISTER (41 FR 49862) Interim Regulations and Proposed Comprehensive Regulations. The Proposed Comprehensive Regulations were made available for public review and comment for a period of thirty (30) days following publication in the FEDERAL REGISTER and ending December 13, 1976.

A total of 14 written replies with recommendations or comments were received during the comment period, with about one-half being received from mining companies, which as a group stated that the Proposed Comprehensive Regulations went beyond the intent of Congress in the enactment of the Act of September 28, 1976 (Pub. L. 94-429, 90 Stat. 1342, 16 U.S.C. 1901 et seq.) and jeopardized the economic viability of mining operations within the National Park System. On the other hand, two conservation groups stated that these regulations were not, in their present form, strong enough to protect the resources and environments of the units of the National Park System affected by this statute. The additional comments suggested editorial, grammatical, or in some instances, substantive changes in the meaning of specific sections and paragraphs of the proposed regulations.

An attempt was made to utilize as many of the comments and recommendations as was appropriate in carrying out the provisions of section 2 of the Act of September 28, 1976, 16 U.S.C. 1901 et seq., in conjunction with the other statutory National Park Service responsibilities. A number of comments pertained to the preamble of the proposal. Since this has no particular standing with respect to the regulations themselves, no attempt was made to address those issues, with the one exception found in the following

paragraph. The preamble serves only to discuss and/or explain the regulations.

It was noted that a misstatement of section 4 of the Act appeared in the preamble of the proposed regulations. The proper interpretation of this section is that, where there has been no significant disturbance to the surface of one of the enumerated units for purposes of mineral extraction, an operation may expand an existing excavation only if the Secretary finds that such expansion is necessary to make feasible continued production therefrom at an annual rate not to exceed the average annual production level of that operation for the calendar years 1973, 1974, and 1975.

Likewise, a number of comments pertained to the Interim Regulations. Because these regulations were not open for comment and review and will be superseded upon publication of the Final Comprehensive Regulations, it was determined unnecessary to respond. The purpose of the Interim Regulations was to maintain essentially the status quo while more comprehensive regulations could be prepared following passage of the Act of September 28, 1976 (16 U.S.C. 1901 et seq.).

One major area of concern in the comments which were received was that the standards for approval of a plan of operations and for reclamation lacked clarity, particularly with regard to the concepts of "nuisance" and "injury." Those sections have been altered in response to these comments. However, since these doctrines all have foundation in jurisprudence, it has been determined that they are appropriate terms and concepts.

Comments were also received concerning compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4331 et seq.) (NEPA). The National Park Service has prepared an environmental assessment of the proposed regulations. Based on this assessment, it has been determined that the proposed action is not a major Federal action that would have a significant impact on the human environment, and therefore, that an environmental impact statement is not required prior to promulgation of the final regulations. Furthermore, an analysis of the environmental impacts associated with execution of each plan of operations submitted by an operator for approval will be made, and in the event that approval of the plan would constitute a major Federal action resulting in a significant impact on the human environment then an environmental impact statement as required by section 102(2)(C) would be prepared prior to approving or denying the plan of operations.

In addition to complying with the general provisions of NEPA, we have increased the potential for public participation by eliminating requirements for submission of certain proprietary documents, and by making available for public review copies of all plans of operations submitted by operators proposing mining activities in units of the National Park System.

A majority of comments related to the surface disturbance moratorium. It has been determined by the National Park Service that the terms and conditions concerning surface disturbance were set by Congress with the passage of the Act of September 28, 1976, (16 U.S.C. 1901 et seq.) and little or no discretion is vested with the Secretary to allow additional surface disturbance, except as expressly authorized by the Act.

The section on the use of water in support of mining operations has been clarified to reflect that the Department's concern is for uses of water from sources within the units of the National Park System. The modification in this provision was made to reflect more accurately the limited extent of the Secretary's authority to dispose of water reserved to the United States.

Certain changes in § 9.5 of these regulations were made in response to comments concerning recorded proofs of labor and other recording requirements. The alterations made should also be considered as amendments to the requirements of the Notice of October 20, 1976, 41 FR 46357.

The regulations also make clear that the filing of notice with the National Park Service satisfies the requirement for the initial filing of notice of a mining claim under section 314 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2743, 43 U.S.C. 1701, for mining claims within the National Park System. Thus, only one initial notice must be filed for unpatented claims in units of the National Park System and that is the notice prescribed by these regulations, which is a restatement of the October 20, 1976 Notice requirements with the amendments noted above. However, the subsequent annual notice requirements of section 314 are applicable and claimants must file the annual notice prescribed by section 314 and the implementing regulations.

The regulations also provide that the surface use provisions of 43 CFR, Subpart 3826 and 36 CFR 7.26 and paragraphs (a) and (b) of § 7.44 are superseded by the regulations of this Part. However, the regulations in 43 CFR 3826.2–5 and 3826.2–6, 3826.4–1(g) and 3826.4–1(h), and 3826.5–3 and 3826.5–4 will remain applicable to those claimants who wish to take their claim to patent. A technical amendment will also be made to delete the provisions of 36 CFR 7.26 and 7.44 (a) and (b) which have only interim application to existing permits for 120 days after publication of the final regulations unless extended by the Superintendent. The amendments will be made by separate publication.

Modification was made to § 9.11 *Reclamation Requirements* to more adequately reflect the tenet that a holder of a claim patented prior to the establishment of the areas as a unit of the National Park System shall not undertake activities on those lands so as to constitute a nuisance to the federally owned lands or adversely affect those lands. Claims not taken to patent are subject to a stricter reclamation standard.

Two new definitions have been added. *Designated Roads*, § 9.2(n), was added to clarify the meaning of existing and open public roads that might be used with respect to mining operations only outside a unit. Only those roads so designated shall be used for this purpose. In § 9.4(c) *lands contiguous to the existing excavation* is defined to further amplify the public's understanding of the surface disturbance moratorium.

Concerning a prohibition on future surface mining activities within units of the National Park System not covered by the moratorium, it has been determined that with respect to unpatented claims or claims patented with surface use restrictions, surface mining will be permitted in the future only where such activity will not jeopardize the pristine beauty of the unit, or adversely affect the ecological or cultural resources thereof. As a caveat, it should be clearly noted that section 4 of the Act places a moratorium on surface mining activities in Death Valley and Organ Pipe Cactus National Monuments and Mount McKinley National Park, notwithstanding, when the location was made. All units of the National Park System upon establishment are closed to further mineral entry and location unless Congress expressly provides otherwise. With respect to the six units of the System which were open to mineral entry and location (now closed under section 3 of Pub. L. 94–429), entry and location was subject to such surface use regulations and restrictions as the Department of the Interior might adopt. Those laws read together with Pub. L. 94–429 now provide a basis for restricting new surface mining operations in units of the National Park System. This restriction will not preclude underground or subsurface mining operations, even if a portal or entry tunnel is required to be developed within the unit.

Additional clarification was made to § 9.10 *Plan of Operations Approval* in order to develop standards for approval of three classes of claims based on the status of the claims and whether extraction operations had begun. As such, no plan of operations shall be approved: (1) For existing or new operations that would constitute a nuisance or injure Federal land if the claim was patented without surface use restrictions; or (2) where the surface of the claim, either unpatented or patented with surface use restrictions, was not significantly disturbed and the operations would preclude management or injure the resources of a unit; or (3) where the surface of the claim, either unpatented or patented subject to surface use restrictions, had been significantly disturbed and the operations would constitute a nuisance or injure Federal lands. In the latter class of claims the provisions of § 9.4 of this Part will apply to other units of the System besides Death Valley and Organ Pipe Cactus National Monuments and Mount McKinley National Park.

These regulations shall take effect on January 26, 1977, because it has been determined that the immediate application of these regulations is necessary to preserve units of the National Park System in their pristine character to fulfill the Congressional mandate that such units be managed to preserve and protect them for present as well as future generations. Furthermore, the continued application of the Interim Regulations would not be in the public interest, because those regulations are only designed to maintain the status quo, rather than comprehensively implement the policy and provisions of Pub. L. 94–429 (16 U.S.C. 1901 et seq.). Therefore the regulations contained in this Part shall be effective on January 26, 1977.

The purpose of these regulations is to provide control over mining activities within areas of the National Park System to the extent authorized by section 2 of Pub. L. 94–429, but not to constitute a "taking" of any compensable property interest of a mining claimant.

The National Park Service has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Orders 11821 and 11949 and OMB Circular A–107.

Title 36 of the Code of Federal Regulations is hereby amended by the addition of a new Part 9 as follows:

Sec.

9.1 Purpose and scope.
9.2 Definitions.
9.3 Access permits.
9.4 Surface disturbance moratorium.
9.5 Recordation.
9.6 Transfer of interest.
9.7 Assessment work.
9.8 Use of water.
9.9 Plan of operations.
9.10 Plan of operations approval.
9.11 Reclamation requirements.
9.12 Supplementation or revision of plans of operations.
9.13 Performance bond.
9.14 Appeals.
9.15 Use of roads by commercial vehicles.
9.16 Penalties.
9.17 Public inspection of documents.
9.18 Surface use and patent restrictions.

AUTHORITY: Mining Law of 1872 (R.S. 2319; 30 U.S.C. 21 et seq.); Act of August 25, 1916 (39 Stat. 535, as amended (16 U.S.C. 1 et seq.); Act of September 28, 1976; 90 Stat. 1342 (16 U.S.C. 1901 et seq.))

§ 9.1 Purpose and scope.

These regulations will control all activities resulting from the exercise of valid existing mineral rights on claims within any unit of the National Park System in order to insure that such activities are conducted in a manner consistent with the purposes for which the National Park System and each unit thereof were created, to prevent or minimize damage to the environment or other resource values, and to insure that the pristine beauty of the units are preserved for the benefit of present and future generations. These procedures apply to all operations conducted on claims in any unit of the National Park System.

§ 9.2 Definitions.

The terms used in this Part shall have the following meanings:

(a) *Secretary.* The Secretary of the Interior.

(b) *Operations.* All functions, work and activities in connection with mining on claims, including: prospecting, exploration, surveying, development and extraction; dumping mine wastes and stockpiling ore; transport or processing of mineral commodities; reclamation of the surface disturbed by such activities; and all activities and uses reasonably incident thereto, including construction or use of roads or other means of access on National Park System lands, regardless of whether such activities and uses take place on Federal, State, or private lands.

(c) *Operator.* A person conducting or proposing to conduct operations.

(d) *Person.* Any individual, partnership, corporation, association, or other entity.

(e) *Superintendent.* The Superintendent, or his designee, of the unit of the National Park System containing claims subject to these regulations.

(f) *Surface mining.* Mining in surface excavations, including placer mining, mining in open glory-holes or mining pits, mining and removing ore from open cuts, and the removal of capping or overburden to uncover ore.

(g) *The Act.* The Act of September 28, 1976, 90 Stat. 1342, 16 U.S.C. 1901 et seq.

(h) *Commercial Vehicle.* Any motorized equipment used for transporting the product being mined or excavated, or for transporting heavy equipment used in mining operations.

(i) *Unit.* Any National Park System area containing a claim or claims subject to these regulations.

(j) *Claimant.* The owner, or his legal representative, of any claim lying within the boundaries of a unit.

(k) *Claim.* Any valid, patented or unpatented mining claim, mill site, or tunnel site.

(l) *Regional Director.* Regional Director for the National Park Service region in which the given unit is located.

(m) *Significantly disturbed for purposes of mineral extraction.* Land will be considered significantly disturbed for purposes of mineral extraction when there has been surface extraction of commercial amounts of a mineral, or significant amounts of overburden or spoil have been displaced due to the extraction of commercial amounts of a mineral. Extraction of commercial amounts is defined as the removal of ore from a claim in the normal course of business of extraction for processing or marketing. It does not encompass the removal of ore for purposes of testing, experimentation, examination or preproduction activities.

(n) *Designated roads.* Those existing roads determined by the Superintendent in accordance with 36 CFR 2.6(b) to be open for the use of the public or an operator.

(o) *Production.* Number of tons of a marketable mineral extracted from a given operation.

§ 9.3 Access permits.

(a) All special use or other permits dealing with access to and from claims within any unit are automatically revoked 120 days after January 26, 1977. All operators seeking new or continued access to and from a claim after that date must file for new access permits in accordance with these regulations, unless access to a mining claim is by pack animal or foot. (See § 9.7 for restrictions on assessment work and § 9.9(d) and § 9.10 (g) for extensions of permits.)

(b) Prior to the issuance of a permit for access to any claim or claims, the operator must file with the Superintendent a plan of operations pursuant to § 9.9. No permit shall be issued until the plan of operations has been approved in accordance with § 9.10.

(c) No access to claims outside a unit will be permitted across unit lands unless such access is by foot, pack animal, or designated road. Persons using such roads for access to such claims must comply with the terms of § 9.15 where applicable.

§ 9.4 Surface disturbance moratorium.

(a) For a period of four years after September 28, 1976, no operator of a claim located within the boundaries of Death Valley National Monument, Mount McKinley National Park, or Organ Pipe Cactus National Monument (see also claims subject to § 9.10(a)(3)) shall disturb for purposes of mineral exploration or development the surface of any lands which had not been significantly disturbed for purposes of mineral extraction prior to February 29, 1976, except as provided in this section. However, where a claim is subject, for a period of four years after September 28, 1976, to this section solely by virtue of § 9.10(a)(3), the date before which there must have been significant disturbance for purposes of mineral extraction is January 26, 1977.

(b) An operator of a claim in one of these units seeking to enlarge an existing excavation or otherwise disturb the surface for purposes of mineral exploration or development shall file with the Superintendent an application stating his need to disturb additional surface in order to maintain production at an annual rate not to exceed an average annual production level of said operations for the three calendar years 1973, 1974, and 1975. Accompanying the application shall be a plan of operations which complies with § 9.9 and verified copies of production records for the years 1973, 1974, and 1975.

(c) If the Regional Director finds that the submitted plan of operations complies with § 9.9, that enlargement of the existing excavation of an individual mining operation is necessary in order to make feasible continued production therefrom at an annual rate not to exceed the average annual production level of said operation for the three calendar years 1973, 1974, and 1975, and that the plan of operations meets the applicable standard of approval of § 9.10 (a)(1), he shall issue a permit allowing the disturbance of the surface of the lands contiguous to the existing excavation to the minimum extent necessary to effect such enlargement. For the purpose of this section "lands contiguous to the existing excavation" shall include land which actually adjoins the existing excavation or which could logically become an extension of the excavation; for example, drilling to determine the extent and direction to which the existing ex-

cavation should be extended may be permitted at a site which does not actually adjoin the excavating.

(d) The appropriate reclamation standard to be applied will be determined by the nature of the claim. (See § 9.11(a)(1) and § 9.11(a)(2).)

(e) Operations conducted under a permit pursuant to this section shall be subject to all the limitations imposed by this Part.

(f) For the purposes of this section, each separate mining excavation shall be treated as an individual mining operation.

§ 9.5 Recordation.

(a) Any claimant of an unpatented mining claim in a unit shall, within 12 months after September 28, 1976, record the claim in the Office of the Superintendent of the unit. Actual receipt by the appropriate Superintendent on or before September 28, 1977, is required. Patented claims do not have to be recorded pursuant to this section.

(b) This recordation shall include, but is not limited to, the following instruments and information:

(1) A certified copy of each location notice should provide: Name of claim; locator(s); type (placer, lode, mill site, or tunnel site); mineral(s) for which claim was located; date of location, date of amendments or relocations, if any; recording date, book, page, county and State, where recorded; and a legal description of the lands included in the mining claim(s). If the location notice does not provide all of the foregoing information, it shall, to the extent possible, be attached in a supplement to the location notice. If the lands are surveyed or unsurveyed, the legal description shall be hy:

(i) A recitation of the appropriate location of all or any part of the claim or site within a 160 acre quadrant (quarter section) of a section or sections, if more than one is involved. In addition, there must be furnished the township, range, meridian and State obtained from an official survey plat or other U.S. Government map showing either the surveyed or protracted U.S. Government grid, whichever is applicable.

(ii) A map with a scale of not less than ½ inch to a mile (1:125,000) showing the survey or protraction grids on which there will be depicted the location of the claim or site. Contiguous claims or sites and groups of claims or sites in the same general area may be depicted on this single map so long as the individual claims or sites are clearly identified.

(2) Current claimant's(s) name(s) and address(es).

(3) Statement that annual labor was performed since September 1, 1970.

(c) Pursuant to section 8 of the Act, any unpatented claim not so recorded pursuant to this section shall be conclusively presumed to be abandoned and shall be void. Such recordation will not render valid any unpatented claim which was not valid on September 28, 1976, the effective date of the Act, or which becomes invalid thereafter.

(d) A claimant who initially records under this section or under the notice of October 20, 1976 (41 FR 46357) is in full compliance with all applicable provisions of law, including the recordation provisions of section 314 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2743, 43 U.S.C. 1701. Thus, a claimant does not have to file this initial notice with the Bureau of Land Management. Copies of all material received pursuant to this section or the notice of October 20, 1976, will be provided by the Regional Director to the Bureau of Land Management. However, subsequent annual filings of notice must be made under section 314 and implementing regulations with the Superintendent who will provide copies to the Bureau of Land Management. These subsequent filings with the Superintendent will satisfy the requirements of section 314 for mining claims in the National Park System.

§ 9.6 Transfers of interest.

(a) Whenever a claimant who has recorded his unpatented claim(s) with the Superintendent pursuant to the requirements of § 9.5 sells, assigns, bequeaths, or otherwise conveys all or any part of his interest in his claim(s), the Superintendent shall be notified within 60 days after completion of the transfer of: The name of the claim(s) involved; the name and legal address of the person to whom an interest has been sold, assigned, bequeathed, or otherwise transferred; and a description of the interest conveyed or received. Copies of the transfer documents will be provided by the Superintendent to the Bureau of Land Management. Failure to so notify the Superintendent shall render any existing access permit void.

(b) If the transfer occurs within the period of 12 months from the effective date of the Act and the prior owner has not recorded the unpatented claim with the Superintendent in accordance with these regulations, the holder by transfer shall have the remainder of the 12-month period to record the unpatented claim. Failure to record shall be governed by the provisions of § 9.5(c).

§ 9.7 Assessment work.

(a) An access permit and approved plan of operations must be obtained by a claimant prior to the performance of any assessment work required by Revised Statute 2324 (30 U.S.C. 28) on a claim in a unit.

(b) Permits will be issued in accordance with the following:

(1) In units subject to the surface disturbance moratorium of section 4 of the Act and § 9.4, no access permits will be granted for the purpose of performing assessment work.

(2) It has been determined that in all other units the Secretary will not challenge the validity of any unpatented claim within a unit for the failure to do assessment work during or after the assessment year commencing September 1, 1976. The Secretary expressly reserves, however, the existing right to contest claims for failure to do such work in the past. No access permits will be granted solely for the purpose of performing assessment work in these units except where claimant establishes the legal necessity for such permit in order to perform work necessary to take the claim to patent, and has filed and had approved a plan of operations as provided by these regulations. (For exploratory or development type work, see § 9.9.)

§ 9.8 Use of water.

(a) No operator may use for operations any water from a point of diversion which is within the boundaries of any unit unless authorized in writing by the Regional Director. The Regional Director shall not approve a plan of operations requiring the use of water from such source unless the right to the water has been perfected under applicable State law, has a priority date prior to the establishment of the unit and there has been a continued beneficial use of that water right.

(b) If an operator whose operations will require the use of water from a point of diversion within the boundaries of the unit can show that he has a perfected State water right junior to the reserved water right of the United States and can demonstrate that the exercise of that State water right will not diminish the Federal right, which is that amount of water necessary for the purposes for which the unit was established, he will be authorized to use water from that source for operations, if he has complied with all other provisions of these regulations.

§ 9.9 Plan of operations.

(a) No operations shall be conducted within any unit until a plan of operations has been submitted by the operator to the Superintendent and approved by the Regional Director. All operations within any unit shall be conducted in accordance with an approved plan of operations.

(b) The proposed plan of operations shall relate, as appropriate, to the proposed operations (e.g. exploratory, developmental or extraction work) and shall include but is not limited to:

(1) The names and legal addresses of the following persons: The operator, the claimant if he is not the operator, and any lessee, assignee, or designee thereof;

(2) A map or maps showing the proposed area of operations; existing roads or proposed routes to and from the area of operations; areas of proposed mining; location and description of surface facilities, including dumps;

(3) A description of the mode of transport and major equipment to be used in the operations;

(4) An estimated timetable for each phase of operations and the completion of operations;

(5) The nature and extent of the known deposit to be mined and a description of the proposed operations;

(6) A mining reclamation plan demonstrating compliance with the requirements of § 9.11;

(7) All steps taken to comply with any applicable Federal, State, and local laws or regulations, including the applicable regulations in 36 CFR, Chapter I;

(8) In units subject to the surface disturbance moratorium of section 4 of the Act and § 9.4, proof satisfactory to the Regional Director that the surface of the area on which the operation is to occur was significantly disturbed for purposes of mineral extraction prior to February 29, 1976, or if the area was not so disturbed, proof, including production records for the years 1973, 1974, and 1975, that new disturbance is necessary to maintain an average annual rate of production not to exceed that of the years 1973, 1974, and 1975;

(9) An environmental report analyzing the following:

(i) The environment to be affected by the operations,

(ii) The impacts of the operations on the unit's environment,

(iii) Steps to be taken to insure minimum surface disturbance,

(iv) Methods for disposal of all rubbish and other solid and liquid wastes,

(v) Alternative methods of extraction and the environmental effects of each,

(vi) The impacts of the steps to be taken to comply with the reclamation plan; and

(10) Any additional information that is required to enable the Regional Director to effectively analyze the effects that the operations will have on the preservation, management and public use of the unit, and to make a decision regarding approval or disapproval of the plan of operations and issuance or denial of the access permit.

(c) In all cases the plan must consider and discuss the unit's Statement for Management and other planning documents, and activities to control, minimize or prevent damage to the recreational, biological, scientific, cultural, and scenic resources of the unit.

(d) Any person conducting operations on January 26, 1977, shall be required to submit a plan of operations to the Superintendent. If otherwise authorized, operations in progress on January 26, 1977, may continue for 120 days from that date without having an approved plan. After 120 days from January 26, 1977, no such operations shall be conducted without a plan approved by the Regional Director, unless access is extended under the existing permit by the Regional Director. (See § 9.10(g).)

§ 9.10 Plan of operations approval.

(a) The Regional Director shall not approve a plan of operations:

(1) For existing or new operations if the claim was patented without surface use restriction, where the operations would constitute a nuisance in the vicinity of the operation, or would significantly injure or adversely affect federally owned lands; or

(2) For operations which had not significantly disturbed the surface of the claim for purposes of mineral extraction prior to January 26, 1977, if the claim has not been patented, or if the patent is subject to surface use restrictions, where the operations would preclude management for the purpose of preserving the pristine beauty of the unit for present and future generations, or would adversely affect or significantly injure the ecological or cultural resources of the unit. No new surface mining will be permitted under this paragraph except under this standard; or

(3) For operations which had significantly disturbed the surface of the claim for purposes of mineral extraction prior to January 26, 1977, if the claim has not been taken to patent, or the patent is subject to surface use restrictions, where the operations would constitute a nuisance in the vicinity of the operation, or would significantly injure or adversely affect federally owned lands. Provided, however, operations under this paragraph shall be limited by the provisions of § 9.4, notwithstanding the limitation of that section's applicability to the three enumerated units;

(4) Where the claim, regardless of when it was located, has not been patented and the operations would result in the destruction of surface resources, such as trees, vegetation, soil, water resources, or loss of wildlife habitat, not required for development of the claim; or

(5) Where the operations would constitute a violation of the surface disturbance moratorium of section 4 of the Act; or

(6) Where the plan does not satisfy each of the requirements of § 9.9.

(b) Within 60 days of the receipt of a proposed plan of operations, the Regional Director shall make an environmental analysis of such plan, and

(1) Notify the operator that he has approved or rejected the plan of operations; or

(2) Notify the operator of any changes in, or additions to the plan of operations which are necessary before such plan will be approved; or

(3) Notify the operator that the plan is being reviewed, but that more time, not to exceed an additional 30 days, is necessary to complete such review, and setting forth the reasons why additional time is required. Provided, however, that days during which the area of operations is inaccessible for such reasons as inclement weather, natural catastrophy, etc., for inspection shall not be included when computing either this time period, or that in subsection (b) above, or

(4) Notify the operator that the plan cannot be considered for approval until forty-five (45) days after a final environmental impact statement, if required, has been prepared and filed with the Council on Environmental Quality.

(c) Failure of the Regional Director to act on a proposed plan of operations and related permits within the time period specified shall constitute an approval of the plan and related permits for a period of three (3) years.

(d) The Regional Director's analysis may include:

(1) An examination of the environmental report filed by the operator;

(2) An evaluation of measures and timing required to comply with reclamation requirements;

(3) An evaluation of necessary conditions and amount of the bond or security deposit to cover estimated reclamation costs;

(4) An evaluation of the need for any additional requirements in access permit; and

(5) A determination regarding the impact of this operation and the cumulative impacts of all operations on the management of the unit.

(e) Prior to approval of a plan of operations, the Regional Director shall determine whether any properties included in, or eligible for inclusion in, the National Register of Historic Places or National Registry of Natural Landmarks may be affected by the proposed activity. This determination will require the acquisition of adequate information, such as that resulting from field surveys, in order to properly determine the presence of and significance of cultural resources within the area to be affected by mining operations. Whenever National Register properties or properties eligible for inclusion in the National Register would be affected by mining operations, the Regional Director shall comply with section 106 of the National Historic Preservation Act of 1966 as implemented by 36 CFR, Part 800.

(1) The operator shall not injure, alter, destroy, or collect any site, structure, object, or other value of historical, archeological, or other cultural scientific importance. Failure to comply with this requirement shall constitute a violation of the Antiquities Act (16 U.S.C. 431-433) (see 43 CFR, Part 3).

(2) The operator shall immediately bring to the attention of the Superintendent any cultural and/or scientific resource that might be altered or destroyed by his operation and shall leave such discovery intact until told to proceed by the Superintendent. The Superintendent will evaluate the discoveries brought to his attention, and will determine within ten (10) working days what action will be taken with respect to such discoveries.

(3) The responsibility for, and cost of investigations and salvage of such values that are discovered during operations will be that of the operator, where the claim is unpatented.

(f) The operator shall protect all survey monuments, witness corners, reference monuments and bearing trees against destruction, obliteration, or damage from mining operations, and shall be responsible for the reestablishment, restoration, or referencing of any monuments, corners and bearing trees which are destroyed, obliterated, or damaged by such mining operations.

(g) Pending approval of the plan of operations, the Regional Director may approve, on a temporary basis, the continuation of existing operations if necessary to enable timely compliance with these regulations and with Federal, State, or local laws, or if a halt to existing operations would result in an unreasonable economic burden or injury to the operator. Such work must be conducted in accordance with all applicable laws, and in a manner prescribed by the

Regional Director and designed to minimize or prevent significant environmental effects.

(h) Approval of each plan of operations is expressly conditioned upon the Superintendent having such reasonable access to the claim as is necessary to properly monitor and insure compliance with the plan of operations.

§ 9.11 Reclamation requirements.

(a) As contemporaneously as possible with the operations, but in no case later than six (6) months after completion of operations and within the time specified in an approved mining reclamation plan, unless a longer period is authorized in writing by the Regional Director, each operator shall initiate reclamation as follows:

(1) Where the claim was patented without surface use restriction, the operator shall at a minimum:

(i) Remove all above ground structures, equipment, and other manmade debris used for operations; and

(ii) Rehabilitate the area of operations to a condition which would not constitute a nuisance; or would not adversely affect, injure or damage, federally owned lands.

(2) On any claim which was patented with surface use restrictions or is unpatented, each operator must take steps to restore natural conditions and processes, which steps shall include, but are not limited to:

(i) Removing all above ground structures, equipment and other manmade debris;

(ii) Providing for the prevention of surface subsidence;

(iii) Replacing overburden and spoil, wherever economically and technologically practicable;

(iv) Grading to reasonably conform the contour of the area of operations to a contour similar to that which existed prior to the initiation of operations, where such grading will not jeopardize reclamation; and

(v) Replacing the natural topsoil necessary for vegetative restoration; and

(vi) Reestablishing native vegetative communities.

(b) Reclamation under paragraph (a)(2), of this section is unacceptable unless it provides for the safe movement of native wildlife, the reestablishment of native vegetative communities, the normal flow of surface and reasonable flow of subsurface waters, the return of the area to a condition which does not jeopardize visitor safety or public use of the unit, and return of the area to a condition equivalent to its pristine beauty.

(c) Reclamation required by this section shall apply to operations authorized under this Part, except that all terms relating to reclamation of previously issued special use permits revoked by this part for operations to be continued under an approved plan of operations shall be incorporated into the operator's reclamation plans.

§ 9.12 Supplementation or revision of plan of operations.

(a) An approved plan of operations may require reasonable revision or supplementation to adjust the plan to changed conditions or to correct oversights.

(1) The Regional Director may initiate an alteration by notifying the operator in writing of the proposed alteration and the justification therefor. The operator shall have thirty (30) days to comment on the proposal.

(2) The operator may initiate an alteration by submitting to the Superintendent a written statement of the proposal, and the justification therefor.

(b) Any proposal initiated under paragraph (a) of this section by either party shall be reviewed and decided by the Regional Director in accordance with § 9.10. Where the operator believes he has been aggrieved by a decision under this paragraph, he may appeal the decision pursuant to § 9.14.

§ 9.13 Performance bond.

(a) Upon approval of a plan of operations the operator shall be required to file a suitable performance bond with satisfactory surety, payable to the Secretary or his designee. The bond shall be conditioned upon faithful compliance with applicable regulations, the terms and conditions of the permit, lease, or contract, and the plan of operations as approved, revised or supplemented.

(b) In lieu of a performance bond, an operator may elect to deposit with the Secretary, or his designee, cash or negotiable bonds of the U.S. Government. The cash deposit or the market value of such securities shall be at least equal to the required sum of the bond.

(c) The bond or security deposit shall be in an amount equal to the estimated cost of completion of reclamation requirements either in their entirety or in a phased schedule for their completion as set forth in the approved, supplemented or revised plan of operations.

(d) In the event that an approved plan of operations is revised or supplemented in accordance with § 9.12, the Superintendent may adjust the amount of the bond or security deposit to conform to the plan of operations as modified.

(e) The operator's and his surety's responsibility and liability under the bond or security deposit shall continue until such time as the Superintendent determines that successful reclamation of the area of operations has occurred.

(f) When all required reclamation requirements of an approved plan of operations are completed, the Superintendent shall notify the operator that performance under the bond or security deposit has been completed and that it is released.

§ 9.14 Appeals.

(a) Any operator aggrieved by a decision of the Regional Director in connection with the regulations in this Part may file with the Regional Director a written statement setting forth in detail the respects in which the decision is contrary to, or in conflict with, the facts, the law, these regulations, or is otherwise in error. No such appeal will be considered unless it is filed with the Regional Director within thirty (30) days after the date of notification to the operator of the action or decision complained of. Upon receipt of such written statement from the aggrieved operator, the Regional Director shall promptly review the action or decision and either reverse his original decision or prepare his own statement, explaining that decision and the reasons therefor, and forward the statement and record on appeal to the Director, National Park Service, for review and decision. Copies of the Regional Director's statement shall be furnished to the aggrieved operator, who shall have 20 days within which to file exceptions to the Regional Director's decision. The Department has the discretion to initiate a hearing before the Office of Hearing and Appeals in a particular case. (See 43 CFR 4.700.)

(b) The official files of the National Park Service on the proposed plan of operations and any testimony and documents submitted by the parties on which the decision of the Regional Director was based shall constitute the record on appeal. The Regional Director shall maintain the record under separate cover and shall certify that it is the record on which his decision was based at the time it is forwarded to the Director of the National Park Service. The National Park Service shall make the record available to the operator upon request.

(c) If the Director considers the record inadequate to support the decision on appeal, he may provide for the production of such additional evidence or information as may be appropriate, or may remand the case to the Regional Director, with appropriate instructions for further action.

(d) On or before the expiration of forty-five (45) days after his receipt of the exceptions to the Regional Director's decision, the Director shall make his decision in writing; Provided, however, that if more than forty-five (45) days are required for a decision after the exceptions are received, the Director shall notify the parties to the appeal and specify the reason(s) for delay. The decision of the Director shall include (1) a statement of facts, (2) conclusions, and (3) reasons upon which the conclusions are based. The decision of the Director shall be the final administrative action of the agency on a proposed plan of operations.

(e) A decision of the Regional Director from which an appeal is taken shall not be automatically stayed by the filing of a statement of appeal. A request for a stay may accompany the statement of appeal or may be directed to the Director. The Director shall promptly rule on requests for stays. A decision of the Director on request for a stay shall constitute a final administrative decision.

§ 9.15 Use of roads by commercial vehicles.

(a) After January 26, 1977, no commercial vehicle shall use roads administered by the National Park Service without first being registered with the Superintendent.

(1) A fee shall be charged for such registration based upon a posted fee schedule, computed on a ton-mile basis. The fee schedule posted shall be subject to change upon 60 days notice.

(2) An adjustment of the fee may be made at the discretion of the Superintendent where a cooperative maintenance agreement is entered into with the operator.

(b) No commercial vehicle which exceeds roadway load limits specified by the Superintendent shall be used on roads administered by the National Park Service unless authorized by written permit from the Superintendent.

(c) Should a commercial vehicle used in operations cause damage to roads or other facilities of the National Park Service, the operator shall be liable for all damages so caused.

§ 9.16 Penalties.

Undertaking any operation within the boundaries of any unit in violation of this Part shall be deemed a trespass against the United States, and the penalty provisions of 36 CFR Part 1 are inapplicable to this Part.

§ 9.17 Public inspection of documents.

(a) Upon receipt of the plan of operations the Superintendent shall publish a notice in the FEDERAL REGISTER advising the availability of the plan for public review.

(b) Any document required to be submitted pursuant to the regulations in this Part shall be made available for public inspection at the Office of Superintendent during normal business hours. The availability of such records for inspection shall be governed by the rules and regulations found at 43 CFR Part 2.

§ 9.18 Surface use and patent restrictions.

(a) The regulations in 43 CFR 3826.2–5 and 3826.2–6, 3826.4–1(g) and 3826.4–1(h), and 3826.5–3 and 3826.5–4 will apply to any claimant who wishes to take his claim to patent in Olympic National Park, Glacier Bay National Monument or Organ Pipe Cactus National Monument.

(b) The additional provisions of 43 CFR, Subpart 3826 and 36 CFR 7.26 and 7.44(a) and (b) will continue to apply to existing permits until 120 days after January 26, 1977, unless extended by the Regional Director. (See § 9.10(g).)

Dated: January 19, 1977.

NATHANIEL P. REED,
Assistant Secretary of the Interior.

[FR Doc.77-2393 Filed 1-25-77;8:45 am]

Title 41—Public Contracts and Property Management

CHAPTER 7—AGENCY FOR INTERNATIONAL DEVELOPMENT, DEPARTMENT OF STATE

[AIDPR Notice 77-4]

PROCUREMENT REGULATIONS

Miscellaneous Amendments

This notice amends various sections of the AID Procurement Regulations (41 CFR Part 7). The substantive changes are:

(1) Section 7-3.200-50 is revised to clarify that negotiated AID contracts are negotiated under the authority of the Foreign Assistance Act of 1961, as amended, and Executive Order 11223 (30 FR 6635). The circumstance permitting negotiations is FPR 1-3.215.

(2) The definition of "immediate family" in § 7-7.5002-3(1) is revised to reflect the current definition in the Uniform State/AID/USIA Regulations.

(3) AID has adopted FPR 1-1.323 as its rules for use of U.S. flag air carriers. Consequently, contract clauses dealing with requirements for use of U.S. flag air carriers for transportation of persons and things have been changed to incorporate the provisions of FPR 1-1.323.

(4) The "Termination for Convenience of the Government" clause has been moved from Section 7-7.5403-2 to Section 7-7.5401-35 thereby making it a required clause for fixed price contracts.

(5) New AIDPR Appendix G, "Contract Closeout Procedures", has been added.

This notice also contains a number of editorial and administrative changes to delete obsolete sections, update cross references, and make clarifications.

PART 7-1 GENERAL

Part 7-1 is amended as follows:

Subpart 7-1.3—General Policies

§§ 7-1.305-2, 7-1.305-3, 7-1.306-1 [Removed]

1. Sections 7-1.305-2, 7-1.305-3, and 7-1.306-1 are deleted.

2. Section 7-1.318 is redesignated as § 7-1.318-1 and revised as follows:

§ 7-1.318-1 Contracting Officer's decision under a disputes clause.

Before a decision is issued, the disputes clause in the contract must be examined, and the decision must be issued by the official designated in the clause, or his legal successor. Decisions shall be issued only after legal review. The text in FPR 1-1.318-1 may be modified as appropriate with the title "Administrator" inserted, unless the right of appeal is to an officer other than the Administrator. The AID contract appeal procedure is set forth in AIDPR 7-60.

§§ 7-1.323, 7-1.323-2 [Removed]

3. Sections 7-323 and 7-323-2 are deleted.

Subpart 7-1.6—Debarred, Suspended, and Ineligible Bidders

4. Sections 7-1.604-1(a)-1, through 7-1.604-1(b)-6 are consolidated and redesignated as § 7-1.604-1 and revised as follows:

§ 7-1.604-1 Procedural requirements relating to the imposition of debarment.

(a) *Initiation of debarment action.* Notice of proposed debarment shall be deemed to have been received by an affected person if the notice was properly mailed to the last known address of such person.

(b) *Hearings.*—(1) Debarment without a hearing. AID may debar a firm, individual, or an affiliate thereof without a hearing if:

(i) No hearing is requested within the period indicated in the notice described in FPR 1-1.604-1(a); or

(ii) There are no disputed questions of fact relevant to the debarment issue; or

(iii) The Administrator determines that the security interests of the supplier in an adversary hearing.

(2) Date of the hearing. Unless the Administrator determines that for good cause shown additional time should be granted, a hearing shall be instituted within 20 days after receipt of a request from an affected person for a hearing in response to the notice described in FPR 1-1.604-1(a).

(3) Hearing examiner. (i) The hearing shall be conducted before an impartial hearing examiner designated by the Administrator.

(ii) The Administrator shall not be limited in the choice of a hearing examiner to persons employed by AID or by any other agency of the U.S. Government.

(4) Report to the Administrator. The hearing examiner shall submit to the Administrator written findings of fact based upon the record established during the hearing and recommendations concerning the proposed debarment based upon these findings.

(5) Findings. (i) Findings of fact adequate to establish a cause for debarment shall be based upon substantial evidence Standards of proof necessary for criminal conviction shall not apply.

(ii) Evidence of criminal intent shall not be necessary to establish a cause for debarment.

(iii) Findings shall not be circumscribed by technical rules of evidence.

(6) Recommendations. The Administrator may approve or disapprove the recommendations of the hearing examiner in whole or in part.

PART 7-3 PROCUREMENT BY NEGOTIATION

Subpart 7-3.2—Circumstances Permitting Negotiation

5. Section 7-3.200-50 is revised as follows:

§ 7-3.200-50 Negotiation authority.

All negotiated AID contracts are negotiated under the authority of Section 633 of the Foreign Assistance Act of 1961, as amended, and Executive Order 11223, May 12, 1965, 30 FR 6635. The files of negotiated AID contracts shall cite, as the circumstance permitting negotiation, FPR 1-3.215 ("Otherwise authorized by law"). No other circumstances as set forth in FPR 1-3.2. need be cited.

§§ 7-3.204, 7-3.205, 7-3.211 [Removed]

6. Sections 7-3.204, 7-3.205, and 7-3.211 are deleted.

Subpart 7–3.3—Determinations, Findings, and Authorities

§ 7–3.305 [Removed]

7. Section 7–3.305 is deleted.

PART 7–4 SPECIAL TYPES AND METHODS OF PROCUREMENT

Subpart 7–4.51—Mission Procurements Under Master Contracts [Removed]

Subpart 7–4.52—Procurement of Technical Assistance from U.S. Carriers [Removed]

Subpart 7–4.54—Procurement by Barter—Commodity Credit Corporation [Removed]

8. Subparts 7–4.51, 7–4.52, and 7–4.54 are deleted in their entirety.

Subpart 7–4.56—General Selection Procedure

§ 7–4.5603 [Removed]

9. Section 7–4.5603 is deleted.

Subpart 7–4.57—Educational Institution and International Research Center Selection Procedure

§ 7–4.5703 [Removed]

10. Section 7–4.5703 is deleted.

Subpart 7–4.58—Collaborative Assistance Selection Procedure

§ 7–4.5803 [Removed]

11. Section 7–4.5803 is deleted.

PART 7–6 FOREIGN PURCHASES

Subpart 7–6.2—Buy American Act—Construction Contracts

12. Subpart 7–6.2 is deleted in its entirety.

Subpart 7–6.52—U.S. Source Restrictions—Commodities

§ 7–6.5203 [Amended]

13. Section 7–6.5203 is amended to substitute "AID Handbook 15, Commodities" for "M.O. 1414.1.1" at the end of the section.

PART 7–7 CONTRACT CLAUSES

Subpart 7–7.50—Clauses for Cost Reimbursement Type Contracts

14. New § 7–7.5001–44 is added as follows:

§ 7–7.5001–44 Clean air and water.

Insert the clause set forth in FPR 1–1.2302–2 under the conditions set forth therein.

§ 7–7.5002–3 [Amended]

15. Section 7–7.5002–3 is amended to change the date in the title of the clause from "(September 1975)" to "December 1976)".

16. Section 7–7.5002–3(i)(1)(ii) is amended to read as follows:

§ 7–7.5002–3 Travel expenses.

* * * * *

(i) *Emergency and irregular travel and transportation.*

(1)

(ii) Death or serious illness or injury of a member of the immediate family of the employee or spouse. "Serious illness or injury" and "immediate family" are defined in accordance with Section 609.5 of the Uniform State/AID/USIA Regulations, as in effect on the date of such travel.

§ 7–7.5002–3 [Amended]

17. Paragraph (l) of § 7–7.5002–3 is deleted.

18. Section 7–7.5002–15 is amended to change the date in the undesignated center head from "(September 1974)" to "(December 1976)" and paragraph (d) is revised to read as follows:

§ 7–7.5002–15 Transportation and Storage Expenses.

* * * * * *

(d) *International ocean transportation.*—(1) All international ocean transportation of persons and things which is to be reimbursed in U.S. dollars under this contract shall be by U.S. flag vessels to the extent they are available.

(i) Transportation of things. Where U.S. flag vessels are not available, or their use would result in a significant delay, the Contractor may obtain a release from this requirement from the Transportation Support Division, Office of Commodity Management, Agency for International Development, Washington, D.C. 20523, or the Mission Director, as appropriate, giving the basis for the request.

(ii) Transportation of persons. Where U.S. flag vessels are not available, or their use would result in a significant delay, the Contractor may obtain a release from this requirement from the Contracting Officer or the Mission Director, as appropriate.

(2) Transportation of foreign-made vehicles. Reimbursement of the costs of transporting a foreign (non-U.S.) made motor vehicle will be made in accordance with the provisions of the Uniform State/AID/USIA Foreign Service Travel Regulations, as from time to time amended.

(3) Reduced rates on U.S. flag carriers. Reduced rates on United States flag carriers are in effect for shipments of household goods and personal effects of AID contract personnel. These reduced rates are available provided the shipper states on the bill of lading that the cargo is "Personal property—not for resale—payment of freight charges is at U.S. Government (AID) expense and any special or diplomatic discounts accorded this type cargo are applicable." The Contractor will not be reimbursed for shipments of household goods or personal effects in amount in excess of the reduced rates available in accordance with the foregoing.

19. New § 7–7.5002–16 is added as follows:

§ 7–7.5002–16 Preference for U.S. flag air carriers.

Insert the clause set forth in FPR 1–1.323–2.

20. New § 7–7.5003–5 is added as follows:

§ 7–7.5003–5 Privacy Act.

Insert the clause set forth in FPR 1–1.327–5(c) under the conditions set forth therein.

Subpart 7–7.52—Basic Ordering Agreement for Participant Training

21. Section 7–7.5201–1(h) is revised to read as follows:

§ 7–7.5201–1 Definitions.

* * * * *

(h) "Director" shall mean the individual who fills the AID position of Director, Office of International Training, or his representative acting within the limits of his authority.

22. New § 7–7.5202–3 is added as follows:

§ 7–7.5202–3 Privacy Act.

Insert the clause set forth in FPR 1–1.327–5(c) under the conditions set forth therein.

Subpart 7–7.53—Contracts for Participant Training

23. Section 7–7.5301–(g) is revised as follows:

§ 7–7.5301–1 Definitions.

* * * * *

(g) "Director" shall mean the individual who fills the AID position of Director, Office of International Training, or his authorized representative acting within the limits of his authority.

24. New § 7–7.5302–3 is added as follows:

§ 7–7.5302–3 Privacy Act.

Insert the clause set forth in FPR 1–1.327–5(c) under the conditions set forth therein.

Subpart 7–7.54—Clauses for Fixed Price Type Contract for Technical Services

25. Section 7–7.5401–35 is added as follows:

§ 7–7.5401–35 Termination for convenience of the Government.

Insert the appropriate clause in accordance with FPR 1–8.700–2(a) (1), (2), or (4).

26. New § 7–7.5401–36 is added as follows:

§ 7–7.5401–36 Clean air and water.

Insert the clause set forth in FPR 1–1.2302–2 under the conditions set forth therein.

27. Section 7–7.5402–8 is revised as follows:

§ 7–7.5402–8 International ocean transportation.

INTERNATIONAL OCEAN TRANSPORTATION (DECEMBER 1976)

All international ocean travel and transportation of persons and things (including commodities and equipment procured specifically for the performance of this contract as well as employee's vehicles, personal effects and household goods, if any) shall be made on United States flag carriers. Where United States flag carriers are not available, or their use would result in significant delays, the Contractor may request a waiver from this requirement. Waivers for shipments of things shall be obtained from the Transportation Support Division, Office of Commodity Management AID, Washington, D.C. 20523; waivers for transportation of persons from the Contracting Officer or Mission Director, as appropriate. If such a waiver is granted it shall be considered a change within the meaning of the "Changes" clause of this contract.

28. New § 7–7.5402–10 is added as follows:

§ 7–7.5402–10 Preference for U.S. flag air carriers.

Insert the clause set forth in FPR 1–1.323–2.

§ 7–7.5403–2 [Removed]

29. Section 7–7.5403–2 is deleted.

30. New § 7–7.5403–6 is added as follows:

§ 7–7.5403–6 Privacy Act.

Insert the clause set forth in FPR 1–1.327–5(c) under the conditions set forth therein.

Subpart 7–7.55—Clauses for Cost Reimbursement Contracts with Educational Institutions

31. New § 7–7.5501–40 is added as follows:

§ 7–7.5501–40 Clean air and water.

Insert the clause set forth in FPR 1–1.2302–2 under the conditions set forth therein.

32. New § 7–7.5502–19 is added as follows:

§ 7–7.5502–19 Preference for U.S. flag air carriers.

Insert the clause set forth in FPR 1–1.323–2.

33. New § 7–7.5503–11 is added as follows:

§ 7–7.5503–11 Privacy Act.

Insert the clause set forth in FPR 1–1.327–5(c) under the conditions set forth therein.

PART 7–8 TERMINATION OF CONTRACTS

Subpart 7–8.1—Definition of Terms [Removed]

34. Subpart 7–8.1 is deleted in its entirety.

Subpart 7–8.2—General Principles Applicable to the Termination for Convenience and Settlement of Fixed Price Type and Cost Reimbursement Type Contracts

§ 7–8.213 [Removed]

35. Section 7–8.213 is deleted.

PART 7–10 BONDS AND INSURANCE

Subpart 7–10.3—Insurance—General

§ 7–10.351 [Redesignated]

36. Section 7–10.351 is redesignated as § 7–10.502–3.

PART 7–12 LABOR

Subpart 7–12.8—Equal Opportunity in Employment

§ 7–12.802–51 [Removed]

37. Section 7–12.802–51 is deleted.

Subpart 7–12.52—Foreign Nationals [Removed]

Subpart 7–12.53—Workmen's Compensation (Defense Base Act) and War Hazards Compensation for Overseas Employees [Removed]

38. Subparts 7–12.52 and 7–12.53 are deleted in their entirety.

PART 7–15 CONTRACT COST PRINCIPLES AND PROCEDURES

Subpart 7–15.1—Applicability

§ 7–15.102–50 [Removed]

39. Section 7–15.102–50 is deleted.

§ 7–15.151 [Removed]

40. Section 7–15.151 is deleted.

Subpart 7–15.2—Contracts With Commercial Organizations

§ 7–15.200 [Removed]

41. Section 7–15.200 is deleted.

Subpart 7–15.3—Grants and Contracts With Educational Institutions

§ 7–15.301 [Amended]

42. Section 7–15.301 is amended to substitute "contract clause set forth in AID PR 7–7.55" for "form which is set out in AIDPR subpart 7–16" at the end of the section.

PART 7–30 CONTRACT FINANCING

Subpart 7–30.4—Advance Payments

§ 7–30.403 [Removed]

43. Section 7–30.403 is deleted.

§ 7–30.413 [Removed]

44. Section 7–30.413 is deleted.

APPENDIX F—DIRECT AID CONTRACTS WITH U.S. CITIZENS FOR PERSONAL SERVICES ABROAD

45. A new paragraph d. is added to Clause 9 of Attachment B (General Provisions, Contract with a U.S. Citizen for Personal Services Abroad) to Appendix F as follows:

9. *Insurance.*

* * * * *

d. Claims for private personal property losses.

The Contractor shall be reimbursed for private personal property losses in accordance with AID Handbook 23, "Overseas Support", Chapter 10.

46. Paragraph (b)(9) of Clause 10 of Attachment B to Appendix F is revised as follows:

(9) *Limitation on Travel.*

(a) Public Law 93–623 requires that all Federal agencies and Government contractors and subcontractors will use U.S. flag air carriers for international air transportation of personnel (and their personal effects) or property to the extent service by such carriers is available. It further provides that the Comptroller General of the United States shall disallow any expenditures from appropriated funds for international air transportation on other than U.S. flag air carrier in the absence of satisfactory proof of the necessity therefor.

(b) The contractor agrees to utilize U.S. flag air carriers for international air transportation of personnel (and their personal effects) or property to the extent service by such carrier is available, in accordance with the following criteria:

(1) Passenger or freight srevice by a U.S. flag air carrier is considered "available" even though:

(A) Comparable or a different kind of service by a non-U.S. flag air carrier costs less, or

(B) Service by a non-U.S. flag air carrier can be paid for in excess foreign currency, or

(C) Service by a non-U.S. flag air carrier is preferred by the agency or traveler needing air transportation, or

(D) Service by a non-U.S. flag air carrier is more convenient for the agency or traveler needing air transportation.

(ii) Passenger service by a U.S. flag air carrier will be considered to be "unavailable":

(A) When the traveler, while en route, has to wait 6 hours or more to transfer to a U.S. flag air carrier to proceed to the intended destination, or

(B) When any flight by a U.S. flag air carrier is interrupted by a stop anticipated to be 6 hours or more for refueling, reloading, repairs, etc., and no other flight by a U.S. flag air carrier is available during the 6 hour period, or

(C) When by itself or in combination with other U.S. flag or non-U.S. flag air carriers (if U.S. flag air carriers are "unavailable") it takes 12 or more hours longer from the original airport to the destination airport to accomplish the agency's mission than would service by a non-U.S. flag air carrier or carriers.

(D) When the elapsed traveltime on a scheduled flight from origin to destination airports by non-U.S. flag air carrier(s) is 3 hours or less, and service by U.S. flag air carrier(s) would involve twice such scheduled traveltime.

(c) In the event that the Contractor selects a carrier other than a U.S. flag air carrier for international air transportation, he will include a certification on vouchers involving such transportation which is essentially as follows:

CERTIFICATION OF UNAVAILABILITY OF U.S. FLAG AIR CARRIERS

I hereby certify that transportation service for personnel (and their personal effects) or property by U.S. flag air carrier was unavailable for the following reasons:

(state reasons)

(d) The terms used in this clause have the following meanings:

(1) "International air transportation" means transportation of persons (and their personal effects) or property by air between a place in the United States and a place outside thereof or between two places both of which are outside the United States.

(2) "U.S. flag air carrier" means one of a class of air carriers holding a certificate of public convenience and necessity issued by the Civil Aeronautics Board, approved by the President, authorizing operations between the United States and/or its territories and one or more foreign countries.

(3) The term "United States" includes the fifty states, Commonwealth of Puerto Rico, possessions of the United States, and the District of Columbia.

(e) The Contractor shall include the substance of this clause, including this paragraph (e), in each subcontract or purchase hereunder, which may involve international air transportation.

47. New Appendix G is added as follows:

APPENDIX G—CONTRACT CLOSEOUT PROCEDURES

1. *Purpose.* This Appendix G establishes procedures for the orderly and expeditious closeout of completed AID/W and Mission direct contracts.

2. *Closeout Procedures.* (a) For the purpose of this Appendix, the "closeout phase" is defined as the period of time extending from the date the work has been completed by the contractor (including submission of all reports required under the contract) until all remaining administrative actions have been satisfactorily accomplished and the contract file is retired. The closeout procedures

are administered by the Support Services Branch, Office of Contract Management (CM/SD/SUP).

(b) AID organizational elements accomplish their respective responsibilities during the closeout phase as follows:

(1) *Fixed-Price Type Contracts.* Within 4 months after the contractor has completed the work.

(2) *Cost-Reimbursement Type Contracts.* Within 21 months after the contractor has completed the work.

(c) Contract records are not officially retired by the contracting office until the closeout phase is completed.

3. *Responsibility.* (a) *Contracting Office.* The Contracting Officer is responsible for:

(1) Identifying outstanding closeout actions.

(2) Contacting other offices within AID having responsibilities during the closeout phase for status information.

(3) Assuring that all closeout actions have been accomplished, as evidenced by the information provided by responsible offices on the checklist form.

(4) Initiation of follow-up measures, as necessary, on administrative actions which have not been completed within a reasonable time.

(5) Submitting any contract file to the Office of the General Counsel for review when he feels that (i) litigation may be involved, or (ii) there is a legal problem which GC should comment on before the contract is closed out.

(b) *Other AID Offices.* Other AID offices (e.g., the Technical Office, Auditor General, AID/W or Mission Security, AID/W Paying Office or Mission Controller, and the Mission) are responsible for:

(1) Accomplishing administrative actions on a work-completed contract as expeditiously as possible.

(2) Providing completed checklist forms or other status information as requested by the Contracting Officer in accordance with the procedures in this appendix.

(4) *Procedures.* (a) As soon as feasible, but not more than 90 days after completion of the work under a contract (including receipt of all reports required thereunder), the Contracting Officer, or his designated representa- tracting Officer, or his designated representa- the outstanding closeout actions which must be accomplished prior to retiring the contract.

(b) The Contracting Officer or his designated representative (CM/SD/SUP for AID/W) prepares form AID 1420-15, Contract Closeout Checklist (see Attachment), for transmittal to each of the indicated AID action offices as follows:

Part I—AID/W Technical Office. Two copies.

Part II—AID Security or Mission Security Office. Two copies.

Part III—AID/W AG Audit. Two copies.

Part IV—AID/W Paying Office or Mission Controller. Two copies.

Part V—Mission. Two copies.

(c) The above checklists are sent concurrently to the action offices indicated. Each action office returns one copy of the completed part of the checklist to the Contracting Officer by the date indicated on the form. Additional remarks or comments by the action office may be attached to their reply. In closing out a mission contract, it may be necessary to obtain certain information from AID/W offices before completing the checklist. If an office indicates on the checklist that one or more items are still pending, they forward the second and final signed copy of the checklist when all of their outstanding actions have been completed.

(d) The Contracting Officer, or his designated representative, follows up periodically on outstanding administrative actions that have not been accomplished within a reasonable period of time.

(e) The Contracting Officer shall certify to the Security Office when the contractor has given notification that all classified information in the contractor's possession has been properly disposed of or retained (see Part VI, item 8 of Attachment).

(f) When the Contracting Officer has received the completed, certified checklists from the other action offices, he completes Part VI, the Contracting Officer checklist (form AID 1420-15F), assembles all checklist parts in order, signs the certification in paragraph B of Part VI, and places the document in the contract file. The signed checklist and supporting data then constitute the necessary authority to officially retire the contract file.

CONTRACT CLOSE-OUT

PART I – TECHNICAL OFFICE CHECKLIST

INSTRUCTIONS: PURSUANT TO AIDPR APPENDIX G, PLEASE COMPLETE THE INFORMATION BELOW AND RETURN ONE SIGNED COPY TO THE CONTRACTING OFFICER BY THE DUE DATE INDICATED IN ITEM 2. IF YOU REPORT ANY ACTIONS WHICH ARE STILL PENDING, PLEASE SUBMIT ANOTHER COMPLETED COPY OF THE CHECKLIST TO THE CONTRACTING OFFICER IMMEDIATELY AFTER ALL OF THE ACTIONS FOR WHICH YOUR OFFICE IS RESPONSIBLE HAVE BEEN SATISFACTORILY COMPLETED.

1. DATE

2. REPLY DUE DATE

3. TO

4. FROM (Contracting Officer)

5. CONTRACT NUMBER | 6. CONTRACTOR | 7. CONTRACTING OFFICE

A. RESPONSIBILITIES

Indicate Answer by Placing "X" in Proper Column	YES	NO	N/A
1. Have all contract work and services, including reports, been accomplished and accepted by the Government? If No, expected completion date _____.			
2. Has the contractor accounted for all U.S. Government titled property and equipment (under your office's surveillance) for which the contractor has custodial responsibility under the contract?			
3. Has proper disposition been made of such property and equipment? If No, expected date of disposition _____.			
4. Is the contractor free of liability for the loss, destruction or damage to any such U.S. Government titled property or equipment?			
If No, have the Contractor and the Contracting Officer been notified of the extent of such liability?			
5. Has Form AID 1420-43, Contractor Performance Evaluation Report (Final) been submitted? If No, expected date of submission _____.			
6. Have all other known contract requirements been met? If No, state nature of requirements and expected date of completion below.			

7. REMARKS

B. CERTIFICATION

All actions for which the Technical Office is responsible have been completed. ☐ YES ☐ NO

SIGNATURE | OFFICE SYMBOL | DATE

AID 1420-15A (4-76)

CONTRACT CLOSEOUT

PART III - AUDIT CHECKLIST

INSTRUCTIONS: PURSUANT TO AIDPR APPENDIX G, PLEASE COMPLETE THE INFORMATION BELOW AND RETURN ONE SIGNED COPY TO THE CONTRACTING OFFICER BY THE DUE DATE INDICATED IN ITEM 2. IF YOU REPORT ANY ACTIONS WHICH ARE STILL PENDING, PLEASE SUBMIT ANOTHER COMPLETED COPY OF THE CHECKLIST TO THE CONTRACTING OFFICER IMMEDIATELY AFTER ALL OF THE ACTIONS FOR WHICH YOUR OFFICE IS RESPONSIBLE HAVE BEEN SATISFACTORILY COMPLETED.

1. DATE

2. REPLY DUE DATE

3. TO

4. FROM (Contracting Officer)

5. CONTRACT NUMBER | 6. CONTRACTOR | 7. CONTRACTING OFFICE

A. RESPONSIBILITIES

Indicate Answer by Placing "X" in Proper Column	YES	NO	N/A
1. Has final audit been accomplished by the Cognizant Auditor? If No, expected date of final audit _____.			
2. Remarks			

B. CERTIFICATION

All actions for which the Office of Audit is responsible have been completed. ☐ YES ☐ NO

SIGNATURE | OFFICE SYMBOL | DATE

AID 1420-15C (4-76)

CONTRACT CLOSE-OUT

PART II – AID/W OR MISSION SECURITY OFFICE CHECKLIST

INSTRUCTIONS: PURSUANT TO AIDPR APPENDIX G, PLEASE COMPLETE THE INFORMATION BELOW AND RETURN ONE SIGNED COPY TO THE CONTRACTING OFFICER BY THE DUE DATE INDICATED IN ITEM 2. IF YOU REPORT ANY ACTIONS WHICH ARE STILL PENDING, PLEASE SUBMIT ANOTHER COMPLETED COPY OF THE CHECKLIST TO THE CONTRACTING OFFICER IMMEDIATELY AFTER ALL OF THE ACTIONS FOR WHICH YOUR OFFICE IS RESPONSIBLE HAVE BEEN SATISFACTORILY COMPLETED.

1. DATE

2. REPLY DUE DATE

3. TO

4. FROM (Contracting Officer)

5. CONTRACT NUMBER | 6. CONTRACTOR | 7. CONTRACTING OFFICE

A. RESPONSIBILITIES

Indicate Answer by Placing "X" in Proper Column	YES	NO	N/A
1. Has the Cognizant Officer certified that he has been notified by the Contractor that all classified and Limited Official Use information in the Contractor's possession has been disposed of or retained (if retained or continuing contracts are involved) in accordance with existing AID Security Regulations?			
2. Remarks			

B. CERTIFICATION

All actions for which the Security Office is responsible have been completed. ☐ YES ☐ NO

SIGNATURE | OFFICE SYMBOL | DATE

AID 1420-15B (4-76)

CONTRACT CLOSE-OUT

PART V – MISSION CHECKLIST

INSTRUCTIONS: PURSUANT TO AIDPR 7-4.9050-9, PLEASE COMPLETE THE INFORMATION ENCLOSED AND RETURN WITH YOUR DOCUMENTS TO THE CONTRACTING OFFICER. THE DOCUMENTS WILL NOT BE ACCEPTED IF YOUR REPORT SHOWS ACTIONS WHICH ARE STILL PENDING. PLEASE RETAIN THIS CHECKLIST AND A COPY OF THE CHECKLIST TO THE CONTRACTING OFFICER. IF YOU HAVE ANY QUESTIONS REGARDING THESE INSTRUCTIONS YOU MAY CONTACT THE CONTRACTING OFFICER. YOUR OFFICE IS RESPONSIBLE UNTIL SUCH TIME AS THE CONTRACT IS SATISFACTORILY COMPLETED.

1. DATE

2. TO: 4. FROM (Commissing Office)

3. CONTRACT NUMBER | 5. CONTRACTOR | 6. CONTRACTING OFFICE

2. REPLY DUE DATE

A. RESPONSIBILITIES

Indicate Answer by Placing "X" in Proper Column

	YES	NO	N/A
1. Has the contractor accounted for all U.S. or Cooperating Government titled property and equipment (located in the Cooperating Country) for which the contractor has custodial responsibility under the contract?			
2. Has proper disposition been made of such property and equipment? If No, expected disposition date _____.			
3. Is the Contractor free of liability for the loss, destruction or damage to any U.S. or Cooperating Government titled property or equipment? If No, has the Contractor and the Contracting Officer been notified of the extent of such liability?			
4. Have all contract work and services (performed in the Cooperating Country), including reports, been accomplished?			
5. Has an overseas audit of the Contractor's activities been accomplished by the USAID/Controller? If to be made, expected completion date _____.			
6. Has Form AID 1420-45, Contractor Performance Evaluation Report, been submitted? If No, expected submission date _____.			
7. Have all other known contract requirements been met, e.g., security, local guaranty, etc.? If No, state nature of the requirements and expected completion date below.			
8. Remarks:			

B. CERTIFICATION

All actions for which the Mission is responsible have been completed. ☐ YES ☐ NO

SIGNATURE | OFFICE SYMBOL | DATE

AID 1420-19 (6-76)

CONTRACT CLOSE-OUT

PART IV – AID/W PAYING OFFICE OR MISSION CONTROLLER CHECKLIST

INSTRUCTIONS: PURSUANT TO AIDPR 7-4.9050-9, PLEASE COMPLETE THE INFORMATION ENCLOSED AND RETURN WITH YOUR DOCUMENTS TO THE CONTRACTING OFFICER. THE DOCUMENTS WILL NOT BE ACCEPTED IF YOUR REPORT SHOWS ACTIONS WHICH ARE STILL PENDING. PLEASE RETAIN THIS CHECKLIST AND A COPY OF THE CHECKLIST TO THE CONTRACTING OFFICER. IF YOU HAVE ANY QUESTIONS REGARDING THESE INSTRUCTIONS YOU MAY CONTACT THE CONTRACTING OFFICER. YOUR OFFICE IS RESPONSIBLE UNTIL SUCH TIME AS THE CONTRACT IS SATISFACTORILY COMPLETED.

1. DATE

2. TO: 4. FROM (Commissing Office)

3. CONTRACT NUMBER | 5. CONTRACTOR | 7. CONTRACTING OFFICE

2. REPLY DUE DATE

A. RESPONSIBILITIES

Indicate Answer by Placing "X" in Proper Column

	YES	NO	N/A
1. Has the contractor accounted for all U.S. or Cooperating Government titled property and equipment (located in the Cooperating Country) for which the contractor has custodial responsibility under the contract?			
2. Has proper disposition been made of such property and equipment? If No, expected disposition date _____.			
3. Is the Contractor free of liability for the loss, destruction or damage to any U.S. or Cooperating Government titled property or equipment? If No, has the Contractor and the Contracting Officer been notified of the extent of such liability?			
4. Have all contract work and services (performed in the Cooperating Country), including reports, been accomplished?			
5. Has an overseas audit of the Contractor's activities been accomplished by the USAID/Controller? If to be made, expected completion date _____.			
6. Has Form AID 1420-45, Contractor Performance Evaluation Report, been submitted? If No, expected submission date _____.			
7. Have all other known contract requirements been met, e.g., security, local guaranty, etc.? If No, state nature of the requirements and expected completion date below.			
8. Has the Contractor submitted a final voucher (Form SF 1034) with the required supporting documents?			
9. Has the Contractor's final voucher been paid? If No, expected payment date _____.			
10. Have all GAO inquiries or formal exceptions to vouchers been cleared? If No, expected clearance date _____.			
11. Remarks:			

B. CERTIFICATION

All actions for which the AID/W Paying Office or Mission Controller is responsible have been completed. ☐ YES ☐ NO

SIGNATURE | OFFICE SYMBOL | DATE

AID 1420-19B (6-76)

CONTRACT CLOSE-OUT

PART VI - CONTRACTING OFFICE CHECKLIST

1. DATE

2. CONTRACT NUMBER | 3. CONTRACTOR | 4. CONTRACTING OFFICE

A. RESPONSIBILITIES

Indicate Answer by Placing "X" in Proper Column

	YES	NO	N/A
1. Has the Contractor complied with all special contract terms and conditions? If No, state nature of special terms and conditions and expected date of compliance.			
2. Have all contractual changes initiated during performance of the contract been reduced to and embodied in formal contractual instruments? If No, expected date of contractual instrument issuance _____.			
3. Have any claims or suits against the Government arising out of the contract been settled? If No, state nature of claim or suit and expected settlement date.			X
4. Has action been taken to deobligate any balance of unexpended and excess funds? If No, funds will be deobligated on _____.			
5. Have all reductions in costs, price or fee, to which the Government is entitled, been effected by amendment to the Contract? If No, expected amendment date _____.			
6. Have the following certifications been sent to the AID Paying Office or Mission Controller by the Contracting Officer? (a) All work or services have been satisfactorily completed. If No, certification will be sent on _____			
(b) Contractor has rendered a satisfactory account of property for which he has custodial responsibility.			
(c) Contractor's assignment to the Government of refunds, rebates, credits and other amounts allocable to reimbursable costs under this contract.			
(d) Contractor's release discharging the Government from all liabilities, obligations, and claims arising out of the contract.			
7. Have all disputes been resolved? If No, state nature of dispute and present status.			
8. Has the Contractor notified the Contracting Officer that all classified and Limited Official Use information in his possession has been disposed of or remained (if related or continuing contracts are involved) in accordance with AID Security Regulations?			
9. Does the contract file contain all required documentation sufficient to constitute a full history of the procurement?			
10. Has a determination been made in connection with Contractor liability for the loss, destruction or damage of any property for which the Contractor has custodial responsibility?			

B. FINAL CERTIFICATION

All administrative actions have been completed under the above contract and the contract files may be officially retired.

SIGNATURE (Contracting Officer) | OFFICE SYMBOL | DATE

AID 1420-19F (6-76)

Authority. This AIDPR Notice 77-4 is an interim procurement instruction and is issued pursuant to 41 CFR 7-1.104-4.

Effective date. This notice is effective January 31, 1977.

Dated: January 5, 1977.

JOHN F. OWENS,
Deputy Assistant Administrator for Program and Management Services.

[FR Doc.77-2314 Filed 1-25-77;8:45 am]

Title 42—Public Health

CHAPTER I—PUBLIC HEALTH SERVICE, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

SUBCHAPTER I—MEDICAL CARE QUALITY AND COST CONTAINMENT

PART 100—COST CONTAINMENT AND QUALITY CONTROL

Policy on Lack of Timely Notice

Notice is hereby given of the adoption of a policy under section 1122 of the Social Security Act (42 U.S.C. 1320a–1) pursuant to which the Regional Health Administrators, under the authority of section 1122(d)(1) (previously delegated to them by the Secretary), will limit the period of withholding of reimbursement for a capital expenditure when it has been determined under section 1122(d)(1)(A) that timely notice of a proposed capital expenditure subject to review under section 1122 has not been provided as required.

This policy has been developed in response to reports of an increasing number of cases in which capital expenditures subject to review under section 1122 have not been submitted for review to the designated planning agency in the timely manner required by the statute and regulations. The circumstances surrounding the history of these cases are varied, and, while some cases apparently merit the withholding of all reimbursement, others do not.

The law and regulations provide two procedures for limiting the requirement to withhold all reimbursement related to the capital expenditure in cases where timely notice was not provided. One is to use the mechanism provided by section 1122(d)(2) whereby the Regional Health Administrators (to whom that authority is presently delegated) could decide not to withhold reimbursement on the grounds cited in the law and regulations, after submitting the matter to the appropriate national advisory council. This mechanism, however, offers serious disadvantages (among them, complexity, lack of flexibility, and lack of timeliness), and therefore has been rejected as the general procedures to be used in these cases. This mechanism remains available, however, for those cases where the designated planning agency has found a proposed capital expenditure not to conform to applicable plans, criteria, or standards, but where the Regional Health Administrator may wish not to withhold reimbursement on the ground that to do so would discourage the operations or expansion of the health care facility or health maintenance organization or of any facility of such organization which has demonstrated to his satisfaction proof of capability to provide comprehensive health care services (including institutional services) efficiently, effectively, and economically, or would otherwise be inconsistent with the effective organization and delivery of health services or the effective administration of title V, XVIII or XIX of the Social Security Act.

The second alternative is that provided by the language of section 1122(d)(1):

• • • if the Secretary determines that—

(A) neither the planning agency designated in the agreement described in subsection (b) nor an agency described in clause (ii) of subparagraph (B) of this paragraph had been given notice of any proposed capital expenditure (in accordance with such procedure or in such detail as may be required by such agency) at least 60 days prior to obligation for such expenditure; • • • then *for such period as he finds necessary in any case to effectuate the purpose of this section,* he shall, in determining the Federal payments to be made under titles V, XVIII, and XIX with respect to services furnished in the health care facility for which such capital expenditure is made, not include any amount which is attributable to depreciation, interest on borrowed funds, a return on equity capital (in the case of proprietary facilities), or other expenses related to such capital expenditure (italics added).

This language requires the Regional Health Administrator to determine the appropriate period of withholding in each case. In order to promote national uniformity in the application of this policy, and thus assure equitable treatment for

the health care facilities and health maintenance organizations involved, the following policy has been developed to describe the different kinds of cases which might occur and the period of withholding which will apply for each case:

NOTE.—Where the Secretary makes the determination described in 42 CFR 100.108(a)(1), he will follow the following policy in establishing the time period during which reimbursement will be withheld:

(1) Where the health care facility or health maintenance organization by or on behalf of which the expenditure was made demonstrates to the satisfaction of the Secretary that a reasonable effort had been made to determine from the designated planning agency whether the expenditure was subject to review, and the designated planning agency had not informed the facility or organization within a reasonable period of time that the proposed expenditure was subject to review, the Secretary will not withhold reimbursement related to the capital expenditure.

(2) Where the designated planning agency has, in accordance with the requirements of section 1122 of the Act and its regulations (42 CFR Part 100), submitted to the Secretary its finding that such expenditure is not consistent with the standards, criteria, or plans described in § 100.104(a)(2) of the regulations, and where subparagraph (1) above is not applicable the Secretary will withhold all reimbursement related to the capital expenditure: *Provided*, That where the designated planning agency, in accordance with § 100.109(c), submits to the Secretary a revised funding in accordance with paragraph (c)(2) of that section, the Secretary will apply the provisions of subparagraph (3) or subparagraph (4) below, whichever is applicable.

(3) Where (i) the designated planning agency submits to the Secretary its finding that for the proponent to comply with the requirement of § 100.106 for timely notice of intent to incur the obligation for a capital expenditure, which capital expenditure was not for the purpose of providing a new service or expanding the capacity of the health care facility or health maintenance organization to offer an existing service, would have placed in jeopardy the health or the safety of the patients of the facility or organization, and that the proponent gave such notice as, in the opinion of the designated planning agency, was reasonable under the circumstances, and (ii) if the facility or organization submitted to the designated planning agency within 60 days following the date of the obligation for the expenditure or 90 days following the date of publication of this policy in the FEDERAL REGISTER, whichever is later, a complete application and (iii) the designated planning agency submits to the Secretary its finding that the capital expenditure is consistent, with the standards, criteria, and plans described in § 100.104(a)(2) which apply at the time of the review by the designated planning agency, the Secretary will not withhold reimbursement related to the capital expenditure.

(4) Where the designated planning agency submits to the Secretary its finding that the capital expenditure is consistent with the standards, criteria, and plans described in § 100.104(a)(2) which apply at the time of the review by the designated planning agency, but the provisions of neither subparagraph (1) nor subparagraph (3) above apply, the Secretary will withhold reimbursement related to the capital expenditure for a period of one year.

Dated: January 14, 1977.

KENNETH M. ENDICOTT,
Administrator, Health Resources Administration.

[FR Doc.77-2401 Filed 1-25-77;8:45 am]

Title 45—Public Welfare

CHAPTER XVI—LEGAL SERVICES CORPORATION

PART 1619—DISCLOSURE OF INFORMATION

The Legal Services Corporation was established pursuant to the Legal Services Corporation Act of 1974, Pub. L. 93-355, 88 Stat. 378, 42 U.S.C. 2996-2996l ("the Act"). Section 1006(b)(1), 42 U.S.C. 2996e(b)(1), provides that the Corporation shall have the authority to enforce compliance with the Act and Corporation rules, regulations and guidelines promulgated pursuant thereto.

On September 23, 1976 (41 FR 41724) a proposed regulation on disclosure of recipient policies was published. Interested persons were given until October 26, 1976 to submit comments on the proposed regulation. All comments received were given full consideration. The following issues were among those considered before adoption of the final regulation.

COMMENT

The final regulation is a substantial revision of the draft published for comment on September 23, 1976.

The disclosure requirements of the published draft were very similar to the ones that Part 1602 imposes on the Legal Services Corporation, although the Legal Services Corporation Act applies the Freedom of Information Act to the Corporation, and not to recipients. After considering the comments received, the Corporation concluded that there is a sound basis for the distinction made by the Congress in its treatment of the Corporation and of recipients.

The published draft gave insufficient weight to the fact that a legal services office is a law firm, and that its operations are fundamentally different from those of the Corporation. Opposing attorneys and parties to lawsuits in which the other side is represented by a legal services program attempted to use the proposed regulation as a means of discovery. The regulation sought to protect against such misuse, but its description of the materials exempt from disclosure was necessarily vague and likely to raise many questions of interpretation and application. Some programs that received requests under the regulation reported difficulty in defining the scope of disclosure with respect to information relating to specific cases or clients. Requiring a legal services program to furnish any information related to a client's case might put legal services clients at a disadvantage that is unjustified by the fact that they are being assisted with funds initially provided by the Congress.

Other legal services programs received requests for information from individuals seeking to show that the recipient was violating the Act or Corporation regulations. Insofar as the draft lent itself to this use, it was inconsistent with section 1618, Enforcement Procedures, and section 1604, providing for the establishment of State Advisory Councils. An individual who has reason to believe a legal services program may have violated the Act or Corporation regulations should not undertake a private investigation or fishing expedition, but should make a complaint to the State Advisory Council, the Director of the recipient, or the Corporation. Investigation is then carried out by the Corporation, as required by Part 1618, which informs the complainant of the results.

The public has a legitimate interest in knowing the rules and regulations of the Corporation and the recipient's policies and guidelines and the names and addresses of the members of its governing body. These should be made available for public inspection during business hours at any office maintained by a recipient. Other information concerning a recipient in which the public may have a legitimate interest may be obtained by an FOIA request to the Corporation pursuant to Part 1602.

The final regulation insures that information in which the public has a legitimate interest will be disclosed, and protects recipients against burdensome or inappropriate demands.

Sec.
1619.1 Purpose.
1619.2 Policy.
1619.3 Referral to the Corporation.
1619.4 Exemptions.

AUTHORITY: Sec. 1006(b)(1), (42 U.S.C. 2996e(b)(1)); sec. 1008(e), (42 U.S.C. 2996 g(e).)

§ 1619.1 Purpose.

This part is designed to insure disclosure of information that is a valid subject of public interest in the activities of a recipient.

§ 1619.2 Policy.

A recipient shall adopt a procedure for affording the public appropriate access to the Act, Corporation rules, regulations and guidelines, the recipient's written policies, procedures, and guidelines, the names and addresses of the members of its governing body, and other materials that the recipient determines should be disclosed. The procedure adopted shall be subject to approval by the Corporation.

§ 1619.3 Referral to the Corporation.

If a person requests information, not required to be disclosed by this part, that the Corporation may be required to disclose pursuant to Part 1602 of this chapter implementing the Freedom of Information Act, the recipient shall either provide the information or inform the person seeking it how to request it from the Corporation.

§ 1619.4 Exemptions.

Nothing in this part shall require disclosure of

(a) Any information furnished to a recipient by a client;

(b) The work product of an attorney or paralegal;

(c) Any material used by a recipient in providing representation to clients;

(d) Any matter that is related solely to the internal personnel rules and practices of the recipient; or

(e) Personnel, medical, or similar files.

Effective date: This part shall become effective February 25, 1977.

THOMAS EHRLICH,
President,
Legal Services Corporation.

[FR Doc.77-2578 Filed 1-25-77;8:45 am]

Title 49—Transportation

CHAPTER X—INTERSTATE COMMERCE COMMISSION

SUBCHAPTER A—GENERAL RULES AND REGULATIONS

[Service Order No. 1257]

PART 1033—CAR SERVICE

Priority in Movement of Fuel and Other Essential Commodities

At a session of the Interstate Commerce Commission, Railroad Service Board, held in Washington, D.C., on the 21st day of January, 1977.

It appearing, That because of severe weather in the eastern portion of the United States available fuel supplies are seriously depleted; that excessive accumulations of snow and ice and extreme cold have also disrupted normal movement of freight by railroad; that shortages of fuel have caused numerous industries to discontinue operations, resulting in extensive unemployment; that supplies of food stuffs for farm animals and for humans are also being depleted; that there are needs for emergency supplies of equipment and chemicals used in removing snow from streets and highways; that certain other articles of commerce must continue to move to points of use promptly; that railroads in certain areas are unable to move currently all traffic available; that the establishment of priorities for the movement of certain commodities is essential to the national welfare; that in the opinion of the Commission an emergency exists; that notice and public procedure herein are impracticable and contrary to the public interest; and that good cause exists for making this order effective upon less than thirty days' notice.

It is ordered, That:

§ 1033.1257 Priority in movement of fuel and other essential commodities.

(a) Any railroad which is unable to transport all of the freight traffic which it would normally move by any particular train or engine shall give priority in movement, over all other traffic of all essential commodities consigned for domestic use including but not limited to the following:

Liquid fuels, including liquefied petroleum gas, diesel fuel, fuel oil, gasoline, etc.
Coal.
Animal and Poultry Feed.
Food for human consumption.
Grain, soybeans and other agricultural products for processing into foods for either human or animal consumption.
Snow removal equipment and supplies, including salt and chemicals when consigned to a federal, state, county or municipal body.
Water and sewage processing supplies and equipment essential to the continuity of water and sewage installations.
Electric power, gas and petroleum, petroleum products, distribution and communication systems supplies, materials and equipment required for the continued operation of such systems.
Military freight on bills of lading issued by transportation officers of the military services.
Material moving on bills of lading specifically certified as essential by the Department of Defense, Energy Research and Development Administration or the Federal Energy Administration.
Empty tank cars which last contained liquid fuel or which the car owner certifies will next be used to transport such commodity.
United States mail in accordance with emergency orders of the United States Postal Service.

(b) *Application.* The provisions of this order shall apply to intrastate, interstate, and foreign traffic.

(c) *Effective date.* This order shall become effective at 11:59 p.m., January 21, 1977.

(d) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., January 31, 1977.

(Secs. 1, 12, 15, and 17(2), 24 Stat. 379, 383, 384, as amended; 49 U.S.C. 1, 12, 15, and 17(2). Interprets or applies Secs. 1(10-17), 15(4), and 17(2), 40 Stat. 101, as amended, 54 Stat. 911 (49 U.S.C. 1(10-17), 15(4), and 17(2)).)

It is further ordered, That copies of this order shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association; and that notice of this order shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing it with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members Joel E. Burns, Lewis R. Teeple, and Thomas J. Byrne.

ROBERT L. OSWALD,
Secretary.

[FR Doc.77-2560 Filed 1-25-77;8:45 am]

Title 50—Wildlife and Fisheries

CHAPTER I—U.S. FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR

PART 33—SPORT FISHING

Individual Wildlife Refuge Areas

The following special regulations are issued and are effective on January 1, 1977.

§ 33.5 Special regulations; sport fishing; for individual wildlife refuge areas.

ALABAMA

CHOCTAW NATIONAL WILDLIFE REFUGE

Sport fishing on the Choctaw National Wildlife Refuge, Jackson, Alabama, is permitted only on the areas designated by signs as open to fishing. These open areas, comprising 2,000 acres, are shown on a map available at the refuge headquarters and from the office of the Regional Director, U.S. Fish and Wildlife Service, 17 Executive Park Drive, NE., Atlanta, Georgia 30329. Sport fishing shall be in accordance with all applicable State regulations subject to the following special conditions:

(1) The sport fishing season is open year-round on all refuge waters not closed by signs.

(2) Fishing permitted during daylight hours only.

(3) Boats and motors are permitted.

(4) Trotlines are not permitted in refuge impoundments.

(5) Equipment (boats, trailers, vehicles, etc.) not permitted overnight.

(6) Boat launching is permitted only at the refuge's north end boat ramp.

ARKANSAS

BIG LAKE NATIONAL WILDLIFE REFUGE

Sport fishing on the Big Lake National Wildlife Refuge, Manila, Arkansas, is permitted on all water areas. These areas, comprising 4,000 acres, are delineated on a map available at the refuge headquarters and from the office of the Regional Director, U.S. Fish and Wildlife Service, 17 Executive Park Drive, NE., Atlanta, Georgia 30329. Sport fishing shall be in accordance with all applicable State regulations subject to the following special conditions:

(1) The sport fishing season on the refuge extends year-round except for closure during duck hunting season.

(2) Limb lines not permitted.

(3) Trotline fishing permitted at night.

HOLLA BEND NATIONAL WILDLIFE REFUGE

Sport fishing is permitted on all waters of Holla Bend National Wildlife Refuge. Sport fishing shall be in accordance with all applicable State and Federal regulations covering fishing, subject to the following special conditions:

(1) Fishing is permitted only during the period March 15 through September 30, daylight hours only.

WAPANOCCA NATIONAL WILDLIFE REFUGE

Sport fishing on the Wapanocca National Wildlife Refuge, Turrell, Arkansas is permitted on Wapanocca Lake and other areas as designated by signs as open to fishing. These open areas are delineated on a map available at the refuge headquarters and from the office of the Regional Director, U.S. Fish and Wildlife Service, 17 Executive Park Drive, NE., Atlanta, Georgia 30329. Sport fishing shall be in accordance with all applicable State regulations subject to the following special conditions:

(1) The sport fishing season on the refuge extends from April 1, 1977 through September 30, 1977.

(2) Fishing permitted during daylight hours only.

(3) Motors larger than 10 horsepower are prohibited.

(4) The use of yo-yo's, jugs, drops, or trotlines is prohibited.

(5) The use of live carp, shad, buffalo, and goldfish for bait is prohibited.

(6) No fishing permitted within 100 yards of any refuge building or structure.

WHITE RIVER NATIONAL WILDLIFE REFUGE

Sport fishing on the White River National Wildlife Refuge, DeWitt, Arkansas, is permitted only on the areas designated by signs as open to fishing. These open areas, comprising 2,592 acres, are delineated on a map available at the refuge headquarters and from the office of the Regional Director, U.S. Fish and Wildlife Service, 17 Executive Park Drive, NE., Atlanta, Georgia 30329. Sport fishing shall be in accordance with all applicable State regulations subject to the following special conditions:

(1) The sport fishing season on the refuge extends from March 16, 1977 through October 31, 1977.

(2) Boats without owner's name plate affixed in a conspicuous place may not be left overnight.

(3) Taking of frogs is prohibited.

LAKE WOODRUFF NATIONAL WILDLIFE REFUGE

FLORIDA

Sport fishing on the Lake Woodruff National Wildlife Refuge, DeLeon Springs, Florida, is permitted only on the areas designated by signs as open to fishing. These open areas, comprising 650 acres, are delineated on a map available at the refuge headquarters and from the office of the Regional Director, U.S. Fish and Wildlife Service, 17 Executive Park Drive, NE., Atlanta, Georgia 30329. Sport fishing shall be in accordance with all applicable State regulations, subject to the following special conditions:

(1) The sport fishing season is open year-round on designated refuge waters west of Norris Dead River, Lake Woodruff, and Spring Garden Creek. In addition, Highland Park Canal and the canal bordering the east side of Norris Dead River are open year-round. Refuge waters east of Norris Dead River Canal, Lake Woodruff, and Spring Garden Creek will be open to fishing only when such use does not result in undue disturbance to wildlife or does not interfere with wildlife management practices being carried out on the area. Such periods of permitted use will be designated by appropriate signing and will generally occur during the period from March 15 to October 15.

(2) Fishing and access on refuge lands and waters is permitted during daylight hours only.

(3) Air thrust boats are prohibited.

LOXAHATCHEE NATIONAL WILDLIFE REFUGE

Sport fishing is permitted in all waters of the Loxahatchee National Wildlife Refuge, Delray Beach, Florida, except those marked by signs as being closed. The open areas, comprising 61,352 acres, are delineated on a map available at the refuge headquarters and from the office of the Regional Director, U.S. Fish and Wildlife Service, 17 Executive Park Drive, NE., Atlanta, Georgia 30329. Sport fishing shall be in accordance with all applicable State and Federal regulations subject to the following special conditions:

(1) All public entry onto the refuge for any purpose is limited to the following points:

(a) S-5A (Twenty-Mile Bend) boat ramp.

(b) Headquarters area.

(c) Loxahatchee Recreation Area.

(2) Sport fishing is permitted yearround.

(3) Fishing is restricted to 1½ hours before sunrise until 1 hour after sunset.

(4) Boats must enter or leave the refuge through the three public ramps:

(a) S-5A (Twenty-Mile Bend) boat ramp.

(b) Headquarters boat ramp.

(c) S-39 (Loxahatchee Recreation Area) boat ramps.

(5) Method of fishing allowed is with attended rod and reel and/or pole and line.

(6) Air thrust boat use is authorized only by special permit issued by the refuge manager. Speed boats and racing craft are prohibited.

MERRITT ISLAND NATIONAL WILDLIFE REFUGE

Sport fishing on the Merritt Island National Wildlife Refuge, Titusville, Florida, is permitted only in open areas as delineated on a map available at the refuge headquarters and from the Regional Director, U.S. Fish and Wildlife Service, 17 Executive Park Drive, NE., Atlanta, Georgia 30329. Salt and fresh water fish may be taken in accordance with all applicable State regulations subject to the following special conditions:

(1) Sport fishing is permitted during daylight hours, year-round, except when posted as closed.

(2) Bank fishing along Banana Creek is prohibited.

(3) Air thrust boats are not allowed on Refuge waters.

(4) Permitted fishing methods:

(a) Attended rod and reel and/or pole and line.

(b) Bow fishing with retrieving line attached.

(c) Cast nets with not more than 7 feet length and not more than 14 feet in diameter and no less than 1 inch mesh.

ST. MARKS NATIONAL WILDLIFE REFUGE

Sport fishing on the St. Marks National Wildlife Refuge, St. Marks, Florida, is permitted only on the areas designated by signs as open to fishing. These open areas, comprising 50,000 acres, are delineated on a map available at the refuge headquarters and from the office of the Regional Director, U.S. Fish and Wildlife Service, 17 Executive Park Drive, NE., Atlanta, Georgia 30329. Sport fishing shall be in accordance with all applicable State regulations subject to the following special conditions:

(1) The sport fishing season on the refuge extends from March 15, 1977, through October 15, 1977.

(2) Fishing permitted one-half hour before sunrise until one-half hour after sunset, 7 days a week.

(3) Boats with gasoline engines to 4 horsepower and electric motors are permitted.

(4) Trotlines shall be taken up prior to closing hour of fishing daily.

ST. VINCENT NATIONAL WILDLIFE REFUGE

Sport fishing on the St. Vincent National Wildlife Refuge, Franklin County, Apalachicola, Florida, is permitted only on the areas designated by signs as open to fishing. These open areas, comprising 360 acres, are delineated on a map available at the refuge headquarters and from the office of the Regional Director, U.S. Fish and Wildlife Service, 17 Executive Park Drive, NE., Atlanta, Georgia 30329. Sport fishing shall be in accordance with all applicable State regulations subject to the following special conditions:

(1) The sport fishing season extends from March 1, 1977 through October 30, 1977.

(2) Fishermen are permitted on the refuge from 1 hour before sunrise to 1 hour after sunset.

(3) No motors of any type may be used.

(4) Boats may be left on the island at designated points during the open season provided they are identified with their owner's name and address. Boats must be removed from the refuge no later than October 30, 1977.

(5) Use of live minnows as bait is prohibited.

GEORGIA

BLACKBEARD ISLAND NATIONAL WILDLIFE REFUGE

Fresh water sport fishing on the Blackbeard Island National Wildlife Refuge, McIntosh County, Townsend, Georgia, is permitted only on two areas. These open areas, comprising 350 acres, are delineated on a map available at the refuge headquarters and from the office of the Regional Director, U.S. Fish and Wildlife Service, 17 Executive Park Drive, NE., Atlanta, Georgia 30329. Sport fishing shall be in accordance with all applicable State regulations subject to the following special conditions:

(1) The sport fishing season on the refuge extends from March 15, 1977 through October 25, 1977.

(2) Fishing is permitted in daylight hours only. Fishermen must be off the refuge by dark.

(3) Boats with electric motors permitted. Gasoline powered motors prohibited.

(4) Use of live minnows as bait prohibited.

(5) Overnight storage of private boats on the refuge is prohibited.

OKEFENOKEE NATIONAL WILDLIFE REFUGE

Sport fishing is permitted on the Okefenokee National Wildlife Refuge, Waycross, Georgia. Certain isolated areas are closed and posted. The open areas are delineated on a map available at the refuge headquarters and from the office of the Regional Director, U.S. Fish and Wildlife Service, 17 Executive Park Drive, NE., Atlanta, Georgia 30329. Sport fishing shall be in accordance with all applicable State regulations subject to the following special conditions:

(1) Fishing permitted during daylight hours only.

(2) Boats with motors not larger than 10 horsepower, canoes, and rowboats permitted.

(3) Use of live minnows as bait prohibited.

(4) Trotlines, limb lines, nets, or other set tackle prohibited.

(5) Persons entering refuge from main access points must register with the respective concessioner.

(6) Persons using the sill access ramp on the pocket are required to sign and register when they enter the swamp and again when they leave.

PIEDMONT NATIONAL WILDLIFE REFUGE

Sport fishing on the Piedmont National Wildlife Refuge, Round Oak, Georgia, is permitted only in the areas designated by signs as open to fishing. These open areas, comprising approximately 30 acres, are delineated on a map available at the refuge headquarters and from the office of the Regional Director, U.S. Fish and Wildlife Service, 17 Executive Park Drive, N.E., Atlanta, Georgia 30329. Sport fishing shall be in accordance with all applicable State regulations subject to the following special conditions:

Open season. March 12, 1977 through September 17, 1977—The Falling Creek Bridge Area on Round Oak-Juliette Road and the Little Falling Creek Area at County Line Bridge; April 30, 1977 through September 17, 1977—Allison Lake.

Hours. Daylight hours only.

Boats permitted in Allison Lake only. Electric motors permitted; all other motors prohibited. Boats may not be left on the refuge overnight. Bank fishing permitted within posted areas only.

LOUISIANA

CATAHOULA NATIONAL WILDLIFE REFUGE

Sport fishing on the Catahoula National Wildlife Refuge, Jena, Louisiana, is permitted on the areas designated by signs as open to fishing. The open areas, comprised of the Cowpen Bayou Impoundment and Duck Lake Marsh, are delineated on a map available at the refuge headquarters and from the office of the Regional Director, U.S. Fish and Wildlife Service, 17 Executive Park Drive, NE., Atlanta, Georgia 30329. Sport fishing shall be in accordance with all applicable State regulations subject to the following special conditions:

(1) The sport fishing season on the refuge extends from April 1, 1977 through October 31, 1977.

(2) Fishing permitted from 30 minutes before sunrise to 30 minutes after sunset.

(3) Gasoline powered outboard motors are not allowed in Cowpen Bayou. Electric trolling motors only may be used. Outboard motors may be used in Duck Lake Marsh.

(4) Boats may not be left in the refuge overnight.

DELTA NATIONAL WILDLIFE REFUGE

Sport fishing and sport shrimping on the Delta National Wildlife Refuge, Venice, Louisiana, are permitted only on the areas designated by signs as open to fishing. These open areas, comprising approximately 48,000 acres, are delineated on a map available at the refuge headquarters and from the office of the Regional Director, U.S. Fish and Wildlife Service, 17 Executive Park Drive, NE., Atlanta, Georgia 30329. Sport fishing and sport shrimping shall be in accordance with all applicable State regulations subject to the following special conditions:

(1) The sport fishing and sport shrimping season on the refuge shall be closed during the waterfowl hunting season.

(2) Fishing and shrimping permitted during daylight hours only.

(3) Sport shrimp trawls are restricted to a maximum of 25 feet.

(4) Air thrust boats are prohibited.

LACASSINE NATIONAL WILDLIFE REFUGE

Sport fishing on the Lacassine National Wildlife Refuge, Lake Arthur, Louisiana, is permitted only on the areas designated by signs as open to fishing. These open areas, comprising 28,000 acres, the delineated on a map available at the refuge headquarters and from the office of the Regional Director, U.S. Fish and Wildlife Service, 17 Executive Park Drive, NE., Atlanta, Georgia 30329. Sport fishing shall be in accordance with all applicable State regulations subject to the following special conditions:

(1) The sport fishing season on the refuge extends from March 1, 1977 through October 15, 1977.

(2) Fishing permitted from one hour before sunrise to one hour after sunset.

(3) Entry to Lacassine Pool restricted to four roller-ways provided.

(4) Boats may not be left inside the refuge overnight.

(5) Boats with outboard motors no larger than 25 horsepower permitted in Lacassine Pool. No size restrictions on boats and motors in the canals and streams. Airboats of any size may not be used on the refuge.

SABINE NATIONAL WILDLIFE REFUGE

Sport fishing on the Sabine National Wildlife Refuge, Hackberry, Louisiana, is permitted only on the areas designated by signs as open to fishing. These open areas, comprising 40,000 acres, are delineated on a map available at the refuge headquarters and from the office of the Regional Director, U.S. Fish and Wildlife Service, 17 Executive Park Drive, NE., Atlanta, Georgia 30329. Sport fishing shall be in accordance with all applicable State regulations subject to the following special conditions:

(1) The sport fishing season on the refuge extends from March 1, 1977 through October 15, 1977.

(2) Fishermen must not enter refuge waters earlier than one hour before sunrise and shall leave refuge waters by one hour after sunset.

(3) Boats may be moored only at designated areas in Pool 1b or Pool 3. Boats left at these mooring sites must bear owner's name and address. All boats must be removed from the refuge prior to the close of the fishing season.

(4) Boats may not be dragged across levees for access to pool areas. Travel over the refuge is restricted to waterways. Fishermen are not to walk canal banks or levees. Boat access into Pool 1b is restricted to bridge sites on Road Canal.

(5) Boats with outboard motors not larger than 25 horsepower permitted in refuge lakes and impoundments. No size restrictions on boats and motors in the canals and bayous.

MISSISSIPPI

NOXUBEE NATIONAL WILDLIFE REFUGE

Sport fishing on the Noxubee National Wildlife Refuge, Brooksville, Mississippi, is permitted on all refuge waters not specifically posted as closed to entry. These open areas, comprising 2,000 acres, are delineated on a map available at the refuge headquarters and from the office of the Regional Director, U.S. Fish and Wildlife Service, 17 Executive Park Drive, NE., Atlanta, Georgia 30329. Sport fishing shall be in accordance with all applicable State regulations subject to the following special conditions:

(1) The sport fishing season on the refuge extends from March 1 through October 31, 1977.

(2) Fishing permitted during daylight hours only.

(3) A daily permit ($1.00) is required by the Mississippi Game and Fish Commission to fish in Bluff and Loakfoma Lakes and tail waters of the spillways.

(4) No limb lines or limb hooks are permitted in Bluff and Loakfoma Lakes.

(5) All trotlines will be removed from the refuge by the close of the refuge fishing season.

(6) Private boats may not be left overnight on the refuge.

(7) Snag lines prohibited.

YAZOO NATIONAL WILDLIFE REFUGE

Sport fishing on the Yazoo National Wildlife Refuge, Hollandale, Mississippi, is suspended during the 1977 season due to inadequate fishing opportunities.

NORTH CAROLINA

MATTAMUSKEET NATIONAL WILDLIFE REFUGE

Sport fishing, bow fishing, and herring dipping on the Mattamuskeet National Wildlife Refuge are permitted only on the areas designated by signs as open. These open areas, comprising 40,000 acres, are delineated on a map available at the refuge headquarters and from the office of the Regional Director, U.S. Fish and Wildlife Service, 17 Executive Park Drive, NE., Atlanta, Georgia 30329. These activities shall be in accordance with all applicable State regulations subject to the following special conditions:

(1) Sport fishing and bow fishing seasons extend from March 1 through November 1, except the following areas are open to bank fishing during the entire year.

(a) State Highway 94 Causeway.

(b) In the immediate vicinity of the Lake Landing water control structure.

(c) In the immediate vicinity of the Outfall Canal water control structure at Mattamuskeet Lodge.

(2) Herring (alewife) dipping will be permitted from March 1 through May 15 from the canal banks and water control structures in the immediate vicinity of the following locations:

(a) Waupoppin Canal control structure—daylight hours only.

(b) Outfall Canal control structure—daylight hours only.

(c) Lake Landing control structure—except closed from sunset Sunday to sunrise Monday; sunset Tuesday to sunrise Wednesday; sunset Thursday to sunrise Friday.

(3) Boats and outboard motors permitted except in areas posted closed to motor boat use. Airboats are prohibited.

PEE DEE NATIONAL WILDLIFE REFUGE

Sport fishing on the Pee Dee National Wildlife Refuge, Wadesboro, North Carolina, is permitted only on the areas designated by signs as open to fishing. These open areas are delineated on a map available at the refuge headquarters and from the office of the Regional Director, U.S. Fish and Wildlife Service, 17 Executive Park Drive, NE., Atlanta, Georgia 30329. Sport fishing shall be in accordance with all applicable State regulations subject to the following special conditions:

(1) *Open season.* April 1 through September 30 except Brown Creek within 100 yards of the Brown Creek Recreation Area on U.S. Highway 52 is open yearround.

(2) Fishing permitted sunrise to sunset only.

(3) Only bank fishing permitted.

SOUTH CAROLINA

CAPE ROMAIN NATIONAL WILDLIFE REFUGE

Sport fishing on the Bulls Island Unit of the Cape Romain National Wildlife Refuge, Awendaw, South Carolina, is permitted only on the areas designated by signs as open to fishing. These open areas, comprising 610 acres, are delineated on a map available at the refuge headquarters and from the office of the Regional Director, U.S. Fish and Wildlife Service, 17 Executive Park Drive, NE., Atlanta, Georgia 30329. Sport fishing shall be in accordance with all applicable State regulations subject to the following special conditions:

(1) The sport fishing season on the refuge extends from March 15, 1977 through September 30, 1977.

(2) Fishing permitted during daylight hours only. No overnight camping allowed.

(3) Boats with electric motors permitted. Other motors prohibited.

(4) Boats must be removed from the refuge at the close of each day.

CAROLINA SANDHILLS NATIONAL WILDLIFE REFUGE

Sport fishing on the Carolina Sandhills National Wildlife Refuge, McBee, South Carolina, is permitted only on the areas designated by signs as open to fishing. These open areas, comprising approximately 150 acres, are delineated on a map available at the refuge headquarters and from the office of the Regional Director, U.S. Fish and Wildlife Service, 17 Executive Park Drive, NE., Atlanta, Georgia 30329. Sport fishing shall be in accordance with all applicable State regulations subject to the following special conditions:

(1) The sport fishing season on the refuge extends year-round on Lake Bee, and the Black Creek Bridge areas on State Road 33, State Road 145, and U.S. Highway 1; from March 14, 1977 through October 8, 1977 on Martin's Lake, and Pools A, B, C, D, G, and H; and from March 14, 1977 through September 10, 1977 on Lake 17 and Pools J and L.

(2) Fishing permitted from official local sunrise until one-half hour after official local sunset.

(3) Unpowered boats and boats with electric motors permitted only in Lake Bee, Lake 17, and Martin's Lake. Other type motors prohibited. All other areas are open only for bank fishing within posted areas.

SANTEE NATIONAL WILDLIFE REFUGE

Sport fishing on Santee National Wildlife Refuge is permitted on all areas except for those designated by signs as being closed. The closed areas are delineated on a map that is available at refuge headquarters and from the office of the Regional Director, U.S. Fish and Wildlife Service, 17 Executive Park Drive, NE., Atlanta, Georgia 30329. Sport fishing shall be in accordance with all applicable State regulations subject to the following conditions:

(1) Waters within all land units (Cuddo, Pine Island, Bluff, and Dingle Pond) are closed to fishing.

(2) Cantey Bay, Blackbottom, and Savannah Branch are closed from November 1 to February 28.

(3) The overnight mooring of boats on the refuge is prohibited.

SAVANNAH NATIONAL WILDLIFE REFUGE

Sport fishing on the Savannah National Wildlife Refuge, Jasper County, Hardeeville, South Carolina, is permitted only on impounded waters, tidal creeks, ditches and canals in an area comprising 13,000 acres and delineated on a map available at the refuge headquarters and from the office of the Regional Director, U.S. Fish and Wildlife Service, 17 Executive Park Drive, N.E., Atlanta, Georgia 30329. Sport fishing shall be in accordance with all applicable State regulations subject to the following special conditions:

(1) The sport fishing season on the refuge extends from March 15, 1977 through October 25, 1977.

(2) Fishing is permitted during daylight hours only.

(3) Outboard motors prohibited in impounded waters.

(4) Tidal creeks may be fished from boat only from February 1 through October 25.

(5) Rod and reel, pole and line, artificial and live baits permitted.

(6) All areas posted with "closed area signs" are closed to all activities including fishing.

TENNESSEE

CROSS CREEKS NATIONAL WILDLIFE REFUGE

Sport fishing on the Cross Creeks National Wildlife Refuge, Dover, Tennessee, is permitted only on areas designated by signs as open to fishing. These open areas, comprising 3,260 acres, are delineated on a map that is available at the refuge headquarters and from the office of the Regional Director, U.S. Fish and Wildlife Service, 17 Executive Park Drive, N.E., Atlanta, Georgia 30329. Sport fishing shall be in accordance with all applicable State regulations subject to the following special conditions:

(1) The open season on refuge waters is April 1 through September 15, 1977 except the season is year-round on Barkley Lake.

(2) Fishing is permitted from 30 minutes before sunrise until 30 minutes after sunset, except fishing permitted 24 hours per day on Barkley Lake.

(3) Outboard motor size is limited to 6 horsepower or less, except motor size is not restricted on Barkley Lake.

(4) Methods of fishing the two reservoirs and impoundments are limited to hand fishing with rod and reel and/or pole and line.

(5) Overnight camping and/or overnight mooring of boats are prohibited on the refuge.

HATCHIE NATIONAL WILDLIFE REFUGE

Sport fishing on the Hatchie National Wildlife Refuge, Brownsville, Tennessee, is permitted on all waters within the refuge boundary unless designated otherwise. These open areas, comprising 100 acres, are delineated on a map available at the refuge headquarters and from the Regional Director, U.S. Fish and Wildlife Service, 17 Executive Park Drive, N.E., Atlanta, Georgia 30329. Sport fishing shall be in accordance with all applicable State regulations subject to the following special conditions:

(1) The sport fishing season on the refuge extends from April 1, 1977 through October 31, 1977.

(2) Fishing permitted during daylight hours only.

(3) Boats powered with electric outboard motors are permitted. Gasoline outboard motors are prohibited.

(4) Methods of fishing are limited to pole and line or rod and reel.

(5) Boats must be removed from refuge no later than November 7.

REELFOOT NATIONAL WILDLIFE REFUGE

Sport fishing on the Reelfoot National Wildlife Refuge, Samburg, Tennessee, is permitted only on the areas designated by signs as open to fishing. These open areas, comprising 9,092 acres, are delineated on a map available at the refuge headquarters and from the office of the Regional Director, U.S. Fish and Wildlife Service, 17 Executive Park Drive, N.E., Atlanta, Georgia 30329. Sport fishing shall be in accordance with all applicable State regulations subject to the following special conditions:

(1) The fishing season on that portion of the refuge located north of Upper Blue Basin extends from February 15, 1977 through October 23, 1977. The fishing season on that portion of the refuge located south of Upper Blue Basin extends from January 21, 1977 until the day preceding opening of the 1977 waterfowl season.

(2) Fishing with bows and arrows is prohibited at all times.

(3) Boats with motors of not more than 10 horsepower may be used.

(4) Public use of the refuge is limited to the hours between sunrise and sunset unless otherwise provided by a refuge permit.

LAKE ISOM NATIONAL WILDLIFE REFUGE

Sport fishing on the Lake Isom National Wildlife Refuge, Tennessee, is permitted only on the areas designated by signs as open to fishing. These open areas, comprising 750 acres, are delineated on a map available at the refuge headquarters and from the office of the Regional Director, U.S. Fish and Wildlife Service, 17 Executive Park Drive, N.E., Atlanta, Georgia 30329. Sport fishing shall be in accordance with all applicable State regulations subject to the following special conditions:

(1) The sport fishing season on the refuge extends from March 16, 1977 through September 30, 1977.

(2) Fishing with bows and arrows is prohibited.

(3) Boats with motors of not more than 6 horsepower may be used.

(4) Public use of the refuge is limited to the hours between sunrise and sunset unless otherwise provided for by a refuge permit.

The provisions of these special regulations supplement the regulations which govern fishing on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 33, and are effective through December 31, 1977.

RAY R. VAUGHN,
Deputy Regional Director,
U.S. Fish and Wildlife Service.

JANUARY 11, 1977.

[FR Doc.77-2493 Filed 1-25-77;8:45 am]

proposed rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

SMALL BUSINESS ADMINISTRATION

[13 CFR Part 121]

SMALL BUSINESS SIZE STANDARDS

Definition of Small Business for Industry No. 2522, and Industry No. 2591, for Purpose of Bidding on Government Procurements

Notice is hereby given that the Small Business Administration proposes to increase the definition of a small business for Industry No. 2522, Metal Office Furniture; and Industry No. 2591, Drapery Hardware and Window Blinds and Shades, from "number of employees" not exceeding 500 persons, to "number of employees" not exceeding 750 persons.

A review of the size structure of the 13 industries in Major Group 25, Furniture and Fixtures, reveals that in the above industries manufacturers that quality as small business under the currently effective 500-employee size standard for such industries account for a significantly smaller percentage of the total sales of that industry than that accounted for by the small businesses in the other 11 industries in the group.

Under such circumstances it is proposed to revise Schedule B of Part 121, Chapter I, Title 13 of the Code of Federal Regulations by inserting immediately after Major Group 22, Textile Mill Products, a new Major Group 25, Furniture and Fixtures, to read as follows:

Census classification code	Industry or class of products	Employment size standard (number of employees)
.	.	.
.	.	.
.	.	.
.	.	.
.	.	.
MAJOR GROUP 25—FURNITURE AND FIXTURES		
2522	Metal office furniture	750
2591	Drapery hardware and window blinds and shades	750

Interested parties may file with the Small Business Administration, on or before February 25, 1977, written statements of facts, opinions, or arguments concerning the proposal. All correspondence shall be addressed to:

William L. Pellington, Director, Size Standards Division, Small Business Administration, 1441 L Street, N.W., Washington, D.C. 20416.

(Catalog of Federal Domestic Assistance Program No. 59.009, Procurement Assistance to Small Business.)

Dated: January 14, 1977.

MITCHELL P. KOBELINSKI,

[FR Doc.77-2523 Filed 1-25-77;8:45 am]

SECURITIES AND EXCHANGE COMMISSION

[17 CFR Part 240]

[Rel. No. 34-13185; File No. S7-671]

QUESTIONABLE OR ILLEGAL CORPORATE PAYMENTS AND PRACTICES

Proposed Promotion of Reliability of Financial Information and Prevention of Concealment

The Securities and Exchange Commission today announced a series of rule-making proposals designed further to promote the reliability and completeness of the financial information which issuers are required to file with the Commission pursuant to the Securities Exchange Act of 1934. These proposals would require each issuer registered pursuant to Section 12 of the Securities Exchange Act, or required to file periodic reports pursuant to section 15(d), to:

(1) Maintain books and records accurately reflecting the transactions and dispositions of assets of the issuer; and

(2) Maintain an adequate system of internal accounting controls designed to provide reasonable assurance that specified objectives are satisfied.

In addition, the Commission, in order to protect the reliability of financial information required to be filed pursuant to the federal securities laws and to protect the integrity of the independent audit of issuer financial statements required under existing Commission rules, is proposing rules which would explicitly

(1) Prohibit the falsification of an issuer's accounting records; and

(2) Prohibit the officers, directors, or stockholders of an issuer from making false, misleading or incomplete statements to an accountant engaged in an examination of the issuer.

Although, as discussed herein, the Commission's authority to promulgate rules of this nature does not rest solely on Section 13 of the Securities Exchange Act, these rules, if adopted, would be codified in a new Regulation 13B, entitled "Accuracy of Books, Records, and Reports."

The Commission believes that these proposals, while not directed solely to the problem of questionable or illegal corporate payments and practices, would serve to create a climate which would significantly discourage repetition of the serious abuses which the Commission has uncovered in this area. The Commission's experience has indicated that improper corporate payments are rarely reflected correctly in the corporate books and records and, indeed, are often symptomatic of a failure in the system of corporate internal accounting controls. In addition, the need to suppress information concerning such payments frequently entails the falsification of records and the deception of auditors.

Because of the unique significance of such payments in the evaluation of the competence and integrity of corporate management, the Commission is also proposing to require disclosure, in connection with any proxy solicitation or information statement pursuant to Regulation 14A under the Securities Exchange Act, of the facts pertaining to the involvement of any officer or director in such corporate payments, and of any corporate policy concerning such matters.[1]

BACKGROUND

Beginning in 1973, as a result of the work of the Office of the Watergate Special Prosecutor, the Commission became aware of a pattern of conduct involving the use of corporate funds for illegal domestic political contributions. Because these activities involved matters of significance to public investors, the nondisclosure of which entail violations of the federal securities laws, on March 8, 1974, the Commission published a statement expressing the views of its Division of Corporation Finance concerning disclosure of these matters in public filings. See Securities Act Release No. 5466 (Mar. 8, 1974).

Subsequent Commission investigations revealed that instances of undisclosed questionable or illegal corporate payments—both domestic and foreign—were indeed widespread and represented a serious breach in both the operation of the Commission's system of corporate disclosure and, correspondingly, in public confidence in the integrity of the system of capital formation. On May 12, 1976, the Commission submitted to the Senate Banking, Housing and Urban Affairs Committee a detailed "Report on Questionable and Illegal Corporate Payments and Practices" ("May 12 Report"). That report describes and analyzes the history of the Commission's activities concerning improper corporate payments and outlines the legislative and other responses which the Commission, based on its experience, recommended to remedy these problems. One of the key conclusions drawn in the May 12 Report was that:

[1] It should be noted that, in large measure, the proposals herein codify existing law rather than create new obligations. One who, for example, falsifies corporate records or deceives corporate auditors would, depending on the facts and circumstances involved, have engaged under present law in a violation of the antifraud provisions of the federal securities laws. Likewise, disclosure of the items proposed to be included expressly in Schedule 14A would, if material, be required under existing law.

The almost universal characteristic of the cases reviewed to date by the Commission has been the apparent frustration of our system of corporate accountability which has been designed to assure that there is a proper accounting of the use of corporate funds and that documents filed with the Commission and circulated to shareholders do not omit or misrepresent material facts. Millions of dollars of funds have been inaccurately recorded in corporate books to facilitate the making of questionable payments. Such falsification of records has been known to corporate employees and often to top management, but often has been concealed from outside auditors and counsel and outside directors.

Accordingly, the primary thrust of our actions has been to restore the efficacy of the system of corporate accountability and to encourage the boards of directors to exercise their authority to deal with the issue. May 12 Report at a.

On the basis of the conclusions in the May 12 Report, the Commission, in addition to pursuing its enforcement and disclosure programs actively, proposed a 2-pronged approach to prevent further such abuses. First, the Commission recommended that Congress enact legislation aimed expressly at enhancing the accuracy of the corporate books and records and the reliability of the audit process which constitute the foundations of the system of corporate disclosure. Specifically, the Commission proposed legislation which would:

(1) Require issuers to make and keep accurate books and records;

(2) require issuers to devise and maintain a system of internal accounting controls meeting the objectives articulated by the American Institute of Certified Public Accountants in Statement on Auditing Standards No. 1, Section 320.28 (1973);

(3) prohibit the falsification of corporate accounting records; and

(4) prohibit the making of false, misleading, or incomplete statements to an accountant in connection with any examination or audit.

The second prong of the Commission's suggested attack on the problem of questionable and illegal corporate payments involved strengthening the independence and vitality of corporate boards of directors by requiring that companies maintain audit committees comprised of independent directors and by encouraging the separation of the functions of independent corporate counsel and director. In the May 12 Report, the Commission proposed that, at least initially, these principles could best be implemented by amendment to the listing requirements of the New York Stock Exchange and the rules of the other self-regulatory organizations, rather than by direct Commission action.[2]

[2] Exhibit D to the May 12 Report is a letter, dated May 11, 1976, from Chairman Hills to Exchange Chairman Batten suggesting that the New York Stock Exchange ("NYSE") consider action of this nature. Subsequently, on September 7, 1976, the NYSE circulated a proposal requiring listed domestic (but not foreign) issuers to establish independent audit committees and, on January 6, 1977, took final action thereon. The Commission, pursuant to Section 19(b) of the Securities Exchange Act, will formally consider the terms and conditions of the Exchange's proposal, after opportunity for public comment.

To date, neither the NYSE nor the other self-regulatory organizations have taken action with respect to the Commission's suggestion that consideration be given to "whether members of law firms which have the responsibility of advising the corporation, including the board, should also serve as members of that board of directors." May 12 Report at 67 and at Exhibit D, p. 2.

Senator Proxmire, Chairman of the Senate Committee on Banking, Housing and Urban Affairs, introduced, as S. 3418, the Commission's legislative proposal, and held hearings on that and other bills related to the problem of illicit corporate foreign payments.[3] Ultimately, the Committee referred a bill to the Senate floor—S. 3664—which embodied all of the Commission's legislative recommendations (as well as certain other proposals).[4] On September 15, 1976, the Senate, by a vote of 88–0 unanimously passed S. 3664. The House of Representatives, however, was unable to complete work on this legislation before adjournment sine die on October 2, 1976.

The Commission continues to believe that Congressional action on the legislation which it proposed in the May 12 Report would be the most desirable means of demonstrating a national commitment to ending the types of corporate misconduct, and defiance of the recordkeeping systems on which disclosure under the securities laws is premised, which the Commission's investigations have uncovered.[5] The Commission also believes that the serious abuses which its May 12 Report and subsequent activities have disclosed require prompt remedial action and has never taken the position that legislation is the sole means by which the substantive goals of its proposals could be effected. Indeed, the Commission believes that the close relationship between the objectives which Congress, in 1934, sought to accomplish by enactment of the Securities Exchange Act and the substance of its legislative proposals places those proposals within the reach of the Commission's general rulemaking authority under section 23 (a) of the Securities Exchange Act. Accordingly, the Commission is today publishing for comment rulemaking proposals which would accomplish the objectives of its earlier legislative recommendation.

MAINTENANCE OF ACCURATE CORPORATE BOOKS AND RECORDS AND AN ATTENDANT SYSTEM OF INTERNAL ACCOUNTING CONTROL

The Commission has found that improper and undisclosed expenditures of corporate assets are frequently accompanied by inaccurate maintenance, or outright falsification, of corporate accounting records and, similarly, failure in the internal controls system designed to insure the accuracy of corporate records and the utilization of assets solely for proper purposes. In this regard, the May 12 Report states:

[M]ost of the instances of reported abuse also involved some falsification of corporate records or the maintenance of records that appear to be inadequate. In many of the reports submitted voluntarily by corporations, the description of the payments and their documentation appears to have been inadequate to permit ready identification or verification of the purpose of the payments. Similarly, the reports the Commission obtained as a result of enforcement actions disclose flagrant instances of abuse of the system of corporate accountability, including the establishment and maintenance of substantial off-book funds that were used for various purposes, some questionable and some clearly illegal.

Many of the defects and evasions of the system of financial accountability represented intentional attempts to conceal certain activities. Not surprisingly, corporate officials are unlikely to engage in questionable or illegal conduct and simultaneously reflect it accurately on corporate books and records. We regard this to be a significant point, and one that is central to [remedial measures]. May 12 Report at 41–42.

a. *Maintenance of accurate records.* In light of these findings, the Commission is proposing for comment new Securities Exchange Act Rule 13b–1 which would require every issuer registered with the Commission pursuant to Sections 12 or 15(d) of the Securities Exchange Act to make and keep books, records, and accounts which accurately and fairly[6] reflect the transactions of the issuer and the dispositions of its as-

[3] Hearings Before the Committee on Banking, Housing and Urban Affairs U.S. Senate, on S. 3133, S. 3379, and S. 3418, 94th Cong. 2d Sess. (May 18, 1976).

[4] See S. Rep. No. 94–1031, 94th Cong. 2d Sess. (1976).

[5] Cf. May 12 Report at 57: [T]he question of illegal or questionable payments is obviously a matter of national and international concern, and legislation in this area is desirable in order to demonstrate clear Congressional policy with respect to a thorny and controversial problem.

[6] In connection with Congressional consideration of S. 3418 and its progeny, some concern was expressed over whether the phrase "accurately and fairly" in the legislation connoted an unattainable measure of exactitude. As the Senate Banking, Housing and Urban Affairs Committee observed:

The term "accurately" in [S. 3664] does not mean exact precision as measured by some abstract principle. Rather, it means that an issuer's records should reflect transactions in conformity with accepted methods of recording economic events. Thus, for example, recording depreciation in a manner permitted by the Internal Revenue Code may not be a precise measurement, but it is nevertheless clearly a permissible one within the intent of [this requirement]. S. Rep. No. 94–1031, supra, at 11.

The Commission agrees with this observation. Moreover, the Commission believes that to require a lesser standard in defining the obligation to keep books and records could lead to the argument that falsifications or omissions below a certain dollar amount may be tolerated.

sets.[7] The Commission believes that such a rule will discourage the types of misconduct which thrive in the absence of adequate recordkeeping.

The Commission's authority to promulgate such a rule under existing law, and the obligation to maintain accurate books and records, stems from the reporting requirements of the federal securities laws.[8] Section 12(b)(1) of the Securities Exchange Act, for example, permits registration of issuers only upon the filing with the Commission of such information as the Commission may require, as necessary or appropriate in the public interest or for the protection of investors, in respect of, among other things:

(A) the organization, financial structure and nature of the business;

• • • • •

(J) balance sheets for not more than the three preceding fiscal years, certified if required by the rules and regulations of the Commission by independent public accountants;

(K) profit and loss statements for not more than the three preceding fiscal years, certified if required by the rules and regulations of the Commission, by independent public accountants; and

(L) any further financial statements which the Commission may deem necessary or appropriate for the protection of investors.

Likewise, section 13(a) authorizes the Commission to compel the filing of annual reports, certified by independent public accountants if the Commission so requires, and other information necessary to up-date section 12 registration statements.[9] The Commission's activities concerning questionable or illegal corporate payments and practices have demonstrated a connection between the failure to disclose such misconduct in reports filed pursuant to section 12, and 13, 15(d) and the failure to maintain reliable and auditable corporate records. Accordingly, rules such as proposed Rule 13b–1 constitute "such rules and regulations as may be necessary or appropriate to implement the provisions of [the Exchange Act]" section 23(a)(1). Absent reliable underlying corporate records, the preparation of financial statements in accordance with generally accepted accounting principles would be extremely difficult.

b. *Maintenance of a system of internal accounting controls.* Proposed Rule 13b–2, which requires management to devise and maintain a system of internal accounting controls, is closely related to proposed Rule 13b–1 in both purpose and statutory foundation. The reliability of corporate records is dependent on the effectiveness of the procedures adopted to insure that corporate transactions are, in fact, reflected in those records and, conversely, to insure that assets are not exposed to unauthorized access and use. Accordingly, proposed Rule 13b–2 would require that issuers filing reports pursuant to sections 12 or 15(d) of the Securities Exchange Act maintain an adequate system of internal accounting controls sufficient to provide reasonable assurance that:

(a) transactions are executed in accordance with management's general or specific authorization;

(b) transactions are recorded as necessary (1) to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements and, (2) to maintain accountability for assets;

(c) access to assets is permitted only in accordance with management's authorization; and

(d) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

These proposed objectives for a system of internal accounting controls have been drawn from the objectives of such a system defined by the American Institute of Certified Public Accountants in Statement on Auditing Standards No. 1, Section 320.28 (1973). The Commission believes that these goals provide a reasonable basis for the implementation of the required system of controls, and that such objectives are already familiar to the business community.

The establishment and maintenance of a system of internal controls is an important management obligation. A fundamental aspect of management's stewardship responsibility is to provide shareholders with reasonable assurance that the business is adequately controlled. Additionally, management has a responsibility to furnish shareholders and potential investors with reliable financial information on a timely basis. An adequate system of internal accounting controls is necessary to management's discharge of these obligations.[10]

Systems of controls will, of course, vary from company to company. The size of the business, diversity of operations, degree of centralization of financial and operating management, amount of contact by top management with day-to-day operations, and numerous other circumstances are factors which management must consider in establishing and maintaining an internal accounting controls system. The design of any such system necessarily involves exercise of management's judgment, and entails the balancing of the cost of implementing any given internal accounting control against the benefit to be derived. By requiring that a system provide reasonable assurance that the specified objectives are met, the Commission's proposed rule recognizes that the issuer must, in good faith, balance the costs and benefits as they relate to the circumstances of that company. The definition of the term "reasonable assurance" in proposed Rule 13b–2 is, like the objectives for a system of internal accounting controls, taken from existing accounting literature. See Statement on Auditing Standards No. 1, supra, section 320.32.

Although the Commission understands that there may be practical limitations to the implementation of internal accounting controls,[11] the Commission believes that, despite the inherent limitations on a system of internal accounting controls, all companies should establish and maintain such systems. A properly functioning system should provide reasonable assurance to investors that the data generated by that system and embodied in interim financial data or annual financial statements fairly reflect the issuer's financial position. Moreover, a properly functioning system of internal accounting controls, including articulated policies relating to improper payments, should significantly discourage questionable or illegal payments and practices.[12]

[7] In proposing this language in the May 12 Report, the Commission did not, of course, intend the phrase "dispositions of its assets" as in any sense a limitation on the scope of the requirement that accurate books and records be maintained. The issuer's responsibility to keep records correctly reflecting the status of its liabilities and equities is no less than its obligation to maintain such records concerning its assets. The word "transactions" in the proposal encompasses accuracy in accounts of every character, and the phrase "disposition of its assets" was added simply to reflect the fact that the abuses outlined in the May 12 Report involved almost exclusively improper accounting for assets. In any event, proposed Rule 13b–1 is intended to require accuracy throughout an issuer's accounting records.

[8] See S. Rep. No. 94–1031, supra, at 11.

[9] In this regard section 13(b) authorizes the Commission to prescribe the form or forms in which the required information shall be set forth, the items or details to be shown in the balance sheet and the earning statement, and the methods to be followed in the preparation of reports, in the appraisal or valuation of assets and liabilities, in the determination of depreciation and depletion, in the differentiation of recurring and nonrecurring income, in the differentiation of investment and operating income, and in the preparation, where the Commission deems it necessary or desirable, of separate and/or consolidated balance sheets or income accounts of any person directly or indirectly controlling or controlled by the issuer, or any person under direct or indirect common control with the issuer • • •.

[10] The term "internal accounting controls" does not ordinarily encompass all corporate policies and procedures. Matters of efficiency, employee relations, and production quality control, for example, should not be confused with the accounting controls established to insure the reliability of financial information.

[11] Statement on Auditing Standards No. 1 sets forth some of these limitations:

There are inherent limitations that should be recognized in considering the potential effectiveness of any system of accounting control. In the performance of most control procedures, there are possibilities for errors arising from such causes as misunderstanding of instructions, mistakes of judgment, personal carelessness, distraction, or fatigue. Furthermore, procedures whose effectiveness depends on segregation of duties obviously can be circumvented by collusion.

Similarly, procedures designed to assure the execution and recording of transactions in accordance with management's authorizations may be ineffective against either errors or irregularities perpetrated by management with respect to transactions or to the estimates and judgments required in the preparation of financial statements. In addition to the limitations discussed above, any projection of a current evaluation of internal accounting control to future periods is subject to the risk that the procedures may become inadequate because of changes in conditions and that the degree of compliance with the procedures may deteriorate. Statement on Auditing Standards No. 1, supra, Section 320.34.

FALSIFICATION OF ACCOUNTING RECORDS AND DECEPTION OF AUDITORS

The Commission is also soliciting comment on a rule—proposed Rule 13b–3—which would prohibit the falsification of corporate accounting records maintained pursuant to proposed Rule 13b–1, and on a rule—proposed Rule 13b–4—which would prohibit issuer officers, directors, or shareholders from deceiving or obstructing accountants in the discharge of their responsibilities in connection with the examination of the financial statements of issuers subject to Rule 13b–1. The Commission believes that express prohibitions of this nature, while already implicit in existing law, are necessary to insure the effectiveness of the proposed corporate recordkeeping requirement and that such prohibitions uniquely respond to problems which the Commission's investigations have disclosed:

The most devastating disclosure that we have uncovered in our recent experience with illegal or questionable payments has been the fact that, and the extent to which, some companies have falsified entries in their own books and records. A fundamental tenet of the recordkeeping system of American companies is the notion of corporate accountability. It seems clear that investors are entitled to rely on the implicit representations that corporations will account for their funds properly and will not "launder" or otherwise channel funds out of or omit to include such funds in the accounting system so that there are no checks possible on how much of the corporation's funds are being expended or whether in fact those funds are expended in the manner management later claims.

Concomitantly, we believe that any legislation in this area should also contain a prohibition against the making of false and misleading statements by corporate officials or agents to those persons conducting audits of the company's books and records and financial operations. May 12 Report at 58.

a. *Prohibition against falsification of accounting records.* Proposed Rule 13b–3 would prohibit any person from falsifying corporate acounting records required to be maintained pursuant to proposed Rule 13b–1. The Commission believes that such a prohibition is a necessary compliment to the requirement that the issuer maintain accurate books and records. In many cases, instances of concealed corporate payments and off-book cash funds have resulted from the activities of particular individuals, acting with or without the knowledge or authorization of top management, to cause such transactions to be improperly reflected on the corporate records. Proposed Rule 13b–3 would permit the Commission to take action to preclude such individuals from further frustrating either the system of corporate recordkeeping or the broader system of accountability by which management monitors the activities of the entire array of individuals entrusted with corporate assets.

The Commission has given consideration to certain facets of the issue, discussed below, and has tentatively concluded that proposed Rule 13b–3 would fall within its authority to promulgate rules "necessary or appropriate to implement the provisions of (the Exchange Act)" section 23(a)(1). At the outset, it must be recognized that, while the Commission proposes to codify the prohibition in question under section 13 of the Act, the Commission does not rely on that provision, in itself, to furnish a complete foundation for the proposed rule. In addition to the periodic reporting requirements, the rule also is predicated upon sections 10(b), 14(a), 20(b) and 20(c) of the Act. The Commission, from experience with the problems treated in its May 12 Report, has concluded that the falsification of accounting records has a strong propensity to lead to a variety of evils against which Congress has authorized it to take rulemaking action including:

(1) The utilization of deceptive devices, such as materially false statements or material omissions, in connection with the purchase or sale of securities by the means of interstate commerce;

(2) The filing of inaccurate and incomplete periodic and annual reports with the Commission;

(3) The solicitation of proxies in contravention of Rule 14a–9, 17 CFR 240.14a–9; and

(4) The hindrance, delay, and obstruction of the making and filing of required documents, reports and information.

Accordingly, the Commission believes that a remedial provision such as proposed Rule 13b–3 would, if adopted, be within the scope of sections 10(b), 13(a), 14(a), and 20(c) of the Act.

The Commission believes it appropriate to outline briefly its present views concerning two issues related to the scope of Rule 13b–3. First, although section 13(a) authorizes the Commission to impose certain *requirements* upon *issuers*, the proposed rule would create a *prohibition* applicable to *any person*. The effects of a falsification in making reports required under Section 13 misleading or incomplete are not, of course, contingent on the identity of the wrongdoer or on whether he acts with the knowledge or acquiescence of management. The falsification of accounting records constitutes an obvious hindrance to the preparation of required reports, the evil which section 20(c) was designed to prohibit, and, therefore, section 20(c) of the Act would permit the Commission to promulgate a rule of this nature applicable to "any director or officer of, or any owenr of any securities issued by, any issuer required to file any document, report or other information." While a prohibition applicable to directors, officers, or securities holders might well serve to encompass many of the problems the Commission has encountered, the Commission thinks it desirable that the rule be broadened to reach any person who engages in the falsification of accounting records. This is especially appropriate in light of section 32(a) of the Securities Exchange Act, which provides criminal penalties for "*any person* who willfully and knowingly makes, or causes to be made, any statement in any application, report, or document required to be filed under this title or any rule or regulation thereunder" (emphasis added).

Likewise, section 10(b) of the Act authorizes the Commission to prohibit deceptive devices—regardless of by whom employed—in connection with the purchase or sale of securities. Because the falsification of accounting records, especially in order to conceal questionable corporate payments, has an unavoidable tendency to lead to the concealment of material information from purchasers and sellers of the issuer's securities, and to the omission of such information from proxy solicitations, the Commission believes that the extension of proposed Rule 13b–3 to any person is warranted.

Second, the Commission recognizes that not every falsification of an accounting record will necessarily have the effect of causing a violation of Rule 10b–5 and section 20(c). The Commission believes, however, as stated above, that the nexus between altered books and these violations is so close as to justify a rule of the type proposed. An attempt to define a class of "harmless" falsifications would appear to be futile and would serve only to provide a loophole for the unscrupulous.

b. *Prohibition against deceptive or misleading statements to auditors.* Proposed Rule 13b–4 would prohibit any officer, director or shareholder of the issuer from making a materially false or misleading statement, or omitting to state any material fact necessary to make statements made not misleading, to an accountant in connection with an audit of the financial statements the issuer or the filing of required reports.[13] The purpose and authority for this proposal are, in large measure, similar to those discussed in connection with pro-

[12] The Commission recognizes that no system of internal controls can, in itself, prevent every kind of misconduct which the Commission has encountered in this area. It does not follow, however, that a requirement that such a system be maintained is idle or superfluous, and the Commission believes that effective systems of internal accounting controls can discourage such misconduct.

[13] The Commission intends that this rule would encompass the audit of issuer financial statements by independent accountants; the preparation of any required reports, whether by independent or internal accountants; the preparation of special reports required to be filed with the Commission, as, for example, pursuant to judicial orders incident to Commission enforcement proceedings; and any other examination conducted by an accountant and culminating in the filing of a document with the Commission.

posed Rule 13b–3. The accountant's examination of the issuer's financial statements is one of the key safeguards to the reliability of the system of financial disclosure; to the extent that individuals hamper or frustrate the accountant's work, the reliability of that system is diluted.

Although the Commission's legislative proposal would prohibit "any person" from engaging in the types of interference with the accountant's work which proposed Rule 13b–4 proscribes, the proposed rule itself extends only to the individuals to which section 20(c) of the Securities Exchange Act applies: "any director or officer of, or any owner of any securities issued by, any issuer." The Commission adheres to its position that a prohibition extending to "any person" would be desirable and has not concluded that it would lack the authority to promulgate a rule of that scope. The Commission has, however, determined that, for the present, a rule identical in coverage to section 20(c) would be adequate to meet the abuses which it has uncovered in this area, and that rulemaking action of greater coverage is inappropriate.[14] It must be stressed, however, that the exclusion from the express language of proposed Rule 13b–4 of low-level corporate employees and persons unaffiliated with the issuer does not indicate that those individuals may mislead the issuer's accountants with impunity. In appropriate circumstances, the existing antifraud provisions of the federal securities laws, and the concept of aiding and abetting, can be invoked against those who deceive the auditors of a publicly held corporation. In this area, as in other areas where duties and liabilities are created under the federal securities laws, case-by-case balancing of the needs of the investing public against the interests of those who have engaged in conduct injurious to investors is essential.[15]

[14] The fact that proposed Rule 13b–4 is narrower in scope than its legislative counterpart does not indicate that the Commission has determined to accept the position of certain commentators who, in response to the Commission's legislative proposal, argued that a prohibition applicable to third parties would discourage such persons from responding to requests for confirmation of account balances or otherwise cooperating with accountants. In this regard, the Senate report on S. 3664 states:

By specifically prohibiting material false or misleading statements or omissions to state material facts to auditors, the bill is designed to encourage careful communications between the auditors and persons from whom the auditors seek information in the audit process. The Committee does not believe that this provision will inhibit such communications and intends that this prohibition is to be directed only at those who fail to exercise due care in furnishing information to auditors engaged in an audit, a standard that we believe represents what is customarily expected in normal commerce. S. Rep. No. 94–1031, 94th Cong. 2d Sess. at 12 (1976).

[15] Cf. Sections 11 and 12 of the Securities Act of 1933, 15 U.S.C. 77k and 77l; see H. Rep. No. 85, 73rd Cong. 1st Sess. at 9 (1933).

It has been suggested that any prohibition such as proposed Rule 13b–4 be limited to proscribing misleading written communications with auditors. The Commission believes, however, that such a limitation would be ill-advised. One engaged in an audit of corporate books and records can be misled by an oral misstatement just as by a written one, and the resulting injury to investors can be serious. Moreover, section 12(2) of the Securities Act, and also the several antifraud provisions of the Securities Exchange Act, have long been applied in Commission and private actions to oral misstatements without unusual or unintended consequences.

Disclosure Concerning Questionable Payments in Proxy Solicitation

The Commission is also proposing amendments to Schedule 14A under the Securities Exchange Act of 1934 to require information in proxy statements concerning the involvement of top management in specified types of questionable or illegal corporate payments or transactions and concerning formal corporate policies as to such matters. Specifically, these amendments would add two new Subitems, 6(d)(1) and 6(d)(2) to Schedule 14A which would deal, respectively, with disclosure of questionable transactions and disclosure of corporate policies regarding such matters. As discussed below, the Commission believes that this type of information is particularly relevant to shareholder proxy and voting decisions.

Proposed Item 6(d)(1) would require disclosure of the material facts pertaining to the involvement of any director of the issuer, any person nominated for election as director, or any executive officer of the issuer in any material political contributions by the issuer or from its assets, whether legal or illegal;[16] the disbursement or receipt of corporate funds outside the normal system of accountability; payments, whether direct or indirect, to or from foreign or domestic governments, officials, employees or agents for purposes other than the satisfaction of lawful obligations, or any transaction which has as its intended effect the transfer of issuer assets in the manner described; the improper or inaccurate recording of payments and receipts on the books of the issuer or its subsidiaries; or any other matters of a similar nature involving disbursements of issuer assets.[17]

Discussion could, however, be omitted of any facts which have previously been both reported in a filing with the Commission and described in an issuer document distributed to shareholders.

The Commission believes that information concerning disclosure of the facts regarding the involvement of directors or top officers in reported instances of questionable payments is highly significant to shareholders in determining whether to give a proxy. A previous Commission public inquiry suggested that many investors use different criteria in determining whether to give a proxy than in making investment decisions.[18] The proxy solicitation process is, of course, the most direct opportunity which shareholders have to endorse or reject the stewardship of those entrusted with the discharge of corporate affairs. Nevertheless, in many of the disclosures concerning questionable or illegal corporate transactions appearing in current and annual reports filed on Forms 10–K and 8–K—which are designed to supply updated and current information concerning the registrant—the role of particular members of management has not been fully set forth. Where individuals who are standing for election to a corporate board or who are a part of top management which is soliciting proxies have been involved in, or personally aware of, questionable or illegal corporate transactions, the Commission believes that shareholders are entitled to more detailed information concerning their role in such matters than might otherwise be necessary.

Concerning the existence and substance of any corporate policies dealing with questionable transactions, the Commission believes that, in at least some circumstances, such policies are of sufficient importance to investors to merit inclusion in proxy statements. The Commission also recognizes, however, that, in a different context, it declined to require the disclosure of policy statements alone in light of the fact that such statements are subject to public relations posturing or to the recitation of boilerplate assertions of good faith, and do not permit of any type of verification.[19]

In the case of the specified types of questionable practices, however, the Commission believes that the opportunity for investors to compare any stated policy to the actual conduct of those seeking shareholder proxies or votes is especially meaningful. And, given the fact that over 200 registrants have made disclosure concerning specific instances of misconduct of this nature, any policy statement which may have been adopted will be readily subject to comparison with specific fact situations. Because, however, of these special considerations regarding general corporate policy pronouncements, the Commission is considering two alternative formulations of proposed Subitem (d)(2) concerning corporate policies as to questionable payments and transactions. Alternative A would require all issuers subject to Regulation 14A to include in every proxy solicitation disclosure or whether or not the issuer has adopted any formal policy regarding the types of questionable payments and transactions specified in proposed Item 6(d)(1). Alternative B, on the other hand, would require such disclosure only where the issuer was also required, by virtue of proposed Item 6(d)(1), described above, to disclose facts concerning some particular questionable or illegal payment or transaction. The Commission invites comment on the advantages and disadvantages of each approach in order to assist it in determining which, if either, should be adopted.

[16] The Commission specifically invites comment on whether lawful corporate political contributions should be included in this instruction.

[17] The Commission intends that the phrase "disbursement or receipt of corporate funds outside the normal system of accountability" would encompass the full range of schemes by which off-book pools of assets are accumulated, including, for example, over-billing, unrecorded transactions in violation of foreign exchange controls, and embezzlement incident to the diversion of corporate assets to improper purposes. Likewise, abuses such as the maintenance of a fictitious set of books would fall within "improper or inaccurate recording of payments or receipts."

[18] See Securities Act Release No. 5627 at 36 (Oct. 14, 1975) (40 FR 51656).

[19] See id. at 33.

Conclusion and Request for Comment

The Commission believes that the proposed rules herein, in conjunction with its suggestion that the self-regulatory organizations consider requiring certain certain steps to enhance the independence of corporate boards, have the potential significantly to enhance the reliability and accuracy of issuer financial reporting.[20] Likewise, the Commission believes that a specific disclosure requirement concerning the involvement of top management in improper corporate payments may be appropriate in connection with the solicitation of proxies. The Commission recognizes, however, that the area is difficult and complex, and intends to afford careful consideration to the views of all interested persons before taking final action on all, or any part of, these proposals.

All interested persons are invited to submit their views and comments, in triplicate, on the foregoing proposals to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Washington, D.C. 20549 on or before the close of business March 11, 1977. The Commission specifically invites comment on (1) the effect, operation, and desirability of the proposals herein; (2) the impact which these proposals, if adopted, would be likely to have on the abuses outlined in the May 12 Report; (3) the extent of the Commission's authority in the areas involved; (4) whether it would be appropriate to exempt issuers registered under the Investment Company Act of 1940 from the operation of any of these proposals; and (5) pursuant to section 23(a)(2) of the Securities Exchange Act, the likely impact, if any, which these proposals would have on competition.

All such communications should refer to File S7–671 and will be available for public inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. The text of the proposed amendments discussed herein is set forth below.

Text of Proposed Amendments

[NEW] REGULATION 13B: ACCURACY OF BOOKS, RECORDS, AND REPORTS

[Existing Rule 13b–1 shall be renumbered as Rule 13b–18.]

[20] The Commission is also considering soliciting comment on the question of whether to require some form of reporting to shareholders concerning the issuer's system of internal accounting control.

§ 240.13b–1 Accounting records.

Every issuer which is required to file any report pursuant to section 13 or 15(d) of the Act (and the Commission's rules and regulations thereunder) shall make and keep books, records, and accounts which accurately and fairly reflect the transactions of the issuer and the dispositions of its assets.

§ 240.13b–2 Internal controls system for accounting records.

(a) Incident to the making and keeping of such books, records, and accounts as are required pursuant to Rule 13b–1 of this regulation, every issuer shall devise and maintain an adequate system of internal accounting controls sufficient to provide reasonable assurance that:

(1) Transactions are executed in accordance with management's general or specific authorization;

(2) Transactions are recorded as necessary (i) to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and (ii) to maintain accountability for assets;

(3) Access to assets is permitted only in accordance with management's authorization;

(4) The recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

(b) As used in (a) of this rule, the term "reasonable assurance" shall mean that the cost of internal accounting control need not exceed the benefits expected to be derived. The benefits consist of reductions in the risk of failing to achieve the objectives implicit in the definition of accounting control.

§ 240.13b–3 Falsification of accounting records.

It shall be unlawful for any person, directly or indirectly, to falsify, or cause to be falsified, any book, record, account, or document made or kept pursuant to Rule 13b–1 of this regulation.

§ 240.13b–4 Obstruction of accountants.

It shall be unlawful for any director or officer of, or any owner of any securities issued by, any issuer:

(a) directly or indirectly, to make, or cause to be made, a materially false or misleading statement; or

(b) directly or indirectly, to omit to state, or cause another person to omit to state, any material fact necessary in order to make statements made, in the light of th circumstances under which such statements were made, not misleading, to an accountant in connection with (1) any audit or examination of the financial statements of the issuer required to be made pursuant to this subpart, or (2) the preparation of filing of any document or report required to be filed with the Commission pursuant to this subpart or otherwise.

§ 240.14a–101 Schedule 14A. Information required in proxy statement.

* * * * *

Item 6. Nominees and directors.[21]

* * * * *

(d) * * *

(1) State the material facts pertaining to the involvement of any director of the issuer, any person nominated for election as director, or any executive officer of the issuer in any material political contributions by the issuer or from the issuer's assets, whether legal or illegal; the disbursement or receipt of corporate funds outside the normal system of accountability; payments, whether direct or indirect, to or from foreign or domestic governments, officials, employees or agents for purposes other than the satisfaction of lawful obligations, or any transaction which has as its intended effect the transfer of issuer assets for the purpose of effecting such a payment; the improper or inaccurate recording of payments and receipts on the books of the issuer or its subsidiaries; or any other matters of a similar nature involving disbursements of issuer assets. Disclosure need not be made of any matter which has been previously reported in a filing with the Commission and described in an issuer document distributed to shareholders.

(d)(2) Alternative Amendments

ALTERNATIVE A

(2) Indicate whether or not the issuer has any policy regarding payments or transactions of the type described in (1). If the issuer has such a policy, briefly describe it. If the policy is set forth in a written document, three copies thereof are to be filed with the Commission at the time preliminary materials are filed pursuant to Rules 14a–6 or 14c–5.

ALTERNATIVE B

(2) If the issuer is required to disclose any payment or transaction pursuant to (1), then, in addition to such disclosure, indicate whether or not the issuer has any policy regarding payments or transactions of the type described in (1). If the issuer has such a policy, briefly describe it. If the policy is set forth in a written document, three copies thereof are to be filed with the Commission at the time preliminary materials are filed pursuant to Rules 14a–6 or 14c–5.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

JANUARY 19, 1977.

[FR Doc.77–2469 Filed 1–21–77;1:31 pm]

[21] The Commission has previously announced a proposal to amend Schedule 14A, including the alteration of the caption of Item 6 to read "Information Regarding Management." See Securities Act Release No. 5758 (Nov. 2, 1976) (41 FR 49493).

TENNESSEE VALLEY AUTHORITY

[18 CFR Part 301]

GOVERNMENT IN THE SUNSHINE

Proposed Implementation

Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552b, requires each agency subject to its provisions to promulgate regu-

lations to implement the requirements of section 552 (b)–(f) of Title 5 of the U.S. Code by March 12, 1977, following consultation with the Office of the Chairman of the Administrative Conference of the United States and published notice in the FEDERAL REGISTER of at least 30 days and opportunity for written comment by any person.

Notice is hereby given that the Board of Directors of the Tennessee Valley Authority (TVA) proposes to amend 18 CFR Part 301 by adding a new Subpart C, entitled "Government in the Sunshine Act," to implement the requirements of that act with respect to TVA. It is proposed to make the regulations effective as of March 12, 1977.

Written comments concerning the proposed regulations may be submitted to Herbert S. Sanger, Jr., General Counsel, Tennessee Valley Authority, Knoxville, Tennessee 37902. All comments received on or before the 30th day after the date of publication of these proposed regulations will be considered. Copies of all comments in response to this proposal will be available for public inspection during normal business hours at the TVA Technical Library, room E2B7, 400 Commerce Avenue, Knoxville, Tennessee.

In accordance with the Government in the Sunshine Act and TVA's practice over the past two years, TVA proposes that all formal meetings of the TVA Board be open to public observation, except in certain specified instances when the Board by recorded vote may decide to close a meeting. TVA proposes to make public announcement, at least one week in advance, of the time, place, and subject matter of each formal Board meeting. If the meeting, or any portion thereof, is to be closed to the public, that fact will also be announced.

TVA anticipates that the Government in the Sunshine Act and these proposed regulations will result in very little change in TVA's procedures for holding formal Board meetings, which TVA has been holding in public for the last two years. The act and these proposed regulations do not grant the public any right to participate in TVA Board meetings, but TVA plans normally to continue its practice of holding question and answer sessions for the public and the news media following the end of the business portion of each formal meeting.

Because of the size, scope, and complexity of the TVA program, decisions on TVA business requiring TVA Board action cannot always be deferred until the next regularly scheduled formal Board meeting. Of necessity then, the TVA Board must gather at informal Board meetings to conduct or dispose of official TVA business during the intervals between formal Board meetings. As with formal TVA Board meetings, TVA proposes that deliberations at such informal meetings be open to public observation, unless closed for one of the specified reasons by a recorded vote of the Board members. Some matters will require that such unscheduled deliberations be convened on very short notice; however, TVA proposes to make public announcement of the time, place, and subject matter of such deliberations as soon as practicable.

Not all gatherings of TVA Board members are meetings subject to the Government in the Sunshine Act. For instance, the act is not intended to prevent any two members of three-member agencies, like TVA, from engaging in informal background discussions which clarify issues and expose varying views, and such discussions do not come within the act's open meeting requirements. Congress' intent in regard to the special problems faced by three-member boards is particularly applicable to TVA's situation and the recognization of these special problems is necessary to maintain the corporate flexibility provided for in the TVA act. The work of the TVA Board is a full-time job and has never been limited to approving or disapproving formal proposals submitted by the TVA staff. The work of Board members includes informal gatherings with the staff and with each other in the day-to-day operations of TVA. Of necessity, this work includes discussions of TVA business on an impromptu basis in the office of one or another Board member, at lunch, while traveling together, or in other similar situations.

Serious and more formalized discussions among Board members on specific topics are generally the result of matters being brought to it for consideration or approval by TVA's General Manager in accordance with longstanding practice under TVA's administrative release system. Consequently, in implementing the Government in the Sunshine Act, TVA intends to use the Board's receipt of a matter from the General Manager for consideration or approval to signal the beginning of the period during which discussions among Board members may become deliberations. TVA's General Counsel has advised its Board members that they should be aware that the Government in the Sunshine Act carries the presumption that all their joint discussions on such matters will be open but that they may continue to have informal and preliminary discussions in private so long as such discussions do not effectively predetermine official actions.

In addition, TVA staff briefings of Board members will not generally be meetings subject to the open meeting requirement so long as the Board members do not engage in deliberations which determine or result in the joint conduct or disposition of TVA business on such occasions. Furthermore, the Government in the Sunshine Act permits TVA to continue its longstanding practice of circulating written material to Board members sequentially for each member to consider and act on individually. This practice has been followed by TVA largely because of the volume,' detail, and urgency of the business handled by the TVA Board and not delegated to the TVA staff. When TVA business is conducted in this manner, there is no meeting subject to the act. In continuing to follow this procedure, TVA is not attempting to circumvent the spirit of the Government in the Sunshine Act but only to carry its statutory responsibilities under the Tennessee Valley Authority Act of 1933 as efficiently and effectively as possible.

NOTE.—The Tennessee Valley Authority has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11949 and OMB Circular A-107.

In consideration of the foregoing, TVA proposes to amend 18 CFR Part 301 by adding a new Subpart C, as follows:

Subpart C—Government in the Sunshine Act

Sec.
301.41 Purpose and scope.
301.42 Definitions.
301.43 Open meetings.
301.44 Notice of meetings.
301.45 Procedure for closing meetings.
301.46 Criteria for closing meetings.
301.47 Transcripts of closed meetings.
301.48 Public availability of transcripts and other documents.

AUTHORITY: Sec. 3(a), Pub. L. No. 94–409, 90 Stat. 1241 (5 U.S.C. 552b), and 48 Stat. 58, as amended (16 U.S.C. 831–831dd).

§ 301.41 Purpose and scope.

(a) The provisions of this Subpart are intended to implement the requirements of section 3(a) of the Government in the Sunshine Act, 5 U.S.C. 552b, consistent with the purposes and provisions of the Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831dd.

(b) Nothing in this subpart expands or limits the present rights of any person under the Freedom of Information Act (5 U.S.C. 552) and the provisions of Subpart A of this Part, except that the exemptions set forth in § 301.46 shall govern in the case of any request made pursuant to the Freedom of Information Act and Subpart A to copy or inspect the transcripts, recordings, or minutes described in § 301.47.

(c) Nothing in this Subpart authorizes TVA to withhold from any individual any record, including transcripts, recordings, or minutes required by this Subpart, which is otherwise accessible to such individual under the Privacy Act (5 U.S.C. 552a) and the provisions of Subpart B.

(d) The requirements of Chapter 33 of Title 44 of the United States Code shall not apply to the transcripts, recordings, and minutes described in § 301.47.

§ 301.42 Definitions.

For the purposes of this Subpart:

(a) The term "Board" means the Board of Directors of the Tennessee Valley Authority;

(b) The term "meeting" means the deliberations of two or more members of the TVA Board where such deliberations determine or result in the joint conduct or disposition of official TVA business, but the term does not include deliberations required or permitted by § 301.44 or § 301.45;

(c) The term "member" means an individual who is a member of the TVA Board; and

(d) The term "TVA" means the Tennessee Valley Authority.

§ 301.43 Open meetings.

Members shall not jointly conduct or dispose of TVA business other than in accordance with this Subpart. Except as provided in § 301.46, every portion of every meeting of the agency shall be open to public observation, and TVA shall provide suitable facilities therefor, but participation in the deliberations at such meetings shall be limited to members and certain TVA personnel. Public observation does not include the recording of any deliberations or actions by means of electronic or other devices or cameras.

§ 301.44 Notice of meetings.

(a) TVA shall make a public announcement of the time, place, and subject matter of each meeting, whether it is to be open or closed to the public, and the name and telephone number of a TVA official who can respond to requests for information about the meeting.

(b) Such public announcement shall be made at least one week before the meeting unless two or more members determine by a recorded vote that TVA business requires that such meeting be called at an earlier date. If an earlier date is so established, TVA shall make such public announcement at the earliest practicable time.

(c) Following a public announcement required by paragraph (a) of this section, the time or place of the meeting may be changed only if TVA publicly announces the change at the earliest practicable time. The subject matter of a meeting or the determination to open or close a meeting or portion of a meeting to the public may be changed following the public announcement required by paragraph (a) of this section only if two or more members determine by a recorded vote that TVA business so requires and that no earlier announcement of the change was possible and if TVA publicly announces such change and the vote of each member upon such change at the earliest practicable time.

(d) Immediately following each public announcement required by this section, notice of the time, place, and subject matter of a meeting, whether the meeting is open or closed, any change in one of the proceedings, and the name and phone number of the TVA official designated to respond to requests for information about the meeting shall be submitted for publication in the FEDERAL REGISTER.

§ 301.45 Procedure for closing meetings.

(a) Action under § 301.46 to close a meeting shall be taken only when two or more members vote to take such action. A separate vote shall be taken with respect to each meeting a portion or portions of which are proposed to be closed to the public pursuant to § 301.46 or with respect to any information which is proposed to be withheld under § 301.46. A single vote may be taken with respect to a series of meetings, a portion or portions of which are proposed to be closed to the public, or with respect to any information concerning such series of meetings, so long as each meeting in such series involves the same particular matters and is scheduled to be held no more than 30 days after the initial meeting in such series. The vote of each member participating in such vote shall be recorded and no proxies shall be allowed.

(b) Notwithstanding that the members may have already voted not to close a meeting, whenever any person whose interests may be directly affected by a portion of a meeting requests that the agency close such portion to the public for any of the reasons referred to in paragraphs (e), (f), or (g) of § 301.46, the Board, upon request of any one of its members made prior to the commencement of such portion, shall vote by recorded vote whether to close such portion of the meeting.

(c) Within one day of any vote taken pursuant to this section, TVA shall make publicly available in accordance with § 301.48 a written copy of such vote reflecting the vote of each member on the question. If a portion of a meeting is to be closed to the public, TVA shall, within one day of the vote taken pursuant to this section, make publicly available in accordance with § 301.48 a full written explanation of this action closing the portion together with a list of all persons expected to attend the meeting and their affiliation.

(d) For every meeting closed pursuant to § 301.46, there shall be a certification by the General Counsel of TVA stating whether, in his or her opinion, the meeting may be closed to the public and each relevant exemptive provision. A copy of such certification shall be retained by TVA and shall be made publicly available in accordance with § 301.48.

§ 301.46 Criteria for closing meetings.

Except in a case where the Board finds that the public interest requires otherwise, the second sentence of § 301.43 shall not apply to any portion of a meeting and such portion may be closed to the public, and the requirements of § 301.44 and § 301.45 (a), (b), and (c) shall not apply to any information pertaining to such meeting otherwise required by this subpart to be disclosed to the public, where the Board properly determines that such portion or portions of its meeting or the disclosure of such information is likely to—

(a) Disclose matters that are (1) specifically authorized under criteria established by an Executive order to be kept secret in the interests of national defense or foreign policy and (2) in fact properly classified pursuant to such Executive order;

(b) Relate solely to the internal personnel rules and practices of an agency;

(c) Disclose matters specifically exempted from disclosure by statute (other than 5 U.S.C. § 552), provided that such statute (1) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (2) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(d) Disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(e) Involve accusing any person of a crime, or formally censuring any person;

(f) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(g) Disclose investigatory records compiled for law enforcement purposes, or information which if written would be contained in such records, but only to the extent that the production of such records or information would (1) interfere with enforcement proceedings, (2) deprive a person of a right to a fair trial or an impartial adjudication, (3) constitute an unwarranted invasion of personal privacy, (4) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (5) disclose investigative techniques and procedures, or (6) endanger the life or physical safety of law enforcement personnel;

(h) Disclose information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions;

(i) Disclose information the premature disclosure of which would—

(1) In the case of any agency which regulates currencies, securities, commodities, or financial institutions, be likely to (i) lead to significant financial speculation in currencies, securities, or commodities, or (ii) significantly endanger the stability of any financial institution; or

(2) In the case of any agency, be likely to significantly frustrate implementation of a proposed agency action, except that this provision shall not apply in any instance where the agency has already disclosed to the public the content or nature of its proposed action, or where the agency is required by law to make such disclosure on its own initiative prior to taking final action on such proposal; or

(j) Specifically concern an agency's issuance of a subpena, or its participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct, or disposition by an agency of a particular case of formal agency adjudication pursuant to the procedures in 5 U.S.C. 554 or otherwise involving a determination on the record after opportunity for a hearing.

§ 301.47 Transcripts of closed meetings.

(a) For every meeting closed pursuant to § 301.46, the presiding officer of the meeting shall prepare a statement setting forth the time and place of the meeting, and the persons present, and such statement shall be retained by TVA.

(b) TVA shall maintain a complete transcript or electronic recording adequate to record fully the proceedings of each meeting, or portion of a meeting, closed to the public, except that in the case of a meeting, or portion of a meeting, closed to the public pursuant to paragraphs (h), (i) (1), or (j) of § 301.46, TVA shall maintain either such a transcript or recording, or a set of minutes. Such minutes shall fully and clearly describe all matters discussed and shall provide a full and accurate summary of any actions taken, and the reasons therefor, including a description of each of the views expressed on any item and the record of any rollcall vote (reflecting the vote of each member on the question). All documents considered in connection with any action shall be identified in such minutes.

(c) TVA shall maintain a complete verbatim copy of the transcript, a complete copy of the minutes, or a complete electronic recording of each meeting, or portion of a meeting, closed to the public, for a period of at least two years after such meeting, or until one year after the conclusion of any TVA proceeding with respect to which the meeting or portion was held, whichever occurs later.

§ 301.48 Public availability of transcripts and other documents.

(a) Public announcements of meetings made pursuant to § 301.44, written copies of votes to change the subject matter of meetings made pursuant to § 301.44(c), written copies of votes to close meetings and explanations of such closings made pursuant to § 301.45(c), and certifications of the General Counsel made pursuant to § 301.45(d) shall be available for public inspection during regular business hours in the TVA Technical Library, room E2B7, 400 Commerce Avenue, Knoxville, Tennessee.

(b) TVA shall make promptly available to the public at the location described in paragraph (a) of this section the transcript, electronic recording, or minutes (as required by § 301.47 (b)) of the discussion of any item on the agenda, or of any item of the testimony of any witness received at the meeting, except for such item or items of such discussion or testimony as TVA determines to contain information which may be withheld under § 301.46. Each request for such material shall be made to the Director of Information, Tennessee Valley Authority, Knoxville, Tennessee 37902; state that it is a request for records pursuant to the Government in the Sunshine Act and this Subpart; and reasonably describe the discussion or item of testimony, and the date of the meeting, with sufficient specificity to permit TVA to identify the item requested.

(c) In the event the person making a request under paragraph (b) of this section has reason to believe that all transcripts, electronic recordings, or minutes or portions thereof requested by that person and required to be made available under paragraph (b) of this section were not made available, the person shall make a written request to the Director of Information for such additional transcripts, electronic recordings, or minutes or portions thereof as that person believes should have been made available under paragraph (b) of this section and shall set forth in the request the reasons why such additional material is required to be made available with sufficient particularity for the Director of Information to determine the validity of such request. Promptly after a request pursuant to this paragraph is received, the Director of Information or his designee shall make a determination as to whether to comply with the request, and shall immediately give written notice of the determination to the person making the request. If the determination is to deny the request, the notice to the person making the request shall include a statement of the reasons for the denial, a notice of the right of the person making the request to appeal the denial to TVA's General Manager, and the time limits therefor.

(d) If the determination pursuant to paragraph (c) of this section is to deny the request, the person making the request may appeal such denial to TVA's General Manager. Such an appeal must be taken within 30 days after the person's receipt of the determination by the Director of Information and is taken by delivering a written notice of appeal to the General Manager, Tennessee Valley Authority, Knoxville, Tennessee 37902. Such notice shall include a statement that it is an appeal from a denial of a request under § 301.48(c) and the Government in the Sunshine Act and shall indicate the date on which the denial was issued and the date on which the denial was received by the person making the request. Promptly after such an appeal is received, TVA's General Manager or his designee shall make a final determination on the appeal. In making such a determination, TVA will consider whether or not to waive the provisions of any exemption contained in § 301.46. TVA shall immediately given written notice of the final determination to the person making the request. If the final determination on the appeal is to deny the request, the notice to the person making the request shall include a statement of the reasons for the denial and a notice of the person's right to judicial review of the denial.

(e) Copies of materials available for public inspection under this section shall be furnished to any person at the actual cost of duplication or transcription.

Dated: January 19, 1977.

LYNN SEEBER,
General Manager.

[FR Doc.77-2526 Filed 1-25-77;8:45 am]

PENSION BENEFIT GUARANTY CORPORATION

[29 CFR Part 2610]

VALUATION OF PLAN BENEFITS

Notice of Proposed Rulemaking

On November 3, 1976, the Pension Benefit Guaranty Corporation (hereinafter referred to as the "PBGC") issued an interim regulation establishing the methods for valuing plan benefits under Title IV of the Employee Retirement Income Security Act of 1974 (hereinafter referred to as the "Act"). (41 FR 48484 et seq.) The regulation includes an appendix containing rates and factors to be used to value benefits in plans which terminate on or after September 2, 1974, but before October 1, 1975.

On November 3, 1976, PBGC published for comment in the FEDERAL REGISTER additional rates and factors for valuing benefits in plans which terminate on or after September 2, 1974, but before September 1, 1976. (41 FR 48503 et seq.)

The appendices to the regulations did not provide rates and factors for valuing benefits in plans that terminate on or after September 1, 1976. PBGC has now developed rates and factors to value benefits in plans that terminate on or after September 1, 1976, but before December 1, 1976. Notice is hereby given that the PBGC proposes to amend Chapter XXVI of Title 29 of the Code of Federal Regulations to provide valuation factors for plans that terminate on or after September 1, 1976, but before December 1, 1976.

Interested persons may submit written comments on this proposal to the Office of the General Counsel, Pension Benefit Guaranty Corporation, Suite 7200, 2020 K Street, NW, Washington, D.C. 20006. Each person submitting comments should include his/her name and address, identify this notice and give reasons for any recommendation. Comments should be submitted before February 7, 1977. Copies of written comments will be available for examination by interested persons in the Office of Communications, Suite 7100, 2020 K Street, NW, between the hours of 9 a.m. and 4 p.m. The proposal may be changed in the light of comments received.

In consideration of the foregoing, it is proposed to amend Part 2610 of Chapter XXIV of Title 29, Code of Federal Regulations by adding a new Table VI to Appendix B to read as follows:

VI. The following interest rates and quantities used to value benefits shall be effective for plans which terminate on or after September 1, 1976 and on or before November 30, 1976:

Table I—*Interest rate for valuing immediate annuities.* An interest rate of 7 percent shall be used to value immediate annuities, to compute the quantity "G" in § 2610.6, and for valuing both portions of a cash refund annuity.

Table II—*Interest rate for valuing death benefits.* An interest rate of 5 percent shall be used to value death benefits other than the decreasing term insurance portion of a cash refund annuity pursuant to § 2610.8.

Table III—*Interest rates and quantities used to value deferred annuities.* The following factors shall be used to value deferred annuities pursuant to § 2610.6:

$k_1 = 1.06$
$k_2 = 1.0475$
$k_3 = 1.035$
$n_1 = 8$
$n_2 = 10$

(Secs. 4002(b)(3), 4041(b), 4044, 4062(b)(1)(A), Pub. L. 93-406, 88 Stat. 1004, 1020, 1025-27, 1029 (29 U.S.C. 1302(b)(3), 1341(b), 1344, 1362(b)(1)(A)).)

Issued at Washington, D.C., on this 21st day of January, 1977.

MATTHEW M. LIND,
Acting Executive Director,
Pension Benefit Guaranty Corp.

NOTE: Issued on the date set forth above, pursuant to a resolution of the Board of Directors authorizing the Executive Director to issue same.

HENRY ROSE,
Secretary,
Pension Benefit Guaranty Corp.

[FR Doc.77-2583 Filed 1-25-77;8:45 am]

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

[33 CFR Part 207]

CAPE FEAR RIVER, NORTH CAROLINA

Proposed Navigation Regulation

Notice is hereby given that pursuant to the provisions of section 7 of the River and Harbor Act of August 8, 1917 (40 Stat. 266; 33 U.S.C. 1) the regulations set forth below in tentative form are proposed by the Secretary of the Army (acting through the Chief of Engineers) to govern the use, administration and navigation of the three locks on the Cape Fear River, North Carolina. This proposal would establish a schedule of operation for the three locks and dams operated by the Corps of Engineers of navigational purposes.

The locks are currently available for navigation 24 hours a day, every day of the year. In view of declining use of the river for navigation and the small number of vessel lockages, combined with the increasing cost of operation and maintenance, continuous operation is uneconomical. It is apparent that the cost of making the locks available on a continuous basis far outweighs the benefits of accommodating the very few vessels currently using the locks. The proposed schedules would reduce the cost of operation by about 50 percent.

Prior to the adoption of the proposed regulations, consideration will be given to any comments, suggestions or objections thereto which are submitted in writing to the Office of the Chief of Engineers, Forrestal Building, Washington, D.C. 20314, Attention: DAEN-CWO-N on or before February 20, 1977.

§ 207.161 Cape Fear River, Navigation Locks, Between 29 and 94 River Miles North of Wilmington, North Carolina; Use, Administration and Navigation.

(a) The owner of or agency controlling the locks shall be required to open the navigation locks upon demand for passage of vessels during the following hours and periods:

Lock and dam No. 1, Lock and dam No. 2, Wm. O. Huske lock and dam		
Apr. 1 through Oct. 31.	Monday through Friday.	7 a.m. to 11 a.m., 12 noon to 4 p.m.
	Saturday and Sunday.	7 a.m. to 9 a.m., 6 p.m. to 8 p.m.
Nov. 1 through Mar. 31.	Monday through Friday.	8 a.m. to 11 a.m., 12 noon to 5 p.m.

In addition, lockages will be provided during other hours if prior requests are made 48 hours in advance to the District Engineer, U.S. Army Engineer District, Wilmington, North Carolina.

(b) The owner of or agency controlling the locks shall place signs, of such size and description as may be designated by the District Engineer, U.S. Army Engineer District, Wilmington, North Carolina, at the locks indicating the nature of the regulations of this section.

(40 Stat. 266 (33 U.S.C. 1).)

Dated: January 13, 1977.

MARVIN W. REES,
Colonel, Corps of Engineers,
Executive Director of Civil Works.

[FR Doc.77-2480 Filed 1-25-77;8:45 am]

[33 CFR Part 207]

SAN FRANCISCO BAY, SAN PABLO BAY, CARQUINEZ STRAIT, SUISUN BAY, SAN JOAQUIN RIVER, AND CONNECTING WATERS, CALIF.

Proposed Navigation Regulation

Notice is hereby given that pursuant to the provisions of section 7 of the River and Harbor Act of August 8, 1917 (40 Stat. 266; 33 U.S.C. 1) the regulations set forth in tentative form below are proposed by the Secretary of the Army (acting through the Chief of Engineers) to amend 33 CFR 207.640. We propose to amend only paragraphs (j) and (n) by changing the descriptive titles, changing the designated command having authority over the restricted areas, and redefining the limits of the restricted area in paragraph (n). These changes are proposed in accordance with a request by the Commanding Officer, Naval Weapons Station, Concord, California, to revise the limits of the restricted area off Port Chicago to include the Seal Islands East Lighter Mooring and to make editorial changes outlined above.

Prior to the adoption of the proposed regulations consideration will be given to any comments, suggestions or objections thereto which are submitted in writing to the Office of the Chief of Engineers, Forrestal Building, Washington, D.C. 20314, Attention: DAEN-CWO-N on or before February 25, 1977.

§ 207.640 San Francisco Bay, San Pablo Bay, Carquinez Strait, Suisun Bay, San Joaquin River, and connecting waters, California.

• • • • • •

(j) San Francisco Bay in vicinity of the NSC Fuel Department, Point Molate; restricted area.

(1) • • •

(2) *The regulations.* Vessels not operating under supervision of the local military or naval authority or public vessels of the United States shall not enter this area except by specific permission of the Commanding Officer, Naval Supply Center, Oakland.

• • • • • •

(n) Suisun Bay at Naval Weapons Station, Concord; restricted area—

(1) *The area.* Beginning at a point on the shore and on the easterly side of the mouth of a small slough (known as Hastings Slough) bearing 189°, 2,412 yards from Tripon at Preston Point on Roe Island; thence 340°30', 400 yards, to the shore line of the westerly of the two Seal Islands; thence 60°30', 940 yards; thence 75°, 1,650 yards; thence 102°, 1,850 yards; thence 99°, 1,880 yards; thence 180°, 435 yards, to the shore line; thence following the high water shore line in a general westerly direction to the point of beginning.

(2) *The regulations.* Vessels and other craft not operating under the authority of the local military or naval authority shall not enter, lie to, anchor, or moor in this area except by specific permission of the Commanding Officer, Naval Weapons Stations, Concord.

• • • • • •

(33 U.S.C. 1.)

Dated: January 14, 1977.

MARVIN W. REES,
Colonel, Corps of Engineers,
Executive Director of Civil Works.

[FR Doc.77-2481 Filed 1-25-77;8:45 am]

ENVIRONMENTAL PROTECTION AGENCY

[FRL 639-1]

[40 CFR Part 60]

STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

Sewage Sludge Incinerators

Subpart O sets forth standards of performance for new, modified, and reconstructed sewage sludge incinerators in sewage treatment plants. The standards limit emissions of particulate matter to 0.65 g/kg dry sludge input (1.30 lb/ton dry sludge input) and visible emissions to 20 percent opacity. The State of Alaska recently requested EPA to revise § 60.150 of the regulation. The basis of the request is that incinerators which are small enough to meet the needs of small communities in Alaska and also comply with the particulate matter standard are not available, and the disposal of sewage sludge in landfills is not a viable option because of permafrost and other factors resulting in landfill problems (shallow and soft landfills). The proposed amendment would exempt incinerators with a capacity of less than 140 kg/hr (300 lb/hr) dry sludge provided that disposal by land application or sanitary landfill are shown to be infeasible because of freezing conditions.

BACKGROUND

The standards of performance for sewage sludge incinerators were promulgated March 8, 1974 (39 FR 9308), under section 111 of the Clean Air Act. Section 111 directs the Administrator to establish standards of performance for new stationary sources which reflect the degree of emission limitation achievable through the application of the best system of emission reduction which (taking into account the cost of achieving such reduction) the Administrator determines has been adequately demonstrated. The best system of emission reduction for sewage sludge incinerators (multiple hearth and fluid bed reactor type incinerators) was determined to be low energy venturi scrubbers.

At the time the standards were promulgated EPA was developing a standard for murcury emissions from sewage sludge incinerators and guidelines for municipal sludge management. The standard limiting mercury emissions was promulgated under section 112 (Hazardous Air Pollutants) of the Clean Air Act on October 14, 1975 (40 FR 48302), and the proposed guideline was issued for public comment on June 3, 1976, under the title "Technical Bulletin on Municipal Sludge Management: Environmental Factors."

Incineration is just one of several methods available for sludge disposal. The standards, which limit emissions of mercury and particulate matter, insure that adequate emission control systems are employed when incineration is used as the method of sludge disposal. Incineration is only a volume reduction method. After incineration, the ash, either dry or in scrubber water, remains to be disposed of to the land. Ash disposal must be designed to protect ground water, to prevent dust, and to insure no erosion to surface waters.

INVESTIGATION

In investigating Alaska's request, EPA contacted the vendors of sewage sludge incinerators and found that multiple hearth or fluid bed reactor type incinerators which can achieve the particulate matter standard are not commercially available below a size capacity of 140 kg/hr (300 lb/hr). This means that incineration would not be a disposal option where units smaller than 140 kg/hr are needed. Since the unique problems in parts of Alaska also prevent disposal by land application or sanitary landfill, sludge disposal cannot be accomplished in an environmentally acceptable mnaner under existing regulations. EPA concluded that a revision to the standards of performance for sludge incinerators is appropriate.

In developing a revision to the standard to accommodate the unique problems in parts of Alaska, EPA intends that the proposed exemption not create an incentive to utilize small incinerators which would not be covered under the standard. To avoid this situation the proposed exemption applies only where an owner or operator can demonstrate to the satisfaction of the Administrator that land application and sanitary landfills are not feasible disposal methods for the sewage sludge. The size exemption is based on the capacity of the waste water treatment plant rather than the incinerator in order to prevent constructing multiple small incinerators rather than larger units which would be subject to the standard.

The proposed amendment of § 60.150 would not affect applicable national mercury emission standards under § 61.50 which currently regulates mercury emissions from all sludge incinerators. These standards are not subject to the exemption because control of mercury emissions can be achieved by ordinances or statutes which prevent mercury-bearing material from being introduced into the municipal waste treatment system.

PUBLIC PARTICIPATION

Interested persons may participate in this proposed rulemaking by submitting written comments (in triplicate) to the Emission Standards and Engineering Division, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Attention: Mr. Don R. Goodwin. Comments on all aspects of the proposed revision are welcome. All relevant comments received not later than March 15, 1977 will be considered. Comments received will be available for public inspection and copying at the EPA Public Information Reference Unit, Room 2922 (EPA Library), 401 M Street, S.W., Washington, D.C. 20460.

AUTHORITY: Sections 111, 114, and 301(a) of the Clean Air Act, as amended by sec. 4(a) of Pub. L. 91-604, 84 Stat. 1678 and by sec. 15(c)(2) of Pub. L. 91-604, 84 Stat. 1713 [42 U.S.C. 1857c-6, 1857c-9 and 1857g(a)].

Dated: January 14, 1977.

RUSSELL E. TRAIN,
Administrator.

In 40 CFR Part 60, it is proposed to amend Subpart 0, by revising § 60.150 as follows:

§ 60.150 Applicability and designation of affected facility.

(a) The affected facility to which the provisions of this subpart apply is each incinerator which combusts the sludge produced by municipal sewage treatment plants except as provided under paragraph (b) of this section.

(b) The owner or operator of a sewage sludge incinerator may apply to the Administrator for an exemption to the requirements of this subpart for any sewage sludge incinerator that is in a municipal waste treatment plant having a dry sludge capacity below 140 kg/hr (300 lb/hr). The Administrator will grant an exemption provided the owner or operator demonstrates to the Administrator's satisfaction that it is not feasible to dispose of the sludge by land application or in a sanitary landfill because of freezing conditions. For the purpose of determining the capacity of a municipal waste treatment plant under this paragraph, the dry sludge capacity of the municipal waste treatment plant or the dry sludge capacity of the sewage sludge incinerator, whichever is greater, is used.

[FR Doc.77-2384 Filed 1-25-77;8:45 am]

LEGAL SERVICES CORPORATION

[45 CFR Part 1606]

FINANCIAL ASSISTANCE

Procedures Governing Applications for and Denial of Refunding

The Legal Services Corporation was established pursuant to the Legal Services Corporation Act of 1974, Pub. L. 93-355, 88 Stat. 378, 42 U.S.C. 2996-2996*l* ("the Act"). Section 1011 of the Act, 42 U.S.C. 2996j, provides that the Corporation shall prescribe procedures to insure that, among other things, applications for refunding are not denied unless the grantee, contractor, or person or entity receiving financial assistance has been afforded reasonable notice and an opportunity for a timely, full, and fair hearing.

Pursuant to section 1008(e) of the Act, the Corporation hereby affords notice and publishes for comment the following proposed regulation concerning procedures governing applications for and denial of refunding. Public comment will be received by the Corporation at its headquarters offices, Suite 700, 733 15th Street, NW., Washington, D.C. 20005 on or before February 25, 1977. Comments must be in writing and may be accompanied by a memorandum or brief in support thereof. Comments received may be seen at the above offices during business hours Monday through Friday.

Final regulations will be issued by the Corporation after review and consideration of public comments received pursuant to this notice.

COMMENT

To insure that the provision of legal assistance to eligible clients would not be disrupted unnecessarily, Congress provided, in section 1011 of the Act, that a recipient's application for refunding should not be denied unless the recipient had been afforded reasonable notice and opportunity for a timely, full, and fair hearing.

The current draft was prepared after consideration of 48 written comments received in response to the publication of a proposed temporary regulation on March 12, 1976 (now in effect) and a proposed final draft on April 30, 1976, as well as lengthy analyses submitted by NLADA and PAG, and proposed drafts prepared by those organizations.

It seems a fair conclusion that section 1011 of the Act calls for procedures less elaborate than those of the Administrative Procedure Act,[1] but broadly comparable to the due process requirements applied to termination of governmental financial benefits, licenses, or employment. This conclusion precludes summary procedures or any provision that is unfair, but does not compel the Corporation to imitate courtroom procedures. Most refunding decisions require the exercise of discretion and policy judgments, issues that are better settled by discussion than by adversarial confrontation. Rarely will refunding hearings be adjudicative in the conventional sense. Nor is it the purpose of the hearing to review or to challenge a decision after it has been made; the purpose is to provide an opportunity for meaningful involvement of a recipient before a final decision is reached, thereby insuring that the Corporation will not act hastily, or on mistaken grounds, or without receipt of all information and viewpoints entitled to consideration.

The major issues raised in the comments received by the Corporation should be considered by the Board.

1. GROUNDS FOR DENIAL OF REFUNDING

The requirements of section 1011 are procedural, and nothing in the Act requires the Corporation to issue a regulation stating all the grounds and criteria that may be applied in the future in considering applications for refunding. The Committee decided that it is desirable to do so, however, and that the grounds enumerated in § 1606.4 are adequate to cover all contingencies likely to occur.

This draft corrects a flaw that comments identified in the earlier one, which failed to provide a hearing on the question whether a generally applicable law or policy was being applied correctly in a particular case.

2. PRESIDING OFFICER

Section 1606.7(a)(1) states that the presiding officer "may be an officer or employee of the Corporation who has not previously been concerned with the investigation or consideration of the application for refunding, or may be a person recruited or retained from outside the Corporation who is familiar with the provision of legal services to the poor and supportive of the purposes of the Act."

Many comments urged the use of an administrative law judge or another person not employed by the Corporation in every case. The request seems misfounded.

Assuming that the presiding officer was not involved in the preliminary determination or the investigation that led to it, there cannot be a serious question about the propriety or validity of designating a Corporation official to preside at the hearing. In "The National Paralegal Institute v. The Legal Services Corporation," Civ. No. 76-1260, (August 12, 1976) the Court held that the provision of the Corporation's temporary regulations authorizing a Corporation employee to act as presiding officer satisfied the requirements of section 1011. The decision was clearly supported by Supreme Court decisions defining constitutional requirements for an impartial tribunal.[2]

The Corporation's regulation is consistent with the one adopted by ACTION, that is also required by statute to provide a full and fair hearing before terminating funding, 42 U.S.C. 5052. It provides that the presiding officer shall be the responsible ACTION official, or at the discretion of the responsible ACTION official, an independent hearing examiner designated pursuant to the Administrative Procedure Act, 45 CFR 1206.1-7(b)(1). The ACTION regulations were published in the FEDERAL REGISTER on January 16, 1974, seven months before passage of the Legal Services Corporation Act, with its provision containing identical language. There is no reason to believe that the Congress intended to impose heavier requirements on the Corporation than on ACTION.[3]

The current draft authorizes appointment of a presiding officer who is not employed by the Corporation. It may be expected that an outsider will most frequently be appointed when a recipient is charged with violating the Act or failing to provide high quality assistance, and the burden of proof is upon the Corporation as provided by § 1606.11. But when the issues presented require judgments about the effective use of Corporation resources, decisions should be made by a person familiar with the overall development of Corporation policy.

3. OBLIGATIONS OF THE CORPORATION

The temporary regulation places the burden of proof in every case upon the recipient. Section 1606.11 of the current draft imposes upon the Corporation the obligation of proving, by a preponderance of the evidence, any disputed fact relied upon as a ground for denying refunding. On issues of policy, the Corporation has the obligation of showing that there is a substantial basis for denying refunding.

The Committee believes there is no legal requirement for the Corporation to assume these obligations, but concluded that it would be wise policy for it to do so.

The other changes from the published draft were minor or technical in nature.

PART 1606—PROCEDURES GOVERNING APPLICATIONS FOR AND DENIAL OF REFUNDING

Sec.
1606.1 Purpose.
1606.2 Definitions.
1606.3 Application for refunding.
1606.4 Grounds for denial of refunding.
1606.5 Preliminary determination.
1606.6 Informal conference.
1606.7 Initiation of proceedings.
1606.8 Presiding officer.
1606.9 Prehearing conference.
1606.10 Conduct of hearing.
1606.11 Obligations of the corporation.
1606.12 Briefs and argument.
1606.13 Recommended decisions.
1606.14 Final decision.
1606.15 Time extension and waiver.
1606.16 Right to counsel.
1606.17 Reimbursement.
1606.18 Interim funding.
1606.19 Termination funding.
1606.20 Notice.

AUTHORITY: Secs. 1006(b)(1), (3), 1007(a)(1), 1007(a)(3), 1007(a)(9), 1007(d), 1008(e), 1011 (42 U.S.C. 2996e(b)(1) and (3), 2996f(a)(1), 2996f(a)(3), 2996f(a)(9), 2996(d), 2996g(e), 2996j.

§ 1606.1 Purpose.

By affording a recipient the opportunity for a timely, full, and fair hearing that will promote informed deliberation by the Corporation when there is reason to believe an application for refunding should be denied, this part seeks to avoid unnecessary disruption in the delivery of legal assistance to eligible clients.

§ 1606.2 Definitions.

(a) "Denial of refunding" means a decision that, after expiration of its current grant or contract, a recipient—

(1) Will not be provided with financial assistance; or

(2) Will have its annual level of financial support reduced to an extent that is not required by a reduction in the Corporation appropriation that is apportioned among all recipients of the same class, and is either more than 10 percent or more than $20,000 below the recipient's annual level of financial assistance under its current grant or contract; or

(3) Will be provided with financial assistance subject to a new condition or restriction that is not generally applicable to all recipients of the same class, and that would significantly reduce the ability of a recipient to maintain its current level of legal assitance to eligible clients.

(b) "Director of a recipient" means the person who has overall day-to-day responsibility for management of operations by the recipient.

(c) "President", as used in this part, means the President (or acting President) of the Corporation, and not his designee.

[1] Had full APA procedures been intended, the Act could simply have adopted them as it did 5 U.S.C. 552 in section 1005(g).

[2] Thus, a parole revocation hearing, or one for the revocation of probation, may be conducted before an in-house presiding officer so long as he was not directly involved in the antecedent investigation. "Morrissey v. Brewer," 408 U.S. 471 (1972); "Gagnon v. Scarpelli," 413 U.S. 788 (1973). A board of physicians may first investigate and then itself bear a license suspension. "Withrow v. Larkin," 421 U.S. 35 (1975). A board composed of senior prison officials may decide a disciplinary case. "Wolff v. McDonnell," 418 U.S. 539 (1974). A "neutral investigative officer", reviewed by the hospital superintendent, can determine whether a mental patient should be transferred to the maximum security unit. "Jones v. Robinson," 440 F.2d 249 (CADC, 1971). A school may be denied eligibility for educating nonimmigrant alien students if the due process hearing is conducted before an official who did not participate in the investigation. "Blackwell College of Business v. Attorney General", 454 F.2d 928 (CADC, 1971).

[3] See also 45 CFR 1067.1-7, and 45 CFR 1303.3-1, implementing 42 U.S.C. 2944(e) (OEO), and 42 U.S.C. 2928(h)(3) (Headstart), respectively.

(d) "Presiding Officer" means the President, or a person designated by the President to recommend a final decision that an application for refunding should be granted or denied.

§ 1606.3 Application for refunding.

At least 120 days before expiration of its current grant or contract, a recipient that desires refunding shall file an application therefor with the Corporation in conformity with directions that, from time to time, may be issued by the Corporation.

§ 1606.4 Grounds for denial of refunding.

An application for refunding may be denied when:

(a) Denial is required by law; or

(b) Denial is required by a Corporation policy that is generally applicable to all recipients of the same class; or

(c) There has been substantial failure by a recipient to comply with a provision of law, or a rule, regulation, or guideline issued by the Corporation, or a term or condition of a current or prior grant from or contract with the Corporation or a predecessor agency. In the absence of unusual circumstances, refunding shall not be denied for this cause unless the Corporation has given the recipient notice of such failure and an opportunity to take effective corrective action.

(d) There has been substantial failure by a recipient to provide high quality, economical, and effective legal assistance, as measured by generally accepted professional standards, the provisions of the Act, or a rule, regulation or guideline issued by the Corporation. In the absence of unusual circumstances, refunding shall not be denied for this cause unless the Corporation has given the recipient notice of such failure and an opportunity to take effective corrective action.

(e) Denial will implement a provision of the Act, or a Corporation policy, rule, regulation or guideline regarding economical or effective use of resources.

§ 1606.5 Preliminary determination.

(a) When there is reason to believe an application for refunding should be denied, the Corporation shall serve a written preliminary determination upon the recipient, which shall state the grounds for proposed denial, and shall identify, with reasonable specificity, any facts or documents relied upon as justification for denial.

(b) The preliminary determination shall advise the recipient that it may, within ten days of receipt of the preliminary determination, make written request for

(1) A hearing under this part, or

(2) An informal conference under § 1606.6 with a subsequent right as there provided to request a hearing.

(c) The preliminary determination shall also advise the recipient of its right to request interim or termination funding, as the case may be, under § 1606.18 or §1606.19.

§ 1606.6 Informal conference.

On timely request by the recipient, the Corporation employee who made the preliminary determination shall conduct an informal conference with the recipient at a time and place designated by the employee. The parties thereto shall exchange views, seek to narrow the issues, and explore the possibilities of settlement or compromise. At the conclusion of the conference, which may be adjourned for deliberation or consultation, the Corporation employee may, in writing, modify, withdraw, or affirm the preliminary determination. The recipient may, within five days thereafter, make written request for a hearing under § 1606.9 through § 1606.15.

§ 1606.7 Initiation of proceedings.

Within ten days of a request for a hearing made under § 1606.5(b) or § 1606.6, the Corporation shall notify a recipient in writing of

(a) The name of the presiding officer, and of the attorney who will represent the Corporation;

(b) The date, time and place scheduled for a prehearing conference, if any should be requested or ordered; and

(c) The date, time and place scheduled for the hearing.

§ 1606.8 Presiding Officer.

(a) The presiding officer may be an officer or employee of the Corporation who has not previously been concerned with the investigation or consideration of the application for refunding, or may be a person who is not an employee of the Corporation, who is familiar with the provision of legal services to the poor and supportive of the purposes of the Act.

(b) After designation, the presiding officer shall not consult with or receive communications from the employee who made the preliminary determination or from those representing the Corporation on any of the factual issues in the hearing except in the presence of, or with copies to, the recipient.

§ 1606.9 Prehearing conference.

(a) A prehearing conference may be ordered by the presiding officer, and shall be ordered if requested by either the recipient or the Corporation. The matters to be considered at the conference shall include:

(1) Proposals to define and narrow the issues;

(2) Efforts to stipulate the facts, in whole or in part;

(3) The probable number, identity, and order of presentation of exhibits and witnesses;

(4) On the agreement of the parties, the possibility of presenting the case on written submission or oral argument;

(5) The desirability of advance submission of some or all of the direct testimony in writing;

(6) Any necessary variation in the date, time and place of the hearing; and

(7) Such other matters as may be appropriate.

(b) In advance of the prehearing conference, the presiding officer may require a party to submit a written statement discussing any matter described in paragraph (a) of this section. After the prehearing conference, the presiding officer may establish the procedures, consistent with this part, to be followed at the hearing.

(c) The presiding officer may, at the prehearing conference or at any subsequent appropriate time prior to completion of the hearing, require the Corporation or the recipient, on sufficient notice, to produce a relevant document in its possession, to make a report not unduly burdensome to prepare, or to produce a person in its employ to testify, if any might offer a relevant and substantial addition to the accuracy or completeness of the record. With the consent of the presiding officer, a party may make a written submission before the hearing.

§ 1606.10 Conduct of hearing.

(a) The hearing shall be scheduled to commence at the earliest appropriate date, ordinarily not later than 45 days after the notice required by § 1606.7, and, whenever practical, shall be held at a place convenient to the recipient and the community it serves. A hearing affecting more than one community or recipient shall be held in a single centrally located place unless the presiding officer determines that an additional hearing place is required.

(b) The presiding officer shall preside, conduct a full and fair hearing, avoid delay, maintain order, and insure that a record sufficient for full disclosure of the facts and issues is made. The hearing shall be open to the public unless, for good cause and in the interests of justice, the presiding officer shall determine otherwise.

(c) The presiding officer may allow any interested person or organization to participate in the hearing if such participation will not broaden the issues unduly or cause delay, and will aid in proper determination of the issues.

(1) A person or organization wishing to participate in a hearing shall request permission from the presiding officer, stating the reason for the request, and the nature of the evidence or argument to be offered; and shall notify the Corporation and the recipient of its request.

(2) The presiding officer shall notify the Corporation, the recipient, and the person or organization requesting participation whether the request has been granted, and in case of denial shall include a brief statement of the reasons therefor.

(3) The presiding officer may limit the scope or form of participation authorized under this paragraph.

(d) The Corporation and the recipient each may present its case by oral or documentary evidence, conduct examination and cross-examination of witnesses, examine any document submitted by another party, and submit rebuttal evidence.

(e) If a party fails, without good cause, to produce a person or document required under § 1606.9(c), the presiding officer may make an adverse finding on the fact or issue with respect to which production was required.

(f) Technical rules of evidence shall not apply. The presiding officer shall make any procedural or evidentiary ruling that may help to insure full disclosure of the facts, to maintain order, or to avoid delay. Irrelevant, immaterial, repetitious or unduly prejudicial matter may be excluded.

(g) Official notice may be taken of published policies, rules, regulations, guidelines and instructions of the Corporation, of any matter of which judicial notice may be taken in a federal court, or of any other matter whose existence, authenticity, or accuracy is not open to serious question.

(h) A record or summary of the hearing shall be made in a manner determined by the presiding officer, and shall be made available to a party upon payment of its cost.

§ 1606.11 Obligations of the Corporation.

At a hearing under § 1606.10:

(a) The Corporation shall have the obligation of proving, by a preponderance of the evidence, the existence of any disputed fact relied upon as justification for denial of refunding on a ground described in paragraph (e) or (d) of § 1606.4; and

(b) On all other issues, the Corporation shall have the obligation of establishing a substantial basis for denying the application for refunding.

§ 1606.12 Briefs and argument.

(a) Within ten days after the close of the hearing, each party may, and upon request of the presiding officer, shall, submit to the presiding officer, with service upon all other parties, proposed findings of fact and argument on matters of law or policy.

(b) The presiding officer may direct or permit oral argument at the close of the hearing or after submission of briefs.

§ 1606.13 Recommended decision.

(a) As soon as practicable after the hearing, and normally within twenty days after its conclusion, the presiding officer shall issue a written recommended decision

(1) Granting the application for refunding, subject to any modification or condition that may be deemed necessary on the basis of information adduced at the hearing; or

(2) Denying the application for refunding.

(b) The recommended decision shall contain findings of the significant and relevants facts and shall state the reasons for the decision. Findings of fact shall be based solely on the evidence adduced at the hearing or on matters of which official notice was taken.

§ 1606.14 Final decision.

(a) If neither the Corporation nor the recipient requests review by the President, a recommended decision shall become final ten days after receipt by a recipient.

(b) The recipient or the Corporation may seek review by the President of a recommended decision. A request shall be made in writing within ten days after receipt by the party of the recommended decision, and shall state in detail the reasons for seeking review.

(c) Within thirty days after receipt of a request for review of a recommended decision, the President may adopt, modify, or reverse the recommended decision, or direct further consideration of the matter. In the event of modification or reversal, the President's decision shall conform to the requirements of § 1606.13(b).

(d) If the presiding officer is the President, within thirty days after the conclusion of a hearing, a final decision that conforms to the requirements of § 1606.13 shall be issued.

(e) A decision by the President shall become final upon receipt by a recipient.

§ 1606.15 Time extension and waiver.

(a) Any period of time provided in these rules may, upon good cause shown and determined, be extended (1) By the person making the preliminary determination, prior to the time the presiding officer is designated; (2) By the presiding officer, prior to the issuance of a recommended decision; or (3) By the President at any time.

(b) Requests for extensions of time shall be considered in light of the overall objective that the procedures prescribed by this part ordinarily shall be concluded within 90 days of the preliminary determination.

(c) Any other provision of these rules may be waived or modified (1) By the presiding officer, if other than the President, with the assent of the recipient and of counsel for the Corporation, or (2) By the President upon good cause shown and determined.

§ 1606.16 Right to Counsel.

At a hearing under § 1606.10, the Corporation and the recipient each shall be entitled to be represented by counsel, or by another person. The attorney designated may be an employee, or may be outside counsel retained for the purpose, who may be compensated at the reasonable and customary rate for an attorney practicing in the vicinity of the attorney retained. Unless prior written approval is received from the Corporation, such fees shall not exceed the daily equivalent of the rate of level V of the Executive Schedule specified in section 5316 of Title 5, United States Code.

§ 1606.17 Reimbursement.

If an application for refunding is granted after a Preliminary Determination has been issued under § 1606.5, a recipient, at the discretion of the President, may receive reimbursement by the Corporation, in whole or in part, for reasonable and actual expenses that were required in connection with proceedings under this part.

§ 1606.18 Interim funding.

Failure by the Corporation to meet a time requirement of this part shall not entitle a recipient to refunding. If the Corporation fails to take final action upon an application for refunding prior to the expiration of the term of a recipient's current grant or contract, the Corporation shall provide the recipient with interim funding necessary to maintain its current level of legal assistance activities under the Act until

(a) The application for refunding has been approved and funds pursuant thereto received, or

(b) A final decision denying the application has been made.

§ 1606.19 Termination funding.

After a final decision to deny refunding, and without regard to whether a hearing has occurred, the Corporation may authorize temporary funding it necessary to enable a recipient to close or transfer current matters in a manner consistent with the recipient's professional responsibility to its present clients.

§ 1606.2 Notice.

A notice required to be sent to a recipient under this part shall be sent to the director of the recipient, and may be sent to the chairperson of its governing body.

THOMAS EHRLICH,
President,
Legal Services Corporation.

[FR Doc.77-2576 Filed 1-25-77;8:45 am]

[45 CFR Part 1621]

CLIENT GRIEVANCE PROCEDURE

Proposed Rulemaking

The Legal Services Corporation was established pursuant to the Legal Services Corporation Act of 1974, Pub. L. 93-355, 88 Stat. 378, 42 U.S.C. 2996-2996*l* ("the Act"). Section 1006(b)(1), 42 U.S.C. 2996e(b)(1), provides that the Corporation shall have authority to insure compliance of the Act.

Pursuant to section 1008(e) of the Act, the Corporation hereby affords notice and publishes for comment the following proposed regulations concerning client grievance procedures. Public comment will be received by the Corporation at its headquarters offices, Suite 700, 733 15th Street, NW., Washington, D.C. 20005 on or before February 25, 1977. Comments must be in writing and may be accompanied by a memorandum or brief in support thereof. Comments received may be seen at the above offices during business hours Monday through Friday.

Final regulations will be issued by the Corporation after review and consideration of public comments received pursuant to this notice.

COMMENT

A person who is denied legal assitance by a recipient, of who is dissatisfied with the assistance rendered, is unable to ob-

tain legal assistance from another source. And, although a client does not pay a fee, adequate recourse should be available when the client believes that the services provided by a recipient do not meet the high standards of effectiveness required by the Act. Further, the fact that a recipient carries on its activities with funds from a public source imposes an additional responsibility beyond those imposed on every lawyer by the Code of Professional Responsibility. An effective client grievance procedure is an appropriate means of insuring the accountability of a recipient to its clients.

The proposed regulation requires the establishment by the governing body of a recipient of a grievance committee with authority to consider compliants that have not been resolved by staff action. The Code of Professional Responsibility does not prevent a committee containing nonlawyers from inquiring into a lawyer's conduct of a case when the committee is acting at the request of the client. Ethical prohibitions against interference with the professional judgment of a lawyer are designed to insure that the lawyer will be directly responsible to the client, and not subject to interference or control by an intermediary. See ABA Formal Opinions 237 and 294. Inquiry by a grievance committee acting at the request of the client is consistent with these opinions.

If a client expresses dissatisfaction with any aspect of the assistance provided by a recipient, it would be appropriate for the recipient to inform the client of the existence of a local group, such as the National Clients Council or the National Welfare Rights Organization, that may be able to counsel the client about the subject of the complaint.

PART 1621—CLIENT GRIEVANCE PROCEDURE

Sec.
1621.1 Purpose.
1621.2 Governing Body Grievance Committee.
1621.3 Procedures.

AUTHORITY: Sec. 1006(b)(1) (42 U.S.C. 2996e(b)(1)).

§ 1621.1 Purpose.

By providing an effective remedy for a client who believes that legal assistance has been denied improperly, or who is dissatisfied with the assistance provided, this part seeks to insure that every recipient will be accountable to its clients and will provide the high quality legal assistance required by the Act.

§ 1621.2 Governing Body Grievance Committee.

The governing body of a recipient shall establish a grievance committee, composed of lawyer and client representatives in the same proportion in which they are on the governing body.

§ 1621.3 Procedures.

(a) A recipient shall establish effective procedures for determining the validity of a complaint that assistance has been improperly denied or ineffectively rendered. The procedures adopted shall be subject to approval by the Corporation.

(b) The procedures shall include:

(1) Adequate notice to clients of how to make a complaint;

(2) Provision of assistance to a client who requests help in presenting a complaint; and

(3) An opportunity for a complainant to appear before the grievance committee established by the govrening body if the director of the recipient is unable to resolve the matter.

(c) A record of every complaint and its disposition shall be preserved for review by the Corporation.

THOMAS EHRLICH,
President,
Legal Services Corporation.

[FR Doc.77-2577 Filed 1-25-77;8:45 am]

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[50 CFR Part 17]

ENDANGERED AND THREATENED WILDLIFE AND PLANTS

Proposed Provisions for Interagency Corporation

Proposed regulations to assist the Federal agencies in complying with section 7 of the Endangered Species Act of 1973.

The Assistant Secretary for Fish and Wildlife and Parks, U.S. Department of the Interior, and the Director, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, hereby jointly issue substantively identical proposed rulemakings that would establish rules and procedures for interagency cooperation pursuant to section 7 of the Endangered Species Act of 1973, 16 U.S.C. 1531–1543 (hereinafter cited as Act). The U.S. Fish and Wildlife Service (hereinafter cited in this preamble as FWS) regulations would be established in Part 17 of Chapter I of Title 50, Code of Federal Regulations, while the National Marine Fisheries Service (hereinafter cited in this preamble as NMFS) regulations (published elsewhere in this issue, see FR Doc 77-2382, published in the proposed rules section of this issue under the Department of Commerce) would be established in Parts 217 and 223 of Chapter II of Title 50, Code of Federal Regulations. The NMFS regulations in Parts 217 and 223 are only for those species under the jurisdictional responsibilities of the Secretary of Commerce (endangered species are identified in 50 CFR 222.23(a) and threatened species are identified in 50 CFR 227.4). The FWS regulations in Part 17 would apply to all other endangered and threatened species.

BACKGROUND

The Act became effective on December 28, 1973. Recognizing that all Federal agencies must cooperate to conserve and protect endangered and threatened species and their habitat, section 7 of the Act states:

INTERAGENCY COOPERATION

Section 7. The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act. All other Federal departments and agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered species and threatened species listed pursuant to section 4 of this Act and by taking such action necessary to insure that actions authorized, funded, or carried out by them do not jeopardize the continued existence of such endangered species and threatened species or result in the destruction or modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with the affected States, to be critical.

By internal memorandum of October 16, 1974, the Secretary of the Interior further defined Interior's responsibilities under section 7 and established the lead role of the FWS within the Department of the Interior.

In a joint letter to all Federal agencies on December 3, 1974, the Secretaries of the Interior and Commerce pointed out the responsibilities of the agencies under section 7 and asked for their cooperation in implementing the Act. The letter of December 3 also clarified the responsibilities of the FWS and the NMFS as lead agencies for the two Departments in implementation of the Act.

On April 22, 1975, the Director of the FWS and the Director of the NMFS published a joint notice in the FEDERAL REGISTER (40 FR 17764–17765) describing how "critical habitat" would be determined for endangered and threatened species pursuant to section 7 of the Act.

On May 29, 1975, the FWS and NMFS convened a conference for affected Federal agencies to discuss the Act and its implications for the activities and programs of the agencies. At this meeting, the Federal agencies requested that guidelines be developed to assist them in meeting their responsibilities under section 7.

In response to that request, the FWS and NMFS convened an Ad Hoc Interagency Committee of representatives from 11 Federal agencies to advise the two Services in developing the necessary guidelines.

An April 22, 1976, "Guidelines to Assist the Federal Agencies in Complying with Section 7 of the Endangered Species Act of 1973" were transmitted to all Federal agencies by the FWS and NMFS. These guidelines are an interim measure to furnish a broad and flexible framework within which Federal agencies may prepare internal procedures to fulfill their responsibilities under section 7. However, as stated in the guidelines, they are "a starting point for the development and promulgation of regulations."

At the request of the Office of Management and Budget, copies of the guidelines were again transmitted to the Federal agencies on May 20, 1976, and comments due by August 1, 1976, were solicited for a "quality of life" review. As of

September 28, 1976, 40 comments had been received from Federal agencies. Although 8 comments expressed unequivocal support for the guidelines and 3 comments were opposed, the remaining 29 did not express general support or opposition, limiting themselves to comments on particular language, organization, or approach. Seven of the 29 simply stated they had no comment at that time.

The guidelines were subsequently revised by the FWS and NMFS for publication as a proposed rulemaking incorporating various comments of the Federal agencies. At the request of the Office of Management and Budget, the Director of the FWS, on behalf of the FWS and of the NMFS, forwarded this draft proposed rulemaking to the affected Federal agencies on November 11, 1976, requesting comments not later than December 1, 1976. As of January 5, 1977, 4 Federal agencies had commented. The draft regulations were then revised for this proposed rulemaking, incorporating many of the Federal agency comments.

DISCUSSION OF THE COMMENTS OF THE FEDERAL AGENCIES

Many of the comments of the Federal agencies on both the guidelines and draft regulations were clearly appropriate, have been incorporated into the proposed regulations, and need not be discussed here. However, several comments, whether adopted or not, merit discussion because of their importance and generality.

First, nearly one-third of the Federal agencies commenting indicated that use of the consultation process should be discretionary with the agency, although the Council on Environmental Quality took the opposite position. The position taken in the proposed rulemaking affirms the ultimate responsibility of each individual agency to decide whether or not it is in compliance with the Act. The proposal establishes a fixed procedure of consultation because the FWS and NMFS believe they cannot responsibly fulfill their obligations under section 7 unless there is a rational and uniform procedure for the provision of biological advice to agencies considering actions within the borders of section 7.

Second, nearly one-third of the Federal agencies commenting expressed in one form or another that set time frames are necessary for the consultation process. The FWS and NMFS acknowledge these agencies' concern that the process not be protracted. They have adopted a 60-day limit for threshold examinations and a 60-day limit for all consultation following receipt of information adequate for a biological opinion, except where special difficulty is incurred in obtaining necessary data. The FWS and NMFS do not expect that consultation will normally be protracted and anticipate that many requests for consultation will be dispatched summarily after a threshold examination. Nonetheless, the FWS and NMFS would be abdicating their responsibilities under section 7 if they were to commit themselves without exception to a time frame that in some cases would render inadequate biological advice. Therefore, the proposal leaves to agreement of the affected agency and the FWS or NMFS the time frame for completion of consultation on especially difficult actions.

Third, about one-fourth of the Federal agencies commenting stressed the need for habitat maps or published geographic coordinates for listed species, and the FWS and NMFS concur. The FWS is now working to satisfy the need, and has already designated critical habitat. This deficiency is not a valid reason for withholding implementation of the proposal, however, because the requirements of section 7 apply to Federal agencies even in the absence of a rulemaking such as that proposed, and it is to the Federal agency's advantage to have whatever biological advice and assistance the FWS and NMFS have to offer. The intended proposal simply establishes uniform procedures whereby Federal agencies can obtain the best available biological opinion as to the effect of an action on endangered or threatened species.

Fourth, about one-quarter of the Federal agencies commenting, including the Council on Environmental Quality, suggested that the consultation process should be linked to established procedures for interagency review of environmental impact statements. The FWS and NMFS expressly support this suggestion in the proposal and encourage it as a means to reduce paperwork.

Fifth, 4 of the Federal agencies expressed the opinion that the preparation and usual intragency review of environmental impact statements satisfy the consultation requirements of section 7. The Council on Environmental Quality did not support this position, but stated that an environmental impact statement should be prepared if an activity or program would jeopardize a species or potentially destroy its critical habitat. Although the FWS and the NMFS encourage consolidation of section 7 consultation and impact statement review, they will only be able to fulfill their obligations under section 7 if agencies that so consolidate will comply with the procedures stated in this proposal and will state the biological opinions of the FWS and NMFS pursuant to section 7 in final environmental impact statements, assessments, or other documents.

Sixth, 4 of the Federal agencies commenting indicated that advanced projects should be exempted from the requirements of section 7. Neither FWS nor NMFS intends that section 7 bring about the waste that can occur if an advanced project is halted. The proposed regulations would clearly limit application of section 7 to cases where Federal involvement or control remains and in itself could jeopardize the continued existence of a listed species or modify or destroy its critical habitat. That the proposal would not exempt advanced projects where such Federal involvement or control remains simply reflects the belief of the FWS and the NMFS that their role under section 7 is limited to providing biological advice and assistance, not in determining if a project may continue. The affected agency must decide whether the degree of completion and extent of public funding of particular projects justify an action that may be otherwise inconsistent with section 7. It seems reasonable that such an agency should seek the advice of the FWS or of the NMFS as to the effect the action will have upon the species in question, so that the agency may weigh the biological effect among other factors in reaching a decision.

Seventh, 3 of the Federal agencies commenting stressed that critical habitat should be the minimum habitat required by the Act or that the meaning of "modification" of such habitat in section 7 should be strictly qualified. The intended proposal incorporates both of these suggestions. Critical habitat is defined as habitat "the loss of which would appreciably decrease the likelihood of survival and recovery of a listed species or a distinct segment of its population." Modification is incorporated in the phrase "destruction or adverse modification," and then defined to be an alteration that appreciably diminishes the value of that habitat for a listed species.

Eighth, 3 of the Federal agencies commenting expressed the opinion that section 7 has no extraterritorial application, and a fourth agency stated that critical habitat should not be determined extraterritorially. However, the Council on Environmental Quality strongly supported extraterritorial application of section 7, and questioned whether it was appropriate to preclude determination of critical habitat in foreign countries. The proposal adopts the position that critical habitat may not be determined in foreign countries. However, the requirement that Federal agency actions not jeopardize the continued existence of listed species is taken to be applicable to listed species wherever occurring. This position adopts the recommendations of the Interior Department Solicitor's Office and the General Counsel's Office of the National Oceanic and Atmospheric Administration on the issue.

Ninth, 4 of the Federal agencies commenting stated that non-Federal entities should be able to consult with the FWS or the NMFS on behalf of the Federal agency. In response, the regulations for proposal have been revised to clarify that the affected Federal agency may obtain technical assistance from any source. However, the proposed regulations emphasize that the Federal agency must take full responsibility for the initiation, carrying out, and completion of consultation, and may not delegate it.

Tenth, several Federal agencies, both formally and informally, have inquired as to the assistance the FWS and the NMFS will provide in consultation. The proposed regulations have been revised to spell this out as clearly as possible. In general, the FWS and the NMFS take responsibility for review of information provided to them by the affected agency, and they will advise agencies on the

kind of information needed and may perform on-site inspections. However, the FWS and the NMFS cannot commit themselves to fund or to carry out the basic study necessary for decision.

All comments of the Federal agencies have been considered in developing the proposed regulations and are maintained in the Office of the Associate Director for Federal Assistance, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240.

DESCRIPTION OF THE PROPOSAL

The purpose of this proposal is to establish joint rules and procedures for interagency cooperation pursuant to section 7 of the Act. Although these proposed regulations are codified for the FWS in Chapter I of Title 50 of the Code of Federal Regulations, the NMFS is publishing substantively identical proposed regulations codified in Chapter II of the same Title.

This joint proposal is summarized below, with cites to NMFS codification in parentheses:

1. Section 17.3 (§ 217.12) is amended by adding key terms used in section 7 and in this proposal.

2. The following sections of Subpart I—Interagency Cooperation (Part 223—Endangered and Threatened Fish or Wildlife—Interagency Cooperation) are added:

(A) A § 17.91 (§ 223.1) is added on the scope of section 7 of the Act. This section affirms the responsibilities of the Federal agencies under section 7 by directing them to carry out conservation programs for listed species, and requiring them to insure that their actions do not jeopardize the continued existence of listed species or result in destruction or modification of critical habitat. The sections affirms that the prohibition against actions causing jeopardy applies extraterritorially.

(B) Section 17.92 (§ 223.2) describes the application of section 7 to previously initiated Federal agency actions.

(C) Section 17.93 (Subpart B—Consultation) sets forth procedures that the Federal agencies should follow in meeting the consultation and assistance requirements of section 7.

(1) The consultation process is to be initiated by Federal agencies after review and identification of actions that may affect listed species. If such review indicates no effect on listed species, consultation is not required unless requested by the FWS or NMFS. If a Federal agency identifies any action that may affect listed species, that agency should initiate consultation by written request to the appropriate FWS or NMFS official, with a copy to the Secretary of State if foreign countries or the high seas are involved. Additionally, consultation can be requested by either the FWS or NMFS should it become aware of a Federal action that may affect listed species and that has not received the benefit of section 7 consultation. Informal consultation at the field level between the FWS or NMFS and the Federal agencies can be initiated, but is not a substitute for the formal consultation process contained in this proposal. Federal agencies may obtain assistance from any source so long as they retain full responsibility for consultation.

(2) Consultation and assistance can take place in several forms.

(a) Consultation may be consolidated with interagency review under the National Environmental Policy Act (42 U.S.C. 4321 et seq.), the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.), and other appropriate statutes. However, such consolidation does not relieve the Federal agencies of complying with the consultation procedures contained in this proposal.

(b) Consultation may be carried out through one Federal agency when several Federal agencies are involved in a common activity or program, and the FWS or NMFS concurs in the arrangement.

(3) It is the responsibility of the affected Federal agencies to obtain the biological data necessary to evaluate the effect of an action. The FWS or NMFS will assist to the extent feasible when requested, but will not fund the basic study.

(4) Upon receipt of a written request for consultation from a Federal agency, the FWS or NMFS will conduct a threshold examination. A threshold examination is a preliminary assessment by the FWS or NMFS to ascertain if an action will adversely affect listed species or their habitat.

(a) If, in either Director's opinion, the Federal action will promote the conservation of listed species or their habitat, the Federal agency will be notified within 60 days of initiation, and further consultation will not be required unless additional consultation will benefit the listed species.

(b) If an action is not specifically for the conservation of listed species and the threshold examination reveals that listed species or their habitat will not be adversely affected, the Federal agency will be notified within 60 days of initiation, and further consultation will not be required.

(c) If the Federal action may adversely affect listed species or their habitat, the agency will be so notified in writing within 60 days of initiation, and a final biological opinion will be rendered within 60 days after receipt of information adequate for a biological opinion, unless special circumstances require that a longer period be negotiated.

(5) The consultation process is complete only when the FWS or NMFS has rendered a written biological opinion on the effect of the Federal action on listed species or their habitat. Such opinions and any recommendations will be accompanied by supporting facts and documentation. Upon receipt of the biological opinions and recommendations from the FWS or NMFS, it will then be the responsibility of the Federal agency to determine whether and how to proceed in light of its section 7 obligations.

(6) Consultation should be reinitiated on a Federal action if the Federal agency or FWS or NMFS obtains significant information not previously considered, if the Federal action is significantly modified, or if a new species is listed that is affected by the action.

(D) Section 17.94 (Subpart C—Determination of Critical Habitat) sets forth procedures for determining critical habitat and states criteria the FWS or NMFS will consider in making such determinations.

PUBLIC COMMENTS SOLICITED

The Director of the FWS, on behalf of the FWS and NMFS, hereby solicits written comments and suggestions from the public at large, concerned Governmental agencies, the scientific community, industry, private interests, and any other interested persons. It is hoped that such comments will expose any potential problems so that our final rules will be clear, equitable, and effective.

The final promulgation of these regulations will take into consideration the comments received. Such comments or other additional information may lead the FWS and NMFS to adopt final regulations that differ from this proposal.

SUBMITTAL OF WRITTEN COMMENTS

Interested persons may participate in this rulemaking by submitting written comments to the Director (FWS/LE), U.S. Fish and Wildlife Service, P.O. Box 19183, Washington, D.C. 20036. All relevant comments received on or before March 28, 1977 will be considered. The FWS, on behalf of both the FWS and NMFS, will attempt to acknowledge receipt of all comments, but may not respond substantively.

Comments received will be available for public inspection during normal business hours (7:45 a.m. to 4:15 p.m.) at the Office of the Associate Director for Federal Assistance, U.S. Fish and Wildlife Service, Department of the Interior, 18th and C Streets, NW, Washington, D.C. 20240.

This notice of proposed rulemaking is issued under the authority of the Endangered Species Act of 1973, 16 U.S.C. 1531–1543.

Dated: January 19, 1977.

NATHANIEL P. REED,
Assistant Secretary,
Fish and Wildlife and Parks.

ROBERT W. SCHONING,
Director,
National Marine Fisheries Service.

Accordingly, it is hereby proposed to amend Part 17, Subchapter B, Chapter I of Title 50, Code of Federal Regulations, as follows:

1. Add to the definitions of § 17.3, maintaining alphabetical order, the following:

§ 17.3 Definitions.

* * * * *

"Activities and programs" means all actions of any kind authorized, funded, or carried out by Federal agencies, in whole or in part, examples of which include, but are not limited to: (1) actions intended to conserve listed species or their habitat; (2) the promulgation of regulations; (3) the granting of licenses, contracts, leases, easements, rights-of-way, permits, or grants-in-aid; or (4) actions directly or indirectly causing modifications to the land, water, or air.

* * * * *

"Critical habitat" means any air, land, or water area (exclusive of those existing man-made structures or settlements which are not necessary to the survival and recovery of a listed species) or any constituent thereof, the loss of which would appreciably decrease the likelihood of the survival and recovery of a listed species or a distinct segment of its population. The constituent elements of critical habitat include, but are not limited to: physical structures and topography, biota, climate, human activity, and the quality and chemical content of land, water, and air. Critical habitat may represent any portion of the present habitat of a listed species and may include additional areas for reasonable population expansion.

"Destruction or adverse modification" means a direct or indirect alteration of critical habitat which appreciably diminishes the value of that habitat for survival and recovery of a listed species. Such alterations include, but are not limited to those diminishing the requirements for survival and recovery listed in § 17.94(b). There may be many types of activities which could be carried out in critical habitat without causing such diminution.

* * * * *

"Federal agency" means each authority of the Government of the United States except for the Congress, the courts of the United States, the Governments of the territories or possessions of the United States, or the Government of the District of Columbia.

* * * * *

"Jeopardize the continued existence of" means to engage in an activity or program which reasonably would be expected to reduce the reproduction, numbers, or distribution of a listed species to such an extent as to appreciably reduce the likelihood of the survival and recovery of that species in the wild. The level of reduction necessary to constitute "jeopardy" would be expected to vary among listed species.

"Listed species" means any species of fish, wildlife, or plant which is designated as endangered or threatened pursuant to the Act.

* * * * *

"Recovery" means improvement in the status of listed species to the point at which listing is no longer required.

2. Add §§ 17.91 through 17.94 of Subpart I, to read as follows:

Subpart I—Interagency Cooperation

§ 17.91 Scope.

This subpart interprets and implements section 7 of the Act. Section 7 (16 U.S.C. 1536) applies to all listed species of fish, wildlife, or plants and imposes three burdens upon the Federal agencies. First, it directs them to utilize their authorities to carry out conservation programs for listed species. Such affirmative conservation programs must comply with any applicable permit requirements of 50 CFR Part 17 for listed species. Second, it requires every Federal agency to insure that its activities and programs in the United States, upon the high seas, and in foreign countries will not jeopardize the continued existence of a listed species. And third, section 7 directs all Federal agencies to insure that their activities and programs do not result in the destruction or modification of critical habitat. Although the Fish and Wildlife Service and the National Marine Fisheries Service share responsibilities for the Act, the regulations in this subpart apply only to listed species under the jurisdiction of the Fish and Wildlife Service. A Federal agency can determine which Service to initiate consultation with by scanning the list of species under the jurisdiction of the National Marine Fisheries Service located at 50 CFR 222.23(a) and 227.4. If the Federal agency's activity or program may affect a listed species which is cited in 50 CFR 222.23(a) or 227.4, then the agency should initiate consultation with the National Marine Fisheries Service. If the listed species is not cited in 50 CFR 222.23(a) or 227.4, the Federal agency should initiate consultation with the Fish and Wildlife Service.

§ 17.92 Applicability to previously initiated actions.

Section 7 applies to all activities or programs where Federal involvement or control remains which in itself could jeopardize the continued existence of a listed species or modify or destroy its critical habitat.

§ 17.93 Consultation.

(a) *Initiation.* (1) It is the responsibility of each agency to review its activities or programs and to identify any such activities or programs that may affect listed species or their habitat. Reviewing agencies may obtain advice from the Service, but this is supplemental to and not a substitute for the formal consultation process set forth in this Subpart. Where a Federal agency funds or authorizes an activity or program to be carried out by a non-Federal entity, the Federal agency should initiate the consultation process and not the non-Federal entity.

(2) If a Federal agency decides that its activities or programs will not affect listed species or their habit the consultation requirements of section 7 will not apply unless requested by the Service.

(3) When a Federal agency identifies activities or programs that may affect listed species or their habitat, the agency should convey a written request for consultation to the Regional Director for the Region where the activity or program is or will be carried out or to the Regional Director for the Region where the Federal agency is situated if more than one Region is involved, or to the Director if foreign countries or the high seas are involved. In addition, if foreign countries or the high seas are involved, a copy of the request for consultation should be forwarded to the Secretary of State c/o the Director, Office of Environmental Affairs.

(4) In addition, the Director or Regional Director will request initiation of consultation if he identifies any activity or program of a Federal agency that has not received prior consultation and that may affect listed species or their habitat.

(5) Informal consultation may be initiated at the field level between the Service and the Federal agencies or their authorized representatives. Such informal consultation is supplemental to and not a substitute for the formal consultation process set forth in this Subpart.

(b) *Form.* (1) Consultation under section 7 may be consolidated with interagency cooperation required by other statutes, such as the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.) or the National Environmental Policy Act (42 U.S.C. 4321 et seq.). The satisfaction of the requirements of these other statutes, however, does not of itself relieve a Federal agency of its obligation to comply with the consultation procedures set forth in this Subpart.

(2) When particular progams or activities involve more than one Federal agency, these agencies may, with concurrence of the Director, fulfill their consultation responsibilities through a single agency.

(c) *Assistance from the Service.* It is the primary responsibility of each Federal agency requesting consultation to conduct appropriate studies and to provide the biological information necessary for adequate review of the effect an activity or program has upon listed species or their habitat. To the extent it is able, the Service will upon request provide relevant available data and reports, personnel, and recommendations for additional studies or surveys, but the Service will not fund any such additional studies or surveys.

(d) *Assistance from other sources.* Federal agencies may seek assistance from any source to obtain the biological information necessary for review of the effect an activity or program has upon listed species or their habitat. Such assistance may include, but is not limited to that obtained by contract or required by regulations of the Federal agency. However, responsibility for compliance with the procedures of this Section remains with the Federal agency and cannot be delegated by it.

(e) *Threshold examination.* Upon receipt of a request for consultation, the Director or Regional Director will conduct a threshold examination of the activity or program under review. A threshold examination may include a review of available information or an on-site inspection of the area.

(1) If an activity or program under review will, in the opinion of the Director, promote the conservation of listed

species, the appropriate Federal agency shall be notified in writing within 60 days after consultation is initiated, and additional section 7 consultation shall be unnecessary unless it would further benefit the listed species. The Service, to the extent feasible, will assist in carrying out such programs if requested by the Federal agency. The Federal agency should be aware that in addition to satisfaction of section 7 requirements, a permit may be required for activities otherwise prohibited by section 9 of the Act (16 U.S.C. § 1538).

(2) If an identified activity or program is not specifically for the conservation of listed species, but the Director or Regional Director concludes from the threshold examination that in no likelihood will the activity or program jeopardize the continued existence of a listed species or result in the destruction or adverse modification of its critical habitat, the appropriate Federal agency shall be notified in writing within 60 days of initiation and further section 7 consultation shall be unnecessary.

(f) *Further consultation.* If an identified activity or program is not specifically for the conservation of listed species, and the Director or Regional Director concludes as a result of the threshold examination that the activity or program may jeopardize the continued existence of a listed species or result in the destruction or adverse modification of its critical habitat, the Federal agency will be so notified in writing within 60 days of initiation. The Federal agency, with assistance as feasible from the Service and other sources of expertise, shall then initiate biological surveys or studies to determine how the activity or program may affect listed species or their critical habitat. Within 60 days of receipt of adequate information and documentation, unless special circumstances require negotiation of a longer period, the Service will end consultation by issuing a biological opinion.

(g) *Biological opinions.* (1) If the Director or Regional Director concludes that an activity or program under review is not likely to jeopardize the continued existence of listed species or result in destruction or adverse modification of critical habitat, he will so notify the Federal agency in writing.

(2) If the Director or Regional Director concludes that an activity or program under review is likely to jeopardize the continued existence of a listed species or result in the destruction or modification of critical habitat, he will so notify the Federal agency in writing and may recommend any changes that in his opinion will eliminate these effects of the activities or programs.

(3) Biological opinions issued pursuant to paragraphs (g) (1) and (2) will be accompanied by a statement of the facts and documentation on which they are based.

(4) Upon receipt and consideration of the final biological opinion and recommendations of the Service, it is the responsibility of the Federal agency to determine whether to proceed with the activity or program as planned, in light of its section 7 obligations. Where the consultation process has been consolidated with interagency cooperation required by other statutes, such as the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.) or the National Environmental Policy Act (42 U.S.C. 4321 et seq.), the final biological opinion and recommendations of the Service should be stated in the documents required by those statutes.

(h) *Reinitiation.* Consultation shall be reinitiated by the Service or by the Federal agency:

(1) If new information reveals impacts of an activity or program that may hinder the survival and recovery of listed species;

(2) If the activity or program is modified in a manner that may hinder the survival and recovery of listed species; or

(3) If a new species is listed that may be affected by the activity or program.

§ 17.94 Determination of critical habitat.

(a) *Procedure.* Whenever deemed necessary and appropriate, the Director shall determine critical habitat for a listed species. After exchange of biological information, as appropriate, with the affected States and Federal agencies with jurisdiction over the lands or waters under consideration, the Director shall publish proposed rulemakings in the FEDERAL REGISTER. Comments of the scientific community and other interested persons will also be considered in promulgating final rulemaking.

(b) *Criteria.* The Director will consider the physiological, behavioral, ecological, and evolutionary requirements for the survival and recovery of listed species in determining what areas or parts of habitat (exclusive of those existing man-made structures or settlements which are not necessary to the survival and recovery of the species) are critical. These requirements include, but are not limited to:

(1) Space for individual and population growth and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, or rearing of offspring; and generally,

(5) Ecosystems that are protected from disturbances and are representative of the geographical distribution of listed species.

(c) *Emergency determination.* Paragraphs (a) and (b) notwithstanding, the Director may make an emergency determination of critical habitat if he finds that an impending action poses a significant risk to the well-being of a listed species by the destruction or adverse modification of its habitat. Emergency determinations will be published in the FEDERAL REGISTER and will remain in effect for no more than 120 days.

[FR Doc.77-2383 Filed 1-25-77;8:45 am]

Fish and Wildlife Service

[50 CFR Part 26]

BACK BAY NATIONAL WILDLIFE REFUGE, VIRGINIA

Public Entry and Use

The Department of the Interior is considering issuance of regulations to govern public access, use, and recreation on the Back Bay National Wildlife Refuge. Prior regulations were published in the FEDERAL REGISTER, 41 FR 22361–22364, June 3, 1976 and 41 FR 31537–31539, July 29, 1976.

The policy of the Department of the Interior is, whenever practical, to afford the public an opportunity to participate in the rule-making process. Accordingly, interested persons may submit written comments, suggestions or objections regarding the proposed revision to the Regional Director, U.S. Fish and Wildlife Service, One Gateway Center, Suite 700, Newton Corner, Massachusetts 02158, by February 25, 1977.

PROPOSED REGULATIONS

These regulations are proposed under the authority of Section 4 of 80 Stat. 927, 16 U.S.C. 668dd: 76 Stat. 654, 16 U.S.C. 460k–3: and 65 Stat. 186, 16 U.S.C. 715s. Accordingly it is proposed that the 1976 special regulations governing public access, use and recreation be revised as set forth below:

§ 26.34 Special regulations concerning public access, use and recreation for individual wildlife refuge areas.

VIRGINIA

BACK BAY NATIONAL WILDLIFE REFUGE

(a) General Use. (1) Entry on foot or by motor vehicle on designated travel routes in public use areas is permitted for the purpose of nature study, sightseeing, wildlife observation, photography, hiking, surf fishing, surfing, swimming, and bicycling during daylight hours.

(2) Swimming and surfing are permitted only on that portion of the beach lying between the north boundary of the refuge and the dune crossing at field headquarters. No lifeguards are provided. Swimming and surfing will be at the visitor's own risk.

(3) The parking lot at the field headquarters is reserved for persons engaged in surf fishing and nature study. Surf fishing is permitted in accordance with applicable State regulations.

(4) Open fires are not permitted. Portable grills with a contained fuel supply are permitted on the beach north of the field headquarters.

(5) Pets on a leash not exceeding 10 feet in length are permitted on refuge public use areas.

(6) Bicycles and registered motor vehicles are permitted on the paved refuge access road and on the parking area at field headquarters. All other types of motorized vehicles are prohibited except as specifically authorized pursuant to these regulations.

(b) Access Permits. (1) Access to and travel along the ocean portion of the refuge by motorized vehicles may be allowed between the dune crossing entrance at the field headquarters and the south boundary of the refuge only after a permit has been issued by the refuge manager or his designated representative.

(2) Permits may be issued for such period of time as appears justifiable to the refuge manager, taking into account the need for and duration of access required by the applicant. In no case will the permit remain in effect beyond December 31 of the year in which it is granted. Permits may be renewed upon the submittal of a proper application.

(3) Permits must be permanently displayed at all times while on refuge property in such a manner as to be readily visible on any motor vehicle. Permits shall be nontransferable. No more than one vehicle owned by the permit holder shall be registered with the refuge manager for use in accordance with these regulations. That vehicle shall be operated on the refuge beach only by the permit holder or a member of his immediate family and household.

(4) Permits may be issued as follows: (i) Residential. (A) To persons now residing on, owning, or leasing land with permanent habitable dwelling, south of the refuge in the False Cape State Park acquisition area, Virginia.

(B) To permanent, full-time residents who can furnish proof of residency prior to December 31, 1975 on the Outer Banks from the refuge boundary south to and including the village of Corolla, North Carolina, as long as they remain permanent, full-time residents. Residence is defined as the dwelling in which the permit applicant lives year round on a full-time basis.

The burden of proof of showing that the prospective permittee meets these criteria shall be on the prospective permittee by presentation of appropriate documentation. Such permitted vehicles shall be restricted to two round trips per day. Travel is restricted to the designated route of travel between the hours of 5 a.m. to 11 p.m. The refuge manager may make exceptions to access restrictions for qualified permittees who have demonstrated, to the satisfaction of the refuge manager, a need for access relating to health or livelihood.

(ii) Non-residential: (A) To full-time commercial fishermen who have verified their dependence for a livelihood since on or before 1972 upon ingress, egress or crossing refuge land. Not more than three (3) special use permits for commercial fishing on the refuge will be in force at one time. Selection of refuge fishing permits will be determined by a lottery when the number of qualified applicants, as described above, exceeds the number of permits available. Commercial fishermen: a commercial fisherman shall be described as one who performs the act of harvesting finfish by gill net or haul seine in the Atlantic Ocean, and who has owned and operated a commercial fishing business since on or before 1972.

(B) For a school bus transporting resident students to and from the False Cape area during the school term.

(C) For service vehicles on business calls during the hours of 8 a.m. to 5 p.m., Monday through Friday, upon written verification of a request from a resident as described in (b) (4) (i) above. Service vehicles. Any vehicle owned or operated by or on behalf of an individual, partnership, or corporation engaged entirely in the business of furnishing construction, maintenance, or repair services, including but not limited to building, plumbing, septic tanks, installation or repair of household appliances, carpentry, painting, lansdcaping, garbage collection, and delivery services.

(D) For public utility vehicles on official business calls upon written verification of a request from a resident as described in (b) (4) (i) above. Public utility vehicles: Any vehicles owned or operated by a public utility company enfranchised to supply Outer Banks residents with electricity or telephone service.

(6) Excluded from the restrictions of these regulations are any military, fire, emergency, or law enforcement vehicle when used for emergency purposes and official use by an employee, agent, or designated representative of the Federal, State, or local government in the course of his official duties.

(7) In an emergency, the refuge manager may suspend, for such period or periods as he shall deem advisable, any or all of the foregoing restrictions on vehicular travel, and he may announce such suspension by whatever means are available. In the event of high winds and waves, storms, adverse weather conditions or high tides, the refuge manager may close all or any portion of the refuge to vehicular travel for such period as he shall deem advisable in the interest of public safety, or may adjust the periods of access otherwise prescribed pursuant to (b) (4) (i) above.

(8) (i) The refuge manager may prescribe restrictions as to the types of vehicles to be permitted to ensure public safety and adherence to all applicable rules and regulations.

(ii) All vehicles registered with the refuge manager must be equipped with four-wheel drive or oversand tires and carry, at all times on the refuge beach a shovel, jack, tow rope or chain, board or similar support for the jack, low-pressure tire gauge and spare tire.

(9) Violators of these special regulations and all other regulations pertaining to the Back Bay National Wildlife Refuge will be subject to legal action as prescribed by 50 CFR 28.31, including mandatory revocation by the refuge manager of such permits for the duration of the permit period.

(10) all permits issued under (b) (4) (i) will be terminated in the event that alternate access is provided during the permit period.

(11) The provisions of this special regulation are effective through December 31, 1977. They supplement the regulations which govern recreation on wildlife refuge areas generally, which are set forth in Title 50.

The refuge, comprising approximately 4,600 acres, is delineated on a map available from the Refuge Manager, Back Bay National Wildlife Refuge, Pembroke Office Park, Pembroke No. 2 Building Suite 218, Virginia Beach, Virginia 23462, and from the Regional Director, U.S. Fish and Wildlife Service, One Gateway Center, Suite 700, Newton Corner, Massachusetts 02158.

WILLIAM C. ASHE,
Acting Regional Director,
U.S. Fish and Wildlife Service.

JANUARY 13, 1977.

[FR Doc.77-2400 Filed 1-25-77;8:45 am]

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[50 CFR Parts 217 and 223]

ENDANGERED AND THREATENED FISH OR WILDLIFE

Interagency Cooperation

Proposed regulations to assist the Federal agencies in complying with section 7 of the Endangered Species Act of 1973.

The Director, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, and the Assistant Secretary for Fish and Wildlife and Parks, U.S. Department of the Interior, hereby jointly issue substantively identical proposed rulemaking that would establish rules and procedures for interagency cooperation pursuant to section 7 of the Endangered Species Act of 1973, 16 U.S.C. 1531–1543. The National Marine Fisheries Service regulations would be established in Parts 217 and 223 of Chapter II of Title 50, Code of Federal Regulations, while the Interior Department regulations (published elsewhere in this issue, see FR Doc. 77–2383, published in the proposed rules section of this issue under the Department of Interior) would be established in Part 17 of Chapter I of Title 50, Code of Federal Regulations.

Parts 217 and 223 are only for those species under the jurisdictional responsibilities of the Secretary of Commerce (endangered species are identified in 50 CFR 222.23(a) and threatened species are identified in 50 CFR 227.4). The FWS regulations in Part 17 would apply to all other endangered and threatened species.

For background information, discussion of comments received from Federal agencies, a description of the joint proposal, and solicitation and submittal of public comments, see FR Doc. 77–2383, supra.

This notice of proposed rulemaking is issued under the authority of the Endangered Species Act of 1973.

Dated: January 19, 1977.

ROBERT W. SCHONING,
Director, National Marine Fisheries Service.

NATHANIEL P. REED,
Assistant Secretary,
Fish and Wildlife and Parks.

Accordingly, it is hereby proposed to amend Part 217, Chapter II of Title 50, Code of Federal Regulations, and to add a new Part 223, Chapter II of Title 50, Code of Federal Regulations, as follows:

§ 217.11 [Amended]

1. Revise the reference "Parts 217–222" in § 217.11 to read "Parts 217–223."

2. Add to the definitions of § 217.12, maintaining alphabetical order, the following:

§ 217.12 Definitions.

* * * * *

"Activities and programs" means all actions of any kind authorized, funded, or carried out by Federal agencies, in whole or in part, examples of which include, but are not limited to: (1) Actions intended to conserve listed species or their habitat; (2) the promulgation of regulations; (3) the granting of licenses, contracts, leases, easements, rights-of-way, permits, or grants-in-aid; or (4) actions directly or indirectly causing modifications to the land, water, or air.

* * * * *

"Critical habitat" means any air, land, or water area (exclusive of those existing man-made structures or settlements which are not necessary to the survival and recovery of a listed species) or any constituent thereof, the loss of which would appreciably decrease the likelihood of the survival and recovery of a listed species or a distinct segment of its population. The constituent elements of critical habitat include, but are not limited to physical structures and topography, biota, climate, human activity, and the quality and chemical content of land, water, and air. Critical habitat may represent any portion of the present habitat of a listed species and may include additional areas for reasonable population expansion.

"Destruction or adverse modification" means a direct or indirect alteration of critical habitat which appreciably diminishes the value of that habitat for survival and recovery of a listed species. Such alterations include, but are not limited to those diminishing the requirements for survival and recovery listed in § 223.22. There may be many types of activities which could be carried out in critical habitat without causing such diminution.

* * * * *

"Federal agency" means each authority of the Government of the United States except for the Congress, the courts of the United States, the Governments of the territories or possessions of the United States, or the Government of the District of Coumbia.

* * * * *

"Jeopardize the continued existence of" means to engage in an activity or program which reasonably would be expected to reduce the reproduction, numbers, or distribution of a listed species to such an extent as to appreciably reduce the likelihood of the survival and recovery of that species in the wild. The level of reduction necessary to constitute "jeopardy" would be expected to vary among listed species.

"Listed species" means any species of fish or wildlife which is designatd as endangered or threatened pursuant to the Act.

"NMFS means the National Marine Fisheries Service.

* * * * *

"Recovery" means improvement in the status of listed species to the point at which listing is no longer required.

* * * * *

"Regional Director" as used in Part 223, means a Regional Director of the National Marine Fisheries Service.

3. Add Part 223 to read as follows:

PART 223—ENDANGERED AND THREATENED FISH OR WILDLIFE—INTERAGENCY COOPERATION

Subpart A—Introduction

Sec.
223.1 Scope of regulations.
223.2 Applicability to previously initiated actions.

Subpart B—Consultation

Sec.
223.11 Initiation.
223.12 Form.
223.13 Assistance from the Service.
223.14 Assistance from other sources.
223.15 Threshold examination.
223.16 Further consultation.
223.17 Biological opinions.
223.18 Reinitiation.

Subpart C—Determination of Critical Habitat

Sec.
223.21 Procedure.
223.22 Criteria.
223.23 Emergency determination.

AUTHORITY: Endangered Species Act of 1973, 16 U.S.C. 1531 et seq.

Subpart A—Introduction

§ 223.1 Scope of regulations.

This Part interprets and implements section 7 of the Act. Section 7 (16 U.S.C. 1536) applies to all listed species of fish, wildlife, or plants and imposes three burdens upon the Federal agencies. First, it directs them to utilize their authorities to carry out conservation programs for listed species. Such affirmative conservation programs must comply with any applicable permit requirements of 50 CFR Parts 220, 222, and 227 for listed species. Second, it requires every Federal agency to insure that its activities and programs in the United States, upon the high seas, and in foreign countries will not jeopardize the continued existence of a listed species. And third, section 7 directs all Federal agencies to insure that their activities and programs do not result in the destruction or modification of critical habitat. Although the National Marine Fisheries Service and the U.S. Fish and Wildlife Service share responsibilities for the Act (the regulations in this Part apply only to listed species under the jurisdiction of the National Marine Fisheries Service. A Federal agency can determine which Service to initiate consultation with by scanning the list of species under the jurisdiction of the National Marine Fisheries Service located at 50 CFR 222.23(a) and 227.4. If the Federal agency's activity or program may affect a listed species which is cited in 50 CFR 222.23(a) or 227.4, then the agency should initiate consultation with the National Marine Fisheries Service. If the listed species is not cited in 50 CFR 222.23(a) or 227.4, the Federal agency should initiate consultation with the U.S. Fish and Wildlife Service.

§ 223.2 Applicability to previously initiated actions.

Section 7 applies to all activities or programs where Federal involvement or control remains which in itself could jeopardize the continued existence of a listed species or modify or destroy its critical habitat.

Subpart B—Consultation

§ 223.11 Initiation.

(a) It is the responsibility of each agency to review its activities or programs and to identify any such activities or programs that may affect listed species or their habitat. Reviewing agencies may obtain advice from the NMFS, but this is supplemental to and not a substitute for the formal consultation process set forth in this Part. Where a Federal agency funds or authorizes an activity or program to be carried out by a non-Federal entity, the Federal agency should initiate the consultation process and not the non-Federal entity.

(b) If a Federal agency decides that its activities or programs will not affect listed species or their habitat, the consultation requirements of section 7 will not apply unless requested by the NMFS.

(c) When a Federal agency identifies activities or programs that may affect listed species or their habitat, the agency should convey a written request for consultation to the Regional Director for the Region where the activity or program is or will be carried out or to the Regional Director for the Region where the Federal agency is situated if more than one Region is involved, or to the Director if foreign countries or the high seas are involved. In addition, if foreign countries or the high seas are involved, a copy of the request for consultation should be forwarded to the Secretary of State, c/o the Director, Office of Environmental Affairs.

(d) In addition, the Director or Regional Director will request initiation of consultation if he identifies any activity or program of a Federal agency that has not received prior consultation and that may affect listed species or their habitat.

(e) Informal consultation may be initiated at the field level between the NMFS and the Federal agencies or their authorized representatives. Such informal consultation is supplemental to and not a substitute for the formal consultation process set forth in this Part.

§ 223.12 Form.

(a) Consultation under section 7 may be consolidated with interagency cooperation required by other statutes, such as the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.) or the National Environmental Policy Act (42 U.S.C. 4321 et seq.). The satisfaction of the requirements of these other statutes, however, does not of itself relieve a Federal agency of its obligation to comply with the consultation procedures set forth in this part.

(b) When particular programs or activities involve more than one Federal agency, these agencies may, with concurrence of the Director, fulfill their consultation responsibilities through a single agency.

§ 223.13 Assistance from the Service.

It is the primary responsibility of each Federal agency requesting consultation to conduct appropriate studies and to provide the biological information necessary for adequate review of the effect an activity or program has upon listed species or their habitat. To the extent it is able, the NMFS will upon request provide relevant available data and reports, personnel, and recommendations for additional studies or surveys, but the NMFS will not fund any such additional studies or surveys.

§ 223.14 Assistance from other sources.

Federal agencies may seek assistance from any source to obtan the biological information necessary for review of the effect an activity or program has upon listed species or their habitat. Such assistance may include, but it not limited to that obtained by contract or required by regulations of the Federal agency. However, responsibility for compliance with the procedures of this subpart remains with the Federal agency and cannot be delegated by it.

§ 223.15 Threshold examination.

Upon receipt of a request for consultation, the Director or Regional Director will conduct a threshold examination of the activity or program under review. A threshold examination may include a review of available information or an on-site inspection of the area.

(a) If an activity or program under review will, in the opinion of the Director, promote the conservation of listed species, the appropriate Federal agency shall be notified in writing within 60 days after consultation is initiated, and additional section 7 consultation shall be unnecessary unless it would further benefit the listed species. The NMFS, to the extent feasible, will assist in carrying out such programs if requested by the Federal agency. The Federal agency should be aware that in addition to satisfaction of section 7 requirements, a permit may be required for activities otherwise prohibited by section 9 of the Act (16 U.S.C. 1538).

(b) If an identified activity or program is not specifically for the conservation of listed species, but the Director or Regional Director concludes from the threshold examination that in no likelihood will the activity or program jeopardize the continued existence of a listed species or result in the destruction or adverse modification of its critical habitat, the appropriate Federal agency shall be notified in writing within 60 days of initiation and further section 7 consultation shall be unnecessary.

§ 223.16 Further consultation.

If an identified activity or program is not specifically for the conservation of listed species, and the Director or Regional Director concludes as a result of the threshold examination that the activity or program may jeopardize the continued existence of a listed species or result in the destruction or adverse modification of its critical habitat, the Federal agency will be so notified in writing within 60 day of initiation. The Federal agency, with assistance as feasible from the NMFS and other sources of expertise, shall then initiate biological surveys or studies to determine how the activity or program may affect listed species or their critical habitat. Within 60 days of receipt of adequate information and documentation, unless special circumstances require negotiation of a longer period, the NMFS will end consultation by issuing a biological opinion.

§ 223.17 Biological opinions.

(a) If the Director or Regional Director concludes that an activity or program under review is not likely to jeopardize the continued existence of listed species or result in destruction or adverse modification of critical habitat, he will so notify the Federal agency in writing.

(b) If the Director or Regional Director concludes that an activity or program under review is likely to jeopardize the continued existence of a listed species or result in the destruction or modification of critical habitat, he will so notify the Federal agency in writing and may recommend any changes that in his opinion will eliminate these effects of the activities or programs.

(c) Biological opinions issued pursuant to paragraphs (a) and (b) of this section will be accompanied by a statement of the facts and documentation on which they are based.

(d) Upon receipt and consideration of the final biological opinion and recommendations of the NMFS, it is the responsibility of the Federal agency to determine whether to proceed with the activity or program as planned, in light of its section 7 obligations. Where the consultation process has been consolidated with interagency cooperation required by other statutes, such as the Fish and Wildlife Coordination (Act (16 U.S.C. 661 et seq.) or the National Environmental Policy Act (42 U.S.C. 4321 et seq.), the final biological opinion and recommendations of the NMFS should be stated in the documents required by those statutes.

§ 223.18 Reinitiation.

Consultation shall be reinitiated by the NMFS or by the Federal agency:

(a) If new information reveals impacts of an activity or program that may hinder the survival and recovery of listed species;

(b) If the activity or program is modified in a manner that may hinder the survival and recovery of listed species; or

(c) If a new species is listed that may be affected by the activity or program.

Subpart C—Determination of Critical Habitat

§ 223.21 Procedure.

Whenever deemed necessary and appropriate, the Director shall determine critical habitat for a listed species. After exchange of biological information, as appropriate, with the affected States and Federal agencies with jurisdiction over the lands or waters under consideration, the Director shall publish proposed rulemakings in the FEDERAL REGISTER. Comments of the scientific community and other interested persons will also be considered in promulgating final rulemaking.

§ 223.22 Criteria.

The Director will consider the physiological, behavioral, ecological, and evolutionary requirements for the survival and recovery of listed species in determining what areas or parts of habitat (exclusive of those existing man-made structures or settlements which are not necessary to the survival and recovery of the species) are critical. These requirements include, but are not limited to:

(a) Space for individual and population growth and for normal behavior;

(b) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(c) Cover or shelter;

(d) Sites for breeding, reproduction, or rearing of offspring; and generally,

(e) Ecosystems that are protected from disturbances and are representative of the geographical distribution of listed species.

§ 223.23 Emergency determination.

Sections 223.21 and 223.22 notwithstanding, the Director may make an emergency determination of critical habitat if he finds that an impending action poses a significant risk to the well-being of a listed species by the destruction or adverse modification of its habitat. Emergency determinations will be published in the FEDERAL REGISTER and will remain in effect for no more than 120 days.

[FR Doc.77-2382 Filed 1-25-77;8:45 am]

notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

MANTI DIVISION GRAZING ADVISORY BOARD

Meeting

The Manti Division Grazing Advisory Board will meet at 1:30 p.m., February 17, 1977, in the Ephraim Town Hall, Ephraim, Utah. The purpose of this meeting is to discuss the following specific topics:

1. Resource Planning Act Review.
2. Representative of B.L.M. to discuss new B.L.M. Organic Act.
3. National Forest Management Act of 1976.
4. Discussion of Manti-LaSal National Forest grazing related problems.

The meeting will be open to the public. Persons who wish to attend should notify Mr. Vail H. Neilson, Ephraim, Utah, Telephone No. 283-4398.

Written statements concerning specific topics of discussion may be filed with the committee before or after the meeting. Public comments and discussion concerning topics of the agenda will be permitted to the extent time permits.

Dated: January 14, 1977.

B. J. GRAVES,
Acting Forest Supervisor.

[FR Doc.77-2475 Filed 1-25-77;8:45 am]

OCHOCO NATIONAL FOREST GRAZING ADVISORY BOARD

Meeting

The Ochoco National Forest Grazing Advisory Board will meet at 10:00 a.m., February 25, 1977 in the Forest Supervisor's Office, Federal Building, Prineville, Oregon.

The purpose of this meeting is the Forest's range program in relation to administration; improvement construction and maintenance; Forest and permittee responsibilities; and other subjects presented by the board members, permittees, and the general public.

The meeting will be open to the general public.

Persons interested in presenting a subject at the meeting may file a request and brief with either:

Carl Mayo, Chairman, Riley, Oregon 97758,
or
Jack H. Royle, Secretary, P.O. Box 490, Prineville, Oregon 97754.

Written statements may be filed with the board before or after the meeting.

Dated: January 18, 1977.

GLEN E. HETZEL,
Forest Supervisor.

[FR Doc.77-2479 Filed 1-25-77;8:45 am]

TIMBER MANAGEMENT PLAN, GREEN MOUNTAIN NATIONAL FOREST

Availability of Draft Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Forest Service, Department of Agriculture has prepared a draft environmental statement on the Timber Management Plan for the Green Mountain National Forest, USDA-FS-R9-DES-(ADM)-77-05.

The environmental statement concerns a proposed plan for managing the timber resource on the Green Mountain National Forest for the period January 1, 1977, through September 30, 1986. The Green Mountain National Forest is located in parts of Addison, Bennington, Rutland, Washington, Windham, and Windsor Counties, Vermont.

This draft environmental statement was transmitted to CEQ on January 19, 1977.

Copies are available for inspection during regular working hours at the following locations:

USDA, Forest Service, South Agriculture Bldg., Room 3231, 12th St. and Independence Ave., SW., Washington, D.C. 20250.
USDA, Forest Service, Eastern Region, 633 West Wisconsin Avenue, Milwaukee, Wisconsin 53203.
USDA, Forest Service, Green Mountain National Forest, Federal Building, 151 West Street, Box 519, Rutland, Vermont 05701.

A limited number of single copies are available upon request to the Forest Supervisor of the Green Mountain National Forest at the above address.

Copies of the environmental statement have been sent to various Federal, State, and local agencies as outlined in the CEQ Guidelines.

Written comments are invited from the public and from State and local agencies which are authorized to develop and enforce environmental standards, and from Federal agencies having jurisdiction by law or special expertise with respect to any environmental impact involved for which comments have not been requested specifically.

Written comments concerning the proposed action and requests for additional information should be sent to Forest Supervisor, Green Mountain National Forest, at the above address. Written comments must be received by March 18, 1977, in order to be considered in the preparation of the final environmental statement.

CARL N. WILSON,
Acting Regional Forester.

JANUARY 19, 1977.

[FR Doc.77-2476 Filed 1-25-77;8:45 am]

UNION PASS PLANNING UNIT

Availability of Draft Environmental Statement

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, the Forest Service, Department of Agriculture, has prepared a draft environmental statement for the Union Pass Planning Unit, Bridger-Teton National Forest, Wyoming. The Forest Service report number is USDA-FS-DES (Adm) R4-77-3.

The environmental statement identifies and evaluates the probable effects of the land management plan for the Union Pass Planning Unit on the Bridger-Teton National Forest, Wyoming. The purpose of the plan is to allocate National Forest lands within the unit to specific resource uses and activities; establish management objectives; document management direction, management decisions, and necessary coordination between resource uses and activities; and provide for the protection, use and development of the various resources within the planning unit. The plan provides for minimization of adverse effects and maximization of desirable effects. Significant areas will remain undeveloped with options for future management remaining open.

This draft environmental statement was transmitted to CEQ on January 17, 1977.

Copies are available for inspection during regular working hours at the following locations:

USDA, Forest Service, South Agriculture Bldg., Room 3230, 12th St. and Independence Ave., S.W., Washington, D.C. 20250.
Regional Planning Office, USDA, Forest Service, Federal Building, Room 4403, 324—25th Street, Ogden, Utah 84401.
Forest Supervisor, Bridger-Teton National Forest, Forest Service Building, Jackson, Wyoming 83001.
District Forest Ranger, Big Piney Ranger District, P.O. Box 218, Big Piney, Wyoming 83113.

A limited number of single copies are available upon request from Forest Supervisor H. Reid Jackson, Bridger-Teton National Forest, Forest Service Building, Jackson, Wyoming 83001.

Copies of the environmental statement have been sent to various Federal, State, and local agencies as outlined in the CEQ Guidelines.

Comments are invited from the public, and from State and local agencies which are authorized to develop and enforce environmental standards, and from Federal agencies having jurisdiction by law or special expertise with respect to any environmental impact involved for which comments have not been requested specifically.

Comments concerning the proposed action and requests for additional information should be addressed to Forest Supervisor H. Reid Jackson, Bridger-Teton National Forest, Forest Service Building, Jackson, Wyoming 83001. Comments must be received by March 21, 1977, in order to be considered in the preparation of the final environmental statement.

Dated: January 17, 1977.

P. M. REES,
Director, Regional Planning and Budget.

[FR Doc.77-2477 Filed 1-25-77;8:45 am]

WOODS PLANNING UNIT

Availability of Final Environmental Statement

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, the Forest Service, Department of Agriculture, has prepared a final environmental statement for the Woods Planning Unit, Arizona, USDA-FS-R3 FES Adm 76-04.

The environmental statement concerns a proposed land use plan. The final environmental statement was transmitted to CEQ on January 18, 1977.

Copies are available for inspection during regular working hours at the following locations:

USDA, Forest Service, So. Agriculture Bldg., Rm. 3230, 14th and Independence Ave., SW, Washington, D.C. 20250.
USDA, Forest Service, Southwestern Region, 517 Gold Avenue, SW, Albuquerque, New Mexico 87102.
Coconino National Forest, 114 North San Francisco Street, Flagstaff, Arizona 86001.

A limited number of single copies are available upon request to Forest Supervisor, Coconino National Forest, 114 North San Francisco Street, Flagstaff, Arizona 86001.

Copies of the environmental statement have been sent to various Federal, State, and local agencies as outlined in the CEQ guidelines.

GARY E. CARGILL,
Acting Regional Forester, Region 3.

JANUARY 18, 1977.

[FR Doc.77-2478 Filed 1-25-77;8:45 am]

CIVIL AERONAUTICS BOARD

[Order 77-1-86; Docket 27573; Agreement C.A.B. 26293]

INTERNATIONAL AIR TRANSPORT ASSOCIATION

Order

Issued under delegated authority January 14, 1977.

An agreement has been filed with the Board pursuant to section 412(a) of the Federal Aviation Act of 1958 (the Act) and Part 261 of the Board's Economic Regulations between various air carriers, foreign air carriers and other carriers, embodied in the resolutions of the Joint Traffic Conferences of the International Air Transport Association (IATA). The agreement was adopted at the 22nd meeting of the Joint Specific Commodity Rates Board held in Miami Beach on October 19-23, 1976 and has been assigned the above C.A.B. agreement number.

With respect to air transportation as defined by the Act, the agreement proposes revisions to the specific commodity rates structures applicable on the North Atlantic, North/Central Pacific and South Pacific market areas. These revisions are outlined in the attachments hereto, and reflect reductions from otherwise applicable general cargo rates.

Pursuant to authority duly delegated by the Board in the Board's Regulations, 14 CFR 385.14, it is not found that the subject agreement is adverse to the public interest or in violation of the Act, provided that approval is subject to the conditions hereinafter ordered.

Accordingly, *It is ordered*, That:

Agreement 26293 is approved, provided that (a) approval shall not constitute approval of the specific commodity descriptions contained therein for purposes of tariff publications; (b) tariff filings shall be marked to become effective on not less than 30 days' notice from the date of filing; and (c) where a specific commodity rate is published for a specified minimum weight at a level lower than the general commodity rate applicable for such weight, and where a general commodity rate is published for a greater minimum weight at a level lower than such specific commodity rate, the specific commodity rate shall be extended to all such greater minimum weights at the applicable general commodity rate level.

Persons entitled to petition the Board for review of this order, pursuant to the Board's Regulations, 14 CFR 385.50, may file such petitions within ten days after the date of service of this order.

This order shall be effective and become the action of the Civil Aeronautics Board unless within such period a petition for review is filed or the Board gives notice that it will review this order on its own motion.

This order will be published in the FEDERAL REGISTER.

PHYLLIS T. KAYLOR,
Secretary.

Agreement CAB 26293

IATA commodity item No.[1]	Specific commodity rate: Cents per kilogram	Specific commodity rate: Minimum weight in kilograms	Market
	North Atlantic		
Rates added under existing commodity descriptions			
0356	[2] 120	1,000	Tunis to New York.
1082	[2] 265	500	New York to Monrovia.
1091	[2] 110	500	Tunis to New York.
1407	127	1,000	Amsterdam to New York.
	127	1,000	Brussels to New York.
1490	[2] 120	500	Tel Aviv to New York.
1992	[2] 290	100	Johannesburg to New York.
2193	126	500	Athens to New York.
2206	146	500	Malta to New York.
	[2] 126	500	
2411	[2] 130	200	Nicosia to New York.
2818	[2] 265	300	Johannesburg to New York.
	[2] 273	300	
	[2] 250	500	
	[2] 243	500	
3200	[2] 273	1,000	Do.
3201	[2] 273	1,000	Do.
3409	[2] 218	100	Belgrade to New York.
	[2] 208	100	
	[2] 188	200	
	[2] 198	200	
6109	[2] 143	100	New York to Zurich.
	[2] 153	100	
7047	[2] 150	500	Tel Aviv to New York.
7103	[2] 235	100	New York to Dubai.
8383	[2] 93	1,000	New York to/from Nice.
9009	[2] 220	1,000	Johannesburg to Miami/New York.
9282	[2] 169	300	Athens to New York.
9512	[2] 320	100	Johannesburg to New York.
9903	[2] 220	1,000	Do.
	[2] 195	500	Kinshasa to New York.
	[2] 185	1,000	
Rates extended under existing commodity descriptions			
1102	[2] 140	200	Athens to New York.
	[2] 121	500	
1400	161	100	New York to Brussels.
1475	206	100	Tel Aviv to New York.
	[2] 198	100	
1951	[2] 350	500	Johannesburg to Miami.
1980	[2] 161	100	Athens to New York.
	[2] 139	200	
7107	[2] 127	100	Amsterdam to/from New York.
	[2] 91	300	
	[2] 127	100	Barcelona to/from New York.
	[2] 91	300	
	[2] 85	300	Belfast to/from New York.
	[2] 134	100	Belgrade to/from New York.
	[2] 98	300	

IATA commodity item No.[1]	Specific commodity rate: Cents per kilogram	Specific commodity rate: Minimum weight in kilograms	Market
	[3] 134	100	Bergen to/from New York.
	[4] 98	300	
	[3] 132	100	Berlin to/from New York.
	[4] 96	300	
	[3] 131	100	Bremen to/from New York.
	[3] 95	300	
	[3] 127	100	Brussels to/from New York.
	[4] 91	300	
	[3] 126	100	Cardiff to/from New York.
	[3] 90	300	
	[3] 127	100	Cologne to/from New York.
	[4] 91	300	
	[3] 131	100	Copenhagen to/from New York.
	[4] 95	300	
	[3] 85	300	Dublin to/from New York.
	[3] 131	100	Frankfurt to/from New York.
	[4] 95	300	
	[3] 125	100	Glasgow to/from New York.
	[4] 87	300	
	[3] 134	100	Gothenburg to/from New York.
	[4] 98	300	
	[3] 131	100	Hamburg to/from New York.
	[4] 95	300	
	[3] 131	100	Hanover to/from New York.
	[4] 95	300	
	[3] 140	100	Helsinki to/from New York.
	[3] 103	300	
	[3] 132	100	Innsbruck to/from New York.
	[4] 96	300	
	[3] 142	100	Instanbul to/from New York.
	[3] 104	300	
	[3] 138	100	Kristiansand to/from New York.
	[3] 101	300	
	[3] 132	100	Linz to/from New York.
	[4] 96	300	
	[3] 125	100	Lisbon to/from New York.
	[4] 87	300	
	[3] 125	100	London to/from New York.
	[4] 87	300	
	[3] 127	100	Luxembourg to/from New York.
	[3] 91	300	
	[3] 127	100	Madrid to/from New York.
	[4] 91	300	
	[3] 133	100	Malmo to/from New York.
	[4] 97	300	
	[3] 125	100	Manchester to/from New York.
	[4] 87	300	
	[3] 131	100	Milan to/from New York.
	[4] 95	300	
	[3] 132	100	Munich to/from New York.
	[4] 96	300	
	[3] 131	100	New York to/from Nice.
	[4] 95	300	
	[3] 132	100	New York to/from Nuremberg.
	[4] 96	300	
	[3] 126	100	New York to/from Oslo.
	[3] 101	300	
	[3] 127	100	New York to/from Paris.
	[4] 91	300	
	[3] 132	100	New York to/from Prague.
	[4] 96	300	
	[3] 133	100	New York to/from Rome.
	[4] 97	300	
	[3] 121	100	New York to/from Shannon.
	[4] 84	300	
	[3] 138	100	New York to/from Stavanger.
	[3] 101	300	
	[3] 138	100	New York to/from Stockholm.
	[3] 101	300	
	[3] 131	100	New York to/from Stuttgart.
	[4] 95	300	
	[3] 133	100	New York to/from Vienna.
	[4] 97	300	
	[3] 133	100	New York to/from Warsaw.
	[4] 97	300	
	[3] 133	100	New York to/from Zagreb.
	[4] 97	300	
7119	[4] 80	1,000	Amsterdam to/from New York.
	[4] 80	1,000	Barcelona to/from New York.
	[4] 85	1,000	Belgrade to/from New York.
	[4] 85	1,000	Bergen to/from New York.
	[4] 83	1,000	Berlin to/from New York.
	[4] 77	1,000	Birmingham to/from New York.
	[4] 82	1,000	Brehen to/from New York.
	[4] 79	1,000	Bristol to/from New York.
	[4] 80	1,000	Brussels to/from New York.
	[4] 79	1,000	Cardiff to/from New York.
	[4] 80	1,000	Cologne to/from New York.
	[4] 82	1,000	Copenhagen to/from New York.
	[4] 79	1,000	Edinburgh to/from New York.
	[4] 82	1,000	Frankfurt to/from New York.
	[4] 77	1,000	Glasgow to/from New York.
	[4] 85	1,000	Gothenburg to/from New York.
	[4] 82	1,000	Hamburg to/from New York.
	[4] 82	1,000	Hanover to/from New York.
	[4] 91	1,000	Helsinki to/from New York.
	[4] 79	1,000	Leeds to/from New York.
	[4] 77	1,000	Lisbon to/from New York.
	[4] 77	1,000	London to/from New York.
	[4] 80	1,000	Luxembourg to/from New York.
	[4] 82	1,000	Lyons to/from New York.
	[4] 80	1,000	Madrid to/from New York.
	[4] 84	1,000	Malmo to/from New York.
	[4] 77	1,000	Manchester to/from New York.
	[4] 82	1,000	Milan to/from New York.
	[4] 83	1,000	Munich to/from New York.
	[4] 87	1,000	New York to/from Oslo.
	[4] 80	1,000	New York to/from Paris.
	[4] 84	1,000	New York to/from Rome.
	[4] 73	1,000	New York to/from Shannon.
	[4] 87	1,000	New York to/from Stravanger.
	[4] 87	1,000	New York to/from Stockholm.
	[4] 82	1,000	New York to/from Stuttgart.
	[4] 151	500	New York to Tel Aviv.
	[4] 84	1,000	New York to/from Vienna.
	[4] 85	1,000	New York to/from Warsaw.
	[4] 64	1,000	New York to/from Zagreb.
8282	[3] 165	100	Athens to New York.
	[3] 134	500	
	[3] 112	1,000	
9634	118	500	Milan to New York.
	121	500	Rome to New York.
9993	[3] 111	500	Beirut to New York.
	[3] 315	100	Teheran to New York.

Rates changed under existing commodity descriptions

0007	[3] 110	500	Tunis to New York.
1407	[3] 117	1,000	Amsterdam to New York.
	[3] 117	1,000	Brussels to New York.
1951	[4] 350	1,000	Johannesburg to New York.
2196	[3] 124	100	Lisbon to/from New York.
	[3] 124	100	Santa Maria to/from New York.
9935	[4] 102	1,000	Milan to New York.
9993	[4] 130	500	Beirut to New York.

Rates canceled under existing commodity descriptions

0856		500	Amsterdam to New York.
		500	Brussels to New York.
1407		1,000	Amsterdam to New York.
		1,000	Brussels to New York.
1951		100	Johannesburg to New York.
5858		100	New York to Belfast.
		100	New York to Belgrade.
		500	
		100	New York to Bristol.
		100	New York to Cardiff.
		100	New York to Dublin.
		100	New York to Edinburgh.
		100	New York to Glasgow.
		100	New York to Leeds.
		100	New York to London.
		100	New York to Manchester.
		100	New York to Newcastle.
		100	New York to Prague.
		100	New York to Shannon.
7047		100	Brussels to New York.
		100	London to New York.
		100	Paris to New York.
9512		500	Johannesburg to New York.
9935		200	Brussels to New York.
		200	Frankfurt to New York.

North and Central Pacific

Rates added under existing commodity descriptions

0007	[3] 150	300	Tokyo to Honolulu.
2203	[3] 250	500	Colombo to Los Angeles.
4314	[3] 260	100	Bangkok to Los Angeles.
4427	[3] 280	300	Bombay to Los Angeles.
	[3] 208	250	Bombay to New York.
	[3] 280	300	
	[3] 280	300	Delhi to Los Angeles.
	[3] 280	300	Delhi to New York.
4803	[3] 250	250	Bombay to New York.
	[3] 250	300	
1602	[3] 360	100	Los Angeles to Bombay.
	[3] 350	100	
	[3] 360	100	Los Angeles to Delhi.
9080	[4] 225	500	Bombay to New York.

Rates extended under existing commodity descriptions

1567	311	100	Bangalore to New York.
2865	[3] 208	1,000	Calcutta to Los Angeles.
	[3] 188	1,000	Calcutta to New York.
3302	301	500	Bangalore to New York.
7119	[3] 198	500	Bombay to New York.
	[3] 198	500	Delhi to New York.
9207	[3] 205	500	Bombay to New York.
	[3] 205	500	Delhi to New York.

Rates changed under existing commodity descriptions

6435	223	1,000	Bombay to New York.
	225	1,000	Calcutta to New York.
	223	1,000	Delhi to New York.

Rates canceled under existing commodity descriptions

0185		200	Bombay to New York.
		100	Calcutta to New York.
		200	Do.
1100		100	Bombay to New York.
		100	Calcutta to New York.
		500	
		100	Delhi to New York.
		100	Madras to New York.
		500	
1915		500	Bombay to New York.
		1,000	
		200	

IATA commodity item No.[1]	Specific commodity rate: Cents per kilogram	Specific commodity rate: Minimum weight in kilograms	Market
2195		100	Calcutta to Honolulu.
2700		45	Madras to New York.
		300	
4478		200	Calcutta to New York.
5520		100	Bombay to New York.
7623		200	Do.
9089		300	Do.
9090		200	Do.
		290	Calcutta to New York.
		200	Delhi to New York.

South Pacific

Rates added under existing commodity descriptions

0482	[3] 51	5,000	Nandi to Honolulu.
0651	[3] 70	1,000	Los Angeles to Papeete.
1024	[3] 228	100	Noumea to Los Angeles.
	[3] 134	100	Papeete to Los Angeles.
1400	[3] 213	45	Nandi to Los Angeles.
	[3] 120	500	Papeete to Los Angeles.
6001	[3] 176	100	Auckland to Los Angeles.
6810	[3] 132	1,000	Christchurch to Los Angeles.
8604	[3] 151	1,000	Sydney to Los Angeles.
9202	[3] 139	200	Auckland to Los Angeles.
	[3] 152	200	
9380	[3] 151	1,000	Sydney to Los Angeles.

Rates changed under existing commodity descriptions

0006	[3] 74	5,000	Auckland to Los Angeles.
1439	[3] 182	45	Honolulu to Auckland.

[1] See applicable tariffs for commodity descriptions.
[3] Expires Dec. 31, 1977.
[3] Expired Dec. 31, 1976.
[4] Expires Mar. 31, 1977.
[5] Expires Sept. 30, 1977.
[6] Expires June 30, 1977.

Agreement CAB 26293.—Specific commodity descriptions

IATA commodity item No.	Description
0300	Fish and seafood.[1]
0300	Fish and seafood—excluding fish, live, inedible.[1]
0301	Fish and seafood—excluding caviar.[2]
0301	Fish and seafood—excluding caviar and/or fish, live, inedible.[1]
0326	Fish.[1]
0326	Fish—excluding live, inedible.[1]
0326 R	Fish—frozen.[1]
0356	Fish, crabs and/or shrimps.[1]
0356	Fish, crabs and/or shrimps—excluding fish, live, inedible.[1]
0482	Coconut meat.[1]
0651	Pork and/or chicken—chilled or frozen.[2]
1040	Hares.[1]
1093	Live worms.[1]
1190	Reptile skins.[1]
1409	Ethrogim and lulavim.[3]
1410	Bulbs and/or tubers.[1]
1424	Tulips and hyacinths in pots.[1 4]
1436	Carnation and chrysanthemum cuttings and gladioli.[1]
1983	Coral.[1]
2075	Silk, yarn and/or thread.[1]
2089	Wool, raw.[1]
2193	Woven bags, wool.[1]
2215	Cloth and/or partly manufactured clothing, including dressmaking supplies.[1]
2411	Shirts and blouses.[1]
2818	Blankets.[1]
3200	Hand tools.[1]
3201	Hand tools—excluding electrically operated.[1 4]
3109	Kitchen and table utensils (including vases), excluding electrical equipment.[1]
4246	Parts and accessories of self-propelled surface vehicles—excluding marine.[1]
4421	Record players and tape recorders/players.[2]
4704	Machines for manufacturing corrugated boxes.[1 4]
4705	Food processing machinery.[1]
4707	Dairy machinery.[1]
4765	Water purifiers.[1]
4782	Sewing machines.[1]
4803	Taps and dies.[1]
5330	Table and kitchen glassware.[1]
6227	Pyrethrum extract.[1]
7118	Booklets.[1]
7430	Druggists sundries of rubber.[1]
8100	Dental, surgical and medical instruments, apparatus and supplies—excluding watches and clocks.[2]
8383	Plastic sunglasses.[3]
8604	Electrically operated training aids; namely, alinement devices.[2]
9009	Imitation jewelry, fancy novelties, personal ornaments—excluding cloth, wearing apparel, textile articles, watches, and clocks.[1]
9202	Toys, games, athletic and sporting goods.[1]
9216	Manufacturing materials for balls; namely, natural or artificial leather plates, bladders, threads, pitch, wax.[2]
9223	Swimming pool equipment and accessories, including ladders, scoops, filters, pumps.[2]
9282	Toys; namely, movie viewers.[1 4]
9906	Picture hanging kits and/or picture books.[1]
9910	Furniture—new and unused.[1]
9982	Articles of Indian manufacture. For exhibition at international trade fairs/exhibitions or for display in the offices of the Government of India mission/agencies. Shipped by Government of India or agencies thereof.[1]

[1] Area of application changed.
[2] Delete.
[3] New description.
[4] Changed description.

[FR Doc.77-2166 Filed 1-25-77;8:45 am]

[Agreements CAB 25606 E-1 through E-4; Docket 28672]

IATA AGREEMENTS

Uniform Commission Rates; Reassignment of Proceeding

This proceeding has been reassigned from Administrative Law Judge Ralph L. Wiser to Administrative Law Judge Katherine A. Kent. Future communications should be addressed to Judge Kent.

Dated at Washington, D.C., January 19, 1977.

HENRY M. SWITKAY,
Acting Chief
Administrative Law Judge.

[FR Doc.77-2539 Filed 1-25-77;8:45 am]

[Docket 27701]

PACIFIC GROUP FARES INVESTIGATION

Postponement of Hearing

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that the hearing in the above-entitled proceeding, which was assigned to be held on February 1, 1977 (42 FR 2333, January 11, 1977), is postponed until further notice.

Dated at Washington, D.C., January 19, 1977.

ALEXANDER N. ARGERAKIS,
Administrative Law Judge.

[FR Doc.77-2538 Filed 1-25-77;8:45 am]

[Order 77-1-124; Docket Nos. 29001; 30249; 30258]

SOUTHERN AIRWAYS, INC., ET AL.

Route Exchange Agreement and Certificates of Public Convenience Order

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 21st day of January, 1977.

The route exchange agreement between Southern Airways and Trans World Airlines provides, principally, for the transfer to Southern of TWA's authority to engage in air transportation between Nashville, on the one hand, and St. Louis, Tampa-St. Petersburg-Clearwater ("Tampa"), Ft. Lauderdale and Miami, on the other.[1] By Order 76-12-1 the Board instituted this proceeding to consider:

(1) Whether that route transfer agreement should be approved.

(2) Whether any carrier (including Southern) should be certificated between Nashville, on the one hand, and Atlanta, St. Louis, Tampa, Miami, and/or Ft. Lauderdale, on the other hand; and/or

(3) Whether TWA's authority between Nashville, on the one hand, and Atlanta, St. Louis, Tampa, Miami, and/or Ft. Lauderdale, on the other hand, should be deleted.

The order consolidated into Docket 29001 the applications of Delta and Ozark for authority to serve the markets at issue, to the extent those applications are consistent with the scope of the proceeding as outlined above. The order also provided for the receipt of comparable route applications and motions to consolidate from other carriers.

Braniff subsequently applied for a certificate to engage in air transportation between the terminal point St. Louis, Missouri, the intermediate points Nashville, Tennessee and Tampa-St. Petersburg-Clearwater, Florida and the terminal point Miami/Ft. Lauderdale, Florida, subject to the con-

[1] By its terms the agreement also provides for the transfer of TWA's Nashville-Atlanta authority to Southern. Since Southern already holds nonstop rights in that market, however, Order 76-12-1 noted that "the instant agreement is correctly characterized as contemplating only the deletion of TWA and not the transfer of any [Nashville-Atlanta] authority to Southern."

dition that all flights on the segment which serve St. Louis, Missouri, shall also serve Nashville, Tennessee.[3]

Braniff's motion to consolidate that application into Docket 29001 accompanied the application. No answers to Braniff's motion to consolidate have been filed and we shall grant it.

Southern also has filed a route application[4] and motion to consolidate. Southern's application, however, provides for Atlanta-St. Louis service, via Nashville, along with Nashville-St. Louis/Tampa/Miami/Ft. Lauderdale authority. Eastern opposes grant of Southern's motion to the extent that Southern's application provides for St. Louis-Atlanta service. Eastern argues that the thrust of Order 76-12-1 is to preclude the consideration in this proceeding of additional St. Louis-Atlanta service.

We have concluded that Southern's application in Docket 30258 should be consolidated into this proceeding without the limitation requested by Eastern. For one thing, Southern's 401 application precisely tracks the authority it would obtain were the route transfer approved. More importantly, the language in Southern's application about which Eastern objects—language that purports to give Southern one-stop St. Louis-Atlanta authority via Nashville—adds nothing to the authority Southern could gain in this proceeding even if no reference were made to Atlanta at all. St. Louis-Nashville authority is specifically at issue in this proceeding. And Southern already holds nonstop Nashville-Atlanta rights. Under normal Board rules of construction, the award of St. Louis-Nashville authority to Southern would give that carrier one-stop St. Louis-Atlanta rights absent the imposition of a specific restriction to the contrary.

Eastern will be free at subsequent stages of this proceeding to show why Southern should not be permitted to obtain St. Louis-Atlanta authority via Nashville. But the action Eastern seeks in its answer to Southern's motion to consolidate would not have the effect Eastern seeks. And we see no reason to adopt, on a pretrial basis, a restriction that would preclude one-stop St. Louis-Atlanta authority via Nashville.

As a last matter, we note that Southern's 401 application provides for a closed door restriction on services between Miami/Ft. Lauderdale and Tampa.[4] We recognize that the route transfer agreement provides for just such a restriction. But we sufficiently disfavor restrictions of that nature to conclude that the scope of this proceeding should not be limited by a closed door Miami/Ft. Lauderdale-Tampa pretrial restriction.

Accordingly, it is ordered, That: (1) The motions of Braniff Airways and Southern Airways to consolidate their applications in, respectively, Docket 30249 and Docket 30258 into the proceeding instituted by Order 76-12-1 be and they hereby are granted; and (2) Such proceeding shall hereafter be designated the "TWA-Southern Route Exchange Case."

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc.77-2541 Filed 1-25-77;8:45 am]

[Docket No. 30255]

TRANS-MEDITERRANEAN AIRWAYS, S.A.L.

Foreign Air Carrier Permit; Notice of Prehearing Conference and Hearing

Notice is hereby given that a prehearing conference in this proceeding is assigned to be held on February 15, 1977, at 9:30 a.m. (local time), in Room 1003, Hearing Room B, 1875 Connecticut Avenue, N.W., Washington, D.C., before Administrative Law Judge William A. Kane, Jr.

Notice is also given that the hearing may be held immediately following conclusion of the prehearing conference unless a person objects or shows reason for postponement on or before February 8, 1977.

Ordinary transcript will be adequate for the proper conduct of this proceeding.

Dated at Washington, D.C., January 19, 1977.

HENRY M. SWITKAY,
Acting Chief
Administrative Law Judge.

[FR Doc.77-2727 Filed 1-25-77;8:45 a.m.]

DEPARTMENT OF COMMERCE

Domestic and International Business Administration

FREDERICK CANCER RESEARCH CTR.

Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Office of Import Programs, Department of Commerce, Washington, D.C. 20230.

Docket Number: 76-00490. Applicant: Frederick Cancer Research Center, P.O. Box B, Frederick, Maryland 21701. Article: Electron Microscope, Model HU-12A. Manufacturer: Hitachi, Ltd., Japan. Intended use of article: The article is intended to be used in a variety of collaborative research projects ranging from viruses, molecular genetics, cytochemistry, and cell surface markers which include: (a) immunoelectron microscopy of normal and pathologic cells to determine the presence of cross-reactive antigens with different microorganisms used in immunotherapy, (b) ultrastructural studies of animal and human tumors, (c) chronological studies of tissue ultrastructure during invasion of normal tissues by tumor cells, during treatment of the tumor with various chemotherapeutic and immunotherapeutic agents and during regression of the tumor, (d) autoradiography studies at the ultrastructural level of normal and pathologic tissues, (e) studies of cell surfaces as they are modified by physiologic and pathologic agents, (f) studies on viral ultrastructure *in situ* and in isolated preparations, (g) microscopy of critical point dried single cells and thick sections.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, was being manufactured in the United States at the time the article was ordered (December 26, 1974).

Reasons: This application is a resubmission of Docket Number 75-00362-33-46040 which was denied without prejudice to resubmission April 19, 1976 for informational deficiencies. The foreign article has a specified resolving capability of 3 Angstroms. The most closely comparable domestic instrument available at the time the article was ordered was the Model EMU-4C electron microscope manufactured by the Adam David Company. The Model EMU-4C had a specified resolving capability of 5 Angstroms. The Department of Health, Education, and Welfare (HEW) advises in its memorandum dated December 10, 1976 that the additional resolving capability of the foreign article is pertinent to the purposes for which the foreign article is intended to be used. We, therefore, find that the Model EMU-4C was not of equivalent scientific value to the foreign article for such purposes as the article is intended to be used at the time the article was ordered.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which was being manufactured in the United States at the time the article was ordered.

RICHARD M. SEPPA,
Director, Special
Import Programs Division.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

[FR Doc.77-2532 Filed 1-25-77;8:45 am]

HARVARD UNIVERSITY ET AL.

Applications for Duty-Free Entry of Scientific Articles

The following are notices of the receipt of applications for duty-free entry of scientific articles pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897). Interested persons may present their views with respect to the question of whether an instrument or apparatus of equivalent scientific value for the purposes for which the article is intended to be used is being manufactured in the United States. Such comments must be filed in triplicate with the Director, Special Import Programs Division, Office of Import Programs, Washington, D.C. 20230, on or before February 15, 1977.

Amended regulations issued under cited Act, (15 CFR 301) prescribe the requirements applicable to comments.

A copy of each application is on file, and may be examined during ordinary Commerce Department business hours at the Special Import Programs Division, Department of Commerce, Washington, D.C. 20230.

Docket Number: 77-00064. Applicant: Harvard University, Purchasing Department, 75 Mt. Auburn Street, Cambridge, Massachusetts 02138. Article: Electron Microscope, Model EM-400 with High Tilt Goniometer and accessories. Manufacturer: Philips Electronics Instruments, NVD, The Netherlands. Intended use of article: The article is intended to be used for the study of microscopic samples of nervous tissue from experimental animals, including brain, spinal cord and peripheral nervous system; in particular the synapses, the sites of transmission of information between nerve cells. Experiments will be conducted with the objective of understanding the structural basis of nervous function in a sensory system, and the mechanisms of development. Application received by Commissioner of Customs: December 19, 1976.

Docket Number: 77-00072. Applicant: Rutgers University, Department of Chemistry, 73 Warren Street, Newark, NJ 07102. Article: Mass Spectrometer, Model MS 30 and accessories. Manufacturer: AEI Scientific Apparatus, Inc., United Kingdom. Intended use of article: The article is intended to be used for both high resolution and low resolution mass spectrometry. Natural products will be examined and structural elucidations of steroids, triterpenes, sesterterpenes, and other organic compounds of biological interest will be carried out. Application received by Commissioner of Customs: December 22, 1976.

Docket Number: 77-00074. Applicant: University of California, Biochemistry Department, 401 Biochemistry Building, Berkeley, California 94720. Article: Electron Microscope, Model EM 301 and accessories. Manufacturer: Philips Electronics Instruments NVD, the Netherlands. Intended use of article: The article is intended to be used for the following research projects: (1) Studies of nucleic acids by electron microscopy using protein free spreading techniques for DNA, DNA fragments and DNA-enzyme complexes, (2) Studies of cellular structures (e.g., active transport of amino acids in thin sections of the bacterium *Salmonella typhimurium*, biochemical and morphological changes in the sexual mating reactions of yeast, biosynthesis of the spore coat in wild type and spore defective mutants contractile proteins in cytokinesis and mitosis, bacterial membranes and their flagellar attachment sites), and (3) Structural studies employing unstained or negatively stained preparations viewed in darkfield as well as bright field. The article will also be used for instruction in specimen preparative techniques required for specific research projects and for individual and small group instruction in the operation of the electron microscope and associated techniques. Application received by Commissioner of Customs: December 10, 1976.

Docket Number: 77-00078. Applicant: University of Rochester, 601 Elmwood Avenue, Rochester, NY 14642. Article: Electron Microscope, Model EM 10-A and accessories. Manufacturer: Carl Zeiss, West Germany. Intended use of article: The article is intended to be used for studies of materials and phenomena related directly to the analysis of the mammalian central nervous system and specifically to the ultrastructural correlates of neuroendocrine mechanisms and the fine structural localization of brain hormones. The properties of the material to be investigated for the phenomena relates to the capability of localizing radiolabelled neurohormones releasing factors and neurotransmitters with transmission electron microscopy in the primate central nervous system, that has been embedded in plastic and thin sectioned. Relevant regions of the primate brain including the hypothalamus, brain stem and other circumventricular organs will be analyzed as to their capacity to sequester various radioactive bioactive peptide molecules. The article will also be used for educational purposes in the courses: Anatomy 595, Ph.D. Research; Anatomy 395, Research in Anatomy; Anatomy 500, Techniques in Neuroendocrine Morphology; and Anatomy 596, Ultrastructural Correlates of Neuroendocrine Mechanisms. The objectives of these courses are to instill in students basic fundamental ultrastructural techniques to determine the fine anatomy of the central nervous system and provide advanced training for senior graduate students, postdoctoral fellows and research associates. Application received by Commissioner of Customs: January 7, 1977.

RICHARD M. SEPPA,
Director,
Special Import Programs Division.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

[FR Doc.77-2531 Filed 1-25-77;8:45 am]

TELECOMMUNICATIONS EQUIPMENT TECHNICAL ADVISORY COMMITTEE

Partially Closed Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. I (Supp. V, 1975), notice is hereby given that a meeting of the Telecommunications Equipment Technical Advisory Committee will be held on Friday, February 11, 1977, at 10:00 a.m. in Room 5611, Main Commerce Building, 14th and Constitution Avenue, N.W., Washington, D.C.

The Telecommunications Equipment Technical Advisory Committee was initially established on April 5, 1973. On March 12, 1975, the Acing Assistant Secretary for Adminisration approved the recharter and extension of the Committee for two additional years, pursuant to Section 5(c)(1) of the Export Administration Act of 1969, as amended, 50 U.S.C. App. Sec. 2404(c)(1) and the Federal Advisory Committee Act.

The Committee advises the Office of Export Administration, Bureau of East-West Trade, with respect to questions involving technical matters, worldwide availability and actual utilization of production and technology, and licensing procedures which may affect the level of export controls applicable to telecommunications equipment, including technical data related thereto, and including those whose export is subject to multilateral (COCOM) controls.

The Committee meeting agenda has five parts:

GENERAL SESSION

(1) Opening remarks by the Chairman.
(2) Presentation of papers or comments by the public.
(3) Nomination and election of a new Chairman.
(4) Discussion of draft sections on Findings—Volume I of the annual report.

EXECUTIVE SESSION

(5) Discussion of matters properly classified under Executive Order 11652, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting is open to the public, at which a limited number of seats will be available. To the extent time permits members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

With respect to agenda item (5), the Acting Assistant Secretary of Commerce for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 28, 1976, pursuant to Section 10(d) of the Federal Advisory Committee Act that the matters to be discussed in the Executive Session should be exempt from the provisions of the Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552(b)(1), i.e., it is specifically required by Executive Order 11652 that they be kept confidential in the interest of the national security. All materials to be reviewed and discussed by the Committee during the Executive Session of the meeting have been properly classified under the Executive Order. All Committee members have appropriate security clearances.

Copies of the minutes of the open portion of the meeting will be available

[3] Docket 30249.
[4] Docket 30258.
[4] "Southern shall not enplane or deplane passengers at Tampa-St. Petersburg-Clearwater who deplane or enplane at either Ft. Lauderdale or Miami."

upon written request addressed to the Freedom of Information Officer, Domestic and International Business Administration, Room 3012, U.S. Department of Commerce, Washington, D.C. 20230.

For further information, contact Mr. Charles C. Swanson, Director, Operations Division, Office of Export Administration, Domestic and International Business Administration, Room 1617M, U.S. Department of Commerce, Washington, D.C. 20230, telephone: A/C 202-377-4196.

The complete Notice of Determination to close portions of the meetings of the Telecommunications Equipment Technical Advisory Committee and of any subcommittees thereof, was published in the FEDERAL REGISTER on April 30, 1976 (41 FR 18129).

Dated: January 21, 1977.

RAUER H. MEYER,
Director, Office of Export Administration, Bureau of East-West Trade, U.S. Department of Commerce.

[FR Doc.77-2533 Filed 1-25-77;8:45 am]

National Oceanic and Atmospheric Administration

CARIBBEAN FISHERY MANAGEMENT COUNCIL

Meeting

Notice is hereby given of a meeting of the Caribbean Fishery Management Council established by section 302 of the Fishery Conservation and Management Act of 1976 (Pub. L. 94-265).

The Caribbean Council will have authority, effective March 1, 1977, over fisheries within the fishery conservation zone adjacent to Puerto Rico and the Virgin Islands. The Council will, among other things, prepare and submit to the Secretary of Commerce fishery management plans with respect to the fisheries within its area of authority, prepare comments on applications for foreign fishing, and conduct public hearings.

This is the fifth in a series of organizational meetings of the Council. The meeting will be held Monday through Thursday, February 14 to February 17, 1977, at the Holiday Inn, Road 2, Firm El Tuque, Ponce, Puerto Rico. The meeting will convene at 1 p.m. on February 14 and adjourn at about noon on February 17. Daily sessions will normally start at 9 a.m. and adjourn at 5 p.m., except as otherwise noted. The meeting may be extended or shortened depending on progress on the agenda.

PROPOSED AGENDA

1. Council Organization and Administration Procedures.
2. Technical Organization and Procedures.
3. Organizational Meetings of the Council's Scientific and Statistical Committee and the Advisory Panel.
4. Review of foreign fishing applications, if any.
5. Other management business.

This meeting is open to the public, and there will be seating for a limited number of public members available on a first come, first served basis. Members of the public having an interest in specific items for discussion are also advised that agenda changes are at times made prior to the meeting. To receive information on changes, if any, made to the agenda, interested members of the public should contact on or about February 11, 1977:

Mr. Robert Cummins, Jr., Special Assistant to the Regional Director, National Marine Fisheries Service, Duval Building, 9450 Gandy Boulevard, St. Petersburg, Florida 33702.

At the discretion of the Council, interested members of the public may be permitted to speak at times which will allow the orderly conduct of Council business. Interested members of the public who wish to submit written comments should do so by addressing the Special Assistant to the Regional Director at the above address. To receive due consideration and facilitate inclusion of these comments in the record of the meeting, typewritten statements should be received within 10 days after the close of the Council meeting.

Dated: January 21, 1977.

WINFRED H. MEIBOHM,
Associate Director, National Marine Fisheries Service.

[FR Doc.77-2534 Filed 1-25-77;8:45 am]

MID-ATLANTIC FISHERY MANAGEMENT COUNCIL

Meeting

Notice is hereby given of a meeting of the Mid-Atlantic Fishery Management Council established by section 302 of the Fishery Conservation and Management Act of 1976 (Pub. L. 94-265).

The Mid-Atlantic Fishery Management Council will have authority effective March 1, 1977, over fisheries within the fishery conservation zone adjacent to the States of New York, New Jersey, Delaware, Pennsylvania, Maryland, and Virginia. The Council will, among other other things, prepare and submit to the Secretary of Commerce fishery management plans with respect to fisheries within its area of authority, prepare comments on applications for foreign fishing, and conduct public hearings.

This meeting of the Council will be held on February 9 and 10, 1977, from 10 a.m. to 5 p.m., and 9 a.m. to 3 p.m., respectively, at the Holiday Inn of Dover, U.S. Nos. 13 and 113, Dover, Delaware.

Proposed Agenda:

(1) Review of Council management plans.
(2) Review of permit applications, if any.
(3) Personnel matters—staff recruitment and procurement of office space and equipment.
(4) Other management business.

This meeting is open to the public and there will be seating for approximately 30 public members available on a first-come, first-serve basis. Members of the public having an interest in specific items for discussion are also advised that agenda changes are at times made prior to the meeting. Interested members of the public should contact Mr. Donald G. Birkholz, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, State Fish Pier, Gloucester, MA 01930 on or about 10 days before the meeting to receive information on changes in the agenda, if any. At the discretion of the Council, interested members of the public may be permitted to speak at times which will allow the orderly conduct of Council business. Interested members of the public who wish to provide written comments should do so by submitting them to Mr. Birkholz, at the above address. To receive due consideration and facilitate inclusion of these comments in the record of the meeting, typewritten statements should be received within 10 days after the close of the Council meeting.

Dated: January 21, 1977.

WINFRED H. MEIBOHM,
Associate Director, National Marine Fisheries Service.

[FR Doc.77-2535 Filed 1-25-77;8:45 am]

CONSUMER PRODUCT SAFETY COMMISSION

[CP 76-14]

GAS FURNACES

Safety Standards Development; Denial of Petition

This notice announces that the Consumer Product Safety Commission has denied a petition to issue a consumer product safety rule for gas furnaces used in residences.

Section 10 of the Consumer Product Safety Act (CPSA), (15 U.S.C. 2059), provides that any interested person may petition the Consumer Product Safety Commission to commence a proceeding for the issuance of a consumer product safety rule. Section 10 also provides that if the Commission denies such a petition, it shall publish its reasons for denial in the FEDERAL REGISTER.

On July 7, 1976, Michael Smith of Elkgrove Village, Illinois, petitioned the Commission to develop mandatory safety standards for gas furnaces and gas conversion furnaces to reduce the hazard of carbon monoxide fumes (Petition CP 76-14).

The petition states that a number of furnace failures and malfunctions in gas furnaces and furnaces that have been converted to gas from oil have exposed residents of the homes in which such furnaces are installed to unnecessary amounts of carbon monoxide (CO). The petition requests a standard which would keep carbon monoxide out of a residence in the event of a furnace failure or as a result of improper burner adjustment, improper installation, a collapsed chimney, or malfunction of the furnace due to "failure or design failure." The petition suggests that the requested standard should include a requirement for a device to warn residents that they are being exposed to carbon monoxide. The petitioner suggests that the device could be an instrument that could be read or a device that would automatically shut down the furnace if carbon monoxide concentration exceeded a certain level. It was suggested that the standard could include a requirement that the furnace compartment be isolated in such a way as to force any escaping fumes outside the residence or that the furnace compartment should be isolated from the home in such a way as to make it impossible for escaping fumes to enter.

Information available to the Commission indicates that over 33 million gas furnaces and gas wall furnaces are currently in use in the United States. In reviewing available injury data, it was found that data reported to the National Electronic Injury Surveillance System (NEISS) showed that approximately 425 instances of poisoning or anoxia that were associated with gas furnaces and required hospital emergency room treatment occurred during fiscal year 1976. The Commission has conducted in-depth investigations of seven cases involving carbon monoxide poisoning that occurred between January 1, 1974 and June 30, 1976. Five of these cases involved improper, blocked or damaged vents. One involved a cracked heat exchanger, and one report stated only that the pilot light had gone out. Death certificates were also examined, although they do not ordinarily contain much technical detail concerning incidents of this type. An analysis of the certificates which have been submitted to the Commission for the period January 1, 1974, through December 31, 1975, shows that improper, blocked, or damaged vents were important factors in the 26 carbon monoxide incidents reported, which resulted in 36 deaths. Leaks in furnaces and defective furnaces were mentioned in several incidents.

From the information available to the Commission, it appears that the vast majority of carbon monoxide poisoning cases connected with gas furnaces may result from improperly installed or maintained furnaces or damaged or blocked vents.

The voluntary standards for gas furnaces, issued by the American National Standards Institute (ANSI), include the following:

1. ANSI Z21.47—1973 Gas-Fired Gravity and Forced Air Central Furnaces, plus addenda.
2. ANSI Z21.48—1973 Gas-Fired Gravity and Fan Type Floor Furnaces, plus addenda.
3. ANSI Z21.49—1975 Gas-Fired Gravity and Fan Type Vented Wall Furnaces.
4. ANSI Z21.44—1973 Gas-Fired Gravity and Fan Type Direct Vent Wall Furnaces, plus addenda.

New gas furnaces are accompanied by maintenance instructions which state that qualified persons should inspect and service the equipment periodically, preferably once a year at the start of the heating season. The applicable American National Standards require each furnace to be supplied with instructions for its proper installation and safe operation. These instructions are also required to state that the furnace is to be installed in accordance with local building codes or, in the absence of local codes, the American National Standard for Installation of Gas Appliances and Gas Piping, Z21.30-1964 (redesignated as part of the National Fuel Gas Code, ANSI Z223.1-1974). From the information available to the Commission, it appears that the vast majority of furnaces are now provided with appropriate instructions and are installed in accordance with their installation instructions. A study funded by the Commission, Calspan Investigations on Flame-Fired Appliances, did not suggest a need for improved furnace installation instructions.

Additional features in the voluntary standards that also help to reduce the possibility of carbon monoxide poisoning include the following: (1) combustion controls, (2) safety interlocks, (3) cyclic testing of heat exchangers to minimize cracking, (4) use of corrosion resistant materials in areas susceptible to corrosion, and (5) CO limits for tests under normal and abnormal conditions. The Commission has information that the voluntary standards are universally complied with by domestic gas furnace manufacturers.

Because the petitioner, in earlier correspondence with the Commission, had expressed special concern about CO build-up as a result of heat exchanger failure, CPSC sponsored a study of the high incidence of furnace heat exchanger failures in Elkgrove Village, Illinois, by Polytechnic, Inc. (a private research organization). The study indicates that this problem was primarily caused by factors relating to the installation of the furnace rather than by the furnace design. It should be noted, however, that furnace heat exchanger failures seldom result in carbon monoxide problems, because the combustion chamber is generally surrounded by the air that is being heated in the plenum and that is at a higher static pressure than the interior of the combustion chamber. Therefore, any leakage due to a crack or split in the heat exchanger would usually be into the combustion chamber rather than into the air which will be supplied to the residence. A Commission-sponsored study by Unified Industries Inc., dated April 30, 1976, of air samples in homes with known leaks in the heat exchanger found that the CO levels in these homes did not exceed the CO level in the air outside the home. The Commission is aware of four incidents involving suspected CO poisoning from cracked heat exchangers. In two of these, blood tests failed to disclose the presence of CO. In the other two (a telephone complaint and an emergency room visit), the results of blood tests, if any, are not available.

From the Commission's analysis of the information available to it, it appears that while the consequences of exposure to high levels of CO from gas furnaces are severe and occur with a frequency that is not negligible, the principal causes of dangerously high concentrations of CO from gas furnaces do not appear to be correctable through the issuance of a mandatory safety standard.

Since there are many ways in which dangerously high concentrations of CO in residences can come about, the ultimate solution would appear to be, along the lines suggested in the petition, the use of CO detectors (with or without automatic furnace cut-off devices) in residences. However, the Commission believes that a mandatory requirement for such detectors is not practicable or economically feasible at this time. The Commission is aware of no device which could perform this function satisfactorily for an extended period of time without frequent recalibration by trained specialists. Also, equipment with the required degree of sensitivity that might be incorporated into such a device now sells for fifteen hundred to two thousand dollars.

While acknowledging the substantial contribution that the development of a reliable, low cost CO detector could make to consumer safety, the Commission must note that it has neither the statutory nor the resources to undertake the development of such a product. The Commission observes that the development of inexpensive fire and smoke detectors by private industry has disclosed a large, and apparently profitable, market for them. The availability of smoke detectors has even encouraged many municipalities to require their installation in residences. The Commission believes that a similarly attractive market may exist for an inexpensive, reliable CO detector and hope that industry will undertake research and development leading to a commercially viable device.

After careful consideration, the Commission has decided to deny this petition because, based on the information available at this time, the Commission believes (1) that the principal causes of dangerously high concentrations of CO from gas furnaces are not correctable by the issuance of a mandatory standard and (2) the suggested requirement for the mandatory use of a CO detector in conjunction with gas furnaces appears to be premature since reliable, low cost CO detectors are not available at this time.

Copies of the petition and other relevant materials may be seen in or obtained from the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207, during working hours Monday through Friday.

Dated: January 21, 1977.

SADYE E. DUNN,
Secretary, Consumer Product Safety Commission.

[FR Doc.77-2537 Filed 1-25-77;8:45 am]

ENVIRONMENTAL PROTECTION AGENCY

[FRL 675-4]

AIR PROGRAMS—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

Receipt of Application and Approval of Alternative Performance Test Method

On January 26, 1976 (41 FR 3826), the Environmental Protection Agency (EPA) promulgated standards of performance

for new primary aluminum reduction plants under 40 CFR Part 60. The standards limit air emissions of gaseous and particulate fluorides from new and modified primary aluminum reduction plants. The owners or operators of affected facilities are required to determine compliance with these standards by conducting a performance test as specified in Appendix A—Reference Methods, Method 13A or 13B, "Determination of Total Fluoride Emissions from Stationary Sources" published in the FEDERAL REGISTER August 6, 1975 (40 FR 33157). As provided in 40 CFR 60.8(b), (2) and (3), the Administrator may approve the use of an equivalent test method or may approve the use of an alternative method if the method has been shown to be adequate for the determination of compliance with the standard. Method 13A specified that total fluorides be determined by the SPADNS Zirconium Lake colormetric method, and Method 13B specified that this determination be made by the specific ion electrode method.

On September 3, 1976, EPA received written application for approval of equivalency for a third analytical technique from Kaiser Aluminum and Chemical Corporation, Oakland, California. Specifically, the application requested approval of ASTM Method D 3270-73T, "Tentative Method of Analysis for Fluoride Content of the Atmosphere and Plant Tissues," 1974 Annual Book of ASTM Standards—Part 26.

Specific guidelines for the determination of method equivalency have not been established by EPA. However, EPA has completed a technical review of the application and has determined that the ASTM method will produce results adequate for the determination of compliance with the standards of performance for new primary aluminum plants. Therefore, EPA approves the ASTM method as an alternative to the analytical procedures specified in paragraph 7.3 "Analysis" of Method 13A or 13B for aluminum plants, pursuant to 40 CFR 60.8(b)(3).

Dated: January 18, 1977.

ROGER STRELOW,
Assistant Administrator
for Air and Waste Management.

[FR Doc.77-2385 Filed 1-25-77;8:45 am]

[FRL 675-3]

DIAGNOSTIC X RAYS

Radiation Protection Guidance; Invitation for Comment

Notice is hereby given that pursuant to its responsibility to recommend guidance for Federal agencies regarding radiation matters (42 U.S.C. 2021h), the Environmental Protection Agency is considering recommendations for the guidance of Federal agencies in the conduct of radiation protection for uses of x rays for diagnostic purposes in the healing arts. Public participation is invited in the development of these recommendations prior to their transmittal to the President for approval as guidance for Federal agencies. The Agency has been assisted in developing these proposed recommendations by an Interagency Working Group on Medical Radiation which was formed on July 5, 1974. The Interagency Working Group delivered its final report in October 1976, based on information developed in two background reports previously made available for public comment (41 FR 10705 and 27998) and reflects comments received on these reports. The recommendations listed below also reflect further comments received from Federal agencies on the Agency's draft recommendations based upon this final report.

This action is based on Executive Order 10831 (Public Law 86-373, and the President's Reorganization Plan No. 3 of 1970, which defined functions transferred to the Environmental Protection Agency. Under this authority, "The Administrator shall advise the President with respect to radiation matters, directly or indirectly affecting health, including guidance for all Federal agencies in the formulation of radiation standards and in the establishment and execution of programs of cooperation with States." In carrying out this responsibility, it is recognized that both the Environmental Protection Agency and the Department of Health, Education, and Welfare (DHEW) have statutory responsibilities which impact upon radiation protection in areas which involve the use of radiation in the healing arts. In particular, DHEW has the major responsibility for national health care policy, including areas in the practice of medicine which involve radiation exposure. For this reason, it is important that the two agencies work together closely so that in the development of radiation guidance, health care impact is properly considered. To this end, the two agencies have recently undertaken to develop a formal working relationship which is expressed in a Memorandum of Understanding now in the final stages of approval. This memorandum will be published in the FEDERAL REGISTER.

BACKGROUND

In developing the recommendations under consideration, the Agency has reviewed information on the use of x rays in medicine, has considered potential controls that could be applied without compromising benefits, and has consulted with scientists and professionals within and outside the government. In this regard, the Agency has completed the contract effort begun by the National Academy of Sciences—National Research Council for the former Federal Radiation Council to examine and report on new knowledge on radiation effects and sources of population exposure. The report of the NAS Committee on Biological Effects of Ionizing Radiation (BEIR) was issued in 1972. One of its principal findings was that "• • • medical diagnostic radiology accounts for at least 90% of the total man-made radiation dose to which the U.S. population is exposed." More importantly, the Committee also concluded "• • • that it appears reasonable that as much as a 50% reduction in the genetically significant dose from medical radiology might be possible through improved technical and educational methods."

It is recognized by medical practitioners, medical physicists, and other scientists concerned with radiation protection that exposure due to medical uses of ionizing radiation represents a significant and growing source of exposure for the U.S. population and is also one that can be reduced by good practice. The National Council on Radiation Protection and Measurements has concluded that whereas "there can be no rational means to • • • limit radiation exposure prescribed for patients for necessary and proper diagnostic or therapeutic purposes • • • steps can be taken to minimize unnecessary or medically unproductive radiation exposure. Advantage should be taken of any new technology or procedure that will significantly reduce unnecessary diagnostic or medical exposure, both in individual examinations and treatments, and in the adoption of group screening practices."

The Interagency Working Group on Medical Radiation determined that it is desirable and possible in Federal facilities to reduce exposure from the diagnostic use of x rays by: (1) eliminating clinically unproductive examinations, (2) assuring the use of optimal technic when examinations are performed, and (3) requiring appropriate equipment to be used. As a result of this consensus a Subcommittee on Prescription of Exposure to x rays was established to examine factors to eliminate clinically unproductive examinations. Another Subcommittee on Technic of Exposure Prevention was formed to examine the second and to some extent the third subject areas. The third area is being regulated by the U.S. Food and Drug Administration which issued x-ray equipment performance standards effective August 1, 1974. The reports of these Subcommittees were made available for comment (41 FR 10705 and 27998) prior to making final the Interagency Working Group report. Comments from interested parties have been considered prior to making these recommendations for guidance to Federal agencies.

Without question the use of x rays in the healing arts provides large benefits to society through improved health care; thus, in developing guidance for uses of diagnostic x rays, the Agency has been careful to assure that the necessary benefits to patients from the use of medical and dental x rays are derived. In this regard, the Agency has consulted with the Department of Health, Education, and Welfare, which is the lead Federal agency for health care policy, and medical personnel in both the Federal and private sectors.

DISCUSSION

The most important factor in reducing radiation exposure is to eliminate the prescription of clinically unproductive examinations. Appropriate prescription of x-ray examinations involves two major considerations: (1) the clinical decision to order a particular examination, and (2) the minimization of the number of radiographic views required in an examination. In particular, attention should be given to qualifications of those who order examinations, the elimination of unproductive screening programs, and appropriate clinic procedures to assure that unproductive views are eliminated during the performance of the examination.

Although the largest savings in radiation exposure may be to preclude the prescription of an unproductive x-ray examination, patient exposure can also be reduced by assuring that the examination is performed with good technic. The fundamental objective in performing an x-ray examination is to obtain optimum diagnostic information with minimum patient exposure. Achievement of this objective requires: (1) Assurance that equipment is calibrated and properly functioning, (2) operation of equipment is only by competent personnel, (3) the patient is appropriately prepared, and (4) technic factors which will minimize exposure are selected.

It has been demonstrated that the same technic factors used with different x-ray generators may produce widely varying patient exposures. Thus, the performance of x-ray equipment utilized for diagnostic x-ray procedures is an important factor in limiting patient and operator exposure. The Federal Diagnostic X-ray Equipment Performance Standard (21 CFR Subchapter J) requires that x-ray equipment manufactured after August 1, 1974, be certified by manufacturers to comply with radiation safety requirements issued by the U.S. Department of Health, Education, and Welfare pursuant to the Radiation Control for Health and Safety Act of 1968 (PL 90-602). All Federal health care facilities which perform diagnostic x-ray examinations, should, as soon as practicable before the effective date, utilize medical and dental x-ray equipment that conforms to the requirements of 21 CFR Subchapter J.

RECOMMENDATIONS FOR FEDERAL GUIDANCE

In view of the discussions presented above, the Agency invites comments on the following recommendations which are under consideration as guidance for Federal agencies for reduction of unnecessary radiation exposure due to use of diagnostic x-rays in the healing arts:

1. General radiographic or fluoroscopic examinations should be prescribed only by licensable Doctors of Medicine or Osteopathy; specialized studies should be prescribed only by those physicians with advanced training in the particular specialty. Exception for certain limited procedures may be made for dentists and podiatrists or properly-trained physician assistants, nurse practitioners, and physicians in postgraduate training status.

2. Prescription of an x-ray study should be for the purpose of obtaining diagnostic information, be based on clinical evaluation of the patient, and should state the diagnostic objective and detail relevant medical history.

3. Routine or screening examinations in which no prior clinical evaluation of the patient is made should not be performed; except may be made for identifiable groups on the basis of careful consideration of diagnostic yield, radiation risk, and economic and social factors. In implementation of this recommendation, the Agency recommends that Federal agencies adopt the recommendation by the Interagency Working Group on Medical Radiation that the following examinations should not be routinely performed:

(a) Chest and lower back x-ray examinations in routine physical examinations or as a Federal requirement for employment,

(b) Tuberculosis screening by chest radiography,

(c) Chest x-rays for hospital admission of patients under the age of 40 unless a clinical indication of chest disease exists,

(d) Chest radiography in routine prenatal care,

(e) Mammography examinations for women of an age[1] for which screening has been determined to be nonefficacious and who also do not exhibit symptoms or have a strong family history of breast cancer.

4. Prescription of x-ray examinations of pregnant or possibly pregnant patients should assure that medical consideration has been given to possible fetal exposure and appropriate protective measures are applied.

5. The number, sequence, and types of standard views for an examination should be clinically-oriented and kept to a minimum. Diagnosticians should closely monitor the performance of x-ray examinations and, where practicable, direct examinations to obtain the diagnostic objectives stated by clinicians, through appropriate addition, substitution, or deletion of prescribed views. Technic protocols for performing medical and dental x-ray examinations should detail the operational procedures for all standard radiographic projections, patient preparation requirements, use of technic charts, and image receptor specifications.

6. X-ray equipment used in Federal programs should meet, where practicable, the Federal performance standards (21 CFR Subchapter J) sooner than required or, in the interim, Part F of the "Suggested State Regulations for Control of Radiation." General purpose fluoroscopy units should provide image-intensification; fluoroscopy units for non-radiology specialty use should, when practicable, have electronic image-holding features. Photofluorographic x-ray equipment should not be used for chest radiography.

7. X-ray facilities should have quality assurance programs designed to produce radiographs that satisfy diagnostic requirements with minimal patient exposure; such programs should contain materials and equipment specifications, equipment calibration and preventive maintenance requirements, quality control of image processing, and operational procedures to reduce retake and duplicate examinations.

8. Operation of medical or dental x-ray equipment should be by individuals who have demonstrated proficiency to produce diagnostic quality radiographs with the minimum of exposure required; these individuals should be qualified by didactic training and practical experience identical to, equivalent to, or greater than those programs approved by recognized medical and dental organizations. In implementation of this recommendation, the Agency recommends that Federal agencies adopt the recommendation by the Interagency Working Group on Medical Radiation that such programs be identical to or equivalent to those approved by the Council on Medical Education of the American Medical Association or the American Registry of Clinical Radiography Technologists for medical x-ray equipment operators, or for dental equipment operators, the guidelines of the Oral Radiology Section of the American Association of Dental Schools.

9. Proper collimation should be used to restrict the x-ray beam as much as practicable to the clinical area of interest and within the dimensions of the image receptor; shielding should be used to further limit the exposure of the fetus and the gonads (as detailed in 21 CFR Subchapter J) when such exclusion does not interfere with the examination being conducted.

10. Technic appropriate to the equipment and materials available should be used to maintain exposures as low as is reasonably achievable without loss of requisite diagnostic information; Entrance Skin Exposure Guides for nonspecialty examinations should be established for this purpose and measures should be undertaken to evaluate and reduce, where practicable, exposures which exceed such established guides. In implementation of this recommendation, the Agency recommends that Federal agencies adopt the following Entrance Skin Exposure Guides developed by the Interagency Working Group on Medical Radiation:

Examination (projection):	*ESEG (milliroentgens)*[1]
Chest (P/A)	30
Skull (lateral)	300
Abdomen (A/P)	750
Cervical spine (A/P)	250
Thoracic spine (A/P)	900
Full spine (A/P)	300
Lumbo-sacral spine (A/P)	1000
Retrograde pyelogram (A/P)	900
Feet (D/P)	270
Dental (bitewing or periapical)	700

[1] Entrance skin exposure determined by the NEXT program for a patient having the following body part/thickness: head/15 cm, neck/13 cm, thorax/23 cm, abdomen/23 cm, and foot/8 cm.

11. Dental x-ray examinations should be prescribed only by licensable Doctors of Dental Surgery or Dental Medicine or properly supervised postgraduate den-

[1] The Department of Health, Education, and Welfare issued interim findings on August 16, 1976, that asymptomatic women under the age of 50 should not receive mammography as a part of periodic screening for breast cancer; the optimal age range for which mammography screening of asymptomatic women is justified is being reviewed by the Department and should be followed by Federal agencies when issued.

tists on the basis of clinical evaluation or pertinent history; neither a full-mouth series nor bitewing radiographs should be part of routine preventive dental care except for certain forensic purposes.

12. Intra-oral radiography should be performed with long open-ended, shielded, cylindrical position indicating devices and with technic to restrict the x-ray beam as near the size of the image receptor as practicable.

It is expected that each Federal agency will use these recommendations as a basis upon which to develop detailed standards tailored to meet its particular requirements. In developing these proposed recommendations, however, the Agency and the Interagency Working Group on Medical Radiation were aware that information in several specific areas is continually changing. In order that such information as well as recommendations and guidelines isued by various Federal and professional bodies can be appropriately reflected in guidance to Federal agencies, the Agency recognizes a need to review such information, recommendations, and guidelines from time to time in order to provide specific guidance that may be required for appropriate interpretation of these recommendations. The Agency, in cooperation with the Federal agencies, will follow the implementation of these recommendations, will promote the necessary coordination to achieve an effective Federal program, and will initiate procedures to periodically interpret and expand upon each of the recommendations as required to provide new and changing information for use by Federal agencies in their implementation of the recommendations.

ADDRESS

Comments on the foregoing recommendations should be sent by March 1, 1977, to the Director, Criteria and Standards Division (AW-460), Office of Radiation Programs, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460. Single copies of the report of the Interagency Working Group on Medical Radiation entitled "Radiation Protection Guidance for Diagnostic X Rays" are also available and may also be requested at this same address.

Dated: January 18, 1977.

RUSSELL E. TRAIN,
Administrator.

[FR Doc.77-2088 Filed 1-25-77;8:45 am]

FEDERAL ENERGY ADMINISTRATION

ELECTRIC UTILITIES ADVISORY COMMITTEE

Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92-463, 86 Stat 770), notice is hereby given that the Electric Utilities Advisory Committee will meet Friday, February 18, 1977, at 9 a.m., Room 5041B, FEA Headquarters, 12th & Pennsylvania Avenue, NW., Washington, D.C.

The Committee was established to advise the Administrator, FEA with respect to general electric utilities' aspects of interests and problems related to the policy and implementation of programs to meet the current and continuing national energy shortage.

The agenda for the meeting is as follows:

1. Review of Federal Study Evaluating the Regional Supply and Demand Projections and the Prospect of Shortfalls (ERDA and FEA).
2. Status Report of FEA's Contract Study of State Load-Growth Forecasting.
3. Status Report and Discussion of the Electricity Rate-Reform Study Mandated by Title II of the Energy Conservation and Policy Act of 1976.
4. Remarks from the Floor (10 Minute Rule).

The meeting is open to the public. The Chairman of the Committee is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Committee will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform Lois G. Weeks, Director, Advisory Committee Management, (202) 566-7022 at least 5 days before the meeting and reasonable provision will be made for their appearance on the agenda.

Further information concerning this meeting may be obtained from the Advisory Committee Management Office.

Minutes of the meeting will be made available for public inspection and copying in the FEA Freedom of Information Office, Room 2107, FEA Headquarters, 12th and Pennsylvania Avenue, N.W., Washington, D.C.

Issued at Washington, D.C. on January 21, 1977.

DAVID G. WILSON,
Acting General Counsel.

[FR Doc 77-2369 Filed 1-21-77;4:24 pm]

ISSUANCE OF DECISIONS AND ORDERS BY OFFICE OF EXCEPTIONS AND APPEALS

Week of November 8 Through November 12, 1976

Notice is hereby given that during the week of November 8 through November 12, 1976, the Decisions and Orders summarized below were issued with respect to Appeals and Applications for Exception or other relief filed with the Office of Exceptions and Appeals of the Federal Energy Administration. The following summary also contains a list of submissions which were dismissed by the Office of Exceptions and Appeals and the basis for the dismissal.

APPEALS

Laketon Asphalt Refining, Inc.; Evansville, Ind.; FEA-0943; Crude Oil

Laketon Asphalt Refining, Inc. (Laketon) filed an Appeal from a Decision and Order which the FEA issued to the firm on August 13, 1976. *Laketon Asphalt Ref., Inc.*, 4 FEA Par. 83,043 (August 13, 1976). The Appeal, if granted, would retroactively relieve Laketon of its obligation to purchase entitlements for the months of April and May 1976. In considering Laketon's Appeal, the FEA determined that despite ample notification by the FEA in the Federal Register of a filing deadline of May 3, 1976, the firm had failed to file an Application for Exception from the Entitlements Program until June 2, 1976. The FEA therefore concluded that there was no reasonable basis upon which Laketon could have believed that it could submit an application beyond the May 3, 1976 deadline and still qualify for exception relief for April and May 1976. The FEA also concluded that Laketon had failed to demonstrate that it would experience a severe and irreparable hardship in the absence of retroactive exception relief. Accordingly, the firm's Appeal was denied.

Peoples Gas Company; Chicago, Ill.; FEA-0900; Naphtha

The Peoples Gas Company (Peoples) appealed from a Decision and Order in which the FEA denied an Application for Exception which the firm had previously submitted from the provisions of 10 CFR, Part 214 (the Canadian Crude Oil Allocation Program). *People's Gas Co.*, 3 FEA Par. 83,215 (June 11, 1976), People's Appeal, if granted, would result in the issuance of an order permitting the firm to purchase 3,000 barrels per day of Kaybob type condensate produced in Canada for use in a synthetic natural gas (SNG) plant which it operates. In considering Peoples' Appeal, the FEA found that contrary to the firm's claim that the Kaybob condensate was essential to enable it to meet the needs of its customers, the amounts of natural gas and SNG available to Peoples are adequate to satisfy its present supply obligations. The FEA also determined that Peoples had not made a convincing showing that it was likely to experience supply difficulties in the foreseeable future which would warrant approval of the exception relief which it requested. Finally, the FEA found that Peoples could replace the Kaybob condensate feedstock which it had previously been able to purchase from Canada with additional quantities of naphtha which it could obtain from its present supplier. It therefore appeared that Peoples' would be able to operate its SNG plant at full capacity without exception relief and the firm's Appeal was accordingly denied.

Quincy Oil, Inc., Boston, Mass.; FEA-0854; No. 6 Fuel Oil

Quincy Oil, Inc. (Quincy) filed an Appeal from a Decision and Order which was issued to it by the FEA on May 7, 1976. *Quincy Oil, Inc.*, 3 FEA Par. 83,180 (May 7, 1976). In that Order, the FEA denied an exception application in which Quincy requested that it be permitted to charge the Taunton Municipal Lighting Plant prices for No. 6 fuel oil for the period prior to June 1, 1976 which were in excess of the maximum permissible levels specified in 10 CFR 212.93. Quincy's Appeal, if granted, would result in the approval of the exception relief which it originally requested. In considering Quincy's Appeal, the FEA found that in the May 7, 1976 Decision the FEA properly evaluated Quincy's request for prospective exception relief by considering only the effect of the FEA Regulations on the firm's operations for the period subsequent to May 7, 1976, the date of issuance of the Decision to Quincy. With respect to the period of time prior to that date, the FEA found that the criteria regarding applications requsting retroactive exception relief were correctly applied. Since the financial data which Quincy provided did not indicate that the firm would incur any hardship or inequity during the last 24 days of May if prospective exception relief were not provided for that period, the FEA concluded the firm's request for prospective exception relief had been properly denied. The FEA also concluded that the May 7 Decision was correct in determining that the income which Quincy realized prior to its payment of interest and rent to its parent company more accurately reflected Quincy's actual operating posture for the purpose of the exceptions process. Finally, the FEA found that Quincy failed to demonstrate that the firm would incur a severe, irreparable injury in the absence of retroactive exception relief. In view of these findings the Quincy Appeal was denied.

Standard Oil Company of California; San Francisco, Calif.; FEA-0890; Gasco Gasoline, Inc.; Los Angeles, Calif.; FEA-0891; Terrible Herbst, Inc.; Las Vegas, Nev.; FEA-0892; Ashland Oil Company of California; San Francisco Calif.; FEA-0897; Motor Gasoline

Standard Oil Company of California (SOCAL), Gasco Gasoline, Inc. (Gasco), Terrible Herbst, Inc. (Herbst), and Ashland Oil Company of California (Ashland) appealed from a Decision and Order issued by the FEA on June 10, 1976, which granted exception relief to Ashland. In the June 10 Order, the Regional Administrator for FEA Region IX was directed to assign a new, lower-priced supplier of motor gasoline to Ashland to replace its base period supplier of motor gasoline for the months of April, May and June 1976. *Ashland Oil Co.*, 3 FEA Par. 83,173 (June 10, 1976).

The exception relief which was granted to Ashland was designed to alleviate a serious financial hardship which the firm was experiencing as a result of its high cost of motor gasoline during the months of April through June 1976. After the Regional Administrator assigned SOCAL to supply motor gasoline to Ashland for this three month period, SOCAL filed its Appeal. Gasco and Herbst purchased motor gasoline from Ashland during the base period. Gasco, Herbst and Ashland contended in their respective Appeals that additional exception relief should have been granted in the June 10 Decision and Order. Since the factual background and legal issues raised in the appeals were similar, the four Appeals were consolidated. In analyzing the arguments presented in the Appeals the FEA determined that there was no merit to the contention that undue administrative delay had preceded the issuance of the June 10 Decision. The FEA found that this issue had been fully considered in the prior proceeding and that Ashland, Gasco and Herbst had advanced no new arguments in their Appeals which would alter the conclusion reached in the prior determination. The FEA also found that the only basis for SOCAL's allegation that Ashland was no longer experiencing high product costs was a report in a trade publication which did not indicate that Ashland's cost of motor gasoline had declined to competitive levels. Moreover, price survey data for motor gasoline in the area in which Ashland markets that product showed that Ashland's selling prices were actually above the average of the prices of its competition. Accordingly, the FEA concluded that SOCAL's contention that Ashland's retail price for motor gasoline had declined to a level point below that of its competitors prices had no merit. Finally, the FEA stated that even if the factual circumstances involving Ashland had changed significantly subsequent to the issuance of the initial exception determination, that factor would not necessarily lead to the conclusion that the prior exception relief should be modified. The FEA noted that the prior relief was designed to alleviate a serious hardship which Ashland had been incurring during a period of time which had already transpired prior to the issuance of the June 10 Decision. The four Appeals were therefore denied.

Sundance Oil Company; Denver, Colo.; FEA-0959; Crude Oil

Sundance Oil Company (Sundance) appealed from a Decision and Order in which the FEA denied an Application for Exception which Sundance submitted from the provisions of 10 CFR, Part 212, Subpart D. *Sundance Oil Co.*, 4 FEA Par. 80,038 (August 6, 1976). The Appeal, if granted, would have resulted in a rescission of the previous Order and the issuance of a further order permitting Sundance to sell at market price levels the crude oil which it produced from the Weigand Lease prior to February 1, 1976. Since the Sundance submission did not even purport to establish that the firm was experiencing a serious hardship or gross inequity as a result of the provisions of Subpart D, the FEA concluded that Sundance had failed to demonstrate that the August 6 Order was erroneous in fact or law. Accordingly the Appeal was denied.

Texaco, Inc.; New York, N.Y. FEA-0995, Motor Gasoline

Texaco, Inc. (Texaco) appealed from a Decision and Order which the FEA issued to Jones and Murtha Distributing Co., Inc. (J&M) on August 31, 1976. *Jones and Murtha Distributing Co., Inc.* 4 FEA Par. 80,076 (August 31, 1976). In the August 31, 1976 Decision the FEA granted J&M an exception to the provisions of 10 CFR 211.9 on the grounds that adherence to its based period supplier/purchaser relationship with The Oil Shale Corporation resulted in a serious hardship to the firm. Based upon that determination, the Regional Administrator of FEA Region X was directed to assign J&M a new supplier for all of J&M's base period use of motor gasoline during the months of September, October and November 1976. Texaco's appeal, if granted, would result in the issuance of an order vacating or modifying the previous decision so that Texaco would not be assigned to supply any portion of J&M's base period use of motor gasoline. In considering the Appeal, the FEA observed that the Regional Administrator for Region X has not yet taken any action pursuant to the provisions of the August 31 Decision. The FEA therefore concluded that Texaco had not been aggrieved by the August 31 Decision and the appeal was accordingly denied.

Varibus Corporation, Gulf States Utilities Company; Beaumont, Tex.; FEA-0776; Fuel Oil

Varibus Corporation (Varibus) and Gulf States Utilities Company (Gulf States) filed a joint Appeal from a Decision and Order which the Federal Energy Administration had issued to Varibus, *Varibus Corp.*, 3 FEA Par. 83,092 (January 30, 1976). In the Decision which it issued, the FEA denied an Application for Exception from the provisions of 10 CFR 212.93 which Varibus had filed concerning its sales of fuel oil to Gulf States. If that exception request had been granted, Varibus, a wholly-owned subsidiary of Gulf States, would have been retroactively relieved of the requirement that the prices which it charged Gulf States for fuel oil sold during the period October 1973 through November 1974 be established in accordance with the Mandatory Petroleum Price Regulations. The Appeal, if granted, would have eliminated or reduced the amount of any possible liability for refunds which Varibus would incur as a result of a compliance action which has been initiated by FEA Region VI. In considering the Appeal, the FEA noted that Gulf States had financed the fuel procurement activities of its subsidiary through direct cash advances to Varibus in the form of interest-bearing loans. Under the terms of two agreements entered into between the firms, Varibus was required to charge Gulf States a price for the fuel oil sold which was equivalent to Varibus' actual cost plus actual overhead including the interest which Varibus remitted to Gulf States. After reviewing the detailed nonproduct cost data which the appellants had submitted, the FEA determined that with the exception of the costs claimed for the interest which Varibus paid to Gulf States, the expenses which Varibus incurred in connection with the fuel procurement activities which it performed on behalf of Gulf States were reasonable and necessary. However, the FEA also concluded that the interest expense which Varibus included in the price of the fuel oil sold to Gulf States did not constitute a legitimate nonproduct cost under the FEA reseller regulations. The FEA observed that Gulf States in turn apparently included this interest in the rates which it charged to its electricity customers through fuel adjustment clauses by reflecting it as a component of the cost of the fuel which was used to generate electricity. At the same time however Gulf States also received the same amount in the form of interest payments from Varibus. In view of the fact that Varibus is a wholly-owned subsidiary of Gulf States, the FEA determined that the net result of these transactions was to effectively reduce the cost to Gulf States of the fuel oil obtained through its subsidiary by the amount of the interest paid to Gulf States by Varibus. The FEA therefore concluded that any failure of Varibus to recover the interest expense as a result of the application of the FEA price regulations to the Gulf States transactions did not constitute a serious hardship or a gross inequity or a showing that the January 30, 1976 Decision was erroneous. The Appeal was accordingly denied.

REQUESTS FOR EXCEPTION

Class Exception—Retroactive Application of Subpart K; FEX-0033; Natural Gas Liquids and Natural Gas Liquid Products

On June 17, 1976, the Federal Energy Administration published a Notice in the Federal Register which stated that the agency was considering the issuance of a Supplemental Order to the Class Exception issued by the Office of Exceptions and Appeals of the FEA on August 29, 1975. *Class Exception—Retroactive Application of Subpart K*, 2 FEA Par. 84,901 (August 29, 1975). See also 41 FR 24609 (June 17, 1976). In the August 29, 1975 Class Exception Decision, the FEA noted that, prior to the January 1, 1975 effective date of 10 CFR, Part 212, Subpart K, the FEA regulations applicable to the pricing of natural gas liquids and natural gas liquid products were set forth in Subpart E of the general price regulations applicable to all "refiners." One of the objectives of the August 29 Class Exception was to eliminate certain inequities which were found to have resulted from the application of Subpart E to the pricing of natural gas liquids and natural gas liquid products prior to the adoption by the FEA of Subpart K. In the June 17, 1976 Notice, the FEA stated that it was considering modifying the August 29 Class Exception determination so as to exclude from the scope of the relief approved those firms which are subject to the jurisdiction of the Federal Power Commission or an equivalent regulatory body. The FEA noted that, in exercising jurisdiction over such firms, those regulatory commissions appear to have taken into account the revenues realized by fully regulated firms from their sales of natural gas liquids and natural gas liquid products in determining the overall revenues necessary to permit

the firms to obtain a specified rate of return. In order to facilitate a full examination of the complex issues involved in the proceeding, the FEA requested any interested parties to submit comments with respect to the proposed Supplemental Order. The FEA also held a public hearing at which oral testimony on the matter was received. After considering the evidence submitted in this proceeding, the FEA concluded that the issuance of the proposed Supplemental Order was not warranted. The FEA found that the price levels charged by the fully regulated firms on May 15, 1973 for natural gas liquids and natural gas liquid products were not distinguishable from the price levels charged on that date by all other members of the class to which exception relief was granted in the August 29 Class Exception. Furthermore, the FEA determined that, in considering natural gas rate-making applications submitted by the fully regulated firms involved in this proceeding, the Federal Power Commission and equivalent regulatory bodies have given and continue to give full weight and consideration to the total revenues received by those firms in their sales to natural gas liquids and natural gas liquid products, including any funds realized as a result of the August 29 Class Exception. Since firms which are fully regulated by the Federal Power Commission or an equivalent regulatory body appear to have been as adversely affected by the application of the provisions of Subpart E of the FEA Regulations to their natural gas processing operations prior to January 1, 1975, as all other firms to which exception relief was provided in the August 29 Class Exception, and since the fully regulated firms cannot derive an undue advantage through the relief provided in that Order, the FEA concluded that any further action with respect to this matter is unnecessary and unwarranted. The FEA therefore dismissed the proposed Supplemental Order proceeding.

Sanford P. Fagadau; Dallas, Tex.; FEE-3164; FEE-3165; Natural Gas Liquids

Sanford P. Fagadau (Fagadau) filed Applications for Exception from the provisions of 10 CFR 212.165 which, if granted, would permit Fagadau to increase the selling prices for the natural gas liquids produced at his Bluegrove and Maryetta natural gas processing plants to reflect the non-product cost increases which he actually incurred and which were in excess of the $0.00375 per gallon passthrough for natural gas liquids permitted under Section 212.165. In considering the applications, the FEA noted that as a general rule exception relief will be granted to any natural gas processor which can demonstrate that the non-product costs which it has experienced since May 1973 have increased substantially in excess of the $0.005 per gallon passthrough for natural gas liquid products and the $0.00375 per gallon passthrough for natural gas liquids permitted under Section 212.165. The FEA found that Fagadau had made such a showing with respect to his Bluegrove and Maryetta gas plants and therefore granted Fagadau appropriate exception relief for those plants.

GO-tane Service Stations, Inc.; Forest Park, Ill.; FEE-2968; Motor Gasoline

GO-tane Service Stations, Inc. (GO-tane) filed an Application for Exception from the provisions of 10 CFR 211.9 which, if granted, would have resulted in the issuance of orders assigning GO-tane new, lower-priced suppliers for a portion of the firm's total base period use of gasoline to replace the Clark Oil and Refining Corporation (Clark) and the Martin Oil Service Company (Martin). GO-tane specifically requested that the Skelly Oil Company (Skelly), which is also one of the firm's base period suppliers, be assigned to partially replace Clark and Martin and to supply additional quantities of motor gasoline directly to 14 retail sales outlets which GO-tane purchased from Skelly in September 1972. In considering the application, the FEA determined that contrary to GO-tane's allegations, the price which GO.tane would pay its base period suppliers for motor gasoline is only marginally higher than the average of the prices which the firm's competitors are required to pay to their suppliers. The FEA also found that GO-tane is able to offset the marginally higher price of the gasoline received from Clark and Martin with purchases of lower-priced gasoline from other suppliers. As a result, the weighted average price which GO-tane pays for its motor gasoline supplies is not significantly different from the prices which the firm's competitors pay to their suppliers for motor gasoline. The FEA therefore concluded that GO-tane had failed to establish that the maintenance of its base period supplier/purchaser relationship with Clark and Martin resulted in a serious hardship or gross inequity to GO-tane and the firm's exception application was denied in the form submitted. However, the FEA also found that under the current FEA regulations which become effective June 1, 1974, GO-tane is apparently entitled to receive significantly more motor gasoline from Skelly than the amount established by a May 9, 1974 Adjustment Order which was issued by FEA Region V. Under the current FEA regulations, GO-tane's allocation entitlement for each of the 14 outlets which the firm purchased from Skelly in 1972 should be based on the quantity of motor gasoline which Skelly provided to the outlets in 1972, rather than the quantity in inventory at each of the stations at the time of the acquisition. The FEA therefore permited GO-tane 60 days from the issuance of the Order in which to take any necessary steps to determine the base period volume which it is entitled to receive for each of its retail sales outlets and assert its right to receive those quantities of petroleum products from suppliers pursuant to the FEA Mandatory Petroleum Allocation Regulations.

Louisiana Land and Exploration Co.; New Orleans, La.; Fee-2845; Crude Oil

The Louisiana Land and Exploration Company (LL&E) filed an Application for Exception from the provisions of 10 CFR 211.63 which, if granted, would extend the exception relief which the FEA had approved in three previous Decisions and Orders. *Louisiana Land and Exploration Co.*, 2 FEA Par. 83,339 (October 22, 1975); *Louisiana Land and Exploration Co.*, 3 FEA Par. 80,586 (February 26, 1976); and *Louisiana Land and Exploration Co.*, 4 FEA Par. 87,003 (July 23, 1976). In those Decisions the FEA deemed LL&E to be the purchaser on December 1, 1973 of up to 32,719 barrels per day of crude oil produced for it from the Jay-Little Escambia Creek Field in northwestern Florida and relieved the firm of its obligation under 10 CFR 211.63(b) to sell any of that crude oil to the Exxon Company, U.S.A. This relief was designed to permit LL&E to obtain a sufficient quantity of Jay Field crude oil to enable it to continue operating its newly constructed refinery in Mobile, Alabama. On the basis of financial and operating data which LL&E submitted in support of its present exception request, the FEA determined that the conditions which prevailed at the time of the earlier proceedings continue to exist. The FEA found that LL&E had invested in the construction of its Mobile refinery in justifiable reliance on the assumption that it would be able to use its Jay Field crude oil as a feedstock, and LL&E would lack an adequate and reliable supply of crude oil for that refinery if exception relief were denied. Consequently, the firm's refining operation and its investment could be seriously jeopardized in the foreseeable future. The FEA therefore approved an extension of the exception relief previously granted for the six-month period from September 1, 1976 through February 28, 1977.

Omega Oil Co.; Dayton, Ohio; FEE-2718; Motor Gasoline

Omega Oil Company (Omega) filed an Application for Exception from the provisions of 10 CFR 211.12 which, if granted, would result in the issuance of Orders by the FEA (i) increasing the base period use of motor gasoline to nine retail outlets which Omega currently owns and operates and (ii) assigning new suppliers to furnish the additional gasoline to the stations. The purchase by Omega on April 1, 1976 of the nine stations from the Standard Oil Company of Ohio (Sohio) was, in furtherance of a Consent Decree entered into between Sohio and the U.S. Department of Justice in late 1970. *See United States* v. *The Standard Oil Co.*, CCH Trade Cases, Par. 72,988 (N.D. Ohio 1970). In its Application, Omega stated that each of the nine retail was outlets being converted from a full service station to a high volume/low markup station and will require a substantially increased base period use of gasoline. In considering Omega's exception application, the FEA determined that the firm had submitted no evidence that the demand for motor gasoline in any of the markets served by the nine retail outlets has increased significantly since the base period or that the current demand for motor gasoline in those market areas is greater than the existing supply. The FEA further concluded that Omega has failed to show how the denial of the exception request would significantly frustrate any of the goals set forth in the Emergency Petroleum Allocation Act of 1973, as amended, or that the firm is currently unable to purchase adequate supplies of surplus motor gasoline for the nine retail outlets. The Omega submission also failed to demonstrate the manner in which the denial of the increased allocations would significantly frustrate or prevent the effectuation of the antitrust objectives embodied in the Consent Decree since under the very terms of the divestiture decree Sohio is required to offer each purchaser an opportunity to enter into supply contracts under which Sohio would provide the outlets with the motor gasoline they currently require. The FEA specifically found that while Sohio had made such an offer, the offer was declined by Omega. The FEA therefore determined that Omega had failed to satisfy any of the criteria which were set forth in prior Decisions as the basis for adjusting a firm's base period use of an allocated petroleum product on gross inequity or serious hardship grounds. Omega's exception application was therefore denied.

Standard Oil Co. (Indiana); Chicago, Ill.; FEE-3166 through FEE-3178; FEE-3216; FEE-3217; Natural Gas liquids and Products

Standard Oil Company (Indiana) (Amoco) filed Applications for Exception from the provisions of 10 CFR 212.165 which, if granted, would permit Amoco to increase the prices it charges to reflect non-product cost increases which the firm has incurred in producing the natural gas liquids and natural gas liquid products at 14 of its natural gas processing plants. In considering the applications, the FEA noted that as a general rule exception relief will be granted to any natural gas processor which can demonstrate that the non-product costs which it has experienced since May 1973 have increased substantially

in excess of the $.005 per gallon passthrough for natural gas liquid products and the $.00375 per gallon passthrough for natural gas liquids permitted under Section 212.165. The FEA found that Amoco had made such a showing with respect to 13 of the 15 gas plants and therefore granted Amoco appropriate exception relief for those plants. However, the FEA denied exception relief for the remaining two plants on the grounds that the adjusted non-product unit cost increase experienced by Amoco with respect to the Levelland and Slaughter plants was not materially in excess of the $.005 per gallon.

Union Oil Co. of California; Los Angeles, Calif.; FEE-3113 through FEE-3129; FEE-3161; FEE-3162; Natural Gas Liquid Products

Union Oil Company of California (Union) filed Applications for Exception from the provisions of 10 CFR 212.165 which, if granted, would permit Union to increase the prices it charges to reflect non-product cost increases which the firm has incurred in producing the natural gas liquid products at 19 of its natural gas processing plants. In considering the applications, the FEA noted that as a general rule exception relief will be granted to any natural gas processor which can demonstrate that the non-product costs which it has experienced since May 1973 have increased substantially in excess of the $.005 per gallon passthrough for natural gas liquid products and the $.00375 per gallon passthrough for natural gas liquids permitted under Section 212.165. The FEA found that Union had made such a showing with respect to 17 of the 19 gas plants and therefore granted Union appropriate exception relief for those plants. However, the FEA denied exception relief for the remaining two plants on the grounds that the adjusted non-product unit cost increase experienced by Union with respect to the Bakke and Stearns plants was not materially in excess of the $.005 per gallon.

REQUEST FOR STAY

Kerr-McGee Corp.; Oklahoma City, Okla.; FES-0882; Covered Products

The Kerr-McGee Corporation (Kerr-McGee) requested that the application to it of certain provisions of the Mandatory Petroleum Price Regulations be stayed pending a decision on an Appeal which the firm filed with the FHA on July 2, 1976. The stay request relates to the determination of maximum allowable prices for covered products which are produced by Kerr-McGee at the Dubach natural gas processing plant (the Dubach Plant) in which the firm owns a 50 percent interest. The Application for Stay, if granted, would permit Kerr-McGee to compute its increased costs and determine its maximum allowable prices at the Dubach Plant separately from the firm's subsidiaries which sell products refined from crude oil. According to the Kerr-McGee submission, stay relief was warranted since the regulatory provisions which govern the computation of increased costs are ambiguous as applied to the Dubach Plant. In considering the stay request, the FEA determined that Kerr-McGee failed to establish that it would experience an irreparable injury in the absence of a stay. The FEA also found that Kerr-McGee had not established in a compelling manner that it would incur a disproportionate burden unless the stay which it requested were approved since the impact of aggregating increased costs at the Dubach Plant with the costs incurred by its other subsidiaries would have only a minimal effect on its firm-wide prices for gasoline. Moreover, the FEA discerned no compelling public policy reasons in this case which warranted the preservations of the *status quo ante* pending a determination of the Kerr-McGee Appeal. The FEA also noted that, contrary to Kerr-McGee's contention that compliance with FEA regulations was impossible, the data which the firm provided indicated that the consolidation of costs on a firm-wide basis including the Dubach Plant was feasible. Since the FEA concluded that Kerr-McGee had satisfied none of the applicable criteria under Section 205.125(b) for the approval of stay relief, the firm's Application for Stay was denied.

REQUEST FOR MODIFICATION OR RESCISSION

Fletcher Oil and Refining Co.; Wilmington, Calif.; FMR-0065; Crude Oil

On September 9, 1976, Fletcher Oil and Refining Company (Fletcher) filed a Request for Modification of a Decision and Order which was issued to the firm on June 18, 1976. *Fletcher Oil and Ref. Co.*, 3 FEA Par. 83,223 (June 18, 1976). The June 18 Order granted Fletcher an exception from the provisions of 10 CFR 211.67 (the Old Oil Entitlements Program) and thereby relieved the firm of any obligation to purchase entitlements during the three month period June 1 through August 31, 1976. Those entitlement purchase obligations related to Fletcher's receipts of old crude oil and crude oil runs to stills during the final month of the firm's fiscal year ended on April 30, 1976, and the two initial months of its 1977 fiscal year. In its Request for Modification Fletcher contended that it did not receive any entitlement exception relief under the June 18 Order which affected its entitlement position for May and June 1976, the initial two months of its 1977 fiscal year. Fletcher therefore requested that the requirement of the June 18 Order that the firm supply certain financial data with respect to its 1977 fiscal year was unnecessary and should be vacated. Fletcher's contentions were sustained in the Decision which the FEA issued in the matter. The FEA determined that Fletcher apparently did not receive any benefit for the exception relief granted with the initial two months of its 1977 fiscal year. Consequently the June 18 Order was amended to eliminate any requirement that Fletcher submit financial data with respect to its 1977 fiscal year.

SUPPLEMENTAL ORDERS

Linden's Propane, Inc.; Lagrange, Ohio; FEX-0103; Propane

On August 31, 1976, the Federal Energy Administration issued a Decision and Order to Linden's Propane, Inc. (Linden) staying the refund provisions of a July 7, 1976 Remedial Order. *Linden's Propane, Inc.*, 4 FEA Par. 85,018 (August 31, 1976). The Stay was granted, however, on the condition that Linden place the disputed funds into an escrow account pending a final determination on the merits of the Appeal which it had filed from the Remedial Order. The Stay was further conditioned upon the submission by Linden of a copy of the required escrow agreement to the Office of Exceptions and Appeals of the FEA within 15 days of receipt of the August 31 Decision. On the basis of its determination that Linden had failed to comply with the express conditions of the August 31 Order, the FEA concluded that the Stay which was approved on August 31, 1976 should be vacated.

Skelly Oil Co.; Tulsa, Okla.; FEX-0097; Catalyst Coke

On October 14, 1976, the Federal Energy Administration issued a Decision and Order to the Skelly Oil Company (Skelly) staying the refund provisions of a September 1, 1976 Remedial Order. *Skelly Oil Co.*, 4 FEA Par. 85,027 (October 14, 1976). The Stay was granted, however, on the condition that Skelly place the disputed funds into an escrow account pending a final determination on the merits of the Appeal which it had filed from the Remedial Order. The Stay was further conditioned upon the submission by Skelly of a copy of the required escrow agreement to the Office of Exceptions and Appeals of the FEA within 15 days of receipt of the October 14 Decision. On the basis of its determination that Skelly had failed to comply with the express conditions of the October 14 Order, the FEA concluded that the Stay which was approved on October 14, 1976 should be vacated.

DISMISSALS

The following submission was dismissed following a statement by the applicant indicating that the relief requested was no longer needed:

State of Alaska; Juneau, Alaska; FEA-0985

Copies of the full text of these Decisions and Orders are available in the Public Docket Room of the Office of Private Grievances and Redress, Room B-120, 2000 M Street, N.W., Washington, D.C. 20461, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., e.s.t., except Federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

DAVID G. WILSON,
Acting General Counsel.

JANUARY 21, 1977.

[FR Doc.77-2572 Filed 1-21-77;4:25 pm]

REPORT OF OIL IMPORTS INTO THE UNITED STATES AND PUERTO RICO

Availability of Form

Notice is hereby given that the Federal Energy Administration ("FEA") has available Form FEA P113-M-0 (Report of Oil Imports into the United States and Puerto Rico) and has mailed the form to approximately 700 firms which meet the reporting requirements for this survey.

All companies, including subsidiary or affiliated companies, which import crude oil, unfinished oils and/or finished petroleum products into the United States and Puerto Rico are required to file the FEA P113-M-0 each month beginning with January 1977.

The FEA P113-M-0 will collect data on petroleum imports of crude oil for processing, unfinished oils, finished petroleum products, and residual fuel oil including crude oil to be burned as fuel. A breakdown of imports is required for residual fuel oil imported for sale or consumption in the East Coast Refining District.

The FEA P113-M-0 must be completed and submitted in triplicate not later than 15 working days after the end of each report month. The first report is due at FEA by February 21, 1977, for January 1977 data.

Questions or requests for assistance in completing the FEA P113-M-0 as well as requests for copies of the form, may be referred by mail to the Federal Energy

Administration, Code 2885, Washington, D.C. 20461, or by telephone to FEA at 202/254–8450.

Issued in Washington, D.C., January 21, 1977.

DAVID G. WILSON,
Acting General Counsel.

[FR Doc.77–2472 Filed 1–21–77;2:00 pm]

STRATEGIC PETROLEUM RESERVE; COTE BLANCHE SALT MINE STORAGE SITE

Availability of Final Site-Specific Environmental Impact Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C), the Federal Energy Administration (FEA) has prepared a final site-specific environmental impact statement (EIS) for the Cote Blanche salt mine site, one of five storage sites that is being considered for the creation of a Strategic Petroleum Reserve. The Reserve is mandated by Part B of Title I, Energy Policy and Conservation Act, 42 U.S.C. 6231–6242. The Reserve will be created for the storage of approximately 500 million barrels of crude oil and/or petroleum products for use in the event of a Presidential determination of a severe energy supply interruption or a requirement to meet the obligations of the United States under the International Energy Program.

The Cote Blanche salt mine site is located in St. Mary Parish, Louisiana. This site is currently under consideration for use in the Early Storage Reserve, i.e., for the first 150 million barrels of storage capacity. The final Cote Blanche EIS (FES–76/77–7) includes comments received by FEA on the draft EIS for the Cote Blanche site (DES–76–7) and FEA analyses and responses to those comments.

Single copies of the final Cote Blanche EIS may be obtained from the FEA Office of Communications and Public Affairs, Room 3138, 12th and Pennsylvania Avenue, NW., Washington, D.C. 20461. Copies of the final Cote Blanche EIS will also be available for public review in the FEA Information Access Reading Room, Room 2107, 12th and Pennsylvania Avenue, NW., Washington, D.C. 20461, between 8 a.m. and 4:30 p.m., e.s.t., Monday through Friday, except Federal holidays.

Interested persons are invited to submit data, views or arguments with respect to the final Cote Blanche EIS to Executive Communications, Box KN, Room 3309, Federal Energy Administration, 12th and Pennsylvania Avenue, NW., Washington, D.C. 20461.

Comments should be identified on the outside of the envelope and on the document submitted to FEA Executive Communications with the designation, "Final Cote Blanche EIS." Fifteen copies should be submitted. All comments should be received by FEA by February 18, 1977, in order to receive full consideration.

Any information or data considered by the person furnishing it to be confidential must be so identified and submitted in one copy only. The FEA reserves the right to determine the confidential status of the information or data and to treat it according to that determination.

Issued in Washington, D.C., January 21, 1977.

DAVID G. WILSON,
Acting General Counsel,
Federal Energy Administration.

[FR Doc.77–2470 Filed 1–21–77;1:59 pm]

Environmental Impact Statement

STRATEGIC PETROLEUM RESERVE; WEEKS ISLAND SALT MINE STORAGE SITE

Availability of Final Site-Specific Environmental Impact Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C), the Federal Energy Administration (FEA) has prepared a final site-specific environmental impact statement (EIS) for the Weeks Island salt mine site, one of five storage sites that is being considered for the creation of a Strategic Petroleum Reserve. The Reserve is mandated by Part B of Title I, Energy Policy and Conservation Act, 42 U.S.C., sections 6231–6242. The Reserve will be created for the storage of approximately 500 million barrels of crude oil and/or petroleum products for use in the event of a Presidential determination of a severe energy supply interruption or a requirement to meet the obligations of the United States under the International Energy Program.

The Weeks Island salt mine site is located in Iberia Parish, Louisiana. This site is currently under consideration for use in the Early Storage Reserve, i.e., for the first 150 million barrels of storage capacity. The final Weeks Island EIS (FES–76/77–8) includes comments received by FEA on the draft EIS for the Weeks Island site (DES–76–8) and FEA analyses and responses to those comments.

Single copies of the final Weeks Island EIS may be obtained from the FEA Office of Communications and Public Affairs, Room 3138, 12th and Pennsylvania Avenue NW., Washington, D.C. 20461. Copies of the final Weeks Island EIS will also be available for public review in the FEA Information Access Reading Room, Room 2107, 12th and Pennsylvania Avenue NW., Washington, D.C. 20461, between 8 a.m. and 4:30 p.m., e.s.t., Monday through Friday, except Federal holidays.

Interested persons are invited to submit data, views or arguments with respect to the final Weeks Island EIS to Executive Communications, Box KM, Room 3309, Federal Energy Administration, 12th and Pennsylvania Avenue NW., Washington, D.C. 20461.

Comments should be identified on the outside of the envelope and on the document submitted to FEA Executive Communications with the designation, "Final Weeks Island EIS." Fifteen copies should be submitted. All comments should be received by FEA by February 18, 1977, in order to receive full consideration.

Any information or data considered by the person furnishing it to be confidential must be so identified and submitted in one copy only. The FEA reserves the right to determine the confidential status of the information or data and to treat it according to that determination.

Issued in Washington, D.C., January 21, 1977.

DAVID G. WILSON,
Acting General Counsel,
Federal Energy Administration.

[FR Doc.77–2471 Filed 1–21–77;1:59 pm]

FEDERAL POWER COMMISSION

[Docket No. CP77–114]

ARKANSAS OKLAHOMA GAS CORP. ET AL.

Shortening of Notice Period

JANUARY 13, 1977.

On January 4, 1977, Arkansas Oklahoma Gas Corporation, Mississippi River Transmission Corporation, and Arkansas Louisiana Gas Company (Applicants) filed an abbreviated joint application for a certificate of public convenience and necessity under Section 7(c) of the Natural Gas Act. In the application, Applicants request that the Commission utilize the shortened procedure pursuant to Section 1.32 of the Commission's Rules.

Notice of the application was issued on January 11, 1977, setting February 1, 1977, as the last date for filing protests or petitions to intervene. In order to expedite consideration of the subject application, notice is hereby given that the period for filing protests and petitions to intervene in this proceeding is shortened to and including January 25, 1977.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77–2427 Filed 1–25–77;8:45 am]

[Docket No. CS75–379]

BENSON-MONTIN-GREER DRILLING CORP.

Notice of Petition for Waiver

JANUARY 14, 1977.

Take notice that Benson-Montin-Greer Drilling Corporation (BMG), (petitioner), 221 Petroleum Center Building, Farmington, New Mexico, filed a petition for waiver of Section 157.40(c) of the Commission's Rules of Practice and Procedure. Applicant requests waiver of Section 157.40(c) to enable it to sell under its small producer certificate in Docket No. CS75–379 natural gas produced from certain properties in Carbon County, Wyoming which it has acquired from Amoco Production Company (Amoco) and Phillips Petroleum Company (Phillips). BMG is willing to accept a condition which would limit its rate for production attributable to the interests acquired from Amoco and Phillips to the applicable large-producer ceiling rate.

BMG has recently drilled and completed a new well on the properties which it acquired under the December 5, 1975 agreement. BMG proposes to sell to Western under its small producer certificate in Docket No. CS75–379 the gas production attributable to the interests which it acquired from Amoco and Phillips. Such gas will be sold at the applicable national ceiling rate established by the Commission in Opinion Nos. 770 and 770–A.

Any person desiring to be heard or to make any protest with reference to said petition should on or before February 7, 1977, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any party wishing to become a party to a proceeding, or to participate as a party in any hearing therein, must file a petition to intervene in accordance with the Commission's Rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77–2423 Filed 1–25–77;8:45 am]

[Docket No. CP77–118]

COLUMBIA GAS TRANSMISSION CORP. AND COLUMBIA GULF TRANSMISSION CO.

Notice of Application

JANUARY 14, 1977.

Take notice that on January 6, 1977, Columbia Gas Transmission Corporation (Columbia Transmission), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, and Columbia Gulf Transmission Company (Columbia Gulf), 3805 West Alabama Avenue, Houston, Texas 77027, filed in Docket No. CP77–118 a joint application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Columbia Transmission and Columbia Gulf to transport up to 1,500 Mcf of natural gas per day for General Electric Company (GE), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that Columbia Gulf would receive up to 1,500 Mcf of natural gas per day at Erath, Vermilion Parish, Louisiana, from Texas Gas Transmission Corporation (Texas Gas) through existing facilities at the tailgate of Texaco's Henry plant and would redeliver such volumes to Columbia Transmission for GE's account in Boyd County, Kentucky, at an existing point of receipt. Columbia Transmission, it is further stated, would transport and redeliver such gas for GE's account to Baltimore Gas and Electric Company (BG&E) at existing points of delivery located near Baltimore, Maryland.

It is asserted that Columbia Gulf's charge for this transportation service would be 29.34 cents per Mcf, and Columbia Gulf would retain for company-use and unaccounted-for gas 2.5 percent of the total volume of gas delivered into its system. It is further asserted that Columbia Transmission would charge 22.21 cents per Mcf and would retain for company-use and unaccounted-for gas 3.1 percent of the total volume of gas delivered into its system by Columbia Gulf. It is also asserted that the transportation obligations of Columbia Gulf and Columbia Transmission would be subject to the limits of their pipeline capacity and customer service obligations.

It is stated that BG&E has notified GE that no gas would be available for its interruptible customers; hence, GE has acquired the option to purchase sellers' interests under certain leases from Texas Crude, Inc. (Texas Crude) and other owners in the Blue Buck Point gas field in Cameron Parish, Louisiana, for a period commensurate with the productive life of the reserves purchased, a period of not less than ten years. It is further stated that the gas to be transported is to be used for Priority 2 and 3 uses at GE's Columbia, Maryland, plant for drycoaters, pickledryers, enamel dryers, counterflow enamel furnaces, phosphate ovens, paint bake ovens, air make-up systems, and one salt bath unit.

Texas Crude states that unless the sale in place of the Blue Buck Point gas reserves to GE is consummated, such reserves would be sold to intrastate gas purchasers.

It is stated that the transportation and delivery of natural gas by Columbia Transmission is dependent upon the ability of BG&E to receive such gas and redeliver it to GE. It is further asserted that the gas transportation agreement between Columbia Gulf and Columbia Transmission and GE is for a term of ten years or until BG&E terminates its agreement to receive the transported gas for the account of GE, whichever first occurs.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 7, 1977, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc 77 2424 Filed 1–25–77;8:45 am]

[Docket No. ER76–301]

PENNSYLVANIA ELECTRIC CO.

Order Adopting Settlement

JANUARY 14, 1977.

By order issued December 24, 1975, we accepted Pennsylvania Electric Company's (Penelec) filing of November 26, 1975, and suspended the proposed tariff for two months until February 26, 1976. A pre-hearing conference was held on January 19, 1976, and Staff served its cost of service "top sheets" on August 20, 1976. A settlement conference held between Penelec and the intervenors in this docket on September 16, 1976, resulted in an uncontested settlement agreement which was certificated to us by the Administrative Law Judge on November 15, 1976.

Based on our review of the record in these proceedings, including the settlement agreement itself, the filings, documents and pleadings submitted, we conclude that the settlement agreement represents a reasonable resolution of the issues in the proceeding in the public interest, and that accordingly the settlement should be approved.

The Commission finds: The settlement agreement certified by the Presiding Judge to the Commission in this docket, should be approved and made effective, as hereinafter ordered.

The Commission orders: (A) The settlement agreement certified by the Presiding Judge in this docket on November 15, 1976, is hereby approved and made effective, and is incorporated herein by reference.

(B) Within 30 days from the date of this order, Penelec shall file with the Commission revised tariff sheets in conformance with the settlement agreement.

(C) Within 30 days after the settlement tariff sheets are accepted for filing, Penelec shall refund amounts collected in excess of the settlement rates based on service rendered after February 25, 1976, together with simple interest computed at 9 percent per annum.

(D) Within 15 days after refunds have been made, Penelec shall file with the Commission a compliance report showing monthly billing determinants and revenues under prior, present and settlement rates; monthly settlement rate increase, monthly rate refund and the

monthly interest computation together with a summary of such information for the total refund period. A copy of such report shall also be furnished to each State Commission within whose jurisdiction the wholesale customers distribute and sell electric energy at retail.

(E) This order is without prejudice to any filings or orders which have been made or which will hereafter be made by the Commission, its staff, or any party or person affected by this order, in any proceeding now pending or hereafter instituted by or against Penelec or any person or party.

(F) The Secretary shall cause prompt publication of this order in the FEDERAL REGISTER.

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-2422 Filed 1-25-77;8:45 am]

[Docket No. ER76-678]

MAINE ELECTRIC POWER CO.

Order Granting Late Interveniton

JANUARY 14, 1977.

On December 7, 1976, Boston Edison Company, Fitchburg Gas and Electric Light Company, Montaup Electric Company, Newport Electric Corporation, Public Service Company of New Hampshire and Vermont Electric Power Company (the "Petitioners") filed an untimely petition to intervene in the instant proceeding. For the reasons set forth hereinafter the Commission will grant this petition to intervene.

The Petitioners, each a New England utility, have entitlements in power purchased by Maine Electric Power Company (MEPCO) from the New Brunswick Electric Power Commission (New Brunswick). The pertinent contracts, each of which has been filed in this docket, consist of a Unit Participation Agreement dated November 14, 1971 ("Participation Agreement") under which MEPCO buys the power from New Brunswick, and a Power Purchase and Transmission Agreement dated December 1, 1971, ("Purchase Agreement") under which twenty-two New England Utilities, including the Petitioners, buy the power from MEPCO.

By order issued September 15, 1976, the Commission, inter alia, instituted an investigation and hearing regarding the aforementioned agreements. By motion dated November 4, 1976, New England Power Company (NEP) requested that the Presiding Administrative Law Judge proceed to establish procedural dates regarding the aforementioned investigation and hearing to determine appropriate conditions, if any, to be imposed by the Commission upon the importation by MEPCO of power from New Brunswick and upon resale of such power to purchasers under the Power Purchase and Transmission Agreement.

As purchasers under the Power Purchase and Transmission Agreement, the Petitioners state that they will be directly and substantially affected by the Commission's imposition of any condition upon the importation and resale by MEPCO of New Brunswick Power. The Petitioners also state that they became aware that an active effort has been undertaken to impose conditions on the importation of New Brunswick Power only upon receipt of NEP's motion of November 4, 1976. In addition, Petitioners urge that their interests cannot be adequately represented by any of the existing parties and that they may be bound by the Commission's action in this proceeding. The Petitioners assert that they value the interconnection between New England and Eastern Canada as beneficial to each region and desire to see the benefits continued and enlarged. They express concern that if NEP were to obtain the relief it seeks, cooperative Canadian-American endeavor in the electric industry would be severely set back.

Pursuant to a formal Prehearing Conference held on November 9, 1976, in this docket, the Presiding Administrative Law Judge issued a notice dated November 11, 1976, of the contents of NEP's motion to all the signatory parties to the Power Purchase and Transmission Agreement in order to give these parties the opportunity to take such action as they deemed appropriate. A similar notice was published by the Commission in the FEDERAL REGISTER on November 24, 1976.

In light of the foregoing, the Commission concludes that the Petitioners should be permitted to intervene in this proceeding.

The Commission finds: Participation in this proceeding by the Petitioners is in the public interest.

The Commission orders: (A) The Petitioners are hereby permitted to intervene in this proceeding subject to the rules and regulations of the Commission: *Provided, however,* That participation of these companies shall be limited to matters affecting asserted rights and interests as specifically set forth in their petition to intervene; and *Provided, further,* That the admission of these companies shall not be construed as recognition by the Commission that they might be aggrieved because of any order or orders of the Commission entered in this proceeding.

(B) The intervention granted herein shall not be the basis for delaying or deferring any procedural schedules heretofore established for the orderly and expeditious disposition of this proceeding.

(C) The Secretary shall cause prompt publication of this order to be made in the FEDERAL REGISTER.

By the Commission.

[SEAL] KENNETH F. PLUMB,
Secretary.

[FR Doc.77-2428 Filed 1-25-77;8:45 am]

[Docket No. E-9530]

PYRAMID LAKE PAIUTE TRIBE OF INDIANS v. SIERRA PACIFIC POWER CO.

Order Providing for Hearing

JANUARY 14, 1977.

On July 1, 1975, the Pyramid Lake Paiute Tribe of Indians (Tribe), through its attorneys, filed a complaint and petition for declaratory order (complaint) respecting four unlicensed hydroelectric projects[1] owned and operated by Sierra Pacific Power Company (Sierra Pacific) on the Truckee River in California and Nevada. The Tribe requests that an order be issued declaring that the operation of the projects is illegal and that Sierra Pacific be ordered to cease operation of the projects until each is licensed by the FPC.

The Tribe alleges that the Floriston Rates[2] were designed to meet the power requirements of Sierra Pacific's four plants. By requiring Sierra Pacific to cease operation of these plants, the Tribe claims that the flow in the Truckee River would be more beneficial to the needs and the requirements of the Tribe for the maintenance and preservation of the Pyramid Lake and Truckee River fisheries.

On October 14, 1975, Sierra Pacific filed a motion to dismiss the complaint and answer. Sierra Pacific claims that licenses are not required for the continued operation and maintenance of the projects. Alternatively, Sierra Pacific requests that if licenses are necessary for the projects that their continued operation be allowed.

Sierra Pacific argues that the complaint should be dismissed because the Tribe is seeking to assert water rights in the Truckee. Sierra Pacific alleges that the Tribe has not shown a reasonable nexus between the water and treaty rights and the licensing of the four hydroelectric plants. Sierra Pacific also argues that the Tribe is barred by the doctrine of laches from bringing complaint, because the Tribe has delayed filing its complaint without justification. Sierra Pacific further claims that the Federal Power Act (Act) does not require it to obtain a license for the continued operation of the plants, because none of the provisions of the Act is applicable. Sierra Pacific alleges that the Truckee River is not navigable.

On December 1, 1975, the Tribe filed a response to Sierra Pacific's motion and answer.

There appears to be a question among the parties as to whether or not the Truckee River is a navigable waterway of the United States as defined by Section 3(8) of the Act.[3] Because we do not have

[1] The four projects are the Farad Plant near Farad, California; the Fleish and Verdi Plants near Verdi, Nevada; and the Washoe Plant near Mogul, Nevada.

[2] Floriston Rates are the rate of flow in the Truckee River at the head of the diversion penstock at Floriston, California, as measured at the Iceland Gage.

[3] 16 U.S.C. § 796(8).

a factual record before us, we believe that a hearing should be held to determine if the Truckee River is navigable and thus if the Farad, Fleish, Verdi, and Washoe plants are within our licensing jurisdiction. Of course, the parties and Commission staff will not be limited to asserting jurisdiction based solely on navigation, but may rely on any other basis that may be appropriate. Concerning the request of the Tribe that we order Sierra Pacific to cease operating the projects, it would not be appropriate for us to do so because we have not determined that the projects are within our licensing jurisdiction. The hearing that we are providing for by this order will be limited to the issue of Commission jurisdiction over the four plants.

The doctrine of laches does not bar the Tribe from bringing the complaint nor the Commission from instituting any action. The Supreme Court stated that where a governmental interest is held in trust for the public, the public is not to be deprived of that interest by laches. *U.S. v. California,* 332 U.S. 19, 39, 40 (1974), Congress has given to the Commission the responsibility of protecting our national resources for the public interest in developing hydroelectric power. *First Iowa Hydro-Electric Cooperative v. FPC,* 328 U.S. 152 (1946). The complaint is based on a governmental interest, unauthorized use of our navigable waterways, that is held in trust for the public.

As noted above, Sierra Pacific argues that the Tribe is attempting to use the Commission as a forum for determining treaty and water rights. The Tribe denies this assertion in its answer. While issues such as minimum flows and fish facilities may have a relationship to treaty and water rights, these issues are also relevant to a licensing proceeding.

Public notice of the complaint was given on August 5, 1975. On September 2, 1975, a notice of intervention was filed by the Public Service Commission of Nevada. On October 3 and 14, 1975, petitions to intervene were filed by the Secretary of the Interior and the State of Nevada, respectively. The petitions were granted by order issued November 19, 1975. On August 25, 1975, a letter of protest was filed by the John Webster Brown Civil and Structural Engineers, Inc.

The Commission finds: (1) It is appropriate and in the public interest for the purposes of the Federal Power Act that a hearing be held, as hereinafter provided, on the issue of whether the Farad. Verdi. Fleish, and Washoe plants owned and operated by Sierra Pacific Power Company are within our licensing jurisdiction.

(2) It is appropriate and in the public interest to dismiss all other requests not specifically ruled upon in this order.

The Commission orders: (A) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by the Federal Power Act, particularly Sections 4 (e), 4(g), and 23(b) thereof, and the Commission's Rules of Practice and Procedure, an initial conference shall be held at 9:30 a.m. on February 23, 1977, in a hearing room of the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. respecting jurisdiction of the unlicensed hydroelectric projects on the Truckee River owned and operated by Sierra Pacific Power Company.

(B) A Presiding Administrative Law Judge, to be designated by the Chief Administrative Law Judge for that purpose pursuant to Section 3.5(d) of the Commission's Regulations, 18 CFR § 3.5 (d) (1976), shall preside at the hearing in this proceeding, with authority to establish and change all procedural dates and to rule on all motions with the exceptions of petitions to intervene motions to consolidate and sever, and motions to dismiss, as provided for in the Commission's Rules of Practice and Procedure.

(C) The Commission's Rules of Practice and Procedure shall apply in this proceeding except to the extent that they are modified and supplemented herein.

(D) All requests not specifically ruled upon are hereby denied.

(E) The Secretary shall cause prompt publication of this order in the FEDERAL REGISTER.

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-2421 Filed 1-25-77;8:45 am]

[Docket No. CI76-754]

TENNECO EXPLORATION, LTD.

Notice of Application for Optional Procedure Certification

JANUARY 14, 1977.

Take notice that on November 18, 1976, Tenneco Exploration, Ltd. filed an amendment to its September 3, 1976 application for a certificate of public convenience and necessity filed pursuant to Section 2.56a of the Commission's General Policy and Interpretations. Tenneco Exploration, Ltd. requests certification under Section 2.75 for natural gas produced from Eugene Island Block 367, offshore Louisiana, at an initial rate of $2.8037 per Mcf with escalations of 5 cents per Mcf at the end of each contract year. In addition, Tenneco Exploration, Ltd. seeks pre-granted abandonment authorization, effective at the conclusion of its current 15-year sales contract.

The subject gas will be produced by Tenneco Exploration, Ltd. and sold to Tenneco Oil Company for resale to Tennessee Gas Pipeline Company.

Any person desiring to be heard or to make any protest with reference to said petition should on or before February 7, 1977, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any party wishing to become a party to a proceeding, or to participate as a party in any hearing therein, must file a petition to intervene in accordance with the Commission's Rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-2426 Filed 1-25-77;8:45 am]

[Docket No. CI76-755]

TENNECO EXPLORATION II, LTD.

Notice of Application for Optional Procedure Certification

JANUARY 14, 1977

Take notice that on November 18, 1976 Tenneco Exploration II, Ltd. (Exploration II) filed an amendment to its September 3, 1976 application for a certificate of public convenience and necessity filed pursuant to Section 2.56a of the Commission's General Policy and Interpretations. Exploration II requests certification under Section 2.75 for natural gas produced from Eugene Island Block 367, offshore Louisiana, at an initial rate of $2.8037 per Mcf at the end of each contract year. In addition, Exploration II seeks pre-granted abandonment authorization, effective at the conclusion of its current 15-year sales contract.

The subject gas will be produced by Exploration II and sold to Tenneco Oil Company for resale to Tennessee Gas Pipeline Company.

Any person desiring to be heard or to make any protest with reference to said petition should on or before February 7, 1977, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any party wishing to become a party to a proceeding, or to participate as a party in any hearing therein, must file a petition to intervene in accordance with the Commission's Rules.

KENNETH F. PLUM.
Secretary.

[FR Doc.77-2425 Filed 1-25-77;8:45 am]

[Docket No. CP77-123]

ALABAMA-TENNESSEE NATURAL GAS CO.

Application

JANUARY 21, 1977.

Take notice that on January 14, 1977, Alabama-Tennessee Natural Gas Company (Applicant), P.O. Box 918, Florence, Alabama 35630, filed in Docket No. CP77-123 an application pursuant to section 7

(c) of the Natural Gas Act and § 2.79 of the Commission's general policy and interpretations (18 CFR 2.79), for a certificate of public convenience and necessity authorizing the transportation of natural gas on an interruptible basis on behalf of Fruehauf Corporation (Fruehauf), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to transport for Fruehauf up to 1,800 Mcf of gas per day for use at Fruehauf's Decatur, Alabama, facilities for a period of two years from the date delivery commences.

It is stated that the transportation service is required by Fruehauf to offset curtailments from its supplier, City of Decatur Gas Utility Company (Decatur), which has advised Fruehauf that it anticipates no gas would be available to Fruehauf during the winter months and that there would be severe curtailments during the summer months.

It is stated that the gas to be purchased by Fruehauf and transported by Applicant would be produced from wells wholly owned by Fruekel, the energy subsidiary of Fruehauf, in Tuscarawas and Guernsey Counties, Ohio. It is stated that Fruehauf proposes to have said quantities of natural gas delivered to Applicant by Tennessee Gas Pipeline Company (Tennessee) via Columbia Gas Transmission Company (Columbia) at Tennessee's Barton Sales Delivery Point located in Colbert County, Alabama. Applicant further states that it would transport and deliver such gas to Decatur for the account of Fruehauf at its existing Decatur Sales Delivery Point located in Morgan County, Alabama, to the extent operating conditions permit. It is stated that such deliveries would be made through existing facilities, and Applicant anticipates having available capacity due to curtailments resulting from a supply deficiency on the system of Tennessee, its sole supplier.

Applicant states that its transportation charge for this service would be 12.78 cents per Mcf.

Applicant asserts that it did not consider the subject natural gas supply available for purchase because the well or wells from which the gas to be transported is produced have been exclusively dedicated to Fruekel.

Fruehauf states that the gas to be transported and delivered by Applicant would be used for Priority 2 industrial uses to replace volumes being curtailed by its suppliers, Decatur and Applicant. This curtailment, it is stated, would not only occasion economic hardship in Decatur, where Fruehauf, as one of the city's largest employers, employs 525 people and in 1975 had a total payroll of $3,117,412, but would also adversely affect the manufacturing of transportation equipment and its component parts. It is further stated that a curtailment or shutdown of Fruehauf's Decatur plants would affect 16 other Fruehauf plants in the United States and Canada resulting in employee layoffs and plant shutdowns.

It is further asserted that Alumex Corporation which obtains aluminum siding from Fruehauf's Sheet Mill would be adversely affected.

Any person desiring to be heard or to make protest with reference to said application should on or before February 4, 1977 file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules and practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-2417 Filed 1-25-77;8:45 am]

[Docket No. RP-73-77 (PGA77-4)]

ALABAMA-TENNESSEE NATURAL GAS CO.

Proposed PGA Rate Adjustment

JANUARY 17, 1977.

Take notice that on December 30, 1976, Alabama-Tennessee Natural Gas Company (Alabama-Tennessee), P.O. Box 918, Florence, Alabama 35630, tendered for filing as part of its FPC Gas Tariff, Third Revised Volume No. 1, Twentieth Revised Sheet No. 3-A. This revised tariff sheet is proposed to become effective as of February 1, 1977.

Alabama-Tennessee states that the sole purpose of such revised tariff sheet is to adjust Alabama-Tennessee's rates pursuant to the PGA provisions of Section 20 of the General Terms and Conditions of its tariff to reflect increased rates to become effective on February 1, 1977, to be charged by its sole supplier, Tennessee Gas Pipeline.

The revised tariff sheet provides for the following rates:

Rate schedule:	*20th revised sheet No. 3-A*
G-1:	
Demand	$1.78
Commodity (cents)	111.47
SG-1: Commodity (cents)	124.47
I-1: Commodity (cents)	117.32

Alabama-Tennessee states that copies of the filing have been mailed to all of its jurisdictional customers and affected State regulatory Commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 28, 1977. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-2441 Filed 1-25-77;8:45 a.m.]

[Docket No. ER77-139]

AMERICAN ELECTRIC POWER SERVICE CORP.

Changes in Rates and Charges

JANUARY 18, 1977.

Take notice that American Electric Power Service Corporation (AEP) on January 10, 1977, tendered for filing on behalf of its affiliate, Ohio Power Company (Ohio), Modification No. 8 dated January 1, 1977 to the Operating Agreement dated June 14, 1962, between Ohio and The Cleveland Electric Illuminating Company, designated Ohio Rate Schedule FPC No. 31.

Section 1 of Modification No. 8 provides for an increase in the Demand Charge for Short Term Power from $0.50 to $0.60 per kilowatt per week and section 3 provides for an increase in the Demand Charge for Limited Term Power from $2.75 to $3.25 per kilowatt per month. Section 2 of Modification No. 8 provides for an increase in the transmission charge for third party Short Term Power transactions from $0.125 per kilowatt per week to $0.15 per kilowatt per week and Section 4 provides for an increase in the transmission charge for third party Limited Term transactions from $0.55 per kilowatt per month to $0.65 per kilowatt per month, both schedules proposed to become effective January 3, 1977.

The Company states that since the use of Short Term and Limited Term Power cannot be accurately estimated, it is impossible to estimate the increase in revenues resulting from the Modification.

The Company states that copies of the filing were served upon The Cleveland Electric Illuminating Company and the Public Utilities Commission of Ohio.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before February 2, 1977. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-2445 Filed 1-25-77;8:45 a.m.]

[Docket No. CP66-235]

ATLANTIC SEABOARD CORP.

Petition for Declaratory Order

JANUARY 18, 1977.

Take notice that on December 28, 1976, Columbia Gas Transmission Corporation (Columbia) as successor to Atlantic Seaboard Corporation (Seaboard), 1700 MacCorkle Avenue, S.E. Charleston, West Virginia 25314, filed in Docket No. CP66-235 a petition pursuant to section 16 of the Natural Gas Act and § 1.7(c) of the Commission's Rules of Practice and Procedure (18 CFR 157.7(c)) for a declaratory order to remove the uncertainty of whether or not Columbia must first secure regulatory approval, specifically, a certificate of public convenience and necessity under section 7(c) of the Natural Gas Act, for future replacements of its 20-inch gas transmission pipeline extending from Flat Top, West Virginia, to Dranesville, Virginia, with like size minimum wall thickness pipe, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Columbia states that on February 20, 1964, representatives of Seaboard met with members of the Commission's Staff for discussion relative to the replacement of Seaboard's 20-inch gas transmission pipeline with like size minimum wall thickness pipe from West Virginia to the Pennsylvania state line, and from this discussion, Seaboard's representatives concluded that the planned replacements of Seaboard's 35-year old 20-inch pipeline would come within the purview of § 2.55(b) of the Commission's Rules of Practice and Procedure (18 CFR 2.55 (b)). Columbia further states that relying upon this conclusion, Seaboard made two replacements: in 1964, 34 miles of 20-inch pipeline between Covington and Lexington, Virginia, were replaced with like diameter pipe; and in 1965, approximately 35 miles of 20-inch pipeline between Waynesboro and Bickers, Virginia, were replaced with like diameter pipe.

It is stated that the Commission's Order to Show Cause in Docket No. CP66-235 issued January 25, 1966 (35 FPC 146), questioned these replacements under Section 2.55(b) of the Commission's Rules and Regulations; which proceeding was terminated by Commission order issued September 13, 1967, in Docket Nos. CP67-167 and CP66-235 (38 FPC 597). Further, it is stated that subsequent replacements have been made pursuant to Commission authorization as follows:

(1) In 1968, 21.5 miles were replaced as authorized in Docket No. CP67-167 (38 FPC 597).

(2) In 1969, 58.0 miles were replaced as authorized in Docket No. CP69-106 (41 FPC 262).

(3) In 1976, 3.7 miles in two sections of 3.1 miles and 0.6 mile, respectively, were replaced as authorized in Docket No. CP76-239 (56 FPC --------).

Columbia states that the replacements made in 1964, 1965, 1968 and 1969 were part of a planned program to replace the pipeline in systematic large sections, as delineated in the Commission's Show Cause Order in Docket No. CP66-235 (35 FPC 146), so as to increase capacity for its eastern markets, but the replacement program was abandoned in 1970 because of a shortage of gas supply. It is further stated that since 1972 Columbia has had a moratorium on additional sales; the replacement made in 1976 was made because of the condition of the pipe. Columbia asserts that future replacements on this 20-inch pipeline would be made only as required to meet DOT Regulations, class location changes or the condition of the pipe as there is presently no need for increased pipeline capacity.

Columbia states that it could continue to replace small sections of its 20-inch pipeline subsequent to obtaining a certificate of public convenience and necessity from the Commission but finds this method has limited flexibility in effecting minor replacements because of the lead time required to prepare the necessary filings and receive Commission authority. It further states that frequently once the overburden is removed and the pipeline exposed, a different section or length of pipeline is determined to need replacement, thereby requiring further amendment of the originally issued certificate of public convenience and necessity.

Accordingly, Columbia submits, that in view of the foregoing discussion, it would be beneficial and in the public interest for Columbia to possess the flexibility inherent in § 2.55(b) of the Commission's Rules and Regulations in order to effectuate the type replacements contemplated on its 20-inch gas transmission pipeline. It states that the Commission might wish to condition such order to provide for reporting replacement sections at the end of each construction year.

Columbia, therefore, proposes that the Commission issue a Declaratory Order removing any uncertainty as to the availability of § 2.55(b) of the Commission's Rules of Practice and Procedure for future replacement of its 20-inch gas transmission pipeline.

Any person desiring to be heard or to make any protest with reference to said petition should on or before February 8, 1977, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-2433 Filed 1-25-77;8:45 am]

[Docket No. RI77-21]

BETTIS, BOYLE AND STOVALL (OPERATOR), ET AL.

Petition for Special Relief

JANUARY 17, 1977.

Take notice that on December 29, 1976, Bettis, Boyle and Stovall (Operator), et al., P.O. Box 1168, Graham, Texas 76046, filed a petition for special relief in Docket No. RI77-21 pursuant to Commission Order No. 481.

Petitioner seeks authorization to charge $1.10 per Mcf for the sale of gas to Cities Service Gas Company from a number of leases in the Northwest Knowles Field, Beaver County, Oklahoma. Petitioner states that it has undergone extensive rework of the wells and gathering system pertaining to the wells in the aforesaid leases. Petitioner further states that unless the requested increase is granted, abandonment is imminent. The subject gas is currently being sold at 35 cents per Mcf.

Any person desiring to be heard or to make any protest with reference to said petition should on or before January 31, 1977, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any party wishing to become a party to a proceeding, or to participate as a party in any hearing therein, must file a petition to intervene in accordance with the Commission's rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc 77-2439 Filed 1-25-77;8:45 am]

[Docket No. CP77-124]

COLUMBIA GAS TRANSMISSION CORP.

Application

JANUARY 21, 1977.

Take notice that on January 18, 1976, Columbia Gas Transmission Corporation (Applicant), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed in Docket No. CP77-124 an application pursuant to section 7(c) of the Natural Gas Act and § 2.79 of the Commission's general policy and interpretations (18 CFR 2.79), for a certificate of public convenience and necessity authorizing the transportation of natural gas on an interruptible basis on behalf of Jones & Laughlin Steel Corporation (J&L), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to transport for J&L up to 2,000 Mcf of gas per day for an initial two-year term, commencing on the first day of delivery, for use at J&L's Aliquippa, Pennsylvania, steel plant in order to minimize the economic impact of curtailments by Applicant.

It is stated that Applicant would receive such natural gas into its Line C-106 in Warren Township, Washington County, Ohio, at a specific point to be mutually agreed upon and would deliver it to Columbia Gas of Pennsylvania, Inc. (Columbia Pennsylvania) at existing points of delivery in Beaver County, Pennsylvania. Applicant states that it would charge J&L 22.21 cents per Mcf for this transportation service and would retain for company-use and unaccounted-for gas 3.1 percent of the volumes received for the account of J&L. Applicant further states that all receipts and deliveries would be effectuated by means of existing facilities, and such transportation service would be subject to the limits of its pipeline capacity and to its service obligations to its CD, WS, SGES, G and SGS customers.

It is asserted that J&L has contracted with David S. Towner dba David S. Towner Enterprises (Towner) to purchase such gas produced from leases in Washington County, Ohio, for a primary term commencing with the first day of delivery and ending on April 30, 1978, with an option to extend the contract through April 30, 1980. Further, it is asserted that J&L would pay Towner $2.30 per Mcf through April 30, 1977, $2.30 per Mcf from May 1 through October 31, 1977, and $2.40 per Mcf from November 1, 1977, through April 30, 1978.

It is stated that J&L's Aliquippa plant, where such gas would be used for Priority 2 or Priority 3 industrial uses, manufacturers steel products in the form of hot and cold rolled and coated sheets and strip, hot rolled and cold finished bars, tubular products, light plates, structural shapes, tin mill products and rod wire products. It is further stated that J&L employs approximately 11,000 people in the Aliquippa plant and has a yearly payroll of approximately $150,000,000, and that a curtailment would have a domino like impact within the plant and throughout Beaver County, Pennsylvania, where it is the largest employer.

Applicant states that it did not consider the subject gas supply available for purchase because the intrastate market is available and marginal gas reserves such as these cannot be developed for the regulated interstate market because of the high cost of development.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 4, 1977, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-2416 Filed 1-25-77;8:45 am]

[Docket No. ER77-142]

CONNECTICUT LIGHT AND POWER CO.

Purchase Agreement

JANUARY 18, 1977.

Take notice that on January 10, 1977, the Connecticut Light and Power Company (CL&P) tendered for filing a proposed Purchase Agreement with Respect to Various Gas Turbine Units, dated November 30, 1976 between (1) CL&P and The Hartford Electric Light Company (HELCO), and (2) Mansfield Municipal Electric Department (MMED).

CL&P states that the Purchase Agreement provides for a sale to MMED of a specified percentage of capacity and energy from five gas turbine generating units (Norwalk Harbor, Devon, South Meadow 10, Middletown and Torrington Terminal) during the period from December 1, 1976 to December 31, 1976 together with related transmission service.

CL&P states that questions as to MMED's Capability Responsibility Obligation, under the terms of the New England Power Pool (NEPOOL) Agreement, during the Term of this Purchase Agreement affected the amounts of gas turbine capacity that could be purchased by MMED and thus delayed execution of the agreement until a date which prevented the filing of such rate schedule more than thirty days prior to the proposed effective date.

CL&P therefore requests that, in order to permit MMED to receive urgently needed capacity, and in order to allow CL&P and HELCO to receive payment for such capacity, the Commission, pursuant to Section 35.11 of its regulations, waive the thirty-day notice period and permit the rate schedule filed to become effective on December 1, 1976.

CL&P states that the capacity charge for the proposed service was a negotiated rate, the monthly transmission charge is equal to one-twelfth of the annual average unit cost of transmission service on the Northeast Utilities (NU) system determined in accordance with § 13.9 of the New England Power Pool (NEPOOL) Agreement and the uniform rules adopted by the NEPOOL Executive Committee, multiplied by the number of kilowatts of winter capability which MMED is entitled to receive, reduced to give due recognition of the payments made by MMED for transmission services on intervening systems, and the variable maintenance charge was arrived at through negotiations.

CL&P states that copies of this rate schedule have been mailed or delivered to CL&P, Hartford, Connecticut; HELCO, Hartford, Connecticut; and MMED, Mansfield, Massachusetts.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before February 1, 1977. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-2446 Filed 1-25-77;8:45 am]

[Docket No. RP77-7]

CONSOLIDATED GAS SUPPLY CORP.

Proposed Changes in FPC Gas Tariff

JANUARY 14, 1977.

Take notice that Consolidated Gas Supply Corporation (Consolidated) on December 30, 1976 tendered for filing Twentieth Revised Sheet Nos. 8 and 9 to its FPC Gas Tariff, Second Revised Volume No. 1 to be effective February 1, 1977.

Consolidated states the purpose of this filing is to request that a portion of its general rate increase at Docket No. RP77-7 become effective for the period February 1, 1977 through April 30, 1977 when, after suspension, the increase in Docket No. RP77-7 will become effective.

In its general rate increase, Consolidated demonstrated that among the reasons for the rate change, was a rate filing of Transcontinental Gas Pipe Line Corporation (Transco) at Docket No. RP76-136 who, along with selling natural gas, renders a transportation service to Consolidated. Transco's increase was suspended by the Commission until February 1, 1977. Consolidated states that an increase filed by Columbia Gas Transmission Company (Columbia Gulf) at Docket Nos. RP76-94 and RP76-138, which became effective November 1, 1976, was inadvertently overlooked and has been included herein. Columbia Gulf provides transportation service under Rate Schedules X-9 and X-10. Consolidated contends that if the proposed increase is not allowed to become effective as proposed, Consolidated will be exposed to three months of increased costs without an offsetting increase of its own to recover such costs. The estimated jurisdictional exposure to Consolidated for the three-month period will be approximately $1.0 million of unrecoverable costs unless the Commission approves these proposed tariff sheets.

Consolidated has requested a waiver of the Commission's Rules and Regulations as may be required to permit the filed tariff sheets to become effective as proposed.

Copies of this filing were served upon Consolidated's jurisdictional customers as well as interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 28, 1977. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-2420 Filed 1-25-77;8:45 am]

[Docket No. CI77-213]

CONTINENTAL OIL CO.

Application

JANUARY 21, 1977.

Take notice that on January 13, 1977, Continental Oil Company (Applicant), P.O. Box 2197, Houston, Texas 77001, filed in Docket No. CI77-213 an application pursuant to section 7(c) of the Natural Gas Act for a limited-term certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce to Michigan Wisconsin Pipeline Company (Mich-Wis) from the Cupp D No. 1 Well, S. W. Mayfield Field, Beckham County, Oklahoma, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it commenced the sale of natural gas to Mich-Wis on January 10, 1977, within the contemplation of § 157.29 of the regulations under the Natural Gas Act (18 CFR 157.29) and that it proposes to continue said sale for a period of six months from the date of termination of the sixty-day emergency period or until Applicant is able to begin the sale to the alternate and originally intended purchaser, whichever date is earlier.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than 15 days for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said application should on or before February 4, 1977, file with the Federal Power Commission, Washington, D.C., 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-2414 Filed 1-25-77;8:45 am]

[Docket No. CP74-98]

EL PASO NATURAL GAS CO.

Notice Prescribing Procedures for the Submission of Comments Regarding Issues Presented by Court Remand

JANUARY 18, 1977.

These proceedings involve the question of the allocation of the cost of looping a segment of El Paso Natural Gas Company's Alamogordo, New Mexico, lateral, which serves only customers of Southern Union Gas Company (Southern Union). In *Southern Union Gas Company* v. *FPC*, 536 F. 2d 440 (D.C. Cir., June 18, 1976), the Court found that the Commission had failed adequately to explain its reasons why the cost of these facilities should be borne solely by Southern Union and remanded the record in this proceeding for further development.

The Commission believes that the issues presented on remand can be most efficiently and expeditiously resolved through the submission of written comments. If the comments demonstrate a need for ore formal procedures, we will prescribe such procedures. The Commission requests the parties to this proceeding to address the following questions in their comments:

1. Should the certificate granted to El Paso Natural Gas Company (El Paso) be conditioned to specify the means of payment for the certificated facilities, for example, to require application of the lateral line policy in El Paso's tariff?

2. If the certificate is conditioned on application of El Paso's lateral line policy, should Southern Union be required to bear the entire cost of the lateral?

3. If the certificate is conditioned on application of El Paso's lateral line policy, are there offsetting factors which would relieve Southern Union of the obligation to pay the entire cost of the facilities?

4. If it is determined that El Paso's lateral line policy should not be applied in this case, should be a special facilities charge be imposed on Southern Union since the annual volumetric limitations in El Paso's curtailment plan preclude any system-wide benefit?

5. Since El Paso commenced construction of the lateral without prior Commission authorization, what portion, if any, should be borne by El Paso's shareholders of the costs attributable to this lateral.

In addition, the parties are invited to comment upon other questions which the remand raises but which they feel have not been fully addressed by the foregoing specific questions.

An original and fourteen (14) copies of all initial and reply comments shall be filed with the Secretary of the Federal Power Commission on or before February 3, 1977, and on or before March 3, 1977, respectively. All written submittals shall be single spaced and submitted upon letter size paper (8" by 10½" or 8½" by 11"), and shall state the name, title, mailing address and telephone number of the person or persons to whom communications concerning this proceeding should be addressed. All written submittals will be placed in the Commission's public files and will be available for inspection in the Commission's Office of Public Information at 825 North Capitol Street, NE., Washington, D.C. 20426, during regular business hours. All statements and submittals in response to this notice shall be under oath, acknowledged by a notary public or comparable official, as follows: "---------- being duly (name) sworn, deposes and says that he is (title and organization, if filing is in a representative capacity), that he has examined the statements contained in the submittal or response, and that all such statements are true and correct to the best of his knowledge, information and belief."

By direction of the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-2443 Filed 1-25-77;8:45 am]

[Docket No. ER77-85]

INDIANA & MICHIGAN ELECTRIC CO.

Changes in Rates and Charges

JANUARY 18, 1977.

Take notice that American Electric Power Service Corporation (AEP) on January 6, 1976 tendered for filing on behalf of its affiliate Indiana & Michigan Electric Company (I&M), Modification No. 9 dated November 1, 1976 to the Interconnection Agreement dated November 27, 1951 between Illinois Power Company and Indiana & Michigan Electric Company. I&M's Rate Schedule FPC No. 23.

Sections 1 and 3 of Modification No. 9 provide for an increase in the demand charge for Short Term Power and Limited Term Power from $0.50 to $0.60 per kilowatt per week and $2.75 to $3.25 per kilowatt per month respectively. Section 2 and 5 provide for an increase in the Short Term Power and Limited Term Power transmission charges from $0.125 to $0.15 per kilowatt per week and $0.55 to $0.65 per kilowatt per month respectively, both schedules proposed to become effective January 1, 1977. Applicant states that since the use of Short Term and Limited Term Power cannot be accurately estimated, it is impossible to estimate the increase in revenues resulting from the Modification.

Copies of the filing were served upon Illinois Power Company, the Public Service Commission of Indiana, the Michigan Public Service Commission and the Illinois Commerce Commission.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426 in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10).

All such petitions or protests should be filed on or before January 30, 1977. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene.

Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-2434 Filed 1-25-77;8:45 am]

[Docket No. ER77-144]

KANSAS CITY POWER & LIGHT CO.

Filing of Change in Rate Schedule

JANUARY 18, 1977.

Take notice that on January 11, 1977, Kansas City Power and Light Company (KCPL) tendered for filing a Municipal Wholesale Firm Power Contract dated December 20, 1976, between KCPL and the City of Gardner, Kansas. KCPL requests an effective date thirty (30) days after filing. The Contract terminates the Municipal Wholesale Firm Power Contract, dated November 6, 1967, KCPL Rate Schedule FPC No. 66, and provides for rates and charges for wholesale firm power service by KCPL to the City of Gardner.

KCPL states that the proposed rates are KCPL's rates and charges for similar service under schedules previously filed by KCPL with the Federal Power Commission.

KCPL states that copies of this filing have been served upon the City of Gardner, Kansas and the State Corporation Commission of Kansas.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before February 3, 1977. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-2435 Filed 1-25-77;8:45 am]

[Project No. 2168]

LOWER VALLEY POWER & LIGHT, INC.

Application for Amendment of Transmission Line License

JANUARY 19, 1977.

Public notice is hereby given that an application was filed on March 8, 1976, under the Federal Power Act (16 U.S.C. 791a–825r) by the Lower Valley Power & Light, Inc. (Correspondence to: Mr. Boyd A. Parker, Assistant General Manager, Lower Valley Power & Light, Inc., P.O. Box 118, Afton, Wyoming 83110) for amendment of the license for constructed transmission line Project No. 2168 located in Bonneville County, Idaho and Lincoln County, Wyoming and affecting lands of the United States in Targhee National Forest and other U.S. lands.

Applicant proposes to change the existing 16.5-mile-long single-circuit, wood-pole transmission line from 69 kilovolt capacity to 115-kilovolt capacity. Single pole structures would be replaced by double or triple wood pole, H-frame structures.

All structures would be reinsulated for 115 kilovolts. Except for rerouting of approximately one-third mile in section 23, Township 1 South, Range 45 East, and approximately one-fourth mile in Section 17, Township 1 South, Range 45 East, the existing location of the line will be retained.

Applicant states that the increases in voltage and conductor size are necessary to provide additional transmission line capacity needed for the Lower Valley Power & Light service area. The rerouted line will connect to a 115-kilovolt section of the U.S. Bureau of Reclamation Palisades Dam Substation. Applicant states that it has obtained a new right-of-way at the substation and the rerouting has been coordinated with the U.S. Bureau of Reclamation.

Any person desiring to be heard or to make any protest with reference to said application should file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All such petitions or protests should be filed on or before March 7, 1977. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules. The application is on file with the Commission and is available for public inspection.

Take further notice that, pursuant to the authority contained in and conferred upon the Federal Power Commission by Sections 308 and 309 of the Federal Power Act (16 U.S.C. 825g, 825h) and the Commission's Rules of Practice and Procedure, specifically § 1.32(b) (18 CFR 1.35(b)), (1976), a hearing may be held without further notice before the Commission on its application if no issue of substance is raised by any request to be heard, protest or petition filed subsequent to this notice within the time required herein and if the applicant or initial pleaser requests that the shortened procedure of § 1.35(b) be used.

Under the shortened procedure herein provided for, unless otherwise advised, it will not be necessary for applicant or initial pleader to appear or be represented at the hearing before the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-2436 Filed 1-25-77;8:45 am]

[Docket No. CP74-296]

NATIONAL FUEL GAS SUPPLY CORP.

Extension of Time

JANUARY 18, 1977.

On January 14, 1977, National Fuel Gas Supply Corporation (National Fuel), filed a motion to extend the date within which to accept the Certificate of Public Convenience and Necessity issued to National Fuel by Order issued December 15, 1976, in the above-designated proceeding.

Upon consideration, notice is hereby given that the date within which National Fuel must accept its Certificate is extended to and including February 14, 1977.

LOIS D. CASHELL,
Acting Secretary.

[FR Doc.77-2437 Filed 1-25-77;8:45 am]

[Docket No. ER77-148]

NEW ENGLAND POWER CO.

Filing

JANUARY 18, 1977.

Take notice that on January 12, 1977, New England Power Company (NEPCO) tendered for filing as an initial rate schedule a System Power—Unreserved Power Contract between NEPCO and the City of Burlington, Vermont, Electric Department (Burlington) dated as of November 15, 1976.

The Power Contract provides for NEPCO's supply to Burlington of various capacity entitlements of System Power—Unreserved, together with related energy during, the period December 1, 1976, through February 28, 1977. "System Power—Unreserved" is electric power supplied by NEPCO without specification as to the source of generation, without reserves, and various percentages of which are made available for delivery only at such times as, and to the extent that, specified NEPCO generating units are generating power on line or available for such generation.

NEPCO requests waiver of the notice requirements so as to permit the Power Contract to become effective as of December 1, 1976, in accordance with its terms.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before February 4, 1977. Protest will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-2447 Filed 1-25-77;8:45 am]

[Docket No. ER77-147]

NEW ENGLAND POWER CO.

Filing

JANUARY 18, 1977.

Take notice that on January 12, 1977, New England Power Company (NEPCO) tendered for filing as an initial rate schedule a System Power—Unreserved Power Contract between NEPCO and Green Mountain Power Corporation (G.M.P.C.) dated as of November 15, 1976.

The Power Contract provides for NEPCO's supply to G.M.P.C. of various capacity entitlements of System Power—Unreserved, together with related energy during portions of the period January 1, 1977, through October 31, 1981. "System Power—Unreserved" is electric power supplied by NEPCO without specification as to the source of generation, without reserves, and various percentages of which are made available for delivery only at such times as, and to the extent that, specified NEPCO generating units are generating power on line or available for such generation.

NEPCO requests waiver of the notice requirements so as to permit the Power Contract to become effective as of January 1, 1977 in accordance with its terms.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 or 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before February 1, 1977. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-2449 Filed 1-25-77;8:45 am]

[Docket No. ER77-146]

NEW ENGLAND POWER CO.

Filing

JANUARY 18, 1977.

Take notice that on January 12, 1977 New England Power Company (NEPCO) tendered for filing as an initial rate schedule a System Power—Unreserved Power Contract between NEPCO and the Town of Braintree, Massachusetts, Electric Light Department (Braintree) dated as of April 1, 1976.

The Power Contract provides for NEPCO's supply to Braintree of a 21,450 KW entitlement of System Power—Unreserved capacity, together with related energy during the period commencing on April 1, 1976, and extending until the earlier to occur of (1) the commercial operation date of Braintree's combined-cycle unit now under construction in Braintree, Massachusetts or (2) March 31, 1977. Said term may be extended from month to month. "System Power—Unreserved" is electric power supplied by NEPCO without specification as to the source of generation, without reserves, and various percentages which are made available for delivery only at such times as, and to the extent that, specified NEPCO generating units are generating power on line or available for such generation.

NEPCO requests waiver of the notice requirement so as to permit the Power Contract to become effective as of April 1, 1976 in accordance with its terms.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before February 4, 1977. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-2444 Filed 1-25-77;8:45 am]

[Docket Nos. E-7638 and E-7647]

PUBLIC SERVICE COMPANY OF INDIANA, INC.

Extension of Time

JANUARY 18, 1977.

In the matter of Public Service Company of Indiana, Inc., Southern Indiana Gas and Electric Company and Public Service Company of Indiana, Inc.

On January 7, 1977, the City of Huntingburg, Indiana, filed a motion to extend the date for filing comments, as set by Commission's notice issued January 4, 1977, on the "Motion to Reaffirm and Ratify the Commission's Prior Findings and Order and Terminate Proceedings", filed December 1, 1976, by Public Service Company of Indiana, Inc., and Southern Indiana Gas and Electric Company, in the above-designated proceedings. The motion states that parties to the proceeding have no objection.

Upon consideration, notice is hereby given that the date for filing protests and petitions to intervene is extended to and including January 31, 1977.

LOIS D. CASHELL,
Acting Secretary.

[FR Doc.77-2438 Filed 1-25-77;8:45 am]

[Docket No. ER77-138]

SOUTHERN CALIFORNIA EDISON CO.

Filing of Initial Rate Schedule and Request for Waiver

JANUARY 18, 1977.

Take notice that Southern California Edison Company (Edison), on January 7, 1977, tendered for filing a December 7, 1976, Agreement with the San Diego Gas and Electric Company providing for the transmission by Edison on an interruptible basis of power purchased on a non-firm basis by San Diego from two separate sources. Edison will charge San Diego for transmission, dispatching, and

scheduling services, and for losses in delivery of such non-firm energy.

Edison states that San Diego requests that service be initiated at the earliest possible date under this Agreement, and for that reason Edison requests that the notice provisions of the Commission's regulations be waived and the filing be permitted to become effective no later than January 31, 1977.

Copies of this filing were served upon San Diego Gas and Electric Company and the Public Utilities Commission of the State of California.

Any person desiring to be heard or to protest this application should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 31, 1977. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-2448 Filed 1-25-77;8:45 am]

[Docket No. ER77-149]

SOUTHERN CALIFORNIA EDISON CO.

Tariff Change

JANUARY 18, 1977.

Take notice that Southern California Edison Company (Edison) on January 12, 1977 tendered for filing a change of rate of interruptible transmission services under the provisions of Edison's agreement with the City of Riverside as embodied in Rate Schedule FPC No. 84. The new rate for these services effective on January 13, 1977, which requires waiver of the notice requirements, is 1.31 mills per kilowatt-hour. This is an increase of .02 mills per kilowatt hour. Said filing is in accordance with terms of the agreement stating that whenever the California Public Utilities Commission (CPUC) finds a new overall rate of return on retail operations to be reasonable for Edison • • • the rate for interruptible transmission service shall be adjusted based on said new rate of return. Said new rate of return was authorized in CPUC Decision 86794.

The Company states that copies of this filing were served upon the City of Riverside, California, and the Public Utilities Commission of the State of California.

Any person desiring to be heard or to protest this application should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before February 3, 1977. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any persons wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-2450 Filed 1-25-77;8:45 am]

[Docket No. ER77-150]

SOUTHERN CALIFORNIA EDISON CO.

Tariff Change

JANUARY 18, 1977.

Take notice that Southern California Edison Company (Edison) on January 12, 1977 tendered for filing a change of rate for interruptible transmission services under the provisions of Edison's agreement with the City of Anaheim as embodied in Rate Schedule FPC No. 83. The new rate for these services effective on January 13, 1977, which requires waiver of the notice requirements, is 1.24 mills per kilowatthour. This is an increase of .02 mills per kilowatthour. Said filing is in accordance with terms of the agreement stating that whenever the California Public Utilities Commission (CPUC) finds a new overall rate of return on retail operations to be reasonable for Edison . . . the rate for interruptible transmission service shall be adjusted based on said new rate of return. Said new rate of return was authorized in CPUC Decision 86794.

The Company states that copies of this filing were served upon the City of Anaheim, California, and the Public Utilities Commission of the State of California.

Any person desiring to be heard or to protest this application should file a petition to intervene or protest with the Federal Power Commission, 825 North Capital N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10) All such petitions or protests should be filed on or before February 3, 1977. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-2442 Filed 1-25-77;8:45 am]

[Docket No. CP77-127]

TENNESSEE GAS PIPELINE CO. AND EAST TENNESSEE NATURAL GAS CO.

Application

JANUARY 21, 1977.

Take notice that on January 18, 1977, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), P.O. Box 2511, Houston, Texas 77001, and East Tennessee Natural Gas Company (East Tennessee), P.O. Box 10245, Knoxville, Tennessee 37919, filed in Docket No. CP77-127 a joint application pursuant to section 7(c) of the Natural Gas Act and § 2.79 of the Commission's general policy and interpretations (18 CFR 2.79), for a certificate of public convenience and necessity authorizing the transportation of natural gas on an interruptible basis for a limited term of two years on behalf of Briggs Division of the Celotex Corporation (Briggs), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Tennessee proposes to transport up to 850 Mcf of natural gas per days plus volumes for its fuel and use requirements from its Main Line Valve 702 plus 1.95 miles located in Desoto Parish, Louisiana, to East Tennessee for the account of Briggs at its existing Greenbrier Sales No. 2 Delivery Point in Robertson County, Tennessee (Greenbrier). East Tennessee proposes to transport such gas, up to 850 Mcf per day less reductions of volumes used for fuel and use requirements for the account of Briggs of Knoxville Utilities Board (KUB). Such gas, it is stated, would be transported and delivered by KUB to Briggs for its plant located in Knoxville, Tennessee.

It is stated that Briggs proposes to purchase such natural gas from ENERCO Exploration and Management Co. (ENERCO) from the latter's production areas in northern Louisiana for $1.40 per million Btu's in order to offset curtailments presently being imposed on it by KUB. Tennessee states that ENERCO would construct, at its sole cost, the necessary meter station and interconnection with Tennessee's existing pipeline at Tennessee's Main Line Valve 702 plus 1.95 miles.

It is further stated that Briggs would pay Tennessee each month for transportation service: (1) A demand charge to be determined by multiplying $1.27 by the maximum daily quantity, less any demand charge credit provided therein, if applicable; and (2) a volume charge equal to 17.01 cents per Mcf multiplied by (a) the total of the daily volumes delivered during such month or (b) the number of days in said month multiplied by 66⅔ percent of the maximum daily quantity, whichever is greater, less any applicable annual minimum bill credit as provided therein. Further, it is stated that Tennessee would receive 3.28 percent of the daily volume transported for fuel and use requirements. It is also stated that Briggs would pay East Tennessee each month for transportation service a charge to be determined by multiplying the rate of 20.74 cents per Mcf by the volume of natural gas actually transported and delivered by East Tennessee for the account of Briggs, and East Tennessee would retain 0.72 percent of the volume delivered for fuel and use requirements.

Briggs states that the gas to be transported would be for Priority 2 industrial uses at its Knoxville, Tennessee,

plant where Briggs manufactures porcelain enamel fixtures, and any slowdown due to failure to offset recent curtailments would result in the layoff of some 200 employees.

Tennessee and East Tennessee state that they did not consider the subject natural gas supply to be available for purchase because ENERCO has stated that it would sell the gas to one of the intrastate purchasers which has made an offer if the present arrangements are not approved.

It is stated that Tennessee and East Tennessee anticipate having capacity available to perform the subject transportation service because of curtailments resulting from a supply deficiency on their respective systems.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 4, 1977, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-2415 Filed 1-25-77;8:45 am]

[Docket No. RP71-11 (PGA77-3); RP76-99 (non-consolidated)]

TENNESSEE NATURAL GAS LINES, INC.

Proposed Rate Change Under Tariff Rate Adjustment Provisions

JANUARY 14, 1977.

Take notice that on January 4, 1977, Tennessee Natural Gas Lines, Inc. ("Tennessee Natural") tendered for filing proposed changes to First Revised Volume No. 1 of its FPC Gas Tariff to be effective on February 1, 1977, consisting of the following revised tariff sheets:

Twentieth Revised Sheet No. PGA-1,
Fifteenth Revised Sheet No. PGA-2, and
Third Revised Sheet No. 4-A.

Tennessee Natural states that the purpose of the instant filing is to make a PGA rate adjustment pursuant to the purchased gas adjustment provisions of Rate Schedule G-1 and SWS-1 of its FPC Gas Tariff to reflect a rate change of its sole supplier, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. ("Tennessee Gas"), proposed to become effective on February 1, 1977, pursuant to such supplier's motion to make rates effective filed on December 20, 1976 in its general rate increase proceeding at Docket No. RP76-137.

Tennessee Natural further advises the Commission that it has discovered that, although the same has operated correctly in the past, in the future due to changed circumstances the PGA provisions of its tariff as applied to its SWS-1 Rate Schedule (for service from its LNG storage facility) may result in Tennessee Natural recovering rate changes of its supplier on a time period basis different than the Commission may have intended; that if such is the case, the PGA provisions of its tariff as applied to its SWS-1 Rate Schedule will have to be changed and that the same will be complex and will require time and study to work out. Tennessee Natural states its belief that the proper forum for working out such problems, if any, would be its general rate proceeding in Docket No. RP76-99. Tennessee Natural states that, in the meantime, it voluntarily agrees that it will collect the PGA increase in the commodity component of its SWS-1 Rate Schedule (Sheet No. PGA-2 tendered for filing) subject to refund and will refund back to the effective date thereof any amounts collected thereunder in excess of the rates it would have collected under any revised PGA clause applicable to its SWS-1 rate schedule which may finally be approved.

Tennessee Natural states that copies of the filing have been mailed to its jurisdictional customer and the affected state regulatory commission.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 N. Capitol Street, Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 28, 1977.

Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. This notice does not provide for consolidation of the captioned proceedings and any party desiring to protest or intervene in either proceeding should file separately in either docket. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-2418 Filed 1-25-77;8:45 am]

[Docket No. CP77-125]

TEXAS GAS TRANSMISSION CORP.

Application

JANUARY 21, 1977.

Take notice that on January 18, 1977, Texas Gas Transmission Corporation, 3800 Frederica Street, Owensboro, Kentucky 42301 (Applicant) filed in Docket No. CP77-125 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing for a term of ten years the transportation of up to 3,750 Mcf of natural gas per day on an interruptible basis for General Electric Company (GE) to be used for Priority 2 and 3 requirements in GE's plants in Louisville, Kentucky, Bloomington, Indiana, and Columbia, Maryland, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to transport natural gas for GE pursuant to an agreement dated January 6, 1977, between Applicant and GE. It is stated that Applicant would receive the volumes of gas to be transported from Natural Gas Pipeline Company of America (Natural) through existing facilities at the tailgate of Texaco's Henry plant and redeliver, for the account of GE, up to 2,000 Mcf of gas per day to Louisville Gas and Electric Company (LG&E), up to 250 Mcf of gas per day to Indiana Gas Company, Inc. (Indiana Gas), and up to 1,500 Mcf of gas per day to Columbia Gulf Transmission Company (Columbia Gulf). It is further stated that the gas would be delivered to LG&E and Indiana Gas at existing points of delivery and to Columbia Gulf by a dispatching arrangement with Texaco's Henry plant. It is indicated that deliveries to Columbia Gulf are contingent upon the continuation of the dispatching arrangement with Texaco's Henry plant.

It is stated that the gas to be transported would be produced from the Blue Buck Field, Cameron Parish, Louisiana. It is stated that GE has signed an option agreement with Texas Crude, Inc. (Texas Crude), and other owners, under which GE has acquired the option to purchase in place reserves located in the Blue Buck Field. It is indicated that Texas Crude would sell the gas to an intrastate customer if GE does not buy the gas.

Applicant states that it would collect an initial charge of 20.68 cents per Mcf for volumes delivered to LG&E and 21.32 cents per Mcf for volumes delivered to Indiana Gas. Applicant further states

that no rate would be charged for volumes delivered to Columbia Gulf. Applicant further states that it would retain a volume equal to 8.6 percent of the volumes delivered to LG&E and a volume equal to 9.1 percent of the volumes delivered to Indiana Gas. It is said that no volumes will be retained for gas delivered to Columbia Gulf. It is stated that the retained volumes would be utilized as makeup for compressor fuel and line loss, which percentages were calculated on an incremental basis for pipeline throughout to and within the rate zones in which the deliveries would be made.

Applicant states that no new facilities would be constructed.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 4, 1977, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 77-2413 Filed 1-25-77;8:45 am]

[Docket No. RP77-25]

TRANSCO GAS SUPPLY CO.

Tariff Filing

JANUARY 17, 1977.

Take notice that Transco Gas Supply Company (Gasco) on December 30, 1976, as corrected on January 6, 1977, tendered for filing First Revised Sheet No. 106 to its FPC Gas Tariff, Original Volume No. 2 with the proposed effective date of February 1, 1977. Transco states that this revised tariff sheet provides for an increase from 14.39% to 15.73% in the percentage applicable to return and income taxes on Gasco's rate base. This percentage increase is occasioned by a rate increase filing to be placed into effect by Transcontinental Gas Pipe Line Corporation (Transco) in Docket No. RP76-136 on February 1, 1977, subject to refund.

Under the terms of Gasco's approved tariff, the percentage applicable to return and income taxes on Gasco's rate base is 14.39% or such other percentage applicable to return and income taxes which is reflected in any rate filing of Transco; provided, however, that if such other percentage is reflected in a rate filing of Transco under which revenues are being collected subject to refund, Gasco shall make such refunds and adjustments as may be required based upon the final determination by the Federal Power Commission of such percentage for Transco.

The Company states that copies of the filing have been mailed to Transco and, for information purposes, to each of Transco's customers and interested State Commissions.

Any persons desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 28, 1977. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-2440 Filed 1-25-77;8:45 am]

[Docket No. RP77-26]

TRANSCONTINENTAL GAS PIPE LINE CORP.

Tariff Filing

JANUARY 14, 1977.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) on December 30, 1976, tendered for filing certain revised tariff sheets to its FPC Gas Tariff Original Volume No. 2.

Transco states that these tariff sheets provide for an increase in the rates charged for the interruptible transportation service rendered by Transco. The proposed effective date of such increased rates is January 31, 1977, and it is requested that the Commission suspend the use of such tariff sheets for one (1) day and provide that the sheets become effective February 1, 1977, subject to refund pending the outcome of the proceedings in Docket No. RP76-136.

Transco also states that its general rate increase filed in the above referenced docket on July 30, 1976, was suspended until February 1, 1977. In that docket Transco did not propose an increase for interruptible transportation service since it believed that the present rates were sufficient to cover the proper share of Transco's cost of service. However, the staff of the Commission in submitting its top sheets in Docket No. RP76-136 allocated greater costs to interruptible service than would be provided under existing rates. Transco, in order that its rates be compensatory in the event the allocation methods utilized by the Staff are found to be proper, further states that it has developed rates for interruptible transportation service utilizing the method of cost allocation as Staff in its top sheets.

The Company states that copies of the filing have been mailed to each of the customers receiving service under the affected schedules.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 28, 1977. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-2419 Filed 1-25-77;8:45 am]

FEDERAL RESERVE SYSTEM

MARSHALL & ILSLEY CORP.

Acquisition of Bank

Marshall & Ilsley Corporation, Milwaukee, Wisconsin, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 80 percent or more of the voting shares of Fox Heights State Bank, Green Bay, Wisconsin. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than February 17, 1977.

Board of Governors of the Federal Reserve System, January 19, 1977.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc.77-2456 Filed 1-25-77;8:45 am]

SPENCER FINANCIAL CORP.

Formation of Bank Holding Company

Spencer Financial Corporation, Spencer, Iowa, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company through acquisition of 66.44 per cent or more of the voting shares of Spencer National Bank, Spencer, Iowa. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 to be received no later than February 14, 1977.

Board of Governors of the Federal Reserve System, January 18, 1977.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc.77-2457 Filed 1-25-77;8:45 am]

SPENCER NATIONAL BANK TRUST

Acquisition of Bank

Spencer National Bank Trust, Spencer, Iowa, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 75.94 per cent of the voting shares of Spencer Financial Corporation, Spencer, Iowa. The factors that are considered in acting on the application are set forth in section 3 (c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than February 14, 1977.

Board of Governors of the Federal Reserve System, January 18, 1977.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc.77-2458 Filed 1-25-77;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Public Health Service

NATIONAL IMMUNIZATION: POLICY WORK GROUPS

Meetings

Notice is hereby given that as a follow-up to a public meeting on National Immunization Policy held November 12, 13, and 14, 1976, the Assistant Secretary for Health, Department of Health, Education, and Welfare, has entered into a contract with JRB Associates, Inc., 8400 Westpark Drive, McLean, Virginia, to establish and coordinate the activities of six Work Groups with membership from outside the Federal government. Each group is charged with developing a set of recommendations to be used by the Public Health Service in developing national policy relative to immunization. Meetings of these Work Groups are open to the public.

The areas of concern of the six Work Groups and tentative schedules of meetings are as follows:

NATIONAL IMMUNIZATION POLICY

January 25–26, Sheraton O'Hare, Rosemont, Illinois.

February 21–22, Sheraton Motor Inn-Airport, Romulus, Mich.

CONSENT

February 11, February 25, Key Bridge Marriott, Arlington, Virginia.

LIABILITY

January 31, February 13–14, February 28, Crystal City Marriott, Arlington, Virginia.

HEALTH INFORMATION AND PUBLIC AWARENESS

February 12–13, Sheraton Motor Hotel, New Orleans, Louisiana, March 1–2 (Washington, D.C. metropolitan area).

RESEARCH AND DEVELOPMENT

February 5–6, Shamrock Hilton, Houston, Texas.

PRODUCTION AND SUPPLY

(Meeting in conjunction with the Research and Development group) February 5–6, Shamrock Hilton, Houston, Texas.

Policy recommendations developed by the Work Groups will be available after March 15, 1977, and may be obtained from Ms. Marie Curtis (see below).

The schedule of meetings is tentative; time and place of meetings may be confirmed by contacting Ms. Marie Curtis, JRB Associates, Inc., McLean, Virginia, (703) 821–4666.

CHARLES U. LOWE,
Special Assistant for Child Health Affairs.

[FR Doc.77-2464 Filed 1-25-77; 8:45 am]

PUBLIC HEALTH SERVICE REGIONAL OFFICES

Statement of Organization, Functions, and Delegations of Authority

Part HD, Chapter HD, of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health, Education, and Welfare entitled Public Health Service (PHS) Regional Offices (39 FR 1468, January 9, 1974, as amended by 42 FR 2123, January 10, 1977) is amended to reflect the transfer of the alcoholism, drug abuse, and mental health functions from the Division of Health Services to the newly established Division of Alcoholism, Drug Abuse, and Mental Health in Region X.

Section HD–B, Organization and Functions, is amended by deleting the title "Division of Alcoholism, Drug Abuse, and Mental Health" (HD2T, HD7T, HD8T, HD9T) and substituting the title "Division of Alcoholism, Drug Abuse, and Mental Health" (HD2T, HD7T, HD8T, HD9T, HDXT). There is no change in the functional statement for this division.

Dated: January 17, 1977.

JOHN OTTINA,
Assistant Secretary for Administration and Management.

[FR Doc.77-2574 Filed 1-25-77;8:45 am]

Office of the Assistant Secretary for Health

HEALTH PROFESSIONS EDUCATIONAL ASSISTANCE

Notice of Rulemaking Procedures

The Health Professions Educational Assistance Act of 1976 (Pub. L. 94–484) enacted on October 12, 1976, amends Title VII of the Public Health Service Act to revise and extend programs which provide student and institutional assistance for training in the health and allied health professions; and assign personnel to provide health services in health manpower shortage areas. The Department of Health, Education, and Welfare has identified the need to develop and publish approximately forty (40) separate Notices of Proposed Rulemaking (NPRM) and approximately forty (40) Final Rule documents no later than September 30, 1978 in order to implement the Act.

The Secretary's regulations policy established on July 25, 1976,[1] provides for the publication of Notices of Intent (NOIs) in addition to the requirements for publishing Notices of Proposed Rulemaking, and Final Rules, in order to increase the opportunity for public involvement early in the rulemaking process. This same policy statement also prescribes a 45 day comment period for Notices of Intent and Notices of Proposed Rulemaking unless a lesser period of 30 days has been justified to and approved by the Secretary.

In recognition of the large volume of rulemaking documents required under this Act, their complexity, and the relatively short time available, the Secretary, after careful consideration, has permitted the following modifications to the Regulatory Policy of July 25, 1976; [2]

1. Authority for issuing Notices of Intent has been delegated to the Assistant Secretary for Health;

2. Notices of Intent will be published covering related clusters of proposed rules, rather than publishing separate Notices of Intent for each proposed regulation; and,

3. A 30-day comment period has been approved for Notices of Intent and Notices of Proposed Rulemaking for implementing Sections 701 and Section 783,

[1] A complete text of the Secretary's Regulations Policy of July 25, 1976, was published in the FEDERAL REGISTER, of August 17, 1976, (41 FR 34811–34812).

[2] These modifications apply only to Rulemaking Procedures for Regulations promulgated under Pub. L. 94–484.

Physicians Assistants and Expanded Function Dental Auxiliaries, and Section 332(b) Health Manpower Shortage Area Criteria.

The Secretary has concluded that these procedural modifications will maintain the integrity of the July 25, 1976 policy, particularly, those aspects designed to allow increased opportunity for early public involvement, yet allow the Department the ability to promulgate the required rulemaking documents by September 30, 1978.

A list of the approximate publication dates of Notices of Intent and the program topics to be covered within each Notice, is provided below:

Subject	Authority[1]
Jan. 28, 1977	
Assistance for construction of teaching facilities	42 U.S.C. 293 sec. 720, 42 U.S.C. 293l sec. 726.
Lister Hill scholarship program	42 U.S.C. 294aa sec. 759.
Education of returning U.S. students from foreign medical schools.	42 U.S.C. 295g–2 sec. 782.
General internal medicine and general pediatrics	42 U.S.C. 295g–4 sec. 784.
Medical school planning costs	42 U.S.C. 295g–8 sec. 788(g).
New medical schools emphasizing family medicine	42 U.S.C. 295g–8 sec. 788(f).
Physicians assistants	42 U.S.C. 292a sec. 701, 42 U.S.C. 295g–3 sec. 783.
Expanded function dental auxiliaries	42 U.S.C. 292a sec. 701, 42 U.S.C. 295g–3 sec. 783.
Health manpower shortage area criteria	42 U.S.C. 254e, sec. 332(b).
Payment for tuition and other educational costs	42 U.S.C. 292k, sec. 711.
Health professions data	42 U.S.C. 292h sec. 708.
Training in emergency medicine	42 U.S.C. 295f–6 sec. 789(a) (enacted by P.L. 94–573).
Feb. 15, 1977	
Establishment of departments of family medicine	42 U.S.C. 295g sec. 780.
Area health education centers	42 U.S.C. 295g–1 sec. 781.
Dental team practice	42 U.S.C.295g–3 sec. 783(a)(3).
Family medicine and general practice of dentistry	42 U.S.C. 295g–6 sec. 786.
Educational assistance to individuals from disadvantaged backgrounds.	42 U.S.C. 295g–7 sec. 787.
Start-up assistance	42 U.S.C. 295g–8 sec. 788(a).
Financial distress	42 U.S.C. 295g–8 sec. 788(b).
Interdisciplinary training	42 U.S.C 295g–8 sec. 788(c).
Health manpower projects and programs	42 U.S.C. 295g–8 sec. 788(d).
Feb. 25, 1977	
Health professions capitation grants	42 U.S.C. 295f sec. 770.
Educational assistance to disadvantaged individuals in allied health.	42 U.S.C. 295h–7 sec. 798.
Allied health special projects grants and contracts	42 U.S.C. 295h–5 sec. 798.
Special projects for schools of public health and graduate programs in health administration.	42 U.S.C. 295h–1 sec. 792.
Grants for graduate programs in health administration.	42 U.S.C. 295h sec. 791.
Feb. 25, 1977	
National Health Service Corps scholarships	42 U.S.C. 294t sec. 751.
Scholarships for first year students of exceptional financial need.	42 U.S.C. 294z sec. 758.
Scholarships for advanced training of allied health personnel.	42 U.S.C. 295h–6 sec. 748.
Traineeships for students in schools of public health.	42 U.S.C. 294r sec. 748.
Traineeships for students in graduate programs in health administration.	42 U.S.C. 294s sec. 749.
HPEA student loans	42 U.S.C. 294 sec. 740.
Loan repayment	42 U.S.C. 294a sec. 741.
Insured loans to health professions students	42 U.S.C. 294 sec. 727.
Feb. 28, 1977	
National Health Service Corps program	Subpart II, Part C, Title III: 90 Stat. 2269; 42 U.S.C. 254, secs. 331, 333, 334, 335, 331(d).
Private practice option for scholarship recipients	Sec. 753, Subpart IV, Part C, Title VII; 90 Stat. 2279; 42 U.S.C. 294v.
Special grants for former corps members to enter private practice.	Sec. 755, Subpart C, Title VII; 90 Stat. 2279; 42 U.S.C. 294x.

[1] All section citations refer to sections of the Public Health Service Act as amended by Public Law 94–484.

Comments regarding these rulemaking procedures or inquiries relative to the process for development and publication of regulations under this Notice may be directed to the Office of the Assistant Secretary for Health, Director, Office of Program Implementation, Room 17A–55, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857; telephone: 301–443–2873.

Dated: January 18, 1977.

THEODORE COOPER,
Assistant Secretary for Health.

[FR Doc.77–2463 Filed 1–25–77;8:45 am]

Office of the Assistant Secretary for Health

NATIONAL COMMISSION FOR PROTECTION OF HUMAN SUBJECTS OF BIOMEDICAL AND BEHAVIORAL RESEARCH

Meeting

Notice is hereby given that the National Commission for the protection of Human Subjects of Biomedical and Behavioral Research will meet on February 11, 12 and 13, 1977, in Conference Room 6, C Wing, Building 31, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland. The meeting will convene at 9:00 a.m. each day and will be generally open to the public, subject to the limitations of available space. Topics identified in the mandate to the Commission under the National Research Act (Public Law 93–348), as amended, and the Health Research and Health Services Amendments of 1976 (Public Law 94–278), including the identification of ethical principles that should underlie the conduct of biomedical and behavioral research involving human subjects, and the disclosure of research information, will be the agenda for this meeting.

Written materials of any length may be submitted to the Commission at any time. Requests for information should be directed to Ms. Anne Ballard (301–496–7776), Room 125, Westwood Building, 5333 Westbard Avenue, Bethesda, Maryland 20016.

Dated: January 17, 1977.

CHARLES U. LOWE,
Executive Director, National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research.

[FR Doc.77–2573 Filed 1–25–77;8:45 am]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM 29647, 29648, 29649, 29650, 29651, 29652, 29653, 29654, and 29655]

NEW MEXICO

Notice of Applications

JANUARY 19, 1977.

Notice is hereby given that pursuant to Section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185) as amended by the Act of November 16, 1973 (87 Stat. 576), El Paso Natural Gas Company has applied for nine 4½-inch natural gas pipelines rights-of-way across the following lands:

NEW MEXICO PRINCIPAL MERIDIAN, NEW MEXICO

T. 26 N., R. 12 W.,
Sec. 14, SE¼NW¼;
Sec. 34, NE¼NE¼.
T. 28 N., R. 12 W.,
Sec. 7, lots 4 and 6;
Sec. 17, NW¼NW¼;
Sec. 18, lot 1, S½NE¼, NE¼NE¼, and SW¼SE¼;
Sec. 23, NE¼SW¼;
Sec. 32, W½NW¼, NE¼NW¼.
T. 27 N., R. 13 W.,
Sec. 35, NE¼NE¼.
T. 28 N., R. 13 W.,
Sec. 12, SE¼SE¼.

These pipelines will convey natural gas across 2.136 miles of national resource lands in San Juan County, New Mexico.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration whether the applications should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 6770, Albuquerque, New Mexico 87107.

FRED E. PADILLA,
Chief, Branch of Lands and Minerals Operations.

[FR Doc.77–2489 Filed 1–25–77;8:45 am]

[NM 28991]

NEW MEXICO

Notice of Application

JANUARY 17, 1977.

Notice is hereby given that, pursuant to Section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (87 Stat. 576), The Permian Corporation has applied for a water plant site and access road right-of-way across the following land:

NEW MEXICO PRINCIPAL MERIDIAN, NEW MEXICO

T. 21 S., R. 27 E.,
Sec. 17, NW¼SW¼;
Sec. 18, NE¼SW¼ and N½SE¼.

The water plant site and access road will be used in connection with a salt-water disposal well and will occupy 2.5 acres and 0.743 mile of national resource land in Eddy County, New Mexico.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 1397, Roswell, New Mexico 88201.

FRED E. PADILLA,
Chief, Branch of Lands and Minerals Operations.

[FR Doc.77–2488 Filed 1–25–77;8:45 am]

[OR 12130]

OREGON

Order Providing for Opening of Public Lands

JANUARY 18, 1977.

1. In an exchange of lands made under the provisions of section 8 of the Act of June 28, 1934, 48 Stat. 1269, 1272, as amended and supplemented, 43 U.S.C. 315g (1970), the following lands have been reconveyed to the United States:

WILLAMETTE MERIDIAN

T. 30½ S., R. 34 E.,
Sec. 25, lots 1, 2, 3, and 4, SE¼NE¼, S½NW¼, E½SW¼, and E½SE¼;
Sec. 26, lots 1, 2, and 3 and S½NE¼;
Sec. 36, N½ and SW¼.
T. 31 S., R. 34 E.,
Sec. 3, NW¼SE¼;
Sec. 12, lots 1, 2, 3, and 4, SW¼NE¼, E½NW¼, SW¼NW¼, SW¼, and NW¼SE¼;
Sec. 13, lots 1 and 2, W½NE¼, and NE¼NW¼.
T. 32S., R. 34 E.,
Sec. 27, W½SW¼;
Sec. 28, NE¼SW¼ and SE¼;
Sec. 33, E½;
Sec. 34, W½W½.
T. 33 S., R. 34 E.,
Sec. 3, lots 3 and 4, S½NW¼, and E½SW¼;
Sec. 4, lots 1 and 2, S½NE¼, SE¼NW¼, and W½SW¼;
Sec. 5, lots 3, 4, 5, 6, and 7, SE¼NW¼, E½SW¼, and SE¼;
Sec. 8, lot 1, N½NE¼, and NE¼NW¼;
Sec.9, NW¼NW¼, S½N½, E½SW¼, and NW¼SE¼;
Sec. 16, lots 1, 2, 3, and 4;
Sec. 17, SW¼NE¼, SE¼NW¼, E½SW¼, and W½SE¼;
Sec. 20, SW¼;
Sec. 28, lot 1, E½NE¼, SW¼NE¼, E½NW¼, and N½SE¼;
Sec. 29, N½NE¼ and W½;
Sec. 30, E½SE¼;
Sec. 31, NE¼NE¼;
Sec. 32, NW¼NW¼ and E½W½.
T. 34 S., R. 34 E.,
Sec. 5, lot 2, SW¼NE¼, and W½SE¼;
Sec. 7, lot 3, SE¼NE¼, NE¼SW¼, and N½SE¼;
Sec. 8, NW¼NE¼, N½NW¼, SW¼NW¼, and N½SW¼.
T. 35 S., R. 34 E.,
Sec. 17, NE¼.
T. 30 S., R. 35 E.,
Sec. 17, W½;
Sec. 18, NE¼NE¼;
Sec. 19, lots 3 and 4 and SE¼SW¼;
Sec. 20, NW¼, NE¼SW¼, NW¼SE¼, and S½SE¼;
Sec. 28, SW¼NW¼ and N½SW¼;
Sec. 29, E½;
Sec. 30, lots 1, 2, and 4, NE¼, E½W½, N½SE¼, and SW¼SE¼;
Sec. 31, lots 2 and 3, W½NE¼, and E½W½;
Sec. 32, E½E½, and NW¼SW¼;
Sec. 33, SW¼, W½SE¼, and SE¼SE¼.
T. 31 S., R. 35 E.,
Sec. 4, lots 1, 2, 5, 6, and 7;
Sec. 5, lots 1, 8, 29, 36, 37, 38, and 39;
Sec. 6, lots 32, 33, and 40;
Sec. 7, lots 3 and 4;
Sec. 18, lot 1 and NE¼NW¼.
T. 32 S., R. 35 E.,
Sec. 6, SW¼NE¼, W½SE¼, and SE¼SE¼;
Sec. 7, lots 2, 3, 4, and 5, NW¼NE¼, and NE¼NW¼.

The areas described aggregate 10,003.37 acres in Harney County.

2. All the minerals in the following described lands were and continue to be in United States' ownership and open to operation of the mining laws (Ch. 2, Title 30 U.S.C.) and the mineral leasing laws:

WILLIAMETTE MERIDIAN

T. 30; S., R. 34 E.,
Sec. 25, W½NW¼ and E½SW¼;
Sec. 26, lots 1, 2, and 3, and S½NE¼.
T. 31 S., R. 34 E.,
Sec. 3, NW¼SE¼;
Sec. 12, lots 3 and 4, E½SW¼, and NE¼SE¼;
Sec. 13, lot 2 and SW¼NE¼.
T. 32 S., R. 34 E.,
Sec. 27, E½SW¼,
Sec. 28, NE¼SW¼ and SE¼;
Sec. 33, NW¼NE¼;
Sec. 34, W½N¼ and SW¼SW¼.
T. 33 S., R. 34 E.,
Sec. 3, lot 4 and SW¼NW¼;
Sec. 4, SW¼NE¼, SE¼NW¼, and W½SW¼;
Sec. 5, lots 3 and 4, SE¼NW¼, N½SE¼, and SE¼SE¼;
Sec. 8, NE¼NE¼;
Sec. 9, SW¼NE¼ and W½NW¼;
Sec. 17, SW¼NE¼, SE¼NW¼, E½SW¼, and W½SE¼;
Sec. 20, N½SW¼ and SW¼SW¼;
Sec. 28, lot 1, NE¼NE¼, S½NE¼, E½NW¼, and N½SE¼;
Sec. 29, W¼NW¼ and NW¼SW¼;
Sec. 30, E½SE¼;
Sec. 31, NE¼NE¼;
Sec. 32, E½W½ and NW¼NW¼.
T. 34 S., R. 34 E.,
Sec. 5, lot 2, SW¼NE¼, and W½SE¼;
Sec. 7, lot 3, SE¼NE¼, NE¼SW¼, and N½SE¼;
Sec. 8, NW¼NE¼, N½NW¼, SW¼NW¼, and N½SW¼.
T. 30 S., R. 35 E.,
Sec. 17, NE¼NW¼ and E½SW¼;
Sec. 20, NE¼, NE¼SW¼, NW¼SE¼, and S½SE¼;
Sec. 28, SW¼NW¼;
Sec. 29, NE¼ and SW¼SE¼;
Sec. 33, SW¼, W½SE¼, and SE¼SE¼.
T. 31 S., R. 35 E.,
Sec. 4, lots 2, 5, 6, and 7;
Sec. 5, lots 1, 8, 29, 36, 37, 38, and 39;
Sec. 6, lots 32, 33, and 40;
Sec. 7, lots 3 and 4.

3. The subject lands are located along the eastern side of Steens Mountain approximately 50 to 80 miles southeast of the City of Burns. Elevation ranges from 5,800 to 7,000 feet above sea level, and the topography varies from gently sloping meadows and basins to steep rocky bluffs. Vegetation consists primarily of sagebrush, native grasses, and juniper. In the past, the lands have been used for livestock grazing purposes. The lands will be managed, together with adjoining national resource lands, for multiple use.

4. Subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law, the lands described in paragraph 1 hereof are hereby open (except as already provided in paragraph 2 hereof) to operation of the public land laws, including the mining laws (Ch. 2, Title 30 U.S.C. and the mineral leasing laws. All valid applications received at or prior to 10 a.m. February 23, 1977, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

5. Inquiries concerning the lands should be addressed to the Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, P.O. Box 2965, Portland, Oregon 97208.

HAROLD A. BERENDS,
Chief, Branch of Lands and Minerals Operations.

[FR Doc.77-2488 Filed 1-25-77;8:45 am]

Bureau of Land Management

OUTER CONTINENTAL SHELF OFFICE

Availability of Official Protraction Diagrams

1. Notice is hereby given that, effective with this publication, the following OCS Official Protraction Diagrams, last approved on the dates indicated, are available, for information only, in the New Orleans Outer Continental Shelf Office, Bureau of Land Management, New Orleans, Louisiana. In accordance with Title 43, Code of Federal Regulations, these protraction diagrams are the basic record for the description of mineral and oil and gas lease offers in the geographic areas they represent.

2. For the benefit of interested parties and in the public interest, and for their convenience, this publication constitutes a composite list of all official protraction diagrams now covering the Gulf of Mexico OCS. Prior purchasers of any of these diagrams should determine if they are current by comparing their respective approval dates with the approval dates listed herein.

Outer Continental Shelf official protraction diagrams

Description		Latest approval date
NG 14-3	Corpus Christi	Jan. 27, 1976
NG 14-6	Port Isabel	Do.
NG 15-1	East Breaks	Do.
NG 15-4	Alaminos Canyon	Mar. 26, 1976
NG 15-2	Garden Banks	Dec. 2, 1976
NG 15-5	Keathley Canyon	Do.
NH 15-12	Ewing Bank	Do.
NG 15-3	Green Canyon	Do.
NG 15-6	Walker Ridge	Do.
NH 16-4	Mobile	Oct. 10, 1972
NH 16-7	Viosca Knoll	Dec. 2, 1976
NH 16-10	Mississippi Canyon	Do.
NG 16-1		Do.
NG 16-4		Do.
NH 16-5	Pensacola	Do.
NH 16-8	Destin Dome	Do.
NH 16-11	De Soto Canyon	Do.
NG 16-2		Do.
NG 16-5		Do.
NH 16-9	Apalachicola	Jan. 15, 1976
NH 16-12	Florida Middle Ground	Dec. 2, 1976
NG 16-3	The Elbow	Do.
NG 16-6		Do.
NH 17-7	Gainesville	Jan. 27, 1976
NH 17-10	Tarpon Springs	Dec. 2, 1976
NG 17-1	St. Petersburg	Do.
NG 17-4	Charlotte Harbor	Do.
Louisiana Map No. 1	West Cameron area	July 22, 1954
Louisiana Map No. 1A	West Cameron area west addition	Jan. 30, 1957
Louisiana Map No. 1B	West Cameron area south addition	Sept. 8, 1959
Louisiana Map No. 2	East Cameron area	Aug. 1, 1973
Louisiana Map No. 2A	East Cameron area south addition	Sept. 8, 1959
Louisiana Map No. 3	Vermilion area	July 22, 1954
Louisiana Map No. 3A	South Marsh Island area	Aug. 7, 1959
Louisiana Map No. 3B	Vermillion area south addition	Sept. 8, 1959
Louisiana Map No. 3C	South Marsh Island area south addition	Do.
Louisiana Map No. 3D	South Marsh Island area north addition	Jan. 18, 1972
Louisiana Map No. 4	Eugene Island area	July 22, 1954
Louisiana Map No. 4A	Eugene Island area south addition	Sept. 8, 1959
Louisiana Map No. 5	Ship Shoal area	June 8, 1954
Louisiana Map No. 5A	Ship Shoal area south addition	Sept. 8, 1959
Louisiana Map No. 6	South Timbalier, South Pelto, and Bay Marchand areas	Dec. 9, 1954
Louisiana Map No. 5A	South Timbalier area south addition	July 22, 1968
Louisiana Map No. 7	Grand Isle area	June 8, 1954
Louisiana Map No. 7A	Grand Isle area south addition	Mar. 7, 1961
Louisiana Map No. 8	West Delta area	June 8, 1954
Louisiana Map No. 8A	West Delta area south addition	Nov. 24, 1961
Louisiana Map No. 9	South Pass area	May 11, 1973
Louisiana Map No. 9A	South Pass area south and east addition	Sept. 8, 1959
Louisiana Map No. 10	Main Pass and Breton Sound areas	July 22, 1954
Louisiana Map No. 10A	Main Pass area south and east addition	Sept. 8, 1959
Louisiana Map No. 11	Chandeleur area	July 22, 1954
Louisiana Map No. 11A	Chandeleur area east addition	Sept. 8, 1959
Texas Map No. 1	South Padre Island area	July 16, 1954
Texas Map No. 1A	South Padre Island area east addition	May 6, 1965
Texas Map No. 2	North Padre Island area	July 16, 1954
Texas Map No. 2A	North Padre Island area east addition	May 6, 1965
Texas Map No. 3	Mustang Island area	Oct. 20, 1961
Texas Map No. 3A	Mustang Island area east addition	Jan. 23, 1967
Texas Map No. 4	Matagorda Island area	July 16, 1954
Texas Map No. 5	Brazos area	Do.

Description		Latest approval date
Texas Map No. 5B	Brazos area south addition	Sept. 24, 1959
Texas Map No. 6	Galveston area	July 16, 1954
Texas Map No. 6A	Galveston area south addition	Sept. 24, 1959
Texas Map No. 7	High Island area	Aug. 19, 1955
Texas Map No. 7A	High Island area east addition	Jan. 23, 1967
Texas Map No. 7B	High Island area south addition	Sept. 24, 1959
Texas Map No. 7C	High Island area east addition south extension	Do.

3. Copies of these diagrams are for sale as follows:

(a) Outer Continental Shelf Official Leasing Maps—Texas Nos. 1 through No. 7C. These maps are arranged in two sets (Nos. 1 through 4—7 maps and Nos. 5 through 7C—8 maps) which will sell for $5.00 per set.

(b) Outer Continental Shelf Official Leasing Maps—Louisiana Nos. 1 through 11A. This is a set of 26 maps, which sells for $15.00.

(c) All other maps may be purchased individually for $2.00 each.

All of these protraction diagrams may be purchased from the Manager, New Orleans Outer Continental Shelf Office, Bureau of Land Management, Suite 841, Hale Boggs Federal Building, 500 Camp Street, New Orleans, Louisiana 70130. Checks or money orders should be made payable to the Bureau of Land Management.

JOHN L. RANKIN,
Manager, New Orleans Outer Continental Shelf Office.

[FR Doc.77-2309 Filed 1-25-77;8:45 am]

OUTER CONTINENTAL SHELF; ALASKA

Oil and Gas Lease Sale No. C1; February 23, 1977

Correction

In FR Doc. 1632 appearing at page 3804 in the issue for Wednesday, January 19, 1977, the following corrections should be made:

1. On page 3804, in the first column, paragraph designated No. 4, the second line should read, "in a sealed envelope must be submitted".

2. On page 3807, in the 3rd column, under Stipulation 6, the 16th line should read, "any major colonies or rookeries discov-".

3. On page 3808, in the 3rd column, paragraph designated No. 17, the 2nd line should read, "In the case of joint bids, each joint bid-".

[Wyoming 57956]

WYOMING

Application

JANUARY 17, 1977.

Notice is hereby given that pursuant to Section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), Northwest Pipeline Corporation of Salt Lake City, Utah, filed an application for a right-of-way to construct a cathodic protection station for the purpose of maintaining protection and safe operation of their natural gas pipeline system across the following described National Resource Lands:

SIXTH PRINCIPAL MERIDAN, WYOMING

T. 27 N., R. 114 W.
Sec. 13, SW¼SW¼.

The cathodic protection station will be used for the protection and safe operation of their natural gas pipeline system located in sec. 13, T. 27 N., R. 114 W., Sublette County, Wyoming.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved and, if so, under what terms and conditions.

Interested persons desiring to express their views should do so promptly. Persons submitting comments should include their name and address and send them to the District Manager, Bureau of Land Management, Highway 187 North, P.O. Box 1869, Rock Springs, Wyoming 82901.

HAROLD G. STINCHCOMB,
Chief, Branch of Lands and Minerals Operations.

[FR Doc.77-2487 Filed 1-25-77;8:45 am]

Fish and Wildlife Service

DEVELOPMENT OF STANDARDS FOR TRANSPORT OF ENDANGERED WILDLIFE AND PLANT SPECIMENS

Public Hearing

The Director, U.S. Fish and Wildlife Service, hereby issues notice of an informal public hearing on February 16, 1977, 9:30 a.m. at 1717 H Street, N.W., Room 430, in accordance with provisions of the Endangered Species Act of 1973 (16 U.S.C. 1531–43).

The purpose of the hearing is to solicit information and public comment on guidelines for the proper and humane shipment of live plant and wildlife specimens in international commerce. This information will aid the U.S. Fish and Wildlife Service in adopting such guidelines to meet the requirements of the Convention on International Trade in Endangered Species of Wild Fauna and Flora. That Convention requires the Service, as U.S. Management Authority, be "* * * satisfied that any living specimen (for which an export permit is to be issued) will be so prepared and shipped as to minimize the risk of injury, damage to health, or cruel treatment; * * *"

The Convention came into effect July 1, 1975, when the first ten nations ratified it. Since that time, 24 more nations have become Parties to the Convention. The Parties, at a conference held in Berne, Switzerland, in November 1976, appointed a special committee to develop uniform international guidelines for the shipment of animal and plant specimens under the Convention. The proposed guidelines will be presented at future conferences of the Parties.

Because of probable delays in implementing international guidelines, the U.S. Fish and Wildlife Service believes it is desirable for the United States to establish its own set of guidelines and standards at this time. In order to obtain the widest possible range of opinions and the greatest amount of data, the comment of all public sectors in invited. The Service is particularly interested in obtaining biological and veterinary data on proper standards for shipment of various plant and animal specimens.

The hearing will be informal and may include discussion between the Chairman and various speakers. Summary records will be kept and written statements are invited. The record will remain open until February 23, 1977, for the submission of further written comments which may be submitted to the Director (FWS/WPO), U.S. Fish and Wildlife Service, Washington, D.C. 20240.

LYNN A. GREENWALT,
Director, U.S. Fish and Wildlife Service.

JANUARY 14, 1977.

[FR Doc.77-2408 Filed 1-25-77;8:45 am]

EMERGENCY CLOSURE OF SPECIAL SCAUP SEASON

Acting under the authority of 50 CFR 20.26 pertaining to the emergency closure of migratory bird seasons, I have determined, on January 20, 1977, not to permit the opening on January 21, 1977, of the Special Scaup Season in Virginia as described in the FEDERAL REGISTER of September 30, 1976 (41 FR 43176) under §20.105(h) because to do so would constitute an imminent threat to the safety of canvasback and redhead populations wintering in the designated Special Scaup Season area of Virginia.

This notification in the FEDERAL REGISTER is subsequent to the announcement of this action to the general public in the affected area via local radio, television and newspaper media.

Dated: January 21, 1977.

LYNN A. GREENWALT,
Director, U.S. Fish and Wildlife Service.

[FR Doc.77-2545 Filed 1-25-77;8:45 am]

Geological Survey

COLORADO

Coal Land Classification Order No. 139

Pursuant to authority under the Act of March 3, 1879 (20 Stat. 394; 43 U.S.C. 31), and as delegated to me by Departmental Order 2563, May 2, 1950, under authority of Reorganization Plan No. 3 of 1950 (64 Stat. 1262), the following described lands, insofar as title thereto remains in the United States, are hereby classified as shown:

SIXTH PRINCIPAL MERIDIAN, COLORADO

COAL LANDS

T. 8 S., R. 90 W.,
Sec. 13, S½;
Sec. 14, NE¼SW¼, S½SW¼, SE¼;
Sec. 18, W½NW¼;
Sec. 19, S½S½;
Sec. 22, NE¼NE¼, S½NE¼, SE¼SW¼, SE¼;
Secs. 23 to 26, inclusive;
Sec. 27, E½E½W½;
Secs. 30 and 31;
Sec. 32, SW¼NW¼, W½SW¼;
Secs. 33 to 18, inclusive;
Sec. 34, E½, E½NW¼, SE¼SW¼;
Secs. 35 and 36.

T. 8 S., R. 91 W.,
Sec. 2, W½SW¼;
Secs. 3 to 10, inclusive;
Sec. 11, SW¼NE¼, W½, W½SE¼;
Secs. 13 to 18, inclusive;
Sec. 19, lots 1 to 3, inclusive, E½, E½NW¼, NE¼SW¼;
Secs. 20 to 29, inclusive;
Sec. 30, NE¼, SE¼NW¼, N½SE¼, SE¼SE¼;
Secs. 32 to 36, inclusive.

T. 8 S., R. 92 W.,
Sec. 1;
Sec. 2, lots 1 and 2, S½NE¼, N½SE¼, SE¼SE¼;
Sec. 12, N½, E½SW¼, SE¼;
Sec. 13, NE¼, N½SE¼, SE¼SE¼;
Sec. 24, NE¼NE¼.

T. 9 S., R. 90 W.,
Secs. 1 and 2;
Sec. 3, N½NE¼, SE¼NE¼, E½SE¼;
Sec. 5, W½, W½SE¼, SE¼SE¼;
Secs. 6 to 8, inclusive;
Sec. 9, W½NW¼, S½;
Sec. 10, S½SW¼, SW¼SE¼;
Sec. 11, E½, N½NW¼, SE¼NW¼, NE¼SW¼, S½SW¼;
Sec. 12 to 18, inclusive;
Sec. 19, N½, N½SE¼, SE¼SE¼;
Secs. 20 to 28, inclusive;
Sec. 29, N½, E½SW¼, NW¼SW¼, SE¼;
Sec. 30, E½NE¼;
Sec. 32, NE¼, NE¼NW¼, SE¼;
Secs. 33 to 36 inclusive.

T. 9 S., R. 91 W.,
Secs. 1 to 3, inclusive;
Sec. 4, lots 1 to 5, inclusive, SW¼NW¼, E½SW¼, SE¼;
Sec. 5, lot 1, SE¼NE¼;
Sec. 9, lot 1, that part of H.E.S. 168, in the NE¼NE¼;
Sec. 10, lots 1 to 7, inclusive, NE¼NE¼, SW¼NE¼, NW¼SE¼, S½SE¼, that part of the H.E.S. 168 lies in W½NW¼;
Secs. 11 to 13, inclusive;
Sec. 14, lots 1 to 8, inclusive, NE¼NE¼, that part of H.E.S. 65 that lies in S½NW¼, N½SW¼, and W½SE¼, that part of H.E.S. 214 that lies in S½SE¼;
Sec. 15, N½NE¼, SE¼NE¼;
Sec. 24, lots 1 to 4, inclusive, NE¼NE¼, that part of H.E.S. 218 and 219 that lies on the N½; and H.E.S. 169, 178, 216, 217, 220, 222, 225, 226, and 236.

T. 9 S., R. 94 W.,
Sec. 30, lots 3 and 4;
Sec. 31, lots 1 to 4, inclusive, SE¼SW¼.

T. 10 S., R. 90 W.,
Sec. 4;
Sec. 5, NE¼ SW¼SW¼, E½SW¼, SE¼;
Sec. 8, N½, E½SW¼, SE¼;
Secs. 9 and 16;
Sec. 17, NE¼, NE¼NW¼, S½NW¼, N½SW¼, SE¼SW¼, SE¼;
Sec. 20, NE¼, E½NW¼, NE¼SW¼, SE¼;
Secs. 21 and 28;
Sec. 29, N½NE¼, SE¼NE¼, NE¼SE¼;
Sec. 31, NE¼SE¼, S½SE¼, that part of H.E.S. 268 that lies in the NE¼SE¼;
Sec. 32, S½, that part of H.E.S. 268 that lies in the W½S½;
Sec. 33.

T. 10 S., R. 94 W.;
Sec. 6, lots 3 to 7, inclusive, SE¼NW¼;
Sec. 7, lots 1 to 4, inclusive, E½W½, SW¼SE¼;
Sec. 18, lots 1 to 3, inclusive, E½, E½W½;
Sec. 19, N½NE¼, SW¼NE¼.

T. 11 S., R. 90 W.,

T. 11 S., R. 91 W.,
Sec. 2, SW¼SW¼;
Sec. 10, S½NE¼, that part of H.E.S. 281 in SE¼NE¼, SE¼NW¼, E½SW¼, that part of H.E.S. 279 in SE¼SW¼, SE¼;
Sec. 11, SW¼NE¼, NW¼NW¼, that part of H.E.S. 281 in NW¼NW¼, S½NW¼, S½;
Sec. 12, E½, W½SW¼;
Sec. 13;
Sec. 14, and that part of H.E.S. 128 in W½;
Sec. 15, NE¼, SE¼NW¼, NE¼SW¼, SE¼, that part of H.E.S. 128 in E½, and that part of H.E.S. 128 in SE¼NW¼;
Sec. 22, NE¼NE¼, S½NE¼, SE¼NW¼, NE¼SW¼, SE¼;
Secs. 23 to 25, inclusive;
Sec. 26, N½, E½SW¼, SE¼;
Sec. 27, NE¼NE¼;
Sec. 29, S½SW¼, that part of H.E.S. 347 in SW¼SW¼;
Sec. 30, S½NE¼, that part of H.E.S. 347 and 348 in S½NE¼, SE¼SW¼, SE¼, that part of H.E.S. 347 in E½SE¼, and that part of H.E.S. 348 in SE¼;
Sec. 31, E½, E½W½, SW¼SW¼;
Sec. 32, S½NE¼, NW¼, S½;
Sec. 33, SW¼NW¼, S½;
Sec. 34, S½S½;
Sec. 35, E½, NE¼NW¼, S½SW¼;
Sec. 36;
H.E.S. 64, 124, 126, 127, 130, 155, 157, 158, 159, 349, 373.

T. 12 S., R. 90 W.,
Secs. 1 to 18, inclusive;
Sec. 19, NE¼;
Sec. 20, N½;
Sec. 21, N½;
Sec. 22, N½;
Sec. 23, N½;
Sec. 24, N½;
H.E.S. 135, 136, 253.

RECLASSIFIED COAL LAND FROM NONCOAL LAND

Prior classification of the following subdivisions as noncoal is hereby revoked and the land is reclassified as coal land:

T. 6 S., R. 92 W.,
Sec. 34, SE¼SE¼;
Sec. 35, S½;
Sec. 36, S½NW¼, SW¼, S½SE¼.

T. 7 S., R. 91 W.,
Sec. 6, lots 4 and 5, SE¼SW¼, SW¼SE¼;
Sec. 7, lots 1 to 4, inclusive, W½NE¼, E½NW¼;
Sec. 16, SW¼SW¼;
Sec. 17, S½;
Sec. 18, lots 1 to 4, inclusive, W½NE¼, SE¼NE¼, E½W¼, SE¼;
Secs. 19 to 21, inclusive;
Sec. 27, W½, W½SE¼, SE¼SE¼;
Secs. 28 to 33, inclusive;
Sec. 34, W½E½, W½.

T. 7 S., R. 92 W.,
Secs. 1 and 2;
Sec. 3, lot 1, E½SW¼, SE¼;
Secs. 10 to 14, inclusive;
Sec. 15, E½, E½W½;
Sec. 22, NE¼, N½SE¼, SE¼SE¼;
Secs. 23 to 26, inclusive;
Sec. 27, E½E½;
Sec. 35, E½, N½NW¼, SE¼NW¼, E½SW¼;
Sec. 36.

T. 7 S., R. 96 W.,
Sec. 33, lots 5 to 8, inclusive, SE¼SE¼;
Sec. 34, lots 1 and 5, SW¼NE¼, SW¼W½SE¼.

T. 8 S., R. 89 W.,
Sec. 4, lot 4, SW¼NW¼, W½SW¼;
Sec. 5, lots 1 to 3, inclusive, S½NE¼, NE¼SE¼;
Sec. 8, SE¼NE¼, E½SE¼;
Sec. 9, W½W½;
Sec. 16, W½W½;
Sec. 17, E½NE¼, S½SW¼, NE¼SE¼, S½SE¼;
Sec. 18, lots 3 and 4, SE¼SW¼; S½SE¼;
Secs. 19 and 20;
Sec. 21, W½W½;
Sec. 28, W½W½;
Secs. 29 to 32, inclusive;
Sec. 33, W½W½.

T. 8 S., R. 96 W.,
Sec. 3, lots 2 to 4, inclusive, SW¼NE¼, S½NW¼, SW¼, W½SE¼;
Sec. 4, lots 1, 2, 3, and 5, S½N½, S½;
Sec. 5, lots 6 to 10, inclusive, lots 13 and 14, SE¼;
Sec. 7, lots 4 to 8, inclusive, SE¼SW¼, NE¼SE¼, S½SE¼;
Secs. 8 and 9;
Sec. 10, W½NE¼, NW¼, S½;
Sec. 14, NW¼SW¼, S½SW¼;
Secs. 15 to 22, inclusive;
Sec. 23, SW¼NE¼, W½, W½SE¼;
Sec. 26, NW¼NW¼, SW¼SW¼;
Sec. 27, N½NE¼, SW¼NE¼, NW¼, S½;
Secs. 28 to 33, inclusive;
Sec. 34, NE¼, NE¼NW¼, W½SW¼, E½SE¼;
Sec. 35, W½.

T. 8 S., R. 97 W.,
Sec. 13, that part south of Colorado River;
Sec. 23, that part south of Colorado River;
Sec. 24, that part south of Colorado River;
Secs. 25 and 26;
Sec. 27, that part south of Colorado River;
Sec. 28, that part south of Colorado River;
Sec. 33, that part east and south of the Colorado River;
Secs. 34 to 36, inclusive.

T. 9 S., R. 89 W.,
Sec. 4, lots 3 and 4, S½NW¼, SW¼, SW¼SE½;
Secs. 5 to 8, inclusive;
Sec. 9, W½E½, W½;
Sec. 16, W½NE¼, W½;
Secs. 17 to 19, inclusive;
Sec. 20, N½, NW¼SW¼;
Sec. 21, lots 1 and 2;
Sec. 30, lots 7 to 10, inclusive, lots 15 and 16.

T. 9 S., R. 95 W.,
Sec. 16, SW¼SW¼;
Sec. 17, SW¼SW¼, SE¼SE¼;
Sec. 18, SE¼SW¼, SE¼;
Secs. 19 and 20;
Sec. 21, lots 1 to 4, inclusive, N½NW¼;
Sec 22, lots 3 to 5, inclusive, NW¼;
Sec. 23, SW¼NW¼, W½SW¼, SE½SW¼;
Sec. 24, SE¼SW¼, SW¼SE¼;
Sec. 25, NW¼NE¼, S½NE¼, SW¼, S½;
Secs. 26 to 36, inclusive;
Tracts 37 to 49, inclusive.

T. 9 S., R. 96 W.,
Sec. 2, lots 3 and 4;
Sec. 3, lots 1 and 4;
Secs. 4 to 9, inclusive;
Sec. 10, E½NE¼, W½NW¼, SW¼;
Sec. 11, W½NW¼;
Sec. 13, lots 3 and 4, SW¼SE¼;
Sec. 14, SE¼SW¼;
Sec. 15, W½NW¼;
Sec. 16, NE¼, W½, NW¼SE¼, S½SE¼;
Secs. 17 to 20, inclusive;
Sec. 21, NW¼NE¼, S½NE¼, W½, and SE¼;
Sec. 22, NE¼, E½NW¼, SW¼NW¼, S½;
Sec. 23, SW¼NE¼, NW¼, S½;
Sec. 24, lots 1 to 4, inclusive, SW¼NE¼, S½NW¼, SW¼, W½SE¼;
Secs. 25 to 36, inclusive.

T. 9 S., R. 97 W.,
Secs. 1 and 2;
Sec. 3, lots 1 to 4, inclusive, S½NE¼, SE¼NW¼, N½SE¼, SE¼SE¼;
Sec. 10, E½NE¼, NE¼SE¼;
Sec. 11, lots 1 to 3, inclusive, S½NE¼, NE¼NW¼, N½SE¼;
Sec. 12, lots 1 to 5, inclusive, SW¼NW¼;
Sec. 14, lots 1 to 8, inclusive;
Secs. 15 to 22, inclusive;
Sec. 23, W½W½;
Sec. 26, NW¼NW¼, SW¼SW¼;
Sec. 27, N½NE¼, SW¼NE¼, W½, W½SE¼, SE¼SE¼;
Sec. 28 to 30, inclusive;
Sec. 31, lots 5 to 10, inclusive, lots 12 to 15, inclusive, NE¼, E½NW¼, NE¼SW¼, N½SW¼;
Sec. 32;
Sec. 33, N½, N½SW¼, NE¼SE¼;
Sec. 34;
Sec. 35, lots 1 to 3, inclusive, SW¼NE¼, NW¼, N½SW¼, NW¼SE¼.

T. 10 S., R. 97 W.,
Sec. 1, lots 1, 2, 3, and 4, S½N½, S½;
Sec. 2, lots 1 to 4, inclusive, S½N½, S½;
Sec. 3, lots 1 to 4, inclusive, S½N½, S½;
Sec. 4, lots 1 to 4, inclusive, S½N½, S½;
Sec. 5, lots 1 to 4, inclusive, S½N½, S½;
Sec. 6, lots 1 to 7, inclusive, S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 7, lots 1 to 4, inclusive, E½W½, SW¼SE¼;
Sec. 8, lots 1 to 3, inclusive, E½, E½W½;
Sec. 9, N½NE¼, SW¼NE¼.

T. 11 S., R. 90 W.,

T. 11 S., R. 91 W.,
Sec. 2, SW¼SW¼;
Sec. 10, S½NE¼, that part of H.E.S. 281 in SE¼NE¼, SE¼NW¼, E½SW¼, that part of H.E.S. 279 in SE¼SW¼, SE¼;
Sec. 11, SW¼NE¼, NW¼NW¼, that part of H.E.S. 281 in NW¼NW¼, S½NW¼, S½;
Sec. 12, E½, W½SW¼;
Sec. 13;
Sec. 14, and that part of H.E.S. 128 in W½;
Sec. 15, NE¼, SE¼NW¼, NE¼SW¼, SE¼, that part of H.E.S. 128 in E½, and that part of H.E.S. 128 in SE¼NW¼;
Sec. 22, NE¼NE¼, S½NE¼, SE¼NW¼, NE¼SW¼, SE¼;
Secs. 23 to 25, inclusive;
Sec. 26, N½, E½SW¼, SE¼;
Sec. 27, NE¼NE¼;
Sec. 29, S½SW¼, that part of H.E.S. 347 in SW¼SW¼;
Sec. 30, S½NE¼, that part of H.E.S. 347 and 348 in S½NE¼, SE¼SW¼, SE¼, that part of H.E.S. 347 in E½SE¼, and that part of H.E.S. 348 in SE¼;
Sec. 31, E½, E½W½, SW¼SW¼;
Sec. 32, S½NE¼, NW¼, S½;
Sec. 33, SW¼NW¼, S½;
Sec. 34, S½S½;
Sec. 35, E½, NE¼NW¼, S½SW¼;
Sec. 36;
H.E.S. 64, 124, 126, 127, 130, 155, 157, 158, 159, 349, 373.

T. 12 S., R. 90 W.,
Secs. 1 to 18, inclusive;
Sec. 19, NE¼;
Sec. 20, N½;
Sec. 21, N½;
Sec. 22, N½;
Sec. 23, N½;
Sec. 24, N½;
H.E.S. 135, 136, 253.

RECLASSIFIED COAL LAND FROM NONCOAL LAND

Prior classification of the following subdivisions as noncoal is hereby revoked and the land is reclassified as coal land:

T. 6 S., R. 92 W.,
Sec. 34, SE¼SE¼;
Sec. 35, S½;
Sec. 36, S½NW¼, SW¼, S½SE¼.

T. 7 S., R. 91 W.,
Sec. 6, lots 4 and 5, SE¼SW¼, SW¼SE¼;
Sec. 7, lots 1 to 4, inclusive, W½NE¼, E½NW¼;
Sec. 16, SW¼SW¼;
Sec. 17, S½;
Sec. 18, lots 1 to 4, inclusive, W½NE¼, SE¼NE¼, E½W¼, SE¼;
Secs. 19 to 21, inclusive;
Sec. 27, W½, W½SE¼, SE¼SE¼;
Secs. 28 to 33, inclusive;
Sec. 34, W½E½, W½.

T. 7 S., R. 92 W.,
Secs. 1 and 2;
Sec. 3, lot 1, E½SW¼, SE¼;
Secs. 10 to 14, inclusive;
Sec. 15, E½, E½W½;
Sec. 22, NE¼, N½SE¼, SE¼SE¼;
Secs. 23 to 26, inclusive;
Sec. 27, E½E½;
Sec. 35, E½, N½NW¼, SE¼NW¼, E½SW¼;
Sec. 36.

T. 7 S., R. 96 W.,
Sec. 33, lots 5 to 8, inclusive, SE¼SE¼;
Sec. 34, lots 1 and 5, SW¼NE¼, SW¼W½SE¼.

T. 8 S., R. 89 W.,
Sec. 4, lot 4, SW¼NW¼, W½SW¼;
Sec. 5, lots 1 to 3, inclusive, S½NE¼, NE¼SE¼;
Sec. 8, SE¼NE¼, E½SE¼;
Sec. 9, W½W½;
Sec. 16, W½W½;
Sec. 17, E½NE¼, S½SW¼, NE¼SE¼, S½SE¼;
Sec. 18, lots 3 and 4, SE¼SW¼; S½SE¼;
Secs. 19 and 20;
Sec. 21, lots 1 to 4, inclusive, N½NW¼;
Sec 22, lots 3 to 5, inclusive, NW¼;
Sec. 23, SW¼NW¼, W½SW¼, SE½SW¼;
Sec. 24, SE¼SW¼, SW¼SE¼;
Sec. 25, NW¼NE¼, S½NE¼, SW¼, S½;
Secs. 26 to 36, inclusive;
Tracts 37 to 49, inclusive.

T. 9 S., R. 96 W.,
Sec. 2, lots 3 and 4;
Sec. 3, lots 1 and 4;
Secs. 4 to 9, inclusive;
Sec. 10, E½NE¼, W½NW¼, SW¼;
Sec. 11, W½NW¼;
Sec. 13, lots 3 and 4, SW¼SE¼;
Sec. 14, SE¼SW¼;
Sec. 15, W½NW¼;
Sec. 16, NE¼, W½, NW¼SE¼, S½SE¼;
Secs. 17 to 20, inclusive;
Sec. 21, NW¼NE¼, S½NE¼, W½, and SE¼;
Sec. 22, NE¼, E½NW¼, SW¼NW¼, S½;
Sec. 23, SW¼NE¼, NW¼, S½;
Sec. 24, lots 1 to 4, inclusive, SW¼NE¼, S½NW¼, SW¼, W½SE¼;
Secs. 25 to 36, inclusive.

T. 9 S., R. 97 W.,
Secs. 1 and 2;
Sec. 3, lots 1 to 4, inclusive, S½NE¼, SE¼NW¼, N½SE¼, SE¼SE¼;
Sec. 10, E½NE¼, NE¼SE¼;
Sec. 11, lots 1 to 3, inclusive, S½NE¼, NE¼NW¼, N½SE¼;
Sec. 12, lots 1 to 5, inclusive, SW¼NW¼;
Sec. 14, lots 1 to 8, inclusive;
Secs. 15 to 22, inclusive;
Sec. 23, W½W½;
Sec. 26, NW¼NW¼, SW¼SW¼;
Sec. 27, N½NE¼, SW¼NE¼, W½, W½SE¼, SE¼SE¼;
Sec. 28 to 30, inclusive;
Sec. 31, lots 5 to 10, inclusive, lots 12 to 15, inclusive, NE¼, E½NW¼, NE¼SW¼, N½SW¼;
Sec. 32;
Sec. 33, N½, N½SW¼, NE¼SE¼;
Sec. 34;
Sec. 35, lots 1 to 3, inclusive, SW¼NE¼, NW¼, N½SW¼, NW¼SE¼.

T. 11 S., R. 97 W.,
Sec. 1, lots 17, 24, 25, 32, 33, 34, 37, and 38, W½SE¼;
Sec. 12, lots 1 to 4, inclusive, W½E½, E½W½, SW¼SW¼;
Sec. 13;
Sec. 14, SE¼NE¼, E½SE¼;
Sec. 23, E½NE¼;
Sec. 24;
Sec. 25, lots 1 to 4, inclusive, W½E½, N½NW¼, SE¼NW¼, NE¼SW¼;
Sec. 36, lots 1 and 2, NW¼NE¼.

T. 12 S., R. 91 W.,
Secs. 1 to 5, inclusive;
Sec. 6, lots 1 to 4, inclusive, lots 6 to 14, inclusive, S½NE¼, SE¼;
Secs. 7 to 12, inclusive;
Sec. 13, lots 1 and 2, that part of H.E.S. 140 and 139 in N½N½;
Sec. 14, lots 1 to 3, inclusive, NW¼NE¼, that part of H.E.S. 140, 37, 58 in N½N½;
Sec. 15, lots 1 and 2, NW¼NE¼, NE¼NW¼, SW¼NW¼, that part of H.E.S. 57 and 58;
Sec. 16, lots 1 and 2, W½NE¼, NW¼, that part of H.E.S. 57 in E½NE¼;
Sec. 17, N½, N½SW¼, NW¼SE¼;
Sec. 18, lots 1 to 11,, inclusive, NE¼, N½SE¼;
H.E.S. 56, 126, 153, 154, 284.

T. 12 S., R. 92 W.,
Sec. 1, SE¼NE¼, NE¼SE¼, S½SE¼;
Sec. 7, S½;
Sec. 8, NE¼SW¼, S½SW¼, SW¼SE¼;
Sec. 12, E½, E½NW¼, NE¼SW¼;
Sec. 13, E½E½, SW¼SW¼, W½SE¼;
Sec. 14, S½S½;

Sec. 26, NE¼, NE¼NW¼, N½SE¼, SE¼SE¼;
Sec. 35, NE¼NE¼;
Sec. 36, N½, NE¼SW¼, N½SE¼, SE¼SE¼.

T. 10 S., R. 95 W.,
Secs. 1 to 22, inclusive;
Sec. 23, N½, SW¼, W½SE¼;
Sec. 24, N½NW¼, SW¼NW¼;
Sec. 26, W½NE¼, W½;
Secs. 27 to 33, inclusive;
Sec. 34, N½, NW¼SW¼, NE¼SE¼;
Sec. 35, NW¼, NW¼SW¼.

T. 10 S., R. 96 W.

T. 10 S., R. 97 W.,
Sec. 36, SE¼SW¼, SE¼.

T. 11 S., R. 95 W.,
Sec. 2, SW¼SW¼;
Sec. 3, lots 18 to 23, inclusive, SW¼NE¼, S½NW¼, S½;
Sec. 4, lots 17 to 27, inclusive, S½NE¼, SE¼NW¼, E½SW¼, E½SE¼;
Secs. 5 and 6;
Sec. 7, lots 5 to 7, inclusive, E½SW¼, N½SE¼, SW¼SE¼;
Sec. 8, lots 1 to 4, inclusive, S½N½, SW¼, W½SE¼;
Sec. 9, NE¼NE¼;
Sec. 10, N½NW¼;
Sec. 17, NW¼NE¼, NE¼NW¼.

T. 11 S., R. 96 W.,
Secs. 1 to 10, inclusive;
Sec. 11, lots 1 to 11, inclusive, S½NE¼, SE¼NW¼, NE¼SW¼, N½SE¼;
Sec. 12, lots 1 to 5, inclusive, SW¼NW¼;
Sec. 14, lots 1 to 8, inclusive;
Secs. 15 to 22, inclusive;
Sec. 23, W½W½;
Sec. 26, NW¼NW¼, SW¼SW¼;
Sec. 27, N½NE¼, SW¼NE¼, W½, W½SE¼, SE¼SE¼;
Sec. 28 to 30, inclusive;
Sec. 31, lots 5 to 10, inclusive, lots 12 to 15, inclusive, NE¼, E½NW¼, NE¼SW¼, N½SW¼;
Sec. 32;
Sec. 33, N½, N½SW¼, NE¼SE¼;
Sec. 34;
Sec. 35, lots 1 to 3, inclusive, SW¼NE¼, NW¼, N½SW¼, NW¼SE¼.

T. 11 S., R. 97 W.,
Sec. 1, lots 17, 24, 25, 32, 33, 34, 37, and 38, W½SE¼;
Sec. 12, lots 1 to 4, inclusive, W½E½, E½W½, SW¼SW¼;
Sec. 13;
Sec. 14, SE¼NE¼, E½SE¼;
Sec. 23, E½NE¼;
Sec. 24;
Sec. 25, lots 1 to 4, inclusive, W½E½, N½NW¼, SE¼NW¼, NE¼SW¼;
Sec. 36, lots 1 and 2, NW¼NE¼.

T. 12 S., R. 91 W.,
Secs. 1 to 5, inclusive;
Sec. 6, lots 1 to 4, inclusive, lots 6 to 14, inclusive, S½NE¼, SE¼;
Secs. 7 to 12, inclusive;
Sec. 13, lots 1 and 2, that part of H.E.S. 140 and 139 in N½N½;
Sec. 14, lots 1 to 3, inclusive, NW¼NE¼, that part of H.E.S. 140, 37, 58 in N½N½;
Sec. 15, lots 1 and 2, NW¼NE¼, NE¼NW¼, SW¼NW¼, that part of H.E.S. 57 and 58;
Sec. 16, lots 1 and 2, W½NE¼, NW¼, that part of H.E.S. 57 in E½NE¼;
Sec. 17, N½, N½SW¼, NW¼SE¼;
Sec. 18, lots 1 to 11,, inclusive, NE¼, N½SE¼;
H.E.S. 56, 126, 153, 154, 284.

T. 12 S., R. 92 W.,
Sec. 1, SE¼NE¼, NE¼SE¼, S½SE¼;
Sec. 7, S½;
Sec. 8, NE¼SW¼, S½SW¼, SW¼SE¼;
Sec. 12, E½, E½NW¼, NE¼SW¼;
Sec. 13, E½E½, SW¼SW¼, W½SE¼;
Sec. 14, S½S½;
Sec. 15, SW¼SW¼;
Sec. 16, SW¼, S½SE¼;
Secs. 17 to 22, inclusive;
Sec. 23, N½, SW¼, N½SE¼, SW¼SE¼;
Sec. 24, NW¼NE¼, NW¼;
Sec. 30, NW¼NE¼, N½NW¼.

T. 12 S., R. 93 W.,
Sec. 5, S½SW¼, SE¼SE¼;
Sec. 6, S½S½;
Secs. 7 and 8;
Sec. 9, W½W½;
Sec. 12, lot 4, S½SW¼, SW¼SE¼;
Sec. 13;
Sec. 14, NE¼, E½NW¼, SW¼NW¼, S½;
Sec. 15, SW¼NW¼, SW¼, S½SE¼;
Sec. 16, S½NE¼, NW¼, N½S½;
Sec. 17, N½;
Sec. 18, N½;
Sec. 22, N½NE¼, SE¼NE¼;
Sec. 23, N½, N½S½, SE¼SW¼, S½SE¼;
Sec. 24;
Sec. 25, lot 1, NW¼NE¼, N½NW¼;
Sec. 26, NE¼NE¼.

T. 12 S., R. 94 W.,
Sec. 1, SW¼NW¼, SW¼, S½SE¼;
Sec. 2, SE¼;
Sec. 7, lots 6 to 16, inclusive, S½NE¼, SE¼;
Sec. 8, SW¼NE¼, NW¼NW¼, S½NW¼, S½;
Sec. 9, NW¼SW¼, S½S½;
Sec. 10, NE¼SW¼, S½SW¼, SE¼;
Secs. 11 and 12;
Sec. 13, N½;
Sec. 14, N½;
Sec. 15, N½, N½S½;
Sec. 16, N½, N½S½, S½SW¼;
Sec. 17;
Sec. 18, lots 5 to 13, inclusive, lots 18 to 21, inclusive, NE¼, N½SE¼.

T. 12 S., R. 95 W.,
Sec. 2, SW¼SW¼;
Sec. 3, S½SE¼;
Sec. 8, S½SE¼;
Sec. 9, S½NE¼, NE¼SW¼, S½SW¼, SE¼;
Sec. 10;
Sec. 11, S½NE¼, W½, SE¼;
Sec. 12, NW¼NE¼, S½N½, S½;
Sec. 13, N½, N½S½;
Sec. 14, N½, N½S½;
Sec. 15, N½, N½S½;
Sec. 16;
Sec. 17, NE¼, NE¼NW¼, S½NW¼, S½;
Sec. 18, lots 6 to 8, inclusive, S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 19, lots 5 to 8, inclusive, NE¼, E½W½, N½SE¼;
Sec. 20, NE¼NE½, WN¼E¼, NW¼, NW¼SW¼;
Sec. 21, NW¼NW¼.

T. 12 S., R. 96 W.,
Sec. 3, SW¼SW¼;
Sec. 4, lot 8, SW¼, S½SE¼;
Sec. 5, lot 5, NE¼SE¼;
Sec. 9, N½NE¼, SE¼NE¼;
Sec. 10, S½NE¼, NW¼, NE¼SW¼, SE¼;
Sec. 11, SE¼NE¼, S½NW¼, S½;
Sec. 12, SW¼;
Secs. 13 and 14;
Sec. 15, N½NE¼, SE¼NE¼, NE¼SE¼;
Sec, 23, NE¼, N½NW¼, SE¼NW¼, N½SE¼, SE¼SE¼;
Sec. 24.

NONCOAL LANDS

T. 9 S., R. 90 W.,
Sec. 3, SW¼NE¼, W½, W½SE¼;
Sec. 4;
Sec. 5, NE¼, NE¼SE¼;
Sec. 9, NE¼, E½NW¼;
Sec. 10, N½, N½S½, SE¼SE¼;
Sec. 11, SW¼NW¼, NW¼SW¼;
Sec. 19, SW¼, SW¼SE¼;
Sec. 30, W½NE¼, W½, SE¼;
Sec. 31;
Sec. 32, W½NW¼, SE¼NW¼, SW¼.

T. 10 S., R. 90 W.,
Sec. 5, NW¼, NW¼SW¼;
Secs. 6 and 7;
Sec. 8, W½SW¼;
Sec. 17, NW¼NW¼, SW¼SW¼;
Secs. 18 and 19;
Sec. 20, W½W½, SE¼SW¼;
Sec. 29, SW¼NE¼, W½, W½SE¼, SE¼SE¼;
Sec. 30;
Sec. 31, N½, SW¼, NW¼SE¼;
Sec. 32, N½.

The area classified totals 306,580 acres, more or less, of which 106,703 acres are coal land, 190,411 acres which were formerly classified as noncoal are reclassified as coal land, and 9,466 acres are classified as noncoal land.

Dated: January 19, 1977.

W. A. RADLINSKI,
Acting Director.

[FR Doc.77-2492 Filed 1-25-77;8:45 am]

[Outer Continental Shelf Order No. 2]

GULF OF MEXICO AREA

Request for Comments

The Geological Survey hereby announces that written comments on revisions to OCS Order No. 2 for the Gulf of Mexico Area will be accepted until March 1, 1977. Proposed revisions to this document were published in the FEDERAL REGISTER on January 10, 1977 (42 FR 2137); however, the due date for comments was inadvertently omitted.

Written comments should be sent to the Acting Chief, Conservation Division, U.S. Geological Survey, National Center, Mail Stop 600. 12201 Sunrise Valley Drive, Reston. Virginia 22092.

W. A. RADLINSKI.
Acting Director.

[FR Doc.77-2387 Filed 1-25-77;8:45 am]

UTAH

Coal Land Classification Order No. 118

Coal Land Classification Order No. 118 Pursuant to authority under the Act of March 3, 1879 (20 Stat. 394; 43 U.S.C. 31), and as delegated to me by Departmental Order 2563, May 2, 1950, under authority of Reorganization Plan No. 3 of 1950 (64 Stat. 1262), the following described lands, insofar as title thereto remains in the United States, are hereby classified as shown:

SALT LAKE MERIDIAN

COAL LANDS

T. 17 S., R. 15 E., unsurveyed:
Secs. 5 to 8, inclusive;
Secs. 17 to 19, inclusive;
Sec. 20, W½NE¼, W½;
Sec. 29, W½;
Secs. 30 and 31;
Sec. 32, W½.

T. 18 S., R. 14 E., partly unsurveyed:
Sec. 1, lots 1 to 6, inclusive;
Sec. 12, N½.

T. 18 S., R. 15 E.,
Sec. 5, W½W½;
Secs. 6 and 7;
Sec. 8, W½W½;
Sec. 17, W½W½;
Sec. 18, N½, E½SW¼, and SE¼.

The area described aggregates 9,174 acres, more or less, of which all are classified as coal.

Dated: January 19, 1977.

W. A. RADLINSKI,
Acting Director.

[FR Doc 77-249; Filed 1-25-77;8 45 am]

7

WYOMING

Phosphate Land Classification Order No. 22

Pursuant to authority under the Act of March 3, 1879 (20 Stat. 394; 43 U.S.C. 31), and as delegated to me by Departmental Order 2563, May 2, 1950, under authority of Reorganization Plan No. 3 of 1950 (64 Stat. 1262), the following described lands, insofar as title thereto remains in the United States, are hereby classified as shown:

SIXTH PRINCIPAL MERIDIAN, WYOMING

PHOSPHATE LANDS

T. 39 N., R. 116 W., partly unsurveyed,
Sec. 28, NW¼NW¼, SW¼;
Sec. 32, lot 2, NE¼NE¼;
Sec. 33, NW¼NW¼.

NONPHOSPHATE LANDS

T. 39 N., R. 116 W., partly unsurveyed.
Sec. 3, SE¼NW¼ (west part of lot 4), SW¼NW¼, SW¼;
Sec. 4, NW¼NE¼, S½NE¼, NW¼, S½;
Secs. 5 to 9, inclusive;
Sec. 10, W½;
Sec. 14, W½;
Secs. 15 to 22, inclusive;
Sec. 23, W½NW¼;
Sec. 27, lot 5, W½NE¼, NW¼, N½SW¼, SW¼SW¼;
Sec. 28, NE¼, NE¼NW¼, S½NW¼, SE¼;
Secs. 29 and 30;
Sec. 31, W½NE¼, W½, W½SE¼;
Sec. 32, lot 1, NW¼NE¼, NE¼NW¼;
Sec. 33, E½W½;
Sec. 34.

The area described aggregates 13,458 acres, more or less, of which about 317 acres are classified phosphate lands and about 13,141 acres are classified nonphosphate lands.

Dated: January 19, 1977.

W. A. RADLINSKI,
Acting Director.

[FR Doc 77-2490 Filed 1-25-77;8:45 am]

Mining Enforcement and Safety Administration

NATIONAL MINE HEALTH AND SAFETY ACADEMY

Fees for Training and Use of Space

A notice of the proposed schedule of fees to be charged in connection with the training and use of the National Mine Health and Safety Academy, Beckley, West Virginia, was published in the FEDERAL REGISTER on November 2, 1976 (41 FR 48139). Interested persons were given until November 30, 1976, in which to submit comments in writing regarding the proposed fees. No written comments have been received and the proposed schedule of fees is hereby adopted without change, effective January 26, 1977.

Persons, other than employees of the Department of the Interior, permitted to attend training at the Academy under existing Federal statutes will be admitted on a reimbursable basis in accordance with the fees set forth in this Notice. The Secretary of the Interior may waive, in whole or in part, payments from, or in behalf of, State and local governments for the costs of their employees training at the Academy (42 U.S.C. 4222, 4742).

The daily fees, which are payable upon registration, are based upon identifiable actual costs for food, housekeeping, linens, utilities and miscellaneous expendable materials furnished by the Academy to students. These fees do not include depreciation of facilities and salaries which accrue whether the students attend the Academy or not (31 U.S.C. 483a and OMB Circular A-25). Daily fees will range from $2.35 per day for students who do not room and board at the Academy to $10.00 per day for students who will room and board at the Academy. The daily fee schedule is as follows:

Food	$5.90
Housekeeping	[1] 1.40
Linens	.35
Utilities	1.12
Miscellaneous expendable materials	[2] 1.23

[1] $0.70 per student if double occupancy.
[2] Routine supplies, materials, services and textbooks.

The cost of providing services will be reviewed periodically and fee adjustments will be made as necessary. Information on future adjustments will be published in the Academy's General Catalog.

The Secretary of the Interior may also permit the use of facilities at the Academy for meetings or performances, not directly related to the functions of Federal agencies or activities of employee groups, on a reimbursable actual cost basis provided such use does not adversely affect the interest of the Government (41 CFR Subpart 101-20.7).

Interested persons may write or call the National Mine Health and Safety Academy, P.O. Box 1166, Beckley, West Virginia 25801 (telephone 304-255-0451).

Dated: January 19, 1977.

HARRY C. MCKITTRICK,
Acting Assitant Secretary of the Interior.

[FR Doc.77-2461 Filed 1-25-77;8:45 am]

National Park Service

ENVIRONMENTAL ASSESSMENT ON THE GENERAL MANAGEMENT PLAN FOR GREAT SMOKY MOUNTAINS NATIONAL PARK

Notice of Availability and Public Meetings

An Environmental Assessment considering alternatives for visitor use, development and resource management of Great Smoky Mountains National Park is available for inspection at courthouses and libraries in communities near the park, both in North Carolina and Tennessee; and at National Park Service Regional Offices in Philadelphia, Pennsylvania; Omaha, Nebraska; Washington, D.C.; Boston, Massachusetts; Seattle, Washington; Denver, Colorado; Atlanta, Georgia; Santa Fe, New Mexico; and San Francisco, California. (Consult your local telephone directory for addresses and telephone numbers.)

In addition copies are located at the National Park Service Headquarters in Washington, D.C. and at the following field offices: Field Assistant to Regional Director, Room 10-G-3 Fritz G. Lanham Federal Center, 819 Taylor Street, Fort Worth, Texas 76102; Gateway National Recreation Area Headquarters, Building 69, Floyd Bennett Field, Brooklyn, New York 11234; Great Smoky Mountains National Park, Gatlinburg, Tennessee 37738; and Assistant to Regional Director, Chicago Field Office, National Park Service, 2510 Dempster Street, Suite 214, Des Plaines, Illinois 60016.

In addition, as part of the Service's program for public participation in planning, public meetings will be held at 7 p.m. on February 7, 1977, at Southwestern Technical Institute on Webster Road, in Sylva, North Carolina; at 7 p.m. on February 8, 1977, at Asheville High School, 419 McDowell Street, in Asheville, North Carolina; at 7 p.m. on February 9, 1977, at the Sevier County High School, Sevierville, Tennessee; and at 7 p.m. on February 10, 1977, at the Second Presbyterian Church, 2829 Kingston Pike, Knoxville, Tennessee.

In addition to the alternatives, the assessment considers the nature of the resources, impacts of the various alternatives, mitigating measures to soften the effect of an alternative on the human environment and adverse effects that cannot be avoided should an alternative be implemented. Public comments on the assessment and the alternatives are solicited. Written and oral comments on the assessment and other planning alternatives will be received for consideration at the meetings. Written comments will be received at the Southeast Regional Office, National Park Service, 1895 Phoenix Boulevard, Atlanta, Georgia 30349, and Great Smoky Mountains National Park, Gatlinburg, Tennessee 37738 until March 14, 1977.

Dated: December 28, 1976.

L. BOYD FINCH,
Acting Regional Director, Southeast Region.

[FR Doc.77-2392 Filed 1-25-77;8:45 am]

NATIONAL CAPITAL MEMORIAL ADVISORY COMMITTEE

Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the National Capital Memorial Advisory Committee will be held at 1:30 p.m. on Monday, February 14, 1977, in Room 234 at the National Capital Region Headquarters, 1100 Ohio Drive, SW., Washington, D.C.

The Committee was established for the purpose of preparing and recommending to the Secretary broad criteria, guidelines, and policies for memorializing persons and events on Federal lands in the National Capital Region (as defined in the National Capital Planning Act of 1952, as amended) through the media of monuments, memorials, and statues. It is to examine each memorial proposal for adequacy and appropriateness, make recommendations to the Secretary with respect to site location on Federal land in the National Capital Region and to serve as an information focal point for those seeking to erect memorials on Federal land in the National Capital Region.

The members of the Committee are as follows:

Mr. Gary E. Everhardt (Chairman), Director, National Park Service, Washington, D.C.
Mr. George M. White, Architect of the Capitol, Washington, D.C.
General Mark W. Clark, Chairman, American Battle Monuments Commission, Washington, D.C.
Mr. J. Carter Brown, Chairman, Fine Arts Commission, Washington, D.C.
Mr. David Childs, Chairman, National Capital Planning Commission, Washington, D.C.
Honorable Walter E. Washington, Mayor of the District of Columbia, Washington, D.C.
Mr. Nicholas, Panuzio, Commissioner, Public Buildings Service, Washington, D.C.

The purpose of this meeting is to consider:

1. Pedestal design for the memorial to Bernardo de Galvez.

2. Site locations for the American Legion Freedom Bell.

The meeting will be open to the public. Any person may file with the Committee a written statement concerning the matters to be discussed. Persons who wish to file a written statement or who want further information concerning the meeting may contact Mr. Richard L. Stanton, Associate Regional Director, Cooperative Activities, National Capital Region, at area code 202-426-6715. Minutes of the meeting will be available for public inspection 2 weeks after the meeting at the Office of National Capital Region, Room 208, 1100 Ohio Drive, SW., Washington, D.C.

Dated: January 14, 1977.

MANUS J. FISH, JR.,
Regional Director, National Capital Region.

[FR Doc.77-2391 Filed 1-25-77;8:45 am]

Office of Hearings and Appeals

[Docket No. M 77-79]

REPUBLIC STEEL CORP.

Petition for Modification of Application of Mandatory Safety Standard

Notice is hereby given that in accordance with the provisions of section 301(c) of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. 861(c) (1970), Republic Steel Corporation has filed a petition to modify the application of 30 CFR 75.1710 to its Republic Mine, located in Pike County, Kentucky.

30 CFR 75.1710 provides:

An authorized representative of the Secretary may require in any coal mine where the height of the coalbed permits that electric face equipment, including shuttle cars, be provided with substantially constructed canopies, or cabs, to protect the miners operating such equipment from roof falls and from rib and face rolls.

A time schedule by which all mines must comply with § 75.1710 is specified by 30 CFR 75.1710-1(a) which provides:

(a) Except as provided in paragraph (f) of this section, all self-propelled electric face equipment including shuttle cars, which is employed in the active workings of each underground coal mine on and after January 1, 1973 shall, in accordance with the schedule of time specified in subparagraphs (1), (2), (3), (4), (5), and (6) of this paragraph (a), be equipped with substantially constructed canopies or cabs, located and installed in such a manner that when the operator is at the operating controls of such equipment he shall be protected from falls of roof, face, or rib, or from rib and face rolls. The requirements of this paragraph (a) shall be met as follows:

(1) On and after January 1, 1974, in coal mines having mining heights of 72 inches or more;

(2) On and after July 1, 1974, in coal mines having mining heights of 60 inches or more, but less than 72 inches;

(3) On and after January 1, 1975, in coal mines having mining heights of 48 inches or more, but less than 60 inches;

(4) On and after July 1, 1975, in coal mines having mining heights of 36 inches or more, but less than 48 inches;

(5) (i) On and after January 1, 1976, in coal mines having mining heights of 30 inches or more, but less than 36 inches,

(ii) On and after July 1, 1977, in coal mines having mining heights of 24 inches or more, but less than 30 inches, and

(6) On and after July 1, 1978, in coal mines having mining heights of less than 24 inches.

The substance of Petitioner's statement is as follows:

1. Petitioner requests modification of 30 CFR 75.1710-1 for its electric face equipment in the following areas of its Republic Mine:

A. The Lower Elkhorn Seam, specifically all areas driven under the boney coal. Coal heights are 42-48 inches.

B. The Upper Elkhorn Seam, specifically all areas driven after 1969. Coal heights are up to 53 inches.

C. The Clintwood Seam (a.k.a. Lick Creek Section), all areas. Coal heights are 37-44 inches.

2. The equipment to be used in the affected areas includes:

Lee Norse 285 continuous miner.
Joy 14 CM continuous miner.
Lee Norse 35Y continuous miner.
21 SC Joy shuttle cars.
No. 48 Torkar National Mine Service shuttle cars.
14 BU-10 Joy loading machine.
Lokar National Mine Service shuttle car.
Model UATTY Uni Trac battery scoop.
Model LTDO Fletcher roof bolter.
Model SDME Fletcher roof bolter.
Model DM Fletcher roof bolter.

3. Petitioner seeks to have application of 30 CFR 75.1710-1 modified so that cabs or canopies would not be required on the above-described equipment which is used in the specific areas of the Lower Elkhorn, Upper Elkhorn and Clintwood Seams.

4. Petitioner proposes as an alternative a continued strict compliance with applicable roof control plans and personal protective device regulations.

5. This modification is being requested because use of cabs or canopies on such equipment in the specific sections of the Mine results in a diminution of safety to the miners. The placing of a cab or canopy on any of the various pieces of equipment raises the height of such equipment to the point where the cab or canopy strikes the roof or roof supports. This striking against the roof or roof supports can cause weakening and/or collapse of such areas of the roof and this results in a diminution of safety to the miners.

6. The cab or canopy also causes a diminution of safety to the miners due to the blocked vision of the equipment operator. Due to the limited heights within the specific areas of the mine, the canopy not only blocks the operators' vision directly but also prevents him from moving to a position where he can better see. Obstructed vision increases the chances that the operator will run into or over miners, equipment ribs or walls, thus causing injury to miners or damage to equipment or property.

7. The cab or canopy further diminishes the safety of the miners by limiting the working quarters of the equipment operators. This causes premature fatigue and discomfort to the operator and increases the likelihood of unsafe practices.

8. Petitioner requests that this modification be granted and that it be allowed to operate electric face equipment in the specified areas of its Republic Mine without cabs or canopies as provided in 30 CFR 75.1710-1.

REQUEST FOR HEARING OR COMMENTS

Persons interested in this petition may request a hearing on the petition or furnish comments by February 25, 1977. Such requests or comments must be filed with the Office of Hearings and Appeals, Hearings Division, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

Dated: January 14, 1977.

DAVID TORBETT,
Acting Director, Office of Hearings and Appeals.

[FR Doc.77-2494 Filed 1-25-77;8:45 am]

[Docket No. M 77-61]

ART COAL COMPANY, INC.

Petition for Modification of Application of Mandatory Safety Standard

Notice is hereby given that in accordance with the provisions of section 301(c) of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. 861(c)

(1970), Art Coal Company Inc., has filed a petition to modify the application of 30 CFR 75.1710 to its No. 4 Mine, located in Pike County, Kentucky.

30 CFR 75.1710 provides:

An authorized representative of the Secretary may require in any coal mine where the height of the coalbed permits that electric face equipment, including shuttle cars, be provided with substantially constructed canopies, or cabs, to protect the miners operating such equipment from roof falls and from rib and face rolls.

A time schedule by which all mines must comply with § 75.1710 is specified by 30 CFR 75.1710–1(a) which provides:

(a) Except as provided in paragraph (f) of this section, all self-propelled electric face equipment, including shuttle cars, which is employed in the active workings of each underground coal mine on and after January 1, 1973, shall, in accordance with the schedule of time specified in subparagraphs (1), (2), (3), (4), (5), and (6) of this paragraph (a), be equipped with substantially constructed canopies or cabs, located and installed in such a manner that when the operator is at the operating controls of such equipment he shall be protected from falls of roof, face, or rib, or from rib and face rolls. The requirements of this paragraph (a) shall be met as follows:

(1) On and after January 1, 1974, in coal mines having mining heights of 72 inches or more;

(2) On and after July 1, 1974, in coal mines having mining heights of 60 inches or more, but less than 72 inches;

(3) On and after January 1, 1975, in coal mines having mining heights of 48 inches or more, but less than 60 inches;

(4) On and after July 1, 1975, in coal mines having mining heights of 36 inches or more, but less than 48 inches;

(5) (i) On and after January 1, 1976, in coal mines having mining heights of 30 inches or more, but less than 36 inches,

(ii) On and after July 1, 1977, in coal mines having mining heights of 24 inches or more, but less than 30 inches, and

(6) On and after July 1, 1978, in coal mines having mining heights of less than 24 inches.

The substance of Petitioner's statement is as follows:

1. Petitioner operates a mine in the No. 1 seam of coal located at Little Branch. The coal height is 48–50 inches. Canopies block vision and create a dangerous condition. Petitioner's employees are refusing to operate the equipment simply because they cannot work under them in a cramped position. They are afraid they will either be injured or run over some of the other employees.

2. Without relief, Petitioner will have to close its mine. Petitioner has six employees.

REQUEST FOR HEARING COMMENTS

Persons interested in this petition may request a hearing on the petition or furnish comments by February 25, 1977. Such requests or comments must be filed with the Office of Hearings and Appeals, Hearings Division, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

Dated: January 14, 1977.

DAVID TORBETT,
Acting Director,
Office of Hearings and Appeals.

[FR Doc.77-2495 Filed 1-25-77;8:45 am]

[Docket No. M 77-73]

CARBON FUEL CO.

Petition for Modification of Application of Mandatory Safety Standard

Notice is hereby given that in accordance with the provisions of section 301 (c) of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. 861(c) (1970), Carbon Fuel Company has filed a petition to modify the application of 30 CFR 75.902 to its Morton Mine, located in Kanawha County, West Virginia.

30 CFR 75.902 provides:

On or before September 30, 1970, low- and medium-voltage resistance grounded systems shall include a fail-safe ground check circuit to monitor continuously the grounding circuit to assure continuity which ground check circuit shall cause the circuit breaker to open when either the ground or pilot check wire is broken, or other no less effective device approved by the Secretary or his authorized representative to assure such continuity, except that an extension of time, not in excess of 12 months, may be permitted by the Secretary on a mine-by-mine basis if he determines that such equipment is not available. Cable couplers shall be constructed so that the ground check continuity conductor shall be broken first and the ground conductors shall be broken last when the coupler is being uncoupled.

75.902–1—The maximum voltage used for such ground check circuits shall not exceed 40 volts.

75.902–2—Ground check systems not employing pilot check wires will be approved only if it is determined that the system includes a fail safe design causing the circuit breaker to open when ground continuity is broken.

75.902–4—In grounding equipment frames of all stationary, portable or mobile equipment receiving power from resistance grounded systems separate connections shall be used when practicable.

The substance of Petitioner's statement is as follows:

1. The coal mined in Petitioner's mine is transported from the working faces to a slope bottom area ("bin") where the coal is fed onto a belt which carries the coal up the slope and out of the mine. The slope bottom or bin area is constructed of steel columns, beams, struts, etc. All of the electrical equipment necessary for operation of the machinery in the bin area is mounted on the steel structure.

2. The entire steel structure on which all electric equipment is mounted in the bin area is grounded in three ways as shown in Exhibit A [1] and is described as follows:

a. A conduit runs from the power center to a control panel which is mounted on the steel frame. A piece of copper wire connects the power center to the steel structure. This copper wire provides a grounding medium for current to return to the neutral grounding resistor which is located in the power center.

b. A backup system is a ground current transformer around the ground resistor ground wire. If a ground fault occurs, this system operates and opens the contacts of a 50G relay which de-energizes the control power to all circuit breaker undervoltage releases.

c. A voltage relay is provided across the terminals of the grounding resistors. The relay has normally closed contacts but if a ground fault occurs, the contacts will open and de-energize the undervoltage releases on all circuit breakers. If the grounding resistor opens so there is not continuity, the voltage relay operates under fault condition opening the control circuit to the undervoltage releases.

3. On November 16, 1976, Federal Mine Inspector Roy A. Gray issued to Petitioner a "Notice" for an alleged violation of 30 CFR 75.902, a copy of which notice is attached hereto as Exhibit B.[2] Such notice requires that Petitioner provide a fail-safe ground check system to continuously monitor the grounding circuit for motors located at the slope bottom bin. The alleged violation is to be totally abated by 8:00 a.m. on December 31, 1976.

4. After a thorough investigation by Petitioner, it has been determined that its present grounding system as described above is an alternative method which achieves the same results of 30 CFR 75.902 and at all times guarantees no less than the same measure of protection afforded the miners of the Morton Mine by 30 CFR 75.902.

5. No danger is involved. Petitioner requests that in lieu of the mandatory standard contained in 30 CFR 75.902, that it be permitted to continue to ground the electric equipment in the slope bottom bin area in the manner described herein.

REQUEST FOR HEARING OR COMMENTS

Persons interested in this petition may request a hearing on the petition or furnish comments by February 25, 1977. Such requests or comments must be filed with the Office of Hearings and Appeals, Hearings Division, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

Dated: January 14, 1977.

DAVID TORBETT,
Acting Director,
Office of Hearings and Appeals.

[FR Doc.77-2496 Filed 1-25-77;8:45 am]

[1] The enclosed Exhibit is available for inspection at the address listed in the last paragraph of this notice.

[2] The enclosed Exhibit is available for inspection at the address listed in the last paragraph of this notice.

[Docket No. M 77-62]

LYNN COAL CO.

Petition for Modification of Application of Mandatory Safety Standard

Notice is hereby given that in accordance with the provisions of section 301 (c) of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. 861(c) (1970), Lynn Coal Company has filed a petition to modify the application of 30 CFR 75.1101 to its No. 32 Mine, located in Boone County, West Virginia.

30 CFR 75.1101 provides:

Deluge-type water sprays or foam generators automatically actuated by rise in temperature, or other no less effective means approved by the Secretary of controlling fire, shall be installed at main and secondary belt-conveyor drives.

The substance of Petitioner's statement is as follows:

1. Petitioner's mine uses a blowing ventilation system. Therefore, air will be traveling down the belt entry to the surface.

2. A fire sensor will be placed over the drive.

3. The mine will be no less safe than if the mandatory safety standard is applied.

4. Freezing problems would prevent the use of deluge type systems (presently on hand).

5. All other regulations will be complied with (fire sensors, fire resistant belt, belt control switches, etc.).

6. A self-explanatory map is enclosed.[1]

REQUEST FOR HEARING OR COMMENTS

Persons interested in this petition may request a hearing on the petition or furnish comments by February 25, 1977. Such requests or comments must be filed with the Office of Hearings and Appeals, Hearings Division, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

Dated: January 14, 1977.

DAVID TORBETT,
Acting Director,
Office of Hearings and Appeals.

[FR Doc.77-2497 Filed 1-25-77;8:45 am]

[Docket No. M77-70]

TUNNELTON MINING CO.

Petition for Modification of Application of Mandatory Safety Standard

Notice is hereby given that in accordance with the provisions of section 301 (c) of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. 861(c) (1970), Tunnelton Mining Company has filed a petition to modify the application of 30 CFR 75.802(a) to its Marion Mine, located in Indiana County, Pennsylvania.

30 CFR 75.802 provides:

(a) Except as provided in paragraph (b) of this section, high-voltage circuits extending underground and supplying portable, mobile, or stationary high-voltage equipment shall contain either a direct or derived neutral which shall be grounded through a suitable resistor at the source transformers, and a grounding circuit, originating at the grounded side of the grounding resistor, shall extend along with the power conductors and serve as a grounding conductor for the frames of all high-voltage equipment supplied power from that circuit.

(b) Notwithstanding the requirements of paragraph (a) of this section, the Secretary or his authorized representative may permit ungrounded high-voltage circuits to be extended underground to feed stationary electric equipment if:

(1) Such circuits are either steel armored or installed in grounded, rigid steel conduit throughout their entire length; or,

(2) The voltage of such circuits is nominally 2,400 volts or less phase-to-phase and the cables used in such circuits are equipped with metallic shields around each power conductor, and contain one or more ground conductors having a total cross sectional area of not less than one-half the power conductor; and,

(3) Upon a finding by the Secretary or his authorized representative that the use of the circuits described in paragraph (b) (1) and (2) of this section does not pose a hazard to the miners.

(c) Within 100 feet of the point on the surface where high-voltage circuits enter the underground portion of the mine, disconnecting devices shall be installed and so equipped or designed in such a manner that it can be determined by visual observation that the power is disconnected, except that the Secretary or his authorized representative may permit such devices to be installed at a greater distance from such area of the mine if he determines, based on existing physical conditions, that such installation will be more accessible at a greater distance and will not pose any hazard to the miners.

The substance of Petitioner's statement is as follows:

1. The 7.2 KV system was installed at Petitioner's Mine prior to 1969. The source transformers are owned by the West Penn Power Company and are located about 4,300 feet by straight line away from the mine. The 7.2 KV distribution line from the source transformer to the mine is owned and maintained by the West Penn Power Company. The source transformers are located 4.3 miles by road (20 minutes by vehicle) away from the mine.

2. Petitioner proposes the use of an oil circuit recloser to disconnect the entire surface load (less the primary fan) for any phase to ground fault on the entire 7.2 KV system originating from the West Penn transformers.

3. Petitioner further proposes as a modification the following system:

(a) Two separate ground beds with impedance less than 2 ohms each. One ground bed will be for the underground system and will be connected to the ground side of the neutral resistor. The other ground bed will be separated at least 25 feet from the previous ground bed and will be connected to the West Penn skywire, all surface equipment grounds and frames, and all surface lightning arrestor installations.

(b) An oil circuit recloser (OCR) will be added to the 7.2 KV circuit immediately after the primary fan transformer and before any other mine surface load. The OCR will have appropriate load carrying and interrupting rating.

(c) A phase to ground fault sensing and indicating scheme will be added to sense a grounded phase and trip the OCR.

(d) The OCR will be tripped for all phase to ground faults on the surface 7.2 KV system. Tripping will be delayed slightly to coordinate with the ground fault protection on the underground breaker.

(e) A ground fault indicating light will be added at the OCR to indicate a ground fault anywhere on the 7.2 KV system.

(f) With the exception of (c) above, all operations of the OCR will be manual.

(g) The grounding conductor from the ground resistor will not serve as grounding medium for the surface high-voltage equipment frames; it will be the grounding medium for the underground high-voltage equipment frames and the resistor will not be at the source transformers.

(h) The underground high-voltage ground will not be connected to the frame of the high-voltage equipment supplying power to the system but the frames will be effectively grounded.

(i) All frames of surface high-voltage equipment shall be effectively grounded at the utilization point by both a local ground rod and be connected to the surface system ground wire.

(j) The neutral resistor ground conductor will not be connected to the surface high-voltage equipment frames; these frames will be effectively grounded to limit frame voltages to safe levels under fault conditions.

4. If Petitioner's existing system were modified to comply with Section 75.802, the entire surface load would become a delta ungrounded system.

5. Petitioner maintains that its proposed alternates system will be as safe as, or safer than the present system as required by 30 CFR 75.802(a) in that phase to ground faults on the surface systems will be cleared before a dual phase to ground fault can occur.

6. If Petitioner's modification is granted, the installation of the oil circuit recloser will not result in a diminution of safety to the miners at Petitioner's mine.

REQUEST FOR HEARINGS OR COMMENTS

Persons interested in this petition may request a hearing on the petition or furnish comments by February 25, 1977. Such requests or comments must be filed with the Office of Hearings and Appeals, Hearings Division, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

Dated: January 14, 1977.

DAVID TORBETT,
Acting Director,
Office of Hearings and Appeals.

[FR Doc.77-2498 Filed 1-25-77;8:45 am]

[1] The enclosed map is available for inspection at the address listed in the last paragraph of this notice.

[Docket No. M77-71]

TUNNELTON MINING CO.

Petition for Modification of Application of Mandatory Safety Standard

Notice is hereby given that in accordance with the provisions of section 301 (c) of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. 861(c) (1970), Tunnelton Mining Company has filed a petition to modify the application of 30 CFR 75.811 to its Marion Mine, located in Indiana County, Pennsylvania. 30 CFR 75.811 provides:

Frames, supporting structures, and enclosures of stationary, portable or mobile underground high-voltage equipment and all high-voltage equipment supplying power to such equipment receiving power from resistance grounded systems shall be effectively grounded to the high-voltage ground.

The substance of Petitioner's statement is as follows:

1. The 7.2 KV system was installed at Petitioner's mine prior to 1969. The source transformers are owned by the West Penn Power Company and are located about 4,300 feet by straight line away from the mine. The 7.2 KV distribution line from the source transformer to the mine is owned and maintained by the West Penn Power Company. The source transformers are located 4.3 miles by road (20 minutes by vehicle) away from the mine.

2. Petitioner proposes the use of an oil circuit recloser to disconnect the entire service load (less the primary fan) for any phase to ground fault on the entire 7.2 KV system originating from the West Penn transformers.

3. Petitioner further proposes as a modification the following system:

(a) Two separate ground beds with impedance less than 2 ohms each. One ground bed will be for the underground system and will be connected to the ground side of the neutral resistor. The other ground bed will be separated at least 25 feet from the previous ground bed and will be connected to the West Penn skywire, all surface equipment grounds and frames, and all surface lightning arrestor installations.

(b) An oil circuit recloser (OCR) will be added to the 7.2 KV circuit immediately after the primary fan transformer and before any other mine surface load. The OCR will have appropriate load carrying and interrupting rating.

(c) A phase to ground fault sensing and indicating scheme will be added to sense a grounded phase and trip the OCR.

(d) The OCR will be tripped for all phase to ground faults on the surface 7.2 KV system. Tripping will be delayed slightly to coordinate with the ground fault protection on the underground breaker.

(e) A ground fault indicating light will be added at the OCR to indicate a ground fault anywhere on the 7.2 KV system.

(f) With the exception of (c) above, all operations of the OCR will be manual.

(g) The grounding conductor from the ground resistor will not serve as grounding medium for the surface high-voltage equipment frames; it will be the grounding medium for the underground high-voltage equipment frames and the resistor will not be at the source transformers.

(h) The underground high-voltage ground will not be connected to the frame of the high-voltage equipment supplying power to the system but the frames will be effectively grounded.

(i) All frames of surface high-voltage equipment shall be effectively grounded at the utilization point by both a local ground rod and be connected to the surface system ground wire.

(j) The neutral resistor ground conductor will not be connected to the surface high-voltage equipment frames; these frames will be effectively grounded to limit frame voltages to safe levels under fault conditions.

4. If Petitioner's existing system were modified to comply with 30 CFR 75.802, the entire surface load would become a delta ungrounded system.

5. Petitioner maintains that its proposed alternate system will be as safe as, or safer than the present system as required by 30 CFR 75.811 in that phase to ground faults on the surface systems will be cleared before a dual phase to ground fault can occur.

6. If Petitioner's modification is granted, the installation of the oil circuit recloser will not result in a diminution of safety to the miners at Petitioner's mine.

REQUEST FOR HEARING OR COMMENTS

Persons interested in this petition may request a hearing on the petition or furnish comments by February 25, 1977. Such requests or comments must be filed with the Office of Hearings and Appeals, Hearings Division, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

Dated: January 14, 1977.

DAVID TORBETT,
Acting Director,
Office of Hearings and Appeals.

[FR Doc.77-2499 Filed 1-25-77;8:45 am]

[Docket No. M77-72]

TUNNELTON MINING CO.

Petition for Modification of Application of Mandatory Safety Standard

Notice is hereby given that in accordance with the provisions of section 301 (c) of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. 861(c) (1970), Tunnelton Mining Company has filed a petition to modify the application of 30 CFR 75.802 to its Marion Mine, located in Indiana County, Pennsylvania.

30 CFR 75.802 provides:

(a) Except as provided in paragraph (b) of this section, high-voltage circuits extending underground and supplying portable, mobile, or, stationary high-voltage equipment shall contain either a direct or derived neutral which shall be grounded through a suitable resistor at the source transformers, and a grounding circuit, originating at the grounded side of the grounding resistor, shall extend along with the power conductors and serve as a grounding conductor for the frames of all high-voltage equipment supplied power from that circuit.

(b) Notwithstanding the requirements of paragraph (a) of this section, the Secretary or his authorized representative may permit ungrounded high-voltage circuits to be extended underground to feed stationary electric equipment if:

(1) Such circuits are either steel armored or installed in grounded, rigid steel conduit throughout their entire length; or,

(2) The voltage of such circuits is nominally 2,400 volts or less phase-to-phase and the cables used in such circuits are equipped with metallic shields around each power conductor, and contain one or more ground conductors having a total cross sectional area or not less than one-half the power conductor; and,

(3) Upon a finding by the Secretary or his authorized representative that the use of the circuits described in paragraph (b) (1) and (2) of this section does not pose a hazard to the miners.

(c) Within 100 feet of the point on the surface where high-voltage circuits enter the underground portion of the mine, disconnecting devices shall be installed and so equipped or designed in such a manner that it can be determined by visual observation that the power is disconnected, except that the Secretary or his authorized representative may permit such devices to be installed at a greater distance from such area of the mine if he determines, based on existing physical conditions, that such installations will be more accessible at a greater distance and will not pose any hazard to the miners.

The substance of Petitioner's statement is as follows:

1. The 7.2 KV system was installed at Petitioner's mine prior to 1969. The source transformers are owned by the West Penn Power Company and are located about 4,300 feet by straight line away from the mine. The 7.2 KV distribution line from the source transformer to the mine is owned and maintained by the West Penn Power Company. The source transformers are located 4.3 miles by road (20 minutes by vehicle) away from the mine.

2. Petitioner proposes the use of an oil circuit recloser to disconnect the entire surface load (less the primary fan) for any phase to ground fault on the entire 7.2 KV system originating from the West Penn transformers.

3. Petitioner further proposes as a modification the following system:

(a) Two separate ground beds with impedance less than 2 ohms each. One ground bed will be for the underground system and will be connected to the ground side of the neutral resistor. The other ground bed will be separated at least 25 feet from the previous ground bed and will be connected to the West Penn skywire, all surface equipment grounds and frames, and all surface lightning arrestor installations.

(b) An oil circuit recloser (OCR) will be added to the 7.2 KV circuit immediately after the primary fan transformer and before any other mine surface load. The OCR will have appropriate load carrying and interrupting rating.

(c) A phase to ground fault sensing and indicating scheme will be added to sense a grounded phase and trip the OCR.

(d) The OCR will be tripped for all phase to ground faults on the surface 7.2 KV system. Tripping will be delayed slightly to coordinate with the ground fault protection to the underground breaker.

(e) A ground fault indicating light will be added at the OCR to indicate a ground fault anywhere on the 7.2 KV system.

(f) With the exception of (c) above, all operations of the OCR will be manual.

(g) The grounding conductor from the ground resistor will not serve as grounding medium for the surface high-voltage equipment frames; it will be the grounding medium for the underground high voltage equipment frames and the resistor will not be at the source transformers.

(h) The underground high-voltage ground will not be connected to the frame of the high-voltage equipment supplying power to the system but the frames will be effectively grounded.

(i) All frames of surface high-voltage equipment shall be effectively grounded at the utilization point by both a local ground rod and be connected to the surface system ground wire.

(j) The neutral resistor ground conductor will not be connected to the surface high-voltage equipment frames; these frames will be effectively grounded to limit frame voltages to safe levels under fault conditions.

4. If Petitioner's existing system were modified to comply with 30 CFR 75.802, the entire surface load would become a delta ungrounded system.

5. Petitioner maintains that its proposed alternate system will be as safe as, or safer than the present system as required by 30 CFR 75.802 in that phase to ground faults on the surface systems will be cleared before a dual phase to ground fault can occur.

6. If Petitioner's modification is granted, the installation of the oil circuit recloser will not result in a diminution of safety to the miners at Petitioner's mine.

REQUEST FOR HEARING OR COMMENTS

Persons interested in this petition may request a hearing on the petition or furnish comments by February 25, 1977. Such requests or comments must be filed with the Office of Hearings and Appeals, Hearings Division, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

Dated: January 14, 1977.

DAVID TORBETT,
Acting Director,
Office of Hearings and Appeals.

[FR Doc.77-2500 Filed 1-25-77;8:45 am]

Office of the Secretary

LIVESTOCK GRAZING ON PUBLIC LANDS

Schedule of Fees, 1977

Pursuant to the Taylor Grazing Act of 1934 and the Federal Land Policy and Management Act of 1976, notice is hereby given of the schedule of fees for the 1977 fee year beginning March 1, 1977, and ending February 28, 1978, for livestock grazing on the public lands.

For the purpose of establishing charges, one animal unit month (AUM) shall be considered equivalent to grazing use by one cow, five sheep, or one horse for one month. The charge for one horse is at twice the rate for one cow.

Bills shall be issued in accordance with the rates prescribed in this notice.

INSIDE STATUTORY GRAZING DISTRICTS

Pursuant to Departmental regulations (43 CFR 4115.2-1(k)), as amended January 4, 1977 (FR 778), fees within districts, except as otherwise provided herein, shall be $1.51 per AUM of which 50 percent is credited to the range betterment account.

Exceptions to the above rates are hereby set as follows for certain LU project lands (Bankhead-Jones Title III lands) in order to continue the basis of fees that has heretofore been established:

Arizona. For the San Simon project (Cienega area) transferred to the Department by Executive Order 10322, the fees shall be $1.88 per AUM.

Colorado. For the Great Divide project transferred to the Department by Executive Order 10046, the fees shall be $1.62 per AUM.

Montana. For all LU lands within districts transferred to the Department by Executive Order 10787, the fees shall be $1.62 per AUM.

New Mexico. For the Hope Land project transferred to the Department by Executive Order 10787, the fees shall be $1.58 per AUM. The San Simon project (Cienega area) transferred to the Department by Executive Order 10322, the fees shall be $1.88 per AUM.

OUTSIDE STATUTORY GRAZING DISTRICTS (EXCLUSIVE OF ALASKA)

Pursuant to Departmental regulations (43 CFR 4125.1-1(m)), as amended January 4, 1977 (FR 778), the rate for grazing leases, except as otherwise provided herein, shall be $1.51 per AUM of which 50 percent is credited to the range betterment account.

Exceptions to the above rate are hereby set as follows for certain LU project lands and for all O&C (Revested Oregon and California Railroad), CBWR (Reconveyed Coos Bay Wagon Road Grant), and intermingled public domain lands in western Oregon in order to continue the basis of fees that has heretofore been established:

Montana. For those Milk River Land project lands outside districts transferred to the Department by Executive Order 18787, the fee shall be $1.62 per AUM.

Wyoming. For the northeast Wyoming project transferred to the Department by Executive Order 10046 and amended by Executive Order 10175, the fee shall be $1.62 per AUM.

Western Oregon. For western Oregon, the fee shall be $1.62 per AUM. Receipts from O&C and CBWR lands are not subject to the range betterment program account provisions of the Federal Land Policy and Management Act of 1976.

JACK O. HORTON,
Assistant Secretary
of the Interior.

JANUARY 19, 1977.

[FR Doc.77-2460 Filed 1-25-77;8:45 am]

ALVIN F. BAAL

Statement of Changes in Financial Interests

In accordance with the requirements of section 710(b)(6) of the Defense Production Act of 1950, as amended, and Executive Order 10647 of November 28, 1955, the following changes have taken place in my financial interests during the past six months:

(1) No change.
(2) No change.
(3) No change.
(4) No change.

This statement is made as of January 1, 1977.

Dated: December 20, 1976.

ALVIN F. BAAL, III.

[FR Doc.77-2501 Filed 1-25-77;8:45 am]

HARLEY L. COLLINS

Statement of Changes in Financial Interests

In accordance with the requirements of section 710(b)(6) of the Defense Production Act of 1950, as amended, and Executive Order 10647 of November 28, 1955, the following changes have taken place in my financial interests during the past six months:

(1) No change.
(2) No change.
(3) No change.
(4) No change.

This statement is made as of January 1, 1977.

Dated: December 17, 1976.

HARLEY L. COLLINS.

[FR Doc.77-2502 Filed 1-25-77;8:45 am]

WINSTON M. COOPER

Statement of Changes in Financial Interests

In accordance with the requirements of section 710(b)(6) of the Defense Production Act of 1950, as amended, and Executive Order 10647 of November 28, 1955, the following changes have taken place in my financial interests during the past six months:

(1) No change.
(2) No change.
(3) No change.
(4) No change.

This statement is made as of January 1, 1977.

Dated: December 20, 1976.

WINSTON M. COOPER.

[FR Doc.77-2503 Filed 1-25-77;8:45 am]

LESTER E. GARLINGHOUSE

Statement of Changes in Financial Interests

In accordance with the requirements of section 710(b) (6) of the Defense Production Act of 1950, as amended, and Executive Order 10647 of November 28, 1955, the following changes have taken place in my financial interests during the past six months:

Purchased:
(1) Gould Incorporated (9-30-76).
(2).
(3).
(4).

This statement is made as of January 1, 1977.

Dated: January 4, 1977.

LESTER E. GARLINGHOUSE.

[FR Doc.77-2504 Filed 1-25-77;8:45 am]

BILL M. GUTHRIE

Statement of Changes in Financial Interests

In accordance with the requirements of section 710(b) (6) of the Defense Production Act of 1950, as amended, and Executive Order 10647 of November 28, 1955, the following changes have taken place in my financial interests during the past six months:

(1) No change.
(2) No change.
(3) No change.
(4) No change.

This statement is made as of January 28, 1977.

Dated: December 16, 1976.

BILL M. GUTHRIE.

[FR Doc.77-2505 Filed 1-25-77;8:45 am]

KENNETH M. HALE

Statement of Changes in Financial Interests

In accordance with the requirements of section 710(b) (6) of the Defense Production Act of 1950, as amended, and Executive Order 10647 of November 28, 1955, the following changes have taken place in my financial interests during the past six months:

(1).
(2) No change from status previously submitted.
(3).
(4).

This statement is made as of January 1, 1977.

Dated: December 20, 1976.

KENNETH M. HALE.

[FR Doc.77-2506 Filed 1-25-77;8:45 am]

WILLIAM P. HENNE

Statement of Changes in Financial Interests

In accordance with the requirements of section 710(b) (6) of the Defense Production Act of 1950, as amended, and Executive Order 10647 of November 28, 1955, the following changes have taken place in my financial interests during the past six months:

(1) No change.
(2) No change.
(3) No change.
(4) No change.

This statement is made as of January 11, 1977.

Dated: December 16, 1976.

WILLIAM P. HENNE.

[FR Doc.77-2507 Filed 1-25-77;8:45 am]

BILL C. HULSEY

Statement of Changes in Financial Interests

In accordance with the requirements of section 710(b) (6) of the Defense Production Act of 1950, as amended, and Executive Order 10647 of November 28, 1955, the following changes have taken place in my financial interests during the past six months:

(1) No change.
(2) No change.
(3) No change.
(4) No change.

This statement is made as of January 28, 1977.

Dated: December 20, 1976.

BILL C. HULSEY.

[FR Doc.77-2508 Filed 1-25-77;8:45 am]

MAURICE H. KENT

Statement of Changes in Financial Interests

In accordance with the requirements of section 710(b) (6) of the Defense Production Act of 1950, as amended, and Executive Order 10647 of November 28, 1955, the following changes have taken place in my financial interests during the past six months:

(1) No change.
(2) No change.
(3) No change.
(4) No change.

This statement is made as of January 1, 1977.

Dated: December 17, 1976.

MAURICE H. KENT.

[FR Doc. 77-2509 Filed 1-25-77;8:45 am]

LEON LOVELESS

Statement of Changes in Financial Interests

In accordance with the requirements of section 710(b) (6) of the Defense Production Act of 1950, as amended, and Executive Order 10647 of November 28, 1955, the following changes have taken place in my financial interests during the past six months:

(1) No change.
(2) No change.
(3) No change.
(4) No change.

This statement is made as of January 1, 1977.

Dated: December 16, 1976.

LEON LOVELESS.

[FR Doc.77-2510 Filed 1-25-77;8:45 am]

ROBERT J. MARCHETTI

Statement of Changes in Financial Interests

In accordance with the requirements of section 710(b) (6) of the Defense Production Act of 1950, as amended, and Executive Order 10647 of November 28, 1955, the following changes have taken place in my financial interests during the past six months:

(1) No change.
(2) No change.
(3) No change.
(4) No change.

This statement is made as of January 1, 1977.

Dated: January 6, 1977.

ROBERT J. MARCHETTI.

[FR Doc. 77-2511 Filed 1-25-77;8:45 am]

JOHN A. McMAHON

Statement of Changes in Financial Interests

In accordance with the requirements of section 710(b) (6) of the Defense Production Act of 1950, as amended, and Executive Order 10647 of November 28, 1955, the following changes have taken place in my financial interests during the past six months:

(1) No change.
(2) No change.
(3) No change.
(4) No change.

This statement is made as of January 1, 1977.

Dated: December 31, 1976.

JOHN A. MCMAHON.

[FR Doc.77-2512 Filed 1-25-77;8:45 am]

S. RIGGS SHEPPERD

Statement of Changes in Financial Interests

In accordance with the requirements of section 710(b) (6) of the Defense Production Act of 1950, as amended, and Executive Order 10647 of November 28, 1955, the following changes have taken place in my financial interests during the past six months:

(1) None.
(2) None.
(3) None.
(4) None.

This statement is made as of January 12, 1977.

Dated: January 6, 1977.

RIGGS SHEPPERD.

[FR Doc.77-2513 Filed 1-25-77;8:45 am]

KEITH E. SPENCER

Statement of Changes in Financial Interests

In accordance with the requirements of section 710(b) (6) of the Defense Production Act of 1950, as amended, and Executive Order 10647 of November 28, 1955, the following changes have taken place in my financial interests during the past six months:

(1) None.
(2) None.
(3) None.
(4) None.

This statement is made as of January 1, 1977.

Dated: December 16, 1976.

KEITH E. SPENCER.

[FR Doc. 77-2514 Filed 1-25-77;8:45 am]

FRED M. TREFFINGER

Statement of Changes in Financial Interests

In accordance with the requirements of section 710(b) (6) of the Defense Production Act of 1950, as amended, and Executive Order 10647 of November 28, 1955, the following changes have taken place in my financial interests during the past six months:

(1) No change.
(2) No change.
(3) No change.
(4) No change.

This statement is made as of January 1, 1977.

Dated: January 6, 1977.

FRED M. TREFFINGER.

[FR Doc.77-2515 Filed 1-25-77;8:45 am]

CHARLES N. WHITMIRE

Statement of Changes in Financial Interests

In accordance with the requirements of section 710(b) (6) of the Defense Production Act of 1950, as amended, and Executive Order 10647 of November 28, 1955, the following changes have taken place in my financial interests during the past six months:

(1) None.
(2) Delete Marcor; add Mobil.
(3) None.
(4) None.

This statement is made as of January 28, 1977.

Dated: December 20, 1976.

CHARLES N. WHITMIRE.

[FR Doc.77-2517 Filed 1-25-77;8:45 am]

ROBERT W. WINFREE

Statement of Changes in Financial Interests

In accordance with the requirements of section 710(b) (6) of the Defense Production Act of 1950, as amended, and Executive Order 10647 of November 28, 1955, the following changes have taken place in my financial interests during the past six months:

(1) No change.
(2) No change.
(3) No change.
(4) No change.

This statement is made as of January 11, 1977.

Dated: December 16, 1976.

ROBERT W. WINFREE.

[FR Doc.77-2518 Filed 1-25-77;8:45 am]

INTERNATIONAL TRADE COMMISSION

GOVERNMENT IN THE SUNSHINE

Amendment of Meeting

In its notice for the meeting of February 1, 1977, the Commission indicated that its discussion of reorganization (agenda item No. 3) would be in open session. Such discussion will be in open session to the extent that the discussion does not involve selections of personnel to fill positions under the reorganization. The portion of the discussion under item No. 3 which concerns selections of personnel to fill positions under the reorganization will be held in closed session.

Pursuant to the specific exemptions of 5 U.S.C. 552b(c) (2) and (6), on the authority of 19 U.S.C. 1335, and in conformity with proposed 19 CFR 201.37(b) (2) and (6), Commissioners Parker, Moore, Bedell, and Ablondi voted to hold this portion of the discussion with respect to item No. 3 on reorganization in closed session. Commissioners Minchew and Leonard voted against closing this portion to the public.

A majority of the entire membership of the Commission felt that this portion of the meeting should be closed to the public since: (1) The discussion would only concern internal personnel practice and procedures; and (2) The information discussed in such portion would be likely to disclose information of a personal nature which could constitute a clearly unwarranted invasion of personal privacy.

Those persons expected to be present at this closed portion, and their corresponding affiliations, are listed as follows:

Daniel Minchew, Chairman.
Joseph O. Parker, Vice Chairman.
Will E. Leonard, Commissioner.
George M. Moore, Commissioner.
Catherine Bedell, Commissioner.
Italo H. Ablondi, Commissioner.
Kenneth R. Mason, Secretary.
E. Bernice Morris, Staff Assistant.
Charles R. Ramsdale, Acting Director, Personnel.
Norma H. Warbis, Personnel Management Specialist (if Mr. Ramsdale is not available).
Bruce N. Hatton, Assistant to Commissioner Leonard.

The General Counsel to the Commission certified that it is his opinion that the Commission's action in closing this portion of its discussion of reorganization was properly taken by a vote of a majority of the entire membership of the Commission pursuant to 5 U.S.C. 552b (d) (1) and in conformity with proposed 19 CFR 201.37(e). The discussion to be held in closed session is within the specific exemptions of 5 U.S.C. 552b(c) (2) and (6) and proposed 19 CFR 201.37(b) (2) and (6).

By order of the Commission.

Issued: January 21, 1977.

RUSSELL N. SHEWMAKER,
General Counsel.
KENNETH R. MASON,
Secretary.

[FR Doc.77-2546 Filed 1-25-77;8:45 am]

GOVERNMENT IN THE SUNSHINE

Amendment of Meeting

In its notice for the meeting of February 3, 1977, the Commission indicated that its discussion of reorganization (agenda item No. 1) would be in open session. Such discussion will be in open session to the extent that the discussion does not involve selections of personnel to fill positions under the reorganization. The portion of the discussion under item No. 1 which concerns selections of personnel to fill positions under the reorganization will be held in closed session.

Pursuant to the specific exemptions of 5 U.S.C. 552b(c) (2) and (6), on the authority of 19 U.S.C. 1335, and in conformity with proposed 19 CFR 201.37(b) (2) and (6), Commissioners Parker, Moore, Bedell, and Ablondi voted to hold this portion of the discussion with respect to item No. 1 on reorganization in closed session. Commissioners Minchew and Leonard voted against closing this portion to the public.

A majority of the entire membership of the Commission felt that this portion of the meeting should be closed to the public since: (1) The discussion would only concern internal personnel practice and procedures; and (2) The information discussed in such portion would be likely to disclose information of a personal nature which could constitute a clearly unwarranted invasion of personal privacy.

Those persons expected to be present at this closed portion, and their corresponding affiliations, are listed as follows:

Daniel Minchew, Chairman.
Joseph O. Parker, Vice Chairman.
Will E. Leonard, Commissioner.
George M. Moore, Commissioner.
Catherine Bedell, Commissioner.
Italo H. Ablondi, Commissioner.
Kenneth R. Mason, Secretary.
E. Bernice Morris, Staff Assistant.
Charles R. Ramsdale, Acting Director, Personnel.
Norma H. Warbis, Personnel Management Specialist (if Mr. Ramsdale is not available).
Bruce N. Hatton, Assistant to Commissioner Leonard.

The General Counsel to the Commission certified that it is his opinion that the Commission's action in closing this portion of its discussion of reorganiza-

tion was properly taken by a vote of a majority of the entire membership of the Commission pursuant to 5 U.S.C. 552b (d) (1) and in conformity with proposed 19 CFR 201.37(e). The discussion to be held in closed session is within the specific exemptions of 5 U.S.C. 552b(c) (2) and (6) and proposed 19 CFR 201.37(b) (2) and (6).

By order of the Commission.

Issued: January 21, 1977.

RUSSELL N. SHEWMAKER,
General Counsel.
KENNETH R. MASON,
Secretary.

[FR Doc.77-2547 Filed 1-25-77;8:45 am]

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

CARLTON TURNER

Registration as Importer of Controlled Substances

By Notice dated November 18, 1976, and published in the FEDERAL REGISTER on November 29, 1976; (41 FR 52345), Carlton Turner, Department of Pharmacognosy, School of Pharmacy, University of Mississippi, University, MS 38677, made application to the Drug Enforcement Administration to be registered as an importer of marihuana, a basic class of controlled substance listed in Schedule I.

No comments or objections having been received, and, pursuant to section 1008(a) of the Comprehensive Drug Abuse Prevention and Control Act of 1970, and in accordance with 21 CFR 1311.42, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Dated: January 17, 1977.

DONALD E. MILLER,
Acting Deputy Administrator, Drug Enforcement Administration.

[FR Doc.77-2519 Filed 1-25-77;8:45 am]

KNOLL PHARMACEUTICAL CO. PRODUCTION CO.

Application for Manufacture of Controlled Substances

Section 303(a)(1) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 823(a)(1)) states:

"The Attorney General shall register an applicant to manufacture controlled substances in schedule I or II if he determines that such registration is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on the effective date of this part. In determining the public interest, the following factors shall be considered:

(1) Maintenance of effective controls against diversion of particular controlled substances and any controlled substance in schedule I or II compounded therefrom into other than legitimate medical, scientific, research, or industrial channels, by limiting the importation and bulk manufacture of such controlled substances to a number of establishments which can produce an adequate and uninterrupted supply of these substances under adequately competitive conditions for legitimate medical, scientific, research, and industrial purposes;"

Pursuant to § 1301.43 of Title 21 of the Code of Federal Regulations (CFR), notice is hereby given that on November 22, 1976, Knoll Pharmaceutical Company Production Department, 30 North Jefferson Road, Whippany, NJ 07981, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of hydromorphone, a basic class of controlled substance in schedule II.

Pursuant to Section 301 of the Controlled Substances Act (21 U.S.C. 821), and in accordance with 21 CFR 1301.43 (a), notice is hereby given that the above person has made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic class of controlled substance indicated, and any other such person, and any existing registered bulk manufacturer of hydromorphone, may file written comments on or objections to the issuance of such registration and may, at the same time, file a written request for a hearing on the application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47. Such comments, objections and requests for a hearing may be filed no later than February 24, 1977.

Comments and objections may be addressed to the DEA Federal Register Representative, Office of Chief Counsel, Drug Enforcement Administration, Room 1203, 1405 Eye Street, N.W., Washington, D.C. 20537.

Dated: January 17, 1977.

DONALD E. MILLER,
Acting Deputy Administrator, Drug Enforcement Administration.

[FR Doc.77-2520 Filed 1-25-77;8:45 am]

Law Enforcement Assistance Administration

ARMORED CAR COMMITTEE

Meeting

Notice is hereby given that the Armored Car Committee of LEAA's Private Security Advisory Council (PSAC) will meet Thursday and Friday, February 10 and 11, 1977. The meeting will convene at 9:30 a.m., February 10 at the Fort Lauderdale Hilton Hotel, Verde Room, 4060 Galtoceanmile Drive, in Fort Lauderdale, Florida. The meeting is scheduled to adjourn by 1:00 p.m., February 11.

Discussion at this meeting will focus on standards for personnel selection, training, equipment and performance for armored car and armed courier services. The meeting will be open to the public.

For further information, please contact: Mr. James Hagerty, Program Manager, Standards and Goals, Office of Regional Operations, Law Enforcement Assistance Administration, U.S. Department of Justice, 633 Indiana Avenue, N.W., Room 700, Washington, D.C. 20530. (202) 376-3550.

JAY A. BROZOST,
Attorney-Advisor, Office of General Counsel.

[FR Doc.77-2536 Filed 1-25-77;8:45 am]

NATIONAL ADVISORY COMMITTEE ON OCEANS AND ATMOSPHERE

MEETING

JANUARY 24, 1977.

Pursuant to Sec 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. I (Supp V, 1975), notice is hereby given that the National Advisory Committee on Oceans and Atmosphere (NACOA) will hold a two-day meeting on Monday and Tuesday, February 14–15, 1977. The sessions will be open to the public and will be held in Room 4830 of the U.S. Department of Commerce Building, 14th Street between Constitution Avenue and E Street, N.W. Washington, D.C. beginning at 9:00 a.m. on both days.

The Committee, consisting of 25 non-Federal members appointed by the President from State and local governments, industry, science and other appropriate areas, was established by Congress by Public Law 92-125, on August 16, 1971, as amended. Its duties are to (1) undertake a continuing review of national ocean policy, coastal zone management and the progress of the marine and atmospheric science and service programs of the United States, (2) submit a comprehensive annual report to the President and to the Congress setting forth an overall assessment of the status of the Nation's marine nad atmospheric activities on or before 30 June of each year, and (3) advise the Secretary of Commerce with respect to the carrying out of the purpose of the National Oceanic and Atmospheric Administration.

The general agenda includes the following topics:

FEBRUARY 14, 1977—MORNING—0900–1200

Induction of new members—Agency briefings on Coastal Zone Management Merchant Marine Issues.

AFTERNOON—1300–1700

Agency briefings on Ocean Engineering Working groups on marine transportation, ocean engineering, marine education, National Weather Service emergency operations, air pollution monitoring, national goals and objectives.

FEBRUARY 15, 1977—MORNING—0900–1330

World Oil and Gas Outlook. NACOA work in progress, plans for the future. Mr. E. H. Clark, NACOA. NACOA Members, Dr. William J. Hargis, Jr.

Adjournment at approximately 1330.

The public is welcome at these sessions and will be admitted to the extent of the seating available. Persons wishing to make formal statements should notify the Chairman in advance of the meeting.

The Chairman retains the perogative to place limits on the duration of oral statements and discussions. Written statements may be submitted before or after each session.

Additional information concerning this meeting may be obtained through the Committee's Executive Director, Dr. Douglas L. Brooks, whose mailing address is: National Advisory Committee on Oceans and Atmosphere, Department of Commerce Building, Room 5225, Washington, D.C. 20230. The telephone number is 377-3343.

DOUGLAS L. BROOKS,
Executive Director.

[FR Doc.77-2642 Filed 1-25-77;8:45 a.m.]

OFFICE OF MANAGEMENT AND BUDGET

CLEARANCE OF REPORTS

List of Requests

The following is a list of requests for clearance of reports intended for use in collecting information from the public received by the Office of Management and Budget on January 18, 1977 (44 U.S.C. 3509). The purpose of publishing this list in the FEDERAL REGISTER is to inform the public.

The list includes the title of each request received; the name of the agency sponsoring the proposed collection of information; the agency form number(s), if applicable; the frequency with which the information is proposed to be collected; the name of the reviewer or reviewing division within OMB, and an indication of who will be the respondents to the proposed collection.

Requests for extension which appear to raise no significant issues are to be approved after brief notice through this release.

Further information about the items on this daily list may be obtained from the Clearance Office, Office of Management and Budget, Washington, D.C. 20503 (202-395-4529), or from the reviewer listed.

NEW FORMS

DEPARTMENT OF DEFENSE

Departmental and Other, Army Advertising Awareness and Attitude Survey, single time, nonprior service males age 17-21, National Security Division, Maria Gonzalez, 395-4734.

Policy Development Research, U.S. Navy Paid Broadcast Media Mix and Media Weight Attitude and Awareness Study, single time, nonprior service males age 17-21, National Security Division, Maria Gonzalez, 395-4734.

DEPARTMENT OF THE INTERIOR

Bureau of Mines, Underground Coal Mining Recovery, 6-PI 12, single time, coal mining companies, C. Louis Kincannon, 395-3211.

DEPARTMENT OF TRANSPORTATION

Departmental and Other, Preliminary Plan for Collecting Data on Transit Patrols Security Perceptions and Needs, single time, potential urban transit patrols, Strasser, A., 395-5867.

REVISIONS

DEPARTMENT OF LABOR

Employment and Training Administration, CETA Forms Preparation Handbook—Titles I, II, III and VI,MA 2-202,203 219,220, MA-5-134-136 145,145A, Other (see SF-83), State and local agencies, Caywood, D. P., Strasser, A., 395-3443.

Labor Management and Service Administration, Surety Company Annual Report, LMSA S-1, annually, surety companies which issue bonds under the LMRDA, Caywood, D. P., 395-3443.

EXTENSIONS

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of the Secretary, Third Wave Survey: Vietnam Resettlement Operation Feedback Survey, OS-13-76, single time, Vietnamese refugees, Sunderhauf, M. B., 395-6140.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Housing Management, Monthly Operating Summary for Insured Subsidized Multifamily Housing Projects, HUD 9808, monthly, owners of projects with insured of HUD-held mortgages, Tracey Cole, 395-5870.

PHILLIP D. LARSEN,
Budget and Management Officer.

[FR Doc.77-2654 Filed 1-25-77;8:45 am]

CLEARANCE OF REPORTS

List of Requests

The following is a list of requests for clearance of reports intended for use in collecting information from the public received by the Office of Management and Budget on January 17, 1977 (44 U.S.C. 3509). The purpose of publishing this list in the FEDERAL REGISTER is to inform the public.

The list includes the title of each request received; the name of the agency sponsoring the proposed collection of information; the agency form number(s), if applicable; the frequency with which the information is proposed to be collected; the name of the reviewer or reviewing division within OMB, and an indication of who will be the respondents to the proposed collection.

Requests for extension which appear to raise no significant issues are to be approved after brief notice through this release.

Further information about the items on this daily list may be obtained from the Clearance Office, Office of Management and Budget, Washington, D.C. 20503 (202-395-4529), or from the reviewer listed.

NEW FORMS

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Pretest: Survey of Consumer Demand for Arts and Cultural Services in the South, singletime, National Family Opinion, Inc. Pre-volunteer Panel, Maria Gonzalez, 395-6132.

DEPARTMENT OF DEFENSE

Department of the Army (excluding Defense Civil Preparedness Agency), Great Lakes Shoreline Property Damage, on occasion, shoreline property owners, Caywood, D. P., 395-3443.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Human Development, Evaluation of the Process of Mainstreaming Handicapped Children Into Head Start, singletime, teachers, administrators, parents, health professionals, Human Resources Division, Reese, B. F., 395-3532.

Social Security Administration, Survey of Physicians' Practice Costs, SSA-3482, annually, physicians in 18 specialties, Richard Eisinger, 395-6140.

Office of Human Development, Evaluation of CDA Competency-Based Training Programs Surveys, other (see SF-83), HSST/CDA project managers, field supervisors, H.S. grantees, Human Resources Division, Reese, B. F., 395-3532.

DEPARTMENT OF TRANSPORTATION

Coast Guard, Reception Facility Survey, single time, companies, Strasser, A. 395-5867.

Federal Railroad Administration, Regulations Governing Proposed Transactions Submitted to the Secretary of Transportation Under Section 5(3)(F) of the Interstate Commerce Act, single time, common carrier by rail, Economics and General Government Division, Lowry, R. L., 395-3451.

REVISIONS

DEPARTMENT OF COMMERCE

Bureau of Census, Flat Glass Report, MQ-32A, quarterly, flat glass plants, Peterson, M. O., 395-5631.

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration, Locomotive Inspection and Repair Report, FRA F 6180, semiannually, railroads, Warren Topelius, 395-5872.

EXTENSIONS

DEPARTMENT OF AGRICULTURE

Forest Service, Application for Permit—Non-Federal Commercial Use of Special Service Roads (Forest Service Lands), 7700-40, on occasion, non-Federal Commercial haulers, Marsha Traynham, 395-4529.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Social Security Administration, Inpatient Admission and Billing, SSA-1453, on occasion, hospitals and skilled nursing facilities, Tracey Cole, 395-5870.

Health Resources Administration, National Survey of Family Growth, Cycle II; Main Field Work, NCHS 0910, single time, subsample of main survey nonrespondents, Richard Eisinger, 395-6140.

PHILLIP D. LARSEN,
Budget and Management Officer.

[FR Doc.77-2455 Filed 1-25-77;8:45 am]

OHIO RIVER BASIN COMMISSION

WABASH RIVER BASIN COMPREHENSIVE COORDINATED JOINT PLAN

Availability of Report

Pursuant to Section 204(3) of the Water Resources Planning Act of 1965 (Pub. L. 89-80), the Ohio River Basin Commission has completed a report summarizing the current Comprehensive Coordinated Joint Plan (CCJP) for the Wabash River Basin portion of the Ohio River Basin. The Report currently is being reviewed by the Governors and the head of each Federal agency, and each

interstate agency, from which a member of the Commission has been appointed.

Views, comments and recommendations on the CCJP are requested by April 14, 1977. Copies are available on request to the Ohio River Basin Commission, 36 E. Fourth Street, Suite 208–220, Cincinnati, Ohio 45202.

FRED E. MORR,
Chairman.

[FR Doc.77-2530 Filed 1-25-77;8:45 am]

SMALL BUSINESS ADMINISTRATION

[License No. 03/03-5126]

PROFESSIONAL CAPITAL CORP.

Issuance of License to Operate as a Small Business Investment Company

On December 1, 1976, a notice was published in the FEDERAL REGISTER (41 FR 52737) stating that Professional Capital Corporation, 1121 Arlington Boulevard, Suite 59, Arlington, Virginia 22209 has filed an application with the Small Business Administration pursuant to 13 CFR 107.102 (1976) for a license to operate as a small business investment company under the provisions of Section 301(d) of the Small Business Investment Act of 1958, as amended.

Interested parties were given until the close of business December 16, 1976, to submit their comments to SBA. No comments were received.

Notice is hereby given that having considered the application and other pertinent information, SBA has issued license No. 03/03-5126 to Professional Capital Corporation on January 6, 1977.

(Catalog of Federal Domestic Assistance Program No. 59.011 Small Business Investment Companies.)

Dated: January 17, 1977.

PETER F. MCNEISH,
Deputy Associate Administrator for Investment.

[FR Doc.77-2521 Filed 1-25-77;8:45 am]

[License No. 05/05-0113]

FOURTH STREET CAPITAL CORP.

Issuance of a Small Business Investment Company License

On December 2, 1976, a notice was published in the FEDERAL REGISTER (41 FR 52929) stating that an application had been filed by Fourth Street Capital Corp., 508 Dixie Terminal Building, Cincinnati, Ohio 45202 with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1976)) for a license as a small business investment company.

Interested parties were given until close of business December 17, 1976, to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to Section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 05/05-0113 on January 12, 1977 to Fourth Street Capital Corp., to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011 Small Business Investment Companies)

Dated: January 18, 1977.

PETER F. MCNEISH,
Deputy Associate Administrator for Investment.

[FR Doc.77-2522 Filed 1-25-77;8:45 am]

DEPARTMENT OF STATE

[Public Notice CM-7/21]

GOVERNMENT ADVISORY COMMITTEE ON INTERNATIONAL BOOK AND LIBRARY PROGRAMS

Meeting

The Government Advisory Committee on International Book and Library Programs will meet on Thursday, February 17, 1977 in open session.

The meeting will be divided into two separate parts: a morning session and an afternoon session.

The morning session will be a joint meeting with the U.S. Advisory Commission on International Educational and Cultural Affairs. It will be held in the Charles Suite of L'Enfant Plaza Hotel, 480 L'Enfant Plaza East, S.W., Washington, D.C. from 9:00 a.m. until 12:00 noon. There will be one item on the agenda: a discussion of U.S. implementation of the provisions of Basket III of the "Final Act" of the Conference on Security and Cooperation in Europe (the Helsinki agreement), with particular emphasis on the desirability of reinstituting a currency convertibility program to encourage the sales abroad of U.S. cultural materials.

The afternoon session will also be held in the Charles Suite from approximately 2:00 p.m. until 4:30 p.m.

The agenda will include:

1. Discussions on U.S. participation in international book fairs and U.S.-U.S.S.R. book and library exchanges.
2. Reports:
   a. On the November 1976 UNESCO General Conference.
   b. On the January 1977 Cairo International Book Fair.

Visitors to either session will be accommodated up to the capacity of the conference room; therefore, anyone wishing to attend either session must advise the Executive Secretary of the Committee by 5:30 p.m., February 15, 1977. Telephone: (202) 632-2841.

Dated: January 13, 1977.

CAROL M. OWENS,
Executive Secretary.

[FR Doc.77-2524 Filed 1-25-77;8:45 am]

[Public Notice CM-7/20]

U.S. ADVISORY COMMISSION ON INTERNATIONAL EDUCATIONAL AND CULTURAL AFFAIRS

Meeting

The United States Advisory Commission on International Educational and Cultural Affairs will meet in open session on Thursday, February 17, 1977.

The meeting will be divided into two separate parts: A morning session and an afternoon session.

The morning session will be a joint meeting with the Government Advisory Committee on International Book and Library Programs. It will be held in the Charles Suite of L'Enfant Plaza Hotel, 480 L'Enfant Plaza East, S.W., Washington, D.C. from 9:00 a.m. until 12:00 noon. There will be one item on the agenda: A discussion of U.S. implementation of the provisions of Basket III of the "Final Act" of the Conference on Security and Cooperation in Europe (the Helsinki agreement), with particular emphasis on the desirability of reinstituting a currency convertibility program to encourage the sales abroad of U.S. cultural materials.

The afternoon session will be held in the Marquette Salon of L'Enfant Plaza Hotel, from approximately 2:00 p.m. until 4:30 p.m. There will be the following subjects on the agenda, in addition to any old or new business which any member may wish to raise.

1. Briefing by State Department representative on exchanges between U.S. and Canada.
2. Reports:
   a. By the Chairman and Mr. Smith on their trip to the Middle East.
   b. By the Chairman on his talks with President Ford, Congressman Slack, and Secretary-designate Vance.
   c. By Staff Director on financial status of Commission.
3. Old Business.
   a. Assignment of an economic professor to Japan under the Fulbright Program.
   b. New concepts for a North-South Center.

Visitors to either session will be accommodated up to the capacity of the conference rooms; therefore, anyone wishing to attend either session must advise the Staff Director of the Commission by 5:30 PM, February 15, 1977. He can be reached by telephone at (202) 632-2764.

Dated: January 13, 1977.

W. E. WELD, Jr.,
Staff Director, Commission Secretariat.

[FR Doc.77-2525 Filed 1-25-77;8:45 am]

DEPARTMENT OF THE TREASURY

Office of the Secretary

INEDIBLE GELATIN AND ANIMAL GLUE FROM THE FEDERAL REPUBLIC OF GERMANY

Antidumping Proceeding

On December 23, 1976, information was received in proper form pursuant to Sections 153.26 and 153.27, Customs Regulations (19 CFR 153.26, 153.27), from counsel acting on behalf of Darling & Company, Chicago, Illinois; Milligan & Higgins Corporation, West Orange, New Jersey; and the Peter Cooper Corporation, Gowanda, New York, indicating a possibility that inedible gelatin and animal glue from the Federal Republic of Germany are being, or are likely to be, sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160 et seq.) (referred to in this notice as "the Act").

There is evidence on record concerning injury to or likelihood of injury to or prevention of establishment of an industry in the United States. This evidence indicates that imports from the Federal Republic of Germany have increased during the past year and that these imports are substantially underselling the domestic product. Available evidence further indicates that domestic prices, production, employment and capacity utilization may have suffered declines during the past year as a result of less than fair value imports from the Federal Republic of Germany.

Having conducted a summary investigation as required by § 153.29 of the Customs Regulations (19 CFR 153.29), and having determined as a result thereof that there are grounds for so doing, the U.S. Customs Service is instituting an inquiry to verify the information submitted and to obtain the facts necessary to enable the Secretary of the Treasury to reach a determination as to the fact or likelihood of sales at less than fair value.

A summary of price information received from all sources is as follows: the information received tends to indicate that the prices of the merchandise sold for exportation to the United States are less than the prices for home consumption.

This notice is published pursuant to Section 153.30 of the Customs Regulations (19 CFR 153.30).

Dated: January 19, 1977.

JOHN H. HARPER,
Acting Assistant Secretary of the Treasury.

[FR Doc.77-2410 Filed 1-25-77;8:45 am]

INEDIBLE GELATIN AND ANIMAL GLUE FROM THE NETHERLANDS

Antidumping Proceeding

On December 23, 1976, information was received in proper form pursuant to Sections 153.26 and 153.27, Customs Regulations (19 CFR 153.26, 153.27), from counsel acting on behalf of Darling & Company, Chicago, Illinois; Milligan & Higgins Corporation, West Orange, New Jersey; and the Peter Cooper Corporation, Gowanda, New York, indicating a possibility that inedible gelatin and animal glue from the Netherlands are being, or are likely to be, sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160 et seq.) (referred to in this notice as "the Act").

There is evidence on record concerning injury to or likelihood of injury to or prevention of establishment of an industry in the United States. This evidence indicates that imports from the Federal Republic of Germany have increased during the past year and that these imports are substantially underselling the domestic product. Available evidence further indicates that domestic prices, production, employment and capacity utilization may have suffered declines during the past year as a result of less than fair value imports from the Federal Republic of Germany.

Having conducted a summary investigation as required by § 153.29 of the Customs Regulations (19 CFR 153.29), and having determined as a result thereof that there are grounds for so doing, the U.S. Customs Service is instituting an inquiry to verify the information submitted and to obtain the facts necessary to enable the Secretary of the Treasury to reach a determination as to the fact or likelihood of sales at less than fair value.

A summary of price information received from all sources is as follows: the information received tends to indicate that the prices of the merchandise sold for exportation to the United States are less than the prices for home consumption.

This notice is published pursuant to Section 153.30 of the Customs Regulations (19 CFR 153.30).

Dated: January 19, 1977.

JOHN H. HARPER,
Acting Assistant Secretary of the Treasury.

[FR Doc.77-2412 Filed 1-25-77;8:45 am]

INEDIBLE GELATIN AND ANIMAL GLUE FROM SWEDEN

Antidumping Proceeding

On December 23, 1976, information was received in proper form pursuant to Sections 153.26 and 153.27, Customs Regulations (19 CFR 153.26, 153.27), from counsel acting on behalf of Darling & Company, Chicago, Illinois; Milligan & Higgins Corporation, West Orange, New Jersey; and the Peter Cooper Corporation, Gowanda, New York, indicating a possibility that inedible gelatin and animal glue from Sweden are being, or are likely to be, sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended (19 USC 160 et seq.) (referred to in this notice as "the Act").

There is evidence on record concerning injury to or likelihood of injury to or prevention of establishment of an industry in the United States. This evidence indicates that imports from Sweden have increased during the past year and that these imports are substantially underselling the domestic product. Available evidence further indicates that domestic prices, production, employment and capacity utilization may have suffered declines during the past year as a result of less than fair imports from Sweden.

Having conducted a summary investigation as required by § 153.29 of the Customs Regulations (19 CFR 153.29), and having determined as a result thereof that there are grounds for so doing, the U.S. Customs Service is instituting an inquiry to verify the information submitted and to obtain the facts necessary to enable the Secretary of the Treasury to reach a determination as to the fact or likelihood of sales at less than fair value.

A summary of price information received from all sources is as follows: the information received tends to indicate that the prices of the merchandise sold for exportation to the United States are less than the prices for home consumption.

This notice is published pursuant to Section 153.30 of the Customs Regulations (19 CFR 153.30).

Dated: January 19, 1977.

JOHN H. HARPER,
Acting Assistant Secretary of the Treasury.

[FR Doc.77-2411 Filed 1-25-77;8:45 am]

INEDIBLE GELATIN AND ANIMAL GLUE FROM YUGOSLAVIA

Antidumping Proceeding

On December 23, 1976, information was received in proper form pursuant to Sections 153.26 and 153.27, Customs Regulations (19 CFR 153.26, 153.27), from counsel acting on behalf of Darling & Company, Chicago, Illinois; Milligan & Higgins Corporation, West Orange, New Jersey; and the Peter Cooper Corporation, Gowanda, New York, indicating a possibility that inedible gelatin and animal glue from Yugoslavia are being, or are likely to be (sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended (19 USC 160 et seq.) (referred to in this notice as "the Act").

There is evidence on record concerning injury to or likelihood of injury to or prevention of establishment of an industry in the United States. This evidence indicates that imports from Yugoslavia have increased during the past year and that these imports are substantially underselling the domestic product. Available evidence further indicates that domestic prices, production, employment and capacity utilization may have suffered declines during the past year as a result of less than fair imports from Yugoslavia.

Having conducted a summary investigation as required by § 153.29 of the Customs Regulations (19 CFR 153.29), and having determined as a result thereof that there are grounds for so doing, the U.S. Customs Service is instituting an inquiry to verify the information submitted and to obtain the facts necessary to enable the Secretary of the Treasury to reach a determination as to the fact or likelihood of sales at less than fair value.

A summary of price information received from all sources is as follows: the information received tends to indicate that the prices of the merchandise sold for exportation to the United States are less than the prices for home consumption.

This notice is published pursuant to Section 153.30 of the Customs Regulations (19 CFR 153.30).

Dated: January 19, 1977.

JOHN H. HARPER,
Acting Assistant Secretary of the Treasury.

[FR Doc.77-2411 Filed 1-25-77;8:45 am]

A summary of price information received from all sources is as follows: The information received tends to indicate that the prices of the merchandise sold for exportation to the United States are less than the constructed value, as reflected by the prices at which such or similar merchandise is sold for consumption in the home market of certain other European countries.

This notice is published pursuant to Section 153.30 of the Customs Regulations (19 CFR 153.30).

Dated: January 19, 1977.

JOHN H. HARPER,
Acting Assistant Secretary of the Treasury.

[FR Doc.77-2409 Filed 1-25-77;8:45 am]

[Public Debt Series No. 1-77]

TREASURY NOTES OF SERIES L–1979

Interest Rates

JANUARY 21, 1977.

The Secretary of the Treasury announced on January 19, 1977, that the interest rate on the notes described in Department Circular—Public Debt Series No. 1–77, dated January 13, 1977, will be 5⅞ percent per annum. Accordingly, the notes are hereby redesignated 5⅞ percent Treasury Notes of Series L–1979. Interest on the notes will be payable at the rate of 5⅞ percent per annum.

DAVID MOSSO,
Fiscal Assistant Secretary.

[FR Doc.77-2548 Filed 1-25-77;8:45 am]

INTERSTATE COMMERCE COMMISSION

[Notice No. 311]

ASSIGNMENT OF HEARINGS

JANUARY 21, 1977.

Cases assigned for hearing, postponement, cancellation or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the Official Docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested.

MC 1 Sub 7, Eschenbach & Rodgers Trucking, Inc. now being assigned March 23, 1977 (3 days) at Philadelphia, Pennsylvania in a hearing room to be later designated.

MC 134958 Sub 9, Hams Express, Inc. now being assigned March 21, 1977 (2 days) at Philadelphia, Pennsylvania in a hearing room to be later designated.

MC–F 13016, Delta California Industrits—Control—I–5 Freightline, Inc. and Delta Lines, Inc.—Merge—I–5 Freightline, Inc., FD 28330, Delta California Industries-Notes and FD 28331, Delta Lines, Inc.—Assumption of Notes now being assigned March 15, 1977 (7 days) at Portland, Oregon and March 24, 1977 (2 days) for continued hearings at Medford, Oregon in hearing rooms to be later designated.

MC–F 12875, Delta Lines, Inc.—Purchase (Portion)—Ringsby Truck Lines, Inc., and Ringsby Pacific Ltd., FD 28245, Ringsby-Pacific Ltd., FD 28238, Ringsby Truck Lines, Inc. and FD 28337, North Pacific Forwarders, Inc. now being assigned March 15, 1977 (7 days) at Portland, Oregon and March 24, 1977 (2 days) for continued hearings at Medford, Oregon in hearing rooms to be later designated.

AB 31 (Sub-No. 3), Grand Trunk Western Railroad Company Abandonment between Imlay City and Caseville in Lapeer, Tuscoal and Huron Counties, Michigan now assigned January 31, 1977, at Cass City, Michigan will be held at the Culture Center, 6429 Main Street instead of Culture Center, 6737 Church Street.

NC 142107 (Sub-No. 1), H & M Trucking Co., now assigned January 25, 1977, at Chicago, Ill., is canceled and application dismissed.

MC 142174, Loiselle Transport Limited, now assigned February 8, 1977, at Helena, Mont., is canceled and application dismissed.

ROBERT L. OSWALD,
Secretary.

[FR Doc.77-2564 Filed 1-25-77;8:45 am]

BALTIMORE AND OHIO RAILROAD CO.

Exemption Under Mandatory Car Service Rules

[Ex Parte No. 241; Twenty-second Revised Exemption No. 90]

It appearing, That the railroads named below own numerous 50-ft. plain boxcars; that under present conditions there are substantial surpluses of these cars on their lines; that return of these cars to the owners would result in their being stored idle; that such cars can be used by other carriers for transporting traffic offered for shipments to points remote from the car owners; and that compliance with Car Service Rules 1 and 2 prevents such use of these cars, resulting in unnecessary loss of utilization of such cars.

It is ordered, That pursuant to the authority vested in me by Car Service Rule 19, 50-ft. plain boxcars described in the Official Railway Equipment Register, I.C.C.-R.E.R. No. 401, issued by W. J. Trezise, or successive issues thereof, as having mechanical designation "XM," and bearing reporting marks assigned to the railroads named below, shall be exempt from the provisions of Car Service Rules 1. 2(a), and 2(b).

The Baltimore and Ohio Railroad Company.
Reporting Marks: BO.
Cadiz Railroad Company.[1]
Reporting Marks: CAD.
The Chesapeake and Ohio Railroad Company.
Reporting Marks: CO–PM.
Elgin, Joliet and Eastern Railway Company.
Reporting Marks: EJE.
Green Mountain Railroad Corporation.
Reporting Marks: GMRC.
Greenville and Northern Railway Company.
Reporting Marks: GRN.
Louisville and Wadley Railway Company.
Reporting Marks: LW.
Louisville, New Albany & Corydon Railroad Company.
Reporting Marks: LNAC.
Missouri-Kansas-Texas Railroad Company.
Reporting Marks: BKTY–MKT.
New Jersey, Indiana & Illinois Railroad Company.
Reporting Marks: NJII.
Norfolk and Western Railway Company.
Reporting Marks: N&W–ACY–NKP–P&WV–WAB.
Ogdensburg Bridge and Port Authority.
Reporting Marks: NSL.
Pearl River Valley Railroad Company.
Reporting Marks: PRV.
The Pittsburgh and Lake Erie Railroad Company.
Reporting Marks: P&LE.
Raritan River Rail Road Company.
Reporting Marks: RR.
Sacramento Northern Railway.
Reporting Marks: SN
St. Johnsbury & Lamoille County Railroad.
Reporting Marks: SJL.
Sierra Railroad Company.
Reporting Marks: SERA.
Tidewater Southern Railway Company.
Reporting Marks: TS.
Toledo, Peoria & Western Railroad Company.
Reporting Marks: TPW.
Vermont Railway, Inc.
Reporting Marks: VTR.
WCTU Railway Company.
Reporting Marks: WCTR.
Western Maryland Railway Company.
Reporting Marks: WM.
Yreka Western Railroad Company.
Reporting Marks: YW.

[1] Addition.

Effective January 15, 1977, and continuing in effect until further order of this Commission.

Issued at Washington, D.C., January 10, 1977.

INTERSTATE COMMERCE COMMISSION,
JOEL E. BURNS,
Agent.

[FR Doc.77-2561 Filed 1-25-77;8:45 am]

At a Session of the Interstate Commerce Commission, Division 1, held at its office in Washington, D.C., on January 21, 1977.

[Ex Parte No. MC–64; General Temporary Order No. 10]

EMERGENCY MOTOR CARRIER SERVICES UNDER SEVERE WINTER CONDITIONS

Order

The Interstate Commerce Commission having under consideration the urgent need for motor carrier services due to severe winter weather conditions, the national transportation policy, the public interest, and, among others, sections 202(a), 204(a)(6), and 210(a) of the Interstate Commerce Act, and

It appearing, That due to freezing temperatures, certain carriers are unable to transport passengers and property tendered to them; and that an emergency exists in all sections of the United States requiring immediate action on the part of the Commission to make provision for adequate transportation of essential commodities, including but not limited to those listed below, in the interest of the public and the national defense:

Food or kindred products, canned, preserved or otherwise prepared, including fresh, frozen or chilled meats and poultry; fresh eggs and milk; fresh or frozen fruits and vegetables; fresh or frozen fish and shell fish; feeds for animals and fowls.
Hospital and sick room supplies and equipment, including diagnostic devices and essential support utilities.
Pharmaceuticals, biologicals, surgical textiles and instruments.
Medical laboratory supplies and equipment.
Professional dental supplies and equipment.
Fuels required for the production of electric power and those used directly for heating residences and institutions essential for the public welfare.
Electrical power and communication systems repair materials and equipment required for the continued supply of essential electric power and communications.
Essential supplies and materials directly related to exploration, development and construction of energy-producing systems.
Material moving on Government or commercial bills of lading specifically certified as essential by Department of Defense, Energy Research and Development Administration or General Services Administration contract administrators.
All material moving on Government bills of lading issued by transportation officers of the military services.
U.S. mail in accordance with emergency orders issued by the Postmaster General.
Water and sewage processing and handling supplies and equipment, including chlorine, alum, lime, sulphate of iron, soda ash, and similar chemicals and equipment essential to the continuity of operation of water and sewage installations.
Items necessary to the continued smooth functioning of the financial system, i.e., movement of checks, currency and coins.
Federal Government personnel on agency-designated essential travel orders and non-Federal Government personnel on self-designated essential travel in support of items contained in this priority list.

It further appearing, That there exists an immediate and urgent need for additional motor carrier service to supplement temporarily the transportation facilities of the Nation for the movement of military and other freight, and passengers;

And it further appearing, That the present transportation emergency and immediate need for maximum utilization of motor carrier facilities, equipment, and service have made it necessary for the Commission to provide and authorize a more flexible method whereby motor carriers, and other persons, may obtain temporary authorizations to render the required motor service necessary in the public interest and to the national defense.

It is ordered, That pursuant to section 210a(a) of the Interstate Commerce Act (49 U.S.C. 310a(a)), all persons who shall apply to any regional operations director, assistant regional operations director, district supervisor, or their designees, of the Commission's Bureau of Operations are hereby granted temporary authority to transport passengers or property by motor vehicle for a period of not more than 30 days to the extent and scope that such regional operations director, assistant regional operations director, district supervisor, or their designees, shall certify that due to the existing transportation emergency, there is an immediate and urgent need for the service applied for, and there is no available carrier service capable of meeting such need;

It is further ordered, That the grant of such temporary authority be, and it is hereby, conditioned upon satisfying the said regional operations director, assistant regional operations director, district supervisor, or their designees, of full compliance by the grantee with all applicable statutory and Commission requirements concerning tariff publications, evidence of security for the protection of the public, and designation of agents for service of process, and further conditioned upon such tariff publications quoting rates, fares, and charges no lower than those of existing rail, water, or motor carriers in the territory in which the operations are to be authorized;

It is further ordered, That service performed under temporary authority granted pursuant to this order shall in no way constitute evidence or a showing warranting future issuance of a certificate of public convenience and necessity or permit, as provided in Section 207(a) of the Act (49 U.S.C. 307(a)) and section 209(b) of the Act (49 U.S.C. 309(b)).

It is further ordered, That temporary authority granted pursuant to this order shall expire as of the first midnight after the issuance of an order by this Commission revoking General Temporary Order No. 10 except as to passengers and property, the transportation of which was begun prior to that time;

It is further ordered, That this order shall become effective on the 22d of January, 1977, at 12:01-a.m.

And it is further ordered, That notice of this order shall be given to motor carriers, other parties of interest, and to the general public by depositing a copy thereof in the Office of the Secretary of the Commission, Washington, D.C., and by filing a copy thereof with the Director, Office of the Federal Register.

By the Commission, Division 1, Commissioners Murphy, Gresham and MacFarland.

ROBERT L. OSWALD,
Secretary.

[FR Doc.77-2565 Filed 1-25-77;8:45 am]

FOURTH SECTION APPLICATION FOR RELIEF

JANUARY 21, 1977.

An application, as summarized below, has been filed requesting relief from the requirements of section 4 of the Interstate Commerce Act to permit common carriers named or described in the application to maintain higher rates and charges at intermediate points than those sought to be established at more distant points.

Protests to the granting of an application must be prepared in accordance with Rule 40 of the General Rules of Practice (49 CFR 1100.40) and filed within 15 days from the date of publication of this notice in the FEDERAL REGISTER.

FSA No. 43308—*Fibreboard, Paperboard and Pulpboard Between North Coast Points and Group 19 (Los Angeles, California)*. Filed by Pacific Southcoast Freight Bureau, Agent, (No. 270), for and on behalf of the Union Pacific Railroad. Rates on fibreboard, paperboard, and pulpboard, in carloads, as described in the application, between North Coast points, and Group 19 (Los Angeles, California).

Grounds for relief—Market competition, rate relationship.

Tariff—Supplement 36 to Pacific Southcoast Freight Bureau, Agent, tariff 315–A, I.C.C. No. 1974. Rates are published to become effective on February 20, 1977.

By the Commission

ROBERT L. OSWALD,
Secretary.

[FR Doc.77-2563 Filed 1-25-77;8:45 am]

[I.C.C. Order No. 17; Service Order No. 1252]

CHESAPEAKE AND OHIO RAILWAY CO.

In the opinion of Joel E. Burns, Agent, The Chesapeake and Ohio Railway Company is unable to transport traffic requiring movement through Bison Yard, located at Buffalo, New York, because of congestion caused by an accumulation of snow.

It is ordered, That: (a) *Rerouting traffic.* The Chesapeake and Ohio Railway Company, being unable to transport traffic requiring movement through Bison Yard, located at Buffalo, New York, because of congestion caused by an accumulation of snow, is hereby authorized to divert or reroute such traffic over any available route to expedite the movement.

(b) *Concurrence of receiving road to be obtained.* The Chesapeake and Ohio Railway Company, in rerouting cars in accordance with this order shall receive the concurrence of other railroads to which such traffic is to be diverted or rerouted, before the rerouting or diversion is ordered.

(c) *Notification to shippers.* The Chesapeake and Ohio Railway Company, when rerouting cars in accordance with this order, shall notify each shipper at the time each shipment is rerouted or diverted and shall furnish to such shipper the new routing provided under this order.

(d) Inasmuch as the diversion or rerouting of traffic is deemed to be due to carrier disability, the rates applicable to traffic diverted or rerouted by said Agent shall be the rates which were applicable at the time of shipment on the shipments as originally routed.

(e) In executing the directions of the Commission and of such Agent provided for in this order, the common carriers involved shall proceed even though no contracts, agreements, or arrangements now exist between them with reference

to the divisions of the rates of transportation applicable to said traffic; divisions shall be, during the time this order remains in force, those voluntarily agreed upon by and between said carriers; or upon failure of the carriers to so agree, said divisions shall be those hereafter fixed by the Commission in accordance with pertinent authority conferred upon it by the Interstate Commerce Act.

(f) *Effective date.* This order shall become effective at 8 a.m., January 14, 1977.

(g) *Expiration date.* This order shall expire at 11:59 p.m., January 18, 1977, unless otherwise modified, changed or suspended.

It is further ordered, That this order shall be served upon the Association of American Railroads, Car Service Division, as Agent of all railroads, subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association; and that it be filed with the Director, Office of the FEDERAL REGISTER.

Issued at Washington, D.C., January 14, 1977.

INTERSTATE COMMERCE COMMISSION,
JOEL E. BURNS,
Agent.

[FR Doc.77-2562 Filed 1-25-77;8:45 am]

federal register

WEDNESDAY, JANUARY 26, 1977

PART II

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Social Security Administration

Social and Rehabilitation Service

LIFE SAFETY REQUIREMENTS

Proposed Regulations

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Social Security Administration

[20 CFR Part 405]

[Reg. No. 5]

FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

Medicare Standards for Hospitals and Skilled Nursing Facilities, Life Safety Code

Notice is hereby given, pursuant to the Administrative Procedure Act (5 U.S.C. 553), that the amendments to the regulations set forth in tentative form below, are proposed by the Commissioner of Social Security with the approval of the Secretary of Health, Education, and Welfare. The proposal, which does not have major program significance, would change the current requirement that skilled nursing facilities and hospitals participating in the Medicare and Medicaid programs must meet the fire safety provisions of the 1967 Life Safety Code of hte National Fire Protection Association. They would instead have to meet the fire safety provisions of the newer 1973 version of the Code. The 1973 version reflects the current scientific and technical approach to fire safety for institutional occupancies which places a stronger reliance on better systems for detecting and extinguishing fire and less emphasis on building construction requirements. The proposal, implementing Public Law 94-182 of December 31, 1975 as to skilled nursing facilities, and amending the conditions of participation for hospitals to conform to those for skilled nursing facilities, would also allow those providers which, at the specified time, met the 1967 Code requirements, or met State codes approved by the Secretary, to continue to participate in these programs by continuing to meet those pre-amendment reqiurements. The proposed amendments are of a technincal nature and, with respect to skilled nursing facilities, update the regulations to conform to the statutory enactment (Pub. L 94-182). With respect to hospitals they conform the requirements for hospitals to those mandated for skilled nursing facilities in the interests of uniform administration. It is believed publication of this notice requesting comments will provide ample and adequate opportunity for participation of all interested individuals and organizations. This is in keeping with the spirit and intent of the Secretary's regulation development policies announced on July 25, 1976. Interested parties are invited to submit comments within 45 days of this publication and any comments received on this proposal will be given consideration before the proposal is published as final regulations.

Specifically, the proposed amendments are intended to update the respective conditions of participation dealing with life safety from fire applicable to skilled nursing facilities and hospitals participating in the Medicare/Medicaid programs. With respect to skilled nursing facilities, the proposed changes implement section 106 of Pub. L. 94-182 (enacted December 31, 1975) which amends section 1861(j)(13) of the Social Security Act to require skilled nursing facilities to comply with the 1973 Edition of the Life Safety Code of the National Fire Protection Association, rather than the 1967 Edition of the Code currently specified in regulations. With respect to hospitals, current regulations require hospitals to meet the 1967 Edition of the Life Safety Code; and the proposed changes would require them to meet the 1973 Edition, in order to conform the life safety requirements for hospitals to those for skilled nursing facilities. The purpose of the proposal is to maintain consistency in the application of life safety requirements to all inpatient health care facilities in the Medicare program. A notice of proposed rule making and proposed amendments to 45 CFR Part 249 that would incorporate similar life safety requirements for intermediate care facilities participating in the Medicaid program are published by the Social and Rehabilitation Service elsewhere in this issue of the FEDERAL REGISTER.

Skilled nursing facilities that met the requirements of the 1967 Life Safety Code on May 31, 1976 (the day preceding the statutory effective date for imposition of the new standard), by compliance (subject to the provisions of § 405.1907 of Subpart S of Regulations No. 5, if applicable) or by waiver of specific requirements of the Life Safety Code will be considered to be in compliance with the provisions of section 1861(j)(13) of the Social Security Act for so long as the facilities continue to meet the requirements of the 1967 Life Safety Code. Also, skilled nursing facilities that met, on May 31, 1976, applicable requirements of a State fire and safety code imposed by State law and approved by the Secretary for use instead of the Life Safety Code prescribed herein, in accordance with the law and regulations, will be considered in compliance with the provisions of section 1861(j)(13) of the Act, for so long as such requirements of such State code are met. With respect to hospitals, the proposal contains similar provisions, but specifies the day before the effective date of final regulations as the date on which the hospital must be in compliance with the 1967 Code, or a State code approved by the Secretary, in order to be considered in compliance with the applicable requirement relating to life safety from fire.

These exceptions (whereby hospitals and skilled nursing facilities in compliance with the former life safety requirement are exempted from meeting the new requirements) are applicable to institutions that submitted acceptable plans of correction (with respect to the life safety requirement) prior to June 1, 1976, in the case of skilled nursing facilities, and prior to the effective date of this regulation in the case of hospitals, and are in the process of correcting, or have corrected, the deficiencies noted, so long as compliance with applicable requirements is achieved and maintained.

With respect to blind, ambulatory, or physically handicapped patients in skilled nursing facilities, the proposed amendments clarify the provisions of § 405.1134(a)(3) to conform to the 1967 and 1973 editions of the Life Safety Code. Specifically, the amendments add the words "fully sprinklered" as a requirement for buildings of 1-hour protected noncombustible construction where these patients are housed above the street floor.

If there are any questions about these amendments, you may contact Mrs. Janet Harryman, Branch Chief, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone (301) 594-9712. Mrs. Harryman will respond to questions but will not accept comments on these amendments.

Prior to the final adoption of the proposed amendments to the regulations, consideration will be given to any data, views, or arguments pertaining thereto which are submitted in writing to the Commissioner of Social Security, Department of Health, Education, and Welfare, P.O. Box 1585, Baltimore, Maryland 21203, on or before March 14, 1977.

Copies of all comments received in response to this notice will be available for public inspection during regular business hours at the Washington Inquiries Section, Office of Information, Social Security Administration, Department of Health, Education, and Welfare, North Building, Room 4146, Independence Avenue, SW., Washington, D.C. 20201.

(Sec. 106 of Pub. L. 94-182, 89 Stat. 1052; sections 1102, 1861(e)(9) and (j)(13), and 1871 of the Social Security Act, 49 Stat. 647, as amended, 79 Stat. 314 and 318, as amended, 79 Stat. 331 (42 U.S.C. 1302, 1395x(e)(9) and (j)(13), and 1395hh))

(Catalog of Federal Domestic Assistance Program No. 13.800, Health Insurance for the Aged, Hospital Insurance.)

It is hereby certified that this proposal has been screened pursuant to Executive Order 11821, and does not require an Inflation Impact Evaluation.

Dated: September 15, 1976.

J. B. CARDWELL,
Commissioner of Social Security.

Approved: January 11, 1977.

MARJORIE LYNCH,
Acting Secretary of Health, Education, and Welfare.

Part 405 of Chapter III of Title 20 of the Code of Federal Regulations is amended as follows:

1. Section 405.1022(b) is revised to read:

§ 405.1022 Condition of participation—physical environment.

* * * * *

(b) *Standard: Life safety from fire.*

(1) The hospital meets such provisions of the Life Safety Code of the National Fire Protection Association, 1973 Edition (23rd Edition, 1973) as are applicable to hospitals, except that:

(i) The Secretary may waive, after consideration of State survey agency findings and recommendations, if any, for such periods as deemed appropriate, specific provisions of such Code which, if rigidly applied, would result in unreasonable hardship upon a particular hospital, but only if such waiver will not adversely affect the health and safety of the patients;

(ii) The provisions of the Life Safety Code applicable to hospitals shall not apply in any State if the Secretary makes a finding that in such State there is in effect a fire and safety code, imposed by State law, which adequately protects patients in hospitals;

(iii) Any hospital (or part of a hospital) which on (*the day before the effective date of final regulations*) complied (subject to the provisions of § 405.1907) with the applicable provisions of the Life Safety Code, 21st Edition, 1967, with or without waivers of specific provisions, or complied with the applicable provisions of a fire and safety code imposed by State law where the Secretary had made a finding that such fire and safety code adequately protected patients in hospitals, shall, so long as such compliance is achieved and maintained, be considered in compliance with this paragraph (b)(1).

(2) With respect to those hospitals subject to the provisions of paragraph (b)(1)(iii) of this section:

(i) The hospital is equipped with a grounding system, in conjunction with an isolation transformer in each anesthetizing location, adequate to minimize the difference in potential which can occur between any conductive surfaces that the patient or a person touching the patient can contact. This difference in potential, under conditions of the first fault between either isolated conductor and ground, shall be less than 5 millivolts. Anesthetizing areas where flammable anesthetics are used, shall have conductive flooring which complies with the provisions of section 252 of the National Fire Protection Association Standard No. 56A, Standard for the Use of Inhalation Anesthetics (1971); and

(ii) To the extent that inhalation therapy is provided and nonflammable medical gas systems such as oxygen and nitrous oxide are, or have been, installed, the hospital complies with the applicable provisions of National Fire Protection Association Standard No. 56B, Standard for the Use of Inhalation Therapy (1968), and National Fire Protection Association Standard No. 56F, Nonflammable Medical Gas Systems (1970).

(3) The hospital maintains written evidence of regular inspection and approval by State or local fire control agencies.

(4) The hospital has procedures for the proper routine storage and prompt disposal of trash.

(5) Written fire control plans contain provisions for prompt reporting of all fires; extinguishing fires; protection of patients, personnel, and guests; evacuation; and cooperation with firefighting authorities.

* * * * * *

2. Section 404.1134(a) is revised to read:

§ 405.1134 Condition of participation-physical environment.

* * * * * *

(a) *Standard: Life safety from fire.* (1) The skilled nursing facility meets such provisions of the Life Safety Code, 1973 Edition (23rd Edition, 1973) of the National Fire Protection Association as are applicable to nursing homes; except that:

(i) In consideration of a recommendation by the State survey agency, the Secretary may waive, for such periods as deemed appropriate, specific provisions of such Code which, if rigidly applied, would result in unreasonable hardship upon a skilled nursing facility, but only if such waiver will not adversely affect the health and safety of the patients;

(ii) The provisions of such Code shall not apply in any State if the Secretary finds, in accordance with applicable provisions of, section 1861(j)(13) of the Social Security Act, that in such State there is in effect a fire and safety code, imposed by State law, which adequately protects patients in skilled nursing facilities;

(iii) Any skilled nursing facility (or part of a skilled nursing facility) which on May 31 1976, complied (subject to the provisions of § 405.1907) with the applicable provisions of the Life Safety Code, 21st Edition, 1967, with or without waivers of specific provisions, or complied with the applicable provisions of a fire and safety code imposed by State law where the Secretary had made a finding that such fire and safety code adequately protected patients in skilled nursing facilities, shall, so long as such compliance is achieved and maintained, be considered in compliance with this paragraph (a)(1).

(2) With respect to those skilled nursing facilities subject to the provisions of paragraph (a)(1)(iii) of this section, to the extent that inhalation therapy is provided and nonflammable medical gas systems such as oxygen and nitrous oxide are, or have been, installed, the skilled nursing facility complies with the applicable provisions of National Fire Protection Association Standard No. 56B, Standard for the Use of Inhalation Therapy (1968), and National Fire Protection Association Standard No. 56F, Nonflammable Medical Gas Systems (1970).

(3) Where a skilled nursing facility is housed in an existing building of two or more stories which is not of at least 2-hour fire-resistive construction and waiver of this construction requirement is granted where appropriate, blind, nonambulatory, or physically handicapped patients are not housed above the street level floor unless the building is one of the following types:

(i) Fully sprinklered 1-hour protected noncombustible construction (as defined in National Fire Protection Association Standard No. 220);

(ii) Fully sprinklered 1-hour protected ordinary construction; or

(iii) Fully sprinklered 1-hour protected wood frame construction.

* * * * * *

[FR Doc.77-2153 Filed 1-25-77;8:45 am]

Social and Rehabilitation Service

[45 CFR Part 249]

MEDICAL ASSISTANCE PROGRAM

Life Safety Code Requirement for Intermediate Care Facilities

Notice is hereby given that the regulations set forth in tentative form below are proposed by the Administrator, Social and Rehabilitation Service, with the approval of the Secretary of Health, Education, and Welfare.

The purpose of these amendments is to update fire safety regulations with respect to intermediate care facilities, conforming them to the provision adopted for application to skilled nursing facilities under the Medicare and Medicaid programs published elsewhere in this issue. The changes would require, effective 30 days following the date of final publication, the use of the 1973 Life Safety Code of the National Fire Protection Association in the certification of intermediate care facilities.

However, the following exceptions would be made:

1. Intermediate care facilities that meet, with or without waivers, the provisions of the 1967 Life Safety Code on the day preceding the effective date of these regulations would not be required to meet any additional requirements of the 1973 Code.

2. A skilled nursing facility already certified as meeting the provision of the 1967 Code, which on or after the effective date of these regulations applies for certification also as an intermediate care facility, can be certified on the basis of the 1967 Code.

3. Intermediate care facilities with approved plans of correction under the 1967 Code prior to the effective date of these regulations will be exempt from application of the 1973 edition of the Code as long as compliance with the 1967 Code is achieved and maintained.

The following exceptions are in existing regulations and would be unchanged by the proposed regulations:

1. Specified facilities of 15 beds or less may meet the provisions of the Lodging or Rooming Houses section rather than the institutional provisions of the Code.

2. Specific provisions of the Code which would result in unreasonable hardship upon a facility may be temporarily waived.

3. Certified facilities that meet, on the day preceding the effective date of these regulations, applicable provisions of a State fire and safety code imposed by State law and approved by the Secretary, in accordance with law and regulation, will be considered in compliance with the

Medicaid fire safety requirements under the intermediate care facility program.

The change to the use of the 1973 Code from the 1967 Code with respect to skilled nursing facilities was mandated by section 106 of Public Law 94-182, December 31, 1975, and is being adopted by regulation for intermediate care facilities to maintain consistency in the application of fire safety requirements for long-term care facilities under the Medicaid program.

The basis for this proposal is the Secretary's belief that it is appropriate to apply the updated version of the Code to all long-term care facilities entering the Medicaid program on or after the effective date of this regulation.

Since a considerable number of institutions participate as both skilled nursing and intermediate care facilities under the Medicaid program, it would be unnecessarily complex for governing Federal regulations to provide different editions of the Life Safety Code for application of the same requirements under both programs. Also, confusion would be created for the State survey teams which inspect and certify both types of facilities against a standard which has always been uniform. No disadvantage for intermediate care facilities will result from the updated requirement since those facilities participating in the program prior to the effective date of the regulation may continue to be certified under the provisions of the 1967 edition of the Code.

Prior to the adoption of the proposed regulations, consideration will be given to written comments, suggestions, or objections thereto which are received by the Administrator, Social and Rehabilitation Service, Department of Health, Education, and Welfare, P.O. Box 2366, Washington, D.C. 20013, on or before March 14, 1977. In order to assure prompt handling of comments, please refer to MSA-184-P. Agencies and organizations are requested to submit their comments in duplicate.

Comments will be available for public inspection, beginning approximately two weeks after publication, in Room 5225 of the Department's offices at 330 C Street, S.W., Washington, D.C., on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (202-245-0950). Answers to specific questions may be obtained by calling Robert Silva (202-245-0425).

(Sec. 1102, 49 Stat. 647 (42 U.S.C. 1302).)

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program.)

The Social and Rehabilitation Service has determined that this document does not require preparation of an Inflationary Impact Statement under Executive Order 11821 and OMB Circular A-107.

Dated: January 10, 1977.

ROBERT FULTON,
Administrator, Social and Rehabilitation Service.

Approved: January 11, 1977.

MARJORIE LYNCH,
Acting Secretary.

Part 249, Chapter II, Title 45 of the Code of Federal Regulations is amended as set forth below:

1. Sections 249.12 (a) (5) and (a) (6) (ix) are revised to read as follows:

§ 249.12 Standards for intermediate care facilities.

(a) Standards for an intermediate care facility (as defined in § 249.10(b) (15) of this part) which are specified by the Secretary pursuant to section 1905 (c) and (d) of the Social Security Act and are applicable to all intermediate care facilities are as follows. The facility:

* * * * *

(5) (i) Meets such provisions of the Life Safety Code of the National Fire Protection Association, 1973 edition, as are applicable to institutional occupancies: except that:

(A) For facilities of 15 beds or less, the State survey agency may apply the Lodging or Rooming Houses section of the residential occupancy requirements of the Code for institutions for the mentally retarded or persons with related conditions and intermediate care facilities primarily engaged in the treatment of alcoholism and drug abuse, all of whose residents are currently certified by a physician or in the case of an institution for the mentally retarded or persons with related conditions by a physician or psychologist as defined in paragraph (c) (3) (i) of this section, as:

(*1*) Ambulatory;

(*2*) Engaged in active programs for rehabilitation which are designed to and can reasonably be expected to lead to independent living, or in the case of an institution for the mentally retarded or persons with related conditions, receiving active treatment; and

(*3*) Capable of following directions and taking appropriate action for self-preservation under emergency conditions;

(B) In accordance with criteria issued by the Secretary, the State survey agency may waive the application to any such facility of specific provisions of such Code, for such periods as it deems appropriate, which provisions if rigidly applied would result in unreasonable hardship upon a facility, but only if such waiver will not adversely affect the health and safety of the residents;

(C) The Life Safety Code shall not apply in any State if the Secretary makes a finding that in such State there is in effect a fire and safety code, imposed by State law, which adequately protects residents in intermediate care facilities;

(D) Any certified intermediate care facility which complied with the provisions of the 1967 Code on (the day preceding the effective date of these revisions) shall be considered to be in compliance with this standard for so long as such compliance is maintained. Compliance is maintained by meeting the applicable provision of the 1967 Code, with or without waivers of specific provisions, by implementing an approved plan of correction, or by meeting the applicable provision of a fire and safety code imposed by State law as provided for in paragraph (a) (5) (i) (C) of this section; and

(E) A skilled nursing facility certified in accordance with 20 CFR 405.1134(a) as meeting the provisions of the 1967 Code, which applies for certification as an intermediate care facility on or after (the effective date of these revisions) may be certified as an intermediate care facility on the basis of meeting the provisions of the 1967 Code.

(ii) In an existing facility of two or more stories which is not of at least 2-hour fire resistive construction, blind, nonambulatory or physically handicapped residents are not housed above the street level floor unless the facility is of fully sprinklered 1-hour protected non-combustible construction (as defined in National Fire Protection Association Standard #220), fully sprinklered 1-hour protected ordinary construction or fully sprinklered 1-hour protected wood frame construction.

* * * * *

2. Section 249.33(a) (2) (v) is amended to read as follows:

§ 249.33 Standards for payment for skilled nursing facility and intermediate care facility services.

(a) *State plan requirements.* A State plan for medical assistance under title XIX of the Social Security Act must:

* * * * *

(2) Provide that the single State agency will, prior to execution of an agreement with any facility (including hospitals and skilled nursing facilities) for provision of intermediate care facility services and making payments under the plan, obtain certification from the agency designated pursuant to § 250.100 (c) of this chapter that the facility meets the definition set forth under § 249.10(b) (15); except that in the case of an intermediate care facility determined to have deficiencies under the requirements for environment and sanitation (§ 249.12(a) (6)) or of the Life Safety Code (§ 249.12(a) (5)) it may be recognized for certification as an intermediate care facility in accordance with subparagraph (4) (iii) of this paragraph for a period not exceeding 2 years following the date of such determination provided that:

* * * * *

(v) At the completion of the period allowed for corrections, the intermediate care facility is in full compliance with the Life Safety Code requirements set forth under § 249.12(a) (5), and the requirements for environment and sanitation set forth under § 249.12(a) (6), except for any provisions waived in accordance with § 249.12.

[FR Doc.77-2164 Filed 1-25-77;8:45 am]

federal register

WEDNESDAY, JANUARY 26, 1977

PART III

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Human Development

HEAD START PROGRAM

Identification and Reporting of Child Abuse and Neglect; Policy Instruction

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Human Development

HEAD START PROGRAM

Identification and Reporting of Child Abuse and Neglect; Policy Instruction

The Proposed Policy Instruction on Identification and Reporting of Child Abuse and Neglect was published in the FEDERAL REGISTER on January 20, 1976, prescribing instructions on the identification and the reporting of child abuse and neglect for Head Start and delegate agencies.

Interested persons and organizations were invited to submit comments on or before March 26, 1976. Eight-two (82) comments were received from thirty-seven (37) individuals and organizations in regard to the Proposed Policy Instruction. Of thirty-seven (37) individuals and organizations, thirty-five (35) concurred with the proposed policy, accompanied by some recommendations and comments. The other two (2) opposed the proposed policy on the grounds that child abuse was rare and that reporting of child abuse or neglect cases could jeopardize the trust relationship between Head Start staff and parents. Comments and recommendations were generally thoughtful and helpful and they covered primarily the following:

A. The definition of child abuse and neglect should be separated and distinguished considering the definition of child abuse as a "willful" act, while neglect is often an outcome of environmental or educational circumstances.

B. "Suspected" child abuse should be recognized as justifiable for reporting.

C. Head Start has already been playing a significant role in preventing and alleviating the problems of child abuse and neglect, and the proposed policy does not fully recognize this fact.

D. There is a concern over personal protection from physical or mental harassment that could occur as a result of reporting.

E. The admission of already "eligible" children on the grounds of abuse or neglect does not serve the purpose that the admission of "ineligible" children on these grounds would.

F. Parents and communities need to be made aware of the seriousness of child abuse and neglect, educated on laws governing it, as well as informed about agencies that are available to them to help prevent child abuse and the services Head Start offers in this area.

G. There is a desire and need by the staff and parents for training and education about child abuse and neglect and the laws concerning this issue.

H. When the Head Start program is located within the jurisdiction of an American Indian tribe, the reporting in accordance with tribal code should be accepted on the same basis as reporting in accordance with State law.

It was suggested that the definition of child abuse and neglect be separated and distinguished considering the definition of child abuse as a "willful" act, while neglect is often an outcome of environmental or educational circumstances. The reason for distinguishing the definition of the two seems to be based on an assumption that abuse is a willful act, whereas neglect is not, and that parents or guardians who abuse children are more responsible for their acts than those who neglect children. Yet, neglecting a child can be just as harmful in many instances as abusing a child, in our opinion. This policy requires the Head Start agencies to comply with the State law in identifying and reporting child abuse and neglect. Since many State laws do not distinguish the definitions of the two, it would be confusing to some Head Start agencies. Office of Child Development (OCD) did not revise the policy based on this comment.

It has been a concern to OCD that the reporting of child abuse and neglect may strain the relationship between Head Start and parents. However, this distressing social problem of child abuse and neglect must be dealt with, and it is our hope that it can be done without damaging the trust relationship with parents. We recognize the potential public relations problems inherent in implementing this policy, but must keep in mind the threat which abuse and neglect imposes on children who become victims. If Head Start did not report a child abuse or neglect case to preserve a trust relationship with parents, the credibility and viability of Head Start may be jeopardized with other parents, staff members, and the public. This kind of problem can be minimized or prevented if Head Start agencies provide an orientation session for parents where the nature of the problem, available treatment and resources, and the position of Head Start, can be discussed, accompanied by the social service coordinator's working closely with the parents throughout the year. OCD made no revision based on this comment.

It was pointed out that the admission of already "eligible" children on the grounds of abuse or neglect does not serve the purpose that the admission of "ineligible" children on these grounds would. OCD appreciated this comment. However, if this policy did change the eligibility by allowing Head Start to accept otherwise ineligible children, Head Start would become a child abuse and neglect treatment agency. This raises a series of issues in terms of the local Head Start's resources and working relationship with the State-designated agency as well as legal questions under the Headstart-Follow Through Act. OCD made no revision based on this comment.

While we concur with the desirability of requiring reporting of "suspected" child abuse and neglect, the reporting laws of several States do not mandate or authorize the making of reports on the basis of evidence of abuse and neglect which arouses only a suspicion. In such States the reporting statute would not grant immunity from civil and criminal liability to a reporter who based his report on suspicion. This policy, therefore, even though it requires reports by Head Start agencies and personnel in all cases reportable under State or local laws, whether mandatory or voluntary, does not impose a universal duty to report suspected child abuse and neglect. Thus, the phrase, "child abuse and neglect," as used herein, refers to both the definition of abuse and neglect under applicable State law, and the evidentiary standard required for reporters under applicable State law. OCD made no change based on this comment.

The following changes have been made on the Proposed Policy Instruction based on these comments:

A. "Applicable" is added immediately before "State", and "local" is added immediately after "State", where appropriate, to allow Indian tribes who do not follow the State laws to report in accordance with the tribal code.

B. The last paragraph of Section N-30-356-1-30, Policy—A. *General provisions*, was revised to recognize the role that Head Start has been playing in preventing child abuse and neglect.

C. *Training*, (2) under B. *Special provisions*, was strengthened to make communities aware of the seriousness of child abuse and neglect and to accommodate the needs and wants for training, by the Head Start staff members and parents, in child abuse and neglect.

This policy instruction is published pursuant to the requirements of section 517(d), Title V, Economic Opportunity Act of 1964, as amended by section 8(a) of the Headstart, Economic Opportunity, and Community Partnership Act of 1974.

The National Center on Child Abuse and Neglect has been established in the Office and Child Development to implement the Child Abuse Prevention and Treatment Act ("the Act"), Pub. L. 93-247. Although Head Start is not specially affected by the new child abuse and neglect Act, the establishment of the National Center has increased our awareness of the role that Head Start can end, in fact, has been playing in the effort to prevent and identify child abuse and neglect and find help for the child and his/her family. Thus, the establishment of the Center and increased Federal effort in child abuse and neglect prevention, identification, treatment, and reporting have prompted a careful reexamination of what Head Start has been doing about this most distressing problem and development of specific guidance to assist Head Start programs in dealing with it.

States set different requirements for pre-school and day care staff in reporting suspected child abuse and neglect cases. Twenty-nine (29) States mandate pre-school and day care staff to report suspected child abuse or neglect cases and twenty-five (25) States permit day care staff to report suspected child abuse or neglect cases. Therefore, Head Start agencies need policy guidance in dealing with suspected child abuse and neglect cases. This policy provides that guidance.

Effective date: This policy instruction shall be effective on January 26, 1977.

(Catalogue of Federal Domestic Assistance Programs No. 13,600 Child Development—Head Start.)

Dated: January 18, 1977.

JOHN H. MEIER,
Director,
Office of Child Development.

Approved: January 18, 1977.

STANLEY B. THOMAS, JR.,
Assistant Secretary for
Human Development.

The Chapter N-30-356-1 in the Head Start Policy Manual reads as follows:

N-30-356-1-00 Purpose.
10 Scope.
20 Applicable law and policy.
30 Policy.

AUTHORITY: 80 Stat. 2304 (42 U.S.C. 2928h).

N-30-356-1-00 *Purpose.* This chapter sets forth the policy governing the prevention, identification, treatment, and reporting of child abuse and neglect in Head Start.

N-30-356-1-10 *Scope.* This policy applies to all Head Start and delegate agencies that operate or propose to operate a Full-Year or Summer Head Start program, or experimental or demonstration programs funded by Head Start. This issuance constitutes Head Start policy and noncompliance with this policy will result in appropriate action by the responsible HEW official.

N-30-356-1-20 *Applicable law and policy.* Section 511 of the Headstart-Follow Through Act, P.L. 93-644, requires Head Start agencies to provide comprehensive health, nutritional educational, social and other services to the children to attain their full potential. The prevention, identification, treatment, and reporting of child abuse and neglect is a part of the social services in Head Start. In order for a State to be eligible for grants under the Child Abuse Prevention and Treatment Act (hereinafter called "the Act"), P.L. 93-247, the State must have a child abuse and neglect reporting law which defines "child abuse and neglect" substantially as that term is defined in the regulations implementing the Act, 45 CFR 1340.1-2(b). That definition is as follows:

A. "(b) 'Child abuse and neglect' means harm or threatened harm to a child's health or welfare by a person responsible for the child's health or welfare.

"1. 'Harm or threatened harm to a child's health or welfare' can occur through: Nonaccidental physical or mental injury; sexual abuse, as defined by State law; or neglectful treatment or maltreatment, including the failure to provide adequate food, clothing, or shelter. Provided, however, that a parent or guardian legitimately practicing his religious beliefs who thereby does not provide specified medical treatment for a child, for that reason alone shall not be considered a negligent parent or guardian; however, such an exception shall not preclude a court from ordering that medical services be provided to the child, where his health requires it.

"2. 'Child' means a person under the age of eighteen.

"3. 'A person responsible for a child's health or welfare' includes the child's parent, guardian, or other person responsible for the child's health or welfare, whether in the same home as the child, a relative's home, a foster care home, or a residential institution."

In addition, among other things, the State would have to provide for the reporting of known or suspected instances of child abuse and neglect.

It is to be anticipated that States will attempt to comply with these requirements. However, a Head Start program, in dealing with and reporting child abuse and neglect, will be subject to and will act in accordance with the law of the State in which it operates whether or not that law meets the requirements of the Act. Thus, it is the intention of this policy in the interest of the protection of children to insure compliance with and, in some respects, to supplement State or local law, not to supersede it. Thus, the phrase "child abuse and neglect," as used herein, refers to both the definition of abuse and neglect under applicable State or local law, and the evidentiary standard required for reporters under applicable State or local law.

N-30-356-1-30 *Policy*—A. *General provisions.* 1. Head start agencies and delegate agencies must report child abuse and neglect in accordance with the provisions of applicable State or local law.

a. In those States and localities with laws which require such reporting by pre-school and day care staff, Head Start agencies and delegate agencies must report to the State or local agencies designated by the State under applicable State or local Child Abuse and Neglect reporting law.

b. In those States and localities in which such reporting by pre-school and day care staff is "permissive" under State or local law, Head Start agencies and delegate agencies must report child abuse and neglect if applicable State or local law provides immunity from civil and criminal liability for goodfaith voluntary reporting.

2. Head Start agencies and delegate agencies will preserve the confidentiality of all records pertaining to child abuse or neglect in accordance with applicable State or local law.

3. Consistent with this policy, Head Start programs will not undertake, on their own, to treat cases of child abuse and neglect. Head Start programs will, on the other hand, cooperate fully with child protective service agencies in their communities and make every effort to retain in their programs children allegedly abused or neglected—recognizing that the child's participation in Head Start may be essential in assisting families with abuse or neglect problems.

4. With the approval of the policy council, Head Start programs may wish to make a special effort to include otherwise eligible children suffering from abuse or neglect, as referred by the child protective services agency.

However, it must be emphasized that Head Start is not nor is it to become a primary instrument for the treatment of child abuse and neglect. Nevertheless, Head Start has an important preventative role to play in respect to child abuse and neglect.

B. *Special provisions*—1. *Staff responsibility.* Directors of Head Start agencies and delegate agencies that have not already done so shall immediately designate a staff member who will have responsibility for:

a. Establishing and maintaining cooperative relationships with the agencies providing child protective services in the community, and with any other agency to which child abuse and neglect must be reported under State law, including regular formal and informal communication with staff at all levels of the agencies;

b. Informing parents and staff of what State and local laws require in cases of child abuse and neglect;

c. Knowing what community medical and social services are available for families with an abuse or neglect problem;

d. Reporting instances of child abuse and neglect among Head Start children reportable under State law on behalf of the Head Start program;

e. Discussing the report with the family if it appears desirable or necessary to do so;

f. Informing other staff regarding the process for identifying and reporting child abuse and neglect. (In a number of States it is a statutory requirement for professional child-care staff to report abuse and neglect. Each program should establish a procedure for identification and reporting.)

2. *Training.* Head Start agencies and delegate agencies shall provide orientation and training for staff on the identification and reporting of child abuse and neglect. They should provide an orientation for parents on the need to prevent abuse and neglect and provide protection for abused and neglected children. Such orientation ought to foster a helpful rather than a punitive attitude toward abusing or neglecting parents and other caretakers.

[FR Doc.77-2284 Filed 1-25-77;8:45 am]

federal register

WEDNESDAY, JANUARY 26, 1977

PART IV



DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Human Development

■

CHILD ABUSE AND NEGLECT, RESEARCH AND DEMONSTRATION GRANTS PROGRAMS

General Information

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Human Development

CHILD ABUSE AND NEGLECT RESEARCH AND DEMONSTRATION GRANTS PROGRAMS

General Information

This announcement contains general information regarding the Office of Child Development's Child Welfare and Child Abuse and Neglect Research and Demonstration Grants Programs, including legislation, regulations, policy and procedures governing the two programs.

A summary of program priorities and estimated funding levels for each fiscal year will be disseminated in separate announcements.

INTRODUCTION

The Office of Child Development (OCD) was established on July 1, 1969 within the Office of the Secretary of the Department of Health, Education, and Welfare to serve as the coordinating agency for Federal programs for children and youth.

In June 1973, the Office became part of the newly-created Office of Human Development, headed by an Assistant Secretary for Human Development.

OCD's functions are carried out through the Office of the Director and its two major bureaus: the Children's Bureau, authorized by the Children's Bureau Act of 1912 to investigate and report "upon all matters pertaining to the welfare of children and child life among all classes of our people," and the Head Start Bureau, which administers Project Head Start.

To accomplish its goals, the Office of Child Development has set for itself three major missions:

(1) To act as an advocate on behalf of children of all ages, and especially those children who are handicapped physically or emotionally, economically deprived, victims of the disruption of the family unit, or of child abuse and neglect, by bringing the needs of these children to the attention of other Government agencies and the public; by promoting beneficial changes in child and family development; and by planning new programs for children and their families;

(2) To coordinate the activities of Federal programs for children and their families as well as all Federal research in early child development;

(3) To ensure high quality services for children through effective administration of such programs as Head Start and Parent-Child Centers and through leadership in the development of standards, policies, and models in child welfare and other child-oriented programs.

TWO RESEARCH AND DEMONSTRATION GRANTS PROGRAMS

One of the significant ways in which the Office of Child Development carries out its objectives is through the support of high quality research and demonstration projects in the areas of child and family development, child welfare, services to children and families, and child abuse and neglect.

OCD is authorized by law to administer two grants programs, the Child Welfare and the Child Abuse and Neglect Research and Demonstration Grants Programs. These are administered jointly by the Research and Evaluation Division, located in the Office of the Director, and the Children's Bureau.

CHILD WELFARE RESEARCH AND DEMONSTRATION GRANTS PROGRAM

This program is authorized by 42 USC 626(a)(1)(A) and (B), (Section 426, Part B, Title IV of the Social Security Act). This legislation provided the Department of Health, Education, and Welfare with responsibility for conducting Child Welfare research, training, and demonstration projects.

Child Welfare services are defined in section 425 as "public social services which supplement, or substitute for, parental care and supervision for the purpose of:

(1) Preventing or remedying, or assisting in the solution of problems which may result in, the neglect, abuse, exploitation, or delinquency of children,

(2) Protecting and caring for homeless, dependent, or neglected children,

(3) Protecting and promoting the welfare of children of working mothers, and

(4) Otherwise protecting and promoting the welfare of children, including the strengthening of their own homes where possible, or, where needed, the provision of adequate care of children away from their homes in foster family homes or day care or other child care facilities."

The Child Welfare Research and Demonstration Grants Program is stated in section 426 as follows: "(a) There are hereby authorized to be appropriated for each fiscal year such sums as the Congress may determine—

(1) For grants by the Secretary—

(A) To public or other nonprofit institutions of higher learning, and to public or other nonprofit agencies and organizations engaged in research or child welfare activities, for special research or demonstration projects in the field of child welfare which are of regional or national significance and for special projects for the demonstration of new methods or facilities which show promise of substantial contribution to the advancement of child welfare;

(B) To State or local public agencies responsible for administering, or supervising the administration of, the plan under this part, for projects for the demonstration of the utilization of research (including findings resulting therefrom) in the field of child welfare in order to encourage experimental and special types of welfare services."

Within this general legislative authority, the Office of Child Development supports major research and demonstration efforts in selected areas of high impact and national concern where the utilization of findings is expected to make a substantial contribution to the development and welfare of children and their families.

Recent areas to receive support include demonstrations of the provision of comprehensive emergency services to maintain children in their homes in times of crisis, development of comprehensive day care models with an emphasis on child development, education in parenting which combines the study of child development and child care for teenagers with meaningful cross-age experiences, demonstrations to increase the number of adoptive and foster homes, demonstrations of methods to bring about changes in the institutional care of children, research on the impact of television as a socializing agent on the infant, preschool child and family, research on the effects of early intervention programs, research on child/family/institution interaction, and on the child welfare service delivery system.

Through the utilization and dissemination of findings of successful projects, a nationwide program of Education for Parenthood is ongoing in close to 3,000 of the nation's high schools and national voluntary organizations, and Comprehensive Emergency Services projects which have proved successful in maintaining children in their own homes in times of crisis through provision of services such as emergency homemakers are being replicated. Another successful demonstration project currently being replicated is one dealing with children in long-term foster care. Many of these children were returned to their biological homes, while in other cases, the parental relationship was terminated in order to provide nurturing adoptive homes for these children. Other significant ongoing programs are providing information which will lead to the development of a functional national policy on child and family development.

CHILD ABUSE AND NEGLECT RESEARCH AND DEMONSTRATION GRANTS PROGRAM

This program is authorized by 42 U.S. Code 5101, the Child Abuse Prevention and Treatment Act of 1974. The Act created the National Center on Child Abuse and Neglect within the Children's Bureau of the Office of Child Development.

The Act defines "child abuse and neglect" as the physical or mental injury, sexual abuse, negligent treatment, or maltreatment of a child under the age of eighteen by a person who is responsible for the child's welfare under circumstances which indicate that the child's welfare under circumstances which indicate that the child's health or welfare is harmed or threatened thereby, as determined in accordance with regulations prescribed by the Secretary." The authority of the Secretary has been delegated to OCD, and the program is in the Children's Bureau's National Center on Child Abuse and Neglect. Under paragraphs 2(b)(5) and 2(c), the Children's Bureau is authorized to "conduct research into the causes of child abuse and neglect, and into the prevention, identification, and treatment thereof."

Under section 4(a) of the Act, the Children's Bureau "is authorized to make grants to, and enter into contracts with, public agencies or nonprofit private organizations (or combinations thereof) for demonstration programs and projects designed to prevent, identify, and treat child abuse and neglect." Demonstrations constitute a major portion of activities conducted under the Act. Suggested areas of activity are: training of professionals and paraprofessionals in various disciplines involved in the prevention, identification, and treatment of child abuse and neglect; the establishment and maintenance of centers which provide a broad range of services related to child abuse and neglect; "and other innovative programs and projects that show promise of successfully preventing or treating cases of child abuse and neglect as the Secretary may approve."

Among the child abuse and neglect activities the Children's Bureau has been supporting under the Act are: demonstrations of the delivery of services to abused children and their families in general and specifically to military, rural, and Native American populations; demonstration resource projects, providing technical assistance and training to service providers through different models; demonstrations by State agencies and professional organizations of the use of the Children's Bureau-developed multidisciplinary staff training curriculum; and research into the causes of child abuse and neglect and into the relationship between drugs or alcohol abuse and child abuse and neglect.

ELIGIBILITY

Grants under both the Child Welfare and Child Abuse and Neglect Research and Demonstration Grants Program may be awarded to public or private nonprofit organizations. Grants are not made to individuals even though they may be affiliated with a public or private nonprofit institution. In certain cases, a specific program announcement may further define or limit eligibility. For example, a recent announcement of intent to fund projects dealing with foster care limited eligible applicants to the single State agency or organizational unit responsible for social services to children and families.

Support is available under both of these programs for both research and demonstration projects. Support is not available for the expansion of ongoing programs or services, such as the provision of day care services, or for projects that demonstrate a service that has already been established in other communities and is generally accepted as part of a comprehensive child welfare, child development, or child abuse and neglect program. Under the Child Welfare Research and Demonstration Grants Program, support is not available for staff training.

Research, both basic and applied, and demonstration are defined as follows:

Basic research refers to research directed primarily toward the increase of knowledge, the improvement of understanding, the provision of background information, and the discovery of basic relationships. It is not necessarily applicable to solutions of immediate problems, and may include theory building.

Applied research refers to research in which results are intended to be more directly applicable to immediate problems than basic research. It may be derived from basic research or theory or may be empirical. It may be aimed at showing how existing knowledge can be used in new and useful ways.

Demonstration and/or replication refer to activities designed specifically to show the method of operation or applicability of a research or program model.

HOW TO APPLY

Names of individuals and organizations will be added to mailing lists to either or both grants programs on request. Inquiries should be addressed to Research and Evaluation Division, Office of Child Development, P.O. Box 1182, Washington, D.C. 20013. Potential applicants should specify whether the request is related to the Child Welfare or Child Abuse and Neglect Research and Demonstration Grants Program.

Priority statements (program announcements) are disseminated by the Office of Child Development to inform the research community of the types of projects the Agency is most interested in supporting during that fiscal year. When priorities for the current fiscal year become available, they are sent along with an application kit, deadline information, and other pertinent materials, to the organizations and individuals on OCD's mailing list. This information is also published in the FEDERAL REGISTER.

OCD also supports a very small number of projects known as "unsolicited" projects, which while not specifically related to the issues and projects identified in the priority statements, nevertheless show promise of making a substantial contribution to our knowledge regarding the development and welfare of children, as consistent with the stated OCD goals.

All applications must be submitted on the forms supplied and in the manner prescribed by the Office of Child Development. Failure to do so might remove a proposal from consideration.

REVIEW AND AWARD PROCESS

Completed and eligible grant applications go through a series of steps which comprise the review process.

ADVISORY COMMITTEE

Most proposals are reviewed by members of the Child and Family Development Research Review Committee, a 20-member non-Federal Advisory Committee composed of experts in the fields of child development and child welfare. (Proposals submitted by an institution represented by a member of the Committee and therefore subject to a possible conflict of interest if reviewed by the Committee, will usually be reviewed by a non-Federal Ad Hoc Committee representing the same level of professional expertise and utilizing the same evaluation criteria.)

EVALUATION CRITERIA

All proposals reviewed by the Advisory Committee or an Ad Hoc Committee are evaluated at a minimum according to the following elements:

1. Appropriateness of cost to the government in view of anticipated results

2. Qualifications of project personnel and adequacy of organizational facilites and resources

3. Capability of proposed procedures (scientific or otherwise), if well executed, of attaining project objectives

4. Responsiveness to priority statement, i.e., capability of achieving specific program objectives defined in program announcement.

Additional criteria will be used by the Advisory Committee as is appropriate to a particular priority statement. The specific criteria will be published as part of the priority statement.

"Unsolicited" proposals, those which are not submitted in response to OCD priority statements, must meet all the standards of quality of the solicited proposals. They are evaluated on Items 1-3 (above) as well as the following criteria:

The research addresses problems of OCD target populations or identifies a new target group of concern to OCD, e.g., learning-disabled, Oriental-American.

The research is within the long-range goals of OCD

The research is a new approach to a problem or brings together a new configuration for addressing a problem.

FUNDING DECISIONS

The Child and Family Development Research Review Committee and Ad Hoc Committees function in an advisory capacity. They make their recommendations in the form of a numerical score and narrative critique for each proposal to the Director of the Office of Child Development, who makes the final funding decisions. These decisions are based upon the recommendations of the Committee, program priorities, availability of funds, and other relevant factors, such as equitable geographic distribution of funds, as is mandated in the Child Abuse and Neglect Research and Demonstration Grants Program.

NOTIFICATION OF DECISION

Notification of final decisions is made in writing to the person designated on the application as the official authorized to obligate the applicant agency. Applicants of approved projects will receive a "Notice of Grant Awarded," (NGA), the official grant award document that notifies the grantee and others of the award of the grant, contains or references all terms and conditions of the grant, and provides the documentary basis for recording the obligation of Federal funds in the Department's accounting system.

Unsuccessful applicants will receive a letter from the Office of Child Development which will include an explanation of the reasons for disapproval or indicate that an explanation may be obtained upon request.

POST AWARD MANAGEMENT OF GRANTS

I. Acceptance by an agency of a grant indicates that the agency agrees to be bound by DHEW, OHD and OCD legislation, regulations, and policies. There are several significant policy documents which the grantee agency should be aware of.

1. Part 205 of Title 42 of the Code of Federal Regulations, (42 CFR Part 205) entitled "Research Projects Relating to Maternal and Child Health Services and Crippled Children's Services, and Research or Demonstration Projects relating to Child Welfare Services," implements the Child Welfare Research and Demonstration Grants Program conducted by the Office of Child Development under section 426 of the Social Security Act.

2. Part 1340 of Title 45 of the Code of Federal Regulations (45 CFR Part 1340), entitled "Child Abuse and Neglect Prevention and Treatment Program," implements the research and demonstration programs conducted under the Child Abuse Prevention and Treatment Act of 1974.

3. Part 74 of Title 45 of the Code of Federal Regulations (45 CFR Part 74), entitled "Administration of Grants," implements for all of DHEW a single consistent body of administrative rules and contains uniform cost principles for all of the classes of grantees eligible to receive funds under the Child Welfare and Child Abuse and Neglect Research and Demonstration Grants Program. The policies of 45 CFR Part 74 supersedes all policy in other regulations cited above where the policies in 45 CFR 74 are not consistent with these other regulations.

4. *Department of Health, Education, and Welfare Staff Manual—Grants Administration (DHEW/GAM) contains* policies binding on grantees. It includes further guidance on the administrative regulations contained in 45 CFR Part 74. The *GAM* also contains additional DHEW policy which speaks to areas of administrative activity not described by regulation.

5. *Office of Human Development—Grants Administration Manual (OHD/GAM)* reflects the *DHEW/GAM* and discusses areas where governing policy for OHD programs varies from standard DHEW policy. These variances are generally due to specific legislative requirements.

6. *Special Conditions.* The Office of Child Development may apply special conditions to a grant prior to the acceptance of that grant. Where such conditions are imposed, they must be met by the grantee.

AVAILABILITY OF RULES AND MANUALS

The regulations implementing the two program authorities, 42 CFR Part 205 and 45 CFR Part 1340 are available on request from the Office of Child Development. Requests should be sent to the Research and Evaluation Division, Office of Child Development, P.O. Box 1182, Washington, D.C. 20013.

The *OHD/GAM* may be obtained from the Division of Grants and Contract Administration, Office of Administration and Management, Office of Human Development, HEW South Portal Building, Room 345F, Washington, D.C. 20013.

Part 74 of Title 45 of the Code of Federal Regulations and the *DHEW/GAM* are available for a reasonable charge from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

DURATION OF SUPPORT

The average duration of support for a project is three years. Generally, when more than one year is required to realize the objectives of a project, the grant is approved at the outset for continued support and the total project period indicated on the "Notice of Grant Awarded." However, applications for continuation of support must be submitted and approved annually. Approval beyond the first year is dependent upon satisfactory progress of the project as indicated in a progress report and by the availability of funds as determined by the Congressional appropriation for the current fiscal year.

PROJECT OFFICER

Each approved project is assigned to a staff member of the Division of Research and Evaluation or Children's Bureau who serves as project officer. The project officer facilitates the operation of the project in meeting its objectives, reviews applications for continuation, and makes site visits and consults with project staff as is appropriate. The project officer should be consulted when questions arise.

(Catalog of Federal Domestic Assistance Numbers 13.608—Child Welfare Research and Demonstration, 13.628—Child Abuse Research and Demonstration.)

Dated: January 19, 1977.

STANLEY B. THOMAS, JR.,
Assistant Secretary for Human Development.

[FR Doc.77-2283 Filed 1-25-77;8:45 am]

federal register

WEDNESDAY, JANUARY 26, 1977

PART V

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

INTERNATIONAL AIR TRANSPORTATION POLICY STATEMENT IMPLEMENTATION PLAN

Requests for Public Comment

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Notice No. 77-1]

INTERNATIONAL AIR TRANSPORTATION POLICY STATEMENT IMPLEMENTATION PLAN

Request for Public Comment

The purpose of this notice is to set forth the Department of Transportation plan for implementing the International Air Transportation Policy Statement and to request public comment. On September 8, 1976, President Ford issued a new Statement of International Air Transportation Policy of the United States. This statement explicitly superseded the 1970 international aviation policy statement. The world of international aviation has changed substantially since 1970, and both the role and the philosophy of the United States have been challenged. The new policy reflects the changes that have taken place and the present U.S. positions.

The primary goal in formulating new policy has been the interest of the U.S. consumer in having available both regularly scheduled passenger and cargo services and low-cost charter service options. Another principal concern is to assure that well-managed, efficient U.S. airlines can earn a reasonable return on investment.

The policies contained in the Statement envision a revitalized U.S. international aviation system. Policies are truly meaningful, however, only when they are implemented. Accordingly, the group of government agencies and departments which developed the Policy Statement have listed the key actions, as shown below, that need to be applied in such areas as routes and competition, fares and rates, roles of scheduled and charter operations, excess capacity, unfair competitive practices, and safety and environmental considerations. These actions have been organized under five broad functions (actions before the Civil Aeronautics Board, bilateral negotiations, legislative and regulatory changes, research studies and projects, and coordination with air carriers and other organizations). The lead agency (which is underlined) and other agencies involved in the implementation are listed, as well as dates for action. It is anticipated that the lead agencies ultimately will develop a more definitive treatment of the specific issues and actions involved, as well as more precise timing for action. Actions having a high priority are designated with an asterisk.

There may be other issues which the Executive Branch of the Government should be addressing, or some of the tentative positions may not be the appropriate ones. Thus the need for comment and reactions. Air carriers, air travelers, and other interested parties are invited to comment on the implementation of the Policy Statement. Policy is an evolving process, and the evolution of international aviation policy will depend heavily upon the views, support, and efforts of U.S. airlines, air travelers, and the public. Written comments and requests for copies of the Statement of International Air Transportation Policy should be addressed to:

John B. Flynn, Director, Air Transportation Policy Staff, Department of Transportation, 400 Seventh Street, N.W., Room 10304, Washington, D.C. 20590 (202-426-4428)

Comments received before March 1, 1977, will be considered. Comments received after March 1, 1977, will be considered to the extent practicable.

Issued in Washington, D.C. on January 18, 1977.

WILLIAM T. COLEMAN, JR.,
Secretary of Transportation.

Implementation of the international air transportation policy statement

Actions	Action agencies	Action dates
A. Participation in CAB proceedings:		
1. Routes:		
*Establish and apply commercial (economic) viability standard in international route cases.	DOT	Early 1977.
*Participate in major international route cases, review CAB decisions and assess commercial viability of awards and their impact on the U.S. international route network.	DOT	1977.
Stress importance of new gateways and area service concepts in cases coming before the CAB.	DOT	1977.
Push for more expeditious handling of international route cases, particularly those routes negotiated in the 1974 United States-Canada bilateral agreement.	DOT.DOS	Early 1977.
Support U.S. carriers' applications for domestic fill-up rights..	DOT:DOS	Do.
2. Rates:		
(a) Support:		
*Establishment of cost-related scheduled and charter fares.	DOT:DOC/CIEP	1977.
Establishment of high-weight breaks.	DOT:DOC/CIEP	1977.
Full consideration of filings involving part-charter passenger and cargo tariffs.	DOT:DOC	1977.
Concept of off-peak pricing.	DOT:DOC	1977.
Full consideration of filings involving intermodality and all-cargo scheduling and routing flexibility.	DOT:DOC	Early 1977.
(b) Review:		
Major tariff filings and call for suspensions of tariffs which appear noncompensatory or attempt to increase the share of cargo moving on specific commodity rates.	DOT:DOC/CIEP	Do.
Administrative Law Judge's pending decision in Transatlantic, Transpacific and Latin American Mail Rates (docket 26487).	DOT	Do.
CAB order 76-10-11 denying temporary international mail rates.	DOT	Do.
3. Other		
(a) Support:		
Full consideration of blocked-space and equipment interchange agreements.	DOT	1977.
Relaxation of U.S. scheduled carrier off-route charter restrictions in docket 29808 rulemaking proceeding.	DOT	Early 1977.
Carrier establishment of independent commission structure through presentation of exhibits in the Travel Agency Commission investigation (docket 26672).	DOT	Do.
(b) Review:		
Capacity limitation agreements filed with CAB to determine that they meet the standards called for in the statement.	DOT	1977.
Carrier commission filings to determine full compliance with filing requirements (docket 28499).	DOT	Early 1977.
B. Bilateral negotiations:		
*Strive to prevent erosion of Bermuda principles in negotiations. Implementation includes conduct of economic analyses and exchange of economic papers.	DOS:DOT/DOC/CIEP	1977.
Stress the need to consider fair and equal opportunities to compete for benefits and not just the estimated balance of benefits.	DOS:DOT	1977.
Seek to obtain more liberal charter rights for U.S. carriers consistent with the need to assure that essential levels of scheduled service are maintained, and ensure equitable treatment of U.S. charters.	DOS:DOT	1977.
Avoid government negotiation of fares, but stress the importance of cost-related fares.	DOS:DOT	1977.
C. Changes in legislation and regulations.		
1. Legislation:		
Considered support of legislation similar to H.R. 7017 which would give public at least a 30-d notice of tariff changes.	DOT	Early 1977.
Testify regarding the merits of an anticipated travel agent self-regulation bill which is expected to be introduced during this session of Congress.	DOT	Do.
2. Regulations:		
Propose to CAB elimination of affinity charters and TGC's when it appears that ABC's and OTC's are viable concepts.	DOT	Late 1977.
File a petition for rulemaking with CAB to remove the prohibition against split charters.	DOT	Early 1977.
D. Studies and research projects:		
1. Routes:		
*Develop prototype of an economic and efficient U.S. international route network for guidance in bilateral negotiations.	DOT	Mid-1977.
*Conduct economic analysis to determine U.S. position in bilateral negotiations.	DOT; DOS/CIEP/DOC.	1977.
Determine whether charter services generally should be part of bilateral agreements and ways of preventing foreign charter restrictions.	DOT; DOS/CIEP	1977.
2. Costs: *Develop appropriate cost criteria for scheduled and charter fares and introduce in CAB proceedings.	DOT:DOC	Early 1977.
3. Capacity:		
*Develop criteria for determining what is excess capacity under Bermuda principles and how extensively the public interest requires 5th freedom operations.	DOT:DOS/CIEP	Do.
*Formalize position regarding extensive foreign carrier 6th-freedom capacity, including possible renegotiation of agreements, and implementation of pt. 213 (of CAB economic regulations) actions.	DOS:DOT/CIEP	Do.

Actions	Action agencies	Action dates
4. Discrimination:		
*Complete a review of the facts in serious discrimination cases to determine what action the Secretary of Transportation should take.	DOT:DOC	Do.
Study the economic impact of discriminatory practices by foreign carriers.	DOT:DOS	1977.
5. Other:		
Study the matter of IATA surcharges to adequately reflect currency exchange rates.	DOT.CIEP	Early 1977.
Develop a report on conclusions and recommendations resulting from an evaluation of a survey of U.S. diplomatic posts concerning airport security in host countries.	DOT.DOS	1977.
Monitor international airport/airway charges and determine whether to take steps to impose compensatory charges on foreign carriers failing to pay landing fees in home countries.	DOT.DOS	1977.
E. Coordination with carriers, U.S. Government agencies and international organizations:		
1. Carriers:		
*Encourage United States and foreign carriers to reduce any wasteful capacity on a voluntary basis.	DOT.DOS.CIEP.	1977.
Determine with U.S. carriers their need for subsidized traffic.	DOT.DOS.DOC/CIEP.	1977.
Encourage carrier filings of cost-related fares.	DOT	1977.
Meet with U.S. carriers to discuss ways to facilitate the carriage of mail on charters when scheduled capacity is unavailable.	DOT	Early 1977.
2. U.S. Government agencies:		
Meet with Postal Service on feasibility of utilizing U.S. charter service for carriage of mail when U.S. scheduled flights are not available.	DOT	1977.
Consider greater commitment of the military, to the extent practicable, to civilian aircraft cargo shipments.	DOD.DOT	Early 1977.
3. International organizations:		
Assist the development of ICAO standards and recommended practices as well as guidance materials pertaining to handling and transport of hazardous materials.	DOT	1977.
Participate fully with the United Kingdom and France in supporting the proposed sonic monitoring program of ICAO.	DOT	1977.
Seek agreement through ICAO of international aircraft noise standards which are compatible with U.S. requirements.	DOT	1977.
Participate in the comprehensive review of ICAO Aviation Security Manual contemplated in 1977.	DOT	1977.

LEGEND.—CIEP, Council on International Economic Policy; DOC, Department of Commerce; DOD, Department of Defense; DOS, Department of State; DOT, Department of Transportation; ICAO, International Civil Aviation Organization.

[FR Doc.77-2324 Filed 1-25-77;8:45 am]

federal register

WEDNESDAY, JANUARY 26, 1977

PART VI

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

REGULATIONS GOVERNING PROPOSED TRANSACTIONS SUBMITTED TO SECRETARY OF TRANSPORTATION UNDER SECTION 5(3) OF THE INTERSTATE COMMERCE ACT

Establishment of Part

Title 49—Transportation

CHAPTER II—FEDERAL RAILROAD ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[FRA Economics Doc. 5, Notice 2]

PART 268—REGULATIONS GOVERNING PROPOSED TRANSACTIONS SUBMITTED TO SECRETARY OF TRANSPORTATION UNDER SECTION 5(3) OF THE INTERSTATE COMMERCE ACT

Establishment of Part

The purpose of these regulations is to set forth the procedures to be followed by railroads in preparing and submitting merger and consolidation proposals to the Administrator of the Federal Railroad Administration (the "Administrator") under section 5(3)(f) of the Interstate Commerce Act (the "Act"), 49 U.S.C. 5(3)(f).

Title IV of the Railroad Revitalization and Regulatory Reform Act of 1976, as amended (the "RRRRA"), significantly reformed the merger and consolidation procedural provisions of the Interstate Commerce Act (the "Act"). The existing procedural provisions contained in section 5(2) of the Act were streamlined by section 402 of the RRRRA, and a new expedited consolidation procedure was established in section 403, which added a new paragraph (3) to section 5 of the Act. The Secretary of Transportation (the "Secretary") has delegated his powers and duties under section 403 of the RRRRA to the Administrator.

Common carriers by railroad desiring to use the expedited procedure may propose a transaction to the Commission if, not less than six months prior to such submission, they submit the proposed transaction to the Administrator for evalution. New sections 5(3) (a) and (f) of the Act authorize common carriers by railroad in the period prior to December 31, 1981, to submit to the Administrator for his evaluation, proposals for a railroad merger, consolidation, unification or coordination project, joint use of tracks or other facilities, or acquisition or sale of assets (hereinafter collectively referred to as "consolidation").

Section 5(3) of the Act also permits the Administrator to propose a transaction to the Commission, with the consent of the railroads which are parties to the transaction. These regulations only apply to those proposals being made by railroads to the Commission. The Administrator anticipates promulgating a policy statement concerning proposals which he may initiate under section 5(3), when the Secretary issues his report setting forth the results of his comprehensive study of the rail system, prepared pursuant to section 901 of the RRRRA.

Proposed regulations governing the procedures to be used by railroads in submitting consolidation proposals to the Administrator under section 5(3)(f) of the Act, were published in the FEDERAL REGISTER on October 13, 1976 (41 FR 44954). Interested parties were invited to submit on or before November 12, 1976, their written data, views, or comments on the proposed regulations. The period for comments was extended to November 26, 1976, at the request of the American Association of Railroads (the "AAR") (41 FR 50303).

Several comments were filed in response to the proposed regulations, and each was given due consideration by the Federal Railroad Administration (the "FRA"). As a result of these comments, numerous significant changes have been made in both the format and substantive requirements of the regulations. These regulations are intended to be responsive to the comments received. They are designed to encourage utilization by the railroads of the section 5(3) consolidation procedure, while at the same time permitting the FRA to carry out its statutory responsibilities. Because these regulations represent a considerable restructuring and streamlining of the proposed regulations, the FRA will consider petitions for reconsideration from interested parties who believe there are significant problems with these final regulations. Such petitions should be filed in accordance with the new provisions of 49 CFR 211.29 (41 FR 54181 (1976)).

PUBLIC COMMENTS AND REVISIONS TO THE REGULATIONS

The public comments received in response to the publication of the proposed regulations related to the following general areas: (a) The role of the Administrator in the expedited merger procedure, and the amount and extent of data required to be submitted to the Administrator; (b) Informal public hearings; and (c) Availability to States of the data submitted to the Administrator. Each of these areas is discussed below.

A. THE ROLE OF THE ADMINISTRATOR AND THE DATA REQUIRED TO BE SUBMITTED

1. *Information required to be submitted.* The AAR contended that the Administrator's study and evaluation of a proposed transaction comes at a fairly early stage in the total review process, that his role is confined at this stage to a study and evaluation of the nine enumerated areas set forth in section 5(3)(f)(iv) and that he should, therefore, restrict his requests for data to the nine statutory concerns.

Section 5(3)(f)(iv) provides that each proposed transaction shall be studied with respect to:

(a) The needs of rail transportation in the geographical area affected;

(b) The effect of the proposed transaction on the retention and promotion of competition in the provision of rail and other transportation services in the geographical area affected;

(c) The environmental impact of such proposed transaction and of alternative choices of action;

(d) The effect of such proposed transaction on employment;

(e) The cost of rehabilitation and modernization of track, equipment, and other facilities, with a comparison of the potential savings or losses from other possible choices of action;

(f) The rationalization of the rail system;

(g) The impact of such proposed transaction on shippers, consumers, and railroad employees;

(h) The effect of such proposed transaction on communities in the geographical areas affected and on the geographical areas contiguous to such areas; and

(i) Whether such proposed transaction will improve rail service.

The AAR suggested that the Administrator should require only an abbreviated draft of the applicant's ultimate consolidation application to the Interstate Commerce Commission (the "Commission"). However, simply submitting an abbreviated draft of the formal consolidation application, as suggested by the AAR, would not provide the Administrator with information sufficient to make the nine statutory studies and to perform his other statutory duties. The Administrator has evaluated the AAR's comment, and agrees that the statutorily mandated analysis is based on the nine enumerated areas, and is not identical to the Commission's responsibilities under section 5(3) of the Act. In order to fulfill affirmatively his responsibilities, the Administrator believes a compromise between the AAR's proposal and our own originally proposed regulations is appropriate. The revised requirements are responsive to the AAR comments: They clearly focus on the nine statutory concerns, and are less cumbersome, better organized, and, we believe, within the capability of railroads to comply with.

2. *Conforming submission begins six month period.* The regulations provide that the Administrator reserves the right to reject those submissions which do not conform to the required form, content, and documentation, and that only a submission conforming to these requirements shall be considered a filing for the purpose of computation of the time period prescribed in section 5(3) of the Act. The AAR questioned whether the FRA had authority to delay the start of the six month period until a submission conformed to the requirements of the regulations.

The authority of the Administrator to promulgate such a provision derives from his mandate and obligation under section 5(3)(f) of the Act to evaluate and study all proposed transactions submitted to him. The Administrator must anticipate that he will be restricted to a six-month period within which to perform all of his responsibilities under section 5(3)(f) of the Act. He must be assured of receiving a complete submission in order to (1) publish a summary and detailed account of the proposed transaction, (2) prepare meaningful studies of the nine areas enumerated in section 5(3)(f)(iv), (3) submit a report to the Commission setting forth the results of each study within ten (10) days after an application is submitted to the Commission, and (4) submit the views of the Secretary with respect to the effect of the proposed transaction on the national transportation policy, as enunciated by the Secretary.

3. *The order in which information is required to be submitted.* Subparts A and C of these regulations are, for the most part, the same provisions as those proposed. Subpart B represents a complete reworking of the provisions relating to information required to be submitted to the Administrator. Subpart B delineates the information required to be submitted to the Administrator along the lines of the studies and summary required by section 5(3) of the Act.

Subpart B requests the information required to be submitted to the Administrator in an order different from that found in section 5(3)(f)(iv) of the Act. The nine factors are set up so that the explicit information gathered and findings made for the first six, §§ 268.19 through 268.29 will lead to general summations in the last three, §§ 268.31 through 268.35. The first six factors deal with specific concerns that are highly interactive and provide the foundation for the final three factors, which are intended to provide quantitative summations.

4. *Minimum information required, and additional information.* Section 268.13 clearly states that the requirements of subpart B are the minimum requirements: a filing of data with the Administrator is not effective, and, therefore, the six (6) month period referenced in section 5(3)(b)(ii) does not begin, unless these minimum requirements are met, waived or modified. The FRA is cognizant that numerous kinds of transactions are covered by section 5(3), and that not all information required by §§ 268.19 through 268.35 applies to every transaction that can be proposed, nor can all of the information required by §§ 268.19 through 268.35 always be provided by the submitting parties. Section 268.41 provides a mechanism by which an applicant may request that the Administrator waive or modify any requirement. On the other hand, occasions may also arise where the submission of additional information may be deemed necessary by the Administrator. Section 268.37 provides that the Administrator may require submission of such additional information as he may deem necessary.

Insofar as an applicant seeks the active support of the Secretary in promoting the proposed transaction at the Commission (rather than providing data sufficient to allow the Administrator to comply only with the narrow requirements of the Act), additional information and data may be needed. Applicants wishing such support should note § 268.9 of these regulations which provides that any information submitted which exceeds that required by this part, referred to as supplemental submissions, may be made by any applicant at the time of its initial submission, or at a later date. The Administrator encourages the use of supplemental submissions. The more the initial and supplemental submissions, taken as a whole, resemble the application required by the Commission, the more comprehensive the Administrator's report under section 5(3)(v) can be. If the applicant wants the Administrator to consider any supplemental submissions filed after the initial submission in making his study of the nine statutory factors, then § 268.9 provides for the applicant and the Administrator to agree on a date on which the applicant will file his application with the Commission to enable the Administrator to complete his report prior to that date.

5. *Terminology.* The terminology used in the proposed regulations has been changed so that it is clear that the Administrator does not require submission of the full application ultimately submitted to the Commission. The term "submission" is used to describe the data required to be filed with the Administrator, and the definition of "application" has been amended to refer to the data format required by the Commission. The term "applicant" is defined to refer to any railroad or railroads submitting a consolidation proposal for evaluation by the Administrator and all railroads with properties directly involved in the proposed transaction.

6. *Intent of regulations.* The National Industrial Traffic League filed comments stating that, as a matter of general policy, it supported the adoption of appropriate procedures to expedite the handling of railroad consolidations. The Administrator believes that these revised regulations meet the League's desire to have voluntary consolidations between rail carriers that will strengthen the transportation industry, produce improved service, establish or continue adequate competition in transportation service, and be consistent with the long-range public interest in the maintenance of an adequate common carrier system.

B. INFORMAL PUBLIC HEARINGS

Section 268.11 provides that there will be informal public hearings concerning all material submitted to the Administrator. The AAR suggested that the final regulations should contain a basic outline for participation at the informal hearings, in order to obtain meaningful comments given the short time allotted for the FRA evaluation process. The Administrator finds the comment to be a good one, but would prefer to provide such a basic outline in the notice for each informal hearing. This would afford the type of flexibility which is necessary to accommodate the hearing procedure to the nature of each proposed transaction, and which is implied by the informality of the hearing requirement.

C. AVAILABILITY OF SUBMISSIONS TO STATES

The New York State Department of Transportation recommended that the States receive copies of the submissions filed with the FRA in order to allow them to participate in the public hearings and to assess the effect of a proposed consolidation on the State's economy and transportation network.

The Administrator welcomes New York State's suggestion, and is eager to benefit from any designated State agency's comments concerning the impact of the proposed transaction on the State's economy, transportation system, communities generally, employment, environment, and rail assistance programs. Section 268.7(d) requires each applicant to make a copy of its submission to FRA available to any State Department of Transportation or designated State agency of any State in which any part of the rail facilities of the railroads involved in proposed transaction is situated.

The provision requires the State agency to request a copy of the submission from the applicant, rather than requiring each applicant to automatically file a copy with each affected State, in order to avoid requiring the applicant to duplicate and mail copies of its submission to State agencies that are not interested in studying the entire consolidation proposal. Governors of all States in which any part of the properties of railroads involved in the proposed transaction are situated, receive notice of the filing of the submission, pursuant to section 5(3)(f)(ii) of the Act. A summary and a detailed account of the contents of the proposed transaction will be published in the FEDERAL REGISTER, pursuant to section 5(3)(f)(i) of the Act.

Inflationary Impact Analysis. The Administrator has determined that the issuance of these regulations is not a major proposal under Executive Order 2050.4, February 2, 1976, requiring an inflationary impact evaluation.

Improved Analysis and Review of Regulations. The Administrator has evaluated the adoption of these regulations in accordance with the policies of the Department of Transportation which were stated in the public notice published on April 16, 1976, in the FEDERAL REGISTER (41 F.R. 16200). In response to the public comments received the regulations have been drafted to eliminate, to a substantial degree, the amount of documentation required of applicants. The revised requirements clearly focus on the nine statutory concerns, and are less cumbersome, better organized, and within the capability of railroads to produce. The preparation of the required data will assist applicants in their preparation of formal applications to the Commission, and will assist them and other interested parties in providing information to the Commission regarding factors which the Commission must consider in determining whether to approve the proposed transaction.

Therefore, the Administrator has determined that the adoption of this regulation will have such a minimal cost impact on the private sector, consumers, Federal, state, and local governments that an evaluation of the effects of this regulation is not warranted.

In consideration of the foregoing, 49 CFR Chapter II is amended by adding a new Part 268 to read as follows:

Subpart A—General Provisions

Sec.
268.1 Applicability.
268.3 Definitions.
268.5 Eligibility.
268.7 Filing procedure; notice of filing.
268.9 Supplemental submissions; time extension.
268.11 Informal public hearings.

Subpart B—Contents of Submissions

268.13 Form and content of consolidation submission.
268.15 Front covers.
268.17 Introductory statement, summary of proposed transaction, and map of applicant.
268.19 Needs of rail transportation.
268.21 Retention and promotion of competition.
268.23 Rationalization of rail system.
268.25 Cost of rehabilitation and modernization compared to alternative choices.
268.27 Impact on shippers, consumers, and railroad employees.
268.29 Effect on communities.
268.31 Improvement of rail service.
268.33 Effect on employment.
268.35 Environmental impact.
268.37 Administrator's request for additional information.

Subpart C—Miscellaneous Provisions

268.39 Access to information.
268.41 Waivers and modifications.

AUTHORITY: Sec. 5(3) Interstate Commerce Act, 49 U.S.C. 5(3)(f); Department of Transportation Act, 49 U.S.C. 1651 et seq., Regulations of the Office of the Secretary of Transportation, 49 CFR 1.49(u).

Subpart A—General Provisions

§ 268.1 Applicability.

This part prescribes the guidelines and procedures governing merger and consolidation proposals submitted to the Federal Railroad Administrator for evaluation pursuant to section 5(3)(f) of the Interstate Commerce Act, 49 U.S.C. 5(3)(f).

§ 268.3 Definitions.

As used in this part:

(a) "Act" means the Interstate Commerce Act, 49 U.S.C. 1 et seq.

(b) "Administrator" means the Federal Railroad Administrator, or the designee of the Administrator.

(c) "Applicant" means any railroad or railroads submitting a merger or consolidation proposal for evaluation by the Administrator pursuant to this part, and all common carriers by railroad subject to Part I of the Act with properties directly involved in the proposed transaction.

(d) "Application" means the form in which the Interstate Commerce Commission requires the proposed transaction to be submitted to it, following evaluation and study of the proposal by the Administrator.

(e) "Commission" means the Interstate Commerce Commission.

(f) "Consolidation" means all transactions subject to section 5(3) of the Act, including merger, consolidation, unification or coordination project (as described in section 5(c) of the Department of Transportation Act), joint use of tracks or other facilities, or acquisition or sale of assets, which involve any common carrier by railroad subject to Part I of the Act.

(g) "Including" means including but not limited to.

(h) "Railroad" means a common carrier by railroad as defined in section 1(3) of Part I of the Act.

(i) "RRRRA" means the Railroad Revitalization and Regulatory Reform Act of 1976, Pub. L. 94-210, as amended.

(j) "Secretary" means the Secretary of the Department of Transportation.

(k) "Submission" means the form and content in which data concerning the proposed transaction is to be submitted to the Administrator for evaluation and study, as set forth in this part.

§ 268.5 Eligibility.

Any railroad may, in the period prior to December 31, 1981, submit to the Administrator a consolidation proposal for evaluation pursuant to this part.

§ 268.7 Filing Procedure.

(a) Each submission shall bear the date of execution, be signed by or on behalf of the applicant, and shall bear the corporate seal in the case of an applicant which is a corporation. Execution shall be by all partners if a partnership, unless satisfactory evidence is furnished of the authority of a partner to bind the partnership, or if a corporation, an association or other similar form of organization, by its president or other executive officer having knowledge of the matters therein set forth. Persons signing the submission on behalf of the applicant shall also sign a certificate in form as follows:

_____ certifies that
(Name of official)
(he) (she) is the _____
(Title of official)
of the _____, authorized
(Name of applicant)
on the part of the applicant to sign and file with the Administrator this submission; that (he) (she) has carefully examined all of the statements contained in such submission relating to the aforesaid _____
(Name of applicant); that (he) (she) has knowledge of the matters set forth therein and that all such statements made and matters set forth therein are true and correct to the best of (his) (her) knowledge, information, and belief.

_____
(Name of official)

_____
(Date)

(b) The original submission and supporting papers, including any data deemed relevant by the applicant which are not specifically requested by this part, and ten copies thereof for the use of the Administrator shall be filed with the Associate Administrator for Policy and Program Development of the Federal Railroad Administration, 400 Seventh Street, S.W., Washington, D.C. 20590. Each copy shall bear the dates and signatures that appear in the original and shall be complete in itself, except to the extent otherwise provided in this part, but the signature on the copies may be stamped or typed.

(c) Each applicant shall file a copy of the submission with each regional office of the Federal Railroad Administration responsible for the area(s) affected by the proposed transaction. The five regional offices, with their locations, are:

Eastern Region, Independence Bldg., Room 1020, 434 Walnut Street, Philadelphia, Pa 19106.
Southern Region, Suite 216B, 1568 Willingham Drive, College Park, Georgia 30337.
Central Region, 536 S. Clark St., Room 210, Chicago, Illinois 60605.
Southwest Region, Room 11A234, Federal Office Building, 819 Taylor Street, Fort Worth, Texas 76102.
Western Region, No. 2 Embarcadero Center, Suite 630, San Francisco, California 94111.

(d) Each applicant shall make available to any state Department of Transportation or similar state agency of any state in which any rail facilities of applicant are located, a copy of its submission under this part upon request by such agency.

(e) Each applicant shall retain a copy of its submission, and shall make the submission available for public inspection in a reasonable manner at the executive offices of the applicant.

(f) The applicant shall submit such additional information to support its submission as the Administrator may request.

(g) The Administrator reserves the right to reject those submissions which do not conform to the regulations prescribed herein regarding the form, content and documentation. Upon the filing of a submission, the Administrator will review the submission and determine whether it conforms with all applicable regulations. If the submission is incomplete, or otherwise defective, the Administrator may reject said submission by written notice to the applicant, specifying the reasons for the rejection, within 30 days from the date of filing of the submission. Thereafter a revised submission may be submitted, and the Administrator will determine whether the resubmitted submission conforms with all prescribed regulations. The resubmission or refiling of a submission shall be considered a de novo filing for the purpose of computation of the time period prescribed in section 5(3) of the Act, provided that such resubmitted submission is deemed complete.

§ 268.9 Supplemental submissions; time extension.

(a) Sections 268.15 through 268.37 inclusive set forth the minimum data requirements, subject to modification or waiver, for filing an effective submission under this part. Supplemental information may be filed along with the initial submission, or at a later time. Applicants are urged to make their supplemental submissions as similar in form and content to the anticipated application to the Commission as is reasonably possible. The Administrator will use any supplemental information submitted in preparing his report for the Commission. To the extent that the supplemental submissions correspond to the filing requirements established by the Commission for section 5(3) applications, the Administrator will be able to comment to a greater degree on the merits of the entire proposed transaction.

(b) If an applicant decides to make a supplemental submission to the Administrator and wishes the submission to be considered by the Administrator in his findings pursuant to section 5(3)(f)(iv) and (v) of the Act, then the applicant and the Administrator will reach agreement on the date on which the applicant will file his application with the Commission. This provision is designed to afford the Administrator sufficient additional time to study the supplemental submission, to conduct any necessary public hearings, and to prepare his report.

§ 268.11 Informal public hearings.

(a) Informal public hearings will be conducted with respect to all submissions, and may be held with respect to any supplemental submissions made pursuant to § 268.9.

(b) Notice of all informal public hearings, together with a basic outline for participation at the informal hearing, will be published in the FEDERAL REGISTER at least 15 days prior to each hearing.

Subpart B—Contents of Submissions

§ 268.13 Form and content of consolidation submissions.

Each submission shall contain in the order indicated and identified by reference to heading and section numbers, the information required by §§ 268.15 through 268.35. In the event that full responses to the information requirement of one section in Subpart B are contained elsewhere in the submission, the response should reference the portion of the submission where the requested information is contained.

§ 268.15 Front covers.

(a) The front cover shall list—

(1) The full and correct name of the applicant;

(2) The nature of the transaction (e.g., merger, control, coordination project, trackage rights, etc.); and

(3) If a consolidation or merger is proposed, the proposed name of the resulting company.

(b) An inside front cover listing—

(1) The business address of the applicant (street and number, city, county, state and zip code);

(2) The name, title, business address and telephone number of the officer or offices to whom correspondence with respect to the submission should be addressed; and

(3) The name, business address and phone number of the applicant's attorney.

§ 268.17 Introductory statement, summary of proposed transaction, and map of applicant.

Each submission shall contain—

(a) A section, written in a narrative form, entitled "Introductory Statement", describing applicant and including the following information concerning applicant:

(1) Whether applicant is an individual, firm, partnership, corporation, company, association, joint stock company, trustee, receiver, assignee, or other personal representative, and trade name or style, if any, under which applicant is doing business;

(2) Depending upon whether the applicant is a corporation, partnership, or other form of organization or entity, the date and place of incorporation, of partnership formation, of organization, or the name and address of the court, if any, under direction of which applicant is acting, as applicable.

(3) Whether applicant is a railroad subject to Part I of the Act;

(4) If applicant is not a railroad, the type of business in which it is engaged, the length of time so engaged, and particulars of its present activities which are or may be related to transportation subject to the Act;

(5) Whether applicant or any subsidiary is affiliated with a motor or water carrier subject to the Act; also the following information with respect to rail, motor or water operations, where applicable: The date of the certificate, permit, or temporary authority; and the number of the Commission's docket assigned to the application upon which such certificate, permit, or temporary authority was issued or granted; or if application to engage in interstate or foreign commerce has been made but is still pending, the date of the application and the docket number.

(6) Whether applicant is controlled by any other corporation or corporations, and, if so, the name(s) of the controlling corporation(s), the form of control, whether sole or joint, direct or indirect, and its extent;

(7) The measure of control or ownership, if any, now exercised by applicant over any other railroad subject to the Act, or over the properties of such railroad;

(8) Whether there are any intercorporate relationships, not disclosed in responses to prior instructions, through holding companies, ownership of securities, or otherwise, direct or indirect between applicant and any railroad or person affiliated with applicant and any railroad or person affiliated with any railroad, at the time of making the application; if so, the nature and extent of such relationship; and, if applicant owns securities of a railroad corporation or corporations subject to the Act, the name of the corporation, a description of securities, the par value of each class of securities held, and the percentage of total ownership.

(b) The submission shall also contain a narrative summary including—

(1) A description of the general nature of the entire proposed transaction;

(2) A brief description of the line or lines of railroads involved in the transaction, the principal points of interchange, city or county and state location, and major terminals and classification points.

(3) Briefly, the terms and conditions of the contract or agreement pursuant to which the proposed transaction is to be effected, including the manner in which the parties propose to consummate the transaction;

(4) A brief geographical description (including as applicable, route descriptions) of (i) operations sought to be performed and (ii) other operations presently performed;

(5) The state or states in which any part of the properties of the railroads involved in the proposed transaction are situated; and

(6) The public interest factors involved.

(c) At the conclusion of the narrative summary, a general or key map indicating clearly the line or lines of applicant, parts of the line or lines of applicant in their true relation to each other, short-line connections, other rail lines in the territory and the principal geographic points of the region transversed. The map may be drawn using any appropriate scale or key system, so long as it is clear, can be easily reproduced, and effectively presents the required information. Three additional copies of the map shall be furnished, unbound, for the use of the Administrator.

§ 268.19 Needs of rail transportation.

Each submission shall contain—

(a) A discussion and analysis of the present demand for rail transportation, both freight and passenger, in the geographical area affected by the proposed transaction, and how the proposed transaction would better meet such demands or would result in improved rail freight or passenger service. The discussion shall include:

(1) Revenue carload data from true origin station or city to final destination station or city (for the lines affected by the proposed transaction);

(2) The present service patterns from true origin station or city to final destination station or city, and the current routings of the existing traffic described in subsection (1); and

(3) Trends in growth, direction or traffic pattern, and modal split of the existing traffic described in subsection (1), to the best of applicant's knowledge.

(b) A description and analysis of future rail freight and passenger transportation needs that the proposed transaction is designed to meet (such as freight transportation presently handled by other modes, new industries likely to locate in the geographical area affected, new mineral traffic, etc.). If the future rail freight traffic is anticipated to result from anything other than continued growth in existing rail traffic, describe—

(1) The type of traffic (e.g., by commodity);

(2) The anticipated amount of rail freight traffic;

(3) Estimated revenue carload data from true origin station or city to final destination station or city; and

(4) How the proposed transaction enables applicant to meet this need.

(c) A traffic study detailing estimated gains and losses in traffic and revenues expected to result from the consummation of the proposed transaction, for any

changes in freight or passenger usage or traffic flow, etc., as discussed in paragraphs (b)(1) and (2) of this section. Traffic studies are not required in submissions involving the acquisition of a line of a railroad where the line to be acquired has been authorized by the Commission to be abandoned or the line to be acquired connects with no carrier other than the applicant. The traffic study shall be prepared in conformity with the following instructions:

(1) The period covered by the traffic study shall be the latest three calendar years preceding the filing of the submission. A different time period may be used if reasonable under the circumstances of the proposed transaction, so long as the reasons therefor are specifically set forth; and

(2) The traffic studies shall be based upon all data available to applicant in abstract or machine-sensible form. Data for the movements relied upon in the traffic studies shall be totally reproduced, together with all other information relied upon for determining the gains or losses in traffic and revenue. The amount of such gains or losses shall be shown for each movement abstract on which a gain or loss has been determined.

(d) A discussion and analysis of financial strengths and weaknesses of the applicant, including a discussion of—

(1) The improved financial performance expected to be achieved as a result of the proposed transaction; and

(2) The funds that will be available for investment in improvements, as a result of the proposed transaction.

(e) Any additional facts necessary to establish that the proposed transaction will be consistent with the needs of rail transportation in the geographical area affected.

(f) A full explanation of the methodology and reasoning used in making estimates and projections called for by this section.

§ 268.22 Retention and promotion of competition.

Each submission shall contain—

(a) A discussion and analysis of the present intermodal competition for the traffic originated and terminated on the lines affected by the proposed transaction, from true origin station or city to final destination station or city of the shipments. Among other factors, this discussion should include:

(1) The extent and scope of motor and water carrier ability to meet the service needs, as compared to the existing railroad network; and

(2) The identification of the motor and water carriers that compete with the applicant and the applicant's best estimate of the tonnage, ton-miles and freight revenues of such carriers.

(b) A discussion and analysis of the present rail competition for the traffic originated and terminated on the lines affected by the proposed transaction, from true origin station or city to final destination station or city of the shipments. Among other factors, this discussion should include the identification of the railroads competing with the applicant for the same traffic from true origin station or city to final destination station or city of that traffic, and the applicant's best estimate of the tonnage, ton-miles and freight revenues of such carriers.

(c) For all transactions involving railroads serving substantially the same geographical area, a listing of all of the communities on lines affected by the proposed transaction which are served by more than one railroad and an estimate of the share of the rail traffic possessed by each railroad. The listing will indicate the following—

(1) Whether the railroads serve the same patrons (i.e., whether some form of competition exists) or whether patrons are isolated on one line;

(2) The effect of the proposed transaction on a reduction or increase in such competition; and

(3) An indication of those points served by more than one railroad that can receive better service by only one railroad, if any.

(d) Applicant's best estimate of the percentage of traffic handled by competitors, if any, which applicant would reasonably expect to attract as a result of the proposed transaction, and a projection of the total rail market share before and after the proposed transaction would take effect, describing the relative market shares of competing modes.

(e) A discussion of any overhead traffic, that is, traffic which neither originates nor terminates on the lines affected by the proposed transaction but which passes over the lines affected by the proposed transaction, if any, including—

(1) The extent and scope of intermodal competition for this traffic;

(2) A discussion of existing railroad competition for this traffic;

(3) A listing of the true origin city and railroad and final destination city and railroad of the overhead traffic, to the best of applicant's ability; and

(4) An explanation of what steps could and are planned to be taken, if any, to enable applicant to originate or terminate such overhead traffic.

(f) Any additional facts necessary to show the effect of the proposed transaction on the retention and promotion of competition in the provision of rail and other transportation services in the geographical areas affected.

(g) A full explanation of the methodology and reasoning used in making estimates and projections called for by this section.

§ 268.23 Rationalization of the rail system.

Each submission shall contain—

(a) A discussion and analysis of the proposed transaction in the context of the findings or facts contained in the reports prepared under sections 503, 504, and 901 of the RRRRA, as those reports are issued.

(b) To the extent altered by the proposed transaction, a description of service presently performed. All significant service improvements and downgradings (e.g., changes in scheduling, service frequency, blocking plans, etc.) will be listed. Shippers affected by proposed service improvements and/or downgrading will be listed, and located by point of shipment. For the purposes of this listing, the shippers to be listed will be any that have used rail service in the year preceding the date of submission.

(c) A description of the effect the proposed transaction will have on the total funding needs (Federal, state, and local) of the applicant, examining all programs including those for rail line rehabilitation and improvements, grade crossing needs, highway bridge construction plans, passenger or commuter lines, etc.

(d) An identification of all lines of the applicant in the geographical area affected by the proposed transaction which serve no rail patrons except at junctions with other carriers. A discussion of the practicality of serving all such rail patrons at such points by only one railroad, and a recommendation as to which railroad this should be is required.

(e) An analysis and discussion of the operating savings expected from any service or route changes, following consummation of the proposed transaction, including a breakdown of the significant components of these savings and a discussion of the quantitative effect of these savings on present operating costs.

(f) An estimate of the additional net revenue to be derived as a result of any longer hauls and increased single-line service.

(g) Any additional information necessary to show the effect of the proposed transaction on the achievement of a more efficient or adequate rail system.

(h) A full explanation of the methodology and reasoning used in making estimates and projects called for by this section.

§ 268.25 Cost of rehabilitation and modernization compared to alternative choices.

Each submission shall contain—

(a) For those lines affected by the proposed transaction, a description and analysis of the maintenance and rehabilitation needs, slow orders in effect, class of track, rail facilities subject to deferred maintenance, equipment and other facilities involved in the proposed transaction in the context of the informational findings or facts contained in the reports prepared by the Secretary pursuant to sections 504 and 901 of the RRRRA, when issued.

(b) A discussion of the means by which accelerated maintenance and rehabilitation needs for any lines identified and discussed in subsection (a) are to be met, including—

(1) The amount and availability of private sources of funds, including internally generated fund; and

(2) The availability of public sources of funds from all levels of governments, describing in detail the amounts and timing of any public funds anticipated.

(3) Identification and discussion of possible alternative courses of action available if such maintenance and rehabilitation needs are not met in the amount or time frame proposed, and a projection of the costs of such alternative courses of action.

(4) A description of those lines, or portions thereof, on which maintenance and rehabilitation is to take place, if any, which have shippers located thereon who have service options from connecting or intersecting railroads.

(c) If the applicant has applied or intends to apply for financial assistance under Title V of the RRRRA, full details should be provided regarding the relationship of the request for financial assistance to the proposed transaction, including the nature, amount, timing and purpose of such assistance, and the steps which have been taken to secure such financial assistance. Any applications filed in the last three (3) years or to be filed for state or local assistance should be similarly discussed, to the extent they relate to the proposed transaction, including tax relief, grade crossing programs, etc.

(d) Any additional facts necessary to show the cost of rehabilitation and modernization of track, equipment, and other facilities associated with the proposed transaction with a comparison of the potential savings or losses from other possible choices of action.

(e) A full explanation of the methodology and reasoning used in making estimates and projections called for by this section.

§ 268.27 Impact on shippers, consumers, and railroad employees.

Each submission shall contain—

(a) A description of any service improvements on specific lines which would result from the proposed transaction. As a part of the discussion—

(1) All shippers along these lines shall be identified. Identification of such shippers for the purpose of this subsection may be made by group, locality, or other reasonable method of classification.

(2) The type of service improvement (e.g., single-line service, better operating plan, scheduling, rate effects) that would result from the proposed transaction shall be described and an analysis which quantifies the benefits shall be submitted.

(b) A discussion noting any lines which, as a result of the proposed transaction, would handle less through traffic or would be abandoned within the next three (3) years, including—

(1) Identification (as in subsection (a)(1) above) of all shippers located along such lines.

(2) A description of the service effect on these shippers, if any, as a result of the reduction in through traffic. Indicate the existence, if any, of service guarantees made to shippers.

(3) A description of the remaining freight transportation alternatives for shippers, if any, along lines proposed for abandonment.

(4) If an application to abandon a line or discontinue a service is contemplated, describe such lines or services and state the reasons for the contemplated abandonment or discontinuance.

(5) To the extent the proposed transaction leads or will likely lead to abandonments in the geographical area, a statement of the degree of the applicant's commitment to cooperate with the financial assistance mechanisms established in Title VIII of the RRRRA and to meet the rules and regulations established under that statute, and a statement of the commitment of any connecting carrier that could provide subsidized service at a lower cost.

(c) To the extent related to, or directly affected by, the proposed transaction, a listing of any selected rate changes anticipated to result from the proposed transaction over the three years following consummation of the proposed transaction. Explain the consequences of any such rate changes on general consumers. This discussion shall include possible rate and service packages, anticipated frequency of service, distinct service pricing, peak-load pricing, and similar pricing, rate and service concerns.

(d) With regard to rail employees of the applicant—

(1) A description of all projected changes in employment as a result of the proposed transaction.

(2) A list of any increases in rail employment resulting from the creation of any service improvements (e.g., single-line service).

(3) For any projected employment decreases, an explanation of how they will be handled and an estimate of the total costs of labor protection associated with the proposed transaction.

(4) A copy of any agreement or agreements with employee organizations entered into as a result of, or as part of, the proposed transaction.

(5) A discussion regarding the effect, if any, any consolidation of management and personnel that would result from the proposed transaction would have in improving the present and future rail needs of the geographical area affected.

(e) An analysis which quantifies—

(1) The effect of rehabilitation programs, as discussed under section 268.25 on individual shippers.

(2) The amount of rail employment to be derived directly from the proposed rehabilitation program and any secondary rail employment which would result after completion of the proposed rehabilitation program.

(3) The effect of rationalization efforts, as discussed under section 268.23 on the quality of service on individual lines and shippers, addressing upgrading and improved services as well as downgrading or abandonments.

(f) Any additional facts necessary to show the effect of the proposed transaction on shippers, consumers and railroad employees.

(g) A full explanation of the methodology and reasoning used in making estimates and projections called for by this section.

§ 268.29 Effect on communities.

Each submission shall contain—

(a) For the lines described in section 268.27, if any, identification of all governing bodies (e.g., states, counties, townships, cities, towns, etc.) on such lines.

(b) A description of the effect of service improvements, downgradings, or abandonments resulting from the proposed transaction, if any, on the communities served and on areas adjacent to those communities.

(c) A description of any new industrial development opportunities or losses resulting from the proposed transaction.

(d) If commuter or other passenger services, Amtrak, Autotrain or the like intercity passenger service are operated over the lines of the applicant, a detailed discussion of any impact anticipated on such services, such as delays which may be occasioned because a line is scheduled to handle increased traffic due to route consolidation or improvements resulting from the rehabilitation or rationalization program.

(e) An identification and location of any existing shops, repair facilities, yards, or major installations facility, whenever such operations are or would become significant employers in the community where they are or would be located as a result of the proposed transaction.

(f) A description of the effect of the proposed transaction on property taxes. Show how the total property taxes relate to net income of applicant. List any branch lines estimated to be unprofitable for which reduction or elimination of property taxes would result in profitability.

(g) Any additional facts necessary to show the effect of the proposed transaction on the communities in the geographical areas affected and on the geographical areas contiguous to such areas.

(h) A full explanation of the methodology and reasoning used in making estimates and projections called for by this section.

§ 268.31 Improvement of rail service.

Each submission shall contain—

(a) A narrative discussion of all the factors noted in sections 268.19 through 268.29, qualifying all of the benefits and costs of, and assessing the tradeoffs related to, the proposed transaction, to the extent rail service improvements are anticipated. The discussion will include coverage of the following issues:

(1) Single-line service opportunities met;

(2) Competitive gains and losses;

(3) Rehabilitation and rationalization that would be achieved;

(4) Rail employment gains and losses;

(5) Effect on shippers and communities;

(6) Effect on passenger services; and

(7) Other services improved or lost.

(b) Any additional facts necessary to show whether the proposed transaction will improve rail services.

(c) A full explanation of the methodology and reasoning used in making estimates and projections called for by this section.

§ 268.33 Effect on employment.

Each submission shall contain—

(a) A narrative discussion of all the factors discussed in §§ 268.19 through 268.29, estimating the amount of new employment (other than rail employment), both direct and secondary, to be gained or lost as a result of the proposed transaction, and estimating the value to the economy of the geographical area affected by the proposed transaction, of the consummation and implementation of the proposed transaction. The discussion will include coverage of the following issues:

(1) Single-line service opportunities met;

(2) Competitive gains and losses;

(3) Rehabilitation and rationalization that would be achieved;

(4) Effect on shippers and communities;

(5) Effect on passenger services; and

(6) Other services improved or lost.

(b) Any additional facts necessary to show the effect of the proposed transaction on employment in the geographical areas effected by the proposed transaction.

(c) A full explanation of the methodology and reasoning used in making estimates and projections called for by this section.

§ 268.35 Environmental impact.

Each submission shall contain—

(a) A description of the environment in the geographical area to be affected by the proposed transaction, together with a statement of Federal activities in the same geographical area which are known or should be known to the applicant. As part of the description, applicant will—

(1) Include maps which are sufficient to identify the communities and land uses (farm, industry, forest, etc.) adjacent to any affected properties, together with the number of grade crossings in each affected community;

(2) Indicate speed and frequency of current rail traffic and note how long grade crossings are blocked during a typical day on affected lines;

(3) Indicate the air quality in the affected region, as found in the State Implementation Plans to meet ambient air quality standards; and

(4) Indicate derailments and fatalities and/or injuries resulting from accidents involving trains and motor vehicles and/or pedestrians along the affected rights of way, which are reported to the Federal Railroad Administration pursuant to part 225 of Title 49, Code of Federal Regulations, as revised.

(b) A discussion of the relationship of the proposed transaction to any applicable Air Quality Implementation Plan promulgated under the Clean Air Act, 42 U.S.C. 1857. In preparing this discussion, applicant—

(1) Should refer to state air quality agencies or to the Regional Offices of the U.S. Environmental Protection Agency (the "EPA") for guidance.

(2) Document whether the proposed transaction is consistent with any state plans and demonstrate whether the proposed transaction would violate National Ambient Air Quality Standards, as set forth in part 50 of Title 40, Code of Federal Regulations.

(c) A discussion of the proposal's relationship to proposed land use plans, policies, and controls of affected areas. The discussion should consider the impacts of abandonments, increased traffic and new construction, as appropriate.

(d) If the proposed transaction would lead to an application for Federal funding, a statement of any impact on public parks, recreational areas, wildlife refuges, historic sites, and similar areas referenced in section 4(f) of the Department of Transportation Act, 49 U.S.C. 1653(f).

(e) A statement as to whether the proposed transaction (including proposed abandonments) would affect any districts, sites, buildings, structures, or objects that are included in the National Register of Historic Places, or are eligible for including in the National Register of Historic Places, as defined in 36 CFR 800.3(f). The National Register of Historic Places, which is a register of districts, sites, buildings, structures, and objects significant in American history, architecture, archeology, and culture, is maintained by the Secretary of the Interior under authority of section 2(6) of the Historic Sites Act of 1935 (16 U.S.C. 461) and section 101(a)(1) of the National Historic Preservation Act (16 U.S.C. 470). The National Register is published in its entirety in the Federal Register each year in February, with addenda published on the first Tuesday of each month. 36 CFR 800.3(d). Applicants may consult with officials designated by their Governors to act as State Historic Preservation Officers responsible for state activities under the National Historic Preservation Act. A listing of these state officials may be found at 36 CFR 60.5(d), or may be obtained from the Director, National Park Service, U.S. Department of the Interior, Washington, D.C. 20240. The Secretary of the Interior will advise, upon request, whether properties are eligible for the National Register.

(f) A review of all the factors discussed in §§ 268.19 through 268.33 in a narrative form, quantifying the positive and negative effects of the proposed transaction on the environment in the affected communities, including effects on air and water, soil quality, and noise levels, and listing measures which can be taken to mitigate adverse impacts. This discussion should include—

(1) *Impacts.* Examples of impacts are increases in noise, dust, erosion, solid waste disposal, use of herbicides, water pollution, congestion, and delays in the provision of essential services. Traffic impacts might include changes in exposure to noise, changes in level of noise or vibration (as associate with higher speed operations on welded rail), delays in provision of essential services (police, fire, ambulance), congestion of street traffic in adjacent communities; and anticipated changes in accident patterns. In considering noise levels, applicants should note any conflicts between current or projected noise levels from rail operations and HUD standards for noise at sensitive sites, such as schools, hospitals, parks, and residential locations. (U.S. Department of Housing and Urban Development, *Noise Abatement and Control: Department Policy, Implementation Responsibilities, and Standards*, Departmental Circular 1390.2, Chart: External Noise Exposure Standards for New Construction (August 4, 1971)).

(2) *Mitigation measures.* Examples include control of hours of operation, coordination of street blockages with adjacent communities, dust and erosion controls measures, and proposed methods of tie disposal and maintenance of way. Applicants should also refer to the EPA "Levels" document (U.S. Environmental Protection Agency, *Information on Levels of Noise Requisite to Protect Public Health and Welfare with an Adequate Margin of Safety*). This document provides a system of measuring day and night noises on a weighted average.

(g) A description of any alternatives to the proposed transaction that have been enumerated and discussed in §§ 268.23 and 268.25 of this part, with respect to impact on the environment. This discussion should include—

(1) Continuation of rail service without the proposed transaction;

(2) Abandonment of rail service;

(3) Relocation or construction of grade separations at conflict points; and

(4) Costs of such alternatives.

(h) A full explanation of the methodology and reasoning used in making estimates and projections called for by this section. Applicant should reference sources used as the basis for comparisons. For energy comparisons, a possible source is Oak Ridge National Laboratory Report, "Energy Intensiveness of Passenger and Freight Transport Modes" by Dr. Eric Hirst, April, 1973. For analyzing community impacts, the following report may be useful: "The Impacts on Communities of Abandonment of Railroad Service," July, 1975, prepared for the U.S. Railway Association by the Public Interest Economics Center, Washington, D.C. In examining the environmental effects of highway transport as an alternative to rail service, applicants may wish to use the following publication: "A Study of the Environmental Impact of Projected Increases in Intercity Freight Traffic, August, 1971, prepared for the Association of American Railroads by Battelle, Columbus, Ohio.

§ 268.37 Administrator's request for additional information.

Applicant shall submit any additional information which the Administrator may deem necessary concerning a submission filed under this part.

Subpart C—Miscellaneous Provisions

§ 268.39 Access to information.

If an applicant wishes any information filed in a submission or in a supplemental submission not be released by the Administrator upon request from a member of the public, the applicant must so state and must set forth the reasons why such information should not be released, including particulars as to any competitive harm which should result from release of such information. The Administrator will keep such information confidential as permitted by law.

§ 268.41 Waiver or modification.

The Administrator, upon good cause shown, may waive or modify any requirement of this part, or make any additional requirements deemed necessary.

Dated: January 19, 1977.

ASAPH H. HALL,
Administrator, Federal Railroad Administration.

[FR Doc.77-2366 Filed 1-25-77;8:45 am]

federal register

WEDNESDAY, JANUARY 26, 1977
PART VII



FEDERAL COMMUNICATIONS COMMISSION

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COMMERCIAL TELEVISION NETWORK PRACTICES

Notice of Inquiry

FEDERAL COMMUNICATIONS COMMISSION

[FCC 77-53; Docket No. 21049 (RM-2749)]

COMMERCIAL TELEVISION NETWORK PRACTICES

Notice of Inquiry

Adopted: January 14, 1977.

Released: January 14, 1977.

1. Notice is hereby given of the institution of an inquiry into commercial television network practices and policies regarding the acquisition and distribution of television programming. Almost two decades have elapsed since the Commission completed its last overall study of network practices.[1] Developments in recent years suggest that a new inquiry is warranted.

2. This inquiry will encompass a number of subjects surrounding the matter of alleged dominance of the nation's commercial television industry by the three major commercial networks, but will focus most specifically on the relationship between these networks and their affiliated stations. In this regard, the Commission has consistently emphasized that it is the individual licensee who has the right and the responsibility to program his station:

> • • • the Commission in administering the Act and the Courts in interpreting it, have consistently maintained that responsibility for the selection and presentation of broadcast material ultimately devolves upon the individual station licensee and that fulfillment of such responsibility requires the free exercise of his independent judgment. En Banc Programming Policy Report, 20 R.R. 1901, 1911 (1960).

It is clear, furthermore, that this responsibility for the independent exercise of programming judgment cannot be delegated to a network or to any other entity or individual.[2] Accordingly, we propose to carefully examine whether particular network practices may improperly compromise or restrict the programming discretion of the broadcast station licensee.

3. In giving proper consideration to this question, it is not possible to limit our inquiry simply to an examination of the contractual relations which exist directly between a network and its affiliated stations. The networks play a central role in our commercial television industry and their activities have a direct bearing on the entire market relating to the production and distribution of television entertainment programming. Station discretion can be meaningful and effectively exercise only in circumstances where this market is in a healthy, competitive state and is in a position to offer alternative sources of programming. For this reason, our inquiry will encompass the question of whether the networks have maintained anticompetitive policies which unduly restrict the development of other programming sources.

Preliminary Observations

4. This study is prompted, in part, by a rulemaking petition brought before us by Westinghouse Broadcasting Company, Inc. (RM-2749) and by allegations contained in antitrust complaints which the Department of Justice filed against the networks in the Central District of California.[3] The Westinghouse petition called for a "comprehensive inquiry and rulemaking proceeding to review the changing role and function of the three national television networks." Westinghouse Petition in RM-2749, September 3, 1976, p. 1. The Justice Department filed comments in support of this petition but, in a supplemental letter, emphasized that its comments "should not be construed as suggesting that the inquiry encompass those issues now being litigated in the Federal District Court in California," and that neither this letter nor the Department's formal comments were intended "to preclude either the Commission or the Department of Justice from taking any action consistent with its respective responsibilities." Letter from the Honorable Donald I. Baker, Assistant Attorney General, Antitrust Division, December 3, 1976, pp. 1 and 2.

5. We would like to make it clear that, in instituting the present inquiry, we have neither the power nor the desire to foreclose the Department in its antitrust action. While it is inevidentable that thorough inquiry into network practices will encompass many of the questions raised in the antitrust suit, we do not believe that our inquiry should in any way preclude the Department from prosecuting its case or from arranging an appropriate settlement. See *United States* v. *Radio Corporation of America*, 358 U.S. 334 (1958). In concurrently examining similar issues, the Department of Justice has a direct responsibility for the enforcement of the Sherman Act, whereas the Commission's inquiry will focus on public interest questions affecting communications policy pursuant to our responsibilities under the Communications Act of 1934. In this connection, we note that in mid-November 1976 a proposed consent decree was agreed to by the Department and by NBC in one of the three antitrust actions mentioned (Case No. 74-3601—RJK), and is now pending before the Federal District Judge handling the case. See 41 Fed. Reg. 51991 (November 24, 1976). This is discussed below, in connection with the general subject of network-producer relationships.

6. In the discussion of specific topics below, there is extensive reference to allegations raised in the Westinghouse petition, statements in response to that petition filed by public interest groups and other parties, the Department of Justice antitrust complaints, and the proposed NBC consent decree. The networks vigorously oppose most of these allegations, as to their relevance and materiality and in some cases their accuracy. They also advance counter-arguments, both in respects mentioned below and otherwise. We have carefully considered the networks' positions, just as we have carefully noted assertions made by Westinghouse, the Department of Justice, and public interest groups. Given the networks' highly important role in the commercial television industry, allegations regarding abuses of power, and the lapse of 20 years since the last overall network study and investigation, we believe that this Inquiry is appropriate at the present time. This is true not only in connection with consideration of possible Commission regulation by rule or adjudication, but also in connection with possible legislative recommendations to Congress. The Commission hastens to point out, however, that we have not reached any conclusions, even of a tentative nature, regarding these issues discussed below. What we contemplate at this time is solely a fact gathering inquiry designed to provide the Commission with information necessary to a thorough understanding of television networking.

7. The Commission is, of course, cognizant of the vital contributions which the networks have made to the development of the television medium. As pointed out in the 1960 Program Policy Statement, supra, (20 R.R. 1914):

> The programs provided first by "chains" of stations and then by networks has always been recognized by this Commission as of great value to the station licensee in providing a well-rounded community service. The importance of network programs need not be reemphasized as they have constituted an integral part of the well-rounded program service provided by the broadcast business in most communities.

While it is certainly not our intention to adopt any regulatory measures which would impair the ability of the networks to serve the public interest, we must assure ourselves that the networks are not engaging in practices which might unduly encroach on the discretion of our licensees, or unnecessarily restrict the development of new sources of television programming.

8. As a matter of convenience, this Notice has been divided into three sections. (1) background on the role of the networks; (2) questions concerning the relationship between networks and their affiliated stations; and (3) questions concerning the relationships between the networks and program producers and suppliers. It is obvious, of course, that the categories of questions concerning network-affiliate relations and network-program supplier relations are far from being mutually exclusive. Developments in one area can and generally do impact on the other. Nevertheless, we believe that this division of questions will be useful for the purposes of discussion and inquiry. Commenting parties should be careful, however, to keep in mind the fact that to a very large extent these categories are inextricably intertwined. The fact that we are studying various particular aspects of commercial television broadcasting does not mean that these are viewed as problem areas. It simply means that information pertaining to these activities is indispensable to a thorough understanding of network practices. In this regard, our inquiry addresses the identification of problems, not the consideration of possible remedies for any abuses that may be identified.

Background: The Role of the Networks

9. Ever since the demise of the Du-Mont Network in the mid-1950's, there have been only three "national" television networks: the American Broadcasting Companies, Inc. (ABC), Columbia Broadcasting System, Inc. (CBS) and National Broadcasting Company, Inc. (NBC). Recent years have witnessed the development of a number of specialized networks offering sports or movies, but the pre-eminent position of the three national networks remains unchallenged. Their affiliates number well over 75% of all U.S. commercial television stations (approximately 600 out of slightly more than 700) and, outside the major markets, network affiliation is virtually indispensable to successful station operations.[4] As discussed below, it appears that about sixty percent of the broadcast programs currently presented by affiliates are supplied directly by their network. In addition to their ability to reach nearly all American households through their affiliated stations, all three networks own VHF stations in each of the nation's three largest television markets (New York, Los Angeles and Chicago), and two in other major markets (ABC, Detroit and San Francisco, the 6th and 7th markets; CBS, Philadelphia and St. Louis, the 4th and 12th markets; and NBC, Cleveland and Washington, the 8th and 9th markets). Each of these 5-station "owned and operated" (O and O) groups reaches about 22 percent of the U.S. audience.[5] The networks are actively involved as brokers or middlemen connecting the program producers and national advertisers with local stations and their viewers. It is, therefore, not surprising that the networks play a very important role in the development, selection, and distribution of television programming.

10. This role, with respect to program development and selection, has not remained unchanged. Twenty years ago, more than half of the programs carried by the networks were either produced or purchased by major advertisers who acquired the necessary amount of network time to broadcast their programs. Today, for a variety of economic reasons, virtually all regularly scheduled network programs are either obtained by the networks directly from an independent producer or produced by themselves. With this development, the ability to determine what types of television programming will be made available to the American public has largely shifted from the advertising community to the networks.

11. This change is largely attributable to increases in the costs of producing programming as well as the costs of network advertising time. Between 1960 and 1976, the average cost of a single half-hour episode of a new prime-time program increased by about 237 percent from nearly $49,000 to approximately $165,000.[6] Network program expenditures reflected this trend, rising from $376,948,000 in 1960 to $1,273,241,000 in 1975, an increase of 238 percent. The average cost of a thirty-second network TV advertising spot rose by 153 percent during the same period. Cost increases have also been accompanied by a general recognition that shorter commercial messages are, for the most part, more cost effective than longer TV advertisements. That is, a 20 or 30-second spot, in many instances, is thought to be as nearly effective as a 60-second spot besides being less expensive. Given these developments, it is not surprising that advertisers have become increasingly inclined to spread their commercials over a larger number of programs. Consequently, they no longer produce their own regularly scheduled programming but, rather, purchase a number of commercial spots which are usually placed in a variety of programs. While this development has shifted almost exclusive control over the development and selection of programs to the networks, it has also permitted more businesses, particularly smaller ones, to use television as an advertising medium.

12. Network control over access to the medium has also coincided with rather extraordinary increases in profits. Between 1960 and 1975, total combined network expenditures rose from $461 million to $1,465 million, for an average annual increase of 13.6 percent. Total net broadcast revenues, on the other hand, increased more rapidly; from $495 million in 1960 to $1,673 million in 1975, which was equivalent to an average annual increase of 15 percent. Net income (total combined profits before taxes) earned by the networks has risen at an annual rate of 32 percent; increasing from $33.6 million in 1960 to $208 million in 1975. According to the Internal Revenue Service, pretax profits accruing to all businesses in the United States increased at an average anual rate of approximately 12 percent between 1960 and 1974.[7]

13. Westinghouse alleges that increases in network profits have partially resulted from expanded program schedules and relative reductions in station compensation payments. It is stated that between 1960 and 1976 the networks increased the length of their program schedules from 434 to 516 half-hours, or by 19 percent.[8] It is further argued that these increases occurred at the expense of local station time which has declined by 25 percent since 1960. Additionally, Westinghouse maintains that network programming currently occupies up to two-thirds of the available time on affiliated stations. The networks, it is claimed, have also reduced the proportion of their total revenues devoted to station compensation which, of course, has also enhanced their profits. Westinghouse further maintains that between 1964 and 1975, station payments as a percent of network revenues declined from 23.1 to 13.4 percent. Similarly, it is contended that station compensation payments as a percent of station receipts decreased from 19.8 to 10.7 percent during the same period. It is suggested that these and related developments have adversely affected the ability of affiliated stations to meet their public service responsibilities.

14. When the allegations of Westinghouse and other parties are considered against this background of significant change in the commercial television industry, it appears that an inquiry is warranted. In order to protect the interest of the public in receiving the best possible programming service, the Commission must take a careful look at the question of whether the networks may have engaged in conduct which hampers the independent judgment of the affiliated station, and which restricts effective competition in the programming market.

Network-Affiliate Relations

15. In the paragraphs which follow, we will briefly discuss three areas of network-affiliate relationships which appear to be particularly pertinent in connection with this inquiry, and as to which comments are specifically invited, although, of course, parties may wish to discuss others. These are: (1) clearance of network programming and the

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[1] Between 1955 and 1957, a special network study staff conducted a broad-ranging inquiry into network practices. This study resulted in the release of the "Barrow Report." *Network Broadcasting*, H. Rep. No. 1297, 85th Cong., 2nd Sess. (1958). (Hereinafter cited as the "Barrow Report.")

[2] As also stated in the Programming Policy Report (20 R.R. 1901, 1914), the broadcaster is obligated to provide programming to meet the needs and interests of his local community and this "is a duty personal to the licensee and may not be avoided by delegation of responsibility to others." See also Broadcast Licensees and Public Agreement, 57 FCC 2d 42, 49-51 (1975).

[3] *United States* v. *American Broadcasting Companies, Inc.*, Civil Action No. 74-3600—RJK (C.D. Cal.); *United States* v. *CBS Inc.*, Civil Action No. 74-3599—RJK (C.D. Cal.); *United States* v. *National Broadcasting Company, Inc.*, Civil Action No. 74-3601—RJK (C.D. Cal.).

[4] There are only ten commercial independent stations (in the conterminous U.S.) outside the top 50 markets.

[5] In terms of "ADI households" (households located in the market stations' "area of dominant influence") the figure was 22.82% for ABC, 22.76% for CBS and 21.91% for NBC. See Broadcasting Yearbook 1976, p. B-80, American Research Bureau (ARB) estimates for 1975-76.

[6] The average cost of a prime time network episode was obtained from Arthur D. Little, Television Program Production, Procurement, Distribution and Scheduling, (April 21, 1969) p. 41. Production costs are based on individual program production fees published in Variety, September 15, 1976, pp. 50-54.

[7] According to the Statistics Division of the Internal Revenue Service, net income earned by proprietorships, partnerships and corporations increased from $79,809 million in 1960 to $225,120 million in 1974. Statistics are not available for 1975.

[8] "Clearance" of network programs by affiliate stations is usually very high; ABC shows it as 95% or more for prime time and Monday-Friday daytime programming (though less in other parts of the week)

expansion of network program schedules, (2) previewing of network programming by affiliated stations, and (3) the relationship between station compensation plans and the independence of affiliate stations. While we are confident that larger licensees will supply comments, we particularly urge affiliates in smaller markets and independent stations to provide us with their views. With respect to each of these matters, we would hope that commenting parties will support their arguments, as completely as is possible, with relevant statistics and other factual information. This will facilitate our assessment of the merits of these arguments as well as assist the staff in its fact-finding efforts.

16. *Clearance of Network Programs and the Expansion of Network Schedules.* Westinghouse has estimated that, in 1960, network schedules filled only about one-half of the total hours broadcast by affiliate stationss, but that today network programs occupy approximately two thirds of these hours. It is argued that this increase has caused a corresponding decrease in the opportunities for independent programming decisions by station licensees. Implicit in this argument is an assumption that affiliated stations really do not wish to clear additional network programming, but that circumstances compel them to accept these programs anyway. In response to these claims, the networks argue that the overall figures on network program expansion are misleading and that regardless of the amount of increase, affiliates have supported and benefited from the additional programs.[9] We specifically invite comments on the extent to which such clearances are other than voluntary and the nature of any contractual provisions or other economic relationships which might serve to undermine the independent judgment of the station licensee.[10]

17. In addition, we seek comments on the likelihood of further expansion of network schedules and whether this would impact on the financial performance of local stations as well as their ability to serve the interests of the local community.[11] We invite additional comments regarding any relationships between the length of network schedules, and the supply and demand for syndicated programming, particularly first-run material, available to affiliated and independent stations. With regard to the latter questions, we have noted various reports indicating that the networks, at some time in the near future, may increase the total amount of available commercial minutes per hour in prime time. We ask for comments on whether this would significantly impede the development of additional networks, specialized networks, and other syndicated program offerings in competition with network programming.

18. *Previewing of Network Programs by Affiliate Stations.* Westinghouse has also alleged that the networks do not afford affiliated stations a reasonable opportunity to review network programming before it is shown to local audiences, thereby making it difficult for station licensees to exercise independent judgment concerning the suitability of particular episodes for their communities. With regard to this issue, it is suggested that audiences will become confused or angered if a program is cancelled after it has been promoted over-the-air or has been published as part of an announced program listing. Westinghouse contends that prescreening opportunities are commonly delayed until after this promotional material has been provided to the public. Network comments in response to the Westinghouse petition contain extensive descriptions of present (in the case of NBC, recently amended) procedures for informing affiliates in advance of network program content, procedures which the networks claim are "adequate."[12] We invite comments on the nature and adequacy of the information which is presently provided to affiliates concerning up-coming programs, and the extent to which improvements may be needed so as to allow the effective exercise of licensee discretion. We also invite comments on the cost and inconvenience which may be associated with the provision of additional, or more timely, program information. Finally, we encourage comments regarding the extent to which affiliates currently prescreen network programs as well as their willingness to make use of additional prescreening opportunities if made available.

19. *Station Compensation Plans.* Traditionally, the networks have paid their affiliated stations for clearing network programming, or more precisely, for clearing the network commercials which are associated with that programming. While the methods used to determine these payments are rather complicated, they are directly related to the size of a station's audience and constitute an important ingredient contributing to the financial health of affiliated stations. While the Commission is not concerned with the earnings of stations per se, we do become interested when financial arrangements detract from the ability of these stations to live up to their responsibilities as public trustees. In 1963, for example, we found that a proposed CBS compensation plan would discourage affiliates from rejecting network programs which they believed to be unsatisfactory or contrary to the public interest. CBS Network Compensation Plan, 24 R.R. 520a; 1 RR 2d 696 (1963). In this instance, the Commission stated that:

> Any graduated payment plan wherein the average hourly rate of compensation varies greatly with or is heavily influenced by the number of hours taken and which as a practical matter, requires an affiliate to take the majority of its programs from the same network without regard to the merits of the programming offered, is barred by our rules.

Id. at 698.[13] We invite comments on the extent to which the networks' present compensation plans are consistent with this principle. These contracts variously call for affiliates to carry up to an equivalent of 24 hours of prime time programming per month without compensation or for dollar discounts which amount in substance to roughly the same thing. We are specifically interested in the effect these provisions have on the independent discretion of our licensees and on the ability of syndicators and other program suppliers to compete with the networks by dealing directly with affiliated stations.[14] We are further interested in (1) whether and to what extent uncompensated prime time represents a

[9] It is further argued that these increases are largely attributable to ABC which accounted for more than half of the overall expansion of combined network schedules since 1960. Moreover, the networks maintain that the expansion was part of a "long process of building ABC into a fully competitive network." CBS and NBC, on the other hand, only expanded their schedules by 9 and 5 percent, respectively. Furthermore, the new network material has largely been late night, early morning (cleared, ABC and CBS note, by only about 80 percent of their affiliates) and weekend sports programming which has meant increased station compensation and/or made possible station broadcasts at times when the affiliates were previously off the air.

[10] Westinghouse has also suggested that the lack of joint efforts by affiliates in dealing with their network with respect to program clearances and other matters may have impeded their ability to serve the public. Some parties may wish to comment on the need for, legality, and propriety of such joint efforts.

[11] With regard to this specific question, Westinghouse has estimated that an expansion of network news to one hour would cost affiliate stations a total of $75 million annually and would increase total network income (including 0 and 0's) to 50 percent of all industry income.

[12] All three networks provide affiliates with written materials summarizing future programs. Policies on allowing actual previews of programs are: ABC—up to 15 hours per week (9 on the average), including all programs which carry a parental guidance advisory; CBS—no hour per week figures, but provides programs of particular interest "virtually on a daily basis" and theatrical movies approximately 4 weeks in advance where practical; NBC—up to 20 hours per week (series episodes, theatrical and made-for-television movies, specials), programs with parental guidance adivsories and any available program requested by in affiliate ABC and NBC both refer to their program standards departments as one way of insuring that programs are "acceptable" to affiliates (although Westingthouse points out that licensees must determine acceptability based on local, not national standards). Other network policies in this area include showing pilot programs to affiliates at annual meetings and during the preceding season and permitting affiliates to invite newspaper television critics to previews. Finally, it is said that there are practical problems in providing affiliates with programs 4 weeks in advance, as Westinghouse requests—production schedules and editing, MPAA classifications and dealing with the creative community.

[13] Aside from this concept, network control over a station's network rate has the potential for use by the network to influence the station's clearance decisions and also the level of its national spot advertising rates. See American Broadcasting Company, 17 R.R. 458, 462–463; Columbia Broadcasting System, Inc., 17 R.R. 447, 449; National Broadcasting Company, Inc., 17 R.R. 449, 452–453 (all 1958).

[14] A brief discussion of this issue may be found in the "Barrow Report," supra. pp. 463–66.

justifiable means of sharing the overhead expenses associated with network program procurement and (2) the extent to which the average amount of compensation for each half hour of network programming cleared by a station varies depending on the total amount of network programming cleared by that station.

20. In its petition, Westinghouse states that between 1964 and 1975 the net income of the networks increased by 246%, whereas compensation payments to stations increased only 20%. It is argued that, by virtue of their powerful economic position, the networks have been able to limit compensation payments and thus realize a rather dramatic increase in their profits. This argument suggests that the advantages of networking, as opposed to syndication, are very substantial. That is, in the absence of anti-competitive practices, artificially depressed levels of station compensation would be expected to provide a fertile opportunity for entry by non-network program sources. We are most interested in comments on the question of whether the economic picture painted by Westinghouse is complete and accurate and, if so, what factors exist which discourage vigorous competitive activities by syndicators or the creation of a "fourth network." Comments are also invited on the effects which various changes in compensation plans might have on the health and viability of networking and the viability of networking and the ability of the networks to contribute to programming in the public interest. We would encourage comments, particularly from our licensees, regarding relationships between compensation payments and expenditures to serve local programming needs (including locally produced material) as well as their ability to compete effectively with networks for national spot advertising. With regard to the latter two questions, it is alleged that relative decreases in compensation have forced stations to increase prices for national spots, while at the same time, permitting the networks to reduce commercial rates charged to national advertisers. This, according to Westinghouse, has afforded the networks a substantial competitive advantage which has adversely impacted on station revenues and on the quantity and quality of local service. Finally, parties are free to comment on any other aspect of network compensation plans or contractual relations which may be inconsistent with legitimate public interest objectives. We stress again, however, our unwillingness to become involved in the amount of station compensation per se i.e., without reference to practices which are anti-competitive or contrary to the public interest).

NETWORK-PROGRAM SUPPLIER RELATIONS

21. Our discussion of the relationships between the networks and program producers and suppliers is divided into the following six categories: (1) network interests in syndicated programs produced by independent suppliers, (2) network produced entertainment programming, (3) contractual tying agreements relating to production facilities and program options, (4) exclusive exhibition rights to new programs, (5) exhibition rights to network reruns, and (6) relations between network owned and operated stations and program suppliers. Once again, parties are free to comment on other matters which may be relevant to this Inquiry. All parties are urged, however, to make every effort to support their arguments with factual information.

22. *Network Interests in Syndicated Programs Produced by Independent Suppliers.* The proposed NBC consent decree contains terms prohibiting NBC from acquiring distribution rights or profit shares in programs produced by outside producers, and from engaging in syndication of such programs anywhere, and from all syndication in the U.S. These particular terms appear virtually identical to rules adopted by the Commission in 1970 (§ 73.658(j)), prohibiting such activities, including the acquisition of any interest in a program produced by an outside party beyond the right to network exhibition. We invite interested parties to comment on the adequacy of our present rules and to propose alternatives if that appears to be warranted. Parties may wish to comment, particularly, on programs such as the current Dinah program—created originally by CBS, produced for its 5 owned and operated stations by an outside entity, and syndicated nationally by a different company but often, according to Westinghouse, carried by CBS-affiliated stations. Westinghouse and NAITPD claim that this violates the spirit if not the letter of the 1970 rules, particularly in light of Dinah Shore's other contractual relations with CBS.[15]

23. *Network "In-House" Production of Entertainment Programs.* Although most network entertainment programs are acquired from outside producers, a small number have been and are produced entirely by the networks themselves. This was one subject of the Department of Justice's antitrust action. The Department's position (as set forth in its competitive impact statement filed with the NBC consent decree) is that, just as with programs produced by others but in which the network acquires subsidiary rights, there arises a network predisposition to use such material regardless of its merit, and independent producers are thus unduly excluded from the network program market. Other parties have alleged that the unlimited network potential for producing their own entertainment programs can be used to obtain first-run programming at unreasonably low prices. While we are not concerned with the profits of program producers as such, we are interested in the question of whether this factor gives the networks an anti-competitive advantage over potential competitors, and whether the advantage works to limit the supply of independently produced programs. Parties addressing the possibility of Commission regulation in this area should attempt to assess the possible effects of such restrictions on: (1) network programming schedules, as to quality and type of programming; (2) prices paid for network exhibition rights; and (3) the cost and supply of syndicated programming available to local stations.

24. *Contractual Tying Agreements Relating to Production Facilities and Program Options.* Independent production companies have periodically maintained that the networks agree to purchase a particular program on the condition that the producer grant the networks other rights or interests which are not incidental to network exhibition of that program. These interests, it is said, sometimes include a commitment to use network-owned production facilities to produce the program. We suggest that commenting parties address themselves to the question of whether such arrangements to the extent that they exist, may affect competition in the offering of program production facilities. We are further interested in obtaining information regarding the following questions: (1) what proportion of all network programs are produced using network owned facilities or that of other networks, (2) how does the cost of leasing these facilities compare with the cost of leasing facilities owned by others, (3) what percentage of total production costs is attributable to the cost of leasing facilities, and (4) does that percentage vary by type of program?

25. It is also alleged that the networks commonly demand options on exhibition rights for as much as five to seven years following the development of a script or program pilot, thereby precluding the producer in bidding for the rights to a program which develops into a highly successful series. We invite comments on the effects which such practices could have on competition, and, more specifically, on the supply of programs available to local stations through the syndication market, and also on the extent to which these clauses may limit the life expectancy of a first-run series. Comment is also invited on (1) the extent to which extended options may be necessary to cover a network's heavy expenses in developing and promoting program series, (2) whether the terms and conditions of options differ for various types of programs, (3) their impact on the profitability of an investment by a producer in independently produced entertainment series, (4) the relationship between program options and the life expectancy of a new series and the subsequent availability of that series in the syndication markets and (5) the extent to which changes in program options would or could affect station compensation payments.

26. *Exclusive Exhibition Rights for Program Pilots.* In a given year, the networks typically purchase exhibition rights to a far greater number of new programs than they can possibly use.

[15] Westinghouse also mentions the fact that the program is produced by CBS facilities (see para. 25, below). While not mentioned by Westinghouse, other pertinent factors in this connection could be: (1) the proportion of guests on the show which are CBS "talent"; and (2) whether or not CBS advanced financing for the program.

In large measure, such purchases are necessary to enable the network to select an attractive line-up of programs and to replace those which generate relatively small audiences. Nevertheless, we believe that it is appropriate to seek comments on whether some present practices unduly restrict the release of a significant number of pilots for further development and thereby limit the amount of first-run material available for syndication, and whether this programming might, in some instances, provide viable competition to network offerings. More specifically we invite comments regarding (1) the extent to which networks have eventually used programs which were initially rejected for regularly scheduled distribution; (2) the amount of elapsed time between initial rejection and eventual acceptance of these programs during the past 10 television seasons; and (3) any differences in the duration of exclusive rights to new series which depend on the type of program (e.g. prime-time series as opposed to daytime, situation comedy as opposed to drama etc.). Finally, parties are invited to comment on whether these rights influence the diversity of network schedules or the availability of first-run syndicated programs.

27. *Exhibition Rights to Network Reruns.* The Department of Justice has raised a question as to whether limitations should be placed on the ability of networks to secure exclusive rights to rebroadcast episodes originally shown in a previous television season. Specifically, the consent decree contains a provision that negotiations for exhibition rights to repeats, originally broadcast in a preceding season, must be separated from negotiations for rights to first-run exhibition.[9] We invite comments regarding the need for such restrictions and their effect on (1) the cost of repeats to the network and local stations, (2) network use of repeats in day-time, prime-time and fringe hours, (3) investment opportunities in new first-run network and syndicated programming and (4) the demand for new as well as repeated syndicated material available to local stations. Parties are invited to comment on any other aspect of this issue which warrants our attention. It is not our wish to reopen here the issues regarding same-year repeat episodes which were dealt with in the Commission's inquiry concerning the networks' use of reruns in prime-time entertainment programming (Docket No. 20203, 37 RR 2d 1435).

28. *The Relations Between Network Owned and Operated Stations and Program Suppliers.* The networks also participate in the programming market as station owners. It has been alleged by Westinghouse that certain practices used by the networks in acquisition of programming for the owned and operated stations have adversely influenced the quantity and quality of syndication offerings. It would be helpful to the Commission to know the extent of block buying of programming for each network owned station group (i.e., the purchase of the same programs for exhibition on all of the stations in that group.) The Commission is also interested in whether any relationship exists between the purchase of first-run programs for O and O exhibition and the leasing of network owned facilities for the production of those programs. Comments are invited on whether a "network deal" in the form of a contract for exhibition on an O and O group is a prerequisite for the success of a first-run program sold in the syndication market. Parties are also free to address other issues concerning the impact which network practices with respect to owned and operated stations may have on the programming market and, in particular, the impact which such practices might have on the successful syndication of programming in direct competition with network offerings. While this inquiry concerns the business practices of the networks as they may impact on industry competition, and while attention, thus, must be paid to network practices with respect to the O and O's, we wish to make it clear that this is not a multiple or "group" ownership proceeding.

29. *The Nature of this Proceeding.* Comments and other information filed in connection with this inquiry will be evaluated by a special staff composed of economists, attorneys, and others with relevant experience and expertise. This staff will be under the direct supervision of the full Commission.[16] The staff's analysis of the comments and reply comments may be followed by the issuance of questionnaires or inquiries designed to provide a complete factual record. If at any point it appears that these procedures are inadequate, the special staff will be authorized to initiate compulsory processes under Section 403 of the Act. It is hoped that a report concluding this inquiry can be completed within one year following receipt of the comments.

30. *It is ordered,* That the petition for inquiry, rule making and immediate temporary relief, filed September 3, 1976, by Westinghouse Broadcasting Company, Inc. IS GRANTED to the extent indicated herein and IS DENIED in all other respects.

31. Authority for the institution of this proceeding is contained in sections 4(i), 303 (g), (i) and (r) and 403 of the Communications Act of 1934, as amended. Pursuant to applicable procedures set out in § 1.430 of the Commission's Rules, interested persons may file comments on or before May 2, 1977 and reply comments on or before June 1, 1977. All relevant and timely comments and reply comments will be considered by the Commission before final action is taken herewith. In reaching its decision in this proceeding, the Commission may also take into account other relevant information before it, in addition to the specific comments invited by this Notice. We recognize that some parties may wish to file comments which include confidential financial information or other material which they may be reluctant to make public. In a manner consistent with the Freedom of Information Act (5 U.S.C. 552) we will consider requests for confidential treatment made under § 0.459 of our Rules. As set forth in that section such requests may be made in advance.

32. In accordance with the provisions of § 1.419 of the Rules, an original and 5 copies of all comments, replies pleadings, briefs, and other documents shall be furnished the Commission. Material filed will be available for public inspection during regular business hours in the Commission's Broadcast and Docket Reference Room at its headquarters in Washington, D.C.

FEDERAL COMMUNICATIONS COMMISSION,[17]
VINCENT J. MULLINS,
Secretary.

[FR Doc.77-2338 Filed 1-25-77;8:45 am]

[16] The special staff which conducted the 1955-57 inquiry was under the supervision of a committee of four Commissioners. In the present instance, however, we see no need for the establishment of such a committee.

[17] Separate Statement of Commissioner Joseph R. Fogarty, filed as part of the original document.

federal register

WEDNESDAY, JANUARY 26, 1977

PART VIII



DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

TAXATION OF LARGE CIGARS

Title 27—Alcohol, Tobacco Products and Firearms

CHAPTER I—BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, DEPARTMENT OF THE TREASURY

[T.D. ATF-40; Reference No. 305]

LARGE CIGAR

Taxation; Revision of Procedures

On December 3, 1976, there was published in the FEDERAL REGISTER (41 FR 53055) a notice of proposed rulemaking setting forth proposed amendments to the above-captioned regulations. The purpose of the amendments is to revise procedures relating to the taxation of large cigars (cigars weighing more than three pounds per thousand). The amendments are required by section 2128 of Pub. L. 94-455 (Tax Reform Act of 1976), which was approved on October 4, 1976. Section 2128 changed the basis for taxation of large cigars from seven tax classes, divided according to retail price, to a percentage tax based on the wholesale price. The new tax rate is 8½ percent of the wholesale price, with a maximum rate of $20 per thousand cigars.

Interested persons have been afforded an opportunity to participate in the making of these amendments by submission of views, comments, and suggestions. Due consideration has been given to all these expressions of public opinion. Some suggestions have been adopted; others have not. The reasons for the Bureau's decisions in each instance are discussed below. Except as specifically discussed in this document, the amendments as adopted are the same as those contained in the notice.

(1) *Editorial changes.* The statutory citation following § 275.81 has been amended to conform to FEDERAL REGISTER standards. The definitions of "ATF officer", "regional regulatory administrator", and "region", have been modified where they appear in §§ 270.11, 275.11, 290.11, 295.11, and 296.72 as part of a program to standardize these definitions throughout regulations of the Bureau of Alcohol, Tobacco and Firearms. Other minor editorial and conforming changes have also been made.

(2) *TSUSA schedules.* The proposals contained a definition in § 275.11 of "TSUS" (Tariff Schedules of the United States), but the U.S. International Trade Commission has informed us that this should be "TSUSA" (Tariff Schedules of the United States Annotated). Accordingly, this change has been made. Furthermore, the Commission indicated that it will amend these schedules to add new items 170.7225 through 170.7290, corresponding to the new ATF statistical classes A through H. This will remove the necessity of providing for a combination, under certain circumstances, of classes G and H, in § 297.37. Section 275.37 is therefore changed to reflect this development.

(3) *Determination of wholesale price.* A number of comments were received, from both government and industry, regarding the proposed rules for determination of wholesale price in §§ 270.22 and 275.39. Some minor changes have been made as a result of these comments. In paragraph (a) of each of these sections, the next-to-last sentence is re-worded for improved clarity. In paragraph (f), the second sentence is made into a separate paragraph (g) entitled "Removals for sales to retailers only". Paragraphs (g) and (h) are accordingly re-numbered as paragraphs (h) and (i).

One comment from industry, relating to the paragraph entitled "Change in wholesale price", suggested that the wholesale price tax base should not change until the actual effective date of the price change. If the change proposed by this comment were to be adopted, a manufacturer or importer would be able to remove and taxpay a large quantity of cigars during the period immediately preceding an intended wholesale price increase, thereby taking advantage of the lower tax rate. The cigars could then be sold after the effective date of the price increase, and the manufacturer or importer would obtain a tax advantage. Another industry suggestion with respect to this issue proposed that the tax rate should change as of the date a price change is announced, with an exception for cigars "removed to a distribution warehouse, controlled by the manufacturer, in anticipation of the change". This suggestion avoids some difficulties of the other suggestion discussed above, but it is still unacceptable because it would in effect permit the manufacturer to unilaterally determine the time of change in tax rate. The Bureau believes that the intent of Pub. L. 94-455 (and the predecessor statutory provisions) is that large cigars be taxed on the basis of the taxable price at which they will in fact be sold, to the best of the taxpayer's ability to determine or predict that price at the time of the taxable removal. Under the regulations as proposed and adopted, cigars removed even before the announcement or effective date of an intended price change, which the manufacturer or importer has reason to know will not be sold to retailers until after the effective date, are taxed according to the new wholesale price. The Bureau feels that the rule as adopted is in harmony with the intent of Congress and adequately protects the public revenue while not imposing any unusual administrative burden on the taxpayer. Furthermore, the rule as adopted is patterned after Revenue Ruling 69-470 (Internal Revenue Cumulative Bulletin 1969-2, 274), which provided a similar rule regarding retail price changes under the former system of taxation.

Another industry comment was made that the rule as proposed was unclear and therefore "legally defective under the 'void for vagueness' doctrine". The Bureau disagrees with this contention. As mentioned above, a basically similar rule has been in effect since 1969, under Revenue Ruling 69-470, without any known difficulties of interpretation by either government or industry. Nevertheless, in the interest of maximum public understanding, this paragraph has been re-written in what is hoped will be perceived as clearer language.

(4) *Marks on packages.* Several industry comments objected to the requirement that wholesale price be marked on the cigar packages. The most significant objection was that the cost of this requirement would be excessive to industry without corresponding benefits to the government. The Bureau feels that more time will be required to study the industry claims. Consequently, the effective date of the price marking requirements in §§ 270.214, 275.73, 290.186, 290.253, and 295.44 will be postponed for at least six months. If the Bureau decides, after thorough study, to make these requirements effective, notification in the FEDERAL REGISTER will be published at least 90 days prior to the effective date. In the interim period, manufacturers and importers will be permitted to use up existing stocks of packaging materials imprinted with the previously required information, without any additional package markings. Consequently, after February 1, 1977, and until further notice, no wholesale price information will be required on packages. During the next three or four months, the Bureau will conduct a study to determine what problems are experienced without such package information, and the relative significance of the problems in relation to operational problems and costs of including wholesale price information on the packages. Additional input from interested members of the public which would be useful to this study is solicited. Because a notice of proposed rulemaking has already been published, and because the present document in effect extends the public comment period with respect to this subject, no additional notice of proposed rulemaking will be published unless the Bureau decides to propose requirements that are substantially different from those published in the notice of December 3, 1976.

(5) *Manufacturers' records.* A manufacturer of cigars commented that, because of multiple wholesale prices, the record of removals subject to tax set forth in § 270.183(e) would present a significant burden for him. He stated that many of his sales are of private label cigars to retailers, and it would be relatively easy for him to calculate the total billing price for each day, but it would not be so easy to compute the number of cigars removed at each wholesale price. Part of this complexity he attributes to the myriad of private brand cigars and variations he produces. Consequently, he suggested as an alternative to the proposed requirement that only the total wholesale price of each day's removals be required to be shown in the record. The Bureau recognizes that record-keeping under the new system of taxation may be more detailed for some manufacturers because there will be more wholesale prices than there were tax classes under the former system. However, it is not felt that there is sufficient basis at present for a major change in record-keeping procedure such as the one proposed. The requirement for removals to be shown separately by wholesale price is expected to be important for auditing purposes, and is essential if statistics in the proposed form are to be provided. On the other hand, this industry comment does call attention to a possible simplification for manufacturers which should receive further consideration. If study indicates that a change such as the one proposed is practical and would be beneficial, a notice of proposed rulemaking on this subject may be published in the future. Public comments which would be helpful in this study are solicited.

Another industry comment pointed out that in § 270.183(e), the exception to permit cigars with a wholesale price of more than $235.294 per thousand to be shown without further price breakdown, was omitted. This omission was deliberate. The purpose of requiring exact wholesale price in this instance is to facilitate audit of records, since it is expected that commercial records of removals will indicate exact wholesale prices. The situation in § 270.183(i) is different, since in that case package markings without specific information for wholesale prices above $235.294 per thousand may be the only source of the required information. During the period of suspension of package marking requirements, as discussed above, only the total number of tax determined large cigars need be shown under § 270.183(i). Section 270.183(i) is amended accordingly.

(6) *Claims by manufacturers and importers.* Because of the period of suspension of package marking requirements, claims by manufacturers and importers for refund or credit of tax on large cigars withdrawn from the market must be for the lowest tax rate on that brand and size of cigar established during the record retention period (three to four years), unless a higher amount can be clearly demonstrated by specific documentation. This provision will cover situations when the absence of package markings indicating wholesale price may make it impossible to determine the exact amount to be refunded or credited. Sections 270.311, 275.170, and 275.172 are amended to include this new provision.

(7) *Export warehouses.* During the period of suspension of package marking requirements, the records, reports, and inventories under §§ 290.142, 290.143, and 290.147 need only show the total number of large cigars. Wholesale price need not be shown, since the absence of packag emarkings may make it impossible to determine the applicable wholesale price. Section 290.143 is amended because it contains a specific reference to wholesale price. When it is necessary for export warehouse proprietors to establish tax liability on large cigars, the liability will be at the maximum rate of $20 per thousand unless a lower tax liability can be clearly demonstrated. This provision applies to completion of Form 2150 and to establishment of tax liabilities on shortages and losses. Section 290.67 is amended to include this new provision.

(8) *Wholesale price of imported cigars.* The U.S. Customs Service pointed out that there might be procedural problems under the proposed § 275.39, as it related to liquidation of import entries. Consequently, slight modifications have been made in § 275.39(i) as adopted.

(9) *Effective date.* Several industry comments stressed the need for a minimum of thirty days between publication and effective date, in order to comply with anticipated package marking requirements. Since these package marking requirements are being suspended for at least another six months, this objection to a February 1 effective date is no longer relevant. The proposed amendments not related to package markings are being adopted in virtually the same form as published in the FEDERAL REGISTER on December 3, 1976. All interested parties have had constructive notice of the amendments since that time, and the Bureau believes that most interested persons have had actual notice. Since the amendments are necessary to implement section 2128 of Pub. L. 94-455, which permits the cigar industry to take advantage of the reduced tax rate effective February 1, 1977, it is found that there is good cause, within the meaning of 5 U.S.C. 553(d)(3), for making the amended regulations effective less than thirty days from the date of publication. Accordingly, these regulations shall become effective on February 1, 1977, which is the effective date of section 2128 of Pub. L. 94-455.

The following regulations are issued under the authority contained in 28 U.S.C. 7805 (68A Stat. 917).

PART 270—MANUFACTURE OF CIGARS AND CIGARETTES

PARAGRAPH A. The regulations in 27 CFR Part 270 are amended as follows:

1. Section 270.11 is amended (1) to reflect the change in taxation of large cigars, (2) to improve clarity, and (3) to reflect the establishment of the Bureau of Alcohol, Tobocco and Firearms. Definitions of "wholesale price", "Assistant Director (Regulatory Enforcement)", "regional regulatory administrator", and "ATF officer" are added; the introductory language is re-worded; the definitions of "Commissioner" and "regional commissioner" are deleted; and the definitions of "assistant regional commissioner", "determined or determination", "Director", "internal revenue officer", and "region" are revised. As amended, § 270.11 reads as follows:

§ 270.11 Meaning of terms.

When used in this part and in forms prescribed under this part, the following terms shall have the meanings given in this section, unless the context clearly indicates otherwise. Words in the plural form shall include the singular, and vice versa, and words indicating the masculine gender shall include the feminine. The terms "includes" and "including" do not exclude things not listed which are in the same general class.

Assistant Director (Regulatory Enforcement). The Assistant Director for regulatory enforcement activities in the Bureau of Alcohol, Tobacco and Firearms, who is responsible to, and functions under the direction and supervision of, the Director.

Assistant regional commissioner. A regional regulatory administrator as defined in this section.

ATF officer. An officer of the Bureau of Alcohol, Tobacco and Firearms (ATF) authorized to perform any function relating to the administration or enforcement of this part.

• • • • • •

Cigarette. • • •

Determined or determination. When used with respect to the tax on cigars and cigarettes, determined or determination means that the quantity and kind (small cigars, large cigars, small cigarettes, large cigarettes) of cigars and cigarettes and wholesale price of large cigars to be removed subject to tax have been established as prescribed by this part so that the tax payable with respect thereto may be calculated.

Director. The Director, Bureau of Alcohol, Tobacco and Firearms, Washington, D.C.

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Internal revenue officer. An ATF officer as defined in this section.

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Region. A geographical region of the Bureau of Alcohol, Tobacco and Firearms.

Regional regulatory administrator. The principal regional official responsible for administering regulations in this part.

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Wholesale price. The manufacturer's or importer's suggested delivered price at which the cigars are to be sold to retailers, inclusive of the tax imposed by 26 U.S.C. chapter 52 or section 7652, but exclusive of any State or local taxes imposed on cigars as a commodity, and before any trade, cash, or other discounts, or any promotion, advertising, display, or similar allowances. Where the manufacturer's or importer's suggested delivered price to retailers is not adequately supported by bona fide arm's length sales, or where the manufacturer or importer has no suggested delivered price to retailers, the wholesale price shall be the price for which cigars of comparable retail price are sold to retailers in the ordinary course of trade as determined by the Assistant Director (Regulatory Enforcement), as provided in § 270.22(i).

2. Section 270.21 is amended to reflect the new large cigar tax rate of 8½ percent of the wholesale price, which replaces the old system of tax classes based on the retail price. As amended, § 270.21 reads as follows:

§ 270.21 Cigar tax rates.

(a) *Present rates.* On cigars, manufactured in or imported into the United States, the following taxes are imposed by law:

(1) *Small cigars.* 75 cents per thousand.

(2) *Large cigars.* 8½ percent of the wholesale price, but not more than $20 per thousand.

Cigars not exempt from tax under 26 U.S.C. chapter 52 and the provisions of this part which are removed but not intended for sale, are taxed at the same rate as similar cigars removed for sale.

(b) *Previous rates for large cigars.* Prior to February 1, 1977, the following tax rates were in effect for large cigars:

(1) If removed to retail at not more than 2½ cents each, $2.50 per thousand;

(2) If removed to retail at more than 2½ cents each and not more than 4 cents each, $3 per thousand;

(3) If removed to retail at more than 4 cents each and not more than 6 cents each, $4 per thousand;

(4) If removed to retail at more than 6 cents each and not more than 8 cents each, $7 per thousand;

(5) If removed to retail at more than 8 cents each and not more than 15 cents each, $10 per thousand;

(6) If removed to retail at more than 15 cents each and not more than 20 cents each, $15 per thousand; and

(7) If removed to retail at more than 20 cents each, $20 per thousand.

(Sec. 202, Pub. L. 85–859, 72 Stat. 1414, as amended by sec. 2128, Pub. L. 94–455, 90 Stat. 1921 (26 U.S.C. 5701).)

3. Section 270.22 is completely revised to set out rules for properly determining the wholesale price of large cigars. As revised, § 270.22 reads as follows:

§ 270.22 Determination of wholesale price of large cigars.

(a) *General rule.* All cigars of the same brand, size, and packaging are taxed at the same rate except where otherwise specifically provided. When the manufacturer establishes a suggested delivered price to retailers (wholesale price), he shall do so according to the principles in the definition of "wholesale price" in § 270.11 and in this section. "Suggested delivered price" is the price at which the manufacturer intends for the cigars to be sold to retailers, and based on which the manufacturer's price to distributors and wholesalers is established through the usual trade discount. The price at which a cigar is in fact usually sold to retailers in transactions at arm's length from the manufacturer is the best evidence of whether the manufacturer's suggested delivered price is properly set. While it is not expected that a manufacturer will exercise any control over the prices actually paid by retailers in transactions with independent distributors, it is the manufacturer's responsibility to exercise reasonable care to assure that his suggested price to retailers (wholesale price) used as the basis for tax determination is consistent with prices actually paid by retailers. (Where there is no suggested delivered price adequately supported by actual sales to retailers, see paragraph (i) of this section).

(b) *Pricing for different packaging.* If different bona fide wholesale prices are applicable to different types of packaging (e.g., boxes of 25 and boxes of 50), then the cigars in each type of packaging are taxed on the basis of their respective wholesale prices.

(c) *Pricing of seconds.* If some of an otherwise identical cigar brand and size (1) Are distinctive from other such cigars because of physical imperfections, (2) Are offered to the consumer through clear labeling as "imperfects", "seconds", "throw-outs", or a comparable commonly understood term, and (3) The manufacturer has a separate wholesale price for such cigars, then they are taxed on the basis of this separate wholesale price.

(d) *Combination packages.* If a manufacturer has a wholesale price for a combination package containing cigars of different sizes, the cigars are taxed based on that combination wholesale price. If there is no wholesale price for the combination, then the cigars are taxed based on their individual wholesale prices.

(e) *Promotional pricing.* Special promotional pricing arrangements, whether applicable to all or only a part of removals, do not alter the taxable wholesale price of large cigars. For the purposes of applying this rule, any temporary reduction in price is presumed to be for promotional purposes.

(f) *Removals for another person.* If a manufacturer makes taxable removals of a brand and size of cigar only for distribution by others who establish the suggested delivered price to retailers (wholesale price), then the tax is based on such wholesale price irrespective of the fact that it is not directly established by the manufacturer making the taxable removals.

(g) *Removals for sale to retailers only.* If a manufacturer makes taxable removals of a brand and size of cigars for arm's length sales to retailers only, the tax is based on the manufacturer's selling price, applying the principles of inclusion and exclusion contained in the definition of "wholesale price" in § 270.11.

(h) *Change in wholesale price.* When a manufacturer decides to change the wholesale price of a brand and size of large cigars, there may be some of these cigars which were removed before the price change decision and were tax determined on the basis of the old wholesale price, which in fact are later sold to retailers under the new wholesale price. In this situation, the cigars will be considered to have been properly tax determined, unless at the time of removal the manufacturer had reason to believe that the cigars would be sold under the new wholesale price, considering all information which was or should have been available to him. After the price change decision, cigars may properly be removed and tax determined on the basis of the old wholesale price if the manufacturer has reason to know, at the time of removal, that they will be sold to retailers before the new wholesale price is effective. Conversely, cigars removed after a price change decision which can reasonably be expected to be sold to retailers under the new wholesale price must be tax determined on the basis of the new wholesale price, even if the removal takes place before the new wholesale price is announced or becomes effective. A price change decision is held to be made at the earliest time during the price change considerations when it might reasonably be concluded that the decision to change the price had in fact been reached.

(i) *Determination of wholesale price by Assistant Director (Regulatory Enforcement).* The Assistant Director (Regulatory Enforcement) will determine the wholesale price for tax purposes where the manufacturer has no suggested delivered price to retailers as contemplated by the definition of "wholesale price" in § 270.11 and as discussed in paragraph (a) of this section. Listings of such wholesale prices and their comparable retail prices will be published as necessary in the official Bulletin of the Bureau of Alcohol, Tobacco and Firearms for use by manufacturers in properly determining the tax on removals of large cigars for which there is no suggested delivered price to retailers. If a manufacturer has cigars which are not covered by the existing published listing, and for which he has no suggested delivered price to retailers, the manufacturer shall submit a written request to the Assistant Director (Regulatory Enforcement) for a determination of the wholesale price applicable to such cigars for tax purposes. If any of these cigars are removed before such determination, the manufacturer shall ascertain the wholesale price to the best of his ability based on the prices which are included in the published listing and other pertinent information available to him, and shall use that price for calculation and payment of the tax and for other tax purposes under this part, pending the determination by the Assistant Director (Regulatory Enforcement). If the wholesale price used by the manufacturer for tax payment differs from that subsequently determined by the Assistant Director (Regulatory Enforcement) to be the wholesale price for tax purposes, then the manufacturer shall make an adjustment in his tax return to correct the amount of tax paid. Any tax adjustment shall be made on the return covering the date on which notification of the wholesale price determination was received from the Assistant Director (Regulatory Enforcement).

4. Section 270.162 is amended to show that the tax on large cigars is now based on the wholesale price rather than the tax class, with a maximum tax of $20 per thousand on cigars with a wholesale price of more than $235.294 per thousand. A change in terminology is also made which reflects the establishment of the Bureau of Alcohol, Tobacco and Firearms. The amended portions of § 170.162 read as follows:

§ 270.162 Semimonthly tax return.

(a) *Requirement for filing.* Every manufacturer of tobacco products shall file, for each of his factories, a semimonthly tax return on Form 3071, in triplicate, with the district director of the internal revenue district in which the factory is located, for each return period, including any period during which a manufacturer begins or discontinues business. He shall file the return at the time specified in § 270.165 regard-

less of whether cigars or cigarettes are removed or whether tax is due for that particular return period. However, where the manufacturer requests by letter, in duplicate, and the regional regulatory administrator grants specific authorization, the manufacturer need not during the term of such authorization file a tax return for any period for which tax is not due or payable. The manufacturer shall retain the receipted copy of each tax return transmitted to him by the district director.

(b) *Information to be included.* The manufacturer shall show on the return (1) His employer identification number, (2) The numbers of small cigarettes, large cigarettes, and small cigars removed subject to tax during the return period, (3) The number and the total wholesale price of all large cigars with a wholesale price of not more than $235.294 per thousand which were removed subject to tax during the return period, (4) The number of large cigars with a wholesale price of more than $235.294 per thousand which were removed subject to tax during the return period, and (5) The tax due. The manufacturer shall serially number each return on Form 3071, commencing with the number "1" on the first return filed in any calendar year, and shall make a written declaration that the return is made under penalties of perjury.

* * * * *

(Sec. 202, Pub. L. 85–859, 72 Stat. 1417 (26 U.S.C. 5703); sec. 2128(c), Pub. L. 94–455, 90 Stat. 1921 (26 U.S.C. 5741).)

5. Section 270.183 is amended to require that large cigars be recorded by wholesale price rather than by the former tax classes, and to provide a breakdown of products removed for "export purposes" to show the respective quantities removed for export directly from the factory and transferred to export warehouses. During the suspension of package marking requirements, only the total number of large cigars on which the tax has been determined need be shown. As amended, § 270.183 reads as follows:

§ 270.183 Record of cigars and cigarettes.

The record of a manufacturer of tobacco products shall show the date and total quantity of all cigars and cigarettes, by kind (small cigars—large cigars; small cigarettes—large cigarettes);

(a) Manufactured;
(b) Received in bond by—
(1) Transfer from other factories,
(2) Release from customs custody, and
(3) Transfer from export warehouses;
(c) Received by return to bond;
(d) Disclosed as an overage by inventory;
(e) Removed subject to tax (by wholesale price for large cigars);
(f) Removed, in bond, for—
(1) Export,
(2) Transfer to export warehouses,
(3) Transfer to other factories,
(4) Use of the United States,
(5) Experimental purposes off factory premises;
(g) Otherwise disposed of, without determination of tax, by—
(1) Consumption by employees on factory premises,
(2) Consumption by employees off factory premises, together with the number of employees to whom furnished,
(3) Use for experimental purposes on factory premises,
(4) Loss,
(5) Destruction, and
(6) Reduction to tobacco;
(h) Disclosed as a shortage by inventory; and
(i) On which the tax has been determined (by wholesale price for large cigars, except that those over $235.294 per thousand may optionally be shown as if the wholesale price were $236 per thousand) and which are—
(1) Received, and
(2) Disposed of.

However, due to the suspension of requirements for wholesale price to be shown on packages of large cigars (see § 270.214(d)), the record under paragraph (i) of this section relating to large cigars on which the tax has been determined need only show the total number of these cigars, until notification in the FEDERAL REGISTER.

(Sec. 2128(c), Pub. L. 94–455, 90 Stat. 1921 (26 U.S.C. 5741).)

6. Section 270.184 is amended to require the records supporting removals of large cigars subject to tax to show the wholesale price, rather than the tax class under the former system of taxation. As amended, § 270.184 reads as follows:

§ 270.184 Record in support of removals subject to tax.

Every manufacturer of tobacco products shall keep a supporting record of cigars and cigarettes removed from his factory subject to tax and shall make entries in the record at the time of removal. The supporting record shall show, with respect to each removal, the date of removal, the name and address of the person to whom shipped or delivered, and the kind and quantity of cigars or cigarettes removed. In the case of large cigars the wholesale price shall also be shown, except that if the price is more than $235.294 per thousand, an indication in the supporting record to that effect will suffice. Where the cigars or cigarettes are delivered within the factory directly to the consumer, the name and address of the person to whom delivered need not be shown. Where the manufacturer keeps, at the factory, copies of invoices or other commercial records containing the information required as to each removal, in such manner that the information may be readily ascertained therefrom, such copies will be considered the supporting record required by this section. Such invoices or other commercial records which do not show specifically the tax classification of cigars or cigarettes (including wholesale price of large cigars) will be acceptable if they contain adequate information to readily enable an ATF officer to ascertain the applicable tax.

(Sec. 2128(c), Pub. L. 94–455, 90 Stat. 1921 (26 U.S.C. 5741).)

7. A new § 270.187 is added to require that manufacturers keep records of the wholesale prices of large cigars. The new § 270.187 reads as follows:

§ 270.187 Record of large cigar wholesale prices.

Every manufacturer of tobacco products who removes large cigars from his factory shall keep the records required by this section.

(a) *Basic record of wholesale prices.* The manufacturer shall keep a record to show each wholesale price (suggested delivered price to retailers or wholesale price as determined by the Assistant Director (Regulatory Enforcement) under § 270.22(h)), which is applicable to large cigars removed. No later than the tenth business day in January of each year the manufacturer shall prepare such a record to show the wholesale price in effect on the first day of that year for each brand and size of his large cigars. However, for the year 1977 the record shall be prepared no later than the tenth business day in February, to show the prices in effect as of February 1, 1977. The manufacturer shall thereafter enter in the record the wholesale price and its effective date for any large cigar removed which was not previously entered in the record, and any change in a price from that shown in the record, within ten business days after such removal or change in price. The record shall be a continuing one for each brand and size of cigar (and type of packaging, if pertinent), so that the taxable price on any date may be readily ascertained.

(b) *Copies of price announcements.* The manufacturer shall retain a copy of each general announcement which he issues within his organization or to the trade about establishment or change of large cigar wholesale prices. If the copy does not show the actual date when issued it shall be annotated to show that information, and it shall also be annotated to show the date on which a copy was submitted to the Assistant Director (Regulatory Enforcement) in accordance with § 270.202(b).

8. The existing material in § 270.202 is designated as paragraph (a), and a new paragraph (b) is added to require reports concerning wholesale prices of large cigars. As revised, § 270.202 reads as follows:

§ 270.202 Reports.

(a) *Monthly report.* * * *

(b) *Report of wholesale prices for large cigars.* Every manufacturer of tobacco products who removes large cigars from his factory, and who issues announcements such as those described in this paragraph, shall make a report of each establishment or change of wholesale price (suggested delivered price to retailers) for large cigars. The report shall consist of a copy of each general announcement that the manufacturer issues within his organization or to the trade about establishment or changes of wholesale prices. Only one copy of an announcement need be submitted even if it relates to cigars removed subject to

tax from more than one factory. If this copy does not show the actual date when the announcement was issued, or identify the factory or factories from which removals of the cigars covered by the announcement are made, then the copy shall be annotated to show this information. The factory or factories shall be identified either by permit number(s) or by name, city and state. If an intra-organizational announcement involves a forthcoming price change or new product which at the time of issuance is to remain confidential until a later date, the manufacturer may include a statement to this effect on the copy submitted. The copy shall be submitted to the Assistant Director (Regulatory Enforcement), Attn: Industry Control Division, Bureau of Alcohol, Tobacco and Firearms, Washington, D.C. 20226, within five business days after the day issued.

(Sec. 202, Pub. L. 85-859, 72 Stat. 1422 (26 U.S.C. 5722).)

9. A new § 270.203 is added to provide statistical classes of large cigars, based on wholesale prices, which will replace the former tax classes based on retail prices. New § 270.203 reads as follows:

§ 270.203 Statistical classification of large cigars.

Large cigars are divided into eight classes for statistical purposes, according to the wholesale price. The eight classes are as follows:

(a) *Class A.* large cigars with a wholesale price of not more than $33.00 per thousand.

(b) *Class B.* large cigars with a wholesale price of more than $33.00 per thousand but not more than $51.00 per thousand.

(c) *Class C.* large cigars with a wholesale price of more than $51.00 per thousand but not more than $66.00 per thousand.

(d) *Class D.* large cigars with a wholesale price of more than $66.00 per thousand but not more than $105.00 per thousand.

(e) *Class E.* large cigars with a wholesale price of more than $105.00 per thousand but not more than $120.00 per thousand.

(f) *Class F.* large cigars with a wholesale price of more than $120.00 per thousand but not more than $154.00 per thousand.

(g) *Class G.* Large cigars with a wholesale price of more than $154.00 per thousand but not more than $235.294 per thousand, and

(h) *Class H.* Large cigars with a wholesale price of more than $235.294 per thousand.

10. Section 270.214 is revised to include requirements that packages of large cigars show information relating to wholesale price. However, application of these new requirements for large cigars is suspended pending further notification in the FEDERAL REGISTER. Other requirements of this section, not related to wholesale price markings, are effective as of the effective date of this document. As amended, § 270.214 reads as follows:

§ 270.214 Notice for cigars.

(a) *General requirement.* Every package of cigars shall, before removal subject to tax, have adequately imprinted thereon, or on a label securely affixed thereto, the designation "cigars", the quantity of such product contained therein, and the classification of the product for tax purposes, i.e., for small cigars, either "small" or "little", and for large cigars, the wholesale price.

(b) *Expression of wholesale price.* The price to be shown is the wholesale price for each thousand cigars, except that for cigars with a wholesale price of more than $235.294 per thousand the wholesale price may be either specifically expressed or expressed as if it were $236 per thousand. Such price shall be expressed either in arabic numerals or according to the code: A=1, B=2, C=3, D=4, E=5, F=6, G=7, H=8, J=9, K=0; and in either case shall be preceded by the identifying letters "MP". If the wholesale price is in even dollars then no decimal or cents information need be shown. Thus, for a cigar with a wholesale price of $80.00 per thousand the wholesale price would be expressed as "MP80" or as "MPHK"; for a cigar with a wholesale price of $65.20 per thousand, the wholesale price would be expressed as "MP65.20" or as "MPFE.BK"; and for a cigar with a wholesale price for $450 per thousand, the wholesale price would be expressed as either "MP450," "MPDEK", "MP236", or "MPBCF".

(c) *Packages with cigars of more than one price.* If a combination package includes large cigars of more than one wholesale price and they are taxable on the basis of the individual wholesale prices of the cigars and not on the basis of an established wholesale price for the combination package (see § 270.22(d)), the numbers of cigars at each wholesale price and a brief description of those cigars shall be shown with the applicable wholesale price information. For example, if a package contained 30 Blunts with a wholesale price of $80 per thousand and 20 Panatelas with a wholesale price of $100 per thousand, the wholesale price would be shown as "30 Blunts—MP80, 20 Panatelas—MP100", or "30 Blunts—MPHK, 20 Panatelas—MPAKK".

(d) *Application of wholesale price regulations.* The application of regulations in this section relating to the imprinting, on packages of large cigars, of information relating to wholesale price is suspended until notification in the FEDERAL REGISTER. This notification shall be published in the FEDERAL REGISTER not less than 90 days prior to the date when the wholesale price marking regulations shall begin to apply.

(Sec. 202, Pub. L. 85-895, 72 Stat. 1422 (26 U.S.C. 5723).)

10a. Section 270.311 is amended to indicate that during the suspension of package marking requirements (see § 270.214(d)), the schedule of products on Form 3069, as well as claims filed on the basis of this schedule, must show large cigars at the lowest wholesale price for that brand and size of cigar established during the record retention period, unless a higher amount can be clearly demonstrated by specific documentation. The existing material is designated as paragraph (a), and the new material is contained in a new paragraph (b). As amended, § 270.311(b) reads as follows:

§ 270.311 Action by claimant.

(a) • • •

(b) After February 1, 1977, information on large cigar packages will not adequately evidence the amount of tax paid on the contents, because of the suspension of package notice requirements as provided in § 270.214(d), and because packages indicating the former tax classes may continue to be removed without alteration. Consequently, refund or credit of tax on large cigars withdrawn from the market after February 1, 1977, will be limited to the minimum amount applicable to that brand and size of cigar during the required record retention period (see § 270.185) except where the manufacturer establishes that a greater amount was actually paid. For each claim involving large cigars withdrawn from the market the manufacturer shall include a certification on either ATF Form 3069, ATF Form 2635, or IRS Form 843, to read as follows: "The amounts claimed relating to large cigars are based on the lowest wholesale prices applicable to such cigars during the required record retention period, except where specific documentation is submitted with the claim to establish that any greater amount of tax claimed was actually paid."

(Sec. 202, Pub. L. 85-859, 72 Stat. 1419, as amended (26 U.S.C. 5705).)

PART 275—IMPORTATION OF CIGARS, CIGARETTES, AND CIGARETTE PAPERS AND TUBES

PAR. B. The regulations in 27 CFR Part 275 are amended as follows:

1. Section 275.11 is amended (1) to reflect the change in taxation of large cigars, (2) to improve clarity, and (3) to reflect changes in Customs Service organization and the establishment of the Bureau of Alcohol, Tobacco and Firearms. Definitions of "wholesale price", "Assistant Director (Regulatory Enforcement)", "ATF officer", "Chief, Puerto Rico Operations", "regional regulatory administrator", and "TSUSA" are added; the introductory language is re-worded; and the definitions of "assistant regional commissioner", "collector of customs", "computation or computed", "determination or determined", "internal revenue officer", and "regional director" are modified. As amended, § 275.11 reads as follows:

§ 275.11 Meaning of terms.

When used in this part and in forms prescribed under this part, the following terms shall have the meanings given in this section, unless the context clearly indicates otherwise. Words in the plural form shall include the singular, and vice versa, and words indicating the masculine gender shall include the feminine. The terms "includes" and "including" do not exclude things not listed which are in the same general class.

Assistant Director (Regulatory Enforcement). The Assistant Director for regulatory enforcement activities in the Bureau of Alcohol, Tobacco and Firearms, who is responsible to, and functions under the direction and supervision of, the Director.

Assistant regional commissioner. A regional regulatory administrator as defined in this section.

ATF officer. An officer of the Bureau of Alcohol, Tobacco and Firearms (ATF) authorized to perform any function relating to the administration or enforcement of this part.

• • • • •

Chief, Puerto Rico Operations. The primary representative in Puerto Rico of the Bureau of Alcohol, Tobacco and Firearms.

• • • • •

Collector of customs. A district director of customs as defined in this section.

Computation or computed. When used with respect to the tax on cigars and cigarettes of Puerto Rican manufacture, computation or computed shall mean that the bonded manufacturer has ascertained the quantity and kind (small cigars, large cigars, small cigarettes, large cigarettes) of cigars and cigarettes and wholesale price of large cigars being shipped to the United States; that the payment, in Puerto Rico, of the tax on such products is to be deferred under Subpart G of this part; that the tax imposed on such products by 26 U.S.C. 7652(a) has been calculated, that the bonded manufacturer has executed an agreement to pay the internal revenue tax which will become due with respect to such products, as provided in this part; and that an ATF officer has verified and executed a certification of such calculation.

Determined or determination. When used with respect to the internal revenue tax on cigars, cigarettes, and cigarette papers and tubes, determined or determination shall mean that the quantity and kind (small cigars, large cigars, small cigarettes, large cigarettes) of cigars and cigarettes and wholesale price of large cigars, or the number of books or sets of cigarette papers of each different numerical content, or the number of cigarette tubes, to be removed subject to internal revenue tax, has been established as prescribed by this part so that the internal revenue tax payable with respect thereto may be calculated.

• • • • •

Internal revenue officer. An ATF officer as defined in this section.

• • • • •

Region. A geographical region of the Bureau of Alcohol, Tobacco and Firearms.

Regional director. A regional regulatory administrator as defined in this section.

Regional regulatory administrator. The principal regional official responsible for administering regulations in this part.

• • • • •

TSUSA. The Tariff Schedules of the United States Annotated, as published by the United States International Trade Commission.

• • • • •

Wholesale price. The manufacturer's or importer's suggested delivered price at which the cigars are to be sold to retailers, inclusive of the tax imposed by 26 U.S.C. chapter 52 or section 7652, but exclusive of any State or local taxes imposed on cigars as a commodity, and before any trade, cash, or other discounts, or any promotion, advertising, display, or similar allowances. Where the manufacturer's or importer's suggested delivered price to retailers is not adequately supported by bona fide arm's length sales, or where the manufacturer or importer has no suggested delivered price to retailers, the wholesale price shall be the price for which cigars of comparable retail price are sold to retailers in the ordinary course of trade as determined by the Assistant Director (Regulatory Enforcement) under § 275.39(i).

2. Section 275.31 is amended to reflect the new tax rate on large cigars, which is 8½ percent of the wholesale price. The old system of tax classes has been changed by statute. As amended, § 275.31 reads as follows:

§ 275.31 Cigars.

(a) *Present rates.* On cigars imported or brought into the United States, the following internal revenue taxes are imposed by law:

(1) *Small cigars.* 75 cents per thousand.

(2) *Large cigars.* 8½ percent of the wholesale price, but not more than $20 per thousand.

Cigars not exempt from tax under this part which are removed but not intended for sale are taxed at the same rate as similar cigars removed for sale.

(b) *Previous rates for large cigars.* Prior to February 1, 1977, the following tax rates were in effect for large cigars:

(1) If removed to retail at not more than 2½ cents each, $2.50 per thousand;

(2) If removed to retail at more than 2½ cents each and not more than 4 cents each, $3 per thousand;

(3) If removed to retail at more than 4 cents each and not more than 6 cents each, $4 per thousand;

(4) If removed to retail at more than 6 cents each and not more than 8 cents each, $7 per thousand;

(5) If removed to retail at more than 8 cents each and not more than 15 cents each, $10 per thousand;

(6) If removed to retail at more than 15 cents each and not more than 20 cents each, $15 per thousand; and

(7) If removed to retail at more than 20 cents each, $20 per thousand.

(68A Stat. 907, as amended (26 U.S.C. 7652); sec. 202, Pub. L. 85-859, 72 Stat. 1414, as amended by sec. 2128, Pub. L. 94-455, 90 Stat. 1921 (26 U.S.C. 5701).)

3. Section 275.37 is revised to provide statistical classes of large cigars, based on wholesale prices, which will replace the former tax classes based on retail prices. Also, the center heading above § 275.37 is modified to reflect the change from tax classes to statistical classes. As amended, the center heading and § 275.37 read as follows:

CLASSIFICATION OF LARGE CIGARS AND CIGARETTES

§ 275.37 Statistical classification of large cigars.

Large cigars are divided into eight classes for statistical purposes, according to the wholesale price. The eight classes are as follows:

(a) *Class A.* Large cigars with a wholesale price of not more than $33.00 per thousand,

(b) *Class B.* Large cigars with a wholesale price of more than $33.00 per thousand but not more than $51.00 per thousand,

(c) *Class C.* Large cigars with a wholesale price of more than $51.00 per thousand but not more than $66.00 per thousand,

(d) *Class D.* Large cigars with a wholesale price of more than $66.00 per thousand but not more than $105.00 per thousand,

(e) *Class E.* Large cigars with a wholesale price of more than $105.00 per thousand but not more than $120.00 per thousand,

(f) *Class F.* Large cigars with a wholesale price of more than $120.00 per thousand but not more than $154.00 per thousand,

(g) *Class G.* Large cigars with a wholesale price of more than $154.00 per thousand but not more than $235.294 per thousand, and

(h) *Class H.* Large cigars with a wholesale price of more than $235.294 per thousand.

4. A new § 275.39 is added to set out rules for properly determining the wholesale price of large cigars. New § 275.39 reads as follows:

§ 275.39 Determination of wholesale price of large cigars.

(a) *General rule.* All cigars of the same brand, size, and packaging are taxed at the same rate except where otherwise specifically provided. When the importer establishes a suggested delivered price to retailers (wholesale price), he shall do so according to the principles in the definition of "wholesale price" in § 275.11 and in this section. "Suggested delivered price" is the price at which the importer intends for the cigars to be sold to retailers and based on which the importer's price to distributors and wholesalers is established through the usual trade discount. The price at which a cigar is in fact usually sold to retailers in transactions at arm's length from the importer is the best evidence of whether the importer's suggested delivered price is properly set. While it is not expected that an

importer will exercise any control over the prices actually paid by retailers in transactions with independent distributors, it is the importer's responsibility to exercise reasonable care to assure that his suggested price to retailers (wholesale price) used as the basis for tax determination is consistent with prices actually paid by retailers. (Where there is no suggested delivered price adequately supported by actual sales to retailers, see paragraph (i) of this section.)

(b) *Pricing for different packaging.* If different wholesale prices are applicable to different types of packaging (e.g., boxes of 25 and boxes of 50), then the cigars in each type of packaging are taxed on the basis of their respective wholesale prices.

(c) *Pricing of seconds.* If some of an otherwise identical cigar brand and size (1) Are distinctive from other such cigars because of physical imperfections, (2) Are offered to the consumer through clear labeling as "imperfects", "seconds", "throw-outs", or a comparable commonly understood term, and (3) The importer has a separate wholesale price for such cigars; then they are taxed on the basis of this separate wholesale price.

(d) *Combination packages.* If an importer has a wholesale price for a combination package containing cigars of different sizes, the cigars are taxed based on that combination wholesale price. If there is no wholesale price for the combination, then the cigars are taxed based on their individual wholesale prices.

(e) *Promotional pricing.* Special promotional pricing arrangements, whether applicable to all or only a part of removals, do not alter the taxable wholesale price of large cigars. For the purposes of applying this rule, any temporary reduction in price is presumed to be for promotional purposes.

(f) *Removals for another person.* If an importer makes taxable removals of cigars for exclusive distribution by others who establish the suggested delivered price to retailers (wholesale price), then the tax is based on such wholesale price irrespective of the fact that it is not directly established by the importer making the taxable removals.

(g) *Removals for sales to retailers only.* If an importer makes taxable removals of cigars exclusively for arm's length sales to retailers only, the tax is based on the importer's selling price applying the principles of inclusion and exclusion contained in the definition of "wholesale price" in § 275.11.

(h) *Change in wholesale price.* When an importer decides to change the wholesale price of a brand and size of large cigars, there may be some of these cigars which were removed before the price change decision and were tax determined on the basis of the old wholesale price, which in fact are later sold to retailers under the new wholesale price. In this situation, the cigars will be considered to have been properly tax determined, unless at the time of removal the importer had reason to believe that the cigars would be sold under the new wholesale price, considering all information which was or should have been available to him. After the price change decision, cigars may properly be removed and tax determined on the basis of the old wholesale price if the importer has reason to know, at the time of removal, that they will be sold to retailers before the new wholesale price is effective. Conversely, cigars removed after a price change decision must be tax determined on the basis of the new wholesale price, even if the removal takes place before the new wholesale price is announced or becomes effective. A price change decision is held to be made at the earliest time during the price change considerations when it might reasonably be concluded that the decision to change the price had in fact been reached.

(i) *Determination of wholesale price by Assistant Director (Regulatory Enforcement).* The Assistant Director (Regulatory Enforcement) will determine the wholesale price for tax purposes where the importer has no suggested delivered price to retailers as contemplated by the definition of "wholesale price" in § 275.11 and as discussed in paragraph (a) of this section. Listings of such wholesale prices and their comparable retail prices will be published as necessary in the official Bulletin of the Bureau of Alcohol, Tobacco and Firearms for use by importers in properly determining the tax on removals of large cigars for which there is no suggested delivered price to retailers. If an importer has cigars which are not covered by the existing published listing, and for which he has no suggested delivered price to retailers, the importer shall submit a written request to the Assistant Director (Regulatory Enforcement) for a determination of the wholesale price applicable to such cigars for tax purposes. If any of these cigars are removed before such determination, the importer shall ascertain the wholesale price to the best of his ability based on the prices which are included in the published listing and other pertinent information available to him, and shall use that price for calculation and payment of the tax and for other tax purposes under this part pending the determination by the Assistant Director (Regulatory Enforcement). On each entry document on which the importer so estimates the tax, he shall include a conspicuous statement on all copies as follows: "Request this entry not be liquidated until ATF has ruled on the taxable wholesale price of these cigars." If the wholesale price used by the importer for taxpayment differs from that subsequently determined by the Assistant Director (Regulatory Enforcement) to be the wholesale price for tax purposes, then the importer shall pay any additional amount due or make claim for overpayment by advising the district director of customs of the additional amount due or overpaid, in accordance with customs procedure. If the wholesale price used by the importer is the same as that determined by the Assistant Director (Regulatory Enforcement), the importer shall so notify the district director of customs and request that liquidation of the entry proceed. The importer shall take the appropriate action within fifteen calendar days following the date on which notification of the wholesale price determination was received from the Assistant Director (Regulatory Enforcement).

5. Section 275.73 is received to include requirements that packages of large cigars show information relating to wholesale price. However, application of these new requirements for large cigars is suspended pending further notification in the FEDERAL REGISTER. Other requirements of this section, not related to wholesale price markings, are effective as of the effective date of this document. As amended, § 275.73 reads as follows:

§ 275.73 Notice for cigars.

(a) *General requirement.* Every package of cigars, except as provided in § 275.75, shall, before removal subject to internal revenue tax, have adequately imprinted thereon, or on a label securely affixed thereto, the designation "cigars", the quantity of such product contained therein, and the classification of the product for tax purposes, i.e., for small cigars, either "small" or "little", and for large cigars, the wholesale price.

(b) *Expression of wholesale price.* The price to be shown is the wholesale price for each thousand cigars, except that for cigars with a wholesale price of more than $235.294 per thousand the wholesale price may be either specifically expressed or expressed as if it were $236 per thousand. Such price shall be expressed either in arabic numerals or according to the code: A=1, B=2, C=3, D=4, E=5, F=6, G=7, H=8, J=9, K=0; and in either case shall be preceded by the identifying letters "IP". If the wholesale price is in even dollars then no decimal or cents information need be shown. Thus, for a cigar with a wholesale price of $80.00 per thousand the wholesale price would be expressed as "IP80" or as "IPHK"; for a cigar with a wholesale price of $65.20 per thousand, the wholesale price would be expressed as "IP65.20" or as "IPFE.BK"; and for a cigar with a wholesale price of $450 per thousand, the wholesale price would be expressed as either "IP450", "IPDEK", "IP236", or "IPBCF".

(c) *Packages with cigars of more than one price.* If a combination package includes large cigars of more than one wholesale price and they are taxable on the basis of the individual wholesale prices of the cigars and not on the basis of an established wholesale price for the combination package (see § 275.39(d)), the number of cigars at each wholesale price and a brief description of those cigars shall be shown with the applicable wholesale price information. For example, if a package contained 30 Blunts with a wholesale price of $80 per thousand and 20 Panatelas with a wholesale price of $100 per thousand, the wholesale price would be shown as "30 Blunts—IP80, 20 Panatelas—IP100", or "30 Blunts—IPHK, 20 Panatelas—IPAKK".

(d) *Application of wholesale price regulations.* The application of regulations in this section relating to the imprinting, on packages of large cigars, of information relating to wholesale price is suspended until notification in the FEDERAL REGISTER. This notification shall be published in the FEDERAL REGISTER not less than 90 days prior to the date when the wholesale price marking regulations shall begin to apply.

(Sec. 202, Pub. L. 85-859, 72 Stat. 1422 (26 U.S.C. 5723).)

6. Section 275.81(c)(4) is amended to require importers to show, on the customs entry form, information about the wholesale price of large cigars which is necessary for computation of the internal revenue tax. As amended, § 275.81(c)(4) reads as follows:

§ 275.81 Taxpayment.

* * * * * * *

(c) *Required information.* * * *

* * * * * * *

(4) *For cigars.* The importer will show:

(i) The number imported under each TSUSA item number;

(ii) For large cigars with a wholesale price of not more than $235.294 per thousand, the number and total wholesale price of such cigars;

(iii) For large cigars with a wholesale price of more than $235.294 per thousand, the number of such cigars;

(iv) The applicable tax rate ($0.75 per thousand for small cigars, 8½ percent of the wholesale price for large cigars with a wholesale price of not more than $235.294 per thousand, and $20.00 per thousand for large cigars with a wholesale price of more than $235.294 per thousand); and

(v) The tax due.

* * * * * * *

(68A Stat. 907, as amended (26 U.S.C. 7652); Sec. 202, Pub. L. 85-859, 72 Stat. 1417 (26 U.S.C. 5703).)

7. Section 275.105 is amended to replace "class of large cigars" with the information about wholesale price required by the new system of taxation, and to make nomenclature changes to reflect the establishment of the Bureau of Alcohol, Tobacco and Firearms. As amended, § 275.105 reads as follows:

§ 275.105 Prepayment of tax.

To prepay, in Puerto Rico, the internal revenue tax imposed by 26 U.S.C. 7652(a), on cigars, cigarettes, and cigarette papers and tubes of Puerto Rican manufacture which are to be shipped to the United States, the shipper shall file, or cause to be filed, with the Officer-in-Charge, a tax return, Form 3073, in triplicate, with full remittance of tax which will become due on such cigars, cigarettes, and cigarette papers and tubes. The Officer-in-Charge will present a receipted copy of the return to the person filing the return and paying the tax, retain one copy, and forward the remaining copy to the Regional Regulatory Administrator, Bureau of Alcohol, Tobacco and Firearms, New York, N.Y. The person who filed the return and prepaid the tax shall present the receipted copy of the return to the ATF officer assigned by the Chief, Puerto Rico Operations, to inspect the cigars, cigarettes, and cigarette papers and tubes to be shipped to the United States. Such officer will endorse the receipted copy of the return to show release of the cigars, cigarettes, and cigarette papers and tubes, or, if less than the quantity of cigars, cigarettes, and cigarette papers and tubes covered by the return is released, to show (a) The numbers of small cigarettes, large cigarettes, and small cigars, (b) The number and total wholesale price of large cigars with a wholesale price of not more than $235.294 per thousand, (c) The number of large cigars with a wholesale price of more than $235.294 per thousand, (d) The number of books or sets of cigarette papers of each different numerical content, and (e) The number of cigarette tubes, in fact released and will return such copy to the taxpayer.

(68A Stat. 907, as amended (26 U.S.C. 7652); sec. 202, Pub. L. 85-859, 72 Stat. 1417 (26 U.S.C. 5703).)

8. Section 275.106 is amended to replace the detailed instructions for completion, by the ATF officer, of Form 3074 (including an instruction for "class of large cigars") with a simplified instruction for completion of "other information required by that form." Preparation of Form 3075 will be required of the shipper, rather than the ATF officer, although the ATF officer must still certify that the tax has been prepaid. Nomenclature changes are also made to reflect the establishment of the Bureau of Alcohol, Tobacco and Firearms. As amended, § 275.106 reads as follows:

§ 275.106 Inspection of shipment and certification of prepayment by ATF officer.

The ATF officer, assigned to inspect Puerto Rican cigars, cigarettes, and cigarette papers and tubes to be shipped to the United States in accordance with § 275.105, will prepare, for each shipping container, a statement on Form 3074 that the tax has been prepaid, and show the other information required by that form. The shipper shall affix the completed Form 3074 to the outside of each shipping container in which the articles are packed. Such statement, Form 3074, shall be affixed to the outer container used in the shipment of freight in bulk (crate, packingbox, van, trailer, etc.) and not on the individual cartons, cases, etc., included in such outer container. In addition, the shipper will prepare Form 3075, in quintuplicate, identifying the cigars, cigarettes, and cigarette papers and tubes released in each shipment, for certification by the ATF officer that the tax has been prepaid thereon. The ATF officer will then (a) Present one copy to the taxpayer for attachment to the bill of lading to accompany the shipment (in custody of the carrier) for presentation to the district director of customs at the port of entry; (b) Promptly mail two copies to the district director of customs at the port of entry; (c) Mail one copy to the regional regulatory administrator of the region wherein the customs collection headquarters is located; and (d) Retain the remaining copy. Noncommercial mail shipments of cigars, cigarettes, and cigarette papers and tubes to the United States are exempt from the provisions of this section, except that the ATF officer in Puerto Rico receiving a payment of internal revenue tax on mail shipments of such articles will prepare a certificate to be affixed to the container stating that the United States internal revenue tax has been prepaid on the articles contained therein.

9. Section 275.107 is amended to replace "class of large cigars" with the information about wholesale price required by the new system of taxation, and to make nomenclature changes reflecting changes in Customs Service organization and the establishment of the Bureau of Alcohol, Tobacco and Firearms. As amended, § 275.107 reads as follows:

§ 275.107 Procedure at port of entry.

The district director of customs at the port of entry will inspect the shipment to determine whether the quantity specified on the Form 3075 is contained in the shipment. He will then execute his certificate on the three copies of the Form 3075 in his possession, and indicate on each copy any exceptions found at the time of release. The statement of exceptions shall identify each shipping container which sustained a loss; the cigars, cigarettes, and cigarette papers and tubes reported shipped in such container; and the cigars, cigarettes, and cigarette papers and tubes lost from such container. Losses occurring as the result of missing packages, cases, or shipping containers shall be listed separately from losses caused by damage. Where the statement is made on the basis of cigars, cigarettes, or cigarette papers or tubes missing or damaged, the district director of customs shall show (a) The numbers of small cigarettes, large cigarettes, and small cigars, (b) The number and total wholesale price of large cigars with a wholesale price of not more than $235.294 per thousand, (c) The number of large cigars with a wholesale price of more than $235.294 per thousand, (d) The number of books or sets of cigarette papers of each different numerical content, and (e) The number of cigarette tubes. If the district director of customs finds that the full amount of the tax has not been prepaid, he will require the difference due to be paid to him prior to release of the cigars, cigarettes, and cigarette papers and tubes. When the inspection of the shipment has been effected, and any additional tax found to be due has been paid to the district director of customs, the shipment may be released.

10. Section 275.110 is amended to replace "class of large cigars" with the information about wholesale price required by the new system of taxation, and to

make nomenclature changes reflecting the establishment of the Bureau of Alcohol, Tobacco and Firearms. As amended, § 275.110 reads as follows:

§ 275.110 Computation of tax and execution of agreement to pay tax.

Where cigars or cigarettes are to be shipped to the United States on computation of internal revenue tax in Puerto Rico (involving deferred taxpayment), the bonded manufacturer shall calculate the tax and shall prepare an original and six copies of Form 2987. He shall enter on such form under the penalties of perjury (a) The numbers of small cigarettes, large cigarettes, and small cigars to be shipped, (b) The number and total wholesale price of large cigars with a wholesale price of not more than $235.294 per thousand to be shipped, (c) The number of large cigars with a wholesale price of more than $235.294 per thousand to be shipped, (d) The amount of the tax to be paid on such products under the provisions of this subpart, and (e) The name and address of the consignee in the United States to whom such products are being shipped; and shall date and execute the agreement to pay the amount of tax which shall be computed on such products covered by the Form 2987. The Form 2987 shall be serially numbered by the bonded manufacturer beginning with the number "1" on January 1 of each year. The bonded manufacturer shall then request the Chief, Puerto Rico Operations, to assign an ATF officer to inspect the cigars and cigarettes, verify the tax calculation with respect to such products, and release such products for shipment in accordance with § 275.111. The bonded manufacturer shall present all copies of the prepared Form 2987 to the ATF officer assigned. The date of certification of Form 2987 by the ATF officer shall be treated as the date of computation of tax. Cigars and cigarettes may be released for shipment to the United States in accordance with the provisions of this section only after computation of tax.

11. Section 275.111 is amended to rephrase the instructions for completion, by the ATF officer, of Form 2989. The phrase, "quantity and kind of cigars and cigarettes and class of large cigars" is replaced with the simpler phrase, "other information required by that form." Nomenclature changes are also made to reflect changes in Customs Service organization and the establishment of the Bureau of Alcohol, Tobacco and Firearms. As amended, § 275.111 reads as follows:

§ 275.111 Inspection of shipment and certification by ATF officer.

On receipt of the original and six copies of the Form 2987 completed and executed by the bonded manufacturer in accordance with § 275.110, an ATF officer will inspect the cigars and cigarettes covered by the form, verify the tax calculation made with respect to such products, date and execute the certification on such form, and release the cigars and cigarettes for shipment to the United States. Such officer will then promptly distribute the certified Form 2987 by (a) Mailing the original to the Officer-in-Charge; (b) Mailing two copies to the district director of customs at the port of entry; (c) Mailing one copy to the regional regulatory administrator of the region wherein the customs collection headquarters is located; (d) Returning two copies to the bonded manufacturer who will attach one copy to the bill of lading to accompany the shipment (in custody of the carrier) for presentation to the district director of customs at the port of entry; and (e) Submitting one copy to the Chief, Puerto Rico Operations. The ATF officer will also prepare, for each shipping container, a statement on Form 2989 that the tax on the cigars and cigarettes to be shipped to the United States has been computed and show the name and address of the bonded manufacturer, date of tax computation, and the other information required by that form. The bonded manufacturer shall affix the completed Form 2989 to the outside of each shipping container in which the products are packed. Such statement, Form 2989, shall be affixed to the outer container used in the shipment of freight in bulk (crate, packing box, van, trailer, etc.) and not on the individual cartons, cases, etc., included in such outer container.

12. Section 275.112 is amended to replace "class of large cigars" with the information about wholesale price required by the new system of taxation, and to make nomenclature changes reflecting the establishment of the Bureau of Alcohol, Tobacco and Firearms. As amended, § 275.112 reads as follows:

§ 275.112 Tax return.

The internal revenue taxes imposed by 26 U.S.C. 7652(a), with respect to cigars and cigarettes manufactured in Puerto Rico and shipped to the United States on computation of tax under the provisions of this subpart shall be paid on the basis of a semimonthly tax return. The bonded manufacturer of such products shall file with the Officer-in-Charge a tax return, Form 2988, in triplicate, for each semimonthly return period. The bonded manufacturer shall show on the return (a) The serial numbers of all Forms 2987 certified during the return period, (b) The numbers of small cigarettes, large cigarettes, and small cigars upon which the tax has been computed during the return period, (c) The number and total wholesale price of large cigars with a wholesale price of not more than $235.294 per thousand upon which the tax has been computed during the return period, (d) The number of large cigars with a wholesale price of more than $235.294 per thousand upon which the tax has been computed during the return period, and (e) The tax due. The bonded manufacturer shall execute the return, Form 2988, under the penalties of perjury. He shall file a return for each return period at the time specified in § 275.113, regardless of whether tax is due for that return period. However, where the Regional Regulatory Administrator, Bureau of Alcohol, Tobacco and Firearms, New York, N.Y., grants specific authorization, the bonded manufacturer need not file a tax return during the term of such authorization for any period in which tax liability was not incurred under the provisions of this subpart.

13. Section 275.117 is amended to replace "class of large cigars" with the information about wholesale price required by the new system of taxation, and to make nomenclature changes reflecting the establishment of the Bureau of Alcohol, Tobacco and Firearms. As amended, § 275.117 reads as follows:

§ 275.117 Procedure at port of entry.

The district director of customs at the port of entry will inspect the shipment to determine whether the quantity specified on the Form 2987 is contained in the shipment. He will then execute his certificate on the three copies of the Form 2987 in his possession, and indicate on each copy any exceptions found at the time of release. The statement of exceptions shall identify each shipping container which sustained a loss, the cigars and cigarettes reported shipped in such container, and the cigars and cigarettes lost from such container. Losses occurring as the result of missing packages, cases, or shipping containers shall be listed separately from losses caused by damage. Where the statement is made on the basis of cigars and cigarettes missing or damaged, the district director of customs shall show (a) The numbers of small cigarettes, large cigarettes, and small cigars, (b) The number and total wholesale price of large cigars with a wholesale price of not more than $235.294 per thousand, and (c) The number of large cigars with a wholesale price of more than $235.294 per thousand. If the district director of customs finds that the full amount of tax due has not been computed, he will require the difference due to be paid to him prior to release of the cigars and cigarettes. When the inspection of the shipment has been effected, and any additional tax found to be due has been paid to the district director of customs, the shipment may be released.

14. Section 275.139 is amended to replace "class" of large cigars with "wholesale price", and to add a qualification that if the wholesale price is more than $235.294 per thousand, it may be shown as if it were $236 per thousand. During the suspension of package marking requirements (see § 275.73(d)), only the total number of large cigars received need be shown. As amended, § 275.139 reads as follows:

§ 275.139 Records.

Every manufacturer of tobacco products and cigarette papers and tubes in the United States who receives cigars, cigarettes, or cigarette papers or tubes of Puerto Rican manufacture, without payment of internal revenue tax, under his bond, shall keep a separate record which will show the date and quantity and kind of cigars and cigarettes, the wholesale price of large cigars (if not more than $235.294 per thousand; if more than this, the wholesale price may be shown as if it were $236 per thousand), the date and number of books or sets of cigarette papers of each different numerical content, and the number of cigarette tubes: (a) Received, (b) Removed subject to tax, (c) Removed for tax-exempt purposes, and (d) Otherwise disposed of. However, due to the suspension of requirements for wholesale price to be shown on packages of large cigars (see § 275.73(d)), the record under (a) of large cigars received need only show the total number of these cigars, until notification is given in the FEDERAL REGISTER.

(Sec. 2128(c), Pub. L. 94-455, 90 Stat. 1921 (26 U.S.C. 5741).)

15. A new § 275.153 is added to require that proprietors of customs class 6 manufacturing warehouses, who remove large cigars for consumption in the United States, keep records and submit reports concerning the wholesale prices for such cigars. As added, § 275.153 reads as follows:

§ 275.153 Records and reports.

A proprietor of a customs bonded manufacturing warehouse, class 6, who removes cigars for sale or consumption in the United States, shall keep records and make reports as prescribed in §§ 275.181-183.

15a. Section 275.170 is amended to indicate that during the suspension of package marking requirements (see § 275.73(d)), the schedule of products on Form 3069, as well as claims filed on the basis of this schedule, must show large cigars at the lowest wholesale price for that brand and size of cigar established during the record retention period, unless a higher amount can be clearly demonstrated by specific documentation. The existing material is designated as paragraph (a), and the new material is contained in a new paragraph (b). As amended, § 275.170 reads as follows:

§ 275.170 Destruction or reduction to tobacco, action by taxpayer.

(a) * * *

(b) After February 1, 1977, information on large cigar packages will not adequately evidence the amount of tax paid on the contents, because of the suspension of package notice requirements as provided in § 275.73(d), and because packages indicating the former tax classes may continue to be removed without alteration. Consequently, refund or credit of tax on large cigars withdrawn from the market after February 1, 1977, will be limited to the minimum amount applicable to that brand and size cigar during the required record retention period (see § 275.22) except where the importer establishes that a greater amount was actually paid. For each claim involving large cigars withdrawn from the market the importer shall include a certification on either ATF Form 3069, ATF Form 2635, or IRS Form 843, to read as follows: "The amounts claimed relating to large cigars are based on the lowest wholesale prices applicable to such cigars during the required record retention period, except where specific documentation is submitted with the claim to establish that any greater amount of tax claimed was actually paid."

(Sec. 202, Pub. L. 85-859, 72 Stat. 1419, as amended (26 U.S.C. 5705).)

15b. Section 275.172 is amended to indicate that during the suspension of package marking requirements (see § 275.73(d)), the schedule of products on Form 3069, as well as claims filed on the basis of this schedule, must show large cigars at the lowest wholesale price for that brand and size of cigar established during the record retention period, unless a higher amount can be clearly demonstrated by specific documentation. The existing material is designated as paragraph (a), and the new material is contained in a new paragraph (b). As amended, § 275.172 reads as follows:

§ 275.172 Return to nontaxpaid status, action by taxpayer.

(a) * * *

(b) After February 1, 1977, information on large cigar packages will not adequately evidence the amount of tax paid on the contents, because of the suspension of package notice requirements as provided in § 275.73(d), and because packages indicating the former tax classes may continue to be removed without alteration. Consequently, refund or credit of tax on large cigars withdrawn from the market after February 1, 1977, will be limited to the minimum amount applicable to that brand and size of cigar during the required record retention period (see § 275.22) except where the importer establishes that a greater amount was actually paid. For each claim involving large cigars withdrawn from the market the importer shall include a certification on either ATF Form 3069, ATF Form 2635, or IRS Form 843, to read as follows: "The amounts claimed relating to large cigars are based on the lowest wholesale prices applicable to such cigars during the required record retention period, except where specific documentation is submitted with the claim to establish that any greater amount of tax claimed was actually paid."

(Sec. 202, Pub. L. 85-859, 72 Stat. 1419, as amended (26 U.S.C. 5705).)

16. A new Subpart J is added immediately following § 275.174, to require that importers of large cigars keep records and submit reports concerning the wholesale prices and taxpayment of large cigars imported for sale within the United States. As added, the new Subpart J reads as follows:

Subpart J—Records and Reports

Sec.

275.181 Records of large cigars.
275.182 Availability of records.
275.183 Report of wholesale prices for large cigars.

Subpart J—Records and Reports

§ 275.181 Records of large cigars.

Every person who imports large cigars for sale within the United States shall keep the records required by this section.

(a) *Basic record of wholesale prices.* The importer shall keep a record to show each wholesale price (suggested delivery price to retailers or wholesale price as determined by the Assistant Director (Regulatory Enforcement) under § 275.39(i)), which is applicable to large cigars removed (entered or withdrawn). No later than the tenth business day in January of each year the importer shall prepare such a record to show the wholesale price in effect on the first day of that year for each brand and size of his large cigars. However, for the year 1977 the record shall be prepared no later than the tenth business day in February, to show the prices in effect as of February 1, 1977. The importer shall thereafter enter in the record the wholesale price and its effective date for any large cigar removed (entered or withdrawn) which was not previously entered in the record, and any change in a price from that shown in the record, within ten business days after such removal or change in price. The record shall be a continuing one for each brand and size of cigar (and type of packaging, if pertinent), so that the taxable price on any date may be readily ascertained.

(b) *Copies of price announcements.* The importer shall retain a copy of each general announcement which he issues within his organization or to the trade about establishment or change of large cigar wholesale prices. If the copy does not show the actual date when issued it shall be annotated to show this information, and it shall also be annotated to show the date on which a copy was submitted to the Assistant Director (Regulatory Enforcement) in accordance with § 275.183.

(c) *Copies of entry and withdrawal forms.* The importer shall keep a copy of each customs entry or withdrawal form on which internal revenue tax for large cigars is declared pursuant to § 275.81.

(d) *Alternative record.* If an importer has so few import transactions and/or brands and sizes of large cigars that retention of an appropriate copy of each entry and withdrawal form required under paragraph (c) of this section will provide an adequate record of wholesale prices, then the record required under paragraph (a) of this section need not be kept. In such case the entry and withdrawal forms must identify the brands and sizes of cigars covered and show the corresponding quantity and wholesale price for each. If such information was not originally entered on the form it may be included by annotation. Whenever the regional regulatory administrator finds that alternative records being kept pursuant to this paragraph are inadequate for the intended purpose, he may so notify the importer in writing, after which time the importer shall keep the record required under paragraph (a) of this section.

§ 275.182 Availability of records.

The records required under § 275.181 shall be kept by the importer at his usual place of business unless otherwise authorized in writing by the regional regulatory administrator, and shall be made

available for inspection by any ATF officer upon his request. (For retention period, see § 275.22.)

§ 275.183 Report of wholesale prices for large cigars.

Every person who imports large cigars for sale within the United States and who issues announcements such as those described in this section shall make a report of each establishment or change of wholesale price (suggested delivered price to retailers) for large cigars. The report shall consist of a copy of each general announcement that the importer issues within his organization or to the trade about establishment or change of wholesale prices. If this copy does not show the actual date when issued, it shall be annotated to show this information. If an intraorganizational announcement involves a forthcoming price change or new product which at the time of issuance is to remain confidential until a later date, the importer may include a statement to this effect on the copy submitted. The copy shall be submitted to the Assistant Director (Regulatory Enforcement), Attn: Industry Control Division, Bureau of Alcohol, Tobacco and Firearms, Washington, D.C. 20226, within five business days after the day issued. (See § 275.181 for requirement to keep records of large cigar wholesale prices.)

PART 290—EXPORTATION OF CIGARS, CIGARETTES, AND CIGARETTE PAPERS AND TUBES, WITHOUT PAYMENT OF TAX, OR WITH DRAWBACK OF TAX

PAR. C. The regulations in 27 CFR Part 290 are amended as follows:

1. The Table of Contents is amended to delete §§ 290.12 through 290.54 and to group all definitions into a single section, § 290.11. The amended portion of the Table of Contents reads as follows:

* * * * *

Subpart B—Definitions

Sec.
290.11 Meaning of terms.

Subpart C—General

* * * * *

§§ 290.12–290.54 [Deleted]

2. Sections 290.12 through 290.54 are deleted. The definitions are grouped together into one section, § 290.11, for the sake of conformity to other regulations. Further, the definitions of "assistant regional commissioner", "Director, Alcohol, Tobacco and Firearms Division", "director of customs" and "internal revenue officer" are modified and the definition of "regional commissioner" is dropped to reflect changes in Customs Service organization and the establishment of the Bureau of Alcohol, Tobacco and Firearms. Definitions of "Assistant Director (Regulatory Enforcement)", "ATF officer", "district director of customs", "regional regulatory administrator", and "wholesale price" are added. As amended, § 290.11 reads as follows:

§ 290.11 Meaning of terms.

When used in this part and in forms prescribed under this part, the following terms shall have the meanings given in this section, unless the context clearly indicates otherwise. Words in the plural form shall include the singular, and vice versa, and words indicating the masculine gender shall include the feminine. The terms "includes" and "including" do not exclude things not listed which are in the same general class.

Assistant Director (Regulatory Enforcement). The Assistant Director for regulatory enforcement activities in the Bureau of Alcohol, Tobacco and Firearms, who is responsible to, and functions under the direction and supervision of, the Director.

Assistant regional commissioner. A regional regulatory administrator as defined in this section.

ATF officer. An officer of the Bureau of Alcohol, Tobacco and Firearms (ATF), authorized to perform any function relating to the administration or enforcement of this part.

Cigar. Any roll of tobacco wrapped in leaf tobacco or in any substance containing tobacco (other than any roll of tobacco which is a cigarette within the definition of "cigarette" given in this section).

Cigarette. (a) Any roll of tobacco wrapped in paper or in any substance not containing tobacco, and

(b) Any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in paragraph (a) of the section.

Cigarette paper. Paper, or other material except tobacco, prepared for use as a cigarette wrapper.

Cigarette papers. Taxable books or sets of cigarette papers.

Cigarette tube. Cigarette paper made into a hollow cylinder for use in making cigarettes.

Customs warehouse. A customs bonded manufacturing warehouse, class 6, where cigars are manufactured of imported tobacco.

Director, or Director, Alcohol, Tobacco and Firearms Division. The Director, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226

Director of customs. A district director of customs as defined in this section.

District director of customs. The district director of customs at a headquarters port of the district (except the district of New York, N.Y.); the area directors of customs in the district of New York, N.Y.; and the port director at a port not designated as a headquarters port.

Exportation or export. A severance of cigars, cigarettes, or cigarette papers or tubes from the mass of things belonging to the United States with the intention of uniting them to the mass of things belonging to some foreign country. For the purposes of this part, shipment from the United States to Puerto Rico, the Virgin Islands, or a possession of the United States, shall be deemed exportation, as will the clearance from the United States of cigars, cigarettes, and cigarette papers and tubes for consumption beyond the jurisdiction of the internal revenue laws of the United States, i.e., beyond the 3-mile limit or international boundary, as the case may be.

Export warehouse. A bonded internal revenue warehouse for the storage of cigars, cigarettes, and cigarette papers and tubes, upon which the internal revenue tax has not been paid, for subsequent shipment to a foreign country, Puerto Rico, the Virgin Islands, or a possession of the United States, or for consumption beyond the jurisdiction of the internal revenue laws of the United States.

Export warehouse proprietor. Any person who operates an export warehouse.

Factory. The premises of a manufacturer of cigars, cigarettes, or cigarette papers and tubes in which he carries on such business.

Foreign-trade zone. A foreign-trade zone established and operated pursuant to the Act of June 18, 1934, as amended.

In bond. The status of cigars, cigarettes, and cigarette papers and tubes, which come within the coverage of a bond securing the payment of internal revenue taxes imposed by 26 U.S.C. 5701 or 7652, and in respect to which such taxes have not been determined as provided by regulations in this chapter, including (a) Such articles in a factory or an export warehouse, (b) Such articles removed, transferred, or released, pursuant to 26 U.S.C. 5704, and with respect to which relief from the tax liability has not occurred, and (c) Such articles on which the tax has been determined, or with respect to which relief from the tax liability has occurred, which have been returned to the coverage of a bond.

I.R.C. The Internal Revenue Code of 1954, as amended.

Internal revenue officer. An ATF officer as defined in this section.

Manufacturer of cigarette papers and tubes. Any person who makes up cigarette paper into books or sets containing more than 25 papers each, or into tubes, except for his own personal use or consumption.

Manufacturer of tobacco products. Any person who manufactures cigars or cigarettes, except that such term shall not include (a) A person who produces cigars or cigarettes solely for his own personal consumption or use; or (b) A proprietor of a customs bonded manufacturing warehouse with respect to the operation of such warehouse.

Package. The container in which cigars, cigarettes, or cigarette papers or tubes are put up by the manufacturer and offered for sale or delivery to the consumer.

Person. An individual, partnership, association, company, corporation, estate, or trust.

Region. A geographical region of the Bureau of Alcohol, Tobacco and Firearms.

Regional regulatory administrator. The principal regional official responsible for administering regulations in this part.

Removal or remove. The removal of cigars, cigarettes, or cigarette papers or tubes from either the factory or the export warehouse covered by the bond of the manufacturer or proprietor.

State. "State" shall, for the purposes of this part, be construed to include the District of Columbia.

Tobacco products. Cigars and cigarettes. The term does not include smoking tobacco, chewing tobacco, or snuff.

United States. "United States" when used in a geographical sense shall include only the States and the District of Columbia.

U.S.C. The United States Code.

Wholesale price. The manufacturer's or importer's suggested delivered price at which the cigars are to be sold to retailers, inclusive of the tax imposed by 26 U.S.C. chapter 52 or section 7652 but exclusive of any State or local taxes imposed on cigars as a commodity, and before any trade, cash, or other discounts, or any promotion, advertising, display, or similar allowances. Where the manufacturer's or importer's suggested delivered price to retailers is not adequately supported by bona fide arm's length sales, or where the manufacturer or importer has no suggested delivered price to retailers, the wholesale price shall be the price for which cigars of comparable retail price are sold to retailers in the ordinary course of trade as determined by the Assistant Director (Regulatory Enforcement).

Zone operator. The person to whom the privilege of establishing, operating, and maintaining a foreign-trade zone has been granted by the Foreign-Trade Zones Board created by the Act of June 18, 1934, as amended.

2a. Section 290.67 is amended to provide that, during the suspension of package marking requirements (see §§ 290.186 (d) and 290.253(d)), tax liability on large cigars must be based on the maximum tax rate of $20 per thousand, unless a lower rate can be clearly demonstrated. The existing material in § 290.67 is redesignated as paragraph (a), and the new provision is placed in a new paragraph (b). As amended, § 290.67 reads as follows:

§ 290.67 Payment of tax.

(a) * * *

(b) After February 1, 1977, information on large cigar packages will not adequately evidence the amount of tax liability on the contents, because of the suspension of package notice requirements as provided in §§ 290.186(d) and 290.253 (d), and because packages indicating the former tax classes may continue to be used without alteration. Consequently, the amount of tax liability shall be based on the maximum tax rate of $20 per thousand unless the person liable for the tax establishes that a lower tax rate is applicable.

2b. Section 290.143 is amended to replace "taxable class" with "wholesale price" in relation to large cigars, and to change terminology to reflect the establishment of the Bureau of Alcohol, Tobacco and Firearms. During the suspension of package marking requirements (see §§ 290.186(d) and 290.253(d)), only the total number of all large cigars held need be shown. As amended, § 290.143 reads as follows:

§ 290.143 General.

Every export warehouse proprietor shall make a true and accurate inventory on Form 3373 to the regional regulatory administrator, of the numbers of (a) Small cigars, (b) Large cigars at each wholesale price of not more than $235.294 per thousand, (c) Large cigars with a wholesale price of more than $235.294 per thousand, (d) Small cigarettes, (e) Large cigarettes, (f) Cigarette papers, and (g) Cigarette tubes held by him at the times specified in this subpart. Due to the suspension of requirements for wholesale price to be shown on packages (see §§ 290.186(d) and 290.253(d)), only the total number of large cigars held need be shown on the inventory, until notification is given in the FEDERAL REGISTER. This inventory shall be subject to verification by an ATF officer. A copy of each inventory shall be retained by the export warehouse proprietor for 2 years following the close of the calendar year in which the inventory is made and shall be made available for inspection by any ATF officer upon his request.

(Sec. 202, Pub. L. 85–859, 72 Stat. 1422 (26 U.S.C. 5721))

3. Section 290.181 is amended to change "class designation" to "tax classification", reflecting the change in taxation of large cigars now that the tax is based on the wholesale price rather than on the retail price class. As amended, § 290.181 reads as follows:

§ 290.181 Packages.

All cigars, cigarettes, and cigarette papers and tubes shall, before removal, be put up by the manufacturer in packages which shall bear the label or notice, tax classification, and mark, as required by this subpart.

(Sec. 202, Pub. L. 85–859, 72 Stat. 1422 (26 U.S.C. 5723).)

4. Section 290.186 is amended to include requirements that packages of large cigars show information relating to wholesale price. However, application of these new requirements for large cigars is suspended pending further notification in the FEDERAL REGISTER. Other requirements of this section, not related to wholesale price markings, are effective as of the effective date of this document. As amended § 290.186 reads as follows:

§ 290.186 Tax classification for cigars.

(a) *General requirement.* Every package of cigars shall, before removal from a factory under this subpart, have adequately imprinted thereon, or on a label securely affixed thereto, the designation "cigars", the quantity of such product contained therein, and the classification of the product for tax purposes. For small cigars such classification shall be either "small" or "little", and for large cigars, the wholesale price applicable to similar cigars removed for taxable purposes in the United States.

(b) *Expression of wholesale price.* The price to be shown is the wholesale price for each thousand cigars, except that for cigars with a wholesale price of more than $235.294 per thousand the wholesale price may be either specifically expressed or expressed as if it were $236 per thousand. Such price shall be expressed either in arabic numerals or according to the code: A=1, B=2, C=3, D=4, E=5, F=6, G=7, H=8, J=9, K=0; and in either case shall be preceded by the identifying letters "MP". If the wholesale price is in even dollars then no decimal or cents information need be shown. Thus, for a cigar with a wholesale price of $80.00 per thousand, the wholesale price would be expressed as "MP80" or as "MPHK"; for a cigar with a wholesale price of $65.20 per thousand, the wholesale price would be expressed as "MP65.20" or as "MPFE.BK"; and for a cigar with a wholesale price of $450 per thousand, the wholesale price would be expressed as "MP450", "MPDEK", "MP 236", or "MPBCF".

(c) *Packages with cigars of more than one price.* If a combination package includes large cigars of more than one wholesale price and they are taxable on the basis of the individual wholesale prices of the cigars and not on the basis of an established wholesale price for the combination package (see § 270.22(d) of this chapter), the numbers of cigars at each wholesale price and a brief description of those cigars shall be shown with the applicable wholesale price information. For example, if a package contained 30 Blunts with a wholesale price of $80 per thousand and 20 Panatelas with a wholesale price of $100 per thousand, the wholesale price would be shown as "30 Blunts—MP80, 20 Panatelas—MP100", or "30 Blunts—MPHK, 20 Panatelas—MPAKK".

(d) *Application of wholesale price regulations.* The application of regulations in this section relating to the imprinting, on packages of large cigars, of information relating to wholesale price is suspended until notification in the FEDERAL REGISTER. This notification shall be published in the FEDERAL REGISTER not less than 90 days prior to the date when the wholesale price marking regulations shall begin to apply.

(Sec. 202, Pub. L. 85–859, 72 Stat. 1422 (26 U.S.C. 5723).)

5. Section 290.248 is amended to replace "class designation" with "tax classification" to reflect the different taxation of large cigars now that the tax is based on the wholesale price rather than on the retail price class. As amended, § 290.248 reads as follows:

§ 290.248 Packages.

Cigars shall, before withdrawal under this part, be put up by the customs warehouse proprietor in packages which shall bear the label or notice, tax classification, and mark, as required by this subpart.

(Sec. 202, Pub. L. 85–859, 72 Stat. 1422 (26 U.S.C. 5723).)

6. Section 290.253 is amended to include requirements that packages of large cigars show information relating to wholesale price. However, application of

these new requirements for large cigars is suspended pending further notification in the FEDERAL REGISTER. Other requirements of this section, not related to wholesale price markings, are effective as of the effective date of this document. As amended, § 290.253 reads as follows:

§ 290.253 Tax classification for cigars.

(a) *General requirement.* Every package of cigars shall, before withdrawal from a customs warehouse under this subpart, have adequately imprinted thereon or on a label securely affixed thereto the designation "cigars", the quantity of such product contained therein, and the classification of the product for tax purposes. For small cigars, such classification shall be either "small" or "little", and for large cigars, the wholesale price applicable to similar cigars removed for taxable purposes in the United States.

(b) *Expression of wholesale price.* The price to be shown is the wholesale price for each thousand cigars, except that for cigars with a wholesale price of more than $235.294 per thousand the wholesale price may be either specifically expressed or expressed as if it were $236 per thousand. The price shall be expressed either in arabic numerals or according to the code: A=1, B=2, C=3, D=4, E=5, F=6, G=7, H=8, J=9, K=0, and in either case shall be preceded by the identifying letters "IP". If the wholesale price is in even dollars then no decimal or cents information need be shown. Thus, for a cigar with a wholesale price of $80.00 per thousand, the wholesale price would be expressed as "IP80" or as "IPHK"; for a cigar with a wholesale price of $65.20 per thousand, the wholesale price would be expressed as "IP65.20" or as "IPFE.BK"; and for a cigar with a wholesale price of $450 per thousand, the wholesale price would be expressed as "IP450", "IPDEK", IP236", or "IPBCF".

(c) *Packages with cigars of more than one price.* If a combination package includes large cigars of more than one wholesale price and they are taxable on the basis of the individual wholesale prices of the cigars and not on the basis of an established wholesale price for the combination package (see § 275.39(d) of this chapter), the numbers of cigars at each wholesale price and a brief description of those cigars shall be shown with the applicable wholesale price information. For example, if a package contained 30 Blunts with a wholesale price of $80 per thousand and 20 Panatelas with a wholesale price of $100 per thousand, the wholesale price would be shown as "30 Blunts—IP80, 20 Panatelas—IP100", or "30 Blunts—IPHK, 20 Panatelas—IPAKK".

(d) *Application of wholesale price regulations.* The application of regulations in this section relating to the imprinting, on packages of large cigars, of information relating to wholesale price is suspended until notification in the FEDERAL REGISTER. This notification shall be published in the FEDERAL REGISTER not less than 90 days prior to the date when the wholesale price marking regulations shall begin to apply.

(Sec. 202, Pub. L. 85-859, 72 Stat. 1422 (26 U.S.C. 5723).)

PART 295—REMOVAL OF CIGARS, CIGARETTES, AND CIGARETTE PAPERS AND TUBES, WITHOUT PAYMENT OF TAX, FOR USE OF THE UNITED STATES

PAR. D. The regulations in 27 CFR Part 295 are amended as follows:

1. Section 295.11 is amended to improve clarity and to reflect the change in taxation of large cigars and the establishment of the Bureau of Alcohol, Tobacco and Firearms. Definitions of "Assistant Director (Regulatory Enforcement)", "ATF officer", "regional regulatory administrator" and "wholesale price" are added; the definitions of "Commissioner" and "regional commissioner" are deleted; the introductory language is rephrased; and the definitions of "assistant regional commissioner", "Director", "internal revenue officer", and "region" are modified. As amended, § 295.11 reads as follows:

§ 295.11 Meaning of terms.

When used in this part and in forms prescribed under this part, the following terms shall have the meanings given in this section, unless the context clearly indicates otherwise. Words in the plural form shall include the singular, and vice versa, and words indicating the masculine gender shall include the feminine. The terms "includes" and "including" do not exclude things not listed which are in the same general class.

* * * * *

Assistant Director (Regulatory Enforcement). The Assistant Director for regulatory enforcement activities in the Bureau of Alcohol, Tobacco and Firearms, who is responsible to, and functions under the direction and supervision of, the Director.

Assistant regional commissioner. A regional regulatory administrator as defined in this section.

ATF officer. An officer of the Bureau of Alcohol, Tobacco and Firearms (ATF) authorized to perform any function relating to the administration or enforcement of this part.

* * * * *

Director. The Director, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226.

* * * * *

Internal revenue officer. An ATF officer as defined in this section.

* * * * *

Region. A geographical region of the Bureau of Alcohol, Tobacco and Firearms.

Regional regulatory administrator. The principal regional official responsible for administering regulations in this part.

* * * * *

Wholesale price. The manufacturer's or importer's suggested delivered price at which the cigars are to be sold to retailers, inclusive of the tax imposed by 26 U.S.C. chapter 52 or section 7652, but exclusive of any State or local taxes imposed on cigars as a commodity, and before any trade, cash, or other discounts, or any promotion, advertising, display, or similar allowances. Where the manufacturer's or importer's suggested delivered price to retailers is not adequately supported by bona fide arm's length sales, or where the manufacturer or importer has no suggested delivered price to retailers, the wholesale price shall be the price for which cigars of comparable retail price are sold to retailers in the ordinary course of trade as determined by the Assistant Director (Regulatory Enforcement).

2. Section 295.44 is amended to include requirements that packages of large cigars show information relating to wholesale price. However, application of these new requirements for large cigars is suspended pending further notification in the FEDERAL REGISTER. Other requirements of this section, not related to wholesale price markings, are effective as of the effective date of this document.

As amended § 295.44 reads as follows:

§ 295.44 Notice for cigars.

(a) *General requirement.* Every package of cigars shall, before removal under this part, have adequately imprinted thereon, or on a label securely affixed thereto, the designation "cigars," the quantity of such product contained therein, and the classification of the product for tax purposes, i.e., for small cigars, either "small" or "little", and for large cigars, the wholesale price.

(b) *Expression of wholesale price.* The price to be shown is the wholesale price for each thousand cigars, except that for cigars with a wholesale price of more than $235.294 per thousand the wholesale price may be either specifically expressed or expressed as if it were $236 per thousand. Such price shall be expressed either in arabic numerals or according to the code: A=1, B=2, C=3, D=4, E=5, F=6, G=7, H=8, J=9, K=0; and in either case shall be preceded by the identifying letters "MP". If the wholesale price is in even dollars then no decimal or cents information need be shown. Thus, for a cigar with a wholesale price of $80.00 per thousand, the wholesale price would be expressed as "MP80" or as "MPHK"; for a cigar with a wholesale price of $65.20 per thousand, the wholesale price would be expressed as "MP65.20" or as "MPFE.BK"; and for a cigar with a wholesale price of $450 per thousand, the wholesale price would be expressed as either "MP450", "MPDEK", "MP236", or "MPBCF".

(c) *Packages with cigars of more than one price.* If a combination package includes large cigars of more than one wholesale price and they are taxable on the basis of the individual wholesale prices of the cigars and not on the basis of an established wholesale price for the combination package (see § 270.22(d) of this chapter), the numbers of cigars at each wholesale price and a brief description of those cigars shall be shown with the applicable wholesale price information. For example, if a package contained 30 Blunts with a wholesale price of $80 per thousand and 20 Panatelas with a wholesale price of $100 per thousand, the wholesale price would be shown as "30 Blunts—MP80, 20 Panatelas—MP100", or "30 Blunts—MPHK, 20 Panatelas—MPAKK".

(d) *Application of wholesale price regulations.* The application of regulations in this section relating to the imprinting, on packages of large cigars, of information relating to wholesale price is suspended until notification in the FEDERAL REGISTER. This notification shall be published in the FEDERAL REGISTER not less than 90 days prior to the date when the wholesale price marking regulations shall begin to apply.

(Sec. 202, Pub. L. 85-859, 72 Stat. 1422 (26 U.S.C. 5723).)

3. Section 295.51 is amended to change "class" of large cigars to "wholesale price," and to change "internal revenue officer" to "ATF officer." As amended, § 295.51 reads as follows:

§ 295.51 Supporting record.

Every manufacturer who removes cigars, cigarettes, and cigarette papers and tubes under this part shall, in addition to the records kept under Part 270 of this chapter, keep a supporting record of such removals and shall make appropriate entries therein at the time of removal. The supporting record shall show, with respect to each removal, the date of removal, the name and address of the Federal agency to which shipped or delivered, the quantity and, with respect to large cigars, wholesale price for tax purposes. Appropriate entries shall also be made in the supporting record of any cigars, cigarettes, or cigarette papers or tubes removed under this part which are returned to the factory. Where the manufacturer keeps, at the factory, copies of invoices or other commercial records containing the information required as to each removal, in such manner that the information may be readily ascertained therefrom, such copies will be considered the supporting record required by this section. The supporting record shall be retained by the manufacturer for 3 years following the close of the year covered therein and shall be made available for inspection by any ATF officer upon his request.

(Sec. 2128(c), Pub. L. 94-455, 90 Stat. 1921 (26 U.S.C. 5741).)

PART 296—MISCELLANEOUS REGULATIONS RELATING TO CIGARS, CIGARETTES, AND CIGARETTE PAPERS AND TUBES

PAR. E. The regulations in 27 CFR Part 296 are amended as follows:

1. Section 296.72 is amended to rephrase the introductory language, to delete the definition of "Commissioner", to add definitions of "wholesale price", "region", and "regional regulatory administrator", and to modify the definitions of "assistant regional commissioner" and "Commissioner of Customs" to reflect the change in the name of the U.S. Customs Service and the establishment of the Bureau of Alcohol, Tobacco and Firearms. As amended, § 296.72 reads as follows:

§ 296.72 Meaning of terms.

When used in this subpart, the following terms shall have the meanings given in this section, unless the context clearly indicates otherwise. Words in the plural form shall include the singular, and vice versa, and words indicating the masculine gender shall include the feminine. The terms "includes" and "including" do not exclude things not listed which are in the same general class.

* * * * *

Assistant Director (Regulatory Enforcement). The Assistant Director for regulatory enforcement activities in the Bureau of Alcohol, Tobacco and Firearms, who is responsible to, and functions under the direction and supervision of, the Director, Bureau of Alcohol, Tobacco and Firearms.

Assistant regional commissioner. A regional regulatory administrator as defined in this section.

* * * * *

Commissioner of Customs. The Commissioner of Customs, U.S. Customs Service, the Department of the Treasury, Washington, D.C.

* * * * *

Region. A geographical region of the Bureau of Alcohol, Tobacco and Firearms.

Regional regulatory administrator. The principal regional official responsible for administering regulations in this part.

* * * * *

Wholesale price. The manufacturer's or importer's suggested delivered price, at which the cigars are to be sold to retailers, inclusive of the tax imposed by 26 U.S.C. chapter 52 or section 7652 but exclusive of any State or local taxes imposed on cigars as a commodity, and before any trade, cash, or other discounts, or any promotion, advertising, display, or similar allowances. Where the manufacturer's or importer's suggested delivered price to retailers is not adequately supported by bona fide arm's length sales, or where the manufacturer or importer has no suggested delivered price to retailers, the wholesale price shall be the price for which cigars of comparable retail price are sold to retailers in the ordinary course of trade as determined by the Assistant Director (Regulatory Enforcement).

2. Section 296.74 is amended to replace "tax class" of large cigars with "wholesale price," to change the examples to reflect the new tax structure imposed by legislation, and to make terminology changes to reflect the establishment of the Bureau of Alcohol, Tobacco and Firearms. As amended, § 296.74 reads as follows:

§ 296.74 Execution and filing of claims.

Claims under this subpart shall be executed on Internal Revenue Service Form 843 in accordance with the applicable instructions on the form, and filed with the regional regulatory administrator of the region in which the cigars, cigarettes, or cigarette papers or tubes were lost, rendered unmarketable, or condemned, within 6 months after the date on which the President makes the determination that the disaster has occurred. The claim shall state all the facts on which the claim is based, and shall set forth the numbers of small cigars, large cigars (itemized separately as to taxable wholesale price), small cigarettes, large cigarettes, cigarette papers, and cigarette tubes, as the case may be, and the rate of tax and the amount claimed with respect to each article set forth, substantially in the form as shown in the example below.

Example

Quantity	Article	Rate of tax	Amount
20,000	Small cigars	$0.75 per thousand.	$15.00
1,000	Large cigars—Wholesale price $100 per thousand.	8½ pct of wholesale price.	8.50
500	Large cigars—Wholesale price $236 per thousand.	$20 per thousand.	10.00
10,000	Small cigarettes	$4 per thousand.	40.00
5,000	Large cigarettes	$8.40 per thousand.	42.00
2,000 sets	Cigarette papers—50 each set.	$0.005 per set.	10.00
1,000 sets	Cigarette papers—100 each set.	$0.01 per set.	10.00
1,000	Cigarette tubes	$0.01 per 50 tubes.	.20
Total claimed			135.70

The claimant shall certify on the claim to the effect that no amount of internal revenue tax or customs duty claimed therein has been or will be otherwise claimed under any other provision of law or regulations.

Signed: January 14, 1977.

REX D. DAVIS,
Director.

Approved: January 19, 1977.

JOHN H. HARPER,
Acting Assistant Secretary of the Treasury.

[FR Doc.77-2407 Filed 1-21-77;11:07 am]

federal register

WEDNESDAY, JANUARY 26, 1977

PART IX



FEDERAL ENERGY ADMINISTRATION

DOMESTIC CRUDE OIL ALLOCATION PROGRAM

Entitlement Notice for November 1976

FEDERAL ENERGY ADMINISTRATION

DOMESTIC CRUDE OIL ALLOCATION PROGRAM

Entitlement Notice for November 1976

In accordance with the provisions of 10 CFR §211.67 relating to FEA's domestic crude oil allocation program the monthly notice specified in § 211.67(l) is hereby published.

Based on reports submitted to FEA by refiners and other firms as to crude oil receipts, crude oil runs to stills and eligible product imports for November 1976, imported naphtha utilized as a petrochemical feedstock in Puerto Rico, application of the entitlement adjustment for residual fuel oil production for sale in the East Coast market provided in § 211.67(d)(4), and application of the entitlement adjustment for small refiners provided in § 211.67(e), the national domestic crude oil supply ratio for November 1976 is calculated to be .273071.

In accordance with § 211.67(b)(2), to calculate the number of barrels of deemed old oil included in refiner's adjusted crude oil receipts for the month of November 1976, each barrel of old oil is equal to one barrel of deemed old oil and each barrel of upper-tier crude is equal to .177464 of a barrel of deemed old oil.

The issuance of entitlements for the month of November 1976 to refiners and other firms is set forth in the Appendix to this notice. The Appendix lists the name of each refiner or other firm to which entitlements have been issued, the number of barrels of deemed old oil included in each such refiner's adjusted crude oil receipts, the number of entitlements issued to each such refiner or other firm, and the number of entitlements required to be purchased or sold by each such refiner or other firm.

Pursuant to 10 CFR 211.67(l)(4), FEA hereby fixes the price at which entitlements shall be sold and purchased for the month of November 1976 at $7.90, which is the exact differential as reported for the month of November between the weighted average per barrel costs to refiners of old oil and of imported and exempt domestic crude oil, less the sum of 21 cents.

In accordance with 10 CFR 211.67(b), each refiner that has been issued fewer entitlements for the month of November 1976 than the number of barrels of deemed old oil included in its adjusted crude oil receipts is required to purchase a number of entitlements for the month of November 1976 equal to the difference between the number of barrels of deemed old oil included in those receipts and the number of entitlements issued to and retained by that refiner. Refiners which have been issued a number of entitlements for the month of November 1976 in excess of the number of barrels of deemed old oil included in their adjusted crude oil receipts for that month and other firms issued entitlements shall sell such entitlements to refiners required to purchase entitlements. In addition, certain refiners are required to purchase or sell entitlements to effect corrections for reporting errors for the months September 1975 through October 1976 pursuant to 10 CFR 211.67(j)(1).

Pursuant to § 211.67(j)(2), the November 1976 installments of the amounts representing corrections for reporting errors for months prior to September 1975 are shown in a separate column in the listing and these installments will continue to be shown in entitlement notices through the notice for February 1977. As set forth in the revised special correction notice issued on September 21, 1976, the total dollar amounts of the special corrections have been divided into eight substantially equal installments for reflection in each firm's entitlement position for each of the months July 1976 through February 1977, based on the particular month's entitlement price.

The listing of refiners' old oil receipts contained in the Appendix reflects any adjustments made by FEA pursuant to §211.67(h).

The listing contained in the Appendix identifies in a separate column additional entitlements issued to refiners pursuant to relief granted by FEA's Office of Exceptions and Appeals. Also set forth in this column are the adjustments for relief granted by the Office of Exceptions and Appeals for 1975, which adjustments are being reflected in monthly installments commencing with the September 1976 entitlement notice. The number of installments is dependent on the magnitude of the adjustment to be made. For a full discussion of the issues involved, see *Beacon Oil Company*, et al, 4 FEA par. 87,024 (November 5, 1976).

The listing in the Appendix does not reflect an entitlement obligation of $379,965.42 (or 48,097 entitlements) of Delta Refining Company for the month November 1976 that is attributable to adjustments for exception relief received by Delta in 1975. This obligation has been temporarily stayed by the United States District Court for the District of Columbia until 10 days from the date of issuance of a final order in Case No. FXA-1052.[1] FEA will reflect, in the earliest practicable entitlement notice, the entitlement obligation as determined by the final order.

For purposes of the adjustments to refiners' crude run volumes under § 211.67(d)(4), total production of residual fuel oil for sale in the East Coast market (in excess of the first 5,000 barrels per day thereof for each refiner reporting such production) was 16,597,963 barrels for November 1976. For that month, imports of residual fuel oil eligible for entitlement issuances totaled 35,062,448 barrels.

The total number of entitlements required to be purchased and sold under this notice is 21,809,856.

Payment for entitlements required to be purchased under 10 CFR 211.67(b) for November 1976 must be made by January 31, 1977.

On or prior to February 10, 1977, each firm which is required to purchase or sell entitlements for the month of November 1976 shall file with FEA the monthly transaction report specified in 10 CFR 211.66(l) certifying its purchases and sales of entitlements for the month of November. FEA has mailed the monthly transaction report forms for the month of November to reporting firms. FEA requests that firms which have been unable to locate other firms for required entitlement transactions by January 31, 1977 contact FEA at 202-254-6296 to expedite consummation of these transactions. For firms that have failed to consummate required entitlement transactions on or prior to January 31, 1977, FEA may direct sales and purchases of entitlements pursuant to the provisions of 10 CFR 211.67(k).

This notice is issued pursuant to Subpart G of FEA's regulations governing its administrative procedures and sanctions, 10 CFR Part 205. Any person aggrieved hereby may file an appeal with FEA's Office of Exceptions and Appeals in accordance with Subpart H of 10 CFR Part 205. Any such appeal shall be filed on or before February 25, 1977.

Issued in Washington, D.C. on January 21, 1977.

DAVID G. WILSON,
Acting General Counsel.

[1] This supersedes the statement in last month's notice regarding the implementation of the Court's order. It remains the intent of FEA to exclude the obligation from the entitlements list solely during the effective period of the Court's order. The matter of interest on such obligations is subject to the terms of the Court's order.

APPENDIX

ENTITLEMENTS FOR DOMESTIC CRUDE OIL

REPORTING FIRM SHORT NAME	DEEMED OLD OIL ADJUSTED RECEIPTS	********** TOTAL ISSUED	EXCEPTIONS AND APPEALS	ENTITLEMENT POSITION PRODUCT ENTITLEMENTS	10 MONTH CLEAN-UP	REQUIRED TO BUY	********** REQUIRED TO SELL
A-JOHNSON	0	126,345	790	0	-5,988	0	126,345
AGWAY	0	0	0	0	-23	23	0
ALLIED	46,188	136,171	0	0	-66	0	89,983
AMER-PETROFINA	1,657,467	1,603,368	0	61,280	54,099	0	0
AMERADA-HESS	1,877,938	4,258,074	0	106,138	-29,741	0	2,380,136
AMOCO	11,032,227	8,225,591	0	19,312	-16,773	2,806,636	0
APCO	380,220	456,296	0	0	-1,355	0	76,076
APEX	0	-9	0	0	-9	9	0
ARCO	5,860,443	5,304,926	4,785*	0	-141,179	555,517	0
ARIZONA	63,573	55,496	17,899	0	345	8,077	0
ASAMERA	163,455	186,242	0	0	262	0	22,787
ASHLAND	1,396,640	2,748,193	0	0	-23,374	0	1,351,553
ASIATIC	0	199,417	0	202,290	-2,873	0	199,417
ATLANTIC-CEMENT	0	195	0	0	195	0	195
AUGSBURY	0	-4	0	0	-4	4	0
BAYOU	43,138	50,356	0	0	57	0	7,218
BEACON	223,524	172,836	6,623	0	-5,177	50,688	0
BELCHER	0	149,734	0	150,207	-473	0	149,734
BLUE-RIDGE	0	11,334	0	11,640	-306	0	11,334
C&H	-113	146,492	0	0	-13	0	146,605
CALUMET	171,515	137,033	0	0	-210	34,482	0
CANAL	79,027	61,978	0	0	-1,342	17,049	0
CARIBOU	88,567	102,327	0	0	103	0	13,760
CASTLE	0	21,649	0	21,911	-262	0	21,649
CENTRAL	0	6,435	0	6,622	-187	0	6,435
CHAMPLIN	1,877,916	1,078,823	0	0	12,693	799,093	0
CHARTER	758,074	546,994	28,559	0	12,263	211,080	0
CIRILLO	0	28,790	0	29,812	-1,022	0	28,790
CITGO	3,457,564	2,210,797	0	0	-4,169	1,246,767	0
CLAIBORNE	20,487	44,200	0	0	17,583	0	23,713
CLARK	303,729	843,510	0	0	-2,389	0	539,781
COASTAL	263,422	1,223,676	0	0	26,566	0	960,254
COLONIAL	0	23,930	0	24,306	-376	0	23,930
CON-ED	0	-2,183	0	0	-2,183	2,183	0

REPORTING FIRM SHORT NAME	DEEMED OLD OIL ADJUSTED RECEIPTS	********** TOTAL ISSUED	ENTITLEMENT POSITION EXCEPTIONS AND APPEALS	PRODUCT ENTITLEMENTS	10 MONTH CLEAN-UP	REQUIRED TO BUY	********** REQUIRED TO SELL
CON-REF	0	55	0	0	55	0	55
CONOCO	2,994,999	2,914,634	0	48,106	8,518	80,365	0
CONSUMERS-POWER	0	-446	0	0	-446	446	0
CORCO	0	1,062,348	0	218,775	-3,855	0	1,062,348
CRA-FARMLAND	423,272	575,253	0	0	-2,387	0	151,981
CROSS	15,769	152,959	0	0	2,931	0	137,190
CROWN	342,951	707,021	0	0	-2,119	0	364,070
CRYSTAL-OIL	195,571	187,144	0	0	-12,285	8,427	0
CRYSTAL-REF	522	44,884	0	0	-536	0	44,362
DEEPWATER	0	-90	0	0	-90	90	0
DELTA	333,013	315,520	0	0	801	17,493	0
DEMENNO	30,145	75,297	0	0	0	0	45,152
DETROIT-ED	0	734	0	0	734	0	734
DIAMOND	580,170	493,326	0	0	4,094	86,844	0
DILLMAN	20,965	21,070	5,311	0	0	0	105
DORCHESTER	8,098	13,209	0	0	-56	0	5,111
DOW	47,249	178,271	0	0	134	0	131,022
E-SEABOARD	0	70,364	0	71,341	-977	0	70,364
ECO	118,950	108,091	0	0	0	10,859	0
EDDY	35,961	145,815	0	0	67	0	109,854
EDGINGTON-OIL	0	-10,332	-10,858	0	526	10,332	0
EDGINGTON-OXN	0	-5	0	0	-5	5	0
ELM	0	-322	0	0	-322	322	0
ENERGY-COOP	0	559,250	0	0	0	0	559,250
ENTERPRISE	0	-38	0	0	-38	38	0
EVANGELINE	46,420	26,512	0	0	51	19,908	0
EXXON	11,316,835	11,084,719	0	738,883	-4,006	232,116	0
EZ-SERVE	74,355	54,310	0	0	0	20,045	0
F-FLETCHER	0	1	0	0	1	0	1
FAMARISS	220,169	332,015	3,733	0	-41	0	111,846
FARMERS-UN	227,705	388,642	0	0	-224	0	160,937
FLETCHER	58,772	77,859	-9,843	0	13,311	0	19,087
FLINT	9,377	8,853	0	0	-8	524	0
FLORIDA-POWER	0	671	0	0	671	0	671

REPORTING FIRM SHORT NAME	DEEMED OLD OIL ADJUSTED RECEIPTS	********** TOTAL ISSUED	ENTITLEMENT POSITION EXCEPTIONS AND APPEALS	PRODUCT ENTITLEMENTS	10 MONTH CLEAN-UP	REQUIRED TO BUY	********** REQUIRED TO SELL
GARY	27,086	73,196	0	0	-71	0	46,110
GEN-PORTLAND	0	-16	0	0	-16	16	0
GETTY	945,656	649,101	0	0	-4,298	296,555	0
GIANT	12,595	92,446	0	0	-183	0	79,851
GIBBS	0	-370	0	0	-370	370	0
GIBSON	107	0	0	0	0	107	0
GLACIER-PARK	53,692	32,190	0	0	0	21,502	0
GLADIEUX	42,702	187,597	0	0	252	0	144,895
GOLDEN-EAGLE	33,954	169,869	0	0	-2,591	0	135,915
GOLDEN-EAGLE-NY	0	2,155	0	0	2,155	0	2,155
GOOD-HOPE	47,400	256,149	-574	0	-439	0	208,749
GREAT-NORTHERN	0	-125	0	0	-125	125	0
GUAM	0	306,076	0	0	-2,230	0	306,076
GULF	8,258,236	7,337,673	0	40,816	-12,323	920,563	0
GULF-STS	89,181	130,597	0	0	72	0	41,416
HIRI	0	452,460	0	0	2,011	0	452,460
HOWARD	0	65,220	0	66,672	-1,452	0	65,220
HOWELL	629,535	329,066	0	0	1,147	300,469	0
HUNT	186,872	250,458	0	0	-500	0	63,586
HUSKY	633,043	633,486	225,120	0	443	0	443
INDEPENDENT-REF	84,623	98,743	0	0	0	0	14,120
INDIANA-FARM	43,735	243,641	0	0	-463	0	199,906
INTL-PAPER	0	73	0	0	73	0	73
IRVING	0	319	0	381	-62	0	319
J&W	41,168	39,858	14,570	0	-1,310	1,310	0
K-H-WHITE	0	-35	0	0	-35	35	0
KAISER	0	10,117	0	10,117	0	0	10,117
KENTUCKY	1,985	5,184	0	0	-29	0	3,199
KERN	426,281	426,281	216,116	0	0	0	0
KERR-MCGEE	1,658,555	1,415,061	0	0	27,448	243,494	0
KOCH	296,420	771,783	0	0	-2,167	0	475,363
LA-WATER	0	7,288	0	0	7,288	0	7,288
LAGLORIA	436,294	164,449	0	0	-73,240	271,845	0
LAKESIDE	14,558	98,360	0	0	-240	0	83,802

REPORTING FIRM SHORT NAME	DEEMED OLD OIL ADJUSTED RECEIPTS	********** TOTAL ISSUED	ENTITLEMENT POSITION EXCEPTIONS AND APPEALS	PRODUCT ENTITLEMENTS	10 MONTH CLEAN-UP	REQUIRED TO BUY	********** REQUIRED TO SELL
LAKETON	113,094	112,432	2,171	0	-6,354	662	0
LITTLE-AMER	1,205,499	1,034,785	470,380	0	324	170,714	0
LOUISIANA-LAND	174,251	355,563	0	0	0	0	181,312
MACMILLAN	34,123	188,152	0	0	-3,488	0	154,029
MARATHON	3,604,102	3,719,352	0	0	-5,637	0	115,250
MARION	169,809	239,165	0	0	-792	0	69,356
MID-AMER	7,155	9,032	0	0	-322	0	1,877
MID-TEX	1,092	82,286	0	0	175	0	81,194
MIDLAND	32,313	213,413	-11,159	0	-116	0	181,100
MOBIL	7,994,023	6,342,210	36,612	80,092	-199,473	1,651,813	0
MOHAWK	429,212	424,627	104,191	0	846	4,585	0
MONSANTO	-130,796 **	330,427 ***	0	0	-628	0	461,223
MORRISON	8,724	119,274	0	0	2	0	110,550
MOUNTAINEER	5,297	5,590	0	0	4	0	293
MURPHY	834,264	813,473	0	0	210	20,791	0
N-AMER-PETRO	77,198	160,383	13,290	0	-2,107	0	83,185
NARRAGANSETT	0	-115	0	0	-115	115	0
NATL-COOP	362,733	508,088	0	0	369	0	145,355
NAVAJO	359,256	360,334	39,331*	0	-1,817	0	1,078
NEW-EDGINGTON	617,624	382,149	156,992	0	0	235,475	0
NEW-ENGL-PETRO	0	293,974	0	297,650	-3,676	0	293,974
NEW-ENGL-POWER	0	-72	0	0	-72	72	0
NEWHALL	129,434	149,438	-6,633	0	94	0	20,004
NEWMAN	0	-64	0	0	-64	64	0
NORCO	0	62	0	0	62	0	62
NORTHEAST-PETRO	0	19,028	0	19,937	-909	0	19,028
NORTHLAND	37,489	89,776	0	0	-51	0	52,287
NORTHVILLE	0	20,500	0	21,277	-777	0	20,500
OIL-SHALE	1,974,840	1,456,931	1,011	0	-2,537	517,909	0
OKC	252,260	290,492	22,806	0	1,994	0	38,232
ORANGE&ROCKLAND	0	64	0	0	64	0	64
OXNARD	42,290	108,937	0	0	0	0	66,647
PASCO	0	-43,709	-48,395	0	4,686	43,709	0
PATCHOGUE	0	20,235	0	20,527	-292	0	20,235

REPORTING FIRM SHORT NAME	DEEMED OLD OIL ADJUSTED RECEIPTS	********** TOTAL ISSUED	ENTITLEMENT POSITION EXCEPTIONS AND APPEALS	PRODUCT ENTITLEMENTS	10 MONTH CLEAN-UP	REQUIRED TO BUY	********** REQUIRED TO SELL
PENNZOIL	864,995	511,646	0	0	-449	353,349	0
PEPCO	0	-962	0	0	-962	962	0
PETRO-HEAT-CT	0	5,798	0	6,378	-580	0	5,798
PETRO-HEAT-PA	0	-327	0	0	-327	327	0
PG&E -	0	-472	0	0	-472	472	0
PHILLIPS	2,303,945	2,317,374	0	0	100,410	0	13,429
PHILLIPS-PR	0	293,638	0	293,638	0	0	293,638
PIONEER	17,823	144,023	0	0	-5	0	126,200
PITTSTON	0	177,553	0	178,661	-1,108	0	177,553
PLACID	206,207	384,790	0	0	-1,297	0	178,583
PLATEAU	120,404	155,419	0	0	-480	0	35,015
POWERINE	279,345	410,275	0	0	272	0	130,930
PRIDE	125,085	210,749	0	0	-334	0	85,664
PRINCETON	0	57,164	0	0	0	0	57,164
PRULEASE	0	-873	0	0	-873	873	0
QUAKER-ST	30,952	260,089	0	0	-1,818	0	229,137
REMINGTON	0	-89	0	0	-89	89	0
RICHARDS	521	1,472	0	0	0	0	951
RICO	0	-48	0	0	-48	48	0
ROAD-OIL	576	40,961	0	0	-7	0	40,385
ROCK-ISLAND	369,880	383,723	-27,870	0	542	0	13,843
ROYAL	0	-138	0	0	-138	138	0
SABER-TEX	21,562	150,055	0	0	-7,616	0	128,493
SABRE-CAL	58,834	58,712	26,449	0	-122	122	0
SAGE-CREEK	2,432	5,623	0	0	-7	0	3,191
SAN-JOAQUIN	167,296	219,470	65,697	0	-1,527	0	52,174
SEARS	0	13,980	0	14,011	-31	0	13,980
SEMINOLE	0	136,800	0	0	-2,983	0	136,800
SHELL	12,030,977	8,711,823	0	15,568	342,745	3,319,154	0
SIGMOR	42,741	155,478	0	0	1,799	0	112,737
SKELLY	1,016,024	647,993	0	0	794	368,031	0
SO-HAMPTON	63,961	224,514	0	0	968	0	160,553
SOCAL	7,273,670	9,069,641	0	30,256	-5,762	0	1,795,971
SOCALEDISON	0	-87	0	0	-87	87	0

REPORTING FIRM SHORT NAME	DEEMED OLD OIL ADJUSTED RECEIPTS	TOTAL ISSUED	EXCEPTIONS AND APPEALS	ENTITLEMENT POSITION PRODUCT ENTITLEMENTS	10 MONTH CLEAN-UP	REQUIRED TO BUY	REQUIRED TO SELL
SOHIO	1,293,373	3,420,639	0	0	19,691	0	2,127,266
SOMERSET	18,710	50,360	0	0	-307	0	31,650
SOUND	90,265	129,777	1,013	0	-151	0	39,512
SOUTHLAND	380,961	315,772	89,356	0	199	65,189	0
SOUTHWESTERN	6,209	8,863	4,568	0	0	0	2,654
SPRAGUE	0	83,485	0	83,485	0	0	83,485
STEUART	0	28,933	0	29,820	-887	0	28,933
SUNLAND	323,794	230,406	101,035	0	6,230	93,388	0
SUNOCO	5,244,802	4,008,949	0	0	-74,082	1,235,853	0
SWANN	0	61,465	0	61,931	-466	0	61,465
TARRICONE	0	-120	0	0	-120	120	0
TAUBER	0	-83	0	0	-83	83	0
TENNECO	816,531	714,797	0	0	-51,150	101,734	0
TESORO	1,196,119	964,797	157,219	0	3,440	231,322	0
TEXACO	11,867,282	8,264,467	0	403,976	40,361	3,602,815	0
TEXAS-ASPH	48,903	137,432	-7,062*	0	-7,066	0	88,529
TEXAS-CITY	468,901	429,786	0	0	-28,883	39,115	0
THAGARD	204,183	199,508	103,080	0	-5	4,675	0
THE-REFINERY	0	-2,608	0	0	-2,608	2,608	0
THRIFTWAY	19,499	31,901	0	0	-107	0	12,402
THUNDERBIRD	112,192	174,214	0	0	-292	0	62,022
TONKAWA	22,552	68,418	0	0	-192	0	45,866
TOTAL-LEONARD	195,616	417,433	0	0	-1,891	0	221,817
TRANS-OCEAN	0	90,313	0	0	0	0	90,313
UCC-CARIBE	0	140,293	0	140,293	0	0	140,293
UNION-OIL	5,137,053	3,725,106	0	0	79,020	1,411,947	0
UNION-TEXAS	1,520	226	0	0	226	1,294	0
UNTD-IND	0	97,280	0	0	54	0	97,280
UNTD-REF	153,348	399,084	0	0	-14,443	0	245,536
US-OIL	18,791	194,921	0	0	-483	0	176,130
USA-PETROCHEM	22,673	170,484	0	0	0	0	147,811
VEN-FUEL	0	-89	0	0	-89	89	0
VICKERS	279,153	567,591	0	0	668	0	288,438
VULCAN	126,043	226,425	0	0	-123	0	100,382

REPORTING FIRM SHORT NAME	DEEMED OLD OIL ADJUSTED RECEIPTS	TOTAL ISSUED	EXCEPTIONS AND APPEALS	ENTITLEMENT POSITION PRODUCT ENTITLEMENTS	10 MONTH CLEAN-UP	REQUIRED TO BUY	REQUIRED TO SELL
WALLACE	0	12,124	0	12,124	0	0	12,124
WALLER	0	8,861	0	9,011	-150	0	8,861
WARRIOR	37,640	52,686	27,022	0	-5,043	0	15,046
WEBBER	0	177	0	0	177	0	177
WELLEN	0	-114	0	0	-114	114	0
WEST-COAST	28,611	34,738	-1,246	0	-2,500	0	6,127
WESTERN	58,263	106,716	0	0	7,042	0	48,453
WHALECO	0	-37	0	0	-37	37	0
WICKETT	0	3,320	3,325	0	-5	0	3,320
WINSTON	137,218	202,638	0	0	-10	0	65,420
WIREBACK	0	1,010	0	0	32	0	1,010
WITCO	96,346	207,371	0	0	-245	0	111,025
WYATT	0	38,393	0	39,097	-704	0	38,393
YETTER	0	1,441	0	0	-7	0	1,441
YOUNG	105,350	108,103	51,578	0	-5	0	2,753
TOTAL	132,674,564	132,674,564	1,876,992	3,525,061	0	21,809,856	21,809,856

* Also includes entitlements issued to correct an error in this firm's special correction amount.

** Reflects a correction to a prior month's report.

*** Does not include entitlements issued by virtue of the negative volume of adjusted receipts shown.

[FR Doc.77-2582 Filed 1-21-77;4:43 pm]

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PAGES
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federal register

THURSDAY, JANUARY 27, 1977

highlights

PART I:

MANDATORY PETROLEUM PRICE REGULATIONS
FEA regulates pricing of leaded and unleaded gasoline by refiners; effective 2–1–77 5030
FEA amends refiner price regulations—increased non-product costs and allocation of increased costs to exempt products; effective 1–1–77 5023

MANDATORY PETROLEUM ALLOCATION REGULATIONS
FEA issues emergency amendment concerning Mandatory Refinery Yield Control Program; comments by 2–11–77 5031
FEA issues emergency amendments relating to allocation levels for propane and suppliers' method of allocation 5033

MANDATORY PETROLEUM ALLOCATION AND PRICE REGULATIONS
FEA rescinds motor gasoline exemption 5036

GOVERNMENT PROCUREMENT
GSA/FSS amends regulations on minority enterprises, small businesses and other concerns; effective 12–23–76 5054

COMBINATION AND MOBILE HOME LOT LOANS
HUD/FHC provides for insurance of financial institutions; effective 2–28–77 5045

MOBILE HOMES
HUD/FHC amends construction and safety standards; effective 2–28–77 5044
HUD/FHC proposes to establish subsidized ownership program to aid low income families; comments by 2–28–77 5088

HUD-OWNED MULTIFAMILY PROJECTS
HUD/FHC issues interim regulations regarding disposition; comments by 2–28–77 5049

RAILROAD OPERATIONS
DOT/FRA issues regulations on protection of trains and radio standards and procedures (2 documents); effective 8–1–77 ..... 5054, 5065

CONTINUED INSIDE

reminders

(The items in this list were editorially compiled as an aid to FEDERAL REGISTER users. Inclusion or exclusion from this list has no legal significance. Since this list is intended as a reminder, it does not include effective dates that occur within 14 days of publication.)

Rules Going Into Effect Today

DOT/FAA—Standard instrument approach procedures; changes and additions. 54166; 12–13–76

Standard instrument approach procedures..... 55333; 12–20–76

FCC—Class D Stations in Citizen Radio Services..... 56068; 12–23–76

Noncommercial educational broadcast stations; program logs..... 56648; 12–29–76

List of Public Laws

NOTE: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's LIST OF PUBLIC LAWS.

AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The six-month trial period ended August 6. The program is being continued on a voluntary basis (see OFR notice, 41 FR 32914, August 6, 1976). The following agencies have agreed to remain in the program:

Monday	Tuesday	Wednesday	Thursday	Friday
NRC	USDA/ASCS		NRC	USDA/ASCS
DOT/COAST GUARD	USDA/APHIS		DOT/COAST GUARD	USDA/APHIS
DOT/NHTSA	USDA/FNS		DOT/NHTSA	USDA/FNS
DOT/FAA	USDA/REA		DOT/FAA	USDA/REA
DOT/OHMO	CSC		DOT/OHMO	CSC
DOT/OPSO	LABOR		DOT/OPSO	LABOR
	HEW/FDA			HEW/FDA

Documents normally scheduled on a day that will be a Federal holiday will be published the next work day following the holiday.

Comments on this program are still invited. Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408.

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Finding Aids	523–5227
Public Briefings: "How To Use the Federal Register."	523–5282
Code of Federal Regulations (CFR)	523–5266
Finding Aids	523–5227
PRESIDENTIAL PAPERS:	
Executive Orders and Proclamations.	523–5233
Weekly Compilation of Presidential Documents.	523–5235
Public Papers of the Presidents	523–5235
Index	523–5235
PUBLIC LAWS:	
Public Law dates and numbers	523–5237
Slip Laws	523–5237
U.S. Statutes at Large	523–5237
Index	523–5237
U.S. Government Manual	523–5230
Automation	523–5240
Special Projects	523–5240

HIGHLIGHTS—Continued

HIGHWAY SAFETY
DOT terminates proceeding on occupant crash protection 5088
DOT/NHTSA amends safety standard; effective 1–19–77. 5071

FAIR CREDIT REPORTING ACT
FTC proposes interpretations; comments by 3–15–77..... 5075

PRIVACY ACT
Justice issues notice of systems of records..... 5104

GOVERNMENT IN THE SUNSHINE
The following agencies have issued documents on implementation:
Consumer Product Safety Commission..... 5079
Federal Home Loan Mortgage Corp..... 5125
Overseas Private Investment Corp..... 5086
National Labor Relations Board..... 5105

LEAD-BASED PAINT
HUD amends definitions and prohibits use in Federal and federally-assisted construction of residential structures; effective 2–25–77..... 5042

AVERAGE FUEL ECONOMY STANDARDS
DOT/NHTSA announces deadline of 2–11–77 for submission of applications for financial assistance..... 5178

RELOCATION PAYMENTS, ASSISTANCE AND REAL PROPERTY ACQUISITION
HUD establishes eligibility criteria; effective 1–26–77..... 5044

DISASTER ASSISTANCE
HUD/FDAA proposes legal service provisions to low-income victims; comments by 2–25–77..... 5093
HUD/FDAA proposes individual and family grant program; comments by 2–25–77..... 5094

PRIVACY ACT AND FREEDOM OF INFORMATION
DOD/DPB publishes guidelines for release of personal information to commercial enterprises..... 5119

ENVIRONMENTAL IMPACTS
DOT/FRA notice on procedures for consideration..... 5171

MUSEUM SERVICES ACT
HEW proposes clarification; comments by 3–15–77..... 5110

AFFIRMATIVE FAIR HOUSING MARKETING
HUD/FHEO proposes compliance procedures; comments by 2–28–77..... 5097

BROKERS
SEC proposes clarification of definition; comments by 3–21–77 5084

MEETINGS—
Commerce/Census: Spanish Origin Population for 1980 Census Advisory Committee, 2–17 and 2–18–77 5118
DOT/NHTSA: Truck and Bus Safety Committees, 2–24–77 5178
Privacy Protection Study Commission, 2–2, 2–3, 2–9, 2–10, 2–17 and 2–18–77..... 5159
NASA: Space Technology Steering Committee and Research and Technology Advisory Council, 2–22 thru 2–25–77 5146
Stratospheric Research Advisory Committee, 2–24 and 2–25–77 5146
NFAH: National Council on the Arts, 2–11 and 2–12–77 5147
NSF: Engineering Chemistry and Energetics Advisory Panel, 2–14 and 2–15–77 5147
NRC: Advisory Committee on Reactor Safeguards, 2–10 thru 2–12–77..... 5157
SBA, District Advisory Councils:
Boise, 2–14–77..... 5170
Los Angeles, 3–2–77 5171
Louisville, 4–14 and 4–15–77..... 5171
SEC: National Market Advisory Board, 3–14, 3–15, 4–18 and 4–19–77..... 5170
State: U.S. Advisory Commission on International Educational and Cultural Affairs, 2–18 and 2–19–77 5171

Treasury/ATF: Technical Subcommittee of the Advisory Committee on Explosives Tagging, 2–23 and 2–24–77 5180
USDA/FS: Boise National Forest Grazing Advisory Board, 3–8–77 5114
VA: Station Committee on Educational Allowances, 2–18–77 (2 documents) 5181
Special Medical Advisory Group, 2–28 and 3–1–77 .. 5181

AMENDED MEETINGS—
NRC:: Advisory Committee on Reactor Safeguards, Subcommittee on Emergency Core Cooling Systems; 1–29 and 2–5–77 5154

CHANGED MEETINGS—
HEW/ADAMHA: Minority Group Mental Health Programs Review Committee, 2–24 and 2–26–77 5138

PART II:

DEVELOPMENTAL DISABILITIES PROGRAM
HEW regulates grants for improvement and coordination of services; effective 4–27–77 5271

PART III:

PUBLIC LANDS
Interior/BLM proposes regulations on issuing special recreation permits; comments by 3–14–77 5293

PART IV:

MINING CLAIMS
Interior/BLM adopts recordation regulations; effective 1–20–77 5297

PART V:

CONTRACTORS AND GRANTEES
HUD revises debarment, suspension and ineligibility procedures; effective 1–27–77 5303

PART VI:

COMMUNITY DEVELOPMENT BLOCK GRANTS
HUD amends regulations on program management; effective 2–24–77 5311

PART VII:

FEDERAL AND FEDERALLY ASSISTED PROGRAMS
Justice adopts regulations on evaluation, review and coordination 5317

PART VIII:

PROCUREMENT
DOT proposes a uniform system for the provision, use, control and disposition of government property used by contractors in connection with the performance of work under contracts; comments by 3–14–77 5323

PART IX:

ELECTIONS
FEC invites comments on advisory opinion requests and establishes clearinghouse committee (2 documents) 5339

contents

AGRICULTURAL MARKETING SERVICE
Rules
Oranges, grapefruit, tangerines, and tangelos grown in Fla 5071
Oranges (navel) grown in Ariz. and Calif 5072
Tomatoes grown in Fla 5072
Vegetables; tomato import regulation 5073

AGRICULTURE DEPARTMENT
See Agricultural Marketing Service; Federal Grain Inspection Service; Forest Service; Soil Conservation Service.

ALCOHOL, DRUG ABUSE, AND MENTAL HEALTH ADMINISTRATION
Notices
Committees; establishment, renewals, etc.:
Scientific Counselors Board; renewal 5138
Meetings:
Minority Group Mental Health Programs Review Committee 5138

ALCOHOL, TOBACCO AND FIREARMS BUREAU
Proposed Rules
Distilled spirits from Puerto Rico and Virgin Islands; containers, formula serial number marking 5104
Notices
Firearms, granting of relief 5179
Meetings:
Explosives Tagging Advisory Committee, Technical Subcommittee 5180

ARMS CONTROL AND DISARMAMENT AGENCY
Notices
Environmental impact statements; procedures 5115

ARMY DEPARTMENT
Notices
Environmental statements; availability, etc.:
Fort Belvoir, Va.; family housing construction 5119

ARTS AND HUMANITIES, NATIONAL FOUNDATION
Notices
Meetings:
Arts National Council 5147

CENSUS BUREAU
Notices
Meetings:
Spanish Origin Population for 1980 Census Advisory Committee 5118

CIVIL AERONAUTICS BOARD
Notices
Hearings, etc.:
International Air Transport Association 5117
Texas International Airlines, Inc 5118

COAST GUARD
Proposed Rules
Boating safety:
Flotation devices, personal; information pamphlet; correction 5107

COMMERCE DEPARTMENT
See Census Bureau; National Oceanic and Atmospheric Administration.

COMMUNITY PLANNING AND DEVELOPMENT, OFFICE OF ASSISTANT SECRETARY
Rules
Community development block grants:
Program management 5311

CONSUMER PRODUCT SAFETY COMMISSION
Rules
Sunshine Act implementation; meetings; public attendance and recordkeeping; cross reference 5040
Proposed Rules
Sunshine Act implementation; meetings; public attendance and recordkeeping 5079

COPYRIGHT OFFICE, LIBRARY OF CONGRESS
Proposed Rules
Copyright owners and broadcasting entities:
Cable systems; recording of notices of identity and signal carriage complement 5109

CUSTOMS SERVICE
Rules
Articles conditionally free, subject to reduced rate, etc.:
Certificate of origin; filing by importer or consignee 5041
Financial and accounting procedure:
Services, overtime; performed by employees; reimbursement 5041
Organization and functions; field organization; ports of entry, etc.:
Los Ebanos, Tex 5040
Vessels in foreign and domestic trades:
Containers, coastwide transportation by certain vessels 5040

DEFENSE DEPARTMENT
See also Army Department.
Notices
Freedom of information and Privacy Act 5119

ENVIRONMENTAL PROTECTION AGENCY
Notices
Air pollution; standards of performance for new stationary sources:
Fossil fuel-fired steam generators, review 5121
Pesticide applicator certification; State plans:
Louisiana 5121
New York 5122
Pesticides, specific exemptions and experimental use permits:
Washington State Department of Agriculture; benomyl on cabbage, etc 5123
Radiation protection in healing arts, Federal agency guidance; memorandum of understanding with HEW 5123

FAIR HOUSING AND EQUAL OPPORTUNITY, OFFICE OF ASSISTANT SECRETARY
Proposed Rules
Affirmative fair housing marketing; compliance procedures 5097

FEDERAL AVIATION ADMINISTRATION
Rules
Airworthiness directives:
Beech 5036
Piper 5037
Pratt & Whitney 5037
Control zones 5038
Standard instrument approach procedures (2 documents) .. 5038, 5039
Proposed Rules
Control zones 5074
Transition areas 5074

FEDERAL DISASTER ASSISTANCE ADMINISTRATION
Proposed Rules
Disaster assistance administration:
Individual and family grants; performance, policy and eligibility, etc 5094
Legal services program 5093
Notices
Disaster assistance administration; legal services, agreement with Young Lawyers Section, ABA 5139
Disaster and emergency areas:
Minnesota (2 documents) .. 5139, 5140
Missouri 5140
Nebraska 5140
Oklahoma 5140
Wisconsin 5140
Utah 5141
West Virginia 5139

FEDERAL ELECTION COMMISSION
Notices
Clearinghouse Advisory Committee, charter 5339
Advisory opinion requests 5339

FEDERAL ENERGY ADMINISTRATION
Rules
Petroleum allocation and price regulations, general and mandatory:
Motor gasoline, exemption 5036
Petroleum allocation regulations, mandatory:
Propane; alteration of allocation levels and suppliers' method of allocation 5033
Refinery yield control program; kerosene-base jet fuel 5031
Petroleum price regulations, mandatory:
Gasoline, leaded and unleaded 5030
Refiners; increased non-product costs 5023
Notices
Environmental statements; availability, etc.:
Kleer Salt Dome Storage Site 5124
West Hackberry Salt Dome Storage Site 5124

FEDERAL GRAIN INSPECTION SERVICE
Notices
Grain Standards Act; recordkeeping and registration provisions 5114

FEDERAL HOME LOAN MORTGAGE CORPORATION
Notices
Public information:
Decision making processes, proposed procedures 5125
Organization, rules and access to records 5126

FEDERAL HOUSING COMMISSIONER—OFFICE OF ASSISTANT SECRETARY FOR HOUSING
Rules
Authority delegations:
Insuring Offices, Director et al.; fund reservations 5044
Mortgage and loan insurance programs:
Mobile homes; construction and safety standards 5044
Property improvement and mobile home loans; combination and mobile home lots, insurance of financial institutions 5045
Proposed Rules
Mortgage and loan insurance programs:
Mobile home loan insurance assistance payments 5088
Notices
Authority delegations:
Regional Administrators et al 5141

FEDERAL MARITIME COMMISSION
Notices
Casualty and nonperformance, certificates:
National Hellenic American Line 5129
Agreements filed, etc.:
Pacific Coast European Conference, et al 5129

FEDERAL POWER COMMISSION
Notices
Hearings, etc.:
Panhandle Eastern Pipe Line Co 5130

FEDERAL RAILROAD ADMINISTRATION
Rules
Radio standards and procedures 5065
Operating rules:
Trains and locomotives, protection 5054

Notices

Environmental impacts, procedures for considering; inquiry.. 5171

FEDERAL RESERVE SYSTEM

Notices

Board actions; applications and reports 5130
Applications, etc.:
Buffalo Bank Corp..... 5133
NBC Corp..... 5133
National David City Corp..... 5133
Redwood Bancorp..... 5133

FEDERAL SUPPLY SERVICE

Rules

Procurement; minority, small business, etc..... 5054

FEDERAL TRADE COMMISSION

Proposed Rules

Fair Credit Reporting Act, interpretations; spouses' files and reports on nonapplicant spouses 5075
Ophthalmic goods and services; advertising; report availability.. 5075

Notices

Consent agreements:
Grand Spaulding Dodge, Inc... 5133
National Service Industries, Inc 5136
Trade regulation rulemaking proceedings:
Director, Bureau of Consumer Protection; presiding officer and Staff reports on record.. 5138

FISH AND WILDLIFE SERVICE

Notices

Authority delegations:
Associate Director, Federal Assistance, et al.; Federal wildlife permits issuance..... 5143

FOREST SERVICE

Notices

Environmental statements; availability, etc.:
Mt. Hood and Williamette National Forests, Breitenbush Area, Oreg.; correction..... 5114
Tongass National Forest, Burnett Inlet Fish Hatchery, Alaska 5114
Meetings:
Boise National Forest Grazing Advisory Board..... 5114

GENERAL SERVICES ADMINISTRATION

See also Federal Supply Service.

Notices

Property management regulations, temporary:
Teleprocessing services program 5138

GEOLOGICAL SURVEY

Notices

Geothermal resource areas; operations, etc.:
New Mexico..... 5143

HEALTH, EDUCATION, AND WELFARE DEPARTMENT

See also Alcohol, Drug Abuse, and Mental Health Administration; Human Development Office; Social and Rehabilitation Service.

Proposed Rules

Museum Services Institute; membership, policies, etc..... 5110

Notices

Committees; establishment, renewals, etc.:
Population Affairs, Secretary's Advisory Committee; renewal 5138
Radiation protection in healing arts, Federal agency guidance; cross reference..... 5138

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

See also Community Planning and Development, Office of Assistant Secretary; Fair Housing and Equal Opportunity, Office of Assistant Secretary; Federal Disaster Assistance Administration; Federal Housing Commissioner—Office of Assistant Secretary for Housing; New Communities Administration.

Rules

Contractors and grantees, debarment, suspension, and ineligibility; administrative sanctions... 5308
Low income housing:
Multi-family projects, HUD-owned; disposition; interim procedures 5049
Paint, lead-based, poisoning prevention; Federal and federally assisted construction of residential structures..... 5042
Relocation payments and assistance and real property acquisition 5044

Proposed Rules

Low-income housing:
Housing assistance, application review; supplemental allocations for areawide housing opportunity plans..... 5090

HUMAN DEVELOPMENT OFFICE

Rules

Developmental disabilities program:
Discretionary and formula grants, etc..... 5271

INTERIOR DEPARTMENT

See Fish and Wildlife Service; Geological Survey; Land Management Bureau.

INTERSTATE COMMERCE COMMISSION

Notices

Fourth section applications for relief 5182
Hearing assignments..... 5182
Motor carriers:
Irregular route property carriers; gateway elimination.... 5191
Temporary authority applications (2 documents)..... 5183, 5186
Transfer proceedings (2 documetns) 5202, 5204
Petitions, applications, finance matters (including temporary authorities), railroad abandonments, alternate route deviations, and intrastate applications 5204
Petitions filing:
Midwest Freight Car Co..... 5182

JUSTICE DEPARTMENT

See also Law Enforcement Assistance Administration.

Rules

Organization, functions, and authority delegations:
International Criminal Police Organization (INTERPOL); responsibility for establishment and implementation.... 5054

Proposed Rules

Privacy Act; implementation; exemption of records system..... 5104

Notices

Pollution control; consent judgments; U.S. versus listed companies:
New York City, et al..... 5144
Privacy Act; systems of records.. 5144

LAND MANAGEMENT BUREAU

Rules

Mining claims:
Location; recordation of unpatented claims and filing of assessment work information.. 5297

Proposed Rules

Recreation management:
Visitor use other than developed recreation sites; special permits 5293

Notices

Airport leases:
Nevada 5143
Classification of lands:
California; reclassification for transfer 5142
Opening of public lands:
Washington 5143
Withdrawal and reservation of lands, proposed, etc.:
Nevada 5142

LAW ENFORCEMENT ASSISTANCE ADMINISTRATION

Rules

Federal and federally-assisted programs and projects; evaluation, review, and coordination..... 5317

LIBRARY OF CONGRESS

See Copyright Office.

MATERIALS TRANSPORTATION BUREAU

Rules

Shippers:
Shipment and packaging requirements; carbon dioxide aboard aircraft..... 5059

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Notices

Meetings:
Long Duration Exposure Facility (LDEF) Experiment Review Ad Hoc Subcommittee of the Space Technology Steering Committee and Research and Technology Advisory Council 5146
Stratospheric Research Advisory Committee 5146

NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION

Rules

Motor vehicle safety standards:
Occupant crash protection..... 5071

Notices

Fuel economy average standards; passenger cars, 1981–1984 model years; financial assistance applications to participate in rulemaking 5178
Meetings:
Motor Vehicle Safety National Advisory Council, Truck and Bus Safety Subcommittee, et al..... 5178
Motor vehicle safety standards; exemption petitions, etc.:
H.C.M. Co., Inc.; air brake systems 5177
Toyota Motor Sales, USA Inc.; control location, identification, and illumination..... 5178

NATIONAL LABOR RELATIONS BOARD

Proposed Rules

Sunshine Act implementation; public observation of meetings.. 5105

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Proposed Rules

Coastal zone management programs:
Administrative grants, State qualification procedures; extension of time..... 5074

Notices

Meetings:
New England Regional Fishery Management Council and Mid-Atlantic Regional Fishery Management Council.... 5118

NATIONAL SCIENCE FOUNDATION

Notices

Committees; establishments, renewals, revisions, etc.:
National Science Foundation Advisory Council..... 5148
Meetings:
Engineering Chemistry and Energetics Advisory Panel..... 5147

NATIONAL TRANSPORTATION SAFETY BOARD

Proposed Rules

Sunshine Act; implementation... 5111

Notices

Safety recommendations and accident reports; availability, responses, etc..... 5158

NAVAJO AND HOPI INDIAN RELOCATION COMMISSION

Rules

Commission operations and relocation procedures; correction.. 5054

NEW COMMUNITIES ADMINISTRATION

Notices

Environmental statements; availability, etc.:
Shenandoah New Community Project, Ga..... 5141

NUCLEAR REGULATORY COMMISSION

Notices

Licensees authorized to transport or possess strategic quantities of special nuclear material; memorandum and order..... 5150
Meetings:
Advisory Committee on Reaction Safeguards..... 5157
ACRS Subcommittee on Emergency Core Cooling Systems; correction 5154
Applications, etc.:
Arkansas Power and Light Co.. 5154
Baltimore Gas and Electric Co. 5155
Chem-Nuclear Systems, Inc.... 5149
Duke Power Co..... 5155
Duquesne Light Co et al..... 5155
Florida Power and Light Co.... 5148
Iowa Electric Light and Power Co. et al..... 5148
Public Service Co. of Colorado.. 5148
Public Service Co. of New Hampshire et al..... 5156
Toledo Edison Co. et al..... 5149
Vermont Yankee Nuclear Power Co 5149
Westinghouse Electric Corp.... 5156

OVERSEAS PRIVATE INVESTMENT CORPORATION

Proposed Rules

Sunshine Act implementation; open meetings; policy and procedures 5086

PRIVACY PROTECTION STUDY COMMISSION

Notices

Meeting 5159

SECURITIES AND EXCHANGE COMMISSION

Rules

Authority delegations to Directors et al.:
Corporation Finance Division Director 5040

Proposed Rules

Securities Exchange Act:
Brokers; statutory definition clarified 5084

Notices

Meetings:
National Market Advisory Board 5170
Resolution of investor disputes; public forum rescheduled..... 5161
Securities Exchange Act; exempted securities:
Federal Farm Credit Banks-Consolidated Systemwide Bonds Designated..... 5163
Self-regulatory organizations; proposed rule changes:
Municipal Securities Rulemaking Board (2 documents).. 5167, 5168
Philadelphia Stock Exchange, Inc 5161
Hearings, etc.:
American Stock Exchange, Inc.. 5159
General Public Utilities Corp.... 5163
Gold Income Investors, Inc..... 5163
Midwest Clearing Corp..... 5164
National Association of Securities Dealers, Inc. (3 documents)..... 5160, 5164
New York Stock Exhange, Inc... 5160
Ohio Power Co..... 5165
Vanguard Group, Inc. et al.... 5166
Willow Fund, Inc..... 5162

SMALL BUSINESS ADMINISTRATION

Notices

Applications, etc.:
First Valley Ltd..... 5170
Disaster areas:
California 5170
Meetings:
Boise District Advisory Council.. 5170
Los Angeles District Advisory Council 5171
Louisville District Advisory Council 5171

SOCIAL AND REHABILITATION SERVICES

Rules

Developmental disabilities program and grants for community mental retardation facilities initial staffing; revoked; cross reference 5271

SOIL CONSERVATION SERVICE

Notices

Environmental statements on watershed projects; availability, etc.:
St. Thomas-Lodema, N. Dak.... 5114

STATE DEPARTMENT

Proposed Rules

Legal and related services:
Foreign Sovereign Immunities Act; suits, services, etc.; correction 5086

Notices

Meetings:
International Educational and Cultural Affairs, U.S. Advisory Commission 5171

TRADE NEGOTIATIONS, OFFICE OF SPECIAL REPRESENTATIVE

Notices

Imports relief investigations, determinations:
Alloy tool steel..... 5171

TRANSPORTATION DEPARTMENT

See also Coast Guard; Federal Aviation Administration; Federal Railroad Administration; Materials Transportation Bureau; National Highway Traffic Safety Administration.

CONTENTS

Proposed Rules

Highway safety programs, State; uniform standards:
Occupant crash protection; terminated ---------- 5088
Procurement; Government property ---------- 5323

VETERANS ADMINISTRATION

Notices

Meetings:
Educational Allowances Special Committee (2 documents) --- 5181
Special Medical Advisory Group_ 5181

TREASURY DEPARTMENT

See Alcohol, Tobacco and Firearms Bureau; Customs Service.

"THE FEDERAL REGISTER—WHAT IT IS AND HOW TO USE IT"

Briefings at the Office of the Federal Register

(For Details, See 41 FR 46527, Oct. 21, 1976)

RESERVATIONS: DEAN L. SMITH, 523-5282

list of cfr parts affected in this issue

The following numerical guide is a list of the parts of each title of the Code of Federal Regulations affected by documents published in today's issue. A cumulative list of parts affected, covering the current month to date, follows beginning with the second issue of the month.

A Cumulative List of CFR Sections Affected is published separately at the end of each month. The guide lists the parts and sections affected by documents published since the revision date of each title.

7 CFR
905 ---------- 5071
907 ---------- 5072
966 ---------- 5072
980 ---------- 5073

10 CFR
210 ---------- 5036
211 (3 documents) ---------- 5031, 5033, 5036
212 (3 documents) ---------- 5023, 5030, 5036

14 CFR
39 (3 documents) ---------- 5036, 5037
71 ---------- 5038
97 (2 documents) ---------- 5038, 5039
PROPOSED RULES:
71 (2 documents) ---------- 5074

15 CFR
PROPOSED RULES:
923 ---------- 5074

16 CFR
1012 ---------- 5040
PROPOSED RULES:
456 ---------- 5075
600 ---------- 5075
1012 ---------- 5079

17 CFR
200 ---------- 5040
PROPOSED RULES:
240 ---------- 5084

19 CFR
1 ---------- 5040
4 ---------- 5040
10 ---------- 5041
24 ---------- 5041

22 CFR
PROPOSED RULES:
93 ---------- 5086
707 ---------- 5086

23 CFR
PROPOSED RULES:
1204 ---------- 5088

24 CFR
24 ---------- 5304
35 ---------- 5042
42 ---------- 5044
200 ---------- 5044
201 (2 documents) ---------- 5044, 5045
290 ---------- 5049
570 ---------- 5312
PROPOSED RULES:
108 ---------- 5097
235 ---------- 5088
891 ---------- 5099
2205 (2 documents) ---------- 5093, 5094

25 CFR
700 ---------- 5054

27 CFR
PROPOSED RULES:
250 ---------- 5104

28 CFR
0 ---------- 5054
30 ---------- 5318
PROPOSED RULES:
16 ---------- 5104

29 CFR
PROPOSED RULES:
102 ---------- 5105

33 CFR
PROPOSED RULES:
181 ---------- 5107

37 CFR
PROPOSED RULES:
201 ---------- 5109

41 CFR
5A-1 ---------- 5054
5A-2 ---------- 5055
5A-5 ---------- 5055
5A-7 ---------- 5057
5A-14 ---------- 5057
5A-16 ---------- 5058
5A-19 ---------- 5058
5A-53 ---------- 5058
5A-72 ---------- 5058
5A-76 ---------- 5059
PROPOSED RULES:
12-70 ---------- 5324

43 CFR
3830 ---------- 5298
PROPOSED RULES:
2920 ---------- 5294
6260 ---------- 5294

45 CFR
416 ---------- 5272
1385 ---------- 5276
1386 ---------- 5279
1387 ---------- 5287
PROPOSED RULES:
Ch. I ---------- 5110

49 CFR
173 ---------- 5059
218 ---------- 5059
220 ---------- 5065
571 ---------- 5071
PROPOSED RULES:
804 ---------- 5111

CUMULATIVE LIST OF PARTS AFFECTED DURING JANUARY

The following numerical guide is a list of parts of each title of the Code of Federal Regulations affected by documents published to date during January.

1 CFR
PROPOSED RULES:
442 ---------- 1267

3 CFR
EXECUTIVE ORDERS:
10480 (Amended by EO 11956) ---- 2947
10900 (Amended by EO 11963) ---- 4325
10973 (Amended by EO 11959) ---- 4315
11490 (Amended by EO 11953) ---- 2491
11501 (Revoked by EO 11958) ---- 4311
11651 (Amended by EO 11951) ---- 1453
11718 (Revoked by EO 11966) ---- 4331
11724 (Superseded by EO 11954) -- 2297
11793 (Revoked by EO 11957) ---- 3295
11821 (Amended by EO 11949) ---- 1017
11888 (Amended by EO 11960) ---- 4317
11921 (See EO 11953) ---------- 2491
11949 ---------- 1017
11950 ---------- 1451
11951 ---------- 1453
11952 ---------- 2293, 4809
11953 ---------- 2491
11954 ---------- 2297
11955 ---------- 2499
11956 ---------- 2947
11957 ---------- 3295
11958 ---------- 4311
11959 ---------- 4315
11960 ---------- 4317
11961 ---------- 4321
11962 ---------- 4323
11963 ---------- 4325
11964 ---------- 4327
11965 ---------- 4329
11966 ---------- 4331
11967 ---------- 4393
PROCLAMATIONS:
4423 (See Proc. 4482) ---------- 4309
4481 ---------- 4307
4482 ---------- 4309
4483 ---------- 4391

5 CFR
213 ---------- 1455, 2949, 3297, 3827
610 ---------- 3297
1410 ---------- 2299

7 CFR
1 ---------- 743
2 ---------- 2968, 4395
26 ---------- 1019
55 ---------- 2969
56 ---------- 2970
59 ---------- 2971
70 ---------- 2971
210 ---------- 2971
226 ---------- 1475
354 ---------- 1475
401 ---------- 4111
601 ---------- 3845
718 ---------- 2973
722 ---------- 1476
726 ---------- 2300
729 ---------- 749
730 ---------- 2301
905 ---------- 1022, 5071
907 ---- 1230, 2665, 3845, 3846, 4395, 5072
910 ---------- 1476, 2977, 3297, 4111
912 ---------- 4811
917 ---------- 3625
928 ---------- 1, 2, 2665
930 ---------- 3626
959 ---------- 2308, 4395
966 ---------- 5072
971 ---------- 2666, 3626
980 ---------- 5073
981 ---------- 3159, 3847
1205 ---------- 4812
1421 ---------- 4397
1430 ---------- 3
1473 ---------- 2977
1701 ---------- 3847
1803 ---------- 4401
1821 ---------- 4405
1822 ---------- 1023, 2051, 4406
1823 ---------- 4408, 4409
1843 ---------- 1231
1845 ---------- 2308
1924 ---------- 4111
PROPOSED RULES:
52 ---------- 3178
270 ---------- 1479
271 ---------- 1479
272 ---------- 780, 2328
275 ---------- 1479
661 ---------- 3311
730 ---------- 780
967 ---------- 2691
987 ---------- 2503
1002 ---------- 4471
1033 ---------- 4127
1063 ---------- 1356
1070 ---------- 1356
1078 ---------- 1356
1079 ---------- 1356
1205 ---------- 2503
1260 ---------- 4484
1421 ---------- 2328
1434 ---------- 2980
1473 ---------- 2977
1488 ---------- 3849
1701 ---------- 1479, 4489

8 CFR
204 ---------- 3626
212 ---------- 3627
214 ---------- 3627

9 CFR
73 ---------- 2949, 3297
97 ---------- 1455
113 ---------- 750, 1456
317 ---------- 3298
319 ---------- 751, 3298
381 ---------- 2949
PROPOSED RULES:
92 ---------- 1483, 3859

10 CFR
100 ---------- 2051
140 ---------- 46
Ch. II ---------- 1036, 4409
203 ---------- 3814
210 ---------- 4416, 4417, 5036
211 ---- 4416, 4421, 4422, 5031, 5033, 5036
212 ---------- 1036, 1456, 2308, 4417, 5023, 5030, 5036
500 ---------- 4813
711 ---------- 4826
FEA RULINGS:
1977-1 ---------- 3628
1977-3 ---------- 4833
PROPOSED RULES:
2 ---------- 3178
51 ---------- 3178
212 ---------- 2646, 4491
215 ---------- 3652

11 CFR
PROPOSED RULES:
2 ---------- 3810
3 ---------- 3810

12 CFR
4 ---------- 2950
16 ---------- 2200, 3299
202 ---------- 1242, 2950
206 ---------- 3171
207 ---------- 968
211 ---------- 752
212 ---------- 2951
213 ---------- 752
220 ---------- 752
221 ---------- 968
224 ---------- 968
225 ---------- 752, 1263, 2951
226 ---------- 753, 1264, 2650, 3827
227 ---------- 2950
265 ---------- 2501, 2950
563 ---------- 2952
570 ---------- 2952
601 ---------- 2666
704 ---------- 1458
PROPOSED RULES:
226 ---------- 780, 1268
505b ---------- 2503
523 ---------- 2338
545 ---------- 2328
564 ---------- 2328
604 ---------- 55, 2078

13 CFR
309 ---------- 753
PROPOSED RULES:
112 ---------- 2506
121 ---------- 2505, 2980, 4854

14 CFR
25 ---------- 2052
36 ---------- 4113
37 ---------- 19
39 ---------- 1217, 1218, 2053-2055, 3870, 3828, 4113-4116, 5036, 5037
71 ---------- 300, 2055, 2056, 3170, 3171, 3829, 4117, 5038
73 ---------- 300, 3829
75 ---------- 300, 4117
97 ---------- 1219, 2056, 3171, 5038, 5039
207 ---------- 4117
208 ---------- 4118
221a ---------- 1220
241 ---------- 1219
288 ---------- 3299
302 ---------- 2667
378a ---------- 2309
385 ---------- 1220, 2667, 2668
1214 ---------- 3829

14 CFR—Continued

PROPOSED RULES:

39 ... 1268–1270
71 ... 1270, 1271, 2078, 2079, 3179, 3861–3863, 4132, 4133, 5074
91 ... 3863
152 ... 2850, 4134
239 ... 2693
288 ... 1271
298 ... 2692
310b ... 2995
370 ... 2995
399 ... 3180

15 CFR

369 ... 2057
371 ... 1222
377 ... 1222
931 ... 1164

PROPOSED RULES:

920 ... 2507
923 ... 5074
933 ... 4046

16 CFR

2 ... 3300
4 ... 4834
13 ... 3–5, 3636, 3640, 3833, 4118, 4119
1012 ... 5040
1201 ... 1428

PROPOSED RULES:

1 ... 2980
4 ... 2079
438 ... 1483
447 ... 2694
450 ... 1038
456 ... 5075
600 ... 5075
801 ... 3181, 3655
1012 ... 5079
1301 ... 1484

17 CFR

1 ... 2628, 4120
155 ... 4120
180 ... 3433
200 ... 753, 5040
211 ... 2058
240 ... 753, 754, 2060, 3301, 4424
241 ... 759
276 ... 2953

PROPOSED RULES:

1 ... 4134
155 ... 4134
239 ... 3312
240 ... 781, 782, 3312, 4854, 5084
249 ... 782
270 ... 3312
275 ... 3312

18 CFR

2 ... 2954, 4834
11 ... 1226
141 ... 6
154 ... 2954
300 ... 2668

PROPOSED RULES:

1 ... 2079
2 ... 2329, 4834
3 ... 2079
154 ... 1272
157 ... 56
301 ... 4859

19 CFR

1 ... 5040
4 ... 3160, 5040
6 ... 2309
10 ... 2309, 2310, 3161, 5041
18 ... 4120
24 ... 4120, 5041
153 ... 2501
172 ... 3161

PROPOSED RULES:

1 ... 2329
113 ... 2330
201 ... 805

20 CFR

401 ... 3640
404 ... 2062
405 ... 1028
416 ... 2062
422 ... 3640
614 ... 1459
601 ... 4724
602 ... 4724
603 ... 4724
604 ... 4724
651 ... 4724
652 ... 4727
653 ... 4727
654 ... 4731
655 ... 4731
656 ... 3440
657 ... 4731
658 ... 4731
701 ... 3847
702 ... 3847

PROPOSED RULES:

405 ... 4966
416 ... 2079, 3316
655 ... 4670

21 CFR

1 ... 4697
2 ... 1459, 4436, 4697
4 ... 3108
6 ... 4712
8 ... 1459, 4712
10 ... 4712
11 ... 4713
80 ... 4713
90 ... 4713
100 ... 4713
102 ... 761
121 ... 1460, 1461, 3302, 4713
310 ... 4714
314 ... 1624, 1638, 3109, 4714
320 ... 1624, 1638
501 ... 4716
503 ... 4716
508 ... 4717
510 ... 3837
514 ... 3109, 4717
520 ... 1462, 3838
522 ... 3838
540 ... 1462
548 ... 3838
555 ... 3838
558 ... 761, 1463, 2312
564 ... 4717
570 ... 4717
571 ... 4717
601 ... 4718
701 ... 4718
809 ... 4719

PROPOSED RULES:

1 ... 2330
3e ... 1483

21 CFR—Continued

PROPOSED RULES—Continued

11 ... 806
18 ... 2330
121 ... 1483
128d ... 807
369 ... 2330
500 ... 2330
510 ... 2981
701 ... 2330
740 ... 2330
801 ... 2330

22 CFR

41 ... 2501
42 ... 2501

PROPOSED RULES:

93 ... 5086
707 ... 5086

23 CFR

625 ... 6, 3642
655 ... 4835
712 ... 7

PROPOSED RULES:

1204 ... 5088

24 CFR

24 ... 5304
35 ... 5042
42 ... 5044
200 ... 3838, 5044
201 ... 3839, 5044, 5045
203 ... 762
207 ... 764, 2954
213 ... 764, 2954
221 ... 765, 2954
231 ... 766, 2954
241 ... 763, 3162
280 ... 960
290 ... 5049
570 ... 5312
1905 ... 3162
1914 ... 2193, 4264
1916 ... 4264, 4265
1917 ... 2063–2068, 4265–4268
3282 ... 2576

PROPOSED RULES:

108 ... 5097
200 ... 4296
201 ... 1487
235 ... 5088
242 ... 3655
279 ... 3112
406 ... 2796
501 ... 1488
570 ... 3292, 3437
800 ... 4300
866 ... 3181
881 ... 4300
891 ... 5099
1917 ... 2082, 4269–4280, 4641–4649
2205 ... 5093, 5094

25 CFR

700 ... 5054

PROPOSED RULES:

221 ... 3319
504 ... 3864

26 CFR

1 ... 767, 1195, 1463, 2501, 3839, 4436
7 ... 1469, 1471, 2954, 4121
41 ... 2671
48 ... 2671
142 ... 2677

26 CFR—Continued

154 ... 2312
404 ... 1029, 2313, 4437, 4438

PROPOSED RULES:

1 ... 57, 2694, 3181, 3866
54 ... 1488
301 ... 1038, 1489

27 CFR

170 ... 3840
194 ... 3840
201 ... 3840
270 ... 4999
275 ... 5002
290 ... 5008
295 ... 5010
296 ... 5011

PROPOSED RULES:

250 ... 5104

28 CFR

0 ... 3163, 4440, 5054
30 ... 5318

PROPOSED RULES:

16 ... 5104
32 ... 1390

29 CFR

15 ... 769
60 ... 3440
94 ... 1656, 2426
95 ... 2427
96 ... 2428
97 ... 1656
98 ... 2428
99 ... 773, 2430
511 ... 2313
609 ... 2954
613 ... 3303
657 ... 4440
672 ... 2955
673 ... 2955
720 ... 3303
1601 ... 3163
1910 ... 2956, 3304
1926 ... 2956
1952 ... 2313
2608 ... 2677, 4440
2610 ... 2678

PROPOSED RULES:

90 ... 2981
102 ... 5105
215 ... 3319, 4492
1910 ... 808, 1742, 1806
2550 ... 1488, 1618, 3871
2610 ... 4862

30 CFR

100 ... 1214
211 ... 3642, 4441

PROPOSED RULES:

11 ... 2986
77 ... 2800
211 ... 1489, 2082, 4492, 4493
251 ... 3321

31 CFR

1 ... 2311
13 ... 3841
51 ... 2196, 2422
101 ... 1471
128 ... 4121
210 ... 9
515 ... 1472

32 CFR

40 ... 3646
256 ... 773
2000 ... 2679

PROPOSED RULES:

242a ... 1492
903 ... 2085
1482 ... 3322

33 CFR

40 ... 10
92 ... 2681
117 ... 3841
159 ... 11
183 ... 2681, 2682
204 ... 3646
265 ... 3841

PROPOSED RULES:

110 ... 3871
114 ... 3181
115 ... 3181
161 ... 3182
181 ... 5107
207 ... 4863
209 ... 2572

34 CFR

Ch. I ... 12
232 ... 1478

36 CFR

9 ... 4835
212 ... 2957
221 ... 2957
231 ... 2957
251 ... 2957
261 ... 2957
262 ... 2961
271 ... 2962
272 ... 2962
291 ... 2962
295 ... 2962
606 ... 1473

PROPOSED RULES:

7 ... 3655, 3656
16 ... 812
17 ... 812

37 CFR

201 ... 2962

PROPOSED RULES:

1 ... 2632
3 ... 2632
5 ... 2632
201 ... 4134, 5109

38 CFR

0 ... 2314
3 ... 2069
17 ... 2316

39 CFR

111 ... 3470
233 ... 4123
257 ... 4123
258 ... 4124
3002 ... 3646

PROPOSED RULES:

1 ... 2699
2 ... 2699
3 ... 2699
4 ... 2699
5 ... 2699

39 CFR—Continued

PROPOSED RULES—Continued

8 ... 2699
7 ... 2699
8 ... 2699

40 CFR

6 ... 2450
52 ... 3841, 4124
60 ... 1214, 4124
61 ... 1215, 4124
86 ... 1122, 1150
129 ... 2588, 2617
136 ... 3306
190 ... 2858
220 ... 2468
221 ... 2470
222 ... 2471
223 ... 2474
224 ... 2474
225 ... 2475
226 ... 2475
227 ... 2476
228 ... 2482
229 ... 2489
409 ... 3164
430 ... 1398
440 ... 3165
455 ... 2316

PROPOSED RULES:

22 ... 1492
52 ... 1273, 1494, 2705, 3657, 4134, 4135, 4496
60 ... 2842, 4863
80 ... 3183
85 ... 1044
180 ... 815
201 ... 2330
202 ... 2330
260 ... 2331
1516 ... 1044

41 CFR

3–3 ... 2683
3–4 ... 2684
3–16 ... 2684
3–50 ... 2684
5A–1 ... 5054
5A–2 ... 5055
5A–5 ... 5055
5A–7 ... 5057
5A–14 ... 5057
5A–16 ... 5058
5A–19 ... 5058
5A–53 ... 5058
5A–72 ... 5058
5A–76 ... 5059
7–1 ... 4841
7–3 ... 4841
7–4 ... 4842
7–6 ... 4842
7–7 ... 4842
7–8 ... 4843
7–10 ... 4843
7–12 ... 4843
7–15 ... 4843
7–30 ... 4843
9–4 ... 4124
9–7 ... 2963
9–15 ... 2963
9–51 ... 2684
Ch. 14 ... 1215
14–1 ... 1215
14–10 ... 1215
60–1 ... 3458
60–2 ... 3461
60–3 ... 3825
60–30 ... 3462, 4057

41 CFR—Continued

60–741 3307
101–1 12
101–25 1030
101–26 1032
101–28 2317
101–38 1477

PROPOSED RULES:

3–1 1273
12–70 5324
101–17 816

42 CFR

56b 4125
100 ..... 4024, 4847
101 4676
122 4024
123 4028

PROPOSED RULES:

54b 2986
101 ..... 2994, 4256–4260, 4624, 4632, 4637

43 CFR

4 1216
419 3307
2650 779
3040 4441
3041 4442
3100 1032
3500 ..... 4451, 4457
3520 4452
3830 5298
4110 778
4120 778
9230 4457

PUBLIC LAND ORDER:

5561 (Amended by PLO 5612) 2684
5611 (Corrected by PLO 5612) 2684
5612 2708

PROPOSED RULES:

2 4496
29 3660
2400 3657
2920 5294
3520 2684
3800 1045
4700 4500
6260 5294

45 CFR

99 4460
177 2963
185 3842
193 1190
233 3307
248 2684
249 4125
250 779
304 3843
416 5272
1005 3165
1050 3272
1068 3165
1336 3782
1385 5276
1386 5279

45 CFR—Continued

1387 5287
1619 4848

PROPOSED RULES:

Subtitle A 3325
46 ..... 2792, 3076
63 4135
74 4137
Ch. I 5110
153 3792
158 2086
185 4501
Ch. II 2445
201 3664
205 2440
249 ..... 3325, 3665, 4967
250 ..... 2331, 3328
304 3663
504 3872
706 2708
1480 1045
1606 4864
1621 4867
1703 3667

46 CFR

536 1473

PROPOSED RULES:

10 3186
12 1278
502 817
531 3186

47 CFR

0 ..... 3166, 3167
1 ..... 3166–3168, 3308
13 1231
15 ..... 1231, 3308, 4461
21 1232
73 ..... 1233, 2502, 3167, 3308, 3646, 4157
74 2069
76 3308
81 1474
83 ..... 1231, 1474
87 ..... 3168, 3308
89 4158
97 ..... 3166, 3167

PROPOSED RULES:

64 1278
73 ..... 1278, 1279, 2086, 3186
74 2087
76 3670
83 2088
97 2089

49 CFR

Ch. II 4464
Ch. V 2864
25 12
99 3118
173 ..... 2071, 2688, 5059
174 2071
178 2688
218 ..... 2318, 3843, 5059
220 5065
221 ..... 2321, 3843
225 1221

49 CFR—Continued

231 1222
258 4652
260 4652
265 4286
268 4982
310 2964
501 3843
571 ..... 3844, 5071
630 3772
1033 ..... 2965, 3309, 3310, 3844, 4467, 4849
1047 19
1056 3169
1100 4126
1241 1474
1249 1474
1250 1474
1251 1474

PROPOSED RULES:

Subtitle A 2868
173 2709
179 2709
228 2994
230 2994
258 4660
267 2507
268 4982
523 2092
571 3187
804 5111
1251 2092

50 CFR

17 ..... 2071, 2965
26 ..... 1033, 2689, 2690, 3845
32 2690
33 ..... 1034, 2690, 3845, 4849
216 ..... 1034, 3845
260 2326
261 2326
262 2326
263 ..... 2326, 4468
264 2326
265 2326
266 2326
267 2326
268 2326
269 2326
270 2326
271 2326
272 2326
273 2326
274 2326
275 2326
276 2326
277 2326
278 2326
279 2326
601 2968
602 2968

PROPOSED RULES:

17 ..... 2101, 2102, 2507, 4868
26 4872
216 1049
217 4873
233 4874

FEDERAL REGISTER PAGES AND DATES—JANUARY

Pages	Date	Pages	Date
1–741	Jan. 3	2947–3157	14
743–1015	4	3159–3294	17
1017–1194	5	3295–3624	18
1195–1450	6	3625–3826	19
1451–2049	7	3827–4109	21
2051–2291	10	4110–4394	24
2293–2497	11	4395–4808	25
2499–2664	12	4809–5021	26
2665–2946	13	5023–5339	27

rules and regulations

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Title 10—Energy

CHAPTER II—FEDERAL ENERGY ADMINISTRATION

PART 212—MANDATORY PETROLEUM PRICE REGULATIONS

Amendments to the Refiner Price Regulations; Increased Non-Product Costs and Allocation of Increased Costs To Exempt Products

I. Introduction

On July 27, 1976, the Federal Energy Administration ("FEA") issued a notice of proposed rulemaking and public hearing (41 FR 31863, July 30, 1976) to consider proposals to amend the refiner price regulations (10 CFR, Part 212, Subpart E) regarding the passthrough of increased non-product costs and the method of allocating increased costs to exempt products.

Written comments with respect to the July 30 notice were received from interested parties and a public hearing was held on August 24, 1976 at which oral statements were presented. After consideration of all the written and oral presentations, FEA has determined to modify in part and adopt certain of the proposed amendments. This rulemaking proceeding is continued with respect to the proposed amendments on which action is not being taken in today's notice. The amendments adopted and issued today are effective with respect to increased costs incurred beginning January 1, 1977, and with respect to maximum allowable prices beginning February 1, 1977.

II. Summary

FEA price regulations have always included provisions with respect to the passthrough of increased non-product costs by refiners. Initially, increased non-product costs could be passed through generally according to the increase in the rate at which the costs were incurred, subject to a prenotification procedure and FEA approval. (§ 212.82(b)(2); 39 FR 6533, February 20, 1974) Such prenotification and approval procedures proved complex and cumbersome and were therefore eliminated by amendments to the regulations, effective December 1, 1974. The amended regulations provided that specific increased non-product costs, defined in eight categories, could be calculated by refiners and passed through automatically, without the need for prenotification. (§ 212.83(c)(2)(E); 39 FR 42368, December 5, 1974)

Comments received since the eight defined categories of increased non-product costs were adopted and the comments and testimony presented in this proceeding indicate that FEA should expand the eight defined categories to include significant additional categories of non-product cost increases.

The regulations issued today therefore adopt additional categories of non-product cost increases, revise the definitions of certain existing categories, and generally standardize the computation of the amount of increase in each category of non-product costs in a manner that is analogous to the method for computing the amount of increased crude oil costs. Also, the regulations issued today require that the allocation of increased crude oil costs and increased non-product costs to covered products be based on volume refined rather than sales volume. Several issues discussed in the July 30 notice, such as treatment of "processing fees," methods of allocating non-product cost increases among petroleum product categories, and adjustments to May 1973 non-product costs to reflect changes in business operations are being further considered by FEA. Final amendments to the regulations may be hereafter adopted regarding certain of these issues; further notices of proposed rulemaking may be appropriate for certain other of these issues.

III. Increased Non-Product Costs

A. Method of computation of increased non-product costs

The July 30 notice proposed two principal alternative methods for standardized computation of all categories of increased non-product costs. The first or "simple method" was based upon a comparison of the dollar amounts of non-product costs incurred in May 1973 and in the month for which the amount of non-product cost increase was being measured, and did not require any adjustment in the result until any month in which refinery output exceeded the May 1973 output by more than 10%. The second, or "output adjusted method" was based upon a comparison of the non-product cost per unit of refinery output in May 1973 with the non-product cost per unit of refinery output in the month for which the amount of non-product cost increase was being measured, multiplied by the total volume of refinery output in the month of measurement. The "output adjusted method" was proposed to be required for computation of increased non-product costs beginning with any month in which refinery output exceeded the May 1973 output by more than 10%. Once a refiner was required to use the "output adjusted method" it was proposed that this method would then be required to be used throughout the remainder of that calendar year.

FEA has concluded that the benefits of simplicity, which led it to propose the method of computing increased non-product costs without any adjustment for volume for refiners with output not in excess of 110% of their May 1973 output, are counterbalanced by the negative consequences such a regulation would have. In particular, adoption of the simplified method would have tended to discourage refinery expansion. Although it would have afforded cost passthrough benefits to the extent that current refinery output was in excess of May 1973 levels, those benefits would have been lost if current refinery output amounted to 110% or more of May 1973 output.

FEA has therefore concluded that all refiners shall be required to use only the proposed standardized "output adjusted method" for the computation of all increased non-product costs.

The "output adjusted method" for computation of increased non-product costs adopted today is similar to the method for computation of increased crude oil costs currently prescribed in § 212.83(c)(2)(iii)(C). The amount of increase in each category of non-product cost shall be computed by determining the difference between the amount of that cost in the month of measurement per unit of refinery output and the amount of that cost in May 1973 per unit of refinery output, multiplied by the amount of refinery output in the month of measurement. This amendment simplifies in certain respects the former regulations, which provided for different computational methods for the various categories of increased non-product costs.

It was suggested by some commentors that the "output adjusted method" for computation of increased non-product costs should not be adopted. They stated that, because refinery operating costs, except for fuel, are not directly tied to refinery output, computation of increased non-product costs by a method based upon a cost increment per unit of refinery output tends to interfere with free market pricing patterns of incremental production. Such pricing would not necessarily reflect the per unit reduction in non-product costs which results when a relatively fixed total amount of non-product costs is spread over a larger volume of production. It was further suggested that the "output adjusted method" of computation of increased non-product costs would result in artificially low prices and would tend to stifle incentives to decrease costs by requiring refiners to pass on to consumers all savings engendered by such reductions.

FEA is aware that levels of all non-product costs are not directly tied to levels of refinery output and that the

"output adjusted method" for computation of increased non-product costs adopted today does not permit the pricing of incremental production according to free market conditions. FEA has concluded, however, that this method of computation, which generally operates to require decreases in per unit costs associated with increased refinery output to be passed through in the form of lower prices, is appropriate. Although this method may operate to some extent to reduce incentives for refiners to decrease costs, prices of approximately half of the volume of refined petroleum products are no longer regulated. Moreover, to the extent that cost reductions are required to be passed through in the form of lower prices, there are potential benefits to the refiner concerned of increased sales volumes. Accordingly, FEA has concluded that the "output adjusted method" of computing increased non-product costs, required by the regulations adopted today, is an appropriate price control mechanism which does not unduly revide in the definition of "E'" in § 212.83 strict the incentives to decrease refinery non-product costs.

FEA recognizes that non-product costs in certain categories are typically paid or incurred on an irregular basis. Accordingly, the amended regulations pro- (c) (2) (iii) (E), as was proposed in the July 30 notice, for averaging such costs. Costs paid or incurred less frequently than monthly during the firm's fiscal year which included May 1973 must be averaged over such year (and costs paid or incurred each month during the firm's fiscal year which included May 1973 but in significantly different amounts independent of output variation must be averaged over such year) to calculate non-product costs for May 1973. Such costs must also be averaged over the firm's current fiscal year for each month of measurement, if they are accrued according to generally accepted accounting practices historically and consistently applied by the firm concerned.

The requirement to average such costs over the firm's fiscal year means generally that if, pursuant to generally accepted accounting practices historically and consistently applied by the firm concerned, costs such as maintenance costs are accrued, such costs may also be accrued for purposes of calculating non-product cost increases. However, in such instances appropriate corrective adjustments must be made to reflect the costs actually incurred.

In the ordinary case, except for costs which typically occur at intervals of greater than one year (such as the maintenance costs of major refinery shutdowns, in which case the costs incurred must be averaged over the period to which they apply), the costs treated as incurred during a firm's fiscal year under the accrual provision of § 212.83(c)(2)(iii)(E) must not exceed the amounts of such costs actually paid or incurred during that fiscal year. Furthermore, as discussed below, in computing the newly adopted categories of "maintenance cost increase" and "Federal, State, and local tax increase" FEA has provided for adjustments to May 1973 costs so that they reflect levels averaged over an appropriate period of time.

B. ADDITIONAL CATEGORIES OF INCREASED NON-PRODUCT COSTS

The regulations issued today adopt the three proposed additional categories of increased non-product costs that may be used in the computation of total increased non-product costs under § 212.83 (c)(2)(iii)(E), with certain modifications, plus another category on which FEA invited comments. The new categories are: "depreciation cost increase," "maintenance cost increase," "federal, state and local tax increase," and "overhead cost increase."

1. *Depreciation cost increase.* The addition of a "depreciation cost increase" category to § 212.83(c)(2)(iii)(E) enables refiners to recover increased depreciation costs. The July 30 notice proposed that refiners be permitted to pass through as a non-product cost increase

> • • • all depreciation associated with capital investment undertaken since May 15, 1973 for refining and storage of covered products including investment to expand refinery capacity, to produce lower sulphur refined petroleum products, to institute energy conservation measures, and to increase storage capacity. Both equipment and facility expansion would be included. (41 FR at 31864)

FEA proposed to permit a passthrough of these depreciation costs as increased non-product costs in order to permit recovery of costs of capital investments to expand domestic refining capacity, to achieve energy conservation, and for equipment installed to produce lower-sulfur products which enable users of such products to conform to pollution control standards applicable to them. These have been identified as important national objectives by the Congress, and current FEA regulations tend to discourage investments for such purposes by not permitting full recovery of their costs in prices of covered products.

The comments generally supported the addition of the "depreciation cost increase" category to the existing categories of non-product cost increases.

FEA has concluded, however, that the "depreciation cost increase" should be computed in accordance with the standardized "output adjusted method" discussed above, rather than the method that was proposed. The proposed method would simply have treated as depreciation cost increase all costs "attributable to the depreciation of refinery equipment and storage capacity acquired and installed and facility expansion since May 15, 1973," without regard to the level of depreciation costs that was incurred in May 1973 and reflected in prices on May 15, 1973. Hence, the proposal would not accurately have reflected net increases in depreciation costs since May 1973 because it would only have measured certain added depreciation costs, without regard to any reductions in depreciation costs which may also have occurred.

By computing the amount of increase in this category through a comparison of depreciation per unit of output in the month of measurement with depreciation per unit of output in May 1973, the need to determine whether a particular asset was "acquired and installed since May 15, 1973" is obviated. Also, this modification to the proposal is appropriate to insure that only net increases in depreciation costs over May 1973 levels are permitted to be passed through. Because May 15, 1973 sales prices reflected the May 1973 level of depreciation costs, FEA has concluded that any increases in those price levels based on the passthrough of increased depreciation costs should reflect only the net increase in such costs since May 1973.

Accordingly, the regulations adopted today provide that all increases in depreciation costs per unit of output in a month of measurement over May 1973 levels per unit of output may be included in increased non-product costs and used to determine a refiner's maximum allowable selling price under the refiner price regulations, except as discussed in section III.C.1. below. The separate category for "pollution control cost increase" has been deleted as no longer necessary, as the costs which formerly fell into that category will now generally fall within the new depreciation cost increase category.

FEA has decided in these amendments to require each refiner to calculate depreciation cost increase pursuant to that refiner's customary accounting practices generally accepted and consistently and historically applied for purposes of its certified annual financial statements filed with the Securities and Exchange Commission or a comparable state regulatory agency. If no certified financial statements are so filed, depreciation cost increase must be calculated according to generally accepted accounting practices historically and consistently applied by the firm concerned for certified annual financial reports prepared by an independent accounting firm.

2. *Maintenance cost increase.* The "maintenance cost increase" category of increased non-product costs adopted today includes all increased costs associated with the maintenance and repair of refinery equipment, except direct labor cost associated with maintenance and repair of refinery equipment, which is to be reflected under the labor cost increase category. The maintenance cost increase category includes contract maintenance.

Refiners that, pursuant to generally accepted accounting practices historically and consistently applied by the firm concerned, treat maintenance costs such as those associated with major anticipated and unanticipated refinery shutdowns (maintenance costs incurred at greater than monthly intervals) on an accrual basis and prorate such costs over an appropriate period shall accrue such costs for purposes of calculating per unit non-product costs for the month of May 1973 and the month of measurement.

Refiners that, pursuant to generally accepted accounting practices historically and consistently applied by the firm concerned, do not treat the maintenance costs associated with anticipated and unanticipated refinery shutdowns on an accrual basis shall compute the May 1973 per unit maintenance costs by adding all maintenance costs incurred during an appropriate period approved or required by FEA including May 1973 (such as one or two years) and dividing by output during that period. Such refiners, shall, however, compute the maintenance cost increase for the month of measurement according to the generally accepted accounting practices historically and consistently applied by the firm concerned.

For example, a refiner that, pursuant to generally accepted accounting practices historically and consistently applied by that firm, during the month of May 1973 and during the month of measurement accrued the costs of anticipated and unanticipated major refinery shutdowns shall compute the maintenance non-product cost increase per unit of refinery output by computing the difference between (1) the total cost of the standard maintenance (ordinary daily repair and minor emergency maintenance) per unit of refinery output incurred in the month of measurement plus the accured cost for anticipated and unanticipated major refinery shutdowns per unit of refinery output for the month of measurement and (2) the total cost of such standard maintenance per unit of refinery output incurred in May 1973 plus the accrued cost for anticipated and unanticipated major refinery shutdowns per unit of refinery output for May 1973.

However, a refiner that, pursuant to generally accepted accounting practices historically and consistently applied by that firm, during the month of May 1973 and during the month of measurement did not accrue the costs of anticipated or unanticipated major refinery shutdowns shall compute the maintenance non-product cost increase per unit of refinery output by computing the difference between (1) the total actual cost incurred for maintenance per unit of refinery output in the month of measurement and (2) the total actual cost incurred for maintenance per unit of refinery output during an appropriate period approved or required by FEA including May 1973 (such as one or two years).

3. *Federal, State and local tax increase.* The "federal, state and local tax increase" category of increased non-product costs adopted today includes costs incurred in payment of new types of property, excise, franchise and other similar taxes such as license fees imposed since May 1973, as well as increases in the actual dollar amount of such taxes per unit of output incurred in the month of measurement over the amount per unit of output incurred in May 1973. As was proposed, federal, state or local income taxes are excluded from this category of increased non-product costs. Passthrough of the $2 per barrel tax imposed by the Commonwealth of Puerto Rico on each barrel of petroleum imported into and consumed in Puerto Rico is discussed separately in section V, below.

Refiners that, pursuant to generally accepted accounting practices historically and consistently applied by the firm concerned, treat taxes incurred at greater than monthly intervals on an accrual basis and prorate such costs over an appropriate period shall accrue such costs for purposes of calculating per unit non-product costs for the month of May 1973 and the month of measurement. Costs of taxes treated as incurred during a firm's fiscal year under the accrual provision of § 212.83(c)(2)(iii)(E) must not exceed the amounts of such costs actually paid or incurred during the fiscal year which includes May 1973 or which includes the month of measurement.

Refiners that, pursuant to generally accepted accounting practices historically and consistently applied by the firm concerned, do not treat the costs of taxes incurred on an accrual basis and do not prorate such costs shall compute the May 1973 per unit tax costs by adding all taxes incurred during the firm's fiscal year which included May 1973 and dividing by output during that period. Such refiners shall, however, compute the per unit tax cost for the month of measurement according to generally accepted accounting practices historically and consistently applied by the firm concerned.

For example, a refiner that, pursuant to generally accepted accounting practices historically and consistently applied by that firm, during the month of May 1973 and during the month of measurement accrued the costs of taxes incurred over its fiscal year shall compute "federal, state, and local tax increase" per unit of refinery output by computing the difference between (1) the accrued cost of taxes incurred per unit of refinery output for the month of measurement and (2) the accrued cost of taxes incurred per unit of refinery output for May 1973.

However, a refiner that, pursuant to generally accepted accounting practices historically and consistently applied by that firm, during the month of May 1973 and during the month of measurement did not accrue the costs of taxes incurred shall compute "federal, state, and local tax increase" per unit of refinery output by computing the difference between (1) the total actual cost incurred for taxes per unit of refinery output in the month of measurement and (2) the total actual cost incurred for such taxes per unit of refinery output during the firm's fiscal year which included May 1973.

4. *Overhead cost increase.* In its July 30 notice FEA indicated its intention to amend the regulations to permit the passthrough of as many types of increased non-product costs as would be easily auditable as directly related to refining operations. Based on its analysis of the comments received, FEA has decided to adopt another category of increased non-product costs: "overhead cost increase." This category includes increased costs of insurance, outside legal and accounting fees, and inter-refinery transportation costs directly attributable to refining operations.

C. REVISION OF CURRENT CATEGORIES OF NON-PRODUCT COST INCREASES

The regulations issued today adopt amendments to the current "refinery fuel cost increase" and "labor cost increase" categories of increased non-product costs. These amendments conform the computations in these categories to the standardized "output adjusted method," discussed above.

1. *Refinery fuel cost increase.* Prior to the regulations issued today, refinery fuel non-product cost increases were required to be calculated in terms of the rate of fuel usage (e.g., Btu's to refine one barrel of crude oil) during May 1973. A refiner that used fewer units of energy currently to refine a barrel of crude oil than in May 1973 was permitted to pass through a dollar amount of refinery fuel cost increase based upon its current per unit cost of refinery fuel and its May 1973 rate of fuel usage. This method of computing the amount of increased cost of refinery fuel was adopted to provide an incentive for fuel conservation. Thus, for refiners that have reduced their rate of fuel usage, this method permits an increased cost passthrough which is greater than the actual increased expenditure for refinery fuel. On the other hand, for refiners that have increased their rate of fuel usage, this method operates to prevent the passthrough of the full amount of the actual increased expenditure for refinery fuel.

The earlier basis for adoption of this method of computing "refinery fuel cost increase" was noted and the reason for for the proposed modification of the computation was explained in the July 30 notice, which stated in part:

> FEA's intent in using the rate of May 1973 fuel usage in lieu of the fuel usage in the month of measurement was to encourage refiners to use fewer btu's to refine a barrel of crude oil. Refiners were thus provided with an economic incentive to install equipment or make other capital investments to conserve energy used for refinery fuel. However, the proposed addition of "depreciation cost increase," should encourage energy conservation by permitting a dollar-for-dollar passthrough of such investment costs. It does not therefore appear any longer to be appropriate to permit refiners also to have an opportunity to recoup a bonus for increased efficiencies in refinery fuel usage in the refinery fuel cost increase category. Also, because use of desulfurization equipment typically requires increased rate of refinery fuel usage, the cost of which cannot currently be recovered to the extent that the current rate exceeds the rate in May 1973, the current regulations have tended to discourage installation of such equipment. (41 FR at 31865)

The regulations adopted today, as discussed above, adopt a new category of depreciation cost increase, which removes an aspect of the regulations that formerly discouraged investments for the purpose of fuel conservation. Accordingly, the amendments adopted today

generally provide for the computation of "refinery fuel cost increase" under § 212.83(c)(2)(iii)(E)(I) as the actual increased cost of refinery fuel per unit of current output, multiplied by units of current output. The former conservation incentive method of computing refinery fuel cost increase is, however, retained as an option for refiners that choose to exclude from their calculation of depreciation cost increase all depreciation associated with investments which effect fuel conservation.

Comments urging the retention of the refinery fuel conservation incentive suggested that a requirement to pass through refinery fuel cost savings to the market place, even with the addition of the "depreciation cost increase" category, would result in a decrease in the incentive to save fuel. Comments suggested that the elimination of the "refinery fuel incentive" would discourage refiner investment in fuel economy in light of alternative investment possibilities and that the removal of this incentive was not consistent with the intent of section 381 (a) of the Energy Policy and Conservation Act (Pub. L. 94–163, "EPCA") which directs the FEA to promote increased energy conservation and efficiency. Finally, it was urged that the removal of the refinery fuel incentive would be unfair to those refiners which had taken measures to conserve fuel in reliance on the regulatory incentive which had been afforded.

FEA believes that the adoption today of a "depreciation cost increase" category to enable refiners to recover increased depreciation costs provides generally an incentive to expend capital funds both to increase refinery output and efficiency, as discussed above. However, because of the special considerations that exist with respect to refinery fuel—particularly the higher priority of fuel conservation as opposed to other types of efficiency measures and the reliance which has been placed on the refinery fuel incentive regulations—FEA has concluded that refiners should be afforded an option to continue to calculate refinery fuel cost increase based on the refinery fuel conservation incentive.

In such cases, however, the "depreciation cost increase" category of increased non-product costs adopted today shall be calculated exclusive of any depreciation for capital investments which have operated to reduce the rate of refinery fuel usage below the May 1973 rate.

2. *Labor cost increase.* Prior to the regulations adopted today, refiners were permitted to recover a "labor cost increase" equal to the ratio of the wage rates paid in the month of measurement to the wage rates paid in May 1973, multiplied by the May 1973 payroll, or "base labor cost," and multiplied by a "productivity offset factor" to adjust for the increase in labor productivity since May 1973. (§ 212.83(c)(2)(iii)(E)(11))

Refiners were thus permitted to reflect in prices average wage rate increases since May 1973. However, because the total amount of increased labor costs was computed as though the number of employees was the same as in May 1973, no increased costs resulting from increasing numbers of employees could be reflected. This method of "labor cost increase" computation was adopted on the theory that new employees were generally associated with increased refinery production, which would offset associated payroll increases through increased sales volumes. As indicated in the July 30 notice

> • • • it now appears that more complex refinery facilities, with desulfurization equipment and complicated pollution control equipment, require refiners now to have more employees than they had for an equivalent level of output in May 1973. (41 FR at 31866)

Also, as labor efficiency can generally be increased only by capital investments, the "productivity offset factor" may have discouraged such investment by precluding a full return of the costs thereof.

The regulations issued today adopt a method of computation based on the increase in labor costs per unit of output in the month of measurement over the May 1973 labor costs per unit of output and, accordingly, eliminate the "productivity offset factor" as unnecessary. As amended, the labor cost increase computation will reflect increases in the number of employees since May 1973, as well as wage rate increases.

IV. Allocation of Increased Costs To Exempt Products

Under current regulations either of two alternative volumetric cost allocation formulae is permitted to be used to compute the amount of increased costs of crude oil attributable to prices for particular products or product categories.

One formula, adopted initially by FEA, allocates such costs according to the relative sales volumes of the products concerned, including sales attributable to products purchased as well as to products refined by the refiner concerned. This method of allocation requires generally that the amount of increased costs allocable each month to prices for a particular product or product category be determined by multiplying the total amount of increased cost of crude oil for a month of measurement by a ratio that consists of the volume of the product or product category in question estimated to be sold in the current month ("V_i^t"), divided by the volume of all petroleum products estimated to be sold in the current month ("V^t"), or "V_i^t/V^t".

The allocation of increased cost of crude oil by sales volume pursuant to the "V_i^t/V^t" cost allocation formula has the virtue of being easily calculated and audited, but it also has the effect of allocating a greater proportion of increased crude oil costs to those products where a refiner supplements its production with product purchased for resale than would be allocated if the refiner made no such purchases.

Due in part to certain price distortions resulting from use of this cost allocator, FEA on January 7, 1976 proposed to amend the regulations to require the increased cost of crude oil to be allocated to products on the basis of the relative volumes of such products refined by the refiner concerned to be sold in the current month ("R_i^t/R^t"). (41 FR 1680, January 9, 1976)

A number of comments were received from refiners objecting to the proposed mandatory use of the proposed method. They opposed the added complexity the new method would introduce, stated that the difference between the results obtained under the two methods was negligible, or maintained that it was not possible to segregate sales volumes in a particular month according to source—whether refined or purchased. Other refiners, however, maintained that the sales volume method of allocation had a negative impact on their pricing policies.

Based on the comments received, FEA decided in the rulemaking proceeding initiated by the January 9, 1976 notice to afford refiners the option of allocating the increased cost of crude oil to prices for particular products or product categories either by sales volume in the current month or by volume refined in the month of measurement. The alternative volume refined method of allocation, as adopted, requires generally that the amount of increased cost of crude oil allocable each month to a particular product or product category be determined by multiplying the total amount of increased cost of crude oil for a month of measurement by a ratio that consists of the volume of the product or product category in question refined by the refiner in the month of measurement ("R_i^t") divided by the volume of all products refined by the refiner in the month of measurement ("R^t"), or "R_i^t/R^t." Refiners were required, beginning with the allocation of the increased cost of crude oil incurred in January 1976 (for purposes of determining maximum allowable prices in February 1976), to make a one-time choice between the two methods of cost allocation. (41 FR 5111, February 4, 1976).

As FEA stated in the January 9, 1976 and July 30, 1976 notices, use of the term "V_i^u/V^u" introduces a certain amount of distortion into the allocation of increased costs of crude oil among products, particularly for refiners which purchase relatively large volumes of refined products. The amount of product purchased for resale increases both the numerator and the denominator of the "V_i^u/V^u" cost allocator fraction, and has the effect of allocating a greater proportion of increased crude oil costs to those products where a refiner supplements its production with product purchased for resale than would be allocated if the refiner made no such purchases.

During the period before exemption from regulation of any refined petroleum products, whether the "R" or "V" term was used did not substantially affect the extent to which increased costs were allocated to covered products, as opposed to exempt products. However, because of the distortions inherent in the use of the "V_i^u/V^u" cost allocator, which were discussed by FEA in proposing and adopting the alternative "R_i^t/R^t" cost allocator, and because the relative volume of exempt products to covered products in a refiner's output is now so great, in its July 30 notice FEA proposed to require that the allocation of increased crude oil costs and increased non-product costs to covered products produced by a refiner be computed only by use of the "R_i^t/R^t" cost allocated (that is, the total volume of a covered product category refined by the refiner from crude oil in the period "t" divided by the total volume of all covered products refined by the refiner from crude oil and all products other than covered products refined by the refiner from crude oil in the period "t").

As was generally proposed, the regulations adopted today will, as of March 1, 1977, require that the allocation of increased crude oil costs be computed only on the basis of the use of the volume refined, or the "R_i^t/R^t" cost allocation. This adoption of this allocator for increased crude oil costs will eliminate the distortions inherent in the allocation of crude oil costs by sales volume between covered products and an expanded list of exempt products which would otherwise result simply because a refiner purchases products for resale.

Increased non-product costs have been allocated only by the "V" factor since the adoption of the defined categories in December 1974. (39 FR 42368, December 5, 1974) FEA proposed the use of the "R" factor only for increased crude oil costs in January 1976 because increased costs of crude oil were the major share of all increased costs. However, FEA has concluded that the same allocator shall now be required to be used for increased non-product costs as is used for the increased cost of crude oil. Use of the "R" factor to allocate increased non-product costs as of March 1, 1976 will also eliminate distortions resulting from product purchases in allocating non-product costs between covered products and exempt products.

In order to facilitate the transition from the "V" to the "R" factor for product and non-product costs, refiners presently using the "V" allocator may continue to use that allocator through the month of February 1977, but may convert to the use of the "R" factor as of any time beginning with June 1976, when the first covered product was deregulated (residual fuel oil). This option to use the volume refined cost allocator as of June 1976 or thereafter, even if it were not chosen on February 1, 1976, is provided in order to insure that no refiner is precluded from allocating at least a pro rata volumetric share of its increased crude oil costs to the prices of products which remain under controls. Thus, to the extent that since June 1976 a refiner has purchased proportionately more exempt products than products which remain under controls, selection of the volume refined cost allocator will serve to avoid the disproportionate allocation of increased crude oil costs to exempt products which would otherwise result.

It was suggested that prices computed by the "R_i^t/R^t" cost allocator will be distorted by seasonal fluctuations in refinery output and by disruptions in refinery operations for maintenance or other reasons. The "R_i^t/R^t" cost allocator is adopted, however, in order generally to assure a more representative allocation of the increased cost of crude oil and to remove the artificial incentives for the purchase of products by refiners which are inherent in the use of a sales volume allocator. FEA believes that use of the volume refined allocator, together with the carryover of increased product and non-product costs provided for in § 212.83(e)(2), should serve generally to accomplish the allocation of such costs in a manner that should permit fairly uniform pricing practices to continue to be followed on a month-to-month basis, regardless of variations in refinery output or variations in sales volumes.

It was further suggested that the allocation of increased costs according to volumes of product refined does not allocate sufficient increased crude oil costs to higher value products, particularly gasoline, and therefore tends to distort historical pricing practices and inhibit recovery of increased costs. FEA finds merit in this suggestion. FEA has, however, proposed deregulation of gasoline. (41 FR 51832, November 24, 1976) If gasoline is not deregulated, FEA will consider issuance of a notice of proposed rulemaking to address this issue. Even if gasoline is deregulated, FEA will consider addressing this issue to be incorporated in the standby price regulations.

V. The Commonwealth of Puerto Rico Tax on Imported Crude Oil and Petroleum Products

On January 23, 1975, the President of the United States issued Proclamation 4341 that imposed supplemental import fees on crude oil and petroleum products imported into the United States. On March 27, 1975, the Commonwealth of Puerto Rico passed the Commonwealth of Puerto Rico Act No. 6 ("Act No. 6") that levied supplemental taxes substantially equivalent to the import fees provided by the United States Proclamation 4341. Both the import fees imposed by the United States Proclamation 4341 and the taxes imposed by Act No. 6 were in addition to a $.21 per barrel duty on crude oil and $.63 per barrel duty on petroleum products imposed on imports not brought in under duty free licences.

The Commonwealth of Puerto Rico decision to adopt Act No. 6, in the form of a "tax" based on the Commonwealth of Puerto Rico's constitutional powers to tax territorial business and consumption, was reached following a determination that license fees collected on imports into the Commonwealth of Puerto Rico pursuant to Presidential Proclamation 3279 could not lawfully be rebated to the Puerto Rican Treasury, as had been the case with respect to tariffs imposed by the United States on imports into the Commonwealth of Puerto Rico

As stated in the July 30 notice, FEA regulations do not specifically address the passthrough by refiners of the Puerto Rican supplemental taxes. However, as long as the Puerto Rican supplemental taxes and the United States supplemental fees were concurrently in force, the Puerto Rican taxes "took the place of" the United States fees. During that time the Puerto Rican levies, although legally "taxes" and not import "fees," were treated for purposes of FEA price regulations as the equivalent of import "fees" and includable in the cost of crude oil and petroleum products under §§ 212.82 and 212.83.

The President of the United States repealed Proclamation 4341, effective December 21, 1975. However, on December 22, 1975 the Commonwealth of Puerto Rico enacted the Commonwealth of Puerto Rico Department of Treasury Resolution No. 4 ("Resolution No. 4") that extended the supplemental portion of the Puerto Rican tax as imposed by Puerto Rican Act No. 6. Accordingly, since December 21, 1975 the Puerto Rican supplemental tax, as extended by Resolution No. 4, has not taken the place of a commensurate United States import fee.

FEA has determined that from December 21, 1975 through December 31, 1976 the taxes extended by Resolution No. 4 shall be treated as a continuation of the import "fees" which they were intended to replace when first enacted. Therefore, during that period such tax costs are properly regarded as an inceased cost of crude oil or petroleum products under §§ 212.82 and 212.83, to refiners that have paid such taxes.

Beginning with February 1977, refiners may pass through increased tax costs incurred beginning in January 1977 as an increased non-product cost, under § 212.83(c)(2)(iii)(E) of the regulations as amended today.

FEA proposed in this proceeding that the Puerto Rican supplemental taxes be treated as special local taxes on local consumption, to be passed through only in the prices of crude oil and petroleum products sold in the Commonwealth of Puerto Rico. More generally, FEA also requested comments on whether the regulations should be modified to permit taxes levied in a locality to be passed through in prices charged in that locality. FEA has tentatively concluded that the Puerto Rican supplemental tax is essentially a tax on consumption similar to a sales tax and that it would be appropriate for the tax to be passed through in the Commonwealth of Puerto Rico. Adoption of such an amendment is, however, being deferred in light of the proposal to exempt gasoline from price controls which, if it becomes effective, would largely moot this issue, and because, as discussed below, no amendment to provide generally for local passthrough of local taxes is being adopted at this time. Instead, the passthrough of local taxes in local prices will continue to be handled on a case-by-case basis through the exceptions process.

FEA acknowledges the burden that would be placed upon Puerto Rican consumers by a local passthrough of the supplemental tax and recognizes the extent to which the Commonwealth of Puerto Rico has stated that it relies upon the continued receipt of the revenue engendered by the tax, as extended by Resolution No. 4. It appears that the allocation of the Commonwealth of Puerto Rico supplemental tax, as extended in Resolution No. 4, to the prices of all products produced by refiners which incur the Puerto Rican tax, including products sold in the United States and in the Commonwealth of Puerto Rico, would tend to result in mainland United States consumers bearing the burden of taxes imposed by the Commonwealth of Puerto Rico. However, as a general matter, FEA is still considering whether the price regulations should regulate the price of refinery products so as to restrict the extension of the territorial effect of taxes imposed by one jurisdiction unduly into other jurisdictions.

VI. Allocation to Local Prices of Increased Local Taxes

As noted above, in its July 30, 1976 notice FEA invited comments on whether the equal application rule in § 212.83(h) of the regulations should be modified to permit taxes levied by a locality to be passed through in prices charged in that locality (or in prices charged for all products produced in a facility in that locality). FEA has concluded that, although such an amendment may be appropriate, action on this matter will be deferred at least until a determination concerning the exemption of gasoline from FEA price regulations has been made. Since such an exemption would largely moot this issue, an amendment does not appear to be warranted at this time in light of audit and other difficulties which such an amendment would entail.

Also, during July 1976 FEA amended the equal application rule in § 212.83(h) to permit "regional pricing" of gasoline with a differential of up to three cents per gallon permitted among regions (41 FR 30021, July 21, 1976), and this amendment provides some flexibility in this regard.

VII. Allocation of Other Increased Non-Product Costs

FEA also requested comments on whether some or all increased non-product costs should be permitted or required to be allocated directly to the specific product or product category with respect to which they are incurred. Since gasoline is the only major product remaining subject to regulation, FEA issued a notice of proposed rulemaking which considers that issue separately for gasoline. (41 FR 54774, December 15, 1976).

(Emergency Petroleum Allocation Act of 1973, Pub. L. 93-159, as amended, Pub. L. 93-511, Pub. L. 94-99, Pub. L. 94-133, Pub. L. 94-163, and Pub. L. 94-385; Federal Energy Administration Act of 1974, Pub. L. 93-275, as amended, Pub. L. 94-385; Energy Policy and Conservation Act, Pub. L. 94-163, as amended, Pub. L. 94-385; E.O. 11790, 39 FR 23185.)

In consideration of the foregoing, Part 212 of Chapter II, Title 10 of the Code of Federal Regulations are amended as set forth below, effective January 1, 1977.

Issued in Washington, D.C., January 19, 1977.

David G. Wilson,
Acting General Counsel,
Federal Energy Administration.

1. Section 212.83(c)(2) is amended by revising the formula for "A_i'" in paragraph (c)(2)(iii)(C) and the "N" factor in (c)(2)(iii)(E) to read as follows:

§ 212.83 Price rule.

* * * * *

(c) *Allocation of increased costs.* * * *
(2) *Formulae.* * * *
(iii) *Definitions.* * * *
(C) *The "A" factor.*

* * * * *

(I) Until March 1, 1977 but not thereafter:

$$A_i{}^t = Q^t\left(\frac{C^t}{Q^t} - \frac{C^o}{Q^o}\right)\left(\frac{V_i{}^u}{V^u}\right)$$

and

(II) Beginning not later than March 1, 1977 or, at the option of each refiner, beginning as of any month prior thereto but not before June 1, 1976:

$$A_i{}^t = Q^t\left(\frac{C^t}{Q^t} - \frac{C^o}{Q^o}\right)\left(\frac{R_i{}^t}{R^t}\right)$$

* * * * *

(E) *The "N" factor.*

$$N_i = N_i{}^t + N_i{}^o + N_i{}^r$$

"N_i" is, for i=1, i=2, i=3, and i=4, the increased nonproduct costs attributable to the specific covered product or products of the type "i" incurred on or after January 1, 1976 and prior to or during the period "s" and not recovered in sales of that product through the period "t" and the increased non-product costs attributable to the specific covered product or products of the type "i" incurred on or after January 1, 1976 in the period "t."

(I) Until March 1, 1977 but not thereafter:

$$N_i{}^t = E^t\left(\frac{V_i{}^u}{V^u}\right) + F_i{}^t$$

and

(II) Beginning not later than March 1, 1977 or, at the option of each refiner, beginning as of any month prior thereto but not before June 1, 1976:

$$N_i{}^t = E^t\left(\frac{R_i{}^t}{R^t}\right) + F_i{}^t$$

"$N_i{}^t$" is the total increased non-product costs attributable to the specific covered product or products of the type "i" incurred in the period "t."
Where:

E^t=the total increased non-product costs (excluding marketing cost increase, which is included in "$F_i{}^t$") incurred during the period "t"; provided that such costs are included only to the extent that such costs are attributable to refining operations during the period "t" under the generally accepted accounting procedures historically and consistently applied by the firm concerned, and are not included in computing May 15, 1973 prices or in computing increased product costs. Costs paid or incurred periodically but less frequently than monthly must be charged as incurred over the entire period to which they apply in computing non-product costs for May 1973 and must be charged according to the generally accepted accounting practices historically and consistently applied by the firm concerned in computing month of measurement increased costs. Costs paid or incurred each month but in significantly different amounts independent of output variations must be charged over the entire period to which they apply in computing non-product costs for May 1973 and must be charged according to the generally accepted accounting practices historically and consistently applied by the firm concerned in computing month of measurement costs. Except for costs which are determined by FEA to typically occur at intervals of greater than one year, the costs treated as incurred during a firm's fiscal year shall not exceed the amounts of such costs actually paid or incurred during that fiscal year.

$V_i{}^u$=The total volume of a specific covered product or products of the type "i" (other than propane, which shall be included to the extent that it was refined by the refiner from crude oil) estimated to be sold in the period "u."

V^u=The total volume of all covered products (other than propane, which shall be included to the extent that it was refined by the refiner from crude oil) and all products refined from crude oil other than covered products estimated to be sold in the period "u."

$R_i{}^t$=The total volume of a specific product of the type "i" refined by the refiner from crude oil in the period "t."

R^t=The total volume of all products refined by the refiner from crude oil in the period "t."

As of January 1, 1977 refiners shall compute "E^t" (for costs incurred during January 1977 and thereafter and used in calculating maximum allowable prices during February 1977 and thereafter) by adding the amounts calculated by applying the following formula separately to § 212.83(c)(2)(iii)(E) paragraphs (I) through (X) below.

$$E_n{}^t = R^t\left(\frac{C_n{}^t}{R^t} - \frac{C_n{}^o}{R^o}\right)$$

$E_n{}^t$ is the total increased non-product costs (excluding marketing cost increase, which is included in "$F_i{}^t$") of the type "n" incurred during the period "t"; provided that such costs are included only to the extent that such costs are attributable to refining operations during the period "t" under the generally accepted accounting practices historically and consistently applied by the firm concerned or as otherwise provided in this § 212.83(c)(2)(iii)(E) and are not included in computing May 15, 1973 prices or in computing increased product costs.
Where:

"n" references the particular types of increased non-product costs, and for purposes of paragraphs (I) through (X) is respectively refinery fuel, labor, additive, utility, interest, container, tax, maintenance, depreciation, and overhead cost increase.

R^t=The total volume of all products refined by the refiner from crude oil in the period "t."

R^o=The total volume of all products refined by the refiner from crude oil in the period "o."

$C_n{}^t$=The total dollar amount of the particular increased non-product cost of the type "n" incurred in the period "t."

$C_n{}^o$=The total dollar amount of the particular increased non-product cost of the type "n" incurred in the period "o."

(I) *Refinery fuel cost increase.* As of January 1, 1977 (for costs incurred during January 1977 and thereafter and used in calculating maximum allowable prices during February 1977 and thereafter) each refiner shall elect to compute the refinery fuel cost increase according to paragraph (I)(aa) below and depreciation cost increase according to paragraph (IX)(aa) below or to compute refinery fuel cost increase according to paragraph (I)(bb) below and depreciation cost increase according to paragraph (IX)(bb) below. *Provided,* That once such election of a computation method is made, such method shall continue to be used.

(aa) Refinery fuel cost increase for refiners that elect to include in the computation of total increased non-product costs the depreciation costs associated with capital investments which effect fuel conservation is computed by applying the formula for "$E_n{}^t$" above. For purposes of this computation "C" refers to the dollar amount of costs incurred for refinery fuel.

(bb) Refinery fuel cost increase for refiners that elect to exclude from the computation of total increased non-product costs the depreciation costs associated with capital investments which effect fuel conservation is the base refinery fuel usage multiplied by the throughput for the month of measurement, and multiplied by the amount which represents the difference between the average refinery fuel cost rate in the month of measurement and the average refinery fuel cost rate in the month of May 1973, where:

"Average refinery fuel cost rate" means the weighted average cost of refinery fuel per unit of energy (e.g., dollars per million British Thermal Units (Btu)). If the calculation of refinery fuel costs is not feasible in energy units, a refiner may substitute a method that is more reasonably consistent with the data available. In such case, however, the refiner must prepare a schedule justifying the alternative method of calculation and explaining why the results represent the average refinery fuel cost rate;

"Base refinery fuel usage"' means the amount of refinery fuel, in units of energy (e.g., million Btu's) used per barrel of refinery throughput during the month of May 1973. If the calculation of refinery fuel costs is not feasible in energy units, the refiner may substitute a method that is more reasonably consistent with the data available. In such cases, however, the refiner must prepare a schedule justifying the alternative method of calculation and explaining why the results represent the base refinery fuel usage; and

"Throughput"·means the volume of crude oil, unfinished oils, and natural gas liquids refined during the time period specified.

Refiners shall maintain records of the volume and cost of covered products purchased or landed that are consumed as refinery fuel.

(II) *Labor cost increase.* Labor cost increase is computed by applying the formula for "$E_n{}^t$" above. For purposes of this computation "C" refers to the total dollar amount of direct and indirect remuneration or inducement for personal services which are reasonably subject to valuation for those personnel employed at the refinery or those personnel directly involved in refinery operations, including that portion of the costs of any contract between a refiner and an outside entity attributable to personnel other than employees that perform such services. No amount included in maintenance cost increase may be included in labor cost increase. The calculation must be based on the historical accounting practices employed by the refiner and must be substantiated by a supporting document which summarizes the personnel considered in the calculation and the date of any remuneration increases.

(III) *Additive cost increase.* Additive cost increase is computed by applying the formula for "$E_n{}^t$" above. For purposes of this computation "C" refers to the total dollar amount of costs incurred for materials and compounds, including catalyst and process chemicals which were not covered products as of May 31, 1976 and which are added to or blended with crude oil or covered products during the refining process.

(IV) *Utility cost increase.* Utility cost increase is computed by applying the formula for "$E_n{}^t$" above. For purposes of this computation "C" refers to the dollar amount of costs incurred for utilities.

(V) *Interest cost increase.* Interest cost increase is computed by applying the formula for "$E_n{}^t$" above. For purposes of this computation "C" refers to the dollar amount of costs incurred for interest.

(VI) *Container cost increase.* Container cost increase is computed by applying the formula for "$E_n{}^t$" above. For purposes of this computation "C" refers to the dollar amount of costs incurred for containers, such as barrels, drums, tubes, cans, jars, or bottles, used by the refiner for storing or packaging products which were covered products as of May 31, 1976.

(VII) *Federal, state, and local tax cost increase.* (aa) Federal, state and local tax cost increase is computed by applying the formula for "$E_n{}^t$" above. For purposes of this computation "C" refers to the dollar amount of federal, state, and local property, excise, franchise and other similar taxes incurred. Federal, state, and local income taxes are not includable in this amount.

(bb) The tax cost increase ("$E_n{}^t$") for taxes that are paid or incurred at greater than monthly intervals shall be computed as follows:

(AA) Taxes that are paid or incurred at greater than monthly intervals and are treated, pursuant to generally accepted accounting practices historically and consistently applied by the firm concerned, on an accrual basis and are prorated shall be accrued and prorated for purposes of calculating per unit non-product costs for the month of May 1973 ("$C_n{}^o/R^o$") and the month of measurement ("$C_n{}^t/R^t$").

(BB) Taxes that are paid or incurred at greater than monthly intervals and are not treated on an accrual basis and prorated over an appropriate period shall be computed for purposes of calculating per unit non-product costs for the month of May 1973 ("$C_n{}^o/R^o$") by adding all such taxes paid or incurred during the firm's fiscal year which includes May 1973 and dividing by the firm's output during that period. Taxes that are paid or incurred at greater than monthly intervals and are not treated on an accrual basis and prorated over an appropriate period shall be computed for purposes of calculating per unit non-product costs for the month of measurement ("$C_n{}^t/R^t$") according to the generally accepted accounting practices historically and consistently applied by the firm concerned.

(cc) The Commonwealth of Puerto Rico supplemental $2 tax shall be treated as a cost of crude oil or petroleum products under §§ 212.82 and 212.83 from December 21, 1975 through December 31, 1976.

(VIII) *Maintenance cost increase.* Maintenance cost increase is computed by applying the formula for "$E_n{}^t$" above. For purposes of this computation "C" is the dollar amount of operating cost attributable to refinery maintenance operations. Maintenance cost increase includes the cost of contract maintenance. The maintenance cost increase for maintenance expenses that are paid or incurred at greater than monthly intervals shall be computed as follows:

(aa) Maintenance expenses that are paid or incurred at greater than monthly intervals and are not treated on an accrual basis and prorated over an appropriate period shall be computed for purposes of calculating per propriate period, as permitted or required in unit non-product costs for the month of May 1973 ("$C_n{}^o/R^o$") by adding all maintenance expenses paid or incurred during the appropriate period, as permitted or required in writing by the director of compliance for the FEA region in which each firm is located, and dividing by output during that period. Maintenance expenses that are paid or incured at greater than monthly intervals and are not treated on an accrual basis and prorated over an appropriate period shall be computed for purposes of calculating per unit non-product costs for the month of measurement ("$C_n{}^t/R^t$") according to the generally accepted accounting practices historically and consistently applied by the firm concerned.

(IX) *Depreciation cost increase.* (aa) Depreciation cost increase is computed by applying the formula for "$E_n{}^t$" above. For purposes of this computation "C" is the cost attributable to the depreciation of refinery and storage capacity and equipment installed; provided that such costs are computed according to the generally accepted accounting practices historically and consistently applied by the firm concerned and are included only to the extent that such costs are not otherwise covered by this section. If Form 10-K is filed with the Securities and Exchange Commission or an analogous report is filed with a state regulatory agency, the amount computed for depreciation cost increase must be consistent with the figures used in preparing Form 10-K or such analogous report. Accounting procedures used to compute depreciation cost increase by refiners which do not file such form or report, or on whose behalf such form or report is not filed, must be calculated according to generally accepted accounting practices historically and consistently applied by the firm concerned for certified annual financial reports prepared by an independent accounting firm. No capital investments may be included in non-product costs as expenses; all such investments must be capitalized and depreciated and included in the computation of "E_n" for depreciation cost increase.

(bb) Refiners that elect to compute the refinery fuel cost increase according to paragraph (I)(bb) above shall compute depreciation cost increase according to paragraph (IX)(aa) above but must exclude from "$C_n{}^t$" the depreciation costs associated with capital investments which effect fuel conservation.

(X) *Overhead cost increase.* Overhead cost increase is computed by applying the formula for "$E_n{}^t$" above. For purposes of this computation "C" is the dollar amount of costs of insurance, outside legal and accounting fees, and inter-refinery transportation costs directly attributable to refinery operations, provided that such costs are computed according to the generally accepted accounting practices and historically and consistently applied by the firm for certified annual reports.

* * * * *

[FR Doc.77-2432 Filed 1-21-77;11:48 am]

PART 212—MANDATORY PETROLEUM PRICE REGULATIONS

Pricing of Leaded and Unleaded Gasoline by Refiners

I. INTRODUCTION

On December 13, 1976, the Federal Energy Administration ("FEA") issued a notice of proposed rulemaking and public hearing (41 FR 54774, December 15, 1976) in which the FEA proposed to amend the price regulations (10 CFR Part 212, Subparts E and H) regarding the pricing by refiners of leaded and unleaded gasoline. Twenty-three written comments were received in response to the notice of proposed rulemaking, and oral presentations were made by ten persons at the public hearing held on January 5, 1977. All of these comments and presentations were considered by the FEA, as well as other information available to the FEA, in arriving at the amendments adopted today, which become effective February 1, 1977.

Certain of the amendments which were proposed on the pricing of gasoline are being adopted and others are not. Those which are adopted are largely unchanged from the proposed amendments. The formula for calculating increased costs for gasoline, No. 2 oils and aviation jet fuel is being amended so it will conform to that used for general refinery products and will result in a total dollar amount of increased costs permitted to be recovered through sales of each product. The amendment to permit the total amount of increased costs attributable to gasoline to be allocated without restriction among types and grades of gasoline is also adopted.

The proposal with respect to a separate calculation of increased costs of purchased product for each type and grade of gasoline is not being adopted and action on the proposed amendment with respect to increased non-product costs attributable to unleaded gasoline is deferred.

Although the FEA continues to believe that the exemption of motor gasoline from the Mandatory Petroleum Allocation and Price Regulations represents the best solution to the problems in this area, these amendments should provide greater flexibility in the pricing of gasoline should an exemption not become effective. If an exemption does become effective, the amendments will form part of the stand-by regulatory framework.

II. CALCULATION OF PRICES FOR GASOLINE

Application of the current pricing formula for No. 2 oils, gasoline and aviation jet fuel, found in § 212.83(c)(2)(i), results in a single per unit increment which may be applied in determining maximum allowable prices, rather than in a total dollar amount of increased costs which may be recovered through sales of the product, or product category, as is the case under the formula for general refinery products. One reason that the current formula for No. 2 oils, gasoline, and aviation jet fuel was originally written in this manner (for No. 2 oils and gasoline) was that, with the rule which then limited price increases for those products to one per month, a single application of the formula yielded the maximum lawful price for the product concerned for each month. Because that rule has since been deleted, the per unit increment formula is no longer appropriate on that basis.

A second reason for requiring a single per unit calculation of increased costs was that the products to which this formula applied each represented a single product to which the same per unit increment of increased costs was to be applied, rather than a group of products among which a total amount of increased costs could be freely allocated. With today's amendment to § 212.83(c)(1)(i)(B), discussed more fully below, which permits unrestricted allocation of increased costs among types and grades of gasoline, the category gasoline becomes analogous to the category of general refinery products, and increased costs for gasoline therefore should be calculated accordingly, as a total dollar amount.

The FEA therefore amends the pricing formula for No. 2 oils, aviation jet fuel, and gasoline found in § 212.83(c)(2)(i) to conform to the formula for general refinery products found in § 212.83(c)(2)(ii). This means that each covered product or group of covered products will be priced according to the same formula. A separate calculation will continue to be made for each product or group of products. Although increased costs will now be calculated according to the same formula for all products, the two separate sections (§§ 212.83(c)(2)(i) and 212.83(c)(2)(ii)) will be retained in order to avoid the need to redesignate existing cross-references in other sections of the regulations.

As noted above, the rule providing for equal application of increased costs as applied to the pricing of various types and grades of gasoline is also amended to permit a refiner to designate specific product categories within gasoline which reflect different types (unleaded gasoline as opposed to leaded gasoline) and grades (gasoline with different octane numbers) and to apportion increased costs among these categories of gasoline as it deems appropriate. This amendment will permit greater flexibility in gasoline pricing and should permit a restructing of gasoline pricing which is more consistent with today's market. The general provisions of the equal application rule in § 212.83(h) will continue to apply to each specific category of gasoline.

In this rulemaking proceeding, it was also proposed to amend § 212.83(c)(2)(iii)(D) to permit a separate calculation of increased costs for each type and grade of gasoline purchased by refiners. The purpose of this proposal was to more accurately reflect levels of increased costs where a shift in the product mix being purchased, from the mix that was being purchased in May 1973, might otherwise result in distortions. Comments received in the rulemaking proceeding, however, have led FEA to conclude that distortions resulting from use of the present formula are minimal, if any, and that adoption of the proposed amendment would have resulted in unwarranted additional complexity.

III. PRICING OF UNLEADED GASOLINE

FEA also proposed two amendments which, taken together, would have replaced the current rule for the pricing of unleaded gasoline. The revised interim price rule now in effect provides, for refiners which did not sell unleaded gasoline on May 15, 1973 or within the 30-day period preceding that date, that for purposes of determining maximum allowable prices of unleaded gasoline, the weighted average price at which unleaded gasoline was sold to the class of purchaser concerned on May 15, 1973 is deemed to be not in excess of the weighted average price at which leaded gasoline of the same or nearest octane number had been sold to the same class of purchaser, plus one cent per gallon.

The FEA proposed to amend the refiner price regulations to fix the May 15, 1973 "imputed price" for unleaded gasoline at the weighted average price to the class of purchaser concerned of leaded gasoline of the same or nearest octane number. In addition, it was proposed to permit all of the increased non-product costs specifically attributable to the refining of unleaded gasoline to be allocated directly to gasoline prices. This, in conjunction with the proposal to permit free allocation of increased costs attributable to gasoline among types and grades of gasoline, would have permitted the price of unleaded gasoline to more accurately reflect the additional costs of refining unleaded gasoline.

Both the written comments and the oral presentations objected to the removal of the one cent per gallon increment in the imputed May 15, 1973 price for unleaded gasoline. The basis for the objection was that the proposal would reduce the historic profitability of gasoline, more particularly so in light of the continuing shift from premium gasoline, with its historically higher profit margin. The comments also brought out the fact that on May 15, 1973, some refiners were selling unleaded gasoline at prices equal to or less than the price of leaded regular gasoline because of pricing decisions involving test marketing considerations rather than cost data, while most refiners who were selling unleaded gasoline on May 15, 1973, were selling it at a price in excess of the price of leaded gasoline of the same or nearest octane number plus one cent.

There was widespread support for the proposal to permit the allocation to gasoline of increased non-product costs attributable to unleaded gasoline. Specific comments were also requested on whether increased non-product costs attributable to all types and grades of gasoline should be permitted to be allocated to gasoline, and there was also substantial support for this alternative.

However, opinion varied widely on the best mechanism for achieving this goal. Additionally, many of the comments suggested extending the reallocation of increased costs to gasoline to include reallocation of increased product costs; i.e., to increase the proportion of increased costs permitted to be allocated to gasoline.

Because of the importance and complexity of the issues raised, the FEA has determined not to adopt the proposed amendment, but instead to consider making it the subject of a further rulemaking in order that all of the issues concerning the allocation of increased costs to gasoline may be addressed directly.

Therefore, the imputed May 15, 1973 price for unleaded gasoline will remain at no more than one cent per gallon over the May 15, 1973 price of leaded gasoline of the same or nearest octane number, as that amount was initially chosen as an estimate of the additional costs associated with refining unleaded gasoline. However, that regulation is being modified to provide refiners the option of using this imputed May 15, 1973 price or their actual weighted average May 15, 1973 price to the class of purchaser concerned, in the interest of greater uniformity in the pricing of unleaded gasoline, and to remove the anomalies which have resulted for refiners that were test marketing unleaded gasoline in May 1973.

(Emergency Petroleum Allocation Act of 1973, Pub. L. 93-159, as amended, Pub. L. 93-511, Pub. L. 94-99, Pub. L. 94-133, Pub. L. 94-163, and Pub. L. 94-385; Federal Energy Administration Act of 1974, Pub. L. 93-275, as amended, Pub L. 94-385; Energy Policy and Conservation Act, Pub. L. 94-63, as amended, Pub. L. 94-385; E.O. 11790, 39 FR 23185).

In consideration of the foregoing, Part 212 of Chapter II of Title 10 Code of Federal Regulations is amended as follows, effective February 1, 1977.

Issued in Washington, D.C., January 19, 1977.

DAVID G. WILSON,
Acting General Counsel,
Federal Energy Administration.

1. Section 212.83(c)(1)(i) is renumbered § 212.83(c)(1)(i)(A) and a new § 212.83(c)(1)(i)(B) is added, paragraph (c)(2)(i) is amended, and (c)(2)(iii)(B) is amended as follows:

§ 212.83 Price rule.

* * * * *

(c) *Allocation of increased costs.* * * *

(1) *Allocation of increased costs incurred in the period "t"-(i) No. 2 oils, aviation jet fuel and gasoline.* * * *

(i) * * *

(B) Notwithstanding any other provision of this Subpart, for purposes of this section, a refiner, upon notice to and unless and until disapproved by the FEA, may designate as categories within the product gasoline different types (unleaded gasoline as differentiated from leaded gasoline) and grades (differentiated by octane number), if the categories so designated by the refiner represent discrete gasoline types and grades that have been consistently and historically differentiated by that refiner. In apportioning the total amount of increased costs allocable to gasoline among categories of gasoline, a refiner may apportion amounts of increased costs to a particular category of gasoline in whatever amounts it deems appropriate. The notice required by this paragraph shall be sent to the Deputy Assistant Administrator for Compliance.

(2) *Formulae—(i) No. 2 oils, aviation jet fuel, and gasoline.* For No. 2 oils, aviation jet fuel, and gasoline (i=1, i=2, and i=3):

$$d_i^u = A_i + B_i + N_i - G_i' \pm H_i^u$$

* * * * *

(iii) *Definitions* * * *

(B) *The "D" factors.*

d_i^u = The total dollar amount a refiner may apportion in the period "u" to No. 2 oils (i=1); aviation jet fuel (i=2); or gasoline (i=3). The formula for d_i^u must be computed separately for i=1, for i=2, and for i=3.

* * * * *

2. Section 212.112 (a) and (b)(1) are amended to read as follows:

§ 212.112 Unleaded gasoline.

(a) *Scope.* This section prescribes the method for calculating the maximum price which may be charged in sales of unleaded gasoline by all refiners, and by resellers, reseller-retailers and retailers which did not sell unleaded gasoline on May 15, 1973, or within the 30-day period prior thereto.

* * * * *

(b) *Rule.* * * *

(1) for purposes of determining the weighted average price at which unleaded gasoline was lawfully priced in transactions with the class of purchaser concerned on May 15, 1973 in order to calculate the "maximum allowable price" as defined in § 212.82 a refiner shall use either a price not in excess of the weighted average price at which leaded gasoline of the same or nearest octane number was lawfully priced by it in transactions with that class of purchaser on May 15, 1973, computed in accordance with the provisions of § 212.83(a), plus 1 cent per gallon; or the weighted average price at which unleaded gasoline was lawfully priced in transactions with the class of purchaser concerned on May 15, 1973, computed in accordance with the provisions of § 212.83(a); and

[FR Doc.77-2431 Filed 1-21-77;11:47 am]

PART 211—MANDATORY PETROLEUM ALLOCATION REGULATIONS

Emergency Amendment of Refinery Yield Control Program

The Federal Energy Administration ("FEA") hereby adopts on an emergency basis an amendment, effective immediately, to § 211.71 of the Mandatory Petroleum Allocation Regulations (10 CFR Part 211). The purpose of this amendment is to provide FEA the regulatory authority to require refiners that refine and supply kerosene-base jet fuel to areas of the country either experiencing or having the potential to experience shortages of No. 1 fuel oil to adjust their yield of kerosene-base jet fuel so as to reduce their allocation fraction for that product, thereby increasing their yields and supplies of No. 1 fuel oil. This authority would be exercised by FEA through the issuance of orders to specific refiners.

Severely cold weather conditions throughout the nation this winter have produced a record level demand for middle distillates, particularly No. 1 fuel oil, which is used primarily for heating homes equipped with outdoor fuel storage facilities exposed to cold temperatures and for blending with No. 2 fuel oil when temperatures are below 25° F. The industry's ability to respond to the heavy demand for No. 1 fuel oil, particularly in the North Central region, has been impeded by the freezing of the Mississippi and Ohio Rivers and Lake Michigan, which are the principal barge distribution routes; a shortage of railroad tank cars; and a reduction in Canadian exports of crude oil to the Northern Tier states. Stocks of No. 1 fuel oil in the affected region have been declining at a precipitous rate, causing or having the potential to cause spot shortages in some areas. The situation appears most acut in Minnesota, Wisconsin, Michigan and North Dakota, where temperatures have been eighteen percent colder than normal and thirty-three percent colder than last winter, requiring an earlier and faster drawdown of inventories. These states are potentially threatened with serious shortages of No. 1 fuel oil which FEA believes could create severe hardships for users of this product if the current colder than normal weather continues.

Due to this situation, the state energy offices in Minnesota, Wisconsin, Michigan and North Dakota have requested that FEA take action to increase the supply of No. 1 fuel oil in their areas. Additionally, FEA has received information from most refiners that supply the affected states with kerosene-base jet fuel, which may be substituted for No. 1 fuel oil, that, if ordered to reduce their production of kerosene-base jet fuel, the result would be an immediate increase in production and available supplies of No. 1 fuel oil.

Current FEA regulations do not authorize FEA to issue direct orders to specified refiners to increase their yields of a particular product to alleviate the type of supply conditions that have arisen this winter with respect to No. 1 fuel oil. This emergency amendment is, therefore, being promulgated to provide FEA with the additional authority needed to deal in the most effective manner with the serious situation which presently exists. In particular, this amendment will allow FEA to order a specific refiner to adjust its yield of kerosene-base jet fuel to a level that permits it to supply that product at a specified allocation fraction, thereby permitting an increase in its current production of light fuel oil.

FEA believes that civil air carriers and other users of kerosene-base jet fuel will

not, on balance, be adversely affected to any significant degree by the measures contemplated by this amendment because of their ability to purchase jet fuel in other geographical regions of the country not experiencing shortage conditions. Although minor short-term supply difficulties could occur, FEA believes that overall supply levels for users of kerosene-base jet fuel can be generally maintained so as to avert most problems, particularly in light of the substantially greater degree of flexibility as to supply sources available to these users compared to users of No. 1 fuel oil. In light of these considerations, FEA believes that this action is required to provide for the protection of the public health, safety and welfare, and to assure the equitable distribution of petroleum products among all regions and areas of the country and among all users.

FEA is adopting this emergency amendment pursuant to its authority to exercise direct controls on refinery operations under section 14 of Emergency Petroleum Allocation Act of 1973, as amended ("EPAA"), which was added to the EPAA by section 457 of the Energy Policy and Conservation Act (Pub. L. 94-163). Section 14 of the EPAA provides as follows:

Sec. 14. The President may by amendment to the regulation under section 4(a) of this Act or by order, as may be consistent with the attainment, to the maximum extent practicable, of the objectives specified in section 4(b)(1) of this Act, require adjustments in the operations of any refinery in the United States with respect to the proportions of residual fuel oil or any refined petroleum product produced through such operations if he determines such adjustments are necessary to assure the production of residual fuel oil or any refined petroleum product in such proportions as are necessary or appropriate to provide for the attainment, to the maximum extent practicable, the objectives specified in section 4(b)(1).

FEA is also considering the advisability of issuing regulations to extend its authority to cover refinery yield of No. 2 heating oil, under procedures similar to those made effective today as to No. 1 heating oil. In this connection, therefore, FEA requests that comments address whether further amendments in this regard would be appropriate to authorize FEA to meet any potential regional shortages of No. 2 heating oil for this heating season.

This amendment is being issued on an emergency basis so that FEA may respond expeditiously to the critical shortages or potential shortages of No. 1 fuel oil in certain areas of the nation. If this amendment were not adopted until after notice and a hearing, it could not be effective until after the coldest portion of the heating season, long after potential shortages of No. 1 fuel oil could have created hardships which could have been prevented or minimized by an immediate effective date. FEA therefore finds that strict compliance with the notice requirements of section 7(i)(1)(B) of the Federal Energy Administration Act of 1974, as amended ("FEAA"), Pub. L. 93-275, Pub. L. 94-385, could cause serious harm and injury to the public health, safety and welfare, and the notice requirements of that section are hereby waived.

Section 7(c)(1) of the FEAA provides that FEA shall, before promulgating proposed regulations affecting the quality of the environment, provide a period of not less than five working days during which the Administrator of the Environmental Protection Agency ("EPA") may provide written comments concerning the impact of such regulations on the quality of the environment. Such comments are required to be published concurrently with or as part of the notice of proposed rulemaking.

Under section 7(c)(2) of the FEAA, the prior review required by section 7(c)(1) may be waived for a period of 14 days if there is an emergency situation which requires taking action at a date earlier than would permit the EPA the five day opportunity for prior comment required under section 7(c)(1). Notice of any such waiver must be given to the EPA and filed with the FEDERAL REGISTER with the notice of proposed or final FEA action and must include an explanation of the reasons for such waiver together with supporting data and factual background information.

Pursuant to section 7(c)(2) of the FEAA, FEA hereby waives the requirements of section 7(c)(1) of the FEAA concerning prior review by EPA of the environmental impact of this emergency rulemaking. This waiver is based on an emergency situation which, as explained above, mandates that FEA be able immediately to act to divert production of kerosene-base jet fuel for use as No. 1 fuel oil in areas of the country experiencing severe or potentially severe shortages of that product. A copy of this emergency amendment has been sent concurrent with its issuance to the Administrator of the EPA for his comments.

In accordance with Executive Order 11821 and OMB Circular A-107, FEA is considering the inflationary impact of this proposal.

Because this amendment is being issued on an emergency basis, an opportunity for oral presentation of views is not possible prior to its implementation. A public hearing, however, will be held beginning at 9:30 a.m., e.s.t., on Tuesday, February 8, 1977, in Room 2105, 2000 M Street, NW., Washington, D.C., to receive comments from interested persons. Any person who has an interest in the subject of the hearing, or who is a representative of a group or class of persons which has an interest in the subject of the hearing, may make a written request for an opportunity to make an oral presentation. Such a request should be directed to Executive Communications, FEA, 1200 Pennsylvania Avenue, NW., Washington, D.C. 20461, and must be received before 4:30 p.m., e.s.t., on Thursday, February 3, 1977. Such a request may be hand delivered to Room 3309, Federal Building, 1200 Pennsylvania Avenue, NW., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., e.s.t., Monday through Friday, except Federal holidays. The person making the request should be prepared to describe the interest concerned; if appropriate, to state why he or she is a proper representative of a group or class of persons which has such an interest; and to give a concise summary of the proposed oral presentation and a phone number where he or she may be contacted through Friday, February 4, 1977. Each person selected to be heard will be so notified by FEA before 5:30 p.m., e.s.t., Friday, February 4, 1977, and must submit 50 copies of his or her statement to the Office of Allocation Regulation Development, FEA, Room 2214, 2000 M Street, NW., Washington, D.C. 20461, before 9:00 a.m., e.s.t., Tuesday, February 8, 1977.

FEA reserves the right to select the persons to be heard at the hearing, to schedule their respective presentations, and to establish the procedures governing the conduct of the hearing. Each presentation may be limited, based on the number of persons requesting to be heard.

An FEA official will be designated to preside at the hearing. It will not be a judicial or evidentiary-type hearing. Questions may be asked only by those conducting the hearing, and there will be no cross-examination of persons presenting statements. At the conclusion of all initial oral statements, each person who has made an oral statement will be given the opportunity, if he or she so desires, to make a rebuttal statement. The rebuttal statements will be given in the order in which the initial statements were made and will be subject to time limitations.

Any interested person may submit questions, to be asked of any person making a statement at the hearing, to Executive Communications, FEA, before 4:30 p.m., e.s.t., Monday, February 7, 1977. Any person who makes an oral statement and who wishes to ask a question at the hearing may submit the question, in writing, to the presiding officer. FEA or the presiding officer, if the question is submitted at the hearing, will determine whether the question is relevant, and whether time limitations permit it to be presented for response.

Any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer.

A transcript of the hearing will be made and the entire record of the hearing, including the transcript, will be retained by FEA and made available for inspection at the FEA Freedom of Information Office, Room 2107, Federal Building, 1200 Pennsylvania Avenue, NW., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Anyone may purchase a copy of the transcript from the reporter.

Interested persons are invited to submit data, views, or arguments with respect to this emergency amendment to Executive Communications, FEA, Box KT, Washington, D.C. 20461.

Comments should be identified on the outside envelope and on documents submitted to Executive Communications, FEA, with the designation "Refinery Yield of No. 1 Fuel Oil." Fifteen copies should be submitted. All comments received by Friday, February 11, 1977, and all relevant information, will be considered by FEA.

Any information or data considered by the person furnishing it to be confidential must be so identified and submitted in writing, in accordance with the procedures stated in 10 CFR 205.9(f). FEA reserves the right to determine the confidential status of the information or data and to treat it according to its determination.

(Emergency Petroleum Allocation Act of 1973, Pub. L. 93-159, as amended, Pub. L. 93-511, Pub. L. 94-99, Pub. L. 94-133, Pub. L. 94-163, and Pub. L. 94-385; Federal Energy Administration Act of 1974, Pub. L. 93-275, as amended, Pub. L. 94-332 and Pub. L. 94-385; Energy Policy and Conservation Act, Pub. L. 94-163, as amended, Pub. L. 94-385; E.O. 11790, 39 FR 23185; E.O. 11933, 41 FR 36641.)

In consideration of the foregoing, Part 211 of Chapter II, Title 10 of the Code of Federal Regulations, is amended as set forth below, effective immediately.

Issued in Washington, D.C., January 24, 1977.

DAVID G. WILSON,
Acting General Counsel,
Federal Energy Administration.

Section 211.71 is amended by adding a new paragraph (e) as follows:

§ 211.71 Mandatory refinery yield control program.

* * * * *

(e) *Adjustments in production levels of kerosene-base jet fuel and No. 1 fuel oil.* (1) Whenever FEA determines that No. 1 fuel oil is or potentially will be in short supply in any region or area of the United States, FEA may require one or more specified refiners, which produce kerosene-base jet fuel and supply or are capable of supplying No. 1 fuel oil in or into those regions or areas experiencing shortage conditions, to adjust their yields of kerosene-base jet fuel to levels that permit them to supply that product at an allocation fraction specified in such order or orders and to increase production and supplies of No. 1 fuel oil.

(2) Any such order may by its terms apply only to one or more refineries specified in the order and owned by the refiner to which the order is issued and shall be effective for the period specified in the order.

(3) The terms of any order issued under the authority of this paragraph shall be subject to review and comment by the refiner and the other principal parties affected thereby prior to the issuance thereof, if the FEA determines that the shortage situation in response to which the order is to be issued permits these review and comment procedures to take place without adversely affecting supplies of No. 1 fuel oil in the particular region or area. Any such order shall be appealable pursuant to Subpart H of Part 205 of this chapter.

[FR Doc.77-2632 Filed 1-24-77;11:39 am]

PART 211—MANDATORY PETROLEUM ALLOCATION REGULATIONS

Emergency Amendment to Allocation Levels for Propane and Adoption of Special Rule No. 1 to Subpart D

The Federal Energy Administration ("FEA") hereby adopts on an emergency basis an amendment to the Mandatory Petroleum Allocation Regulations, 10 CFR Part 211, with respect to the allocation levels provided for residential use and plant protection use of propane. FEA also adopts on an emergency basis Special Rule No. 1 to Subpart D of Part 211 (the "Special Rule"), altering allocation levels and suppliers' method of allocation in certain emergency situations prior to March 31, 1977. The amendment and Special Rule adopted today are effective immediately.

BACKGROUND

In light of the severely cold winter weather that many parts of the nation are experiencing, FEA believes that the relatively low allocation levels currently accorded to residential use and plant protection use of propane are insufficient. In addition, gas utilities are faced with extremely large demand for natural gas and are encountering difficulties in meeting the requirements of their residential customers.

The amendments and the Special Rule adopted today are intended to assure maintenance of service at the highest possible level for essential human needs and for essential minimal protection against property loss. These rules apply to maintain these critical uses of propane regardless whether the purchasers are direct users of propane or are customers of gas utilities which use propane to supplement supplies of natural gas. However, increased allocations of propane for gas utilities are conditioned by FEA by the requirement that gas utilities may use any propane supplied under the Special Rule adopted today only for meeting specified high priority needs and that suppliers must provide an equivalent level of priority for direct users of propane for the same needs. In this manner, FEA believes that available supplies of propane will be most equitably distributed for the remainder of the current heating season.

ALLOCATION LEVELS FOR RESIDENTIAL AND PLANT PROTECTION USE

To accomplish these purposes, FEA is today adopting amendments to its propane allocation levels raising the allocation levels accorded residential use and plant protection fuel use to one hundred percent of current requirements subject to the supplier's allocation fraction. FEA has determined that the previous allocation levels of ninety-five percent of base period use and one hundred percent of base period use subject to an allocation fraction, respectively, are no longer appropriate because the severity of weather this heating season has made historical usage an inadequate level for these high priority uses. In particular, the facts that the base period of April 1, 1972—March 31, 1973 was significantly warmer than the current winter and that upward adjustments to base use levels have not been permitted since mid-1974 have caused these current allocation levels to bear little relationship to the needs of individual priority purchasers. Therefore, to avoid potential serious hardships these allocation levels are being changed to a current requirements basis. It should be noted that since these amendments provide current requirements for residential and plant protection use, purchasers under these allocation levels will be subject to the requirements of 10 CFR 211.21, requiring purchasers to certify to their suppliers that they have an energy conservation program in effect.

Since these amendments take effect in the middle of a period corresponding to a base period, suppliers may have to compute a new allocation fraction for the remainder of the base period. Suppliers should estimate their supply obligation according to 10 CFR 211.10(b)(2) using the new allocation levels for residential use and plant protection fuel use, and their allocable supply for the remainder of the base period to compute their applicable allocation fraction.

SPECIAL RULE NO. 1—EMERGENCY ALLOCATION LEVELS AND SUPPLIERS' METHOD OF ALLOCATION

Because the severe winter weather threatens natural gas service, FEA is also adopting Special Rule No. 1 to Subpart D (the "Special Rule") on an emergency basis. The Special Rule provides for an adjustment to base period use for peak shaving by gas utilities in certain emergency situations, for new priorities of allocation levels and for a new suppliers' method of allocation applicable when such an adjustment is granted. The Special Rule is effective through March 31, 1977.

The Special Rule provides that when a gas utility's need for propane for peak shaving to maintain gas service for essential human needs and property protection exceeds one hundred percent of its base period use or when a utility has no supplier or base period use, it may apply to the FEA National Office pursuant to Subpart G of Part 205, FEA's Administrative Procedures and Sanctions, for an assignment of supplier or adjustment to base period use. In its application the utility is required to state in full the circumstances surrounding its request for additional propane, including the names and addresses of its suppliers of propane and natural gas, its inventory levels of propane and natural gas, its requirements of propane and present and anticipated levels of curtailments in the absence of a grant of its application. The utility must also provide a description of the priority-of-service categories imposed for use during periods of curtailment by the State regulatory

body to whose jurisdiction the utility is subject.

FEA will evaluate the application in light of all surrounding circumstances, taking into account the most equitable means of distributing propane among direct users and utility customers for high priority needs, and may issue an order assigning a supplier and a base period use or an order adjusting the base period use of the utility, in order to specify, in effect, a volume of propane which the utility may purchase and use for the remainder of the current period corresponding to a base period. A copy of the order will be served immediately upon the utility's propane supplier.

A gas utility receiving increased supplies of propane under the Special Rule is required to certify to FEA within seven days of receiving increased supplies and every seven days thereafter the priority-of-use categories to which it delivered natural gas during the previous reporting period.

Upon receipt of an order to supply increased volumes of propane to a gas utility, the supplier must apply the emergency allocation levels and method of allocation provided in the Special Rule. The emergency allocation levels are divided into first and second priority categories. The first priority category includes agricultural production, Department of Defense use, the priorities currently set forth in 10 CFR 211.83(c)(1) (as amended by this rule to include residential and plant protection fuel use), synthetic natural gas plant feedstock use and the peak shaving allocation for the gas utility. The latter two uses are accorded an allocation level of one hundred percent of base period use, while all others are assigned an allocation level of one hundred percent of current requirements. All these allocation levels, while the Special Rule is in effect for that supplier, are subject to the allocation fraction.

In addition, for purposes of this Special Rule, FEA is amending the definition of peak shaving previously set forth in 10 CFR 211.83(c)(2)(v) to provide that peak shaving use of propane by gas utilities is accorded an allocation level of one hundred percent of base period use only if peak shaving occurs to maintain gas service to essential human needs and property protection. 10 CFR 211.82 is amended by addition of a definition of "gas service for essential human needs and property protection" as

> • • • distribution of natural gas to residential and small commercial users with no alternate fuel capability which use less than 50,000 cubic feet of natural gas on a peak day, to industrial plants for plant protection fuel, and to apartment buildings and medical and nursing buildings with no alternate fuel capability.

The supplier will estimate its allocable supply for the remainder of the period corresponding to a base period and using the first priority allocation levels provided in the Special Rule calculate a new allocation fraction. If the fraction is less than one, the supplier must supply only the first priority customers according to the fraction. If the fraction exceeds one, the supplier must supply first priority customers at an allocation fraction of one and using the volume represented by the portion of the fraction in excess of one calculate a second fraction for second priority purchasers. Those purchasers will then be supplied at the levels allowed by application of the second fraction for the remainder of the period corresponding to a base period.

These amendments are being issued on an emergency basis to ensure that gas utilities may acquire additional supplies of propane for peak shaving to maintain gas service for essential human needs and property protection during the current heating season, while providing equitable allocations to meet the same needs of direct users of propane. If these amendments were not adopted until after notice and a hearing, they would not be effective until after the coldest portion of the heating season, long after most of the requests for additional peak shaving material should have been acted upon. FEA therefore finds that strict compliance with the notice requirements of section 7(i)(1)(B) of the Federal Energy Administration Act of 1974, as amended ("FEAA"), Pub. L. 93-275, Pub. L. 94-385, will cause serious harm and injury to the public health, safety and welfare, and the notice requirements of that section are hereby waived.

Section 7(c)(1) of the FEAA provides that FEA shall, before promulgating proposed regulations affecting the quality of the environment, provide a period of not less than five working days during which the Administrator of the Environmental Protection Agency ("EPA") may provide written comments concerning the impact of such regulations on the quality of the environment. Such comments are required to be published concurrently with or as part of the notice of propsed rulemaking.

Under section 7(c)(2) of the FEAA, the prior review required by section 7(c)(1) may be waived for a period of 14 days if there is an emergency situation which requires taking action at a date earlier than would permit the EPA the five day opportunity for prior comment required under section 7(c)(1). Notice of any such waiver must be given to the EPA and filed with the FEDERAL REGISTER with the notice of proposed or final FEA action and must include an explanation of the reasons for such waiver together with supporting data and factual background information.

Pursuant to section 7(c)(2) of the FEAA, FEA hereby waives the requirements of section 7(c)(1) of the FEAA concerning prior review by EPA of the environmental impact of this rulemaking. This waiver is based on an emergency situation which, as explained above, mandates that FEA take immediate steps to ensure adequate supplies of propane to direct users for residential and plant protection use and to gas utilities for peak shaving in excess of their base period use to serve essential human needs and protection of property needs that might otherwise be curtailed. A copy of this emergency amendment has been sent concurrent with its issuance to the Administrator for his comments.

In accordance with Executive Order 11821 and OMB Circular A-107, FEA is considering the inflationary impact of this proposal.

Because this amendment is being issued on an emergency basis, an opportunity for oral presentation of views is not possible prior to its implementation. A public hearing, however, will be held beginning at 9:30 a.m., on Thursday, February 10, 1977, in Room 2105, 2000 M Street, N.W., Washington, D.C., to receive comments from interested persons. Any person who has an interest in the subject of the hearing, or who is a representative of a group or class of persons which has an interest in the subject of the hearing, may make a written request for an opportunity to make an oral presentation. Such a request should be directed to Executive Communications, FEA, 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20461, and must be received before 4:30 p.m., e.s.t., Friday, February 4, 1977. Such a request may be hand delivered to Room 3309, Federal Building, 1200 Pennsylvania Avenue, N.W., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., e.s.t., Monday through Friday, except Federal holidays. The person making the request should be prepared to describe the interest concerned if appropriate, to state why he or she is a proper representative of a group or class of persons which has such an interest; and to give a concise summary of the proposed oral presentation and a phone number where he or she may be contacted through Tuesday, February 8, 1977. Each person selected to be heard will be so notified by FEA before 5:30 p.m., e.s.t., Monday, February 7, 1977, and must submit 50 copies of his or her statement to Office of Allocation Regulation Development, FEA, Room 2214, 2000 M Street, N.W., Washington, D.C. 20461, before 5:30 p.m., e.s.t, Wednesday, February 9, 1977.

FEA reserves the right to select the persons to be heard at the hearing, to schedule their respective presentations, and to establish the procedures governing the conduct of the hearing. Each presentation may be limited, based on the number of persons requesting to be heard.

An FEA official will be designated to preside at the hearing. It will not be a judicial or evidentiary-type hearing. Questions may be asked only by those conducting the hearing, and there will be no cross-examination of persons presenting statements. At the conclusion of all initial oral statements, each person who has made an oral statement will be given the opportunity, if he or she so desires, to make a rebuttal statement. The rebuttal statements will be given in the order in which the initial statements were made and will be subject to time limitations.

Any interested person may submit questions, to be asked of any person making a statement at the hearing, to Executive Communications, FEA, before 4:30 p.m., e.s.t., Wednesday, February 9, 1977. Any person who makes an oral statement and who wishes to ask a question at the hearing may submit the question, in writing, to the presiding officer. FEA or the presiding officer, if the question is submitted at the hearing, will determine whether the question is relevant, and whether time limitations permit it to be presented for answer.

Any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer.

A transcript of the hearing will be made and the entire record of the hearing, including the transcript, will be retained by FEA and made available for inspection at the FEA Freedom of Information Office, Room 2107, Federal Building, 1200 Pennsylvania Avenue, N.W., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Anyone may purchase a copy of the transcript from the reporter.

Interested persons are invited to submit data, views, or arguments with respect to this emergency amendment to Executive Communications, Federal Energy Administration, Box KS, Washington, D.C. 20461.

Comments should be identified on the outside envelope and on documents submitted to Executive Communications, FEA, with the designation "Allocation Levels for Propane and Special Rule No. 1." Fifteen copies should be submitted. All comments received by Friday, February 11, 1977, and all relevant information, will be considered by FEA.

Any information or data considered by the person furnishing it to be confidential must be so identified and submitted in writing, in accordance with the procedures stated in 10 CFR 205.9(f). FEA reserves the right to determine the confidential status of the information or data and to treat it according to its determination.

(Emergency Petroleum Allocation Act of 1973, Pub. L. 93-159, as amended, Pub. L. 93-511, Pub. L. 94-99, Pub. L. 94-133, Pub. L. 94-163, and Pub. L. 94-385; Federal Energy Administration Act of 1974, Pub. L. 93-275, as amended, Pub. L. 94-332 and Pub. L. 94-385; Energy Policy and Conservation Act, Pub. L. 94-163, as amended, Pub. L. 94-385; E.O. 11790, 39 FR 23185; E.O. 11933, 41 FR 36641)

In consideration of the foregoing, Part 211 of Chapter II, Title 10 of the Code of Federal Regulations, is amended as set forth below, effective immediately.

Issued in Washington, D.C., January 24, 1977.

DAVID G. WILSON,
Acting General Counsel.

1. Section 211.82 is amended by adding, in the proper alphabetical order, a definition of "gas service for essential human needs and property protection," to read as follows:

§ 211.82 Definitions.

• • • • • •

"Gas service for essential human needs and property protection" means distribution of natural gas to residential and small commercial users with no alternate fuel capability which use less than 50,000 cubic feet of natural gas on a peak day, to industrial plants for plant protection fuel, and to apartment buildings and medical and nursing buildings with no alternate fuel capability.

• • • • • •

2. Section 211.83 is amended by revising paragraph (c) and by inserting before paragraph (a) as an introduction a phrase to read as follows:

§ 211.83 Allocation levels.

Except as provided in Special Rule No. 1 to this subpart—

• • • • •

(c) *Allocation levels subject to an allocation fraction.* (1) One hundred (100) percent of current requirements (as reduced by the application of an allocation fraction) for the following uses:

(i) Emergency services;
(ii) Energy production;
(iii) Sanitation services;
(iv) Telecommunications services;
(v) Passenger transportation services;
(vi) Medical and nursing buildings;
(vii) Aviation ground support vehicles and equipment;
(viii) Start-up, testing and flame stability of electrical utility plants;
(ix) Residential use; and
(x) Plant protection fuel use.

(2) One hundred (100) percent of base period use for:

(i) Petrochemical feedstock use;
(ii) Synthetic natural gas plant feedstock use;
(iii) Industrial use as a process fuel or where no substitute for propane is available;
(iv) Governmental use;
(v) Peak shaving for gas utilities. Unless directed by FEA upon application pursuant to Subpart G of Part 205 of this chapter, the use of propane for peak shaving by gas utilities during any consecutive twelve month period beginning after January 1, 1974, is limited to the volume of propane equal to one hundred (100) percent of that volume which a gas utility contracted for or purchased for delivery during the period April 1, 1972 through March 31, 1973, regardless of whether that volume was used during the period. Propane shall not be used for peak shaving as long as the gas utility continues service during such peak shaving usage to interruptible industrial customers (other than for process fuel, plant protection fuel, or raw material) or to any non-residential customer who can use a fuel other than natural gas, propane or butane; and
(vi) Refinery fuel use.

(3) Ninety (90) percent of base period use for the following uses:

(i) Commercial use (The maximum volume which may be obtained for this use, however, is 210,000 gallons per year);
(ii) Standby volumes or any other industrial use;
(iii) Transportation services other than passenger transportation services or aviation ground support vehicles, for vehicles equipped to use propane as of December 27, 1973; and
(iv) Schools.

3. Subpart D is amended by adding as an appendix thereto Special Rule No. 1, to read as follows:

SPECIAL RULE NO. 1—EMERGENCY ALLOCATION LEVELS AND SUPPLIERS' METHOD OF ALLOCATION

(1) *Scope.* This Special Rule applies to the allocation of propane in certain emergency situations, as determined by FEA, upon application by a gas utility pursuant to paragraph (3) below. This Special Rule shall remain in effect through March 31, 1977.

(2) *Purpose.* This Special Rule provides new allocation levels and a special suppliers' method of allocation for use in emergency situations in order to assure both maintenance, at the highest possible level, of service by gas utilities for essential human needs and property protection, and equitable distribution of propane for the same end-uses as between direct users of propane and customers of gas utilities.

(3) *Application by a gas utility for increased allocations of propane.* (a) Whenever a gas utility's requirements for propane for peak shaving to maintain gas service for essential human needs and property protection exceed one hundred (100) percent of base period use as reduced by application of its supplier's allocation fraction, the gas utility may apply, pursuant to Subpart G of Part 205 of this chapter, to the FEA National Office for assignment of a supplier and establishment of a base period use or an adjustment to its base period use of propane for peak shaving use. In its application the gas utility shall provide FEA with the name and address of its base period supplier of propane, if any, and with a complete statement of the circumstances surrounding its application, which shall include:

(i) The current level of its propane and natural gas inventories;
(ii) The volume of propane required on a peak day to maintain gas service for essential human needs and property protection, as defined in § 211.82;
(iii) Its present and anticipated curtailment of customers under applicable state and federal laws in the absence of a grant of relief from FEA;
(iv) The names and addresses of its natural gas supplier(s);
(v) The names and addresses of its propane supplier(s), if any, and the volume(s) of propane which such supplier(s) can presently supply;
(vi) A description of the priority-of-service categories imposed for use during periods of curtailment by the State regulatory body to whose jurisdiction the utility is subject;
(vii) A certification of the accuracy of the application by the chief executive officer of the applicant or his duly authorized representative; and
(viii) A statement that any propane allocated pursuant to the application shall be used only for the purpose stated in the application, shall not be diverted to other uses, and that if the applicant's needs for propane to maintain gas service for essential human needs and property protection decline, the applicant shall immediately file an amended application for a downward adjustment to its base period use.

(b) In processing an application under paragraph (3)(a), FEA shall consider potential supply reductions to users of propane

for residential use, plant protection fuel and other priority uses and shall attempt to maintain the most equitable feasible distribution of propane for priority uses.

(c) Upon consideration of an application of a gas utility, filed pursuant to this Special Rule, and other relevant information received or obtained during the proceeding, the FEA may issue an appropriate order assigning a supplier or suppliers and/or adjusting the base period use of the utility. A copy of the order shall be served on the applicant and upon any supplier or suppliers required to supply propane pursuant to the order.

(d) Within seven days of receiving propane pursuant to an order issued under paragraph (3)(c) of this Special Rule and every seven (7) days thereafter until the expiration of the order, the gas utility shall certify to the FEA National Office the priority-of-use categories to which it has supplied natural gas for the previous reporting period and the volumes supplied to each such category.

(4) *Suppliers' emergency method of allocation.* Upon receipt of an order under paragraph (3)(c) of this Special Rule, a supplier shall supply its purchasers according to the emergency allocation levels as provided in paragraph (5) of this Special Rule. The supplier shall recalculate its allocation fraction for the remainder of the period corresponding to a base period by dividing its estimated remaining allocable supply by the estimated remaining allocation entitlements of the purchasers supplied under the first priority allocation levels listed in paragraph (5)(a) of this Special Rule at the allocation levels provided therein. If the supplier's allocation fraction is one (1.0) or less than one (1.0), it shall supply its first priority purchasers at that allocation fraction. If the supplier's allocation fraction exceeds one (1.0), it shall calculate a second allocation fraction for its purchasers supplied under the second priority allocation levels listed in paragraph (5)(b) using as its allocable supply volumes of propane not needed to supply its first priority purchasers and shall distribute its remaining supplies of propane accordingly.

(5) *Emergency allocation levels*—(a) *First priority allocation levels.* (i) One hundred (100) percent of current requirements subject to an allocation fraction for:

(A) Agricultural production;
(B) Department of Defense use;
(C) Residential use;
(D) Plant protection fuel use;
(E) Emergency services;
(F) Energy production;
(G) Sanitation services;
(H) Telecommunication services;
(I) Passenger transportation services;
(J) Medical and nursing buildings;
(K) Aviation ground support vehicles and equipment; and
(L) Start-up, testing and flame stability of electric utility plants.

(ii) One hundred percent of base period use subject to an allocation fraction for:

(A) Synthetic natural gas plant feedstock use; and
(B) Peak shaving use by gas utilities to maintain gas service for essential human needs and property protection, as assigned or adjusted by FEA.

(b) *Second priority allocation levels.* (i) One hundred (100) percent of base period use for:

(A) Petrochemical feedstock use;
(B) Industrial use as a process fuel or where no substitute for propane is available;
(C) Peak shaving use by gas utilities. Unless otherwise directed by FEA upon application pursuant to Subpart G of Part 205, the use of propane for peak shaving by gas utilities during any consecutive twelve month period beginning after January 1, 1974, is limited to the volume of propane equal to one hundred (100) percent of that volume which a gas utility contracted for or purchased for delivery during the period April 1, 1972 through March 31, 1973, regardless of whether that volume was used during the period. Propane shall not be used for peak shaving as long as the gas utility continues service during such peak shaving usage to interruptible industrial customers (other than for process fuel, plant protection fuel, or raw material) or to any non-residential customer who can use a fuel other than natural gas, propane or butane; and
(D) Governmental use;
(E) Refinery fuel use.

(ii) Ninety (90) percent of base period use for:

(A) Commercial use (the maximum volume which may be obtained for this use, however, is 210,000 gallons per year)
(B) Standby volumes or any other industrial use;
(C) Transportation services other than passenger transportation services or aviation ground support vehicles, for vehicles equipped to use propane as of December 27, 1973; and
(D) Schools.

[FR Doc.77-2631 Filed 1-24-77;11:42 am]

PART 210—GENERAL ALLOCATION AND PRICE RULES

PART 211—MANDATORY PETROLEUM ALLOCATION REGULATIONS

PART 212—MANDATORY PETROLEUM PRICE REGULATIONS

Exemption of Motor Gasoline From Mandatory Petroleum Allocation and Price Regulations

On January 19, 1977, the Federal Energy Administration ("FEA") issued two amendments exempting motor gasoline from 10 CFR Parts 210, 211 and 212, the General Allocation and Price Rules and the Mandatory Petroleum Allocation and Price Regulations (42 FR 4416, and 42 FR 4419, January 25, 1977). These amendments were transmitted to the Congress as Energy Actions Nos. 8 and 9 on January 19, 1977, in accordance with the procedures set forth in section 551 of the Energy Policy and Conservation Act, Pub. L. 94-163 ("EPCA").

Because of the pending change of Administration at the time the amendments were issued, FEA provided in the operative language thereof that the amendments would take effect March 1, 1977 unless disapproved by either House of Congress or withdrawn by the President prior to Congressional approval or disapproval during the 15-day period provided for Congressional review by the EPCA.

Notice was thereby given that these amendments were still subject to possible rescission before the completion of the 15-day review period. Thus, the rulemaking proceeding which FEA initiated on the exemption of motor gasoline from its regulations was, to this extent, continued in awareness of the fact that the new Administration might determine that further consideration would be necessary. The President has made such a determination and, therefore, FEA is now hereby rescinding the amendments issued January 19, 1977, and not yet approved or disapproved by the Congress. By this action, FEA has, in effect, withdrawn Energy Actions Nos. 8 and 9 from the process of Congressional review under section 551 of the EPCA.

Since this rescission is a continuation of a pending rulemaking proceeding, FEA is not required to provide prior notice and opportunity for comment with respect to this action. Requirements with respect to notice to the Administrator of the Environmental Protection Agency, evaluation of inflationary impact and providing an opportunity for oral comment likewise do not apply to this action because they were met in connection with the notice of proposed rulemaking and public hearing issued November 19, 1976 (41 FR 51332, November 24, 1976).

(Emergency Petroleum Allocation Act of 1973, Pub. L. 93-159, as amended, Pub. L. 93-511, Pub. L. 94-99, Pub. L. 94-133, Pub. L. 94-163, and Pub. L. 94-385; Federal Energy Administration Act of 1974, Pub. L. 93-275, as amended, Pub. L. 94-385; Energy Policy and Conservation Act, Pub. L. 94-163, as amended, Pub. L. 94-385; E.O. 11790, 39 FR 23185; E.O. 11933, 41 FR 36641).

In consideration of the foregoing, the amendments to Parts 210, 211 and 212 of Chapter II, Title 10 of the Code of Federal Regulations, issued January 19, 1977 (42 FR 4416, 42 FR 4419, January 25, 1977), to exempt motor gasoline from price and allocation controls are hereby rescinded in their entirety, effective immediately.

Issued in Washington, D.C., January 24, 1977.

DAVID G. WILSON,
Acting General Counsel.

[FR Doc.77-2685 Filed 1-24-77;3:30 pm]

Title 14—Aeronautics and Space

CHAPTER I—FEDERAL AVIATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Docket No. 75-CE-22-AD; Amdt. 39-2817]

PART 39—AIRWORTHINESS DIRECTIVES

Beech Model 200 Airplanes

A proposal to amend Part 39 of the Federal Aviation Regulations to include an Airworthiness Directive (AD) applicable to Beech Model 200 airplanes was published in the FEDERAL REGISTER on September 8, 1975 (40 FR 41537). The proposed AD, if adopted, would require replacement of presently installed circuit boards in the secondary low pitch stop amplifier with those of improved design to preclude unintentional propeller feathering.

Interested persons have been afforded an opportunity to participate in the making of the amendment. No adverse comments were received.

Subsequent to the issuance of the proposal it has been determined that the secondary low pitch stop system may be removed from airplanes having a revised reversing system incorporated on Pratt and Whitney PT6A-27 and later model engines which are installed in Beech Model 200 airplanes. Accordingly, the FAA believes that the Final Rule should permit removal of the secondary low pitch stop system as an alternate means of compliance.

With respect to the modification specified in the Notice of Proposed Rule Making the airplane manufacturer subsequently superseded and cancelled Service Instruction 0745-354 which covered this modification. However, the FAA considers airplanes modified in accordance with this service instruction airworthy and this modification is being retained in the Final Rule as an alternate means of compliance.

Finally, the FAA has been advised that Beech Model 200, Serial Numbers BB-3, BB-4 and BB-5 airplanes are special configuration military airplanes that are not expected to be presented for civil certification. Therefore these three airplanes are being deleted from the applicability statement in the Final Rule.

Although this amendment modifies the original proposal, it is relieving in nature and is in the interest of safety. Accordingly, no further notice and public procedure hereon are necessary.

NOTE.—The FAA has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107.

In consideration of the foregoing and pursuant to the authority delegated to me by the Administrator, 14 CFR 11.89 (31 FR 13697), § 39.13 of Part 39 of the Federal Aviation Regulations is amended by adding the following new AD.

BEECH. Applies to Model 200 (Serial Numbers BB-2, BB-6 thru BB-18 and BB-20 thru BB-50) airplanes.

Compliance: Required within 100 hours' time in service after the effective date of this AD, unless already accomplished.

To prevent unintentional feathering of a propeller due to failure of the secondary low pitch stop amplifier, accomplish either Paragraph A or B:

(A) Replace both P/N 101-364171-1 and P/N 101-364171-9 printed circuit board assemblies with P/N 101-364170-15 printed circuit board assemblies in accordance with Beechcraft Service Instruction No. 0745-354, notwithstanding its supersedence by Beechcraft Service Instruction No. 0808-247.

(B) Remove secondary low pitch stop system in accordance with Beechcraft Service Instruction No. 0808-247, or later approved revisions.

(C) Airplanes which have accumulated 100 hours' time in service after the effective date of this AD may be flown in accordance with FAR 21.197 to a place where a replacement or removal can be performed, providing the existing amplifiers have not malfunctioned.

(D) Any equivalent method of compliance with this AD, must be approved by the Chief, Engineering and Manufacturing Branch, FAA, Central Region.

NOTE.—The manufacturer has advised the FAA that sufficient replacement parts are available to accomplish Paragraph A of this AD.

This amendment becomes effective March 1, 1977.

(Secs. 313(a), 601 and 603 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 and 1423), and of Section 6(c) of the Department of Transportation Act (49 U.S.C. 1655 (c)))

Issued in Kansas City, Missouri, on January 17, 1977.

C. R. MELUGIN, JR.,
Director, Central Region.

[FR Doc.77-2612 Filed 1-26-77;8:45 am]

[Docket No. 76-EA-79; Amdt. 39-2816]

PART 39—AIRWORTHINESS DIRECTIVE

Piper Aircraft

The Federal Aviation Administration is amending § 39.13 of Part 39 of the Federal Aviation Regulations so as to issue an airworthiness directive applicable to Piper PA 36-285 type airplanes.

There has been a report that the wing front and rear spar attachment plates were found to have enlarged bolt holes and slight bearing load effects were observed on the bolts.

The foregoing constitutes a hazard and therefore an airworthiness directive is being issued, which will require a repetitive inspection and alteration if necessary.

Since the foregoing affects air safety, notice and public procedure hereon are impractical and good cause exists for making the directive effective in less than 30 days.

It has been determined that the expected impact of the proposed regulation is so minimal that the proposal does not warrant an evaluation.

In consideration of the foregoing and pursuant to the authority delegated to me by the Administrator, 14 CFR 11.89 [31 FR 13697] § 39.13 of Part 39 of the Federal Aviation Regulations is amended by issuing a new airworthiness directive as follows:

PIPER: Applies to Model PA-36-285, Serial Nos. 36-7360003 through 36-7560044 certificated in all categories except aircraft incorporating Piper Kit Part Number 760 933.

To prevent possible hazards in flight associated with elongation of bolt holes at the forward and/or aft wing attachment fittings, accomplish the following:

(a) Within the next 50 hours in service from the effective date of this AD or upon the attainment of 500 total hours in service which ever is later unless previously accomplished within the past 500 hours in service, and at intervals not to exceed 500 hours in service from the last inspection, inspect and alter, if necessary, the forward and/or aft wing attachment fittings in accordance with the instructions section of Piper Service Bulletin No. 471A dated July 16, 1976, or equivalent.

(b) Upon the incorporation of Wing Fitting Modification Kit, Piper Part Number 760 933 or equivalent, compliance with the requirements of this AD may be dispensed with.

(c) Equivalent inspections and repairs must be approved by the Chief, Engineering and Manufacturing Branch, FAA, Eastern Region.

(d) Upon submission of substantiating data by an owner or operator through an FAA Maintenance Inspector, the Chief, Engineering and Manufacturing Branch, FAA, Eastern Region may adjust the inspection intervals specified in this AD.

NOTE.—The Federal Aviation Agency has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107.

This amendment is effective January 28, 1977.

(Secs. 313(a), 601 and 603 of the Federal Aviation Act of 1958 [49 U.S.C. 1354(a), 1421 and 1423], and section 6(c) of the Department of Transportation Act [49 U.S.C. 1655(c)])

Issued in Jamaica, N.Y., on January 14, 1977.

L. J. CARDINALI,
Acting Director, Eastern Region.

[FR Doc.77-2613 Filed 1-26-77;8:45 am]

[Docket No. 75-NE-35, Amdt. 39-2814]

PART 39—AIRWORTHINESS DIRECTIVES

Pratt & Whitney JT8D Aircraft Engines

A proposal to amend § 39.13 of Part 39 of the Federal Aviation Regulations, Amendment 39-2099 (39 FR 7626), AD 75-05-06, as amended by Amendment 39-2604 (41 FR 19619) to require retorquing within 1500 hours time in service of all fuel manifold "B" nuts that have not been retorqued in service was published in the FEDERAL REGISTER on November 1, 1976 (41 FR 47947).

Interested persons have been afforded the opportunity to fully participate in the making of this amendment. Comments were received from the Air Transport Association (ATA) in response to the notice. The commentator suggested that the requirement to retorque, within 1500 hours time in service, all fuel manifold "B" nuts that had been quadruple torqued at manufacture is unreasonable and would impose an unnecessary burden and loss of service to the public. The ATA recommended a retroque at 2500 hours in lieu of the 1500 hours. The commentator based the recommendation on the improved failure statistics of the quadruple torqued "B" nuts (at manufacture) versus the single or double torqued "B" nuts, the success of the individual carrier inspection programs and finally the lack of evidence that safety of flight was affected.

Subsequent to the ATA comments on this subject, an operator experienced a "B" nut leak and resultant fire on an engine which was quadruple torqued at manufacture. The fire resulted in an inflight shutdown, and due to the severe nature of the fire, ground fire extinguishing assistance was required. The engine had been operating under a fuel flow monitoring inspection program.

Based on evaluation of the data submitted by the commentator and in view of the above cited incident, the proposed amendment will be issued as originally proposed, requiring retorque within 1500 hours time in service on affected engines.

The Federal Aviation Administration has determined that this document does not contain a major proposal requiring preparation of an inflation impact statement under Executive Order 11821 and OMB Circular A-107.

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (31 FR 13697), § 39.13 of Part 39 of the Federal Aviation Regulations, Amendment 39-2099 (39 FR 7626), A.D. 75-05-06, as amended by Amendment 39-2604 (41 FR 19619) is further amended as follows:

A. Delete the words "were single or double torqued at original manufacture and" from the applicability paragraph.

B. Delete the words "torque" from Paragraph 1, and "torqued" from Paragraph 2, and insert the words "retorque" and "retorqued" respectively.

C. Delete the words "the effective date of this A.D., unless already accomplished" from Paragraph 1, and insert the words March 12, 1976, for fuel manifolds with "B" nuts which were single or double torqued at original manufacture and within the next 1500 hours time in service after the effective date of this amendment for fuel manifolds with "B" nuts which were quadruple torqued at original manufacture, unless already accomplished.

Issued in Burlington, Mass., on January 14, 1977.

This amendment becomes effective February 24, 1977.

QUENTIN S. TAYLOR,
Director, New England Region.

[FR Doc.77-2188 Filed 1-26-77;8:45 am]

[Airspace Docket No. 76-SO-101]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

Designation of Control Zone

On November 18, 1976, a Notice of Proposed Rulemaking was published in the FEDERAL REGISTER (41 FR 50841), stating that the Federal Aviation Administration was considering an amendment to Part 71 of the Federal Aviation Regulations that would designate the Sanford, Fla., control zone.

Interested persons were afforded an opportunity to participate in the rulemaking through the submission of comments. All comments received were favorable.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective 0901 G.M.T., April 21, 1977, as hereinafter set forth.

In § 71.171 (42 FR 355), the following control zone is added:

SANFORD, FLA.

Within a 5-mile radius of Sanford Airport (lat. 28°46'30" N., long. 81°14'25" W.); within 3 miles each side of the 259° bearing from the Sanford RBN (lat. 28°47'05" N., long. 81°14'36" W.), extending from the 5-mile radius zone to 8.5 miles west of the RBN. This control zone is effective from 0800 to 2100 hours, local time, daily.

(Sec. 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348(a)) and of Sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c))).

NOTE: The FAA has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107.

Issued in East Point, Ga., on January 17, 1977.

GEORGE R. LACAILLE,
Acting Director, Southern Region.

[FR Doc.77-2616 Filed 1-26-77;8:45 am]

[Docket No. 16422; Amdt. No. 1056]

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

Recent Changes and Additions

This amendment to Part 97 of the Federal Aviation Regulations incorporates by reference therein changes and additions to the Standard Instrument Approach Procedures (SIAPs) that were recently adopted by the Administrator to promote safety at the airports concerned.

The complete SIAPs for the changes and additions covered by this amendment are described in FAA Forms 8260-3, 8260-4, or 8260-5 and made a part of the public rule making dockets of the FAA in accordance with the procedures set forth in Amendment No. 97-696 (35 FR 5609).

SIAPs are available for examination at the Rules Docket and at the National Flight Data Center, Federal Aviation Administration, 800 Independence Avenue, S.W., Washington, D.C. 20591. Copies of SIAPs adopted in a particular region are also available for examination at the headquarters of that region. Individual copies of SIAPs may be purchased from the FAA Public Information Center, AIS-230, 800 Independence Avenue, S.W., Washington, D.C. 20591 or from the applicable FAA regional office in accordance with the fee schedule prescribed in 49 CFR 7.85. This fee is payable in advance and may be paid by check, draft, or postal money order payable to the Treasurer of the United States. A weekly transmittal of all SIAP changes and additions may be obtained by subscription at an annual rate of $150.00 per annum from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. Additional copies mailed to the same address may be ordered for $30.00 each.

Since a situation exists that requires immediate adoption of this amendment, I find that further notice and public procedure hereon is impracticable and good cause exists for making it effective in less than 30 days.

In consideration of the foregoing, Part 97 of the Federal Aviation Regulations is amended as follows, effective on the dates specified:

1. Section 97.23 is amended by originating, amending or canceling the following VOR-VOR/DME SIAPs, *effective March 10, 1977.*

South Lake Tahoe, CA—Lake Tahoe Arpt., VOR/DME-A, Amdt. 1
Greeley, CO—Weld County Municipal, VOR-A, Amdt. 4
Pocatello, ID—Pocatello Municipal, VOR Rwy 3, Amdt. 13
Pocatello, ID—Pocatello Municipal, VOR/DME Rwy 21, Amdt. 7
Brownwood, TX—Brownwood Municipal, VOR Rwy 17, Amdt. 6
Georgetown, TX—Georgetown Municipal, VOR/DME Rwy 35, Amdt. 3

* * * *effective March 3, 1977.*

Macomb, IL—Macomb Municipal, VOR/DME-A, Amdt. 1
Berkeley Springs, WV—Potomac Airpark, VOR Rwy 29, Amdt. 1
Cable, WI—Cable Union Arpt., VOR/DME-A, Amdt. 1
Superior, WI—Richard I. Bong Arpt., VOR Rwy 13, Amdt. 1

* * * *effective January 27, 1977.*

Pendleton, OR—Pendleton Municipal, VOR Rwy 7L, Amdt. 12

The FAA published amendments in Docket No. 16302, Amdt. No. 1050 to Part 97 of the Federal Aviation Regulations (31 FR 54166; December 13, 1976) under § 97.23, effective January 20, 1977, which are hereby amended as follows:

a. Orlando, FL—Orlando Jetport at McCoy, VOR Rwy 18L, Original is rescinded.
b. Orlando, FL—Orlando Jetport at McCoy, VOR Rwy 18L & 18R, Amdt. 3 cancellation is rescinded (Amdt. 3 remains in effect).

2. Section 97.25 is amended by originating, amending or canceling the following SDF-LOC-LDA SIAPs, *effective March 10, 1977.*

Bismarck, ND—Bismarck Municipal, LOC/DME(BC) Rwy 13, Amdt. 2
Harlingen, TX—Harlingen Industrial Airpark, LOC(BC) Rwy 35L, Amdt. 3

* * * *effective March 3, 1977.*

Elkins, WV—Elkins-Randolph County Jennings-Randolph Field, LDA-C, Amdt. 2

* * * *effective February 24, 1977.*

Hawthorne, CA—Hawthorne Municipal, LOC Rwy 25, Amdt. 1

3. Section 97.27 is amended by originating, amending, or canceling the following NDB/ADF SIAPs, *effective March 10, 1977.*

Bismarck, ND—Bismarck Municipal, NDB Rwy 31, Amdt. 24
Brigham City, UT—Brigham City Arpt., NDB Rwy 26, Amdt. 5

* * * *effective March 3, 1977.*

Macomb, IL—Macomb Municipal Arpt., NDB Hwy 26, Amdt. 5
Sturgis, KY—Sturgis Muni Arpt., NDB Rwy 36, Original
Defiance, OH—Defiance Memorial Arpt., NDB Rwy 12, Amdt. 5
Cable, WI—Cable Union Arpt., NDB-B, Amdt. 5

* * * *effective January 27, 1977.*

Pendleton, OR—Pendleton Municipal Arpt., NDB-A, Amdt. 1

4. Section 97.29 is amended by originating, amending, or canceling the following ILS SIAPs, *effective March 10, 1977.*

Little Rock, AR—Adams Field, ILS Rwy 22, Amdt. 1
Bismarck, ND—Bismarck Municipal Arpt., ILS Rwy 31, Amdt. 25

* * * *effective March 3, 1977.*

Hagerstown, MD—Hagerstown Regional, ILS Rwy 27, Amdt. 1

* * * *effective January 27, 1977.*

Pendleton, OR—Pendleton Municipal, ILS Rwy 25R, Amdt. 16

* * * *effective January 13, 1977.*

Hillsboro, OR—Portland-Hillsboro Arpt., ILS Rwy 12, Amdt. 2

5. Section 97.31 is amended by originating, amending, or canceling the following RADAR SIAPs, *effective March 3, 1977.*

Jackson, MS—Allen C. Thompson Field, RADAR-1, Amdt. 9

6. Section 97.33 is amended by originating, amending, or canceling the following RNAV SIAPs, *effective March 3, 1977.*

Dayton, OH—James M. Cox-Dayton Municipal, RNAV Rwy 6R, Amdt. 2
Cable, WI—Cable Union Arpt., RNAV Rwy 34, Amdt. 1

(Secs. 307, 313, 601, 1110, Federal Aviation Act of 1958; 49 U.S.C. 1438, 1354, 1421, 1510, and Sec. 6(c) Department of Transportation Act, 49 U.S.C. 1655(c))

Issued in Washington, D.C., on January 14, 1977.

JAMES M. VINES,
Chief,
Aircraft Programs Division.

NOTE: Incorporation by reference provisions in §§ 97.10 and 97.20 (35 FR 5610) approved by the Director of the Federal Register on May 12, 1969.

[FR Doc.77-2614 Filed 1-26-77;8:45 am]

[Docket No. 16435; Amdt. No. 1057]

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

Recent Changes and Additions

This amendment to Part 97 of the Federal Aviation Regulations incorporates by reference therein changes and additions to the Standard Instrument Approach Procedures (SIAPs) that were recently adopted by the Administrator to promote safety at the airports concerned.

The complete SIAPs for the changes and additions covered by this amendment are described in FAA Forms 8260-3, 8260-4, or 8260-5 and made a part of the public rule making dockets of the FAA in accordance with the procedures set forth in Amendment No. 97-696 (35 FR 5609).

SIAPs are available for examination at the Rules Docket and at the National Flight Data Center, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591. Copies of SIAPs adopted in a particular region are also available for examination at the headquarters of that region. Individual copies of SIAPs may be purchased from the FAA Public Information Center, AIS-230, 800 Independence Avenue, SW., Washington, D.C. 20591 or from the applicable FAA regional office in accordance with the fee schedule prescribed in 49 CFR 7.85. This fee is payable in advance and may be paid by check, draft, or postal money order payable to the Treasurer of the United States. A weekly transmittal of all SIAP changes and additions may be obtained by subscription at an annual rate of $150.00 per annum from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. Additional copies mailed to the same address may be ordered for $30.00 each.

Since a situation exists that requires immediate adoption of this amendment, I find that further notice and public procedure hereon is impracticable and good cause exists for making it effective in less than 30 days.

In consideration of the foregoing, Part 97 of the Federal Aviation Regulations is amended as follows, effective on the dates specified:

1. Section 97.23 is amended by originating, amending, or canceling the following VOR-VOR/DME SIAPs, *effective March 10, 1977.*

Middletown, DE—Summit Airpark, VOR-A, Amdt. 3
Freeport, IL—The Albertus Arpt., VOR Rwy 24, Amdt. 1
Pekin, IL—Pekin Municipal Arpt., VOR-A, Amdt. 2
Madison, IN—Madison Municipal Arpt., VOR/DME Rwy 3, Amdt. 2
Nappanee, IN—Nappanee Municipal Arpt., VOR-B, Original
Gaylord, MI—Otsego County, VOR Rwy 9, Amdt. 1
Gaylord, MI—Otsego County, VOR Rwy 27, Amdt. 5
Hallock, MN—Hallock Municipal Arpt., VORTAC Rwy 31, Amdt. 1
St. Charles, MO—St. Charles Arpt., VOR Rwy 9, Original
St. Charles, MO—St. Charles Arpt., VOR-B, Amdt. 1, cancelled
St. Joseph, MO—Rosecrans Memorial Arpt., VOR Rwy 17, Amdt. 10
Rocky Mount, NC—Rocky Mount-Wilson Arpt., VOR/DME Rwy 22, Amdt. 5
Shelby, OH—Shelby Community Arpt., VOR-A, Amdt. 2
Bartlesville, OK—Frank Phillips Arpt., VOR Rwy 17, Amdt. 8
Bartlesville, OK—Frank Phillips Arpt., VOR/DME Rwy 35, Amdt. 3
Ashland, WI—John F. Kennedy Memorial Arpt., VOR Rwy 2, Amdt. 1
Ashland, WI—John F. Kennedy Memorial Arpt., VOR Rwy 31, Amdt. 1
Oshkosh, WI—Wittman Field, VOR Rwy 27 Amdt. 1

* * * *effective January 12, 1977.*

Clinton, OK—Clinton-Sherman Airport, VOR Rwy 35L, Amdt. 3

2. Section 97.25 is amended by originating, amending, or canceling the following SDF-LOC-LDA SIAPs, *effective March 10, 1977.*

St. Joseph, MO—Rosecrans Memorial Arpt., LOC(BC) Rwy 17, Amdt. 4

* * * *effective January 12, 1977.*

Clinton, OK—Clinton-Sherman Airport, LOC (BC) Rwy 17R, Amdt. 3

3. Section 97.27 is amended by originating, amending, or canceling the following NDB/ADF SIAPs, *effective March 10, 1977.*

Freeport, IL—The Albertus Arpt., NDB Rwy 24, Amdt. 5
Madison, IN—Madison Municipal Arpt., NDB Rwy 3, Amdt. 3
Alpena, MI—Phelps-Collins Arpt., NDB Rwy 18, Amdt. 10
Alpena, MI—Phelps-Collins Arpt., NDB Rwy 36, Amdt. 1
St. Joseph, MO—Rosecrans Memorial Arpt., NDB Rwy 17, Amdt. 5
St. Joseph, MO—Rosecrans Memorial Arpt., NDB Rwy 35, Amdt. 25
Rockingham, NC—Rockingham-Hamlet Arpt., NDB Rwy 31, Original
Ashland, WI—John F. Kennedy Memorial Arpt., NDB Rwy 2, Amdt. 5

* * * *effective February 24, 1977.*

Rocky Mount, NC—Rocky Mount-Wilson Arpt., NDB Rwy 4, Original

* * * *effective February 10, 1977.*

Magnolia, AR—Magnolia Municipal Arpt., NDB Rwy 35, Original
Rutherfordton, NC—Rutherford County Arpt., NDB Rwy 36, Original

* * * *effective February 3, 1977.*

Casey, IL—Casey Municipal Arpt., NDB Rwy 4, Original

* * * *effective January 12, 1977.*

Clinton, OK—Clinton-Sherman Airport, NDB Rwy 17R, Amdt. 3

4. Section 97.29 is amended by originating, amending, or canceling the following ILS SIAPs, *effective March 10, 1977.*

Alpena, MI—Phelps-Collins Arpt., ILS Rwy 36, Amdt. 1
St. Joseph, MO—Rosecrans Memorial Arpt., ILS Rwy 35, Amdt. 25
Columbia, SC—Columbia Metropolitan Arpt., ILS Rwy 29, Amdt. 1

* * * *effective February 24, 1977.*

Rocky Mount, NC—Rocky Mount-Wilson Arpt., ILS Rwy 4, Amdt. 5

* * * effective January 12, 1977.

Clinton, OK—Clinton-Sherman Airport, ILS Rwy 35L, Amdt. 3

5. Section 97.31 is amended by originating, amending, or canceling the following RADAR SIAPs, *effective February 10, 1977.*

Savannah, GA—Savannah Municipal Arpt., RADAR-1, Original
Savannah, GA—Savannah Municipal Arpt., RADAR-A, Amdt. 6, cancelled

6. Section 97.33 is amended by originating, amending, or canceling the following RNAV SIAPs, *effective March 10, 1977.*

Pekin, IL—Pekin Municipal Arpt., RNAV Rwy 9, Amdt. 1
Burlington, IA—Burlington Municipal Arpt., RNAV Rwy 18, Amdt. 1
Parsons, KS—Tri City Arpt., RNAV Rwy 17, Amdt. 1

Parsons, KS—Tri City Arpt., RNAV Rwy 35, Amdt. 1
St. Joseph, MO—Rosecrans Memorial Arpt., RNAV Rwy 17, Amdt. 2

(Secs. 307, 313, 601, 1110, Federal Aviation Act of 1958; 49 U.S.C. 1438, 1354, 1421, 1510, and Sec. 6(c) Department of Transportation Act, 49 U.S.C. 1655(c).)

Issued in Washington, D.C., on January 21, 1977.

JAMES M. VINES,
Chief,
Aircraft Programs Division.

NOTE.—Incorporation by reference provisions in §§ 97.10 and 97.20 (35 FR 5610) approved by the Director of the Federal Register on May 12, 1969.

[FR Doc.77-2615 Filed 1-26-77;8:45 am]

Title 16—Commercial Practices

CHAPTER II—CONSUMER PRODUCT SAFETY COMMISSION

PART 1012—MEETINGS: ADVANCE PUBLIC NOTICE, PUBLIC ATTENDANCE, AND RECORDKEEPING

Interim Rules

CROSS REFERENCE: For interim rules governing the procedures for making a determination to open or close a meeting of the Commissioners, the provisions for public announcement of such meetings and the provisions regarding recordkeeping for such meetings, effective January 27, 1977, see FR Doc. 77-2579 published in the Proposed Rules section of this issue.

Title 17—Commodity and Securities Exchanges

CHAPTER II—SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-13190]

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

Delegation of Authority to Director of Division of Corporation Finance

The Commission today announced the amendment, effective immediately, of its regulations governing delegation of authority to the Director of the Division of Corporation Finance (17 CFR 200.30-1) with respect to the Securities Exchange Act of 1934 ("Exchange Act") (15 U.S.C. 78a et seq., as amended by Pub. L. No. 94-29 (June 4, 1975)).

Section 3(a)(12) of the Exchange Act provides that the term "exempted security" or "exempted securities" includes, among others, "securities issued or guaranteed by corporations in which the United States has a direct or indirect interest as shall be designated for exemption by the Secretary of the Treasury as necessary or appropriate in the public interest or for the protection of investors." In accordance with the provisions of this section, the Secretary of the Treasury from time to time designates appropriate securities for exemption. Upon receipt of a letter from the Secretary of the Treasury, or from a Treasury Department official with delegated authority to act for the Secretary, designating securities as exempted securities under section 3(a)(12), the Commission authorizes publication of a release announcing the designation.

Inasmuch as these releases are of a routine nature and do not involve any policy considerations or novel questions, it is not necessary for the Commission to consider each Treasury Department designation announcement on an individual basis. Delegation of authority to the Director of the Division of Corporation Finance to issue these announcement releases will eliminate any delay caused by seeking Commission approval for release of the information and therefore will result in more timely notice to the public of the designation of a new exempted security.

To accomplish this delegation of authority, the Commission hereby amends 17 CFR 200.30-1 by adding a new paragraph (d)(9) to read as follows:

§ 200.30-1 Delegation of authority to Director of Division of Corporation Finance.

* * * * *

(d) * * *

(9) Upon receipt of a notification from the Secretary of the Treasury designating a security for exemption pursuant to section 3(a)(12), to issue public releases announcing such designation.

* * * * *

The Commission finds that the foregoing action relates solely to agency management and personnel and, accordingly, that notice and prior publication for comment under the Administrative Procedure Act (5 U.S.C. 553) are not necessary. This action, taken pursuant to Pub. L. 87-592, 76 Stat. 394 (15 U.S.C. 78d-1, 78d-2), becomes effective immediately.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

JANUARY 19, 1977.

[FR Doc.77-2678 Filed 1-26-77;8:45 am]

Title 19—Customs Duties

CHAPTER I—UNITED STATES CUSTOMS SERVICE, DEPARTMENT OF THE TREASURY

[T.D. 77-37]

PART 1—GENERAL PROVISIONS

Change in Customs Field Organization

In order to promote more efficient management within the Customs Service, it is desirable to transfer supervision over the Customs station at Los Ebanos, Texas, from the Hidalgo, Texas, Customs port of entry to the Rio Grande City, Texas, Customs port of entry.

Accordingly, § 1.3(d) of the Customs Regulations (19 CFR 1.3(d)) is amended by substituting "Rio Grande City," for "Hidalgo," in the column headed "Port of entry having supervision" in the list of Customs stations and ports of entry having supervision thereof.

(Sec. 1, 37 Stat. 434 (5 U.S.C. 301, 19 U.S.C. 1))

Because this amendment involves a matter relating to agency organization, it is exempt from the notice requirements of 5 U.S.C. 553.

Effective date: This amendment shall become effective February 28, 1977.

LEONARD LEHMAN,
Acting Commissioner of Customs.

Approved: January 17, 1977.

JERRY THOMAS,
Under Secretary of the Treasury.

[FR Doc.77-2665 Filed 1-26-77;8:45 am]

[T.D. 77-38]

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

Information Required on Manifest

On February 25, 1974, a notice of proposed rulemaking was published in the FEDERAL REGISTER (39 FR 7179), which proposed to amend § 4.93(c) of the Customs Regulations (19 CFR 4.93(c)) to permit empty vans, tanks, and barges, equipment for use with vans and tanks, empty instruments of international traffic, and stevedoring equipment and material to be manifested at the port of lading without including their identification numbers or symbols or other appropriate identifying data, provided the manifest includes a statement that the district director at the port of unlading will be presented with a statement at the time of entry of the vessel listing the identifying numbers or symbols or other appropriate identifying data for the articles to be unladen at that port.

This amendment was proposed because the loading of such articles on a foreign vessel for movement from one coastwise port to a second coastwise port is the last action prior to sailing and it is difficult for the carrier to list timely the number and symbol of each article without delaying the vessel. Furthermore, when a number of identical articles are being transported to two or more coastwise ports, it is sometimes not known which specific article will be unladen at which port, and identification by number or symbol on the manifest by port of destination results in a cumbersome operation.

In addition, the notice proposed to further amend § 4.93(c) to provide that violation of the requirements set forth in that section would be subject to applicable penalties under section 584, Tariff Act of 1930, as amended (19 U.S.C. 1584).

Interested persons were given 30 days from the date of publication of the notice to submit data, views, or arguments with respect to the proposed amendment. After consideration of the comment received, it has been determined that the proposed amendment should be adopted as set forth in the notice of proposed rulemaking.

Accordingly, the proposed amendment is adopted as set forth below.

Effective date: This amendment shall become effective February 28, 1977.

VERNON D. ACREE,
Commissioner of Customs.

Approved: January 17, 1977.

JERRY THOMAS,
Under Secretary of the Treasury.

Paragraph (c) of § 4.93 is amended to read as follows:

§ 4.93 Coastwise transportation by certain vessels of empty vans, tanks, and barges, equipment for use with vans and tanks; empty instruments of international traffic; stevedoring equipment and material; procedures.

* * * * *

(c) Any manifest required to be filed under this part by any foreign vessel shall describe any article mentioned in paragraph (a) of this section laden aboard and transported from one United States port to another, giving its identifying number or symbol, if any, or such other identifying data as may be appropriate, the names of the shipper and consignee, and the destination. The manifest shall also include a statement (1) that the articles specified in paragraph (a)(1) of this section are owned or leased by the owner or operator of the transporting vessel and are transported for his use in handing his cargo in foreign trade; or (2) that the stevedoring equipment and material specified in paragraph (a)(2) of this section is owned or leased by the owner or operator of the transporting vessel, or is owned or leased by the stevedoring company contracting for the lading or unlading of that vessel, and is transported without charge for his use in handling his cargo in foreign trade. If the district director at the port of lading is satisfied that there will be sufficient control over the coastwise transportation of the article without identifying it by number or symbol or such other identifying data on the manifest, he may permit the use of a manifest that does not include such information provided the manifest includes a statement, that the district director at the port of unlading will be presented with a statement at the time of entry of the vessel that will list the identifying number or symbol or other appropriate identifying data for the article to be unladen at that port. Applicable penalties under section 584, Tariff Act of 1930, as amended (19 U.S.C. 1584), shall be assessed for violation of this paragraph.

(R.S. 251, as amended, sec. 27, 41 Stat. 999, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624, 46 U.S.C. 883))

[FR Doc.77-2668 Filed 1-26-77;8:45 am]

[T.D. 77-36]

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

Late Filing of Generalized System of Preferences Certificate of Origin Form A

Pursuant to § 10.173(a) of the Customs Regulations (19 CFR 10.173(a)), the importer or consignee of a shipment of merchandise eligible for duty-free treatment under the Generalized System of Preferences, valued in excess of $250, is required to file with the district director of Customs at the time of entry a properly completed Certificate of Origin Form A (or an acceptable duplicate thereof) as evidence of the country of origin of the merchandise. If a properly completed Certificate of Origin Form A (or an acceptable duplicate thereof) is not produced at the time of entry, the entry will be accepted provided all other applicable requirements are met and the importer or consignee gives a bond on Customs Form 7551, 7553, or 7595 for the subsequent production of the Certificate of Origin.

However, pursuant to § 10.112 of the Customs Regulations (19 CFR 10.112), whenever a free entry or a reduced duty document, form, or statement required to be filed in connection with the entry is not filed at the time of the entry or within the period for which a bond was filed for its production, but failure to file it was not due to willful negligence or fraudulent intent, such document, form, or statement may be filed at any time prior to liquidation of the entry or, if the entry was liquidated, before the liquidation becomes final.

Inasmuch as § 10.112 of the Customs Regulations permits the late filing of other free entry and reduced duty documents, it has been concluded that the requirement that the Certificate of Origin be filed only at the time of entry or within the period for which a bond was filed for its subsequent production is unduly restrictive. Accordingly, it has been determined that the late filing provisions of § 10.112 of the Customs Regulations should be made applicable to the filing of the Certificate of Origin by amending § 10.173(a) of the Customs Regulations to provide that the certificate be filed in connection with the entry, rather than at the time of entry.

Pursuant to § 10.172 of the Customs Regulations (19 CFR 10.172), a written claim for duty-free entry is required to be filed on the entry document by placing the symbol "A" as a prefix to the Tariff Schedules of the United States Annotated item number for each article for which such treatment is claimed. In order to make it clear that the failure to properly place the symbol "A" on the entry document does not preclude the importer or consignee from filing the Certificate of the Origin subsequent to the time of entry in accordance with § 10.112 of the Customs Regulations, it has been determined that the late filing of the certificate in accordance with that section should constitute the written claim for duty-free entry.

Accordingly, Part 10 of the Customs Regulations (19 CFR Part 10) is amended in the following manner:

The second sentence of § 10.172 is amended to read as follows:

§ 10.172 Claim for exemption from duty under the Generalized System of Preferences.

* * * If duty-free treatment is claimed at the time of entry, a written claim shall be filed on the entry document by placing the symbol "A" as a prefix to the Tariff Schedules of the United States Annotated item number for each article for which such treatment is claimed. If duty-free treatment is claimed subsequent to the time of entry in accordance with § 10.112, the filing of the Certificate of Origin, or a duplicate thereof as described in § 10.173(a)(2), shall constitute the written claim.

The first sentence of paragraph (a)(1), and the first sentence of paragraph (a)(2) of § 10.173 are amended to read as follows:

§ 10.173 Evidence of the country of origin.

(a) *Shipments valued in excess of $250.*—(1) *Certificate of Origin.* Except as provided in paragraph (a)(5) of this section, the importer or consignee of a shipment of eligible merchandise valued in excess of $250 shall file with the district director in connection with the entry the Generalized System of Preferences Certificate of Origin Form A, as evidence of the country of origin. * * *

(2) *Duplicate Certificate of Origin.* In the event of the loss, theft, or destruction of a Certificate of Origin, the district director will accept in connection with the entry a duplicate Certificate of Origin issued by the appropriate governmental body in the country of origin and endorsed with the word "duplicate" in box 4. * * *

Inasmuch as the foregoing amendments merely relax present requirements and place no affirmative duty or burden on the public, prior notice and public procedure thereon is unnecessary and good cause is found for dispensing with the delayed effective date provision of 5 U.S.C. 553.

Effective date: These amendments shall be effective January 27, 1977.

VERNON D. ACREE,
Commissioner of Customs.

Approved: January 17, 1977.

JERRY THOMAS,
Under Secretary of the Treasury.

[FR Doc.77-2667 Filed 1-26-77;8:45 am]

[T.D. 77-35]

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

Reimbursement for Overtime Services

In accordance with section 5 of the Act of February 13, 1911, as amended (19 U.S.C. 267), and section 451 of the Tariff Act of 1930, as amended (19 U.S.C. 1451), § 24.16 of the Customs Regulations (19 CFR 24.16) provides that parties requesting overtime services by Customs employees are required to reimburse Customs for the amount of overtime compensation paid to the employees performing the services. For Customs purposes, "overtime services" are those performed on Sundays or holidays, or on weekdays, before the hours of 8:00 a.m. or after 5:00 p.m., or between the corresponding weekday hours where the regular hours

for the transaction of Customs business are other than 8:00 a.m. to 5:00 p.m.

In the case of Customs services performed in connection with the arrival or departure of private vessels and aircraft, section 53(a) of the Airport and Airway Development Act of 1970, as amended (49 U.S.C. 1741(a)), limits the amount of reimbursements to $25.00. In the case of inspectional services performed as a consequence of the operation of aircraft generally, section 53(e) of that Act limits the amount of reimbursement for such services performed during regularly-established hours of service on Sundays or holidays to the amount that would have been charged had they been performed during regularly-established hours of service on weekdays. The provisions of section 53(e) will become effective on January 1, 1977.

As written, § 24.16 of the Customs Regulations does not reflect the provisions of section 53 of the Airport and Airway Development Act of 1970, as amended (49 U.S.C. 1741). Therefore, it is necessary to amend § 24.16 to provide that charges for Customs overtime services shall be made, where appropriate, in accordance with that Act, and in particular, that no such charges for overtime shall be made to owners or operators of aircraft for services performed on Sundays or holidays between the hours of 8:00 a.m. and 5:00 p.m. (effective January 1, 1977). Inasmuch as the latter services will be provided without charge, § 24.16 is also amended to provide that the required application for such services need not be accompanied by a cash deposit or bond.

Accordingly, § 24.16 of the Customs Regulations (19 CFR 24.16) is amended in the following manner:

§ 24.16 [Amended]

Paragraph (a) of § 24.16 is amended to read as follows:

(a) *General.* Customs services for which overtime compensation is provided for by section 5 of the Act of February 13, 1911, as amended (19 U.S.C. 267), or section 451, Tariff Act of 1930, as amended (19 U.S.C. 1451), shall be furnished only upon compliance with the requirements of those statutes for applying for such services and giving security for reimbursement of the overtime compensation, unless the compensation is nonreimbursable under the said section 451, or section 53 of the Airport and Airway Development Act of 1970, as amended (49 U.S.C. 1741). Reimbursements of overtime compensation shall be collected by the district director from the applicants for the services. Customs employees shall not receive overtime compensation for services performed on regular tours of duty at night, but no regular tour of duty shall embrace any part of a Sunday or holiday if the services performed are such that extra compensation would be payable if performed at the request of a private interest. Reimbursable overtime services shall not be furnished to an applicant who fails to cooperate with the Customs Service by filing a timely application therefor during regular hours of business when the need for the services can reasonably by foreseen, nor in any case until the maximum probable reimbursement is adequately secured.

Paragraph (c)(1) of § 24.16 is amended to read as follows:

* * * * *

(c) *Application and bond.* (1) Except as provided for in subparagraphs (2) and (4) of this paragraph, an application for services of Customs employees at night or on a Sunday or holiday, Customs Form 3171, supported by the required cash deposit or bond, shall be filed in the office of the district director of Customs before the assignment of such employees for reimbursable overtime services. The cash deposit to secure reimbursement shall be fixed by the district director or his authorized representative in an amount sufficient to pay the maximum probable compensation and expenses of the Customs employees, or the maximum amount which may be charged by law, whichever is less, in connection with the particular services requested. The bond to secure reimbursement shall be on Customs Form 7597 or 7599 and in an amount to be fixed by the district director, unless another bond containing a provision to secure reimbursement is on file. A bond given on Customs Form 7597 to secure the payment of overtime services rendered private aircraft and private vessels shall be taken without surety or cash deposit in lieu of surety, and the bond shall be modified to so indicate.

* * * * *

Paragraph (c)(3) of § 24.16 is amended by substituting "timely" for "seasonably" where it appears in the second sentence of that paragraph.

Paragraph (c) of § 24.16 is amended by the addition of a new subparagraph (4) to read as follows:

* * * * *

(c) * * *

(4) Inspectional services will be provided to owners or operators of aircraft without charge for overtime on Sundays and holidays between the hours of 8:00 a.m. and 5:00 p.m. Applications for inspectional services for aircraft during those hours shall be filed as set forth in subparagraph (1) of this paragraph, but without cash deposit or bond.

(R.S. 251, as amended, sec. 624, 46 Stat. 759, (5 U.S.C. 301, 19 U.S.C. 66, 624))

Inasmuch as these amendments merely conform the Customs Regulations to provisions of the law limiting the reimbursement of certain Customs overtime charges, and because these amendments require no public initiative, notice and public procedure thereon is found to be unnecessary. In addition, with respect to the amendments to paragraphs (a) and (c) (1) and (3) of § 24.16, good cause is found for those amendments to become effective at the earliest possible date.

Effective date: The amendments to paragraphs (a) and (c) (1) and (3) of § 24.16 shall become effective January 27, 1977. The amendment to paragraph (c) (4) of § 24.16 shall become effective January 1, 1977.

LEONARD LEHMAN,
Acting Commissioner of Customs.

Approved: January 17, 1977.

JERRY THOMAS,
Undersecretary of the Treasury.

[FR Doc.77-2666 Filed 1-26-77;8:45 am]

Title 24—Housing and Urban Development

SUBTITLE A—OFFICE OF THE SECRETARY, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. R-77-339]

PART 35—LEAD-BASED PAINT POISONING PREVENTION IN CERTAIN RESIDENTIAL STRUCTURES

Amendments of Definitions in Subparts A and B and Addition of New Subpart F (Prohibition Against the Use of Lead-Based Paint in Federal and Federally Assisted Construction of Residential Structures)

The Department of Housing and Urban Development (HUD) published as a final rule Subparts A through E of this Part on July 13, 1976, at 41 FR 28876-28881, in order to implement the provisions of section 302 of the Lead-Based Paint Poisoning Prevention Act, Pub. L. 91-695, as amended, (42 U.S.C. 4801 et seq), hereinafter referred to as "the Act."

On June 23, 1976, section 501(3) of the Act (42 U.S.C. 4841(3)) was amended by the National Consumer Health Information and Health Promotion Act of 1976, Pub. L. 94-317, 94th Congress, to change the definition of Lead Based Paint, as follows:

[(c)(1) section 501(3) of such Act (42 U.S.C. 4841(3) is amended to read as follows:

(3)(A) Except as provided in subparagraph (B), the term 'lead based paint' means any paint containing more than five-tenths of 1 per centum lead by weight (calculated as lead metal) in the total nonvolatile content of the paint, or the equivalent measure of lead in the dried film of paint already applied, or both.

(B)(i) The Consumer Product Safety Commission shall, during the six-month period beginning on the date of the enactment of the National Health Promotion and Disease Prevention Act of 1976, determine, on the basis of available data and information and after providing opportunity for an oral hearing and considering recommendations of the Secretary of Health, Education, and Welfare (including those of the Center for Disease Control) and of the National Academy of Sciences, whether or not a level of lead in paint which is greater than six one-hundredths of 1 per centum but not in excess of five-tenths of 1 per centum is safe. If the Commission determines, in accordance with the preceding sentence, that another level of lead is safe, the term 'lead-based paint' means, with respect to paint which is manufactured after the expiration of the six-month period beginning on the date of the Commission's determination, paint containing by weight (calculated as lead metal) in the total nonvolatile content of the paint more than the level of lead determined by the Commission to be safe or the equivalent measure of lead in the dried film of paint already applied, or both.]

Pursuant to this provision, the Consumer Product Safety Commission ruled

on December 17, 1976 that "available scientific information is insufficient to support a finding that a level of lead in paint above 0.06 of 1 percent is safe." Consequently, the term lead-based paint will mean, with respect to paint which is manufactured after June 22, 1977, any paint containing more than six one-hundredths of 1 per centum lead by weight (calculated as lead metal) in the total nonvolatile content of the paint, or the equivalent measure of lead in the dried film of paint already applied or both.

In accordance with the statutory amendment and the Consumer Product Safety Commission's determination, the Department is hereby amending certain definitions in Subparts A and B to conform to the statutory definition. The two definitions affected are the definition of "Act" in Subpart A and the definition of "Lead-Based Paint" in Subpart B.

In addition, section 401 of the Act was amended by Pub. L. 94-317, to provide that the Secretary of Housing and Urban Development shall take appropriate action to prohibit the use of lead-based paint in Federal and Federally-assisted construction or rehabilitation of residential structures. The purpose of the amendment was to designate HUD to replace the Department of Health, Education and Welfare (HEW), which previously had this responsibility, and the new Subpart F implements this change in statutory designation.

These amendments to the definitions and the new Subpart F of Part 34 are hereby published as a final rule. No purpose would be served by publishing these provisions as proposed rulemaking since the only amendments are those necessary to incorporate definitional provisions of Pub. L. 94-317 and to specify that the Secretary of Housing and Urban Development will replace the Secretary of Health, Education and Welfare as the appropriate official to enforce Section 401 of the Lead-Based Paint Poisoning Prevention Act.

The Department has determined that an Environmental Impact Statement is not required with respect to this amended rule. A copy of the Finding of Inapplicability is available for public inspection in the Office of the Rules Docket Clerk, Office of the Secretary, Room 10141, Department of Housing and Urban Development, 451 7th Street, SW, Washington, D.C. 20410.

NOTE.—The Department of Housing and Urban Development has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107.

Accordingly, Part 35 of Title 24 is amended by incorporating the following changes in Subparts A and B and by adding a new Subpart F, as follows:

1. In Subpart A, § 35.3, Definitions, revise paragraph (a) to read:

§ 35.3 Definitions.

(a) "Act" means the Lead-Based Paint Poisoning Prevention Act, Pub. L. 91-695, 84 Stat. 2078, as amended by Pub. L. 93-151 and Pub. L. 94-317 (42 U.S.C. 4801).

* * * * *

2. In Subpart B, § 35.12, Definitions, revise paragraph (a) to read:

§ 35.12 Definitions.

(a) "Lead-based paint" as defined in Section 501(3) of the Act as amended by Pub. L. 94-317 (42 U.S.C. 4801, et seq), the National Consumer Information and Health Promotion Act of 1976, means (1) any paint containing more than five-tenths of 1 per centum lead by weight (calculated as lead metal in the total non-volatile content of the paint or the equivalent measure of lead in the dried film of paint already applied or both; or (ii) with respect to paint which is manufactured after June 22, 1977 lead-based paint means any paint containing more than six one-hundredths of 1 per centum lead by weight (calculated as lead metal) in the total nonvolatile content of the paint or the equivalent measure of lead in the dried film of paint already applied.

* * * * *

3. Add Subpart F to read as follows:

Subpart F—Prohibition Against the Use of Lead-Based Paint in Federal and Federally-Assisted Construction or Rehabilitation of Residential Structures

Sec.
36.60 Scope.
36.61 Definitions.
36.62 Federal construction; prohibition against use of lead-based paint.
36.63 Federally assisted construction; prohibition against use of lead-based paint.
36.64 Reports to the Secretary.
36.65 Authority for Subpart B of these regulations.

Subpart F—Prohibition Against the Use of Lead-Based Paint in Federal and Federally-Assisted Construction or Rehabilitation of Residential Structures

§ 36.60 Scope.

The regulations of this Subpart are promulgated to implement Section 401 of the Lead-Based Paint Poisoning Prevention Act, as amended, which directs the Secretary of Housing and Urban Development to take such steps and impose such conditions as may be necessary or appropriate to prohibit the use of lead-based paint in residential structures constructed or rehabilitated by the Federal Government or with Federal assistance in any form. The regulations are applicable to all Federal agencies.

§ 35.61 Definitions.

The definitions contained in § 35.3 shall apply to this Subpart F and in addition the following definitions are applicable to this Subpart F:

(a) "Federal Agency" means the United States or any executive departments, independent establishments, administrative agencies and instrumentalities of the United States, including corporations in which all or substantially all of the stock is beneficially owned by the United States or by any of the foregoing departments, establishments, agencies or instrumentalities.

(b) "Agency Head" means the principal official of a Federal Agency and includes those persons duly authorized to act in his behalf.

(c) "Lead-based paint" as defined in Section 501(3) of the Act as amended by Pub. L. 94-317 (42 U.S.C. 4801 et seq), the National Consumer Information and Health Promotion Act of 1976, means (1) any paint containing more than five-tenths of 1 per centum lead by weight (calculated as lead metal) in the total non-volatile content of the paint or the equivalent measure of lead in the dried film of paint already applied or both; or (2) with respect to paint which is manufactured after June 22, 1977 lead-based paint means any paint containing more than six one-hundredths of 1 per centum lead by weight (calculated as lead metal) in the total nonvolatile content of the paint or the equivalent measure of lead in the dried film of paint already applied.

§ 36.62 Federal construction; prohibition against use of lead-based paint.

No Federal agency shall, in any residential structure constructed or rehabilitated by such agency, use or permit the use of lead-based paint on applicable surfaces.

§ 36.63 Federally assisted construction: prohibition against use of lead-based paint.

(a) Each Agency Head shall issue regulations and take such other steps as in his or her judgment are necessary to prohibit the use of lead-based paint on applicable surfaces of any residential structures constructed or rehabilitated by such agency under any federally assisted program.

(b) Such regulations shall require the inclusion of appropriate provisions in contracts and subcontracts pursuant to which such Federally assisted construction or rehabilitation is performed, prohibiting such use of lead-based paint, and shall include provisions for enforcement of that prohibition.

§ 36.64 Reports to the Secretary.

(a) To assist the Secretary in fulfilling her responsibilities under the Act, each Federal agency shall furnish to the Secretary, not later than 3 months after the effective date of these regulations, a report of the steps it has taken to comply with this Subpart F, Part 35.

(b) Each Federal agency shall submit such additional reports on its activities in the implementation of this part as may be deemed necessary by the Secretary.

§ 36.65 Authority for Subpart B of these regulations.

On or after the effective date of these amended regulations, Subpart F will serve as the authority for Subpart B of these regulations.

(Pub. L. 91-695, 84 Stat. 2078, as amended by Pub. L. 94-317 (42 U.S.C. 4801 et seq.);

sec. 7(d) Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).)

Effective date: February 25, 1977.

Issued at Washington, D.C., January 19, 1977.

JOHN B. RHINELANDER,
Under Secretary of Housing and Urban Development.

[FR Doc.77-2700 Filed 1-26-77;8:45 am]

[Docket No. R-77-241]

PART 42—RELOCATION PAYMENTS AND ASSISTANCE AND REAL PROPERTY ACQUISITION UNDER THE UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970

Eligibility for Relocation Payments—Section 8 of the United States Housing Act of 1937, as Amended

On February 20, 1975, revised guidelines amending Part 42 of the regulations of the Department of Housing and Urban Development implementing the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 were published at 40 FR 7206. These regulations became effective on March 31, 1975. § 42.55(d)(3) of those regulations, pertaining to basic eligibility conditions for persons displaced as a result of the Section 8 Housing Assistance Payments Program authorized by the United States Housing Act of 1937, as amended (50 Stat. 88; U.S.C. 1401 et seq.) provides that persons who, on or after the date of execution of an Annual Contributions Contract (ACC), move from a dwelling acquired by a public housing agency and satisfy the other eligibility criteria of the regulations in that Part, shall qualify for relocation payments. It has been brought to the attention of the Department that a more pertinent date for establishing Federal recognition of a HUD-assisted project for purposes of creating eligibility for relocation payments is the date of notification to the public housing agency that the final proposal is approved.

The Secretary has determined that it is impractical, unnecessary and contrary to the public interest to follow a notice of proposed rulemaking procedure and that good cause for making the revision effective on the date of publication exists.

In connection with the environmental review of the proposed revision to the regulations, a Finding of Inapplicability has been made under HUD Handbook 1390.1, 38 FR 19182. A copy of the Finding is available for inspection in the Office of the Rules Docket Clerk, Office of the Secretary, Room 10141, Department of Housing and Urban Development, 451 7th Street, SW, Washington, D.C. 20410.

NOTE.—It is hereby certified that the economic and inflationary impacts of this revision have been carefully evaluated in accordance with OMB Circular No. A-107.

This revision is issued under the authority of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601), and Section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

In consideration of the foregoing, 24 CFR 42.55(d)(3) is revised to read as follows:

§ 42.55 Basic eligibility conditions.

* * * * *

(d) * * *

(3) Housing assistance payments program: If such person moves from real property on or after the date of notification to the public housing agency that the final proposal is approved: *Provided*, That eligibility under the regulations in this Part shall be limited to cases in which a public housing agency itself acquires real property from such person is displaced.

Effective date: This revision shall be effective January 26, 1977.

JOHN B. RHINELANDER,
Under Secretary of Housing and Urban Development.

[FR Doc.77-2699 Filed 1-26-77;8:45 am]

CHAPTER II—OFFICE OF ASSISTANT SECRETARY FOR HOUSING—FEDERAL HOUSING COMMISSIONER (FEDERAL HOUSING ADMINISTRATION)

SUBCHAPTER A—GENERAL

[Docket No. R-77-450]

PART 200—INTRODUCTION

Redelegation With Respect to Fund Reservations Under Section 202 of the Housing Act of 1959, as Amended

The Department of Housing and Urban Development has determined that it would be more efficient and effective for both HUD and program applicants if field offices were redelegated authority to increase fund reservations for approved applications under section 202 of the Housing Act of 1959, as amended (12 USC 1701q). Therefore, §§ 200.109(a)(5), 200.118(e)(1), and 200.128 are amended to read as follows:

§ 200.109 Regional Administrators, Deputy Regional Administrators and Assistant Regional Administrator Housing Production and Mortgage Credit (Region VIII, Denver).

* * * * *

(a) * * *

* * * * *

(5) To make reservations of funds and to approve or disapprove loans for housing for the elderly or handicapped under section 202 of the Housing Act of 1959 and to make contracts and execute documents in connection therewith and, with respect to project applications for mortgage insurance under section 236 of the National Housing Act, to determine feasibility under section 236, issue commitments for mortgage insurance under section 236, insure such mortgases pursuant to such commitments, including approval of insured advances during construction, and in connection with section 202 loans to be converted to insured mortgages under section 236, to assign and deliver such mortgages to the permanent lender.

§ 200.118 Area Director and Deputy Area Director.

* * * * *

(e) * * *

(1) To make reservations of funds and to approve or disapprove loans for housing for the elderly or handicapped under section 202 of the Housing Act of 1959 and to make contracts and execute documents in connection therewith.

§ 200.128 Director and Deputy Director of the Insuring Offices.

To the position of Director, and under his general supervision to the position of Deputy Director, of each Insuring Office listed below, with respect to the production of housing units within the jurisdiction of the Insuring Office, there is redelegated the authority to perform the functions and exercise the authorities set forth in § 200.118 (c) and (e)(1).

Phoenix, AZ	Albuquerque, NM
Fresno, CA	Albany, NY
Sacramento, CA	Cincinnati, OH
Santa Ana, CA	Cleveland, OH
Denver, CO	Providence, RI
Springfield, IL	Memphis, TN
Des Moines, IA	Houston, TX
Topeka, KS	Salt Lake City, UT
Shreveport, LA	Spokane, WA
Grand Rapids, MI	Charleston, WV
Helena, MT	

Effective date: These amendments shall be effective as of January 17, 1977.

JOHN T. HOWLEY,
Acting Assistant Secretary for Housing — Federal Housing Commissioner.

[FR Doc.77-2692 Filed 1-26-77;8:45 am]

[Docket No. R-77-421]

PART 201—PROPERTY IMPROVEMENT AND MOBILE HOME LOANS

On November 23, 1976 a notice of proposed rulemaking was published in the FEDERAL REGISTER, 41 FR 51614, proposing amendments to Subtitle B of Title 24 of the Code of Federal Regulations, Chapter II, Subchapter B, Part 201, "Property Improvement and Mobile Home Loans."

The amendments require that mobile homes financed with loans under this part meet the requirements of the National Mobile Home Construction and Safety Standards Act of 1974 (Pub. L. 93-383, 42 U.S.C. 5401, et seq.) in effect at the time the mobile home is manufactured and revoke provisions of the regulations concerning factory inspection and private testing laboratories as these activities are now covered by the above standards.

Interested persons were invited to submit written data, views or statements not later than December 22, 1976.

Two comments were received. Both commenters indicated approval of the amendments. One of the commenters indicated that there might be some confusion by the public between these regulations and the regulations implementing the National Mobile Home Construction and Safety Standards Act of 1974. These regulations are solely concerned with the eligibility of mobile home loans under the National Housing Act and have no effect on regulations promulgated under the National Mobile Home Construction and Safety Standards Act of 1974.

A Finding of Inapplicability pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969, has been made with regard to these proposed regulations in accordance with HUD Handbook 1390.1. A copy of the Finding of Inapplicability is available for public inspection at the Office of the Rules Docket Clerk, Office of the Secretary, Room 10141, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410.

Accordingly, 24 CFR Part 201 is amended to read as follows:

1. Section 201.520(b) Structural design and standards is amended to read as follows:

§ 201.520 Structural design and standards.

* * * * *

(b) The requirements of paragraph (a) of this section shall be satisfied by a certification by the manufacturer that the mobile home conforms to all applicable Federal construction and safety standards in effect on the date the mobile home was manufactured. The certification shall be in the form of a label or tag affixed to the mobile home as prescribed in Section 616 of the National Mobile Home Construction and Safety Standards Act of 1974, Pub. L. 93-383, 42 U.S.C. 5401, 5415.

* * * * *

§ 201.521 [Revoked]

§ 201.522 [Revoked]

2. In consideration of the foregoing, § 201.521 Factory Inspection and § 201.522 Private testing organizations, are revoked.

(Sec. 7(d) 79 Stat. 670 (42 U.S.C. 3535(d)); sec. 2, 48 Stat. 1246 (12 U.S.C. 1703), as amended by Pub. L. 93-383.)

Effective date: This regulation shall be effective on February 28, 1977.

NOTE.—The Department of Housing and Urban Development has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107.

JOHN T. HOWLEY,
Acting Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc.77-2686 Filed 1-26-77;8:45 am]

[Docket No. R-77-405]

PART 201—PROPERTY IMPROVEMENT AND MOBILE HOME LOANS

Insurance of Financial Institutions

On August 3, 1976, a notice of proposed rulemaking was published in the FEDERAL REGISTER, 41 FR 32564-32567 stating that HUD was considering an amendment to subtitle B of Title 24 of the Code of Federal Regulations, Chapter II, subchapter B, Part 201, "Property Improvement and Mobile Home Loans", adding a new subpart D, "Combination and Mobile Home Lot Loans." The new subpart implements 309 (b)(2) and (d) of the Housing and Community Development Act of 1974, Pub. L. 93-383 which amended Title I of the National Housing Act, 12 U.S.C. 1703, to provide for insurance of financial institutions that make loans to finance the purchase of mobile home lots by present owners of mobile homes, and loans for the purchase of a mobile home lot and a mobile home in combination.

COMMENTS ON PROPOSED REGULATIONS

Interested persons were invited to submit written data, views, or statements. Twenty-one comments were received in response to this request. The majority of the comments related to the limitations on maximum terms. The 1974 amendments to Title I of the National Housing Act as amended (12 U.S.C. 1703) provide for a maximum term of 15 years and 32 days for a single-wide mobile home and a lot, and 20 years and 32 days for a mobile home consisting of two or more modules and a lot. The proposed regulations limited maxima for these loans to 12 years and 32 days, and 15 years and 32 days respectively. After taking into consideration the views and statements submitted, a determination has been made to set the maximum terms for these loans at the limits permitted under the Act.

Several commenters also objected to the exclusion of furniture from the financing package, and one commenter suggested that the regulations should contain a definition of furniture. After careful consideration, it was determined that the exclusion of furniture from financing is proper and necessary in view of the relatively long terms to be permitted under the program. A definition of furniture has been included in the regulations to make clear that wall-to-wall carpeting, major household appliances, stoves and air conditioners may be included in the financing package and will not be considered furniture.

A commenter questioned the definition of a mobile home (eligible for financing) which requires that a mobile home be at least 40 body feet or more in length, and 10 body feet or more in width, pointing out that the definition of a mobile home in the Mobile Home Construction and Safety Standards Act of 1974, 42 U.S.C. 5401, 5402, provides for dimensions of 8 body feet or more in width and 32 body feet or more in length. The Mobile Home Construction and Safety Standards Act applies to all mobile homes without regard to whether or not they are to be used as permanent residences. Title I of the National Housing Act, as amended, 12 U.S.C. 1703, imposes a statutory requirement that mobile homes financed pursuant to this part must be the permanent residence of the borrower. In implementing this requirement it is deemed necessary to exclude the financing of smaller mobile homes under the program. The final regulations provide for a minimum width of 12 body feet.

Several commenters suggested that a minimum size should be prescribed for a mobile home lot eligible for financing under this part. The lot must be acceptable to the Secretary as a mobile home site. Where local sanitary and zoning codes require minimum lot size, the lot must meet such code requirements in addition to the Secretary's requirements.

A suggestion was made that lots subject to a condominium agreement should be eligible. This requires further study to determine the conditions necessary for protection of the consumer and those factors affecting long term value. Accordingly, the prohibition of lots subject to a condominium agreement has been retained.

Several comments were made recommending that the maximum permissible interest rate be raised to permit a higher annual percentage rate. After careful study it was determined that an increase in the interest rate would not be warranted at this time.

A commenter suggested that in § 201.1512(a)(3)—now § 201.1512(b)—which deals with a purchase of a mobile home lot by the present owner of a mobile home, and requires that the borrower shall certify that he or she will place his or her mobile home on the lot acquired within six months after the date of the loan, the word "placed" be changed to "erected". Section 2(b) of Title I of the National Housing Act as amended (12 U.S.C. 1703(b)) provides that, "A mobile home lot loan may be made only if the owner certifies that he will place his mobile home on the lot acquired with such loan within six months after the date of such loan." In view of the use of the term "place" in the Act, that term has been retained in the regulations.

SUMMARY OF FINAL PROVISIONS

The final regulations provide for a maximum loan for the purchase of an undeveloped mobile home lot of $5,000. The maximum term for repayment would be 10 years and 32 days. The maximum loan for the purchase of a single-wide mobile home and a developed lot is $20,000 with a maximum term of 15 years and 32 days.

The maximum dollar amount allocated for the purchase of a developed mobile home lot is $7,500; the maximum term for repayment is 10 years and 32 days.

The maximum insurable loan for the purchase of a mobile home consisting of two or more modules and a developed lot is $27,500 with a maximum term of 20 years and 32 days. Mobile homes acquired pursuant to this subpart will be required to be built in accordance with the standards required by the regulations and procedures implementing the National Mobile Home Construction and Safety Standards Act of 1974, Pub. L. 93-383, 42 U.S.C. 5401, et seq.

Mobile home lots purchased will be appraised by an agent of the Secretary and insured lending institutions will be required to determine that marketable

title is vested in the borrower or borrowers.

Insured lenders will be required to obtain a first lien on the mobile home and the mobile home lot where both are secured with proceeds of the loan. When only the acquisition of a mobile home lot is being financed by a present owner of a mobile home, with a loan to be insured under the regulations being promulgated, the first lien need only be on the lot. The first lien on the mobile home and the mobile home lot, where state law permits, may be obtained in a single instrument. Where a chattel security and a real estate mortgage are necessary to obtain the requisite first lien or security interest both instruments will be required. For purposes of these regulations, where more than one legal instrument is necessary in order to effect a first lien on a mobile home and a mobile home lot, the transaction will nevertheless be considered to be a single loan transaction for purposes of this subpart.

The maximum interest rate eligible for insurance is 10½ percent per annum.

Insurance afforded to lending institutions under the promulgated regulations is subject to co-insurance as required by Title I of the National Housing Act. The Secretary's insurance liability is limited to 90 percent of the insured lender's loss on an individual loan up to the amount in the insured lender's general insurance reserve.

A Finding of Inapplicability respecting the National Environmental Policy Act of 1969 has been made in accordance with HUD procedures. A copy of this Finding of Inapplicability will be available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of the Secretary, Room 10141, Department of Housing and Urban Development, 451 7th Street, SW., Washington, D.C. 20410.

Accordingly, 24 CFR Part 201 is amended to read as follows:

1. In Part 201, § 201.12 paragraph (b) is amended to read as follows:

§ 201.12 Insurance reserve.

* * * * *

(b) There shall be maintained for each insured a general insurance reserve which shall equal 10 percent of the aggregate amount advanced on all eligible loans originated by such insured pursuant to the provisions of the regulations in Subpart A, B,*, D * * * of this part on or after March 1, 1950, and prior to the expiration of the Secretary's authority to insure under the provisions of this Act, less the amount of all claims approved for payment by the Secretary in connection with such loans and less the amount of any adjustment made pursuant to paragraph (c) of this section.

* * * * *

2. In Part 201 a new subpart D is added to read as follows:

Subpart D—Combination and Mobile Home Lot Loans

Sec.
201.1500 Incorporation by reference.
201.1501 Purpose.
201.1502 Definitions.

Loan Requirements

201.1503 Eligibility requirements.
201.1504 Maximum loan amounts and terms.
201.1505 Combination loans for the purchase of a mobile home and a developed or undeveloped lot.
201.1506 Loans for the purchase or acquisition of a lot.
201.1507 Title and lien requirements.
201.1508 Waived title objections.
201.1509 Fees and charges.
201.1510 Borrower's minimum investment.
201.1511 Financing charges.
201.1512 Mobile home lot certification.

Insurance Requirements

201.1513 Insurance reserve.
201.1514 Rate of insurance charge.

Default Under Mobile Home Obligation

201.1515 [Reserved].
201.1516 Date of default.
201.1517 Notice of default.
201.1518 Acquisition of property.
201.1519 Notice of foreclosure.
201.1520 Deed in lieu of foreclosure.
201.1521 Notice of acquisition of title.
201.1522 Disposition of property.

Claims

201.1525 Claim application.
201.1526 Amount of claim.
201.1527 Incontestability of claim payment.

Extension of Time

201.1528 Actions to be taken by insured lender.

Amendments

201.1530 Effect of amendments.

Authority: Sec. 7(d), 79 Stat. 670 (42 U.S.C. 3535(d); sec. 2, 48 Stat. 1246 (12 U.S.C. 1703), as amended by Pub. L. 93-383, and Pub. L. 94-173.

Subpart D—Combination and Mobile Home Lot Loans

§ 201.1500 Incorporation by reference.

All of the provisions of Subpart B of this part concerning insurance of institutions making mobile home loans shall be applicable to insurance of institution making mobile home lot loans and combination loans pursuant to this subpart except the following provisions:

Sec.
201.501(b)(1)(j) and (1) Definitions.
201.505 Purpose of subpart.
201.525 Mobile home location standards.
201.530 Maximum loan amount.
201.535 Borrower's minimum investment.
201.540 Financing charges.
201.625 Rate of insurance.
201.560 Maturity provisions.
201.585 Refinancing.
201.595(e) Dealer investigation approval and control.
201.665 Claim application.
201.675 Insurance reserve.
201.900 Amendment and effect.

§ 201.1501 Purpose.

The provisions of this subpart contain the requirements under which an approved financial institution may obtain insurance of combination loans (mobile home and lot) and mobile home lot loans.

§ 201.1502 Definitions.

As used in the regulations in this subpart the term—

(a) "Combination loan" means a loan for the purchase of a mobile home and a mobile home lot, in a single transaction.

(b) "Mobile home lot" means a parcel or portion of land acceptable to the Secretary as a mobile home site. The mobile home lot may be unplatted, or may be in a mobile home park, a recorded or unrecorded subdivision or planned unit development, but may not be subject to a condominium agreement.

(c) "Repossession" means a lawful foreclosure, recovery or acquisition of title to property (pursuant to provisions of a security agreement or mortgage) such as to enable the insured lender to convey marketable title to a third party.

(d) "Borrower" means a natural person who applies for and receives a loan for the purchase of a mobile home and a developed or undeveloped lot, or only for a developed or undeveloped mobile home lot.

(e) "Owner" means (1) a borrower who owns a mobile home at the time of application for a loan to finance, under this subpart, the purchase of a lot upon which to place that mobile home, or (2) a borrower who is purchasing a mobile home and a lot, under the provisions of this subpart.

(f) "Developed lot" means a lot with water and utility connections, sanitary facilities, appropriate driveways, concrete parking pad, slab, or masonry foundation, provisions for anchoring, and other improvements which are necessary to make the lot acceptable to the Secretary as a mobile home site.

(g) "Undeveloped lot" means a lot with water and utility connections, sanitary facilities, ingress and egress to the property.

(h) "Actuarial method" means the method of allocating payments made on a debt between the amount financed and the finance charge, pursuant to which a payment is applied first to the accumulated finance charge, and any remainder is subtracted from, or any deficiency is added to, the unpaid balance of the amount financed.

(i) "Manufacturer's invoice" means a document which is officially issued by the manufacturer stating the true wholesale price of a mobile home and its equipment, excluding furniture. The document shall be on a form which is in general use in the industry.

(j) "Mobile home" means a transportable structure which is twelve body feet or more in width and is forty body feet or more in length, and which is built on a permanent chassis, and designed to be used as a dwelling with or without permanent foundation, when connected to the required utilities, and includes the plumbing, heating, air conditioning and electrical systems contained therein. Where a mobile home is composed of two or more modules or sections, each module or section shall have a minimum floor space area of at least 400 square feet.

(k) "Furniture" means movable articles of personal property such as bed, bedding, chairs, sofas, divans, lamps, tables, television, radio or stereo sets, and other similar items of personal property; but furniture does not include wall-to-wall carpeting, refrigerators, ovens, ranges, dishwashers, clothes dryers, heating or cooling equipment or other similar appliances.

Loan Requirements

§ 201.1503 Eligibility requirements.

Loans shall be made only for financing, in combination, the purchase of a mobile home and a developed or undeveloped mobile home lot or a developed or undeveloped mobile home lot by the owner of a mobile home which mobile home is the principal residence of that owner. Furniture may not be included in the loan, or financed with the proceeds of the loan.

§ 201.1504 Maximum loan amounts and terms.

(a) Maximum insurable loan amounts and terms shall not exceed:

(1) $17,500 for 15 years and 32 days for the purchase of a single-wide mobile home and an undeveloped lot (but not to exceed $12,500 for the mobile homes).

(2) $20,000 for 15 years and 32 days for the purchase of a single-wide mobile home and a developed lot (but not to exceed $1 ,500 for the mobile home).

(3) $25,000 for 20 years and 32 days for the purchase of a mobile home composed of two or more modules and an undeveloped lot (but not to exceed $20,000 for the mobile home).

(4) $27,500 for 20 years and 32 days for the purchase of a mobile home composed of two or more modules and a developed lot (but not to exceed $20,000 for the mobile home).

(b) Maximum permissible loan amounts and terms for the purchase of a mobile home lot shall not exceed:

(1) $5,000 for 10 years and 32 days for the purchase of an undeveloped lot on which to place a mobile home owned by the borrower.

(2) $7,500 for 10 years and 32 days for the purchase of a developed lot on which to place a mobile home owned by the borrower.

(c) A loan may not exceed the Secretary's estimate of the value of the property purchased.

§ 201.1505 Combination loans for the purchase of a mobile home and a developed or undeveloped lot.

(a) A loan to purchase a mobile home and a developed or undeveloped lot on which such mobile home is placed shall be eligible for insurance: If,

(1) The borrower acquires title to such lot, which meets the requirements of § 201.1507;

(2) The loan is secured by a first lien;

(3) The lot is determined by the Secretary to be an acceptable mobile home site;

(b) Notwithstanding that the borrower's obligation for purchase or acquisition of the lot is evidenced and secured separately from his obligation for the purchase of the mobile home, the instrument evidencing both obligations shall constitute one loan for the purposes of this part.

(c) Any portion of the cost of the home and lot and the cost of improvements to the home or lot which will not be paid from the proceeds of the loan must be paid by the borrower in cash from his or her own resources.

§ 201.1506 Loans for the purchase or acquisition of a lot.

(a) A loan to finance the purchase by the borrower of a lot on which to place a mobile home owned by the borrower shall be eligible, *Provided*, That:

(1) The borrower acquires title to such lot, which meets the requirements of § 201.1507;

(2) The loan is secured by a first lien;

(3) The cost of the purchase of the lot, which will not be paid from the proceeds of the loan, is paid by the borrower in cash from his or her own resources;

(4) The borrower certifies that he or she owns a mobile home which is the borrower's principal residence;

(5) The borrower certifies that he or she will place his or her mobile home on the lot within six months after the date the loan is made;

(b) For the purposes of this subpart, purchase of a mobile home lot includes:

(1) The refinancing of the balance owed by the borrower as purchaser under an existing real estate installment purchase contract; or

(2) The refinancing of existing mortgage loans or other liens which are secured of record on a mobile home lot owned by the borrower.

§ 201.1507 Title and lien requirements.

(a) The interest in the realty constituting a mobile home lot purchased by the borrower wholly or in part with the proceeds of a loan, shall not be less than a fee simple estate:

(b) The title to the realty shall be a marketable title such as is generally acceptable to informed buyers, title companies, and attorneys in the community in which the property is situated.

(c) It shall be the responsibility of the lender to assure that the borrower obtains or has an estate in the land constituting the mobile home lot that meets the requirements of this section and § 201.1508.

(d) The lender shall obtain from the borrower an agreement that the home will not be moved from the lot while the loan is outstanding.

§ 201.1508 Waived title objections.

Title shall not be objected to by reason of the following matters:

(a) Violation of a restriction based on race, color or creed, even where such restrictions provide for a penalty of reversion or forfeiture of title or a lien for liquidated damage;

(b)(1) Customary easements for public utilities, party walls, driveways, and other purposes;

(2) Easements for public utilities along one or more of the property lines and extending not more than 10 feet therefrom or for drainage or irrigation ditches along the rear 10 feet of the property, provided the exercise of the rights thereunder do not interfere with any of the buildings or improvements located on the subject property;

(c) Easements for underground conduits which are in place and which do not extend under any buildings on the subject property;

(d) Mutual easements for joint driveways constructed partly on the subject property and partly on adjoining property, provided the agreements creating such easements are of record;

(e) Encroachments on the subject property by improvements on adjoining property where such encroachments do not exceed 1 foot, provided such encroachments do not touch any buildings or interfere with the use of any improvements on the subject property;

(f) Encroachments on adjoining property by eaves and overhanging projections attached to improvements on subject property where such encroachments do not exceed 1 foot;

(g) Encroachments on adjoining property by hedges, wooden or wire fences belonging to the subject property;

(h) Encroachments on the adjoining property by driveways belonging to subject property where such encroachments do not exceed 1 foot, provided there exists a clearance of at least 8 feet between the building on the subject property and the property line affected by the encroachment;

(i) Variations between the length of the subject property lines as shown on the application for insurance and as shown by the record or possession lines, provided such variations do not interfere with the use of any of the improvements on the subject property and do not involve a deficiency of more than 2 percent with respect to the length of any other lines;

(j) Encroachments by garages or improvements other than those which are attached to portion of the main dwelling structure over easements for public utilities, provided such encroachment does not interfere with the use of the easement or the exercise of the rights of repair and maintenance in connection therewith;

(k) Violations of cost or set-back restrictions which do not provide a penalty of reversion or forfeiture of title, or a lien for liquidated damages which may be superior to the lien or the insured mortgage. Violations of such restrictions which do provide for such penalties, provided such penalty rights have been duly released or subordinated to the lien of the insured mortgage, or provided that the borrower has been furnished with a policy of title insurance expressly insuring the borrower against loss by reason of such penalties.

(l) Customary building and use restrictions which:

(1) Are coupled with a reversionary clause, provided there has been no violation prior to the date of the deed to the borrower; or

(2) Are not coupled with a reversionary clause and have not been violated to a material extent.

(m) Outstanding oil, water or mineral rights (or damage caused by the exer-

cise of such rights) which are customarily waived by prudent lending institutions and leading attorneys in the community.

§ 201.1509 Fees and charges for origination or loan.

(a) The Secretary will charge the insured a fee of $45 for appraisal of the mobile home lot.

(b) Fees and charges incident to the origination of a loan which may be paid by the borrower shall be limited to reasonable and customary amounts for the following:

(1) Appraisal fees charged by the Secretary.

(2) Recording fees and recording taxes.

(3) Credit report.

(4) That portion of taxes, assessments, and other similar items for the current year chargeable to the borrower and his initial deposit (lump-sum payment) for a tax and insurance escrow account.

(5) Survey, if required, by the lender or borrower.

(6) Title examination and title insurance, if any.

(7) Such other items as may be authorized in advance by the Secretary as appropriate for inclusion under this paragraph.

(c) Fees and charges specified in this section may not be included in the loan.

§ 201.1510 Borrower's minimum investment.

The borrower shall make a minimum cash down payment of at least 5 percent of the first $10,000 of purchase price of the mobile home and lot plus 10 percent of any amount in excess of $10,000. Where only a mobile home lot is being financed, the borrower shall make a minimum cash down payment of at least 10 percent of the purchase price of the mobile home lot.

§ 201.1511 Financing charges.

(a) *Maximum financing charges.* The maximum permissible financing charge which may be directly or indirectly paid to, or collected by, the insured in connection with a combination mobile home and lot loan or mobile home lot loan transaction shall not exceed:

(1) 10½ percent per annum.

(2) No points or discounts of any kind may be assessed or collected in connection with the loan transaction.

Finance charges on individual loans shall be made in accordance with tables of calculation issued by the Secretary.

(b) *Prepayment rebate.* If an obligation is paid in full prior to maturity, the insured shall rebate the full unearned charge according to the actuarial method, where such rebate is $1 or more.

§ 201.1512 Mobile home lot certification.

(a) Prior to disbursement of loan proceeds for the purchase of a mobile home lot, the insured shall obtain a certificate on a form prescribed by the Secretary, signed by the seller and borrower, establishing that:

(1) The lot meets the requirements established by the Secretary, and has been appraised by the Secretary or his designated agent.

(2) The borrower has not been paid or offered, as an inducement for consummation of the transaction, any cash payment or rebate, nor has it been represented to the borrower that he or she will receive a cash bonus payment or commission on future sales;

(b) If the loan is solely for the purchase of a mobile home lot by the present owner of a mobile home, which is the principal residence of the borrower, the borrower shall certify that he will place his mobile home on the lot acquired with such loan within six months after disbursement of the loan proceeds.

(c) If the insured has information to the contrary with regard to the statements in the certification required by paragraph (a) or (b) of this section, he shall not disburse the loan proceeds. In the absence of such contrary information, he may disburse the loan proceeds in reliance upon the statements in the certification.

INSURANCE REQUIREMENTS

§ 201.1513 Insurance reserve.

All of the provisions of § 201.12 with respect to the maintenance for each insured lender of a general insurance reserve shall apply with respect to loans reported for insurance under this subpart. The aggregate amount of loans advanced by an insured lender, for the purposes of determining its general insurance reserve, shall include loans reported for insurance under all subparts of this part.

§ 201.1514 Rate of insurance charge.

The insured shall pay to the Secretary an insurance charge equal to fifty-four one hundredths (0.54) of 1 per cent per annum of the net proceeds of any eligible loan reported and acknowledged for insurance. In computing the insurance charge, no charge shall be made for a period of 14 days or less, and a charge for a month shall be made for a period of more than 14 days.

DEFAULT UNDER MOBILE HOME OBLIGATION

§ 201.1515 [Reserved]

§ 201.1516 Default.

For the purposes of this subpart, the lender shall not consider the borrower(s) to be in default until 30 days after:

(a) The first uncorrected failure to perform any duty under the mobile home lot mortgage; or

(b) The first failure to make a monthly payment which is not covered by subsequent payments made by the borrower where such subsequent payments are applied to the overdue monthly payments in the order in which they became due.

(c) If after default and prior to completion of foreclosure or repossession proceedings the borrower shall cure the default, the lender shall reinstate the loan as if a default had not occurred, provided the borrower pays to the insured lender such expenses as the lender has incurred in connection with the foreclosure or repossession proceedings.

§ 201.1517 Notice of default.

The insured lender shall, within 60 days after the date of default as defined in this part, give written notice thereof to the Secretary on a form prescribed by him, unless such default has been cured or unless the Secretary has been notified of a previous default which remains uncured.

§ 201.1518 Acquisition of property.

At any time within one year from the date of default, or such additional period of time as may be approved by the Secretary, the lender, at its election, shall either:

(a) Commerce foreclosure or repossession; or

(b) Acquire possession of, and title to, the mortgaged property by means other than foreclosure.

§ 201.1519 Notice of foreclosure.

The insured lender shall give written notice to the Secretary on a form prescribed by him within 30 days after the institution of foreclosure or repossession proceedings and shall exercise reasonable diligence in prosecuting such proceedings to completion.

§ 201.1520 Deed in lieu of foreclosure.

(a) In lieu of instituting or completing a foreclosure or repossession, the lender may acquire property by voluntary conveyance from the mortgagor. Conveyance of the property by deed in lieu of foreclosure is approved subject to the following requirements:

(1) The loan is in default at the time the deed is executed and delivered.

(2) The credit instrument is cancelled and surrendered to the mortgagor;

(3) The mortgage and security agreement are satisfied of record as a part of the consideration for such conveyance; and

(4) The deed from the borrower contains a covenant which warrants against the acts of the grantor and all claiming by, through, or under him and conveys good marketable title.

§ 201.1521 Notice of acquisition of title.

The lender shall give written notice to the Secretary, on a form prescribed by him, of acquisition of good marketable title to the property, within 15 days of such acquisition.

§ 201.1522 Disposition of property.

(a) The insured lender shall take possession of, preserve and repair the property, and shall sell the property for the best price obtainable, within six months after the date of acquisition of marketable title. Repairs shall not exceed those required by local law. No other repairs shall be made without the specific advance approval of the Secretary.

(b) The insured lender shall not enter into a contract for the preservation, repair or sale of the property with any

officer, employee, owner of ten percent or more interest in the insured lender or with any other person or organization having an identity of interest with the insured lender or with any relative of such officer, employee, owner or person.

CLAIMS

§ 201.1525 Claim application.

(a) *How to file.* Claim for reimbursement for loss on any eligible loan shall be made on a form provided by the Secretary and executed by a qualified officer of the insured lender. The claim shall be accompanied by the insured lender's complete file, including copies of appraisals made by appraisers acceptable to the Secretary, pertaining to the transaction. Where the insured is required by law to keep an original document in its possession, a copy of the original document shall be deemed acceptable.

(b) *Where to file.* Claim shall not be filed by the insured lender until after default, repossession, and resale of the mobile home and lot or mobile home lot. Where a mobile home and lot have been financed, the mobile home and lot shall be sold in a single transaction. The mobile home may not be removed from the lot without the prior approval of the Secretary. Claim shall be filed no later than 12 months and 31 days after the due date of the earliest fully unpaid installment provided for in the obligation, unless an extension is requested and approved by the Secretary.

§ 201.1526 Amount of claim.

An insured lender may be reimbursed for losses on loans made in accordance with the regulations under this part, up to the amount of its general insurance reserve. The amount of reimbursement is determined by following the computation steps prescribed in paragraph (a), (b) and (c) of this section.

(a) Deduct from the unpaid amount of the obligation (net unpaid principal and the earned portion of the financing charge, calculated according to the actuarial method), at the time of default:

(1) The actual sales price obtained after lawful repossession and resale of the mobile home and lot, or mobile home lot, or the appraised value, whichever amount is the greater. The appraised value shall be determined by an appraiser acceptable to the Secretary;

(2) All amounts received by the lender on account of the loan from any source relating to the property on account of rent or other incomes after deducting reasonable expenses incurred in handling the property;

(3) All cash retained by the lender including amounts held or deposited for the account of the borrower or to which the lender is entitled under the loan transaction that has not been applied in reduction of the borrower's indebtedness.

(b) Add to 90 percent of the amount determined under paragraph (a) of this section 90 percent of the interest at 7 percent per annum on the amount determined under paragraph (a) of this section computed from the date of default:

(1) To either the date of claim application or for a period of 12 months and 31 days following such default date, whichever period of time is lesser, or:

(2) To the date of certification of the claim for payment in a case where an otherwise eligible claim has been held without payment by the Secretary pending a determination of the eligibility for insurance of other claims or loans, or by an investigation of the insured's loan or claim activities.

(c) Add to the amount obtained under paragraph (b) of this section 90 percent of the following allowances for expenditures made by the insured:

(1) Taxes, ground rent and water rates, which are liens prior to the mortgage, prorated to the date of disposition of the property;

(2) Special assessments, which are noted on the application for insurance or which become liens after the insurance of the mortgage, prorated to the date of disposition of the property;

(3) Hazard insurance on the mortgaged property, prorated to the date of disposition of the property;

(4) Taxes imposed upon any deeds or other instruments by which said property was acquired by the mortgagee;

(5) Foreclosure costs, or costs of acquiring the property otherwise, actually paid by the insured lender and approved by the Secretary, in an amount not in excess of two-thirds of such costs or $75, whichever is the greater.

(6) Reasonable payments made by the insured lender for:

(i) Preservation and maintenance of the property;

(ii) Repairs required by local law, and such additional repairs as may be specifically approved in advance by the Secretary;

(iii) Expenses in connection with the sale of the property including a sales commission at the rate customarily paid in the community;

(iv) Appraisal fee not to exceed $45.00.

§ 201.1527 Incontestability of claim payment.

Any payment for loss made to an insured lender shall be final and incontestable after two years from the date the claim was certified for payment in the absence of fraud or misrepresentation on the part of the lender, unless a demand for repurchase of the obligation shall have been made on behalf of the United States prior to the expiration of such two year period.

EXTENSION OF TIME

§ 201.1528 Action to be taken by insured lender.

The Secretary may extend any time period respecting any action required by an insured which is prescribed by this subpart.

AMENDMENTS

§ 201.1530 Effect of amendment.

The regulations in this subpart may be amended by the Secretary at any time and from time to time, in whole or in part, but such amendment shall not adversely affect the insurance coverage of a lender under its contract of insurance on any loan previously made or in the process of being made.

NOTE.—The Department of Housing and Urban Development has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107.

Effective date: This regulation shall be effective on February 28, 1977.

JOHN T. HOWLEY,
Acting Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc.77-2689 Filed 1-26-77;8:45 am]

SUBCHAPTER E—SUBCHAPTER H [RESERVED]

SUBCHAPTER I—HUD OWNED PROPERTIES

[Docket No. R-77-448]

PART 290—DISPOSITION OF HUD-OWNED MULTIFAMILY PROJECTS

Interim Regulations

Notice is hereby given that the Department proposes to amend Chapter II of Title 24 of the Code of Federal Regulations by adding a new Subchapter I, "HUD-Owned Properties," a new Part 290, "Disposition of HUD-Owned Multifamily Projects," Subpart A, "General Provisions," Subpart B, "Formerly Subsidized Projects," and Subpart C, "Projects Not Formerly Subsidized," on an interim basis.

Subpart A would set forth general provisions. The term "disposition" is used throughout the Part to denote the sale as well as the demolition of HUD-Owned projects. The disposition of HUD-Owned multifamily projects shall be carried out, to the extent feasible to reduce the inventory of HUD-Owned projects in such a manner as to ensure the maximum return to the mortgage insurance funds consistent with the need to preserve and maintain urban residential areas and communities, and to protect the financial interests of the government by obtaining a satisfactory return based on the project's present market value and anticipated future use, and to maintain through a rental subsidy, or otherwise, rents at levels low- to moderate-income families can afford if the project was intended to serve low- to moderate-income groups. Disposition must be expedited, since HUD's ownership of projects is on an interim basis, and the Department is without a mandate to hold these projects on a long term ownership basis.

Subpart B would be applicable to the disposition of formerly subsidized projects, i.e., those with tenants who received the benefit of a rental subsidy before title to the project was acquired by HUD. The term "formerly subsidized project," refers to a project with rental subsidies provided by the following HUD programs: (1) Below-market interest rate mortgages insured under section 221(d)(3) of the National Housing Act; (2) In-

terest reduction payments made in connection with mortgages insured under section 236 of the National Housing Act; (3) Rent supplement payments under section 101 of the Housing and Urban Development Act of 1965; (4) Direct loans at below-market interest rates pursuant to section 202 of the Housing Act of 1959; (5) Direct loans at below-market interest rates pursuant to sections 401 and 404(b)(3) of the Housing Act of 1950; (6) Direct loans made under section 312 of the Housing Act of 1964; and (7) Housing assistance payments pursuant to (i) section 8 of the United States Housing Act of 1937, or (ii) section 23 of the United States Housing Act of 1937 in effect prior to January 1, 1975.

Subpart B sets forth a disposition process consisting of three decision points: the Initial Determination, the Disposition Recommendation and the Final Disposition Program. The Initial Determination would be made by the HUD field office Director promptly after HUD's acquisition of title and would constitute a preliminary decision as to whether the project could or could not be disposed of with a subsidy (Section 290.20). The Disposition Recommendation would also be prepared by the HUD field office Director and consists of a detailed physical and financial analysis of the project, a statement of the estimated price obtainable and a recommendation as to the nature of the disposition program (§ 290.30). Consideration would be given to the feasibility of:

1. Sale with a subsidy designed to maintain the project's low-to-moderate income character;

2. Sale as rental housing without a subsidy;

3. Conversion to other uses, including forms of home ownership; and

4. Partial or complete demolition.

The Disposition Recommendation is then submitted for approval and authorization to the appropriate Property Disposition Committee which would either accept the Disposition Recommendation or modify it, and then issue a Final Disposition Program for the project (§ 290.40). In some instances, the Final Disposition Program may provide for the payment of out-of-pocket moving costs by HUD (§ 290.45). In the case of disposition in connection with certain subsidy programs, the Final Disposition Program is authorized by the HUD field office Director.

At all three decision points, careful consideration would be given to the need for units of low-to-moderate-income housing and the feasibility of providing the benefits of a HUD rental subsidy program in connection with the disposition.

If at any time in the decision making process HUD would propose a disposition program which does not include a rental subsidy program, then HUD would provide a notice and comment procedure for eligible tenants (§ 290.35). This notice and comment procedure provides for: (1) notification to tenants of the Secretary's intent to adjust rents or to dispose of or demolish the project; (2) a 30-day period for written comments to be submitted to HUD; and (3) written notification to tenants of HUD's disposition decision.

The regulation also addresses itself to rental policy during the period in which HUD has title (§ 290.25). Promptly after title is taken, HUD would establish a maximum rental rate schedule for each unit in the project based upon a survey of the rents for comparable housing in the locality. Once a determination is made in any case to dispose of a project without a rental subsidy, rents payable by tenants would be adjusted to the level of the maximum rental rate schedule. These adjustments, however, would be implemented in phases, if necessary, to avoid financial hardships. No rent adjustments for eligible tenants would be implemented until a 30-day notice and comment procedure has been completed. When a determination is made to dispose of a project with a subsidy, however, rents to be charged eligible tenants (i.e., those eligible for a rental subsidy) would be established through income recertification procedures, in accordance with the applicable rental subsidy program proposed to be utilized in connection with the disposition.

Subpart B also sets forth the rules governing methods of sale, which are basically a codification of rules contained in HUD Handbook 4315.1, and currently followed by HUD. Except for stated exceptions, all sales would be by competitive offering. Negotiated sales would be permitted only where the sale is to an agency of the Federal, state or local government or where the project is converted to a cooperative or other form of conversion to homeownership.

Subpart C would be applicable to all multifamily projects other than formerly subsidized ones. There are two basic differences between Subparts B and C. First, no Initial Determination would be prepared under Subpart C. However, the procedures for the preparation of the Disposition Recommendation and authorization of the Final Disposition Program would be fully applicable to Subpart C and would be incorporated therein by reference. Second, the notice and comment procedure would not be applicable to Subpart C. The provisions on methods of sale also are fully applicable to Subpart C and would be incorporated therein by reference.

In some cases, the goal of maintaining project rents at levels affordable to the low-to-moderate-income families for whom the project was intended will require an explicit subsidy, such as Section 8 assistance. While the regulation generally contemplates that property be sold at market prices, there may be some instances in which a sale for low-to-moderate-income housing will produce a return to the insurance funds which is less than the return which would be realized by an unrestricted sale. These can be considered instances of implicit subsidies. The Department has made a decision that, in proper cases, subsidies for this purpose represent an appropriate utilization of public resources. The Department is particularly interested in public comments on its policy decision to devote resources, in the form of both programmatic and impliict insurance fund subsidies, to the preservation of HUD subsidized rental housing as a resource for the low-to-moderate-income families for whom those projects were originally intended.

In order to provide, as quickly as possible, a procedure for instituting due process and to conform HUD policy with recent judicial determinations with regard to tenant actions, and to defer further litigations arising out of alleged procedural deficiencies in this regard, the Department finds that it is impractical to provide for public comment in advance of the effective date of this Part, and good cause therefore exists for making this interim rule effective upon publication. However, interested persons are invited to submit written comments, suggestions, or data regarding the regulations to the Rules Docket Clerk, Room 10141, Office of the Secretary, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410. Communications should make reference to the above docket number and title. All relevant material received on or before February 28, 1977, will be considered before adoption of the final rule, which the Department intends to promulgate by May 1, 1977. A copy of each communication submitted will be available for public inspection during business hours at the above address.

A Finding of Inapplicability with respect to the National Environmental Policy Act of 1969 has been made in accordance with HUD procedures. A Finding of Inapplicability with respect to an Inflation Impact Statement has also been made in accordance with HUD procedures. Copies of these findings are available for public inspection at the above address.

Accordingly, the Department proposes to amend its Chapter II of Title 24 by reserving Subchapter E through Subchapter H and adding a Subchapter I, Part 290, on an interim basis, as follows:

Subpart A—General Provisions

Sec.
290.1 Purpose and scope.
290.5 Definitions.
290.10 Objectives.

Subpart B—Formerly Subsidized Projects

290.15 Applicability.
290.20 Initial determination.
290.25 Rental rates.
290.30 Preparation of disposition recommendations.
290.35 Notice to eligible tenants.
290.40 Final disposition program.
290.45 Payment of moving costs.
290.50 Method of sale.

Subpart C—Projects Not Formerly Subsidized

290.55 Applicability.
290.60 Incorporation by reference.

AUTHORITY: Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart A—General Provisions

§ 290.1 Purpose and scope.

The purpose of this Part is to prescribe the basic policies which govern the disposition of HUD-owned multifamily projects by the Deparement of Housing and Urban Development.

§ 290.5 Definitions.

(a) *Disposition.* The sale of a HUD-owned multifamily project, or any portion thereof, including the demolition of structures and transfer of title to the vacant land.

(b) *Disposition recommendation.* The HUD field office Director's disposition recommendation, with supporting data and analysis, setting forth his firm disposition program for the project.

(c) *Eligible tenant.* Any tenant currently residing in a formely subsidized project who was eligible for and received the benefits of a rental subsidy prior to HUD acquiring title to the project, and is determined to be eligible for a rental subsidy upon recertification of income in accordance with the procedure under the applicable subsidy program in force prior to HUD acquiring title to the project.

(d) *Final disposition program.* The disposition program authorized by the Property Disposition Committee, or the HUD field office Director, as appropriate.

(e) *Formerly subsidized project.* A multifamily project, the tenants of which, prior to the acquisition of title by HUD, received the benefit of a rental subsidy in the form of:

(1) Below-market interest rates mortgages insured under section 221(d)(3) of the National Housing Act;

(2) Interest reduction payments made in connection with mortgages insured under section 236 of the National Housing Act;

(3) Rent supplement payments under section 101 of the Housing and Urban Development Act of 1965;

(4) Direct loans at below-market interest rates, pursuant to section 202 of the Housing Act of 1959, sections 401 and 404(b)(3) of the Housing Act of 1950, or section 312 of the Housing Act of 1964;

(5) Housing assistance payments pursuant to section 8 of the United States Housing Act of 1937, or section 23 of the United States Housing Act of 1937 in effect prior to January 1, 1975.

(f) *HUD.* The Department of Housing and Urban Development.

(g) *HUD determination.* The Initial Determination, the disposition recommendation, or the final disposition program.

(h) *Initial determination.* The determination by the HUD field office Director, promptly after HUD's acquisition of the title to a previously subsidized project, as to whether the project should be disposed of with or without a rental subsidy program.

(i) *Multifamily project or projec's.* Any rental property, or combination of rental properties, consisting of 5 or more living units, acquired by the Secretary as the result of a default under a mortgage insured by the Secretary pursuant to the National Housing Act, or under a program involving a loan guarantee or a direct loan by the Secretary.

(j) *Property disposition committee.* The designated group of HUD officials redelegated the authority to authorize disposition programs for HUD-owned multifamily projects, pursuant to 41 FR 26946, June 30, 1976.

(k) *Rental subsidy.* A HUD rental assistance program for multifamily projects with eligible tenants who, because of insufficient income, are unable to pay the market rent for their rental unit without HUD assistance.

§ 290.10 Objectives.

The disposition of HUD-owned multifamily projects shall be carried out, to the extent feasible, in accordance with the following objectives:

(a) To reduce the inventory of HUD-owned projects in such a manner as to ensure the maximum return to the mortgage insurance funds consistent with the need to preserve and maintain urban residential areas and communities, and to protect the financial interests of the Government by obtaining a satisfactory return based on the project's present market value and anticipated future use.

(b) To maintain through a rental subsidy, or otherwise, rents at levels low-to-moderate-income families can afford, if the project was intended to serve low-to-moderate-income groups.

Subpart B—Formerly Subsidized Projects

§ 290.15 Applicability.

This subpart applies to all multifamily projects where the tenants, prior to acquisition of title by HUD, received the benefit of a rental subsidy.

§ 290.20 Initial determination.

(a) *Factors considered.* Promptly after acquiring title to a multi-family project, each HUD field office Director shall make an Initial Determination as to whether it is feasible to dispose of the project with a rental subsidy program. The following factors shall be considered:

(1) Whether or not rental subsidy funds can be made available to the project after disposition of the project.

(2) The eligibility for HUD rental subsidy of each eligible tenant in occupancy at acquisition, based upon income recertification.

(3) The availability of comparable (subsidized or unsubsidized) housing or housing assistance programs in the general area.

(4) The feasibility of making available to the eligible tenants comparable (subsidized or unsubsidized) housing or obtaining housing assistance for them.

(5) The availability of rental counseling.

(b) *Initial determination—disposition with subsidy.* An Initial Determination that a project will be sold under a rental subsidy program will be made whenever the following two conditions are both satisfied:

(1) A determination is made that a rental subsidy program is available and can be utilized after the sale of the project; and

(2) A determination is made that tenants would be adversely affected by a sale without a rental subsidy program because other comparable housing units or other comparable housing assistance is not available.

(c) *Initial determination—disposition without subsidy.* An Initial Determination that a project will be sold without a rental subsidy program shall be made when:

(1) A determination is made that a rental subsidy program cannot be utilized in the disposition of the project; or

(2) Comparable housing units or comparable housing assistance is available which will allow disposition without a rental subsidy, without adversely affecting eligible tenants. Promptly after issuance of an Initial Determination providing for the disposition of the project without a rental subsidy, HUD shall implement the notice and comment procedure prescribed by § 290.35. Whenever it is proposed that rental schedules be adjusted in accordance with the standards prescribed in § 290.25(a), the notice served under § 290.35 shall also include adequate information on the proposed adjustment in rents and shall specifically elicit comment on this.

§ 290.25 Rental rates.

(a) *Establishment of maximum rental rate schedule.* Following acquisition of a project, HUD will establish a maximum rental rate schedule for each unit in the project, comparable to the rates charged for comparable rental housing accommodations in the area, uniform to the extent feasible, based on unit size, location, services, amenities provided, and conducive to attracting high occupancy. This maximum rental rate schedule shall be reviewed and updated periodically, to assure current comparability. The rules set forth in paragraph (b) will govern the extent to which individual tenants will be charged rents in accordance with the maximum rental rate schedule or a lesser rent. Whenever rent increases are to be accomplished in accordance with this section, adjustments will be made in phases if necessary to avoid any substantial financial impact on the tenants or to prevent a substantial number of tenants from terminating their leases.

(b) *Rents payable by tenants*—(1) *Non-eligible tenants.* All tenants who are not eligible tenants, as defined in § 290.5(c), including all tenants who obtain occupancy after HUD acquires title, shall pay rent in accordance with the standards prescribed in paragraph (a) of this section.

(2) *Eligible tenants.* (i) Prior to the issuance of the Initial Determination, eligible tenants in occupancy at the time HUD acquires title shall pay the same rents which were payable under the Lease in effect prior to HUD acquiring title.

(ii) If the Initial Determination provides for the sale of the project with a rental subsidy program, rental rates for eligible tenants shall be established in accordance with the income recertification procedures applicable to the subsidy program proposed to be utilized in the sale.

(iii) If the Initial Determination provides for sale without a rental subsidy program, rents for eligible tenants will be adjusted in accordance with the standards prescribed in paragraph (a) of this section: *Provided*, That no increase in rents shall be put into effect until the notice and comment procedure has been implemented pursuant to §§ 290.20(c) and 290.35.

(iv) Whenever an Initial Determination providing for a sale with a subsidy is later modified by a Disposition Recommendation or a Final Disposition Program which provides for a sale without a subsidy, the HUD field office Director may adjust rents in accordance with the standards prescribed in paragraph (a): *Provided*, That no adjustment in rents shall be put into effect until the notice and comment procedure under § 290.35 has been completed.

§ 290.30 Preparation of disposition recommendation.

After the Initial Determination is made pursuant to § 290.20, the HUD field office Director shall prepare a Disposition Recommendation for presentation to the Property Disposition Committee for approval and authorization. This Disposition Recommendation shall consist of analyses as well as a recommendation for the disposition of the project as follows:

(a) *Physical and financial analysis.* A physical and financial analysis shall be made of the property, including an estimate of the price obtainable if the property were sold on the current market with no restrictions on use. In arriving at this price, generally accepted methods of appraising real property shall be used. The analysis shall consider, but need not be limited to, the following factors:

(1) The design, utility and facilities of the project;

(2) The location and accessibility of public transportation, schools, shopping, medical facilities, and other necessary public and private facilities;

(3) The need for rehabilitation or repairs, due to deferred maintenance or curable obsolescence, and estimated costs of such work;

(4) Local housing market conditions;

(5) Local economic conditions;

(6) Real estate tax assessments on the property;

(7) Availability of public or private financing;

(8) The history of the project and the factors which contributed substantially to the default;

(9) The impact of the disposition upon the racial composition of the neighborhood in which the project is located, as well as the neighborhoods to which the tenants may be relocated;

(10) The cost of paying out-of-pocket moving costs to eligible tenants, if the Property Disposition Committee should so authorize;

(11) Compliance with HUD requirements implementing the National Environmental Policy Act of 1969, as amended; and

(12) Compliance with the National Historic Preservation Act (Pub. L. 89-665), the Archeological and Historic Preservation Act of 1974 (Pub. L. 93-291), and Executive Order 11593 on Protection and Enhancement of the Cultural Environment, including the procedures prescribed by the Advisory Council on Historic Preservation in 36 CFR Part 800, and such other statutes as may be enacted which impact upon the disposition of a multi-family project.

(b) *Conversion to homeownership.* The Disposition Recommendation shall give appropriate consideration to the feasibility of conversion of a multifamily project to a condominium, and subsequent sale of the individual units; sale to a cooperative; and conversion and sales as individual dwellings. Whenever the HUD field office Director determines that one of these homeownership programs will produce a greater price than that estimated from a sale as rental property, such a program may be given favorable consideration. In the case of a multifamily project intended to be occupied by low-to-moderate-income families, favorable consideration also may be given to any of the ownership programs which will produce a disposition price which is at least equal to that estimated from a sale as rental property, and in which homeownership would assist in preserving and maintaining residential areas and communities, and could be accomplished within a time frame similar to that found in a sale as rental housing. The Disposition Recommendation also shall evaluate the insurance risk to HUD of the various financing programs pursuant to paragraph (e)(1) of this section, and the additional holding costs to HUD, if any, of such a disposition program.

(c) *Appropriateness for Use as Low-to-moderate-income housing.* The Disposition Recommendation shall also consider, but need not be limited to, the following factors:

(1) The availability of comparable (subsidized or unsubsidized) housing in the area and the feasibility of making such housing available to eligible tenants;

(2) The need in the area for units of low-or-moderate-income housing of the type contained in the project;

(3) The comments of the eligible tenants;

(4) The feasibility of providing the benefits of a HUD rental subsidy program to the project, in consideration of the following:

(i) Satisfaction of the eligibility requirements governing the currently available HUD rental subsidy program(s) for property disposition;

(ii) Expressions of interest by a public housing agency or other government entity, and the probability that an acceptable proposal will be submitted;

(iii) Availability to the HUD field office of contract authority and budget authority for a rental subsidy program;

(iv) The feasibility of obtaining the benefit of a rental subsidy under a state or local housing program;

(v) The extent, if any, to which a disposition plan providing for a rental subsidy program will affect the disposition price;

(vi) If the disposition recommendation involves the insurance of a mortgage or the taking back of a purchase money mortgage by HUD, the extent, if any, that such disposition plan will increase the risk to be assumed by the mortgage insurance funds beyond that which would be assumed under a disposition plan not involving a rental subsidy program. For all projects, whether or not they were previously insured by HUD, sale with HUD insurance will require that the project meet HUD's current underwriting criteria.

(d) *Demolition.* Whenever the analysis under paragraph (a) of this section (1) indicates that the project's monthly operating expenses exceed monthly income, (2) the project has little or no occupancy, (3) is functionally or economically obsolescent, (4) presents a danger to the safety of the neighborhood and its residents, (5) or is contributing to a general deterioration of the neighborhood, consideration may be given to a plan to demolish the project after acquisition of title by HUD. In arriving at a determination as to whether demolition will be recommended, careful consideration shall be given to all the factors enumerated in paragraphs (a), (b), and (c) of this section. In addition, consideration shall be given to the following:

(i) The economic feasibility of rehabilitation and sale.

(ii) Probable short and long term impacts of the demolition on the neighborhood, both in terms of physical structures and the residents of the neighborhood.

(iii) The extent to which the current and projected use of the land is consistent with local, state, and regional land use planning.

(iv) Availability of comparable (subsidized or unsubsidized) alternative housing for the residents and payments of out-of-pocket moving costs, if such payments are authorized by the Property Disposition Committee.

(e) *Methods of financing.* (1) HUD shall, in its discretion and in accordance with the objectives of the disposition policy under § 290.10, select one of the following methods of financing:

(i) All cash.

(ii) Sale with purchase money mortgage taken back by HUD.

(iii) Sale subject to a mortgage insured by HUD.

(2) Sales in accordance with paragraphs (e)(1)(ii) and (iii) of this section may contain a requirement that the purchaser rehabilitate the project. Where the sale is subject to a mortgage insured by HUD, the mortgage may include provisions for insured advances for major rehabilitation. All sales subject to paragraphs (e)(1)(ii) and (iii) of this section shall require that the purchaser execute a HUD Regulatory Agreement, which provides for certain contractual management controls between the purchaser and HUD during the life of the mortgage.

§ 290.35 Notice to eligible tenants.

(a) *General.* If the Initial Determination pursuant to § 290.20, the Disposition Recommendation pursuant to § 290.30, or the Final Disposition Program pursuant to § 290.40, proposes a disposition program which does not include a rental subsidy program, or which includes a rental subsidy program which is not comparable to the one in effect prior to HUD's acquisition of the title to the project, HUD shall promptly carry out the notice and comment procedure set forth in this section. Once this procedure is completed however, there is no requirement that it be repeated at a later stage of the disposition process.

(b) *Notification.* A notice shall be delivered directly or by mail to each eligible tenant, and shall be posted in a conspicuous place adjacent to the project office, within 5 days after the date of the HUD Determination. The notice shall summarize very briefly the nature of the HUD Determination, the eligibility requirements for the payment of moving costs by HUD (only if applicable and authorized), the names, addresses and telephone numbers of HUD-approved counseling agencies; and that: (1) Comments are invited for a 30-day period from the date of the issuance of the notice;

(2) The HUD Determination, including supporting material, shall be available for inspection and copying at the HUD field office and at the project office;

(3) The HUD Determination shall be reviewed with respect to the comments received, and revised if necessary before subsequent HUD action is taken;

(c) *Inspection and copying.* During the 30-day period following the issuance of the notice required pursuant to paragraph (a) of this section, a copy of the HUD Determination shall be available to eligible tenants for inspection and copying at the HUD field office with jurisdiction over the project, and at the project office. Reasonable requests from eligible tenants for a waiver of the fees charged for copying under the provisions of 24 CFR 15.14 will be honored.

(d) *Waivers.* In the case of any proposed demolition, the provisions of paragraphs (a) and (b) of this section, governing notice and comments, may be waived in whole or in part upon a determination by HUD that continued occupancy for all or a portion of the time required by the notice and comment procedure presents a substantial risk to the health or safety of the residents or other persons or property.

(e) *Consideration.* All comments received shall be carefully reviewed and due consideration given in connection with all future HUD actions in connection with the disposition of the project.

§ 290.40 Final disposition program.

(a) The Property Disposition Committee shall authorize a Final Disposition Program, which shall include the Disposition Recommendation together with such supplementary material as may be necessary, after due consideration is given to the HUD field office Director's Disposition Recommendation and any comments received pursuant to section 290.35. The Property Disposition Committee may modify any recommendation from a HUD field office Director or return it to the HUD field office Director for review, updating, and/or revision, as may be necessary.

(b) Subsidized Disposition. Disposition of projects under a rental subsidy program shall be in accordance with HUD regulations issued pursuant thereto. For those subsidized disposition programs which do not require Property Disposition Committee approval, the HUD field office Director shall authorize the disposition, pursuant to to 41 FR 13652, March 31, 1976, or 41 FR 16604, April 20, 1976.

(c) When the Property Disposition Committee authorizes a disposition without a rental subsidy, where disposition with a rental subsidy was recommended by the HUD field office Director, or demolition where demolition was not recommended, the procedures set forth in § 290.35 shall be immediately implemented.

(d) Copies of the Final Disposition Program shall be available for eligible tenants at the HUD field office with jurisdiction over the project and at the project office. However, where the project will be advertised with no stated minimum price, all references in the Final Disposition Program to the unstated minimum price shall be deleted. Reasonable requests for a waiver of the fees charged for copying under 24 CFR 15.14 shall be honored.

§ 290.45 Payment of moving costs.

(a) *Eligibility.* The Final Disposition Program may include a determination to pay out-of-pocket moving costs to eligible tenants, in the amount prescribed in paragraph (b) of this section:

(1) Where the proposed disposition would adversely affect eligible tenants, and

(2) Where such payments would expedite the disposition, and

(3) Where the payment of such moving costs is considered sound business judgment.

(b) *Amount of payment.* Tennants eligible under paragraph (a) of this section shall be paid an amount by HUD which may not exceed the average out-of-pocket moving costs per family or individual determined by the HUD field office from a survey of the local market.

§ 290.50 Method of sale.

(a) *Competitive offering.* Except as provided in paragraph (b) and (c) of this section, the disposition of HUD-owner multifamily projects shall be by competitive offering.

(1) Interested bidders shall be invited to submit sealed bids in accordance with bidding instructions issued by HUD. Offerings shall be publicized by advertisement and distribution of a prospectus.

(2) Bids must be posted, or delivered by other means, so as to be received by the addressee not later than the return date specified in the advertisement. The bidding instructions shall govern the submission of mailed bids, late bids and modifications or withdrawal of bids. Bids shall be opened publicly.

(3) The contract shall be awarded to the highest responsive, responsible bidder; *Provided*, That HUD reserves the right, in its discretion, to reject all bids. No bids shall be considered which does not meet the terms established by HUD. In determining whether a bidder is responsible, HUD shall evaluate the bidder's experience, and financial ability requisite to reasonable assurance of satisfactory performance. In the case of sales other than cash sales, a bidder must be approved under the Previous Participation Review and Clearance procedures in 24 CFR 200.210 et seq. in order to qualify as responsible. The Previous Participation Review and Clearance procedures shall not be applicable to cash sales.

(b) *Negotiated disposition.* Disposition by negotiation with one or more selected purchasers, without resorting to competitive bidding, is permitted only in the following cases:

(1) Disposition to an agency of the Federal, state or local government.

(2) Sales to a nonprofit cooperative organization pursuant to a recommendation under § 290.30.

(3) Sales of individual condominium units and of individual homes pursuant to a program of conversion under § 290.30(b).

(4) Where disposition programs are pursuant to paragraphs (b)(2) and (3) of this section, the contracts for the legal and organizational work necessary for the conversion of the project to the new form of ownership, and the marketing costs of individual units or shares, shall be awarded by competitive bidding.

(c) *Nursing homes and hospitals receiving Public Health Service Act grants.* Whenever HUD acquires a nursing home or hospital which has received a grant under Title VI of the Public Health Service Act (42 U.S.C. 291 et seq.), the sale shall be limited to public or nonprofit entities which agree to operate the property as a health facility in accordance with the Public Health Service Act and the regulations adopted thereunder. If an acceptable bid is not received, requests shall then generally be made by HUD to the Secretary of Health, Education and Welfare to waive this condition pursuant to 42 U.S.C. 291i and 42 CFR 53.135. If this waiver is issued, the property may then be offered a second time without the condition set forth in the first sentence of paragraph (c) of this section.

Subpart C—Projects Not Formerly Subsidized

§ 290.55 Applicability.

This subpart applies to all multifamily projects not formerly subsidized.

§ 290.60 Incorporation by reference.

The provisions of §§ 290.1, 290.5, 290.10, 290.25(a) and (b)(1), 290.30, 290.40(a), and § 290.50 apply with full force and effect to multifamily projects described in section 290.55 and are hereby incorporated by reference.

Issued at Washington, D.C., January 19, 1977.

NOTE.—It is hereby certified that the economic and inflationary impacts of these proposed regulations have been carefully evaluated in accordance with OMB Circular A-107.

JOHN T. HOWLEY,
Acting Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc.77-2690 Filed 1-26-77;8:45 am]

Title 25—Indians

CHAPTER IV—NAVAJO AND HOPI INDIAN RELOCATION COMMISSION

PART 700—COMMISSION OPERATIONS AND RELOCATION PROCEDURES

Internal Operations; Correction

On November 12, 1976 in 41 FR 49982, FR Doc. 76-33269 filed 11-11-76 § 700.14 is hereby corrected as follows: "delete the word Monday and substitute the word Thursday."

Issued January 20, 1977.

HAWLEY ATKINSON,
Chairman, Navajo and Hopi Indian Relocation Commission.

[FR Doc.77-2660 Filed 1-26-77;8:45 am]

Title 28—Judicial Administration

CHAPTER I—DEPARTMENT OF JUSTICE

[Order No. 682-77]

PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

Subpart C—Office of the Deputy Attorney General

AGENCY: Department of Justice

ACTION: Final rule

SUMMARY: Under 22 U.S.C. 263(a), the Attorney General is authorized to accept and maintain membership in the International Criminal Organization (INTERPOL), on behalf of the United States, and to designate those departments and agencies which may participate in the United States' representation with INTERPOL.

The purpose of this rule is to assign the responsibility for the establishment and implementation of policy related to INTERPOL within the Department of Justice to the Office of the Deputy Attorney General. Additionally, the Departments of Justice and Treasury have reached an understanding providing for alternating representation and joint participation in INTERPOL.

EFFECTIVE DATE: January 27, 1977.

FOR FURTHER INFORMATION CONTACT:

Harry L. Gastley, Office of Administrative Counsel, Office of Management and Finance, Department of Justice, Washington, D.C. 20530 (202-739-5361).

By virtue of the authority vested in me by 5 U.S.C. 301, 22 U.S.C. 263(a), and 28 U.S.C. 509 and 510, Section 0.15 of Subpart C of Part 0 of Chapter I of Title 28, Code of Federal Regulations, is amended by renumbering pararaph (b)(8) of § 0.15 to be paragraph (b)(9) and by adding a new paragraph (b)(8) to read as follows:

§ 0.15 Deputy Attorney General.

* * * * * * *

(b) * * *

(8) Establish and direct the implementation of policy related to the participation of the United States in the International Criminal Police Organization (22 U.S.C. 263(a)).

Dated: January 18, 1977.

EDWARD H. LEVI,
Attorney General.

[FR Doc.77-2601 Filed 1-26-77;8:45 am]

Title 41—Public Contracts and Property Management

CHAPTER 5A—FEDERAL SUPPLY SERVICE, GENERAL SERVICES ADMINISTRATION

Miscellaneous Amendments

This change to the General Services Administration Procurement Regulations (GSPR) provides guidelines for assisting minority business enterprises in achieving increased participation in Government procurements; updates procedures applicable to the procurement of prison-made products and products of the blind and other severely handicapped; prescribes new contract clauses; revises procedures applicable to the review of procurements not set aside for small business; imposes restrictions on waiving requirements to furnish bid samples; revises forms and exhibits; and makes miscellaneous minor editorial changes.

PART 5A-1—GENERAL

The table of contents for Part 5A-1 is amended to add the following new entries:

Subpart 5A-1.13—Minority Business Enterprises

Sec.	
5A-1.1310	Subcontracting with minority business enterprises.
5A-1.1310-50	Minority Business Subcontracting Program.
5A-1.1310-51	Marketing, management, and technical assistance.

Subpart 5A-1.7—Small Business Concerns

Section 5A-1.706-50(f) is revised as follows:

§ 5A-1.706-50 Documentation and review of procurements not set aside for small business.

* * * * * * *

(f) Preparation of GSA Form 2689 is not repetitively required for procurements which clearly have no potential to be set aside for small business concerns, provided the procuring director, the local regional Director, Business Service Center (for Central Office procurement divisions and national commodity centers in Washington, DC, only, the Director, Socio-Economic Policy Division in lieu of the Director, Business Service Center), and the SBA procurement center representative agree that periodic reviews of such procurement actions will satisfy the requirements of §§ 1-1.705, 1-1.706, and 5A-1.706. For example, procurements of FSC 2310, Passenger motor vehicles—ambulances, sedans, station wagons, buses, limosines, hearses, ambulances (truck mounted), and FSC 2320, Trucks and truck-tractors (except armored cars and mobile health, dental, and X-ray clinic trucks) could logically be processed under such arrangements.

Subpart 5A-1.13—Minority Business Enterprises

New Subpart 5A-1.13 is added as follows:

§ 5A-1.1310 Subcontracting with minority business enterprises.

§ 5A-1.1310-50 Minority Business Subcontracting Program.

(a) Contracting officers shall send a letter as shown in (c), below, to all contractors awarded contracts valued at $500,000 or more. A copy of each letter shall be furnished to the Socio-Economic Policy Division (FCH). Contracting officers shall forward to FCH copies of related correspondence and reports received from the contractor.

(b) Any visits to contractor facilities for purposes of this subcontracting program must be cleared in advance with the contracting division.

(c) Letter format.

GENTLEMEN: You were awarded contract No. ---------- for ---------- This letter is to emphasize and call to your attention your obligation to utilize minority-owned businesses in your subcontracting program as provided by the terms of this contract.

The clause of your contract titled "Minority Business Enterprises Subcontracting Program," included in GSA Form 1790, Subcontracting Programs, requires you to "establish and conduct a program which will enable minority business enterprises * * * to be considered fairly as subcontractors and suppliers under this program." Basically, this involves designating one of your officials to ensure that minority firms are identified and encouraged to compete for your subcontracts. You are required to maintain certain records and submit reports prescribed by the contracting officer concerning your minority subcontracting program. For your convenience we are enclosing a copy of GSA Form 1790, Subcontracting Programs.

We may, at some later date, contact you to arrange a visit to discuss the program. In the meantime, if you have any questions concerning the program you may contact the Socio-Economic Policy Division (FCH), GSA, Washington, DC 20408.

Sincerely,

Contracting Officer.

Enclosure—GSA Form 1790.

(End of Sample Letter Format)

§ 5A-1.1310-51 Marketing, management, and technical assistance.

Contracting officers becoming aware of minority business enterprises in need of marketing, management, or technical assistance shall refer such concerns to the appropriate Business Service Center for assistance. When appropriate, the Business Service Center will coordinate the matter with the Socio-Economic Policy Division (FCH).

PART 5A-2—PROCUREMENT BY FORMAL ADVERTISING

Subpart 5A-2.2—Solicitation of Bids

1. Section 5A-2.201-70(e)(2) is revised as follows:

§ 5A-2.201-70 Forms to be used.

* * * * * * *

(e) * * *

(2) GSA Form 1246, GSA Supplemental Provisions (AID Procurement), Aug. 1976, shall be incorporated by reference in each solicitation for offers under the AID buying program by using the following provision:

GSA Form 1246, GSA Supplemental Provisions (AID Procurement), Aug. 1976, receipt of which is acknowledged by the bidder, is hereby incorporated by reference. A copy of GSA Form 1246, if not enclosed, is available upon request.

* * * * * * *

2. Section 5A-2.202-4 is amended to add paragraph (k) as follows:

§ 5A-2.202-4 Bid samples.

* * * * * * *

(k) If the Federal specification and/or item purchase description card has changed from the previous bid solicitation, waiver of bid samples is not authorized without the written approval of the Assistant Commissioner for Standards and Quality Control (FM).

Subpart 5A-2.4—Opening of Bids and Award of Contract

1. Section 5A-2.402(1) is revised as follows:

§ 5A-2.402 Opening of bids.

* * * * * * *

(1) When bids are received in more than one copy, the bid opening official shall verify the entries on all copies. If there is a discrepancy between the copies of a bid, the contracting officer shall direct the bidder's attention to the suspected mistake and shall follow the procedures set forth in FPR §§ 1-2.406 and 5A-2.406 concerning mistakes in bids.

* * * * * * *

2. Section 5A-2.407-84 is amended as follows:

§ 5A-2.407-84 Notification of proposed substantial awards and awards involving Congressional interest.

(a) *Applicability.* This section applies to notification of proposed awards resulting from either advertised or negotiated solicitations including modifications and renewals (1) when the dollar value exceeds or is estimated to exceed $250,000, except as shown in (b), below, and (2) when there is Congressional interest regardless of dollar value.

* * * * * * *

(b) Notification of proposed awards exceeding or estimated to exceed $250,000 is not required for products whose points of origin are not readily identifiable or which involve foreign production points.

* * * * * * *

(f) * * *

(1) Regional and Central Office procurement activities shall transmit notifications as determined by the Director (or his equivalent) of the Central Office or regional procurement activity directly to the Director of Congressional Affairs (AK), by telephone (566-1250) followed by a completed GSA Form 2932 annotated confirming notification.

* * * * * * *

PART 5A-5—SPECIAL AND DIRECTED SOURCES OF SUPPLY

The table of contents for Part 5A-5 is revised as follows:

Subpart 5A-5.4—Procurement of Prison-Made Products

Sec.	
5A-5.406	Procurement procedures.
5A-5.406-50	Use of forms.
5A-5.408	Clearances.
5A-5.408-50	Federal Prison Industries clearance numbers.

Subpart 5A-5.8—Procurement of Products of the Blind and Other Severely Handicapped

5A-5.805	Procurement procedures.
5A-5.805-2	Allocations and orders.
5A-5.805-3	Purchase exceptions.
5A-5.805-50	Administration of delinquent delivery orders.
5A-5.805-51	Use of forms.

Subpart 5A-5.50—Government Sources of Supply

5A-5.5000	Scope of subpart.
5A-5.5001	GSA sources.
5A-5.5002	Government Printing Office.
5A-5.5005	Department of Defense contracts.
5A-5.5005-1	Lubricating oils, greases, and gear lubricants.
5A-5.5005-2	Packaged petroleum products.
5A-5.5005-3	Gasoline, fuel oil (diesel and burner), kerosene, and solvents.
5A-5.5005-4	Coal.
5A-5.5005-5	Electronic items.
5A-5.5006	District of Columbia Government—Department of Corrections.
5A-5.5007	District of Columbia Government term contracts.

Subpart 5A-5.60—Procurement Procedures and Forms

5A-5.6001	Use of GSA Form 1584, Contract Summary.

Subpart 5A-5.70—Procurement Assignments

Sec.	
5A-5.7001	Scope.
5A-5.7002	General.
5A-5.7003	Criteria for making procurement assignments.
5A-5.7004	Changes in procurement assignments.
5A-5.7005	Central records for stock items assignments.
5A-5.7006	Current procurement assignments.

Subpart 5A-5.4—Procurement of Prison-Made Products

A new Subpart 5A-5.4 is added as follows:

§ 5A-5.406 Procurement procedures.

§ 5A-5.406-50 Use of forms.

GSA stock item purchases from the Federal Prison Industries shall be recorded on GSA Form 1584, Contract Summary, in accordance with § 5A-5.6001.

§ 5A-5.408 Clearances.

§ 5A-5.408-50 Federal Prison Industries clearance numbers.

Clearance numbers issued by the Federal Prison Industries shall be cited in the solicitation for offers and all subsequent award documents.

Subpart 5A-5.8—Procurement of Products of the Blind and Other Severely Handicapped

Subpart 5A-5.8 is revised as follows:

§ 5A-5.805 Procurement procedures.

(a) When the Committee for Purchase from the Blind and Other Severely Handicapped (hereafter referred to as the Committee) undertakes evaluation of an item, the item is included on a Proposed List. This list is forwarded to the Socio-Economic Policy Division (FCH) with a request for pertinent information, including procurement history, anticipated requirements, and the following details from the current production plan: (1) Date solicitation is to be released for printing; (2) solicitation issuance date; (3) bid opening date; and (4) contract award date. The appropriate procuring activity will in turn be contacted by FCH, and shall furnish the requested information within 15 working days. The response to FCH shall include identification, by NSN, of any items which are currently set aside for small business.

(b) FCH and the procuring activity must closely coordinate the procurement of all items for which addition to the Procurement List is anticipated. Under certain circumstances the Committee may request that procurement actions be canceled or delayed. FCH shall coordinate through FP all such requests prior to action by the procuring activity. To keep these requests to a minimum, the contracting officer shall, prior to issuance of a solicitation, request from FCH the status of any item in which he is aware that the Committee has indicated interest.

§ 5A-5.805-2 Allocations and orders.

In addition to the requirements set forth in § 1-5.805-2, requests for alloca-

tions and orders shall indicate the packaging, packing, or marking required if they are other than the standard required by the specification cited or otherwise provided in the Procurement List. Pricing of these non-standard requirements is covered in § 1–5.805–10(e).

§ 5A–5.805–3 Purchase exceptions.

Purchases from commercial sources pursuant to § 1–5.805–3 shall cite the purchase exception number issued by the central nonprofit agency (CNA) in the solicitation for offers and all subsequent award documents.

§ 5A–5.805–50 Administration of delinquent delivery orders.

(a) Delinquent orders require prompt and vigorous action on a continuing basis until the problems are resolved. Administration shall be in accordance with § 1–5.805–6 and the Procurement List issued by the Committee for Purchase from the Blind and Other Severely Handicapped (see 41 CFR 51–5.1–2(1) and 51–5.7).

(1) Efforts to negotiate an adjustment to the delivery schedule shall not include a request for price adjustment.

(2) Records of delinquencies, regardless of whether the delivery schedule was adjusted, shall be maintained in the procurement file.

(b) In delinquency situations where the requirements will not permit further delay and the items are available from commercial sources and may be obtained in significantly less time than from the workshop, the contracting officer will request that the central nonprofit agency issue a purchase exception for the required quantities. In the event that problems arise in negotiations, including a delay or refusal to grant a clearly justified purchase exception, the contracting officer shall request the assistance of the Socio-Economic Policy Division (FCH), in resolving the problem. FCH, if unable to effect an immediate solution with the central nonprofit agency, shall refer the matter to the Committee. If the Committee fails to provide a prompt solution, particularly where backorders or other exigency requirements exist, the appropriate procuring director shall refer the problem to the Assistant Commissioner for Procurement or to the cognizant national commodity center director, as applicable.

§ 5A–5.805–51 Use of forms.

GSA stock item purchases from the central nonprofit agencies (CNA) (blind and other severely handicapped), shall be recorded on GSA Form 1584, Contract Summary, in accordance with § 5A–5.6001.

Subpart 5A–5.50—Government Sources of Supply

Subpart 5A–5.50 is revised to read as follows:

§ 5A–5.5000 Scope of subpart.

This subpart sets forth policies and procedures regarding the use of certain government sources of supply, including the Government Printing Office, Defense Supply Agency, District of Columbia Government—Department of Corrections, and District of Columbia Government term contracts.

§ 5A–5.5001 GSA sources.

Items covered by the GSA Stock Catalog, Federal Supply Schedule contracts, and GSA consolidated procurement programs shall be acquired in accordance with instructions contained in the Federal Property Management Regulations Subchapter E—Supply and Procurement, §§ 101–26.3, 101–26.4, and 101–26.5.

§ 5A–5.5002 Government Printing Office.

Procurement of items for use within the District of Columbia which are listed in the GPO Catalog and Price List shall be from GPO. Procurement of these items from commercial sources is prohibited unless a waiver is granted by the Public Printer through Printing and Publications Division, Region 3, authorizing such purchases. When so authorized, the GPO waiver number shall be shown in the contract and/or purchase order. Acquisition from GPO of such items for use outside the District of Columbia is not mandatory. See FPMR 101–26.703 regarding marginally punched continuous forms.

§ 5A–5.5005 Department of Defense contracts.

The Defense Supply Agency, Defense Fuel Supply Center, Cameron Station, Alexandria, Virginia 22314, and the Defense General Supply Center, Richmond, Virginia 23219 prepare annual contracts for lubricating oils, greases, gear lubricants, packaged petroleum products, gasoline, fuel oil (diesel and burner), kerosene, solvents, and coal. Electronic items are available from the Defense Electronic Supply Center, Dayton, Ohio 45401.

§ 5A–5.5005–1 Lubricating oils, greases, and gear lubricants.

See FPMR 101–26.602–1.

§ 5A–5.5005–2 Packaged petroleum products.

See FPMR 101–26.602–2.

§ 5A–5.5005–3 Gasoline, fuel oil (diesel and burner), kerosene, and solvents.

See FPMR 101–26.602–3.

§ 5A–5.5005–4 Coal.

See FPMR 101–26.602–4.

§ 5A–5005–5 Electronic items.

See FPMR 101–26.603.

§ 5A–5.5006 District of Columbia Government—Department of Corrections.

The Commissioners of the District of Columbia are authorized to sell industrial products and services to Federal agencies. A listing of their commercial products and services is available from:

District of Columbia, Department of Corrections, Industries Division, Lorton, Virginia 22079.

Except as otherwise provided in paragraphs (a) and (b) of this § 5A–5.5006, these supplies and services may be procured on an optional basis.

(a) Laundry services for Federal agencies in the Washington, DC metropolitan area should be obtained from the Department of Corrections except when that department issues clearance for procurement from another source.

(b) Official U.S. Government tags for use on motor vehicles shall be acquired in accordance with FPMR 101–38.3.

§ 5A–5.5007 District of Columbia Government term contracts.

The District of Columbia places term contracts for sand, gravel, premixed concrete, Portland cement, slag and slag screenings, and road salt which may be used on an optional basis in the Washington, DC area. Details of these contracts may be obtained from the Purchasing Officer, DC Government, 613 G St. NW, Room 1002, Washington, DC 20001, or telephone 629–4811.

Subpart 5A–5.60—Procurement Procedures and Forms

New Subpart 5A–5.60 is added as follows:

§ 5A–5.6001 Use of GSA Form 1584, Contract Summary.

Contractual arrangements with (1) Federal Prison Industries (FPI), and (2) central nonprofit agencies (CNA) operating under the auspices of the Committee for Purchase from the Blind and Other Severely Handicapped shall be summarized on GSA Form 1584. The form shall be prepared in accordance with § 5A–16.950–1584–1 and the applicable instructions in this Subpart 5A–5.60.

(a) A separate GSA Form 1584 shall be prepared for each addressee (block 5).

(1) For CNA items, the appropriate CNA alpha code shall be inserted following the addressee (block 5).

(2) Currently applicable alpha codes are:

IB—National Industries for the Blind.
SH—National Industries for the Severely Handicapped, Inc.

(b) Each GSA Form 1584 shall be assigned a separate contract number in accordance with § 5A–1.352.

(c) At a minimum, blocks 1, 2, 4, 5, 6, 9, 10, 11, and 15 through 18 of GSA Form 1584 shall be completed. Blocks which are not applicable shall be annotated "N/A". Necessary information not available from the FPI Schedule or the CNA Procurement List shall be obtained by letter or telephone.

(1) When shipment FOB origin is specified, the shipping container weight shall be shown in block 17(h).

(2) For CNA items:

(i) Block 17(b)—include statement that copy of each purchase order is to be furnished to the appropriate CNA (see alpha code in block 5).

(ii) Block 17(c)—enter "ADO" instead of the price.

(d) If not otherwise provided, copies of GSA Form 1584 forwarded to the Quality Control Division shall include or be accompanied by adequate information regarding specifications, including packing and marking requirements, to enable that activity to perform inspection of the supplies.

(e) Each GSA Form 1584 issued for the procurement of stock items from FPI or CNA may be renewed for two successive periods provided no significant change has occurred. After two renewals, a new GSA Form 1584 shall be issued and a new contract number assigned. Renewal information shall be forwarded to 10FPN 20 calendar days prior to expiration of the currently effective period.

(f) When items are designated by a CNA as "allocated", GSA Form 1584 shall be prepared showing the CNA address in block 5 to enable the ADO system to provide a printed request that the inventory manager obtain an allocation number and workshop address from the CNA. At a minimum, entries are required in blocks 2, 4, 5, 16, 17(a) and 17(b). Block 17(b) shall include the caption allocated item(s). Each purchase order issued for allocated items shall include one of the following:

(1) Applicable specification.

(2) Applicable item purchase description and date.

(3) Reference to (1) or (2) when appropriate.

(g) Distribution of GSA Form 1584 shall be in accordance with § 5A–76.201 (b) or (c), with an additional copy to FPI or CNA as applicable.

PART 5A–7—CONTRACT CLAUSES

Subpart 5A–7.1—Fixed Price Supply Contracts

1. Section 5A–7.102–4 is amended as follows:

§ 5A–7.102–4 Variation in quantity.

* * * * *

(b) The Variation in Quantity clause set forth above is included in GSA Form 1424, GSA Supplemental Provisions, solely for the purpose of administrative convenience in avoiding the need to amend contracts or purchase orders when an overshipment or an undershipment within prescribed limits is determined to be acceptable. This standard clause is in no way intended to establish a general policy with respect to the extent to which FSS or the agencies it serves will accept variations in quantity. If experience indicates that a different variation percentage should be used in a particular procurement or class of procurements, due to the particular industry practices involved, the contracting officer may determine that a variation percentage, other than the 3 percent normally called for in the Variation in Quantity clause, shall be used. In this regard, based on Central Office studies, it has been determined that (i) a 5 percent variation shall be specified when procuring printing stationery paper, (ii) a 10 percent variation shall be specified when procuring aluminum foil items, (iii) a full pallet quantity be specified when the solicitation requires palletization, and (iv) a 10 percent variation shall be specified when purchasing special paint when the purchase is for 500 gallons or less, particularly if it is of an unusual type or color or a specialty item (e.g., gray or olive drab baking enamel for metal equipment).

(c) When other than a 3 percent variation is to be specified, the following clause shall be used:

VARIATION IN QUANTITY (ENTER ITEM DESCRIPTION)

Article 4, Variation in Quantity, of GSA Form 1424, GSA Supplemental Provisions, is hereby deleted in its entirety and the following substituted: A variation in quantity when caused by the conditions specified in Article 4 of Standard Form 32 will be accepted: *Provided*, That (1) such variation is not in excess of (Percent[1]) of the quantity ordered, or (2) the variation results in a full-pallet quantity. If ½ or less, ship to the next low pallet quantity. If over ½, ship to the next higher pallet quantity.

* * * * *

2. Section 5A–7.103–56 is revised as follows:

§ 5A–7.103–56 Minimum order limitation.

(a) When bidders are reluctant to accept small orders and will increase prices to cover additional costs for handling the orders, the following provisions shall be included in solicitations for requirements contracts for stock items.

MINIMUM ORDER LIMITATION

(a) No ordering office will be obligated to order and no Contractor will be obligated to make any delivery amounting to less than (Percent[1]), but such deliveries may be ordered by the Government subject to acceptance by the Contractor. Failure on the part of the Contractor to return the order by mailing or otherwise furnishing it to the ordering office within 5 working days after receipt shall constitute acceptance whereupon all other provisions of the contract shall apply to such order.

(b) Where either Government Standard Packing or Commercial Standard Packing is specified in the contract, orders shall be placed only in the specified standard pack quantity or multiples thereof.

(b) Where the unit of issue is a high dollar value item (i.e., procurement of tools), the following provision is authorized:

MINIMUM ORDER LIMITATION

(a) No ordering office will be obligated to order and no Contractor will be obligated to make any delivery amounting to less than (Percent[1]), but such deliveries may be ordered by the Government subject to acceptance by the Contractor. Failure on the part of the Contractor to return the order by mailing or otherwise furnishing it to the ordering office within 5 working days after receipt shall constitute acceptance whereupon all other provisions of the contract shall apply to such order.

(b) Notwithstanding the foregoing, where either Government Standard Pack or Commercial Standard Pack (shipping container) is specified in the contract, orders shall be placed by the Government in shipping container quantity except as set forth in paragraph (c), below.

(c) The Government may at its option place orders for less than a shipping container quantity, providing such quantity equals a unit, intermediate pack, or multiples thereof, up to a shipping container quantity. Such orders shall be packed in accordance with the applicable packaging and packing specification.

[1]Enter the minimum economical quantity in terms of dollar amount, pounds, gallons, drums, packages, dozens, etc.; coinciding with unit(s) of issue specified in the contract. Contracting officers shall consider the compatibility between the minimum order limitation and the normal standard pack.

PART 5A–14—INSPECTION AND ACCEPTANCE

Subpart 5A–14.2—Acceptance

Section 5A–14.206–1 is amended as follows:

§ 5A–14.206–1 Acceptance of nonconforming supplies or services.

* * * * *

(b) If the contracting officer or his authorized representative determines that acceptance of supplies or services is in the Government's best interest, recommendations for deviation shall be referred to the appropriate specification manager.

(c) Recommendations for deviation shall contain (1) a copy of the solicitation (or contract), (2) the reasons why the item does not conform to contract requirements, (3) a statement as to whether or not a similar deficiency was the basis for rejection of an otherwise low bid received on the same solicitation, and (4) the reasons why it is in the best interest of the Government to accept the non-conforming item. If urgency of acceptance is a factor, recommendations for deviation shall be handled on an expedited basis. When stock items are involved, the contracting officer shall coordinate with the appropriate national inventory manager to determine urgency of need.

(d) Where the recommendation for deviation is concurred in by the appropriate specification manager, he shall furnish the contracting officer with an estimate of the savings in costs which will accrue to the contractor. The contracting officer shall be guided by the estimate in negotiating an equitable price reduction (including direct and indirect costs, plus profit) for the deviation and shall annotate the contract file with a statement justifying the adequacy and reasonableness of the price reduction.

(e) For nonstock items (see § 1–14.206), the approval of the requiring activity must be obtained in all cases involving acceptance of nonconforming supplies or services.

* * * * *

[1]Enter appropriate percentage.

PART 5A–16—PROCUREMENT FORMS

Subpart 5A–16.9—Illustrations of Forms

§§ 5A–16.950–1246, 5A–16.950–1584A, 5A–16.950–1790 and 5A–16.950–1584–1 [Amended]

Sections 5A–16.950–1246, 5A–16.950–1584, 5A–16.950–1584A, and 5A–16.950–1790 are revised to illustrate new editions of forms, and § 5A–16.950–1584–1 is revised to show updated instructions for completion of new GSA Form 1584.

PART 5A–19—TRANSPORTATION

The table of contents for Part 5A–19 is amended to add § 5A–19.170, Receipt of improperly loaded shipments.

Sec.
5A–19.170 Receipt of improperly loaded shipments.

Subpart 5A–19.1—General

Section 5A–19.170 is added as follows:

§ 5A–19.170 Receipt of improperly loaded shipments.

Once damaged material is accepted and unloaded by the Government, the contracting officer has only limited authority to take action against the contractor. However, if material is accepted and unloaded and the receiving activity later notifies the contracting officer of improper loading, the contracting officer shall attempt to collect from the contractor any additional costs incurred. In addition, he shall take whatever action is deemed necessary to prevent a recurrence.

PART 5A–53—CONTRACT ADMINISTRATION

The table of contents for Part 5A–53 is amended to change the title of § 5A–53.471–2 as follows:

Sec.
5A–53.471–2 Nonstock (including Improved Federal Supply Schedule Program contracts) and stock direct delivery orders.

Subpart 5A–53.1—General

Section 5A–53.103(b) is revised as follows:

§ 5A–53.103 Authority and responsibility.

* * * * *

(b) The contract administration responsibilities of the inventory management centers and order processing and order control activities include (1) issuing definite quantity stock replenishment and stock and nonstock direct delivery orders from established sources, (2) issuing amendments to the above delivery orders (limited to editorial and other routine ordering problem corrections) and (3) the coordination and processing of transportation and shipping-type discrepancies, directing of proper disposition of rejected material, including arrangements for replacement or repair actions with the contractor, and the processing of charges for the failure of contractors to mark shipments in accordance with contract requirements.

* * * * *

Subpart 5A–53.4—Contract Performance

1. Section 5A–53.470 is revised as follows:

§ 5A–53.470 Monitoring.

Monitoring is the performance of all actions necessary to exercise effective control over individual supply transactions while they are being processed through the entire supply system. The inventory management center is responsible for monitoring stock replenishment orders. The order processing and order control activities are responsible for performing this function for direct stock and nonstock direct delivery orders, excluding those orders issued by the Special Programs Division (FPZ) and the Automotive Procurement Division (FYP).

2. Section 5A–53.471 is revised as follows:

§ 5A–53.471 Expediting.

§ 5A–53.471–1 General.

Expediting is the performance of all necessary actions required to obtain delivery to satisfy customer needs and consists of delivery status inquiries, ensuring "on time" deliveries, and accelerating or moving back delivery schedules. Expediting between the Government and contractor should only be made by the contracting officer or his authorized representative pursuant to this § 5A–53.471.

§ 5A–53.471–2 Nonstock (including Improved Federal Supply Schedule Program contracts) and stock direct delivery orders.

(a) *Source inspection.* (1) Requests for expediting source inspected orders shall be made to the regional Quality Control Division (QCD) responsible for inspection. The regional QCD shall take prompt action in accordance with the request and expeditiously reply to the requester.

(2) Requests for alteration of delivery schedules which may require contract modifications shall be sent directly to the contracting officer by the requester. The contracting officer shall take prompt action on the request and reply to the requester. Requests shall be processed within 5 workdays after receipt of the request.

(b) *Destination inspection.* The office issuing delivery orders requiring destination inspection shall expedite those orders which are late or anticipated to be late. Expediting by the order processing and order control activities shall be limited to requests for delivery status. Delivery arrangements requiring a contract/order modification shall be made only by the contracting officer.

§ 5A–53.471–3 Stock replenishment orders.

Requests for delivery status or accelerated delivery involving stock replenishment orders placed against national or zonal contracts shall be processed as follows:

(a) Requests for delivery status information shall be made to the responsible regional QCD (for source inspected orders) or the responsible inventory management center (for destination inspected orders). Prompt action shall be taken by the regional QCD and inventory management center, and an expeditious reply made to the requester. In addition to determining delivery status, the regional Quality Control Division and inventory manager may request specific shipping order precedence for items contained in the same order. However, any delivery arrangement requiring a contract/order modification shall be made only by the contracting officer.

(b) Requests for accelerated delivery: Requests for accelerated delivery shall be processed through the responsible inventory management center to the contracting officer. Upon receipt of the request for accelerated delivery, the contracting officer shall proceed in accordance with § 5A–72.106(a).

§ 5A–53.471–4 Stock availability improvement assistance.

The inventory management center has responsibility for ensuring that the contractor meets the delivery due dates specified in stock replenishment orders requiring inspection at destination. If problems arise in obtaining delivery, a request for assistance should be submitted to the contracting officer. Upon receipt of request, the contracting officer shall take appropriate action and respond promptly.

PART 5A–72—PROCUREMENT OF STOCK ITEMS

Subpart 5A–72.1—General Policies for Stock Replenishment

1. Section 5A–72.106(c)(3) is revised as follows:

§ 5A–72.106 Accelerated deliveries and public exigency purchases.

* * * * *

(c) * * *

(3) See § 5A–76.301(a) and (b) for formats to assist contracting officers in the preparation of findings and determination for negotiated exigency procurements. These formats are samples and modifications may be necessary to suit individual cases.

* * * * *

2. Section 5A–72.107–1(b) is revised as follows:

§ 5A–72.107–1 Contracts with guaranteed minimums.

* * * * *

(b) If no timely notification regarding any open balances is received from the contractor within the time specified in the Guaranteed Minimum Quantity clause (see § 5A–7.103–80), but the contract administration file indicates that unordered balances may exist, the following actions shall be taken:

* * * * *

Subpart 5A–72.2—Requirements Contracts for Stock Replenishment

Section 5A–72.202 is amended to add subparagraph (f) as follows:

§ 5A–72.202 Specifications.

* * * * *

(f) Requests from contractors for specification deviations should be in accordance with § 5A–14.206–1. If the deviation concerns preparation for delivery (packaging, packing, marking, and/or palletizing), the contracting officer should consider any impact on the supply distribution facility. Close liaison with the affected depots is essential.

PART 5A–76—EXHIBITS

The table of contents for Part 5A–76 is amended to delete §§ 5A–76.324, 5A–76.325, and 5A–76.326; and to show revised entries for Subparts 5A–76.2 and 5A–76.4, as follows:

Subpart 5A–76.2—Distribution of Documents

Sec.
5A–76.201 Distribution of contractual and related documents.
5A–76.201–1 Purchase/delivery order forms.
5A–76.201–2 Term contracts for stock items.
5A–76.201–3 Term contracts for nonstock items where GSA issues delivery orders.
5A–76.201–4 Federal Supply Schedule contracts and term contracts against which other agencies may place orders.
5A–76.201–5 Definite quantity contracts.
5A–76.201–6 Transportation and related services contracts.
5A–76.201–7 Purchase/delivery orders for stock replenishment.
5A–76.201–8 Purchase/delivery orders for direct delivery (DDO's).

Subpart 5A–76.4—Procurement Assignments

5A–76.401 General.
5A–76.402 Listing of assignments.
5A–76.403 Service contracts.
5A–76.403–1 National-scope service schedules.
5A–76.403–2 Regional-scope service schedules.
5A–76.404 U.S. Forest Service special items.

Subpart 5A–76.2—Distribution of Documents

Subpart 5A–76.2 is revised to update instructions applicable to the distribution of contracts, contract summaries, and purchase orders.

Subpart 5A–76.3—Miscellaneous Exhibits

§ 5A–76.301 [Amended]

1. Section 5A–76.301 is revised to change the format for a findings and determination.

§ 5A–76.306 [Amended]

2. Section 5A–76.306 is revised to update information and internal procedures regarding the bidders mailing list system.

Subpart 5A–76.4—Procurement Assignments

Subpart 5A–76.4 is revised to reflect updated procurement assignements and to recodify various portions under new headings.

NOTE.—Copies of the forms illustrated in Part 5A–16 and copies of the exhibits shown in Part 5A–76 are filed with the original document.

(Sec. 205(c), 63 Stat. 390; (40 U.S.C. 486(c)))

Effective date: These regulations are effective on the date shown below.

Dated: December 23, 1976.

JAY H. BOLTON,
Acting Commissioner,
Federal Supply Service.

[FR Doc.77–2485 Filed 1–26–77;8:45 am]

Title 49—Transportation

CHAPTER I—DEPARTMENT OF TRANSPORTATION, MATERIALS TRANSPORTATION BUREAU

[Docket No. HM–147; Amdt. No. 173–103]

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

Carbon Dioxide Transported Aboard Aircraft

The purpose of this amendment to Part 173 of the Department's Hazardous Materials Regulations is to except from the coverage of those regulations carbon dioxide in solid form, when used as a refrigerant to preserve materials for medical diagnostic or treatment purposes. Regulations applicable to all carbon dioxide in solid form were published in the FEDERAL REGISTER on April 15, 1976 (41 FR 15972) under Docket HM–103/112. No comments were received which objected to the requirements imposed by this docket publication. Recently, the Materials Transportation Bureau has become concerned that these regulations may be disrupting certain shipments of essential medical supplies and specimens for critical medical diagnoses since carbon dioxide in solid form is used extensively for the preservation of materials being shipped by aircraft for medical diagnostic and treatment purposes. The Bureau recognizes that certain hazards are associated with carbon dioxide when shipped by air. It was for this reason that carbon dioxide in solid form was placed under regulation. It is the Bureau's opinion that on balance the benefits which accrue from the rapid movement of these materials outweigh the limited risks involved. Therefore, to the extent the regulations restrict the timely performance of essential medical services and treatment, some adjustment to the regulations is called for.

This Bureau plans to review the total effect of its regulations as they apply to carbon dioxide in solid form. Meanwhile, in consideration of the desirability of not disrupting the movement of these materials by aircraft, the regulations are amended in that regard. Because this action does not impose any burden on the general public, public proceedings are unnecessary.

In consideration of the foregoing, Part 173 of Title 49 Code of Federal Regulations is amended as follows:

In § 173.615 paragraph (e) is added to read as follows:

§ 173.615 Carbon dioxide, solid (dry ice).

* * * * *

(e) Carbon dioxide, solid (Dry ice) is excepted from the shipping paper and certification requirements of this subchapter if the requirements of paragraphs (a) and (d) of this section are complied with and the package is marked "Carbon dioxide, solid" or "Dry ice" and marked with an indication that the material being refrigerated is used for diagnostic or treatment purposes (e.g. Frozen medical specimens).

(49 U.S.C. 1803, 1804, 1808; 49 CFR 1.53(e)).

Effective date: This amendment is effective on January 19, 1977.

NOTE.—The Materials Transportation Bureau has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11821 and OMB Circular A–107.

Issued in Washington, D.C. on January 19, 1977.

JAMES T. CURTIS, Jr.,
Director,
Materials Transportation Bureau.

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CHAPTER II—FEDERAL RAILROAD ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Docket No. RSOR–2; Notice 5]

PART 218—RAILROAD OPERATING RULES

Protection of Trains and Locomotives

On August 9, 1973, the Federal Railroad Administration (FRA) published an advance notice of proposed rulemaking (ANPRM) stating that it was studying possible courses of action to address the safety problems highlighted by those accident cause codes generally categorized by FRA as "human factor" accidents.

In the advance notice of proposed rulemaking, FRA requested comments relative to four specific operating rules included in the Standard Code of Operating Rules of the Association of American Railroads (AAR). These rules were: Rule 34, Calling of Signals; Rule 93, Operation of Trains within Yard Limits; Rule 99, Protective Flagging; and Rule 291, Stop-and-Proceed Signals. After analysis of the comments received in response to the ANPRM, Rule 291 was developed in a separate notice of proposed rulemaking. Rules 34, 93 and 99 were referred to the Railroad Operating Rules Advisory Committee (RORAC). The RORAC was a group established by the FRA to provide expert advice and assistance in the study and development of railroad operating rules. The group was made up of representatives of railroad management, labor organizations, and State agencies with jurisdiction over railroads. Suggested revisions to the language of the AAR Standard Code version of each of these

regulations were developed by the RORAC through lengthy discussions, and approved by a majority of the Committee members. While these revised versions reflect the practical experience of those who deal with rules on a daily basis, the FRA does not wish to infer that they constitute a final statement of the official positions of all the organizations represented by the RORAC members. These revisions were utilized by the FRA in its development of the notice of proposed rulemaking published on March 30, 1976 (41 FR 13369).

Interested persons were invited to participate in this rulemaking proceeding by submitting written comments by May 14, 1976; or by appearing and presenting oral comments at a hearing conducted on May 14, 1976. After considering all of the comments, the FRA has decided to issue a final rule in this proceeding which differs somewhat from the proposals included in the NPRM. The changes determined to be necessary are set forth in the following discussion of each of the proposed rules.

COMMUNICATION OF SIGNAL INDICATIONS (SECTION 218.33, AAR RULE 34)

This proposed rule would require all railroad employees located in the operating compartment of a locomotive to call out loud the name or aspect of each signal governing the movement of their train, and to take appropriate action to ensure safety in the event that the engineer fails to operate in accordance with signal indications or is incapacitated while controlling the movement of a train.

The basic purpose of Rule 34 of the AAR Standard Code is to assure that all crew members in the cab of the locomotive maintain a vigilant lookout for signals affecting the operation of their train. The weakness of the Standard Code version was in its ambiguous language and failure to give crew members explicit direction as to their responsibility for the safety of their train and the action to be taken whenever that safety was in jeopardy. The revised version developed by RORAC was a great improvement over the Standard Code version in that it clearly assigned responsibility for safety to all crew members and designated the engineer as the individual responsible for assuring that crew members in the cab of the locomotive complied with the signal calling requirement. In addition, the revised rule clearly sets forth the responsibility of crew members to take positive action to control the movement of their train to ensure safety whenever the engineer fails to do so or is incapacitated. The rule explicitly authorizes any employee, under such circumstances, to stop the train by operation of the emergency brake valve.

The RORAC revised rule, which is basically the same as the proposed rule in the NPRM, was submitted to the AAR and its Operating Rules Committee for review. The revised language was approved by the Committee and adopted by the AAR as the official version to be incorporated into the Standard Code as Rule 34. Following this action by the AAR and the Rules Committee, many of the major rail carriers revised their own rule books so as to conform with the revised Rule 34 version.

On review and further consideration of the purpose of this regulation, the FRA has determined that this particular area of railroad operating rules is not an appropriate one for Federal regulation. The policies of the President concerning regulatory reform, and of the Secretary of Transportation concerning a full assessment of the impact of Federal regulatory actions, require careful evaluation of the effectiveness of such actions in accomplishing their intended purpose. FRA has concluded that it will be virtually impossible for its inspectors in the field to monitor compliance with such a rule or to establish the existence of a violation for purposes of enforcing a penalty where appropriate. Although crew members in the cab of a locomotive might comply when an FRA inspector was present, there would be no way of assuring that they are routinely complying with the regulation.

Two commenters to this proceeding expressed the opinion that operating rules can best be formulated and administered through the joint efforts of management and labor as has traditionally been the case in the railroad industry. The FRA believes that this rule provides a prime example of a case in which the traditional mechanisms of rules enforcement, through efficiency testing and rules instruction, is the more effective method of assuring that operating train crews are vigilant in their actions to assure the safe movement of their trains. Consequently, the FRA has decided to terminate this portion of this proceeding without the issuance of a final rule.

OPERATIONS WITHIN YARD LIMITS (SECTION 218.35, AAR RULE 93)

This proposed rule would require all railroads to adopt a uniform procedure to govern train operations within yard limits. The basic purpose of AAR Rule 93 was to establish controls to coordinate train movements on high speed main tracks and other movements on yard tracks. The rule granted yard movements the right to occupy segments of the main track within a designated area defined as "yard limits", provided the main track was cleared so as not to interfere with through movements of preferential trains of a designated class which retained a superior privilege to occupy the main track. All train or yard movements other than the designated class or classes thus became "inferior" and were required to observe vigorous speed restrictions (being able to stop short of another movement) since they could expect to find the main track occupied at any location by other "inferior" train movements operating under the same restrictions.

The FRA recognizes this historical use of the "yard limits rule", and fully intended to preserve the basic concepts of this type of operation through the rule proposed in § 218.35 of the NPRM. That proposed rule attempted to paraphrase, in standard Code of Federal Regulations format, the revised rule 93 developed by RORAC. Comments submitted by several commenters suggested that the changes in traditional terminology associated with widely used operating rules which were included in the NPRM would result in unnecessary confusion. Several of these commenters suggested that FRA adopt the revised version of rule 93 exactly as proposed by RORAC as the final rule in this proceeding.

As a result of these comments, FRA has decided to redraft the final rule in a format which will comply with the standard Code of Federal Regulations style, and yet preserve, to the maximum extent possible, the more traditional operating rule format and verbatim language recommended by RORAC. Section 218.35 has been revised accordingly. In order to clarify the following discussion of the comments, reference will be made to the relevant section of the NPRM, and the corresponding provision of the final rule.

Subsection (a) of the NPRM required each railroad to designate its yard limits by yard limit signs, timetable, train order, or special instructions, and its superior and inferior trains.

Three commenters stated that they believed that, in all cases, yard limits should be designated by appropriate yard limit signs, covered with a luminous reflective substance, in addition to being identified in various written sources such as train orders or timetables. The FRA believes that the presence of a physical reminder that yard limit territory is being entered will provide the engineer, and other members of the crew in the cab of the locomotive, with a visible reminder that movement beyond that point must be restricted according to the yard limits rule, and that they must maintain a particularly vigilant lookout for other movements on the track. Many carriers already use such signs to designate "yard limits". Yard limit designations given only in written form in train orders, timetables, or special instructions can be forgotten or confused. Therefore, FRA has revised § 218.35(a) so that yard limit signs must be used to designate the territory within which the rule is to apply. While the FRA believes that the presence of yard limit signs will enhance the effectiveness of the rule, we have no data to show that an additional requirement that such signs be constructed of a reflectorized substance is justified, nor did the commenter provide any such data. For this reason, FRA has decided at this time not to include specifications for the type of signs which must be used.

The provision of the NPRM requiring each railroad to designate its superior and inferior trains was criticized by several commenters as ambiguous and confusing. According to these commenters, superiority can be conveyed by right, by class or by direction. Right is conferred by train order and is superior to either class or direction which are conveyed by

timetable. The intent of rule 93 was to identify a superior class or classes of trains—such as first class trains or first and second class trains—which have a preferential authority to occupy the main track. These commenters suggested use of the RORAC version which clearly indicated that it was concerned with superiority conveyed by class, and provided the railroad with the option of designating what class or classes were appropriate for designation as superior movements based on the peculiarities of its operation. FRA has included the RORAC language in subsections (b)(1) and (b)(2) of § 218.35. In addition, subsection (c) requires the railroad to designate what class or classes of trains are to be given superiority on the main track within yard limits. All other train movements must operate subject to the requirement to clear the main track and the restrictions on speed.

Subsection (b) of the NPRM provided that yard movements could occupy the main track only when that track could be cleared for a superior train. If the track was not cleared by the prescribed time, the yard movement was required to provide flag protection as defined in § 218.37 (rule 99).

Two commenters criticized the manner in which this section was written because they felt it created the inference that the purpose of the rule was to restrict use of the main track, when in fact the purpose is to permit use of that track by all types of yard movements. They felt the positive, permissive language of the AAR Standard Code, which was preserved in the RORAC version, was a preferable statement of the rule. The FRA recognizes that the changes in language incorporated into the NPRM have caused confusion, although the change was not intended to alter the right of yard movements to use the main track. We have, therefore, decided to base the final rule on the RORAC version as suggested, and subsections (b)(1) and (2) set forth the basic authority for a yard movement to occupy the main track, as well as the conditions under which such a movement must be conducted.

Four commenters suggested that the proposed subsection (b) be revised by the substitution of the term "first class" for "superior" trains. FRA's decision to revert to the RORAC version of the rule has eliminated the problem and potential confusion which may have resulted from the different bases of superiority cited earlier in this discussion. Under the final rule, a railroad must designate the superior class, and may do so by extending the privilege of superiority to more than a single class of trains.

One commenter expressed the opinion that the provision exempting the crew of the yard movement from a protective flagging requirement in automatic block signal territory might be unsafe since the crew could not be insured of having two block signals in the direction of an approaching movement. The FRA believes that this commenter was chiefly concerned with protection for a movement moving onto the main track. The FRA believes that each operating crew will have at least two members, the conductor and engineer, who are sufficiently qualified on the physical characteristics of the railroad to be knowledgeable as to the location of signals. This knowledge, when combined with other generally applicable operating rules which require a movement to wait a specified interval after a switch is thrown before moving to the main track or across the main track, provides adequate protection for such movements.

One commenter thought there was confusion as to when protective flagging would be required. With the adoption of the RORAC version, FRA does not believe there should be such confusion. Flagging is required only when a yard movement cannot clear the main track in time for an approaching superior class train in non-automatic block signal territory.

Another commenter inquired if flagging on the main track would still be required if no class of trains was designated as superior. If no class of trains has been identified as being superior, then all movements within the yard limit territory must operate subject to the restrictions as to speed and stopping within one-half the range of vision requirements; therefore, flagging protection is not required.

Subsection (c) of the NPRM provided that, except where a block signal indicates the track to be clear, inferior train movements on the main track within yard limits must be made prepared to stop within one-half the range of vision, but not exceeding 30 miles per hour.

Once again, several commenters suggested that the final rule be expressed in terms of the Standard Code or RORAC version of the specific operating restrictions, rather than those of the proposed rule. This has been done in section (b)(2) of the rule. FRA believes the effect of this provision to be the same as was intended by the NPRM, with the exception of the maximum authorized speed within yard limits. Two commenters expressed the opinion that the 30 m.p.h. maximum speed was excessive and suggested the use of a maximum speed of 15 m.p.h. FRA has reviewed copies of the various versions of operating rule 93 which are presently in effect on most railroads. That review revealed a common range of speeds up to 20 m.p.h. The FRA believes that a 15 m.p.h. speed limit would unnecessarily restrict yard movements, and that a 20 m.p.h. maximum speed limit is more proper particularly when that maximum speed is coupled with a requirement to be able to stop within ½ the range of vision and, therefore, would be used only under the most ideal visibility situations. Subsection (b)(2) of § 218.35 has been revised accordingly.

Another commenter suggested that the requirement that the movement be able to "stop within one-half the range of vision" be deleted, and that the rule be changed to read "prepared to stop short of a train, engine, car, stop signal, derail, switch improperly lined or other obstruction." In its criticism of the Standard Code version of Rule 93, the National Transportation Safety Board (NTSB) noted that the traditional terminology of "stop short" did not provide adequate protection. The NTSB, as well as RORAC cited the problems posed by such a standard, particularly when it was applied to train movements in opposing directions. For this reason, RORAC recommended, and FRA agrees, that the "½ range of vision" standard will provide improved protection.

Subsection (d) of the NPRM provided that movements against the current of traffic could not be made unless authorized and protected by train order, yardmaster, or other railroad official.

Two commenters suggested that the authority for such a movement against the current of traffic should be in written form. The FRA believes that such a provision would be impractical and unnecessarily burdensome. Yard assignments are accustomed to operating under verbal authority from the yardmaster. Responsibility for providing the necessary protection lies with the yardmaster. We do not see that the issuance of written orders would add to the safety of yard movements against the current of traffic. This aspect of the rule has been adopted in subsection (b)(3) as recommended by RORAC.

One commenter suggested that the word "official" in subsection (d) of the NPRM be replaced with the word "authority". This commenter stated that such a change would permit a movement against the current of traffic to be authorized by signal indication or flag protection, and not necessarily by a person. The FRA believes that the term "official" is more proper. Even if a signal were available to give a clear indication, the official would still be required to authorize its use to govern the movement against the current of traffic.

One commenter felt that this provision should specifically state that movements against the current of traffic, when authorized, must be made subject to "yard speed." The FRA agrees that the proposed language, which is identical to the RORAC version adopted in this final rule, is ambiguous as to whether the other operating restrictions of the section apply. The final rule has been amended to indicate clearly that movements against the current of traffic must be made prepared to stop within one-half the range of vision, not to exceed 20 m.p.h.

One commenter suggested that this section merely require that provision be made for protection of the movement, without specific reference to the source of authority or type of protection. The FRA believes that such a rule would be ambiguous, and that a rule which specifies how authority and protection are to be obtained is preferable.

One commenter suggested a requirement of a five minute interval after a switch is lined for movement to or across the main track and before the move-

ment proceeds in order to establish block signal protection. This type of protection is now provided by rules such as Rule 513 of the Consolidated Code of Operating Rules. The FRA recognizes that operating rules are part of an overall code of procedures which govern train movements, and that there are many interrelated rules which might in some manner affect movements within yard limits. The FRA does not intend that the rule established in this proceeding should be the sole requirement governing such movements. We intend only that this rule will establish a uniform minimum standard as to the traditional provisions of rule 93. We expect that other related carrier rules will continue in effect as before, and be applied in conjunction with this revised rule 93 in order to assure the safety of yard movements. Therefore, no additional provisions have been added to this rule.

PROTECTIVE FLAGGING (SECTION 218.37, AAR RULE 99)

This proposed rule identified the circumstances in which protective flagging was required, and specifically defined the manner in which such flag protection was to be provided.

Among the various general comments submitted on the NPRM version of rule 99, the major issue concerned the question of whether or not flagging should be required in automatic block signal territory. Several commenters expressed the opinion that only a live flagman could provide adequate backup protection. On the other hand, other commenters cited statistics which demonstrate the reliability of signal systems such as automatic block signals, centralized traffic control, and automatic train control. The FRA believes that the provision which exempts train crews operating in automatic block signal territory from providing flag protection is safe, realistic and practical. Automatic block signal systems and other methods of train control cited above provide reliable train separation and when complied with fully assure a safe operation. In addition, the FRA has recently issued a final rule in response to the Federal Railroad Safety Authorization Act of 1976 (Pub. L. 94–348) which will require trains to be equipped with highly visible marking devices which will provide an additional, backup warning system for an engineer if, for whatever reason, he has passed a signal displaying a stop indication (42 FR 2321). The FRA believes that a regulation that would require the provision of a second "backup" warning system in addition to the primary safety system of the signals would not result in so significant an increase in safety as to justify the additional costs involved. The final rule retains the exemption for operations within automatic block signal territory.

Again, several commenters suggested the revision of this section so as to incorporate the revised rule 99 as drafted by RORAC. With some minor reorganization to accommodate Federal regulatory format, FRA has adopted this suggestion.

Another commenter stated that he believed that the proposed rule was a significant improvement over the existing Standard Code Rule 99, but that its effective application still depended upon the judgment of individual employees. In its criticism of the traditional Standard Code Rule 99, the NTSB noted the use of ambiguous terms such as "sufficient distance". The NTSB believed that such terms did not assist the employee in exercising his judgment so as to properly perform his duties. The FRA recognizes that the proposed rule, and the final rule, do rely upon some degree of judgment on the part of operating employees. We believe, however, that this rule will greatly assist the employee in exercising that judgment correctly by identifying for him some of the significant factors which he must consider in determining what actions will provide adequate protective flagging. In addition, the rule will require each carrier to specify a specific distance at which flag protection must be provided. The FRA does not believe all judgment can be eliminated from any rule, but feels that the specific definition of how protective flagging is to be provided which is given by this rule is far more helpful for a train crew than the traditional instructions based on "a sufficient distance" and similar ambiguous terms which have been used traditionally in rule 99.

One commenter stated that he preferred having no Federal regulation, and felt that the one proposed was inadequate. He noted the experience in one State which has in effect what he believed to be a stricter rule. He stated that in all cases of rear end collisions in automatic block signal territory, the proposed rule would not have applied. He would prefer that regulation in this area be left to the various States. As stated above, the FRA believes that there are adequate provisions for the safety of train movements within automatic block signal territory without the addition of protective flagging. Safe train operations are dependent upon the train crew's strict compliance with all signal indications, operating rules and other instructions governing the movement of their train. The FRA believes that this rule provides an adequate degree of safety in a reasonable manner. With respect to this commenter's preference for State regulation as opposed to Federal regulation, the policy of the Federal Railroad Safety Act of 1970, as expressed in section 205 (45 U.S.C. 434), has committed FRA to promoting uniform national regulation to the extent practicable. The FRA, as well as NTSB, has noted the need for revision of rule 99. We cannot assure that all States will adopt a regulation, and even if all did, we cannot assure that all 50 would be uniform. The necessity of complying with a multitude of rules is not only burdensome to carriers, but also confusing to operating employees. The FRA believes, therefore, that a single uniform Federal regulation is preferable to a multitude of different State regulations.

Another commenter asked that the final regulation specifically provide that more stringent State rules or laws would take precedence over a less stringent Federal regulation. The relationship between Federal regulations issued under the Federal Railroad Safety Act and State regulations governing the same subject matter is governed by section 205 of that Act. That statutory provision prescribes the preemption of all State laws, rules, regulations, orders and standards concerning the same subject matter as a Federal regulation, except where such a State provision addresses an essentially local safety hazard and is not incompatible with the Federal provision. In light of this statutory provision, FRA does not have the authority to amend the rule as requested by this commenter.

Several commenters thought that the exception in subsection (a) of the NPRM which would permit a railroad to designate, by train order or special instruction, that flag protection was not required is a serious defect in the rule. One of these thought it irresponsible to "delegate" to the carrier the authority to determine that flag protection was not required. The FRA has reviewed this provision in light of these comments and continues to believe that some such flexibility is justified. We recognize that train orders and special instructions have been used traditionally to relieve a train crew of unnecessary flagging in order to expedite a train movement under certain conditions without sacrificing safety. We have no reason to believe that continued use of this means of operation will lead to abuse or total disregard for the safety of the movement. With respect to the use of train orders, protection for the train movement is not eliminated. Rather, the responsibility for the protection of the train movement is transferred from the train crew (where it would be if flagging were required) to the dispatcher who issues the train order. Once such a "no-flagging" order has been issued, the dispatcher must assure that no other movement is permitted to operate in such a way as to endanger the movement. The FRA does not now believe that a similar degree of safety can be expected from the use of a special instruction as there is no corresponding single individual responsible for providing alternate protection for each movement so exempted. Therefore, while the train order exemption has been retained in the final rule, the special instruction provision has been eliminated.

Two commenters contended that the exemption from flagging in automatic block signal territory would eliminate the "backup protection" provided by the live flagman. As stated earlier, the signal system provides the primary safety system. In the rare situation where a signal malfunction results in a "false proceed", the requirement for highly visible marking devices as required in Part 221 of this chapter already provides a backup warning system. To require flagging in addition, as a backup to a backup system would be unjustifiably redundant protection.

Two commenters asked for a clear definition of "interlocking limits". FRA has included a definition in the final rule which should eliminate confusion over the meaning or intended scope of the term.

Several commenters questioned whether the term "block signal" as used in the exemption in subsection (a) of the NPRM was intended to include other systems of train control such as cab signals. The FRA fully intended the term "block signal" to be used in its broadest sense to include a cab signal which is in fact a fixed signal governing entrance to and passage through a block even though the signal is mounted in the cab of the locomotive rather than along the right-of-way.

One commenter thought there was a discrepancy between subsection (a), and subsections (b) and (c) of the NPRM with respect to flagging in automatic block signal territory—he believed that under (a) it was not required, but under (b) and (c) it was. This is an incorrect reading. Subsection (a) outlined the conditions under which flagging was not required (this provision has been redesignated as subsection (a)(2) of the final rule). Subsections (b) and (c) define the manner in which flagging is to be provided wherever it is required (these provisions have been redesignated as subsections (a)(1)(i) and (a)(1)(ii) of the final rule). There is no discrepancy.

Another commenter suggested that the requirement of protection by two block signals should be replaced by a requirement that the rear of the train is protected by a "block signal system". The FRA and the RORAC versions of the rule require the two block signals since the presence of those signals will assure that a following train movement will be operating under restrictive conditions prepared to stop short of a train ahead. The broader term "block signal system" could be interpreted as a single signal to the rear, and as such would not provide adequate assurance of safety.

Another commenter stated that a relatively new or inexperienced flagman would not necessarily know that there were two signals to the rear of his train. This commenter noted that employees are not usually required to be that qualified on the physical characteristics of the railroad until they become conductors. The FRA does not believe that this provision places an unreasonable burden on an inexperienced flagman. Generally speaking, each carrier's operating rules specify that the conductor and the engineer are responsible for the protection and safety of their train, as well as rules compliance by subordinate crew members. As noted by the commenter, the conductor is familiar enough with the physical characteristics of the railroad to provide adequate instruction to an inexperienced flagman.

Another commenter felt that acceptable distances between the signals ought to be stated in the rule. The design of signal systems is a complex operation which must take into consideration a variety of factors which are peculiar to the specific location. Signal spacing can be affected by the geography, grade, curvature, visibility, density of traffic, type of traffic, length of trains. These factors are too variable to permit the specification of a uniform signal spacing requirement, and in any event, FRA does not believe that such a requirement is necessary in relation to an effective rule 99.

One commenter thought that a passenger train making a scheduled stop should be exempt from the flagging requirement. FRA finds no justification for such an exemption as there are no special procedures that assure protection for the rear of the train while it is stopped.

A commenter inquired whether the meaning of the exemption based on two block signals meant that they must be two "clear" signals, or if two restricting signals would suffice. This provision is intended to require the presence of two signals capable of displaying an aspect which indicates the condition of block occupancy so as to enable a following train to stop short of the rear of the train ahead. The actual indication shown by those signals at any given time is not critical. Stop-and-proceed or grade signals are well established and effective means of controlling a train's movement and therefore can be counted in determining the presence of the necessary two signals.

One commenter noted that the NPRM reflected a drastic departure from the flagging rule now in effect on the Alaska Railroad which is operated by FRA. This rule was not intended to codify the existing practice of any railroad. Rather, it is intended to establish a minimum rule which, once this regulation becomes effective, will be adopted and applied by all carriers to more specifically state the conditions under which flagging is required and the manner in which it is to be provided.

A commenter suggested that the final rule should be no less strict than that contained in the Uniform Code of Operating Rules used by Canadian railroads. The FRA believes that the language of the final rule is as strict as that used by the Canadian railroads. This revision of the Standard Code Rule 99 is sufficiently specific to enable an employee to determine what action is expected of him under given operating conditions so that he is assisted in exercising his judgment as to how to provide for the safety of his train. It also requires each railroad to specify flagging distances for individual segments of its lines which take into consideration all the various factors necessary to define a "sufficient distance" for that territory.

Subsections (b) and (c) of the NPRM set forth the conditions under which flagging protection was to be provided. A number of commenters took exception to the judgment factors involved in a flagman's determination of when the conditions of subsection (b) or (c) existed. They contended that the flagman was not in a position to know with a fair degree of accuracy whether the train was moving at less than ½ the maximum authorized speed. The FRA does not agree that a flagman is incapable of making such a judgment with a reasonable degree of accuracy. Railroad employees have for years been taught how to estimate the speed of a train with the aid of passing mileposts and a standard railroad watch. Using this time honored method, a flagman can reasonably be expected to determine when the train is moving at less than ½ its maximum authorized speed.

In addition, these same commenters contended that the flagman was not in a position to determine such factors as the relative speed of his train to a following train in order to judge whether he was operating under circumstances in which he might be overtaken, even though moving at more than ½ the maximum speed for that track. The list of factors included in the proposed rule (subsection (b)) and the final rule (subsection (a)(1)(ii)) is intended as a guideline of factors to be considered by the flagman in exercising his judgment. Under such conditions, he must assume that the following train is moving at the maximum authorized speed for that territory, unless he has reliable information to the contrary such as by radio communication between his train and the following train and can ascertain the actual speed.

One commenter did note that a provision should be added to the rule providing for the use of radio. While radio may be used to communicate between trains so as to determine more accurately whether a train "may be overtaken", the FRA believes that the use of radio in over-the-road operation is still subject to too many variables in terms of reliability and coverage to be incorporated into this rule as a mandatory requirement. Those railroads that are well equipped with radios will be able to utilize them as an additional tool to assist the flagman in exercising his judgment as to when protection should be provided under subsection (a)(1)(ii).

One commenter characterized these two subsections as being overly wordy, difficult to understand, and difficult to teach to crew members. The FRA believes that the language of the RORAC version incorporated in the NPRM and final rule is far clearer than the traditional rule based on ambiguous terms such as "sufficient distance", "proper intervals", and the like. The inclusion of a list of factors to be considered in providing protection and the specific definition of how to flag will assist the flagman in exercising a more informed and proper judgment and will provide the specificity called for by NTSB. For this reason, this rule should be easier to comprehend and to teach.

One commenter thought the provisions of these two subsections ((a)(1)(i) and (a)(1)(ii)) would apply in automatic block signal territory, and were in that case illogical. These provisions were not intended to apply where automatic protective systems provide for the safety

of the movement. They would apply in territory which does not meet one of the criteria set forth in subsection (a)(2).

One commenter inquired whether a carrier that wished to retain a flagging requirement in territory which was exempted under subsection (a)(2) of this rule, would have to conduct that flagging in accordance with the provisions of the rule. The answer to this question is no. In an operation such as on a heavy commuter line, entirely controlled by automatic block signals, a carrier would not be required to flag under the rule. If he wished to maintain a flagging requirement of his own that differs from the procedure established in this regulation, he could do so.

One commenter suggested the substitution of the words "for any train at that location" for the proposed language "including slow order limits" which is used to define what is meant by maximum authorized speed. The FRA believes the proposed language is the better of the two phrases since it more accurately and explicitly defines what is to be considered maximum authorized speed.

Another commenter thought the ½ maximum speed concept would create difficulties for heavy trains leaving a yard where it would take some time to attain that speed. While FRA recognizes that heavy weight trains coming out of yards will take some time to attain a speed which exceeds ½ maximum speed, and will, therefore, be required to protect to their rear, this is not unlike present rule 99 requirements. To this extent, this rule will merely reinforce current practice, and assure that it is uniformly applied.

A number of commenters expressed the opinion that the required use of fusees was excessive and might also result in danger of fire, particularly on bridges, in tunnels and at stations, or of increased personal injuries. In order to insure full protection during the speed intervals identified in the regulation, lighted fusees must be dropped off in the manner prescribed in the RORAC rule so as to assure that the following train will encounter a lighted fusee. An exception to the rule is provided where a Federal, State or local regulation prohibits the use of fusees because of the danger of fire under certain weather conditions. Under such conditions, the carrier will be required to put into effect alternate operating procedures to ensure full protection. This may be done, for example, by use of an absolute block. Existing carrier rules cover the use of fusees in locations such as bridges, tunnels and stations. These may require revision and special instruction of employees so as to assure the degree of protection intended by this rule. With respect to the question of personal injury, the FRA recognizes that fusees have been used for years and that their safe use is one of the items stressed in safety instructions issued to both new and veteran employees.

A commenter also questioned the provision of the NPRM requiring fusees to be dropped from the rear of the train. The FRA agrees that fusees need not be dropped from the rear of the train. The manner in which the fusees are dropped can be determined by the carrier in its operating rules.

Subsection (d) of the NPRM defined the specific manner in which flagging is to be accomplished. One commenter suggested that the subsection be revised to require torpedoes to be placed "at least" 100 feet apart, rather than the specific "100 feet apart" as was proposed. The FRA agrees with this suggestion and has made the appropriate change for protection to the rear and to the front of a train (subsection (a)(1)(iii) and (a)(1)(iv)).

A commenter thought the phrase "flagman's signals" awkward and suggested the term "flagging signals" instead. The FRA believes the term "flagman's signals" is the better term in that it is the term presently used in the operating rules of many railroads and does not confine the meaning to train service alone.

Several commenters criticized the provision requiring each railroad to designate the specific distance which the flagman was required to go back in a given territory in order to provide flag protection. Some suggested that the final rule should revert to the "sufficient distance" terminology, while others contended that the proposed rule would result in nonuniformity. The FRA feels that the phrase "sufficient distance" is specifically the type of ambiguity and weakness in the present rule which was criticized by NTSB. The requirement that each railroad designate a safe flagging distance for each segment of its line based on speed and other operational characteristics will provide a more precise and effective rule.

One of these commenters suggested alternate language which would require the flagman to go back "a sufficient distance to insure full protection against a train approaching at twice the speed it was expected to operate." The FRA believes that adoption of a rule such as that would be unrealistic, would be burdensome for a flagman to comply with and could invite intentional operating speed violations. Operating rules presently included in railroad rule books that use indefinite terms such as "sufficient distance" will have to be revised to conform with the requirements of § 218.37.

The FRA does not believe that the "non-uniformity" resulting from the provision requiring each railroad to specify a specific distance for establishing flagging protection will in any way weaken the rule. In this case, the rule on each railroad will comply with the minimum standard included in this regulation in terms of the conditions in which flagging must be provided, as well as the manner in which it is provided. In these overall terms, the rules will create a uniform procedure. There is both a rational and practical basis for allowing the specific designation of a particular flagging distance since as was pointed out earlier in this discussion, so many variables are involved in defining a safe distance at any given location.

One commenter suggested the addition of a requirement which would provide that a flagman could not return to his train if he could see or hear a train approaching, but should wait until the train stops or acknowledges his signal. The FRA does not believe that such an additional provision is necessary to assure the safety of the operation. The following train will have already been warned by the two torpedoes and lighted fusee.

One commenter thought that subsection (e) of the NPRM, which provided for flag protection of the front of a train, should specify the conditions under which such protection is required. The rule as proposed provided that front end protection against opposing movements must be provided whenever required under the railroad's operating rules. The FRA believes this to be the sounder approach as this will minimize confusion resulting from a Federal regulation conflicting with a multitude of other carrier operating rules and procedures. Carriers now prescribe conditions under which front end protection is required, and these may vary depending upon the type of operation involved. FRA has no reason to believe that a continuation of the present practice will adversely affect the safety of train operations.

The FRA has reviewed the rules included in this proceeding in accordance with the policies of the Department of Transportation as stated in the FEDERAL REGISTER (41 FR 16200, April 16, 1976), and has concluded that the expected regulatory impact of these rules will be minimal since they do not differ significantly from present good operating practices and will merely assure that such good practice becomes the minimum standard for the industry.

The environmental impact of the rules has also been assessed in compliance with section 102(2)(C) of the National Environmental Policy Act. Since the Federal rule will serve only to assure that existing procedures are applied uniformly throughout the industry, FRA has determined that this action will not significantly affect the quality of the human environment.

In light of the foregoing discussion, Part 218 of Title 49 of the Code of Federal Regulations is amended as follows:

1. By revising the table of contents for Part 218 to read as follows:

Subpart A—General

Sec.
218.1 Purpose.
218.3 Application.
218.5 Definitions.
218.7 Waivers.
218.9 Civil penalty.
218.11 Filing, testing and instruction.
218.12-218.20 [Reserved]

Subpart B—Blue Signal Protection of Workmen

218.21 Scope.
218.23 Blue signal display.

Sec.
218.25 Workmen on track other than a hump-yard track.
218.27 Workmen on hump-yard track.
218.29 Remotely-controlled switches.

Subpart C—Protection of Trains and Locomotives

218.31 Scope.
218.33 [Reserved]
218.35 Operations within yard limits.
218.37 Flag protection.

AUTHORITY: Secs. 202, 84 Stat. 971, (45 U.S.C. 431), Sec. 1.49(n) of the regulations of the Office of the Secretary of Transportation, 49 CFR 1.49(n).

2. By adding new paragraphs (e), (f) and (g) to § 218.5 to read as follows:

§ 218.5 Definitions.

* * * * *

(e) "Interlocking limits means the tracks between the opposing home signals of an interlocking.

(f) "Flagman's signals" means a red flag by day and a white light at night, and a specified number of torpedoes and fusees as prescribed in the railroad's operating rules.

(g) "Absolute block" means a block in which no train is permitted to enter while it is occupied by another train.

3. By adding a new Subpart C to Part 218 which reads as follows:

Subpart C—Protection of Trains and Locomotives

§ 218.31 Scope.

This subpart prescribes minimum operating rule requirements for the protection of railroad employees engaged in the operation of trains, locomotives and other rolling equipment.

§ 218.33 [Reserved]

§ 218.35 Yard limits.

(a) After August 1, 1977, yard limits must be designated by—

(1) Yard limit signs, and

(2) Timetable, train orders, or special instructions.

(b) After August 1, 1977, each railroad must have in effect an operating rule which complies with the requirements set forth below:

(1) The main tracks within yard limits may be used, clearing the time an approaching designated class train is due to leave the nearest station where time is shown. In case of failure to clear the time of designated class trains, protection must be provided as prescribed by § 218.37. In yard limits where main tracks are governed by block signal system rules, protection as prescribed by § 218.37 is not required.

(2) Trains and engines, except designated class trains, within yard limits must move prepared to stop within one-half the range of vision but not exceeding 20 m.p.h. unless the main track is known to be clear by block signal indications.

(3) Within yard limits, movements against the current of traffic on the main tracks must not be made unless authorized and protected by train order, yardmaster, or other designated official and only under the operating restrictions prescribed in 218.35(b)(2).

(c) Each railroad shall designate in the operating rule prescribed under paragraph (b) of this section the class or classes of trains which shall have superiority on the main track within yard limits.

§ 218.37 Flag protection.

(a) After August 1, 1977, each railroad must have in effect an operating rule which complies with the requirements set forth below:

(1) Except as provided in subparagraph (2) of this paragraph, flag protection shall be provided—

(i) When a train is moving on the main track at less than one-half the maximum authorized speed (including slow order limits) in that territory, flag protection against following trains on the same track must be provided by a crew member by dropping off single lighted fusees at intervals that do not exceed the burning time of the fusee.

(ii) When a train is moving on the main track at more than one-half the maximum authorized speed (including slow order limits) in that territory under circumstances in which it may be overtaken, crew members responsible for providing protection will take into consideration the grade, curvature of track, weather conditions, sight distance and relative speed of his train to following trains and will be governed accordingly in the use of fusees.

(iii) When a train stops on main track, flag protection against following trains on the same track must be provided as follows: A crew member with flagman's signals must immediately go back at least the distance prescribed by timetable or other instructions for the territory, place at least two torpedoes on the rail at least 100 feet apart and display one lighted fusee. He may then return one-half of the distance to his train where he must remain until he has stopped the approaching train or is recalled. When recalled, he must leave one lighted fusee and while returning to his train, he must also place single lighted fusees at intervals that do not exceed the burning time of the fusee. When the train departs, a crew member must leave one lighted fusee and until the train resumes speed not less than one-half the maximum authorized speed (including slow order limits) in that territory, he must drop off single lighted fusees at intervals that do not exceed the burning time of the fusee.

(iv) When required by the railroad's operating rules, a forward crew member with flagman's signals must protect the front of his train against opposing movements by immediately going forward at least the distance prescribed by timetable or other instructions for the territory placing at least two torpedoes on the rail at least 100 feet apart, displaying one lighted fusee, and remaining at that location until recalled.

(v) Whenever a crew member is providing flag protection, he must not permit other duties to interfere with the protection of his train.

(2) Flag protection against following trains on the same track is not required if—

(i) The rear of the train is protected by at least two block signals;

(ii) The rear of the train is protected by an absolute block;

(iii) The rear of the train is within interlocking limits; or

(iv) A train order specifies that flag protection is not required.

(b) Each railroad shall designate by timetable or other instruction for each territory the specific distance which a crew member providing flag protection must go out in order to provide adequate protection for his train.

(c) Whenever the use of fusees is prohibited by a Federal, State or local fire regulation, each railroad operating within that jurisdiction shall provide alternate operating procedures to assure full protection of trains in lieu of flag protection required by this section.

This amendment is effective August 1, 1977. Earlier compliance with these regulations is authorized as of January 27, 1977.

Issued in Washington, D.C., on January 19, 1977.

ASAPH H. HALL,
Administrator.

[FR Doc.77-2585 Filed 1-26-77;8:45 am]

[Docket No. RSOR-5, Notice No. 3]

PART 220—RADIO STANDARDS AND PROCEDURES

Final Rule

On August 11, 1975, the Federal Railroad Administration (FRA) published in the FEDERAL REGISTER (40 FR 33682) a notice of proposed rulemaking (NPRM) stating that FRA was considering the issuance of a new Part 220, Radio Standards and Procedures. This new part would prescribe mandatory procedures governing the use of radio communications in connection with railroad operations. A technical correction to the proposed rule was published in the FEDERAL REGISTER on August 21, 1975 (40 FR 36575).

Interested persons were invited to participate in the rulemaking proceeding by submitting written comments before September 24, 1975. The notice also scheduled a public hearing which was held on September 25, 1975, in Washington, D.C. The written comments filed in response to the NPRM, and the comments submitted at the public hearing have been considered. FRA has determined, after reviewing and analyzing all of these comments, that several changes are necessary. These changes, which are discussed below, affect the following sections: § 220.1 Scope; § 220.5 Definitions; § 220.29 Statement of letters and numbers; § 220.43 Communication consistent with rules; § 220.49 Switching, backing or pushing; and § 220.61 Transmission of train orders by radio.

The Administrator has evaluated the adoption of this new part in accordance with the regulatory reform policies of the Department of Transportation, which were stated in the public notice published on April 16, 1976 in the FEDERAL REGISTER (41 FR 16200). These policies require an evaluation of the economic impact of regulations. The main economic impact to the railroad industry would be due to the instruction of employees in the proper use of radio communication, and the additional time used in connection with transmitting by radio in compliance with these rules. This time would involve listening to ensure a channel is clear before transmitting, properly identifying the station when transmitting or receiving, repeating a transmission when necessary, and copying and disseminating train orders received by radio. The costs which will be incurred as a result of these activities will be minimal. In the two accidents cited by the National Transportation Safety Board (NTSB) in recommending that FRA adopt rules for the use of radio, there were three fatalities, three injuries and over two million dollars in property damage. Since the adoption of these rules can prevent such accidents FRA has determined that the benefits outweigh the slight costs to the railroad industry.

A summary of the contents of the comments and FRA's responses to these comments, including any action taken as a result, are discussed below:

SUBPART A—GENERAL

Section 220.1. This section provides that the rules in this part shall govern the use of radio communications in connection with railroad operations. Several commenters asked for clarification concerning what modes of communication are to be governed by these rules. These rules apply only to voice communications between railroad employees by way of radio and are not applicable to communications by modes such as telephone, telegraph, automatic audio signalling devices, or the transmitting of recorded messages by radio. To clarify the intended scope of these rules, the following language has been added to this section regarding the term "radio communications": "The term 'radio communications' refers to the transmission and reception of voice communications by radio." In addition, the scope of these rules is limited to the use of radio communications in connection with railroad operations, as defined in this part.

This section also permits railroads to adopt more stringent requirements so long as the minimum requirements of this part are met. One commenter felt that the standards and procedures that railroads may adopt should be submitted to FRA prior to implementation and made subject to the penalty provisions. FRA believes that these measures would be counterproductive in that they would discourage railroads from adopting and observing more stringent requirements.

Section 220.3. This section states that this part applies to railroads that operate trains or other rolling equipment on standard gage track which is part of the general railroad system of transportation. This section also exempts rapid transit railroads and railroads that operate only on track inside an installation which is not part of the general railroad system of transportation. One commenter opposed the exemption in paragraph (b)(2) for rapid transit railroads. The commenter felt that any railroad subject to the Federal Railroad Safety Act of 1970 should be subject to these rules. In view of the many operational differences between rapid transit systems and the general railroad system of transportation, the application of identical radio rules and procedures would be inappropriate. FRA believes that radio rules for rapid transit railroads should be addressed separately and will continue to analyze and review the situation for future action. This section remains as proposed.

Section 220.5. This section defines terms used in this part. As a result of comments received a change has been made in the wording of one definition. The definition of the term "train order" in paragraph (c) has been revised to read as follows: "'Train order' means any mandatory directive issued as authority for the conduct of a railroad operation which is transmitted by radio." This new definition, which applies only to the rules in this part, reflects two changes from the proposed definition. The first is the elimination of the requirement that for a directive to qualify as a train order it must be conveyed in written form pursuant to the railroad's operating rules. The elimination of this provision is designed to broaden the scope of the definition to include those directives which have the same force and effect as train orders, such as movement orders, but which are not required by a railroad's operating rules to be reduced to writing by the recipient. The second is the addition of the requirement that for a directive to be considered a train order, for the purposes of this part, that it must also be transmitted by radio. Since these rules are not intended to govern the use of directives which are not transmitted by radio, such as timetables, this provision has been added to prevent their inclusion under the definition of train order.

FRA is aware that certain railroads are presently conducting operations by unique directives which serve as substitutes for train orders and which are not transmitted in accordance with these rules. An August 1, 1977, effective date has been established for these rules, which will enable railroads that desire to continue using such directives to petition FRA for waivers, pursuant to the provisions of 49 CFR Part 211, Rules of Practices (41 FR 54181, December 13, 1976).

Section 220.7. This section prescribes a civil penalty of at least $250 but not more than $2,500 for each violation of a provision of this part. One commenter noted that the Federal Communication Commission (FCC) regulations prescribe a monetary penalty for failure to observe proper station identification procedures. The commenter believed that this section might expose railroads to "double jeopardy" in that they may also be liable to FRA for violating § 220.37, which prescribes station identification procedures to be observed when using radio in connection with railroad operations. A violation of the FCC regulation would result from the failure to comply with a standard governing radio communications generally, while failure to comply with a rule in this part would constitute a violation of a railroad safety standard involving the use of radio. If a railroad uses identification procedures which do not comply with either FRA or FCC rules, that railroad may be liable to both agencies. However, this would not constitute "double jeopardy". Double jeopardy occurs when one is prosecuted more than once for the same offense, not when one is prosecuted for different offenses resulting from a single act. Here a railroad would be subject to two penalties for two different offenses, resulting from a single act. This section remains as proposed.

SUBPART B—RADIO PROCEDURES

Section 220.21. This section prescribes filing requirements for railroads using or intending to use radio communications in connection with their operations. Under this subpart, each railroad is required to adopt rules which conform with the minimum standards prescribed herein and to submit them to the Federal Railroad Administrator at least 30 days before implementation. Each amendment to these rules must be filed within thirty days after it is issued. One commenter suggested that this section be revised to require the filing of amendments thirty days prior to implementation. FRA believes that a thirty day advance filing requirement for amendments would have an unnecessarily restrictive affect upon the use of radio. These rules, which constitute the initial step in the regulation of a technical and expanding subject area, do not provide guidelines for all the exigencies which may occur in the course of using radio to conduct railroad operations. Occasions may arise where the expeditious amendment of the radio operating rules of a railroad may be needed to provide for unanticipated situations. These filing requirements will give railroads the necessary degree of flexibility to effectively manage in such situations. However, as stated before, any amendments adopted by a railroad must be as stringent as the standards prescribed in this part. In addition, individual railroads will be expected to exercise prudent judgment in amending their radio rules.

Another commenter favored eliminating the filing requirements since railroads are currently required to file their operating rules under 49 CFR Part 217. FRA believes that these new procedures, which are unique to radio-train operations, require detailed attention. The separate filing of radio rules will enable both railroads and the FRA to focus their attention on problems peculiar to these new operations. Accordingly, FRA has decided to retain these filing requirements. This section remains as proposed.

Section 220.23. This section requires railroads using radio in connection with their operations to publish information concerning the locations and hours of operation of their stations. One commenter suggested that FRA require railroads to publish this information in their timetables. FRA feels this is not necessary. The manner of publication should be left to the discretion of the railroads. However, all employees required to use radio in connection with train operations must be provided with a copy of the publication that is used.

One commenter noted that FCC regulations define a "base station" as "a land station in the land mobile service carrying on a service with land mobile stations" (47 CFR 93.7). This commenter pointed out that under this definition it was possible for a base station to be no more than the site of a transmitter and therefore unmanned. This would also be true for wayside stations. The commenter also stated that a literal interpretation of the last sentence of this section would result in the publication of a list of base and wayside stations that were never attended, but were functional because their "control points" were attended. It was suggested that the term "control point," which is defined in the FCC regulations as "an operational station which is used to control the emissions or operations of another station * * *" be used in lieu of the term "base and wayside stations." FRA believes that the use of the term "control point," in these rules, would cause confusion because it does not have a commonly recognized meaning in the railroad industry. A number of railroads use the term in lieu of station names to designate specific locations for the issuing of written orders, while others use it to designate remote control signal installations at outlying points. The terms "base" and "wayside" were chosen because they have commonly understood meanings in the railroad industry, even though those meanings may not be in accord with FCC definitions. On those railroads utilizing radio, a "base" station is generally understood to be the main receiving and transmitting terminal where the train dispatcher's office is located. The term "wayside" station is commonly understood as indicating an intermediate station between terminals. Thus, a dispatcher in a base station can code into his phone circuit a number of intermediate wayside radio installations to increase the range of his set to reach trains that are out of the range of his base station, but which are within the reception range of a wayside station. Based on the foregoing, FRA believes that the proposed terminology is more suitable for the railroad industry.

Another commenter thought that in publishing information concerning the hours of operation of base and wayside stations, railroads should only be required to indicate when they are "usually attended or in operation" as opposed to when they are in fact "attended or in operation." FRA believes that the use of the suggested language would present a safety hazard because it may cause unwarranted reliance upon a station being in operation. This section remains as proposed.

Section 220.25. This section requires those railroads using radio to educate and instruct their employees in the proper use of radio. This section remains as proposed.

Section 220.27. This section prescribes procedures to be employed for the identification of those receiving and transmitting communications by radio. One commenter felt the use of short identification tags should be permitted after initial transmissions. The language of paragraph (a)(1) permits the use of "an abbreviated name or initial letters" when identifying the railroad. In addition, paragraph (a)(2) permits the use of a "unique designation" when identifying a station. FRA believes that those provisions give sufficient latitude to permit the shortening of transmissions without resorting to the casual use of name tags, which do not provide adequate identification.

Two commenters felt that the requirements of paragraphs (a)(2) and (a)(3) were redundant and time consuming since both would result in the transmission of information concerning the location of stations. It was suggested that this section be revised to require compliance with either subparagraph, but not both. The location of a station is extremely important for identification purposes. Since most stations are designated by location, compliance with paragraph (a)(2) will usually satisfy the requirements of (a)(3). Paragraph (a)(3) provides for those cases where the name of a station does not indicate its location. FRA believes that safety will be enhanced by requiring compliance with the provisions of both subparagraphs. This section remains as proposed.

Section 220.29. This section prescribes minimum requirements for maintaining clarity and understanding when pronouncing letters and numbers during radio transmissions. Several commenters raised questions concerning the use of the phonetic alphabet in Appendix A. Paragraph (a) requires the use of a phonetic alphabet when pronouncing letters or numbers during radio transmissions. The phonetic alphabet in Appendix A is only recommended; therefore, any railroad presently using a different phonetic alphabet may continue to do so.

One commenter suggested that paragraph (a) be revised to begin with the phrase "If necessary for clarity", to eliminate the need for using the phonetic alphabet for terms such as "a.m." (ante meridiem) or "p.m." (post meridiem). FRA concurs with this suggestion and the language of this section has been revised accordingly.

Section 220.31. This section prescribes procedures for initiating radio transmissions. It is designed to ensure that a uniform and proper identification format is used. Since no comments were received regarding this section, it remains as proposed.

Section 220.33. This section prescribes the procedures for receiving transmissions. It provides a uniform format to ensure proper identification and repetition of messages. Several commenters felt that adherence to the requirements of this section would require the repetition of messages not involving railroad operations, such as transmissions between security forces, and lead to the overcrowding of channels. This section requires the repetition of all transmissions involving railroad operations to ensure safety. The exceptions contained in paragraph (c) are designed to eliminate the repetition of nonessential messages to avoid overcrowding channels. Thus, transmissions involving security forces and other personnel not involved in railroad operations are not subject to the rule. This section remains as proposed.

Section 220.35. This section prescribes procedures for terminating transmissions. The only comment received regarding this section suggested changes in the language of paragraphs (a) and (b), so that they would conform with more general provisions in the FCC regulations. This section is designed to ensure reception of the entire contents of messages before the termination of transmissions. FRA believes that these paragraphs, as proposed, more precisely convey that intent. This section remains as proposed.

Section 220.37. This section requires railroads to test the functional quality of equipment used for radio transmissions or receptions in connection with railroad operations. One commenter requested a clarification of the term "found not to be functioning properly", located in paragraph (b). A radio is not functioning properly when it is not capable of either receiving or transmitting communications clearly because of a mechanical malfunction or the deterioration of its power source. When a radio is used at a location which is within its normal operating range and the quality of its receptions and transmissions is so impaired as to render them unreliable, or the radio is totally incapable of either receiving or transmitting, then that radio is not functioning properly and must be removed from service until repaired. There may be instances where interference or fluctuation are encountered when a radio which is functioning properly is being used near or beyond the periphery of its normal operating range. In such instances the radio being used is not required to be removed from service. However, it should be noted that under § 220.45 of this part, any communications which are not fully understood or completed may not be acted upon and must be treated as if not sent.

One commenter felt that it would be impractical for the crews of multiple unit electric trains to comply with the provisions of paragraph (c), which requires that all crew members be notified when a radio is removed from service. In order to effectuate the purposes of this rule, the crews of all trains within the scope of these regulations must comply with the provisions of paragraph (c).

Section 220.39. This section requires that radio equipment be maintained so that it will be ready to receive transmissions whenever the engine or caboose is manned. This section remains as proposed.

Section 220.41. This section prescribes the procedures to be followed in reporting the failure of an engine or caboose radio that occurs while en route. Two commenters suggested that this section be revised to require the filling of a written report. This report, which would be submitted at the final terminal, would contain information identifying the point at which the failure was discovered. FRA believes that the regulation, as proposed, which requires that a radio failure be reported as soon as practicable, assures that radio failures will receive prompt attention. Individual railroads may adopt rules to require their employees to also file written reports, provided such rules are consistent with this part. This section remains as proposed.

Section 220.43. This section prohibits the use of radio communications in a manner inconsistent with the requirements of 49 CFR Part 220, the operating rules of individual railroads, and with FCC regulations. The proposed rule did not contain the reference to FCC regulations. Several commenters suggested that FRA also refer to the FCC regulations to avoid implying that this part preempted those regulations. These rules are not intended to preempt FCC regulations and to avoid that inference FRA has added language to that effect.

Language has also been added to this section to prohibit the use of citizen band radios in connection with railroad operations. The virtually unlimited public access to these radios has made their usage widespread. This usage presents serious problems because many users consistently fail to observe FCC identification procedures. In drafting these rules, FRA was careful to prescribe stringent identification procedures to ensure that employees using radio in connection with railroad operations properly identified themselves. FRA believes that the purposes of this part would be undermined if railroads were permitted to use citizen band radios, in that railroad employees, who must rely upon radio communications, would be subjected to serious safety hazards by unidentified and uncontrolled transmissions from public users.

Section 220.45. This section prohibits railroad employees from acting in response to radio communications unless those communications are understood or completed in accordance with the requirements of this part and the railroad's operating rules. Since no comments were received regarding this section, it remains as proposed.

Section 220.47. This section prescribes procedures governing emergency radio transmissions involving railroad operations. Two commenters suggested that the international distress call "May Day" be substituted for the word "emergency". FRA believes that the present language not only adequately conveys the intent of this section, but also is commonly used throughout the railroad industry. This section remains as proposed.

Section 220.49. This section prescribes guidelines for certain train movements made in response to radio communications. One commenter was uncertain whether this section was also applicable to operations on mainlines. It was noted that the title of this section, as proposed ("Yard movements, switching, backing"), implied that it was applicable only to switching and backing in yards. This confusion was compounded by the fact that the text of this section referred to switching, backing or pushing, and did not mention either yard movements or mainline operations. FRA intends this section to apply to switching, backing or pushing at all locations. To clarify this intent, the title of this section has been revised to read as follows: "Switching, backing or pushing". The text of this section remains as proposed. With this revision the title and the text of the section are in accord and the inference that the application of this section is limited to yard movements is eliminated.

One commenter felt that the word "and" should be substituted for "or" in the first sentence, to require both complete instructions and continuous radio contact. Continuous radio contact is necessary to maintain control of a switching, backing or pushing movement when instructions are incomplete. FRA believes that when complete instructions have been given for an entire movement, continuous radio contact is not necessary.

One commenter suggests that this section also require that radio equipped engines and cabooses be provided with portable radios, as auxiliary devices, to prevent a total loss of communication at a critical moment. Requiring railroads to equip each engine and caboose with a portable radio for emergency situations is unnecessary since the rule already requires the immediate cessation of movements when instructions are not understood or continuous radio contact is lost. FRA believes that the rule, as proposed, provides sufficient safeguards to assure safety when radio contact is lost.

Section 220.51. Paragraph (a) of this section restricts the use of radio in transmitting information concerning the position or aspect displayed by a fixed signal. This language is designed to prohibit the use of radio to transmit information in advance concerning the aspect of a signal, when the train receiving this information has not arrived at that signal. The practice of predicting the aspect of a signal may cause unwarranted reliance and presents a substantial safety hazard. This paragraph proscribes such a practice.

Paragraph (b) allows the use of radio to convey instructions which would have the effect of overriding the indication of a fixed signal in automatic block territory, if permitted by the railroad's operating rules. Commenters were concerned whether under paragraph (b) railroads were permitted to use radio to authorize trains to move under less restrictive conditions than a signal indicates. They also inquired as to whether radio may be used to require trains to move under more restrictive conditions. In promulgating this rule, FRA was concerned with preventing the casual use of radio to override signal indications in automatic block signal territory. The provisions of paragraph (b) permit the use of radio to authorize trains to either proceed from an automatic block signal displaying a "stop" indication, or to stop at a signal displaying a "proceed" indication, if such action is taken in accordance with the procedures contained in the operating rules of the railroad. Radio merely serves as an alternate method of communication.

SUBPART C—TRAIN ORDERS

Section 220.61. This section prescribes procedures governing the use of radio to transmit train orders when authorized by the operating rules of the railroad. Several commenters felt that it was dangerous for crew members to attempt to receive train orders in moving engines. One of these commenters expressed apprehension regarding the clarity of reception in a moving engine because of the high noise levels. Another commenter was concerned with the difficulty of legibly copying train orders while in a moving engine. The language of paragraph (b)(2) requires the stopping of trains to receive train orders when it is deemed necessary by a conductor, engineer, or train dispatcher. In addition, the rule is structured around a system of "checks and balances", which requires that train orders be copied by the receiving crew member and repeated to the dispatcher for verification. FRA believes that adherence to these procedures will provide adequate protection against the possibility of misunderstanding train orders.

Paragraph (b)(3) of this section has been amended to require that all train orders be reduced to writing. FRA believes that all instructions which fall under the definition of train order, as used in this part, should be reduced to writing so that there will be a written record substantiating the content of a transmission, which can be referred to by crew members implementing those instructions. This revision is intended to eliminate the dangers inherent in requiring a crew member to rely on his recollection of the content of a train order.

As a result of comments received, two changes have been made in the wording of paragraph (b)(4). The first change is the elimination of the requirement that train orders be repeated in accordance

with the railroad's operating rules, and the substitution of the requirement that train orders be immediately repeated in their entirety. This change is intended to prevent the use of abbreviated responses, such as the "X response", when an employee is called upon to repeat the contents of a train order.

The second change is the addition of the requirement that after the dispatcher has stated "complete", the employee copying the train order must then acknowledge by repeating "complete". FRA believes that the addition of this procedure will enhance safety by providing a uniform and more complete format for the termination of transmissions involving train orders.

One minor change has been made in the language of paragraph (b)(6). The term "or which" has been substituted for "and" in the first sentence to prohibit employees from acting upon train orders which have not been completed "or which" do not comply with the requirements of the railroad's operating rules. Failure to comply with either of these requirements may present a safety hazard and this change is intended to prevent the use of train orders which are not both complete and in compliance with the railroad's operating rules.

One commenter suggested that this entire section be eliminated because it repeats what is already contained in the operating book of rules of most carriers. FRA is cognizant of the fact that this section reiterates many procedures already utilized by many carriers. However, to establish uniform and standard procedures throughout the entire railroad industry, FRA has decided to retain the provisions of this section.

In consideration of the foregoing, Chapter II of Title 49 of the Code of Federal Regulations is amended by adding a new Part 220, Radio Standards and Procedures, to read as set forth below. These rules become effective August 1, 1977.

Issued in Washington, D.C., on January 19, 1977.

BRUCE M. FLOHR,
Deputy Administrator.

Subpart A—General

Sec.
220.1 Scope.
220.3 Application.
220.5 Definitions.
220.7 Penalty.

Subpart B—Radio Procedures

220.21 Railroad operating rules; radio communications.
220.23 Publication of radio information.
220.25 Instruction of employees.
220.27 Identification.
220.29 Statement of letters and numbers.
220.31 Initiating a transmission.
220.33 Receiving a transmission.
220.35 Ending a transmission.
220.37 Voice test.
220.39 Continuous monitoring.
220.41 Notification on failure of train radio.
220.43 Communication consistent with rules.
220.45 Communication must be complete.
220.47 Emergencies.
220.49 Yard movements, switching, backing.
220.51 Signal indications.

Subpart C—Train Orders

220.61 Transmission of train orders by radio.

AUTHORITY: Sec. 202 and 209, 84 Stat. 971, 975 (45 U.S.C. 431, 438), and § 1.49(n) of the regulations of the Office of the Secretary of Transportation, 49 CFR 1.49(n).

Subpart A—General

§ 220.1 Scope.

This part prescribes minimum requirements governing the use of radio communications in connection with railroad operations. The term "radio communications" refers to the transmission and reception of voice communications by radio. So long as these minimum requirements are met, railroads may adopt additional or more stringent requirements.

§ 220.3 Application.

(a) Except as provided in paragraph (b) of this section, this part applies to railroads that operate trains or other rolling equipment on standard gage track which is part of the general railroad system of transportation.

(b) This part does not apply to:

(1) A railroad that operates only on track inside an installation which is not part of the general railroad system of transportation; or

(2) A rapid transit railroad that operates only on track used exclusively for rapid transit, commuter, or other short-haul passenger service in a metropolitan or suburban area.

§ 220.5 Definitions.

As used in this part, the term:

(a) "Employee" means any person who is authorized by a railroad to use its radio facilities in connection with railroad operations.

(b) "Railroad operation" means any movement of a train, engine, on-track equipment, or track motor car, single or in combination with other equipment, on the track of a railroad.

(c) "Train Order" means any mandatory directive issued as authority for the conduct of a railroad operation which is transmitted by radio.

§ 220.7 Penalty.

Each railroad to which this part applies that violates any requirement prescribed in this part is liable to a civil penalty of at least $250 but no more than $2500.

Subpart B—Radio Procedures

§ 220.21 Railroad operating rules; radio communications.

(a) After August 1, 1977, the operating rules of each railroad with respect to radio communications shall conform with the requirements of this part.

(b) Before November 1, 1977 or 30 days before it commences to use radio communications in connection with railroad operations, whichever is later, each railroad shall file with the Federal Railroad Administrator, Washington, D.C. 20590, one copy of its operating rules with respect to radio communications. Each amendment to these rules shall be filed with the Federal Railroad Administrator within 30 days after it is issued.

§ 220.23 Publication of radio information.

Each railroad shall designate its territory where radio base stations are installed, where wayside stations may be contacted, and designate appropriate radio channels by publishing them in a timetable or special instruction. The publication shall indicate the periods during which base and wayside radio stations are attended or in operation.

§ 220.25 Instruction of employees.

Each employee who is authorized to use a radio in connection with a railroad operation, shall be:

(a) Provided with a copy of the railroad's operating rules governing the use of radio communication in a railroad operation.

(b) Instructed in the proper use of radio communication as part of the program of instruction prescribed in § 217.11 of this chapter.

§ 220.27 Identification.

(a) Except as provided in paragraph (c) of this section, the identification of each wayside, base or yard station shall include at least the following minimum elements, stated in the order listed:

(1) Name of railroad. An abbreviated name or initial letters of the railroad may be used where the name or initials are in general usage and are understood in the railroad industry;

(2) Name of office or other unique designation of the station; and

(3) Location of the station.

(b) Except as provided in paragraph (c) of this section, the identification of each mobile station shall consist of the following elements, stated in the order listed:

(1) Name of the railroad. An abbreviated name or initial letters of the railroad may be used where the name or initial letters are in general usage and are understood in the railroad industry;

(2) Train name (number), if one has been assigned, or other appropriate unit designation; and

(3) The word "engine", "caboose", "motorcar", "pakset" or other word which indicates to the listener the precise mobile transmitting station, unless identical to the requirement of paragraph (b)(2) of this section.

(c) If positive identification is achieved in connection with switching, classification, and similar operations wholly within a yard, fixed and mobile units may use short identification after the initial transmission and acknowledgement consistent with applicable Federal Communication Commission regulations governing "Station Identification".

§ 220.29 Statement of letters and numbers.

(a) If necessary for clarity, a phonetic alphabet shall be used to pronounce any letter used as an initial, except initial letters of railroads. See Appendix "A", of this part for the recommended phonetic alphabet.

(b) A word which needs to be spelled for precision or clarity shall first be pronounced, and the word shall then be spelled. If necessary, the word shall be spelled again, using a phonetic alphabet.

(c) Numbers shall be spoken by digit, except that exact multiples of hundreds and thousands may be stated as such. A decimal point shall be indicated by the word "decimal". (See Appendix B to this part, for a recommended guide to the pronunciation of numbers.)

§ 220.31 Initiating a transmission.

Before transmitting by radio, an employee shall:

(a) Listen to insure that the channel on which he intends to transmit is not already in use;

(b) Identify his station in accordance with the requirements of § 220.27; and

(c) Verify that he has made radio contact with the person or station with whom he intends to communicate by listening for an acknowledgement. If the station acknowledging his transmission fails to identify itself properly, the employee shall require a proper identification before proceeding with the transmission.

§ 220.33 Receiving a transmission.

(a) Upon receiving a radio call from another station, an employee shall promptly acknowledge the call, identifying his station in accordance with the requirements of § 220.27 and stand by to receive. An employee need not attend the radio, however, if this would interfere with other immediate duties relating to the safety of railroad operations.

(b) An employee shall acknowledge receipt of all transmissions directed to him or his station.

(c) An employee who receives a transmission shall repeat it to the transmitting party unless the communication:

(1) Relates to yard switching operations;

(2) Is a recorded message from an automatic alarm device; or

(3) Is general in nature and does not contain any information, instruction or advice which could affect the safety of a railroad operation.

§ 220.35 Ending a transmission.

(a) At the close of each transmission to which a response is expected, the transmitting employee shall say "over" to indicate to the receiving employee that the transmission is ended.

(b) At the close of each transmission to which no response is expected, the transmitting employee shall state his identification followed by the word "out" to indicate to the receiving employee that the exchange of transmissions is complete.

§ 220.37 Voice test.

(a) Each radio which is used in connection with a railroad operation outside yard limits shall be tested at the point where the train is originally made up. At least once during each tour of duty, the engineer and conductor shall be responsible for the testing of the radio to verify that the radio is operating properly on the engine and caboose. The tests shall consist of an exchange of voice transmissions with another station. The other station shall advise the station conducting the test of the quality and readability of its transmission.

(b) Any radio found not to be functioning properly shall be removed from service until it has been repaired.

(c) When a radio is removed from service, each crew member of the train and the train dispatcher or other employee designated by the railroad shall be so notified.

§ 220.39 Continuous monitoring.

Engine and caboose radios must be turned on to the appropriate channel as designated in § 220.23 with the volume adjusted to receive communications while the engine or caboose is manned.

§ 220.41 Notification on failure of train radio.

The failure of an engine or caboose radio en route shall be reported as soon as practicable to the train dispatcher or other employee designated by the railroad by any alternate means of communication available.

§ 220.43 Communication consistent with rules.

Radio communication may not be used in connection with a railroad operation in a manner which conflicts with the requirements of this Part 220, Federal Communication Commission regulations or the railroad's operating rules. The use of citizen band radios for railroad operating purposes is prohibited.

§ 220.45 Communication must be complete.

Any radio communication which is not fully understood or completed in accordance with the requirements of Part 220 and the operating rules of the railroad, shall not be acted upon and shall be treated as though not sent.

§ 220.47 Emergencies.

(a) An emergency transmission shall be preceded by the word "emergency", repeated three times. An emergency transmission shall have priority over all other transmissions and the frequency or channel shall be kept clear of non-emergency traffic for the duration of the emergency transmission.

(b) Emergency transmissions shall be used to report derailments, collisions, storms, wash-outs, fires, obstructions to tracks, and other hazardous conditions which could result in death or injury, damage to property or serious disruption of railroad operations. Emergency transmissions shall describe as completely as possible the nature, degree and location of the hazard.

§ 220.49 Switching, backing or pushing.

When radio communication is used in lieu of hand signals in connection with the switching, backing or pushing of a train, engine, or car, the employee directing the movement shall give complete instructions or keep in continuous radio contact with the employees receiving the instructions. When backing or pushing a train, engine or cars, the distance of the movement must be specified, and the movement must stop in one-half the remaining distance unless additional instructions are received. If the instructions are not understood or continuous radio contact is not maintained, the movement shall be stopped immediately and may not be resumed until the misunderstanding has been resolved, radio contact has been restored, or communication has been achieved by hand signals or other procedures in accordance with the operating rules of the railroad.

§ 220.51 Signal indications.

(a) No information may be given by radio to a train or engine crew about the position or aspect displayed by a fixed signal. However, radio may be used by a train crew member to communicate information about the position or aspect displayed by a fixed signal to other members of the same crew.

(b) Except as provided in the railroad's operating rules, radio communication may not be used to convey instructions which would have the effect of overriding the indication of a fixed signal in automatic block territory.

Subpart C—Train Orders

§ 220.61 Transmission of train orders by radio.

(a) Train orders may be transmitted by radio only when authorized by railroad's operating rules and must be transmitted in accordance with the railroad's operating rules and the requirements of this Part 220.

(b) The procedures for transmission of train orders by radio are as follows:

(1) The dispatcher or operator shall call the addressees of the train order and state his intention to transmit the train order.

(2) Before the train order is transmitted, the employee to receive and copy the train order shall state his name, identification or call sign, location, and that he is prepared to receive a train order. Train orders may not be received and copied by an employee operating the controls on an engine of a moving train. Train orders may not be transmitted to the crew of a moving train when, in the judgment of either the conductor, the engineer, or the train dispatcher, the train order cannot be received and copied without impairing the safe operation of their train.

(3) Train orders shall be copied in writing by the receiving employee in the format prescribed in the railroad's operating rules.

(4) After the train order has been received and copied, it shall be immediately repeated in its entirety. After verifying the accuracy of the repeated train order, the dispatcher shall then state "complete" and the initials of the employee designated by the railroad. Employees copying train orders must then acknowledge by repeating "complete" and the time.

(5) Before a train order is acted upon, both the conductor and engineer must have a written copy of the train order and make certain that the train order is read and understood by other members of the crew.

(6) A train order which has not been completed or which does not comply with the requirements of the railroad's operating rules, may not be acted upon and must be treated as though not sent. Information contained in a train order may not be acted upon by persons other than those to whom the train order is addressed.

APPENDIX A—RECOMMENDED PHONETIC ALPHABET

A	ALFA	N	NOVEMBER
B	BRAVO	O	OSCAR
C	CHARLIE	P	PAPA
D	DELTA	Q	QUEBEC
E	ECHO	R	ROMEO
F	FOXTROT	S	SIERRA
G	GOLF	T	TANGO
H	HOTEL	U	UNIFORM
I	INDIA	V	VICTOR
J	JULIET	W	WHISKEY
K	KILO	X	XRAY
L	LIMA	Y	YANKEE
M	MIKE	Z	ZULU

The letter "ZULU" should be written as "Z" to distinguish it from the numeral "2."

APPENDIX B—RECOMMENDED PRONUNCIATION OF NUMERALS

To distinguish numbers from similar sounding words, the word "figures" should be used preceding such numbers. Numbers should be pronounced as follows:

Number:	*Spoken*
0	ZERO
1	WUN
2	TOO
3	THUH-REE
4	FO-WER
5	FI-YIV
6	SIX
7	SEVEN
8	ATE
9	NINER

(The figure ZERO should be written as "0" to distinguish it from the letter "O". The figure ONE should be underlined to distinguish it from the letter "I". When railroad rules require that numbers be spelled, these principles do not apply.)

The following examples illustrate the recommended pronunciation of numerals:

Number:	*Spoken*
44	FO-WER FO-WER
500	FI-YIV HUNDRED
1000	WUN THOUSAND
16000	WUN SIX THOUSAND
14899	WUN FO-WER ATE NINER NINER
20.3	TOO ZERO DECIMAL THUR-REE

[FR Doc.77-2584 Filed 1-26-77;8:45 am]

CHAPTER V—NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[OST Docket No. 44; Notice 77-3]

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

Occupant Crash Protection

This notice amends Standard No. 208, *Occupant Crash Protection*, to extend indefinitely the current occupant crash protection requirements for passenger cars.

In a notice published June 14, 1976 (41 FR 24070), I proposed five alternative courses of action for future occupant crash protection requirements under Standard No. 208 (49 CFR 571.208). Based on an analysis of comments received, a decision was reached to call upon the automobile manufacturers to join the Federal government in conducting a large-scale demonstration program to exhibit the effectiveness of passive restraint systems. The reasoning that underlies that decision is contained in a December 6, 1976, document ("The Secretary's Decision Concerning Motor Vehicle Occupant Crash Protection") that is hereby incorporated by reference in this notice. The effect of that decision on Standard No. 208 is to require the continuation of the current requirements for passenger cars, as proposed in the first of the five alternative courses of action.

The first alternative was written as a three-year extension (to August 31, 1979), although the preamble discussion made clear that the length of the extention was open to discussion. It is now apparent that a continuation of the existing requirements is best effectuated by a deletion of any termination date. This action accords with the intent of the first alternative to maintain current occupant crash protection requirements for the indefinite future. Because this action represents a continuation of existing manufacturing practices, it is the Department's finding that no new significant economic or environmental impacts result from this amendment.

I have directed the National Highway Traffic Safety Administration (NHTSA) to propose comparable changes in the requirements for multipurpose passenger vehicles and light trucks. The NHTSA has also been directed to take final action on the substantive changes to Standard No. 208 that were proposed in its notice of July 19, 1976 (41 FR 29715).

The Department hereby closes OST Docket No. 44, which is transferred to the NHTSA's docket on occupant crash protection. I want to make it clear, however, that by closing OST Docket No. 44 and amending Standard No. 208 to extend indefinitely the current occupant crash protection requirements for passenger cars, I have not in any way foreclosed a future Secretary or Administrator of NHTSA from instituting at any time a rulemaking to amend Standard No. 208 either to place a termination date on Standard No. 208 or to mandate passive restraints on some or all passenger cars.

In consideration of the foregoing, the heading and text of S4.1.2 of Standard No. 208 (49 CFR 571.208) are amended in part to read as follows:

S4.1.2. *Passenger cars manufactured on or after September 1, 1973.* Passenger cars manufactured on or after September 1, 1973, shall meet the requirements of S4.1.2.1, S4.1.2.2, or S4.1.2.3. * * *.

Effective date: January 19, 1977.

(Secs. 103, 119, Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392, 1407).)

Issued on January 19, 1977.

WILLIAM T. COLEMAN, Jr.,
Secretary of Transportation.

[FR Doc.77-2567 Filed 1-26-77;8:45 am]

Title 7—Agriculture

CHAPTER IX—AGRICULTURAL MARKETING SERVICE (MARKETING AGREEMENTS AND ORDERS; FRUITS, VEGETABLES, NUTS), DEPARTMENT OF AGRICULTURE

[Orange Reg. 75, Amdt. 5]

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

Amendment of Size Regulation

This amendment, effective January 21, 1977, lowers the minimum size requirements applicable to fresh shipments of Murcott Honey oranges, grown in the production area in Florida, to $2^{6}/_{16}$ inches in diameter (size 176). The specification of such lower minimum size for Florida Murcott Honey oranges is necessary to satisfy the current and prospective demand for such oranges. The amended regulation recognizes the size distribution of much of the Murcott Honey oranges currently available for fresh shipment.

Findings. (1) Pursuant to the marketing agreement, as amended, and Order No. 905, as amended (7 CFR Part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and upon available information, including an informal poll of the Growers Administrative Committee and Shippers Advisory Committee, established under the aforesaid amended marketing agreement and order, it is hereby found that less restrictive requirements applicable to shipments of Murcott Honey oranges, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) This amendment reflects the Department's appraisal of the current and prospective demand for fresh Murcott Honey oranges by domestic and export market outlets. Less restrictive size requirements for such fruit are consistent with the size composition and available

supply of such oranges in the production area.

(3) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking procedure, and postpone the effective date of this amendment until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553) because the time intervening between the date when information upon which this amendment is based became available and the time when this amendment must become effective in order to effectuate the declared policy of the act is insufficient; and this amendment relieves restrictions on the handling of Murcott Honey oranges grown in Florida.

Order. 1. The provisions of paragraph (a) (8) and paragraph (b) (8) of § 905.564 (Orange Regulation 75; 41 FR 42177, 49474, 51029, 53007, 54917) are amended to read as follows:

§ 905.564 Orange Regulation 75.

(a) • • •

(8) Any Murcott Honey oranges, grown in the production area, which are of a size smaller than 2 6/16 inches in diameter except that a tolerance for Murcott Honey oranges smaller than such minimum diameter shall be permitted as specified in § 51.1818 of the United States Standards for Grades of Florida Tangerines;

• • • • • •

(b) • • •

(8) Any Murcott Honey oranges, grown in the production area, which are of a size smaller than 2 6/16 inches in diameter, except that a tolerance for Murcott Honey oranges smaller than such minimum diameter shall be permitted as specified in § 51.1818 of the United States Standards for Grades of Florida Tangerines;

• • • • • •

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated, January 21, 1977, to become effective January 21, 1977.

CHARLES R. BRADER,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc.77-2639 Filed 1-26-77;8:45 am]

[Navel Orange Reg. 398]

PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

Limitation of Handling

This regulation fixes the quantity of California-Arizona Navel oranges that may be shipped to fresh market during the weekly regulation period Jan. 28–Feb. 3, 1977. It is issued pursuant to the Agricultural Marketing Agreement Act of 1937, as amended, and Marketing Order No. 907. The quantity of Navel oranges so fixed was arrived at after consideration of the total available supply of Navel oranges, the quantity currently available for market, the fresh market demand for Navel oranges, Navel orange prices, and the relationship of season average returns to the parity price for Navel oranges.

§ 907.698 Navel Orange Regulation 398.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 907, as amended (7 CFR Part 907), regulating the handling of Navel oranges grown in Arizona and designated part of California, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and upon the basis of the recommendations and information submitted by the Navel Orange Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such Navel oranges, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) The need for this section to limit the respective quantities of Navel oranges that may be marketed from District 1, District 2, and District 3 during the ensuing week stems from the production and marketing situation confronting the Navel orange industry.

(i) The committee has submitted its recommendation with respect to the quantities of Navel oranges that should be marketed during the next succeeding week. Such recommendation, designed to provide equity of marketing opportunity to handlers in all districts, resulted from consideration of the factors enumerated in the order. The committee further reports that the fresh market demand for Navel oranges has become very active on all grades and sizes. Prices f.o.b. averaged $3.40 a carton on a reported sales volume of 934 carlots last week, compared with $3.46 per carton on sales of 623 carlots a week earlier. Track and rolling supplies at 487 cars were up 147 cars from last week.

(ii) Having considered the recommendation and information submitted by the committee, and other available information, the Secretary finds that the respective quantities of Navel oranges which may be handled should be fixed as hereinafter set forth.

(3) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking procedure, and postpone the effective date of this section until 30 days after publication hereof in the FEDERAL REGISTER (5 U.S.C. 553) because the time intervening between the date when information upon which this section is based became available and the time this section must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The committee held an open meeting during the current week, after giving due notice thereof, to consider supply and market conditions for Navel oranges and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such Navel oranges; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period herein specified; and compliance with this section will not require any special preparation on the part of persons subject hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on January 25, 1977.

(b) *Order.* (1) The respective quantities of Navel oranges grown in Arizona and designated part of California which may be handled during the period January 28, 1977, through February 3, 1977, are hereby fixed as follows: (i) District 1: 1,230,000 cartons; (ii) District 2: 270,000 cartons; (iii) District 3: Unlimited movement."

(2) As used in this section, "handled," "District 1," "District 2," "District 3," and "carton" have the same meaning as when used in said amended marketing agreement and order.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: January 26, 1977.

CHARLES R. BRADER,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc.77-2949 Filed 1-26-77;12.38 pm]

[Amdt. 2]

PART 966—TOMATOES GROWN IN FLORIDA

Handling Regulation

This amendment relieves certain restrictions on the handling of Florida tomatoes from the effective date herein through February 6, 1977.

Findings. (a) Pursuant to Marketing Agreement No. 125 and Order No. 966, both as amended, regulating the handling of tomatoes grown in the production area, and based upon current information received by the Department, it is hereby found that the Handling Regulation, § 966.315 (41 FR 43909, 50264), should be further amended to reduce the minimum size requirement. This program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674).

Information has been received from both the Florida Tomato Committee, established pursuant to said Marketing Agreement and Order, and from other sources including field representatives of the Agricultural Marketing Service that freezing weather conditions in the production area during the week of January 17 have resulted in substantial damage to the tomato crop. The committee has unanimously recommended that the minimum size restriction be lowered to 12 8/32 inches in order to be able to ship all remaining supplies. Continuation of the current size provisions of this regulation would no longer tend to effectuate the declared policy of the act.

(b) It is hereby found that it is impracticable and contrary to the public interest to give preliminary notice and engage in public rulemaking procedure, and that good cause exists for not postponing the effective date of this amendment until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553) in that: (1) This amendment relieves restrictions on the handling of tomatoes grown in the production area, (2) information regarding this recommendation has been made available to producers and handlers in the production area, and (3) this amendment will not require any special preparation by handlers which cannot be completed by the effective date.

The amendment is as follows:

Paragraph (a) (2) (i) is hereby amended to read as follows:

§ 966.315 Handling regulation.

• • • • •

(a) • • •

(2) *Size.* (i) Tomatoes shall be at least 2 2/32 inches in diameter and be sized in accordance with § 51.1859 of the U.S. tomato standards except that from the effective date herein through February 6, 1977, tomatoes shall be at least 12 8/32 inches in diameter.

• • • • •

(Secs. 1–19, 48 Stat. 31, as amended (7 U.S.C. 601–674).)

Dated January 25, 1977, to become effective January 25, 1977.

FLOYD F. HEDLUND,
Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc.77-2882 Filed 1-26-77;8:45 am]

[Amdt. 2]

PART 980—VEGETABLES: IMPORT REGULATIONS: TOMATOES

Minimum Size Requirements

Findings. Pursuant to the requirements of § 8e of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 608e–1), Tomato Import Regulation § 980.211, as amended (41 FR 43910, 50266), is hereby further amended to lower the minimum size requirement of this section from the effective date herein through February 6, 1977.

It is hereby found that good cause exists for not postponing the effective date of this amendment beyond that herein specified (5 U.S.C. 553) in that (1) the requirements of 8e of the act make such amendment mandatory upon amendment of the corresponding regulation applicable to shipments of domestic tomatoes; (2) this amendment corresponds with the amendment of regulations on shipments of domestic tomatoes under Marketing Order No. 966, as amended (7 CFR Part 966); and (3) this amendment relieves restrictions on the importation of tomatoes.

The amendment is as follows:

Paragraph (a) (1) is hereby amended to read as follows:

§ 980.211 Tomato import regulation.

• • • • •

(a) *Minimum grade and size requirements.* (1) At least U.S. No. 3 grade and at least 2 2/32 inches in diameter except that from the effective date herein through February 6, 1977, the minimum diameter shall be 12 8/32 inches.

• • • • •

(Secs. 1–19, 48 Stat. 31, as amended; (7 U.S.C. 601–674).)

Dated January 25, 1977, to become effective January 25, 1977.

FLOYD F. HEDLUND,
Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc.77-2883 Filed 1-26-77;8:45 am]

proposed rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Part 71]

[Airspace Docket No. 76-EA-97]

CONTROL ZONE

Proposed Designation

The Federal Aviation Administration is considering amending § 71.171 of Part 71 of the Federal Aviation Regulations so as to designate a Beaver Falls, Pa., control zone.

A new non-Federal airport traffic control tower to be established at Beaver County Airport, Beaver Falls, Pa., will provide the weather observation reporting and communications required for designation of a part-time control zone at that airport.

We propose to establish a part-time control zone to coincide with the planned hours of operation of the airport traffic control tower. The control zone will provide additional controlled airspace protection for IFR arrivals and departures at the airport.

Interested parties may submit such written data or views as they may desire. Communications should be submitted in triplicate to the Director, Eastern Region, Attn: Chief, Air Traffic Division, Department of Transportation, Federal Aviation Administration, Federal Building, John F. Kennedy International Airport, Jamaica, New York 11430. All communications received on or before February 28, 1977, will be considered before action is taken on the proposed amendment. No hearing is contemplated at this time, but arrangements may be made for informal conferences with Federal Aviation Administration officials by contacting the Chief, Airspace and Procedures Branch, Eastern Region.

Any data or views presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official docket will be available for examination by interested parties at the Office of Regional Counsel, Federal Aviation Administration, Federal Building, John F. Kennedy International Airport, Jamaica, New York.

The Federal Aviation Administration, having completed a review of the airspace requirements for the terminal area of Beaver Falls, Pa., proposes the airspace action hereinafter set forth:

1. Amend § 71.171 of Part 71 of the Federal Aviation Regulations by designating a Beaver Falls, Pa., Control Zone as follows:

BEAVER FALLS, PA.

Within a 5-mile radius of the center, 40°46'21" N., 80°23'37" W., of Beaver County Airport, Beaver Falls, Pa., within 1.5 miles each side of the Ellwood City, Pa., VORTAC 248° radial, extending from the 5-mile radius zone to 1.5 miles west of the VORTAC. This control zone is effective from 0900 to 2100 hours, local time daily June 1, through August 31, and from 0900 to 1700 hours, local time daily September 1, through May 31.

NOTE.—The Federal Aviation Agency has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107.

This amendment is proposed under section 307(a) of the Federal Aviation Act of 1958 (72 Stat. 749; 49 U.S.C. 1348) and section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Jamaica, N.Y., on January 6, 1977.

L. J. CARDINALI,
Acting Director, Eastern Region.

[FR Doc.77-2618 Filed 1-26-77;8:45 am]

[14 CFR Part 71]

[Airspace Docket No. 76-EA-98]

TRANSITION AREA

Proposed Alteration

The Federal Aviation Administration is considering amending § 71.181 of Part 71 of the Federal Aviation Regulations so as to alter the Corry, Pa., transition area (41 FR 476).

A new VOR RWY 32 original, instrument approach procedure developed for Lawrence Airport, Corry, Pa., requires alteration of the transition area to provide additional controlled airspace protection for aircraft executing the procedure.

Interested parties may submit such written data or views as they may desire. Communications should be submitted in triplicate to the Director, Eastern Region, Attn: Chief, Air Traffic Division, Department of Transportation, Federal Aviation Administration, Federal Building, John F. Kennedy International Airport, Jamaica, New York 11430. All communications received on or before February 28, 1977, will be considered before action is taken on the proposed amendment. No hearing is contemplated at this time, but arrangements may be made for informal conferences with Federal Aviation Administration officials by contacting the Chief, Airspace and Procedures Branch, Eastern Region.

Any data or views presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official docket will be available for examination by interested parties at the Office of Regional Counsel, Federal Aviation Administration, Federal Building, John F. Kennedy International Airport, Jamaica, New York.

The Federal Aviation Administration, having completed a review of the airspace requirements for the terminal area of Corry, Pa. proposes the airspace action hereinafter set forth:

1. Amend § 71.181 of Part 71 of the Federal Aviation Regulations by deleting the description of the Corry, Pa., 700 foot floor transition area and by substituting the following in lieu thereof:

That airspace extending upward from 700 feet above the surface within a 5.5-mile radius of the center, 41°54'30" N., 79°38'30" W. of Lawrence Airport, Corry, Pa.; within 3 miles each side of the 305° bearing from the Corry RBN (41°54'44" N., 79°38'54" W.), extending from the 5.5-mile radius area to 8.5 miles northwest of the RBN; and within 5 miles each side of the Tidioute, Pa., VORTAC 319° radial, extending from 5.5-mile radius area to the VORTAC.

NOTE.—The Federal Aviation Agency has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107.

This amendment is proposed under section 307(a) of the Federal Aviation Act of 1958 (72 Stat. 749; 49 U.S.C. 1348) and section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Jamaica, N.Y., on January 6, 1977.

L. J. CARDINALI,
Acting Director, Eastern Region.

[FR Doc.77-2617 Filed 1-26-77;8:45 am]

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[15 CFR Part 923]

COASTAL ZONE MANAGEMENT PROGRAM

State Administrative Grants; Extension of Comment Period

On December 30, 1976, the National Oceanic and Atmospheric Administration (NOAA) published proposed regulations in the FEDERAL REGISTER (41 FR 57004) amending coastal zone management state administrative grant regulations pursuant to sections 306 and 312 of the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. section 1451 et seq. NOAA requested that comments on the proposed regulations be submitted on or before February 3, 1977.

Subsequently, NOAA has concluded that an extension of the comment period is warranted. Written comments may be submitted to the Office of Coastal Zone Management, U.S. Department of Commerce, Page Building 1, 3300 Whitehaven Street, NW., Washington, D.C. 20235, on or before March 15, 1977.

R. L. CARNAHAN,
Acting Assistant Administrator for Administration.

JANUARY 21, 1977.

[FR Doc.77-2648 Filed 1-26-77;8:45 am]

FEDERAL TRADE COMMISSION

[16 CFR Part 456]

ADVERTISING OF OPHTHALMIC GOODS AND SERVICES

Notice That Presiding Officer's Summary, Findings and Conclusions With Respect to Proposed Trade Regulation Rule Has Been Made Public

The Presiding Officer's Report, required by 16 CFR 1.13(f) of the Commission's rules of practice consisting of his Summary, Findings and Conclusions with regard to the proposed rule and to those issues designated by the Presiding Officer and such other findings and conclusions as he has seen fit to make, has been made public and a copy placed on the public record of the proceeding. The staff's analysis of the rulemaking record and its recommendations to the Commission upon completion will also be made public.

The Presiding Officer's Report has not been reviewed or adopted by the Bureau of Consumer Protection or the Commission itself and its publication should not be interpreted as reflecting the present views of the Commission or any individual member thereof. The sixty-day period which the rules of practice provide for public comment on both the report by the Presiding Officer and the report of the staff will not commence until the staff's report required by § 1.13(g) of the rules of practice has been made public and placed on the record of this proceeding. Therefore, comment on the Presiding Officer's report alone would be considered premature at this time.

Issued: January 27, 1977.

MARGERY WAXMAN SMITH,
Acting Director, Bureau of Consumer Protection.

[FR Doc.77-2610 Filed 1-26-77;8:45 am]

[16 CFR Part 600]

FAIR CREDIT REPORTING ACT

Reporting of Undesignated Information From a Spouse's File: Permissible Purposes for Consumer Reports on Nonapplicant Spouses; Proposed Interpretations and Request for Comments

The Federal Trade Commission announces two proposed interpretations of the Fair Credit Reporting Act pursuant to § 1.73 of its Procedures and rules of practice (36 FR 9293, 16 CFR 1.71-1.73) in order to afford interested persons and groups a chance to comment on the proposed interpretations.

The Commission's rules provide for issuance of interpretations of the Fair Credit Reporting Act (Pub. L. 91-508, 84 Stat. 1127-1136, 15 U.S.C. 1681 et seq.) when it appears that guidance as to the legal requirements of the Act would be in the public interest and would serve to bring about more widespread compliance with the Act. The interpretations are not substantive rules and do not have the force or effect of statutory provisions. They are guidelines intended as clarification of the Fair Credit Reporting Act, and, like industry guides, are advisory in nature. Failure to comply with such interpretations may result in corrective action by the Commission under applicable statutory provisions. These interpretations are published in order to obtain comments from the public. Publication should not be construed as an indication of how the Commission will ultimately resolve these issues. These interpretations will not become final until further notice by the Commission.

There are two proposed interpretations:

I. Interpretation § 600.7(a)—Reasonable Procedures to Assure Maximum Possible Accuracy of Information Concerning Individuals—Undesignated Information (Interprets 15 U.S.C. 1681e (1970)).

II. Interpretation § 600.8—Permissible Purposes for Reports on Nonapplicant Spouses in Consumer Credit Transactions. (Interprets 15 U.S.C. 1681b (1970)).

BACKGROUND

The lack of accessible credit history for women has severely restricted their ability to obtain credit.[1] This lack of credit history resulted from a variety of practices, most of which involved overt discrimination against women and helped cause the passage of the Equal Credit Opportunity Act. For example, before the Equal Credit Opportunity Act, some creditors would issue a credit card to an individually creditworthy married woman only in the name of her husband.[2] Often, when a single woman married, her credit cards would be withdrawn and reissued in the name of her husband even though her individual creditworthiness was unaffected by the marriage.[3] More importantly, where a married woman was jointly contractually liable for a credit obligation, the history of the account would almost never be reported in any name other than that of her husband. As a result many women presently have no credit identity separate from that of their spouse even though they have been joint obligors or users of several credit accounts. When a divorce or separation occurs, the credit history from the marriage has continued to be attibuted to the husband and not to the wife, thus requiring the wife to re-establish her credit history.[4]

The Equal Credit Opportunity Act ("ECOA"), 15 U.S.C. 1691-1691g (Supp V 1975), and its implementing regulation, Regulation B, 12 CFR Part 202 (1976), prohibit discrimination against credit applicants on the basis of sex or marital status. The regulation, which conclusively interprets the act, seeks to remedy the problems resulting from past information gathering processes in a number of ways. Section 202.6 of the regulation requires that, as of June 1, 1977, creditors must report to credit bureaus the histories of accounts on which both spouses are contractually liable (joint accounts) in a manner which will enable the credit bureaus to provide access to the information about the account in the name of each spouse.[5] The same requirement is imposed for accounts on which one spouse is contractually liable and the other is a user (user accounts). Section 202.5(j)(1) of the regulation requires creditors to give as much weight to credit histories concerning joint accounts or user accounts designated pursuant to § 202.6 as they would to the credit histories of other accounts.[6] Finally, § 202.5(j)(2) requires creditors to consider the credit history of any account reported in the name of the applicant's spouse or former spouse which the applicant can demonstrate accurately reflects the applicant's willingness or ability to repay.[7]

Creditors, credit bureaus and consumers have expressed concern that the Fair Credit Reporting Act can be interpreted to substantially limit a creditor's access to credit history information needed to evaluate married or formerly married women applying for separate accounts during the initial stages of implementation of the Equal Credit Opportunity Act. At the same time these groups share a common interest in (1) assuring that creditworthy women can obtain credit and (2) maintaining the integrity of the credit information system. The proposed interpretations are designed to minimize the impact of the Fair Credit Reporting Act on the goals of the Equal Credit Opportunity Act.

In addition, the interpretations will clarify for consumer reporting agencies and creditors their responsibilities under the Fair Credit Reporting Act. Note that neither Regulation B nor the Equal Credit Opportunity Act specifically regulates the conduct of consumer reporting agencies. They impose obligations only on creditors, properly leaving regulation of the credit reporting system to the Fair Credit Reporting Act.

See footnotes at end of document.

I. INTERPRETATION §600.7(a) CONCERNING "UNDESIGNATED INFORMATION"

NEED FOR INTERPRETATION

For many years most credit history of joint accounts or user accounts was reported to credit bureaus only in the name of the husband. The information was stored in a file under the identifier: "John Doe, spouse: Mary". The file could be accessed only by the husband's name ("John Doe") while the wife's name ("Mary") served as an identifier to distinguish John Doe from others of the same name in the same manner as his street address, birthdate and social security number. In some instances the files were termed "joint files," but the practical effect of the storage systems appears to have been the merger of all credit history from the marriage into the husband's file.

Section 202.6 of Regulation B addresses itself to this problem by requiring creditors after June 1, 1977 to report account information to credit bureaus in a manner which will reflect the participation of both spouses in the accounts and which will enable the agencies to provide access to the information in the name of each spouse.[9] In addition, the regulation requires that creditors ascertain whether accounts established prior to and in existence on June 1, 1977 are joint or separate accounts and adjust their reporting of these accounts accordingly.[9] This determination can be made either from the creditor's records or by mailing of the notice provided by the regulation. For accounts opened after June 1, 1977, creditors are required to determine how the accounts are opened.[10] Finally, § 202.5(j)(2) requires creditors to consider the credit history of any account reported in the name of the applicant's spouse or former spouse which the applicant can demonstrate accurately reflects the applicant's ability or willingness to repay.[11]

Regulation B does not resolve the problem of how credit history not designated by the § 202.6 procedure is to be treated. In most automated credit reporting systems this information is currently reported in the name of only one spouse, usually the husband, and retrievable only in his name even if the information reflects the history of a joint account or an account on which the wife was a user. The resulting lack of affirmative credit history can render the wife uncreditworthy as effectively as derogatory information. Some major credit grantors, for example, award points for each line of credit history in a report in their point scoring systems and many other credit grantors give weight to affirmative credit history in making their credit decisions. Such criteria are also employed in various prescreening programs used by creditors for solicitation purposes.

Ultimately, the undesignated information problem will be resolved prospectively by the operation of § 202.6, which will establish separate credit histories for married women. For the next few years however, unavailability of undesignated information could restrict the ability of women to obtain credit.

Recognizing this potential problem the largest credit reporting industry association, Associated Credit Bureaus, requested a Commission staff interpretation which would allow credit bureaus to automatically report all "undesignated information"[12] from a "joint file" when a separate report on either spouse is requested. Other credit bureaus have also requested clarification of this question.

The obvious objection to the proposed reporting of undesignated information is that some or much of it may not relate to the applicant spouse. Thus the question raised is whether use of a presumption that all undesignated information relates to both members of a marriage is "a reasonable procedure" designed to ensure the maximum possible accuracy of the information concerning the individual about whom the report relates, as required by section 607(b) of the Fair Credit Reporting Act.[13]

There appear to be two possible solutions to the problem presented by the current reservoir of undesignated information. The first solution is to allow a credit bureau to automatically incorporate undesignated information from the file of the applicant's spouse in its report on the applicant and rely on the Fair Credit Reporting Act's correction mechanism to remove information which does not reflect the applicant's credit history. This could be accomplished either by allowing the creditor to make a separate request for undesignated information in the spouse's file or by using an automated system which would automatically incorporate the undesignated information in a separate file on the applicant. Use of either of these two alternatives would result in automatic reporting of all undesignated information in the file of the applicant spouse.

The second solution is to prohibit the reporting of undesignated information from the file of the applicant's spouse unless the consumer reporting agency has some indication that the information in fact relates to the applicant other than the mere "undesignated" status of the particular information in the spouse's file. Such an approach would include setting up separate files on request of the consumer using undesignated information and, possibly, allowing creditors to verify by telephone that particular accounts listed on an application are reported as undesignated information in the spouse's file. This approach would, in effect, require many women who wish to avail themselves of "undesignated" information in their husband's file to arrange an interview with the credit bureau and have a separate file established.

ARGUMENT FOR AUTOMATIC REPORTING OF UNDESIGNATED INFORMATION

When there has been only one marriage it is reasonable to assume that most undesignated information in the files of married individuals relates to either joint accounts or user accounts. The majority of credit history information is positive information, that is, it reflects hte history of accounts paid as agreed. Thus, the proposed automatic reporting of undesignated information would benefit married women as a class by creating a separate credit history for them without requiring them to individually contact the credit bureau and, therefore, serve as a remedy to the effects of past credit practices. To the extent that erroneous information is included in the consumer's file because of this procedure, consumer injury can be mitigated through traditional Fair Credit Reporting Act correction procedures. However, in most instances it will be unnecessary for the consumer to correct erroneous information unless it results in the denial of credit.

Automatic incorporation of all undesignated information will also make more positive information avalable to women than would a procedure providing for verification by the credit bureau of the spouse's participation in each account included in the report, since many creditors will not have retained documents which reflect this information. Proponents of this interpretation believe that the possible harm to consumers from this procedure will be greatly outweighed by the benefits derived.

ARGUMENT AGAINST AUTOMATIC REPORTING OF UNDESIGNATED INFORMATION

There are at least four major arguments against automatic inclusion of undesignated information from a nonapplicant spouse's file when making a consumer report on the applicant spouse. First, while most "undesignated information" may relate to both spouses, some will not. This problem will be aggravated in instances in which the nonapplicant spouse had a previous marriage, or where there has been a recent divorce or separation, since many credit bureaus apparently have no practical means of ascertaining when a divorce or separation has occurred. Given the more than 1 million divorces which occurred in 1975, this flaw could produce a substantial inaccuracy problem.[14] Under the proposed automatic reporting there would also be, for example, instances in which adverse credit information which predates the marriage will be reported from the spouse's file including instances in which adverse credit information from the spouse's prior marriage would be included in the consumer's file.[15]

Second, the privacy of the nonapplicant spouse may be invaded. Information concerning some separate accounts held by the spouse will inevitably be incorporated in the other spouse's file. In addition, in certain instances, financial information from a divorced or separated consumer's file will fortuitously become available to his or her former spouse.

Third, the proposal would have the maximum adverse impact on married or formerly married women who have established their own credit history since their spouse's and former spouse's file

See footnotes at end of document.

may at least initially be mixed in with theirs. Finally, the interpretation would not be applicable in cases in which a divorce or separation was recorded with the credit bureau because the undesignated information could no longer be presumed to relate to both spouses. Thus, a significant number of women will still be required to contact the credit bureau to set up a separate file.

I. INTERPRETATION § 600.7—REASONABLE PROCEDURES TO ASSURE MAXIMUM POSSIBLE ACCURACY OF INFORMATION CONCERNING INDIVIDUALS—UNDESIGNATED INFORMATION (INTERPRETS 15 U.S.C. 1681e (1970)).

A consumer reporting agency may report information contained in the file of spouse A when spouse B applies for a separate extension of credit if such information relates to accounts on which spouse B was either a joint user or contractually liable. Conversely, however, a consumer reporting agency may not report information from spouse A's file that relates only to his or her individual credit history when spouse B applies for credit, unless it otherwise has a permissible purpose for the report under section 604[1] of the Fair Credit Reporting Act.

While this principle is simple to state, it is difficult to apply since most credit grantors have in the past reported the credit history of accounts on which two spouses are jointly liable or on which one is liable and the other a user, only in the name of one spouse and in most instances in the name of the husband. Although § 202.6 of Regulation B, which interprets the Equal Credit Opportunity Act,[2] is designed to provide a prospective solution to this problem, it appears to be commercially impracticable for consumer reporting agencies to reinvestigate all existing information to determine whether it reflects the participation of both spouses. Consumer reporting agencies are thus faced with a choice of either reporting all "undesignated information"[3] in the husband's file on the assumption that most of it relates to both spouses or initiating procedures to reinvestigate undesignated information upon the request of the consumer and establish separate files in those instances in which the consumer's participation can be verified.

The Commission believes a credit bureau which responds to a request for information on a consumer by supplying all undesignated information from the file of the consumer's spouse would not be in compliance with section 607(b)[4] of the Fair Credit Reporting Act, since some or all of the information reported may not relate to both spouses.

An acceptable alternative method of ensuring access by both spouses to undesignated information would be for credit bureaus to allow married or divorced individuals who wish undesignated information to be segregated to contact the credit bureau in order to have a separate file created. This procedure, currently in use by some credit bureaus, should ensure greater accuracy and protection of the privacy of individual spouses than automatic reporting of undesignated information. Such a procedure affords the credit bureau some additional indication, through the individual's own word plus any reinvestigation the credit bureau deems it advisable to conduct, that the undesignated information belongs to the consumer. The credit bureau would not be relying on the mere undesignated status of that information in the file of the consumer's spouse.

Finally, the Commission believes that credit bureaus, consistently with this interpretation, must adopt some procedure to ensure that undesignated information can be accessed in the name of either spouse who wishes to rely on it. If such a procedure is not adopted by credit bureaus, creditors who rely on information supplied by those bureaus may be subject to challenge under the general prohibition of discrimination against applicants on the basis of sex or marital status that is contained in § 202.2 of Regulation B.[5] A credit bureau's failure to create a separate file on request as described in the preceding paragraph may render its data base discriminatory and unusable by creditors unless the bureau can satisfy the Commission that it has a nondiscriminatory justification for its practice.

II. INTERPRETATION § 600.8 CONCERNING PERMISSIBLE PURPOSES FOR CONSUMER REPORTS

NEED FOR INTERPRETATION

The provisions of the Equal Credit Opportunity Act create a right to a separate credit identity for married women. The creation of this separate credit identity has produced uncertainty concerning the requirements of section 604 of the Fair Credit Reporting Act[17] which limits the distribution of consumer reports on "individuals" to specified permissible purposes. Specifically, the question is whether a creditor has a permissible purpose to obtain a consumer report on a applicant's spouse in instances in which the creditor is allowed under Regulation B to consider information about the spouse. This question did not arise previously because a married woman's credit identity was merged with that of her husband and their accounts were usually in the husband's name.

Although the Equal Credit Opportunity Act creates a separate credit identity for married women, there are still four specified instances in which Regulation B recognizes that information on the nonapplicant spouse may be considered by a credit grantor.[6] In each of these four instances a question arises as to whether the Fair Credit Reporting Act allows creditors to gain access to the information through credit bureaus, the normal sources of such information.

Section 604 provides in relevant part:

A consumer reporting agency may furnish a consumer report under the following circumstances and no other:

• • • • • •

(2) In accordance with the written instructions of the consumer to whom it relates.

(3) To a person which it has reason to believe—

(A) Intends to use the information in connection with a credit transaction involving the consumer on whom the information is to be furnished and involving the extension of credit to * * * the consumer; or

• • • • • •

(E) Otherwise has a legitimate business need for the information in connection with a business transaction involving the consumer.

The legislative history of this section indicates that its purpose was to ensure that reports were made only to those having legitimate business need for them. Its passage was spurred, in part, by a television program which suggested that almost anyone could obtain reports from credit bureaus.[7] There is no expressed intention in the legislative history to limit access to information by those having a legitimate business need for the information in connection with a business transaction involving the consumer.[8]

A narrow interpretation of section 604(3) would prevent the creditor from obtaining a consumer report about the nonapplicant spouse without that individual's written permission.[20] This interpretation does not seem to be required by the policies which section 604 is designed to further and would appear to contradict the policies of the Equal Credit Opportunity Act by requiring the applicant spouse to obtain the written permission of the non-applicant spouse in order to apply for credit in those instances listed in section 205(b)(1)(i–iv) of Regulation B. Moreover, this position would be inconsistent with prior staff opinions allowing creditors to gain access to consumer reports on nonapplicant spouses.[21]

The proposed interpretation allows creditors to obtain consumer reports on nonapplicant spouses where consideration of such information is permitted by Regulation B, with certain exceptions. Thus, for example, in a state with a community property law which grants the applicant spouse the power to commit the property and income of the nonapplicant spouse, a creditor may, under Regulation B, consider any information about the nonapplicant spouse which it can about the applicant, if the applicant is relying on community property as the basis for repayment of the credit. Under the proposed interpretation a permissible purpose would also exist for a creditor to obtain a consumer report on the nonapplicant spouse, since the creditor has a legitimate business need for the information in connection with a business transaction involving (tangentially) the nonapplicant spouse. Section 604(3)(E).

It is also arguable that the transaction, in effect, involves an extension of credit to the nonapplicant spouse and therefore a consumer report may be obtained under section 604(3)(A) as well. While this rationale is most clearly applicable in community property states it would also be

See footnotes at end of article.

true under other state laws which grant the applicant spouse the implied or express authority to open a joint account in the name of both spouses, thus, effectively making both spouses applicants or otherwise subjecting the nonapplicant spouse to contractual or other liability on the account. Compare § 202.5(b)(1)(ii) of Regulation B.

Similarly the proposed interpretation provides that, where the nonapplicant spouse is an intended user of the account, a permissible purpose to obtain a consumer report on the nonapplicant spouse exists. Compare § 202.5(b)(1)(i) of Regulation B.

II. INTERPRETATION § 600.8—PERMISSIBLE PURPOSES FOR REPORTS ON NONAPPLICANT SPOUSES IN CONSUMER CREDIT TRANSACTIONS (INTERPRETS 15 U.S.C. 1681b (1970))

Because of the many types of accounts offered by creditors which contemplate reliance by the creditor on the resources of both spouses, a question arises as to when a creditor has a permissible purpose to access the consumer report of the nonapplicant spouse.[1]

Whether a creditor would have a permissible purpose to access the consumer report of the nonapplicant spouse turns on the extent of that spouse's involvement in the credit transaction. In order to make such a determination it is appropriate to look to § 202.5(b)(1) of Regulation B which implements the Equal Credit Opportunity Act.[2] That Section governs the circumstances under which a creditor may consider information about the applicant's spouse. The Commission interprets section 604(3)(A) and (E)[3] of the FCRA to permit a creditor to access the consumer report of the applicant's spouse in those cases in which §§ 202.5(b)(1)(i), (ii) and (iii)[4] permit the creditor to consider information about the spouse.

In our view, a creditor may access the consumer report of the applicant's spouse when the applicant is applying for an account which the spouse will be permitted to use (see 12 CFR 202.5(b)(1)(i) (1976)) or an account for which the spouse will be contractually liable (see 12 CFR 202.5(b)(1)(ii) (1976)). In these instances a creditor would have a permissible purpose to access the nonapplicant spouse's report because, as to those two types of accounts the creditor "intends to use the information in connection with a credit transaction involving an extension of credit to the consumer" (see 604(3)(A) of the FCRA, 15 U.S.C. 1681b(3)(A)(1970)). Since the nonapplicant spouse in both situations is receiving, in effect, an extension of credit, the creditor has a permissible purpose to receive the consumer report of both the applicant and nonapplicant spouse.

Where the applicant is relying on community property or the spouse's income as a basis for repayment of the obligation, the situation described under § 202.5(b)(1)(iii) of Regulation B,[5] the creditor would also have a permissible purpose under section 604(3)(E)[6] of the FCRA to obtain the consumer report of the nonapplicant spouse. In that situation, although the transaction may not involve an extension of credit to the applicant's spouse, the creditor does have a legitimate business need for the information in connection with a business transaction involving the applicant's spouse. The connection between the applicant's spouse and the creditor is established by reason of the creditor's reliance on the resources of that spouse in the transaction involving the applicant. This interpretation is based on the assumption that the applicant is acting as an agent for his or her spouse in committing either the community property or the spouse's income as a basis for establishing creditworthiness.[7]

The rationales described above do not apply to the situation set forth in § 202.5(b)(1)(iv)[8] of Regulation B. The fact of a marriage, or previous marriage standing alone, is not sufficient to establish a permissible purpose to obtain a consumer report nor does a permissible purpose exist under section 604 to obtain a report on a former spouse. Although § 202.5(b)(1)(iv)[9] allows the creditor to consider information on a former spouse where the applicant is relying on alimony or child support, a former spouse cannot be deemed to have consented to the distribution of information as can a participant in an ongoing marriage. Where a spouse is legally separated or has otherwise indicated an intent to legally disassociate with the marriage the Commission believes that no permissible purpose exists.

Finally it should be noted that a permissible purpose for making a consumer report on a nonapplicant spouse can never exist under section 604(3)[10] of the Fair Credit Reporting Act when the consideration of the information is prohibited by Regulation B. It is clear that where Regulation B prohibits consideration of the information a "legitimate" need for it can never exist.

* * * * *

The Commission requested comments on the following subjects:

(1) The arguments for and against the proposed undesignated information interpretation. The Commission is specifically seeking submission of data which will allow the Commission to assess the negative impact of the proposed interpretation and balance this impact against the need for an expanded interpretation authorizing automatic reporting of undesignated information. Examples of such data include: (A) The percentage of women who currently have separate credit files, (B) the percentage of credit information which is positive, (C) the percentage of denials of credit which are currently caused by (i) inadequate information or (ii) derogatory information, (D) the procedures or safeguards which would lessen the impact of an interpretation authorizing automatic reporting of undesignated information on (i) privacy and (ii) accuracy, (E) the additional costs to consumer reporting agencies contrasted to costs to consumers. Also, the Commission requests views on whether FCRA procedures would be adequate to correct any inaccuracies created by automatic reporting of undesignated information under the spouse's name.

(2) The present practices of consumer reporting agencies with respect to opening separate credit files on married or divorced women including descriptions of the types of information which would be placed in or transferred to the file, the steps necessary to initiate such action the costs to the consumer of such services, and the costs to the credit bureau.

(3) Whether the Commission should issue an interpretation placing an affirmative duty under section 607(b) of the Fair Credit Reporting Act on consumer reporting agencies to create separate credit files concerning joint accounts and user accounts in the file of the consumer's spouse or former spouse upon request. What nondiscriminatory reasons, if any, can be advanced to justify refusals to create separate credit files? Would such a duty create the possibility that consumers could distort their own credit histories by, for example, identifying only favorable undesignated information for inclusion in their files? If a danger of distortion exists, how serious is it? What safeguards, if any, could minimize or eliminate inaccuracy of this kind?

(4) The extent to which one party to an on-going marriage expects his or her individual credit history to be withheld from the other party.

(5) The privacy considerations involved in both proposed interpretations and their alternatives, the weight to be accorded to them, and possible steps to minimize the adverse impact of the interpretations on personal privacy.

(6) The impact on creditors and consumers of requiring a written authorization from a nonapplicant spouse before a consumer report is furnished on him or her in connection with an extension of credit to the other spouse.

Comments on the proposed interpretations may be submitted to the Secretary of the Commission Federal Trade Commission 20580 within 45 days from the date of this notice and should be titled "Comment FCRA Interpretations". The proposed interpretations will not become final until further notice by the Commission.

Dated: January 27, 1977.

By direction of the Commission.

JOHN F. DUGAN,
Acting Secretary.

FOOTNOTES.

[1] See, e.g., Utah Advisory Committee to United States Commission on Civil Rights, "Credit Availability to Women in Utah" 94 (1975) (Hereinafter Utah Report).

[2] S. Rep. No. 93-278, 93rd Cong., 1st Sess. 16 (1973).

[3] Id.

[4] Id.; "Utah Report" at 85.

[5] 12 CFR 202.6(b) (1976), as amended 41 FR 38759 (Sept. 13, 1976).

[6] 12 CFR 202.5(j)(1) (1976).

[7] 12 CFR 202.5(j)(2) (1976).

[8] 12 CFR 202.6(a)(2) (1976).

[9] 12 CFR 202.6(b) (1976), as amended 41 FR 38759 (Sept. 13, 1976).

[10] 12 CFR 202.6(a)(1) (1976), as amended 41 FR 38759 (Sept. 13, 1976).

[11] 12 CFR 202.5(j)(2) (1976).

[12] The term "undesignated information" refers to all credit history information in a married consumer's file which was not reported to the consumer reporting agency with a designation indicating that the information relates to either the consumer's joint or individual credit experience. This would include most file informatoin compiled up to June 1, 1977 (when the Regulation B designation requirement goes into effect) and most information reported to credit bureaus after that date which relates to pre-June, 1977 accounts that have not been designated either by the creditor, through the process set forth in Section 202.6 of Regulation B, or by the consumer's direct request to the credit bureau.

[13] 15 U.S.C. 1681e (1970).

[14] In 1975 there were 1,026,000 divorces in the United States. HEW, "Vital Statistics Report, Annual Summary For the United States 1975" at 12 (June 1976). In 1975, 10 percent of all ever married persons 25 to 54 years old were reported as either divorced (and not remarried) or separated. Dept. of Commerce, "Marital Status and Living Arrangements: March 1975" at 2-4 (Dec. 1975).

[15] Recent trends indicate that 4 out of 5 divorced individuals can be expected to remarry. Norton & Glick, "Marital Instability: Past, Present, and Future", 32 J. Social Sci. 5, 8 (1976); Dept. of Commerce, "Population Characteristics" 3 (Oct. 1976).

FOOTNOTES FOR INTERPRETATION I.

[1] 15 U.S.C. 1681b (1970). See also, Proposed Interpretation § 600.8, infra.

[2] 12 CFR 202.6 (1976), as amended 41 FR 38759 (Sept. 13, 1976).

[3] For purposes of this interpretation, the term "undesignated information" refers to all credit history information in a married consumer's file which was not reported to the consumer reporting agency with a designation indicating that the information relates to either the consumer's joint or individual credit experience. This would include most file information compiled up to June 1, 1977 (when the Regulation B designation requirement goes into effect) and most information reported to credit bureaus after that date which relates to pre-June, 1977 accounts that have not been designated either by the creditor, through the process set forth in § 202.6 of Regulation B, or by the consumer's direct request to the credit bureau.

[4] 15 U.S.C. 1681e(b) (1970).

[5] 12 CFR 2022 (1976). See also proposed amendments at 41 FR 29870, 29880 n. 7 (July 20, 1976).

* * * * *

[16] 15 U.S.C. 1681b (1970).

[17] 12 CFR 202.5(b)(1)(i-iv) (1976)

(b) *Information about a spouse or former spouse.* (1) A creditor may request and consider any information concerning an applicant's spouse (or former spouse under (iv) below) which may be considered about the applicant of:

(i) The spouse will be permitted to use the account; or

(ii) The spouse will be contractually liable upon the account; or

(iii) The applicant is relying on community property or the spouse's income as a basis for repayment of the credit requested; or

(iv) The applicant is relying on alimony, child support or maintenance payments from a spouse or former spouse as a basis for repayment of the credit requested.

[18] S. Rep. No. 91-517 91st Cong., 1st Sess. 4 (1969).

[19] Id. at 5; 116 Cong. Rec. 35941 (1970) (remarks of Senator Proxmire).

[20] See 604(2). 15 U.S.C. 1681b(2) (1970).

[21] See, Clontz, "Fair Credit Reporting Act Manual" 554, 626,634 (1975 Cum. Supp.)

FOOTNOTES FOR INTERPRETATION II.

[1] The term "nonapplicant spouse" is used here for identification purposes and refers to a spouse not actually signing or otherwise completing the application.

[2] Pub. L. 93-495, 88 Stat. 1521 (1974), as amended Pub. L. 94-239 (1976). 12 CFR 202.5(b)(1) (1976).

[3] 15 U.S.C. 1681b(3)(A) and (E) (1970).

[4] 12 CFR 202.5(b)(1)(i), (ii) and (iii) (1976).

[5] 12 CFR 202.5(b)(1)(iii)(1976).

[6] 15 U.S.C. 1681b(3)(E)(1970).

[7] 12 CFR 202.5b(1)(iv)(1976).

[8] Id.

[9] 15 U.S.C. 1681b(3)(1970).

[FR Doc.77-2611 Filed 1-26-77;8:45 am]

CONSUMER PRODUCT SAFETY COMMISSION

[16 CFR Part 1012]

MEETINGS: ADVANCE PUBLIC NOTICE, PUBLIC ATTENDANCE AND RECORDKEEPING

Proposed and Interim Amendments To Implement Government in the Sunshine Act

● The purpose of this document is to propose amendments to the Consumer Product Safety Commission's meetings policy, (16 CFR 1012) to implement the Government in the Sunshine Act ("Sunshine Act") Pub. L. 94-409. The Commission solicits public comment on the proposal until February 28, 1977. The Sunshine Act requires the Commission to issue final regulations effective by March 12, 1977. Howeve, the Commission wishes to begin to comply with the Sunshine Act prior to the effective date. The first meeting of the Commissioners to which the Commission expects to apply the provisions set forth in this document is planned for February 24, 1977. Therefore, until final regulations are issued, the procedures for making a determination to open or close a meeting of the Commissioners, the provisions for public announcement of such meetings and the provisions regarding recordkeeping for such meetings are effective upon publication of this document in the FEDERAL REGISTER. ●

BACKGROUND

In the FEDERAL REGISTER of November 4, 1975 (40 FR 51360), the Commission issued a policy regarding its requirements for advance public notice, public attendance and recordkeeping for meetings that are of substantial interest to the public involving Commissioners or Commission staff and outside parties (hereinafter "Part 1012"). In developing the policy, the Commission followed the principle that the public interest is best served when regulatory affairs are open to the fullest extent practicable. The Commission therefore, provided for advance public notice and public attendance at meetings between its members or its staff and outside parties, subject to narrow exceptions. The Commission remains committed to this principle and will continue to provide for advance public notice and public attendance at such meetings. In addition, as described below, the Commission proposes to revise its policy with regard to meetings of the Commissioners held to conduct official agency business in order to comply with the requirements of the Sunshine Act.

PROPOSED REVISIONS TO IMPLEMENT THE SUNSHINE ACT

The requirements of the Sunshine Act regarding meetings apply only to meetings of members of the collegial body heading the agency. The Commission therefore proposes to revise § 1012.2, containing definitions, to incorporate the definition of "meeting" as used in the Sunshine Act. Meetings to which the Sunshine Act applies, meetings of the Commissioners held to conduct official agency business, are referred to as "Commission meetings." Other meetings to which Part 1012 applies, which are not covered by the Sunshine Act, are referred to as "Agency meetings" and include meetings between Commissioners or agency staff and outside parties, hearings, staff meetings and advisory committee meetings.

The proposed amendments to Part 1012 to implement the Sunshine Act, involve chiefly a revision and expansion of former § 1012.4(b) (renumbered § 1012.4 in this document) relating to Commission meetings; and a revision and expansion of former § 1012.5 (renumbered § 1012.6 in this document) relating to recordkeeping requirements for the various types of meetings covered by the policy.

Proposed § 1012.4 follows closely the relevant provisions of section 3 of the Sunshine Act (5 U.S.C. 552b) and sets forth requirements for announcement of meetings of the Commission, requirements for attendance by the public and exceptions to the requirement of open meetings, and procedures to be followed by the Commission in closing a meeting and in reconsidering its decision to open or close a meeting.

Proposed § 1012.5 retains the provisions relating to Agency meetings previously set forth in § 1012.4(a), (c), (d) and (e). Proposed § 1012.6 sets forth requirements for recordkeeping and procedures for making meeting records available to the public. Requirements are set forth separately for Commission meetings and Agency meetings. Proposed § 1012.6(b) (formerly § 1012.5(b)) regarding recordkeeping requirements for Commission meetings retains the existing provisions relating to documentation, by use of "Commission minutes", of de-

cisions of the Commission made at Commission meetings or by ballot vote. However, in order to avoid confusion with the minutes provided for in § 1012.6(a)(1), which are detailed summaries of Commission meetings, the term "Record of Commission Action" is substituted for the term "Commission minute." Records of Commission Action summarize the issues presented, indicate the vote of each Commissioner and are signed by each Commissioner voting.

In considering these regulations, the Commission discussed the impact of section 6(b)(1) of the Consumer Product Safety Act (15 U.S.C. 2055(b)(1)) on Commission meetings to be conducted pursuant to these regulations. Section 6(b)(1) requires that prior to the public disclosure of any information about a consumer product that would permit the public to identify the manufacturer or private labeler of the product, the Commission must provide 30 days notice and a summary of the information to the manufacturer or private labeler in order to afford the interested party an opportunity to submit comments on the information. The purpose of the notice requirement is to assure that information which is publicly disclosed is accurate, fair, and reasonably related to effectuating the purposes of the Consumer Product Safety Act. The provision also requires the Commission to retract information that is publicly disclosed about the safety of a consumer product or the practices of any manufacturer, private labeler, distributor, or retailer of consumer products if the Commission determines that the information is inaccurate or misleading.

The particular question raised was whether a Commission discussion of information covered by section 6(b)(1) in a meeting open to the public, would constitute "public disclosure" of such information.

The Commission previously decided (on October 6, 1975) that the term "public disclosure" in section 6(b)(1) means the affirmative and widespread dissemination of information. The mere discussion of information at a public meeting would not, in the Commission's view, constitute a "public disclosure" which would invoke the notice or retraction requirements of section 6(b)(1).

Accordingly, in view of the provisions of the Sunshine Act regarding the bases for closing meetings and the Commission's interpretation of section 6(b)(1) of the Consumer Product Safety Act, the Commission's position is that section (b)(1) does not apply to discussions at Commission meetings and will not be invoked as a basis for closing any Commission meeting.

Accordingly, pursuant to the provisions of the Sunshine Act requiring agencies to promulgate implementing regulations (sec. 3(g), Pub. L. 94-409, 5 U.S.C. 552b(g), the Commission proposes to revise Part 1012 of Title 16, Chapter II, Subchapter A to read as follows:

Sec.

1012.1 General policy considerations.
1012.2 Definitions.
1012.3 Forms of advance public notice of meetings; public calendar/master calendar and FEDERAL REGISTER.
1012.4 Commission meetings; requirements for advance public notice and attendance by the public.
1012.5 Agency meetings; requirements for advance public notice and attendance by the public.
1012.6 Recordkeeping requirements for meetings.
1012.7 Agency meetings: the news media.
1012.8 Agency meetings: telephone conversations.

AUTHORITY: 5 U.S.C. 552b(g); Pub. L. 92-573, 86 Stat. 1207 (15 U.S.C. 2051-81); Pub. L. 90-189, 81 Stat. 568 (15 U.S.C. 1191-1204); Pub L. 86-613, 74 Stat. 372, as amended by Pub. L. 89-756, 80 Stat. 1303, and Pub. L. 91-113, 83 Stat. 187 (15 U.S.C. 1261-74); Pub. L. 91-601, 84 Stat. 1670 (15 U.S.C. 1471-75) and the Act of Aug. 7, 1956, 70 Stat. 953 (15 U.S.C. 1211-14).

§ 1012.1 General policy considerations.

(a) In enacting the Government in the Sunshine Act (Pub. L. 94-409, 5 U.S.C. 552b), the Congress stated the policy that the public is entitled to the fullest practicable information regarding the decisionmaking processes of the Federal Government. The purpose of the Government in the Sunshine Act is to provide the public with such information while protecting the rights of individuals and the ability of the Government to carry out its responsibilities. Accordingly, when the Commissioners of the Consumer Product Safety Commission hold meetings for the purpose of jointly conducting or disposing of Commission business, the meetings shall be held in accordance with the provisions of the Government in the Sunshine Act.

(b)(1) In order for the Consumer Product Safety Commission to properly carry out its mandate to protect the public from unreasonable risks of injury associated with consumer products, the Commission has determined that it must involve the public to the fullest possible extent in its activities.

(2) To guarantee public confidence in the integrity of Commission decisionmaking, the Agency will, to the fullest possible extent, conduct its business in an open manner which is free from any actual or apparent impropriety.

(3) To achieve the goals set forth in paragraphs (b)(1) and (2), the Commission believes that, wherever practicable, it should notify the public in advance of all Agency meetings involving matters of substantial interest held or attended by its personnel and permit the public to attend such meetings. Furthermore, to ensure the widest possible exposure of the details of such meetings, the Agency will keep records of them which are freely available for inspection by the public.

§ 1012.2 Definitions.

As used in this Part 1012, the following terms shall have the meanings set forth:

(a) *Agency.* The entire organization which bears the title Consumer Product Safety Commission (CPSC).

(b) *Agency staff.* Employees of the Agency other than the five Commissioners.

(c) *Commissioner.* An individual who belongs to the collegial body heading the CPSC.

(d) *Commission.* The Commissioners of the Consumer Product Safety Commission acting in an official capacity.

(e) *Majority of the Commission.* Three or more of the Commissioners.

(f) *Commission meeting.* The joint deliberations of at least a majority of the Commission where such deliberations determine or result in the joint conduct or disposition of official Agency business. This term does not include meetings required or permitted by § 1012.4(e)(1) (to determine whether a meeting will be open or closed), meetings required or permitted by § 1012.4(b)(2) (to change the subject matter of a meeting or the determination to open or close a meeting after the public announcement) or meetings required or permitted by § 1012.4(a)(2) (to dispense with the one week advance notice of a meeting).

(g) *Agency meeting.* Any face-to-face encounter, other than a Commission meeting as defined in paragraph (f) of this section, in which one or more employees, including Commissioners, discuss any subject relating to the Agency or any subject under its jurisdiction.

(h) *Outside party.* Any person not an employee, not under contract to do work for the Agency, or not acting in an official capacity as a consultant to the Consumer Product Safety Commission, such as advisory committee members or offeror personnel. Examples of persons falling within this definition are representatives from industry, consumer groups and other government bodies. Members of the news media are not considered to be outside parties when acting in a news-gathering capacity. (See also § 1012.7.)

(i) *Substantial interest matter.* Any matter, other than that of a trivial nature, that pertains in whole or in part to any issue that is likely to be the subject of a regulatory or policy decision by the Commission. Pending matters, i.e., matters before the Agency in which the Agency is legally obligated to make a decision, automatically constitute substantial interest matters. Examples of pending matters are: scheduled administrative hearings; matters published for public comment; petitions under consideration; and mandatory standard development activities. The following examples do not constitute substantial interest matters: inquiries concerning the status of a pending matter; discussions relative to general interpretations of existing laws, rules, and regulations; inspection of nonconfidential CPSC documents by the public; negotiations for contractual services; and routine CPSC activities such as recruitment, training,

meetings involving consumer deputies, or meetings with hospital staff and other personnel involved in the National Electronic Injury Surveillance System.

(j) *Public announcement.* A matter is publicly announced when it is entered on the master calendar or public calendar, or both.

§ 1012.3 Forms of advance public notice of meetings; public calendar/master calendar and "Federal Register."

Advance notice of Agency activities is provided to the public so that it may know of and participate in these activities to the fullest extent possible. Where appropriate, the Commission uses the following types of notices for both Agency meetings involving substantial interest matters and Commission meetings.

(a) *Public calendar/master calendar.* (1) The printed public calendar and the master calendar maintained in the Office of the Secretary are the principal means by which the Agency notifies the public of its day-to-day activities. The public calendar and/or master calendar provide advance notice of public hearings, Commission meetings, Agency meetings with outside parties involving substantial interest matters, selected staff meetings, advisory committee meetings, and other events such as speeches, and participation in panel discussions, regardless of the location. The public calendar also lists recent CPSC FEDERAL REGISTER issuances and Advisory Opinions of the Office of the General Counsel.

(2) Upon request in writing to the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207, any person or organization will be sent the public calendar on a regular basis free of charge. In addition, interested persons may contact the Office of the Secretary to obtain information from the master calendar which is kept current on a daily basis.

(3) The master calendar, supplemented by meeting summaries, is intended to serve the requirements of section 27(j)(8) of the Consumer Product Safety Act (15 U.S.C. 2076(j)(8)).

(4) Commissioners and Agency staff are responsible for reporting meeting arrangements for Agency meetings to the Office of the Secretary so that they may be published in the printed public calendar or entered on the master calendar at least seven days before a meeting, except as provided in § 1012.5(b)(1). Such reports shall include the following information:

(i) Probable participants and their affiliations;

(ii) Date, time and place of the meeting;

(iii) Subject of the meeting (as fully and precisely designated as possible);

(iv) Who requested the meeting;

(v) Whether the meeting involves matters of substantial interest;

(vi) Notice that the meeting is open or reason why the meeting or any portion of the meeting is closed (e.g., discussion of trade secrets); and

(vii) Name and telephone number of the CPSC host or contact person.

(5) The Secretary of the Commission is responsible for preparing and making public the announcements and notices relating to Commission meetings that are required in § 1012.4(a) and (b).

(b) FEDERAL REGISTER. The FEDERAL REGISTER is the publication through which official notifications, including formal rules and regulations of the Agency, are made. Because the public calendar and/or master calendar are the primary devices through which the Agency notifies the public of its routine, daily activities, the FEDERAL REGISTER will be utilized only when required by the Government in the Sunshine Act (as provided in § 1012.4 (a) and (b)) or other applicable law, or when the Agency believes that the additional coverage which the FEDERAL REGISTER can provide is necessary to assist in notification to the public of important meetings.

§ 1012.4 Commission meetings; requirements for advance public notice and attendance by the public.

Commission meetings are held for the purpose of jointly conducting the formal business of the Agency, including the rendering of official decisions. The following provisions regarding announcement of meetings and attendance by the public shall apply to Commission meetings that determine or result in the joint conduct or disposition of official Agency business. Requirements as to other types of meetings Commissioners may attend (Agency meetings) are contained in § 1012.5.

(a) *Announcement of meetings.* (1) The Agency shall announce each Commission meeting in the public calendar or master calendar at least one week (seven calendar days) before the meeting. The Agency shall concurrently submit the announcement for publication in the FEDERAL REGISTER. The announcement and the FEDERAL REGISTER notice shall contain the following information:

(i) The date, time, and place of the meeting;

(ii) The subject matter of the meeting;

(iii) Whether the meeting will be open or closed to the public;

(iv) The name and phone number of the official who responds to requests for information about the meeting.

(2) If a majority of the Commission determines by recorded vote that Agency business requires calling a meeting earlier than 7 calendar days in advance, announcement shall be made in the public calendar or master calendar at the earliest practicable time and the Agency shall transmit the announcement concurrently for publication in the FEDERAL REGISTER.

(b) *Changes after public announcement.* (1) When necessary and at the direction of the Chairman, the Secretary shall change the time of a meeting after the announcement in the public calendar or master calendar. Such change shall be entered on the master calendar and such other notice shall be given as is practicable.

(2) The Commission may change the subject matter of a meeting or the decision to open or close a meeting or portion thereof to the public, after announcement in the public calendar or master calendar only if a majority of the Commission determines by recorded vote that Agency business so requires and that no earlier announcement of the change was possible. The Commission shall announce the change in the public calendar or master calendar at the earliest practicable time before the meeting and shall concurrently submit the announcement for publication in the FEDERAL REGISTER. (See also § 1012.4(f) for requirements for Commission reconsideration of a decision to open or close a meeting to the public.)

(c) *Attendance by the public.* Every portion of every Commission meeting shall be open to public observation, except as provided in paragraph (d) of this section. Notwithstanding paragraph (d) of this section, Commission meetings or portions thereof may be open to public observation if the Commission determines that the public interest so requires. The number of public observers shall be limited only by availability of space. Attendance by the public shall be limited to observation and shall not include participation.

(d) *Exceptions to the requirement of openness.* The requirement in paragraph (c) of this section that all Commission meetings be open to public observation shall not apply to any Commission meeting or portion thereof for which the Commission has determined, in accordance with the procedures for closing meetings set forth in paragraph (e) of this section, that such meeting or portion thereof is likely to—

(1) Disclose matters that are specifically authorized under criteria established by an Executive Order to be kept secret in the interests of national defense or foreign policy and in fact properly classified pursuant to such Executive Order;

(2) Relate solely to the internal personnel rules and practices of the Agency;

(3) Disclose matters specifically exempted from disclosure by statute (other than 5 U.S.C. 552): *Provided,* That such statute (i) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Involve accusing any person of a crime, or formally censuring any person;

(6) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(7) Disclose investigatory records compiled for law enforcement purposes, or information which if written would be contained in such records, but only to the extent that the production of such records or information would (i) interfere with enforcement proceedings, (ii) deprive a person of a right to a fair trial or an impartial adjudication, (iii) constitute an unwarranted invasion of personal privacy, (iv) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (v) disclose investigative techniques and procedures, or (vi) endanger the life or physical safety of law enforcement personnel;

(8) Disclose information contained in related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions;

(9) Disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed Agency action. This provision does not apply in any instance where the Agency has already disclosed to the public the content or nature of its proposed action, or where the Agency is required by law to make such disclosure on its own initiative prior to taking final agency action on such proposal; or

(10) Specifically concern the Agency's issuance of a subpoena, or the Agency's participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct, or disposition by the Agency of a particular case of formal agency adjudication pursuant to the procedures in 5 U.S.C. 554 or otherwise involving a determination on the record after opportunity for a hearing.

(e) *Procedure for closing meetings of the Commission.* The following procedure shall be followed in closing a Commission meeting or portion thereof to public observation:

(1) A majority of the Commission must vote to close a meeting or portion thereof to public observation pursuant to paragraph (d) of this section. A separate vote of the Commission shall be taken for each matter with respect to which a Commission meeting is proposed to be closed to public observation. Each such vote may, at the discretion of the Commission, apply to that portion of any meeting held within the following thirty days in which such matter is to be discussed. The vote of each Commissioner participating in such vote shall be recorded and no proxies shall be allowed.

(2) Any person, whose interest may be directly affected if a portion of a meeting is open, may request in writing to the Office of the Secretary that the Commission close that portion on the basis of paragraph (d) (5), (6) or (7) of this section. The Commission shall vote on such requests if at least one Commissioner desires to do so.

(3) Within one day of a vote in accordance with paragraph (d) (1) or (2) of this section to close a Commission meeting or portion thereof, the Secretary shall make available to the public a notice setting forth:

(i) The results of the vote reflecting the vote of each Commissioner;

(ii) A full explanation of the action of the Commission closing the meeting or portion thereof, including reference to the specific basis for such closing (see paragraph (d) of this section) and an explanation, (without disclosing exempt information), of why the Commission concludes on balance, (taking into account the relative advantages and disadvantages to the public of conducting the meeting in open or closed session) that the public interest would best be served by closing the meeting;

(iii) A list of all persons (other than Commissioners) expected to attend the meeting and their affiliations; and

(iv) A certification by the General Counsel that in his or her opinion, the meeting may properly be closed to the public.

(4) The public release of the written statement required by paragraph (d) (3) of this section may be delayed upon a determination by the Commission, by recorded vote, that such a notice, or portion thereof, would disclose information which may be withheld in accordance with paragraphs (d) (1) through (10) of this section.

(f) *Reconsideration of a decision to open or close a meeting.* The Commission may, in accordance with the procedures in paragraph (b) (2) or (e) (2) of this section, reconsider its determination to open or close a Commission meeting when it finds that the public interest so requires.

§ 1012.5 Agency meetings: requirements for advance public notice and attendance by the public.

For the purpose of implementing the Agency's meetings policy, meetings which involve Agency staff or the Commissioners, other than Commission meetings, shall be classified in the following categories and shall be held according to the procedures outlined within each category.

(a) *Hearings.* Hearings are public inquiries held by direction of the Commission for the purpose of fact finding or to comply with statutory requirements. The Office of the Secretary is responsible for providing transcription services at the hearings. Where possible, notice of forthcoming hearings will be published in the public calendar and the FEDERAL REGISTER at least 30 days before the date of the hearings.

(b) *Meetings between Commissioners or Agency staff and outside parties.* The following requirements shall apply to Agency meetings between Commissioners or Agency staff and outside parties whether hosted or attended at Agency premises or at the premises of outside parties, or at any other location:

(1) *Notice.* (i) (A) Notice of Agency meetings with outside parties involving substantial interest matters shall be published in the public calendar at least 7 calendar days in advance of the meeting. Any Agency employee planning to host or attend such a meeting must notify the Office of the Secretary as provided in § 1012.3(a) (4). Once notification has been made, Commission employees subsequently desiring to attend the meeting need not notify the Office of the Secretary.

(B) When there is no opportunity to give 7 days advance notice of a meeting, Agency staff (other than the personal staff of Commissioners) who desire to hold or attend such meeting must obtain the approval of the Office of the Chairman. Personal staff of Commissioners must obtain the approval of their respective Commissioners. If such approval is obtained, the Office of the Secretary must be notified in advance of the meeting to record the meeting on the master calendar. The Office of the Secretary shall publish notice of the meeting as an addendum to the succeeding public calendar. Because it could unduly compromise the indepedence of individual Commissioners, they need not obtain the permission of the Chairman to hold or attend an emergency unscheduled meeting. Listing of the meeting in the master calendar is still required.

(ii) *Exceptions.* The notice requirement shall not apply to:

(A) Meetings with outside parties not involving substantial interest matters (although such meetings should be listed where the public interest would be served).

(B) Meetings regarding initial notifications pursuant to section 15(b) of the Consumer Product Safety Act. However, subsequent meetings are not excepted from the notice requirement.

(C) Meetings held during the normal course of field surveillance, inspection or investigation of a person or company, including informal citation hearings under the Federal Hazardous Substances Act or the Poison Prevention Packaging Act. However, advance notice is required for any negotiation meetings leading to settlement of individual cases.

(D) Meetings or discussions with or at the request of members of Congress and their staffs, or Office of Management and Budget personnel relating to legislation or appropriation matters.

(E) Meetings with Department of Justice employees regarding litigation matters.

(F) Routine speeches given by CPSC personnel before outside parties. However, personnel are encouraged to submit advance notice of these speeches to the Office of the Secretary for inclusion in the public calendar, for information purposes.

(2) *Attendance by the public.* (i) Any person or organization may attend any Agency meeting listed in the master calendar unless that meeting has been listed as a closed meeting. Generally, all meetings between Agency employees and outside parties are open to the public for the purpose of observation or participation, subject only to space limitations. Participation by the public may be permitted by the meeting chairperson. When feasible, a person or organization desiring to attend should give at least one day advance notice to the employee holding or attending such meeting.

(ii) The following Agency meetings are not open to the public:

(A) Meetings, or, if possible, portions of meetings where the Office of the General Counsel has determined that proprietary data are to be discussed in such a manner as to imperil their confidentiality.

(B) Meetings held by outside parties at which limits on attendance are imposed by lack of space, provided, that such meetings are open to the press or other news media.

(C) Meetings regarding initial notifications pursuant to section 15(b) of the Consumer Product Safety Act. All subsequent meetings shall be open to the public.

(D) Meetings held during the normal course of field surveillance, inspection, or investigation of a person or company, including informal citation hearings under the Federal Hazardous Substances Act or the Poison Prevention Packaging Act. However, the public may attend any negotiation meetings leading to settlement of individual cases.

(E) Meetings held with other government officials when they request that the meeting be closed, and, in the opinion of the Agency employees, extraordinary circumstances warrant closing the meeting.

(F) Meetings between Agency staff (other than Commissioners and their personal staff) and an outside party, when, by majority vote of the Commission, it is determined that extraordinary circumstances require that the meeting be closed. In such a case, the reasons for closing the meeting or a portion of the meeting shall be detailed in the public calendar.

(G) Meetings between a Commissioner, his or her personal staff, and an outside party, when in the opinion of the Commissioner extraordinary circumstances require that the meeting be closed. In such a case, the reasons for closing the meeting or a portion of the meeting shall be detailed in the public calendar.

(H) Meetings or discussions with members of Congress and their staffs or Office of Management and Budget personnel relating to legislation or appropriation matters.

(I) Meetings with Department of Justice employees regarding litigation matters.

(3) *Recordkeeping.* Any Commission employee who holds or attends an Agency meeting involving a substantial interest matter must prepare a meeting summary as described in § 1012.6(c) (1). However, only one meeting summary is required for each meeting, even if more than one CPSC employee holds or attends the meeting.

(c) *Staff meetings.* Staff meetings are attended only by members of the Agency as a general rule. At the discretion of the participants, such meetings may be listed on the public calendar and attendance by the public may be permitted. Recordkeeping is at the discretion of the participants.

(d) *Advisory committee meetings.* Meetings of the Agency's advisory committees are scheduled by the Commission. Notice will be given in both the public calendar and the FEDERAL REGISTER. Advisory committee meetings serve as a forum for discussion of matters relevant to the Agency's statutory responsibility with the objective of providing advice and recommendations to the Commission. The Agency's advisory committees are the National Advisory Committee for the Flammable Fabrics Act, the Product Safety Advisory Council, and the Technical Advisory Committee on Poison Prevention Packaging. The Office of the Secretary is responsible for the recordkeeping for such meetings. All meetings of advisory committees are open to the public as provided in the Federal Advisory Committee Act (Pub. L. 92–463, as amended by Pub. L. 94–409, 5 U.S.C. App. I) and the Commission's regulations under that Act (16 CFR Part 1018; 41 FR 45821, October 18, 1976).

§ 1012.6 Recordkeeping requirements.

(a) *Commission meetings*—(1) *Maintenance of transcripts, recordings or minutes.* (i) The Agency shall maintain a complete transcript or electronic recording of each Commission meeting, whether open or closed, except that in the case of a meeting, or portion thereof, closed to the public pursuant to paragraph (10) of § 1012.4(d), the Agency may elect to maintan a set of minutes instead of a transcript or a recording. Minutes shall:

(A) Fully and clearly describe all matters discussed, and

(B) Provide a full and accurate summary of any actions taken and the reasons therefor; including a description of each of the views expressed on any item and the record of any roll call vote (reflecting the vote of each Commissioner on the question). All documents considered in connection with any action shall be identified in such minutes.

(ii) The transcript, recording or minutes of closed Commission meetings shall include the certification by the General Counsel required by § 1012.4(e) (3) (iv) and a statement by the presiding Commissioner setting forth the date, time and place of the meeting and the persons present.

(iii) The transcript, recording or minutes of any Commission meeting may include attachments such as Commission opinions, briefing papers, or other documents presented at the meeting.

(iv) The transcript and accompanying material shall be maintained by the Secretary for a period of at least two years after the meeting, or until one year after the conclusion of any Agency proceeding with respect to which the meeting, or portion thereof, was held, whichever occurs later.

(2) *Availability of transcripts, recordings or minutes.* The Agency shall make available to the public, the transcript, recording or minutes of Commission meetings. However, unless the Commission finds that the public interest requires otherwise, any portion of the transcript, recording or minutes of a closed meeting which is determined to contain information which may properly be withheld from the public on the basis of paragraphs (1) through (10) of § 1012.4(d) need not be made available to the public.

(3) *Procedure for making available transcripts, recordings or minutes.* Meeting records will be made available for inspection or copies will be furnished, as requested, in accordance with the following procedures.

(i) *Requests.* Requests for inspection or copies shall be in writing addressed to the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207. A request must reasonably describe the meeting, or portion thereof, including the date and subject matter and any other information which may help to identify the requested material.

(ii) *Responses to requests.* The responsibility for responding to requests for meeting records is vested in the Secretary of the Commission. In any case where the Secretary or designee of the Secretary in his/her discretion determines that a request for an identifiable meeting record should be initially determined by the Commission, the Secretary or designee may certify the matter to the Commission for decision. In that event, the Commission decision shall be made within the time limits set forth in paragraph (a) (3) (iii) of this section and shall be final.

(iii) *Time limitations on responses to requests.* The Secretary or designee of the Secretary shall respond to all written requests for copies of meeting records within ten (10) working days. The time limitations on responses to requests shall begin to run as of the time a request for records is received and date stamped by the Office of the Secretary.

(iv) *Responses: Form and content.* When a requested meeting record has been identified and is available for disclosure, the requester shall either be informed as to where and when the records will be made available for inspection or supplied with a copy. A response denying a written request for a meeting record of a closed meeting shall be in writing signed by the Secretary and shall include:

(A) A reference to the specific exemptions under the Government in the Sunshine Act (5 U.S.C. 552b(c)) authorizing the denial; and

(B) A statement that the denial may be appealed to the Commission pursuant to paragraph (a) (3) (v) of this section.

(v) *Appeals to the Commissioners.* (A) When the Secretary or designee of

the Secretary has denied a request for records in whole or in part, the requester may, within 30 days of its receipt, appeal the denial to the Commissioners of the Consumer Product Safety Commission by writing to the attention of the Chairman, Consumer Product Safety Commission, Washington, D.C. 20207.

(B) The Commission will act upon an appeal within 20 working days of its receipt. The time limitations on an appeal begin to run as of the time an appeal is received by the Office of the Chairman and date stamped.

(C) The Commission's action on appeal shall be in writing, signed by the Chairman of the Commission if the appeal is denied and shall identify the Commissioners who voted for a denial. A denial in whole or in part of a request on appeal for records of a closed meeting shall set forth the exemption relied on and a brief explanation (without disclosing exempt information) of how the exemption applies to the records withheld. A denial in whole or in part shall also inform the requester of his/her right to seek judicial review as specified in 5 U.S.C. 552b(h).

(vi) *Fees.* (A) Fees shall be charged for copies of transcripts, recordings, transcriptions of recordings or minutes in accordance with the schedule contained in paragraph (a)(3)(vi)(C) of this section.

(B) There shall be no fee charged for services rendered in connection with production or disclosure of meeting records unless the charges, calculated according to the schedule below, exceed the sum of $25.00. Where the charges are calculated to be an amount in excess of $25.00, the fee charged shall be the difference between $25.00 and the calculated charges.

(C) The schedule of charges for furnishing copies of meeting records is as follows:

(*1*) Reproduction, duplication or copying of transcripts or minutes: 10 cents per page.

(*2*) Reproduction of recordings: Actual cost basis.

(*3*) Transcription (where meeting records are in form of recording only): Actual cost basis.

(*4*) Postage: Actual cost basis.

(b) *Records of Commission action.* Records of Commission Action, summarizing the issues presented to the Commission for decision and indicating the vote of each Commissioner, document the decisions of the Commission, whether made at open or closed meetings or by ballot vote. The Commission's final Record of Commission Action constitutes the official means of recording the decisions of the Commission and the votes of individual Commissioners when filed with the Office of the Secretary.

(c) *Agency meetings.* The types of records required for Agency meetings depends on the type and purpose of the meeting. Following is a list of the types of and requirements for the categories of recordkeeping utilized by the Agency for Agency meetings.

(1) *Agency Meeting Summaries.* (i) Meeting summaries are written records setting forth the issues discussed at all Agency meetings with outside parties involving substantial interest matters. Any Commission employee who holds or attends an Agency meeting involving a substantial interest matter must prepare a meeting summary. However, only one meeting summary is required for each meeting, even if more than one CPSC employee holds or attends the meeting. A meeting summary should detail the essence of all substantive matters relevant to the Agency, especially any matter discussed which was not listed on the public calendar and should describe any decisions made or conclusions reached regarding substantial interest matters. A meeting summary should also indicate the date and the identity of persons at the meeting.

(ii) A meeting summary or a notice of cancellation of the meeting must be submitted to the Office of the Secretary within twenty (20) calendar days after the meeting for which the summary is required. The Office of the Secretary shall maintain a public file of the meeting summaries in chronological order.

(2) *Transcripts.* Transcripts are generally taken at public hearings and certain Agency meetings when complex subjects indicate verbatim records are desirable. The transcript may also include exhibits submitted to be part of the formal record of an Agency meeting. Copies of such transcripts are placed on file for public inspection in the Office of the Secretary.

§ 1012.7 Agency meetings: The news media.

The Agency recognizes that the news media occupy a unique position relative to informing the public of the activities of the Agency. It is believed that the inherently public nature of the news media requires that their activities be exempt from the requirements of this Part whenever Agency meetings are held with the news media for the purpose of informing them about Agency activities. Such Agency meetings are not exempt in the event that any representative of the news media attempts to influence any Agency employee on a substantial interest matter.

§ 1012.8 Agency meetings: Telephone conversations.

Telephone conversations present special problems regarding Agency meetings as set forth in this Part. It is recognized that persons outside the Agency have a legitimate right to information and to present their views regarding Agency activities. It is further recognized that such persons may not have the financial means to travel to meet with Agency employees. However, because telephone conversations, by their very nature, are not susceptible to attendance or participation by the public, care must be taken to ensure that they are not utilized to circumvent the provisions of this Part. Two basic rules apply to telephone conversations:

(a) Any telephone conversation in which substantial interest matters are discussed with outside parties must be detailed in a meeting summary which meets the requirements of § 1012.6(c)(1). A summary detailing telephone conversations must be submitted by the CPSC employee involved to the Office of the Secretary within 20 calendar days after the telephone call for which a summary is required. The Office of the Secretary shall maintain a public file of telephone call summaries in chronological order.

(b) All agency personnel must exercise sound judgment in discussing substantial interest matters during a telephone conversation and in the exercise of such discretion, should not hesitate to terminate a telephone conversation and insist that the matters being discussed be postponed until an Agency meeting with appropriate advance public notice may be scheduled or until the matter is presented to the Agency in writing if the outside party is financially or otherwise unable to meet with the Agency employee.

Interested persons are invited to submit on or before February 28, 1977, written comments regarding this document. Comments received after this date will be considered to the extent practicable.

Comments should be submitted, preferably in five copies, addressed to the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207. Received comments may be seen in the Office of the Secretary, 3rd Floor, 1111 18th Street, N.W., Washington, D.C. during working hours Monday through Friday.

Dated: January 21, 1977.

SADYE E. DUNN,
Secretary, Consumer Product Safety Commission.

[FR Doc.77-2579 Filed 1-26-77;8:45 am]

SECURITIES AND EXCHANGE COMMISSION

[17 CFR Part 240]

[Release No. 34-13195; File No. S7-672]

PERSONS DEEMED NOT TO BE BROKERS

Proposed Rulemaking

The Securities and Exchange Commission today announced for public comment a proposal to adopt Securities Exchange Act Rule 3a4-1 (17 CFR 240.3a4-1). Proposed Rule 3a4-1 would provide that, under certain circumstances, persons who are associated with an issuer of securities and who participate in a distribution of the issuer's securities shall be deemed not to be brokers, as that term is defined in section 3(a)(4) of the Securities Exchange Act of 1934 (the "Act") (15 U.S.C. 78c(a)(4)). The rule is proposed to be adopted pursuant to the Act, particularly sections 3, 15 and 23 thereof (15 U.S.C. 78c, 78o and 78w).

Section 3(a)(4) of the Act provides: "The term 'broker' means any person engaged in the business of effecting transactions in securities for the account of others, but does not include a bank." Where an issuer of securities elects not to use a registered broker or dealer to effect a distribution of securities and instead effects the distribution through its own regular officers and employees, the Act has customarily been interpreted not to require the issuer itself to register as either a broker or a dealer; the issuer would not be effecting transactions for the account of others nor, generally, would it be engaged in the business of both buying and selling securities for its own account.[1] At the same time, the persons acting on behalf of the issuer in distributing its securities may, depending on the circumstances, be either brokers or dealers within the meaning of Section 3(a)(4) or 3(a)(5) of the Act.

If the definition of the term "broker" in section 3(a)(4) of the Act were interpreted to cover all officers, employees, or other persons associated with an issuer who assisted the issuer in distributing its securities, such persons would have to register as broker-dealers under Section 15(a)(1) of the Act unless an exemption were available.[2] By interpretation, however, the Commission's staff has attempted over the years to distinguish between the circumstances in which persons distributing securities for issuers are deemed not to be "brokers" within the meaning of section 3(a)(4) and circumstances in which such persons should be deemed to be brokers. The rule the Commission has today proposed is intended to address that interpretive distinction.

Questions concerning broker-dealer registration have frequently arisen in circumstances where an entity, that characterizes itself as an issuer and proposes to distribute its securities through its officers and employees, or other persons associated with it, has itself repeatedly been involved in securities distributions or is controlled or managed by those who have. On the one hand, a securities distribution effected by persons associated with an issuer, viewed in isolation, would not generally raise questions as to whether the persons effecting the distribution were engaged in the business of effecting transactions in securities. On the other hand, the repetitive or continuous involvement of persons in effecting transactions for a series of "issuers," or even a single issuer, may indeed suggest that the persons engaged in that distribution process are doing so as part of a regular business and are therefore brokers within the meaning of section 3(a)(4).

Proposed Rule 3a4-1 would provide guidance to issuers in determining whether their officers, employees and other associated persons would be acting as brokers if they effected transactions in the issuer's securities. In the past the Commission has called attention in general terms to the applicability of the broker-dealer registration requirements of Section 15(a)(1) of the Act to persons selling certain securities, for example, condominium programs involving investment contracts.[3] It appears, however, that further guidance would be useful particularly to promoters of, for example, real estate syndications and oil and gas drilling programs (and other oil and gas ventures) who have in the past often sought to distribute securities.

The proposed rule would provide a "safe harbor" within which persons associated with an issuer would be deemed not to be brokers. The term "person associated with an issuer" would be defined in paragraph (b) of the rule and would exclude, among others, associated persons of an issuer or other entity which is itself a registered broker or dealer. Paragraph (a) of the rule would provide that the safe harbor to be afforded by the rule would not be available to any person who is subject to a "statutory disqualification," as that term is defined by section 3(a)(39) of the Act, 15 U.S.C. 78c(a)(39).

The safe harbor is available to an associated person in any one of three ways: by confining his participation to the types of transactions enumerated in paragraph (a)(1), or by being a bona fide employee of the issuer meeting the criteria set forth in paragraph (a)(2), or by restricting his activities in the manner described in paragraph (a)(3).

Paragraph (a)(1) would be available to those effecting certain kinds of transactions which have not generally raised substantial problems of investor protection. The transactions described in paragraph (a)(1)(i) involve the issuer on one side and a financial intermediary on the other. The inclusion of that exemption is premised on the belief that the types of financial intermediaries included will generally be capable of protecting their own interests without the need for further Commission regulation. The transactions described in paragraph (a)(1)(ii) are those in which an issuer sells its securities to the public through a registered broker or dealer. In that case, it is assumed, the activities of the issuer's associated persons in arranging for the offering would not appear to raise problems of investor protection so long as only the registered broker or dealer is involved in making sales to the public. The transactions described in paragraphs (a)(1)(iii) and (iv) are included because they do not currently seem likely to offer substantial inducements to improper selling tactics.

Paragraph (a)(2) would cover bona fide employees of an issuer meeting all three tests enumerated. The test set forth in paragraph (a)(2)(i) is designed to limit paragraph (a)(2) to employees who are not repetitively involved in the distribution process and thus not "in the business" of distributing securities. Any involvement in distributing or selling securities within the preceding two years would disqualify a person from relying on paragraph (a)(2) regardless of the nature of the involvement (e.g., whether or not it would come within paragraphs (a)(1) or (a)(3)) and regardless of whether it was for the current employer or a different one. The (a)(2)(ii) test is aimed, in turn, at limiting paragraph (a)(2) to employees who are regularly and primarily engaged in the issuer's business, outside the securities distribution process. It would, for example, exclude people hired to be securities salesmen. At the same time, it might be available under appropriate circumstances to the bona fide employees of a start-up company whose regular business operations involving such employees will not for the most part be undertaken until the completion of the offering. The (a)(2)(iii) test would exclude persons compensated on a commission basis or any other basis, whatever its designation, that varied directly with the volume or number of securities transactions. For example, a system of salary increases or bonuses that was in fact designed to pay the equivalent of commissions on securities sales would confer "remuneration based on transactions in securities." The test in paragraph (a)(2)(iii) is based in large part on the assumption that the payment of commissions and other transaction-related remuneration not only raises questions as to whether the recipient is "engaged in the business" of effecting transactions but also is somewhat more likely than other compensation schemes to induce high pressure sales tactics and to engender other problems of investor protection customarily associated with unsupervised and unregulated brokerage activities.

Paragraph (a)(3) is designed to cover persons associated with an issuer whose participation in the securities distribution process is essentially passive. Those qualifying under paragraph (a)(3) may not engage in any activities with respect to securities distributions other than those listed. For example, their participation in selling securities may not extend to "cold" calls to those who have not initiated an inquiry. A person's participation in transactions covered by paragraph (a)(1) would not, however, be considered in determining whether paragraph (a)(3) was available for his participation in other transactions.

[1] Section 3(a)(5), 15 U.S.C. 78c(a)(5), provides that the term "dealer" means any person engaged in the business of buying and selling securities for his own account but does not include a bank, or any person insofar as he buys or sells securities for his own account, either individually or in some fiduciary capacity, but not as part of a regular business.

[2] Section 15(a)(1), 15 U.S.C. 78o(a)(1), generally provides that it shall be unlawful for any broker or dealer (other than one whose business is exclusively intrastate and who does not make use of any facility of a national securities exchange) to make use of the mails or any means or instrumentality of interstate commerce to effect any transactions in, or to induce or attempt to induce the purchase or sale of, any security (other than an exempted security or commercial paper, bankers' acceptances, or commercial bills) unless the broker or dealer is registered in accordance with Section 15(b) of the Act, 15 U.S.C. 78o(b).

[3] *See* Securities Act Release No. 5347 (Jan. 4, 1973).

Only unusual circumstances would be expected to support a conclusion that persons who do not come within the provisions of the proposed rule are not brokers within the meaning of section 3(a)(4).

The text of the proposed rule is as follows:

§ 240.3a4–1. Associated persons of an issuer deemed not to be brokers.

(a) A person associated with an issuer of securities shall be deemed not to be a broker, as that term is defined in section 3(a)(4) of the Act, solely by reason of his participation in the distribution or sale of securities of such issuer if such person is not subject to a statutory disqualification, as that term is defined in section 3(a)(39) of the Act, and if:

(1) His participation is confined to transactions in securities:

(i) Involving offers and sales of securities to a registered broker or dealer, a registered investment company (or separate account), an insurance company, a bank or a trust for which a bank or registered investment adviser is the trustee or is authorized in writing to make investment decisions; or

(ii) Made through a registered broker or dealer; or

(iii) Exempted by reason of section 3(a)(7) or 3(a)(9) of the Securities Act of 1933 from the registration provisions of that Act; or

(iv) In connection with a reclassification, merger or consolidation or transfer of assets within the meaning of Rule 145 under the Securities Act of 1933; or

(2) He is a bona fide employee of the issuer who:

(i) Has not participated, within the preceding two years, in the distribution or sale of any securities; and

(ii) Primarily performs, or is intended primarily to perform at the end of the distribution, substantial duties for, or on behalf of, the issuer otherwise than in connection with transactions in securities; and

(iii) Is compensated on a basis other than the direct or indirect payment of commissions or other special remuneration based on transactions in securities; or

(3) He restricts his participation to any one or more of the following:

(i) The delivery of a prospectus or other communication described in Rule 134 under the Securities Act of 1933;

(ii) Responding to inquiries concerning the offering of securities; and

(iii) The ministerial and clerical work of effecting any transaction.

(b) When used in this section, the term "person associated with an issuer" means any natural person who is a partner, officer, director, or employee of the issuer and who is not an associated person of a registered broker or dealer.

* * * * *

All interested persons are invited to submit three copies of written views, data and arguments on proposed Rule 3a4–1 to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Washington, D.C. 20549, not later than March 21, 1977. Reference should be made to File No. S7–672. All submissions will be made available for public inspection at the Commission's Public Reference Room, Room 6101, 1100 L Street, NW., Washington, D.C.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

JANUARY 21, 1977.

[FR Doc.77–2734 Filed 1–26–77;8:45 am]

DEPARTMENT OF STATE

[22 CFR Part 93]

[Docket No. SD–125]

FOREIGN SOVEREIGN IMMUNITIES

Proposed Service on Foreign State Regulations

Correction

In FR Doc. 76–36776, appearing at page 54495 in the issue, make the following changes:

1. In the second column, "Subpart J—Legal And Related Service", should read "Subchapter J—Legal and Related Service".

2. In the third column, in the "annex" material, "6. Date of default judgment (if any):" should be added just below the information for number "5".

OVERSEAS PRIVATE INVESTMENT CORPORATION

[22 CFR Part 707]

SUNSHINE REGULATIONS

Proposed Rulemaking

Pursuant to the Government in the Sunshine Act, 5 U.S.C. 552b, and to implement the provisions of such Act, the Corporation proposes to amend Title 22, Chapter VII of the Code of Federal Regulations by adding a new Part 707.

The purpose of the proposed regulations is to state the policy for open meetings, exemptions to the open meeting rule, procedures for transcribing meetings closed to public observation and for making the non-exempt portions of the transcripts available to the public, and procedures for the public announcement of meetings open or closed to public observation. These proposed regulations will implement subsections (b) through (f) of the Government in the Sunshine Act.

Interested parties are invited to submit their comments on these proposed regulations to the Secretary, Overseas Private Investment Corporation, 1129 20th Street, N.W. Washington, D.C. 20527, not later than February 20, 1977. Written comments will be placed in the Corporation's public files and will be available for public inspection at the Office of Secretary of the Corporation.

JANUARY 24, 1977.

OVERSEAS PRIVATE INVESTMENT CORPORATION,
ELIZABETH BURTON,
Corporate Secretary.

The proposed regulations are as follows:

PART 707—SUNSHINE REGULATIONS

Sec.
707.1 Purpose and applicability.
707.2 Open meeting policy.
707.3 Scheduling of a meeting.
707.4 Public announcement.
707.5 Closed meetings.
707.6 Records of closed meetings.

AUTHORITY: 5 U.S.C. 552b.

§ 707.1 Purpose and applicability.

The purpose of this part is to effectuate the provisions of the Government in the Sunshine Act. This part applies to the deliberations of a quorum of the Directors of the Corporation required to take action on behalf of the Corporation where such deliberations determine or result in the joint conduct or disposition of official Corporation business, but does not apply to deliberations to take action to open or close a meeting or to release or withhold information under § 707.5. Any deliberation to which this part applies is hereinafter in this part referred to as a meeting of the Board of Directors.

§ 707.2 Open meeting policy.

(a) It is the policy of the Corporation to provide the public with the fullest practicable information regarding the decisionmaking process of the Board of Directors of the Corporation while protecting the rights of individuals and the ability of the Corporation to carry out its responsibilities. In order to effect this policy, every meeting of the Board of Directors shall be open to public observation and will only be closed to public observation if justified under one of the provisions of § 707.5. The public is invited to observe and listen to all meetings of the Board of Directors, or portions thereof, open to public observation, but may not participate or record any of the discussions by means of electronic or other devices or cameras. Documents being considered at meetings of the Board of Directors may be obtained subject to the procedures and exemptions set forth in § 706.31 of this chapter.

(b) Directors of the Corporation shall not jointly conduct or dispose of agency business other than in accordance with this part. This prohibition shall not prevent Directors from considering individually business that is circulated to them sequentially in writing.

(c) The Secretary of the Corporation shall be responsible for assuring that ample space, sufficient visibility, and adequate acoustics are provided for public observation of meetings of the Board of Directors.

§ 707.3 Scheduling of a meeting.

A decision to hold a meeting of the Board of Directors should be made as provided in the By-laws of the Corporation and at least eight days prior to the scheduled meeting date in order for the Secretary of the Corporation to give the public notice required by § 707.4. However in special cases, a majority of the

Directors may decide to hold a meeting less than eight days prior to the scheduled meeting date if they determine by a recorded vote that Corporation business requires such meeting at such earlier date. After public announcement of a meeting of the Board of Directors under the provision of § 707.4, the subject matter thereof, or the determination to open or close a meeting, or portion thereof, may only be changed if a majority of the Directors determines by a recorded vote that business so requires and that no earlier announcement of the change is possible.

§ 707.4 Public announcement.

(a) Except to the extent that such information is exempt from disclosure under the provisions of § 707.5, in the case of each meeting of the Board of Directors, the Secretary shall make public announcement at least one week before the meeting, of the time, place, and subject matter of the meeting, whether it is to be open or closed to the public, and the name and telephone number of the official designated by the Corporation to respond to requests for information about the meeting. Such announcement shall be made unless a majority of the Directors determines by a recorded vote that Corporation business requires that such meeting be called at an earlier date, in which case the Secretary shall make public announcement of the time, place, and subject matter of such meeting, and whether open or closed to the public, at the earliest practicable time.

(b) The time or place of a meeting may be changed following the public announcement required by paragraph (a) of this section only if the Secretary publicly announces such change at the earliest practicable time. The subject matter of a meeting, or the determination of the Corporation to open or close a meeting, or portion of a meeting, to the public, may be changed following the public announcement required by this section only if (1) a majority of the Directors determines by a recorded vote that business so requires and that no earlier announcement of the change was possible, and (2) the Secretary publicly announces such change and the vote of each Director upon such change at the earliest practicable time: *Provided*, That individual items which have been announced for consideration at a meeting of the Board of Directors may be deleted without notice.

(c) The "earliest practicable time", as used in this subsection, means as soon as possible, which should in few, if any, instances be later than the commencement of the meeting or portion in question.

(d) The Secretary shall use reasonable means to assure that the public is fully informed of the public announcements required by this subsection. Such public announcements may be made by posting notices in the public areas of the Corporation's headquarters and mailing notices to the persons on a list maintained for those who want to receive such announcements.

(e) Immediately following each public announcement required by this section, notice of the time, place, and subject matter of a meeting, whether the meeting is open or closed, any change in one of the preceding announcements, and the name and telephone number of the official designated by the Corporation to respond to requests for information about the meeting shall also be submitted by the Secretary for publication in the FEDERAL REGISTER.

§ 707.5 Closed meetings.

(a) Meetings of the Board of Directors will be closed to public observation where the Corporation properly determines, according to the procedures set forth in paragraph (c) of this section, that such portion or portions of the meeting or disclosure of such information is likely to:

(1) Disclose matters that are (i) specifically authorized under criteria established by an Executive order to be kept secret in the interests of national defense or foreign policy and are (ii) in fact properly classified pursuant to such Executive order;

(2) Relate solely to the internal personnel rules and practices of an agency;

(3) Disclose matters specifically exempted from disclosure by statute (other than 5 U.S.C. 552), *Provided*, That such statute (i) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Disclose the trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Involve accusing any person of a crime, or formally censuring any person;

(6) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(7) Disclose investigatory records compiled for law enforcement purposes, or information which if written would be contained in such records, but only to the extent that the production of such records or information would (i) interfere with enforcement proceedings, (ii) deprive a person of a right to a fair trial or an impartial adjudication, (iii) constitute an unwarranted invasion of personal privacy, (iv) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (v) disclose investigative techniques and procedures, or (vi) endanger the life or physical safety of law enforcement personnel;

(8) Disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action, except in any instance where the Corporation has already disclosed to the public the content or nature of its proposed action, or where the Corporation is required by law to make such disclosure on its own initiative prior to taking final Corporation action on such proposal; or

(9) Specifically concern the Corporation's issuance of a subpoena, or the Corporation's participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct, or disposition by the Corporation of a particular case of formal Corporation adjudication pursuant to the procedures in 5 U.S.C. 554 or otherwise involving a determination on the record after opportunity for a hearing.

(b) Meetings of the Board of Directors shall not be closed pursuant to paragraph (a) of this section when the Corporation finds that the public interest requires that they be open.

(c) (1) Action to close a meeting, or portion thereof, pursuant to the exemptions defined in paragraph (a) of this section may be initiated by the President or any Director of the Corporation by presentation of a request for closure to the Board of Directors. The person initiating the request for closure shall give the Board of Directors a statement specifying the extent of the proposed closure, the relevant exemptive provisions and the circumstances pertinent to such request. Such statement shall also be given to the General Counsel of the Corporation to serve as a basis for the certification the General Counsel may determine can be issued in accordance with § 707.6. The General Counsel's determination shall be given to the Board of Directors. Action to close a meeting, or portion thereof, shall be taken only when a majority of the entire membership of the Board of Directors votes to take such action. A separate vote of the Board of Directors shall be taken with respect to each meeting and of the Board of Directors portion or portions of which are proposed to be closed to the public or with respect to any information which is proposed to be withheld. A single vote may be taken with respect to a series of meetings, a portion or portions of which are proposed to be closed to the public, or with respect to any information which is proposed to be withheld. A single vote may be taken with respect to a series of meetings, a portion or portions of which are proposed to be closed to the public, or with respect to any information concerning such series of meetings, so long as each meeting in such series involves the same particular matters and is scheduled to be held no more than thirty days after the initial meeting in such series. The vote of each Director participating in such vote shall be recorded and no proxies shall be allowed.

(2) Whenever any person whose interests may be directly affected by a portion of a meeting requests that the Corporation close such portion to the public

for any of the reasons referred to in paragraph (a)(5), (a)(6), or (a)(7) of this section, the Corporation, upon request of any one of its Directors, shall vote by recorded vote whether to close such meeting.

(3) Within one day of any vote taken pursuant to paragraph (c)(1) or (c)(2) of this section, the Secretary shall make publicly available a written copy of such vote reflecting the vote of each member on the question. If a portion of a meeting to be closed to the public, the Secretary shall, by the close of the business day next succeeding the day of the vote taken pursuant to paragraph (c)(1) or (c)(2) of this section, make publicly available a full written explanation of the Corporation's action closing the portion together with a list of all persons expected to attend the meeting and their affiliation. The information required by this subparagraph shall be disclosed except to the extent that it is exempt from disclosure under the provisions of paragraph (a) of this section.

§ 707.6 Records of closed meetings.

(a) For every meeting of the Board of Directors closed pursuant to § 707.5, the General Counsel of the Corporation shall publicly certify that, in his or her opinion, the meeting may be closed to the public and shall state each relevant exemptive provision. A copy of such certification, together with a statement from the presiding officer of the meeting setting forth the time and place of the meeting, and the persons present, shall be retained by the Secretary as part of the transcript, recording, or minutes required by paragraph (b) of this section.

(b) The Secretary shall maintain a complete transcript or electronic recording adequate to record fully the proceedings of each meeting, or portion of a meeting, closed to the public, except that in the case of a meeting, or portion of a meeting, closed to the public pursuant to § 707.5(a)(9), the Secretary shall maintain either such a transcript or recording, or a set of minutes. Such minutes shall fully and clearly describe all matters discussed and shall provide a full and accurate summary of any actions taken, and the reasons therefor, including a description of each of the views expressed on any item and the record of any roll-call vote (reflecting the vote of each member on the question). All documents considered in connection with any Corporation action shall be identified in such minutes.

(c) The Secretary shall maintain a complete verbatim copy of the transcript, a complete copy of the minutes, or a complete electronic recording of each meeting, or portion of a meeting, closed to the public, for a period of at least two years after such meeting, or until one year after the conclusion of the proceeding of the Board of Directors with respect to which the meeting or portion was held, whichever occurs later.

(d) Within ten days of receipt of a request for information (excluding Saturdays, Sundays, and legal public holidays), the Corporation shall make available to the public, in the Office of Secretary of the Corporation, Washington, D.C., the transcript, electronic recording, or minutes (as required by paragraph (b) of this section) of the discussion of any item on the agenda, or of any item of the testimony of any witness received at the meeting, except for such item or items of such discussion or testimony as the Secretary determines to contain information which may be withheld under § 707.5. Copies of such transcript, or minutes, or a transcription of such recording disclosing the identity of each speaker, shall be furnished to any person at the actual cost of duplication or transcription.

(e) The determination of the Secretary to withhold information pursuant to paragraph (d) of this section may be appealed to the President of the Corporation, in his or her capacity as administrative head of the Corporation. The President will make a determination to withhold or release the requested information within twenty days from the date of receipt of the request for review (excluding Saturdays, Sundays, and legal public holidays).

[FR Doc.77-2622 Filed 1-26-77;8:45 am]

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[23 CFR Part 1204]

[OST Docket No. 44; Notice 77-2]

HIGHWAY SAFETY PROGRAMS STANDARDS

Termination of Proceeding

• *Purpose.* The purpose of this notice is to terminate the rulemaking proceeding on motor vehicle occupant crash protection insofar as it concerns the possible issuance of a highway safety program standard to cause the States to increase safety belt usage. •

In a notice published June 14, 1976 (41 FR 24070), I proposed five alternative courses of action for future occupant crash protection requirements under Federal Motor Vehicle Safety Standard (FMVSS) No. 208 (49 CFR 571.208). Based on an analysis of comments received, a decision was reached to call upon the automobile manufacturers to join the Federal Government in conducting a large-scale demonstration program to exhibit the effectiveness of passive restraint systems. The reasoning that underlies that decision is contained in a December 6, 1976, document ("The Secretary's Decision Concerning Motor Vehicle Occupant Crash Protection") that is hereby incorporated by reference in this notice. The effect of that decision on FMVSS 208 is to require the continuation of the current requirements for passenger cars, as proposed in the first of the five alternate courses of action.

The second alternative was written as a requirement that States adopt and enforce safety belt usage laws or otherwise achieve a usage level much higher than is being experienced today. As discussed above and in a final rulemaking document published elsewhere in today's FEDERAL REGISTER, I have decided not to impose such a requirement upon the States. I want to make it clear, however, that in terminating the subject rulemaking, I have not in any way foreclosed a future Secretary or Administrator of the National Highway Traffic Safety Administration from instituting at any time a rulemaking proceeding concerning possible issuance of a highway safety program standard to cause States to increase safety belt usage or any other type of rulemaking proceeding on the subject of future occupant crash protection requirements.

In consideration of the foregoing, the subject proceeding is hereby terminated.

Issued in Washington, D.C., on January 19, 1977.

(Sec. 101, Pub. L. 85-564, 80 Stat. 731, (231 U.S.C. 402).)

WILLIAM T. COLEMAN, JR.,
Secretary of Transportation.

[FR Doc.77-2518 Filed 1-26-77;8:45 am]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing-Federal Housing Commissioner

[24 CFR Part 235]

[Docket No. R-77-449]

MOBILE HOME LOAN INSURANCE ASSISTANCE PAYMENTS FOR HOME-OWNERSHIP

Proposed Subsidized Ownership Program

The Department of Housing and Urban Development proposes to amend 24 CFR Part 235 to establish a mobile home subsidized ownership program, as authorized by the Housing Authorization Act of 1976 (90 Stat. 1067). The proposed program would be carried out by providing interest subsidies under section 235 of the National Housing Act and loan insurance for private lenders under Section 2 of Title I of the National Housing Act, as amended.

Program Summary. This program makes it possible for a lower income family to purchase as its principal residence a mobile home consisting of two or more modules and a lot on which it is or will be placed. To be eligible, a family must have an adjusted annual income at the time of initial occupancy of no more than 95 percent of the median income for the area, with adjustments for smaller and larger families, and must have paid in cash 5 percent of the first $10,000 of the purchase price plus 10 percent of the purchase price in excess of $10,000. Maximum permissible loan amounts and terms shall not exceed $25,000 for 20 years and 32 days in the case of a mobile home and an undeveloped lot or $27,500 for 20 years and 32 days in the case of a mobile home and a developed lot. The purchase price of the property may not exceed 120 percent of these loan amounts.

Monthly assistance payments will be made on behalf of an eligible family to a financial institution making a loan under this program or purchasing an obligation representing the loan. The amount of assistance will vary with the family's income and the total amount of the loan payment at the market rate of interest. Assistance payments will be made to reduce the borrower's effective interest costs to as low as seven percent if the borrower cannot afford the full loan payment with 20% of his or her income.

A loan under this program is subject to co-insurance where a share of the potential loss is borne by the lender. The insurance obligation of the Secretary with respect to any lender cannot exceed either (1) 10 percent of the total amount of loans made by the lender, or (2) 90 percent of the loss on any individual loan. Primary responsibility for loan processing is placed upon the insured lending institution.

The Department expects that this program will aid in support of industry efforts to produce economical quality housing for lower income families who, without a subsidy, might be unable to become home owners.

Wherever possible these proposed regulations were drafted to conform with the section 235 regulations published on January 6, 1976, at 41 FR 1168. Arguments in defense of existing § 235 regulations will not be reiterated here; instead an effort will be made to point out how those regulations were modified, when they were, to meet the special needs of this program.

Eligibility: Families owning homes. As under the existing § 235 program, a family which already owns a home may purchase a new mobile home and lot under this program, but will be required to sell its present home when it is no longer the family's residence. The family will not be permitted to rent that property out to another and occupy the subsidized unit.

Counseling. As under the existing section 235 program, insured lenders will be required to certify that the borrower received a package of written counseling material which will be provided by the Department. The regulations also provide that mobile home owners may be required to accept further counseling when it is needed and available from local agencies having requisite capabilities.

Eligibility: Mobile home and lot. Loans will be made only for financing in combination the purchase of a mobile home consisting of two or more modules and a lot on which the mobile is or will be placed. Furniture may not be included in the loan or financed with the proceeds of the loan. The mobile home lot must be acceptable to the Secretary as a mobile home site. As under the existing section 235 program, lots for use under this program cannot exceed one acre unless more than one acre is needed to comply with local code requirements or to provide for a safe and adequate water supply and sewage drainage system. Lots cannot be smaller than required by local sanitary and zoning codes.

Eligibility: Location and concentration. Several regulations applicable to units assisted under the existing section 235 program are extended to this program. They are the limitation on concentration of assisted units in a subdivision, the provision for preliminary reservation of contract authority for interest reduction payments, and local government comment procedures. Unlike the existing program, however, a developer or seller of 13 or more units in a subdivision is not required to apply for a preliminary reservation of contract authority. The regulation providing for local government comment has been altered to reflect this change. It now provides that with respect to any request for a contract for assistance payments involving 13 or more units in a locality with an approved housing assistance plan, the procedures for soliciting local government comment must be observed. The purpose of this change is to provide developers and sellers with greater flexibility while continuing to assure that local governments will be afforded opportunity to comment in appropriate cases.

Assistance payments and income recertification. The provisions for assistance payments and income recertification are essentially the same as under the existing section 235 program, except for those governing termination of the subsidy.

Termination of the subsidy. Assistance payments will be terminated when the mobile home owner ceases to occupy or sells the property. The Department recognizes that some advantages would flow from a rule that would extend the subsidy to subsequent purchasers. Continuation of the payment would enhance marketability and reduce the likelihood of default in situations where a mobile home owner could not otherwise find a purchaser. However, continuation of the subsidy would not contribute to a major purpose of the program—stimulating housing production—and would add to the total and long term costs of the program.

Limitation on use of assistance payments. The Housing Authorization Act of 1976 provides that periodic assistance payments to families acquiring a mobile home and lot under this part shall not be made with respect to more than 20 percent of the total number of units with respect to which assistance is approved under section 235 after January 1, 1976.

Interested persons are invited to participate in this proposed rulemaking by submitting written data, views, and arguments with respect to this proposal. Communications should be identified by the above docket number and title, and should be filed with the Rules Docket Clerk, Office of the Secretary, Room 10141, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410.

All relevant materials received on or before February 28, 1977, will be considered before adoption of a final rule. Copies of comments submitted will be available for public inspection during normal business hours at the above address.

A Finding of Inapplicability pursuant to Section 102(2)(c) of the National Environmntal Policy Act of 1969, has been made with regard to these proposed regulations in accordance with HUD Handbook 1390.1. A copy of the Finding of Inapplicability is available for public inspection at the above address.

Accordingly, it is proposed to amend Title 24, Part 235, by adding new Subparts G and H to read as follows:

Subpart G—General Eligibility Requirements—Mobile Home Ownership for Lower Income Families

Sec.
235.1001 Incorporation by reference.
235.1005 Basic program outline.
235.1010 Definitions used in this subpart.
235.1015 Eligible borrowers.
235.1020 Home ownership counseling.
235.1025 Eligibility requirements.
235.1030 Lot size.
235.1035 Loan provisions.
235.1040 Maximum loan amounts and terms.
235.1045 [Reserved.]
235.1050 Limitation on concentration of units in a subdivision.
235.1055 Reservation of contract authority.
235.1060 Local government comment procedures.
235.1065 Late charge.
235.1070 Cancellation of property insurance.

Subpart H—Assistance Payments—Mobile Home Ownership for Lower Income Families

Sec.
235.1101 [Reserved.]
235.1105 Contract for assistance payments.
235.1110 Execution of assistance payment contract.
235.1111 Qualified mobile home owners.
235.1115 Limitation of sales price.
235.1120 Assistance payments and handling charges.
235.1125 Time of payments.
235.1130 Term of assistance payment contract.
235.1135 Mobile home owner's required recertification.
235.1140 Mobile home owner's optional recertification.
235.1145 Adjustment in assistance payments.
235.1146 Recovery of assistance payments.
235.1150 Lender records.
235.1155 Effect of assignment of mortgage on assistance payment contract.
235.1160 Termination, suspension, or reinstatement of the assistance payment contract.
235.1165 Effect of amendment.

AUTHORITY: Sec. 7(d) 79 Stat. 670 (42 U.S.C. 3535(d)); sec. 2, 48 Stat. 1246 (12 U.S.C. 1703) as amended by Pub. L. 93-383, Pub. L. 94-173, and Pub. L. 94-375.

Subpart G—General Eligibility Requirements—Mobile Home Ownership for Lower Income Families

§ 235.1001 Incorporation by reference.

(a) All of the provisions of subparts B and D of Part 201 of this chapter concerning insurance of institutions making mobile home loans and mobile home lot loans shall be applicable to loans assisted

under subparts G and H of this part except the following provisions:

Sec.
201.501 (b), (i), (k), and (l) Definitions.
201.505 Purpose of subpart.
201.510 New or used mobile homes.
201.520(d) Minimum size.
201.525 Mobile home location standards.
201.530 Maximum loan amount.
201.535 Borrower's minimum investment.
201.540 Financing charges.
201.555 Payment provisions.
201.625 Rate of insurance.
201.560 Maturity provisions.
201.570 Late charges.
201.585 Refinancing.
201.595(e) Dealer investigation approval and control.
201.665 Claim application.
201.675 Insurance reserve.
201.900 Amendment and effect.
201.1500 Incorporation by reference.
201.1501 Purpose.
201.1502 (d), (e), (j) Definitions.
201.1503 Eligibility requirements.
201.1504 Maximum loan amount and terms.
201.1505 Combination loans for the purchase of a mobile home and a developed or undeveloped lot.
201.1506 Loans for the purchase or acquisition of a lot.
201.1510 Borrower's minimum investment.
201.1512(b) Mobile home lot certification.
201.1530 Effect of amendments.

(b) For purposes of these subparts all references in Part 201 of this chapter to Section 2, of Title I of the National Housing Act, as amended, shall be construed to refer to section 235 of the Act.

§ 235.1005 Basic program outline.

This part authorizes assistance to aid lower income families to acquire ownership of a mobile home and a lot upon which the home is placed.

(a) Assistance will be in the form of monthly payments by the Secretary to the insured lender to reduce effective interest costs to a home owner to as low as seven percent if the home owner cannot afford the full loan payment with 20 percent of his income.

(b) The amount of subsidy will vary according to the family's income and the total amount of the payment at the market rate of interest. Family income and mortgage limits are established for eligibility in each locality.

(c) Assistance will be limited to borrowers who purchase for use as their principal residence a new mobile home, consisting of two or more modules and a lot on which such mobile home is sited.

(d) The borrower must have paid in cash 5 percent of the first $10,000 of the purchase price plus 10 percent of the purchase price in excess of $10,000.

(e) Assistance payments will be terminated upon sale of the property.

§ 235.1010 Definitions used in this subpart.

As used in this subpart, the following terms shall have the meaning indicated:

(a) "Borrower" means a natural person or persons who apply for and receive a loan for the purchase of a new mobile home and lot under this part, and who is a member of a family as defined under this part.

(b) "Mobile home" means a structure, consisting of two or more modules, which structure is erected on a lot, where each module measures twelve body feet or more in width and forty body feet or more in length, which is built on a permanent chassis, and is designed to be used as a dwelling with or without a permanent foundation, when connected with the required utilities and includes the plumbing, heating, air conditioning and electrical systems contained therein.

(c) "Adjusted annual income" means the annual family income remaining after making certain exclusions from gross annual income. The following items shall be excluded, in the order listed, from family gross annual income:

(1) Five percent of such gross annual income, in lieu of amounts to be withheld (social security, retirement, health insurance, etc.) regardless of the actual amount of such withholdings;

(2) Any unused income or temporary income, such as overtime pay which will be discontinued, income of a secondary wage earner which will terminate, unemployment compensation which does not occur regularly, or other income of a temporary nature which will be or has been discontinued;

(3) The earnings of each minor in the family who is living with such family plus the sum of $300 for each such minor.

(d) "Family" means (1) two or more persons related by blood, marriage or operation of law, who occupy the same unit; (2) a handicapped person who has a physical impairment which is expected to be of continued duration which substantially impedes his ability to live independently, and which would be improved by more suitable housing; or (3) a single person 62 years of age or older.

(e) "Gross annual income" means the total income, before taxes and other deductions, received by all members of the mortgagor's household. There shall be included in this total income all wages, social security payments, retired benefits, military and veteran's disability payments, unemployment benefits, welfare benefits, interest and dividend payments, and such other income items as the Secretary considers appropriate.

(f) "Minor" means a person under the age of 21. As used in this subpart, minor shall not include a borrower or his or her spouse.

(g) "Assistance payment" means that portion of a mobile home owner's monthly payment which the Secretary becomes obligated to pay under an assistance payment contract.

§ 235.1015 Eligible borrowers.

(a) To be eligible under this subpart, the borrower shall have an adjusted annual income, which shall not exceed at the time of initial occupancy 95 percent of the median income for the area, with adjustments for smaller and larger families, as determined by the Secretary, except that the Secretary may establish income ceilings which are higher based upon the Secretary's determination that such higher ceilings are necessary because of unusually low median family incomes or such other factors as the Secretary may deem appropriate to carry out the purpose of this part. The percentage of median income for smaller and larger families shall be as follows:

Persons per family:	*Percent of median family income*
1	67
2	76
3	85
4	95
5	101
6	107
7	113
8 or more	119

(b) In addition to the income limitations set forth in paragraph (a) of this section, a borrower must establish that his or her income is and will be adequate to meet his or her portion of the periodic payments required. Only that part of the mobile home owner's income which can reasonably be expected to continue for approximately the first five years of the loan term will be considered effective income for the purpose of determining the adequacy of the mobile home owner's income.

(c) The mobile home owner shall agree to recertify, on a form prescribed by the Secretary, as to occupancy, employment, family composition and income whenever one of the following events take place:

(1) Annually, no earlier than 60 days before and no later than 30 days after the anniversary date of the mortgage or at such other anniversary date as set by the Secretary;

(2) No more than 30 days after:

(i) The mobile home owner or any adult (21 years or older) member of the family residing in the household changes or begins employment which results in an increase in the family income reported in the original application for assistance or the most recent recertification.

(ii) The family income (except income of minors) increases at least $50 per month.

(3) At such other times as the Secretary may require.

(d) Assistance payments for the purchase of a new mobile home and lot may be used to assist a family already owning a home at the time of application; however, the family must sell the home when it ceases to be its residence and may not rent it and occupy the subsidized unit.

§ 235.1020 Home ownership counseling.

The Secretary will make available a counseling information package to lenders, reservation recipients, and sellers participating in this program, who will be required to distribute the package to potential purchasers. Material will include information on mobile home purchase procedures, property maintenance, and other mobile home ownership responsibilities. A certification by the reservation recipient, seller or lender that the prospective mobile home owner has received the counseling information package must accompany each application. In addition, some field office jurisdictions are served by HUD approved agencies offering counseling. Where such counseling is available, and if the applicant has never owned a home, or where in the opinion of the Secretary the applicant will benefit from counseling, successful completion of mobile home ownership counseling may be required before the Secretary will undertake to make assistance payments.

§ 235.1025 Eligibility requirements.

(a) Loans shall be made only for financing in combination the purchase of a mobile home consisting of two or more modules and a lot on which such mobile home is or will be situated. Furniture may not be included in the loan or financed with the proceeds of the loan.

(b) Marketable title in the mobile home and lot shall be vested in the borrower.

(c) The mobile home lot shall be acceptable to the Secretary as a mobile home site.

§ 235.1030 Lot size.

Home ownership assistance payments may not be used to permit acquisition of land in excess of requirements for an adequate residential site, even though the cost of land may be cheaper in outlying areas. Accordingly, lots for use under the program authorized by this part shall not exceed one acre unless more than one acre is needed to comply with local code requirements or to provide for a safe and adequate water supply and sewage drainage system.

§ 235.1035 Loan provisions.

(a) The security instrument or instruments shall be a first lien upon the mobile home and lot. The entire principal amount of the loan shall have been disbursed to the borrower or to the creditors for the borrower's account and with the borrower's consent.

(b) *Loan multiples.* The loan shall involve a principal obligation in multiples of $50.

(c) *Payments.* Payments shall be due on the first of the month.

§ 235.1040 Maximum loan amount and terms.

Maximum permissible loan amounts and terms shall not exceed:

(a) $25,000 for 20 years and 32 days in the case of a mobile home composed of two or more modules and an undeveloped lot (but not to exceed $20,000 for the mobile home).

(b) $27,500 for 20 years and 32 days in the case of a mobile home composed of two or more modules and suitably developed lot (but not to exceed $20,000 for the mobile home).

(c) The amount specified under paragraphs (a) and (b) of this section or the actual sales price of the mobile home and lot, except that the maximum loan amount attributable to the mobile home shall not exceed the lesser of 113 percent of the total price of the mobile home as stated in the manufacturer's invoice, plus the Secretary's estimate of the appraised value of the mobile home lot.

§ 235.1045 [Reserved]

§ 235.1050 Limitation on concentration of units in a subdivision.

No subdivision or substantially contiguous group of subdivisions which constitute or will constitute a single residential area, shall have over 40 percent of the homes therein assisted under this Part. The 40 percent rule shall not be applied to limit the number of subsidized units below 25 in any single residential area. The 40 percent ratio is applicable to the relationship of section 235 applications to the sum of vacant lots within a residential land development tract under centralized control. In defining residential areas for purposes of this paragraph, the Secretary will exercise appropriate discretion in order to meet the objective of limiting the concentration of subsidized units but not unduly restricting efficient and good subdivision planning and land utilization. Further, within a single residential area to assure sound underwriting which requires an assurance of a future market for resales without subsidy, the Secretary will limit, to the extent practicable, the percentage of subsidized units in a block or contiguous group of blocks to 40 percent.

§ 235.1055 Reservations of contract authority.

(a) Preliminary reservations of contract authority for interest reduction payments may be issued by the Secretary to a developer or seller specifically identified with sites in a particular subdivision or project or for a specific mobile home and lot not in a subdivision. Developers or sellers may submit a request to the Secretary for a preliminary reservation of contract authority. If contract authority is available, it will be reserved if the project in which the units will be located meets project selection, affirmative marketing, environmental, underwriting, feasibility and other applicable requirements. A preliminary reservation is an advance commitment that contract authority will be available for assistance payments when the homes are sold to families who qualify for assistance. Applications for preliminary reservation may be made as early as desired but not before filing of the request for subdivision approval or other appropriate applications.

(b) If a request for a preliminary reservation is approved, either for the amount requested or for an amount determined by the Secretary, the Secretary will reserve the contract authority. The reservation is a commitment by HUD that the contract authority for the transaction has been reserved.

(c) A preliminary reservation will expire six months after the date of issue.

(d) Periodic assistance payments pursuant to this subpart shall be limited to no more than 20 percent of the total number of units with respect to which assistance is approved under section 235 after January 1, 1976.

§ 235.1060 Local government comment procedures.

(a) With respect to any request for assistance payments involving 13 or more units in a locality with an approved housing assistance plan, the following procedures must be followed: Within 10 working days of the receipt of such a request, the Secretary shall, for purposes of compliance with Section 213 of the Housing and Community Development Act of 1974, forward a copy of the request to the chief executive officer of the unit of general local government in which the assisted housing is to be located, requesting comments and objections, if any. The unit of general local government shall have 30 days from receipt of the letter and copy of the request to object or otherwise submit comments as the response to the Secretary. Alternatively, the individual or organization making the request for assistance payments may include with the request a statement of "no objections" or other comment from the unit of general local government, obtained in advance by the individual or organization. The unit of local government may object to the request on the grounds that it is inconsistent with the housing assistance plan. If such an objection is filed, the Secretary may not approve the request unless the Secretary determines that the request is consistent with the housing assistance plan. If the Secretary determines that the request is consistent with the plan, the Secretary shall notify the chief executive officer of the unit of general local government, giving his reasons therefor in writing. If the Secretary concurs with the objection of the unit of local government, the Secretary shall so notify the individual or organization making the request for assistance payments, stating the reasons therefor in writing.

(b) With respect to a request for assistance payments involving 13 or more units in a locality that does not have an approved housing assistance plan, assistance under this Part may not be approved unless the Secretary determines that there is a need for such assistance, taking into consideration any applicable State housing plan, and that there is or will be in the area public facilities and services adequate to serve the housing assisted. Within 10 working days of receipt of such a request, the Secretary will forward a copy of the request to the chief executive officer of the unit of general local government in which the proposed assisted housing will be located with a letter requesting comments on matters relevant to the determination required in this paragraph. The unit of general local government shall have 30 days from receipt of the letter and copy of the assistance payments request to submit any comments it wishes to make to the Secretary. Any relevant comments received will be considered in connection with the Secretary's determination. As in the case of

requests subject to paragraph (a) of this section, individuals or organizations submitting assistance payments requests subject to the provisions of this paragraph (b) of this section may satisfy the comment requirements of this section by obtaining a statement of the local government on the application in advance and submitting that statement with the assistance payments request to the Secretary.

§ 235.1065 Late charge.

The note may provide that a late charge may be collected by the lender for each payment more than 15 days in arrears, but such charge shall not exceed 4 percent of each dollar of the borrower's share of the monthly payment. Such charge shall be separately billed to and collected from the borrower and shall not be deducted from any aggregate monthly payment. Such charge shall not be included in the assistance payment.

§ 235.1070 Cancellation of property insurance.

(a) The property shall have been covered by fire insurance at the time the loan was made.

(b) If the fire insurance company shall have later cancelled or refused to renew the policy, in order for the loan to be eligible for insurance benefits, the lender shall have notified the Secretary within 30 days (or within such further time as the Secretary may approve) of the cancellation of the fire insurance or of the refusal of the insuring company to renew the fire insurance. This notification shall have been accompanied by a certification of the lender that diligent efforts were made, but it was unable to obtain fire insurance coverage at reasonably competitive rates and that it will continue its efforts to obtain adequate fire insurance coverage at competitive rate.

Subpart H—Assistance Payments—Mobile Home Ownership for Lower Income Families

§ 235.1101 [Reserved]

§ 235.1105 Contract for assistance payments.

This subpart shall constitute the contract between the lender and the Secretary for assistance payments pursuant to section 235 of the National Housing Act.

§ 235.1110 Execution of assistance payment contract.

Mobile home owners. The acceptance of a loan report pursuant to § 201.650 shall also constitute the execution of the assistance payment contract with respect to the insurance granted to the lending institution reporting the loan.

§ 235.1111 Qualified mobile home owners.

To qualify for assistance payments, the mobile home owner's income at the time of application for assistance shall be within the limitations provided in § 235.1015, and insurance covering the mobile home owner's loan under Section 2 of Title I of the National Housing Act as amended, shall have been granted to the lending instituton which made the loan.

§ 235.1115 Limitation of sales price.

To qualify for assistance payments, the mobile home owner shall not have paid more than the Secretary's estimate of value of the mobile home and lot purchased, nor shall the purchase price of the property exceed 120 percent of the loan amount established pursuant to § 235.1040.

§ 235.1120 Assistance payments and handling charges.

(a) Assistance payments shall be in an amount not exceeding the lesser of—

(1) The balance of the monthly payment for principal, interest, real and personal property taxes, insurance and insurance premiums chargeable under § 201.1514 due under the loan or advance of credit remaining unpaid after applying for 20 percent of the mobile home owner's income as determined under this part; or

(2) The difference between the amount of the monthly payment for principal, interest, and insurance premium chargeable under § 201.1514 which the mobile home owner is obligated to pay under the loan or advance of credit and the monthly payment of principal and interest and insurance premium which the mobile home owner would be obligated to pay if the loan or advance of credit were to bear interest at a rate of seven percent per annum;

(b) In addition to the assistance payment referred to in paragraph (a) of this section, the lender shall be entitled to a monthly payment of an amount the Secretary deems sufficient to reimburse it for its expenses in handling the loan.

(c) Special assessments levied by a governmental body are to be included under the terms "taxes' as a part of the total monthly payment. However, ground rents, assessments of a home owner's association, and special assessments levied by persons or private organizations are not to be included.

§ 235.1125 Time of payments.

The assistance payment shall be due on the first day of each month and shall be paid upon receipt of a billing, on a form prescribed by the Secretary, from the lender or its authorized agent.

§ 235.1130 Term of assistance payment contract.

Mobile home loan. The term of the assistance payment contract shall begin on the date of disbursement of loan proceeds and shall continue until the contract is terminated pursuant to § 235.1160.

§ 235.1135 Mobile home owner's required recertification.

(a) The lender shall obtain from the borrower, on a form prescribed by the Secretary, a recertification as to occupancy, employment, family composition and income whenever one of the following events takes place:

(1) Annually, no earlier than 60 days before and no later than 30 days after the anniversary date of the mortgage or at such other anniversary date as set by the Secretary.

(2) No more than 30 days after the lender is notified by the borrower or learns from any identifiable source:

(i) That the borrower or any member of the family (21 years or older) residing in the household changes or begins employment which results in an increase in the family income reported in the original application for assistance or the most recent recertification.

(ii) That the family income (excluding income of minors) has increased at least $50 per month.

(3) At such other times as the Secretary may require.

(b) With respect to mortgages insured under this Part, the lender shall obtain from the applicant mobile home owner at the time application is made for assistance and at the time of annual recertification required under paragraph (a) (1) of this section, on a form provided by the Secretary, a statement of the aggregate amounts of total income prior to adjustments reported for all family members (other than minors) by the applicant mobile home owner is his most recent Federal income tax return. If seperate returns are filed by separate members of the family, the total income prior to adjustments included in all such returns (except returns of minors) shall be reported. If the income so reported is more than 25 percent above the income reported on the recertification, the lender shall obtain from the mobile home owner a new recertification or a written explanation of the difference in income reported on the two forms.

(c) A mobile home owner who fails to disclose his or her actual income in accordance with the requirements of this Part will be required to reimburse the Secretary for all overpayments made on his or her behalf.

(d) Each mobile home owner must provide a letter on a form prescribed by the Secretary authorizing the Internal Revenue Service to release Federal Income Tax returns for the most recent three years to the Secretary on request.

§ 235.1140 Mobile home owner's optional recertification.

Upon request of the mobile home owner the lender shall accept recertification whenever the borrower, his or her spouse or an adult (21 years or older) member of the family changes or loses employment which results in a decrease in the family income reported in the most recent certification or recertification. This recertification shall be on a form prescribed by the Secretary.

§ 235.1145 Adjustment in assistance payments.

The lender shall make appropriate adjustments in the amount of the requested assistance payments to reflect changes in family income reported in any required or optional recertification of the home owner. The adjustment shall not be retroactive except at the discretion of the Secretary. The adjustment shall apply only to assistance payments beginning with the payment due no earlier than the first day of the month following the date the borrower's recertification is received by the lender.

§ 235.1146 Recovery of assistance payments.

If it is determined that assistance payments have been paid on behalf of a borrower in excess of the amount of benefits to which the borrower was entitled, the lender shall reduce its next billing to the Secretary in the amount of overpaid assistance payments. The lender may increase the borrower's required monthly payments in an amount which will reimburse the lender within a reasonable time without causing undue hardship to the borrower. If the lender has filed a claim for mortgage insurance benefits, whether or not that claim has been paid or if the mortgage has been paid in full or the borrower has sold the property to an assumptor before the determination is made, and the lender did not contribute to the overpayment through fraud, misrepresentation or error (including failure to meet contractual obligations), the lender will not be required to reduce its billings or increase the assumptor's monthly payments. In such cases, HUD will require payment by the borrower on whose behalf assistance has been overpaid. If fraud, misrepresentation or error on the part of the lender resulted in assistance payments being made on behalf of a borrower when no assistance payment should have been made, the lender shall reduce the next billing to the Secretary in the amount of the handling charges for the period during which the assistance was not warranted.

§ 235.1150 Lender records.

The lender shall maintain such records as the Secretary may require with respect to the borrower's payments, the assistance payments received from the Secretary and the annual recertification of financial status from the mobile home owner. Such records shall be kept on file for a period of time and in a manner prescribed by the Secretary and shall be available, when requested, for review and inspection by the Secretary or the Comptroller General of the United States.

§ 235.1155 Effect of assignment of loan on assistance payment contract.

Where a loan covered by an assistance payment contract is sold to another approved lender, the buyer shall succeed to all rights and become bound by all the obligations of the seller under such contract.

§ 235.1160 Termination, suspension, or reinstatement of the assistance payment contract.

(a) *Termination.* The assistance payment contract shall be terminated when:

(1) The mobile home owner ceases to occupy the property.

(2) The property is sold by the mobile home owner.

(b) *Suspension.* The assistance payments contract shall be suspended when any one of the following events occurs:

(1) The lender determines that the borrower ceases to qualify for the benefits of assistance payments by reason of his income increasing to an amount enabling him to pay the full monthly mortgage payment by using 20 percent of the family income.

(2) Foreclosure is instituted.

(3) The lender is unable to obtain from the mobile home owner a required recertification of occupancy, employment, income, and family composition.

(4) At such other times as the Secretary may require.

(c) *Effect of termination or suspension.* Upon termination or suspension of the assistance payments contract, the payment due on the first day of the month in which the termination or suspension occurs shall be the last payment to which the lender shall be entitled except that, in the case of a suspended contract, payment may be resumed after the contract is reinstated pursuant to paragraph (e) of this section.

(d) *No effect on the mortgage insurance contract.* The termination or suspension of the assistance payments contract shall have no effect on the insurance contract, under Section 2 of Title I of the National Housing Act, as amended.

(e) *Reinstatement.* Where the assistance payment contract is suspended, it may be reinstated by the Secretary at his discretion and on such conditions as he may prescribe.

§ 201.1165 Effect of amendment.

The regulations in this subpart may be amended by the Secretary at any time, from time to time, in whole or in part, but such amendment shall not adversely affect the interest of a lender under an existing contract for assistance payments.

NOTE: The Department of Housing and Urban Development has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107.

JOHN T. HOWLEY,
Acting Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc.77-2694 Filed 1-26-77;8:45 am]

Federal Disaster Assistance Administration

[24 CFR Part 2205]

[Docket No. R-77-445]

FEDERAL DISASTER ASSISTANCE

Disaster Legal Services

The Department promulgated the Final Regulations for Federal Disaster Assistance under the Disaster Relief Act of 1974 (88 Stat. 143 et seq.; 42 U.S.C. 5121 note et seq.) in the FEDERAL REGISTER (40 FR 23252) on May 28, 1975, as 24 CFR Part 2205. Since at the time of publication the authority for providing disaster legal services (section 412 of the Act) was reserved to the President, 24 CFR Part 2205 did not contain regulations covering provision of legal services. By Executive Order 11910 (April 13, 1976), such authority was granted to the Secretary, and was redelegated to the Administrator of the Federal Disaster Assistance Administration (41 FR 19365, May 12, 1976), and further redelegated to the Regional Directors, FDAA (41 FR 19363, May 12, 1976).

Section 2205.47a, as proposed, contains regulations covering the provision of disaster legal services to disaster victims. This new paragraph provides guidelines for lawyers cooperating with the Federal Disaster Assistance Admipistration, and defines the parameters of the disaster legal services program intended by the Act.

In each disaster requiring disaster legal services, the authority contained in section 412 has been specifically delegated to FDAA. There is a long-standing agreement between FDAA (and its predecessor agency, the Office of Emergency Preparedness) and the Young Lawyers Section (YLS) of the American Bar Association, which provides for volunteer services to disaster victims. FDAA desires to continue the operation of disaster legal services through that agreement, which is published in today's FEDERAL REGISTER. The regulations proposed here allow the FDAA Regional Director to provide authority and guidance to YLS or other attorneys when the YLS cannot adequately provide disaster legal services. By the terms of the May 12, 1976 redelegation, the Regional Directors may provide legal services under any arrangement they deem appropriate, using the existing agreement, other Federal attorneys, or any other arrangement.

Interested persons are invited to participate in the making of this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted to the Office of the Rules Docket Clerk, Office of the Secretary, Room 10141, Department of Housing and Urban Development, 451 7th Street, SW, Washington, D.C. 20410. All communications received on or before February 25, 1977, will be considered by the Administrator before publishing the final regulations. The provisions in this proposed regulation may be changed in light of comments received. All comments will be available for inspection, both before and after the closing date, at the Office of the Rules Docket Clerk at the above address.

The Administrator of the Federal Disaster Assistance Administration, with the concurrence of the appropriate Departmental officials, has issued a Finding of Inapplicability of Environmental Impact according to Section 102 of the National Environmental Policy Act of 1969, concerning this regulation, in accordance with the procedures set forth in HUD Handbook 1390.1 (38 FR 19182).

It is the position of the signatories to that Finding that this regulation in itself has no significant impact on the human environment. Interested parties may inspect and obtain copies of this Finding of Inapplicability of Environmental Impact at the Office of the Rules Docket Clerk, Department of Housing and Urban Development in Washington, D.C.

Accordingly, pursuant to the authority contained in section 7(d) of the Department of Housing and Urban Development Act (79) Stat. 670; 42 U.S.C. 3535(d)) and section 601 of the Disaster Relief Act of 1974 (88 Stat. 163; 42 U.S.C. 5201), it is proposed that a new section, designated § 2205.47a, be added to 24 CFR Part 2205, reading as follows:

§ 2205.47a Disaster legal services.

(a) Legal services may be provided to low-income individuals who require them as a result of a major disaster. For the purpose of this Section, "low-income individuals" shall include those disaster victims who, as a result of the disaster, have insufficient resources to secure adequate legal services. The Regional Director or his authorized representative shall make all determinations concerning whether an individual qualifies for legal services under this Section.

(b) Disaster legal services shall be provided without cost to such individuals. Fee-generating cases shall not be accepted by lawyers operating under these regulations. For the purposes of this Section, a fee-generating case is one which the Regional Director or his authorized representative, after any necessary consultation with local or State bar associations, determines would not ordinarily be rejected by local attorneys as a result of its lack of potential remunerative value. Any fee-generating cases shall be referred by the Regional Director or his authorized representative to private attorneys.

(c) The provision of disaster legal services may be accomplished by use of volunteer lawyers under terms of appropriate agreements. The provision of disaster legal services may also be accomplished by use of Federal lawyers, or by any other arrangement the Regional Director deems appropriate, including payment to attorneys by the Federal Disaster Assistance Administration for the provision of legal services when the Regional Director determines that there is no other means of obtaining adequate legal assistance for qualified disaster victims.

(d) In the event it is necessary for the Federal Disaster Assistance Administration to pay attorneys for the provision of legal services under these regulations, the Regional Director, in consultation with State and local bar associations, shall determine the amount of reimbursement due to the attorneys who have provided disaster legal services at the request of the Regional Director. At the Regional Director's discretion, administrative costs of lawyers providing legal services requested by him may also be authorized.

(e) Provision of disaster legal services is confined to the securing of benefits under the Act and claims arising out of a major disaster.

(f) Any disaster legal services shall be provided in accordance with § 2205.13 of these regulations.

NOTE: The Federal Disaster Assistance Administration has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107.

(Sec. 412, Pub. L. 93-288, 88 Stat. 157 (42 U.S.C. 15182), E.O. 11795 as amended by E.O. 11910, FR 25929. Delegation of Authority, 39 FR 28227.)

THOMAS P. DUNNE,
Administrator, Federal Disaster Assistance Administration.

[FR Doc.77-2703 Filed 1-26-77;8:45 am]

[24 CFR Part 2205]

[Docket No. R-77-282]

FEDERAL DISASTER ASSISTANCE

Individual and Family Grant Programs

The Department promulgated the Final Regulations for Federal Disaster Assistance under the Disaster Relief Act of 1974 (88 Stat. 143 et seq.; 42 U.S.C. 5121 note et seq.) in the FEDERAL REGISTER (40 FR 23252), May 28 1975, as 24 CFR Part 2205.

Section 2205.48 contains the regulations governing the Individual and Family Grant Program authorized by section 408 of the Act. During the two years of the program's operation, several changes have been suggested to improve program performance and clarify policy and eligibility questions. The following proposal would effect those changes, incorporate numbering changes both new and previously published as errata, and reprint section 2205.48 completely for the convenience of users.

The proposed changes are:

1. Deletion of the word "authorized" when used in conjunction with the word "representative" to avoid confusion in differentiating between the person assigned by the Governor to administer the Individual and Family Grant Program and the "Governor's Authorized Representative" as defined elsewhere in these Regulations. This change will appear both in paragraph (a) *General* and paragraph (e)(2).

2. Deletion of the word "financial" in paragraph (c)(1)(C) as a description of assistance from other means. If a grant recipient receives assistance in the form of a service or item, he should refund to the State that part of the grant that was identified as payment for that assistance, whether financial or in the nature of a service or item, in order to avoid duplication of benefits.

3. Deletion of existing paragraph (c)(1)(iii) and substitution of a more explicit requirement that States determine whether individuals and families must obtain flood insurance, and that States require grant recipients to provide proof of purchase of such flood insurance. This change will also establish the initial flood insurance premium as a necessary expense.

4. Addition of new subparagraphs (E) and (F) to paragraph (c)(2)(ii), that add new eligibility categories as dictated by experience in field operations. The first addresses minimum protective measures required to safeguard residences against threat of damage, and the second provides protection for mobile homes.

5. Addition of a new subparagraph (E) to paragraph (c)(2)(iii), to permit States to move and store personal property to prevent or reduce damage.

6. Deletion of the words "repair, replace or" and "loss of or" in paragraph (c)(2)(iv)(B). This change more accurately reflects the fact that the grant program is not intended to indemnify losses, but does not reduce the ability of States to meet transportation needs of disaster victims.

7. Addition of a new subparagraph (vi) under paragraph (c)(2) to include as eligible those rental accommodation expenses made necessary because of the disaster. This will allow States to assist those families who were ordered to evacuate an area, but who sustained no physical damage to their residences.

8. Revision of paragraph (d)(6) to provide coordination between the State and the Regional Director rather than the Federal Coordinating Officer, since the Regional Director is responsible for insuring that the grant program is administered properly.

9. Revision of paragraph (e)(1) to more clearly indicate a State's responsibility for administration of the program, and to provide guidance on recovery of funds that have not been spent by grant recipients for their specified purposes.

10. Addition of the words "State audits" in paragraph (g)(1)(v) to make it clear that a State audit must accompany a claim for reimbursement.

11. Revision of paragraph (g) to incorporate a provision permitting the Regional Director to extend the 180-day time limitation by an additional 90 days if all appeals have been resolved and all grants disbursed. This change will provide the Regional Director with greater flexibility in granting time extensions, while retaining controls necessary to insure that grant applicants receive assistance at the earliest possible time.

12. Deletion of present paragraph (g)(2), since the date for submission of requests for grant assistance for those disasters covered under the retroactive provision of the Act has passed.

13. Revision of paragraph (k) by changing the title from *Federal Audit* to *Audits*, and providing guidance on the conduct of both State and Federal audits.

Interested persons may participate in this proposed rule making by submitting written data, views or arguments to the Rules Docket Clerk, Office of the Secretary, Room 10141, Department of Housing and Urban Development, 451 7th Street, SW, Washington, D.C. 20410. Each person submitting a comment should identify this notice, and give reasons for any recommendations. Comments received on or before February 25, 1977, will be considered before final action is taken on this proposal. Copies of all written comments received will be available for examination by interested persons at the above address. This proposal may be changed in light of the comments received.

The Administrator, with the concurrence of the appropriate Departmental officials, has issued a Finding of Inapplicability of Environmental Impact concerning this proposed rule making, in accordance with Section 102 of the National Environmental Policy Act of 1969 and the procedures set forth in HUD Handbook 1390.1 (38 FR 19182). It is the position of the signatories to the Finding that this amendment in itself has no significant impact on the human environment. Interested parties may inspect and obtain copies of this Finding of Inapplicability of Environmental Impact at the Office of the Rules Docket Clerk of the Department of Housing and Urban Development in Washington, D.C. 20410.

Accordingly, pursuant to the authority contained in section 7(d) of the Department of Housing and Urban Development Act (79 Stat. 670; 42 U.S.C. 3535d) and section 601 of the Disaster Relief Act of 1974 (88 Stat. 163; 42 U.S.C. 5201), it is proposed that § 2205.48 be amended and reprinted to read as follows:

§ 2205.48 Individual and family grants.

(a) *General.* The Governor may request that Federal funds be made available to a State for the purpose of such State making grants to individuals and families who, as a result of a major disaster, are unable to meet necessary expenses or serious needs. The grant program authorized by this section will be 75 percent Federally funded and 25 percent State funded. The Governor of the affected State or his representative will administer the grant program. The grant program is intended to provide funds to disaster victims to permit them to meet those necessary expenses or serious needs for which other governmental assistance is either unavailable or inadequate. The grant program is not intended to indemnify all disaster losses or to purchase items or services that may generally be characterized as nonessential, luxury, or decorative.

(b) *Definitions as used in this section.* (1) "Necessary expense" means the cost of an item or service essential to an individual or family to mitigate or overcome an adverse condition caused by a major disaster.

(2) "Serious need" means a requirement for an item or service essential to an individual or family to prevent or reduce hardship, injury, or loss caused by a major disaster.

(3) "Family" means a social unit comprised of husband and wife and dependents, if any, or a head of household, as these terms are defined in the Internal Revenue Code of 1954.

(4) "Individual" means a person who is not a member of a family, as defined in paragraph (b)(3) of this section.

(5) "Assistance from other means" means assistance including monetary or in-kind contributions from other governmental programs, insurance, voluntary or charitable organizations, or from any source other than those of the individual or family.

(c) *National eligibility criteria.* In administering the Individual and Family Grant Program, a State shall determine the eligibility of an individual or family for a grant to meet a necessary expense or serious need in accordance with the following criteria.

(1) *General.* (i) In order to qualify for a grant under this section, an individual or family representative must certify:

(A) That application has been made to other available governmental programs for assistance to meet a necessary expense or serious need and that neither he nor any member of his family has been determined to be qualified for such assistance, or for demonstrated reasons, any assistance received has not satisfied any such necessary expense or serious need.

(B) That with respect to the specific necessary expense or serious need or portion thereof for which application is made, neither he, nor to the best of his knowledge, any member of his family, has previously received or refused assistance from other means.

(C) That should the individual or family receive a grant and assistance from other means later becomes available to meet the necessary expense or serious need, the individual or family shall refund to the State that part of the grant for which assistance from other means has been received.

(ii) Farmers, ranchers, and persons engaged in aquaculture who are qualified to apply to the Farmers Home Administration (FmHA), must submit proof of the denial of such loan assistance from the FmHA before they may be considered eligible for a grant under this section. If applicants have been denied such loan assistance because, in FmHA's determination, they are able to obtain necessary credit from other sources, they will be considered ineligible for grant assistance for those items or services for which assistance may be provided by the FmHA's Emergency Loan program.

(iii) Individuals or families who incurred a necessary expense or serious need in the major disaster area may be eligible for assistance under this section without regard to their residency in the major disaster area or within the State in which the major disaster had been declared.

(iv) States shall determine whether individuals or families otherwise eligible for assistance under this section must obtain flood insurance, as provided by the Flood Disaster Protection Act of 1973 (Public Law 93-234), in order to reduce future avoidable claims in the Federal or State governments for disaster assistance. After a determination that flood insurance is required, and after disbursement of a grant, States shall require the grant recipient to provide proof of purchase of the required flood insurance. In this regard, the initial premium for flood insurance, not to exceed $25, shall be considered a necessary expense.

(2) *Eligible categories.* Assistance under this section may be made available to meet necessary expenses or serious needs by providing essential items or services in the categories set forth below:

(i) Medical or dental.

(ii) Housing. With respect to private owner-occupied primary residences (including mobile homes), grants may be authorized to:

(A) Repair, replace, rebuild;

(B) Provide access;

(C) Clean or make sanitary;

(D) Remove debris from such residences. Any debris removal will be limited to the minimum required to remove health hazards or protect against additional damage to the residence;

(E) Provide minimum protective measures required to protect such residences against the immediate threat of damage; and

(F) Move mobile homes to prevent or reduce damage.

(iii) Personal Property.

(A) Clothing;

(B) Household items, furnishings, or appliances;

(C) Tools, specialized or protective clothing or equipment which are essential to or a condition of a wage earner's employment;

(D) Repair, clean or sanitize any eligible personal property item; and

(E) Move and store to prevent or reduce damage, including move and store unoccupied mobile homes.

(iv) Transportation.

(A) Grants may be authorized to provide transportation by public conveyance provided that the requirement for this transportation was the direct result of the disaster.

(B) Grants may be authorized to provide private transportation, if the requirement for this transportation was the direct result of the disaster, and transportation by public conveyance is inadequate or unavailable.

(v) Funeral expenses. Grants for funeral expenses will be based on minimum expenditures for interment or cremation.

(vi) Rental accommodations, to include motel, hotel, and other temporary accommodations.

(3) *Ineligible categories.* Assistance under this section will not be made available for any item or service in the following categories:

(i) Business losses, including farm businesses.

(ii) Improvements or additions to real or personal property.

(iii) Landscaping.

(iv) Real or personal property used exclusively for recreation.

(v) Financial obligations incurred prior to the disaster.

(vi) Any necessary expense or serious need or portion thereof for which assistance was available from other means but was refused by the individual or family.

(4) *Other categories.* Should the State determine that an individual or family has an expense or need not specifically identified as eligible, the State shall provide a factual summary to the Regional Director, and request a determination.

(d) *State request to participate in the Individual and Family Grant Program.* In order to make assistance under this section available to disaster victims, the Governor must file with the appropriate Regional Director a request which includes the following:

(1) A certification that assistance under the Act and from other means is insufficient to meet necessary expenses or serious needs of disaster victims.

(2) An estimate of the number of disaster victims who have necessary expenses or serious needs and the basis for such estimate.

(3) An estimate or the total Federal grant as identified in paragraph (f)(1) of this section.

(4) A commitment to implement an administrative plan as identified in paragraph (e) of this section.

(5) A commitment to identify specifically in the accounts of the State all Federal and State funds committed to the grant program.

(6) A commitment to maintain close coordination with the Regional Director and provide him with such reports as he may require in order to insure proper administration, including avoidance of duplication of benefits and timely availability of Federal funds.

(7) A commitment to implement the grant program throughout the major disaster area designated by the Administrator.

(8) A certification that the State will pay its 25 percent share of all grants to individuals or families. If the State is unable immediately to pay its 25 percent share, the State may request an advance of Federal funds as identified in paragraph (h) of this section.

(e) *State Administrative Plan.* (1) The State will develop a plan for the administration of the Individual and Family Grant Program that includes, but is not limited to:

(i) Assignment of grant program responsibilities to State officials or agencies.

(ii) Methods and procedures for notification of potential applicants to include the publication of pertinent time limitations.

(iii) Provisions for accepting applications, including the establishment of local application centers.

(iv) Administrative procedures for:

(A) Verifying necessary expenses and serious needs.

(B) Determining applicant eligibility and grant amounts by a panel of at least three State employees.

(C) Determining the need for flood insurance.

(D) Processing applicant appeals.

(E) Disbursing grants.

(F) Verifying grant expenditures.

(G) Recovering grant funds expended for unauthorized items or services, or grant funds in excess of a grant recipient's expenses or needs.

(H) Conducting a State audit.

(I) Providing controls to insure that grant recipients expend funds in a timely manner for those items and services specified by the State. Grant funds that have not been expended prior to Federal audit, and grant funds that have not been expended for their specified purposes and are not recovered by the State, may be subject to suspension.

(v) National eligibility criteria as defined in paragraph (c) of this section.

(vi) Provisions for compliance with §§ 2205.13, 2205.15, and 2205.18 of these regulations and the Flood Disaster Protection Act of 1973 (Pub. L. 93-234, 87 Stat. 975) and the Federal Insurance Administration Regulations, 24 CFR Parts 1909 et. seq.

(2) The Governor or his representative may request the Regional Director to provide technical assistance in the preparation of an administrative plan to implement the Individual and Family Grant Program.

(3) The Regional Director will review the State administrative plan for each disaster for which assistance is requested under this section to insure that the requirements of these regulations have been met. The Regional Director may defer approval of a State administrative plan until any deficiencies have been corrected.

(4) The State administrative plan is to be made part of the State's emergency plan, as described in § 2205.4 of these regulations.

(f) *Limitation on grants.* (1) The Federal grant under this part shall be equal to 75 percent of the actual cost of meeting necessary expenses or serious needs of individuals and families, plus State administrative expenses not to exceed 3 percent of the total Federal grant, and shall be made only on condition that the remaining 25 percent of such actual cost is paid to such individuals and families from funds made available by the affected State.

(2) An individual or family shall not receive a grant or grants under the provisions of this section aggregating more than $5,000 with respect to any one major disaster. Such aggregate amount shall include both the Federal and State share of the grant.

(g) *Time limitations.* (1) In the administration of the Individual and Family Grant Program authorized under section 408 of the Act, the following time limitations will be applicable except as described in paragraph (g)(2) of this section:

(i) Should the Governor decide to request assistance under this section, he must submit such request no later than seven days following the date on which the major disaster was declared and in the manner set forth in paragraph (d) of this section.

(ii) The State will accept applications from individuals or families for a period of 60 days following the date on which the major disaster was declared.

(iii) Any application filed after the 60-day period stated above must be reviewed by the State to determine whether the late filing was the result of extenuating circumstances or conditions beyond the control of the individual or family. If such conditions or circumstances are demonstrated, the State will determine that good cause existed for late filing and accept that application as though it had been filed on a timely basis; otherwise, the application will be rejected.

(iv) No application will be accepted by the State if it is filed more than 90 days following the date on which the major disaster was declared.

(v) All administrative activities, including the submission of final reports. State audits, and vouchers to the Regional Director, shall be completed by the State within 180 days following the date on which the major disaster was declared.

(2) The Regional Director may extend any time limitation set forth above for a period not to exceed 30 days. If all appeals to the State have been resolved and all grants disbursed, the Regional Director may further extend the 180-day time limitation contained in paragraph (g)(1)(v) above for a period not to exceed 90 days. The Administrator may further extend any of the above time limitations.

(h) *Advance of State share.* (1) If the State is immediately unable to pay its 25 percent share of the grants to be made under this section, the Governor may request that this amount be advanced by the Federal Government. Requests for such advances will be made to the Regional Director and will include the following:

(i) A certification that the State is immediately unable to pay its 25 percent share and an explanation of the reasons therefor.

(ii) A statement as to the specific actions taken or to be taken to overcome the inability to provide the State share, including a time schedule for such actions.

(iii) A commitment to repay the Federal advance at the time the State is able to do so.

(iv) An estimate of the total amount needed to meet the 25 percent State share.

(v) An agreement to return immediately upon discovery all Federal funds advanced to meet the State's 25 percent share which exceed actual requirements.

(2) Failure to repay the advance of the State share, in accordance with the time schedule in paragraph (h)(1)(ii) of this section, may result in the withholding by the Federal Government of subsequent advances under this section.

(3) Any advance of the State's share not repaid to the Federal Government by the repayment date established by the time schedule in accordance with paragraph (h)(1)(ii) of this section, may, at the discretion of the Administrator, be recovered by the offset of Federal funds to which the State would otherwise be entitled under other sections of this Act.

(i) *Approval—Authorization of Funds.* (1) The Regional Director may approve Federal assistance and authorize advances of funds under this section upon his determination that:

(i) All required certifications and commitments have been completed by the Governor;

(ii) The administrative plan provided by the State to implement the Individual and Family Grant Program meets the requirements of these regulations.

(2) The Regional Director may authorize Federal assistance based on his estimate of the amount required to meet the necessary expenses or serious needs of disaster victims.

(j) *Reimbursement to the State.* Reimbursement to the State of the Federal share of eligible costs will be on the basis of a voucher filed by the State and approved by the Regional Director.

(k) *Audits.* The State shall perform site audits on all claims in accordance with audit guidelines provided by the HUD Inspector General. All claims are subject to Federal audit.

NOTE.—Federal Disaster Assistance Administration has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107.

(Sec. 408, Pub. L. 93-288, 88 Stat. 156 (42 U.S.C. 5178), EO 11795 as amended by EO 11910, 39 FR 25939, Delegation of Authority, 39 FR 26227.)

THOMAS P. DUNNE,
Administrator, Federal Disaster Assistance Administration.

[FR Doc.77-2698 Filed 1-26-77;8:45 am]

Office of Assistant Secretary for Fair Housing and Equal Opportunity

[24 CFR Part 108]

[Docket No. R-77-447]

COMPLIANCE PROCEDURES FOR AFFIRMATIVE FAIR HOUSING MARKETING

Notice of Proposed Rulemaking

It is proposed to implement the Department's Affirmative Fair Housing Marketing (AFHM) Regulations, 24 CFR 200.600 et seq., by establishing a comprehensive compliance procedure, which would provide all participants in the Department's housing programs that are required to submit AFHM plans advance information as to Departmental procedure to insure compliance with AFHM Regulations. At the same time, it would insure nation-wide uniformity in obtaining compliance. The compliance procedures outlined do not represent a significant change in Departmental policy in effectuating compliance in those Departmental programs subject to Executive Order 11063, but present the specific procedural steps in an orderly fashion. A show cause procedure is provided in order that a participant in the Department's housing programs subject to the Regulations has opportunity to show good faith efforts to comply with its AFHM plans when there is information which indicates there may be a violation of the AFHM regulation prior to conducting a compliance review. The nature of the compliance review is specified as well as procedures for conducting the review. Since noncompliance with the AFHM regulation may involve a violation of Executive Order 11063 when a complaint or a compliance review of the AFHM plan indicates possible violation of the Executive Order a comprehensive compliance review may also be undertaken to determine compliance with requirements of that Order. Where appropriate, efforts will be undertaken to resolve the matter by conciliation. In cases where these efforts fail the regulation of sanctions. Failure of an individual tion sanctions. Failure of an individual to respond to the HUD informal efforts does not prejudice the individual's rights at later stages of enforcement.

Interested persons are invited to comment on this proposed regulation by furnishing such written comments, data, and recommendations as they may desire. All such materials should be filed with the Rules Docket Clerk, Office of the Secretary, Room 10141, Department of Housing and Urban Development, 451 7th Street SW., Washington, D.C. 20410. Comments received on or before February 28, 1977, will be considered before adoption of a final regulation in this matter. Copies of all comments will be available for public inspection at the above address during regular business hours, both before and after the close of the comment period.

The Department has determined that this proposed regulation will not have an environmental impact, as defined in HUD Handbook 1390.1. The finding of inapplicability may be inspected at the above address.

NOTE.—It is hereby certified that the economic and inflation impacts of the proposed regulation have been carefully evaluated in accordance with OMB Circular No. A-107.

Accordingly, it is proposed to amend Subchapter A of Chapter 1 of Title 24 of the Code of Federal Regulations by establishing a new Part 108 to read as follows:

PART 108—COMPLIANCE PROCEDURES FOR AFFIRMATIVE FAIR HOUSING MARKETING

Sec.

108.1 Purpose and application.
108.2 Authority.
108.3 Responsibility.
108.4 Monitoring and technical assistance.
108.5 Show Cause proceeding to determine compliance.
108.6 Compliance reviews.
108.7 Conciliation conference.
108.8 Sanctions.
108.9 Application of sanctions.
108.10 Effective date.

AUTHORITY: Sec. 7(d) Depart. of Hud Act, 42 U.S.C. 3535(d), E.O. 11063, 27 FR 11527 and Title VIII of the Civil Rights Act of 1968, Pub. L. 90-284, 42 U.S.C. 3608, as amended by the Housing and Community Development Act of 1974, Pub. L. 93-383.

§ 108.1 Purpose and application.

(a) The primary purpose of this regulation is to establish procedures for determining whether or not an applicant's actions are in compliance with its approved Affirmative Fair Housing Marketing (AFHM) Plan and the AFHM Regulations (Subpart M of Part 200 of this title).

(b) These regulations apply to all subsidized and unsubsidized housing programs administered by the Federal Housing Administration, and the Department of Housing and Urban Development as defined in paragraph (c) of this section and all other persons required to submit AFHM plans in Department Programs.

(c) The term "Applicant" includes:

(1) Sponsors and developers (both at the time of application for assistance from the Department and after the assistance is granted) whose application is approved for development or rehabilitation of subdivisions, multifamily projects and moble home parks of five or more lots, units or spaces, or of dwelling units, when the applicants' participation in FHA housing programs had exceeded or would thereby exceed development of five or more such dwelling units during the year preceding the application, except that there shall not be included in a determination of the number of dwelling units developed by an applicant those in which a single family dwelling is constructed or rehabilitated for occupancy by a mortgagor on property owned by the mortgagor and in which the applicant had no interest prior to entering into the contract for construction or rehabilitation; and (2) all other persons required to submit AFHM plans in Department Programs.

§ 108.2 Authority.

This regulation is issued pursuant to the authority to issue regulations granted to the Secretary by section 7(d) of the Department of Housing and Urban Development Act of 1965, 42 U.S.C. 3535 (d), Executive Order 11063, 27 FR 11527, and Title VIII of the Civil Rights Act of 1968, Public Law 90-284, 42 U.S.C. 3608, as amended by the Housing and Community Development Act of 1974, Public Law 93-383.

§ 108.3 Responsibility.

The Assistant Regional Administrator for Fair Housing and Equal Opportunity (ARA for FH and EO) shall be responsible for determining whether or not an applicant's actions are in compliance with its approved AFHM plan and the AFHM regulations. Compliance determinations shall be based on whether or not the applicant has made good faith efforts

to fulfill the provisions of its approved plan and is in compliance with the regulations, not on whether implementation of the plan has resulted in achievement of the anticipated results.

§ 108.4 Monitoring and technical assistance.

(a) *Submission of Reports.* The applicant shall submit sales or occupancy reports to the Area or Insuring Office as required.

(b) *Responsibility of Director of E.O. and the E.O. Specialist.* The Area or Insuring Office as appropriate is responsible for monitoring the applicant's AFHM plan, providing technical assistance to the applicant in the preparation or modification of the plan, and reviewing applicant monthly sales and occupancy reports. Copies of such reports shall be forwarded to the ARA for FH and EO by the Area or Insuring Office as requested.

(c) *Review of Applicants' Reports.* When the monthly sales or occupancy reports show that 20% of the units covered by the affirmative marketing plan have been sold or rented, the report shall be evaluated by the Area or Insuring Office to determine if the applicant is taking affirmative action to ensure that the terms of the plan are being implemented in such a way as to attract buyers or tenants of all minority and majority groups. Such evaluations shall continue to be made on a monthly basis. If a determination is made that the plan should be modified in order to accomplish the purposes of the AFHM regulation, the Department shall discuss with the applicant any needed changes.

(d) *Failure of Applicant to File Monthly Reports.* If the applicant fails to file a required monthly report, the applicant shall be notified in writing that if the delinquent report is not submitted to the Area/Insuring Office within 10 days from date of receipt of the notice, the ARA for FH and EO will be requested to conduct a compliance review of the applicant's affirmative fair housing marketing practices.

(e) *Referral to ARA for FH and EO for Compliance Action.* If an applicant fails within 10 days of receipt of notice under paragraph (d) of this section to submit a required monthly sales or occupancy report, or if it appears that an applicant has not complied with its plan or in any other way is in noncompliance with the AFHM regulation, the matter shall be referred with appropriate documentation to the ARA for FH and EO for compliance action.

§ 108.5 Show cause proceeding to determine compliance.

(a) *General.* Whenever the ARA for FH and EO has received information from an Area/Insuring Office, complaint, or other source which indicates that an applicant may be in violation of its AFHM plan or the APHM regulation, he shall initiate Show Cause Proceedings, unless the ARA for FH or EO determines that an immediate compliance review of the applicant's affirmative marketing practices is necessary.

(b) *Notice.*—To initiate a Show Cause Proceeding, the ARA for FH and EO shall issue a written notice to the applicant requiring the applicant to show cause within thirty (30) days why enforcement action or other appropriate action to ensure compliance should not be instituted. The notice shall be sent to the last known address of the applicant, by certified mail, return receipt requested. The notice shall request the applicant to attend a meeting for the purpose of reviewing the AFHM plan and its implementation, at a designated time, date, and location convenience to all parties and shall request the applicant to bring specific documents and records, or furnish other relevant information concerning its compliance, including but not limited to:

(1) Copies or scripts or all advertising in the SMSA or housing market area, as appropriate, including newspaper, radio and television advertising, and a photograph of any sale or rental sign at the site of construction;

(2) Copies of brochures and other printed material used in connection with sales or rentals;

(3) Evidence of outreach to community organizations;

(4) Any other evidence of affirmative outreach to groups which are not likely to apply for the subject housing;

(5) Evidence of instructions to employees with respect to company policy of nondiscrimination in housing, and data on racial composition of staff;

(6) Description of training conducted with sales/rental staff; and

(7) Evidence of nondiscriminatory hiring and recruiting policies for staff engaged in the sale or rental of properties.

The documentation should show what activities the applicant has engaged in to ensure that it has acted affirmatively to attract buyers and renters regardless of sex of all minority and majority groups.

(c) *The Show Cause Meeting.* The show cause meeting shall be conducted by the ARA for FH and EO or designee. Parties to the matters under consideration may be represented by counsel and shall have a fair opportunity to present any relevant material. Formal rules of evidence will not apply to such proceedings. Minutes of the meeting shall be recorded.

(d) *Resolution of Matters.* If the documentation produced at the show cause meeting shows no violation of the AFHM regulations and that the applicant is in good faith complying with its approved affirmative marketing plan, the ARA for FH and EO shall so inform the applicant in writing. If the documentation indicates a possible failure to comply with the AFHM plan or the AFHM regulations, and the matter cannot be resolved informally, the ARA for FH and EO shall so notify the applicant no later than twenty (20) days after the date of the show cause meeting, in writing by certified mail, return receipt requested, and shall advise the applicant that the Department will conduct a comprehensive compliance review. The compliance review shall be conducted to determine whether the applicant has complied with the provisions of Executive Order 11063, Title VIII of the Civil Rights Act of 1968, and the AFHM regulations in conjunction with the applicant's specific AFHM plan previously approved by HUD.

§ 108.6 Compliance reviews.

(a) *General.* All compliance reviews shall be conducted by the ARA for FH and EO or designee. Complaints alleging a violation(s) of the AFHM regulations or a failure to comply with an affirmative marketing plan ascertained in the absence of a complaint or as in § 108.5 (d) shall be referred immediately to the ARA for FH and EO. The Assistant Regional Administrator for Housing shall be notified of all alleged violations of the AFHM regulations or a failure to comply with an AFHM plan, as appropriate.

(b) *Conducting Compliance Reviews.* The ARA for FH and EO or designee, shall conduct a compliance review. In the case of multi-family projects the ARA/EO or designee shall conduct such reviews periodically throughout the life of the mortgage. A comprehensive review of the applicant's compliance with all equal opportunity requirements may also be periodically conducted by the ARA for FH and EO or designee.

(c) *Nature of Compliance Reviews.* The purpose of a compliance review is to determine whether the applicant is in compliance with the Department's AFHM Regulations and is conforming to its approved affirmative marketing plan. The applicant shall be given at least five (5) days notice of the time set for any compliance review and the place or places for such review. A review will be made of the applicant's sales and rental practices, including practices in soliciting buyers and tenants, determining eligibility, selecting and rejecting buyers and realities and in concluding sales and rental transactions. A review will also be made of programs to attract majority and minority buyers and renters, including use of advertising media, brochures and pamphlets and conformance with the Department's Fair Housing Poster Regulation, Part 110 of this title, and the Advertising Guidelines for fair housing, 37 F.R. 6700. Occupancy data, in relation to the size and location of units, services provided and prices and rental ranges, broken down on a racial basis will also be reviewed, as well as staff engaged in the sale of rental properties.

§ 108.7 Conciliation conference.

Following a compliance review, the ARA for FH and EO or designee shall prepare a report, including recommendations for specific action to be taken by the applicant where appropriate. The applicant shall receive a summary of the findings, and the ARA for FH and EO shall then attempt to resolve the matter by conciliation, when the findings indicate the applicant is in noncompliance. The ARA for Housing shall also receive a copy of the summary of the findings. The resolution of the matter shall be made in writing and shall be signed by the applicant and the ARA for Fair Housing and Equal Opportunity. A copy of the conciliation agreement entered into shall be provided to the ARA for Housing and the Area or Insuring Office Director as appropriate.

§ 108.8 Sanctions.

When conciliation fails and there is a failure or refusal to comply and give satisfactory assurance of future compliance with the requirements of the AFHM regulations, shall be a proper basis for applying sanctions. Such sanctions may include those authorized by laws, regulations, agreements, rules of policies governing the program pursuant to which the application was made, including but not limited to denial of further participation in Departmental programs in accordance with Part 24 of this title—Debarment, Suspension, and Ineligibility of Contractors and Grantees, and referral to the Department of Justice for suit by the United States for Injunctive or other appropriate relief.

§ 108.9 Application of sanctions.

(a) *General.* In cases where the applicant declined the opportunity to conciliate or conciliation failed, the Assistant Secretary for Fair Housing and Equal Opportunity or designee will issue to the applicant an order to show cause within thirty (30) days why sanctions should not be imposed pursuant to Sec. 200.635 of the AFHM regulations or Sec. 302 of Executive Order 11063. The notice shall be sent to the last known address of the applicant, by certified mail, return receipt requested. The notice will advise the applicant of the right to submit information and relevant data indicating compliance with the requirements of the Affirmative Fair Housing Marketing Regulations, 24 CFR.200.600, Executive Order 11063, 27 FR 11527, the Poster Regulation, 37 FR 16540 and the Advertising Guidelines, 37 FR 6700, and other affirmative marketing requirements applicable to the HUD Programs or activity. Further, the applicant will be offered the opportunity to be present at a meeting scheduled 30 days after the date of the notice, in order to submit any other evidence showing such compliance. The date, place and time of the scheduled meeting will be included in the notice.

(b) *The Show Cause Meeting to Impose Sanctions.* The show cause meeting shall be conducted by the ARA for FH and EO or the ARA's designee. Parties to the matters under consideration may be represented by counsel and shall have a fair opportunity to present any relevant material. Minutes of the meeting shall be recorded and made a matter of record.

(d) *Resolution of the Matters.* If it is found that the applicant is not in compliance the entire file in the matter shall be referred to the Assistant Secretary for FH and EO to make a determination whether or not to initiate further action to complete the imposition of sanctions. The applicant shall be notified of such action by certified mail, return receipt requested and copies of this notice shall be sent to the appropriate Area/Insuring Office Director, the Regional Administrator, the ARA for the appropriate program and the appropriate Assistant Secretary.

If it is found that the applicant is in compliance all parties concerned shall be notified.

Issued at Washington, D.C., January 21, 1977.

JOHN B. RHINELANDER,
Under Secretary of Housing and Urban Development.

[FR Doc.77-2707 Filed 1-26-77;8:45 am]

Office of Assistant Secretary for Housing—Federal Housing Commissioner

[24 CFR Part 891]

[Docket No. R-77-388]

LOW INCOME HOUSING

Review of Applications for Housing Assistance; Allocation of Housing Assistance Funds

On August 23, 1976, the Department of Housing and Urban Development (HUD) published at 41 FR 35660 a final rule amending Chapter VIII of Title 24 of the Code of Federal Regulations by adding a new Part 891, "Review of Applications for Housing Assistance; Allocation of Housing Assistance Funds." Subpart E of Part 891 contains the policies and procedures governing supplemental allocations of contract authority for use in jurisdictions participating in an Areawide Housing Opportunity Plan selected as the basis for the award of supplemental allocations in accordance with this Subpart. (Subpart E previously had been published for final effect on June 23, 1976, at 41 FR 25983.)

Notice is hereby given that the Department proposes to amend § 891.102 of Subpart A (Definitions) and selected portions of Subpart E. The purpose of the revisions is three-fold: (1) to make the objectives of the Areawide Housing Opportunity Plan effort more explicit (2) to clarify and to revise the requirements for selection of Areawide Housing Opportunity Plans to serve as the basis for award of supplemental allocations of contract authority and (3) to provide for Plans approved by HUD to serve as the primary basis for the distribution of housing assistance funds otherwise allocated by HUD to the area served by the APO.

As prescribed in these regulations, an Areawide Housing Opportunity Plan (Plan) is a plan developed by an areawide planning organization (APO) which addresses areawide housing assistance needs and goals and allocates lower income housing assistance in such a manner as to provide for a broader geographical choice of housing opportunities for lower income households outside areas and jurisdictions containing undue concentrations of low income and minority households. For a Plan to be acceptable, at least 50 percent of the jurisdictions in the area served by the APO, representing at least 75 percent of the population, must have reached agreement with the APO on goals for the distribution of housing assistance and on measures for the implementation of the Plan. In addition, the housing assistance goals contained in Housing Assistance Plans (HAPs) prepared by or applicable to participating jurisdiction may not be less than or inconsistent with the goals identified in the Plan.

The proposed regulations would establish two potential uses for Plans submitted to HUD for review. First, a Plan determined by HUD to have met the general criteria in § 891.502 would be designated by the Secretary as an "Approved Areawide Housing Opportunity Plan." Under this provision, the aggregate amount of contract authority otherwise allocated in accordance with Subpart D of Part 891 to jurisdictions within the area served by the APO of Part 891 to jurisdiction within the area served by the APO would be disturbed, to the extent practicable, in accordance with the Approved Plan. Although the total amount of housing assistance funds allocated to jurisdictions in the area would still be made in accordance with Subpart D, the program mix and geographical distribution of contract authority would be decided jointly by the HUD Field Office Director and the APO and would reflect the Approved Plan. Because the goals in HAPs and the Plan cannot be inconsistent, an allocation of contract authority by HUD according to the regional Plan will be consistent with the HAPS of Participating Jurisdictions. It is hoped that this procedure will enable HUD to be more responsive to local and regional priorities and goals.

Second, Plans which meet the general criteria in § 891.502 would be considered by the Secretary for selection as the basis for supplemental allocations of contract authority to participating jurisdictions. Additional criteria contained in § 891.503 would identify plans for priority consideration from among acceptable plans. HUD has determined that supplemental allocations pursuant to Subpart E can only be made to participating jurisdictions which are covered by a HAP. However, this does not preclude a jurisdiction which is not covered by a HAP from being considered as a participating jurisdiction through agreement on numerical goals and on measures for the implementation of the Plan.

The specific changes proposed to be made are as follows:

1. The definitions of "Areawide Housing Opportunity Plan" (Plan) and "Participating Jurisdiction" contained in § 891.102 of Subpart A have been expanded to more clearly define a Plan and the responsibilities of Participating Jurisdictions. An "Approved Areawide Housing Opportunity Plan" is defined.

2. Section 891.501(a) has been amended to specifically include as part of the role of the APO participation in the determination of the distribution of the supplemental allocation of housing assistance among Participating Jurisdictions.

3. Section 891.501(c) has been revised to limit the amount of supplemental allocations provided on the basis of a Plan selected as the basis for funding. The range of the supplemental allocation has been expanded to between 10 and 50 percent of the initial allocation of contract authority made available in accordance with § 891.404 of Subpart D to Participating Jurisdictions under the applicable housing assistance program(s). In addition, the amount of supplemental contract authority which may be awarded on the basis of any single Plan is limited to twenty percent of the total amount of supplemental contract authority made available by the Secretary for supplemental allocations under Subpart E. The total amount of contract authority which may be awarded on the basis of previously selected Plans is limited to 66⅔ percent of the total supplemental contract authority made available by the Secretary. These proposed revisions are responsive to the need to ensure that Plans which have not been previously selected are given an opportunity to compete with previously selected Plans on an equitable basis and that no single Plan receives a disproportionate share of the contract authority available for supplemental allocations under Subpart E.

4. The needs assessment required in § 891.502(a)(1) has been revised so that only an areawide assessment is required.

5. Section 891.502(a)(2), (formerly § 891.502(a)(4)) has been expanded to identify factors which shall be considered in an allocation procedure. This elaboration is deemed necessary to clarify the objectives of Subpart E.

6. Expression of goals has been made more specific. Section 891.502(a)(3), (formerly § 891.502(a)(2)), has been revised to permit either numerical or percentage housing goals, but requires them on a one and a three-year basis. They must also be specific, at a minimum, as to household types.

7. Section 891.502(a)(4), (formerly § 891.502(3)), has been expanded to include additional examples of acceptable evidence of agreement between the APO and Participating Jurisdictions and to indicate that agreement on implementation measures must be part of this agreement.

8. In response to confusion over the method by which Participating Jurisdictions are to be counted, § 891.502(b)(1) has been expanded to define those circumstances in which a jurisdiction within a county which is a Participating Jurisdiction may be counted as a Participating Jurisdiction.

9. Several additional criteria for priority plans have been added to § 891.503. Separate consideration is now given to APOs which participate in providing housing information and those which provide referrals, counseling or related assistance. Special consideration will also be given to areas without residency preferences for Low Income Housing and to other activities developed or administered by the APO which address the objectives of the Plan.

10. Section 891.503 requires that an APO whose Plan has been previously selected must demonstrate significant progress in addressing at least three priority criteria.

11. The identification of the required elements of requests for supplemental allocations in § 891.504 has been expanded to ensure that the request is responsive to each of the criteria for acceptable and priority Plans and that the necessary information is provided for HUD review.

12. Section 891.505 has been expanded to provide for a separate discussion of the basis for selection of Plans to receive supplemental funding and the determination of the amount of supplemental contract authority to be awarded on the basis of these Plans.

13. A new § 891.506 has been added to provide for special recognition by the Secretary of Plans which meet the general criteria in § 891.502. To the extent practicable, these Plans shall serve as the primary basis for the allocation of any housing assistance provided by HUD in accordance with Subpart D of Part 891. This recognition represents an additional commitment of support to regional strategies which address the housing assistance needs of lower income persons.

14. Section 891.507 has been added to provide for the submission of a report to HUD on the implementation and impact of selected Plans.

Interested persons are invited to participate in the making of these proposed rules by submitting such written comments or suggestions as they may desire. Communications should identify the subject matter by the above title and should be submitted to the Rules Docket Clerk, Department of Housing and Urban Development, 451 Seventh Street, S.W., Room 10141, Washington, D.C. 20410. All communications received on or before February 25, 1977 will be considered before action is taken on these proposals.

Comments received after that date shall be considered only as time permits, or shall be considered as petitions for future rulemaking.

The Department has determined that these regulations do not constitute a major Federal action significantly affecting the quality of human environment. Accordingly, a finding of inapplicability of environmental impact has been prepared and is available for inspection by the public during regular business hours in Room 10141, 451 Seventh Street, S.W., Washington, D.C.

This notice of proposed rulemaking is issued under the authority of Section 7(d), Department of HUD Act, 42 U.S.C. 3535(d).

Accordingly, it is proposed to amend Subparts A and E of Part 891, Chapter VIII, 24 CFR, as follows:

1. Section 891.102 of Subpart A is amended by revising paragraph (c), adding a new paragraph (d) and by redesignating paragraphs (d) through (o) as (e) through (p) to read as follows:

§ 891.102 Definitions.

* * * * *

(c) *Approved Areawide Housing Opportunity Plan (Approved Plan).* An Areawide Housing Opportunity Plan approved by the Secretary in accordance with § 891.506 to serve as the basis for allocations under § 891.404(a)(3).

(d) *Areawide Housing Opportunity Plan (Plan).* A plan, developed by an Areawide Planning Organization, which addresses areawide housing assistance needs and goals and contains a program which encourages, facilitates, and demonstrably provides for a broader geographical choice of housing opportunities for lower income households outside of areas and jurisdictions containing undue concentrations of low income or minority households.

(l) *Participating jurisdiction.* A jurisdiction, whether or not it is covered by a HAP (including counties and other local governments), with which the APO has reached agreement on numerical or percentage goals for the distribution of lower income housing assistance and on measures for the implementation of the Plan.

* * * * * *

2. By revising Subpart E to read as follows:

Subpart E—Supplemental Allocations Based Upon Areawide Housing Opportunity Plans

Sec.
891.501 Applicability and scope.
891.502 General criteria for acceptable plans.
891.503 Criteria for priority plans.
891.504 Contents of requests for supplemental allocations.
891.505 Review and selection of plans.
891.506 Reporting requirements.
891.507 Approval of plans as basis of allocations under § 891.404(a)(3).

AUTHORITY: Sec. 7(d) of the Department of HUD Act, (42 U.S.C. 3535(d)).

Subpart E—Supplemental Allocations Based Upon Areawide Housing Opportunity Plans

§ 891.501 Applicability and scope.

(a)(1) This Subpart describes the policies and procedures governing (i) the review and selection of Areawide Housing Opportunity Plans, as defined in § 891.102 of Subpart A, as the basis for supplemental allocations of contract and budget authority for use in jurisdictions participating in such a Plan; and (ii) approval of such plans to serve as the primary basis for the allocation of any housing assistance provided by HUD pursuant to Subpart D of Part 891 (hereinafter "Subpart D").

(2) The role of the APO under the provisions of this Subpart includes, but need not be limited to, (i) development of the Plan, including the needs assessment, the allocation procedures, implementation strategies and other components described in §§ 891.502 and 891.503; (ii) submission of requests to the Secretary for supplemental allocations in accordance with § 891.504; and (iii) participation in the determination of the distribution of the supplemental allocation of housing assistance among Participating Jurisdictions covered by a HAP in accordance with § 891.505(f).

(b) The Secretary, after considering all the pertinent factors under section 213(d) of the Housing and Community Development Act of 1974, including such adjustments as may be necessary to assist in carrying out activities designed to meet lower income housing needs as described in approved HAPs, will determine the aggregate amount of contract authority to be used for supplemental allocations and from which housing assistance program(s) contract authority will be made available for supplemental allocations in any fiscal year for which such allocations will be made.

(c) The Secretary shall announce, through a Notice in the FEDERAL REGISTER, the amount of contract authority to be made available for supplemental allocations during any fiscal year; the housing assistance program(s) under which these allocations shall be made; any additional or special criteria which may be established for specific housing assistance programs; and the time, closing date, and address for submission of requests for the supplemental allocations. The closing date for submission of requests shall not be sooner than 30 calendar days after publication of the Notice in the FEDERAL REGISTER.

(d) In order to be approved as a basis for a supplemental allocation under this Subpart, a Plan must meet the general criteria for acceptability set forth in § 891.502. Priority shall be given to those Plans which also meet the greatest number of the priority criteria set forth in § 891.503.

(e)(1) The amount of the supplemental allocation provided on the basis of a Plan selected for funding in a single fiscal year under this Subpart shall not be less than 10 percent nor more than 50 percent of the initial allocation of contract authority to the Participating Jurisdictions in accordance with § 891.404 of Subpart D during the same fiscal year in which the request specified in § 891.504 is submitted to HUD.

(2) The total amount of supplemental contract authority which may be awarded on the basis of any single Plan shall not exceed twenty percent of the supplemental contract authority for the applicable housing assistance program available in that fiscal year in accordance with § 891.501(b).

(3) The total amount of supplemental contract authority awarded on the basis of Plans (or an earlier version of a selected Plan) which have been selected during any previous fiscal year for award of supplemental allocations in accordance with this Subpart shall not exceed 66⅔ percent of the total amount of the supplemental contract authority for the applicable housing assistance program unless, the Secretary determines that there are no other Plans which meet the general criteria for acceptable plans set forth in § 891.502 and at least two of the criteria for priority plans set forth in § 891.503.

§ 891.502 General criteria for acceptable plans.

(a) In addition to any special criteria in the Notice published pursuant to § 891.501(c), a plan, to be acceptable, shall be a program for allocating housing assistance among jurisdictions in the area served by the APO which encourages, facilitates, and demonstrably provides for a broader geographical choice of housing opportunities than is presently available for lower income households outside areas and jurisdictions containing undue concentrations of low income or minority households. The Plan shall contain, but need not be limited to, the following elements:

(1) An assessment, based upon the most reliable and generally available uniform data base, of the housing assistance needs of lower income households (including households displaced or to be displaced by governmental action) on an areawide basis. This assessment shall indicate housing assistance needs by (i) household type (lower income households which are elderly or handicapped; large families; and other families), (ii) present form of housing tenure (owner and renter), (iii) female heads of households and (iv) minority households.

(2) A procedure for allocating housing assistance (whether or not provided by HUD) among jurisdictions within the area served by the APO (as a minimum, by county and for each jurisdiction of over 50,000 population) in accordance with the Plan and the objectives of this Subpart. The procedure shall consider the assessment of needs conducted in accordance with § 891.502(a)(1), the Housing Assistance Plans of jurisdictions in the area served by the APO, and any regional community development, growth, land use, and environmental policies and objectives which have been adopted or are being developed by the APO. In addition, the procedure shall, as a minimum, explicitly take into account the following factors:

(i) Present and potential areas of undue concentration of low income and minority households which have been identified in approved HAPs of Participating Jurisdictions and other data available to the APO.

(ii) The locations of assisted housing and jurisdictions with undue concentrations of assisted housing.

(iii) The present or potential capacity of each jurisdiction to accommodate assisted housing.

(iv) Present and projected (for at least three years) regional population and employment data or patterns, with particular emphasis on the data and patterns applicable to lower income persons.

(v) The needs of lower income households which are (A) large families, (B) minority households and (C) female heads of households.

The allocation procedure included in the Plan shall be designed to ensure that the distribution of housing assistance in accordance with the procedure will have a demonstrable impact in increasing the geographical choice of housing opportunities for lower income households outside areas and jurisdictions containing undue concentrations of low income or minority households throughout the area served by the APO.

(3) Numerical or percentage goals, on an annual and on a 3-year basis, by type of assistance and source of funds, for the distribution of lower income housing assistance (whether or not provided by HUD) to each Participating Jurisdiction which address the needs identified in § 891.502(a)(1) and which have been derived from the allocation procedure. The goals identified in HAPs prepared by or applicable to Participating Jurisdictions may not be less than or inconsistent with the goals identified in the Plan. The numerical or percentage goals shall, as a minimum, be specific as to household type (lower income households which are elderly or handicapped; large families; and other families).

(4) Evidence of agreement between the APO and each Participating Jurisdiction on the goals in paragraph (a)(3) of this section for the distribution of lower income housing assistance among Participating Jurisdictions and of agreement on measures for the implementation of the Plan in accordance with the allocation under paragraph (a)(2) of this section. This evidence may include individual written agreements or other confirmation from the Chief Executive Officer of the Participating Jurisdiction, including confirmation of the consistency of the numerical goals in the HAP of each Participating Jurisdiction covered by a HAP with the goals in the Plan; or by an equivalent provision acceptable to the Secretary which demonstrates a commitment to the objectives and implementation measures of the Plan by each Participating Jurisdiction (e.g., through commitment of CDBG funds in support of implementation measures, removal of impediments to the provision of lower income housing, or cooperation in efforts to meet the Criteria for Priority Plans contained in § 891.503).

(5) Provisions for the Plan to be used in the review of all applications for community development, housing assistance, and other community assistance programs which are subject to review under OMB Circular A-95.

(b) The Plan also shall meet the following conditions:

(1) The Plan shall apply to and include as Participating Jurisdictions at least fifty percent of the jurisdictions in the area served by the APO, wherein Participating Jurisdictions represent at least seventy-five percent of the population of the area. For the purposes of counting Participating Jurisdictions, any jurisdiction under 50,000 population within a county which is a Participating Jurisdiction may be counted as a Participating Jurisdiction if (i) the county's agreement with the APO on numerical or percentage goals applies to that jurisdiction and the county has authority to provide or approve assisted housing in

that jurisdiction or the county has reached agreement on goals and implementation measures with that jurisdiction and the plan provides written evidence thereof; and (ii) the agreement between the county and the APO specifies general locations for assisted housing for those jurisdictions in the county which are not covered by a HAP.

(2) The Plan shall have been approved by the governing body of the APO.

(3) The APO shall demonstrate (i) that the plan can be implemented through activities undertaken or to be undertaken by the APO and Participating Jurisdictions and (ii) that an additional allocation of contract authority can be committed within a reasonable time in Participating Jurisdictions covered by a HAP in a manner consistent with the objectives of the Plan. Implementation activities may include, but need not be limited to, provision of technical assistance to PHAs or prospective developer/sponsors; coordination of outreach to eligible families and owners of properties potentially available for the section 8 Existing Housing Program; coordination of CDBG activities which support the objectives of the Plan; preparation of guides to assisted housing opportunities throughout the region served by the APO; development of specific mechanisms to facilitate interjurisdictional moves; or other coordinated administrative mechanisms to achieve the objectives of the plan and the numerical or percentage goals contained therein. Satisfactory evidence that an additional allocation of contract authority can be committed within a reasonable time may include, but is not limited to, (A) the availability of sites whose locations are consistent with the objectives of the Plan and which meet all applicable program standards and criteria (including site and neighborhood standards) in those Participating Jurisdictions in which the Plan proposes the use of newly-constructed or rehabilitated housing under the programs specified in § 891.101(a), and developer/sponsor-owner interest (e.g., as evidenced by responses to recent notifications of fund availability or invitations for housing applications under these programs); (B) the willingness and ability of established PHAs to administer or otherwise participate in the program in those Participating Jurisdictions in which the Plan proposes the use of a program specified in § 891.101(a) which requires the participation of a PHA, or actions taken by such Participating Jurisdictions to establish PHAs or to negotiate agreements with existing PHAs to perform this function; and (C) contract authority currently allocated to Participating Jurisdictions has been committed or satisfactory progress has been made in committing such contract authority and these Participating jurisdictions have been cooperative in removing or waiving impediments to the provision of lower income housing which have been imposed by local governments.

(4) The data used in making the assessment of housing assistance needs in § 891.502(a)(1) available for use by Participating Jurisdictions in preparing their HAPs.

§ 891.503 Criteria for priority plans.

(a) In order for an Acceptable Plan to qualify for priority consideration, it must meet one or more of the following criteria:

(1) The APO presently administers, funds, or participates in the provision of housing information to lower income and minority households desiring housing assistance outside areas and jurisdictions which contain undue concentrations of low income or minority households.

(2) The APO presently administers, funds, or participates in a program which provides referrals, counseling, and related assistance to lower income and minority households desiring housing assistance outside areas and jurisdictions which contain undue concentrations of low income or minority households.

(3) To the extent that the section 8 Existing Housing Program is used by Participating Jurisdictions, eligible families currently are permitted to use and are assisted in using their section 8 Certificates of Family Participation in two or more Participating Jurisdictions representing at least 50 percent of the area population (e.g., through use of an areawide, regional, or state public housing agency; through cooperation or other local agreements which provide for interjurisdictional use of Section 8 Certificates of Family Participation among Participating Jurisdictions; through elimination of residency preferences for issuance of section 8 Existing Certificates in Participating Jurisdictions which are participating in the section 8 Existing Housing Program; or other administrative mechanisms acceptable to the Secretary which facilitate interjurisdictional moves for households with section 8 Certificates of Family Participation among Participating Jurisdictions which are participating in the Section 8 Existing Housing Program).

(4) Residency preferences for admission to Low-Income housing have been eliminated in all Participating Jurisdictions by all PHAs administering a Low-Income Housing Program.

(5) The Area served by the APO is covered by a voluntary areawide affirmative fair housing marketing agreement with HUD which is currently operative or is covered by a similar program which can be demonstrated to achieve the same objective as a typical agreement with HUD.

(6) The Plan applies to and includes as Participating Jurisdictions 75 to 100 percent of the jurisdictions in the area served by the APO.

(7) Any other activity or activities, as developed or administered by the APO and acceptable to the Secretary, which encourages, facilitates and demonstrably increases the geographical choice of housing opportunities for lower income households outside areas and jurisdictions containing undue concentrations of low-income or minority households.

(b) APOs whose Plan has previously been selected as the basis for the award of supplemental allocations must meet or demonstrate significant progress in addressing at least three priority criteria to be considered for additional supplemental allocations.

§ 891.504 Contents of requests for supplemental allocations.

(a) Each request for supplemental allocation shall consist of:

(1) A letter of transmittal signed by the executive director of the APO submitting the request;

(2) An index of all documents and materials submitted with the request, including graphs, maps, or other illustrative material;

(3) A list of all jurisdictions within the area served by the APO, identification of Participating Jurisdictions, and identification of Participating Jurisdictions covered by HAPs;

(4) A description of the Plan, with specific references to the plan and other documentation, where appropriate, which responds to each of the acceptability criteria contained in § 891.502 and the priority criteria contained in § 891.503; provides examples of and discusses the Plan's conformity to these criteria; and explains how the Plan, with specific references to the allocation procedure (including allocation criteria and factors) and implementation measures, will provide a broader geographical choice of housing opportunities for lower income households outside areas and jurisdictions containing undue concentrations of low income or minority households;

(5) The amount of supplemental allocation requested and from which program(s);

(6) A proposal, consistent with the Plan, showing type of households to be assisted and type of housing proposed for the Participating Jurisdictions covered by a HAP, for using supplemental allocations of ten, thirty, and fifty percent of the initial allocation of contract authority from the applicable program(s) otherwise allocated to Participating Jurisdictions during the current fiscal year in accordance with § 891.404.

(7) Identification of any variations or inconsistencies between the goals of the Plan and the goals contained in the HAPs of Participating Jurisdictions, with a discussion of the reasons therefor;

(8) A discussion of the methodology and sources of data used in assessing areawide housing assistance needs under § 891.502(a)(1);

(9) Identification of areas containing undue concentrations of low income households and of minority households both for each Participating Jurisdiction and on an areawide basis;

(10) A narrative statement which indicates how the Plan, including implementation measures, addresses the needs of lower income households which are (i) large families, (ii) female headed and (iii) minority households within the area served by the APO;

(11) If supplemental allocations or other housing allocations pursuant to Subpart D have been awarded in any previous fiscal year on the basis of the plan or an earlier version of the plan, a report on the distribution of these allocations; activities undertaken in support of the plan, any known results in achieving the objectives of the plan and this Subpart, any expansion, upgrading or other refinement of the data used in any earlier version of the plan;

(12) For participating jurisdictions which are not covered by a HAP, the general locations proposed for assisted housing in accordance with the numerical or percentage goals in § 891.502(a)(3);

(13) A summary of the recent experience of participating jurisdictions with assisted housing programs, including the status and amount of housing assistance received—by program—by each participating jurisdiction during the current fiscal year and each of the previous two fiscal years;

(14) The impact of the plan on the distribution of housing assistance within the area served by the APO since approval of the plan, or an earlier version of the plan, by the governing body of the APO;

(15) A description of the citizen participation process used in the development of the plan in accordance with requirements under section 701 of the Housing Act of 1954 and the way in which affected public and private agencies and organizations were provided an opportunity to participate;

(16) A narrative statement which describes the APO's proposal, if any, to evaluate the impact of the plan and the effect of any supplemental allocations received in achieving the objectives of the plan;

(b) In lieu of a separate and distinct discussion of any or all of items (8) through (16) of § 891.504(a), the APO may, at its option, provide an index which refers to any other portion of the request which specifically responds to these items.

(c) Copies of HAPs prepared by Participating Jurisdictions need not be submitted with the request.

(d) Each request shall be submitted in the number of copies and to the address required in the Notice published pursuant to § 891.501(d). Any request received by HUD after the deadline date and time specified in the Notice shall not be accepted but shall be returned unopened.

§ 891.505 Review and selection of plans.

(a) The Secretary shall review all Plans submitted to identify (1) Acceptable Plans under § 891.502 and (2) Priority Plans under § 891.503. Field Office Directors and Regional Administrators shall be consulted in this evaluation.

(b) On the basis of the evaluation conducted in accordance with paragraph (a) of this section the Secretary shall select, from among all Acceptable Plans, those Plans on the basis of which supplemental allocations can be awarded. Preference shall be given to those Plans which meet the greatest number of the priority criteria set forth in § 891.503.

(c) The Plans to be selected as the basis for supplemental allocations shall be determined by the Secretary on the basis of the following factors:

(1) The compliance with, and overall quality of the Plan with respect to each of the general criteria for acceptable Plans set forth in § 891.502 and the criteria for priority Plans in § 891.503 and the degree to which the Plan addresses the objective of this Subpart;

(2) The responsiveness of the request to the requirements outlined in § 891.504; and

(3) In the case of Plans or earlier versions of Plans previously selected as the basis for supplemental allocations during any previous fiscal year, the impact of the Plan and prior supplemental allocations and the progress made by the APO and Participating Jurisdictions in meeting additional priority criteria as indicated in the Report required in § 891.506, in the request, or from other information available to HUD.

(d) The amount of the supplemental allocation to be awarded on the basis of each of the selected Plans shall be determined by the Secretary on the basis of each of the following factors:

(1) The compliance with, and overall quality of the Plan with respect to each of the criteria in §§ 891.502 and 891.503 and the degree to which the Plan addresses the objective of this subpart.

(2) The number of Plans selected as the basis for award of supplemental allocations and the amount of housing assistance available for supplemental allocations.

(3) The type of lower income households (elderly or handicapped; large families; and other families) and type of housing (new, substantial rehabilitation, or existing) proposed to be assisted with the supplemental allocation, relative to the needs identified in § 891.502(a)(1).

(4) The amount of housing assistance available to each of the Participating Jurisdictions for the current fiscal year that has been committed.

(e) If contract authority from more than one housing assistance program is made available by the Secretary in any fiscal year in accordance with § 891.501(b), and the APO requests supplemental allocations for more than one program, the Secretary shall determine the program(s) from which contract authority will be provided on the basis of a Plan selected as the basis for funding.

(f) After the total amount of the supplemental allocations on the basis of each of the selected Plans has been determined, each APO shall be advised of its selection or rejection. Selected APOs shall also be advised of the amount of additional contract authority which is to be made available on the basis of the Plan and the approximate number of units this contract authority is expected to assist. Concurrently with or subsequent to this notification, the allocations will be distributed to those Field Office Directors with jurisdiction over Participating Jurisdictions for reallocation among Participating Jurisdictions covered by a HAP. The Field Office Directors will consult with APOs to determine the actual geographical distribution and program mix of units on the basis of the Plan and other applicable administrative or statutory requirements prior to allocation among Participating Jurisdictions covered by a HAP.

§ 891.506 Approval of plans as basis for allocations under § 891.404(a)(3).

(a) Each Plan which has been determined by the Secretary to have met each of the general criteria for acceptable plans contained in § 891.502 (whether or not it is selected as the basis for award of supplemental allocations under § 891.505(a)) shall be designated by the Secretary as an Approved Areawide Housing Opportunity Plan. An Approved Plan shall serve, to the extent practicable, as the primary basis for the allocation by HUD of any housing assistance provided by HUD pursuant to Subpart D (1) until a subsequent or updated version of an Approved Plan has been approved by HUD in accordance with the procedures under this Subpart or (2) for three years, whichever occurs first. This allocation shall be in consultation with the APO.

(b) In addition, the one and three-year goals in the Housing Assistance Plans of Participating Jurisdictions shall be approved by the Area Office if those goals are not inconsistent (in number or program type) with the goals in an Approved Plan.

(c) Each APO whose Plan is approved pursuant to this section shall be advised of this designation simultaneously with the transmittal of the Secretary's notification to the Field Office Director.

§ 891.507 Reporting requirements.

Each APO which has developed a Plan selected as the basis for funding during or subsequent to fiscal year 1977 shall submit to the Secretary, within one year after the determination by the Field Office Director on the distribution of the supplemental allocation in accordance with § 891.505(f), a report which contains the following information:

(a) The actual distribution of the supplemental allocation among jurisdictions and the number of households assisted or to be assisted (by type of household and by race and sex of head of household, if known) as a result of the supplemental allocation and other housing assistance allocated pursuant to Subpart D;

(b) Any known impact of the Plan in reducing concentrations of low income or minority households outside areas and jurisdictions which contain undue concentrations of such households;

(c) Any refinements, amendments, or upgrading of any of the elements of the Plan;

(d) Actions taken by Participating Jurisdictions to implement or to support

the implementation of the Plan (e.g., encouragement of developers/sponsors, zoning amendments, tax abatement programs, coordination of outreach to eligible families and owners of properties qualifiable for the Section 8 Existing Housing Program, reservations of water and sewer capacity, development and implementation of complementary CDBG or other activities, etc.);

(e) Any increase in the number of Participating Jurisdictions or Participating Jurisdictions covered by HAPS; and

(f) Actions taken to meet additional Priority Criteria contained in § 891.503.

(It is hereby certified that the economic and inflationary impacts of this regulation have been carefully evaluated in accordance with OMB Circular A-107).

JOHN T. HOWLEY,
Acting Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc.77-2690 Filed 1-26-77;8:45 am]

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

[27 CFR Part 250]

[Notice No. 307]

LIQUORS AND ARTICLES FROM PUERTO RICO AND THE VIRGIN ISLANDS

Elimination the Serial-Number-of-Approved-Formula-Marking Requirement on Distilled Spirits Containers

The Director, Bureau of Alcohol, Tobacco and Firearms, with the approval of the Secretary of the Treasury or his delegate, is issuing a notice of proposed rulemaking to eliminate the requirement of marking the serial number of the approved formula on containers of distilled spirits made in Puerto Rico and in the Virgin Islands, and shipped to the United States.

The proposed regulations are to be issued under the authority contained in 26 U.S.C. 7805 (68A Stat. 917).

The Director received a petition on April 26, 1976, which requested that 27 CFR 250.40, Marking containers of distilled spirits, be amended "to eliminate the requirement for printing the serial number of the approved formula on the cases of distilled spirits, under which distilled spirits were made in Puerto Rico and shipped to the United States". This petition seeks to alleviate any undue burden on producers of Puerto Rican rum by doing away with a marking requirement which may be nonessential.

Section 250.40 currently requires that the serial number of the approved formula be marked on all containers of distilled spirits shipped to the United States from Puerto Rico. Whenever a Puerto Rican manufacturer changes a formula, the manufacturer must remove the premarked serial number from empty shipping containers and affix the new approved formula number. If it were possible to eliminate the formula number requirement of § 250.40, Puerto Rican manufacturers would be relieved from the necessity of removing old serial numbers and re-marking with new serial numbers.

Form 478-B is a required application and permit document that accompanies shipments of distilled spirits from Puerto Rico to the United States. In addition to other information, this form contains both the formula number of the distilled spirits product and the serial numbers of the shipping containers. Since the Form 487-B identifies the formula number of all shipping containers, it could be used to supply the information in question which § 250.40 presently requires.

The Director is also considering to amend a comparable regulation, § 250.206, affecting distilled spirits shipments of Virgin Island manufacture to the United States. Virgin Islands producers are presently required to show formula numbers on the individual shipping containers and on a certificate which accompanies each shipment, along with a report of gauge. If the formula number requirement of § 250.206 were deleted from the section, the certificate, which calls for the number and the date of the approved formula, and the report of gauge, which shows the serial number of each package gauged for shipment, would supply the same information. Thus, the Virgin Islands manufacturers would also be relieved from what appears to be a needless requirement.

In addition to giving notice to the distilled spirits producer of Puerto Rico and of the Virgin Islands, the Director seeks to give notice to the governments of Puerto Rico and of the Virgin Islands of the United States to permit them to comment on this proposal.

Interested parties who desire to submit written comments or arguments on the proposed changes should submit them, in duplicate, to the Director, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226 (Attention: Chief, Regulations and Procedures Division) no later than March 14, 1977. Written statements which are not exempt from disclosure by the Bureau of Alcohol, Tobacco and Firearms, may be inspected by any person upon compliance with 27 CFR 71.22(d)(7). The provisions of 27 CFR 71.31(b) shall apply with respect to designation of portions of statements as exempt from disclosure.

In view of the foregoing, it is proposed that the regulations, 27 CFR 250.40 and 250.206, pertaining to markings on distilled spirits containers be amended by deleting the phrase, "the serial number of the approved formula under which made", by deleting the last sentence, and by simplifying the language of the sections.

1. As amended, § 250.40 reads as follows:

§ 250.40 Marking containers of distilled spirits.

The distiller, rectifier, or bottler shall serially number each case, barrel, cask, or similar container of distilled spirits filled for shipment to the United States. In addition to the serial number of the container, the distiller, rectifier, or bottler shall plainly print, stamp, or stencil with durable coloring material, in letters and figures not less than one-half inch high, on the head of each barrel, cask or similar container or on one side of each case, as follows:

(a) The name of the distiller, rectifier, or bottler;

(b) The brand name and kind of liquor;

(c) The wine and proof gallon contents; or, for bottles filled according to the metric standards of fill prescribed by § 5.47a, of this chapter, the contents in liters and the proof of the spirits; and

(d) In the case of barrels or casks, the serial number of the permit to ship, Form 487-B, prefixed by the number of such form (e.g., "487-B-61-1").

2. As amended, § 250.206 reads as follows:

§ 250.206 Marking packages and cases.

The distiller, rectifier, or bottler shall serially number each case, barrel, cask, or similar container of distilled spirits filled for shipment to the United States. In addition to the serial number of the container, the distiller, rectifier, or bottler shall plainly print, stamp, or stencil with durable coloring material, in letters and figures not less than one-half inch high, on the head of each barrel, cask or similar container or on one side of each case, as follows:

(a) The name of the manufacturer;

(b) The brand name and kind of liquor; and

(c) The wine and proof gallon contents; or, for bottles filled according to the metric standards of fill prescribed by § 5.47a, of this chapter, the contents in liters and the proof of the spirits.

NOTE.—The Director, Bureau of Alcohol, Tobacco and Firearms, has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107.

Signed: December 23, 1976.

JARVIS L. BREWER,
Acting Director.

Approved: January 17, 1977.

JERRY THOMAS,
Under Secretary of the Treasury.

[FR Doc.77-2625 Filed 1-26-77;8:45 am]

DEPARTMENT OF JUSTICE

Office of the Attorney General

[28 CFR Part 16]

[Order No. 680-77]

PRODUCTION OR DISCLOSURE OF INFORMATION

Exemption of Records System Under the Privacy Act

The Department of Justice proposes to issue a regulation exempting a system of records maintained by the Offices of the United States Attorneys, the Pre-Trial Diversion Program Files, JUSTICE/USA-015, from the provisions of subsections (c) (3) and (4), (d), (e) (1), (2) and (3), (e)(4) (G) and (H), (e) (5) and (8), (f), (g) and (h) of the Privacy Act pursuant to 5 U.S.C. 552a (j)(2) and (k) (1) and (2). The principal function of the U.S. Attorneys Offices pertains to the enforcement of criminal laws. The purposes of this exemption are to maintain the confidentiality and security of information compiled for purposes of criminal investigation or civil or regulatory law enforcement or reports compiled at any stage of the process of enforcement of the criminal laws, and to maintain the confidentiality and security of the identity of witnesses, informants, and others protected in witness security programs. Some records contained in this system of records may not be subject to exemptions. A determination will be made as to the exemption of a specific record at the time a request for notification or access is made.

These reasons for exempting this system are similar to ones published in subsection (b) of 28 C.F.R. 16.81 for other systems of the Offices of the United States Attorneys and are published within subparagraph (b) of this order.

By virtue of the authority vested in me by U.S.C. 552a (j) and (k), and as Attorney General of the United States, 28 CFR, Chapter I, Part 16, Subpart E, § 16.81 is amended by the addition of the following new paragraph (a)(9) and paragraph (b) as follows:

§ 16.81 Exemption of U.S. Attorneys Systems—Limited access, as indicated.

(a) The following system of records is exempt from 5 U.S.C. 552a (c) (3) and (4), (d), (e) (1), (2) and (3), (e) (4) (G) and (H), (e) (5) and (8), (f), (g) and (h):

* * * * *

(9) Pre-Trial Diversion Program Files (JUSTICE/USA-015)

These exemptions apply to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a (j) and (k).

(b) Exemption from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because the release of the disclosure accounting uses published for these systems would permit the subject of a criminal investigation and/or civil case or matter under investigation, litigation, regulatory or administrative review or action, to obtain valuable information concerning the nature of that investigation, case or matter and present a serious impediment to law enforcement or civil legal activities.

(2) From subsection (c)(4) since an exemption is being claimed for subsection (d), this subsection will not be applicable.

(3) From subsection (d) because access to the records contained in these systems would inform the subject of criminal investigation and/or civil investigation, matter or case of the existence of that investigation, provide the subject of the investigation with information that might enable him to avoid detection, apprehension or legal obligations, and present a serious impediment to law enforcement and other civil remedies.

(4) From subsection (e)(1) because in the course of criminal investigations and/or civil investigations, cases or matters, the United States Attorneys often obtain information concerning the violation of laws or civil obligations other than those relating to an active case or matter. In the interests of effective law enforcement and civil litigation, it is necessary that the United States Attorneys retain this information since it can aid in establishing patterns of activity and provide valuable leads for other agencies and future cases that may be brought within the United States Attorneys' offices.

(5) From subsection (e)(2) because in a criminal investigation the requirement that information be collected to the greatest extent possible from the subject individual would present a serious impediment to law enforcement in that the subject of the investigation would be placed on notice of the existence of the investigation and would therefore be able to avoid detection, apprehension or legal obligations and duties.

(6) From subsection (e)(3) because the requirement that individuals supplying information be provided with a form stating the requirements of subsection (e)(3) would constitute a serious impediment to law enforcement in that it could compromise the existence of a confidential investigation, reveal the identity of confidential sources of information and endanger the life and physical safety of confidential informants.

(7) From subsections (e)(4) (G) and (H) because these systems of records are exempt from individual access pursuant to subsections (j) and (k) of the Privacy Act of 1974.

(8) From subsection (e)(5) because in the collection of information for law enforcement purposes it is impossible to determine in advance what information is accurate, relevant, timely, and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light and the accuracy of such information can only be determined in a court of law. The restrictions of subsection (e)(5) would restrict the ability of trained investigators and intelligence analysts to exercise their judgment in reporting on investigations and impede the development of intelligence necessary for effective law enforcement.

(9) From subsection (e)(8) because the individual notice requirements of subsection (e)(8) could present a serious impediment to law enforcement as this could interfere with the United States Attorneys' ability to issue subpoenas and could reveal investigative techniques and procedures.

(10 From subsection (f) because these systems of records have been exempted from the access provisions of subsection (d).

(11) From subsections (g) and (h) because these systems of records are compiled for law enforcement purposes and have been exempted from the access provisions of subsections (d) and (f).

Interested person are invited to submit written comments concerning this proposed exemption. Comments should be mailed to the Executive Office of United States Attorneys, Department of Justice, Washington, D.C. 20530. All comments must be received by February 28, 1977. No oral hearings are contemplated Comments received will be available for inspection in Room 1266, Main Department of Justice Building, 10th and Constitution Avenue, NW., Washington, D.C.

Dated: January 18, 1977.

EDWARD H. LEVI,
Attorney General.

[FR Doc.77-2602 Filed 1-26-77;8:45 am]

NATIONAL LABOR RELATIONS BOARD

[29 CFR Part 102]

PUBLIC OBSERVATION OF MEETINGS OF THE NATIONAL LABOR RELATIONS BOARD

Proposed Rules

Pursuant to its authority under section 6 of the National Labor Relations Act, as amended (49 Stat. 452; 29 U.S.C. 156), and in accordance with section 3(a) (section 552b(g)) of the Government in the Sunshine Act, Pub. L. 94-409, September 13, 1976, 5 U.S.C., Section 552b(g), the National Labor Relations Board hereby gives notice of its intent to promulgate rules establishing the circumstances under which Board meetings will be open to public observation, the Agency's procedures for public announcement of time, place and subject matter of Board meetings, and provisions for the maintenance of minutes, transcripts or recordings of such meetings. A statement of the basis and purpose of such rules is published herewith.

STATEMENT OF PURPOSE

The Government in the Sunshine Act requires each agency to promulgate regulations to implement the provisions of that statute. This proposed Subpart S of the Rules of the National Labor Relations Board is designed to fulfill that requirement.

Section 102.137 of the subpart states the general statutory obligation that all meetings of agency members for the purpose of conducting or disposing of agency business are to be open to public observation, unless the meeting is to be closed due to the subject matter.

Section 102.138 defines the term "meeting" as applied to the Board. The reference to "at least two members of any group of three Board members to whom the Board has delegated power which it may itself exercise", is from section 3(b) of the National Labor Relations Act. Under that section three members of the Board is a quorum and two members of any designated group is established as a

quorum for purposes of the exercise of delegated powers.

Section 3(a)(d)(4) of the Sunshine Act (5 U.S.C. Section 552b(d)(4)) provides that when the majority of an agency's meetings fall within certain of the statutory reasons permitting meetings to be closed, that agency may provide by regulation for the closing of meetings falling within that provision. Section (c)(10) of the statute permits the closing of meetings which concern the agency's issuance of a subpena, its participation in a civil action or proceeding, or the initiation, conduct or disposition by the agency of a particular case of formal adjudication pursuant to the procedures of section 554 of Title 5, U.S.C., or which otherwise involve a determination on the record after opportunity for a hearing. During the three year period 1974–1976, the National Labor Relations Board held 141 meetings, the subject matter of which was the deliberation of unfair labor practice and representation proceedings pending before the Board for disposition. Of these, 59 were held in calendar year 1974, 46 in 1975 and 36 in 1976. During that same three year period the Board held a total of approximately 60 meetings on matters other than deliberation of pending cases. The Board is therefore entitled under the statute to provide by regulation for the closing to public observation of meetings falling within subsection (c)(10) of the statute. Section 102.139(a) of the proposed rules so provides.

Section 102.139(b) sets forth the other criteria contained in the statute for closing meetings, which might be applicable to this agency's activities.

Section 102.140 sets forth agency procedures to be followed in determining whether a meeting is in fact to be closed to public observation. It also provides for the public availability of the vote of members on the issue of closing.

Section 102.141 sets forth, in its various subsections, the requirements for public announcement of Board meetings, including procedures to be followed when a change of open or closed status, subject matter, or time and place, is made subsequent to the initial announcement of the meeting. The provisions also specify requirements for determining whether a meeting should be held under circumstances permitting less than the seven day prior notice to the public required by the statute, and for publication of the annuoncements in the FEDERAL REGISTER to the extent required.

Section 102.142 provides for maintenance of a transcript, recording or minutes, as may be appropriate, for each closed meeting. The section also establishes the circumstances under which those records may be made available to the public, and the agency's responsiblility concerning the period of their retention.

All persons who desire to submit written comments, views, or arguments for consideration by the Board in connection with the proposed rules should file 10 copies of the same, on or before February 28, 1977, with the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570. Copies of such communications will be available for examination by interested persons during normal business hours in the Office of the Executive Secretary of the Board, Room 701, 1717 Pennsylvania Avenue, NW., Washington, D.C. 20570.

Dated: January 24, 1977 at Washington, D.C.

JOHN C. TRUESDALE,
Executive Secretary.

The proposed rules, when promulgated, will constitute a new Subpart S of the Board's Rules and Regulations, §§ 102.137 through 102.142, and will read as follows:

Subpart S—Open Meetings

Sec
102.137 Public Observation of Board Meetings.
102.138 Definition of meeting.
102.139 Closing of meetings: reasons therefor.
102.140 Action necessary to close meeting; record of votes.
102.141 Notice of meetings; public announcement and publication.
102.142 Transcripts, recordings or minutes of closed meetings; public availability; retention.

Subpart S—Open Meetings

AUTHORITY: Sec. 6, National Labor Relations Act, as amended (49 Stat. 452; 29 U.S.C. 156) and sec. 3(a), Government in the Sunshine Act, Pub. L. 94–409, Sept. 13, 1976, 5 U.S.C. 552b(g).

§ 102.137 Public Observation of Board Meetings.

Every portion of every meeting of the Board shall be open to public observation, except as provided in § 102.139 of these rules, and Board members shall not jointly conduct or dispose of agency business other than in accordance with the provisions of this subpart.

§ 102.138 Definition of meeting.

For purposes of this subpart, "meeting" shall mean the deliberations of at least three members of the full Board, or the deliberations of at least two members of any group of three Board members to whom the Board has delegated powers which it may itself exercise, where such deliberations determine or result in the joint conduct or disposition of official agency business, but does not include deliberations to determine whether a meeting should be closed to public observation in accordance with the provisions of this subpart.

§ 102.139 Closing of meetings; reasons therefor.

(a) Except where the Board determines that the public interest requires otherwise, meetings, or portions thereof, shall not be open to public observation where the deliberations concern the issuance of a subpoena, the Board's participation in a civil action or proceeding or an arbitration, or the initiation, conduct or disposition by the Board of particular representation or unfair labor practice proceedings under sections 8, 9, or 10 of the act, or any court proceedings collateral or ancillary thereto.

(b) Meeting, or portion thereof, may also be closed by the Board, except where it determines that the public interest requires otherwise, when the deliberations concern matters or information falling within the reasons for closing meetings specified in 5 U.S.C. 552b(c)(1) (secret matters concerning national defense or foreign policy); (c)(2) (internal personnel rules and practices); (c)(3) (matters specifically exempted from disclosure by statute); (c)(4) (privileged or confidential trade secrets and commercial or financial information); (c)(5) (matters of alleged criminal conduct or formal censure); (c)(6) (personal information where disclosure would cause a clearly unwarranted invasion of personal privacy); (c)(7) (certain materials or information from investigatory files compiled for law enforcement purposes); or (c)(9)(B) (disclosure would significantly frustrate implementation of a proposed agency action).

§ 102.140 Action necessary to close meeting; record of votes.

A meeting shall be closed to public observation under § 102.139, only when a majority of the members of the Board who will participate in the meeting vote to take such action.

(a) When the meeting deliberations concern matters specified in § 102.139(a), the Board members shall vote at the beginning of the meeting, or portion thereof, on whether to close such meeting, or portion thereof, to public observation. A record of such vote, reflecting the vote of each member of the Board, shall be kept and made available to the public at the earliest practicable time.

(b) When the meeting deliberations concern matters specified in § 102.139(b), the Board shall vote on whether to close such meeting, or portion thereof, to public observation. The vote shall be taken at a time sufficient to permit inclusion of information concerning the open or closed status of the meeting in the public annoucement thereof. A single vote may be taken with respect to a series of meetings at which the deliberations will concern the same particular matters where such subsequent meetings are scheduled to be held within thirty days after the initial meeting. A record of such vote, reflecting the vote of each member of the Board, shall be kept and made available to the public within one day after the vote is taken.

(c) Whenever any person whose interests may be directly affected by deliberations during a meeting, or a portion thereof, requests that the Board close that meeting, or portion thereof, to public observation for any of the reasons specified in 5 U.S.C. section 552b(c)(5) (matters of alleged criminal conduct or formal censure), (c)(6) (personal information where disclosure would cause a clearly unwarranted invasion of personal privacy), or (c)(7) (certain materials or information from investigatory files compiled for law enforcement purposes), the Board members participating in the meeting, upon request of any one of its members, shall vote on whether to close such meeting, or a portion thereof, for that reason. A record of such vote, reflecting the vote of each member of the Board participating in the meeting shall be kept and made available to the public within one day after the vote is taken.

(d) After public announcement of a meeting as provided in § 102.141 of these rules, a meeting, or portion thereof, announced as closed may be opened, or a meeting, or portion thereof, announced as open may be closed, only if a majority of the members of the Board who will participate in the meeting determine by a recorded vote that Board business so requires and that an earlier announcement of the change was not possible. The change made and the vote of each member on the change shall be announced publicly at the earliest practicable time.

(e) For each meeting closed pursuant to § 102.139, the solicitor of the Board shall certify that in his or her opinion the meeting may be closed to the public. The certification shall set forth each applicable exemptive provision for such closing. Such certification shall be retained by the agency and made publicly available as soon as practicable.

§ 102.141 Notice of meetings; public announcement and publication.

(a) A public announcement setting forth the time, place and subject matter of meetings or portions thereof closed to public observation pursuant to the provisions of § 102.139(a) of these rules, shall be made at the earliest practicable time.

(b) Except for meetings closed to public observation pursuant to the provisions of § 102.139(a) of these rules, the agency shall make public announcement of each meeting to be held at least 7 days before the scheduled date of the meeting. The announcement shall specify the time, place and subject matter of the meeting, whether it is to be open to public observation or closed, and the name, address, and phone number of an agency official designated to respond to requests for information about the meeting. The 7 day period for advance notice may be shortened only upon a determination by a majority of the members of the Board who will participate in the meeting that agency business requires that such meeting be called at an earlier date, in which event the public announcements shall be made at the earliest practicable time. A record of the vote to schedule a meeting at an earlier date shall be kept and made available to the public.

(c) Within one day after a vote to close a meeting, or any portion thereof, pursuant to the provisions of § 102.139(b) of these rules, the agency shall make publicly available a full written explanation of its action closing the meeting, or portion thereof, together with a list of all persons expected to attend the meeting and their affiliation.

(d) If after public announcement required by paragraph (b) of this section has been made, the time and place of the meeting are changed, a public announcement shall be made at the earliest practicable time. The subject matter of the meeting may be changed after the public announcement only if a majority of the members of the Board who will participate in the meeting determine that agency business so requires and that no earlier announcement of the change was possible. When such a change in subject matter is approved a public announcement of the change shall be made at the earliest practicable time. A record of the vote to change the subject matter of the meeting shall be kept and made available to the public.

(e) All announcements or changes thereto issued pursuant to the provisions of paragraphs (b) and (d) of this section, or pursuant to the provisions of § 102.140(d), shall be submitted for publication in the FEDERAL REGISTER immediately following their release to the public.

(f) Announcements of meetings made pursuant to the provisions of this section shall be made publicly available by the executive secretary.

§ 102.142 Transcripts, recordings or minutes of closed meetings; public availability; retention.

(a) For every meeting or portion thereof closed under the provisions of § 102.139 of these rules, the presiding officer shall prepare a statement setting forth the time and place of the meeting and the persons present, which statement shall be retained by the agency. For each such meeting or portion thereof there shall also be maintained a complete transcript or electronic recording of the proceedings, except that for meetings closed pursuant to § 102.139(a) the Board may, in lieu of a transcript or electronic recording, maintain a set of minutes fully and accurately summarizing any action taken, the reasons therefor and views thereon, documents considered, and the members' vote on each roll call vote.

(b) The agency shall make promptly available to the public copies of transcripts, recordings or minutes maintained as provided in accordance with paragraph (a) of this section, except to the extent the items therein contain information which the agency determines may be withheld pursuant to the provisions of 5 U.S.C. section 552b(c). Copies of transcripts or minutes, or transcriptions of electronic recordings including the identification of speakers, shall, to the extent determined to be publicly available, be furnished to any person, subject to the payment of duplication costs in accordance with the schedule of fees set forth in § 102.117(c)(2(iv), and the actual cost of transcription.

(c) The agency shall maintain a complete verbatim copy of the transcript, a complete electronic recording, or a complete set of the minutes for each meeting or portion thereof closed to the public, for a period of at least one year after the close of the agency proceeding of which the meeting was a part, but in no event for a period of less than two years after such meeting.

[FR Doc.77-2736 Filed 1-26-77;8:45 am]

DEPARTMENT OF TRANSPORTATION

Coast Guard

[33 CFR Part 181]

[CGD 75–008a]

PERSONAL FLOTATION DEVICES

Proposed Information Pamphlet

Correction

In FR Doc. 76–37229 appearing on page 55478 in the issue for Monday, December 20, 1976, the format of § 181.705 was incorrect. It is being reprinted below to correctly reflect material to be published in a pamphlet. Section 181.703 is also being reprinted since it contains internal references to material in § 181.705.

§ 181.703 PFD information pamphlet: manufacturer requirements.

Each manufacturer of a Type I, II, III, IV, or V personal flotation device that is sold or offered for sale for use on a recreational boat shall furnish the information required by § 181.705 with each device by meeting one of the following:

(a) If the personal flotation device package is not transparent—

(1) The information in paragraph (a) of § 181.705 of this subpart must be printed on the outside of the package; and

(2) The information in paragraph (b) of § 181.705 of this subpart must be printed in a pamphlet and the pamphlet must be enclosed in each package.

(b) If the personal flotation device package is transparent—

(1) The information in paragraph (a) of § 181.705 of this subpart must be printed on the front page of a pamphlet and the pamphlet must be enclosed in each package so that the front page can be read through the package; and

(2) The information in paragraph (b) of § 181.705 of this subpart must be printed on the remaining pages of the pamphlet.

(c) If the personal flotation device is not in a package, a pamphlet that meets paragraph (b) of this section must be attached to each personal flotation device so that a purchaser can remove it.

§ 181.705 PFD information pamphlet: contents.

Each manufacturer of a Type I, II, III, IV, or V personal flotation device shall furnish, under the requirements of § 181.703 of this subpart, the information in this section with each PFD that is sold or offered for sale for use on a recreational boat and may include additional information. Instructions or illustrations:[1]

[1] The illustrations required by paragraph (a) of § 181.705 may be photographs or drawings. Each manufacturer should use illustrations of his own products. If this is not possible, illustrations of other Coast Guard approved PFD's may be used

(a) PERSONAL FLOTATION DEVICES FOR RECREATIONAL BOATS; FEDERAL REGULATIONS REQUIRED: [1]

(a) No person may use a recreational boat less than 16 feet in length or a canoe or kayak unless at least one personal flotation device of the following types is on board for each person:

(1) Type I PFD.
(2) Type II PFD.
(3) Type III PFD.
(4) Type IV PFD.

(b) No person may use a recreational boat 16 feet or more in length, except a canoe or kayak, unless at least one personal flotation device of the following types is on board for each person:

(1) Type I PFD.
(2) Type II PFD.
(3) Type III PFD.

(c) No person may use a recreational boat 16 feet or more in length, except a canoe or kayak, unless at least one Type IV PFD is on board in addition to the PFDs required in paragraph (b).

THERE ARE FIVE TYPES OF PERSONAL FLOTATION DEVICES

This is a Type (I, II, III, IV, or V) PFD

Type I—A Type I PFD has the greatest buoyancy and is designed to turn an unconscious person in the water from a face down position to a vertical or slightly backward position and to maintain the person in the vertical or slightly backward position. The Type I PFD is recommended for all waters, especially for cruising on waters where there is a probability of delayed rescue, such as large bodies of water where it is not likely that a significant number of boats will be in close proximity. This type PFD is the most effective of all the types in rough water. The Type I PFD is available in two sizes—Adult (90 lbs. or more) and child (less than 90 lbs.).

(Illustration of Type I PFD)

Type II—A Type II PFD is designed to maintain the wearer in a vertical or slightly backward position in the water. The Type II PFD is usually more comfortable to wear than the Type I. The Type II is recommended for use where there is a probability of quick rescue, such as areas where boating, fishing, and other water activities are likely to occur. The Type II PFD is available in three sizes—Adult (more than 90 lbs.), Medium Child (50 lbs. to 90 lbs.), and Small Child (less than 50 lbs.).

(Illustration of Type II PFD)

Type III—The Type III PFD is designed so that the wearer can place him or herself in a vertical or slightly backward position, and can maintain that position with a minimum of effort. A Type III is the most comfortable, comes in several sizes, and is usually the best choice for water sports, such as skiing. The Type III is recommended for use where there is a probability of quick rescue, such as areas where boating, fishing and other water activities are likely to occur.

(Illustration of Type III PFD)

Type IV—A Type IV PFD is designed to be thrown to a person who has fallen overboard and to be grasped and held by him until he is rescued.

(Illustration of Type IV PFD)

Type V—A Type V PFD is a PFD approved for restricted uses. No. Type V PFD is currently approved for use on recreational boats.

(Illustration of Type V PFD)

(b) YOUR PERSONAL FLOTATION DEVICE

You are required by Federal Regulation to have at least one Coast Guard approved personal flotation device (PFD) for each person in your recreational boat. You may not use your recreational boat unless all your PFD's are in serviceable condition, are readily accessible, are legibly marked with the Coast Guard approval number, and are of an appropriate size for each person on board.

WHY DO YOU NEED A PFD?

Your PFD provides buoyancy to help keep your head above the water and to help you remain in a satisfactory position in the water. The average weight of an adult is only 10 to 12 pounds in the water and the buoyancy provided by the PFD is necessary to support that weight in water. Unfortunately, your body weight does not determine how much you will weigh in water. In fact, your weight in water changes slightly throughout the day. There is no simple method of determining your weight in water. You should try the device in the water to make sure it supports your mouth out of the water. Remember, all straps, zippers, and tie tapes must be used and of course the PFD must be the proper size (size limitations are on the label).

HYPOTHERMIA

Hypothermia, the loss of body heat to the water, is probably the greatest cause of deaths. Often the cause of death is listed as drawning; but, most often the primary cause is hypothermia and the secondary cause is drowning. After an individual has succumbed to hypothermia, he will lose consciousness and then drown. The following chart shows the effects of hypothermia:

Water temperature (degrees Fahrenheit)	Exhaustion or unconsciousness	Expected time of survival
32.5 to 40	Under 15 min	Under 15 to 45 min.
32.5 to 40	15 to 30 min	30 to 90 min.
40 to 50	30 to 60 min	1 to 3 hr.
50 to 60	1 to 2 hr	1 to 6 hr.
60 to 70	2 to 7 hr	2 to 40 hr.
70 to 80	3 to 12 hr	3 hr to indefinite.
Over 80	Indefinite	Indefinite.

PFD's can increase survival time because of the insulation they provide. Naturally, the warmer the water, the less insulation one will require. When operating in cold waters (below 40°F) consideration should be given to using a coat or jacket style PFD as they cover more of the body than the vest style PFD's.

Some points to remember about hypothermia protection:

1. While afloat in the water, do not attempt to swim unless it is to reach a nearby craft, fellow survivor, or a floating object on which you can lean or climb. Unnecessary swimming increases the rate of body heat loss.

2. Keep a positive attitude about your survival and rescue. This will improve your chances of extending your survival time until rescue. Your will-to-live does make a difference!

3. If there is more than one person in the water, huddling is recommended while waiting to be rescued. This action tends to reduce the rate of heat loss and thus increase the survival time.

4. Always wear your PFD, it won't help you fight off the effects of hypothermia if you don't have it on when you go into the water.

EACH OF THESE DEVICES IS INTENDED TO HELP YOU SAVE YOUR OWN LIFE

For your PFD to function properly, follow these suggestions to insure that it fits, floats, and remains in good condition:

(1) Try your wearable PFD on and adjust it until it fits comfortably in and out of the water.

(2) Mark your PFD with your name if you are the only wearer.

(3) Try your PFD out in the water. This will show you how it works, and will give you confidence when you use it.

(4) Do not alter your PFD. If it doesn't fit properly, get one that does. An altered device is no longer Coast Guard approved.

(5) Use your PFD only for the purpose for which it is intended. Do not use it as a boat fender or kneeling pad.

(6) Inspect your PFD periodically to insure that it is free of rips, tears, or holes, that the flotation pads have no leaks, and that all seams and joints are securely sewn.

(7) Keep your PFD away from sharp objects which may rip the fabric or puncture the flotation pads.

(8) If your PFD contains kapok, the kapok fibers may become waterlogged and lose their buoyancy after the vinyl inserts are split or punctured. When the kapok becomes hard or if the device is soaked with water, it is no longer serviceable. It may not work when you need it and must be replaced.

(9) If your PFD is wet, allow it to dry thoroughly before storing it.

(10) Store your PFD in a well ventilated area.

PFD'S AND CHILDREN

A child is difficult to float in a safe position because of the distribution of body weight and because a child tends to panic when suddenly in an unfamiliar environment. The violent movement of the arms and legs in an attempt to "climb out" of the water tends to nullify the stability of the PFD. An approved device will keep a child afloat, but not always in a face-up position. A child should be taught how to put on the device and should be allowed to try it out in the water. It is important that the child feels comfortable and knows what the PFD is for and how it functions. Parents should note, however, that PFD's are not a substitute for adult supervision.

WEAR YOUR PFD

Your personal flotation device won't help you if you don't have it on. If you don't choose to wear it at all times, you should keep it handy and put it on when heavy weather threatens, or when danger is imminent. Don't wait until it is too late. Non-swimmers and children especially should wear their PFD's at all times when on or near the water.

REMEMBER—SAFE BOATING IS NO ACCIDENT

If you need more information about PFD's and safe recreational boating, contact your State boating authority, U.S. Coast Guard Auxiliary, U.S. Power Squadron, Red Cross, or your nearest unit of the U.S. Coast Guard.

(46 U.S.C. 1454, 1488; 49 CFR 1.46(n)(1))

[1] Coast Guard regulations and special exceptions of these regulations are in Part 175 of Title 33, Code of Federal Regulations.

LIBRARY OF CONGRESS

Copyright Office

[37 CFR Part 201]

[Docket RM 77-1]

RECORDING OF NOTICES OF IDENTITY AND SIGNAL CARRIAGE COMPLEMENT OF CABLE SYSTEMS

Notice of Proposed Rulemaking

AGENCY: Library of Congress, Copyright Office.

ACTION: Proposed rule.

SUMMARY: The purpose of this notice of proposed rulemaking is to advise the public that the Copyright Office of the Library of Congress is considering the adoption of a new regulation designed to implement a section of Pub. L. 94–553 (90 Stat. 2541), the Act for General Revision of the Copyright Law, pertaining to the recording of certain notices by cable systems.

DATES: Initial comments should be received on or before February 18, 1977. Reply comments on or before March 4, 1977.

ADDRESS: Interested persons should submit written comments to:

Office of General Counsel, Copyright Office, Washington, D.C. 20559.

FOR FURTHER INFORMATION, CONTACT:

Jon Baumgarten, General Counsel, Copyright Office, Washington, D.C. 20559 (703–557–8731).

SUPPLEMENTARY INFORMATION: Section 111(c) of the first section of Pub. L. 94–553 establishes a compulsory licensing system under which cable systems may make secondary transmissions of copyrighted works. Initial conditions of the compulsory license are set forth in § 111(d)(1) as follows:

> For any secondary transmission to be subject to compulsory licensing under subsection (c), the cable system shall, at least one month before the date of the commencement of operations of the cable system or within one hundred and eighty days after the enactment of this Act, whichever is later, and thereafter within thirty days after each occasion on which the ownership or control or the signal carriage complement of the cable system changes, record in the Copyright Office a notice including a statement of the identity and address of the person who owns or operates the secondary transmission service or has power to exercise primary control over it, together with the name and location of the primary transmitter or primary transmitters whose signals are regularly carried by the cable system, and thereafter, from time to time, such further information as the Register of Copyrights, after consultation with the Copyright Royalty Tribunal (if and when the Tribunal has been constituted), shall prescribe by regulation to carry out the purpose of this clause.

Section 111(d)(1) thus establishes the following recording requirements for cable systems, if they are to enjoy the benefits of the compulsory license provided by section 111(c):

(1) Any system that is in operation on April 17, 1977 (180 days after the effective date of the new law) must record the following information in the Copyright Office no later than April 18, 1977: [1]

(a) "the identity and address of the person who owns or operates the secondary transmission service or has power to exercise primary control over it"; and

(b) "the name and location of the primary transmitter or primary transmitters whose signals are regularly carried by the cable system".

(2) Any system that begins operation after April 17, 1977, must record the specified information (quoted in the preceding paragraph) at least one month before the date operations commence. (As a transitional exception, the recording deadline for any system that starts operating between April 18, 1977, and May 18, 1977, is April 18, 1977.)

(3) After making the initial record (described in the preceding two paragraphs), the cable system must then make supplemental records "within thirty days after each occasion on which the ownership or control or the signal carriage complement of the cable system changes."

(4) In addition to the initial and supplemental records (described in the preceding three paragraphs), the cable system must record "thereafter, from time to time, such further information as the Register of Copyrights, after consultation with the Copyright Royalty Tribunal (if and when the Tribunal has been constituted), shall prescribe by regulation to carry out the purpose of this clause."

The main purpose of the proposed regulation is to make clear that the public records of the Copyright Office are open, well in advance of the first statutory deadline of April 18, 1977, to the initial recording of notices of identity and signal carriage required by section 111(d)(1). The Office's records will also be opened to the recording of the supplemental information required upon changes of ownership, control or signal carriage complement. It is proposed that the recording of these notices be covered by the addition of a new § 201.11 to the regulations of the Copyright Office. The proposed section pertains to the nature of the document to be filed and the action to be taken by the Copyright Office upon its receipt.

The proposed regulation is an interim measure. Section 111(d)(1) authorizes the Register of Copyrights to prescribe regulations under which, after the initial information has been recorded, the recording of "further information * * * to carry out the purpose of this clause" can be required. Moreover, the recording provisions of § 111(d)(1) are part of a larger statutory scheme of compulsory licensing under which cable systems will be required to record or file other information in the Copyright Office. Fairly extensive rulemaking procedings, with the fullest possible public and industry participation, will be needed before the Copyright Office can prescribe in detail all of the information that cable systems must record under § 111 as whole. These proceedings will be instituted in the near future, but they obviously cannot be concluded before the initial deadline of April 18, 1977.

For this reason the proposed regulation, in prescribing the requirements for recording an "initial notice" and a "notice of change", follows the express statutory language of section 111–(d)(1). At the same time, the proposed regulation contains suggestions as to how these requirements should appropriately be interpreted in practice, and further suggestions for additional information that should appropriately be included in the notices. These suggested interpretations and additional information are of the sort that can be expected to be included in future, definitive regulations prescribed under section 111 as a whole. By including them as suggestions in the proposal for an interim regulation, the Copyright Office hopes to encourage public comment on the issues they raise, and to reduce, at least to some extent, the amount of additional information required to be recorded under definitive regulations issued after April 18, 1977

In addition to general comments on the points raised above, specific comments are invited upon the following:

(1) The Office has considered the possibility of cable systems recording copies of FCC Form 325, "Annual Report of Cable Television Systems", instead of separately prepared notices. It is noted, however, that (a) FCC Form 325 does not include the "location" of primary transmitters as required by § 111(d)(1); and (b) paragraph 4 of Schedule 2 to FCC Form 325 does not require identification of individual primary FM radio transmitters where the cable system carries all FM band signals.

(2) Attention is directed to the definition of signals "regularly carried" at page 95 of H.R. Rep. No. 94–1476, 94th Cong., 2d Sess. The report states that "signals 'regularly carried' by the system mean those signals which the Federal Communications Commission has specifically authorized the cable system to carry, and which are actually carried by the system on a regular basis." In preparing this proposal the Copyright Office has considered the phrase "specifically authorized" to include identification of any primary transmitter whose signals are actually carried by the cable system under the "authority" of any permissive or mandatory rule, regulation or authorization of the Federal Communications Commission, or in the absence of any prohibitory Commission rule or regulation, if the signals are carried on a regular basis. We have thus considered that (a) distinctions between categories of signals, such as radio and television, network and independent, commercial and noncommercial, and local and distant, are irrelevant for this purpose; but that (b) identification of primary transmitters whose signals are carried on a sporadic basis, such as under program substitution rules of the Federal Communications Commission, is not required.

Authority. This regulation is proposed under 17 U.S.C. 207 and 215, and under sections 111(d)(1) and 702 of Title 17 of

[1] Since April 17, 1977 is a Sunday, the deadline for recording is the next business day.

the United States Code as amended by Pub. L. 94–553.

Proposed Regulation. In consideration of the foregoing, it is proposed to amend Part 201 of 37 CFR chapter II by adding a new § 201.11 to read as follows:

§ 201.11 Notices of identity and signal carriage complement of cable systems.

(a) *Definitions.* (1) An "Initial Notice of Identity and Signal Carriage Complement" is a notice under section 111(d)(1) of Title 17 of the United States Code is amended by Pub. L. 94–553 and required by that section to be recorded in the Copyright Office "at least one month before the date of the commencement of operations of the cable system or within one hundred and eighty days after (October 19, 1976), whichever is later" for any secondary transmission by the cable system to be subject to compulsory licensing.

(2) A "Notice of Change of Identity or Signal Carriage Complement" is a notice under section 111(d)(1) of Title 17 of the United States Code as amended by Pub. L. 94–553 and required by that section to be recorded in the Copyright Office "within thirty days after each occasion on which the ownership or control or the signal carriage complement of the cable system changes" for any secondary transmission by the cable system to be subject to compulsory licensing.

(b) *Forms.* The Copyright Office does not provide printed forms for the use of persons recording Initial Notices or Notices of Change.

(c) *Contents.* (1) An Initial Notice of Identity and Signal Carriage Complement shall be identified as such by prominent caption or heading, and shall include the following:

(i) The identity and address of the person who, or entity which, owns or operates the cable system or has power to exercise primary control over it. It is suggested that the "identity" include the legal name of the person or entity, together with any fictitious or assumed name used for the purpose of conducting the business of the cable system, and that the "address" be given as the full mailing address of that person or entity. It is further suggested that the Notice include the legal name, fictitious or assumed name (if any), and full mailing address of the cable system if different from the above, together with the name of the community served by the system.

(ii) The name and location of the primary transmitter or primary transmitters whose signals are regularly carried by the cable system. It is suggested that the "name" of the primary transmitter be given by station call sign, accompanied by a brief statement of the type of signal carried (for example, "TV", "FM" or "AM"); and that the "location" of the primary transmitter be given as the name of the community to which the transmitter is licensed by the Federal Communications Commission (in the case of domestic signals) or with which the transmitter is identified (in the case of foreign signals).

(2) A Notice of Change of Identity or Signal Carriage Complement shall be clearly identified as such by prominent caption or heading, and shall include the information required by paragraph (c)(1) of this section. It is suggested that the notice also include a brief statement of the nature and date of the change which occasioned the recording of the notice.

(d) *Signature.* It is suggested that all Initial Notices and Notices of Change be dated and that they contain the individual signature of the person identified as the individual person who owns or operates the cable system or has power to exercise primary control over it, or by a duly authorized representative of that person; or, if an entity is identified as owning, operating, or controlling the system, the signature should be that of an officer if the entity is a corporation, or a partner if the entity is a partnership.

(e) *Recording in Copyright Office.* (1) The Copyright Office will record the Notices described in this section by placing them in the appropriate public files of the Office.

(2) Upon request and payment of a fee of $3, the Copyright Office will furnish a certified receipt for any such Notice.

Dated: January 18, 1977.

BARBARA RINGER,
Register of Copyrights.

Approved by:

DANIEL J. BOORSTIN,
Librarian of Congress.

[FR Doc.77–2750 Filed 1–26–77;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of the Secretary

[45 CFR Chapter I]

MUSEUM SERVICES ACT

Intent To Issue Regulations

On October 8, 1976, the President signed the Arts, Humanities, and Cultural Affairs Act of 1976, cited as Pub. L. 94–462. The Act contains five titles, Title II of which is the Museum Services Act. This Notice of Intent to Issue Regulations is exclusively concerned with Title II.

The purpose of this Notice of Intent is two-fold. First, it serves to make the public aware of the existence and provisions of the Museum Services Act, as well as, projected Department of Health, Education, and Welfare activities to implement the Act through the regulations process. Secondly, the Notice of Intent facilitates public involvement in the rulemaking process at an early stage by focusing attention on issues basic to the implementation of the Act. The proposed regulations will be published in the FEDERAL REGISTER as a Notice of Proposed Rulemaking with another opportunity for public comment before publication as final regulations. We are not, of course, asking for recommendations amending the Act. We are concerned solely with the identification of issues involving clarification, interpretation, and specification which arise from the provisions of the Act.

LEGISLATIVE HISTORY

With the authorization of appropriations for the National Foundation on the Arts and Humanities expiring at the end of Fiscal Year 1976, joint hearings on the legislation, including the proposed Museum Services Act, were held in November 1975 by the Subcommittee on Select Education of the House Committee on Education and Labor and the Special Subcommittee on Arts and Humanities of the Senate Committee on Labor and Public Welfare. These hearings resulted in S. 3440, Committee Report 94–880 (May 14, 1976) and H.R. 12838, Committee Report 94–1024 (April 9, 1976). Final enactment by the Congress of H.R. 12838, Conference Report 94–1260, occurred on September 20, 1976.

SUMMARY OF MUSEUM SERVICE ACT PROVISIONS

The Act establishes within the Department of Health, Education, and Welfare an Institute of Museum Services, consisting of a National Museum Services Board and a Director of the Institute. The Board consists of fifteen members, appointed by the President with the advice and consent of the Senate, broadly representative of various museums, of the curatorial, educational and cultural resources of the United States, and of the general public. The Director is appointed by the President with the advice and consent of the Senate, will be compensated at the rate for executive level V, and will report to the Secretary of Health, Education, and Welfare with respect to the activities of the Institute.

Subject to the policy direction of the Board, the Director is authorized to make grants to museums to increase and improve museum services including: (1) The construction and installation of displays and exhibitions; (2) developing and maintaining experienced staff; (3) meeting the administrative costs of preserving and maintaining collections and providing educational programs to the public; (4) inter-museum arrangements; (5) the conservation of artifacts and art objects; and (6) developing and carrying out special programs for specific population groups. Grants under this title can be used to pay up to 50 percent of the cost of programs, except that up to 20 percent of the total appropriation can be used for grants without regard to that limitation. The Institute is authorized to accept grants, gifts, and bequests of money for use in furtherance of the functions of the Institute.

The amount authorized to be appropriated for grants by the Institute is $15 million for Fiscal Year 1977, $25 million for Fiscal Year 1978, and such sums as may be necessary for Fiscal Years 1979 and 1980. Such sums as may be necessary is also authorized to be appropriated to administer the provisions of this title. A further authorization is provided through Fiscal Year 1980 to match the amount of any private contributions to the Institute.

ISSUES

ISSUE 1: SELECTION OF NATIONAL MUSEUM SERVICES BOARD MEMBERS

The statute requires that Board membership be "broadly representative of various museums * * *" What criteria, if any, should the Department of Health, Education, and Welfare recommend to the President to insure such broad representation? What kind of selection process, if any, would be most likely to help the President meet this goal?

ISSUE 2: COORDINATION

The statute mandates that the Board "assure that the policies and purposes of the Institute are coordinated with other activities of the Federal Government." In addition, the statute amends the National Foundation on the Arts and Humanities Act of 1965 to require that the Federal Council on the Arts and Humanities "advise and consult with the National Museum Services Board and with the Director of the Institute of Museum Services * * *" How extensive should such coordination be? How can such coordination be most effectively implemented? How should the relationship between the Federal Council and the Institute's Board and Director be precisely defined?

ISSUE 3: DEFINITION OF MUSEUM

The statute defines museum as "a public or private non-profit agency or institution organized on a permanent basis for essentially educational or esthetic purposes, which, utilizing a professional staff, owns or utilizes tangible objects, cares for them, and exhibits them to the public or a regular basis."

Is this definition adequate for program administration? If not, what expansion and/or clarification is necessary?

ISSUE 4: ELIGIBILITY

Any institution which qualifies under the definition of "museum" is eligible to apply for a grant to improve its services. In this application process should such institutions be required to meet any specific accreditation standards in order to be eligible for a grant under this program?

ISSUE 5: ACTIVITIES OF THE INSTITUTE

The statute authorizes the Director, with the policy direction of the Board, to make grants to museums for a variety of activities. The description of these activities, which is not meant to be all inclusive, raises a number of specific questions:

Given the authorization level in the Act, should there be any limit on the cost or extent of construction or installation of displays?

How should the Department define the terms "professionally-trained" and "otherwise experienced" in relation to museum staff: Should the Department through this program consider subsidizing undergraduate education, graduate fellowships, inservice training for museum employees, or any combination of the above?

How should the Department define what constitutes a traveling exhibition? What are legitimate transportation costs?

How should the Department define the term "conservation" of artifacts and art objects?

What will qualify as a "specialized program for specific segments of the public?" Should other segments be identified in a regulation?

In each case above what specific criteria should be set up in order to assure funding of the most appropriate and most valid proposals?

Finally, given the sweep of this legislation, are there any specific types of activities related to the operation of museums which should not qualify for funding under this statute?

ISSUE 6: MATCHING REQUIREMENTS

An issue within this category which deserves special attention is that relating to the distribution of funds. Grants under this section may not exceed one half of the cost of the program for which the grant is made except that "not more than 20 per centum" of the funds available may be allocated without regard to such limitations. The Department would like to solicit advice as to what criteria should be used to determine which projects or programs should qualify for more than 50 percent funding.

An additional question relates to the sources of recipients' matching funds. Should some or all of these funds come from new funds or should recipients be permitted to use funds from existing budget levels to fulfill the matching requirements?

Further, how should the Department interpret the phrase "immediate disbursement?" Does money have to be obligated within a given fiscal year? Is any specific time frame appropriate?

ISSUE 7: FUNDING

While the statute provides some detail regarding the scope of activities which qualify for funding by the Institute, little is said about how the authorization should be divided among the range of eligible activities:

Should funds be earmarked for certain kinds of museums (art, science, history, other)?

Should funds be earmarked for certain kinds of museum services, for specialized programs, for specific segments of the public?

Should additional weight be given to museums' past efforts at and/or future interest in educational programs?

Should additional weight be given to funding an institution's present needs or new initiatives?

Should some money be earmarked for evaluation activities related to this program?

What, if any, evidence of eligibility and/or need will institutions be required to submit during the funding process?

OTHER ISSUES

The Secretary of Health, Education, and Welfare welcomes comments, advice, and guidance from any member of the general public on any of the issues set forth in this Notice of Intent and on any other issues related to the Museum Services Act. We hope that this Notice of Intent will both benefit the development of regulations and promote an understanding of the process.

COMMENTS

Comments are due by March 15, 1977.

Addressed to: Room 403–E—South Portal Building, 200 Independence Avenue, S.W., Washington, D.C. 20201.

For further information call, Dr. J. Anthony Imler 202–245–1889.

Approved: January 18, 1977.

MARJORIE LYNCH,
Acting Secretary.

[FR Doc 77–2653 Filed 1–26–77;8:45 am]

NATIONAL TRANSPORTATION SAFETY BOARD

[49 CFR Part 804]

RULES IMPLEMENTING THE GOVERNMENT IN THE SUNSHINE ACT

Proposed Rulemaking

Pursuant to the Government in the Sunshine Act (Act), Pub. L. 94–409, the National Transportation Safety Board (NTSB) gives notice that it proposes to amend Chapter VIII, Title 49, Code of Federal Regulations, by adding a new Part 804 entitled "Rules Implementing the Government in the Sunshine Act."

The Act requires that meetings of multimember Government agencies, including the NTSB, be open to public observation subject to 10 exemptions. The Act also requires public announcement of every meeting. To facilitate widespread dissemination of the public announcement referred to in proposed § 804.7, the NTSB will, in addition to publishing a notice of each announcement in the FEDERAL REGISTER, post the announcements on meeting notice bulletin boards, submit the announcements to the media, and establish a mailing list for anyone desiring to receive announcements. Requests to be placed on this mailing list should be addressed as follows: Meetings Announcement Mailing List, Publications Unit, National Transportation Safety Board, Washington, D.C. 20594.

Interested persons are invited to submit written comments concerning the proposed regulations to the General Counsel, National Transportation Safety Board, 800 Independence Avenue, S.W., Washington, D.C. 20594, on or before February 28, 1977.

Accordingly, the NTSB proposes to establish Part 804 of Chapter VIII, Title 49, Code of Federal Regulations, to read as follows:

PART 804—RULES IMPLEMENTING THE GOVERNMENT IN THE SUNSHINE ACT

Sec.

804.1 Applicability.
804.2 Policy.
804.3 Definitions.
804.4 Open meetings requirement.
804.5 Grounds on which meetings may be closed or information may be withheld.

Sec.

804.6 Procedures for closing meetings, or withholding information, and requests by affected persons to close a meeting.
804.7 Procedures for public announcement of meetings.
804.8 Changes following public announcement.
804.9 Transcripts, recordings, or minutes of closed meetings.
804.10 Availability and retention of transcripts, recordings, and minutes, and applicable fees.

AUTHORITY: Government in the Sunshine Act, Pub. L. 94-409, 90 Stat. 1241 (5 U.S.C. 552b); Independent Safety Board Act on 1974, Pub. L. 93-633, 88 Stat. 2166 (49 U.S.C. 1901 et seq.).

§ 804.1 Applicability.

(a) This part implements the provisions of the Government in the Sunshine Act (5 U.S.C. 552b). These procedures apply to meetings, as defined herein, of the Members of the National Transportation Safety Board (NTSB).

(b) Documents which are considered at meetings may be obtained subject to the procedures and exemptions set forth in Part 801 of the NTSB regulations (49 CFR Part 801).

§ 804.2 Policy.

It is the policy of the NTSB to provide the public with the fullest practicable information regarding the decisionmaking processes of the Board, while protecting the rights of individuals and the ability of the Board to discharge its statutory functions and responsibilities. The public is invited to attend but not to participate in open meetings.

§ 804.3 Definitions.

As used in this part: "Meeting" means the deliberations of three or more Members where such deliberations determine or result in the joint conduct or disposition of official NTSB business, and includes conference telephone calls otherwise coming within the definition. A meeting does not include:

(a) Notation voting or similar consideration of business, whether by circulation of material to the Members individually in writing or by a polling of the Members individually by telephone.

(b) Deliberations by three or more Members (1) to open or to close a meeting or to release or to withhold information pursuant to § 804.6, (2) to call a meeting on less than seven days' notice as permitted by § 804.7(b), or (3) to change the subject matter or the determination to open or to close a publicly announced meeting under § 804.8(b).

"Member" means an individual duly appointed and confirmed to the collegial body, known as "the Board," which heads the NTSB.

"National Transportation Safety Board (NTSB)" means the agency set up under the Independent Safety Board Act of 1974.

§ 804.4 Open meetings requirement.

Members shall not jointly conduct or dispose of agency business other than in accordance with this part. Except as provided in § 804.5, every portion of every meeting of the Board shall be open to public observation.

§ 804.5 Grounds on which meetings may be closed or information may be withheld.

Except in a case where the Board finds that the public interest requires otherwise, a meeting may be closed and information pertinent to such meeting otherwise required by §§ 804.6, 804.7, and 804.8 to be disclosed to the public may be withheld if the Board properly determines that such meeting or portion thereof or the disclosure of such information is likely to:

(a) Disclose matters that are (1) specifically authorized under criteria established by an Executive Order to be kept secret in the interests of national defense or foreign policy, and (2) are in fact properly classified pursuant to such Executive Order;

(b) Relate solely to the internal personnel rules and practices of the NTSB;

(c) Disclose matters specifically exempted from disclosure by statute (other than 5 U.S.C. 552): *Provided*, That such statute (1) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (2) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(d) Disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(e) Involve accusing any person of a crime, or formally censuring any person;

(f) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(g) Disclose investigatory records compiled for law enforcement purposes, or information which if written would be contained in such records, but only to the extent that the production of such records or information would:

(1) Interfere with enforcement proceedings;

(2) Deprive a person of a right to a fair trial or an impartial adjudication;

(3) Constitute an unwarranted invasion of personal privacy;

(4) Disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source;

(5) Disclose investigative techniques and procedures; or

(6) Endanger the life or physical safety of law enforcement personnel;

(h) Disclose information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions;

(i) Disclose information the premature disclosure of which would—

(1) In the case of an agency which regulates currencies, securities, commodities, or financial institutions, be likely to (i) lead to significant financial speculation in currencies, securities, or commodities or (ii) significantly endanger the stability of any financial institution; or

(2) In the case of any agency, be likely to significantly frustrate implementation of a proposed agency action, except that this paragraph shall not apply in any instance where the NTSB has already disclosed to the public the content or nature of its proposed action, or where the NTSB is required by law to make such disclosure on its own initiative prior to taking final agency action on such proposal; or

(j) Specifically concern the Board's issuance of a subpoena, or the NTSB's participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct, or disposition by the NTSB of a particular case of formal agency adjudication pursuant to the procedures in 5 U.S.C. 554 or otherwise involving a determination on the record after opportunity for a hearing.

§ 804.6 Procedures for closing meetings, or withholding information, and requests by affected persons to close a meeting.

(a) A meeting shall not be closed, or information pertaining thereto withheld, unless a majority of all Members votes to take such action. A separate vote shall be taken with respect to any action under § 804.5. A single vote is permitted with respect to a series of meetings, a portion or portions of which are proposed to be closed to the public, or with respect to any information concerning such series of meetings, so long as each meeting in such series involves the same particular subject matters and is scheduled to be held no more than thirty days after the initial meeting in such series. Each Member's vote under this paragraph shall be recorded and proxies are not permitted.

(b) Any person whose interest may be directly affected if a portion of a meeting is open may request the Board to close that portion on any of the grounds referred to in 804.5 (e), (f), or (g). Requests, with reasons in support thereof, should be submitted to the General Counsel, National Transportation Safety Board, 800 Independence Avenue, S.W., Washington, D.C. 20594. On motion of any Member, the Board shall determine by recorded vote whether to grant the request.

(c) Within one working day of any vote taken pursuant to this section, the NTSB shall make available a written copy of such vote reflecting the vote of each Member on the question and, if a portion of a meeting is to be closed to the public a full written explanation of its action closing the meeting and a list of all persons expected to attend and their affiliation.

(d) For every closed meeting, the General Counsel of the NTSB shall publicly certify that, in his or her opinion, the meeting may be closed to the public and shall state each relevant exemptive provision. A copy of such certification, together with a statement of the presiding officer setting forth the time and place of the meeting and the persons present, shall be retained by the NTSB as part of the transcript, recording, or minutes required by § 804.9.

§ 804.7 Procedures for public announcement of meetings.

(a) For each meeting, the NTSB shall make public announcement, at least one week before the meeting, of the:

(1) Time of the meeting;

(2) Place of the meeting;

(3) Subject matter of the meeting;

(4) Whether the meeting is to be open or closed; and

(5) The name and business telephone number of the official designated by the NTSB to respond to requests for information about the meeting.

(b) The one week advance notice required by paragraph (a) of this section may be reduced only if: (1) A majority of all Members determines by recorded vote that NTSB business requires that such meeting be scheduled in less than seven days; and

(2) The public announcement required by paragraph (a) of this section be made at the earliest practicable time.

(c) Immediately following each public announcement required by this section, or by § 804.8, the NTSB shall submit a notice of public announcement for publication in the FEDERAL REGISTER.

§ 804.8 Changes following public announcement.

(a) The time or place of a meeting may be changed following the public announcement only if the NTSB publicly announces such change at the earliest practicable time. Members need not approve such change.

(b) The subject matter of a meeting or the determination of the Board to open or to close a meeting, or a portion thereof, to the public may be changed following public announcement only if:

(1) A majority of all Members determines by recorded vote that NTSB business so requires and that no earlier announcement of the change was possible; and

(2) The NTSB publicly announces such change and the vote of each Member thereon at the earliest practicable time.

§ 804.9 Transcripts, recordings, or minutes of closed meetings.

The NTSB shall maintain a complete transcript or electronic recording adequate to record fully the proceedings of each meeting, or a portion thereof, closed to the public. The NTSB may maintain a set of minutes in lieu of such transcript or recording for meetings closed pursuant to § 804.5 (h), (i)(1), or (j). Such minutes shall fully and clearly describe all matters discussed and shall provide a full and accurate summary of any actions taken, and the reasons therefor, including a description of each of the views expressed on any item and the record of any rollcall vote. All documents considered in connection with any actions shall be identified in such minutes.

§ 804.10 Availability and retention of transcripts, recordings, and minutes, and applicable fees.

The NTSB shall make promptly available to the public the transcript, electronic recording, or minutes of the discussion of any item on the agenda or of any testimony received at the meeting, except for such item, or items, of discussion or testimony as determined by the NTSB to contain matters which may be withheld under the exemptive provisions of § 804.5. Copies of the nonexempt portions of the transcript or minutes, or transcription of such recordings disclosing the identity of each speaker, shall be furnished to any person at the actual cost of transcription or duplication. The NTSB shall maintain a complete verbatim copy of the transcript, a complete copy of the minutes, or a complete electronic recording of each meeting, or a portion thereof, closed to the public for at least two years after such meeting, or until one year after the conclusion of any NTSB proceeding with respect to which the meeting, or a portion thereof, was held, whichever occurs later.

Signed at Washington, D.C., this 24th day of January 1977.

WEBSTER B. TODD, JR.,
Chairman.

[FR Doc 77-2682 Filed 1-26-77;8:45 am]

notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

UNITED STATES GRAIN STANDARDS ACT

Recordkeeping and Registration

The following statements concerning the recordkeeping and registration provisions of the United States Grain Standards Act, as amended by Public Law 94-582 (90 Stat. 2867), are published pursuant to section 3A of the Act for the information of persons subject to the provisions of the Act and of the public generally.

RECORDKEEPING

Section 12(d) of the United States Grain Standards Act, as amended by Public Law 94-582 (90 Stat. 2882), generally provides that grain merchandisers and elevator owners or operators who obtain, or have obtained, official inspection or weighing services under the Act shall keep, for a 5-year period after obtaining such services, complete and accurate records of purchases, sales, transportation, storage, weighing, handling, treating, cleaning, drying, blending, and other processing, and official inspection and official weighing for all grain merchandised or handled by them.

In implementing the recordkeeping provisions, a rulemaking proceeding will be instituted by the Federal Grain Inspection Service to identify the kind of records to be kept and the manner in which they shall be kept. Until a final determination is made in this matter, the Service will consider merchandisers and elevator owners or operators as being in compliance with the recordkeeping provisions if the merchandisers, owners, or operators permit representatives of the Secretary or the Administrator to have access to, and to copy, at all reasonable times, the records which the merchandisers, owners, or operators normally maintain with reference to the named activities.

REGISTRATION

Section 17A(a) of the Act generally provides that the Administrator of the Federal Grain Inspection Service shall provide by regulation for the registration, with specified exceptions, of all persons engaged in the business of buying grain for sale in foreign commerce and in the business of handling, weighing, or transporting of grain for sale in foreign commerce. In implementing the registration provisions, a rulemaking proceeding will be instituted by the Service to establish procedures and guidelines for registration. Until a final determination is made in this matter, there is no obligation to register under the Act.

Done at Washington, D.C., on: January 17, 1977.

DONALD E. WILKINSON,
Interim Administrator.

[FR Doc.77-2731 Filed 1-26-77;8:45 am]

Forest Service

BURNETT INLET FISH HATCHERY

Availability of Final Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Forest Service, Department of Agriculture, has prepared a final environmental statement for the Burnett Inlet Fish Hatchery, USDA-FS-R10-FES (Adm)-76-06.

This environmental statement concerns the construction plans for nonprofit salmon hatchery structures on Burnett Inlet, Tongass National Forest, Alaska.

This final environmental statement was transmitted to CEQ on January 19, 1977.

Copies are available for inspection during regular working hours at the following locations:

USDA, Forest Service, South Agriculture Building, Room 3231, 12th Street & Independence Ave. SW, Washington, D.C. 20250.
USDA, Forest Service, Alaska Region, Federal Office Building, Juneau, Alaska 99802.
Forest Supervisor, Chatham Area, Tongass National Forest, Federal Building, Sitka, Alaska 99835.
Forest Supervisor, Stikine Area, Tongass National Forest, Federal Building, Petersburg, Alaska 99833.
Forest Supervisor, Ketchikan Area, Tongass National Forest, Federal Building, Room 313, Ketchikan, Alaska 99901.

A limited number of single copies are available upon request to the Forest Supervisor, Stikine Area, Tongass National Forest, P.O. Box 309, Petersburg, Alaska 99833.

Copies of the environmental statement have been sent to various Federal, State and local agencies as outlined in the CEQ guidelines.

CARL W. SWANSON,
Environmental Coordinator, Alaska Region.

JANUARY 19, 1977.

[FR Doc.77-2662 Filed 1-26-77;8:45 am]

GEOTHERMAL DEVELOPMENT BREITENBUSH AREA

Availability of Draft Environmental Statement

The Notice of Availability for the Geothermal Development—Breitenbush Area Draft Environmental Statement on Mt. Hood and Williamette National Forest, Oregon, USDA-FS-R6-DES(Adm)-77-3, that appeared in the FEDERAL REGISTER, Volume 41, No. 213 (41 FR 48389), Wednesday, November 3, 1976, is corrected to extend the review period to February 15, 1977.

CURTIS L. SWANSON,
Regional Environmental Coordinator, Planning, Programing and Budgeting.

JANUARY 20, 1977.

[FR Doc.77-2600 Filed 1-26-77;8:45 am]

BOISE NATIONAL FOREST GRAZING ADVISORY BOARD

Meeting

The Boise National Forest Grazing Advisory Board will meet at 9:00 a.m., March 8, 1977, at the Boise National Forest Supervisor's Office, 1075 Park Boulevard, Boise, Idaho.

The agenda for the meeting is as follows:

1. Election of Officers.
2. Review of the Federal Land Policy and Management Act of 1976, Pub. L. 94-579.
3. Review of the National Forest Management Act of 1976, Pub. L. 94-588.
4. New business.

The meeting will be open to the public. Persons who wish to attend should notify Mr. Tom Nicholson, President, Boise National Forest Grazing Advisory Board, 10322 Estate Drive, Boise, Idaho 83705; Telephone Area Code 208-375-5255.

The committee has established the following rules for public participation: Written statements will be accepted by the committee president prior to the meeting or immediately after the close of the meeting.

Dated: January 20, 1977.

EDWARD C. MAW,
Forest Supervisor.

[FR Doc.77-2647 Filed 1-26-77;8:45 am]

Soil Conservation Service

ST. THOMAS-LODEMA WATERSHED PROJECT, NORTH DAKOTA

Availability of Negative Declaration

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the St. Thomas-Lodema Watershed Project, Pembina County, North Dakota.

The environmental assessment of this federal action indicates that the project will not create significant adverse local, regional, or national impacts on the environment and that no significant controversy is associated with the project. As a result of these findings, Mr. Allen L. Fisk, State Conservationist, Soil Conservation Service, has determined that the preparation and review of an environmental impact statement is not needed for this project.

The project concerns a plan for watershed protection and flood prevention. The remaining planned works of improvement, as described in the negative declaration, include conservation land treatment supplemented by 25.0 miles of channel work on natural and previously notified ephemeral streams.

The negative declaration is being filed with the Council on Environmental Quality and copies are being sent to various federal state, and local agencies. The basic data developed during the environmental assessment is on file and may be reviewed by interested parties at the Soil Conservation Service, Room 270, Federal Building, Rosser Avenue, and 3rd Street, Bismarck, North Dakota 58501. A limited number of copies of the negative declaration is available from the same address to fill single copy requests.

No administrative action on implementation on the proposal will be taken until February 11, 1977.

Dated: January 14, 1977.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention on Program—Pub. L. 83-566, 16 U.S.C. 1001-1008.)

JOSEPH W. HAAS,
Assistant Administrator for Water Resources Soil Conservation Service.

[FR Doc.77-2594 Filed 1-26-77;8:45 am]

ARMS CONTROL AND DISARMAMENT AGENCY

ENVIRONMENTAL IMPACT STATEMENTS

Issuance of Final Agency Procedures for Compliance With Federal Environmental Statutes

Notice is hereby given of the publication of final procedures of the U.S. Arms Control and Disarmament Agency (ACDA) for compliance with Federal environmental statutes, in accordance with the requirements of section 102(2)(C) of the National Environmental Policy Act (NEPA) (42 U.S.C. 4332(2)(C)), and section 309 of the Clean Air Act (42 U.S.C. 1857h-7). These procedures supercede the proposed procedures published by the Agency in the FEDERAL REGISTER on March 8, 1973 (38 FR 6321) and will be published in the ACDA Manual.

When the proposed procedures were published on March 8, 1973, the Agency solicited written comments or suggestions for consideration concerning them to be submitted on or before April 9, 1973 to the General Counsel of the Agency. The records of the Office of the General Counsel indicate that no comments were received at that time; however, by letter dated December 10, 1973 the Center for Law and Social Policy submitted a copy of a letter dated April 6, 1973 addressed to the General Counsel of the Agency submitting nine numbered comments on behalf of the Sierra Club and the Environmental Defense Fund. These comments have been available for public inspection in the Office of the General Counsel. All of the suggestions have been fully considered and most of them have been adopted or substantially satisfied by eidtorial changes, deletions, or additions to the procedures. In addition, the nomenclature and citations in the procedures, particularly the citations to the Guidelines of the Council on Environmental Quality, have been clarified and updated.

The following is a brief discussion of the nine comments and the changes made in the final procedures in response to them:

1. Section 3 of the proposed procedures provided that the Bureau of Science and Technology (ST) (now the Non-Proliferation and Advanced Technology Bureau (NTB)) would have primary responsibility for determining whether any proposed action required an environmental impact statement and would "consult" with the Office of the General Counsel in making this decision. The commenter pointed out that the General Counsel's role should be more than a consulting one because the decision on whether an environmental impact statement is required is basically a legal one. The Agency agrees and has revised the initial paragraph of section 3 and made changes elsewhere in that section and in section 4, the third paragraph of section 5, and in section 6 (c) and (d) of the final procedures to assign appropriate responsibilities to the Office of the General Counsel.

2. The third paragraph of section 3 of the proposed procedures contained guidelines to consider in assessing the need for impact statements. The first of these guidelines provided several examples of what are not considered major Federal actions. The commenter urged that before providing such examples, the procedures should set forth examples of what are major Federal actions. The Agency agrees that it is desirable for the procedures to provide more guidance about the Federal actions for which the agency is responsible under the NEPA. The Agency has moved the guidelines to the end of section 2(b) of the final procedures which deals with determining the need for environmental impact statements and has revised them to accommodate this comment and the following four comments which also relate to the guidelines. In the process, the reference in section 5(b) of the proposed procedures to the Department of State procedures has been moved to the end of the new section 2(b)(1) in the final procedures.

3. Section 3(a)(1) of the proposed procedures stated that Agency participation in research or study projects would not be considered major Federal actions for purposes of the NEPA. The commenter pointed out that some types of research, e.g., field research, could pose significant risks to the environment and should not be exempted from the impact statement requirement. The Agency agrees and has reflected this point in the new section 2(b)(2) of the final procedures.

4. Section 3(a)(2) of the proposed procedures exempted all "mandatory actions" required by international agreements or decisions to which the United States is bound. While agreeing that the question whether or not the United States should comply with a mandatory international obligation should not be subject to an impact statement, the commenter expressed concern that this would be construed as exempting "mandatory" internatinal obligations that could be fulfilled by alternative routes with varying environmental impacts. The Agency has addressed this concern by adding a parenthetical clarification in section 2(b)(3) of the final procedures where the subject is now covered.

5. Section 3(b) of the proposed procedures referred to indirect effects of Agency activities. The commenter felt that further guidance on this subject was needed. The Agency has expanded the discussion of indirect effects in section 2(b)(4) of the final procedures which combines section 3(b) of the proposed procedures with the last two sentences of section 3(c) of the proposed procedures and additional explanatory material. The commenter also felt that the procedures should explicitly note that "major Federal actions" should be construed with a view to overall cumulative impact and with a view to further actions contemplated. The Agency believes that this subject already is adequately covered in the third sentence of section 2(b) where there is a specific reference to section 1500.6 of the CEQ Guidelines for a general elaboration of the term "major Federal action".

6. The second sentence of the final paragraph of section 3 of the proposed procedures provided that those preparing an environmental impact statement "may, where appropriate" solicit information from private organizations and government agencies with special expertise or interest. The commenter pointed out that the NEPA provides that such consultations "shall" be held with appropriate government agencies. The Agency agrees and has changed that paragraph of the final procedures to comply with the NEPA requirement.

7. Paragraph 3 of the proposed procedures concluded by stating that the Office of the General Counsel would provide advice on the legal requirements for the preparation of impact statements.

FEDERAL REGISTER, VOL. 42, NO. 18—THURSDAY, JANUARY 27, 1977

The commenter pointed out again that legal requirements are not something the General Counsel should advise on, but rather his office should decide such issues. The Agency agrees and has revised the last sentence of paragraph 3 of the final procedures to require that decisions on legal requirements regarding the contents of environmental impact statements be obtained from that office.

8. The commenter objected that section 6(a) of the proposed procedures would be applicable to "Limited Official Use" information through its use of the term "administratively controlled material". The Agency agrees that "Limited Official Use" information will be covered and has made no changes in the final procedures since they are considered appropriate for information properly determined to be "Limited Official Use".

9. Section 6(d) of the proposed procedures set no minimum time for advance notice of public hearings on environmental issues and allowed hearings to be held only 15 days after circulation of the draft impact statement. The commenter urged that the section be amended to provide that, where possible, notice of hearings in the FEDERAL REGISTER and the circulation of draft impact statements should occur 30 days before the hearings. The Agency agrees, and has added a new sentence to that effect in section 6(d) of the final procedures.

The Agency is always interested in receiving public comment on its published procedures and regulations. This is particularly so in this case due to the length of time between the publication of the proposed procedures and the publication of these final procedures. Persons desiring to make comments or suggestions for consideration concerning these procedures should submit them in writing to the General Counsel, U.S. Arms Control and Disarmament Agency, 2201 C Street, N.W., Washington, D.C. 20451.

The Agency procedures are as follows:

1. *General.* Attention is called to section 102(2)(C) of the National Environmental Policy Act (NEPA) (42 U.S.C. 4332(2)(C)); section 309 of the Clean Air Act (42 U.S.C. 1857h-7); Executive Order 11514 of March 5, 1970; and the Guidelines for Preparation of Environmental Impact Statements issued by the Council on Environmental Quality (CEQ) (40 CFR Part 1500), incorporated herein by reference. Except as modified by the present policy guides, the CEQ Guidelines will be followed by the responsible Agency officials in complying with policies and provisions of the NEPA and section 309 of the Clean Air Act. The requirements of these procedures are in addition to, and not a substitute for, any environmental analyses or consultations required by any international obligations of the United States.

2. *Determining the Need for Environmental Impact Statements.* (a) Whether or not an environmental impact statement is required under section 102(2)(C) of the NEPA and filed for any Agency action, the policies and provisions of NEPA require that the environmental effects of proposed actions, and reasonable alternatives thereto (including those not within the authority of the Agency), be considered. The process of deciding on the need for an environmental impact statement on any Agency action will itself require an analysis of the effects that the proposed action will have on the human environment. The inquiry into environmental effects is mandated, independent of the requirements to file environmental impact statements, by section 102(2)(B) of the NEPA, which requires procedures to insure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking along with economic, technical, and other considerations. Section 1500.1 of the CEQ Guidelines underscores this by recognizing a requirement that agencies build into the decisionmaking process an appropriate and careful consideration of the environmental aspects of proposed actions. While the procedural requirements of section 102(2)(C) must be carefully complied with, it must also be emphasized that the essence of the NEPA is the need for real consideration of environmental effects.

(b) Section 102(2)(C) of the NEPA requires an environmental impact statement on "every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment." Therefore, if otherwise required, an environmental impact statement must be prepared for an activity which is both a major Federal action and has a potentially significant effect on the environment. For a general elaboration of the terms see the CEQ Guidelines, especially sections 1500.5 and 1500.6. In assessing the need for impact statements regarding any particular action, the following guidelines will be considered:

(1) The Agency is responsible for determining whether environmental impact statements are required and for preparing such statements with respect to Federal actions for which the Agency is solely responsible or for which it is the "lead agency", as defined in section 1500.7(b) of the CEQ Guidelines. However this does not encompass actions having no environmental impact under peacetime conditions (e.g., actions taken in formulating rules regulating the conduct of warfare), or activities covered by section 36 of the Arms Control and Disarmament Act (sec. 146 of Public Law 94-141). In connection with the Agency's responsibilities, it should be noted that although the Agency conducts activities related to the preparation for and management of U.S. participation in international negotiations in the arms control and disarmament field, these functions are subject to the direction of the Secretary of State (see 22 U.S.C. 2551(b), 22 U.S.C. 2574(a), and the Department of State Circular 175 Procedure (11 FAM 720)). (For Department of State environmental impact statement procedures, see 37 FR 19167, September 19, 1972.)

(2) The Agency is responsible for determining whether environmental impact statements are required for its research projects and for preparing such statements for those projects which constitute major Federal actions significantly affecting the quality of the human environment. Since the Agency's research is directed at acquiring a fund of theoretical and practical knowledge for arms control and disarmament policy formulation, the conduct of most Agency research will not involve significant environmental impact; however, there are types of research, e.g., field research, which could have significant effects on the environment and may therefore require an environmental impact statement.

(3) Mandatory actions (i.e., those for which no alternatives are available) required under any treaty or international agreement to which the United States is a party, or required by the decisions of international organizations, authorities, conferences, or consultations in which the United States is a member or participant, will not be considered major Federal actions for purposes of the NEPA.

(4) Indirect effects of Agency activities can lead to a need to file an environmental impact statement. In some such instances, the Agency might be the lead agency responsible for the preparation of such a statement. However, in most cases, another Agency will be responsible since the action of this Agency will merely permit rather than require action by the other agency or will leave open the manner in which the actions of the other agency will be performed. For example, projects such as the destruction of weapons in accordance with the provisions of an international arms control agreement would be the subject of environmental impact statements, if otherwise required, prepared by the Department of Defense, the Department of State, or other lead agency. In some cases, joint preparation of the statement by two or more agencies may be appropriate.

3. *Responsibility within the Agency.* The Office of the General Counsel (GC) is responsible for the legal aspects of filing environmental impact statements and the contents of any such statements as well as for coordination of necessary activities related thereto. The Non-Proliferation and Advanced Technology Bureau (NTB) has primary responsibility for the scientific and other non-legal aspects of the Agency's compliance with the requirements of the NEPA. Other Agency bureaus and offices are responsible for providing necessary assistance to GC and NTB on environmental matters. Disagreements between bureaus and offices will be referred to the Director of the Agency for resolution.

Each Agency bureau or office having operational responsibility over a proposed major action which may significantly affect the environment shall inform NTB and GC of the proposed action, its potential environmental impact and reasonable alternatives thereto. In order to determine whether the proposed action will be "a major Federal action significantly affecting the quality of the human environment," NTB and GC, together with the bureau or office having operational responsibility, shall investigate the direct and indirect environmental effects of the proposed action. Where appropriate to supplement their work in evaluating the environmental impact of the proposed action, they will solicit information from other parts of the Agency, from other Government agencies with jurisdiction by law or special expertise with respect to any environmental impact involved, or from private organizations.

In each instance where it is determined, after this investigation, that no environmental impact statement will be prepared by the Agency, a memorandum will be prepared jointly by NTB and GC for Agency files indicating the extent of the investigation conducted and the reasons for the determination that no impact statement will be prepared. A list of actions for which such memoranda have been prepared will be available to Government agencies or members of the public on request to GC.

Where it is determined that an environmental impact statement will be prepared by the Agency, NTB, together with the bureau having operational responsibility and GC for the legal aspects, will prepare the statement. In doing so, they shall consult with and obtain the comments of Government agencies with special expertise or interest. In addition they may, where appropriate, solicit information and comments from private organizations and, under the direction of the Secretary of State, engage in consultations with foreign governments whose environments will be substantially affected by the proposed action. Decisions on legal requirements regarding the contents of environmental impact statements will be obtained from GC.

4. *Responsibility for Investigation Into Environmental Effects of All Proposed Actions.* Even where it appears clear from the start that a proposed action will not require an environmental impact statement, the consideration of possible environmental effects will still be made by NTB and the bureau having operational responsibility and, as required by the NEPA, the results of that investigation will be an integral part of the decisionmaking process. Furthermore, where no impact statement will be prepared, GC will nonetheless submit for review and comment to the Environmental Protection Agency (EPA) all proposals for legislation, regulations, and construction projects which are related to the statutory responsibilities of the Administrator of the EPA, as required by section 309 of the Clean Air Act and by section 1500.9(b) of the CEQ Guidelines.

5. *General Procedure.* Unless excluded under section 2, actions of the Agency which are covered by the NEPA will require an environmental impact statement. Section 1500.7(a) of the CEQ Guidelines emphasizes "that draft environmental statements be prepared and circulated for comment and furnished to the Council as early as possible in the agency review process in order to permit agency decisionmakers and outside reviewers to give meaningful consideration to the environmental issue involved."

The draft statements will be distributed by GC for comment to Government agencies with jurisdiction by law or special expertise with respect to any environmental impact involved, such as the agencies identified in Appendices II and III of the CEQ Guidelines, and, in accordance with section 6(d) below, made available to the public. Upon circulation of draft statements to the EPA, comments shall be requested under both the NEPA and section 309 of the Clean Air Act. GC shall arrange for notice of the draft statement's availability to be published in the FEDERAL REGISTER.

Any comments received will be considered in final policy decisions and in the preparation of a final evironmental impact statement. All such comments should be attached to the final statement, and those responsible comments not adequately discussed in the draft statement should be appropriately dealt with in the final statement. In any case where comments are not received in sufficient time to allow consideration in final policy decisions, they should be considered in future decisionmaking in similar areas of policy.

6. *Exceptions.* The nature of negotiations and relations at the international level may make it necessary to depart in some instances from the procedures in the CEQ Guidelines. CEQ foresaw the need for such departures in sections 1500.4 and 1500.11 of the CEQ Guidelines. Exceptions applicable to the Agency are set forth below:

(a) The statements and other written matter prepared to comply with the NEPA should not normally include any classified or administratively controlled material. However, there may be situations where such statements and memoranda cannot adequately discuss environmental effects without including material classified or administratively controlled under the provisions of 22 CFR Part 605 and the ACDA Security and Classification Handbook. In any event, however, those portions of any statement which are not classified or administratively controlled shall be made available to the public unless the material thus disclosed would be distorted or incomprehensible.

(b) Every attempt will be made to comply with the 30-day and 90-day periods which section 1500.11(b) of the CEQ Guidelines requires between submission of statements and final action. Where schedules of international conferences or other factors make this impossible, the Agency will consult with the CEQ concerning appropriate modifications by the Agency of these minimum arrangements for the availability of environmental impact statements.

(c) Normally, agencies consulted in accordance with section 1500.9 of the CEQ Guidelines shall be allowed 30 days for reply, and the EPA shall be allowed 45 days. However, the procedure in section 6(b) above will be followed if it becomes necessary to reduce these periods. When this is the case, all agencies to whom the draft statement has been sent will be informed by GC of the reduced time period. The reduced time period must also be included in the public notice published in the FEDERAL REGISTER.

(d) Section 2(b) of Executive Order 11514 establishes requirements for providing public information on Federal actions and impact statements and envisions use of public hearings whenever appropriate. Public hearings will be employed by the Agency following the circulation of each draft impact statement unless it is determined that the requirements of carrying on international relations, including the constraints of time and the posture of the United States in negotiations do not allow such hearings to be carried out without prejudice to the national interest. The provisions of the Administrative Procedure Act do not apply to hearings involving "foreign affairs functions"; however, in each case where hearings are employed in accordance with this paragraph, a public notice of the hearings shall be published in the FEDERAL REGISTER indicating the time and place of the hearing and the matters to be considered, and the draft environmental impact statement shall be made available to the public at least 15 days prior to the hearings. Where possible, notice of hearings in the FEDERAL REGISTER and circulation of draft impact statements should occur 30 days before the hearings. GC shall determine the nature and the procedures to be employed for such hearings, shall arrange for the hearing and the publication of the prescribed notice, and shall conduct the hearing. If such hearings cannot be carried out, arrangements should still be made, where practicable, for an expedited opportunity for members of the public to present their views orally.

Dated: January 21, 1977.

LEON SLOSS,
Acting Director.

[FR Doc.77-2729 Filed 1-26-77;8:45 am]

CIVIL AERONAUTICS BOARD

[Order No. 77-1-89; Docket No. 27573; Agreement CAB 26381 R-1 throught R-8]

INTERNATIONAL AIR TRANSPORT ASSOCIATION

Order

Issued under delegated authority January 14, 1977.

An agreement has been filed with the Board pursuant to section 412(a) of the Federal Aviation Act of 1958 (the Act) and Part 261 of the Board's Economic Regulations between various air carriers, foreign air carriers, and other carriers,

embodied in the resolutions of the Traffic Conferences of the International Air Transport Association (IATA), and adopted pursuant to the provisions of Resolution 590 dealing with specific commodity rates.

As set forth in the attachment, the agreement adds three and extends five specific commodity rates under existing specific commodity descriptions, all reflecting reductions from general cargo rates. The agreement was adopted pursuant to unprotested notices to the carriers and promulgated in an IATA letter dated January 6, 1977.

Pursuant to authority duly delegated by the Board in the Board's Regulations, 14 CFR 385.14, it is not found that the subject agreement is adverse to the public interest or in violation of the Act, provided that approval is subject to the conditions hereinafter ordered.

Accordingly, it is ordered, That:

Agreement 26381, R–1 through R–8, is approved, *Provided,* That (a) approval shall not constitute approval of the specific commodity descriptions contained therein for purposes of tariff publications; (b) tariff filings shall be marked to become effective on not less than 30 days' notice from the date of filing; and (c) where a specific commodity rate is published for a specified minimum weight at a level lower than the general commodity rate applicable for such weight, and where a general commodity rate is published for a greater minimum weight at a level lower than such specific commodity rate, the specific commodity rate shall be extended to all such greater minimum weights at the applicable general commodity rate level.

Persons entitled to petition the Board for review of this order, pursuant to the Board's Regulations, 14 CFR 385.50, may file such petitions within ten days after the date of service of this order.

This order shall be effective and become the action of the Civil Aeronautics Board unless within such period a petition for review is filed or the Board gives notice that it will review this order on its own motion.

This order will be published in the FEDERAL REGISTER.

By James L. Deegan, Chief, Passenger and Cargo Rates Division, Bureau of Economics.

PHYLLIS T. KAYLOR,
Secretary.

Agreement CAB	Specific commodity item No.	Description and rate
26381:		
R-1	0007	Fruits and vegetables, excluding strawberries, 190 c/kg,[1] minimum weight 500 kg. From Johannesburg to New York.
R-2	3341	Bathroom shower sets, 160 c/kg, minimum weight 500 kg. From Tel Aviv to New York.
R-3	3909	Locks, 145 c/kg, minimum weight 500 kg. From Tel Aviv to New York
R-4	4479	Electrical apparatus for killing insects, 190 c/kg, minimum weight 500 kg. From Tel Aviv to New York.
R-5	8001	Surgical instruments including rubber/enamel articles for use in surgery, 286 c/kg,[2] minimum weight 500 kg. From Bombay to New York.
R-6	1100	Furs, hides, pelts, and skins, excluding wearing apparel, 172 c/kg, minimum weight 1,000 kg. From Melbourne to New York.
R-7	7067	Lottery tickets, 125 c/kg, minimum weight 1,000 kg. From Auckland to New York.
R-8	9512	Handicraft, namely brass, copper, iron, wood, stone, bamboo, wicker, paper, papier mache, leather, clay, lac and handloom textiles, excluding wearing apparel, diamonds and precious stones, 112 c/kg, minimum weight 100 kg. From Nandi to Honolulu.

[1] Expires Sept. 30, 1977.
[2] Expires June 30, 1977.

[FR Doc.77-2540 Filed 1-25-77;8:45 am]

[Docket No. 27434]

TEXAS INTERNATIONAL AIRLINES, INC.

Postponement of Argument on Motion for Summary Judgment

Argument on the motion for summary judgment in this proceeding heretofore assigned to be heard on February 7, 1977, (42 FR 3190, dated January 17, 1977) is hereby postponed to 9:30 a.m., February 8, 1977 in Room 1003, Hearing Room C, Universal North Building, 1875 Connecticut Avenue, NW., Washington, D.C., before the undersigned.

Dated at Washington, D C., January 21, 1977.

JANET D. SAXON,
Administrative Law Judge.

[FR Doc.77-2728 Filed 1-26-77;8:45 am]

DEPARTMENT OF COMMERCE

Bureau of the Census

CENSUS ADVISORY COMMITTEE ON THE SPANISH ORIGIN POPULATION FOR THE 1980 CENSUS

Public Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C., Appendix I (1974)), notice is hereby given that the Census Advisory Committee on the Spanish Origin Population for the 1980 Census will convene on February 17 and 18, 1977 at 9:30 a.m. The Committee will meet in Room 2424, Federal Building 3, at the Bureau of the Census in Suitland, Maryland.

The Committee is composed of 21 members appointed by the Secretary of Commerce. It was established in February 1975 to advise the Director, Bureau of the Census, on such 1980 census planning elements as improving the accuracy of the population count, developing definitions for classification of the Spanish-origin population, recommending subject content and tabulations of special use to the Spanish-origin population, and expanding the dissemination of census results among present and potential users of census data in the Spanish-origin population.

The agenda for the February 17 meeting is: (1) Current status of the 1980 census plans; (2) pretest census in Oakland, California; (3) enumeration of migrants; and (4) reports by Committee members on population items on the census questionnaire.

The February 18 meeting, which will adjourn at 12:30 p.m., will consist of: (1) Reports by Committee members on housing items on the census questionnaire, (2) affirmative action, and (3) Committee review and recommendations.

The meeting will be open to the public and a brief period will be set aside on February 18 for public comment and questions. Extensive questions or statements must be submitted in writing to the Committee Control Officer at least 3 days prior to the meeting.

Persons wishing further information concerning these meetings or who wish to submit written statements may contact Clifton S. Jordan, Deputy Chief, Demographic Census Staff, Bureau of the Census, Room 3779, Federal Building 3, Suitland, Maryland. (Mailing address: Washington, D.C. 20233) Telephone: (301) 763–5169.

Dated: January 21, 1977.

ROBERT L. HAGAN,
Acting Director,
Bureau of the Census.

[FR Doc.77-2628 Filed 1-26-77;8:45 am]

National Oceanic and Atmospheric Administration

NEW ENGLAND REGIONAL FISHERY MANAGEMENT COUNCIL AND MID-ATLANTIC REGIONAL FISHERY MANAGEMENT COUNCIL

Meetings

Pursuant to section 302(h) of the Fishery Conservation and Management Act of 1976 (Pub. L. 94–265); and section 10(a)(2) of the Federal Advisory Committee Act; notice is hereby given of a series of public meetings to be held for the purpose of receiving public views and comments on a Draft Fishery Management Plan prepared by the New England Regional Fishery Management Council in consultation with the Mid-Atlantic Regional Fishery Management Council for the following fisheries: (a) Atlantic cod (*Gadus morhua*); (b) haddock (*Melanogrammus aeglefinus*); (c) yellowtail flounder (*Limanda ferruginea*).

These do not have a surplus available for foreign nationals to harvest and thus the draft plan pertains solely to the management of the United States domestic groundfish fisheries identified above.

The New England Regional Fishery Management Council will hold its public meetings at the following locations and dates. All will be from 7:30 to 9:30 p.m.

Monday, February 7, 1977, Gloucester City Hall, Dale Avenue, Gloucester, Massachusetts.
Tuesday, February 8, 1977, Brunswick Recreational Hall, 30 Federal Street, Brunswick, Maine.
Wednesday, February 9, 1977, Holiday Inn, 500 Hathaway Road, New Bedford, Massachusetts.
Thursday, February 10, 1977, Dutch Inn, Great Island Road, Point Judith, Rhode Island.
Friday, February 11, 1977, Cape Cod Community College, West Barnstable, Massachusetts.

The Mid-Atlantic Regional Fishery Management Council will hold its public meetings at the following locations and dates. All will be from 7:30 to 9:30 p.m.

Monday, February 7, 1977, City Hall, 4400 New Jersey Avenue (use Davis Avenue Entrance), Wildwood, New Jersey.
Tuesday, February 8, 1977, Kings Grant Inn, River Road and Route 70, Point Pleasant, New Jersey.
Wednesday, February 9, 1977, Holiday Inn, Routes US 13N and 113, Dover, Delaware.
Friday, February 11, 1977, Gold Crest Manor, North Highway, Southampton, L.I., New York.

Copies of the Draft Fishery Management Plan are being distributed by:

Office of the Director, National Marine Fisheries Service, NOAA, Page Building 2—Room 400, Washington, D.C. 20235, Tel: 202–634–7283.

Members of the public interested in immediately viewing a copy of the draft plan may contact any member of the New England or Mid-Atlantic Regional Fishery Management Councils. Copies of the complete draft plan may also be viewed at the public meetings and summaries will be distributed at the public meetings. In addition, the complete draft plan will be published in the FEDERAL REGISTER prior to the above meetings.

A summary of the draft plan may also be obtained by contacting:

John C. Bryson, Executive Director, Mid-Atlantic Regional Fishery Management Council, c/o Senator Roth's Office, Federal Building, North New Street, Dover, Delaware 19901.
Patricia Pelczarski, New England Regional Fishery Management Council, c/o National Marine Fisheries Service, State Fish Pier, Gloucester, Massachusetts 01930.

Written comments on the draft plan may be submitted by interested members of the public no later than 23 February, 1977 to either of the addresses above.

This notice was prepared and published at the request of the New England Regional Fishery Management Council in consultation with the Mid-Atlantic Regional Fishery Management Council.

Dated 24 January, 1977 at Washington D.C.

WINFRED H. MEIBOHM,
Associate Director, National Marine Fisheries Service.

[FR Doc.77-2657 Filed 1-26-77;8:45 am]

DEPARTMENT OF DEFENSE

Department of the Army

CONSTRUCTION OF MILITARY FAMILY HOUSING IN FORT BELVOIR, VIRGINIA, MLITARY RESERVATION

Filing of Supplement to Final Environmental Impact Statement

In compliance with the National Environmental Policy Act of 1969, the Army is filing with the Council on Environmental Quality a Supplement to the Final Environmental Impact Statement concerning the scope reduction to 444 from 1,445 for construction of military housing units in the Fort Belvoir, Virginia, Military Reservation.

Copies of the statement have been forwarded to concerned Federal, State and local agencies. Interested individuals may obtain copies from the Office of the U.S. Army Engineer District, Norfolk, ATTN: NAOEN–D, 803 Front Street, Norfolk, Virginia 23510. In the Washington area, inspection copies can be seen in the Environmental Office, Assistant Chief of Engineers, Room 1E676, Pentagon Building, Washington, D.C. 20310. (Telephone: (202) 694–1163).

CHARLES R. FORD,
Deputy Assistant Secretary of the Army (Civil Works).

[FR Doc.77-2680 Filed 1-26-77;8:45 am]

Defense Privacy Board

GUIDELINES FOR RELEASE OF PERSONAL INFORMATION TO COMMERCIAL ENTERPRISES

Application of the Privacy Act and Exemption 6 of the Freedom of Information Act

On August 30, 1976, a general notice promulgated by the Defense Privacy Board, FR Doc. 76–25326, was published in the FEDERAL REGISTER (41 FR 36523) setting forth Department of Defense proposed guidelines for release of personal information, as affected by the Privacy Act of 1974 and Exemption 6 of the Freedom of Information Act, in responding to requests for information or assistance from commercial enterprises.

The notice invited interested parties to submit their views and comments to the Defense Privacy Board by September 29, 1976. All comments with respect to the proposed guidelines were given due consideration. As a result of comments received, the following changes in the revised final policy guidelines are made in addition to language changes for clarification:

1. A new sentence is added to paragraph 3. containing policy guidelines which reads: "Requests for evaluation of personal characteristics, including pay habits, if known, shall not be provided." Reason: The Department of Defense is not in a position to render an evaluation of personal characteristics of integrity or ability of an individual to pay or not pay his or her debts.

2. Paragraph 3b. concerning releasable information pertaining to military personnel has been expanded to include: date of birth, marital status, the number, names, sex and age of dependents; awards and decorations, and the duty status at any given time. Reason: Information is releasable under the Freedom of Information Act exception, or matter of public record.

3. Paragraph 3e. providing locator assistance, containing the sentence: "However, once an individual's affiliation with the Department of Defense is terminated through separation or retirement, the locator assistance the Department may render in the disclosure of home address is severely curtailed." is changed by adding: "unless the public interest dictates disclosure of the last known home address." Reason: To permit disclosure of home address for certain special overriding public policy matters, e.g., child support and alimony.

Accordingly, the Department of Defense policy on guidelines for release of personal information to commercial enterprises, as revised, is set forth below. These guidelines will be incorporated within the Department of Defense rules implementing the Privacy Act (Title 32, Chapter 1, Part 286a) which is currently under revision.

Effective date: This policy guideline shall become effective February 1, 1977.

Adopted by the Defense Privacy Board at its office in Washington, D.C., on the 19th day of January 1977.

Dated: January 24, 1977.

MAURICE W. ROCHE,
Director, Correspondence and Directives, OASD (Comptroller).

GUIDELINES FOR RELEASE OF PERSONAL INFORMATION TO COMMERCIAL ENTERPRISES

1. *Scope.* The provisions of this guideline apply to all requests for personal information or assistance concerning Department of Defense military and civilian personnel. The provisions also apply to all commanders, supervisors, personnel officers, Privacy Act, and Freedom of Information Act officials, administrators, legal counsels and others involved in releasing information to the public within the various components of the Department of Defense.

2. *Background.* It is the policy of the Department of Defense, consistent with the Freedom of Information Act (5 U.S.C. 552) to make available to the public the maximum amount of information concerning its operations and activities. Information may be disclosed without the written consent of the individual to

whom the information pertains if such disclosure is required under the Freedom of Information Act. Section 552(b)(6) of that Act, however, clearly states that information in personnel, medical and similar files is exempt from the provisions of the Act if disclosure to a member of the public would result in a clearly unwarranted invasion of personal privacy. This guideline attempts to strike a balance between the rights of all requestors under the Freedom of Information to obtain information in Department of Defense records and the rights of individuals pursuant to the Privacy Act of 1974 (5 U.S.C. 552a) and the Freedom of Information Act (5 U.S.C. 552) to avoid an unwarranted invasion of personal privacy by the release of personal information from Department of Defense records. This guideline attempts to advise what personal information concerning individuals of the Department of Defense can and cannot be disclosed. To comply with the Privacy Act, any record contained in a system of records filed by name or personal identifier, maintained within the Department of Defense may not be disclosed by any means of communication to any other person unless it is available under the Freedom of Information Act, or to any agency outside the Department of Defense, pursuant to a published routine use or pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains.

3. *Policy Guidelines.* Commercial enterprises hold the same position and relationship to their customers and to the Government as they did before the enactment of the Privacy Act. In this connection, banks, branch banks, military banking facilities, credit unions, or any type of commercial facility or concession operating on any Department of Defense installation or facility have no better standing than any other commercial enterprises or public requestor in the private sector to obtaining personal information concerning Department of Defense personnel. Within their usual business relationships, commercial enterprises are assumed to be responsible for safeguarding the information provided by their clients and for obtaining only such information as is reasonable and necessary to conduct business. This includes normal credit information and proper identification, which may include the Social Security number. Requests for evaluation of personal characteristics including pay habits, if known, shall not be provided.

a. *Indebtedness.* The Department of Defense policy towards personal indebtedness is set forth in DoD Directive 1344.9, July 1, 1969, (32 CFR 43a) for military personnel and the Civil Service Commission Federal Personnel Manuel (5 CFR 735.207) for federal civilian employees. The established policy towards indebtedness expressed in these documents is unaffected by the Privacy Act. Department of Defense personnel are expected to pay all just financial obligations in a timely and proper manner.

b. *Releasable Information.* Information which would be released as required under provisions of the Freedom of Information Act is releasable to a member of the public. Verification of identity shall be required of an individual or commercial enterprise seeking access to information under the Freedom of Information Act (5 U.S.C. 552) only when such information is relevant to determining whether a clearly unwarranted invasion of privacy would result from the requested release. Information available under the Freedom of Information Act and not involving research or duplication may be releasable by telephone. Examples of personal information pertaining to military personnel which normally are releasable under the Freedom of Information Act without an unwarranted invasion of personal privacy are: name, rank, date of rank, salary, present and past duty assignments, future assignments which are final, office phone number, source of commission, promotion sequence number, date of birth, marital status, the number, names, sex and age of dependents, awards and decorations, and the duty status at any given time. Disclosure of personal information pertaining to civilian Department of Defense employees shall be made in accordance with the Civil Service Commission Federal Personnel Manual (5 CFR Part 294). There is nothing to preclude a written request for personal information pursuant to the Freedom of Information Act. However, a formal written request obligates the addressee to various automatic legal obligations should the request be delayed or denied. Search and duplication may require more time for processing and subject the requester to search and duplication fees (32 CFR 286.10).

c. *Restrictions on Release of Personal Information.* (1) Social Security Number (SSN): Disclosure of the SSN may constitute a clearly unwarranted invasion of personal privacy. The SSN is considered an individual identifier in accordance with the Privacy Act, which need not be disclosed in all instances without the prior written consent of the individual concerned.

(2) Home Addresses: The home address of an individual is considered to be personal information, the release of which may be considered a clearly unwarranted invasion of personal privacy. In this regard, an individual's name and address may not be sold or rented unless specifically authorized by law. Lists or compilations of names and home addresses, or single home addresses normally will not be disclosed, without the prior written consent of the individual concerned.

(3) Home Telephone Numbers: An individual's home telephone number falls within the same restrictions imposed on home addresses set forth in (2) above.

d. *Individual Consent.* Disclosure may be authorized for any personal information, including that set forth in c. above, when prior written consent for release is obtained from the individual concerned. There is nothing to preclude commercial enterprises in their direct bilateral negotiations from soliciting any personal information deemed necessary from the individual concerned or from incorporating consent to disclosure of personal information in agreements signed by their potential customers. Such an agreement might require the customer to sign a consent to the release of certain personal information at the time of a conditional sale, agreement, or the like. Commercial enterprises may incorporate the following conditions of disclosure of personal information in all agreements honored by the Department of Defense as meeting the prior written consent condition for the release of information:

"I hereby authorize the Department of Defense and its various departments and commands to verify my social security number or other identifier and disclose my home address to authorized (name of commercial enterprise) officials so that they may contact me in connection with my financial business with (name of commercial enterprise). All information furnished will be used solely in connection with my financial business relationship with (name of commercial enterprise)."

When the commercial enterprise presents such signed authorizations, the military commands or installations shall provide the appropriate information.

e. *Providing Locator Assistance.* In those cases where a Department of Defense member with a financial obligation is reassigned, and fails to inform a commercial enterprise or individual of his or her whereabouts, the remedy is to seek the locator assistance of the individual's last known commander or supervisor at the official position or duty station within that particular Department of Defense component. That commander or supervisor shall either furnish the individual's new official duty location address to the requestor or forward, through official channels, any correspondence received pertaining thereto to the individual's new commander or supervisor for appropriate assistance and response. Correspondence addressed to the individual concerned at his or her last official place of business or duty station is forwarded as provided by postal regulations to the new location, but the individual may choose not to respond. However, once an individual's affiliation with the Department of Defense is terminated through separation or retirement, the locator assistance the Department may render in the disclosure of home address is severely curtailed unless the public interest dictates disclosure of the last known home address. The Department may at its discretion forward correspondence to the individual's last known home address. The individual may choose not to respond and the Department of Defense will not act as an intermediary for private matters concerning former Department personnel who are no longer affiliated with it.

[FR Doc.77-2684 Filed 1-26-77;8:45 am]

ENVIRONMENTAL PROTECTION AGENCY

[FRL 676-5]

FOSSIL FUEL-FIRED STEAM GENERATORS; SO_2 EMISSIONS

Study To Review New Source Performance Standard

The Clean Air Act requires the Environmental Protection Agency to develop and implement regulations on air pollution. These include standards of performance for new and modified stationary sources. The Act also provides that the Administrator may, from time to time, revise such standards as new knowledge or technology becomes available.

In December, 1971, pursuant to section 111 of the Clean Air Act, the Administrator promulgated a regulation establishing standards of performance for emissions of SO_2 from new or modified fossil fuel-fired steam generators. (40 CFR 60.40 et seq.) Since that time, the technology for controlling these emissions has been greatly improved. Emissions of SO_2 continue to be a national problem. The utility industry contributes about half of all the SO_2 emissions from stationary sources, and it is a source category for which rapid growth is predicted.

EPA was petitioned on August 6, 1976, by the Oljato and Red Mesa Chapters of the Navajo Tribe, and the Sierra Club, to revise that standard so as to require a 90% reduction in SO_2 emissions from all coal-fired power plants. The petition included detailed information which on its face presented a compelling case to support the claim that advances in technology since 1971 call for a revision of the standard, and EPA has agreed to investigate the matter thoroughly.

EPA is required to consider a broad range of issues in promulgating or revising a standard issued under section 111 of the Clean Air Act. Any revision of this regulation would have broad environmental impact by reducing nationwide SO_2 emissions, and would have economic impact in terms of added industry control costs and their attendant effect on the cost of electrical power. Accordingly, the Agency has initiated a study to complete the technological, economic and other documentation needed to determine to what extent the regulation for emissions of SO_2 from fossil fuel-fired steam generators should be revised. This study is scheduled for completion by November 1977.

Interested persons are invited to participate in Agency efforts by submitting written data, opinions or arguments as they may desire. The Agency is specifically interested in information on the following aspects of fossil fuel-fired steam generators and their SO_2 emissions: industry definitions; emission data; toxicological data; information concerning both demonstrated emission control technology and processes; cost associated with the control of SO_2 emissions and solid and liquid waste treatment and disposal systems; and methods and costs of coal desulfurization. Communication on these or any other aspects of this program should be submitted to: the Environmental Protection Agency, Office of Air Quality Planning and Standards, Emission Standards and Engineering Division, Research Triangle Park, North Carolina 27711, Attention: Mr. Don R. Goodwin.

In the near future, EPA will conduct a public hearing, at which interested persons will have the opportunity to orally present their views on this subject. The time and place of the hearing will be announced in a separate notice.

Dated: January 19, 1977.

ROGER STRELOW,
Assistant Administrator for Air and Waste Management.

[FR Doc.77-2586 Filed 1-26-77;8:45 am]

LOUISIANA

Submission of State Plan for Certification of Pesticide Applicators

In accordance with the provisions of Section 4(a)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (86 Stat. 973; 7 U.S.C. 136) and 40 CFR Part 171 (39 FR 36446 (Oct. 9, 1974) and 40 FR 11698 (March 12, 1975)), the Honorable Edwin Edwards, Governor of the State of Louisiana, has submitted a State Plan for Certification of Commercial and Private Applicators of Restricted Use Pesticides to the Environmental Protection Agency (EPA) for contingency approval, pending promulgation of proposed regulations. Notice is hereby given of the intention of the Regional Administrator, EPA, Region VI, to approve this plan on a contingency basis pending promulgation of the proposed regulations.

A summary of the plan follows. The entire plan, together with all attached appendices, except for sample examinations, may be examined during normal business hours at the following locations:

Louisiana Department of Agriculture, Harry D. Wilson Lab, Room 223, LSU Campus, Baton Rouge, Louisiana 70893, phone: 504-389-5478.

U.S. Environmental Protection Agency, Region VI, Pesticides & Hazardous Materials Branch, First International Building, 1201 Elm Street, Dallas, Texas 75270, phone: 214-749-7601.

U.S. Environmental Protection Agency, Office of Pesticide Programs (WH-569), Federal Register Section, Room 401 East Tower, 401 M Street SW., Washington, D.C. 20460, phone: 202-755-4854.

SUMMARY OF LOUISIANA STATE PLAN

The Louisiana Department of Agriculture, Bureau of Technical Services, has been designated as the State Lead Agency for the administrator of the pesticide certification program. Since the authority to regulate applicators is legislatively delegated between the Bureau of Technical Services and the Bureau of Entomology and Plant Industry within the Department of Agriculture, each agency will certify those applicators in its sphere of authority. The Bureau of Technical Services will certify all applicators of restricted use pesticides except those individuals required to be licensed as Structural Pest Control Operators. Those individuals will be certified by the Bureau of Entomology and Plant Industry in conjunction with the licensing procedure of the Structural Pest Control Commission. The Bureau of Entomology and Plant Industry is the departmental adjunct to the Structural Pest Control Commission and as such will administer the laws, rules, and policies of the Commission regarding certification.

The Cooperative Extension Service will handle training and educational aspects of certification with participation by the Bureau of Entomology and Plant Industry and the Bureau of Environmental Health in the areas in which they have available expertise.

Legal authority for the program is contained in the Louisiana Pesticide Control Act (R.S. 3:1621-1642) and the Louisiana Structural Pest Control Law (R.S. 40:1261-1274), and proposed regulations. A copy of the proposed regulations is attached to the plan.

The plan indicates that the State Lead Agency and cooperating agencies have sufficient qualified personnel and funds necessary to carry out the programs.

The Bureau of Technical Services will submit an annual report providing the information required in 40 CFR 171.7(d) on March 1 of each year for the previous year and other reports as may be required by 40 CFR 171.7 (d).

The major categories for commercial applicators for the State of Louisiana will conform to those listed in 40 CFR 171.3(b). Louisiana has adopted the following subcategories:

2. Forest Pest Control: a. General Forest Pest Control. b. Forest Tree Seed Orchards and Nurseries Pest Control. c. Wood Processing Treatment.

6. Right-of-Way Pest Control: a. Industrial Weed and Brush Control.

7. Industrial, Institutional, Structural and Health Related Pest Control: a. Commercial applicators licensed as Pest Control Operators by the Bureau of Entomology and Plant Industry in the following areas. 1. Entomology. 2. Wood-destroying Organism Control. 3. Household Pest Control. 4. Fumigation. 5. Rodent Control. b. Commercial applicators not covered by subcategories 7a or 7c. c. Commercial applicators who apply or supervise the application of pesticides with restricted uses in, on, or around establishments engaged in the manufacture of food products from raw agricultural commodities.

8. Public Health Pest Control: a. Mosquito Control (governmental programs). b. Rodent Control (governmental programs). c. Community Public Health Pest Control.

Approximately 4,905 commercial and 70,000 private applicators will need certification.

Commercial applicators will be certified using the standards of competency established in 40 CFR 171.4(b&c) and 171.6. Competency will be determined by written examination for both general and specific standards.

Commercial applicators will be certified by written examinations administered by employees of the appropriate agency. These tests will be graded by agency employees and the results will be mailed to the applicators.

In accordance with 40 CFR 171.7(e)(3), the State of Louisiana has described its current licensing program for applicators in subcategory 7a, 1-5 (See App. B, R.S. 40:1265) and has requested authority to certify those applicators licensed in these categories on the basis of written examinations with further demonstration of competency solely through a written examination covering the

general standards. This Agency has reviewed the examinations submitted with the Plan, and has determined that applicators licensed on the basis of the examinations have satisfied the requirements for certification with respect to the specific standards of competency. Passage by these applicators of a written examination covering the general standards would, in this Agency's view, fully satisfy the requirements for certification. Accordingly, notice is hereby given of the intention of the Regional Administrator to approve the Louisiana request.

Private applicators will be certified to the standards of competency listed in 40 CFR 171.5 and 171.6.

General certification will be obtained by private applicators by one of two methods:

1. Completion of a State Cooperative Extension Service training course which will include oral review questions and group discussions;

2. Completion of written examination administered by the State Lead Agency.

Single product certification will be used for certification of private applicators who cannot read the label and for emergency certification. A written questionnaire will be used for single product certification. This questionnaire will be administered by field inspectors of the Bureau of Technical Services and employees of other designated agencies. Applicators able to read the label will be allowed to fill out the questionnaire while those applicators not able to read a label will be asked the questions by the field inspector or employee of the designated agency. This certification will be valid for one year. Emergency certification will not be renewable. Non-reading applicator certification will be renewable.

Programmed instruction may be utilized in the future as a means of granting general certification. Louisiana will submit a copy of the programmed instruction to EPA for approval.

A copy of the examinations or a representative sample of questions has been submitted with the plan for review.

To preserve the confidentiality of the examinations, the State of Louisiana has requested they not be made available for public inspection. The Agency agrees with this request and has removed the examinations and sample questions from the public inspection copies of the plan.

Credentials will be furnished to all applicators when they become certified.

Louisiana will not accept the Government Agency Plan (GAP) as it is understood at this time. Within 60 days of final approval of the GAP a statement will be forwarded to EPA in regards to acceptance of GAP.

The Department of Agriculture intends to enter into agreements with the two Indian reservations in the State to provide for jurisdiction of applicators under this State Plan. Copies of this agreement will be furnished to EPA.

Louisiana is open to reciprocity with States that have competency standards at least equal to Louisiana. Copies of these agreements will be furnished to EPA.

Other pesticide regulatory activities include the regulation of: pesticide dealers, pesticide registrations, pesticide residues, and pest management consultants.

Pesticide inspectors will make checks of persons applying, selling, or recommending the application of pesticides to determine if they are complying with the law. Inspectors may also sample pesticides to determine if they meet the analysis specification. The inspector may also obtain pesticide residue samples.

The certification documents (credentials) will be renewed every three years for private applicators and every year for commercial applicators. All applicators will be required to attend a training session every three years beginning October 21, 1977 to maintain their certification.

PUBLIC COMMENTS

Interested persons are invited to submit written comments on the proposed State Plan for the State of Louisiana to the Chief, Pesticides and Hazardous Materials Branch, Region VI, Environmental Protection Agency, First International Building, 1201 Elm Street, Dallas, Texas 75270. The comments must be received on or before February 28, 1977, and should bear the identifying notation (OPP-42038). All written comments filed pursuant to this notice will be available for public inspection at the above mentioned location from 8:30 a.m. to 3:30 p.m. Monday through Friday.

Date: January 14, 1977.

JOHN C. WHITE,
Regional Administrator,
EPA, Region VI.

[FR Doc-77-2590 Filed 1-26-77;8:45 am]

[FRL 675-8; OPP—42033A]

NEW YORK

Approval of State Plan for Certification of Commercial and Private Pesticide Applicators

Section 4(a)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (86 Stat. 973; 7 U.S.C. 136b) and the implementing regulations of 40 CFR Part 171 require each State desiring to certify applicators to submit a plan for its certification program. Any State certification program under this section shall be maintained in accordance with the State Plan approved under this section.

On October 28, 1976, notice was published in the FEDERAL REGISTER (41 FR 47283) of the intent of the Regional Administrator, Environmental Protection Agency (EPA) Region II, to approve, on a contingency basis, the New York State Plan for Certification of Pesticide Applicators (New York State Plan). Contingency approval was requested by the State of New York pending enactment of an approvable amendment to Article 33 of the Environmental Conservation Law to delete or clarify the exemption granted to public employees from unlawful acts and pending approval of implementing regulations. Complete copies of the New York State Plan were made available for public inspection at the Bureau of Pesticides, Division of Quality Services, Department of Environmental Conservation, Albany, New York; Pesticides Branch, Environmental Programs Division, EPA Region II, New York, New York and the Federal Register Section, Technical Services Division, Office of Pesticide Programs, EPA Headquarters, Washington, D.C.

The only written comments received were from the National Canners Association. These comments were carefully reviewed and evaluated by EPA and by the Department of Environmental Conservation, the State lead agency responsible for implementing the New York State Plan.

The National Canners Association commented that because pesticide applicator training is not required by amended FIFRA, New York State Cooperative Extension Service funds for training should not be considered in the assessment of the adequacy of funding to support the State Plan. Although the State of New York plans to utilize training programs as an integral part of the pesticide applicator certification program, the Agency assessed the proposed certification program only on the basis of funding information provided by the lead agency.

Objections were raised to the State's intention to require a certification fee for pesticide applicators, to the plan's provision for private applicator categories and to certain commercial applicator subcategory divisions. It is the Agency's position that Section 4 of the amended FIFRA establishes a coordinated State/Federal program for certifying applicators with section 4(a)(1) making EPA responsible for prescribing applicator certification standards. Under section 24 of the amended FIFRA, the States are left with a great deal of flexibility in developing their individual programs provided these programs meet the prescribed Federal standards. These comments received pertain to regulatory requirements which are specific to the State of New York and do not address the acceptability of the regulations to the Agency. Since these comments are pertinent to the specifics of the New York State Plan, the Agency has forwarded the comments to the Department of Environmental Conservation for its consideration.

Certain comments address regulations promulgated under amended FIFRA rather than the acceptability of the plan under Federal regulations. Since these comments are not germane to the conformance of the plan to prescribed standards they were not considered by the Agency.

The New York State Plan will remain available for public inspection at the Bureau of Pesticides, Division of Quality Services, Department of Environmental Conservation, 50 Wolf Road, Albany, New York.

It has been determined that the New York State Plan will satisfy the requirements of Section 4(a)(2) of the amended FIFRA and of 40 CFR Part 171 if an approvable amendment to Article 33 of the Environmental Conservation Law to delete or clarify the exemption granted to public employees from unlawful acts is enacted and if necessary implementing regulations are promulgated. Accordingly, the New York State Plan is approved contingent upon enactment of such amendment and upon promulgation of implementing regulations in accordance with and as prescribed in the State Plan.

This contingency approval shall expire on October 21, 1977, if these terms and conditions are not satisfied by that time. On or before the expiration of the period of contingency approval, a notice shall be published in the FEDERAL REGISTER concerning the extent to which these terms and conditions have been satisfied, and the approval status of the New York State Plan as a result thereof.

Effective date. Pursuant to Section 4(d) of the Administrative Procedure Act, 5 U.S.C. 553(d), the Agency finds that there is good cause for providing that the contingency approval granted herein to the New York State Plan shall be effective immediately. Neither the New York State Plan itself nor this Agency's contingency approval of the Plan create any direct or immediate obligations on pesticide applicators or other persons in the State of New York. Delays in the work necessary to implement the plan, such as may be occasioned by providing some later effective date for this contingency approval, are inconsistent with the public interest. Accordingly, this contingency approval shall become effective immediately.

Dated: January 70, 1977.

ERIC B. OUTWATER,
Acting Regional Administrator,
United States Environmental
Protection Agency, Region II.

[FR Doc.77-2589; Filed 1-26-77;8:45 am]

[FRL 675-6, OPP-180111]

WASHINGTON STATE DEPARTMENT OF AGRICULTURE

Issuance of Specific Exemption To Use Benomyl to Control Fungus on Cabbage, Cauliflower, Broccoli, and Brussels Sprout Seeds

Pursuant to the provisions of section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (86 Stat. 973; 89 Stat. 751; 7 U.S.C. 136(a) et seq.), notice is given that the Environmental Protection Agency (EPA) has granted a specific exemption to the Washington State Department of Agriculture (hereafter referred to as the "Applicant") to use benomyl on commercial cabbage, cauliflower, broccoli, and brussels sprout seeds in western Washington to control infestations of the fungus *Phoma lingam*, which causes the plant disease called "blackleg". This exemption was granted in accordance with, and is subject to, the provisions of 40 CFR Part 166, issued December 3, 1973 (38 FR 33303), which prescribes requirements for exemption of Federal and State agencies for use of pesticides under emergency conditions.

This notice contains a summary of certain information required by regulation to be included in the notice. For more detailed information, interested parties are referred to the application on file with the Registration Division (WH-567), Office of Pesticide Programs, EPA, 401 M Street, S.W., Room E-315, Washington, D.C. 20460.

According to the Applicant, *Phoma lingam*, the causal agent of blackleg disease in these crucifers (plants of the family *Cruciferae*) is frequently present on seed, but epidemic outbreaks depend on the weather conditions in seed growing, transplant and food production areas. The organism, which may remain viable on plant debris for up to four (4) years, can be introduced into new fields by seed transmission. The Applicant stated that a disastrous outbreak of cabbage blackleg occurred in the eastern cabbage-growing States in 1973 as a result of seed transmission of *Phoma lingam*. In that year, cabbage growers suffered a ten (10) percent loss of the nation's cabbage crop to blackleg and blackrot; the cabbage seed growing industry of Washington State was threatened by lawsuits and the potential loss of insurance coverage.

Control of this fungus requires effective treatment of stock seed used for seed production and commercial seed; however, tolerances have not been established for benomyl residues on cabbage, cauliflower, broccoli, or brussels sprouts. EPA has made the determination that the use of benomyl on seed used exclusively for seed production does not constitute a food use and therefore, does not require food tolerances. Although there is an alternative control method, hot water treatment, the Applicant contended that it is not effective and may cause damage to the seeds. The fungus *Phoma lingam* has been found on seeds from this year's cabbage crop; without an effective control method, spread of the fungus to growing fields by seed transmission may occur.

The Applicant will treat up to one million (1,000,000) pounds of commercial seed which has been harvested from the 1976 cabbage, cauliflower, broccoli and brussels sprout seed production crop. The seed from these crucifers will be utilized for food production in 1977. Benomyl (Benlate 50 percent wettable powder, EPA Reg. No. 352-354 AA) will be applied at the rate of eight (8) ounces of the product, four (4) ounces active ingredient, in sufficient water to treat one-hundred (100) pounds of seed. Seeds will be treated upon the determination of the presence of Phoma lingam; each seed lot will be treated no more than once. Treatment will begin as soon as possible and be completed by March 31, 1977. All applications will be made by seed companies or seed contractors utilizing seed treating personnel.

There are approximately 1,500 acres of cabbage grown for seed in the United States each year, including 1,000 acres in western Washington State, according to the Applicant. These 1,000 acres supply about 80% of the cabbage seed for the United States and 30% for the world. The Applicant stated that the potential market value of cabbage raised from this seed is $84,000,000. This estimate of economic loss does not include the possible losses which could be incurred regarding the cauliflower, broccoli and brussels sprout crops.

After reviewing the application and other available information, EPA has determined that (a) a pest outbreak of the fungus *Phoma lingam* has occurred; (b) there is no pesticide presently registered and available for use to control the fungus in Washington State; (c) there are no alternative means of control, taking into account the efficacy and hazard; (d) significant economic problems may result if the fungus is not controlled; and (e) the time available for action to mitigate the problems posed is insufficient for a pesticide to be registered for this use. Accordingly, the Applicant has been granted a specific exemption to use the pesticide noted above until April 1, 1977, to the extent and in the manner set forth in the application. The specific exemption is also subject to the following conditions:

(1) A benomyl product, Benlate 50 percent wettable powder (EPA Reg. No. 352-354 AA) will be used;

(2) Benomyl will be applied at the rate of eight (8) ounces of the product, four (4) ounces active ingredient, in sufficient water to treat one hundred (100) pounds of seed;

(3) Each seed lot will receive no more than a single application of benomyl;

(4) A maximum of one million pounds of seed will be treated;

(5) Treated seed will not be used for food, feed, or any other use except planting;

(6) EPA has determined that residues of benomyl resulting from this use are not likely to exceed 0.2 ppm (parts per million) in cabbage and cauliflower and 0.4 ppm in broccoli and brussels sprouts, which will not pose a hazard to the public health. The Food and Drug Administration of the U.S. Department of Health, Education, and Welfare, has been advised of this action;

(7) The Applicant is responsible for ensuring that the restrictions pursuant to this specific exemption are met;

(8) The Applicant will monitor crops grown from treated seed for residues of benomyl and its metabolites; and

(9) All applications will be made by seed treating personnel of the seed companies or seed contractors.

Dated: January 17, 1977.

EDWIN L. JOHNSON,
Deputy Assistant Administrator
for Pesticide Programs.

[FR Doc.77-2587 Filed 1-26-77;8:45 am]

[FRL 675-7]

RADIATION PROTECTION IN HEALING ARTS; GUIDANCE TO FEDERAL AGENCIES

Memorandum of Understanding with Department of Health, Education, and Welfare

The Environmental Protection Agency (EPA) and the Department of Health, Education, and Welfare (HEW) each have statutory responsibilities which affect radiation protection. In addition, HEW has the major Federal responsibility for national health care policy, including areas in the practice of medicine which involve radiation exposure. For the purpose of reducing unnecessary patient exposure to radiation in the healing arts, through the devel-

opment and promulgation of radiation protection guidance to Federal agencies, the EPA and HEW hereby agree to the following:

AUTHORITY

1. The Administrator of EPA is directed by Section 274(h) of the Atomic Energy Act (42 U.S.C. 2021(h)) to advise the President with respect to radiation matters, directly or indirectly affecting health, including guidance for all Federal agencies in the formulation of radiation standards and in the establishment and execution of programs of cooperation with States.

2. The Secretary of HEW is directed by Sections 301, 310, 311, and 356 of the Public Health Service Act (42 U.S.C. 241, 242o, 243, and 263d) to conduct research and investigations, to issue information to the public, to advise the States, and to make recommendations on radiation matters affecting public health and safety, and by Section 520(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360j(e)) to prescribe regulations restricting the sale, distribution and use of medical devices. These authorities have been delegated to the Commissioner of Food and Drugs (21 CFR 5.1).

AGENCY RESPONSIBILITIES

1. EPA will identify in consultation with other Federal agencies (including HEW) areas of potential reduction in radiation exposure in the healing arts, particularly those areas of concern to Federal agencies.

2. In the consideration of potential Federal radiation guidance affecting radiation exposure in the healing arts, EPA will consult with HEW on the need for Federal guidance, the time within which it should be developed, the degree of specificity appropriate to the problem, and the adequacy of any existing criteria as a basis for such guidance.

3. When HEW believes that development of Federal guidance is needed and is consistent with its resources and priorities, FDA will proceed to develop and promulgate a radiation protection recommendation and transmit it to EPA for review as proposed Federal radiation guidance.

4. When, in the interest of timely Federal guidance, it is appropriate to consider issuance in two phases: (1) Broad guidance developed by EPA, followed by (2) Specific implementing guidance developed by HEW, the agencies will consult on the appropriate division between the broad and specific phases.

5. In those instances when EPA develops proposed Federal radiation guidance, HEW will provide available input on the content of that guidance and a determination of the anticipated impact on health care, and EPA will address in the public record all comments by Federal agencies (including HEW), professional organizations, and the public.

6. EPA will conduct review of proposed Federal radiation guidance developed by either HEW or EPA. Such review will include coordination of appropriate review by affected Federal and State agencies, experts in radiation matters, professional organizations, and the public.

7. EPA will provide appropriate followup and coordination with Federal agencies to assure implementation of Federal radiation guidance as used in the healing arts.

LIAISON OFFICIALS

All matters pertaining to this agreement will be administered by the following officials or their designees:

For the Department of Health, Education, and Welfare: Director, Bureau of Radiological Health, FDA.

For the Environmental Protection Agency: Director, Criteria and Standards Division, Office of Radiation Programs.

PERIOD OF AGREEMENT

This Memorandum of Understanding shall continue in effect unless modified by mutual consent of both parties or terminated by either party upon thirty (30) days advance written notice to the other.

This Memorandum of Understanding will become effective on the date of the last signature.

For the Environmental Protection Agency.

Dated: January 5, 1977.

RUSSELL E. TRAIN,
Administrator.

For the Department of Health, Education, and Welfare.

Dated: January 18, 1977.

THEODORE COOPER,
Assistant Secretary for Health.

[FR Doc.77-2588 Filed 1-26-77;8:45 am]

FEDERAL ENERGY ADMINISTRATION

KLEER SALT DOME STORAGE SITE; STRATEGIC PETROLEUM RESERVE

Availability of Draft Site-Specific Environmental Impact Statement

Pursuant to Section 102(2)(C) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C), the Federal Energy Administration (FEA) has prepared a draft site-specific environmental impact statement (EIS) for the Kleer salt dome site, one of eight storage sites that is being considered for the creation of a Strategic Petroleum Reserve. The Reserve is mandated by Part B of Title I, Energy Policy and Conservation Act, 42 U.S.C., Sections 6231–6246. The Reserve will be created for the storage of approximately 500 million barrels of crude oil and/or petroleum products for use in the event of a Presidential determination of a severe energy supply interruption or a requirement to meet the obligations of the United States under the International Energy Program.

The Kleer salt dome site is located near Grand Saline, Texas. This site is currently under consideration for use in the Early Storage Reserve, i.e., for the first 150 million barrels of storage capacity.

Single copies of the draft Kleer EIS (DES–77–3) may be obtained from the FEA, Office of Communications and Public Affairs, Room 3138, 12th and Pennsylvania Avenue, N.W., Washington, D.C. 20461. Copies of the draft Kleer EIS will also be available for public review in the FEA Information Access Reading Room, Room 2107, 12th and Pennsylvania Avenue, N.W., Washington, D.C. 20461, between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Interested persons are invited to submit data, views or arguments with respect to the draft Kleer EIS to Executive Communications, Box KI, Room 3309, Federal Energy Administration, 12th and Pennsylvania Avenue, N.W., Washington, D.C. 20461.

Comments should be identified on the outside of the envelope and on the documents submitted to FEA Executive Communications with the designation "Draft Kleer EIS (DES–77–3)." Fifteen copies should be submitted. All comments should be received by FEA by March 7, 1977, in order to receive full consideration.

Any information or data considered by the person furnishing it to be confidential must be so identified and submitted in one copy only. The FEA reserves the right to determine the confidential status of the information or data and to treat it according to that determination.

Issued in Washington, D.C., January 21, 1977.

DAVID G. WILSON,
Acting General Counsel,
Federal Energy Administration.

[FR Doc.77-2606 Filed 1-24-77;9:32 am]

WEST HACKBERRY SALT DOME STORAGE SITE; STRATEGIC PETROLEUM RESERVE

Availability of Final Site-Specific Environmental Impact Statement

Pursuant to Section 102(2)(C) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C), the Federal Energy Administration (FEA) has prepared a final site-specific environmental impact statement (EIS) for the West Hackberry salt dome site, one of eight storage sites that is being considered for the creation of a Strategic Petroleum Reserve. The Reserve is mandated by Part B of Title I, Energy Policy and Conservation Act, 42 U.S.C., Sections 6231–6246. The Reserve will be created for the storage of approximately 500 million barrels of crude oil and/or petroleum products for use in the event of a Presidential determination of a severe energy supply interruption or a requirement to meet the obligations of the United States under the International Energy Program.

The West Hackberry salt dome site is located in Cameron Parish, Louisiana. This site is currently under consideration for use in the Early Storage Reserve, i.e., for the first 150 million barrels of storage capacity.

Single copies of the final West Hackberry EIS (FES–76/77–4) may be obtained from the FEA, Office of Communications and Public Affairs, Room 3138, 12th and Pennsylvania Avenue, N.W., Washington, D.C. 20461. Copies of the final West Hackberry EIS will also be available for public review in the FEA Information Access Reading Room, Room 2107, 12th and Pennsylvania Avenue, N.W., Washington, D.C. 20461, between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Interested persons are invited to submit data, views or arguments with respect to the final West Hackberry EIS to Executive Communications, Box KJ, Room 3309, Federal Energy Administration, 12th and Pennsylvania Avenue, N.W., Washington, D.C. 20461.

Comments should be identified on the outside of the envelope and on the documents submitted to FEA Executive Communications with the designation "Final West Hackberry EIS (FES–76/77–4)." Fifteen copies should be submitted. All comments should be received by FEA by February 22, 1977, in order to receive full consideration.

Any information or data considered by the person furnishing it to be confidential must be so identified and submitted in one copy only. The FEA reserves the right to determine the confidential status of the information or data and to treat it according to that determination.

Issued in Washington, D.C., January 21, 1977.

DAVID G. WILSON,
Acting General Counsel.
Federal Energy Administration.

[FR Doc.77-2605 Filed 1-24-77;9:33 am]

FEDERAL HOME LOAN MORTGAGE CORPORATION

[No. MC 77–5]

GOVERNMENT IN THE SUNSHINE ACT

Public Information Regarding Decision Making Process

JANUARY 13, 1977.

SECTION 1. *Purpose and scope.* Notice is hereby given of proposed rules issued by the Federal Home Loan Mortgage Corporation ("the Corporation") pursuant to the requirement of the Government in the Sunshine Act of 1976 (Pub. L. 94–409, 5 U.S.C. 552b). These proposed rules are issued in accordance with the provisions of the Act in order to provide the public with the fullest practicable information regarding the Corporation's decision making processes while protecting the rights of individuals and the ability of the Corporation to carry out its purposes and objectives.

Interested persons are invited to submit written public comments in connection with these proposed rules through February 23, 1977. Comments should be sent to Mr. Don Hill, Director of Corporate Relations, Federal Home Loan Mortgage Corporation, 311 First Street, NW., Washington, D.C. 20001.

SEC. 2. *Definitions.* (a) For purposes of these rules, the term "meeting" means any deliberations of two or more members of the Corporation's Board of Directors ("Director"), assembled in *collegio*, the purpose or effect of which is to determine or result in joint conduct of official business of the Corporation.

SEC. 3. *Opened meetings.* (a) Except as provided in section 4 of these Rules, all meetings of the Directors shall be open to the public.

(b) Procedures for open meetings:

(1) Except as provided in subparagraph (2) of this section, the Directors shall announce at least one week before a meeting the time, place, and subject matter of the meeting and the name and telephone number of the official designated to respond to requests for information about the meeting. This announcement shall be sent to the FEDERAL REGISTER for publication and also posted in the main lobby of the Corporation's headquarters which is located on the 6th floor at 311 First Street, NW., Washington, D.C. 20001.

(2) Where a majority of the Directors determine by recorded vote that Corporation business requires a shorter announcement period or a change in a meeting or portion thereof previously announced, the one-week prior-announcement rule shall be suspended and announcement shall be made at the earliest practicable time.

SEC. 4. *Closed meetings*—(a) *Expediting regulation.* (1) This section, providing for expedited closing procedures with regard to meetings or portions thereof exempt under paragraphs (4), (8), (9) (A) or (10) of subsection (c) of this Act (paragraphs (c) (4), (8), (9)(A) or (10) of this section), is adopted pursuant to 5 U.S.C. 552(d)(4), because a majority of the Directors' meetings include deliberations which if held publicly would be likely to disclose information required or authorized by law to be kept confidential. However, the Directors may choose to open any meeting on an ad hoc basis notwithstanding that it may lawfully be closed.

(2) Where a meeting or portion thereof is to be closed, a public record shall be kept of the Directors' vote at the beginning of the meeting to close it or a portion thereof and any certification by the General Counsel that such closure is authorized by law, including a statement pertaining to the relevant exemptive provision or provisions of law. Such record shall be made available to the public at the Office of the Secretary of the Corporation. Public announcement of the time, place and subject matter of closed meetings or portions thereof shall be made at the earliest practicable time.

(b)(1) A complete transcript or recording shall be made and maintained of the proceedings at each meeting or portion thereof closed to the public under these Rules, except that, where appropriate, a set of minutes may be made and maintained in lieu of such transcript or recording. Such minutes shall fully and clearly describe all matters discussed and provide a full and accurate summary of any action taken, and the reasons therefor, including a description of each of the views expressed on any item and the record of any rollcall vote (reflecting the vote of each Director on the question). All documents considered in connection with any action shall be identified in such minutes.

(ii) Such transcript, electronic recording, or minutes of the discussion of any item on the agenda shall be made promptly available to the public at or through the Office of the Secretary, except for such item or items of such discussions as the Directors determine to contain information which may be withheld under paragraph (c) of this section. Copies of such transcript or minutes or a transcription of such recording, disclosing the identity of each speaker, shall be furnished to any person at the actual cost of duplication or transcription. The Directors shall maintain a complete verbatim copy of the transcript, a complete copy of the minutes, or a complete electronic recording of each meeting, or portion of a meeting, closed to the public, for a period of at least two years after such meeting, or until one year after the conclusion of any Corporation proceeding with respect to which the meeting or portion was held, whichever occurs later.

(c) Except in a case where the Directors find that the public interest requires otherwise, the Directors may close a meeting or portion of a meeting where they determine that disclosure of information pertaining to such meeting or portion thereof is likely to:

(1) Disclose matters that are (A) specifically authorized under criteria established by an Executive order to be kept secret in the interests of national defense or foreign policy and (B) in fact properly classified pursuant to such Executive order;

(2) Relate solely to the internal personnel rules and practices of the Corporation;

(3) Disclose matters specifically exempted from disclosure by statute (other than 5 U.S.C. 552), provided that such statute (A) requires that matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Disclose trade secrets or commercial or financial information obtained from a person and privileged or confidential;

(5) Involve accusing any person of a crime, or formally censuring any person;

(6) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(7) Disclose investigatory records compiled for law enforcement purposes, or information which if written would be contained in such records, but only to the extent that the production of such records or information would (A) interfere with enforcement proceedings, (B) deprive a person of a right to a fair trial

or an impartial adjudication, (C) constitute an unwarranted invasion of personal privacy, (D) disclose the identity of a confidential source or, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by a confidential source, (E) disclose investigative techniques and procedures, or (F) endanger the life or physical safety of law enforcement personnel;

(8) Disclose information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of the Corporation or another agency responsible for the regulation or supervision of financial institutions;

(9) Disclose information the premature disclosure of which would:

(A) Be likely to (i) lead to significant financial speculation in currencies, securities, or commodities, or (ii) significantly endanger the stability of any financial institution; or

(B) Be likely to significantly frustrate implementation of a proposed Corporation action,

except that subparagraph (B) shall not apply in any instance where the Corporation has already disclosed to the public the content or nature of its proposed action, or where the Corporation is required by law to make such disclosure on its own initiative prior to taking final action on such proposal; or

(10) Specifically concern the Corporation's participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct, or disposition of a particular case involving a determination on the record after opportunity for a hearing.

SEC. 5. *Accommodation for public attendance at open meetings.* Open meetings are held in Room 630 at 320 First Street, N.W., Washington, D.C. 20552, at the time and on the date specified in the advance public notice; such information is also posted in the main lobby at such location. Interested members of the public may attend such meetings but may not participate therein unless invited or permitted to do so by the Corporation.

FEDERAL HOME LOAN MORTGAGE CORPORATION,
RONALD A. SNIDER,
Assistant Secretary.

[FR Doc.77-2543 Filed 1-26-77;8:45 am]

[NO: MC 77-3]

PUBLIC INFORMATION

Notice Providing Information Concerning Organization, Rules and Access to Records

JANUARY 13, 1977.

Notice is hereby given as to the (1) organization, (2) rules, and (3) procedures for access to records used by the Federal Home Loan Mortgage Corporation. Some of this information is set forth herein, and the remainder is incorporated by reference pursuant to 5 U.S.C. 552(a)(1). This Notice supersedes, in its entirety, the Notice on this subject which appeared at 41 FR 30721 on July 27, 1976 and is effective upon publication.

1. CREATION AND PURPOSE

The Federal Home Loan Mortgage Corporation (hereinafter referred to as "FHLMC" or the "Corporation") is a corporate instrumentality of the United States created pursuant to an Act of Congress enacted on July 24, 1970 (Title III of the Emergency Home Finance Act of 1970, as amended, 12 U.S.C. 1451–1459, hereinafter referred to as the "FHLMC Act"). The Federal Home Loan Mortgage Corporation was established primarily for the purpose of increasing the availability of mortgage credit for the financing of housing. It seeks to provide an enhanced degree of liquidity for residential mortgage investments primarily by assisting in the development of secondary markets for conventional mortgages.

The Corporation currently carries out its statutory responsibilities by purchasing mortgages, and by selling securities representing interests in mortgages it has purchased. Sales of mortgages provide funds for additional mortgage purchases or are used to repay borrowings of the Corporation.

The Corporation purchases conventional mortgages, FHA insured mortgages and VA guaranteed mortgages; these purchases include mortgages secured by both single family and multifamily real properties. The Corporation is statutorily limited to purchasing mortgages from financial institutions the deposits or accounts of which are insured by the United States or from certain state institutions as described in the FHLMC Act. The FHLMC Act further restricts the Corporation's mortgage purchases to those mortgages which would be acceptable to institutional mortgage investors.

The Corporation currently resells mortgages it purchases primarily in the form of Participation Certificates (PCs) and Guaranteed Mortgage Certificates (GMCs). A description of the terms of these securities can be found in the current Offering Circular for PCs and current Prospectus for GMCs, both of which are available from the Corporation. The primary purchasers of PCs have been savings and loan associations, and the primary purchasers of GMCs have been institutional investors—e.g., pension funds.

2. CENTRAL AND FIELD ORGANIZATION

A. *Principal and Regional Offices.* The principal office of the Federal Home Loan Mortgage Corporation is located at 311 First Street, NW., Washington, D.C. 20001. In addition, it has established five regional offices for administrative purposes. The locations and respective administrative areas of these regional offices are set forth below.

Regional Offices and Administrative Areas

Northeast: 2001 Jefferson Davis Highway, Suite 901, Arlington, Virginia 22202 (703) 685–2400: Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Virginia, Virgin Islands, West Virginia.

Atlanta: 229 Peachtree Street, N.E., Suite 2600, Atlanta, Georgia 30343 (404) 659–3377: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee.

Chicago: 111 East Wacker Drive, Suite 1515, Chicago, Illinois 60601 (312) 861–8400: Illinois, Indiana, Iowa, Michigan, Minnesota, North Dakota, Ohio, South Dakota, Wisconsin.

Dallas: 12700 Park Central Place, Suite 1800, Dallas, Texas 75251 (214) 387–0600: Arkansas, Colorado, Kansas, Louisiana, Missouri, Nebraska, New Mexico, Oklahoma, Texas, Wyoming.

Los Angeles: 3435 Wilshire Boulevard, Suite 1000, Los Angeles, California 90010 (213) 487–4800: Alaska, Arizona, California, Guam, Hawaii, Idaho, Montana, Nevada, Oregon, Utah, Washington.

B. *Corporation Officers and Directors.*—(i) *Board of Directors.* The Board of Directors of the Corporation consists of the Chairman and Board Members of the Federal Home Loan Bank Board. The Board of Directors is responsible for all corporate functions.

(ii) *President and Chief Executive Officer.* The President and Chief Executive Officer is directly responsible to the Board of Directors for the management of the Corporation.

(iii) *Executive Vice President and Chief Administrative Officer.* The Executive Vice President and Chief Financial Officer is directly responsible to the President for administration of corporate activities relating to Finance, Marketing, Office Services, Personnel and Systems.

(iv) *Executive Vice President and Chief Operating Officer.* The Executive Vice President and Chief Operating Officer is directly responsible to the President for the recommendation and implementation of all corporate activities relating to the procurement and administration of the corporate mortgage portfolio and regional operations.

(v) *Senior Vice President—Regional Operations.* The Senior Vice President—Regional Operations is directly responsible to the Executive Vice President and Chief Operating Officer for the administration of the corporate regional offices.

(vi) *Senior Vice President—Region.* The Senior Vice President—Region is directly responsible to the Senior Vice President—Regional Operations for the administration of the corporate regional office.

(vii) *Vice President—General Counsel.* The Vice President—General Counsel is directly responsible to the President for advice concerning corporate policy on all matters of law affecting the Corporation.

(viii) *Vice President—Research.* The Vice President—Research is directly responsible to the President for the analysis of current economic indicators affecting overall corporate activity as well as research on housing and mortgage finance related topics.

(ix) *Vice President—Congressional Relations.* The Vice President—Congressional Relations is directly responsible to the President and provides national legislative analysis, advice and coordination.

(x) *Vice President—Treasurer.* The Vice President—Treasurer is directly responsible to the Executive Vice President and Chief Administrative Officer for the recommendation and implementation of corporate financial policy.

(xi) *Vice President—Marketing.* The Vice President—Marketing is directly responsible to the Executive Vice President and Chief Administrative Officer for the development and implementation of all marketing functions of the Corporation.

(xii) *Vice President—Systems.* The Vice President—Systems is directly responsible to the Executive Vice President and Chief Administrative Officer for development, operation, support and control of all corporate computer systems.

(xiii) *Vice President—Appraisal and Underwriting.* The Vice President—Appraisal and Underwriting is directly responsible to the Executive Vice President and Chief Operating Officer for the establishment and maintenance of appraisal and underwriting standards for corporate mortgage procurement.

(xiv) *Corporate Secretary.* The Corporate Secretary is directly responsible to the Board of Directors for preparation and maintenance of the Minute Record of all official actions of the Board of Directors of the Corporation.

3. PUBLISHED INFORMATION

A. *Federal Register.* The Corporation hereby publishes in the FEDERAL REGISTER for the guidance of the public:

(i) A description of its central and field organization, and

(ii) The place at which forms may be obtained.

B. *Availability of Forms and Other Publications.* All forms and other publications of the Corporation which are described hereinafter are reasonably available to the class of persons affected thereby and may be obtained from the FOIA Director of the Corporation at the Corporation's principal office, 311 First Street, N.W., Washington, D.C. 20001, during normal business hours. These forms and publications are hereby incorporated by reference in this Notice.

(i) *Sellers' Guide Conventional Mortgages.* The Sellers' Guide Conventional Mortgages sets forth eligibility requirements applicable to conventional mortgages purchased by the Corporation, and describes the procedures pursuant to which the Corporation purchases such mortgages.

(ii) *Servicers' Guide.* The *Servicers'* Guide sets forth rules and procedures to be followed by entities (such as savings and loan associations) which service mortgages which the Corporation has purchased either in whole or in part, or on an agent basis.

(iii) *Sellers' Guide FHA/VA Mortgages.* The Sellers' Guide FHA/VA Mortgages sets forth eligibility requirements applicable to mortgages purchased by the Corporation which are either insured by the Federal Housing Administration or guaranteed by the Veterans Administration, and describes the procedures pursuant to which the Corporation purchases such mortgages.

(iv) *Mortgage Insurer Eligibility Requirements.* The Mortgage Insurer Eligibility Requirements are standards (such as minimum capitalization) which must be met by private mortgage insurance companies in order to insure those loans purchased by the Corporation as to which such insurance is required. Private mortgage insurance companies are State-chartered, and are regulated by the applicable State insurance commissioner.

(v) *Home Mortgages—Underwriting Guidelines.* The Home Mortgages—Underwriting Guidelines are intended to assist in the establishment of underwriting criteria which will produce institutional quality loans which can be purchased by the Corporation.

(vi) *How to Package and Sell Conventional Home Mortgage Loans to The Mortgage Corporation.* This publication describes, in an illustrated step-by-step manner, the way in which financial institutions should submit loans for sale to the Corporation.

(vii) *Policy and Procedure Manual.* The Policy and Procedure Manual sets forth policies and procedures to be followed by Corporation personnel in connection with mortgage purchases, underwriting review, supervision of servicers, and the sale of loans and securities.

(viii) *Annual Report.* The Corporation prepares an annual report of the type prepared by other corporate entities. The report describes the Corporation's operations for the preceding year and contains the Corporation's financial statements for that period.

(ix) *Mortgage Finance Review.* The Mortgage Finance Review, which is prepared quartely, describes mortgage activity during the preceding quarter and charts significant financial indicators relevent to housing.

(x) *FNMA/FHLMC Uniform Mortgage Instruments.* The FNMA/FHLMC Uniform Mortgage Instruments consist of a note and mortgage or deed of trust form for use in each State in connection with 1–4 family property. These forms were developed in conjunction with the Federal National Mortgage Association.

(xi) *FHLMC Uniform Mortgage Instruments.* The FHLMC Uniform Mortgage Instruments consist of a note and mortgage or deed of trust form for use in each State in connection with property involving more than four dwelling units—i.e., multifamily property.

(xii) *Current Offering Circular for PCs.* This document describes the terms and conditions under which Mortgage Participation Certificates are sold and contains information concerning the business operations and financial condition of the Corporation which may be material to the purchaser of PCs.

(xiii) *Current Prospectus for GMCs.* This document describes the terms and conditions under which Guaranteed Mortgage Certificates are sold and contains information concerning the business operations and financial condition of the Corporation which may be material to the purchaser of GMCs.

C. *Index of Records.* The Federal Home Loan Mortgage Corporation hereby determines and orders that the publication of a quarterly index to those items specified in 5 U.S.C. 552(a) is unnecessary and impractical in that it does not materially assist the public and, in addition, such publication imposes a financial burden on the Corporation. A copy of said index will nonetheless be provided, upon request, at a cost not to exceed the direct cost of duplication at the rate per page specified in Section 4E(i) of this Notice.

4. ACCESS TO RECORDS

A. *General Rule.* All records of the Corporation are made available to any person for inspection and copying in accordance with the provisions of this Notice and subject to the limitations stated in section 5 of this Notice. It is the policy of the Corporation to disclose its records (including computerized information which can be retrieved through an existing information system program of the Corporation) to the public, even though such records may, in the Corporation's discretion, be exempted from disclosure by section 552 of Title 5 of the United States Code or by Section 5 of this Notice, wherever such disclosure can be made without resulting in injury to a public or private interest intended to be protected by the foregoing statute or in a significant interference with the statutory responsibilities of the Corporation. However, requests for information which can be produced only by processing through an information systems program especially designed for that purpose are not regarded as requests for identifiable records that must be disclosed pursuant to section 552 of Title 5 of the United States Code; but it is the policy of the Corporation to make such information available if it is not otherwise exempt from disclosure, provided that the retrieval or production of such information does not unduly burden or interfere with the functioning of the Corporation. For purposes of this paragraph, a request for information which can be produced only by processing through an information systems program designed for that purpose means any request for information which can be obtained only by the use of an information systems program furnished by the person making the request, by the creation of a new information systems program by the Corporation, or by the modification by the Corporation of one of its existing information systems programs.

B. *Statements of Policy, Interpretations, and Staff Manuals and Instructions.* Subject to the provisions of Section 5 of this Notice, the Corporation makes available for inspection and copying (1)

statements of policy and interpretations adopted by the Corporation that are not published in the FEDERAL REGISTER; and (2) administrative staff manuals and instructions to staff that affect any member of the public. However, to the extent required to prevent a clearly unwarranted invasion of personal privacy, the Corporation may delete identifying details in any material of the kinds abovedescribed; and in each such case the justification for such deletion will be fully explained in writing. The Corporation maintains and makes available for public inspection and copying a current index providing indentifying information for the public as to any material described in this paragraph which is issued, adopted or promulgated after July 24. 1970 (date of corporate charter).

C. *Other Records.* Subject to the provisions of Section 5 of this Notice, a record of the final votes of each member of the Board of Directors of the Corporation in any proceeding of the Corporation is available for public inspection.

D. *Requests for Records and Other Information.* Available records and other information of the Corporation subject to this section may be inspected or copied during regular business hours on regular business days at the offices of the Federal Home Loan Mortgage Corporation, 311 First Street, NW., Washington, D.C. 20001. Any person requesting access to, or copying of, such records or other information shall submit such request in writing to the FOIA Director. The request shall state the full name and address of the person and a description of the records or other information sought that is reasonably sufficient to permit their identification without undue difficulty. Wherever possible request should be submitted in advance of the date inspection or copying is desired, preferably by mail.

E. *Fees for Providing Copies of Records.* (i) A person requesting access to or copies of particular records shall pay the cost of searching or copying such records at the rate of $10 per hour for searching by non-clerical personnel, $5 per hour for searching by clerical personnel, and 10 cents per page for copying. Unless a requester states in his initial request that he will pay all costs regardless of amount, he shall be notified as soon as possible if there is reason to believe that the cost for obtaining access to and/or copies of such records will exceed $50. If such notice is given, the time limitations contained elsewhere in this section shall not commence until the requester agrees in writing to pay such cost. The FOIA Director is authorized to require an advance deposit whenever in his judgment such a deposit is necessary to insure that the Corporation will receive adequate reimbursement of its costs. If such a deposit is required, the time limitations contained elsewhere in this section shall not commence until the deposit is paid.

(ii) The FOIA Director or a person designated by the FOIA Director is authorized either to waive such payment in instances in which total charges are less than $3, or to waive in full or in part such fees when unnecessary hardship would be inflicted upon the requesting person or when waiver would serve the public interest.

(iii) With respect to information obtainable only by processing through an information systems program, which has been made available under paragraph A of this section, a person requesting such information shall pay a fee equal to the full cost of retrieval and production of the information requested and the Vice President—Systems, or such person or persons as he may designate, with the concurrence of the Vice President—Research, or such person or persons as he may designate, is authorized to determine the cost of such retrieval and production, and to waive such payment in instances in which unnecessary hardship would be inflicted upon the requesting person or in which waiver would serve the public interest.

F. *Initial Determination.* (i) The FOIA Director of the Corporation, or his designee, shall determine within 10 days (excepting Saturdays, Sundays and legal public holidays) after the receipt by the FOIA Director of a written request for records or other information of the Corporation whether, or the extent to which, the Corporation will comply with such request.

(ii) Upon determination by the FOIA Director, or his designee, with respect to a request for records or other information of the Corporation, the FOIA Director shall immediately send written notification to the person making the request. If the request is denied, in whole or in part, said notification shall include the reasons therefore and shall advise such person that such determination is not a final agency action and of the right to appeal therefrom under paragraph G of this Section.

G. *Appeal Procedure.* (i) In the event of a denial of a request for records or other information pursuant to paragraph F of this Section, the person making the request may appeal from such denial to the Board of Directors of the Corporation by so notifying the FOIA Director at the address set forth in Section 4D of this Notice. Such an appeal shall be in writing and shall state the grounds for the appeal.

(ii) The Board of Directors of the Corporation has delegated to the Vice President—General Counsel the authority to grant (in whole or in part) any request for records or other information which was denied by the FOIA Director pursuant to paragraph F of this Section, and as to which an appeal to the Board of Directors has been filed pursuant to paragraph G(i) thereof. In the event that the Vice President-General Counsel decides to grant such a request, this decision shall be made within 10 days (excepting Saturdays, Sundays and legal public holidays) after the receipt of the appeal to the Board of Directors. In the event that the Vice President-General Counsel does not grant such a request, the Board of Directors (or such Member thereof as it shall designate) shall make its determination with respect to the appeal within 20 days (excepting Saturdays, Sundays and legal public holidays) after receipt of such appeal under paragraph G(i) of this Section. If the Board of Directors upholds (in whole or in part) the denial of a request for records or other information, the FOIA Director shall promptly notify the person making the request. Such notice shall be in writing, and shall inform such person of the provisions for judicial review under 5 U.S.C. 552(a)(4).

H. *Appeal During Pendency of Action for Judicial Review.* If a suit is filed in a district court of the United States under 5 U.S.C. 552(a)(4) in any case in which an initial adverse determination, in whole or in part, has been issued, regardless of whether or not the suit is premature: (1) the Board of Directors of the Corporation or a designated Member thereof may continue to process any appeal therefrom under paragraph G of this Section, or (2) if the person making the request has not appealed under said paragraph G, the Board of Directors of the Corporation or a designated Member thereof may initiate and process an appeal from such determination.

I. *Time Extension in Unusual Circumstances.* In unusual circumstances as provided in this paragraph, the time limitations prescribed in paragraphs F or G of this Section may be extended for not more than ten additional working days by written notice to the person making the request setting forth the reasons for such extension and the date on which a determination of the request or appeal is expected to be dispatched. As used herein, "unusual circumstances" means:

(i) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(ii) The need to search for, collect and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(iii) The need for consultation with another agency having substantial interest in the determination of the request or the appeal, or among two or more components of the Corporation having substantial subject-matter interest therein.

J. *Time Limitations.* All time limitations established pursuant to this Section with respect to initial determinations and appeals therefrom shall begin as of the time that a written request for records or other information of the Corporation, or the appeal from such determination, is actually received by the FOIA Director.

5. INFORMATION NOT DISCLOSED

A. *General Rule.* Except as otherwise provided in this Section or as may be specifically authorized by the Corporation, records or other information of the Corporation that have not been published in accordance with this Notice and are not available to the public through other sources will not be made available to the public or otherwise disclosed if such records or other information are:

(i) Specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive order;

(ii) Related solely to the internal personnel rules and practices of the Corporation;

(iii) Specifically exempted from disclosure by statute;

(iv) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(v) Inter-agency or intra-corporate memoranda or letters which would not be available by law to a party other than an agency in litigation with the Corporation;

(vi) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(vii) Investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would (a) interfere with enforcement proceedings, (b) deprive a person of a right to a fair trial or an impartial adjudication, (c) constitute an unwarranted invasion of personal privacy, (d) disclose the identity of a confidential source, (e) disclose investigative techniques and procedures, or (f) endanger the life or physical safety of law enforcement personnel; or

(viii) Contained in or related to examination, operating, or condition reports prepared by, or on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions;

Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt from disclosure under this Section.

B. *Prohibition Against Disclosure.* Except as authorized by this Notice or otherwise by the Corporation, no officer, employee, or agent of the Corporation shall disclose or permit the disclosure of any unpublished information of the Corporation to anyone (other than an officer, employee, or agent of the Corporation properly entitled to such information for the performance of his official duties), whether by giving out or furnishing such information or a copy thereof or by allowing any person to inspect, examine, or copy such information or copy thereof, or otherwise. Notwithstanding the foregoing, unpublished economic, statistical or similar information may be disclosed, orally or in writing, by any officer, employee or agent of the Corporation, subject, however, to the restrictions stated in this section.

C. *Subpoenas.* (i) If any person, whether or not an officer, employee, or agent of the Corporation, has information of the Corporation that may not be disclosed under this Section, and in connection therewith is served with a subpoena, order or other process requiring his personal attendance as a witness or the production of documents or information in any proceeding, he shall promptly advise the Corporation of such service and of all relevant facts, including the documents and information requested and any facts which may be of assistance to the Corporation in determining whether such documents or information should be made available; and he shall take action at the appropriate time to advise the court or tribunal which issued the process and the attorney for the party at whose instance the process was issued, if known, of the substance of these rules.

(ii) Except as the Corporation has authorized disclosure of the relevant information, or except as authorized by law, any person who has information of the Corporation that may not be disclosed under this section and is required to respond to a subpoena or other legal process shall attend at the time and place therein mentioned and respectfully decline to produce such information or give any testimony with respect thereto, basing his refusal upon this Section. If, notwithstanding, the court or other body orders the disclosure of such information or the giving of such testimony, the person having such information of the Corporation shall continue respectfully to decline to produce such information and shall promptly report the facts to the Corporation for such action as the Corporation may deem appropriate.

(5 U.S.C. 552, as amended; 12 U.S.C. 1452 (b)(3)(1970))

RONALD A. SNIDER,
Assistant Secretary.

[FR Doc.77-2544 Filed 1-26-77;8:45 am]

FEDERAL MARITIME COMMISSION

NATIONAL HELLENIC AMERICAN LINE S.A.

Certificate of Financial Responsibility; Order of Revocation

Certificate of financial responsibility for indemnification of passengers for nonperformance of transportation No. P-68 and certificate of financial responsibility to meet liability incurred for death or injury to passengers or other persons No voyages No. C-1,063.

Whereas, National Hellenic American Line S.A. (c/o Chandris Incorporated, 666 Fifth Avenue, New York, New York 10019) has ceased to operate the passenger vessel R.H.M.S. *Amerikanis;* and

Whereas, Certificate (Performance) No. P-68 and Certificate (Casualty) No. C-1,063 issued to National Hellenic American Line S.A. have been returned for revocation.

It is ordered, that Certificate (Performance No. P-68 and Certificate (Casualty) No. C-1,063 covering the R.H.M.S. *Amerikanis* be and are hereby revoked effective January 19, 1977.

It is further ordered, that a copy of this Order be published in the FEDERAL REGISTER and served on certificant.

By the Commission January 19, 1977.

FRANCIS C. HURNEY,
Secretary.

[FR Doc 77-2717 Filed 1-26-77;8:45 am]

PACIFIC COAST EUROPEAN CONFERENCE, ET AL.

Agreement Filed

Notice is hereby given that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1100 L Street, N.W., Room 10126, or may inspect the agreement at the Field Offices located at New York, N.Y., New Orleans, La., San Juan, Puerto Rico and San Francisco, California. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C., 20573, on or before February 7, 1977. Any person desiring a hearing on the proposed agreement shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the statement should indicate that this has been done.

Notice of agreement filed by:

Raymond A. Velez, Chairman, Pacific Coast European Conference & Pacific Coast Europe Rate Agreement, 417 Montgomery Street, San Francisco, California 94104.

Agreement No. 10280, between the Associated North Atlantic Freight Conferences (ANAFC) on the one hand and the Pacific Coast European Conference and the Pacific Coast Europe Rate Agreement on the other hand evidence the understanding whereby ANAFC will provide self-policing, enforcement, cargo inspection and revenue collection services for the two bodies.

By Order of the Federal Maritime Commission

Dated: January 24, 1977.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.77-2718 Filed 1-26-77;8:45 am]

FEDERAL POWER COMMISSION

PANHANDLE EASTERN PIPE LINE CO.

[Docket No. CP77-112]

Notice of Application

JANUARY 13, 1977.

Take notice that on December 30, 1976, Panhandle Eastern Pipe Line Company (Applicant), P.O. Box 1642, Kansas City, Missouri 64141, filed in Docket No. CP77-112 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of natural gas pipeline and compressor facilities to be located at various points on the Applicant's existing Anadarko Gathering and Rocky Mountain systems in the states of Colorado, Oklahoma, Texas and Kansas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to construct and operate the following facilities at the listed locations:

Pipeline facilities

Section	Township or block	Range or survey	County and State	Length (miles) diameter (inches)
10,13,16	Block 3	A.B. & M.	Carson, Tex.	2.1-12
79,77	Block 5	I. & G.N.	do.	1.6-8
77	do.	I. & G.N.	do.	.4-8
81	do.	I. & G.N.	do.	.5-8
11,12	Block 3	A.B. & M.	do.	1.1-8
	Horace Hall		Moore, Tex.	.6-6
22	Block 1	J. Poitevent	do.	.4-8
15,16	Block 44	H. & T.C.	do.	.7-8
29,30	27S	35W	Grant, Kans.	1.5-8
16	27S	35W	do.	.5-6
16	27S	36W	do.	.9-8
14,15	29S	36W	Stevens, Kans.	1.1-6
16,22	32S	36W	do.	.9-6
12,13	33S	38W	do.	1.0-6
1	35S	39W	do.	1.4-8

Section	Township or block	Range or survey	County and State	Diameter (inches) miles
26,35	31S	38W	do.	1.8-6
3	32S	38W	do.	.8-8
2	33S	38W	do.	.4-8
2	35S	12E	Texas, Okla.	1.4-8
25,36	6N	12E	Texas, Okla.	.9-6
30,31	6N	13E	do.	

Compressor facilities

Station name	Section	Township	Range	County and State	Proposed horsepower
McAtee	33	34S	39W	Stevens, Kans.	2,000
Ward	16	33S	39W	Morton, Kans.	2,000
Ulysses	24	29S	36W	Grant, Kans.	(1)
Adams	22	3N	18E	Texas, Okla.	(1)
Vollmer	14	2N	67W	Weld, Colo.	1,500

[1] Re-gasification.

Applicant states that the compressor units proposed would be installed immediately adjacent to existing similar units or related pipeline facilities and that all miscellaneous pipeline facilities would run, essentially, parallel to and would be constructed within existing pipeline rights-of-way. Applicant estimates the cost of the proposed facilities to be $7,740,000. The cost would be financed from funds available to the Company.

Applicant states that the production and gathering of oil and gas in most of the areas in which the proposed facilities would be installed has been carried out for more than forty years. The pressure of these older gas reservoirs, it is indicated, has declined with a resultant loss in deliverability. Furthermore, new gas supplies have been insufficient to offset deliverability losses from the older fields. The proposed facilities would assist Applicant to remedy this problem, it is stated, by lowering system line pressures to permit production at lower reservoir pressures. Applicant anticipates that the construction and improvements proposed would allow older reservoirs on the Applicant's system to produce substantial volumes of gas and would assist Applicant in meeting its mainline requirements east of its Haven, Kansas, Compressor Station.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 4, 1977, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUM,
Secretary.

[FR Doc.77-2453 Filed 1-26-77;8:45 am]

FEDERAL RESERVE SYSTEM

[H.2, 1977 No. 2]

ACTIONS OF THE BOARD

Applications and Reports Received During the Week Ending January 8, 1977

ACTIONS OF THE BOARD

Annual report to Congress on Truth in Lending for the year 1976.

Regulation L, interlocking relationships, the Board announced easing of its rules to permit interlocking relationships, under specified conditions, between a member bank and a minority for a women's bank (Docket No. R0059).

Request for a determination of the applicability of section 212.3(g) of the Board's Regulation L, to the appointment of Mr. W. Hunter Platt, Vice President, Citibank, N.A., New York, New York, to serve as a director of Freedom National Bank of New York, New York, New York.

Reorganization of the Division of Consumer Affairs, effective immediately, creating two Associate Director positions; the new positions will be filled by Mr. Nathaniel E. Butler and Mr. Jerauld C. Kluckman.

Regulation F, revision, which governs disclosures to shareholders by State member banks with more than 500 shareholders; the revision affects a guideline form, and accompanying instructions, that set forth the form and content of financial statements these banks must file with the Board of Governors.

Regulations B, Z and AA, Rules Regarding Delegation of Authority amendments, part 202 Equal Credit Opportunity; part 226-Truth in Lending; part 227Unfair or Deceptive Acts or Practices; part 265Rules Regarding Delegation of Authority; the amendments delegate authority to issue certain examination, inspection and reporting materials to the Board's Division of Banking Supervision and Regulation and Division of Consumer Affairs (Docket No. R0076).

Peninsula Financial, Inc., Sturgeon Bay, Wisconsin, extension of time to March 31, 1977, within which to acquire 98.20 percent of the First State Bank of Algoma, Algoma, Wisconsin.[1]

Ann Arbor Bank and Trust Company, Ann Arbor, Michigan, extension of time to February 10, 1977, within which to establish a branch at the corner of Main Street and Eisenhower Boulevard, Ann Arbor, Michigan.[1]

City Bank & Trust Company, Moberly, Missouri, to make an additional investment in bank premises.[1]

To Establish a Domestic Branch Pursuant to Section 9 of the Federal Reserve Act.

APPROVED

Glenwood State Bank, Glenwood, Iowa. Branch to be established in the Glenwood Shopping Center, Glenwood.[2]

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To Withdraw from Membership in the Federal Reserve System Without a Six-Month Notice as Prescribed by Section 9 of the Federal Reserve Act.

DENIED

The Oberlin Savings Bank Company, Oberlin, Ohio.[2]

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To Form a Bank Holding Company Pursuant to Section 3(a)(1) of the Bank Holding Company Act of 1956.

APPROVED

Marion National Corporation, Marion, Indiana, for approval to acquire 28.29 per cent or more of the voting shares of Marion National Bank of Marion, Marion, Indiana.

Reed Street Company, Inc., Red Oak, Iowa, for approval to acquire an additional 66.8 per cent of the voting shares of The Montgomery County National Bank of Red Oak, Red Oak, Iowa.[2]

Midwest Bancshares, Inc., Midwest City, Oklahoma, for approval to acquire 80 per cent or more of the voting shares of Security Bank & Trust Company, Midwest City, Oklahoma.[2]

DENIED

Lake View Bancorp, Inc., Northbrook, Illinois, for approval to acquire 100 per cent of the voting shares (less directors' qualifying shares) of Lake View Trust and Savings Bank, Chicago, Illinois.

To Expand a Bank Holding Company Pursuant to Section 3(a)(3) of the Bank Holding Company Act of 1956.

APPROVED

Independent Bank Corporation, Ionia, Michigan, for approval to acquire 100 per cent of the voting shares of the successor by consolidation to Western State Bank, Howard City, Michigan.

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To Expand a Bank Holding Company Pursuant to Section 3(a)(5) of the Bank Holding Company Act of 1956.

APPROVED

Trust Company of Georgia, Atlanta, Georgia, for approval to merge with Central Bankshares Corporation, Jonesboro, Georgia.

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[1] Application processed on behalf of the Board of Governors under delegated authority.

[2] Application processed by the Reserve Bank on behalf of the Board of Governors under delegated authority.

To Expand a Bank Holding Company Pursuant to Section 4(c)(8) of the Bank Holding Company Act of 1956.

WITHDRAWN

Mid America Bancorporation, Inc., Minneapolis, Minnesota, notification of intent to engage in de novo activities (the placement and servicing of real estate mortgages of all kinds including but not limited to mortgages on industrial, commercial, apartments, and homes) at 815 Foshay Tower, Minneapolis, Minnesota, through a division of the Corporation known as Mid America Mortgage Company (1/7/77).[3]

DELAYED

Industrial National Corporation, Providence, Rhode Island, notification of intent to engage in de novo activities (consumer finance and insurance agency for any insurance directly related to an extension of credit or provision of other financial services or otherwise sold as a matter of convenience to the purchaser) at 715 W. Oglethorpe Boulevard, Albany, Georgia, through a subsidiary, Southern Discount Company, a subsidiary of Industrial National Corporation (1/5/77).[3]

REACTIVATED

Shawmut Corporation, Boston, Massachusetts, notification of intent to engage in de novo activities (agricultural commodity financing, and servicing such financing and related and incidental activities and in general, making, servicing, or acquiring, for its own account of for the account of others, loans and other extensions of credit to agricultural enterprises or secured by agricultural commodities) at 4701 Marion Street, Denver, Colorado, through a subsidiary, American Cattle and Crop Services Corporation (1/5/77).[3]

Citicorp, New York, New York, notification of intent to engage in de novo activities (purchasing and servicing for its own account consumer installment sales finance contracts; and will act as broker for the sale of consumer credit related life/accident and health insurance on purchased consumer installment sales finance contracts, said insurance will only be offered when such transactions are the equivalent of direct extensions of consumer credit by the subsidiary; if the proposal is effected, the subsidiary will offer to sell insurance as follows: group credit life/accident and health insurance to cover the outstanding balances on consumer installment sales finance contracts to obligators, singly or jointly, with their spouses or cosigners in the case of life coverage in the event of death, or, to make the contractual monthly payment on consumer installment sales finance transactions in the event of the obligators' disability to the extent permissible under applicable State insurance laws and regulations; and individual casualty insurance on personal property subject to security agreements; further, in regard to the sale of credit related insurance, the subsidiary will not act as a general insurance agency) at 3000 Lynch Extension, Jackson, Mississippi, through its subsidiary, Nationwide Financial Corporation (12/28/76).[3]

PERMITTED

Bank of Virginia Company, Richmond, Virginia, notification of intent to engage in de novo activities (making loans or extensions of credit such as would be made by a finance company; and acting as agent for credit life/accident and health insurance and other insurance written to protect collateral during the period of credit extension) at 10750 Lee Highway, Fairfax Mall Shopping Center, Store #26, Fairfax, Virginia, through a subsidiary, The Budget Plan Company of Virginia (a wholly-owned subsidiary of General Finance Service Corporation) (1/2/77).[3]

Bank of Virginia Company, Richmond, Virginia, notification of intent to engage in de novo activities (leasing of real property or acting as agent, broker, or adviser in leasing such property provided the lease is to serve as the functional equivalent of an extension of credit to the lessee of the property, the property to be leased to be acquired specifically for the leasing transaction or having been acquired specifically for an earlier leasing transaction) at 11011 West Broad Street Road, Richmond, Virginia, through its subsidiary, BVA Credit Corporation (1/8/77).[3]

Banks of Iowa, Inc., Cedar Rapids, Iowa, notification of intent to engage in de novo activities (bookkeeping or data processing services for the internal operations of its subsidiaries and other banking institutions and storing and processing other banking, financial, or related economic data such as performing payroll, accounts receivable or payable, or billing services for other businesses) at 1014 Nebraska Street, Sioux City, Iowa, through its subsidiary, Banks of Iowa Computer Services, Inc. (1/6/77).[3]

Security Pacific Corporation, Los Angeles, California, notification of intent to engage in de novo activities (the financing of personal property and equipment and real property and the leasing of such property or the acting as agent, broker, or adviser in the leasing and/or financing of such property where at the inception of the initial lease the effect of the transaction (and, with respect to Governmental entities only, reasonably anticipated future transactions) will yield a return that will compensate the lessor for not less than the lessor's full investment in the property plus the estimated total cost of financing the property over the term of the lease and the servicing of such financings and/or leases) at Suite 910, 7777 Bonhomme, Clayton, Missouri, through its subsidiary, Security Pacific Leasing Corporation (1/7/77).[3]

Security Pacific Corporation, Los Angeles, California, notification of intent to relocate de novo activities (the origination and acquisition of mortgage loans including development and construction loans on multi-family and commercial properties for its own account or for the sale to others and the servicing of such loans for others) from 319 West 5th Avenue to 1011 East Tudor Road, Anchorage, Alaska, through its subsidiary, Security Pacific Mortgage Corporation (1/6/77).[3]

APPROVED

Trust Company of Georgia, Atlanta, Georgia, for approval to acquire direct acquisition of ownership and control of the leasing activities of Central Bankshares Corporation, Jonesboro, Georgia.

Trust Company of Georgia, Atlanta, Georgia, for approval to acquire acquisition of 100 per cent of the voting shares of Central Bankshares Equity Corporation, Jonesboro, Georgia.

APPLICATIONS RECEIVED

To Establish a Domestic Branch Pursuant to Section 9 of the Federal Reserve Act.

[3] 4(c)(8) and 4(c)(12) notifications processed by Reserve Bank on behalf of the Board of Governors under delegated authority.

Piedmont Trust Bank, Martinsville, Virginia. Branch to be established at 200 East Church Street, Martinsville.

Tracy Collins Bank and Trust, Salt Lake City, Utah. Branch to be established at 1090 North 500 East, North Salt Lake, Davis County.

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To Withdraw from Membership in the Federal Reserve System Without a Six Month Notice as Prescribed by Section 9 of the Federal Reserve Act.

The Oberlin Savings Bank Company, Oberlin, Ohio.

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To Form a Bank Holding Company Pursuant to Section 3(a)(1) of the Bank Holding Company Act of 1956.

Bancorporation of Wisconsin, Inc., West Allis, Wisconsin, for approval to acquire 80 per cent or more of the voting shares of West Allis State Bank, West Allis, Wisconsin and Southwest Bank, New Berlin, Wisconsin.

Spencer Financial Corporation, Spencer, Iowa, for approval to acquire 66.44 per cent or more of the voting shares of Spencer National Bank, Spencer, Iowa.

NBC Corp., Jackson, Tennessee, for approval to acquire 108,000 shares of the voting shares of The National Bank of Commerce of Jackson, Jackson, Tennessee and to acquire 723,047 shares of the voting shares of The First National Bank of Gibson County, Humboldt, Tennessee.

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To Expand a Bank Holding Company Pursuant to Section 3(a)(3) of the Bank Holding Company Act of 1956.

Ellis Banking Corporation, Bradenton, Florida, for approval to acquire 50.1 per cent or more of the voting shares of Citizens Bank of Bunnell, Bunnell, Florida.

The Royal Trust Company, Montreal, Quebec, Canada, for approval to acquire 50 per cent or more of the voting shares of Baymeadows Bank, Jacksonville, Florida.

Spencer National Bank Trust, Spencer, Iowa, for approval to acquire 75.94 per cent of the voting shares of Spencer Financial Corporation, Spencer, Iowa and indirectly to acquire 66.44 per cent or more of the voting shares of Spencer National Bank, Spencer, Iowa.

First City Bancorporation of Texas, Inc., Houston, Texas, for approval to acquire 100 per cent of the voting shares (less directors' qualifying shares) of East Dallas Bank, Dallas, Texas.

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To Expand a Bank Holding Company Pursuant to Section 4(c)(8) of the Bank Holding Company Act of 1956.

CBT Corporation, Hartford, Connecticut, notification of intent to engage in de novo activities (the financing of accounts receivable, inventories and imports for business customers) at Room No. 20, Gateway Suites, Suite 640, 1801 Avenue of the Stars, Los Angeles, California, through a subsidiary, Lazere Financial Corporation, a wholly-owned subsidiary of CBT Financial Corporation which is in turn a wholly-owned subsidiary of CBT Corporation (1/3/77).[3]

CBT Corporation, Hartford, Connecticut, notification of intent to engage in de novo activities (purchasing on a recourse basis residential, second mortgage loans) at One Constitution Plaza, Hartford, Connecticut, through a subsidiary, Nutmeg Commercial Corporation, a wholly-owned subsidiary of CBT Financial Corporation, which is in turn a wholly-owned subsidiary of CBT Corporation (1/3/77).[3]

First National Boston Corporation, Boston, Massachusetts, notification of intent to engage in de novo activities (making, acquiring, and servicing for its own account, loans and other extensions of credit including loans to individuals for property improvement, debt consolidation and other purposes; and offering credit life and credit accident and health insurance coverage to its borrowers through a master health insurance policy) at 4900 Veterans Boulevard, Metairie, Louisiana, through a subsidiary of FSC Corp., Boston, Massachusetts, which is a wholly-owned subsidiary of First National Boston Corporation to be known as First Louisiana Acceptance Corporation (1/3/77).[3]

Fidelity Union Bancorporation, Newark, New Jersey, notification of intent to engage in de novo activities (the business of making loans in the present maximum amount of $5,000.00 or less under the provision of the Pennsylvania Consumer Discount Company Act; and making available to customers, credit life insurance and disability insurance covering the unpaid balance of loans outstanding and fire and theft insurance to protect household goods held as collateral during the periods of credit extensions) at 1505 Market Street, Camp Hill, Cumberland County, Pennsylvania, through its subsidiary, Suburban Finance Company and its subsidiary Sentry Consumer Discount Company (1/7/77).[3]

Fidelity Union Bancorporation, Newark, New Jersey, notification of intent to engage in de novo activities (the business of making loans in the present maximum amount of $5,000.00 or less under the provisions of the Pennsylvania Consumer Discount Company Act; and making available to customers, credit life insurance and disability insurance covering the unpaid balance of loans outstanding and fire and theft insurance to protect household goods held as collateral during the periods of credit extensions) at 616 Baltimore Pike, Springfield, Delaware County, Pennsylvania, through its subsidiary, Suburban Finance Company and its subsidiary, Sentry Consumer Discount Company (1/5/77).[3]

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For Certification Pursuant to the Bank Holding Company Tax Act of 1976.

H. F. Ahmanson & Company, Los Angeles, California, divestiture of Ahmanson Bank & Trust Co., Beverly Hills, California.

GATX Corporation, Chicago, Illinois, divestiture of 100,000 shares of LaSalle National Bank, Chicago, Illinois.

The Signal Companies, Inc., Beverly Hills, California, divestiture of Signal Equities, formerly Arizona Bancorporation, Phoenix, Arizona.

The Wachovia Corporation, Winston-Salem, North Carolina, divestiture of Wachovia Insurance Agency, Inc., Winston-Salem, North Carolina.

The Wachovia Corporation, Winston-Salem, North Carolina, divestiture of North Carolina Title Company, Winston-Salem, North Carolina.

First Missouri Banks, Inc., Creve Coeur, Missouri, divestiture of certain real property in Ellisville, Missouri.

Republic of Texas Corporation, Dallas, Texas to divest: (a) All of the Howard Corporation's interests in its oil and gas properties and related real estate interests; (b) The common stock of Round Rock Lime Company; (c) Three shopping centers located in Dallas and Midland, Texas and Shreveport, Louisiana, and (d) Approximately 6 acres of real estate in Dallas, Texas.

Republic of Texas Corporation, Dallas, Texas, divestiture of Highland Park Shopping Center and other real property, all in Dallas, Texas.

Transohio Financial Corporation, Cleveland, Ohio, divestiture of Port Clinton National Bank, Port Clinton, Ohio.

World Airways, Inc., Oakland, California and its wholly-owned subsidiary, Worldamerica Investors Corp., divestiture of shares of Western Bank and Trust Company, Los Angeles, California.

Southern National Corporation, Lumberton, North Carolina, through its wholly-owned subsidiary, Southern National Insurance Services, Inc.: (a) Divestiture of general insurance agency business located in Lumberton, North Carolina, on December 31, 1976, (b) proposed divestiture of general insurance agency business located in Rockingham, North Carolina, and (c) proposed divestiture of general insurance agency business located in Henderson, North Carolina.

G.S. Bancshares, Inc., Goodland, Kansas (formerly Western Agency, Inc.), divestiture of its shares of Western Insurance Agency, Goodland, Kansas.

University Bancorp, Inc., Kansas City, Missouri (formerly Orwig and Company, Inc.), divestiture of real property located in Topeka, Kansas by Ward Parkway Building Company ("Ward Parkway").

Earl R. Waddell & Sons, Inc., Fort Worth, Texas, proposed divestiture of 58,714 shares (approximately 39 per cent of outstanding shares) of City National Bank, Fort Worth, Texas.

Shelter Resources Corporation, Lyndhurst, Ohio ("Applicant") divestiture by its subsidiary, Capital Bancorporation, of shares of Capital National Bank, Lyndhurst, Ohio.

Educators Investment Company of Kansas, Inc., Emporia, Kansas, divestiture of Flint Hills Manor, Inc., Emporia, Kansas.

Midwestern Fidelity Corporation, Milford, Ohio, divestiture of The Miami Deposit Bank, Yellow Springs, Ohio.

Pan American Bancshares, Inc., Miami, Florida, divestiture of Commercial Aseguradora Suize Americano, S.A., Guatemala City, Guatemala.

First Oklahoma Bancorporation, Inc., Oklahoma City, Oklahoma, divestiture of 30 various nonbanking companies, assets and activities.

First National Bank, Stewartville, Minnesota, proposed divestiture of its insurance agency.

MEI Corporation, Minneapolis, Minnesota, divestiture of Olmstead County Bank and Trust Company, Rochester, Minnesota and the First National Bank, Sioux City, Iowa.

Tracy Bancorp., Salt Lake City, Utah, proposed divestitures of Tracy Realty Company, Salt Lake City, Utah and Tracy-Osborne-Dickson & Associates, Inc.

Westland Banks, Inc., Lakewood, Colorado, divestiture of its travel agency business.

First International Bancshares, Inc., Dallas, Texas: (a) Divestiture by its subsidiary, First National Bank in Dallas, of 264,143 shares of Guaranty Bank, Dallas, Texas, and a $150,000 debenture of Guaranty Bank; and (b) Divestiture by its subsidiary, First National Securities Company, Dallas, Texas of: 19,200 shares of White Rock National Bank, Dallas, Texas; 4,458 shares of DeSoto State Bank, Dallas, Texas; 9,960 shares of North Park National Bank of Dallas, Dallas, Texas; 21,464 shares of North Dallas Bank & Trust Co., Dallas, Texas; 6,130 shares of East Dallas Bank & Trust Company, Dallas, Texas; 14,058 shares of Citizens State Bank, Irving, Texas; 22,080 shares of 1st National Bank of Richardson, Richardson, Texas.

Union Financial Corporation, Denver, Colorado, divestiture of substantially all of its oil and gas properties.

Crocker National Corporation, San Francisco, California, proposed divestiture of Crocker McAlister Equipment Leasing Inc. and Crocker McAlister Leasing Inc.

American Affiliates, Inc., South Bend, Indiana, divestiture of American Home Industries, Inc., and Maron Products, Inc., both of South Bend, Indiana.

Helmerich & Payne, Inc., Tulsa, Oklahoma, divestiture of shares of Utica Bankshares Corporation, Tulsa, Oklahoma.

Beverly Agency, Inc., Chicago, Illinois, divestiture of shares of Mt. Greenwood Bank, Chicago, Illinois.

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REPORTS RECEIVED

Current Report Filed Pursuant to Section 13 of the Securities Exchange Act.

The State Bank of North Jersey, Pine Brook, New Jersey.

PETITIONS FOR RULEMAKING

None.

Board of Governors of the Federal Reserve System, January 21, 1977.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc.77-2638 Filed 1-26-77;8:45 am]

BUFFALO BANK CORP.

Formation of Bank Holding Company

Buffalo Bank Corporation, Buffalo, Wyoming, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company through acquisition of 80 per cent or more of the voting shares of Wyoming Bank and Trust Company, Buffalo, Wyoming. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 to be received no later than February 22, 1977.

Board of Governors of the Federal Reserve System, January 21, 1977.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc.77-2635 Filed 1-26-77;8:45 am]

NATIONAL DAVID CITY CORP.

Formation of Bank Holding Company

National David City Corporation, David City, Nebraska, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company through acquisition of 80 per cent or more of the voting shares of The First National Bank of David City, David City, Nebraska. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than February 17, 1977.

Board of Governors of the Federal Reserve System, January 21, 1977.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc.77-2637 Filed 1-26-77;8:45 am]

NBC CORP.

Formation of Bank Holding Company

NBC Corp., Jackson, Tennessee, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company through acquisition of 100 per cent of the voting shares of National Bank of Commerce, Jackson, Tennessee, and of 83 per cent or more of the voting shares of First National Bank of Gibson County, Humboldt, Tennessee. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of St. Louis. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 to be received no later than February 18, 1977.

Board of Governors of the Federal Reserve System, January 21, 1977.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc.77-2636 Filed 1-26-77;8:45 am]

REDWOOD BANCORP

Order Amending Prior Board Orders With Regard to Divestiture of Real Estate

By Order dated July 24, 1973, the Board approved the application of Redwood Bancorp, San Francisco, California ("Redwood"), a bank holding company within the meaning of the Bank Holding Company Act (12 U.S.C. 1841), to acquire the assets of Montgomery Street Mortgage Corporation ("MSMC") and shares of West Coast Insurance Agency, Inc., both of San Francisco, California (38 FR 20951). In acquiring the assets of MSMC, Redwood indirectly acquired a parcel of unimproved real estate held by MSMC for development. Redwood committed itself to divesting that property promptly but in no event later than July 24, 1975. The Board's Order approving the acquisition was made subject to the condition that such divestiture be carried out. The period for divestiture was extended to October 24, 1976, by the Federal Reserve Bank of San Francisco. Redwood has requested that the divestiture period be extended to February 24, 1977.

Redwood has indicated that active efforts to sell the property are continuing. In fact, the property has been sold to a developer, subject to approval of the development plan by municipal authorities. It appears, in light of Redwood's efforts to sell the property, that an extension of the period for divestiture would not be detrimetnal to the public interest.

After examining the facts of record, the Board has concluded that Redwood's request should be granted. Accordingly, the Board's Order of July 24, 1973, is hereby amended to authorize retention of the property subject to the condition that Redwood promptly divest such real property, but in no event later than February 24, 1977.

In addition, the Board has noted that as a result of Redwood's acquisition of National Mortgage Company, Salt Lake City, Utah ("NMC"), approved by the Board on January 18, 1973 (38 FR 3014), Redwood holds indirectly four parcels of real property. At the time that Redwood's acquisition of NMC was approved, the Board was not aware of the ownership of such real property by NMC. The ownership of land for development or investment is not a permissible activity under the Act.

After examining the facts of record, the Board has concluded that Redwood should divest the properties that it holds indirectly through NMC. Accordingly, the Board's Order of January 18, 1973, is hereby amended so that Redwood must promptly divest itself of such properties, but in no event later than June 30, 1977.

By order of the Board of Governors,[1] effective January 19, 1977.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc.77-2634 Filed 1-26-77;8:45 am]

FEDERAL TRADE COMMISSION

[File No. 72 3197]

GRAND SPAULDING DODGE, INC.

Consent Agreement With Analysis To Aid Public Comment

Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34, of the Commission's Rules of Practice (16 CFR 2.34, 40 F.R. 15236, April 4, 1975), notice is hereby given that the following consent agreement containing a consent order to cease and desist and an explanation thereof, having been filed with and provisionally accepted by the Commission,

[1] Voting for this action: Chairman Burns and Governors Gardner, Wallich, Coldwell, Jackson, Partee, and Lilly.

has been placed on the public record for a period of sixty (60) days. Public comment is invited on or before March 28, 1977. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b) (14) of the Commission's Rules of Practice (16 CFR 4.9(b) (14), 40 FR 15236, April 4, 1975). Comments should be directed to:

Office of the Secretary, Federal Trade Commission, 6th Street and Pennsylvania Avenue NW., Washington, D.C. 20580.

GRAND SPAULDING DODGE, INC.
A CORPORATION

AGREEMENT CONTAINING CONSENT ORDER TO CEASE AND DESIST

The Federal Trade Commission having initiated an investigation of certain acts and practices of Grand Spaulding Dodge, Inc., a corporation, sometimes hereinafter referred to as proposed respondent, and it now appearing that proposed respondent is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated.

It is hereby agreed by and between Grand Spalding Dodge, Inc., by its duly authorized officer, and its attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent Grand Spaulding Dodge, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal place of business located at 3300 W. Grand Ave., Chicago, Illinois.

2. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint here attached.

3. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

4. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

5. This agreement shall not become a part of the official record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released, and such acceptance may be withdrawn by the Commission if, within thirty (30) days after the sixty (60) day period, comments or views submitted to the Commission disclose facts or consideration which indicate that the order contained in the agreement is inappropriate, improper, or inadequate.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and shall become final and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Mailing of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right he may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby, and understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order, and that it may be liable for a civil penalty in the amount provided by law for each violation of the order after it becomes final.

ORDER

It is ordered, that respondent Grand Spaulding Dodge, Inc., a corporation, its successors and assigns and its officers, and respondent's agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale, and distribution of new and used automobiles in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist, in connection with credit sales in which the sales presentation has been conducted in whole or in part in Spanish, from:

1. Failing to furnish consumers with complete and accurate translations in Spanish of any documents, notices or disclosures normally provided to consumers in connection with respondent's credit sales at the time of the transaction.

2. Failing to furnish to consumers executing any contracts, agreements or other documents in connection with such credit sales, a complete and accurate translation in Spanish of each such writing, prior to the execution of the same.

Provided however, That nothing in this order shall be understood to apply to sales receipts or other documents which serve merely as a memorandum of sales and do not, in themselves, contain covenants, disclaimers or other provisions defining the rights and responsibilities of the parties.

Further provided, That respondent must comply with subparagraphs 1 and 2 of this order by providing consumers either with:

a. bilingual documents containing all the provisions and disclosures in both English and Spanish, or

b. separate documents containing complete and accurate translations in Spanish of each English language document, and which shall contain in a clear and conspicuous manner in the Spanish language, the following heading in bold-face 10 point type:

READ THIS FIRST

THIS IS A TRANSLATION OF THE DOCUMENT OR DOCUMENTS YOU HAVE RECEIVED OR ARE ABOUT TO SIGN.

It is further ordered, That respondent shall display, in at least two different locations on its premises, one of them being the location where consumers usually execute consumer credit instruments or other legally binding documents, the following notice in Spanish:

NOTICE TO SPANISH-SPEAKING CUSTOMERS

IF YOU ARE A SPANISH-SPEAKING CONSUMER AND THE SALE PRESENTATION WAS MADE, IN WHOLE OR IN PART IN SPANISH, YOU ARE ENTITLED TO RECEIVE A SPANISH TRANSLATION OF THE CREDIT CONTRACT AND OF THE OTHER DOCUMENTS RELATED TO THE FINANCING OF YOUR PURCHASE BEFORE YOU SIGN ANYTHING. DO NOT SIGN ANY DOCUMENTS UNTIL YOU HAVE RECEIVED AND READ THE SPANISH TRANSLATIONS.

It is further ordered with respect to each account in which translations in Spanish are provided, as required herein, that respondent shall maintain in its files, for a period of two years, statements signed by respondent's consumers acknowledging receipt of such translations.

It is further ordered, That respondent deliver a copy of this order to cease and desist to all operating divisions and to all present and future personnel of respondent engaged in making sales presentations and in the consummation of any consumer credit transactions.

It is further ordered, That respondent notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the operation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of this order.

It is further ordered, That no provision of this order shall be construed in any way to annul, invalidate, repeal, terminate, modify or exempt respondent from complying with agreements, orders or directives of any kind obtained by any other agency, or act as a defense to actions instituted by municipal or state regulatory agencies. No provision of this order shall be construed to imply that any past or future conduct of respondent complies with the rules and regulations of, or the statutes administered by the Federal Trade Commission.

It is further ordered, That the respondents herein shall within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

DECISION AND ORDER

In the Matter of Grand Spaulding Dodge, Inc., a corporation.

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Chicago Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in § 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Grand Spaulding Dodge, Inc. is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Illinois with its office and principal place of business located at 3300 West Grand Ave., Chicago, Illinois.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

It is ordered, That respondent Grand Spaulding Dodge, Inc., a corporation, its successors and assigns and its officers, and respondent's agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale, and distribution of new and used automobiles in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist, in connection with credit sales in which the sales presentation has been conducted in whole or in part in Spanish, from:

1. Failing to furnish consumers with complete and accurate translations in Spanish of any documents, notices or disclosures normally provided to consumers in connection with respondent's credit sales at the time of the transaction.

2. Failing to furnish to consumers executing any contracts, agreements or other documents in connection with such credit sales, a complete and accurate translation in Spanish of each such writing, prior to the execution of the same.

Provided however, That nothing in this order shall be understood to apply to sales receipts or other documents which serve merely as a memorandum of sales and do not, in themselves, contain covenants, disclaimers or other provisions defining the rights and responsibilities of the parties.

Further provided, That respondent must comply with subparagraphs 1 and 2 of this order by providing consumers either with:

a. bilingual documents containing all the provisions and disclosures in both English and Spanish, or

b. separate documents containing complete and accurate translations in Spanish of each English language document, and which shall contain in a clear and conspicuous manner in the Spanish language, the following heading in bold face 10 point type:

READ THIS FIRST

THIS IS A TRANSLATION OF THE DOCUMENT OR DOCUMENTS YOU HAVE RECEIVED OR ARE ABOUT TO SIGN.

It is further ordered, That respondent shall display, in at least two different locations on its premises, one of them being the location where consumers usually execute consumer credit instruments or other legally binding documents, the following notice in Spanish:

NOTICE TO SPANISH SPEAKING CUSTOMERS

IF YOU ARE A SPANISH-SPEAKING CONSUMER AND THE SALES PRESENTATION WAS MADE, IN WHOLE OR IN PART IN SPANISH, YOU ARE ENTITLED TO RECEIVE A SPANISH TRANSLATION OF THE CREDIT CONTRACT AND OF THE OTHER DOCUMENTS RELATED TO THE FINANCING OF YOUR PURCHASE BEFORE YOU SIGN ANYTHING. DO NOT SIGN ANY DOCUMENTS UNTIL YOU HAVE RECEIVED AND READ THE SPANISH TRANSLATIONS.

It is further ordered with respect to each account in which translations in Spanish are provided, as required herein, that respondent shall maintain in its files, for a period of two years, statements signed by respondent's consumers acknowledging receipt of such translations.

It is further ordered, That respondent deliver a copy of this order to cease and desist to all operating divisions and to all present and future personnel of respondent engaged in making sales presentations and in the consummation of any consumer credit transactions.

It is further ordered, That respondent notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the operation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of this order.

It is further ordered, That no provision of this order shall be construed in any way to annul, invalidate, repeal, terminate, modify or exempt respondent from complying with agreements, orders or directives of any kind obtained by any other agency, or act as a defense to actions instituted by municipal or state regulatory agencies. No provision of this order shall be construed to imply that any past or future conduct of respondent complies with the rules and regulations of, or the statutes administered by the Federal Trade Commission.

It is further ordered, That the respondents herein shall within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

ANALYSIS OF PROPOSED CONSENT ORDER TO AID PUBLIC COMMENT

The Federal Trade Commission has accepted an agreement to a proposed consent order from Grand Spaulding Dodge, Inc., a corporation.

The proposed consent order has been placed on the public record for sixty (60) days of reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

Grand Spaulding Dodge, Inc. is an Illinois corporation engaged in the advertising, sale and distribution of new and used automobiles to the general public. Over forty percent of Grand Spaulding Dodge, Inc. customers are Spanish speaking customers.

The complaint alleges that in the advertising and sale of new and used automobiles, Grand Spaulding Dodge, Inc. engaged in false, misleading and deceptive sales presentations to Spanish speaking consumers, many of whom have been induced to deal with respondent as a result of respondent's advertisements and sales presentations made in whole or part in the Spanish language.

Spanish speaking consumers do not have the opportunity to receive full and adequate disclosure in Spanish of the terms and conditions of any agreements they have entered into with respondent.

These terms and conditions include customer's rights and obligations under sales agreement, and other written instruments normally provided to consumers at the time of the transaction.

The consent order prohibits Grand Spaulding Dodge, Inc. from failing to make adequate disclosures in Spanish to all Spanish speaking customers of the terms and conditions of the transaction as alleged in the complaint. In addition the order prohibits respondent from failing to provide customers who only speak, write and understand Spanish with bilingual documents containing all the provisions and disclosures of the transaction in both the English and Spanish languages.

Respondent must provide said customers with separate documents containing complete and accurate translations in Spanish of each English language documents in a clear and conspicous manner. A headline sign to notify consumers of this requirement is provided for in this provision of the order.

The order further requires the posting of a notice, in at least two locations, where sales agreement are negotiated, advising Spanish speaking customers that if the sales presentation was made to them in Spanish they are entitled to receive a Spanish translation of all documents that they are about to sign, and all documents relating to the financing of their purchase, prior to signing and documents.

The purpose of this analysis is to facilitate public comment of the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

JOHN F. DUGAN,
Acting Secretary.

[FR Doc.77-2608 Filed 1-26-77;8:45 am]

NATIONAL SERVICE INDUSTRIES, INC., TRADING AS CERTIFIED LEASING COMPANY

[File No. 742 3225]

Consent Agreement With Analysis To Aid Public Comment

Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34, 40 FR 15236, April 4, 1975), notice is hereby given that the following consent agreement containing a consent order to cease and desist and an explanation thereof, having been filed with and provisionally accepted by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited on or before March 28, 1977. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14), 40 FR 15236, April 4, 1975). Comments should be directed to:

Office of the Secretary, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, D.C. 20580.

ANALYSIS OF PROPOSED CONSENT ORDER TO AID PUBLIC COMMENT

The Federal Trade Commission has accepted an agreement containing a proposed consent order from National Service Industries, Inc., doing business as Certified Leasing Company.

The proposed consent order and complaint described in this analysis have been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The complaint alleges that customers who are determined by proposed respondent to be eligible for the return of their security deposits and who do not, within ninety (90) days of the termination of the lease agreement, furnish a forwarding address to which their deposits are to be sent forfeit the deposits to the company. It also alleges that proposed respondent fails to make any effort to return to customers security deposits in instances where customers have not specifically furnished proposed respondent with their forwarding addresses.

The terms of the proposed order as presented in the provisionally accepted consent agreement require proposed respondent to cease and desist from:

(1) Failing to follow certain procedures, detailed in the order, which are aimed at maximizing the number of instances in which the company, by taking certain affirmative steps, will obtain forwarding addresses for the return of deposits to eligible customers.

(2) Failing to refund all security deposits due lessees whose lease terminated or expired within three months from the effective date of the consent order, by following certain procedures in an attempt to obtain forwarding addresses.

(3) Failing to maintain for a period of three years from the date the lease was terminated or expired adequate records concerning the disposition of each lessee's security deposit; and

(4) Failing to honor any lessee's request for the return of his security deposit up to three years from the date the lease was terminated or expired.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

[File No. 742 3225]

AGREEMENT CONTAINING CONSENT ORDER TO CEASE AND DESIST

In the Matter of National Service Industries, Inc., a corporation, doing business as Certified Leasing Company.

The Federal Trade Commission having initiated an investigation of certain acts and practices of National Service Industries, Inc., a corporation, doing business as Certified Leasing Company, and it now appearing that National Service Industries, Inc., a corporation, doing business as Certified Leasing Company, hereinafter sometimes referred to as proposed respondent, is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated.

It is hereby agreed by and between National Service Industries, Inc., doing business as Certified Leasing Company, and its attorney, and counsel for the Federal Trade Commission that:

1. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the facts as alleged in the draft complaint here attached are true or that any law has been violated.

2. Proposed respondent National Service Industries, Inc., doing business as Certified Leasing Company, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its office and principal place of business located at 1180 Peachtree Street, N.E., Atlanta, Georgia 30309.

3. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

4. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this Agreement.

5. This agreement shall not become a part of the official record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it together with the complaint, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released; and such acceptance may be withdrawn by the Commission if comments or views submitted to the Commission disclose facts or considerations which indicate that the order contained in the agreement is inappropriate, improper, or inadequate. The Commission may at any time pending final acceptance of this order, require hearings on the relief requirements provided by this order.

6. The agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to the respondent, (1) issue its Complaint corresponding in form and substance with the draft of Complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Mailing of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the complaint and order contemplated thereby, and it understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order and that it may be liable for a civil penalty in the amount provided by law for each violation of the order after it becomes final.

8. It is agreed that the relief for consumers set forth in the order contained herein fully satifies any claim for consumer redress which the Commission has under sections 5(b) and 19 of the Federal Trade Commission Act, as amended, arising out of the acts and practices alleged in the complaint, prior to the effective date of this order. By its final acceptance of this agreement, with such modifications, if any, which the parties may make prior to said final acceptance, the Commission waives its right to commence a civil action under section 19 of the Federal Trade Commission Act, as amended, with respect to the acts and practices alleged in the Commission's complaint, prior to the effective date of this order.

ORDER

It is ordered, That respondent National Service Industries, Inc., a corporation, doing business as Certified Leasing Company, its successors and assigns, and its officers, representatives, agents and employees, directly or through any corporation, subsidiary, division or other device, in connection with the leasing to consumers of furniture, related accessories, or any other personal property, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

1. Failing to request, both orally and in writing, at the time the lease agreement is signed with two or more legally unrelated persons, which person will be designated by the joint lessees to be the recipient of the lessees' returnable security deposit in the event that respondent is obligated to return the full security deposit or any portion thereof to such customers.

2. Failing to incorporate on the face of the lease agreement, in bold print, the following notice which shall be given to the lessee at the time the lease agreement is signed.

NOTICE: YOU MAY BE ENTITLED TO A REFUND OF ALL OR A PORTION OF YOUR SECURITY DEPOSIT AT THE TERMINATION OF THIS LEASE AGREEMENT. RETAIN THIS REMINDER SO THAT YOU MAY SEND US A FORWARDING ADDRESS WHERE YOU CAN BE REACHED SO THAT WE CAN PROMPTLY FORWARD ANY BALANCE OF THE SECURITY DEPOSIT DUE YOU.

3. Failing to request from the lessee, both orally and in writing, at the time the lease agreement is signed, a tentative forwarding address where the security deposit, or any portion thereof which may be returnable to the lessee, can be mailed if no updated forwarding address is received prior to or at the termination of the lease agreement.

4. Failing, when notice of termination of the lease agreement is received telephonically, to request from the lessee at that time a forwarding address.

5. Failing to send written notice by first class mail prior to the expiration of the term of the lease agreement to the lessee's last known address requesting a forwarding address within five business days after receiving notification of the lessee's intent to terminate the lease agreement, if such forwarding address has not been received.

6. Failing to send by first class mail, with the envelope captioned "PLEASE FORWARD," the security deposit, or any portion thereof which may be returnable to the lessee, including an itemized accounting of respondent's charges against the lessee's security deposit, within thirty (30) days from the termination of the lease agreement, to the lessee's updated forwarding address or to the tentative forwarding address obtained at the time the lease agreement was signed if no updated address has been received, or in the absence of the above, to the lessee's last known address; and failing in all other situations to provide within 30 days, by first class mail, such itemized accounting upon the oral or written request of the lessee.

It is further ordered:

A. That respondent attempt to refund all security deposits or portions thereof due lessees whose lease terminated or expired within three months from the effective date of this order. In attempting to refund all returnable deposited money, respondent shall perform the following steps:

1. Determine whether the lessee's file contains an address to which a returnable deposit is to be forwarded. If so, respondent shall forward a check in that amount to the lessee or his designee at the address given.

2. If no forwarding address is given, respondent shall send a notice by first class mail, with the envelope captioned "PLEASE FORWARD," to the lessee's last known address informing such lessee that a refund is due him, and that he should immediately contact the respondent at the address or telephone number given, requesting an address correction.

3. If the letter is returned by the post office as undeliverable, respondent shall

(a) Determine from information set forth in the lessee's credit application filed by the lessee incident to the consummation of the lease agreement the name and address of the lessee's parents, employer and a listed personal reference of the lessee.

(b) Forward the notice in the form set forth below, entitled "We need your help", to either the parents, employer, or one listed personal reference of the lessee, if such names and addresses are available in the lessee's file.

WE NEED YOUR HELP

The individual listed below recently rented furniture from Certified Leasing Company and placed a security deposit with us. The individual is entitled to a refund of all or a portion of such deposit, which refund will be sent as soon as we can determine a current address.

If you know the individual's current address and/or telephone number, please complete the following form and return it to us. The postage is prepaid.

Thank you for your help.

CERTIFIED LEASING COMPANY

Lessee .....

Street ..... Apt. .....

City ..... State ..... Zip Code .....

( ) .....

Area Code Telephone Number

B. That respondent shall not use the notices described in paragraphs 2. and A. 3.(b) of the order to collect or attempt to collect delinquent accounts.

C. That respondent maintain, for a period of three years from the date the lease was terminated or expired, adequate records including a complete summary of each lessee's file which (1) substantiate that respondent is following the procedures specified in the order, and (2) readily disclose the disposition of the lessee's security deposit and the reasons therefor, including a notation of the specific amount of money due the lessee from his security deposit; any request by such person within three years from the date the lease was terminated or expired for the return of the deposit due shall be honored by mailing the balance of said deposit within thirty (30) days from the date of receipt of such request.

D. That respondent deliver a copy of this order to all present and future administrative and sales employees engaged in any aspect of communicating

with customers with respect to the leasing to consumers of furniture or other personal property, and that respondent secure a signed statement acknowledging receipt of said order from each such person.

E. That respondent notify the Commission within thirty (30) days prior to any proposed change in the corporate respondent or its division such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or other change in the corporation or its division which may affect compliance obligations arising out of the order.

F. That respondent herein shall within sixty (60) days after service upon it of this order file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

JOHN F. DUGAN,
Acting Secretary.

[FR Doc.77-2609 Filed 1-26-77;8:45 am]

TRADE REGULATION RULEMAKING PROCEEDINGS UNDER THE MAGNUSON-MOSS WARRANTY—FEDERAL TRADE COMMISSION IMPROVEMENTS ACT

Placement of Presiding Officer and Staff Reports on Public Record

In Re: Placement of Presiding Officer and Staff Reports on the Public Record and Authorization of Federal Register Notice of Publication for 60-day Comment Period.

The Director of the Bureau of Consumer Protection is authorized to place on the public record and to arrange for Federal Register notice of public availability of presiding officer reports completed under Rule 1.13(f) and staff reports completed under 1.13(g) in Magnuson-Moss trade regulation rulemaking proceedings. The presiding officer's report should state that it has not been reviewed or adopted by the Bureau of Consumer Protection or by the Commission, and the staff report should state that it has not been reviewed or adopted by the Commission. Both reports should explain that the Commission's final determination in the matter will be made upon the record taken as a whole, including the presiding officer's report, the report and recommendations prepared by the staff under Section 1.13(g) of the Rules, and comments upon these reports received during the 60-day period after the staff report is placed on the public record.

By direction of the Commission.

Dated: January 26, 1977.

JOHN F. DUGAN,
Acting Secretary.

[FR Doc.77-2483 Filed 1-26-77;8:45 am]

GENERAL SERVICES ADMINISTRATION

[FPMR Temp. Reg. E-47, Supplement 1]

TELEPROCESSING SERVICES PROGRAM

Extension of Expiration Date

1. *Purpose.* This supplement extends the expiration date of FPMR Temporary Regulation E-47 (41 FR 34634, August 16, 1976).

2. *Effective date.* This regulation is effective upon publication in the FEDERAL REGISTER.

3. *Expiration date.* This regulation expires September 30, 1977, unless sooner superseded or revised.

4. *Revised date.* The expiration date indicated in paragraph 3 of FPMR Temporary Regulation E-47 is extended to ensure continuity of the policies regarding the Teleprocessing Services Program.

JACK ECKERD,
Administrator of General Services.

JANUARY 17, 1977.

[FR Doc.77-2482 Filed 1-26-77;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Alcohol, Drug Abuse, and Mental Health Administration

BOARD OF SCIENTIFIC COUNSELORS, NIMH

Renewal

Pursuant to the Federal Advisory Committee Act of October 6, 1972 (5 U.S.C. Appendix I), the Alcohol, Drug Abuse, and Mental Health Administration announces the renewal by the Secretary, Department of Health, Education, and Welfare, with the concurrence of the Office of Management and Budget Committee Management Secretariat, of the Board of Scientific Counselors, NIMH.

Authority for this board will expire January 4, 1979, unless the Secretary formally determines that continuance is in the public interest.

Dated: January 19, 1977.

F. N. WALDROP,
Acting Administrator, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc.77-2646 Filed 1-26-77;8:45 am]

MINORITY GROUP MENTAL HEALTH PROGRAMS REVIEW COMMITTEE

Meeting Change

In FR Doc. 77-1382 appearing at page 3213 in the issue of Monday, January 17, 1977, the date and location for the February meeting of the Minority Group Mental Health Programs Review Committee should be changed as follows: from February 24-26 to February 25-26; new location—Franz Hall, Room A344, University of California, 405 Hilgard Avenue, Los Angeles, California. The meeting will therefore be open from 9:00 a.m. to 10:30 a.m. on February 25 instead of February 24.

Dated: January 21, 1977.

CAROLYN T. EVANS,
Committee Management Officer, Acohol, Drug Abuse, and Mental Health Administration.

[FR Doc.77-2645 Filed 1-26-77;8:45 am]

Office of the Secretary

RADIATION PROTECTION IN HEALING ARTS; GUIDANCE TO FEDERAL AGENCIES

Memorandum of Understanding With Environmental Protection Agency

CROSS REFERENCE: For a document issued jointly by the Department of Health, Education, and Welfare, Office of the Secretary, and the Environmental Protection Agency, concerning the above entitled matter see FR Doc. 77-2588 appearing in the notices section of this FEDERAL REGISTER.

Office of the Secretary

SECRETARY'S ADVISORY COMMITTEE ON POPULATION AFFAIRS

Renewal

Notice is hereby given that pursuant to the authority contained in section 14 (a)(1)(A) of Pub. L. 92-463 I have determined that renewal of the Secretary's Advisory Committee on Population Affairs beyond December 7, 1976 is in the public interest in connection with the performance of duties imposed upon the Department by law, that such duties can best be performed through the advice and counsel of such a group, and, therefore, the Committee has been continued for a period of one year.

My determination to continue the Committee for a period of two years was communicated to the Office of Management and Budget on November 24, 1976, and that Office on December 2, 1976 approved the renewal of the Committee for a period of one year.

In making my determination I concluded that it is not feasible for the Department or any of its existing committees to perform the duties above described, and that a satisfactory plan for appropriate balance of the Committee membership has been submitted.

Dated: December 6, 1976.

DAVID MATHEWS,
Secretary.

[FR Doc.77-2681 Filed 1-26-77;8:45 am]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Federal Disaster Assistance Administration

[Docket No. N-77-695]

DISASTER LEGAL SERVICES

Notice is hereby given that pursuant to section 412 of the Disaster Relief Act of 1974, Pub. L. 93-288, the Federal Disaster Assistance Administration has entered into an agreement with the Young Lawyers Section of the American Bar Association for the provision of disaster legal services for the victims of Presidentially declared major disasters. Volunteer services under this agreement is one of the methods used by the Federal Disaster Assistance Administration in providing disaster legal assistance. The Office of Emergency Preparedness, predecessor of the Federal Disaster Assistance Administration, originally entered into a legal services agreement with the Young Lawyers Section of the American Bar Association in December 1972. The Federal Disaster Assistance Administration found that arrangement beneficial and entered into a revised agreement in March 1976. The purpose of this notice is to submit the revised agreement for the public record. Also published in today's FEDERAL REGISTER are the proposed regulations governing the provision of disaster legal services, 24 CFR 2205.47a (FR Doc. 77-2703).

THOMAS P. DUNNE,
Administrator, Federal Disaster Assistance Administration.

AGREEMENT BETWEEN THE YOUNG LAWYERS SECTION (AMERICAN BAR ASSOCIATION) AND THE FEDERAL DISASTER ASSISTANCE ADMINISTRATION CONCERNING DISASTER LEGAL SERVICES

The Federal Disaster Assistance Administration, hereinafter referred to as FDAA, and the Young Lawyers Section of the American Bar Association, hereinafter referred to as YLS, enter into the following agreement concerning legal services to disaster victims at the local or State level in the aftermath of a "major disaster" as defined in the Disaster Relief Act of 1974, Public Law 93-288, hereinafter referred to as the Act.

a. *First:* When the President declares a major disaster under the Act, and when the Administrator or Regional Director of FDAA determines that implementation of this agreement is necessary, the Regional Director or his designee will notify the appropriate YLS Regional Director or State Chairman that legal services are needed in accordance with the provisions of this agreement.

b. *Second:* The YLS Regional Director or State Chairman will activate a local legal services unit and instruct them to report to the Individual Assistance Officer on the Federal Coordinating Officer's staff for full particulars and assignment. Local YLS units will then provide legal assistance in accordance with their previously prepared response plans, and with the advice and approval of the State or local bar association. The local unit shall report to, and be under the general direction of, the Individual Assistance Officer.

c. *Third:* "Legal services", for the purposes of the agreement, shall be defined as legal counseling and advice, referral to appropriate sources of assistance, and representation in non fee-generating cases. Legal services may be provided to low-income disaster victims and those who, as a result of the disaster, have insufficient resources to secure adequate legal assistance. Legal services are authorized only to assist disaster victims in securing benefits under the Act and in resolving claims arising out of the disaster.

d. *Fourth:* Disaster legal services units shall operate with the advice, assistance, and cooperation of the appropriate State or local bar association, in accordance with Section 412 of the Act. The legal services units will undertake to have knowledge of the disaster assistance programs through all available means, including training materials furnished by FDAA. At its discretion, FDAA will assist in the training of participating lawyers through the furnishing of material describing Federal disaster assistance programs, payment of travel expenses to training sessions, meetings with FDAA Regional personnel, and by other means it deems useful.

e. *Fifth:* The YLS agrees to mobilize voluntary legal services units at the local level. The mobilization functions shall include, but not be limited to, the following:

1. Enlisting of attorneys to comprise the legal services unit.

2. Serving as a conduit in transmitting materials received from FDAA and other Federal agencies.

3. Maintaining direct communication with FDAA, at the National, Regional, and local office levels.

4. Providing whatever additional services are mutually agreed upon by the parties to this agreement.

f. *Sixth:* No compensation shall be paid to or accepted by participating attorneys, nor may participating attorneys accept any fee-generating cases. Participating attorneys shall be encouraged to refer to private local attorneys any matters they are handling when it becomes apparent that substantial legal effort will be required to resolve the problem and where referral can be done without jeopardizing the interests of the disaster victims.

g. *Seventh:* FDAA will provide the local legal services units with administrative support, including office space and supplies, secretarial services, and reimbursement for official phone expenses in connection with this agreement.

h. *Eighth:* Nothing in this agreement nor in the plans developed pursuant to this agreement, precludes FDAA from providing legal services in any other manner it selects, including, without limitation, arrangements with other Federal agencies or through implementation of agreements between FDAA and State or local bar associations, or in any other manner.

i. *Ninth:* As required by Section 311 of the Act, the legal services program provided for under this agreement shall be conducted in an equitable and impartial manner, without discrimination on the grounds of race, color, religion, nationality, sex, or age.

In witness whereof, the parties hereto have executed this agreement on the 6th day of March, 1976.

THOMAS P. DUNNE,
Administrator, Federal Disaster Assistance Administration.

R. WILLIAM IDE, III,
Chairman, Young Lawyers Section, American Bar Association.

[FR Doc.77-2715 Filed 1-26-77;8:45 am]

[Docket No. NFD-388; FDAA-3021-EM]

WEST VIRGINIA

Notice of an Emergency Declaration and Related Determinations

Pursuant to the authority vested in the Secretary of Housing and Urban Development by the President under Executive Order 11795 of July 11, 1974, and delegated to me by the Secretary under Department of Housing and Urban Development Delegation of Authority, Docket No D-74-285; and by virtue of the Act of May 22, 1974, entitled "Disaster Relief Act of 1974" (88 Stat. 143); notice is hereby given that on January 19, 1977, the President declared an emergency as follows:

I have determined that the impact of a drought on the State of West Virginia is of sufficient severity and magnitude to warrant a declaration of an emergency under Public Law 93-288. I therefore declare that such an emergency exists in the State of West Virginia. You are to determine the specific areas within the State eligible for Federal assistance under this declaration.

Notice is hereby given that pursuant to the authority vested in the Secretary of Housing and Urban Development under Executive Order 11795, and delegated to me by the Secretary under Department of Housing and Urban Development Delegation of Authority, Docket No. D-74-285, I hereby appoint Mr Arthur T. Doyle, FDAA Region III, to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following areas to have been adversely affected by this declared emergency:

The Counties of:

Grant	Mercer
Greenbrier	Mineral
Hampshire	Monroe
Hardy	Summers

The purpose of this designation is to provide emergency livestock feed assistance only in the aforementioned affected areas effective the date of this Notice.

(Catalog of Federal Domestic Assistance No 14.701, Disaster Assistance.)

Dated: January 19, 1977.

THOMAS P. DUNNE,
Administrator, Federal Disaster Assistance Administration

[FR Doc.77-2706 Filed 1-26-77;8:45 am]

[Docket No NFD-391; FDAA-3013-EM]

MINNESOTA

Amendment to Notice of Emergency Declaration

Notice of emergency for the State of Minnesota, dated June 17, 1976, and amended on June 28, 1976, August 27, 1976, November 9, 1976, December 16, 1976, December 27, 1976, and December 30, 1976, is hereby further amended to include the following counties among those counties determined to have been adversely affected by the catastrophe de-

clared an emergency by the President in his declaration of June 17, 1976:

The Counties of:

Anoka	Mille Lace
Carver	Murray
Clay	Nobles
Dakota	Pine
Dodge	Pipestone
Grant	Polk
Kanabec	Renville
Kandiyohi	Rock
McLeod	Sherburne
Mahnomen	Steele
Meeker	Wilkin

The purpose of this designation is to provide emergency livestock feed assistance only in the aforementioned affected areas effective the date of this amended Notice.

(Catalog of Federal Domestic Assistance No. 14.701, Disaster Assistance.)

Dated: January 14, 1977.

THOMAS P. DUNNE,
Administrator, Federal Disaster Assistance Administration.

[FR Doc.77-2710 Filed 1-26-77;8:45 am]

[Docket No. NFD-393 FDAA-3013-EM]

MINNESOTA

Amendment to Notice of Emergency Declaration

Notice of emergency for the State of Minnesota, dated June 17, 1976, and amended on June 28, 1976, August 27, 1976, November 9, 1976 December 16, 1976, December 27, 1976, December 30, 1976, and January 14 1977, is hereby further amended to include the following county among those counties determined to have been adversely affected by the catastrophe declared an emergency by the President in his dcelaration of June 17, 1976:

The County of Olmsted.

The purpose of this designation is to provide emergency livestock feed assistance only in the aforementioned affected area effective the date of this amended Notice.

(Catalog of Federal Domestic Assistance No. 14.701, Disaster Assistance)

Dated: January 19, 1977.

THOMAS P. DUNNE,
Administrator, Federal Disaster Assistance Administration.

[FR Doc. 77-2712 Filed 1-26-77;8:45 am]

[Docket No. NFD-394; FDAA-3017-EM]

MISSOURI

Amendment to Notice of Emergency Declaration

Notice of emergency for the State of Missouri dated September 24, 1976, and amended on November 9, 1976, and January 12, 1977, is hereby further amended to include the following counties among those counties determined to have been adversely affected by the catastrophe declared an emergency by the President in his declaration of September 24, 1976:

The Counties of:

Benton	Morgan
Callaway	Osage
Cedar	Oregon
Dallas	Ozark
Douglas	Polk
Franklin	Reynolds
Gasconade	St. Clair
Howell	St. Louis
Iron	Shannon
Jefferson	Texas
Ladiede	Washington
Madison	Wright
Maries	

The purpose of this designation is to provide emergency livestock feed assistance only in the aforementioned affected areas effective the date of this amended notice.

(Catalog of Federal Domestic Assistance No. 14.701, Disaster Assistance.)

Dated: January 19, 1977.

THOMAS P. DUNNE,
Administrator, Federal Disaster Assistance Administration.

[FR Doc.77-2713 Filed 1-26-77;8:45 am]

[Docket No. NFD-389; FDAA-3022-EM]

NEBRASKA

Emergency Declaration and Related Determinations

Pursuant to the authority vested in the Secretary of Housing and Urban Development by the President under Executive Order 11795 of July 11, 1974, and delegated to me by the Secretary under Department of Housing and Urban Development Delegation of Authority, Docket No. D-74-285; and by virtue of the Act on May 22, 1974, entitled "Disaster Relief Act of 1974" (88 Stat. 143); notice is hereby given that on January 19, 1977, the President declared an emergency as follows:

I have determined that the impact of a drought on the State of Nebraska is of sufficient severity and magnitude to warrant a declaration of an emergency under Public Law 93-288. I therefore declare that such an emergency exists in the State of Nebraksa. You are to determine the specific areas within the State eligible for Federal assistance under this declaration.

Notice is hereby given that pursuant to the authority vested in the Secretary of Housing and Urban Development under Executive Order 11795, and delegated to me by the Secretary under Department of Housing and Urban Development Delegation of Authority, Docket No. D-74-285, I hereby appoint Mr. Francis X. Tobin, FDAA Region VII, to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following areas to have been adversely affected by this declared emergency:

The Counties of:

Boyd	Keya Paha

The purpose of this designation is to provide emergency livestock feed assistance only in the aforementioned affected areas effective the date of this Notice.

(Catalog of Federal Domestic Assistance No. 14.701, Disaster Assistance.)

Dated: January 19, 1977.

THOMAS P. DUNNE,
Administrator, Federal Disaster Assistance Administration.

[FR Doc.77-2708 Filed 1-26-77;8:45 am]

WISCONSIN

[Doc. No. NFD-390; FDAA-3014-EM]

Amendment to Notice of Emergency Declaration

Notice of emergency for the State of Wisconsin, dated June 17, 1976, and amended on July 29, 1976, and on September 7, 1976, and on September 30, 1976, and on December 16, 1976, and on December 30, 1976, is hereby further amended to include the following counties among those counties determined to have been adversely affected by the catastrophe declared an emergency by the President in his declaration of June 17, 1976:

The Counties of:

Adams	Kewaunee
Barron	Lafayette
Brown	Marinette
Chippewa	Oconoto
Dane	Polk
Door	Portage
Dunn	Rock
Eau Claire	St. Croix
Green Lake	Sauk

The purpose of this designation is to provide emergency livestock feed assistance only in the aforementioned affected areas effective the date of this amended Notice.

(Catalog of Federal Domestic Assistance No. 14.701, Disaster Assistance)

Dated: January 14, 1977.

THOMAS P. DUNNE,
Administrator, Federal Disaster Assistance Administration.

[FR Doc.77-2709 Filed 1-26-77;8:45 am]

[Docket No. NFD-392; FDAA-3020-EM]

OKLAHOMA

Emergency Declaration and Related Determinations

Pursuant to the authority vested in the Secretary of Housing and Urban Development by the President under Executive Order 11795 of July 11, 1974, and delegated to me by the Secretary under Department of Housing and Urban Development Delegation of Authority, Docket No. D-74-285; and by virtue of the Act of May 22, 1974, entitled "Disaster Relief Act of 1974" (88 Stat. 143); notice is hereby given that on January 18, 1977, the President declared an emergency as follows:

I have determined that the impact of a fire on the State of Oklahoma is of sufficient severity and magnitude to warrant a declaration of an emergency under Public Law 93-288. I therefore declare that such an emergency exists in the State of Oklahoma. You are to determine the specific areas within the State eligible for Federal assistance under this declaration.

Notice is hereby given that pursuant to the authority vested in the Secretary of Housing and Urban Development under Executive Order 11795, and delegated to me by the Secretary under Department of Housing and Urban Development Delegation of Authority, Docket No. D-74-285, I hereby appoint Mr. Donald G. Eddy, FDAA Region VIII, to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following areas to have been adversely affected by this declared emergency:

The Counties of:

Beaver	Piute
Emery	Sanpete
Juab	Sevier
Millard	

The purpose of this designation is to provide emergency livestock feed assistance only in the aforementioned affected areas effective the date of this Notice.

in the State eligible for Federal assistance under this declaration.

Notice is hereby given that pursuant to the authority vested in the Secretary of Housing and Urban Development under Executive Order 11795, and delegated to me by the Secretary under Department of Housing and Urban Development Delegation of Authority, Docket No. D-74-285, I hereby appoint Mr. Joe D. Winkle, FDAA Region VI, to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following area to have been adversely affected by this declared emergency:

The City of Bartlesville

(Catalog of Federal Domestic Assistance No. 14.701, Disaster Assistance)

Dated: January 18, 1977.

THOMAS P. DUNNE,
Administrator, Federal Disaster Assistance Administration.

[FR Doc.77-2711 Filed 1-26-77;8:45 am]

[Doc. No. NFD-395; FDAA-3024-EM]

UTAH

Emergency Declaration and Related Determinations

Pursuant to the authority vested in the Secretary of Housing and Urban Development by the President under Executive Order 11795 of July 11, 1974, and delegated to me by the Secretary under Department of Housing and Urban Development Delegation of Authority, Docket No. D-74-285; and by virtue of the Act of May 22, 1974, entitled "Disaster Relief Act of 1974" (88 Stat. 143); notice is hereby given that on January 20, 1977, the President declared an emergency as follows:

I have determined that the impact of a drought on the State of Utah is of sufficient severity and magnitude to warrant a declaration of an emergency under Public Law 93-288. I therefore declare that such an emergency exists in the State of Utah. You are to determine the specific areas within the State eligible for Federal assistance under this declaration.

Notice is hereby given that pursuant to the authority vested in the Secretary of Housing and Urban Development under Executive Order 11795, and delegated to me by the Secretary under Department of Housing and Urban Development Delegation of Authority, Docket No. D-74-285, I hereby appoint Mr. Donald G. Eddy, FDAA Region VIII, to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following areas to have been adversely affected by this declared emergency:

The Counties of:

Beaver	Piute
Emery	Sanpete
Juab	Sevier
Millard	

The purpose of this designation is to provide emergency livestock feed assistance only in the aforementioned affected areas effective the date of this Notice.

(Catalog of Federal Domestic Assistance No. 14.701, Disaster Assistance.)

Dated: January 20, 1977.

THOMAS P. DUNNE,
Administrator, Federal Disaster Assistance Administration.

[FR Doc.77-2714 Filed 1-26-77;8:45 am]

Office of Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. D-77-480]

REGIONAL ADMINISTRATORS, ET AL.

Redelegation of Authority With Respect to Housing

Section L of the redelegation of authority to Regional Administrators et al. with respect to Housing published at 41 FR 52545, November 30, 1976, is revised to read:

SEC. L. *Additional authority redelegated to Insuring Office Officials.* 1. Each Insuring Office Director and Deputy Insuring Office Director in the offices listed below is authorized to exercise the power and authority of the Secretary of Housing and Urban Development for housing for the Elderly and Handicapped under Section 202 of the Housing Act of 1959 (12 U.S.C. 1701 et seq.) and for housing assisted under the U.S. Housing Act of 1937 as amended (42 U.S.C. 1401, et seq.).

Phoenix, AZ	Albuquerque, NM
Fresno, CA	Albany, NY
Sacramento, CA	Cincinnati, OH
Santa Ana, CA	Cleveland, OH
Denver, CO	Providence, RI
Springfield, IL	Memphis, TN
Des Moines, IA	Houston, TX
Topeka, KS	Salt Lake City, UT
Shreveport, LA	Spokane, WA
Grand Rapids, MI	Charleston, WV
Helena, MT	

The authority redelegated above includes the power and authority under sections 1(1) and 1(2) of Executive Order 11196, except the authority to:

a. Determine that there is a substantial breach or default and invoke any remedy on behalf of the Federal Government upon default or breach by a local housing authority in respect to the terms, covenants, or conditions of an annual contributions contract.

b. Terminate annual contributions contracts when the decision to terminate is made by the Federal Government.

c. Waive the provisions of annual contributions contracts: Provided, That each Insuring Office Director and Deputy Insuring Office Director is authorized to waive provisions with respect to the following:

i. Employment of a former local housing authority Commissioner.

ii. Frequency of reexamination of tenants to permit a local housing authority to change its established reexamination schedule.

iii. Approval of the use of force account for modernization programs.

iv. Approval of construction and equipment contracts for modernization exceeding $5,000, but not exceeding $50,000.

2. Each Director of Housing Management in the above listed Insuring Offices is authorized to exercise the powers and authorities redelegated to Directors of Housing Management in Area Offices in section D.

(Secretary's delegation of authority to redelegate published at 41 FR 24755, June 18, 1976.)

Effective date: This amendment to redelegation of authority is effective on January 17, 1977.

JOHN T. HOWLEY,
Acting Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc.77-2691 Filed 1-26-77;8:45 am]

New Communities Administration

[Docket No. N-77-696]

SHENANDOAH NEW COMMUNITY PROJECT

Intent to Supplement Environmental Impact Statement

The U.S. Department of Housing and Urban Development, New Communities Administration, Washington, D.C., intends to issue a supplement to the Final Environmental Impact Statement for the Shenandoah New Community Project, Coweta County, Georgia. The final EIS was issued on December 4, 1972, and copies are available at the address set forth below.

Shenandoah is located approximately 35 miles southwest of Atlanta adjacent to the junction of Interstate Highway 85 and Georgia State Highway 34 lying between the cities of Newman and Peachtree.

The Supplement will evaluate the impact of changing the water supply system from the original Flint River Water Supply System (reflected in Shenandoah's Final Environmental Impact Statement) to the Line Creek-Lake Shenandoah Water Supply System. This Water Supply System will essentially comprise construction of an intake structure and pumping station (initial capacity of 12 million gallons per day) located at Wynnes Pond adjacent to Georgia State Highway 54, about 8 miles of 24-inch raw water transmission pipeline from Wynnes Pond intake to the City of Newman's present water intake at White Oak Creek; and construction of water treatment facilities, and Lake Shenandoah Reservoir on Sullivan Creek which at maximum design capacity will cover about 300 acres and impound about 5,000 acre-feet of water.

Copies of the Supplement will be available at the address set forth below in February 1977. The comment period on the Supplement will be 30 calendar days. All persons who received the Final EIS will receive the Supplement. Copies of the Supplement will also be available in the Atlanta HUD Regional Office at Room 211 Pershing Point Plaza, 1321 Peachtree Street, NE., Atlanta, Georgia, and the Carnegie Public Library in the City of Newnan.

Comments concerning this Notice are invited from all affected and interested parties. Please send comments by February 15, 1977, to:

Earl DeMaris, Deputy Administrator for Project Support and Development, Attn: Leo Stein, U.S. Department of Housing and Urban Development, New Communities Administration, 451 7th Street, SW, Room 7134, Washington, D.C. 20410, Telephone 202-755-6092.

Issued in Washington, D.C.

JAMES F. DAUSCH,
Deputy General Manager and Administrator, New Communities Administration.

Concurrence: January 7, 1977.

RICHARD BROUN,
OEQ.

Concurrence: January 10, 1977.

BURTON BLOOMBERG,
OGC.

[FR Doc.77-2697 Filed 1-26-77;8:45 am]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[S-2635]

CALIFORNIA

Reclassification of Natural Resource Lands for Transfer Out of Federal Ownership

1. Notice is hereby given that the following described national resource lands are reclassified for transfer out of federal ownership by exchange pursuant to the Act of July 15, 1968 (16 U.S.C.A. 460L-22, 1969 Supplement). The lands were classified previously for exchange pursuant to the Point Reyes National Seashore Act of September 13, 1962 (76 Stat. 538) by a notice of classification published January 7, 1970 in the FEDERAL REGISTER.

MOUNT DIABLO MERIDIAN, CALIFORNIA

T. 7 N., R. 7 W.,
Sec. 11: E½NE¼;
Sec. 12: SW¼NW¼; NW¼SW¼.

The above described lands aggregate 160 acres and are located in Sonoma County.

2. The reclassification has been discussed with local governmental agencies as well as with other interested parties. These lands, after appropriate analysis including an environmental assessment, meet the criteria of 43 CFR 2430.4(d). The regulation authorizes classification of national resource lands for exchange under appropriate authority where they have special values arising from the interest of proponents for exchange of other lands needed in support of a federal program. The National Park Service has a proponent interested in exchanging private in holdings within the Golden Gate National Recreation Area for the subject lands.

3. One comment only was received after publication of the notice of proposed reclassification in the FEDERAL REGISTER (FR Doc. 76-33121) on November 11, 1976 (41 FR 49892). The comment was not adverse to the proposal.

4. Information concerning the lands including the land report and environmental record, is available for inspection at the Bureau of Land Management District Office, 555 Leslie Street, Ukiah, California 95482.

5. On or before February 28, 1977, the classification shall be subject to the exercise of administrative review and modification by the Secretary of the Interior as provided for in 43 CFR 2461.3.

For the State Director.

ALAN L. BELLON,
Acting District Manager.

[FR Doc.72-2661 Filed 1-26-77;8:45 am]

[N-16095]

NEVADA

Proposed Withdrawal and Reservation of Lands of Military Purposes

JANUARY 19, 1977.

The United States Army, Corps of Engineers, on behalf of the Department of the Air Force, filed application N-16095 on December 23, 1976, for the withdrawal of lands described below from settlement, sale, location or, entry under the public land laws, including the mining and mineral leasing laws and disposals of materials under the Act of July 31, 1947, as amended (30 U.S.C. 601, 602).

The applicant desires to continue using the lands for the Indian Springs Auxiliary Air Force Field and bombing and gunnery ranges (Nellis) in the training of combat aircrews as well as testing of new and improved weapons systems.

On or before February 28, 1977, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management.

Pursuant to section 204(h) of the Federal Land Policy and Management Act of 1976 (hereinafter referred to as the act), an opportunity for a public hearing is hereby afforded. All interested persons who desire to be heard on the proposed withdrawal must submit a written request for a hearing to the State Director, Bureau of Land Management, at the address shown below, on or before February 28, 1977. Upon determination by the State Director that a public hearing will be held, the time and place will be announced.

The lands involved are presently segregated from the operation of the public land laws by virtue of withdrawals effected by Executive Orders No. 8578 of October 29, 1940, No. 9019 of January 12, 1942, No. 9086 of March 4, 1942, Public Land Orders No. 58 of November 12 1942, No. 89 of February 10, 1943, and No. 168 of September 17, 1943, which withdrawals will expire February 15, 1977. Under section 204(b) of the Act, the segregation will remain in effect for a period of 2 years from date of publication of this notice unless Congress approves the withdrawal prior to that date, in which case the segregation would be continued in accordance with the legislation.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demands for the lands and their resources. He will also undertake negotiations with the applicant agency with the view of adjusting the application to reduce the area to the minimum essental to meet the applicants needs, to provide for the maximum concurrent utilization of the lands for purposes other than the applicant's, and to reach agreement on the concurrent management of the lands and their resources

He will also prepare a report for consideration by the Secretary of the Interior who will submit a legislative proposal to the Congress of the United States for its consideration to determine whether the lands will be withdrawn as requested by the applicant agency.

The lands involved in the application are described below and are delineated on maps designated 256-FP-1, 256-FP-3 and 389-FP-1, copies of which are on file in Case No. N-16095, Nevada State Office, Bureau of Land Management.

All correspondence in connection with this withdrawal should be directed to the Bureau of Land Management, Department of the Interior; Chief, Division of Technical Services, 300 Booth Street, Reno, Nevada 89509.

MOUNT DIABLO MERIDIAN, NEVADA

Tps. 1, 2, 3, and 4 S., R. 44 E.
Tps. 1, 2, 3, and 4 S., R. 45 E.
Tps. 1 and 2 S., R. 46 E.
Tps. 3 and 4 S., R. 46 E. (unsurveyed).
Tps. 1 and 2 S., R. 47 E.
Tps. 3 and 4 S., R. 47 E. (unsurveyed).
Tps. 1 and 2 S., R. 48 E.
Tps. 3 and 4 S., R. 48 E. (unsurveyed).
Tps. 1 and 2 S., R. 49 E.
Tps. 3, 4, 5, 6, and 7 S., R. 49 E. (unsurveyed).
T. 8 S., R. 49 E. (unsurveyed),
Secs. 1-11, incl., 14-23, incl., 26-35, incl.;
Secs. 12, 13, 24, 25, and 36, exclusive of those portions withdrawn by P.L.O. 5268.
Tps. 9, 10, 11, and 12 S., R. 49 E. (unsurveyed.
Secs. 2-11, incl., 14-23, incl., 26-35, incl.;
Secs. 1, 12, 13, 24, 25, and 36, exclusive of those portions withdrawn by P.L.O. 2568.
Tps. 1, 2, 3, 4, 5, 6, and 7 S., R. 50 E. (unsurveyed).
T. 8 S., R. 50 E. (unsurveyed),
Secs. 1-6, incl.;
Secs. 7-12, incl., exclusive of those portions withdrawn by P.L.O. 2568.
Tps. 2, 3, 4, 5, 6, and 7 S., R. 51 E. (unsurveyed).
T. 8 S., R. 51 E. (unsurveyed),
Secs. 1-6, incl.;
Secs. 7-12, incl., exclusive of those portions withdrawn by P.L.O. 2568.
Tps. 3 and 4 S., R. 51½ E. (unsurveyed).
Tps. 3, 4, 5, 6, and 7 S., R. 52 E. (unsurveyed).
T. 8 S., R.52 E. (unsurveyed),
Secs. 1-6, incl.;
Secs. 7-12, incl., 18, 19, 30, and 31, exclusive of those portions withdrawn by P.L.O. 805 and 2568.
Tps. 3 and 4 S., R. 53 E.
Tps. 5, 6, and 7 S., R. 53 E. (unsurveyed).
T. 8 S., R. 53 E. (unsurveyed),
Secs. 1-6, incl.;
Secs. 7-12, incl., exclusive of those portions withdrawn by P.L.O. 805.

Tps. 3 and 4 S., R. 54 E.,
Secs. 4-9, incl., 16-21, incl., 28-33, incl.
Tps. 5 and 6 S., R. 54 E. (unsurveyed).
T. 7 S., R. 54 E. (unsurveyed).
Secs. 1-34, incl.;
Secs. 35 and 36, exclusive of those portions withdrawn by P.L.O. 1662.
T. 8 S., R. 54 E. (unsurveyed),
Secs. 3-6, incl.;
Secs. 2, 35, 36, and 7-11, incl., exclusive of those portions withdrawn by P.L.O. 1662 and 805.
Tps. 9, 10, 11, and 12 S., R. 54 E. (unsurveyed),
Secs. 1, 12, 13, 24, 25, and 36;
Secs. 2, 11, 14, 23, 26, and 35, exclusive of those portions withdrawn by P.L.O. 805.
T. 13 S., R. 54 E. (unsurveyed),
Secs. 10-15, incl., 22-27, incl., 34, 35, and 36;
Secs. 9, 16, 21, 28, 33, exclusive of those portions withdrawn by P.L.O. 805.
T. 14 S., R. 54 E. (unsurveyed),
Secs. 1-3, incl., 10-15, incl., 22-27, incl., 34, 35, and 36;
Secs. 4, 9, 16, 21, 28, and 33, exclusive of those portions withdrawn by P.L.O. 805.
Tps. 5 and 6 S., R. 55 E. (unsurveyed),
Secs. 2-11, incl., 14-23, incl., 26-35, incl.
T. 7 S., R. 55 E. (unsurveyed),
Secs. 2-11, incl., 14-23, incl., 26-30, incl.;
Secs. 31-35, incl., exclusive of those portions withdrawn by P.L.O. 1662;
Secs. 36, S½, exclusive of those portions withdrawn by P.L.O. 1662.
T. 8 S., R. 55 E. (unsurveyed),
Secs. 31-36, incl., exclusive of those portions withdrawn by P.L.O. 1662.
Tps. 9, 10, 11, 12, 13, and 14 S., R. 55 E. (unsurveyed),
T. 7 S., R. 55½ E. (unsurveyed),
Secs. 31, 32, and 33, S½, exclusive of those portions withdrawn by P.L.O. 1662.
T. 8 S., R. 55½ E. (unsurveyed),
Secs. 4, 9, 16, 21, 28, 31, 32, and 33, exclusive of those portions withdrawn by P.L.O. 1662.
Tps. 9, 10, 11, 12, 13, and 14 S., R. 55½ E. (unsurveyed).
Tps. 8, 9, 10, 11, 12, 13, and 14 S., R. 56 E. (unsurveyed).
T. 15 S., R. 56 E.
T. 16 S., R. 56 E.
Secs. 1 and 2;
Sec. 3, lost 5, 6, 7, 8, 9, E½;
Sec. 4, lost 5, 6, 7;
Sec. 5, lots 5, 6, 7, 8, 9, NW¼, W½NE;
Sec. 6, lots 8, 9, NE¼, W½;
Sec. 8, lot 1;
Sec. 9, lot 1;
Tracts 38, 39, 40, 41, 42 A and B.
Tps. 8, 9, 10, 11, 12, 13, and 14 S., R. 57 E. (unsurveyed).
Tps. 8, 9, 10, 11, 12, 13, and 14 S., R. 58 E. (unsurveyed).
Tps. 8, 9, 10, 11, 12, 13, and 14 S., R. 59 E. (unsurveyed).

The lands described above aggregate 2,375,000 acres more or less in Nye, Lincoln and Clark Counties. Approximately 810,000 acres are within the Desert National Wildlife Range.

WM. J. MALENCIK,
Chief, Division of Technical Services.

[FR Doc.77-2595 Filed 1-26-77;8:45 am]

[Nev-025474]

NEVADA

Termination, in Part of Airport Lease Nev-025474

JANUARY 17, 1977.

Notice is hereby given that Elko County, through and by the Board of County Commissioners, relinquished its airport lease as to the following described lands:

MOUNT DIABLO MERIDIAN, NEVADA

T. 47 N., R. 64 E.,
Sec. 12, E½E½SE¼NE¼, SE¼NE¼NE¼ and portions of the NE¼SW¼NE¼NE¼, SE¼SW¼NE¼NE¼, NW¼NE¼SE¼NE¼, SW¼NE¼SE¼NE¼, NW¼SE¼SE¼NE¼, SW¼SE¼SE¼NE¼, more particularly described as follows: Beginning at the east quarter corner of said section 12, Corner No. 1; thence, north along the east section line of said sec. 12, 1,980', more or less, to corner No. 2; thence, west along the north line of the SE¼NE¼NE¼, 921.05 feet, more or less, to a point 300' from the centerline of the existing Jackpot runway, corner No. 3; thence, S. 16°37'15" E., 2,066.33', more or less, to the east-west quarter section line of said sec. 12, corner No. 4; thence, east, 330', more or less, to the east quarter corner of said sec. 12, Corner No. 1, the point of beginning.

Therefore, at 10:00 a.m. on February 21, 1977 the lands will be relieved of the segregation effect of the lease.

WILLIAM J. MALENCIK,
Chief, Division of Technical Services.

[FR Doc 77-2649 Filed 1-26-77;8:45 am]

[OR 9296 (Wash.); Vancouver 0808]

WASHINGTON

Order Providing for Opening of Public Land

JANUARY 20, 1977.

1. Pursuant to Order of the Office of Hearings and Appeals, dated January 25, 1972; Indian Trust Patent No. 77896, dated September 9, 1909, has been cancelled, and the following land has returned to the status of national resource land:

WILLIAMETTE MERIDIAN

T. 5 N., R. 19 E.,
Sec. 19, SE¼.

The area described contains 160 acres in Klickitat County.

2. The subject land is located approximately 19 miles northeast of the Town of Goldendale. Elevation ranges from 2,300 to 2,700 feet above sea level, and the topography varies from generally flat to rolling and undulating. Vegetation consists primarily of scattered conifers and native grasses and brush. In the past, the land has been used for livestock grazing purposes, and it will be managed, together with adjoining national resource lands, for multiple use management.

3. Subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law, the land described in paragraph 1 hereof is hereby open to operation of the public land laws, including the mining laws (Ch. 2, Title 30 U.S.C.) and the mineral leasing laws. All valid applications received at or prior to 10:00 a.m. February 25, 1977, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

4. Inquiries concerning the land should be addressed to the Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, P.O. Box 2965, Portland, Oregon, 97208.

HAROLD A. BERENDS,
Chief, Branch of Lands and Minerals Operations.

[FR Doc 77-2650 Filed 1-26-77;8:45 am]

Fish and Wildlife Service

ISSUANCE OF FEDERAL WILDLIFE PERMITS

Delegation of Authority

Notice is hereby given that the Associate Director, Federal Assistance, and the Federal Wildlife Permit Office have been delegated the authority formerly held by the Division of Law Enforcement to issue, modify, suspend and revoke permits and exemptions issuable under authority of the Endangered Species Act of 1973, 16 U.S.C. 1531-1543; Lacey Act, 18 U.S.C. 42, 44; Tariff Classification Act of 1962, 19 U.S.C. 1202; and Marine Mammal Protection Act of 1972, 16 U.S.C. 1368-1384, 1401; and they may redelegate this authority by memorandum to other Washington Office Federal Wildlife Permit Office personnel.

The Associate Director, Federal Assistance, and the Federal Wildlife Permit Office also have been delegated authority to issue permits for the importation and exportation into or out of the United States of migratory birds, or parts, nests, or eggs thereof; to kill, frighten or otherwise herd migratory birds (except eagles) injuring crops or other property; and they also may exercise all of the authority set forth in the Code of Federal Regulations pertaining to the acquisition and possession of migratory birds.

Effective date: This delegation of authoirty shall be effective as of November 15, 1976.

Dated: December 28, 1976.

LYNN A. GREENWALT,
Director, U.S. Fish and Wildlife Service.

[FR Doc 77-2630 Filed 1-26-77;8:45 am]

Geological Survey

NEW MEXICO

Known Geothermal Resources Area

Pursuant to the authority vested in the Secretary of the Interior by section 21(a) of the Geothermal Steam Act of 1970 (84 Stat. 1566, 1572; 30 U.S.C. 1020), and delegations of authority in 220 Departmental Manual 4.1 H, Geological Survey Manual 220. 2.3, and Conservation Division Supplement (Geological Survey Manual) 220.2.1 G, the following described lands are hereby defined as the Socorro Peak known geothermal resources area, effective October 26, 1976:

(31) NEW MEXICO

SOCORRO PEAK KNOWN GEOTHERMAL RESOURCES AREA

NEW MEXICO PRINCIPLE MERIDIAN, NEW MEXICO

T. 2 S., R. 1 E.,
Secs. 28, 29 and 80;
Secs. 31, 32 and 33, partly unsurveyed, (including lands within Town of Socorro Grant).
T. 2 S., R. 1 W.,
Secs. 25–33, inclusive;
Secs. 34, 35 and 36, partly unsurveyed (including lands within Town of Socorro Grant).
T. 2 S., R. 2 W.,
Secs. 25–29, inclusive;
Secs. 32–36, inclusive.
T. 3 S., R. 1 E.,
Secs. 4–9, inclusive, partly unsurveyed, (including lands within Town of Socorro Grant);
Secs. 16–21, inclusive, partly unsurveyed, (including lands within Town of Socorro Grant);
Secs. 28, 29 and 30, partly unsurveyed, (including lands within Town of Socorro Grant);
Secs. 31–33, inclusive.
T. 3 S., R. 1 W.,
Secs. 1–36, inclusive, partly unsurveyed, (including lands within Town of Socorro Grant).
T. 3 S., R. 2 W.,
Secs. 1–5, inclusive;
Secs. 8–17, inclusive;
Secs. 20–29, inclusive;
Secs. 32–36, inclusive.
T. 4 S., R. 1 E.,
Secs. 4–9, inclusive.
T. 4 S., R. 1 W.,
Secs. 1–12, inclusive.
T. 4 S., R. 2 W.,
Secs. 1–5, inclusive;
Secs. 8–12, inclusive.

The area described aggregates 89,715.81 acres, more or less.

Dated: January 10, 1977.

GEORGE H. HORN,
Conservation Manager.
Central Region.

[FR Doc.77–2591 Filed 1–26–77;8:45 am]

DEPARTMENT OF JUSTICE

Office of the Attorney General

ACTION TO ENJOIN DISCHARGE OF WATER POLLUTANTS BY THE CITY OF NEW YORK

Proposed Consent Decree

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that on January 14, 1977, a proposed consent decree in *United States v. City of New York, Abraham Beame, Robert Low and Charles Samowitz* was lodged with the United States District Court for the Southern Ditrict of New York. The proposed decree would require the City to meet a detailed time-table to build two sewage treatment facilities, the Red Hook Water Pollution Control Plant at the Brooklyn Navy Yard, Brooklyn, New York and the North River Water Pollution Control Plant at the Hudson River between West 138th and 145th Streets, New York, New York; to upgrade one sewage treatment facility, the Oakwood Beach Pollution Control Plant at Staten Island, New York; and to otherwise comply with the National Pollutant Discharge Elimination System permits covering the service areas for the above projects.

The proposed consent decree may be examined at the office of the United States Attorney, One St. Andrew's Plaza, New York, New York, 10007; at the Region II Office of the Environmental Protection Agency, Enforcement Division, 26 Federal Plaza, New York, New York, 10007; and at the Pollution Control Section, Land and Natural Resources Division of the Department of Justice, Room 2625, Ninth Street and Pennsylvania Avenue, Northwest, Washington, D.C. 20530. A copy of the consent decree may be obtained in person or by mail from the Pollution Control Section, Land and Natural Resources Division of the Department of Justice.

The Department of Justice will receive until February 28, 1977 written comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *"United States v. City of New York, et al.,"* D.J. Ref. 90–5–1–1–683. In requesting a copy, please enclose a check in the amount of one dollar (ten cents per page reproduction charge) payable to the Treasurer of the United States.

PETER R. TAFT,
Assistant Attorney General,
Land and Natural Resources Division.

[FR Doc.77–2593 Filed 1–26–77;8:45 am]

[Order No. 681–77]

PRIVACY ACT OF 1974

Notice of Systems of Records, Proposed Routine Uses, and Other System Modifications

Notice is hereby given that pursuant to the provisions and requirements of the Privacy Act of 1974, 5 U.S.C. 552a, the following system notices, routine uses and system modifications are proposed by the Department of Justice.

JUSTICE/USA–015, Pre-Trial Diversion Program Files, is a proposed new system of records for which no public notice is currently published in the FEDERAL REGISTER.

JUSTICE/DEA–027, DEA Employee Profile System (DEPS) is an existing system of records which was inadvertently omitted from previous publication and for which no public notice consistent with the requirements of 5 U.S.C. 552a(e)(4) has been published in the FEDERAL REGISTER.

JUSTICE/BOP–006, Inmate Commissary Accounts Record System, is partially reprinted to reflect the proposed automation of this system. The original Privacy Act notice for this system appeared on August 27, 1975, at 40 FR 38705.

Interested persons are invited to comment on those portions of the notices which describe the routine uses of JUSTICE/USA–015 and JUSTICE/DEA–027, and the storage and retrievability practices of JUSTICE/BOP–006. Comments should be mailed to the System Manager at the address listed in the relevant System Notice. All comments must be received by February 28, 1977. No oral hearings are contemplated. Comments received will be available for inspection in Room 1266, Main Department of Justice Building, 10th and Constitution Avenue, N.W.

Dated: January 18, 1977.

EDWARD H. LEVI,
Attorney General.

JUSTICE/USA 015

System name:

Pre-Trial Diversion Program Files

System location:

Ninety-four United States Attorneys' Offices (See attached Appendix)

Categories of individuals covered by the system:

Individuals referred to in potential or actual pre-trial diversion cases.

Categories of records in the system:

(a) USA Form 184—Referral letter to Probation Service; (b) USA Form 185—Letter to defendant; (c) USA Form 186—Agreement for Pre-Trial Diversion; (d) USA Form 187—Pre-Trial Diversion Report Form; (e) USA Form 188—Certification of Completion of Programs; (f) USA Form 189—Defendant Application Form; (g) Telephone Records; (h) Miscellaneous Correspondence; and, (i) Files Unique to a District.

Authority for maintenance of the system:

This system is established and maintained pursuant to 5 U.S.C. 301 and 44 U.S.C. 3101.

Routine uses of records maintained in the system, including categories of users and purposes of such uses:

A record maintained in this system of records may be disseminated as a routine use of such record as follows:

(a) In any case in which there is an indication of a violation or potential violation of law, criminal, or regulatory in nature, the record in question may be disseminated to the appropriate federal, state, local, or foreign agency charged with the responsibility for investigating or prosecuting such violation or charged with enforcing or implementing such law;

(b) In the course of investigating the potential or actual violation of any law, criminal, or regulatory in nature, or during the course of a trial or hearing or the preparation for a trial or hearing for such violation, a record may be disseminated to a federal, state, local, or foreign agency, or to an individual or organization, if there is reason to believe that such agency, individual, or organization possesses information relating to the investigation, trial, or hearing and the dissemination is reasonably necessary to elicit such information or to obtain the cooperation of a witness or an informant;

(c) A record relating to a case or matter may be disseminated in an appropriate federal, state, local, or foreign court or grand jury proceeding in accordance with established constitutional, substantive, or procedural law or practice;

(d) A record relating to a case or matter may be disseminated to a federal, state, or local administrative or regulatory proceeding or hearing in accordance with the procedures governing such proceeding or hearing;

(e) A record relating to a case or matter may be disseminated to an actual or potential party or his attorney for the purpose of negotiation or discussion on such matters as settlement of the case or matter, plea bargaining, or informal discovery proceedings;

(f) A record relating to a case or matter that has been referred by an agency for investigation, prosecution, or enforcement, or that involves a case or matter within the jurisdiction of an agency, may be disseminated to such agency to notify the agency of the status of the case or matter or of any decision or determination that has been made, or to make such other inquiries and reports as are necessary during the processing of the case or matter;

(g) A record relating to a person held in custody pending or during arraignment, trial, sentence, or extradition proceedings, or after conviction or after extradition proceedings, may be disseminated to a federal, state, local, or foreign prison, probation, parole, or pardon authority, or to any other agency or individual concerned with the maintenance, transportation, or release of such a person;

(h) A record relating to a case or matter may be disseminated to a foreign country pursuant to an international treaty or convention entered into and ratified by the United States or to an executive agreement;

(i) A record may be disseminated to a federal, state, local, foreign, or international law enforcement agency to assist in the general crime prevention and detection efforts of the recipient agency or to provide investigative leads to such agency;

(j) A record may be disseminated to a federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information relates to the requesting agency's decision on the matter;

(k) A record may be disseminated to the public, news media, trade associations, or organized groups, when the purpose of the dissemination is educational or informational, such as descriptions of crime trends or distinctive or unique modus operandi, provided that the record does not contain any information identifiable to a specific individual;

(l) A record may be disseminated to a foreign country, through the United States Department of State or directly to the representative of such country, to the extent necessary to assist such country in apprehending and/or returning a fugitive to a jurisdiction which seeks his return;

(m) A record that contains classified national security information and material may be disseminated to persons who are engaged in historical research projects, or who have previously occupied policy making positions to which they were appointed by the President, in accordance with the provisions codified in 28 CFR 17.60.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

All information, except that specified in this paragraph, is recorded on basic paper/cardboard material, and stored within manila file folders, within metal file cabinets, electric file/card retrievers or safes. Some material is recorded and stored on magnetic tape, card or other data processing type storage matter for reproduction later into conventional formats.

Retrievability:

Information is retrieved by the name of the person, case number or complaint number.

Safeguards:

Information in the system is both confidential and non-confidential and located in file cabinets in the United States Attorney offices. Some materials are located in locked file drawers and safes, and others in unlocked file drawers. Offices are locked during non-working hours and are secured by either Federal Protective Service, United States Postal Service, or private building guards.

Retention and disposal:

Records are maintained and disposed of in accordance with Department of Justice retention plans.

System manager(s) and address:

System manager for the system in each office is the Administrative Officer/Assistant, for the U.S. Attorney for each district. (See attached Appendix.)

Notification procedure:

Address inquiries to the System Manager for the judicial district in which the diversion application or approval was made. (See attached appendix.)

Record access procedures:

The major part of the information maintained in this system is exempt from this requirement under 5 U.S.C. 552a (j)(2), (k)(1) and/or (k)(2). To the extent that this system is not subject to exemption, it is subject to access. A determination as to exemption shall be made at the time a request for access is received. A request for access to a record from this system shall be made in writing, with the envelope and the letter clearly marked 'Privacy Access Request.' Include in the request the name of the individual involved, his birth date and place, or any other identifying number or information which may be of assistance in locating the record and the name of the case or matter involved, if known. The requester shall also provide a return address for transmitting the information. Access requests will be directed to the system manager. (See attached Appendix.)

Contesting record procedures:

The major part of the information maintained in this system is exempt from this requirement under 5 U.S.C. 552a (j)(2), (k)(1) and/or (k)(2). To the extent that this system is not subject to exemption, it is subject to contest. A determination as to exemption shall be made at the time a request for contest is received. Individuals desiring to contest or amend information maintained in the system should direct their request to the System Manager (see attached Appendix) stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

Record source categories:

Sources of information contained in this system include, but are not limited to investigative reports of federal, state and local law enforcement agencies, client agencies of the Department of Justice; other non-Department of Justice investigative agencies; forensic reports; statements of witnesses and parties; verbatim transcripts of Grand Jury and court proceedings; data, memoranda and reports from the Court and agencies thereof; and the work product of Assistant United States Attorneys, Department of Justice attorneys and staff, and legal assistants working on particular cases.

Systems exempted from certain provisions of the act:

The Attorney General has exempted this system from subsections (c)(3) and (4), (d), (e)(1), (2) and (3), (e)(4)(G) and (H), (e)(5) and (8), (f), (g) and (h) of the Privacy Act pursuant to 5 U.S.C. 552a (j)(2) and (k)(1) and (2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c) and (e) and have been published in the FEDERAL REGISTER.

JUSTICE/DEA 027

System name:

DEA Employee Profile System (DEPS)

System location:

Drug Enforcement Administration, 1405 Eye Street, N.W., Washington, D.C. 20537

Categories of individuals covered by the system:

DEA employees.

Categories of records in the system:

The following eight categories of information will be maintained in the system:

(1) Personal identification
(2) Work experience
(3) Language and geographical areas
(4) Formal education
(5) Special skills
(6) Record of training
(7) Consideration for vacancies
(8) Awards

Authority for maintenance of the system:

This system is maintained to effectively place and assign employees to positions to further the mandates of the Comprehensive Drug Abuse Prevention and Control Act of 1970.

Categories of users and the purposes of such uses:

The records will be used principally by the Personnel Management Division. Selected data will be forwarded by this personnel section to the Career Development Board and operational units throughout DEA for the purpose of:

(1) Identifying employees with particular skills or qualifications for assignment to special projects.

(2) Identification of candidates for overseas assignments who have specific language skills.

(3) Insuring that the Career Development Board will be reviewing the entirety of an applicant's background.

(4) Calculating DEA's human resources on hand and to project more accurately future resource needs and capabilities.

Information from this system will not be disseminated outside of DEA.

Storage:

These records will be maintained on magnetic tape and a disk storage device.

Retrievability:

The information in this system can be retrieved by the individual's name, special skills information, special knowledge information or by some combination of the above information.

Safeguards:

The records of the system will be maintained at DEA Headquarters which is protected by twenty-four hour guard service and electronic surveillance. Access to the building is restricted to DEA employees and those transacting business within the building who are escorted by DEA employees. In addition, the area where the tapes and disks are stored is a secured area and access is restricted to those employees who have business in the area and those non-DEA people who are transacting business within the area and escorted by a DEA employee. Inquiries to the system are only made by the written request of the Chief, Personnel Management Division.

Retention:

Records in this system are retained as long as the individual is employed by DEA.

System manager(s) and address:

Chief, Computer Services Division, Drug Enforcement Administration, 1405 Eye Street, N.W., Washington, D.C., 20537.

Notification procedure:

Inquiries should be addressed to Freedom of Information Unit, Drug Enforcement Administration, 1405 Eye Street, N.W., Washington, D.C., 20537. Inquiries should include inquirer's name, date of birth, and social security number.

Record access procedures:

Same as *Notification procedure*.

Contesting record procedures:

Same as *Notification procedure*.

Record source categories:

(1) DEA employee, (2) Servicing personnel office, and (3) The Justice Uniform Personnel System (Juniper).

Systems exempted from certain provisions of the act:

None.

JUSTICE/BOP 006

NOTE: The JUSTICE/BOP 006 system is partially reprinted to reflect a change in the equipment configuration.

System name:

Inmate Commissary Accounts Record System

Categories of records in the system:

(1) Financial data; (2) identification data. Both categories of records will be automated; the Bureau facilities will have responsibility for their maintenance. The records will be accessible by the telecommunications means of BOP facilities, Regional Offices and the Central Office.

Storage:

Information maintained in the system will be stored electronically on the Department of Justice Computer System separate from the BOP Central Office.

Retrievability:

Information on the automated system will be indexed by name and/or register number.

Safeguards:

The Inmate Commissary Accounts Record System will be protected by both physical security methods and dissemination and access controls. Access to this information will be limited to those persons with a demonstrated and lawful need to know, in order to perform assigned functions.

Protection of the automated system will be provided by physical, procedural and electronic means. The files will reside on the Department of Justice Computer System which is physically attended or guarded on a full-time basis. For retrieval purposes, access to active telecommunications terminals will be limited to those persons with a demonstrated need to know. For update purposes, access to the files will be limited to BOP facilities employees, as required in the performance of their assigned duties. Surreptitious access to an unattended terminal will be precluded by a complex authentication procedure. The procedure will be provided only to authorized BOP employees.

An automated log of queries will be maintained for each terminal. Improper procedure will result in no access, and under certain conditions complete lockout of the terminal, pending restoration by the master controller at the BOP Central Office after appropriate verification has been received. Unattended terminals, after normal office hours, will be electronically disconnected by the master controller at the BOP Central Office. All terminals will have key locks and will be located in lockable facilities.

Retention:

Records in this system will be retained for a period of ten (10) years after expiration of sentence, then destroyed by electronic means.

[FR Doc.77-2603 Filed 1-26-77;8:45 am]

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (77-5)]

STRATOSPHERIC RESEARCH ADVISORY COMMITTEE

Meeting

The Stratospheric Research Advisory Committee will meet at the National Aeronautics and Space Administration Headquarters on February 24 and 25, 1977. The meeting will be open to members of the public. The meeting will take place from 9:00 am to 5:00 pm on February 24 and from 9:00 am to 4:30 pm on February 25 in room 6004 of Federal Office Building 6, 400 Maryland Avenue SW, Washington, DC, 20546.

The Stratospheric Research Advisory Committee advises NASA concerning the contents and direction of the NASA Upper Atmospheric Research Program. Topics under discussion at this meeting will include: Development of the NASA measurement strategy; Responses to the NASA UARO "Dear Colleague" Letter; Discussion of the research programs at the Goddard Space Flight Center and the Jet Propulsion Laboratory.

For further information regarding the meeting, please contact Dr. Shelby G. Tilford, Executive Secretary, at Area Code 202/755-3766 or 755-1790, National Aeronautics and Space Administration, Washington, DC 20546.

JOHN M. COULTER,
Acting Assistant Administrator for DOD and Interagency Affairs.

JANUARY 21, 1977.

[FR Doc.77-2663 Filed 1-26-77;8:45 am]

[Notice 77-6]

LONG DURATION EXPOSURE FACILITY (LDEF)

Experiment Review Ad Hoc Subcommittee of the Space Technology Steering Committee and the Research and Technology Advisory Council

MEETING

The Long Duration Exposure Facility (LDEF) Experiment Review Ad Hoc Subcommittee of the Space Technology Steering Committee and the NASA Research and Technology Advisory Council (RTAC) will meet on February 22-25, 1977, to evaluate experiment proposals submitted in response to the LDEF Announcement of Opportunity No. OAST-76-1. The Subcommittee will discuss and complete the categorization of proposals for flight on the first LDEF mission. Discussion of the professional qualifications of the proposers and their potential research and technology contributions to the LDEF mission would invade the privacy of the proposers and other individuals involved. Since this Subcommittee session will be concerned throughout with matters listed in 5 U.S.C. 552(b)(6), it has been determined that the sessions be closed to the public.

The Subcommittee is comprised of four advisory groups to evaluate proposals in appropriate technology disciplines. The Structures and Materials Advisory Group, which consists of eleven members, will meet on February 22-25, 1977, in Room 124, Building 1192C, Langley Research Center, Hampton, Virginia, 23665. The Electronics Advisory Group, which consists of seven members, will meet on February 23-25, 1977, in Room 103, Building 1192C, Langley Research Center, Hampton, Virginia, 23665. The Propulsion and Power Advisory Group, which consists of nine members, will meet on February 23-25, 1977, in Room 185, Building 1192D, Langley Research Center, Hampton, Virginia, 23665. The Basic Research Advisory Group, which consists of seven members, will meet on February 24-25, 1977, in Room 125, Building 1192E, Langley Research Center, Hampton, Virginia 23665.

The LDEF is a large, free-flying, passive satellite which provides accommodations to experiments which require long-term exposure to the space environment. It will be carried into Earth orbit during the 1979-80 Shuttle Orbital Flight Test program, deployed in a gravity-gradient stabilized mode, and retrieved six to nine months later during a subsequent Shuttle flight. The LDEF Experiment Review Ad Hoc Subcommittee was established to review experiment proposals for the first flight of the Long Duration Exposure Facility. The NASA Chairman is Mr. Robert G. Kyle, and the Advisory Chairman is Professor Seymour M. Bogdonoff of the Research and Technology Advisory Council. The Subcommittee will report the results of its evaluation to the Space Technology Steering Committee. It will also report the results to the RTAC Council after the formal announcement of the experiment proposal selections has been made.

The Structures and Materials Advisory Group will convene at 1:00 p.m. on February 22, 1977. The Electronics Advisory Group will convene at 8:30 a.m. on February 23, 1977. The Propulsion and Power Advisory Group will convene at 9:30 a.m. on February 23, 1977. The Basic Research Advisory group will convene at 8:30 a.m. on February 24, 1977. After being convened, the Advisory Groups will meet daily from 8:15 a.m. to 4:30 p.m. until all assigned proposals have been evaluated individually according to the guidelines of Section V of the Announcement of Opportunity. For further information, please contact the Executive Secretary, Mr. James L. Jones, Jr., NASA, Langley Research Center, Mail Code 158B, Langley Station, Hampton, Virginia 23665 (Area Code 804, 827-3704).

JOHN M. COULTER,
Acting Assistant Administrator for Department of Defense and Interagency Affairs, National Aeronautics and Space Administration.

JANUARY 21, 1977.

[FR Doc. 77-2664; Filed 1-26-77, 8:45 am]

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

NATIONAL COUNCIL ON THE ARTS

Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that a meeting of the National Council on the Arts will be held on February 11-12, 1977, from 9:00 a.m. to 5:30 p.m., and February 13, 1977, from 9:00 a.m. to 1:00 p.m., in the Chandelier Room, Sheraton Carlton Hotel, 16th and K Streets, NW., Washington, D.C.

A portion of this meeting will be open to the public on February 11-12, from 9:00 a.m. to 3:00 p.m., on a space available basis. Accommodations are limited. The agenda for these sessions include a general budget briefing, discussion of Dance, Education, Music, and Public Media program guidelines, and long-range program and policy planning.

The remaining sessions of this meeting on February 11-12, from 3:00 p.m. to 5:30 p.m., and February 13, from 9:00 a.m. to 1:00 p.m., are for the purpose of Council review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the FEDERAL REGISTER of June 16, 1975, these sessions, which involve matters exempt from the requirements of public disclosure under the provisions of the Freedom of Information Act (5 U.S.C. 552(b), (4), (5), and (6)) will not be open to the public.

Further information with reference to this meeting can be obtained from Mr. Robert M. Sims, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call 202-634-6377.

ROBERT M. SIMS,
Administrative Officer, National Endowment for the Arts, National Foundation on the Arts and the Humanities.

[FR Doc.77-2644 Filed 1-26-77;8:45 am]

NATIONAL SCIENCE FOUNDATION

ADVISORY PANEL FOR ENGINEERING CHEMISTRY AND ENERGETICS

Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Advisory Panel for Engineering Chemistry and Energetics.
Date and time: February 14 and 15, 1977—9:00 a.m. to 5:00 p.m. each day
Place: Room 338, National Science Foundation, 1800 G Street, N.W., Washington, D.C. 20550.
Type of meeting: Part Open—Open 2/14/77 9:00 a.m.-1:00 p.m. and 2/15/77, 9:00 a.m.-1:00 p.m.; Closed—2/14/77, 1:00 p.m.-5:00 p.m. and 2/15/77—1:00 p.m. 5:00 p.m.
Contact person: Dr. Marshall M. Lih, Head Chemical Processes Program, Room 413, National Science Foundation, Washington D.C 20550 telephone (202) 632-5867.
Purpose of panel: To provide advice and recommendations concerning support for research in Engineering Chemistry and Energetics.

AGENDA

FEBRUARY 14

9 a.m.	Open Session—Remarks and Introductions. Status Report on the Engineering Division.
9:45 a.m.	Section Head's Report (M Lih).
10:15 a.m.	Break.
10:30 a.m.	Program Briefing (30 min each). Dr. Rafi Turian, Chemical Processes. Dr. Win Aung Heat Transfer. Dr. Royal Rostenbach, Engineering Energetics. Dr. William Weigand Thermodynamics and Mass Transfer. Dr. Morris Ojalvo, Solid and Particulate Processing.
11:20 a.m.	Question and Answer Time.
11:45 a.m.	Lunch Break.
1 p.m.	Closed Session—Subpanel review of the individual programs including proposal jackets and peer reviews.
5 p.m.	Adjourn.

FEBRUARY 15

9 a.m.	Discussion. (1) Oral Reports from subpanels. (2) Section-wide concerns
12 noon	Main panel adjourns.
1 p.m.	Closed Session—Heat Transfer subpanel's further in-depth study of the Program including proposal jackets and peer reviews.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552(b), Freedom of Information Act. The rendering of advice by the panel is considered to be a part of the Foundation's

deliberative process and is thus subject to exemption (5) of the Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make determinations by the Director, NSF, on February 11, 1976.

M. REBBECCA WINKLER,
Acting Committee Management Offier.

JANUARY 24, 1977.

[FR Doc.77-2643 Filed 1-26-77;8:45 am]

NATIONAL SCIENCE FOUNDATION ADVISORY COUNCIL

Revision of Charter

This notice is to announce revision to the charter of the National Science Foundation Advisory Council.

The National Science Foundation Advisory Council was established on March 8, 1976 to provide advice and counsel to the NSF Director and principal members of his staff on Foundation-wide issues. This revision will provide for membership on the Council of non-scientists as well as scientists.

The revision described above is reflected in the Council's modified charter. Copies of the charter addendum like the initial charter, have been forwarded to the Library of Congress for public inspection and filed with the standing committees of Congress having legislative jurisdiction of the National Science Foundation.

RICHARD C. ATKINSON,
Acting Director.

JANUARY 24, 1977.

[FR Doc.77-2641 Filed 1-26-77;8:45 am]

NUCLEAR REGULATORY COMMISSION

[Dockets Nos. 50-250 and 50-251]

FLORIDA POWER AND LIGHT CO.

Issuance of Amendments to Facility Operating Licenses

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) has issued Amendments Nos. 22 and 21 to Facility Operating Licenses Nos. DPR-31 and DPR-41, respectively, issued to Florida Power and Light Company which revised Technical Specifications for operation of the Turkey Point Nuclear Generating Units Nos. 3 and 4, located in Dade County, Florida. The amendments are effective as of the date of issuance.

These amendments concern changes required as a result of (1) the steam generator repair and (2) a reevaluation of the emergency core cooling system, for Turkey Point Unit No. 3. The emergency core cooling system reevaluation fulfills, for Unit No. 3, the requirements of the Commission's Order for Modification of License dated August 27, 1976. The operating limits for Unit No. 4 set forth in its Technical Specifications remain unchanged although the Unit No. 4 Technical Specifications will be modified to reflect the revisions to the Unit No. 3 Technical Specifications.

The application for the amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments. Prior public notice of these amendments was not required since the amendments do not involve a significant hazards consideration.

The Commission has determined that the issuance of these amendments will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of these amendments.

For further details with respect to this action, see (1) the application for amendments dated December 21, 1976, as supplemented by letters dated December 9, December 22, December 30, 1976 and January 3, 1977, (2) Amendments Nos. 22 and 21 to Licenses Nos. DPR-31 and DPR-41 and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the Environmental and Urban Affairs Library, Florida International University, Miami, Florida 33199.

A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Maryland, this 14th day of January 1977.

For the Nuclear Regulatory Commission.

GEORGE LEAR,
Chief, Operating Reactors Branch No. 3, Division of Operating Reactors.

[FR Doc.77-2292 Filed 1-26-77;8:45 am]

[Docket No. 50-331]

IOWA ELECTRIC LIGHT AND POWER CO., ET AL.

Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 26 to Facility Operating License No. DPR-49 issued to Iowa Electric Light and Power Company, Central Iowa Power Cooperative, and Corn Belt Power Cooperative, which revised Technical Specifications for operation of the Duane Arnold Energy Center, located in Linn County, Iowa. The amendment is effective as of its date of issuance.

This amendment modifies the Technical Specifications by lowering the trip level setpoints for the differential pressure instruments associated with the HPCI Turbine Steam Line High Flow trip.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated December 17, 1976, (2) Amendment No. 26 to License No. DPR-49, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the Cedar Rapids Public Library, 426 Third Avenue, S.E., Cedar Rapids, Iowa 52401.

A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Maryland, this 17th day of January 1977.

For the Nuclear Regulatory Commission.

GEORGE LEAR,
Chief, Operating Reactors Branch No. 3, Division of Operating Reactors.

[FR Doc.77-2293 Filed 1-26-77;8:45 am]

[Docket No. 50-267]

PUBLIC SERVICE COMPANY OF COLORADO

Issuance of Amendment to Facility Operating License

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 17 to Facility Operating License No. DPR-34 issued to Public Service Company of Colorado which temporarily revised Technical Specifications for operation of the Fort St. Vrain Nuclear Generating Station, located in Weld County, Colorado. The amendment was effective on December 8, 1976.

The amendment temporarily revised the provisions in the Technical Specifications relating to operation of the bearing water makeup pumps in the primary coolant system. On December 8, 1976, telephoned authorization was given to the licensee to extend from 24 hours to seven days the duration during which one bearing water makeup pump could be inoperable without the helium circulators being considered inoperable. On December 15, 1976, telephoned authorization was given to the licensee to extend the time to a total of twenty-one days from December 8, 1976. Following this period the original technical specification would be reinstated.

The applications for the amendment comply with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the applications for amendment dated December 8, 1976 and December 15, 1976, (2) Amendment No. 17 to License No. DPR-34, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the Greeley Public Library, City Complex Building, Greeley, Colorado 80631.

A copy of items (2) and (3) may be obtained upon request addressed to the United States Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Project Managment.

Dated at Bethesda, Maryland, this 17th of January, 1977.

For the Nuclear Regulatory Commission.

RICHARD P. DENISE,
Assistant Director for Special Projects, Division of Project Management.

[FR Doc. 77-2294 Filed 1-26-77;8:45 am]

[Docket No. 50-346]

THE TOLEDO EDISON CO. AND CLEVELAND ELECTRIC ILLUMINATING CO. (DAVIS-BESSE UNCLEAR POWER STATION, UNIT NO. 1)

Issuance of Amendment to Construction Permit and Availability of Initial Decision (Antitrust)

Notice is hereby given that pursuant to an Initial Decision (Antitrust), dated January 6, 1977, by the Atomic Safety and Licensing Board, the Nuclear Regulatory Commission has issued Amendment No. 3 to Construction Permit CPPR-80 issued to The Toledo Edison Company and The Cleveland Electric Illuminating Company for construction of the Davis-Besse Nuclear Power Station, Unit No. 1, presently under construction at the Applicants' site on the southwestern shore of Lake Erie in Ottawa County, Ohio, approximately 21 miles east of Toledo, Ohio. The Board's Initial Decision includes antitrust conditions to be attached to licenses for the Davis-Besse 1, 2 and 3 nuclear units.

The Nuclear Regulatory Commission has found that the provisions of this amendment comply with the requirements of the Atomic Energy Act of 1954, as amended, and the Commission's regulations published in 10 CFR Chapter I and has concluded that the issuance of this amendment will not be inimical to the common defense and security or to the health and safety of the public.

A copy of the Atomic Safety and Licensing Board's Initial Decision (Antitrust), dated January 6, 1977, and Amendment No. 3 to Construction Permit No. CPPR-80 are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and in the Ida Rupp Public Library, 310 Madison Street, Port Clinton, Ohio 43452.

Single copies of the Initial Decision (Antitrust) and Amendment No. 3 to CPPR-80 may be obtained by writing to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Project Management.

Dated at Bethesda, Maryland this 14th day of January 1977.

For the Nuclear Regulatory Commission.

JOHN F. STOLZ,
Chief, Light Water Reactors Branch No. 1, Division of Project Management.

[FR Doc.77-2295 Filed 1-26-77;8:45 am]

[Docket No. 50-271]

VERMONT YANKEE NUCLEAR POWER CORP.

Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the FEDERAL REGISTER (37 FR 28710) and §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established in the following proceeding:

VERMONT YANKEE NUCLEAR POWER CORPORATION

Vermont Yankee Nuclear Power Station, Facility Operating License No. DPR-28.

This action is in reference to a notice published by the Commission on December 9, 1976, in the FEDERAL REGISTER (41 FR 53871) entitled "Proposed Issuance of Amendment to Facility Operating License".

The members of the Board and addresses are as follows:

Samuel W. Jensch, Esq., Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Dr. David B. Hall, Member, Los Alamos Scientific Laboratory, P.O. Box 1663, Los Alamos, New Mexico 87544.

Dr. Paul W. Purdom, Member, 245 Gulph Hills Road, Radnor, Pennsylvania 19087.

Dated at Bethesda, Maryland this 17th day of January, 1977.

Atomic Safety and Licensing Board Panel.

JAMES R. YORE,
Chairman.

[FR Doc.77-2296 Filed 1-26-77;8:45 am]

NUCLEAR REGULATORY COMMISSION

[Docket No. PRM-71-4]

CHEM-NUCLEAR SYSTEMS, INC.

Filing of Petition for Rule Making

Notice is hereby given that the Chem-Nuclear Systems, Inc., P.O. Box 1866, Bellevue, Washington, by letter dated November 22, 1976, has filed with the Nuclear Regulatory Commission a petition for rule making to amend the Commission's regulation "Packaging of Radioactive Material for Transport and Transportation of Radioactive Material Under Certain Conditions", 10 CFR Part 71.

The petitioner requests the Commission to amend §§ 71.7 and 71.10 of 10 CFR Part 71 to exempt from the specification container requirements of Part 71 "low specific activity material" as defined in § 71.4(g). The petitioner states that § 71.4(g) defines the term "low specific activity material" using the same language provided in § 173.389 of the Department of Transportation (DOT) Hazardous Materials Regulations, 49 CFR Parts 170-189, and that the DOT regulations provide a specific exemption for "low specific activity material" from the type A and type B packaging requirements. The petitioner states that this exemption is consistent with both the 1967 regulations of the International Atomic Energy Agency and the 1972 revised edition of the IAEA regulations.

A copy of the petition for rule making is available for public inspection in the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. A copy of the petition may be obtained by writing to the Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

All interested persons who desire to submit written comments or suggestions concerning the petition for rule making should send their comments to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, by March 28, 1977.

Dated at Washington D.C this 18th day of January 1977.

For the Nuclear Regulatory Commission.

SAMUEL J. CHILK,
Secretary of the Commission.

[FR Doc.77-2291 Filed 1-26-77;8:45 am]

[Docket Nos. 70-8, 70-25 etc.]

LICENSEES AUTHORIZED TO POSSESS OR TRANSPORT STRATEGIC QUANTITIES OF SPECAL NUCLEAR MATERIALS

Memorandum and Order

Docket Nos. 70-8, 70-25, 72-27, 70-33, 70-135, 70-143, 70-364, 70-371, 70-734, 70-754, 70-820, 70-1143, 70-1257, 70-1319, et al.

On February 2, 1976, the Natural Resources Defense Council, Inc. ("NRDC") filed a petition requesting that the NRC either immediately implement emergency safeguards measures to protect strategic special nuclear material ("SSNM") currently held or transported by NRC licensees or revoke forthwith the licenses and take immediate possession of the SSNM. The emergency safeguards measures included immediate dispatch of U.S. Marshall to licensee facilities, curtailment or complete suspension of licensee activities, revocation of outstanding SSNM licenses, and immediate recovery of SSNM.

The "Emergency Safeguards Petition" before the Commission addresses the adequacy of safeguards measures used by NRC licensees who are authorized under our regulations (10 CFR Parts 70 and 73) to possess or transport substantial quantities of strategic special nuclear material.[1] The term "safeguards" refers to the security measures undertaken by a licensee to protect SSNM from loss, theft, or diversion and to prevent sabotage of a licensee's facilities or activities.

By notice in the FEDERAL REGISTER dated February 4, 1976 (41 FR 5357), the Commission requested comments on the petition. The Commission referred the petition to the Director of NRC's Office of Nuclear Material Safety and Safeguards ("NMSS") under 10 CFR § 2.206. After reviewing the matter and meeting with NRDC representatives, the Director denied the request for emergency relief on March 22, 1976, concluding that the requested emergency action was "unnecessary" and failed "take into account the competing interest of the licensees and the broader public interests involved." In the Director's words, "the present safeguards programs of the licensees in question are adequate to provide a reasonable assurance of public health and safety and are not inimical to the common defense and security." On April 8, 1976, petitioner filed a motion requesting action at the Commission level, in response to the emergency safeguards petition. In its response, the NRC staff did not oppose the request for Commission action. However, the staff contended that our review should be a limited one under our *Indian Point* decision.[2] In *Indian Point*, we stated our authority to review, under an abuse of discretion standard, a staff decision made under 10 CFR § 2.206 not to issue an order to show cause.

Ten private companies (operating 13 facilities) licensed by NRC currently possess SSNM, and four transport companies hold NRC-approved transportation plans for shipments of SSNM. The licensees utilize the SSNM for a number of purposes, but most of the SSNM—more than 90%—is high-enriched uranium held by certain licensees whose principal business is fabricating fuel for the Navy Nuclear Propulsion Program, an important national defense activity relating to the initial fueling and refueling of Navy nuclear submarines and surface ships. Other SSNM is used in various research and development programs of private organizations and institutions and of governmental agencies. The SSNM which licensees possess or transport (predominantly high-enriched uranium) differs from the low-enriched uranium primarily utilized as fuel in commercial light water-cooled power reactors in that the former is capable of being used to fabricate a nuclear explosive device while the latter is not.[3] SSNM licensees are therefore required by NRC regulations to protect the SSNM against loss, theft, or diversion (10 CFR parts 70 and 73). The potential consequences which could arise from the illicit use of SSNM are sufficiently great that licensees are required to employ detailed security measures to provide a high-degree of assurance against the threat of theft or diversion of the SSNM. Safeguards programs of licensees typically have several dimensions including: (1) physical security measures, such as private guards, physical barriers, and intrusion alarms (e.g., 10 CFR § 73.50); (2) material containment programs providing for separate material access areas and vault storage of SSNM (e.g., 10 CFR § 73.60); and (3) material control and accounting procedures such as inventory and measuring systems designed to detect discrepancies in the amount of material on hand (e.g., 10 CFR § 70.57).

Petitioner contended that the safeguards programs of the SSNM licensees do not sufficiently and adequately protect SSNM from theft or diversion by, for example, an armed terrorist group intent on obtaining SSNM for its illicit use. In support of its position, petitioner relied principally on internal memoranda and reports done by or for the NRC and its predecessor agency, the Atomic Energy Commission.[4] Petitioner asserted that the common defense and security and the public health and safety require either that the licensees' safeguards programs be immediately supplemented to provide protection against the maximum credible threat of theft—as, for example, by the immediate dispatch of federal marshals—or, if this cannot expeditiously be done, that the SSNM licenses be revoked forthwith and that possession immediately be taken of the SSNM.

1. *Preliminary Considerations.* At the outset, we need to address two aspects of the emergency petition each of which affects our consideration. The first relates to our scope of review. The petition can be viewed as requesting both enforcement action against individual licensees and special rulemaking on a generic level. Because of its request for enforcement action, the petition was initially referred to the staff under 10 CFR § 2.206. The Director's decision not to institute action under 10 CFR § 2.202 is reviewable by the Commission utilizing the standard of review established in *Consolidated Edison Company of New York, Inc.* (Indian Point, Units 1, 2, and 3, 2 NCRI 173 (1975)).[5] Under this standard, detailed in a note below,[5] the Director's decision will not be disturbed unless it is clearly unwarranted or an abuse of discretion. The *Indian Point* review is essentially a deferral to the staff's judgment on the facts relating to a potential enforcement action, in order to avoid premature commitment by the Commission on factual issues. While the Director's decision not to institute emergency action was rendered in March 1976, we consider this to remain his decision today by virtue of his responsibility under our regulations to act on his own initiative. The Director has not initiated the emergency action requested by petitioner to date. Thus, the *Indian Point* issue is whether the Director's decision was an abuse of discretion, either when he made it or in light of the current facts.

[1] The term strategic special nuclear material ("SSNM") includes uranium-235 (contained in uranium enriched to 20 percent or more in the U-235 isotope), uranium 233, or plutonium alone or in any combination in a quantity of 5,000 grams or more computed by the formula, grams = (grams contained U-235) + 2.5 (grams U-233 + grams plutonium).

[2] *Consolidated Edison Company of New York, Inc.* (Indian Point, Units 1, 2, and 3), 2 NRCI 173 (1975). See note 5 infra.

[3] Some licensees also possess limited amounts of plutonium. Plutonium is toxic. Adverse consequences could follow from its dispersal in the atmosphere. This is not as great a concern with either low or high-enriched uranium.

[4] The reports and memoranda include an early draft of the NRC Security Agency Study required by the Energy Reorganization Act of 1974, an internal memorandum, dated January 19, 1976, written by Carl Builder, the Director of NRC's Division of Safeguards, NMSS ("Builder Memorandum"), the Rosenbaum Special Safeguards Study done for the AEC and issued in April 1974 ("Rosenbaum Report"), and a Mitre Corporation report to the NRC entitled "The Threat to Licensed Nuclear Facilities," done in September 1975.

[5] Review of the Director's decision embodies the following elements: (1) whether the statement of reasons given permits rational understanding of the basis for his decision; (2) whether the Director has correctly understood governing law, regulations, and policy; (3) whether all necessary factors have been considered, and extraneous factors excluded, from the decision; (4) whether inquiry appropriate to the facts asserted has been made; and (5) whether the Director's decision is demonstrably untenable on the basis of all information available to him.

In this case, contrary to petitioner's view utilization of the *Indian Point* standard will not noticeably limit Commission involvement in the issues raised by the emergency safeguards petition. As we have earlier noted, a substantial part of the petition relates to policy matters which, as is clear from *Indian Point* and otherwise, the Commission itself must decide. In any event, we would rely heavily on the staff's judgment of factual matters, quite apart from the considerations in *Indian Point*. Of course, we would examine the staff's judgment and its basis with the appropriate degree of discrimination to satisfy ourselves of the judgment's validity. A searching inquiry is also considered essential to an *Indian Point* review.[6]

The second important aspect of the petition relates to the emergency nature of the relief sought. Much of the substance of the NRDC's position is of a policy nature which would warrant close Commission attention whether or not available information compelled the precipitate action it sought.[7] Nonetheless, petitioner's contentions must be weighed in the context of its request for emergency action.

The emergency action requested by petitioner is a drastic procedure which can radically and summarily affect the rights and interests of others, including licensees and those who depend on their activities. Our emergency powers must be responsibly exercised. *Cf. Nader* v. *Federal Aviation Administration*, 440 F.2d 292, 294 (D.C. Cir. 1971). Available information must demonstrate the need for emergency action and the insufficiency of less drastic measures. In the context of the request for emergency relief in this case, the available information must show that the continued activities of NRC licenses, under current safeguards programs, are inimical to the common defense and security and constitute an unreasonable risk to the public health and safety. We are not required either by the Atomic Energy Act or by our regulations, to take the emergency action petitioner has requested whenever we receive information adverse to the integrity of existing nuclear power safety or safeguards systems. See *Nader* v. *Nuclear Regulatory Commission*, 513 F.2d 1045, 1054–55 (D.C. Cir. 1975). Where the balance of available information demonstrates an undue risk, we of course take prompt remedial action. Actions have been taken to improve our safeguards posture. But the facts have never called for the drastic relief which petitioner seeks. And as we state in detail in the following paragraphs, we believe that current available information also falls short of establishing a basis for the emergency relief.

2. *Review of the Director's Decision and the Staff's Site-Specific Actions.* Petitioner has raised a number of safeguards issues calling for our consideration. Although there were safeguards deficiencies pointed up by a series of staff site visits initiated prior to receipt of the petition, the Commission is of the view that the emergency remedies sought by petitioners were inappropriate in March 1976, when Mr. Chapman denied the petition, and are equally inappropriate now. As we now discuss, what the staff review indicated as necessary to remedy the shortcoming revealed in fuel cycle facility safeguards was a systematic and integrated increase in safeguards protection implemented on an expedited, but not emergency, basis. Such an orderly enhancement of safeguards effectiveness has indeed been in progress since March, and we have recently directed implementation of additional measures at a limited number of facilities. Additionally, the Commission has decided to conduct a rulemaking, the details of which will be publicized shortly to establish, through public proceedings, a long-term regulatory framework for safeguarding strategic quantities of special nuclear material.

We believe the orderly approach adopted by the staff was and remains the correct one, in view of the compressed timetable under which needed safeguards improvements have been and are being implemented. In contrast, the emergency measures proposed by petitioners would have required our taking action in the absence of the results of the staff's careful, though expeditious, review of the situation and could have had an unwarranted and severe impact on the operations of our licensees, most of whom are engaged in activities of importance to the national security.

In January of last year and prior to this petition, the Director of the NRC Office of Nuclear Material Safety and Safeguards initiated a special onsite review of all SSNM licensees.[8] The purpose of the special review was to evaluate the safeguards measures of licensees against current NRC regulations and to analyze safeguards capabilities against a hypothetical internal threat of diversion of SSNM by at least one insider—an employee of the licensee—occupying any position, and a hypothetical external threat of theft presented by a determined violent attack of, at minimum, three well-armed, well-trained attackers, who might possess inside knowledge or assistance.[9] Two separate task groups of the NRC safeguards staff visited each licensee's facilities. The task groups consisted of six-to-eight staff personnel, and the visits ranged from two-to-four days' duration. One task group examined the licensee's physical security measures for compliance with existing regulations, the purpose of gauging the timeliness, likelihood and adequacy of the licensee's response to an external attack. The second task group reviewed the licensee's material control programs to evaluate procedures controlling access to and containment of SSNM. The reviews were completed in May.[10] While the fixed-facility licensees were found to have safeguards programs which were generally in compliance with existing regulations, nearly all licensees were unable to defeat both hypothetical threats. The most frequently observed weaknesses were control of access to significant quantities of SSNM (both stored and in process), exit search procedures, and adequacy of response by onsite and offsite forces.

The special review task groups reported that most weaknesses could be corrected by licensees instituting changed procedures, and the Director concluded that shutdown or curtailment of SSNM activities was not necessary. A few weak-

[6] The *Indian Point* standard of review is similar to the review that would be accorded the Director's decision by a court. 2 NRCI at 175. *See Dunlop* v. *Bachowski*, 421 U.S. 560, 568–576 (1975); *Citizens to Preserve Overton Park, Inc.* v. *Volpe*, 401 U.S. 402, 416 (1971). Using the *Indian Point* standard to review the Director's decision in this case is not an abdication of Commission responsibilities as petitioner maintains. As we have noted, the Commission itself will decide questions of safeguards policy. The *Indian Point* standard is reserved for the factually oriented controversies in which full Commission review at the very outset of a proceeding risks premature commitment on factual disputes which the Commission might later be called upon to review.

[7] Indeed, as we note later, the petitioner's contentions relate to policy matters being considered by the Commission. For this reason and as we note *infra*, we retain these aspects of petition for further review.

[8] The January review was directed at the fixed-facility fuel cycle licensees. Activities of companies authorized to transport SSNM had been under special review since October 1975, and are discussed infra. Much of the information generated by these staff reviews and follow-up activities is classified or proprietary. We have attempted in this memorandum and order to set forth the salient aspects of the information without, of course, compromising the classified nature of it. But the factual underpinning of our conclusions includes the classified information and briefings we have received from the staff.

[9] No specific threat levels are defined in our regulations.

[10] While the Director's decision on the NRDC emergency request preceded completion of the site reviews, we do not conclude that his inquiry into the facts asserted by petitioner was thereby rendered incomplete. In our view the factual issues raised by the petition center primarily on the nature of the threat to licensed facilities, generally, rather than on the implementation of safeguards measures at specific sites, which was the subject of the staff's site reviews. The Director properly focused his inquiry on the former, broader question. The Director's denial of the emergency relief requested amounted to a finding that modification of NRC's regulatory standards on an emergency basis was not called for. The Director's action was based in large measure on examination of the very information and reports cited by petitioner, who, as the Director pointed out in his response to the petition, brought forward no new factual material on this subject. Nevertheless, implicit in the petition was a request for the actual implementation of emergency safeguards measures to protect the public against whatever threat was ultimately found to be appropriate. As we note in the text, each site visit was followed by the imposition of new license conditions as appropriate, although in no case were the dramatic measures petitioner sought found to be required.

nesses were found which required structural changes, but these were susceptible to correction through compensatory procedural changes as a short-term solution. The NRC safeguards staff suggested specific procedural alterations to each fixed-facility licensee at the conclusion of each site visit, and has continued to work closely with the licensees to increase safeguards capabilities and correct weaknesses found. A special survey, conducted by inspectors in the NRC Regional Offices during June, determined that all licensees had made significant improvements in their safeguards systems, although further upgrading measures still had to be taken.

Beginning in May, new license conditions were issued to individual SSNM licensees which, in effect, formally required each licensee to employ the safeguards measures that the review teams had determined were sufficient to defend against the hypothetical threats. During September and October, the staff conducted a second round of special onsite reviews to verify that the actions required by the new license conditions had been fully implemented. These onsite reviews were similar, in personnel, time, and procedures, to the earlier initial staff review. Our staff's conclusions were that marked safeguards improvements had been made by all SSNM licensees, and that, in the judgment of the site-review teams, all facilities visited have the capability of meeting the postulated threat. However, as to several facilities, the site reviews have suggested that the level of assurance underlying that judgment was not as great as for the remaining facilities. The Commission considers it prudent—in order to maintain a reasonably assured margin of safeguards at all facilities—to undertake additional measures at these facilities to increase the level of assurance that they are protected against the postulated threat. Based on a generic staff analysis that shows a strong relationship between onsite guard strength and the level of safeguards protection afforded at SSNM facilities, the Commission has decided to require the facilities to increase the number of guards on site or to implement alternative measures which are equally effective within the next two months.[11]

As regards SSNM transportation activities, on October 1, 1976, ERDA assumed responsibility for shipment of all Government-owned SSNM—over 90 percent of the total SSNM road shipments. In a separate series of reviews, the NRC staff evaluated the vulnerability of road shipments of SSNM to attack by at least one insider, or an external group of a minimum of three attackers with military training and skills, at least one of whom could be an insider. As to the private shipments which are still subject to NRC regulation—about 10–30 shipments annually—the NRC staff reviews have led to improvements in commercial transportation planning and scheduling. New license conditions responding to other problems identified by the staff vulnerability studies were implemented in May 1976. The license conditions required increased escort guards, training and instruction of shipment guards and drivers, and installation of citizen band radios for shipment and escort vehicles. The staff is conducting additional reviews, and further upgrading measures remain under consideration.

As we next address, we believe the NRC policy of orderly strengthening of safeguards which the staff is implementing and enforcing provides adequate protection to the public. This policy includes planned agency public proceedings directed at requiring additional upgrading actions by SSNM licensees. In this context, we are satisfied with the staff's conclusions that licensees have safeguards programs which are adequate for the immediate term and that the emergency safeguards sought by NRDC are unwarranted. Our conclusion to initiate rulemaking directed at further upgrading of existing safeguards discussed below, is founded on considerations of prudence. As we have described above, the staff's conclusions rest on extensive onsite reviews of and work with individual licensees. We do not construe the staff's efforts as a statement that the safeguards measures of NRC licensees are insufficient. Rather, we view the activities as an important ingredient to enhance a safeguards posture which we believe is adequate to protect during this interim period while the upgrading measures discussed below are implemented. Because of the staff's past and continuing safeguards efforts, we believe that the emergency measures which petitioner requests are not necessary and that the continued activities of SSNM licensees are not inimical to the common defense and security and do not constitute an unreasonable risk to the public health and safety. Based upon the information present available, we cannot conclude that the Director's decision not to invoke the emergency action petitioner requests was an abuse of discretion.[12]

3. *Consideration of Safeguards Policy Matters.* Specific threat levels are not defined in NRC regulations. However, the effect of the staff's recent activities with individual SSNM licensees has been to require safeguards systems that will protect against the postulated threat of diversion of SSNM by at least one insider occupying any position, or by, at minimum, three well-armed, well-trained outside attackers, who might possess inside knowledge or assistance. This current NRC safeguards posture rests on judgment and experience. It is supported by (1) analysis of and to the extent possible extrapolation from historical evidence on the size and character of groups involved in incidents of terrorism and other antisocial behavior; (2) communications and work with other federal agencies having special knowledge and expertise of this area; and (3) review of our records of the types of actual and threatened violence in the commercial nuclear industry. No NRC-licensed nuclear facility or activity has ever been subjected to armed attack, and we have no evidence suggesting that any such attack is likely. Nonetheless, the danger of attack cannot be wholly discounted. Given our impending proposals for safeguards upgrading, we believe the current level of safeguards reasonably assures that continued SSNM activities of NRC licensees are not inimical to the common defense and security and do not constitute an unreasonable risk to the public health and safety.

The principal safeguards policy issue raised by the NRDC is whether SSNM licensees should be required immediately to employ safeguards measures which would protect against attacks by groups substantially larger than the threat postulated in the staff's special safeguards review. The documents upon which petitioner relies are several reports and memoranda generated by or for the NRC and the AEC over the last two years.[13] The authors of some of these documents judge larger groups to be a possible risk as petitioner contends. However, neither these judgments nor the factual context in which they must be evaluated suggest that the emergency action petitioner requests is either necessary or appropriate. Petitioner has not provided information demonstrating an imminent threat to SSNM licensees—although such risks cannot be wholly discounted—and in this regard it is noteworthy that the reports and memoranda referenced by petitioner

[11] All SSNM facilities and transportation activities will be the object of continued NRC review, inspection, and evaluation. In this regard, the Commission has asked the staff to develop a plan for the comprehensive assessment of all SSNM facilities, to be used in the context of current safeguards as well as upgraded safeguards measures which are to be the subject of a Commission rulemaking described later in this document. The staff's expertise in using safeguards evaluation techniques is growing, and future site visits will likely include the use of additional evaluation strategies.

[12] Analyzing the Director's March 22 decision under the Indian Point standards (see footnote 5, supra), we consider the letter-decision to be understandable and to rationally explain the basis for the decision. The Director understood and executed then-current safeguards policy and his obligations under the Atomic Energy Act and NRC regulations. No essential factor was excluded from consideration or extraneous factor included. An appropriate factual inquiry was made (see footnote 10 supra), and the decision was, and remains, not demonstrably untenable in light of the available information.

[13] Representative of the internal reports and memoranda—and also the documents upon which petitioner principally relies in seeking emergency action—are the Rosenbaum Report, and the Builder Memorandum. See note 4 supra. The former hypothesizes a threat of 15 highly trained persons, three of whom might be insiders; the latter assumes, for purposes of future safeguards consideration, an internal and external threat of two and six persons respectively (nothing a range of expert opinion from one and three to four and 12) and hypothesizes a minimum level of one insider and three outsiders.

do not recommend the kind of precipitate action which petitioner seeks.[14]

In the safeguards context, the specifications of the threat against which safeguards should protect—its size and characteristics—cannot be precisely quantified. In this respect, threat analysis appears to be an example of regulatory action that would greatly benefit, before implementation, from a detailed and open review, including a public examination of the costs and benefits attendant to increasing safeguards measures to meet varying levels of threat. Some historical perspective exists for threat analysis, but it appears to be of limited value. Much of the safeguards question deals in the complexities and unpredictable nature of human character. Thus, the possible analogy of safeguards planning and design and of the technical health and safety planning and design undertaken incident to the licensing of commercial nuclear facilities is of uncertain scope or validity.[15] At present we are not convinced that the empirical or technical means exist to assess the threat with such precision as to establish as mandatory one specific level of safeguards and no higher or lower level. Further examination of safeguards policy may reveal that the appropriate level of safeguards protection will depend on the public acceptability of the measures employed and on the cost-benefit balance of increasing safeguards protection.[16] In this regard, we cannot discount that the ultimate decision to require additional safeguards may involve substantial amounts of initial and continuing expenditures.[17] Before requiring this action, we should be reasonably certain that the expenditures will provide a publicly desired benefit in safeguards protection. Additional safeguards protection need not be implemented on an emergency basis unless necessitated by the facts. Available information does not provide a factual basis for emergency implementation. Thus, in refusing petitioner's requests for emergency action, we do not put a price on basic public safety. Rather, we simply recognize that we must determine that the common defense and security and the public health and safety are advanced by proposed safeguards improvements. All of this discussion convinces us that the issues addressed by petitioner are of important concern but can and should be resolved in contexts other than that of a request for immediate, emergency action.

We do not perceive an actual threat to our licensees although such may not be wholly discounted. As we have said, no NRC licensees has ever been the target of an armed attack, and available information does not indicate than an attack is probable. However, prudence dictates that our safeguards policy be subject to close and continuing NRC review.

Thus, we have decided to conduct a public rulemaking to consider upgraded interim safeguards requirements and proposed longer-term upgrading actions. The specific upgrading actions remain to be defined in the proposed rule and in developing these actions the Commission will consult and coordinate with the Energy Research and Development Administration and other Federal agencies having special knowledge and expertise in this area.[18] For the reasons already stated, we have concluded that continuing activities of SSNM licensees are neither inimical to the common defense and security nor present an unreasonable risk to the public health and safety.

The rulemaking is currently planned for the next few months. This proceeding is intended as a public review of generic safeguards policy for SSNM licenses, and transportation activities and will consider requirements for upgraded safeguards programs in both the near and long term. At the Commission's request, the staff is formulating, for consideration in the rulemaking, recommendations for additional steps that might be taken to upgrade safeguards to protect against higher levels of threat. In formulating its recommendations, the staff is considering, among other materials, the report from a joint NRC–ERDA Task Force which evaluated safeguards of the fixed-facility licensees involved in this proceeding for the purpose of formulating a safeguards action plan for NRC licensees and government-owned SSNM facilities.[19] The Task Force recommended employing additional safeguards measures to counter the hypothetical threats of internal conspiracies among licensee employees and determined violent assaults which would be more severe than those postulated in evaluating the adequacy of current safeguards. The Commission has approved this objective as an appropriate proposal for purposes of the planned public review.[20] The rulemaking proposal will also include interim safeguards actions to be taken over a shorter span of time. Proposed interim actions include: (1) increasing the capability of weapons supplied to guards; (2) improving guard training; (3) requiring SSNM licensees to employ additional safeguards measures, as the staff determines necessary at each facility or for each transport company, to defend against an external threat having the capability of a determined assault more severe than that currently postulated; [21] (4) a security clearance program for employees with access to SSNM; [22] and (5) other measures which may, for the interim, be utilized to increase protection against internal threats of theft or diversion of SSNM.

The Commission believes that the contemplated safeguards rulemaking proceeding presents a satisfactory framework for near- and long-term safeguards decisionmaking. We see no reason to short-circuit the usual rulemaking procedures to address safeguards policy matters.[23]

One final matter merits comment. Petitioner has contended that SSNM licensees must employ safeguards measures

[14] The Builder Memorandum, for example, did not suggest that additional safeguards must be implemented on an emergency basis. Rather, the memorandum recommended a review of existing facilities while awaiting further judgments about what may be a prudent design threat level. This, of course, has been done by the staff.

[15] See "A Report to the U.S. Nuclear Regulatory Commission on a Conceptual Approach to Safeguards," p. 21 (October 31, 1975).

[16] Id. at 16.

[17] On his point, we note that some of the SSNM licensees are engaged in important national defense activities. Thus, there may not be the option of ultimate shutdown of these SSNM licensees even though the publicly desired level of safeguards might be greater and more expensive than the present level. Petitioners recognize this, albeit in the contetx of short-term, emergency relief.

[18] In this regard, we note that ERDA has recently initiated upgrading actions at its facilities and plans additional actions in Fiscal Year 1978. Over 90 percent of the SSNM possessed by NRC licensees is government-owned and subject to ERDA possession and safeguards at one point, or another. Our safeguards concerns relate, of course, to those periods when SSNM is in the hands of our licensees.

[19] The Task Force was directed by Carl H. Builder, then Director of NRC's Division of Safeguards. Its report—sometimes referred to as the "Builder Task Force Report"—contains Restricted Data, and is classified "Confidential," under the Atomic Energy Act of 1954. 42 U.S.C. § 2014y. Like previous reports on this subject, the report based its recommendation to increase safeguards on prudence, rather than a perception of the imminence of threats to the nuclear industry. An unclassified version of the report is planned for release shortly.

[20] While we are committed to proposing for public review an upgrade of safeguards capabilities at SSNM facilities, this is not to say that the Commission will necessarily adopt the proposed upgrade measures as its ultimate course of action. The Commission remains free, at the close of the public proceeding, to adopt the course it considers as most prudent to maintain a margin of safeguards protection, taking into consideration all ingredients of responsible regulatory action, including the education it undergoes as a result of the public process. While we have no evidence of actual threats, we cannot wholly discount that SSNM licensees will be the object of assaults more severe than those currently postulated or of internal conspiracies among employees.

[21] Depending on the staff's evaluation of what is preferable at each facility, these additional safeguards measures would include additional guards at some facilities, installation of undefeatable offsite communications systems, improved guard deployment and defensive positions, and hardened facility alarm stations.

[22] Security clearances are already required by ERDA for employees of SSNM licensees that are engaged in activities under ERDA contract. This covers 90 percent of the SSNM in facilities licensed by the NRC.

[23] The Commission's analysis of safeguards issues in the context of the wide-scale use of mixed-oxide fuels in commercial light water-cooled power reactors ("GESMO") may also offer a forum for discussion of longer-term safeguards matters. GESMO does not apply to existing SSNM licensees, but could serve to focus long-term generic safeguards issues and develop future approaches that would be relevant to existing SSNM licensees.

ures designed to combat "the maximum credible threat of theft or diversion." It is maintained that the concept finds support, by analogy, in the health and safety requirements incident to the licensing of commercial nuclear facilities—an analogy which, as we have previously indicated, is of uncertain validity. The maximum credible threat concept is not now a part of NRC safeguards policy. Without intending to prejudge the utility of the concept, which will likely be evaluated in planned agency proceedings and studies, the present state of safeguards information does not render the concept obviously useful. For example, there does not now appear to be sufficient sophistication in safeguards analysis to establish conclusively the precise nature and level of threats which may be posed to nuclear facilities.[34] Current safeguards policy relies on extrapolation from historical evidence and communications with law enforcement authorities and with other Federal agencies having intelligence-gathering responsibilities or experience and expertise in protecting materials similar to SSNM. Yet, as we have noted earlier, the empirical basis for nuclear safeguards threat assessment is not well developed. This, of course, is not to say that an analytical framework for threat analysis cannot be developed and would not be important in the resolution of safeguards policy issues. In this regard, we again note that the parameters appear to us to be more social than technical. The staff has underway several studies which address the analytical basis for a design basis threat. Additionally, consideration of this safeguards matter may be a part of the planned NRC public proceedings. Thus, while future information and developments may provide clarity, we are not now convinced that the maximum credible threat concept is a helpful one in safeguards planning.

4. *Disposition of the Petition.* On the basis of the above, we conclude that existing safeguards programs, including the extensive and continuing activities of the staff and the SSNM licensees along with the planned safeguards policy activities, are adequate to provide a reasonable assurance that the current SSNM activities of NRC licensees are not inimical to the common defense and security, and do not constitute an unreasonable risk to the public health and safety. We further conclude that the Director's decision not to invoke the emergency action requested by petitioner was not an abuse of discretion. We accordingly deny petitioner's request for the immediate dispatch of federal guards, or similar emergency measures, or the revocation of SSNM licensees. As to the safeguards policy issues raised by the emergency petition—apart from the requested emergency relief—we retain these to be incorporated into ongoing and contemplated reviews and proceedings, and shall invite NRDC participation at appropriate stages in these proceedings. The staff will be instructed to notify petitioner of agency proceedings, which involve public participation, on agency proposals relating to the safeguards measures to be used by SSNM licensees and in related transportation activities. Nothing contained herein should be construed as precluding petitioner from renewing its request for emergency action upon a showing of new information which demonstrates the need for emergency relief.[35]

It is so ordered.

Dated at Washington, D.C. this 21st day of January, 1977.

By the Commission.

SAMUEL J. CHILK,
Secretary of the Commission.

[FR Doc.77-2390 Filed 1-21-77;1:09 pm]

[34] For example, petitioner asserts that existing information places the maximum credible threat at from 12–15 armed outsiders or 3–4 industry employees in collusion, with the chance that future review and assessment may reveal a significantly larger threat. We consider these numbers to be essentially matters of judgments. Such judgments, together with the other available information, have been taken into account by the Commission in arriving at its safeguards decisions.

[35] Petitioner has filed a motion entitled "Motion to Ensure Compilation of the Record." The motion reflects petitioner's concern that all materials relevant to the contentions made in the Emergency Safeguards Petition be available and before the Commission for review. We agree with this concern and note, that the Commission is free to consider any materials it believes relevant including, but not limited to, the documents enumerated in petitioner's motion. This follows from the fact that our consideration of the Emergency Safeguards Petition is not a formal agency proceeding conducted on the record. Thus, the Commission is free to rely on its expertise in the matter and to consider any and all available information whether or not cited by NRDC or the staff, and whether or not it has been or could be made publicly available. The information relevant to and considered in this case includes staff reports and documents on the special onsite reviews (some of which are classified Restricted Data or National Security Information), information and reports provided to the Commission in connection with its continuing interchanges with the Congress and other Executive branch agencies, safeguards studies done by or for the Commission (some of which are classified Restricted Data or National Security Information), documents and reports furnished to the Commission in the course of performing its daily business affairs.

ADVISORY COMMITTEE ON REACTOR SAFEGUARDS, SUBCOMMITTEE ON EMERGENCY CORE COOLING SYSTEMS

Meeting; Correction

The February 5, 1977 meeting of the ACRS Subcommittee on Emergency Core Cooling Systems announced in FEDERAL REGISTER, Vol. 42, page 3906, January 21, 1977, will discuss experimentation concerning core bypass of emergency core coolants. It will not consider items regarding the Oyster Creek Nuclear Power Plant as stated in paragraph (a) of cited notice. (The Subcommittee will consider items pertaining to the Oyster Creek Plant at its January 29, 1977 meeting, announced in FEDERAL REGISTER, Vol. 42, page 2729, January 13, 1977.)

Dated: January 25, 1977.

JOHN C. HOYLE,
Advisory Committee Management Officer.

[FR Doc.77-2763 Filed 1-26-77;8:45 am]

[Docket No. 50-313]

ARKANSAS POWER & LIGHT CO.

Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 18 to Facility Operating License No. DPR-51, issued to Arkansas Power & Light Company (the licensee), which revised Technical Specifications for operation of Arkansas Nuclear One—Unit No. 1 (the Facility) located in Pope County, Arkansas. The amendment is effective as of its date of issuance.

This amendment authorized changes in the Technical Specifications concerning tendon and ventilation system surveillance requirements.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of the amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5 (d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated November 12, 1976. (2) Amendment No. 18 to Facility Operating License No. DPR-51 and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the Arkansas Polytechnic College, Russellville, Arkansas 72801. A single copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Md., this 18th day of January, 1977.

For the Nuclear Regulatory Commission.

DENNIS L. ZIEMANN,
Chief, Operating Reactors Branch No. 2, Division of Operating Reactors.

[FR Doc.77-2766 Filed 1-26-77;8:45 am]

[Docket Nos. 50-317 and 50-318]

BALTIMORE GAS & ELECTRIC CO.

Issuance of Amendments to Facility Operating Licenses and Negative Declaration

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment Nos. 19 and 5 to Facility Operating License Nos. DPR-53 and DPR-69 (respectively), issued to Baltimore Gas & Electric Company (the licensee), which revised the licenses for operation of the Calvert Cliffs Nuclear Power Plant Unit Nos. 1 and 2 (the facilities) located in Calvert County, Maryland. The amendments are effective as of their date of issuance.

The amendments authorized an additional offsite power source from Southern Maryland Electric Cooperative (SMECO) which provides a standby offsite power source to augment the two existing offsite power sources and increases the reliability of the offsite power sources, thus minimizing the possibility of an extended shutdown of the facilities.

The application for the amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments. Prior public notice of these amendments was not required since the amendments do not involve a significant hazards consideration.

The Commission has prepared an environmental impact appraisal relating to the action authorized by these license amendments and has concluded that an environmental impact statement for this particular action is not warranted because there will be no significant environmental impact attributable to the action.

For further details with respect to this action, see (1) the application for amendment dated March 18, 1976, and supplement thereto dated July 13, 1976, (2) Amendment No. 19 to License No. DPR-53 and Amendment No. 5 to License No. DPR-69, and (3) the Commission's jointly issued Safety Evaluation and Environmental Impact Appraisal. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the Calvert County Library, Prince Frederick, Maryland 20678. A single copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Md., this 14th day of January, 1977.

For the Nuclear Regulatory Commission.

DENNIS L. ZIEMANN,
Chief, Operating Reactors Branch No. 2, Division of Operating Reactors.

[FR Doc.77-2767 Filed 1-26-77;8:45 am]

[Docket Nos. STN 50-491, STN 50-492, and STN 50-493]

DUKE POWER CO., CHEROKEE NUCLEAR STATION, UNIT NOS. 1, 2, AND 3

Issuance of Revision to Limited Work Authorization

Pursuant to the provisions of 10 CFR 50.10(e) of the Nuclear Regulatory Commission's (Commission) regulations, the Commission has authorized the Duke Power Company to conduct certain site activities in connection with the Cherokee Nuclear Station, Unit Nos. 1, 2, and 3, prior to a decision regarding the issuance of construction permits. Notice of the Limited Work Authorization was published in the FEDERAL REGISTER on June 10, 1976 (41 FR 23489). Based upon an Atomic Safety and Licensing Board Order, the staff has now revised two of the environmental conditions related to the radwaste treatment system and preservation of a mountain-laurel hardwood stand.

A Partial Initial Decision on matters relating to the National Environmental Policy Act and site suitability was issued by the Atomic Safety and Licensing Board in the above captioned proceeding on May 21, 1976. A copy of (1) the Partial Initial Decision; (2) the applicant's Preliminary Safety Analysis Report and amendments thereto; (3) the applicant's Environmental Report, and amendments thereto; (4) the staff's Final Environmental Statement dated October 1975; (5) the Commission's letter of authorization, dated May 28, 1976; and (6) the Commission's revision to that letter of authorization dated January 19, 1977, are available for public inspection at the Commission's Public Document Room at 1717 H Street NW, Washington, D.C. and the Cherokee County Library, 300 East Rutledge Avenue, Gaffney, South Carolina.

Dated at Rockville, Md., this 19th day of January 1977.

For the Nuclear Regulatory Commission.

WM. H. REGAN, Jr.,
Chief, Environmental Projects Branch 2, Division of Site Safety and Environmental Analysis.

[FR Doc.77-2768 Filed 1-26-77;8:45 am]

[Docket No. 50-334]

DUQUESNE LIGHT CO., OHIO EDISON CO., AND PENNSYLVANIA POWER CO.

Proposed Issuance of Amendment to Facility Operating License

The Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-66 issued to Duquesne Light Company, Ohio Edison Company, and Pennsylvania Power Company (the licensees), for operation of the Beaver Valley Power Station Unit No. 1, located in Beaver County, Pennsylvania.

In accordance with the licensees' application for amendment dated December 3, 1976, the amendment would revise the provisions in the Technical Specifications relating to the spent fuel storage pool. As amended, the Technical Specifications would permit the replacement of the existing 272 spent fuel storage cells with High Density Spent Fuel Storage Racks, increasing the ultimate storage capacity of the spent fuel storage pool to 833 storage locations.

Prior to issuance of the proposed license amendment, the Commission will have made the findings required by the Atomic Energy Act of 1954, as amended (the Act), the Commission's rules and regulations.

By February 28, 1977, the licensees may file a request for a hearing and any person whose interest may be affected by this proceeding may file a request for a hearing in the form of a petition for leave to intervene with respect to the issuance of the amendment to the subject facility operating license.

Petitions for leave to intervene must be filed under oath or affirmation in accordance with the provisions of § 2.714 of 10 CFR Part 2 of the Commission's regulations. A petition for leave to intervene must set forth the interest of the petitioner in the proceeding, how that interest may be affected by the results of the proceeding, and the petitioner's contentions with respect to the proposed licensing action. Such petitions must be filed in accordance with the provisions of this FEDERAL REGISTER notice and Section 2.714, and must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Section, by the above date. A copy of the petition and/or request for a hearing should be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Gerald Charnoff, Esquire, Shaw, Pittman, Potts and Trowbridge, 1800 M Street, NW., Washington, D.C. 20036, the attorney for the licensees.

A petition for leave to intervene must be accompanied by a supporting affidavit which identifies the specific aspect or aspects of the proceeding as to which intervention is desired and specifies with particularity the facts on which the petitioner relies as to both his interest and his contentions with regard to each aspect on which intervention is requested. Petitions stating contentions relating only to matters outside the Commission's jurisdiction will be denied.

All petitions will be acted upon by the Commission or licensing board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel. Timely petitions will be considered to determine whether a hearing should be noticed or another appropriate order issued regarding the disposition of the petitions.

In the event that a hearing is held and a person is permitted to intervene, he becomes a party to the proceeding and has a right to participate fully in the conduct of the hearing. For example, he may present evidence and examine and cross-examine witnesses.

For further details with respect to this action, see the application for amendment dated December 3, 1976, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Beaver Area Memorial Library, 100 College Avenue, Beaver, Pennsylvania.

Dated at Bethesda, Md., this 12th day of January 1977.

For the Nuclear Regulatory Commission.

ROBERT W. REID,
Chief, Operating Reactors Branch No. 4, Division of Operating Reactors.

[FR Doc.77-2764 Filed 1-26-77;8:45 am]

[Docket No. STN 50-572]

WESTINGHOUSE ELECTRIC CORP.

Receipt of Standard Safety Analysis Report

Westinghouse Electric Corporation, in response to Option No. 1 of the policy statement of the Nuclear Regulatory Commission (the Commission) entitled "Methods of Achieving Standardization of Nuclear Power Plants", issued March 5, 1973, and pursuant to Appendix O to 10 CFR Part 50, has filed with the Commission a seven-volume document entitled "Westinghouse Reference Safety Analysis Report 414" (RESAR-414), which was docketed on December 30, 1976. The tendered application for RESAR-414 was received on October 8, 1976. Following a preliminary review for completeness, the application was found to be acceptable for docketing. Docket No. STN 50-572 has been assigned to RESAR-414 and should be referenced in any correspondence relating thereto.

RESAR-414 has been submitted in accordance with the "reference system" option wherein an entire facility design or major fractions of it can be identified as a standard design to be used in multiple applications. RESAR-414 describes and analyzes a four-loop pressurized water reactor nuclear steam supply system (NSSS) with auxiliary and safety systems. The reactor is designed for initial operation at a rated core thermal power level of 3,800 megawatts.

On March 11, 1974, the Commission docketed for review an application filed by Westinghouse Electric Corporation for its Reference Safety Analysis Report, RESAR-41. The Commission issued a preliminary design approval for RESAR-41 on December 31, 1975. The RESAR-414 NSSS is in many respects similar to the RESAR-41 NSSS, with the principal differences being the reactor core length, control rods, systems for emergency core cooling and boration, electrical protection systems, and spent fuel removal and storage.

When its review of RESAR-414 is complete, the Commission's staff will prepare and publish a Safety Evaluation Report documenting the results of the review. In addition, RESAR-414 has been referred to the Advisory Committee on Reactor Safeguards (ACRS) for its review and a report thereon. Copies of the Safety Evaluation Report and the ACRS report will be made available to the public. A notice relating to the availability of these documents will be published in the FEDERAL REGISTER.

All interested persons who desire to submit written comments for consideration by the staff and ACRS during their review of RESAR-414 should send them to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Section by ----------.

A copy of the RESAR-414 Reference Safety Analysis Report is available for public inspection at the Commission's Public Document Room, 1717 H Street, Washington, D.C. 20555. When available, the Safety Evaluation Report and the ACRS report will be made available for inspection by the public at the Commission's Public Document Room.

Dated at Bethesda, Md., this 19th day of January, 1977.

For the Nuclear Regulatory Commission.

S. A. VARGA,
Chief, Light Water Reactors Branch No. 4, Division of Project Management.

[FR Doc.77-2765 Filed 1-26-77;8:45 am]

[Docket Nos. 50-443, 50-444]

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE ET AL., (SEABROOK STATION, UNITS 1 AND 2)

Order Regarding Stay Application

On January 21, 1977, the Atomic Safety and Licensing Appeal Board rendered ALAB-366, suspending the effectiveness of the outstanding construction permits for the proposed Seabrook facility. The Board's decision is to become effective on February 4, 1977. An application for a stay of construction is pending before the United States Court of Appeals for the First Circuit. *Audubon Society of New Hampshire* v. *United States*, 76-1346. On December 17, 1976, the Court rendered an opinion deferring its ruling on the stay application pending further agency consideration of the issues. The Court stated its expectation that it would rule on the stay application unless further agency action eliminating a need for a stay were taken by February 18, 1977.

Pursuant to 10 CFR 2.786, the Commission has elected to review ALAB-366. The matter raises complex legal and policy issues with possible ramifications for other proceedings. As is our custom, we will articulate in appropriate detail the reasons for any action we may decide to take in our decision announcing the results of our review.

As previously noted, the Appeal Board decision will become effective by its own terms and construction must cease (except for measures which protect the environment or buildings, material or personnel) on February 4, 1977. In order to allow adequate time for consideration of the submissions of the parties under the schedule we are establishing by this order, the effectiveness of the Appeal Board decision is hereby stayed until 6 p.m., February 7, 1977. Any party who believes that the Appeal Board decision should be stayed beyond that date should apply for a stay. The other parties will have an opportunity to respond. The Commission will rule on any such stay application no later than February 7, 1977. Should the Commission decline to issue a further stay, the applicant will be given a reasonable period of time to comply with the Board's decision.

Apart from the question of a temporary stay pending completion of Commission review, the parties are to file papers addressed to the correctness of the Appeal Board decision. In addition, the applicant is to provide a detailed description of the status of work at the site and its plans with reference to construction over the next several months, should continued construction be permitted. In this regard, the applicant should explain the meaning of its Board of Directors resolution of January 6, 1977 referred to in the Appeal Board's opinion at pp. 63-64, detailing the work now underway whose continuation is regarded as "necessary or desirable in order to complete a particular phase or phases of the Project or to permit full construction activity to be resumed in an efficient and orderly manner as soon as possible * * *."

In view of time constraints the parties are free to incorporate relevant portions of papers previously submitted to the Licensing and Appeal Boards and to the Court, so long as such submissions are readily intelligible.

The following schedule is established for Commission review:

Jan. 31, 1977---	All parties submit papers on the merits of the Appeal Board decision; any party seeking a stay pending a completion of Commission review shall file an appropriate submission.
Feb. 3, 1977----	Reply papers due from all parties on the merits and any stay application.
Feb. 7, 1977----	Oral argument before the Commission.

All submissions must be put in the hands of all parties by the close of business on the specified deadlines. The oral argument will take place at 9:30 a.m. in the Commissioners Conference Room, 1717 H Street NW., Washington, D.C. Counsel wishing to participate in oral argument should so inform the Secretary by January 31, 1977. The Secretary will thereafter issue an order allocating time for oral presentations.

In footnote 54 of the majority opinion, the Board noted that it had not reached the merits of many of the issues pending before it for decision in this proceeding. It indicated, however, that some of those issues appear to be "troublesome." The Appeal Board is requested to identify these issues and to provide the Commission with a statement of the seriousness of these issues and the competing considerations involved. This submission is requested by February 3, 1977.

The reconstituted Licensing Board in this proceeding should proceed with preparation for the hearing contemplated in the Appeal Board's opinions without awaiting the outcome of Commission review of ALAB-366.

Dated at Washington, D.C., this 24th day of January 1977.

It is so ordered.

SAMUEL J. CHILK,
Secretary of the Commission.

[FR Doc.77-2791 Filed 1-26-77;8:45 am]

NUCLEAR REGULATORY COMMISSION

ADVISORY COMMITTEE ON REACTOR SAFEGUARDS NUCLEAR REGULATORY COMMISSION

Notice of Meeting

In accordance with the purposes of Sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b.), the Advisory Committee on Reactor Safeguards will hold a meeting on February 10-12, 1977, in Room 1046, 1717 H Street NW., Washington, D.C.

The agenda for the subject meeting will be as follows:

THURSDAY, FEBRUARY 10, 1977

8:00 A.M.—8:45 A.M.: Executive Session (Closed).—The Committee will discuss the qualifications of candidates nominated for appointment to the ACRS.

8:45 A.M.–9:45 A.M.: Executive Session (Open).—The Committee will hear and discuss the reports of ACRS Subcommittees and consultants who may be present regarding the evaluation of selected safety issues related to light-water reactors. Portions will be closed if necessary to discuss proprietary material or intra-agency memoranda prepared for internal use only.

9:45 A.M.–12:45 P.M. and 1:45 P.M.–4:45 P.M.: Meeting on Evaluation of Selected Safety Issues Related to Light-Water Reactors (Open).—The Committee will hear presentations and hold discussions regarding evaluation of selected safety issues related to light-water reactors.

Portions of this session will be closed if necessary to receive reports from individual NRC employees who will present their personal opinions and recommendations only in confidence. Portions will also be closed if required to review Proprietary Information related to the matters being considered and intra-agency memoranda prepared for internal use only.

4:45 P.M.–6:30 P.M.: Executive Session (Open).—The Committee will hear and discuss reports of ACRS Subcommittees regarding proposed Regulatory Guides and regulatory activities related to the practices and policies for correction of ECCS errors for operating power plants. The Committee will also discuss a proposed revision of its report on the Status of Generic Matters Related to Light-Water Reactors.

FRIDAY, FEBRUARY 11, 1977

8:30 A.M.—11:15 A.M.: Meeting with Members of the NRC Staff.—This portion of the meeting will include sessions with the Executive Director for Operations and other members of the NRC Staff related to current reactor operating experience and licensing actions; evaluation of generic matters related to light-water reactors, including performance of steam generator tubes in pressurized water reactors and evaluation of fuel handling accidents inside containment; and evaluation of safety research data and regulatory requirements of the Federal Republic of Germany. The future schedule for ACRS activities will be discussed. Reports will be made to the Committee regarding the NRC program to evaluate integrity of reactor pressure vessels designed and fabricated to the ASME Boiler and Pressure Vessel Code Sections I and VIII and the NRC program to review environmental phenomena at sites with facilities for processing and fabricating plutonium.

11:15 A.M.–12:00 Noon: Executive Session (Open).—The Committee will hear and discuss the report of the ACRS Subcommittee and consultants who may be present regarding the analytical models formulated to evaluate use of Exxon Nuclear Company Replacement Fuel for Light-Water Reactors. Portions of this session will be closed if required to discuss Proprietary Information related to the design, fabrication, or operation of this fuel.

1:00 P.M.–3:00 P.M.: Meeting Regarding Exxon Nuclear Company, Inc. Replacement Fuel for Light-Water Reactors (Open).—The Committee will hear and discuss information with representatives of the NRC Staff and the Exxon Nuclear Company, Inc., and the Jersey Central Power & Light Company, regarding the ECCS evaluation models for replacement fuel to be used in non-jet pump boiling water reactors and pressurized water reactors with low-pressure containment.

Portions of this session will be closed if required to discuss Proprietary Information related to the design, fabrication or operation of this type fuel.

3:00 P.M.–5:00: Executive Session (Open).—The Committee will hear and discuss the reports of ACRS Subcommittee Chairmen with respect to ACRS activities regarding review of the Zion Nuclear Station, ACRS review of the Clinch River Breeder Reactor, review of sites with environmental phenomena for plutonium processing and fabrication facilities, and ACRS review of the NRC plan to reevaluate siting policy and practices.

5:00 P.M.–6:30: Executive Session (Closed).—The Committee will meet in closed Executive Session to discuss the qualifications of proposed candidates for appointment to the Committee. The Committee will discuss a proposed ACRS report on safeguards provisions at nuclear facilities.

SATURDAY, FEBRUARY 12, 1977

8:30 A.M.–4:30 P.M.: Executive Session (Open).—The Committee will discuss proposed ACRS reports and activities regarding matters considered during this meeting. Portions of this session will be closed if necessary to discuss proprietary material related to the matters being discussed. Portions will also be closed if necessary to discuss information related to safeguards provisions at nuclear facilities and to discuss proposed policy and practice regarding conduct of ACRS activities.

I have determined in accordance with Subsection 10(d) of Public Law 92-463 that it is necessary to close portions of the meeting as noted above to protect material, which has been designated national security information and is classified under E.O. No. 11652 (5 U.S.C. 552(b)(1), to protect proprietary data (5 U.S.C. 552(b)(4)), to protect the confidentiality of intra-agency memoranda prepared for internal agency use only and discussion of information which, if written, would fall within the provisions of exemption 5 of 5 U.S.C. 552(b) (5 U.S.C. 552(b)(5)), to preserve the confidentiality of information related to safeguarding of special nuclear material (5 U.S.C. 552(b)(4)), to protect information provided in confidence by individual members of the NRC Staff (5 U.S.C. 552(b)(5)), and to protect information which, if released, would represent an undue invasion of privacy (5 U.S.C. 552(b)(6)). Separation of factual information and information considered exempt from disclosure under exemption (1), exemption (4), exemption (5), and exemption (6) of 5 U.S.C. 552(b) during these portions of the meeting is not considered practical.

Practical considerations may dictate alterations in the above agenda or schedule. The Chairman of the Committee is empowered to conduct the meeting in a manner that in his judgment will facilitate the orderly conduct of business, including provisions to carry over an incompleted open session from one day to the next.

The Advisory Committee on Reactor Safeguards is an independent group established by Congress to review and report on each application for a construction permit and on each application for an operating license for a reactor facility and on certain other nuclear safety matters. The Committee's reports become a part of the public record. Although ACRS meetings are ordinarily open to the public and provide for oral or written statements to be considered as a part of the Committee's information gathering procedure concerning the health and safety of the public, they are not adjudicatory type hearings such as are conducted by the Nuclear Regulatory Commission's Atomic Safety & Licensing Board as part of the Commission's licensing process. ACRS meetings do not normally treat matters pertaining to environmental impacts outside the safety area.

With respect to public participation in the open portion of the meeting, the following requirements shall apply:

(a) Persons wishing to submit written statements regarding the agenda items may do so by providing a readily reproducible copy to the Committee at the beginning of the meeting. Comments should be limited to safety related areas within the Committee's purview. Persons desiring to mail written comments may do so by mailing a readily reproducible copy thereof in time for consideration at this meeting. Comments postmarked no later than February 2, 1977, to the Executive Director, Advisory Committee on Reactor Safeguards, Nuclear Regulatory Commission, Washington, DC 20555 will normally be received in time to be considered at this meeting. Background information concerning items to be considered at this meeting can be found in documents on file and available for public inspection at the Nuclear Regulatory Commission's Public Document Room, 1717 H Street, NW, Washington, DC 20555 and at the following Public Document Rooms:

OYSTER CREEK NUCLEAR POWER PLANT

Ocean County Library, 15 Hooper Avenue, Toms River, NJ 08753.

D.C. COOK UNIT 1

Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, MI 49085.

(b) Those persons wishing to make oral statements regarding agenda items at the meeting should make a request to do so prior to the meeting, identifying the topics and desired presentation time so that appropriate arrangements can be made. The Committee will receive oral statements in safety related areas within the Committee's purview at an appropriate time chosen by the Chairman of the Committee.

(c) Further information regarding topics to be discussed, whether the meeting or portions of the meeting have been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted therefor, can be obtained by a prepaid telephone call on February 9, 1977, to the Office of the Executive Director of the Committee (Telephone: 202-634-1371) between 8:15 A.M. and 5:00 P.M., Eastern Time. It should be noted that the above schedule is tentative, based on the anticipated availability of related information, etc. It may be necessary to reschedule items to accommodate required changes. The ACRS Executive Director will be prepared to describe these changes on February 9, 1977.

(d) Questions may be propounded only by members of the Committee and its consultants.

(e) The use of still, movie, and television cameras, the physical installation and presence of which will not interfere with the course of the meeting, will be permitted both before and after the meeting and during any recess. The use of such equipment will not, however, be allowed while the meeting is in session.

(f) Persons with agreements or orders permitting access to proprietary information other than safeguards information may attend portions of ACRS meetings where this material is being discussed upon confirmation that such agreements are effective and relate to the material being discussed.

The Executive Director of the ACRS should be informed of such an agreement at least 3 days prior to the meeting so that the agreement can be confirmed and a determination can be made regarding the applicability of this agreement to the material that will be discussed during the meeting. Minimum information provided should include information regarding the date of the agreement, the scope of material included in the agreement, the project or projects involved, and the names and titles of the persons signing the agreement. Additional information may be requested to identify the specific agreement involved. A copy of the executed agreement should be provided to the Executive Director at the beginning of the meeting.

(g) A copy of the transcript of the open portion(s) of the meeting where factual information is presented will be available for inspection during the following workday at the Nuclear Regulatory Commission's Public Document Room, 1717 H Street, NW, Washington, D.C. Copies of the minutes of the meeting will be made available for inspection at the Nuclear Regulatory Commission's Public Document Room, 1717 H Street, NW, Washington, D.C. on or after May 13, 1977. Copies may be obtained upon payment of appropriate charges.

Dated: January 21, 1977.

JOHN C. HOYLE,
Advisory Committee Management Officer.

NOTE: This is a republication of a document which originally appeared at 42 FR 4564, Jan. 25, 1977.

[FR Doc.77-2389 Filed 1-21-77;1:11 pm]

NATIONAL TRANSPORTATION SAFETY BOARD

[N-AR 77-4]

SAFETY RECOMMENDATIONS AND RESPONSES

Availability and Receipt

The National Transportation Safety Board has recommended that the U.S. Department of Transportation in conjunction with its State agent, the Maine Public Utilities Commission, monitor the compliance actions taken by Maine Utility Gas Company to insure that it has established operations and maintenance records as required by 49 CFR Part 192. The Class II, priority followup recommendation No. P-76-101 was issued January 17 following investigation of a flash fire which occurred last August 13 in the basement of a house in Bangor, Maine.

The fire killed one Maine Utility Gas Company employee, burned two other employees, and caused minor damage to the house. Board investigation disclosed that liquefied petroleum gas admixed with air at 7-inches water-column pressure had escaped from a severely corroded segment of a 1½-inch bare steel service line at the basement wall. The escaping gas migrated underground along the service line and entered the basement through numerous openings in the stone foundation wall.

In its recommendation letter, the Board indicated that the gas company's operating procedures did not include instructions for the type of operation used by company servicemen in attempting to locate a low gas pressure problem immediately before the fire began. These procedures did not require the servicemen to vent open service lines to a safe outside location or to monitor the atmosphere for combustible gases when working in confined locations, nor did the procedures prohibit smoking or the introduction of other ignition sources while working near gas facilities. Also, the Board stated that it was doubtful that leakage surveys of the company's gas mains made previously by a contractor were adequate.

Also on January 17 the Safety Board directed five Class I recommendations to the Maine Utility Gas Company. The Board asks urgent followup action in implementing these recommendations:

Develop written procedures to insure the safety of company personnel and the public when work is performed on active gas facilities within buildings or other enclosed locations and train its employees in the use of the procedures. These procedures should require the use of equipment to monitor the atmosphere for combustible gases and should prohibit smoking, open flames, or other sources of ignition. (P-76-96)

Inspect a sample of the bare steel gas service lines at foundation walls to determine the systemwide extent of corrosion and perform a survey capable of detecting gas leakage that includes all service lines, meter set assemblies, and openings in foundation walls near gas service lines. Based upon the results of the inspection and survey, take necessary corrective action. (P-76-97)

Determine areas of active corrosion and install necessary cathodic protection to stop corrosion which could result in a condition detrimental to public safety. (P-76-98)

Determine the odor intensity of the gas at one-fifth of its lower explosive limit and periodically sample the intensity at representative locations. (P-76-99)

Maintain operation and maintenance records as required by 49 CFR Part 192. (P-76-100)

A third recommendation letter was forwarded by the Board on January 17 to the American Society of Mechanical Engineers Gas Piping Standards Committee. The Class II recommendation, No. P-76-102, also issued in connection with the Bangor accident, asked that the Committee provide priority followup action in revising its Guide for Gas Transmission and Distribution Systems, Appendix G-11, to include information appropriate to heavier-than-air gases which will guide operators of systems transporting these gases in the selection of gas leakage detection techniques and procedures.

The Federal Highway Administration, by letter of January 13, has acknowledged the Safety Board's letter of December 21 redirecting recommendations H-76-2 and H-76-3 from the National Highway Traffic Safety Administration to FHWA. (See 41 FR 56739, December 29, 1976.) These recommendations were developed as a result of the Board's investigation of the railroad-automobile grade crossing collision which occurred in Tracy, California, March 9, 1975. FHWA notes that the basic issues involved in railroad grade crossing safety and programs conducted by the Department of Transportation were discussed with Safety Board representatives at a meeting last June 14. The meeting was initiated by FHWA's Office of Engineering, partly as a result of the Board's report on the Tracy accident, and was attended by representatives of the Federal Railroad Administration and NHTSA. FHWA states that its formal response to these recommendations will be an extension and updating of the information provided to Board representatives at that meeting.

The Safety Board's letter of January 17 to the Federal Aviation Administration supplies comments on FAA's notice of proposed rulemaking 76-23—Additional Weather Information: Domestic and Flag Carriers, published last November 15 at 41 FR 50275. While the Board concurs with the intent of the proposal, certain reservations are expressed.

The preamble to NPRM 76-23 quotes, in part, the Safety Board's recommendation A-74-14, resulting from the July 1973 crash of an Ozark Airlines FH-227B at St. Louis, Missouri. The recommendation, in part, was that the FAA "* * * implement, in coordination with the National Weather Service, a system to relay severe thunderstorms and tornado bulletins expeditiously to inbound and outbound flights when such bulletins include the terminal area." The Board states that the letter to FAA was quite clear in pointing out that the tower and approach control facility had no system for the relay of severe weather warning bulletins to incoming and outgoing flights. The Board did not intend that the company have the responsibility in the terminal area.

The Board states that its operational and investigative experience and the findings of its ongoing study of terminal area thunderstorm problems indicate that the timely transmission of significant weather information by the company dispatcher to a flight in the terminal area is not feasible because of communications difficulties. The Board believes that the responsibility for transmission of such information necessarily devolves to the controller and that the proposed 14 CFR 121.601(c) as it pertains to the terminal area is not practical. The Board therefore considers recommendation A-74-14 to be still applicable and is carrying it on Board records as an "open" item.

Further commenting on the FAA proposal, the Board notes that although the major air carriers have meteorological departments which tailor weather information for their flights and provide forecasts of low-level wind shear, many carriers do not have company meteorologists and depend on the products of the National Weather Service. The Board notes that although NWS issues forecasts for clear air turbulence and thunderstorms, it does not provide routine forecasts of low-level wind shear; accordingly, there is no way many dispatch departments can provide such forecasts to flightcrews. According to the Board, similar problems no doubt exist on international routes where the dispatcher might be separated from the flight by thousands of miles, and such forecasts, even if issued by the various meteorological authorities, are not necessarily available to the dispatcher.

Safety recommendation letters are available to the general public; single copies may be obtained without charge. Copies of letters concerning recommendations may be obtained at a cost of $4.00 for service and 10¢ per page for reproduction. All requests must be in writing, identified by recommendation number and date of publication of this FEDERAL REGISTER notice. Address inquiries to: Publications Unit, National Transportation Safety Board, Washington, D.C. 20594.

(Sec. 307 of the Independent Safety Board Act of 1974 (Pub. L. 93-633, 88 Stat. 2172 (49 U.S.C. 1906)).)

MARGARET L. FISHER,
Federal Register Liaison Officer.

JANUARY 24, 1977.

[FR Doc.77-2683 Filed 1-26-77;8:45 am]

PRIVACY PROTECTION STUDY COMMISSION

MEETING

The Privacy Protection Study Commission will hold meetings on February 2 (Wednesday), 3 (Thursday), 9 (Wednesday), 10 (Thursday), 17 (Thursday), and 18 (Friday), 1977 for the purpose of internal deliberations and discussion with staff. The meetings will be held from 9:00 a.m. to 5:30 p.m. each day in Room 2358, Rayburn House Office Building, Washington, D.C.

Topics of discussion for February 2, 3, 9, and 10 may include the following Commission projects: Credit, credit reporting, insurance, and medical records. The sessions on February 17 and 18 will include a discussion of education records, research and statistics, and implementation of the Privacy Act of 1974.

It has been determined in writing by the Acting Director of the Office of Management and Budget, James L. Mitchell, that these meetings of the Commission to be held February 2, 3, 9 and 10 may be closed under section 10(d) of the Federal Advisory Committee Act and under exemption 5 of the Freedom of Information Act, 5 U.S.C. 552(b)(5). The Commission will discuss the progress of draft reports being undertaken by the staff of the Commission. No recommendations will be given to anyone outside of the Commission nor will the Commission take any final actions in closed session. Also, a full verbatim transcript will be taken for all sessions.

For further information, contact John Barker, Public Affairs Director, at 202-634-1477.

CAROLE W. PARSONS,
Executive Director, Privacy Protection Study Commission.

[FR Doc.77-2607 Filed 1-26-77;8:45 am]

SECURITIES AND EXCHANGE COMMISSION

[File No. SR-Amex-76-30]

AMERICAN STOCK EXCHANGE, INC.

Order Approving Proposed Rule Change

JANUARY 18, 1977.

On December 13, 1976, the American Stock Exchange, Inc. ("Amex"), 86 Trinity Place, New York, N.Y. 10006, filed with the Commission, pursuant to Section 19(b) of the Securities Exchange Act of 1934 (the "Act") and Rule 19b-4 thereunder, a proposed rule change amending the Amex constitution and rules to reflect the proposed transfer of the clearing agency business of the American Stock Exchange Clearing Corporation ("ASECC"), the Amex's wholly-owned clearing subsidiary, to the National Securities Clearing Corporation ("NSCC"). The proposed amendments were filed in connection with the pending application of NSCC as a registered clearing agency.

In accordance with Section 19(b) of the Act and Rule 19b-4 thereunder, notice of the proposed rule change was published in the FEDERAL REGISTER (42 FR 85, January 3, 1977), and the public was invited to submit comments. Notice of the filing and an invitation for comments also appeared in Securities Exchange Act Release No. 13103, December 23, 1976. No letters of comment were received.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges, and in particular, the requirements of Section 6 and the rules and regulations thereunder.[1] Furthermore, in view of the proposed transfer of the clearing agency business of ASECC to NSCC, the Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing thereof.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change contained in File No. SR-Amex-76-30 be, and it hereby is, approved provided, however, that the proposed rule change will not become effective prior to the effectiveness, and implementation by NSCC, of the order granting NSCC registration as clearing agency.[2]

[1] The Commission's approval of the amendments to the Amex constitution and rules is subject, nevertheless, to the Commission's review pursuant to Section 31(b) of the Securities Acts Amendments of 1975. See Securities Exchange Act Release No. 13027 (December 1, 1976).

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.77-2619 Filed 1-26-77;8:45 am]

[SR-NASD-76-10]

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

Order Approving Proposed Rule Change

JANUARY 18, 1977.

The National Association of Securities Dealers, Inc., 1735 K Street, N.W., Washington, D.C. 20006 (the "NASD") submitted on September 28, 1976, a proposed rule change under Rule 19b-4 to amend Section 4 of Schedule G under Article XVIII of the By-Laws of the NASD to provide that the charge to members for transactions in eligible securities reported in the consolidated transaction reporting system (the "consolidated system") contemplated by Rule 17a-15 under the Securities Exchange Act of 1934 (the "Act") through the NASDAQ system be altered from $.20 per transaction for all transactions, to $.20 per transaction for transactions reported prior to January 1, 1976, and $.10 per transaction for transactions reported subsequent to January 1, 1976.

The schedule of changes proposed to be amended (contained in Section 4 of Schedule G) was originally filed with the Commission on March 21, 1975, in conjunction with other rule changes (contained in Sections 1, 2 and 3 of Schedule G) governing: (i) the reporting of transactions in eligible securities, and (ii) antimanipulative rules relating to over-the-counter trading in such securities.

The provisions of Schedule G were amended by the NASD and refiled with the Commission on June 4, 1975, and were deemed by the Commission to have been filed under Section 19(b) of the Act, as amended by the Securities Acts Amendments of 1975. In view of the need to implement the NASD rule changes proposed in Article XVIII of the NASD's By-Laws and Schedule G thereunder (the "NASD Rule Changes") immediately to permit the scheduled commencement of the consolidated system on June 16, 1975, the Commission ordered the NASD Rule Changes into effect summarily pursuant to Section 19(b)(3)(B) of the Act on June 11, 1975. Notice of that action was provided[1] by Securities Act Release No. 11461 (June 11, 1975), published in the FEDERAL REGISTER on June 18, 1975 (40 FR 25730). That release also solicited public comment on the NASD Rule Changes.[1]

On May 12, 1976, the Commission approved Article XVIII of the NASD By-Laws and Sections 1, 2 and 3 thereunder, as modified on December 15, 1975, with respect to the method of reporting transactions effected by NASD members at a price plus or minus a commission, commission equivalent, or differential.[2] With respect to the fees and charges contained in Section 4 of Schedule G, the Commission determined to take no formal action, but acknowledged the consent of the NASD to a further extension of the time within which the Commission is required to act on the proposed fees and charges.[3] In so doing, the Commission noted that it understood that the reason the NASD consented to the further extension of time was to permit an opportunity for internal resolution of certain issues relating to the proposed fees contained in Section 4 of Schedule G.[4] The Commission understands that the revised transaction fees proposed by the NASD represent a resolution of those issues.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 12914 (October 21, 1976)) and by publication in the FEDERAL REGISTER (41 FR 47300 (October 28, 1976)). Interested persons were invited to submit written data, views and arguments concerning the proposal by November 27, 1976. The Commission has not received any comments concerning the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act, and the rules and regulations thereunder applicable to national securities associations, and in particular the requirements of Section 15A of the Act and the rules and regulations thereunder.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act, that the proposed rule change referenced above be, and it hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.77-2624 Filed 1-26-77;8:45 am]

[File No. SRNYSE 76-29]

NEW YORK STOCK EXCHANGE, INC.

Order Approving Proposed Rule Change

JANUARY 18, 1977.

On April 30, 1976, the New York Stock Exchange, Inc. ("NYSE"), 11 Wall Street, New York, New York 10005 filed with the Commission, pursuant to Section 19(b) of the Securities Exchange Act of 1934 (the "Act") and Rule 19b-4 thereunder, a proposed rule change amending the NYSE constitution and rules to reflect the proposed transfer of the clearing agency business of Stock Clearing Corporation ("SCC"), the NYSE's wholly-owned clearing subsidiary, to the National Securities Clearing Corporation ("NSCC"). The proposed amendments were filed in connection with the pending application of NSCC as a registered clearing agency.

In accordance with Section 19(b) of the Act and Rule 19b-4 thereunder, notice of the proposed rule change was published in the FEDERAL REGISTER (41 FR 23499, June 10, 1976), and the public was invited to submit comments. Notice of the filing and an invitation for comments also appeared in Securities Exchange Act Release No. 12512, June 3, 1976. No letters of comment were received.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges, and in particular, the requirements of Section 6 and the rules and regulations thereunder.[1]

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change contained in File No. SR-NYSE-76-29 be, and it hereby is, approved provided, however, that the proposed rule change will not become effective prior to the effectiveness, and implementation by NSCC, of the order granting NSCC registration as a clearing agency.[2]

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary

[FR Doc.77-2679 Filed 1-26-77;8:45 am]

[1] On January 13, 1977, the Commission issued an order granting NSCC registration as a clearing agency subject to the terms, conditions and directives contained in the order. See Securities Exchange Act Release No. 13163 (January 13, 1977).

[1] The original deadline for submission of written comments on the proposals was June 30, 1975; the time for such comment was extended until July 18, 1975, in Securities Exchange Act Release No. 11508 (June 30, 1975), and until October 1, 1975, in Securities Exchange Act Release No. 11653 (September 15, 1975), 40 FR 43284 (1975). See also Securities Exchange Act Release Nos. 11546 (July 10, 1975), 40 FR 53085 (1975), and 11951 (December 24, 1975), 41 FR 836 (1976).

[2] Securities Exchange Act Release No. 12432 (May 12, 1976). See Securities Exchange Act Release No. 11951 (December 24, 1975), 41 FR 836.

[3] Securities Exchange Act Release No. 12432 (May 12, 1976), at 2, n. 3.

[4] Id. See also File No. SR-1 for previous comments received with respect to the NASD transaction fees.

[1] The Commission's approval of the amendments to the NYSE constitution and rules is subject, nevertheless, to the Commission's review pursuant to Section 31(b) of the Securities Acts Amendments of 1975. See Securities Exchange Act Release No. 13027 (December 1, 1976).

[2] On January 13, 1977, the Commission issued an order granting NSCC registration as a clearing agency subject to the terms, conditions and directives contained in the order. (See Securities Exchange Act Release No. 13163 (January 13, 1977).

[Release No. 34-13171; File No. SR-PHLX 76-23]

PHILADELPHIA STOCK EXCHANGE, INC.

Self-Regulatory Organizations; Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94-29, 16 (June 4, 1975), notice is hereby given that on December 30, 1976, the above mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

PHLX' STATEMENT OF THE TERMS OF SUBSTANCE OF THE PROPOSED RULE CHANGE

Centramart provides a system for the automatic execution of orders on the Exchange equity floor under predetermined conditions. Orders accepted under the system may be executed on a fully automated or manual basis. Securities admitted to dealings on the equity floor are eligible for trading on the Centramart System in which equity specialists and member organizations may choose to participate. The conditions under which orders will be accepted and executed are set forth below. When used in these rules PRL means a combined round-lot and odd-lot order. The Centramart rules, conditions and guidelines do not apply to orders not on the system, and existing rules governing the latter dealings are not affected hereby.

1. Member organizations wishing to participate in Centramart will undertake to send to the Philadelphia trading floor all of their market orders and limit orders up to 299 shares in securities traded under Centramart.

2. Only agency orders may be executed under Centramart.

3. Floor brokerage or service charges on orders executed under Centramart are subject to negotiation by the specialist and the participating member organization. An automated execution program, by nature, involves set parameters. The Exchange permits such a program but does not require its members to participate in it. Thus, fees are ultimately subjected to competitive determination. Members may choose to deal on the program, not on the program, or on other markets.

4. When the prices of limit orders entered under Centramart, or by floor brokers representing member organizations not participating in the system, or by competing market-makers, are between the New York market and Philadelphia market quotes, it is the responsibility of the specialist to reflect such prices in the Philadelphia quote on Centramart and allow any agency order in the crowd to participate in the transaction occurring on Centramart.

5. All market orders will be executed immediately upon entry in the system.

6. Market orders (round-lots, odd-lots and PRL's up to 299 shares) entered prior to 9:57 a.m., will be executed at the New York market opening price. In the case of delayed openings execution will occur at the New York market opening price.

7. Market orders (round-lots, odd-lots and PRL's up to 299 shares) entered after 9:57 a.m. will be executed on the best bid/ask quote on either the Philadelphia or New York markets.

8. Odd-lot limit orders will be executed at the limit price when a sale takes place on the New York market either at or through the limit price. An odd-lot stop or stop limit order which becomes a market order will be executed on the next sale in the New York market plus or minus a differential if any is charged.

9. Round-lot limit orders and PRL limit orders will be executed at the limit price when an accumulative volume of 500 shares prints at the limit price on the New York market after the time of entry of any such order into Centramart. A maximum of 300 shares will be executed on each such accumulation of 500 shares for each participant in Centramart. Round-lot limit orders and PRL limit orders are distributed to the specialists for manual execution based on the above conditions.

10. Upon approval of a Floor Procedure Committee member, the specialist will have the right to refuse by 9:55 a.m. round-lot and PRL orders which create a net long or short position in excess of 1,000 shares.

11. In case of a trading halt, orders will be executed based on the reopening price.

12. Under unusual market conditions such as imbalance in the influx of orders, specialist can seek relief during the trading day from performance conditions. In such case, only a Floor Procedure Committee member may authorize such relief.

13. It is permissible for the specialist and the participants to adjust Centramart executions when the latter take place outside the New York market range for the day because of erroneous quotation or sales information.

14. Orders to which special conditions are attached and orders which exceed 299 shares may be accepted under Centramart but such orders will be executed manually by the specialist.

PHLX' STATEMENT OF BASIS AND PURPOSE

The purpose of the proposed rule change is to provide, as an alternative, an efficient system under which specialists on an automatic and predetermined basis can expand their market-making activities to serve the investing public.

The proposed rule change establishing an alternate system for the execution of orders, is consistent with the registration and functions of odd-lot dealers and specialists as contemplated under Section 11(b) of the Exchange Act.

No written comments have been received from members on the proposed rule change. During developmental stages and operation of the pilot program, oral comments and recommendations have been received from specialists, members and technical resource people.

No burden on competition will be imposed by the proposed Rule.

The PHLX does not consent to an extension of the time periods specified in Section 19(b)(2) of the Act.

On or before March 7, 1977, or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the above-mentioned self-regulatory organization consents, the Commission will:

A. by order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 "L" Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted on or before February 17, 1977.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

JANUARY 14, 1977.

[FR Doc.77-2620 Filed 1-26-77;8:45 am]

[Release No. 34-13176]

RESCHEDULING PUBLIC FORUM

On December 8, 1976 [41 FR 54785 (12-15-76)] the Commission announced that a public forum would be held on January 28, 1977 for the purpose of receiving oral presentations from a representative selection of persons who are interested in the establishment of a nationwide investor dispute grievance system. Because a relatively large number of persons have indicated an interest in appearing at the public forum and making an oral presentation, the Commission today announced that the public forum would be rescheduled to February 9-10, 1977.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

JANUARY 17, 1977.

[FR Doc.77-2623 Filed 1-26-77;8:45 am]

[812-4076]

WILLOW FUND, INC.

Application for Temporary Order of Exemption

JANUARY 18, 1977.

Notice is hereby given that The Willow Fund, Inc. ("Applicant"), 1 Chase Manhattan Plaza, New York, N.Y. 10005, an open-end non-diversified management investment company registered under the Investment Company Act of 1940 (the "Act"), has filed an application on January 4, 1977, and an amendment thereto on January 17, 1977, pursuant to Section 10(e) of the Act for an order of the Commission temporarily exempting Applicant from the requirements of Section 10(b) of the Act to the extent specified therein. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Wertheim & Co., Inc. (the "Corporation") is an investment banking firm and a broker-dealer registered under the Securities Exchange Act of 1934. The Corporation acts as Applicant's regular broker in the execution of its portfolio transactions, and is also the principal underwriter of Applicant's shares. Wertheim & Co., a partnership, owns substantially all the outstanding voting stock of the Corporation. Wertheim Advisers, Inc. ("Advisers"), a wholly-owned subsidiary of the Corporation, acts as investment adviser to Applicant, and the Corporation acts as Applicant's subinvestment adviser. Applicant and Advisers have no employees other than their officers. All of Applicant's officers are affiliated persons or interested persons of the Corporation. All persons who perform services for Applicant are employees of the Corporation or one of its subsidiaries. The Corporation provides the necessary personnel and services to permit Advisers to serve Applicant. Applicant has no facilities apart from those provided by the Corporation. Applicant represents that Wertheim & Co. and Advisers, and all partners, directors, officers and employees thereof, are affiliated persons or interested persons of the Corporation within the meaning of sections 2(a)(3) and 2(a)(19)(B), respectively, of the Act.

Prior to December 16, 1976, the Applicant's Board of Directors consisted of five members, two of whom were affiliated and interested persons of the Corporation, and three of whom were not affiliated or interested persons of the Corporation. The application states that on December 16, 1976, one of the non-affiliated and non-interested directors of Applicant resigned unexpectedly leaving two of Applicant's current four directors, Messrs. Frederick A. Klingenstein and Robert Bach, as affiliated and interested persons of the Corporation, and Applicant's two other current directors as non-affiliated and non-interested persons of the Corporation. As a result of this resignation, the non-affiliated and non-interested directors of Applicant are no longer in a majority on Applicant's Board of Directors. Section 10(b) of the Act provides, in pertinent part, that it is unlawful for a registered investment company to employ as its regular broker, or to use as principal underwriter of its shares or to have as a director, officer or employee any person affiliated with an investment banker, unless a majority of the board of directors of such registered company shall be persons who are (i) not affiliated persons of such broker, (ii) not interested persons of any such principal underwriter, or (iii) not affiliated persons of any investment banker, respectively.

Section 10(e) of the Act provides, in pertinent part, that if by reason of the bona fide resignation of any director the requirements of Section 10(b) of the Act shall not be met by an investment company, the operation of such provision shall be suspended for a period of sixty days if a vote of stockholders is required to fill the vacancy, or for such longer period as the Commission may prescribe by order upon application as not inconsistent with the protection of investors.

Applicant represents that its remaining directors cannot fill the vacancy created by the December 16, 1976, resignation because of the requirements of Section 16(a) of the Act, which provide, in pertinent part, that immediately upon filling a director vacancy by vote of the remaining directors at least two-thirds of the directors of an investment company must have been elected by the stockholders at the last annual meeting. The application states that three of Applicant's four current directors were elected by the stockholders of Applicant at its last Annual Meeting of Stockholders; and that one director was elected in July, 1976, by Applicant's board of directors to fill a vacancy created by the earlier resignation of another non-interested director, who had been elected by the stockholders and was forced to retire as a result of serious illness. The application further states that under Section 10(e) of the Act, Applicant has 60 days, or until February 14, 1977, to have its stockholders elect a new noninterested director if the Corporation is to continue to serve as Applicant's regular broker and principal underwriter, if Messrs. Klingenstein and Bach are to remain directors of Applicant, and if the current officers of Applicant are to remain its officers after that date. The application further states that if stockholder action is not taken by February 14, 1977, the normal operations of Applicant will cease, because Applicant has no facilities or services apart from the Corporation, unless Applicant hires its own personnel and arranges for its own facilities and operations before that date.

Applicant represents that its Board of Directors has determined that it is the prudent course to retain the Corporation as Applicant's regular broker and principal underwriter, to retain Messrs. Klingenstein and Bach as directors, and to retain Applicant's current officers past February 14, 1977, until Applicant's 1977 Annual Meeting of Stockholders, and thereby prevent a serious disruption in the normal operations of Applicant. Applicant further states that it is the prudent course not to hold a special meeting of stockholders on or before February 14, 1977, for the purpose of electing an additional noninterested person to its board of directors, followed by the Annual Meeting of Stockholders of Applicant soon thereafter.

Applicant represents that it is not practicable to have its Annual Report to Stockholders, which under Rule 14a-3 of the Securities Exchange Act of 1934 must accompany or precede Applicant's proxy statement, prepared and delivered in time so as to combine the Annual Meeting of Stockholders with a special meeting of stockholders which would otherwise be required to be held by February 14, 1977, under Section 10(e) of the Act. Applicant also represents that its By-Laws provide for an Annual Meeting date of the third Tuesday in April in each year. Applicant states that unless the Commission grants the exemption requested, it will be required to hold a special meeting of stockholders, to be followed within a relatively short period by its Annual Meeting. Applicant further represents that its Board of Directors have determined that the interest of stockholders will not be adversely affected if Applicant continues to operate temporarily without a majority of directors who are neither affiliated persons nor interested persons of the Corporation, if Applicant is spared the expense of holding a Special Meeting of Stockholders.

On the basis of the above information, Applicant requests the Commission to grant a temporary exemption to Applicant from the requirements of Section 10(b) of the Act from February 14, 1977, until the 1977 Annual Meeting of Stockholders of Applicant, provided that such Annual Meeting is called and held not later than April 19, 1977, and at least 50 percent of Applicant's board of directors continue to be non-affiliated and non-interested persons of the Corporation and Advisers.

Applicant asserts that the granting of the application is consistent with the protection of investors, and will save the expense of holding a special stockholders' meeting approximately two months before the regularly scheduled Annual Meeting of Stockholders.

Notice is further given that any interested persons may, not later than February 10, 1977, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reason for such request and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission orders a hearing thereon. Any such communications should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549.

A copy of such request shall be served personally or by mail upon Applicant at the address set forth above. Proof of such service (by affidavit, or in case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date, unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons, who request a hearing or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 77-2621 Filed 1-26-77;8:45am]

[Rel. No. 34-13187]

EXEMPTED SECURITIES

Federal Farm Credit Banks-Consolidated Systemwide Bonds Designated

The Securities and Exchange Commission announced today that the Federal Farm Credit Banks-Consolidated Systemwide Bonds of the twelve Federal Land Banks, the twelve Federal Intermediate Credit Banks, and the thirteen Banks for Cooperatives, have been designated exempted securities under the Securities Exchange Act by the Secretary of the Treasury pursuant to section 3(a)(12) of that Act.

Following is the text of the letter from the Secretary of the Treasury to the Commission providing for the exemption:

Paragraph 12 of section 3(a) of the Securities Exchange Act of 1934, as amended, provides in part that when used in Title I thereof, unless the context otherwise requires, the term "exempted security" or "exempted securities" shall include "securities issued or guaranteed by corporations in which the United States has a direct or indirect interest as shall be designated for exemption by the Secretary of the Treasury as necessary or appropriate in the public interest or for the protection of investors."

In accordance with the provisions of this paragraph and pursuant to the authority delegated to me by the Secretary of the Treasury, I am designating for exemption the obligation entitled "The Federal Farm Credit Banks-Consolidated Systemwide Bond" of the twelve Federal Land Banks, the twelve Federal Intermediate Credit Banks, and the thirteen Banks for Cooperatives, issued pursuant to section 4.2(d) of the Farm Credit Act of 1971 (12 U.S.C. 2153). This designation for exemption may be revoked, modified, or amended at any time with respect to securities not issued prior to such time.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

JANUARY 19, 1977.

[FR Doc.77-2670 Filed 1-26-77;8:45 am]

[70-5957]

GENERAL PUBLIC UTILITIES CORP.

Proposed Capital Contributions by Holding Company to Subsidiaries

JANUARY 21, 1977.

In the matter of General Public Utilities Corporation, 80 Pine Street, New York, New York, 10005; (70-5957).

Notice is hereby given that General Public Utilities Corporation ("GPU"), a registered holding company, has filed a declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act") designating section 12(b) of the Act and Rule 45 promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the declaration, which is summarized below for a complete statement of the proposed transactions.

GPU proposes to make cash capital contributions to two of its three major operating subsidiaries, Jersey Central Power and Light Company ("JCP&L") and Pennsylvania Electric Company ("Penelec"), of amounts up to an aggregate of $100,000,000. GPU proposes to make such contributions from time to time during the period beginning with the effectiveness of the authorization herein sought and ending December 31, 1977. GPU requests that it be permitted to allocate the respective amounts of the proposed contributions covered by this Declaration among its subsidiaries as to best match the needs of such subsidiary, as such needs may develop in 1977.

The proposed cash capital contributions will be utilized by JCP&L and Penelec for the purpose of financing their respective businesses as public utilities, including the construction of additional facilities and the increase in their working capital. JCP&L will require an aggregate of approximately $238,000,000 for its construction program including anticipated net payments to Metropolitan Edison (Met-Ed) and Penelec relating to the transfer of ownership in portions of certain generating stations and approximately $5,000,000 for sinking fund purposes. During 1977, Penelec will require an aggregate of approximately $101,000,000 for its construction program, including anticipated net receipts from JCP&L relating to the transfer of ownership in portions of certain generating stations and approximately $3,000,000 for sinking fund purposes.

GPU estimates that the fees, commissions and expenses paid or incurred in connection with the proposed transactions will total $4,000 including $3,500 in legal fees. It is stated that no state or federal commission, other than this Commission, has jurisdiction with respect to the proposed transactions.

Notice is further given that any interested person may, not later than February 17, 1977, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the declarant at the above-stated address and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as filed, or as it may be amended, may be permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc 77-2671 Filed 1-26-77;8:45 am]

[811-2569]

GOLD INCOME INVESTORS, INC.

Filing of Application for an Order Declaring That Applicant Has Ceased To Be an Investment Company

JANUARY 19, 1977.

In the matter of Gold Income Investors, Inc., 122 East 42nd Street, New York, New York 10017; (811-2569).

Notice is hereby given that Gold Income Investors, Inc. ("Applicant"), registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified management investment company, filed an application on December 23, 1976, for an order of the Commission, pursuant to section 8(f) of the Act, declaring that it has ceased to be an investment company as defined in the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

The Applicant was incorporated under the laws of Maryland on December 16, 1974; and registered with the Commission under the Act on May 5, 1975. The Applicant states that it has never issued any securities, has no intention of ever issuing any securities, and has no outstanding assets or liabilities.

The Applicant further represents that its Board of Directors has authorized

its dissolution, and that articles of dissolution have been forwarded for filing with the appropriate authorities of the State of Maryland.

Section 8(f) of the Act provides, in pertinent part, that whenever the Commission, on its own motion or upon application, finds that a registered investment company has ceased to be an investment company, it shall so declare by order, and upon the taking of effect of such order the registration of such company shall cease to be in effect.

Notice is further given that any interested person may, not later than February 14, 1977, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication shall be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon the Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule O–5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.77–2672 Filed 1–26–77;8:45 am]

[File No. SR–MCC–75–2]

MIDWEST CLEARING CORP.

In the matter of Midwest Clearing Corporation, 120 South LaSalle Street, Chicago, Illinois 60603 (File No. SR–MCC–75–2).

Order Approving Rule Change Submitted by the Midwest Clearing Corporation

JANUARY 19, 1977.

On October 24, 1975, the Midwest Clearing Corporation ("MCC"), a wholly-owned subsidiary of the Midwest Stock Exchange, Inc., filed with the Commission, pursuant to section 19(b) of the Securities Exchange Act of 1934 (the "Act") and Rule 19b–4 thereunder, a proposed rule change expanding its services to its members to include the trade recording, comparison, and settlement of over-the-counter securities. In connection with the proposed rule change, MCC requested that the Commission continue its previous finding pursuant to paragraph (g) of Rules 8c–1 and 15c2–1 under the Act that the agreements, provisions and safeguards established by MCC are adequate for the protection of investors.

In accordance with section 19(b) of the Act and Rule 19b–4 thereunder, notice of the proposed rule change was published in the FEDERAL REGISTER (40 FR 51514, November 11, 1975), and the public was invited to submit comments. Notice of the filing and an invitation for comments also appeared in Securities Exchange Act Release No. 11770, October 29, 1975.

The Commission has reviewed the MCC submission and finds that the agreements, provisions and safeguards established by MCC are adequate for the protection of investors. The Commission finds also that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to registered clearing agencies.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change contained in File No. SR–MCC–75–2 be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

GEORGE FITZSIMMONS,
Secretary.

[FR Doc.77–2674 Filed 1–26–77;8:45 am]

[SR–NASD–76–14]

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

Order Approving Proposed Rule Change

JANUARY 19, 1977.

In the matter of National Association of Securities Dealers, Inc., 1735 K Street, NW., Washington, D.C., 20006; (SR–NASD–76–14).

The National Association of Securities Dealers, Inc. (the "NASD") submitted on December 3, 1976, a proposed rule change under Rule 19b–4 to amend Schedule D under Article XVI of the NASD By-Laws by adding a new Part III to Schedule D, redesignating existing Part III of Schedule D as Part V thereof, redesignating existing Parts V through X of Schedule D as Parts VI through XI respectively, amending Part IV of Schedule D to add a new section D thereof, and redesignating existing sections D and E of Schedule D as sections E and F respectively. Part III of Schedule D, as proposed to be added by the proposed rule change, describes the NASD's proposed Consolidated Quotations Service ("CQS") which will provide subscribers with quotations from all registered CQS Third Market Makers, as well as the Boston, Midwest, New York, Pacific, and Philadelphia Stock Exchanges, in approximately 2,000 common stocks, preferred stocks, warrants and rights registered or admitted to unlisted trading privileges on the New York Stock Exchange.

Part III of Schedule D, as proposed to be added, also establishes rules and regulations governing the activities of registered CQS Third Market Makers, including provisions governing (i) registration, (ii) character of quotations, (iii) business hours, (iv) withdrawal, (v) voluntary termination, and (vi) suspension and termination of quotations by action of the NASD. Section D of Part IV of Schedule D, as proposed to be added, contains the fees and charges associated with CQS.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission release (Securities Exchange Act Release No. 13047 (December 8, 1976)) and by publication in the FEDERAL REGISTER (41 FR 55404 (December 20, 1976)). Interested persons were invited to submit written data, views and arguments concerning the proposal by January 17, 1977. The Commission has not received any comments concerning the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Securities Exchange Act of 1934 (the "Act") and the rules and regulations thereunder applicable to national securities associations, and in particular the requirements of section 15A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change referenced above be, and it hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.77–2676 Filed 1–26–77;8:45 am]

[File No. SR–NASD–76–6]

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

Order Approving Rule Changes Submitted with Respect to Establishment of National Securities Clearing Corporation

JANUARY 19, 1977.

In the matter of National Association of Securities Dealers, Inc., 1735 K. Street, NW., Washington, D.C. 20006; (File No. SR–NASD–76–6).

On June 30, 1976, the National Association of Securities Dealers, Inc. (the "NASD") filed with the Commission, pursuant to section 19(b) of the Securities Exchange Act of 1934 (the "Act") and Rule 19b–4 thereunder, proposed changes to the NASD By-Laws, Uniform Practice Code, and Code of Arbitration Procedure to reflect the proposed transfer of the securities processing operations of National Clearing Corporation ("NCC"), the NASD's wholly-owned subsidiary, to the National Securities Clearing Corporation ("NSCC"). The rule changes were filed in connection with the ending application of NSCC as a registered clearing agency.

In accordance with section 19(b) of the Act and Rule 19b–4 thereunder, the rule changes were published in the FEDERAL REGISTER (41 FR 31949, July 30, 1976), and the public was invited to submit comments. Notice of the filing and an invitation for comments also appeared in Securities Exchange Act Release No. 12653, July 23, 1976. No letters of comment were received.

The Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to registered securities associations, and in particular, the requirements of Section 15A and the rules and regulations thereunder.[1]

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule changes contained in File No. SR–NASD–76–6 be, and they hereby are, approved provided, however, that the rule changes will not become effective prior to the effectiveness, and implementation by NSCC, of the order granting NSCC rgeistration as a clearing agency.[2]

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.77–2675 Filed 1–26–77;8:45 am]

[70–5924]

OHIO POWER CO.

Proposed Charter Amendments

JANUARY 19, 1977.

In the matter of Ohio Power Company, 301 Cleveland Avenue, S.W., Canton, Ohio 44702; (70–5924).

Notice is hereby given that Ohio Power Company ("Ohio"), an electric utility subsidiary company of American Electric Power Company, Inc. ("AEP"), a registered holding company, has filed a declaration, and amendments thereto, with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating sections 6(a), 7 and 12(e) of the Act and Rules 62 and 65 promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the declaration, as amended, which is summarized below, for a complete statement of the proposed transactions.

Ohio proposes to amend its Articles of Incorporation ("Charter") to create authority for Ohio to issue 4,000,000 shares of its Cumulative Preferred Stock with a par value of $25 per share ("$25 non-voting preferred") and 1,000,000 shares of its Cumulative Preferred Stock with a par value of $100 per share ("$100 non-voting preferred") (the $25 non-voting preferred and the $100 non-voting preferred, collectively "the new preferreds"). Ohio's Charter presently authorizes Ohio to issue 4,200,000 shares of cumulative preferred stock with $100 par value ("$100 voting preferred"), of which 1,437,597, shares remain unissued to date. Ohio proposes to amend its Charter to cancel the unissued $100 voting preferred. Ohio states that a market for preferred stock priced at less than $100 per share recently has developed. Consequently, Ohio states it believes that its ability to sell preferred stock on favorable terms will be strengthened by the creation of authority to issue additional shares of preferred stock with a par value of $25 per share. Additionally, Ohio states that it may be advantageous to sell shares of $100 par value preferred in the future, but that it would not be appropriate for Ohio to issue both voting and non-voting shares.

The $100 voting preferred presently outstanding and the new preferreds will be of equal rank and will confer equal rights upon the holders thereof, except as to the par value per share of the $25 non-voting preferred, the number of votes per share, and permissible variations among the series thereof as detailed below. Unlike the holders of the $100 voting preferred, who are entitled to vote for the election of directors of Ohio and upon all matters submitted to the shareholders of Ohio, the holders of the new preferreds would not be entitled to vote, except in proceedings as to which their vote is required by Ohio law and in the case of certain other events specified in the Charter, as amended. Whenever the holders of the new preferreds would be so entitled to vote, they will vote as a single class with the holders of the $100 voting preferred, but the holders of the $25 non-voting preferred will have ¼ vote per share. Ohio's Board of Directors, without action by the shareholders, will be authorized to issue series of the new preferreds and to fix the dividend rate, liquidation prices, redemption terms and prices and sinking fund provisions, if any, for such series, as it is currently empowered to do with respect to the authorized and unissued $100 voting preferred.

The proposed amendments also will amend that portion of the Charter which permits Ohio to issue stock authorized by the shareholders which ranks prior to or on a parity with the $100 voting preferred only within a period of 180 days after the shareholders' meeting at which consent to the issuance of the stock is given. It is not intended or expected that all, or even a major part, of the new preferred will be issued within 180 days of the proposed special meeting. The amendment would eliminate any time limit on the issuance of the new preferreds or other stock ranking on a parity with the $100 voting preferred or new preferreds, but would retain a time limit with respect to any stock ranking prior to either of these classes of cumulative preferred stock. Additionally, a proposed amendment as to notices of redemption of the cumulative preferred stock would substitute publication thereof in general circulation newspapers in Canton, Ohio, (Ohio's present principal office place) for publication in Newark, Ohio (Ohio's former principal office place).

Ohio proposes to solicit proxies from its common stockholder and the holders of its $100 voting preferred stock to be used at a special meeting of the common and preferred stockholders to be held on March 3, 1977. Holders of the Ohio preferred stock will be asked to approve the Ohio Charter amendments. Such approval requires the affirmative vote of more than two-thirds of the outstanding shares of common stock and outstanding $100 voting preferred shares, voting together, and the affirmative vote of the holders of more than two-thirds of the outstanding $100 voting preferred shares, voting separately as a class. AEP, owner of all of Ohio's common stock, has indicated that it intends to vote all of such shares in favor of the Charter amendments.

It is stated that no state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transactions. Fees and expenses to be incurred in connection with the proposed transactions are estimated at $79,000, including legal fees of $3,500.

Notice is further given that any interested person may, not later than February 14, 1977, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said declaration, as amended, which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as amended, or as it may be further amended, may be permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including

[1] The Commission's approval of the amendments to the NASD By-Laws, Uniform Practice Code and Code of Arbitration Procedure is subject, nevertheless, to the Commission's review pursuant to section 31(b) of the Securities Acts Amendments of 1975. See Securities Exchange Act Release No. 13027 (December 1, 1976).

[2] On January 18, 1977, the Commission issued an order granting NSCC registration as a clearing agency subject to the terms, conditions and directives contained in the order. See Securities Exchange Act Release No. 13163 (January 18, 1977).

the date of the hearing (if ordered) and any postponements thereof.

It appearing that the declaration, as amended, insofar as it proposes the solicitation of proxies from Ohio's preferred and common stockholders, should be permitted to become effective forthwith pursuant to Rule 62:

It is ordered, That the declaration, as amended, regarding the proposed solicitation of proxies from Ohio's preferred and common stockholders, be, and it hereby is, permitted to become effective forthwith pursuant to Rule 62 and subject to the terms and conditions prescribed in Rule 24 under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.77-2677 Filed 1-26-77;8:45 am]

[812-4004]

VANGUARD GROUP, INC.

Filing of Application for an Order Permitting Certain Proposed Transactions

JANUARY 19, 1977.

In the matter of the Vanguard Group, Inc. and Wellington Fund, Inc., Windsor Fund, Inc., Ivest Fund, Inc., Exeter Fund, Inc., Gemini Fund, Inc., Explorer Fund, Inc., Trustees' Equity Fund, Inc., Wellesley Income Fund, Inc., W. L. Morgan Growth Fund, Inc., Westminster Bond Fund, Inc., Whitehall Money Market Trust, Qualified Dividend Portfolio, Inc., Qualified Dividend Portfolio II, Inc., and First Index Investment Trust, P.O. Box 1100, Valley Forge, Pennsylvania 19482 (812-4004).

Notice is hereby given that The Vanguard Group, Inc. ("Vanguard"), and Wellington Fund, Inc., Explorer Fund, Inc., Trustees' Equity Fund, Inc., Wellesley Income Fund, Inc., W. L. Morgan Growth Fund, Inc., Westminster Bond Fund, Inc., Whitehall Money Market Trust, Qualified Dividend Portfolio, Inc., and Qualified Dividend Portfolio II, Inc., all open-end, diversified management investment companies, and Gemini Fund, Inc., a closed-end, diversified investment company ("Vanguard Funds"), all of which are registered under the Investment Company Act of 1940 ("Act"), and First Index Investment Trust ("Index Trust"), a newly organized open-end diversified management investment company registered under the Act (collectively, "Applicants"), filed an application on August 5, 1976, and amendments thereto on October 7 and November 29, 1976, pursuant to sections 6(c) and 17(b) of the Act and Rule 17d-1 thereunder, for an order permitting Applicants to engage in certain transactions. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

On February 18, 1975, the Commission issued an order (Investment Company Act Release No. 8676) pursuant to an application filed by Vanguard, Vanguard Funds and Wellington Management Company ("WMC"), the Vanguard Funds' investment adviser and principal underwriter, to permit, in substance, the partial internationalization of the Vanguard Funds through Vanguard, a corporation owned by the Vanguard Funds which provides them with corporate management and administrative services at cost. Pursuant to this arrangement, each of the Vanguard Funds contributed to the capital of Vanguard in proportion to such fund's relative net assets. Adjustments will be made periodically to maintain proportional ownership by each of the Vanguard Funds. Applicants state that after approval by the shareholders of each Vanguard Fund, Vanguard began its operations on May 1, 1975.

Index Trust is a new investment company organized by WMC to provide investment results that correspond to the price and yield performance of common stocks as represented by the Standard & Poor's 500 Composite Stock Price Index. The Trustees of the Trust also serve as the Directors of Vanguard and the Vanguard Funds, and the principal executive officers of the Trust are the same persons who serve as the principal executive officers of Vanguard and the Vanguard Funds. The Vanguard Funds' Service Contract makes provision for other registered investment companies to become parties to the agreement and join in the "at cost" arrangements for corporate management and administrative services. The Vanguard Funds propose to permit Index Trust to become a party to the agreement. Index Trust will participate in the capitalization of Vanguard, which is limited to .05% of the net assets of each party to the agreement.

Section 17(a) of the Act, in pertinent part, prohibits an affiliated person of or principal underwriter for a registered investment company, acting as principal, knowingly to sell any security to such registered company, or knowingly to purchase from such registered investment company any security. Section 17(b) of the Act, however, provides that the Commission, upon application, shall exempt a transaction from the provisions of section 17(a) if evidence establishes that the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act.

Vanguard is an affiliated person of several of the Vanguard Funds which own more than 5% of its voting securities. Further, since there are common directors and Vanguard Funds and Index Trust will own all of Vanguard's voting securities, Vanguard may be deemed to be directly or indirectly controlled by, or under common control with, one or more of the Vanguard Funds and Index Trust, and therefore Vanguard may be deemed to be an affiliated person of each of them and they may be deemed to be affiliated persons of each other. Thus, Applicants state the proposed purchases and sales of Vanguard shares by Index Trust among Vanguard and Vanguard Funds may be deemed subject to the provisions of section 17(a).

Section 17(d) of the Act and Rule 17d-1 thereunder, in pertinent part, prohibit an affiliated person of a registered investment company, or an affiliated person of such a person, acting as principal, from participating in, or effecting any transaction in connection with, any joint enterprise or arrangement in which any such registered investment company or a company controlled by such registered company is a participant with the affiliated persons unless an application regarding such transaction is filed with, and an order is granted by, the Commission permitting such joint enterprise or arrangement prior to its submission to security holders for approval; and provided that, in passing upon such application the Commission will consider whether the participation of such registered or controlled company in such arrangement is consistent with the provisions, policies and purposes of the Act, and the extent to which such participation is on a basis different from or less advantageous than that of other participants.

Applicants state that Vanguard, Vanguard Funds and Index Trust may be deemed to be engaged in such a joint transaction and prohibited from having Index Trust join the Vanguard Fund Group unless the Commission issues an order allowing the implementation of such proposal.

Applicants, therefore, request an order pursuant to section 17(b) of the Act and Rule 17d-1 thereunder (1) exempting from section 17(a) of the Act the transaction whereby Vanguard will issue and Index Trust will purchase securities of Vanguard as described above; (2) exempting from section 17(a) of the Act the transactions whereby each of the Vanguard Funds and Index Trust periodically may purchase and sell securities of Vanguard among themselves to maintain ownership of Vanguard proportional to their assets; and (3) permitting Vanguard, Vanguard Funds, and Index Trust to enter into and implement the proposed joint transaction whereby Index Trust joins the Vanguard Funds described herein.

The application further states that on August 23, 1976, Vanguard became registered under the Investment Advisers Act of 1940 ("Advisers Act") with a view towards rendering investment advisory services to persons other than the Vanguard Funds, including Fiduciaries Index Trust, a private business trust recently organized by Vanguard as a vehicle through which institutional investors can acquire "index matching services" similar to those which Vanguard will provide to Index Trust. Section 12(d)(3) of the Act, in pertinent part, prohibits, with exceptions unavailable to Applicants, a registered investment company from acquiring any security issued by a registered investment adviser. Thus, section 12(d)(3) would prohibit the Vanguard Funds, including Index Trust, from acquiring shares of Vanguard pursuant to the Vanguard Service Agreement.

Section 6(c) of the Act provides, in pertinent part, that the Commission by order upon application may exempt any classes of transactions from any provision of the Act if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicants believe that the exemptions they request are necessary and appropriate primarily because the internationalization of the management of their corporate administrative affairs through Vanguard achieves increased independence from and an increased ability to monitor and evaluate the performance of any external investment adviser or distributor, and providing administrative services at a reasonable cost. They further state that the arrangement increases their bargaining power in obtaining advisory and underwriting services and reduces the expenses both immediately and in the long run by having corporate administrative services performed at cost. Vanguard Funds and Vanguard state that the addition of Index Trust to The Vanguard Fund Group arrangements will produce additional benefits to the Vanguard Funds because of the ability to spread Vanguard's fixed costs of operation over a larger asset base, producing economies of scale. Vanguard asserts it has the capability to provide services to Index Trust without impairing the quality of service to others.

The application states that the proposed contribution to the capitalization of Vanguard by Index Trust is reasonable in view of the anticipated working capital needs of Vanguard and the de minimis portion of its assets to be invested, and fair since each investment company will contribute capital in proportion to its current net assets with the capital contribution being adjusted periodically so that no investment company will have a disproportionate investment. Applicants further state that the essential purposes of the proposal are consistent with the provisions, policies and purposes of the Act.

Notice is further given that any interested person may, not later than February 14, 1977, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit, or in case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.77-2673 Filed 1-26-77;8:45 am]

[Release No. 34-13191; File No. SR-MSRB-77-1]

MUNICIPAL SECURITIES RULEMAKING BOARD

Self-Regulatory Organizations; Proposed Rule Changes

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. 94-29, 16 (June 4, 1975), notice is hereby given that on January 18, 1977, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

STATEMENT OF THE TERMS OF SUBSTANCE OF THE PROPOSED RULE CHANGES

The Municipal Securities Rulemaking Board (the "Board") is filing proposed amendments to rule G-6 (hereinafter sometimes referred to as the "proposed rule changes") as follows (brackets indicate deletions; *italics* indicate new language):

Rule G-6. *Fidelity Bonding Requirements.*

[(a)] No municipal securities broker or municipal securities dealer (other than a bank dealer) shall be qualified for purposes of rule G-2 unless such broker or dealer, if a member of a registered securities association, has met the fidelity bonding requirements set forth in the rules of such association, to the same extent as if such rules were applicable to such broker or dealer, or such broker or dealer, if not a member of a registered securities association, has met the fidelity bonding requirements set forth in rule 15b10-11 under the Act, to the same extent as if such rules were applicable to such broker or dealer, in each case as such requirements were set forth on *January 10, 1977.* [May 24, 1976.]

[(b) The requirements of this rule shall become effectice on October 18, 1976.]

STATEMENT OF BASIS AND PURPOSE

The basis and purpose of the foregoing proposed rule changes is as follows:

Purpose of Proposed Rule Changes. The principal purpose of the proposed rule changes is to revise the reference date to fidelity bonding rules of the National Association of Securities Dealers, Inc. and the Securities and Exchange Commission (the "Commission") to incorporate recent changes in rule 15b10-11 of the Commission. In addition, the paragraph relating to the effective date of the rule has been omitted since such date has now passed.

Basis Under the Act for Proposed Rule Changes. The Board has adopted the proposed rule changes pursuant to Section 15B(b)(2)(A) of the Act which authorizes and directs the Board to adopt professional qualification standards for municipal securities brokers and municipal securities dealers and persons associated with municipal securities brokers and municipal securities dealers.

Comments Received from Members, Participants, or Others on Proposed Rule Changes. Comments were not solicited or received on the proposed rule changes.

Burden on Competition. The Board is of the opinion that the proposed rule changes will not impose any burden on competition.

On or before March 3, 1977, or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the above-mentioned self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule changes, or

(B) Institute proceedings to determine whether the proposed rule changes should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file 6 copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted on or before February 17, 1977.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

JANUARY 19, 1977.

[FR Doc.77-2733 Filed 1-26-77;8:45 am]

[Release No. 34-13196; File No. SR-MSRB-77-2]

MUNICIPAL SECURITIES RULEMAKING BOARD

Self-Regulatory Organizations; Proposed Rule Changes

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94-29, 16 (June 4, 1975), notice is hereby given that on January 19, 1977, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

STATEMENT OF THE TERMS OF SUBSTANCE OF THE PROPOSED RULE CHANGES

The Municipal Securities Rulemaking Board (the "Board") is filing herewith proposed amendments to rule A-3(d) (hereinafter sometimes referred to as the "proposed rule changes").

The proposed rule changes provide a procedure for the nomination and election of successor members of the Board. The term of office of the 15 initial members of the Board, who were appointed by the Securities and Exchange Commission (the "Commission") pursuant to section 15B(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] expires on September 4, 1977. Rule A-3(d) provides that five of the initial members of the Board shall be elected for a succeeding one-year term and five initial members for a succeeding two-year term, and that five individuals who are not initial members of the Board shall be elected for a three-year term, and that all other future members of the Board shall be elected for three-year terms. The rule, however, does not presently provide a procedure for these elections.

The proposed rule changes provide for the nomination by the chairman of the Board and election by the Board of those initial members of the Board who will serve successive one- and two-year terms beginning in September 1977. Under the proposed rule changes, the Board would also appoint a Nominating Committee in each year beginning in 1977, consisting of the five Board members whose terms are due to expire that year and six persons other than Board members, two representing bank dealers, two representing municipal securities brokers and non-bank municipal securities dealers, and two representing the public. In appointing the Nominating Committee, the Board would be required to give consideration to the need for broad geographic representation and representation of diverse sizes and types of municipal securities brokers and municipal securities dealers on the Committee.

The Nominating Committee would solicit public recommendations for nominees to the Board for a period of 60 days. Thereafter, the Nominating Committee would nominate three persons for each Board position to be filled. In making such nominations, the Nominating Committee would be required to give consideration to the need to maintain broad geographic representation on the Board, as well as diversity in the size and type of municipal securities brokers and municipal securities dealers represented. The nominations to the Board would be confidential. The Board would elect from the slate of nominees submitted by the Nominating Committee one person for each of the Board positions to be filled, giving consideration to the need for broad geographic representation on the Board as well as diversity in size and type of municipal securities brokers and municipal securities dealers represented.

Rule A-3(d) presently prohibits any member of the Board from succeeding himself or herself in office. The proposed rule changes would also prohibit a broker-dealer representative or bank representative from being succeeded in office by any person associated with the municipal securities broker or municipal securities dealer with which the Board member was associated at the time of expiration of his or her term.

STATEMENT OF BASIS AND PURPOSE

Purpose of Proposed Rule Changes. The purpose of the proposed rule changes is to provide a procedure for the nomination and election of successor members of the Board. In adopting the proposed rule changes, the Board sought to achieve four goals: to provide equal representation on the Board by bank dealers, securities firms and public members, as mandated by the Act and set forth in existing rule A-3(d), within the framework of staggered terms of office; to assure broad diversity in geographical background and sized and type of banks and firms represented on the Board; to establish a fair and workable procedure for the nomination and election of successor members of the Board; and to tailor a suitably deliberative framework for the nomination and election of successor members of the Board. The Board believes that the proposed rule changes provide a procedure for the nomination and election of successor Board members which will take into account the views and recommendations of all sectors of the municipal securities industry and of the public at large in as fair a manner as possible, recognizing that the Board is not a membership corporation.

Basis Under the Act for Proposed Rule Changes. The Board has adopted the proposed rule changes pursuant to section 15B(b)(2)(B) of the Act which directs the Board to establish fair procedures for the nomination and election of members of the Board and assure fair representation in such nominations and elections of municipal securities brokers and municipal securities dealers. Such rules shall provide that the membership of the Board shall at all times be equally divided among public representatives, broker-dealer representatives, and bank representatives, and that the public representatives shall be subject to approval by the Commission to assure that no one of them is associated with any broker, dealer, or municipal securities dealer and that at least one is representative of investors in municipal securities and at least one is representative of issuers of municipal securities. Such rules shall also specify the term members shall serve and may increase the number of members which shall constitute the whole Board provided that such number is an odd number.

The proposed rule changes were also adopted pursuant to section 15B(b)(2)(I) of the Act which authorizes and directs the Board to adopt rules providing for the operation and administration of the Board.

Comments Received from Members, Participants or Others on Proposed Rule Changes. On November 23, 1976, the Board issued an exposure draft of the proposed rule changes and solicited comments thereon. The Board received letters of comment from the following persons:

Bank of America N.T.&S.A., National Association of Securities Dealers, Inc. ("NASD"), Shearson Hayden Stone Inc. ("Shearson"), State Farm Mutual Automobile Insurance Company ("State Farm"), Wauterlek & Brown, Inc. ("Wauterlek & Brown").

Both the Bank of America and the NASD suggested that the Board examine procedures utilized by other self-regulatory organizations to determine whether additional industry participation could be achieved in the selection of Board members. In accordance with these suggestions, the Board considered the possibility of providing for a petitioning procedure similar to that of the NASD in which generally each member firm and branch office of supervisory jurisdiction in a district is given one vote for petitioning purposes. However, given the special characteristics of the Board, including the fact that it is not a membership corporation, the Board has concluded that the procedures incorporated in the proposed rule changes will result in the most equitable and administratively feasible selection of Board members possible under the circumstances.

The fact that the Board is not a membership corporation is significant in several respects pertinent to the matter of elections. Thus, the Board's constituency is much more difficult to define than that of the NASD and the proper weight to assign to each segment of the constituency more difficult to determine. One possibility would be to assign one vote to each securities firm and bank dealer that had paid the Board's initial fee. Under this system, however, disproportionate representation would be given to the more numerous small firms. In addition, firms that paid the Board's initial fee but have ceased doing a municipal securities business would nonetheless be entitled to vote. Alternatively, voting weight could be scaled to the total dollar amount of municipal securities underwritten by each firm and bank dealer during the prior year. To do so, however, would exclude the sizeable number of firms and bank dealers that do not participate in underwriting activity.

All of the possible methods of assigning voting weight to achieve an equitable allocation in a nonmembership context appear to present severe administrative problems, involving substantial financial cost to the Board and therefore the industry and onerous reporting requirements. The Board questions whether any of these burdens can be justified when weighed against the possible benefits to be obtained, particularly in light of the strict requirments set forth in the proposed rule changes that broad representation be achieved both in the nominating process and on the Board. In addition, the Board understands that the NASD's petitioning procedure has been used on not more than two occasions in the more than 35 years it has been in effect, a fact which underscores the disparity, for the Board's purposes, between the difficulties and costs in establishing a similar procedure as against the benefits to be realized.

One final and critical factor in the Board's consideration of possible election procedures was the need to achieve broad representation on the Board, not only according to the categories specified in the Act—securities firm representatives, bank dealers and public members—but also with respect to geography, and size and type of firm. The Board believes that these criteria can best be met by the more direct and flexible selection procedures of a representative nominating committee than by an at-large election.

The Board notes that aside from the comments discussed above, no municipal securities broker or municipal securities dealer has questioned the fairness or appropriateness of the election procedures set forth in the proposed rule changes.

On another point, the NASD suggested that the final slate of nominees be circulated for review and comment by the industry and general public. The Board concluded, however, that such a procedure would be counterproductive for several reasons. First, the Board expects the Nominating Committee to engage in such investigation of a nominee's background and qualifications as may be necessary to demonstrate his or her capabilities and eligibility for Board membership and that therefore there would be little benefit to be gained in this respect from public review of the nominees. Second, public circulation of the names of nominees would tend to emphasize nominees' political popularity instead of their capabilities and would tend to favor individuals from large financial centers or with well-known firms. Finally, the Board believes that the most capable individuals would be reluctant to enter a three-way contest which carried with it the possibility of being identified thereafter as a person not elected to the Board.

The NASD suggested that a prohibition be added against individuals from the same organization succeeding each other on the Board. The proposed rule changes incorporate this suggestion.

The NASD also suggested that at least one Board member be required to be a representative of "small" municipal securities brokers and municipal securities dealers. The Board concluded that it was unnecessary to make such provision in view of the requirements of the proposed rule that both the Nominating Committee and the Board give consideration in selecting new Board members to the size and type of municipal securities brokers and municipal securities dealers represented on the Boad. The Board also believed it would be inappropriate to require representation of any one size or type of firm without doing so for all sizes and types.

Both the NASD and Wauterlek & Brown suggested that the proposed rule provide for broader publication of the request for recommended nominees. The NASD suggested publication in two financial journals instead of one and Wauterlek & Brown suggested that the notice be sent to the Board's mailing list. The Board anticipates assuring wide distribution of the notice, including distribution to the Board's mailing list, and did not deem it necessary to incorporate more specific requirements in the text of the rule.

State Farm recommended that the Board require at least one member of the Board and Nominating Committee to be a representative of the property and liability insurance industry. In view of the requirement of the Act that at least one Board members be representative of investors in municipal securities and the requirement in the proposed rule changes that the public be represented on the Nominating Committee, the Board believed it would be inappropriate to incorporate more specific language on this point in the rule.

Burden on Competition. The proposed rule changes do not affect the conduct of business by any broker, dealer or municipal securities dealer, and the Board has therefore concluded that the proposed rule changes do not impose any burden on competition.

On or before March 3, 1977 or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the above-mentioned self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submission should file 6 copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted on or before February 17 1977.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

JANUARY 21, 1977.

The text of the proposed rule is as follows:

A-3(d) *Nomination and Election of Members.*[1]

(i) Except for the initial members of the Board, members shall be nominated and elected in accordance with *the* procedures specified *by this rule.* [of the Board. The public representatives on the Board shall, prior to their assumption of office, be subject to approval by the Commission to assure that no one of them is associated with any broker, dealer or municipal securities dealer and that at least one is representative of investors in municipal securities and at least one is representative of issuers of municipal securities.] The members of the Board elected to succeed the initial members shall consist of five of the initial members who shall serve for a succeeding term of one year, five of the initial members who shall serve for a succeeding term of two years, and five individuals who are not initial members, who shall serve for a term of three years; provided, however, that each such category of initial members shall include at least one public representative, one broker-dealer representative and one bank representative. Subsequent to such first election of members, all members of the Board shall be elected for terms of three years, so that the terms of office of one-third of the whole Board shall expire each year. Except for the succeeding terms for initial members as hereinbefore provided, no member of the Board may succeed himself in office *and no broker-dealer representative or bank representative may be succeeded in office by any person associated with the municipal securities broker or municipal securities dealer with which such member was associated at the expiration of his term.*

(ii) Not later than March 15, 1977, the chairman of the Board shall announce the names of five initial members of the Board whose membership on the Board will terminate on September 4, 1977, and shall nominate, after consultation with the other members of the Board, five initial members to serve for a succeeding term to expire September 4, 1978, and five initial members to serve for a succeeding term to expire September 4, 1979. Each such category of initial members shall include at least one but no more than two public representatives, broker-dealer representatives and bank representatives.

(iii) In each year, prior to March 15, 1977 and prior to February 15 of each year thereafter, the Board shall appoint a Nominating Committee composed of eleven members. The membership of the Nominating Committee shall consist of the five members of the Board whose terms expire during such year and six persons who are not members of the Board, two of whom shall be associated with and representative of bank dealers, two of whom shall be associated with and representative of municipal securities brokers and municipal securities dealers other than bank

[1] *Italics* in paragraph (i) indicate additions; brackets indicate deletions. The text of paragraphs (ii) through (vii) is new.

[1] See Securities Exchange Act Release No. 11635 (Sept. 5, 1975).

dealers, and two of whom shall not be associated with any broker, dealer, or municipal securities dealer. In appointing persons to serve on the Nominating Committee, the Board shall take into consideration such factors as the need to achieve broad geographic representation on such Committee, as well as diversity in the size and type of municipal securities brokers and municipal securities dealers represented on such Committee.

(iv) Not later than April 15, 1977 and March 15 of each year thereafter, the Nominating Committee shall publish a notice in a financial journal having general national circulation among members of the municipal securities industry, soliciting public recommendations for nomination for the positions on the Board to be filled in such year. Such notice shall require that recommendations be accompanied by a statement of the position for which the person is recommended, the background and qualifications for membership on the Board of the person recommended and information concerning such person's association with any broker, dealer or municipal securities dealer. The Nominating Committee shall accept recommendations pursuant to such notice for a period of at least 60 days. Any interested member of the public, whether or not associated with a municipal securities broker or municipal securities dealer, may submit recommendations to the Nominating Committee. The names of all persons recommended to the Nominating Committee shall be made available to the public upon request.

(v) Not later than July 15, 1977 and June 15 of each year thereafter, the Nominating Committee shall nominate three persons for each of the Board positions to be filled and shall submit such nominations to the Board. In making such nominations, the Nominating Committee shall take into consideration such factors as the need to maintain broad geographic representation on the Board, as well as diversity in the size and type of municipal securities brokers and municipal securities dealers represented. Each nomination shall be accompanied by a statement indicating the position for which such person is nominated, the nominee's qualifications to serve as a member of the Board, and information concerning the nominee's association with any broker, dealer, or municipal securities dealer. The names of the nominees will be confidential.

(vi) The Board will elect the ten initial members of the Board nominated in accordance with paragraph (d)(ii) of this rule for the terms for which they are nominated and shall elect from the slate of nominees submitted by the Nominating Committee one person for each of the other Board positions to be filled, taking into consideration such factors as the need to maintain broad geographic representation on the Board, as well as diversity in the size and type of municipal securities brokers and municipal securities dealers represented. Newly elected members of the Board will assume office on September 5 in the year in which they are elected.

(vii) The public representatives on the Board will, prior to their assumption of office, be subject to approval by the Commission to assure that no one of them is associated with any broker, dealer or municipal securities dealer and that at least one is representative of investors in municipal securities and at least one is representative of issuers of municipal securities.

[FR Doc.77-2735 Filed 1-26-77;8:45 am]

NATIONAL MARKET ADVISORY BOARD

Meeting

This is to give notice, pursuant to section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. 1 10(a); that the National Market Advisory Board will conduct open meetings on February 14 and 15, 1977 in the Basement Auditorium, United California Bank, 707 Wilshire Boulevard, Los Angeles, California. Initial notice of this meeting was published in the FEDERAL REGISTER on December 28, 1976.

The Board will also conduct open meetings on March 14 and 15, and April 18 and 19, 1977, in Room 776, 500 North Capitol Street, Washington, D.C. The summarized agenda for these meetings will be published in the FEDERAL REGISTER at a later date.

The summarized agenda for the Februrary meeting is as follows:

1. Discussion of the Board's report to the Securities and Exchange Commission regarding restrictions on off-board transactions in listed securities by exchange members.
2. Discussion of possible pilot projects relevant to issues considered, or to be considered, by the Board.
3. Discussion of future agenda of the Board and enumeration of topics which should be further considered prior to September, 1977.
4. Discussion of such other matters as may properly be brought before the Board.

Further information may be obtained by writing Martin L. Budd, Executive Director, National Market Advisory Board Staff, Securities and Exchange Commission, Washington, D.C. 20549.

GEORGE A. FITZSIMMONS,
Secretary.

JANUARY 19, 1977.

[FR Doc.77-2732 Filed 1-26-77;8:45 am]

SMALL BUSINESS ADMINISTRATION

BOISE DISTRICT ADVISORY COUNCIL

Public Meeting

The Small Business Administration Boise District Advisory Council will hold a public meeting at 9:30 a.m., Monday, February 14, 1977, at the Royal Restaurant, 1112 Main Street in Boise, Idaho, to discuss such business as may be presented by members and the staff of the Small Business Administration. For further information write or call Oliver T. Davis, U.S. Small Business Administration, P.O. Box 2618, Boise, Idaho 83701 (208) 342-2516.

Dated: January 19, 1977.

HENRY V. Z. HYDE, Jr.,
Deputy Advocate for Advisory Councils.

[FR Doc.77-2599 Filed 1-26-77; 8:45 am]

[Declaration of Disaster Loan Area #1284]

CALIFORNIA

Declaration of Disaster Loan Area

East Rosewood Court within the City of Ontario in San Bernardino County, California, constitutes a disaster area because of damage resulting from a fire on December 15, 1976. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on March 21, 1977, and for economic injury until the close of business on October 21, 1977, at:

Small Business Administration, District Office, 3508 Figueroa St.—6th Floor, Los Angeles, California 90071.

or other locally announced locations.

Dated: January 18, 1977.

MITCHELL P. KOBELINSKI,
Administrator.

[FR Doc.77-2592 Filed 1-26-77;8:45 am]

[Application No. 06/06-5183]

FIRST VALLEY LTD.

Application for a License To Operate as a Small Business Investment Company

An application for a license to operate as a small business investment company under section 301(d) of the Small Business Investment Act of 1958, as amended (Act) (15 U.S.C. 661 et seq.) has been filed by First Valley Limited (Applicant) with the Small Business Administration (SBA) pursuant to 13 CFR 107.102 (1976).

The officers, directors and stockholders are as follows:

Manuel A. Ferran, President, General Manager, Director and 6.6% Stockholder, 435 Amherst Drive, NE, Albuquerque, New Mexico 87107.

Lenton Malry, Vice President, Director and 6.6% Stockholder, 3000 Sandta Clara, SE, Albuquerque, New Mexico 87106.

Sosimo Padilla, Treasurer and Director, 3920 Las Vegas Drive, SW, Albuquerque, New Mexico 87105.

Larry L. Lamb, Secretary, Director and 6.7% Stockholder, 4804 Ridgecrest Circle, SE, Albuquerque, New Mexico 87108.

Bernard P. Metzgar, Director and 6.6% Stockholder, 9508 Parsifal Place, NE, Albuquerque, New Mexico 87111.

Wilfred J. Brandiwine, 60% Stockholder, 1423 South Club, Carlsbad, New Mexico 88220.

Farrell L. Lines, 6.6% Stockholder, 13201 Cedar Brook, NE, Albuquerque, New Mexico 87111.

The Applicant, a New Mexico Corporation, will be located at 1900 Bridge Boulevard, S.W., Albuquerque, New Mexico 87105.

It will begin operations with $500,000 of paid-in capital and paid-in surplus derived from the sale of 5,000 shares of common stock to seven individuals.

The Applicant will not concentrate its investments in any particular industry. As a small business investment company under section 301(d) of the Act, the Applicant has been organized and chartered solely for the purpose of performing the functions and conducting the activities contemplated under the Act, as amended from time to time, and will provide assistance solely to small business concerns which will contribute to a well-balanced national economy by facilitating ownership in such concerns by persons whose

participation in the free enterprise system is hampered because of social or economic disadvantages.

Matters involved in SBA's consideration of the Applicant include the general business reputation and character of the proposed owners and management and the probability of successful operations of the Applicant under this management, including adequate profitability and financial soundness, in accordance with the Act and SBA rules and regulations.

Any person may, not later than February 11, 1977, submit to SBA written comments on the proposed Applicant. Any such communication should be addressed to the Deputy Associate Administrator, 1441 L Street, NW., Washington, D.C. 20416.

A copy of this notice shall be published in a newspaper of general circulation in Albuquerque, New Mexico.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies.)

Dated: January 19, 1977.

PETER F. MCNEISH,
Deputy Associate Administrator for Investment.

[FR Doc.77-2596 Filed 1-26-77;8:45 am]

LOS ANGELES DISTRICT ADVISORY COUNCIL

Public Meeting

The Small Business Administration Los Angeles District Advisory Council will hold a public meeting at 12:00 noon, Wednesday, March 2, 1977, at the Taix Les Freres French Restaurant, 1911 West Sunset Boulevard, Los Angeles, California, to discuss such matters as may be presented by members, staff of the Small Business Administration, or others present. For luncheon reservations and further information write or call Stewart L. Rollins, U.S. Small Business Administration, 350 South Figueroa Street, Suite 600, Los Angeles, California 90071, (213) 688-2977.

Dated: January 19, 1977.

HENRY V. Z. HYDE, Jr.,
Deputy Advocate for Advisory Councils.

[FR Doc.77-2597 Filed 1-26-77;8:45 am]

LOUISVILLE DISTRICT ADVISORY COUNCIL

Public Meeting

The Small Business Administration Louisville District Advisory Council will hold a public meeting from 9:00 a.m., until 5:00 p.m., April 14, 1977, and will convene again at 9:00 a.m., until 12 o'clock noon, Friday, April 15, 1977, at the Natural Bridge State Resort Park, Slade, Kentucky, to discuss such business as may be presented by members and the staff of the Small Business Administration. For further information write or call R. B. Blankenship, U.S. Small Business Administration, Federal Office Building, Room 188, P.O. Box 3517 (502) 352-5978.

Dated: January 19, 1977.

HENRY V. Z. HYDE, Jr.,
Deputy Advocate for Advisory Councils.

[FR Doc.77-2598 Filed 1-26-77;8:45 am]

OFFICE OF THE SPECIAL REPRESENTATIVE FOR TRADE NEGOTIATIONS

CERTAIN ALLOY TOOL STEEL QUANTITATIVE LIMITATIONS

Reallocation

By Proclamation 4445 of June 11, 1976 (41 FR 24101, June 15, 1976), as modified by Proclamation 4477 of November 16, 1976 (41 FR 50969), temporary quantitative limitations were placed on the importation into the United States of certain articles of stainless or alloy tool steel. Pursuant to paragraph (6) of Proclamation 4445, the authority to make changes in the quantitative restrictions provided for by Proclamation 4445, as modified, is delegated to the Special Representative for Trade Negotiations. Pursuant to subparagraph (d) of headnote 2, subpart A, part 2 of the Appendix to the Tariff Schedules of the United States (TSUS), the Special Representative may allocate or reallocate a specific quota quantity to any country or instrumentality subject to restriction if he determines that it is necessary or appropriate to do so in order to assure equitable treatment.

In order to provide equitable treatment for Austria regarding the importation of certain alloy tool steel, I have determined that it is appropriate to provide a separate quota quantity for Austria for the restraint periods beginning June 14, 1977 and June 14, 1978 for alloy tool steel of the type provided for in item 923.26, subpart A, part 2 of the Appendix to the TSUS.

Accordingly, pursuant to paragraph (6) of Proclamation 4445, of June 11, 1976, and subparagraph (d) of headnote 2, subpart A, part 2 of the Appendix to the TSUS, item 923.26 is hereby modified as follows:

[In short tons]

Item	Articles	Quota quantity effective on or after—		
		June 14, 1976	June 14, 1977	June 14, 1978
	Alloy tool steel of the types provided for in items 608.52, 608.76, 608.78, 608.85, 608.88, 609.06, 609.07, and 609.08:			
923.26	Other (see headnote 2(a)(iii)):			
	Japan	3,500	3,700	3,800
	European Economic Community	3,400	3,500	3,600
	Canada	1,900	2,000	2,000
	Sweden	8,500	8,600	8,700
	Austria (for the periods beginning on or after June 14, 1977)	.....	2,322	2,385
	Other:			
	Countries (including Austria for the period ending June 13, 1977) entitled to the rate of duty column No. 1 (total)	3,600	1,378	1,415
	Other (total)	6	6	6

This modification will be effective January 27, 1977.

Signed: January 19, 1977.

FREDERICK B. DENT,
Special Representative for Trade Negotiations.

[FR Doc.77-2529 Filed 1-26-77;8:45 am]

DEPARTMENT OF STATE

[Public Notice CM-7/22]

UNITED STATES ADVISORY COMMISSION ON INTERNATIONAL EDUCATIONAL AND CULTURAL AFFAIRS

Meeting

The U.S. Advisory Commission on International Educational and Cultural Affairs will meet in open session in Ottawa, Canada, on February 18 and 19 from approximately 9:00 a.m. until 5:00 p.m.

On February 18 the Commission will meet with Canadian government and university officials to discuss ways in which international educational and cultural exchange programs can contribute to improved relations between Canada and the United States. The Canadian government will determine the sites for the meetings.

On February 19 from 9:00 a.m. until 12:00 noon, the Commission will meet in the American Embassy, 100 Wellington Street. There will be one item on the agenda: A general discussion of the Commission's activities in 1977.

Anyone wishing to attend any part of these sessions must advise the Staff Director no later than February 14, 1977. Telephone: (202) 632-2764. Members of the public will be accommodated according to the space available.

Dated: January 18, 1977.

W. H. WELD, Jr.,
Staff Director, Commission Secretariat.

[FR Doc.77-2558 Filed 1-26-77;8:45 am]

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[FRA Docket No. EP-1, Notice 1]

PROCEDURES FOR CONSIDERING ENVIRONMENTAL IMPACTS

Notice of Proposed Procedures

The Federal Railroad Administration (FRA) is in the process of developing specific implementing instructions which

incorporate the general procedures established by the Secretary of Transportation in DOT Order 5610.1B, "Procedures for Considering Environmental Impacts" (39 FR 35234). These instructions will be issued as an internal FRA Order, and will establish procedures and define the responsibilities of individual offices within FRA for insuring full consideration of the environmental impacts of all major Federal actions undertaken by this agency in compliance with the National Environmental Policy Act (42 U.S.C. 4321 et seq.), the Department of Transportation Act (49 U.S.C. 1651 et seq.), and various other environmental statutes and administrative procedures cited in the proposed Order.

The proposed procedures include the identification of specific programs under the jurisdiction of the FRA within which individual actions are to be considered "major Federal actions" which must be subjected to an environmental assessment to determine their specific environmental effects. This assessment will provide the basis for a determination as to the appropriateness of a negative declaration or the necessity for the preparation of an environmental impact statement in compliance with NEPA. Instructions for the preparation of either a negative declaration or an environmental impact statement include guidelines as to their form and content as well as specific assignment of responsibility for the various aspects of the environmental process to appropriate offices within FRA. In addition, staff responsibilities are also assigned to assure that there will be the opportunity for open citizen involvement in the environmental analysis of all major FRA actions which will significantly affect the quality of the human environment.

These proposed procedures are being published for public comment in compliance with the guidelines of the Council on Environmental Quality (40 CFR Part 1500), and the provisions of paragraph 4a of DOT Order 5610.1B, "Procedures for Considering Environmental Impacts". Interested persons are invited to participate by submitting written comments on the proposed procedures. Communications should identify the FRA docket number, and should be submitted to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street, SW, Washington, D.C. 20590.

Communications received before March 14, 1977, will be considered before these procedures are finalized.

All comments received will be available for examination by interested persons at any time during regular working hours in Room 5101, Nassif Building, 400 Seventh Street, SW, Washington, D.C. 20590.

In consideration of the foregoing, the following "Procedures for Considering Environmental Impacts" are proposed to read as stated below.

This notice is issued under authority of the National Environmental Policy Act, 42 U.S.C. 4321 et seq; Executive Order 11514, 35 FR 4247; Council on Environmental Quality Guidelines 40 CFR 1500, and DOT Order 5610.1B.

Issued in Washington, D.C. on January 19, 1977.

ASAPH H. HALL,
Administrator.

PROCEDURES FOR CONSIDERING ENVIRONMENTAL IMPACTS

1. *Purpose.* This Order establishes procedures for the consideration, preparation, and processing of environmental impact statements and related documents for FRA actions.

2. *Authority.* This Order implements DOT Order 5610.1B, dated September 30, 1974 and provides instructions for implementing section 102(2)(C) of the National Environmental Policy Act (hereinafter "NEPA"), section 4(f) of the Department of Transportation Act of 1966 (45 U.S.C. 1653(f), hereinafter "the DOT Act"), section 309 of the Clean Air Act of 1970, as amended (42 U.S.C. 1857 et seq., hereinafter "the Clean Air Act"), section 106 of the National Historic Preservation Act of 1966 (16 U.S.C. 470(f), hereinafter "the Historic Preservation Act"), sections 303 and 307 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.), section 2 of the Fish and Wildlife Coordination Act (16 U.S.C. 662), and various Executive Orders relating to environmental impacts.

3. *Background*—(a) *The National Environmental Policy Act (NEPA)* establishes a broad national policy to promote efforts to improve the relationship between people and their environment and provides for the creation of the Council on Environmental Quality (SEQ). NEPA sets out certain policies and goals concerning the environment, and requires that, to the fullest extent possible, the policies, regulations, and public laws of the U.S. shall be interpreted and administered in accordance with those policies and goals.

(b) *Section 102 of NEPA* is designed to ensure that environmental considerations are given careful attention and appropriate weight in all decisions of the Federal Government. Section 102(2)(C) requires that all agencies of the Federal Government shall:

> Include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on—
>
> (i) The environmental impact of the proposed action,
>
> (ii) Any adverse environmental effects which cannot be avoided should the proposal be implemented,
>
> (iii) Alternatives to the proposed action,
>
> (iv) The relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and
>
> (v) Any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.
>
> Prior to making any detailed statement, the responsible Federal official shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of the appropriate Federal, State, and local agencies, which are authorized to develop and enforce environmental standards, shall be made available to the President, to the Council on Environmental Quality and to the public as provided by Section 552 of Title 5, United States Code, and shall accompany the proposal through the existing agency review processes.

(c) *Section 102(2)(A) of NEPA* requires all agencies to "utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and decision making which may have an impact on man's environment * * *."

(d) *Guidelines from the President's Council on Environmental Quality*, published in 38 FR 20549, 40 CFR 1500 et seq., August 1, 1973, provides guidance to agencies for preparation of environmental impact statements.

(e) *DOT Order 5610.1B*, Procedures for Considering Environmental Impacts, published in 39 FR 35234, September 30, 1974, establishes general procedures to be employed by the Department of Transportation, and directs that each operating administration in the Department issue implementing instructions which incorporate the general procedures of the Order and apply them with more specificity to the programs of the operating administration.

(f) *Section 4(f) of the DOT Act* states, "It is hereby declared to be the national policy that special effort should be made to preserve the natural beauty of the countryside and public park and recreational lands, wildlife and waterfowl refuges, and historic sites. The Secretary * * * shall not approve any program or project which requires the use of any publicly owned land from a public park, recreation area, or wildlife and waterfowl refuge of national, State, or local significance as determined by the Federal, State, or local officials having jurisdiction thereof, or any land from an historic site of national, State, or local significance as so determined by such officials unless (1) there is no feasible and prudent alternative to the use of such land, and (2) such program includes all possible planning to minimize harm to such park, recreational area, wildlife and waterfowl refuge, or historic site resulting from such use."

(g) *Section 106 of the National Historic Preservation Act* requires the head of any Federal agency having jurisdiction over a Federal or federally-assisted undertaking to take into account, prior to approving the undertaking, its effect on any district, site, building, structure, or object that is included in the National Register of Historic Places, and to give the Advisory Council on Historic Preservation a reasonable opportunity to comment on the proposed undertaking.

For additional background, refer to paragraph 2, "Background" of DOT Order 5610.1B, "Procedures for Considering Environmental Impacts."

4. *Definitions*—(a) *Environmental Assessment.* This is an administrative record which describes the probable impact of the proposed action on the quality of the human environment. This record is used to determine the significance of the environmental impact of the proposed action, and the need for the preparation of a negative declaration or an environmental impact statement.

(b) *Environmental Impact Statement.* This is a report required by section 102(2)(C) of the NEPA to accompany a proposal for any major Federal action which significantly affects the human environment through the review process.

(c) *Negative Declaration.* This is a report which is required to be prepared to accompany a proposal for any major Federal action which does not significantly affect the quality of the human environment through the review process.

(d) *4(f) Determination.* This is a document which must be prepared with respect to any program or project which requires the use of any land from any public park, recreation area, wildlife and waterfowl refuge, or historic site of national, State, or local significance as determined by the Federal, State or local officials having jurisdiction thereof. The determination must document that (1) there is no feasible and prudent alternative to the use of such land, and (2) such program or project includes all possibe planning to minimize harm resulting from such use.

(e) *Major Federal Action Significantly Affecting the Quality of the Human Environment.* The following actions are to be considered major Federal actions significantly affecting the quality of the human environment:

(1) Any action producing an effect that is not minimal on properties protected under section 4(f) of the DOT Act, or section 106 of the Historic Preservation Act;

(2) Any action that is likely to be highly controversial on environmental grounds;

(3) Any action that is likely to have a significant adverse impact on natural, ecological, cultural, or scenic resources of national, State or local significance;

(4) Any action that is likely to be controversial regarding relocation housing;

(5) Any action that (A) divides or disrupts an established community or disrupts orderly, planned development or is inconsistent with plans or goals that have been adopted by the community in which the project is located; or (B) causes increased congestion;

(6) Any action that (A) is inconsistent with any Federal, State or local standard relating to the environment; or (B) has a significantly detrimental impact on air or water quality or on ambient noise levels for adjoining areas, or involves the possibility of contamination of public water supply system, or affects ground water, flooding, erosion, or sedimentation, or

(7) Other action that directly or indirectly significantly affects human beings by creating an adverse impact on the enviroment.

5. *Action Covered*—(a) *General.* An environmental assessment must be performed for all major FRA actions. Section 3.b of the DOT Order 5610 sets forth general categories of actions that require such an assessment, and section 3.c. sets forth those categories that do not require such an assessment. Section 3.c.(7) permits the operating administrations to exempt certain activities from the requirement of preparing an assessment.

(b) *Environmental Assessment Required.* Actions within the following categories are major FRA actions that will require environmental assessment to determine whether individual projects or classes of projects significantly affect the quality of the human environment and must therefore be the subject of an environmental impact statement:

(1) Demonstration projects:

(2) Financing (through redeemable preference shares and loan guarantees) of construction, rehabilitation or improvement of railroad facilities or equipment;

(3) Financing of capital expenditures (through grants and loan guarantees) for intercity rail passenger service;

(4) Financing (through grants) for the rehabilitation improvement or conversion of railroad passenger terminals;

(5) Financing (through grants) for rehabilitation and improvement projects requiring new rights-of-way in conjunction with the continuation of local rail freight service; and

(6) Construction activities undertaken in conjunction with the Northeast Corridor Rail Passenger Service Improvement Program (NECIP) other than those activities which do not involve, either by themselves or as integral components of larger projects, sufficiently serious effects to justify the costs of completing an Environmental Impact Statement.

(c) *Class of Actions.* A general class of actions may be covered by a single environmental assessment, negative declaration, or environmental impact statement when the environmental impacts of all the actions (and alternatives thereto) are substantially similar.

6. *Environmental Assessments*—(a) *Scope.* The environmental assessment should utilize an interdisciplinary approach in identifying the type, degree of effect, and probability of occurrence of primary, secondary and cumulative potential environmental impacts (positive and negative) of the proposed action and of alternative courses of action. The depth of coverage should be consistent with the magnitude of the project and its expected environmental effects.

(b) *Documentation.* Documents used as a basis for the assessment must be included in the program file to support the assessment, and to assist in the preparation of any subsequent documents required by this Order.

(c) *Timing.* The environmental impacts of a proposed action covered by this Order should be assessed concurrently with the initial technical and economic studies.

(d) *Staff Responsibilities.*—(1) Program Office.

(i) Determine, regarding each program action, the necessity for an environmental assessment.

(ii) Prepare the necessary environmental assessments for each program action that is subject to this Order.

(iii) Determine whether preparation of a negative declaration or environmental impact statement is appropriate for each of its program actions.

(2) Office of Policy and Program Development—RPD.

(i) Provide the program office with advice concerning the scope and content of an environmental assessment.

(3) Office of the Chief Counsel—RCC.

(i) Provide advice and assistance in interpreting and applying the requirements for an environmental assessment to program offices and RPD.

(ii) Review for legal sufficiency the program office's determination regarding the necessity for an environmental assessment.

(iii) Review for legal sufficiency each program office determination as to whether a negative declaration or an environmental impact statement should be prepared.

7. *Negative Declarations.* A negative declaration shall be prepared for all major actions which have been determined to have no significant environmental impact.

(a) *Coordination.* A negative declaration need not be coordinated outside the FRA, but must be made available to the public upon request.

(b) *4(f) Determination.* A 4(f) determination may be required even though a negative declaration is appropriate for a particular action. In this case the material set forth in section 11(b)(11) below shall be set forth in a separate document accompanying the negative declaration.

(c) *Staff Responsibility*—(1) Program Office.

(i) Prepare the negative declaration and necessary supporting documentation.

(ii) Decide whether a 4(f) determination is necessary, and if so, prepare the required documentation.

(2) Office of Policy and Program Development.

(i) Review for concurrence all negative declarations.

(ii) Review for concurrence all decisions concerning the need for a 4(f) determination and all 4(f) determinations prepared in conjunction with a negative declaration.

(iii) Maintain lists of negative declarations and proposed negative declarations.

(3) Office of the Chief Counsel.

(i) Review for legal sufficiency all negative declarations.

(ii) Review for legal sufficiency all 4(f) determinations prepared in conjunction with a negative declaration.

(4) Federal Railroad Administrator—ROA.

(i) Approve all negative declarations and associated 4(f) determinations.

8. *Form and Content of Negative Declarations.* All negative declarations shall be prepared in accordance with the format below. The negative declaration should include and identify clearly a description of the project, action or proposal, and sufficient data and environmental findings to support the conclusion as to the impact upon the quality of the human environment.

NEGATIVE DECLARATION FOR FEDERAL RAILROAD ADMINISTRATION PROJECT, ACTION OR PROPOSAL

The following project (action or proposal) has been reviewed and it has been determined that the project (action or proposal) will have no foreseeable significant impact upon the quality of the human environment.

(a) Description of project (action or proposal).

(b) Environmental data and analysis.

(c) Conclusion.

Date

Signature of Originator of Negative Declaration

9. *Citizen Involvement Procedures*—(a) *Timing.* After it has been determined that an environmental impact statement is required for a particular FRA action, citizen involvement in the environmental analysis is encouraged and should be sought as early as possible.

(b) *Staff Responsibilities*—(1) Program Office.

(i) Implement citizen involvement procedures, including development of mailing lists of parties interested in each of its programs.

(ii) Notify parties interested in a program of the decision to prepare an environmental impact statement and solicit their comments on the environmental effects of the proposed program action at an early stage in the preparation of the draft impact statement.

(2) Office of Policy and Program Development.

(i) Provide advice and assistance to program offices in applying citizen involvement procedures.

(ii) Maintain a list of actions for which negative declarations or environmental impact statements are being prepared by FRA and submit a current list of these actions to the Assistant Secretary for Environment, Safety and Consumer Affairs (TES) and CEQ not less than quarterly. This list shall be available to the public upon request.

(3) Office of the Chief Counsel.

(i) Determine whether or not a hearing is required or appropriate with respect to FRA actions, and provide legal counsel at such hearings as necessary.

10. *Environmental Impact Statements*—(a) *Timing.* (1) Draft statements shall be prepared early enough in the development of a project so that analysis of the environmental effects and exploration of alternatives to the proposed action are significant inputs to the decision making process.

(2) A time period for comments on the draft statement must be specified. This period may not be less than 45 days from the date of the Federal Register notice of availability of the statement that is published by CEQ. Requests for extensions of the period for comment shall be granted whenever possible.

(3) For actions involving a public hearing, the draft statement must be made available to the public at least 30 days prior to the hearing.

(4) (i) A draft environmental impact statement must be available to Federal, State, and local agencies and to the public at least 90 days prior to any major administrative action on a proposal or project.

(ii) A final enviromnnatel73 god nigh

(ii) A final environmental impact statement must be made available to those who commented on the draft and to the public at least 30 days prior to any major administrative action on a proposal or project.

(iii) If the final environmental impact statement is filed with CEQ within 90 days after a draft statement has been circulated for comment, furnished to the CEQ and made public pursuant to this section, the 30-day period provided for in subsection (a)(4)(ii) of this section and the 90-day period may run concurrently.

(iv) Exceptions to these time periods may be made for emergency procurement or when advance public disclosure will result in significant added costs of procurement to the Government.

(b) *Staff Responsibility*—(1) Program Office.

(i) Coordinate all communications with an applicant or prospective applicant concerning environmental matters covered by this Order.

(ii) Prepare the draft environmental impact statement for each of its program actions.

(iii) Decide whether a 4(f) determination is necessary, and if so, prepare the required documentation.

(iv) In consultation with RPD, prepare lists of agencies having jurisdiction or special expertise and interested parties to whom the draft environmental impact statement should be distributed for comment.

(v) Review and analyze comments submitted in response to the draft statement and prepare final environmental impact statement.

(vi) Determine whether a change made in a proposed action after approval of the final statement is substantial, or new information regarding environmental impacts is significant.

(vii) Notify RPD and RCC of any substantial changes made in a proposed action after approval of a final statement, or of significant new information regarding the environmental impacts of the proposed action.

(viii) Assure, through internal supervision, funding agreements, and project review procedures, that any actions set forth in an approved environmental impact statement to minimize adverse impacts are carried out.

(2) Office of Policy and Program Development.

(i) Review for concurrence decisions to prepare an environmental impact statement.

(ii) Review for concurrence all decisions concerning the need for a 4(f) determination and all 4(f) determinations prepared in conjunction with an environmental impact statement.

(iii) Circulate the draft statement for comment to agencies and interested parties identified in cooperation with the program office, to CEQ (five copies, and to TES (two copies).

(iv) Review for concurrence all final statements.

(v) Provide TES two copies of the final statement and copies of all comments submitted on the draft, and coordinate TES concurrence.

(vi) Provide for required distribution of final statement: CEQ (five copies); appropriate State, regional, and metropolitan clearinghouses; appropriate public places such as local public libraries, FRA regional offices, offices of applicant or grantee; appropriate offices of EPA; all Federal, State and local agencies and private organizations who commented substantively on the draft statement; and individuals who request copies.

(vii) Consult with TES and CEQ on the need for, or desirability of, recirculating an amended statement when a substantial change is made in a proposed action after approval of the final statement, or significant new information regarding environmental impacts comes to light.

(3) Office of the Chief Counsel—RCC.

(i) Review for legal sufficiency the draft environmental impact statement.

(ii) Review for legal sufficiency the final environmental impact statement.

(iii) Review for legal sufficiency all 4(f) determinations prepared in conjunction with an environmental impact statement.

(iv) Review for legal sufficiency any deviation from action to minimize environmental impacts set forth in an approved final statement.

(4) Federal Railroad Administrator—ROA.

(i) Approve all draft and final environmental impact statements and 4(f) determinations originating in FRA, after concurrence of TES, TES concurrence may be assumed unless, within two weeks of receipt of a final statement, TES notifies FRA to the contrary.

(c) *Decisions reserved to the Secretary.* If an action requires the personal approval of the Secretary or Deputy Secretary pursuant to a request by either of them, TES, TGC, or FRA, the statement shall be accompanied by a brief cover memorandum from the Administrator requesting the Secretary's or Deputy Secretary's approval of the action.

(1) The memorandum shall have signature lines for the concurrence of the

Assistant Secretary for Environment, Safety, and Consumer Affairs, the General Counsel, and the Deputy Secretary and for the approval of the Secretary or Deputy Secretary.

(2) TES, in conjunction with the Executive Secretary, is responsible for informing the Assistant Secretary for Congressional and Intergovernmental Affairs and the departmental Office of Public Affairs of the Secretary's decisions so they, in coordination with the FRA, may take the appropriate actions.

11. *Form and Content of Environmental Impact Statement.* All environmental impact statements shall be prepared in accordance with the format below.

(a) *Form.* (1) Each statement will be headed as follows:

DEPARTMENT OF TRANSPORTATION

FEDERAL RAILROAD ADMINISTRATION

Draft (Final) Environmental Impact Statement pursuant to section 102(2)(C) (42 U.S.C. 4332 (2)(C).)

(2) The heading specified in paragraph (1) shall be modified to indicate that the statement also covers section 4(f) of the DOT Act and/or section 106 of the Historic Preservation Act, as appropriate.

(3) The format for the summary to accompany draft and final environmental statements is as follows:

SUMMARY

DEPARTMENT OF TRANSPORTATION

FEDERAL RAILROAD ADMINISTRATION

(check one) ( ) Draft ( ) Final

(name, address and telephone number of contact individual)

(i) Name of Action (check one) ( ) Administrative Action. ( ) Legislative action.

(ii) Brief description of action indicating what States (and counties) are particularly affected.

(iii) Summary of environmental impacts.

(iv) List of the alternatives considered, their environmental impacts.

(v)(A) (For draft statement) List all Federal, State, and local agencies and other parties from which comments have been requested.

(B) (For final statements) List all Federal, State and local agencies and other sources from which written comments have been received.

(vi) Dates the draft statement and the final statement if issued were made available to the Council on Environmental Quality and the public.

(b) *General Content.* This subsection is intended to provide guidance on the content of environmental statements. Additional guidance is expected to be obtained from research reports, guidance on methodology, and other technical material which is pertinent to evaluation of related environmental factors. The following points are to be covered, where relevant.

(1) A description of the proposed action, a statement of its purpose, the nature and extent of the FRA's involvement in the proposed action, and a description of the environment affected, including summary technical data, maps, diagrams, and other information adequate to permit commenting offices and the public to assess the potential environmental impacts.

(i) Highly technical and specialized analyses and data should be avoided in the body of the draft or final statement.

(ii) The sources of data used to identify, quantitfy, or evaluate any environmental consequence should be noted.

(2) The relationship of the proposed action to the adopted or proposed land use plans, policies, controls, and objectives issued by governments having jurisdiction over affected communities.

(3) The probable impact of the proposed action on the environment. This requires assessment of both the positive and the negative environmental effects, including primary, secondary and other foreseeable effects within the following areas:

(i) Standards Concerning Noise, Air and Water Pollution. The statement shall reflect sufficient analysis to predict the effects of the proposed action on attainment and maintenance of any applicable environmental standards established by law or administrative determination. The following documentation must be included:

(A) Consultation with the agency responsible for the State water pollution control program about consistency of the proposed action with standards and regulations regarding storm sewer damage, sedimentation control, and other non-point source discharges.

(B) The comments or determinations of the offices charged with administration of the State's implementation plan for air quality on the consistency of the project with State plans for the implementation of ambient air quality standards.

(C) Conformity to adopted noise standards, compatible, if appropriate, with different land uses.

(ii) Relocation Housing. Where relocation housing will be involved, information should be provided which discusses the availability of relocation housing (see requirements in 49 CFR 25.53; DOT 5620.1, Replacement Housing Policy, dated June 24, 1970).

(iii) Energy Supply and Natural Resources Development. Where applicable, the statement shall reflect consideration of whether the project or program will have any effect on either the production or consumption of energy and other natural resources and discuss such effects if they are significant.

(iv) Flood Hazard Evaluation. When an alternative under consideration encroaches on a flood plain, the statement shall include evidence that studies have been made and evidence that consultations with agencies with special expertise have been carried out. Necessary measures to handle flood hazard problems shall be described, in compliance with Executive Order 11296 and Flood Hazard Guidelines for Federal Executive Agencies promulgated by the Water Resources Council.

(v) Wetlands or Coastal Zones. Where wetlands or coastal zones are involved, the statement shall include:

(A) Information on location, types, and extent of wetlands areas which might be affected by the proposed action.

(B) An assessment of the impacts expected to result from both construction and operation of the project on the wetlands and associated wildlife, and measures to minimize adverse impacts.

(C) A statement by the appropriate representative of the Department of the Interior, and any other responsible officials with special expertise, setting forth their views on the impacts of the project on the wetlands, the worth of the particular wetlands areas involved to the community and to the nation, and recommendations as to whether the proposed action should proceed and, if applicable, along what alternative route or under what mitigating conditions.

(D) Where applicable, a discussion of how the proposed action relates to the State coastal zone management program for the particular State in which the project is located.

(vi) Construction Impacts. Statements should appropriately address such matters as the following, identifying any special problem areas:

(A) Noise impacts from construction and any specifications setting maximum noise levels.

(B) Disposal of spoil and effect on borrow areas and disposal sites (include any specifications).

(C) Measures to minimize effects on traffic and pedestrians.

(D) Consideration of non-point source pollution such as might result from water runoff.

(vii) Land Use and Urban Growth. The statement shall include, to the extent relevant and predictable:

(A) The effect of the proposed action on land use, development patterns, and urban growth.

(B) Where significant land use and development impacts are anticipated, identify public facilities needed to serve the new development and any problems or issues which would arise in connection with these facilities and the comments of agencies that would provide these facilities.

(4) Alternatives to the proposed action, including those not within the authority of the FRA. Section 102(2)(E) of NEPA requires the responsible agency to "study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources".

(5) Any probable adverse environmental effect which cannot be avoided, such as water or air pollution, undesirable land use patterns, or impacts on public parks and recreation areas, wildlife and waterfowl refuges, or historic sites, damage to life systems, traffic congestion, threats to health, or other consequences adverse to the environmental goals set out in section 101(b) of NEPA, 42 U.S.C. 4331(b).

(6) The relationship beween local short-term uses of man's environment and the maintenance and enhancement of long-term productivity. This section shall contain a brief discussion of the extent to which the proposed action involves tradeoffs between short-term environmental gains at the expense of long-term losses, or vice versa, and a discussion of the extent to which the proposed action forecloses future options.

(7) Any irreversible and irretrievable commitments of resources that would be involved in the proposed action should it be implemented. This requires identification of unavoidable impacts and the extent to which the action irreversibly curtails the range or potential uses of the environment. "Resources" means not only the labor and materials devoted to an action but also the natural and cultural resources lost or destroyed.

(8) An indication of what other interests and considerations of Federal policy are thought to offset the adverse environmental effects of the proposed action. If a cost-benefit analysis has been performed, the extent to which environmental costs have been reflected in the analysis should be stated.

(9) A discussion of problems and objections raised by other Federal agencies, State and local entities and citizens in the review process, and the disposition of the issues involved and the reasons therefor. (This section may be added at the end of the review process to the final text of the environmental statement.)

(10) Underlying studies, reports, and other information obtained and considered in preparing each section of the statement should be identified.

(11) Publicly-Owned Parklands, Recreational Areas, Wildlife and Waterfowl Refuges, and Historic Sites (§ 4(f), DOT Act).

(i) Protected land proposed to be used. Describe any publicly owned land from a public park, recreation area or wildlife and waterfowl refuge or any land from an historic site which would be effected or taken by the proposed program or project, including the size of the land proposed to be affected or taken, available activities on the land, use, patronage, unique or irreplaceable qualities, relationship to other similarly used land in the vicinity of the proposed project, and maps, plans, slides, photographs, and drawings in sufficient scale and detail to show clearly the proposed project. Include a description of impacts of the proposed program or project on the land and changes in vehicular or pedestrian access.

(ii) Significant area. Include a statement of the national, State, or local significance of the entire park, recreation area, wildlife or waterfowl refuge, or historic site as determined by the Federal, State or local officials having jurisdiction thereof. In the absence of such a statement, protected land is presumed to be located in an area of national, State or local significance. Any statement of insignificance by the official having jurisdiction is reviewed by FRA to determine whether such statement is capricious. Where land proposed to be used is part of Federal lands administered for multiple uses, the Federal official having jurisdiction over the lands shall determine whether the lands are in fact being used for public park, recreation, wildlife, waterfowl, or historic purposes.

(iii) Alternatives. Where applicable include similar data for each alternative design or location. For each alternative, include detailed cost estimates (with figures showing percentage differences in total project costs), analysis of technical feasibility, analysis of any unique problems, and evidence that the monetary cost, resource consumption, community disruption, or other economic and social costs from the alternatives would reach extraordinary magnitudes.

(iv) Describe all planning undertaken to minimize harm to the protected area and state the actions taken or to be taken to implement this planning. Measures to minimize harm may include the following:

(A) Measures to maintain or enhance the natural beauty of the land used;

(B) Replacement of land and facilities, providing land or facilities, or providing for functional replacement of the facility; and

(C) Design measures to minimize harm; e.g., tunneling, cut and cover, cut and fill, treatment of embankments, planting, screening, maintenance of pedestrian or bicycle paths, and noise mitigation measures. Design measures should be proposed and selected with the assistance of appropriate interdisciplinary design personnel.

(v) Evidence of concurrence or description of efforts to obtain concurrence of Federal, State, or local officials having jurisdiction over the property regarding the action proposed and the measures planned to minimize harm.

(vi) If land acquired with Federal grant money (Department of Housing and Urban Development "open space" funds or Bureau of Outdoor Recreation "land and water conservation" funds) is involved, the final statement shall include evidence of concurrence or description of efforts to obtain concurrence of the grantor agency.

(vii) If Federal lands or interests in lands are involved in railroad-highway grade crossing or railroad-highway bridge projects, the final environmental statement shall include the results of the filing with the Secretary of the Department supervising such lands or interests as required by 23 U.S.C. 317.

(viii) The General Counsel (TGC) will determine application of section 4(f) to public interests in land, such as easements, reversions, etc.

(ix) A specific statement that there is no feasible and prudent alternative and that the proposal includes all possible planning to minimize harm to the "4(f) area" involved.

(12) Properties and Sites of Historic and Cultural Significance. The statement should document actions taken to preserve and enhance districts, sites, buildings, structures, and objects of historical, architectural, archeological, or cultural significance which would be affected by the proposed action.

(i) Draft environmental statements should include identification, through consulting the National Register and applying the National Register Criteria (36 CFR Part 800), of properties that are included in or eligible for inclusion in the National Register of Historic Places that may be affected by the project. The National Register is published in its entirety each February in the FEDERAL REGISTER. Monthly additions and listings of eligible properties are published in the FEDERAL REGISTER the first Tuesday of each month. The Secretary of the Interior will advise, upon request, whether properties are eligible for the National Register.

(ii) If application of the Advisory Council on Historic Preservation's (ACHP) Criteria of Effect (36 CFR Part 800) indicates that the proposed action will have an effect upon a property included in or eligible for inclusion in the National Register of Historic Places, the draft environmental statement should document the effect. Evaluation of the effect should be made in consultation with the State Historic Preservation Officer (SHPO) and in accordance with the ACHP's Criteria of Adverse Effect (36 CFR Part 800).

(iii) Determinations of no adverse effect should be documented in the draft statement with evidence of the application of the ACHP's Criteria of Adverse Effect, the views of the appropriate State Historic Preservation Officer, and any results obtained by submitting the determination to the ACHP for review.

(iv) If the project will have an adverse effect upon a property included in or eligible for inclusion in the National Register of Historic Places, the final environmental statement should include either an executed Memorandum of Agreement or comments from the Council after consideration of the project at a meeting of the ACHP and an account of actions to be taken in response to the comments of the ACHP. Procedures for obtaining a Memorandum of Agreement and the comments of the Council are found in 36 CFR Part 800.

(v) To determine whether the project will have an effect on properties of State or local historical, architectural, archaeological, or cultural significance not included in or eligible for inclusion in the National Register, the program office shall consult with the State Historic Preservation Officer, with the local official having jurisdiction of the property, and where appropriate, with historical societies, museums, or academic institutions having expertise about the property. If publicly owned land from a public park, recreation area, or wildlife and waterfowl refuge would be used, the information required under paragraph 11(b) of the body of this Order (see especially subparagraph 11.(b)(11)), should be sought concurrently.

APPENDIX A—PROCEDURES FOR CONSIDERING ENVIRONMENTAL IMPACTS NORTHEAST CORRIDOR PROJECT

1. *Purpose.* This Appendix establishes staff responsibilities for the coordination of consideration of environmental impacts resulting from major FRA actions undertaken by the Northeast Corridor Project ("NECP"). All provisions of this Order, except those relating to staff responsibilities, shall apply to the Northeast Corridor Rail Passenger Service Improvement Program ("NECIP") to the same extent as they apply to other FRA programs. For the purpose of this Appendix "project action" shall mean any NECP action taken pursant to Title VII of the RRRRA.

2. *Environmental Assessments.* Staff responsibilities.

(a) *Northeast Corridor Project—NECP.*

(1) Determine, regarding each project action, the necessity for an environmental assessment.

(2) Prepare the environmental assessments for each project action as determined necessary under subparagraph (1).

(3) Determine whether preparation of a negative declaration or environmental impact statement is appropriate for each of its project actions.

(b) *Office of the Chief Counsel—RCC.*

(1) Review for legal sufficiency each NECP determination under subparagraph (a)(1) that the preparation of an environmental assessment is not necessary.

(2) Advise NECP with respect to the legal sufficiency of its determination as to whether a negative declaration or an environmental impact statement should be prepared.

(c) *Office of Policy & Program Development—RPD.*

(1) Advise NECP regarding practices and procedures in making the determinations required under this section and in preparing environmental assessments.

3. *Negative Declarations.* Staff Responsibilities.

(a) *Northeast Corridor Project.*

(1) Prepare negative declarations and necessary supporting documentation.

(2) When necessary, prepare the documentation for a 4(f) determination.

(3) Approve all negative declarations and associated 4(f) determinations.

(b) *Office of the Chief Counsel.*

(1) Review for legal sufficiency all negative declarations and accompanying 4(f) statements.

(c) *Office of Policy & Program Development.*

(1) Advise NECP regarding practices and procedures in preparing negative declarations and associated 4(f) statements.

(2) Maintain lists of negative declarations and proposed negative declarations.

(d) *Federal Railroad Administrator.*

(1) Approve all negative declarations and associated 4(f) determinations for NECP project actions that NECP in its discretion determines (i) establish or change major project policy, or (ii) are likely to be highly controversial.

4. *Citizen Involvement Procedures.* Staff Responsibilities.

(a) *Northeast Corridor Project.*

(1) Implement citizen involvement procedures with respect to NECP project actions, including the development of mailing lists of interested parties.

(2) Notify interested parties of the decision to prepare an environmental impact statement and solicit their comments on the enevironmental effects of the proposed project action at an early stage in the preparation of the draft impact statement.

(3) Report to RPD monthly on the status of preparation of all negative declarations and environmental impact statements concerning NECIP project actions.

(4) Consult with RCC concerning the requirement or appropriateness of a hearing with respect to project actions.

(b) *Office of the Chief Counsel.*

(1) Determine with respect to NECP project actions whether or not a hearing is legally required, or advise NECP as to whether a hearing is appropriate, and provide legal counsel at such hearings as necessary.

(c) *Office of Policy & Program Development.*

(1) Provide advice and assistance to NECP program offices in applying citizen involvement procedures.

(2) Maintain lists of actions for which negative declarations or environmental impact statements are being prepared by NECP and submit a current list of these actions to TES and CEQ not less than quarterly. This list shall be available to the public upon request.

5. *Environmental Impact Statements.* Staff Responsibilities.

(a) *Northeast Corridor Project.*

(1) Coordinate all communications with an applicant or prospective applicant concerning environmental matters covered by this Order.

(2) Prepare draft environmental impact statements for project actions for which the preparation of an environmental impact statement is determined appropriate under section 2(a)(3) of this Appendix.

(3) In consultation with RCC prepare lists of agencies and interested parties to whom the draft environmental impact statement should be distributed for comment.

(4) Circulate the draft statement for comment to agencies and interested parties identified in the program list required to be prepared under subparagraph (3) above, and to CEQ (five copies), TES (two copies), and RPD (two copies).

(5) Review and analyze comments submitted in response to the draft statement and prepare the final environmental impact statement.

(6) Provide TES and RPD two copies of the final statement, and copies of all comments submitted on the draft, and coordinate TES concurrence.

(7) Provide for required distribution of final statement to CEQ (five copies), appropriate State, regional, and metropolitan clearinghouses; appropriate public places such as local public libraries, FRA regional offices, offices of applicant or grantee, appropriate offices of EPA, all Federal, State and local agencies, and private organizations who commented substantively on the draft statement, and individuals who request copies.

(8) Assure, through internal supervision, funding agreements and project review procedures, that any actions set forth in an approved environmental impact statement to minimize adverse impacts are carried out.

(9) Determine when a change made in a proposed action after approval of the final statement is substantial, or new information regarding environmental impacts is significant.

(10) Notify RCC of any substantial changes made in a proposed action after approval of a final statement, or of significant new information regarding the environmental impacts of the proposed action.

(11) Consult with TES, CEQ and RCC on the need for, or desirability of, recirculating an amended statement when a substantial change is made in a proposed action after approval of the final statement, or significant new information regarding environmental impacts comes to light after concurrence of TES.

(12) Approve all draft and final impact statements and 4(f) determinations for NECP project actions. Concurrence by TES may be assumed, unless TES, within two weeks of receipt of a final statement, notifies FRA to the contrary.

(b) *Office of the Chief Counsel.*

(1) Review for legal sufficiency all draft environmental impact statements.

(2) Review for legal sufficiency all final environmental impact statements.

(3) Review for legal sufficiency all 4(f) determinations.

(4) Review for legal sufficiency any deviation from actions to minimize environmental impacts set forth in an approved final statement.

(5) Review for legal sufficiency any NECP determination concerning whether a change made in a proposed action after approval of the final statement is substantial, or new information regarding environmental impacts is significant.

(6) Review for legal sufficiency any NECP determination regarding consultation with TES and CEQ concerning the need for, or desirability of, recirculating an amended statement when a substantial change is made in a proposed action after approval of the final statement, or significant new information regarding environmental impacts comes to light.

(7) Respond to Freedom of Information Act requests for access to, or copies of, draft or final statements and comments.

(c) *Office of Policy & Program Development.*

(1) Provide NECP with advice concerning practices and procedures applicable to the preparation and circulation of draft and final environmental impact statements.

(d) *Federal Railroad Administrator.*

(1) Approve, after concurrence of TES, all draft and final impact statements and 4(f) determinations for project actions which NECP in its discretion determines (i) establish or change major project policy, or (ii) are likely to be highly controversial. Concurrence by TES may be assumed, unless TES, within two weeks of receipt of a final statement, notifies FRA to the contrary.

[FR Doc.77-2575 Filed 1-26-77;8:45 am]

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. EX 77-2; Notice 1]

H. C. M. COMPANY, INC.

Petition for Temporary Exemption From Federal Motor Vehicle Safety Standard

H. C. M. Company, Inc. of Yakima, Washington, has petitioned for a 3-year exemption from 49 CFR 571.121 Motor Vehicle Safety Standard No. 121 Air Brake Systems, on the basis that compliance would cause it substantial economic hardship.

The petitioner is a manufacturer of "straddle trailers" which it defines as "a specialized agricultural commodity hauling trailer which features 'drive over' hydraulic lifting arms which suspend

the load for transit." H. C. M. manufactured eight straddle trailers in 1975 and "no other vehicles." The vehicles are equipped with air brake systems but, according to petitioner, "there are no manufacturers currently making components which can be adopted to these axles to achieve the requirements of Motor Vehicle Safety Standard 121 with regard to 'antiskid'." A mechanical spring parking brake could be added to achieve compliance but that "would cause over-width of the vehicle" which would mean it could be neither sold nor operated. Petitioner argues that the exemption would be in the public interest since fruit producers and haulers have found the trailer uniquely suitable to their needs. An exemption can be viewed as consistent with the objectives of the National Traffic and Motor Vehicle Safety Act since "the (current) air brakes have a safety record of 100 percent." The company had a net income of $16,250 in the fiscal year ending December 31, 1975. A denial would cause the demise of the company.

This notice of receipt of a petition for a temporary exemption is published in accordance with the NHTSA regulations on this subject (49 CFR 555.7), and does not represent any agency decision or other exercise or judgment concerning the merits of the petition.

Interested persons are invited to submit comments on the petition for exemption of the H. C. M. Company, Inc. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5108, 400 Seventh Street, SW., Washington, D.C. 20590. It is requested but not required that five copies be submitted.

All comments received before the close of business on the comment closing date indicated below will be considered. The application and supporting materials, and all comments received, are available for examination in the docket both before and after the closing date. Comments received after the closing date will also be filed and will be considered to the extent practicable. Notice of final action on the petition will be published in the FEDERAL REGISTER.

Comment closing date: February 22, 1977.

(Sec. 3, Pub. L. 92-548, 86 Stat. 1159 (15 U.S.C. 1410), delegations of authority at 49 CFR 1.50 and 49 CFR 501.8.)

Issued on January 17, 1977.

ROBERT L. CARTER,
Associate Administrator,
Motor Vehicle Programs.

[FR Doc.77-2380 Filed 1-26-77;8:45 am]

[Docket No. IP75-2; Notice 2]

TOYOTA MOTOR SALES, USA INC.

Petition for Exemption From Notice and Recall for Inconsequential Noncompliance

This notice grants the petition by Toyota Motor Sales, USA Inc. (Toyota) to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 et seq.) for a noncompliance with 49 CFR 571.101, Federal Motor Vehicle Safety Standard No. 101, Control Location, Identification, and Illumination, on the basis that the noncompliance is inconsequential as it relates to motor vehicle safety.

Notice of the petition was published on November 26, 1975, (40 FR 54852) and an opportunity afforded for comment.

Toyota discovered that about 69,000 1974 Corona model vehicles were manufactured "without word identification on the headlamps, hazard warning signal, and washer-wiper controls" as required by S4.2 of Standard No. 101. The company believes that this "technical noncompliance" will have no effect upon motor vehicle safety as the controls in question "were identified by symbols on the controls and an explanation of the symbols appeared in the owner's manual."

Two comments were received on the petition. General Motors supported the petition "to the extent that the identification of vehicle controls solely by the use of symbols without accompanying word identification will have no effect on motor vehicle safety". The petition was opposed by Moray Leonard Fleming of Ringwood, New Jersey, owner of one of the affected Toyotas. In Mr. Fleming's opinion the hazard warning switch is poorly identified, both at its location in the vehicle and in the operator's manual. According to this Toyota owner "it was three months before I knew what the switch was for, or how to work it. I am still concerned that other drivers of my vehicle, or future owners, may not know what this switch is for".

The NHTSA considers that the symbols identifying the lighting and windshield wiper-wash controls are sufficiently clear to designate functions without verbal identification. The hazard warning signal control, however, has only been mandated on passenger cars since January 1, 1969, and its symbol, one triangle within another, allowed only since January 1, 1972. Mr. Fleming's comment was taken seriously as an indication that both the control and its symbol might still be unfamiliar to the motoring public. However, a review of the agency's consumer complaint files has turned up no complaints whatever regarding the hazard warning system control or its identification on the Toyota or on any other passenger car. Further, the agency recently proposed (41 FR 46460) that many controls be identified by symbols alone, with words simply as an optional supplement. The public comments filed with NHTSA support the proposal. Accordingly, it is hereby found that the noncompliance herein described is inconsequential as it relates to motor vehicle safety and the petition of Toyota Motor Sales, USA Inc. is hereby granted.

(Sec. 102, Pub. L. 93-492, 88 Stat. 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8.)

Issued on January 17, 1977.

ROBERT L. CARTER,
Associate Administrator,
Motor Vehicle Programs.

[FR Doc.77-2381 Filed 1-26-77;8:45 am]

TRUCK AND BUS SAFETY SUBCOMMITTEES

Public Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of the Truck and Bus Safety Subcommittees of the National Highway Safety Advisory Committee and the National Motor Vehicle Safety Advisory Council. The subcommittees will meet on February 24 from 9:00 a.m. to 12:00 noon at the Granada Royale Hotel, 1635 N. Scottsdale Road, Tempe, Arizona.

The agenda will consist of the Task Force report on organization and discussion of future activities and old/new business.

Attendance is open to the interested public but limited to the space available. With the approval of the Chairman, members of the public may present oral statements at the meetings. Any member of the public may present a written statement to the subcommittees at any time.

This meeting is subject to the approval of the appropriate DOT officials.

Additional information may be obtained from the NHTSA Executive Secretary, Room 5215, 400 Seventh Street, S.W., Washington, D.C. 20590, telephone 202-426-2872.

Issued in Washington, D.C., on January 19, 1977.

WILLIAM H. MARSH,
Executive Secretary.

[FR Doc.77-2551 Filed 1-26-77;8:45 am]

[Docket No. FE76-1; Notice 2]

AVERAGE FUEL ECONOMY STANDARDS FOR PASSENGER AUTOMOBILES FOR 1981-84 MODEL YEARS

Invitation for Applications for Financial Assistance to Rulemaking Participants

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Invitation for applications for financial assistance.

SUMMARY: This notice invites applications for financial assistance from parties who wish to participate in the rulemaking proceeding for the development of average fuel economy standards for passenger automobiles manufactured in model years 1981-84. The National Highway Traffic Safety Administration (NHTSA) may provide financial assistance to individuals or organizations which can effectively supplement the record of that proceeding but which are financially unable to participate.

DATES: DEADLINE FOR SUBMISSION OF APPLICATIONS: February 11, 1977.

ADDRESSES: SUBMIT APPLICATIONS TO: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Applications should be clearly marked for the attention of the Director of the Office of Automotive Fuel Economy.

FOR FURTHER INFORMATION CONTACT:

Roger Fairchild, Office of Chief Counsel (N40-30), National Highway Traffic Safety Administration, 400 7th Street, S.W., Washington, D.C. 20590, (202-426-2993).

SUPPLEMENTARY INFORMATION: On January 13, 1977, the Department of Transportation (DOT), in conjunction with NHTSA, published a notice (41 FR 2863) establishing a demonstration program of one year duration for funding of individuals or organizations which desire to participate in designated NHTSA proceedings under the National Traffic and Motor Vehicle Safety Act of 1966, as amended, the Motor Vehicle Information and Cost Savings Act, as amended, and the Highway Safety Act of 1966, as amended.

Under regulations set forth in the notice for conducting the demonstration program, applications for assistance for participating in the proceeding are to be submitted in response to an invitation which will usually be published along with the initial FEDERAL REGISTER notice commencing the proceeding. Due to the limited funds available for the demonstration program, NHTSA will publish invitations primarily for those proceedings with the greatest potential impact on the general public. After the deadline specified in an invitation for submission of applications, all those applications submitted before the deadline will be evaluated by a panel of NHTSA and DOT officials to determine whether each applicant is eligible to receive funding under the regulations. In general, an applicant is deemed eligible if (1) it represents an interest the representation of which can reasonably be expected to contribute to a full and fair determination of the issues in the proceeding, (2) its participation is reasonably necessary to represent that interest, (3) it can competently represent that interest, and (4) it lacks sufficient financial resources to participate in the absence of such assistance. If more than one applicant representing the same or similar interest is deemed eligible, the panel either will select the applicant which can make the strongest presentation or, will select more than one applicant if the eligible applicants seek to present significantly different points of view or proposals. Compensation is available only for reasonable out-of-pocket expenses necessary to the applicant's participation. Payment is made as soon as possible after the selected applicant has completed its work and submitted a claim. Interested persons may obtain a copy of the regulations for the demonstration program from the person identified above as the contact for further information.

This notice initiates the above procedures with respect to the 1981-84 passenger automobile average fuel economy standards rulemaking proceeding. Section 502(a)(3) of the Motor Vehicle Information and Cost Savings Act provides for the issuance, by July 1, 1977, of average fuel economy standards for in each of the model years 1981 through 1984. These standards must be set at a level which is the maximum feasible average fuel economy level and which results in steady progress toward meeting the statutorily imposed 1985 standard of 27.5 miles per gallon. The Administrator commenced this proceeding on September 23, 1976, by publishing an ANPRM (41 FR 41713) soliciting certain specified technical and economic information relevant to establishing these standards.

Although the 1981-84 standards proceeding was initiated before the commencement of the financial assistance demonstration program, and notwithstanding the limited time remaining for development of useful, detailed comments, NHTSA deems it appropriate to solicit funding applications for this proceeding. The importance of these fuel economy standards to the general public requires the encouragement of public participation in the rulemaking proceeding.

These standards pose significant issues relating to energy conservation, the environment, vehicle safety, consumer preferences regarding vehicle size, design and performance, and the costs of acquiring, maintaining and operating vehicles. For example, if the entire passenger automobile fleet averaged 27.5 miles per gallon, the daily savings in gasoline consumption would be up to two million barrels compared to the gasoline that would be consumed if the average were that of the model year 1975 fleet. These savings would aid in the short run in lessening this country's dependence on foreign petroleum and thereby aid in solving the associated problems regarding international balance of payments and this country's vulnerability to future interruptions of its petroleum supply. The 1973-74 interruption significantly affected individual mobility and many aspects of the national economy. The standards may have an environmental impact of concern to many persons since reducing gasoline consumption will contribute to reducing the need for additional exploration, extraction, transportation, and refining of petroleum and other sources of hydrocarbon liquid fuels for motor vehicles.

One of the means of improving fuel economy, reducing vehicle weight, may increase the chance of occupant injury in motor vehicle accidents. Thus, one issue will be whether there will be any need for compensatory safety measures. Part of the effort to reduce vehicle weight will probably entail substituting light weight materials like aluminum and plastics. Such substitution raises questions regarding the effects of decreased demand for steel, the possibility of solid waste disposal problems associated with the increased use of plastics, and increased consumption of scarce natural resources.

In addition to changes in vehicle weight, the standards may also lead manufacturers to make changes in vehicle interior and exterior size, noise, and acceleration capability. The effect of the changes on the range of consumer choice and on the acceptability of new vehicles to consumers will be another issue.

Each application submitted pursuant to this notice should identify which of these or other issues the applicant proposes to address and the manner in which the applicant proposes to do so.

Applicants are urged to submit their applications by the deadline specified above. Under the regulations for the demonstration program, consideration of late applications is at the discretion of the panel of officials that will review the applications.

Issued on January 24, 1977.

JOHN W. SNOW,
Administrator.

[FR Doc.77-2737 Filed 1-26-77;8:45 am]

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

GRANTING OF RELIEF

Notice is hereby given that pursuant to 18 U.S.C. section 925(c) the following named persons have been granted relief from disabilities imposed by Federal laws with respect to acquisition, transfer, receipt, shipment, or possession of firearms incurred by reason of their convictions of crimes punishable by imprisonment for a term exceeding one year.

It has been established to my satisfaction that the circumstances regarding the convictions of each applicant's record and reputation are such that the applicants will not be likely to act in a manner dangerous to public safety and that the granting of the relief will not be dangerous to the public interest.

Abbott, Gilbert S., Route 5, Box 347, Shelbyville, Kentucky, convicted on September 17, 1965, in the Tremble Circuit Court, Bedford, Kentucky.

Allen, Rodney D., Sr., Box 584, Cass Lake, Minnesota, convicted on November 13, 1972, in the Minnesota District Court, Ninth Judicial District, Cass County, Minnesota.

Barnett, Lonnie R., 4218 South Juneau, Seattle, Washington, convicted on July 2, 1968, in the Superior Court, Kings County, Washington.

Beeler, Lawrence E., 226 Orchas Street, Port Angeles, Washington, convicted on April 17, 1974, in the Superior Court of Callum County, Washington.

Bend, J. T., 5441 Arlington Street, St. Louis, Missouri, convicted on October 20, 1972, in the United States District Court, Eastern District, Missouri.

Brown, Jack L., 3016 E. Presidio, Tucson, Arizona, convicted on March 21, 1947, in the District Court, Clovis, New Mexico.

Campbell, David M., 209 West Tobias Street, Flint, Michigan, convicted on or about November 28, 1972, in the Genesee Circuit Court, Michigan.

Carmichael, Jack L., 2027 South Perkins, Indianapolis, Indiana, convicted on March 1, 1957, in the Circuit Court in and for Scott County, Indiana.

Carter, Edward J., 888 Pallister, Detroit, Michigan, convicted on September 12, 1963, in the Recorder's Court, Detroit, Michigan.

Chartier, Earl H., Rt. 1, Waukomis, Oklahoma, convicted on May 28, 1969, in the District Court of Garfield County, Oklahoma.

Cherry, Douglas W., R.D. 4, Box 448½, Lehigh Drive, Leechburg, Pennsylvania, convicted on June 20, 1973, in the Court of Common Pleas, Armstrong County, Pennsylvania.

Colson, Charles W., 1350 Ballantrae Lane, McLean, Virginia, convicted on June 3, 1974, in the United States District Court, Washington, D.C.

Combs, Robert L., 629 Warwick Drive, Montgomery, Alabama, convicted on June 30, 1972, in Montgomery County Court, Montgomery, Alabama.

Cornett, David A., 308 Pine, Manton, Michigan, convicted on March 8, 1974, in the Wexford County Circuit Court, Cadillac, Michigan.

Davis, Otee, 1380 Shawmut Place, St. Louis, Missouri, convicted on July 7, 1972, in the United States District Court, Eastern District, Missouri.

Delrow, Michael Allen, 727 East Lincoln, Little Chute, Wisconsin, convicted on December 27, 1973, in the Circuit Court, Waupaca County, Wisconsin.

Dublin, Hugh P., Jr., Route #1, Tennessee Colony, Texas, convicted on September 30, 1963, in the Criminal District Court No. 5, Harris County, Texas.

Ervin, James C., 1906 South 17th Street, Yakima, Washington, convicted on October 6, 1945, in the Yakima County Superior Court, Yakima, Washington.

Fyffe, Randy L., 5868 South Villa Lane, Indianapolis, Indiana, convicted on October 19, 1962, in the Court of Common Pleas, Montgomery County, Ohio.

Fiveash, Roy J., Route 1, Box 304–A, Saucier, Mississippi, convicted on April 5, 1972, in the United States District Court, Southern District, Mississippi.

Fowler, Kenneth, Route 6, Box 20, Lebanon, Tennessee, convicted on December 11, 1974, in the Criminal Court of Wilson County, Tennessee.

Frederick, Vernon C., III, 2901 Westheimer, Houston, Texas, convicted on March 2, 1972, in the 176th District Court of Harris County, Texas.

Gambill, Robert B., Route 6, Box 361–A, North Wilkesboro, North Carolina, convicted on January 27, 1959, in the Wilkes County Superior Court, Wilkesboro, North Carolina; and on August 3, 1959, in the Catawba County Superior Court, North Carolina.

Gunnde, Frank J., P.O. Box 15061, Marmet, West Virginia, convicted on December 9, 1960, in the Intermediate Court for Kanawha County, West Virginia.

Hafner, Francis J., 70 Ashford Avenue, Pittsburgh, Pennsylvania, convicted on October 23, 1952, on February 26, 1953, on November 24, 1953, in a Special Court Martial, United States Navy, Philadelphia; and on March 31, 1954, in a General Court Martial, United States Navy, Philadelphia; and on June 28, 1955, in a General Court Martial, United States Navy, Boston, Massachusetts; and on May 27, 1957, in the Allegheny County Court, Pennsylvania.

Hall, Calvin Arthur, 1329 N. Second Avenue, Upland, California, convicted on December 7, 1956, in the Superior Court, Los Angeles County, California.

Harmon, Martin C., Route 1, Box 18AA, Hereford, Arizona, convicted on September 19, 1950, in the Boyd Circuit Court, Ashland, Kentucky.

Harrigan, Jack T., Jr., 2105 Anderson Street, Petersburg, Virginia, convicted on January 15, 1969, in the Criminal Court, Sullivan County, Blountville, Tennessee.

Hawkins, Frankie A., 712 West Taylor, Lovington, New Mexico, convicted on October 20, 1970, in the Lea County District Court, Lovington, New Mexico.

Hiller, Henry E., 369 15th Street, Box 215, Pomeroy, Washington, convicted on June 5, 1973, in the Garfield County Superior Court, Pomeroy, Washington.

Hollingshead, Ronald L., 4821 Sahler Street, Omaha, Nebraska, convicted on March 4, 1968, in the District Court, Washington County, Blair, Nebraska.

Jones, Jack Lee, Box 93, Clarksburg, Missouri, convicted on January 2, 1968, in the Circuit Court of Moniteau County, Missouri.

Kiernan, Eugene A., Jr., 334 S. Whiting Street, Alexandria, Virginia, convicted on February 9, 1971, in the City of Alexandria Circuit Court, Virginia.

Lee, Joe R., 2500 Minor Avenue East, Seattle, Washington, convicted on June 12, 1959, in the Superior Court, King County, Washington.

Lock, Charles W., 3622 Deerford Avenue, Lakewood, California, convicted on March 2, 1967, Los Angeles County Superior Court, Long Beach, California.

McCreary, Sheila K., 506 Hammond Street, Newport Newa, Virginia, convicted on March 29, 1973, in the Hustings Court, Newport News, Virginia.

McNemar, Kenneth L., Jr., 6229 Tanager, Houston, Texas, convicted on September 26, 1972, in the 180th District Court, Harris County, Texas.

Mars, Robert L., 1044 Southwest McFadden, Chehalis, Washington, convicted on February 22, 1974, in the Superior Court of Washington.

Marshbanks, Rothey Eugene, 7712 E. Waverly, Tucson, Arizona, convicted on or about January 24, 1968, in the United States District Court for the Eastern District of Maryland.

Miller, Steven C., 512 East Wilcox Avenue, Peoria, Illinois, convicted on June 4, 1973, in the United States District Court for the Northern District of Illinois, Eastern Division.

Morgan, Joseph W., 4000 Boardman Street, Minneapolis, Minnesota, convicted on September 8, 1967, on October 31, 1967, and on November 18, 1970, in the District Court, Hennepin County, Minnesota; and on December 17, 1970, in the District Court, Second Judicial District, Ramsey County, Minnesota.

Morningstar, Rex E., Rural Route 3, Cassopolis, Michigan, convicted on November 9, 1973, in the Cass County Circuit Court, Michigan.

Nalepinski, Donald E., Route #4, Box 24A, Sparta, Wisconsin, convicted on February 12, 1974, in the Circuit Court, Grant County, Wisconsin.

Oliver, Kelly M., 114 South 44th, Muskogee, Oklahoma, convicted on June 26, 1975, in the Oklahoma County District Court, Oklahoma City, Oklahoma.

Parker, Warren J., 5125 East Washington, Stockton, California, convicted on December 27, 1955, in the Superior Court of California, in the County of San Madeo; and on September 12, 1960, in the Superior Court of California, County of San Francisco.

Ponder, Leon C., Route 1, Box 281–A, Brent, Alabama, convicted on September 7, 1973, in the United States District Court for the Northern District of Alabama.

Pugh, Jeffrey C., Box 911, Ferrum College, Ferrum, Virginia, convicted on April 10, 1973, in the Circuit Court of Franklin County, Rocky Mount, Virginia.

Pyron, Wayne E., 6276 North 12th Street, Oak Dale, Minnesota, convicted on March 19, 1971, in the Superior Court of Baldwin County, Georgia.

Raia, Leo Lee, 4337 Fyler Street, St. Louis, Missouri, convicted on July 10, 1969, in the United States District Court, Eastern District of Missouri.

Rice, Jack M., 1807 South Third Street, Enid, Oklahoma, convicted on November 12, 1923, in the District Court, Cimarron County, Oklahoma.

Ross, Gerald W., 311 Barbieri, Arma, Kansas, convicted on January 12, 1971, in the District Court, Crawford County, Pittsburgh, Kansas.

Ruh, Duane R., 3112 West Glendale Avenue, Milwaukee, Wisconsin, convicted on May 24, 1965, in the Circuit Court, Milwaukee County, Wisconsin.

Sass, Verne A., 114 McKinley Avenue, Kellogg, Indiana, convicted on September 29, 1931, in the United States District Court for the Western District of Missouri.

Simard, Marvin E., 13060 11th Avenue, Seattle, Washington, convicted on January 25, 1973, in the Superior Court, County of King, Seattle, Washington.

Smith, Thomas D., 28487 Bridge Street, Garden City, Michigan, convicted on November 12, 1965, in the Oakland County Circuit Court, Pontiac, Michigan.

Swinson, John Lee, Route No. 1, Box 184, Vestaburg, Michigan, convicted on January 23, 1956, in the Circuit Court of Gratiot County, Michigan.

Wasserman, Donald M., 15620 Spring Mill Road, Mishawaka, Indiana, convicted on August 3, 1956, in the United States District Court, Eastern District of Michigan, Southern Division, Detroit, Michigan.

Watson, Tony M., Route 3, Berry, Alabama, convicted on November 18, 1972, in the United States District Court, Northern District of Alabama, Tuscaloosa, Alabama.

Wolfe, Steven J., 1901 Old Concord Road, Smyrna, Georgia, convicted on February 8, 1967, in the Spartanburg County Criminal Court, Spartanburg, South Carolina.

Signed at Washington, D.C., this 17th day of January 1977.

REX D. DAVIS,
Director, Bureau of Alcohol, Tobacco and Firearms.

[FR Doc.77-2626 Filed 1-26-77;8:45 am]

[Notice No. 77-2]

TECHNICAL SUBCOMMITTEE OF THE ADVISORY COMMITTEE ON EXPLOSIVES TAGGING

Closed Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that a closed meeting of the Technical Subcommittee to the Advisory Committee on Explosives Tagging will be held on February 23 and 24, 1977, in Room 5041, Federal Building, 1200 Pennsylvania Avenue, N.W., Washington, D.C., beginning at 9:00 a.m. (e.s.t.).

The Technical Subcommittee will discuss detailed proprietary scientific and technical data concerning various candidate explosive tagging systems that can be used in the detection and identification of explosives. The information which will be presented and discussed during the meeting will constitute trade secrets and commercial or financial information from a person privileged or confidential within the ambit of Title 5, United States Code, section 552(b)(4). Accordingly, the meeting of the Technical Subcommittee of the Advisory Committee on Explosive Tagging will, under authority of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463), not be open to the public.

All communications regarding this Advisory Committee meeting should be addressed to the Bureau of Acohol, Tobacco and Firearms, Washington, D.C. 20226, Attention: Mr. Robert F. Dexter, Committees Manager, Technical Services Division, Explosives Technology Branch, Room 8233.

Signed: January 21, 1977.

REX D. DAVIS,
Director.

[FR Doc.77-2627 Filed 1-26-77;8:45 am]

VETERANS ADMINISTRATION

SPECIAL MEDICAL ADVISORY GROUP

Meeting

The Veterans Administration gives notice pursuant to Pub. L. 92–463 that a meeting of the Special Medical Advisory Group, authorized by 38 U.S.C. 4112(a), will be held in the Administrator's Conference Room at the Veterans Administration Central Office, 810 Vermont Avenue, NW, Washington, DC on February 28, and March 1, 1977. The purpose of the Special Medical Advisory Group is to advise the Administrator and the Chief Medical Director relative to the care and treatment of disabled veterans, and other matters pertinent to the Veterans Administration's Department of Medicine and Surgery.

The general session will convene at 8:30 a.m. on February 28. It will be open to the public up to the seating capacity of the room. Because this capacity is limited, it will be necessary for those wishing to attend to contact Mr. R. E. Lindsey, Executive Secretary, Special Medical Advisory Group, Veterans Administration Central Office (Phone 202–389–2588) prior to February 25, 1977.

Dated: January 21, 1977.

By direction of the Administrator.

ODELL W. VAUGHN,
Deputy Administrator.

[FR Doc.77-2640 Filed 1-26-77;8:45 am]

STATION COMMITTEE ON EDUCATIONAL ALLOWANCES

Meeting

Notice is hereby given pursuant to Section V, Review Procedure and Hearing Rules, Station Committee on Educational Allowances that on Friday, February 18, 1977, at 1:30 p.m., the Des Moines Regional Office Station Committee on Educational Allowances shall at Room 1021, Federal Building, 210 Walnut Street, Des Moines, Iowa 50309, conduct a hearing to determine whether Veterans Administration benefits to all eligible persons enrolled in Mankato State University, Estherville Branch, Estherville, Iowa 51334, should be discontinued, as provided in 38 CFR 21.4134, because a requirement of law is not being met or a provision of the law has been violated. All interested persons shall be permitted to attend, appear before, or file statements with the committee at that time and place.

Dated: January 19, 1977.

ROBERT L. WINTERS,
Director, VA Regional Office.

[FR Doc.77-2651 Filed 1-26-77;8:45 am]

STATION COMMITTEE ON EDUCATIONAL ALLOWANCES

Meeting

Notice is hereby given pursuant to Section V, Review Procedure and Hearing Rules, Station Committee on Educational Allowances that on Friday, February 18, 1977, at 11:00 a.m., the Des Moines Regional Office Station Committee on Educational Allowances shall at Room 1021, Federal Building, 210 Walnut Street, Des Moines, Iowa 50309, conduct a hearing to determine whether Veterans Administration benefits to all eligible persons enrolled in Mankato State University, Algona Branch, Algona, Iowa 50511, should be discontinued, as provided in 38 CFR 21.4134, because a requirement of law is not being met or a provision of the law has been violated. All interested persons shall be permitted to attend, appear before, or file statements with the committee at that time and place.

Dated: January 19, 1977.

ROBERT L. WINTERS,
Director, VA Regional Office.

[FR Doc.77-2652 Filed 1-26-77;8:45 am]

INTERSTATE COMMERCE COMMISSION

[Notice No. 312]

ASSIGNMENT OF HEARINGS

JANUARY 24, 1977.

Cases assigned for hearing, postponement, cancellation or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the Official Docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested.

MC 141033 Sub 16, Continental Contract Carrier, Corp., now being assigned March 10, 1977 (2 days), at San Francisco, Calif., in a hearing room to be later designated.

MC 83539 Sub 439, C & H Transportation Co., Inc., now being assigned March 14, 1977, at San Francisco, Calif., in a hearing room to be later designated.

FF–C 63, Western Pacific Transport Company San Francisco, California And Western Pacific Railroad Company San Francisco, California—Investigation of Operations—now being assigned March 8, 1977 (2 days), at Carson City, Nevada, in a hearing room to be later designated.

MC–C 9100 Western Pacific Transport Company, San Francisco, California and Western Pacific Railroad Company, San Francisco, California—Investigation of Operation—now being assigned March 8, 1977 (2 days), at Carson City, Nevada, in a hearing room to be later designated.

MC 136786 Sub 91, Robco Transportation, Inc. now assigned February 1, 1977 for continued hearings at Washington, D.C. is postponed until February 2, 1977 at the Offices of the Interstate Commerce Commission in Washington, D.C.

MC–C–8917, Dignan Trucking, Inc., et al V. Southern Maryland Transportation Co., Inc., now assigned January 27, 1977, at Washington, D.C. is postponed to March 3, 1977, at the Office of the Interstate Commerce Commission, Washington, D.C.

MC 107515 (Sub-1009), Refrigerated Transport Co., Inc., now assigned January 25, 1977 at Chicago, Illinois is canceled and the application is dismissed.

MC–F–12822, Overnite Transportation Company—Purchase—O'nan Transportation Company, Inc., and MC 109533 (Sub-No. 75), Overnite Transportation Company, Inc., now assigned March 15, 1977, at Louisville, Ky. will be held at the Stouffers Louisville Inn, 120 W. Broadway.

MC 142442 Custom Skin Company, application dismissed.

MC 68100 (Sub-No. 17), D. P. Bonham Transfer, Inc., application dismissed.

MC–F 12811, Chicago-St. Louis Transport, Inc.—Purchase—Airline Cartage, Inc. and MC 134493 (Sub. No. 2), Chicago-St. Louis Transport, Inc. now assigned March 21, 1977 at Chicago, Illinois and will be held in Room 1319, Everett Mckinley Dirksen Building, 219 South Dearborn Street.

MC 114533 Sub 343, Bankers Dispatch Corporation now assigned March 14, 1977 at Chicago, Illinois and will be held in Room 1319, Everett McKinley Dirksen Building, 219 South Dearborn Street.

MC–F 12636, Lime City Trucking Company, Inc.—Purchase—Robert O., Evans dba Johnson Express Line and MC 20872 Sub 16, Lime City Trucking Company, Inc. now assigned February 28, 1977 at Chicago, Illinois and will be held in Room 209, 536 South Clark Street.

AB 57 Sub 2, Soo Line Railroad Company Abandonment Between Raco Junction and Raco in Luce and Chippewa Counties, Michigan now assigned February 23, 1977 at Sault Ste. Marie, Michigan and will be held in the County Commissioner's Room, 3rd Floor of Chippewa County Court House, Bingham Avenue at Maple & Spruce Street.

MC 126986 Sub 9, Dufour Brothers, Inc. now assigned March 22, 1977 at Pittsfield, Massachusetts and will be held in Superior Court, Berkshire County Court House, 76 East Street.

ROBERT L. OSWALD,
Secretary.

[FR Doc.77-2726 Filed 1-26-11;8:45 am]

FOURTH SECTION APPLICATION FOR RELIEF

JANUARY 24, 1977.

An application, as summarized below, has been filed requesting relief from the requirements of Section 4 of the Interstate Commerce Act to permit common carriers named or described in the application to maintain higher rates and charges at intermediate points than those sought to be estblished at more distant points.

Protests to the granting of an application must be prepared in accordance with Rule 40 of the General Rules of Practice (49 CFR 1100.40) and filed on or before February 11, 1977.

FSA No. 43309—*Vinyl Acetate from Points in Texas.* Filed by Southwestern Freight Bureau, Agent, (No. B–652), for interested rail carriers. Rates on vinyl acetate, in tank-car loads, as described in the application, from South Bay City and Texas City, Texas, to Dayton, N.J., and Elkton, Maryland.

Grounds for relief—Market competition.

Tariff—Supplement 27 to Southwestern Freight Bureau, Agent, tariff 12–J, I.C.C.

No. 5219. Rates are published to become effective on February 21, 1977.

By the Commission.

ROBERT L. OSWALD,
Secretary.

[FR Doc.77-2721 Filed 1-26-77;8:45 am]

[No. 36508]

MIDWEST FREIGHT CAR COMPANY—PETITION FOR DECLARATORY ORDER—SWITCHING CHARGES AT CLINTON, ILLINOIS

Directing Modified Procedure for This Proceeding

It appearing, That, upon referral order by the Circuit Court of Cook County, Illinois Law Division, the Midwest Freight Car Company, filed a petition on January 10, 1977, seeking a declaratory order under section 554(e) of the Administrative Procedure Act with respect to certain questions as described in the petition; and good cause appearing therefor:

It is ordered, That this matter appears susceptible of handling under the modified procedure, and therefore petitioner and Illinois Central Gulf Railroad Company, complainant in the court action, and any interested parties subsequently permitted to intervene, should comply with rules 45 to 54, inclusive, of the Commission's General Rules of Practice, and the filing and service of the pleadings is to be as follows: (a) opening statement of facts and argument by petitioner and any parties supporting petitioner on or before 20 days from the date of service of this order; (b) 30 days after that date, statement of facts and argument by replicant and any supporting parties; and (c) reply by petitioner and any supporting parties 20 days thereafter.

It is further ordered, That any pleadings filed responsive to this order shall be served upon all parties subsequently permitted to intervene.

And it is further ordered, That notice of this order shall be given to the general public by depositing a copy of this order and the attached notice in the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., for public inspection, and by forwarding appropriate notice to the Director, Office of the Federal Register, for publication in the FEDERAL REGISTER as notice to interested persons.

Dated at Washington, D.C., this 17th day of January, 1977.

By the Commission, Commissioner Hardin.

ROBERT L. OSWALD,
Secretary.

[Docket No. 36508]

MIDWEST FREIGHT CAR COMPANY—PETITION FOR DECLARATORY ORDER—SWITCHING CHARGES AT CLINTON, ILLINOIS

Instituting Proceeding

• *Purpose:* The purpose of this notice is to inform the public that upon petition by the Midwest Freight Car Company and pursuant to the Administrative Procedure Act (5 U.S.C. 554(e)) a declaratory order is sought in regard to charges for certain switching services. •

The Illinois Central Gulf Railroad filed an action at law in the Circuit Court of Cook County, Illinois Law Division, *Illinois Central Gulf Railroad Company* v. *Midwest Freight Car Company*, No. 76 L 21052, seeking to recover $421.14 for switching services rendered petitioner Midwest Freight Car Company at Clinton, Ill., during the period between April 3, 1973 and February 11, 1976. On December 30, 1976, Midwest filed a counterclaim in that action seeking recovery of $36,385.10 in charges paid to the said railroad for switching at Clinton during the period between November 17, 1973, and October 28, 1976.

A petition for a declaratory order was filed by Midwest pursuant to a referral order of January 4, 1977, from the Court to decide:

(1) Whether or not the switching charges involved in the complaint and counterclaim were applicable to the switching services referred to therein under section 6 of the Interstate Commerce Act.

(2) Whether or not such switching charges, if applicable to such services, were just and reasonable as applied thereto under section 1 of the Interstate Commerce Act.

Petitioner Midwest operates a railroad freight car manufacturing and repair facility at Clinton which is served exclusively by the Illinois Central Gulf Railroad. The charges sought to be collected by the Illinois Central Gulf Railroad are for switching of new and rebuilt cars to and from weighing scales for purposes of determining the tare weight of the cars prior to the first line-haul movement. The charges which Midwest seeks to recover are charges paid for switching railroad-owned and privately-owned freight cars to its facility for repairs. Midwest alleges in its instant petition that neither of these types of switching movements are covered by published switching charges, but, instead, are included as an element in line-haul rates with no further charges being justified.

By order served concurrently with this publication, the proceeding is being set for handling under the modified procedure. Oral hearings do not appear necessary at this time and are not contemplated.

Any interested parties subsequently permitted to intervene should comply with rules 45 to 54 (49 CFR 1100.45 to 1100.54), inclusive, of the Commission's General Rules of Practice, and the filing and service of pleadings is to be as follows: (a) opening statement of facts and arguments by petitioner and any parties supporting petitioner on or before 20 days from the date of service of this order; (b) 30 days after that date, statement of facts and argument by replicant and any supporting parties; and (c) reply by petitioner and any supporting parties 20 days thereafter.

All written submissions will be available for public inspection during regular business hours at the offices of the Interstate Commerce Commission, 12th and Constitution Avenue, N.W., Washington, D.C.

Issued in Washington, D.C., January 17, 1977.

ROBERT L. OSWALD,
Secretary.

[FR Doc.77-2723 Filed 1-26-77;8:45 am]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

[Notice No. 7]

JANUARY 18, 1977.

The following are notices of filing of applications for temporary authority under section 210a(a) of the Interstate Commerce Act provided for under the provisions of 49 CFR 1131.3. These rules provide that an original and six (6) copies of protests to an application may be filed with the field official named in the FEDERAL REGISTER publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the FEDERAL REGISTER. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in the ICC Field Office to which protests are to be transmitted.

MOTOR CARRIERS OF PROPERTY

No. MC 5227 (Sub-No. 23TA), filed January 4, 1977. Applicant: ECONOMY MOVERS, INC., P.O. Box 201, Mead, Nebr. 68041. Applicant's representative: Gailyn L. Larsen, P.O. Box 81849, Lincoln, Nebr. 68501. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Containers*, from the plantsite and storage facilities of Tote Systems, Division of Hoover Ball and Bearing Co., at or near Dyersburg, Tenn., to points in the United States (except Alaska and Hawaii), for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. P. A. Hartwig, Sales Manager, Tote Systems, Division of Hoover Ball and Bearing Co., P.O. Box 456, Beatrice, Nebr. 68310. Send protests to: Max H. Johnston, District Supervisor, 285 Federal Bldg., & Courthouse, 100 Centennial Mall North, Lincoln, Nebr. 68508.

No. MC 17605 (Sub-No. 3TA), filed January 7, 1977. Applicant: RONALD E. WATSON, P.O. Box 184, Ross, Ohio 45061. Applicant's representative: John L. Alden, 1396 W. Fifth Ave., Columbus, Ohio 43212. Authority sought to operate as a *contract carrier*, by motor vehicle, over regular and irregular routes, transporting: *Paper and paper products and papermill products*, from the facilities of Champion International Corporation, at Cincinnati, Ohio, to points in Ohio, Illinois and Indiana as follows: from the facilities of Champion International Corporation, at Cincinnati, Ohio, over U.S. Highway 127, to junction Bypass U.S. Highway 50, thence over Bypass U.S. Highway 50 to Cleves, Ohio, thence over U.S. Highway 50 to junction U.S. Highway 31, thence over U.S. Highway 31 to Sellersburg, Ind., and thence over U.S. Highway 31E to Jeffersonville, Ind.; and from the facilities of Champion International Corporation, at Cincinnati, Ohio, over U.S. Highway 127 to Greenville, Ohio, thence over Ohio Highway 571 (formerly Ohio Highway 71) to the Ohio-Indiana State line, thence over Indiana Highway 32 via Muncie, Ind., to Anderson, Ind., thence over Indiana Highway 9 via Alexandria, Ind., to Marion, Ind. (also from Muncie over Indiana Highway 3 to junction Indiana Highway 18, thence over Indiana Highway 18 to Marion; also from junction Indiana Highways 3 and 28 over Indiana Highway 28 to junction Indiana Highway 9, thence to Marion as specified above), thence over Indiana Highway 15 to Wabash, Ind., thence over U.S. Highway 24 to the Indiana-Illinois State line, and thence over irregular routes, to points in that part of Illinois bounded by a line beginning at the Illinois-Indiana State line and extending along U.S. Highway 36 to Jacksonville, Ill., thence along U.S. Highway 67 to the Illinois-Iowa State line, at Rock Island, Ill., thence along the Illinois-Iowa State line to the Illinois-Wisconsin State line.

Thence along the Illinois-Wisconsin State line to Lake Michigan, thence along the shore of Lake Michigan, to the Illinois-Indiana State line, and thence along the Illinois-Indiana State line to the point of beginning, including the points named and points on the indicated portions of the highways specified; and service is authorized to and from all intermediate points on the above-specified regular routes, from the facilities of Champion International Corporation, at Cincinnati, Ohio, over irregular routes, to Columbus, Connersville, Ft. Wayne, and Madison, Ind., and points in Ohio; Paper and paper products, over irregular routes, from the facilities of Champion International Corporation, at Cincinnati, Ohio, to points in that part of Illinois on and north of U.S. Highway 40, east of U.S. Highway 67, and south of U.S. Highway 36, those in that part of Indiana on and north of U.S. Highway 40 (except Fort Wayne, Ind.), those in that part of Michigan on and south of Michigan Highway 21, and to Milwaukee, Racine and Beloit, Wis.; St. Louis, Mo.; Erie, Pa.; and Buffalo and Rochester, N.Y.

Supporting shipper: Champion International Corporation, Knightsbridge Drive, Hamilton, Ohio 45020. Send protests to: Paul J. Lowry, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 5514–B Federal Bldg., 550 Main St., Cincinnati, Ohio 45202.

NOTE.—The destination territory is identical to that presently held by the applicant. By this application, applicant seeks to serve the new warehousing facilities utilized by its existing contract shipper, under a continuing contract with Champion International Corporation, for 180 days.

No. MC 29120 (Sub-No. 199TA), filed January 5, 1977. Applicant: ALL-AMERICAN, INC., 900 W. Delaware, P.O. Box 769, Sioux Falls, S. Dak. 57104. Applicant's representative: Ralph H. Jinks (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Electric ranges and/or*

microwave ovens and such commodities as are used in the manufacture of electric ranges and/or microwave ovens, including materials, supplies, and accessories, between the plantsite and/or storage facilities utilized by Litton Microwave Cooking Products, at Sioux Falls, S. Dak., on the one hand, and, on the other, points in Indiana, Ohio and Michigan, restricted to traffic originating at or destined to the above-named facilities at Sioux Falls, S. Dak., for 180 days. Supporting shipper: Litton Microwave Cooking Products, Litton Systems, Inc., 1405 Xenium Lane, Minneapolis, Minn. 55441. Send protests to: J. L. Hammond, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 369, Federal Bldg., Pierre, S. Dak. 57501.

No. MC 61396 (Sub-No. 320TA), filed January 4, 1977. Applicant: HERMAN BROS., INC., 2565 St. Marys Ave., P.O. Box 189, Omaha, Nebr. 68101. Applicant's representative: John E. Smith II (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Flour*, from the plantsites and storage facilities of ConAgra, Inc., at Omaha, Nebr., to joints in Iowa, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Ed Duncza, Supervisor, of Fleet Operations, ConAgra, Inc., 200 Kiewit Plaza, Omaha, Nebr. Send protests to: Carroll Russell, District Supervisor, Interstate Commerce Commission, Suite 620, 110 N. 14th St., Omaha, Nebr. 68102.

No. MC 103066 (Sub-No. 51TA), filed January 4, 1976. Applicant: STONE TRUCKING CO., 4927 S. Tacoma, P.O. Box 2014, Tulsa, Okla. 74101. Applicant's representative: C. L. Phillips, Room 248, 1411 N. Classen, Classen Terrace Bldg., Oklahoma City, Okla. 73106. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meat, meat products and meat by-products*, as defined by the Commission, from Madison and Omaha, Nebr., to points in Massachusetts, New York, New Jersey and Pennsylvania, and from Memphis, Tenn., to points in New York, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Armour Food Company, Greyhound Tower, 111 W. Clarendon Ave., Phoenix, Ariz. 85077. Send protests to: Joe Green, District Supervisor, Room 240 Old Post Office Bldg., 215 N.W. Third St, Oklahoma City, Okla. 73102.

No. MC 112184 (Sub-No. 50TA), filed December 17, 1976. Applicant: THE MANFREDI MOTOR TRANSIT COMPANY, 11250 Kinsman Road, Newbury, Ohio 44065. Applicant's representative: John P. McMahon, 100 E. Broad St. Columbus, Ohio 43215. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Corn products*, in bulk (except corn oil, in bulk), from Dayton, Ohio, to points in Alabama, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Kentucky, Maine Maryland, Massachusetts, Michigan, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia, Wisconsin and the District of Columbia, with no transportation for compensation on return except as otherwise provided, restricted to service performed under a continuing contract with Car-Mi, Inc., of Dayton, Ohio, for 180 days. Supporting shipper: Car-Mi, Inc., P.O. Box 14303. Send protests to: James Johnson, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 181 Federal Office Bldg., 1240 E. Ninth St., Cleveland, Ohio 44199.

No. MC 112963 (Sub-No. 63TA), filed January 4, 1977. Applicant: ROY BROS., INC., 764 Boston Road, Pinehurst, Mass. 01866. Applicant's representative: Leonard E. Murphy (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Wine*, in bulk, in tank vehicles, from Naples, N.Y., to Laconia, N.H., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: White Mountain Vineyard, Inc., R.F.D. No. 2, Province Road, Laconia, N.H. 03246. Send protests to: D. W. Hammons, District Supervisor, Interstate Commerce Commission, 150 Causeway St., Room 501, Boston, Mass. 02114.

No. MC 114004 (Sub-No. 158TA), filed January 7, 1977. Applicant: CHANDLER TRAILER CONVOY, INC., 8828 New Benton Highway, Little Rock, Ark. 72209. Applicant's representative: Winston Chandler, Jr. (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Trailers*, designed to be drawn by passenger automobiles (except travel trailers and recreational vehicles), *and buildings*, in sections, moving on wheeled undercarriages (except prefabricated building) from Lindsay and Dinuba, Calif.; Berthoud, Colo.; Lake City and Oneco, Fla.; Ellaville and Woodbury, Ga.; Monroe, Ind.; Dryden and Reed City, Mich.; Slayton, Minn.; Sherman, Miss.; Central City and York, Nebr.; Lillington, N.C.; Claysburg, Pa.; Buffalo, N.Y.; Wills Point, Commerce and Honey Grove, Tex.; and Mt. Jackson, Va., to points in the United States including Alaska, but excluding Hawaii, for 180 days. Supporting shipper: Champion Home Builders Co., 5573 N. St., Dryden, Mich. 48428. Send protests to: William H. Land, Jr., District Supervisor, 3108 Federal Office Bldg., 700 W. Capitol, Little Rock, Ark. 72201.

No. MC 110420 (Sub-No. 763TA), filed January 7, 1977. Applicant: QUALITY CARRIERS, INC., P.O. Box 186, Pleasant Prairie, Wis. 53158. Applicant's representative: Joseph K. Reber (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Alcohol*, in bulk, from the plantsite and storage facilities of Archer Daniels Midland Company, at Decatur, Ill., to points in the United States (except Alaska and Hawaii), restricted to traffic originating and destined to points named, for 180 days. Supporting shipper: Archer Daniels Midland Company, P.O. Box 1470, Decatur, Ill. 62525. Send protests to: Gail Daugherty, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, U.S. Federal Bldg., and Courthouse, 517 E. Wisconsin Ave., Room 619, Milwaukee, Wis. 53202.

No. MC 114045 (Sub-No. 454TA), filed January 7, 1976. Applicant; TRANS-COLD EXPRESS, INC., P.O. Box 61228, D/FW Airport, Tex. 75261. Applicant's representative: J. B. Stuart (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Photographic materials, supplies and equipment*, in vehicles equipped with mechanical refrigeration, from Teterboro, N.J., to Salt Lake City, Utah, for 180 days. Supporting shipper: Agfa-Gevaert, Inc., 275 North St., Teterboro, N.J. 07608. Send protests to: Opal M. Jones, Transportation Assistant, Interstate Commerce Commission, 1100 Commerce St., Room 13C12, Dallas, Tex. 75242.

No. MC 114569 (Sub-No. 158TA), filed January 3, 1977. Applicant: SHAFFER TRUCKING, INC., P.O. Box 418, New Kingstown, Pa. 17072. Applicant's representative: N. L. Cummins (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Dairy products*, from Lena, Wis., to New York City, N.Y. and its commercial zone for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Frigo Cheese, Box 158, Lena, Wis. 54139. Send protests to: Robert P. Amerine, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 278 Federal Bldg., P.O. 869, Harrisburg Pa. 17108.

No. MC 114969 (Sub-No. 56TA), filed January 7, 1976. Applicant: PROPANE TRANSPORT, INC., 1734 State Route 131, P.O. Box 232, Milford, Ohio 45150. Applicant's representative: James M. Roudebush (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Anhydrous ammonia*, in bulk, in tank vehicles, from Middletown Ohio, to points in Indiana, Illinois, Michigan and Kentucky for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Vistron Corporation, 313 Midland Bldg., Cleveland, Ohio 44115. Send protests to: Paul J. Lowry, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 5514-B Federal Bldg.. 550 Main St., Cincinnati, Ohio 45202.

No. MC 115904 (Sub-No. 68TA) (Correction), filed December 16, 1976, published in the FEDERAL REGISTER issue of January 5, 1977, and republished as corrected this issue. Applicant: GROVER TRUCKING CO., 1710 W. Broadway, Idaho Falls, Idaho 83401. Applicant's representative: Irene Warr, 430 Judge Bldg., Salt Lake City, Utah 84111. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Gypsum wallboard;* (2) *Gypsum wallboard paper;* (1) from the facilities of American Gypsum, at or near Albuquerque, N. Mex., to points in Arizona and Colorado; and (2) from Denver, Colo., and points in the commercial zone thereof to the plantsite of American Gypsum, at or near Albuquerque, N. Mex., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: American Gypsum Company, P.O. Box 6345, Albuquerque, N. Mex. 87107. Send protests to: Interstate Commerce Commission, Barney L. Hardin, District Supervisor, 550 W. Fort St., P.O. Box 07, Boise, Idaho 83724. The purpose of this republication is to correct the commodity description in this proceeding.

No. MC 116254 (Sub-No. 174TA), filed January 4, 1977. Applicant: CHEM-HAULERS, INC., P.O. Box 339, Florence, Ala. 35630. Applicant's representative: Hampton M. Mills (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Aluminum ingots*, in dump vehicles, from the plantsite of Texas Reduction Corp., at or near Alvin, Tex., to points in Colbert, Franklin and Lauderdale Counties, Ala., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Texas Reduction Corporation, P.O. Box 791, Alvin, Tex. 77511. Send protests to: Clifford W. White, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Room 1616, 2121 Bldg., Birmingham, Ala. 35203.

No. MC 116254 (Sub-No. 175TA), filed January 4, 1977. Applicant: CHEM-HAULERS, INC., P.O. Box 339, Florence, Ala. 35630. Applicant's representative: Hampton M. Mills (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Alloys*, in dump vehicles, from Selma, Dallas County, Ala., to points in Texas, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Texas Reduction Corporation, P.O. Box 791, Alvin, Tex. 77511. Send protests to: Clifford W. White, District Supervisor, Bureau of Operations, Interstate Commerce Commission. Room 1616, 2121 Bldg., Birmingham, Ala. 35203.

No. MC 123392 (Sub-No. 71TA), filed January 5, 1977. Applicant: JACK B. KELLEY, INC., Rt. 1, Box 400, U.S. 66 West at Kelley Drive, Amarillo, Tex. 79106. Applicant's representative: Weldon M. Teague (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Helium*, in bulk, from the facilities at Union Carbide Corporation, at or near Bushton, Kans., to points in the United States (except Hawaii), Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Union Carbide Corporation, 270 Park Ave., New York, N.Y. 10017. Send protests to: Haskell E. Ballard, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Box H-4395 Herring Plaza, Amarillo, Tex. 79101.

No. MC 128527 (Sub-No. 73TA), filed January 6, 1977. Applicant: MAY TRUCKING COMPANY, Box 398, Payette, Idaho 83661. Applicant's representative: Edward G. Rawle, 4635 S. W. Lake View Blvd., Lake Oswego, Oreg. 97034. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lumber, ABS pipe, paneling, particleboard, moldings, metal articles, windows and furniture*, from the plantsite of Champion Home Builders, Weiser Products Division, at or near Weiser, Idaho, to Champion Homes, at or near Brigham City, Utah, for 180 days. Supporting shipper: Champion Home Builders, Weiser Products Division, Weiser Industrial Park, Weiser, Idaho 83672. Send protests to: Barney L. Hardin, District Supervisor, 550 W. Fort St., P.O. Box 07, Boise, Idaho 83724.

No. MC 129032 (Sub-No. 31TA), filed January 4, 1977. Applicant: TOM INMAN TRUCKING, INC., 6015 S. 40th West Ave., P.O. Box 9667, Tulsa, Okla. 74107. Applicant's representative: John Paul Fischer, 256 Montgomery St., San Francisco, Calif. 94104. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Canned seafood*, from the plantsite and storage facilities of Kelley-Clarke Co., of Seattle and Bekkingham, Wash., to Ft. Worth and Amarillo, Tex.; St. Louis and Kansas City, Mo.; and Davenport, Iowa, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Kelley-Clarke Company, 2460 Sixth Ave., South, C-34010, Seattle, Wash. 98124. Send protests to: Joe Green, District Supervisor, Room 240 Old Post Office Bldg., 215 N.W. Third St., Oklahoma City, Okla. 73102.

No. MC 136825 (Sub-No. 3TA), filed January 5, 1976. Applicant: ENDICOTT TRUCKING CO., 1193 Refugee Road, P.O. Box 705, Columbus, Ohio 43207. Applicant's representative: Richard H. Brandon, P.O. Box 97, Dublin, Ohio 43017. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Such commodities* as are dealt in by electronic equipment and supply stores, between the facilities of Radio Shack, Division of Tandy Corporation, at Groveport, Ohio, on the one hand, and, on the other, points in Wisconsin, under a continuing contract with Radio Shack, Division of Tandy Corporation, for 180 days: Supporting shipper: Radio Shack, Division of Tandy Corporation, 4343 Williams Road, Groveport, Ohio 43215. Send protests to: Frank L. Calvary, District Supervisor, Interstate Commerce Commission, 220 Federal Bldg., and U.S. Courthouse, 85 Marconi Blvd., Columbus, Ohio 43215.

No. MC 138080 (Sub-No. 8TA), filed January 7, 1977. Applicant: EDWARD R. WOLFE, doing business as WOLFE TRUCKING, Bend, Oreg. 97701. Applicant's representative: Edward R. Wolfe (same address as applicant). Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Crushed agri gypsum rock*, in bulk, in vehicles equipped with hydraulic dump beds, from Empire, Nev., to points in Crook, Deschutes and Jefferson Counties, Oreg., under a continuing contract with Midstate Fertilizer Company, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Midstate Fertilizer Company, Box 488, Redmond, Oreg. 97756. Send protests to: R. V. Dubay, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 114 Pioneer Courthouse, 555 SW. Yamhill St., Portland, Oreg. 97204.

No. MC 138522 (Sub-No. 3TA) (Correction), filed December 13, 1976, published in the FEDERAL REGISTER issue of December 27, 1976, and republished as corrected this issue. Applicant: R. G. STANKO EXPRESS, INC., West Highway 20, P.O. Box 509, Gordon, Nebr. 69343. Applicant's representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, Nebr. 68501. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Meat, meat products, and meat by-products, and articles distributed by meat packinghouses*, as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766, from the facilities of Nebraska Beef Packers Co., at or near Gordon, Nebr., and the facilities of Stanko Packing Company, at or near Gering, Nebr., to points in the United States (except Alaska and Hawaii); and (2) *Such commodities* as are used by meat packers in the conduct of their business, from points in the United States (except Alaska and Hawaii), to the facilities of Nebraska Beef Packers Co., at or near Gordon, Nebr., and the facilities of Stanko Packing Company, at or near Gering, Nebr. Restriction: The operations authorized herein are limited to a transportation service to be performed under a continuing contract with Nebraska Beef Packers Co., of Gordon, Nebr., and Stanko Packing Company, doing business as Nebraska Beef Packers, of Gering, Nebr., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shippers: R. G. Stanko, Secretary-Treasurer, Nebraska Beef Packers Company, Gering, Nebr. 69343. R. C. Stanko, Secretary-Treasurer, Stanko Packing Co., dba, Nebraska Beef Packers, Gering, Nebr. 69314. Send protests to: Max H. Johnston, District Supervisor, 285 Federal Bldg., & Courthouse, 100 Centennial Mall North, Lincoln, Nebr. 68508. The purpose is to add part (2) of the application, and to add the destination points, which was omitted in the previous publication.

No. MC 139091 (Sub-No. 16TA), filed January 6, 1976. Applicant: LOGAN MOTOR LINES, INC., 2829 Mays St., P.O. Box 4625 CDU, Amarillo, Tex. 79105. Applicant's representative: Clayton J. Logan, P.O. Box 30038, Amarillo, Tex. 79120. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products and meat by-products and articles distributed by meat packinghouses* as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766, from the plantsite of Swift Fresh Meats Co., at or near Grand Island, Nebr., and Glenwood, Iowa, to points in Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia and the District of Columbia, under a continuing contract with Swift Fresh Meats Co., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Swift Fresh Meats Co., 115 W. Jackson Blvd., Chicago, Ill. 60604. Send protests to: Haskell E. Ballard, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Box H-4395 Herring Plaza, Amarillo, Tex. 79101.

No. MC 139193 (Sub-No. 52TA) filed January 5, 1976. Applicant: ROBERTS & OAKE, INC., 527 E. 52nd St., North, P.O. Box 1356, Sioux Falls, S. Dak. 57101. Applicant's representative: Jacob P. Billig, 2033 K St., N.W., Washington, D.C. 20006. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Electric ranges and/or microwave ovens and such commodities* as are used in the manufacture of electric ranges and/or microwave ovens, including materials, supplies, and accessories related thereto, between the plantsite and/or storage facilities utilized by Litton Microwave Cooking Products, at Sioux Falls, S. Dak., on the one hand, and, on the other, points in the United States (except Alaska and Hawaii), restricted to traffic originating at or destined to the above-named facilities at Sioux Falls, S. Dak., under a continuing contract with Litton Microwave Cooking Products, Litton Systems, Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting Shipper: Litton Microwave Cooking Products, Litton Systems, Inc., 1405 Xenium Lane, Minneapolis, Minn. 55441. Send protests to: J. L. Hammond, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 369, Federal Bldg., Pierre, S. Dak. 57501.

No. MC 61231 (Sub-No. 98TA), filed January 4, 1977. Applicant: ACE LINES, INC., 4143 East 43rd St., Des Moines, Iowa 50317. Applicant's representative: William L. Fairbank, 1980 Financial Center, Des Moines, Iowa 50309. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Perlite products, vermiculite products, and insulation*, from the plantsite of W. R. Grace & Co., at Milwaukee, Wis., to points in Minnesota, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Construction Products Division, W. R. Grace & Co., 62 Whittemore Ave., Cambridge, Mass. 02140. Send protests to: Herbert W. Allen, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 518 Federal Bldg., Des Moines, Iowa 50309.

No. MC 139482 (Sub-No. 10TA), filed January 4, 1977. Applicant: NEW ULM FREIGHT LINES, INC., County Road No. 29 West, P.O. Box 347, New Ulm, Minn. 56073. Applicant's representative: Samuel Rubenstein, 301 N. Fifth St., Minneapolis, Minn. 55403. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Electric ranges and/or microwave ovens* and such commodities as are used in the manufacture of electric ranges and/or microwave ovens, including materials, supplies and accessories related thereto, between the plantsite and/or storage facilities utilized by Litton Microwave Cooking Products, at Sioux Falls, S. Dak., on the one hand, and, on the other, points in Minnesota, Wisconsin, Illinois, Indiana, Ohio, Pennsylvania, Virginia, New York, Connecticut and Massachusetts, restricted to traffic originating at or destined to the above-named facilities at Sioux Falls, S. Dak., for 180 days. Supporting shipper: Litton Microwave Cooking Products, Litton Systems, Inc., 1405 Xenium Lane, Minneapolis, Minn. 55441. Send protests to: Marion L. Cheney, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, 414 Federal Bldg., & U.S. Courthouse, 110 S. 4th St., Minneapolis, Minn. 55401.

No. MC 141811 (Sub-No. 3TA), filed January 4, 1977. Applicant: SCHEDULED TRANSPORT, INC., Suite 2465, One Indiana Square, Indianapolis, Ind. 46204. Applicant's representative: Donald W. Smith (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Flour*, in bulk, in tank vehicles, from East Gary, Ind., to Fremont, Ohio. Restriction: Restricted to traffic having an immediately prior movement by rail, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Hubbard Milling Company, 424 N. Front St., Mankato, Minn. 56001. Send protests to: Fran Sterling, Transportation Assistant, Interstate Commerce Commission, Federal Bldg., and U.S. Courthouse, 46 East Ohio St., Room 429, Indianapolis, Ind. 46204.

No. MC 141914 (Sub-No. 4TA), filed January 7, 1977. Applicant: FRANK & SON, INC., Rt. 1, Box 108A, Big Cabin, Okla. 74332. Applicant's representative: Gary Brasel, Mezzanine Floor, Beacon Bldg., Tulsa, Okla. 74103. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Curtains and draperies*, from Skowhegan, Maine, to points in Arizona, California, Colorado, Oregon, Texas, Utah and Washington; (2) *Molded pulp articles, plastic plates, knives and spoons*, from Waterville, Maine, to points in Alabama, Arkansas, Arizona, New Mexico, Louisiana, Oklahoma, Tennessee and Texas; and (3) *Wood turnings, dowells and golf tees*, from Guildford Maine, to points in California and Utah, for 180 days. Supporting shippers: (1) Pride Golf Tee Co., Guildford, Maine 04443. (2) Sunrise Drapery Co., Inc., 10 Walnut St., Skowhegan, Maine 04976, and (3) Keyes Fibre Co., Waterville, Maine 04901. Send protests to: Joe Green, District Supervisor, Room 240 Old Post Office Bldg., 215 N.W. Third St., Oklahoma City, Okla. 73102.

PASSENGER APPLICATION

No. MC 61016 (Sub-No. 45TA), filed January 4, 1976. Applicant: PETER PAN BUS LINES, INC., 1776 Main St., Springfield, Mass. 01103. Applicant's representative: Frank Daniels, 15 Court Square, Boston, Mass. 02108. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Passengers*, in special operations, between Springfield, Mass., and The Bridgeport Jai-Alai Fronton, located at Bridgeport, Conn., restricted to the transportation of passengers originating at or destined to The Bridgeport, Conn., Jai-Alai Fronton, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shippers: There are approximately 8 statements of support attached to the application, which may be examined at the Interstate Commerce Commission in Washington, D.C., or copies thereof which may be examined at the field office named below. Send protests to: J. D. Perry, Jr., District Supervisor, Interstate Commerce Commission, 436 Dwight St., Room 338, Springfield, Mass. 01103.

By the Commission.

ROBERT L. OSWALD,
Secretary.

[FR Doc.77 2719 Filed 1-26-77;8:45 am]

[Notice No. 8]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

JANUARY 19, 1977.

The following are notices of filing of applications for temporary authority under Section 210a(a) of the Interstate Commerce Act provided for under the provisions of 49 CFR 1131.3. These rules provide that an original and six (6) copies of protests to an application may be filed with the field official named in the FEDERAL REGISTER publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the FEDERAL REGISTER. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in the ICC Field Office to which protests are to be transmitted.

MOTOR CARRIERS OF PROPERTY

No. MC 28060 (Sub-No. 32TA), filed January 7, 1977. Applicant: WILLERS, INC., 1400 N. Cliff Ave., Sioux Falls, S. Dak. 57104. Applicant's representative: Bruce E. Mitchell, Suite 375, 3379 Peachtree Road, NE., Atlanta, Ga. 30326. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meat, meat products and meat by-products* as described in Section A of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except commodities in bulk), in vehicles equipped with mechanical refrigeration, from the plantsite and facilities of Landy of Wisconsin, Eau Claire, Wis., to points in Colorado, Illinois, Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota and South Dakota, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting Shipper: Landy of Wisconsin, Inc., P.O. Box 1265, Eau Claire, Wis. 54701. SEND PROTESTS TO: J. L. Hammond, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 369, Federal Bldg., Pierre, S. Dak. 57501.

No. MC 32948 (Sub-No. 21TA), filed January 5, 1977. Applicant: P.A.K. TRANSPORT, INC., Meadow Road, P.O. Box 187, Newport, N.H. 03773. Applicant's representative: R. Peter Decato, 20 W. Park St., Lebanon, N.H. 03776. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Wood chips*, between points in Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York and New Jersey, for 180 days. Supporting shipper: Connecticut Valley Chepping Corp., R.F.D. 32, Plymouth, N.H. 03264. Send protests to: Ross J. Seymour, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 208 Federal Bldg., 55 Plesant St., Concord, N.H. 03301.

No. MC 59856 (Sub-No. 71TA), filed January 6, 1977. Applicant: SALT CREEK FREIGHTWAYS, P.O. Box 39, Casper, Wyo. 82601. Applicant's representative: John R. Davidson, Suite 805 Midland Bank Bldg., Billings, Mont. 59101. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, household goods as defined by the Commission, commodities in bulk, commodities requiring the use of special equipment and Classes A and B explosives), serving the mine and processing plantsite of Mineral Exploration, Wamsutter, Wyo., as an off-route point in connection with carrier's otherwise authorized regular-route operation. Applicant intends to tack its existing authority with MC 59856 Sub-No. 24, applicant also intends to interline at Denver, Colo.; Rapid City, S. Dak.; Billings, Great Falls and Missoula, Mont.; Idaho Falls, Idaho; Casper, Wyo.; and Rawlins, Wyo., for 180 days. Supporting shipper: Mineral Exploration Company, P.O. Box 2674, Casper, Wyo. 82602. Send protests to: P. A. Naughton, District Supervisor, Room 105 Federal Bldg., and U.S. Courthouse, 111 S. Wolcott St., Casper, Wyo. 82601.

No. MC 78725 (Sub-No. 4 TA), filed January 6, 1977. Applicant: ROLLAND GUENTHER, doing business as, R. GUENTHER TRUCKING, 3905 Kraus Lane Ross, Ross, Ohio 45061. Applicant's representative: John L. Alden, 1396 W. Fifth Ave., Columbus, Ohio 43212. Authority sought to operate as a *contract carrier*, by motor vehicle, over regular and irregular routes, transporting: *Paper and paper products*, over regular routes, from the facilities of Champion International Corporation, at Cincinnati, Ohio, to Chicago, Ill., serving the intermediate points of Hammond, Muncie and Richmond, Ind., and the off-route points of De Kalb, La Salle, and Peoria, Ill., and those in Illinois within 30 miles of Chicago: from the facilities of Champion International Corporation, at Cincinnati, Ohio, over U.S. Highway 127 to Eaton, Ohio, thence over U.S. Highway 35 to junction Indiana Highway 28, thence over Indiana Highway 28 to junction U.S. Highway 52, thence over U.S. Highway 52 to junction U.S. Highway 41, thence over U.S. Highway 41 to junction U.S. Highway 6, thence over U.S. Highway 6, to junction Alternate U.S. Highway 30, thence over Alternate U.S. Highway 30 to Chicago, Ill.; *Paper and paper products*, over irregular routes; from the facilities of Champion International Corporation, at Cincinnati, Ohio, to points in Ohio, those in that part of Illinois on and north of U.S. Highway 40 (except Chicago and points in Illinois within 30 miles of Chicago, and De Kalb, La Salle, and Peoria, Ill.), those in that part of Indiana on and north of U.S. Highway 40 (except Hammond, Muncie and Richmond), those in that part of Michigan on and south of Michigan Highway 21, Milwaukee, Racine and Beloit, Wis.; St. Louis, Mo.; Erie, Pa., and Buffalo and Rochester, N.Y.

NOTE.—The destination territory is identical to that presently held by the applicant. By this application applicant seeks to serve the new warehousing facilities utilized by its existing contract shipper, under a continuing contract with Champion International Corporation, or 180 days. Supporting Shipper: Champion International Corporation, Knightsbridge Drive, Hamilton, Ohio 45020. Send Protests To: Paul J. Lowry, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 5514-B Federal Bldg., 550 Main St., Cincinnati, Ohio 45202.

No. MC 108207 (Sub-No. 452 TA), filed January 4, 1977. Applicant: FROZEN FOOD EXPRESS, INC., 318 Cadiz St., P.O. Box 5888, Dallas, Tex. 75222. Applicant's representative: Mike Smith (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Molding compounds; granulated resin; and liquid plastics*, in refrigerated equipment (except in bulk), from Los Angeles, Calif., to points in Arizona, New Mexico, Texas, Louisiana, Mississippi, Arkansas, Oklahoma, Kansas, Missouri, Illinois, Indiana, Ohio, Michigan, Wisconsin, Minnesota, Iowa, Nebraska, South Dakota, and Memphis, Tenn., for 180 days. Supporting shipper: Furane Plastics, Inc., 5121 San Fernando Road, West, Los Angeles, Calif. 90039. Send protests to: Opal M. Jones, Transportation Assistant, Interstate Commerce Commission, 1100 Commerce St., Room 13C12, Dallas, Tex. 75242.

No. MC 108937 (Sub-No. 43 TA), filed January 10, 1977. Applicant: MURPHY MOTOR FREIGHT LINES, INC., 2323 Terminal Road, St. Paul, Minn. 55113. Applicant's representative: Raymond L. Stevens, (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Electric ranges and/or microwave ovens and such commodities* as are used in the manufacture of electric ranges and/or microwave ovens, including materials, supplies and accessories related thereto, between the plantsite and/or storage facilities utilized by Litton Microwave Cooking Products, at Sioux Falls, S. Dak., on the one hand, and, on the other, points in Illinois, Indiana, Kentucky, Michigan, Minnesota, Ohio, Wisconsin, restricted to traffic originating at or destined to the above-named facilities at Sioux Falls, S. Dak. for 180 days. Supporting Shipper: Litton Microwave Cooking Products, Litton Systems, Inc., 1405 Xenium Lane, Minneapolis, Minn. 55441. Send protests to: Marion L. Cheney, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, 414 Federal Bldg., & U.S. Courthouse, 110 S. 4th St., Minneapolis, Minn. 55401.

No. MC 111274 (Sub-No. 17 TA), filed January 3, 1977. Applicant: ELMER C. SCHMIDGALL AND BENJAMIN G. SCHMIDGALL, doing business as, SCHMIDGALL TRANSFER, Box 249, Tremont, Ill. 61568. Applicant's representative: Frederick C. Schmidgall, Box

356, Morton, Ill. 61550. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Mine roof bolts*, from Marion, Ill., to points in Colorado, New Mexico, Wyoming, Utah, Idaho and Arizona, under a continuing contract with Pattin-Marion, Division of the Eastern Company, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting Shipper: Pattin-Marion, Division of the Eastern Company, P.O. Box 339, Marion, Ill. 62959. Send Protests To: Patricia Roscoe, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, Everett McKinley Dirksen Bldg., 219 S. Dearborn St., Room 1386, Chicago, Ill. 60604.

No. MC 111812 (Sub-No. 526 TA), filed January 5, 1977. Applicant: MIDWEST COAST TRANSPORT, INC., 900 W. Delaware, P.O. Box 1233, Sioux Falls, S. Dak. 57104. Applicant's representative: Ralph H. Jinks, (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Electric ranges and/or microwave ovens and such commodities* as are used in the manufacture of electric ranges and/or microwave ovens, including materials, supplies and accessories related thereto, from the plantsite and/or storage facilities utilized by Litton Microwave Cooking Products, at Sioux Falls, S. Dak., to points in New Mexico, Arizona, California, Utah, Oregon, Washington and Montana, restricted to traffic originating at the above-named facilities in Sioux Falls, S. Dak., for 180 days. Supporting shipper: Litton Microwave Cooking Products, Litton Systems, Inc., 1405 Xenium Lane, Minneapolis, Minn. 55441. Send Protests To: J. L. Hammond, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 369 Federal Bldg., Pierre, S. Dak. 57501.

No. MC 117940 (Sub-No. 206 TA), filed January 7, 1977. Applicant: NATIONWIDE CARRIERS, INC., P.O. Box 104, Maple Plain, Minn. 55359. Applicant's representative: Allan L. Timmerman (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Electric ranges and/or microwave ovens and such commodities* as are used in the manufacture of electric ranges and/or microwave ovens, including materials, supplies and accessories related thereto, between the plantsite and/or storage facilities utilized by Litton Microwave Cooking Products, at Sioux Falls, S. Dak., on the one hand, and, on the other, points in the United States (except Alaska and Hawaii), restricted to traffic originating at or destined to the above-named facilities at Sioux Falls, S. Dak., for 180 days. Supporting shipper: Litton Microwave Cooking Products, Litton Systems, Inc., 1405 Xenium Lane, Minneapolis, Minn. 55441. Send protests to: Marion L. Cheney, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, 414 Federal Bldg., & U.S. Courthouse, 110 S. 4th St., Minneapolis, Minn. 55401.

No. MC 124078 (Sub-No. 711 TA), filed January 6, 1977. Applicant: SCHWERMAN TRUCKING COMPANY, 611 S. 28th St., Milwaukee, Wis. 53246. Applicant's representative: James R. Ziperski (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Anhydrous ammonia*, in bulk, in tank vehicles, from Middletown, Ohio, to points in Indiana, Illinois, Michigan and Kentucky, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Vistron Corporation, 313 Midland Bldg., Cleveland, Ohio 44115. Send protests to: Gail Daugherty, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, U.S. Federal Bldg. & Courthouse, 517 E. Wisconsin Ave., Room 619, Milwaukee, Wis. 53202.

No. MC 124221 (Sub-No. 57 TA), filed January 3, 1977. Applicant: HOWARD BAER, P.O. Box, Route 98W, Morton, Ill. 61550. Applicant's representative: Robert Loser, 1009 Chamber of Commerce Bldg., Indianapolis, Ind. 46204. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Merchandise*, as is dealt in by wholesale, retail, and chain grocery and food business houses, and in connection therewith, *equipment, materials* and supplies used in the conduct of such business (except commodities in bulk), in vehicles equipped with mechanical refrigeration, from Louisville, Ky., to Houston and Dallas, Tex. Restriction: The operations authorized herein are subject to the following conditions: The authority granted herein is restricted to the transportation of traffic originating at or destined to a facility of the Kroger Company. The operations authorized herein are limited to a transportation service to be performed under a continuing contract with the Kroger Company, of Cincinnati, Ohio, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting Shipper: The Kroger Co., 1014 Vine St., Cincinnati, Ohio 45201. Send Protests To: Patricia Roscoe, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, 219 S. Dearborn St., Room 1386, Chicago, Ill. 60604.

No. MC 127253 (Sub-No. 54 TA), (Correction) filed December 17, 1976, published in the FEDERAL REGISTER issue of January 14, 1977, and republished as corrected this issue. Applicant: R. A. CORBETT TRANSPORT, INC., P.O. Box 728, Waskom, Tex. 75692. Applicant's representative: Kenneth Sitton, FM 9 South, Waskom, Tex. 75692. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Contaminated water*, from Tinker Air Force Base, Okla., to Grand Prairie, Tex., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: U.S. Department of Defense, Office of The Judge Advocate General, Department of the Army, Washington, D.C. 20310. Send Protests To: Opal M. Jones, Transportation Assistant, Interstate Commerce Commission, 1100 Commerce St., Room 13C12, Dallas, Tex. 75242. The purpose of this republication is to correct docket number MC 127253 (Sub-No. 54), in lieu of MC 12725 (Sub-No. 543), which was previously published in error.

No. MC 139495 (Sub-No. 185 TA), filed January 6, 1977. Applicant: NATIONAL CARRIERS, INC., 1501 E. 8th St., P.O. Box 1358, Liberal, Kans. 67901. Applicant's representative: James E. McCarty, (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Light bulbs*, from the plantsite and storage facilities utilized by North American Philips Lighting Corporation at or near Lynn, Mass., to Toledo, Ohio and Detroit, Mich. Applicant intends to tack its existing authority with MC 139495 Sub-No. 4, for 180 days. Supporting shipper: North American Philips Lighting Corp., Banks St., Hightstown, N.J. 08520. Send Protests To: M. E. Taylor, District Supervisor, Interstate Commerce Commission, Suite 101 Litwin Bldg., 110 North Market, Wichita, Kans. 67202.

No. MC 139999 (Sub-No. 18TA), filed January 5, 1977. Applicant: REDFEATHER FAST FREIGHT, INC., 2606 N. 11th St., Omaha, Nebr. 68110. Applicant's representative: Arlyn L. Westergren, Suite 520 Univac Bldg., 7100 W. Center Road, Omaha, Nebr. 68106. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats and packinghouses products*, from the plantsite of Dubuque Packing, Co., at or near Mankato, Kans., to points in Rhode Island, Connecticut, Illinois, Indiana, Iowa, Michigan, Missouri, New Jersey, New York, Nebraska, Ohio, Pennsylvania and Wisconsin, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Ray Bliesmer, Plant Manager, Dubuque Packing Company, P.O. Box 283, Mankato, Kans. 66956. Send protests to: Carroll Russell, District Supervisor, Interstate Commerce Commission, Suite 620, 110 N. 14th St., Omaha, Nebr. 68102.

No. MC 141781 (Sub-No. 1TA), filed January 10, 1977. Applicant: LARSON TRANSFER & STORAGE CO., INC., P.O. Box 877, Minneapolis, Minn. 55440. Applicant's representative: F. H. Kroeger, 1745 University Ave., St. Paul, Minn. 55104. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Electric ranges and/or microwave ovens and such commodities* as are used in the manufacture of electric ranges and/or microwave ovens, including materials, supplies and accessories related thereto, between the plantsite and/or storage facilities utilized by Litton Microwave Cooking Products, at Sioux Falls, S. Dak., on the one hand, and, on the other, points in Minnesota and Wisconsin, restricted to traffic originating at or destined to the above-named facilities at Sioux Falls, S. Dak., for 180 days. Supporting shipper: Litton Microwave Cooking Products, Litton Systems, Inc., 1405 Xenium Lane, Minneapolis, Minn. 55441. Send protests to: Marion L. Cheney, Transportation Assistant, Interstate Commerce Commission, 414 Federal Bldg. and U.S. Courthouse, 110 S. 4th St., Minneapolis, Minn. 55401.

No. MC 141804 (Sub-No. 40TA), filed January 5, 1977. Applicant: WESTERN EXPRESS, DIVISION OF INTERSTATE RENTAL, INC., P.O. Box 422, Goodlettsville, Tenn. 37072. Applicant's representative: Frederick J. Coffman, P.O. Box 81849, Lincoln, Nebr. 68501. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Individually portioned control packaged foodstuffs*, not frozen (except meat, meat products and meat by-products), from the plantsite and storage facilities of Serv-A-Portion, Inc., at or near Chatsworth, Calif., to points in Alabama, Arkansas, Illinois, Indiana, Kentucky, Louisiana, Maryland, Michigan, West Virginia, Delaware, Washington, D.C., Virginia, North Carolina, South Carolina, Florida, Ohio, Tennessee, Texas, Oklahoma, Missouri and Mississippi, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Serv-A-Portion, Inc., 9140 Lurline Ave., Chatsworth, Calif. 91311. Send protests to: Joe J. Tate, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Suite A-422 U.S. Courthouse, 801 Broadway, Nashville, Tenn. 37203.

No. MC 141849 (Sub-No. 1TA), filed January 5, 1977. Applicant: RAY LOCKRIDGE TRUCKING, INC., 95 Lawrenceville Industrial Park Circle, N.E., Lawrenceville, Ga. 30245. Applicant's representative: Virgil H. Smith, Suite 12, 1578 Phoenix Blvd., Atlanta, Ga. 30349. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Carpet backing and textile products*, from the facilities of Amoco Fabrics Co., Patchogue Plymouth Division, at Hazlehurst, Ga., to points in Los Angeles, San Bernardino and Orange Counties, and Bakersfield and Fresno, Calif., under a continuing contract with Amoco Fabric Co., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Amoco Fabric Co., P.O. Box 836, Hazlehurst, Ga. 31539. Send protests to: Sara K. Davis, Transportation Assistant, Bureau of Operations, Interstate Commerce Commission, 1252 W. Peachtree St., N.W., Room 546, Atlanta, Ga. 30309.

No. MC 142224 (Sub-No. 1TA), filed January 10, 1977. Applicant: CHARLES GAJDA AND CHESTER GAJDA, doing business as, GAJDA TRUCKING COMPANY, R.D. No. 3, Volant, Pa. 16156. Applicant's representative: John A. Pillar, 205 Ross St., Pittsburgh, Pa. 15219. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Millscale*, in bulk, in dump vehicles, from Sharon, Wheatland, Koppel and Beaver Falls, Pa., to Niagara Falls, N.Y.; Steubenville, Ohio; and Alloy, W. Va., under a continuing contract with P. Pettler Company, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: P. Pettler Company, 7th Avenue at 27th St., Beaver Falls, Pa. 15010. Send protests to: John J. England, District Supervisor, Interstate Commerce Commission, 2111 Federal Bldg., 1000 Liberty Ave., Pittsburgh, Pa. 15222.

No. MC 142361 (Sub-No. 1TA), filed January 6, 1977. Applicant: RISBERG TRUCK SERVICE, INC., 2339 S.E. Grand Ave., Portland, Oreg. 97214. Applicant's representative: Jerry R. Woods, Suite 1440, 200 Market Bldg., Portland, Oreg. 97201. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except commodities in bulk, in tank vehicles, commodities requiring special equipment, household goods, and Classes A and B explosives), between the facilities of Pay Less Drug Stores Northwest, Inc., located in California, Colorado, Idaho, Oregon, and Washington, on the one hand, and, on the other, points in California, Colorado, Idaho, Nevada, Oregon, Utah and Washington, under a continuing contract with Pay Less Drug Stores Northwest, Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Pay Less Drug Stores Northwest, Inc., 10605 S.W. Allen Blvd., Beaverton, Oreg. 97005. Send protests to: A. E. Odoms, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 114 Pioneer Courthouse, 555 S.W. Yamhill St., Portland, Oreg. 97204.

No. MC 142677TA (amendment), filed November 29, 1976, published in the FR issue of December 13, 1976, and republished as corrected this issue. Applicant: SHELBY BODY SHOP, INC., U.S. Highway 74, Route 9, Box 22, Shelby, N.C. 28150. Applicant's representative: George W. Clapp, 109 Hartsville St., P.O. Box 836, Taylors, S.C. 29687. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Wrecked and disabled trucks, wrecked and disabled tractors and wrecked and disabled trailers* (other than those designed to be drawn by passenger vehicles), from points in Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, the District of Columbia, Florida, Georgia, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New Mexico, New York, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Virginia and West Virginia, to points in Cleveland County, N.C.; and (2) *Wrecked and disabled trucks, wrecked and disabled tractors and wrecked and disabled trailers* (other than those designed to be drawn by passenger vehicles), from points in Alabama, Connecticut, Delaware, the District of Columbia, Florida, Georgia, Illinois, Indiana, Kentucky, Maryland, Massachusetts, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Virginia, West Virginia and Wisconsin, to points in Gaston County, N.C.; Restriction: Restricted to a transportation service performed by use of wrecker equipment and/or lowboy semitrailers, only; (3) *Replacement vehicles*, for the vehicles named in (1) above, from points in Cleveland County, N.C., to the origin points as described in (1) above; and (4) *Replacement vehicles*, for the vehicles named in (2) above, from points in Gaston County, N.C., to the origin points as described in (2) above, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shippers: Beaunit Corporation (Trucking Div.), 607 Charles St.; PPG Ind. (Trucking Div.), P.O. Box 288, Kings Mountain, N.C. 28086. and Carolina Freight Carriers Corp., P.O. Box 697, Cherryville, N.C. 28021. Send protests to: Terrell Price, District Supervisor, 800 Briar Creek Road, Room CC516, Mart Office Bldg., Charlotte, N.C. 28205. The purpose of this republication is to amend the commodity description in parts (1) and (2) of this proceeding.

No. MC 142742 (Sub-No. 1TA), filed January 3, 1977. Applicant: RICHARD OLOFFSON, doing business as RICH'S AG SERVICE, P.O. Box 147, Manlius, Ill. 61338. Applicant's representative: Samuel Harrod, 107 E. Eureka Ave., Eureka, Ill. 61530. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Dry yeast*, in bags, from the facilities of Miller Brewing Co., Juneau, Wis., to the facilities of Cargill, Inc., Princeton, Ill.; (2) *Animal feed*, dry, in bags, from the facilities of Thiel Milling Co., Slinger, Wis., to the facilities of Cargill, Inc., Princeton, Ill.; (3) *Animal feed*, dry, in bulk or in bags, from the facilities of Cargill, Inc., Janesville, Wis., to the facilities of Cargill, Inc., Princeton, Ill.; (4) *Vitamin and drug premixes*, dry, in bags, from the facilities of Cadco, Inc., Des Moines, Iowa, to the facilities of Cargill, Inc., Princeton, Ill.; (5) *Vitamin supplements*, dry, in bags, from the facilities of Hoffman-LaRoche, Ames, Iowa, to the facilities of Cargill, Inc., Princeton, Ill.; (6) *Minerals*, dry, in bulk, from the facilities of International Mineral, Corp., Montpelier, Iowa, to the facilities of Cargill, Inc., Princeton, Ill.; (7) *Animal feed*, dry, in bags, from the facilities of Cargill, Inc., West Branch, Iowa, to the facilities of Cargill, Inc., Princeton, Ill.; and (8) *Minerals*, dry, in bags, from the facilities of Kings Castle, Marion, Iowa, to the facilities of Cargill, Inc., Princeton, Ill., under a continuing contract with Cargill, Inc., Nutrena Feed Division, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting Shipper: Cargill, Inc., Nutrena Feed Division, Cargill

Bldg., Minneapolis, Minn. 55402. Send protests to: Patricia Roscoe, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, 219 S. Dearborn St., Room 1386, Chicago, Ill. 60604.

No. MC 142749 (Sub-No. 1TA), filed January 4, 1977. Applicant: BUDDY L. INC., 804 N. Rogers St., Irving, Tex. 75061. Applicant's representative: Leroy Hallman, 4555 First National Bank Bldg., Dallas, Tex. 75202. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Lead*, from the plantsites of Dixie Metals Co., at Dallas, Tex., and Heflin, La., to the plantsites of General Battery Corp., at Selma, Ala., City of Industry, Calif.; Opa-Locka, Fla.; Frankfort, Ind.; Salina, Kans.; and Greer, S.C.; and (2) Lead scrap and junk batteries, from the plantsites of General Battery Corp., at Salina, Kans., and Greer, S.C., to the plantsites of Dixie Metals Co., at Dallas, Tex., and Heflin, La., under a continuing contract with Dixie Metals Co., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Dixie Metals Co., 3030 McGowan St., Dallas, Tex. 75202. Send protests to: Opal M. Jones, Transportation Assistant, Interstate Commerce Commission, 1100 Commerce St., Room 13C12, Dallas, Tex. 75242.

No. MC 142765TA (correction), filed December 28, 1976, published in the FR issue of January 14, 1977, and republished as corrected this issue. Applicant: AMERICAN TRANSPORTATION, INC., P.O. BOX 2379, Trenton, N.J. 08601. Applicant's representative: Mel P. Booker, Jr., 118 N. St. Asaph St., Alexandria, Va. 22314. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Such commodities* as are dealt in or sold by direct sale houses (except commodities in bulk), from the facilities of Amway Corp., located at or near Dayton, N.J., to points in Delaware, Maryland, New Jersey, Connecticut, points in Rockland, Orange, Westchester and Putnam Counties, N.Y.; points in that part of Virginia on and north of Interstate Highway 64; points in that part of West Virginia on and north of U.S. Highway 60 and Interstate Highway 64; and points in Pennsylvania east of the western boundaries of Potter, Clinton, Centre, Blair and Bedford Counties, Pa., and Washington, D.C., under a continuing contract with Amway Corporation, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Amway Corporation, Regional Distribution Center, Box 900 Monmouth Junction Road, Dayton, N.J. 08810. Send protests to: Dieter H. Harper, District Supervisor, Interstate Commerce Commission, 428 E. State St., Room 204, Trenton, N.J. 08608. The purpose of this republication is to add Washington, D.C., as a destination point in this proceeding.

No. MC 142766 (Sub-No. 1TA), filed January 6, 1977. Applicant: WHITE TIGER TRANSPORTATION, INC., 115 Jacobus Ave., Kearny, N.J. 07032. Applicant's representative: George A. Olsen, 69 Tonnele Ave., Jersey City, N.J. 07306. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Chemicals, cleaning, washing, scouring, defoaming compounds;* and (2) *Materials, equipment and supplies* used in the manufacture and sale of the foregoing commodities, between Harrison, Kearny, Edison, Middlesex, N.J., on the one hand, and, on the other, Jacksonville, Tampa and Miami, Fla.; Houston, Tex.; Crossett, Ark.; and Ferguson, Miss., restricted against the transportation of commodities in bulk, under a continuing contract with Drew Chemical Corporation, Harrison, N.J., for 180 days. Supporting shipper: Chemical Corp., 102 Essex St., Harrison, N.J. 07029. Send protests to: Julia M. Papp, Transportation Assistant, Interstate Commerce Commission, 9 Clinton St., Newark, N.J. 07102.

No. MC 142783TA, filed January 5, 1977. Applicant: BIRD MOTOR LINES, INC., 4301 B Pleasantdale Road, Doraville, Ga. 30340. Applicant's representative: Charles E. Creager, 1329 Pennsylvania Ave., Hagerstown, Md. 21740. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Foodstuffs, food-treating compounds, spices, extracts, additives, candles, cards and advertising paraphernalia and materials, equipment and supplies* used in the packaging, sale, and distribution of the foregoing commodities, in vehicles equipped with mechanical distribution; and (2) Commodities, the transportation of which is exempt or partially exempt from regulation under the provisions of Section 203(b)(6) of the Interstate Commerce Act, in mixed loads with the commodities described in (1) above, between Atlanta, Ga., and its commercial zone, on the one hand, and on the other, points in Florida, Georgia, Alabama, South Carolina, North Carolina, Virginia, Maryland, Delaware, Tennessee, Kentucky, Ohio, West Virginia, Pennsylvania, New York, New Jersey, Mississippi, Illinois, Indiana and the District of Columbia, under a continuing contract with Nationwide Fund Raisers, Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Nationwide Fund Raisers, Inc., 4301 Plesantdale Road, Atlanta, Ga. 30340. Send protests to: Sara K. Davis, transportation Assistant, Bureau of Operations, Interstate Commerce Commission, 1252 W. Peachtree St., NW., Room 546, Atlanta, Ga. 30309.

No. MC 142784TA, filed January 5, 1977. Applicant: RICHARD H. GRAVES, R.F.D., Center Conway, N.H. 03813. Applicant's representative: Richard H. Graves (same address as applicant). Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Lumber*, from Fryeburg, Maine, to Walton and Deposit, N.Y., and Honesdale, Pa.; and (2) *Wooden pallets*, from Walton and Deposit, N.Y., and Honesdale, Pa., to Fryeburg, Maine, under a continuing contract with S. J. Bailey & Sons, Inc., for 180 days. Supporting shipper: S. J. Bailey & Sons, Inc., Box 239, Clarks Summit, Pa. 18411. Send protests to: Ross J. Seymour, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 208 Federal Bldg., 55 Pleasant St., Concord, N.H. 03301.

No. MC 142785TA, filed January 7, 1977. Applicant: BROTHERLY LOVE EXPRESS, INC., 2451 Montrose St., Philadelphia, Pa. 19145. Applicant's representative: Brian S. Stern, 2425 Wilson Blvd., Suite 327, Arlington, Va. 22201. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Steel*, in coils, sheets and lengths of flat, corrugated steel in sheets, from the plantsite and facilities utilized by Western Steel Company, at Philadelphia, Pa., to points in Connecticut, Delaware, Georgia, Florida, Maryland, Massachusetts, New Jersey, New York, North Carolina, Rhode Island, South Carolina, Tennessee and Virginia; and (2) (a) *Returned shipments* of the commodities described in (1) above, and used in the manufacture, sales and distribution of the commodities described (b) *Materials, equipment and supplies* in (1) above, from points in Connecticut, Delaware, Georgia, Florida, Maryland, Massachusetts, New Jersey, New York, North Carolina, Rhode Island, South Carolina, Tennessee and Virginia, to the plantsite and facilities utilized by Western Steel Company, at Philadelphia, Pa., in (2) (a) and (b) above, under a continuing contract with Western Steel Company, for 180 days. Supporting shipper: Western Steel Company, 4424 Paul St., Philadelphia, Pa. 19124. Send protests to: Monica A. Blodgett, Transportation Assistant, Interstate Commerce Commission, 600 Arch St., Room 3238, Philadelphia, Pa. 19106.

PASSENGER APPLICATIONS

No. MC 141447 (Sub-No. 2TA), filed January 5, 1977. Applicant: AUTOBUS DES BOIS-FRANCS LTEE, P.O. Box 1134, R.R. No. 1, Plessisville, Quebec. Applicant's representative: Guy Poliquin, Room 140, 580 E. Grande-Allee, Quebec, Quebec G1R 2K3. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Passengers and their baggage*, in charter and special operations, from points on the International Boundary line in the States of Maine, New Hampshire, Vermont, New York and Michigan, to points in the United States (except Alaska and Hawaii), restricted to traffic originating at Trois-Rivieres, Victoriaville and Plessisville, Quebec, for 180 days. Supporting shipper: Agence de Voyages Plessis Enrg., R.R. 1, Plessisville, Quebec. Send protests to: Ross J. Seymour, District Supevisor, Interstate Commerce Commission, Bureau of Operations, 208 Federal Bldg., 55 Pleasant St., Concord, N.H. 03301.

No. MC 141449 (Sub-No. 1TA), filed January 5, 1977. Applicant: TRANSPORT FONTAINE LTEE, No. 1 Main St., St-Gervais (Bellechasse), Quebec. Applicant's representative: Guy Poliquin, Room 140, 580 E. Grande-Allee, Quebec, Quebec G1R 2K3. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Passengers and their baggage*, in charter and special operations, from points on the International Boundary line, in the states of Maine, New Hampshire, Vermont, New York and Michigan, to points in the United States (except Alaska and Hawaii), restricted to traffic originating at Levis and Quebec, Quebec, for 180 days. Supporting shipper: Quebec Monde Agence Voyage S.P.A.R., 225 est, Blvd., Charest, Quebec 2, Quebec. Send protests to: Ross J. Seymour, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 208 Federal Bldg., 55 Pleasant St., Concord, N.H. 03301.

By the Commission.

ROBERT L. OSWALD,
Secretary.

[FR Doc.77-2720 Filed 1-26-77;8:45 am]

IRREGULAR-ROUTE MOTOR COMMON CARRIERS OF PROPERTY

Elimination of Gateway Letter Notices

JANUARY 21, 1977.

The following letter-notices of proposals to eliminate gateways for the purpose of reducing highway congestion, alleviating air and noise pollution, minimizing safety hazards, and conserving fuel have been filed with the Interstate Commerce Commission under the Commission's Gateway Elimination Rules (49 CFR part 1065), and notice thereof to all interested persons is hereby given as provided in such rules.

An original and two copies of protests against the proposed elimination of any gateway herein described may be filed with the Interstate Commerce Commission on or before February 7, 1977. A copy must also be served upon applicant on its representative. Protests against the elimination of a gateway will not operate to stay commencement of the proposed operation.

Successively filed letter-notices of the same carrier under these rules will be numbered consecutively for convenience in identification. Protests, if any, must refer to such letter-notices by number.

No. MC 61825 (Sub-E756), filed March 5, 1976. Applicant: ROY STONE TRANSFER CORPORATION, P.O. Box 385, Collinsville, Va. 24078. Applicant's representative: Harry Jordan, 1000 16th Street, N.W., Washington, D.C. 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *New furniture* between points in Idaho, Montana, North Dakota, Oregon, and Washington, and points in California, Nevada, South Dakota, Utah, and Wyoming on and northwest of a line beginning at San Francisco, Calif., and extending northeast along Interstate Highway 80 to junction California Highway 4, thence east along California Highway 4 to junction California Highway 26, thence northeast along California Highway 26 to junction California Highway 88, thence northeast along California Highway 88 to junction Nevada Highway 88, thence north along Nevada Highway 88 to junction U.S. Highway 395, thence north along U.S. Highway 395 to junction U.S. Highway 50, thence east along U.S. Highway 50 to junction U.S. Highway 50 Alternate, thence north along U.S. Highway 50 Alternate to junction Nevada Highway 2, thence northeast along Nevada Highway 2 to the Nevada-Utah State line, thence north along the Nevada-Utah State line to junction Interstate Highway 80, thence east along Interstate Highway 80 to junction U.S. Highway 187, thence north along U.S. Highway 187 to junction Wyoming Highway 28, thence northeast along Wyoming Highway 28 to junction U.S. Highway 287, thence north along U.S. Highway 287 to junction Wyoming Highway 789, thence northeast along Wyoming Highway 789 to junction U.S. Highway 26, thence northeast along U.S. Highway 26 to junction U.S. Highway 20, thence north along U.S. Highway 20 to junction U.S. Highway 16, thence east along U.S. Highway 16 to junction Interstate Highway 90, thence east along Interstate Highway 90 to junction U.S. Highway 14 Alternate, thence southeast along U.S. Highway 14 Alternate to junction U.S. Highway 385, thence southeast along U.S. Highway 385 to junction South Dakota Highway 40.

Thence east along South Dakota Highway 40 to Rapid City, S. Dak., thence east along U.S. Highway 14 to Box Elder, S. Dak., thence north along unnumbered Highway to the Elk Creek, thence east along the Elk Creek to the Cheyenne River, thence northeast along the Cheyenne River to Lake Oake, thence northeast along Lake Oake to junction U.S. Highway 212, thence east along U.S. Highway 212 to junction South Dakota Highway 45, thence north along South Dakota Highway 45 to junction South Dakota Highway 20, thence east along South Dakota Highway 20 to junction South Dakota Highway 37, thence north along South Dakota Highway 37 to junction U.S. Highway 12, thence east along U.S. Highway 12 to junction U.S. Highway 81, thence north along U.S. Highway 81 to junction South Dakota Highway 10, thence east along South Dakota Highway 10 to the South Dakota-Minnesota State line, on the one hand, and, on the other, those points in Georgia on and east of a line beginning at the South Carolina-Georgia State line and extending southwest along U.S. Highway 29 to junction U.S. Highway 129, thence south along U.S. Highway 129 to Macon, Georgia, and thence south along U.S. Highway 41 to the Georgia-Florida State line. The purpose of the filing is to eliminate the gateway of Bassett, Va.

No. MC 61825 (Sub-E757), filed March 5, 1976. Applicant: ROY STONE TRANSFER CORPORATION, P.O. BOX 385, Collinsville, Va. 24078. Applicant's representative: Harry Jordan, 1000 16th Street, N.W., Washington, D.C. 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *New furniture*, between points in Oregon and Washington, and points in California, Idaho, Montana, Nevada, and points in North Dakota on and northwest of a line beginning at San Francisco, Calif., and extending northeast along Interstate Highway 80 to junction California Highway 4, thence east along California Highway 4 to junction California Highway 160, thence north along California Highway 160 to junction California Highway 12, thence east along California Highway 12 to junction California Highway 88, thence east along California Highway 88 to junction Nevada Highway 88, thence north along Nevada Highway 88, to junction U.S. Highway 395, thence north along U.S. Highway 395 to junction U.S. Highway 50, thence east along U.S. Highway 50 to junction Nevada Highway 21, thence north along Nevada Highway 21 to junction U.S. Highway 40, thence east along U.S. Highway 40 to junction U.S. Highway 93, thence north along U.S. Highway 93 to junction Interstate Highway 80 N, thence east along Interstate Highway 80 N to junction Interstate Highway 15 W, thence northeast along Interstate Highway 15 W to junction U.S. Highway 191, thence north along U.S. Highway 191 to junction U.S. Highway 287, thence east along U.S. Highway 287 to the Montana-Wyoming State line, thence north and thence east along the Montana-Wyoming State line to junction U.S. Highway 212, thence northeast long U.S. Highway 212 to junction U.S. Highway 10, thence east along U.S. Highway 10 to junction U.S. Highway 12, thence east along U.S. Highway 12 to junction U.S. Highway 85, thence north along U.S. Highway 85 to junction U.S. Highway 10, thence east along U.S. Highway 10 to junction U.S. Highway 83, thence north along U.S. Highway 83 to junction North Dakota Highway 41, thence north along North Dakota Highway 41 to junction North Dakota Highway 200.

Thence east along North Dakota Highway 200 to junction North Dakota Highway 3, thence north along North Dakota Highway 3 to junction North Dakota Highway 19, thence east along North Dakota Highway 19 to junction North Dakota Highway 20, thence north along North Dakota Highway 20 to junction North Dakota Highway 17, thence east along North Dakota Highway 17 to junction North Dakota Highway 1, thence north along North Dakota Highway 1 to junction North Dakota Highway 5, thence east along North Dakota Highway 5 to junction North Dakota Highway 18, thence north along North Dakota Highway 18 to the United States-Canadian International Boundary line, on the one hand, and, on the other, those points in Georgia on and bounded by a line beginning at the South Carolina-Georgia State line and extending southwest along U.S.

Highway 29 to junction U.S. Highway 129, thence south along U.S. Highway 129 to Macon, Ga., thence south along U.S. Highway 41 to junction U.S. Highway 341, thence northwest along U.S. Highway 341 to junction U.S. Highway 41, thence north along U.S. Highway 41 to junction U.S. Highway 19, thence north along U.S. Highway 19 to junction U.S. Highway 76, thence east along U.S. Highway 76 to junction Georgia Highway 75, thence north along Georgia Highway 75 to the Georgia-North Caroline State line, thence east along the Georgia-North Carolina State line to the Georgia-South Carolina State line, and thence south to point of beginning. The purpose of this filing is to eliminate the gateway of Bassett, Va.

No. MC 61825 (Sub-E758), filed March 5, 1976. Applicant: ROY STONE TRANSFER CORPORATION, P.O. Box 385, Collinsville, Va. 24078. Applicant's representative: Harry J. Jordan, 1000 16th Street, NW., Washington, D.C. 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *New furniture*, between points in Washington, and points in California, Idaho, Montana, and Oregon on and northwest of a line beginning at Eureka, Calif., and extending south along U.S. Highway 1 to junction California Highway 36, thence east along California Highway 36 to junction California Highway 3, thence northeast along California Highway 3 to junction California Highway 299, thence east along California Highway 299 to junction U.S. Highway 395, thence north along U.S. Highway 395 to junction Oregon Highway 31, thence northwest along Oregon Highway 31 to junction U.S. Highway 97, thence north along U.S. Highway 97 to junction Oregon Highway 218, thence east along Oregon Highway 218 to junction Oregon Highway 19, thence north along Oregon Highway 19 to junction Oregon Highway 206, thence east along Oregon Highway 206 to junction Oregon Highway 74, thence east along Oregon Highway 74 to junction U.S. Highway 395, thence northeast along U.S. Highway 395 to junction Oregon Highway 11, thence northeast along Oregon Highway 11 to the Oregon-Washington State line, thence east along the Oregon-Washington State line to the Washington-Idaho State line, thence north along the Washington-Idaho State line to junction U.S. Highway 12, thence east along U.S. Highway 12 to junction Montana Highway 200, thence east along Montana Highway 200 to junction U.S. Highway 87, thence northeast along U.S. Highway 87 to junction Montana Highway 232, thence north along Montana Highway 232 to junction Montana Highway 233, and thence north along Montana Highway 233 to the United States-Canadian International Boundary line, on the one hand, and, on the other, those points in Georgia on and bounded by a line beginning at the Tennessee-Georgia State line and extending south along Georgia Highway 71 to junction U.S. Highway 41, thence south along U.S. Highway 41 to junction Georgia Highway 53, thence south along Georgia Highway 53 to junction U.S. Highway 27, thence south along U.S. Highway 27 to junction Georgia Highway 100, thence south along Georgia Highway 100 to junction Georgia Highway 166, thence west along Georgia Highway 166 to the Georgia-Alabama State line, thence south along the Georgia-Alabama State line to the Georgia-Florida State line, thence southeast along the Georgia-Florida State line to junction U.S. Highway 41, thence north along U.S. Highway 41 to junction U.S. Highway 341, thence northwest along U.S. Highway 341 to junction U.S. Highway 41, thence north along U.S. Highway 41 to junction U.S. Highway 19, thence north to junction U.S. Highway 76, thence east along U.S. Highway 76 to junction Georgia Highway 75, thence north along Georgia Highway 75 to the Georgia-North Carolina State line, thence west along the Georgia-North Carolina State line to the Georgia-Tennessee State line, and thence west along the Georgia-Tennessee State line to point of beginning. The purpose of this filing is to eliminate the gateway of Basset, Va.

No. MC 61825 (Sub E759), filed March 5, 1976. Applicant: ROY STONE TRANSFER CORPORATION, P.O. Box 385, Collinsville, Va. 24078. Applicant's representative: Harry J. Jordan, 1000 16th Street NW., Washington, D.C. 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Furniture parts*, from points in Georgia on and east of a line beginning at the South Carolina-Georgia State line and extending southwest along U.S. Highway 29 to junction U.S. Highway 129, thence south along U.S. Highway 129 to junction U.S. Highway 23, thence southeast along U.S. Highway 23 to junction U.S. Highway 441, thence south along U.S. Highway 441 to junction Georgia Highway 158, thence southeast along Georgia Highway 158 to junction U.S. Highway 82, thence east along U.S. Highway 82 to junction U.S. Highway 1, thence southeast along U.S. Highway 1 to the Georgia-Florida State line, to points in Washington, and points in California, Idaho, Montana, Nevada, and Oregon on and northwest of a line beginning at Fort Bragg, Calif., and extending south along California Highway 1 to junction California Highway 20, thence southeast along California Highway 20 to junction California Highway 16, thence southeast along California Highway 16 to Sacramento, Calif., thence northeast along Interstate Highway 80 to junction U.S. Highway 95, thence northeast along U.S. Highway 95 to the Oregon-Idaho State line, thence north along the Oregon-Idaho State line to junction U.S. Highway 20, thence east along U.S. Highway 20 to junction U.S. Highway 95, thence north along U.S. Highway 95 to junction Idaho Highway 13, thence north along Idaho Highway 13 to junction U.S. Highway 12, thence east along U.S. Highway 12 to junction U.S. Highway 10, thence south along U.S. Highway 10 to junction U.S. Highway 91, thence north along U.S. Highway 91 to junction U.S. Highway 12, thence east along U.S. Highway 12 to junction U.S. Highway 191, thence north along U.S. Highway 191 to junction U.S. Highway 87, thence east along U.S. Highway 87 to junction Montana Highway 200, thence east along Montana Highway 200 to junction Mountain Highway 13, thence north along Montana Highway 13 to junction U.S. Highway 2, thence east along U.S. Highway 2 to junction Montana Highway 16, thence north along Montana Highway 16 to junction Montana Highway 5, thence east along Montana Highway 5 to the Montana-North Dakota State line, and thence north along the Montana-North Dakota State line to the United States-Canadian International Boundary line, restricted against the transportation of those commodities requiring special equipment. The purpose of this filing is to eliminate the gateway of points in Smyth County, Va., Lynchburg, and Bedford, Va.

No. MC 61825 (Sub-No. E777), filed March 5, 1976. Applicant: ROY STONE TRANSFER CORPORATION, P.O. Box 385, Collinsville, Va. 24078. Applicant's representative: Harry J. Jordan, 1000 Sixteenth St. NW., Washington, D.C. 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Furniture parts*, between points in Delaware, on the one hand, and, on the other points in Arizona, California, Colorado, Idaho, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming. The purpose of this filing is to eliminate the gateway of Bassett, Va.

No. MC 61825 (Sub E785), filed March 5, 1976. Applicant: ROY STONE TRANSFER CORPORATION, P.O. Box 385, Collinsville, Va. 24078. Applicant's representative: Harry J. Jordan, 1000 16th Street NW., Washington, D.C. 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Clocks, New Furniture* and *Furniture parts*, from New York, N.Y., and points in New Jersey on and south of U.S. Highway 202, and points in Pennsylvania on and south of a line beginning at New Jersey-Pennsylvania State line and extending southwest along U.S. Highway 202 to Norristown, Pa., thence west along U.S. Highway 422 to junction U.S. Highway 322, thence west along U.S. Highway 322 to Harrisburg, Pa., thence southwest along U.S. Highway 15 to junction U.S. Highway 15 Business, thence south along U.S. Highway 15 Business to junction U.S. Highway 15, and thence south along U.S. Highway 15 to the Pennsylvania-Maryland State line, to points in Arizona, California, Colorado, Idaho, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming, restricted against the transportation of Class A and B Explosives, commodities in bulk, and those requiring special equipment. The purpose of this filing is to eliminate the gateway of Roanoke, Va.

No. MC 61825 (Sub E786), filed March 5, 1976. Applicant: ROY STONE TRANSFER CORPORATION, P.O. Box 385, Collinsville, Va. 24078. Applicant's representative: Harry Jordan, 1000 16th Street NW., Washington, D.C. 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Clocks, New furniture*, and *Furniture parts*, from points in Maryland on and north of a line beginning at the Pennsylvania-Maryland State line and extending east along U.S. Highway 40, thence east along U.S. Highway 40 Alternate to junction U.S. Highway 40 near Frederick, Md., thence east along U.S. Highway 40 to junction Maryland Highway 144, thence east along Maryland Highway 144 to Baltimore, Md., thence to the Chesapeake Bay, thence northeast along the shores of the Chesapeake Bay and Elk River to the Chesapeake and Delaware Canal, and thence east along the Chesapeake and Delaware Canal to the Maryland-Delaware State line, to points in Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, Wyoming, and points in Nebraska, North Dakota and South Dakota on and west of a line beginning at the Kansas-Nebraska State line and extending north along Nebraska Highway 161 to junction U.S. Highway 34, thence northeast along U.S. Highway 34 to junction Nebraska Highway 61, thence north along Nebraska Highway 61 to junction U.S. Highway 6, thence northwest along U.S. Highway 6 to the Nebraska-Colorado State line, thence north along the Nebraska-Colorado State line to junction Nebraska Highway 27, thence north along Nebraska Highway 27 to junction U.S. Highway 26, thence northwest along U.S. Highway 26 to junction Nebraska Highway 29, thence north along Nebraska Highway 29 to junction U.S. Highway 20, thence west along U.S. Highway 20 to the Nebraska-Wyoming State line, thence north along the Nebraska-Wyoming State line to the Nebraska-South Dakota State line, thence east along the Nebraska-South Dakota State line to junction South Dakota Highway 71, thence north along South Dakota Highway 71 to junction U.S. Highway 385, thence southeast along U.S. Highway 385 to junction South Dakota Highway 79, thence north along South Dakota Highway 79 to junction South Dakota Highway 168, thence northwest along South Dakota Highway 168 to junction U.S. Highway 85, thence north along U.S. Highway 85 to junction North Dakota Highway 21, thence east along North Dakota Highway 21 to junction North Dakota Highway 22, thence north along North Dakota Highway 22 to junction North Dakota Highway 23, thence east along North Dakota Highway 23 to junction U.S. Highway 83, and thence north along U.S. Highway 83 to the United States-Canadian International Boundary line, restricted against the transportation of Class A and B explosives, commodities in bulk, and those requiring special equipment. The purpose of this filing is to eliminate the gateway of Roanoke, Va.

No. MC 61825 (Sub E787), filed March 5, 1976. Applicant: ROY STONE TRANSFER CORPORATION, P.O. Box 385, Collinsville, Va. 24078. Applicant's representative: Harry J. Jordan, 1000 16th Street NW., Washington, D.C. 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Clocks, New furniture*, and *Furniture parts*, from points in Maryland on and north of a line beginning at the Pennsylvania-Maryland State line and extending south along Interstate Highway 81 to junction U.S. Highway 40, thence east along U.S. Highway 40 to Hagerstown, Md., thence east along U.S. Highway 40 Alternate to junction U.S. Highway 40 near Frederick, Md., thence east along U.S. Highway 40 to junction Maryland Highway 144, thence east along Maryland Highway 144 to Baltimore, Md., thence to the Chesapeake Bay, thence northeast along the shores of the Chesapeake Bay and Elk River to the Chesapeake and Delaware Canal, and thence east along the Chesapeake and Delaware Canal to the Maryland-Delaware State line, to points in Nebraska, North Dakota, and South Dakota on and east of a line beginning at the Kansas-Nebraska State line and extending north along Nebraska Highway 161 to junction U.S. Highway 34, thence northeast along U.S. Highway 34 to junction Nebraska Highway 61, thence north along Nebraska Highway 61 to junction U.S. Highway 6, thence northwest along U.S. Highway 6 to the Nebraska-Colorado State line, thence north along the Nebraska-Colorado State line to junction Nebraska Highway 27, thence north along Nebraska Highway 27 to junction U.S. Highway 26, thence northwest along U.S. Highway 26 to junction Nebraska Highway 29, thence north along Nebraska Highway 29 to junction U.S. Highway 20, thence west along U.S. Highway 20 to the Nebraska-Wyoming State line, thence north along the Nebraska-Wyoming State line to the Nebraska-South Dakota State line, thence east along the Nebraska-South Dakota State line to junction South Dakota Highway 71, thence north along South Dakota Highway 71 to junction U.S. Highway 385, thence southeast along U.S. Highway 385 to junction South Dakota Highway 79, thence north along South Dakota Highway 79 to junction South Dakota Highway 168, thence northwest along South Dakota Highway 168 to junction U.S. Highway 85, thence north along U.S. Highway 85 to junction North Dakota Highway 21, thence east along North Dakota Highway 21 to junction North Dakota Highway 22, thence north along North Dakota Highway 22 to junction North Dakota Highway 23, thence east along North Dakota Highway 23 to junction U.S. Highway 83, and thence north along U.S. Highway 83 to the United States-Canadian International Boundary line, restricted against the transportation of Class A and B explosives, commodities in bulk, and those requiring special equipment. The purpose of this filing is to eliminate the gateway of Roanoke, Va.

No. MC 61825 (Sub-E788), filed March 5, 1976. Applicant: ROY STONE TRANSFER CORPORATION, P.O. Box 385, Collinsville, Va. 24078. Applicant's representative: Harry J. Jordan, 1000 16th Street, N.W., Washington, D.C. 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Clocks, New Furniture, and Furniture parts*, from points in Arizona, California, Colorado, Idaho, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming, to New York, New York, and Newark, New Jersey, and points in New Jersey within 15 miles of Newark, N.J., restricted against the transportation of Class A and B explosives, commodities in bulk, and those requiring special equipment, (2) *Materials, equipment and supplies*, used in the manufacture and distribution of clocks, new furniture, and furniture parts (except in bulk), from points in Arizona, California, Colorado, Idaho, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming, to New York, New York, and Newark, New Jersey, and points in New Jersey within 15 miles of Newark, N.J., restricted against the transportation of Class A and B explosives, commodities in bulk, and those requiring special equipment. The purpose of this filing is to eliminate the gateways of Bedford and Lynchburg, Va., and Baltimore, Md.

No. MC 61825 (Sub-No. E801), filed March 5, 1976. Applicant: ROY STONE TRANSFER CORPORATION, P.O. Box 385, Collinsville, Va. 24078. Applicant's representative: Harry J. Jordan, 1000 Sixteenth St., N.W., Washington, D.C. 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Clocks, new furniture, and furniture parts*, from those points in North Carolina on and east of a line beginning at the Virginia-North Carolina State line and extending along U.S. Highway 52 to the North Carolina-South Carolina State line, and points in South Carolina on and east of a line beginning at the North Carolina-South Carolina State line and extending south along U.S. Highway 221 to junction South Carolina Highway 176, thence southeast along South Carolina Highway 176 to junction U.S. Highway 52, thence south along U.S. Highway 52 to junction South Carolina Highway 7, thence south along South Carolina Highway 7 to junction South Carolina Highway 171, thence south along South Carolina Highway 171 to the Atlantic Ocean, to points in Arizona, California, Colorado, Idaho, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming, restricted against the transportation of class A and B explosives, commodities in bulk, and those requiring special equipment. The purpose of this filing is to eliminate gateway of Ridgeway, Va.

No. MC 61825 (Sub-No. E802), filed March 5, 1976. Applicant: ROY STONE

TRANSFER CORPORATION, P.O. Box 385, Collinsville, Va. 24078. Applicant's representative: Harry J. Jordan, 1000 Sixteenth St., N.W., Washington, D.C. 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Clocks, new furniture, and furniture parts*, from points in South Carolina on and bounded by a line beginning at the North Carolina-South Carolina State line and extending south along U.S. Highway 25 to junction U.S. Highway 221, thence south along U.S. Highway 221 to the South Carolina-Georgia State line, thence southeast along the South Carolina-Georgia State line to the Atlantic Ocean, thence northeast along the Atlantic Coast to Folly Beach, S.C., thence north along South Carolina Highway 171 to junction South Carolina Highway 7, thence north along South Carolina Highway 7 to junction U.S. Highway 52, thence north along U.S. Highway 52 to junction U.S. Highway 176, thence northwest along U.S. Highway 176 to junction U.S. Highway 221, thence north along U.S. Highway 221 to the South Carolina-North Carolina State line, and thence west along the South Carolina-North Carolina State line to point of beginning, to points in California, Idaho, Montana, Nevada, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming, and points in Arizona, Colorado, Nebraska, and New Mexico on, north and west of a line beginning at the United States-Mexico International Boundary line near Douglas, Ariz., and extending north along U.S. Highway 666 to junction U.S. Highway 550, thence east along U.S. Highway 550 to junction New Mexico Highway 17, thence northeast along New Mexico Highway 17 to junction Colorado Highway 17, thence northeast along Colorado Highway 17 to junction Colorado Highway 140, thence east along Colorado Highway 140 to junction U.S. Highway 160, thence east along U.S. Highway 160 to junction U.S. Highway 85, thence north along U.S. Highway 85 to junction Colorado Highway 96, thence east along Colorado Highway 96 to the Colorado-Kansas State line, thence north along the Colorado-Kansas State line to the Kansas-Nebraska State line, thence east along the Kansas-Nebraska State line to junction U.S. Highway 281, thence north along U.S. Highway 281 to junction Nebraska Highway 74, thence east along Nebraska Highway 74 to junction Nebraska Highway 14, thence north along Nebraska Highway 14 to junction U.S. Highway 6, thence northeast along U.S. Highway 6 to junction Nebraska Highway 66, thence east along Nebraska Highway 66 to junction U.S. Highway 34, and thence east along U.S. Highway 34 to the Nebraska-Iowa State line, restricted against the transportation of Class A and B explosives, commodities in bulk, and those requiring special equipment. The purpose of this filing is to eliminate the gateway of Ridgeway, Va.

No. MC 61825 (Sub-No. E803), filed March 5, 1976. Applicant: ROY STONE TRANSFER CORPORATION, P.O. Box 385, Collinsville, Va. 24078. Applicant's representative: Harry J. Jordan, 1000 Sixteenth St., N.W., Washington, D.C. 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Clocks, new furniture and furniture parts*, from points in South Carolina on and west of a line beginning at the North Carolina-South Carolina State line and extending south along U.S. Highway 25 to junction U.S. Highway 221, and thence south along U.S. Highway 221 to the South Carolina-Georgia State line, to points in California, Idaho, Montana, Nevada, North Dakota, Oregon, Utah, Washington, and Wyoming, and points in Arizona, Colorado, Nebraska, and South Dakota on and northwest of a line beginning at the United States-Mexico International Boundary line near Lakeville, Ariz., and extending north along Arizona Highway 85 to junction Arizona Highway 86, thence east along Arizona Highway 86 to junction Indian Trail 15, thence north along Indian Trail 15 to junction Arizona Highway 93, thence north along Arizona Highway 93 to junction U.S. Highway 89, thence north along U.S. Highway 89 to junction Arizona Highway 64, thence northeast along Arizona Highway 64 to junction U.S. Highway 89, thence north along U.S. Highway 89 to junction U.S. Highway 160, thence northeast along U.S. Highway 160 to junction U.S. Highway 550, thence north along U.S. Highway 550 to junction U.S. Highway 50, thence east along U.S. Highway 50 to junction Colorado Highway 135, thence north along Colorado Highway 135 to junction Taylor Road, thence northeast along Taylor Road to junction Rainbow Lane, thence east along Rainbow Lane to junction Colorado Highway 306, thence east along Colorado Highway 306 to junction U.S. Highway 24, thence south along U.S. Highway 24 to junction U.S. Highway 285, thence northeast along U.S. Highway 285 to junction U.S. Highway 85, thence north along U.S. Highway 85 to the Colorado-Wyoming State line.

Thence east along the Colorado-Wyoming State line to the Colorado-Nebraska State line, thence east along the Colorado-Nebraska State line to junction Nebraska Highway 71, thence north along Nebraska Highway 71 to junction U.S. Highway 30, thence east along U.S. Highway 30 to junction U.S. Highway 385, thence north along U.S. Highway 385 to junction Nebraska Highway 2 thence east along Nebraska Highway 2 to Mullen, Nebr., thence northeast along unnumbered highway to Valentine, Nebr., thence north along U.S. Highway 83 to the Nebraska-South Dakota State line, thence east along the Nebraska-South Dakota State line to junction U.S. Highway 81, thence north along U.S. Highway 81 to junction South Dakota Highway 46, thence east along South Dakota Highway 46 to junction South Dakota Highway 10, and thence east along South Dakota Highway 10 to the South Dakota-Iowa State line, thence north along the South Dakota-Iowa State line, thence north along the South Dakota-Iowa State line, to junction South Dakota-Minnesota State line, thence north to the South Dakota-Minnesota State to junction North Dakota-Minnesota State line, and thence north to the North Dakota-Minnesota State line, restricted against the transportation of Classes A and B explosives, commodities in bulk, and those requiring special equipment. The purpose of this filing is to eliminate the gateway of Ridgeway, Va.

No. MC-61825 (Sub-No. E804), filed March 5, 1976. Applicant: ROY STONE TRANSFER CORPORATION, P.O. Box 385, Collinsville, Va. 24078. Applicant's representative: Harry J. Jordan, 1000 Sixteenth St., N.W., Washington, D.C. 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Clocks, new furniture, and furniture parts*, from points in North Carolina on and bounded by a line beginning at the Tennessee-North Carolina State line and extending south along U.S. Highway 421 to junction U.S. Highway 321, thence southeast along U.S. Highway 321 to junction U.S. Highway 321A, thence southeast along U.S. Highway 321A to junction U.S Highway 321, thence southeast along U.S. Highway 321 to junction North Carolina Highway 127, thence south along North Carolina Highway 127 to junction North Carolina Highway 10, thence southwest along North Carolina Highway 10 to junction North Carolina Highway 18, thence south along North Carolina Highway 18 to junction U.S. Highway 74, thence east along U.S. Highway 74 to junction North Carolina Highway 216, thence southwest along North Carolina Highway 216 to the North Carolina-South Carolina State line, thence east along the North Carolina-South Carolina State line to junction U.S. Highway 52, thence north along U.S. Highway 52 to the North Carolina-Virginia State line, thence west along the North Carolina-Virginia State line to the North Carolina-Tennessee State line, and thence south along the North Carolina-Tennessee State line to point of beginning, to points in Arizona, California, Idaho, Montana, Nevada, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming, and points in Colorado, Nebraska, and New Mexico on, west and north of a line beginning at the Texas-New Mexico State line and extending north along U.S. Highway 285 to junction U.S. Highway 285 Alternate, thence north along U.S. Highway 285 Alternate to junction U.S. Highway 285, thence northwest along U.S. Highway 285 to junction New Mexico Highway 3, thence north along New Mexico Highway 3 to junction U.S. Highway 85, thence northeast along U.S. Highway 85 to junction U.S. Highway 160.

Thence east along U.S. Highway 160 to junction U.S. Highway 350, thence northeast along U.S. Highway 350 to junction U.S. Highway 50, thence east along U.S. Highway 50 to Fort Lyon, Colo., thence north along unnumbered highway to junction Colorado Highway 96 at Haswell, Colo., thence east along Colorado Highway 96 to junction U.S. Highway 287, thence north along U.S. Highway 287 to junction U.S. Highway 40, thence east along U.S. Highway 40 to junction U.S. Highway 385, thence north along U.S. Highway 385 to junction U.S. Highway 24, thence east along U.S. Highway 24 to the Colorado-Kansas State line, thence north along the Colorado-Kansas State line to the Kansas-Nebraska State line, thence east along the Kansas-Nebraska State line to junction U.S. Highway 83, thence north along U.S. Highway 83 to junction U.S. Highway 6, thence east along U.S. Highway 6 to junction U.S. Highway 281, thence north along U.S. Highway 281 to junction U.S. Highway 30, thence northeast along U.S. Highway 30 to junction Nebraska Highway 15, thence north along Nebraska Highway 15 to junction Nebraska Highway 91, thence east along Nebraska Highway 91 to junction U.S. Highway 275, thence north along U.S. Highway 275 to junction Nebraska Highway 9, thence north along Nebraska Highway 9 to junction Nebraska Highway 51, and thence east along Nebraska Highway 51 to the Nebraska-Iowa State line, restricted against the transportation of Classes A and B explosives, commodities in bulk, and those requiring special equipment.

The purpose of this filing is to eliminate the gateways of Lynchburg, and Bedford, Va.

No. MC-61825 (Sub-No. E805), filed March 5, 1976. Applicant: ROY STONE TRANSFER CORPORATION, P.O. Box 385, Collinsville, Va. 24078. Applicant's representative: Harry J. Jordan, 1000 Sixteenth St., N.W., Washington, D.C. 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Clocks, new furniture, and furniture parts*, from those points in North Carolina on and bounded by a line beginning at the Tennessee-North Carolina State line and extending southeast along U.S. Highway 19E to junction North Carolina Highway 194, thence south along North Carolina Highway 194 to junction U.S. Highway 221, thence south along U.S. Highway 221 to the North Carolina-South Carolina State line, thence east along the North Carolina-South Carolina State line to junction North Carolina Highway 216, thence northeast along North Carolina Highway 216 to junction U.S. Highway 74, thence west along U.S. Highway 74 to junction North Carolina Highway 18, thence north along North Carolina Highway 18 to junction North Carolina Highway 10, thence northeast along North Carolina Highway 10 to junction North Carolina Highway 127, thence north along North Carolina Highway 127 to junction U.S. Highway 321, thence northwest along U.S. Highway 321 to junction U.S. Highway 321 Alternate, thence northwest along U.S. Highway 321 Alternate to junction U.S. Highway 321, thence northwest along U.S. Highway 321 to junction U.S. Highway 421, thence northwest along U.S. Highway 421 to the North Carolina-Tennessee State line, and thence southwest along North Carolina-Tennessee State line to point of beginning, to points in Arizona, California, Idaho, Montana, Neveda, North Dakota, Oregon, Utah, Washington, and Wyoming, and points in Colorado, Nebraska, New Mexico, and South Dakota on, north and west of a line beginning at the United States-Mexico International Boundary line at the New Mexico-Texas State line and extending north along U.S. Highway 85 to junction New Mexico Highway 52, thence north along New Mexico Highway 52 to junction New Mexico Highway 78, thence north along New Mexico Highway 78 to junction U.S. Highway 60, thence west along U.S. Highway 60 to junction to New Mexico Highway 117, thence north along New Mexico Highway 117 to junction U.S. Highway 66.

Thence northwest along U.S. Highway 66 to junction New Mexico Highway 57, thence north along New Mexico Highway 57 to junction New Mexico Highway 44, thence southeast along New Mexico Highway 44 to junction New Mexico Highway 96, thence north along New Mexico Highway 96 to junction New Mexico Highway 112, thence north along New Mexico Highway 112 to junction U.S. Highway 84, thence north along U.S. Highway 84 to junction New Mexico Highway 17, thence northeast along New Mexico Highway 17 to junction Colorado Highway 17, thence northeast along Colorado Highway 17 to junction U.S. Highway 285, thence north along U.S. Highway 285 to junction U.S. Highway 50, thence east along U.S. Highway 50 to junction U.S. Highway 85, thence north along U.S. Highway 85 to junction U.S. Highway 6, thence northeast along U.S. Highway 6 to junction Interstate Highway 80S, thence east along Interstate Highway 80S to junction Interstate Highway 80, thence east along Interstate 80 to junction U.S. Highway 83, thence north along U.S. Highway 83 to junction Nebraska Highway 2, thence southeast along Nebraska Highway 2 to junction Nebraska Highway 91, thence east along Nebraska Highway 91 to junction Nebraska Highway 7, thence north along Nebraska Highway 7 to junction U.S. Highway 20, thence east along U.S. Highway 20 to junction Nebraska Highway 11, thence north along Nebraska Highway 11 to junction U.S. Highway 18, thence northeast along U.S. Highway 18 to junction South Dakota Highway 37, thence north along South Dakota Highway 37 to junction South Dakota Highway 44, thence east along South Dakota Highway 44 to junction U.S. Highway 81, thence north along U.S. Highway 81 to junction U.S. Highway 16, thence east along U.S. Highway 16 to the South Dakota-Minnesota State line, Restricted against the transportation of Class A and B explosives, commodities in bulk, and those requiring special equipment. The purpose of this filing is to eliminate the gateways of Lynchburg and Bedford, Va.

No. MC-61825 (Sub-No. E809), filed March 5, 1976. Applicant: ROY STONE TRANSFER CORPORATION, P.O. Box 385, Collinsville, Va. 24078. Applicant's representative: Harry J. Jordan, 1000 Sixteenth St., N.W., Washington, D.C. 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Clocks, new furniture, and furniture parts*, from those points in North Carolina on and bounded by a line beginning at the Tennessee-North Carolina State line and extending south along U.S. Highway 129 to Andrews, N.C. thence northeast along U.S. Highway 19 to junction North Carolina Highway 28, thence southeast along North Carolina Highway 28 to junction U.S. Highway 441, thence south along U.S. Highway 441 to the North Carolina-Georgia State line, thence east along the North Carolina-Georgia State line to the North Carolina-South Carolina State line to junction U.S. Highway 221, thence north along U.S. Highway 221 to junction North Carolina Highway 194, thence north along North Carolina Highway 194 to junction U.S. Highway 19E, thence northwest along U.S. Highway 19E to the North Carolina-Tennessee State line, thence southwest along the North Carolina-Tennessee State line to point of beginning, to points in Oregon and Washington, and points in California, Idaho, Montana, Nevada, and North Dakota on, north and west of a line beginning at Monterey, California and extending east along California Highway 68 to junction U.S. Highway 101, thence northwest along U.S. Highway 101 to junction California Highway 17, thence north along California Highway 17 to junction unnumbered Highway at Milpitas, Calif., thence east along unnumbered Highway to junction Interstate Highway 680, thence north along Interstate Highway 680 to junction Interstate Highway 580, thence southeast along Interstate Highway 580 to junction Interstate Highway 5, thence east along Interstate Highway 5 to junction California Highway 132, thence east along California Highway 132 to junction California Highway 108, thence northeast along California Highway 108 to junction California Highway 120.

Thence east along California Highway 120 to junction U.S. Highway 6, thence east along U.S. Highway 6 to junction Nevada Highway 8A, thence north along Nevada Highway 8A to junction Nevada Highway 82, thence north along Nevada Highway 82 to junction U.S. Highway 50, thence east along U.S. Highway 50 to junction Nevada Highway 46, thence north along Nevada Highway 46 to junction U.S. Highway 40, thence east along U.S. Highway 40 to junction U.S. Highway 93, thence north along U.S. Highway 93 to junction U.S. Highway 93 Alternate, thence northeast along U.S. Highway 93 Alternate to junction U.S. Highway 20, thence east along U.S. Highway 20 to junction Idaho Highway 22, thence northeast along Idaho Highway 22 to junction U.S. Highway 91, thence north along U.S. Highway 91 to the Idaho-Montana State line, thence east along the Idaho-Montana State line to the Idaho-Wyoming-Montana State line, thence north and east along the Wyoming-Montana State line to junction U.S. Highway 212, thence northeast along U.S. Highway 212 to junction U.S. Highway 10, thence northeast along U.S. Highway 10 to junction U.S. Highway 12,

thence east along U.S. Highway 12 to junction U.S. Highway 85, thence north along U.S. Highway 85 to junction North Dakota Highway 21, thence east along North Dakota Highway 21 to junction North Dakota Highway 22, thence north along North Dakota Highway 22 to junction U.S. Highway 10, thence east along U.S. Highway 10 to junction North Dakota Highway 31, thence north along North Dakota Highway 31 to junction North Dakota Highway 200A, thence east along North Dakota Highway 200A to junction U.S. Highway 83, thence north along U.S. Highway 83 to junction North Dakota Highway 200,

Thence east along North Dakota Highway 200 to junction North Dakota Highway 41, thence north along North Dakota Highway 41 to junction U.S. Highway 52, thence southeast along U.S. Highway 52 to junction North Dakota Highway 14, thence north along North Dakota Highway 14 to junction U.S. Highway 2, thence east along U.S. Highway 2 to junction North Dakota Highway 3, thence north along North Dakota Highway 3 to junction North Dakota Highway 66, thence east along North Dakota Highway 66 to junction U.S. Highway 281, thence north along U.S. Highway 281 to junction North Dakota Highway 5, thence east along North Dakota Highway 5 to junction North Dakota Highway 20, thence north along North Dakota Highway 20 to the United States-Canadian International Boundary line, restricted against the transportation of Class A and B explosives, commodities in bulk, and those requiring special equipment.

The purpose of this filing is to eliminate the gateways of Bedford and Lynchburg, Va.

No. MC 61825 (Sub-No. E809), filed March 5, 1976. Applicant: ROY STONE TRANSFER CORPORATION, P.O. Box 385, Collinsville, Va. 24078. Applicant's representative: Harry J. Jordan, 1000 Sixteenth St., NW., Washington, D.C. 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Clocks, materials, equipment, and supplies*, used in the manufacture and distribution of clocks, new furniture and furniture parts (except in bulk), from points in Idaho, Montana, North Dakota, Oregon, and Washington, and points in California, Colorado, Nebraska, Nevada, South Dakota, Utah, and Wyoming on, west and north of a line beginning at San Diego, Calif., and extending east along Interstate Highway 8 to junction California Highway 67, thence north along California Highway 67 to junction California Highway 78, thence east along California Highway 78 to junction California Highway 79, thence north along California Highway 79 to junction California Highway 71, thence east along California Highway 71 to junction California Highway 74, thence northeast along California Highway 74 to junction California Highway 111, thence east along California Highway 111 to junction Interstate Highway 10 at Indio, California, thence west along Interstate Highway 10 to junction Interstate Highway 15, thence northeast along Interstate Highway 15 to junction California Highway 127, thence north along California Highway 127 to junction Nevada Highway 29, thence north along Nevada Highway 29 to junction U.S. Highway 95, thence northwest along U.S. Highway 95 to junction U.S. Highway 6, thence east along U.S. Highway 6 to junction Utah Highway 56, thence east along Utah Highway 56 to junction Utah Highway 14, thence east along Utah Highway 14 to junction U.S. Highway 89, thence north along U.S. Highway 89 to junction Utah Highway 12, thence northeast along Utah Highway 12 to junction Utah Highway 24, thence northeast along Utah Highway 24 to junction Interstate Highway 70, thence east along Interstate Highway 70 to junction U.S. Highway 163, thence southeast along U.S. Highway 163 to junction Utah Highway 128, thence northeast along Utah Highway 128 to junction U.S. Highway 6, thence east along U.S. Highway 6 to junction U.S. Highway 50 at Grand Junction, Colo., thence west along U.S. Highway 50 to junction Colorado Highway 139.

Thence north along Colorado Highway 139 to junction Colorado Highway 64, thence northwest along Colorado Highway 64 to junction U.S. Highway 40, thence east along U.S. Highway 40 to junction Colorado Highway 789, thence north along Colorado Highway 789 to junction Wyoming Highway 789, thence north along Wyoming Highway 789 to junction Wyoming Highway 70, thence east along Wyoming Highway 70 to junction Wyoming Highway 230, thence north along Wyoming Highway 230 to junction Wyoming Highway 130, thence east along Wyoming Highway 130 to junction U.S. Highway 287, thence north along U.S. Highway 287 to junction Wyoming Highway 34, thence northeast along Wyoming Highway 34 to junction U.S. Highway 87, thence north along U.S. Highway 87 to junction U.S. Highway 20, thence east along U.S. Highway 20 to junction Nebraska Highway 61, thence north along Nebraska Highway 61 to junction South Dakota Highway 73, thence north along South Dakota Highway 73 to junction U.S. Highway 18, thence east along U.S. Highway 18 to junction U.S. Highway 183, thence north along U.S. Highway 183, to junction U.S. Highway 16, thence east along U.S. Highway 16 to junction South Dakota Highway 45, thence north along South Dakota Highway 45 to junction South Dakota Highway 34, thence east along South Dakota Highway 34 to junction South Dakota Highway 25, thence north along South Dakota Highway 25 to junction U.S. Highway 14, and thence east along U.S. Highway 14 to the South Dakota-Minnesota State line, to points in South Carolina on and bounded by a line beginning at the North Carolina-South Carolina State line and extending along U.S. Highway 25 to junction South Carolina Highway 11, thence west along South Carolina Highway 11 to junction U.S. Highway 276, thence south along U.S. Highway 276 to junction South Carolina Highway 186.

Thence south along South Carolina Highway 186 to junction South Carolina Highway 135, thence south along South Carolina Highway 135 to junction U.S. Highway 178, thence south along U.S. Highway 178 to junction South Carolina Highway 28, thence southeast along South Carolina Highway 28 to the South Carolina-Georgia State line, thence southeast along the South Carolina-Georgia State line to the Atlantic Ocean, thence northeast along the Atlantic Coast to the Edisto River, thence north along the Edisto River to junction U.S. Highway 15, thence north along U.S. Highway 15 to junction U.S. Highway 178, thence northwest along U.S. Highway 178 to junction U.S. Highway 21, thence northwest along U.S. Highway 21 to junction South Carolina Highway 6, thence northwest along South Carolina Highway 6 to junction South Carolina Highway 60, thence east along South Carolina Highway 60 to junction U.S. Highway 176, thence northwest along U.S. Highway 176 to junction U.S. Highway 221, thence north along U.S. Highway 221 to the South Carolina-North Carolina State line, and thence west along the South Carolina-North Carolina State line to point of beginning, restricted against the transportation of those commodities requiring special equipment. The purpose of this filing is to eliminate the gateways of Bedford and Lynchburg, Va.

No. MC 61825 (Sub-No. E811), filed March 5, 1976. Applicant: ROY STONE TRANSFER CORPORATION, P.O. Box 385, Collinsville, Va. 24078. Applicant's representative: Harry J. Jordan, 1000 Sixteenth St., N.W., Washington, D.C. 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Clocks, materials, equipment, and supplies* used in the manufacture and distribution of clocks, new furniture and furniture parts (except in bulk), from points in Arizona, California, Idaho, Montana, Nevada, North Dakota, Oregon, Utah, Washington, and Wyoming, and points in Colorado, Nebraska, New Mexico, and South Dakota on, north and west of a line beginning at the United States-Mexico International Boundary line and extending north along the New Mexico-Texas State line to junction U.S. Highway 85, thence north along U.S. Highway 85 to junction New Mexico Highway 52, thence north along New Mexico Highway 52 to junction New Mexico Highway 78, thence north along New Mexico Highway 78 to junction U.S. Highway 60, thence west along U.S. Highway 60 to junction New Mexico Highway 117, thence north along New Mexico Highway 117 to junction U.S. Highway 66, thence northwest along U.S. Highway 66 to junction New Mexico Highway 57, thence north along New Mexico Highway 57 to junction New Mexico Highway 44, thence southeast along New Mexico Highway 44 to junction New Mexico Highway 96, thence north along New Mexico Highway 96 to junction New Mexico Highway 112, thence north along New Mexico Highway 112 to junction

U.S. Highway 84, thence north along U.S. Highway 84 to junction New Mexico Highway 17, thence northeast along New Mexico Highway 17 to junction Colorado Highway 17, thence northeast along Colorado Highway 17 to junction U.S. Highway 285, thence north along U.S. Highway 285 to junction U.S. Highway 50, thence east along U.S. Highway 50 to junction U.S. Highway 85, thence north along U.S. Highway 85 to junction U.S. Highway 6, thence northeast along U.S. Highway 6 to junction Interstate Highway 80S, thence east along Interstate Highway 80S to junction Interstate Highway 80.

Thence east along Interstate Highway 80 to junction U.S. Highway 83, thence north along U.S. Highway 83 to junction Nebraska Highway 2, thence southeast along Nebraska Highway 2 to junction Nebraska Highway 91, thence east along Nebraska Highway 91 to junction Nebraska Highway 7, thence north along Nebraska Highway 7 to junction U.S. Highway 20, thence east along U.S. Highway 20 to junction Nebraska Highway 11, thence north along Nebraska Highway 11 to junction U.S. Highway 18, thence northeast along U.S. Highway 18 to junction South Dakota Highway 37, thence north along South Dakota Highway 37 to junction South Dakota Highway 44, thence east along South Dakota Highway 44 to junction U.S. Highway 81, thence north along U.S. Highway 81 to junction U.S. Highway 16, and thence east along U.S. Highway 16 to the South Dakota-Minnesota State line, to points in North Carolina on and bounded by a line beginning at the Tennessee-North Carolina State line and extending southeast along U.S. Highway 19E to junction North Carolina Highway 194, thence south along North Carolina Highway 194 to junction U.S. Highway 221, thence south along U.S. Highway 221 to the North Carolina-South Carolina State line, thence east along the North Carolina-South Carolina State line to junction North Carolina Highway 216, thence northeast along North Carolina Highway 216 to junction U.S. Highway 74, thence west along U.S. Highway 74 to junction North Carolina Highway 18, thence north along North Carolina Highway 18 to junction North Carolina Highway 10, thence northeast along North Carolina Highway 10 to junction North Carolina Highway 127, thence north along North Carolina Highway 127 to junction U.S. Highway 321, thence northwest along U.S. Highway 321 to junction U.S. Highway 321 Alternate, thence northwest along U.S. Highway 321 Alternate to junction U.S. Highway 321, thence northwest along U.S. Highway 321 to junction U.S. Highway 421, thence northwest along U.S. Highway 421 to the North Carolina-Tennessee State line, and thence southwest along the North Carolina-Tennessee State line to point of beginning, restricted against the transportation of those commodities requiring special equipment. The purpose of this filing is to eliminate the gateways of Bedford and Lynchburg, Va.

No. MC 61825 (Sub-No. E812), filed March 5, 1976. Applicant: ROY STONE TRANSFER CORPORATION, P.O. Box 385, Collinsville, Va. 24078. Applicant's representative: Harry J. Jordan, 1000 Sixteenth St., N.W., Washington, D.C. 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Clocks, materials, equipment, and supplies* used in the manufacture and distribution of clocks, new furniture and furniture parts (except in bulk), from points in Oregon and Washington, and points in California, Idaho, Montana, Nevada, and North Dakota on, north and west of a line beginning at Monterey, Calif., and extending east along California Highway 68 to junction U.S. Highway 101, thence northwest along U.S. Highway 101 to junction California Highway 17, thence north along California Highway 17 to junction unnumbered highway at Milpitas, Calif., thence east along unnumbered highway to junction Interstate Highway 680, thence north along Interstate Highway 680 to junction Interstate Highway 580, thence southeast along Interstate Highway 580 to junction Interstate Highway 5, thence east along Interstate Highway 5 to junction California Highway 132, thence east along California Highway 132 to junction California Highway 108, thence northeast along California Highway 108 to junction California Highway 120, thence east along California Highway 120 to junction U.S. Highway 6, thence east along U.S. Highway 6 to junction Nevada Highway 8A, thence north along Nevada Highway 8A to junction Nevada Highway 82, thence north along Nevada Highway 82 to junction U.S. Highway 50, thence east along U.S. Highway 50 to junction Nevada Highway 46, thence north along Nevada Highway 46 to junction U.S. Highway 40, thence east along U.S. Highway 40 to junction U.S. Highway 93, thence north along U.S. Highway 93 to junction U.S. Highway 93 Alternate.

Thence northeast along U.S. Highway 93 Alternate to junction U.S. Highway 20, thence east along U.S. Highway 20 to junction Idaho Highway 22, thence northeast along Idaho Highway 22 to junction U.S. Highway 91, thence north along U.S. Highway 91 to the Idaho-Montana State line, thence east along the Idaho-Montana State line to the Idaho-Montana-Wyoming State line, thence north and thence east along the Montana-Wyoming State line to junction U.S. Highway 212, thence northeast along U.S. Highway 212 to junction U.S. Highway 10, thence northeast along U.S. Highway 10 to junction U.S. Highway 12, thence east along U.S. Highway 12 to junction U.S. Highway 85, thence north along U.S. Highway 85 to junction North Dakota Highway 21, thence east along North Dakota Highway 21 to junction North Dakota Highway 22, thence north along North Dakota Highway 22 to junction U.S. Highway 10, thence east along U.S. Highway 10 to junction North Dakota Highway 31, thence north along North Dakota Highway 31 to junction North Dakota Highway 200A, thence east along North Dakota Highway 200A to junction U.S. Highway 83, thence north along U.S. Highway 83 to junction North Dakota Highway 200, thence east along North Dakota Highway 200 to junction North Dakota Highway 41, thence north along North Dakota Highway 41 to junction U.S. Highway 52, thence southeast along U.S. Highway 52 to junction North Dakota Highway 14, thence north along North Dakota Highway 14 to junction U.S. Highway 2, thence east along U.S. Highway 2 to junction North Dakota Highway 3, thence north along North Dakota Highway 3 to junction North Dakota Highway 66, thence east along North Dakota Highway 66 to junction U.S. Highway 281.

Thence north along U.S. Highway 281 to junction North Dakota Highway 5, thence east along North Dakota Highway 5 to junction North Dakota Highway 20, thence north along North Dakota Highway 20 to the United States-Canadian International Boundary line, to points in North Carolina on and bounded by a line beginning at the Tennessee-North Carolina State line and extending south along U.S. Highway 129 to Andrews, N.C., thence northeast along U.S. Highway 19 to junction North Carolina Highway 28, thence southeast along North Carolina Highway 28 to junction U.S. Highway 441, thence south along U.S. Highway 441 to the North Carolina-Georgia State line, thence east along the North Carolina-Georgia State line to the North Carolina-South Carolina State line, thence east along North Carolina-South Carolina State line to junction U.S. Highway 221, thence north along U.S. Highway 221 to junction North Carolina Highway 194, thence north along North Carolina Highway 194 to junction U.S. Highway 19E, thence northwest along U.S. Highway 19E to the North Carolina-Tennessee State line, thence southwest along the North Carolina-Tennessee State line to point of beginning, restricted against the transportation of those commodities requiring special equipment. The purpose of this filing is to eliminate the gateways of Bedford and Lynchburg, Va.

No. MC 61825 (Sub-E817), filed March 5, 1976. Applicant: ROY STONE TRANSFER CORPORATION, P.O. Box 385, Collinsville, Va. 24078. Applicant's representative: Harry J. Jordan, 1000 Sixteenth Street, Washington, D.C. 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *New Furniture, Furniture parts*, and *Furniture materials* (except in bulk, from points in Arizona, California, Idaho, Montana, Nevada, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming, and points in Colorado, Nebraska, and New Mexico on and northwest of a line beginning at the Texas-New Mexico State line and extending north along U.S. Highway 54 to junction New Mexico Highway 3, thence north along New Mexico Highway 3 to junction Colorado

Highway 159, thence north along Colorado Highway 159 to junction U.S. Highway 160, thence east along U.S. Highway 160 to junction Colorado Highway 10, thence northeast along Colorado Highway 167 to junction Colorado Highway 96, thence east along Colorado Highway 96 to junction Colorado Highway 71, thence north along Colorado Highway 71 to junction U.S. Highway 24, thence east along U.S. Highway 24 to the Colorado-Kansas State line, thence north along the Colorado-Kansas State line, to the Colorado-Nebraska State line, thence north along the Colorado-Nebraska State line to junction Nebraska Highway 23, thence east along Nebraska Highway 23 to junction U.S. Highway 283, thence north along U.S. Highway 283 to junction U.S. Highway 30, thence east along U.S. Highway 30 to junction U.S. Highway 183, thence north along U.S. Highway 183 to junction Nebraska Highway 70, thence northeast along Nebraska Highway 70 to junction U.S. Highway 275, thence east along U.S. Highway 275 to junction Nebraska Highway 35, thence northeast along Nebraska Highway 35 to junction U S. Highway 73, and thence north along U.S. Highway 73 to the Nebraska-Iowa State line, to points in North Carolina on and bounded by a line beginning at the Tennessee-North Carolina State line and extending south along North Carolina Highway 226 to junction North Carolina Highway 197, thence southwest along North Carolina Highway 197 to junction U.S. Highway 23, thence south along U.S. Highway 23 to junction U.S. Highway 25, thence south along U.S. Highway 25 to the North Carolina-South Carolina State line, thence east along the North Carolina-South Carolina State line to junction U.S. Highway 221, thence north along U.S. Highway 221 to junction U.S. Highway 321, thence northwest along U.S. 321 to junction U.S. Highway 421, thence north along U.S. Highway 421 to the North Carolina-Tennessee State line, and thence southwest along the North Carolina-Tennessee State line to point of beginning. The purpose of this filing is to eliminate the gateway of Bassett, Va.

No. MC 61825 (Sub-E818), filed March 5, 1976. Applicant: ROY STONE TRANSFER CORPORATION, P.O. Box 385, Collingsville, Va. 24078. Applicant's representative: Harry J. Jordan, 1000 Sixteenth Street, Washington, D.C. 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *New Furniture, Furniture parts*, and *Furniture materials*, except in bulk, from points in Idaho, Montana, Oregon, and Washington, and points in California, Nevada, North Dakota, South Dakota, Utah, and Wyoming on, north and west of a line beginning at the United States-Mexico International Boundary line and extending north along California Highway 111 to junction Interstate Highway 10, thence west along Interstate Highway 10 to junction U.S. Highway 395, thence north along U.S. Highway 395 to junction U.S. Highway 66, thence north along U.S. Highway 66 to junction Interstate Highway 15, thence northeast along Interstate Highway 15 to junction California Highway 127, thence north along California Highway 127 to junction California Highway 178, thence north along California Highway 178 to junction Nevada Highway 52, thence northeast along Nevada Highway 52 to junction Nevada Highway 16, thence north along Nevada Highway 16 to junction U.S. Highway 95, thence northwest along U.S. Highway 95 to junction U.S. Highway 6, thence east along U.S. Highway 6 to junction Nevada Highway 25, thence east along Nevada Highway 25 to junction Utah Highway 56, thence east along Utah Highway 56 to junction U.S. Highway 91, thence northeast along U.S. Highway 91 to junction Utah Highway 20, thence southeast along Utah Highway 20 to junction U.S. Highway 89, thence northeast along U.S. Highway 89 to junction Interstate Highway 70, thence east along Interstate Highway 70 to junction Utah Highway 10.

Thence northeast along Utah Highway 10 to junction U.S. Highway 6, thence northwest along U.S. Highway 6 to junction U.S. Highway 89, thence north along U.S. Highway 89 to junction U.S. Highway 189, thence north along U.S. Highway 189 to junction U.S. Highway 187, thence southeast along U.S. Highway 187 to junction Wyoming Highway 28, thence northeast along Wyoming Highway 28 to junction U.S. Highway 287, thence north along U.S. Highway 287 to junction Wyoming Highway 789, thence northeast along Wyoming Highway 789 to junction U.S. Highway 16, thence northeast along U.S. Highway 16 to junction Interstate Highway 90, thence east along Interstate Highway 90 to Rapid City, S. Dak., thence northwest along U.S. Highway 14 to junction South Dakota Highway 34, thence east along South Dakota Highway 34 to junction South Dakota Highway 73, thence north along South Dakota Highway 73 to junction U.S. Highway 212, thence east along U.S. Highway 212 to junction South Dakota Highway 47, thence north along South Dakota Highway 47 to junction U.S. Highway 12, thence east along U.S. Highway 12 to junction U.S. Highway 281, thence north along U.S. Highway 281 to junction North Dakota Highway 11, thence east along North Dakota Highway 11 to junction North Dakota Highway 1, thence north along North Dakota Highway 1 to junction North Dakota Highway 46, thence east along North Dakota Highway 46 to junction North Dakota Highway 18, thence north along North Dakota Highway 18 to junction U.S. Highway 10, and thence east along U.S. Highway 10 to the North Dakota-Minnesota State line, to points in North Carolina on and bounded by a line beginning at the Tennessee-North Carolina State line and extending south along U.S. Highway 129 to junction U.S. Highway 19 at Andrews, North Carolina, thence northeast along U.S. Highway 19 to junction North Carolina Highway 28.

Thence south along North Carolina Highway 28 to junction U.S. Highway 23, thence south along U.S. Highway 23 to the North Carolina-Georgia State line, thence east along the North Carolina-Georgia State line to the North Carolina-South Carolina State line, thence east along the North Carolina-South Carolina State line to junction U.S. Highway 25, thence north along U.S. Highway 25 to junction U.S. Highway 23, thence north along U.S. Highway 23 to junction North Carolina Highway 197, thence northeast along North Carolina Highway 197 to junction North Carolina Highway 226, thence north along North Carolina Highway 226 to the North Carolina-Tennessee State line, and thence southwest along the North Carolina-Tennessee State line to point of beginning. The purpose of this filing is to eliminate the gateways of Bassett, Va.

No. MC 61825 (Sub-E819), filed March 5, 1976. Applicant: ROY STONE TRANSFER CORPORATION, P.O. Box 385, Collinsville, Va. 24078. Applicant's representative: Harry J. Jordan, 1000 Sixteenth Street, Washington, D.C. 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *New Furniture, Furniture parts*, and *Furniture materials*, from points in Oregon and Washington, and points in California, Idaho, Montana, Nevada, and North Dakota on, north and west of a line beginning at Santa Barbara, California and extending northwest along U.S. Highway 101 to junction California Highway 41, thence northeast along California Highway 41 to junction California Highway 198, thence east along California Highway 198 to junction California Highway 43, thence south along California Highway 43 to junction California Highway 137, thence northeast along California Highway 137 to junction California Highway 99, thence northwest along California Highway 99 to junction California Highway 41, thence north along California Highway 41 to junction California Highway 49, thence northwest along California Highway 49 to junction California Highway 120, thence east along California Highway 120 to junction U.S. Highway 395, thence southeast along U.S. Highway 395 to junction U.S. Highway 6, thence northeast along U.S. Highway 6 to junction U.S. Highway 93, thence north along U.S. Highway 93 to junction U.S. Highway 26, thence northeast along U.S. Highway 26 to junction U.S. Highway 20, thence east along U.S. Highway 20 to junction U.S. Highway 191, thence northeast along U.S. Highway 191 to the Montana-Wyoming State line, thence north and thence east along the Montana-Wyoming State line to junction U.S. Highway 212, thence northeast along U.S. Highway 212 to junction U.S. Highway 10.

Thence northeast along U.S. Highway 10 to junction U.S. Highway 83, thence north along U.S. Highway 83 to junction North Dakota Highway 41, thence north along North Dakota Highway 41 to junction North Dakota Highway 200, thence east along North Dakota Highway 200 to junction North Dakota Highway 14, thence north along North Dakota Highway 14 to junction U.S. Highway 52, thence southeast along U.S. Highway 52 to junction North Dakota Highway 3, thence north along North Dakota Highway 3 to junction U.S. Highway 2, thence east along U.S. Highway 2 to junction U.S. Highway 281, thence north along U.S. Highway 281 to junction North Dakota Highway 5, thence east along North Dakota Highway 5 to junction North Dakota Highway 1, thence north along North Dakota Highway 1 to the United States-Canadian International Boundary line, to points in North Carolina on and southwest of a line beginning at the Tennessee-North Carolina State line and extending south along U.S. 129 to Andrews, North Carolina, thence northeast along U.S. Highway 19 to junction North Carolina Highway 28, thence south along North Carolina 28 to junction U.S. Highway 23, thence south along U.S. Highway 23 to the North Carolina-Georgia State line. The purpose of this filing is to eliminate the gateways of Basset, Va.

No. MC 107012 (Sub-No. E16) (partial correction), filed June 3, 1974, published in the FEDERAL REGISTER issue of August 26, 1975, and republished, as corrected, this issue. Applicant: NORTH AMERICAN VAN LINES, INC., P.O. Box 988, Fort Wayne, Ind. 46801. Applicant's representative: Terry G. Fewell (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting (C) *New furniture*, crated, from Los Angeles County, Calif., to points in Maine, New Hampshire, and Vermont. (Greene County, Ark.) * The purpose of this filing is to eliminate the gateways indicated by asterisks above.

NOTE.—The purpose of this partial correction is to include Part (C) that was omitted in prior publication. The remainder of this letter notice remains as previously published.

No. MC 108449 (Sub-No. E196), filed June 4, 1974. Applicant: INDIANHEAD TRUCK LINE, INC., 1947 West County Road, C, St. Paul, Minn. 55113. Applicant's representative: W. A. Mylienbeck (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Canned goods*, from points in Wisconsin in and north and east of Ozaukee, Washington, Dodge, Columbia, Sauk, Juneau, Wood, Marathon, Lincoln, Oneida, and Vilas Counties, Wis., to points in Iowa on and north of a line beginning at the Iowa-Nebraska State line and extending along Iowa Highway 175 to junction U.S. Highway 71, thence along U.S. Highway 71 to junction U.S. Highway 20, thence along U.S. Highway 20 to junction Interstate Highway 35, thence along Interstate Highway 35 to junction Iowa Highway 3, thence along Iowa Highway 3 to junction U.S. Highway 63, thence along U.S. Highway 63 to junction Iowa Highway 24, thence along Iowa Highway 24 to junction Iowa Highway 139, thence along Iowa Highway 139 to the Iowa-Minnesota State line. The purpose of this filing is to eliminate the gateway of Winona, Minn.

No. MC 112070 (Sub-No. E41), filed June 4, 1974. Applicant: GRAY MOVING & STORAGE, INC., 1290 South Pearl, Denver, Colo. 80210. Applicant's representative: D. R. Gray (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Household goods*, as defined by the Commission, (a) between points in Pennsylvania, on the one hand, and, on the other, poin's in Iowa; (b) between points in Pennsylvania, on the one hand, and, on the other, those points in Michigan on and west of a line beginning at the International Boundary line between United States and Canada, and extending along Interstate Highway 75, thence along Interstate Highway 75 to the Michigan State line at or near St. Ignace, Mich. The purpose of this filing is to eliminate the gateway of points in Illinois.

No. MC 112070 (Sub-No. E43), filed June 4, 1974. Applicant: GRAY MOVING & STORAGE, INC., 1290 South Pearl, Denver, Colo. 80210. Applicant's representative: D. R. Gray (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Household goods*, as defined by the Commission, (a) between points in Indiana, on the one hand, and, on the other, points in Iowa, Wisconsin and Minnesota; (b) between points in Indiana, on the one hand, and, on the other, points in Nebraska, South Dakota, Colorado, Kansas, and Wyoming. The purpose of this filing is to eliminate the gateway of points of Illinois.

No. MC 112070 (Sub-No. E44), filed June 4, 1974. Applicant: GRAY MOVING & STORAGE, INC., 1290 South Pearl, Denver, Colo. 80210. Applicant's representative: D. R. Gray (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Household goods*, as defined by the Commission, between those points in Nebraska on and east of a line beginning at the South Dakota-Nebraska State line, and extending along U.S. Highway 81, thence along U.S. Highway 81 to junction Nebraska Highway 92, thence west along Nebraska Highway 92 to junction U.S. Highway 81, thence along U.S. Highway 81 to the Kansas-Nebraska State line, on the one hand, and, on the other, those points in Oklahoma on and east of a line beginning at the Kansas-Oklahoma State line, and extending along U.S. Highway 75, thence along U.S. Highway 75 to the Oklahoma-Texas State line. The purpose of this filing is to eliminate the gateway of points in Missouri.

No. MC 112070 (Sub-No. E45), filed June 4, 1974. Applicant: GRAY MOVING & STORAGE, INC., 1290 South Pearl, Denver, Colo. 80210. Applicant's representative: D. R. Gray (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Household goods*, as defined by the Commission, (a) between points in Brown, Doniphan, and Atchison Counties, Kans., on the one hand, and, on the other, those points in Oklahoma on and east of a line beginning at the Kansas-Oklahoma State line, and extending along Oklahoma Highway 74, to junction Oklahoma Highway 51, thence along Oklahoma Highway 51 to junction U.S. Highway 64, thence along

filing is to eliminate the gateway of points in Missouri.

No. MC 112070 (Sub-No. E46), filed June 4, 1974. Applicant: GRAY MOVING & STORAGE, INC., 1290 South Pearl, Denver, Colorado 80210. Applicant's representative: D. R. Gray (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Household goods*, as defined by the Commission, between points in Pennsylvania, on the one hand, and, on the other, Enid, Okla., and points within 90 miles thereof. The purpose of this filing is to eliminate the gateway of points in Missouri.

No. MC 112070 (Sub-No. E47), filed June 4, 1974. Applicant: GRAY MOVING & STORAGE, INC., 1290 South Pearl, Denver, Colo. 80210. Applicant's representative: D. R. Gray (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Household goods*, as defined by the Commission, between points in Tennessee, on the one hand, and, on the other, points in Wisconsin. The purpose of this filing is to eliminate the gateway of points in Illinois.

No. MC 112070 (Sub-No. E48), filed June 4, 1974. Applicant: GRAY MOVING STORAGE, INC., 1290 South Pearl, Denver, Colo. 80210. Applicant's representative: D. R. Gray (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Household goods*, as defined by the Commission, between points in Tennessee, on the one hand, and, on the other, points in Colorado, Kansas and Wyoming. The purpose of this filing is to eliminate the gateway of points in Missouri.

No. MC 112070 (Sub-No. E49), filed June 4, 1974. Applicant: GRAY MOVING & STORAGE, INC., 1290 South Pearl, Denver, Colo. 80210. Applicant's representative: D. R. Gray (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Household goods*, as defined by the Commission, between points in Colorado, on the one hand, and, on the other, points in Arkansas. The prpose of this filing is to eliminate the gateway of points in Missouri.

No. MC 112070 (Sub-No. E50), filed June 4, 1974. Applicant: GRAY MOVING & STORAGE, INC., 1290 South Pearl, Denver, Colo. 80210. Applicant's representative: D. R. Gray (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Household goods*, as defined by the Commission, (a) between points in Brown, Doniphan, and Atchison Counties, Kans., on the one hand, and, on the other, those points in Oklahoma on and east of a line beginning at the Kansas-Oklahoma State line, and extending along Oklahoma Highway 74, to junction Oklahoma Highway 51, thence along Oklahoma Highway 51 to junction U.S. Highway 64, thence along

U.S. Highway 64 to the Oklahoma-Arkansas State line; (b) those points in Kansas on and north of a line beginning at the Colorado-Kansas State line, and extending along Kansas Highway 96, thence along Kansas Highway 96 to junction Kansas Highway 15, thence along Kansas Highway 15 to junction U.S. Highway 77, thence along U.S. Highway 77 to the Kansas-Oklahoma State line, on the one hand, and, on the other, points in Arkansas. The purpose of this filing is to eliminate the gateway of points in Missouri.

No. MC 112070 (Sub-No. E51), filed June 4, 1974. Applicnt: GRAY MOVING & STORAGE, INC., 1290 South Pearl, Denver, Colo. 80210. Applicant's representative: D. R. Gray (same as above), Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Household goods*, as defined by the Commission, (a) between points in Kansas, on the one hand, and, on the other, those points in Arkansas on and north of a line beginning at the Oklahoma-Arkansas State line, and extending along Arkansas Highway 16 to junction Arkansas Highway 23, thence along Arkansas Highway 23 to junction Interstate Highway 40, thence along Interstate Highway 40 to the Arkansas-Tennessee State line; (b) between points in Kansas, on the one hand, and, on the other, points in Kentucky. The purpose of this filing is to eliminate the gateway of points in Missouri.

No. MC 112070 (Sub-No. E52), filed June 4, 1974. Applicant: GRAY MOVING & STORAGE, INC., 1290 South Pearl, Denver, Colo. 80210. Applicant's representative: D. R. Gray (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Household goods*, as defined by the Commission, (a) between those points in Kansas on and east of a line beginning at the Kansas-Nebraska State line, and extending along U.S. Highway 81, thence along U.S. Highway 81 to junction Kansas Highway 18, thence along Kansas Highway 18 to junction Kansas Highway 99, thence along Kansas Highway 99 to junction Kansas Highway 57, thence east on Kansas Highway 57 to junction U.S. Highway 75, thence along U.S. Highway 75 to junction Kansas Highway 39, thence along Kansas Highway 39 to junction U.S. Highway 59, thence along U.S. Highway 59 to the Kansas-Oklahoma State line, on the one hand, and, on the other, those points in Oklahoma on and west of a line beginning at the Missouri-Oklahoma State line, and extending along Interstate Highway 44 to junction U.S. Highway 69, thence along U.S. Highway 69 to the Oklahoma-Texas State line; (b) between those points in Kansas on and east of a line beginning at the Nebraska-Kansas State line and extending along U.S. Highway 159, thence along U.S. Highway 159 to U.S. Highway 59, thence along U.S. Highway 59 to junction Kansas Highway 31, thence along Kansas Highway 31 to junction U.S. Highway 59, thence along U.S. Highway 59 to the Kansas-Oklahoma State line, on the one hand, and, on the other, to those points in Oklahoma on and east of a line beginning at the Kansas-Oklahoma State line, and extending along U.S. Highway 75, thence along U.S. Highway 75 to the Oklahoma-Texas State line; (c) between points in Cherokee and Crawford Counties, Kans., on the one hand, and, on the other, points in Oklahoma. The purpose of this filing is to eliminate the gateway of points in Missouri.

No. MC 112070 (Sub-No. E53), filed June 4, 1974. Applicant: GRAY MOVING & STORAGE, INC., 1290 South Pearl, Denver, Colo. 80210. Applicant's representative: D. R. Gray (same as above). Authority sought to operate as a *common carrier*, by motor vehicles, over irregular routes, transporting: *Household goods*, as defined by the Commission, between points in Kentucky, on the one hand, and, on the other, points in Colorado. The purpose of this filing is to eliminate the gateway of points in Missouri.

No. MC 112070 (Sub-No. E54), filed June 4, 1974. Applicant: GRAY MOVING & STORAGE, INC., 1290 South Pearl, Denver, Colo. 80210. Applicant's representative: D. R. Gray (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Household goods*, as defined by the Commission, between points in South Dakota on and east of the Missouri River, on the one hand, and, on the other, points in Oklahoma on and east of a line beginning at the Kansas-Oklahoma State line, and extending along U.S. Highway 75, thence along U.S. Highway to the Oklahoma-Texas State line. The purpose of this filing is to eliminate the gateway of points in Missouri.

No. MC-112070 (Sub-No. E55), filed June 4, 1974. Applicant: GRAY MOVING & STORAGE, INC., 1290 South Pearl, Denver, Colo. 80210. Applicant's representative: D. R. Gray (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Prepared foodstuffs* (except frozen), from Coloma, Mich., to Minneapolis and St. Paul, Minn. The purpose of this filing is to eliminate the gateway of points in Wisconsin on and south of U.S. Highway 10 (except Milwaukee).

No. MC 119767 (Sub-No. E54), filed June 4, 1974. Applicant: BEAVER TRANSPORT CO., P.O. Box 186, Pleasant Prairie, Wis. 53158. Applicant's representative: Henry Seaton, 915 Pennsylvania Building, 425 Thirteenth St., N.W., Washington, D.C. 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Canned food* (except dairy products, frozen fruit, frozen vegetables, frozen berries and commodities in bulk, in tank vehicles), from points in Indiana on and north of U.S. Highway 24 to points in Missouri on and east of U.S. Highway 65 and on and west of U.S. Highway 63. The purpose of this filing is to eliminate the gateway of points in Wisconsin within 75 miles of Beaver Dam, Wis. (except Brookfield, Cudahy, Darien, Waukesha, Kenosha, Waupaca, Hilbert, Kaukauna, Mayville, and Watertown, Wis. and points within their respective commercial zones and defined by the Commission).

No. MC 119767 (Sub-No. E56), filed June 4, 1974. Applicant: BEAVER TRANSPORT CO., P.O. Box 186, Pleasant Prairie, Wis. 53158. Applicant's representative: Henry Seaton, 915 Pennsylvania Building, 425 Thirteenth Street, N.W., Washington, D.C. 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs* (except dairy products, frozen foods, frozen fruit, frozen vegetables, frozen berries and commodities in bulk, in tank vehicles), from Coloma, Mich., to points in Laclede, Webster, Wright, Douglas, and Ozark Counties, Mo. and points in Dallas, Greene, Christian, and Taney Counties, Mo. on and east of U.S. Highway 65. The purpose of this filing is to eliminate the *gateways* of points in Walworth and Racine Counties, Wis.

No. MC 119767 (Sub-No. E57), filed June 4, 1974. Applicant: BEAVER TRANSPORT CO., P.O. Box 186, Pleasant Prairie, Wis. 53158. Applicant's representative: Henry Seaton, 915 Pennsylvania Building, 425 Thirteenth St., N.W., Washington, D.C. 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Prepared food products, dairy products and by-products, and materials, supplies and equipment* used in the preparation, packing, and sale of these commodities (except in bulk), between points in that part of Illinois on, north and east of a line beginning at the Illinois-Wisconsin State line and extending along Illinois Highway 47 to junction U.S. Highway 150, thence along U.S. Highway 150 to the Illinois-Indiana State line, on the one hand, and, on the other, points in that part of Minnesota on and north of a line beginning at the South Dakota-Minnesota State line and extending along U.S. Highway 14 to New Ulm, Minn., thence along Minnesota Highway 15 to junction U.S. Highway 212, thence along U.S. Highway 212 to the Minnesota-Wisconsin State line, including all points in McLeod, Hennepin, and Washington Counties, Minn. The purpose of this filing is to eliminate the *gateways* of Minneapolis, Minn. and points in the Towns of Rock Elm and Spring Lake, Pierce County, Wis., those in the Towns of Eau Galle, Weston, and Dunn, Dunn County, Wis. and those in the Towns of Waubeck, Waterville, and Durand, Pepin County, Wis.

No. MC 119767 (Sub-No. E58), filed June 4, 1974. Applicant: BEAVER TRANSPORT CO., P.O. Box 186, Pleasant Prairie, Wis. 53158. Applicant's representative: Henry Seaton, 915 Pennsylvania Building, 425 Thirteenth St., NW., Washington, D.C. 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Prepared food products, dairy products and by-products, and materials, supplies and equipment* used in the preparation, packing and sale of these commodities (except in bulk), between points in Indiana, on the one hand, and, on the other, points in Minnesota on and north of a line beginning at the South Dakota-Minnesota State line and extending along Minnesota Highway 30 to junction Minnesota Highway 60 at or near St. James, Minn., thence along Minnesota Highway 60 to junction U.S. Highway 169 near Mankato, Minn., thence along U.S. Highway 169 to junction Minnesota Highway 19, thence along Minnesota Highway 19 to junction U.S. Highway 61, thence along U.S. Highway 61 to the Mississippi River at or near Red Wing, Minn. The purpose of this filing is to eliminate the *gateways* of Minneapolis, Minn. and points in the Towns of Rock Elm and Spring Lake, Pierce County, Wis., those in the Towns of Eau Galle, Weston, and Dunn, Dunn County, Wis., and those in the Towns of Waubeck, Waterville, and Durand, Pepin County, Wis.

No. MC 119767 (Sub-No. E59), filed June 4, 1974. Applicant: BEAVER TRANSPORT CO., P.O. Box 186, Pleasant Prairie, Wis. 53158. Applicant's representative: Henry Seaton, 915 Pennsylvania Building, 425 Thirteenth St., NW., Washington, D.C. 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Prepared food products, dairy products and by-products, and materials, supplies and equipment* used in the preparation, packing, and sale of these commodities (except in bulk), between points in Illinois, on the one hand, and, on the other, points in Minnesota on and north of U.S. Highway 12. The purpose of this filing is to eliminate the gateways of Minneapolis, Minn. and points in the Towns of Rock Elm and Spring Lake, Pierce County, Wis., those in the Towns of Eau Galle, Weston, and Dunn, Dunn County, Wis., and those in the Towns of Waubeck, Waterville, and Durand, Pepin County, Wis.

No. MC 119767 (Sub-No. E60), filed June 4, 1974. Applicant: BEAVER TRANSPORT CO., P.O. Box 186, Pleasant Prairie, Wis. 53158. Applicant's representative: Henry Seaton, 915 Pennsylvania Building, 425 Thirteenth Street, N.W., Washington, D.C. 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Prepared food products and dairy products* (except in bulk, in tank vehicles), from Chicago, Ill., and points in its commercial zone, to points in that part of the Lower Peninsula of Michigan on, north, and east of a line beginning at Lake Michigan near Ludington, Mich., and extending along U.S. Highway 10 to junction U.S. Highway 27, thence along U.S. Highway 27 to Lansing, Mich., thence along U.S. Highway 127 to Jackson, Mich., thence along Interstate Highway 94 to junction Michigan Highway 52, thence along Michigan Highway 52 to the Ohio-Michigan State line. The purpose of this filing is to eliminate the gateway of points in Wisconsin (except Racine, Kenosha, Milwaukee, Brookfield, Fort Atkinson and points in their respective commercial zones).

No. MC 119767 (Sub-No. E61), filed June 4, 1974. Applicant: BEAVER TRANSPORT CO., P.O. Box 186, Pleasant Prairie, Wis. 53158. Applicant's representative: Henry Seaton, 915 Pennsylvania Building, 425 Thirteenth St., N.W., Washington, D.C. 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Prepared food products and dairy products* (except in bulk, in tank vehicles), from points in Illinois on and north of a line beginning at the Mississippi River near Moline, Ill. and extending along Illinois Highway 2 to junction Winnebago-Ogle County line, thence along the southern boundary of Winnebago, Boone, McHenry and Lake Counties, Ill. to Lake Michigan, to points in that part of the Lower Peninsula of Michigan on, north and east of a line beginning at Lake Michigan near Muskegon, Mich., and extending along Interstate Highway 96 to junction Michigan Highway 37, thence along Michigan Highway 37 to junction Michigan Highway 89, thence along Michigan Highway 89 to junction Interstate Highway 69, thence along Interstate Highway 69 to the Indiana-Michigan State line (except Grand Rapids, Mich.). The purpose of this filing is to eliminate the gateway of points in Wisconsin (except Racine, Kenosha, Milwaukee, Brookfield, Fort Atkinson and their respective commercial zones).

No. MC 119767 (Sub-No. E62), filed June 4, 1974. Applicant: BEAVER TRANSPORT CO., P.O. Box 186, Pleasant Prairie, Wis. 53158. Applicant's representative: Henry Seaton, 915 Pennsylvania Building, 425 Thirteenth St., NW., Washington, D.C. 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Such glassware, glass containers and closures for glass containers* as are materials, supplies, and equipment used or useful in the preparation, packing, and sale of prepared food products, dairy products and by-products, from points in Indiana on and west of a line beginning at Lake Michigan and extending along U.S. Highway 421 to junction Indiana Highway 43, thence along Indiana Highway 43 to junction U.S. Highway 231, thence along U.S. Highway 231 to junction Indiana Highway 57, thence along Indiana Highway 57 to the Indiana-Kentucky State line, to points in Minnesota and points in Iowa on and north of Iowa Highway 18. The purpose of this filing is to eliminate the gateway of Burlington, Wis.

No. MC 119767 (Sub-No. E63), filed June 4, 1974. Applicant: BEAVER TRANSPORT CO., P.O. Box 186, Pleasant Prairie, Wis. 53158. Applicant's representative: Henry Seaton, 915 Pennsylvania Building, 425 Thirteenth Street, NW., Washington, D.C. 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Dairy products* (ex-

cept frozen foods), from points in Minnesota on and south of U.S. Highway 12, to points in Ohio on and west of a line beginning at the Sandusky, Ohio and extending south along Ohio Highway 4 to Marion, Ohio, and thence south along U.S. Highway 23 to Portsmouth, Ohio. The purpose of this filing is to eliminate the gateway of points in Wisconsin (except Fort Atkinson, Brookfield, and the commercial zones thereof as defined by the Commission, and Milwaukee, Wis. and except points in Douglas, Bayfield, Ashland, Iron, Vilas, Forest, Florence, Marinette and Door Counties).

By the Commission.

ROBERT L. OSWALD,
Secretary.

[FR Doc 77-2722 Filed 1-26-77; 8:45 am]

[Notice No. 12]

MOTOR CARRIER BOARD TRANSFER PROCEEDINGS

The following publications include motor carrier, water carrier, broker, and freight forwarder tansfer applications filed under section 212(b), 206(a), 211, 312(b), and 410(g) of the Interstate Commerce Act.

Each application (except as otherwise specifically noted) contains a statement by applicants that there will be no significant effect on the quality of the human environment resulting from approval of the application.

Protests against approval of the application, which may include a request for oral hearing, must be filed with the Commission on or before February 28, 1977. Failure seasonably to file a protest will be construed as a waiver of opposition and participation in the proceeding. A protest must be served upon applicants' representative(s), or applicants (if no such representative is named), and the protestant must certify that such service has been made.

Unless otherwise specified, the signed original and six copies of the protest shall be filed with the Commission. All protests must specify with particularity the factual basis, and the section of the Act, or the applicable rule governing the proposed transfer which protestant believes would preclude approval of the application. If the protest contains a request for oral hearing, the request shall be supported by an explanation as to why the evidence sought to be presented cannot reasonably be submitted through the use of affidavits.

The operating rights set forth below are in synopses form, but are demed sufficient to place interested persons on notice of the proposed transfer.

No. MC-FC-76841, filed November 26, 1976. Transferee: O'BOYLE TRANSFER CO., INC., 1800 N Western Avenue, Chicago, Illinois, 60647. Transferor: Carl O. Minnberg, doing business as Calder's Van Company, 1800 N. Western Avenue, Chicago, Illinois, 60647. Applicants' representative: Walter N. New, 10 S. La Salle Street, Chicago, Illinois, 60603. Authority sought for purchase by transferee of the operating rights of transferor, as set forth in Certificate No. MC 95293, issued August 26, 1974, as follows: Household goods as defined by the Commission, Between Chicago, Evanston City and points in New Trier and Niles Townships, Ill., on the one hand, and, on the other, points in Minnesota, Iowa, Nebraska, Wisconsin, Ohio, and Indiana. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under Section 210a(b).

No. MC-FC-7685, filed December 3, 1976. Transferee: O'CONNOR BROTHERS MOVING AND STORAGE CO., INC., 429-37 Schiller St., Elizabeth, New Jersey 07206. Transferor: Patrick J. O'Connor, Jewel O'Connor, Administratrix, doing business as O'Connor Brothers, 429-37 Schiller St., Elizabeth, New Jersey 07206. Applicants' representative: Frank O'Conor, 429-37 Schiller St., Elizabeth, New Jersey, 07206. Authority sought for purchase by transferee of the operating rights of transferor, as set forth in Certificate No. MC 8526, issued December 5, 1973, as follows: Household goods, between points in Essex, Union, Hudson, and Middlesex Counties, N.J., on the one hand, and, on the other, points in New Jersey and New York. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under Section 210a(b).

No. MC-FC-76872, filed December 15, 1977. Transferee: SALMON RIVER STAGES, INC., P.O. Box 806, Salmon, Idaho 83467. Transferor: Billie G. Peterson, doing business as Salmon River Stages, P.O. Box 806, Salmon, Idaho 83467. Applicant's representative: Billy G. Peterson, Box 806, Salmon, Idaho 83467. Authority sought for purchase by transferee of the operating rights of transferor, as set forth in Certificate No. MC 1578 issued August 8, 1975, as follows: Passengers and their baggage, and express and newspapers, in the same vehicle with passengers, over specified regular routes between Pocatello, Idaho, and Salmon, Idaho, serving all intermediate points, and the off-route point of Challis, Idaho; Between Idaho Falls, Idaho, and Salmon, Idaho, serving all intermediate points; Between Roberts, Idaho, and Idaho Falls, Idaho, serving all intermediate points; and Between junction Idaho Highway 28 and unnumbered highway (known as Pole Line Road), and the site of the Atomic Energy Plant, serving all intermediate points. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under Section 210a(b).

No. MC-FC-76873, filed December 14, 1976. Transferee: MOTOR LEASING CO., 905 Smelter Ave., P.O. Box 652, Great Falls, Montana, 59403. Transferor: Glacier Transportation, 812 19th St. N., Great Falls, Montana. Applicant's representative: J. Ward Kencke, P.O. Box 652, Great Falls, Montana, 59403. Authority sought for purchase by transferee of the operating rights of transferor, as set forth in Certificate No. MC-29477 issued June 24, 1970, as follows: (A) *Passengers and their baggage, and express and mail*, in the same vehicle with passengers, over specified regular routes, between Great Falls, Mont., and Choteau, Mont., serving all intermediate points: *Passengers and their baggage*, from the 15th day of June to the 15th day of September each year, inclusive, over specified regular route between Browning, Mont., on the one hand, and, on the other, Glacier Park Mont.: *Passengers and their baggage, and express* in the same vehicle with passengers, over specified regular route, between Choteau, Mont., and Browning, Mont., serving all intermediate points: (Incidental charter operations may be conducted pursuant to Section 208(c) of the Interstate Commerce Act. (B) *Passengers and their baggage and express*, in the same vehicle with passengers, over specified regular route, between junction U.S. Highway 89 and Montana Highway 219 and Pendroy, Mont., serving no intermediate points: *Passengers and their baggage*, over specified regular route, between Browning, Mont., and Kalispell, Mont., serving no intermediate points: *Passengers and their baggage*, between Browning, Mont., and Glacier Park, Mont., serving no intermediate points: The filed after January 1, 1967, and, therefore, no incidental charter operations are authorized. *Passengers and their baggage* in the same vehicle with passengers, in special and charter operations, over irregular routes, Beginning and ending at points on the routes next above, and extending to points in the United States (including Alaska, but excluding Hawaii). Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under Section 210 a(b).

No. MC-FC-76875 filed December 14, 1976. Transferee: MUSTANG TRANSPORTATION INCORPORATED, 3804 Jensen Drive, P.O. Box 21201, Houston, Texas 77026. Transferor: Ramsey Truck Lines, Inc., P.O. Box 1031, Houston, Texas 77001. Applicant's representative: J. G. Dail, Jr., P.O. Box 567, McLean, Virginia 22101. Authority sought for purchase by transferee of the operating rights of transferor, as set forth in Certificate of Registration No. MC-133506, issued December 9, 1969, as follows: Oilfield equipment and pipe when moving as oilfield equipment and trenching machines and numerous other specified commodities between points in Texas. Transferee presently holds no authority from this Commission. Application has been filed for temporary authority under Section 210a(b).

No. MC-FC-76887, filed December 21, 1976. Transferee: CENTER ENTERPRISES, INC., 5450 South Center Avenue, Summit, Illinois 60501. Transferor: O. K. Motor Service, Inc., 5450 South Center Avenue, Summit, Illinois 60501. Applicant's representative: Carl L. Steiner, Attorney at Law, Axelrod, Goodman, Steiner & Bazelon, 39 South La Salle Street, Chicago, Illinois 60603. Authority sought for purchase by transferee of the operating rights as set forth in Certificates No. MC-52587, MC-52587 (Sub-No. 1), MC-52587 (Sub-No. 2), MC-52587 (Sub-No. 7), MC-52587 (Sub-No. 9), and MC-52587 (Sub-No. 10), issued September 27, 1941, November 19, 1942, April 13, 1940, December 16, 1954, April 27, 1959, and April 25, 1968, respectively as follows: General commodities with the usual exceptions over specified regular routes between specified points in Illinois, Wisconsin, and Indiana; also malt beverages, newspapers, and magazines from Chicago, Ill. to specified points in Wisconsin, and iron and steel articles from the plant site of the Jones & Laughlin Steel Corp. located in Putnam County, Ill. to points in Wisconsin. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under Section 210a(b).

No. MC-FC-76889 filed December 21, 1976. Transferee: EABORN TRUCK SERVICE, INC., 1300 Crafton Boulevard, Pittsburgh, Pennsylvania 15205. Transferor: William R. Eaborn, doing business as Eaborn Truck Service, 1300 Crafton Boulevard, Pittsburgh, Pennsylvania 15205. Applicants' representative: Arthur J. Diskin, Esq., 806 Frick Building, Pittsburgh, Pennsylvania 15219. Authority sought for purchase by transferee of the operating rights of transferor, as set forth in Certificate of Registration No. MC-120757 (Sub-No. 1) issued January 28, 1965, corresponding in scope to certificate of public convenience and necessity No. 86527, dated July 27, 1959, issued by the Pennsylvania Public Utility Commission, as follows: To transport, as a Class B carrier, household goods and office furnishings, in use, between points in the Borough of Carnegie and the City of Pittsburgh, Allegheny County, and within five (5) miles by the usually traveled highways of the limits of the said borough. To transport, as a Class D carrier, household goods and office furnishings, in use, from points in the Borough of Carnegie and the City of Pittsburgh, Allegheny County, and within five (5) miles by the usually traveled highways of the limits of the said borough to other points within seventy-five (75) miles by the usually traveled highways of the limits of the said borough, and vice versa. To transport, as a Class B Carrier, property, excluding store equipment in use, between points in the Borough of Carnegie, Allegheny County, and within five (5) miles by the usually traveled highways of the limits of said borough. To transport, as a Class C carrier, property from points in the Borough of Carnegie, Allegheny County, and within five (5) miles by the usually traveled highways of the limits of said borough to points within thirty-five (35) miles by the usually traveled highways of the limits of said borough; and subject to the following conditions is necessary or proper for the service, accommodation or convenience of the public: First: That the rights, powers and privileges herein granted pertaining to the transportation of property for O. Hommel Company, shall be limited and restricted to the following points of destination: Boroughs of Carnegie, Heidelberg, Rosslyn Farms, Bridgeville, and the Townships of Scott and Collier. Second: That no right, power or privilege is granted to transport to or from the City of Pittsburgh, property, weighing less than six hundred (600) pounds, except freight from The Bell Telephone Company, Union Electric Steel Company, O. Hommel Company and the Superior Steel Company. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under Section 210a (b).

No. MC-FC-76896, filed December 28, 1976. Transferee: Jekel Moving & Storage Co., 405 36th St., S.E., Grand Rapids, Mich. 49508. Transferor: Robert Jekel and David Jekel, doing business as Jekel Moving & Storage Co., 405 36th St., SE., Grand Rapids, Mich. 49508. Applicants' representative: William B. Elmer. Attorney-at-Law, 21635 East Nine Mile Road, St. Clair Shores, Mich. 49508. Authority sought for purchase by transferee of the operating rights set forth in Certificates Nos. MC-98391 (Sub-No. 2 and MC-98391 (Sub-No. 3), issued September 26, 1975 and May 14, 1975, respectively, to transferor as follows: Household goods as defined by the Commission, between points in Allegan, Barry, Ionia, Kent and Ottawa Counties, Mich., on the one hand, and, on the other, points in Michigan; and between Grand Rapids, Mich., and points in Michigan within 80 miles of Grand Rapids, on the one hand, and, on the other, points in Indiana, Illinois, Ohio, Pennsylvania, New York, and Wisconsin. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under Section 210a(b) of the Act.

No. MC-FC-76897, filed December 28, 1976. Transferee: ROBERT J. GARTNER, 3325 West 2nd St., Grand Island, Nebraska 68801. Transferor: Johnsrud Transport, Inc., Highway 9 West, P.O. Box 447, Cresco, Iowa 52136. Applicants' representative: Bruce A. Bullock, Attorney at Law, 530 Univvac Building, Omaha, Nebraska 68106; Patrick E. Quinn, Attorney at Law, P.O. Box 82028, Lincoln, Nebraska 68501. Authority sought for purchase by transferee that portion of the operating rights of transferor, as set forth in Certificate No. MC 128075 (Sub-No. 14), issued November 20, 1972, as follows: *Furniture*, from Minneapolis and St. Paul, Minn., to Riceville, Iowa, and points within 30 miles of Riceville, and *Emigrant movables*, between Osage, Iowa, and points in Iowa within 30 miles of Osage, on the one hand, and, on the other, points in Minnesota, and *fertilizer*, from points in Wisconsin to points in Mitchell County, Iowa. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under Section 210a(b).

No. MC-FC-76899, filed December 27, 1976. Transferee: DELTA TRANSPORT CORPORATION, 217 Washington Avenue, Carlstadt, N.J. 07072. Transferor: First Transport Corporation, 250 Stanley St., New Britain, Conn. 06050. Applicants' representative: James E. Mahoney, Attorney-at-Law, 84 State St., Boston, Mass. 02109. Authority sought for purchase for transferee of the operating rights set forth in Certificate of Registration No. MC-87335 (Sub-No. 4), issued September 12, 1973, to transferor, as follows: General commodities, with specified exceptions, within Connecticut. Transferee is a carrier holding authority from this Commission under Certificate No. MC-93147. Application has not been filed for temporary authority under Section 210a(b) of the Act.

No. MC-FC-76900, filed December 27, 1976. Transferee: RONALD JOSEPH FIORILLO, doing business as RONALD FIORILLO TRUCKING, 1081 Ogden Ave., Bronx, N.Y. 10452, Transferor: Tomaselli Bros. Inc., 60 Thompson St., New York, N.Y. 10012. Applicants' representative: Bruce J. Robbins, Attorney-at-Law, One Lefrak City Plaza, Suite 1515, Flushing, N.Y. 11368. Authority sought for purchase by transferee of the operating rights of transferor set forth in Certificate No. MC-39429, issued June 16, 1943, as follows: Wines, liquors, and groceries, from New York, N.Y., to points in Passaic, Bergen, Union, Essex, Hudson, Middlesex, and Monmouth Counties, N.J. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under Section 210a(b) of the Act.

No. MC-FC-76904, filed December 28, 1976. Transferee: WALLACE TRANSPORT INC., P.O. Box 214, Somers Point, N.J. 08244. Transferor: Johnsrud Transport, Inc., Highway 9 West, P.O. Box 447, Cresco, Iowa 52136. Applicants' representative: Raymond A. Thistle Jr., Attorney at Law, Suite 1012, Four Penn Center Plaza, Philadelphia, Pa.; Patrick E. Quinn, Attorney at Law, P.O. Box 82028, Lincoln, Neb. 68501. Authority sought for purchase by transferee of a portion of the operating rights of transferor, as set forth in Certificate No. MC-128075 (Sub-No. 22), issued October 8, 1976, as follows: Cheese, in mixed loads with milk and whey, and milk and whey in mixed loads with cheese, over irregular routes, from the facilities of Associated Milk Producers, Inc., at Rochester, Minn., Parkston, S. Dak. and Blair. Portage and Madison, Wis., to the above-named shipper's facilities at Mason City, Iowa, and *butter* and *cheese*, in mixed loads with milk and whey, and *milk* and *whey*, in mixed loads with butter and cheese, from the facilities of Associated Milk Producers, Inc., at points in Iowa and Minnesota to points in Connecticut, Massachusetts, New Jersey, New York, Ohio, Pennsylvania, and Rhode Island. Transferee presently holds no authority from this Commission. Application has been filed for temporary authority under Section 210a(b).

ROBERT L. OSWALD,
Secretary.

[FR Doc.77-2724 Filed 1-26-77;8:45 am]

[Notice No. 109]

MOTOR CARRIER BOARD TRANSFER PROCEEDINGS

JANUARY 27, 1977.

Synopses of orders entered by the Motor Carrier Board of the Commission pursuant to Sections 212(b), 206(a), 211, 312(b), and 410(g) of the Interstate Commerce Act, and rules and regulations prescribed thereunder (49 CFR Part 1132), appear below:

Each application (except as otherwise specifically noted) filed after March 27, 1972, contains a statement by applicants that there will be no significant effect on the quality of the human environment resulting from approval of the application. As provided in the Commission's Special Rules of Practice any interested person may file a petition seeking reconsideration of the following numbered proceedings on or before February 16, 1977. Pursuant to Section 17(8) of the Interstate Commerce Act, the filing of such a petition will postpone the effective date of the order in that proceeding pending its disposition. The matters relied upon by petitioners must be specified in their petitions with particularity.

No. MC-FC-76390. By order of January 12, 1977 Division 3, acting as an Appellate Division, approved the transfer to Utah Moving & Storage Company, a corporation, Salt Lake City, Utah, of Certificate No. MC 59462 issued by the Commission October 2, 1945, to Hadley Transfer & Storage Company, Salt Lake City, Utah, authorizing the transportation of general commodities between points in Salt Lake City, Utah, and household goods as defined in Practices of Motor Common Carriers of Household Goods, 17 M.C.C. 467, between Salt Lake City, Utah, and points in Utah within 50 miles of Salt Lake City, on the one hand, and, on the other, points in Wyoming and those in Idaho, except those north of Salmon River Canyon. Thomas M. Zarr, Esquire, Nelson, Harding, Richards, Leonard & Tate, P.O. Box 2465 Salt Lake City, Utah 84110.

ROBERT L. OSWALD,
Secretary.

[FR Doc.77-2725 Filed 1-26-77;8:45 am]

[Vol. No. 1]

PETITIONS FOR MODIFICATION, INTERPRETATION OR REINSTATEMENT OF OPERATING RIGHTS AUTHORITY

JANUARY 21, 1977.

The following petitions seek modification or interpretation of existing operating rights authority, or reinstatement of terminated operating rights authority.

An original and one copy of protests to the granting of the requested authority must be filed with the Commission within 30 days after the date of this FEDERAL REGISTER notice. Such protest shall comply with Special Rule 247(d) of the Commission's General Rules of Practice (49 CFR 1100.247)[1] and shall include a concise statement of protestant's interest in the proceeding and copies of its conflicting authorities. Verified statements in opposition should not be tendered at this itme. A copy of the protest shall be served concurrently upon petitioner's representative or petitioner if no representative is named.

No. MC 20861 (Sub-No. 4) (Notice of filing of petition to modify territorial description), filed December 6, 1976. Petitioner: FROZEN FOOD DELIVERY SERVICE, INC., 300 West St., Berlin, Mass. 01513. Petitioner's representative: Frank J. Weiner, 15 Court Square, Boston, Mass. 02108. Petitioner holds a motor *contract carrier* Permit in No. MC 20861 (Sub-No. 4), issued March 18, 1974, authorizing transportation, as pertinent, over irregular routes, of *frozen fruits* and *frozen vegetables*, from Taunton and Southborough, Mass., to points in Connecticut, Rhode Island, and New Hampshire, under a continuing contract, or contracts, with Newton Acres, Inc. By the instant petition, petitioner seeks to broaden the territorial description above through the addition of an additional territorial description to read as follows: "from Seabrook, N.J., to points in Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont, under a continuing contract, or contracts, with Newton Acres, Inc."

No. MC 108207 (Sub-No. 1) (Notice of filing of petition to remove restrictions), filed December 16, 1976, Petitioner: FROZEN FOOD EXPRESS, INC., 318 Cadiz Street, Dallas, Tex. 75222. Petitioner's representative: Ralph W. Pulley, Jr., 4555 First National Bank Building, Dallas, Tex. 75202. Petitioner holds a motor *common carrier* certificate in No. MC 108207 (Sub-No. 1), issued June 18, 1952, authorizing transportation, as pertinent, over irregular routes, of (1) *Frozen foods, and meats, meat products, and meat by-products* as defined by the Commission (except canned or packaged meats and canned or packaged meat products, other than canned hams, packaged hams, and packaged bacon), dairy products as defined by the Commission, salad dressing, yeast, and uncooked bakery goods; and (2) *frozen foods, and meats, meat products, and meat by-products* as defined by the Commission (except canned or packaged meat products, other than canned hams, packaged hams, and packaged bacon), generally (a) between points in Texas, Louisiana, Illinois, Michigan, Missouri, Oklahoma, Arkansas, and Mississippi; and (b) between Memphis, Tenn., on the one hand, and, on the other, points in Texas, Louisiana, Michigan, Oklahoma, Missouri, Arkansas, Illinois and Mississippi. The territory has been condensed and does not exactly follow language contained in the original Certificate. By the instant petition, petitioner seeks to remove the restrictions in (1) and (2) above.

No. MC 128527 (Sub-No. 38) (Notice of filing of petition to remove restriction), filed December 20, 1976. Petitioner: MAY TRUCKING COMPANY, a Corporation, P.O. Box 398, Payette, Idaho 83661. Petitioner's representative: Edward G. Rawle, 4635 S.W. Lakeview Blvd., Lake Oswego, Oreg. 97034. Petitioner holds a motor *common carrier* Certificate in No. MC 128527 (Sub-No. 38), issued May 15, 1974, authorizing transportation over irregular routes, of *lumber, lumber mill products, particle board, and hardboard paneling*, used in the manufacture of mobile homes, recreational vehicles, and campers, between points in California, on the one hand, and, on the other, points in Ada, Canyon, Payette, and Washington Counties, Idaho, restricted to the transportation of shipments originating at the above-named origin points and destined to the above-named destination points.

By the instant petition, petitioner seeks to delete the restriction "used in the manufacture of mobile homes, recreational vehicles and campers" from the above authority.

No. MC 136408 (Sub-No. 22) (Notice of filing of petition to modify territorial description), filed November 22, 1976. Petitioner: CARGO CONTRACT CARRIER CORP., P.O. Box 206, U.S. Highway 20, Sioux City, Iowa 51102. Petitioner's representative: William J. Hanlon, 55 Madison Avenue, Morristown, N.J. 07960. Petitioner holds a motor *contract carrier* Permit in No. MC 136408 (Sub-No. 22), issued June 29, 1976, authorizing transportation over irregular routes, of *chemicals* (except in bulk in tank vehicles), from Wallingford, Conn., and Linden, N.J., to points in Ohio, Michigan, Indiana, and Illinois, under a continuing contract, or contracts with American Cyanamid Co., of Wayne, N.J. By the instant petition, petitioner seeks to broaden the territorial description above by adding Bound Brook, N.J., as an additional origin point in the authority above.

REPUBLICATIONS OF GRANTS OF OPERATING RIGHTS AUTHORITY PRIOR TO CERTIFICATION

The following grants of operating rights authorities are republished by order of the Commission to indicate a broadened grant of authority over that previously noticed in the FEDERAL REGISTER.

An original and one copy of protests to the granting of the authority must be filed with the Commission within 30 days after the date of this FEDERAL REGISTER notice. Such protest shall comply with Special Rule 247(d) of the Commission's General Rules of Practice (49 CFR 1100.247) addressing specifically the issue(s) indicated as the purpose for republication, and including a concise statement of protestant's interest in the proceeding and copies of its conflicting

[1] Copies of Special Rule 247 (as amended) can be obtained by writing to the Secretary, Interstate Commerce Commission, Washington, D.C. 20423.

authorities. Verified statements in opposition shall not be tendered at this time. A copy of the protest shall be served concurrently upon the carrier's representative, or carrier if no representative is named.

No. MC 111045 (Sub-No. 126) (Republication), filed November 17, 1975, published in the FEDERAL REGISTER issue of December 24, 1975, and republished this issue. Applicant: REDWING CARRIERS, INC., P.O. Box 426, Tampa, Fla. 33601. Applicant's representative: J. Douglas Harris, 1406 Union Bank Building, Montgomery, Ala. 36104. An Order of the Commission, Review Board Number 2, dated December 13, 1976, and served January 17, 1977, finds that the present and future public convenience and necessity require operation by applicant, in interstate or foreign commerce, as a *common carrier* by motor vehicle, over irregular routes, in the transportation of (1) *cleaning compounds*, in bulk, in tank vehicles, from points in Dade County, Fla., to points in New Jersey, New York, and Connecticut; and (2) *materials* used in the manufacture of cleaning compounds, in bulk in tank vehicles, from Fla.; that applicant is fit, willing, and Connecticut, to points in Dade County, Fla.; that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder.

NOTE.—The purpose of this republication is to indicate the addition of an additional commodity and territorial description in (2) above, in accplicant's grant of authority.

No. MC 141034 (Sub-No. 2) (Republication), filed March 26, 1976, published in the FEDERAL REGISTER issue of May 20, 1976, and republished this issue. Applicant: MARGIN LEASING, INC., 21 Baltic Road, Worcester, Mass. 01607. Applicant's representative: Ronald I. Shapss, 450 Seventh Avenue, New York, N.Y. 10001. An order of the Commission, Review Board Number 1, dated December 10, 1976, and served December 27, 1976, finds that operation by applicant, in interstate or foreign commerce, as a *contract carrier* by motor vehicle, over irregular routes, in the transportation of (1) *malt beverages and beverage containers*, between Merrimack, N.H., and East Cambridge, Mass.; and (2) *beverage containers*, between Merrimack, N.H., and Lawrence, Mass., under a continuing contract, or contracts, with Anheuser-Busch, of St. Louis, Mo., will be consistent with the public interest and the national transportation policy; that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder.

NOTE.—The purpose of this republication is to (I) indicate the nonradial grant of authority in (1) and (2) above rather than radial; and (II) indicate the addition of *beverage containers* as an additional commodity in (1) above, in applicant's grant of authority.

No. W-101 (exemption section 303(e)(2) (Republication), filed July 26, 1968, and published in the FEDERAL REGISTER issue of August 7, 1968, and republished this issue. An Order by the Commission, General Session, dated December 15, 1976, and served December 28, 1976, directs further processing of the proceeding below: Authority sought for cancellation of the above-noted exemption in the name of the RAYMOND INTERNATIONAL, INC., P.O. Box 22718, Houston, Tex. 77027, and reissuance of same to HOFFMAN INTERNATIONAL, INC. (formerly Hoffman Rigging & Crane Service, Inc.), a motor carrier, 560 Cortland St., Belleville, N.J. 07109. Applicant's attorney: Morton E. Kiel, 5 World Trade Center, Suite 6193, New York, N.Y. 10048. Exemption sought to be cancelled and reissued: Transportation, in interstate or foreign commerce, as a water contract carrier (1) by derricks and/or barges and tugs from and to ports on the Atlantic and Gulf coasts of heavy or bulky articles such as tanks, boilers, airplanes, cracking chambers, machinery and similar pieces of freight, and (2) by towing vessels and derrick lighters of contractors' equipment and material, consisting of steam shovels, pile driving rigs, trucks, bulldozers, ditching machines, caterpillar cranes, compressors, dredges, derrick lighters, and other miscellaneous heavy and bulky material used in construction work between construction sites, along the Atlantic coast, on Long Island, N.Y., and along Long Island Sound, Block Island Sound, and their tributary waterways, Narrangansett Bay, Providence River, and in the area defined in the order of March 26, 1941, in Ex Parte No. 140, Determination of the Limits of New York Harbor and Harbors Contiguous Thereto.

NOTE.—This transaction is related to the purchase transaction previously described on November 8, 1972 in the FEDERAL REGISTER at No. MC-F-11701 wherein Hoffman International, Inc. (formerly Hoffman Rigging & Crane Service, Inc.), a motor carrier, proposed to purchase the certificated water carrier operating rights and certain other property of Raymond International, Inc. Authority to acquire the said certificated rights and property was granted by order of the Commission, Division 3, acting as an Appellate Division, served November 8, 1973.

NOTE.—(2) To facilitate processing of this proceeding, copies of all protests should be served upon applicant's and their representative.

NOTE.—(3): (a) The transaction proposed in No. W-101 will be processed under the modified procedure. Applicants have been directed to file opening verified statements in support of the application within 30 days or less of the date of this notice. Protestants must file their verified statements in opposition to the application within 30 days or less of the date of this notice. Applicants must file verified statements in reply within 65 days or less of the date of this notice. (b) All protesting parties as well as applicants must comply with applicable provisions of section 1100.45(b), 1100.46(b), and 1100.47–1100.54, inclusive of the Commission's General Rules of Practice, relating to modified procedure, except that the original and one copy of any statement made pursuant to section 1100.51 shall be filed with the Commission. (c) Copies of any verified statements in opposition must be served upon applicant's and their representative, and a copy of each statement filed with the Commission shall so certify. Similarly, applicants have been directed to serve copies of their verified statements upon protestants. (d) Except for good cause shown, preliminary motions and requests for cross-examination of witnesses or for other relief will not be acted upon prior to the date on or before which all verified statements are required to be filed.

MOTOR CARRIER, BROKER, WATER CARRIER, AND FREIGHT FORWARDER OPERATING RIGHTS APPLICATIONS

The following applications are governed by Special Rule 247 of the Commission's General Rules of Practice (49 CFR § 1100.247). These rules provide, among other things, that a protest to the granting of an application must be filed with the Commission within 30 days after the date of notice of filing of the application is published in the FEDERAL REGISTER. Failure to seasonably file a protest will be construed as a waiver of opposition and participation in the proceeding. A protest under these rules should comply with section 247(d)(3) of the rules of practice which requires that it set forth specifically the grounds upon which it is made, contain a detailed statement of protestant's interest in the proceeding (including a copy of the specific portions of its authority which protestant believes to be in conflict with that sought in the application, and describing in detail the method—whether by joinder, interline, or other means—by which protestant would use such authority to provide all or part of the service proposed), and shall specify with particularity the facts, matters, and things relied upon, but shall not include issues or allegations phrased generally. Protests not in reasonable compliance with the requirements of the rules may be rejected. The original and one copy of the protest shall be filed with the Commission, and a copy shall be served concurrently upon applicant's representative, or applicant if no representative is named. If the protest includes a request for oral hearing, such requests shall meet the requirements of section 247(d)(4) of the special rules, and shall include the certification required therein.

Section 247(f) further provides, in part, that an applicant who does not intend timely to prosecute its application shall promptly request dismissal thereof, and that failure to prosecute an application under procedures ordered by the Commission will result in dismissal of the application.

Further processing steps will be by Commission order which will be served on each party of record. Broadening amendments will not be accepted after the date of this publication except for good cause shown, and restrictive amendments will not be entertained following publication in the FEDERAL REGISTER of a notice that the proceeding has been assigned for oral hearing.

Each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

No. MC 1485 (Sub-No. 13), filed December 27, 1976. Applicant: SCHROLL TRANSPORTATION, INC., 360 Governor Street, East Hartford, Conn. 06108. Applicant's representative: Hugh M. Joseloff, 80 State Street, Hartford, Conn. 06103. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, cooked, cured, or preserved*, from the plantsites of M. M. Mades Co., Inc., located in Manchester and Bedford, N.H., to points in Connecticut, Massachusetts and Rhode Island.

NOTE.—If a hearing is deemed necessary, the applicant requests that it be held at either Hartford, Conn. or Boston, Mass.

No. MC 2052 (Sub-No. 10), filed December 22, 1976. Applicant: BLAIR TRANSFER, INC., 203 South 9th Street, Blair, Nebr. 68008. Applicant's representative: Patrick E. Quinn, P.O. Box 82028, Lincoln, Nebr. 68501. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meat, meat products and meat by-products and articles distributed by meat packinghouses*, as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except commodities in bulk), from the plantsite and storage facilities utilized by American Beef Packers, Inc., located at or near Omaha, Nebr., and Oakland, Iowa, to points in Maryland, New York, Ohio, Pennsylvania, West Virginia, and the District of Columbia, restricted to traffic originating at the named origins and destined to the named destinations.

NOTE.—If a hearing is deemed necessary, the applicant requests that it be held at Omaha, Nebr.

No. MC 2135 (Sub-No. 14) (Correction) filed November 12, 1976, published in the FEDERAL REGISTER issue of December 9, 1976, and republished as corrected this issue. Applicant: D. J. McNICHOL CO., a Corporation, 6951 Norwitch Drive, Philadelphia, Pa. 19153. Applicant's representative. Harold P. Boss, 1100 Seventeenth Street, N.W., Washington, D.C. 20036. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Such foods, commodities and equipment* as are used in connection with the operation of cafeterias, "whether or not the shipment is moving to or from a cafeteria." (1) from Philadelphia, Pa., to the District of Columbia and points in Connecticut, Delaware, Maryland, Massachusetts, New Jersey, New York, Rhode Island, and Virginia; and to transport on return to Philadelphia, shipments which have been accepted by a consignee and which are subsequently to be returned to ARA Services, Inc., located at Philadelphia; and (2) between Philadelphia, Pa., on the one hand, and, on the other, points in Maine, New Hampshire, and Vermont, under a continuing contract or contracts with ARA Services, Inc.

NOTE.—Applicant states that the only new territorial authority sought herein is described in "(2)" above. Applicant's permit, No. MC 2135 (Sub-No. 11), authorizes operations from and to the points described in "(1)" above. However, the commodity authorization therein does not specifically include the words "whether or not the shipment is moving to or from a cafeteria." In applicant's opinion, it is now authorized to transport shipments of commodities authorized in its permits, whether or not the shipment is moving to or from a cafeteria, when such service is, in fact, rendered under contract with ARA Services, Inc., within its authorized territory. Applicant is concurrently filing with the Commission a motion to dismiss that portion of the instant application described in "(1)" above, primarily on the ground that applicant may now render such service under its MC 2135 (Sub-No. 11) permit. Dual operations may be involved. Common control may also be involved. If a hearing is deemed necessary, the applicant requests it be held at either Philadelphia, Pa., or Washington, D.C.

The purpose of this republication is to include applicant's statement "whether or not the shipment is moving to or from a cafeteria", as stated above and to also include the "note" and dual operations statement which was inadvertently excluded in the FEDERAL REGISTER.

No. MC 5623 (Sub-No. 30), filed December 14, 1976. Applicant: ARROW TRUCKING CO., a Corporation, P.O. Box 7280, Tulsa, Okla. 74105. Applicant's representative: J. G. Dail, Jr., P.O. Box 567, McLean, Va. 22101. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Refractories and refractory products*, (1) from the plantsite of North American Refractories Co., located at or near White Cloud, Mich., to points in Arizona, Arkansas, California, Colorado, Florida, Georgia, Idaho, Louisiana, Montana, Nebraska, New Mexico, North Carolina, North Dakota, Oklahoma, Oregon, South Carolina, South Dakota, Texas, Utah, Washington, and Wyoming; and (2) from the plantsites of North American Refractories Co., located in Berks, Huntingdon, and Clearfield Counties, Pa., to points in Idaho, Iowa, Kansas, Minnesota, Montana, Nebraska, and Nevada.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at Cleveland, Ohio.

No. MC 15643 (Sub-No. 7), filed December 10, 1976. Applicant: FOUR WINDS VAN LINES, INC., 7035 Convoy Court, San Diego, Calif. 92138. Applicant's representative: Robert J. Gallagher, 1000 Connecticut Ave. NW., Suite 1200, Washington, D.C. 20036. Authority sought to operate as a *common carrier*, by motor vehicle over irregular routes, transporting: *Empty household goods shipping containers*, set up or knocked down, between points in Alabama, Arkansas, Colorado, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Missouri, North Carolina, New Hampshire, New Jersey, New Mexico, New York, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Virginia, Vermont, Wisconsin, and the District of Columbia.

NOTE.—Common control may be involved. If a hearing is deemed necessary, the applicant requests it be heard on a consolidated record with similar application(s) at San Diego, Calif.

No. MC 19945 (Sub-No. 62), filed December 28, 1976. Applicant: BEHNKEN TRUCK SERVICE, INC., Route No. 13, New Athens, Ill. 62264. Applicant's representative: Ernest A. Brooks II, 1301 Ambassador Building, St. Louis, Mo. 63101. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Salt*, from the plantsite of Cargill, Inc., located at Cahokia, Ill., to points in Missouri.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at either St. Louis, Mo. or Washington, D.C.

No. MC 22229 (Sub-No. 112), filed December 16, 1976. Applicant: TERMINAL TRANSPORT COMPANY, INC., 248 Chester Avenue, S.E., Atlanta, Ga. 30316. Applicant's representative: Harold H. Clokey, 1740 The Equitable Building, Atlanta, Ga. 30303. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the plantsite and warehouse facilities of Springport Steel Container Corporation, located at or near Springport, Mich., as an off-route point in connection with applicant presently authorized regular-route operations between Lansing, Mich., and Detroit, Mich., and between Jackson, Mich., and Detroit, Mich.

NOTE.—Common control may be involved. If a hearing is deemed necessary, the applicant requests it be held at Detroit, Mich. and Washington, D.C.

No. MC 29079 (Sub-No. 91), filed December 14, 1976. Applicant: BRADA MILLER FREIGHT SYSTEM, INC., 1210 South Union, P.O. Box 935, Kokomo, Ind. 46901. Applicant's representative: Richard H. Streeter, 704 Southern Building, 15th & H Streets, N.W. Washington, D.C. 20005. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fertilizers*, herbicides and pesticides (except commodities in bulk), from the plantsite of Knox Fertilizer, located at or near Knox, Ind., to points in Iowa, Kansas, Nebraska and Minnesota.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at Indianapolis, Ind.

No. MC 41951 (Sub-No. 31), filed December 16, 1976. Applicant: WHEATLEY TRUCKING, INC., P.O. Box 458, Cambridge, Md. 21613. Applicant's representative: James H. Sweeney, P.O. Box 684, Woodbury, N.J. 08096. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs*, from Hallwood, Va., to points in Illinois, Indiana, Michigan, Ohio and Wisconsin.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at Washington, D.C.

No. MC 59117 (Sub-No. 53), filed December 17, 1976. Applicant: ELLIOTT TRUCK LINE, INC., P.O. Box 1, 101 East Excelsior, Vinita, Okla. 74301. Applicant's representative: Wilburn L. Williamson, 280 National Foundation Life Building, 3535 N.W. 58th Street, Oklahoma City, Okla. 73112. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Anhydrous ammonia, nitrogen fertilizer solutions, and urea liquor*, from the plantsites of Oklahoma Nitrogen Corporation and Bison Chemical Company located at or near Woodward, Okla., to points in Arkansas, Colorado, Iowa, Kansas, Louisiana, Missouri, Nebraska, New Mexico, Oklahoma, South Dakota, and Texas.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at Oklahoma City, Okla.

No. MC 73165 (Sub-No. 397), filed December 16, 1976. Applicant: EAGLE MOTOR LINES, INC., P.O. Box 11086, 830 North 33rd Street, Birmingham, Ala. 35202. Applicant's representative: William P. Parker (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Cooling towers, and accessories, materials and supplies* used for cooling towers (except commodities in bulk), from the facilities of E. D. Goodfellow, Inc., located at Tulsa, Okla., to points in the United States (except Alaska and Hawaii).

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at either Tulsa, Okla. or Memphis, Tenn.

No. MC 76032 (Sub-No. 322), filed December 15, 1976. Applicant: NAVAJO FREIGHT LINES, INC., 1205 South Platte River Drive, Denver, Colo. 80223. Applicant's representative: Edward G. Bazelon, 39 South La Salle Street, Chicago, Ill. 60603. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk and those requiring special equipment), Between Memphis, Tenn., and Kansas City, Mo., as an alternate route for operating convenience only: From Memphis, Tenn., over Interstate Highway 40 to junction Interstate Highway 55, thence over Interstate Highway 55 to junction U.S. Highway 63, thence over U.S. Highway 63 to junction U.S. Highway 60, located at or near Willow Springs, Mo., thence over U.S. Highway 60 to junction U.S. Highway 65, located at or near Springfield, Mo., thence over U.S. Highway 65 to junction Interstate Highway 44, thence over Interstate Highway 44 to junction Missouri Highway 13, thence over Missouri Highway 13 to junction Missouri Highway 7, located at or near Clinton, Mo., thence over Missouri Highway 7 to junction U.S. Highway 71, located at or near Harrisonville, Mo., thence over U.S. Highway 71 to Kansas City, Mo., and return over the same route, restricted against the handling of local and interline traffic moving between Memphis, Tenn., and Kansas City, Mo.

NOTE.—Common control may be involved. If a hearing is deemed necessary, the applicant requests it be held at either Denver, Colo. or Chicago, Ill.

No. MC 82492 (Sub-No. 140), filed December 16, 1976. Applicant: MICHIGAN & NEBRASKA TRANSIT CO., INC., P.O. Box 2853, 2109 Olmstead Road, Kalamazoo, Mich. 49003. Applicant's representative: Jack H. Blanshan, 205 West Touhy Avenue, Suite 200, Park Ridge, Ill. 60068. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, meat by-products, and articles distributed by meat packinghouses* (except hides and commodities in bulk), as defined in Sections A and C of Appendix I to the Report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766, from the plantsites and warehouse facilities of Wilson Foods Corporation, located at or near Albert Lea, Minn., to points in Pennsylvania on and west of U.S. Highway 219, and points in that part of New York in and west of Broome, Cortland, Onondaga and Oswego Counties, N.Y., restricted to the transportation of traffic originating at the above-named origin and destined to the named destination points.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at either Dallas, Tex. or Kansas City, Mo.

No. MC 98327 (Sub-No. 21), filed January 7, 1977. Applicant: SYSTEM 99, 8201 Edgewater Drive, Oakland, Calif. 94621. Applicant's representative: Michael J. O'Neil (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, Classes A and B explosives, commodities in bulk, household goods as defined by the Commission and commodities requiring special equipment), between Portland, Oreg. and the junction of U.S. Highway 20 and Oregon Highway 22; From Portland, Oreg. over Interstate Highway 5 to its junction with Oregon Highway 22, thence over Oregon Highway 22 to its junction with U.S. Highway 20, and return over the same route, as an alternate route for operating convenience only, serving no intermediate points and serving the termini for the purposes of joinder only.

NOTE.—Common control may be involved. If a hearing is deemed necessary, the applicant requets it be held at either San Francisco, Calif. or Portland, Oreg.

No. MC 99019 (Sub-No. 8), filed December 16, 1976. Applicant: KILLIAN-BLACK TRUCKING, INC., Roseville and Hydraulic Streets, Buffalo, N.Y. 14210. Applicant's representative: Robert D. Gunderman, Suite 710 Statler Hilton, Buffalo, N.Y. 14202. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Flour*, in bulk, in tank vehicles, from points in New York, to points in Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, Ohio, Pennsylvania, Rhode Island, Vermont and West Virginia.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at Buffalo, N.Y.

No. MC 100666 (Sub-No. 339), filed December 17, 1976. Applicant: MELTON TRUCK LINES, INC., P.O. Box 7666, 1129 Grimmett Drive, Shreveport, La. 71107. Applicant's representative: Wilburn L. Williamson, 280 National Foundation Life Bldg., 3535 N.W. 58th Street, Oklahoma City, Okla. 73112. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Particleboard*, from the plantsite of Louisiana-Pacific Corporation located at or near Clayton, Ala., to points in Arkansas, Louisiana, Oklahoma and Texas.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at Dallas, Tex.

No. MC 103051 (Sub-No. 384), filed December 13, 1976. Applicant: FLEET TRANSPORT COMPANY, INC., P.O. Box 90408, 934 44th Avenue, North, Nashville, Tenn. 37209. Applicant's representative: Russell E. Stone (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Liquid pepper mash*, in bulk, in tank vehicles, from Edenton, N.C. and points in Bertie and Chowan Counties, N.C., to Cades, La.; and (2) *liquid sugar, and blends thereof*, in bulk, in tank vehicles, from Chalmette, Gramercy, Houma, Mathews, Reserve and Supreme, La., to Wilson, N.C.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at either Nashville, Tenn. or Atlanta, Ga.

No. MC 105813 (Sub-No. 218), filed December 16, 1976. Applicant: BELFORD TRUCKING CO., INC., 1759 S.W. 12th Street, P.O. Box 1936, Ocala, Fla. 32670. Applicant's representative: Arnold L. Burke, 180 North LaSalle Street, Chicago, Ill. 60601. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Furniture, earthenware and ceramics*, from Miami, Fla., to points in the United States (except Alaska and Hawaii).

NOTE.—Common control may be involved. If a hearing is deemed necessary, the applicant requests it be held at Miami, Fla.

No. MC 107403 (Sub-No. 993) (amendment), filed December 3, 1976, published in the FEDERAL REGISTER issue of December 30, 1976, and republished this issue. Applicant: MATLACK, INC., Ten West Baltimore Ave., Lansdowne, Pa. 19050. Applicant's representative: John Nelson (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Alloys, ores and minerals* (except salt, lime, limestone and fluorspar products), dry, in tank or hopper type vehicles, from the plantsite of C-E

Minerals, located at Wilmington, Del., to points in Ohio and Pennsylvania.

NOTE.—The purpose of this republication is to amend applicant's request for authority. Common control may be involved. If a hearing is deemed necessary, the applicant requests it be held at Washington, D.C.

No. MC 112617 (Sub-No. 358), filed December 10, 1976. Applicant: LIQUID TRANSPORTERS, INC., P.O. Box 21395, Louisville, Ky. 40221. Applicant's representative: C. R. Dunford (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Dry chemicals*, in bulk, in tank vehicles, from Terre Haute, Ind., to points in Illinois, Indiana, and Ohio, and St. Louis, Mo.

NOTE.—Common control may be involved. If a hearing is deemed necessary, the applicant requests it be held at either Louisville, Ky. or Washington, D.C.

No. MC 113267 (Sub-No. 346), filed December 17, 1976. Applicant: CENTRAL & SOUTHERN TRUCK LINES, INC., 3215 Tulane Rd., P.O. Box 30130 A.M.F., Memphis, Tenn. 38130. Applicant's representative: Lawrence A Fischer (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, and articles distributed by meat packinghouses* as described in Section A of Appendix I to the Report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except commodities in bulk, in tank vehicles and hides), from the plantsite and warehouse facilities utilized by Landy of Wisconsin, Inc., located at or near Eau Claire, Wis., to points in Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at either Chicago, Ill. or Minneapolis, Minn.

No. MC 113388 (Sub-No. 113), filed December 17, 1976. Applicant: LESTER C. NEWTON TRUCKING CO., a Corporation, P.O. Box 618, Seaford, Del. 19973. Applicant's representative: Charles Ephraim, 1250 Connecticut Avenue, N.W., Suite 600, Washington, D.C. 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foods, food products, food ingredients, animal foods, animal food ingredients and meat by-products* (except in bulk), between the warehouses of Beatrice Foods Co., located at Scranton, Pa. and at or near Allentown, Pa., on the one hand, and, on the other, points in Connecticut, Delaware, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia and the District of Columbia, restricted to the transportation of traffic orginating at the above named origins and destined to the above destinations.

NOTE.—Common control may be involved. If a hearing is deemed necessary, the applicant requests it be held at Washington, D.C.

No, MC 113855 (Sub-No. 367), filed December 17, 1976. Applicant: INTERNATIONAL TRANSPORT, INC., 2450 Marion Road SE, Rochester, Minn. 55901. Applicant's representative: Alan Foss, 502 First National Bank Bldg., Fargo, N. Dak. 58102. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Rock crusher equipment;* and (2) *parts and attachments* for rock crusher equipment, from the plant site of Hewitt-Robbins, Inc., located in Richland County, S.C., to points in the United States, including Alaska but excluding Hawaii.

NOTE.—Common control may be involved. If a hearing is deemed necessary, the applicant requests it be heard on a consolidated record with similar application(s) at either Atlanta, Ga. or Washington, D.C.

No. MC 114457 (Sub-No. 281), filed December 27, 1976. Applicant: DART TRANSIT COMPANY, a Corporation, 2102 University Avenue, St. Paul, Minn. 55114. Applicant's representative: James H. Wills (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Malt beverages and related advertising materials*, from Latrobe, Pa., to Ann Arbor, Mich.; and (2) *empty used containers*, from Ann Arbor, Mich., to Latrobe, Pa.

NOTE.—If a hearing is deemed necessary, the applicant requests that it be held at either St. Paul, Minn. or Chicago, Ill.

No. MC 114725 (Sub-No. 77), filed December 27, 1976. Applicant: WYNNE TRANSPORT SERVICE, INC., 2222 North 11th Street, Omaha, Nebr. 68110. Applicant's representative: Arlyn L. Westergren, Suite 530 Univac Building, 7100 West Center Road, Omaha, Nebr. 68106. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid feed*, in bulk, in tank vehicles, from Shickley, Nebr., to points in Illinois, Iowa, and Kansas.

NOTE: If a hearing is deemed necessary, the applicant requests it be held at Omaha, Nebr.

No. MC 114890 (Sub-No. 74), filed December 23, 1976. Applicant: C. E. REYNOLDS TRANSPORT, INC., P.O. Box A, Joplin, Mo. 64801. Applicant's representative: T. M. Brown, 223 Ciudad Building, Oklahoma City, Okla. 73112. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Anhydrous ammonia, nitrogen fertilizer solutions, and urea liquor*, from the plantsites of Oklahoma Nitrogen Corporation and Bison Chemical Company located at or near Woodward, Okla., to points in Arkansas, Iowa, Colorado, Kansas, Louisiana, Missouri, Nebraska, New Mexico, Oklahoma, South Dakota and Texas.

NOTE: If a hearing is deemed necessary, the applicant requests it be held at either Oklahoma City or Tulsa, Okla.

No. MC 115215 (Sub-No. 24), filed December 21, 1976. Applicant: NEW TRUCK LINES, INC., P.O. Box 639, Perry, Fla. 32347. Applicant's representative: Sol H. Proctor, 1101 Blackstone Building, Jacksonville, Fla. 32202. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lumber, lumber products, poles, posts, timbers, particle board and forest products* (except commodities in bulk), (1) from points in Alabama, North Carolina, South Carolina and Tennessee, to points in Georgia, (2) from points in Louisiana, Mississippi, North Carolina, South Carolina and Tennessee, to points in Florida; and (3) from points in Florida, to points in Georgia, North Carolina, South Carolina and Tennessee.

NOTE.—Common control may be involved. If a hearing is deemed necessary, the applicant requests it be held at either Jacksonville, Fla. or Atlanta, Ga.

No. MC 115322 (Sub-No. 125), filed December 15, 1976. Applicant: REDWING REFRIGERATED, INC., P.O. Box 10177, Taft, Fla. 32809. Applicant's representative: J. V. McCoy, P.O. Box 426, Tampa, Fla. 33601. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Pet foods* (except commodities in bulk), from Tupelo, Miss. and Red Bay, Ala., to points in Alabama, Delaware, Florida, Georgia, Kentucky, Maryland, New Jersey, North Carolina, Pennsylvania, South Carolina, Tennessee, Virginia, West Virginia, and the District of Columbia.

NOTE.—Common control may be involved. If a hearing is deemed necessary, the applicant requests it be held at either Mobile or Montgomery, Ala.

No. MC 115904 (Sub-No. 69), filed December 27, 1976. Applicant: GROVER TRUCKING CO., a Corporation, 1710 West Broadway, Idaho Falls, Idaho 83401. Applicant's representative: Irene Warr, 430 Judge Building, Salt Lake City, Utah 84111. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Gypsum wallboard*, from the facilities of American Gypsum Company located at or near Albuquerque, N. Mex., to points in Arizona and Colorado; and (2) *gypsum wallboard paper*, from Denver, Colo., and points in its Commercial Zone, to the plantsite of American Gypsum Company located at or near Albuquerque, N. Mex.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at either Albuquerque, N. Mex., or Washington, D.C.

No. MC 118142 (Sub-No. 141), filed December 27, 1976. Applicant: M. BRUENGER & CO., INC., 6250 North Broadway, Wichita, Kans. 67219. Applicant's representative: Lester C. Arvin, 814 Century Plaza Building, Wichita, Kans. 67202. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products and meat by-products and articles distributed by meat packinghouses*, as described in Sections

A and C of Appendix I to the Report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except hides and commodities in bulk), from the plantsite and storage facilities utilized by American Beef Packers, Inc., located at or near Omaha, Nebr. and Oakland, Iowa, to points in Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina and Tennessee, restricted to traffic originating at the named origins and destined to the named destinations.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at Omaha, Nebr.

No. MC 118202 (Sub-No. 67), filed December 27, 1976. Applicant: SCHULTZ TRANSIT, INC., P.O. Box 406, 323 Bridge Street, Winona, Minn. 55987. Applicant's representative: Robert S. Lee, 1000 First National Bank Bldg., Minneapolis, Minn. 55402. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, meat by-products, and articles distributed by meat packing houses* (except hides and commodities in bulk) from the plantsite and storage facilities of Royal Packing Company, Inc., located at or near National Stockyards, National City, Ill., to points in Connecticut, Delaware, Maryland, Massachusetts, New Jersey, New York, Pennsylvania, and Rhode Island, restricted to traffic originating at the above-named plantsite and storage facilities and destined to the above listed states.

NOTE.—Applicant holds motor contract carrier authority in No. MC 134631 and subs numbers thereunder, therefore dual operations may be involved. An application is now pending to convert this contract carrier authority to common carrier authority in MC 118202 (Sub-No. 60). If a hearing is deemed necessary, applicant requests that it be held at either Minneapolis-St. Paul, Minn., or St. Louis, Mo.

No. MC 118831 (Sub-No. 145) (Correction), filed November 12, 1976, published in the FEDERAL REGISTER issue of December 16, 1976, and republished this issue. Applicant: CENTRAL TRANSPORT, INCORPORATED, P.O. Box 7007, High Point, N.C. 27264. Applicant's representative: Richard E. Shaw (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Kyanite*, dry, in bulk, from points in Appamottox, Buckingham, Charlotte, Cumberland and Prince Edward Counties, Va., to points in North Carolina, South Carolina, Pennsylvania and Richmond and Norfolk, Va.

NOTE.—Applicant seeks to tack the requested authority with its Sub-No. 32 authority at points in North Carolina to transport Kyanite, dry, in bulk, in tank or hopper type vehicles, from points in Appomattox, Buckingham, Charlotte, Cumberland, and Prince Edward Counties, Va., to points in Georgia. The purpose of this republication is to correct applicant's request for authority. Common control may be involved. If a hearing is deemed necessary, the applicant requests it be held at Washington, D.C.

No. MC 119619 (Sub-No. 96), filed December 16, 1976. Applicant: DISTRIBUTORS SERVICE CO., a Corporation, 2000 West 43rd Street, Chicago, Ill. 60609. Applicant's representative: Arthur J. Piken, Suite 1515, One Lefrak City Plaza, Flushing, N.Y. 11368. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Food and food poducts* (except commodities in bulk), from the plantsite and facilities utilized by DCA Food Industries, Inc., located at Hillsdale and Jonesville, Mich., to points in Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee and Texas.

NOTE.—If a hearing is deemed necessary, the applicant does not specify a location.

No. MC 123157 (Sub-No. 29), filed December 28, 1976. Applicant: CTI, A Corporation, P.O. Box 397, Rillito, Ariz. 85246. Applicant's representative: A. Michael Bernstein, 1441 E. Thomas Rd., Phoenix, Ariz. 85014. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Flyash*, in bulk, from Arizona and Nevada to Arizona, California, Colorado, Nevada, New Mexico and Utah.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at either Phoenix, Ariz., or Las Vegas, Nev.

No. MC 123329 (Sub-No. 28), filed December 15, 1976. Applicant: H. M. TRIMBLE & SONS LTD., a Corporation, P.O. Box 3500, Calgary Alberta Canada T2P 2P9. Applicant's representative: Ray F. Koby, 314 Montana Building, Great Falls, Mont. 59401. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Quicklime*, in bulk, in tank vehicles, from ports of entry on the International Boundary line between the United States and Canada located in Washington, to points in Idaho, Oregon and Washington, restricted to traffic originating at Langley, British Columbia, Canada.

NOTE.—Common control may be involved. If a hearing is deemed necessary, the applicant requests it be held at any city in Washington, Idaho or Oregon.

No. MC 124711 (Sub-No. 42), filed December 16, 1976. Applicant: BECKER CORPORATION, P.O. Box 1050, El Dorado, Kans. 67042. Applicant's representative: T. M. Brown, 223 Ciudad Building, Oklahoma City, Okla. 73112. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Anhydrous ammonia, nitrogen fertilizer solutions, and urea liquor*, from the plantsites of Oklahoma Nitrogen Corporation and Bison Chemical Company, located at or near Woodward, Okla., to points in Arkansas, Colorado, Iowa, Kansas, Louisiana, Missouri, Nebraska, New Mexico, Oklahoma, South Dakota and Texas.

NOTE.—Common control may be involved. If a hearing is deemed necessary, the applicant requests it be held at either Oklahoma City or Tulsa, Okla.

No. MC 125522 (Sub.-No. 9) (Correction), filed November 12, 1976. Published in the FEDERAL REGISTER issue of December 16, 1976, republished as corrected this issue. Applicant: SUNBURY TRANSPORT LIMITED, Hoyt New Brunswick Canada. Applicant's representative: Francis E. Barrett, Jr., 10 Industrial Park Road, Hingham, Mass. 02043. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Plasterboard, gypsum board, plasterboard, plywood and asphalt products* (except in bulk) *and waste paper*, from points in Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island and Vermont to ports of entry on the International boundary line between the United States and Canada located at or near Houlton, Vanceboro, Calais, Madawaska, Fort Kent and Jackman, Maine, restricted to the transportation of traffic destined to Buctouche, St. John, Sussex and St. George, New Brunswick and Debert, Nova Scotia.

NOTE.—The purpose of this republication is to correct the above restriction which was published in error. If a hearing is deemed necessary, the applicant requests it be held at either Portland, Maine or Boston, Mass.

No. MC 126844 (Sub-No. 34), filed December 15, 1976. Applicant: R. D. S. TRUCKING CO., INC., 1713 North Main Road, Vineland, N.J. 08360. Applicant's representative: Terrence D. Jones, 2033 K Street, N.W., Washington, D.C. 20006. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Canned goods*, from the facilities of Joan of Arc and Co., located at or near Turkey, N.C., to points in Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island and Vermont.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at Washington, D.C.

No. MC 127095 (Sub-No. 5), filed December 21, 1976. Applicant: KEYS TRUCKING COMPANY, INC., 902 South Randolph Street, Arlington, Va. 22204. Applicant's representative: Bernard J. Hasson, Jr., 927 15th Street NW, Suite 306, Washington, D.C. 20005. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Sand*, from the plantsite of Charles F. Meyer & Sons, Inc., located at or near Lothian, Md., to the plantsite of Gray Concrete Pipe Co., Inc., located at or near Springfield, Va., under a continuing contract, or contracts, with Gray Concrete Pipe Co., Inc.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at Washington, D.C.

No. MC 128841 (Sub-No. 17), filed December 27, 1976. Applicant: MUR-GAIL, INC., 301 North Fifth Street, Minneapolis, Minn. 55403. Applicant's representative: Samuel Rubenstein (Same address as applicant). Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Merchandise* handled by retail hardware stores, in shipper owned or

leased trailers, from Brookings, S. Dak., to points in Arkansas, Arizona, California, Colorado, Idaho, Kansas, Kentucky, Missouri, Nebraska, New Mexico, Nevada, Oklahoma, Oregon, Texas, Utah and Washington; and (2) *merchandise* being returned, from the destination states named in (1) above to the origin point named in (1) above; (1) and (2) above are under a continuing contract, or contracts, with Coast to Coast Stores Central Organization, Inc.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at either Minneapolis or St. Paul, Minn.

No. MC 128988 (Sub-No. 91) (Amendment), filed November 22, 1976, published in the FEDERAL REGISTER issue of December 23, 1976, and republished this issue. Applicant: JO/KEL, INC., 159 South Seventh Avenue, Box 1249, City of Industry, Calif. 91749. Applicant's representative: Patrick E. Quinn, P.O. Box 82028, Lincoln, Nebr. 68501. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Pumps, pump motors, heat transfer equipment and related parts thereof* used in the production of electric power (except commodities which by reasosn of size or weight require the use of special equipment, and commodities in bulk), from Huntington Park, Orange and El Cajon, Calif., to points in the United States on and east of a line beginning at the mouth of the Mississippi River and extending along the Mississippi River to its junction with the western boundary of Itasco County, Minn., thence northward along the western boundaries of Itasca and Koochiching Counties, Minn., to the International Boundary line between the United States and Canada, under a continuing contract, or contracts, with Westinghouse Electric Corporation, located at Pittsburgh, Pa.

NOTE.—The purpose of this republication is to amend applicant's request for authority. If a hearing is deemed necessary, the applicant requests it be held at either Los Angeles, Calif. or Pittsbugh, Pa.

No. MC 129068 (Sub-No. 35), filed December 10, 1976. Applicant: GRIFFIN TRANSPORTATION, INC., 3002 S. Douglas Blvd., Oklahoma City, Okla. 73150. Applicant's representative: Jack L. Griffin (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Trailers* designed to be drawn by passenger automobile (excluding recreational vehicles such as travel trailers and campers) in secondary movements; and (2) *buildings* complete or in sections mounted on wheeled undercarriages (excluding modular units and prefabricated buildings), from Louisiana and Texas to points in the United States (except Alaska and Hawaii).

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at Dallas or Austin, Tex.

No. MC 129387 (Sub-No. 29) (Correction), filed November 26, 1976, published in the FEDERAL REGISTER issue of January 13, 1977, republished as corrected this issue. Applicant: PAYNE TRANSPORTATION, INC., P.O. Box 1271, Hwy. 14E, Huron, S. Dak. 57350. Applicant's representative: Patrick E. Quinn, P.O. Box 82028, Lincoln, Nebr. 68501. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Such mechandise* as is dealt in by retail and wholesale department and hardware stores (except commodities in bulk), (1) from points in that part of the United States in and east of Alabama, New York, Pennsylvania, Tennessee, Virginia and West Virginia, to the facilities of Coast to Coast Stores Central Organization, Inc., at or near Crawfordsville, Ind.; (2) from points in that part of the United States in and east of Alabama, Indiana, Kentucky, Michigan and Tennessee, to the facilities of Coast to Coast Stores Central Organization, Inc., located at Kansas City, Mo.; and (3) from points in that part of the United States in and east of Alabama, Illinois, Missouri, Tennessee and Wisconsin, to the facilities of Coast to Coast Stores Central organization, Inc., at or near Brookings, S. Dak., and Springfield, Oreg.

NOTE.—The purpose of this republication is to correct the applicant's name which was published in error. If a hearing is deemed necessary, applicant requests it be held at St. Paul, Minn.

No. MC 129615 (Sub-No. 23) (Correction), filed November 26, 1976, published in the FEDERAL REGISTER issue of December 30, 1976, and republished this issue. Applicant: AMERICAN INTERNATIONAL DRIVEAWAY, a Corporation, P.O. Box 545, 123 N. First Street, Decatur, Ind. 46733. Applicant's representative: Robert Loser, Chamber Commerce Building, Suite 1009, Indianapolis, Ind. 46204. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fifth wheel travel trailers*, between points in Elkhart County, Ind., on the one hand, and, on the other, points in the United States, including Alaska and Hawaii. Note: The purpose of this republication is to correct applicant's request for authority, and to indicate the correct name of applicant.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at either Chicago, Ill. or Washington, D.C.

No. MC 133689 (Sub-No. 94), filed December 16, 1976. Applicant: OVERLAND EXPRESS, INC., 719 First St., S.W., New Brighton, Minn. 55112. Applicant's representative: Robert P. Sack, P.O. Box 6010, West St. Paul, Minn. 55118. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Carpeting, hard surface floor covering, wallboard, wall panels, floor screens, ceiling panels, insulation materials, advertising material, materials and accessories and supplies* used in the installation of the above described commodities, (except commodities in bulk), from the plantsite and storage facilities of Armstrong Cork Co., located in Lancaster County, Pa., to points in Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, South Dakota, and Wisconsin.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at Minneapolis, Minn.

No. MC 133689 (Sub-No. 95), filed December 17, 1976. Applicant: OVERLAND EXPRESS, INC., 719 First St., S.W., New Brighton, Minn. 55112. Applicant's representative: Robert P. Sack, P.O. Box 6010, West St. Paul, Minn. 55118. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs and other articles* distributed by health food stores (except commodities in bulk), between the facilities of General Nutrition Mills, Inc., located at or near Fargo, N. Dak., and Pittsburgh, Pa.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at Minneapolis, Minn.

No. MC 133689 (Sub-No. 98), filed December 17, 1976. Applicant: OVERLAND EXPRESS, INC., 719 First St., S.W., New Brighton, Minn. 55112. Applicant's representative: Robert P. Sack, P.O. Box 6010, West St. Paul, Minn. 55118. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Animal and poultry feed* (except commodities in bulk), from Mankato, Minn., to points in Illinois, Indiana and Ohio.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at Minneapolis, Minn.

No. MC 134105 (Sub-No. 18) filed December 18, 1976. Applicant: CELERY-VALE TRANSPORT, INC., 1318 East 23rd Street, Chattanooga, Tenn. 37402. Applicant's representative: Jack H. Blanshan, Suite 200, 205 West Touhy Avenue, Park Ridge, Ill. 60068. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, meat by-products and articles distributed by meat packinghouses* (except hides and commodities in bulk), as defined in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766, from the plant site and warehouse facilities of Wilson Foods Corporation, located at or near Cedar Rapids, Iowa, to points in North Carolina, South Carolina and Tennessee, restricted to the transportation of traffic originating at the above named origins and destined to the named destinations.

NOTE.—If a hearing is deemed necessary, the applicant requests that it be held at either Dallas, Tex. or Kansas City, Mo.

No. MC 134323 (Sub-No. 91), filed December 17, 1976. Applicant: JAY LINES, INC., 720 North Grand, P.O. Box 4146, Amarillo, Tex. 79105. Applicant's representative: Gailyn Larsen, 521 South 14th, P.O. Box 81849. Lincoln, Nebr. 68501. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Chemicals, plastic materials, and plastic products, and equipment, materials and supplies* used in the manufacture and distribution thereof (except in bulk), (1) between the facilities of Union Carbide Corporation located at or near North Seadrift, Texas City and Houston, Tex., and Taft, La., on the one hand, and, on the other, points in Alabama, Arizona, California, Connecticut, Florida, Georgia, Idaho, Kentucky, Maine, Maryland, Massachusetts, Michigan, Mississippi, Nevada, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oregon, Pennsylvania, South Carolina, Tennessee, Utah, Vermont, Virginia, Washington, West Virginia and the District of Columbia; and (2) from the storage facilities of Union Carbide Corporation located at or near New Orleans, La., to points in the United States (except Alaska and Hawaii), under a continuing contract, or contracts, with Union Carbide Corporation.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at either New York City, N.Y. or Lincoln, Nebr.

No. MC 134599 (Sub-No. 152), filed December 16, 1976. Applicant: INTERSTATE CONTRACT CARRIER CORPORATION, P.O. Box 748, Salt Lake City, Utah 84110. Applicant's representative: Richard A. Peterson, P.O. Box 81849, Lincoln, Nebr. 68501. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Aquariums, aquarium accessories, and household pet cages, supplies and equipment*, (except in bulk and those which because of size and weight require the use of special handling or equipment), between East Paterson, Maywood, and Lodi, N.J., on the one hand, and, on the other, points in Alabama, Arizona, Arkansas, Colorado, Idaho, Kentucky, Mississippi, Missouri, Nebraska, Nevada, New Mexico, Oklahoma, Oregon, South Carolina, South Dakota. Tennessee, Utah, Washington, West Virginia and Wyoming, under a continuing contract or contracts with Mattel, Inc.

NOTE.—Applicant holds common carrier authority in MC 139906 and subs thereunder, therefore dual operations may be involved. If a hearing is deemed necessary, the applicant requests it be held at either Lincoln, Nebr., or Salt Lake City, Utah.

No. MC 134599 (Sub-No. 153), filed December 16, 1976. Applicant: INTERSTATE CONTRACT CARRIER CORPORATION, P.O. Box 748, Salt Lake City, Utah 84110. Applicant's representative: Richard A. Peterson, P.O. Box 81849, Lincoln, Nebr. 68501. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Candy and confectionery items* (except in bulk and those which because of size and weight require special handling or equipment), from Sulphur Springs, Tex., to Centralia and Ashley, Ill., under a continuing contract or contracts with Hollywood Brands, Division of Consolidated Foods Corporation.

NOTE.—Applicant holds common carrier authority in MC 139906 and subs thereunder, therefore dual operations may be involved. If a hearing is deemed necessary, the applicant requests it be held at either Lincoln, Nebr., or Salt Lake City, Utah.

No. MC 135078 (Sub-No. 11), filed November 19, 1976. Applicant: AMERICAN TRANSPORT, INC., 7850 "F" Street, Omaha, Nebr. 68127. Applicant's representative: Frederick J. Coffman, 521 South 14th Street, P.O. Box 81849, Lincoln, Nebr. 68501. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) (a) *Floor covering and floor tile*, from Lancaster, Pa., to points in Arizona, Arkansas, California, Colorado, Idaho, Iowa, Kansas, Louisiana, Missouri, Montana, Nebraska, New Mexico, Nevada, Oklahoma, Oregon, South Dakota, Texas, Washington, Wyoming and Utah; (b) *carpet*, from Ware. Mass., to points in Arizona, Arkansas, California, Colorado, Idaho, Iowa, Kansas, Louisiana, Missouri, Montana, Nebraska, New Mexico, Nevada, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, and Wyoming; (c) *carpet lining*, from Derby and Shelton, Conn., to points in Arizona, Arkansas, California, Colorado, Idaho, Iowa, Kansas, Louisiana, Missouri, Montana, Nebraska, Nevada, New Mexico, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, and Wyoming; restricted in parts (a), (b), and (c) abovè to traffic moving for the account of William Volker & Company and further restricted to traffic originating at the named origins and destined to the name destination states; (2) *new finished furniture*, from Taylor and San Marcos, Tex., to points in Alabama, Arkansas, Colorado, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Masschusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Tennessee, Virginia, and West Virginia, under continuing contract or contracts with Kerr-Ben Furniture Manufacturing Company, Inc., a subsidiary of William Volker & Company, of East Taylor, Tex., restricted to traffic moving from the facilities of Kerr-Ben Furniture Manufacturing Company, Inc., a subsidiary of William Volker & Company and destined to the named destination states;

(3) *Carpeting and rugs*, from points in Laurens County, Ga., Washington County, Miss., and Dillon County, S.C.; to points in Minnesota, Iowa, Missouri, Arkansas, Louisiana, Texas, Oklahoma, Kansas, Nebraska, South Dakota, North Dakota, Montana, Wyoming, Colorado, New Mexico, Arizona, Utah, Idaho, Nevada, California, Oregon and Washington, restricted to traffic moving for the account of William Volker & Company and to traffic originating at the named origins and destined to the named destination states; (4) *floor covering, floor tile, carpet padding and lining, and materials, equipment and supplies* used in the installation thereof, from Anaheim and South Gate, Calif., to points in Washington, Oregon, Idaho, Nevada, Utah, Arizona, Montana, Wyoming, Colorado, New Mexico, Nebraska, Kansas, Oklahoma, Texas, Iowa, Missouri, Arkansas, and Louisiana, restricted to traffic originating at the named origins and destined to the named destination states; (5) *new furniture*, crated, from Taylor and San Marcos, Tex., to points in Arizona, California, Idaho, Montana, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming, restricted to traffic originating at the named origins and destined to the named destination states; (6) *window rollers, slats, window shades, shutters, and roller fixtures*, from Ogdensburg, N.Y.; and Chicago, Ill., to points in California, Colorado, Missouri, Nebraska, Oregon, Texas, Utah, and Washington, restricted to traffic moving for the account of William Volker & Company and to traffic originating at the named origins and destined to the named destination states; (7) *floor covering and rugs*, from Crow Agency, Mont.; to points in Washington, Oregon, California, Idaho, Nevada, Utah, Arizona, Wyoming, Colorado, New Mexico, South Dakota, Nebraska, Kansas, Oklahoma, Texas, Iowa, Missouri and Louisiana, restricted to traffic moving for the account of William Volker & Company and to traffic originating at the named origins and destined to the named destination states.

(8) *New unfinished furniture*, (a) from Loveland, Colo.; to points in New Mexico and Texas; and (b) from Spangle, Wash., to points in Montana, Utah, and Idaho, restricted in (a) and (b) above to traffic moving for the account of William Volker & Company and to traffic originating at the named origins and destined to the named destination states. (9) *new finished furniture*, from Portland, Oreg.; to points in Missouri, Kansas, Nebraska, Idaho, Montana, Colorado, Utah, California, Arizona, New Mexico, Texas, Oklahoma, Washington, and Nevada, restricted to traffic moving for the account of William Volker & Company and to traffic originating at the named origins and destined to the named destination states; (10) (a) *bed frames and accessories*, from Benicia, Calif., to points in Washington, Montana, New Mexico, Arizona, Texas, Oregon, Colorado, Idaho and Utah; and (b) *carpet tacking strip and materials and equipment* used for the installation of carpet, from City of Industry and Los Angeles, Calif.; to points in New Mexico, Colorado, Texas, Oklahoma, Idaho, Utah, Arizona, Kansas, Missouri, Louisiana, and Nebraska, restricted in parts (a) and (b) to traffic moving for the account of William Volker & Company and to traffic originating at the named origins and destined to the named destination states; (11) *floor covering, floor title and rugs*, from the facilities of William Volker & Company located at or near Merced, Calif.; to points in Washington, Oregon, Nevada, Idaho, Utah, Arizona, Montana, Wyoming, Colorado, New Mexico, South Dakota, Nebraska Kansas, Oklahoma,

Texas, Iowa, Missouri, Arkansas and Louisiana, restricted to traffic moving for the account of William Volker & Company and originating at the named origin and destined to the named destination states; (1) *new finished furniture*, from the facilities of William Volker & Company points located at or near Cameron, Tex., to Arkansas, Colorado, Iowa, Kansas, Louisiana, Missouri, Nebraska, New Mexico and Oklahoma, restricted to traffic moving for the account of William Volker & Company and originating at the named origin and destined to the named destination states:

(13) *floor covering, floor tile, carpet padding, and carpet lining*, from Milwaukee, Wis., and Libertyville, Waukegan, and Kankakee, Ill., to points in Iowa, Kansas, Minnesota, Missouri, Nebraska, and South Dakota, restricted to traffic moving for the account of William Volker & Company and originating at the named origins and destined to the named destination states; (14) *new finished furniture*, from Canby, Oreg., to points in Arizona, California, Colorado, Idaho, Kansas, Missouri, Montana, Nebraska, Nevada, New Mexico, Oklahoma, South Dakota, Texas, Utah, Washington, and Wyoming, restricted to traffic originating at the named origins and destined to the named destination states; (15) *such commodities* as are dealt in and used by manufacturers and wholesalers of household furnishings (except commodities in bulk, commodities which because of their size or weight require special equipment for loading and unloading, lumber and construction and building materials), between points in Arizona, Arkansas, California, Colorado, Idaho, Illinois, Iowa, Kansas, Louisiana, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, and Wyoming; restricted to traffic moving for the account of William Volker & Company and to traffic originating at and/or destined to the suppliers, customers or facilities of or utilized by William Volker & Company; (16) *carpet padding and materials and supplies* used in the installation of carpet padding (except commodities in bulk), from Grafton, W. Va., and Dyersburg, Tenn., to points in Arizona, Arkansas, California, Colorado, Idaho, Iowa, Kansas, Louisiana, Missouri, Montana, Nebraska, Nevada, New Mexico, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, and Wyoming; restricted to traffic moving for the account of William Volker & Company and originating at the named origins and destined to the named destination states; and (17) *carpet lining and padding*, from Norfolk, Va., to points in Colorado, Iowa, Kansas, Louisiana, Missouri, Nebraska, New Mexico, Oklahoma, and Texas, restricted to traffic moving for the account of William Volker & Company and originating at the named origins and destined to the named destination states.

NOTE.—The purpose of this application is to convert applicant's contract carrier authority to common. Applicants holds contract carrier authority in MC 135007 and subs thereunder, therefore dual operations may be involved. If a hearing is deemed necessary, the applicant requests it be held at San Francisco, Calif., or Omaha, Nebr.

No. MC 135598 (Sub-No. 6), filed December 17, 1976. Applicant: SHARKEY TRANSPORTATION, INC., P.O. Box 546, Quincy, Ill. 62301. Applicant's representative: Carl L. Steiner, 39 South La Salle Street, Chicago, Ill. 60603. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Dry animal and poultry feed, dry animal and poultry mineral mixtures*, in bulk, from Quincy, Ill., to points in Iowa, Missouri and Wisconsin.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at Chicago, Ill.

No. MC 138144 (Sub-No. 14), filed December 13, 1976. Applicant: FRED OLSON CO., INC., 6022 West State Street, Milwaukee, Wis. 53213. Applicant's representative: Daniel C. Sullivan, 327 South LaSalle Street, Chicago, Ill. 60604. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lumber and lumber products*, from the facilities of Ratzlaff Logging and Lumber, Inc., located at or near Princeton and Onamia, Minn., to points in Wisconsin on and south of U.S. Highway 10.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at either Milwaukee, Wis. or Chicago, Ill.

No. MC 138144 (Sub-No. 16), filed December 27, 1976. Applicant: FRED OLSON CO., INC., 6022 West State Street, Milwaukee, Wis. 53213. Applicant's representative: Daniel C. Sullivan, 327 South LaSalle Street, Chicago, Ill. 60604. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lumber, lumber products, lumber mill products, poles, posts and pilings*, from Beardstown, Ill., to points in Illinois, Iowa, Minnesota, Missouri and Wisconsin.

NOTE.—Applicant is seeking contract carrier authority in MC 138144 (Sub-No. 7); therefore dual operations may be involved. If a hearing is deemed necessary, the applicant requests that it be held at either Milwaukee, Wis. or Chicago, Ill.

No. MC 138359 (Sub-No. 5), filed December 16, 1976. Applicant: LENNEMAN TRANSPORT, INC., 10 North Michigan Street, Hutchinson, Minn. 55350. Applicant's representative: Robert P. Sack, P.O. Box 6010, West St. Paul, Minn. 55118. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Fertilizer spreading equipment*, from Hutchinson, Minn., to points in Illinois, Indiana, Iowa, Nebraska, North Dakota, South Dakota and Wisconsin; and (2) *parts and materials* used in the manufacture of (1) above, from Armstrong, Iowa and Chicago, Ill., to Hutchinson, Minn., under a continuing contract, or contracts, with Ag Systems, Inc. located at Hutchinson, Minn.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at Minneapolis, Minn.

No. MC 138875 (Sub-No. 39), (Correction) filed November 17, 1976, published in the FEDERAL REGISTER issue of January 6, 1977, republished as corrected this issue. Applicant: SHOEMAKER TRUCKING COMPANY, a Corporation, 11900 Franklin Road, Boise, Idaho 83705. Applicant's representative: Frank L. Sigloh, (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen foods, and potato products*, other than frozen, from points in Idaho and those in Washington and Oregon (including Metolius), located east of U.S. Highway 97, to points in Connecticut, Delaware, Indiana, Maryland, Massachusetts, Michigan, New Jersey, New York, Pennsylvania, Ohio, Rhode Island, Virginia, West Virginia and the District of Columbia.

NOTE.—The purpose of this republication is to indicate the destinations which were previously omitted. If a hearing is deemed necessary, the applicant requests it be held at either Boise, Idaho or Washington, D.C.

No. MC 139876 (Sub-No. 3), filed December 22, 1976. Applicant: A B C TRANSIT CO., INC., 7860 "F" Street, Omaha, Nebr. 68127. Applicant's representative: Scott E. Daniel, P.O. Box 82028, Lincoln, Nebr. 68501. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, and meat by-products and articles distributed by meat packinghouses*, as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except hides and commodities in bulk), from the plantsite and storage facilities utilized by American Beef Packers, Inc., located at or near Omaha, Nebr., and Oakland, Iowa, to points in Arkansas, Illinois, Indiana, Iowa, Kansas, Kentucky, Minnesota, Missouri, Ohio, Tennessee and Wisconsin, restricted to traffic originating at the named origins and destined to the named destinations.

NOTE.—Applicant holds common carrier authority in No. MC 139686, therefore dual operations may be involved. If a hearing is deemed necessary, the applicant requests that it be held at Omaha, Nebr.

No. MC 140789 (Sub-No. 2), filed December 20, 1976. Applicant: P.D.Q., INC. OF MIAMI, 3395 NW 107th Street, Miami, Fla. 33167. Applicant's representative: H. Neil Garson, 1400 North Uhle Street, Suite 404, Arlington, Va. 22201. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except Classes A and B explosives, commodities of unusual value, household good as defined by the Commission, commodities in bulk and those requiring special equipment), between points in Broward, Dade and Palm Beach Counties, Fla., restricted to shipments originating at or destined to the facilities utilized by ABC-Trans National Transport Inc. located at Miami, Fla., and further restricted to shipments moving on freight forwarder freight bills or bills of lading issued by ABC-Trans National Transport, Inc.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at Miami, Fla.

No. MC 141247 (Sub-No. 7), filed December 17, 1976. Applicant: LAWRENCE PILGRIM, doing business as PILGRIM TRUCKING COMPANY, P.O. Box 77, Cleveland, Ga. 30528. Applicant's representative: Jeffrey Kohlman, Suite 400, 1447 Peachtree St., N.E., Atlanta, Ga. 30309. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Lumber*, from Cleveland, Ga., to points in Illinois, Indiana, Michigan, Ohio, Pennsylvania, and West Virginia, under a continuing contract, or contracts, with Appalachian Industries, Inc.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at either Atlanta, Ga. or Washington, D.C.

No. MC 141431 (Sub-No. 2), filed December 17, 1976. Applicant: CAL-VALLEY TRANSPORTATION, INC., P.O. Box 217, 7916 West Bellevue, Atwater, Calif. 95301. Applicant's representative: William D. Taylor, 100 Pine Street, San Francisco, Calif. 94111. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Frozen fruits and vegetables*, moving in equipment requiring mechanical refrigeration, (1) from Watsonville and Atwater, Calif., to points in the United States (except Alaska and Hawaii); and (2) from Bear Lake and Decatur, Mich., to points in the United States (except Alaska and Hawaii), under a continuing contract, or contracts, with Big Valley Marketing Corporation.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at San Francisco, Calif.

No. MC 142289 (Sub-No. 4), filed December 10, 1976. Applicant: HECHT BROTHERS, INC., 2075 Lakewood Road, Toms River, N.J. 08753. Applicant's representative: Jean R. Hecht (same address as applicant). Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Uncrated doors, and materials and supplies* used in connection therewith, from Sunbury, Pa., to Ormrod, Pa. and Lakewood, N.J.; and (2) *uncrated, rejected and returned materials*, from Ormrod, Pa. and Lakewood, N.J., to Sunbury, Pa., under a continuing contract or contracts with Level Line, Inc.

NOTE.—Applicant holds common carrier authority in MC 5970 and subs thereunder, therefore dual operations may be involved. If a hearing is deemed necessary, the applicant requests it be held at Philadelphia, Pa.

No. MC 142548 (Sub-No. 2), filed December 13, 1976. Applicant: STALEY EXPRESS, INC., 2501 N. Brush College Road, Decatur, Ill. 62526. Applicant's representative: Fritz R. Kahn, Suite 1100, 1660 L Street, N.W., Washington, D.C. 20036. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Tires, tire parts, inner tubes, inner tube parts, and equipment, materials and supplies* used and useful in the manufacture, distribution or repair thereof, between Decatur, Ill., on the one hand, and, on the other, points in Illinois, Indiana, Kentucky, and Missouri, restricted to the transportation of shipments originating at or destined to the plantsites or storage facilities of the Firestone Tire & Rubber Company located at Decatur, Ill.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at either Springfield, Ill. or Washington, D.C.

No. MC 142571 (Sub-No. 1) filed December 20, 1976. Applicant: METROPOLITAN ARMORED CAR, INC., 1410 East 17th Avenue, Columbus, Ohio 43211. Applicant's representative: Edwin H. van Deusen, 220 West Bridge Street, P.O. Box 97, Dublin, Ohio 43017. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Industrial abrasives*, in armored car service, from the facilities of the General Electric Company, Specialty Materials Department, located at Worthington, Ohio, to Romulus, Mich., under a continuing contract, or contracts, with The General Electric Company, Specialty Materials Department.

NOTE.—If a hearing is deemed necessary, the applicant requests that it be held at Columbus, Ohio.

No. MC 142754, filed December 8, 1976. Applicant: PIROLLO TRANSPORT CO., INC., 6312 Hooker Street, Pittsburgh, Pa. 15206. Applicant's representative: Arthur J. Diskin, 806 Frick Building, Pittsburgh, Pa. 15219. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Motor oil, lubricants and undercoating compounds*, in drums and cases, from Buffalo, N.Y.; Emlenton and Warren, Pa.; and St. Mary, and Congo, W. Va., to the warehouses of Ross Oil Corporation, located at West Palm Beach, Miami and Opa Locka, Fla., under a continuing contract, or contracts, with Ross Oil Corporation; and (2) *frozen citrus juice concentrate*, in refrigerated vehicles, from points in Florida, to the plantsite of Daily Juice Products, Inc., located in Verona, Pa., under a continuing contract, or contracts, with Daily Juice Products, Inc.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at either Washington, D.C. or Pittsburgh, Pa.

No. MC 142756, filed December 10, 1976. Applicant: EL PASO E-Z MOVERS, INC., 9700 Railroad Drive, El Paso, Tex. 79924. Applicant's representative: Robert J. Gallagher, Suite 1200, 1000 Connecticut Ave., N.W., Washington, D.C. 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Used household goods* as defined by the Commission, restricted to the transportation of shipments having a prior or subsequent movement, in containers, beyond the points authorized, and further restricted to the performance of pickup and delivery service in connection with the packing, crating, and containerization or unpacking, uncrating, and decontainerization of such shipments, between points in El Paso County, Tex.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at El Paso, Tex.

No. MC 142773 filed December 20, 1976. Applicant: PRATHER AUTO SALES, INC., Box 165, Louisville, Ill., 62858. Applicant's representative: Edward G. Finnegan, 188 West Randolph Street, Chicago, Ill. 60601. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Used motor vehicles* when moving therewith in secondary movements in truckaway or transporter services, (1) between points in Illinois and Lake County, Ind., on the one hand, and, on the other, points in Arkansas, Colorado, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, Nebraska, Oklahoma and Wisconsin; and (2) between points in Illinois, on the one hand, and, on the other, Indianapolis and Merrillville, Ind. and points in Lake County, Ind.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at Chicago, Ill.

PASSENGER APPLICATIONS

No. MC 2890 (Sub-No. 51), filed December 17, 1976. Applicant: AMERICAN BUSLINES, INC., 1501 South Central Avenue, Los Angeles, Calif. 90021. Applicant's representative: Edward G. Villalon, Suite 1032 Pennsylvania Building, Pennsylvania Avenue & 13th St., N.W., Washington, D.C. 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Passengers and their baggage*, in special, one-way, and round-trip operations, from points in Hendricks, Marion, Putman, Clay, Vigo, Allen, Hancock, Henry and Wayne Counties, Ind., DuPage, Bureau, LaSalle, Peoria, Cook, Madison and St. Clair Counties, Ill., and St. Louis County, Mo., to points in the United States including Alaska, but excluding Hawaii.

NOTE.—Common control may be involved. If a hearing is deemed necessary, the applicant requests it be held at either Chicago or Springfield, Ill. or Indianapolis, Ind.

No. MC 95466 (Sub-No. 6), filed December 23, 1976. Applicant: DATTCO, INC., 99 Newington Avenue, New Britain, Conn. 06051. Applicant's representative: William C. Mitchell, Jr., 370 Lexington Avenue, New York, N.Y. 10017. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Passengers and their baggage*, in special operations, beginning and ending at points in Hartford and New Haven Counties, Conn., and extending to Atlantic City, N.J.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at Hartford, Conn.

FINANCE APPLICATIONS

The following applications seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control through ownership of stock, of rail carriers or motor carriers pursuant to Sections 5(2) or 210a(b) of the Interstate Commerce Act.

An original and two copies of protests against the granting of the requested authority must be filed with the Commission within 30 days after the date of this FEDERAL REGISTER notice. Such protest shall comply with Special Rules 240 (c) or 240(d) of the Commission's General Rules of Practice (40 CFR 1100.240) and shall include a concise statement of protestant's interest in the proceeding. A copy of the protest shall be served concurrently upon applicant's representative, or applicant, if no representative is named.

No. MC–F–13072. Authority sought for purchase by HILLDRUP TRANSFER AND STORAGE, INC., 300 Central Road, Fredericksburg, VA., 22401, of the operating rights of HILLDRUP TRANSFER & STORAGE OF KEY WEST, INC., 1st and Maloney Streets, Key West, FL., 33040, and for acquisition by CHARLES G. McDANIEL, 300 Central Road, Fredericksburg, VA., 22401, of control of such rights through the purchase. Applicants' attorney: Alan F. Wohlstetter, 1700 K Street, N.W., Washington, D.C., 20006. Operating rights sought to be transferred: Used household goods, as a common carrier over irregular routes betwen points in Monroe and Dade Counties, Fla. Vendee is authorized to operate as a common carrier in Delaware, Florida, Georgia, Maryland, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Tennessee, Virginia, and West Virginia. Application has not been filed for temporary authority under section 210a(b).

No. MC–F–13073. Authority sought for purchase by BOULEVARD STORAGE & MOVING CO., INC., 2620 West Wisconsin Avenue, Milwaukee, WI., 53233, of the operating rights of CENTRAL MOVING & STORAGE CORPORATION, 3526 West Kiehnan Avenue, Milwaukee, WI., 53209, and for acquisition by T. E. NEUBAUER, and JANET M. NEUBAUER, both of 1407 E. Goodrich La., Milwaukee, WI., 53217, and W. A. MOORE, 1616 W. Bender Road, Milwaukee, WI., 53209, of control of such rights through the purchase. Applicants' attorney: William D. Dineen, 412 Empire Building, 710 North Plankinton Avenue, Milwaukee, WI., 53203. Operating rights sought to be transferred: *Household goods*, as defined by the Commission, as a *common carrier* over irregular routes between points in Milwaukee County, Wis., on the one hand, and, on the other, points in Illinois, Indiana, Ohio, Minnesota, Iowa and Michigan. Vendee is authorized to operate as a *common carrier* in Wisconsin, Illinois, Michigan, Indiana, Ohio, Minnesota, and Iowa. Application has not been filed for temporary authority.

MOTOR CARRIER OF PASSENGERS

No. MC–F–13076. Authority sought for purchase by CARL R. BIEBER, INC., dba, CARL R. BIEBER TOURWAYS, Vine and Baldy Streets, Kutztown, PA., 19530, of apportion of the operating rights of PHILBORO COACH CORPORATION, DBA PHILBORO COACH, T/A GRAY LINE MOTOR TOURS, P.O. Box 418 North Broadway, Pitman, N.J., 08071, and for acquisition by CARL R. BIEBER, of the Kutztown, PA., 19530 address, of control of such rights through the purchase. Applicants' attorneys: L. C. Major, Jr., Suite 400 Overlook Bldg., 6121 Lincolnia Road, Alexandria, VA., 22312, and John R. Sims, Jr., 915 Pennsylvania Bldg., 425 13th Street, N.W. Washington, D.C., 20004. Operating rights sought to be transferred: Passengers and their baggage, and express and newspapers, in the same vehicle with passengers, as a common carrier over regular routes (A) between Philadelphia, Pa., and Allentown, Pa., serving all intermediate points; (B) between Philadelphia, Pa., and Allentown, Pa., serving all intermediate points; between junction Pennsylvania Turnpike Delaware River Extension and Pennsylvania Turnpike Northeast Extension, and junction unnumbered highway (formerly Pennsylvania Highway 731) and the Pennsylvania Turnpike Delaware River Extension serving all intermediate points; between the Pennsylvania Turnpike Northeast Extension Lansdale Interchange, and junction Pennsylvania Highway 63 and U.S. Highway 309, serving all intermediate points; between the Pennsylvania Turnpike Northeast Extension Quakertown Interchange, and Quakertown, Pa., serving all intermediate points; (C) between Philadelphia, Pa., and Allentown, Pa., serving all intermediate points, including Bethlehem, Coopersburg, Quakertown, Sellersville, and Ambler, Pa.: Passengers and their baggage, restricted to traffic originating in the territory indicated, in charter operations, as a common carrier over irregular routes from points in Bucks County, Pa., and those within 5 miles of the regular routes specified under (A) above, and those within 5 miles of the rail routes of the Reading Company in Lehigh and Northampton Counties, Pa., to points in Connecticut, New York, New Jersey, Maryland, Delaware, Virginia, and the District of Columbia, and return. Vendee is authorized to operate as a common carrier in Alabama, Connecticut, Delaware, the District of Columbia, Florida, Georgia, Illinois, Indiana, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, Tennessee, Vermont, Virginia, and West Virginia. Application has not been filed for temporary authority under section 210a(b).

No. MC–F–13077. Authority sought for purchase by ROBCO TRANSPORTATION, INC., P.O. Box 12729, 309 Fifth Avenue N.W., New Brighton, MN., 55112, of the operating rights of DM'S TRUCKS, 1000 First National Bank Building, Minneapolis, MN., 55402, and for acquisition by C. H. ROBINSON CO., 7525 Mitchell Road, Eden Prairie, MN., 55343, of control of such rights through the purchase. Applicants' attorneys: Val M. Higgins, 1000 First National Bank Bldg., Minneapolis, MN., 55402, and Stanley C. Olsen, Jr., 7525 Mitchell Road, Eden Prairie, MN., 55343. Operating rights sought to be transferred: Meats, meat products, and meat by-products, and articles distributed by meat packinghouses, as described in Sections A and C of Appendix I to the report in Descriptions in Motor Carrier Certificates, 61 M.C.C. 209 and 766, (except commodities in bulk, in tank vehicles), as a common carrier over irregular routes from points in Kansas except Kansas City, Kans., to Springfield and Macon, Mo., with no transportation for compensation on return except as otherwise authorized, with restrictions. Vendee is authorized to operate as a common carrier in all the States in the United States (except Alaska and Hawaii). Application has not been filed for temporary authority under Section 210a(b).

NOTE.—MC–136786 (Sub-No. 107) is a directly related matter.

No. MC–F–13078. Authority sought for purchase by COLDWAY FOOD EXPRESS, INC., Route 20 North P.O. Box 747, Sidney, OH., 45365, of the operating rights of FOODWAY EXPRESS, INC., Suite 300, Three Penn Center Plaza, Philadelphia, PA., 19102, and for acquisition by JOHN L. MAURER, 437 Pinehurst, Sidney, OH., 45365, and JOSEPH M. SCANLAN, 111 West Washington St., Chicago, IL., 60602, of control of such rights through the purchase. Applicants' attorney: Joseph M. Scanlan, 111 West Washington St., Chicago, IL., 60602. Operating rights sought to be transferred: Fresh processed, and canned fruits, produce, and food products, nuts, peanut oil, peanut butter, batteries, and battery parts as a common carrier over irregular routes between New York, N.Y., and Philadelphia, Pa., as follows: from New York across the Hudson River (also via Hudson vehicular tunnel) and over city streets and connecting highways to Jersey City, N.J., thence over U.S. Highway 1 to Philadelphia; from New York to Jersey City as specified above, thence over New Jersey Highway 25 to Camden, N.J., and thence across the Delaware River to Philadelphia; and return over these routes to New York, service is authorized to and from the intermediate and off-route points of Camden, Jersey City, Elizabeth, New Brunswick, Newark, Paterson and Trenton, N.J.; fresh fruits and fresh vegetables, between New York, N.Y., and Jersey City, N.J., on the one hand, and, on the other, U.S. Naval Air Station, Lakehurst, N.J., U.S. Merchant Marine Academy, Kings Point, L.I., N.Y., Camp Upton, Yaphank, L.I., N.Y., U.S. Naval Hospital, Brentwood, L.I., N.Y. Port Slocum, New Rochelle, N.Y., Camp Shanks, Orangeburg, N.Y., U.S.

Military Academy, West Point, N.Y., and Stewart Field, Newburg, N.Y.; fruits, and fresh vegetables, poultry, eggs, dairy products, meats, meat products and fish, between New York and Jersey City, on the one hand, and on the other, Mitchel Field, Garden City, L.I., N.Y., U.S. Naval Separation Center, Lido Beach, L.I., N.Y., Greenhaven Prison, Stormville, N.Y., U.S. Naval Training Station and U.S. Naval Separation Center, Sampson, N.Y., Fort Monmouth, N.J., Fort Hancock, Red Bank, N.J., Camp Kilmer, New Brunswick N.J., and Fort Dix, N.J. Vendee is authorized to operate as a *common carrier* in all States in the United States (except Alaska and Hawaii). Application has not been filed for temporary authority.

No. MC–F–13080. Authority sought for purchase by BAKER HI-WAY EXPRESS, INC., P.O. Box 506, 555 Commercial Parkway, Dover, OH., 44622, of a portion of the operating rights of A. J. WEIGAND, INC., P.O. Box 130, Dover, OH., 44622, and for acquisition by HAROLD BAKER, SR., Stone Creek, OH., 43840, of control of such rights through the purchase. Applicants' attorney: Richard H. Brandon, 220 West Bridge Street, P.O. Box 97, Dublin, OH., 43017. Operating rights sought to be transferred: *Steel and steel products*, as a *common* carrier over irregular routes from Dover, Ohio, and points within two miles of Dover, not including New Philadelphia, Ohio, to points in that part of New York on and west of a line beginning at Oswego, N.Y., and extending along New York Highway 57 to Syracuse, N.Y., and thence along U.S. Highway 11 to the New York-Pennsylvania State line, those parts of Maryland and Pennsylvania on and west of U.S. Highway 11, including Wilkes-Barre, Sunbury, and Harrisburg, Pa., that part of West Virginia, on, north, and west of a line beginning at the Maryland-West Virginia State line, and extending along U.S. Highway 220 to junction U.S. Highway 33 thence along U.S. Highway 33 to junction West Virginia Highway 4, thence along West Virginia Highway 4 to junction U.S. Highway 60, and thence along U.S. Highway 60 to the West Virginia-Kentucky State line, that part of Kentucky, on, north and east of a line beginning at the West Virginia-Kentucky State line and extending along U.S. Highway 60 to junction U.S. Highway 62, thence along U.S. Highway 62 to junction U.S. Highway 41 and thence along U.S. Highway 41 to the Ohio River, that part of Michigan and on and south of a line beginning at Muskegon, Mich., and extending along Michigan Highway 20 to Bay City, Mich.

Thence along Michigan Highway 25 to Huron City, Mich., that part of Illinois on and east of U.S. Highway 51 and on and north of U.S. Highway 36, and points in Indiana, and *machinery and machinery parts* used in the manufacture of *Steel and steel products*, from points in the destination territory specified above to Dover, Ohio, and points within two miles thereof, not including New Philadelphia, Ohio, *truck parts, accessories, and equipment, and trailer parts, accessories, and equipment*, from Chicago, Ill., Detroit and Pontiac, Mich., Hillside, N.J., and Clearfield, Pittsburgh, Uniontown and Washington, Pa., to Dover, Ohio, with no transportation for compensation on return except as otherwise authorized, from Dover, Ohio to Clearfield, Pa., with no transportation for compensation on return except as otherwise authorized, *sheet steel and sheet steel products*, from the site of the plant of the Reeves Steel and Manufacturing Company, near Dover, Ohio, to points in Pennsylvania east of U.S. Highway 11, except Wilkes-Barre, Sunbury, and Harrisburg, Pa., *Sheet steel and sheet steel products* (except articles requiring special equipment), from the site of Reeves Steel and Manufacturing Co. plant at Dover, Ohio to points in that part of New York east of a line beginning at Oswego, N.Y. and extending along New York Highway 57 to Syracuse, N.Y. and thence along U.S. Highway 11 to the New York-Pennsylvania state line points in New Jersey, points in that part of Maryland east of U.S. Highway 11 and the District of Columbia, with no transportation for compensation on return except as otherwise authorized. Vendee is authorized to operate as a *common carrier* in Alabama, Arkansas, Connecticut, Delaware, the District of Columbia, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, New Jersey, New Hampshire, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Virginia, Vermont, West Virginia, and Wisconsin. Application has not been filed for temporary authority under section 210a (b).

No. MC–F–13082. Authority sought for purchase by A & H, INC., Old Highway 11, Footville, WI., 53537, of a portion of the operating rights of JOHNSRUD TRANSPORT, INC., Highway 9 West, P.O. Box 447, Cresco, IA., 52136, and for acquisition by FERALD O. ARNESON, EDWARD K. HOERLER, and WILLIS E. HOERLER, all of Footville, WI., 53537, of control of such rights through the purchase. Applicants' attorney: Patrick E. Quinn, P.O. Box 82028, Lincoln, NB., 68051. Operating rights sought to be transferred: *Foodstuffs* (except commodities in bulk), as a *common carrier* over irregular routes from the facilities of Geo. A. Hormel & Co., at or near Beloit, Wis., to points in Minnesota, North Dakota, South Dakota, Nebraska, Kansas, Oklahoma, Iowa, Missouri, Illinois, Michigan, Indiana, Ohio, Kentucky, New York, Pennsylvania, Louisiana, Arkansas, Alabama, Georgia, Mississippi, Tennessee, Vermont, New Hampshire, Maine, Massachusetts, Rhode Island, Connecticut, Maryland, New Jersey, Delaware, West Virginia, Virginia, North Carolina, and South Carolina, and the District of Columbia, restricted to the transportation of shipments originating at the named origin and destined to the named States; *meat, meat products, and meat by-products* as described in Section A of Appendi 1 to the report of *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except hides), and foodstuffs, canning plant materials, equipment and supplies, except commodities in bulk, from points in Minnesota, North Dakota, South Dakota, Nebraska, Kansas, Oklahoma, Iowa, Missouri, Illinois, Michigan, Indiana, Ohio, New York, Pennsylvania, New Jersey, Louisiana, Arkansas, Mississippi, Alabama, and Georgia, to facilities of Geo. A. Hormel & Co., at or near Beloit, Wis., restricted to the transportation of shipments originating at the named origins and destined to the named destinations. Vendee is authorized to operate as a common carrier in all the States in the United States (except Alaska and Hawaii). Application has been filed for temporary authority under section 210a (b).

No. MC–F–13083. Authority sought for purchase by SHORT FREIGHT LINES, INC., 459 South River Road, Bay City, MI., 48706, of the operating rights of RED LINE EXPRESS, INC., PHILIP R. JOELSON, Trustee in Bankruptcy, 6180 Benore Road, Toledo, OH., 43612, and for acquisition by GARY L. SHORT, 459 South River Road, Bay City, MI., 48706, of control of such rights through the purchase. Applicants' attorneys: John P. McMahon, 100 E. Broad St., Columbus, OH., 43215, Arthur R. Cline, 420 Security Building, Toledo, OH., 43604. Operating rights sought to be transferred: General commodities, with exceptions as a common carrier over regular routes between Elmore, Ohio, and Toledo, Ohio, serving no intermediate points: from Elmore over Ohio Highway 51 to Toledo, and return over the same route, with restrictions. Under a certificate of Registration in Docket No. MC 15394 (Sub-No. 4), property, as a common carrier solely within the State of Ohio. Vendee is authorized to operate as a common carrier in Michigan and Ohio. Application has been filed for temporary authority under section 210a(b).

NOTE.—MC 106382 (Sub-No. 26) is a directly related matter.

No. MC–F–13084. Authority sought for purchase by YELLOW FREIGHT SYSTEM, INC., P.O. Box 7270, 10990 Roe Avenue, Shawnee Mission, KS., 66207, of the operating rights of HERMAN O. E. LAGERBERG, DBA BARTLETT'S EXPRESS, 71 Harrison Street, Keene, N.H., 03431, and for acquisition by GEORGE E. POWELL, JR., 1040 West 57th Street, Kansas City, MO., 64113, of control of such rights through the purchase. Applicants' attorneys: Leonard Kofkin, 39 South La Salle Street, Chicago, IL., 60603; David B. Schneider, P.O. Box 7270, Shawnee Mission, KS. 66207; and John Reynolds, 73 Court Street, Keene, N.H., 03431. Operating rights sought to be transferred: General commodities with exceptions, as a common carrier (A) over regular routes, between Keene, NH, and Boston MA, from Keene over New Hampshire Highway 12 to the New Hampshire-Massachusetts State Line, thence over Massachusetts Highway 12

to Fitchburg, MA, and thence over Massachusetts Highway 2 to Boston, and return over the same route, serving all intermediate points and specified off-route; (B) over irregular routes, between Keene, NH, on the one hand, and, on the other, Bellows Falls, VT, and points and places in Massachusetts and New Hampshire north and east of a line beginning at Keene, NH, and extending in a southeasterly direction to Worcester, MA, and thence along Massachusetts Highway 9 to Boston, including points on the Highway indicated. Vendee is authorized to operate as a common carrier in Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Michigan, Massachusetts, Minnesota, Missouri, Nebraska, Nevada, New Jersey, New Mexico, New York, Ohio, Pennsylvania, South Carolina, Tennessee, Texas, Utah, Vermont, and the District of Columbia. Application has been filed for temporary authority under section 210a(b).

MOTOR CARRIER OF PASSENGERS

No. MC–F–13087. Authority sought for purchase by RALPH OWNBEY, an individual, dba TWIN STATE COACH LINES, P. O. Box 826, Bristol, VA., 24201, of the operating rights and property of BLACK AND WHITE TRANSIT COMPANY, INC., P.O. Box 402, Grundy VA., 24614, and for acquisition by RALPH OWNBEY, of the Bristol, VA., 24201 address, of control of such rights through the purchase. Applicants' attorney: Michael L. Rigsby, 200 West Grace Street, Richmond, VA., 23220. Operating rights sought to be transferred: *Passengers and their baggage*, and *express and newspapers in the same vehicle with passengers*, as a *common carrier* over regular routes between Pikeville, Ky., and Grundy, Va., serving all intermediate points, between Hellier, Ky., and Elkhorn City, Ky., serving all intermediate points, between the Kentucky-Virginia State line near Breaks, Va., and junction Virginia Secondary Highway 609 and U.S. Highway 460 near Bigrock, Va., serving all intermediate points, between Pikeville, Ky., and Jenkins, Ky., serving all intermediate points, between Bluefield, W. Va., and Grundy, Va., serving all intermediate points; between Huntington, W. Va., and Pikeville, Ky., serving all intermediate points; between Elkhorn City, Ky., and Pikeville, Ky., serving all intermediate points, between Mouthcard, Ky., and Belcher, Ky., serving all intermediate points; *Passengers and their baggage, newspapers, and express* (not to exceed 100 pounds in weight or 60 inches in length), between Claypool Hill, Va., and Bristol, Tenn., serving all intermediate points between Claypool Hill and Abingdon, Va.; Passengers and their baggage, in the same vehicle with passengers, in special and charter operations, in round-trip sightseeing or pleasure tours, as a common carrier over irregular routes beginning and ending at Bluefield, W. Va., and points in Mingo and Wayne Counties, W. Va., Buchanan, Tazewell, and Dickenson Counties, Va., and Pike and Letcher Counties, Ky., and extending to points in the United States (except Alaska and Hawaii). Vendee is authorized to operate as a common carrier in Virginia, West Virginia, Kentucky, and Tennessee. Application has been filed for temporary authority under section 210a (b).

No. MC–F–13090. Authority sought for purchase by HALLAMORE MOTOR TRANSPORTATION, INC., 795 Plymouth Street, Holbrook, MA 02343, of the operating rights of LAWRENCE TRANSPORT, INC., Main Street, Stratford, CT., 06497, and for acquisition by JOSEPH L. BARRY, JR., 38 Pleasant St., Whitman, MA., and DENNIS E. BARRY, 44 Hillview Ave., Holbrook, MA., of control of such rights through the purchase. Applicant's attorney: Frank J. Weiner, 15 Court Square, Boston, Massachusetts, 02108. Operating rights sought to be transferred: *Scrap rubber*, as a *common carrier* over irregular routes from Bridgeport, Conn., to Boston, Mass., from New York, N.Y., Jersey City, Newark, Perth Amboy, Butler, and Carteret, N.J., Philadelphia, Pa., and Providence, R.I., to Naugatuck, Conn.; *scrap materials*, from Bridgeport, New Haven, Ansonia, Stamford, Danbury, Bethel, Naugatuck, Waterbury, and Waterville, Conn., Port Chester and Tarrytown, N.Y., to New York, N.Y., Newark, Jersey City, Perth Amboy, Butler, and Carteret, N.J., Philadelphia, PA., and Providence, R.I.,; *lumber and masons' supplies*, from New York, N.Y., to Stratford, Conn., return with no transportation for compensation, except as otherwise authorized, to the above specified origin; *scrap paper*, between New Haven and Bridgeport, Conn., on the one hand, and, on the other, Haverhill, Mass., from New York, N.Y., Jersey City, Newark, Perth Amboy, Butler, and Carteret, N.J., Philadelphia, Pa., and Providence, R.I., to New Haven, Conn., with no transportation for compensation on return except as otherwise authorized; *machinery, factory equipment, and stock*, between Stratford, Conn., and points and places in Connecticut within 75 miles of Stratford, on the one hand, and, on the other, points and places in New York, Rhode Island, Pennsylvania, New Jersey, and Massachusetts; household goods between Stratford, Conn., and points and places in Connecticut within 20 miles of Stratford, on the one hand, and, on the other, points and places in New York, Rhode Island, Pennsylavnia, New Jersey, and Massachusetts. Vendee is authorized to operate as a *common carrier*, in Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, and Vermont. Application has been filed for temporary authority under section 210a(b).

No. MC–F–13091. Authority sought for control by SYSTEM 99, 8201 Edgewater Drive, Oakland, CA of NEVADA FREIGHT LINES, INC., 301 E. Commercial Row, Reno, NV 89501, and for acquisition by M. D. GILARDY, L. A. DORE', JR., and E. R. PRESTON, all of the Oakland, CA 94601 address, of control of NEVADA FREIGHT LINES, INC., through the acquisition by M. D. GILARDY, L. A. DORE', JR., and E. R. PRESTON. Applicants' attorneys: Marvin Handler, 100 Pine Street, San Francisco, CA 94111, and John P. Meyer, 16110 Rhyolite Circle, Reno, NV 89511. Operating rights sought to be controlled: Under a certificate of Registration in Docket No. MC–97526 (Sub-No. 1) covering the transportation of general commodities, as a common carrier, in interstate commerce, within the State of Nevada. Vendee is authorized to operate as a common carrier in Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington. Application has been filed for temporary authority under section 210a(b).

NOTE.—MC–98327 (Sub-No. 21) is a directly related matter.

MOTOR CARRIER OF PASSENGERS

No. MC–F–13092. Authority sought for purchase by JIGGETTS TRANSPORTATION SERVICE, INC., 24 Washington Ave., Paterson, N.J. 07501, of the operating rights and property of CHEETAH CHARTER BUS SERVICE CO., INC., Samuel J. Landau, Trustee, DBA CHEETAH TOURS, 405 Lexington Ave., N.Y., N.Y. 10013, and for acquisition by GEORGE and MARTHA JIGGETTS, both of 24 Washington Ave., Paterson, N.J. 07501, of control of such rights through the purchase. Applicants' attorney: Edward F. Bowes, P.O. Box 1409, 167 Fairfield Rd., Fairfield, N.J. 07006. Operating rights sought to be transferred: *Passengers and their baggage, in round-trip charter operations*, as a *common carrier* over irregular routes beginning and ending in that part of New York County, N.Y., bounded on the south by 110th Street, on the west by the New York-New Jersey State line, and on the north and east by Bronx and Queens Counties, N.Y., and extending to points in Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Maine, Maryland, Massachusetts, New Hampshire, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, West Virginia, and the District of Columbia, and Monmouth, Ocean, Atlantic, and Cape May Counties, N.J. Vendee is authorized to operate as a common carrier in New York, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Maine, Maryland, Massachusetts, New Hampshire, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, West Virginia, and New Jersey. Application has been filed for temporary authority under section 210a(b).

NOTICE

WILLAMETTE-WESTERN CORPORATION, Foot of North Portsmouth Avenue, Portland, Oregon 97203, represented by Mr. Norman E. Sutherland, White, Sutherland, Parks & Allen, Attorneys at law, 1200 Jackson Tower, Portland, Oregon 97205, hereby gives notice that, on the 13th day of September, 1976, it filed with the Interstate

Commerce Commission at Washington, D.C., an application under Section 5(2) of the Interstate Commerce Act for authority to purchase the operating authority of Atlas Tug Service, held by Rainier National Bank, Guardian of the Estate of Bert Howard and Lester Howard doing business as, with the elimination of duplicating authority, which application is assigned Finance Docket No. 28293.

Atlas Tug Service, pursuant to authority granted in Docket No. W–401, is authorized to perform general towage between ports and points along the Columbia River and its tributaries below and including Bonneville, Oregon, and along the Willamette River and its tributaries below its confluence with the Yamhill River. Operations proposed by Willamette-Western Corporation would be an extension of its present authority permitting general towage to Bonneville, Oregon, on the Columbia River and to the confluence of the Yamhill River on the Willamette River.

Willamette-Western Corporation operates pursuant to a certificate issued in Docket No. W–643 as a common carrier by water between points along the Columbia River and its tributaries below Vancouver, Washington and on the Willamette River below Portland, Oregon, including the ports named.

Willamette-Western has been continuously engaged in the business, among others, of operating tugs and barges on the Columbia and Willamette since incorporation in 1937. Transferee originally operated under the name of Willamette Tug and Barge Company (250 I.C.C. 818). On February 1, 1967, a new certificate was issued in Docket No. W–643 to transferee pursuant to a change of corporate name and a request to this Commission for its order approving the change in name. Transferee operates 34 tugs and 37 cargo barges together with pile drivers, dredges and derrick barges. Transferor, Atlas Tug Service, has been engaged in the operation of tugs and the towing of logs and other traffic on the Columbia and Rivers since inception of the partnership in 1938 pursuant to an oral agreement. No application for temporary authority has been filed under Section 311(b).

In the opinion of the applicant, the granting of the authority sought will not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969. In accordance with the Commission's regulations (49 C.F.R. 1108.8) in Ex Parte No. 55 (Sub-No. 4), *Implementation—National Environmental Policy Act, 1969*, 352 I.C.C. 451 (1976), any protests may include a statement indicating the presence or absence of any effect of the requested Commission action on the quality of the human environment. If any such effect is alleged to be present, the statement shall indicate with specific data the exact nature and degree of the anticipated impact. See *Implementation—National Environmental Policy Act, 1969, supra*, at p. 487.

Pursuant to the provisions of the Interstate Commerce Act, as amended, the proceeding will be handled without public hearings unless comments in support or opposition on such application are filed with the Secretary, Interstate Commerce Commission, 12th and Constitution Avenue, N.W., Washington, D.C. 20423, and the aforementioned counsel for applicant, within 45 days after date of first publication in the FEDERAL REGISTER; that such comments shall be served upon (a) Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Room 5101, 400 Seventh Street, S.W., Washington, D.C. 20590, (b) Mr. Edward H. Levi, Attorney General, Department of Justice, 10th and Constitution Avenue, N.W., Washington, D.C. 20530, and certificate of all such service is given to the Interstate Commerce Commission; and that all other applications, which are inconsistent, in whole or in part, with such applications, and all petitions for inclusion in the transaction, shall be filed with the Commission and furnished to the Docket Clerk, Secretary of Transportation, within 90 days after the publication of notice of the application in the FEDERAL REGISTER.

WILLAMETTE-WESTERN CORPORATION

NOTICE

SSI RAIL CORP., Two Embarcadero Center, San Francisco, California 94111 and ITEL CORPORATION, One Embarcadero Center, San Francisco, California 94111, represented by David M. Schwartz, Sullivan & Worcester, 1025 Connecticut Avenue, N.W., Washington, D.C. 20036 and Martin D. Goodman, SSI Rail Corp., Two Embarcadero Center, San Francisco, California 94111 hereby give notice that on the 7th day of January, 1977, they filed with the Interstate Commerce Commission at Washington, D.C., an application under Section 5(2) of the Interstate Commerce Act for an order approving and authorizing SSI Rail Corp. to acquire common control of the Hartford and Slocomb Railroad Company, an Alabama corporation and now a wholly-owned subsidiary of SSI Rail Corp., and of the McCloud River Railroad Company, a California corporation, including the latter's motor carrier operations, its division the Ahnapee & Western Railway Company of Algoma, Wisconsin, and its wholly-owned subsidiary McCloud River Trucking Company of McCloud, California, by means of purchase of the McCloud River Railroad Company's capital stock from Champion International Corporation, which application is assigned Finance Docket No. 28371.

The nature of the transaction proposed in the application is the purchase of the capital stock of McCloud River Railroad Company from Champion International Corporation by SSI Rail Corp. and approval of common control by SSI Rail Corp. and its parent Itel Corporation of the McCloud River Railroad Company, its motor carrier operations and its division Ahnapee and Western Railway Company, its wholly-owned subsidiary McCloud River Trucking Company, and Hartford and Slocomb Railroad Company. The latter is presently a wholly-owned subsidiary of SSI Rail Corp. The McCloud River Railroad Company operates 80 miles of railroad in the State of California; the Ahnapee and Western Railway Company operates 14 miles of railroad in Wisconsin; and the Hartford and Slocomb Railroad Company operates 22 miles of railroad in Alabama. The McCloud River Railroad Company holds a motor carrier certificate from the Interstate Commerce Commission in No. MC 28759 and the McCloud River Trucking Company holds a California certificate registered with the Interstate Commerce Commission in No. MC 125604 (Sub-No. 2). Common control by the McCloud River Railroad Company and in turn, United States Plywood Corporation, now Champion International Corporation, of the various McCloud River Railroad operations has previously been approved by the Interstate Commerce Commission in No. MC–F–8981.

In the opinion of the applicant, the granting of the authority sought will not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969. In accordance with the Commission's regulations (49 C.F.R. 1108.8) in Ex Parte No. 55 (Sub-No. 4). *Implementation — National Environmental Policy Act, 1969*, 352 I.C.C. 451 (1976), any protests may include a statement indicating the presence or absence of any effect of the requested Commission action on the quality of the human environment. If any such effect is alleged to be present, the statement shall indicate with specific data the exact nature and degree of the anticipated impact. See *Implementation—National Environmental Policy Act, 1969, supra*, at p. 487.

Pursuant to the provisions of the Interstate Commerce Act, as amended, the proceeding will be handled without public hearings unless comments in support or opposition on such application are filed with the Secretary, Interstate Commerce Commission, 12th and Constitution Avenue, NW., Washington, D.C. 20423, and the aforementioned counsel for applicant, within 45 days after date of first publication in the FEDERAL REGISTER; that such comments shall be served upon (a) Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Room 5101, 400 Seventh Street, S.W., Washington, D.C. 20590, (b) Mr. Edward H. Levi, Attorney General, Department of Justice, 10th and Constitution Avenue, N.W., Washington, D.C. 20530, and certificate of all such service is given to the Interstate Commerce Commission; and that all other applications, which are inconsistent, in whole or in part, with such applications, and all petitions for inclusion in the transaction, shall be filed with the Commission and furnished to the Docket Clerk, Secretary of Transportation, within 90

days after the publication of notice of the application in the FEDERAL REGISTER.

SSI RAIL CORP., ITEL CORPORATION

OPERATING RIGHTS APPLICATION(S) DIRECTLY RELATED TO FINANCE PROCEEDINGS

The following operating rights application(s) are filed in connection with pending finance applications under Section 5(2) of the Interstate Commerce Act, or seek tacking and/or gateway elimination in connection with transfer applications under Section 212(b) of the Interstate Commerce Act.

An original and two copies of protests to the granting of the authorities must be filed with the Commission within 30 days after the date of this FEDERAL REGISTER notice. Such protests shall comply with Special Rule 247(d) of the Commission's General Rules of Practice (49 CFR 1100.247) and include a concise statement of protestant's interest in the proceeding and copies of its conflicting authorities. Verified statements in opposition should not be tendered at this time. A copy of the protest shall be served concurrently upon applicant's representative, or applicant if no representative is named.

Each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

No. MC 96961 (Sub-No. 3), (Amendment), filed October 29, 1976, published in the FEDERAL REGISTER issue of December 2, 1976, and republished this issue. Applicant: WEST TENNESSEE MOTOR EXPRESS, INC., Faydur Court, Nashville, Tenn. 37210. Applicant's representative: Don R. Binkely, 500 Court Square Building, Nashville, Tenn. 37201. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: (A) *General commodities* (except commodities in bulk, household goods and commodities which because of size and weight require special equipment), (1) Between Nashville, Tenn., and Humboldt, Tenn., serving Bruceton, Tenn., and all intermediate points between Bruceton and Humboldt: From Nashville, Tenn., over U.S. Highway 70 to Huntingdon, Tenn., thence over alternate U.S. Highway 70 to Atwood, Tenn., thence over U.S. Highway 79 to Humboldt, and return over the same route, restricted against the transportation of traffic originating at or destined to Humboldt; (2) Between Huntingdon, Tenn. and South Fulton, Tenn., serving all intermediate points: From Huntingdon, Tenn. over Tennessee Highway 22 to Martin, Tenn., thence over U.S. Highway 45E to South Fulton, Tenn., and return over the same route; (3) Between South Fulton, Tenn. and Troy, Tenn., serving all intermediate points: From South Fulton, Tenn. over U.S. Highway 51 to Troy, Tenn., and return over the same route; (4) Between Troy, Tenn. and Tiptonville, Tenn., serving all intermediate points: From Troy, Tenn. over Tennessee Highway 21 to Tiptonville, Tenn., and return over the same route;

(5) Between Tiptonville, Tenn., and Dyersburg, Tenn., serving all intermediate points: From Tiptonville, Tenn. over Tennessee Highway 78 to Dyersburg, Tenn., and return over the same route; (6) Between Dyersburg, Tenn. and Brownsville, Tenn., serving all intermediate points: From Dyersburg, Tenn. over U.S. Highway 51 to the junction of Tennessee Highway 20, thence over Tennessee Highway 20 to the junction of Tennessee Highway 54, thence over Tennessee Highway 54 to Brownsville, Tenn., and return over the same route, restricted against traffic originating at or destined to Brownsville, Tenn.; (7) Between the junction of Tennessee Highway 54 and Tennessee Highway 20 and Bells, Tenn., serving all intermediate points: From the junction of Tennessee Highway 54 and Tennessee Highway 20 over Tennessee Highway 20 to Bells, Tenn., and return over the same route, restricted against traffic originating at or destined to Bells, Tenn.; (8) Between Dyersburg, Tenn. and Troy, Tenn., serving all intermediate points: From Dyersburg over U.S. Highway 51 to Troy, and return over the same route; (9) Between Dyersburg, Tenn. and Milan, Tenn., serving all intermediate points.: From Dyersburg over Tennessee Highway 104 to its junction with Tennessee Highway 77, thence over Tennessee Highway 104 (also Tennessee Highway 77) to Milan, and return over the same route; (10) Between Trenton, Tenn., and Union City, Tenn., serving all intermediate points: From Trenton over U.S. Highway 45W to Union City, and return over the same route; (11) Between Newbern, Tenn. and Dyer, Tenn., serving all intermediate points: From Newborn over Tennessee Highway 77 to Dyer, and return over the same route; (12) Between Milan, Tenn. and Martin, Tenn., serving all intermediate points: From Milan over U.S. Highway 45E to Martin, and return over the same route; (13) Between Trenton, Tenn. and Bradford, Tenn., serving all intermediate points: From Trenton over Tennessee Highway 54 to Bradford, and return over the same route; (14) Between Greenfield, Tenn. and McKenzie Tenn., serving all intermediate points: From Greenfield over Tennessee Highway 124 to McKenzie, and return over the same route;

(15) Between McKenzie, Tenn. and Atwood, Tenn., serving all intermediate points: From McKenzie over U.S. Highway 79 to Atwood, and return over the same route; (16) Between Camden, Tenn., and Buchanan, Tenn., serving all intermediate points: From Camden over Tennessee Highway 69 to Paris, thence over U.S. Highway 641 to Puryear, thence over Tennessee Highway 140 to Buchanan, and return over the same route; (17) Between Paris, Tenn. and Dresden, Tenn., serving all intermediate points: From Paris over Tennessee Highway 54 to Dresden, and return over the same route. (18) Between Paris, Tenn. and McKenzie, Tenn., serving all intermediate points: From Paris over U.S. Highway 79 to McKenzie, and return over the same route. (19) Between Trenton, Tenn. and Alamo, Tenn., serving all intermediate points: From Trenton over Tennessee Highway 54 to Alamo, and return over the same route. (20) Between Memphis, Tenn., and Paris Landing, Tenn., serving points in Carroll and Henry Counties, Tenn., as intermediate and off-route points: (a) From Memphis over Interstate Highway 40 to junction U.S. Highway 70, thence over U.S. Highway 70 to Huntingdon, Tenn., thence over Tennessee Highway 22 to McKenzie, Tenn., thence over U.S. Highway 79 to Paris Landing, and return over the same route; (b) From Memphis over Interstate Highway 40 to junction Tennessee Highway 22, thence over Tennessee Highway 22 to McKenzie, Tenn., thence over U.S. Highway 79 to Paris Landing, and return over the same route; and (c) From Memphis over Interstate Highway 40 to junction Tennessee Highway 69, thence over Tennessee Highway 69 to Paris, Tenn., thence over U.S. Highway 79 to Paris Landing, and return over the same route, restricted in (20) (a), (b), and (c) above against joinder with previously authorized routes, (except that joinder shall be authorized with all authorities to perform service from Memphis, Tenn., to Dyer, Rutherford, Trenton, and/or Bradford, Tenn., and return); and

(21) Between Memphis, Tenn., and Big Sandy, Tenn., serving no intermediate points: From Memphis over Interstate Highway 40 to the junction of Tennessee Highway 69, thence over Tennessee Highway 69 to Camden, Tenn., thence over Tennessee Highway 69 Alternate to Big Sandy, and return over the same route. Alternate routes for operating convenience only: (22) Between Nashville, Tenn., and the junction of U.S. Highway 70 and Tennessee Highway 96, for the purpose of joinder only: From Nashville, over Interstate Highway 40 to junction Tennessee Highway 46, thence over Tennessee Highway 46 to the junction of U.S. Highway 70, and return over the same route; (23) Between Nashville, Tenn., and Camden, Tenn., for the purpose of joinder only: From Nashville over Interstate Highway 40 to junction Tennessee Highway 69, thence over Tennessee Highway 69 to Camden, and return over the same route; (24) Between Nashville, Tenn., and Milan, Tenn., for purposes of joinder only: From Nashville over Interstate Highway 40 to junction U.S. Highway 45, thence over U.S. Highway 45 to junction U.S. Highway 45 East, thence over U.S. Highway 45 East to Milan, and return over the same route; and (25) Between Nashville, Tenn., and the junction of Tennessee Highway 20 and Tennessee Highway 54 for the purpose of joinder only: From Nashville over Interstate Highway 40 to junction Tennessee Highway 20 to the junction of Tennessee Highway 54, and return over the same route.

NOTE.—The purpose of this filing is to convert applicant's Certificate of Registration to a Certificate of Public Convenience and Necessity. The application is being republished to amend applicant request for authority. This matter is directly related to a Section 5(2) finance proceeding in No. MC-F-13011, published in the FEDERAL REGISTER issue of November 18, 1976. Common control may be involved. If a hearing is deemed necessary, the applicant requests it be held at Nashville, Tenn.

MOTOR CARRIER ALTERNATE ROUTE DEVIATIONS

The following letter-notices to operate over deviation routes for operating convenience only have been filed with the Commission under the Deviation Rules—Motor Carrier of Passengers (49 CFR 1042.2(c)(9)).

Protests against the use of any proposed deviation route herein described may be filed with the Commission in the manner and form provided in such rules at any time, but will not operate to stay commencement of the proposed operations unless filed within 30 days from the date of this FEDERAL REGISTER notice.

Each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its request.

MOTOR CARRIERS OF PASSENGERS

No. MC-1515 (Deviation No. 717) (Cancels Deviation No. 150), GREYHOUND LINES, INC., Greyhound Tower, Phoenix, Ariz. 85077, filed January 11, 1977. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *passengers and their baggage*, and *express* and *newspapers* in the same vehicle with passengers, over deviation routes as follows: From Dallas, Tex., over the Dallas-Fort Worth Toll Road to Fort Worth, Tex., with the following access routes: (1) From Grand Prairie, Tex., over city streets to junction Dallas-Fort Worth Toll Road, and (2) From Arlington, Tex., over city streets to junction Dallas-Fort Worth Toll Road and return over the same routes for operating convenience only. The notice indicates that the carrier presently authorized to transport passengers and the same property over a pertinent service route as follows: From El Paso, Tex., over U.S. Highway 80 to Dallas, Tex., and return over the same route.

MOTOR CARRIER INTRASTATE APPLICATION(S)

The following application(s) for motor common carrier authority to operate in intrastate commerce seek concurrent motor carrier authorization in interstate or foreign commerce within the limits of the intrastate authority sought, pursuant to Section 206(a)(6) of the Interstate Commerce Act. These applications are governed by Special Rule 245 of the Commission's General Rules of Practice (49 CFR 1100.245), which provides, among other things, that protests and requests for information concerning the time and place of State Commission hearings or other proceedings, any subsequent changes therein, and any other related matters shall be directed to the State Commission with which the application is filed and shall not be addressed to or filed with the Interstate Commerce Commission.

Florida Docket No. 770029-CCT filed January 12, 1977. Applicant: SMALLEY TRANSPORTATION COMPANY, 2202—38th Street, Tampa, Fla. 33605. Applicant's representative: David C. G. Kerr and Ansley Watson, Jr., 512 N. Florida Ave., P.O. Box 1531, Tampa, Fla. 33601. Certificate of Public Convenience and Necessity sought to operate a freight service as follows: Applicant seeks an extension of its Certificate No. 1013, pursuant to Section 323.03, Florida Statutes, so as to authorize the transportation, as a *common carrier*, of *General commodities* (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, garments on hangers, and commodities in vehicles equipped with mechanical refrigeration), over regular routes and on regular schedules, (1) Between all points in Dade and Broward Counties, Fla., using I-95, U.S. 1, U.S. 41 and U.S. 441, and using all other roads in said counties as alternate routes; (2) Between Sarasota, Fla., and Naples, Fla., using U.S. 41, serving all intermediate points on U.S. 41, and using the following as an alternate route for operating convenience: State Road 675 from U.S. 301 to junction with State Road 70, State Road 70 to Arcadia, Fla., State Road 31 from Arcadia to junction with State Road 80, State Road 80 to Fort Myers, Fla.; (3) Between Orlando, Fla., on the one hand, and, on the other, all points in Dade and Broward Counties, Fla., using U.S. 441, Sunshine State Parkway (Florida's Turnpike), and I-95, serving no intermediate points; and

(4) Between Jacksonville, Fla., on the one hand, and, on the other, all points in Dade and Broward Counties, Fla., using I-95, and serving no intermediate points. Applicant seeks authority to engage in transportation in interstate and foreign commerce within the limits of the intrastate authority sought herein, and further seeks authority to tack or join the authority sought herein with its present authority under FPSC Certificate No. 1013 and Interstate Commerce Commission Certificate of Registration No. MC 121667 and subs. Applicant also seeks authority to operate over the following alternate routes for operating convenience only and serving no points on said routes not otherwise authorized to be served: (A) I-4 between Orlando, Fla., and its junction with I-95; (B) Sunshine State Parkway between I-4 and Broward County, Fla.; (C) State Road 60 between the eastern Polk County Line and the Sunshine State Parkway; (D) State Road 84 (Everglades Parkway) between Naples, Fla., and Broward County, Fla.; (E) U.S. 41 between Naples, Fla., and Dade County, Fla.; (F) State Road 80 between Fort Myers, Fla., and its junction with U.S. 27, and U.S. 27 to the Broward County Line, and (G) U.S. 27 between Polk County, Fla., and Broward County, Fla. intrastate, interstate, and foreign commerce authority sought.

HEARING: Date, time and place not shown. Requests for procedural information should be addressed to the Florida Public Service Commission, 700 South Adams Street, Tallahassee, Fla. 32304 and should not be directed to the Interstate Commerce Commission.

By the Commission.

ROBERT L. OSWALD,
Secretary.

[FR Doc.77-2559 Filed 1-26-77;8:45 am]

federal register

THURSDAY, JANUARY 27, 1977

PART II

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Human Development

■

DEVELOPMENTAL DISABILITIES PROGRAM

Regulations on Grants to States, Nonprofit Agencies, Colleges and Other Organizations

Title 45—Public Welfare

CHAPTER IV—SOCIAL AND REHABILITATION SERVICE, (REHABILITATION PROGRAMS), DEPARTMENT OF HEALTH, EDUCATON, AND WELFARE

PART 416—DEVELOPMENTAL DISABILITIES PROGRAM AND GRANTS FOR INITIAL STAFFING OF COMMUNITY MENTAL RETARDATION FACILITIES

Revocation

CROSS REFERENCE: for a document revoking 45 CFR Part 416, see FR Doc. 77-2229, published in the Rules and Regulations section of this issue under 45 CFR Chapter XIII. This document also establishes 45 CFR Parts 1385, 1386, and 1387, which relate to the Developmental Disabilities Program.

CHAPTER XIII—OFFICE OF HUMAN DEVELOPMENT, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Developmental Disabilities Program

Notice of proposed rulemaking (NPRM) for the Developmental Disabilities Program (Title I, of the Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963, as amended) was published in the FEDERAL REGISTER on August 30, 1976 (Part II, Vol. 41, No. 169). Interested persons were permitted 45 days in which to send written comments, suggestions, or objections regarding the proposed regulations. The following statement summarizes the substance of those comments and the Department's responses.

Comments were received from 42 individuals and/or organizations covering 220 items. Three letters commended the Department for writing regulations in layman's language and explaining reasons for positions taken on different issues. However, seven inquiries stated that the proposed regulations lacked specificity and insufficient interpretation of the Act. Responses to specific items will be indicated below. There was a recommendation that the final regulations include as much as possible of the preamble to the NPRM, and that it be distributed to interested agencies and organizations concerned with services to developmentally disabled people. That preamble is included here as an Appendix. Nothing included in the NPRM preamble has been changed as a result of the comments. It is, therefore, included in its entirety. In addition, the present preamble states the bases and purposes of changes made in the regulations.

Consideration was given to the recommendation that the regulations include a part on the activities of the National Advisory Council, and the conduct of special studies required by the Act. The Department's reason for not including them is set forth in the preamble to the NPRM and is reaffirmed here. See Appendix to this document.

It was pointed out that there were numerious instances where "will" and "shall" have been indiscriminately interchanged, and it was recommended that "shall" be used throughout since "shall" implies a duty or obligation to do something. In the majority of instances the language of the regulation repeats that of the Act, and "will" is or can be mandatory also. Accordingly, this suggestion has not been followed.

PART 1385—GENERAL

Comments pertaining to the purpose of the Act, § 1385.1, suggested that the wording be revised to emphasize needs assessment and financial assistance in meeting needs. Section 1385.1(a) has been amended to add identification of need. The Department does not, however, agree that there is need to highlight additionally the provision of financial assistance. In the first place, financial assistance is only one kind of assistance provided for; in the second place, existing language in this Subsection seems to the Department to cover this adequately (i.e., references to "grants" and "support"). Other changes made in this Section include the deletion of "development of regional community programs" since there is no basis in the statute for this item; and the substitution of "university affiliated facilities" for "institutions of higher education" to identify specifically the type of facility supported by grants.

It was suggested that the term "developmental disability" be amended, (§ 1385.2(a)(6)) to include "any child identified as schizophrenic or psychotic," and that such condition "be found by the Secretary." Any change in the definition is delayed until the report to the Congress on the definitional study, required under section 301 of the Act, has been submitted. It would be premature to make such a decision now, since the purpose of the study is to ascertain what additional conditions should be included as developmental disabilities.

The definition for State agencies (§ 1385.2(a)(22)) has been reworded making the term applicable only to State agencies responsible for administering the basic formula grant program and not the agency for the protection and advocacy system. In accordance with Section 113 of the Act, the protection and advocacy system must be independent of any State agency which provides treatment, services, or habilitation to persons with developmental disabilities.

The definition of the "State planning council" has not been amended, as was suggested, to include "supervising the implementation of the State plan" (§ 1385.2(a)(25)). The Department does not concur because it would involve the council in the day-to-day administration of the program. Such involvement would not be consistent with Section 137 of the Act.

The Department concurs with the suggestions made that the reference to "physical and mental disability" in the definition of "substantial handicap" (§ 1385.2(b)(26)) be changed to "physical or mental disability or both." This was done so that it would be clear that in order to be eligible for developmental disabilities services, an individual does not have to have both a physical and a mental disability, since such concurrence of conditions is not required by the Act.

The definition of "urban and rural poverty areas" (§ 1385.2(a)(30)), has been amended to incorporate the definition by the Health Resources Administration (HRA) in its NPRM, dated November 26, 1976, for implementing section 1625 of the Public Health Service Act (42 U.S.C. 300r) as explained on page 36584 of the Appendix. This was done to comply with Congressional intent. Grantees should be aware of the discussion of this issue and of the intention of HRA to publish a list of such urban and rural poverty areas in the FEDERAL REGISTER at a later date. In the interim, States are advised to use this definition since it constitutes the Department's best determination at present.

Section 1385.3, in addition to incorporating the provisions of 45 CFR Part 74, lists certain other Departmental requirements for grants which are applicable to developmental disabilities programs. Several letters suggested that the section be extended to cover all existing legislation and regulations requiring action on the part of grantees. The Department believes it would be counterproductive to list all such references presently applicable, as the list will change from time to time. Moreover, a grantee is bound by all statutes and regulations applicable to it, even if they are not cited in these regulations. The grantee is responsible for knowing what statutes and regulations apply, and the Federal government makes every effort to provide necessary information to grantees.

Despite this general rule, these regulations are amended to provide specific information about the sections of the Rehabilitation Act, as requested in six letters. The reference in § 1385.6 of these regulations is to sections 503 and 504 of the Rehabilitation Act. The Department's purpose in being specific in this instance is to make certain that grantees are aware of the specific portions of that Act which are applicable; and it has done so because of the direct relationship of the Rehabilitation Act to this program. The basis for the change is to conform to Congressional intent.

Section 1385.10(b) has been amended to state that the cost incurred in acquiring land for construction of facilities under Parts 1386 and 1387 is not eligible for Federal financial participation. This repeats Section 102(4) of the Act, and was inadvertently omitted from the NPRM.

PART 1386—SUBPART A—THE STATE PLAN

The majority of comments the Department received on the NPRM concerned the respective roles and responsibilities of the State planning council and the designated State agency(ies). The specific areas of disagreement centered on (1) development and preparation of the State plan; (2) award of individual grants; and (3) control of the annual allotment. Other areas of concern related to responsibility of staff of the council to the State council; preclusion of membership on the council of officers or directors of an entity receiving funds; definition of "program unit" of the designated State agency; and others. The specific comments and recommendations appear under the appropriate sections of this preamble.

With regard to the development and preparation of the State plan, it is clearly Congressional intent that the State council supervise the development of and approve the State plan, but that the State agency prepare the plan. (See page 33, Report No. 94-473, Conference Report to accompany H.R. 4005). These regulations (Section 1386.60) define the role of the council in regard to the development, monitoring, and evaluation of the implementation of the State plan. Three comments suggested that § 1386.1 include a statement that the State plan is to be prepared by the designated State agency under the supervision of the State council. Five other comments recommended that the State be allowed flexibility in assigning this activity. As explained above, § 1386.1 has been amended in order to reflect the intent of Congress. In response to the second and third areas of concern (i.e., award of individual grants and control of funds), it is the Department's belief that Congress intended the State council to remove itself from dealing with individual grant applications, and to be more concerned with advocacy and with comprehensive planning, monitoring, and evaluation of the State plan rather than with the administrative activities. The preamble to the NPRM sets forth the basis and purpose for the regulations dealing with the preparation of the State plan, and also with the award of individual grants. For emphasis and clarity the pertinent part is repeated:

> • • • (Based) upon legislative history, the Department believes that Congress wished to highlight the crucial advocacy role and strengthen the supervisory, planning, and monitoring functions of the State planning councils to meet increased responsibilities effectuated by the 1975 amendments, leaving the actual day-to-day administration of the programs to the designated State agencies. (See Appendix, p. 36583.)

The Department is of the opinion that, through the process of supervising the development of, and approving the State plan, the State planning council may earmark resources that are available to the State for the purpose of achieving goals, and may identify the appropriate State agencies which will participate in carrying out the design for implementation.

Two letters urged the issuance of guidance as soon as possible since it is necessary for proper planning, and for conformance with the requirement that the State plan be submitted 60 days prior to the beginning of the fiscal year for which it is applicable (See § 1386.2). The Department wishes to emphasize that the development of guidelines is a high priority item. With issuance of the final regulations, the Developmental Disabilities Office will devote maximum effort to achieving this goal. The Department believes it is unnecessary to include a waiver provision in the regulations for 1977 fiscal year State plan submission, as requested. There is no basis in the Act for a waiver, and it is not necessary since arrangements were made to allow States to receive funding for fiscal year 1977 without complying with the submission date of 60 days prior to the beginning of the fiscal year, as set forth in § 1386.2 of the regulations.

Inclusion of the process required by OMB Circular A-95 was overlooked in the NPRM but has now been added in § 1386.2(e). This standard requirement provides for the Governor's review as stated in that paragraph.

It was recommended that § 1386.3(c) be amended to make reference to the roles of the State planning councils and State agencies when the State plan provides for participation of more than one agency in the administration or supervising the administration of designated portions of the State plan. The Department believes this is unnecessary because State officials are in the best position to determine how such an apportionment is to be made since it will vary from State to State. In addition, the State planning councils may earmark funds and designate the appropriate State agency to achieve the goals and objectives of the State plan.

The Department has reviewed the comments recommending that an Indian tribal organization be a designated State agency under certain conditions (§ 1386.3). It is the Department's belief that sufficient authority is available to the States to make this determination. Sections 132(b) and 133(b) of the Act provide for participation of more than one State agency in the administration of the State plan and the apportionment of the State allotment in a manner which, to the satisfaction of the Secretary, is reasonably related to the responsibilities assigned to such agencies.

One recommendation received was that the requirement for an identified program unit (§ 1386.4) be deleted. Four others requested a definition of the term "program unit." The Department believes it necessary for efficient and effective administration of the State plan that an office and officer of the designated State agency be assigned as responsible for the day-to-day operations of the program. Therefore, no change has been made in the regulations. However, guidelines will provide additional information regarding the duties and responsibilities of the program unit.

Seven inquiries were received commenting on the use of data from the Adult Disabled Child Program, Social Security Administration, for determining "need for services and facilities" in computing the allotment to the States (§ 1386.10(b)). Suggested sources of information included data from the Bureau of Education for the Handicapped, the number of beneficiaries receiving assistance under the Supplementary Security Income, and others. Another suggestion was that additional weight be given to rural States. The Department will look into these matters and others and issue in NPRM its suggestions for changes at a later date.

In connection with the allotments, the Department received a number of inquiries recommending that for States having an Indian population of 1 percent or more $50,000 be added to the allotment of such State for planning, provision of service and construction of facilities for the Indian developmentally disabled population. This suggestion is inappropriate in view of section 132(a)(1)(A) of the Act which specifies the allotment criteria which must be used. The Department also takes the view that those criteria do encompass such concerns, whereas a fixed sum of additional money would not necessarily have any relevance to actual needs.

Clarification was requested for "developing and implementing plans designed to eliminate inappropriate placement in institutions" and what actions were expected from the State. (§ 1386.12(a)) Another letter asked if "community alternatives" are considered to be part of deinstitutionalization plans. The Department believes community alternatives are, within certain limitations, a part of the deinstitutionalization plan but not all community programs directly affect the institutional population. The Department believes that guidelines are more appropriate for dealing with this complex issue because of the numerous possible ways of meeting the requirement for deinstitutionalization. It is not possible to anticipate all such approaches to the problem. Guidelines will, therefore, provide the necessary flexibility. The Department believes that the establishment of community alternative programs for those inappropriately placed developmentally disabled persons in institutions is a suitable item to be included in the State deinstitutionalization plan (section 133(b)(20), of the Act and § 1386.43 of the regulations). Further, the expenditures for this purpose are allowable for inclusion in the percentage of Federal funds that must be spent for deinstitutionalization (section 132 of the Act and § 1386.12 of the regulations).

Two inquiries were received regarding § 1386.12(d)—Expenditures for proper and efficient administration of the State plan. One pointed out an apparent contradiction between Sections 133(d) and 103 of the Act. Section 103 of the Act sets forth the Federal share for allotments under Part C (the basic formula grant program) which may not exceed 75 percent, except for projects located in poverty areas which may go up to 90 percent of the costs. Section 133(d) limits the Federal share to 50 percent of the cost of administration but not more than 5 percent of the State's allotment or $50,000, whichever is less. In addition, section 133(d)(2) sets a baseline date of June 30, 1975 for the level of State expenditures for administration of the State plan below which the State may not go if it is to receive Federal funds for this purpose. One State noted that this requirement, and the 5 percent limit mentioned above, would result in the loss of Federal funds to the State because of resulting changes that would have to be made in its accounting and fiscal policies and procedures. The Department cannot change the law. However, it will consider

the need for possible legislative amendments.

One commenter asked, in effect, if it was mandatory for the State to request funds under this subsection of the law. Such expenditures could be paid for entirely by State funds, thereby releasing Federal funds for other purposes of the program, i.e., planning, provision of services, and construction of facilities. In this connection, another comment pointed out that the Act does not specify that the "designated State agency" would make the request, but rather that "the State" would. Section 1386.12(d)(1) has, accordingly, been changed to comply with the Act (section 133(d)).

Comments from two other sources recommended that § 1386.16(d) contain authority to resolve conflicts arising between the State council and State administering agencies and that the State plans specify a method by which these differences would be satisfied. The Department believes that this is primarily a matter that must be resolved at the State level, and that the key to successful planning and administration will depend upon the establishment of a clear relationship between the State planning council and the designated State agency. This can be accomplished best if the two groups have an open line of communication and a clear delineation of responsibilities. The Department has confidence in the ability of the State governments to operate their programs.

Five comments dealt with § 1386.16(b) in slightly varying ways. One wanted the regulations to require that the State have a method for resolving differences between the council and the State agency (ies), but did not want the method to be specified. Two recommended that the council review at least annually the activites of the State for compliance. One suggested that it be the actions of the designated State agency that would be reviewed for compliance. All suggested mandatory annual reports.

The Department believes the requirement of a report of results of the review goes beyond the intent of the Act (section 135(b)). Rather, the council must report that it has reviewed the actions of the State for the purposes of determining if the State is complying with the requirements of the plan (and its design for implementation). It will so report in the annual State plan revision. But the Department believes it is not the intent of the Act to require the council to report the results of the review. States are expected to be able to resolve problems identified.

Furthermore, the council is empowered to make such a review at any time it has reason to believe the State may not be in compliance with its plan, and may, at any time, at its own discretion, report results of the review to the Secretary.

As a consequence of this interpretation, the regulation (§ 1386.16(b)) has been revised to require an annual review, and to make the report of the results of the review optional with the Council.

Two comments registered disappointment with the lack of standards for services for developmentally disabled people. The Department has let a contract to study this matter as mandated by the Act. Standards will be published in the FEDERAL REGISTER upon completion of the study, and acceptance by the Department, as indicated in the preamble to the NPRM on August 30. (See Appendix to this document).

It was recommended that § 1386.17 of the regulations set forth the requirements applicants must follow in complying with the provisions of the National Environmental Policy Act and the National Historic Preservation Act. It is the Department's policy to include in the regulations only those provisions which are requirements of the statute and to avoid putting additional requirements on the States. Our purpose is to avoid undue burdens on the States, and is based on our belief that the regulation is specific enough. Information relative to interpreting or providing alternatives to the regulations are best handled in the guidelines.

It was recommended that the Department delete the reference to the occupancy classification of the building under the Life Safety Code (§ 1386.17(b)(1)(ii)) because the requirements are too restrictive. The Department does not concur with the suggestion because it has been our experience that this is the best available standard, although not entirely satisfactory. Upon completion of several studies now underway to update the code, the Department will reexamine its position.

The Department concurs with the recommendation to delete the requirement that hot water shall not exceed 110 degrees Fahrenheit (§ 1386.17(b)(3)). The Department believes this requirement is inappropriate for some community living and transitional training arrangements since not all developmentally disabled persons need such protection. The basis of this change reflects the Department's best judgment that the requirement is too restrictive and is not consistent with current normalization principles.

Rather than require that site location be "community based," as requested, the regulations (§ 1386.17(b)(1)(iii)) have been amended to read: "The site of any facility shall meet the criteria established by the designated State agency for construction." This will allow the States to develop suitable rules for the various types and kinds of facilities that may be constructed under the Act. This removes Federal requirements that might limit States' abilities to make reasonable judgments since they are now charged with the responsibility for the construction program. Should experience indicate to the Department the necessity for greater specificity, the matter will be dealt with when the need arises.

One inquiry regarding methods of evaluation (§ 1386.25) asked for clarification as to whether the State shall develop a system of evaluation in addition to the evaluation system to be developed by the Secretary. The answer is for the State to describe the system it is using until after the study by the Secretary is completed. Then the States will have six months to submit a time-phased plan for implementing the system. This approach conforms to section 110 of the Act.

Detailed draft regulations were submitted by a commenter for implementing the protection of employees' interest in connection with deinstitutionalization plans (§ 1386.27), for specific use as a substitute for the proposed regulations which were thought to provide no guidance to the States nor to establish any specific requirements to implement. The Department has rejected this proposal because, after careful consideration and in cooperation with the Department of Labor, it is the Department's belief that the best way to deal with this problem is in guidelines. It is the Department's policy to include in regulations essentially those provisions which are requirements of the statute for the reasons stated above. The Developmental Disabilities Office in consultation with the Department of Labor will issue guidelines informing applicants as to how they will comply with these requirements.

Recommendations that § 1386.29 be amended to include that "staff shall be responsible to the State council" have been accepted. This change will assure that adequate funds will be made available to the council for carrying out its responsibilities. The Department believes that this change complies with Congressional intent. (See Conference Report, supra p. 36.)

Recommendations that a time limit be imposed on the State planning council for reviewing State plans (§ 1386.30), and that sanctions be imposed for failure to do so, were not accepted because the Department believes they are not appropriate. Section 135 of the Act does not provide for sanctions, except for noncompliance or nonconformity. Therefore, the Department believes it lacks authority to implement such recommendations.

A request was made that the phrase "review State plans 'to the maximum extent feasible'" (§ 1386.30) be deleted. This was not accepted because the statute requires that this be done. (See sections 133(b)(28) and 137(b)(3) of the Act.)

A request was made that § 1386.30 be amended to read as follows: "The State plan shall provide, to the maximum extent feasible, for an opportunity for prior review and comment by the State council of all State plans of the State which relate to programs affecting or *having the potential to affect* persons with developmental disabilities." (Words in italics are suggested additions.) This would put the State on notice that programs other than just those currently providing such services should serve the developmentally disabled population of the State; e.g., transportation and housing programs. The Department does not believe it is necessary to extend the regulation in order to serve the desired purpose. Section 133(b)(28) of the Act is interpreted by the Department to mean both

actual and potential effect since a service not now available to persons with developmental disabilities, but which is needed by them, would affect them negatively.

The Department rejected the request that all State programs submit their plans to the council for "prior coordination of planning activities." To the extent that a State can work out such an arrangement, its planning will be enhanced. But the Act does not authorize the imposition of such a possibly burdensome arrangement, and the laws governing the other programs are not amended by this Act. The difficulties inherent in such a proposal were recognized when Congress included, in its mandate that the State council review other State plans, the phrase "to the maximum extent feasible." (See section 137 of the Act.)

The removal of some of the priorities stated in § 1386.41 was requested on the basis that no criteria are provided. The Act, in section 109, however, requires the Secretary to promulgate regulations applicable uniformly to all the States, prescribing the priorities for service and facilities based on type of service, categories of persons to be served, and type of disability. The regulations do set forth the factors to be used by the States for allocating funds. These are minimum requirements, believed by the Department to be responsive to the most immediately pressing needs of persons with developmental disabilities, rather than, for example, basic research, or long-postponed developmental activities. As the Department gains more experience, it may consider revising or elaborating on these priorities.

One comment expressed concern that the regulations failed to mention the concept of "least restrictive alternatives" in connection with deinstitutionalization and the establishment of community alternatives (§§ 1386.42 and .43). The term "least restrictive alternatives" is not mentioned in the Act, and this concept is a very complicated and fluid subject at this time. For this reason, the Department believes it can best be dealt with in the guidelines because there are myriad possibilities, and flexibility is needed until a greater degree of agreement has been reached by all interested parties.

The Department has not accepted the suggestion that the Section dealing with deinstitutionalization (§ 1386.42), and that the Section dealing with community alternatives (§ 1386.43) be combined. The basis for this nonacceptance is that sections 133(b)(22) and (23) of the Act require that planning be done for both. In addition, section 132(a)(4) of the Act requires the States to expend a specific portion of their allotments for deinstitutionalization.

It was requested that the words "provide for," and "protective service" and "personal advocacy" in §§ 1386.44 and .45, be defined. The Department believes the meaning of the words as used in sections 133(b)(21) and (22) of the Act are self-explanatory.

There were two recommendations that § 1386.45, concerning State plan requirements, be tied in with the protection and advocacy system (§ 1386.70). The Department believes this to be inappropriate because the statute is clear that the protection and advocacy system is to be independent of existing State agencies providing treatment, services, or habilitation to developmentally disabled persons. (See section 113 of the Act.)

Three respondents were concerned about the State's ability to describe in the State plan the quality, extent and scope of services provided or to be provided under other Federally-assisted programs (§ 1386.46). They pointed out that data and information from these programs are not regularly available in a form that readily lends itself to developmental disabilities planning, and that there might be some invasion of privacy of an agency's client records. The Department believes that, as a result of a grant from the Developmental Disabilities Office, a model planning process has been developed which, among other things, indicates the availability of planning data, and provides a strategy to analyze data from other Federally-assisted programs. Training and technical assistance in the use of this process has been provided to the States. The Department reiterates its comments appearing in the preamble of the NPRM:

> The Department further believes that this (the fact that the Act is designed to assure that councils have the capacity for getting cross-agency cooperation) requires that the State planning council and State agency(ies) complement each other's functions through effective working relationships. These regulations restate the statutory requirements to make it clear that planning council members and staff are required to review their own and other State plans, and that such analysis, as a component of a systematic planning process, contributes information on needs, actual and potential resources, and leads to the development of short-term objectives to meet long-term goals. It also contributes to the development of council insight into the best methods to effect cross-agency coordination to develop a reliable system of services for the developmentally disabled persons in the State. (See Appendix to this document.)

The guidelines will provide additional information and assistance to the States for obtaining and using these data.

Another comment received, pertaining to § 1386.46, suggested that it reflect the language of the Act, and that the States be allowed to decide what factors to use in describing the extent of services to be provided. Other than indicating what quality, extent and scope of services are, the language is that found in section 133(b)(2) of the Act. In addition to the factors listed in the regulations which are to be taken into account for "scope and extent of services," provision is made for the State to use "other relevant factors." The Department believes that the regulations do provide flexibility and that no changes are necessary in this section.

It was recommended that the regulations require that the State plan specifically identify and specify need for services and facilities for the Indian developmentally disabled population, and that failure to do so would result in the Department's allocating funds to tribal governments to do their own planning and providing services. Unlike the Older Americans Act and some other statutes, there are no provisions in this legislation which would authorize such a requirement. The State must, however, as part of its policies, establish planning policies for its Indian population as well as for other groups in the State. Furthermore, section 133(b)(11) of the Act provides that "special financial and technical assistance shall be given to areas of urban or rural poverty in providing services and facilities for persons with developmental disabilities who are residents of such areas." Such special assistance applies to Indian populations residing in urban or rural poverty areas.

It was suggested that language, or a new subsection, be added to § 1386.47 which would require a habilitation plan only when services are provided by developmental disabilities funds, and which would require coordination with other agencies using a habilitation plan. The Department believes that the proposed regulations adequately cover these suggestions (See § 1386.1(b)(x)).

In relation to §§ 1386.44 and .45, a definition of the term "provide for" certain services was requested. The Department does not believe it advisable to define services until the study of standards and quality assurance mechanisms, mandated by Section 204 of the Act, has been completed. Definitions used in other Federal-State programs may be used in the meanwhile.

However, to the question of the difference between the meaning of "provide" and that of "provide for," the response is that generally the word "provide" means that the grantee furnishes the service directly; and generally "provide for" means assuring the availability of a service, either by "providing" it directly, or making certain that the service is "provided" by someone else. The Department believes, however, that the difference is seldom critical enough to warrant including these terms in § 1385.2.

One writer urged that the form and reporting procedures for the individual habilitation plan not constitute a burden on small agencies. The law, section 112, spells out the details of the content of the habilitation plan. The Department does not anticipate imposing on any agency any burden in developing, coordinating and revising habilitation plans beyond the requirements of section 112 of the Act, and those reports needed by the State councils to carry out their mandate to evaluate the program. Since reporting forms and procedures are essentially technical in nature, the Department believes that they are best left to guidelines. This will allow greater flexibility in dealing with purely administrative and ministerial matters.

Section 1386.50 deals with the design for implementation of the State Plan. Comments were received from six agencies, four of which took exception to the State agencies' option "to select from alternative strategies" the best method

to achieve goals and objectives as developed by the State council. The remaining two comments indicated that the Section gave control of developmental disabilities funds to the State agency, which control was formerly a responsibility of the State planning council. The Department believes no changes are required in the regulations as they carry out the intent of Congress (Conference Report pages 28 and 33), and reaffirms its position as stated on page 36584 of the Appendix, August 30, 1976.

PART 1386—SUBPART B

STATE PLANNING COUNCIL

One letter stated that appointment of council members (§ 1386.61) by the Governor is contrary to its State law and recommended that the regulations be modified to take into account that situation. There is not provision in the statute for such a waiver. Moreover, section 137(a) of the Act requires that the Governor appoint the council members. Thus, the Department has no choice in the matter.

Another suggestion was that the State council should be independent and free from political influence, and offered five ways that this could be done. The Department believes the present regulations are adequate, and that the States should not be given additional requirements that are not contained in the statute.

The recommendation to delete "officers or directors of entity receiving funds" was edited to omit "directors" since this has no basis in the Act. The remaining limitation is imposed by Section 137(a) of the Act.

In accordance with the Conference Report, p. 36, and as suggested by two commenters, § 1386.62 has been amended to indicate that staff assigned to the council is to be responsible to the council. See previous discussion of Subpart A.

PART 1386—SUBPART C—PROTECTION AND ADVOCACY OF INDIVIDUAL RIGHTS

Five respondents registered disappointment that the regulations contained no guidance or detailed provisions for States to follow in planning and implementing the protection and advocacy system. The Department has reviewed its position stated in the preamble of the NPRM (See the Appendix to this document), and believes that until more experience is available in this program, it is best to allow the States as much flexibility as possible in implementing their protection and advocacy systems. Interim guidelines for the program have been issued by the Developmental Disabilities Office and the results will be carefully monitored and evaluated for updating. As deemed necessary, the Department may issue more detailed regulations later. However, until it has more experience in this program, detailed requirements beyond those already set forth would, of necessity, be arbitrary. The Department is convinced that its interpretation of section 113 of the Act, and its implementation of that Section comport with the intent of Congress.

PART 1386—SUBPART D—PRACTICE AND PROCEDURE FOR HEARINGS TO STATES ON CONFORMITY OF DEVELOPMENTAL DISABILITIES PLANS TO FEDERAL REQUIREMENTS

One major concern expressed about the next section of the regulations, Subpart D, Hearings procedure, pertained to the omission of the State planning council from the list of those to receive a notice of hearing or opportunity for a hearing as required by section 135 of the Act. The regulations have been changed (§ 1386.90) to correct this oversight.

Comments were received concerning § 1386.111(c) (1) and (2) indicating that the proposed rule gives the Secretary's delegate discretion as to whether the allotment shall be authorized at all, or whether the allotment will be limited to categories under or parts of, the State plan not affected by such nonconformity. It was thought that this discretion undermines the requirement that all State plans meet the Federal requirements. In effect, according to the writer, the proposed rule states that the State plan must meet Federal requirements, but if it does not, the State may still receive its allotment. The commenter also observed that: "Balanced against this is the argument that it is pointless to withhold benefits from the developmentally disabled who would be helped by a non-complying State plan." It was suggested that section 135(a) of the Act affords the degree of discretion described in § 1386.111 of the regulations. If a State has no approved plan under section 133 of the Act because the proposed plan is not in conformity with Federal requirements, no allotment would be made until the plan had been corrected and approved. However, if the State's proposals under section 113 and Part B (protection and advocacy system, and university affiliated facilities) meet Federal requirements, they could be approved.

If, on the other hand, a State is finally determined to be out of compliance with its approved plan, the Secretary's delegate would have the option of withholding either all further funding or only that relating to the offending provisions until the noncompliance was corrected. These regulations are consistent with the express language of section 135 of the Act, and, therefore, the Department makes no changes in this Section.

It was recommended that "sign language" be included § 1386.105(a) when testimony is given. This will automatically be done, if needed, just as interpreters may be used for cases involving foreign languages.

PART 1387—DISCRETIONARY GRANTS SUBPARTS A AND B

Comments were received from four agencies regarding the grant programs, three pertaining to the university affiliated program. The Department did not concur with the suggestion to include "paraprofessional and career ladder programs" in § 1387.1(a) because the Department believes it inappropriate for regulations, but it can be handled in the guidelines. In response to a question about § 1387.4, the regulation is proposed for the purpose of implementing what the Department believes to be the Congressional purpose of section 122(b) of the Act of giving priority to applications for programs which will provide services within the community rather than in an institutional setting. Guidelines will provide further details.

Section 1387.22 has been amended, as suggested, to include "institutions of higher education, including community and junior colleges." This change makes it clear that such colleges are eligible applicants for discretionary grants.

MISCELLANEOUS

One agency requested that private profit-making agencies be made eligible for grants under the program. This would require an amendment to the legislation because the Act authorizes only public and nonprofit agencies as eligible grantees (See section 145(a) of the Act).

In addition to the changes described above, other minor editorial and clarifying changes have been included.

Federal financial assistance extended under this part will be subject to the regulations at 45 CFR Part 80 issued by the Secretary of Health, Education, and Welfare, and approved by the President, to effectuate the provisions of section 601 of the Civil Rights Act of 1964 (42 U.S.C. 200d). The purpose is to conform to uniform Federal policies.

Accordingly, the provisions of Pub. L. 94-103, signed October 4, 1975 (Developmentally Disabled Assistance and Bill of Rights Act) are implemented as set forth in the following regulations, which will become effective April 27, 1977. This period of time is considered necessary in order to allow the States opportunity to make those revisions in their State plans consequent to the promulgation of these regulations. It is considered to be an adequate amount of time because the regulations introduce few demands not specified in the law.

Accordingly, the regulations as revised are hereby adopted, and the existing regulations at Chapter IV of Title 45 CFR are revoked.

Chapter IV of Title 45 of the Code of Federal Regulations is amended by revoking Part 416, and Chapter XIII of Title 45 of the Code of Federal Regulations is amended by adding Part 1385, Part 1386, and Part 1387 as follows:

PART 1385—GENERAL

Sec.
1385.1 Purpose of Act.
1385.2 Terms.
1385.3 Grants administrative requirements.
1385.4 Judicial review.
1385.5 State control of operations.
1385.6 Employment of handicapped individuals.
1385.7 Recovery.
1385.8 Good cause for other use of facility.
1385.9 Cooperative or joint effort between States and agencies.
1385.10 Awards.
1385.11 Assurances regarding evaluation system.

AUTHORITY: Pub. L. 91-517; Pub. L. 94-103.

§ 1385.1 Purpose of Act.

The purpose of the Act is to improve and coordinate the provision of services to persons with developmental disabilities and to establish a system for the protection and advocacy of rights for persons with developmental disabilities through:

(a) Grants to assist the States in developing and implementing a comprehensive and continuing plan for identifying and meeting the needs of the developmentally disabled;

(b) Support of activities which contribute to improving the condition of persons with developmental disabilities;

(c) Renovation and modernization of university affiliated facilities which demonstrate the provision of services for the demonstration and interdisciplinary training programs in university affiliated facilities;

(d) Training specialized personnel needed for providing such services;

(e) Provision of technical assistance in the establishment of services and facilities for the developmentally disabled; and

(f) Development and demonstration of new and improved techniques for providing such services.

To these ends, Federal financial assistance is available through (1) basic support formula grants to States; (2) formula grants to States for effecting a system to protect and advocate the rights of developmentally disabled persons; (3) grants to university affiliated facilities and for satellite centers; and (4) grants to public and private nonprofit groups for demonstration projects and projects of national significance.

§ 1385.2 Terms.

(a) For purposes of Parts 1386 and 1387, the terms below are defined as follows:

(1) "Act" means the Developmental Disabilities Services and Facilities Construction Act, as amended by the Developmentally Disabled Assistance and Bill of Rights Act;

(2) "Construction" means (i) the construction of new buildings, acquisition, expansion, remodeling, and alteration of existing buildings, (ii) initial equipment for such buildings including medical and other transportation facilities, and (iii) architect's fees in connection with an approved project. Construction does not include the cost of offsite improvements or the cost of the acquisition of land;

(3) "Costs of administration and operation," for purposes of Part 1387 of this chapter, means those administrative and operating costs of university affiliated facilities which are necessary to support interdisciplinary training programs and demonstration facilities providing services to developmentally disabled persons. Eligible costs shall be specified in guidelines to be issued by the Secretary;

(4) "Cost of construction" means the amount found by the Secretary to be necessary for the construction of a project, approved under Parts 1386 and 1387 of this chapter;

(5) "Demonstration" means, for the purposes of Part 1387 of this chapter, (i) a pilot study or experimental attempt to provide more and better services than are available, for the purpose of testing or establishing standards or methods of service that are practicable and effective for general application in the developmental disabilities program; (ii) provision of a special type of service in order to test its value and to provide information on costs, methods of administration, methods of providing services, or techniques; or (iii) application in new settings of the results derived from previous research or practice for the purpose of determining the effectiveness of new procedures;

(6) "Developmental disability" means a disability of a person which (i) is attributable to mental retardation, cerebral palsy, epilepsy, or autism; (ii) is attributable to any other condition of a person found to be closely related to mental retardation because such condition results in similar impairment of general intellectual functioning or adaptive behavior to that of mentally retarded persons or requires treatment and services similar to those required for such persons; or (iii) is attributable to dyslexia resulting from a disability described in paragraph (a) (i) or (ii); (iv) originates before such person attains age eighteen; (v) has continued or can be expected to continue indefinitely; and (vi) constitutes a substantial handicap to such person's ability to function normally in society;

(7) "Director" means the Director of the Developmental Disabilities Office, Office of Human Development.

(8) "Equipment," for the purposes of construction under Parts 1386 and 1387 of this Chapter, means those items which are necessary for the initial operation of the facility, but does not include supplies such as food, fuel, drugs, and paper;

(9) "Exemplary services" means those specialized services, including adaptation of generic services, for the diagnosis, treatment, education, training, habilitation, and care of persons with developmental disabilities, conducted in or in conjunction with a university affiliated facility (or satellite) for purposes of demonstration or training, which are of replicable high quality;

(10) "Facility for persons with developmental disabilities" means a facility, or a specified portion of a facility, designed primarily for the delivery of one or more services to persons with one or more developmental disabilities;

(11) "Interdisciplinary training" means an integrated educational program utilized reciprocally by two or more disciplines each of which is knowledgeable about or possesses, in relationship to common fields of endeavor, a basic language, a core body of knowledge, certain relevant skills, and an understanding of the attitudes, values, and methods of partcipating disciplines. Interdisciplinary training includes training with practicums which enhance the skills of the trainee in collaboration with or complementing the services rendered by members of other disciplines;

(12) "National Advisory Council" means the National Advisory Council on Services and Facilities for the Developmentally Disabled;

(13) "Nonprofit facility for persons with developmental disabilities" and "nonprofit private institution of higher learning" mean, respectively, a facility for persons with developmental disabilities and an institution of higher learning which are owned and operated by one or more nonprofit corporations or associations no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual; and the term "nonprofit private agency or organization" means an agency or organization which is such a corporation or association or which is owned and operated by one or more of such corporations or associations;

(14) "Population" as applied to any State means the population of that State as determined by the most recent official estimates by the U.S. Department of Commerce made available to the Secretary;

(15) "Project period" means the period of time, not exceeding three years, for which a project is approved for grant support with Federal funds. Such period may be extended by the Secretary beyond three years for a period not to exceed twelve months, and with or without additional funding, in order to permit continuation or completion of the same approved project. The approval and support of a project for the maximum project period shall not preclude additional support of that project beyond such period if such support of the continued project is requested, evaluated, and approved on the same basis as a new or initial application in acordance with § 1387.22 of this chapter;

(16) "Projects of national significance" means projects (i) designed to have a direct impact on developmental disabilities programs throughout the country; or (ii) having an objective or objectives which if achieved could be replicated or result in an improved delivery system for developmental disabilities services or affect national policies or standards; or (iii) involving activities to be conducted in a number of sites in various parts of the country as part of a unified program;

(17) "Public agency" means any State, unit of local government, combination of such States or units, or any department, agency, or instrumentality of any of the foregoing, including State institutions of higher education and hospitals, or any Indian tribal government;

(18) "Satellite center" means an entity which is associated with one or more university affiliated facilities and which functions as a community or regional extension of such university affiliated facilities in the delivery of training, services, and programs to the developmentally disabled and their families, to personnel of State agencies concerned with developmental disabilities, and to others responsible for the care of persons with developmental disabilities;

(19) "Secretary" means the Secretary of Health, Education, and Welfare, or a designee;

(20) "Services for persons with developmental disabilities" means specialized services or special adaptations of generic services directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with such a disability. Such services include: Diagnosis, evaluation, treatment, personal care, day care, domiciliary care, special living arrangements, training, education, sheltered employment, recreation, counseling of the individual with a developmental disability and of his family, protective and other social and socio-legal services, information and referral services, follow-along services, and transportation services necessary to assure delivery of services to persons of all ages with developmental disabilities;

(21) "State" means the several States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands;

(22) "State agency(ies)" except for the purpose of Part 1386, Subpart C means the State agency or agencies designated in the State plan to administer or supervise the administration of all or designated portions of the State plan;

(23) "State agency for construction" means the sole State agency designated to administer or supervise the administration of grants for construction of facilities for the developmentally disabled under the State plan;

(24) "State plan" means the document or documents submitted by the State to comply with the requirements for participation under Parts 1386 and 1387 of this chapter;

(25) "State planning council" (referred to alternately as "State council" or "council") means that body, the members of which are appointed by the Governor, which is responsible for supervising the development of comprehensive planning for persons with developmental disabilities, monitoring of the plan, and evaluating its results, and which serves as an advocate for persons with developmental disabilities;

(26) "Substantial handicap" means a physical or mental disability or both of such severity that, alone or in connection with social, legal, or economic constraints, it requires the provision of specialized services over an extended period of time directed toward the individual's social, personal, physical, or economic habilitation or rehabilitation;

(27) "Technical assistance" means the furnishing of consultative, technical, and informational services to States, local or other public or private agencies, organizations, or individuals in matters pertaining to planning, provision of services, construction of facilities, and the organization and management of facilities and programs for developmentally disabled persons;

(28) "Title" (except when it refers to the Code of Federal Regulations) means a fee simple, or such other estate or interest (including a leasehold on which the rental does not exceed 4 per centum of the value of the land) as the Secretary finds sufficient to assure for a period of not less than fifty years undisturbed use and possession for the purposes of construction and operation of the project;

(29) "University affiliated facility" means a public or other non-profit facility which is associated with, or is an integral of, a college or university, which aids in demonstrating the provision of specialized services for the diagnosis and treatment of persons with developmental disabilities, and which provides education and training (including interdisciplinary training) of personnel needed to render services to persons with developmental disabilities;

(30) "Urban or rural poverty area" means a census tract, census country division, or minor civil division, as applicable, in which a percentage (which is at least the percentage determined in accordance with the following sentence) of the residents have incomes below the poverty level, as defined by the Secretary of Commerce. The percentage referred to in the preceding sentence shall be derived so that the total population of such areas as a percent of the population of the United States is equal to the total population of the United States with incomes below such poverty level, as a percent of the total population of the United States, plus five percent.

(31) "Volunteer" means a person who provides a service on a non-paid basis, except for reimbursement of actual expenses, and who works in concert with other services toward shared objectives on an individual or group assignment.

§ 1385.3 Grants administrative requirements.

(a) The provisions of 45 CFR Part 74, establishing uniform administrative requirements and cost principles for grants to State and local governments, shall apply to all grants funded under Parts 1386 and 1387 of this chapter.

(b) Attention is called to the applicability, as cited therein, of the provisions of the following parts of Title 45 CFR to grants funded under Parts 1386 and 1387 of this chapter:

45 CFR Part 16—Department Grant Appeals Process
45 CFR Part 46—Protection of Human Subjects
45 CFR Part 75—Informal Grant Appeals Procedures, Subpart A—Indirect Cost Appeals
45 CFR Part 80—Nondiscrimination under Programs Receiving Federal Assistance through the Department of Health, Education, and Welfare—Effectuation of Title VI of Civil Rights Act of 1964
45 CFR Part 81—Practice and Procedure for Hearings under Part 80 of this Title.

(c) Each recipient of assistance under these Parts shall keep records (1) which fully disclose (i) the amount and disposition by such recipient of the proceeds of such assistance, (ii) the total cost of the project or undertaking in connection with which such assistance is given or used, and (iii) the amount of that portion of the cost of the project or undertaking supplied by other sources, and (2) such other records as will facilitate an effective audit.

§ 1385.4 Judicial review.

If any State is dissatisfied with the Secretary's action under § 1386.2 or § 1386.15 such State may appeal to the United States Court of Appeals for the circuit in which such State is located, by filing a petition with such court within sixty days after such action, in accordance with 42 U.S.C. 2694.

§ 1385.5 State control of operations.

Except as otherwise specifically provided, nothing in Parts 1386 and 1387 of this chapter shall be construed as conferring on any Federal officer or employee the right to exercise any supervision or control over the administration, personnel, maintenance, or operation of any facility for persons with developmental disabilities with respect to which any funds have been or may be expended under these parts.

§ 1385.6 Employment of handicapped individuals.

As a condition for the receipt of financial assistance under Parts 1386 and 1387 of this chapter each recipient of such assistance shall take affirmative action to employ and advance in employment qualified handicapped individuals on the same terms and conditions required with respect to the employment of such individuals by the provisions of sections 503 and 504 of the Rehabilitation Act of 1973 which govern employment (a) by State rehabilitation agencies and rehabilitation facilities, and (b) under Federal contracts and subcontracts.

§ 1385.7 Recovery.

The State council shall promptly notify the Secretary in writing if, any time within 20 years after the completion of construction, any facility which received funds under Part 1386, Subpart A and Part 1387, Subpart A of this chapter is sold or transferred to any person, agency, or organization not qualified to file an application under the Act or not approved as a transferee by the State agency; or (b) ceases to be a public or other nonprofit facility for persons with developmental disabilities. Unless there is good cause, in conformance with § 1385.8, for releasing the applicant or other owner from obligation to continue such facility as a facility for developmentally disabled persons, the United States shall be entitled to recover from either the transferor or the transferee (or, in the case of a facility which has ceased to be a public or other nonprofit facility for persons with developmental disabilities, from the owners thereof) an amount bearing the same ratio to the then value (as determined by the agreement of the parties or by action brought in the district court of the United States for the district in which the facility is situated) of so much of such facility as constituted an approved project or projects, as the amount of the Federal participation bore to the cost of the construction of such project or projects. Such right of recovery shall not constitute a lien upon such facility prior to judgment.

§ 1385.8 Good cause for other use of facility.

If, within 20 years after completion of any construction for which a construction grant under the Act has been made, the facility shall cease to be a public or nonprofit facility for persons with developmental disabilities, the Secretary in determining whether there is good cause for releasing the applicant or other owner of the facility from the obligation to continue such facility as a public or other nonprofit facility for persons with developmental disabilities, shall take into consideration the extent to which:

(a) The facility will be devoted by the applicant or other owner to use for another public purpose which will promote the purposes of the Act; or

(b) There are reasonable assurances that for the remainder of the 20 year period other facilities not previously utilized for the care of persons with developmental disabilities will be so utilized and are substantially equivalent in nature and extent for such purposes.

§ 1385.9 Cooperative or joint effort between States and agencies.

An application providing for participating in a joint effort between States or among public or private agencies, or by any combination of such entities, shall be in accordance with the agreements in writing between the entities involved.

§ 1385.10 Awards.

All awards under Parts 1386 and 1387 of this chapter shall be in writing and shall set forth the amount awarded. Awards under Part 1387 of this chapter shall also specify the project period for which support is contemplated.

(a) Federal financial participation shall be available under Parts 1386 and 1387 of this chapter only for those activities approved in the grant award and only in the total amount approved in the award.

(b) Under Part 1386, Subpart A of this chapter, Federal financial participation may be available in expenditures made under the State plan including expenditures for the State council and the administration of the State plan, in accordance with applicable State laws, rules, regulations, and standards governing expenditures by State and local agencies. The cost of acquiring land for a construction project under Parts 1386 and 1387 is not eligible for Federal financial participation. As a condition for Federal financial participation, the annual revision of the State plan and other required reports must be submitted by the State planning council and approved by the Secretary.

§ 1385.11 Assurances regarding evaluation system.

(a) Within six months after the development by the Secretary of an evaluation system in accordance with the Act, as a condition to the receipt of Federal financial assistance under Parts 1386 and 1387 of this chapter, each State shall submit to the Secretary a proposal for a time-phased method of implementing the system. Proposals shall be submitted in the form and at the time set forth in guidelines which will be issued by the Secretary.

(b) Within two years after the date of the development of such a system, each State shall provide assurances satisfactory to the Secretary that the State is using such a system.

PART 1386—FORMULA GRANT PROGRAMS

Subpart A—The State Plan

GENERAL

Sec.
1386.1 Purpose and assurances.
1386.2 Plan submission and approval.
1386.3 Designation of State agency(ies) for administration.
1386.4 Identification of administrative program unit.

ALLOTMENTS, FEDERAL SHARE, AND PAYMENTS

1386.10 Allotments to States.
1386.11 Reallotment of funds.
1386.12 Conditions on uses of allotments.
1386.13 Federal share.
1386.14 Nonduplication.
1386.15 Payments for planning, administration, services, and construction.
1386.16 Withholding of payments.
1386.17 Standards for services and construction of facilities.

STATE PLAN REQUIREMENTS—METHODS OF ADMINISTRATION

1386.20 Methods of administration.
1386.21 Personnel administration.
1386.22 Fiscal administration.
1386.23 Special financial and technical assistance to poverty areas.
1386.24 Reports.
1386.25 Methods of evaluation.
1386.26 Use of volunteers.
1386.27 Protection of employees' interests.
1386.28 Membership of State planning council.
1386.29 Identification of State planning council staff.
1386.30 Review of all other State plans.
1386.31 Review of State plan.

PROVISION OF SERVICES AND CONSTRUCTION OF FACILITIES

1386.40 Goals and objectives.
1386.41 Allocation of grant funds based on State priorities.
1386.42 Deinstitutionalization.
1386.43 Establishment of community program alternatives to institutionalization.
1386.44 Early screening, diagnosis, and evaluation.
1386.45 Counseling, program coordination, advocacy, follow-along, and protective services.
1386.46 Quality, extent, and scope of services being provided or to be provided.
1386.47 Habilitation plans.
1386.48 Program for construction of facilities.
1386.49 Opportunity for appeal and hearing.

DESIGN FOR IMPLEMENTATION

1386.50 Design for implementation of State plan.

Subpart B—State Planning Council

1386.60 Role of State planning council.
1386.61 Establishment of State planning council.
1386.62 Adequate staff.
1386.63 Duties of the State planning council.

Subpart C—Protection and Advocacy of Individual Rights

1386.70 State system for protection and advocacy of individual rights.

Subpart D—Practice and Procedure for Hearings to States on Conformity of Developmental Disabilities Plans to Federal Requirements

GENERAL

1386.80 Definitions.
1386.81 Scope of rules.
1386.82 Records to be public.
1386.83 Use of gender and number.
1386.84 Suspension of rules.
1386.85 Filing and service of papers.

PRELIMINARY MATTERS—NOTICE AND PARTIES

1386.90 Notice of hearing or opportunity for hearing.
1386.91 Time of hearing.
1386.92 Place.
1386.93 Issues at hearing.
1386.94 Request to participate in hearing.

HEARING PROCEDURES

1386.100 Who presides.
1386.101 Authority of presiding officer.
1386.102 Rights of parties.
1386.103 Discovery.
1386.104 Evidentiary purpose.
1386.105 Evidence.
1386.106 Exclusion from hearing for misconduct.
1386.107 Unsponsored written material.
1386.108 Official transcript.
1386.109 Record for decision.

POSTHEARING PROCEDURES, DECISIONS

1386.110 Posthearing briefs.
1386.111 Decisions following hearing.
1386.112 Effective date of decision by Secretary's delegate.

AUTHORITY: Pub. L. 91-517; Pub. L. 94-103.

Subpart A—The State Plan

GENERAL

§ 1386.1 Purpose and assurances.

(a) *General.* Any State wishing to take advantage of Federal financial assistance under this Subpart must have a State plan approved annually by the Secretary.

(b) *Form and content.* The State plan, which is to be prepared by the designated State agency(ies) in accordance with supervision provided by the State Council, shall contain, in the form prescribed by the Secretary, a specific description of the State's program, the plans and policies to be followed in carrying out the program, a description of the planning process as developed by the State council and utilized in developing the program, and such other information as prescribed by the Secretary. Basic principles for the planning processes and suggested alternative models will be described in guidelines issued by the Secretary. The State plan shall consist of the following parts which shall be amended, reaffirmed, or updated annually as applicable:

(1) A part setting forth data necessary to comply with assurances required in the Act, and all regulations, policies, and

procedures which shall be established by the Secretary;

(2) A part which describes the State goals, annual objectives to achieve the goals, priorities, evaluation methods, and the rationale for annual changes;

(3) A part containing measurable objectives and strategies (i) to reduce and eventually eliminate inappropriate institutional placement of people with developmental disabilities; and (ii) to improve the quality of care and state of surroundings of persons for whom institutional care is appropriate;

(4) A part containing a design for implementation of the plan as set forth in § 1386.50; and

(5) A part containing the following assurances: (i) Authority of the State agency(ies): The State plan shall certify that the State agency(ies) has authority to administer or supervise the administration of all or portions of the State plan, and that nothing in the State plan is inconsistent with State law;

(ii) Funds made available to other agencies: (A) Part of the funds paid to the State will be made available to other public agencies or other nonprofit private agencies, institutions, and organizations for the purposes of carrying out the Act; (B) Such funds shall be expended in accordance with State procedures and standards and in accordance with the requirements contained in these regulations and policies established by the Secretary;

(iii) State participation in carrying out the State plan: That there will be reasonable State financial participation in the cost of carrying out the State plan. Reasonable State participation shall include evidence of the following: (A) That there is an organizational unit responsible for program administration; (B) That adequate staff is available for administration of the plan; and (C) That State appropriated funds will be used in part to support the activities included under the State plan;

(iv) Anticipated contribution toward strengthening services: That the funds paid to the State will be used to make significant contribution toward strengthening services for persons with developmental disabilities in the various political subdivisions of the State, in order to improve the quality, extent, and scope of services.

(v) Maintenance of effort: That funds paid the State under the State plan will be used to supplement and, to the extent practicable, increase the level of funds that would otherwise be made available for the purposes for which the Federal funds are provided, and not to supplant such non-Federal funds. Compliance with such assurance will be deemed to have been met if the aggregate level of State, local, and private non-profit funds available in the State for activities supported under the approved State plan is at least no lower for any fiscal year than it was for the immediately preceding fiscal year as reported in required financial reports, provided that the Secretary may also take into consideration the extent to which the level of such funds for any fiscal year may have included emergency or other funds for an activity of a non-recurring nature;

(vi) Human rights and welfare of individuals receiving services: That the human rights of all persons (especially those without familial protection) receiving services under Parts 1386 and 1387 of this chapter will be protected;

(vii) Services for persons unable to pay: That a reasonable volume of services will be furnished to persons unable to pay therefor. As used in this section, "persons unable to pay therefor" includes persons who are otherwise self-supporting but are unable to pay the full cost of needed services. Such services may be paid for wholly or partly out of public funds or contributions of individuals and private and charitable organizations, or may be contributed at the expense of the provider of services itself. In determining what constitutes a reasonable volume of services to persons unable to pay therefor, there shall be considered the amount of services that may be available through generic agencies. The requirements may be waived if it is demonstrated to the satisfaction of the State agency, subject to subsequent approval by the Secretary, that to furnish such services is not feasible financially;

(viii) Financial support for facilities: That adequate financial support will be available to complete the construction of, and to maintain and operate the facility when such construction is completed. Compliance with this assurance may be made by a showing from the grantee that adequate funds are or will be on deposit in a bank, or that program income from services provided is or will be adequate, or that State and local funds will be made available for maintenance and operation upon completion of construction;

(ix) Payment of construction workers: That all laborers and mechanics employed by contractors or subcontractors in the performance of work on any construction project assisted with funds under this subpart and Subpart A, Part 1387 of this Chapter will be paid at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Act of March 3, 1931 (40 U.S.C. 276a–276a–5, known as the Davis-Bacon Act); and the Secretary of Labor shall have with respect to the labor standards specified in this paragraph the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 FR 3176; 5 U.S.C. Appendix) and section 2 of the Act of June 13, 1934 (40 U.S.C. 276c); and

(x) Compliance with assurance for habilitation plans for developmentally disabled persons: Each State receiving an allotment under this Subpart after September 30, 1976, shall satisfactorily assure the Secretary that each program (including programs of any agency, facility, or project) which receives funds from the State's allotment under this Subpart has in effect for each developmentally disabled person who receives services from or under the program a habilitation plan and that such plans are reviewed annually.

(6) A part containing those requirements in §§ 1386.20 through 1386.49.

§ 1386.2 Plan submission and approval.

(a) The State plan (and its annual revisions) shall be submitted by the chairperson of the State council to the Secretary 60 days prior to the fiscal year for which the plan is applicable.

(b) Failure to submit an approvable plan or annual revision prior to the fiscal year for which the plan is applicable shall result in the loss of Federal financial participation in the cost of expenditures during the period of the fiscal year for which an approvable plan or annual or other revision has not been submitted.

(c) Any State plan, amendment, or revision meeting the requirements of the Act, this Subpart, and performance standards to be issued by the Secretary shall be approved.

(d) Final disapproval of any State plan or annual or other revision shall be determined by the Secretary; except that no State plan or any revision thereof shall be finally disapproved until after the State has been given reasonable notice and opportunity for a hearing in accordance with Subpart D of this part.

(e) In accordance with the Office of Management and Budget Circular A-95, the Governor shall be given an opportunity to review and comment on the State plan, plan amendments, and related material, except for periodic statistical, or budget, and other fiscal reports. The Office of the Governor shall have 45 days to review such plan material prior to its submission to the Secretary. Any comments made shall be transmitted to the Department with the documents.

§ 1386.3 Designation of State agency(cies) for administration.

(a) The State plan shall name the designated State agency(ies) which shall administer all or designated portions of the State plan: provided, that a sole State agency is to be designated for administering or supervising the administration of grants for construction.

(b) If the State plan designates more than one State agency to administer the State plan, it shall set forth the portion of the program for which each State agency is responsible.

(c) The State may apportion its allotment among such agencies in proportion to the responsibilities assigned to such agencies for carrying out activities approved under the State plan. Funds so apportioned may be combined with other State or Federal funds authorized to be spent for other purposes, provided the purpose of the State plan will receive proportionate benefit from the combination.

§ 1386.4 Identification of administrative program unit.

The State plan shall provide for and identify a program unit within the designated State administering agency, which has primary responsibility for proper and efficient administration of the State plan.

ALLOTMENTS, FEDERAL SHARE, AND PAYMENTS

§ 1386.10 Allotments to States.

The allotment to the several States shall be computed by the following formula:

(a) Two-thirds on the basis of total population weighted by financial need determined by the relative per capita income as shown by data supplied by the U.S. Department of Commerce for the three most recent consecutive years for which satisfactory data are available.

(b) One-third on the basis of a need factor based on the ratio of beneficiaries in the State receiving benefits under the Adult Disabled Child Program (section 202(d)(1)(B)(ii) of the Social Security Act) related to population of the State age 18–65 as bearing on the national total of such population weighted by the total population of the State.

(c) For the Virgin Islands, American Samoa, Guam, and the Trust Territory of the Pacific Islands, the allotment in any fiscal year beginning July 1, 1975, shall not be less than $50,000. The allotment of each other State in any fiscal year shall not be less than the greater of $150,000, or the amount of the allotment received by the State for the fiscal year ending June 30, 1974.

(d) If the amount appropriated for State allotments for any fiscal year exceeds $50,000,000, the minimum allotment of a State for such fiscal year shall be increased by an amount which bears the same ratio to the amount determined for such State as the difference between the amount so appropriated and the amount authorized to be appropriated for such fiscal year bears to $50,000,000.

§ 1386.11 Reallotment of funds.

The amount of an allotment to a State for a fiscal year which the Secretary determines will not be required by the State during the period for which it is available for the purpose for which allotted shall be available for reallotment by the Secretary from time to time, on such date or dates as may be fixed (but not earlier than thirty days after notice has been published of the Secretary's intention to make such reallotment in the FEDERAL REGISTER), to other States with respect to which such a determination has not been made, in proportion to the original allotments of such States for such fiscal year, but with such proportionate amount for any of such other States being reduced to the extent it exceeds the sum the Secretary estimates such State needs and will be able to use during such period; and the total of such reductions shall be similarly reallotted among the States whose proportionate amounts were not so reduced. Any amount so reallotted to a State for a fiscal year shall be deemed to be a part of its allotment for such fiscal year.

§ 1386.12 Conditions on uses of allotments.

(a) For the fiscal year ending June 30, 1976, not less than 10 per centum of each State's allotment shall be expended for the purpose of assisting in developing and implementing plans designed to eliminate inappropriate placement in institutions of persons with developmental disabilities. For each succeeding fiscal year, 30 per centum of the State's allotment shall be used for these purposes.

(b) Designation of allotment for construction. The State plan shall specify the per centum of the State's allotment in any fiscal year which is to be devoted to construction of facilities. Such per centum shall be not more than 10 per centum of the State's allotment or such lesser per centum as the Secretary may from time to time prescribe.

(c) Sums allotted to a State in a fiscal year and designated by it for construction and remaining unobligated at the end of such year shall remain available to such State for such purpose in the next fiscal year (and in such year only), in addition to the sums allotted to such State in such next fiscal year; except that if the maximum amount which may be specified for construction for a year plus any part of the amount so specified pursuant to such section for the preceding fiscal year and remaining unobligated at the end of such fiscal year is not sufficient to pay the Federal share of the cost of construction of a specific facility included in the construction program of the State, the amount specified for such preceding year shall remain available for a second additional year for the purpose of paying the Federal share of the cost of construction of such facility.

(d) Expenditures for proper and efficient administration of the State plan. (1) At the request of the State, a portion of the State's allotment shall be made available by the Secretary to pay not more than one-half of the expenditures described in this paragraph for proper and efficient administration of the approved State plan: *Provided*, That not more than 5 per centum or $50,000, whichever is less, shall be available for this purpose. (2) Payments under this section shall be made only on the condition that expenditures from State appropriations for administration of the State plan shall not be less than State expenditures for the fiscal year ending June 30, 1975. (3) Costs identified in the approved State plan as necessary for the administration of the program shall not include costs applicable to provision of services, planning or construction.

§ 1386.13 Federal share.

(a) Except as provided for in paragraph (b) of this section, the Federal share for a State may not exceed 75 per centum of the expenditures incurred by the State under the State plan.

(b) In the case of any project, program, or activity located in an area within a State determined by the Secretary to be an urban or rural poverty area, the Federal share may not exceed 90 per centum of the expenditures incurred by the State under the State plan.

(c) The non-Federal share of any project, program, or activity assisted by a grant under this Subpart may be provided in kind.

(d) For the purpose of determining the Federal share with respect to any activity, program, or project described in the State plan, expenditures on that activity, program, or project by a political subdivision of a State or by a nonprofit private entity shall be deemed to be expenditures by such State, subject to the condition that such expenditures may be included only when made by a political subdivision or nonprofit private agency, organization, or group to which the State agency has made available funds from Federal or State sources for carrying out the approved State plan for the fiscal year.

§ 1386.14 Nonduplication.

In determining the amount of any State's Federal share of the expenditures incurred by it under its approved State plan, there shall be disregarded (a) any portion of such expenditures which are financed by Federal funds provided under any provision of the law other than this subpart, and (b) the amount of any non-Federal funds required to be expended as a condition of receipt of such Federal funds, except as otherwise provided by statute enacted subsequent to the effective date of Pub. L. 94–103, December 18, 1975.

§ 1386.15 Payments for planning, administration, services, and construction.

(a) From each State's allotment for a fiscal year under this subpart, the State shall be paid the Federal share of the expenditures, other than expenditures for construction, incurred during such year under its State plan approved under this part. Such payments shall be made from time to time in advance on the basis of estimates by the Secretary of the sums the State will expend under the State plan, except that such adjustments as may be necessary shall be made on account of previously made underpayments or overpayments under this section.

(b)(1) Payments for construction projects shall be made upon certification by the designated State agency for construction that, based upon its inspection, work has been performed upon a project, or purchases have been made in accordance with plans and specifications approved by the State agency and payment of an installment is due. If the State is not authorized by law to make payments to the applicant, the payment shall be made directly to the applicant. Certification shall be submitted to the Secretary in such form and at such times as required. Final payment for a project shall be made only upon certification by the State agency authorized by State law and designated by the Governor to administer construction grants that appropriate, periodic, and final inspections have been made by appropriate authorities in the State and that all applicable construction standards and other applicable standards and codes have been met.

(2) If the Secretary, after investigation or otherwise, has reason to believe that any act (or failure to act) has occurred requiring withholding of payments (§ 1386.16) payment may be withheld in whole or in part, pending

corrective action or action based on such hearing, after notice has been given to the designated State agency of opportunity for a hearing.

§ 1386.16 Withholding of payments.

(a) Whenever the Secretary, after reasonable notice and opportunity for hearing to the State council and the appropriate State agency(ies), finds that (1) there is a failure to comply substantially with any of the provisions required to be included in the State plan; (2) there is a failure to comply substantially with any regulations of the Secretary which are applicable to this Part, the Secretary shall notify such State council and agency(ies) that further payments will not be made to the State under this Subpart (or, in his discretion, that further payments will not be made to the State for activities in which there is such failure) until he is satisfied that there will no longer be such failure. Until he is so satisfied, the Secretary shall make no further payment under this Subpart to the State or shall limit further payment under this subpart to such State to activities in which there is no such failure.

(b) The State council shall review, at least annually, the State's plan (including the design for implementation) and the actions of the State for the purpose of determining if the State is complying with the requirements of the State plan and its design for implementation and shall notify the Secretary that it has made such a review. The State council may notify the Secretary of the findings of such review.

§ 1386.17 Standards for services and construction of facilities.

(a) Standards for services for persons with developmental disabilities. [Reserved].

(b) Standards for construction and equipment of facilities.

(1) *General.* (i) The standards set forth in this section shall apply to all projects receiving Federal assistance under Subpart A, Part 1386 and Subpart A, Part 1387 of this chapter for construction of new buildings, acquisition, modernization, expansion, remodeling, and alteration of existing buildings and initial equipment for such buildings.

(ii) The designated State agency for construction shall determine in writing the occupancy classification of the building under the Life Safety Code (National Fire Protection Association (NFPA) Bulletin No. 101) 1973 edition or such future revisions as may be approved by the Secretary, to ensure the capability of building occupants to respond in emergencies and for self-preservation.

(iii) The site location of any facility shall meet the criteria established by the State agency designated for construction, and comply with the Department's requirements with regard to the National Environmental Policy Act, Pub. L. 91-190, National Historical Preservation Act, Pub. L. 89-665, Coastal Zone Management Act, Pub. L. 92-583, and National Archeological Preservation Act, Pub. L. 93-291.

(2) *Design and construction of facilities.* (i) Project design and construction of facilities shall be done in accordance with one of the following model codes:

The Building Officials Conference of America—(BOCA).
The Uniform Building Code—(UBC).
The Southern Standard Building Code—(SSB).
The National Building Code—(NBC).

(ii) The codes listed below shall be used with respect to the following specific details:

Life safety: The National Fire Protection Association (NFPA), The Life Safety Code. Bulletin No. 101;
Air conditioning and ventilation systems: NFPA Standards, Nos. 90A or 90B;
Plumbing—National Standard Plumbing Code, (NAPHCC);
Electrical systems—National Electrical Code, NFPA Standard No. 70;
Elevators—American Standard Safety Code for Elevators, Dumbwaiters, and Escalators, ASA-A17 1960.

(3) *Special details.* (i) All doors to toilet rooms and bathrooms shall be equipped with hardware that will permit access in an emergency.

(ii) All paint and applied finishes used in furniture and furnishing shall be free of lead or other materials which may be harmful if ingested by humans, in accordance with Pub. L. 94-317, the Lead-Based Paint Poisoning Prevention Act;

(4) *Equipment.* Initial equipment of the kind and in the quantity necessary shall be provided for the complete functioning of the facility.

(5) *Architectural Barriers.* The building to be constructed, renovated, or modernized will comply with revised standards of the American National Standards Institute, Inc., adopted pursuant to the Architectural Barriers Act of 1968, 42 U.S.C. 4151-4156.

(6) *Hazards—Relocation.* The application, facility, and the operation thereof shall comply, as appropriate, with the following:

(i) Uniform Relocation Assistance Act— Pub. L. 91-646.
(ii) Historic Sites—Pub. L. 89-665.
(iii) Flood Insurance—Pub. L. 93-234.
(iv) Flood Hazards—Executive Order 11296.

STATE PLAN REQUIREMENTS—METHODS OF ADMINISTRATION

§ 1386.20 Methods of administration.

The State plan shall provide for such strategies, policies, and procedures as are necessary for the proper and efficient administration of the State plan. It shall include methods of informing the general public in the State of the kinds and locations of services and facilities which are available under the State plan, and that the State plan is available to interested parties in the State for their information.

§ 1386.21 Personnel administration.

(a) The State plan shall provide that methods of personnel administration will be established and maintained (in the State agencies administering or supervising the administration of the program and in local agencies administering the program) in conformity with the standards for a Merit System of Personnel Administration, 45 CFR Part 70, and any standards prescribed by the U.S. Civil Service Commission pursuant to section 208 of the Intergovernmental Personnel Act of 1970 modifying or superseding such standards.

(b) The State plan shall provide that the State agency will develop and implement an affirmative action plan for equal employment opportunity in all aspects of personnel administration as specified in 45 CFR 70.4, Equal employment opportunity. The affirmative action plan will provide for specific action steps and timetables to assure equal employment opportunity. This plan shall be made available for review upon request.

§ 1386.22 Fiscal administration.

The State plan shall provide for such fiscal control and fund accounting procedures as may be necessary to assure the proper disbursement of and accounting for funds paid to the State under this Subpart.

§ 1386.23 Special financial and technical assistance to poverty areas.

The State plan shall provide that special financial and technical assistance shall be given to areas of urban or rural poverty in providing services and facilities for persons with developmental disabilities who are residents of such areas.

§ 1386.24 Reports.

The State plan shall provide that the State agency will make such reports in such form and containing such information, and at such time, as the Secretary may require, and will comply with such provisions as he may find necessary to assure the correctness and verification of such reports. These reports include, but are not limited to, (a) the Developmental Disabilities Office's program performance report and (b) financial reports.

§ 1386.25 Methods of evaluation.

(a) The State plan shall describe the methods to be used to assess the effectiveness and accomplishments of the State in meeting the needs of persons with developmental disabilities in the State.

(b) The State plan shall provide for the implementation of an evaluation system in accordance with § 1385.11 of this chapter.

§ 1386.26 Use of volunteers.

The State plan shall provide for the maximum utilization of all available community resources including volunteers serving under the Domestic Volunteer Services Act of 1973 (87 Stat. 394), and other appropriate voluntary organizations. The use of such services shall supplement, but shall not be in lieu of, paid employees.

§ 1386.27 Protection of employees' interests.

The State plan shall provide for fair and equitable arrangements (as determined by the Secretary after consultation with the Secretary of Labor) to protect the interests of employees affected by actions to carry out the plan described in § 1386.42 including arrangements designed to preserve employee rights and benefits and to provide training and retraining of such employees where necessary and arrangements under which maximum efforts will be made to guarantee the employment of such employees.

§ 1386.28 Membership of State planning council.

The State plan shall contain a current listing of the members of the State council, their names, and the constituency, agency, or organization each represents.

§ 1386.29 Identification of State planning council staff.

The State plan shall (a) provide that the State council will be adequately staffed, consistent with its duties and responsibilities; (b) identify the staff assigned to the council; and (c) specify that the staff shall be responsible to the State council.

§ 1386.30 Review of all other State plans.

The State plan shall provide, to the maximum extent feasible, for an opportunity for prior review and comment by the State council of all State plans of the State which relate to programs affecting persons with developmental disabilities. The State council's responsibilities in obtaining timely access to these other State plans, and the council's recourse if the plans are not made available will be detailed in guidelines to be issued by the Secretary.

§ 1386.31 Review of State plan.

The State plan shall provide that the State council will from time to time, but not less often than annually, review and evaluate its State plan approved under this subpart and submit appropriate revisions to the Secretary.

PROVISION OF SERVICES AND CONSTRUCTION OF FACILITIES

§ 1386.40 Goals and objectives.

The State plan shall describe clearly defined long-range goals and measurable short-term objectives, with primary consideration given to §§ 1386.42 through 1386.45 and to goals which may be established by the Secretary.

§ 1386.41 Allocation of grant funds based on State priorities.

(a) The State plan shall set forth priorities, policies, and procedures for the allocation and expenditure of funds under the plan, based on the established goals and objectives.

(b) Special consideration shall be given to those activities (1) which are located in areas of urban or rural poverty, or (2) which provide services to the more severly handicapped persons.

(c) The State plan shall provide that high priority for approval shall be given to those activities that hold significant promise toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of individuals with such a disability.

§ 1386.42 Deinstitutionalization.

The State plan goals, objectives, and strategies shall address: (a) The elimination of inappropriate placement in institutions of persons with developmental disabilities, and (b) the improvement of the quality of care and the state of surroundings of persons who are appropriately placed in institutions.

§ 1386.43 Establishment of community program alternatives to institutionalization.

The State plan shall support the establishment of community programs as alternatives to institutionalization and support such programs designed to provide services for the care and habilitation of persons with developmental disabilities, and which utilize, to the maximum extent feasible, the resources and personnel in related community programs to assure full coordination with such programs and to assure the provision of appropriate supplemental health, educational, or social services for persons with developmental disabilities.

§ 1386.44 Early screening, diagnosis, and evaluation.

The State plan shall provide for early screening, diagnosis, and evaluation (including maternal care, developmental screening, home care, infant and preschool stimulation programs, and parent counseling and training) of developmentally disabled infants and preschool children, particularly those with multiple handicaps.

§ 1386.45 Counseling, program coordination, advocacy, follow-along, and protective services.

The State plan shall provide for counseling, program coordination, follow-along services, protective services, and personal advocacy on behalf of developmentally disabled adults.

§ 1386.46 Quality, extent, and scope of services being provided or to be provided.

(a) The State plan shall describe the quality, extent, and scope of services being provided, or to be provided, in implementing the State plan, under such other State plans for Federally assisted State programs as may be specified by the Secretary, but in any case including the following Federally assisted programs: Education for the handicapped, vocational rehabilitation, public assistance, medical assistance, social services, maternal and child health, crippled children's services, and comprehensive health and mental health plans.

(b) The State plan shall describe the quality, extent, and scope of treatment, services, and habilitation being provided or to be provided in implementing the State plan to person with developmental disabilities from funds under this part.

(1) *Quality.* The State plan shall provide that services and facilities furnished under the State plan for persons with developmental disabilities will be in accordance with the standards set forth in § 1386.17.

(2) *Extent.* The State plan shall describe the extent of services to be provided under the plan including: (i) The kinds of needs to be met, and individuals to be served (such as type and severity of disabilities, age groups, economic status), (ii) the geographic location, distribution, and accessibility of services, and (iii) other relevant factors.

(3) *Scope.* The State plan shall describe the scope of the services to be provided, taking into account Federally-aided State and local programs involved, manpower, and financial resources, and other factors, directed toward the alleviation of developmental disabilities, or toward the social, personal, physical or economic habilitation, or rehabilitation of individuals with such disabilities.

(c) The State plan shall describe how Federal funds allotted to the State will be used to complement and augment rather than duplicate or replace services and facilities which are eligible for Federal assistance under other State programs.

§ 1386.47 Habilitation plans.

For the purpose of complying with the assurance regarding individual habilitation plans (§ 1386.1(b)(5)(x)), the State plan shall describe the methods to be used to facilitate an annual review of the individual plans. The State plan shall also describe the requirements of the habilitation plan which shall include at least the following: (a) The plan shall be in writing.

(b) The plan shall be developed jointly by (1) a representative(s) of the program primarily repsonsible for delivering or coordinating the delivery of services to the person for whom the plan is established, (2) such person, and (3) where appropriate, such person's parents or guardian or other representative.

(c) Such plan shall contain a statement of the long-term habilitation goals for the person and the intermediate habilitation objectives relating to the attainment of such goals. Such objectives shall be stated specifically and in sequence and shall be expressed in behavorial or other terms that provide measurable indices of progress. The plan shall (1) describe how the objectives will be achieved and the barriers that might intrefere with the achievement of them, (2) state objective criteria and an evaluation procedure and schedule for determining whether such goals and objectives are being achieved, and (3) provide for a program coordinator who will be responsible for the implementation of the plan.

(d) The plan shall contain a statement (in readily understandable form) of specific habilitation services to be provided, shall identify each agency which will de-

liver such services, shall describe the personnel (and their qualifications) necessary for the provision of such services, and shall specify the date of the initiation of each service to be provided and the anticipated duration of each such service.

(e) The plan shall specify the role and objectives of all parties to the implementation of the plan.

(f) Each habilitation plan shall be reviewed at least annually by the agency primarily responsible for the delivery of services to the person for whom the plan was established or responsible for the coordination of the delivery of services to such person. In the course of the review, such person and the person's parents or guardian or other representative shall be given an opportunity to review such plan and to participate in its revision.

§ 1386.48 Program for construction of facilities.

When a specific portion of the State's allotment is set aside for construction, the State plan shall provide for the development of a program of construction, renovation, or modernization of facilities for the provision of services for persons with developmental disabilities. Such a program shall (a) be based on a statewide inventory of existing facilities and a survey of need; (b) set forth the relative need in accordance with § 1386.41; (c) assign priority to the construction of projects in order of relative need insofar as funds are available for costs of construction and costs of maintenance and operation of such projects.

§ 1386.49 Opportunity for appeal and hearing.

The State plan shall provide for an opportunity for appeal to and hearing before the State agency for construction to every applicant for a construction project who is dissatisfied with any action of the State agency for construction regarding its application.

DESIGN FOR IMPLEMENTATION

§ 1386.50 Design for implementation of State plan.

(a) The State plan shall contain a design for implementation which shall include (1) details of the methods to be used to implement the State plan, (2) specific objectives to achieve the goals set forth in the State plan, (3) a listing of the programs and resources to be used to meet such objectives, (4) priorities for spending of funds provided under this Subpart, (5) a detailed plan for the use of such funds, and (6) a method for periodic evaluation of the design's effectiveness in meeting such objectives.

(b) The designated State agency is responsible for selecting from alternative strategies those best methods which will achieve the goals and annual objectives as developed by the State council. The design for implementation shall identify the programs and activities related to each of the objectives set forth in accordance with §§ 1386.40 through 1386.45 and the amount of funds allocated to each objective. The expenses of the State council are to be included in the design for implementation.

(c) The design for implementation is to be submitted annually as part of the annual State plan revision. Revisions to the design for implementation may be made as necessary by the designated State administering agency and shall be approved by the State council prior to submission to the Secretary.

Subpart B—State Planning Council

§ 1386.60 Role of State planning council.

The role of the State council is to supervise the development of and approve the State plan prepared by the designated State agency(ies) by providing guidance through the establishment of goals and objectives, identification of gaps, and the setting of priorities for the allocation of funds. In order to establish credible goals, the State council shall be responsible for needs assessment, analysis of programs currently and potentially capable of providing services to the developmentally disabled, and establishment of priorities to deal with identified gaps. The State council shall establish methods for monitoring and evaluating the implementation of the State plan to ensure that established goals and objectives are being achieved.

§ 1386.61 Establishment of State planning council.

(a) Each State which receives assistance under this part shall establish a State council which will serve as an advocate for persons with developmental disabilities. The members shall be appointed by the Governor of the State.

(b) Membership. Each State planning council shall at all times include in its membership representatives of the principal State agencies, local agencies, and nongovernmental agencies, and groups concerned with services to persons with developmental disabilities. As a minimum, the following Federal/State programs must be represented by the State agency membership on the council: Education of the handicapped, vocational rehabilitation, public assistance, medical assistance, social services, maternal and child health, crippled children's services, comprehensive health planning, and mental health. At least one-third of the membership of such a council shall consist of persons with developmental disabilities, or their parents or guardians, who are not officers or directors of an entity, or employees of any State agency or of any other entity, which receives funds or provides services under this part.

§ 1386.62 Adequate staff.

Each State receiving assistance under this Part shall engage for its State council personnel adequate to insure that the council has the capacity to fulfill its responsibilities and that the staff shall be responsible to the State council.

§ 1386.63 Duties of the State planning council.

The State council shall—

(a) Supervise the development of and approve the State plan required by this part;

(b) Monitor and evaluate the implementation of such State plan;

(c) To the maximum extent feasible, review and comment on all State plans in the State which relate to programs affecting persons with developmental disabilities;

(d) Submit to the Secretary, through the Governor, such periodic reports as the Secretary may reasonably request; and

(e) Submit revisions of the State plan to the Secretary.

Subpart C—Protection and Advocacy of Individual Rights

§ 1386.70 State system for protection and advocacy of individual rights.

(a) As a condition to a State's receiving an allotment under Subpart A of this part, the State shall provide assurances satisfactory to the Secretary that not later than October 1, 1977, (1) the State will have in effect a system to protect and advocate the rights of persons with developmental disabilities, (2) such system will have the authority to pursue legal, administrative, and other appropriate remedies to insure the protection of the rights of such persons who are receiving treatment, services, or habilitation within the State, and (3) such system will be independent of any State agency which provides treatment, services, or habilitation to persons with developmental disabilities. The Secretary shall not make an allotment under Subpart A of this part to a State for any fiscal year beginning after September 30, 1977, unless the State has in effect such a system.

(b) The Governor shall designate the agency responsible for administering the protection and advocacy system and shall approve the advocacy plan prior to the approval of the Secretary. Such plan is to be submitted in accordance with this section and guidelines established by the Secretary.

(c) The allotment to the State shall be computed in accordance with § 1386.10 (a), (b) except that the allotment to a State in any fiscal year shall not be less than $20,000.

Subpart D—Practice and Procedure for Hearings to States on Conformity of Developmental Disabilities Plans to Federal Requirements

GENERAL

§ 1386.80 Definitions.

For purposes of this Subpart only:

(a) The term "DDO" means Developmental Disabilties Office.

(b) The term "designee" means any other individual so designated by the Secretary's delegate.

(c) The term "Secretary" means the Secretary of the Department of Health, Education, and Welfare.

(d) The term "Secretary's delegate" means the Assistant Secretary for Human Development, or the Director, Developmental Disabilities Office.

§ 1386.81 Scope of rules.

(a) The rules of procedure in this Subpart govern the practice for hearings afforded by the Department to States pursuant to § 1386.2 or § 1386.16, and the practice relating to decisions upon such hearings.

(b) Nothing in this part is intended to preclude or limit negotiations between the Department and the State, whether before, during, or after the hearing to resolve the issues which are, or otherwise would be, considered at the hearing. Such negotiations and resolution of issues are not part of the hearing, and are not governed by the rules in this subpart, except as expressly provided herein.

§ 1386.82 Records to be public.

All pleadings, correspondence, exhibits, transcripts of testimony, exceptions, briefs, decisions, and other documents filed in the docket in any proceeding may be inspected and copied in the office of the DDO Hearing Clerk. Inquiries may be made at the Central Information Center, Department of Health, Education, and Welfare, 330 Independence Avenue, S.W., Washington, D.C. 20201.

§ 1386.83 Use of gender and number.

As used in this part, words importing the singular number may extend and be applied to several persons or things, and vice versa. Words importing the masculine gender may be applied to females or organizations.

§ 1386.84 Suspension of rules.

Upon notice to all parties, the Secretary's delegate or the presiding officer, with respect to matters pending before him and within his jurisdiction, may modify or waive any rule in this part, unless otherwise expressly provided, upon determination that no party will be unduly prejudiced and the ends of justice will thereby be served.

§ 1386.85 Filing and service of papers.

(a) All papers in the proceedings shall be filed with the DDO Hearing Clerk in an original and two copies. Originals only of exhibits and transcripts of testimony need be filed.

(b) All papers in the proceedings shall be served on all parties by personal delivery or by mail. Service on the party's designated representative will be deemed service upon the party.

PRELIMINARY MATTERS—NOTICE AND PARTIES

§ 1386.90 Notice of hearing or opportunity for hearing.

Proceedings are commenced by mailing a notice of hearing or opportunity for hearing from the Secretary's delegate to the State council and the designated State agency. The notice shall state the time and place for the hearing, and the issues which will be considered, and shall be published in the FEDERAL REGISTER.

§ 1386.91 Time of hearing.

The hearing shall be scheduled not less than 30 days nor more than 60 days after the date notice of the hearing is furnished to the State.

§ 1386.92 Place.

The hearing shall be held in the city in which the regional office of the Department is located or in such other place as is fixed by the Secretary's delegate in light of the circumstances of the case, with due regard for the convenience and necessity of the parties or their representatives.

§ 1386.93 Issues at hearing.

(a) The Secretary's delegate may, prior to a hearing under § 1386.2 or § 1386.16, notify the State in writing of additional issues which will be considered at the hearing, and such notice shall be published in the FEDERAL REGISTER. If such notice is furnished to the State less than 20 days before the date of the hearing, the State or any other party, at its request, shall be granted a postponement of the hearing to a date 20 days after such notice was furnished, or such later date as may be agreed to by the Secretary's delegate.

(b) If, as a result of negotiations between the Department and the State, the submittal of a plan amendment, a change in the State program or other actions by the State, any issue is resolved in whole or in part, but new or modified issues are presented, as specified by the Secretary's delegate, the hearing shall proceed on such new or modified issues.

(c) (1) If at any time, whether prior to during or after the hearing the Secretary's delegate finds that the State has come into compliance with Federal requirements on any issue in whole or in part he shall remove such issue from the proceedings in whole or in part as may be appropriate. If all issues are removed he shall terminate the hearing.

(2) Prior to the removal of any issue from the hearing in whole or in part the Secretary's delegate shall provide all parties other than the Department and the State (see § 1386.94(b)) with the statement of his intention and the reasons therefor and a copy of the proposed State plan provision on which the State and he have settled and the parties shall have oportunity to submit in writing within 15 days, for the consideration of the Secretary's delegate and for the record, their views as to, or any information bearing upon, the merits of the proposed plan provision and the merits of the reasons of the Secretary's delegate for removing the issue from the hearing.

(d) The issues considered at the hearing shall be limited to those issues of which the State is notified as provided in § 1386.90 and paragraph (a) of this section, and new or modified issues described in paragraph (b) of this section, and shall not include issues or parts of issues removed from the proceedings pursuant to paragraph (c) of this section.

§ 1386.94 Request to participate in hearing.

(a) The Department and the State council and the designated State agency are parties to the hearing without making a specific request to participate.

(b) (1) Other individuals or groups may be recognized as parties, if the issues to be considered at the hearing have caused them injury and their interest is within the zone of interests to be protected by the governing Federal statute.

(2) Any individual or group wishing to participate as a party shall file a petition with the DDO Hearing Clerk within 15 days after notice of the hearing has been published in the FEDERAL REGISTER, and shall serve a copy on each party of record at that time in accordance with § 1386.85(b). Such petition shall concisely state (i) petitioner's interest in the proceeding, (ii) who will appear for petitioner, (iii) the issues on which petitioner wishes to participate, and (iv) whether petitioner intends to present witnesses.

(3) Any party may, within 5 days of receipt of such petition, file comments thereon.

(4) The presiding officer shall promptly determine whether each petitioner has the requisite interest in the proceedings and shall permit or deny participation accordingly. Where petitions to participate as parties are made by individuals or groups with common interests, the presiding officer may request all such petitioners to designate a single representative, or he may recognize one or more of such petitioners to represent all such petitioners. The presiding officer shall give each petitioner written notice of the decision on his petition, and if the petition is denied, he shall briefly state the grounds for denial.

(c) (1) Any interested person or organization wishing to participate as amicus curiae shall file a petition with the DDO Hearing Clerk before the commencement of the hearing. Such petition shall concisely state (i) the petitioner's interest in the hearing, (ii) who will represent the petitioner, and (iii) the issues on which petitioner intends to present argument. The presiding officer may grant the petition if he finds that the petitioner has a legitimate interest in the proceedings, that such participation will not unduly delay the outcome and may contribute materially to the proper disposition of the issues. An amicus curiae is not a party but may participate as provided in this paragraph.

(2) An amicus curiae may present a brief oral statement at the hearing, at the point in the proceedings specified by the presiding officer. He may submit a written statement of position to the presiding officer prior to the beginning of a hearing, and shall serve a copy on each party. He may also submit a brief or written statement at such time as the parties submit briefs, and shall serve a copy on each party.

HEARING PROCEDURES

§ 1386.100 Who presides.

(a) The presiding officer at a hearing shall be the Secretary's delegate or his designee.

(b) The designation of the presiding officer shall be in writing. A copy of the designation shall be served on all parties.

§ 1386.101 Authority of presiding officer.

(a) The presiding officer shall have the duty to conduct a fair hearing, to avoid delay, maintain order, and make a record of the proceedings. He shall have all powers necessary to accomplish these ends, including, but not limited to, the power to:

(1) Change the date, time, and place of the hearing, upon due notice to the parties. This includes the power to continue the hearing in whole or in part.

(2) Hold conferences to settle or simplify the issues in a proceeding, or to consider other matters that may aid in the expeditious disposition of the proceeding.

(3) Regulate participation of parties and amici curiae and require parties and amici curiae to state their position with respect to the various issues in the proceeding.

(4) Administer oaths and affirmations.

(5) Rule on motions and other procedural items on matters pending before him, including issuance of protective orders or other relief to a party against whom discovery is sought.

(6) Regulate the course of the hearing and conduct of counsel therein.

(7) Examine witnesses.

(8) Receive, rule on, exclude, or limit evidence or discovery.

(9) Fix the time for filing motions, petitions, briefs, or other items in matters pending before him.

(10) If the presiding officer is the Secretary's delegate, make a final decision.

(11) If the presiding officer is a hearing examiner, certify the entire record including his recommended findings and proposed decision to the Secretary's delegate.

(12) Take any action authorized by the rules in this part or in conformance with the provisions of 5 U.S.C. 551–559.

(b) The presiding officer does not have authority to compel by subpoena the production of witnesses, papers, or other evidence.

(c) If the presiding officer is a hearing examiner, his authority pertains to the issues of compliance by a State with Federal requirements which are to be considered at the hearing, and does not extend to the question of whether, in case of any noncompliance, Federal payments will not be made in respect to the entire State plan or will be limited to categories under or parts of the State plan affected by such noncompliance.

§ 1386.102 Rights of parties.

All parties may:

(a) Appear by counsel or other authorized representative, in all hearing proceedings.

(b) Participate in any prehearing conference held by the presiding officer.

(c) Agree to stipulations as to facts which will be made a part of the record.

(d) Make opening statements at the hearing.

(e) Present relevant evidence on the issues at the hearing.

(f) Present witnesses who then must be available for cross-examination by all other parties.

(g) Present oral arguments at the hearing.

(h) Submit written briefs, proposed findings of fact, and proposed conclusions of law, after the hearing.

§ 1386.103 Discovery.

The Department and any party named in the Notice issued pursuant to § 1386.90 shall have the right to conduct discovery (including depositions) against opposing parties. Rules 26–37 of the Federal Rules of Civil Procedure shall apply to such proceedings; there will be no fixed rule on priority of discovery. Upon written motion, the presiding officer shall promptly rule upon any objection to such discovery action initiated pursuant to this section. The presiding officer shall also have the power to grant a protective order or relief to any party against whom discovery is sought and to restrict or control discovery so as to prevent undue delay in the conduct of the hearing. Upon the failure of any party to make discovery, the presiding officer may, in his discretion, issue any order and impose any sanction (other than contempt orders) authorized by Rule 37 of the Federal Rules of Civil Procedure.

§ 1386.104 Evidentiary purpose.

The hearing is directed to receiving factual evidence and expert opinion testimony related to the issues in the proceeding. Argument will not be received in evidence; rather it should be presented in statements, memoranda, or briefs, as determined by the presiding officer. Brief opening statements, which shall be limited to statement of the party's position and what he intends to prove, may be made at hearings.

§ 1386.105 Evidence.

(a) *Testimony.* Testimony shall be given orally under oath or affirmation by witnesses at the hearing. Witnesses shall be available at the hearing for cross-examination by all parties.

(b) *Stipulations and exhibits.* Two or more parties may agree to stipulations of fact. Such stipulations, or any exhibit proposed by any party, shall be exchanged at the prehearing conference or otherwise prior to the hearing if the presiding officer so requires.

(c) *Rules of evidence.* Technical rules of evidence shall not apply to hearings conducted pursuant to this part, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary by the presiding officer. A witness may be cross-examined on any matter material to the proceeding without regard to the scope of his direct examination. The presiding officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues.

§ 1386.106 Exclusion from hearing for misconduct.

Disrespectful, disorderly, or contumacious language or contemptuous conduct, refusal to comply with directions, or continued use of dilatory tactics by any person at the hearing before a presiding officer shall constitute grounds for immediate exclusion of such person from the hearing by the presiding officer.

§ 1386.107 Unsponsored written material.

Letters expressing views or urging action and other unsponsored written material regarding matters in issue in a hearing will be placed in the correspondence section of the docket of the proceeding. These data are not deemed part of the evidence or record in the hearing.

§ 1386.108 Official transcript.

The Department will designate the official reporter for all hearings. The official transcripts of testimony taken, together with any stipulations, exhibits, briefs, or memoranda of law filed therewith shall be filed with the Department. Transcripts of testimony in hearings may be obtained from the official reporter by the parties and the public at rates not to exceed the maximum rates fixed by the contract between the Department and the reporter. Upon notice to all parties, the presiding officer may authorize corrections to the transcript which involve matters of substance.

§ 1386.109 Record for decision.

The transcript of testimony, exhibits, and all papers and requests filed in the proceedings, except the correspondence section of the docket, including rulings and any recommended or initial decision shall constitute the exclusive record for decision.

POSTHEARING PROCEDURES, DECISIONS

§ 1386.110 Posthearing briefs.

The presiding officer shall fix the time for filing posthearing briefs which shall not exceed 20 days after termination of the hearing. Such briefs may contain proposed findings of fact and conclusions of law, and, if permitted, reply briefs.

§ 1386.111 Decisions following hearing.

(a) If the Secretary's delegate is the presiding officer, he shall, when the time for submission of posthearing briefs has expired, issue his decision within 60 days.

(b) (1) If a hearing examiner is the presiding officer, he shall, within 30 days of the time for submission of posthearing briefs has expired, certify the entire record, including his recommended findings and proposed decision, to the Secretary's delegate. The Secretary's delegate shall serve a copy of the recommended findings and proposed decision upon all parties, and amici, if any.

(2) Any party may, within 20 days, file with the Secretary's delegate exceptions to the recommended findings and proposed decision and a supporting brief or statement.

(3) The Secretary's delegate shall thereupon review the recommended decision and, within 60 days of its issuance, issue his own decision.

(c) If the Secretary's delegate concludes:

(1) In the case of a hearing under § 1386.2, that a State plan does not comply with Federal requirements, he shall also specify whether the State's total allotment for the fiscal year will not be authorized for the State or whether, in the exercise of his discretion, the allotment will be limited to categories under or parts of the State plan not affected by such noncompliance;

(2) In the case of a hearing pursuant to § 1386.16, that the State is not complying with requirements of the State plan he shall also specify whether further payments will not be made to the State or whether, in the exercise of his discretion, payments will be limited to categories under or parts of the State plan not affected by such noncompliance. The Secretary's delegate may ask the parties for recommendations or briefs or may hold conferences of the parties on these questions.

(d) The decision of the Secretary's delegate under this section shall be the final decision of the Secretary and shall constitute "final agency action" within the meaning of 5 U.S.C. 704 and the "Secretary's action" within the meaning of section 138 of the Act. The Secretary's delegate's decision shall be promptly served on all parties, and amici, if any.

§ 1386.112 Effective date of decision by Secretary's delegate.

(a) If, in the case of a hearing pursuant to § 1386.2, the Secretary's delegate concludes that a State plan does not comply with Federal requirements, and his decision provides that the allotment will be authorized but limited to categories under or parts of the State plan not affected by such noncompliance, his decision shall specify the effective date for the authorization of the allotment.

(b) If, in the case of a hearing pursuant to § 1386.16, the Secretary's delegate concludes that the State is not complying with requirements of the State plan, his decision that further payments will not be made to the State, or payments will be limited to categories under or parts of the State plan not affected, shall specify the effective date for the withholding of Federal funds.

(c) The effective date shall not be earlier than the date of the decision of the Secretary's delegate and shall not be later than the first day of the next calendar quarter.

(d) The provisions of this section may not be waived pursuant to § 1386.84.

PART 1387—DISCRETIONARY GRANT PROGRAMS

Subpart A—University Affiliated Facilities

DEMONSTRATION AND TRAINING GRANTS

Sec.
1387.1 Purpose of grant funds.
1387.2 Application content.
1387.3 Eligible applicants.
1387.4 Priority.

CONSTRUCTION PROGRAM

1387.10 Purpose.
1387.11 Application form.
1387.12 Application assurances.
1387.13 Approval of applications.
1387.14 Priority.

Subpart B—Special Project Grants

1387.20 Eligible projects.
1387.21 Nonduplication of Federal funds.
1387.22 Eligible applicants.
1387.23 Application content and procedures.

AUTHORITY: Pub. L. 91–517; Pub. L. 94–103.

Subpart A—University Affiliated Facilities

DEMONSTRATION AND TRAINING GRANTS

§ 1387.1 Purpose of grant funds.

Demonstration and training grants authorized under the Act may be made for the purpose of:

(a) Assisting university affiliated facilities in meeting the cost of administering and operating demonstration facilities for the provision of exemplary services for persons with developmental disabilities, or for interdisciplinary training programs for personnel needed to render specialized services for persons with developmental disabilities;

(b) Supplementing one or more university affiliated facilities funded under these regulations to conduct a feasibility study of the ways in which a satellite center can be established and operated in areas not presently served by a university affiliated facility. These satellite centers shall provide services to persons with developmental disabilities in coordination with existing facilities funded under these regulations or from any other Federally supported program. Supplemental grants to university affiliated facilities for a feasibility study may not exceed $25,000; and

(c) Paying part of the costs of establishing and assisting satellite centers in meeting part of their administration and operation costs.

§ 1387.2 Application content.

Applications for demonstration and training grants may be submitted at the time and in the manner and detail prescribed by the Secretary in guidelines, and shall include the following:

(a) In the case of grants to university affiliated facilities for administration and operation and demonstration facilities and interdisciplinary training programs, evidence of how such university affiliated facility shall provide (1) interdisciplinary training programs for personnel needed to render specialized services to persons with developmental disabilities, and (2) services for persons with developmental disabilities by the operation of demonstration facilities;

(b) In the case of applications for an increase in the amount of a demonstration and training grant to meet the cost of conducting a feasibility study, assurances that such study shall be carried out in consultation with the State planning council for the State in which the facility is located and where the satellite center would be established; and according to guidelines to be issued by the Secretary;

(c) In the case of an application for a grant to establish or to administer and operate a satellite center(s), a copy of the feasibility study which documents the need for such satellite, conducted in accordance with section 121(a)(2) of the Act;

(d) For all applications, an assurance that the services and training programs to be supported are licensed, if necessary, according to the applicable State law(s) and also meet appropriate accreditation standards;

(e) For all applications, reasonable assurance that the grant will not result in decreased State, local, or other non-Federal funds for services for persons with developmental disabilities and for the training of personnel to provide such services; and

(f) For all applications, a statement describing the general methodology by which the project will be evaluated to determine whether objectives have been achieved.

§ 1387.3 Eligible applicants.

The applicant must be a public or nonprofit university affiliated facility or a satellite which has been found eligible to operate such a center.

§ 1387.4 Priority.

In approving applications, the Secretary shall give priority consideration to those programs which demonstrate an ability and commitment to provide within a community, rather than in an institution, services for persons with developmental disabilities.

CONSTRUCTION PROGRAM

§ 1387.10 Purpose.

The Secretary may make grants to university affiliated facilities to assist (a) in meeting the costs of the renovation or modernization of buildings which are being used in connection with an activity assisted by a demonstration and training grant; and (b) for the construction, renovation, or modernization of buildings to be used as satellite centers.

§ 1387.11 Application form.

An application shall be submitted in such form and manner and contain such information as the Secretary may require in addition to assurances required in § 1387.12.

§ 1387.12 Application assurances.

An application for a construction grant under this subpart may be approved by the Secretary only if it is supported by such reasonable assurances as may be required by law or executive order:

(a) The application for assistance is consistent with the appropriate State developmental disabilities plan;

(b) The application has been reviewed and commented upon by the appropriate State council;

(c) The facilities upon completion of construction will meet standards set forth in § 1386.17;

(d) The plans and specifications for the project to be assisted by the grant applied for are in accordance with § 1386.17(b);

(e) Title to the site for such project is or will be vested in the applicant or, in the case of a satellite center, in a public or other nonprofit entity which is to operate the center;

(f) Adequate financial support will be available in conformance with requirements of § 1386.1(b)(5)(viii) of these regulations;

(g) All laborers and mechanics will be paid in accordance with requirements set forth in § 1386.1(b)(5)(ix);

(h) No amendment to an approved application resulting in a substantial change in scope of work, function, or safety of the facility shall be put into effect without prior approval of the Secretary.

§ 1387.13 Approval of applications.

Applications under this subpart shall be reviewed by the Secretary who shall approve or disapprove the proposed project in whole or in part on the basis of established criteria.

§ 1387.14 Priority.

In approving applications under this subpart, the Secretary shall give priority consideration to university affiliated facilities funded under this Subpart for costs of renovating or modernizing existing buildings to enable them to comply with the Architectural Barriers Act of 1968.

Subpart B—Special Project Grants

§ 1387.20 Eligible projects.

Special project grants may be made to assist in meeting the costs of conducting an activity or program, hereinafter referred to as "project," that is intended and designed to benefit persons with developmental disabilities. No project (other than projects of national significance) shall be eligible unless the State or States in which it will be conducted has a State plan approved under Part 1386, Subpart A of this chapter, and unless it addresses one or more of the following:

(a) Demonstrations (and research and evaluation in connection therewith) for establishing programs which hold promise of expanding or otherwise improving services to persons with developmental disabilities (especially those who are disadvantaged or multihandicapped), including programs for parent counseling and training, early screening and intervention, infant and preschool children, seizure control systems, legal advocacy, and community-based counseling, care, housing, and other services or systems necessary to maintain a person with developmental disabilities in the community;

(b) Public awareness and public education programs to assist in the elimination of social, attitudinal, and environmental barriers confronted by persons with developmental disabilities;

(c) Coordinating and using all availability community resources in meeting the needs of persons with developmental disabilities (especially those from disadvantaged backgrounds);

(d) Demonstrations of the provision of services to persons with developmental disabilities who are also disadvantaged because of their economic status;

(e) Technical assistance relating to services and facilities for persons with developmental disabilities, including assistance in State and local planning or administration respecting such services and facilities;

(f) Training of specialized personnel needed for the provision of services for persons with developmental disabilities or for research directly related to such training;

(g) Developing or demonstrating new or improved techniques for the provision of services to persons with developmental disabilities (including model integrated service projects);

(h) Gathering and disseminating information relating to developmental disabilities; and

(i) Improving the quality of services provided in and the administration of programs for such persons.

The Secretary may establish criteria for projects designed to achieve the purposes of the Act to the fullest extent possible within the limitation of available Federal resources.

§ 1387.21 Nonduplication of Federal funds.

In determining the amount of any grant for the costs of any project under this subpart, there shall be excluded, except as otherwise provided by statute enacted subsequent to December 18, 1975, from such costs an amount equal to the sum of (a) the amount of any other Federal grant which the applicant has obtained, or is assured of obtaining, with respect to such project under any provision of law enacted prior to October 4, 1975, and (b) the amount of any non-Federal funds required to be expended as a condition of such other Federal grant.

§ 1387.22 Eligible applicants.

Applications may be made by public and other nonprofit agencies, organizations, and institutions of higher education including community and junior colleges.

§ 1387.23 Application content and procedures.

(a) Applications for grants under this subpart shall be submitted in the form and detail, and in accordance with procedures and deadline dates, as prescribed by the Secretary in guidelines.

(b) The applicant shall provide, concurrently, a copy of an application for a grant under this Subpart to the appropriate State planning council for review and comment at the time the application is submitted to the Secretary. Comment with regard to a particular application must be submitted to the Secretary by the State planning council within 30 days from the date of submission by the applicant in order to assure consideration of such comments.

Effective date: These regulations shall be effective April 27, 1977.

NOTE.—It is hereby certified that this has been screened pursuant to Executive Order No. 11821, and does not require an Inflation Impact Evaluation.

(Catalog of Federal Domestic Assistance Program, Nos. 13.630 Developmental Disabilities—Basic Support; 13.631 Developmental Disabilities—Special Projects; 13.632 Developmental Disabilities—Demonstration and Training (University Affiliated Facilities).)

Dated: January 13, 1977.

JULIA V. TAFT,
Acting Assistant Secretary for Human Development.

Approved: January 18, 1977.
Marjorie Lynch,
Acting Secretary.

APPENDIX—Preamble

Notice is hereby given that the regulations set forth in tentative form below are proposed by the Assistant Secretary for Human Development with the approval of the Secretary of Health, Education, and Welfare.

The purpose of the proposed regulations is to implement provisions of the Developmental Disabilities Services and Facilities Construction Act of 1970 (Pub. L. 91-517), as amended by the Developmentally Disabled Assistance and Bill of Rights Act of 1975 (Pub. L. 94-103), hereafter referred to as "the Act." The program is administered by the Developmental Disabilities Office, Office of Human Development.

The new Act is designed to assist States to develop a comprehensive plan which will bring together all available resources so that the developmentally disabled may be served in the most effective, efficient way. The new Act does not provide for separate funds to meet all the needs of the target population; rather it establishes the means for accessing the systems already in use for the general population and encourages special adaptations of these generic services. Funds are to be used to fill gaps in existing generic services and to expand the reach of existing services to new groups of individuals.

Other provisions include establishment of the State planning council as the means for accessing and coordinating generic services, for identifying gaps in services, and for planning ways of filling the gaps. State planning council requirements include supervision of the development of the State plan; approval, mointoring, and evaluation of the implementation of the plan; review, to the extent possible, of all plans in the State which relate to programs affecting persons with development disabilities; and submission of regular reports on its activities. The State planning council is

required to serve as an advocate for persons with developmental disabilities. The Act calls for the State plan to designate one or more State agencies to administer the State plan.

The Act adds a new program of special projects and a new formula grant program for the protection and advocacy of *individual* rights of the developmentally disabled. Other changes brought about by the new Act include a broadened definition of developmental disabilities; increased emphasis on deinstitutionalization of the developmentally disabled by alternative community placement, where possible, and improvement of institutional services; establishment of a State data base and ongoing evaluation activities; increase in the program focus on urban and rural areas of poverty; and establishment and protection of the rights of persons with developmental disabilities (section 113 of the Act), including implementation of individualized habilitation plans and advocacy of individual rights.

Regulations for the new programs and concepts are herewith included. These regulations have been divided into separate Parts to make clear to the general public which specific regulations apply to the different programs administered by the Developmental Disabilities Office, and include a general part to make it easier for the public to locate those regulatory provisions which apply to all or almost all of the different program areas.

The principal purpose of these regulations is to ensure the continued targeting of funds and resources to developmentally disabled individuals through a national, State, and local partnership. To this end, the goal of the program is to enable States to increase the provision of quality services to persons with developmental disabilities through the designs and implementation of a comprehensive and continuing State plan which makes optimal use of Federal, State, local, and private resources, and assures the rights and dignity of all those being served.

A second, but not secondary, purpose is to specify the rights of the developmentally disabled: That developmentally disabled persons have the right to appropriate treatment, services, and habilitation; that programs should be designed to maximize the developmental potential of the person; and that the Federal Government and the States have an obligation to assure that public funds are not provided in programs which do not deliver appropriate treatment, services, and habilitation or do not meet appropriate minimum standards as specified in the Act.

Certain sections of the Act are not included in these proposed regulations. These parts of the Act direct the Secretary to carry out certain activities which are general and administrative in character and do not directly or immediately affect grantees. Accordingly, regulations are not developed for the amendments which revise the components and functions of the National Advisory Council on Services and Facilities for the Developmentally Disabled, hereafter referred to as the National Advisory Council; the conduct of special studies required by the Act, which will be guided by the general policies and procedures governing such activities, modified, as necessary, by the specific requirements of the law; and the administrative aspects of the special projects authority for projects of national significance. Additional information will be published in the FEDERAL REGISTER from time to time as necessary.

It should be noted that the regulations for formula grants to States and grants to university affiliated facilities are removed from Chapter IV of Title 45 of the Code of Federal Regulations and are relocated in Chapter XIII, which covers all programs administered by the Office of Human Development within the Department of Health, Education, and Welfare.

PART 1385—GENERAL

The purpose of this general part of the regulations is to bring together in one place those provisions which are applicable to the other parts of the regulations. The basis for this is the Department's belief that this will make it easier for members of the public to locate such provisions, and that it will avoid unnecessary duplication which would occur if each of the provisions of general applicability had to be repeated in the other parts of the proposed regulations.

This part sets forth the policies and procedures which apply to all of the subsequent parts, such as definition of terms, grant procedures, and other administrative concerns. Part 1385 essentially follows standard Federal policies and procedures, except where specific differences, such as assurances regarding an evaluation system, are required by the Act.

Section 1385.1 of these regulations is aimed at stating the Department's view of the purposes of the Act and is based on the Department's belief that such an expression clearly sets the ground rules and the context for the rest of the regulations.

Section 1385.2 contains definitions of terms applicable to all of the other parts of the regulations.

Section 1385.3 incorporates the provisions of 45 CFR Part 74 and is based upon the Department's belief that it is advantageous to all concerned to follow uniform administrative requirements and cost principles to avoid or minimize mistakes and misinterpretations of administrative provisions since States are generally familiar with Part 74 requirements.

Sections 1385.4, 1385.5 and 1385.6 incorporate into the regulations provisions contained in the statute itself. The Department believes that these provisions (judicial review, State control of operations, and employment of handicapped individuals) are mandatory and that it is helpful, from the standpoint of clarity, to restate these requirements in the regulations.

Sections 1385.7, 1385.8, 1385.9, and 1385.10 also incorporate provisions contained in the statute. The purpose of restating these requirements (recovery, good cause for other use of facility, cooperative or joint effort between States and agencies, and awards) is to avoid any possibility of oversight by the public about these requirements. The basis of these regulations is the belief that they will help alert public and private agencies and members of the public to the existence of these requirements.

Lastly, § 1385.11, concerning assurances regarding evaluation systems, is also for the purpose of incorporating in the regulations an express, statutory provision. The Department believes it is advisable to make clear that compliance with the requirement for the development of an evaluation system is a condition for the receipt of Federal financial assistance under the other parts of the regulations. The purpose of this regulation is to make that point absolutely clear. The Department believes that any condition of Federal financial participation or assistance should be expressly stated in regulations.

PART 1386—FORMULA GRANT PROGRAMS

The purpose of this part of the proposed regulations is to govern the conduct of the Formula Grant Programs and to take cognizance of and implement the changes brought about by the 1975 amendments. Part 1386 is divided into four basic Subparts as described below.

The general provisions of Subpart A, pertaining to State plans, consist of §§ 1386.1 through 1386.4. These regulations are designed to implement the requirements of section 133 of the Act pertaining to State plans, and to define further what that provision requires. The Department believes that these regulations give the greatest assurance that States will, in fact, submit approvable State plans prior to the beginning of the fiscal year, and that the Department will have adequate time to review such submissions properly.

In addition, the Department believes it necessary to make it clear to all States that submission of a State plan at the beginning of a fiscal year is a requirement for Federal financial participation, and that failure actually to submit such a plan will result in the loss of Federal funds for that period of time during which there is no approved State plan in effect.

It is the Department's belief that it is the intention of Congress that the State plan be a viable management tool that reflects the State planning process and the rationale through which expressed needs, priorities, and resource allocations are determined so as to provide the basis for the expenditure of funds under the program. Performance standards, to be issued by the Secretary, will provide criteria for evaluation and approval of the State plan. They may also be used as a tool by the State planning council to develop the State plan.

The Department further believes that Congress has intended that money be paid to States only pursuant to an approved State plan. In the past, some States have failed to submit their plans in a timely manner and this has resulted in a decreased ability on the part of the Department to assure that funds

are, in fact, properly paid and properly utilized. Thus, § 1386.2 requires States to submit proposed plans 60 days prior to the fiscal year to which the plan applies. This time period was selected because of the Department's experience that such a time period would be reasonable to allow for review of proposed State plans.

Furthermore, to ensure that States comply with these requirements, this regulation is designed to make it clear that no Federal financial participation will be provided to a State for any period of time during a fiscal year in which an approved State plan is not in effect. The purpose of this regulation is to encourage States to do advance planning, and it is based on the Department's belief that such an approach is necessary to ensure compliance with the statutory requirement for an annual State plan. This position represents a departure from past practice and is believed necessary because several States have, in the past, failed to submit approvable plans until a significant portion of the fiscal year had elapsed.

This subpart also effectuates the amendments to the basic formula grant program which had been in operation for five years and details the requirements which a State must meet in its State plan to participate in the program. These proposed regulations are based on the Department's belief that they best implement key Congressional policies associated with the formula grant programs.

For example, based upon the legislative history, the Department believes that Congress wished to highlight the crucial advocacy role and strengthen the supervisory, planning, and monitoring functions of the State planning councils to meet increased responsibilities effectuated by the 1975 amendments, leaving the actual day-to-day administration of the programs to the designated State agencies. The Department also believes that the regulations in Subpart A accomplish that goal.

The next section under Subpart A is concerned with allotments, Federal share, and payments of Federal money to the States. These provisions, which encompass §§ 1386.10 through 1386.17, essentially are designed to implement various statutory provisions and do not constitute any major innovations brought about by the statute or by interpretations of the statutory provisions. However, particular attention is directed to proposed § 1386.10(b) which defines the need factor referred to in section 132(a) of the Act. The Act itself refers to allotments being made to States on the basis of the population, the extent of need for services and facilities for persons with developmental disabilities, and the financial needs of the respective States. The statute, however, does not define what is meant by "need" and the purpose of this regulation is to do so. It is based upon the advice of the National Advisory Council and represents what the Department believes to be the best approach available at this time based upon information and comments currently before the Agency.

For the first year of the program, the measure of need adopted was the incidence of developmental disability as reflected by the proportion of the population in the State under age 18. This age was substituted for the age 21 factor used in the former mental retardation program formula, because it corresponds to the age criterion in the definition of developmental disabilities in the Act. The data for measuring need utilized after the first year came from the Social Security Disability Applicant Statistics published by the Social Security Administration and updated periodically. The actual data selected are the number of beneficiaries in the State under the Adult Disabled Child Program as an index of relative need of the State for services and facilities for the developmentally disabled. It is the Department's belief that these data are the best that are available. Suggesions for alternative need data, or for definition of need to determine the extent of need for services and facilities for persons with developmental disabilities for State allocation purposes, are solicited during the comment period.

Further attention is directed to proposed § 1386.14 which relates to nonduplication of funds and which implements section 136 of the Act. This provision differs from preceding provisions due to a change in the law which no longer permits the use of Federal funds for matching even though other Federal legislation allows it:

> In determining the amount of any State's Federal share of the expenditures incurred by it under a State plan approved under section 133, there shall be disregarded (1) any portion under any provision of law other than section 132, and (2) the amount of any non-Federal funds required to be expended as a condition of receipt of such Federal funds.

This will bring about a change in past Department practice, and funds which had been used in the past for matching will, in some cases, no longer be able to be used in such a manner. An example would be funds provided under the Appalachian Regional Development Act. All questions arising under this regulation will, absent an express reference to this Act in subsequent Federal legislation, be referred to the Department's Office of General Counsel for opinion and/or interpretation.

It should be noted that § 1386.17(a), "Standards for services for persons with developmental disabilities," will be published in the FEDERAL REGISTER upon completion of a special study mandated by the Act.

The next subdivision of Subpart A relates to "State Plan Requirements—Methods of Administration," and includes §§ 1386.20 through 1386.31. These regulations are based on the Department's belief that carrying out the purposes of the Act in this area is best accomplished by incorporating in the regulations the requirements and provisions of the Act, clarifying exactly what the Act requires, and, in the case of § 1386.24, specifying the reports which the Secretary deems necessary in this area for purposes of assuring proper operation of the State plan.

The regulations pertaining to personnel administration, special assistance to poverty areas, use of volunteers, protection of employees' interests, etc., are based strictly on the statute and upon the Department's belief that these essentially straightforward provisions allow the greatest flexibility in carrying out technical matters.

The purpose of § 1386.23 is to restate the statutory requirement that the State plan provide that special financial and technical assistance be given to areas of urban or rural poverty in providing services and facilities for persons with developmental disabilities who are residents of such areas. The Joint Conference Report No. 94–473 (page 28) notes that Congressional intent is that these regulations define the poverty areas in the manner required by the National Health Planning and Resources Development Act (Pub. L. 93–641.) Regulations implementing this latter Act have not yet been issued by the Department, and under that Act, until the areas can be determined for the entire country, it cannot be determined on a State-by-State basis. Accordingly, in the interim, until regulations are issued for Pub. L. 93–641, the Department in only requiring that State plans provide for this special financial and technical assistance to areas of urban or rural poverty.

This provides States the maximum flexibility possible until such time as Pub. L. 93–641 regulations are issued. When they are issued, such changes as may be necessary to these regulations will be announced through standard FEDERAL REGISTER procedures. It was deemed advisable not to attempt to spell out in § 1386.24 all of the reports that the Department would or might require, but rather to leave such additional detail to subsequent instructions from the Department.

Sections 1386.28 through 1386.31 incorporate substantive aspects required in the statute for a State plan: Membership of the State planning council, identification of State council staff, review of all other State plans, and systematic review of the State plan. The purpose of these regulations is to emphasize that State planning councils, the core planning authority in the State essential to the maximum effective utilization of available existing and potential resources, can best function when adequately staffed and in an environment of coordination and mutual cooperation with all State agencies concerned with planning or implementation processes related to the program. The basis for these regulations is the Department's belief that the Act is designed so that the State planning council can have the capacity for getting cross-agency cooperation in carrying out its duties.

The Department further believes that this requires that the State planning council and State agency(ies) complement each other's functions through effective working relationships. These regulations restate the statutory requirements to make it clear that planning council members and staff are required to review their own and other State plans, and that such analysis, as

a component of a systematic planning process, contributes information on needs, actual and potential resources, and to the development of short-term objectives to meet long-term goals. It also contributes to the development of council insight into the best methods to effect cross-agency coordination to develop a reliable system of services for the developmentally disabled persons in the State.

The next major area of concern relates to the provision of services and construction of facilities and consists of the proposed regulations found in §§ 1386.40 through 1386.49. The purpose of this subdivision of Subpart A is to insure that, through the description of clearly defined long-range goals and measurable short-term objectives, with primary consideration given to implementing the goals of the Act (deinstitutionalization of the developmentally disabled, early identification of those needing assistance, and provision of protective services, advocacy, and follow-along services) allocations of funds can be based on State priorities. At the heart of these provisions are the regulations at §§ 1386.42 through 1386.45.

The Department believes that detailed requirements are advisable in § 1386.46, dealing with the quality, extent, and scope of services, based upon the assumption that knowledge of such requirements will compel careful consideration of the types of services and assistance being provided to the developmentally disabled.

Similar reasoning relates to § 1386.47, dealing with habilitation plans which are required by the statute. In order to eliminate or reduce the possibility of confusion as to what is meant by a habilitation plan, it was deemed advisable to incorporate the statutory details in the regulations in order to give the greatest guidance with respect to this requirement.

Section 1386.48, dealing with the program for construction of facilities, is designed to set forth the purposes for which such construction programs are proper, and to require assessment of relative need and assignment of priority in order of relative need. It is the Department's belief that such a requirement will help to ensure planning for the best use of limited funds.

The last regulation in this group is § 1386.49 which, consistent with the statute, requires States to afford opportunities for appeal and hearing to applicants for construction projects who are dissatisfied with any action of the State with respect to an application for such a project.

The last subdivision of this subpart, § 1386.50, deals with the design for the implementation of the State plan. This provision is based on section 133(b)(25) of the Act. The purpose of the regulation is to set forth the Department's view as to what must be included in a design for implementation of the State plan in order for it to meet statutory requirements through the selection of the best methodology to achieve the goals and objectives developed by the State planning council. The Department believes that this regulation accomplishes the purpose of informing the States of the essential elements of a valid design, especially the review of alternative strategies, without denying them the flexibility to tailor such a design for implementing the State plan to their specific needs.

Subpart B relates to State planning councils. Proposed §§ 1386.60 through 1386.63 are designed to implement section 137 of the Act which sets forth the duties and responsibilities of State planning councils. These provisions, especially those found in §§ 1386.60 and 1386.63, are based on the Department's belief that the 1975 amendments (Pub. L. 94–103) broadened the responsibility of State planning councils in advocacy, planning, and evaluation. These regulatory provisions provide the statutory specificity regarding the role of the State planning councils, membership, and duties of those councils.

The basis for specifying in § 1386.61(b) the Federal/State program membership on State planning councils is section 133(b)(A) of the Act which requires that a State plan describe the quality, extent, and scope of services provided, or to be provided, under other State plans, but in any case to include the nine programs listed. It is the Department's belief that this requirement in the statute necessitates State council representation of at least these nine programs. The purpose of this regulation is to enable States to meet the statutory requirement to develop an approvable State plan. The Department further believes that this provision, which supports Congressional intent, allows for maximum flexibility in council membership since in many States one member could represent more than one of these program areas and since there is no restriction on the number of council members that may be appointed.

One of the purposes of the Department in promulgating § 1386.63 is to ensure that State planning councils supervise the development of State plans through the provision of guidance, the establishment of goals and objectives, identification of gaps, and the setting of priorities for the allocation of funds. The day-to-day implementation of the State plan is the responsibility of the State agency(ies) designated to administer it. The activities of these designated agencies will be monitored and evaluated through the methods established by the State councils to ensure that goals and objectives established in the State plan are being achieved.

Subpart C concerns the protection and advocacy of individual rights and consists of a single proposed regulation, § 1386.70. The purpose of this regulation is to implement section 113 of the Act by incorporating into the regulatory structure the statutory requirements. The regulation includes provisions for assurances that the States will have a system in effect by October 1, 1977, to protect and advocate the rights of individuals with developmental disabilities as specified in the statute, and that such a system will be independent of any State agency which provides treatment, services, or habilitation to such persons. The regulation does not attempt to establish a single method of implementing the statutory provisions. It is the Department's belief that different approaches may be utilized in order to achieve the substantive goal of establishing an independent agency to pursue the rights of the developmentally disabled. The Department believes it desirable to give States flexibility in the development of such a system. However, guidelines which will assist in the development of an advocacy plan will be issued by the Department to insure that the statutory provisions of section 113 are implemented. This regulation imposes no restrictions on the choice of the agency to plan the system. Rigid restrictions, however, are placed on the agency to be selected or established to implement the system by the Act.

The basis for this is to avoid all possibility of conflict of interest because this system has been established in section 113 of the Act for the purpose of addressing problems of individuals. It is the Department's belief that the State council's advocacy role is to be carried out on behalf of the developmentally disabled population as a whole within a State, and that the basic principle underlying the establishment of the protection and advocacy system in each State is that individuals who are developmentally disabled need to be able to reach outside the system of services in order to assure that their rights are not violated or diminished.

The Act makes these findings respecting the rights of developmentally disabled persons:

> (1) Persons with developmental disabilities have a right to appropriate treatment, services, and habilitation for such disabilities.
>
> (2) The treatment, services, and habilitation for a person with developmental disabilities should be designed to maximize the developmental potential of the person and should be provided in the setting that is least restrictive of the person's personal liberty.
>
> (3) The Federal Government and the States both have an obligation to assure that public funds are not provided to any institutional or other residential program for persons with developmental disabilities that—
>
> (A) Does not provide treatment, services, and habilitation which is appropriate to the needs of such persons; or
>
> (B) Does not meet the following minimum standards:
>
> (i) Provision of a nourishing, well-balanced daily diet to the persons with developmental disabilities being served by the program.
>
> (ii) Provision to such persons of appropriate and sufficient medical and dental services.
>
> (iii) Prohibition of the use of physical restraint on such persons unless absolutely necessary and prohibition of the use of such restraint as a punishment or as a substitute for a habilitation program.
>
> (iv) Prohibition on the excessive use of chemical restraints on such persons and the use of such restraints as punishment or as a substitute for a habilitation program or in quantities that interfere with services, treatment, or habilitation for such persons.

(v) Permission for close relatives of such persons to visit them at reasonable hours without prior notice.

(vi) Compliance with adequate fire and safety standards as may be promulgated by the Secretary.

(4) All programs for persons with developmental disabilities should meet standards which are designed to assure the most favorable possible outcome for those served, and—

(A) In the case of residential programs serving persons in need of comprehensive health-related, habilitative, or rehabilitative services, which are at least equivalent to those standards applicable to intermediate care facilities for the mentally retarded promulgated in regulations of the Secretary on January 17, 1974 (39 FR pt. II), as appropriate when taking into account the size of the institutions and the service delivery arrangements of the facilities of the programs;

(B) In the case of other residential programs for persons with developmental disabilities, which assure that care is appropriate to the needs of the persons being served by such programs, assure that the persons admitted to facilities of such programs are persons whose needs can be met through services provided by such facilities, and assure that the facilities under such programs provide for the humane care of the residents of the facilities are sanitary, and protect their rights; and

(C) In the case of nonresidential programs, which assure the care provided by such programs is appropriate to the persons served by the programs.

Subpart D establishes the practice and procedure for hearings pertaining to State conformity with State plans for the developmentally disabled and with Federal requirements. These regulations are found in §§ 1386.80 through 1386.112 The purpose of these regulations is to create in advance of any hearing, regular procedures for the initiation of hearings, for the determination of the requisite notice and parties, and for the rules which will govern the conduct of the hearing itself and post-hearing actions of the parties and of the Presiding Officer and/or Director of the Developmental Disabilities Office.

The Department believes that these regulations, which are followed by other agencies within the Department, such as the Social and Rehabilitation Service and the Administration on Aging (the latter on an *ad hoc* basis), are fair to all the parties concerned and protect the interests of all potential parties with the least amount of delay and expense consistent with the protection of the rights of all concerned.

PART 1387—DISCRETIONARY GRANTS PROGRAM

Subpart A of proposed Part 1387 addresses university affiliated facilities and is divided into two subdivisions, "Demonstration and training grants" and "Construction programs." Sections 1387.1 through 1387.4 deal with demonstration and training grants. The essential purpose of these regulations is to incorporate the requirements of Part B, Subpart 1 of the Act, as amended. The Department believes that little material additional to that contained in the statute is required or desirable for the purpose of implementing this part of the Act. Section 1387.2 does detail what an application for a demonstration and a training grant must contain. The Department believes that this carries out the directive of section 122(a) of the Act which requires the Secretary to establish the form and manner of making an application and of the required contents of an application. Section 1387.4 is proposed for the purpose of implementing what the Department believes to be the Congressional purpose of section 122(b): Of giving priority to applications for programs which will provide services within a community rather than in an institutional setting. The Department believes that this Congressional purpose is best served by repetition of that priority in the regulations, even though the statutory provision just noted is clear.

Subpart 2 of Part B of the Act deals with construction programs and is implemented in §§ 1387.10 through 1387.14 of the proposed regulations. Section 1387.11 implements the statutory mandate found in section 126 of the Act, as amended, which directs the Secretary to establish the form and manner of submitting an application and the information which such an application must contain.

The purpose of the remaining regulations of this subdivision is to implement the statutory directives found in Subpart 2 of the Act. The Department bases these regulations on its belief that little change is necessary because the statute itself is clear with respect to assurances that are required and the purposes of the program. Section 1387.11, dealing with the form of the application, provides that it will be in such form and manner, and contain such information, as the Secretary may require. This is based upon the Department's belief that flexibility is required in the construction program. The applications will be expected to contain, as a minimum, however, the assurances regarding consistency with the State plan, State planning council review, construction standards, and other statutory requirements detailed in § 1387.12.

Subpart B of Part 1387 pertains to special project grants. The purpose of this Subpart, which consists of the regulations at §§ 1387.20 through 1387.23, is to incorporate into the regulations the statutory purposes for which such grants may be made as set forth in section 145 (a) of the Act. These provisions are based upon the Departments' belief that the statute clearly sets forth what are acceptable purposes of special project grants.

Eligible applicants are described in § 1387.22 and are limited to public and other nonprofit agencies, organizations, and institutions. This definition is consistent with, and implements section 145(a) of the Act.

Section 1387.23 deals with the application content and the procedures for submitting applications. The purpose of this regulation is to make clear that the Secretary, through guidelines, has the authority to elaborate on the content and procedures. The reason for leaving this to guidelines is that, since this Subpart relates to specific applications for special projects, as opposed to Statewide plans, greater diversity in permissible or required content is desirable; therefore criteria will be carefully developed. The Department believes that this can be accomplished more efficiently through guidelines than through the regulatory process, particularly since guidelines afford greater flexibility to both the Department and the applicant.

Paragraph (b), of § 1387.23 of this proposed regulation expressly requires a copy of any application for special project grant (other than projects of national significance) to be submitted to the State planning council for review and comment in order to ensure that the proposed project is consistent with the State plan goals and objectives and the comprehensive planning and monitoring responsibilities of the State planning council.

In summary, many of these proposed rulemaking provisions are restated from the Act. The Department has sought to provide States with maximum flexibility within the terms of the Act and to avoid imposing additional burdens beyond those required by the law. The detailed provisions concerning the content of State plans included in these proposed regulations are required by the statute itself.

Prior to the adoption of the proposed regulations, consideration will be given to any comments, suggestions, or objections thereto which are submitted in writing to the Director, Developmental Disabilities Office, Department of Health, Education, and Welfare, 330 C Street, SW., Washington, D.C. 20201, on or before October 12, 1976. Comments received will be available for public inspection in Room 3070, Mary E. Switzer Building, of the Department's offices at 330 C Street, SW., Washington, D.C. 20201, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (202/245–0335). 0335).

(Catalog of Federal Domestic Assistance Program, Nos. 13.630 Developmental Disabilities—Basic Support; 13.631 Developmental Disabilities—Special Projects; 13.632 Developmental Disabilities—Demonstration and Training (University Affiliated Facilities)

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THURSDAY, JANUARY 27, 1977

PART III

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

RULES FOR VISITOR USE—OTHER THAN DEVELOPED RECREATION SITES

Proposed Rulemaking

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[43 CFR Parts 2920, 6260]

RULES FOR VISITOR USE—OTHER THAN DEVELOPED RECREATION SITES

Proposed Rulemaking

For many years, recreational uses of the public lands, not specifically provided for by existing law, were authorized by special land-use permits issued in accordance with regulations in 43 CFR Part 2920. Pub. L. 93–303, amending the Land and Water Conservation Fund Act of 1965, and the Federal Land Policy and Management Act of 1976 (Pub. L. 94–579), authorized recreational uses of the public lands under permit. Because these recreational uses are now authorized by law, special land-use permits are no longer appropriate for permitting such use, and a new permit system is necessary. Special recreation permits for recreational use at other than developed recreation sites shall generally not be required of individuals or families not making competitive and/or commercial use of the public land.

The purpose of the proposed rulemaking is to continue to allow recreational use of the national resource lands and to ensure a safe and enjoyable recreational experience for users while minimizing the environmental impact of their recreational use. This will be accomplished by a fair and equitable system of special recreation permits for recreational use of areas requiring management of such use needed to ensure a safe recreational experience for the user and to protect natural values.

This rulemaking would provide for issuance of permits and collection of fees for permits under authority contained in Pub. L. 93–303. These regulations would serve to implement the enforcement authority provided in the Federal Land Policy and Management Act of 1976 and the Land and Water Conservation Fund Act of 1965, as amended by Pub. L. 92–347, and 93–303, and on those areas covered by joint agreements between the Bureau of Land Management and State governments as provided for in Title II of the Sikes Act, as amended by Pub. L. 93–452. With exceptions provided by law, the enforcement provisions of the Federal Land Policy and Management Act of 1976 and the Land and Water Conservation Fund Act of 1965, as amended, will apply to all special recreation permits issued for which a fee is charged.

Another purpose is to provide for certain controls necessary in the management of special areas such as trails in the National Trails System and river areas in the National Wild and Scenic Rivers System.

Four categories of permit are recognized: (a) commercial, (b) competitive, (c) motorized recreation vehicle, and (d) special areas. Fees generally will be charged for permits for these four categories of use. The basis for fees shall include, but not be limited to, resource impacts of permitted use, administrative costs, levels of supervision necessary, and comparability with fees charged by other Federal and non-Federal agencies. Fees collected will be used for recreational purposes as provided in the Land and Water Conservation Fund Act of 1965, as amended.

Insurance and bonding stipulations are included for the protection of the public, the users, the operators, and the Government.

Permits issued prior to the effective date of these regulations shall be honored, but new permits will be allowed only under the provisions of these regulations.

The proposed rules, when put into effect, will aid in the management of recreational uses and protection of resource values, and will enhance the public safety and welfare.

It is hereby determined that the publication of this proposed rulemaking is not a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332 (2)(C)) is required.

In accordance with the Department's policy on public participation in rulemaking (36 FR 8336) interested parties may submit written comments, suggestions, or objections with respect to the proposed rules to the Director (210), Bureau of Land Management, Washington, D.C. 20240 until March 14, 1977.

Copies of comments, suggestions, or objections made pursuant to this notice will be available for public inspection in the Division of Legislation and Regulatory Management, Bureau of Land Management, Room 5555, Interior Building, Washington, D.C. 20240 during regular business hours (7:45 a.m.–4:15 p.m.)

It is therefore proposed to amend 43 CFR Chapter II in the manner set forth below.

PART 2920—SPECIAL LAND USE PERMITS

§ 2920.0–50 [Amended]

§§ 2920.0–2—2920.7 (Subpart 2924) [Deleted]

1. Part 2920 is amended by deleting § 2920.0–5(e), and Subpart 2924.

PART 6260—VISITOR MANAGEMENT

2. Part 6260 is amended by adding Subpart 6263 to the table of sections as follows:

. . . . .

Subpart 6263—Rules for Visitor Use—Other Than Developed Recreation Sites

Sec.

6263.0–1 Purpose.
6263.0–2 Objective.
6263.0–3 Authority.
6263.0–5 Definitions.
6263.0–7 Enforcement.
6263.1 Permits required.
6263.2 Applications.
6263.3 Issuance of permits.
6263.4 Fees.
6263.5 Terms.

3. Part 6260 is amended by adding Subpart 6263 to read as follows:

Subpart 6263—Rules for Visitor Use—Other Than Developed Recreation Sites

§ 6263.0–1 Purpose.

This subpart sets forth the procedures for authorizing certain recreational uses of lands and waters administered by the Bureau.

§ 6263.0–2 Objective.

To establish a permit and fee system for certain recreation uses of lands and waters administered by Bureau.

§ 6263.0–3 Authority.

The rules in this subpart are issued pursuant to: 43 U.S.C. 1201; 43 U.S.C. 1701 et seq.; 43 U.S.C. 1374; 43 U.S.C. 1181a; 16 U.S.C. 460(1–6a); 16 U.S.C. 670g–n; 16 U.S.C. 1271–1287; 16 U.S.C. 1241–1249.

§ 6263.0–5 Definitions.

For the purposes of this subpart:

(a) "Commercial use" is recreational use of the public lands for business or financial gain. When any permittee, employee or agent of a permittee, operator, or participant makes or attempts to make a profit, salary, increase his capital worth, advance or promote his business or financial standing, or supports, in any part, other programs or activities from amounts received from or for services rendered to customers or participants in the permitted activity, as a result of having the special recreation permit, the use will be considered commercial. The collection by a permittee or his agent of any fee, charge, or other compensation which is not strictly a sharing of, or is in excess of, actual expenses incurred for the purposes of the activity or use shall make the activity or use commercial. Use by educational and therapeutic institutions is considered commercial when the above criteria are met. Profit making organizations are automatically classified as commercial, even if that part of their activity covered by the permit is not profit making. Nonprofit status of any group or organization under the Internal Revenue or Postal Laws or regulations does not in itself determine whether an event or activity arranged by such a group or organization is noncommercial. Any person, group, or organization seeking to qualify as noncommercial shall have the burden of establishing to the satisfaction of the authorized officer that no financial or business gain will be derived from the proposed use.

(b) "Actual costs or expenses" are costs or expenses necessarily incurred for the permitted activity or use. These terms include, but are not limited to, the actual costs of such items as expendable equipment and supplies. Actual costs or expenses will not include any salaries, profit, increase of capital worth, allowances, or subsidies of any other activities of the permittee or sponsor, the purchase or amortization of nonexpendable supplies or equipment, any allowance for undersubscribed events, or any monetary compensation for sponsors or participants.

(c) "Competitive use" is any formally organized or structured use, event, or activity on public land in which there are the elements of competition between two or more contestants. Informal, spur-of-the-moment competition is not included.

(d) An "event" is a single, structured, organized, consolidated, or scheduled meeting or occurrence for the purpose of recreational use of the public lands. An event may be composed of several activities.

(e) "Educational use" is use by an institution which has been recognized as educational by Federal, State, or local government bodies, or regional accrediting bodies. Such use must have learning as the major objective, and there must be a teacher-pupil relationship present. National, regional, State, or local accreditation will normally qualify a school as noncommercial, but such accreditation in and of itself does not assure noncommercial status.

(f) An "operator" is a group, association, individual, corporation, or organization which provides recreational services.

(g) A "special area" is an area established as a component of either the National Trails System, the National Wild and Scenic Rivers System, or an area covered by joint agreement between the Bureau of Land Management and a State government as provided for in Title II of the Sikes Act.

(h) "Rider/event" is one vehicle or animal, and driver or rider, regardless of the number of passengers, participating in competitive use of public lands in one event.

(i) A "User day" is any calendar day, or portion thereof, for each individual accompanied or serviced by an operator or permittee on the public lands.

(j) A "motorized recreation vehicle" is any vehicle employing a motor or engine, either internal combustion or noninternal combustion, for propulsion, capable of, or designed for, travel on or immediately over land or water used in any noncommercial, noncompetitive recreational activity; excluding any vehicle used for official government purposes.

§ 6263.0–7 Enforcement.

Any person who violates or fails to comply with the regulations of this subpart is subject to arrest and punishment pursuant to the Federal Land Policy and Management Act of 1976, the Land and Water Conservation Fund Act, the Wild and Scenic Rivers Act, the National Trails Act, the Sikes Act, and other appropriate laws when applicable.

§ 6263.1 Permits required.

Special recreation permits are required for commercial, and competitive recreational uses of lands administered by the Bureau. When 25 or more motorized recreation vehicles are used in an event a special recreation permit will be required for the event. Special recreation permits are also required for use in special areas where the authorized officer determines the criteria of either the Land and Water Conservation Fund Act, the Sikes Act, the Wild and Scenic Rivers Act, or National Trails Act requires their issuance. With the exception of use in special areas, special recreation permits are not required for recreational use by individuals, or individual immediate families. Notice will be given by the authorized officer in the FEDERAL REGISTER and regional news media when special recreation permits are required for recreational use other than commercial, competitive, and motorized recreation vehicle use in a special area. Access points in special areas will also be posted notifying the public of required permits for recreational use, other than commercial, competitive, and motorized recreation vehicle use.

§ 6263.2 Applications.

(a) *Forms and Maps.* Applications for special recreation permits shall be made to the authorized officer on forms approved by the Director, Bureau of Land Management. Applications shall include three copies of a map of sufficient scale and detail to allow identification of the proposed use area on the ground. The authorized officer may waive the requirement for maps where appropriate.

(b) *Supplemental Information.* The authorized officer may require the applicant to submit supplemental information in sufficient detail to evaluate the impact of the proposed event upon the lands and environment, including measures the applicant would take to mitigate impacts on the lands and environment.

(c) *Filing.* (1) The application may be filed in any office of the Bureau having jurisdiction over the lands to be used. Application for commercial, competitive, and motorized recreation vehicle uses must be filed a minimum of 120 days in advance of intended use unless a shorter time is authorized by the authorized officer. This advance filing also may be required of other organized use. Application should be made at the earliest possible time to provide for adequate consideration of the application prior to the intended use period. (2) Within 60 days of the filing date the authorized officer will inform the applicant if the decision on issuing the permit will be delayed. (3) The authorized officer may establish a maximum time by which applications will be accepted prior to date of proposed use.

§ 6263.3 Issuance of permits.

The approval of an application and subsequent issuance of a special recreation permit is discretionary with the authorized officer.

§ 6263.4 Fees.

(a) *Filing fees.* Applicants for special recreation permits for commercial or competitive uses shall include with their application a $10.00 nonrefundable filing fee.

(b) *Use Fees.* (1) Commercial use—a minimum of $25.00 is required for use of not in excess of 100 user days. Payment for use in excess of 100 user days shall be in the amount of $25.00 each additional 100 user days or fraction thereof. (2) Competitive use—the fee is five percent of the gross receipts, $1.00 per participant per day or $10.00 whichever is greater. When use is both commercial and competitive, the competitive fee shall be charged. (3) Special area use—fees may be required for special area uses by other than commercial, competitive, and motorized recreation vehicle users where the authorized officer determines that such charges are consistent with the Land and Water Conservation Fund Act. A minimum fee of $1.00 will be charged for each permit for such use. (4) Motorized recreation vehicle use—a minimum fee of $1.00 will be charged for the permit for each event. (5) The authorized officer may charge larger fees than these minimums consistent with charges made for similar uses by other organizations and governmental agencies in the region of use. (6) Any change in established fees will be made in accordance with 43 U.S.C. 1734 (1976).

(c) *Payment of use fees.* (1) Payment of fees will be required at the time a permit is issued. (2) Where the amount of intended use cannot be precisely determined, the fee will be based on an estimation and payment will be required of that amount. The fee will be adjusted, based on actual use, after use is made. Refunds will be made or additional payment will be required to the extent the payment requirement for actual use varies from the initial amount paid by $10.00. (3) If an applicant is unable to pay the fee in advance, the authorized officer may allow the posting of a payment bond or other guarantee in an amount equal to the actual or estimated fee. The authorized officer will establish a payment date which is no later than 15 days following the use period.

(d) *Exceptions, exclusions, and exemptions.* (1) Nothing contained herein shall authorize Federal hunting, trapping, or fishing licenses, permits, or fees. (2) Fees of this part shall not be charged for commercial or other activities not related to recreation, including, but not limited to, organized tours or outings conducted for educational or scientific purposes related to the resources of the area visited by bona fide institutions established for these purposes. (3) Applicants for waiver of fees on this basis will be required to provide documentation of their official recognition as educational or scientific institutions by Federal, State, or local government bodies and will also be required to provide a statement as to the purposes of the visit proposed. (4) The use of areas for which a fee waiver is requested must relate directly to scientific or educational purposes. (5) No fee shall be charged for those special recreation permits required for: (i) Any hospital patient actively involved in medical treatment or therapy in the area visited; (ii) educational and therapeutic institutions that are not commercial; and (iii) individuals, and individual immediate families in units of the National Wild and Scenic Rivers and National Trails System.

§ 6263.5 Terms.

(a) *General.* (1) A special recreation permit will be revocable at the discretion

of the authorized officer at any time. (2) Permits may be issued for a day, season of use, or such other time period considered appropriate by the authorized officer for the use involved. (3) A special recreation permit will not be issued for an area larger than the authorized officer determines is necessary for the contemplated use. The land may be surveyed or unsurveyed. (4) The operator or permittee will allow the authorized officer, or other duly authorized representative of the Bureau, to have access to and the right to examine any directly pertinent books, documents, papers, and records of the operator or permittee involving transactions related to the permit. The operator or permittee also will allow the authorized officer, or other duly authorized representative of the Bureau, to have access to and the right to examine any directly pertinent books, documents, papers, and records of any employee or agent of the permittee or operator. These allowances and rights terminate 3 years after the expiration of the permit.

(b) *Stipulations.* A special recreation permit will contain such stipulations as the authorized officer considers necessary to protect the lands and resources involved and the public interest in general.

(c) *Bonds.* In addition to a payment bond, the authorized officer may require the posting of a cash or surety bond or other guarantee in such form and in such amount as the authorized officer determines to be sufficient to defray the costs of restoration and rehabilitation of the lands affected by the permitted use. Bonds and guarantees will be returned to the permittee upon satisfactory compliance with all permit stipulations, including restoration and rehabilitation requirements.

(d) *Insurance.* The authorized officer will require all commercial and competitive applicants, and may require other applicants, to obtain and submit a property damage, personal injury, and public liability insurance policy which he judges sufficient to protect the public and the United States. The policy shall name the United States Government as a co-insured and stipulate that the authorized officer of the Bureau of Land Management will be notified 30 days in advance of the termination or modification of the policy.

(e) *Liability.* The permittee shall indemnify the United States against any responsibility or liability for damage, injury, or loss to persons and property which may occur during the permitted use period or as a result of such use.

(f) *Violation of Law.* The conviction of a violation of any Federal or State law or regulation concerning the conservation or protection of natural resources, the environment, endangered species, or antiquities that is related to said special recreation permit may result in the cancellation of the permit and/or denial of any subsequent permit applications.

JACK O. HORTON,
Assistant Secretary of the Interior.

JANUARY 18, 1977.

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federal register

THURSDAY, JANUARY 27, 1977

PART IV



DEPARTMENT OF THE INTERIOR

Bureau of Land Management

MINING CLAIMS

Recordation, Filing of Assessment Work and Notice of Intent To Hold Mining Claims

Title 43—Public Lands: Interior

CHAPTER II—BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

[Circular No. 2419]

PART 3830—LOCATION OF MINING CLAIMS

Recordation of Mining Claims and Filing Evidence of Annual Assessment Work or Notice of Intention to Hold Mining Claims

On December 10, 1976, the Department of the Interior/Bureau of Land Management published in the FEDERAL REGISTER (41 FR 54084) a notice and text of a proposed rulemaking that would add a new subpart to Part 3830 of Title 43, Code of Federal Regulations. The purpose of the proposed rulemaking is to implement section 314 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701) (hereinafter called the Act) which requires that within specified periods of time unpatented mining claims be recorded and information concerning assessment work or a notice of intention to hold a claim be filed with the Bureau of Land Management. The proposed rulemaking also implements the general regulatory authority of the Department under the mining law of 1872 (30 U.S.C. 22) providing that the exploration, occupation and purchase of valuable mineral deposits shall be "under regulations prescribed by law." Another purpose of the proposed rulemaking is to coordinate the implementation of section 8 of the Act of September 28, 1976 (16 U.S.C. 1901), which requires the recordation of unpatented mining claims located within the boundaries of the National Park System before September 27, 1977, with the implementation of section 314. The proposed rulemaking applies to both existing and future mining claims located under the Mining Law of 1872 (30 U.S.C. 21–54), as amended.

Interested persons were given 30 days, until January 10, 1977, to submit comments, suggestions, or objections to the proposed rulemaking. More than 160 comments were received and given careful consideration as part of the final rulemaking process.

There were a large number of comments that objected to the proposed rulemaking in general and stated that the Department has exceeded the authority given it by the Congress in section 314 of the Act. We disagree with this contention and feel that the proposed rulemaking in those sections of the regulations which are intended to implement the Act is a careful effort to meet the Congressional purpose of section 314 without unduly burdening the mining community. However, many of these comments objected to sections of the regulations which were issued pursuant to the regulatory authority of the Department under the Mining Law of 1872, supra. Therefore, comments objecting to the regulations as beyond the intent of the Act address the wrong issue and are not accepted. We also received objections to specific sections of the proposed rulemaking as being beyond the authority granted the Department in section 314 of the Act. We will answer each of those objections when we deal with the specific sections of the proposed rulemaking.

We received a number of comments supporting the purpose of the proposed rulemaking and recommending some changes that would improve them. Many comments recognized that the proposed rulemaking was required by the Congress and accepted them in that light.

Another general comment was that only the minimum period was given the public to comment on the proposed rulemaking and the comment period occured during the Christmas and New Year holiday period. We recognize the problems caused by the short comment period and the impact that the holidays had on the number of working days actually available for making comments, but we did not extend the comment period because of the 90-day limit placed on the recording of claims located after the approval of the Act by the Congress. We felt that we had an obligation to the public to have final regulations in effect as soon as possible so that the public would know the procedures they must follow to record their claims.

Even though the Department is publishing this final rulemaking, we recognize the short period of time allowed to analyze the process outlined in the final rulemaking. Therefore, we will carefully observe the practical effects of the implementation of this final rulemaking over the next several months and will make any additional revisions we find necessary to improve the recordation operation mandated by the Congress as amendments to the final rulemaking.

Even though we received no comments on the index to the proposed regulations, we made several changes in the index so that it would agree with changes made in the sections.

We received a few comments on the purpose of the proposed rulemaking. One comment recommended the deletion of the last sentence of the purpose because it exceeded the authority granted in section 314. We were unable to accept this comment because we feel that the Secretary has the authority under the provision of Mining Law of 1872 to require notification of transfer of interest in unpatented mining claims.

We did make a change in the purpose section of the proposed rulemaking by deleting the word "proof" and inserting in lieu thereof the word "evidence". This is a more accurate description of what is furnished in connection with assessment.

One comment objected to the use of the phrase "cloud on the title" in the objectives section of the proposed rulemaking. We did not accept this comment because that phrase is taken directly from the legislative history of the section and is properly used. It was decided that a change was needed in the objectives section to make it clear that this rulemaking was not intended to supersede or replace existing recording requirements under State law, except when specifically changed by the provisions of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701). This amendment makes it clear that there are instances where changes in State law are made by the Act and the proposed rulemaking carries out those changes. An example of a change in State law that is mandated by the Act is the filing requirement that is set on a date certain by the Act but conflicts with some existing State laws.

Comments on the authority section challenged the requirement for filing of the required documents with the Bureau of Land Management, on the basis that this filing superseded the counties as the offices of record for mining claims. These comments were not accepted because their adoption would make the Act meaningless. What was the purpose of Congress if it did not intend what it clearly states in the Act, recordation with the Bureau of Land Management of all unpatented mining claims located on the public lands? Further, neither the Act nor the proposed rulemaking make any change in the requirements of the local jurisdictions, but simply require a second place of recording so that the Government can know the location of unpatented mining claims and can use that information in planning use of its lands.

Comments were made that the authority cited in subsection (c) of § 3833.0–3 of the proposed rulemaking was superfluous and not needed. We disagree and have used the authority cited in subsection (c) as the basis of requiring the recording of transfers of interest and other sections of the regulations not intended to implement the Act. The authority cited in subsection (d) of this section of the regulations is also needed because section 314 of the Act does not provide authority to issue regulations. Such general authority for the Act is contained in section 310 of the Act.

In connection with the definitions section of the proposed rulemaking, a very complicated comment suggested that the use of the term "location" or "located" inferred that acceptance of a certificate of location of a claim by the BLM validated the claim. We found this comment unacceptable because the language of section 314 of the Act specifically states that the recordation of a claim under its provisions in and of itself does not validate the claim.

A comment properly pointed out that the definition of "owner" used in the proposed rulemaking could be read to require the listing of all stockholders of a corporation that owned an interest in a mining claim. We agree that the definition could be misconstrued and have amended it by adding words that make it clear that we are talking about owners of record. Several comments noted the printing error in subsection (f) of the definition sections. We have changed the date from 1972 to 1872.

Some comments suggested that the District Offices of the Bureau of Land Management be made the proper office for purposes of recording of mining claims. We did not accept that suggestion because the State Offices are the location of the master plats and our central records. The District Offices can obtain information from the State Office as it is needed. We did make a minor amendment to subsection (g) of § 3833.0–5 to make it clear that the State Office is the proper office for recordation of mining claims.

Even though we received no comments on subsection (h) of the definition section, we amended it to clarify the term "date of location". We think that the amendment will be helpful to those recording.

We received comments on subsection (i) of the definition section to the effect that what was required as part of the official record was excessive and the subsection should be changed. After careful consideration of those comments, we made a change in subsection (i) that we believe will satisfy most of the objections of those commenting on this subsection.

One point of clarification in subsection (i) was a change requiring that only the documents accompanying the certificate of location at the time it was filed with the State would be required when the claim or site is being recorded with the Bureau. We do not want other documents, such as liens, wills, earlier transfers, etc., filed for record in the local jurisdiction subsequent to the filing of the certification of location. We only want the claimant to file those amendments to the certificate that change the location of the claim. We are not interested in any of the other papers of record.

No comments were received in connection with section 3833.1–1 of the proposed rulemaking, but we amended the section to make it clear that those recording claims located within the boundaries of the National Park System must comply with the provisions of the final rulemaking published by the National Park Service covering recordation of mining claims in the parks.

Almost every substantive comment made on the proposed rulemaking made direct reference to § 38.33.1–2, with special emphasis on the requirements imposed and on the fee imposed in connection with the recordation. There also were other comments made about this section. As a result of the heavy volume of comments on this section, the section was exhaustively reviewed and a number of changes were made in the section.

Comments on subsection (a) of § 3833.1–2 were directed at the need it imposed to meet the requirements of subsection (c) of the section. We have amended subsection (c) and feel that the amendment to subsection (c) resolve the objections made to subsection (a).

Some comments objected to the requirement for recordation within 90 days of a location of a claim imposed in subsection (b). That requirement cannot be changed because it is set by the provisions of section 314 of the Act. We have amended subsection (b) to make it clear that the time of filing set out in subsection (b) will be the time the documents required are received and time stamped in the proper BLM office, not the date of mailing of said documents. This clarification will require the mining claimant to take into consideration the required mailing time when he files his recordation papers.

A large number of strong comments were made about subsection (c) of § 3833.1–2 of the proposed rulemaking. Many of those making comments read the subsection as requiring a survey in order to meet the requirements contained therein. It was not intended that the proposed rulemaking require any mining claimant to go to the expense of a survey to record his claim. It was believed that the requirements of subsection (c) could be met without accomplishment of a survey. As a result of our re-examination of this subsection, it was decided that there was in fact, no need for several of the requirements in the proposed rules. Subsection (c) has, therefore, been amended to eliminate a number of the requirements originally imposed. The amendments will satisfy most of the objections raised in the comments submitted on this subsection and will, at the same time, furnish the Government with sufficient information to meet its need to locate the mining claim site. We believe that the requirements in this final rulemaking can be legally required by the Department, either under the provisions of section 314 of the Federal Land Policy and Management Act of 1976, or the provisions of the Mining Law of 1872.

One area of special concern to those commenting on subsection (c) was the requirement for a map. We have continued to require a map, but have reduced the requirements in connection with the map. As an example, we have changed the scale of the map to one that is generally available from nearly all U.S. Government offices, including BLM offices. We have also changed the subsection so that all that is required on the map is a general location of the claim or site or group of contiguous claims or sites in a quarter of a section. We believe that this new, broader map requirement is in keeping with our precise statement that the claimant is not expected to hire a professional surveyor or engineer.

Because of the numerous comments received on this point, a careful analysis was made of the requirements for a fee imposed by subsection (d) of § 3833.1–2. Although the recordation of mining claims is of direct benefit to the claimant, the Government and the public also receive a benefit from the recordation of mining claims. After carefully weighing these corresponding benefits it was decided that about half of the $10 cost of handling the recordation of a mining claim could be attributed to the public. The service fee has been reduced to $5.00.

No comments were received on § 3833.1–3 and no amendments have been made to that section.

Reconsideration of the sections of the proposed rulemaking dealing with the required assessment work disclosed the fact that the use of the word "proof" was inaccurate. The word "evidence" has been substituted for the word "proof" in those instances where it is used in conjunction with the word "assessment." This rewording more accurately describes what is being required.

Comments on subsection (a) of § 3833.2–1 pointed out that the Mining Law of 1872 did not require evidence of assessment in the first calendar year following the recordation of the location of the claim. We agree with that comment and find that the proposed rulemaking provides for that eventuality. In that case, a notice of intent will be required in that first calendar year after recordation if the claim is not to be deemed abandoned. We also added language making it clear that the filing requirements of this subsection do not cover claims or sites located in the National Park System.

Comments on § 3833.2–2 questioned the reasons for requiring evidence of assessment work that went beyond the affidavit of assessment that is required by the States. Following a review of § 3833.2–2 the section has been amended to call for the filing of a certified copy of the affidavit required by State law. We believe this section, coupled with § 3833.2–3, requires the filing of a notice of intent in those States that do not require an affidavit of assessment work. In addition, the requirement for filing of the residence address of claimants has been deleted as was done in other sections of the proposed rules.

Comments on § 3833.2–3 objected to the definition of what constitutes a notice of intent. We feel that this comment is without merit because the term, which was introduced into the mining law for the first tme by section 314 of the Act, needs to be defined so that everyone understands exactly what it is. The definition, therefore, remains in the final rulemaking. It is the document that is to be filed by a claimant when he cannot file one of the other documents set forth in the Act. This section has also been amended to include sites. Comments pointed out that section 3833.2–4 was incorrect in that tunnel sites cannot be patented. The section has been amended to delete tunnel sites.

A large number of comments on section 3833.3 challenged the Department's authority to require the filing of a notice of transfer under the provision of section 314 of the Federal Land Policy and Management Act of 1976, and suggested that the section should be deleted from the proposed rulemaking. Other comments suggested that the requirement to file notices of transfer made the Bureau of Land Management, instead of the local jurisdictions, the depository of documents affecting the title of mining claims. First, the authority to require the filing of notices of transfers is derived from the authority granted the Department by the Mining Law of 1872 which has never been exercised. Up until the requirement for the recordation of mining claims was imposed, there was no reason to have claimants file a notice of transfer with the Government. With this new recordation requirement and

the necessity of keeping records it imposed, we feel that it is appropriate to exercise this authority and it is being retained in the final rulemaking. Further, the requirements of the rulemaking do not extend to documents other than notices of transfer so do not make the Bureau of Land Management a title repository for mining claims located on public lands, but leaves that function with the local jurisdictions, where we think it logically belongs. While requiring the filing of a notice of transfer, we believe that the final rulemaking now requires the filing of a minimum amount of information.

Several comments suggested that the thirty day time limitation imposed by § 3833.2–4 was too short and should be extended. That recommendation has been accepted and the time limits imposed in the section have been extended to 60 days.

We also accepted the comments that questioned our need for a description of the interest conveyed in the notice of transfer and deleted that requirement.

Finally, because of the large number of comments on the subject, we examined the basis for the imposition of a $10 service fee in connection with the filing of a notice of transfer. The requirement for payment of this fee has been deleted in its entirety because the public, and not the claimant, receives the benefit of the filing.

A large number of comments suggested that section 3833.4 should be changed to make a failure to file prima facie evidence of abandonment rather than conclusive proof of abandonment. We cannot accept these comments because section 314 of the Act provides that failure to comply with the provisions of the Act will be conclusive evidence of abandonment and the claim or site will be void as a matter of law.

A few general comments were made with reference to section 3833.5 to the effect that we should not require recording of mining claims with both the Federal Government and the local jurisdictions. We understand the problem that mining claimants may have with the double recordation but point out that section 314 of the Act requires both filings. We must comply with the Act's provisions.

Our review of § 3833.5 leads us to the conclusion that subsection (d) was not clear as to the action the Government would take in notifying owners of claims or sites who had failed to record or file a notice of transfer. We have redrafted the subsection to clarify it.

Further, we feel that the failure to include language in the proposed rulemaking that deals with actual notice of claims or sites that have not been recorded pursuant to section 314 of the Act could lead to the conclusion that such actual notice implies that the claimant did not have to comply with the requirement to record under the Act. To make it clear that regardless of its form, actual notice of the existence of a claim or site to the Bureau of Land Management does not free a claimant from the recording requirement, we have added subsection (e) to § 3833.5.

We appreciate the interest expressed in the proposed rulemaking and the comments made on them. We found the comments helpful in our effort to promulgate rulemaking that will carry out the responsibilities given us by the Congress and at the same time assist the mining interests in meeting their day-to-day responsibilities.

Accordingly, 43 CFR Part 3830 is adopted with the changes discussed herein.

Effective date: January 20, 1977.

Signed at Washington, D.C. on January 19, 1977.

CHRIS FARRAND,
Deputy Assistant
Secretary of the Interior.

Part 3830 is amended by adding Subpart 3833 to read:

Subpart 3833—Recordation of Mining Claims and Filing Proof of Annual Assessment Work or Notice of Intention To Hold Mining Claims

Sec.

3833.0–1 Purpose.
3833.0–2 Objectives.
3833.0–3 Authority.
3833.0–5 Definitions.
3833.1 Recordation of mining claims.
3833.1–1 Manner of recordation—National Park System.
3833.1–2 Manner of recordation—other Federal lands.
3833.1–3 When recordation not required.
3833.2 Evidence of assessment work/notice of intention to hold claim.
3833.2–1 When filing required.
3833.2–2 Form—evidence of assessment work.
3833.2–3 Form—notice of intention to hold claim.
3833.2–4 When evidence or notice not required.
3833.3 Notice of transfer of interest.
3833.4 Failure to file.
3833.5 Effect of recording and filing.

§ 3833.0–1 Purpose.

One purpose of these regulations is to establish procedures for the recordation in the proper BLM office of unpatented mining claims, mill sites, or tunnel sites on Federal lands, and for the filing in the same office of evidence of performance of annual assessment work or of a notice of intention to hold an unpatented mining claim. Another purpose is to notify the proper BLM office of the transfer of an interest in unpatented mining claims, mill sites or tunnel sites.

§ 3833.0–2 Objectives.

An objective of these regulations is to determine the number and location of unpatented mining claims, mill sites, or tunnel sites located on Federal lands to assist in the management of those lands and the mineral resources therein. Other objectives are to remove the cloud on the title to these lands because they are subject to mining claims that may have been abandoned and to keep the BLM abreast of transfers of interest in unpatented mining claims, mill sites or tunnel sites. These regulations are not intended to supersede or replace existing recording requirements under State law, except when specifically changed by the provisions of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701), and are not intended to make the BLM office the official recording office for all ancillary documents (wills, liens, judgments, etc.) involving an unpatented mining claim, mill site or tunnel site.

§ 3833.0–3 Authority.

(a) Subsections (a) and (b) of section 314 of the Act require the recordation of unpatented mining claims and the filing of information concerning annual assessment work performed or a notice of intention to hold such a claim in the proper BLM office within specified time periods. Subsection (c) sets forth the consequences of the failure to file such information or documents within the time limits prescribed.

(b) Section 8 of the Act of September 28, 1976 (16 U.S.C. 1901–1912), requires that all unpatented mining claims within the boundaries of the National Park System shall be recorded with the Secretary within one year after the date of the Act and provides penalties for failure to record.

(c) Section 2319 of the Revised Statutes (30 U.S.C. 22) provides that the exploration, location, and purchase of valuable mineral deposits shall be "under regulations prescribed by law," and section 2478 of the Revised Statutes, as amended (43 U.S.C. 1201), provides that those regulations will be issued by the Secretary.

(d) The Secretary has general responsibility and authority concerning public lands under 43 U.S.C. 2 and section 310 of the Act.

§ 3833.0–5 Definitions.

As used in this Subpart:

(a) "The Act" means the Federal Land Policy and Management Act of 1976 (Pub. L. 94–579; 90 Stat. 2743).

(b) "Unpatented mining claim" means a lode mining claim or a placer mining claim located under the General Mining Law of 1872, as amended (30 U.S.C. 21–54), for which a patent under 30 U.S.C. 29 and 34 CFR 3860 has not been issued.

(c) "Mill site" means any land located under 30 U.S.C. 42.

(d) "Tunnel site" means a tunnel located pursuant to 30 U.S.C. 27.

(e) "Owner" means any person who holds a recorded possessory interest in all or any part of an unpatented lode or placer mining claim, mill site, or tunnel site whether such interest was obtained by location, purchase, gift, inheritance, or other means recognized under law for transfer of the right of possession and enjoyment recognized in the holder of the claim or claims under the General Mining Law of 1872, as amended, *supra*.

(f) "Federal lands" means any land or interest in land owned by the United States as defined by subparagraph (e) of section 103 of the Act and any other land or interest in land owned by the United States which is subject to location and purchase under the General Mining Law of 1872, *supra.*, and 43 CFR Subpart 3811 including, but not limited to, those lands within units of the National Park System, forest reservations within the National Forest System and wildlife refuges within the National Wildlife Refuge System.

(g) "Proper BLM office" means the Bureau of Land Management State Office having jurisdiction over the area in which the lands subject to the regulations are located. (See 43 CFR 1821.2–1 for office location and area of jurisdiction.)

(h) "Date of location" means the date indicated on the notice of location or discovery posted on an unpatented mining claim, mill site, or tunnel site under state law, or, if state law does not require the posting of a notice of location or discovery for unpatented mining claims or tunnel sites the date that the notice of location of the claim was posted in accordance with 43 CFR Parts 3830 and 3840 or if state law does not require the posting of a notice for mill sites, the date that the person who located the site began using or occupying the site for mining or milling purposes.

(i) "Official record of the notice or certificate of location" means the official document of recordation and all accompanying maps, papers or other documents filed for record with the recorder or other officer now authorized to record such instruments under state law in the local jurisdiction where the unpatented mining claim, mill site, or tunnel site is located and any amendments thereof which may change or alter the location of the claim or site.

§ 3833.1 Recordation of mining claims.

§ 3833.1–1 Manner of recordation—National Park System.

The owner of an unpatented mining claim, mill site, or tunnel site located within the boundaries of units of the National Park System must comply with the requirements of the Notice of October 13, 1976, entitled "Claimants of Mining Claims," published on October 20, 1976, at 41 FR 46357, and the requirements of Park Service regulations concerning recordation in 36 CFR Part 9, and copies of all material received by the National Park Service pursuant to that Notice will be given by the Park Service to the proper BLM office. Compliance with the requirements of that Notice will be deemed full compliance with the requirements of section 314 of the Act for all owners of unpatented mining claims, mill sites, or tunnel sites within the boundaries of any unit of the National Park System.

§ 3833.1–2 Manner of recordation—other Federal lands.

(a) The owner of an unpatented mining claim, mill site, or tunnel site located on or before October 21, 1976, on Federal land, excluding land within units of the National Park System, shall file (file shall mean being received and date stamped by the proper BLM office), before October 22, 1979, in the proper BLM office a copy of the official record of the notice or certificate of location of the claim or site filed under state law, or, if state law does not require the recordation of a notice or certificate of location containing the information in paragraph (c) of this section.

(b) The owner of an unpatented mining claim, mill site, or tunnel site located after October 21, 1976, on Federal land shall file (file shall mean being received and date stamped by the proper BLM office), within 90 days after the date of location of that claim in the proper BLM office a copy of the official record of the notice or certificate of location of the claim or site filed under state law or, if the state law does not require the recordation of a notice or certificate of location of the claim or site, a certificate of location containing the information in paragraph (c) of this section.

(c) The copy of the notice or certificates filed in accordance with paragraphs (a) and (b) of this section shall be supplemented by the following additional information unless it is included in the copy:

(1) The name or number of the claim, or both, if the claim has both;

(2) A reference by book and page or other identification number to the county or other local public record of the notice or certificate and, if amended, of the last recorded amendment thereof;

(3) The name, and current mailing address, if known, of the owner or owners of the claim;

(4) The type of claim or site;

(5) The date of location;

(6) For all claims or sites located on surveyed or unsurveyed lands, a legal description shall be furnished. This description shall recite the approximate location of all or any part of the claim or site with a 160 acre quadrant of a section (quarter section) or sections, if more than one is involved. In addition, there must be funished the township, range, meridian and state obtained from an official survey plat or other U.S. Government map showing either the surveyed or protracted U.S. Government grid, whichever is applicable;

(7) A map with a scale of not less than ¼ inch to a mile showing the survey or protraction grids on which there will be depicted the location of the claim or site. Contiguous claims or sites and groups of claims or sites in the same general area may be depicted on this single map so long as the individual claims or sites are clearly identified;

(8) If the individual claim or site or group of claims or sites are located on unsurveyed land and it is not a part of or included in the notice or certificate, there shall also be furnished either a narrative or a sketch describing the individual claim or site or group of claims or sites in reference to some topographic, hydrographic or man-made feature. Such narrative description or sketch shall set forth the boundaries and position of the individual claim or site or group of claims or sites with such accuracy as will permit the authorized officer of the agency administering the surface of the lands to identify and locate the claimed lands on the ground;

(9) Nothing in the requirements for a map and description found in this section shall require the owner of a claim or site to employ a professional surveyor or engineer; and

(10) For claims on O & C lands located pursuant to 43 CFR subpart 3821 and claims located pursuant to Public Law 359, 43 CFR Part 3730, the notice or certificate shall be so marked.

(d) Each claim or site filed shall be accompanied by a $5 service fee which is not returnable.

§ 3833.1–3 When recordation not required.

If the owner of an unpatented mining claim or mill site had on file in the proper BLM office on October 21, 1976, an application for a mineral patent which complies with 43 CFR Part 3860, except the requirements for publication and payment of purchase price (43 CFR 3862.4), or if the owner of an unpatented mining claim or mill site located on or before October 21, 1976, shall file in the proper BLM office an application for a mineral patent, as described above, before October 22, 1979, the filing of the application will be deemed full compliance with the recordation requirements of section 314 of the Act and the owner of that claim or site shall be exempt from the filing requirements of § 3833.1.

§ 3833.2 Evidence of assessment work/notice of intention to hold claim.

§ 3833.2–1 When filing required.

(a)(1) The owner of an unpatented mining claim located on Federal land, excluding land within units of the National Park System, on or before October 21, 1976, shall file before October 22, 1979, and prior to December 31 of each calendar year following the calendar year of recording in the proper BLM office pursuant to this subpart evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim.

(2) The owner of a mill site or tunnel site located on Federal land, excluding land within units of the National Park System, on or before October 21, 1976, shall file before October 22, 1979, and prior to December 31 of each calendar year following the calendar year of recording pursuant to this subpart, in the proper BLM office a notice of intention to hold the mill or tunnel site.

(3) The owner of an unpatented mining claim located within the boundaries of units of the National Park System must comply with the requirements of 36 CFR 9.5(d) for annual filing and copies of all those annual filings received by the National Park Service pursuant to that regulation will be given by the National Park Service to the proper BLM office. Compliance with the requirements of that regulation will be deemed full compliance.

(b)(1) The owner of an unpatented mining claim located after October 21, 1976, shall, prior to December 31 of each year following the calendar year in which such claim was located, file in the proper BLM office evidence of annual assessment work performed during the pre-

ceding assessment year or a notice of intention to hold the mining claim.

(2) The owner of a mill site or tunnel site located after October 21, 1976, shall, prior to December 31 of each year following the calendar year in which such mill or tunnel site was located, file in the proper BLM office a notice of intention to hold the mill or tunnel site.

§ 3833.2–2 Form—evidence of assessment work.

Evidence of annual assessment work shall be in the form of either:

(a) An official copy of the affidavit of assessment work performed filed in the local jurisdiction of the State where the claim or group of contiguous claims are located setting forth the following information:

(1) The serial number assigned to each claim by the authorized officer upon filing of a copy of the official record of the notice or certificate of location or patent application in the proper BLM office;

(2) Any change in the mailing address, if known, of the owner or owners of the claim or claims; or

(b) An official copy of the detailed report concerning geological, geochemical, and geophysical surveys filed in the office of the local jurisdiction in which the claim is located pursuant to the Act of September 2, 1958 (30 U.S.C. 28–1), setting forth the following additional information:

(1) The serial number assigned to each claim by the authorized officer upon filing in the proper BLM office of a copy of the official record of the notice or certificate of location or patent application; and

(2) Any change in the mailing address, if known, of the owner or owners of the claim.

§ 3833.2–3 Form—notice of intention to hold claim.

A notice of intention to hold a mining claim or group of mining claims or mill or tunnel sites shall be in the form of a letter signed by the owner or owners of such claim or site or their agent setting forth the following information:

(a) The serial number assigned to each claim by the authorized officer upon filing in the proper BLM office of a copy of the official record of the notice or certificate of location;

(b) Any change in the mailing address, if known, of the owner or owners of the claim;

(c) A statement that the claim is held and claimed by the owner(s) for the valuable mineral contained therein;

(d) A statement that the owner(s) intend to continue diligent exploration or development of the claim;

(e) The reasons that physical, legal, or other impediments, beyond the control of the owner(s), have prevented his filing an affidavit of assessment work performed or a detailed report of geological, geochemical, and geophysical survey under 43 CFR 3833.2–2 (such impediments may include, but are not limited to, deferment of annual assessment work, in which case the notice must be accompanied by a copy of petition for deferment and the order or decision disposing of such petition); and

(f) As required by section 314(a)(1) of the Act, the date on which a copy of the notice of intention to hold the mining claim, was filed in the office of the local jurisdiction in which the claim is located.

§ 3833.2–4 When evidence or notice not required.

Evidence of annual assessment work performed or a notice of intention to hold a mining claim need not be filed on unpatented mining claims or mill sites for which application for mineral patent which complies with 43 CFR Part 3860 has been filed and final certificate has been issued. (See 43 CFR 3851.5). The filing of an application and issuance of the final certificate will be deemed full compliance with the requirements of section 314(a) of the Act and the owner of that claim or site shall be exempt from the filing requirements of § 3833.2–1.

§ 3833.3 Notice of transfer of interest.

(a) Whenever the owner of an unpatented mining claim, mill site or tunnel site, which has been recorded in accordance with § 3833.1–2, sells, assigns, or otherwise conveys all or any part of his interest in the claim, his transferee shall file in the proper BLM office within 60 days after the completion of the transfer the following information:

(1) The serial number assigned to the claim by the authorized officer upon filing of a copy of the official record of the notice or certificate of location in the proper BLM office; and

(2) The name and mailing address of the person(s) to whom an interest in the claim has been sold, assigned, or otherwise transferred.

(b) Whenever any person acquires an interest through inheritance in an unpatented mining claim, mill site, or tunnel site recorded in accordance with § 3833.1, he shall file in the proper BLM office within 60 days after completion of the transfer the information required by paragraph (a) of this section.

§ 3833.4 Failure to file.

(a) The failure to file such instruments as are required by §§ 3833.1 and 3833.2 within the time periods prescribed therein, shall be deemed conclusively to constitute an abandonment of the mining claim, mill site, or tunnel site and it shall be void.

(b) The fact that an instrument is filed in accordance with other laws permitting filing or recording thereof and is defective or not timely filed for record under those laws, or the fact that an instrument is filed for record under this subpart by or on behalf of some, but not all of the owners of the mining claim, mill site, or tunnel site, shall not be considered failure to file an instrument under this subpart.

§ 3833.5 Effect of recording and filing.

(a) Recordation or application involving an unpatented mining claim, mill site, or tunnel site by itself shall not render valid any claim which would not be otherwise valid under applicable law and does not give the owner any rights he is not otherwise entitled to by law.

(b) Nothing in this subpart shall be construed as a waiver of the assessment work requirements of section 2324 of the Revised Statutes, as amended (30 U.S.C. 28), and compliance with the requirements of this subpart shall be in addition to and not a substitute for compliance with the requirements of section 2324 and with laws and regulations issued by any State or other authority.

(c) Filing of instruments pertaining to mining claims under other Federal law with the BLM or any other Federal agency will not excuse the filings required by this subpart and filings under this subpart will not excuse the filing of instruments pertaining to mining claims under any other Federal law, except for filing a notice or certificate of location under this subpart which is marked by the owner as required by section 3833.1–2(c) (10) hereof, which filing shall satisfy the recording requirement for O & C lands under 43 CFR subpart 3821 and Public Law 359 lands under 43 CFR Part 3730.

(d) In the case of any action or contest affecting an unpatented mining claim, mill site or tunnel site, only those owners who have recorded their claim or site pursuant to § 3833.1–2 or filed a notice of transfer of interest pursuant to § 3833.3, will be considered by the United States as the record owners of such claim or site and will be personally notified of such action or contest. Owners who have not recorded a claim or site or filed a notice of transfer will not be personally served but will be put on notice only by publication and will be bound by any contest proceeding even though they have not been personally served. Diligent search and inquiry for the purposes of contesting the validity of a mining claim under this Title shall only require a search of the records of the proper BLM office and shall not require any other search or inquiry.

(e) Actual notice of an unpatented mining claim or mill or tunnel site by any employee or officer of the United States shall not exempt the claim or site from the requirements of this subpart.

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PART V



DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

DEBARMENT, SUSPENSION AND INELIGIBILITY OF CONTRACTORS AND GRANTEES; ADMINISTRATIVE SANCTIONS

Title 24—Housing and Urban Development

SUBTITLE A—OFFICE OF THE SECRETARY, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. R-77-427]

PART 24—DEBARMENT, SUSPENSION AND INELIGIBILITY OF CONTRACTORS AND GRANTEES; ADMINISTRATIVE SANCTIONS

On Monday, December 13, 1976, a notice of proposed rulemaking was published in the FEDERAL REGISTER (41 FR 54302). This notice proposed revisions to existing regulations in order to improve procedures by which contractors and grantees are excluded from participating in HUD programs because of irresponsible conduct or for other good reason.

The suggestions received, with few exceptions, have been included in the final rule as follows:

1. The proposal changed the maximum debarment period from an identified term of three years to an indefinite period of time. Several commentators took strong exception to this change pointing out that it did not follow the trend of court decisions in this area; that it violated the standard of fairness which is required by the courts; that it could put the Department in the position of having the court invalidate such a procedure; that it did not bear a reasonable relationship to the intention of debarment, i.e., protection of the public; that imposition of all debarments for an indefinite period bears no relationship to the severity and variety of the circumstances which justify debarment; that it discriminates against less informed and less educated contractors not represented by counsel; that a definite period of debarment is necessary to protect the public interest; that removing the obligation from the hearing officer to set a stated debarment term is a derogation of his authority and puts him in the position of merely performing a clerical function; that this procedure presents substantial policy and administrative problems particularly in the record keeping area, e.g., since in excess of a hundred debarment cases are litigated each year the Consolidated List which reflects debarment and suspensions would be filled with stale listings of those who do not seek reinstatement; that purging the Consolidated List of these names would require continuous review of the records; that where the reinstatement of contractors and the necessary purging of the list is on an ex parte administrative basis, there is a greater opportunity for the charge of personal or political favoritism. In view of these comments, the indefinite debarment period that was proposed has been modified. The hearing officer may only impose an indefinite debarment in egregious circumstances; otherwise a time certain must be set up to five years.

2. The suggestion that the term "ineligibility" tends to be ambiguous has been addressed by clarifying that an ineligibility status means a disqualification from HUD programs due to imposition of a sanction by another Federal agency.

3. A commentator recommended that the temporary denial of participation sanction should carry with it a time limitation. Accordingly, the temporary denial rule has been modified to limit the exclusion to a maximum of 12 months.

4. In accordance with a comment concerning conditional participation and temporary denial of participation, the regulation makes clear that this sanction only impacts on the specific program under which it is taken.

5. The suggestion of another commentator has been adopted which will give the field officer imposing a temporary denial of participation or conditional participation the responsibility of advising other field offices of this sanction. A field officer, so advised, may at his option invoke this sanction against the contractor in his jurisdiction. Otherwise the sanction is limited to the jurisdiction of the office which invokes it.

6. In response to the suggestion that some HUD officials were excluded from the authority of invoking sanctions, a definition of "Assistant Secretary" has been added which includes any official bearing the title of Assistant Secretary, Federal Insurance Administrator, Federal Disaster Assistance Administrator, President, Government National Mortgage Association and New Communities Administrator.

7. In response to a suggestion by the Inspector General, the regulations have been amended to indicate that information with regard to sanctions is to be sent to the Office of the Inspector General through the appropriate program office.

8. A commentator pointed out that there is uncertainty as the regulations are presently written whether the Consolidated List is public information. Accordingly, reference to restriction of such list has been deleted.

9. Several commentators objected to the order in which sections were set out in the regulations and suggested that a more meaningful pattern could be developed. Accordingly, the sections have been rearranged.

10. Commentators also objected to the complicated numbering of subsections in § 24.10. This section is replaced by four separate sections and consequently the numbering of the subsections has been simplified.

11. The treatment of a contractor who has been placed on the Consolidated List but inadvertently awarded a contract during an emergency situation has been clarified in response to a commentator who complained of this omission. Also, treatment of a contractor on the Consolidated List who has prior valid contracts with the Government has been clarified to indicate that the contract may be evaluated to determine whether its termination would be in the best interest of the government in light of the facts surrounding the sanction invoked against the contractor.

12. In response to a commentator's suggestion, the subsection describing total restriction of contractors has been amended to include the two exceptions which apply to total restrictions. These exceptions may arise when the debarred contractor is a subcontractor and when a suspended contractor is permitted to do business with the Department because of considerations of the best interest of the Government.

13. The provision absolving a party when failure to perform as a contractor is due to the events beyond his control was criticized by a commentator. This provision has been rewritten to place the burden on the contractor to demonstrate that in fact the events were beyond his control and not due to his negligence.

14. The section on reinstatement procedures has been amended in accordance with a suggestion by a commentator to recognize the authority of the reinstating official to require restitution by the party for losses sustained by HUD on his account.

15. With regard to the repeal of other sanctions which are now imposed by HUD, in response to a suggestion by several commentators, it is specified that the Previous Participation Review and Clearance Procedure is not repealed.

16. With regard to contractors who are presently affected by sanctions which have been repealed, in response to a suggestion of a commentator, provision has been made for such parties to petition for reconsideration or for reduction of the sanction term.

17. It was pointed out by one commentator that under the temporary denial of participation proceedings, categorization of the appeal by a party as a "conference for reconsideration" may indicate to the party that a further appeal is available at the field office level. Since this was not the intent of this section, the term "informal hearing" has been substituted in order that it be made clear that this is the only administrative remedy available before an appeal to the Assistant Secretary may be taken.

18. Several commentators suggested that the authority of the General Counsel to appoint hearing officers should be recinded. This suggestion has been adopted and the Secretary or the Under Secretary have been designated as the officials responsible for hearing officer appointments.

19. It was suggested by one commentator that the decision of the hearing officer should be final within the Department. This suggestion was not adopted because of the Secretary's desire to have the authority to review hearing officer determinations at her discretion. However, the same commentator's suggestion that the Secretary's review should be subject to a time limit has been adopted by providing that the Secretary shall issue a determination on such cases as she chooses to review within thirty days after her decision that review be granted.

The Department has determined that an environmental impact statement is not required with respect to this final rule. A copy of the environmental finding of inapplicability is available for inspection at the Office of the Rules Docket Clerk, Room 10141, 451 Seventh Street, SW., Washington, D.C. 20410. The Department has also determined in accordance with OMB Circular A-107 that this proposal does not have an economic impact. A copy of the economical finding of inapplicability is also available for inspection at the above address.

Effective date: This revision becomes effective as of January 27, 1977.

Accordingly, Part 24 of Title 24 of the Code of Federal Regulations is revised to read as follows:

Sec.

24.0 Policy.
24.1 Scope.
24.2 Authority.
24.3 Applicability.
24.4 Definitions.
24.5 General.
24.6 Causes and conditions applicable to determination of debarment.
24.7 Procedural requirements relating to the imposition of debarment.
24.8 Determination of Hearing Officer; review of determination.
24.9 Authority of Hearing Officer.
24.10 Notice of Determinations.
24.11 Rescission and reinstatement.
24.12 Suspension.
24.13 Causes and conditions under which contractors or grantees may be suspended.
24.14 Period and scope of suspension.
24.15 Restrictions during period of suspension.
24.16 Notice of suspension.
24.17 Other sanctions.
24.18 Temporary denial of participation; conditional denial.
24.19 [Reserved]
24.20 [Reserved]
24.21 Establishment and maintenance of lists of contractors and grantees subject to administrative sanctions.
24.22 Bases for entry.
24.23 Treatment to be accorded contractors or grantees subject to administrative sanctions.

AUTHORITY: Sec. 7(d), Department of HUD Act, 79 Stat. 670; (42 U.S.C. 3535(d)).

§ 24.0 Policy.

In order that this Department may realize the goal of a decent home and a suitable living environment for every American family, it is necessary that grants and contracts awarded by the Department and by those entities with whom it does business be made only to those contractors and grantees which can demonstrate that Government funds will be properly utilized. Department policy requires, therefore, that awards may be made only to responsible contractors and grantees. In evaluating past performance of participants in programs administered by the Department, as well as other relevant aspects of the record and status of the participants, the criteria for debarment and suspension shall be uniform.

§ 24.1 Scope.

This part prescribes procedures relating to:

(a) The debarment of contractors and grantees for cause, temporary denial of participation and conditional participation;

(b) The suspension of contractors and grantees for cause under prescribed conditions;

(c) The placement of contractors and grantees in ineligibility status when they are included in lists which make their participation in federally assisted programs illegal;

(d) Reconsideration of debarment and suspension, and ineligibility.

§ 24.2 Authority.

This part is issued under section 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§ 24.3 Applicability.

(a) This part applies to (1) contracts in accordance with 41 CFR, Chapter I, for procurement of property, nonpersonal services (including construction), and personal services (41 CFR 1-3.204); (2) HUD assisted contracts; (3) individuals, state and local governments and public and private organizations who are contractors with or grantees of the Department and to all who receive HUD funds directly or indirectly from such contractors or grantees; (4) participants, or contractors with participants, in programs where HUD is or will be the guarantor or insurer; and (5) former HUD employees.

(b) This part does not apply to (1) contracts with, or grants made to, owners or occupants of real property in connection with the acquisition of such real property, or any interest therein, by a public entity for a HUD assisted program or project where such entity possesses the power of eminent domain: (2) relocation payments to eligible displaced parties; or (3) contracts of direct-all-cash sales of Secretary-owned properties with contractors or grantees against whom administrative sanctions under this part have been taken.

§ 24.4 Definitions.

(a) "Debarment" means, exclusion from participation in HUD programs for a reasonable, specified period of time commensurate with the seriousness of the offense or the failure or inadequacy of performance generally not to exceed five years. However, the hearing officer may exclude a party for an indefinite period because of egregious and willful improper conduct. Debarment also means exclusion from participation by reason of ineligibility under regulations of the Secretary of Labor pursuant to Executive Order 11246, which exclusion continues pending elimination of the circumstances for which it was imposed.

(b) "Suspension" means a disqualification from participation in HUD programs for a temporary period of time because a contractor or grantee is suspected upon adequate evidence of engaging in criminal, fraudulent, or seriously improper conduct.

(c) "Placement in ineligibility status" means a disqualification from participation in HUD programs due to imposition of a sanction by another Federal agency and pending the elimination of the circumstances which constitute the basis for imposition of the disqualification.

(d) "Affiliates." Business concerns are affiliate of each other when either directly or indirectly one concern or individual formulates, directs, or controls the other concern; or has the power to formulate, direct, or control the other concern; or has the responsibility and authority either to prevent in the first instance, or promptly to correct, the offensive conduct of the other concern. Business concerns are also affiliates of each other when a third party is similarly situated with respect to both concerns.

(e) "Consolidated List." A monthly publication which includes the names of contractors and grantees who may not participate in Department programs because of their debarred, suspended or ineligible status.

(f) "Contractors or grantees." Individuals, state and local governments and public or private organizations that are direct recipients of HUD funds or that receive HUD funds indirectly through non-Federal sources including, but not limited to, borrowers, builders, mortgagees, real estate agents and brokers, area management brokers, management and marketing agents, or those in a business relationship with such recipients including, but not limited to, consultants, architects, engineers and attorneys; all participants, or contractors with participants, in programs where HUD is the guarantor or insurer; and Federally assisted construction contractors.

(g) "Financial assistance." Assistance through grant or contractual arrangements; assistance in the form of loans, loan guarantees or insurance; and in addition, award of procurement contracts, notwithstanding any quid pro quo given or whether the Department gives anything of value in return.

(h) "Temporary denial of participation." Unless taken as a result of a pending investigation or an indictment which gives rise to suspension of the contractor or grantee, a temporary denial is an exclusion from HUD programs by an Area Office Director, Insuring Office Director or a Regional Administrator for a specified period not to exceed twelve months. The denial is limited in effect to the jurisdiction of the office initiating the action and the specific program under which this action is taken.

(i) "Conditional participation." An exclusion of a contractor or grantee by an Area Director, Insuring Officer Director or a Regional Administrator from participation in one HUD program, generally pending corrective actions by the contractor or grantee. The exclusion is limited in effect to the jurisdiction of the office imposing the condition and the specific program under which the action is taken.

(j) "Administrative sanction." Any action by the Department under this part which is a limitation upon the right of a contractor or grantee to participate in Department programs.

(k) "Assistant Secretary." Any Assistant Secretary of HUD, the Federal Disaster Assistance Administrator, the Federal Insurance Administrator, the President, Government National Mortgage Association and the New Communities Administrator.

§ 24.5 General.

(a) Debarment, suspension, placement in ineligible status, temporary denial of participation and conditional participation are measures which may be invoked by offices of the Department either to exclude or to disqualify contractors and grantees from participation in Department programs. These measures shall be used for the purpose of protecting the public and are not for punitive purposes.

(b) Department action to exclude or to disqualify contractors and grantees from participation in its programs, or to reconsider such measures, shall be based upon all available relevant facts. Department investigation required to elicit such facts and related evidence shall be conducted by the Office of the Inspector General or by such other office as has been assigned investigative authority.

(c) Where Department action results in an applicant's being denied financial assistance on the basis of his previous conduct with the Department, the applicant is entitled to a hearing in accordance with this part, except that (1) in those Departmental programs where administrative sanctions and hearings are provided by Statute, this Part 24 shall not apply; (2) where the action is based on an indictment or conviction of the party, an appeal of the action is limited to submission of documentary evidence and written briefs to the hearing officer.

(d) Where a party has been adversely affected by Department action on the grounds that he is an "affiliate", the hearing on this issue shall be consolidated with the hearing of any of the principals.

(e) Where a contract or grant has been let to a party named on the Consolidated List because (1) a disaster or emergency situation existed under provisions of the Disaster Relief Act of 1974 (42 U.S.C. 5121 note) or (2) when the grant or contract was let, the party was not then on such list: The contract or grant shall be re-evaluated. If it is determined that termination would be in the best interest of the Government, the contract or grant shall be terminated.

(f) "Hearing Officers." Hearing Officers shall be appointed by the Secretary or the Under Secretary of the Department.

(g) "Precedence of statutes and Executive Orders." Where an office of the Department is required by statute or Executive Order to follow administrative sanction procedures that may differ from the requirements of this part, the statutory or Executive Order procedures shall take precedence. The appropriate liaison officer shall provide the Inspector General with such statutes or Executive Orders and all implementing materials.

(h) "Intervention." At hearings conducted pursuant to this section, any member of the public having an interest in the matter may request participation in the hearing. Participation will be limited to (1) reviewing case files, (2) receiving advance notice of hearings, (3) attending hearing, (4) filing written briefs on the issues presented, and (5) testifying when requested by the Hearing Officer.

(i) "Scheduling information." The General Counsel shall maintain a current schedule of all matters that have been set for hearing. This information shall be available to the public upon request.

§ 24.6 Causes and conditions applicable to determination of debarment.

Subject to the following conditions, the Department may debar a contractor or grantee in the public interest for any of the following causes:

(a) *Causes.* (1) Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract, or subcontract thereunder, or in the performance of such contract or subcontract.

(2) Conviction under the Federal Antitrust Statutes arising out of the submission of bids or proposals.

(3) Violation of contract provisions, as set forth below, of a character which is regarded by the Department to be so serious as to justify debarment action:

(i) Willful failure to perform in accordance with the specifications or within the time limit provided in the contract.

(ii) A record of failure to perform, or of unsatisfactory performance, in accordance with the terms of one or more contracts: *Provided,* That such failure or unsatisfactory performance has occurred within a reasonable period of time preceding the determination to debar. Failure to perform or unsatisfactory performance which the contractor can show was caused by events beyond its control which were not reasonably foreseeable shall not be considered to be a basis for debarment provided that no fault or negligence of the firm or individual was involved.

(iii) Violation of the contractual provision against contingent fees.

(iv) Payment or acceptance of a contingent fee, which is paid in violation of a contractual or statutory provision against contingent fees.

(v) Violation of the contractual provision requiring affirmative action to provide equal opportunity in the participant's own employment practices.

(4) Any other cause of such serious compelling nature, affecting responsibility, as may be determined by the appropriate Assistant Secretary, to warrant debarment.

(5) Violation of any law, regulation, or procedure relating to the application for financial assistance, insurance, or guarantee or to the performance of obligations incurred pursuant to a grant of financial assistance, or conditional or final commitment to insure or guarantee.

(6) Making or procuring to be made any false statement for the purpose of influencing in any way the action of the Department.

(7) Those found by the Secretary, after hearing and in accordance with procedural requirements of implementing regulations, to have violated Title VI of the Civil Rights Act of 1964. (Title VI and implementing regulations limit a withholding of financial assistance to the particular program, or part thereof, where the noncompliance occurred.)

(8) Those found by the Secretary to have violated any rule, regulation or procedure issued or adopted pursuant to Executive Order 11063, or any nondiscrimination provision included in any agreement or contract pursuant to any such rule, regulation, or procedure.

(9) Conviction under the Organized Crime Control Act of 1970, 18 U.S.C. 1961 et seq. or conviction for the commission of the offense of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, fraudulent use of the mail in connection with commission of such offenses, or conviction for any other offense indicating a lack of business integrity or honesty, which seriously and directly affects the question of present responsibility.

(10) Those who have failed to pay their debts to the Department within a reasonable period of time after a written demand for payment has been made in accordance with 4 CFR Part 102, Standards for the Administrative Collection of Claims and implementing HUD regulations in Part 17 of this title.

(b) *Conditions.* (1) The existence of any of the causes set forth in paragraph (a) of this section does not necessarily require that a contractor or grantee be excluded from departmental programs. In each instance, whether the offense or failure, or inadequacy of performance, be of a criminal, fraudulent, or other serious nature, the decision to debar shall be made within the discretion of the Department and shall be rendered in the best interest of the Government. Likewise, all mitigating factors may be considered in determining the seriousness of the offense, failure or inadequacy of performance, and in deciding whether the Administrative Sanction is warranted.

(2) The existence of a cause set forth in paragraph (a) (1) and (2) of this section shall be established by criminal conviction by a court of competent jurisdiction at the discretion of the appropriate official.

(3) The existence of a cause set forth in paragraph (a) (3), (4), (5), (6), (7) and (8) of this section shall be established upon the evidence presented as determined by the Department and consistent with pertinent statutes and regulations.

§ 24.7 Procedural requirements relating to the imposition of debarment.

(a) *Initiation of action.* When the Department seeks to debar a contractor or grantee (or any affiliate thereof), that party shall be served with written notice by registered or certified mail, return receipt requested, from the Assistant Secretary, proposing the action:

(1) Stating that the action is being considered,

(2) Setting forth the reasons for the proposed action, and

(3) Indicating that such party will be accorded an opportunity for a hearing if he so requests within 10 days from his receipt of notice, and that he may be represented by counsel. For the purposes

of compliance with this section, notice shall be considered to have been received by the addressee if the notice is properly mailed to the last known address of such addressee. Any official having jurisdiction may initiate a debarment action, notwithstanding the concurrent jurisdiction of another office.

(b) *Hearing*—(1) *Request for hearing.* Any contractor or grantee that has been notified of a proposed action is entitled to request an opportunity to be heard and to be represented by counsel. A hearing request shall be made in writing addressed to the official proposing the action. If at the end of such 10 day period, no request has been received, it may be assumed that an opportunity to be heard is not desired, and such official may proceed to make a final determination and so notify the interested party.

(2) *Notice of Hearing.* Upon receipt of a request for an opportunity to be heard, the Hearing Officer shall arrange a prompt and timely hearing. Notice of the time and place of such hearing shall be in writing, transmitted by certified or registered mail, return receipt requested, and shall include a statement indicating the nature of the proceedings and their purpose. It shall be within the discretion of the Hearing Officer to determine the hearing place. In determining the hearing place, the Hearing Officer shall consider the convenience of the parties and the public interest.

(c) *Hearing procedures.* (1) At the discretion of the Hearing Officer, hearings may be open to the public upon request except where issues of National security, trade secrets and personal privacy are present.

(2) Hearings shall be conducted by a Hearing Officer of the Department who shall be responsible for the fair and expeditious conduct of proceedings.

(3) The Department shall be represented by the General Counsel or his designee.

(4) A transcribed record shall be made of the proceeding and shall be made available to the parties upon request.

(5) Counsel for the Department shall proceed first with an opening statement to be followed by Appellant's opening statement. Either party may waive this right.

(6) All witnesses shall testify under oath or affirmation. Department witnesses, if any, shall be first called and may be cross-examined by Appellant. Appellant's witnesses may also be cross-examined.

(7) Counsel for the Department shall make the first closing statement. Appellant shall have the right of last closing statement and final rebuttal.

(8) Formal rules of evidence and procedure applicable to a proceeding in a Court of Law will not be applied. Parties may object to clearly irrelevant material, but technical objections to testimony as used in a court of law will not be sustained.

§ 24.8 Determination of Hearing Officer; review of determination.

(a) After the contractor or grantee has been afforded an opportunity to be heard, the Hearing Officer shall make a written determination on the evidence presented. If it is proposed that the sanction include an affiliate, the Hearing Officer shall rule specifically whether, and to what extent, the determination applies to such affiliate. The Hearing Officer's determination shall be transmitted to all appealing parties by certified or registered mail, return receipt requested.

(b) The Hearing Officer's determination shall be final unless within 30 days the Secretary decides, as a matter of discretion, to review the findings of the Hearing Officer or to have the findings reviewed by a designee of the Secretary. Any party may request such a review in writing within 10 days of receipt of the Hearing Officer's determination.

(c) Where a review is granted, the determination by the Secretary, or the Secretary's designee, shall be based on the record of the initial hearing and shall fully recite the evidentiary grounds upon which the Secretary's determination is made. Such determination shall be issued within 30 days from the decision to grant a review.

(d) Each determination shall become a part of the record.

(e) Notice of the Secretary's decision to review the Hearing Officer's determination and subsequent determination by the Secretary, or the Secretary's designee, shall be given in writing, signed by the Secretary or the Secretary's designee and transmitted by registered mail, return receipt requested.

§ 24.9 Authority of Hearing Officer.

The Hearing Officer, in the conduct of the hearing, has the power among others, to:

(a) Hold conferences to settle, simplify, or fix the issues in a proceeding, or to consider other matters that may aid in the expeditious disposition of the proceeding by consent of the parties or upon his own motion;

(b) Require parties to state their position with respect to the various issues in the proceeding;

(c) Require parties to produce for examination those relevant witnesses and documents under their control;

(d) Rule on motions, and other procedural items on matters pending before him;

(e) Regulate the course of the hearing and conduct of participants therein;

(f) Receive, rule on, exclude, or limit evidence, and limit lines of questioning or testimony which are irrelevant, immaterial or unduly repetitious;

(g) Fix time limits for submission of written documents in matters before him;

(h) Impose appropriate sanctions against any party or person failing to obey an order under these procedures which sanctions may include:

(1) Refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing designated matters in evidence;

(2) Excluding all testimony of an unresponsive or evasive witness, and

(3) Expelling any party or person from further participation in the hearing.

(i) Take official notice of any material fact not appearing in evidence in the record, which is among the traditional matters of judicial notice.

(j) Administer oaths of affirmation.

(k) Rule on requests by the public to attend the hearing.

§ 24.10 Notice of Determination by the Hearing Officer or the Secretary.

(a) *Notice to the Assistant Secretary.* (1) The Hearing Officer's determination shall be transmitted promptly to the Department official who invoked the Administrative Sanction.

(2) When the Secretary grants a review of the Hearing Officer's determination, the Assistant Secretary shall be so advised and shall defer notice to the Inspector General until a Secretarial Determination has been issued.

(3) Notice of a Secretarial Determination shall be sent upon issuance to the appropriate Assistant Secretary.

(b) *Notice to Field Offices by the Assistant Secretary.* When a sanction has been invoked or removed by a Hearing Officer which is not reviewed by the Secretary, or after such review is complete, each Field Office shall be notified in writing of the determination. Such notice shall include:

(1) The name of the party and affiliates, if any, against whom the sanction is invoked or removed.

(2) The address of the party, and affiliates where appropriate.

(3) The effect of the determination.

(4) The duration of any sanction invoked.

§ 24.11 Rescission and reinstatement.

(a) *Request for reinstatement.* Six months after the date of the final determination, any contractor or grantee against whom an administrative sanction has been invoked may in writing request reinstatement by the official who invoked the administrative sanction.

(b) *Reinstatement procedures.* The procedures for reinstatement are substantially similar to those invoked in the initial proceedings. Conduct of the reinstatement proceedings under § 24.11 shall be the responsibility of the official who imposed the sanction. Where the party has been suspended or debarred, however, the reinstatement proceeding shall be conducted by a Hearing Officer appointed in accordance with § 24.5(f). In reaching his determination regarding reinstatement, the presiding official must be satisfied that it is in the best interest of the Government to reinstate and also be persuaded from the assurances of the party concerned that he understands the

requirements of the statutes and the administrative rules and regulations and that he will comply with them in the future. The presiding official may require, where appropriate, restitution by the party for losses sustained by the Department on his account.

(c) *Grounds.* Except as otherwise provided by statute, a party may be reinstated subject to this § 24.11 upon the submission of an application, supported by documentary evidence, setting forth appropriate grounds for the granting of relief such as newly discovered material evidence, reversal of a conviction, bona fide change of ownership or management, or the elimination of the causes for which the debarment was imposed.

(d) *Consultation by Field Officers and Assistant Secretaries.* Following reinstatement proceedings, the presiding official shall promptly submit a recommendation concerning the reinstatement. The appropriate Field Officer and Assistant Secretary shall confer with regard to the merits of reinstatement. If there is disagreement between the Assistant Secretary and the Field Officer, the issue shall be referred to the Secretary for final resolution of the request for reinstatement.

(e) *Notice.* When an Administrative Sanction has been rescinded, a report thereof shall be forwarded to the appropriate Assistant Secretary. Notice of reinstatement shall be forwarded to the party so reinstated by certified or registered mail, return receipt requested, by the official taking the reinstatement action.

§ 24.12 Suspension.

Suspension is a drastic action and, as such, shall not be based upon an unsupported accusation. In assessing whether adequate evidence exists for invoking a suspension, consideration shall be given to the amount of credible evidence which is available, to the existence or absence of corroboration as to important allegations, as well as to the inferences which may properly be drawn from the existence or absence of affirmative facts. This assessment shall include an examination of basic documents, such as contracts, inspection reports and correspondence. A suspension may be modified by the office invoking the sanction whenever it is determined to be in the interest of the Government to do so.

§ 24.13 Causes and conditions under which contractors or grantees may be suspended.

(a) The Assistant Secretaries may, in the interest of the Government, suspend a contractor or grantee:

(1) Suspected, upon adequate evidence, of—

(i) Commission of fraud or a criminal offense as an incident to obtaining, attempting to obtain a public contract, or in the performance of Government business or contractual dealings.

(ii) Violation of the Federal antitrust statutes arising out of the submission of bids and proposals; or

(iii) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, violation of the Organized Crime Control Act of 1970 or any other offense indicating a lack of business integrity or business honesty, which seriously and directly affects the question of present responsibility; or

(2) For other causes of such serious and compelling nature, affecting responsibility as may be determined in writing by the appropriate Assistant Secretary to warrant suspension. Among such causes are cases where the contractor or grantee is suspected, upon adequate evidence of—

(i) Violation of any law, regulation, or procedure relating to the application for financial assistance, insurance or guarantee or to the performance of obligations incurred pursuant to a grant of financial assistance or conditional or final commitment to insure or guarantee.

(ii) Making or procuring to be made any false statement for the purpose of influencing in any way the action of the Department.

(b) A suspension invoked by another agency for any of the causes set forth in paragraph (a) (1) and (2) of this section may be the basis for the imposition of a concurrent suspension by the Department.

(c) An outstanding indictment of a contractor or grantee, or the naming of a contractor or grantee as an unindicted co-conspirator is adequate evidence of suspected criminal conduct and may be the basis for imposition of a suspension. Conviction of a contractor or grantee is adequate evidence to warrant imposition of a suspension pending debarment.

§ 24.14 Period and scope of suspension.

(a) *Period of suspension.* All suspensions shall be for a temporary period pending the completion of an investigation and such administrative or legal proceedings as may ensue. In cases involving suspected violations of Federal law where prosecutive action has not been initiated by the Department of Justice within 12 months from the date of the notice of suspension, the suspension shall be terminated unless an Assistant Attorney General or a United States Attorney requests continuance for an additional six months. Notice of the proposed removal of the suspension shall be given to the Department of Justice 30 days prior to the expiration of the 12-month period. In no event shall a suspension continue beyond 18 months unless prosecutive action has been initiated within that period. Whenever prosecutive action has been initiated, the suspension may continue until the administrative or legal proceedings are completed. Consideration may be given to debarment in accordance with § 24.6 in conjunction with the suspension procedures.

(b) *Scope of suspension.* (1) Suspension may include all known affiliates of a contractor or grantee.

(2) A decision to include known affiliates in a proposed suspension is an individual determination and, as such, must be made on a case-by-case basis. Among the factors to be considered in making this determination are:

(i) Likelihood of the affiliate's knowledge of or participation in the suspected improper conduct, and

(ii) The impact of its suspension on Department programs.

(3) The criminal, fraudulent, or other seriously improper conduct of an individual may be imputed to the organization with which he is connected when the impropriety involved was performed within the course of his official duty, or with knowledge or approval of the organization.

§ 24.15 Restrictions during period of suspension.

During a period of suspension of a contractor or grantee, the following policies and procedures shall be applicable:

(a) Bids and proposals for financial assistance shall not be solicited from suspended contractors or grantees. If received, bids and proposals shall not be considered and financial assistance shall not be granted to suspended contractors or grantees unless it is determined in writing by the suspending official to be clearly in the best interest of the Government. A determination to consider such bids and make such awards shall include consideration of unique value of the bidder's services, the degree to which the suspected improper conduct reflects upon the bidder's capacity to serve the Department and the overriding need for the bidder's services.

(b) Suspended contractors will be subject to the provisions of § 24.23(c) regarding restrictions on subcontractors.

§ 24.16 Notice of suspension.

(a) The contractor or grantee concerned shall be furnished by registered or certified mail, return receipt requested, a written notice of the suspension by the appropriate Assistant Secretary within 10 days after the effective date of the suspension. The notice shall state as follows:

(1) "Basis of the action." The suspension is based:

(i) On the information that the contractor or grantee has committed irregularities of a serious nature in business dealings with the Government, or

(ii) On irregularities which seriously reflect on the propriety of further dealings of the contractor or grantee with the Government. The irregularities should be described in general terms without disclosing the Government's evidence.

(2) The suspension is for a temporary period pending the completion of an investigation by the Department and/or any other Federal Agency and such administrative or legal proceedings as may ensue.

(3) Bids and proposals for participation in any Department programs will not be solicited from the contractor or grantee and, if received, will not be considered for award unless determined by the Department to be in the best interest of the Government.

(4) The suspended party is entitled to request an opportunity to be heard and represented by counsel in accordance with § 24.7.

(b) Where a matter has been referred to the Department of Justice, the Department shall not give further information to the contractors or grantees concerning the reasons for suspension beyond that stated in the notice of suspension set forth in this section until the Department of Justice has been advised of the inquiry and acquiesces in any such disclosure.

(c) For the purposes of compliance with the section, notice shall be considered to have been received by the addressee if the notice is properly mailed to the last known address of such addressee.

§ 24.17 Other sanctions.

(a) Except for provisions for withdrawal of mortgagee approval by the Mortgagee Review Board (24 CFR Part 25) and the Previous Participation Review and Clearance Procedure (24 CFR 200.210), all sanctions not authorized by this Part 24 are hereby repealed. This includes but is not limited to:

(1) Unsatisfactory Risk Determination (24 CFR 200.200).

(2) Precautionary Measures (24 CFR 200.205–200.208).

(3) Restrictions Pending Correction of Construction Deficiencies (HUD Handbook 4080.1, par. 2–3).

(4) Refusal of Participation Under Section 512 (24 CFR 200.190–200.195).

(5) Warning Letters (HUD Handbook 4080.1, par. 2–2).

(6) Dealer Approval (24 CFR 201.615–201.620).

(b) Limitations on participation of a contractor or grantee imposed prior to the effective date of these regulations under an ancillary procedure shall not be modified unless a final determination under § 24.8(c) so requires. However, such contractor or grantee may petition for reconsideration or for reduction of the sanction term under procedures provided by § 24.18(a) (5).

(c) Procedures under § 24.18 may be utilized to effect the sanctions repealed under this section.

§ 24.18 Temporary denial of participation; conditional denial.

(a) Causes and conditions under which a temporary denial of participation may be invoked.

(1) An Area Director, Insuring Office Director or Regional Administrator may issue an order which denies the participation in Department programs of a contractor or grantee.

(2) Causes for denial of participation shall include:

(i) Adequate evidence that approval of an applicant for insurance would be an unsatisfactory risk;

(ii) Adequate evidence of irregularities in contractor's or grantee's past performance in a Department program; and

(iii) Failure of a contractor or grantee to maintain prerequisites of eligibility to participate in a Department program.

(iv) Causes under § 24.13(a).

(3) Period and scope of temporary denial of participation.

(i) A denial of participation is limited to the program under which the offense occurred.

(ii) Denial or participation shall be for a temporary period pending correction or dismissal of the grounds for the denial, demonstration by the contractor or grantee that it is in the best interest of the Government to resume business with such contractor or grantee, or completion of an investigation and such legal proceedings as may ensue.

(iii) Denial of participation to affiliates shall be in accordance with § 24.14 (b).

(iv) Restrictions imposed by a denial of participation shall not extend beyond the jurisdiction of the official invoking the denial.

(v) The official invoking the denial shall notify all other Area, Insuring and Regional offices of the action. Officials so notified may restrict participation in the appropriate program by the party on this basis without the need for a further hearing.

(4) Notice of temporary denial of participation.

(i) A contractor or grantee shall be furnished by registered or certified mail, return receipt requested, a written notice of the action by the Area Director, Insuring Office Director or Regional Administrator. The denial shall be effective as of the date of the notice.

(ii) The notice shall clearly state the grounds upon which the action is based and shall explain the temporary nature of the action in accordance with paragraph (a) (3) of this section.

(iii) The notice shall explain the impact of the action on the contractor's or grantee's participation in Department programs specifying the program involved and the geographical area affected by the action.

(iv) The notice shall advise the contractor or grantee that a request may be made in writing to the official invoking the action for an opportunity to request reconsideration of the decision.

(5) Informal Hearing.

(i) Upon receipt of a request for an informal hearing seeking reconsideration, the official imposing the action shall promptly arrange such a hearing with the contractor or grantee to reconsider the order.

(ii) The contractor or grantee may be represented by counsel and may present all relevant materials to the official.

(iii) After consideration of the materials presented, the official shall in writing advise the contractor or grantee of his decision to withdraw, modify or affirm his order.

(iv) Where the decision is to affirm the order, the contractor or grantee may appeal in accordance with provisions of § 24.7(b), except that the request shall be addressed to the Assistant Secretary having jurisdiction of the program concerned.

(b) Causes and conditions under which conditional participation may be invoked.

(1) An Area Director, Insuring office Director or Regional Administrator may issue an order of conditional participation to a contractor or grantee.

(2) Causes for an order of conditional participation shall include:

(i) Failure to proceed in accordance with Department specifications;

(ii) Adequate evidence that requirements of a grant or contract will not be satisfied upon completion; and

(iii) Adequate evidence that there may be construction deficiencies in ongoing projects.

(3) Period and scope of an order of conditional participation.

(i) An order of conditional participation is limited to the program under which the offense occurred.

(ii) An order of conditional participation shall apply to affiliates in accordance with § 24.14(b).

(iii) Conditional participation shall be for a temporary period pending satisfaction of the conditions leading to issuance of the order.

(iv) Restrictions imposed by conditional participation shall not extend beyond the jurisdiction of the official issuing the order.

(4) "Notice of conditional participation." Issuance of an order of conditional participation shall be in accordance with § 24.18(a) (4).

(5) "Informal Hearing." Procedures to request reconsideration of an order of conditional participation shall be in accordance with § 24.18(a) (5).

§ 24.19 [Reserved]

§ 24.20 [Reserved]

§ 24.21 Establishment and maintenance of lists of contractors and grantees subject to administrative sanctions.

(a) The Inspector General, shall be responsible for maintenance and consolidation of Department lists relating to administrative sanctions. He shall further maintain debarment lists of other Government agencies which this Department is required by law and Executive Order to observe.

(b) Each Assistant Secretary shall advise the Inspector General of additions or deletions to be made in the lists maintained by the Office of the Inspector General.

(c) The Office of Inspector General shall, in cooperation with the offices of the Department, establish procedures for assuring the timely receipt of information relative to updating the Consolidated List.

(d) All lists shall be kept current. Procedures for issuance of notices of additions and deletions shall be established by the Inspector General. Each Assistant Secretary shall appoint a liaison officer responsible for providing the Office of the Inspector General with current information.

(e) The Consolidated List shall show as a minimum the following information where applicable:

(1) The names of those contractors and grantees against whom HUD has invoked administrative sanctions (in alphabetical order) with appropriate cross

reference where more than one name is involved in a single transaction;

(2) The basis of authority for each action;

(3) The extent of restrictions imposed; and

(4) The name of the office initiating the action, where appropriate.

(f) The Inspector General shall arrange for reproduction and distribution of the Consolidated List. Publication shall be in accordance with entries made under § 24.22. Distribution of such list among Department employees shall be made to those whose duties require access to the list as authorized by the Assistant Secretaries, Area Directors, Insuring Office Directors and Regional Administrators having respective jurisdiction of such employees. Names of entities named in the Consolidated List will be available upon request.

(g) Procedures for submitting requests for information contained in the Consolidated List and distribution of such information shall be established by the Office of the Inspector General.

§ 24.22 Basis for entry.

Entry shall be made on the Consolidated List of contractors and grantees on the following basis:

(a) Those listed by the Comptroller General in accordance with the provisions of section 3 of the Walsh-Healey Public Contracts Act (41 U.S.C. 37), which have been found by the Secretary of Labor to have violated any of the agreements or representations required by that Act.

(b) Those listed by the Comptroller General in accordance with the provisions of section 3 of the Davis-Bacon Act (40 U.S.C.-276a-2(a)), as found by the Comptroller General to have violated said Act.

(c) Those listed by the Comptroller General in accordance with the provisions of Part 5, § 5.6(b) of the regulations of the Secretary of Labor issued pursuant to authority granted under Reorganization Plan 14 of 1950, as found by the Secretary of Labor to be in aggravated or willful violation of the prevailing wage or overtime pay provision of any statutes including the following:

(1) Davis-Bacon Act (40 U.S.C. 276a).

(2) Anti-Kickback Act (18 U.S.C. 874, 40 U.S.C. 276b, c).

(3) The Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330).

(4) National Housing Act (12 U.S.C. 1703).

(5) Hospital Survey and Construction Act (42 U.S.C. 291).

(6) Airport and Airway Development Act of 1970 (49 U.S.C. 1701).

(7) Housing Act of 1949 (42 U.S.C. 1401).

(8) School Survey and Construction Act of 1950 (20 U.S.C. 251).

(9) Defense Housing and Community Facilities and Services Act of 1951 (42 U.S.C. 1501, 1591).

(10) Federal Civil Defense Act of 1950 (50 App. U.S.C. 2281(i)).

(11) Area Redevelopment Act of 1961 (42 U.S.C. 2518).

(12) Delaware River Basin Compact (sec. 15.1, 75 Stat. 714).

(13) Health Profession Educational Assistance Act of 1963 (sec. 721, 77 Stat. 167).

(14) Mental Retardation Facilities Construction Act (secs. 10, 122, 13, 77 Stat. 282, 284, 288).

(15) Community Mental Health Centers Act (secs. 205, 77 Stat. 292).

(16) Housing and Community Development Act of 1974 (42 U.S.C. 5301).

(d) Those listed by the Director of the Office of Federal Contract Compliance on the Contract Ineligibility List which gives the names of contractors and grantees who have been declared ineligible to participate in Government contracting or subcontracting by reason of noncompliance with the Equal Opportunity clause.

(e) Those whom the Department has debarred or suspended in accordance with this part.

(f) Those determined by an executive agency in accordance with section 3(b) of the Buy American Act (41 U.S.C. 10b (b)) to have failed to comply with the provisions of section 3(a) of that Act under any contract containing the specific provisions required by said section 3(a) and made by the agency for construction, alteration, or repair of any public building or public work.

§ 24.23 Treatment to be accorded contractors or grantees subject to administrative sanctions.

(a) *Total restrictions.* No financial assistance shall be made available directly or indirectly to any contractor or grantee that is listed on the basis of § 24.22 or to any affiliate of said contractor or grantee, nor shall bids or proposals be solicited therefrom unless the exceptions of § 24.23(c) or § 24.15(a) apply.

(b) *Partial restrictions.* Where an Area Director, Insuring Office Director or a Regional Administrator has authority to initiate actions for temporary denial of participation or conditional participation, the restriction on providing financial assistance to a contractor or grantee shall apply only within the territory of authority for the respective regional, insuring, or area office.

(c) *Restrictions on subcontracting.* Where a contractor or grantee listed on the Consolidated List is proposed as a subcontractor, the contracting officer or program officer should prohibit or decline to approve subcontracting with that contractor or grantee unless it is determined by the Department to be clearly in the best interest of the Government to do so.

Issued January 19, 1977.

JOHN B. RHINELANDER,
Under Secretary for Housing and Urban Development.

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THURSDAY, JANUARY 27, 1977

PART VI



DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Community Planning and Development

COMMUNITY DEVELOPMENT BLOCK GRANTS

Program Management

Title 24—Housing and Urban Development

CHAPTER V—OFFICE OF ASSISTANT SECRETARY FOR COMMUNITY PLANNING AND DEVELOPMENT, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. R-77-292]

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

Program Management

On November 15, 1976, the Department of Housing and Urban Development (HUD) published in the FEDERAL REGISTER (41 FR 50376) proposed amendments to the regulations governing the community development block grant program. The amendments concerned the Secretarial review of performance of a block grant recipient and the sanctions and remedial actions that may be appropriate in various situations.

Interested persons were given until December 16, 1976, to submit written comments. Nearly 30 comments were received and all were given careful consideration. As a result of the comments received, a number of substantive changes have been made and the material has been reorganized for greater clarity. Section 570.911, Sanctions and Remedial Actions, has been divided into two sections: § 570.910, Corrective and Remedial Actions, and § 570.911, Reduction of Annual Grant. In order to accommodate the new § 570.910, the existing section entitled Evaluation by HUD, has been numbered as § 570.908. The following is a description of the major substantive changes that have been made:

1. Paragraph (b) of § 570.909 has been amended by striking the words "where possible" in order to make clear that the Secretary's review of an entitlement recipient's performance will take place in all instances prior to approval of a succeeding year's entitlement application. Also, the last sentence is changed to state that the review of a discretionary grantee's performance will take place prior to final closeout of the grant, rather than prior to making final payment on the grant. This change is made because there is no final payment under the letter of credit procedure; there is a closeout procedure, however, whereby final costs are recognized and accepted.

2. Paragraph (c)(8) of § 570.909 is changed to state that records of comments as well as complaints by citizens and organizations will be reviewed. While this was not previously precluded, it is now specifically mentioned in order to make clear that studies, analyses and other comments will be given due consideration by HUD.

3. A new paragraph (d), entitled Review of Urban Counties, has been added to § 570.909. This is for the purpose of acknowledging that many elements of performance are within the control of participating units of general local government rather than the urban county itself. The overall responsibility of the urban county to carry out the approved program is not, however, diminished in any respect.

4. Several comments suggested that there is nothing in Section 104(d) of the Housing and Community Development Act of 1974, which provides the basis for the Secretary's review of performance, that authorizes HUD to review a recipient's progress in carrying out approved activities. Others suggest that recipients should not be compared with each other. The Department disagrees with that position on the grounds that the specific language of Section 104(d) that the Secretary "determine whether the grantee has carried out a program substantially as described in its application;" the general thrust of the legislation; and the legislative history all suggest that it is HUD's responsibility to review a recipient's progress. The peer group standard for measuring progress is used instead of arbitrary numerical or percentage measures because the latter are inherently unfair and unresponsive to factors that are unique to a particular community or group of communities.

In administering this provision of the regulations, HUD will consider measures of progress, such as expenditure of funds, as an indication of progress only. In the final analysis it is the actual accomplishment of approved activities that determines whether a recipient "has carried out a program" substantially as described in its application.

Consequently, § 570.909(e)(1) is substantially unchanged except that the language regarding corrective and remedial actions is transferred to § 570.910.

5. Paragraph (e)(2) of § 570.909 is revised to set more specific standards for measuring progress in carrying out an approved housing assistance plan (HAP). Most important is the addition of the standard that a one-year housing goal will be considered to be met if the units included in the HAP have reached the stage of a firm financial commitment within a two-year period. This standard is established in recognition of the fact that the many steps involved in developing housing (particularly new construction) are sufficiently time consuming that a recipient will not be able to conclusively demonstrate that the one-year housing goals are being met by the time HUD makes its review of the recipient's next performance report and succeeding entitlement application.

6. Paragraph (f)(1)(ii) of § 570.909 has been amended to state that HUD's review of performance will not include new determinations of eligibility, except where there is substantial evidence challenging the basis for the original finding of eligibility.

7. Paragraph (g) of § 570.909 has been amended by deleting the examples of noncompliance. The examples themselves raised questions and did not substantively contribute to the clarity of the paragraph.

8. A major change has been made in paragraph (h) of § 570.909 regarding the determination required by section 104(d) of the Act that "the applicant has a continuing capacity to carry out in a timely manner the approved Community Development Program." The preamble to the proposed November 15, 1976, regulation stated that it was the Department's interpretation that the statutory requirement for a continuing capacity determination applied only to the Community Development Program and not to the HAP. Several comments provided well reasoned arguments why that interpretation was too literal and narrow. Consequently, the Department has concluded that there is sufficient legislative and administrative authority to apply the continuing capacity standard to performance in carrying out housing assistance plans.

The basic standard for determining continuing capacity has remained essentially unchanged; namely, that a recipient that has made substantial progress in carrying out the program, in conformance with the approved application, and in compliance with applicable laws and regulations, will generally be considered to have a continuing capacity. Where a recipient's performance does not meet the standards in the regulations, however, HUD may review the recipient's administrative capacity to carry out the approved program. HUD may also review a recipient's organizational capacity to carry out the program. For instance, a recipient that does not have a housing authority or similar agency, where such agency is necessary to implement the HAP, may be found to lack a continuing capacity.

9. Several commenters suggested that the word "advise", which is included in paragraphs (b)(5)–(7) of § 570.910, should be changed to "require". For instance, § 570.910(b)(5) states, "Advise the recipient to suspend, discontinue or not incur costs for the affected activity." The significance of using either "advise" or "require" is negligible. If a recipient fails to take the actions specified, the result is the same; namely, more serious sanctions may be taken including the initiation of actions under § 570.913. Consequently, the word "advise" is retained.

10. Paragraph (b)(6) of § 570.910 is amended to except substantial environmental violations from the reprogramming provision.

11. Another major change is to authorize HUD to condition contracts for lack of performance, nonconformance, or lack of continuing capacity, as well as for noncompliance with applicable laws or regulations. This amendment appears in § 570.910(b)(9). Whereas the Department intends to use its authority to condition contracts as a means to achieve performance only in the most extreme cases, it is recognized that there may be instances where this is an appropriate sanction in specific situations. Accordingly, § 570.306(e)(3) is also amended to be consistent with this provision.

12. Section 570.911 is amended to add two provisions: first, that an entitlement amount may be reduced down to zero for a succeeding program year; and second, to provide recipients with the opportunity for an informal consultation prior to reducing an annual grant. These provisions were discussed in the preamble, but were inadvertently omitted from the text, of the November 15, 1976 proposed regulations.

Finally, several comments urged that the Department be more specific throughout the regulations in identifying the specific sanctions or corrective or remedial actions that might be applied in particular cases. The Department has seriously considered this suggestion, but has concluded that such precision is not possible at this time. Each situation is unique. The reasons for noncompliance or lack of progress vary from community to community, as do the appropriate means and ability to improve performance. Each situation will be considered on its own merits, at least until additional experience is gained.

In order to facilitate the Secretary's review of recipient performance, it has been determined to be necessary to make certain changes in the grantee performance report. Section 570.906 is being amended in order to require that, starting with the performance report submitted in Fiscal Year 1977, information will be reported on a cumulative basis.

Section 570.906(a) is revised to require that the performance report include information on all activities underway, completed, or not yet begun, regardless of the year in which a particular activity was first included in the recipient's community development program. This revision will enable HUD, which must review each recipient's past performance prior to approving the next year's application, to base its findings on the most complete information available. Because some recipients have already submitted a performance report and others will be submitting their reports in the near future, § 570.906(a) is further revised to permit a grace period for submission of information on activities included in the recipient's first year community development program. While all entitlement recipients must submit a performance report in accordance with the timing requirements of § 570.300(e), recipients who submit a performance report prior to March 1, 1977, may delay reporting on activities included in the first year's community development program until March 1, 1977.

Section 570.906(b)(1) and (2) are revised to eliminate the reference to a single year.

In connection with the environmental review of these amendments to the regulations, a Finding of Inapplicability has been made under HUD Handbook 1390.1 (38 FR 19182). A copy of the Finding is available for inspection in the Office of the Rules Docket Clerk, Room 10141, Department of Housing and Urban Development, 451 7th Street, SW., Washington, D.C. 20410.

NOTE.—It is hereby certified that the economic and inflationary impacts of these amendments have been carefully evaluated in accordance with OMB Circular No. A-107.

(Title I, Housing and Community Development Act of 1974, (42 U.S.C. 5301 et seq.); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d).)

Accordingly, Part 570 of Chapter V of 24 CFR is amended as follows:

1. By deleting paragraph (e)(4) and the last full paragraph of § 570.306(e), and revising paragraph (e)(3) to read as follows:

§ 570.306 HUD review and approval of application.

• • • • • •

(e) • • •

(3) There is substantial evidence that there has been, or there will be, a lack of substantial progress, nonconformance, noncompliance, or a lack of continuing capacity, as described in § 570.909. In such case, the reasons for the conditional approval and the actions necessary to remove the condition shall be specified. Failure to satisfy the condition may result in a reduction in the annual grant pursuant to § 570.910(b)(10).

2. By revising § 570.906 (a) and (b)(1) and (2) as follows:

§ 570.906 Performance Report.

(a) *Submission.* Each entitlement recipient shall annually submit a performance report. The performance report shall include information on each activity included in the recipient's cumulative community development program, regardless of the year in which the activity was first included in the program, and regardless of whether the activity is underway, completed or not yet begun. The report must be submitted in accordance with the timing requirements of § 570.300(e); however, recipients who submit a performance report prior to March 1, 1977, may delay reporting on activities included in the first year's community development program until March 1, 1977.

(b) *Contents.*—(1) *Progress on planned activities.* The recipient shall indicate, on a form prescribed by HUD, progress on:

(i) Each activity described in all approved applications;

(ii) Each local option activity;

(iii) Each activity added by HUD-approved program amendments; and

(iv) Each activity added by local program amendment.

(2) *Recipient assessment.* The performance report must include the recipient's assessment of the effectiveness of the program of community development activities conducted under this part in meeting the objectives of this part and the needs and objectives identified in the recipient's application(s).

• • • • • •

§ 570.908 [Redesignated from § 570.910]

3. By renumbering § 570.910 as § 570.908, *Evaluation by HUD.*

4. By revising § 570.909 to read as follows:

§ 570.909 Secretarial review of recipient's performance.

(a) *Objective.* The Secretary will review each recipient's performance to determine whether:

(1) The recipient has carried out a program substantially as described in its application.

(2) That program complied with the requirements of the Act, this part, and other applicable laws and regulations.

(3) The recipient has a continuing capacity to carry out the approved program in a timely manner; and

(4) Sanctions or other corrective or remedial actions described in §§ 570.910–570.913 are appropriate as a result of the above determinations.

(b) *Timing of review.* The Secretary's review of each entitlement recipient's performance will take place at least on an annual basis and prior to approval of the succeeding year's entitlement application. The Secretary's review of a discretionary recipient's performance will take place prior to approval of a subsequent discretionary grant to the same recipient and, in the case of other discretionary recipients, prior to final closeout of the grant.

(c) *Basis of review.* In reviewing each recipient's annual performance, the Secretary will consider all available evidence which may include, but need not be limited to, the following:

(1) The approved block grant application and any amendments thereto;

(2) Reports prepared by the recipient, including the annual performance report described in § 570.906;

(3) Records maintained by the recipient pursuant to § 570.907;

(4) Results of HUD's monitoring of recipient performance;

(5) Audit reports whether conducted by the recipient or by HUD auditors;

(6) Records of drawdowns on the letter of credit;

(7) Evidence of progress in the provision of housing assistance in accordance with goals in the housing assistance plan;

(8) Records of comments and complaints by citizens and organizations, or litigation.

(d) *Review of urban counties.* In reviewing the performance of urban counties, the Secretary will take into consideration both those actions which are within the control of the urban county and those which are within the control of its included units of general local government. A lack of performance on the part of a participating unit of general local government does not relieve the urban county of its obligation to carry out the approved program or to take whatever measures are appropriate to obtain performance by its included units of general local government.

(e) *Substantial progress.* HUD will review a recipient's performance to determine whether the recipient has made substantial progress in carrying out its approved program.

(1) *Community Development Program.* HUD will review a recipient's progress in carrying out approved activities and will take into account such factors as expenditure of funds, obligation of funds, award of third party contracts, and other measures of progress. While HUD will not establish arbitrary numerical or percentage standards for measuring progress, HUD will compare a recipient's progress with that of other recipients of comparable size with similar activities and grant amounts. If a recipient's progress lags substantially behind that of other similar recipients, further reviews may be conducted to determine the reasons for a lack of progress.

(2) *Housing assistance plan (HAP).* HUD will review a recipient's progress in achieving the one-year goals for housing assistance in the most recently approved HAP and the two prior HAPs, and the three-year goals in the two prior HAPs. In measuring progress in achieving HAP goals, HUD will consider a one-year goal to have been met if the recipient has received a firm financing commitment for specific projects or units identified in the HAP within a two-year period. A failure to achieve the one-year HAP goals or to make substantial progress toward achieving the three-year HAP goals may be due to factors not within the control of the recipient. However, HUD will consider the extent to which actions within the control of the recipient have been taken to achieve HAP goals. Such actions include:

(i) The removal of impediments under local ordinances and land use requirements to the development of assisted housing;

(ii) The formation of a local housing authority or execution of an agreement with a housing authority having powers to provide assisted housing within the jurisdiction of the applicant, when necessary to carry out the housing assistance plan;

(iii) The provision of sites, or improvements to sites, or extension of utilities to sites for assisted housing when resources are available, provided that such sites meet the applicable site and neighborhood standards of HUD; and

(iv) Other actions appropriate for implementation of the housing assistance plan.

(f) *Conformance with approved program.* HUD will review a recipient's performance to determine whether the program carried out conforms with the approved application.

(1) *Community Development Program.* HUD will review a recipient's performance to determine whether the activities undertaken during the period under review conform substantially to the Community Development Program described in the application, including any amendments thereto approved by HUD pursuant to § 570.305.

(i) The review may include whether any activities that were undertaken which were not included in the approved Community Development Program, or any amendments thereto, are eligible under § 570.200, conform to the certification under § 570.303(e)(6), and are within amounts not requiring prior HUD approval pursuant to § 570.305.

(ii) HUD's review of activities for conformance with the approved Community Development Program will not include new determinations of eligibility, except where there is substantial evidence challenging the basis for the original finding of eligibility.

(2) *Housing assistance plan.* HUD will review a recipient's performance to determine whether the housing assistance provided conforms to the type of housing to be assisted (new construction, rehabilitation or use of existing housing), the households to be assisted, and the general locations as set forth in the HAP. This review shall also take into consideration the regulations implementing Section 213 of the Act as set forth in Part 891 of this title.

(g) *Compliance.* HUD will review a recipient's performance to determine whether the program carried out complies with the requirements of the Act, this Part, and other applicable laws and regulations.

(h) *Continuing capacity.* HUD will review a recipient's performance to determine whether the recipient has a continuing capacity to carry out the approved program in a timely manner. The primary factors to be considered in arriving at a determination that a recipient has a continuing capacity are those described in paragraphs (e), (f) and (g) of this section.

(i) If the Secretary determines that the recipient has made substantial progress in carrying out the approved program, that the program undertaken conformed substantially to the approved application, and that the program was carried out in compliance with the Act, this part, and other applicable laws and regulations, the recipient will generally be considered to have a continuing capacity.

(ii) A determination that a recipient lacks a continuing capacity may be based on any single one, or any combination of the factors in paragraphs (e), (f) and (g) of this section. Particular attention will be given to efforts of the recipient to accelerate the progress of the program and/or to prevent the recurrence of past instances of nonconformance with the approved application or noncompliance with applicable laws and regulations.

(iii) If there is substantial evidence that the recipient lacks a continuing capacity, HUD will review the recipient's program to determine whether there is an administrative capacity to carry out the approved program in a timely manner. Primary among the factors to be considered will be whether responsibility for administering the program has been assigned to specific departments, agencies or persons, and whether necessary staff has in fact been employed or contracted for. In addition, HUD will consider whether the recipient has the requisite organizational authority, such as a housing authority or similar agency, when required to carry out the approved HAP.

5. By adding a new § 570.910 to read as follows:

§ 570.910 Corrective and remedial actions.

(a) *General.* When the Secretary determines on the basis of a review of a recipient's performance under § 570.909, that the objectives set forth in § 570.909 (a) have not been met, the Secretary will take one or more of the actions authorized in §§ 570.910–570.913. In each instance, the action taken will be designed to, first, prevent a continuance of the deficiency (lack of progress, nonconformance, noncompliance, lack of continuing capacity); second, mitigate any adverse effects or consequences of the deficiency to the extent possible under the circumstances; and third, prevent a recurrence of the same or similar deficiencies.

(b) *Actions authorized.* The following is a listing of actions that HUD may take in response to review of a recipient's performance. Such actions may be taken with regard to either an entitlement recipient or a discretionary recipient and may be taken either singly or in combination, as appropriate to the circumstances.

(1) Request the recipient to submit additional information:

(i) Concerning the administrative, planning, budgeting, management and evaluation functions to determine any reasons for lack of progress;

(ii) Explaining any actions being taken to correct or remove the causes for delay;

(iii) Documenting that activities undertaken were not in nonconformance with the approved program or in noncompliance with applicable laws or regulations; or

(iv) Demonstrating that the recipient has a continuing capacity to carry out the approved program in a timely manner.

(2) Request the recipient to submit progress schedules for completing approved activities.

(3) Issue a letter of warning that advises the recipient of the defiiniency and puts the recipient on notice that more serious sanctions will be taken if the deficiency is not corrected or is repeated.

(4) Advise the recipient that a certification will no longer be acceptable and that additional information or assurances will be required, as provided in § 570.306(b)(1).

(5) Advise the recipient to suspend, discontinue or not incur costs for the affected activity.

(6) Advise the recipient to reprogram funds from affected activities to other eligible activities: *Provided,* That such action shall not be taken in connection with any substantial violation of § 570.603 and 24 CFR Part 58.

(7) Advise the recipient to reimburse the recipient's program account or letter of credit in any amounts improperly expended.

(8) Change the method of payment from a letter of credit basis to a reimbursement basis.

(9) Condition the approval of a succeeding year's application if there is substantial evidence of a lack of progress, nonconformance, noncompliance, or a lack of a continuing capacity. In such cases, the reasons for the conditional approval and the actions necessary to remove the condition shall be specified, as provided in § 570.306(e)(3).

(10) Reduce the recipient's annual grant by up to the amount conditionally approved pursuant to § 570.306(e)(3) where such condition or conditions have not been satisfied.

6. By revising § 570.911 to read as follows:

§ 570.911 Reduction of annual grant.

When the Secretary determines on the basis of a review of an entitlement recipient's performance, that the objectives set forth in § 570.909(a) have not been met, the Secretary may make an appropriate reduction in the entitlement grant amount for the succeeding program year. A reduction will not be made in the entitlement grant amount until at least one of the corrective or remedial actions specified in § 570.910(b) has been taken, and only then if the recipient has not made an appropriate and timely response. The Secretary may reduce the entitlement amount down to zero for a succeeding program year. Prior to making a reduction in the entitlement amount under this section, however, the recipient shall be notified and given an opportunity within a prescribed time for an informal consultation regarding the proposed action.

7. By revising paragraph (b) of § 570.913 to read as follows:

§ 570.913 Other remedies for noncompliance.

• • • • •

(b) *Secretarial actions on payments.* If the Secretary finds a recipient has failed to comply substantially with any provision of this part, including the performance standards set forth in § 570.909, he may, provided his finding of failure to comply is made after reasonable notice and opportunity for hearing:

(1) Terminate payments to the recipient; or

(2) Reduce payments to the recipient by an amount equal to the amount of such payments which were not expended in accordance with this part; or

(3) Limit the availability of payments to programs, projects, or activities not affected by such failure to comply. *Provided, however,* That the Secretary may on due notice revoke the recipient's letter of credit in whole or in part at any time after the initial finding of failure to comply, pending such hearing and a final decision of the Department, to the extent the Secretary determines such action necessary to preclude the further expenditure of funds for activities affected by such failure to comply. The following regulations govern the procedures and practice requirements involving adjudications where the Secretary desires to take action requiring reasonable notice and opportunity for hearing. The regulations in this part shall be liberally construed to secure just, expeditious, and efficient determination of the issues presented. The Administrative Procedures Act (5 U.S.C. 551 et seq.) where applicable shall be a guide in any situation not provided for or controlled by this subpart, but shall be liberally construed or relaxed when necessary.

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Effective date: This amendment shall be effective on February 24, 1977.

WARREN H. BUTLER,
Acting Assistant Secretary for Community Planning and Development.

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federal register

THURSDAY, JANUARY 27, 1977

PART VII



DEPARTMENT OF JUSTICE

Law Enforcement Assistance Administration

■

FEDERAL AND FEDERALLY ASSISTED PROGRAMS AND PROJECTS

Evaluation, Review and Coordination

Title 28—Judicial Administration

CHAPTER I—DEPARTMENT OF JUSTICE

PART 30—FINAL REGULATION RELATING TO THE LEAA IMPLEMENTATION OF THE OMB CIRCULAR NO. A-95 REVISED

Federal and Federally Assisted Programs and Projects; Evaluation, Review and Coordination

The Law Enforcement Assistance Administration hereby amends Part 30 to Chapter I of Title 28 of the Code of Federal Regulations. This regulation will amplify current LEAA regulation governing compliance with OMB Circular No. A-95 Revised entitled "Evaluation, Review, and Coordination of Federal and Federally Assisted Programs and Projects."

On August 27, 1976, the Law Enforcement Assistance Administration published draft regulations proposed to amend 28 CFR Part 30 implementing OMB Circular No. A-95 Revised. 41 FR 36215 (August 27, 1976). Comments have been received and the following modifications have been made to the draft regulations:

Section 30.2(c). Crime Control Act of 1973 is an improper cite to the LEAA authorizing legislation. The proper cite has been substituted.

Section 30.3. Same revision as made to § 30.2(c).

Section 30.3(c)(2). The term "Formula" is inserted before the term "Allocation".

Section 30.3(d). This section is revised to limit the applicability of Subpart E only to 16.500 Law Enforcement Assistance—Comprehensive Planning Grant—programs.

Section 30.4(a). A second sentence is added to allow an applicant to notify either the State or areawide clearinghouses where such clearinghouses have agreed on a single entry point into the review system in that State.

Section 30.4(f). The words "by the areawide clearinghouse" is inserted after the phrase "to be sent" to make it clear that it is the clearinghouse's responsibility to send project notification to local units and not the applicant's responsibility.

Section 30.5(a). A second sentence is added to permit concurrent review of an application by the funding agency and clearinghouses if the applicant, clearinghouses, and funding agency agree to such review.

Section 30.5(c)(3). This has been added as a conforming amendment to implement the change to § 30.5(a).

Section 30.5(d). This subsection is revised for clarification.

Section 30.6(b). A second sentence is added to provide that SF 424 may be used for notification purposes.

Section 30.7(b). The language "by the clearinghouse" is inserted in the first sentence to clarify that receipt is by the clearinghouse.

Section 30.9(a). A second sentence is added as a conforming amendment to implement the change to § 30.5(a).

Section 30.9(d). The term "against" is inserted after the term "recommended".

Section 30.14. This section has been substantially revised to bring it into conformity with Part III of OMB Circular No. A-95 Revised.

Section 30.14(b). This subsection allows the Governor or the Governor's designated agency to permit concurrent review of the State plan by LEAA and the Governor or the designated agency.

Section 30.19(a)(1). The term "SPA" is deleted and the language "areawide comprehensive planning agency" has been substituted.

Section 30.23. The term "the FRC" has been added to the second sentence and the third sentence is deleted. The third sentence in the draft regulation provided: "The SPA may seek the aid of the FRC if LEAA is unable to achieve an acceptable resolution." The reason for this revision is to make the SPA responsible to achieve an acceptable resolution. Where an acceptable resolution cannot be achieved, then the SPA may apply to LEAA for a waiver of this requirement.

Section 30.24(b). The term "a" is inserted before the term "State".

Section 30.24(f). A definition of "State planning agency" is added. Accordingly, paragraphs (f) through (k) are redesignated as (g) through (l).

Section 30.24(m). A definition of "days" is added to mean calendar days.

A number of comments related to clearinghouse functions. LEAA may not alter such functions. However, all comments have been forwarded to the Office of Management and Budget for consideration.

RICHARD W. VELDE,
Administrator.

Accordingly, Part 30 of Title 28 is amended to read as follows:

Subpart A—General Provisions

Sec.
30.1 Purpose.
30.2 Authority.
30.3 Implementation.

Subpart B—Project Notification Procedures

30.4 Notification of intent.
30.5 Application submission.
30.6 Indian tribes.
30.7 Clearinghouse review.
30.8 SPA responsibilities.
30.9 Funding agency responsibilities.
30.10 Requests for exemptions and procedural variations.
30.11 Joint funding.

Subpart C—Direct Federal Development

30.12 Non-applicability.

Subpart D—State Plans

30.13 General.
30.14 Governor's comments.

Subpart E—Coordination of Planning in Multijurisdictional Areas

30.15 Planning and development districts or regions.
activities in multijurisdictional areas.
30.16 Governor's review and comment.
30.17 Consultation in review boundaries.
30.18 Justification for variance.
30.19 Common and consistent planning bases and coordination of related
30.20 Memorandum of agreement signatories.
30.21 Applicant for assistance to accomplish areawide planning.
30.22 SPA implementation of memorandum of agreement requirement.
30.23 Inability to effectuate a memorandum of agreement.

Subpart F—Definitions

30.24 Definitions.

AUTHORITY: OMB Circ. No. A-95 Rev.; Sec. 501, Omnibus Crime Control and Safe Streets Act of 1968, as amended, 42 U.S.C. 3701, et seq.

Subpart A—General Provisions

§ 30.1 Purpose.

The purpose of this regulation is to implement OMB Circular A-95 Revised (41 FR 2052 (January 13, 1976)) for the cooperation with the Law Enforcement Assistance Administration (LEAA) and State Planning Agencies (SPA's) in the evaluation, review, and coordination of LEAA assisted programs and projects.

§ 30.2 Authority.

This regulation is based upon and incorporates OMB Circular No. A-95 Revised, and is promulgated for the:

(a) Encouragement for the use of a project notification and review system to facilitate coordinated planning on an intergovernmental basis for certain Federal assistance programs in furtherance of section 204 of the Demonstration Cities and Metropolitan Development Act of 1966 and Title IV of the Intergovernmental Cooperation Act of 1968.

(b) Securing the comments and views of State and local agencies which are authorized to develop and enforce environmental standards on certain Federal or federally assisted projects affecting the environment pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 and regulations of the Council on Environmental Quality.

(c) Furthering the objectives of Title VI of the Civil Rights Act of 1964; section 262(b) of the Juvenile Justice and Delinquency Prevention Act of 1974; and section 518(c) of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, 42 U.S.C. 3701, et seq.

§ 30.3 Implementation.

Full compliance with OMB Circular No. A-95 Revised is required by all applicants for funds under programs associated with section 205, section 306(a), section 455(a) and section 515(b) of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, 42 U.S.C. 3701, et seq., and section 222(a) and section 224(a) of the Juvenile Justice Delinquency Prevention Act of 1974, Pub. L. 93-415. This regulation and OMB Circular No. A-95 Revised will have applicability to all programs, projects, and activities (or significant substantive changes thereto) for which LEAA assistance is being sought as outlined below:

(a) Subpart B of this regulation and Part I of OMB Circular No. A-95 Revised cover the following programs:

(1) 16.500 Law Enforcement Assistance—Comprehensive Planning Grants.

(2) 16.501 Law Enforcement Assistance—Discretionary Grants.

(3) 16.502 Law Enforcement Assistance—Improving and Strengthening Law Enforcement and Criminal Justice.

(4) 16.515 Criminal Justice Systems Development.

(5) 16.516 Law Enforcement Assistance—Juvenile Justice and Delinquency Prevention—Formula Allocation to the States.

(6) 16.517 Law Enforcement Assistance—JJDP Special Emphasis Prevention and Treatment.

(b) Part II of OMB Circular No. A-95 Revised does not apply to LEAA assisted programs and projects.

(c) Subpart D of this regulation and Part III of OMB Circular No. A-95 Revised cover the following programs:

(1) 16.502 Law Enforcement Assistance—Improving and Strengthening Law Enforcement and Criminal Justice.

(2) 16.516 Law Enforcement Assistance—Juvenile Justice and Delinquency Prevention—Formula Allocation to the Statea.

(d) Subpart E of this regulation and Part IV of OMB Circular No. A-95 Revised cover the following programs:

(1) 16.500 Law Enforcement Assistance—Comprehensive Planning Grants.

Subpart B—Project Notification Procedures

§ 30.4 Notification of intent.

(a) Any applicant undertaking to apply to LEAA or an SPA for assistance for a project or program or major substantive modification thereto under an LEAA assisted project or program covered by this Subpart and Part I of OMB Circular No. A-95 Revised is required to notify both the State and areawide planning and development clearinghouses in the jurisdiction in which the project is to be located of the applicant's intent to apply for assistance at such time as the applicant determines to develop an application. The applicant may notify either the State or areawide planning and development clearinghouses where such clearinghouses have agreed on a single entry point into the review system in that State.

(b) In the case of the applications for projects involving land or water use and development or construction in the National Capital (as defined in section 1(b) of the National Capital Planning Act of 1952, as amended) a copy of the notification is to be sent to the National Capital Planning Commission (NCPC) in addition to the State and areawide clearinghouses.

(c) In the case of an application in any State for an activity that is statewide or broader in nature and does not have specific applicability to areawide or local planning and programs, the notification is to be sent only to the State clearinghouse unless otherwise required by the State clearinghouse.

(d) Notifications shall include a summary description of the proposed project. The summary description shall contain the following information:

(1) Identity of the applicant.

(2) The geographical location of the proposed project. A map should be provided, if appropriate.

(3) A brief description of the proposed project by type, purpose, general size or scale, estimated cost, beneficiaries, or other characteristics which will enable the clearinghouses to identify agencies of State or local government having plans, programs, or projects that may be affected by the proposed project.

(4) A statement as to whether the applicant will be required by the funding agency to submit environmental impact information for the proposed project.

(5) The LEAA program title and number under which assistance will be sought as provided in § 30.5.

(6) The estimated date the applicant expects to formally file an application.

(e) Applicants are encouraged to contact the clearinghouse to which the notification will be sent to obtain notification forms and instructions and to submit the notification containing the preliminary information indicated above to the clearinghouse at the earliest possible time to expedite clearinghouse review.

(f) Notifications of all projects affecting a unit of general local government may be requested by the chief executive of such unit to be sent by the areawide clearinghouse to such chief executive or to such central agency as the chief executive may designate for review and reference to appropriate agencies of such unit.

§ 30.5 Application submission.

(a) All applications for assistance under programs covered by this Subpart must be submitted to appropriate clearinghouses for review prior to their submission to the funding agency. However, concurrent submission of an application to the clearinghouses and the funding agency is permissible only if the applicant, clearinghouses, and funding agency agree to concurrent submission.

(b) Where review by clearinghouse has been completed prior to completion of an application, the applicant is not required to submit a completed application to the clearinghouses prior to submission to the funding agency. However, the applicant may be requested by the clearinghouses to supply an information copy of the completed application when the application is submitted to the funding agency.

(c) Applicants will include with the completed application as submitted to the funding agency:

(1) All comments and recommendations made by or through clearinghouses, along with a statement that such comments have been considered prior to submission of the application;

(2) Where no comments have been received from a clearinghouse a statement that the procedures outlined in this section have been followed and that no comments or recommendations have been received; or

(3) Statements from the applicant and clearinghouses agreeing to concurrent review of the application by the clearinghouses and funding agency.

(d) Applications for annual renewal or continuation grants are subject to review upon request of the clearinghouse; and applications not submitted to or acted upon by the funding agency within one year after completion of the clearinghouse review are subject to re-review upon the request of the clearinghouse.

(e) Applications submitted to clearinghouses for review from nongovernmental applicants are not required to include confidential information concerning the financial status or structure or the personnel of the applicant organization, even though the funding agency may require such information to be sent to the funding agency as part of the application.

§ 30.6 Indian tribes.

(a) Applications from federally recognized Indian tribes are not subject to the requirements of this Subpart or Part I of OMB Circular No. A-95 Revised. However, Indian tribes may voluntarily comply with this Subpart and are encouraged to do so.

(b) The funding agency shall notify the appropriate State and areawide clearinghouses of any applications submitted by federally recognized Indian tribes upon receipt. SF 424 may be used for such notification.

(c) Where a federally recognized Tribal Government has established a mechanism for coordinating the activities of Tribal departments, divisions, enterprises, and entities, such Tribal Government may require upon obtaining approval from LEAA that applications for assistance under programs covered by this Subpart from such Tribal departments, divisions, enterprises, and entities shall be subject to review by such Tribal coordinating mechanism as though it were a State or areawide clearinghouse. Upon receiving such request for approval, LEAA shall transmit the request to the Office of Management and Budget for comment.

§ 30.7 Clearinghouse review.

(a) Comments and recommendations made by or through clearinghouses with respect to any project are for the purpose of assuring maximum consistency of such projects with State, areawide, and local comprehensive plans.

(b) An applicant may generally expect that State and areawide clearinghouses will complete review of a project notification within 30 days after receipt by the clearinghouses of the notification. However, clearinghouses may request an additional 30 days to review the completed application. Where the applicant has not received a response to the applicant's notification from the clearinghouse within the initial 30-day period, the applicant may consider the clearinghouse to have waived its opportunity to review and comment on the proposed project.

(c) If an applicant submits a completed application to State and areawide clearinghouses during the 30-day notification review period, the applicant may expect that the clearinghouses will complete review within 30 days plus the num-

ber of days remaining in the 30 day notification period. If an applicant submits to the clearinghouses a completed application without a project notification, the applicant may expect that the clearinghouses will complete review of the application within 60 days. In all other cases, the applicant may expect that the clearinghouses will complete review of a completed application within 30 days. If clearinghouse review of an application is not completed within these time periods, the applicant may consider that the application has been favorable reviewed and may submit the application to the funding agency for consideration.

§ 30.8 SPA responsibilities.

SPA's shall provide procedures:

(a) For the submission of applications for programs or projects covered by this Subpart to the appropriate clearinghouses.

(b) To insure that all applications contain a State Application Identifier (SAI) number. This is mandatory for use in notifying clearinghouses of action taken on the application.

(c) To insure that all comments have been considered and made a part of the application.

§ 30.9 Funding agency responsibilities.

(a) A funding agency that receives an application that does not carry evidence that appropriate clearinghouses have been given an opportunity to review the application shall return the application to the applicant with instructions to fulfill the requirements of this Subpart. However, if the application is accompanied with statements from the applicant and clearinghouses agreeing to concurrent review by the clearinghouses and the funding agency, the funding agency may, within its discretion, receive the application.

(b) The funding agency must notify appropriate clearinghouses within seven working days of any major action taken on any application that has been reviewed by such clearinghouses. Major actions will include awards, rejections, returns for amendment, deferrals, or withdrawals. The standard multipurpose form, SF 424, as prescribed by Treasury Circular TC 1082 (as revised, October 1975) will be used for this purpose.

(c) Where a clearinghouse has recommended against approval or approval only with specific and major substantive changes and the funding agency approves the application substantially as submitted, the funding agency will provide the clearinghouse with, along with the action notice, an explanation therefor.

(d) Where a clearinghouse has recommended against approval of a project because it conflicts with or duplicates another Federal or federally assisted project, the funding agency will consult with the agency assisting the referenced project prior to acting if it plans to approve the application.

§ 30.10 Requests for exemptions and procedural variations.

(a) LEAA may request an exemption from OMB for certain classes of projects or activities under programs otherwise covered which:

(1) Meet any of the following characteristics: (i) Assistance to organizations and institutions for the provision of education or training not designed to meet the needs of specific individual States or localities.

(ii) Research, not involving capital construction, which is national in scope or is not designed to meet the needs or to address problems of a particular State, area, or locality (except in the case of demonstration or pilot research programs where projects may have an impact on the community or area in which they are being conducted).

(iii) Assistance to education, medical, or similar service institutions or agencies for internal staff development or management improvement purposes.

(iv) Assistance to education institutions or activities that are part of a school's regular academic program and are not related to local programs of health, welfare, employment, or other social services.

(v) Assistance for construction involving only routine maintenance, repair, or minor construction which does not change the use or the scale or intensity of use of the structure or facility.

(vi) Assistance for law enforcement projects involving confidential law enforcement investigative information, techniques, or procedures.

(2) Are of small scale or size or are highly localized as to impact; or

(3) Display other characteristics which might make review impractical.

(b) LEAA may request procedural variations from normal review processes:

(1) On a temporary basis for programs with time constraints brought about because of startup requirements or other unusual circumstances beyond the control of the funding agency.

NOTE.—Delay in fund availability is not normally an acceptable reason for a variation. When a delay is anticipated, applicants should be instructed to have their applications reviewed by clearinghouses in readiness for submission when funds become available.

(2) For programs where statutory or related procedural limitations make the normal review processes impracticable.

(c) All requests from LEAA offices or SPA's through LEAA Regional Offices for exemptions or procedural variations should be routed through the Office of Regional Operations, LEAA, Washington, D.C. 20531.

(d) Individual clearinghouses may exempt certain types of projects from review for reasons indicated above or for other reasons appropriate to the State or area.

(e) Applicants should be aware that in various States State law requires review of applications for Federal assistance under various programs not covered by this Subpart. Implementation of such law is enforced through State rules and regulations, and applications are urged to ascertain the existence of such laws and to acquaint themselves with applicable State procedures.

§ 30.11 Joint Funding.

Applications for assistance to activities under the Joint Funding Simplification Act (Pub. L. 93-510) or any other joint funding authority, which involves activities funded under one or more of the programs covered under this Subpart, will be subject to the requirements of this Subpart.

Subpart C—Direct Federal Development

§ 30.12 Non-applicability.

Part II of the OMB Circular No. A-95 Revised does not apply to LEAA.

Subpart D—State Plans

§ 30.13 General.

The purpose of this Subpart and Part III of OMB Circular No. A-95 Revised is to provide information about the relationship to State or areawide comprehensive planning of the Annual Comprehensive State Plan.

§ 30.14 Governor's comments.

(a) The Governor, or the agency the Governor has designated to perform reviews under Part III of OMB Circular No. A-95 Revised, must be given an opportunity to comment (up to 45 days) on the relationship of the Annual Comprehensive State Plan to comprehensive and other State plans and programs and to those of affected local or areawide jurisdictions. The Governor is urged to involve areawire clearinghouses in the review of State plans, particularly where such plans have specific applicability to or affect areawide or local plans and programs.

(b) A period of 45 days must be provided the Governor or the designated agency to make such comments. Unless otherwise provided for by the Governor or the designated agency, the 45 day period must be afforded prior to submission of the Annual Comprehensive State Plan to LEAA. Any comments made by the Governor or the designated agency must be submitted with the Annual Comprehensive State Plan.

(c) A "State plan" under this Subpart is defined to include any required supporting planning reports or documentation that indicate the programs, projects, and activities for which Federal funds will be utilized. Such reports or documentation will also be submitted for review at the request of the Governor or the agency he has designated to perform reviews under Part III of OMB Circular No. A-95 Revised.

Subpart E—Coordination of Planning In Multijurisdictional Areas

§ 30.15 Planning and development districts or regions.

The States are encouraged to:

(a) Exercise leadership in delineating and establishing a system of planning and development districts or regions in each State, which can provide a consistent geographic base for the planning and coordination of Federal, State, and local development programs.

(b) Use agencies that have been designated to perform areawide comprehensive planning, planning and development districts or regions established pursuant to paragraph (a) of this section (generally, areawide clearinghouses designated pursuant to Part I of OMB Circular No. A-95 Revised) to carry out or coordinate planning. In the case of interstate metropolitan areas, agencies designated as metropolitan areawide clearinghouses should be utilized to the extent possible to carry out or coordinate LEAA assisted or required areawide planning.

§ 30.16 Governor's review and comment.

Prior to the designation or redesignation (or the approval thereof) of any planning and development district or region under the LEAA programs, the Governor(s) of the State(s) in which the district or region will be located must be allowed a period of 30 days to review the boundaries thereof and comment on its relationship to planning and development districts or regions established by the State. Where the State has established such planning and development districts, the boundaries of areas designated under LEAA programs will conform to them unless there is clear justification for not doing so.

§ 30.17 Consultation in review boundaries.

Where the State has not established planning and development districts or regions which provide a basis for evaluation of the boundaries of the area proposed for designation, major units of general local government and the appropriate Federal Regional Council (FRC) will also be consulted prior to designation of the area to assure consistency with districts established under interlocal agreements and under related Federal programs.

§ 30.18 Justification for variance.

The Office of Management and Budget will be notified through the appropriate FRC by LEAA of any proposed designation and will be informed of such designation when it is made, including such justifications as may be required under § 30.16.

§ 30.19 Common and consistent planning bases and coordination of related activities in multijurisdictional areas.

(a) Each SPA will develop procedures and requirements for applications for multijurisdictional planning and development assistance under appropriate programs to assure the fullest consistency and coordination with planning and development being carried on by the areawide comprehensive planning agency or clearinghouse designated under Part I of the OMB Circular No. A-95 Revised. These procedures shall include provision for submission to the funding agency by any applicant for multijurisdictional planning assistance, if the applicant is other than an areawide comprehensive planning agency, of a memorandum of agreement between the applicant and such areawide comprehensive planning agency covering the means by which their planning activities will be coordinated. The agreement will cover but need not be limited to the following matters:

(1) Identification of relationships between the planning proposed by the applicant and that of the areawide comprehensive planning agency and of similar or related activities that will require coordination;

(2) The organizational and procedural arrangements for coordinating such activities, such as: Overlapping board membership, procedures for joint review of project activities and policies, information exchange, etc.;

(3) Cooperative arrangements for sharing planning resources (funds, personnel, facilities, and services); and

(4) Agreed upon base data, statistics and projections (social, economic, demographic) on the basis of which planning in the area will proceed.

(b) Each SPA must provide to LEAA a description of:

(1) The extent to which law enforcement and criminal justice planning regions are consistent with State established planning and development districts or regions together with reasons for any inconsistency.

(2) Procedural arrangements to assure maximum coordination with related planning under other Federal programs citing existing or planned memoranda of agreement and specific Regional Planning Units and/or State agencies which must execute memoranda of agreement.

§ 30.20 Memorandum of agreement signatories.

The signatories to the memorandum of agreement are:

(a) The areawide comprehensive planning agency (usually the areawide A-95 clearinghouse), and

(b) The applicant for assistance to carry out areawide planning if other than (a) above. (Not infrequently paragraph (a) and (b) of this section are the same, in which case no memorandum of agreement is required.)

§ 30.21 Applicant for assistance to accomplish areawide planning.

The applicant referred to in § 30.20(b) will in most cases mean any Regional Planning Units which cover a multijurisdictional area comprising, encompassing or extending into more than one unit of general local government and which does not operate under the auspices of an area-wide comprehensive planning agency.

§ 30.22 SPA implementation of memorandum of agreement requirement.

The SPA is required to implement procedures to assure that the memorandum of agreement required is followed.

§ 30.23 Inability to effectuate a memorandum of agreement.

Where an applicant has been unable to effectuate a memorandum of agreement, the applicant will submit a statement indicating the efforts which were made to secure an agreement and the issues that have prevented it. In such case, the SPA in consultation with the FRC, LEAA, and the designated State clearinghouse, will undertake, within a 30 day period after receipt of the application, resolution of the issue before approving the application, if it is otherwise in good order.

Subpart F—Definitions

§ 30.24 Definitions.

(a) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, and any territory or possession of the United States.

(b) "Unit of general local government" means any city, county, township, town, borough, parish, village or other general purpose political subdivision of a State, an Indian tribe which performs law enforcement functions as determined by the Secretary of the Interior, or, for the purpose of assistance eligibility, any agency of the District of Columbia government performing law enforcement functions in and for the District of Columbia.

(c) "Special purpose unit of local government" is any special district, public purpose corporation, or other strictly limited purpose political subdivision of a State.

(d) "LEAA assistance, LEAA financial assistance, LEAA assistance program, or LEAA assisted programs" are programs that provide assistance through LEAA grant or contractual arrangements; these also include technical assistance programs or programs providing assistance in the form of loans. The term does not include any annual payment by the United States to the District of Columbia authorized by article VI of the District of Columbia Revenue Act of 1947 (D.C. Code sec. 47-2501a and 47-2501b).

(e) "Funding agency" is the Law Enforcement Assistance Administration or, in the case of block or formula grant programs, the State Planning Agency which is responsible for final approval of applications for assistance.

(f) "State planning agency" is the agency created or designated by the chief executive of the State or by State law pursuant to section 203(a)(1) of the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. 3701, et seq., as amended (Pub. L. 90-351, as amended by Pub. L. 93-83, Pub. L. 93-415, Pub. L. 94-430, and Pub. L. 94-503).

(g) "Metropolitan area" is a standard metropolitan statistical area as established by the Office of Management and Budget, subject, however, to such modifications and extensions as the Office of Management and Budget may determine to be appropriate for the purpose of section 204 of the Demonstration Cities and

Metropolitan Development Act of 1966, and the OMB Circular No. A-95 Revised.

(h) "Areawide" means comprising, in metropolitan areas, the whole of contiguous urban and urbanizing areas; and in non-metropolitan areas, contiguous counties or other multijurisdictional areas having common or related social, economic, or physical characteristics indicating a community of developmental interests; or, in either, the area included in a sub-State district designated pursuant to paragraph 1d, Part IV, Attachment A of the OMB Circular No. A-95 Revised.

(i) "Planning and development clearinghouse or clearinghouses" includes:

(1) "State Clearinghouse" which is an agency of the State government designated by the Governor or by State law to carry out the requirements of paragraph 3, Part I, Attachment A of the OMB Circular No. A-95 Revised.

(2) "Areawide clearinghouse" means:

(i) In non-metropolitan areas a comprehensive planning agency designated by the Governor (or Governors in the case of regions extending into more than one State) or by State law to carry out requirements of OMB Circular No. A-95 Revised.

(ii) In metropolitan areas an areawide agency that has been recognized by the Office of Management and Budget as an appropriate agency to perform review functions under section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, Title IV of the Intergovernmental Cooperation Act of 1968, and OMB Circular No. A-95 Revised.

(j) "Multijurisdictional area" means any geographical area comprising, encompassing, or extending into more than one unit of general local government.

(k) "Planning and developmental district or region" means a multijurisdictional area that has been formally designated or recognized as an appropriate area for planning under State law or Federal program requirements.

(l) "Direct Federal development" means planning and construction of public works, physical facilities, and installations or land and real property development (including the acquisition, use, and disposal of real property) undertaken by or for the use of the Federal Government or any of its agencies; or the leasing of real property for Federal use where the use or intensity of use of such property will be substantially altered.

(m) "Days" means calendar days.

[FR Doc.77-2310 Filed 1-26-77;8:45 am]

federal register

THURSDAY, JANUARY 27, 1977

PART VIII



DEPARTMENT OF TRANSPORTATION

Office of the Secretary

■

GOVERNMENT PROPERTY

Procurement

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[41 CFR Part 12–70]

PROCUREMENT REGULATIONS

Government Property

AGENCY: Department of Transportation.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Transportation (DOT) proposes to amend its procurement regulations (DOTPR) by adding a new Part 12–70 entitled "Government Property" and by adding a new Supplement 1 entitled "Manual for Control of Property in Possession of Contractors". These amendments propose requirements for acquiring, using, and disposing of Government property by DOT contractors and propose administrative procedures for DOT personnel. They establish a uniform system of control and accountability of Government property to prevent further inconsistent treatment of DOT contractors. In the absence of comparable coverage in the Federal Procurement Regulations (FPR), these additions supplement the FPR. Public comment is invited.

DATES: Comments by: March 14, 1977.

ADDRESSES: Comments to:

Docket Clerk, OST Docket Number 19, Office of the General Counsel, Department of Transportation, Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT:

L. S. Hanson, Chief, Property Management Staff, Office of Installations and Logistics, Department of Transportation, Washington, D.C. 20590. (202) 426–4194.

SUPPLEMENTARY INFORMATION: In general, these regulations would establish for the Department a uniform system for the provision, use, control, accounting, and disposition of Government property used by contractors in connection with the performance of work under DOT contracts. The proposal prescribes policies, procedures, authorities, and responsibilities as necessary to effectuate such a system, with respect to both the preaward and postaward phases of contracting. As proposed, Part 12–70 contains directive material applicable to DOT contracting personnel, whereas Supplement 1 would be applicable to those DOT contractors that are provided Government property.

This proposal was developed in response to a demonstrated need for such directives within the Department. In the absence of a prescribed Departmental system, the contractual and administrative aspects associated with Government-provided property have not been accorded uniform treatment by the various procurement activities of the Department. By the same token, there has been a lack of consistency in the requirements levied on DOT contractors with respect to the control and accountability of Government property. With regard to the matter of consistency, it is recognized that many contractors presently utilize Government property procedures established by other Federal agencies, particularly the Department of Defense, the National Aeronautics and Space Administration, and the Department of Health, Education and Welfare.

Accordingly, in developing this proposal the existing procurement regulations of such agencies were used as guidelines. In some subject areas the DOTPR coverage would be identical to that found in the regulations just cited, while in other areas the coverage of a particular subject would be modified or condensed to accommodate DOT's specific needs. Additionally, pertinent provisions of the FPR and the Federal Property Management Regulations have been referenced where appropriate.

As previously indicated, the New Part 12–70 would provide direction to DOT contracting personnel. Within this part are set forth policies, procedures, authorities, and responsibilities relative to the following general subjects:

(1) Furnishing Government material to contractors;

(2) Providing Government facilities to contractors;

(3) Use of Government facilities in the possession of contractors or subcontractors;

(4) Property administration;

(5) Vesting of title to equipment under research contracts; and

(6) Disposition of excess and residual contract inventory.

Supplement 1 (the manual) would set forth the basic requirements to be followed by contractors in establishing and maintaining control over Government property. It would be incorporated by reference in all contracts under which Government property is provided to contractors, and be made available to each such contractor. Within this manual are contained procedures and responsibilities relative to the following general subjects:

(1) Contractor's assumption of, and relief from, responsibility for Government property;

(2) Records of Government property to be maintained by the contractor;

(3) Identification of Government property;

(4) Conduct of physical inventories;

(5) Care, maintenance, and utilization of Government property;

(6) Passage of title to equipment under research contracts; and

(7) Reports to be provided to the Government.

All comments received before the close of business on the comment closing date (March 14, 1977) will be considered, and will be available for public inspection or copying from 9 a.m. to 5:30 p.m., Monday through Friday, except Federal holidays, in Room 10100, DOT Headquarters, 400 Seventh Street, S.W., Washington, DC 20590. To the extent possible, comments filed after the closing date will also be considered. However, the rule-making action may proceed at any time after that date, and comments received after the closing date and too late for consideration in regard to the action will be treated as suggestions for future rulemaking. The DOT will continue to file relevant material as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

In consideration of the foregoing, it is proposed to amend Chapter 12 of Title 41, Code of Federal Regulations, by inserting a new Part 12–70 and adding a Supplement 1, to read as set forth below.

Issued in Washington, DC on January 18, 1977.

WILLIAM S. HEFFELFINGER,
Assistant Secretary for Administration.

PART 12–70—GOVERNMENT PROPERTY

Sec.

12–70.000 Scope of Part.

Subpart 12–70.1—General

12–70.101 Definitions.
12–70.101–1 Property.
12–70.101–2 Government property.
12–70.101–3 Provide.
12–70.101–4 Material.
12–70.101–5 Non-expendable.
12–70.101–6 Plant Equipment.
12–70.101–7 Facilities.
12–70.101–8 Nonserverable.
12–70.101–9 Excess and residual contract inventory.
12–70.102 Use for or by contractors of test facilities owned and operated by the government.
12–70.103 Government property contract clauses.
12–70.104 Control of government property.
12–70.105 Disposition of excess and residual contract inventory.

Subpart 12–70.2—Furnishing Government Material to Contractors

12–70.201 Policy.
12–70.202 Procedure.
12–70.203 Changing the amount of material to be furnished by the government.

Subpart 17–70.3—Providing Government Facilities to Contractors

12–70.301 Policy.
12–70.302 Providing government facilities when disposal is limited.
12–70.303 Offers to furnish government facilities.
12–70.304 Changing government facilities to be provided.

Subpart 12–70.4—Use of Government Facilities in the Possession of Contractors or Subcontractors

12–70.401 Policy.
12–70.402 Use of facilities under the cognizance of another department or agency.
12–70.403 Use by another department or agency of facilities under the cognizance of DOT.

Subpart 12–70.5—Property Administration

Sec.
12–70.501 General.
12–70.502 Responsibilities of the contracting officer.
12–70.503 Actions requiring approval of the contracting officer.
12–70.504 Assignment of responsibility for property administration.

12–70.505 Responsibilities of the property administrator.
12–70.506 DOTPR Supplement 1—Manual for Control of Property in Possession of Contractors.
12–70.507 Records of government property.
12–70.508 Contract property control file.
12–70.509 Evaluation and approval of contractor's property control system.
12–70.510 Review of contractor's property control system during contract performance.

Subpart 12–70.6—Vesting of Title to Equipment Under Research Contracts

12–70.601 General.
12–70.602 Conditions of transfer.
12–70.603 Contracts performed at government installations.

Subpart 12–70.7—Disposition of Excess and Residual Contract Inventory

12–70.701 General.
12–70.702 Application of FPR, FPMR and other DOT regulations.
12–70.703 Reports of contract inventory.
12–70.704 Disposition methods and priorities.

Subpart 12–70.8—Contract Closure

12–70.801 Actions by the property administrator.

Subpart 12–70.9—Contract Clauses, Government Property

12–70.901 Contract clauses.

AUTHORITY: Sec. 205(c), 63 Stat. 389; 40 U.S.C. 486(c), 10 U.S.C. 2301–2314.

§ 12–70.000 Scope of Part.

This part sets forth the policies of the Department of Transportation with respect to providing property for use by contractors in connection with procurement by the components of the Department of Transportation, prescribes responsibilities and procedures pertinent thereto, and references applicable contract clauses. This part does not apply to property to which the Government has acquired a lien or title solely as a result of partial, advance, or progress payments. When lien or title is acquired solely as a result of such payments, the provisions of the partial, advance, or progress payments clauses shall apply, including any modifications to such clauses as may be contained in the contract.

Subpart 12–70.1—General

§ 12–70.101 Definitions.

As used in this part, the following terms have the meaning stated below. Additional definitions applicable to property administration are set forth in DOTPR Supplement 1—"Manual for Control of Property in Possession of Contractors."

§ 12–70.101–1 Property.

Includes all property, both real and personal. For the purpose of this part, it consists of two separate categories—material and facilities.

§ 12–70.101–2 Government property.

Means all property owned by or leased to the Government or acquired by the Government under the terms of a contract. However, the term "Government property" does not include property to which the Government has acquired a lien or title solely as a result of partial, advance, or progress payments. Government property includes both Government-furnished property and contractor-acquired property as defined below:

(a) Government-furnished property is property in the possession of, or acquired directly by, the Government and subsequently delivered or otherwise made available to the contractor; and

(b) Contractor-acquired property is property procured or otherwise provided by the contractor for the performance of a contract, title to which is vested in the Government.

§ 12–70.101–3 Provide.

As used in the context of such phrases as "Government property provided to the contractor" and "Government-provided property", means either to furnish, as in "Government-furnished property", or to acquire, as in "contractor-acquired property."

§ 12–70.101–4 Material.

Means property which may be incorporated into or attached to an end item to be delivered under a contract or which may be consumed or expended in the performance of a contract. It includes, but is not limited to, raw and processed material, parts, components, assemblies, and small tools and supplies which may be consumed in normal use in the performance of a contract. It also includes items of a nonexpendable nature with a unit acquisition cost of less than $50, unless the Government has designated any such items to be classified as plant equipment.

§ 12–70.101–5 Non-expendable.

Means items of Government personal property which:

(a) Have a unit acquisition cost of $50.00 or more, and

(b) Have a life expectancy of one year or more, and

(c) Retain their identity when put into use, and

(d) Are not consumed in the performance of work on the contract.

§ 12–70.101–6 Plant equipment.

Means personal property of a nonexpendable nature (consisting of equipment, machine tools, test equipment, furniture, vehicles, and accessory and auxiliary items) used or capable of use in the manufacture of supplies or in the performance of services or for any administrative or general plant purpose.

§ 12–70.101–7 Facilities.

Means property (other than material) for production, maintenance, research, development, or test, including real property and rights therein, buildings, structures, improvements, and plant equipment.

§ 12–70.101–8 Nonseverable.

When related to Government facilities, means that such property cannot be removed after erection or installation without substantial loss of value or damage thereto, or to the premises where installed.

§ 12–70.101–9 Excess and residual contract inventory.

"Excess and residual contract inventory" means:

(a) Any property acquired by and in the possession of a contractor or subcontractor (including Government-furnished property) under a contract pursuant to the terms of which title is vested in the Government, and in excess of the amounts needed to complete full performance under the entire contract; and

(b) Any property which the Government is obligated to or has an option to take over under any type of contract as a result either of any changes in the specifications or plans thereunder or of the termination of such contract (or subcontract thereunder), prior to completion of the work, for the convenience or at the option of the Government.

§ 12–70.102 Use for or by contractors of test facilities owned and operated by the Government.

(a) The on-site use for or by contractors of existing Government-owned test facilities located at installations owned and operated by the Government may be authorized in connection with the performance of Government contracts only when:

(1) there is no commercial test capability adequate for the testing needs, or

(2) substantial cost savings will result from use of the Government-owned test facilities.

(b) Whenever any such use is authorized, adequate consideration comparable to commercial charges, if any, shall be obtained under any affected contract.

§ 12–70.103 Government property contract clauses.

When Government property is provided under a contract, the contract shall contain the appropriate Government Property clause as referenced in Subpart 12–70.9 of this part.

§ 12–70.104 Control of government property.

The control of Government property shall be in accordance with DOTPR Supplement 1—Manual for Control of Property in Possession of Contractors. Each contract under which Government property is provided shall incorporate this Manual by reference.

§ 12–70.105 Disposition of excess and residual contract inventory.

Excess and residual contract inventory shall be disposed of in accordance with the procedures contained in Subpart 12–70.7 of this part.

Subpart 12–70.2—Furnishing Government Material to Contractors

§ 12–70.201 Policy.

It is the general policy of the Department of Transportation that contractors will furnish all material required for the performance of Government contracts. However, the Government may furnish material to a contractor when it is determined to be in the best interest of the Government by reason of economy, standardization, the expediting of pro-

duction, or other appropriate circumstances.

§ 12–70.202 Procedure.

(a) Material to be furnished by the Government shall be set forth in the solicitation in sufficient detail to permit evaluation by prospective contractors.

(b) Where material is to be furnished by the Government, the contract shall state whether the requisitioning documentation is to be prepared by the contractor or the procuring activity. When the responsibility is placed upon the contractor, such documentation shall be prepared in accordance with the instructions provided by the procuring activity.

§ 12–70.203 Changing the amount of material to be furnished by the government.

(a) At any time after a contract has been entered into, whether as a result of formal advertising or negotiation, the contract may be bilaterally modified to provide for the furnishing of Government material or to increase the amount to be furnished, provided there is adequate consideration for such modification.

(b) When it is anticipated that substantial quantities of Government material will become available for the contract by transfer from another contract or otherwise, the contract may provide that a unilateral increase in the amount of material to be furnished by the Government may be ordered by the contracting officer, and that the contract shall be equitably adjusted therefor.

(c) Unilateral decreases in or substitutions for the material specified under a contract to be provided by the Government may be ordered by the contracting officer, subject to the equitable adjustment of the contract, in accordance with the provisions of the applicable Government Property clause(s) and other terms of the contract.

Subpart 12–70.3—Providing Government Facilities to Contractors

§ 12–70.301 Policy.

(a) It is the policy of the Department of Transportation that contractors will furnish all facilities required for the performance of Government contracts. Facilities will not be provided to a contractor, nor will competitive solicitations offer to provide such property, except as follows:

(1) For use in a Government-owned, contractor-operated plant operated on a cost-plus-fixed-fee basis; or

(2) When the Contracting Officer determines in writing that (i) the contract cannot be fulfilled by any other practical means, or (ii) it is in the public interest.

(b) New facilities will not be provided by the Government where an economical, practical and appropriate alternative exists. Examples include:

(1) Procuring from sources not requiring Government-owned facilities;

(2) Requiring the contractor to make full utilization of subcontractors possessing adequate and available capacity;

(3) Having the contractor rent facilities from commercial sources; and

(4) Using existing Government-owned facilities.

(c) Prospective contractors who propose to use Government facilities, including property offered for use in the solicitation as well as property already in possession of the contractor or his subcontractors, will be required to identify such property in their bids or proposals. Unless prior written approval has been obtained by the procurement Contracting Officer, prospective contractors who propose to use Government facilities already in possession of the contractor or his subcontractors under other contracts will be required to submit written approval for the use of such property from the contracting officer cognizant of such property.

§ 12–70.302 Providing government facilities when disposal is limited.

(a) *Nonseverable property.* Government facilities, other than foundations and similar improvements necessary for the installation of plant equipment, shall not be installed or constructed on land not owned by the Government in such fashion as to be nonseverable, unless the Head of a Procuring Activity determines in writing that such location is necessary, and:

(1) The contract under which such property is provided contains a provision for reimbursing the Government for the fair value of the property at the completion or termination of the contract or within a reasonable time thereafter (for example, in appropriate cases, such a provision may require the contractor to purchase the property at a value to be determined by appraisal, or at a price equal to its acquisition cost less depreciation at a specified rate considering its estimated useful life, or may require the contractor to reimburse the Government for its scrap or salvage value if the Head of a Procuring Activity determines that its estimated useful life will not extend beyond the expiration of the contract or the completion of the work for which the property was provided);

(2) The Government has an option to acquire the underlying land; or

(3) The contract under which such property is provided contains an alternate provision that the Head of the Procuring Activity considers to be adequate to protect the interests of the Government therein. (The authority of the Head of the Procuring Activity under this paragraph may not be delegated.)

(b) *Property Subject to Patent or Other Proprietary Rights.* If patent or other proprietary rights of a contractor may restrict the disposal of Government facilities, the condition in either subparagraph (a)(1) or (a)(3) of this section shall be satisfied before such property is provided.

§ 12–70.303 Offers to furnish government facilities.

(a) Generally, where Government facilities are offered for use in a competitive procurement, the solicitation should provide that the user will assume all costs related to making the property available, to avoid the need for separate evaluation of such costs. Where this is not feasible, or it is otherwise in the Government's interest, the Government may assume such costs provided they are included in the evaluation of bids or proposals.

(b) When a solicitation contains an offer to furnish Government facilities (including an offer to use Government property already in the possession of a prospective contractor), and when the furnishing and use of such property will result in either direct and measurable costs to the Government or direct and measurable savings to the Government, then:

(1) Such costs or savings will be set forth in the solicitation;

(2) The manner in which such costs or savings will be applied in the evaluation of bids or proposals will be set forth in the solicitation; and

(3) Such costs or savings will be considered in the evaluation of bids and proposals.

(c) Government facilities may be offered on an "as is" basis in solicitations for fixed-price type contracts, whether such property is in storage or in the possession of a contractor, provided that the property can be inspected by bidders or proposers prior to the submission of their offers. In such cases, the solicitation will state:

(1) The availability and location of the property, and the conditions under which it may be inspected;

(2) That the property will be offered in its current condition, f.o.b. present location;

(3) That bidders or proposers must satisfy themselves that the property is suitable for their use;

(4) That any costs of transporting, installing, modifying, repairing, or otherwise making the property suitable for use shall be borne by the successful bidder or proposer; and

(5) The bidders or proposers to whom the property is offered, if it is not to be offered to all.

(d) If it is not feasible to make Government facilities available to all bidders or proposers, solicitations offering to furnish such property may limit the offer accordingly.

§ 12–70.304 Changing Government facilities to be provided.

The amount of Government facilities specified under a contract to be provided may be increased by a bilateral modification of the contract. Such increases will be made only when approved in accordance with the policies prescribed in this Subpart 12–70.3 and when the Government receives adequate consideration therefor. Unilateral decreases in or substitutions for the Government property specified under a contract to be provided by the Government may be ordered by the contracting officer, subject to the equitable adjustment of the contract, in accordance with the appropriate Government property clause and other terms of the contract.

Subpart 12–70.4—Use of Government Facilities in the Possession of Contractors or Subcontractors

§ 12–70.401 Policy.

It is the policy of the Department of Transportation to put Government facilities which are in the possession of a contractor or subcontractor to the greatest possible use in the performance of Government contracts or subcontracts. Facilities over which DOT has cognizance and which are in the possession of a contractor or subcontractor will not be authorized for use except for the performance of Government contracts or subcontracts, unless other use of such property is specifically authorized by law or other DOT regulation. When a contractor is authorized to use facilities over which DOT has cognizance for the performance of Government contracts or subcontracts, no charge will be made for such use. However, the Contracting Officer having cognizance of the prime contract must determine that the Government will receive adequate consideration for the use of the property through reduced costs for the supplies or services or otherwise.

§ 12–70.402 Use of facilities under the cognizance of another department or agency.

When a DOT procurement contracting officer has obtained approval for the use by a contractor or subcontractor of Government facilities over which another department or agency has cognizance, and regulations of such department or agency require that the contractor be charged for such use, then the contract will provide for the payment of such charge. It is the responsibility of the contracting officer of the department or agency having cognizance of the property to collect for such charges.

§ 12–70.403 Use by another department or agency of facilities under the cognizance of DOT.

When a contracting officer of another department or agency requests approval for the use by a contractor or subcontractor of facilities over which DOT has cognizance, it is the responsibility of the requesting contracting officer to make any evaluations or other contractual determinations required relative to the furnishing of Government property to a contractor. When the DOT contracting officer cognizant of the property has determined that the property can be made available for the requested use, approval for such use will be granted.

Subpart 12–70.5—Property Administration

§ 12–70.501 General.

This subpart sets forth responsibilities and procedures to:

(a) Assure performance of property control to protect the interests of the Government;

(b) Assure uniformity in the administration of contract provisions relating to Government property; and

(c) Meet management data requirements of the Government.

§ 12–70.502 Responsibilities of the Contracting Officer.

The Contracting Officer is responsible for:

(a) Assuring that all contracts which provide for the use of Government property include necessary provisions relative to the use, control, and disposition of such property, including the appropriate Government Property clause and DOT PR Supplement 1—Manual for Control of Property in the Possession of Contractors;

(b) Performing, or arranging for the performance of, all actions required to effect and carry out the provisions of the contract and this part relative to Government property;

(c) Providing necessary direction to the contractor, either directly or through an authorized representative of the contracting officer, on all matters pertaining to Government property;

(d) Obtaining from the contractor all required reports and other management data; and

(e) Cooperating with and assisting the appropriate DOT accounting office in all matters pertaining to the financial accounting for Government property.

§ 12–70.503 Actions Requiring Approval of the Contracting Officer.

The actions listed below (and which are subject to other applicable provisions of this part) require the written approval of the Contracting Officer, except that the actions set forth in paragraphs (e) and (f) of this section may be approved by an authorized representative of the Contracting Officer who has been designated as such in writing. The contractor will be notified in writing when an authorized representative has been so designated. No other person will be permitted to approve these actions on behalf of the Government—

(a) Providing Government property to a contractor when providing such property has not been previously authorized in the contract.

(b) Changing the amount of Government property specified to be provided in a contract.

(c) Authorizing the use by a contractor of Government property provided under one contract for work under another contract, unless the latter contract specifically authorizes such use.

(d) Relieving a contractor of responsibility for Government property due to loss, damage, destruction, or unreasonable wear or deterioration or unjustifiable consumption in the performance of the contract.

(e) Directing the removal of Government property from the custody of a contractor, the transfer of Government property to another contract or to another contractor (but only when such transfer has been authorized pursuant to paragraph (a), (b), or (c) of this section), or the disposal of Government property.

(f) Approving a contractor's property control system.

§ 12–70.504 Assignment of responsibility for Property Administration.

The Contracting Officer may delegate to another individual the authority to administer the contract requirements and obligations relative to Government property. The individual to whom this authority is delegated will be designated in writing as the Property Administrator for the contract, and the contractor will be notified of such designation in writing. In selecting a Property Administrator, the Contracting Office will consider the qualifications of the individual in terms of training, education, and experience in property matters. When a specific individual has not been designated as Property Administrator, the Contracting Officer is the Property Administrator.

§ 12–70.505 Responsibilities of the Property Administrator.

A designated Property Administrator should be assigned the responsibilities and duties set forth below. This listing is provided for guidance and is not intended to be inclusive or exclusive. Any responsibilities of the Contracting Officer relative to Government property which are not assigned to a Property Administrator remain with the Contracting Officer—

(a) Establishing and maintaining a property control file for each contract.

(b) Evaluating and approving the contractor's property control system.

(c) Reviewing the contractor's property control system during contract performance, to the extent required by § 12–70.510.

(d) Advising the Contracting Officer as to the contractor's noncompliance with approved procedures.

(e) Resolving property administration matters with the contractor's management and with Government procurement, property, accounting, and audit personnel.

(f) Obtaining assistance in property matters from other Government personnel in such technical areas as accounting, audit, disposal, quality assurance, engineering, and pricing.

(g) Providing necessary direction to the contractor on matters pertaining to Government property, including authorization for the commingling of Government and contractor property.

(h) Assisting the servicing DOT accounting office in matters pertaining to financial accounting for Government property.

(i) Analyzing the use or consumption of Government property by the contractor to determine reasonableness of consumption and proper utilization.

(j) Preparing written determinations, for the Contracting Officer's signature, for relieving the contractor of responsibility for Government property due to loss, damage, destruction, or unreasonable wear or deterioration or unjustifiable consumption in the performance of the contract.

(k) Effecting the removal of Government property from the custody of a contractor, the transfer of Government property to another contract or to another contractor, and the disposal of Government property.

(l) Certifying to the Contracting Officer that all Government property provided under a completed or terminated contract has been properly accounted for and disposition effected.

§ 12–70.506 DOTPR Supplement 1—Manual for control of property in possession of contractors.

This manual sets forth basic requirements to be observed by contractors in establishing and maintaining control over Government property provided for performance of contracts with the Department. The manual supplements provisions of the contract that apply to Government property, but does not supersede them. The contract provisions will govern in the event of any conflict with the manual. If there is evidence that Government property will be required in performance of a contract, the Contracting Officer will reference the manual in the solicitation and make it available on request. The manual will be incorporated by reference in all contracts which provide for the use of Government property and will be issued to the contractor at time of award if not previously provided.

§ 12–70.507 Records of government property.

(a) Records of Government property established and maintained by the contractor pursuant to the terms of the contract will be designated and utilized as the official contract records. Exceptions to this policy may be authorized by the Contracting Officer for those contracts in which contract administration is retained by the procurement office involving Government property (1) furnished to a contractor for repair or servicing and return to the shipping organization or (2) furnished to a contractor for use on a Government installation. In such cases, the property will be accounted for as a suspense item within the Government property account designated by the procurement office, and the Government property clause will be appropriately modified.

(b) Maintenance of official records for DOT financial accounting purposes is the responsibility of the DOT accounting activity that provides accounting service to the procurement office responsible for the contract. The Property Administrator will ensure that the servicing accounting activity is provided copies of documents necessary to maintain financial accounting for Government property, including: (1) Government shipments, (2) notices of contractor acquisitions, (3) physical inventory reports, (4) transfers and disposals, and (5) contractors annual financial property reports as specified in DOTPR Supplement 1.

(c) Each procurement office having contracts involving Government property will maintain a consolidated and current listing of all such contracts. This listing is to be primarily used for the purpose of verifying that contractors submit the annual reports prescribed in DOTPR Supplement 1. The Property Administrator will take prompt action to obtain any delinquent reports and will assist the accounting activity as necessary in effecting reconciliation between contractor property reports and the DOT financial accounts.

(d) When contracts involving property are reported for inclusion in the DOT Contract Information System, the procurement office will ensure that input to the system includes the required property code.

§ 12–70.508 Contract property control file.

Upon award of a contract, the Property Administrator will establish a Contract Property Control File which will include as a minimum:

(a) copy of the contract or extract of provisions thereof establishing requirements for property administration (except when the Property Control File is maintained as an adjunct to the contract working file);

(b) letters designating authorized representatives of the Contracting Officer for property matters;

(c) report of initial review, evaluation, and approval of the contractors property control system;

(d) record of visits, property system examinations and analyses, and appropriate work papers;

(e) documents evidencing the furnishing of Government property;

(f) contractor's receipts for Government furnished property;

(g) contractor's notices of acquisitions of contractor purchased or fabricated Government property as prescribed in DOTPR Supplement 1;

(h) contractor's physical inventory and financial property reports as prescribed in DOTPR Supplement 1;

(i) documents evidencing the removal of Government property from the custody of the contractor, the transfer of Government property to another contract or another contractor, and the disposal of Government property;

(j) documents evidencing relief of the contractor from responsibility for Government property due to loss, damage, destruction, or unreasonable wear or deterioration or unjustifiable consumption in the performance of the contract;

(k) any other correspondence affecting the status of Government property under the contract; and

(l) statement of closure of the contract property account.

§ 12–70.509 Evaluation and approval of contractor's property control system.

(a) The choice of the methods to be used for evaluation and approval of the contractors property control system is a matter of judgment by the Property Administrator, predicated on the nature and amount of Government property involved in any particular contract. Regardless of the methods used, it is the responsibility of the Property Administrator to determine that the contractor's system will meet the requirement of DOTPR Supplement 1 and other contract requirements as appropriate.

(b) It is normal contractor practice to provide for the control of property by means of written procedures that communicate the organization's standards, techniques, and instructions to operational personnel for uniform application. However, depending on the number of contractor employees and the nature, quantity, and value of the property, a contractor may not need written procedures for effective management of Government property. In such cases, the Property Administrator, if he agrees that written procedures are not required, will evaluate the adequacy of the contractor's system on the basis of the contractor's explanation of his controls and prepare a brief description of the applicable procedures for inclusion in the Contract Property Control File.

(c) Upon completing his evaluation of the contractor's system, the Property Administrator will prepare a written summary of his findings to support approval of the system or requirement for corrective action prior to such approval. The Property Administrator will forward to the contractor a listing of any deficiencies found as a result of the evaluation. The contractor will be requested to indicate within 30 days his willingness to correct the deficiencies or to forward to the Property Administrator a statement of his position thereon.

(d) When the Property Administrator is not successful in obtaining compliance with contract requirements, he will advise the Contracting Officer. If the Contracting Officer concurs with the Property Administrator, he will advise the contractor in writing of the changes or additions required in his property control system and will establish a schedule for accomplishment of the corrective actions. The contractor will be informed that approval of his property control sysem will be withheld (or withdrawn if previously approved) unless corrective action is accomplished within the specified period. Such notice will also advise the contractor that in the event approval of his property control system is withheld (or withdrawn if previously approved) his liability for loss or damage may be increased. If the contractor fails to make satisfactory progress for correction of the deficiencies in accordance with the schedule, the Contracting Officer will advise him in writing, with a copy to the Property Administrator, that approval of his property control system is, as the case may be, withheld or withdrawn.

(e) When the contractor's property control system is acceptable, the Property Administrator will so advise the contractor in writing. When the contract involves Government property at subcontractor plants or prime contractor secondary locations, and the controls for the property at such locations have been determined to be adequate, the approval will be expanded to include the procedures governing Government property at such locations.

§ 12–70.510 Review of Contractor's Property Control System During Contract Performance.

(a) While the contractor has an incurred obligation to comply, it is incumbent upon the Government to ensure that the contractor does in fact comply with the property control requirements of the contract. The preferred method for carrying out this responsibility is the periodic conduct by the Government of system reviews at the contractor's premises. The need for and frequency of such reviews should be based on case-by-case determinations, considering the particular circumstances relative to a given contract or contractor. When the Property Administrator feels that a system review is necessary, then he must arrange for the conduct of such a review by an appropriate means.

(b) Notwithstanding the requirements of paragraph (a) of this section, it is the continuing responsibility of the Property Administrator to be alert to any indications that the contractor's property control system may be deficient. Examples of such indications are as follows:

(1) Failure of the contractor to acknowledge receipt of Government furnished property;

(2) Failure of the contractor to provide notices of contractor acquisitions of Government property when the contract provides for such acquisition;

(3) Failure of the contractor to submit the annual physical inventory and financial property reports specified in DOTPR Supplement 1;

(4) Discrepancies in contractor's records and weaknesses in control as reflected by the contractor's physical inventory reports;

(5) Contractor's financial property reports do not reconcile with DOT financial control accounts;

(6) Analysis of contractor's costs indicates consumption of material in excess of that considered reasonable;

(7) Inability of the contractor to furnish property listings when requested to do so; or

(8) Analysis of contractor's request for relief of responsibility due to loss or damage indicates inadequate control.

(c) When the Property Administrator has reason to believe that the contractor's property control system is deficient or inadequate, the Property Administrator must take prompt action to obtain correction of such problems. In some cases, discussions with the contractor may suffice. In other cases, it may be necessary to arrange for an on-site system review as discussed in paragraph (a) of this section. Another alternative is to request the conduct of an audit by the appropriate Government contract audit activity. If the situation demands, the procedures set forth in § 12–70.509(d) of this part will be applied.

(d) Records and accounts of Government property will be audited by the Government as frequently as conditions warrant or as may be specifically requested by the Contracting Officer. Audits may take place at any time during the performance of the contract, upon completion or termination of the contract, or at any time thereafter. Audits will include records maintained by the contractor and Government-maintained records for the property involved. Government personnel and the contractor are required to make all property records, including correspondence related thereto, available to the auditors.

Subpart 12–70.6—Vesting of Title to Equipment Under Research Contracts

§ 12–70.601 General.

(a) In accordance with the provisions of 42 U.S.C. 1892, DOT is authorized to transfer title to equipment acquired with research contract funds to nonprofit institutions of higher education and to other nonprofit organizations whose primary purpose is the conduct of scientific research. This statutory authority must be implemented by express provision in the Special Provisions of contracts with eligible contractors, permitting the Contracting Officer to transfer to the contractor title to equipment acquired with research contract funds at any time during the term of the contract or upon its completion or termination. The contract will reserve the right to require the contractor to transfer title to equipment costing $1,000 or more per unit to the Government or to a third party named by the Government, where the third party is eligible under existing statutes. The reservation will provide that the right may be exercised at any time prior to final payment under the contract.

(b) Title to equipment not acquired with research contract funds will not be transferred but will remain vested in the Government.

§ 12–70.602 Conditions of transfer.

In research contracts with eligible institutions and organizations, the Contracting Officer may, upon his own initiative or upon the request of the contractor, transfer title to equipment at any time during the term of the contract or upon its completion or termination. All transfers of title must be based upon a written determination by the Contracting Officer that transfer with respect to the specific items of equipment is consistent with the best interests of the Department. Until such time as title has been transferred, the property will be administered and controlled as "Government property" in accordance with this part and DOTPR Supplement 1. Upon transfer, such equipment ceases to be "Government property"; however, the transfer of title will be subject to the terms and conditions of the contract and the requirements described in DOTPR Supplement 1.

§ 12–70.603 Contracts performed at government installations.

Notwithstanding the provisions of § 12–70.602 of this part, when the contractor is performing at a Government installation and there will be a continuing need for the equipment at that location following completion of the contract, title to such equipment will not be vested in or transferred to the contractor.

Subpart 12–70.7—Disposition of Excess and Residual Contract Inventory

§ 12–70.701 General.

(a) Disposition of excess and residual contract inventory (hereinafter referred to as "contract inventory") must be accomplished in a timely manner and in accordance with statutory and regulatory requirements. Regulations governing the disposition of contract inventory are:

(1) Federal Procurement Regulations (FPR), Part 1–8;

(2) Federal Property Management Regulations (FPMR), Parts 101–43 through 101–45;

(3) DOT Procurement Regulations (DOTPR); and

(4) Other DOT regulations as referenced herein.

All actions taken by Contracting Officers with respect to disposition of contract inventory must be in strict conformance with the above cited regulations.

(b) Contracting Officers will issue disposition instructions expeditiously upon receipt of acceptable contract inventory reports. Contracts involving Government property cannot be closed out until all residual property has been accounted for and/or disposed of and the Government property file of the contract specifically noted to that effect.

(c) The disposal of nonseverable property will be governed by the provisions set forth in DOTPR § 12–70.302.

§ 12–70.702 Application of FPR, FPMR and other DOT regulations.

(a) FPR Subpart 1–8.5 sets forth policies and procedures for the disposition of termination inventory and may also be used for the disposition of contract inventory generally. Pursuant to the authority contained in FPR 1–8.000, FPR Subpart 1–8.5 will be utilized by the Department for the disposition of contract inventory generally.

(b) FPR Subpart 1–8.5 incorporates by reference various requirements and procedures of the FPMR pertaining to disposition of Government property, some of which are optional in nature insofar as contract inventory is concerned. However, it is the policy of the Department, with respect to paragraphs (e) through (h) of § 12–70.704 to effect disposition of contract inventory in accordance with the same requirements and procedures set forth in the FPMR for disposition of other Government excess or surplus property.

(c) The reporting and screening of contract inventory for possible redistribution within DOT will be accomplished in the same manner, and to the same extent, as required for other types of excess property. Procedures applicable to such reporting and screening will be

prescribed in issuances published under the Department's internal management directives system.

§ 12–70.703 Reports of contract inventory.

Requirements and procedures for the submission of contract inventory reports by contractors are set forth in DOTPR Supplement 1. Procedures applicable to the processing of such reports by Contracting Officers are set forth in FPR Subpart 1–8.5.

§ 12–70.704 Disposition methods and priorities.

Subject to the Government exercising its rights to require delivery of any items of contract inventory to satisfy known Government requirements, contract inventory will be disposed of by the following methods in the priority indicated:

(a) Purchase or retention of contractor acquired property at cost by prime contractor or subcontractors (see FPR Subpart 1–8.5);

(b) Return of contractor acquired property to suppliers (see FPR Subpart 1–8.5);

(c) Reassignment within the procuring activity (see § 12–70.702(c));

(d) Redistribution within DOT (see § 12–70.702(c);

(e) Utilization by other Government agencies (see FPMR Parts 101–32 and 101–43);

(f) Donation to eligible donees (see FPMR Part 101–44);

(g) Sale—including purchase at less than cost by prime or subcontractor (see FPMR Part 101–45);

(h) Abandonment or destruction (see FPMR Part 101–45).

Subpart 12–70.8—Contract Closure

§ 12–70.801 Actions by the property administrator.

(a) Upon completion or termination of a contract, the Property Administrator must monitor the actions of the contractor and the Government with respect to the return, transfer, or other disposition of Government property. Prior to closing of the contract, the Property Administrator will determine that:

(1) All Government property provided under the contract has been properly accounted for;

(2) Disposition of Government property has been properly accomplished and documented;

(3) Adjustment documents, including request of the contractor for relief from responsibility, have been processed to completion;

(4) Proceeds from disposals or other property transactions, including adjustments, have been properly credited to the contract or paid to the Government as directed by the Contracting Officer;

(5) All questions as to title to property fabricated or acquired under the contract have been resolved and appropriately documented; and

(6) The Contract Property Control File is complete and ready for retirement.

(b) Upon completion of the above actions, the Contract Property Control File will be annotated accordingly and retired with the contract file.

Subpart 12–70.9—Contract Clauses, Government Property

§ 12–70.901 Contract clauses.

Contract clauses and guidance as to their use in specific types of contracts may be found in the following sections:

(a) 12–7.151–2 Fixed Price Supply Contracts,

(b) 12–7.5002–16 Cost Reimbursement Type Supply Contracts,

(c) 12–7.5102–2 Fixed Price Research and Development Contracts,

(d) 12–7.5202–15 Cost Reimbursement Type Research and Development Contracts,

(e) 12–7.650–7 Fixed Price Construction Contracts.

(f) 12–7.5002–16 Cost Reimbursement Type Construction Contracts,

(g) 12–7.5601–9 Fixed Price Vessel Repair, Alteration or Conversion Contracts.

DEPARTMENT OF TRANSPORTATION, PROCUREMENT REGULATIONS, SUPPLEMENT 1

MANUAL FOR CONTROL OF PROPERTY IN POSSESSION OF CONTRACTORS

Part 1—Introduction

S1–100 General.
S1–101 Definitions.
S1–102 Segregation or Commingling of Government Property and Contractor's Property.
S1–103 Written Property Control Procedures.
S1–104 Audit of Property Control System and Accounts.

Part 2—Contractor's Responsibility

S1–200 General.
S1–201 Assumption of Responsibility.
S1–202 Evidence of Receipt of Government Property.
S1–203 Report of Property Purchased or Fabricated.
S1–204 Discrepancies Incident to Shipment.
S1–205 Relief from Responsibility.
S1–206 Contractor's Liability.

Part 3—Records of Government Property

S1–300 General.
S1–301 Pricing.
S1–302 Records of Material.
S1–303 Records of Noncapitalized Equipment.
S1–304 Records of Capitalized Equipment.
S1–305 Records of Real Property.
S1–306 Records of Scrap and Salvage.
S1–307 Records of Related Data and Information.
S1–308 Records of Completed Products.
S1–309 Financial Control Accounts and Reports.

Part 4—Identification

S1–400 General.
S1–401 Material and Noncapitalized Equipment.
S1–402 Capitalized Equipment.

Part 5—Physical Inventories

S1–500 General.
S1–501 Annual Inventories.
S1–502 Reporting Results of Annual Inventories.
S1–503 Inventories Upon Termination or Completion.

Part 6—Care, Maintenance and Utilization

S1–600 General.
S1–601 Contractor's Maintenance Program.
S1–602 Utilization of Government Property.
S1–603 Property in Possession of Subcontractors.
S1–604 Property Excess to Contract Requirements.

Part 7—Passage of Title to Equipment Under Research Contracts

S1–700 General.
S1–701 Conditions of Transfer.
S1–702 Contractor's Obligations.

Exhibit A—Property Condition Codes

Part 1—Introduction

S1–100 *General.*

(a) This Manual sets forth the basic requirements to be followed by contractors in establishing and maintaining control over Government property provided pursuant to the terms of contracts with the Department of Transportation. To to extent of any inconsistency between this Manual and the terms of the contract under which the Government property is provided the terms of the contract will govern. The contractor shall be directly responsible for and accountable for all Government property in accordance with the provisions of the contract, including property provided under such contract which may be in the possession or control of a subcontractor.

(b) Pursuant to the terms of a contract, the Government may acquire a lien or title to property upon the making of partial, advance, or progress payments to the contractor. Property to which the Government has acquired a lien or title solely as a result of such payments will not be subject to the provisions of this Manual. When lien or title is acquired solely as a result of such payments, the provisions of the partial, advance, or progress payments clauses will apply, including any modifications to such clauses as may be contained in the contract.

(c) The contractor shall establish and maintain a system (in accordance with the provisions of this Manual) to control, protect, preserve, and maintain all Government property. This system shall be reviewed and, if satisfactory, approved in writing by the assigned Property Administrator. The contractor shall maintain and make available such records as are required by Part 3 of this Manual and must account for all Government property until relieved of responsibility therefor in accordance with Part 2 of this Manual. Liability for loss, damage, or excessive use of property in a given instance will necessarily depend upon all the circumstances surrounding the particular case and must be considered and determined in accordance with the provisions of the contract. The contractor shall furnish all necessary data to substantiate any request for discharge from responsibility.

(d) The contractor shall require any of his subcontractors who are provided Government property under the prime contract to comply with the provisions of this Manual. Procedures for assuring subcontractor compliance shall be included in the contractor's approved property control system.

(e) In the event any portion of the contractor's property control system is found to be inadequate upon review by the Property Administrator, any necessary corrective action shall be accomplished by the contractor prior to approval of the system.

(f) When Government property is disclosed to be in the possession or control of the contractor but not provided in accordance with the provisions of any contract, the contractor shall, as promptly as possible, (1) record such property according to the established property control procedure, and (2) furnish the Property Administrator with all known circumstances and factual data pertaining to its receipt and a statement as to whether there is a need for retention of such property.

(g) The Contractor shall report to the Property Administrator all Government property in excess of the amounts needed to complete full performance under the contract pursuant to which it was provided, or other existing contracts which authorize the use of such property, within 30 days after disclosure of the condition.

S1–101 *Definitions.*

As used in the Manual: (a) "Accessory item" means an item which facilitates or enhances the operation of equipment but which is not essential for its operation, such as remote control devices.

(b) "Auxiliary item" means an item without which the basic unit of equipment cannot operate, such as motors for pumps and machine tools.

(c) "Capital property" means real property and capitalized equipment.

(d) "Capitalized equipment" means personal property of a nonexpendable nature having a unit acquisition cost of $200 or more.

(e) "Custodial records" means written memoranda or identifying checks of any description or type used to control items issued from tool cribs, tool rooms, stockrooms, etc., such as requisitions, issue hand receipts, tool checks, stock record books, etc.

(f) "Discrepancies incident to shipment" means all deficiencies incident to shipment of Government property to or from a contractor's facility whereby differences exist between the property purported to have been shipped and the property actually received. Such deficiencies include, but are not limited to, loss, damage, destruction, improper status and condition coding, error in identity or classification, and improper consignment.

(g) "Educational or other nonprofit organization" means any corporation, foundation, trust, or other institution operated for scientific or educational purposes, not organized for profit, not any part of the net earnings of which inures to the profit of any private shareholder or individual.

(h) "Government property" means all property, both real and personal, owned by or leased to the Government or acquired by the Government under the terms of a contract. However, the term "Government property" does not include property to which the Government has acquired a lien or title solely as a result of partial, advance, or progress payments. Government property includes both Government-furnished property and contractor-acquired property as defined below:

(1) Government-furnished property is property in the possession of, or acquired directly by, the Government and subsequently delivered or otherwise made available to the contractor.

(2) Contractor-acquired property is property procured or otherwise provided by the contractor for the performance of a contract, title to which is vested in the Government.

(i) "Individual item record" means a separate card for or document utilized to account for one item of property.

(j) "Material" means property which may be incorporated into or attached to an end item to be delivered under a contract or which may be consumed or expended in the performance of a contract. It includes, but is not limited to, raw and processed material, parts, components, assemblies, and small tools and supplies which may be consumed in normal use in the performance of a contract. It also includes items of a nonexpendable nature with a unit acquisition cost of less than $50, unless the Government has designated any such items to be classified as noncapitalized equipment.

(k) "Noncapitalized equipment" means personal property of a nonexpendable nature having a unit acquisition cost of $50 or more but less than $200, and other items of personal property regardless of cost when so designated by the Government.

(l) "Nonexpendable" means items of Government personal property which:

(1) Have a unit acquisition cost of $50.00 or more;

(2) Have a life expectancy of one year or more;

(3) Retain their identity when put into use; and

(4) Are not consumed in the performance of work on the contract.

(m) "Property account" means the official records of the Government property provided to a contractor which are established and maintained under the provisions of this Manual. Separate property accounts will be maintained on an individual contract basis.

(n) "Property Administrator" means the individual designated, in writing, by appropriate authority to administer the contract requirements and obligations relative to Government property. He is an authorized representative of the Contracting Officer. When a specific individual has not been designated as Property Administrator, the Contracting Officer is the Property Administrator.

(o) "Provide" as used in the context of such phrases as "Government property provided to the contractor" and "Government-provided property," means either to furnish, as in "Government-furnished property," or to acquire, as in "contractor-acquired property."

(p) "Real property" for purposes of accounting classification means:

(1) Land and rights therein;

(2) Ground improvements;

(3) Utility distribution systems;

(4) Buildings; and

(5) Structures.

(q) "Salvage" means property which because of its worn, damaged, deteriorated or incomplete condition, or specialized nature, has no reasonable prospect of sale or use as serviceable property without major repairs or alterations, but which has some value in excess of its scrap value.

(r) "Scrap" means property that has no reasonable prospect of being sold except for the recovery value of its basic material content.

(s) "Stock record" means a perpetual inventory form of record which shows, by nomenclature, the quantities received and issued and the balances on hand.

(t) "Utility distribution system" means a system (including distribution and transmission lines, substations, and installed equipment forming an integral part of the system), by which gas, water, steam, electricity, sewage, or other utility services are transmitted between:

(1) Outside of the building or structure in which the services are used, and

(2) The point of origin or disposal, or the connection with some other system.

S1–102 *Segregation or Commingling of Government Property and Contractor's Property.*

Ordinarily, Government property, particularly material, should be segregated and kept physically separate from contractor-owned property at all times. However, when advantageous to the Government and consistent with the contractor's authority to use such property, the property may be commingled;

(1) When the Government property is clearly identified and recorded as Government property; or

(2) When scrap of a uniform nature is produced from both Government-owned and contractor-owned materials and physical segregation is impracticable, or when scrap produced from Government-owned materials is insignificant in consideration of the cost of segregation and control; or

(3) When otherwise approved by the Property Administrator.

S1–103 *Written Property Control Procedures.*

It is normal contractor practice to provide for the control of property by means of written procedures that communicate the organization's standards, techniques, and instructions to operational personnel for uniform application. However, depending on the number of contractor employees and the nature, quantity, and value of the property, a contractor may not have a need for written procedures for effective management of Government property. Immediately after the award of an initial contract involving property, the contractor shall forward to the Property Administrator the name, title, address, and telephone number of the contractor's representative to contact for review and discussion of the proposed property control system. If the Property Administrator determines that written property control procedures are not required, the contractor will be so advised.

S1–104 *Audit of Property Control System and Accounts.*

The contractor's Government property control system and accounts will be audited by the Government as frequently as conditions warrant. Audits may take place at any time during the performance of the contract, upon completion or termination of the contract, or at any time thereafter, during the period the contractor is required to retain such records. The contractor shall make all such records, including correspondence related thereto, available to the auditors.

Part 2—Contractor's Responsibility

S1–200 *General.*

This part covers to the extent not otherwise provided in the contract: (1) The duties and responsibilities of the contractor with respect to Government property; (2) the obligations of the contractor with respect to the control of Government property, both physically and administratively; and (3) the liability of the contractor for Government property lost, damaged, or destroyed, or for which the contractor is otherwise unable to account.

S1–201 *Assumption of Responsibility.*

A contractor is responsible for all Government property in his possession or control in accordance with the terms of the contract, including property provided under such contract which may be in the possession or control of a subcontractor. Sources from which Government property may be furnished or acquired are as follows:

(a) *Shipments from Government Activities or Other Sources.* Government property may be shipped to a contractor from agencies of DOT, other Government activities, other contractors, or suppliers. For the purpose of this Manual, the contractor becomes responsible for such property upon delivery of the property into his custody or control. The Government will furnish the contractor with copies of documents necessary to permit the contractor's property records to accurately reflect the transaction.

(b) *Direct Purchase by the Contractor.* For purposes of property control within the scope of this Manual, it will be considered that property purchased by the contractor, for which reimbursement is to be requested, becomes Government property upon its receipt by the contractor. However, this provision will not be deemed to alter or modify contractual provisions relating to passage of title. Direct purchases will be subject to a determination by the contracting officer that the items are allocable to the contract involved and are reasonably necessary therefor.

(c) *Withdrawal from Contractor-Owned Stores.* For purposes of property control, within the scope of this Manual, property withdrawn from contractor-owned stores, for direct charge to the contract, will be considered Government property at the time of approval of the claim for reimbursement, or at the time of issuance for use of such property for the performance of the contract, whichever is earlier.

(d) *Contract Provisions, Termination, Contract Changes.* Pursuant to specific contractual provisions or as a result of termination of a contract, or change orders issued under a contract, the Government may acquire title to property. For purposes of property control, such property will, unless otherwise provided by the contract, be considered Government property upon acceptance of title by the Government.

S1–202 *Evidence of Receipts of Government Property.*

Immediately upon receipt of any Government-furnished property the contractor shall sign and return the Government transfer document to the Property Administrator. For contractor-acquired capital property, the contractor shall submit reports in accordance with S1–203 of this Manual.

S1–203 *Report of Property Purchased or Fabricated.*

As a condition to reimbursement of costs incurred in the purchase or fabrication of capital property, the contractor shall submit itemized reports of such purchases or fabrications. Each item shall be adequately described, including unit cost. Reports shall be provided by the contractor not later than the time he submits his application for payment (public voucher) for the property. Upon request of the Government, the contractor shall submit supporting data for any material cost or noncapitalized equipment included in the voucher.

S1–204 *Discrepancies Incident to Shipment.*

(a) *Government - Furnished Property.* When overages, shortages, or damages are discovered upon receipt of Government-furnished property, the contractor shall provide a statement of the condition and the apparent causes to the Property Administrator. When the quantity or description of property received by a contractor differs from the quantity or description denoted as shipped on the Government transfer document, only that quantity, or property, actually received shall be recorded on the official records of the contractor.

(b) *Contractor - Acquired Property.* The contractor shall take all actions necessary to adjust shortages, overages, or damages in shipment of contractor-acquired property from a vendor or supplier except in those instances where the shipment has moved via Government bill of lading and carrier liability is indicated. In the latter event, the contractor shall report the instance in accordance with paragraph (a) of this section.

S1–205 *Relief from Responsibility.*

Subject to specific instructions of the Contracting Officer, and unless otherwise provided for in the contract, the contractor will be relieved of his property control responsibility for Government property by the following:

(1) *Consumption of Property in the Performance of the Contract.* To the extent that the Property Administrator determines that property has been consumed or expended for proper purpose and in reasonable amounts in the performance of the contract;

(2) *Shipment of Government Property from a Contractor's Facility.* When Government property is shipped from the contractor's facility (except when shipment is to a subcontractor or other location of the contractor) pursuant to the instructions of the Contracting Officer or the Property Administrator;

(3) *Retention by the Contractor.* When the contractor retains, with Contracting Officer approval, Government property for which the Government has received consideration;

(4) *Sale of Property.* For Government property sold pursuant to instructions of the Contracting Officer or the Property Administrator, provided that proceeds from such sale have been received by or credited to the Government;

(5) *Determination by the Contracting Officer.* For Government property which is lost, damaged, destroyed, or consumed in excess of that normally anticipated in a manufacturing, processing, or research operation, and for which the Contracting Officer has determined the extent of liability, if any, of the contractor; *Provided*, That:

(i) Such determination is furnished to the contractor in writing;

(ii) The Government has been reimbursed where required by the determination; and

(iii) Proper disposition of property rendered unserviceable by damage has been accomplished, and appropriate cross-reference is recorded on the determination as to the shipping documents or other documents evidencing disposal; and

(6) *Transfer of Title.* When title to equipment has been transferred to the contractor in accordance with 42 U.S.C. 1892 and thereby ceases to be Government property. However, certain obligations attach to contractor-owned property acquired with contract funds as set forth in Part 7 of this Manual.

S1–206 *Contractor's Liability.*

(a) *Property Discrepancies.* Subject to the terms of the contract, the contractor may be liable when shortages of Government property are disclosed or when Government property is lost, damaged, or destroyed or when there is evidence of unreasonable wear or deterioration or unjustifiable consumption in the performance of the contract.

(b) *Report Requirements.* The contractor shall report all cases of loss, damage, or destruction of Government property in his possession or control to the Property Administrator as soon as such facts become known or when requested by the Property Administrator. The report shall contain all factual data as to the circumstances surrounding such loss, damage, or destruction. A similar report shall be furnished when completed products or end items are lost, damaged, or destroyed while such property is in the possession or control of the contractor. Any loss that may be due to theft must be reported immediately to the local police and the nearest field office of the Federal Bureau of Investigation by the contractor or subcontractor.

(c) *Subcontractor's Liability.* The contractor shall require any of his subcontractors having Government property in their possession or control, which is accountable under the contract, to report to him all instances of loss, damage, or destruction of such Government property. Further procedures shall be in accordance with that prescribed in paragraphs (a) and (b) of this section.

Part 3—Records of Government Property

S1–300 *General.*

This part establishes minimum requirements for records to be established and maintained by the contractor for Government property in his possession or control.

(a) *Policy.* It is the Government's policy to rely upon contractor property control records and to designate and use such records as the official contract records unless an exception has been authorized due to special circumstances. The contractor shall establish and maintain adequate control records, either manual or mechanized, in accordance with the requirements of this Manual for all Government property provided under a contract, including property provided under such contract as may be in the possession or control of a subcontractor. When the subcontractor has a property control system approved by the Government for Government property provided under the subcontractor's own prime contracts, the contractor will utilize records created and maintained in accordance with such approved system unless otherwise directed by the Property Administrator.

(b) *Financial Control System.* The contractor's property control system shall provide financial accounts for Government property (capital and noncapital) in the contractor's possession or control, as prescribed in S1–309(a) of this Manual. The system shall be subject to internal control standards and be supported by property records in the manner described in this Part 3.

(c) *Property Records.* The official records shall be kept in such condition that at any stage of completion of the work under a contract the status of Government property can be readily ascertained.

(1) Separate property records for each contract shall be maintained. Contractors shall furnish the Property Administrator with the name and title of the individual who will have cognizance over all Government property in the contractor's possession and who will be responsible for maintenance of property records.

(2) Property records of the same type which would have been established for components if acquired separately shall be established for such usable components which are permanently removed from items of Government property, as a result of modification, or otherwise.

(3) The contractor's property control system shall contain an adequate locator system or techniques to permit the location of any item of Government property within a reasonable period of time after request therefor.

S1–301 *Pricing.*

Except as provided in paragraph (a) of this section, the contractor's property control system shall contain the unit acquisition price for each item of Government property recorded therein. It is a recognized practice of many contractors to record the unit acquisition price of property on other than the quantitative inventory record, thus requiring the use of supplementary records to ascertain unit prices. Under such circumstances, the supplementary records containing such information shall be identified and recognized as a portion of the official property records.

(a) *Contractor-Acquired and Contractor-Fabricated Property.* The unit acquisition price of contractor-acquired and contractor-fabricated property shall be determined in accordance with the system established by the contractor in conformance with generally accepted accounting principles and consistently applied. Generally, it is desired that separate unit prices be applied to work-in-process items fabricated or acquired by the contractor. However, if the contractor's accounting system is acceptable and if the maintenance of detailed cost records results in excessive accounting cost or is otherwise impracticable considering all circumstances, group pricing may be used for work-in-process inventory. Processed material, fabricated parts, components, assemblies, etc., charged to the contractor's work-in-process inventory, including items in temporary storage while awaiting processing, may be considered as work-in-process for the purpose of compliance with this requirement. Nothing in the foregoing lessens the requirement for quantitative property controls for work-in-process necessary for the proper protection of the Government's interest.

(b) *Government-Furnished Property.* The unit acquisition price of Government-furnished property will be determined by the Government and furnished to the contractor. Transportation and installation costs will not be considered as part of the unit price for this purpose. Normally, the unit price of Government-furnished property will be provided on the transfer document covering shipment of the property to the contractor. In the event the unit price is not provided on the document, action will be taken through the Property Administrator to obtain the information.

S1–302 *Records of Material.*

All Government material furnished to the contractor, as well as other material to which title has passed to the Government by reason of allocation from contractor-owned stores or purchase by the contractor for direct charge to a Government contract or otherwise, shall be recorded in accordance with the contractor's property control system, as follows:

(a) *Material Issued Directly Upon Receipt.* (1) Fixed-Price Contracts. In the case of Government-furnished material which is issued directly by the contractor upon receipt so as to be considered consumed under the contract, the documents evidencing receipt and issue maintained by the contractor will be accepted as property control records.

(2) Cost-Type Contracts. For material, whether Government-furnished or contractor-acquired, issued by the contractor directly so as to be considered consumed under the contract, the Government invoices, contractor's purchase documents, or other documentary evidence of acquisition and issue will be accepted as adequate property records.

(b) *Material Maintained in Stocks.* For material maintained by the contractor in stocks or stores, the contractor's property control system shall be such as to provide the following information:

(1) Contract number or equivalent code designation;

(2) Nomenclature or description of item (including National Stock Number when available);

(3) Quantity received;

(4) Quantity issued;

(5) Balance on hand;

(6) Posting reference;

(7) Date received or issued;

(8) Unit price; and

(9) Disposition action taken.

(c) *Consolidated Stock Record.* When a contractor has more than one Government contract under which Government material is provided, a consolidated record for material may be authorized by the Property Administrator; *Provided*, The total quantity of any item is allocated to each contract by contract number and each requisition of material from contractor-owned stores is charged to the contract on which the material is to be used. The supporting document or issue slip shall show the contract number or equivalent code designation to which the issue is charged.

(d) *Custodial Records.* Custodial records shall be maintained for sensitive items, tool crib items, guard force items, protective clothing, and other items for the use of individuals in the performance of their work under the contract.

S1–303 *Records of Noncapitalized Equipment.*

Except where individual item records are necessary for effective control, calibration, or maintenance, summary stock records may be maintained for noncapitalized equipment. The contractor's property control system shall be such as to provide the following minimum information:

(1) Contract number or equivalent code designation;

(2) Noun name of the item;

(3) Manufacturer and model/part number (including National Stock Number when available);

(4) Quantity received;

(5) Balance on hand;

(6) Posting reference and date of transaction;

(7) Unit price;

(8) Location; and

(9) Disposition.

In addition, where appropriate as determined by the Property Administrator, the serial number and/or Government identification number for each item shall be recorded in a permanent manner in the property records and, upon disposition, lined out or otherwise deleted from the record.

S1–304 *Records of Capitalized Equipment.*

(a) *Item Records.* The contractor shall maintain individual item records (manual or mechanized) of each item of Government-owned capitalized equipment which will provide the following minimum information:

(1) Name of the equipment manufacturer;

(2) Manufacturer's model/part number (including National Stock Number when available);

(3) Serial number and year built (when available);

(4) Government identification/tag number;

(5) Noun name of the item;

(6) Acquisition document reference and date;

(7) Location;

(8) Disposition document reference and date;

(9) Contract number or equivalent code designation; and

(10) Unit price. (Unit price will be reduced when accessory and auxiliary items are permanently separated from the basic item of capitalized equipment.)

(b) *Record of Accessory and Auxiliary Equipment.* Accessory and auxiliary equipment which is attached to or otherwise a part of an item of capitalized equipment or has been acquired for use in connection with a specific item shall be recorded on the record of the item of capitalized equipment. In the event the accessory or auxiliary item is not attached to, a part of, or acquired for use with a specific item of capitalized equipment, it shall be recorded as indicated in S1–303 or S1–304(a) of this Manual.

S1–305 *Records of Real Property.*

The contractor shall maintain a continuous itemized record of the description, location, acquisition cost, and disposition of all Government real property including unimproved real property, all alterations, and all construction, whether acquired by purchase, lease, or otherwise. The foregoing records shall be complete, show the original cost of the property and improvements and the cost of changes and additions thereto, and be appropriately classified as indicated in S1–101 (f) of this Manual.

S1–306 *Records of Scrap and Salvage.*

Unless the Property Administrator has determined that such records are not necessary, the contractor shall maintain records of all scrap and salvage generated.

(a) *Records of Scrap.* The contractor's property control system shall be such as to provide the following minimum information:

(1) Contract number, if practicable, or equivalent code designation;

(2) Scrap classification (material content);

(3) Quantity on hand;

(4) Unit of measure;

(5) Posting reference and date of transaction; and

(6) Disposition.

(b) *Records of Salvage.* The contractor's property control system shall be such as to provide the following minimum information:

(1) Contract number, if practicable, or equivalent code designation;

(2) Nomenclature or description of item (including National Stock Number, if available);

(3) Quantity on hand;

(4) Posting reference and date of transaction; and

(5) Disposition.

S1–307 *Records of Related Data and Information.*

The contractor shall maintain property control and accountability in accordance with sound business practice with respect to manufacturing or assembly drawings, installations, operation, repair, or maintenance instructions, or other similar data and information provided to the contractor by the Government. Other requirements set forth in this Manual are not applicable to such property unless specified in the contract or required by the Property Administrator.

S1–308 *Records of Completed Products.*

The contractor shall maintain a record of all completed products produced under the contract as follows:

(a) When there is not any lapse of time between Government inspection and acceptance of the completed products and shipment from the contractor's facility, the records shall, as a minimum, consist of a summary of quantities accepted or shipped. When end items are accepted by the Government and stored with the contractor awaiting shipment, the record shall identify quantities stored, location, and disposition action.

(b) On contracts which provide that completed products are to be retained by the contractor for further use under the contract, or other contracts, such items shall be considered Government-furnished property upon acceptance and shall be recorded as prescribed in this part.

(c) When completed products are returned to a contractor under the terms of a warranty clause, the contractor shall, as a minimum, maintain a record by contract setting forth a description of the items involved, quantities received and returned to the Government, and such other pertinent data as may be required to permit determination that a proper accounting for all property has been made.

S1–309 *Financial Control Accounts and Reports.*

(a) *Control System.* The contractor's property control system shall be such as to provide at any time for each contract the dollar amount of Government property for which he is accountable in the following classifications:

(1) Real property;
(2) Capitalized equipment;
(3) Noncapitalized equipment; and
(4) Material maintained in stocks.

The contractor's accounts shall be susceptible to reconciliation in totals and subtotals as to whether contractor-acquired or Government-furnished.

(b) *Financial Property Reports.* The contractor shall prepare a report as of July 31 each year, for each contract, showing the dollar amount of Government real property and capitalized equipment in the possession of the contractor and his subcontractors. Reports shall be prepared in the format shown below and shall be furnished to the Property Administrator not later than September 15 each year. Subcontract reports shall be consolidated with prime contract reports. The contractor shall certify that the reports have been reconciled and are in balance with the contract property records. If specifically requested by the Property Administrator, the contractor shall submit similar reports for Government noncapitalized equipment and material maintained in stocks.

	Real property	Capitalized equipment	Total
Balance beginning of period			
Acquisitions during period:			
Government furnished			
Contractor acquired			
Dispositions during period:			
Government furnished			
Contractor acquired			
Balance end of period			

Part 4—Identification

S1–400 *General.*

This part establishes minimum requirements for the identification and marking of Government property in the possession or control of the contractor. The contractor shall identify and record all Government property promptly upon receipt, except as may be exempted by this part, and it shall remain so identified. Assigned Government property identification numbers shall be recorded on all applicable receiving documents, shipping documents, disposal documents, and any other documents pertaining to the property control system. Such markings shall be removed or obliterated from the property involved when Government ownership is terminated.

S1–401 *Material and Noncapitalized Equipment.*

All Government material and noncapitalized equipment shall be identified as Government property except in those cases where:

(1) Material or noncapitalized equipment of the same type at the same location is not owned by the contractor, his employees, or other contracting agencies;

(2) Adequate physical control is maintained over sensitive items, tool crib items, guard force items, protective clothing, and other items issued for use by individuals in the performance of their work under the contract;

(3) Property is of bulk type or by its size or general nature of packing or handling precludes adequate markings; or

(4) The property is segregated and kept physically separate from contractor-owned property at all times.

S1–402 *Capitalized Equipment.*

(a) *Equipment Identification.* Unless already marked in compliance with these instructions, all Government capitalized equipment shall be marked by the contractor with a Government identification number except: when the size or nature of the equipment makes it impracticable, or the equipment is accessory or auxiliary and attached to or otherwise a part of an item of capitalized equipment and is required for its normal operations, in which case such item shall be entered and described on the record of the equipment to which it is attached or of which it is otherwise a part. Identification shall be effected by affixing a numbered decal direct to the equipment, or, when practicality dictates, by using indelible ink, acid, or electric etch, steel dies, or any other legible, permanent, conspicuous, and tamper proof method which will identify the equipment with the Government number assigned.

(b) *Position of Markings or Identification.* Identification shall be affixed on the main body of the item, not on a removable part. For practical purposes, identification should be placed where it is conspicuous and readily visible without requiring the item to be moved and where it will not interfere with the functioning, especially if it is a sensitive instrument. If the manufacturer's identification plate or label is in a readily accessible position, a position immediately above or below it is preferable to any other.

S1–500 *General.*

This part establishes minimum requirements for the physical inventory of Government property in the possession or control of the contractor.

S1–501 *Annual Inventories.*

The contractor shall perform an annual physical inventory of the following categories of Government property in his possession or control and shall require such inventories of any subcontractors that are in possession of Government property provided under the contract: (1) Capital property; (2) noncapitalized equipment; and (3) material maintained in stocks. The contractor's procedures for the performance of annual physical inventories constitute a necessary part of the contractor's property control system. For the purposes of this Manual, inventory consists of sighting, tagging or marking, describing, recording, and reporting the property involved, and reconciling the inventory results with the property records.

S1–502 *Reporting Results of Annual Inventories.*

The contractor shall promptly submit to the Property Administrator information as follows:

(1) A list on both a quantitative and monetary basis of all discrepancies disclosed by the inventory in each category of Government property;

(2) A signed statement that physical inventory of Government property under the contract was completed on a specified date and that the contractor's official property records were found to be in agreement with the physical inventory except for the discrepancies noted; and

(3) If specifically requested by the Property Administrator, a list of all items of capital property.

S1–503 *Inventories Upon Termination or Completion.*

Immediately upon termination or completion of a contract, the contractor shall perform a physical inventory adequate for disposal purposes of all Government property applicable to the terminated or completed contract. Further, the contractor shall cause each subcontractor to perform a physical inventory adequate for disposal purposes of all Government property in the subcontractor's possession or control which is applicable to the terminated or completed contract. Within 30 days after the contract's completion or termination, unless the Contracting Officer specifically approves an extension of time, the prime contractor shall submit a final inventory of Government property (including subcontractor property) in the form and detail as prescribed below:

(a) *Form.* Separate reports are required for Government-furnished property and for contractor-acquired property and for each of the following property categories:

(1) Real Property;
(2) Capitalized Equipment;
(3) Noncapitalized Equipment;
(4) Materials;
(5) Salvage; and
(6) Scrap.

(b) *Details Required.* Each item of capital property must be completely identified with sufficient detail to permit verification by reference to the covering reimbursement voucher or (if furnished by the Government) shipping or other documents. To the extent to which they apply, the following particulars are required for all items:

(1) Commercial description, adequate for screening and disposal purposes;
(2) Make, model, type, serial number, and National Stock Number when available;
(3) Government identification number;
(4) Quantity;
(5) Cost;
(6) Condition (use codes listed in Exhibit A of this Manual); and
(7) Location (contractor's facility or other site).

(c) *Copies Required.* Three copies of the inventory reports shall be submitted to the Property Administrator.

(d) *Certification.* The following certification signed by the contractor or an authorized official shall accompany each copy of the inventory schedules:

I do hereby certify as (Title) of (Name of Contractor) that the attached inventory reports are complete and correctly list and describe all items of property furnished to the contractor, or for which the contractor has been or will be reimbursed by the Government, for use in the performance of Contract No. ____ which as of this date have not been consumed in performance of this contract; and that I will immediately notify the Contracting Officer of any change affecting these inventory reports at any time prior to final disposition of the inventory.

(S) _____

Dated _____

(e) *Disposal of Property.* Disposal of property will be directed by the Contracting Officer, or a designated representative of the Contracting Officer, in accordance with the terms of the contract. The contractor shall not make disposition of any property except as so directed.

Part 6—Care, Maintenance, and Utilization

S1–600 *General.*

This part establishes minimum requirements as to care, maintenance, and utilization of Government property in the possession or control of the contractor. The contractor shall be responsible for the proper care, maintenance, and utilization of Government property in his possession or control from the time of receipt of the property until properly relieved of responsibility in accordance with the contract. The removal of Government property to storage, or its contemplated transfer, shall not relieve the contractor of these responsibilities.

S1–601 *Contractor's Maintenance Program.*

(a) *Policy.* The contractor's maintenance program (which shall be approved in accordance with Part 1 of this Manual) shall be such as to provide, consistent with sound industrial practice and the terms of the contract, for:

(1) Disclosure of need for the performance of preventive maintenance;
(2) Disclosure and reporting of need for capital type rehabilitation; and
(3) Recording of work accomplished under the program.

(b) *Preventive Maintenance.* Preventive maintenance is maintenance generally performed on a regularly scheduled basis to prevent the occurrence of defects and to detect and correct minor defects before they result in serious consequences. An effective preventive maintenance program shall consist of, but not be limited to, the following actions:

(1) Inspection of buildings at such periodic intervals as will assure detection of deterioration and the need for repairs;
(2) Inspection of equipment at such periodic intervals as will assure detection of maladjustment, wear, or impending breakdown;
(3) Regularly scheduled lubrication of bearings and moving parts in accordance with a lubrication chart or equivalent plan;
(4) Protection from exposure to deteriorating agents;
(5) Adjustments for wear, repair, or replacement of worn or damaged parts and the elimination of causes of deterioration of associated parts;
(6) Removal of sludge, chips, and cutting oils from equipment which will not be used for a period of time; and
(7) Proper storage and preservation of accessories and special tools furnished with an item of capitalized equipment but not regularly used with it.

(c) *Capital Type Rehabilitation.* The contractor's maintenance program shall be such as to provide for the disclosure and reporting of the need for major repair, replacement, and other rehabilitation work for Government property in the possession or control of the contractor.

(d) *Records of Maintenance.* The contractor's maintenance program shall provide for records sufficient to disclose the maintenance actions performed and deficiencies discovered as a result of inspections.

S1–602 *Utilization of Government Property.*

The contractor's procedures shall be adequate to assure that Government property will be utilized only for those purposes authorized in the contract.

S1–603 *Property in Possession of Subcontractors.*

The contractor shall require any of his subcontractors having Government property in their possession or control adequately to care for and maintain that property and assure that it is utilized only as authorized by the contract. Procedures necessary to assure the accomplishment of this responsibility shall be included in the contractor's approved property control system.

S1–604 *Property Excess to Contract Requirements.*

Government property which becomes excess to contract performance requirements shall be reported to the Property Administrator within 30 days. The contractor's excess declaration shall be prepared in the same manner as prescribed in S1–503 of this Manual. Disposal of excess property will be directed by the Contracting Officer, or a designated representative of the Contracting Officer, in accordance with the terms of the contract. The contractor shall not make any disposition of such property except as so directed.

Part 7—Passage of Title to Equipment Under Research Contracts

S1–700 *General.*

This part covers to the extent not otherwise provided in the contract or elsewhere in this Manual the obligations of the contractor with respect to property acquired with research contract funds, title to which has passed to him. In accordance with the provisions of 42 U.S.C. 1892, DOT is authorized to transfer title to equipment acquired with research contract funds to nonprofit institutions of higher education and to other nonprofit organizations whose primary purpose is the conduct of scientific research. This statutory authority is implemented by express provision in the Special Provisions of contracts with eligible institutions and organizations permitting the Contracting Officer to transfer to the contractor title to equipment acquired with research contract funds at any time during the term of the contract or upon its completion or termination. The contract will reserve the right to require the contractor to transfer title of equipment costing $1,000 or more per unit to the Government, or to a third party named by the Government, at any time prior to final payment under the contract.

S1–701 *Conditions of Transfer.*

In research contracts with eligible institutions and organizations, the Contracting Officer may, upon his own initiative or upon the request of the contractor, transfer title to equipment at any time during the term of the contract or upon its completion or termination. All transfers of title must be based upon a written determination by the Contracting Officer that transfer with respect to the specific items of equipment is consistent with the best interests of the Department. Until such time as title has been transferred, the property shall be administered and controlled as Government property in accordance with Parts 1 through 6 of this Manual. Upon transfer, such equipment ceases to be Government property, however, the transfer of title is subject to the terms and conditions of the contract and this Part 7.

S1–702 *Contractor's Obligations.*

Although equipment ceases to be Government property when title to it is vested in or transferred to the contractor, nonetheless the following obligations attach to the property and the contractor agrees to such obligations by accepting title thereto:

(1) *Utilization.* The contractor agrees to use the property for the benefit of research under the contract and any extensions or successor contracts thereto and to continue to use such property for the benefit of research of interest to the Government;

(2) *Charges with Respect to the Property.* The contractor is not permitted to charge for any depreciation, amortization, or use with respect to such equipment under any Government contract, any Government grant, or any subcontract under a Government contract;

(3) *Transfer of Title to Government.* With respect to each item of equipment having a unit acquisition cost of $1,000 or more, the contractor's ownership rights are qualified by the contractor's express agreement to transfer title to any such items to the Government, or to a third party designated by the Government, in accordance with any written request therefore issued by the Contracting Officer at any time prior to final payment under the contract;

(4) *Control of Property.* The contractor shall maintain a property control system which will provide for adequate identification, recording, location, utilization, maintenance, and physical inventory of equipment acquired with contract funds; and

(5) *Inventories Upon Completion or Termination.* Immediately upon completion or termination of the contract, the contractor shall perform a physical inventory of all contractor-owned equipment acquired with contract funds and having a unit acquisition cost of $1,000 or more. The inventory shall be performed, prepared, and submitted in the same manner as prescribed in S1–503 of this Manual.

DOTPR supplement 1, exhibit A—Property condition codes

[See S1-503 of this manual]

Code	Brief definition	Expanded definition
N-1	New—Excellent	New or unused property in excellent condition. Ready for use and identical or interchangeable with new items delivered by manufacturer or normal source of supply.
N-2	New—Good	New or unused property in good condition. Does not quite qualify for N-1 (because slightly shopworn, soiled, or similar), but condition does not impair utility.
N-3	New—Fair	New or unused property in fair condition. Soiled, shopworn, rusted, deteriorated, or damaged and its utility is slightly impaired.
N-4	New—Poor	New or unused property so badly soiled, rusted, mildewed, deteriorated, or damaged, that its utility is seriously impaired.
E-1	Used—Reconditioned excellent	Used property, but repaired or renovated and in excellent condition.
E-2	Used—Reconditioned good	Used property which has been repaired or renovated and, while still in good usable condition, has become worn from further use and cannot qualify for excellent condition.
E-3	Used—Reconditioned fair	Used property which has been repaired or renovated but has deteriorated since reconditioning and is only in fair condition. Further overhauling required or expected to be needed in near future.
E-4	Used—Reconditioned poor	Used property which has been repaired or renovated and is in poor condition from serious deterioration such as from major wear and tear, corrosion, exposnre to weather or mildew.
O-1	Used—Usable without repairs—Excellent.	Property which has been slightly or moderately used, no repairs required, and still in excellent condition.
O-2	Used—Usable without repairs—Good.	Used property, more worn than O-1, but still in good condition with considerable use left before any important repairs would be required.
O-3	Used—Usable without repairs—Fair.	Used property which is still in fair condition and usable without repairs; however, somewhat deteriorated with some parts (or portion) worn and should be replaced.
O-4	Used—Usable without repairs—Poor.	Used property which is still usable without repairs, but in poor condition and undependable or uneconomical in use. Parts badly worn and deteriorated.
R-1	Used—Repairs required—Excellent.	Used property, still in excellent condition, but minor repairs required (repairs would not cost more than 10 pct of acquisition cost).
R-2	Used—Repairs required—Good	Used property, in good condition but considerable repairs required. Estimated cost of repairs would be from 11 to 25 pct of acquisition cost.
R-3	Used—Repairs required—Fair	Used property, in fair condition but extensive repairs required. Estimated repair costs would be from 26 to 40 pct of acquisition cost.
R-4	Used—Repairs required—Poor	Used property, in poor condition and requiring major repairs. Badly worn, and would still be in doubtful condition of dependability and uneconomical to use if repaired. Estimated repair costs from 41 to 65 pct of acquisition cost.
X	Salvage	Property which because of its worn, damaged, deteriorated or incomplete condition, or specialized nature, has no reasonable prospect of sale or use as serviceable property without major repairs or alterations, but which has some value in excess of its scrap value.
S	Scrap	Property that has no reasonable prospect of being sold except for the recovery value of its basic material content.

[FR Doc.77-2326 Filed 1-26-77;8:45 am]

federal register

THURSDAY, JANUARY 27, 1977

PART IX



FEDERAL ELECTION COMMISSION

■

ADVISORY OPINION REQUESTS

Clearinghouse Advisory Committee Charter

FEDERAL ELECTION COMMISSION

[Notice 1977-7, AOR 1976-117 and AOR 1977-2]

ADVISORY OPINION REQUESTS

Pursuant to 2 U.S.C. 437f(c) and the procedures reflected in Part 112 of the Commission's Proposed Regulations, published on August 25, 1976 (41 FR 35954), Advisory Opinion Requests 1976-117 and 1977-2 have been made public at the Commission. Copies of AOR 1976-117 and AOR 1977-2 were made available on January 18, 1977. These copies of advisory opinion requests were made available for public inspection and purchase at the Federal Election Commission, Public Records Division, at 1325 K Street, N.W., Washington, D.C. 20463.

Interested persons may submit written comments on any advisory opinion request within ten days after the date the request was made public at the Commission. These comments should be directed to the Office of the General Counsel, Advisory Opinion Section, at the Commission. Persons requiring additional time in which to respond to any advisory opinion requests will normally be granted such time upon written request to the Commission. All timely comments received by the Commission will be considered before the Commission issues an advisory opinion. Comments on pending requests should refer to the specific AOR number of the requests and statutory references should be to the United States Code citations rather than to the Public Law citations.

A descriptive listing of each of the requests recently made public as well as the identification of the requesting party follows hereafter:

AOR 1976-117: Does a proposed debt settlement with corporate creditors of a 1974 campaign committee conform to 2 U.S.C. 441b?—Requested by Luther Rutherford, Counsel to the Committee to Elect Nelson W. Wolff, San Antonio, Texas.

AOR 1977-2: Is the Constructive Congress Committee "a separate segregated fund established by a trade association" for purposes of the solicitation approval requirements in 2 U.S.C. 441b(b)(4)(D)?—Requested by J. Richard Sewell, Treasurer, Constructive Congress Committee, Washington, D.C.

JANUARY 19, 1977.

JOAN D. AIKENS,
Commissioner,
Federal Election Commission.

[FR Doc.77-2580 Filed 1-26-77;8:45 am]

[Notice 1977-6]

CLEARINGHOUSE ADVISORY COMMITTEE

Charter

Establishment. The Federal Election Commission, having determined that it is in the public interest in connection with the performance of duties imposed on the Commission by law, hereby establishes the Federal Election Commission Clearinghouse Advisory Committee (the "Committee") pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. I.

Objectives and Duties. 1. The objective of the Committee is to advise the Commission through its Clearinghouse on the best manner in which to allocate Commission resources toward improving the administration of elections throughout the nation.

2. The Committee will draw upon the expertise of its members and other sources (such as national associations of elections-related officials) in order to offer advice and recommendations regarding the topics most deserving of Clearinghouse research efforts. It will also suggest other means for assisting election administrators in the performance of their tasks.

3. The Committee will function solely as an advisory body and will comply fully with the provisions of the Federal Advisory Committee Act.

Members and Chairman. 1. The Committee shall consist of twenty (20) members to be nominated by the Clearinghouse Chief and appointed by the Federal Election Commission. The Commission shall ensure a balanced representation of state election officials, local election officials, and state legislators as well as of major political party affiliation where appropriate. Members will be appointed for two-year terms and serve at the discretion of the Commission. Vacancy appointments shall be for the remainder of the unexpired term of the vacancy.

2. The Chairman will be the Commission's Chief of the Clearinghouse on Election Administration.

Administrative Provisions. 1. The Committee will report to the Commission through the Chief of the Clearinghouse on Election Administration.

2. The Committee will meet every six months except that additional meetings may be called as deemed desirable by the Commission or the Chairman.

3. The Commission Administrative Division and the Clearinghouse will provide clerical and other necessary support services to the Committee.

4. Members of the Committee will not be compensated for their services but will, upon request, be reimbursed for travel expenses and subsistance.

5. The annual cost for operating the Committee is estimated at $15,000–$20,000. This includes one quarter staff year of support services.

6. The Committee may establish such subcommittees of its members as may be necessary subject to the provisions of the law and the approval of the Chairman.

7. The Committee may, by simple majority vote, adopt resolutions and pass recommendations. Such resolutions and recommendations will, however, be only advisory to the Commission and will be restricted to the Commission's activities in support of election administration.

Duration. The Committee shall terminate two years from the date of this charter unless earlier terminated or renewed by proper authority.

JOAN D. AIKENS,
Commissioner,
Federal Election Commission.

JANUARY 19, 1977.

[FR Doc.77-2581 Filed 1-26-77;8:45 am]

Advance Orders are now being Accepted
for delivery in about 6 weeks

CODE OF FEDERAL REGULATIONS

(Revised as of October 1, 1976)

Quantity	Volume	Price	Amount
_____	Title 49—Transportation (Parts 200–999)	$7.55	$_____

[A Cumulative checklist of CFR issuances for 1976 appears in the first issue of the Federal Register each month under Title 1]

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5341-5676

federal register

FRIDAY, JANUARY 28, 1977



highlights

PART I:

ADVANCE BOOKING CHARTERS
CAB proposal authorizing operators to charge fee covering administrative expenses incurred when substitute is arranged for cancelling participant; comments by 2-28-77 5367

BLACK POWDER
Treasury/ATF imposes new requirements for certain persons engaged in business or operations as dealers; effective 4-28-77..... 5350

BRUCELLOSIS
USDA/APHIS updates area listing; effective 1-28-77..... 5343

BUBBLE BATHS
HEW/FDA proposes caution label; comments by 3-29-77 5368

COD, HADDOCK, FLOUNDER
Commerce/NOAA requests written comments by 2-23-77 on draft fishery management plan..... 5460

ENERGY
FEA proposal providing entitlement benefits for imported No. 2 heating oil and notice of public hearing, 2-7-77; comments by 2-4-77..... 5362
FEA publishes notice of decisions and orders (6 documents)..... 5396-5409

FARMING OPERATIONS
Labor/OSHA interprets funding limitations in Title I, Department of Labor—Department of Health, Education, and Welfare Appropriations Act for fiscal year 1977.. 5356

GRAS REVIEW
HEW/FDA announces opportunity for requests for oral presentations by 2-28-77 on certain substances 5425

HAZARDOUS MATERIALS LABELING
Labor/OSHA advance notice of proposed rulemaking on whether standard should be developed requiring employers to label dangerous materials; comments by 3-29-77 5372

INCOME TAX
Treasury/IRS regulations relating to group-term life insurance; requests for public hearing and comments by 3-14-77 5371

CONTINUED INSIDE

reminders

(The items in this list were editorially compiled as an aid to FEDERAL REGISTER users. Inclusion or exclusion from this list has no legal significance. Since this list is intended as a reminder, it does not include effective dates that occur within 14 days of publication.)

Rules Going Into Effect Today

DOT/FAA—General operating and flight rules; noise abatement landing flap; decision not to prescribe two segment approach requirements submitted by EPA. 52388; 11–29–76

FCC—Cable TV channel capacity and access channel requirements; opinion and order..... 56200; 12–27–76

Rules Going Into Effect Jan. 30, 1977

Labor/W&H—Women's and children's underwear and women's blouse industry in Puerto Rico; wage order..... 2954; 1–14–77

List of Public Laws

NOTE: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's LIST OF PUBLIC LAWS.

AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The six-month trial period ended August 6. The program is being continued on a voluntary basis (see OFR notice, 41 FR 32914, August 6, 1976). The following agencies have agreed to remain in the program:

Monday	Tuesday	Wednesday	Thursday	Friday
NRC	USDA/ASCS		NRC	USDA/ASCS
DOT/COAST GUARD	USDA/APHIS		DOT/COAST GUARD	USDA/APHIS
DOT/NHTSA	USDA/FNS		DOT/NHTSA	USDA/FNS
DOT/FAA	USDA/REA		DOT/FAA	USDA/REA
DOT/OHMO	CSC		DOT/OHMO	CSC
DOT/OPSO	LABOR		DOT/OPSO	LABOR
	HEW/FDA			HEW/FDA

Documents normally scheduled on a day that will be a Federal holiday will be published the next work day following the holiday.

Comments on this program are still invited. Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408.

ATTENTION: For questions, corrections, or requests for information please see the list of telephone numbers appearing on opposite page.

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FEDERAL REGISTER, Daily Issue:	
Subscriptions and distribution.....	202–783–3238
"Dial · a · Regulation" (recorded summary of highlighted documents appearing in next day's issue).	202–523–5022
Scheduling of documents for publication.	523–5220
Copies of documents appearing in the Federal Register.	523–5240
Corrections	523–5286
Public Inspection Desk.....	523–5215
Finding Aids.....	523–5227
Public Briefings: "How To Use the Federal Register."	523–5282
Code of Federal Regulations (CFR)..	523–5266
Finding Aids.....	523–5227
PRESIDENTIAL PAPERS:	
Executive Orders and Proclamations.	523–5233
Weekly Compilation of Presidential Documents.	523–5235
Public Papers of the Presidents....	523–5235
Index	523–5235
PUBLIC LAWS:	
Public Law dates and numbers.....	523–5237
Slip Laws.....	523–5237
U.S. Statutes at Large.....	523–5237
Index	523–5237
U.S. Government Manual.....	523–5230
Automation	523–5240
Special Projects.....	523–5240

HIGHLIGHTS—Continued

NEW ANIMAL DRUGS
HEW/FDA approves amoxicillin for oral suspension in dogs and cats for treating certain bacterial infections and mepivacaine hydrochloride injection as local anesthetic for horses (2 documents); effective 1–28–77..... 5349

NEW DRUGS
HEW/FDA offers opportunity for hearing requests by 2–28–77 on less-than-effective indications for gamma benzene hexachloride topical products and withdraws approval of pertinent parts of application for a certain combination product (2 documents)..... 5422, 5423

OCCUPATIONAL NOISE EXPOSURE
Labor/OSHA proposal on availability of post-hearing comments and additional information on economic impact analysis; comment period extended to 3–29–77..... 5374

SCIENTIFIC, PREHISTORIC, HISTORIC DATA
Interior/NPS proposal regarding responsibilities under Archeological and Historic Preservation Act; comments by 3–14–77..... 5374

MEETINGS—
ATBCB: National Advisory Committee on an Accessible Environment, 2–12 and 2–13–77..... 5389
Commerce: Technical Advisory Board, 2–22 and 2–23–77 5499
EPA: Technology Assessment and Pollution Control Advisory Committee, 2–18–77..... 5395
Electronic Fund Transfers National Commission, 2–9 and 2–10–77..... 5458
FPC: Gas Policy Council, 2–15–77..... 5418
HEW/FDA: Hemorrhoidal Panel, 2–20 and 2–21–77.... 5422
Obstetrics and Gynecology Advisory Committee, 2–25–77 5421
ITC: Government in the Sunshine: Emergency, 1–28–77 (2 documents)..... 5430, 5431
NSF: Genetic Biology Advisory Panel (2 documents); 2–17 thru 2–19–77..... 5499
USDA/FS: Oregon Dunes National Recreation Area Advisory Council, 3–18–77..... 5389

CHANGED MEETING—
HEW/FDA: Endocrinology and Metabolism Advisory Committee, 2–18–77..... 5425

RESCHEDULED MEETING—
Labor/PWBO: Employee Welfare and Pension Benefit Plan, 2–4–77..... 5441

PART II:

METAL AND NONMETAL MINES
Interior/MESA proposes health and safety standards; comments by 3–14–77..... 5545

PART III:

HOUSING LOANS
HUD provides construction and long-term financing for elderly or handicapped; effective 1–28–77..... 5567

PART IV:

DWELLING LEASES
HUD regulations on grievance procedures and requirements (2 documents); effective 2–16–77..... 5571

PART V:

NATIONAL FLOOD INSURANCE PROGRAM
HUD proposal of draft tentative agreement negotiated between HUD and NFIA; comments by 2–28–77..... 5575

PART VI:

PATENTS
Commerce/PTO rules on examining and appeal procedures; effective 3–1, 7–1–77, and 1–1–78..... 5587

PART VII:

PUBLIC WORKS
Commerce/EDA amends grant and loan programs; comments by 2–28–77; effective 1–28–77..... 5697

PART VIII:

HOUSING ASSISTANCE PAYMENTS
HUD issues final rule concerning HUD-Insured and HUD-Held Mortgages; effective 2–24–77 5601

PART IX:

MINIMUM WAGES
Labor/ESA publishes general wage determination decisions for Federal and federally assisted construction.... 5611

contents

AGRICULTURAL MARKETING SERVICE
Rules
Almonds grown in Calif 5341
Lemons grown in Ariz. and Calif .. 5341
Proposed Rules
Beef research and information, recommended decision and opportunity to file written exceptions; correction 5362
Celery grown in Fla 5362

AGRICULTURE DEPARTMENT
See also Agricultural Marketing Service; Animal and Plant Health Inspection Service; Forest Service.
Rules
Adjudicatory proceedings, formal; uniform rules of practice; correction 5341

ALCOHOL, TOBACCO AND FIREARMS BUREAU
Rules
Beer; tax reduction for small brewers; correction 5355
Explosives, firearms and ammunition; commerce in; black powder; transportation and distribution, etc 5350

ANIMAL AND PLANT HEALTH INSPECTION SERVICE
Rules
Livestock and poultry quarantine:
Brucellosis 5343
Scabies in cattle 5343

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD
Notices
Meetings:
National Advisory Committee on an Accessible Environment 5389

ARMY DEPARTMENT
Notices
Meetings:
Armed Forces Institute of Pathology Scientific Advisory Board 5394

BLIND AND OTHER SEVERELY HANDICAPPED, COMMITTEE FOR PURCHASE FROM
Notices
Procurement list, 1977; additions and deletions (3 documents) .. 5391

CIVIL AERONAUTICS BOARD
Rules
Board proceedings, conduct rules .. 5346
Proposed Rules
Charters:
Advance booking; administrative expense fees on participant cancellations 5367
Notices
Hearings, etc.:
International Air Transport Association (2 documents) .. 5389, 5390
Trans World Airlines, Inc 5390

CIVIL SERVICE COMMISSION
Notices
Noncareer executive assignments:
Defense Department 5390
Executive Office of the President (4 documents) 5391

COMMERCE DEPARTMENT
See also Economic Development Administration; National Bureau of Standards; National Oceanic and Atmospheric Administration; Patent and Trademark Office.
Notices
Meetings:
Technical Advisory Board 5499

DEFENSE DEPARTMENT
See Army Department.

DRUG ENFORCEMENT ADMINISTRATION
Proposed Rules
Papaver Bracteatum, postponement and rescheduling of hearing; extension of comment period 5370

ECONOMIC DEVELOPMENT ADMINISTRATION
Rules
Grant and loan program; organization, public works, and financial assistance requirements ... 5597

ELECTRONIC FUND TRANSFERS, NATIONAL COMMISSION
Notices
Meetings 5458

EMPLOYMENT AND TRAINING ADMINISTRATION
Notices
Employment transfer and business competition determinations; financial assistance applications 5433
Unemployment compensation, emergency:
Federal supplemental benefits, availability; Delaware 5433

EMPLOYMENT STANDARDS ADMINISTRATION
Notices
Minimum wages for Federal and federally-assisted construction; general wage determination decisions, modifications, and supersedeas decisions 5611

ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION
Notices
Committees; establishment, renewals, etc.:
Geothermal Energy Advisory Committee 5394

ENVIRONMENTAL PROTECTION AGENCY
Proposed Rules
Air quality implementation plans; various States, etc.:
California 5385
Texas and New Mexico 5383
Notices
Meetings:
Environmental Pollutant Movement and Transformation Advisory Committee 5395
Technology Assessment and Pollution Control Advisory Committee 5395

ENVIRONMENTAL QUALITY COUNCIL
Notices
Environmental statements:
Availability, etc 5391

EXPORT-IMPORT BANK
Proposed Rules
Sunshine Act implementation 5364

FEDERAL ELECTION COMMISSION
Notices
Advisory opinion requests 5395

FEDERAL ENERGY ADMINISTRATION
Rules
Petroleum price regulations, mandatory:
Crude oil, allocated, pricing method change; correction .. 5346
Proposed Rules
Imported heating oil; entitlement benefits 5362
Petroluem price regulations, mandatory:
Crude oil, imputed stripper well; production and sale; correction 5364
Notices
Appeals and applications for exception, etc.; cases filed with Exceptions and Appeals Office (6 documents) 5396–5409

FEDERAL HOUSING COMMISSIONER—OFFICE OF ASSISTANT SECRETARY FOR HOUSING
Proposed Rules
Low-income housing:
Fair market rents for new construction; Portland, Oreg. area 5370

FEDERAL INSURANCE ADMINISTRATION
Proposed Rules
Flood Insurance Program, National:
Draft tentative agreement between HUD and National Flood Insurers Association 5575

FEDERAL MARITIME COMMISSION
Notices
Agreements filed:
Combi Line and Tecomar, S.A 5417

FEDERAL POWER COMMISSION
Notices
Meetings:
Gas Policy Advisory Council 5418
Hearings, etc.:
Columbia Gas Transmission Corp 5417
Natural Gas Pipeline Co. of America and United Gas Pipe Line Co 5418
Public Service Co. of New Hampshire (2 documents) 5419
Southern Natural Gas Co. (2 documents) 5419, 5420
Sun Oil Co., et al 5420
Texaco, Inc 5420

FEDERAL RAILROAD ADMINISTRATION
Proposed Rules
Employee hours of service; sleeping quarters construction; hearing 5387

FEDERAL RESERVE SYSTEM
Notices
Federal Open Market Committee:
Domestic policy directives 5420

FEDERAL TRADE COMMISSION
Rules
Prohibited trade practices:
Interstate Check Systems, Inc., et al 5347
Martin Marietta Corp., et al 5347
Notices
Consent agreement; cease and desist:
Bryson Implement Co., et al; correction 5421

FISH AND WILDLIFE SERVICE
Proposed Rules
Fishing:
Hillside National Wildlife Refuge, Miss 5387

FOOD AND DRUG ADMINISTRATION
Rules
Animal drugs, feeds, and related products:
Amoxicillin trihydrate 5349
Mepivacaine hydrochloride injection 5349
Human drugs:
Bioavailability and bioequivalence requirements; correction 5349
Proposed Rules
Cosmetic products:
Bubble bath; label caution statements 5368
Nonclinical laboratory studies, good laboratory practice; requirements established; correction 5367
Notices
GRAS status or prior sanction determinations; hearings 5425
Human drugs:
Antiemetic combination preparation; approval withdrawn; hearing 5422
Gamma benzene hexachloride topical preparations; hearing 5423
Serpalan (reserpine) tablets; correction 5425
Meetings:
Endocrinology and Metabolism Advisory Committee 5425
Hemorrhoidal Panel 5422
Obstetrics and Gynecology Advisory Committee 5421

FOREST SERVICE
Notices
Meetings:
Oregon Dunes National Recreation Area Advisory Council .. 5389

HEALTH, EDUCATION, AND WELFARE DEPARTMENT
See also Food and Drug Administration; Social Security Administration.
Notices
Information and data acquisition activity, comments on collection 5426

HOUSING AND URBAN DEVELOPMENT DEPARTMENT
See also Federal Housing Commissioner—Office of Assistant Secretary for Housing; Federal Insurance Administration.
Rules
Low-income housing:
Elderly and handicapped, loans .. 5567
Lease and grievance procedures and requirements (2 documents) 5571
Multi-family projects, HUD-insured and HUD-held mortgages; additional assistance .. 5601
Notices
Authority delegations:
Regional Administrators et al.; labor standards for new communities 5429
Mobile home construction and safety standards; hearings:
Elcona Homes Corp. et al 5428
Mason Homes Inc 5429

INTERIOR DEPARTMENT
See also Fish and Wildlife Service; Land Management Bureau; Mining Enforcement and Safety Administration; National Park Service.
Rules
Property management; utilization of personal property 5358

INTERNAL REVENUE SERVICE
Proposed Rules
Income taxes:
Insurance, life; group term 5371

INTERNATIONAL TRADE COMMISSION
Notices
Government in the Sunshine; deletion of agenda items 5430
Import investigations:
Alloy tool steel 5430
Meetings:
Government in the Sunshine (3 documents) 5430, 5431
Preliminary drafts of enumeration of articles to provide for comparability among U.S. import, production, and export data 5431
Probable domestic impact of changing from current "chief value" method of classifying textile imports to "chief weight" method for classifying such imports 5432

INTERSTATE COMMERCE COMMISSION
Rules
Motor carriers:
Household goods transportation; annual performance reports; correction 5360
Railroad car service orders:
Freight cars, distribution 5359
Notices
Abandonment of railroad services, etc.:
Seaboard Coast Line Railroad Co 5507
Agreements under sections 5 a and b, applications for approval, etc.:
Maine Central Railroad Co 5500
Fourth section applications for relief 5500
Hearing assignments 5500
Motor carriers:
Temporary authority applications (2 documents) 5500, 5504
Rerouting of traffic:
Chesapeake and Ohio Railway Co. (2 documents) 5507

JUSTICE DEPARTMENT
See Drug Enforcement Administration.

LABOR DEPARTMENT
See also Employment and Training Administration; Employment Standards Administration; Occupational Safety and

CONTENTS

Health Administration; Pension and Welfare Benefit Programs Office.

Proposed Rules

Worker adjustment assistance:
Certification of eligibility; correction ---- 5372

Notices

Adjustment assistance:
A & T Ladies' Garment Corp--- 5447
Amboy Manufacturing Co---- 5447
Atkin, William, Co., Inc---- 5457
Atwater Throwing Co., Inc. (2 documents)---- 5447, 5448
Ball Co., Inc---- 5448
Belleville Shoe Manufacturing Co ---- 5448
Bern Industries, Inc---- 5441
Bohren, E. W., Transport, Inc-- 5443
Brown Shoe Co---- 5441
Capitol Footwear Corp---- 5449
Curlee Clothing Co., Inc---- 5449
Dana Corp---- 5442
Dilavore Sportswear Corp---- 5449
Duchess Garter Corp---- 5450
Duraloy-Blaw-Knox, Inc---- 5450
Empire Oldsmobile---- 5450
Evans', L. B., Son Co---- 5452
GTE Sylvania---- 5444
General Signal Corp---- 5443
Gettysburg Garment Co---- 5451
Hansen Seaway Service Ltd---- 5451
Honeycomb Inc---- 5444
International Harvester Co---- 5451
K-P Hydraulics Co---- 5452
Leemar Knitting Mills---- 5452
Lesande Shoe Co., Inc---- 5445
Linett Talleurs Co---- 5453
Lockheed—California Co---- 5445
Maria Garment Co---- 5453
Mired Foundations, Inc---- 5453
National Supply Co---- 5454
Robert Hall Clothes---- 5454
Rockwell International---- 5454
Shenango, Inc---- 5455
South End Transportation, Inc-- 5455
Sportables, Inc---- 5446
Union Carbide Corp---- 5455
United Automobile, Aerospace & Agricultural Implement Workers of America---- 5456
U.S. Steel Corp. (2 documents)-- 5456
Western Leather Products Corp-- 5446
Weyenberg Shoe Manufacturing Co ---- 5457
Wheeling-Pittsburgh Steel Corp ---- 5457

LAND MANAGEMENT BUREAU

Notices

Opening of public lands:
Oregon ---- 5429

MANAGEMENT AND BUDGET OFFICE

Notices

Clearance of reports; list of requests ---- 5458

MINING ENFORCEMENT AND SAFETY ADMINISTRATION

Proposed Rules

Metal and nonmetallic mine safety:
Fire prevention and control, explosives, etc---- 5545

NATIONAL BUREAU OF STANDARDS

Notices

Voluntary product standards:
Hardware cloth; intent to withdraw ---- 5460

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Notices

Endangered species permits; applications; shortnose sturgeon-- 5460
Fishery management plan; draft; Atlantic cod, haddock, and yellowtail flounder---- 5460
Meetings:
Pacific Fishery Management Council; Anchovy Advisory Panel ---- 5499

NATIONAL PARK SERVICE

Proposed Rules

Scientific, prehistoric, historic and archeological data recovery; methods, standards, etc---- 5374

NATIONAL SCIENCE FOUNDATION

Notices

Meetings:
Genetic Biology Advisory Panel- 5499
Systematic and Ecological Sciences Panels ---- 5499

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

Rules

Inspections, citations, and proposed penalties; occupational injuries and illnesses reporting; State plan implementation grants ---- 5356

Proposed Rules

Health and safety standards:
Hazardous materials labeling; inquiry ---- 5372
Noise exposure; economic impact analysis availability and hearing; extension of time-- 5374

Notices

Applications, etc.:
Richmond Engineering Co., Inc- 5440
NIOSH criteria documents review and evaluation; cadmium; inquiry ---- 5434

PATENT AND TRADEMARK OFFICE

Rules

Patent cases:
Practice rules; examining and appeal procedures---- 5587

PENSION AND WELFARE BENEFIT PROGRAMS OFFICE

Notices

Meetings:
Employee Welfare and Pension Benefit Plans Advisory Council; cancelled---- 5441

POSTAL SERVICE

Rules

Practice rules; mailability proceedings, etc---- 5357

Proposed Rules

Board of Governors bylaws; Sunshine Act implementation and general revision; correction---- 5383

SOCIAL SECURITY ADMINISTRATION

Proposed Rules

Supplemental Security income for aged, blind, and disabled, income and exclusions; deeming of income; correction---- 5367

Notices

Authority delegations:
Deputy Commissioner, et al., kidney transplant and dialysis services reimbursement limits; correction---- 5428

STATE DEPARTMENT

Notices

Bermuda Agreement, US-UK air services, renegotiation---- 5458

TRANSPORTATION DEPARTMENT

See also Federal Railroad Administration.

Rules

Conduct standards; corrections-- 5359

TREASURY DEPARTMENT

See Alcohol, Tobacco and Firearms Bureau; Internal Revenue Service.

"THE FEDERAL REGISTER—WHAT IT IS AND HOW TO USE IT"

Briefings at the Office of the Federal Register

(For Details, See 41 FR 46527, Oct. 21, 1976)

RESERVATIONS: DEAN L. SMITH, 523–5282

list of cfr parts affected in this issue

The following numerical guide is a list of the parts of each title of the Code of Federal Regulations affected by documents published in today's issue. A cumulative list of parts affected, covering the current month to date, follows beginning with the second issue of the month.

A Cumulative List of CFR Sections Affected is published separately at the end of each month. The guide lists the parts and sections affected by documents published since the revision date of each title.

7 CFR

1---- 5341
910---- 5341
981---- 5341

PROPOSED RULES:

967---- 5362
1260---- 5362

9 CFR

73---- 5343
78---- 5343

10 CFR

212---- 5346

PROPOSED RULES:

211---- 5362
212---- 5364

12 CFR

PROPOSED RULES:

405---- 5364

13 CFR

301---- 5598
305---- 5598
309---- 5599

14 CFR

300---- 5346

PROPOSED RULES:

371---- 5367

16 CFR

13 (2 documents)---- 5347

20 CFR

PROPOSED RULES:

416---- 5367

21 CFR

314---- 5349
320---- 5349
522---- 5349
540---- 5349

PROPOSED RULES:

3e---- 5367
8---- 5367
121---- 5367
312---- 5367
314---- 5367
430---- 5367
431---- 5367
514---- 5367
740---- 5368
1309---- 5370

24 CFR

866 (2 documents)---- 5573
885---- 5568
886---- 5602

PROPOSED RULES:

888---- 5370
1909---- 5576

26 CFR

PROPOSED RULES:

1---- 5371

27 CFR

178---- 5350
181---- 5350
245---- 5355

29 CFR

1903---- 5356
1904---- 5356
1951---- 5356

PROPOSED RULES:

90---- 5372
1910 (2 documents)---- 5372, 5374

30 CFR

PROPOSED RULES:

55---- 5546
56---- 5546
57---- 5546

36 CFR

PROPOSED RULES:

66---- 5374

37 CFR

1---- 5588

39 CFR

951---- 5357
952---- 5357
953---- 5357
954---- 5358
957---- 5358
958---- 5358
959---- 5358

PROPOSED RULES:

6---- 5383

40 CFR

PROPOSED RULES:

52 (2 documents)---- 5383, 5385

41 CFR

114-43---- 5358

49 CFR

99---- 5359
1033---- 5359
1056---- 5360

PROPOSED RULES:

228---- 5387

50 CFR

PROPOSED RULES:

33---- 5387

CUMULATIVE LIST OF PARTS AFFECTED DURING JANUARY

The following numerical guide is a list of parts of each title of the Code of Federal Regulations affected by documents published to date during January.

1 CFR

PROPOSED RULES:
442 ... 1267

3 CFR

EXECUTIVE ORDERS:
10480 (Amended by EO 11956) ... 2947
10900 (Amended by EO 11963) ... 4325
10973 (Amended by EO 11959) ... 4315
11490 (Amended by EO 11953) ... 2491
11501 (Revoked by EO 11958) ... 4311
11651 (Amended by EO 11951) ... 1453
11718 (Revoked by EO 11966) ... 4331
11724 (Superseded by EO 11954) ... 2297
11793 (Revoked by EO 11957) ... 3295
11821 (Amended by EO 11949) ... 1017
11888 (Amended by EO 11960) ... 4317
11921 (See EO 11953) ... 2491
11949 ... 1017
11950 ... 1451
11951 ... 1453
11952 ... 2293, 4809
11953 ... 2491
11954 ... 2297
11955 ... 2499
11956 ... 2947
11957 ... 3295
11958 ... 4311
11959 ... 4315
11960 ... 4317
11961 ... 4321
11962 ... 4323
11963 ... 4325
11964 ... 4327
11965 ... 4329
11966 ... 4331
11967 ... 4393

PROCLAMATIONS:
4423 (See Proc. 4482) ... 4309
4481 ... 4307
4482 ... 4309
4483 ... 4391

5 CFR

213 ... 1455, 2949, 3297, 3827
610 ... 3297
1410 ... 2299

7 CFR

1 ... 743, 5341
2 ... 2968, 4395
26 ... 1019
55 ... 2969
56 ... 2970
59 ... 2971
70 ... 2971
210 ... 2971
226 ... 1475
354 ... 1475
401 ... 4111
601 ... 3845
718 ... 2973
722 ... 1476
726 ... 2300
729 ... 749
730 ... 2301
905 ... 1022, 5071
907 ... 1230, 2665, 3845, 3846, 4395, 5072
910 ... 1476, 2977, 3297, 4111, 5341
912 ... 4811
917 ... 3625
928 ... 1, 2, 2665
930 ... 3626
959 ... 2308, 4395
966 ... 5072
971 ... 2666, 3626
980 ... 5073
981 ... 3159, 3847, 5341
1205 ... 4812
1421 ... 4397
1430 ... 3
1473 ... 2977
1701 ... 3847
1803 ... 4401
1821 ... 4405
1822 ... 1023, 2051, 4406
1823 ... 4408, 4409
1843 ... 1231
1845 ... 2308
1924 ... 4111

PROPOSED RULES:
52 ... 3178
270 ... 1479
271 ... 1479
272 ... 780, 2328
275 ... 1479
661 ... 3311
730 ... 780
967 ... 2691, 5362
987 ... 2503
1002 ... 4471
1033 ... 4127
1063 ... 1356
1070 ... 1356
1078 ... 1356
1079 ... 1356
1205 ... 2503
1260 ... 4484, 5362
1421 ... 2328
1434 ... 2980
1473 ... 2977
1488 ... 3849
1701 ... 1479, 4489

8 CFR

204 ... 3626
212 ... 3627
214 ... 3627

9 CFR

73 ... 2949, 3297, 5343
78 ... 5343
97 ... 1455
113 ... 750, 1456
317 ... 3298
319 ... 751, 3298
381 ... 2949

PROPOSED RULES:
92 ... 1483, 3859

10 CFR

100 ... 2051
140 ... 46
Ch. II ... 1036, 4409
203 ... 3814
210 ... 4416, 4417, 5036
211 ... 4416, 4421, 4422, 5031, 5033, 5036
212 ... 1036, 1456, 2308, 4417, 5023, 5030, 5036, 5346
500 ... 4813
711 ... 4826

FEA RULINGS:
1977–1 ... 3628
1977–3 ... 4833

PROPOSED RULES:
2 ... 3178
51 ... 3178
211 ... 5362
212 ... 2646, 4491, 5364
215 ... 3652

11 CFR

PROPOSED RULES:
2 ... 3810
3 ... 3810

12 CFR

4 ... 2950
16 ... 2200, 3299
202 ... 1242, 2950
206 ... 3171
207 ... 968
211 ... 752
212 ... 2951
213 ... 752
220 ... 752
221 ... 968
224 ... 968
225 ... 752, 1263, 2951
226 ... 753, 1264, 2650, 3827
227 ... 2950
265 ... 2501, 2950
563 ... 2952
570 ... 2952
601 ... 2666
704 ... 1458

PROPOSED RULES:
226 ... 780, 1268
405 ... 5364
505b ... 2503
523 ... 2338
545 ... 2328
564 ... 2328
604 ... 55, 2078

13 CFR

301 ... 5598
305 ... 5598
309 ... 753, 5599

PROPOSED RULES:
112 ... 2506
121 ... 2505, 2980, 4854

14 CFR

25 ... 2052
36 ... 4113
37 ... 19
39 ... 1217, 1218, 2053–2055, 3870, 3828, 4113–4116, 5036, 5037
71 ... 300, 2055, 2056, 3170, 3171, 3829, 4117, 5038

14 CFR—Continued

73 ... 300, 3829
75 ... 300, 4117
97 ... 1219, 2056, 3171, 5038, 5039
207 ... 4117
208 ... 4118
221a ... 1220
241 ... 1219
288 ... 3299
300 ... 5346
302 ... 2667
378a ... 2309
385 ... 1220, 2667, 2668
1214 ... 3829

PROPOSED RULES:
39 ... 1268–1270
71 ... 1270, 1271, 2078, 2079, 3179, 3861–3863, 4132, 4133, 5074
91 ... 3863
152 ... 2850, 4134
239 ... 1271
288 ... 1271
298 ... 2692
310b ... 2995
370 ... 2995
371 ... 5367
399 ... 3180

15 CFR

369 ... 2057
371 ... 1222
377 ... 1222
931 ... 1164

PROPOSED RULES:
920 ... 2507
923 ... 5074
933 ... 4046

16 CFR

2 ... 3300
4 ... 4834
13 ... 3–5, 3636, 3640, 3833, 4118, 4119, 5347
1012 ... 5040
1201 ... 1428

PROPOSED RULES:
1 ... 2980
4 ... 2079
438 ... 1483
447 ... 2694
450 ... 1038
456 ... 5075
600 ... 5075
801 ... 3181, 3655
1012 ... 5079
1301 ... 1484

17 CFR

1 ... 2628, 4120
155 ... 4120
180 ... 3433
200 ... 753, 5040
211 ... 2058
240 ... 753, 754, 2060, 3301, 4424
241 ... 759
276 ... 2953

PROPOSED RULES:
1 ... 4134
155 ... 4134
239 ... 3312
240 ... 781, 782, 3312, 4854, 5084
249 ... 782
270 ... 3312
275 ... 3312

18 CFR

2 ... 2954, 4834
11 ... 1226
141 ... 6
154 ... 2954
300 ... 2668

PROPOSED RULES:
1 ... 2079
2 ... 2329, 4834
3 ... 2079
154 ... 1272
157 ... 56
301 ... 4859

19 CFR

1 ... 5040
4 ... 3160, 5040
6 ... 2309
10 ... 2309, 2310, 3161, 5041
18 ... 4120
24 ... 4120, 5041
153 ... 2501
172 ... 3161

PROPOSED RULES:
1 ... 2329
113 ... 2330
201 ... 805

20 CFR

401 ... 3640
404 ... 2062
405 ... 1028
416 ... 2062
422 ... 3640
614 ... 1459
601 ... 4724
602 ... 4724
603 ... 4724
604 ... 4724
651 ... 4724
652 ... 4727
653 ... 4727
654 ... 4731
655 ... 4731
656 ... 3440
657 ... 4731
658 ... 4731
701 ... 3847
702 ... 3847

PROPOSED RULES:
405 ... 4966
416 ... 2079, 3316, 5367
655 ... 4670

21 CFR

1 ... 4697
2 ... 1459, 4436, 4697
4 ... 3108
6 ... 4712
8 ... 1459, 4712
10 ... 4712
11 ... 4713
80 ... 4713
90 ... 4713
100 ... 4713
102 ... 761
121 ... 1460, 1461, 3302, 4713
310 ... 4714
314 ... 1624, 1638, 3109, 4714, 5349
320 ... 1624, 1638, 5349
501 ... 4716
503 ... 4716
508 ... 4717
510 ... 3837
514 ... 3109, 4717
520 ... 1462, 3838
522 ... 3838, 5349
540 ... 1462, 5349
548 ... 3838
555 ... 3838
558 ... 761, 1463, 2312
564 ... 4717
570 ... 4717
571 ... 4717
601 ... 4718
701 ... 4718
809 ... 4719

PROPOSED RULES:
1 ... 2330
3e ... 1483, 5367
8 ... 5367
11 ... 806
18 ... 2330
121 ... 1483, 5367
128d ... 807
312 ... 5367
314 ... 5367
369 ... 2330
430 ... 5367
431 ... 5367
500 ... 2330
510 ... 2981
514 ... 5367
701 ... 2330
740 ... 2330, 5368
801 ... 2330
1309 ... 5370

22 CFR

41 ... 2501
42 ... 2501

PROPOSED RULES:
93 ... 5086
707 ... 5086

23 CFR

625 ... 6, 3642
655 ... 4835
712 ... 7

PROPOSED RULES:
1204 ... 5088

24 CFR

24 ... 5304
35 ... 5042
42 ... 5044
200 ... 3838, 5044
201 ... 3839, 5044, 5045
203 ... 762
207 ... 764, 2954
213 ... 764, 2954
221 ... 765, 2954
231 ... 766, 2954
241 ... 763, 3162
280 ... 960
290 ... 5049
570 ... 5312
866 ... 5573
885 ... 5568
886 ... 5602
1905 ... 3162
1914 ... 2193, 4264
1916 ... 4264, 4265
1917 ... 2063–2068, 4265–4268
3282 ... 2576

PROPOSED RULES:
108 ... 5097
200 ... 4296
201 ... 1487
235 ... 5088
242 ... 3655
279 ... 3112

24 CFR—Continued
PROPOSED RULES—Continued
406 2796
501 1488
570 3292, 3437
800 4300
866 3181
881 4300
888 5370
891 5099
1909 5576
1917 2082, 4269–4280, 4641–4649
2205 5093, 5094

25 CFR
700 5054
PROPOSED RULES:
221 3319
504 3864

26 CFR
1 767, 1195, 1463, 2501, 3839, 4436
7 1469, 1471, 2954, 4121
41 2671
48 2671
142 2677
154 2312
404 1029, 2313, 4437, 4438
PROPOSED RULES:
1 57, 2694, 3181, 3866, 5371
54 1488
301 1038, 1489

27 CFR
170 3840
178 5350
181 5350
194 3840
201 3840
245 5355
270 4999
275 5002
290 5008
295 5010
296 5011
PROPOSED RULES:
250 5104

28 CFR
0 3163, 4440, 5054
30 5318
PROPOSED RULES:
16 5104
32 1390

29 CFR
15 769
60 3440
94 1656, 2426
95 2427
96 2428
97 1656
98 2428
99 773, 2430
511 2313
609 2954
613 3303
657 4440
672 2955
673 2955
720 3303
1601 3163
1903 5356
1904 5356

29 CFR—Continued
1910 2956, 3304
1926 2956
1951 5356
1952 2313
2608 2677, 4440
2610 2678
PROPOSED RULES:
90 2981, 5372
102 5105
215 3319, 4492
1910 808, 1742, 1806, 5372, 5374
2550 1488, 1618, 3871
2610 4862

30 CFR
100 1214
211 3642, 4441
PROPOSED RULES:
11 2986
55 5546
56 5546
57 5546
77 2800
211 1489, 2082, 4492, 4493
251 3321

31 CFR
1 2311
13 3841
51 2196, 2422
101 1471
128 4121
210 9
515 1472

32 CFR
40 3646
256 773
2000 2679
PROPOSED RULES:
242a 1492
903 2085
1482 3322

33 CFR
40 10
92 2681
117 3841
159 11
183 2681, 2682
204 3646
265 3841
PROPOSED RULES:
110 3871
114 3181
115 3181
161 3182
181 5107
207 4863
209 2572

34 CFR
Ch. I 12
232 1478

36 CFR
9 4835
212 2957
221 2957
231 2957
251 2957
261 2957
262 2961
271 2962

36 CFR—Continued
272 2962
291 2962
295 2962
606 1473
PROPOSED RULES:
7 3655, 3656
16 812
17 812
66 5374

37 CFR
1 5588
201 2962
PROPOSED RULES:
1 2632
3 2632
5 2632
201 4134, 5109

38 CFR
0 2314
3 2069
17 2316

39 CFR
111 3470
233 4123
257 4123
258 4124
951 5357
952 5357
953 5357
954 5358
957 5358
958 5358
959 5358
3002 3646
PROPOSED RULES:
1 2699
2 2699
3 2699
4 2699
5 2699
6 2699, 5383
7 2699
8 2699

40 CFR
6 2450
52 3841, 4124
60 1214, 4124
61 1215, 4124
86 1122, 1150
129 2588, 2617
136 3306
190 2858
220 2468
221 2470
222 2471
223 2474
224 2474
225 2475
226 2475
227 2476
228 2482
229 2489
409 3164
430 1398
440 3165
455 2316
PROPOSED RULES:
22 1492
52 1273, 1494, 2705, 3657, 4134, 4135, 4496, 5383, 5385

40 CFR—Continued
PROPOSED RULES—Continued
60 2842, 4863
80 3183
85 1044
180 2330
201 2330
202 2331
260 1044
1516 1044

41 CFR
3–3 2683
3–4 2684
3–16 2684
3–50 2684
5A–1 5054
5A–2 5055
5A–5 5055
5A–7 5057
5A–14 5057
5A–16 5058
5A–19 5058
5A–53 5058
5A–72 5058
5A–76 5059
7–1 4841
7–3 4841
7–4 4842
7–6 4842
7–7 4842
7–8 4843
7–10 4843
7–12 4843
7–15 4843
7–30 4843
9–4 4124
9–7 2963
9–15 2963
9–51 2684
Ch. 14 1215
14–1 1215
14–10 1215
60–1 3458
60–2 3461
60–3 3825
60–30 3462, 4057
60–741 3307
101–1 12
101–25 1030
101–26 1032
101–28 2317
101–38 1477
114–43 5358
PROPOSED RULES:
3–1 1273
12–70 5324
101–17 816

42 CFR
56b 4125
100 4024, 4847
101 4676
122 4024
123 4028
PROPOSED RULES:
54b 2986
101 2994, 4256–4260, 4624, 4632, 4637

43 CFR
4 1216
419 3307

43 CFR—Continued
2650 779
3040 4441
3041 4442
3100 1032
3500 4451, 4457
3520 4452
3830 5298
4110 778
4120 778
9230 4457
PUBLIC LAND ORDER:
5561 (Amended by PLO 5612) 2684
5611 (Corrected by PLO 5612) 2684
5612 2706
PROPOSED RULES:
2 4498
29 3660
2400 3657
2920 5294
3520 2684
3800 1045
4700 4500
6260 5294

45 CFR
99 4460
177 2963
185 3842
193 1190
233 3307
248 2684
249 4125
250 779
304 3843
416 5272
1005 3165
1050 3272
1068 3165
1336 3782
1385 5276
1386 5279
1387 5287
1619 4848
PROPOSED RULES:
Subtitle A 3325
46 2792, 3076
63 4135
74 4137
Ch. I 5110
153 3792
158 2086
185 4501
Ch. II 2445
201 3664
205 2440
249 3325, 3665, 4967
250 2331, 3328
304 3663
504 3872
706 2708
1480 1045
1606 4864
1621 4867
1703 3667

46 CFR
536 1473
PROPOSED RULES:
10 3186
12 1278
502 817
531 3186

47 CFR
0 3166, 3167
1 3166–3168, 3308
13 1231
15 1231, 3308, 4461
21 1232
73 1233, 2502, 3167, 3308, 3646, 4157
74 2069
76 3308
81 1474
83 1231, 1474
87 3168, 3308
89 4158
97 3166, 3167
PROPOSED RULES:
64 1278
73 1278, 1279, 2086, 3186
74 2087
76 3670
83 2088
97 2089

49 CFR
Ch. II 4464
Ch. V 2864
25 12
99 3118, 5359
173 2071, 2688, 5059
174 2071
178 2688
218 2318, 3843, 5059
220 5065
221 2321, 3843
225 1221
231 1222
258 4652
260 4652
265 4286
268 4982
310 2964
501 3843
571 3844, 5071
630 3772
1033 2965, 3309, 3310, 3644, 4467, 4849, 5359
1047 19
1056 3169, 5360
1100 4126
1241 1474
1249 1474
1250 1474
1251 1474
PROPOSED RULES:
Subtitle A 2868
173 2709
179 2709
228 2994, 5387
230 2994
258 4660
267 2507
268 4982
523 2092
571 3187
804 5111
1251 2092

50 CFR
17 2071, 2965
26 1033, 2689, 2690, 3845
32 2690
33 1034, 2690, 3845, 4849
216 1034, 3845
260 2326

50 CFR—Continued

261	2326
262	2326
263	2326, 4468
264	2326
265	2326
266	2326
267	2326
268	2326
269	2326
270	2326
271	2326
272	2326
273	2326
274	2326
275	2326
276	2326
277	2326
278	2326
279	2326
601	2968
602	2968

PROPOSED RULES:

17	2101, 2102, 2507, 4868
26	4872
33	5387
216	1049
217	4873
233	4874

FEDERAL REGISTER PAGES AND DATES—JANUARY

Pages	Date
1–741	Jan. 3
743–1015	4
1017–1194	5
1195–1450	6
1451–2049	7
2051–2291	10
2293–2497	11
2499–2664	12
2665–2946	13
2947–3157	14
3159–3294	17
3295–3624	18
3625–3826	19
3827–4109	21
4110–4394	24
4395–4808	25
4809–5021	26
5023–5339	27
5341–5676	28

rules and regulations

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

Title 7—Agriculture

SUBTITLE A—OFFICE OF THE SECRETARY OF AGRICULTURE

PART 1—ADMINISTRATIVE REGULATIONS

Rules of Practice Governing Formal Adjudicatory Administrative Proceedings Instituted by the Secretary

Correction

In FR Doc. 77–184, appearing at page 743, in the issue for Tuesday, January 4, 1977, the second sentence of the effective date paragraph in the second column on page 743 should read as follows:

Proceedings instituted prior to said date shall continue under the applicable rules of practice in effect when the proceedings were instituted, unless the parties to a proceeding agree that the proceeding shall be governed on and after February 1, 1977, by the new uniform rules set forth in the new Subpart H.

CHAPTER IX—AGRICULTURAL MARKETING SERVICE (MARKETING AGREEMENTS AND ORDERS; FRUITS, VEGETABLES, NUTS), DEPARTMENT OF AGRICULTURE

[Lemon Reg. 77]

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

Limitation of Handling

This regulation fixes the quantity of California-Arizona lemons that may be shipped to fresh market during the weekly regulation period Jan. 30–Feb. 5, 1977. It is issued pursuant to the Agricultural Marketing Agreement Act of 1937, as amended, and Marketing Order No. 910. The quantity of lemons so fixed was arrived at after consideration of the total available supply of lemons, the quantity of lemons currently available for market, the fresh market demand for lemons, lemon prices, and the relationship of season average returns to the parity price for lemons.

§ 910.377 Lemon Regulation 77.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 910, as amended (7 CFR Part 910), regulating the handling of lemons grown in California and Arizona, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and upon the basis of the recommendations and information submitted by the Lemon Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such lemons, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) The need for this regulation to limit the quantity of lemons that may be marketed during the ensuing week stems from the production and marketing situation confronting the lemon industry.

(i) The committee has submitted its recommendation with respect to the quantity of lemons it deems advisable to be handled during the ensuing week. Such recommendation resulted from consideration of the factors enumerated in the order. The committee further reports the demand for lemons is showing some improvement early this week. Average f.o.b. price was $4.97 per carton the week ended January 22, 1977 compared to $5.13 per carton the previous week. Track and rolling supplies at 120 cars were up 20 cars from last week.

(ii) Having considered the recommendation and information submitted by the committee, and other available information, the Secretary finds that the quantity of lemons which may be handled should be fixed as hereinafter set forth.

(3) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this regulation until 30 days after publication hereof in the FEDERAL REGISTER (5 U.S.C. 553) because the time intervening between the date when information upon which this regulation is based became available and the time when this regulation must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The committee held an open meeting during the current week, after giving due notice thereof, to consider supply and market conditions for lemons and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such meeting was held; the provisions of this regulation, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such lemons; it is necessary, in order to effectuate the declared policy of the act, to make this regulation effective during the period herein specified; and compliance with this regulation will not require any special preparation on the part of persons subject hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on January 25, 1977.

(b) *Order.* (1) The quantity of lemons grown in California and Arizona which may be handled during the period January 30, 1977, through February 5, 1977, is hereby fixed at 200,000 cartons.

(2) As used in this section, "handled", and "carton(s)" have the same meaning as when used in the said amended marketing agreement and order.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.)

Dated: January 27, 1977.

CHARLES R. BRADER,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc.77-3066 Filed 1-27-77;11:46 am]

PART 981—ALMONDS GROWN IN CALIFORNIA

Revision of Crediting for Paid Advertising

Notice of a proposal to amend Subpart-Administrative Rules and Regulations (7 CFR 981.441—981.481; 42 FR 3159) by revising § 981.441 which pertains to crediting for paid advertising was published in the November 16, 1976, issue of the FEDERAL REGISTER (41 FR 50452). The subpart is operative pursuant to the marketing agreement, as amended, and Order No. 981, as amended (7 CFR Part 981; 41 FR 26852; 27827, 53650), hereinafter collectively referred to as the "order", regulating the handling of almonds grown in California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The proposal was based on a unanimous recommendation of the Almond Board of California.

The notice afforded interested persons an opportunity to submit written data, views, or arguments with respect to the proposal; none were received.

The proposal was to revise § 981.441 to clarify and update the current provisions and to delete references to the Board's former name, the Almond Control Board. Section 981.441 pertains to crediting for paid advertising which is authorized pursuant to § 981.41 in the order.

As provided in § 981.441(b), in order for a handler to receive credit for his paid advertising each of his advertisements must be published, broadcast, or

displayed during the crop year for which credit is requested. In the case of outdoor advertising, paragraph (b) provides that the credit granted by the Board shall be that which is appropriate when compared with the applicable rate published in the "Buyers Guide to Outdoor Advertising". Since the Buyers Guide, however, no longer gives rate data on outdoor advertising, outdoor rate cards should be used by the Board as provided in the notice.

Also, a handler may not know the exact amount of his assessment obligation until after June 30, the end of the crop year. In this situation, a handler's expenditures for creditable advertising may be less than the amount he could have credited against his assessment obligation, and he may need an additional period to place more advertising. Thus, § 981.441(b) would also be revised so that no later than September 1 of the subsequent crop year a handler may expend a maximum of five percent of his total creditable advertising obligation as of the June 30 redetermination report. The accompanying documentation must be filed with the Board no later than September 30. Also, a handler utilizing this extension of time, would have to certify to the Board, at time of redetermination, his planned expenditures during the extension period.

Finally § 981.441(b) would also be revised to provide that for advertisements in countries other than the U.S. and Canada, § 981.441(e) would apply. Currently, § 981.441(e)(1) provides that advertising in Canada may be credited, but as proposed, § 981.441(b) would provide such authority.

Section 981.441(d) outlines what portion of a handler's media expenditures may be credited against his assessment obligation in various advertising situations. In the case when the advertisement is a result of a joint effort on the part of a handler or seller of a complementary commodity or product which includes the brand of both, the allowance shall be 50 percent of the total allowable payment to the advertising medium, or the handler's allowable payment thereof, whichever is less. In the case of two complementary commodities or products, the allowance is one-third. Section 981.441(d) would be revised so that a portion of the allowable media expenditures for which a handler would be granted credit, would be determined by the number of manufacturers or sellers of complementary commodities or products, not the number of complementary commodities or products themselves. For an advertisement resulting from joint participation by a handler and a manufacturer or seller of a complementary commodity or product, and including the brands of both, the credit would be 50 percent of the total allowable payment to the advertising medium, or the handler's payment thereof, whichever is less. For an advertisement resulting from joint participation by a handler and two manufacturers or sellers of complementary commodities or products, and including the brands of all three, the credit would be one-third of the total allowable payment to the advertising medium, or the handler's payment thereof, whichever is less.

As previously mentioned, § 981.441(e) provides that credit for media expenditures shall be allowed for advertising conducted in Canada, and for a handler's unreimbursed media expenditures for advertising in any foreign country pursuant to a contract with the Foreign Agricultural Service, USDA, so long as this advertisement meets the requirements of paragraphs (c) and (g) and the limitations of paragraphs f (1) and (2) of § 981.441. Credit for media expenditures for advertising in Canada would be permitted in § 981.441(b). Thus, references to such advertising in Canada in § 981.441(e) are not necessary and would be deleted.

Section 981.441(e) would also be revised in that the provisions in paragraph (e)(2) would be transferred to paragraph (e)(1), and new provisions would be included in paragraph (e)(2). They provide that credit not to exceed in total 10 percent of his creditable obligation for advertising in each crop year, would be granted a handler for his media expenditures for advertising in 10 foreign countries. These countries are Great Britain, France, Italy, West Germany, Denmark, Belgium, Ireland, Luxembourg, The Netherlands, Sweden, Norway, Finland, Switzerland and Japan. Credit would be allowed when claims are substantiated by applicable rate cards. The provisions of this section applicable to domestic advertising would apply to the crediting of advertising in these countries.

The proposal was also to delete, "Control" wherever it appears in § 981.441. The recent order amendments changed the name of the Board from the "Almond Control Board" to "Almond Board of California".

Finally, the first sentence of § 981.441(g) would be revised by adding at the beginning of the second sentence the following: "Except as provided in paragraph (b) * * *." In this way the proposed revision of § 981.441(b), which would permit handlers to file no later than September 30 of the subsequent crop year documentation with the Board for certain advertising expenditures made after June 30, would not conflict with an existing provision of § 981.441(g). Currently, that paragraph provides that no claim for assessment credit shall be granted if it is filed later than July 15 of the succeeding crop year. This conforming change was not included in the notice. However, § 981.441(g) is revised accordingly to conform with the revised § 981.441(b).

After consideration of all relevant matter presented including that in the notice, the information and recommendation submitted by the Board, and other available information, it is found that to amend the administrative rules and regulations as herein set forth will tend to effectuate the declared policy of the act.

Accordingly, Subpart-Administrative Rules and Regulations (7 CFR 981.441–981.481) is amended as follows:

1. In § 981.441, paragraphs (b), (d), (e) and (g) are revised to read as follows:

§ 981.441 Crediting for paid advertising.

* * * * *

(b) Each advertisement must be published, broadcast, or displayed during the crop year for which credit is requested, except: (i) that a maximum of five percent of the total handler creditable advertising obligation as of the June 30 redetermination report may be expended no later than September 1 of the subsequent crop year, and documentation therefor filed with the Board no later than September 30; and (ii) that a handler utilizing this extension certify to the Board, at time of redetermination, his planned expenditures during the extension period. The credit granted by the Board shall be that which is appropriate when compared to the applicable outlet rate published in the domestic or Canadian catalogs of Standard Rate and Data Service, or station or publisher or outdoor rate cards. In the case of claims for credit not covered by any such source, the Board shall grant the claim if it is consistent with rates for comparable outlets. For advertisements in countries other than the United States and Canada, paragraph (e) shall apply.

* * * * *

(d) Credit against the assessment obligation shall be granted:

(1) For 100 percent of the handler's payment to the advertising medium: (i) for a generic advertisement of California almonds; (ii) for an advertisement of the handler's brand of almonds; or (iii) when either of these advertisements includes reference to a complementary commodity or product; or (iv) for a trade media advertisement that displays branded food products containing almonds, or announces a handler's future promotional activities, including joint promotions, and the entire expenditure is borne by the handler.

(2) For an advertisement resulting from joint participation by a handler and a manufacturer or seller of a complementary commodity or product, and including the brands of both, the credit shall be 50 percent of the total allowable payment to the advertising medium, or the handler's payment thereof, whichever is less.

(3) For an advertisement resulting from joint participation by a handler and two manufacturers or sellers of complementary commodities or products, and including the brands of all three, the credit shall be one third of the total allowable payment to the advertising medium, or the handler's payment thereof, whichever is less.

(4) When almond products are advertised, the credit shall be 50 percent of the total allowable payment to the advertising medium, or the handler's payment thereof, whichever is less: *Provided*, That (i) the almond product does not contain nuts other than almonds, (ii) the almond product contains at least 50 percent raw shelled almonds by weight, and (iii) the almond product displays the handler's brand.

(e) Credit for media expenditures in a foreign country shall be granted:

(1) For the handler's unreimbursed media expenditures for advertising in any foreign country pursuant to a contract with the Foreign Agricultural Service, U.S. Department of Agriculture, provided the advertisements meet the requirements of paragraphs (c) and (d), and the limitations of paragraphs (f) (1) and (2), of this section.

(2) For a handler's media expenditures for advertising his brand of almonds in the following countries: Great Britain, France, Italy, West Germany, Denmark, Belgium, Ireland, Luxembourg, The Netherlands, Sweden, Norway, Finland, Switzerland and Japan, credit shall be allowed when claims are substantiated by applicable rate cards. The provisions of this section applicable to domestic advertising also shall apply to the crediting of advertising in these countries. The total of the foreign credit shall not exceed 10 percent of a handler's advertising assessment in each crop year.

* * * * *

(g) A handler must file a claim with the Control Board to obtain credit for an advertising expenditure. Except as provided in paragraph (b), no claim shall be granted if it is filed later than July 15 of the succeeding crop year. Each claim must be submitted on ABC Form 31 and accompanied by appropriate proof of performance as follows:

* * * * *

2. The word "Control" is deleted wherever it appears in § 981.441.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.)

Dated: January 25, 1977, to become effective March 1, 1977.

CHARLES R. BRADER,
Deputy Director,
Fruit and Vegetable Division.

[FR Doc.77-2884 Filed 1-27-77;8:45 am]

Title 9—Animals and Animal Products

CHAPTER I—ANIMAL AND PLANT HEALTH INSPECTION SERVICE, DEPARTMENT OF AGRICULTURE

SUBCHAPTER C—INTERSTATE TRANSPORTATION OF ANIMALS (INCLUDING POULTRY) AND ANIMAL PRODUCTS

PART 73—SCABIES IN CATTLE

Areas Quarantined and Released

These amendments quarantine a portion of Lubbock County in Texas because of the existence of cattle scabies. The restrictions pertaining to the interstate movement of cattle from quarantined areas as contained in 9 CFR Part 73, as amended, will apply to the area quarantined.

The amendments release a portion of Weld County in Colorado from the areas quarantined because of cattle scabies. Therefore, the restrictions pertaining to the interstate movement of cattle from quarantined areas contained in 9 CFR Part 73, as amended, will not apply to the excluded area, but the restrictions pertaining to the interstate movement of cattle from nonquarantined areas contained in said Part 73 will apply to the excluded area. No areas in Colorado remain under quarantine.

Accordingly, Part 73, Title 9, Code of Federal Regulations, as amended, restricting the interstate movement of cattle because of scabies, is hereby amended as follows:

In § 73.1a, in paragraph (a) relating to the State of Texas, a new paragraph (a)(4) relating to Lubbock County is added and paragraph (g) relating to the State of Colorado is deleted.

§ 73.1a Notice of quarantine.

(a) * * *

(4) The premises of the Lawson Feedlot comprised of the S.E. ¼ of sec. 22, block JS and the S.W. ¼ of sec. 13, block JS in Lubbock County.

* * * * *

(Secs. 4–7, 23 Stat. 32, as amended; secs. 1 and 2, 32 Stat. 791–792, as amended; secs. 1–4, 33 Stat. 1264, 1265, as amended; secs. 3 and 11, 76 Stat. 130, 132; (21 U.S.C. 111–113, 115, 117, 120, 121, 123–126, 134b, 134f); 37 FR 28464, 28477; 38 FR 19141.)

Effective date: The foregoing amendments shall become effective January 24, 1977.

Insofar as the amendments impose certain further restrictions necessary to prevent the interstate spread of cattle scabies, they must be made effective immediately to accomplish their purpose in the public interest. Insofar as the amendments relieve restrictions, they are no longer deemed necessary to prevent the spread of cattle scabies and they should be made effective promptly in order to be of maximum benefit to affected persons. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

Accordingly, under the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to the amendments are impracticable and contrary to the public interest, and good cause is found for making them effective less than 30 days after publication in the FEDERAL REGISTER.

Done at Washington, D.C., this 24th day of January 1977.

NOTE.—The Animal and Plant Health Inspection Service has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107.

PIERRE A. CHALOUX,
Acting Deputy Administrator,
Veterinary Services.

[FR Doc.77-2786 Filed 1-27-77;8:45 am]

PART 78—BRUCELLOSIS

Subpart D—Designation of Brucellosis Areas, Specifically Approved Stockyards, and Slaughtering Establishments

BRUCELLOSIS AREAS

The amendments delete the following areas from the list of Certified Brucellosis-Free Areas in § 78.20 and add such areas to the list designated as Noncertified Areas in § 78.22 because it has been determined that they no longer come within the definition of a Certified Brucellosis-Free Area in § 78.1(l):

Montgomery County in Iowa

The amendments delete the following areas from the list of Certified Brucellosis-Free Areas in § 78.20 and add such areas to the list designated as Modified Certified Brucellosis Areas in § 78.21 because it has been determined that they now come within the definition of a Modified Certified Brucellosis Area in § 78.1(m):

Barbour and Russell Counties in Alabama; Fremont County in Idaho; Delaware and Jones Counties in Iowa

The amendments delete the following areas from the list of Modified Certified Brucellosis Areas in § 78.21 and add such areas to the list designated as Certified Brucellosis-Free Areas in § 78.20 because it has been determined that they now come within the definition of a Certified Brucellosis-Free Area in § 78.1(l):

Pueblo County in Colorado; Effingham County in Illinois; Cedar, Floyd, Poweshiek, and Warren Counties in Iowa.

Accordingly, §§ 78.20, 78.21, and 78.22 of Part 78, Title 9, Code of Federal Regulations, designating Certified Brucellosis-Free Areas, Modified Certified Brucellosis Areas, and Noncertified Areas, respectively, are amended to read as follows:

§ 78.20 Certified Brucellosis-Free Areas.

The following States, or specified portions thereof, are hereby designated as Certified Brucellosis-Free Areas:

(a) *Entire States.* Arizona, California, Connecticut, Delaware, Hawaii, Indiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nevada, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, Washington, West Virginia, Wisconsin, Virgin Islands.

(b) *Specific Counties Within States.*

Alabama. Dale, Etowah, Geneva, Henry, Lee.

Arkansas. Baxter, Benton, Boone, Bradley, Calhoun, Carroll, Clay, Cleveland, Columbia, Dallas, Drew, Fulton, Garland, Grant, Greene, Jackson, Johnson, Lafayette, Madison, Marion, Monroe, Montgomery, Newton, Ouachita, Perry, Pike, Polk, Prairie, Searcy, Sharp, Stone, Union, Woodruff, Yell.

Colorado. Adams, Alamosa, Arapahoe, Archuleta, Baca, Bent, Boulder, Chaffee, Cheyenne, Clear Creek, Conejos, Costilla, Crowley, Custer, Delta, Denver, Dolores,

Douglas, Eagle, Elbert, El Paso, Fremont, Garfield, Gilpin, Grand, Gunnison, Hinsdale, Huerfano, Jackson, Jefferson, Kiowa, Kit Carson, Lake, La Plata, Larimer, Las Animas, Lincoln, Logan, Mineral, Moffat, Montezuma, Montrose, Morgan, Otero, Ouray, Park, Phillips, Pitkin, Prowers, Pueblo, Rio Blanco, Rio Grande, Routt, Saguache, San Juan, San Miguel, Sedgwick, Summit, Teller, Washington, Weld.

Florida. Baker, Bay, Brevard, Calhoun, Dade, Dixie, Escambia, Franklin, Gadsden, Gulf, Hamilton, Holmes, Jackson, Leon, Liberty, Monroe, Okaloosa, Orange, Pasco, Santa Rosa, Seminole, Sumter, Taylor, Wakulla, Walton, Washington.

Georgia. Appling, Atkinson, Bacon, Banks, Brantley, Bryan, Bulloch, Burke, Butts, Camden, Candler, Charlton, Chatham, Chattahoochee, Clarke, Clayton, Cook, Crawford, Dawson, De Kalb, Echols, Effingham, Evans, Fannin, Franklin, Glascock, Glynn, Greene, Habersham, Henry, Jeff Davis, Johnson, Jones, Lanier, Laurens, Liberty, Long, McIntosh, Monroe, Peach, Rabun, Richmond, Schley, Screven, Stephens, Taylor, Telfair, Toombs, Treutlen, Twiggs, Upson, Ware, Washington, Wayne, Wheeler, White, Wilkinson.

Idaho. Adams, Bear Lake, Benewah, Blaine, Boise, Bonner, Boundary, Camas, Canyon, Caribou, Clearwater, Custer, Idaho, Jerome, Kootenai, Latah, Lemhi, Lewis, Nez Perce, Oneida, Owyhee, Payette, Power, Shoshone, Teton, Valley, Washington, Yellowstone National Park.

Illinois. Adams, Alexander, Bond, Boone, Bureau, Calhoun, Carroll, Cass, Champaign, Christian, Clark, Clay, Clinton, Coles, Cook, Crawford, Cumberland, De Kalb, De Witt, Douglas, Du Page, Edgar, Edwards, Effingham, Fayette, Ford, Franklin, Fulton, Gallatin, Greene, Grundy, Hamilton, Hancock, Henderson, Henry, Iroquois, Jackson, Jasper, Jefferson, Jersey, Jo Daviess, Johnson, Kane, Kankakee, Kendall, Knox, Lake, La Salle, Lawrence, Lee, Livingston, Logan, Macon, Macoupin, Madison, Marion, Marshall, Mason, Massac, McDonough, McHenry, McLean, Menard, Mercer, Monroe, Montgomery, Morgan, Moultrie, Ogle, Peoria, Perry, Piatt, Pike, Pulaski, Putnam, Randolph, Richland, Rock Island, St. Clair, Saline, Sangamon, Shuyler, Scott, Shelby, Stark, Stephenson, Tazewell, Union, Vermilion, Wabash, Warren, Washington, Wayne, White, Whiteside, Will, Winnebago, Woodford.

Iowa. Adair, Adams, Audubon, Benton, Black Hawk, Boone, Bremer, Buchanan, Buena Vista, Butler, Calhoun, Carroll, Cass, Cedar, Chickasaw, Clarke, Clayton, Clinton, Dallas, Davis, Des Moines, Dickinson, Dubuque, Emmet, Fayette, Floyd, Franklin, Fremont, Greene, Grundy, Hamilton, Hancock, Hardin, Henry, Howard, Humboldt, Ida, Iowa, Jackson, Jefferson, Johnson, Keokuk, Kossuth, Lee, Linn, Louisa, Lucas, Lyon, Madison, Mahaska, Marion, Marshall, Mills, Mitchell, Monona, Muscatine, O'Brien, Oceola, Page, Palo Alto, Pocahontas, Polk, Pottawattamie, Poweshiek, Plymouth, Scott, Shelby, Tama, Taylor, Van Buren, Wapello, Warren, Washington, Webster, Winnebago, Winneshiek, Woodbury, Worth, Wright.

Kansas. Comanche, Doniphan, Ford, Gove, Graham, Greeley, Haskell, Hodgeman, Johnson, Lane, Logan, Marshall, Pawnee, Phillips, Riley, Scott, Sheridan, Thomas, Trego, Wallace, Washington.

Kentucky. Bell, Breathitt, Campbell, Clay, Edmonson, Floyd, Harlan, Jackson, Johnson, Kenton, Knott, Knox, Lawrence, Lee, Leslie, Letcher, Lewis, Magoffin, Martin, McCreary, Menifee, Morgan, Owsley, Pendleton, Perry, Pike, Robertson, Trimble, Whitley, Wolfe.

Mississippi. Alcorn, Hancock, Harrison, Jackson, Stone, Tishomingo.

Missouri. Audrain, Dallas, Douglas, Dunklin, Franklin, Gasconade, Hickory, Iron, Jackson, Laclede, Lewis, Miller, Moniteau, Montgomery, Perry, Platte, Pulaski, St. Louis, Schuyler, Shelby.

New Mexico. Bernalillo, Catron, Colfax, Dona Ana, Grant, Harding, Hidalgo, Lincoln, Los Alamos, Luna, McKinley, Otero, Rio Arriba, Sandoval, San Juan, Santa Fe, Sierra, Socorro, Taos, Torrance.

South Dakota. Aurora, Beadle, Bennett, Bon Homme, Brookings, Brown, Brule, Buffalo, Butte, Campbell, Charles Mix, Clark, Clay, Codington, Corson, Custer, Davison, Day, Deuel, Dewey, Douglas, Edmunds, Fall River, Faulk, Grant, Gregory, Haakon, Hamlin, Hand, Hanson, Harding, Hughes, Hutchinson, Hyde, Jackson, Jerauld, Kingsbury, Lake, Lawrence, Lincoln, Lyman, Marshall, McCook, McPherson, Meade, Mellette, Miner, Minnehaha, Moody, Pennington, Perkins, Potter, Roberts, Sanborn, Shannon, Spink, Sully, Todd, Tripp, Turner, Union, Walworth, Washabaugh, Yankton, Ziebach.

Tennessee. Anderson, Blount, Campbell, Carter, Cheatham, Claiborne, Davidson, Decatur, Dickson, Fentress, Grainger, Greene, Grundy, Hancock, Hardin, Jefferson, Johnson, Knox, Lake, Meigs, Morgan, Polk, Roane, Robertson, Rutherford, Scott, Sequatchie, Sevier, Sullivan, Unicoi, Union, Warren, White.

Texas. Brewster, Childress, Comal, Crane, Ector, Gray, Hansford, Hartley, Hemphill, Irion, Jeff Davis, Kerr, Kimble, Lipscomb, Llano, Loving, Mason, Newton, Pecos, Reagan, Roberts, Sterling, Terrell, Val Verde, Ward, Winkler.

Utah. Beaver, Carbon, Daggett, Davis, Duchesne, Emery, Garfield, Grand, Iron, Juab, Kane, Millard, Morgan, Piute, Rich, Salt Lake, San Juan, Sanpete, Sevier, Summit, Tooele, Uintah, Utah, Wasatch, Washington, Wayne, Weber.

Wyoming. Albany, Big Horn, Campbell, Carbon, Converse, Crook, Fremont, Goshen, Hot Springs, Johnson, Laramie, Natrona, Niobrara, Park, Platte, Sheridan, Sublette, Sweetwater, Teton, Uinta, Washakie, Weston.

Puerto Rico. Adjuntas, Aguada, Aguadilla, Aguas Buenas, Aibonito, Anasco, Arroyo, Barceloneta, Barranquitas, Bayamon, Cabo Rojo, Caguas, Camuy, Canovanas (Loiza), Catano, Cayey, Ceiba, Ciales, Cidra, Coamo, Comerio, Corozal, Culebra, Dorado, Fajardo, Guanica, Guayama, Guayanilla, Gurabo, Hormigueros, Humacao, Isabela, Jayuya, Juana Diaz, Juncos, Lajas, Lares, Las Marias, Luquillo, Manati, Maricao, Maunabo, Mayaguez, Moca, Morovis, Naranjito, Orocovis, Patillas, Penuelas, Ponce, Quebradillas, Rincon, Rio Grande, Rio Piedras, Sabana Grande, Salinas, San German, San Juan, San Lorenzo, San Sebastian, Santa Isabel, Toa Alta, Toa Baja, Trujillo Alto, Utuado, Vega Alta, Vega Baja, Villalba, Yabucoa, Yauco.

§ 78.21 Modified Certified Brucellosis Areas.

The following States, or specified portions thereof, are hereby designated as Modified Certified Brucellosis Areas:

(a) *Entire States*. Alaska, Louisiana, Nebraska, Oklahoma.

(b) *Specific Counties Within States*.

Alabama. Autauga, Baldwin, Barbour, Bibb, Blount, Bullock, Butler, Calhoun, Chambers, Cherokee, Chilton, Choctaw, Clarke, Clay, Cleburne, Coffee, Colbert, Conecuh, Coosa, Covington, Crenshaw, Cullman, Dallas, De Kalb, Elmore, Escambia, Fayette, Franklin, Greene, Hale, Houston, Jackson, Jefferson, Lamar, Lauderdale, Lawrence, Limestone, Lowndes, Macon, Madison, Marengo, Marion, Marshall, Mobile, Monroe, Montgomery, Morgan, Perry, Pickens, Pike, Randolph, Russell, St. Clair, Shelby, Sumter, Talladega, Tallapoosa, Tuscaloosa, Walker, Washington, Wilcox, Winston.

Arkansas. Arkansas, Ashley, Chicot, Clark, Cleburne, Conway, Craighead, Crawford, Crittenden, Cross, Desha, Faulkner, Franklin, Hempstead, Hot Spring, Howard, Independence, Izard, Jefferson, Lawrence, Lee, Lincoln, Little River, Logan, Lonoke, Miller, Mississippi, Nevada, Phillips, Poinsett, Pope, Pulaski, Randolph, Saline, Scott, St. Francis, Sebastian, Sevier, Van Buren, Washington, White.

Colorado. Mesa, Yuma.

Florida. Alachua, Bradford, Broward, Charlotte, Citrus, Clay, Collier, Columbia, De Soto, Duval, Flagler, Gilchrist, Glades, Hardee, Hendry, Hernando, Highlands, Hillsborough, Indian River, Jefferson, Lafayette, Lake, Lee, Levy, Madison, Manatee, Marion, Martin, Nassau, Okeechobee, Osceola, Palm Beach, Pinellas, Polk, Putnam, St. Johns, St. Lucie, Sarasota, Suwanee, Union, Volusia.

Georgia. Baker, Baldwin, Barrow, Bartow, Ben Hill, Berrien, Bibb, Bleckley, Brooks, Calhoun, Carroll, Catoosa, Chattooga, Cherokee, Clay, Clinch, Cobb, Coffee, Colquitt, Columbia, Coweta, Crisp, Dade, Decatur, Dodge, Dooly, Dougherty, Douglas, Early, Elbert, Emanuel, Fayette, Floyd, Forsyth, Fulton, Gilmer, Gordon, Grady, Gwinnett, Hall, Hancock, Haralson, Harris, Hart, Heard, Houston, Irwin, Jackson, Jasper, Jefferson, Jenkins, Lamar, Lee, Lincoln, Lowndes, Lumpkin, Macon, Madison, Marion, McDuffie, Meriwether, Miller, Mitchell, Montgomery, Morgan, Murray, Muscogee, Newton, Oconee, Oglethorpe, Paulding, Pickens, Pierce, Pike, Polk,

Pulaski, Putnam, Quitman, Randolph, Rockdale, Seminole, Spalding, Stewart, Sumter, Talbot, Taliaferro, Tattnall, Terrell, Thomas, Tift, Towns, Troup, Turner, Union, Walker, Walton, Warren, Webster, Whitfield, Wilcox, Wilkes, Worth.

Idaho. Ada, Bannock, Bingham, Bonneville, Butte, Cassia, Clark, Elmore, Franklin, Fremont, Gem, Gooding, Jefferson, Lincoln, Madison, Minidoka, Twin Falls.

Illinois. Brown, Hardin, Pope, Williamson.

Iowa. Allamakee, Appanoose, Cerro Gordo, Cherokee, Crawford, Decatur, Delaware, Guthrie, Harrison, Jasper, Jones, Monroe, Ringgold, Sac, Sioux, Story, Union, Wayne.

Kansas. Allen, Anderson, Atchison, Barber, Barton, Bourbon, Brown, Butler, Chase, Chautauqua, Cherokee, Cheyenne, Clark, Clay, Cloud, Coffey, Cowley, Crawford, Decatur, Dickinson, Douglas, Edwards, Elk, Ellis, Ellsworth, Finney, Franklin, Geary, Grant, Gray, Greenwood, Hamilton, Harper, Harvey, Jackson, Jefferson, Jewell, Kearney, Kingman, Kiowa, Labette, Leavenworth, Lincoln, Linn, Lyon, Marion, McPherson, Meade, Miami, Mitchell, Montgomery, Morris, Morton, Nemaha, Neosho, Ness, Norton, Osage, Osborne, Ottawa, Pottawatomie, Pratt, Rawlins, Reno, Republic, Rice, Rooks, Rush, Russell, Saline, Sedgwick, Seward, Shawnee, Sherman, Smith, Stafford, Stanton, Stevens, Sumner, Wabaunsee, Wichita, Wilson, Woodson, Wyandotte.

Kentucky. Adair, Allen, Anderson, Ballard, Barren, Bath, Boone, Bourbon, Boyd, Boyle, Bracken, Breckinridge, Bullitt, Butler, Caldwell, Calloway, Carlisle, Carroll, Carter, Casey, Christian, Clark, Clinton, Crittenden, Cumberland, Daviess, Elliott, Estill, Fayette, Fleming, Franklin, Fulton, Gallatin, Garrard, Grant, Graves, Grayson, Green, Greenup, Hancock, Hardin, Harrison, Hart, Henderson, Henry, Hickman, Hopkins, Jefferson, Jessamine, Larue, Laurel, Lincoln, Livingston, Logan, Lyon, Madison, Marion, Marshall, Mason, McCracken, McLean, Meade, Mercer, Metcalfe, Monroe, Montgomery, Muhlenberg, Nelson, Nicholas, Ohio, Oldham, Owen, Powell, Pulaski, Rockcastle, Rowan, Russell, Scott, Shelby, Simpson, Spencer, Taylor, Todd, Trigg, Union, Warren, Washington, Wayne, Webster, Woodford.

Mississippi. Adams, Amite, Attala, Benton, Bolivar, Calhoun, Carroll, Chickasaw, Choctaw, Claiborne, Clarke, Clay, Coahoma, Copiah, Covington, De Soto, Forrest, Franklin, George, Greene, Grenada, Hinds, Holmes, Humphreys, Issaquena, Itawamba, Jasper, Jefferson, Jefferson Davis, Jones, Kemper, Lafayette, Lamar, Lauderdale, Lawrence, Leake, Lee, LeFlore, Lincoln, Lowndes, Madison, Marion, Marshall, Monroe, Montgomery, Neshoba, Newton, Noxubee, Oktibbeha, Panola, Pearl River, Perry, Pike, Pontotoc, Prentiss, Quitman, Rankin, Scott, Sharkey, Simpson, Smith, Sunflower, Tallahatchie, Tate, Tippah, Tunica, Union, Walthall, Warren, Washington, Wayne, Webster, Wilkinson, Winston, Yalobusha, Yazoo.

Missouri. Adair, Andrew, Atchison, Barry, Barton, Bates, Benton, Bollinger, Boone, Buchanan, Butler, Caldwell, Callaway, Camden, Cape Girardeau, Carroll, Carter, Cass, Cedar, Chariton, Christian, Clark, Clay, Clinton, Cole, Cooper, Crawford, Dade, Daviess, De Kalb, Dent, Gentry, Greene, Grundy, Harrison, Henry, Holt, Howard, Howell, Jasper, Jefferson, Johnson, Knox, Lafayette, Lawrence, Lincoln, Linn, Livingston, Macon, Madison, Maries, Marion, McDonald, Mercer, Mississippi, Monroe, Morgan, New Madrid, Newton, Nodaway, Oregon, Osage, Ozark, Pemiscot, Pettis, Phelps, Pike, Polk, Putnam, Ralls, Randolph, Ray, Reynolds, Ripley, St. Charles, St. Clair, St. Francois, St. Genevieve, Saline, Scotland, Scott, Shannon, Stoddard, Stone, Sullivan, Taney, Texas, Vernon, Warren, Washington, Wayne, Webster, Worth, Wright.

New Mexico. Chaves, Curry, De Baca, Eddy, Guadalupe, Lea, Mora, Quay, Roosevelt, San Miguel, Union, Valencia.

South Dakota. Jones, Stanley.

Tennessee. Bedford, Benton, Bledsoe, Bradley, Cannon, Carroll, Chester, Clay, Cocke, Coffee, Crockett, Cumberland, DeKalb, Dyer, Fayette, Franklin, Gibson, Giles, Hamblen, Hamilton, Hardeman, Hawkins, Haywood, Henderson, Henry, Hickman, Houston, Humphreys, Jackson, Lauderdale, Lawrence, Lewis, Lincoln, Loudon, Macon, Madison, Marion, Marshall, Maury, McMinn, McNairy, Monroe, Montgomery, Moore, Obion, Overton, Perry, Pickett, Putnam, Rhea, Shelby, Smith, Stewart, Sumner, Tipton, Trousdale, Van Buren, Washington, Wayne, Weakley, Williamson, Wilson.

Texas. Anderson, Andrews, Angelina, Aransas, Archer, Armstrong, Atascosa, Austin, Bailey, Bandera, Bastrop, Baylor, Bee, Bell, Bexar, Blanco, Borden, Bosque, Bowie, Brazoria, Brazos, Briscoe, Brooks, Brown, Burleson, Burnet, Caldwell, Calhoun, Callahan, Cameron, Camp, Carson, Cass, Castro, Chambers, Cherokee, Clay, Cochran, Coke, Coleman, Collin, Collingsworth, Colorado, Comanche, Concho, Cooke, Coryell, Cottle, Crockett, Crosby, Culberson, Dallam, Dallas, Dawson, Deaf Smith, Delta, Denton, De Witt, Dickens, Dimmitt, Donley, Duval, Eastland, Edwards, Ellis, El Paso, Erath, Falls, Fannin, Fayette, Fisher, Floyd, Foard, Fort Bend, Franklin, Freestone, Frio, Gaines, Galveston, Garza, Gillespie, Glasscock, Goliad, Gonzales, Grayson, Gregg, Grimes, Guadalupe, Hale, Hall, Hamilton, Hardeman, Hardin, Harris, Harrison, Haskell, Hays, Henderson, Hidalgo, Hill, Hockley, Hood, Hopkins, Houston, Howard, Hudspeth, Hunt, Hutchinson, Jack, Jackson, Jasper, Jefferson, Jim Hogg, Jim Wells, Johnson, Jones, Karnes, Kaufman, Kendall, Kenedy, Kent, King, Kinney, Kleberg, Knox, Lamar, Lamb, Lampasas, La Salle, Lavaca, Lee, Leon, Liberty, Limestone, Live Oak, Lubbock, Lynn, McCulloch, McLennan, McMullen, Madison, Marion, Martin, Matagorda, Maverick, Medina, Menard, Midland, Milam, Mills, Mitchell, Montague, Montgomery, Moore, Morris, Motley, Nacogdoches, Navarro, Nolan, Nueces, Ochiltree, Oldham, Orange, Palo Pinto, Panola, Parker, Parmer, Polk, Potter, Presidio, Rains, Randall, Real, Red River, Reeves, Refugio, Robertson, Rockwall, Runnels, Rusk, Sabine, San Augustine, San Jacinto, San Patricio, San Saba, Schleicher, Scurry, Shackelford, Shelby, Sherman, Smith, Somervell, Starr, Stephens, Stonewall, Sutton, Swisher, Tarrant, Taylor, Terry, Throckmorton, Titus, Tom Green, Travis, Trinity, Tyler, Upshur, Upton, Uvalde, Van Zandt, Victoria, Walker, Waller, Washington, Webb, Wharton, Wheeler, Wichita, Wilbarger, Willacy, Williamson, Wilson, Wise, Wood, Yoakum, Young, Zapata, Zavala.

Utah. Box Elder, Cache.

Wyoming. Lincoln.

Puerto Rico. Arecibo, Carolina, Guaynabo, Hatillo, Las Piedras, Naguabo.

§ 78.22 Noncertified areas.

The following States, or specified portions thereof, are hereby designated as Noncertified Brucellosis Areas:

(a) *Entire States*.

(b) *Specific Counties Within States*.

Iowa. Clay, Montgomery.

Puerto Rico. Vieques.

(Secs. 4–7, 23 Stat. 32, as amended; secs. 1 and 2, 32 Stat. 791–792, as amended; sec. 3, 33 Stat. 1265, as amended; sec. 2, 65 Stat. 693; and secs. 3 and 11, 76 Stat. 130, 132; 21 U.S.C. 111–113, 114a–1, 115, 117, 120, 121, 125, 134b, 134f; 37 FR 28464, 28477; 38 FR 19141, 9 CFR 78.25.)

Effective date: The foregoing amendments shall become effective January 28, 1977.

The amendments impose certain restrictions necessary to prevent the spread of brucellosis in cattle and relieve certain restrictions presently imposed. They should be made effective promptly in order to accomplish their purpose in the public interest and to be of maximum benefit to persons subject to the restrictions which are relieved. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

Accordingly, under the administrative procedure provisions of 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to the amendments are impracticable, unnecessary, and contrary to the public interest, and good cause is found for making them effective less than 30 days after publication in the FEDERAL REGISTER.

Done at Washington, D.C., this 24th day of January 1977.

NOTE: The Animal and Plant Health Inspection Service has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107.

PIERRE A. CHALOUX,
Acting Deputy Administrator,
Veterinary Services.

[FR Doc.77-2787 Filed 1-27-77;8:45 am]

Title 10—Energy

CHAPTER II—FEDERAL ENERGY ADMINISTRATION

PART 212—MANDATORY PETROLEUM PRICE REGULATIONS

SUBPART F—RESELLERS AND RETAILERS

EMERGENCY AMENDMENT ADOPTING SPECIAL RULE NO. 1 FOR SUBPART F

Correction

In FR Doc. 76-38499 appearing at page 1036 in the issue of Wednesday, January 5, 1977 the following correction should be made.

On page 1037, middle column in Appendix—Special Rule No. 1, paragraph numbered 2, the 13th line reading "seller in January 1977, February 1977 and" should be deleted.

Title 14—Aeronautics and Space

CHAPTER II—CIVIL AERONAUTICS BOARD

SUBCHAPTER B—PROCEDURAL REGULATIONS

[Docket No. 29626; Regulation PR-162, Amdt. 4]

PART 300—RULES OF CONDUCT IN BOARD PROCEEDINGS

Amendment to Reissuance of Part

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. January 24, 1977 (Incorporate attached regulation.).

Effective: January 24, 1977.

Adopted: January 24, 1977.

This document amends a reissuance of the Board's Rules of Conduct in Board Proceedings, which are interim regulations. It is a response to comments from the public which we called for on the narrow issue of whether the provisions of §§ 300.2a and 300.7 of our regulations or § 300.2(d) of our former regulations unconstitutionally infringed upon First Amendment rights of persons dealing with Board matters and the public. We have concluded that the issues raised by the comments are substantial, that corrective action is warranted, and that the present § 300.2a should be replaced by a new provision directed generally to the elimination of specified conduct rather than the direct limitation of speech or communication.

By PR-154 (41 FR 34587, August 16, 1976) as amended by PR-160 (41 FR 48116, November 2, 1976) the Board reissued on an interim basis, effective October 25, 1976, Part 300 of its Procedural Regulations, Rules of Conduct in Board Proceedings (14 CFR Part 300). Coincidentally with the foregoing issuances, the Board also issued a Notice and a Supplemental Notice of Proposed Rulemaking (PDR-41, 41 FR 34650, August 16, 1976, and PDR-41A, 41 FR 48129, November 2, 1976).

Among other things, the notices called for comment on the provisions of § 300.2a, *Prohibited influence and solicitation*, and § 300.7, *Contacts with other government agencies*, both as set forth in PDR-41 and § 300.2, *Hearing cases; improper influence*, as set forth in the prior regulation. The notices also referred to the discussion of these provisions in the preambles to PR-154 and PR-160. As indicated in the preamble to the latter regulation serious constitutional issues were raised by public comment with respect to limitations on contacts with the media and limitations on the generation of support from third persons for the position of an interested person. We modified our interim regulation to limit their applicability in some of the challenged areas. Otherwise, we deferred consideration of such constitutional issues until receipt of comments on our proposed final rule, which were due on or before December 29, 1976.

Later, the Board determined to expedite its consideration of the constitutional issues to the extent feasible and therefore issued a Supplemental Notice calling for briefs, comments, or arguments on such issues on or before December 20, 1976 (PDR-41B, 41 FR 51036, November 19, 1976). In response thereto comments were filed by the Member Carriers of the National Air Carrier Association and by Reuben Robertson and Aviation Consumer Action Project. The Board finds that it can expedite its resolution of the constitutional issues by separating them from issues raised by other comments and acting upon them now.

The complaints presented to us are that § 300.2 of our prior regulation and §§ 300.2a and 300.7 of our interim regulation unconstitutionally infringe First Amendment rights of persons participating in Board proceedings and the public by direct restraint upon communications to third persons, including the media, and by indirect restraints, arising from both overbreadth and vagueness, which place a "chill" or "chilling effect" on free speech, without appropriate justification, so that constitutional barriers to such regulation are exceeded.

The Board's former regulation, its present interim regulation, and the interim regulation established herein (which we presently intend to include in our final regulation) were and are intended to protect the integrity of our processes rather than to restrain or inhibit free speech, whether or not such speech is critical of the Board. That the Board's intention has governed its administration of these provisions is evidenced by the fact that there has been no serious objection to them on constitutional or other grounds for the many years they have been in effect. Nevertheless, this fact would not justify their continuance in the face of the present comments which appear to be well taken, as a matter of law, in many areas. In light of the legal precedents striking down restraints on free speech,[1] and the fact that problems under our old Rules of Conduct have arisen infrequently,[2] we have determined to replace § 300.2a of our interim regulation, which embodies much of our prior regulation, with a new provision which plainly restricts conduct rather than speech or communication and limits itself to conduct which is unlawful or poses a serious imminent threat to the fair conduct or completion of a Board proceeding or matter.

Specifically, we have prohibited conduct which attempts, directly or indirectly, to affect the judgment of the Board, any of its Members, or its employees by any unlawful means such as (1) the use of deception; (2) the payment of money or other consideration; or (3) any other action or plan which poses a serious imminent threat to disrupt or interfere with the full and fair completion of a proceeding or matter before the Board. Any such conduct will be deemed a violation of the part and brought within the scope of § 300.20 and the remedial actions enumerated therein.

It is the steadfast opinion of the Board that the foregoing prohibitions will neither unconstitutionally restrain or "chill" protected expression or communication nor open up proceeding to destruction through permitted speech. On the contrary, we believe that with such conduct prohibited and with the responsible and intelligent action we can and do anticipate from persons interested in and participating in Board proceedings, there is no occasion to expect difficulties in maintaining the integrity of our proceedings. In view of the Board's obligation to insure such a result, we shall be vigilant in scrutinizing the conduct of our proceedings and in rectifying difficulties that may arise either on an ad hoc basis or by further rulemaking proceedings. We are also of the view that, to the fullest extent possible, the protections afforded by this part should be applicable equally to nonhearing and rulemaking matters, as the regulation provides. Simple fairness requires that such matters, which are of growing number and importance, should not be subjected to attempts to affect the agency's judgment by the means we have prohibited.

Accordingly, the Board hereby amends its Reissuance of Part 300 of its Procedural Regulations (14 CFR Part 300) effective January 24, 1977, as follows:

1. Section 300.2a is revised as follows:

§ 300.2 Prohibited conduct.

It is improper that any person interested in a proceeding before the Board attempt, directly or indirectly, to affect the judgment of the Board or any of its Members or employees by any unlawful means such as the use of deception, the payment of money or other consideration, or any other action which poses a serious imminent threat to disrupt or interfere with the full and fair completion of the proceeding. Any such conduct is prohibited and will be deemed a violation of this part within the meaning of § 300.20.

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc.77-2823 Filed 1-27-77;8:45 am]

[1] We find particularly instructive *Chicago Council of Lawyers* v. *Bauer*, 522 F. 2d 242 (7th Cir. 1975); and the cases cited therein.

[2] See the Board's Opinion in the *Service to Saipan Case*, Docket 24421 (attached to Order 75-11-59) disapproved by the President on other grounds, where we stated after an elaborate investigation of carrier conduct problems, "These circumstances have rarely arisen in prior Board cases and are unlikely to arise in the same fashion in future cases." (Mimeo, p. 3.)

Title 16—Commercial Practices

CHAPTER I—FEDERAL TRADE COMMISSION

[Docket No. C-2857]

PART 13—PROHIBITED TRADE PRACTICES, AND AFFIRMATIVE CORRECTIVE ACTIONS

Interstate Check Systems, Inc. and Gerald A. McColloum

Subpart—Collecting, assembling, furnishing or utilizing consumer reports: § 13.382 Collecting, assembling, furnishing or utilizing consumer reports; 13.382-1 Confidentiality, accuracy, relevancy, and proper utilization; 13.382-1 (a) Fair Credit Reporting Act; 13.382-5 Formal regulatory and/or statutory requirements; 13.382-5(a) Fair Credit Reporting Act.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; 82 Stat. 146, 147; 84 Stat. 1127-36; 15 U.S.C. 1601, et seq.)

In the Matter of Interstate Check Systems, Inc., a corporation, and Gerald A. McColloum, individually and as an officer of said corporation.

Consent order requiring an Indianapolis, Ind., credit reporting firm, among other things to cease collecting, assembling, furnishing or utilizing consumer reports in violation of the Fair Credit Reporting Act.

The order to cease and desist, including further order requiring report of compliance therewith, is as follows: [1]

ORDER

It is ordered, That respondents Interstate Check Systems, Inc., a corporation, its successors and assigns, and its officer Gerald A. McColloum, individually and as an officer of said Interstate Check Systems, Inc., and respondents' officers, agents, representatives and employees, hereafter collectively "respondents", directly or through any corporation, subsidiary, division or other device, in connection with the collecting, preparation, assembling or furnishing of consumer reports, as "consumer report" is defined in section 603(d) of the Fair Credit Reporting Act (Pub. L. 91-508, 15 U.S.C. section 1601 et seq.), shall forthwith cease and desist from:

1. Furnishing any consumer report to any person unless such report is furnished: (a) To a person whom respondent then has reason to believe intends, at the time the information is furnished, to use the information:

(1) In connection with a credit transaction involving the consumer on whom the information is to be furnished and involving the extension of credit to, or review or collection of an account of, the consumer; or

(2) For employment purposes; or

(3) In connection with the underwriting of insurance involving the consumer; or

(4) In connection with a determination of the consumer's eligibility for a license or other benefit granted by a governmental instrumentality required by law to consider an applicant's financial responsibility or status; or

(5) In connection with a business transaction involving each consumer reported upon; or

(b) In response to the order of a court having jurisdiction to issue such order; or

(c) In accordance with the written instructions of the consumer to whom the report relates.

2. Furnishing consumer reports in list form, unless the identity of the consumer to whom the information relates is not disclosed on such list and cannot be determined without the use of a unique identifier, such as social security number, driver's license number, or bank account number. The identifier used must be provided by the consumer at the time of the transaction with the user.

3. Failing to maintain reasonable procedures necessary to limit the furnishing of consumer reports to the purposes listed under section 604 of the Act, as provided by section 607 of the Act.

It is further ordered, That respondents deliver a copy of this order to cease and desist to all present and future personnel of respondents engaged in the preparation and/or furnishing of consumer reports, and that respondents secure a signed statement acknowledging receipt of said order from all such personnel.

It is further ordered, That respondents shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent, such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporate respondent which may affect compliance obligations arising out of this order.

It is further ordered, That the individual respondent named herein promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment. Such notice shall include his current business address and a statement as to the nature of the business or employment in which he is engaged, as well as a description of his duties and responsibilities.

It is further ordered, That respondent shall, within sixty (60) days after service upon him of this Order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with this Order.

[1] Copies of the Complaint and Decision and Order filed with the original document.

Commissioner Dole did not participate by reason of absence.

The Decision and Order was issued by the Commission December 17, 1976.

JOHN F. DUGAN,
Acting Secretary.

[FR Doc.77-2800 Filed 1-27-77;8:45 am]

[Docket No. 9039]

PART 13—PROHIBITED TRADE PRACTICES, AND AFFIRMATIVE CORRECTIVE ACTIONS

Martin Marietta Corp., et al.

Subpart—Combining or conspiring: § 13.400 To discriminate or stabilize prices through basing point or delivered price systems; § 13.405 To discriminate unfairly or restrictively in general; § 13.431 To exchange future price information; § 13.432 To fix and maintain uniform freight charges. Subpart—Selling and quoting on systematic, price matching basis: § 13.2190 Basing points and delivered price systems.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

In the Matter of Martin Marietta Corporation, a Corporation; Ideal Basic Industries, Inc., a Corporation; and OKC Corp., a Corporation.

Consent orders requiring three portland cement manufacturers, Martin Marietta Corporation, Rockville, Md., Ideal Basic Industries, Inc., Denver, Colo., and OKC Corp., Dallas, Tex., among other things to offer, for a ten-year period, a point of origin price for bulk portland cement to a customer each time a delivered price is offered. Customers are given the option of furnishing or arranging transportation from the mill at the point of origin price. The Ideal order defines the point of origin price as the delivered price less the actual freight which would have been incurred to the destination. The other two orders define the point of origin price as the delivered price less the unabsorbed or average freight factor included in it. Further, the orders prohibit the exchange of price information among competitors and control of the place of use of portland cement which has been sold to a customer.

The orders to cease and desist, including further orders requiring report of compliance therewith, are as follows: [1]

ORDER AS TO MARTIN MARIETTA CORPORATION

I

Definitions

For purposes of this Order, the following definitions shall apply:

"Portland cement"—a material sold in bulk which includes types I through V as specified by the American Society for Testing Materials, not including either masonry or white cement.

[1] Copies of the Complaint and Decisions and Orders filed with the original document.

"Point of origin price"—price set by respondent for purchases by a customer at a mill or distribution point from which a delivered price is quoted to that customer. The "point of origin price" shall be no greater than the delivered price offered to the customer less the cost of transportation factor which was included by respondent in the delivered price.

"Delivered price"—price set by respondent for purchases by a customer at a designated destination point. "Delivered price" shall include a cost of transportation factor, which factor shall consist of either (i) the non-absorbed actual freight charge to the designated destination point or (ii) the average freight charge for an established geographic area in which that destination point is located.

II

It is ordered, That respondent, its successors and assigns, and its directors, officers, agents, representatives, employees and affiliates (hereinafter "respondent"), directly or indirectly, through any corporate or other device in connection with the sale or distribution of portland cement:

1. Shall within ninety (90) days from the effective date hereof and for a period of ten (10) years thereafter, where a delivered price is offered to a customer from a mill or distribution point, also allow that customer the option of obtaining a point of origin price at that mill or distribution point and arranging or furnishing transportation from that mill or distribution point for the purchase of portland cement in quantities of at least a truckload in bulk cement vehicles (the minimum truckload tonnage to be the truckload minimum for licensed carriers as established by the federal or state agency having jurisdiction over the applicable tariff) when the customer furnishes or arranges transportation physically compatible with respondent's facilities and complies with reasonable loading schedules and loading procedures of respondent.

2. Shall not exchange with its competitors information concerning prices, discount rates and other terms and conditions pertinent to the sale of portland cement, except in connection with a bona fide sale to, or purchase from, any such competitor or in connection with negotiations related thereto.

3. Shall not control or attempt to control the place of use of portland cement which has been sold to a customer, *provided* that, nothing contained herein shall affect respondent's right to obtain contractual assurances necessary to comply with the Robinson-Patman Act.

III

It is further ordered, That, consistent with the definitions contained in Part I of this Order, nothing contained in this Order shall be interpreted as prohibiting respondent, when acting individually, (1) from exercising its right to establish the price at which and to select the customers to which it shall sell; (2) from selling at a point of origin or delivered price established in good faith to meet the equally low price of a competitor; (3) from absorbing all or any part of actual freight charges on shipment to any geographic area; or (4) from charging the same price to all customers within an established geographic area. No pricing practice engaged in by respondent shall be deemed immune or exempt from the antitrust laws by reason of anything contained in this paragraph.

IV

It is further ordered, That all persons in respondent's organization having sales and policy responsibilities with respect to the subject matter of this Order shall be notified of the terms of this Order.

V

It is further ordered, That respondent, pursuant to § 3.61 of the Commission's rules, within ninety (90) days after this Order becomes effective, submit in writing to the Federal Trade Commission a report setting forth in detail the manner and form in which respondent has complied with this Order.

ORDER AS TO IDEAL BASIC INDUSTRIES, INC.

I

Definitions

For the purposes of this Order, the following definitions shall apply:

"Portland cement"—a material sold in bulk which includes types I through V as specified by the American Society for Testing Materials, not including either masonry or white cement.

"Point of origin price"—a price set by respondent for purchases by a customer at a mill or distribution point from which a delivered price is quoted to that customer. The "point of origin price" shall be no greater than the delivered price offered to the customer less the actual transportation costs which would be incurred by the seller if the sale were made on a delivered basis.

"Delivered price"—a price set by respondent for purchases by a customer at a designated destination point, which price includes the cost of transportation to that designated destination point.

II

It is ordered, That respondent, its successors and assigns, and its directors, officers, agents, representatives, employees and affiliates (hereinafter "respondent"), directly or indirectly, through any corporate or other device in connection with the sale or distribution of portland cement:

1. Shall within ninety (90) days from the effective date hereof and for a period of ten (10) years thereafter, where a delivered price is offered to a customer from a mill or distribution point, also allow that customer the option of obtaining a point of origin price at that mill or distribution point and arranging or furnishing transportation from that mill or distribution point for the purchase of portland cement in quantities of at least a truckload in bulk cement vehicles (the minimum truckload tonnage to be the truckload minimum for licensed carriers as established by the federal or state agency having jurisdiction over the applicable tariff) when the customer furnishes or arranges transportation physically compatible with respondent's facilities and complies with reasonable loading schedules and loading procedures of respondent.

2. Shall not exchange with its competitors information concerning prices, discount rates and other terms and conditions pertinent to the sale of portland cement, except in connection with a bona fide sale to, or purchase from, any such competitor or in connection with negotiations related thereto.

3. Shall not control or attempt to control the place of use of portland cement which has been sold to a customer: *Provided,* That, nothing contained herein shall affect respondent's right to obtain contractual assurances necessary to comply with the Robinson-Patman Act.

III

It is further ordered, That, consistent with the definitions contained in Part I of this Order, nothing contained in this Order shall be interpreted as prohibiting respondent, when acting individually, (1) from exercising its right to establish the price at which and to select the customers to which it shall sell; (2) from selling at a point of origin or delivered price established in good faith to meet the equally low price of a competitor; (3) from absorbing all or any part of actual freight charges on shipment to any geographic area; or (4) from charging the same price to all customers within an established geographic area. No pricing practice engaged in by respondent shall be deemed immune or exempt from the antitrust laws by reason of anything contained in this paragraph.

IV

It is further ordered, That all persons in respondent's organization having sales and policy responsibilities with respect to the subject matter of this Order shall be notified of the terms of this Order.

V

It is further ordered, That respondent, pursuant to § 3.61 of the Commission's rules, within ninety (90) days after this Order becomes effective, submit in writing to the Federal Trade Commission a report setting forth in detail the manner and form in which respondent has complied with this Order.

ORDER AS TO OKC CORP.

I

Definitions

For purposes of this Order, the following definitions shall apply:

"Portland cement"—a material sold in bulk which includes types I through V as specified by the American Society for Testing Materials, not including either masonry or white cement.

"Point of origin price"—price set by respondent for purchases by a customer at a mill or distribution point from which a delivered price is quoted to that customer. The "point of origin price" shall be no greater than the delivered price offered to the customer less the cost of transportation factor which was included by respondent in the delivered price.

"Delivered price"—price set by respondent for purchases by a customer at a designated destination point. "Delivered price" shall include a cost of transportation factor, which factor shall consist of either (i) the non-absorbed actual freight charge to the designated destination point or (ii) the average freight charge for an established geographic area in which that destination point is located.

II

It is ordered, That respondent, its successors and assigns, and its directors, officers, agents, representatives, employees and affiliates (hereinafter "respondent"), directly or indirectly, through any corporate or other device in connection with the sale or distribution of portland cement:

1. Shall within ninety (90) days from the effective date hereof and for a period of ten (10) years thereafter, where a delivered price is offered to a customer from a mill or distribution point, also allow that customer the option of obtaining a point of origin price at that mill or distribution point and arranging or furnishing transportation from that mill or distribution point for the purchase of portland cement in quantities of at least a truckload in bulk cement vehicles (the minimum truckload tonnage to be the truckload minimum for licensed carriers as established by the federal or state agency having jurisdiction over the applicable tariff) when the customer furnishes or arranges transportation physically compatible with respondent's facilities and complies with reasonable loading schedules and loading procedures of respondent.

2. Shall not exchange with its competitors information concerning prices, discount rates and other terms and conditions pertinent to the sale of portland cement, except in connection with a bona fide sale to, or purchase from, any such competitor or in connection with negotiations related thereto.

3. Shall not control or attempt to control the place of use of portland cement which has been sold to a customer: *Provided,* That, nothing contained herein shall affect respondent's right to obtain contractual assurances necessary to comply with the Robinson-Patman Act.

III

It is further ordered, That, consistent with the definitions contained in Part I of this Order, nothing contained in this Order shall be interpreted as prohibiting respondent, when acting individually, (1) from exercising its right to establish the price at which and to select the customers to which it shall sell; (2) from selling at a point of origin or delivered price established in good faith to meet the equally low price of a competitor; (3) from absorbing all or any part of actual freight charges on shipment to any geographic area; or (4) from charging the same price to all customers within an established geographic area. No pricing practice engaged in by respondent shall be deemed immune or exempt from the antitrust laws by reason of anything contained in this paragraph.

IV

It is further ordered, That all persons in respondent's organization having sales and policy responsibilities with respect to the subject matter of this Order shall be notified of the terms of this Order.

V

It is further ordered, That respondent, pursuant to § 3.61 of the Commission's rules, within ninety (90) days after this Order becomes effective, submit in writing to the Federal Trade Commission a report setting forth in detail the manner and form in which respondent has complied with this Order.

The Decisions and Orders were issued by the Commission December 20, 1976.

JOHN F. DUGAN,
Acting Secretary.

[FR Doc.76-2801 Filed 1-27-77;8:45 am]

Title 21—Food and Drugs

CHAPTER 1—FOOD AND DRUG ADMINISTRATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

SUBCHAPTER D—DRUGS FOR HUMAN USE

[Docket No. 75N-0050]

PART 314—NEW DRUG APPLICATIONS

PART 320—BIOAVAILABILITY AND BIOEQUIVALENCE REQUIREMENTS

Procedures for Establishing a Bioequivalence Requirement

Correction

In FR Doc. 77-568 appearing at page 1624 in the issue of Friday, January 7, 1977 the following correction should be made:

On page 1628, third column, the line appearing immediately above paragraph "23" should be deleted and the following should be inserted: "are not bioequivalent drug products.".

SUBCHAPTER E—ANIMAL DRUGS, FEEDS, AND RELATED PRODUCTS

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

Mepivacaine Hydrochloride Injection

The Food and Drug Administration approves a new animal drug application (100-703V) filed by Winthrop Laboratories, Division of Sterling Drug, Inc., 90 Park Ave., New York, NY 10016, proposing safe and effective use of mepivacaine hydrochloride injection as a local anesthetic for horses. The approval is effective January 28, 1977.

The Commissioner of Food and Drugs is amending Part 522 (21 CFR Part 522) to reflect this approval.

In accordance with § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)) of the animal drug regulations, a summary of the safety and effectiveness data and information submitted to support the approval of this application is released publicly. The summary is available for public examination at the office of the Hearing Clerk, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857, Monday through Friday from 9 a.m. to 4 p.m., except on Federal legal holidays.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner (21 CFR 5.1) (recodification published in the FEDERAL REGISTER of June 15, 1976 (41 FR 24262)), Part 522 is amended by adding a new § 522.1372 to read as follows:

§ 522.1372 Mepivacaine hydrochloride injection.

(a) *Specifications.* Each milliliter of sterile aqueous solution contains 20 milligrams of mepivacaine hydrochloride.

(b) *Sponsor.* See No. 000024 in § 510.600(c) of this chapter.

(c) *Conditions of use.* (1) It is intended for use in horses as a local anesthetic for infiltration, nerve block, intra-articular and epidural anesthesia and topical and/or infiltration anesthesia of the laryngeal mucosa prior to ventriculectomy.

(2) It is administered as follows: for nerve block, 3 to 15 milliliters; for epidural anesthesia, 5 to 20 milliliters; for intra-articular anesthesia, 10 to 15 milliliters; for infiltration, as required; for anesthesia of the laryngeal mucosa prior to ventriculectomy, by topical spray, 25 to 40 milliliters, by infiltration, 20 to 50 milliliters.

(3) Not for use in horses intended for food.

(4) Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Effective date: This regulation shall be effective January 28, 1977.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)).)

Dated: January 21, 1977.

FRED J. KINGMA,
Acting Director, Bureau of Veterinary Medicine.

[FR Doc.77-2778 Filed 1-27-77;8:45 am]

PART 540—PENICILLIN ANTIBIOTIC DRUGS FOR ANIMAL USE

Subpart A—Oral Dosage Forms

AMOXICILLIN TRIHYDRATE FOR ORAL SUSPENSION

The Food and Drug Administration approves a new animal drug application (NADA 55-085V) filed by Beecham Laboratories, Division of Beecham, Inc., Bristol, TN 37620, proposing safe and effec-

tive use of amoxicillin trihydrate for oral suspension in dogs and cats for treating certain bacterial infections of the respiratory tract, genitourinary tract, gastrointestinal tract, skin, and soft tissues. The approval is effective January 28, 1977.

The Commissioner of Food and Drugs is amending Part 540 (21 CFR Part 540) to reflect this approval.

In accordance with § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)) of the animal drug regulations, a summary of the safety and effectiveness data and information submitted to support the approval of this application is released publicly. The summary is available for public examination at the office of the Hearing Clerk, Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20857, between the hours of 9 a.m. and 4 p.m., Monday through Friday.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512 (i) and (n), 82 Stat. 347 (21 U.S.C. 360b (i) and (n))) and under authority delegated to the Commissioner (21 CFR 5.1) (recodification published in the FEDERAL REGISTER of June 15, 1976 (41 FR 24262)), Part 540 is amended by adding new § 540.103b to read as follows:

§ 540.103b Amoxicillin trihydrate for oral suspension.

(a) *Requirements for certification—(1) Standards of identity, strength, quality, and purity.* Amoxicillin trihydrate for oral suspension is a mixture of amoxicillin trihydrate with one or more suitable and harmless colorings, flavorings, buffers, sweetening ingredients, preservatives, stabilizers, and suspending agents. When reconstituted as directed in the labeling, it contains amoxicillin trihydrate equivalent to 50 milligrams of amoxicillin per milliliter. Its potency is satisfactory if it is not less than 90 percent and not more than 120 percent of the amount of amoxicillin that it is represented to contain. Its moisture content is not more than 3.0 percent. Its pH, when reconstituted as directed in the labeling, is not less than 5.0 and not more than 7.5. It passes the identity test. The amoxicillin trihydrate used conforms to the standards prescribed by § 440.3(a)(1) of this chapter.

(2) *Labeling.* It shall be labeled in accordance with the requirements of paragraph (c) of this section and § 510.55 of this chapter; in addition, this drug shall be labeled "amoxicillin for oral suspension."

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 514.50 of this chapter, each such request shall contain:

(i) Results of tests and assays on:

(a) The amoxicillin trihydrate used in making the batch for potency, safety, moisture, pH, amoxicillin content, concordance, crystallinity, and identity.

(b) The batch for potency, moisture, pH, and identity.

(ii) Samples required:

(a) The amoxicillin trihydrate used in making the batch: 12 packages, each containing approximately 300 milligrams.

(b) The batch: A minimum of six immediate containers.

(b) *Tests and methods of assay—(1) Potency.* Assay for potency by either of the following methods; however, the results obtained from the iodometric assay shall be conclusive:

(i) *Microbiological agar diffusion assay.* Proceed as directed in § 436.105 of this chapter, preparing the sample for assay as follows: Reconstitute the drug as directed in the labeling. Place an accurately measured representative portion of the sample into a suitable volumetric flask and dilute to volume with 0.1*M* potassium phosphate buffer, pH 8.0 (solution 3), to give a stock solution of convenient concentration. Mix well. Further dilute an aliquot with solution 3 to the reference concentration of 0.1 microgram of amoxicillin per milliliter (estimated).

(ii) *Iodometric assay.* Proceed as directed in § 436.204 of this chapter, preparing the sample as follows: Reconstitute the drug as directed in the labeling. Place an accurately measured aliquot (usually a single dose) into an appropriately sized volumetric flask and dilute to volume with 1 percent potassium phosphate buffer, pH 6.0 (solution 1). Mix well. Further dilute with solution 1 to the prescribed concentration.

(2) *Moisture.* Proceed as directed in § 436.201 of this chapter.

(3) *pH.* Proceed as directed in § 436.202 of this chapter, using the suspension reconstituted as directed in the labeling.

(4) *Identity.* Proceed as directed in § 436.311 of this chapter, preparing the sample solution as follows: Place a 2-gram weighed portion of the sample into a 50-milliliter volumetric flask. Dilute to volume with 0.1*N* hydrochloric acid and shake for 5 minutes.

(c) *Conditions of marketing—(1) Specifications.* The drug conforms to the requirements for certification as in paragraph (a) of this section.

(2) *Sponsor.* No. 000029 in § 510.600 (c) of this chapter.

(3) *Conditions of use.* (i) *Dogs.* (a) The drug is used for the treatment of infections caused by susceptible strains of organisms as follows: respiratory tract (tonsilitis, tracheobronchitis) caused by *Staphylococcus aureus, Streptococcus spp., Escherichia coli,* and *Proteus mirabilis;* genitourinary tract (cystitis) caused by *Staphylococcus aureus, Streptococcus spp., Escherichia coli,* and *Proteus mirabilis;* gastrointestinal tract (bacterial gastroenteritis) caused by *Staphylococcus aureus, Streptococcus spp., Escherichia coli,* and *Proteus mirabilis;* bacterial dermatitis caused by *Staphylococcus aureus, Streptococcus, spp.,* and *Proteus mirabilis;* and soft tissues (abscesses, lacerations, and wounds) caused by *Staphylococcus aureus, Streptococcus spp., Escherichia coli,* and *Proteus mirabilis.*

(b) It is administered to dogs at a dosage of 5 milligrams per pound of body weight twice a day, for 5 to 7 days or 48 hours after all symptoms have subsided.

(ii) *Cats.* (a) The drug is used for the treatment of infections caused by susceptible strains of organisms as follows: upper respiratory tract due to *Staphylococcus spp., Streptococcus spp., Hemophilus spp., Escherichia coli, Pasteurella spp.,* and *Proteus mirabilis;* genitourinary tract (cystitis) due to *Staphylococcus aureus, Streptococcus spp., Escherichia coli, Proteus mirabilis,* and *Corynebacterium spp.;* gastrointestinal tract due to *Escherichia coli, Proteus spp., Staphylococcus spp.,* and *Streptococcus spp.;* skin and soft tissue (abscesses, lacerations, and wounds) due to *Staphylococcus spp., Streptococcus spp., Escherichia coli,* and *Pasteurella multocida.*

(b) It is administered to cats at a dosage of 50 milligrams (5 to 10 milligrams per pound) once daily for 5 to 7 days or 48 hours after all symptoms have subsided.

(iii) Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Effective date: This regulation shall be effective January 28, 1977.

(Sec. 512 (i) and (n), 82 Stat. 347 (21 U.S.C. 360b (i) and (n)))

Dated: January 21, 1977.

FRED J. KINGMA,
Acting Director, Bureau of Veterinary Medicine.

[FR Doc.77-2777 Filed 1-27-77;8:45 am]

Title 27—Alcohol, Tobacco Products and Firearms

CHAPTER I—BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, DEPARTMENT OF THE TREASURY

SUBCHAPTER M—ALCOHOL, TOBACCO AND OTHER EXCISE TAXES

[T.D. ATF-41; Reference Nos. 277 & 287]

PART 178—COMMERCE IN FIREARMS AND AMMUNITION

PART 181—COMMERCE IN EXPLOSIVES

Black Powder

On December 22, 1975, the Bureau of Alcohol, Tobacco and Firearms published in the FEDERAL REGISTER (40 FR 59207) an amended notice of proposed rulemaking to amend 27 CFR Part 178 (Commerce in Firearms and Ammunition) and Part 181 (Commerce in Explosives) for the purpose of implementing Pub. L. 93–639 concerning black powder. This notice superseded an earlier notice of proposed rulemaking relative to the black powder issue, published on May 20, 1975 (40 FR 21961), by (1) proposing more liberal requirements regarding the preparation and disposition of a transaction record than what had initially been proposed, and (2) eliminating the controls on percussion caps and other igniters, which also had initially been proposed.

BACKGROUND

Pub. L. 93–639 removed the exemption in 18 U.S.C. 845(a)(5) on black powder in amounts of five pounds or less, whether commercially or otherwise manufactured and regardless of its intended use. In lieu of the five-pound exemption, the amended law inserted an exemption for black powder in quantities of fifty pounds or less, percussion caps, safety and pyrotechnic fuses, quills, quick and slow matches, and friction primers; however, the new exemption is specifically restricted to (1) commercially manufactured black powder, and (2) black powder intended to be used solely for sporting, recreational, or cultural purposes in antique firearms, as defined in 18 U.S.C. 921(a)(16), or in antique devices, as exempted from the term "destructive device" in 18 U.S.C. 921(a)(4). 18 U.S.C. 921(a)(4) was also amended to include language exempting antiques such as muzzle-loading cannons used for sporting, recreational, or cultural purposes, from the definition of "destructive device."

The House Judiciary Committee Report No. 93–1570, relating to the new law, placed several expectations on the Bureau. The report made it clear that the intent of Congress was to (1) require retailers to maintain records of their sales of exempted black powder, and (2) require that sporting users identify themselves on the purchase of exempted black powder. This latter expectation was for the purpose of insuring that only sporting users had access to black powder under the new statutory exemption.

In meeting these expectations, the Bureau's proposed regulations required first, that retailers of black powder obtain from the purchaser an executed transaction form which shows the purchaser's name and address and certification that the black powder is intended to be used solely for sporting, recreational, or cultural purposes in antique firearms or in antique devices. Also, to comply with the intent of Congress that only antique firearms enthusiasts have access to exempted black powder, the purchaser would provide the retailer with proof of identity that he is, in fact, the person executing the transaction form.

Further, the law contemplates that a dealer will maintain records establishing that the purchaser intends to use black powder for the purposes specified in the law. We must, therefore, require that all dealers be licensed to permit ATF officers to enter business premises and inspect records and thereby enable ATF to maintain a check on the distribution of black powder. Moreover, in order to protect the public safety, approval of magazines for the storage of black powder by persons engaged in the business of selling black powder is essential.

SUMMARY OF COMMENTS

Initially, a 30-day period was afforded the public for commenting on the amended proposals; however, to allow more time to evaluate and respond to our proposed regulations, notice of an extension of the comment period for an additional 45 days was published January 27, 1976 (41 FR 3877). Over 1100 comments were received from the public, including letters from sporting magazines; Congressional inquiries as a result of constituent mail; group petitions; and comments from individual antique firearms enthusiasts. The vast majority of those persons commenting were opposed to our proposed regulations on black powder. In fact, a large percentage were opposed to any regulations whatsoever on the issue. Most were of the opinion that ATF had exceeded its authority with respect to our interpretation of the new law. Although the House of Representative Committee Report No. 93–1570, which accompanied the legislation approved by the full Congress, specifically addressed the matter of ATF regulations that would be necessary to implement the bill, many persons still felt that any controls placed on the sale of black powder in quantities of fifty pounds or less were inappropriate.

Those comments which were of a more specific nature objected to (1) the requirement that all dealers in black powder, regardless of the quantity being handled, obtain an explosives dealer's license, and (2) the requirement that a record, on which the purchaser identifies himself and certifies that the black powder is intended to be used solely for sporting, recreational, or cultural purposes in antique firearms or in antique devices, be maintained by dealers on all transactions covered by the new exemption.

As explained in the background above, because of the expectations set forth in the House Committee Report, the intent of Congress in passing Pub. L. 93–639 was clearly to place certain restrictions on sales of black powder so as to facilitate enforcement of the law and prosecution of violators. Thus, the Bureau has not changed its basic position concerning the licensing of all black powder dealers, certification by purchasers of exempted black powder, or maintenance of records of transactions in black powder, as originally proposed. Persons who sell black powder, regardless of the quantities involved, must be licensed and must maintain records of sales. Also, purchasers of black powder must identify themselves on purchase of black powder and must certify that the black powder is intended to be used for lawful purposes.

CHANGES TO THE AMENDED NOTICE

In view of the fact that our regulations are imposing new requirements on certain persons, a period of ninety days from the date the regulations are published in the FEDERAL REGISTER is being granted before the regulations take effect. This period allows time for affected persons to familiarize themselves with the new provisions and take any necessary actions. Several sections in Part 181 are amended to reflect the date the regulations become effective and make it clear that this part fully applies to any person engaging in business or operations requiring a license or permit under Part 181 after the effective date. A non-licensed person who has been dealing in black powder in quantities not exceeding five pounds and who wishes to continue dealing in black powder, will be required to file an application for an explosives dealer's license prior to the effective date of these regulations in order to sell black powder after that date. A person who files the required application before the effective date, may sell black powder under 18 U.S.C. Chapter 40, as amended by Pub. L. 93–639, without a license until such time as his application is acted upon by the Bureau.

(Sections 181.1 and 181.45 amended; sections 181.122, 181.123, 181.124, and 181.125 further amended.)

At this time, we are also amending several sections in Part 181 to eliminate references to the effective date of the Organized Crime Control Act of 1970 (October 15, 1970) and the implementing regulations (February 12, 1971). It is no longer necessary to provide specific procedures for those persons who were engaged in business or operations without a license or permit prior to such law and implementing regulations, and who subsequently were required to meet all the provisions of the Organized Crime Control Act of 1970 and Part 181.

(Secs. 181.1, 181.45, and 181.109 amended; secs. 181.122, 181.123, 181.124, and 181.125 further amended.)

In addition to the above editorial changes, we are revising the procedures for reporting thefts or losses of explosive materials. The law requires that all persons report thefts or losses to ATF and local authorities within 24 hours after the discovery of such thefts or losses. Regulations provide that licensees or permittees report thefts or losses to ATF within 24 hours of discovery on Form 4712, Report of Theft or Loss—Explosive Materials, and that all other persons notify ATF in writing within the 24-hour period following discovery. Timely receipt of a report of a theft or loss of explosive materials is critically important to a criminal investigation. Thus, to insure that appropriate ATF officials are informed as soon as possible, we are requiring that the nearest ATF office be notified by telephone within 24 hours of the discovery of a theft or loss, in addition to reporting by mail on Form 4712 or in writing. (§ 181.30 amended.)

SPECIFIC CHANGES TO THE REGULATIONS

In consideration of the foregoing, the proposed regulations, as published in the FEDERAL REGISTER on December 22, 1975, are hereby adopted subject to the following changes:

Section 178.11 is amended as follows:

§ 178.11 Meaning of terms.

* * * * *

Destructive device. (a) Any explosive, incendiary, or poison gas (1) bomb, (2) grenade, (3) rocket having a propellant charge of more than 4 ounces, (4) missile having an explosive or incendiary charge of more than one-quarter ounce, (5) mine, or (6) device similar to any of the devices described in the preceding paragraphs of this definition; (b) any type of weapon (other than a shotgun or a shotgun shell which the Director finds is generally recognized as particularly

suitable for sporting purposes) by whatever name known which will, or which may be readily converted to, expel a projectile by the action of an explosive or other propellant, and which has any barrel with a bore of more than one-half inch in diameter; and (c) any combination of parts either designed or intended for use in converting any device into any destructive device described in paragraph (a) or (b) of this section and from which a destructive device may be readily assembled. The term shall not include any device which is neither designed nor redesigned for use as a weapon; any device, although originally designed for use as a weapon, which is redesigned for use as a signalling, pyrotechnic, line throwing, safety, or similar device; surplus ordnance sold, loaned, or given by the Secretary of the Army pursuant to the provisions of section 4684 (2), 4685, or 4686 of title 10, United States Code; or any other device which the Director finds is not likely to be used as a weapon, is an antique, or is a rifle which the owner intends to use solely for sporting, recreational, or cultural purposes.

Paragraph (c) of § 181.1 is revised to (1) delete language governing persons engaged in business or operations under this part on October 15, 1970, and (2) add language to govern persons engaged in business or operations under this part on January 4, 1975.

§ 181.1 Scope of regulations.

• • • • •

(c) *Persons engaged in business or operations in black powder on January 4, 1975.* This part fully applies to persons engaged in business or operations in black powder on January 4, 1975, requiring a license or permit under this part, who have filed an application for such license or permit prior to April 28, 1977, and who are continuing such business or operations pending final action on such application.

Section 181.11 is amended as follows:

§ 181.11 Meaning of terms.

• • • • •

Assistant Regional Commissioner. Whenever used in this part shall mean a regional director as defined in this section.

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Regional director. A regional director who is responsible to, and functions under the direction and supervision of, the Director, Bureau of Alcohol, Tobacco, and Firearms.

• • • • •

Section 181.22 is revised as follows:

§ 181.22 Alternate methods or procedures; and emergency variations from requirements.

(a) *Alternate methods or procedures.* The permittee or licensee, on specific approval by the Director as provided by this paragraph, may use an alternate method or procedure in lieu of a method or procedure specifically prescribed in this part. The Director may approve an alternate method or procedure, subject to stated conditions when he finds that—

(1) Good cause has been shown for the use of the alternate method or procedure;

(2) The alternate method or procedure is within the purpose of, and consistent with the effect intended by, the specifically prescribed method or procedure and that such alternate method or procedure is substantially equivalent to that specifically prescribed method or procedure; and

(3) The alternate method or procedure will not be contrary to any provision of law and will not result in an increase in cost to the Government or hinder the effective administration of this part.

Where the permittee or licensee desires to employ an alternate method or procedure, he shall submit a written application, in triplicate, to the regional director, for transmittal to the Director. The application shall specifically describe the proposed alternate method or procedure and shall set forth the reasons therefor. Alternate methods or procedures shall not be employed until the application has been approved by the Director. The permittee or licensee shall, during the period of authorization of an alternate method or procedure, comply with the terms of the approved application. Authorization of any alternate method or procedure may be withdrawn whenever, in the judgment of the Director, the effective administration of this part is hindered by the continuation of such authorization. As used in this paragraph, alternate methods or procedures shall include alternate construction or equipment.

(b) *Emergency variations from requirements.* The Director may approve construction, equipment, and methods of operation other than as specified in this part, where he finds that an emergency exists and the proposed variations from the specified requirements are necessary and the proposed variations—

(1) Will afford security and protection that are substantially equivalent to those prescribed in this part;

(2) Will not hinder the effective administration of this part; and

(3) Will not be contrary to any provisions of law.

Variations from requirements granted under this paragraph are conditioned on compliance with the procedures, conditions, and limitations set forth in the approval of the application. Failure to comply in good faith with such procedures, conditions, and limitations shall automatically terminate the authority for such variations and the licensee or permittee thereupon shall fully comply with the prescribed requirements of regulations from which the variations were authorized. Authority for any variation may be withdrawn whenever, in the judgment of the Director, the effective administration of this part is hindered by the continuation of such variation. Where the licensee or permittee desires to employ such variation, he shall submit a written application, in triplicate, to the regional director, for transmittal to the Director. The application shall describe the proposed variation and set forth the reasons therefor. Variations shall not be employed until the application has been approved, except when the emergency requires immediate action to correct a situation that is threatening to life or property. Such corrective action may then be taken concurrent with the filing of the application and notification of the Director via telephone.

(c) *Retention of approved variations.* The licensee or permittee shall retain, as part of his records available for examination by alcohol, tobacco and firearms officers, any application approved by the Director under the provisions of this section.

Section 181.26 is amended as follows:

§ 181.26 Prohibited shipment, transportation, or receipt of explosive materials.

(a) No person, other than a licensed importer, licensed manufacturer, licensed manufacturer-limited, licensed dealer, or permittee, shall transport, ship, cause to be transported, or receive in interstate or foreign commerce any explosive materials: *Provided*, That the provisions of this paragraph shall not apply to—

(1) The transportation, shipment, or receipt of explosive materials by a nonlicensed person or nonpermittee who lawfully purchases explosive materials from a licensee in a State contiguous to the purchaser's State of residence if, (i) the purchaser's State of residence has enacted legislation, currently in force, specifically authorizing a resident of that State to purchase explosive materials in a contiguous State, (ii) the provisions of § 181.105(c) are fully complied with, and (iii) the purchaser is not otherwise prohibited under paragraph (b) of this section from shipping or transporting explosive materials in interstate or foreign commerce or receiving explosive materials which have been shipped or transported in interstate or foreign commerce; or

(2) The lawful purchase by a nonlicensee or nonpermittee of commercially manufactured black powder in quantities not to exceed fifty pounds, if (i) the black powder is intended to be used solely for sporting, recreational, or cultural purposes in antique firearms or in antique devices, and (ii) the provisions of § 181.105(g) are fully complied with.

(b) No person may ship or transport any explosive material in interstate or foreign commerce or receive any explosive materials which have been shipped or transported in interstate or foreign commerce who (1) is under indictment for, or who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding 1 year, (2) is a fugitive from justice, (3) is an unlawful user of or addicted to marihuana (as defined in section 4761 of the Internal Revenue Code of 1954; 26 U.S.C. 4761) or any depressant or stimulant drug as defined in section 201(v) of the Federal Food, Drug, and Cosmetic Act; 21 U.S.C. 321 (v)), or narcotic drug (as defined in section 4731(a) of the Internal Revenue Code of 1954; 26 U.S.C. 4731(a)), or (4) has been adjudicated as a mental defective or has been committed to a mental institution.

Section 181.30 is amended to change the procedure for reporting thefts or losses of explosive materials.

§ 181.30 Reporting theft or loss of explosive materials.

Any licensee or permittee who has knowledge of the theft or loss of any explosive materials from his stock shall, within 24 hours of discovery thereof, report such theft or loss by telephone to the nearest ATF office and on Form 4712 in accordance with the instructions on the form. Theft or loss of any explosive materials shall also be reported to appropriate local authorities. Any other person who has knowledge of the theft or loss of any explosive materials from his stock shall, within 24 hours of discovery thereof, report such theft or loss by telephone and in writing to the nearest ATF office. Such theft or loss shall also be reported to appropriate local authorities.

Section 181.41(a) is amended as follows:

§ 181.41 General.

(a) Each person intending to engage in business as an importer or manufacturer of, or a dealer in, explosive materials, including black powder, shall, before commencing such business, obtain the license required by this subpart for the business to be operated. Each person who intends to acquire for use explosive materials from a licensee in a State other than the State in which he resides, or from a foreign country, or who intends to transport explosive materials in interstate or foreign commerce, shall obtain a permit under the provisions of this subpart: *Provided*, That it is not necessary to obtain such permit if the user intends to lawfully purchase—

(1) Explosive materials from a license in a State contiguous to the user's State of residence and the user's State of residence has enacted legislation, currently in force, specifically authorizing a resident of that State to purchase explosive materials in a contiguous State, or

(2) Commercially manufactured black powder in quantities not to exceed fifty pounds, intended to be used solely for sporting, recreational, or cultural purposes in antique firearms or in antique devices.

• • • • •

Section 181.45 is amended to (1) delete language governing persons engaged in business or operations under this part on October 15, 1970, and (2) add language to govern persons engaged in business or operations under this part on January 4, 1975.

§ 181.45 Original license or permit.

(a) Any person who intends to engage in business as an explosive materials importer, manufacturer, or dealer, or who has not timely submitted application for renewal of a previous license issued under this part, shall file with the service center director for the internal revenue district in which the applicant is to do business an application, Form 4705, in duplicate. The application must be executed under the penalties of perjury and the penalties imposed by 18 U.S.C. 844(a). The application shall be accompanied by the appropriate fee in the form of (1) cash, or (2) money order or check made payable to the Internal Revenue Service. Forms 4705 may be obtained from any regional director or from any district director.

(b) Any person, except as provided in § 181.41(a), who intends to acquire explosive materials from a licensee in a State other than the State in which he resides, or from a foreign country, or who intends to transport explosive materials in interstate or foreign commerce, or who has not timely submitted application for renewal of a previous permit issued under this part, shall file with the service center director for the internal revenue district in which is located his legal residence or principal place of business an application, Form 4707, in duplicate. The application must be executed under the penalties of perjury and the penalties imposed by 18 U.S.C. 844(a). The application shall be accompanied by the appropriate fee in the form of (1) cash, or (2) money order or check made payable to the Internal Revenue Service. Forms 4707 may be obtained from any regional director or from any district director.

(c) Any person engaged in business or operations as a dealer in, or as an importer or manufacturer or user of, black powder requiring a license or permit under this part, and who was engaged in such business or operations on January 4, 1975, and who has filed an application for a license or permit under the provisions of this part prior to April 28, 1977, may continue such business or operations pending final action on his application.

Paragraph (g) is added to § 181.105 as follows:

§ 181.105 Distributions to nonlicensees and nonpermittees.

• • • • •

(g) Notwithstanding any other provision of this section, a licensed importer, licensed manufacturer, or licensed dealer, or a licensed manufacturer-limited or permittee disposing of surplus stocks, may sell or distribute commercially manufactured black powder in quantities of fifty pounds or less to a nonlicensee or nonpermittee if:

(1) The black powder is intended to be used solely for sporting, recreational, or cultural purposes in antique firearms or in antique devices, and

(2) The nonlicensee or nonpermittee furnishes to the licensee the transaction record, Form 5400.3, required by § 181.130.

Section 181.106(a) is amended as follows:

§ 181.106 Certain prohibited distributions.

(a) A licensed importer, licensed manufacturer, licensed manufacturer-limited, or licensed dealer shall not distribute explosive materials to any person not licensed or holding a permit under this part, who the licensee knows or has reason to believe does not reside in the State in which the licensee's place of business is located: *Provided*, That the foregoing provisions of this paragraph shall not apply to:

(1) The distribution of explosive material to a resident of a State contiguous to the State in which the licensee's place of business is located, if the requirements of § 181.105(c) are fully met, or

(2) The purchase of commercially manufactured black powder in quantities not to exceed fifty pounds, intended to be used solely for sporting, recreational, or cultural purposes in antique firearms or in antique devices, if the requirements of § 181.105(g) are fully met.

• • • • •

Section 181.108 is revised as follows:

§ 181.108 Importation.

(a) Explosive materials imported or brought into the United States by a licensed importer or permittee may be released from customs custody to the licensed importer or permittee upon proof of his status as a licensed importer or permittee. Such status shall be established by the licensed importer or permittee furnishing to the customs officer a certified copy of his license or permit (see § 181.104).

(b) A nonlicensee or nonpermittee may import or bring into the United States commercially manufactured black powder in quantities not to exceed fifty pounds. Upon submitting to the customs officer completed Form 5400.3, certifying that the black powder is intended to be used solely for sporting, recreational, or cultural purposes in antique firearms or in antique devices, black powder may be released from customs custody. The disposition of the executed Form 5400.3 shall be in accordance with the instructions on the form.

(c) The provisions of this section are in addition to, and are not in lieu of, any applicable requirement under 27 CFR Part 47.

Section 181.109 is amended to delete language referring to the February 12, 1971, effective date of the regulations implementing the Organized Crime Control Act of 1970.

§ 181.109 Identification of explosive materials.

Each licensed manufacturer of explosive materials shall legibly identify by marking all explosive materials he manufactures for sale or distribution. The

marks required by this section shall identify the manufacturer and the location, date, and shift of manufacture. The licensed manufacturer shall place on each cartridge, bag, or other immediate container of explosive materials manufactured for sale or distribution the required mark which shall also be placed on the outside container, if any, used for their packaging: *Provided,* That with respect to explosive materials of small size not suitable for marking on the individual item (for example, blasting caps), it shall only be necessary to place such identification marks on the containers used for their packaging.

Section 181.122 is amended to (1) delete from paragraph (a) reference to the February 12, 1971, effective date for recordkeeping requirements for importers under this part, (2) insert in paragraph (a) recordkeeping requirements for persons engaged in business or operations as importers under this part on January 4, 1975, and (3) add paragraph (f) as follows:

§ 181.122 Records maintained by importers.

(a) Each licensed importers of explosive materials shall take true and accurate inventories which shall include all explosive materials on hand required to be accounted for in the records kept under this part. The licensed importer shall take such an inventory (1) at the time of commencing business, which shall be the effective date of the license issued upon original qualification under this part, or in the case of an importer of black powder who was not required to obtain a license under this part prior to January 4, 1975, such an inventory shall be taken as of April 28, 1977, or at the time of commencing business subsequent thereto; (2) at the time of changing the location of his business to another region; (3) at the time of discontinuing business; and (4) at such other times as the regional director may in writing require. Each inventory shall be prepared in duplicate, the original of which shall be submitted to the regional director, and the duplicate shall be retained by the licensed importer. (See also § 181.127.)

* * * * *

(f) Each licensed importer shall maintain separate records of sales or other distribution made to nonlicensees or nonpermittees of commercially manufactured black powder in quantities not to exceed fifty pounds, intended to be used solely for sporting, recreational, or cultural purposes in antique firearms or in antique devices. Such records shall be maintained in the form and manner prescribed by § 181.130.

Section 181.123 is amended to (1) delete from paragraph (a) reference to the February 12, 1971, effective date for recordkeeping requirements for manufacturers under this part, (2) insert in paragraph (a) recordkeeping requirements for persons engaged in business or operations as manufacturers under this part on January 4, 1975, and (3) add a paragraph (f) as follows:

§ 181.123 Records maintained by licensed manufacturers.

(a) Each licensed manufacturer shall take true and accurate inventories which shall include all explosive materials on hand required to be accounted for in the records kept under this part. The licensed manufacturer shall take such an inventory (1) at the time of commencing business, which shall be the effective date of the license issued upon original qualification under this part, or in the case of a manufacturer of black powder who was not required to obtain a license under this part prior to January 4, 1975, such an inventory shall be taken as of April 28, 1977, or at the time of commencing business subsequent thereto; (2) at the time of changing the location of his premises to another region; (3) at the time of discontinuing business; and (4) at such other times as the regional director may in writing require. Each inventory shall be prepared in duplicate, the original of which shall be submitted to the regional director, and the duplicate shall be retained by the licensed manufacturer. (See also § 181.127.)

* * * * *

(f) Each licensed manufacturer shall maintain separate records of sales or other distributions made to nonlicensees or nonpermittees of commercial manufactured black powder in quantities not to exceed fifty pounds, intended to be used solely for sporting, recreational, or cultural purposes in antique firearms or in antique devices. Such records shall be maintained in the form and manner prescribed by § 181.130.

Section 181.124 is further amended to (1) delete from paragraph (a) reference to the February 12, 1971, effective date for recordkeeping requirements for dealers under this part, (2) insert in paragraph (a) recordkeeping requirements for persons engaged in business or operations as dealers under this part on January 4, 1975, and (3) add paragraph (g) as follows:

§ 181.124 Records maintained by dealers.

(a) Each licensed dealer shall take true and accurate inventories which shall include all explosive materials on hand required to be accounted for in the records kept under this part. The licensed dealer shall take such an inventory (1) at the time of commencing business, which shall be the effective date of the license issued upon original qualification under this part, or in the case of a dealer in black powder who was not required to obtain a license under this part prior to January 4, 1975, such an inventory shall be taken as of April 28, 1977, or at the time of commencing business subsequent thereto; (2) at the time of changing the location of his premises to another region; (3) at the time of discontinuing business; and (4) at such other times as the regional director may in writing require. Each inventory shall be prepared in duplicate, the original of which shall be submitted to the regional director, and the duplicate shall be retained by the licensed dealer. (See also § 181.127.)

(g) Each licensed dealer shall maintain separate records of the sales or other distributions made to nonlicensees or nonpermittees of commercially manufactured black powder in quantities not to exceed fifty pounds, intended to be used solely for sporting, recreational, or cultural purposes in antique firearms or in antique devices. Such records shall be maintained in the form and manner prescribed by § 181.130.

Section 181.125 is amended to (1) delete from paragraph (a) reference to the February 12, 1971, effective date for recordkeeping requirements for manufacturers-limited and permittees under this part, (2) insert in paragraph (a) recordkeeping requirements for persons engaged in business or operations as manufacturers-limited or permittees under this part on January 4, 1975, and (3) amend paragraphs (b) and (c) as follows:

§ 181.125 Records maintained by licensed manufacturers-limited and permittees.

(a) Each licensed manufacturer-limited and each permittee shall take true and accurate inventories which shall include all explosive materials on hand required to be accounted for in the records kept under this part. Such inventory shall be made (1) at the time of commencing business, which shall be the effective date of the license or permit issued upon original qualification under this part, or in the case of a manufacturer-limited of black powder or a permittee using black powder who was not required to obtain a license or permit under this part prior to January 4, 1975, such an inventory shall be taken as of April 28, 1977, or at the time of commencing business subsequent thereto; (2) at the time of changing the location of his premises to another region; (3) at the time of discontinuing business; and (4) at such other times as the regional director may in writing require. Each inventory shall be prepared in duplicate, the original of which shall be submitted to the regional director, and the duplicate shall be retained by the licensed manufacturer-limited. (See also § 181.127.)

(b) A licensed manufacturer-limited disposing of surplus stocks of explosive materials to other licensees or to permittees shall record in the permanent record not later than the close of the next business day following the date of the disposition, the information prescribed in § 181.123(c)(1). Each licensed manufacturer-limited shall maintain separate records of dispositions of surplus stocks of explosive materials to nonlicensees or nonpermittees. Such records shall be maintained in the form and manner as prescribed by § 181.126. Each licensed manufacturer-limited shall maintain separate records of dispositions of surplus stocks of commercially manufactured black powder in quantities not to exceed fifty pounds, intended to be used solely for sporting, recreational, or cultural purposes in antique firearms or in antique devices. Such records shall be

maintained in the form and manner prescribed by § 181.130.

(c) Each permittee shall record in a permanent record the manufacturers' marks of identification (if any), the quantity and class of explosive materials, as prescribed in the Explosives List, the daily acquires, the date of such acquisition, and the name, address and license number of the person from whom explosive materials were obtained. The information rqeired by this paragraph shall be recorded not later than the close of the next business day following the date of such acquisition. A permittee disposing of surplus stocks of explosive materials to other permittees or to licensees shall record in the permanent record not later than the close of the next business day following the date of the disposition, the information prescribed in § 181.124(d). Each permittee shall maintain separate records of dispositions of surplus stocks of explosive materials to nonlicensees or nonpermittees. Such records shall be maintained in the form and manner as prescribed by § 181.126. Each permittee shall maintain separate records of dispositions of surplus stocks of commercially manufactured black powder in quantities not to exceed fifty pounds, intended to be used solely for sporting, recreational, or cultural purposes in antique firearms or in antique devices. Such records shall be maintained in the form and manner as prescribed by § 181.130.

* * * * *

Section 181.126 (c) and (f) are amended as follows:

§ 181.126 Explosives transaction record.

* * * * *

(c) Form 4710 shall be completed in duplicate, the original of which shall be retained by the licensee or permittee as part of his permanent records in accordance with the requirements in paragraph (d) of this section, and the copy shall be forwarded in accordance with the instructions on the form, on or before the close of business on the business day next succeeding that on which the transaction occurs.

* * * * *

(f) A licensee or permittee may obtain, upon request, a supply of Form 4710 from the Director.

Section 181.130 is added as follows:

§ 181.130 Transaction record for black powder to be used in antique firearms or in antique devices.

(a) A licensee or permittee shall not sell or otherwise distribute to a nonlicensee or nonpermittee commercially manufactured black powder in quantities of fifty pounds or less, intended to be used solely for sporting, recreational, or cultural purposes in antique firearms or in antique devices, unless he records the transaction on Form 5400.3.

(b) Prior to the sale or other distribution of the black powder in paragraph (a) of this section to a nonlicensee or nonpermittee who is acquiring it under the provisions contained in § 181.105(g), the licensee or permittee so distributing the black powder shall obtain an executed Form 5400.3 from the distributee. The Form 5400.3 shall contain all the information as indicated by the headings on the form and the instructions thereon or issued in respect thereto, and as required by this part.

(c) Form 5400.3 shall be retained by the licensee or permittee as part of his permanent records in accordance with the requirements of paragraph (d) of this section.

(d) Each Form 5400.3 shall be retained in numerical (by transaction serial number) order commencing with "1" and continuing in regular sequence. When the numbering of any series reaches "1,000,000," the licensee or permittee may recommence the series. The recommenced series shall be given an alphabetical prefix or suffix. Where there is a change in proprietorship, or in the individual, firm, corporate name, or trade name, the series in use at the time of such change may be continued.

(e) The requirements of this section shall be in addition to any other recordkeeping requirement contained in this part.

(f) A licensee or permittee may obtain, upon request, a supply of Form 5400.3 from the Director.

Section 181.141 is revised as follows:

§ 181.141 Exemptions.

(a) *General.* The provisions of this part shall not apply with respect to:

(1) Any aspect of the transportation of explosive materials via railroad, water, highway, or air which are regulated by the U.S. Department of Transportation, and agencies thereof.

(2) The use of explosive materials in medicines and medicinal agents in the forms prescribed by the official United States Pharmacopoeia, or the National Formulary.

(3) The transportation, shipment, receipt, or importation of explosive materials for delivery to any agency of the United States or to any State or political subdivision thereof.

(4) Small arms ammunition and components thereof.

(5) The manufacture under the regulation of the military department of the United States of explosive materials for, or other distribution to or storage or possession by, the military or naval services or other agencies of the United States.

(6) Arsenals, navy yards, depots, or other establishments owned by, or operated by or on behalf of, the United States.

(7) The importation and distribution of fireworks in a finished state, commonly sold at retail for personal use in compliance with State laws or local ordinances.

(8) Gasoline, fertilizers, propellant actuated devices, or propellant actuated industrial tools manufactured, imported, or distributed for their intended purposes.

(b) *Black powder.* Except for the provisions applicable to persons required to be licensed under Subpart D, the provisions of this part shall not apply with respect to commercially manufactured black powder in quantities not to exceed fifty pounds, percussion caps, safety and pyrotechnic fuses, quills, quick and slow matches, and friction primers: *Provided,* That such black powder is intended to be used solely for sporting, recreational, or cultural purposes in antique firearms, as defined in 18 U.S.C. 921(a)(16), or in antique devices, as exempted from the term "destructive device" in 18 U.S.C. 921(a)(4), and the provisions of §§ 181.105(g) and 181.130 are fully complied with.

(18 U.S.C. 847 (84 Stat. 959) and 18 U.S.C. 926 (82 Stat. 1226).)

Effective date: This Treasury decision becomes effective on April 28, 1977.

Signed: June 14, 1976.

REX D. DAVIS,
Director.

Approved: August 5, 1976.

DAVID R. MACDONALD,
Assistant Secretary of the Treasury.

[FR Doc.77-2817 Filed 1-27-77;8:45 am]

[Reference No. T.D. ATF-38]

PART 245—BEER

Correction

On December 30, 1976, the Bureau of Alcohol, Tobacco and Firearms published regulations [FR Doc. 76-38271] amending 27 CFR Part 245, Beer. Those regulations established procedures for qualified small brewers to pay tax at the $7 per barrel rate established by Pub. L. 94-529.

Two minor discrepancies appeared in that document in §§ 245.117a and 245.160. Paragraph (e) of § 245.117a should have contained the phrase "the close of", and paragraph (c) of § 245.160 should have contained the phrase "of tax"; these phrases were inadvertently omitted. As amended, § 245.117a(e) reads as follows:

§ 245.117a Semimonthly return.

* * * * *

(e) *Time for filing returns and paying tax.* The brewer shall file the semimonthly tax return, Form 2034 (5130.7), for each return period, with remittance, not later than the close of the last full calendar day of the return period next succeeding that period.

* * * * *

As amended, § 245.160(c) reads as follows:

§ 245.160 Refund or credit of tax on returned beer.

* * * * *

(c) *Rate of tax.* Brewers who have filed the notice required by § 245.110c and who have paid the tax on beer at the reduced rate of tax shall make claims

for refund, credit, or relief of tax based upon the lower rate of tax. • • •

Signed: January 24, 1977.

REX D. DAVIS,
Director.

[FR Doc.77-2818. Filed 1-27-77;8:45 am]

Title 29—Labor

CHAPTER XVII—OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, DEPARTMENT OF LABOR

PART 1903—INSPECTIONS, CITATIONS AND PROPOSED PENALTIES

PART 1904—RECORDING AND REPORTING OCCUPATIONAL INJURIES AND ILLNESSES

PART 1951—GRANTS FOR IMPLEMENTING APPROVED STATE PLANS

Civil Penalties for First Instance Violations; Employers in Farming Operations With Ten or Fewer Employees; Small Employer Survey; Effect on State Grants; Interpretation

• 1. *Purpose.* Notice is hereby given pursuant to the Administrative Procedure Act, 5 U.S.C. 552(a)(1)(D) and section 8(g)(2) of the Occupational Safety and Health Act of 1970 (hereinafter referred to as the Act) (29 U.S.C. 657(g)(2)) of the Department of Labor's interpretation of the funding limitations in Title I of the Department of Labor-Department of Health, Education, and Welfare Appropriations Act for Fiscal Year 1977 (Pub. L. 94-439) which became effective October 1, 1976, and will cease to be in effect September 30, 1977, unless extended. •

Pub. L. 94-439 places two limitations on the expenditure of funds for the Occupational Safety and Health Administration (hereinafter referred to as OSHA) by providing as follows:

> That none of the funds appropriated under this paragraph shall be obligated or expended for the assessment of civil penalties issued for first instance violations of any standard, rule, or regulation promulgated under the Occupational Safety and Health Act of 1970 (other than serious, willful, or repeated violations under section 17 of the Act) resulting from the inspection of any establishment or workplace subject to the Act, unless such establishment or workplace is cited, on the basis of such inspection, for 10 or more violations: *Provided further*, That none of the funds appropriated under this paragraph shall be obligated or expended to prescribe, issue, administer, or enforce any standard, rule, regulation or order under the Occupational Safety and Health Act of 1970 which is applicable to any person who is engaged in a farming operation and employs 10 or fewer employees.

Because of the one-year duration of the funding limitations of Pub. L. 94-439, this notice does not constitute an amendment to 29 CFR Parts 1903, 1904, and 1951. The purpose of this notice is to interpret the terms of those limitations and their relation to State plans approved under section 18 of the Act. However, in the case of any conflict between provisions of those parts and this notice, the provisions of this notice shall be controlling during fiscal year 1977 unless subsequently extended or provided otherwise by statute or regulation. Notice of the funding limitations has been prepared as a rulemaking document in order to give the public the most effective notice possible.

The Department of Labor appropriations acts for fiscal years 1975 and 1976 exempted employers employing ten or fewer employees from OSHA recordkeeping requirements, except with respect to the provisions of 29 CFR 1904.15 which require exempted small employers to report fatalities and multiple hospitalization accidents and also to participate in the Bureau of Labor Statistics' (hereinafter referred to as BLS) annual statistical survey if the small employers are selected by BLS for such participation. But the appropriations act for fiscal year 1977 (Pub. L. 94-439) did not include this recordkeeping exemption. The present OSHA recordkeeping regulation (29 CFR 1904.15) exempts employers employing seven or fewer employees. OSHA, however, intends to publish in the near future a proposal to amend the recordkeeping regulation to extend the existing exemption to employers of ten or fewer employees. In order to avoid any undue burden on small employers, pending any permanent change in the regulation, OSHA will continue treating employers with 8, 9, and 10 employees as exempt as was provided by the appropriations acts for fiscal years 1975 and 1976. However, as stated above, this exemption for small employers does not, as provided in § 1904.15, apply to those employers selected to participate in the BLS annual survey or to the requirement for reporting fatalities or multiple hospitalization accidents.

2. *Scope.* (a) The first funding limitation under Pub. L. 94-439 is applicable to all employers covered by the Act and will be implemented as follows:

(1) No penalty will be proposed for a first instance other-than-serious violation unless 10 or more total violations are cited. This "10 or more" includes all violations; that is, other-than-serious, serious, willful, repeated, and failure to abate, but does not include *de minimus* violations. If 10 or more violations are cited, all 10 are subject to proposed penalties to be calculated in accordance with the instructions in the Occupational Safety and Health Field Operations Manual (hereinafter referred to as the Manual).

(2) Civil penalties will be proposed in accordance with instructions in the Manual, for all notifications of failure to abate, serious, willful and repeated violations. In addition, if upon reinspection of a workplace, an employer is cited for a violation of the same subsection of a standard which was cited during a previous inspection, the alleged violation shall be treated as a second instance violation and may be accompanied by a proposed penalty regardless of whether the alleged violation is cited as other-than-serious. Citations which include second instance other-than-serious violations with penalties will be accompanied by a brief explanation to the employer as to the reason for the proposed penalty, if fewer than 10 violations are cited.

(3) Grouping of several violations of a single standard into a single alleged violation, and grouping of individual other-than-serious violations which, when considered together, would be a serious violation, will continue according to present policy in the Manual.

(4) The first limitation is applicable to all other-than-serious violations, including violations of the posting requirements under section 17(i) of the Act.

(5) If, as a result of an inspection, a citation was issued for 10 or more violations, and penalties were proposed for some or all of the other-than-serious violations and an amended citation is issued which brings the number of violations below 10, any remaining penalties for first instance other-than-serious violations will be eliminated on the amended citation.

(6) If both safety violations and possible health violations are found in an establishment, a citation will be issued as soon as possible for the safety violations and will not be held awaiting laboratory results. If laboratory results confirm any health violations, a second citation should be issued for the health violations found during the same inspection, but the number of violations will not be totalled from both citations to determine whether 10 or more exist for penalty purposes. Penalties will be proposed, or not be proposed, based on the number of violations in each separate citation.

(7) The limitation will also be applicable to OSHA actions involving penalties in proceedings before the occupational Safety and Health Review Commission.

(b) The second funding limitation (farm-operations) under Pub. L. 94-439 is applicable to all employers covered by the Act who are engaged in a farming operation and employ 10 or fewer employees and will be implemented as follows:

(1) For the purposes of this limitation, a "farming operation" is defined as any operation involved in the growing or harvesting of crops or the raising of livestock or poultry, or related activities conducted by a farmer, on sites such as farms, ranches, orchards, dairy farms or similar farming establishments.

(2) No inspection will be made of an employer engaged in a farming operation if he employs 10 or fewer employees in all his workplaces. Members of the immediate family of the farm employer are not regarded as employees in making the initial determination as to that number.

(3) At the beginning of any inspection the Compliance Safety and Health Officer (hereinafter referred to as the CSHO) will initially determine, by inquiring of the employer, how many employees he has on the day of the inspection. If the employer states that he employs ten or fewer employees, the CSHO will then inquire as to the maximum number of employees he employed at any one time during the twelve months immediately prior to the inspection date. If the employer has had more than 10 employees at any one time during the previous 12 months the CSHO will proceed with the inspection. Where an inspection is conducted based on 11 or more employees employed at the time of the inspection or in the twelve month period prior to the date of the inspection, any further enforcement action will be continued regardless of the number of employees employed at any later date.

(4) Any inspection made of an employer engaged in a farming operation who has more than 10 employees, is subject to all of the provisions of the first funding limitation as stated in 2(a) above.

(5) No consultation services will be provided to any employer engaged in a farming operation if the employer has 10 or fewer employees.

3. *State plans.* Under section 18(c)(2) of the Act and 29 CFR 1902.3(d)(1), a State plan is required to provide a program for the enforcement of State standards which is, or will be, at least as effective as that provided in the Act, and provide assurances that the State's enforcement program will continue to be at least as effective as the Federal program. The provisions of the funding limitations in Pub. L. 94-439 do not limit State authority for the assessment of civil penalties issued for first instance violations of any standard, rule or regulation promulgated under State law, or to enforce any standard, rule, regulation or order, under State law, which is applicable to any person who is engaged in a farming operation and employing 10 or fewer employees.

However, States which engaged in activities for which Federal funds may not be expended under Pub. L. 94-439 will not be reimbursed under sections 23(g) and 24(b) of the Act for any share of funds expended by the State for those activities. States receiving 23(g) and 24(b) grant funds must be able to demonstrate that no portion of the grant funds has been used for the activities prohibited in the funding limitations.

4. *Effective date.* This notice is effective and will continue to be applicable for as long as the funding limitations in Pub. L. 94-439 remain in effect, unless modified or revised by the Assistant Secretary in the FEDERAL REGISTER.

(Sec. 8(g)(2), 84 Stat. 1600 (29 U.S.C. 657(g)(2); 5 U.S.C. 552(a)(1)(D)))

Signed at Washington, D.C., this 19th day of January 1977.

MORTON CORN,
Assistant Secretary of Labor.

[FR Doc.77-2378 Filed 1-19-77;5:06 pm]

Title 39—Postal Service

CHAPTER I—UNITED STATES POSTAL SERVICE

SUBCHAPTER N—PROCEDURES

RULES OF PRACTICE; MISCELLANEOUS AMENDMENTS

AGENCY: United States Postal Service (Judicial Officer).

ACTION: Final Rule.

SUMMARY: The Judicial Officer of the Postal Service hereby issues a complete revision of the rules of practice in proceedings relative to mailability. In addition, the law on ex parte communications is made applicable to the mailability rules of practice and to certain other rules of practice issued by the Judicial Officer.

EFFECTIVE DATE: January 28, 1977.

FOR FURTHER INFORMATION CONTACT: George Davis 202-245-4385.

SUPPLEMENTARY INFORMATION: Acting in accordance with authority delegated to him by 39 CFR 224.1(c)(5)(ii)(D) the Judicial Officer of the Postal Service adopts a complete revision of 39 CFR Part 953, the rules of practice in proceedings relative to mailability. This is done in order to conform these rules with 123.37 of the Postal Service Manual, which provides for administrative appeals of unfavorable mailability decisions in accordance with 39 CFR Part 953.

The Judicial Officer also amends 39 CFR Parts 951, 952, 953, 954, 957, 958 and 959 to make applicable to proceedings under these rules the law on ex parte communications enacted by section 4 of Pub. L. 94-409, 90 Stat. 1246, 1247 (September 13, 1976).

Accordingly, 39 CFR is amended as follows:

PART 951—PROCEDURE GOVERNING THE ELIGIBILITY OF PERSONS TO PRACTICE BEFORE THE POSTAL SERVICE

1. Part 951 is amended by adding new § 951.8 reading as follows:

§ 951.8 Ex parte communications.

The provisions of 5 U.S.C. 551(14), 556(d) and 557(d) prohibiting ex parte communications are made applicable to proceedings under these rules of practice.

PART 952—RULES OF PRACTICE IN PROCEEDINGS RELATIVE TO FALSE REPRESENTATION AND LOTTERY ORDERS

2. Part 952 is amended by adding new § 952.34 reading as follows:

§ 952.34 Ex parte communications.

The provisions of 5 U.S.C. 551(14), 556(d) and 557(d) prohibiting ex parte communications are made applicable to proceedings under these rules of practice.

PART 953—RULES OF PRACTICE IN PROCEEDINGS RELATIVE TO MAILABILITY

3. Part 953 is revised to read as follows:

Sec.
953.1 Authority for rules.
953.2 Initiation.
953.3 Notice of Appeal.
953.4 Service of Notice of Appeal, Reply.
953.5 Reply.
953.6 Hearings.
953.7 Compromise and informal dispositions.
953.8 Default; appearances.
953.9 Location of hearing.
953.10 Change of place of hearing.
953.11 Presiding officers.
953.12 Proposed findings of fact.
953.13 Initial decision.
953.14 Appeal.
953.15 Final agency decision.
953.16 Expedition.
953.17 Disposition.
953.18 Ex parte communications.

AUTHORITY: 39 U.S.C. 204, 401.

§ 953.1 Authority for rules.

These rules of practice are issued by the Judicial Officer of the U.S. Postal Service pursuant to authority delegated by the Postmaster General.

§ 953.2 Initiation.

Mailability proceedings are initiated upon the filing with the Docket Clerk of a Notice of Appeal.

§ 953.3 Notice of appeal.

The Notice of Appeal shall: (a) Be accompanied by a copy or description of the determination or ruling upon which the appeal is based; (b) specify the character or content of the matter sought to be mailed; (c) request review of the mailability determination, and (d) specify whether an oral hearing is desired or whether the matter is to be submitted on the written record.

§ 953.4 Service of Notice of Appeal, Reply.

Upon receipt of the Notice of Appeal, the Docket Clerk shall issue a notice setting forth the date for filing a Reply to the Notice of Appeal, the date of the hearing, if one is requested, and the name of the presiding officer. This notice, together with copies of the Notice of Appeal, shall be sent promptly to the General Counsel and to the postmaster at the place of mailing to be served upon the appellant or his agent. A receipt for service upon the appellant shall be obtained and forwarded immediately to the Docket Clerk. If, after 3 days, the postmaster or his agent can find no person to accept service of the notice, it may be delivered in the same manner as other mail addressed to the appellant. A statement, showing the time and place of delivery, signed by the postal employee who delivered the notice shall be forwarded to the Docket Clerk and such statement shall constitute evidence of service.

§ 953.5 Reply

The General Counsel shall Reply to the Notice of Appeal within the time established unless extended by the presiding officer for good cause shown. The Reply shall be filed in triplicate with the Docket Clerk. Allegations not answered shall be deemed admitted.

§ 953.6 Hearings.

(a) The Federal Rules of Evidence (28 App. U.S.C. (Supp. V, 1975)) shall be applicable to the hearings conducted under this part, except that the rules may be relaxed to the extent that the presiding officer deems proper to assure a fair hearing. Evidence presented at the hearing shall be limited to material evidence relevant to the issues as drawn by the pleadings or as defined in the prehearing conference, if any, subject to

such later modifications of the issues as may be necessary to protect the public interest or to prevent injustice and shall not be unduly repetitious.

(b) Objections to the admission or exclusion of evidence shall be in short form, stating the grounds of objections relied upon, and the transcript shall not include argument or debate thereon except as ordered by the presiding officer. Rulings on such objections shall be a part of the transcript.

(c) Formal exceptions to the rulings of the presiding officer made during the course of the hearing are unnecessary. For all purposes for which an exception otherwise would be taken, it is sufficient that a party, at the time the ruling of the presiding officer is made or sought, makes known the action he desires the presiding officer to take or his objection to an action taken, and his grounds therefor.

§ 953.7 Compromise and informal dispositions.

Either party may request the other to consider informal disposition of any question of mailability, and the scheduled hearing date may be postponed for such period of time as may be necessary to accommodate settlement discussions between the parties.

§ 953.8 Default; appearances.

If no Reply to the Notice of Appeal is filed, the General Counsel shall be deemed in default and the Judicial Officer shall instruct the postmaster of the disposition to be made of the matter. If an oral evidentiary hearing is to be held, the appellant may appear at the hearing in person or by counsel. If either party fails to appear at the hearing, the presiding officer shall receive the evidence of the party appearing and render a decision.

§ 953.9 Location of hearing.

Unless otherwise ordered by the presiding officer, the hearing shall be held at the headquarters of the Postal Service, 475 L'Enfant Plaza West, S.W., Washington, D.C. 20260, on the date set in the notice.

§ 953.10 Change of place of hearing.

Not later than the date fixed for the filing of the Reply, a party may file a request that a hearing be held to receive evidence in his behalf at a place other than that designated for hearing in the notice. He shall support his request with a statement outlining: (a) The evidence to be offered in such place; (b) the names and addresses of the witnesses who will testify; (c) the reasons why such evidence cannot be produced at Washington, D.C. The presiding officer shall give consideration to the convenience and necessity of the parties and the relevancy of the evidence to be offered.

§ 953.11 Presiding officers.

The presiding officer at any hearing shall be an Administrative Law Judge qualified in accordance with law (5 U.S.C. 3105) or the Judicial Officer (39 U.S.C. 204). The Chief Administrative Law Judge shall assign cases to Administrative Law Judges upon rotation so far as practicable. The Judicial Officer may, for good cause shown, preside at the reception of evidence in proceedings where expedited hearings (§ 953.16, *infra*) are requested by either party.

§ 953.12 Proposed findings of fact.

Unless otherwise ordered, proposed findings of fact and conclusions of law shall be submitted orally or in writing at the conclusion of the hearing.

§ 953.13 Initial decision.

Unless given orally at the conclusion of the hearing, the Administrative Law Judge shall render an initial decision as expeditiously as practicable following the conclusion of the hearing, and the receipt of the proposed findings, if any. The initial decision shall become the decision of the Postal Service if an appeal is not perfected.

§ 953.14 Appeal.

Either party may file exceptions in a brief on appeal to the Judicial Officer within 5 days after receipt of the initial decision unless additional time is granted. A reply brief may be filed within 5 days after the receipt of the appeal brief by the opposing party.

§ 953.15 Final Agency decision.

The Judicial Officer shall render a final Agency decision or refer the matter to the Postmaster General for decision. The decision shall be served upon the parties and the postmaster.

§ 953.16 Expedition.

For the purpose of further expedition the parties may, with the concurrence of the Judicial Officer, agree to waive any of these procedures. When the Judicial Officer presides at the hearing, he shall render a tentative or final decision after the conclusion of the hearing. Exceptions may be filed to a tentative decision in accordance with § 953.14.

§ 953.17 Disposition.

Mail matter found to be nonmailable shall be held at the post office where detained for a period of 15 days from the date of the Postal Service decision, unless extended by the Judicial Officer. During that time the mailer may make application for the withdrawal of the matter. The Judicial Officer shall order the matter returned to the mailer or otherwise disposed of in accordance with 39 U.S.C. 3001(b).

§ 953.18 Ex parte communications.

The provisions of 5 U.S.C. 551(14), 556(d) and 557(d) prohibiting ex parte communications are made applicable to proceedings under these rules of practice.

PART 954—RULES OF PRACTICE IN PROCEEDINGS RELATIVE TO THE DENIAL, SUSPENSION, OR REVOCATION OF SECOND-CLASS MAIL PRIVILEGES

4. Part 954 is amended by adding new § 954.26 reading as follows:

§ 954.26 Ex parte communications.

The provisions of 5 U.S.C. 551(14), 556(d) and 557(d) prohibiting ex parte communications are made applicable to proceedings under these rules of practice.

PART 957—RULES OF PRACTICE IN PROCEEDINGS RELATIVE TO DEBARMENT AND SUSPENSION FROM CONTRACTING

5. Part 957 is amended by adding new § 957.28 reading as follows:

§ 957.28 Ex parte communications.

The provisions of 5 U.S.C. 551(14), 556(d) and 557(d) prohibiting ex parte communications are made applicable to proceedings under these rules of practice.

PART 958—RULES OF PRACTICE IN PROCEEDINGS RELATIVE TO THE REFUSAL TO RENT OR RENEW POST OFFICE BOXES AND THE CLOSING OF POST OFFICE BOXES

6. Part 958 is amended by adding new § 958.14 reading as follows:

§ 958.14 Ex parte communications.

The provisions of 5 U.S.C. § 551(14), 556(d) and 557(d) prohibiting ex parte communications are made applicable to proceedings under these rules of practice.

PART 959—RULES OF PRACTICE IN PROCEEDINGS RELATIVE TO THE PRIVATE EXPRESS STATUTES

7. Part 959 is amended by adding new § 959.31 reading as follows:

§ 959.31 Ex parte communications.

The provisions of 5 U.S.C. 551(14), 556(d) and 557(d) prohibiting ex parte communications are made applicable to proceedings under these rules of practice.

EDWARD F. LUSSIER,
Judicial Officer.

[FR Doc.77-2795 Filed 1-27-77;8:45 a.m.]

Title 41—Public Contracts and Property Management

CHAPTER 114—DEPARTMENT OF THE INTERIOR

PART 114-43—UTILIZATION OF PERSONAL PROPERTY

Miscellaneous Amendment

Pursuant to the authority of the Secretary of the Interior contained in 5 U.S.C. 301 and 40 U.S.C. 486(c), Subpart 114-43.1 of Chapter 114, Title 41 of the Code of Federal Regulations, is amended as set forth below.

This amendment relates only to matters of internal Department practice. It is, therefore, determined that the public rulemaking procedure is unnecessary and this amendment shall become effective on January 28, 1977.

NOTE.—The Department of the Interior has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107.

ALBERT C. ZAPANTA,
Assistant Secretary of the Interior.

JANUARY 17, 1977.

This amendment redesignates 114-43.104 as 114-43.001 to comply with the FPMR format, and the definitions of terms are revised.

1. The Table of Contents is amended to delete 114-43.104 through 114-43.104-52 and add new entries to read as follows:

Sec.

114-43.000	Scope of part.
114-43.001	Definitions.
114-43.001-50	Available personal property.
114-43.001-51	Reportable personal property.
114-43.001-52	Nonreportable personal property.

Subpart 114-43.1—General Provisions

114-43.101	Surveys.
114-43.102	Reassignment of property within executive agencies.
114-43.102-50	Holding bureau utilization.
114-43.102-51	Screening nonreportable available property.
114-43.102-52	Screening reportable available property.
114-43.102-53	Documentation of transfers.

2. Section 114-43.000 is revised and §§ 114-43.001 through 114-43.001-52 are added to read as follows:

§ 114-43.000 Scope of part.

The provisions of this part are applicable to all personal property except—

(a) Automatic data processing equipment and supplies, and

(b) Books, periodicals, other publications, and related material.

§ 114-43.001 Definitions.

§ 114-43.001-50 Availability personal property.

"Available personal property" means any personal property that is no longer needed by the holding activity, and is available for use by other Interior activities.

§ 114-43.001-51 Reportable personal property.

"Reportable personal property" means any personal property that has been determined to be excess to the needs of the Department of the Interior and is required to be reported to the General Services Administration.

§ 114-43.001-52 Nonreportable personal property.

"Nonreportable personal property" means any personal property that has been determined to be excess to the needs of the Department of the Interior and is not required to be reported to the General Services Administration except for sale purposes.

§ 114-43.104 [Deleted]

Section 114-43.104 is deleted in its entirety.

[FR Doc.77-2804 Filed 1-27-77;8:45 am]

Title 49—Transportation

SUBTITLE A—OFFICE OF THE SECRETARY OF TRANSPORTATION

[OST Docket No. 16; Amdt. 99-10]

PART 99—EMPLOYEE RESPONSIBILITIES AND CONDUCT

Conflict of Interest; Revision; Corrections

On January 14, 1977 (42 FR 3118), the Secretary of Transportation caused to be published revisions to the Department of Transportation's regulations governing conflict of interest. This document remedies an omission and makes several technical corrections as follows:

1. In Appendix C, Section II, after the caption "Federal Aviation Administration" and before the caption "Office of General Aviation," the following is inserted:

Associate Administrators
Deputy Associate Administrators

OFFICE OF THE ASSOCIATE ADMINISTRATOR FOR ADMINISTRATION

*Chief, Program Review Staff

OFFICE OF THE ASSOCIATE ADMINISTRATOR FOR POLICY DEVELOPMENT AND REVIEW

*Aviation Policy Specialist

OFFICE OF THE ASSOCIATE ADMINISTRATOR FOR AIR TRAFFIC AND AIRWAY FACILITIES

* Special Assistant
* Chief, Program Management Staff
*Program Analyst, GS-14/15

OFFICE OF CHIEF COUNSEL

*Chief Counsel
*Deputy Chief Counsel
*Assistant Chief Counsel
*Special Assistant to the Chief Counsel
*Special Counsel for Regulations
*Deputy Assistant Chief Counsel
*Branch Chiefs
*Chief, Legislative Staff
*Chief, Environmental Law Staff
Attorney Advisor, Procurement Legal Division, GS-13/15

OFFICE OF CIVIL RIGHTS

Director
Deputy Director
Civil Rights Specialist, GS-13 and above, engaged in Contract Compliance Review

OFFICE OF PUBLIC AFFAIRS

*Assistant Administrator

OFFICE OF AVIATION SAFETY

Assistant Administrator

2. In § 99.735-11(A)(2) delete the word "his" in the second and third lines.

3. In § 99.735-15(a), last line:

(a) Delete the letter "s" from the word "paragraphs."

(b) Change the letter "(j)" to "(h)."

(c) Delete the following word, letter and parentheses: "• • • and (j) • • •".

4. In § 99.735-15(c)(2), delete the brackets "[" "]" after the words "interest" and "participation."

5. In § 99.735-35(b), delete the word "his" from the thirty-fifth line.

6. In § 99.735-37, delete the bracket, "]", from the third line.

7. In Appendix B, Section (s) change the citation 2 U.S.C. 441i to 4411.

Issued in Washington, D.C., on January 19, 1977.

WILLIAM T. COLEMAN, JR.,
Secretary of Transportation.

[FR Doc.77-2730 Filed 1-27-77;8:45 am]

CHAPTER X—INTERSTATE COMMERCE COMMISSION

SUBCHAPTER A—GENERAL RULES AND REGULATIONS

[Eighth Rev. S.O. 1234]

PART 1033—CAR SERVICE

Distribution of Freight Cars

At a Session of the INTERSTATE COMMERCE COMMISSION, Railroad Service Board, held in Washington, D.C., on the 24th day of January, 1977.

It appearing, That there is an acute shortage of freight cars for transporting shipments of citrus pulp, citrus pellets, fertilizer, phosphate (dried or ground, treated or untreated, fish meal, grain, grain products, *salt, soybeans, soybean products, cottonseed hulls, peanut hulls, or soybean hulls; that certain tariff provisions require the use of cars of specified cubic or weight carrying capacities; that the carriers are unable to furnish sufficient such cars to transport shipments of such weights; that cars of lesser capacity are available; that such cars cannot be used because of certain tariff provisions; that there is immediate need to use every available car for transportation of fertilizer and grain; that the inability of the carriers to furnish sufficient fertilizer and grain cars results in great economic loss; and that present regulations and practices with respect to the use, supply, control, moevment, and distribution of fertilizer and grain cars are ineffective. It is the opinion of the Commission that an emergency exists requiring immediate action to promote car service in the interest of the public and the commerce of the people. Accordingly, the Commission finds that notice and public procedure are impracticable and contrary to the public interest, and that good cause exists for making this order effective upon less than thirty days notice.

It is ordered, That:

§ 1033.1234 Distribution of freight cars.

(a) Subject to the concurrence of the shipper, carriers may substitute a sufficient number of smaller cars for larger cars ordered to transport shipments of citrus pulp, citrus pellets, fertilizer, phosphate (dried or ground, treated or untreated, fish meal, grain, grain products, salt,[1] soybeans, soybean products, cottonseed hulls, peanut hulls or soybean hulls regardless of tariff requirements specifying minimum cubic or weight carrying capacity. (See exceptions (b) and (c).)

(b) *Exception.* This order shall not apply to shipments subject to tariff provisions requiring the use of twenty-five or more cars per shipment.

(c) *Exception.* This order shall not apply to shipments subject to tariff pro-

[1] Addition.

visions which require that cars be furnished by the shipper.

(d) *Rates and Minimum Weights Applicable.* The rates to be applied and the minimum weights applicable to shipments for which cars smaller than those ordered have been furnished and loaded as authorized by Section (a) of this order shall be the rates and minimum weights applicable to the larger cars ordered.

(e) *Billing to be Endorsed.* The carrier substituting smaller cars for larger cars as authorized by Section (a) of this order shall place the following endorsement on the bill of lading and on the waybills authorizing movement of the car:

Car of (----) cu. ft. and of (----) lbs. or greater capacity ordered. Smaller cars furnished authority Eighth Revised ICC Service Order No. 1234.

(f) *Concurrence of Shipper Required.* Smaller cars shall not be furnished in lieu of cars of greater capacity without the consent of the shipper.

(g) *Exceptions.* Exceptions to this order may be authorized to railroads by the Railroad Service Board, Washington, D.C., 20423. Requests for such exception must be submitted in writing, or confirmed in writing, and must clearly state the points at which such exceptions are requested and the reason therefor.

(h) *Rules and Regulations Suspended.* The operation of all rules, regulations, or tariff provisions is suspended insofar as they conflict with the provisions of this order.

(i) *Application.* The provisions of this order shall apply to intrastate, interstate, and foreign commerce.

(j) *Effective date.* This order shall become effective at 12:01 a.m., January 25, 1977.

(k) *Expiration date.* This order shall expire at 11:59 p.m., February 28, 1977, unless otherwise modified, changed, or suspended by order of this Commission.

(Secs. 1, 12, 15, and 17(2), 24 Stat. 379, 383, 384, as amended; 49 U.S.C. 1, 12, 15, and 17(2). Interprets or applies secs. 1(10–17), 15(4), and 17(2), 40 Stat. 101, as amended, 54 Stat. 911; 49 U.S.C. 1(10–17), 15(4), and 17(2).)

It is further ordered, That a copy of this order and direction shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association; and that notice of this order be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing it with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members Joel E. Burns, Lewis R. Teeple, and Thomas J. Byrne.

ROBERT L. OSWALD,
Secretary.

[FR Doc.77-2886 Filed 1-27-77;8:45 am]

[Ex Parte No. MC-19 (Sub-No. 29)]

PART 1056—TRANSPORTATION OF HOUSEHOLD GOODS IN INTERSTATE OR FOREIGN COMMERCE

Practices of Motor Common Carriers of Household Goods (Performance Reports); Correction

In Ex Parte No. MC-19 (Sub-No. 19 (a)) *Practices of Motor Common Carriers of Household Goods (Consumer Protection—Kingpak Carriers)*, order entered January 5, 1976 (not printed), the Interstate Commerce Commission amended § 1056.7(b) of its General Rules and Regulations (49 CFR 1056.7(b)) by excepting so-called "Kingpak" and "pack and crate" carriers from the requirement that motor common carriers of household goods must file an annual performance report (described in § 1056.7(b)) with the Commission. In that proceeding, the Commission also combined former § 1056.7(b)(3)(1) with former § 1056.7(b)(3)(k), renumbered former § 1056.7(b)(3)(a) through (k) as § 1056.7(b)(3)(i) through (xi), respectively, and reworded certain of those subsections. Subsection 1056.7(b)(3)(ix) was reworded to make it clear that household goods carriers must list in their performance reports the percentage of shipments on which claims were filed due to carrier delay. Subsection 1056.7(b)(3)(x) was reworded to make it clear that carriers must report the average number of consecutive days required to settle loss or damage claims. Subsection 1056.7(b)(3)(xi) was phrased to make it clear that the figures sought in that subsection related to a common whole figure, i.e., all those claims settled during the calendar year. Other minor changes were made to the wording of § 1056.7(b)(3)(i) through (viii). Notice of these changes was published in the FEDERAL REGISTER on January 12, 1976 at page 1742.

By order entered November 19, 1976, in Ex Parte No. MC-19 (Sub-No. 29) *Practices of Motor Common Carriers of Household Goods (Performance Reports)*, 125 M.C.C. 766, the Commission determined, among other things, that § 1056.7(b) should be modified by extending the deadline for the filing of performance reports with this Commission to March 31 of each year. The Commission further determined that § 1056.7(b)(3)(x) [referred to in that proceeding as § 1056.7(b)(3)(j)] should be revised to require carriers to furnish more specific information relating to the length of time required for the settlement of claims for loss or damage. Notice of these changes was published in the FEDERAL REGISTER on December 7, 1976, at page 53485.

In drafting the amendments to § 1056.7(b) in Ex Parte No. MC-19 (Sub-No. 29), inadvertently overlooked were the amendments previously made to that subsection in Ex Parte No. MC-19 (Sub-No. 19(a)). Therefore, this notice reflects the proper wording of § 1056.7(b) to reflect the amendments made to that subsection in both of the above-described proceedings. Thus, § 1056.7(b) now provides that motor common carriers of household goods (with the exception of "Kingpak" and "pack and crate" carriers, who are not required to file such reports) must file annual performance reports on or before March 31 of each year. Subsections 1056.7(b)(3)(ix) and (xi) are phrased to conform to the changes made by the Commission in Ex Parte No. MC-19 (Sub-No. 19(a)). Subsection 1056.7(b)(3)(x) has been rewritten to reflect the rephrasing of that subsection by the Commission in both Ex Parte No. MC-19 (Sub-No. 19(a)) [in which the Commission required household goods carriers to list the average number of consecutive days required to settle claims for loss or damage] and in Ex Parte No. MC-19 (Sub-No. 29) [in which the Commission required household goods carriers to list the percentage of claims filed within certain time periods, in addition to the average length of time required to settle claims for loss or damage].

No additional substantive changes have been made to § 1056.7(b).

(49 U.S.C. 301, 302, 304, 308, 316, and 320, and 5 U.S.C. 552, 553, and 559.)

By the Commission.

ROBERT L. OSWALD,
Secretary.

Accordingly, 49 CFR 1056.7(b) has been modified so that it now should read as follows:

§ 1056.7 Information for shippers.

* * * * *

(b) Each motor common carrier of households goods, *except* carriers engaged in the transportation of household goods solely under authority which reads: "Used household goods, restricted to the transportation of shipments having a prior or subsequent movement, in containers, beyond the points authorized and further restricted to the performance of pickup and delivery service in connection with the packing, crating, and containerization or unpacking", shall on or before March 31 of each year cause to be filed with the Commission's Bureau of Operations, Washington, D.C., and each of the Commission's regional offices, a summary of its service record for the previous calendar year providing the following information:

(1) Name of motor carrier and domicile address.

(2) I.C.C. MC number.

(3) By type of account (c.o.d. shipper, Department of Defense, and national accounts and other Government traffic) specify the following:

(i) Number of shipments delivered and number of estimates on such shipments.

(ii) Percentage of shipments on which there occured a 10 percent or greater over-estimation of charges.

(iii) Percentage of shipments on which there occured a 10 percent or greater under-estimation of charges.

(iv) Percentage of shipments picked up more than 5 days later than specified in the order for service.

(v) Percentage of shipments picked up 1 to 5 days later than specified in the order for service.

(vi) Percentage of shipments delivered more than 5 days later than specified in the order for service.

(vii) Percentage of shipments delivered 1 to 5 days later than specified in the order for service.

(viii) Percentage of shipments on which a $50 or greater claim for loss or damages was filed.

(ix) Percentage of shipments delivered on which a claim was filed for damage or expenses resulting from carrier delay.

(x) (A) Average number of consecutive days required to settle claims for loss or damage (for claims settled during the calendar year).

(B) Percentage of claims for loss or damage settled within 30 days of filing (for claims settled during the calendar year).

(C) Percentage of claims for loss or damage settled within 60 days of filing (for claims settled during the calendar year).

(D) Percentage of claims for loss or damage settled more than 60 days from the date of filing (for claims settled during the calendar year).

(xi) The percentage of claims settled during the calendar year which were settled:

(A) Prior to institution of a law suit by the shipper to recover damages.

(B) After the institution of a law suit by the shipper and prior to the entering of a final judicial decree.

(C) Subsequent to the entering of a final judicial decree.

Copies of this report shall be served upon potential shippers as provided in paragraph (a) of this section. Carriers shall have available supporting documission's Bureau of Operations upon reof such statistics and shall make such documentation available to this Commission's Bureau of Operations upon request. Subjective evaluations by the carrier of its performance may be appended to the objective statistics required above, but on separate pages so as not to obscure in any way the statistical data required by this section.

[FR Doc.77-2887 Filed 1-27-77;8:45 am]

proposed rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 967]

[Docket No. AO–354–A2]

CELERY GROWN IN FLORIDA

Supplemental Notice of Hearing on Proposed Amendment of Marketing Agreement and Order

This notice is supplemental to the notice of hearing which was published in the January 13, 1977, issue of the FEDERAL REGISTER (42 FR 2691), regarding a public hearing to be held with respect to a proposed amendment of marketing agreement and Order No. 967, both as amended, regulating the handling of celery grown in Florida.

Subsequent to the publication of the notice of hearing, the Florida Celery Committee unanimously recommended the following proposal as the method of determining Base Quantities rather than that set forth in Proposal No. 4 in the notice published in the January 13 FEDERAL REGISTER. This proposal has not received the approval of the Secretary of Agriculture.

The proposal is as folows:

Amend § 967.37 to read as follows:

§ 967.37 Base quantities.

(a) Base Quantities shall be those which have been established by the Florida Celery Committee for the 1976–77 season and as recorded on December 15, 1976.

* * * * *

Signed at Washington, D.C., on January 26, 1977.

WILLIAM T. MANLEY,
Deputy Administrator
Program Operations.

[FR Doc.77-2950 Filed 1-27-77;8:45 am]

[7 CFR Part 1260]

[Docket No. BRIA–1]

BEEF RESEARCH AND INFORMATION

Recommended Decision and Opportunity to File Written Exceptions

Correction

In FR Doc. 77–2240, appearing at page 4476 in the issue for Tuesday, January 25, 1977, the following changes should be made:

1. Between the fifth and sixth lines of the second full paragraph on page 4481, first column, insert the words, "projects to be undertaken, and it is".

2. Replace the last two lines of the first full paragraph on page 4483, first column with, "-ual has owned the animal from birth to slaughter.".

3. The next to last word in the fourth line of § 1260.163 on page 4487, third column, should read, "demand".

FEDERAL ENERGY ADMINISTRATION

[10 CFR Part 211]

SPECIAL RULE NO. 8 FOR SUBPART C PROVIDING ENTITLEMENT BENEFITS FOR IMPORTED NO. 2 HEATING OIL

Notice of Proposed Rulemaking and Public Hearing

On January 18, 1977 FEA issued a notice (42 FR 4525; January 25, 1977) providing for public hearings in Minneapolis, Minnesota, and Boston, Massachusetts, and for the filing of written comments with respect to the current price levels for and the adequacy of supplies of middle distillates. The public hearings will be held on Friday, January 28, 1977 and will be continued to Saturday, January 29, if necessary. FEA's announced intention in soliciting public comments on these issues was to provide the agency with background information as to any supply or pricing problems that may arise this heating season, particularly in the North Central and Northeastern states, so that FEA would be able to anticipate and take appropriate action should any such problems develop.

In this notice, FEA invited comments as to whether any regulatory action by FEA was required at this time and, if required, what type of modifications to FEA's regulatory programs would be most appropriate. In this connection, FEA requested comments as to whether the reimposition of controls on a partial or total basis was appropriate and whether, for example, entitlement benefits should be extended to imported middle distillates.

Since the issuance of this notice, FEA has received advice from numerous persons in the North Central and North East regions as to severe potential supply problems for No. 1 fuel oil in the North Central region and No. 2 fuel oil in the North East region. FEA was informed that stocks of No. 1 fuel oil in the North Central region had declined, due to the severity of the winter and to difficulties in transporting that product into the region. In response to the potential supply problems for No. 1 fuel oil in the North Central region in particular, FEA issued an emergency amendment on January 24, 1977 that provided FEA with the specific authority to require refiners to adjust their yields of kerosene-base aviation fuel to levels that permit them to supply that product at a specified allocation fraction, thereby increasing their production and supplies of No. 1 fuel oil. As of the date of this notice, pursuant to the authority set forth in this emergency amendment, FEA has issued orders to six refiners with respect to nine refineries owned by them. FEA is also advised that stocks of middle distillates in the North East region declined by twenty percent during the first two weeks of January.

Due to the extraordinarily high level of demand for No. 2 heating oil caused by the continuing unusually severe winter, FEA has now determined that it should also receive public comment on a specific proposal to extend entitlement benefits to imports of No. 2 heating oil to forestall possible supply problems or preclude severe price increases if the supplies must be made available from imported product. Entitlement benefits for No. 2 heating oil could be expected to induce increased importation of No. 2 heating oil and, thereby, relieve pressures on domestic refineries which are already producing at a very high level of capacity utilization. The extension of entitlement benefits for No. 2 heating oil would also inhibit any tendency for prices of domestically refined No. 2 heating oil to rise to imported product price levels if there is a significantly higher than normal level of imports.

In the January 18 notice of public hearing, FEA did request comments on the level or levels in the distribution system at which the recent price increases for middle distillates have taken place and on whether the current price levels are justified, taking into account normal seasonal increases and the higher costs of any imports into the particular region. FEA will utilize information received at the Boston and Minneapolis hearings, as well as under the comment procedures provided in this proceeding, to make its final determination.

PROPOSED ENTITLEMENT BENEFITS FOR IMPORTED NO. 1 HEATING OIL

Therefore, FEA is hereby proposing the extension of entitlement benefits to imports of No. 2 heating oil in the months February and March 1977 into PAD Districts I through IV. The per barrel entitlement value to be awarded to these imports is proposed as 65% of the applicable per barrel crude oil entitlement value under the entitlements program for the month in which the import takes place. FEA is proposing this 65% entitlement value in conformity with its December 23, 1976 proposal as to the interrelation of the import program and certain changes to FEA's entitlements program with respect to residual fuel oil imports.

In that proposal, FEA set forth its preliminary determination that the proper advantage for domestic refiners refining imported crude oil as compared with offshore refiners was 84 cents per barrel. Thus, to calculate the appropriate entitlement value for purposes of this proposal, FEA has assumed that No. 2 heating oil imports are subject to the 10.5 cent per barrel import tariff, but that such imports are not effectively subject to the 63 cents product import fee, since any fees due have been for the most part offset by tariffs payable as to residual fuel oil imports not subject to the fee. FEA has also assumed that the effective level of import fees and tariffs on crude oil approximates 10.5 cents per barrel, since only slightly in excess of 30% of crude oil imports is subject to the 21 cents per barrel import fee and these fees are offset by the tariff on crude imports. Thus, it appears necessary at this stage to implement the full 84 cents per barrel differential through the entitlements program. Based on a projected $2.40 per barrel crude oil entitlement value for February 1977 (which utilizes the November 1976 value of $2.16 and takes into acount the January 1 OPEC increase), it would be necessary to grant importers $1.56 per barrel, or approximately 65% of $2.40, which will provide domestic refiners with the appropriate 84 cents per barrel advantage.

If adopted, this proposal would be implemented by the addition of a Special Rule No. 8 to the appendix to Subpart C of Part 211. The Special Rule proposed hereby would treat imports of No. 2 heating oil into PAD Districts I through IV in the same fashion that imports of residual fuel oil into the East Coast market are currently provided for under Section 211.67(a)(3). In other words, the importer of record would be the firm eligible to receive an entitlement issuance with respect to the import of the product. Imports from the U.S. Virgin Islands, as is the case with imports of residual fuel oil, would not be eligible for entitlement benefits. Since FEA is not aware of any existing or potential No. 2 heating oil supply or pricing problems in either PAD District V or Puerto Rico, imports into those areas are not proposed to be included in the coverage of the Special Rule.

FEA specifically invites comments on whether imports in the month of April 1977 should also be eligible for entitlement benefits and as to how FEA can be assured that any entitlement benefits awarded under these procedures will be passed through to consumers in the form of current price reductions that anticipate the entitlement revenues to be received for the particular imports. In this latter context, FEA does not believe that it would be appropriate to provide domestic refiners and marketers with these entitlement benefits without reasonable assurances that the benefits would flow through to consumers this heating season, starting with appropriate billing adjustments effective from February 1, 1977. In addition, FEA requests comments on whether other middle distillates, such as No. 2-D diesel fuel, kerosene, and No. 1 oils should also be eligible for import entitlements. Finally, FEA wishes to receive comments as to whether adoption of this proposal would assist domestic refiners in converting their production to yield more motor gasoline, thus enabling gasoline stocks to be increased to normal levels prior to the high demand summer driving season.

Section 7(c)(1) of the FEAA provides that FEA shall, before promulgating proposed regulations affecting the quality of the environment, provide a period of not less than five working days during which the Administrator of the Environmental Protection Agency ("EPA") may provide written comments concerning the impact of such regulations on the quality of the environment. Such comments are required to be published concurrently with or as part of the notice of proposed rulemaking.

Under section 7(c)(2) of the FEAA, the prior review required by section 7(c)(1) may be waived for a period of 14 days if there is an emergency situation which requires taking action at a date earlier than would permit the EPA the five day opportunity for prior comment required under section 7(c)(1). Notice of any such waiver must be given to the EPA and filed with the FEDERAL REGISTER with the notice of proposed or final FEA action and must include an explanation of the reasons for such waiver together with supporting data and factual background information.

Pursuant to section 7(c)(2) of the FEAA, FEA hereby waives the requirements of section 7(c)(1) of the FEAA concerning prior review by EPA of the environmental impact of this rulemaking. This waiver is based on an emergency situation which, as explained above, may very well mandate that FEA take immediate steps to ensure adequate supply and equitable prices to users of No. 2 heating oil. A copy of this notice has been sent concurrent with its issuance to the Administrator for his comments.

In accordance with Executive Order 11821 and OMB Circular A–107, FEA is considering the inflationary impact of this proposal.

PUBLIC HEARING AND WRITTEN COMMENT PROCEDURES

A public hearing on this proposal will be held beginning at 9:30 a.m., on Monday, February 7, 1977, in Room 5041, Federal Building, 1200 Pennsylvania Avenue N.W., Washington, D.C., to receive comments from interested persons. Any person who has an interest in the subject of the hearing, or who is a representative of a group or class of persons which has an interest in the subject of the hearing, may make a written request for an opportunity to make an oral presentation. Such a request should be directed to Executive Communications, FEA, 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20461, and must be received before 4:30 p.m., e.s.t., Wednesday, February 2, 1977. Such a request may be hand delivered to Room 3309, Federal Building, 1200 Pennsylvania Avenue, N.W., Washington, D.C., betwen the hours of 8:00 a.m. and 4:30 p.m., e.s.t., Monday through Friday, except Federal holidays. The person making the request should be prepared to describe the interest concerned; if appropriate, to state why he or she is a proper representative of a group or class of persons which has such an interest; and to give a concise summary of the proposed oral presentation and a phone number where he or she may be contacted through Friday, February 4, 1977. Each person selected to be heard will be so notified by FEA before 5:30 p.m., e.s.t., Thursday, February 3, 1977, and must submit 100 copies of his or her statement to Executive Communications, FEA, 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20461, before 5:30 p.m., e.s.t., Friday, February 4, 1977.

FEA reserves the right to select the persons to be heard at the hearing, to schedule their respective presentations, and to establish the procedures governing the conduct of the hearing. Each presentation may be limited, based on the number of persons requesting to be heard.

An FEA official will be designated to preside at the hearing. It will not be a judicial or evidentiary-type hearing. Questions may be asked only by those conducting the hearing, and there will be no cross-examination of persons presenting statements. At the conclusion of all initial oral statements, each person who has made an oral statement will be given the opportunity, if he or she so desires, to make a rebuttal statement. The rebuttal statements will be given in the order in which the initial statements were made and will be subject to time limitations.

Any interested person may submit questions, to be asked of any person making a statement at the hearing, to Executive Communications, FEA, before 4:30 p.m., e.s.t., Friday, February 4, 1977. Any person who makes an oral statement and who wishes to ask a question at the hearing may submit the question, in writing, to the presiding officer. FEA or the presiding officer, if the question is submitted at the hearing, will determine whether the question is relevant, and whether time limitations permit it to be presented for answer.

Any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer.

A transcript of the hearing will be made and the entire record of the hearing, including the transcript, will be retained by FEA and made available for inspection at the FEA Freedom of Information Office, Room 2107, Federal Building, 1200 Pennsylvania Avenue, NW., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Anyone may purchase a copy of the transcript from the reporter.

Interested persons are invited to submit data, views, or arguments with respect to this proposal to Executive Communications, Federal Anergy Adminis-

tration, Box KO, Washington, D.C. 20461.

Comments should be identified on the outside envelope and on documents submitted to Executive Communications, FEA, with the designation "Entitlement Benefits for Imported No. 2 Heating Oil." Fifteen copies should be submitted. All comments received by 4:30 p.m., Monday, February 7, 1977, and all relevant information, will be considered by FEA.

Any information or data considered by the person furnishing it to be confidential must be so identified and submitted in writing, in accordance with the procedures stated in 10 CFR 205.9(f). FEA reserves the right to determine the confidential status of the information or data and to treat it according to its determination.

(Emergency Petroleum Allocation Act of 1973, Pub. L. 93–159, as amended, Pub. L. 93–511, Pub. L. 94–99, Pub. L. 94–133, Pub. L. 94–163, and Pub. L. 94–385; Federal Energy Administration Act of 1974, Pub. L. 93–275, as amended, Pub. L. 94–332 and Pub. L. 94–385; Energy Policy and Conservation Act, Pub. L. 94–163, as amended, Pub. L. 94385; E.O. 11790, 39 FR 23185; E.O. 11933, 41 FR 36641.)

In consideration of the foregoing, Part 211 of Chapter II, Title 10 of the Code of Federal Regulations, is proposed to be amended as set forth below.

Issued in Washington, D.C., January 26, 1977.

DAVID G. WILSON,
Acting General Counsel.

The appendix to Subpart C of Part 211 is amended by the addition of a Special Rule No. 8 to read as follows:

SPECIAL RULE NO. 8

1. *Scope.* This Special Rule provides, for the months February and March 1977, for the issuance of entitlements under § 211.67 with respect to imports of No. 2 heating oil into PAD Districts I through IV.

2. *Entitlement issuances for middle distillate imports.* (a) For purposes of subparagraph (3) of paragraph (a) of § 211.67, imports of No. 2 heating oil into PAD Districts I–IV in the months of February and March 1977 (other than imports into the United States customs territory from the U.S. Virgin Islands) shall be considered an eligible product, and any firm that imports No. 2 heating oil into PAD Districts I through IV for sale or use in those Districts, that is the importer of record under a license issued pursuant to Part 213 of this chapter and that owns the eligible product at the time of importation thereof pursuant to that license shall be considered an eligible firm. Importation for the purpose hereof shall be as defined in paragraph (j) of § 213.27 of Part 213 of this chapter.

(b) The number of entitlements issuable under paragraph (a) above shall be equivalent to sixty-five (65%) percent of the number of entitlements that would be received by a refiner (without giving effect to the provisions of § 211.67(a)) in that month with respect to the inclusion of a number of barrels of crude oil in that refiner's crude oil runs to stills equal to the number of barrels of eligible product imported by that eligible firm.

3. *Reporting requirements.* The reporting requirements set forth in paragraph (j) of § 211.66 shall apply with respect to eligible firms' imports of No. 2 heating oil in the months February and March 1977.

4. *Provisions of Subpart C.* The provisions of Subpart C of Part 211 shall remain in full force and effect except as expressly modified by the provisions of this Special Rule.

[FR Doc.77–3018 Filed 1–26–77;4:36 pm]

[10 CFR Part 212]

PRODUCTION AND SALE OF "IMPUTED STRIPPER WELL CRUDE OIL" FROM UNITIZED PROPERTIES

Proposed Rulemaking and Public Hearing; Correction

On January 19, 1977 the Federal Energy Administration ("FEA") gave notice of a proposed rulemaking and public hearing to consider a proposal to amend 10 CFR 212.75 so as to compute volumes of "imputed stripper well crude oil" produced and sold from unitized properties on a percentage basis. In that Notice FEA indicated that requests to make oral presentations must be received by FEA before 4:30 p.m. on Wednesday, January 26, 1977, and that witnesses would be notified by 4:30 p.m. on Friday, January 28, 1977.

Inasmuch as the January 19 Notice did not appear in the FEDERAL REGISTER until January 25, 1977 42 FR 4491, FEA hereby extends the period for requests to make oral presentations. Such requests must be received by FEA before 4:30 p.m., Tuesday, February 1, 1977; witnesses will be notified by 4:30 p.m., Thursday, February 3, 1977. The public hearing will be held, as scheduled, on Friday, February 11, 1977. In all other respects, the Notice remains unchanged.

DAVID G. WILSON,
Acting General Counsel,
Federal Energy Administration.

JANUARY 25, 1977.

[FR Doc.77–2815 Filed 1–25–77;3:27 pm]

EXPORT-IMPORT BANK OF THE UNITED STATES

[12 CFR Part 405]

RULES GOVERNING PUBLIC OBSERVATION OF EXIMBANK MEETINGS

Implementation of Government in Sunshine Act

In accordance with the Government in the Sunshine Act, 5 U.S.C. 552b, and to implement the provisions of that act, Eximbank proposes to amend Title 12 of the Code of Federal Regulations by adding a new Part 405.

Written comments concerning these proposed regulations are invited from interested persons. Comments should be presented in writing to the Office of the General Counsel, Export-Import Bank of the United States, 811 Vermont Avenue, NW, Washington, D.C. 20571. An original and four conformed copies should be filed with the General Counsel and should disclose the name, title, mailing address and telephone number of the person submitting the comments. All written comments received no later than February 28, 1977, will be considered. Such written comments will be made available until that date for public inspection at the Office of the General Counsel of Eximbank during regular business hours.

The purpose of new Part 405 of Title 12 of the Code of Federal Regulations is to implement sections (b) through (f) of the Government in the Sunshine Act, 5 U.S.C. 552b (b) through (f), and they are made pursuant to section (g) of the Government in the Sunshine Act, 5 U.S.C. 552b(g). They recognize that the public is entitled to the fullest practicable information regarding the decision-making processes of Eximbank, while at the same time the rights of individuals and the ability of Eximbank to carry out its statutory responsibilities should be protected.

Pursuant to the Export-Import Act of 1945, as amended, 12 U.S.C. 635 et seq., Eximbank is directed "to aid in financing and to facilitate exports and imports and the exchange of commodities * * *" In carrying out this statutory mandate, Eximbank is required to provide financial assistance "* * * for specific purposes" i.e., for individual transactions involving the export of U.S. goods and services. Additional statutory provisions require that every transaction "in the judgment of the Board of Directors, offer reasonable assurance of repayment" and that "in authorizing any loan or guarantee, the Board of Directors * * * take into account any serious adverse effect of such loan or guarantee on the competitive position of United States industry, the availability of materials which are in short supply in the United States, and employment in the United States". In order to do so, Eximbank draws upon information supplied by U.S. manufacturers, exporters, service organizations, financial institutions, and foreign borrowers and guarantors. Such information almost always involves information of the kind exempt from disclosure under Exemption 4 of the Freedom of Information Act, 5 U.S.C. 552(b)(4), and is almost always revealed in discussions of each item on the agendas of the regularly scheduled meetings of the Board of Directors or the Executive Committee at which applications for loans, guarantees and insurance are considered. The exact wording of Exemption 4—"trade secrets and commercial or financial information obtained from a person and privileged or confidential"—was included in Exemption 4 of the Government in the Sunshine Act, 5 U.S.C. 552b(4). The Conference Report to the Government in the Sunshine Act indicates that the Exemption 4 contained therein is intended to be read in the same way as the Exemption 4 of the Freedom of Information Act. See Conference Report, Senate Report No. 94–1178, 94th Cong. 2d Session, August 27, 1976 at p. 15.

It should also be noted that in order to comply with its statutory mandate, Eximbank has made use on occasion of information of the kind that would be exempt from disclosure under Sections (8), (9)(A) and (10) of the Government in the Sunshine Act, 5 U.S.C. 552b(c)

(8), (9)(A) and (10), Eximbank is likely to continue to do so in the future.

For these reasons, Eximbank has made a determination to close its regularly scheduled meetings by regulation as provided in § 405.2(b) below. At the same time, Eximbank recognizes that official Eximbank business may be jointly conducted or disposed of in meetings that are not regularly scheduled and will be open to public observation subject to the exemptions contained in the Sunshine Act. Although past practice indicates that non-regularly scheduled meetings rarely occur, nevertheless Eximbank has made provision for them as set out in § 405.2(c) below. In the event that such meetings could be closed pursuant to Sections (4), (8), (9)(A), or (10) of the Government in the Sunshine Act, as cited above, they will be governed by the procedures applicable to regularly scheduled meetings as provided in § 405.3 below. If they are closed pursuant to any other exemption, they will be governed by the procedures set out in § 405.4 below.

Regulations to implement sections (b) through (f) of the Government in the Sunshine Act will become effective on March 12, 1977.

The proposed regulations are set forth below.

Dated: January 25, 1977.

WARREN W. GLICK,
General Counsel.

PART 405—RULES GOVERNING PUBLIC OBSERVATION OF EXIMBANK MEETINGS

Sec.
405.1 Purpose, scope and definitions.
405.2 Closing meetings.
405.3 Procedures applicable to regularly scheduled meetings.
405.4 Procedures applicable to other meetings.
405.5 Certification by General Counsel.
405.6 Transcripts, recordings and minutes of closed meetings.
405.7 Relationship to Freedom of Information Act.

§ 405.1 Purpose, scope and definitions.

(a) Consistent with the principles that: (1) The public is entitled to the fullest practicable information regarding the decision-making processes of the Federal Government, and

(2) The rights of individuals and the ability of the Export-Import Bank of the United States to carry out its statutory responsibilities should be protected, this Part is promulgated pursuant to the directive of section (g) of the Government in the Sunshine Act, 5 U.S.C. 552b(g), and specifically implements sections (b) through (f) of said Act, 5 U.S.C. 552b (b) through (f).

(b) The term "meeting" means any meeting of the Board of Directors of Eximbank at which a quorum is present or any meeting of the Executive Committee of the Board of Directors where deliberations of the Board of Directors or the Executive Committee determine or result in the joint conduct or disposition of official Eximbank business.

(c) The term "regularly scheduled meeting" means meetings of the Board of Directors or the Executive Committee which are held at 10 a.m. on Tuesday and Thursday of each week.

(d) The term "General Counsel" means the General Counsel and his or her designees.

§ 405.2 Closing meetings.

(a) Except where Eximbank finds that the public interest requires otherwise, a meeting, or any portion thereof, may be closed to the public, where the Board of Directors or the Executive Committee determines that such meetings, or any portion thereof, or information pertaining to such meeting, or any portion thereof, is likely to:

(1) Disclose matters that are: (i) Specifically authorized under criteria established by an Executive order to be kept secret in the interests of national defense or foreign policy, and (ii) In fact properly classified pursuant to such Executive order;

(2) Relate solely to the internal personnel rules and practices of Eximbank or any other agency;

(3) Disclose matters specifically exempted from disclosure by statute (other than section 552 of Title 5 of the United States Code), provided that such statute: (i) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (ii) Establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Involve accusing any person of a crime, or formally censuring any person;

(6) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(7) Disclose investigatory records compiled for law enforcement purposes, or information which if written would be contained in such records, but only to the extent that the production of such records or information would: (i) Interfere with enforcement proceedings, (ii) Deprive a person of a right to a fair trial or an impartial adjudication, (iii) Constitute an unwarranted invasion of personal privacy, (iv) Disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (v) Disclose investigative techniques and procedures, or (vi) Endanger the life or physica safety of law enforcement personnel;

(8) Disclose information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions;

(9) Disclose information the premature disclosure of which would: (i) In the case of an agency which regulates currencies, securities, commodities, or financial institutions, be likely to: (A) Lead to significant financial speculation in currencies, securities, or commodities, or (B) Significantly endanger the stability of any financial institution; or

(ii) In the case of Eximbank or any other agency, be likely to significantly frustrate implementation of a proposed agency action; except that subparagraph (ii) shall not apply in any instance where the agency has already disclosed to the public the content or nature of its proposed action, or where the agency is required by law to make such disclosure on its own initiative prior to taking final agency action on such proposal; or

(10) Specifically concern Eximbank's issuance of a subpoena, or Eximbank's participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration.

(b) Inasmuch as opening any regularly scheduled meeting, or any portion thereof, to public observation will be likely to result in the disclosure of the kind of information set forth in § 405.2(a)(4), (8), (9)(i) or (10), or any combination thereof, the Board of Directors hereby closes all regularly scheduled meetings to the public.

(c) Any other meeting of Eximbank, or any portion thereof, will be open to public observation except where the Board of Directors determines that such meeting, or any portion thereof, is likely to disclose information of the kind set forth in any subparagraph of § 405.2(a). In the event that the Board of Directors closes such meeting, or any portion thereof, by virtue of § 405.2(a)(4), (8), (9)(i) or (10), or any combination thereof, the procedures set forth in § 405.3 below will apply, and in the event that the Board of Directors closes such meeting, or any portion thereof, by virtue of any of the remaining subparagraphs of § 405.2(a), or any combination thereof, the procedures set forth in § 405.4 below will apply.

§ 405.3 Procedures applicable to regularly scheduled meetings.

(a) *Announcements.* Regularly scheduled meetings of the Board of Directors or the Executive Committee will be held at 10:00 a.m. every Tuesday and Thursday in the Board Room (Room 1141) of the Bank's headquarters. In the event that a regularly scheduled meeting is rescheduled, public announcement of the time, date and place for such meeting will be made at the earliest practicable time in the form of a notice posted in the Office of the Secretary. An agenda setting forth the subject matter of each regularly scheduled meeting will be made available in the Office of the Secretary (Room 1012, telephone number 202–382–2289) at the earliest practicable time, provided that individual items may be added to or deleted from any agenda at any time. Inquiries from the public regarding any regularly scheduled meeting shall be directed to the Office of the Secretary.

(b) *Voting.* At the beginning of each regularly scheduled meeting, the Board of Directors or the Executive Committee

will vote by recorded vote on whether to close such meeting. No proxy votes will be permitted. A record of such vote indicating the vote of each Director will be posted in the Office of the Secretary immediately following the conclusion of such meeting.

§ 405.4 Procedures applicable to other meetings.

(a) *Announcements.* (1) For every meeting which is to be open to public observation or which is to be closed pursuant to any subparagraph of § 405.2(a) other than subparagraphs (4), (8), (9) (i) or (10), or any combination thereof, public announcement will be made at least one week before the meeting of the time, place, and the agenda setting forth the subject matter of such meeting, and whether the meeting, or any portion thereof, is to be open or closed to the public.

(2) Inquiries from the public regarding any such meeting shall be directed to the Office of the Secretary.

(3) The one-week period for the announcement required by subparagraph (a) (1) of this section may be reduced if the Board of Directors or the Executive Committee determines by a recorded vote that Eximbank business requires such meeting to be called at an earlier date. Public announcement of the time, place, and subject matter of such meeting, and whether open or closed to the public, will be made at the earliest practicable time.

(4) The time or place of a meeting may be changed following the announcement required by subparagraph (a) (1) of this section only if public announcement is made of such change at the earliest practicable time.

(5) The subject matter of a meeting or the determination of the Board of Directors or the Executive Committee to open or close a meeting, or any portion thereof, to the public, may be changed following the announcement required by paragraph (a) only if:

(i) A majority of the entire voting membership of the Board of Directors or the Executive Committee determines by a recorded vote that Eximbank business so requires and that no earlier announcement of the change was possible; and

(ii) The Board of Directors or the Executive Committee announces such change and the vote of each Director upon such change at the earliest practicable time.

(6) Individual items may be added to or deleted from any agenda at any time.

(7) The announcements required pursuant to this subsection shall be made in the form of a notice posted in the Office of the Secretary. In addition, immediately following each announcement required by this subsection, notice of: (i) The time, place and subject matter of a meeting which is to be open to public observation or which is to closed pursuant to any subsection of § 405.2(a) other than subparagraphs (4), (8), (9) (i) or (10), or any combination thereof, (ii) The decision to open or close such meeting, or any portion thereof, or (iii) Any change in any announcement previously made shall be submitted for publication in the FEDERAL REGISTER.

(8) The information required by this subsection shall be disclosed except to the extent that it is exempt from disclosure under any subsection of § 405.2 (a).

(b) *Voting.* (1) Action to close a meeting, or any portion thereof, pursuant to any subparagraph of § 405.2(a), other than subparagraphs (4), (8), (9)(i), or (10) or any combination thereof, shall be taken only when a majority of the entire voting membership of the Board of Directors or the Executive Committee votes to take such action.

(2) A separate vote of the Board of Directors or the Executive Committee shall be taken with respect to each meeting, or any portion thereof, which is proposed to be closed to the public pursuant to any subparagraph of § 405.2(a) other than subparagraphs (4), (8), (9) (i) or (10), or any combination thereof, or with respect to any information which is proposed to be withheld under any subparagraph of § 405.2(a), other than subparagraphs (4), (8), (9)(i) or (10), or any combination thereof.

(3) A single vote of the Board of Directors or the Executive Committee may be taken with respect to a series of meetings, or any portion thereof, which are proposed to be closed to the public pursuant to any subparagraphs of § 405.2(a), other than subparagraphs (4), (8), (9)(i) or (10), or combination thereof, or with respect to any information concerning such series of meetings, so long as each meeting in such series involves the same particular matters and is scheduled to be held no more than 30 days after the initial meeting in such series.

(4) Whenever any person whose interests may be directly affected by any portion of a meeting which is to be open to public observation submits a request in writing to the Office of the Secretary that the Board of Directors or the Executive Committee close such portion to the public under § 405.2(a) (5), (6) or (7), the Board of Directors or the Executive Committee, shall vote by recorded vote on whether to close such portion.

(5) No proxy vote will be permitted for any vote required under this subsection.

(6) A record of each vote indicating the vote of each Director pursuant to subparagraphs (b) (1), (b) (2), (b) (3) or (b) (4) of this section will be posted in the Office of the Secretary within one day after it has been taken, provided that if a meeting or portion thereof is to be closed, such record shall be accompanied by:

(i) A full writting explanation of the reasons for closing such meeting or portion thereof, and (ii) A list of all persons expected to attend such meeting or portion thereof and their affiliation.

§ 405.5 Certification by General Counsel.

For every meeting closed pursuant to any subparagraph of § 405.2(a), the General Counsel of Eximbank will be asked to certify that in his or her opinion such meeting may properly be closed to the public, and to state which of the exemptions set forth in § 405.2(a) he or she has relied upon. A copy of such certification will be posted in the Office of the Secretary. The original certification together with a statement from the presiding officer of such meeting setting forth the time, date and place of such meeting and the persons present will be retained by Eximbank as part of the transcript, recording or minutes of such meeting described below.

§ 405.6 Transcripts, recordings and minutes of closed meetings.

(a) Eximbank will maintain a complete transcript of electronic recording of the proceedings of every meeting or portion thereof closed to the public, provided, however, that if any meeting or portion thereof is closed pursuant to § 405.2(a) (8), (9) (i), or (10), Eximbank may maintain a set of detailed minutes for such meetings in lieu of a transcript or electronic recording. The entire transcript, electronic recording or set of minutes of a meeting will be made available to the public for inspection and copying in the Office of the Secretary at the earliest practicable time but in any event not later than 20 business days after such meeting has been held. Copies of such transcript or minutes, as well as copies of the transcription of such recording disclosing the identity of each speaker, will be furnished to any person at the actual cost of duplication or transcription. However, Eximbank will not make available for inspection or copying the transcript, electronic recording or minutes of the discussions of any item on the agenda of such meeting which contains information of the kind described in § 405.2(a) above. Requests to inspect or to have copies made of any transcript, electronic recording or set of minutes of any meeting or item(s) on the agenda thereof should be made in writing to the Secretary and if possible, identify the time, date and place of such meeting and briefly describe the item(s) being sought. Eximbank will maintain a complete verbatim copy of the transcript, a complete electronic recording or a complete copy of the minutes of each meeting, or portion thereof, closed to the public for two years after such meeting or one year from the date of final action of the Board of Directors or the Executive Committee on all items on the agenda of such meeting, whichever occurs later.

(b) The determination to withhold information pursuant to paragraph (a) above may be appealed in writing to the General Counsel, who will make a determination to withhold or release the requested information within 20 business days from the date of receipt of the request for review.

§ 405.7 Relationship to Freedom of Information Act.

All requests to inspect or have copied any transcript, electronic recording or minutes described above in § 405.3(c) will be governed by the procedures set forth in this part. Nothing in this part shall effect the procedures set out in Part 404 governing requests for information, under the Freedom of Information Act.

[FR Doc.77-2819; Filed 1-27-77;8:45 am]

CIVIL AERONAUTICS BOARD

[14 CFR Part 371]

[SPDR-54, Docket 29940, Dated January 25, 1977]

ADVANCE BOOKING CHARTERS

Administrative Expenses

Notice is hereby given that the Civil Aeronautics Board has under consideration an amendment of Part 371 of its Special Regulations (14 CFR Part 371) that would authorize Advance Booking Charter (ABC) operators to charge a fee covering administrative expenses incurred when a substitute is arranged for a canceling participant.

The principal features of the proposed amendments are described in the Explanatory Statement, and the proposed amendment is set forth in the Proposed Rule. This amendment is proposed under the authority of sections 101, 204, 401, 402, and 416 of the Federal Aviation Act of 1958, as amended, 72 Stat. 737, 743, 754, 757, and 771; 49 U.S.C. 1301, 1324, 1371, 1372, and 1386.

Interested persons may participate in the rulemaking through the submission of twenty (20) copies of written data, views, or arguments pertaining thereto, addressed to Docket 29940, Docket Section, Civil Aeronautics Board, Washington, D.C. 20428. All relevant material received on or before February 28, 1977, will be considered by the Board before taking final action on the proposed rules. Copies of such communications will be available for examination by interested parties in the Docket Section of the Board, Room 711, Universal Building, 1825 Connecticut Avenue, N.W., Washington, D.C., upon receipt thereof.

Individual members of the general public who wish to express their interest as consumers by participating informally in this proceeding may do so through submission of comments in letter form to the Docket Section at the address indicated above, without the necessity of filing additional copies.

By the Civil Aeronautics Board:

PHYLLIS T. KAYLOR,
Secretary.

EXPLANATORY STATEMENT

Pursuant to § 371.14 of the Board's Special Regulations (14 CFR § 371.14), Advance Booking Charter (ABC) operators may arrange substitutes for a limited number of canceling ABC participants. Section 371.14(a) requires that each participant for whom a new participant is substituted receive a full refund of all monies paid to the charter operator with respect to the charter.

By petition dated October 18, 1976, Docket 29940, Charter Travel Corporation (CTC) requested that the Board adopt an amendment allowing an ABC operator to charge a canceling participant a fee of not more than $25, to cover administrative expenses, whenever the operator arranges a substitute for that participant. Petitioner also requested that this petition be considered simultaneously with its petition in Docket 29866, requesting that the Board amend Part 378a to allow One-stock-inclusive Tour Charter (OTC) operators to find substitutes for cancelling participants.

Answers supporting the petition were filed by ASTI Tours, Gogo International, Duncan Travel Service, Unitours, the Civil Aeronautics Board's Office of the Consumer Advocate (OCA), and jointly by Globus-Gateway Tours and Brendan Tours. No answers opposing the petition were filed.

In support of its request, CTC argued that since ABC operators are precluded from charging cancellation fees when substitutes are arranged, ABC prices must be raised to cover the expenses involved in making such arrangements, thus creating the anomaly that those who travel pay the expenses for those who cancel. Petitioner also pointed out that the Travel Group Charter (TGC) rule, which is the only other special charter rule authorizing air-only charters, permits TGC organizers to charge a fee of not more than 5 percent of the minimum pro rata charter price when substitutes are arranged for cancelling participants.

There is no limit on the cancellation fee an ABC operator may charge if no substitute is found. Gogo International, Unitours, Duncan Travel, and OCA pointed out that due to the expenses involved in arranging substitutions, it is to the advantage of ABC operators to avoid finding substitutes and to charge large cancellation fees. They argued that the current regulations thus provide a disincentive for operators to effect substitutions.

The Board tentatively finds that the described disincentive is indeed inappropriate with respect to non-European ABC's, where substitution privileges should be unfettered, but that it should be retained to discourage substitution in European ABC's. We therefore propose that, for non-European ABC's, an operator may reserve the right to retain up to $25 as an administrative fee to the canceling participant for arranging a substitute.

Duncan Travel, Gobus-Gateway and Brendan Tours, and Unitours all agreed that $25, the amount suggested by petitioner, would be a reasonable ceiling on cancellation fees when substitutes are found. However, Duncan Travel stated that $25 would not fully cover its costs for processing the cancellation and the new reservation. The Board specifically invites those parties filing comments to focus on whether $25 is a reasonable upper limit, and to submit data regarding the actual expenses involved in cancellations and substitutions.

The Boafd has tentatively decided not to state the upper limit as a percentage of the charter price (as is the case for TGC's) because it is not clear that the expenses incurred in arranging substitutions vary according to the price of the charter. However, the Board also invites comments on whether the ceiling should be expressed as a percentage of the air fare or by some other formula, rather than as a specific amount.

The Board has decided to deny CTC's request that this petition be considered simultaneously with its petition in Docket 29866 requesting that the Board amend Part 378a of the Special Regulations (14 CFR Part 378a) to allow tour operators to find substitutes for canceling OTC participants. That petition involves broader issues in a somewhat different area.

PROPOSED RULE

Accordingly, the Civil Aeronautics Board proposes to amend Part 371 of its Special Regulaions (14 CFR Part 371) as follows:

Paragraph (a) of § 371.14, Substitution for charter participants named on filed list, would be amended by adding at the end thereof the clause beginning with the words "except that," so that the paragraph as revised would read as follows:

§ 371.14 Substitution for charter participants named on filed list.

(a) The charter participant for whom a new participant is substituted shall receive a full refund of all monies paid to the charter operator with respect to the charter, except that, with respect to non-European charters, the charter operator may reserve the right to retain an administrative fee of not more than $25 for effecting the substitution.

. . . . . .

[FR Doc.77-2824 Filed 1-27-77;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Social Security Administration

[20 CFR Part 416]

[Regulations No. 16]

SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Income and Exclusions; Deeming of Income

Correction

In FR Doc. 77-1599, appearing at page 3316 in the issue for Tuesday, January 18, 1977, the following change should be made:

The next to last line of Example 2. in § 416.1185(b) (iv) should read, "income to $51.60. His quarterly benefits".

Food and Drug Administration

[21 CFR Parts 3e, 8, 121, 312, 314, 430, 431, 514]

[Docket No. 76N-0400]

NONCLINICAL LABORATORY STUDIES

Proposed Regulations for Good Laboratory Practice; Correction

In FR Doc. 76-34014 apearing at page 51206 in the FEDERAL REGISTER for Friday, November 19, 1976, the first sen-

tence in proposed § 3e.105(a) on page 51224 is corrected to read as follows:

§ 3e.105 Test and control substance characterization.

(a) The identity, strength, quality, and purity of each batch of a test or control substance shall be determined and documented by the testing facility before the initiation of the study, unless this determination with verifying documentation has been done by the sponsor.

• • • • •

Dated: January 19, 1977.

JOSEPH P. HILE,
Associate Commissioner for Compliance.

[FR Doc.77-2405 Filed 1-27-77;8:45 am]

[21 CFR Part 740]

[Docket No. 76N-0486]

BUBBLE BATH PRODUCTS

Label Warning

The Food and Drug Administration (FDA) is proposing a required caution statement on labels of cosmetic bubble bath products. The statement cautions consumers against product misuse and recommends discontinuance of use and consultation with a physician should injury occur; comments by March 29, 1977.

The Food and Drug Administration has received many complaints from consumers and physicians about adverse reactions caused by bubble bath products. They reported itching and skin rashes; urinary tract, bladder and kidney injuries; and genital disorders. Other persons reported eye irritation and respiratory disorders. A significant number of injuries required medical attention. Copies of consumer injury complaint statistics (Refs. 1 and 2) and all other references cited in this preamble are on file at the office of the Hearing Clerk, Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857.

The medical literature contains many reports of urogenital disorders associated with the use of bubble bath products. For example, R. J. Simmons reported in 1955 on cases of vulvovaginitis, many of which he attributed to the use of detergent and perfumed soap products, including bubble bath preparations (Ref. 3). S. Marshall discussed in 1965 a case of urinary frequency, urgency, and marked terminal dysuria (painful or difficult urination) in a 2½-year-old male, which disappeared when bubble baths were discontinued (Ref. 4). In 1967, H. J. Roberts reported five cases of urethral and bladder irritation in diabetic females, precipitated or aggravated by habitual use of bubble bath preparations (Ref. 5). More cases of urinary tract disorders were reported in 1973. Stopping use of the bubble bath eliminated the symptoms (Ref. 6). In 1966, H. N. Bass described four cases of genitourinary tract injuries in children; the injuries were associated with bubble baths. These cases were representative of a total of 16 children with urethral and bladder irritation attributable to use of bubble bath preparations. The symptoms ceased or were alleviated when use of bubble baths were stopped. (Ref. 7.)

Although the ingredients causing the reported consumer injuries could not be determined with certainty by FDA, the available information indicated that the source of the adverse reactions appeared to be alkylarylsulfonate. Alkylarylsulfonates are general purpose detergent and wetting agents for use in industrial, household, and cosmetic products. Some alkylarylsulfonates have been widely used in all types of bubble bath products as detergent and foaming agents. The skin defattening and irritation properties of detergents are widely known (Refs. 4, 8, and 9).

To lower the probability of human hazard, the agency contacted in 1971 all cosmetic firms known to manufacture bubble bath products and requested that they reduce the alkylarylsulfonate content of their formulations to less than 10 percent, preferably to a concentration between 2 and 5 percent, and remove all other harsh ingredients. In addition, the firms contacted were asked to monitor carefully the frequency and types of adverse reactions because a safe concentration of alkylarylsulfonate had not been determined and additional reduction or elimination of the detergent ingredient might be necessary.

The annual number of consumer complaints related to bubble bath products did not change significantly during the ensuing years. In 1970, FDA received 25 consumer reports of adverse reactions to bubble bath products; in 1971 FDA received 14 consumer reports of adverse reactions. For the years 1972 through 1975, the annual complaints totaled 29, 60, 31, and 19, respectively (Refs. 1 and 2).

The number of consumer reports of adverse reactions for 1973, which was 60, was significantly higher than the number of adverse reactions for the other years because of a press and radio solicitation for consumer reports of adverse reactions; this solicitation was initiated by the Federal Trade Commission (FTC) in May 1973 in the Cleveland, Ohio, area. Statistical data confirm this observation: During the period of January 1, 1972 to July 18, 1973, FTC received 29 complaints at its Cleveland, Ohio, district office; for the same period, FDA received, at all its offices, 37 complaints. These data further indicate that many adverse reactions may be expected to remain unreported unless consumers are encouraged to report their experiences; even then, many consumer injuries may not be brought to the attention of FDA.

Other reports of consumer injuries associated with the use of bubble bath preparations were received by FDA through the program of voluntary filing of cosmetic product experiences by cosmetic firms, in accordance with 21 CFR Part 730 and a 3-month survey in 1974 of cosmetic adverse reactions among 10,000 households (Refs. 11 and 12). The voluntarily filed industry data for 1974 and the first half of 1975 included 34 reports of adverse reactions to bubble bath products. Only a limited number of firms have been participating in this program, and the largest distributors of bubble bath preparations did not file their consumer reports of adverse reactions.

The report of the 1974 survey of 10,000 households, "An Investigation of Consumers' Perceptions of Adverse Reactions to Cosmetic Products," which was published in June 1975, included 24 cases of adverse reactions from the use of bubble bath products. Most of the injuries involved itching, redness, rashes, chapping, and fissuring of the skin. Some consumers reported urogenital and respiratory disorders. During September, the panelists reported 15 adverse reactions and 10,705 product uses. Accordingly, the rate of adverse reactions was 14 per 10,000 product uses and was considerably higher than the cumulative rate of 6.9 for all cosmetic product categories.

The tabulations and analyses of the reports of consumer injury received by FDA show that many commercial bubble bath products have caused adverse reactions. The greatest number of complaints is related to the leading children's bubble bath product. The second highest number of complaints is associated with another widely distributed children's product. The majority of injuries and the most severe injuries, i.e., genitourinary tract disorders, were reported in childen, particulaly female children (Refs. 1 and 2).

Representatives of FDA met in 1973 and 1974 on three occasions with representatives of the manufacturer of the leading children's bubble bath product to review the actions taken by the firm and resolve the adverse reaction problem (Refs. 13, 14, and 15). The manufacturer implemented several formulation changes and conducted several animal tests and one human study in an attempt to develop a bubble bath product that would have a lower rate of adverse reactions. In 1974 the firm notified FDA that the label of its bubble bath powder product would in the future bear explicit directions for use and statements cautioning against misuse so as to prevent possible irritation (Ref. 15). The effect of those actions on the adverse reaction level cannot be determined with certainty because comprehensive consumer injury data are unavailable. The available data FDA has received on consumer complaints about bubble bath products in this period indicates no significant reduction in consumer injuries. Since 1972, the annual ratio of adverse reactions to this manufacturer's bubble bath products in relation to the total number of injury reports received on bubble bath products in general, has remained essentially unchanged.

Because of the continuing high rate adverse reactions to bubble bath products and the potential for urogenital tract infection, the Commissioner believes that regulatory action is needed. The Commissioner finds that prolonged or excessive use of bubble bath products contributes significantly to the high incidence of adverse reactions in users, particularly children. One indication that misuse is a contributing factor to the adverse reaction level is that reports of adverse reactions have not declined in recent years despite the changes in formulation and reduction in the alkylarylsulfonate concentration made by the leading manufacturers of bubble bath products.

The effects of soap and detergent solutions on the epidermis, particularly under conditions of repeated exposure, have been documented by B. Idson and M. E. Chernosky in reviews of pertinent scientific literature (Refs. 8 and 16). The skin-modifying effects of soap and detergents have been described also, for example, by J. D. Middleton, B. M. Allen, C. Prottey, and J. Ferguson (Refs. 9, 17, and 18). The removal of sebum from the surface of the skin and the extraction of lipids from the cell membranes of the outer layer of the skin by detergent solutions increase the skin's permeability and permit extraction of hygroscopic, water-soluble substances from epidermal cells. The decrease in hygroscopic substances reduces the water-binding capacity of the epidermis, and hence its flexibility and extensibility, and promotes dryness of the skin. Moreover, denuded, dry skin causes increased friction between one skin surface and another, or skin and clothing, particularly in winter when the relative humidity of the air indoors is low. These epidermal changes, external influences, and related factors may cause itching, redness, chapping, or fissuring of the skin, and in severe cases may induce inflammation and infection. Mucous membranes may undergo similar changes leading to irritation, inflammation, or infection. In severe cases of mucosal damage and microbial attack, urogenital tract infection may occur.

As pointed out by M. E. Chernosky, when skin appears dry and shows signs of damage, dermatologists instruct their patients to avoid soap and detergents as much as possible (Ref. 16). Accordingly, the Commissioner concludes that directions that inform consumers about the conditions of safe use of a bubble bath product, and a mandatory label statement cautioning the consumer about the possible adverse effects of these products and recommending consultation with a physician in cases of persistent irritation, may reduce significantly the occurrence of consumer injury. The effectiveness of cautionary labeling in reducing incidents cannot be determined from past experience because cautionary labeling has only recently come into use by the leading manufacturer and is not as prominent and direct as the labeling proposed below.

The Commissioner further concludes that the additional statement on powder bubble bath products cautioning against the inhalation of the dust of the detergent powder will abate the incidence of respiratory irritation and discomfort. Powder bubble bath products have a tendency to cause dusting when sprinkled into the water, particularly when added near the stream while it is turned on full force. Liquid bubble bath products are not expected to cause this adverse reaction because of their physical form and their ability to mix readily with the water.

The Commissioner has carefully considered the environmental effects of the proposed regulation and, because the proposed action will not significantly affect the quality of the human environment, has concluded that an environmental impact statement is not required. A copy of the environmental impact assessment is on file with the Hearing Clerk, Food and Drug Administration.

Because of the many reported adverse reactions to bubble bath products, the Commissioner intends to make these requirements effective 6 months after publication of the final regulation in the FEDERAL REGISTER. The time period between publication of the final regulation and the effective date of the regulation should provide adequate time to make the required label changes. Accordingly, the labels of all products initially introduced into interstate commerce 6 months after publication of the final regulation must bear adequate directions for safe use and the required caution statements.

REFERENCES

1. Food and Drug Administration, Office of Planning and Evaluation, Consumer Safety Statistics Staff, OPE Study 17. Analysis of Bubble Bath Product Complaints 1967-1974, June 1975.

2. Consumer Reports of Injuries Related to Bubble Bath Products Received by the Food and Drug Administration during the Period September 1, 1974 to December 31, 1975.

3. Simmons, R. J., "Acute Vulvovaginitis caused by Soap Products," American Journal of Obstetrics and Gynecology, 6:447-8, 1955.

4. Marshall, S., "The Effect of Bubble Bath on the Urinary Tract," Journal of Urology, 93:112, 1965.

5. Roberts, H. J., "Bubble Bath Cystitis," Journal of the American Medical Association, 201:125-6, 1967.

6. Roberts, H. J., "Bubble Bath Cystitis and 'Cosmetic' Vulvitis, Neglected Hazards," Journal of the Florida Medical Association, 60:31-5, 1973.

7. Bass, H. N., "'Bubble Bath' as an Irritant to the Urinary Tract of Children," Clinical Pediatrics, 7:174, 1968.

8. Idson, B., "Water and the Skin," Journal of the Society of Cosmetic Chemists, 24:197-212, 1973.

9. Prottey, C. and T. Ferguson, "Factors which determine the skin irritation potential of soap and detergents," Journal of the Society of Cosmetic Chemists, 26:29-46, 1975.

10. "Tabulation of Consumer Adverse Reaction Complaints on Bubble Bath Products," memorandum by the Acting Director, Division of Cosmetics Technology to the Director, Bureau of Foods, Food and Drug Administration, July 20, 1973.

11. "Tabulations of Cosmetic Product Experience Reports Submitted to the Food and Drug Administration Under the Voluntary Cosmetics Regulatory Program, 1974 and January-June, 1975," prepared by Division of Cosmetics Technology, Food and Drug Administration.

12. Department of Health, Education, and Welfare, Food and Drug Administration, "FDA Study of Adverse Reactions to Cosmetic Products Among Nationwide Sample of 36,000 Cosmetics Users," tables 4.1, 5.7, 5.8, 5.9, and 5.19, and page 4-20 of full report entitled "An Investigation of Consumers' Perceptions of Adverse Reactions to Cosmetic Products," submitted by Westat, Inc., Rockville, MD 20852, June 1975.

13. Memorandum of Meeting of August 2, 1973 between Representatives of the Gold Seal Company and Food and Drug Administration representatives, dated August 20, 1973.

14. Memorandum of Meeting of September 25, 1973 between representatives of the Gold Seal Company and Food and Drug Administration representatives, dated September 27, 1973.

15. Memorandum of Meeting of February 28, 1974 between attorneys for Gold Seal Company and Food and Drug Administration representatives, dated March 4, 1974.

16. Chernosky, M. E., "Dry Skin and its Consequences," Journal of the American Medical Women's Association, 27:133-45, 1972.

17. Middleton, J. D., "The Mechanism of Action of Surfactants on the Water Binding Properties of Isolated Stratum Corneum," Journal of the Society of Cosmetic Chemists, 20:399-412, 1969.

18. Middleton, J. D. and B. M. Allen, "The Influence of Temperature and Humidity on Stratum Corneum and Its Relation to Skin Chapping," Journal of the Society of Cosmetic Chemists, 24:239-43, 1973.

19. Environmental impact analysis report.

20. Environmental assessment report.

21. Inflation impact assessment report.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(n), 601, 602, 701(a), 52 Stat. 1041 as amended, 1054, as amended, 1055 (21 U.S.C. 321(n), 361, 362, 371(a))) and under authority delegated to the Commissioner (21 CFR 5.1) (recodification published in the FEDERAL REGISTER of June 15, 1976 (41 FR 24262)), it is proposed to amend Part 740 by adding the following new section to read as follows:

§ 740.17 Bubble bath products.

(a) For the purpose of this section, a bubble bath product is any product intended to be added to a bath for the purpose of cleansing the human body, or for other cosmetic purposes, that contains a detergent or foaming ingredient.

(b) The label of bubble bath products within the meaning of paragraph (a) of this section shall bear adequate directions for safe use and the following caution:

Caution—Use only as directed. Excessive use or prolonged exposure may cause irritation to skin and urinary tract. Discontinue use if rash, redness or itching occur. Consult your physician if irritation persists. Keep out of reach of children.

(c) In the case of products intended for use by children, the phrase "except under adult supervision" may be added at the end of the last sentence in the caution required by paragraph (a) of this section.

(d) In the case of powder products, the phrase "Avoid inhalation of dust to prevent respiratory discomfort" shall be added as the last sentence of the caution statement required by paragraph (a) of this section.

Interested persons may, on or before March 29, 1977, submit to the Hearing Clerk, Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857, written comments (preferably in quintuplicate and identified with

the Hearing Clerk docket number found in brackets in the heading of this document) regarding this proposal. Received comments may be seen in the above office between the hours of 9 a.m. and 4 p.m., Monday through Friday.

The Food and Drug Administration has determined that this document does not contain a major proposal requiring preparation of an inflation impact statement under Executive Order 11821 and OMB Circular A-107. A copy of the inflation impact assessment is on file with the Hearing Clerk, Food and Drug Administration.

Dated: January 18, 1977.

JOSEPH P. HILE,
Associate Commissioner for Compliance.

[FR Doc 77-2404 Filed 1-27-77;8:45 am]

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[21 CFR Part 1309]

PAPAVER BRACTEATUM

Postponement and Rescheduling of Hearing: Extension of Time for Comments

On December 21, 1976, the Administrator of the Drug Enforcement Administration published a notice in the FEDERAL REGISTER (41 FR 55558) which scheduled hearings to be held on January 27 and 28, 1977, for the purpose of hearing comments on the notice of proposed production and control of Papaver Bracteatum in the United States, which had been published originally in the FEDERAL REGISTER on November 19, 1976 (41 FR 51036).

The hearings on this subject matter, scheduled to be held on January 27 and 28, 1977, have been postponed, and have been rescheduled to be held on March 15, 16, and 17, 1977, at a time and place to be announced in a future supplementary notice to be published within the FEDERAL REGISTER. The time for submission of written comments on this subject matter has been likewise extended to March 17, 1977.

Dated: January 25, 1977.

PETER B. BENNINGER,
Administrator.

[FR Doc.77-2965 Filed 1-27-77;8:45 am]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

[24 CFR Part 888]

[Docket No. R-77-311]

SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM

Schedule A; Fair Market Rents for New Construction and Substantial Rehabilitation

On April 6, 1976, at 41 FR 14662, the Department of Housing and Urban Development (HUD) amended Title 24 of the Code of Federal Regulations, incorporating in Part 888, Subpart A, a revised Schedule A, "Fair Market Rents for New Construction and Substantial Rehabilitation (including Housing Finance and Development Agencies Program)," for all market areas.

Since April 6, 1976, additional comments and data have been received from the Portland, Oregon Area Office indicating a need to establish a rent for a zero-bedroom semi-detached/row unit in the Portland market area.

The Department proposes to incorporate in Part 888, Subpart A, at 41 FR 14719, a revised Schedule A for the Portland market to add a fair market rent for zero-bedroom semi-detached/row housing.

Because it is necessary to the operation of the Section 8 program that fair market rents remain as current as possible, and because interested parties are encouraged at all times to submit information and data on those rents which will be considered in initiating revisions as needed, it has been determined that it is impracticable and unnecessary to provide a 30-day period for comments on these proposed revisions and that a 15-day period is reasonable and in the public interest.

Interested persons are invited to submit written data, comments, suggestions, or objections concerning the proposed revision. Communications should identify the subject matter by title and docket number and should be filed with the Rules Docket Clerk, Office of the Secretary, Room 10141, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410. All relevant material received on or before February 11, 1977, will be considered before adoption of the revision in final form. Copies of comments received will be available for examination during business hours at the above address.

A Finding of Inapplicability respecting the National Environmental Policy Act of 1969 has been made in accordance with HUD procedures. A copy of this Finding of Inapplicability will be available for public inspection during regular business hours at the office of the Rules Docket Clerk, Room 10141, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C.

(Sec. 7(d) Department of HUD Act (42 U.S.C. 3535(d)).

NOTE.—It is hereby certified that the economic and inflationary impacts of this regulation have been carefully evaluated in accordance with OMB Circular A-107.

Issued at Washington, D.C., January 19, 1977.

JOHN T. HOWLEY,
Acting Assistant Secretary for Housing — Federal Housing Commissioner.

PART 888—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—FAIR MARKET RENTS AND CONTRACT RENT AUTOMATIC ANNUAL ADJUSTMENT FACTORS

SCHEDULE A—FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION (INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM.)

These Fair Market Rents have been trended ahead two years to allow time for processing and construction of proposed new construction and substantial rehabilitation rental projects.

NOTE: The Fair Market Rents for (1) dwelling units designed for the elderly or handicapped are those for the appropriate size units, not to exceed 2-Bedroom, multiplied by 1.05 rounded to the next higher whole dollar, (2) congregate housing dwelling units are the same as for non-congregate units and (3) single room occupancy dwelling units are those for 0-Bedroom units of the same type.

Area office, Portland, Oreg., region X—Seattle

Market area	Structure type	Number of bedrooms				
		0	1	2	3	4 or more
Portland	Detached			254	322	355
	Semidetached/row	196	216	248	308	342
	Walkup	172	204	235	294	329
	Elevator	235	286	337		
	Detached					
	Semidetached/row					
	Walkup					
	Elevator					
	Detached					
	Semidetached/row					
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	Detached					
	Semidetached/row					
	Walkup					
	Elevator					

[FR Doc.77-2688 Filed 1-27-77;8:45 am]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR Part 1]

GROUP-TERM LIFE INSURANCE

Notice of Proposed Rulemaking

Notice is hereby given that the regulations set forth in tentative form in the attached appendix are proposed to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury or his delegate. Prior to the final adoption of such regulations, consideration will be given to any comments pertaining thereto which are submitted in writing (preferably six copies) to the Commissioner of Internal Revenue, Attention: CC:LR:T, Washington, D.C. 20224, by March 14, 1977. Pursuant to 26 CFR 601.601(b), designations of material as confidential or not to be disclosed, contained in such comments, will not be accepted. Thus, persons submitting written comments should not include therein material that they consider to be confidential or inappropriate for disclosure to the public. It will be presumed by the Internal Revenue Service that every written comment submitted to it in response to this notice of proposed rulemaking is intended by the person submitting it to be subject in its entirety to public inspection and copying in accordance with the procedures of 26 CFR 601.702(d)(9). Any person submitting written comments who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit a request, in writing, to the Commissioner by March 14, 1977. In such case, a public hearing will be held, and notice of the time, place, and date will be published in a subsequent issue of the FEDERAL REGISTER, unless the person or persons who have requested a hearing withdraw their requests for a hearing before notice of the hearing has been filed with the Office of the Federal Register. The proposed regulations are to be issued under the authority contained in sections 79(c) and 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

DONALD C. ALEXANDER,
Commissioner of Internal Revenue.

PREAMBLE

This document contains proposed amendments to the regulations under section 79 of the Internal Revenue Code of 1954, which provides that the cost of group-term life insurance purchased by an employer on the life of an employee is generally included in the employee's gross income but only to the extent the insurance exceeds $50,000. Insurance other than group-term life insurance (such as whole life insurance) does not qualify for this exemption. An employer can generally deduct the entire amount of premium he pays on behalf of his employees as part of the compensation paid for services rendered, regardless of the nature of the insurance purchased.

The present regulations, as applied by the Service, allow an insurance company to issue a policy (or a package of more than one policy) providing both pure life insurance protection and permanent benefits (such as a paid-up value, cash surrender value, or an equivalent benefit). In 1950, the Service held that the premiums paid by an employer for term life insurance in a combination policy containing both term life insurance and paidup life insurance are excluded from the employee's income. Mim. 6477, 1950-1 C.B. 16, paragraph 4. The regulations under section 79 issued in 1966 adopted this rule because it did not seem necessary to require life insurance companies to write two separate contracts merely to qualify the term insurance portion under section 79. The language of the 1966 regulations was interpreted to allow favorable section 79 treatment for the pure insurance portion of a whole life policy. This interpretation was specifically disavowed in Rev. Rul. 71-360, 1971-2 C.B. 87, and in revised section 79 regulations issued in 1972. Nevertheless, the misinterpretation has continued. In addition, the Service has concluded that there is no way to reconcile the varying methods used by insurance companies to allocate premiums between the (generally tax-free) pure life insurance protection and (taxable) permanent benefits. The allocations of the total premiums set firth in the policies have tended to weigh too heavily toward the pure life insurance protection, resulting in income being treated as tax-exempt that Congress did not intend to be so treated.

These amendments provide that a policy for purposes of section 79 must have no features other than pure group-term life insurance. These amendments contain new rules for determining whether a group-term life insurance policy sold in conjunction with certain other contracts constitutes group-term life insurance for purposes of section 79. A "safe-harbor" provision to enable taxpayers and others to determine easily whether the cost for such group-term life insurance qualifies for favorable section 79 treatment utilizes a new uniform premium rate table that supersedes Table I of 1.79-3(d)(2). The new Table II adopts the rates set forth in the Senate Finance Committee Report that preceded the enactment of section 79. Sen. Rept. No. 830, 88th Cong., 2d Sess., 1964-1 (Part II) C. B. 505, 551. It also applies to determine the cost of group-term life insurance in excess of $50,000 for taxable years of employees beginning after December 31, 1976. The new Table II is being proposed in this notice of proposed rule making because it better reflects the actual cost of group-term life insurance than Table I.

The new restrictions concerning combination sales apply to insurance provided under binding arrangements between employers and insurance companies entered into after November 4, 1976, the date IR-1689 was released by the Service. That news release announced a suspension of all private rulings with respect to combination policies entered into after that date. Insurance provided under binding arrangements entered into before November 5, 1976, will be subject to the old rules if no new employees are added after January 24, 1977.

AMENDMENT TO THE REGULATIONS

Accordingly, it is proposed to amend the Income Tax Regulations (26 CFR Part 1) as set forth below:

Paragraph 1. Section 1.79-1 is amended by deleting the second and third sentences of paragraph (b)(1)(i), by inserting three new sentences before paragraph (b)(1)(ii)(*a*), and by inserting a new paragraph (b)(1)(ii-a) after paragraph (b)(1)(ii). The amended provisions read as set forth below:

§ 1.79-1 General rules relating to group-term life insurance purchased for employees.

* * * * *

(b) *Meaning of terms.* * * *

(1) *Group-term life insurance*—* * *

(ii) *Paid up or similar value.* This paragraph (b)(1)(ii) applies only to insurance protection provided after December 31, 1963, for employees who had such protection before January 25, 1977. Pursuant to binding arrangements between an employer and an insurance company entered into before November 5, 1976 (or renewals thereof). Thus, if an employee who was not protected before January 25, 1977, is provided insurance protection thereafter, this paragraph (b)(1)(ii) does not apply to any insurance protection provided to any employees under the arrangement that protects the newly-covered employee. Similarly, if after November 4, 1976 the allocation of premiums between the cost of pure life insurance protection and other features is changed, or any new feature is sold in conjunction with a group-term life insurance policy, there is a new arrangement, and, consequently, this paragraph (b)(1)(ii) will no longer apply.

* * * * *

(ii-a) *Group-term life insurance provided after November 4, 1976*—(a) *General rule.* This paragraph (b)(1)(ii-a) applies to insurance protection provided after November 4, 1976, except that it does not apply to insurance protection to which paragraph (b)(1)(ii) of this section applies. To qualify as "group-term life insurance" for purposes of section 79, a policy must have no features other than pure group-term life insurance. In addition, when an insurance company (or two or more insurance companies that are members of a controlled group of corporations described in section 1563(a), applied by substituting "50 percent" for "80 percent" whenever the latter percentage appears) sells a group-term life insurance policy to an employer insuring the lives of its employees and in conjunction therewith sells to any person another policy on the life of an employee or an owner-employee (as defined below) that includes term or permanent

insurance, a paid-up value, a cash surrender value, or an equivalent benefit, then the group-term life insurance policy is not "group-term life insurance" for purposes of section 79 if the cost of the group-term life insurance policy includes any of the cost that is properly attributable to the other policy. For purposes of section 79, the cost of a provision permitting an employee to convert (or continue) the term insurance protection after it ceases to be provided by the employer shall be treated as part of the cost of the group-term life insurance with which it is associated, so long as it contains no other benefits (such as cash value) that are available to the employee. For the purpose of this paragraph (b)(1)(ii-a)(*a*), the term "owner-employee" means a person who—

(*1*) Owns the entire interest in an unincorporated trade or business,

(2) In the case of a partnership, is a partner who owns more than 10 percent of either the capital interest or the profits interest in such partnership, or

(3) In the case of a corporation, is a shareholder who owns more than 10 percent of any class of stock in such corporation.

(*b*) *Safe-harbor guidelines.* The restriction contained in the third sentence of paragraph (b)(1)(ii-a)(*a*) of this section ordinarily will be satisfied if the following conditions are met:

(*1*) The contracts for the group-term life insurance and such other benefits have each been filed with and approved by the applicable state insurance department as separate contracts.

(2) The availability, termination, conversion or amendment of one of the contracts has no effect in fact on the other contract (including its continuance).

(3) The premiums charged for the group-term life insurance policy do not exceed in the aggregate the premiums that would be charged if they were computed in accordance with Table II of § 1.79-3(d)(2).

(*c*) *Examples.* The following examples illustrate the application of the restriction of the third sentence of paragraph (b)(1)(ii-a)(*a*) of this section.

Example (*1*). Corporation M purchases a group-term life insurance policy for its employees from insurance company U under which M will purchase decreasing term life insurance on each of its employees. It is contemplated that U will offer to each employee the opportunity to purchase units of paid-up life insurance such that the sum of the units of paid-up life insurance plus the term insurance with respect to each employee remains roughly constant over a period of years. The restriction of the third sentence of paragraph (b)(1)(ii-a)(*a*) of this section applies to such an arrangement.

Example (2). Corporation P purchases a group-term life insurance policy from insurance company V. V gives to its agents a list of P's employees that it obtains by reason of the sale. Its agents call upon P's employees to sell permanent individual life insurance policies. The restriction of the third sentence of paragraph (b)(1)(ii-a)(*a*) of this section does not apply to such an arrangement if such policies are generally available and sold under the same terms and conditions to persons not covered by a group-term life insurance policy issued by V.

Example (*3*). Corporation R purchases a group-term life insurance policy for its employees from insurance company W. A, president and owner of R, requests an individual life insurance policy from W at standard rates even though A is a substandard risk. A makes a full disclosure of such facts to W. W nevertheless issues such a policy. The restriction of the third sentence of paragraph (b)(1)(ii-a)(*a*) of this section applies to such an arrangement.

Par. 2. Section 1.79-3 is amended by

(1) Revising paragraph (d)(1),

(2) Amending that part of paragraph (d)(2) preceding Table I,

(3) Revising the heading of Table I in paragraph (d)(2),

(4) Adding a new Table II to paragraph (d)(2), and

(5) Revising the first sentence of paragraph (d)(3).

These new and added revisions are set forth below:

§ 1.79-3 Determination of amount equal to cost of group-term life insurance.

* * * * *

(d) *The cost of the portion of group-term life insurance on an employee's life.* (1) This paragraph sets forth the rules for determining the cost, for each period of coverage, of the portion of the group-term life insurance on the employee's life to be taken into account in computing the amount includible in the employee's gross income for purposes of paragraph (a)(1) of this section. The portion of the group-term life insurance on the employee's life to be taken into account is determined in accordance with the provisions of paragraph (b) of this section. The appropriate table set forth in paragraph (d)(2) of this paragraph determines the cost for each $1,000 of such portion of the group-term life insurance on the employee's life for each one-month period. The cost of the portion of the group-term life insurance on the employee's life for each period of coverage of one month is obtained by multiplying the number of thousand dollars of such insurance computed to the nearest tenth that is provided during such period by the appropriate amount set forth in the appropriate table. In any case in which group-term life insurance is provided for a period of coverage of less than one month, the amount set forth in the appropriate table is prorated over such period of coverage.

(2) The following tables set forth the cost of $1,000 of group-term life insurance for 1 month computed on the basis of 5-year age brackets. For purposes of the tables, the age of the employee is his or her attained age on the last day of his or her taxable year. However, if an employee has attained an age greater than age 64, he or she shall be treated as if he or she were in the 5-year age bracket 60 to 64. With respect to the cost of group-term life insurance in excess of $50,000 to be included in the income of an employee, Table I applies to determine such cost for taxable years of the employee beginning before January 1, 1977. Table II applies to determine such cost for subsequent taxable years. Table II also applies for purposes of § 1.79-1(b)(1)(ii-a) (relating to the cost of group-term life insurance under policies that are sold in conjunction with certain other contracts).

TABLE I—UNIFORM PREMIUMS FOR $1,000 OF GROUP-TERM LIFE INSURANCE PROTECTION FOR EMPLOYEE'S TAXABLE YEARS BEGINNING BEFORE JANUARY 1, 1977

* * * * *

TABLE II—UNIFORM PREMIUMS FOR $1,000 OF GROUP-TERM LIFE INSURANCE FOR EMPLOYEE'S TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1976

5-year age bracket	Cost per $1,000 of protection for 1-month period
15 to 19	$0.12
20 to 24	.14
25 to 29	.18
30 to 34	.23
35 to 39	.30
40 to 44	.43
45 to 49	.61
50 to 54	.91
55 to 59	1.36
60 to 64	2.06

(3) The net premium cost of group-term life insurance as provided in the tables of paragraph (d)(2) of this section applies only * * *

* * * * *

[FR Doc.77-2633 Filed 1-24-77;11:44 am]

DEPARTMENT OF LABOR

Office of the Secretary

[29 CFR Part 90]

CERTIFICATION OF ELIGIBILITY TO APPLY FOR WORKER ADJUSTMENT ASSISTANCE

Proposed Rulemaking; Correction

In FR Doc. 77-1289 appearing at page 2981 in the FEDERAL REGISTER of January 14, 1977, the comment period appearing on page 2981, is corrected in the 2nd column, 32nd line, to read "February 14, 1977," instead of "February 10, 1977."

Signed at Washington, D.C., this 21st day of January 1977.

JOEL SEGALL,
Deputy Under Secretary International Affairs.

[FR Doc.77-2827 Filed 1-27-77;8:45 am]

Occupational Safety and Health Administration

[29 CFR Part 1910]

HAZARDOUS MATERIALS LABELING

Advance Notice of Proposed Rulemaking

The Occupational Safety and Health Administration (OSHA), U.S. Department of Labor, is studying the recommendations of the Standards Advisory Committee on Hazardous Materials Labeling and requests public comment as to whether a standard requiring employers to label hazardous materials should be developed and what should be contained in such a standard to assure that employees are apprised of the hazards to which they are exposed.

Section 6(b)(7) of the Occupational Safety and Health Act of 1970 (84 Stat. 1595, 29 U.S.C. 655) authorizes OSHA to issue standards which "prescribe the use of labels or other appropriate forms of warning as are necessary to insure that employees are apprised of all hazards to which they are exposed, relevant symptoms and appropriate emergency treatment, and proper conditions and precautions of safe use or exposure." The Standards Advisory Committee on Hazardous Materials Labeling was established under section 7(b) of the Act (29 U.S.C. 656) to develop guidelines for the implementation of section 6(b)(7) of the Act with respect to hazardous materials. The Committee was requested:

to develop guidelines for categorizing and ranking hazards of materials, and guidelines for prescribing the required warnings of such hazards and related information on symptomatology, protective steps and equipment, and safe handling procedures, by such means as labels, data sheets and training requirements,

and to report to the Assistant Secretary of Labor for Occupational Safety and Health within 270 days following establishment of the Committee. The work of the Committee was to be basically limited to chemicals.

The Advisory Committee began its deliberations on September 19, 1974, and concluded its activities in June 1975. All scheduled meetings were open to the public, and were announced in advance in the FEDERAL REGISTER. The final report of the Committee, endorsed by a majority of the Committee members, was transmitted to the Assistant Secretary on June 6, 1975. There were also three minority reports on various sections of the final report.

Prior to developing specific recommendations, the Committee identified and discussed several major issues. For example, the Committee considered questions relating to classification systems for hazardous chemicals addressing itself to what major classification systems exist, their strengths and weaknesses, as well a their basis of design, and their ability to meet the objectives and scope of such classification systems. Further, questions arose concerning the maintenance, updating, and revision of classification systems, and concerning how a standard should accommodate changing technological developments affecting the classification system? Requirements and practices in these areas have been well established in many industries and by professional associations, as well a regulated by various government agencies and international agreements. The Committee tried to take cognizance of the existing practices in arriving at its final conclusions. Among other materials, the Committee also considered the document, "An Identification System for Occupationally Hazardous Materials," which was prepared by the National Institute for Occupational Safety and Health (NIOSH). A draft of the NIOSH document was given to the Committee members at their first meeting, and they received the final document midway through their deliberations.

The basic premise of the Committee in developing guidelines for categorizing and ranking hazards of materials and for prescribing the required warnings by labels, data sheets and training programs, involved a total system concept. This concept utilizes an integrated program including material safety and health hazard information in the formulation and implementation of an employee training program. Some or all of the parts of the system are required, as warranted by the potential hazard conditions. Under the Committee's recommendations, the determination of the specific hazard classification/ranking of a material, and the implementation of such items as material safety data sheets, hazard placard systems, and labeling systems in employee training and indoctrination programs, would be the specific responsibility of the employer.

In developing guidelines for the hazard classification and ranking of a material, the Committee confined its recommendations to three major categories of hazards: flammability, reactivity, and health. The Committee suggested that the Secretary cousult with other Federal agencies concerned with material hazards, such as the Environmental Protection Agency, the Consumer Products Safety Commission, and the Department of Transportation, to solicit information that would be of assistance to OSHA in the preparation of a proposal for hazardous materials labeling.

The Committee recommendations with regard to label requirements are extensive, as a label affords the most immediate means of informing an employee of the hazards of a particular material.

They are based on the language labeling system developed by a committee of the Manufacturing Chemists Association, certain United Nations symbols, and certain provisions of the regulations of the Federal Hazardous Substances Act.

The Committee recommended that each employer prepare a material safety data sheet to be used in combination with other components of the system such as labels, placards, and employee indoctrination programs to provide employers and employees with relevant information on potentially hazardous materials and situations.

An indoctrination program and continuing employee training concerning potential hazards is recommended by the Committee. The indoctrination program and training include: hazard identification and recognition, relevant symptoms of disease, emergency procedures, and the necessity for accurate recordkeeping.

In addition to considering the above recommendations, OSHA has received other information related to hazardous materials labeling. The Health Research Group submitted a petition on September 27, 1976, requesting that OSHA promulgate a regulation which would require "each employer to post and provide to each employee representative a list of the generic names of all chemicals used and produced at the workplace." In addition, members of Congress have expressed interest in this subject and have suggested that OSHA initiate steps to issue a regulation requiring disclosure to employees of the generic name of chemicals to which they are exposed.

In September 1976, the Committee on Government Operations of the House of Representatives issued a report (House Report No. 94-1688) dealing with chemical dangers in the workplace. As one of its several findings and conclusions, the Committee stated that "the Occupational Safety and Health Administration has failed to implement section 6(b)(7) of the Occupational Safety and Health Act which requires that employees be apprised of and be protected from the hazards to which they are exposed." The Report then commented that OSHA's promulgation of the Threshold Limit Value list (29 CFR 1910.1000) as a standard was an initial step that should be supplemented by "regulations requiring labeling, monitoring, and training." In order to comply with the intent of the recommendations contained in the Committee Report, OSHA is publishing this notice as a preliminary step in the development of a regulation.

Accordingly, interested persons are invited to submit written data, views, and arguments concerning a standard on hazardous materials labeling. Comments are specifically requested concerning:

1. Whether a standard on hazardous materials labeling should be issued or be included in the Standards Completion Project or be covered by another mechanism;

2. The source for the list or group of chemicals to be included in this standard (the chemicals contained in 29 CFR 1910.1000, the NIOSH Toxic Substances List, or other source);

3. Each section of the advisory committee recommendations;

4. Suitable alternatives to the recommendations of the advisory committee;

5. The national Institute for Occupational Safety and Health document, "An Identification System for Occupationally Hazardous Materials;"

6. The obligation of an employer to determine the hazards related to the materials to which his employees are exposed;

7. Criteria for establishing categories of hazards;

8. Whether the contents of the labels should be in the nature of a warning or contain descriptive information concerning the hazards of each material;

9. Appropriate training requirements and other means of informing the employee;

10. The listing of generic names for trade name substances covered by the regulation;

11. Supported cost data of the estimated costs of coming into compliance with the recommendations of the advisory committee;

12. The relationship of an OSHA standard on hazardous materials labeling with the authority and regulations of DOT, CPSC, and EPA; and

13. Any other related issues.

Communications must be submitted by March 29, 1977 to the Docket Officer, OSHA, New Department of Labor Bldg., 200 Constitution Avenue, NW., Washington, D.C. 20210. The submissions will be available for public inspection and copying at the above location.

The recommendations of the Standards Advisory Committee on Hazardous Materials Labeling will be available for inspection and copying, upon request, at any of the following addresses:

NATIONAL OFFICE

Department of Labor-OSHA, Room N3620, 200 Constitution Ave., N.W., Washington, D.C. 20210.

REGIONAL OFFICES

REGION I

U.S. Department of Labor, Occupational Safety and Health Administration, JFK Federal Building, Room 1804—Government Center, Boston, Massachuetts 02203.

REGION II

U.S. Department of Labor, Occupational Safety and Health Administration, 1515 Broadway (1 Astor Plaza), Room 3445, New York, New York 10036.

REGION III

U.S. Department of Labor, Occupational Safety and Health Administration, Gateway Building—Suite 2100, 3535 Market Street, Philadelphia, Pennsylvania 19104.

REGION IV

U.S. Department of Labor, Occupational Safety and Health Administration, 1375 Peachtree Street, N.E.—Suite 587, Atlanta, Georgia 30309.

REGION V

U.S. Department of Labor, Occupational Safety and Health Administration, 230 South Dearborn Street, 32nd Floor—Room 3263, Chicago, Illinois 60604.

REGION VI

U.S. Department of Labor, Occupational Safety and Health Administration, 555 Griffin Square Building, Room 602, Dallas, Texas 75202.

REGION VII

U.S. Department of Labor, Occupational Safety and Health Administration, 911 Walnut Street—Room 3000, Kansas City, Missouri 64106.

REGION VIII

U.S. Department of Labor, Occupational Safety and Health Administration, Federal Building—Room 15010, 1961 Stout Street, Denver, Colorado 80294.

REGION IX

U.S. Department of Labor, Occupational Safety and Health Administration, 9470 Federal Building, 450 Golden Gate Avenue—Box 36017, San Francisco, California 94102.

REGION X

U.S. Department of Labor, Occupational Safety and Health Administration, Federal Office Building, Room 6048, 909 First Avenue, Seattle, Washington 98174.

This advance notice of proposed rulemaking is issued under sections 6 and 8 of the Occupational Safety and Health Act of 1970 (84 Stat. 1593, 1599; 29 U.S.C. 655, 657) and Secretary of Labor's Order No. 8–76 (41 FR 25059).

Signed at Washington, D.C., this 19th day of January, 1977.

MORTON CORN,
Assistant Secretary of Labor.

[FR Doc. 77–2377 Filed 1–25–77;4:17 pm]

[29 CFR Part 1910]

[Docket No. OSH–11A]

OCCUPATIONAL NOISE EXPOSURE

Availability of Post-Hearing Comments and Additional Information on Economic Impact Analysis; Limited Comment Period

Pursuant to notices published in the FEDERAL REGISTER on June 18, 1976 (41 FR 24718) and August 6, 1976 (41 FR 32912), an informal hearing was convened on September 21, 1976 concerning the economic impact analysis (EIA) of the proposed standard on occupational noise exposure, and related issues as set forth in the notices. The hearing extended through October 8, 1976, at which time Administrative Law Judge Jean Greene who had presided at the hearing, announced that the record would remain open for receipt of post-hearing comments for a period of 60 days.

During the hearing, OSHA received many requests for information which was not contained in the economic impact analysis itself, but which was related to its preparation. OSHA's representative at the hearing noted that all requests for additional material would be taken under advisement by the agency, and that a decision would be forthcoming with regard to such material.

As was discussed at the hearing, it would require substantial additional funding and effort to provide the requested information for the record. Much of the requested information could not be made public by the contractor because it was obtained pursuant to pledges of confidentiality. Moreover OSHA cannot make such information available because OSHA does not have it in its possession or control. With regard to requested data the release of which would not breach any pledges of confidentiality, OSHA has decided to take steps to supply such data for the record, and has contracted with Bolt Beranek and Newman, Inc., (BBN), the contractor for the EIA, to make it available.

In addition, BBN has prepared a post-hearing comment, which discusses certain issues that arose at the hearing, particularly those areas of the EIA which have engendered the most comment. This post-hearing comment is now available for inspection and copying at the following address:

Technical Data Center (Docket No. OSH–11A), Room N–3620, Occupational Safety and Health Administration, U.S. Department of Labor, 3rd Street and Constitution Avenue, NW, Washington, D.C. 20210.

The BBN post-hearing comment includes data requested at the hearing which can be furnished without compromising BBN's pledges of confidentiality

OSHA recognizes that participants at the hearing may wish to comment on the additional information contained in BBN's post-hearing comment. Therefore, OSHA hereby reopens the comment period for the limited purpose of permitting participants at the hearing to comment upon the BBN post-hearing comment, for a period of 30 days. Comments must be submitted in quadruplicate to the above address, and must be postmarked on or before February 28, 1977.

At the end of this period the presiding Administrative Law Judge will certify the record of the proceeding to the Assistant Secretary of Labor for Occupational Safety and Health. The proposal will be reviewed in light of all oral and written submissions received as part of the record and final action will be taken based on the entire record developed in this proceeding.

(Sec. 6, Pub. L. 91–596, 84 Stat. 1593 (29 U.S.C. 655); 29 CFR Part 1911; Secretary of Labor's Order No. 8–76.)

Signed at Washington, D.C., this 19th day of January 1977.

BERT M. CONCKLIN,
Deputy Assistant Secretary of Labor.

[FR Doc.77–2376 Filed 1–19–77;5:06 pm]

DEPARTMENT OF THE INTERIOR

National Park Service

[36 CFR Part 66]

RECOVERY OF SCIENTIFIC, PREHISTORIC, HISTORIC, AND ARCHEOLOGICAL DATA: METHODS, STANDARDS, AND REPORTING REQUIREMENTS

Proposed Guidelines

On August 13, 1975, the Department of the Interior distributed a "Statement of Program Approach" with respect to its responsibilities under Pub. L. 93–291, the Archeological and Historic Preservation Act of May 24, 1974 (88 Stat. 174. 16 U.S.C. Section 469a–1 et seq.; hereinafter, "the Act"). Comments have been received from many Federal agencies, State Historic Preservation Officers, and members of the public. The Department expects to publish proposed rulemaking with respect to this aspect of the Act, for comment, in the near future.

Many of the comments received indicate a need for the Department to provide substantive guidance to agencies that undertake to recover scientific, prehistoric, historic, and archeological data; such guidance is also contemplated by the Act. It is the purpose of this notice of proposed rulemaking to provide this information as a part of the Department's proposed overall rulemaking with respect to the Act. This guidance will facilitate the Department's coordination of activities authorized under the Act, and its reporting to Congress on the scope and effectiveness of the program, as required by section 5(c) of the Act. It will also help guarantee the uniform high quality of reports submitted to the Department pursuant to the requirements of section 3(a) of the Act.

The Act provides Federal agencies with a method of mitigating impacts of their undertakings upon those historic properties that contain scientific, prehistoric, historic, or archeological data. This method, data recovery, is not the only method that may be properly applied in order to mitigate project impacts identified through the process prescribed by the National Environmental Policy Act of 1969 (Pub. L. 91–190, hereinafter, "NEPA"). Actions that preserve historic properties in place are usually preferable to the preservation of data alone through data recovery activities, both because such actions usually extend the useful lives of the properties and their data and because they often are less costly. The activities authorized by the Act must also be understood as applicable only to the mitigation of project impacts on the data or research value of historic properties, not on those historic or cultural attributes that are not data related. For example, the Act does not pertain to actions that may be appropriate under NEPA or the National Historic Preservation Act of 1966 (Pub. L. 89–665; hereinafter, "NHPA") to preserve the historical or cultural meaning or integrity of a property to a neighborhood, community, or group.

In order to ascertain when application of the Act to impact mitigation activities may be appropriate, and to apply its provisions wisely, it is necessary that the planning steps required by NEPA, NHPA, and Executive Order 11593 be taken before the Act is invoked; the Act is not a substitute for these planning authorities. It is also obvious that before data can be recovered under the terms of the Act, the districts, sites, buildings, structures, and objects that contain or represent such data must be carefully located and identified. Accordingly, Appendix B is provided setting forth the Department's general guidelines for the location and identification of historic properties.

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions, or objections regarding these proposed guidelines to the Chief, Office of Archeology and Historic Preservation, National Park Service, U.S. Department of the Interior, Washington, D.C. 20240 on or before March 14, 1977.

Under the terms of the Act, these guidelines are a Department of the Interior responsibility. The budget implications of the Act for other Federal agencies have been presented to the Office of Management and Budget for coordination therewith. It is hereby certified that the economic and inflationary impacts of these proposed guidelines have been carefully evaluated in accordance with Executive Order 11821. The impact will be minor and preparation of an inflation impact statement is not required.

This rulemaking is developed under the authority, *inter alia*, of section 5(c) of the Archeological and Historic Preservation Act of 1974, 16 U.S.C. § 469a–3 *et seq* (1970 ed.). In consideration of the foregoing, it is proposed to amend Chapter 1 of Title 36, Code of Federal Regulations, to add a new Part 66 as follows:

PART 66—RECOVERY OF SCIENTIFIC, PREHISTORIC, HISTORIC AND ARCHEOLOGICAL DATA: METHODS, STANDARDS, AND REPORTING REQUIREMENTS

Sec.
66.1 Definitions.
66.2 Data recovery operations.
66.3 Protection of data and materials.
66.4 Provision of reports to the Department.
Appendix A: Format standards for final reports of data recovery.
Appendix B: Guidelines for the location and identification of historic properties containing scientific, prehistoric, historical, or archeological data.
Appendix C: Professional qualifications.
Appendix D: Recommendations for the procurement of location, identification, and data recovery programs.

AUTHORITY: Sections 2(a), 2(c), 2(j), and 2(k) (without regard to the last sentence thereof), 49 Stat. 666 (16 U.S.C. 462(a), (c), (j), (k)); Section 5(c), 88 Stat. 174 (16 U.S.C. 469a–3).

§ 66.1 Definitions.

(1) *Area subject to environmental impact* is that land area, or areas, where land may be disturbed, or buildings or structures altered, or the environment of historic properties changed, in such a way as to affect their historical value.

(2) *Historic properties* are sites, districts, structures, buildings, and objects that may meet the National Register criteria set forth at 36 CFR 60.6, by virtue of their possession of one or more kinds of historical value. One kind of historical value is data or research value, the known or potential capacity of a property to provide information important to the reconstruction, analysis, and understanding of history.

(3) *History* comprises the events, patterns, and processes of the human past, including those that have affected literate societies and those that have affected pre-literate or nonliterate groups, whose history is sometimes referred to as prehistory.

(4) *Significant data*, as used by the Act, are data that can be used to answer research questions, including questions of present importance to scholars and questions that may be posted in the future.

(5) *Archeological data* are data embodied in material remains (artifacts, structures, refuse, etc.) produced purposely or accidentally by human beings, and in the spatial relationships among such remains.

(6) *Historical data* are data useful in the study and understanding of human life during the period since the advent of written records in the area of concern. The date of inception of the historic period varies from area to area within the United States.

(7) *Prehistoric data* are data useful to the study and understanding of human life during the prehistoric period, i.e., at all time periods prior to substantial contact between the native people of the United States and literate societies. The end point of the prehistoric period varies from area to area within the United States.

(8) *Scientific data*, as used by the Act, are data provided by sciences other than archeology, history, and architecture, that are relevant to an understanding of human life during either historic or prehistoric periods. Ethnographic, biological, geological, paleontological, ecological, and geophysical data, among others, are often important to the understanding of the human past.

(9) *Location and identification study* is the study necessary to determine the locations of, and to evaluate, historic properties. At a minimum it requires background research; if existing data are inadequate to permit the location and evaluation of historic properties, it requires field inspection as well (See Appendix B).

(10) *Data recovery* is the systematic removal of the scientific, prehistoric, historic, and/or archeological data that provide an historic property with its research or data value. Data recovery may include preliminary survey of the historic property or properties to be affected for purposes of research planning, the development of specific plans for research activities, excavation, relocation, preparation of notes and records, and other forms of physical removal of data and the material that contains data protection of such data and material, analysis of such data and material, preparation of reports on such data and material, and dissemination of reports and other products of the research. Examples of data recovery include archeological research producing monographs, descriptive, and theoretical articles, study collections of artifacts and other materials; architectural or engineering studies resulting in measured drawings, photogrammetry, or photography; historic or anthropological studies of recent or living human populations relevant to the understanding of historic properties, and relocation of properties whose data value can best be preserved by so doing.

(11) *Material* means actual objects removed from an historic property as a part of a data recovery program, including but not limited to artifacts, byproducts of human activity such as flakes of stone, fragments of bone, and organic waste of various kinds, architectural elements, soil samples, pollen samples, skeletal material, and works of art.

(12) *Principal Investigator* means the contractor or other person directly responsible for a location and identification, or data recovery project.

(13) *Research design* is a plan, usually generated by the principal investigator, outlining the proposed approach to a location, identification, or data recovery project. Minimally, the design should spell out relevant research problems, research methods, and some predicted results of the study. Research designs are

often modified as the course of research yields new findings.

(14) *Research methods* are procedures and techniques used to record, recover, and/or analyze a body of data such that conclusions may be drawn concerning research problems.

(15) *Research problems* are questions in anthropology, sociology, geography, history, architectural history, art history, and other disciplines of the sciences and humanities that can potentially be answered by studying historic properties. Scientific, prehistoric, historic and archeological data are valuable insofar as they are potentially applicable to the investigation of research problems. Research problems are typically posed as questions about human behavior, thought, or history. Potential answers to such questions, and the ways in which such possible answers may be reflected in the data content of specific historic properties are often spelled out in research designs as hypotheses and test implications.

§ 66.2 Data recovery operations.

(a) Data recovery program operations carried out under the authority of the Act should meet at least the following minimum standards:

(1) All operations should be conducted under the supervision of qualified professionals in the disciplines appropriate to the data that are to be recovered. Qualifications commonly required for professionals are set forth in Appendix C;

(2) The program should be conducted in accordance with a professionally adequate research design. This design should reflect:

(i) An understanding by the principal investigator of the data or research value of the property. This value will normally have been defined as a result of a location and identification study as discussed in Appendix B.

(ii) An acquaintance on the part of the principal investigator with previous relevant research, including research in the vicinity of the proposed undertaking and research on topics germane to the data recovery program regardless of where such research has been carried out.

(iii) The development of a definite set of research problems, taking into account the defined research value of the property, other relevant research and general theory in the social and natural sciences and the humanities that may be pertinent to the data to be recovered.

(iv) A responsiveness to the need to recover from the property to be investigated, a usable sample of data on all research problems that reflect the property's research value, or a clear and defensible rationale for collecting data on a smaller range of problems at the expense of others.

(v) Competence on the part of the principal investigator and his or her staff in the methods and techniques necessary to recover the data contained in the property, and an intention to utilize these methods and techniques in the research;

(3) The program should provide for adequate personnel, facilities, and equipment to fully implement the research design;

(4) The program should provide for adequate consultation with scholars whose research interests would enable them to contribute to the research;

(5) The program should employ methods that insure full, clear, and accurate descriptions of all field operations and observations, including excavation and recording techniques, stratigraphic and/or associational relationships where appropriate, significant environmental relationships, etc. Where architectural characteristics are recorded, such recording should be consistent with the standards published by the Historic American Building Survey (HABS) in "Recording Historic Buildings," by H. J. McKee (National Park Service, 1970). Updated guidelines for recording architectural, engineering, and archeological data may be obtained from the Director, Office of Archeology and Historic Preservation, National Park Service;

(6) If portions or elements of the property under investigation can be preserved, the program should employ methods that make economical use of these portions or elements. Destructive methods should not be applied to such portions or elements if nondestructive methods are feasible;

(7) The program should result in a report or reports detailing the reasons for the program, the research design, the methods employed in both fieldwork and analysis, the data recovered, and the knowledge or insights gained as a result of the data recovery, with reference to the research design and the research value of the property. The report or reports should meet contemporary professional standards, and should be prepared in accordance with the format guidelines set forth in Appendix A;

(8) The program should provide for adequate perpetuation of the data recovered, as discussed at § 66.3. Care should be taken during curation and handling of specimens and records to insure that data are not lost or decimated. Provision must be made for disseminating the report of the program. Appropriate methods for dissemination of results include but are not limited to publication in scholarly journals, monographs, and books, presentation on microfilm or microfiche through the National Technical Information Service or other outlets, and distribution in manuscript form to State Historic Preservation Officers and other appropriate archives and research libraries. Reports submitted to the Department of the Interior pursuant to section 3(a) of the Act will be disseminated as set forth in § 66.4, but nonredundant independent distribution is encouraged. At a minimum, a copy of each report should be provided to the State Historic Preservation Officer; and

(a) Particularly when a data recovery program is conducted upon a potentially complex historic property (e.g., a recent town site; a prehistoric site that may contain many occupation layers, cemeteries, or architectural remains), situations may arise or data be encountered that were not anticipated in designing the program. Adequate provision should be made for modification of the program plan to cope with unforeseen discoveries or other unexpected circumstances.

(b) These guidelines should be regarded as flexible, inasmuch as (a) some specialized types of data recovery (e.g., the relocation of a structure or object) may not require all the operations discussed above, and (b) innovative approaches to data recovery should be encouraged, as long as these have as their purpose the basic purpose set forth in section 1 of the Act.

§ 66.3 Protection of data and materials.

(a) Data recovery programs result in the acquisition of notes, photographs, drawings, plans, computer output, and other data. They also often result in the acquisition of architectural elements, artifacts, soil, bone, modified stones, pollen, charcoal, and other physical materials subject to analysis, interpretation, and in some instances display. Analytic techniques that can be applied to such data and material change and improve through time, and interpretive questions that may be asked using such data and material also change and develop. For these reasons, and to maintain data and material for public enjoyment through museum display, it is important that the data and material resulting from data recovery programs be maintained and cared for in the public trust.

(1) Data and materials recovered from lands under the jurisdiction or control of a Federal agency are the property of the United States Government. They shall be maintained by the Government or on behalf of the Government by qualified institutions through mutual agreement. A qualified institution is one equipped with proper space, facilities, and personnel for the curation, storage, and maintenance of the recovered data and materials. The exact nature of the requisite space, facilities, and personnel will vary depending on the kinds of data and materials recovered, but in general it is necessary for a qualified institution to maintain a loboratory where specimens can be cleaned, labeled, and preserved or restored if necessary; a secure and fireproof storage facility organized to insure orderly maintenance of materials; a secure and fireproof archive for the storage of photographs, notes, etc., and a staff capable of caring for the recovered data and material.

(2) Data recovered from lands not under the control or jurisdiction of a Federal agency, as a condition of a Federal license, permit, or other entitlement, are recovered on behalf of the people of the United States and thus are the property of the United States Government. They should be maintained as provided under § 66.3(1)(a) above. The nonfederal provider of funds should be provided with copies of such data upon request. Material recovered under such

circumstances should be maintained in the manner prescribed under § 66.3(1)(a) insofar as is possible.

(b) Data and material resulting from a data recovery program should be maintained by a qualified institution or institutions as close as possible to their place of origin, and made available for future research.

(c) Data on architectural and/or engineering characteristics, recorded in accordance with the standards discussed at § 66.2.1(e) above, should be filed with the Library of Congress.

§ 66.4 Provision of reports to the Department.

(a) Pursuant to the terms of section 3(a) of the Act, any Federal agency that undertakes a program of data recovery as authorized by the Act shall provide the Department of the Interior with copies of the resulting reports. The Department shall make these reports available to the public.

(b) In order to facilitate public access to these reports, the Department, represented by the Office of Archeology and Historic Preservation, National Park Service, has entered into an agreement with the National Technical Information Service, which agreement provides for the storage on microfiche, and reproduction upon demand, of all final reports on data recovery programs either undertaken by the Department or provided to the Department under the authority of the Act.

(c) Two (2) copies of each final report shall be filed with the Director, Office of Archeology and Historic Preservation, National Park Service, Washington, D.C. 20240. All final reports shall be prepared in accordance with the format standards set forth in Appendix A.

(d) In order to facilitate the Department's fulfillment of its responsibilities under section 5(c) of the Act, to report to Congress concerning the scope and effectiveness of the National Survey and Data Recovery effort, each agency engaging in such activities shall also file with the Director, Office of Archeology and Historic Preservation:

(1) Two (2) copies of each final report on any location and identification study, regardless of whether the study resulted in the actual identification of historic properties;

(2) One (1) copy of each scope-of-work or other description of a proposed location and identification or data recovery program;

(3) One (1) copy of each contract let for any location and identification or data recovery program;

(4) Together with each final report of a location and identification or data recovery program, a statement of the costs incurred by the Federal Government in the conduct of the program; and

(5) Together with each final report of a location and identification or data recovery program, the comments of at least one (1) professional in the field of study represented by the report, and of the State Historic Preservation Officer(s) in whose State(s) the program took place, on the scope and effectiveness of the program reported.

APPENDIX A—FORMAT STANDARDS FOR FINAL REPORTS OF DATA RECOVERY PROGRAMS

The following format standards are required for reports provided to the Department of the Interior under terms of section 3(a) of the Act. They are recommended for other reports provided to the Department pursuant to § 66.4.4(a) as well.

1. Text and line drawings should be clean, clear, and easily reproducible.

2. Photographs should be original black and white positive prints, or high-quality reproductions.

3. Typescript should be single spaced.

4. All pages should be numbered in sequence.

5. Form NTIS-35, available from the National Technical Information Service, U.S. Department of Commerce, Springfield, Virginia, 22161 should be enclosed with each report, partially completed in accordance with the example shown in Figure 1 below.

Figure 1

BIBLIOGRAPHIC DATA SHEET	1. Report No.	2.	3. Recipient's Accession No.
4. Title and Subtitle COMMUNITY ORGANIZATION AT THE ROCKPILE SITE			5. Report Date Jun 79 6.
7. Author(s) John Doe and Sally H. Slade			8. Performing Organization Rept. No. ME-22
9. Performing Organization Name and Address Western Oklahoma State University Western, Oklahoma			10. Project/Task/Work Unit No. 11. Contract/Grant No. CX 1595-9-0073
12. Sponsoring Organization Name and Address U.S.D.A. Soil Conservation Service, Rockpile Soil Conservation District			13. Type of Report & Period Covered 1/77-6/79 14.
15. Supplementary Notes			

16. Abstracts

A data recovery project at the Rockpile Site in northwestern Texas (41 XA 1011) was directed to the development of an understanding of settlement organization during the Late Archaic period. The single-component site represented a permanent village occupied by hunters and gatherers. Analysis of faunal and floral remains indicates intensive exploitation of the local environment. Complete excavation of the site revealed evidence of both circular and rectangular houses arranged in rows. Non-random distribution of Alibates flint detritus suggests the possibility of occupational specialization among households. Non-random distribution of non-utilitarian artifacts suggests the recognition of different social statuses.

17. Key Words and Document Analysis. 17a. Descriptors

17b. Identifiers/Open-Ended Terms

Community organization
Social organization
Occupational specialization
Subsistence practices
Northwest Texas
Archaic

17c. COSATI Field/Group

18. Availability Statement	19. Security Class (This Report) UNCLASSIFIED	21. No. of Pages 523
	20. Security Class (This Page UNCLASSIFIED	22. Price

FORM NTIS-35 (REV. 10-73) ENDORSED BY ANSI AND UNESCO. THIS FORM MAY BE REPRODUCED USCOMM-DC 8265-P74

INSTRUCTIONS FOR COMPLETING FORM NTIS-35 (Bibliographic Data Sheet based on COSATI Guidelines to Format Standards for Scientific and Technical Reports Prepared by or for the Federal Government, PB-180 600).

1. **Report Number.** Each individually bound report shall carry a unique alphanumeric designation selected by the performing organization or provided by the sponsoring organization. Use uppercase letters and Arabic numerals only. Examples FASEB-NS-73-87 and FAA-RD-73-09.

2. Leave blank.

3. **Recipient's Accession Number.** Reserved for use by each report recipient.

4. **Title and Subtitle.** Title should indicate clearly and briefly the subject coverage of the report, subordinate subtitle to the main title. When a report is prepared in more than one volume, repeat the primary title, add volume number and include subtitle for the specific volume.

5. **Report Date.** Each report shall carry a date indicating at least month and year. Indicate the basis on which it was selected (e.g., date of issue, date of approval, date of preparation, date published).

6. **Performing Organization Code.** Leave blank.

7. **Author(s).** Give name(s) in conventional order (e.g., John R. Doe, or J.Robert Doe). List author's affiliation if it differs from the performing organization.

8. **Performing Organization Report Number.** Insert if performing organization wishes to assign this number.

9. **Performing Organization Name and Mailing Address.** Give name, street, city, state, and zip code. List no more than two levels of an organizational hierarchy. Display the name of the organization exactly as it should appear in Government indexes such as Government Reports Index (GRI).

10. **Project/Task/Work Unit Number.** Use the project, task and work unit numbers under which the report was prepared.

11. **Contract/Grant Number.** Insert contract or grant number under which report was prepared.

12. **Sponsoring Agency Name and Mailing Address.** Include zip code. Cite main sponsors.

13. **Type of Report and Period Covered.** State interim, final, etc., and, if applicable, inclusive dates.

14. **Sponsoring Agency Code.** Leave blank.

15. **Supplementary Notes.** Enter information not included elsewhere but useful, such as: Prepared in cooperation with . . . Translation of . . . Presented at conference of . . . To be published in . . . Supersedes . . . Supplements . . . Cite availability of related parts, volumes, phases, etc. with report number.

16. **Abstract.** Include a brief (200 words or less) factual summary of the most significant information contained in the report. If the report contains a significant bibliography or literature survey, mention it here.

17. **Key Words and Document Analysis. (a). Descriptors.** Select from the Thesaurus of Engineering and Scientific Terms the proper authorized terms that identify the major concept of the research and are sufficiently specific and precise to be used as index entries for cataloging.
(b). Identifiers and Open-Ended Terms. Use identifiers for project names, code names, equipment designators, etc. Use open-ended terms written in descriptor form for those subjects for which no descriptor exists.
(c). COSATI Field/Group. Field and Group assignments are to be taken from the 1964 COSATI Subject Category List. Since the majority of documents are multidisciplinary in nature, the primary Field/Group assignment(s) will be the specific discipline, area of human endeavor, or type of physical object. The application(s) will be cross-referenced with secondary Field/Group assignments that will follow the primary posting(s).

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APPENDIX B—GUIDELINES FOR THE LOCATION AND IDENTIFICATION OF HISTORIC PROPERTIES CONTAINING SCIENTIFIC, PREHISTORIC, HISTORICAL, OR ARCHEOLOGICAL DATA

In order to notify the Secretary of the potential loss or destruction of significant scientific, prehistoric, historical, or archeological data pursuant to sections 2, 3 and 4 of the Act, in a manner that will permit the Secretary to act effectively in response to this notification, it is necessary that the agency provide appropriate documentation concerning the nature and significance of all historic properties, subject to impact, that may contain such data. It is recommended that such documentation be generated by agencies in the course of their planning activities carried out under the authorities of the National Environmental Policy Act of 1969 (Pub. L. 91–190) (NEPA), the National Historic Preservation Act of 1966 (Pub. L. 89–665 as amended) (NHPA), Executive Order 11593, and related authorities.

It is important that agencies understand the relationship among NEPA, such general historic preservation authorities as the NHPA, and the Archeological and Historic Preservation Act. NEPA mandates the evaluation of project impacts on the entire environment, including all kinds of cultural resources. One kind of cultural resource is the historic property which is the concern of the NHPA and Executive Order 11593. Section 106 of the NHPA sets forth specific actions to be taken when this kind of cultural resource is subject to effect. Some historic properties contain scientific, prehistoric, historical, and archeological data; the Archeological and Historic Preservation Act of 1974 provides mechanisms for the recovery of such data if and when the planning processes provided for by NEPA, NHPA, and related authorities have resulted in the conclusion that data recovery constitutes the most prudent and feasible method of impact-mitigation.

Identification of cultural resources is an obvious prerequisite to the evaluation of impact on such resources, and to the planning of methods for the mitigation of such impacts. Identification of cultural resources in general through the NEPA process involves a broad, general, interdisciplinary study of all those social and cultural aspects of the environment, both tangible and intangible, that may be affected by the undertaking. Identification of historic properties requires the location of those tangible places and things that may contain or represent historic values, and sufficient study of these properties to determine what their values are and whether these values are of sufficient importance to make the properties eligible for the National Register of Historic Places. In the process of such study, it should become apparent which properties contain significant scientific, prehistoric, historic, or archeological data. Once the undertaking's impact on such properties has been evaluated, it will then be possible to ascertain whether data recovery constitutes an appropriate mitigation action, and it is at this point that the Archeological and Historic Preservation Act can be effectively utilized.

The guidelines presented in this appendix are the same as those required to identify properties eligible for the National Register of Historic Places pursuant to section 106 of NHPA as amended and to sections 2(a), 2(b), and (where applicable) 1(3) of Executive Order 11593. Although prepared for publication under these authorities, they are presented here for the convenience of Federal agencies and other users.

I. *General Conduct of Location and Identification Studies.* Although the exact activities necessary for the identification of historic properties will vary depending on the nature of agency landholdings or jurisdiction and, where applicable, on the nature of the agency's undertaking, the following steps will generally be appropriate.

1. *Background Research and Evaluation of Existing Data.*—a. Since few areas of the Nation have yet been adequately surveyed for historic properties, current lists of such properties seldom provide adequate information for full identification. Documentary research is the starting place for any identification study, however. Systematic study and evaluation of documentary data will usually permit predictions to be made about the kinds of historic properties that may be encountered in the area, and about their possible distributions. Such study may also make it possible to develop a broad evaluatory framework within which the significance of particular properties can be judged. Finally, background research may pinpoint some particular properties that are already adequately documented or properties that are known but need further study to obtain full documentation. In undertaking background research, answers to the following questions should be sought:

(1) Are there known historic properties in the area?

(2) Is knowledge about the presence or absence of historic properties based on a survey or surveys carried out according to the standards set forth in this appendix?

(3) If not, to what extent are survey data lacking?

(4) If the area has not been systematically surveyed, what predictions can be made about the location or kinds of historic properties to be expected based on data from nearby surveyed areas, from the known history of the area, from the constraints known to be imposed by the natural environment, etc.?

(5) Given the known history and prehistory of the region, the social and cultural concerns of its people, and pertinent State, local, and regional plans, what kinds of preservation and/or research priorities appear to be appropriate, and what kinds of historic properties might be important to the satisfaction of these priorities?

b. The agency undertaking a location and identification study, should be vigorous in searching out useful sources of data, and should encourage innovative approaches in their use to predict the locations of properties and to develop evalutory frameworks. It must be recognized, however, that some institutions and organizations that maintain lists, files, or other bodies of unpublished data are legitimately concerned about the integrity of these documents and/or about the cost involved in permitting their use; these concerns shoud be ascertained and, if legitimate, honored. At least the following sources of background data should be consulted:

(1) The State Historic Preservation Officer should be consulted with reference to the State Historic Preservation Plan maintained by his office, to obtain such data as:

(a) Information on properties listed in or nominated to the National Register, properties on other lists, inventories, or registers known to the State Historic Preservation Officer, and properties on which the State has evaluated and unevaluated survey data;

(b) Information on predictive data regarding potential properties in the area;

(c) Recommendations as to the need for surveys in the area;

(d) Recommendations concerning methods that should be used in conducting such surveys and possible sources of professional expertise;

(e) Results of any previous surveys in the area, and the State Historic Preservation Officer's comments thereon; and

(f) Recommendations concerning pertinent State or local laws and policies concerning historic properties.

(2) Basic published and unpublished sources on local history, prehistory, anthropology, ethnohistory, and ecology should be studied to obtain an overview of the region's potential historic property distributions and research or preservation values.

(3) The National Register and other lists or files of data on historic properties should be consulted. The National Register is published in its entirety in the FEDERAL REGISTER, usually in February of each year; additions are published regularly in the FEDERAL REGISTER. The most recent full publication and subsequent additions should be consulted to determine whether any properties exist in an area to be affected by a Federal undertaking. The National Register listings are also accompanied by a list of properties in both Federal and nonfederal ownership which have been determined to be eligible for inclusion as well as a list of pending nominations. The catalogs of the Historic American Buildings Survey and the Historic American Engineering Record maintained by the National Park Service, and any similar surveys and published reports should be utilized. State, university, or professional society historians, architects, architectural historians, and archeologists, and local organizations may also have registers, inventories, catalogs, or other lists of sites or areas with known or presumed historic values.

(4) Persons with first-hand knowledge of historic properties and/or their historic values should be interviewed where feasible and appropriate. Such interviews, and a proper respect for the opinions expressed by those interviewed, are of particular importance where properties of cultural importance to local communities or social groups may be involved. Oral data should be elicited and recorded using existing professional methods such as those prescribed by the Oral History Association, Box 13734, N.T. Station, Denton, Texas 76203.

c. Background research should be undertaken by or under the supervision of professional historians, architectural historians, historical architects, and/or archeologists. It will often be necessary to draw upon the services of specialists such as ethno-historians, anthropologists, sociologists, and cultural geographers to make full use of documentary data.

2. *Field Inspection.* If review and evaluation of existing information fails to produce complete data based upon prior professional examination of the area subject to environmental impact, then the background research should be supplemented by direct examination of the area of concern.

a. Staff and Planning. Field inspection usually can be performed only by professional historians, archeologists, architectural historians, and historical architects. It will sometimes be necessary or useful to call upon additional specialists to deal with particular characteristics of the area. For example, if industrial properties are present the services of an industrial historian or an industrial archeologist may be appropriate, and if the continuing ways of life of local social or ethnic groups are important to understanding historic properties, social or cultural anthropologists and folklorists may be necessary additions to the staff. If paleontological materials are likely in cultural context (i.e. in association with cultural material) the services of a professional paleontologist would be necessary. The exact nature of the appropriate staff will depend on the kinds of data that can be expected

to occur. For example, it is obviously unreasonable to employ an architectural historian in the absence of buildings or structures.

The nature of the area will also affect the kinds of methods that must be employed. Urban areas and rural areas require different approaches. Terrain, vegetation, land ownership and other factors will also affect the time required to conduct an inspection and the kinds of techniques that will be required to complete it. For example, if few indications of archeological sites are likely to appear on the surface of the ground due to vegetation, alluviation, or other factors, it will probably be necessary for archeologists to undertake subsurface testing both to locate sites and to obtain sufficient information for evaluation purposes.

Agencies planning field inspection should take factors such as the above into account in preparing work plans, and should consult with the Secretary, the State Historic Preservation Officer, and/or other qualified persons or groups to determine exactly what special approaches may be necessary.

Adequate records must be kept of all field inspections to clearly indicate what lands were inspected, the degree of intensity with which they were inspected, the kinds of historic properties sought, all historic properties recorded, and any factors that may have affected the quality of the observations.

b. Levels of field inspection: The intensity of field inspection in advance of an undertaking should be commensurate with the projected impact of the undertaking.

An undertaking whose only effects will be indirect and diffuse—for instance an undertaking whose sole effect will be to permit generalized population growth in a large area—will generally require a systematic sample reconnaissance, or some other less intensive field inspection than will an undertaking having definable direct impacts.

The level of project planning will also affect the nature of field inspection undertaken; at an early level of planning, when many options are open for location of project facilities, low-intensity reconaissance may be appropriate to provide planning guidance; when alternative project locations have been reduced, a much more intensive survey will usually be necessary.

Although many different types of field inspections may be appropriate in different situations, such inspections generally fall into two types: reconaissance survey and intensive survey.

3. *Reconnaissance Survey*—Full identification of historic properties for purposes of determination of eligibility and detailed planning normally requires that an intensive survey be conducted as discussed at section I.4 of this appendix. Some agencies however, may find it helpful to their planning activities to conduct reconnaissance surveys in order to obtain preliminary or predictive data on the distribution and nature of historic properties. Reconnaissance survey is designed to provide a general impression of an area's historic properties and their values, and involves small-scale field work relative to the overall size of the area being studied. Although reconnaissance survey will seldom if ever provide sufficient data to insure identification of all historic properties in an area, it should make it possible to identify obvious or well-known properties, to check the existence and condition of properties tentatively identified or predicted from background research, to identify areas where historic properties are obviously lacking, and to indicate where certain kinds of properties are likely to occur, thus making possible a more informed and efficient intensive survey at a later stage in planning.

In areas of potential direct impact from Federal undertakings, reconnaissance survey should be used only as a preliminary to an intensive survey, unless the reconnaissance reveals that it is impossible or extremely unlikely for historic properties to occur in the area. In areas of potential indirect impact, reconnaissance may provide sufficient data to permit an agency to evaluate its possible impacts and to develop plans to assist local agencies in avoiding or mitigating such impacts. In cases where a Federal agency intends to license or permit a State, local, or private undertaking, particularly if the undertaking involves large land areas, a reconnaissance may provide the agency with sufficient information to permit the development of protective stipulations in the permit or license. An agency that participates in many small-scale undertakings in a large region may find it useful to undertake a reconnaissance of the region in order to develop a basis for making decisions about the need for intensive surveys on individual projects, or to obtain guidance in the kinds of survey activities that may be needed. Although a reconnaissance survey will not ordinarily provide sufficient data to insure identification of all historic properties under the jurisdiction or control of, or subject to impact by a Federal agency, it may be a very useful tool for effective agency planning. A reconnaissance survey is preceded by adequate background research as discussed above. In the field an effort is made to gain a sufficient impression of the area under consideration, and its cultural resources, at least to permit predictions to be made about the distribution of historic properties within the area and the potential significance of such properties. For small areas, a superficial visit to the area by professionals in pertinent disciplines (architectural historians, historians, archeologists, and others whose expertise is appropriate to the study of the area) may be sufficient for reconnaissance purposes. Such a reconnaissance should provide an informed general opinion about the kinds of properties that might be encountered and the appropriate methods to be used in completing an intensive survey if such a survey is necessary. For larger areas, a more systematic approach to reconnaissance survey is usually necessary. For archeological resources this usually involves the detailed inspection of selected lands representing a statistically valid sample of the entire area, from which projections can be made to the entire area. Comprehensive drive-through or walking inspections of architecturally significant resources or at least spot-checks of various neighborhoods, within the area, are appropriate for the characterization of architectural resources in such a reconnaissance. Coordination in the field with local parties interested in or knowledgeable about the area's history and historic properties is appropriate during a reconnaissance as during an intensive survey.

4. *Intensive Survey.* An intensive survey is a systematic detailed field inspection done by or under the supervision of professional architectural historians, historians, archeologists, and/or other appropriate specialists. This type of study is usually required to determine the significance of properties and their eligibility for listing in the National Register. It is preceded by adequate background research as discussed above. All districts, sites, buildings, structures, and objects of possible historical or architectural value are examined by or under the supervision of a professional historian, architectural historian, or historical architect. Persons knowledgeable in the history, prehistory, and folkways of the area are interviewed by or under the supervision of a professional historian, ethnohistorian, cultural anthropologist, or folklorist. The surface of the land and all districts, sites, buildings, and objects of possible archeological value are inspected by or under the supervision of a professional archeologist. Historic archeologists are employed where historic sites are likely, prehistoric archeologists are used if prehistsoric sites are probable. Systematic subsurface testing is conducted if necessary to locate or obtain full descriptive and evaluative data. Documentary data necessary to the evaluation of specific properties are compiled and analyzed. A systematic effort is made to identify all properties within the area of concern that might qualify for the National Register, and to record sufficient information to permit their evaluation. All historic properties should be evaluated against the criteria established at 36 CFR 60.6, and supporting documentation should be developed with reference to the standards published in the FEDERAL REGISTER for comment on April 27, 1976, as 36 CFR 63, Appendix A. Since the precise kinds of field activities necessary to identify historic properties vary among the different regions of the United States, it is vital that agencies preparing to undertake intensive surveys consult with the State Historic Preservation Officer and other sources of professional guidance in developing plans for such surveys.

II. *Special Considerations with respect to Submerged Lands.* For submerged lands documentary research by qualified researchers may serve to indicate the need for, and recommended location of, physical and/or electronic surveys for submerged archeological sites and sunken vessels. Because of the specialized nature and problems attending underwater survey activities, agency officials may wish to determine specific survey procedures in consultation with the Director, Office of Archeology and Historic Preservation, National Park Service, Washington, D.C. 20240.

III. *Documenting Location and Identification Studies.* The nature and level of specificity required in documenting a location and identification study will vary somewhat with the scope and kind of undertaking (if any) for which the study is conducted, the kinds of information already on hand about the area being studied, and other factors. In general, however, it is necessary to document the methods used in conducting the study, the assumptions that guided the application of the methods, the results of applying the methods, and any deficiencies in these results that may have arisen from the application or misapplication of the methods. Typically, the deport of a location and identification study should contain the following types of information.

1. *Description of the study area.* Boundaries of the area should be indicated and the rationale used in defining the boundaries should be presented. Topographic and environmental characteristics that might affect the distribution, significance, or preservation of historic properties should be described.

2. *Background research and preparation.* Documentary data and, where relevant, data from oral sources pertinent to the study should be discussed and evaluated. Sources utilized should be identified, and methods of analysis presented and discussed. Background data should be analyred in such a way as to form a basis for planning any necessary field investigations, and for evaluating the significance of properties that may be discovered. Accordingly, the researcher should indicate a familiarity not only with

local history and prehistory, but also with the professional literature in history, architecture, anthropology, archeology, or other disciplines that may provide bases for evaluating historic properties.

3. *Research Design.* The report should also set forth the research design or plan of study that guided the work, discussing what sorts of historic properties were expected in the area, what historic values they might represent, and what strategies were to be employed in seeking the resources. Often it will be possible to make specific predictions about what kinds of properties can be expected in the field and how they ought to appear. The researcher should also set forth any biases or sources of error that can be identified as having potentially influenced the results of the study. For example, researchers trained specifically in prehistoric archeology may be unable to accurately observe historic properties; if this bias is not corrected by adding an historian, historic archeologist, or architectural historian to the study team, it should be explicitly acknowledged in the report as a possible source of error.

4. *Field Inspection.* The composition of the field study team should be presented. An attempt should be made to insure that all pertinent professional disciplines are represented in this team. Names and qualifications of team members and consultants should be presented and their duties discussed. It is the researcher's obligation to employ persons and methods that will insure the accurate recognition of all classes of historic properties. Methods used in seeking, observing, and recording historic properties should be clearly set forth. The extent to which the study area was fully covered by inspectors on foot should be presented, textually and/or using maps and charts. Any portion of the area not inspected, or inspected at a lower level of intensity, should be indicated and discussed. On-the-ground observational procedures should be presented.

a. In reporting the inspection of lands thought to contain nonstructural historic properties, or structures in ruins, the following should normally be discussed:

(1) How surveyors were distributed over the study area, how far apart they were placed and in what directions they walked;

(2) What signs of historic and/or prehistoric activity surveyors were instructed to seek;

(3) What special techniques, if any, were used to seek special kinds of properties thought to occur in the area (e.g., rock art, standing structures), and/or to cope with special difficulties (e.g., pavement, heavy brush, overburden);

(4) If subsurface testing was done, under what conditions it was done, what techniques were used, and where it was done; and

(5) If less than the entire area was inspected, a sampling design should be presented and justified.

b. In reporting the inspection of lands containing buildings, and/or structures, the following should normally be discussed:

(1) How surveyors covered the area—by foot, auto, etc.;

(2) Whether surveyors proceeded individually or as teams;

(3) Intensity of inspection of properties; did the inspection address only facades? exteriors? interiors?

(4) How much of the area was covered at a time; did the inspection cover the entire area, proceed in stages, or cover only a portion? The rationale for the coverage strategy should be presented; and

(5) What kinds of properties were surveyors instructed to seek (e.g., industrial as well as domestic buildings; vernacular architecture as well as "high style" buildings; buildings representing different "themes")?

c. The above categories are not presented as a "check list," but as an example of the kinds of questions that should be answerable using the report of a field inspection. To the extent possible, archeological and architectural/historical inspections should be coordinated, since many properties discovered may be of both archeological and historic architectural importance.

d. All procedures used should be justified in terms of their applicability to the area, its potential properties, its environment, and the plan of study.

5. *Results.* a. If an intensive survey has been done, all historic properties should be clearly and completely described. To the extent possible, documentation of properties should refer to Appendix A to the "Procedures for Requesting Determination of Eligibility," 36 CFR Part 63, published for comment in the FEDERAL REGISTER, April 27, 1976. Documentation can be provided on standard forms or as text, but should be complete and internally consistent.

b. If a reconnaissance survey has been done, the predicted distributions of historic properties should be presented and justified on the basis of background research and field inspection. Specific historic properties actually recorded during the field inspection should be described, insofar as possible, as set forth at section III(5)(a) above.

c. Negative data, as well as positive data should be presented and discussed, i.e., if historic properties were not found, this fact should be noted and, if possible, accounted for.

6. *Evaluation.*—a. Evaluations of historic properties should be made in sufficient detail to provide an understanding of the historical values that they represent, so that this understanding can serve as a basis for managing the properties or planning impact-mitigation programs if necessary. Properties of importance to a community, neighborhood, social or ethnic group should be discussed with reference to the values and concerns of those to whom the properties may be important.

b. If an intensive survey has been done, all historic properties should be evaluated against the criteria of eligibility for the National Register of Historic Places set forth at 36 CFR 60.6.

c. If a reconnaissance survey has been done, to the extent possible, the predicted significance of each kind of historic property likely to occur within the study area should be presented and justified in relation to its general cultural setting, with reference to the criteria set forth at 36 CFR 60.6.

7. *Recommendations.* In most cases it is expected that the report will provide recommendations concerning any need that may exist for further study, evaluation, or, where applicable, impact mitigation.

8. *Accompanying photographs, graphics, and tabular material.* A location and identification study report should contain sufficient photographs, maps, charts, tables, and appendix material to insure its accurate use for study and planning purposes.

APPENDIX C—PROFESSIONAL QUALIFICATIONS

1. Basic professional Occupation Standards. It is essential that any project proposal identify suitably qualified key professional personnel. Basic minimum qualifications for these types of personnel who most often serve as principal investigators and key consultants on contract projects are given below. Agencies which undertake or evaluate identification or data recovery projects using their own employees should also insure that these qualifications are possessed by appropriate staff members in a manner consistent with applicable Civil Service requirements. Professional personnel of the Department of the Interior are available at all times to consult with other Federal, State and local agencies regarding the application of these criteria in given instances. For these services agency officials should contact the Chief, Office of Archeology and Historic Preservation, National Park Service, Department of the Interior, Washington D.C. 20240. In the following definitions, a month of professional experience need not consist of a continuous month of full-time work but may be made up of discontinuous periods of full-time or part-time work adding up to the equivalent of a month of full-time experience.

a. History. The minimum professional qualifications in history are a graduate degree in American history or a closely related field; or a bachelor's degree in history or a closely related field plus one of the following: (a) At least two years of full-time experience in research, writing, teaching, interpretation, or other demonstrable professional activity with an academic institution, historical organization or agency, museum, or other professional institution; or (b) substantial contribution through research and publication to the body of scholarly knowledge in the field of history.

b. Archeology. The minimum professional qualifications in archeology are (a) a graduate degree in archeology, anthropology, or closely related field, or equivalent training accepted for accreditation purposes by the Society of Professional Archeologists, (b) demonstrated ability to carry research to completion, usually evidenced by timely completion of theses, research reports, or similar documents, and (c) at least 16 months of professional experience and/or specialized training in archeological field, laboratory, or library research, administration, or management, including at least 4 months experience in archeological field research and at least one year of experience and/or specialized training in the kind of activity the individual proposes to practice. For example, persons supervising field archeology should have at least 1 year or its equivalent in field experience and/or specialized field training, including at least six months in a supervisory role. Persons engaged to do archival or documentary research should have had at least 1 year experience and/or specialized training in such work. Archeologists engaged in regional or agency planning or compliance with historic preservation procedures should have had at least 1 year of experience in work directly pertinent to planning, compliance actions, etc., and/or specialized historic preservation or cultural resource management training. A practitioner of prehistoric archeology should have had at least 1 year of experience or specialized training in research concerning archeological resources of the prehistoric period. A practitioner of historic archeology should have had at least 1 year of experience in research concerning archeological resources of the historic period. Experience in archeological research in the region where the project will be undertaken is usually desirable.

c. Architectural History. The minimum professional qualifications in architectural history are a graduate degree in architectural history, historic preservation, or closely related field, with course work in American architectural history; or a bachelor's degree in architectural history, with a concentration in American architecture; or a bachelor's degree in architectural history, historic preservation, or closely related field plus one of the following:

(1) At least two years full-time experience in research, writing, or teaching in American history or restoration architecture with an academic institution, historical organization or agency, museum, or other professional institution; or

(2) Substantial contribution through research and publication to the body of scholarly knowledge in the field of American architectural history.

d. Architecture. The minimum professional qualifications in architecture are a professional degree in architecture plus at least 2 years of full-time professional experience in architecture; or a State license to practice architecture.

e. Historical Architecture. The minimum professional qualifications in historical architecture are a professional degree in architecture or a State license to practice architecture, plus one of the following:

(1) At least 1 year of graduate study in architectural preservation, American architectural history, preservation planning, or closely related field and at least 1 year of full-time professional experience on preservation and restoration projects; or

(2) At least 2 years of full-time professional experience on preservation and restoration projects. Experience on preservation and restoration projects shall include detailed investigations of historic structures, preparation of historic structures research reports, and preparation of plans and specifications for preservation projects.

APPENDIX D—RECOMMENDATIONS FOR THE PROCUREMENT OF LOCATION, IDENTIFICATION, AND DATA RECOVERY PROGRAMS

The following recommendations are provided under the Department of the Interior's responsibilities under section 5(c) of the Act, to coordinate all Federal survey and data recovery activities authorized by the Act. They are based on the Department's 30 years of experience in the procurement of archeological, architectural, and historical services in the location, identification, and study of historic properties.

1. The nature of required identification and data recovery programs varies with the kinds of historic properties expected or data to be recovered. The kinds of data to be recovered depend on both the information content of the properties to be investigated and the research questions that can be asked about the properties. Designing responsible identification and data recovery programs is a complex, professional activity, as is judging the quality of proposals from potential contractors and evaluating the final products of work performed. To the extent possible, the Department will assist Federal agencies in designing high-quality scopes-of-work and in evaluating offerers. Those agencies intending to undertake substantial independent data recovery activities, however, should review their staffs and procedures to insure that (1) adequate expertise in archeology, history, architectural history, and/or other appropriate disciplines is represented to provide professional oversight of contract operations, and (2) adequate provision is made for receiving and utilizing input from agencies, institutions, organizations, and qualified individuals who can advise the agency in professional matters relating to archeological and historic data recovery.

2. Because the requirements of any given data recovery program will depend both on the data content of the property and the research questions relevant to its investigation, it is extremely difficult to define standard specifications for required contractual services and end products. As a result, negotiated competitive procurement is recommended for most kinds of data recovery activities. Sole source contracting has been found by the Office of Archeology and Historic Preservation to often result in low quality work by restricting intellectual competition among offerers, and has been difficult to justify within Federal procurement regulations. On the other hand, formal advertising with price as the sole criterion for selection of a contractor has proven to be unsatisfactory as a method of insuring high-quality work because of the lack of a clearly specifiable end product. As a rule, negotiated competitive procurement has been found to be the most effective approach to obtaining high-quality services for location and identification of historic properties as well. Agencies that anticipate the need for very small-scale location and identification projects may find it useful to group these together and solicit proposals for an annual package of jobs. The following procedural steps are recommended in general for the procurement of location, identification, and data recovery programs:

a. Preparation of a Request for Proposals. The request for proposals should include a scope-of-work usually including the following elements:

(1) A description of the undertaking requiring the identification or data recovery activity, including a statement of the present status of planning, status of compliance with historic preservation authorities, and a projected timetable for future actions;

(2) The location of the undertaking including information on the size of the area to be affected, the terrain, access, land ownership, or other factors that might affect the logistics of identification or data recovery;

(3) For identification projects, the kinds of descriptive and evaluatory output required by statute and procedures; and

(4) For data recovery projects, the property or properties to be investigated, and the data or research values the property or properties are (is) known or thought to represent.

b. The request for proposals should be circulated to all qualified and potentially interested contractors, including both local and non-local universities, colleges, museums, private firms, and individuals, and should be advertised in "Commerce Business Daily". Advertising in journals, newsletters, and other media likely to be seen by potential offerers, and distribution through the State Historic Preservation Officer, are desirable. The Department will assist agencies in compiling lists of potential offerers upon request.

c. Offerers should provide proposals for undertaking the requested work, setting forth their staff qualifications, facilities, research designs, and project plans.

d. Proposals should be evaluated for responsiveness and professional quality, and ranked accordingly, prior to a consideration of bids. The Department will provide qualified assistance in evaluating proposals upon request, to the extent permitted by staff limitations.

Dated: January 19, 1977.

GARY EVERHARDT,
Director, National Park Service.

[FR Doc.77-2399 Filed 1-27-77;8:45 am]

POSTAL SERVICE

[39 CFR Part 6]

GOVERNMENT IN THE SUNSHINE ACT—BYLAWS OF THE BOARD OF GOVERNORS

Proposed Rulemaking

Correction

In FR Doc. 77-1096 appearing at page 2699 in the issue of Thursday, January 13, 1977 the following corrections should be made.

1. On page 2702, middle column, in § 6.1 insert the following line immediately above the last line in the column, "ing may be varied by action of the".

2. On page 2702, third column, in § 6.3 the 16th and 17th lines are transposed and should read:

"previous oral notice, must be sent in sufficient time to reach that address at least".

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 52]

[FRL 676-4]

APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Texas and New Mexico

On March 21, 1975, the Governor of Texas submitted a revision to the State Implementation Plan (SIP) concerning the re-classification of several Air Quality Control Regions (AQCRs) with respect to particulate matter, sulfur oxides, and carbon monoxide. The public hearing for this revision was conducted by the State on January 16, 1975. On October 1, 1975, the Texas Air Control Board (TACB) was notified of EPA's preliminary analysis results. On August 2, 1976, the Governor submitted a revision to Section IX, Air Quality Surveillance, of the SIP subsequent to a public hearing conducted by the State on April 6, 1976. In this revision, monitoring equipment requirements for sulfur oxides were proposed based on the preliminary evaluation results of the re-classification revision. Therefore, this notice of proposed rulemaking concerns both revisions to the Texas SIP.

AQCR RE-CLASSIFICATION

The priority re-classification revision concerns the pollutants and AQCRs indicated below. The original classifications are compared with the new classifications proposed by the State.

AQCR No.	Name	Pollutant	Original priority	Proposed priority
210	Abilene-Wichita Falls	Particulate	II	III
		Sulfur oxides	II	III
211	Amarillo-Lubbock	Particulate	II	III
		Sulfur oxides	I	III
213	Brownsville-Laredo	Particulate	I	III
214	Corpus Christi-Victoria	Sulfur oxides	I	II
153	El Paso-Las Cruces-Alamogordo	Carbon monoxide	I	III
		Sulfur oxides	I	IA

The criteria for AQCR priority classifications originally promulgated by EPA were measured ambient air quality or estimated air quality where measured data were not available. In addition, population data could be used to classify AQCRs

for carbon monoxide, photochemical oxidants, and nitrogen dioxide if measured air quality data were not available for these pollutants. The original priority classifications shown above were set in 1971. Measured ambient air quality data collected by the TACB for particulate matter and sulfur dioxide were used as the basis for the priority classifications for these pollutants. For carbon monoxide, the priority classification was based on a limited amount of measured air quality data collected by EPA during a three month period (June 26–September 30) in 1971.

EPA Evaluation Results

An AQCR priority classification change is considered warranted and approvable if it can be shown that errors were made in the original measurement or estimation of air quality data. A change from a classification of 1 to a 1A is considered approvable if it can be shown that emissions of a pollutant in an AQCR are predominantly from a single point source.

Particulate Matter

The particulate matter air quality data used to make the original priority classifications for the Abilene-Wichita Falls, Amarillo-Lubbock, and Brownsville-Laredo AQCRs have been reviewed, and these data support the original classification designations. No information was submitted with the State's proposed revision to show that errors were made in data collection and analysis. Measured ambient air quality data in these AQCRs for 1972 through 1975 agree in magnitude with the original data. Since no support for changing the original priority classifications is provided, the revision with respect to particulate is not considered approvable.

Sulfur Dioxide

A limited amount of measured sulfur dioxide air quality data collected by the TACB prior to SIP development were used to make the original priority classifications in the Abilene-Wichita Falls, Amarillo-Lubbock, and Corpus Christi-Victoria AQCRs. The annual arithmetic means and maximum eight-hour averages for each AQCR support the new State proposed priority classifications. Additional support is provided by air quality measurements in 1973, 1974, and 1975. None of these data suggest a priority classification more restrictive than those that are proposed. Therefore, the revision with respect to sulfur dioxide is considered approvable.

For the El Paso-Las Cruces-Alamogordo AQCR, the new State proposed priority classification for sulfur dioxide is 1A. This classification is applicable where emissions are predominantly from a single point source. In 1973, sulfur dioxide emissions from American Smelting and Refining Company in El Paso were 201,546 tons per year. These emissions represent approximately 94 percent of the total sulfur dioxide emissions in the AQCR. The proposed 1A priority classification is therefore considered approvable.

Carbon Monoxide

Measured air quality data for carbon monoxide were collected by EPA during 1971. An eight-hour maximum value of 15.0 milligrams per cubic meter was used in the original classification of the El Paso-Las Cruces-Alamogordo AQCR as priority 1 for carbon monoxide. Since carbon monoxide air quality measurements during 1973, 1974, and 1975 in both the Texas and New Mexico portions of the AQCR are similar in magnitude to the original air quality measurements, there is no indication that the priority classification was incorrect. No information was submitted with the State's proposed revision to show that errors were made in data collection and analysis. Therefore, the revision with respect to carbon monoxide is not considered approvable.

Effects of the Proposed Revision

Priority classifications were made originally to facilitate SIP development and evaluation. Priority classifications now serve only to designate the need for emergency episode control, and to define air monitoring equipment requirements. Based on the proposed classifications for sulfur dioxide, emergency episode plans (§ 51.16) would no longer be required in the Abilene-Wichita Falls and Amarillo-Lubbock AQCRs, and only contingency plans (§ 51.16(g)) would be required in the Corpus Christi-Victoria AQCR and the Texas and New Mexico portions of the El Paso-Las Cruces-Alamogordo AQCR. Air quality surveillance equipment requirements (§ 51.17) for sulfur dioxide would be reduced accordingly for each affected AQCR, including the New Mexico portion of the El Paso-Las Cruces-Alamogordo AQCR.

Air Monitoring Network

The proposed revision to the air quality surveillance network includes the addition of non-continuous monitoring sites in the cities of Arlington, Corpus Christi, Dallas, Gregory, and Midland. Non-continuous sites for Beach City, Beeville, Houston, and San Angelo are deleted from the network. Seven continuous monitoring sites are added in Houston for use during emergency episode situations. A continuous site for downtown Houston is proposed to become operational by 1977. The sulfur dioxide monitoring requirements are changed to reflect the new requirements resulting from priority classification changes as discussed above.

Purpose of Proposal

In the SIP submitted on January 28, 1972, the air quality surveillance portion of the plan met the minimum requirements of § 51.17 of 40 CFR Part 51, and was approved as a result. For many AQCRs existing sites and those planned for installation exceeded minimum requirements. It has become apparent that the air quality surveillance network originally envisioned by the TACB will require more manpower and financial resources than will be available. Therefore, the purpose of this proposed revision is to eliminate unnecessary monitoring sites so that the total network can be effectively supported with available resources.

Review of Public Comments

During discussion of the testimony presented by the Dallas Environmental Health and Conservation Department (EHCD), the EHCD agreed to operate eight high volume particulate sites in the Dallas area. The EHCD also recommended the addition of one of their continuous monitoring sites to the network. The TACB suggested that the site may be added to the network at a later date after data compatability procedures had been completed. The TACB amended the original proposal to include the City of Houston's monitoring sites as real-time emergency episode sites. EPA recommended that a continuous site for carbon monoxide be included in the proposed revision for the downtown Houston area. The TACB amended the proposal to include this recommendation. EPA recommended that continuous carbon monoxide sites be located in the downtown areas of Austin, Dallas, Fort Worth, and San Antonio because such locations are expected to represent "areas of maximum concentration". The TACB maintains that the carbon monoxide monitoring sites should be located in areas of "maximum population exposure."

EPA Evaluation Results

The proposed revision to the air quality surveillance network meets or exceeds the minimum EPA equipment requirements for high volume particulate samplers, gas bubblers for sulfur dioxide, and continuous monitors for sulfur dioxide, carbon monoxide, and photochemical oxidants (measured as ozone). Based on pollutant priority classification, the TACB should designate at least one site as a "maximum concentration" site in the Brownsville-Laredo and Metropolitan San Antonio AQCRs. Sites for measuring particulate matter during air pollution emergency episodes should be designated for the Brownsville-Laredo, Corpus Christi-Victoria, Metropolitan Houston-Galveston, and El Paso-Las Cruces-Alamongordo AQCRs. Maximum concentration and emergency episode sites were properly designated for carbon monoxide and photochemical oxidants. Based on the results of the evaluation, EPA agrees with the proposed revision of the State's air surveillance network.

All previously approved parts of the air quality surveillance system such as sampling schedules, sample analysis, and data handling, which are not affected by the proposed revision, remain in effect.

Copies of the State's proposed SIP revisions along with EPA's rationale for the proposed actions are available for public inspection at the EPA Region VI Office in Dallas, Texas (see complete address below). Copies of these materials are also available at the Environmental Protection Agency, Public Information Reference Unit, Room 2922, EPA Library, 401 M Street, SW., Washington, D.C. 20460.

Interested persons may participate in this proposed rulemaking by submitting written comments to the Environmental Protection Agency, Region VI, 1201 Elm Street, Dallas, Texas, 75270. All comments received on or before February 28, 1977, will be considered.

(Sec. 110(a) Clean Air Act as amended, 42 USC 1856c–5(a).)

Dated: January 4, 1977.

JOHN C. WHITE,
Regional Administrator.

It is proposed to amend Part 52 of Chapter I, Title 40 of the Code of Federal Regulations as follows:

Subpart GG—New Mexico

§ 52.1621 [Amended]

1. In § 52.1621, the table is revised by changing the classification for sulfur oxides in the El Paso-Las Cruces-Alamogordo. Interstate Region from "1" to "1A".

Subpart SS—Texas

1. In § 52.2270, paragraph (c) is amended by adding paragraphs (10) and (11) as follows:

§ 52.2270 Identification of Plan.

* * * * *

(c) * * *

(10) A revision of priority classifications for particulate matter, sulfur oxides, and carbon monoxide was submitted by the Governor on March 21, 1975. (Non-Regulatory)

(11) A revision of Section IX, Air Quality Surveillance, was submitted by the Governor on August 2, 1976. (Non-Regulatory)

§ 52.2271 [Amended]

2. In § 52.2271, the table is revised by changing the classification for sulfur oxides in the Abilene-Wichita Falls Intrastate Region from "11" to "111", in the Amarillo-Lubbock Intrastate Region from "1" to "111", in the Corpus Christi-Victoria Intrastate Region from "1" to "11", and the El Paso-Las Cruces-Alamogordo Interstate Region from "1" to "1A".

[FR Doc.77-2746 Filed 1-27-77;8:45 am]

[40 CFR Part 52]

[FRL 676-5]

APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Revisions to Bay Area Air Pollution Control District's Rules & Regulations in State of California

On December 13, 1972, July 25, 1973, November 2, 1973, July 19, 1974, October 23, 1974, January 10, 1975, April 10, 1975, November 3, 1975, February 10, 1976, April 21, 1976, August 2, 1976, and November 10, 1976, the Air Resources Board of the State of California submitted revised Rules and Regulations of the Bay Area Air Pollution Control District (APCD) as a revision to the California State Implementation Plan. The submissions listed above will be addressed in this notice, except when such submissions are deficient in a specific area. In this event, the appropriate portions of the earlier submissions have been evaluated and will be discussed in this notice.

Summary of Regulations Submitted

REGULATION 1

This regulation was submitted on July 25, 1973 and partial revisions to Division 3 of the regulation were submitted on July 19, 1974 and February 10, 1976. Since these three submittals taken together represent the most recent version of this regulation, they will be addressed in this notice.

The changes contained in these submittals that are being acted upon by this package include the following: addition of certain definitions; exceptions for burning; addition of criteria which must be complied with during any burning; addition of authority of the public officer to grant waivers from the open burning requirements if it is necessary for the public safety; and other minor changes of a procedural nature.

REGULATION 2

The November 2, 1973 submittal of this regulation supersedes all previous submittals and is currently effective, except that Division 2 was revised in both the January 10, 1975 and August 2, 1976 submittals; Division 3 was revised in both the July 19, 1974 and the April 21, 1976 submittals; and Divisions 15, 16, 17 and 18 were added in the August 2, 1976 submittal. Additionally, that portion of the July 19, 1974 revision to Division 3 which deals with SO_2 will be covered in a separate Federal Register notice.

Section 3212, submitted by the Air Resources Board on April 21, 1976, which concerns malfunctions is not being acted upon in this notice, but will be addressed in a later Federal Register notice dealing with SIP malfunction provisions.

The significant changes to the Bay Area APCD New Source Review rules, Regulation 2, Division 13, submitted on November 2, 1973, July 19 ,1974, October 23, 1974 January 10 1975, April 10, 1975 November 3 1975, and August 2, 1976, will be acted upon in a separate Federal Register notice.

A new section dealing with continuous in-stack monitoring for specific pollutants was submitted on April 21, 1976. The date by which the State of California is required to meet the provisions of 40 CFR 51.19(e) has been extended from October 6, 1976 to April 6, 1977. Additionally, recently developed state guidelines on continuous in-stack monitoring may cause changes to these as well as other APCD regulations. Therefore, the Federal rulemaking on this subject will occur in a separate Federal Register notice.

Those portions of this regulation concerning transfer of gasoline into stationary storage containers and vehicle fuel tanks submitted on April 10, 1975 and November 3, 1975, are not being acted upon in the notice because of the many unique questions involved in this area of air pollution control. These regulations are to be addressed in a separate Federal Register notice.

This package addresses the following changes contained in the November 2, 1973, July 19, 1974, January 10, 1975, April 21, 1976, and August 2, 1976 submittals: Addition of definitions; revisions to analytical procedures for determining the amount of hydrogen sulfide in samples; addition of regulations controlling reduction of animal matter and asphalt air blowing; and other minor changes of a procedural nature. A regulation controlling odorous substances was also received to be included in the SIP. We are not taking any action on this regulation since it is not a pollutant regulated under the Clean Air Act.

REGULATION 3

Regulation 3 was submitted on July 25, 1973 and revisions were submitted on January 10, 1975, April 21, 1976, and November 10, 1976. This regulation contains specific control requirements for organic emissions from solvent usage, from storage tanks and the filling of transportable containers other than the gasoline vapor control requirements of Regulation 2, as well as a general organic emission limitation.

This package addresses the regulation's approvability and its equivalency to the Federally promulgated organic solvent usage regulation, 40 CFR 52.254.

This package also addresses the approvability of organic liquid storage regulations which contain an exemption if the headspace reactivity is less than 5 percent.

Section 3203, submitted by the Air Resources Board on April 21, 1976, which concerns malfunctions is not being acted upon in this notice, but will be addressed in a later Federal Register notice dealing with SIP malfunction provisions.

REGULATION 4

The July 25, 1973 submittal of this regulation supersedes all previous submittals. This regulation requires the installation of crankcase devices on 1955 through 1962 model year motor vehicles.

REGULATION 5

Regulation 5, Episode Warning System, submitted on July 25, 1973, dealing with the Air Pollution Emergency Contingency Plan, is not being acted upon at this time because the Air Resources Board has indicated to EPA that a revision is forthcoming of all local agency regulations addressing the emergency episode requirements. This action by the State is in response to the recent approval by EPA of the State of California Air Pollution Emergency Episode Plan. The State's plan sets forth requirements the local agencies' plans must meet. A separate Federal Register no-

tice addressing this issue will be published after the submission to EPA of the local agency emergency episode regulations by the State.

REGULATION 6

The February 10, 1976 submittal of this regulation supersedes all previous submittals. This regulation concerns a procedural change to the APCD enforcement authority.

REGULATION 7

The January 10, 1975 submittal of this regulation supersedes all previous submittals. This regulation deals with New Source Performance Standards. This regulation is not required by 40 CFR Part 51 to be incorporated into the SIP, but since it has been submitted as a revision, it is being acted upon by this package. EPA delegated authority to implement and enforce these regulations to the Bay Area Air Pollution Control District in the FEDERAL REGISTER (40 FR 42236) on September 11, 1975.

REGULATION 8

The January 10, 1975 submittal of this regulation supersedes all previous submittals. This regulation deals with Emission Standards for Hazardous Pollutants. This regulation is also not required by 40 CFR Part 51 to be incorporated into the SIP, but since it has been submitted as a revision, it is being acted upon by this package. EPA delegated authority to implement and enforce these regulations to the Bay Area Air Pollution Control District in the FEDERAL REGISTER (40 FR 42236) on September 11, 1975.

PROPOSED ACTION

It is the purpose of this notice to propose approval of all the changes included in the July 25, 1973, November 2, 1973, July 19, 1974, January 10, 1975, February 10, 1976, April 21, 1976, August 2, 1976, and November 10, 1976 submissions, with the exception of the regulations concerning new source review, emergency episode, gasoline vapor recovery, malfunction, in-stack monitoring, and sulfur dioxide, which are not being acted upon at this time. In addition, the portions of Regulation 3 discussed hereafter are proposed to be disapproved.

It is the purpose of this notice to propose disapproval of sections of the Bay Area Air Pollution Control District's (BAAPCD) Regulation 3, dealing with organic solvent controls, contained in the January 10, 1975 submission.

On November 12, 1973 (38 FR 31249), the Administrator promulgated organic solvent usage regulations for the San Joaquin Valley, Sacramento Valley, and San Francisco Bay Area Interstate Air Quality Control Regions, 40 CFR 52.254, as one of the control measures of the California Transportation Control Plan, and as part of the California SIP. On October 2, 1974, the BAAPCD amended their regulations for reactive organic gas emissions, Regulation 3, to be more consistent with EPA's promulgated organic solvent usage control regulations. In reviewing the BAAPCD's regulations, EPA found portions inconsistent with the Federally promulgated regulations. In addition, the regulations submitted on January 10, 1975 contain provisions that conflict with the regulatory amendments made on October 2, 1974.

EPA's organic solvent usage control requirements (40 CFR 52.254) identify categories of sources, and the necessary emission limitations for such sources. Categories of specific concern are oven operations emitting organic materials in excess of 15 pounds per day, non-oven operations emitting organic materials in excess of 40 pounds per day if photochemically reactive solvents are used, and operations emitting organic materials in excess of 3,000 pounds per day if non-photochemically reactive solvents are used.

The BAAPCD emission limitations for organic solvent usage in oven operations (Section 3101.1) and in non-oven operations emitting organic materials in excess of 40 pounds per day if photochemically reactive solvents are used (Section 3101.2) are similar to those promulgated by EPA. However, provision is made, at the discretion of the Control Officer, for alternative means of emission reduction (Section 3101.4) which differ from that specified in the above mentioned emission limitations. Under this approach, the emission reductions that are greater than that required of a source can be credited towards achieving the emission limitations of other sources at a facility. Since the BAAPCD emission reductions are determined on the basis of "reactive organic compounds" rather than on total organic materials, this alternative compliance provision may result in a greater overall emission rate from a facility than would occur if the facility were in compliance with the Federal regulation.

It should be noted here that the BAAPCD enforcement practices concerning the use of this alternative means of emission reduction have not interpreted the term "reactive organic compounds" as defined in Section 2032.1.

Therefore, this BAAPCD alternative compliance approach does not achieve equivalent emission reductions as would the Federal regulation on a source by source basis, and may not achieve equivalent emission reductions as would the Federal regulation for the facility as a whole. This alternative approach neither ensures use of the best available control technology for significant sources of organic solvent emissions, nor does it offer incentives for the use of less polluting alternative technologies for the spectrum of emitting sources. Further, it conflicts with standard control practices employed in other areas of the country, particularly those in use in Southern California, and with EPA research results indicating the need for maximum control of virtually all organic material emissions except methane in order to achieve and maintain the National Ambient Air Quality Standards for Photochemical Oxidants.

The Regulation 3 requirement covering operations emitting organic materials in excess of 3,000 pounds per day if non-photochemically reactive solvents are used (Section 3101.3) is not identical or equivalent to that of EPA. EPA's requirement for this category covers new and existing sources, whereas the BAAPCD's requirement applies only to new or modified sources.

Regulation 3 provides for water to be included as part of the total volume of solvent in making the determination of a solvent's classification as non-photochemically reactive or photochemically reactive (Section 2010 and 2011). The inclusion of water allows a greater percentage of reactive materials than does the solvent classification procedures under EPA's regulation (40 CFR 52.254 (k)).

Regulation 3 defines "85 percent overall" (Section 2001) as the degree of control which results in 85 percent reduction in the quantity of the reactive organic compounds. This is not equivalent to the total organic reduction specified in the Federal regulation (40 CFR 52.254).

Regulation 3 defines "reactive organic compounds" (Section 2032.1) on the basis of the composition of an emission condensate and differs from the Federal method of using the composition of the solvent itself for the reactivity classification. Representative samples are not obtainable from an emission condensate approach for processes with multiple stacks given the range of evaporate characteristics of a solvents components. Therefore, this definition is not equivalent to that specified in the Federal regulation (40 CFR 52.254(k)).

Regulation 3, Division 3, contains source operation exemption provisions: *Provided*, That modern maintenance and operating practices are used. Section 3301.12 exempts all printing presses other than rotogravure printing presses. Section 3302.1 exempts ovens used for epoxy resin casting. Section 3302.5 exempts unheated solvent rinsing containers and unheated coating dip tanks if of 100 gallon capacity or less. Such exemptions are not authorized by Federal regulation (40 CFR 52.254).

The existing BAAPCD control requirements that conflict with the regulatory amendments made on October 2, 1974, are identified below:

Section 1214 dealing with the percentage of reactive organic compounds in the organic gas.

Section 1215 providing an exemption if reactive organic gas emissions are reduced by 85 percent.

Finally, the analytical procedures contained in Division 6 of Regulation 3 have not been modified to reflect the requirements of the organic solvent control provisions and are not adequate to determine the compliance status of a source. No provision is made for determining the concentrations of branched chain ketones, aromatic compounds with 8 or more carbon atoms, or the exempted chemical compounds (ethylbenzene, phenyl acetate, and methyl benzoate) as specified in Section 2032.1. The BAAPCD may have established acceptable analytical procedures for the enforcement of this regulation, but they are not contained in the most recent submittals of Regulation 3.

In summary, these conflicting control requirements and exemptions make the organic solvent control requirements of Regulation 3 less stringent than those promulgated by EPA, and are the basis for this proposed disapproval. All provisions of 40 CFR 52.254 will remain in effect.

It is also the purpose of this notice to propose disapproval of sections of BAAPCD's Regulation 3, dealing with storage of organic liquids, contained in the January 10, 1975 submission.

The BAAPCD emission limitations for storage of organic liquids (§ 3102–3102.6) contain exemption provisions for organics which have a headspace reactivity of 5 percent or less. These sections can allow the storage of gasoline in tanks without a floating roof or a vapor recovery system. It is EPA's intention to propose a Federal Regulation controlling the emissions from the storage of organic liquids which does not contain a headspace reactivity exemption. This action is being taken because National Ambient Air Quality Standards for oxidants are currently being violated in the San Francisco Bay Area Air Quality Control Region and because the BAAPCD regulation represents less control than that obtained through the application of reasonably available control technology.

Therefore, it is the purpose of this notice to propose a Federal replacement regulation which is identical to the BAAPCD's Regulation 3, § 3102–3102.6 without the headspace reactivity exemption provision.

Pursuant to section 110 of the Clean Air Act, as amended, and 40 CFR Part 51, the Administrator is required to approve or disapprove the regulations as an SIP revision and, therefore, invites public comment on the State's submission and his proposed approval or disapproval.

Copies of the proposed revision are available for public inspection during normal business hours at the following locations:

Bay Area Air Pollution Control District, 939 Ellis Street, San Francisco, California 94109.
California Air Resources Board, 1709—11th Street, Sacramento, California 95814.
Environmental Protection Agency, Region IX, 100 California Street, San Francisco, California 94111.
Public Information Reference Unit, Room 2922 (EPA Library), 401 M Street, SW., Washington, D.C. 20460.

Interested persons may participate in this rulemaking by submitting written comments to the Regional Administrator; Attention: Air and Hazardous Materials Division; EPA; Region IX; 100 California Street; San Francisco, California 94111. Relevant comments received on or before February 28, 1977, will be considered.

Comments received will be available for inspection during normal working hours at the Region IX office and the EPA Public Information Reference Unit.

(Sec. 110 Clean Air Act, as amended (42 U.S.C. 1857c-5))

Dated: January 18, 1977.

PAUL DE FALCO, Jr.,
Regional Administrator.

[FR Doc.77-2745 Filed 1-27-77;8:45 am]

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[49 CFR Part 228]

[FRA Docket No. HS-2, Notice No. 4]

CONSTRUCTION OF RAILROAD EMPLOYEE SLEEPING QUARTERS

Public Hearing

On December 3, 1976, the Federal Railroad Administration (FRA) published in the FEDERAL REGISTER a notice of proposed rulemaking on regulations concerning the location of railroad employee sleeping quarters in conformity with section 2(a)(4) of the Hours of Service Act (45 U.S.C. 62(a)(4)), as amended by section 4 of the Federal Railroad Safety Authorization Act of 1976, Pub. L. No. 94-348, 90 Stat. 818 (41 FR 53070). Under an extension published in the FEDERAL REGISTER of January 14, 1977, written comments on the rulemaking are due by February 17, 1977 (42 FR 2994). Interim regulations implementing section 2(a)(4) are presently in effect (41 FR 53028; December 3, 1976). FRA administers and enforces the Hours of Service Act under section 6(f)(3)(A) of the Department of Transportation Act (49 U.S.C. 1655(f)(3)(A)) and a delegation from the Secretary of Transportation (49 CFR 1.49(d)).

The Association of American Railroads has requested that FRA "conduct a hearing on the record with the opportunity for interested parties to question all other parties on matters of fact and opinion contained in their respective presentations" to be held "no sooner than twenty days after the due date for the submission of statements herein, to give all parties adequate opportunity to examine the written submissions".

As set forth in 49 CFR Part 211, the FRA Rules of Practice, it is FRA policy that rulemaking hearings are conducted when required by statute or when deemed necessary or desirable (see revision of Part 211 at 41 FR 54181; December 13, 1976). Such hearings are opportunities for the oral presentation of data, views and arguments. FRA rulemaking hearings are not adversary proceedings and the agency is not limited to the hearing transcript or written submissions in fashioning final rules. 49 CFR 211.25. Neither the Hours of Service Act nor any statute which FRA administers requires rulemaking to be conducted "on the record after opportunity for an agency hearing" as that phrase is employed in the Administrative Procedure Act. Indeed, the Hours of Service Act does not require that there be any opportunity for oral presentations. However, FRA does desire to receive the views of interested persons on this topic and to permit such exchange of views as may contribute to an informed agency judgment.

Therefore, FRA will conduct an informal rulemaking hearing at 10 a.m. on March 1, 1977, in Room 6200, Nassif Building, 400 7th Street, SW., Washington, D.C. FRA believes that this hearing date will provide an ample opportunity for persons to review the written submissions in advance and prepare statements for presentation at the hearing. All interested persons are invited to attend and participate.

The hearing will be presided over by a hearing officer designated by the Associate Administrator for Safety. After an introduction on the subject matter, interested persons will be invited to make oral presentations. If necessary to assure full participation, the hearing officer may limit the duration of statements. To the extent possible after completion of initial statements, opportunity will be provided for statements responsive to the comments of other participants. There will be no cross-examination of persons making statements. However, questions will be permitted for the purpose of clarifying the substance of any oral comment.

A transcript of the hearing will be prepared and placed in the public docket. To assist the reporter and the hearing officer, any person intending to deliver a prepared statement is encouraged to make four copies of the statement available to the hearing officer before the start of the hearing. Additional procedures may be announced at the hearing.

Issued in Washington, D.C. on January 24, 1977.

DONALD W. BENNETT,
Associate Administrator for Safety.

[FR Doc.77-2784 Filed 1-27-77;8:45 am]

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[50 CFR Part 33]

SPORT FISHING

Proposed Opening of Hillside National Wildlife Refuge, Mississippi, to Sport Fishing

Notice is hereby given that it is proposed that 50 CFR Part 33 be amended by the addition of the Hillside National Wildlife Refuge, Mississippi, to the list of refuge areas open for support fishing, which is published at 50 CFR 33.4.

Pursuant to the authority of 16 U.S.C. 668dd(d), as redelegated to the Director of the United State Fish and Wildlife Service at DM 242.1.1, the Director may open refuge areas to sport fishing when a determination has been made that such activity is compatible with the major purposes for which the area was established. As a general rule, most areas within the National Wildlife Refuge System are closed to sport fishing until officially opened by regulation. It is the pur-

pose of this proposed rulemaking to allow sport fishing on Hillside National Wildlife Refuge, which is presently prohibited.

Furthermore, pursuant to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)), an environmental assessment has been prepared on this proposal which will help determine whether this rulemaking constitutes a major federal action significantly affecting the human environment. A copy of this assessment is available at the address below.

The policy of the Department of the Interior is, whenever practical, to afford the public an opportunity to participate in the rulemaking process. Therefore, interested persons may submit written comments, suggestions, or objections regarding the proposed amendment to the Director, U.S. Fish and Wildlife Service, Washington, D.C. 20240, on or before February 28, 1977. All relevant comments received will be considered by the Director prior to the issuance of final rulemaking.

Accordingly, it is proposed to amend § 33.4, in Title 50 of the Code of Federal Regulations as set forth below:

§ 33.40 List of open areas, sport fishing.

* * * * *

MISSISSIPPI

HILLSIDE NATIONAL WILDLIFE REFUGE

* * * * *

Dated: January 24, 1977.

F. EUGENE HESTER,
Acting Director, United States Fish and Wildlife Service.

[FR Doc.77-2803 Filed 1-27-77;8:45 am]

notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

OREGON DUNES NATIONAL RECREATION AREA ADVISORY COUNCIL

Meeting

The Oregon Dunes National Recreation Area Advisory Council will meet on Friday, March 18, 1977, at 10 am, in the NRA Headquarters Conference Room at 855 Highway Avenue, Reedsport, Oregon.

The purpose of the meeting will be to review the Final EIS for the Management Plan and Wilderness Suitability Report and to discuss the ORV closure that went into effect on January 1, 1977.

The meeting will be open to the public. Persons who wish to attend should notify Lorraine Potter, 855 Highway Avenue, Reedsport, Oregon 97467. The telephone number is (503) 271-3611. Written statements may be filed with the Council before or after the meetings.

The Council has established the following rules for public participation. Any member of the public who wishes to speak must be recognized by the Council Chairman. The Chairman will decide the time when public participation will take place.

ROBERT L. SCHRENK,
Area Ranger.

JANUARY 21, 1977.

[FR Doc.77-2749 Filed 1-27-77;8:45 am]

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

NATIONAL ADVISORY COMMITTEE ON AN ACCESSIBLE ENVIRONMENT

Public Meeting

Notice is hereby given, pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), that meeting of the National Advisory Committee on an Accessible Environment will be held on February 12-13, 9 a.m., at the Stouffer's Denver Hotel, 3203 Quebec Street, Denver, Colorado, 80207.

The National Advisory Committee on an Accessible Environment is established under the 1974 amendments to the Rehabilitation Act, Pub. L. 93-516, 29 U.S.C. 792 et seq. The Committee is established to provide advice, guidance, and recommendations to the Architectural and Transportation Barriers Compliance Board in carrying out its functions.

The meeting of the Committee shall be open to the public. On the first day the Committee Chairman will discuss activities since the previous meeting and call for government spokespersons to report on program activities and plans of the Architectural and Transportation Barriers Compliance Board. On the second day, the Committee will discuss compliance and related procedures. The proposed afternoon agenda calls for the Committee to discuss its organization and plans for future procedures.

Persons interested in attending the meeting should contact Ms. Laurinda Street, SW., Washington, D.C. 20201, Transportation Barriers Compliance Board, Mary E. Switzer Building, 330 C Street, SW., Washington, D.C. 20201, telephone (202) 245-1801.

JAMES S. JEFFERS,
Executive Director, Architectural and Transportation Barriers Compliance Board.

[FR Doc.77-2799 Filed 1-27-77;8:45 am]

CIVIL AERONAUTICS BOARD

[Docket 27573; Agreement C.A.B. 26095, R-1 through R-12; Agreement C.A.B. 26176; Agreement C.A.B. 26191; Order 77-1-136]

INTERNATIONAL AIR TRANSPORT ASSOCIATION

Agreement Relating to North Atlantic Cargo Rates; Order on Reconsideration

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 24th day of January 1977.

By Order 76-12-98, December 16, 1976, the Board generally approved an agreement among the carrier members of the International Air Transport Association (IATA) establishing North Atlantic cargo rates through September 30, 1977. A joint petition for reconsideration has been submitted by Trans International Airlines, Inc. (TIA), and World Airways, Inc. (World).

In their petition, TIA and World submit that in approving new high weightbreak (10,000 and 34,000 kg.) specific commodity rates as part of the subject IATA agreement the Board included in footnote 13 of the order a "gratuitous statement regarding the relationship between cargo charter costs and the costs of high weightbreak scheduled cargo services", which petitioners allege has no evidentiary basis in the record and appears to prejudge important issues in the *Transatlantic FAK Contaainer and Charter Freight Rates Investigation*, Docket 27557.[1] TIA and World request the Board to delete footnote 13 from the order; and further request the Board to supply interested parties in Docket 27557 with copies of Board studies or other information on which the alleged conclusions in footnote 13 were based, for examination and rebuttal in the *Transatlantic FAK and Charter Rates Investigation* to avoid an ex parte determination on a critical matter in that proceeding. TIA and World allege further that it is inappropriate for the Board to reach even tentative conclusions on the issue of relative costs of cargo charter and scheduled services; and that even the final sentence of the challenged footnote, stating that the issue will be decided in Docket 27557, in no way diminishes the prejudicial atmosphere created by these alleged tentative conclusions.

The Board has concluded to deny the petition. The challenged language in footnote 13 is not based on any ex parte or other "studies" or information concerning the costs of cargo charters vs. scheduled cargo operations, and makes no conclusion, tentative or otherwise, as to their relative levels. It is clear from the language used, that no issues have been predetermined by Order 76-12-98 and that *all* pertinent issues will be determined on the basis of the record in Docket 27557.

Accordingly, *it is ordered*, That:

The petition of Trans International Airlines, Inc., and World Airways, Inc., for reconsideration of Order 76-12-98 be and hereby is denied.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc.77-2822 Filed 1-27-77;8:45 am]

[1] Footnote 13 an page 9 of Order 76-12-98 reads as follows:

As indicated above, the new high-weight-break SCR's would be set at levels equivalent to the new minimum charter rates. It is recognized that the board has previously taken the position that rates for scheduled services should generally be priced at higher levels than those for charter services, in view of the lower load factors and higher unit costs associated with scheduled services. However, under many circumstances, such as the critical time requirements of the charterer, the possibility of unusual shipment characteristics, the one-way nature of cargo charter flights, as well as the off-route operations frequently experienced, and in general the difficlty of arranging crews and equipment to satisfy the requirements, it may not be unreasonable to expect that the costs of cargo charter service are somewhat higher than those of scheduled service. We would emphasize that these factors as well as others are the subject of the ongoing *Transatlantic FAK Container and Charter Freight Rates Investigation*, Docket 27557, and will be determined in that proceeding.

[Order 77-1-130; Docket 27573; Agreement C.A.B. 26384]

INTERNATIONAL AIR TRANSPORT ASSOCIATION

Agreement Relating to Specific Commodity Rates

Issued under delegated authority January 24, 1977.

An agreement has been filed with the Board pursuant to section 412(a) of the Federal Aviation Act of 1958 (the Act) and Part 261 of the Board's Economic Regulations between various air carriers, foreign air carriers, and other carriers embodied in the resolutions of the Joint Traffic Conferences of the International Air Transport Association (IATA), and adopted pursuant to the provisions of Resolution 590 dealing with specific commodity rates.

The agreement names an additional specific commodity rate as set forth below, reflecting reductions from general cargo rates; and was adopted pursuant to unprotested notice to the carriers and promulgated in an IATA letter dated January 12, 1977.

Specific Commodity Item No.	*Description and rate*
0003	Foodstuffs, spices, and beverages, excluding caviar and hatching eggs, 232 cents per kilograms,[1] minimum weight 200 kg 222 cents per kilograms,[1] minimum weight 500 kg from Johannesburg to New York.

Pursuant to authority duly delegated by the Board in the Board's Regulations, 14 CFR 385.14, it is not found that the subject agreement is adverse to the public interest or in violation of the Act, provided that approval is subject to the conditions hereinafter ordered.

Accordingly, *it is ordered*, That:

Agreement C.A.B. 26384 is approved, provided that (a) approval shall not constitute approval of the specific commodity descriptions contained therein for purposes of tariff publications; (b) tariff filings shall be marked to become effective on not less than 30 days' notice from the date of filing; and (c) where a specific commodity rate is published for a specified minimum weight at a level lower than the general commodity rate applicable for such weight, and where a general commodity rate is published for a greater minimum weight at a level lower than such specific commodity rate, the specific commodity rate shall be extended to all such greater minimum weights at the applicable general commodity rate level.

Persons entitled to petition the Board for review of this order, pursuant to the Board's Regulations, 14 CFR 385.50, may file such petitions within ten days after the date of service of this order.

This order shall be effective and become the action of the Civil Aeronautics Board unless within such period a petition for review is filed or the Board gives notice that it will review this order on its own motion.

This order will be published in the FEDERAL REGISTER.

JAMES L. DEEGAN,
Chief, Passenger and Cargo Rates Division, Bureau of Economics.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc.77-2825 Filed 1-27-77;8:45 am]

[1] Expires March 31, 1978.

[Order 77-1-126; Docket 29860]

TRANS WORLD AIRLINES, INC.

Category Y Tariffs; Order Denying Petition for Reconsideration

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 21st day of January, 1977.

The Board, by Order 76-10-48, served October 12, 1976, suspended the Category Y tariffs[1] of Trans World Airlines, Inc. (TWA) pending an investigation. A petition for reconsideration was filed by TWA on October 22, 1976, and answers by Pan American World Airways, Inc. (Pan Am) and Member Carriers of the National Air Carrier Association (NACA) were filed in opposition.

TWA alleges that the Board's findings that its Category Y services present the possibilities of regular passenger displacement during peak travel periods and self-diversion of Category A and Z traffic are speculative and unsupportable. Despite its inability to conduct Category B charter flights as alternative service, TWA argues that the problem of displacement of regular fare traffic by Category Y traffic is no different in the case of TWA than in the cases of Pan Am and Northwest Airlines Inc. (Northwest), whose Category Y tariffs were not suspended. The carrier claims that the scheduling procedures it has arranged with the Department of Defense (DOD) prevent anticipated conflicts between Category Y traffic and regular traffic, and that a Category Y tariff provision allows for reaccommodation of the military passengers on later flights when there is conflict. Regarding the Board's conclusion that higher fare Category A and Z traffic could be diverted to TWA's proposed Category Y service, TWA argues that this is not a problem unique to TWA, and that all of the projected Category Y passengers will be "new" traffic, and will not consist of diverted Category A or Z passengers.

Pan Am and NACA concur in the Board's decision to suspend TWA's tariff and urge the Board to deny TWA's petition for reconsideration. Pan Am argues that the New York-Mediterranean routes are not suited for Category B operations, and that in the absence of a Category Y program all of the military traffic would move on Category Z service. In addition, Pan Am argues that Category Y should be limited to a true substitution for Category B services, and that TWA's tariff represents an attempt by DOD to expand Category Y in order to secure the advantages of scheduled service at planeload charter rates.

Upon consideration of the petition and answers, we find that TWA has not raised sufficient facts to warrant reconsideration of Order 76-10-48. TWA's allegation that the Category Y passengers will be "new" traffic is unsubstantiated by any data, and the remainder of TWA's arguments do not contain any information about military procurement of civilian airlift or the Category Y program in particular that was not considered previously. Thus, TWA has failed to demonstrate error in the Board's conclusion that there are significant differences between the circumstances surrounding the TWA Category Y proposal and those of Pan Am and Northwest, and that these differences require suspension of the TWA tariff.

Accordingly, pursuant to the Federal Aviation Act of 1958, as amended, and particularly Sections 204(a), 403, 404, and 1002 thereof,

It is ordered, That:

The petition filed by Trans World Airlines, Inc. for reconsideration of Order 76-10-48 be and hereby is denied.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board:

PHYLLIS T. KAYLOR,
Secretary.

Minetti and West, members, concurring:

We concur in the decision to deny the petition for reconsideration. We continue to object, however, to the majority's insistence on distinguishing this tariff from those of Northwest and Pan American which we would have suspended. See our concurring statement to Order 76-10-48, September 30, 1976; our dissent from Order 76-3-45, March 8, 1976; and, our concurrence and dissent in Order 75-7-104, July 22, 1975.

G. JOSEPH MINETTI.
LEE R. WEST

[FR Doc.77-2874 Filed 1-27-77;8:45 am]

[1] Local Military Passenger Fares Tariff No. MAC-1 C.A.B. No. 308, filed September 1, 1976 to become effective October 1, 1976. The suspension was made effective December 1, 1976.

CIVIL SERVICE COMMISSION

DEPARTMENT OF DEFENSE

Revocation of Authority To Make Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission revokes the authority of the Department of Defense to fill by noncareer executive assignment in the excepted service the position of Deputy Assistant Secretary (Near East, African and South Asian Affairs), ODAS (Near Eastern, Africa and South Asian Affairs), OASD (International Security Affairs), Office of the Secretary of Defense.

UNITED STATES CIVIL SERVICE COMMISSION,
JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc.77-2629 Filed 1-27-77;8:45 am]

CIVIL SERVICE COMMISSION

EXECUTIVE OFFICE OF THE PRESIDENT

Grant of Authority To Make Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission authorizes the Executive Office of the President to fill by noncareer executive assignment in the excepted service the position of Assistant Director, Natural Resources and Commercial Services, Office of the Director, Office of Science and Technology Policy.

UNITED STATES CIVIL SERVICE COMMISSION,
JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc.77-2552 Filed 1-27-77;8:45 am]

EXECUTIVE OFFICE OF THE PRESIDENT

Grant of Authority To Make Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission authorizes the Executive Office of the President to fill by noncareer executive assignment in the excepted service the position of Executive Secretary, Federal Coordinating Council for Science, Engineering, and Technology, Office of the Director, Office of Science and Technology Policy.

UNITED STATES CIVIL SERVICE COMMISSION,
JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc.77-2553 Filed 1-27-77;8:45 am]

EXECUTIVE OFFICE OF THE PRESIDENT

Grant of Authority to Make Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission authorizes the Executive Office of the President to fill by noncareer executive assignment in the excepted service the position of Assistant Director for Human Resources, Social and Economic Services, Office of the Director, Office of Science and Technology Policy.

UNITED STATES CIVIL SERVICE COMMISSION,
JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc.77-2554 Filed 1-24-77;8:45 am]

EXECUTIVE OFFICE OF THE PRESIDENT

Grant of Authority To Make Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission authorizes the Executive Office of the President to fill by noncareer executive assignment in the excepted service the position of Assistant Director, National Security Affairs, Office of the Director, Office of Science and Technology Policy.

UNITED STATES CIVIL SERVICE COMMISSION,
JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc.77-2555 Filed 1-27-77;8:45 am]

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

PROCUREMENT LIST 1977

Additions

Notice of proposed additions to Procurement List 1977, November 18, 1976 (41 FR 50975) of the commodity and service listed below was published in the FEDERAL REGISTER on December 3, 1976 (41 FR 53126) and November 30, 1976 (41 FR 52512).

After consideration of all the relevant data presented, the Committee has determined that the commodity and service listed below are suitable for procurement by the Government under Pub. L. 92-28, 85 Stat. 77. Accordingly, they are hereby added to the Procurement List.

Class 5940

Terminal Lug (SH), 5940-00-549-6581.

SIC 7542

Vehicle Detailing (SH), Duluth, Minnesota, plus 10-mile radius.

By the Committee.

C. W. FLETCHER,
Executive Director.

[FR Doc.77-2604 Filed 1-27-77;8:45 am]

PROCUREMENT LIST 1977

Deletions

Notice of proposed deletions from Procurement List 1977, November 18, 1976 (41 FR 50975) was published in the FEDERAL REGISTER on December 10, 1976 (41 FR 54021).

After consideration of all the relevant data presented, the Committee has determined that the commodity and service listed below are no longer suitable for procurement by the Government under Pub. L. 92-28, 85 Stat. 77. Accordingly, they are hereby deleted from the Procurement List.

Class 3990

Cap, Wood.
3990-00-366-6824.

SIC 7331

Mailing Service, U.S. Coast Guard Academy, New London, Connecticut.

By the Committee.

C. W. FLETCHER,
Executive Director.

[FR Doc.77-2789 Filed 1-27-77;8:45 am]

PROCUREMENT LIST 1977

Proposed Deletion

Notice is hereby given pursuant to section 2(a)(2) of Pub. L. 92-28; 85 Stat. 77 of the proposed deletion of the following service from Procurement List 1977, November 18, 1976 (41 FR 50975).

SIC 7331

Mailing Service, Center for Disease Control, Bethesda, Maryland.

Comments and views regarding the proposed deletion may be filed with the Committee on or before March 2, 1977. Communications should be addressed to the Executive Director, Committee for Purchase from the Blind and Other Severely Handicapped, 2009 Fourteenth Sreet North, Suite 610, Arlington, Virginia 22201.

This notice is automatically cancelled six months from the date of this FEDERAL REGISTER.

By the Committee.

C. W. FLETCHER,
Executive Director.

[FR Doc.77-2788 Filed 1-27-77;8:45 am]

COUNCIL ON ENVIRONMENTAL QUALITY

ENVIRONMENTAL IMPACT STATEMENTS RECEIVED FROM JANUARY 17 THROUGH JANUARY 21, 1977

Environmental impact statements received by the Council on Environmental Quality from January 17 through January 21, 1977. The date of receipt for each statement is noted in the statement summary. Under Council Guidelines the *minimum* period for public review and comment on draft environmental impact statements in forty-five (45) days from this *Federal Register* notice of availability. (March 14, 1977). The thirty (30) day period for each final statement begins on the day the statement is made available to the Council and to commenting parties.

Copies of individual statements are available for review from the originating agency. Back copies will also be available at 10 cents per page from the Environmental Law Institute, 1346 Connecticut Avenue, Washington, D.C. 20036.

DEPARTMENT OF AGRICULTURE

Contact: Coordinator of Environmental Quality Activities, Office of the Secretary, U.S. Department of Agriculture, Room 359-A, Washington, D.C. 20250, 202-447-3965.

FOREST SERVICE

Final

William B. Bankhead National Forest Timber Plan, Winston, Lawrence, and Franklin

Counties, Ala., January 19: Proposed is the implementation of a Timber Management Plan for the William B. Bankhead National Forest covering the period July 1, 1976 to September 30, 1986. The Bankhead National Forest contains 179,294 acres of which 162,728 acres are classified as commercial forest land. The plan proposes even-aged forest management for that part of the Forest which is suitable for sustained yield timber production and not reserved for some other use. Average annual potential yield is 10.4 million board feet of saw timber and 2,279 thousand cubic feet of small roundwood products. Negative impacts include loss of pleasing forest scenery and temporary increases in turbidity and stream flow. Comments made by: FPC, USDA, AHP, COE, DOI, HEW, ERDA, and EPA. (ELR Order No. 70077.)

Santa Fe National Forest, Geothermal Leasing, Rio Arriba and Sandoval Counties, N. Mex., January 19: Proposed is the leasing of a 51,571 acre Known Geothermal Resource Area (KGRA) in Santa Fe National Forest and a 29,000 acre area of noncompetitive leasing interest outside the KGRA. The Statement also covers a larger area of about 496,950 gross acres extending southward and northeastward known as an area prospectively valuable for geothermal resources, which includes both the KGRA and noncompetitive area. Potential adverse effects include displacement of soils, removal of surface vegetation, and changes in the quality and quantity of water produced from this area. Comments made by: DOI, USDA, EPA, DOC and State and local agencies, and concerned citizens. (ELR Order No. 70074.)

DEPARTMENT OF COMMERCE

Contact: Dr. Sidney R. Galler, Deputy Assistant Secretary for Environmental Affairs, Department of Commerce, Washington, D.C. 20230, 202-967-4335.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Draft

Haddock, Cod, and Yellowtail Flounder, Management Plan, January 21: Proposed is a management plan for the domestic harvesting of haddock (Melanogrammus aeglefinus), cod (Gadus Morhua), and yellowtail flounder (Limanda ferruginea) off the Northeastern United States. These fisheries were regulated under the terms of the 18-member International Commission for the Northwest Atlantic Fisheries (ICNAF), as amended until December 31, 1976, when the U.S. withdrew from the convention. This plan proposes regulatory measures and restrictions are recommended regarding quotas, fishing areas, mesh size, and minimum size limits. Beneficial effects are expected. (ELR Order No. 70091.)

Final

Seamount Trawl Fishery Resources, Preliminary Management Plan, January 21: The proposed action sets forth a preliminary management plan for the seamount trawl fishery resources in the western Pacific Region (Hawaii, Guam, and American Samoa). There is presently no U.S. harvesting of armorheads or alfonsins. Armorheads make up over 90% of the foreign trawl catches on the seamounts; alfonsins are only a minor constituent. The proposed action temporarily restricts the foreign harvest to a 2,000 metric tons catch quota, which may be taken with a trawling effort not to exceed 60 vessel-days, beginning March 1, 1977. Comments made by: COE, EPA, Japanese fishing agency, and University of Hawaii. (ELR Order No. 70085.)

Western Pacific Precious Corals, Preliminary Management Plan, January 21: This statement sets forth a Preliminary Management Plan for the precious coral resources of the Western Pacific Region (Hawaii, Guam, and American Samoa). The proposed action prohibits the direct foreign harvest of precious corals from any bed in the zone until such bed has been surveyed and scientifically assessed, and until the level of surplus yield for foreign vessels has been determined. The action also prohibits the incidental killing or harvesting of precious corals, except when the same is judged by the Secretary of Commerce to not seriously damage U.S. interests. Comments made by: DOC, COE, Japanese fishery agency, and concerned persons and groups. (ELR Order No. 70086.)

E. Bering Sea and Gulf of Alaska Shrimp, Preliminary Management Plan, January 21: Proposed is the adoption and implementation of a preliminary fishery management plan for northern pandalid shrimp in the eastern Bering Sea and Gulf of Alaska. No foreign fishery is to be permitted since the domestic fishery has the capacity and desire to harvest the total allowable catch of 50,000 metric tons. Foreign application to continue the fishery is anticipated. Comments made by: COE, DOI, USDA, USCG, EPA, STAT, DOT, and State and local agencies, and concerned citizens. (ELR Order No. 70087.)

High Seas Salmon Fisheries of Japan, Preliminary Management Plan, January 21: Proposed is the adoption and implementation of a preliminary fishery management plan for the salmon of U.S. origin taken in the high seas salmon fishery of Japan. Although the Fishery Conservation and Management Act of 1975 (P.L. 94-265) would require no allowable catch of salmon by Japan within the U.S. fishery zone and beyond, the North Pacific Fisheries Treaty remains in force until one year after any signatory nation gives notice of its intention of terminating the Convention. Consequently, the foreign fishery for the highseas can be expected to continue at least through the 1977 season. Comments made by: EPA, USCG, 2 State and local agencies, and concerned citizens. (ELR Order No. 70088.)

Pacific Coast Troll Salmon Fishery, Preliminary Management Plan, January 21: Proposed is the adoption and implementation of a preliminary fishery management plan for the troll salmon fishery of the Pacific Coast. The purpose of the plan is to manage the troll salmon fishery off the coast of the U.S. for the optimum sustainable yield, and to allocate harvest between domestic and foreign fishermen. The plan recommends that there be no decision on the total allowable levels of foreign (Canadian) fishing until a new salmon treaty is consummated. Comments made by: USCG, EPA, and State and local agencies, and concerned citizens. (ELR Order No. 70090.)

Trawl Fishery of the Washington-Oregon-California Region, Preliminary Management Plan, Washington, Oregon, and California, January 21: The proposed action is to adopt and implement a preliminary fishery management plan for the trawl fishery of Washington, Oregon, and California. Specific TACs are given for Pacific hake (150,000 metric tons), rockfishes (19,000 metric tons), flounders (31,100 metric tons), sablefish (7,000 metric tons), and jack mackerel (55,000 metric tons). Conservation and management measures recommended are designed to regulate the foreign fisheries and preserve options for U.S. entry when economic conditions permit. Comments made by: USCG, EPA, and State and local agencies, and concerned citizens. (ELR Order No. 70089.)

DEPARTMENT OF DEFENSE

ARMY

Contact: Mr. George A. Cunney, Jr., Acting Chief, Environmental Office, Directorate of Installations, Office of the Deputy Chief of Staff for Logistics, Washington, D.C. 20310, (202)—OX 4-4269

Supplement

Fort Belvoir Family Housing Project (S-1) Fairfax County, Va., January 21: This statement supplements a final EIS filed with CEQ in May 1976. Proposed is the construction of 444 four bedroom units of family housing for members of the Army, Navy, and Coast Guard stationed in the Washington, D.C. area. This is a reduction of 1,856 units from the total reported in the final EIS. Adverse impacts include destruction of 90 acres of wildlife, slight increases in air and noise pollution, increased storm water run-off, increased traffic, and increased strain on some service facilities at the Fort. (ELR Order No. 70084)

DEPARTMENT OF DEFENSE

ARMY CORPS

Contact: Dr. C. Grant Ash, Office of Environmental Policy Development, Attn: DAEN-CWR-P, Office of the Chief of Engineers, U.S. Army Corps of Engineers, 1000 Independence Avenue, S.W., Washington, D.C. 20314, (202)-693-6795.

Draft

Mamaroneck, Sheldrake, Byram R.'s Flood Control, New York and Connecticut: Proposed is a flood control plan for the Mamaroneck and Sheldrake Rivers Basin (Village and Town of Mamaroneck, N.Y.) and for Byram River Basin (Greenwich, Connecticut and Port Chester, N.Y.). The project is broken down into four component parts: Village of Mamaroneck-Mamaroneck River, Village of Mamaroneck-Sheldrake River, Town of Mamaroneck-Sheldrake River, and Port Chester and Greenwich-Byram. Each respective section is discussed at length. Adverse effects include removal of vegetation, and some loss of fish and wildlife habitat. (New York District) ELR ORDER No. 70076)

Coal Transfer Facility, Ohio R. Mile 314.5, Lawrence County, Ohio, January 19: Proposed is the construction, operation, and maintenance of a proposed coal loading facility consisting of a floating dock made up of two barges, a crusher, and a conveyor system. Coal from the Tri-State area would be delivered to the facility by truck over existing roads, dumped into a 25-foot square bin, and moved by an enclosed conveyor to the crusher. The coal would then be moved by an enclosed conveyor equipped with side boards and a catch pan to the barges. Adverse effects include some increase in water pollution to the Ohio River. (Huntington District) (ELR ORDER No. 70078)

Final

Humboldt Harbor and Bay, Navigation Improvements, Humboldt County, Calif., January 18: Proposed are navigation channel improvements for Humbolt Harbor and Bay, California. Projected improvements include widening of three North Bay channel bends up to an additional 200 feet; deepening the North Bay, Samoa and Eureka Channels to 35 feet; widening part of the Samoa Channel to 400 feet; and constructing a turning basin at the end of the Samoa Channel. Project implementation will necessitate the removal of about two square miles of benthic habitat. Shallow groundwater supplies near the disposal site may become saline (San Francisco District). Comments made by: AHP, USDA, HEW, DOC, DOI, EPA, state and local agencies, and concerned citizens. (ELR Order No. 70066).

Redwood Shores Regional Shopping Center, Permit, San Mateo County, Calif., January 18: Mobil Oil Estates Limited, Redwood City, California, has applied for a Department of the Army permit to fill and do storm drainage improvements on the approximately 210-acre area and to improve the existing dike along Steinberger Slough in preparation for the eventual construction of a regional shopping center. Adverse effects include: change in land use from open space to urban area, loss of levee-impounded marshland, changes in air and water quality, change in noise levels, and water runoff alteration (San Francisco District). Comments made by: USDA, DOC, HEW, DOI, DOT, EPA, state and local agencies, concerned groups and persons. (ELR order No. 70068).

Supplement

Hawaii Kai Marina (S-1), Oahu County, Hawaii, January 17: The statement supplements a final EIS filed with CEQ in January 1976 regarding permit actions in the Hawaii Kai Marina. The supplement introduces the concept of the general permit and conditions under which the construction of individual docks and similar structures for small boats in the Hawaii Kai Marina will be authorized. As discussed in the final EIS, construction of boat docks in the marina would shade bottom areas, limiting benthic growth, would possibly interfere with water circulation and mixing, and would be a potential source of petrochemical pollutants. (Honolulu District) (ELR Order No. 70062).

DEPARTMENT OF DEFENSE

NAVY

Draft

Ready Missile Test Facility, Project P-875, Ventura County, Calif., January 19: The proposed action is entitled Military Construction Project P-875: "Ready Missile Test Facility." This action involves the construction of 15 small buildings on 5 acres of mudflat at the Pacific Missile Test Center, Point Mugu, California. It will involve dredging about 25,000 cubic yards of mud out of an intertidal mudflat and filling it in with about 100,000 cubic yards of sand. The purpose of the project is to provide facilities for testing air-launched missiles with line warheads and motors. Few adverse effects are anticipated. (ELR Order No. 70080).

Contact: Mr. Peter M. McDavitt, Special Assistant to the Assistant Secretary of the Navy (Installations and Logistics), Washington, D.C. 20350, 202-692-3227.

Final

POL Bulk Pipelines, Naval Supply Center, Norfolk, Va., January 19: Proposed is the construction of a 10" multipurpose (DFM and JP-5) fuel line to connect the 2,740,000 barrel tankage at the U.S. Naval Bulk Storage Facility, Craney Island, with the smaller tankage at the Naval Station, Destroyer-Submarine Piers (D&S), and with the contiguous Naval Air Station. An 8" sludge line (ballast and only wastewater) will also be constructed connecting the Naval Fuel Depoot, Craney Island, with the D&S piers. Short term impacts to wtaer quality are expected from the dredging and redistribution of sediments. Comments made by: COE, EPA, DOI, DOT, state and local agencies, and concerned citizens. (ELR order No. 70031.)

ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION

Contact: Mr. W. Herbert Pennington, Office of Assistant Adminstrator, E-201, ERDA, Washington, D.C. 20545, (301)—973-4241.

Draft

Safety Research Experiment Facilities, Idaho Lab, Idaho, January 18: This statement was prepared in support of ERDA's proposal for legislative authorization and appropriations for the Safety Research Experiment Facilities (SAREF) Project. The purpose of the proposed project is to modify some existing facilities and provide a new test facility at the Idaho National Engineering Laboratory for conducting fast breeder reactor (FBR) safety experiments. The proposed facilities provide for the in-reactor testing of large bundles of prototypical FBR fuel elements under a wide variety of conditions. (ELR Order No. 70072).

Nevada Test Site Testing Activities, Nye County, Nev., January 18: This statement considers underground nuclear detonation with yields of one megaton or less, along with the preparations necessary for such detonations at the Nevada Test Site (NTS). The testing activities considered also include other continuing and intermittent activities, both nuclear and nonnuclear, which can best be conducted in the remote and controlled area of the NTS. Provision is also made for the study of geologic formations at the NTS for possible use in the ERDA program for management of commercially generated high-level radioactive wastes. (ELR Order No. 70070).

Intermed. Level Radioactive Waste Management, Roane County, Oak Ridge, Tenn., January 17: The proposed action is the selection of a preferred technique for the management of intermediate level radioactive liquid waste (ILW) and the construction and operation of a facility to implement the technique at the Oak Ridge National Laboratory (ORNL) in Roane County, Tennessee. Current ERDA activities at ORNL annually generate about 2 million gallons of ILW which is evaporated to reduce the volume. Three alternative management techniques are assessed: hydrofracture, shale-cement fixation, and glass fixation. The overall impact of any of the techniques would be expected to be beneficial, since each would remove large volumes of radioactive waste from existing storage facilities. (ELR Order No. 70061).

FEDERAL ENERGY ADMINISTRATION

Contact: Dr. Robert Stern, Director, Office of Environmental Impact, Federal Energy Administration, New Post Office Building, Room 7119, 12th and Pennsylvania Avenue, NW., Washington, D.C. 20461, 202-566-9760.

Draft

Kleer Mine, SPR, Van Zandt County, Tex., January 21: This statement involves the implementation of the Strategic Petroleum Reserve, Title I, Part B, of the Energy Policy and Conservation Act of 1975 (P.L. 94-163). The Reserve will store 150 million barrels of oil by December of 1978 in the Early Storage Reserve (ESR), and 500 million barrels by 1982 under the entire program. The candidate site discussed would be part of the ESR and would involve storage of 30 million barrels of oil in a conventional salt mine located in Grand Saline, Texas. The storage of oil at Kleer Mine would be implemented at an existing underground salt mine presently owned and operated by the Morton Salt Company. (ELR Order No. 70083).

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Contact: Mr. Richard H. Broun, Director, Office of Environmental Quality, Room 7258, 451 7th Street, S.W., Washington, D.C. 20410, 202-755-6308.

Draft

Merrillville Terrace Multifamily Project, Lake County, Ind., January 18: Proposed is the development of Merrillville Terrace on 60.2 acres over a period of 5 years. The first phase of development will be 425 multifamily units (out of a total of 797) on 36.33 acres. Plans call for an open space recreation area with clubhouse, pool, and tennis courts. Commercial development is planned on 17.2 acres adjoining on the west by a different developer. Construction of Merrillville Terrace will result in slightly increased vehicular use of existing streets in the area. (ELR Order No. 70069.)

Memorial Parkway Subdivision, Harris Co., Harris County, Tex., January 19: The proposed action is the acceptance for HUD/FHA mortgage insurance purposes of the 1,109-acre Memorial Parkway Subdivision located in Harris County, Texas. When completed in approximately 6 years, the subdivision will contain 3,842 single-family homes plus some attached single-family and multi-family housing, and shopping and recreational facilities. Adverse impacts will be removal of agricultural land from production and an increased demand for fossil fuels through heavy dependence on the automobile for transportation. (ELR Order No. 70075.)

Final

Trans Union Development, Diamond Path Addition, Dakota County, Minn., January 18: Developers of this 1,200 housing unit development propose that HUD provide mortgage insurance for 149 single-family homes in the first stage. The development covers 322 acres of cultivated agricultural land. Adverse effects include removal of farmland from production, increased noise and air pollution, increased traffic, increased demand for public services and facilities, and lack of low and moderate income housing. Comments made by: DOT, EPA, GSA, DOD, HEW, DOI, (ELR Order No. 70067.)

SECTION 104(H)

The following are Community Development Block Grant statements prepared and circulated directly by applicants pursuant to section 104(h) of the 1974 Housing and Community Development Act. Copies may be obtained from the office of the appropriate local chief executive. (Copies are not available from HUD).

Final

Upper Ashbury Rehabilitation Assistance Program, San Francisco County, Calif., January 19: Proposed is the application of Community Development Block Grant funds to the Upper Ashbury area of San Francisco, containing approximately 3,700 dwelling units and 8,700 persons. The San Francisco Rehabilitation Assistance Program is a financial assistance and code enforcement program, designed to carry out the City's policy of residential rehabilitation and neighborhood conservation. The impacts of the proposed Upper Ashbury program are evaluated in this EIS in light of the controversy in the proposed area regarding the social and economic impacts associated thereto. Comments made by: HEW, HUD, EPA, State and local agencies, concerned citizens. (ELR Order No. 70082.)

DEPARTMENT OF INTERIOR

Contact: Mr. Bruce Blanchard, Director, Environmental Project Review, Room 7260, Department of the Interior, Washington, D.C. 20240, 202-343-3891.

BUREAU OF RECLAMATION

Draft

Coronado Project, Maricopa County, Ariz., January 17: Proposed is a joint project, involving the Department of Interior and the Department of Agriculture, associated with the Salt River Project's proposed electrical generating plant at St. John's, Arizona. The facilities are intended to meet the future needs of Maricopa County and of the "Eastern Mining Area." The generating plant, wellfields, pipelines, limestone source, and railroad would occupy 3,516 acres of land and

the transmission line would occupy 526 acres. Negative effects include the impact of access roads, tower sites and staging areas on soils, forage, vegetation, and archeological resources. (ELR Order No. 70064.)

DEPARTMENT OF TRANSPORTATION

Contact: Mr. Martin Convisser, Director, Office of Environmental Affairs, U.S. Department of Transportation, 400 7th Street, S.W., Washington, D.C. 20590, 202-426-4357.

FEDERAL HIGHWAY ADMINISTRATION

Draft

Ocean Boulevard, Morris-Ocean Ave., Monmouth County, N.J., January 19: Proposed is the construction on new alignment of an urban highway, Ocean Boulevard, from its present terminus at Morris Avenue north to Ocean Avenue (N.J. Route 36) in the City of Long Branch, New Jersey. The total project length is approximately 9000 feet or 1.6 miles. The minimum right-of-way of 110 feet will provide for a land-service facility with two travel lanes plus paved shoulders in each direction separated by a narrow grassed mall. Adverse effects include the displacement of 67 to 254 individuals and 8 to 12 businesses. A preliminary 4(f) discussion is also included. (Region I). (ELR Order No. 70073)

Relocated U.S. 32, Dallas to Hickory, Lincoln, Catawba, and Gaston Counties, N.C., January 18: Proposed is the construction of a 4-lane divided highway on new location, connecting the existing improved section of U.S. 321 at Dallas, to the existing (new) interchange with I-40 at Brookford, just south of Hickory, North Carolina. New corridor locations under consideration vary from 30 to 32 miles in length. The new roadway will generally parallel and replace existing U.S. 231, which extends about 37 miles between Dallas and Brookford. Adverse impacts will result from taking homes, businesses, farms, woodlands, and other natural areas for right-of-way. (Region 4). (ELR Order No. 70065.)

Final

Street Improvements (U.S. 122, U.S. 7), Chicago, Cook County, Ill., January 18: This statement concerns the following roadway improvements in Chicago, Illinois: a 4,600 ft. segment of Columbus Drive; a 3000 ft. segment of Randolph Street between N. Michigan Avenue and N. Lake Shore Drive; a 5,220 ft. segment of Nort Lake Shore Drive (US 122); and Wacker Drive Extension (US 7). The project would result in increased air, water, and noise pollution, and the taking of portions of Grant Park, Navy Pier Park, and the Lakefront Promenade, and the Monroe Street Yachting Harbor. A 4(f) statement is included. Comments made by: EPA, DOT, State and local agencies, concerned citizens. (ELR Order No. 70071.)

Route 36, St. Joseph and Missouri River, Kansas County, Missouri, January 19: The proposed action is the acquisition of limited access right-of-way from the Missouri River to 17th Street in St. Joseph, grading, multilane paving, interchanges, and a six lane bridge over the Missour River from a point in Buchannan County, Kansas to 17th Street in St. Joseph. Total project length is 1.5 miles. Adverse impacts include the relocation of 77 families and 22 businesses, and the reassignment of approximately 30 acres of industrial, commercial and residential land to a transportation corridor. Comments made by: HUD, DOI, EPA, HEW, USDA, DOT, COE, State and local agencies, concerned citizens. (ELR Order No. 70079.)

DAVID W. TUNDERMAN,
Acting General Counsel.

[FR Doc.77-2798 Filed 1-27-77;8:45 am]

DEPARTMENT OF DEFENSE

Department of the Army

SCIENTIFIC ADVISORY BOARD OF THE ARMED FORCES INSTITUTE OF PATHOLOGY

Establishment, Organization and Functions

In accordance with the provisions of Pub. L. 92-463, Federal Advisory Committee Act, notice is hereby given that the Scientific Advisory Board of the Armed Forces Institute of Pathology has been found to be in the public interest in connection with the performance of duties imposed on the Department of Defense by law. The Office of Management and Budget has also reviewed the justification for this Advisory Committee and concurs with its reestablishment.

The nature and purpose of the Scientific Advisory Board of the Armed Forces Institute of Pathology is to serve in the public interest as a scientific advisory body to The Director, Armed Forces Institute of Pathology, to provide him and his staff with scientific and professional advice and guidance in matters pertaining to operational programs, policies and procedures of the Armed Forces Institute of Pathology central laboratory of pathology for the Department of Defense and other federal agencies with responsibilities for consultation, education and research in pathology.

Specifically, the advisory board will serve in the public interest by advising The Director, Armed Forces Institute of Pathology, on matters pertaining to:

(a) The character, scope, and adequacy of educational and experimental, statistical, and morphological research programs undertaken by the Institute, to include their correlation with other medical specialties.

(b) The correlation of education and research conducted in the Institute with that of other institutions to avoid unnecessary duplication and to facilitate the work of the Institute.

(c) The utilization for education and research purposes of the vast accumulation of pathologic material in the Institute to include their use in the Medical Museum.

(d) The character, scope, and adequacy of the technical and professional training programs of the Institute for Medical Department personnel and others.

(e) The use of new techniques, equipment and scientific apparatus in consultation, education and research.

(f) The character, size and adequacy of consultation services to include the development and evaluation of new pathologic tests and diagnostic procedures.

(g) The continuation of review for quality control of pathologic diagnoses for the medical services.

(h) Such other matters as are deemed of benefit to the Institute.

In view of the foregoing, the reestablishment of the Scientific Advisory Board of the Armed Forces Institute of Pathology is in the public interest. There is no existing committee, agency, or activity within the Federal Government that can perform the functions of the advisory board.

In order to assure balanced membership, the Board shall be composed of not more than 20 members, 16 selected from the civilian community on the basis of their national or international prominence in medicine and science allied to the functions of the Institute, and one representing the Professional Directorate of each military medical service and the Veterans Administration. No non-Federal civilian member of the Board shall be eligible to vote on or participate in any discussion or decision of the Scientific Advisory Board affecting research projects of their own or research projects of the organization or institution which employs them. Each civilian member will be appointed upon the advice of the Director, Armed Forces Institute of Pathology, and the concurrence of the Institute's Board of Governors by the Secretary of Defense or his designee. The basic term of office of the civilian members shall be two years. No civilian member may serve more than two terms in succession. Terms shall be staggered to provide a rotating membership. Federal members shall be appointed by and serve at the discretion of their respective agencies.

The Board shall report to the Director, Armed Forces Institute of Pathology. The Executive Officer, Armed Forces Institute of Pathology, who is a full-time salaried Federal Officer, shall serve as the agency representative and as Executive Secretary of the Board with full authority to adjourn any meeting not considered to be in the public interest.

The Scientific Advisory Board of the Armed Forces Institute of Pathology shall meet at least once annually for a two-day period. The Board will operate in accordance with the provisions of Pub. L. 92-463, Executive Order 11769, and implementing OMB, DOD and DA directives for Federal Advisory Committees.

The Scientific Advisory Board of the Armed Forces Institute of Pathology will terminate one year from this date unless rechartered for an additional period prior to termination.

Dated: January 25, 1977.

MAURICE W. ROCHE,
Director for Correspondence and Directives, OASD (Comptroller).

[FR Doc.77-2785 Filed 1-27-77;8:45 am]

ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION

ERDA ADVISORY COMMITTEES

Renewal

JANUARY 24, 1977.

Notice is hereby given that the following ERDA Advisory Committees have been renewed for a 2-year period, i.e., beginning from the date that copies of the charters have been filed with the standing committees on Congress and the Library of Congress (approximately February 1, 1977) and ending February 1, 1979:

Advisory Committee on Geothermal Energy; Committee of Senior Reviewers; High Energy Physics Advisory Panel; Historical Advisory Committee.

ERDA's Procurement Policy Advisory Committee has been renewed for a 1-year period, i.e., beginning from the date that copies of the charter have been filed with the standing committees of Congress and the Library of Congress (approximately February 1, 1977) and ending February 1, 1978.

Renewal of these Committees is necessary and in the public interest. The Committees will continue to operate in accordance with the provisions of the Federal Advisory Committee Act (Pub. L. 92-463), ERDA policy and procedures, OMB Circular No. A-63 (Revised), and other directives and instructions issued in implementation of that Act.

This determination follows consultation with the Office of Management and Budget pursuant to the relevant sections of the Federal Advisory Committee Act and OMB Circular No. A-63 (Revised).

ROBERT F. ALLNUTT,
Acting Advisory Committee Management Officer.

[FR Doc.77-2814 Filed 1-27-77;8:45 am]

ENVIRONMENTAL PROTECTION AGENCY

SCIENCE ADVISORY BOARD, TECHNOLOGY ASSESSMENT AND POLLUTION CONTROL ADVISORY COMMITTEE

Open Meeting

Pursuant to Pub. L. 92-463, notice is hereby given that a meeting of the Technology Assessment and Pollution Control Advisory Committee will be held beginning at 9 a.m., February 18, 1977, in room 3305, U.S. Environmental Protection Agency, Waterside Mall, 401 M Street, SW., Washington, D.C.

This meeting is a regularly scheduled meeting of the Committee. The Committee will draft a report regarding its assessment of the quality of EPA's research and development activities related to pollution control technology. Further, the Committee will be briefed on relevant activities of the Science Advisory Board and will discuss members items of interest.

The meeting is open to the public. Any member of the public wishing to attend or submit a paper should contact Lloyd T. Taylor, Executive Secretary, Technology Assessment and Pollution Control Advisory Committee, (703) 557-7720, by c.o.b. February 11, 1977.

THOMAS D. BATH,
Staff Director, Science Advisory Board.

[FR Doc.77-2747 Filed 1-27-77;8:45 am]

SCIENCE ADVISORY BOARD, ENVIRONMENTAL POLLUTANT MOVEMENT AND TRANSFORMATION ADVISORY COMMITTEE

Open Meeting

In accordance with Pub. L. 92-463, the Federal Advisory Committee Act, notice is hereby given of an open meeting of the Environmental Pollutant Movement and Transformation Advisory Committee of the Science Advisory Board of the U.S. Environmental Protection Agency. The meeting is scheduled for February 14, 15 and 16, 1977, and will be held at the Conference Room 1112A of Crystal Mall Building No. 2 (1921 Jefferson Davis Highway, Arlington, Virginia). Each day's session will begin at 9 a.m.

For the February 14, 1977 session, the topics are: current activities of the Science Advisory Board, and programs of the Robert S. Kerr Research Laboratory dealing with groundwater pollution. For the February 15, 1977 session, topics include presentations of the activities of selected researchers sponsored by the U.S. Environmental Protection Agency who are presently engaged in modeling efforts dealing with the movement and environmental fate of selected types of pollutants. For the February 16, 1977 session, the topic is a discussion of how the Committee should write its report of findings on the quality of research programs observed and visited within the Agency's laboratories.

Persons wishing to attend the meeting should contact the Science Advisory Board Secretariat. The address is: U.S. E.P.A., Science Advisory Board (A-101), Washington, D.C. 20460. The telephone number is (703) 557-7710. Please ask for Miss Carolyn Osborne. In order to plan for the meeting, it is requested that persons intending to attend the meeting notify the Secretariat by close of business (c.o.b.) on February 10, 1977.

THOMAS D. BATH,
Staff Director, Science Advisory Board.

JANUARY 21, 1977.

ENVIRONMENTAL POLLUTANT MOVEMENT AND TRANSFORMATION ADVISORY COMMITTEE

PRELIMINARY AGENDA
4TH MEETING

February 14, 1977

9:00 a.m.—Welcome and opening remarks, Dr. Montroll.
9:20 a.m.—Discussion of SAB activities from January 4-5, 1977, executive committee meeting, Dr. Wei.
10:00 a.m.—Advisory statement on post-doctoral fellows, Dr. Levine.
10:45 a.m.—Break.
11:00 a.m.—Discussion of EPMTAC transmittal to ORD on sulfates research plan, Dr. Montroll.
12:30 p.m.—Lunch.
2:00 p.m.—Opening remarks and planning for next meeting, Dr. Montroll.
2:30 p.m.—Groundwater research programs of the Robert S. Kerr research center (Ada, Oklahoma), Dr. Riordan and associates.
4:30 p.m.—Recess.

February 15, 1977

9:00 a.m.—Opening remarks, Dr. Montroll.
9:30 a.m.—Modeling discussions with grantees, Invited guests.
12:00 p.m.—Lunch.
1:30 p.m.—Modeling discussions with grantees, Invited guests.
4:30 p.m.—Recess.

February 16, 1977

9:00 a.m.—Opening remarks, Dr. Montroll.
9:15 a.m.—Discussion of report writing activities on the quality of ORD laboratories: visits to laboratories, other presentations and discussions, Dr. Montroll.
11:00 a.m.—Future committee activities and items of member interest, Dr. Montroll.
12:30 p.m.—Adjourn.

[FR Doc.77-2748 Filed 1-27-77;8:45 am]

FEDERAL ELECTION COMMISSION

[Notice 1977-8, AOR 1977-3]

ADVISORY OPINION REQUESTS

Pursuant to 2 U.S.C. 437f(c) and the procedures reflected in Part 112 of the Commission's Proposed Regulations, published on August 25, 1976 (41 FR 35954), Advisory Opinion Request 1977-3 has been made public at the Commission. Copies of AOR 1977-3 were made available on January 21, 1977. These copies of the advisory opinion request were made available for public inspection and purchase at the Federal Election Commission, Public Records Division, at 1325 K Street, NW., Washington, D.C. 20463.

Interested persons may submit written comments on any advisory opinion request within ten days after the date the request was made public at the Commission. These comments should be directed to the Office of the General Counsel, Advisory Opinion Section, at the Commission. Persons requiring additional time in which to respond to any advisory opinion requests will normally be granted such time upon written request to the Commission. All timely comments received by the Commission will be considered before the Commission issues an advisory opinion. Comments on pending requests should refer to the specific AOR number of the requests and statutory references should be to the United States Code citations rather than to the Public Law citations.

A description of the request recently made public as well as the identification of the requesting party follows hereafter:

AOR 1977-3: Whether office account may be established by Senator seeking re-election in 1978 who holds official Senate leadership position and may be used to pay expenses incident to his duties as a "Senate leader only;" whether office account funds may be used to pay the Senate leader's costs of appearing at "political functions" involving other Senators "up for election."—Requested by Senator Ted Stevens, United States Senate, Washington, D.C.

Dated: January 25, 1977.

VERNON W. THOMSON,
Chairman for the Federal Election Commission.

[FR Doc.77-2875 Filed 1-27-77;8:45 am]

FEDERAL ENERGY ADMINISTRATION

CASES FILED WITH THE OFFICE OF EXCEPTIONS AND APPEALS

Week of December 17 through December 24, 1976

Notice is hereby given that during the week of December 17 through December 24, 1976, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Federal Energy Administration's Office of Exceptions and Appeals.

Under the FEA's procedural regulations, 10 CFR, Part 205, any person who will be aggrieved by the FEA action sought in such cases may file with the FEA written comments of the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of those regulations, the date of service of notice shall be deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first.

Dated: January 21, 1977.

DAVID G. WILSON,
Acting General Counsel.

List of cases received by the Office of Exceptions and Appeals, Dec. 17 through Dec. 24, 1976

Date	Name and location of applicant	Case No.	Type of submission
Dec. 17, 1976	David Crow, Shreveport, La. (If granted: FEA's remedial order would be rescinded and David Crow would not be required to refund overcharges made on its sales of crude oil to Solito.)	FRA-1092 FES-1092	Appeal of remedial order; stay requested.
Do	Earl F. Wakefield, Inc., Wichita, Kans. (If granted: FEA's Dec. 8, 1976, remedial order would be rescinded and Earl F. Wakefield would not be required to refund overcharges made on its sales of crude oil to Cities and Apco.)	FRA-1093 FES-1093	Do.
Dec. 20, 1976	Al Jones Oil Corp. (General Oil Distributors, Inc., Jamaica, N.Y. (If granted: Al Jones Oil Corp. would receive an increase in its base period use of motor gasoline and General Oil Distributors, Inc., would be assigned as its base period supplier.)	FEE-3528	Exception to increase base period use (sec. 211.13).
Do	Algonquin SNG, Inc., Washington, D.C. (If granted: Algonquin SNG, Inc., would receive a stay of the requirements of the FEA's Mar. 22, 1976, decision and order issued to the Petrochemical Energy Group.)	FES-0018	Stay request.
Do	EDG, Inc., Los Angeles, Calif. (If granted: EDG, Inc., would receive a stay of the requirement of the FEA's Nov. 5, 1976, decision and order to purchase $1,029,310 additional entitlements during the period November 1976 through October 1977 pending a final determination of its appeal of that order.)	FES-1083	Request for stay of decision and order in Beacon Oil Co., et al., 4 FEA par. 87,024 (Nov. 5, 1976).
Do	Exxon Co., U.S.A., Washington, D.C. (If granted: The FEA's Nov. 17, 1976, decision and order would be rescinded and Louisiana Land & Exploration Co.'s crude oil supplier purchase relationship with Exxon Co., U.S.A. would be reinstated.)	FXA-1096	Appeal of decision and order in Louisiana Land & Exploration Co., 4 FEA par. .... (Nov. 17, 1976).
Do	Independent Gasoline Marketers Council: Society of Independent Gasoline Marketers of America, Washington, D.C. (If granted: The members of the Independent Gasoline Marketers Council, the Society of Independent Gasoline Marketers of America and other independent retailers of motor gasoline which purchase product from more than 1 supplier and sell in more than 1 marketing area would be recognized by the FEA as a proper class for the purposes of granting exception relief to permit the retroactive application of the separate inventories amendment.)	FXA-1095	Appeal of decision and order in Retroactive Application of the Separate Inventories Amendment, 4 FEA par. 83,099 (Sept. 24, 1976).
Do	Laketon Asphalt Refining, Inc., Evansville, Ind. (If granted: Laketon Asphalt Refining, Inc., would receive an exception from the old oil entitlements program.)	FEE-3525	Exception from oil entitlements program (sec. 211.67).
Do	Mobile Oil Corp., New York, N.Y. (If granted: The FEA's Nov. 5, 1976, order would be rescinded and Mobile Oil Corp. would continue to be supplied motor gasoline by the Gulf Oil Corp.)	FEA-1094 FES-1094	Appeal of FEA's Nov. 5, 1976, order; stay requested.
Do	F. H. Rhees, Tulsa, Okla. (If granted: Crude oil produced by Rhees from wells located in Nowata County, Okla., would be sold at upper tier ceiling prices.)	FEE-3526	Price exception (sec. 212.74).
Do	Rickelson Oil & Gas Co., Tulsa, Okla. (If granted: Crude oil produced from Rickelson's Vanbuskirk lease located in Seminole County, Okla., would be sold at upper tier ceiling prices.)	FEE-3527	Do.
Do	Texaco, Inc., Houston, Tex. (If granted: Texaco, Inc., would be permitted to increase its prices to reflect nonproduct cost increases in excess of $0.005 per gallon for natural gas liquid products produced at the following natural gas plants: Enville, Hitchcock, Kittie, Mermentau, and Ozona.)	FEE-3529— FEE-3533	Price exception (sec. 212.165).
Do	Warrior Asphalt Co. of Alabama, Inc., Washington, D.C. (If granted: Warrior's entitlement purchase obligation for the month December 1976 representing crude oil receipts and runs to stills for October 1976 would be partially stayed.)	FEX-0105	Supplemental order.

Date	Name and location of applicant	Case No.	Type of submission
Do	Warrior Asphalt Co. of Alabama, Inc., Washington, D.C. (If granted: Warrior Asphalt would receive an extension of the entitlement relief granted in FEA's June 17, 1976, decision and order.)	FEX-0106	Do.
Dec. 21, 1976	Batzell, Nunn & Bode, Washington, D.C. (If granted: The FEA's Dec. 2, 1976, information request denial would be rescinded and Batzell, Nunn & Bode would receive access to FEA material regarding FEA's proposal to exempt naphthas, gas oil and other products from the mandatory petroleum allocation and price regulation.)	FEA-1097	Appeal of FEA's information request denial.
Do	Bloes Oil Co., Bowman, N. Dak. (If granted: The FEA's Nov. 8, 1976, decision and order would be rescinded and Bloes Oil Co. would be permitted to retain the revenues which it realized during the period Nov. 1, 1973, through Sept. 30, 1974, from charging prices for propane which exceeded maximum level permitted by sec. 212.93.)	FEA-1098	Appeal of FEA region VIII's decision and order dated Nov. 8, 1976.
Do	Bloes Oil Co., Bowman, N. Dak. (If granted: Bloes Oil Co. would receive a stay of the requirements of the FEA's Dec. 6, 1976, remedial order and would not be required to refund overcharges made in sales of propane during the period Nov. 1, 1973, through Sept. 30, 1974.)	FES-0099	Request for stay of remedial order dated Dec. 6, 1976.
Do	Memphis Aero Corp., Washington, D.C. (If granted: Memphis Aero Corp. would be permitted to increase its selling price for aviation fuel above the maximum allowable price levels computed pursuant to sec. 212.93.)	FEE-3530	Price exception (sec. 212.93).
Do	Petrochemical Energy Group, Washington, D.C. (If granted: The FEA's Oct. 18, 1976, decision and order issued to Brooklyn Union Gas Co. would be rescinded and Brooklyn Union Gas would not be assigned a base period use of 733,000 mcf of butane for its entitlement.)	FEA-1100	Appeal of FEA's Oct. 18, 1976, decision and order issued to Brooklyn Union Gas Co.
Do	Standard Oil Co. (Indiana), Chicago, Ill. (If granted: Standard Oil Co. (Indiana) would be permitted to increase its prices to reflect nonproduct cost increase in excess of $0.005 per gallon for natural gas liquid products produced at the following natural gas plants: Elmwood, Lake Boeuf, Monahans, South Thornwell and TSMA.)	FEE-3534 FEE-3538	Price exception (sec. 212.165).
Do	Varibus Corp., Beaumont, Tex. (If granted: Varibus Corp. would receive a stay of the requirements of the FEA's Sept. 20, 1976, remedial order to refund to Thomas P. Reidy & Rolfe Petroleum overcharges by Varibus in sales of No. 2 fuel oil.)	FES-0084	Request for stay of remedial order dated Sept. 20, 1976.
Dec. 22, 1976	Caldo Oil Co., Curtesy Oil Co., Ranco Oil Co., Rinehart Oil Co., San Francisco, Calif. (If granted: Caldo Oil Co., Curtesy Oil Co., Ranco Oil Co., and Rinehart Oil Co. would receive a stay of the provisions of the FEA's Nov. 5, 1976, decision and order issued to Gulf Oil Corp. pending a final determination of their appeal of that order, and thereby continue to receive their base period use of petroleum products from Gulf.)	FES-0084— FES-0087	Request for stay of decision and order dated Nov. 5, 1976, issued to Gulf Oil Corp.
Do	Major Oil Co., Miles Oil Co., and Olympian Oil Co., San Francisco, Calif. (If granted: Major Oil Co., Miles Oil Co., and Olympian Oil Co. would receive a stay of the provisions of the FEA's Nov. 5, 1976, decision and order issued to Gulf Oil Corp. pending a final determination of their appeal of that order, and thereby continue to receive their base period use of petroleum products from Gulf.)	FES-0088 FES-0089 FES-0090	Do.
Do	Minnesota Gas Co., Minneapolis, Minn. (If granted: Minnesota Gas Co. would receive an exception to sec. 212.92 and sec. 212.93 for purposes of computing its increased product costs and its selling price of propane.)	FEE-3541	Price exception (sec. 212.93).
Do	OKC Corp., Washington, D.C. (If granted: The FEA's Nov. 22, 1976, decision and order would be rescinded and OKC Corp. would be relieved of any obligation to purchase entitlements with respect to its crude oil runs to stills and old oil receipts for the months of April through September 1976.)	FEA-1101	Appeal of decision and order in OKC Corp., 4 FEA par. .... (Nov. 22, 1976.
Do	Skelly Oil Co., Tulsa, Okla. (If granted: The FEA's Dec. 12, 1976, remedial order would be rescinded and Skelly Oil Co. would not be required to determine its imputed May 15, 1973, selling price for unleaded gasoline in accordance with 10 CFR 212.112(b)(1).)	FRA-1096	Appeal of remedial order dated Dec. 12, 1976.
Do	Standard Oil Co. (Indiana), Chicago, Ill. (If granted: The FEA's Oct. 1, 1976, and Nov. 12, 1976, decisions would be modified to reflect increased 3d quarter nonproduct costs for the following natural gas plants: Luby, Old Ocean, Burnell, Midland, and Peoria.)	FMR-0073 FMR-0077	Request for modification of decisions and orders in Standard Oil Co. (Indiana), 4 FEA par. 83,134 (Oct. 1, 1976); Standard Oil Co. (Indiana), 4 FEA par. ---- Nov. 12, 1976).
Do	Sun Co., Inc., Washington, D.C. (If granted: Portions of a document as to which a decision was reserved in the order issued to Sun pursuant to the Freedom of Information Act on Nov. 19, 1976, would be released.)	FEX-0107	Supplemental order to decision in Sun Co., Inc., 4 FEA par. ---- (Nov. 19, 1976).

Date	Name and location of applicant	Case No.	Type of submission
Do.....	James Taylor Wilson, Leroy, Ala. (If granted: James Taylor Wilson would be assigned a new, lower priced supplier of petroleum products to replace its base period supplier, Bedwell Oil Co.)	FEE-3540	Exception to change base period supplier (sec. 211.9).
Dec. 23, 1976	Southwestern Refining Co., Inc., Salt Lake City, Utah. (If granted: Southwestern Refining Co., Inc., would receive a stay of the requirements of the entitlement notice issued Dec. 22, 1976, that it purchase 1,213 entitlements by Dec. 31, 1976.)	FES-0051	Stay request.
Do.....	UCO Oil Co., Whittier, Calif. (If granted: UCO Oil Co. would receive an extension of the exception relief granted in the FEA's Oct. 15, 1976, decision and order and would be assigned new, lower priced suppliers of motor gasoline on the basis that it is continuing to experience a serious hardship.)	FXE-3542	Extension of relief granted in UCO Oil Co., 4 FEA par. 83,155 (Oct. 15, 1976).
Do.....	Union Oil Co. of California, Los Angeles, Calif. (If granted: The FEA's Dec. 6, 1976, decision and order would be modified to (i) include all California heavy-high sulfur crude oil; (ii) remove the requirement that Union pay maximum ceiling prices on all crude oils used in computing the measure of relief; and (iii) make the order effective 3 mo from the date on which it is modified on appeal.)	FXA-1102	Appeal of decision and order in Union Oil Co. of California, 4 FEA par. ---- (Dec. 6, 1976).

[FR Doc.77-2570 Filed 1-21-77;4:24 pm]

CASES FILED WITH THE OFFICE OF EXCEPTIONS AND APPEALS

Week of December 24 through December 31, 1976

Notice is hereby given that during the week of December 17 through December 24, 1976, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Federal Energy Administration's Office of Exceptions and Appeals.

Under the FEA's procedural regulations, 10 CFR, Part 205, any person who will be aggrieved by the FEA action sought in such cases may file with the FEA written comments of the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of those regulations, the date of service of notice shall be deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first.

Dated: January 21, 1977.

DAVID G. WILSON,
Acting General Counsel.

List of cases received by the Office of Exceptions and Appeals, Dec. 24 through Dec. 31, 1976

Date	Name and location of applicant	Case No.	Type of submission
Dec. 27, 1976	City of Long Beach, Long Beach, Calif. (If granted: FEA's Dec. 3, 1976, decision and order would be modified to increase the relief granted to the fault block 11 unit working interest owners.)	FXA-1105	Appeal of FEA's decision and order in City of Long Beach, 4 FEA par. ---- (Dec. 3, 1976).
Do.....	Lee Brooks Oil, Inc., Wichita, Kans. (If granted: FEA's Nov. 24, 1976, remedial order would be rescinded.)	FRA-1104 FES-1104	Appeal of FEA's remedial order; stay requested.
Do.....	Midland Cooperatives, Inc., Washington, D.C. (If granted: FEA's Nov. 5, 1976, decision and order would be rescinded and Midland Cooperatives would not be required to purchase $1,057,841 additional entitlements during the period November 1976 through October 1977.)	FXA-1103	Appeal of FEA's decision and order in Midland Cooperatives, Inc., 4 FEA par. ---- (Nov. 5, 1976).
Do.....	Ozona Gas processing plant, Dallas, Tex. (If granted: Ozona Gas processing plant would be permitted to increase its prices for natural gas liquid products to reflect nonproduct cost increases in excess of $0.005 per gallon.)	FEE-3544	Price exception (sec. 212.165).
Do.....	R. V. Whitmer Thermogas Co., Akron, Ohio. (If granted: R. V. Whitmer Thermogas Co. would not be required to refund overcharges in propane sales and would be permitted to establish its base price as of July 30, 1973.)	FEE-3543	Price exception (sec. 212.93).
Dec. 28, 1976	Boswell Oil Co. of Louisiana, Houston, Tex. (If granted: Boswell Oil Co. would be awarded entitlements on the basis of imputed crude oil runs to stills during the 2 mo prior to the initiation of operations at its St. John Parish refinery.)	FEE-3548	Allocation exception (sec. 211.67).
Do.....	Cities Service Co., Tulsa, Okla. (If granted: Cities Service Co. would replace Peacock Oil Co. as base period supplier for a retail outlet located at 501 West 31st St., Chicago, Ill.)	FEE-3546	Exception to change supplier (sec. 211.9.)
Do.....	Getty Oil Co., New York, N.Y. (If granted: FEA's July 21, 1976, decision and order would be rescinded and Getty Oil Co., Getty Eastern and Skelly would be considered a single firm.)	FMR-0078	Rescission of FEA's decision and order in Getty Oil Co., 2 FEA par. 80,046 (July 21, 1975).
Do.....	Good Hope Industries, Inc., Springfield, Mass. (If granted: The FEA would review the entitlements exception relief granted to Good Hope Industries, Inc., during its 1976 fiscal year in order to determine whether the level of exception relief approved was appropriate.)	FEX-0108	Review of entitlements exception relief (supplemental order).
Do.....	Pryor Interprises, Inc., Griffin, Ga. (If granted: Pryor Interprises, Inc., would be assigned a new, lower priced supplier of motor gasoline to replace its base period supplier, Triton, Inc.)	FEE-3547	Exception to change suppliers (sec. 211.9).

Date	Name and location of applicant	Case No.	Type of submission
Dec. 29, 1976	Earl W. Sander, Emporia, Kans. (If granted: FEA's Nov. 4, 1976, remedial order would be rescinded and the Babinger-Perrier, Possillon, and Jones-Rathke lease would be classified as a stripper well property retroactive to November 1976.)	FRA-1106 FES-1106	Appeal of FEA's remedial order; stay requested.
Do.....	Mobil Oil Corp., New York, N.Y. (If granted: Mobil Oil Corp. would receive a temporary stay of FEA's Nov. 5, 1976, order and would not be required to fulfill a portion of Gulf Oil Corp.'s supply obligations in the northern California, northern Nevada, Oregon, and Washington areas.)	FST-0024	Request for temporary stay of FEA's Nov. 5, 1976 order.
Do.....	OKC Corp., Washington, D.C. (If granted: The FEA would review the entitlements exception relief granted to OKC Corp. during its 1976 fiscal year in order to determine whether the level of exception relief approved was appropriate.)	FEX-0109	Review of entitlements exception relief (supplemental order).
Dec. 28, 1976	Phillips Petroleum Co., Bartlesville, Okla. (If granted: FEA's Dec. 3, 1976, special report order would be rescinded and Phillips Petroleum Corp. would not be required to file a special report with respect to its exchanges involving refined petroleum products.)	FSO-0033	Request for special redress.
Dec. 29, 1976	Tenneco Oil Co., Houston, Tex. (If granted: Tenneco Oil Co. would receive a temporary stay of the refund which the firm is required to make to the West Coast Oil Co. pending judicial review.)	FST-0023	Request for a temporary stay of FEA's decision and order in Tenneco Oil Co., 3 FEA par. ---- (Dec. 21, 1976).
Dec. 30, 1976	Amtane, Inc. (Burmah LP-Gas, Inc.), Tulsa, Okla. (If granted: The FEA's Dec. 3, 1976, decision and order issued to Small's LP Gas Co. would be rescinded.)	FXA-1107	Appeal of FEA's decision and order in Small's LP Gas Co., 4 FEA par. ---- (Dec. 3, 1976).
Do.....	Flying Tiger Line, Inc., Los Angeles, Calif. (If granted: Flying Tiger Line, Inc., would receive a temporary stay of FEA's Dec. 16, 1976, order and Texaco would supply the firm with kerosene-base aviation turbine fuel.)	FST-0025	Temporary stay of FEA's Dec. 16, 1976, order.
Do.....	Flying Tiger Line, Inc., Los Angeles, Calif. (If granted: FEA's Dec. 16, 1976, order would be rescinded and Flying Tiger Lines would be supplied kerosene-base aviation turbine fuel for its base period use.)	FEA-1109 FES-1109	Appeal of FEA's Dec. 16, 1976, order; stay requested.
Do.....	Mid-Michigan Truck Service, Inc., Grand Rapids, Mich. (If granted: Mid-Michigan Truck Service, Inc., would be assigned a new, lower priced supplier of motor gasoline on the basis that it is continuing to experience a serious hardship.)	FXE-3371	Extension of relief granted in Mid-Michigan Truck Service, Inc., 4 FEA par. 87,015 (Oct. 6, 1976).
Do.....	Shell Oil Co., Houston, Tex. (If granted: Shell Oil Co. would be permitted to retroactively compute increased nonproduct cost recoveries under a proportionate recovery method.)	FEE-3545	Price exception (sec. 212.83).

[FR Doc.77-2571 Filed 1-21-77;4:26 pm]

FEDERAL ENERGY ADMINISTRATION

ISSUANCE OF DECISIONS AND ORDERS BY THE OFFICE OF EXCEPTIONS AND APPEALS

Week of November 22 Through November 26, 1976

Notice is hereby given that during the week of November 22 through November 26, 1976, the Decisions and Orders summarized below were issued with respect to Appeals and Applications for Exception or other relief filed with the Office of Exceptions and Appeals of the Federal Energy Administration. The following summary also contains a list of submissions which were dismissed by the Office of Exceptions and Appeals and the basis for the dismissal.

APPEALS

Atlantic Richfield Co., Los Angeles, Calif.; FEA-0863; Refined Petroleum Products

The Atlantic Richfield Company (Arco) appealed from a Decision and Order issued to it and the C F Petroleum Company (CFP) in which the FEA considered requests by those firms for various types of administrative relief in connection with the proposed acquisition by CFP of a refinery owned by Arco. *Atlantic Richfield Co.*, 3 FEA Par. 83,177 (May 14, 1976). Arco limited the scope of its Appeal to a challenge to the determination reached in the May 14 Decision that the firm should not be permitted to recoup the costs which it incurs under a proposed crude oil conversion agreement with CFP as either increased product or nonproduct costs. In considering Arco's Appeal, the FEA observed that these costs constitute processing fees which are not included in the categories of increased costs specified in 10 CFR 212.83 which a refiner may recover in the form of higher selling prices. The FEA therefore rejected Arco's claim that the FEA Price Regulations permit the firm to recover the crude oil processing fee which it pays to CFP. Contrary to Arco's contention that the Emergency Petroleum Allocation Act of 1973, as amended, requires the FEA to permit the recovery of processing fees, the FEA found that the statute only imposes on the FEA an obligation to permit the recovery of increased product costs. With respect to Arco's claim that the FEA erred in failing to find that Arco would experience a gross inequity if it were not permitted to recover the costs incurred under its processing agreement, the FEA generally noted that processing agreements are common among refiners and that a rulemaking proceeding rather than the exceptions process is the appropriate forum in which to present a request for administrative relief which would apply to alleged inequities being experienced by a broad sector of the petroleum industry. Nevertheless, the FEA determined that the additional information submitted by Arco on Appeal materially distinguishes Arco's situation in this case from the situation of other refiners which are parties to processing agreements. In this regard, the FEA found that the processing agreement is an integral part of CFP's acquisition of the Arco refinery and that, in the absence of the agreement, it is uncertain whether CFP would be able to operate the refinery in an economically efficient manner. Furthermore, on the basis of the material submitted by Arco, the FEA determined that, in the absence of exception relief, the refiners' price rule would substantially impede CFP's acquisition of the refinery. Moreover, in the May 14 Decision the FEA had concluded that since the acquisition by CFP of the Arco refinery would further significant national energy objectives, exception relief was appropriate to facilitate the acquisition. The Arco Appeal was therefore granted in part and exception relief was approved which permits Arco rather than CFP to recover the increased non-product costs, as defined in Section 212.83, which are incurred by CFP in producing the refined products delivered to Arco under the processing agreement.

Exxon Co., U.S.A.; Houston, Texas; FEA-0846, FEA-0870, FEA-0917, FEA-0938, FEA-0953, FEA-0972, FEA-1012; Crude oil

Exxon Company, U.S.A. (Exxon) appealed from the Entitlement Notices which the FEA issued for the months of February through July 1976. In the Appeals, Exxon alleged that the total quantity of old oil which was actually produced in the United States during the period November 1974 through July 1976 exceeded the old oil receipts stated in the Entitlement Notices by approximately 93.2 million barrels. Exxon contended that this apparent disparity distorted the adjusted national old oil supply ratio and thereby increased the number of entitlements which Exxon was required to purchase. In analyzing Exxon's assertion, the FEA noted that, on February 1, 1976, amendments to the crude oil price regulations had been adopted which were intended to result in a weighted average first sale price for all domestic crude oil during February 1976 which would comply with the $7.66 per barrel limitation established for that month by Section 401 of the Energy Policy and Conservation Act (EPCA). In order to monitor the first sale price of domestic crude oil, the FEA had, commencing with the month of February 1976, implemented a new monthly reporting system for "first purchasers" which receive a first sale certification from the producers of domestic crude oil. The FEA observed that as a result of this new reporting system, it now has precise data as to the amount of old oil which was actually produced in the United States in each month and is consequently able to verify the old oil receipts which refiners reported for purposes of the Entitlements Program. In considering the Exxon Appeals, the FEA found that the data which has been collected from the First Purchaser System for the period from February through July 1976 demonstrates conclusively that the amount of old oil produced in the United States during that period was approximately equal to the old oil receipts specified in the Entitlement Notices which the FEA published during the months of April through September 1976. The FEA further determined that any variance between the amount of old oil reported in the different regulatory programs is attributable to the existence of reporting errors, compliance violations and the correction process of the Entitlements Program. The FEA also determined that Exxon has substantially overestimated the amount of old oil which was produced during the period since the inception of the Entitlements Program. In view of the various FEA actions which have already been commenced to collect data reported in the operation of the Entitlements Program and the fact that the data which has been collected tends to verify the accuracy of the figures used for purposes of the Entitlements Program, the FEA concluded that Exxon failed to establish the existence of any prejudicial error of fact that is not already in the process of being corrected. The Appeals which Exxon filed wehre accordingly denied.

Kerr-McGee Corp.; Oklahoma City, Okla.; FEA–0882; Refined Petroleum Products

The Kerr-McGee Corporation (Kerr-McGee) filed an Appeal from a Decision and Order issued to it by the Federal Energy Administration. *Kerr-McGee Corp.*, 3 FEA Par. 83,179 (May 7, 1976). In the prior determination, the FEA granted retroactive exception relief from the provisions of 10 CFR 212.83(c)(2) for the period June 28, 1974 through January 31, 1976 which permitted Kerr-McGee to allocate its increased crude oil costs to refined products in the proportion that the products were refined by the firm rather than on the basis of the volumes sold. The FEA denied the Kerr-McGee exception request in all other respects. The present Appeal, if granted, would reverse the previous determination and result in the approval of exception relief which permits the firm to: (i) calculate increased costs and determine maximum allowable prices as though each of its refining subsidiaries were a separate firm; (ii) allocate increased product costs on the basis of refinery yield for the period August 1973 through June 27, 1974; and (iii) apply prospectively and retroactively its increased costs to the selling prices it charged to its various classes of purchaser without regard to the provisions of Section 212.83(c)(1) and Section 212.83(h) (the equal application rule). With respect to the requirement of consolidated pricing on a firm-wide basis, the FEA found no error in its previous conclusion that Kerr-McGee and its subsidiaries lacked the "completely separate and distinct operations" which are necessary for the approval of separate pricing under FEA precedents. *See Getty Oil Co. (Eastern Operations), Inc.; Skelly Oil Co.*, 2 FEA Par. 83,041 (February 11, 1975).

With respect to the Kerr-McGee request for additional retroactive exception relief from the provisions governing the allocation of increased crude oil costs, the FEA noted that the May 7 Decision attempted to arrive at an appropriate balance of a number of equitable considerations in arriving at the conclusion that exception relief should be approved for the period June 28, 1974 through January 31, 1976. Since Kerr-McGee received significant benefits from the prior Decision, the FEA found no merit to Kerr-McGee's position that the denial of relief for the period prior to June 28, 1974 was arbitrary. The FEA also rejected Kerr-McGee's contention that the prior application to it of the equal application rule results in a penalty to the firm. In this connection, the FEA noted that even though Kerr-McGee may not have recovered revenues in excess of its total cost increases, it could nevertheless have overcharged some of its customers by applying unequal increments of costs in determining its selling prices. The FEA found that the mere fact that overcharges to some customers may have been offset by undercharges to other customers did not provide grounds for granting an exception which would relieve Kerr-McGee of all liability but fail to provide redress to those customers whom it overcharged.

In response to Kerr-McGee's contention that the FEA had departed from its precedents by denying it retroactive exception relief from the equal application rule, the FEA reiterated the requirement that a firm seeking retroactive relief must first make a preliminary showing of serious hardship or gross inequity before the issue of retroactivity is even addressed, and Kerr-McGee had not made such a showing. The FEA also found no merit to Kerr-McGee's argument that precedential value should be accorded to a consent order which partially relieved it of liability for violating the equal application rule, since consent orders issued in compliance proceedings are governed by different criteria from those which the FEA employs in resolving adjudicatory cases in the exceptions process. In addition, the FEA determined that the firm's projection that it might incur an operating loss during its present fiscal year if it were required to make refunds was speculative at the present time and provided no basis for retroactive exception relief inasmuch as the FEA Office of Compliance had not made any finding as to the precise amount of overcharges or the appropriate method of restitution. Since Kerr-McGee had failed to demonstrate that the May 7 Decision was erroneous in fact or law or was arbitrary or capricious, its Appeal was denied.

Luke Bros., Inc.; Bryan County, Okla.; FEA–1004; Propane

Luke Brothers, Inc. (Luke) appealed from a Remedial Order in which the Federal Energy Administration, Region VI, found that subsequent to November 1, 1973 Luke had been selling propane at prices which exceeded the maximum price levels permitted by 6 CFR 150.359 and 10 CFR 212.93. The Remedial Order directed Luke to immediately reduce the prices which it charges for propane to lawful levels. In its Appeal, Luke contended that as a result of unusual and anomalous events which occurred during May 1973, the application to the firm of the provisions of Section 212.93 constitutes a gross inequity. Luke further contended that it would incur a serious hardship if it were required to refund the $28,035.41 in alleged overcharges cited in the Remedial Order. In considering Luke's Appeal, the FEA noted that the arguments presented by Luke had already been considered at length and rejected by the FEA in two prior exception proceedings. The FEA further noted that Luke failed to assert in its Appeal that the factual or legal findings contained in the October 5 Remedial Order are erroneous. Accordingly, Luke's Appeal was denied.

Standard Oil Co. of Calif.; San Francisco, Calif.; FEA–0889, FEA–0911

Atlantic Richfield Co.; Los Angeles, Calif.; FEA–0913, FEA–0915

Texaco, Inc.; New York, N.Y.; Gulf Oil Corp.; Los Angeles, Calif.; Motor Gasoline Allocation

The Standard Oil Company of California (Socal), the Atlantic Richfield Company (Arco), Texaco, Inc. (Texaco), and the Gulf Oil Corporation (Gulf) filed Appeals from the Decision and Order which the Federal Energy Administration issued to the UCO Oil Company (UCO) on June 11, 1976. *UCO Oil Company*, 3 FEA Par. 83,219 (June 11, 1976). Pursuant to the provisions of the June 11 Decision, the Regional Administrator of FEA Region IX directed Socal, Arco, Texaco and Gulf to make available for sale to UCO during the period June through August 1976 a total of 5,659,220 gallons of motor gasoline in place of higher priced supplies which UCO would otherwise have been entitled to receive from two of its base period suppliers, The Oil Shale Corporation (Tosco) and the Macmillan Ring-Free Oil Company, Inc. The firms' Appeals of the June 11 Decision, if granted, would result in an order vacating the June 11 Order. In considering the Appeals in a consolidated proceeding, the FEA determined that, contrary to the appellants' assertion, the FEA specifically adjusted the measure of relief granted UCO in the June 11 Decision to take into account the fact that a significant extent of the financial difficulties which UCO is experiencing is a result of the firm's own discretionary business decision. The FEA also found that the appellants' had shown no basis for their claim that the exception relief which had been approved unreasonably permits UCO to obtain its historic markup on sales of motor gasoline, since the June 11 Decision did not in any way guarantee UCO its historic markup in those sales. With respect to the appellants' contention that the FEA failed to adequately consider UCO's surplus product position in the exception proceeding, the FEA found that UCO's position with respect to surplus motor gasoline had been fully considered in the previous proceeding, and that UCO was able to alleviate only a minor portion of the serious financial hardship it was experiencing through purchases of surplus product. With respect to the appellants' argument that the relief granted in the June 11 Decision frustrated several important national energy policy objectives, the FEA held that the June 11 Decision attempted to arrive at an appropriate balance of a number of the objectives specified in the Emergency Petroleum Allocation Act of 1973, as amended, and that no showing had been made by the appellants that the conclusions reached were erroneous, arbitrary or capricious. Finally, the FEA found the appellants' claim that they were deprived of their due process rights to be without merit. During the course of the initial UCO exception proceeding, the appellants were not readily ascertainable as being aggrieved parties, and they have been afforded a full opportunity to challenge any part of the exception determinations during the course of their present Appeals. Based on these findings, the FEA denied the Appeals.

REQUESTS FOR EXCEPTION

Robert G. Cagwin, d.b.a. Lincolnway Mobil; New Lenox, Ill.; FEE–2835; Motor Gasoline

Lincolnway (Lincolnway) filed an Application for Exception from the provisions of 10 CFR 211.9. The exception request, if granted, would have resulted in the assignment of a new, lower-priced supplier of motor gasoline to replace the firm's base period supplier, the Marcley Oil Company. Although Lincolnway claimed that it was experiencing a serious financial hardship as a result of a disparity between the price it paid Marcley for motor gasoline and the prevailing price paid for that fuel by its competitors, the firm failed to submit any data to substantiate that contention. In view of the fact that Lincolnway refused to submit any financial or operating data in support of its contention, despite repeated requests to do so, the FEA denied the firm's exception request.

ECO Petroleum Corp.; Houston, Tex.; FEE–3075; Motor Gasoline

ECO Petroleum Corporation (ECO) filed an Application for Exception from the provisions of 10 CFR 211.9 which, if granted, would result in the assignment by the FEA of a new, lower-priced supplier of motor gasoline to replace ECO's base period suppliers. In considering ECO's exception request, the FEA determined that the firm's current cost of motor gasoline is less than one cent higher than the average price charged by wholesale purchaser-resellers of motor gasoline which supply ECO's competitors. The FEA further found that ECO has operated profitably in the past despite the fact that its cost of motor gasoline has historically been higher than the price paid by some of its competitors. Therefore, the FEA concluded that ECO's current financial difficulties are not solely attributable to the higher prices which it must pay its base period suppliers for motor gasoline, and its request for exception relief was denied.

Farmland Industries, Inc.; Kansas City, Mo.; FEE–3219 (Gillette), FEE– 3220 (Lamont), FEE–3221 (Mertzon), FEE–3222 (Quitman); Natural Gas Liquid Products

Farmland Industries, Inc. (Farmland) filed four Applications for Exception from the provisions of 10 CFR 211.165 which, if granted, would permit Farmland to increase the selling prices for the natural gas liquid products produced at certain of its natural gas processing plants. In those applications, Farmland requested that the exception relief previously granted to the firm on August 31, 1976, be extended for an additional period of time. *Farmland Industries, Inc.*, 4 FEA Par. 83,074 (August 31, 1976). In considering Farmland's requests, the FEA determined that during the fourth quarter of 1976 Farmland had experienced non-product cost increases at four gas plants which substantially exceeded the $.005 per gallon passthrough permitted under the provisions of Section 212.165. Based on the criteria set forth in *Superior Oil Co.*, 2 FEA Par. 83,271 (August 29, 1975) and other previous Decisions, the FEA granted exception relief for each of these plants.

Kamur Industries, Inc.; Oakland, Calif.; FEE–2956; Motor Gasoline

Kamur Industries, Inc. (Kamur) filed an Application for Exception from the provisions of 10 CFR 211.9 which, if granted, would result in the assignment of a new supplier of motor gasoline to replace the Mobil Oil Corporation (Mobil), Kamur's base period supplier for its East 14th Street Outlet. In its submission, Kamur requested that the Standard Oil Company of California (Standard) be designated as the new supplier. In considering Kamur's exception application, the FEA found that, contrary to Kamur's contention, the FEA regulations do not prevent Kamur from terminating its supply contract with Mobil and entering into a contract to purchase motor gasoline from Standard, provided that Standard has surplus product available and complies with the provisions of 10 CFR 211.10(g). In accordance with the precedents established in prior decisions, Kamur's claim that the provisions of Section 211.9 were adversely affecting the firm was analyzed in terms of the effect on its entire petroleum-related activities. The FEA found that although Kamur's East 14th Street Outlet has operated at a loss, the firm as a whole has operated on a profitable basis. Consequently, Kamur had not demonstrated that it would incur a serious hardship as a result of the FEA regulatory requirement that its existing base period relationship with Mobil be maintained, and its exception application was therefore denied.

Oil Properties Co., Inc.; Augusta, Kans.; FEE–3133; Crude Oil

Oil Properties Company, Inc. filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D. The exception request, if granted, would result in the approval of retroactive exception relief which would relieve Oil Properties of the obligation to refund any revenues which the firm may have realized as a result of improperly charging exempt prices for the crude oil which it produced from the Lang Lease during 1974. In its exception application, Oil Properties contended that it had properly classified the Lang Lease as a stripper well lease pursuant to the provisions of 10 CFR 210.32 which were promulgated on January 15, 1974. However, the firm contended that it was unaware of a subsequent amendment to Section 210.32 under which the Lang Lease could not be properly classified as a stripper well lease and that, as a result, it had overcharged its customers. In considering Oil Properties' application, the FEA determined that the firm had failed to meet its affirmative obligation to become cognisant of the correct application of FEA Regulations to its operations. The FEA further determined that Oil Properties had failed to show that it would experience a severe financial hardship if it were required to refund the alleged overcharges. The FEA concluded that the firm had failed to satisfy the standards for approval of retroactive exception relief, and its Application for Exception was denied.

OKC Corp.; Dallas, Tex.; FEE–2777; Crude Oil

OKC Corporation filed an Application for Exception from the provisions of 10 CFR 211.67 (the Old Oil Entitlements Program) which, if granted, would relieve OKC of any obligation to purchase entitlements during the period April through September 1976. In its submission, OKC contended that exception relief is necessary to permit the firm to attain a profit margin and a return on invested capital in its fiscal year ending September 30, 1976, which is at least comparable to the firm's historical operating results. In considering OKC's request, the FEA observed that a sharp reduction in OKC's allocation of United States Geological Survey (USGS) royalty oil, which was the firm's principal source of old crude oil, had caused OKC's entitlement purchase obligations to be concentrated in the three month period from April through June 1976. In order to correct this problem, the FEA had on its own motion issued a Supplemental Order which stayed the firm's purchase obligations during that period and permitted OKC to apply one-third of its total entitlement purchase obligations for the months of April through June 1976 against the entitlement sales revenues which the firm anticipated receiving during the period July through September 1976. *OKC Corp.*, 3 FEA Par. 83,231 (June 14, 1976). In the present proceeding, the FEA determined that this prior relief had mitigated any adverse effects on OKC's sudden change in status under the Entitlements Program. In view of the fact that OKC remained a net seller of entitlements during the six month period from April through September 1976, the FEA concluded that the firm is not being adversely affected by the Entitlements Program and that exception relief which would enhance the benefits which OKC already realizes under the Program is not appropriate. The firm's exception application was therefore denied.

Sid Richardson Carbon and Gasoline Co.; Fort Worth, Tex.; FEE–3331 (Keystone); Natural Gas Liquid Products

Sid Richardson Carbon and Gasoline Company (Richardson) filed an Application for Exception from the provisions of 10 CFR 212.165 which, if granted, would permit Richardson to increase the selling prices for the natural gas liquid products produced at its Keystone natural gas processing plant. In that Application, Richardson requested that the exception relief previously granted to the firm on August 19, 1976, be extended for an additional period of time. *Sid Richardson Carbon and Gasoline Company*, 4 FEA Par. 83,058 (August 19, 1976). In considering Richardson's request, the FEA determined that during the third quarter of 1976 Richardson had experienced a non-product cost increase at the Keystone gas plant which substantially exceeded the $.005 per gallon passthrough permitted under the provisions of Section 212.165. Based on the criteria set forth in *Superior Oil Co.*, 2 FEA Par. 83,271 (August 29, 1975), and previous Decisions, the FEA granted exception relief for the Keystone plant for the period December 1, 1976 through May 31, 1977.

Western Slope Fuel Co.; Denver, Colo.; FEE–3077; Butane

Western Slope Fuel Company (Western Slope) filed an Application for Exception from the provisions of 10 CFR 212.93. The exception request, if granted, would permit Western Slope to increase the prices which it charges for butane products above the maximum levels permitted under the Mandatory Petroleum Price Regulations to reflect non-product cost increases which it experienced. In addition, Western Slope would be permitted to retain any revenues which it may have realized by charging prices for isobutane which exceeded the maximum levels permitted under Section 212.93. In considering the application, the FEA determined that Western Slope had failed to provide any evidence to support its claims that it had actually experienced significant non-product cost increases which adversely affected the profitability of the firm's butane resale operations. Western Slope also failed to provide evidence that it would experience an irreparable injury in the absence of retroactive exception relief. The FEA further determined that the firm's contention that butane resellers in general should be permitted to increase their selling prices by $.005 to reflect non-product cost increases was not an issue which should appropriately be resolved in an exception proceeding. The Application for Exception filed by Western Slope was therefore denied.

Whitco, Inc.; Dallas, Tex.; FEX–0101; Motor Gasoline

Whitco, Inc. filed an application for an extension of the exception relief previously granted the firm from the provisions of 10 CFR 211.25. *Whitco, Inc.*, 3 FEA Par. 87,011 (September 8, 1976) (Supplemental Order). Under the terms of the September 8 Order, the Regional Administrator of FEA Region VI was directed to determine whether Whitco would continue to experience a gross inequity unless it received additional exception relief and then to recommend to the FEA Office of Exceptions and Appeals whether exception relief should be extended. Based on the new data submitted by the firm and the recommendation of the Regional Administrator, the FEA determined that unless Whitco received additional relief it would continue to experience a serious hardship and gross inequity. The exception relief previously granted was therefore extended through March 31, 1977.

REQUESTS FOR STAY

Emond Oil Company; Pawtucket, R.I. FES–1002; No. 2 Fuel Oil

Emond Oil Company (Emond) filed an application for Stay of a Remedial Order which was issued to the firm by FEA Region I on September 27, 1976. In considering Emond's stay request, the FEA determined that the firm would experience inordinate difficulty in complying with the refund provisions within the time period specified in the Remedial Order and that the immediate implementation of the refund requirements could impair the firm's continuing operations. Moreover, since a temporary delay in implementing the refund provisions would not cause hardship to Emond's customers, the FEA determined that a stay of the refund provisions was warranted. The FEA also found that if the firm were required to immediately place the full amount of the required refunds in an escrow account, its operating cash would be depleted to such an extent that its continued activities would

be in serious jeopardy. The FEA therefore stayed the Remedial Order on the condition that Emond place a portion of the disputed funds in escrow immediately and deposit the remaining amount in escrow in the form of monthly payments pending a final determination of its Appeal.

Louisiana Land and Exploration Co.; Washington, D.C.; FES-1062; Refined Products

The Louisiana Land and Exploration Company (LL&E) filed an Application for Stay in which it requested that the provisions of a Decision and Order issued to LL&E by the FEA on October 15, 1976 be stayed pending a determination of an appeal from that Order which LL&E intends to file. In the October 15 Order, exception relief was approved which permitted LL&E to sell the refined products which it produced at its Mobile, Alabama refinery and sold during the month of January 1976, at price levels which exceeded the firm's maximum allowable prices. However, as a condition of the relief, LL&E was required to deduct the amount of revenues which it realized as a result of charging prices in excess of its maximum allowable prices from its bank of unrecouped increased costs during the period November 19 through April 19 . In its Application for Stay, LL&E contended that it is impossible for the firm to fulfill the requirements of the October 15 Order. In considering the Application, the FEA found that LL&E has no bank of current unrecouped costs which could be reduced to satisfy the provisions of the Order. In addition, the FEA determined that since only a small proportion of LL&E's refined products are now covered by FEA Price Regulations, it is unlikely that the firm will accumulate a bank of unrecouped costs within the foreseeable future. The FEA also found that if LL&E were required to comply with the Order by reducing its selling prices for covered products to offset the excess revenues it realized in January 1976, it would be forced to reduce its prices for butane so significantly as to cause price distortions and would possibly be unable to recover the revenues in the event its Appeal is granted. Based on these considerations, the FEA granted LL&E's Application for Stay.

Peters Fuel Corp.; Oakland, Md.; FES-1005; Diesel Fuel; Kerosene; No. 2 Fuel Oil

Peters Fuel Corporation requested a Stay of the requirements of a Remedial Order issued to the firm by FEA Region III on October 6, 1976. The Remedial Order found that during the period November 1, 1973 through August 28, 1975, Peters had charged its customers prices for No. 2 fuel oil, diesel fuel and kerosene which were in excess of the maximum permissible levels specified in 10 CFR 212.93. The Remedial Order directed Peters either to remit to each of its identifiable customers the amount which it had overcharged that customer plus interest, or to credit that amount to the accounts of the customers. Approval of the Stay would relieve Peters of the obligation to comply with the provisions of the Remedial Order pending a final determination of its Appeal from the Order. In considering Peters' request, the FEA determined that if a Stay were not granted and the firm were ultimately successful on the merits of its Appeal, Peters would incur an irreparable injury because of the extensive efforts which would be necessary to recover the refunds which it made pursuant to the Remedial Order. The FEA also determined that the Peters' Appeal had raised substantial issues concerning the propriety of the Remedial Order and that it was therefore appropriate to preserve the status quo ante. Under these circumstances the FEA concluded that a stay of the refund provisions of the Remedial Order was warranted. However, as a condition of the Stay, the FEA required Peters to place the funds in question into an escrow account.

Quincy Oil, Inc.; Quincy, Mass.; FES-1031; No. 6 Fuel Oil

Quincy Oil, Inc. (Quincy) filed an Application for Stay of a Remedial Order which FEA Region I issued to the firm on November 2, 1976. The Remedial Order directed Quincy to refund to the Taunton Municipal Lighting District revenues which the firm had realized by charging prices for No. 6 fuel oil which exceeded the maximum permissible price levels permitted by 6 CFR 150.-359 and 10 CFR 212.93. Approval of a stay would relieve Quincy of the obligation to comply with the provisions of the Remedial Order pending a final determination on an Appeal from the Remedial Order which Quincy had filed. In considering Quincy's request, the FEA applied the principles established in *General Crude Oil Co.*, 3 FEA Par. 85,040 (June 25, 1976), *modified*, 3 FEA Par. 85,040 (July 8, 1976). On the basis of these principles, the FEA concluded that a stay should be granted since Quincy might suffer an irreparable injury if it is required to refund the revenues involved prior to a determination on its Appeal. The FEA further concluded, however, that in accordance with the considerations discussed in *General Crude*, the stay should be conditioned upon Quincy's placing the funds in question into an escrow account. Since the financial data submitted by Quincy demonstrated that it would be inappropriate to require the firm to immediately deposit the entire amount of the refunds in escrow, the FEA directed Quincy to place a portion of the refunds in the escrow account immediately and to deposit the remaining refunds in the escrow account on a monthly basis during the period January through April 1977.

DISMISSALS

The following submission was dismissed for failure to correct deficiencies in the firm's filing as required by the FEA Procedural Regulations:

Krum Oil Co., Inc.; Krum, Tex.; FEE-3277

TEMPORARY STAYS

The following Applications for Temporary Stay were denied on the grounds that the applicant had failed to make a compelling showing that temporary stay relief was necessary to prevent an irreparable injury:

Southland Oil Co.; Washington, D.C.; FST-0018

Time Oil Co.; Los Angeles, Calif.; FST-0020

The following Application for Temporary Stay was dismised on the grounds that alternative regulatory procedures existed under which relief might be obtained:

Arizona Fuels Corp.; Washington, D.C.; FST-0019

Copies of the full text of these Decisions and Orders are available in the Public Docket Room of the Office of Private Grievances and Redress, Room B-120, 200 M Street, NW., Washington, D.C. 20461, Monday through Friday, between the hours of 1 p.m. and 5 p.m., e.s.t., except Federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

DAVID G. WILSON,
Acting General Counsel.

JANUARY 24, 1977.

[FR Doc.77-2754 Filed 1-25-77;9.43 am]

ISSUANCE OF DECISIONS AND ORDERS BY THE OFFICE OF EXCEPTIONS AND APPEALS

Week of November 29 through December 3, 1976

Notice is hereby given that during the week of November 29 through December 3, 1976, the Decisions and Orders summarized below were issued with respect to Appeals and Applications for Exception or other relief filed with the Office of Exceptions and Appeals of the Federal Energy Administration. The following summary also contains a list of submissions which were dismissed by the Office of Exceptions and Appeals and the basis for the dismissal.

REQUESTS FOR EXCEPTION

Anadarko Production Co.; Houston, Tex.; FEE-3242; Crude Oil

The Anadarko Production Company filed an Application for Exception in which it requested that the relief previously granted to the firm be extended for an additional period of time. *See Anadarko Production Company*, 3 FEA Par. 83,221 (June 15, 1976). The request, if approved, would permit Anadarko to continue selling a portion of the crude oil which it produces from the Herrin-Burson Harris Sand Unit located in Creek County, Oklahoma for the benefit of the working interest owners at upper tier ceiling prices. In considering Anadarko's exception request, the FEA determined that the Unit is continuing to incur such significant increased operating costs that the working interest owners lack an economic incentive to continue secondary recovery operations at the Unit if the crude oil produced must be sold at the lower tier ceiling price. In view of this determination and on the basis of the operating data which the firm submitted for its most recently completed fiscal period, the FEA concluded that the exception relief previously granted should be extended and that Anadarko should be permitted to sell 55.97 percent of the crude oil produced from the Unit for the benefit of the working interest owners at upper tier ceiling prices.

City of Long Beach, Calif.; Long Beach, Calif.; Fee-3157; Crude Oil

The City of Long Beach, California, filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D which, if granted, would permit Long Beach and all the other working interest owners to sell the crude oil which they produce from Fault Block Unit 2 located in the western half of the Wilmington Field in California at a price which exceeds the lower tier ceiling price. In considering the Long Beach exception request, the FEA determined that: (1) the crude oil production costs incurred with respect to Unit 2 currently exceed, and are reasonably projected to exceed, the revenues which would be obtained from charging the applicable lower tier ceiling prices; (ii) consequently, Long Beach and the other working interest owners no longer have an economic incentive to continue to operate Unit 2 if the crude oil produced must be sold at the lower tier ceiling price; and (iii) it is highly unlikely that the crude oil in the geological formation underlying Unit 2 could be recovered by wells in other areas of the Wilmington Field. The FEA therefore concluded that, in order to prevent the application of the FEA Regulations in this particular situation from frustrating the effectuation of natural energy policy objectives and from reducing the available supply of domestic crude oil, appropriate exception relief should be approved. On the basis of the standard established in similar previous Decisions and the financial data submitted by Long Beach, the FEA granted exception relief which permits Long Beach and the other working interest owners to sell 16.0791 percent of the crude oil produced for their benefit from Unit 2 at upper tier ceiling prices.

Colonial Oil Co.; Jacksonville, Fla.; Fee-3330; Motor Gasoline

On July 3, 1975, the FEA granted exception relief to Colonial Oil Company (Colonial) on the ground that the Application to it of the provisions of 10 CFR, Part 211, which require adherence to the base period supplier/purchaser relationship, resulted in a serious hardship to the firm. *Colonial Oil Co.*, 2 FEA Par. 83,201 (July 3, 1975). In that Order the Regional Administrator for the FEA, Region IV, was directed to assign to Colonial a supplier whose wholesale prices for motor gasoline, No. 2 fuel oil and kerosene were within the range of prices paid for those products in Colonial's marketing area by wholesale marketers. The Order further provided that upon the submission of certain financial and operating data Colonial could request that the exception relief granted to the firm be extended for an additional period of time. On the basis of the data submitted by Colonial in connection with its present Application and the recommendation of the Regional Administrator, the FEA determined that: (1) the serious hardship which Colonial experienced in the past as a result of the provisions of 10 CFR 211.9 would continue to exist unless further exception relief were granted with respect to its motor gasoline supplies; and (ii) in order to alleviate this hardship Colonial should be assigned a lower-cost supplier for the months of December 1976 and January and February 1977 for the entire volume of gasoline which it is entitled to receive from its principal base period supplier.

Continental Oil Co.; Houston, Tex., FEE-3259; Natural Gas Liquid Products

Continental Oil Company filed an Application for Exception from the provisions of 10 CFR 212.165 which, if granted, would permit the firm to increase the prices it charges for natural gas liquid products to reflect non-product cost increases which the firm has incurred at its Thomas natural gas processing plant. In considering the application, the FEA noted that, as a general rule, exception relief will be granted to any natural gas processor which can demonstrate that the non-product costs which it has experienced since May 1973 have increased substantially in excess of the $.005 per gallon passthrough for natural gas liquid products which is permitted under Section 212.165. The FEA found that Continental had made such a showing with respect to its Thomas gas plant and therefore granted appropriate exception relief with respect to that plant for the period December 3, 1976 through June 30, 1977.

Eason Oil Co.; Oklahoma City, Okla.; FEE-3235; (Crescent) Natural Gas Liquids

Eason Oil Company filed an Application for Exception from the provisions of 10 CFR 212.165 which, if granted, would permit Eason to increase the selling price it charges for natural gas liquids to reflect non-product cost increases which the firm has incurred at its Cresent natural gas processing plant. In considering the application, the FEA noted that, as a general rule, exception relief will be granted to any natural gas processor which can demonstrate that the non-product costs which it has experience since May 1973 have increased substantially in excess of the $.00375 per gallon passthrough for natural gas liquids which is permitted under Section 212.165. The FEA found that Eason had made such a showing with respect to its Crescent gas plant and therefore granted Eason appropriate exception relief with respect to that plant for the period December 3, 1976 through April 30, 1977.

Getty Oil Co.; Los Angeles, Calif., FEE-3295 (Buena Vista Hills), FEE-3296 (Cocodrie), FEE-3297 (Cymric), FEE-3298 (Dollarhide), FEE-3299 (Elk City), FEE-3300 (Elmwood), FEE-3301 (Fuller), FEE-3302 (Hitchcock), FEE-3303 (Katy), FEE-3304 (Kermit), FEE-3305 (Kettleman Hills), FEE-3306 (Levelland), FEE-3307 (Mooreland), FEE-3308 (New Hope), FEE-3309 (Normanna), FEE-3310 (North Cowden), FEE-3311 (O'Keene), FEE-3312 (Old Ocean), FEE-3313 (Palacios), FEE-3314 (Snyder), FEE-3315 (South Peacan Lake), FEE-3316 (Stevens Caliden), FEE-3317 (Ventura), FEE-3318 (Vermillion), FEE-3319 (West Bernard), FEE-3320 (Yates); Natural Gas Liquids and Products

Getty Oil Company filed Applications for Exception from the provisions of 10 CFR 212.165 which, if granted, would permit the firm to increase the prices it charges to reflect non-product cost increases which the firm has incurred at 26 of its natural gas processing plants. In considering the applications, the FEA noted that, as a general rule, exception relief will be granted to any natural gas processor which can demonstrate that the non-product costs which it has experienced since May 1973 have increased substantially in excess of the $.005 per gallon passthrough for natural gas liquid products and the $.00375 per gallon passthrough for natural gas liquids which are permitted under Section 212.165. The FEA found that Getty had made such a showing with respect to 21 of the 26 plants and therefore granted Getty appropriate exception relief with respect to those plants. However, the FEA denied exception relief for the remaining five plants on the grounds that the non-product cost increases experienced at those plants were not materially in excess of the passthrough permitted under Section 212.165.

Harris Enterprises, Inc.; Portland, Oreg.; FEE-2820; Motor Gasoline

Harris Enterprises, Inc. (Harris) filed an Application for Exception from the provisions of 10 CFR 211.9 which, if granted, would have resulted in the issuance of orders assigning Harris new, lower-cost suppliers for a portion of the firm's total base period use of motor gasoline to replace its four principal suppliers: Aminoil U.S., Lion Oil Company, Mercury Oil Company and Powerine Oil Company. In considering the application, the FEA determined that, contrary to Harris' allegations, the average price which Harris pays Aminoil, Powerine, Mercury and Lion is only marginally higher than the average of the prices which the firm's competitors are required to pay their suppliers. The FEA also found that Harris is able to offset the marginally higher price of the gasoline received from the four suppliers by making other purchases of lower-priced gasoline. As a result, the weighted average price which Harris pays for its motor gasoline supplies is not significantly different from the prices which the firm's competitors pay to their suppliers for motor gasoline. The FEA concluded that Harris had therefore failed to establish that the maintenance of its base period supplier/purchaser relationship with Aminoil, Mercury, Lion and Powerine resulted in a serious hardship or gross inequity to Harris and the firm's exception application was denied.

Oklahoma Natural Gas Co.; Tulsa, Okla.; FEE-3201 (Garvin County); Natural Gas Liquid Products

Oklahoma Natural Gas Company (ONGC) filed an Application for Exception from the provisions of 10 CFR 212.165 which, if granted, would permit ONGC to increase the selling prices it charges for natural gas liquid products to reflect non-product cost increases which the firm has incurred at its Garvin County natural gas processing plant. In considering the application, the FEA noted that, as a general rule, exception relief will be granted to any natural gas processor which can demonstrate that the non-product costs which it has experienced since May 1973 have increased substantially in excess of the $.005 per gallon passthrough for natural gas liquid products which is permitted under Section 212.165. The FEA found that ONGC had made such a showing and therefore granted ONGC appropriate exception relief with respect to that plant for the period December 3, 1976 through May 31, 1977.

Small's LP Gas Co.; Wyatt, Mo.; FEE-3042; Propane

Small's LP Gas Company filed an Application for Exception to the provisions of 10 CFR 211.9 which, if granted, would result in the issuance of orders by the FEA assigning Small's a new, lower-priced supplier of propane to replace its base period supplier, Burmah LP-Gas, Inc. In considering Small's exception application, the FEA found that the prices which Burmah charged Small's for propane were substantially above the prices which Small's competitors paid their suppliers. Although Small's had drastically reduced its markup in order to remain competitive in retail sales, the situation which the firm was encountering was nevertheless so severe as to threaten its continued existence as an independent marketer. The FEA also found that Small's had been unable to alleviate the severe financial difficulties which it was experiencing by purchasing surplus propane at competitive price levels. On the basis of these findings, the FEA concluded that the application of Section 211.9 resulted in a serious hardship to Small's and, pursuant to the formula which had been applied in prior cases, exception relief was approved which permitted Small's to receive its base period use of propane for December 1976 and for the January through March 1977 allocation quarter from a new supplier.

Standard Oil Co. of Ohio; Cleveland, Ohio; FEE-2706; Refined Petroleum Products

The Standard Oil Company of Ohio (Sohio) filed an Application for Exception from the provisions of Subpart E of the Mandatory Petroleum Price Regulations. The request, if approved, would permit Sohio to reduce its May 1973 base cost of crude oil for purposes of calculating the maximum allowable prices which it is permitted to charge for refined products under Section 212.83. Sohio contended that as a result of an expansion project undertaken at its Marcus Hook refinery, the refinery now uses lower priced types of crude oil and yields different proportions of refined products than it did in May 1973. The firm claimed that as a consequence it was unable to maintain the same margin between its crude oil costs and the

selling prices of its products that existed in May 1973. In considering Sohio's Application, the FEA observed that although Section 212.83 generally permits a refiner to maintain the margin that existed between its May 1973 cost of crude oil and its May 15, 1973 selling prices for refined products, certain changes in the type of crude oil processed and the mix of products refined could result in a reduction of a refiner's gross margin. With regard to Sohio, the FEA found that although the firm had experienced a reduction in the gross margin realization of its Marcus Hook refinery, that reduction had not resulted in a serious hardship to Sohio since its overall refining and marketing operations were achieving a near record level of profitability. The FEA also found that Sohio failed to establish that the impact of Section 212.83 on the firm is significantly different from or more burdensome than its impact on other refiners which had experienced similar changes in the types of crude oil they process and the product mix which is produced. The FEA concluded that since the reduction in gross margin at the Marcus Hook refinery was not significantly impeding Sohio's operations or affecting the firm in a unique or disproportionate manner, Sohio had failed to establish that a gross inequity existed. Accordingly, Sohio's Application for Exception was denied.

REQUESTS FOR STAY

Glacier Park Co.; Osage, Wyo.; FES-1050; Crude Oil

Glacier Park Company requested that the FEA relieve it of the requirement that it purchase 30,513 of the 76,568 entitlements which it was obligated to buy in accordance with the Entitlement Notice which the FEA published on November 22, 1976. In considering the Application for Stay, the FEA determined that the Office of Regulatory Programs had incorrectly calculated the firm's September entitlement obligation by including certain entitlement obligations which the firm had previously satisfied. On the basis of the analysis conducted, the FEA concluded that Glacier Park had made a substantial *prima facie* showing that it would succeed on the merits of its Appeal, and its Application for Stay was granted.

T. D. Skelton d/b/a Skelton Oil Co.; Hobbs, N. Mex.; FES-1039; Crude Oil

T. D. Skelton d/b/a Skelton Oil Company (Skelton) requested that a Remedial Order issued to the firm by the FEA on November 5, 1976 be stayed pending a final determination of the firm's Appeal from that Order. In the Remedial Order, the FEA determined that Skelton had sold crude oil at prices which exceeded the maximum permissible levels specified in 10 CFR, Part 212, Subpart D. The Remedial Order therefore directed Skelton to refund the excess revenues it previously realized in twelve equal monthly payments. In considering the contentions raised by Skelton its stay request, the FEA observed that in the Appeal which Skelton filed in connection with its stay application the firm did not dispute the propriety of the refunds required by the Remedial Order but instead requested an additional period of time in which to remit the required refunds. The FEA determined that even if Skelton prevails in its Appeal, any refunds which the firm makes during the period of time in which its Appeal is pending could properly be applied towards Skelton's remaining total refund obligation over the entire period of time which is found to be appropriate in the Appeal proceeding. The FEA also determined that Skelton failed to show that it would experience any serious financial difficulties as a result of compliance with the terms of the Remedial Order prior to a final determination on the Appeal. With respect to Skelton's claim that if it complies with the Order it will lack sufficient funds to meet the repair costs of a major equipment malfunction, the FEA found that Skelton failed to submit any evidence which would indicate that the occurrence of this type of malfunction is likely during the pendency of its Appeal. The Application for Stay was therefore denied.

DISMISSALS

The following submissions were dismissed following a statement by the applicant indicating that the relief requested was no longer needed:

Husky Oil Co. of Delaware; Washington, D.C.; FEE-3158

Theodore Gore; Wichita, Kans.; FES-0055, FEA-1033

The following submission was dismissed for failure to correct deficiencies in the firm's filing as required by the FEA Procedural Regulations:

Frank Katy; Rio Hondo, Tex.; FEA-0987

The following submission was dismissed after the applicant repeatedly failed to respond to requests for additional information:

Diamond Coal & Oil Co.; Chicago, Ill.; FEE-3148

The following submission was dismissed on the grounds that the request is now moot:

Luke Brothers, Inc.; Oklahoma City, Okla. FES-0054

The following submission was dismissed on the grounds that the applicant failed to provide any new material or arguments which would materially affect the basis of a prior final decision or otherwise justify re-opening that proceeding:

Golden Flame Fuel Co., Pittsburgh, Pa.; FMR-0067

The following submissions were dismissed on the grounds that alternative regulatory procedures existed under which relief might be obtained:

Jack Roland's Truck Stop; Marianna, Fla.; FEE-3397

Rock Island Refining Corp.; Washington, D.C.; FSG-0031

TEMPORARY STAYS

The following Application for Temporary Stay was denied on the grounds that the applicant had failed to make a compelling showing that temporary stay relief was necessary to prevent an irreparable injury:

Delta Refining Co.; Washington, D.C.; FST-0022

The following Application for Temporary Stay was granted on the grounds that the applicant had made a compelling showing that temporary stay relief was necessary to prevent an irreparable injury:

Southwestern Refining Co., Inc.; Washington, D.C.; FST-0021

Copies of the full text of these Decisions and Orders are available in the Public Docket Room of the Office of Private Grievances and Redress, Room B-120, 2000 M Street, NW, Washington, D.C. 20461, Monday through Friday, between the hours of 1 p.m. and 5 p.m., e.s.t., except Federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

DAVID G. WILSON,
Acting General Counsel.

JANUARY 24, 1977.

[FR Doc.77-2753 Filed 1-25-77;9:43 am]

ISSUANCE OF DECISIONS AND ORDERS BY THE OFFICE OF EXCEPTIONS AND APPEALS

Week of December 6 through December 10, 1976

Notice is hereby given that during the week of December 6 through December 10, 1976, the Decisions and Orders summarized below were issued with respect to Appeals and Applications for Exception or other relief filed with the Office of Exceptions and Appeals of the Federal Energy Administration. The following summary also contains a list of submissions which were dismissed by the Office of Exceptions and Appeals and the basis for the dismissal.

APPEALS

Clark Oil & Refining Corp.; Milwaukee, Wis.; FEA-1030; Freedom of Information

Clark Oil & Refining Corporation filed an Appeal from an Order issued to it by the Information Access Officer denying a Request for Information which the firm had filed under the Freedom of Information Act, 5 U.S.C. 552. Clark had initially requested the FEA to release documents to it which revealed the weighted average cost per barrel of crude oil incurred by two groups of small refiners before and after adjustments for entitlement costs and revenues. The Information Access Officer denied Clark's request on the grounds that the documentary records containing the requested information do not exist. In its Appeal, Clark contended that the data which it sought exists in raw form and that the FEA can compile summaries with relative ease. In analyzing the Clark Appeal submission, the FEA noted that Clark's Appeal is moot with respect to the period February through July 1976 since the documentary material for that period was released to the firm subsequent to the date on which it filed its Appeal. However, the FEA found that the remainder of the requested data has not been compiled by any FEA office. Since the Freedom of Information Act does not place an affirmative duty on Federal agencies to create documents in response to Freedom of Information requests submitted under Section 552(a)(3), the FEA determined that Clark's Appeal should be denied.

Eastern Air Lines, Inc.; Miami, FL.; FEA-0847; Crude Oil

Eastern Air Lines, Inc. appealed from an Interpretation in which the FEA General Counsel determined that the unincorporated operating divisions of Atlantic Richfield Company (Arco) and Mobil Oil Corporation (Mobil) are "affiliated entities" within the meaning of 10 CFR, Part 212, Subpart E. Section 212.83(b) of that subpart provides that, in determining the maximum prices which a refiner may charge for covered products, "transactions between affiliated entities may be used to calculate increased product costs." In considering Eastern's Appeal, the FEA noted that the language used in Section 212.82 to define "transactions between affiliated entities" plainly means that an affiliated entity may be an entity which is part of the same firm. The FEA also stated that the definition makes no distinction as to the form of a firm's organization, nor is the language directed only to incorporated subsidiaries. Although Eastern asserted that no "transaction" can take place unless a transfer for value has occurred, the FEA found that the regulations expressly contemplate that transfers may occur between affiliated entities and that such a transfer is regulated under Section 212.72 as an imputed sale. The FEA further determined that the procedures followed by the General Counsel in issuing the Interpretation did not violate Eastern's due process rights. The FEA concluded in this respect that even though third parties are not entitled as of right to notice and an opportunity to participate in interpretation proceedings, Eastern had ample opportunity to submit its views and the material which Eastern did in fact file was taken into consideration. On the basis of the foregoing considerations, the FEA denied Eastern's Appeal.

Exxon Co., U.S.A.; Houston, Tex.; FEA-1060; Crude Oil

Exxon Company, U.S.A. appealed from the Entitlement Notice which the FEA issued for August 1976. In the Appeal, Exxon alleged that the quantity of old oil which was actually produced in the United States during the period November 1974 through August 1976 exceeded the old oil receipts stated in the FEA Entitlement Notices. Exxon contended that this apparent disparity distorted the adjusted national old oil supply ratio and thereby increased the number of entitlements which Exxon is required to purchase. In considering the Appeal, the FEA noted that Exxon's contention with respect to the inaccuracy of old oil receipts stated in the Entitlement Notices had previously been considered and rejected by the FEA in Decisions denying Exxon's Appeals from prior Entitlements Notices. The FEA held that since Exxon advanced no new arguments in support of its present Appeal, the previous determinations were controlling. Exxon's Appeal was therefore denied.

Frank Dupuis Co.; Pawtucket, R.I., FEA-0997; No. 2 Heating Oil

The Frank Dupuis Company (Dupuis) appealed from a Remedial Order which was issued to the firm by FEA Region I on September 30, 1976. The Remedial Order directed Dupuis to refund revenues obtained from charging illegally high prices for heating oil during the period November 1, 1973 through February 26, 1976. Dupuis contended on appeal that the FEA's use of May 15, 1973 to determine maximum permissible selling prices unconstitutionally deprives the firm of its property without due process of law. In the Decision which it issued with respect to the Dupuis Appeal, the FEA noted that the Congress had directed the FEA to promulgate an appropriate regulatory program which would govern prices which may be charged for refined petroleum products and that the use of May 15, 1973 as a reference date for computation of maximum permissible prices was a reasonable approach in achieving this objective. Since Dupuis had not shown that the use of May 15, 1973 as the reference date was in any way an abuse of agency discretion, the FEA concluded that Dupuis had failed to demonstrate that the Remedial Order was erroneous or arbitrary or capricious. The firm's Appeal was therefore denied.

D. C. Latimer; Jackson, Miss.; FEA-0975; Crude Oil

D. C. Latimer (Latimer) filed an Appeal from an Interpretation which had been issued to him by the Regional Counsel of FEA Region IV. The Interpretation held that crude oil which is produced in one month but sold in another is deemed to be "produced and sold" in the month of sale for purposes of determining the base production control level (BPCL) of a property. In sustaining the Regional Counsel's Interpretation, the FEA held that the phrase "produced and sold" was construed in the same manner by the Cost of Living Council and that this construction provides a rational and explicit manner for determining a property's base production control level. Accordingly, Latimer's Appeal was denied.

Santa Fuel, Inc.; Bridgeport, Conn., FEA-0936; No. 2 Fuel Oil

Santa Fuel, Inc. appealed from a Remedial Order which had been issued to the firm by FEA Region I. The Remedial Order found that during the period November 1, 1973 through June 30, 1974 Santa Fuel sold No. 2 fuel oil to the State of Connecticut at prices which exceeded the price levels permitted under Section 212.93 of the FEA Regulations and Section 150.359 of the Cost of Living Council (CLC) Regulations. Santa Fuel's Appeal, if granted, would relieve the firm of the obligation to refund the amount of the overcharges plus interest. In considering the Appeal, the FEA rejected Santa Fuel's assertion that the CLC Regulations and subsequent FEA Regulations did not apply to the firm's contracts executed prior to the promulgation of the FEA Mandatory Petroleum Price Regulations. The FEA observed that, although Subpart E of the CLC Regulations did exempt from price controls prices specified in contracts which were entered into before 9:00 p.m., June 18, 1973, with respect to delivery occurring after August 12, 1976, the Subpart E exemption was superseded by Subpart L which relates to the pricing of petroleum and petroleum products. The FEA held that since Santa Fuel's contract with the State was subject to price controls under Subpart L those regulations abrogated the price provisions of any private contractual arrangement to the extent that the contract specified prices in excess of those permissible under the FEA regulatory program. Consequently, the price provisions of preexisting contracts may not be relied upon as a defense to remedial action by the FEA Office of Compliance. In addition, the FEA determined that Santa Fuel failed to demonstrate that it would experience a serious hardship if it were required to refund the overcharges to the State. The firm's Appeal was accordingly denied.

REQUESTS FOR EXCEPTION

Blees Oil Co.; Bowman, N. Dak. FEE-3015, No. 2 Heating Oil

Blees Oil Company filed an Application for Exception from the requirement that it file Form P112-M-1 ("No. 2 Heating Oil Supply/Price Monitoring Report"). In considering the Blees Application, the FEA determined that the firm had failed to submit any material whatever in support of its claim that it is unable to supply the requisite information. The FEA also concluded that Blees failed to demonstrate that the inconvenience of supplying the information outweighs the benefits to be derived from the aggregate data which the FEA collects from a sample of firms, including Blees, as to the supply and price of No. 2 heating oil. Blees' request for exception relief was therefore denied.

BP Oil Inc.; Cleveland, Ohio; FEE-2691; Unleaded Gasoline

BP Oil, Inc. filed an Application for Exception from the provisions of 10 CFR 212.82 and 10 CFR 212.112 which, if granted, would have permitted BP, a wholly-owned subsidiary of Standard Oil Company (Sohio) to calculate its selling prices for unleaded gasoline separately from Sohio. In considering BP's Application, the FEA observed that in prior cases it had granted exception relief from the definition of "firm" as specified in 10 CFR 212.82 on the basis of a showing that an entity within a firm maintained completely separate and distinct operations from other parts of the firm. The FEA determined that BP had not established that the degree of independence which characterized the firms involved in prior cases in which exception relief had been approved also existed with respect to Sohio and BP. The FEA further determined that BP had not shown that it was uniquely affected by the FEA Regulations governing the pricing of unleaded gasoline. The FEA held in this respect that Section 212.112 does not produce a gross inequity merely because it may require a firm to sell unleaded gasoline at prices below those charged by similarly situated firms. The FEA also declined to regard BP's inability to price unleaded gasoline at one cent above regular gasoline as a gross inequity. Finally, the FEA determined that the financial material which the firm provided did not demonstrate that the combined BP and Sohio firm is experiencing serious financial difficulties as a result of the PEA regulatory program. Consequently, the FEA denied BP's Application for Exception.

Braden-Deem, Inc.; Wichita, Kans., FEE-3284; Crude Oil

Braden-Deem, Inc. filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D. The request, if granted, would extend the exception relief previously granted to the firm on January 15, 1976, March 11, 1976, and June 29, 1976 and permit Braden-Deem to sell crude oil produced from the Cooper Cove Muddy-Dakota Unit (Cooper Unit) at prices which are in excess of the lower tier ceiling price. *See Braden-Deem, Inc.*, 3 FEA Par. 83,072 (January 15, 1976), *Braden-Deem, Inc.*, 3 FEA Par. 80,597 (March 11, 1976); *Braden-Deem, Inc.*, 3 FEA Par. 83,249 (January 29, 1976). In considering Braden-Deem's Application, the FEA found that during the period April 1976 through September 1976 the operating expenses at the Cooper Unit were lower than the revenues which would have been generated by selling the crude oil at the applicable lower tier ceiling price. The FEA therefore concluded that the firm has a clear economic incentive to continue production at the Cooper Unit in the absence of exception relief. On the basis of the facts presented in the case and the principles established in prior precedents, the exception request was denied.

Farmers Petroleum Cooperative, Inc., Lansing, Mich.; FEE-3200; Crude Oil

Farmers Petroleum Cooperative, Inc. filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D which, if granted, would result in a determination that the firm's Headquarters Richfield Unit (the Unit) is a stripper well property and that the crude oil produced from the Unit may be sold at exempt price levels. In considering the Application, the FEA noted that Ruling 1975-12 sets forth the criteria for determining which production facilities are multiple completion wells that qualify as two or more wells for the purpose of calculating the average daily production of a property. Based on the record in this proceeding, the FEA determined that the wells of the Unit failed to qualify as multiple completion wells and that the firm had failed to establish that this determina-

tion constituted a serious hardship or gross inequity. Accordingly, Farmers' Application for Exception was denied.

Jannetty Oil, Inc.; Waterbury, Conn.; FEE-3204; No. 2 Heating Oil

Jannetty Oil, Inc. filed an Application for Exception from the requirement that it file Form P112-M-1 ("No. 2 Heating Oil Supply/Price Monitoring Report"). In considering the exception application, the FEA determined that the firm had failed to submit any material whatever in support of its claim that it is unable to supply the requisite information to complete the form. The FEA also concluded that Jannetty failed to demonstrate that the inconvenience of supplying the information outweighs the benefits to be derived from the aggregate data which the FEA collects from a sample of firms, including Jannetty, as to the supply and price of No. 2 heating oil. Jannetty's request for exception relief was therefore denied.

Schkade Brothers Drilling Co.; Abilene, Tex.; FEE-2722; Crude Oil

Schkade Brothers Drilling Company filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D. The exception request, if granted, would have permitted Schkade to receive upper tier ceiling prices for the crude oil it sold from the Latham Lease during the month of February 1976. In its exception application, Schkade indicated that it failed to certify the Lease as a stripper well property in a timely manner as required by Section 212.131 and that as a result it did not receive upper tier prices for the crude oil which it produced from the Lease during February 1976. In considering Schkade's request, the FEA noted that all crude oil producers are subject to the certification requirements set forth in Section 212.131, and Schkade presented no evidence which indicated that the application of these requirements to Schkade is discriminatory or inequitable. The FEA further determined that Schkade failed to submit any material demonstrating that the firm will experience a serious financial hardship as a result of its inability to obtain the additional revenues. Moreover, retroactive exception relief is generally inappropriate unless the firm demonstrates that it would otherwise experience a severe and irreparable injury or that compelling reasons exist for the approval of retroactive relief. The FEA found that since Schkade had failed to satisfy those criteria the firm's Application should be denied.

Sound Refining, Inc.; Tacoma, Wash.; FEE-3154; Crude Oil

Sound Refining, Inc. filed an Application for Exception from the provisions of 10 CFR 211.67 (the Old Oil Entitlements Program) which, if granted, would have relieved the firm of any obligation to purchase entitlements reflecting receipts of deemed old oil subsequent to October 1, 1976. The FEA determined that Sound was a net seller of entitlements during the first three quarters of its current fiscal year ending December 31, 1976 and would continue to be a net seller of entitlements during the final quarter of its fiscal year. Since the record indicated that Sound will obtain significant benefits under the Entitlements Program, the FEA concluded that the firm had failed to substantiate its contention that the Program would result in a serious financial hardship to the company. Sound's exception request was therefore denied.

Stovall Oil Co.; Casper, Wyo.; FEE-2557; Crude Oil

Stovall Oil Company filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D, in which it requested permission to sell all of the crude oil it produces from its NPRR No. 3-3 Lease and its Olsen No. 1 Lease at upper tier ceiling prices. Stovall also requested retroactive relief which would permit it to retain revenues it realized subsequent to April 1975 from charging prices which exceeded maximum allowable levels. In considering Stovall's Application, the FEA determined that a secondary recovery (waterflood) operation which Stovall had initiated at the NPRR Lease has been profitable and would continue to be profitable even in the absence of exception relief. Since Stovall had not satisfied the criteria established in previous FEA Decisions concerning requests of this type, this portion of its Application was denied. However, the projections which Stovall submitted with respect to its operations on the Olsen No. 1 Lease indicated that it would incur a substantial operating loss in the absence of exception relief. The FEA found that Stovall would therefore have no economic incentive to continue production from the well and that a substantial amount of otherwise recoverable crude oil would be lost. The FEA concluded that the application to Stovall's Olsen No. 1 Lease of the lower tier ceiling price rule under these circumstances resulted in a gross inequity to the firm and that exception relief should be granted. Based on an analysis of the specific financial and operating data which Stovall had submitted, the FEA determined that the firm should be permitted to sell 100 percent of the crude oil produced from the Olsen Lease for the benefit of the working interest owner at upper tier ceiling prices for a period of six months. With respect to Stovall's request for retroactive relief, the FEA noted that the FEA Office of Compliance is investigating the full extent of Stovall's past overcharges but no determination has yet been made of the firm's full liability. Consequently, the FEA determined that it would be premature to consider the firm's request for retroactive relief.

Tenneco Oil Co.; Houston, Tex.; FEE-3222; Crude Oil

Tenneco Oil Company filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D, which would permit it to sell at upper tier prices the crude oil produced from a well which must be drilled to replace an existing well. In considering Tenneco's Application, the FEA determined that: (i) a substantial investment is necessary to drill the replacement well; (ii) this investment would be uneconomic if the crude oil which would be produced from the replacement well were sold at lower tier prices; and (iii) if the replacement well were not drilled, it would become increasingly difficult to recover substantial quantities of crude oil from the reservoir. On the basis of these findings, the FEA concluded that exception relief should be granted to the working interest owner which would provide a sufficient economic incentive to undertake the capital investment required to drill the replacement well. At the same time the relief provided should not permit the firm to receive windfall profits. The FEA concluded that these objectives would be effectuated if Tenneco were permitted to sell at upper tier prices the first 4,671 barrels of crude oil which it produces for its benefit in each of the first two years and the first 4,670 barrels of crude oil produced for its benefit in each of the third through tenth years of the project.

Union Oil Company of Calif.; Los Angeles, Calif.; FEE-2378; Crude Oil

Union Oil Company of California filed an Application for Exception from the provisions of 10 CFR 211.67(d)(2) which would permit the firm to earn entitlement benefits on its total volume of crude oil runs to stills without making an adjustment for the high sulfur, residual fuel oil which Union exports to Petroleos Mexicanos (PEMEX) in Baja California, Mexico, as required under Section 211.67(d)(2). In considering Union's exception application, the FEA observed that the provisions of Section 211.67(d)(2) which require Union to reduce the volume of its crude oil runs to stills used to calculate its entitlement benefits by the number of barrels of residual fuel oil that the firm exported to PEMEX substantially increase the effective cost of the Santa Maria Valley crude oil which Union processes. The FEA found that the effective cost of lower tier, Santa Maria Valley crude oil is higher than the effective cost of a low sulfur, lighter gravity imported crude oil and Union therefore has an economic incentive to discontinue purchasing the former type of crude oil. With respect to the Santa Maria Valley crude oil which Union itself produces, the FEA found that Union had presented no data to show that it lacked an economic incentive as a result of Section 211.67(d)(2) to continue production of crude oil from its own properties. *See Sun Oil Co.*, 4 FEA Par. 83,111 (September 24, 1976). The FEA also determined that independent producers of upper tier crude oil in the Santa Maria Valley could decrease their maximum permissible upper tier ceiling prices by an amount sufficient to provide Union with an economic incentive to continue purchasing the crude oil. Thus, in order to prevent the provisions of Section 211.67(d)(2) from inordinately impeding domestic crude oil production and providing an incentive to import crude oil, the FEA granted Union Oil Company sufficient entitlement benefits to provide it with an economic incentive to continue to purchase lower tier crude oil from independent producers in the Santa Maria Valley.

Francis Uthe; Dumont, Iowa; FEE-3076; Motor Gasoline

Francis Uthe d/b/a Uthe's Corner (Uthe) filed an Application for Exception from the provisions of 10 CFR, Part 211, which, if granted, would have resulted in the issuance of FEA orders assigning Uthe a new supplier of motor gasoline to replace the Ritchie Oil Company (Ritchie) and directing the new supplier to furnish Uthe with its base period use of motor gasoline. Uthe also requested that the Nielson Oil Company (Nielson), the firm from which Uthe is currently purchasing surplus motor gasoline, be assigned as Uthe's base period supplier. In considering the Application for Exception, the FEA determined that Uthe is able to purchase its entire supply of motor gasoline from Nielson and is doing so at favorable price levels. As a result, Uthe is not experiencing a serious hardship. In addition, the FEA found that Uthe had provided no data which indicated that its supplier/purchaser relationship with Ritchie had adversely affected the firm's operations in a significant manner, or that its operations would be significantly affected if the two firms resumed the relationship. The FEA therefore determined that Uthe did not meet the criteria set forth in *Eagle Point School District No. 9*, 2 FEA Par. 80,622 (July 1, 1975); or *George P. Rios*, 4 FEA Par. 83,008 (July 15, 1976), under which exception relief will be granted on gross inequity grounds. The Application for Exception was therefore denied.

Western Oil Lands, Inc.; Reno, Nev.; FEE-3051; Crude Oil

Western Oil Lands, Inc. requested an extension of the exception relief which was granted to the firm on May 18, 1976. *Western Oil Lands, Inc.*, 3 FEA Par. 80,633 (May 18, 1976). In that Decision, the FEA determined that it was not economically feasible for a refiner to purchase the crude oil which Western produces from the Pennington Federal Nos. 2, 4, and 5 Wells in Nye County, Nevada, because of the high transportation costs and entitlement obligations associated with the purchase. In order to remove this economic disincentive, exception relief was approved which permitted refiners to purchase crude oil produced by Western without incurring any entitlement costs. Western also requested in its present submission that the exception relief granted in the May 18 Decision be expanded to permit the firm to classify all of the crude oil which it produces as new oil for the purposes of the Entitlements Program. Western contended that this relief was necessary because it has been unable to locate a purchaser for the crude oil which it produces since the issuance of the May 18 Decision and has been unable to produce crude oil from its three Wells. In considering Western's exception request, the FEA determined that the firm made a strong showing that in the absence of continued exception relief it would be unable to market its crude oil. Consequently, the exception relief granted in the May 18 Decision was extended for an additional four months. However, with respect to Western's remaining request, the FEA found that difficulties which the firm encountered in marketing its crude oil subsequent to the issuance of the May 18 Decision were not directly attributable to the Entitlements Program since the relief approved in that Decision exempted the crude oil produced by Western from the Program. In view of Western's failure to show that the difficulties which it is experiencing result from the application of the FEA regulatory program, the FEA concluded that the modified form of relief sought by the firm was not warranted. Accordingly, Western's request that it be permitted to classify all of its crude oil production as new oil for purposes of the Entitlements Program was denied.

REQUESTS FOR STAY

Arizona Fuels Corp.; Salt Lake City, Utah; FES-0928; Crude Oil

Arizona Fuels Corporation requested that the application to it of 10 CFR 211.67 (the Old Oil Entitlements Program) be stayed pending a determination on an Appeal of a Decision and Order which was issued to Arizona Fuels on July 16, 1976. *Arizona Fuels Corp.*, 4 FEA Par. 83,002 (July 16, 1976). The stay request, if granted, would have relieved the firm of the obligation during November and December 1976 to purchase entitlements at a value in excess of $23,728 per month. In rejecting Arizona Fuels' contention that a Decision issued to it by the FEA on August 27, 1976 increased the firm's entitlement purchase obligation beyond the limit specified in the July 16 Decision, the FEA noted that the August 27 Decision did not itself create an additional entitlement burden but only made additional quantities of crude oil available for purchase by Arizona Fuels. The FEA therefore concluded that Arizona Fuel's claim that the FEA is responsible for the firm's additional entitlement obligation is without merit. The FEA also determined that Arizona Fuels had failed to demonstrate that it would incur an irreparable injury in the absence of stay relief and that Arizona Fuels had also failed to make the type of substantial *prima facie* showing of likelihood of success on the merits of its Appeal contemplated in *Pasco, Inc.*, 2 FEA Par. 85,012 (March 3, 1975). Therefore, the firm's request for a stay was denied.

Beacon Oil Co.; Hanford, Calif.; FES-1051; Crude Oil

Beacon Oil Company filed an Application for Stay of a Decision and Order which was issued to the firm on November 5, 1976 requiring it to purchase entitlements equal in value to $2,071,628 over a 12 month period in order to refund the excessive exception relief that the firm had received during 1975. *Beacon Oil Co., et al.*, 4 FEA Par. 87,024 (November 5, 1976). In considering the request for stay, the FEA observed that, if Beacon were to prevail on the merits of its Appeal from the November 5 Order, the FEA could adjust Beacon's entitlement obligation in subsequent months to compensate the firm for the additional entitlements it is required to purchase. Since Beacon had submitted no financial data which would indicate that its entitlement obligations would cause the firm to experience cash flow problems or otherwise seriously impair its continued operation, the FEA found no basis for concluding that Beacon would incur the type of irreparable injury which would warrant stay relief. In addition, the FEA found that the issues which Beacon raised had been considered in detail in the November 5 Order and that Beacon had failed to make a *prima facie* showing that the analysis contained in that Order was erroneous. The Application for Stay was therefore denied.

Beren Corp.; Kansas City, Mo.; FES-1059; Crude Oil

Beren Corporation requested that a Remedial Order which was issued to the firm by the Deputy Regional Administrator of FEA Region VIII on November 15, 1976 be stayed pending a final determination of the firm's Appeal. On the basis of a finding that Beren had erroneously classified certain leases as stripper well properties and had been improperly selling the crude oil produced from the leases at exempt price levels, the Remedial Order directed Beren to make refunds for these overcharges within 90 days. In considering the firm's Application, the FEA determined that the firm had satisfied the criteria for the approval of a stay set forth in *General Crude Oil Co.*, 3 FEA Par. 85,040 (June 25, 1976), by showing that it would raise substantial issues in its Appeal and that it would be unduly burdensome for the firm to recover the refunds which the Remedial Order required it to make if it succeeded on the merits of its Appeal. Consequently, in accordance with previous Decisions, stay relief was approved on the condition that the contested funds be placed in an escrow account.

With respect to the provisions of the Remedial Order which require Beren to calculate the average daily production from the affected leases in order to ascertain whether any of the properties qualified as stripper well properties during 1975 or 1976, the FEA determined that no showing had been made by the firm that these calculations would result in an irreparable injury. The FEA therefore declined to stay this requirement of the Remedial Order.

Delta Refining Co.; Memphis, Tenn.; FES-1052; Crude Oil

Delta Refining Company filed an Application for Stay of a Decision and Order which was issued to the firm on November 5, 1976 requiring it to purchase entitlements equal in value to $4,559,585 during the period November 1976 through October 1977 in order to offset the excessive exception relief which the FEA found Delta had received during 1975. *Beacon Oil Co., et al.*, 4 FEA Par. 87,024 (November 5, 1976). In considering Delta's contention that the November 5 Order would compel it to make certain irreversible business decisions, the FEA determined that Delta had failed to show that serious adverse consequences would result from postponing those decisions until a determination is reached on its Appeal or that it would be adversely affected to a material degree if it were to make the type of decisions referred to in its submission. The FEA therefore concluded that Delta's claim of irreparable injury appeared to be largely speculative. The FEA further determined that Delta's Application did not demonstrate a substantial likelihood that the firm would prevail on the merits of its Appeal. Although Delta stated its intention to challenge both an adjustment which was made in the firm's 1975 financial results in order to present those results on the same basis as its historical financial results and the standard which has been utilized for nearly two years in assessing the impact of the Entitlements Program on small refiners, the FEA found that the firm's unsupported challenge of agency action which is not on its face unreasonable does not constitute a *prima facie* showing that the firm will prevail on appeal. The FEA also found that Delta's contentions regarding the propriety and validity of the November 5 Decision were not so persuasive as to lead to the conclusion that stay relief was warranted. With respect to Delta's contention that the FEA cannot require the refund specified in the November 5 Order unless a finding is made that the firm's original projections on which the exception relief was based were materially inaccurate, the FEA observed that since Delta had not presented detailed arguments or cited authority in support of its position the FEA could not agree that the firm's position would be upheld on appeal. The FEA pointed out, moreover, that the fact that Delta's financial and operating results showed that the firm received a far greater measure of exception relief than it was entitled to have received certainly indicated that the firm's original projections were materially inaccurate. In rejecting Delta's further contention that it reasonably relied to its detriment on the expectation that it would be allowed to retain the benefits of the exception relief which it received during 1975, the FEA referred to several occasions on which it had stated that it intended to review the exception relief granted to small refiners during 1975 and to make appropriate adjustments.

Finally, the FEA held that equity considerations strongly led to the conclusion that stay relief should be denied. The FEA pointed out that Delta obtained nearly $4.6 million in excessive benefits from other refiners on the basis of inaccurate financial projections which it furnished and, after an extensive proceeding in which Delta participated, the determination was reached that the firm was not entitled to retain those funds. In view of these considerations, the FEA concluded that it would be grossly unfair to permit Delta to continue to use funds which it erroneously obtained from other refiners. The Delta Application for Stay was accordingly denied.

Pester Refining Co.; El Dorado, Kans.; FES 3376; Crude Oil, Refined Petroleum Products

Pester Refining Company requested that the application to it of certain provisions of the FEA Mandatory Petroleum Allocation and Price Regulations be stayed pending a determination of the firm's Application for Exception. According to the Pester submission, the firm proposed to acquire a refinery and related marketing assets located in El Dorado, Kansas owned by American Petrofina, Inc. (Fina). In considering the stay request,

the FEA concluded that the *status quo ante* would not be preserved by the approval of a stay since Pester would thereby effectively be permitted to consummate the transfer of the El Dorado refinery immediately. The FEA noted that this result would not be appropriate since the transfer of the refinery would become effective at a time when potentially aggrieved parties have not had an opportunity to comment on the stay request and the matter has not been fully considered by the FEA. Finally, the FEA found that Pester's claims that it will incur an irreparable injury in the event that a stay is denied were entirely speculative and unsubstantiated. The FEA noted that any injury that Pester might incur if the stay request were denied would be a direct consequence of Pester's and Fina's own business decision to attempt to consummate the proposed refinery acquisition on November 30, 1976 only 14 days after the parties filed their Application for Exception with the FEA. The FEA also noted that, even if Pester had substantiated its claim that it would incur significant hardships if stay relief were denied, the FEA must consider the effect which the approval of stay relief would have on other persons, and in this case the business activities of all the firms which purchase or sell products from or to the refinery could be severely disrupted by the approval of stay relief. Accordingly, the Application for Stay was denied.

Rock Island Refining Corp.; Indianapolis, Ind.; FES–0057; Crude Oil

Rock Island Refining Corporation requested a stay of a Decision and Order which was issued to the firm on November 5, 1975 directing it to purchase additional entitlements at a value of $2,642,065 during the period November 1976 through October 1977 in order to offset the excessive benefits which the FEA found the firm had obtained from exception relief provided to it during 1975. *Beacon Oil Co., et al.*, 4 FEA Par. 87,024 (November 5, 1976). In considering Rock Island's stay request, the FEA rejected the firm's contention that it would experience an irreparable injury simply because it would have to record the entire entitlement obligation specified in the November 5 Order as a charge against its current earnings in its financial statements for the fiscal year ending November 30, 1976. The FEA emphasized that Rock Island had not indicated how such an accounting entry would in any way affect its refinery operations. The FEA also noted that complex issues of statutory construction were raised by Rock Island's contention that the provisions of the November 5 Order which impose entitlement purchase obligations contravene Section 403 of the Energy Policy and Conservation Act of 1975. Since Rock Island did not cite any legislative history which might support its interpretation, the FEA found that the firm had failed to demonstrate a substantial likelihood that it would prevail on appeal. The FEA further concluded that Rock Island had failed to make a substantial *prima facie* showing that it would ultimately succeed on the merits of its contention that the November 5 Order contains various errors of fact with respect to the firm's historical profit margin, historical return on invested capital, and other financial indicia. Rock Island's request for a stay was therefore denied.

The Standard Oil Co.; Cleveland, Ohio; FES 0056; Crude Oil

On August 12, 1976, the Deputy Assistant Administrator for Compliance of the FEA issued a Remedial Order to the Getty Oil Company. A portion of that Remedial Order concerns crude oil transactions which occurred between Getty and The Standard Oil Company (Sohio) during the period October 1973 through October 1974. According to the Remedial Order, Getty sold 25,000 barrels per day (BPD) of predominantly old domestic crude oil to Sohio, and, in return, Sohio sold 25,000 BPD of foreign crude oil to Getty. The Remedial Order found that Sohio treated the crude oil transactions as an exchange and accordingly accounted for the domestic crude oil which it received from Getty at the price at which Sohio acquired the foreign crude oil while Getty had improperly treated the crude oil transactions as independent purchases and sales. Since Getty should have treated the transaction as an exchange the Remedial Order concluded that the transfer of old oil by Getty in return for higher-valued foreign crude oil from Sohio constituted the carging of a price by Getty which exceeded the ceiling price determined under 6 CFR 150.34 and 10 CFR 212.73. Getty was directed to refund to Sohio the difference between the value of the foreign crude oil which it received from Sohio and the applicable ceiling price for the domestic crude oil transferred to Sohio. In order to ensure that the refunds which Getty is required to make to Sohio are passed through to Sohio's purchasers of covered products, the Deputy Assistant Administrator for Compliance also issued an Ancillary Order to Sohio pursuant to the provisions of 10 CFR 205.195(b). In the present proceeding, Sohio requested that the Ancillary Order be stayed until 60 days after the final resolution of the Appeal which Getty has filed from the Remedial Order.

In Paragraph (1) of the Ancillary Order Sohio is directed to report detailed monthly cost and volume data regarding the Getty-Sohio crude oil transactions. Paragraph (3) of the Ancillary Order directs Sohio to submit a statement of alternative remedy which could be implemented in order to pass through the refunds. In considering the request for stay, the FEA noted that Sohio did not allege that it would incur an irreparable injury if the stay were denied. The FEA also found that Sohio failed to substantiate its assertion that the denial of a stay would result in a more immediate serious hardship or gross inequity to Sohio than the beneficiaries of the refunds. With respect to the information requested in Paragraph (1) of the Ancillary Order, the FEA concluded that Sohio made no showing that the effort which it would expend in compiling and reporting that information would be so inordinately burdensome in view of the public interest involved as to warrant a stay of the provision. The FEA also rejected Sohio's contention that a stay is warranted because Sohio would prevail on the merits of its Appeal. In view of the probable magnitude of the Getty violation, the complexities of the FEA refiner price regulations and the fact that certain products have recently been exempted from the FEA regulatory program, the FEA concluded that there is a substantial public interest which must be protected by designing a proper remedy in this case. The FEA therefore concluded that Sohio failed to satisfy the criteria for a stay which are set forth in Section 205.125(b). However, it was determined that good cause exists for the approval of an extension of time in which Sohio must comply with the provisions of the Ancillary Order.

Time Oil Co., Los Angeles, Calif., FES–0441; Crude Oil

Time Oil Company filed an Application for Stay of the provisions of 10 CFR 212.83. The Application for Stay, if granted, would permit the firm to treat the increased crude oil costs which the firm anticipates that it will incur in purchasing approximately 270,000 barrels of Indonesian crude oil during the first week of December 1976 as if the cost increases had been incurred during the month of November 1976. In considering Time's request, the FEA found that Time had failed to provide any financial material which would indicate that the inability of the firm to pass through the increased crude oil costs until the month of January 1977 would lead to a serious financial hardship. The FEA further held that, in view of the uncertainty of Time's future supply situation, it would be inappropriate to conclude that Time would be permanently deprived of the revenues involved in the proceeding if its request for stay were denied. With respect to Time's further contention that it would be unable to recover certain costs which it incurred in November in the absence of a stay, the FEA found that Time itself had stated that it incurred the costs with the sole intention of reflecting the costs in its December selling price and the firm submitted no material which indicates that it was unable to adhere to that procedure. The Application for Stay was therefore denied.

Zenith Oil Co., Inc.; Minneapolis, Minn.; FES–1047; No. 2 Heating Oil

Zenith Oil Company, Inc. requested that a Remedial Order which was issued to the firm on October 28, 1976 be stayed pending a final determination of the firm's Appeal from that Order. In the Remedial Order, the FEA determined that Zenith had sold No. 2 heating oil at price levels which were in excess of the maximum levels permitted by the provisions of 6 CFR 150.359 and 10 CFR 212.93 and consequently Zenith was directed to issue credit memoranda to the customers which it overcharged. In addition, Zenith was directed to maintain its current selling price for No. 2 heating oil to each of these customers until the refund to that customer has been completed. In considering the contentions raised by Zenith that the Remedial Order should be stayed, the FEA applied the principles previously established in *General Crude Oil Co.*, 3 FEA Par. 85,040 (June 25, 1976), *modified*, 3 FEA Par. 85,040 (July 8, 1976), and concluded that a stay should be granted with regard to the refund provisions of the Remedial Order. The FEA also stayed the provisions of the Remedial Order which specify the maximum permissible price which Zenith may charge while making refunds, since those provisions are intended to operate in concert with the refund provisions of the Remedial Order. The FEA further concluded, however, that in accordance with the considerations discussed in *General Crude*, the stay should be conditioned upon Zenith's establishing an escrow account into which it places the amount of the refunds contemplated by the Remedial Order.

REQUEST FOR MODIFICATION OR RESCISSION

Atlantic Richfield Co., Los Angeles, Calif., FMR–0059; Lessors

Atlantic Richfield Company (Arco) filed an Application for Modification or Rescission of a Remedial Order issued to it by the Director of Compliance and Enforcement of the FEA Region IX on March 6, 1975. In the Remedial Order, FEA Region IX found that Arco had charged rentals in excess of the base rent permitted under the provisions of 6 CFR 150.360(b) and 10 CFR 212.102 for Riley's Arco Truckstop, Inc. located in Yuma, Arizona (Riley). In its Application for Modification or Rescission, Arco requested that the FEA rescind that portion of the Remedial Order which required it to refund the difference between the rent actually collected and the base rent for the period subsequent to April 30, 1974. In support of its request, Arco contended that the Remedial Order had been rendered void by a decision of the Temporary Emergency Court of Appeals in *Shell Oil Co. v. Federal Energy Admin.*, 527 F.2d 1243 (Em. App. 1975). In evaluating Arco's contention, the FEA reexamined the TECA and District Court opinions in the *Shell* case and the record in those proceedings. On the basis of that analysis the FEA concluded that in view of the equities involved and the FEA's statutory responsibility to protect the economic viability of small independent marketers, the *Shell* determination should be regarded as having only prospective effect. Arco's Application for Modification or Rescission was accordingly denied.

REQUEST FOR SPECIAL REDRESS

Intercoastal Marine Supplies; Washington, D.C., FEA–0895, FSG–0026, FSG–0027, FSG–0028; Diesel Fuel

Intercoastal Marine Supplies appealed from an Assignment Order which the FEA Regional Office in Dallas, Texas (FEA Region VI) issued to Gulf Outlet and Marine Supply, Inc. (Gulf Outlet) on June 4, 1976. In the June 4 Order, FEA Region VI directed the Murphy Oil Corporation (Murphy) to supply Gulf Outlet with 8,633,730 gallons of diesel fuel per year. Intercoastal also submitted to the FEA Office of Private Grievances and Redress three Petitions for Special Redress which concern the assignment of diesel fuel to Gulf Outlet by FEA Region VI. In its Appeal, Intercoastal alleged that the June 4 Order was defective. However, since middle distillates (including diesel fuel) were specifically exempted from the provisions of the FEA Regulations effective July 1, 1976, all FEA Orders which were issued prior to that date affecting those products, including the June 4 Order, ceased to have any prospective effect. Accordingly, the FEA determined that the prospective remedies which Intercoastal requested in its Appeal were not applicable under existing regulations and dismissed the Appeal as moot. Intercoastal also submitted three Petitions for Special Redress in which it requested that the FEA investigate various alleged irregularities which occurred during the processing of Gulf Outlet's Application for Assignment. In considering Intercoastal's Petitions, the FEA found that Intercoastal had failed to provide any information to demonstrate that its base period supplier, the Gulf Oil Company, had illegally forced Intercoastal to accept changes in its credit terms during 1973, 1974 and 1975, or that Gulf had illegally withdrawn as a supplier of diesel fuel from the New Orleans, Louisiana market area during that period. The FEA also determined that Intercoastal failed to support its claims that Murphy had discriminated against Intercoastal by refusing to supply it with diesel fuel during the same time period in which it supplied Gulf Outlet and that Murphy and Gulf Outlet consciously cooperated to obtain an unjustifiably large allocation of diesel fuel. Intercoastal's Petitions for Special Redress were therefore denied.

DISMISSALS

The following submission was dismissed following a statement by the applicant that the relief requested was no longer needed:

K.L.M. Oil Co.; Long Beach, Calif.; FEE–3236

The following submissions were dismissed for failure to correct deficiencies in the firm's filing as required by the FEA Procedural Regulations:

Carroll Production; Drumright, Okla.; FEE–3340

Garland Petroleum Co., Inc.; Cumberland, Md.; FEA–1028

The following submission was dismissed on the grounds that the submission did not meet the criteria applicable to an Application for Modification or Rescission:

Standard Oil Co. of Ohio; Cleveland, Ohio; FMR–0062

Copies of the full text of these Decisions and Orders are available in the Public Docket Room of the Office of Private Grievances and Redress, Room B–120, 2000 M Street, NW., Washington, D.C. 20461, Monday through Friday, between the hours of 1 p.m. and 5 p.m., e.s.t., except Federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

DAVID G. WILSON,
Acting General Counsel.

JANUARY 24, 1977.

[FR Doc.77-2755 Filed 1-25-77;9:43 am]

ISSUANCE OF DECISIONS AND ORDERS BY THE OFFICE OF EXCEPTIONS AND APPEALS

Week of December 13 through December 17, 1976

Notice is hereby given that during the week of December 13 through December 17, 1976, the Decisions and Orders summarized below were issued with respect to Appeals and Applications for Exception or other relief filed with the Office of Exceptions and Appeals of the Federal Energy Administration. The following summary also contains a list of submissions which were dismissed by the Office of Exceptions and Appeals and the basis for the dismissal.

APPEALS

Bryant Oil Co.; Huntington Park, Calif.; FEA–1045; Motor Gasoline

Bryant Oil Company (Bryant) appealed from a Decision and Order which the FEA had issued to it denying an Application for Exception which it had previously submitted from the provisions of 10 CFR 211.9. *Bryant Oil Co.*, 4 FEA Par. 83,156 (October 22, 1976). In its Appeal, Bryant requested the FEA to reverse the previous determination and assign to the firm a new, lower-priced supplier of motor gasoline which would replace one of its base period suppliers, Lion Oil Company (Lion). Bryant did not challenge the validity of the earlier determination, but rather contended that economic conditions in its market area had changed so substantially since the issuance of the October 22 Decision as to warrant a reversal of that Decision. In support of this contention, Bryant presented recent data purporting to show that the price which Lion charged Bryant for motor gasoline exceeded the prices which Bryant's competitors paid to their motor gasoline suppliers. The FEA found, however, that the material submitted by Bryant did not reveal a significant disparity between the price charged by Lion for motor gasoline and the average price charged for motor gasoline in Bryant's market area. The FEA therefore concluded that the firm had failed to substantiate its claim that economic conditions in its market area and altered materially since the issuance of the October 22 Decision. Accordingly, the Appeal was denied.

C. D. Hollingsworth and Associates; Natchez, Miss.; FEA–0954; Crude Oil

C. D. Hollingsworth and Associates (Hollingsworth) filed an Appeal from a Decision and Order issued to it by the FEA denying a previous Application for Exception which the firm had filed from the provisions of 10 CFR, Part 212, Subpart D. *C. D. Hollingsworth & Associates*, 4 FEA Par. 83,073 (August 31, 1976). The Hollingsworth Appeal, if granted, would have permitted the firm to sell at upper tier ceiling prices additional quantities of crude oil produced from certain wells in the South Providence Field, Franklin County, Mississippi. In its Appeal, Hollingsworth asserted that the amendments to Subpart D which were promulgated on February 1, 1976 have the effect of reducing the volume of crude oil which it is entitled to sell at upper tier ceiling prices. Hollingsworth argued that this result deprives it of the full benefits of the investment which the firm has made in its properties and also contravenes the underlying purpose of the February 1 amendments. In considering the firm's arguments, the FEA noted that, since Hollingsworth had achieved an initial return of 55 percent on its investment, it did not appear to be subject to a disproportionate burden or gross inequity as a result of the regulatory amendments to Subpart D. With respect to the firm's other argument, the FEA determined that Hollingsworth had failed to furnish any evidence that its inability to sell as much crude oil at upper tier ceiling prices as it would have sold in the absence of the February 1 regulatory amendments was in any way contrary to the intent of those amendments. The Hollingsworth Appeal was therefore denied.

Consumers Fuel Co., Inc.; Martinsburg, W. Va.; FEA–0946; Middle Distillates and Residual Fuel Oil

Consumers Fuel Company, Inc. (Consumers) appealed from a Remedial Order which had been issued to it by FEA Region III on June 23, 1976. The Remedial Order found that from November 6, 1973 through July 16, 1974 Consumers sold kerosene and Nos. 2, 4, 5, and 6 fuel oils at prices which were in excess of the maximum levels specified in 6 CFR 150.359(c)(1) and 10 CFR 212.93(a). The Remedial Order directed Consumers to refund the previous overcharges and refrain from charging prices in excess of lawful levels. In considering Consumers' Appeal, the FEA determined that Consumers' reliance on regulations which were no longer effective did not constitute a justifiable basis for its noncompliance with applicable regulatory obligations. The FEA also found that Consumers had failed to show that any price reductions subsequent to July 16, 1974 were made for the sole purpose of making restitution of previous overcharges or that the prices subsequently charged differed from those which the firm would otherwise have charged under the existing market conditions. The FEA therefore determined that Consumers should not be permitted to offset alleged undercharges against the overcharges specified in the Remedial Order. However, the FEA also determined that the Remedial Order failed to make essential findings of fact in support of its conclusion as required by *Koch Industries, Inc.*, 2 FEA Par. 80,560 (May 2, 1975). The FEA found that in the absence of the essential findings, including Consumers' May 15, 1973 weighted average price for each product to each class of purchaser and weighted average unit cost for each product in inventory, Consumers is unable to comply with the Remedial Order, to vertify its accuracy, or to submit a meaningful Appeal. The FEA therefore rescinded the Remedial Order and remanded the matter to the Regional Administrator of FEA Region

III for further proceedings in accordance with the principles set forth in the Decision.

Eddy Refining Co.; Houston, Tex.; FEA–0004; Diesel Fuel

The Eddy Refining Company (Eddy) filed an Appeal from a Decision and Order which the FEA issued to it denying a previous request for exception relief which Eddy had filed from the provisions of 10 CFR, Part 212, Subpart E. *Eddy Refining Co.*, 4 FEA Par. 83,005 (July 16, 1976). The exception request, if granted, would have permitted Eddy to adjust its May 15, 1973 selling price and thereby both retroactively and prospectively increase its maximum allowable price for No. 2–D diesel fuel. The approval of retroactive exception relief would reduce or eliminate Eddy's liability to refund alleged overcharges in its sales of diesel fuel from September 1973 through June 1975. In the determination which it issued in connection with the Eddy exception proceeding the FEA found that recent amendments to the Mandatory Petroleum Price Regulations exempting middle distillates such as No. 2–D diesel fuel from price controls rendered Eddy's request for prospective relief moot. With respect to retroactive relief, the FEA determined that Eddy had failed to explain its lengthy delay in requesting exception relief, that the month of May 1973 reasonably reflected its operations prior to the promulgation of FEA Price Regulations, and that Eddy's profitable financial and operating posture in recent years contradicted the firm's claim that it would experience a severe and irreparable injury if it were required to make refunds to its diesel fuel customers. Accordingly, Eddy's Application for Exception was denied. In its Appeal, Eddy reiterated the same arguments which it advanced in the prior proceeding and contended that it relied in good faith on erroneous advice from the IRS regarding the correct procedure to pre-notify the FEA of nonproduct costs to be passed through in the form of higher selling prices. The FEA noted that in a number of previous Decisions it had concluded that actions by a firm based upon informal oral discussions with FEA personnel do not constitute appropriate justification for the approval of retroactive exception relief. The Appeal was therefore denied.

McMahan Oil Co.; Easton, Md.; FEA–0901; No. 2–D Diesel Fuel Oil

McMahan Oil Company (McMahan) appealed from a Remedial Order which had been issued to it by FEA Region III on July 6, 1976. In the Remedial Order, the FEA found that McMahan had sold No. 2–D diesel fuel to the Easton Utilities Commission (Easton) from August 19, 1973 through April 4, 1974 at prices which exceeded the maximum permissible selling prices specified in 10 CFR 212.93(a). The Remedial Order directed McMahan to refund the previous overcharges plus interest. In considering the Appeal, the FEA found that contrary to McMahan's assertions both the freight charges which McMahan incurred to transport No. 2–D diesel fuel into its inventory and the firm's rental expenses for storage facilities were properly accounted for in the Remedial Order. The FEA also found that McMahan had failed to establish that its alleged price reductions after the period of the overcharges were made for the sole purpose of making restitution. Accordingly, the FEA concluded that it was reasonable to have determined that McMahan should not be permitted to offset those alleged price reductions against the overcharges. The Appeal filed by McMahan was therefore denied.

Mobil Oil Corp.; Los Angeles, Calif.; FEA–1011; Motor Gasoline

Mobil Oil Corporation appealed from a Decision and Order which the FEA issued to UCO Oil Company on June 11, 1976. *UCO Oil Co.*, 3 FEA Par. 83,219 (June 11, 1976). Pursuant to the June 11 Decision and Order, Mobil was assigned by FEA Region IX to supply motor gasoline to UCO. Since Mobil failed to file its Appeal in a timely manner or demonstrate good cause for the impermissible delay, the Appeal was summarily denied in accordance with the provisions of 10 CFR 205.106(b)(1)(i).

Union Oil Co.; Los Angeles, Calif.; FEA–0947; Crude Oil

Union Oil Company of California appealed from a Decision and Order issued to it by the FEA denying the firm's request for exception relief from the provisions of 10 CFR Part 212, Subpart D. *Union Oil Co. of California*, 4 FEA Par. 83,039 (August 6, 1976). The Appeal, if granted, would have reversed the previous Order and permitted Union to determine the price of crude oil which it produces from the Trading Bay Unit in Alaska without regard to the current cumulative deficiency which has accrued on that property as a result of an explosion on the Unit's platform. In denying the Appeal, the FEA found that the August 6 Decision to deny exception relief must be sustained as correct since Union failed to challenge the Decision's underlying factual determination that the firm had sufficient economic incentive to restore production from the Trading Bay Unit even in the absence of exception relief. The FEA further noted that Union's Appeal was based to a large extent on the contention that the cumulative deficiency rule in 10 CFR 212.72 should be modified through exception relief so that it would not apply in any *force majeure* situation. The FEA observed that such a contention involved a broad issue as to the most desirable means of attaining national policy objectives and would be more appropriately resolved through rulemaking procedures.

Varibus Corp.; Beaumont, Tex.; FEA 1003; No. 2 Fuel Oil

Varibus Corporation appealed from a Remedial Order which was issued to the firm by Region VI of the FEA on September 20, 1976. The Order found that Varibus had sold fuel oil on two occasions during October 1973 to unaffiliated companies at prices which exceeded the maximum permissible selling prices and directed Varibus to refund with interest the revenues generated by the overcharges. In its Appeal Varibus contended that since its sales to unaffiliated entities were made under unusual circumstances, it is not consistently engaged in the business of reselling covered products and, thus, is not a reseller for purposes of the FEA Price Regulations. The FEA noted, however, that it had concluded in two recent Decisions that the applicability of the FEA Price Regulations to a particular sales transaction depends upon the nature of that transaction rather than the nature of the business customarily engaged in by the firm. With respect to the two sales which were the subject of the September 20 Remedial Order, the FEA determined that, since Varibus had purchased a covered product and resold it without substantially changing its form to two customers who were not ultimate consumers, the FEA was correct in concluding that Varibus was included within the regulatory definition of the term "reseller" and Varibus was therefore subject to the FEA Price Regulations governing sales by resellers. Accordingly, the Appeal was denied.

REQUESTS FOR EXCEPTION

Beacon Oil Co.; Hanford, Calif.; FEE–3279; Crude Oil

Beacon Oil Company (Beacon) filed an Application for Exception from the provisions of 10 CFR 211.67 (the Old Oil Entitlements Program) which, if granted, would result in an extension of the exception relief which the FEA originally granted to Beacon on June 8, 1976. That exception determination relieved the firm of its obligation to purchase entitlements during the period June through November 1976. *Beacon Oil Co.*, 3 FEA Par. 83,209 (June 8, 1976). In support of its exception request, Beacon submitted projected financial statements for its current fiscal year ending December 31, 1976 and projected monthly crude oil runs to stills and receipts of old, new and imported crude oil for its current fiscal year. In considering Beacon's exception request the FEA determined that in the absence of exception relief, Beacon would be required to purchase entitlements at a substantial cost commencing with the month of December 1976. As a result of the projected entitlements cost which Beacon would incur during its current fiscal year, the firm's profit margin and return on invested capital would be below historical levels. Based on the material which Beacon submitted a further determination was made that exception relief also appeared appropriate for the initial months of the firm's 1977 fiscal year beginning on January 1, 1977. Under the criteria set forth in *Beacon Oil Co., supra*, and *Delta Refining Co.*, 2 FEA Par. 83,275 (September 11, 1975), exception relief was therefore warranted. Accordingly, the FEA granted Beacon's Application for Exception relieving the firm of sufficient entitlement purchase obligations during the six month period December 1976 through May 1977 to account for its crude oil runs to stills and old oil receipts during the period October 1976 through March 1977, to permit Beacon to achieve its historical profit margin during the current fiscal year. However, the FEA noted in the Decision which it issued that the relief approved to Beacon would be reevaluated if the firm requested an extension of exception relief bevond May 1977, and also at the conclusion of the firm's current fiscal year. The Decision further noted that an adjustment will be made and Beacon will be required to purchase or sell additional entitlements if it received excessive or insufficient benefits in the past because of a discrepancy between the financial projections it submitted and the actual financial result which it achieves.

B. F. Goodrich Chemical Co.; Cleveland Ohio; FEE–3197; Propane

On September 28, 1976, B. F. Goodrich Chemical Company (Goodrich) filed an Application for Exception from the provisions of 10 CFR 211.10(g)(8)(i) which, if granted, would result in the issuance of an Order increasing the firm's base period use of propane. In support of its Application, Goodrich contended that Section 4(c) of the Emergency Petroleum Allocation Act (EPAA) required the FEA to provide for the allocation of propane to an industrial user if no substitute product was available. Goodrich further argued that its current requirements for propane exceeded its base period use of the product and therefore it is incurring a gross inequity because it is the only manufacturer of ethylene in the United States which relies completely on propane as a feedstock. In considering Goodrich's exception request, the FEA noted that the FEA allocation regulations were designed to achieve an appropriate balance of all nine policy objectives contained in subsection 4(b)(1) of the EPAA. The FEA therefore determined that Section 4(c) of the EPAA did not require the FEA to grant exception relief to Goodrich. Moreover, the FEA determined that Goodrich was not experiencing the type of gross disparity between its current requirements and its base period use of propane which would warrant exception relief. The FEA consequently concluded that Goodrich had not demonstrated that the provisions of Section 211.10(g)(8)(i) significantly and uniquely impeded its operations and accordingly denied the firm's exception request.

Champlin Petroleum Co.; Fort Worth, Tex.; FEE–3458 (Block 31), FEE–3459 (Dorer-Hennessey), FEE–3460 (East Texas), FEE–3461 (Gulf Plains), FEE–3462 (Mayfield), FEE–3464 (Peoria), FEE–3465 (South Fullerton), FEE–3466 (Witcher); Natural Gas Liquid Products

Champlin Petroleum Company (Champlin) filed Applications for Exception from the provisions of 10 CFR 212.165, which, if granted, would permit the firm to increase the prices it charges to reflect non-product cost increases which the firm had incurred at eight of its natural gas processing plants. In considering the Applications, the FEA noted that, as a general rule, exception relief will be granted to any natural gas processor which can demonstrate that the non-product costs which it has experienced since May 1973 have increased substantially in excess of the $.005 per gallon passthrough for natural gas liquid products which is permitted under Section 212.165. The FEA found that Champlin had made such a showing with respect to its eight gas plants and therefore granted Champlin appropriate exception relief with respect to those plants.

Cities Service Co.; Tulsa, Oklahoma; FEE–3332 (Mooreland), FEE–3333 (Panola), FEE–3334 (Red Fish Bay), FEE–3335 (Star Lacey), FEE–3336 (West World); Natural Gas Liquid Products

Cities Service Company (Cities) filed Applications for Exception from the provisions of 10 CFR 212.165 which, if granted, would permit the firm to increase the prices it charges to reflect non-product cost increases which the firm has incurred at five of its natural gas processing plants. In considering the Applications, the FEA noted that, as a general rule, exception relief will be granted to any natural gas processor which can demonstrate that the non-product costs which it has experienced since May 1973 have increased substantially in excess of the $.005 per gallon passthrough for natural gas liquid products which is permitted under Section 212.165. The FEA found that Cities had made such a showing with respect to its five gas plants and therefore granted Cities appropriate exception relief with respect to those plants for the period December 14, 1976 through June 30, 1977.

Clark Oil and Refining Corp.; Washington, D.C.; FEE–3214; Crude Oil

Clark Oil and Refining Corporation (Clark) filed an Application for Exception from the provisions of 10 CFR 212.83 which, if granted, would permit Clark to reduce its cost of crude oil in December 1976 to reflect a portion of the revenues which it received from the sale of entitlements in the months of October and November 1976. In its exception application, Clark asserted that its planned conversion of a catalytic cracking unit and the inspection and repair of the crude unit at the firm's Blue Island, Illinois, refinery reduced runs at the refinery and have necessitated adjustments to the firm's scheduled purchases and receipts of crude oil during the last three months of 1976. The firm anticipated that, as a result of these adjustments, it would receive revenues from the sale of entitlements during November 1976 which would be disproportionately large as compared to the aggregate cost of the crude oil which the firm intended to purchase during that month. In considering the firm's exception application, the FEA concluded that that the financial data which Clark submitted failed to support the firm's contention that it would incur a serious financial hardship unless exception relief were approved. The FEA found that, even without exception relief, the firm would achieve significant profits in 1976 and 1977 and that Clark's own projections indicated that in the absence of exception relief the firm would recover all of the increased costs which it incurred during the last three months of 1976. The Clark request for exception was accordingly denied.

Cleary Petroleum Corp., Payne County, Okla.; FEE–2783; Crude Oil

Cleary Petroleum Corporation (Cleary) filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D, which, if granted, would permit the firm to charge upper tier ceiling prices for the crude oil which it produces from the March Skinner Sand Unit located in Payne County, Oklahoma (the March Unit). Cleary requested that the exception relief be made retroactive to November 1973. In its exception application, Cleary contended that it does not have the economic incentive to make certain capital expenditures which are necessary for the continuation of a waterflood project on the March Unit if it must continue to charge the lower tier ceiling prices specified in the FEA Regulations. In considering Cleary's exception request, the FEA found that Cleary's financial and production projections for the property demonstrated that the proposed investment would generate a substantial net cash flow during its first year of operation, even in the absence of exception relief. Based upon the precedents established by the FEA in several recent cases involving similar circumstances, the FEA determined that the firm's projected return on its investment should provide it with an adequate economic incentive to make the proposed investment in the waterflood project. Accordingly, the firm's request for both prospective and retroactive exception relief was denied.

Community Feed Stores; Eastlongmeadow, Mass.; FEE–3274; No. 2 Heating Oil

Community Feed Stores (Community) filed an Application for Exception from the requirement that it file a "No. 2 Heating Oil Supply/Price Monitoring Report," FEA Form P112–M–1. In considering the exception application, the FEA determined that the firm had failed to submit any financial material in support of its claim that it would incur significant expenses in providing the information required by the form. The FEA also concluded that Community failed to demonstrate that the inconvenience of supplying the information outweighs the benefits to be derived from the use of the aggregate data which the FEA collects from a sample of firms, including Community, as to the supply and price of No. 2 heating oil. Community's request for exception relief was therefore denied.

Confederated Tribes of the Warm Springs Reservation of Oregon; Warm Springs, Oreg.; FEE–3111; Motor Gasoline

The Confederated Tribes of the Warm Springs Reservation of Oregon (Confederated Tribes) filed an Application for Exception from the provisions of 10 CFR 211.9 which, if granted, would have resulted in the assignment of a new supplier to replace their base period supplier, Pugh Oil Company (Pugh). In their submission the Confederated Tribes claimed that Pugh had failed to maintain adequate supplies of motor gasoline at the Reservation Garage and had thereby jeopardized vital public services performed by the Confederated Tribes. In considering the exception application, the FEA determined that the Confederated Tribes had demonstrated that motor gasoline shortages had occurred from time to time on the Reservation but that there was no evidence that those shortages had in any way disrupted the performance of essential public services. Furthermore, the FEA found that the record in the proceeding indicated that the Confederated Tribes had contributed to the occasional gasoline shortages at the Reservation by failing to take reasonable measures to alleviate their supply difficulties. The FEA therefore determined that the Confederated Tribes had failed to demonstrate that the maintenance of their base period supplier purchaser relationship with Pugh resulted in a serious hardship or gross inequity. Accordingly, the exception request was denied.

Diamond Shamrock Corp.; Amarillo, Tex.; FEE–2761; Refined Petroleum Products

Diamond Shamrock Corporation (Shamrock) filed an Application for Exception from the provisions of 10 CFR 211.83. The exception request, if granted, would permit Shamrock to allocate its increased crude oil costs to motor gasoline in proportion to the volume of motor gasoline sold by the firm for purposes of calculating its maximum allowable prices. In considering Shamrock's exception request, the FEA found that Shamrock had, during February of 1976, elected to allocate its increased crude oil costs to its products in proportion to its refinery yield using the "R" allocator rather than its product sales using the "V" allocator. As a result, the effect of the regulatory amendments which accompanied the deregulation of No. 2 fuel oils (41 FR 24516; June 16, 1976) had been to preclude the firm from reallocating crude oil cost increases to motor gasoline. Since the FEA's intent in permitting refiners to elect the "R" allocator was to ensure a more representative volumetric allocation of the increased cost of crude oil in the maximum allowable price of each product, the FEA determined that under the particular circumstances presented in this case Shamrock's use of the "R" allocator resulted in a gross inequity to the firm. The FEA therefore granted Shamrock exception relief which permitted it to allocate those increased costs which were attributable to No. 2 fuel oils exchanged for motor gasoline to its sale of motor gasoline. The FEA also determined that under the facts presented, compelling reasons existed for granting exception relief to Shamrock on a retroactive basis. The FEA therefore granted the firm exception relief retroactive to May 1, 1976.

Dillman Oil Recovery, Inc.; Robinson, Ill.; FEE–2763; Crude Oil

Dillman Oil Recovery, Inc. (Dillman) filed an Application for Exception from the provisions of 10 CFR 211.67 (the Old Oil Entitlements Program) which, if granted, would relieve the firm of any obligation to purchase entitlements beginning with the month of December 1976. In support of its exception request, Dillman submitted projected financial statements for its current fiscal year ending December 31, 1976 and projected monthly crude oil runs to stills and receipts of old, new and imported crude oil for the

fiscal year. In considering Dillman's exception request the FEA determined that in the absence of exception relief the firm would be required to purchase entitlements at a substantial cost commencing with the month of December 1976. As a result of the projected entitlements cost which Dillman would incur during its current fiscal year, the firm's profit margin and return on invested capital would be below historic levels. Under the criteria set forth in *Beacon Oil Co.*, 3 FEA Par. 83,209 (June 8, 1976); and *Delta Refining Co.*, 2 FEA Par. 83,275 (September 11, 1975), exception relief was therefore warranted. Accordingly, the FEA granted Dillman exception relief reducing by $20,980 per month the firm's obligation to purchase entitlements during the six month period December 1976 through May 1977 to account for its crude oil runs to stills and old oil receipts during the period October 1976 through March 1977. However, the FEA noted in the Decision which it issued that the relief approved to Dillman would be reevaluated if the firm requested an extension of exception relief beyond May 1977, and also at the conclusion of the firm's current fiscal year. The Decision further noted that an adjustment will be made and Dillman will be required to purchase or sell additional entitlements if it received excessive or insufficient benefits because of a discrepancy between the financial projections it submitted and the actual financial results which it achieves.

Edgington Oil Co. (New Edgington); Long Beach, Calif.; FEE–3281; Crude Oil

Edgington Oil Company (New Edgington) filed an Application for Exception from the provisions of 10 CFR 211.67 (the Old Oil Entitlements Program) which, if granted, would result in an extension of the exception relief which the FEA originally granted to Edgington Oil Company on June 21, 1976. That exception determination relieved the firm of its obligation to purchase entitlements during the period April through September 1976. *Edgington Oil Co.*, 3 FEA Par. 83,240 (June 21, 1976). On September 21, 1976, the FEA issued a Decision and Order in response to a joint Application for Exception filed by Edgington Oil Company and New Edgington which the firms had submitted following the transfer by Edgington of its entire refinery operation and total assets to New Edgington. In making a determination with respect to that matter, the FEA transferred to New Edgington the exception relief which had previously been granted to Edgington in the June 21 Order. *Edgington Oil Co.-New Edgington Corp.*, 4 FEA Par. 83,102 (September 21, 1976). In support of its current exception request, New Edgington submitted projected financial statements for its current fiscal year ending June 30, 1977 and projected monthly crude oil runs to stills and receipts of old, new and imported crude oil for its current fiscal year. In considering New Edgington's request, the FEA determined that in the absence of exception relief, New Edgington would be required to purchase entitlements at a substantial cost commencing with the month of December 1976. As a result of the projected entitlements cost which New Edgington would incur during its current fiscal year, the firm's profit margin and return on invested capital would be below historical levels. Under the criteria set forth in *Beacon Oil Co.*, 3 FEA Par. 83,209 (June 8, 1976), and *Delta Refining Co.*, 2 FEA Par. 83,275 (September 11, 1976), an extension of exception relief was warranted. Accordingly, the FEA granted New Edgington an exception relieving the firm of its obligation to purchase entitlements valued at $1,240,238 per month during the six month period December 1976 through May 1977 to account for its crude oil runs to stills and old oil receipts during the period October 1976 through March 1977. However, the FEA noted in the Decision which it issued that the relief approved to New Edgington would be reevaluated if the firm requested an extension of exception relief beyond May, 1977, and would be further evaluated at the conclusion of the firm's current fiscal year. The Decision further noted that an adjustment will be made and New Edgington will be required to purchase or sell entitlements if it received excessive or insufficient benefits in the past because of a discrepancy between the financial projections it submitted and the actual financial results which it achieves.

Husky Oil Co. of Delaware; Denver, Colo.; FEE–3231; Crude Oil

Husky Oil Company of Delaware (Husky) filed an Application for Exception from the provisions of 10 CFR 211.67 (the Old Oil Entitlements Program) which, if granted, would result in an extension of the exception relief which the FEA originally granted to Husky on June 21, 1976 which relieved the firm of its obligation to purchase entitlements during the period April through September 1976. *Husky Oil Co. of Delaware*, 3 FEA Par. 83,225 (June 21, 1976). In support of its current exception request, Husky submitted projected financial statements for its current fiscal year ending December 31, 1976 and projected monthly crude oil runs to stills and receipts of old, new and imported crude oil for its current fiscal year. In considering Husky's request, the FEA determined that in the absence of exception relief, Husky would be required to purchase entitlements at a substantial cost commencing with the month of December 1976. As a result of the projected entitlements cost which Husky would incur during its current fiscal year, the firm's profit margin and return on invested capital would be below historical levels. Under the criteria set forth in *Beacon Oil Co.*, 3 FEA Par. 83,209 (June 8, 1976); and *Delta Refining Co.*, 2 FEA Par. 83,275 (September 11, 1975), an extension of exception relief was warranted. Accordingly, the FEA granted Husky an exception relieving the firm of any obligation to purchase entitlements during the six-month period December 1976 through May 1977 to account for its crude oil runs to stills and old oil receipts during the period October 1976 through March 1977. However, the FEA noted in the Decision which it issued that the relief approved to Husky would be reevaluated if the firm requested an extension of exception relief beyond May 1977, and also at the conclusion of the firm's current fiscal year. The Decision further noted that an adjustment will be made and Husky will be required to purchase or sell entitlements if it received excessive or insufficient benefits in the past because of a discrepancy between the financial projections it submitted and the actual financial results which it achieves.

Kathol Petroleum, Inc.; Kearney, Mo., FEE–3079, FEE–3373, Natural Gas Liquids and Products

Kathol Petroleum, Inc. (Kathol) filed two Applications for Exception from the provisions of 10 CFR 212.165 which, if granted, would permit Kathol to increase the selling prices of natural gas liquids and natural gas liquid products which it charges to reflect non-product cost increases at its Indian Wells natural gas processing plant retroactive to August 1, 1973 and on a prospective basis. In considering Kathol's request for prospective exception relief, the FEA noted that, as a general rule, exception relief will be granted to any natural gas processor, which can demonstrate that the non-product costs which it has experienced since May 1973 have increased substantially in excess of the $.00375 per gallon passthrough for natural gas liquids and the $.005 per gallon passthrough for natural gas liquid products which are permitted under Section 212.165. The FEA found that Kathol had made such a showing and therefore granted Kathol exception relief with respect to its Indian Wells gas plant for the period December 16, 1976 through February 28, 1977. With respect to Kathol's request that relief be granted retroactive to August 1, 1973, the FEA determined that the firm made no showing that it would be irreparably injured in the absence of retroactive relief nor did it present any other compelling reasons for the approval of such relief. The FEA therefore denied the firm's request for retroactive exception relief.

Kern County Refinery, Inc.; Bakersfield Calif.; FEE–3287; Crude Oil

Kern County Refinery, Inc. (Kern) filed an Application for Exception from the provisions of 10 CFR 211.67 (the Old Oil Entitlements Program) which, if granted, would result in an extension of the exception relief which the FEA originally granted to Kern on June 18, 1976 which relieved the firm of its obligation to purchase entitlements during the period April through September 1976. *Kern County Refinery, Inc.*, 3 FEA Par 83,226 (June 18, 1976). In support of its current exception request, Kern submitted projected financial statements for its current fiscal year ending March 31, 1977 and projected monthly crude oil runs to stills and receipts of old, new and imported crude oil for its current fiscal year. In considering Kern's request, the FEA determined that in the absence of exception relief, Kern would be required to purchase entitlements at a substantial cost commencing with the month of December 1976. As a result of the projected entitlements cost which Kern would incur during its current fiscal year, the firm's profit margin would be below historical levels. Under the criteria set forth in *Beacon Oil Co.*, 3 FEA Par. 83,209 (June 8 1976); and *Delta Refining Co.*, 2 FEA Par 83,275 (September 11, 1975), an extension of exception relief was warranted. Accordingly, the FEA granted Kern's Application for Exception relieving the firm of any obligation to purchase entitlements during the six month period December 1976 through May 1977 to account for its crude oil runs to stills and old oil receipts during the period October 1976 through March 1977. However, the FEA noted in the Decision which it issued that the relief approved to Kern would be reevaluated if the firm requested an extension of exception relief beyond May, 1977, and also at the conclusion of the firm's current fiscal year. The Decision further noted that an adjustment will be made and Kern will be required to purchase or sell entitlements if it received excessive or insufficient benefits in the past because of a discrepancy between the financial projections it submitted and the actual financial results which it achieves

Little America Refining Co.; Washington, D.C.; FEE–2709; Crude Oil, Refined Products

Little America Refining Company (Larco) filed a submission with the Federal Energy Administration requesting administrative relief in connection with the acquisition by its subsidiary, the Sinclair Refining Company (Sinclair), of the refining and marketing assets previously owned by Pasco, Inc. Larco

acquired and began to operate those assets on July 1, 1976. In considering the Larco submission, the FEA determined that, in order to avoid the possibility that supply disruptions and dislocations would occur, Pasco's obligations to supply allocated products to its base period purchasers should be terminated and Larco should be assigned to supply those customers on a permanent basis. The FEA also determined that, since the Larco firm acquired Pasco's entire refining and marketing business, under the provisions of 10 CFR 211.11(d) Pasco's rights to receive allocations of petroleum products from its base period suppliers are deemed to have been transferred to the Larco firm concurrent with Larco's acquisition of the Pasco assets. Consequently, the FEA held that Larco does not require exception relief in order to receive as of right allocated products from Pasco's former base period suppliers. In considering Larco's request that it be permitted to utilize the banks of unrecovered increased costs accrued by Pasco in calculating its maximum allowable prices, the FEA observed that the Pasco assets had been the subject of a federal antitrust decree and Larco had indicated that in approving Pasco's sale of the assets the Federal Trade Commission had expressed concern that the refining and marketing activities previously conducted by Pasco continue to operate in a vigorous, competitive manner and that the customers who relied on Pasco not be adversely affected by the sale. The FEA found that, if Larco were afforded the opportunity to utilize the unrecovered increased costs incurred in the operation of the Pasco assets, its ability to ensure that the former Pasco operations function as a strong, competitive force would certainly be enhanced. The FEA also found that the position of Pasco's former customers would not be significantly affected by the approval of Larco's request since if Pasco had not sold the assets it would have been permitted to pass through its banked costs subject to the limitations specified in the FEA Regulations. In addition, by permitting Larco to utilize Pasco's banked costs the possibility that price fluctuations and distortions would occur would be mitigated. However, the FEA further determined that if Larco were permitted to base its maximum allowable prices to former Pasco customers only on its lower May 1973 costs and were also permitted to pass through the Pasco banked costs, Larco would receive an unwarranted benefit at the expense of the former Pasco customers. In order to prevent this result from occurring, the FEA conditioned the approval of Larco's request to utilize Pasco's banked costs on the requirement that Larco average its May 1973 costs with Pasco's May 1973 costs in computing its maximum allowable prices. Additionally, the FEA indicated that Larco would not be permitted to reflect the cost of any inventories which it purchased from Pasco in its selling prices in order to avoid a situation in which Larco would be able to recover the same costs twice.

Louis M. Mai Operations; Russell, Kans.; FEE–2839; Crude Oil

Louis M. Mai Operations (Mai) filed an Application for Exception from the provisions of 6 CFR, Part 150 and 10 CFR, Part 212, Subpart D. Mai's request, if granted, would permit the firm to sell the crude oil produced from its Sutton lease in November 1973 and the crude oil produced from its Johnson lease during the period November 1973 through December 1974 without regard to the ceiling price rule set forth in 6 CFR 150.354 and 10 CFR 212.73. In its exception application, Mai contended that the two wells on the Johnson lease should be considered as multiple completion wells. Mai indicated that if these wells were classified as multiple completion wells for the purpose of calculating the property's average daily production, the Johnson lease would qualify as a stripper well property for the month of November 1973 and calendar year 1974. In considering this contention, the FEA noted that before the issue of the propriety of retroactive exception relief may be addressed, a firm must make a showing that it is entitled to prospective exception relief. The FEA found that Mai had failed to make this initial showing since the firm had not demonstrated that the application of the multiple completion well ruling, Ruling 1975–12, significantly or uniquely impeded Mai's operations or frustrated the objectives which the Ruling was designed to achieve. Mai also contended that it should not be held liable for any overcharges which it obtained from the Johnson and Sutton leases during November 1973 since the firm had made a good faith effort to comply with the regulations governing the pricing of crude oil during a period of time in which some confusion existed as to the manner in which the regulatory requirements would be applied. The FEA found that this contention was unpersuasive inasmuch as Mai had failed to establish that the regulations governing crude oil pricing were unclear as a matter of law, and Mai's failure to familiarize itself with those regulatory requirements did not provide a basis for the approval of exception relief. Finally, Mai requested that the FEA determine that the Johnson lease was in fact a stripper well property in November 1973. The FEA noted that Mai appeared to be challenging a Notice of Probable Violation (NOPV) which had been issued to the firm and that the exceptions process is not the proper means by which a firm responds to a NOPV or secures a determination that it is applying the regulatory requirements in a proper manner. The Application for Exception which Mai filed was accordingly denied.

Lunday-Thagard Oil Co.; South Gate, Calif.; FEE–3229; Crude Oil

Lunday-Thagard Oil Company (Lunday-Thagard) filed an Application for Exception from the provisions of 10 CFR 211.67 (the Old Oil Entitlements Program) which, if granted, would result in an extension of the exception relief which the FEA originally granted to Lunday-Thagard on June 18, 1976 which relieved the firm of its obligation to purchase entitlements during the period April through September 1976. *Lunday-Thagard Oil Co.*, 3 FEA Par. 83,228 (June 18, 1976). In support of its current exception request, Lunday-Thagard submitted projected financial statements for its current fiscal year ending June 30, 1977 and projected monthly crude oil runs to stills and receipts of old, new and imported crude oil for its current fiscal year. In considering Lunday-Thagard's request, the FEA determined that in the absence of exception relief, Lunday-Thagard would be required to purchase entitlements at a substantial cost commencing with the month of December 1976. As a result of the projected entitlements cost which Lunday-Thagard would incur during its current fiscal year, the firm's profit margin and return on invested capital would be below historical levels. Under the criteria set forth in *Beacon Oil Co.*, 3 FEA Par. 83,209 (June 8, 1976); and *Delta Refining Co.*, 2 FEA Par. 83,275 (September 11, 1975), an extension of exception relief was warranted. Accordingly, the FEA granted Lunday-Thagard's Application for Exception relieving the firm of any obligation to purchase entitlements during the six month period December 1976 through May 1977 to account for its crude oil runs to stills and old oil receipts during the period October 1976 through March 1977. However, the FEA noted in the Decision which it issued that the relief approved to Lunday-Thagard would be reevaluated if the firm requested an extension of exception relief beyond May, 1977, and also at the conclusion of the firm's current fiscal year. The Decision further noted that an adjustment will be made and Lunday-Thagard will be required to purchase or sell entitlements if it received excessive or insufficient benefits in the past because of a discrepancy between the financial projections it submitted and the actual financial results which it achieves.

M. J. Mitchell; Dallas, Tex.; FEE–3289; Crude Oil

M. J. Mitchell (Mitchell) filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D. The request, if granted, would result in an extension of the exception relief previously granted to Mitchell and would permit the firm to continue to sell a portion of the crude oil produced from the Mitchell State Minnelusa Sand Unit in Campbell County, Wyoming (the Unit) for the benefit of the working interest owners at upper tier ceiling prices. *M. J. Mitchell*, 3 FEA Par. 83,270 (July 8, 1976). In considering Mitchell's exception request, the FEA determined that the Unit was continuing to experience increased operating costs and the working interest owners lacked an economic incentive to maintain the production and sale of the crude oil from the Unit at lower tier ceiling prices. In view of this determination and on the basis of the operating data which the firm had submitted, the FEA concluded that the exception relief previously granted should be extended to permit Mitchell to sell 21.612 percent of the crude oil produced from the Mitchell State Minnelusa Sand Unit for the benefit of the working interest owners at upper tier ceiling prices for an additional six month period.

Mobil Oil Corp.; New York, N.Y.; FEE–3418 (Cameron), FEE–3419 (Cotton Valley), FEE–3420 (Cow Island-Riverside), FEE–3421 (Delhi), FEE–3422 (Elwood), FEE–3423 (Gulf-Knox), FEE–3424 (Heyser), FEE–3425 (Postle Hough), FEE–3426 (R. M. Stephens), FEE–3427 (Seeligson), FEE–3428 (South Sarepta), FEE–3429 (Union-Adena); Natural Gas Liquids and Products

Mobil Oil Corporation (Mobil) filed Applications for Exception from the provisions of 10 CFR 212.165 which, if granted, would permit the firm to increase the prices it charges to reflect non-product cost increases which the firm has incurred at 12 of its natural gas processing plants. In considering the applications, the FEA noted that, as a general rule, exception relief will be granted to any natural gas processor which can demonstrate that the non-product costs which it has experienced since May 1973 have increased substantially in excess of the $.005 per gallon passthrough for natural gas liquid products and the $.00375 per gallon passthrough for natural gas liquids which are permitted under Section 212.165. The FEA found that Mobil had made such a showing with respect to its 12 gas plants and therefore granted Mobil appropriate exception relief with respect to those plants for the period December 13, 1976 through June 30, 1977.

Mohawk Petroleum Corp., Inc.; Los Angeles, Calif.; FEE–3321; Crude Oil

Mohawk Petroleum Corporation, Inc. (Mohawk) filed an Application for Exception from the provisions of 10 CFR 211.67 (the

Old Oil Entitlements Program) which, if granted, would result in an extension of the exception relief which the FEA granted the firm on June 17, 1976. *Mohawk Petroleum Corp.*, 3 FEA Par. 83,230 (June 17, 1976). In support of its exception request, Mohawk submitted projected financial statements for its current fiscal year ending December 31, 1976 and projected monthly crude oil runs to stills and receipts of old, new and imported crude oil for its current fiscal year. In considering Mohawk's exception request the FEA determined that in the absence of exception relief the firm would be required to purchase entitlements at a substantial cost commencing with the month of December 1976. As a result of the projected entitlements cost which Mohawk would incur during its current fiscal year, the firm's profit margin and return on invested capital would be below historical levels. Based on the material which Mohawk submitted a further determination was made that exception relief also appeared appropriate for the initial months of the firm's 1977 fiscal year beginning on January 1, 1977. Under the criteria set forth in *Beacon Oil Co.*, 3 FEA Par. 83,209 (June 8, 1976); and *Delta Refining Co.*, 2 FEA Par. 83,275 (September 11, 1975), exception relief was therefore warranted. Accordingly, the FEA granted Mohawk's Application for Exception relieving the firm of sufficient entitlement purchase obligations during the six month period December 1976 through May 1977 to account for its crude oil runs to stills and old oil receipts during the period October 1976 through March 1977, to permit Mohawk to achieve its historical profit margin during the current fiscal year. However, the FEA noted in the Decision which it issued that the relief approved would be reevaluated if the firm requested an extension of exception relief beyond May 1977, and also at the conclusion of the firm's current fiscal year. The decision further noted that an adjustment will be made and Mohawk will be required to purchase or sell additional entitlements if it received excessive or insufficient benefits in the past because of a discrepancy between the financial projections it submitted and the actual financial results which it achieves.

Navajo Refining Co.: Artesia, N. Mex.; FEE–3400; Crude Oil

Navajo Refining Company (Navajo) filed an Application for Exception from the provisions of 10 CFR 211.67 (the Old Oil Entitlements Program) which, if granted, would result in an extension of the exception relief which the FEA granted the firm on November 17, 1976. *Navajo Refining Co.*, 4 FEA Par. ---- (November 17, 1976). In support of its exception request, Navajo submitted projected financial statements for its current fiscal year ending July 31, 1977 and projected monthly crude oil runs to stills and receipts of old, new and imported crude oil for its current fiscal year. In considering Navajo's exception request the FEA determined that in the absence of exception relief the firm would be required to purchase entitlements at a substantial cost commencing with the month of December 1976. As a result of the projected entitlements cost which Navajo would incur during its current fiscal year, the firm's profit margin and return on invested capital would be below historic levels. Under the criteria set forth in *Beacon Oil Co.*, 3 FEA Par. 83,209 (June 8, 1976); and *Delta Refining Co.*, 2 FEA Par. 83,275 (September 11, 1975), exception relief was therefore warranted. Accordingly, the FEA granted Navajo's Application for Exception relieving the firm of any obligation to purchase entitlements during the six month period December 1976 through May 1977 to account for its crude oil runs to stills and old oil receipts during the period October 1976 through March 1977. However, the FEA noted in the Decision which it issued that the relief approved to Navajo would be reevaluated if the firm requested an extension of exception relief beyond May 1977, and also at the conclusion of the firm's current fiscal year. The Decision further noted that an adjustment will be made and Navajo will be required to purchase or sell additional entitlements if it received excessive or insufficient benefits because of a discrepancy between the financial projections it submitted and the actual financial results which it achieves.

W. H. Porter; Midwest City, Okla.; FEE–3087; Crude Oil

W. H. Porter (Porter) filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D. The request, if granted, would permit Porter to sell the crude oil produced from the Kirchmeir Lease (the Lease) at upper tier ceiling prices. In considering the exception application, the FEA found that Porter's production costs exceeded the price which he is permitted to charge for the crude oil which he sells and, consequently, Porter does not have an economic incentive to continue to operate the Lease. The FEA further found that if Porter abandoned the Lease, a substantial quantity of domestic crude oil would not be recovered. On the basis of the criteria which it applied in previous similar cases, the FEA concluded that exception relief should be granted and that Porter should be permitted to sell 42.52 percent of the crude oil produced from the Lease at upper tier ceiling prices for the benefit of the working interest owners.

Rock Island Refining Corp.; Indianapolis, Ind.; FEE–3209; Crude oil

Rock Island Refining Corporation (Rock Island) filed an Application for Exception from the provisions of 10 CFR 211.67 (the Old Oil Entitlemnets Program) in which it requested that the exception relief granted to the firm on September 10, 1976 be extended for an additional period of time. *Rock Island Ref. Corp.*, 4 FEA Par. 83,086 (September 10, 1976). In the September 10 Decision, the FEA determined that exception relief should be granted to Rock Island which reduced its obligation to purchase entitlements during the six month period ending November 30, 1976. That determination was based on an application of the standards for exception relief from the Entitlements Program set forth in *Beacon Oil Co.*, 3 FEA Par. 83,209 (June 8, 1976); and *Delta Refining Co.*, 2 FEA Par. 83,275 (September 11, 1975), to projections which Rock Island submitted as to its financial results and position under the Entitlements Program during the period April 1 through November 30, 1976. In the present proceeding Rock Island submitted actual financial data to replace certain of the projections which it previously furnished. In applying the standards for exception relief set forth in *Beacon* and *Delta* to Rock Island's current financial data the FEA determined that even without further exception relief from the Entitlements Program, the profit margin which Rock Island will attain during the April 1 through November 30, 1976 period will exceed the profit margin which the firm realized during its historical fiscal years 1968 through 1974. Since the *Beacon* and *Delta* standards were designed to prevent the purchase requirements of the Entitlments Program from impairing a small refiner's ability to operate at levels that are below its historical performance and the financial data which Rock Island submitted indicated that this situation would not occur in the absence of further exception relief, the firm's application for additional exception relief from the Entitlements Program was denied.

San Joaquin Refining Co.; Oildale, Calif.; FEE–3240; Crude oil

San Joaquin Refining Company (San Joaquin) filed an Application for Exception from the provisions of 10 CFR 211.67 (the Old Oil Entitlements Program) which, if granted, would result in an extension of the exception relief which the FEA originally granted to San Joaquin on June 18, 1976 which relieved the firm of its obligation to purchase entitlements during the period April through September 1976. *San Joaquin Refining Co.*, 3 FEA Par. 83,234 (June 18, 1976). In support of its current exception request, San Joaquin submitted projected financial statements for its current fiscal year ending April 30, 1977 and projected monthly crude oil runs to stills and receipts of old, new and imported crude oil for its current fiscal year. In considering San Joaquin's request, the FEA determined that in the absence of exception relief, San Joaquin would be required to purchase entitlements at a substantial cost commencing with the month of December 1976. As a result of the projected entitlements cost which San Joaquin would incur during its current fiscal year, the firm's profit margin and return on invested capital would be below historical levels. Under the criteria set forth in *Beacon Oil Co.*, 3 FEA Par. 83,209 (June 8, 1976); and *Delta Refining Co.*, 2 FEA Par. 83,275 (September 11, 1975), an extension of exception relief was warranted. Accordingly, the FEA granted San Joaquin an exception relieving the firm of its obligation to purchase entitlements valued at $400,272 per month during the six month period December 1976 through May 1977 to account for its crude oil runs to stills and old oil receipts during the period October 1976 through March 1977. However, the FEA noted in the Decision which it issued that the relief approved to San Joaquin would be reevaluated if the firm requested an extension of exception relief beyond May, 1977, and also at the conclusion of the firm's current fiscal year. The Decision further noted that an adjustment will be made and San Joaquin will be required to purchase or sell entitlements if it received excessive or insufficient benefits in the past because of a discrepancy between the financial projections it submitted and the actual financial results which it achieves.

E. W. Sauder; Emporia, Kans.; FEE–3090; Crude oil

E. W. Sauder (Sauder) filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D, which if granted, would result in the classification as stripper well leases of two properties which Sauder owned and operated during the period November 1973 through December 1975. In considering Sauder's exception request, the FEA noted that in evaluating requests for retroactive exception relief, the FEA has consistently held that retroactive exception relief will be granted only if an applicant, in addition to satisfying the criteria applicable to prospective exception requests, demonstrates compelling reasons why retroactive exception relief is warranted or shows that it would experience an irreparable and severe injury in the absence of retroactive exception relief. After considering the financial data which Sauder submitted, the FEA concluded that Sauder had failed to satisfy the standards for retroactive exception relief. The FEA found that Sauder had not established that he would experience a severe and irreparable financial injury sufficient to imminently jeopardize the financial viability of his operations in the absence of retroactive exception relief, and accordingly denied Sauder's exception request.

Southland Oil Co.; Jackson, Miss.; FEE–3322; Crude oil

Southland Oil Company (Southland) filed an Application for Exception from the provisions of 10 CFR 211.67 (the Old Oil Entitlements Program) which, if granted, would result in an extension of the exception relief which the FEA granted to the firm on September 10, 1976. *Southland Oil Co.*, 4 FEA Par. 83,087 (September 10, 1976). In support of its exception request, Southland submitted projected financial statements for its current fiscal year ending December 31, 1976 and projected monthly crude oil runs to stills and receipts of old, new and imported crude oil for its current fiscal year. In considering Southland's exception request, the FEA determined that in the absence of exception relief the firm would be required to purchase entitlements at a substantial cost commencing with the month of December 1976. As a result of the projected entitlements cost which Southland would incur during its current fiscal year, the firm's profit margin and return on invested capital would be below historical levels. Under the criteria set forth in *Beacon Oil Co.*, 3 FEA Par. 83,209 (June 8, 1976); and *Delta Refining Co.*, 2 FEA Par. 83,275 (September 11, 1975), exception relief was therefore warranted. Accordingly, the FEA granted Southland exception relief reducing by $994,663 per month the firm's obligation to purchase entitlements during the six month period December 1976 through May 1977 to account for its crude oil runs to stills and old oil receipts during the period October 1976 through March 1977. However, the FEA noted in the Decision which it issued that the relief approved to Southland would be reevaluated if the firm requested an extension of exception relief beyond May, 1977, and also at the conclusion of the firm's current fiscal year. The Decision further noted that an adjustment will be made and Southland will be required to purchase or sell entitlements if it received excessive or insufficient benefits in the past because of a discrepancy between the financial projections it submitted and the actual financial results which it achieves.

Standard Oil Co. of California; San Francisco, Calif.; FEE–3343 (Birch Creek), FEE–3344 (21E Booster), FEE–3345 (Calumet), FEE–3346 (Carpinteria), FEE–3347 (Colonia Booster), FEE–3348 (Cymric), FEE–3349 (Greeley System), FEE–3350 (Hagood), FEE–3351 (Huntington Beach), FEE–3352 (Indian Basin), FEE–3353 (Kermit), FEE–3354 (Laperouse), FEE–3355 (Lisbon Valley), FEE–3356 (Murphy Coyote), FEE–3357 (Reserve-No. Tejon), FEE–3358 (Red Wash), FEE–3359 (Sherman), FEE–3360 (Sivells Bend), FEE–3361 (So. Coles Levee), FEE–3362 (S. E. Marietta), FEE–3363 (Stevens Calidon), FEE–3364 (Swanson River), FEE–3365 (Wilson Creek), FEE–3366 (Yates); Natural gas liquid products

Standard Oil Company of California (SOCAL) filed Applications for Exception from the provisions of 10 CFR 212.165 which, if granted, would permit the firm to increase the prices it charges to reflect non-product cost increases which the firm has incurred at 24 of its natural gas processing plants. In considering the Applications, the FEA noted that, as a general rule, exception relief will be granted to any natural gas processor which can demonstrate that the non-product costs which it has experienced since May 1973 have increased substantially in excess of the $.005 per gallon passthrough for natural gas liquid products which is permitted under Section 212.165. The FEA found that SOCAL has made such a showing with respect to 21 of the 24 plants and therefore granted SOCAL appropriate exception relief with respect to those plants. However, the FEA denied exception relief for the remaining three plants on the grounds that the non-product cost increases experienced at those plants were not materially in excess of $.005 per gallon.

Sunland Refining Corp.; Los Angeles, Calif.; FEE–3234; Crude oil

Sunland Refining Corporation (Sunland) filed an Application for Exception from the provisions of 10 CFR 211.67 (the Old Oil Entitlements Program) which, if granted, would result in an extension of the exception relief which the FEA originally granted to Sunland on June 14, 1976 which relieved the firm of its obligation to purchase entitlements during the period April through September 1976. Sunland Refining Co., 3 FEA Par. 83,236 (June 14, 1976). In support of its current exception request, Sunland submitted projected financial statements for its current fiscal year ending December 31, 1976 and projected monthly crude oil runs to stills and receipts of old, new and imported crude oil for its current fiscal year. In considering Sunland's request, the FEA determined that in the absence of exception relief, Sunland would be required to purchase entitlements at a substantial cost commencing with the month of December 1976. As a result of the projected entitlements cost which Sunland would incur during its current fiscal year, the firm's profit margin and return on invested capital would be below historical levels. Under the criteria set forth in *Beacon Oil Co.*, 3 FEA Par. 83,209 (June 8, 1976); and *Delta Refining Co.*, 2 FEA Par. 83,275 (September 11, 1975), an extension of exception relief was warranted. Accordingly, the FEA granted Sunland an exception relieving the firm of its obligation to purchase entitlements valued at $798,180 per month during the six month period December 1976 through May 1977 to account for its crude oil runs to stills and old oil receipts during the period October 1976 through March 1977. However, the FEA noted in the Decision which it issued that the relief approved to Sunland would be reevaluated if the firm requested an extension of exception relief beyond May, 1977, and also at the conclusion of the firm's current fiscal year. The Decision further noted that an adjustment will be made and Sunland will be required to purchase or sell entitlements if it received excessive or insufficient benefits in the past because of a discrepancy between the financial projections it submitted and the actual financial results which it achieves.

The Eagle Oil Co.: Columbus, Ohio: FXE–3469; Motor Gasoline

On September 27, 1976, the Federal Energy Administration granted an exception to The Eagle Oil Company on the grounds that the application of the provisions of 10 CFR 211.9 resulted in a serious hardship to the firm. *The Eagle Oil Co.*, 4 FEA Par. 83,121 (September 27, 1976). In that Order, the Regional Administrator for the FEA, Region V, was directed to assign Eagle a supplier or suppliers for the months of November and December 1976 whose price for motor gasoline was within the range of prices paid by major marketers for such product in Eagle's marketing area. The Order specified that the assigned supplier(s) was to be required to furnish Eagle with 65 percent of its base period use of motor gasoline during this period. The Order further provided that the Regional Administrator, upon receiving a written request from Eagle for an extension of exception relief shall (i) make a determination for any month subsequent to December 1976 as to whether Eagle would continue to incur a serious hardship in the absence of further exception relief; and (ii) make a recommendation to the National Office of Exceptions and Appeals regarding the need for an additional assignment. Based upon the data which Eagle submitted to the Regional Administrator and the recommendation of the Regional Administrator, the FEA determined that adherence to the base period supplier/purchaser relationship with respect to motor gasoline would continue to result in a serious hardship to the firm. Accordingly, the exception relief which had previously been granted to Eagle was extended for the months of January, February, and March 1977.

The Permian Corp.: Houston, Texas, FEE–3401 (Possum Kingdom), FEE–3402 (Todd Ranch); Natural Gas Liquids and Products

The Permian Corporation (Permian) filed Applications for Exception from the provisions of 10 CFR 212.165 which, if granted, would permit Permian to increase the selling prices of natural gas liquids and natural gas liquid products it charges to reflect non-product cost increases which the firm has incurred at its Possum Kingdom and Todd Ranch natural gas processing plants. In considering the applications, the FEA noted that, as a general rule, exception relief will be granted to any natural gas processor which can demonstrate that the non-product costs which it has experienced since May 1973 have increased substantially in excess of the $.00375 per gallon passthrough for natural gas liquids and the $.005 per gallon passthrough for natural gas liquid products which are permitted under Section 212.165. The FEA found that Permian had made such a showing and therefore granted Permian appropriate exception relief with respect to those two gas plants for the period December 13, 1976 through June 30, 1977.

United Refining Co.: Texas American Oil Corp.; Washington, D.C. FEE–2948; Crude oil; refined products

The United Refining Company (United) and Texas American Oil Corporation (TAO) filed a joint submission in which they requested various types of administrative relief in order to facilitate the proposed acquisition by TAO of United's Osceola refinery and associated marketing operations. In the Decision which it issued the FEA noted that the Mandatory Petroleum Allocation and Price Regulations are not specifically designed to apply to unusual conditions arising from the purchase and sale of a refinery. Consequently, the many issues involved in the proposed transaction were consolidated for evaluation through the exceptions process. With respect to the request that various types of relief be made retroactive to the effective date specified in the firms' Purchase Agreement, the FEA found that United and TAO failed to demonstrate that they were unable to negotiate an agreement to delay the effective date of transfer until after the FEA reached a determination on their application. The FEA therefore determined that any relief in this case should be granted on a prospective basis only. Based on the material submitted by United and TAO and the precedents established in prior decisions involving refinery acquisitions, the FEA determined that TAO should be permitted to compute its maximum allowable prices for refined products by using the May 15, 1973 prices which United charged at the Osceola refinery. Similarly, United was required to exclude from its calculation of maximum allowable prices the May 15, 1973 prices and May 1973 costs of the Osceola refinery. The FEA also determined that a portion of United's unrecouped product and non-product costs should be allocated to

TAO but that the method of allocation proposed by the firms should be modified to permit TAO to assume a portion of United's "banks" based on the ratio between United's gasoline sales from the Osceola refinery within the twelve month period immediately preceding the acquisition and United's total gasoline sales in that period.

In considering the firm's proposed treatment of the revenues involved in the purchase and sale of the Osceola product inventories, the FEA found that the method prescribed in the firms' Purchase Agreement would permit United to receive a price from TAO which could include a margin in excess of United's laid-in cost of the inventories and that, contrary to the intent of the Emergency Petroleum Allocation Act, this method could result in a double recovery of costs which could be reflected in increased prices to TAO's customers. The FEA therefore approved exception relief which permitted the transfer from United to TAO of all product and non-product costs incurred at the Osceola refinery in the month preceding the refinery sale, and required United to exclude those costs from its calculations for purposes of Section 212.93. The FEA also granted United an exception from the equal application rule with respect to the revenues it receives from the sale of the Osceola inventories to TAO.

With respect to the issues presented by the firms involving the allocation of refined products, the FEA determined that in order to avoid a disruption in the Osceola refinery operations and supply dislocations to purchasers of refined products from the refinery: (i) United should be permitted to sell the Osceola product inventories to TAO without including them in its allocable supply; (ii) United's base period relationships with purchasers of products refined at the Osceola refinery should be terminated and TAO should be assigned to supply those purchasers; and (iii) United's rights to purchase refined products from its base period suppliers should be transferred to TAO. In addition, the FEA concluded that TAO should be permitted to participate immediately in the Old Oil Entitlements Program by beginning to earn entitlements with respect to the crude oil runs and receipts at the Osceola refinery during the month in which the refinery acquisition is consummated or the month in which this Decision and Order is issued, whichever is later. However, in order to avoid windfall benefits to United or price distortions in the selling prices charged to the customers of the Osceola refinery, United was required to remit to TAO the revenues which it receives from the sale of entitlements with respect to the Osceola facility during the two months prior to the time TAO begins earning entitlements. Consequently, the firms' submission was granted in part and denied in part.

Warrior Asphalt Co.; of Alabama, Inc.; Tuscaloosa, Ala.; FEE–3224; Crude Oil

Warrior Asphalt Company of Alabama, Inc. (Warrior) filed an Application for Exception from the provisions of 10 CFR 211.67 (the Old Oil Entitlements Program) in which it requested that the exception relief granted to the firm on June 17, 1976 be extended for an additional period of time. *Warrior Asphalt Co. of Alabama, Inc.*, 3 FEA Par. 83,237 (June 17, 1976). In the June Decision, the FEA determined that in order to alleviate the serious hardship which Warrior would experience as a consequence of the Entitlements Program, exception relief should be extended which would relieve the firm of any obligation to purchase entitlements during the months of June through November 1976. In considering Warrior's request for extension of exception relief, the FEA applied the criteria set forth in *Beacon Oil Co.*, 3 FEA Par. 83,209 (June 8, 1976); and *Delta Ref. Co.*, 2 FEA Par. 83,275 (September 11, 1975), to the Warrior submission. Based on the financial data which Warrior furnished, the FEA determined that even in the absence of further exception relief, Warrior would realize a profit margin in its current fiscal year which exceeds its historical profit margin. The FEA therefore concluded that Warrior failed to demonstrate that the application to it of the provisions of Section 211.67 results in a serious hardship or gross inequity. Accordingly, the exception request was denied.

Young Refining Corp.; Douglasville, Ga.; FEE–3258; Crude Oil

Young Refining Corporation (Young) filed an Application for Exception from the provisions of 10 CFR 211.67 (the Old Oil Entitlements Program) which, if granted, would result in an extension of the exception relief which the FEA originally granted to the firm on July 18, 1976. *Young Refining Co.*, 3 FEA Par. 83,239 (July 18, 1976). In support of its exception request, Young submitted projected financial statements for its current fiscal year ending March 31, 1977 and projected monthly crude oil runs to stills and receipts of old, new and imported crude oil for its current fiscal year. In considering Young's exception request the FEA determined that as a result of Young's crude oil runs and receipts during the current fiscal year, the firm would be required to purchase entitlements at a substantial cost commencing with the month of December 1976. As a result of the projected entitlements cost which Young would incur during its current fiscal year, the firm's profit margin and return on invested capital would be below historical levels. Based on the material which Young submitted, a further determination was made that exception relief also appeared appropriate for the initial months of the firm's 1978 fiscal year beginning on April 1, 1977. Under the criteria set forth in *Beacon Oil Co.*, 3 FEA Par. 83,209 (June 8, 1976); and *Delta Refining Co.*, 2 FEA Par. 83,275 (September 11, 1975), exception relief was therefore warranted. Accordingly, the FEA granted Young's Application for Exception relieving the firm of any obligation to purchase entitlements during the six-month period December 1976 through May 1977 to account for its crude oil runs to stills and old oil receipts during the period October 1976 through March 1977. However, the FEA noted in the Decision which it issued that the relief approved to Young would be reevaluated if the firm requested an extension of exception relief beyond May 1977, and also at the conclusion of the firm's current fiscal year. The Decision further noted that an adjustment will be made and Young will be required to purchase or sell additional entitlements if it received excessive or insufficient benefits in the past because of a discrepancy between the financial projections it submitted and the actual financial results which it achieves.

REQUESTS FOR STAY

Inexco Oil Co.; Houston, Tex.; FES–3456; Crude Oil

The Inexco Oil Company filed an Application for Stay of the provisions of 10 CFR 212.131(a)(3) which require a producer of crude oil from an unitized property to make certain written certifications to purchasers of crude oil from that property by November 30, 1976. Inexco requested a stay of the certification requirement with respect to the crude oil it produces and sells from unitized properties in the Redell Field in Louisiana, the Hilight Field in Wyoming, and the Brandon Field in Colorado pending a determination on the firm's application for Exception from Section 212.131(a)(3). In considering the stay request, the FEA found that each of Inexco's unitized properties in the Redell, Hilight, and Brandon Fields has an effective date of unitization prior to August 29, 1974. Accordingly, under a literal reading of the FEA Regulations, the properties would have a unit base production control level (unit BPCL) of zero—a result which was clearly not intended by the FEA when it promulgated Section 212.75 which provides for the determination of upper tier crude oil from unitized properties. In view of the substantial difficulty of correctly applying the definition of unit BPCL to Inexco's unitized properties in these three fields, the FEA determined that the certification requirement should be stayed with respect to those properties pending clarification of the manner in which Section 212.75 applies under the factual circumstances presented in this case.

Minnesota Gas Co.; Minneapolis, Minn.; FES–1071; Propane

Minnesota Gas Company (Minnegasco) requested that a Remedial Order which had been issued to the firm on November 24, 1976 be stayed pending a final determination of the firm's Appeal from that Order. The Remedial Order determined that Minnegasco had sold propane to its retail customers at prices which exceeded the maximum permissible price levels specified in 10 CFR 212.93 and directed the firm to (i) compile customer, sales and price data for the audit period and for the period November 1974 to the date of issuance of the Order, (ii) refund $97,397.91 plus interest to certain retail propane customers, and (iii) compute its maximum lawful selling price in accordance with the guidelines provided in the Order for all future retail sales of propane. On the basis of the principles previously established in *General Crude Oil Co.*, 3 FEA Par. 85,040 (June 25, 1976), *modified*, 3 FEA Par. 85,040 (July 8, 1976), the FEA concluded that a stay should be granted to Minnegasco with regard to the refund and data compilation provisions of the Remedial Order. The FEA further concluded, however, that, in accordance with the considerations discussed in *General Crude*, the stay should be conditioned upon Minnegasco's establishment of an escrow account into which it is required to place the amount of the refunds contemplated by the Remedial Order. The provision of the Remedial Order which requires Minnegasco immediately to reduce its current selling prices to lawful levels was not stayed since Minnegasco did not claim that this provision would be inordinately difficult to comply with or that it would cause irreparable and severe injury to the firm.

SUPPLEMENTAL ORDER

Pasco, Inc., New York, N.Y.; FEX–0092; Crude Oil

On June 18, 1976, Pasco, Inc. (Pasco) was granted an exception from the provisions of 10 CFR 211.67 which reduced the firm's entitlement purchase obligation for the period April through September 1976. *Pasco, Inc.*, 3 FEA Par. 83,232 (June 18, 1976). However, following Pasco's sale on July 1, 1976 of its entire refining and marketing operations, the FEA revoked the exception relief extended in the June 18 Order with respect to the months following the firm's divestiture. *Pasco, Inc.*, 4 FEA Par. 87,006 (August 11, 1976). On December 1, 1976, Pasco requested that the FEA review the exception relief from the Entitlements Program provided to the firm in 1976 so that Pasco could account for any obligation arising from that review in its pending liquidation proceeding. In its review, the FEA determined that Pasco had received a greater measure of relief than was necessary to enable the firm to attain its historical profit margin for the appropriate portion of its 1976 fiscal year. Pasco was therefore required to purchase entitlements to offset the excessive exception relief which it had obtained.

DISMISSALS

The following submissions were dismissed following a statement by the applicant indicating that the relief requested was no longer needed:

Marion Corp.; Wash., D.C.; FEA–1010
Molloy Manufacturing Co.; Fraser, Mich.; FEE–3387

The following submissions were dismissed on the grounds that alternative regulatory procedures existed under which relief might be obtained:

Petrochemical Energy Group; Wash., D.C.; FEA–1037

Western Stations; Portland, Oreg.; FSG–0032

The following submissions were dismissed on the grounds that the requests are now moot:

Great Atlantic & Pacific Aeroplane Co., Van Nuys, Calif.; FEE–3518, FEE–3519

Copies of the full text of these Decisions and Orders are available in the Public Docket Room of the Office of Private Grievances and Redress, Room B–120, 2000 M Street, NW., Washington, D.C. 20461, Monday through Friday, between the hours of 1 p.m. and 5 p.m., e.s.t., except Federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

DAVID G. WILSON,
Acting General Counsel.

JANUARY 24, 1977.

[FR Doc.77–2756 Filed 1–25–77;9:43 am]

FEDERAL MARITIME COMMISSION

COMBI LINE AND TECOMAR, S.A.

Agreement Filed

Notice is hereby given that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1100 L Street, N.W., Room 10126; or may inspect the agreement at the Field Offices located at New York, N.Y., New Orleans, Louisiana, San Francisco, California and San Juan, Puerto Rico. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C., 20573, on or before February 17, 1977. Any person desiring a hearing on the proposed agreement shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. **An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.**

A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the statement should indicate that this has been done.

COMBI LINE AND TECOMAR, S.A.

Notice of agreement filed by:

Ralph Rugan, Jr., Biehl & Company, Inc., 416 Common Street, New Orleans, Louisiana 70130.

Agreement No. 10279 among the abovenamed parties is an equipment interchange agreement applicable to the services of the parties between the United States and Mexico.

Dated: January 24, 1977.

By order of the Federal Maritime Commission.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.77–2880 Filed 1–27–77;8:45 am]

FEDERAL POWER COMMISSION

[Docket No. CP77–126]

COLUMBIA GAS TRANSMISSION CORP.

Order Authorizing Limited Term Importation of Natural Gas

JANUARY 18, 1977.

On January 18, 1977, Columbia Gas Transmission Corporation (Columbia) filed in Docket No. CP77–126 an application pursuant to Section 3 of the Natural Gas Act for authorization to import natural gas from Canada to the United States for a sixty-day term for use in its general system supply to meet the needs of its customers, all as more fully set forth in the application.

Columbia proposes to import 250,000 Mcf of gas per day from Canada for a sixty-day period to be purchased from TransCanada Pipelines, Ltd. (TransCanada), and delivered by TransCanada to Great Lakes Gas Transmission Company (Great Lakes) through existing authorized facilities at the international boundary at Emerson, Manitoba for the account of Columbia.

Great Lakes will transport and deliver this gas to Michigan Wisconsin Pipe Line Company (Mich-Wisc) at Crystal Falls, Michigan. The arrangements for the remaining transportation and displacement of gas have not been finalized according to Columbia; however, it is tentatively contemplated that Mich-Wisc would redeliver 195,000 Mcf of gas per day to Columbia Gulf Transmission Company (Columbia Gulf), an affiliate of Columbia, at various points of intersection between Mich-Wisc and Columbia Gulf in Louisiana offshore and onshore. The remaining 55,000 Mcf per day would be delivered by Mich-Wisc to Natural Gas Pipeline Company of America (Natural) at an intersection between those two systems, and Natural would redeliver an equivalent volume to Columbia Gulf at Erath, Louisiana. Columbia Gulf would deliver all volumes of gas under this arrangement to Columbia's existing facilities in Kentucky.

Columbia proposes to purchase the subject gas from TransCanada at a price of $1.94 per Mcf, the established Canadian export price, with the possibility of an additional payment of up to 25 cents per Mcf to TransCanada for reimbursement of expenses incurred by it and/or its customers for additional compression or storage operations necessary to accommodate the proposed sale. No contract for this purchase was submitted with the application by Columbia pursuant to Section 153.4 of the Commission's Regulations nor has the National Energy Board of Canada (NEB) issued an export license for such gas. In view of the emergency to be addressed, we will waive this requirement; however, the authorization herein granted will be conditioned upon the filing of such contract as required by Section 153.8 of our Regulations. Columbia states that the NEB will permit such exportation of gas but may require a pay-back of this gas to TransCanada between 1980 and 1985, inclusive, in the event there is a shortage of Canadian gas to fulfill contractul commitments under present export licenses issued by the NEB.

In its authorization, Columbia asserts that prompt authorization of this limited term importation and purchase is urgently needed to assist in mitigating the unprecedented emergency gas supply situation over its system. Columbia describes its supply situation as follows: it has experienced unusually cold weather throughout the 1976–1977 heating season to date as determined by heating degree days deficiency (DDD). During the last 16 days of October, Columbia's system experienced weather 91 percent colder than normal. The months of November and December 1976 were 35 percent and 17 percent colder than normal. This trend has continued during the month of January.[1] On November 1, 1976, Columbia imposed a curtailment level of 210 Bcf which equates to a curtailment of 63 percent of Priority 2 of Columbia's 3-priority plan. Due to the cold winter weather, on January 1, 1977, this level was increased to 70 percent of Priority 2 for the remaining 3 winter months. Columbia furthermore indicates that it is experiencing a dramatic drawdown of storage volume which reduces the amount of gas that can be withdrawn from storage on any given day during the remainder of the winter. Columbia expects subsequent to February 1, 1977, for the remainder of the winter daily deficiencies of up to 1,100,000 Mcf of gas under the optimistic forecast of normal weather and a projected flowing gas supply based upon historical temperatures.

[1] The months of October and November were the coldest experiences on Columbia's system in 30 years, and December was the fifth coldest in 30 years.

Columbia's best estimate of additional gas which might be purchased this winter from the intrastate market is 10 Bcf.

The Commission is cognisant of the unprecedented cold weather which has affected the eastern and southern portions of the country including Columbia's service region. On January 14, 1977, in the order issued in Docket No. CP77–116, Houston Pipeline Company, we noted that numerous natural gas pipelines are now facing, or shortly will face, natural gas supply shortfalls to meet high priority loads and that emergency measures are needed to cope with this situation (mimeo p. 2). The application by Columbia for a limited term authorization herein clearly demonstrates that additional gas is needed to assist Columbia in maintaining its ability to render natural gas service to its customers. The Commission reaches no conclusion as to the need of Columbia relative to other pipelines. Viewed in the context of Columbia's needs alone, we shall grant authorization for the proposed importation to the extent possible. The public interest requires that the authorization here issued be conditioned to allow a subsequent evaluation of the relative needs and appropriate response thereto. This authorization will be granted under the broad powers conferred upon the Commission by Sections 3 and 16 of the Natural Gas Act. *Public Service Commission of the State of New York* v. *FPC*, 327 F. 2d 893. *Niagara Mohawk Power Corporation* v. *FPC*, 379 F. 2d 153 (D.C. Cir. 1967).

At a hearing held on January 18, 1977, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) A natural gas supply emergency situation exists on the Columbia Gas Transmission Corporation system which has substantially diminished Columbia's ability to render natural gas service to its high priority customers.

(2) Approval of the proposed importation of gas by Columbia will materially assist in helping to alleviate curtailment of high priority customers and is consistent with the public interest.

(3) It is necessary and appropriate for the purposes of the Natural Gas Act and the Commission's Regulations thereunder to waive the Commission's Regulations as hereinafter provided.

The Commission orders:

(A) Columbia Gas Transmission Corporation is herein authorized to commence the importation of 250,000 Mcf of natural gas per day from Canada for a sixty-day period, as hereinbefore described and as more fully described in the application in Docket No. CP77–126, upon the terms and conditions outlined below.

(B) The authorization hereinabove granted is conditioned upon TransCanada Pipelines, Ltd.'s receiving appropriate authorization from the National Energy Board of Canada for the exportation of natural gas from Canada.

(C) The gas imported under the subject arrangement shall not be used to displace alternate fuel capability or cause other gas to displace alternate fuel capability.

(D) Columbia shall file within 10 days after the initial importation of gas herein its contract for the purchase of such gas with TransCanada and any other contracts which are designed to effectuate the transportation of the imported gas to its intended market.

(E) It could become necessary for Columbia to sell this imported gas, as directed by the Commission, to pipelines with a greater need to protect high priority users. This order is conditioned to allow a subsequent evaluation of the relative needs of Columbia and other natural gas pipelines to the subject gas and appropriate action by the Commission relative thereto.

(F) Pursuant to the provisions of Section 1.7 of the Commission's Rules of Practice and Procedure, the following sections of the Commission's Regulations are hereby waived to facilitate issuance of this order: Section 2.1 of the Commission's General Policy and Interpretations and Section 153.4 of the Commission's Regulations under the Natural Gas Act.

[FR Doc.77–2812 Filed 1–27–77;8:45 am]

GAS POLICY ADVISORY COUNCIL

Meeting Agenda

Supply-Technical Advisory Task Force-Synthesized Gaseous Hydrocarbon Fuels, Conference Room 5200, Federal Power Commission, Union Center Plaza Building, 825 North Capitol Street, NE, Washington, D.C. 20426, February 15, 1977, 9:30 a.m. Presiding: Mr. William J. McCabe, FPC Coordinating Representative and Secretary, Gas Policy Advisory Council.

1. Call to Order and Introductory Remarks, Mr. William J. McCabe.

2. Remarks by Chairman and Vice Chairman, Dr. Alan G. Fletcher, Mr. Charles W. Margolf.

3. Working Session—Subgroup II: Siting and Environment, Mr. Charles W. Margolf:

(a) Review of circulated draft reports.

(b) Prepare draft reports for inclusion in final report.

4. Review of Economic Study, Dr. James J. Harris.

5. Other Business.

6. Adjournment, Mr. William J. McCabe.

This meeting is open to the public. Any interested person may attend, appear before, or file statements with the Committee—which statements, if in written form, may be filed before or after the meeting or if oral, at the time and in the manner permitted by the Committee.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77–3001 Filed 1–26–77;3:55 pm]

[Docket No. CP77–121]

NATURAL GAS PIPELINE CO. OF AMERICA AND UNITED GAS PIPE LINE CO.

Application

JANUARY 21, 1977.

Take notice that on January 10, 1977, Natural Gas Pipeline Company of America (Natural), 122 South Michigan Avenue, Chicago, Illinois 60603, and United Gas Pipe Line Company (United), 700 Milam Street, Houston, Texas 77001, filed in Docket No. CP77–121 a joint application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Natural and United to exchange up to 1,000 Mcf of natural gas per day, and to retain in place and operate facilities required to implement the exchange, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that Natural and United have entered into an exchange agreement dated December 13, 1976, whereby Natuural would deliver up to 1,000 Mcf of natural gas per day purchased from Wynn Miller[1] in the Normanna Area, Bee County, Texas, to United at a point on its Bruni-Junction transmission system in Section 45, Hicks and Hall Cottonfield Addition, Bee County, Texas (Bruni-Junction Delivery Point), and United would deliver equivalent volumes to Natural at the outlet of Getty Oil Company's Normanna Gas Processing Plant, Bee County, Texas (Normanna Redelivery Point). Further, it is stated that the daily exchange volume is to be limited by United's supply at the outlet of the Normanna Gas Processing Plant which is dependent upon United's field supply.

The application states that Natural has constructed and is operating the facilities necessary to connect and measure the gas to be delivered to United at an existing tap connection on United's pipeline at the Bruni-Junction Delivery Point at an estimated cost of $16,825, and commenced deliveries to United on December 29, 1976, pursuant to Letter Order of the Commission dated December 21, 1976. Natural requests authorization to retain these facilities for the long-term exchange proposed herein.

It is stated that the exchange agreement is for a primary period of four years from the date of first delivery and on a month-to-month basis thereafter until canceled by either party.

It is asserted that the exchange agreement between Natural and United is mutually beneficial in that it provides a means for Natural to connect a remote source of gas supply into its system obviating the necessity to construct and operate extensive and/or duplicate facilities, and it enables United to receive gas directly into its transmission system downstream of the Normanna Redelivery Point. It is also asserted that the exchange would have no effect on any other sales or services now rendered nor would there be any change in Applicants' operations occasioned thereby.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 7, 1977, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77–2809 Filed 1–27–77;8:45 am]

[1] Wynn Miller has filed for a small producer certificate pursuant to § 157.40(c) of the Regulations under the Natural Gas Act (18 CFR 157.40(c)), on December 20, 1976, in Docket No. CS77–195.

[Docket No. ER77–140]

PUBLIC SERVICE CO. OF NEW HAMPSHIRE

Filing of Agreement

JANUARY 21, 1977.

Take notice that Public Service Company of New Hampshire (PSNH) on January 10, 1977, tendered for filing as an initial rate schedule a Transmission Contract with Taunton, Massachusetts Municipal Lighting Plant (the Buyer).

PSNH states that under the Contract, PSNH transmitted through its system entitlements of power which the Buyer will be purchasing from Vermont Electric Power Company, Inc.

PSNH requests that the Commission waive the normal 30-day notice requirement and permit the rate schedule to be effective as of November 1, 1976.

According to PSNH, copies of the filing were served upon Taunton Municipal Lighting Plant and the New Hampshire Public Utilities Commission.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before February 3, 1977. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77–2810 Filed 1–27–77;8:45 am]

[Docket No. ER77–141]

PUBLIC SERVICE CO. OF NEW HAMPSHIRE

Filing of Agreement

JANUARY 21, 1977.

Take notice that Public Service Company of New Hampshire (PSNH) on January 10, 1977, tendered for filing as an initial rate schedule a Transmission Contract with New Bedford Gas and Edison Light Company (the Buyer).

PSNH states that under the Contract, PSNH transmitted through its system entitlements of power which the Buyer will be purchasing from Green Mountain Power Corporation.

PSNH requests that the Commission waive the normal 30-day notice requirement and permit the rate schedule to be effective as of November 1, 1976.

According to PSNH, copies of this filing were served upon New Bedford Gas and Edison Light Company and the New Hampshire Public Utilities Commission.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before February 3, 1977. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77–2811 Filed 1–27–77;8:45 am]

[Docket No. RP74–55]

SOUTHERN NATURAL GAS CO.

Order Approving Stipulation and Agreement

JANUARY 19, 1977.

On December 3, 1976, Southern Natural Gas Company (Southern) filed a proposed stipulation and agreement in the above-captioned docket with a motion for approval of the agreement. The proposed agreement would resolve all issues in this proceeding. Southern states that it will move for dismissal with prejudice of its pending appeal in the Fifth Circuit of the Commission's orders of August 20, 1975, and October 17, 1975, in this docket should the proposed agreement be approved. Southern's appeal is designated as *Southern Natural Gas Company* v. *FPC*, 5th Circuit No. 75–4309. For the reasons stated below, the Commission shall approve the proposed agreement.

By order issued January 7, 1974, in this proceeding, the Commission ordered a hearing to determine "the proper transportation charges to be included in the cost of the cushion gas in the Muldon storage project." The Commission affirmed the result reached in the Initial Decision in this proceeding by order dated August 20, 1975, that "Southern be permitted to capitalize only the incremental cost of .3665 cents per Mcf for transporting the cushion gas to storage . . ." The Commission, by Order Denying Rehearing issued October 17, 1975, reaffirmed its earlier ruling. Southern challenged the Commission's treatment in *Southern Natural Gas Company* v. *FPC*, *supra*.

The proposed agreement permits Southern to capitalize certain costs associated with the injection of volumes to Southern's Muldon Storage Field during the period April through June, 1972. First, the difference between the volumes underlying the settlement rates in Docket No. RP70–38 and Southern's actual sales volumes for the period July 1, 1971, through June 30, 1972, was calculated. This difference is 7,670,850 Mcf. Based upon a system average transmission rate, excluding return and taxes, in Docket No. RP70–38 of 10.11¢ per Mcf, the amount of transportation costs for these volumes is $775,523.00. Second, added to this figure is the incremental fuel cost associated with the remaining volumes injected into Muldon Field from April through June, 1972. The remaining volumes were 18,028,150 Mcf with an incremental fuel allowance of $.01126 per Mcf which equals $202,997.00. The total amount to be capitalized in Account 117 under the proposed settlement is $978,520.00. This contrasts with Southern's original request to capitalize $3,906,248, with return and taxes, or $2,598,169, excluding return and taxes.

Southern agrees to move to dismiss with prejudice its pending appeal should the proposed agreement be approved. Based upon its review of the agreement, the Commission believes that it represents a reasonable compromise concerning the amount in controversy here. Should the Fifth Circuit grant Southern's motion to dismiss with prejudice,

this proceeding will be terminated. Accordingly, the Commission believes good cause exists to approve the proposed agreement.

The Commission orders: (A) The proposed stipulation and agreement filed by Southern on December 3, 1976, and incorporated by reference herein, is hereby approved.

(B) The Secretary shall cause prompt publication of this order to be made in the FEDERAL REGISTER.

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-2813 Filed 1-27-77;8:45 am]

[Docket No. RP77-28]

SOUTHERN NATURAL GAS CO.

Application

JANUARY 26, 1977.

Take notice that on January 19, 1977, Southern Natural Gas Company (Applicant), P.O. Box 2563, Birmingham, Alabama 35202, filed in Docket No. RP77-28 an application pursuant to Section 7 of the Natural Gas Act for authorization for the purchase of 540,000 gallons of propane per day for a period of 60 days, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that Applicant is currently curtailing Priority 1 consumers on its system by 9 percent because of unprecedented cold weather. Further, it is stated that many of Applicant's customers are taking gas in excess of the gas allocated to them by Southern which puts an additional strain on Applicant's gas supply.

Applicant proposes to purchase propane from Enterprise Products Company (Enterprise) in the amount of 540,000 gallons per day for a period of 60 days for injection into its system. Applicant states that such propane is stored near Petal, Mississippi, and would be moved by truck and injected into Applicant's pipeline system at its Pearl River Compressor Station.

It is stated that these volumes of propane, the equivalent of approximately 50,000 Mcf of natural gas per day, would be sold to Applicant for approximately 32 cents per gallon, the controlled price of the Federal Energy Administration, and would equate to an equivalent price of approximately $3.46 per Mcf of natural gas. Applicant states that it requests advance authority to track these costs into the deferred account of its purchased gas adjustment, Section 17 of the General Terms and Conditions of its FPC Gas Tariff.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 8, 1977, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-3602 Filed 1-27-77;8:45 am]

SUN OIL CO., ET AL.

Amended Petition For Special Relief

JANUARY 25, 1977.

Sun Oil Company, Docket No. RI76-117; Anadarko Production Company, Docket No. RI76-119; Northern Michigan Exploration Company, Docket No. RI76-132; Clark Oil Production Company, Docket No. RI76-133; Diamond Shamrock Corporation, Docket No. RI 76-135.

Take notive that on January 14, 1977, Clark Oil Producing Company (Petitioner), 601 Jefferson, Houston, Texas 77002, filed a proposed settlement agreement in the above-captioned dockets which amends its petition for special relief filed June 24, 1976,[1] for natural gas produced in waters more than 250 feet deep, pursuant to Section 2.56a(g)(2) of the Commission's Rules of Practice and Procedure. By this amendment petitioner seeks a flat rate of approximately $1.57 per Mcf, commencing February 1, 1977, for all gas attributable to its 15 percent working interest in West Cameron Block 639, Offshore Louisiana. Petitioner, on the basis of the record submitted to date, was seeking a comparable rate of approximately $2.26.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than 15 days for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said application should on or before February 7, 1977, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-2807 Filed 1-27-77;8:45 am]

[1] Notice issued July 9, 1976. Published in the FEDERAL REGISTER on July 19, 1976 at 41 FR 29750.

[Docket No. CI77-220]

TEXACO INC.

Application

JANUARY 25, 1977.

Take notice that on January 14, 1977, Texaco Inc. (Applicant), P.O. Box 2420, Tulsa, Oklahoma, 74102, filed in Docket No. CI77-220 an application pursuant to Section 7(c) of the Natural Gas Act for a limited-term certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce to Michigan-Wisconsin Pipeline Company (Mich-Wis) from the Cupp "D" Unit 1, Beckham County, Oklahoma, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it commenced the sale of natural gas to Mich-Wis on January 1, 1977, within the contemplation of Section 157.29 of the Regulations under the Natural Gas Act (18 CFR 157.29) and that it proposes to continue said sale for a period not to exceed six months, or until Applicant is able to begin the sale to the alternate and originally intended purchaser, whichever date is earlier. The contractually agreed initial rate for the gas is $1.44 per Mcf (at 14.73 psia), exclusive of all State or Federal production, severance or similar taxes; the escalation provided in subsection (a)(2) of Section 2.56a of the Regulations; and the quality and pressure conditions as set forth in the contract.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than 10 days for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said application should on or before February 4, 1977, file with the Federal Power Commission, Washington, D.C., 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc.2806 Filed 1-27-77;8:45 am]

FEDERAL RESERVE SYSTEM

FEDERAL OPEN MARKET COMMITTEE

Domestic Policy Directive of December 20-21, 1976

In accordance with § 271.5 of its rules regarding availability of information, there is set forth below the Committee's Domestic Policy Directive issued at its meeting held on December 20-21, 1976.[1]

The information reviewed at this meeting suggests that growth in real output of goods and services in the fourth quarter has remained at about the reduced pace of the third quarter. In both October and November retail sales increased substantially. Industrial production rose appreciably in November—following 2 months of decline—in large part as a result of termination of strikes in two major industries, although advances in output were widespread among other industries. Employment in manufacturing also recovered from the effects of strikes. According to household survey data, the gain in total employment was large, but the unemployment rate increased from 7.9 to 8.1 per cent as the civilian labor force—which had changed little over the preceding 3 months—increased considerably. The wholesale price index for all commodities rose as much in November as in October, reflecting another substantial increase in average prices of industrial commodities; average prices of farm products and foods changed little. The advance in the index of average wage rates over recent months has remained below the rapid rate of increase during 1975.

The average value of the dollar against leading foreign currencies has declined slightly in recent weeks. The pound sterling and also the currencies associated in the European "snake" arrangement strengthened against the U.S. dollar, while the Canadian dollar depreciated sharply. In October the U.S. foreign trade deficit remained substantial.

M-1, which had expanded sharply in October, was unchanged in November. Although growth in M-2 and M-3 moderated, it remained substantial as inflows of the time and savings deposits included in these broader aggregates continued strong. Interest rates have declined appreciably in recent weeks. In late November Federal Reserve discount rates were reduced from 5½ to 5¼ per cent, and in mid-December member bank reserve requirements were lowered somewhat.

In light of the foregoing developments, it is the policy of the Federal Open Market Committee to foster financial conditions that will encourage continued economic expansion, while resisting inflationary pressures and contributing to a sustainable pattern of international transactions.

To implement this policy, while taking account of developments in domestic and international financial markets, the Committee seeks to maintain prevailing bank reserve and money market conditions over the period immediately ahead, provided that monetary aggregates appear to be growing at about the rates currently expected.

By order of the Federal Open Market Committee, January 21, 1977.

ARTHUR L. BROIDA,
Secretary.

[FR Doc.77-2761 Filed 1-27-77;8:45 am]

[1] The Record of Policy Actions of the Committee for the meeting of December 20-21, 1976, is filed as part of the original document. Copies are available on request to the Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

FEDERAL TRADE COMMISSION

[File No. 772 3015]

BRYSON IMPLEMENT CO., ET AL.

Consent Agreement with Analysis to Aid Public Comment

Correction

In FR Doc. 77-1252, appearing at page 3027, in the issue for Friday, January 14, 1977, the following changes should be made:

On page 3028, the eleventh line from the bottom of the first column should read "amended, 15 U.S.C. 1601-65(a), (Supp. IV,".

On page 3028, in the second column, the sixth line of the third complete paragraph should read "to the place for the customer's signature on".

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

ADVISORY COMMITTEE

Meeting

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also sets forth a summary of the procedures governing committee meetings and methods by which interested persons may participate in open public hearings conducted by the committees and is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)), and the FDA regulations, 21 CFR Part 2, Subpart D, relating to advisory committees. The following advisory committee meeting is announced:

Committee name	Date, time, and place	Type of meeting and contact person
Subcommittee of the Obstetries and Gynecology Advisory Committee.	Feb. 25, 9 a.m., Conference Room A, Parklawn Bldg., 5600 Fishers Lane, Rockville, Md.	Open public hearing 9 a.m. to 10 a.m.; open committee discussion 10 a.m. to 5 p.m.; A. T. Gregoire, Ph. D. (HFD-130), 5600 Fishers Lane, Rockville, Md. 20857, 301-443-3510.

General function of the committee. Reviews and evaluates available data concerning safety and effectiveness of marketed and investigational prescription drugs for use in the practice of obstetrics and gynecology.

Agenda—Open public hearing. Any interested person may present data, information, or views, orally or in writing, on issues pending before the committee.

Open committee discussion. The revision of guidelines for the clinical testing of systemic contraceptive products.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairman determines will facilitate the committee's work.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this FEDERAL REGISTER notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairman's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

A list of committee members and summary minutes of meetings may be obtained from the Public Records and Documents Center (HFC-18), 5600 Fishers Lane, Rockville, MD 20857, between the hours of 9 a.m. and 4 p.m., Monday through Friday. The FDA regulations relating to public advisory committees may be found in 21 CFR Part 2, Subpart D, published in the FEDERAL REGISTER of November 26, 1976 (41 FR 52148).

Dated: January 19, 1977.

JOSEPH P. HILE,
Associate Commissioner for Compliance.

[FR Doc.77-2403 Filed 1-21-77;1:10 p.m.]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

ADVISORY COMMITTEES

Meeting

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also sets forth a summary of the procedures governing committee meetings and methods by which interested persons may participate in open public hearings conducted by the committees and is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770–776 (5 U.S.C. App. I)), and the FDA regulations, 21 CFR Part 2, Subpart D, relating to advisory committees. The following advisory committee meeting is announced:

Committee name	Date, time, and place	Type of meeting and contact person
Hemorrhoidal Panel.	Feb. 20 and 21, 9 a.m., Concord Room, Mayflower Hotel, 1127 Connecticut Ave. NW., Washington, DC.	Open committee discussion Feb. 20, 9 a.m. to 4:30 p.m.; open public hearing Feb. 21, 9 a.m. to 10 a.m.; open committee discussion Feb. 21, 10 a.m. to 4:30 p.m.; Thomas D. DeCillis, (HFD–510), 5600 Fishers Lane, Rockville, Md. 20857, 301–443–4960.

General function of the committee. Reviews and evaluates available data concerning the safety and effectiveness of nonprescription drug products.

Agenda—Open public hearing. Any interested person may present data, information, or views, orally or in writing, on issues pending before the committee.

Open committee discussion. The panel will review data submitted pursuant to the over-the-counter (OTC) review's call for data for this panel (see also 21 CFR 330.10(a)(2)).

The panel will be reviewing, voting upon, and modifying the content of summary minutes and categorization of ingredients and claims.

The panel will be reviewing, voting upon, and modifying its draft report in preparation for submission to the Commissioner.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairman determines will facilitate the committee's work.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this FEDERAL REGISTER notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairman's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

A list of committee members and summary minutes of meetings may be obtained from the Public Records and Documents Center (HFC–18), 5600 Fishers Lane, Rockville, MD 20857, between the hours of 9 a.m. and 4 p.m., Monday through Friday. The FDA regulations relating to public advisory committees may be found in 21 CFR Part 2, Subpart D, published in the FEDERAL REGISTER of November 26, 1976 (41 FR 52148).

Dated: January 25, 1977.

JOSEPH P. HILE,
Associate Commissioner for Compliance.

[FR Doc.77–2938 Filed 1–27–77;8:45 am]

[Docket No. 76N–0339; DESI 10598]

ANTIEMETIC COMBINATION PREPARATION

Opportunity for Hearing on Proposal to Withdraw Approval of Pertinent Parts of the New Drug Application

In a notice (DESI 10598) published in the FEDERAL REGISTER of July 8, 1972 (37 FR 13489), the Food and Drug Administration (FDA) announced its conclusion that the drug product described below is possibly effective for nausea and vomiting of pregnancy. On May 15, 1974 (39 FR 17343), a notice was published in the FEDERAL REGISTER permitting the drug to remain on the market pending completion and review of clinical studies to determine its effectiveness. An additional clinical study was submitted, but FDA has determined that it does not provide substantial evidence of effectiveness for the combination product. This notice announces that conclusion and proposes to withdraw approval of the product. Persons wishing to request a hearing may do so on or before February 28, 1977.

NDA 10–598; That part pertaining to Bendectin Tablets containing dicyclomine hydrochloride, doxylamine succinate, and pyridoxine hydrochloride; Merrell-National Laboratories, Division of Richardson-Merrell, Inc., 110 East Amity Rd., Cincinnati, OH 45215.

On April 15, 1975, the firm submitted results of an eight-way multicenter study intended to establish substantial evidence of effectiveness of the drug product. The study, which was randomized and double-blind, was conducted over a 7-day period and involved 29 investigators and 2,308 patients, 1,599 of whom completed the study. The criterion for admission was morning sickness pattern of early pregnancy. The drugs used were dicyclomine/doxylamine/pyridoxine; dicyclomine/doxylamine/pyridoxine; dicyclomine/doxylamine; doxylamine; dicyclomine/pyridoxine; dicyclomine; pyridoxine; and placebo. The data were evaluated and determined not to provide substantial evidence of effectiveness of the three-component combination (Bendectin). In order to meet the requirements for proving the effectiveness of a fixed combination drug (21 CFR 300.50), it must be shown that each of the ingredients contributes to the claimed effects of the combination. The results of the study showed that doxylamine is the major effective ingredient and that pyridoxine has an independent antinauseant effect, but that dicyclomine does not significantly contribute to the effectiveness of the combination product. However, the results of the study did show that the combination of doxylamine and pyridoxine is effective for nausea and vomiting of pregnancy.

On March 11, 1976, Merrell-National Laboratories supplemented their new drug application to provide for a reformulated product containing only doxylamine succinate and pyridoxine hydrochloride. This product is being handled through the normal supplemental new drug application procedures.

On the basis of all of the data and information available to him, the Director of the Bureau of Drugs is unaware of any adequate and well-controlled investigation, conducted by experts qualified by scientific training and experience, meeting the requirements of section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) and 21 CFR 314.111(a)(5) and 21 CFR 300.50 that provides substantial evidence of the effectiveness of the three-component combination drug product.

Therefore, notice is given to the holder(s) of the new drug application(s) and to all other interested persons that the Director of the Bureau of Drugs proposes to issue an order under section 505 (e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)), withdrawing approval of the new drug application(s) (or if indicated above, those parts of the application(s) providing for the drug product(s) listed above) and all amendments and supplements thereto on the ground that new information before him with respect to the drug product(s), evaluated together with the evidence available to him at the time of approval of the application(s), shows there is a lack of substantial evidence that the drug product(s) will have the effect it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in the labeling.

In addition to the holder(s) of the new drug application(s) specifically named above, this notice of opportunity for hearing applies to all persons who manufacture or distribute a drug product which is identical, related, or similar to a drug product named above, as defined in 21 CFR 310.6. It is the responsibility of every drug manufacturer or distributor to review this notice of opportunity for hearing to determine whether it covers any drug product he manufactures or distributes. Any person may request an opinion of the applicability of this notice to a specific drug product he manufactures or distributes that may be identical, related, or similar to a drug product named in this notice by writing to the Food and Drug Administration, Bureau of Drugs, Division of Drug Labeling Compliance (HFD–310), 5600 Fishers Lane, Rockville, MD 20857.

In addition to the ground(s) for the proposed withdrawal of approval stated above, this notice of opportunity for hearing encompasses all issues relating to the legal status of the drug products subject to it (including identical, related, or similar drug products as defined in 21 CFR 310.6) e.g., any contention that any such product is not a new drug because it is generally recognized as safe and effective within the meaning of section 201 (p) of the act or because it is exempt from part or all of the new drug provisions of the act pursuant to the exemption for products marketed prior to June 25, 1938, contained in section 201(p) of the act, or pursuant to section 107(c) of the Drug Amendments of 1962; or for any other reason.

In accordance with the provisions of section 505 of the act (21 U.S.C. 355) and the regulations promulgated thereunder (21 CFR Parts 310, 314), the applicant(s) and all other persons subject to this notice pursuant to 21 CFR 310.6 are hereby given an opportunity for a hearing to show why approval of the new drug application(s) should not be withdrawn and an opportunity to raise, for administrative determination, all issues relating to the legal status of a drug product named above and of all identical, related, or similar drug products.

If an applicant or any other person subject to this notice pursuant to 21 CFR 310.6 elects to avail himself of the opportunity for a hearing, he shall file (1) on or before February 28, 1977, a written notice of appearance and request for hearing, and (2) on or before March 29, 1977, the data, information, and analyses on which he relies to justify a hearing, as specified in 21 CFR 314.200. Any other interested person may also submit comments on this notice. The procedures and requirements governing this notice of opportunity for hearing, a notice of appearance and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and a grant or denial of hearing, are contained in 21 CFR 314.200.

The failure of an applicant or any other person subject to this notice pursuant to 21 CFR 310.6 to file timely written appearance and request for hearing as required by 21 CFR 314.200 constitutes an election by such person not to avail himself of the opportunity for a hearing concerning the action proposed with respect to such drug product and a waiver of any contentions concerning the legal status of any such drug product. Any such drug product may not thereafter lawfully be marketed, and the Food and Drug Administration will initiate appropriate regulatory action to remove such drug products from the market. Any new drug product marketed without an approved NDA is subject to regulatory action at any time.

A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for the hearing that there is no genuine and substantial issue of fact which precludes the withdrawal of approval of the application, or when a request for hearing is not made in the required format or with the required analyses, the Commissioner will enter summary judgment against the person(s) who requests the hearing, making findings and conclusions, denying a hearing.

All submissions pursuant to this notice shall be filed in quintuplicate with the Hearing Clerk, Food and Drug Administration, Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20857.

All submissions pursuant to this notice, except for data and information prohibited from public disclosure pursuant to 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the office of the Hearing Clerk during working hours, Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 505, 52 Stat. 1052–1053, as amended (21 U.S.C. 355)), and under authority delegated to the Director of the Bureau of Drugs (21 CFR 5.31) (recodification published in the FEDERAL REGISTER of June 15, 1976 (41 FR 24262)).

Dated: January 17, 1977.

J. RICHARD CROUT,
Director, Bureau of Drugs.

[FR Doc 77–2776 Filed 1–27–77;8:45 am]

[Docket No. 76N–0473; DESI 4203]

CERTAIN GAMMA BENZENE HEXACHLORIDE TOPICAL PREPARATIONS

Drugs for Human Use; Drug Efficacy Study Implementation; Followup Notice and Opportunity for Hearing

In notices published in the FEDERAL REGISTER of September 17, 1970 (35 FR 14576) (Docket No. FDC–D–231 (now Docket No. 76N–0473)) and June 23, 1972 (37 FR 12418), the Food and Drug Administration announced its conclusions regarding the effectiveness of the drug products described below containing gamma benzene hexachloride. The drug products are used in the treatment of parasitic infestations, such as scabies and pediculosis. Final conclusions concerning the drugs were announced in the June 23, 1972 notice, classifying them as effective or lacking substantial evidence of effectiveness for various indications. The June 23, 1972 notice did not offer an opportunity for hearing concerning the indications which were reclassified in that notice to lacking substantial evidence of effectiveness. This notice offers an opportunity for hearing concerning them and states the conditions for marketing the drugs for the indications for which they continue to be regarded as effective. Persons who wish to request a hearing may do so on or before February 28, 1977.

The notice that follows does not pertain to the other drugs included in the September 17, 1970 notice. Products containing crotamiton were classified in the September 17, 1970 notice as lacking substantial evidence for a certain indication, and effective for other indications. No person requested a hearing concerning the indication lacking substantial evidence of effectiveness and it is no longer allowable in labeling. Any such product labeled for that indication is subject to regulatory action.

NDA 10–718; Kwell Shampoo containing gamma benzene hexachloride: Reed and Carnrick, 30 Boright Ave., Kenilworth, NJ 07033.

NDA 6–309; Kwell Cream containing gamma benzene hexachloride; Reed and Carnrick.

Such drugs are regarded as new drugs (21 U.S.C. 321(p)). Supplemental new drug applications are required to revise the labeling in and to update previously approved applications providing for such drugs. An approved new drug application is a requirement for marketing such drug products.

In addition to the holder(s) of the new drug application(s) specifically named above, this notice applies to all persons who manufacture or distribute a drug product, not the subject of an approved new drug application, that is identical, related, or similar to a drug product named above, as defined in 21 CFR 310.6. It is the responsibility of every drug manufacturer or distributor to review this notice to determine whether it covers any drug product he manufactures or distributes. Any person may request an opinion of the applicability of this notice to a specific drug product he manufactures or distributes that may be identical, related, or similar to a drug product named in this notice by writing to the Food and Drug Administration, Bureau of Drugs, Division of Drug Labeling Compliance (HFD–310), 5600 Fishers Lane, Rockville, MD 20857.

A. *Effectiveness classification.* The Food and Drug Administration has reviewed all available evidence and concludes that the drug is effective for the indications listed in the labeling conditions below. The drug lacks substantial evidence of effectiveness for the probably and possibly effective indications which were reclassified in the June 23, 1972 notice.

B. *Conditions for approval and marketing.* The Food and Drug Administration is prepared to approve abbreviated new drug applications and abbreviated supplements to previously approved new drug applications under conditions described herein.

1. *Form of drug.* The drug is in cream or liquid form suitable for topical administration.

2. *Labeling conditions.* a. The label bears the statement, "Caution: Federal law prohibits dispensing without prescription."

b. The drug is labeled to comply with all requirements of the act and regulations, and the labeling bears adequate information for safe and effective use of the drug. The Indications are as follows:

SHAMPOO

For the treatment of pediculosis such as: Pediculosis capitis (head louse) and pediculosis pubis (crab louse).

CREAM

For the treatment of pediculosis, such as: Pediculosis capitis (head louse) and pediculosis pubis (crab louse). It is also effective in the treatment of scabies. (*Sarcoptes scabiei*).

3. *Marketing status.* a. Marketing of such drug products that are now the subject of an approved or effective new drug application may be continued provided that, on or before March 29, 1977, the holder of the application submits, if he has not previously done so, (i) a supplement for revised labeling as needed to be in accord with the labeling conditions described in this notice, and complete container labeling if current container labeling has not been submitted, and (ii) a supplement to provide updating information with respect to items 6 (components), 7 (composition), and 8 (methods, facilities, and controls) of new drug application form FD–356H (21 CFR 314.1(c)) to the extent required in abbreviated applications (21 CFR 314.1 (f)).

b. Approval of an abbreviated new drug application (21 CFR 314.1(f)) must be obtained prior to marketing such product. Marketing prior to approval of a new drug application will subject such products, and those persons who caused the products to be marketed, to regulatory action.

C. *Notice of opportunity for hearing.* On the basis of all the data and information available to him, the Director of the Bureau of Drugs is unaware of any adequate and well-controlled clinical investigation, conducted by experts qualified by scientific training and experience, meeting the requirements of section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) and 21 CFR 314.111 (a)(5), demonstrating the effectiveness of the drug(s) for the indication(s) lacking substantial evidence of effectiveness referred to in paragraph A. of this notice.

Notice is given to the holder(s) of the drug application(s), and to all other interested persons, that the Director of the Bureau of Drugs proposes to issue an order under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)), withdrawing approval of the new drug application(s) and all amendments and supplements thereto providing for the indication(s) lacking substantial evidence of effectiveness referred to in paragraph A. of this notice on the ground that new information before him with respect to the drug product(s), evaluated together with the evidence available to him at the time of approval of the application(s), shows there is a lack of substantial evidence that the drug product(s) will have all the effects it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in the labeling. An order with respect to any application(s) supplemented, in accord with this notice, to delete the claim(s) lacking substantial evidence of effectiveness.

In addition to the ground for the proposed withdrawal of approval stated above, this notice of opportunity for hearing encompasses all issues relating to the legal status of the drug products subject to it (including identical, related, or similar drug products as defined in 21 CFR 310.6), e.g., any contention that any such product is not a new drug because it is generally recognized as safe and effective within the meaning of section 201(p) of the act or because it is exempt from part or all of the new drug provisions of the act pursuant to the exemption for products marketed prior to June 25, 1938, contained in section 201(p) of the act, or pursuant to section 107(c) of the Drug Amendments of 1962; or for any other reason.

In accordance with the provisions of section 505 of the act (21 U.S.C. 355) and the regulations promulgated thereunder (21 CFR Parts 310, 314), the applicant(s) and all other persons who manufacture or distribute a drug product which is identical, related, or similar to a drug product named above (21 CFR 310.6), are hereby given an opportunity for a hearing to show why approval of the new drug application(s) providing for the claim(s) involved should not be withdrawn and an opportunity to raise, for administrative determination, all issues relating to the legal status of a drug product named above and all identical, related, or similar drug products.

If an applicant or any person subject to this notice pursuant to 21 CFR 310.6 elects to avail himself of the opportunity for a hearing, he shall file (1) on or before February 28, 1977, a written notice of appearance and request for hearing, and (2) on or before March 29, 1977, the data, information, and analyses on which he relies to justify a hearing, as specified in 21 CFR 314.200. Any other interested person may also submit comments on this proposal to withdraw approval. The procedures and requirements governing this notice of opportunity for hearing, a notice of appearance and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and a grant or denial of hearing, are contained in 21 CFR 314.200.

The failure of an applicant or any other person subject to this notice pursuant to 21 CFR 310.6 to file timely written appearance and request for hearing as required by 21 CFR 314.200 constitutes an election by such person not to avail himself of the opportunity for a hearing concerning the action proposed with respect to such drug product and a waiver of any contentions concerning the legal status of such drug product. Any such drug product labeled for the indication(s) lacking substantial evidence of effectiveness referred to in paragraph A. of this notice may not thereafter lawfully be marketed, and the Food and Drug Administration will initiate appropriate regulatory action to remove such drug products from the market. Any new drug product marketed without an approved NDA is subject to regulatory action at any time.

A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for the hearing that there is no genuine and substantial issue of fact which precludes the withdrawal of approval of the application, or when a request for hearing is not made in the required format or with the required analyses, the Commissioner will enter summary judgment against the person(s) who requests the hearing, making findings and conclusions, denying a hearing.

All submissions pursuant to this notice of opportunity for hearing shall be filed in quintuplicate. Such submissions, except for data and information prohibited from public disclosure pursuant to 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the office of the Hearing Clerk (address given below) during working hours, Monday through Friday.

Communications forwarded in response to this notice should be identified with the reference number DESI 4203, directed to the attention of the appropriate office named below, and addressed to the Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

Supplements (identify with NDA number): Division of Anti-Infective Drug Products (HFD–140), Rm. 12B–45, Bureau of Drugs.

Original abbreviated new drug applications (identify as such): Division of Generic Drug Monographs (HFD–530), Bureau of Drugs.

Request for Hearing (identify with Docket number appearing in the heading of this notice): Hearing Clerk, Food and Drug Administration (HFC–20), Rm. 4–65.

Requests for the report of the National Academy of Sciences-National Research Council: Public Records and Document Center (HFC–18), Rm. 4–62.

Other communications regarding this notice: Drug Efficacy Study Implementation Project Manager (HFD–501), Bureau of Drugs.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 502, 505, 52 Stat. 1050–1053, as amended (21 U.S.C. 352, 355)) and under the authority delegated to the Director of the Bureau of Drugs (21 CFR 5.31) (recodification published in the FEDERAL REGISTER of June 15, 1976 (41 FR 24262)).

Dated: January 17, 1977.

J. RICHARD CROUT,
Director, Bureau of Drugs.

[FR Doc.77–2775 Filed 1–27–77;8:45 am]

ENDOCRINOLOGY AND METABOLISM ADVISORY COMMITTEE

Meeting Change

Pursuant to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92–463, 86 Stat. 770–776 (5 U.S.C. App. I)), the Food and Drug Administration announced in a notice published in the FEDERAL REGISTER of January 18, 1977 (42 FR 3348), public advisory committee meetings and other required information in accordance with provisions set forth in section 10(a)(1) and (2) of the act.

Notice is hereby given that the meeting of the Endocrinology and Metabolism Advisory Committee scheduled for February 17 and 18, 1977, will meet only on February 18, 1977, Conference Rms. G and H, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD, with the open public hearing beginning at 9 a.m. and the open committee discussion at 10 a.m.

Dated: January 21, 1977.

JOSEPH P. HILE,
Associate Commissioner for Compliance.

[FR Doc.77–2773 Filed 1–27–77;8:45 am]

[Docket No. 76N–0481]

NEW DRUG APPLICATIONS

Withdrawal of Approval; Correction

In FR Doc. 70–9292 appearing on page 11929 in the FEDERAL REGISTER of July 24, 1970 (35 FR 11929), under "[Docket No. FDC–D–135; Various NDA's]," the Food and Drug Administration announced the withdrawal of approval of a large number of new drug applications (NDA's) for failure of sponsors to submit required reports. The inclusion in the notice of NDA 10–124 for Serpalan (Reserpine) Tablets, manufactured by Lannett Co., 9000 State Rd., Philadelphia, PA, was in error. Accordingly, on page 11940, in the second column, under the name and address for Lannett Co., the notice is corrected by deleting the line "10–124. Serpalan Tablets 0.1, 0.25, 1.0 mg."

Dated: January 21, 1977.

JOSEPH P. HILE,
Associate Commissioner for Compliance.

[FR Doc.77–2774 Filed 1–27–77;8:45 am]

[Docket No. 76N–0474]

SAFETY OF CERTAIN FOOD INGREDIENTS

Opportunity for Public Hearing

The Food and Drug Administration is announcing an opportunity for public hearing on the safety of certain food ingredients to determine if they are generally recognized as safe (GRAS), or subject to a prior sanction. Requests to make oral presentation at the public hearing must be postmarked on or before February 28, 1977.

The Commissioner of Food and Drugs issued, in the FEDERAL REGISTER of July 26, 1973 (38 FR 20053), a notice advising the public that an opportunity would be provided for oral presentation of data, information, and views at public hearings to be conducted by the Select Committee on GRAS Substances of the Life Sciences Research Office, Federation of American Societies for Experimental Biology (hereinafter referred to as the Select Committee), about the safety of ingredients used in food to determine if they are GRAS or subject to a prior sanction.

The Commissioner now gives notice that the Select Committee is prepared to conduct a public hearing on the following categories of food ingredients: adipic acid; formic acid, ethyl formate and sodium formate; and hydrogenated soybean oil. The public hearing will provide an opportunity, before the Select Committee reaches its final conclusions, for any interested person(s) to present scientific data, information, and views on the safety of these substances, in addition to those previously submitted in writing pursuant to notices published in the FEDERAL REGISTER of July 26, 1973 (38 FR 20051, 20053) and April 17, 1974 (39 FR 13796, 13798).

The Select Committee has reviewed all the available data and information on the categories of food ingredients listed above and has reached one of the five following tentative conclusions on the status of each:

1. There is no evidence in the available information that demonstrates or suggests reasonable grounds to suspect a hazard to the public when it is used at levels that are now current or that might reasonably be expected in the future.

2. There is no evidence in the available information that demonstrates or suggests reasonable grounds to suspect a hazard to the public when it is used at levels that are now current and in the manner now practiced. However, it is not possible to determine, without additional data, whether a significant increase in consumption would constitute a dietary hazard. (This finding does not apply to the substances covered by this notice.)

3. Although no evidence in the available information demonstrates a hazard to the public when it is used at levels that are now current and in the manner now practiced, uncertainties exist requiring that additional studies be conducted. (This finding does not apply to the substances covered by this notice.)

4. The evidence is insufficient to determine that the adverse effects reported are not deleterious to the public health when it is used at levels that are now current and in the manner now practiced. (This finding does not apply to the substances covered by this notice.)

5. The information available is not sufficient to make a tentative conclusion. (This finding does not apply to the substances covered by this notice.)

The following table lists each ingredient, the Select Committee's tentative conclusion (keyed to the five types of conclusions listed above), and the available information on which the Select Committee reached its conclusion.

Substance	Select committee tentative conclusion	Scientific literature review: Order No.	Scientific literature review: Cost	Animal study report order No. and cost	Other information
Adipic acid	1	PB–220–305/AS.	$3.25	Mutagenic evaluation (host mediated, dominant lethal, and cytogenetics) of adipic acid (71–50) by Litton Bionetics, Inc., under FDA contract (PB–245–469/AS, (5.75). Teratologic evaluation of adipic acid (71–50) by Food and Drug Research Labs., Inc., under FDA contract (PB–221–802, $3.75).	(a) Human intake data, taken from "A Comprehensive Survey of Industry on the Use of Food Chemicals Generally Recognized as Safe (GRAS)", available from the National Technical Information Service, PB Nos. 221–921 through 221–949. (b) Report on subacute feeding of adipic acid submitted to E. I. duPont de Nemours & Co. by Hazelton Lab. (c) Investigation of the toxic and teratogenic effects of GRAS substance to the developing chicken embryo: adipic acid. FDA in-house investigation.
Ethyl formate	1	PB–228–558/AS	$4.00		(a) Human intake data, taken from "A Comprehensive Survey of Industry on the use of Food Chemicals Generally Recognized as Safe (GRAS)," available from the National Technical Information Service, PB Nos. 221–921 through 221–949.
Formic acid (used in food-packaging materials).	1				
Sodium formate (used in food-packaging materials).					

Substance	Select committee tentative conclusion	Scientific literature review: Order No.	Scientific literature review: Cost	Animal study report order No. and cost	Other information
Hydrogenated soybean oil.	1	PB-228-557/AS	$4.00		(a) Letter dated July 1, 1976, from Corbin Miles, FDA.
Hydrogenated soybean oil (used in food-packaging materials).	1				(b) Letter dated Jan. 7, 1976, from G. F. Spencer, USDA. (c) Memorandum dated Mar. 27, 1974, from R. J. Dimler, USDA. (d) Carpenter, D. L., J. Lehmann, B. S. Mason, and H. T. Slover, 1976. Lipid composition of selected vegetable oils. J. Am. Oil Chem. (in press). (e) Mounts, T. L., 1976. Double bond position affects metabolism of cis-octadecenoates. Lipids (in press).

Reports in the table with "PB" prefixes may be obtained from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Rd., Springfield, VA 22151.

In addition to the information contained in the documents listed in the table above, the Select Committee supplemented, where appropriate, its reviews with specific information from specialized sources as announced in a previous hearing opportunity notice published in the FEDERAL REGISTER of September 23, 1974 (39 FR 34218).

The Select Committee's tentative reports on (1) adipic acid, (2) formic acid, ethyl formate, and sodium formate, and (3) hydrogenated soybean oil are available for review in the office of the Hearing Clerk, Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857, and also at the Public Information Office, Food and Drug Administration, Rm. 3807, 200 C St. SW., Washington, D.C. 20204. In addition, all reports and documents used by the Select Committee to review the ingredients are available for review in the office of the Hearing Clerk.

To schedule the public hearing, the Select Committee must be informed of the number of persons who wish to attend and the length of time requested to give their views. Accordingly, any interested person who wishes to appear at the public hearing to make an oral presentation shall so inform the Select Committee in writing, addressed to: The Select Committee on GRAS Substances, Life Sciences Research Office, Federation of American Societies for Experimental Biology, 9650 Rockville Pike, Bethesda, MD 20014. A copy of each such request shall be sent to the Hearing Clerk, address noted above, and all such requests shall be placed on public display in that office. Any such requests must be postmarked on or before February 28, 1977, shall state the substance(s) on which an opportunity to present oral views is requested, and shall state how much time is requested for the presentation. As soon as possible thereafter, a notice announcing the date, time, place, and scheduled presentations for any public hearing that may be requested will be published in the FEDERAL REGISTER.

The purpose of the public hearing is to receive data, information, and views not previously available to the Select Committee about the substances listed above. Information already contained in the scientific literature reviews and in the tentative Select Committee report shall not be duplicated, although views on the interpretation of this material may be presented.

Depending on the number of requests for opportunity to make oral presentations, the Select Committee may reduce the time requested for any presentation. Due to time limitations, individuals and organizations with common interests are urged to consolidate their presentations. Any interested person may, in lieu of an oral presentation, submit written views, which shall be considered by the Select Committee. Three copies of such written views shall be addressed to the Select Committee at the address noted above, and must be postmarked not later than 10 days before the scheduled date of the hearing. A copy of any written views shall be sent to the Hearing Clerk, Food and Drug Administration, and shall be placed on public display in that office.

A public hearing will be presided over by a member of the Select Committee. Hearings will be transcribed by a reporting service, and a transcript of each hearing may be purchased directly from the reporting service and will also be placed on public display in the office of the Hearing Clerk, Food and Drug Administration.

Dated: January 17, 1977.

JOSEPH P. HILE,
Associate Commissioner for Compliance.

[FR Doc.77-2222; Filed 1-27-77;8:45 am]

Assistant Secretary for Education

NATIONAL CENTER FOR EDUCATION STATISTICS

Comments on Collection of Information and Data Acquisition Activity

Pursuant to section 406(g)(2)(B), General Education Provisions Act, notice is hereby given as follows:

The U.S. Office of Education has proposed collections of information and data acquisition activities which will request information from educational agencies or institutions.

The purpose of publishing this notice in the FEDERAL REGISTER is to afford each educational agency or institution subject to a request under the proposed collection of information and data acquisition activities and their representative organizations an opportunity, during a 30-day period before transmittal to the Director of the Office of Management and Budget, to comment to the Administrator of the National Center for Education Statistics on the collections of information and data acquisition activities.

Descriptions of the proposed collections of information and data acquisition activities follow below.

Written comments on the proposed activity are invited. Comments must be received on or before February 28, 1977 and should be addressed to Administrator, National Center for Education Statistics, ATTN: Manager, Information Acquisition, Planning, and Utilization, Room 3001, 400 Maryland Avenue, S.W., Washington, D.C. 20202.

Further information may be obtained from Elizabeth M. Proctor of the National Center for Education Statistics, 202-245-1022.

MARIE D. ELDRIDGE,
Administrator, National Center for Education Statistics.

Dated: January 25, 1977.

DESCRIPTION OF A PROPOSED COLLECTION OF INFORMATION AND DATA COLLECTION ACTIVITY

1. TITLE OF PROPOSED ACTIVITY:

A Study of the State of Bilingual Materials Development and the Transition of materials to classrooms ("Evaluation of Bilingual Curriculum Development Activities").

2. AGENCY/BUREAU/OFFICE:
U.S. Office of Education, Office of Planning, Budgeting and Evaluation.

3. AGENCY FORM NUMBERS:
OE 515-1, OE 515-2.

4. LEGISLATIVE AUTHORITY FOR THIS ACTIVITY:

The Bilingual Education Program authorized under Title VII of the Elementary and Secondary Education Act (ESEA) provides funds to local education agencies (LEA's) for projects designed to meet the special needs of children who come from homes in which the dominant language is not English. The original 1968 legislation, P.L. 90-247 stipulates in Section 704(a)(b) that approved activities include "• • • the development and dissemination of special instructional materials for use in bilingual education programs • • •." The Education Amendments of 1974, P.L. 93-380, Section 742(c)(2) directs the Commissioner of Education to "develop and disseminate instructional materials and equipment suitable for use in bilingual education programs • • •." The Interim Rules and Regulations for the Title VII Program published in the Federal Register in 1975 (Section 123.12, "Authorized Activities") refers to the establishment of Resource Centers, Materials Development Centers, and Dissemination and Assessment Centers to carry out the development and dissemination plans.

Planning and evaluation activities are authorized under the General Education Provisions Act which provides appropriations for: "(1) planning for the succeeding year for any • • • program, and (2) evaluation of • • • programs." The law also states in part: "• • • the Secretary shall transmit to [appropriate Congressional committees] an annual evaluation report which evaluates the effectiveness of applicable programs • • • such report shall • • • contain information on progress being made • • • describe the costs and benefits of the applicable program • • • identify which sectors of the public receive the benefits of such program • • •" (20 U.S.C. 1226C).

5. VOLUNTARY/OBLIGATORY NATURE OF RESPONSE:
Voluntary.

6. HOW INFORMATION TO BE COLLECTED WILL BE USED:

The information will be used by the Office of Education in its administration of the Bilingual Education Act, particularly to determine appropriate budget levels for material development and dissemination activities and to provide guidelines for improving the coordination of activities of Materials Development Centers, Dissemination and Assessment Centers, and Resource Centers funded under Title VII.

The inventory of materials in use and the survey of materials needs will be used by Materials Development Centers and by publishers in establishing priorities for the production of materials. The inventory will also assist the Office of Civil Rights in administering Title IV of the Civil Rights Act of 1974 by providing information to be used by Lau Centers for technical assistance to local education agencies.

The overall purpose of the study is to determine the status of the development of bilingual education curriculum materials and to analyze the process through which these materials are introduced into the classroom. There are five major objectives:

To assemble a list of currently available materials and of materials presently under development;

To identify shortages of materials;

To identify the likely market for materials in short supply;

To analyze procedures for field testing, publicizing, and disseminating bilingual materials by Title VII Centers; and

To synthesize and summarize information on the state of bilingual education to curriculum materials and to design a model management plan for bilingual materials development and dissemination.

Data collected in this study will also be used by the Commissioner of Education for a report to the Congress and to the President on the condition of bilingual education in the nation, including plans for future activities to be carried out. (Public Law 93-380, Sections 731(c) and 732(c).)

7. Data Acquisition plan:

a. METHOD OF COLLECTION: LEA mail survey, phone and mail survey of commercial publishers.

b. TIME OF COLLECTION: LEA—Spring 1977; Publishers—June 1977.

c. FREQUENCY: Single time.

8. RESPONDENTS:

a. TYPE: Local Education Agencies.

b. NUMBER: 614.

c. ESTIMATED AVERAGE MAN-HOURS PER RESPONDENT: 0.5.

a. TYPE: Commercial Publishers.

b. NUMBER: 50.

c. ESTIMATED AVERAGE MAN-HOURS PER RESPONDENT: 0.25.

9. INFORMATION TO BE COLLECTED:

RESPONDENT TYPE: Local Educational Agencies—

Lists of bilingual materials currently used by language, subject and grade.

Lists of materials developed by the LEA.

Lists of bilingual materials needed by language, subject and grade.

Numbers of students of limited English-speaking ability by grade.

How LEAs obtain information about bilingual materials.

How LEAs disseminate information about bilingual materials.

RESPONDENT TYPE: Commercial Publishers—

Lists of currently available bilingual materials, and materials to be developed in the near future.

DESCRIPTION OF A PROPOSED COLLECTION OF INFORMATION AND DATA ACQUISITION ACTIVITY

1. TITLE OF PROPOSED ACTIVITY:

Evaluation of Emergency School Aid (ESAA) Implementation and Impact at the Regional Level: Case Study Interview Protocols and Mail Questionnaires.

2. AGENCY/BUREAU/OFFICE:

U.S. Department of Health, Education, and Welfare, Region II, Office of the Regional Director and U.S. Office of Education, Office of Planning, Budgeting, and Evaluation.

3. AGENCY FORM NUMBER:

OE 517-1.

4. LEGISLATIVE AUTHORITY FOR THIS ACTIVITY:

"• • • The Secretary shall transmit (to specified committees of the Congress) an annual evaluation report which evaluates the effectiveness of applicable programs • • •" (20 USC 1226c.)

"• • • the Assistant Secretary is authorized to make grants • • • and contracts • • • for the purpose of evaluating specific programs and projects assisted under this chapter." (20 USC 1612.)

5. VOLUNTARY/OBLIGATORY NATURE OF RESPONSE:

Voluntary.

6. HOW INFORMATION TO BE COLLECTED WILL BE USED:

This study is needed to provide information on the effect of Regional Office procedures and assistance upon the implementation and effectiveness of ESAA Basic and Pilot projects in school districts in New York and New Jersey. The quality and usefulness of local ESAA project evaluations will be determined. Differences among districts will be examined to determine if any characteristics predict local project implementation and effectiveness.

The ultimate purpose of the study is to support alternative administrative strategies for the Regional Office which are likely to increase the effectiveness of Basic and Pilot grant projects in achiving local objectives and national goals.

The results will also be included in the Annual Evaluation Report to Congress (20 USC 1226c). Such results will be used as part of a basis for legislative or executive proposals.

Summary results will be distribtued to State and local ESAA personnel in New York and New Jersey and to other interested parties.

7. DATA ACQUISITION PLAN:

a. METHOD OF COLLECTION: Mail and personal interview.

b. TIME OF COLLECTION: Spring.

c. FREQUENCY: 1977 only.

8. RESPONDENTS:

a. TYPE: Local Education Agencies.

b. NUMBER: 23.

c. ESTIMATED AVERAGE MAN-HOURS PER RESPONDENT: 1.8.

a. TYPE: Principals.

b. NUMBER: 16.

c. ESTIMATED AVERAGE MAN-HOURS PER RESPONDENT: 1.8.

a. TYPE: Teachers.

b. NUMBER: 32.

c. ESTIMATED AVERAGE MAN-HOURS PER RESPONDENT: 1.8.

a. TYPE: Parents.

b. NUMBER: 32.

c. ESTIMATED AVERAGE MAN-HOURS PER RESPONDENT: 0.8.

a. TYPE: Other (ESAA Community Advisory Board Members).

b. NUMBER: 8.

c. ESTIMATED AVERAGE MAN-HOURS PER RESPONDENT: 1.8.

9. INFORMATION TO BE COLLECTED:

RESPONDENT TYPE: Local Education Agencies—

Implementation processes, problems and perceived causes: Adherence to proposed project schedules, perceived problems in implementing separate project components, and factors hindering implementation.

Regional office contacts: Number of site visits made by regional office staff, advance notice for site visits, and changes suggested and resulting from site visits.

Technical assistance: Agencies which supplied technical assistance, content of the assistance, importance of assistance to project.

Project organization: Perceived importance of groups or individual contributors to the ESAA project, description of the role of major contributors, procedures for selection of students, and staff, inservice training.

Project goals: Perceived achievement of goals, relation of goals to problems of desegregation, perceived needs of minority isolated students.

Evaluation activities: Established evaluation criteria by component, difficulties in evaluating component, contribution of evaluation procedures to project.

Next year's proposal process: Applications submitted, differences from previous years' suggestions for change in application processes.

RESPONDENT TYPE: Principals—

Project organization: Personal level of involvement, school eligibility, student eligibility, nature of ESAA activities, differences of ESAA from regular activities, contributions of individuals or groups.

Next year's awards process: Application submitted, level of participation, difference from previous years, support for ESAA activities without Federal funding.

RESPONDENT TYPE: Teachers—

Similar to principals but the questions are directed to the individual teachers' classrooms and not the total school.

RESPONDENT TYPE: Parents—

Role in ESAA process: Knowledge of ESAA activities, difference from regular school activities, role in decision making, evaluation of ESAA Advisory Committee.

Desegregation plan and/or minority isolation: Effect of plan on children, problems arising from desegregation plan, perceived needs of minority isolated children, relationship of ESAA process to problems.

RESPONDENT TYPE: Others (ESAA Advisory Committee Members)—

Project organization: Selection of Advisory committee, selection of chairperson, level of activity in project implementation, time requirements, membership in other advisory committees.

Implementation processes, problems and their perceived causes: Adherence to proposed project schedule, specific problems, causes of problems.

Regional office contacts: Number of site visits made by regional office staff, objectives of site visits, changes suggested and resulting from site visits.

Project goals: Perceived goals of LEA program, progress toward goals, perceived national goals of ESAA.

In-service training: Personal participation, objectives of training, evaluation of training, differences from regular training.

Desegregation plan and/or minority isolation nature of problems resulting from desegregation plan; needs of minority isolated students, relation of ESAA activities.

Evaluation activities: Description of activities, difficulties in evaluating activities, progress toward meeting criteria, alternative criteria for project success.

Implementation processes, problems and their perceived causes: Adherence to proposed project schedule, perceived problems in implementing separate project components.

Regional Office contacts: Number of site visits made by regional office staff, objectives of site visits, changes suggested and resulting from site visits.

Project goals: Perceived achievement of goals, progress toward goals, relation of goals to problems of desegregation, perceived needs of minority isolated students.

Evaluation activities: Nature of evaluation activities, alternative criteria for project success.

Next year's proposal process: Application submitted, level of participation, differences from previous years, suggestions for change in application process.

DESCRIPTION OF A PROPOSED COLLECTION OF INFORMATION AND DATA ACQUISITION ACTIVITY

1. TITLE OF PROPOSED ACTIVITY:

A Review of State Oversight in Postsecondary Education.

2. AGENCY/BUREAU/OFFICE:

U.S. Office of Education, Office of Planning, Budgeting, and Evaluation.

3. AGENCY FORM NUMBER:

OE 526.

4. LEGISLATIVE AUTHORITY FOR THIS ACTIVITY:

"The term 'institution of higher education' means an educational institution in any State which • • • is legally authorized within such State to provide a program of education beyond secondary education • • •" (Sec. 1201(a), Higher Education Act of 1965 as amended, 20 USC 1141.)

"The Commissioner shall publish a list of agencies which he determines to be reliable authority as to the quality of public postsecondary vocational education in their respective States for the purpose of determining eligibility for all Federal students assistance programs." (Sec. 438(b), Higher Education Act of 1965 as amended, 20 USC 1087.)

"The Secretary shall transmit to the Committee on Education and Labor of the House of Representatives and the Committee on Labor and Public Welfare of the Senate an annual evaluation report which evaluates the effectiveness of applicable programs in achieving their legislated purposes together with recommendations relating to such programs for the improvement of such programs which will result in greater effectiveness in achieving such purposes." (Sec. 417(a), General Education Provisions Act, 20 USC 1226(c).)

5. VOLUNTARY/OBLIGATORY NATURE OF RESPONSE:
Voluntary.

6. HOW INFORMATION TO BE COLLECTED WILL BE USED:

Since State agencies are responsible for charting/licensing, and in a number of States approving, postsecondary institutions that thus become eligible to participate in federal assistance programs, this study is designed to provide the Office of Education (OE) with an accurate appraisal of the current status of State agencies legislative authorization for licensing and accrediting. The relationship of these laws and regulations to the practices and processes of the States in the licensing and accrediting of postsecondary institutions is the primary thrust of the study. Since postsecondary institutions become eligible to participate in (OE) programs because of such licensing and accrediting, the information will be used by the Division of Eligibility and Agency Evaluation (DEAE) of the (OE) to evaluate these State activities as well as to maintain a current file on the status of these activities.

7. DATA ACQUISITION PLAN:

a. METHOD OF COLLECTION: Telephone interviews.
b. TIME OF COLLECTION: Spring, 1977.
c. FREQUENCY: Once.

8. RESPONDENTS:

a. TYPE: State Authorizing and/or Regulating Agencies for Public and Private Postsecondary Institutions.
b. NUMBER: 182 (estimated).
c. ESTIMATED AVERAGE MAN-HOURS PER RESPONDENT: 2.

9. INFORMATION TO BE COLLECTED:

The survey will collect information on the States' practices for determining the eligibility of postsecondary institutions that may participate in federal assistance programs. Questions will be designed to ask State agencies about their general structure and function in this area of licensing and eligibility; specific operational responsibilities regarding institutional practices; preferred federal technical assistance; and with aspects of their laws, detailing the agency's postsecondary institutional responsibilities, have allowed them to function particularly effectively or ineffectively.

DESCRIPTION OF A PROPOSED COLLECTION OF INFORMATION AND DATA ACQUISITION ACTIVITY

1. TITLE OF PROPOSED ACTIVITY:
Comprehensive Career Guidance Programs: Interview Schedules.

2. AGENCY/BUREAU/OFFICE:
Office of Education, Bureau of Occupational and Adult Education.

3. AGENCY FORM NUMBER:
OE Form 552.

4. LEGISLATIVE AUTHORITY FOR THIS ACTIVITY:

"Section 408. (a) Each administrative head of an education agency, in order to carry out functions otherwise vested in him by law, is, subject to limitations as may be otherwise imposed by law, authorized—. . . . (4) without regard for section 3648 of the Revised Statutes of the United States (31 U.S.C. 529), to enter into and perform such contracts, . . . as may be necessary for the conduct of such agency. . . ." (P.L. 93-380, sec. 502(a)(1); 20 U.S.C. 1221e-3)

5. VOLUNTARY/OBLIGATORY NATURE OF RESPONSE:
Voluntary.

6. HOW INFORMATION TO BE COLLECTED WILL BE USED:
Information collected on comprehensive career guidance programs and projects will be used by the Bureau of Occupational and Adult Education in (1) formulating future national policy directions and priorities concerning research, development, and implementation of comprehensive systems of career guidance and (2) assisting state and local education agencies in improving their capacities to provide comprehensive systems of career guidance.

7. DATA ACQUISITION PLAN:

a. METHOD OF COLLECTION: Personal Interview.
b. TIME OF COLLECTION: Spring, 1977.
c. FREQUENCY: Once.

8. RESPONDENTS:

a. TYPE: State Career Guidance Specialists in State Education Agencies.
b. NUMBER: 51 (Universe).
c. ESTIMATED AVERAGE MAN-HOURS PER RESPONDENT: 3.

a. TYPE: Project Directors of Career Guidance grants in State Education Agencies, colleges and universities, local education agencies, and nonprofit organizations.
b. NUMBER: 38 (Universe).
c. ESTIMATED AVERAGE MAN-HOURS PER RESPONDENT: 3.

9. INFORMATION TO BE COLLECTED:

The following types of information will be requested about career guidance and development: definitions; concerns of minority racial and ethnic groups, the handicapped and disadvantaged, and other special groups; needs assessment; goals and objectives; personnel development and utilization; development of materials, procedures, and techniques; placement and follow-through components; information and/or communications networks; program planning and program management components and procedures; and research and evaluation provisions.

[FR Doc.77-2816 Filed 1-27-77;8:45 am]

Social Security Administration

SECRETARY OF HEALTH, EDUCATION, AND WELFARE DEPARTMENT

Redelegations of Authority Pertaining to the Reimbursement of Suppliers of End-Stage Renal Disease Services Under the Medicare Program, and to the Withdrawal of Approval of Medicare Coverage of Such Suppliers of Services

Correction

In FR Doc. 37112, appearing at page 55242 in the issue of Friday, December 17, 1976, and corrected at 42 FR 3901, January 21, 1977, is further corrected, on page 55243, in the ninth line, in the first column, following the words "subsection (g)", delete the words "of section (g)".

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Interstate Land Sales Registration Office

[Docket No. N-77-678]

ELCONA HOMES CORP. AND ROBERT P. MYER

Hearing

Pursuant to 42 U.S.C. 5414(g) and 24 CFR 3282.152(c) Notice is hereby given that:

1. Elcona Homes Corporation and Robert P. Myer, President, hereinafter referred to as "Respondent," being subject to the provisions of the National Mobile Home Construction and Safety Standards Act of 1974 (Pub. L. 93-383, 42 U.S.C. 5401 et seq.) received a Notice of Preliminary Determination and Opportunity for Hearing issued November 23, 1976, which was sent to the Respondent pursuant to 42 U.S.C. 5414, 24 CFR 3282.151, 24 CFR 3282.407(a)(2), and 24 CFR 3282.408(b) informing the Respondent of information obtained by the Office of Consumer Affairs and Regulatory Functions—Mobile Home Standards Division alleging that an imminent safety hazard as defined at 24 CFR 3282.7(g) may exist in certain mobile homes manufactured by Respondent.

2. The Respondent filed an Answer received December 7, 1976, in response to the Notice of Proceedings and Opportunity for Hearing.

3. In said Answer the Respondent requested a hearing on the allegations contained in the Notice of Preliminary Determination and Opportunity for Hearing.

4. Therefore, pursuant to the provisions of 42 U.S.C. 5414(g), 24 CFR 3282.151 and 24 CFR 3282.152(g), it is hereby ordered that a public hearing for the purpose of taking evidence on the question set forth in the Notice of Preliminary Determination and Opportunity for Hearing will be held before Judge James W. Mast, in Room 7146, Department of HUD, 451 Seventh Street, SW, Washington, D.C. on February 3, 1977 at 10 a.m., and all inquiries concerning these proceedings should be directed to him.

5. The following time and procedure is applicable to such hearing: The parties are directed to file all affidavits and a list of all witnesses with the Hearing Clerk, HUD Building, Room 10278, Washington, D.C., 20410 on or before January 31, 1977. Copies of all documents filed should be served at the same time on all parties of record.

This Notice shall be served upon the Respondent forthwith pursuant to 24 C.F.R. 3282.152(c)(1).

By the Secretary.

Dated: January 21, 1977.

JAMES W. MAST,
Chief Administrative Law Judge.

[FR Doc.77-2782 Filed 1-27-77;8:45 am]

[Docket No. N-77-679]

MASON HOMES INC.

Hearing

Pursuant to 42 U.S.C. 5414(g) and 24 CFR 3282.152(c) Notice is hereby given that:

1. Mason Homes, Inc. and John F. Dearwester, President, hereinafter referred to as "Respondent," being subject to the provisions of the National Mobile Home Construction and Safety Standards Act of 1974 (Pub. L. 93-383, 42 U.S.C. 5401 et seq.) received a Notice of Preliminary Determination and Opportunity for Hearing issued November 19, 1976, which was sent to the Respondent pursuant to 42 U.S.C. 5414, 24 CFR 3282.151, 24 CFR 3282.407(a)(2), and 24 CFR 3282.408(b) informing the Respondent of information obtained by the Office of Consumer Affairs and Regulatory Functions—Mobile Home Standards Division alleging that an imminent safety hazard as defined at 24 CFR 3282.7(g) may exist in certain mobile homes manufactured by Respondent.

2. The Respondent filed an Answer received December 2, 1976, in response to the Notice of Proceedings and Opportunity for Hearing.

3. In said Answer the Respondent requested a hearing on the allegations contained in the Notice of Preliminary Determination and Opportunity for Hearing.

4. Therefore, pursuant to the provisions of 42 U.S.C. 5414(g), 24 CFR 3282.151 and 24 CFR 3282.152(g), it is hereby ordered that a public hearing for the purpose of taking evidence on the questions set forth in the Notice of Preliminary Determination and Opportunity for Hearing will be held before Judge James W. Mast, in Room 7146, Department of HUD, 451 Seventh Street, SW, Washington, D.C. on February 3, 1977 at 10 a.m., and all inquires concerning these proceedings should be directed to him.

5. The following time and procedure is applicable to such hearing: The parties are directed to file all affidavits and a list of all witnesses with the Hearing Clerk, HUD Building, Room 10278, Washington, D.C., 20410 on or before January 31, 1977. Copies of all documents filed should be served at the same time on all parties of record.

This Notice shall be served upon the Respondent forthwith pursuant to 24 C.F.R. 3282.152(c)(1).

By the Secretary.

Dated: January 21, 1977.

JAMES W. MAST,
Chief, Administrative Law Judge.

[FR Doc.77-2783 Filed 1-27-77;8:45 am]

Office of the Secretary

[Docket No. D-77-478]

REGIONAL ADMINISTRATORS AND AREA DIRECTORS

Delegation of Authority With Respect to Labor Standards Administration for New Communities

Each Regional Administrator and Area Director is hereby authorized to exercise the power and authority of the Secretary of Housing and Urban Development to administer and enforce departmental labor standards for New Communities projects assisted by guarantees under Title IV of the Housing and Urban Development Act of 1968 (Pub. L. 90-448, 81 Stat. 476, 513; 42 U.S.C. 3901 et seq.) and Title VII of the Housing and Urban Development Act of 1970 (Pub. L. 91-609, 84 Stat. 1791; 42 U.S.C. 4501). Each Regional Administrator shall be responsible for coordination and supervision of overall enforcement activities within the jurisdictional area of the Regional Office as well as day-to-day enforcement activities for jurisdictional areas assigned to Insuring Offices within the Region. The Area Director shall be responsible for day-to-day enforcement activities within the jurisdictional area of the Area Office.

Authority to redelegate. Each Regional Administrator and Area Director is authorized to redelegate to subordinate employees any of the authority set forth above.

(Sec. 7(d), Department of HUD Act, 12 U.S.C. 3535(d)).

Effective date: This delegation of authority is effective as of January 8, 1977.

CARLA A. HILLS,
Secretary of Housing and Urban Development.

[FR Doc.77-2781 Filed 1-27-77;8:45 am]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR 13512]

OREGON

Order Providing for Opening of Public Lands

JANUARY 21, 1977.

1. In an exchange of lands made under the provisions of section 8 of the Act of June 28, 1934, 48 Stat. 1269, 1272, as amended and supplemented, 43 U.S.C. 315g (1970), the following lands have been reconveyed to the United States:

WILLAMETTE MERIDIAN

T. 33 S., R. 32¾ E.,
Sec. 23, SE¼SE¼;
Sec. 24, E½SW¼, SW¼SW¼, NW¼SE¼, and E½SE¼;
Sec. 25, SE¼NE¼;
Sec. 26, N½NE¼, SW¼NE¼, and SE¼NW¼.
T. 34 S., R. 32¾ E.,
Sec. 1, lots 1 and 2, S½NE¼, S½SW¼, and SE¼;
Sec. 2, S½SE¼;
Sec. 12, N½N½.
T. 33 S., R. 33 E.,
Sec. 8, S½N½, S½SW¼, NE¼SE¼, and SW¼SE¼;
Sec. 9, N½SW¼, W½SE¼, and SE¼SE¼;
Sec. 10, S½SW¼;
Sec. 15, N½NW¼;
Sec. 16, E½, E½NW¼, NW¼NW¼, and SE¼SW¼;
Sec. 17, SW¼NW¼;
Sec. 20, S½S½;
Sec. 21, S½NW¼, N½S½, and SE¼SE¼;
Sec. 22, SW¼, E½SE¼, and SW¼SE¼;
Sec. 23, SW¼SW¼;
Sec. 26, NW¼NW¼ and SW¼SW¼;
Sec. 27, S½;
Sec. 28, SE¼NE¼, NW¼NW¼, S½SW¼, and SE¼SE¼;
Sec. 29, N½N½, SW¼NW¼, SW¼, and S½SE¼;
Sec. 32, N½NE¼, SE¼NE¼, and NE¼NW¼;
Sec. 33, N½NE¼ and NW¼;
Sec. 34, NW¼NE¼, N½NW¼, and SE¼NW¼.

The areas described aggregate 4,680.24 acres in Harney County.

2. The United States did not acquire any mineral rights with the following land:

WILLAMETTE MERIDIAN

T. 33 S., R. 33 E.,
Sec. 16, S½NE¼, SE¼NW¼, SE¼SW¼, and SE¼.

3. All the minerals in the following described lands were and continue to be in United States' ownership and open to operation of the mining laws (Ch. 2, Title 30 U.S.C.) and the mineral leasing laws:

WILLAMETTE MERIDIAN

T. 34 S., R. 32¾ E.,
Sec. 1, lots 1 and 2, S½NE¼, S½SW¼, and SE¼;
Sec. 2, S½SE¼;
Sec. 12, N½N½.
T. 33 S., R. 33 E.,
Sec. 20, S½S½;
Sec. 21, SE¼NW¼ and SE¼SE¼;
Sec. 22, SE¼SW¼, E½SE¼, and SW¼SE¼;
Sec. 23, SW¼SW¼;
Sec. 26, NW¼NW¼ and SW¼SW¼;
Sec. 28, S½SW¼;
Sec. 29, N½N½ and SW¼SW¼;
Sec. 32, SE¼NE¼, NW¼NE¼, and NE¼NW¼;
Sec. 33, N½NE¼, NE¼NW¼, and S½NW¼;
Sec. 34, NW¼NE¼, N½NW¼, and SE¼NW¼.

4. The subject lands are located on the western slope of Steens Mountain approximately 70 miles south of the City of Burns. Elevation ranges from 6,000 to 9,000 feet above sea level, and the topography is characterized by three glaciated gorges, containing the Little Blitzen River, Big Indian Creek, and Little Indian Creek, with moderately steep to very steep slopes. Vegetation consists primarily of native brush and grasses with large stands of aspen and willow near the streams. In the past, the lands have been used for livestock grazing purposes. The lands will be managed, together with adjoining national resource lands, for multiple use.

5. Subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law, the lands described in paragraph 1 hereof are hereby open (except as provided in paragraphs 2 and 3 hereof) to operation of the public land laws, including the mining laws (Ch. 2, Title 30 U.S.C.), and the mineral leasing laws. All valid applications received at or prior to 10 a.m., February 26, 1977, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

6. Inquiries concerning the lands should be addressed to the Chief, Branch of Lands and Minerals Operations Bureau of Land Management, P.O. Box 2965, Portland, Oregon, 97208.

HAROLD A. BERENDS,
Chief, Branch of Lands and Minerals Operations.

[FR Doc.77-2602 Filed 1-27-77;8:45 am]

INTERNATIONAL TRADE COMMISSION

[TA-203-2]

CERTAIN ALLOY TOOL STEEL

Change of Date of Hearing

Notice is hereby given that the public hearing in this matter previously scheduled for January 25, 1977, has been rescheduled to begin at 10 a.m., e.s.t., on Monday, January 31, 1977 in the Commission's Hearing Room, United States International Trade Commission Building, 701 E Street, NW., Washington, D.C.

Notice of the investigation and the hearing was published in the FEDERAL REGISTER of January 19, 1977 (42 FR 3715).

Issued: January 24, 1977.

By order of the Commission.

KENNETH R. MASON,
Secretary.

[FR Doc.77-2739 Filed 1-27-77;8:45 am]

GOVERNMENT IN THE SUNSHINE

Deletion of Agenda Items

At its meeting of January 24, 1976, the United States International Trade Commission, acting on the authority of 19 U.S.C. 1335 and in conformity with proposed 19 CFR 201.38, voted to delete the following items from its agenda for the meeting of January 24, 1977:

4. Status report on self-initiated studies;
6. Sugar (Inv. TA-201-16)—briefing by the staff (to be held after 3 p.m., EST);
8. Footwear (Inv. TA-201-18)—further consideration of the Commission's determination, if necessary.

Commissioners Minchew, Leonard, Bedell, and Ablondi voted by unanimous consent that Commission business requires the change in subject matter by deletion of these agenda items, affirmed that no earlier announcement of the deletion of these agenda items were possible, and directed the issuance of this notice at the earliest practicable time. (Commissioners Parker and Moore were not present for the vote.)

Issued: January 24, 1977.

By order of the Commission.

KENNETH R. MASON,
Secretary.

[FR Doc.77-2740 Filed 1-27-77;8:45 am]

GOVERNMENT IN THE SUNSHINE

Emergency Meeting

Interested members of the public are invited to attend and to observe the meeting of the United States International Trade Commission to be held on January 21, 1977, beginning at 5:15 p.m., in the Hearing Room of the United States International Trade Commission, 701 E Street, NW., Washington, D.C., 20436. The Commission plans to consider the following agenda item in open session:

1. Sugar (Inv. TA-201-16)—see memorandum from the General Counsel of January 21, 1977, subject: "U.S. International Trade Commission v. American-Maize Products Company et al.", Misc. No. 77-0005.

Commissioners Minchew, Parker, Leonard, Moore, and Bedell determined by recorded vote that Commission business requires that the meeting of January 21, 1977, be called with less than one week's prior notice and directed the issuance of this notice at the earliest practicable time. (Commissioner Ablondi was not present during the vote.)

If you have any questions concerning the agenda for the January 21, 1977, Commission meeting, please contact the Secretary to the Commission at (202) 523-0161. Access to documents to be considered by the Commission at the meeting is provided for in Subpart C of the Commission's rules (19 CFR 201.17-201.21).

On the authority of 19 U.S.C. 1335 and in conformity with proposed 19 CFR 201.39(a), when a person's privacy interests may be directly affected by holding a portion of a Commission meeting in public, that person may request the Commission to close such portion to public observation. Such requests should be communicated to the Office of the Chairman of the Commission.

Issued: January 21, 1977.

By order of the Commission.

KENNETH R. MASON,
Secretary.

[FR Doc.77-2741 Filed 1-27-77;8:45 am]

GOVERNMENT IN THE SUNSHINE

Emergency Meeting

Interested members of the public are invited to attend and to observe the meeting of the United States International Trade Commission to be held on January 27, 1977, beginning at 11 a.m., in the Hearing Room of the United States International Trade Commission, 701 E Street, N.W., Washington, D.C., 20436. The Commission plans to consider the following agenda item:

1. Reorganization.

Commissioners Minchew, Parker, Leonard, Moore, Bedell, and Ablondi determined by recorded vote that Commission business requires that the meeting of January 27, 1977, be called with less than one week's prior notice and directed the issuance of this notice at the earliest practicable time.

If you have any questions concerning the agenda for the January 27, 1977, Commission meeting, please contact the Secretary to the Commission at (202) 523-0161. Access to documents to be considered by the Commission at the meeting is provided for in Subpart C of the Commission's rules (19 CFR 201.17-201.21).

On the authority of 19 U.S.C. 1335 and in conformity with proposed 19 CFR 201.39(a), when a person's privacy interests may be directly affected by holding a portion of a Commission meeting in public, that person may request the Commission to close such portion to public observation. Such requests should be communicated to the Office of the Chairman of the Commission.

Pursuant to the specific exemptions of 5 U.S.C. 552b(c) (2) and (6), on the authority of 19 U.S.C. 1335, and in conformity with proposed 19 CFR 201.37(b) (2) and (6), Commissioners Parker, Moore, Bedell, and Ablondi voted to hold the portion of the January 27, 1977, meeting with respect to the selection of personnel under reorganization (agenda item No. 1) in closed session. Commissioners Minchew and Leonard voted against closing this portion to the public.

A majority of the entire membership of the Commission felt that this portion of the meeting should be closed to the public since: (1) The discussion would only concern internal personnel practice and procedures; and (2) the information discussed in such portion would be likely to disclose information of a personal nature which could constitute a clearly unwarranted invasion of personal privacy.

Those persons expected to be present at this closed portion, and their corresponding affiliations, are listed as follows:

Daniel Minchew, Chairman
Joseph O. Parker, Vice Chairman
Will E. Leonard, Commissioner
George M. Moore, Commissioner
Catherine Bedell, Commissioner
Italo H. Ablondi, Commissioner
Kenneth R. Mason, Secretary
E. Bernice Morris, Staff Assistant
Charles R. Ramsdale, Acting Director, Personnel
Norma H. Warbis, Personnel Management Specialist (if Mr. Ramsdale is not available)
Bruce N. Hatton, Assistant to Commissioner Leonard

The General Counsel to the Commission certified that it is his opinion that the Commission's action in closing this portion of its meeting of January 27, 1977, was properly taken by a vote of a majority of the entire membership of the Commission pursuant to 5 U.S.C. 552b(d)(1) and in conformity with proposed 19 CFR 201.37(e). The discussion to be held in closed session is within the specific exemptions of 5 U.S.C. 552b(c) (2) and (6) and proposed 19 CFR 201.37 (b) (2) and (6).

Issued: January 24, 1977.

By order of the Commission.

KENNETH R. MASON,
Secretary.
RUSSELL N. SHEWMAKER,
General Counsel.

[FR Doc.77-2742 Filed 1-27-77;8:45 am]

GOVERNMENT IN THE SUNSHINE

Emergency Meeting

Interested members of the public are invited to attend and to observe the meeting of the United States International Trade Commission to be held on January 28, 1977, beginning at 10 a.m., in the Hearing Room of the United States International Trade Commission, 701 E Street, NW., Washington, D.C., 20436. The Commission plans to consider the following agenda item:

1. Reorganization.

Commissioners Minchew, Parker, Leonard, Moore, Bedell, and Ablondi determined by recorded vote that Commission business requires that the meeting of January 28, 1977, be called with less than one week's prior notice and directed the issuance of this notice at the earliest practicable time.

If you have any questions concerning the agenda for the January 28, 1977, Commission meeting, please contact the Secretary to the Commission at (202) 523-0161. Access to documents to be considered by the Commission at the meeting is provided for in Subpart C of the Commission's rules (19 CFR 201.17-201.21).

On the authority of 19 U.S.C. 1335 and in conformity with proposed 19 CFR 201.39(a), when a person's privacy interests may be directly affected by holding a portion of a Commission meeting in public, that person may request the Commission to close such portion to public observation. Such requests should be communicated to the Office of the Chairman of the Commission.

Pursuant to the specific exemptions of 5 U.S.C. 552b(c) (2) and (6), on the authority of 19 U.S.C. 1335, and in conformity with proposed 19 CFR 201.37(b) (2) and (6), Commissioners Parker, Moore, Bedell, and Ablondi voted to hold the portion of the January 28, 1977, meeting with respect to the selection of personnel under reorganization (agenda item No. 1) in closed session. Commissioners Minchew and Leonard voted against closing this portion to the public.

A majority of the entire membership of the Commission felt that this portion of the meeting should be closed to the public since: (1) The discussion would only concern internal personnel practice and procedures; and (2) the information discussed in such portion would be likely to disclose information of a personal nature which could constitute a clearly unwarranted invasion of personal privacy.

Those persons expected to be present at this closed portion, and their corresponding affiliations, are listed as follows:

Daniel Minchew, Chairman
Joseph O. Parker, Vice Chairman
Will E. Leonard, Commissioner
George M. Moore, Commissioner
Catherine Bedell, Commissioner
Italo H. Ablondi, Commissioner
Kenneth R. Mason, Secretary
E. Bernice Morris, Staff Assistant
Charles R. Ramsdale, Acting Director, Personnel
Norma H. Warbis, Personnel Management Specialist (if Mr. Ramsdale is not available)
Bruce N. Hatton, Assistant to Commissioner Leonard

The General Counsel to the Commission certified that it is his opinion that the Commission's action in closing this portion of its meeting of January 28, 1977, was properly taken by a vote of a majority of the entire membership of the Commission pursuant to 5 U.S.C. 552b(d)(1) and in conformity with proposed 19 CFR 201.37(e). The discussion to be held in closed session is within the specific exemptions of 5 U.S.C. 552b(c) (2) and (6) and proposed 19 CFR 201.37(b) (2) and (6).

Issued: January 24, 1977.

By order of the Commission.

KENNETH R. MASON,
Secretary.
RUSSELL N. SHEWMAKER,
General Counsel.

[FR Doc.77-2743 Filed 1-27-77;8:45 am]

PRELIMINARY DRAFTS OF PARTS OF AN ENUMERATION OF ARTICLES TO PROVIDE FOR COMPARABILITY AMONG U.S. IMPORT, PRODUCTION, AND EXPORT DATA

Release for Public Comment

Notice is hereby given that the United States Departments of the Treasury and Commerce and the United States International Trade Commission are releasing for public comment the following preliminary drafts of parts of an enumeration of articles which will provide for comparability among U.S. import, production, and export data pursuant to section 484(e) of the Tariff Act of 1930 (19 U.S.C. 1484(e)), as amended by section 608(a) of the Trade Act of 1974 (19 U.S.C. 2101):

Nonmetallic minerals and products, except ceramic products and glass and glass products—schedule 5, part 1, *Tariff Schedules of the United States Annotated* (TSUSA);
Luggage; women's and children's handbags; and billfolds, card cases, coin purses, and similar flat goods—schedule 7 part 1D, *TSUSA;*

Motion pictures; tape recordings, phonograph records and other recordings; recording media; scrap and waste photographic film—schedule 7, part 2G, *TSUSA*; Fishing tackle; wheel goods; games and sporting goods; models; dolls, toys, party favors—schedule 7, part 5, subparts B, C, D, and E, *TSUSA*.

Background. The preparation of the drafts by the three agencies has generally proceeded from recommendations made in a joint report of the Secretary of Commerce and the U.S. International Trade Commission, dated August 1, 1975, submitted to Congress and the President pursuant to section 608(b) of the Trade Act of 1974, and entitled "Principles and Concepts Which Should Guide the Organization and Development of an Enumeration of Articles Which Would Result in Comparability of U.S. Import, Production, and Export Data."

The report noted that the principal advantages of achieving comparability among import, production, and export data are—

1. To permit the development and implementation of a more coordinated and efficient program for the administration, interpretation, and maintenance of national systems;
2. To improve and facilitate the publication of trade data most useful for international economic analysis;
3. To permit more reliable analysis of the impact of external trade on domestic industry.

In making specific recommendations concerning the organization and development of an enumeration of articles which would result in comparability, the report recognized various prerequisites to achieving comparability, such as adhering to sound nomenclature principles, employing identical descriptive techniques and product definitions, using compatible standards of valuation and measurement, and providing for centralized responsibility for interpretation and coordinated responsibility for maintenance. The report also acknowledged many of the practical considerations involved in achieving comparability among the three generally discordant classification systems presently used for the collection of import, production, and export data, including reconciling differences among the three existing systems, preserving statistical continuity, and achieving useful levels of product comparability with the least disruptive impact on current programs and reporting.

In summary, the specific recommendations provided that—

1. The organizational framework of the TSUS should be adopted as the basis for the enumeration of the export schedule.
2. The review and development of an enumeration should take into account the current import, production, and export product classes, with the primary aim of obtaining comparability at a common level.
3. Changes may be proposed to any system, including combinations, subdivisions, and modifications of existing language and content. In particular, consideration should be given to updating of definitions and terms to make them more reflective of current practice in the trade. It must be borne in mind that the TSUS structure and detail are legally based. Therefore, the enumeration should consist of individual TSUSA classifications, or combinations of individual TSUSA classifications (current or as proposed by this program), since this is the only way to attain comparability to the relatively rigid classifications of imports. Combinations may be made of commodities falling in different TSUS classes, if necessary, as long as they consist of aggregations of individual TSUSA classifications.

Continuing program for statistical annotation. The establishment of an enumeration for statistical purposes is, and should be looked upon as, a continuing program. It is intended that the initial modifications to the import, production, and export schedules will serve as a basis for further refinement and change. Modifications to each of the systems will be made from time to time to reflect changing statistical needs and also to improve the comparability of U.S. trade data with trade data reported by other countries on the basis of the Standard International Trade Classification (SITC). The publication of trade data by the Department of Commerce on the basis of the SITC will continue.

Modifications to the Tariff Schedules of the United States. Any proposals to modify the TSUS (other than statistical annotations thereto) could not be implemented without legislative approval. After comments have been recovered and reviewed, consideration may then be given to the extent of, and need for, amendatory legislation.

Comments by interested parties. Over the next several months further preliminary drafts will be released for public comment and consideration. Interested parties are invited to comment on all aspects of the comparability program. Specific recommendations and proposals are invited with respect to the extent to which the drafts would—

Recognize the specific needs of users of statistics; Facilitate economic analysis; Reflect sound principles of commodity identification and specification; and Impose undue reporting burdens for business establishments.

We would also welcome comments with respect to modifications which would provide greater comparability with the SITC (revision 2).

Copies of the drafts are available from the Chief, Industry and Commodity Classification Branch, Economic Surveys Division, U.S. Bureau of the Census, Washington, D.C. 20233.

Written comments should be submitted at the earliest practicable date, but, to be assured of consideration, not later than 60 days after release of the drafts. Such statements should be submitted to the Chief, Industry and Commodity Classification Branch, at the address shown above.

Issued: January 24, 1977.

By order of the Commission.

KENNETH R. MASON,
Secretary.

[FR Doc.77-2738 Filed 1-27-77;8:45 am]

INTERNATIONAL TRADE COMMISSION

[332-82]

TEXTILE IMPORTS

Probable Domestic Impact of Changing From "Chief Value" Method of Classification to "Chief Weight" Method

In response to a request dated January 5, 1977, by the President of the United States, the United States International Trade Commission instituted an investigation on January 7, 1977, under section 332(g) of the Tariff Act of 1930, as amended (19 U.S.C. 1332(g)), to determine the probable domestic impact of changing from the current "chief value" method of classifying textile imports to a method by which textiles would be classified according to the fiber that constituted their "chief weight." The full text of the request is as follows:

DEAR MR. CHAIRMAN: Most textile imports composed of two or more fibers currently are classified for tariff purposes according to the value of the component fibers. For example, a cotton-polyester blended shirt is classified as a cotton shirt if the cotton component has a greater value than the polyester component. This practice is consistent with the current General Headnotes of the Tariff Schedules of the United States (TSUS).

The "chief value" method of classifying textile articles has been criticized on the grounds that it is unstable and unduly difficult to adminnster. It is argued that these problems would not exist if textile articles were classified on the basis of the weight of the component fibers, rather than on the basis of their value.

In order to assist the Executive Branch in deciding whether to recommend a change in the basis for classifying blended textile imports, I hereby request the USITC, pursuant to section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)), to undertake a study of the probable domestic impact of changing from the current "chief value" method of classifying textile imports to a method by which textiles would be classified according to the fiber that constituted their chief weight. This study should include a consideration of the probable impact of such a change on United States customs procedures, on rates of duty, on reliability of trade data, and on U.S. production, consumption, and marketing of textiles and apparel, as well as any other domestic effects of such a change that the USITC considers relevant.

It is understood that much of the basic data that the USITC will require for this study will have to be developed by the Customs Service in connection with the processing of import entries. I am, therefore, requesting the Secretary of the Treasury to ensure that the USITC has the assistance and cooperation of the Customs Service in the conduct of this study.

I further request that this study be completed as quickly as possible, and that the results be reported to the Chairman of the Textile Trade Policy Group, the Special Representative for Trade Negotiations, for receipt on the President's behalf. Following receipt of this report, the interagency Textile Trade Policy Group will review the legal and policy effects of changing to a "chief weight" method of classification, including the potential international effects of such a change upon U.S. obligations under the General Agreement on Tariffs and Trade, under the Arrangement Regarding International Trade in Textiles, and under U.S. bilateral international textile agreements.

Sincerely,

GERALD R. FORD.

HEARINGS

Public hearings in connection with the investigation will be held in Charlotte, N.C., on April 26, 1977, New York, N.Y., on May 10, 1977, Los Angeles, Calif., on May 24 1977, and Washington, D.C., on June 7, 1977. The location of the hearings will be announced later. All interested persons will be given an opportunity to be present, to produce evidence, and to be heard at such hearings. Requests to appear at the public hearings should be addressed to the Secretary, United States International Trade Commission, 701 E Street, NW., Washington, D.C. 20436, and should be received not later than noon of the fifth calendar day preceding the hearing at which an appearance is requested.

WRITTEN SUBMISSIONS

In lieu of or in addition to appearances at the public hearings, interested persons may submit written statements. Any business information which a submitter desires the Commisison to treat as confidential shall be submitted on separate sheets, each clearly marked at the top "Confidential Business Data." All written submissions, except for confidential business data, will be made available for inspection by interested persons. To be assured of consideration by the Commission, written statements should be submitted at the earliest practicable date but not later than June 17, 1977. All submissions should be addressed to the Secretary at the Commission's office in Washington, D.C.

By order of the Commission:

Issued: January 25, 1977.

KENNETH R. MASON,
Secretary.

[FR Doc.77-2885 Filed 1-27-77;8:45 am]

DEPARTMENT OF LABOR

Employment and Training Administration

EMPLOYMENT TRANSFER AND BUSINESS COMPETITION DETERMINATIONS UNDER THE RURAL DEVELOPMENT ACT

Applications

The organizations listed in the attachment have applied to the Secretary of Agriculture for financial assistance in the form of grants, loans, or loan guarantees in order to establish or improve facilities at the locations listed for the purposes given in the attached list. The financial asistance would be authorized by the Consolidated Farm and Rural Development Act, as amended, 7 USC 1924 (b), 1932, or 1942(b).

The Act requires the Secretary of Labor to determine whether such Federal assistance is caculated to or is likely to result in the transfer from one area to another of any employment or business activity provided by operations of the applicant. It is permissible to assist the establishment of a new branch, affiliate or subsidiary, only if this will not result in increased unemployment in the place of present operations and there is no reason to believe the new facility is being established with the intention of closing down an operating facility.

The Act also prohibits such assistance if the Secretary of Labor determines that it is calculated to or is likely to result in an increase in the production of goods, materials, or commodities, or the availability of services or facilities in the area, when there is not sufficient demand for such goods, materials, commodities, services, or facilities to employ the efficient capacity of existing competitive commercial or industrial enterprises, unless such financial or other asistance will not have an adverse effect upon existing competitive enterprises in the area.

The Secretary of Labor's review and certification procedures are set forth at 29 CFR Part 75. In determining whether the applications should be approved or denied, the Secretary will take into consideration the following factors:

1. The overall employment and unemployment situation in the local area in which the proposed facility will be located.
2. Employment trends in the same industry in the local area.
3. The potential effect of the new facility upon the local labor market, with particular emphasis upon its potential impact upon competitive enterprises in the same area.
4. The competitive effect upon other facilities in the same industry located in other areas (where such competition is a factor).
5. In the case of applications involving the establishment of branch plants or facilities, the potential effect of such new facilities on other existing plants or facilities operated by the applicant.

All persons wishing to bring to the attention of the Secretary of Labor any information pertinent to the determinations which must be made regarding these applications are invited to submit such information in writing within two weeks of publication of this notice to: Deputy Assistant Secretary for Employment and Training, 601 D St., NW, Washington, D.C. 20213.

Signed at Washington, D.C. this 24th day of January 1977.

WILLIAM H. KOLBERG,
Assistant Secretary for Employment and Training.

Applications received during the week ending Jan. 21, 1977

Name of applicant	Location of enterprise	Principal product or activity
Brookwood Lodge, Valley Springs, Inc.	Warrior, Ala.	Alcoholic treatment center.
Mountain Enterprises, Inc.	Artemus, Ky.	Manufacturing of asphalt paving mixtures and paving blocks.
Modern Electric Supply, Inc.	Lawrenceville, Ga.	Wholesale distributor of electrical materials.
Ingersoll-Rand Co. (tenant of town of Davidson).	Davidson, N.C.	Manufacturing of air compressors.
Milla A. Kollinger	St. Marie, Ill.	Nursing home.
Hopedale Service Center	Hopedale, Ill.	Provides storage facilities for material and equipment used in the construction of residential housing and confinement hog houses and other farm buildings.
Janssen Manufacturing Co.	Beresford, S. Dak.	Fabricate panelised homes and all weather wood foundations and treat lumber under an osmose franchise.

[FR Doc.77-2669 Filed 1-27-77;8:45 am]

FEDERAL SUPPLEMENTAL BENEFITS (EMERGENCY UNEMPLOYMENT COMPENSATION)

Availability of Federal Supplemental Benefits in the State of Delaware

This notice announces the beginning of a new Federal Supplemental Benefit Period in the State of Delaware, effective January 23, 1977.

BACKGROUND

The Emergency Unemployment Compensation Act of 1974 (Pub. L. 93-572, enacted December 31, 1974) (the Act) created a temporary program of supplementary unemployment benefits (referred to as Federal Supplemental Benefits) for unemployed individuals who have exhausted their rights to regular and extended benefits under State and Federal unemployment compensation laws. Federal Supplemental Benefits are payable during a Federal Supplemental Benefit Period in a State which has entered into an Agreement under the Act with the United States Secretary of Labor. A Federal Supplemental Benefit Period is triggered on in a State when unemployment in the State or in the State and the nation reaches the high levels set in the Act. During a Federal Supplemental Benefit Period the maximum amount of Federal Supplemental Benefits which are payable to eligible individuals will be up to 13 weeks or 26 weeks, depending upon the level of the rate of insured unemployment in the State.

There is a Federal Supplemental Benefit "on" indicator in a State for a week if the United States Secretary of Labor determines with respect to the State that, (a) there is a State or National "on" indicator for the week, as determined for the purposes of payment of extended benefits under the Federal-State Extended Unemployment Compensation Act of 1970, as amended, and (b) the employment security agency of the State has determined that the average rate of

insured unemployment in the State for the period consisting of that week and the immediately preceding twelve weeks equalled or exceeded 5.0 percent. The Federal Supplemental Benefit Period actually begins with the third week following the week for which there is an "on" indicator, and lasts for a minimum period of not less than 26 weeks.

Similarly, an "off" indicator ending a Federal Supplemental Benefit Period occurs in a week when the Secretary of Labor determines that the average rate of insured unemployment (as determined by the State employment security agency) for the period consisting of that week and the immediately preceeding twelve weeks is less than 5.0 percent. The Federal Supplemental Benefit Period actually ends with the third week after the week in which there is an "off" indicator, but not earlier than the end of the twenty-sixth week of the period.

DETERMINATION OF "ON" INDICATOR

The Secretary of Labor has determined under section 203(d) of the Federal-State Extended Unemployment Compensation Act of 1970, as amended, and 20 CFR 615.13(a), (Title 20 of the Code of Federal Regulations, § 615.13 (a)), that there is a National "on" indicator in effect which is applicable to every State, as announced in the notice published in the FEDERAL REGISTER on February 21, 1975, at 40 FR 7722. The employment security agency of the State of Delaware has determined under the Act and 20 CFR 618.19(a)(2) (published in the FEDERAL REGISTER on March 23, 1976, at 41 FR 12151, 12157) that the average rate of insured unemployment in the State for the period consisting of the week ending on January 8, 1977, and the immediately preceding twelve weeks equalled or exceeded 5.0 percent.

Therefore, I have determined in accordance with the Act and 20 CFR 618.19 (a), and as authorized by the Secretary of Labor's Order 4–75, dated April 16, 1975 (published in the FEDERAL REGISTER on April 28, 1975, at 40 FR 18515), that there was a Federal Supplemental Benefit "on" indicator in the State of Delaware for the week ending January 8, 1977, and that a Federal Supplemental Benefit Period therefore commenced in that State with the week beginning on January 23, 1977.

INFORMATION FOR CLAIMANTS

There will be a 5-per centum period in effect in the new Federal Supplemental Benefit Period, commencing at the beginning of the new period. During the 5-per centum period an individual who is eligible for Federal Supplemental Benefits will be entitled to a maximum amount of up to 13 times the individual's weekly benefit amount, or, if less, the balance in the individual's Federal Supplemental Benefit Account.

In the event that a 6-per centum period subsequently takes effect in the new Federal Supplemental Benefit Period, because the rate of insured unemployment in the State has risen to an average of 6.0 percent or more over a period of thirteen weeks, the maximum amount of Federal Supplemental Benefits payable to an eligible individual will increase. In that event an eligible individual will be entitled to a maximum amount of Federal Supplemental Benefits of up to 26 times the individual's weekly benefit amount, or, if less, the balance in the individual's Federal Supplemental Benefit Account.

The State employment security agency will furnish a written notice of potential entitlement to Federal Supplemental Benefits to each individual who is an "exhaustee" (as defined in the Act and 20 CFR 618.5) of regular and extended benefits payable under State and Federal unemployment compensation laws, and to each individual who has a previously established Federal Supplemental Benefit Account in which there is any balance as of the beginning of the new Federal Supplemental Benefit Period. The State employment security agency also will furnish a written notice to each individual for whom a Federal Supplemental Benefit Account has been established, of the beginning or ending of a 6-per centum period in the new Federal Supplemental Benefit Period, and its effect on the individual's entitlement to Federal Supplemental Benefits.

Persons who believe they may be entitled to Federal Supplemental Benefits in the State of Delaware, or who wish to inquire about their rights under this program, should contact the nearest State Employment Office of the Delaware Department of Labor in their locality.

Signed at Washington, D.C., on January 24, 1977.

WILLIAM H. KOLBERG,
Assistant Secretary for Employment and Training.

[FR Doc.77-2872 Filed 1-27-77;8:45 am]

Occupational Safety and Health Administration

REVIEW AND EVALUATION OF NIOSH CRITERIA DOCUMENTS

Procedures for Review; Request for Information on Cadmium

•*Purpose.* This notice describes the procedures that will be followed by the Occupational Safety and Health Administration (OSHA) in evaluating NIOSH criteria documents and, where appropriate, in developing proposed standards on the basis of these criteria documents. This document also requests information from the public in relation the NIOSH criteria document for cadmium, with special attention to areas where additional information is needed.•

INTRODUCTION

Under section 20(a)(3) of the Occupational Safety and Health Act of 1970 (84 Stat. 1610, 29 U.S.C. 669), the Secretary of Health, Education and Welfare, acting through the National Institute for Occupational Safety and Health (NIOSH), is directed to:

Develop criteria dealing with toxic materials and harmful physical agents and substances which will describe exposure levels that are safe for various periods of employment, including but not limited to the exposure levels at which no employee will suffer impaired health or functional capacities or diminished life expectancy as a result of his work experience.

In addition, section 22(c) of the Act authorizes NIOSH to develop recommended occupational safety and health standards. These criteria and the recommended standard developed by NIOSH are intended to be a principal source of information to OSHA concerning many aspects of standards proposals. As noted by the United States Court of Appeals for the District of Columbia Circuit in "IUD v Hodgson", 499 F. 2d 467 (D.C. Cir. 1974), while NIOSH criteria documents do not address all of the elements relevant to OSHA rulemaking and while OSHA is to consider all of the information available to it, the NIOSH recommendations were intended to be an important aid of OSHA in the rulemaking process.

PROCEDURE

As of December 31, 1976, NIOSH has transmitted a total of 57 criteria documents to OSHA (see Appendix A) for consideration as the basis for the development of mandatory occupational safety and health standards. OSHA has initiated rulemaking on a significant number of the hazards identified by the Criteria Documents, and in some instances published Advance Notices of Rulemaking or Notices of Receipt of Criteria Document in order to elicit public comment on key issues during the early stages of the respective proceedings, and to encourage public involvement in determining the appropriate course of regulatory action and in the formulation of future proposed standards.

In the past year, NIOSH has published as many criteria documents as had been published in the preceding years of its existence. This rate of criteria document development is expected to continue. OSHA recognizes the need to establish rational priorities for the initiation of rulemakings on the basis of the NIOSH recommendations. We further recognize that public comment on the relative need for OSHA standards on the hazards addressed by the NIOSH criteria document can be of substantial benefit in setting these priorities. Therefore, OSHA proposes the continued use of Advance Notices of Proposed Rulemaking, published on a routine basis as new criteria documents are received, to invite public comment on the need for OSHA rulemakings to establish mandatory standards, and if standards should be deemed necessary, on the relative priority of developing these standards. We believe such a procedure will assist OSHA in determining the best allocation of its staff resources to address the most serious hazards. We also believe that the Advance Notice should continue to identify key issues on which data and other information are requested from the public to be used in the development of proposed standards. There have been a number of recent criteria documents for which OSHA has not published any notice of receipt or other advance notice of rulemaking. Beginning with this notice, OSHA will publish notices in the FEDERAL REGISTER for all criteria documents received to date and will continue to publish such notices as new recommendations are received.

In addition to noting the availability of new criteria documents containing NIOSH's recommended standards for occupational exposure to toxic substances or other work place hazards, the notices will summarize the hazards presented; the types and extent of use; the major affected parties, as identified in the criteria document; the source of the present standard; the NIOSH recommended standard; and the basis for the recommended standard. While public comment is invited on any issue raised by the NIOSH recommendations, comment and information are specifically requested on the following issues to assist OSHA in fulfilling its responsibilities:

1. Whether the criteria document adequately demonstrates the need for and appropriateness of regulating this substance or other hazard.
2. What benefits are expected to result from the regulation, i.e., what mortality and morbidity are associated with current exposures, and to what extent would that be reduced by the recommended standards.
3. Are affected industries and employee groups, number of employees exposed and conditions of exposure correctly described in the criteria document.
4. Description of current engineering and work practice controls for major affected processes/industries.
5. What is the technological and economic feasibility of the NIOSH recommendations (e.g., control measures, methods of measurement)?
6. Whether the sampling and analytical methods recommended are appropriate and can be feasibly complied with by affected employers.
7. What are the environmental impacts of the recommended standard?

These comments will become part of the record of rulemaking which will be used in deciding on the appropriate course of regulatory action, if any, for each criteria document and will also assist in preparing the proposed standards for those hazards chosen to be addressed in an OSHA standards development project.

CADMIUM—BACKGROUND

Cadmium, atomic number 48 and atomic weight 112.40, is a metallic element with a silver-blue-white appearance. It is soft and ductile and highly corrosion resistant due to the formation of the oxide which resists further oxidation. Cadmium is mined in conjunction with other metals, principally zinc. Cadmium occurs in nature as cadmium sulfide, or greenockite, which is the most common cadmium ore, although it is found in economically recoverable form only with the sulfides of other metals (e.g. zinc sulfide). Cadmium is obtained as a by-product of zinc, lead-zinc, and cooper-lead-zinc ore refining.

NIOSH estimates U.S. cadmium production in the 1961–70 period to be 4.2 to 6.9 million kilograms. Electroplating accounts for 45–60 percent of cadmium use. About 1 million kg/year are used for stabilizers for plastics, particularly polyvinyl chloride. A like quantity is used for pigments. One quarter to one half million kilograms of cadmium are used annually as an alloying agent in low-melting-point brazing alloys, in copper for automobile radiators, in silver-cadmium electrical contacts and in other alloys. These uses account for 80–90 percent of cadmium consumption. Other minor uses include nickel-cadmium batteries, fungicides, photograph, and television picture tubes.

Dusts, fume, and mists of cadmium are commonly present in smelting processes involving zinc, copper, and lead as well as in specific processes for extracting cadmium, according to NIOSH.

NIOSH estimates that there are 100,000 workers potentially exposed to cadmium in the occupations listed in Table I.

TABLE I—POTENTIAL OCCUPATIONAL EXPOSURES

Alloy makers
Aluminum solder makers
Battery makers, storage
Cadmium compound collecting bag cleaners
Cadmium compound collecting bag handlers
Cadmium plates
Cadmium smelters
Cadmium vapor lamp makers
Cadmium workers
Ceramic makers
Dental amalgam makers
Electric instrument makers
Electroplaters
Engravers
Glass makers
Incandescent lamp makers
Lithographers
Lithopone makers
Metalizers
Paint makers
Paint sprayers
Photoelectric cell makers
Pigment makers
Small arms ammunition makers
Smoke bomb makers
Solderers
Solder makers
Textile printers
Welders, cadmium alloy
Welders, cadmium plated object
Zinc refiners

EFFECTS OF CADMIUM EXPOSURE

Numerous toxic effects resulting from exposure to cadmium or cadmium compounds reported in the scientific literature are cited in the NIOSH document. Clearly demonstrated effects include anemia, kidney dysfunction, and pulmonary changes including emphysema. Less clearly demonstrated effects, cited by NIOSH, include effects on the gonads, adrenal glands, thyroid, pancreas, and the liver.

Exposure to cadmium can result in kidney malfunction characterized primarily by proteinuria (Ref. 54, 55, 65).[1] This may be a sign of decreased tubular reabsorption although the precise etiology is unknown. Although other evidence of renal tubular dysfunction such as glucosuria and amino aciduria, have been reported, proteinuria is the most common abnormality found in exposed workers and is probably the earliest sign of renal dysfunction in cadium intoxication.

Pulmonary effects can result from both acute and chronic cadium exposure. Acute effects result from exposure to cadium fume of several milligrams per cubic meter concentration and consist of the delayed (4–10 hours) appearance of dyspnea, cough, and the feeling of chest constriction. Substernal pain, chills and myalgia may also be present. In most cases the symptoms resolve within one week, although, in about 20% of the people exposed, the dyspnea is progressive and wheezing and hemoptypsis may develop. Pulmonary edema and interstitial pneumonia may occur. In progressive cases, death characteristically occurs within the first week after exposure. A probable lethal concentration of cadmium oxide fume is about 5 mg/m³ during an 8-hour period (equivalent to 2,400 mg-min/m³). Chronic sequelae include pulmonary fibrosis and "honeycomb lung." Changes may occur in the muscles of the pulmonary and bronchial blood vessels.

Chronic cadmium inhalation has been reported to cause pulmonary emphysema in humans (Ref. 53–56, 59). The exposure times varied in these studies from 2 years to 39 years. Other studies cited by NIOSH have reported no pulmonary effects from chronic cadmium intoxication (Ref. 61–64), but as NIOSH states, at least some of these involved exposures at lower concentrations or for shorter exposure times.

Anosmia (loss of the sense of smell) and hyposmia (reduced sensitivity to smells) are other potential consequences of cadmium exposure reported by NIOSH (Ref. 55, 65, 78, 79). As with lung and kidney damage, duration and concentration of exposure are probably important factors. Although concurrent nickel exposures were reported in some of the studies (55, 65, 78) one study reported insensitiveness to smells without evidence of nickel exposure (79).

Moderate anemia has been described in workers exposed for a long time to cadmium oxide dust and fume (38, 55, 81). No bone marrow pathology was found in one group of workers (Ref. 55).

The possible role of cadmium in hypertension is unclear. Studies cited by NIOSH have shown a positive correlation between cardio-vascular disease and ambient cadmium levels (82) and hypertension and urinary cadmium (83). Higher than normal kidney cadmium levels were found at autopsy in 17 adults who were hypertensive (84). NIOSH states, however, that "no definitive relationship between cadmium levels in the kidney and cardiovascular disease has been demonstrated."

Cadmium has been reported to cause certain bone changes (Ref. 34, 71) and

[1] Numbers are reference cited in the NIOSH criteria document.

back and extremity pain (Ref. 38). The bone changes, similar or identical to osteomalacia (softening of bone) are of unknown etiology, although impaired renal tubular regulation of calcium/phosphorus balance may be responsible (Ref. 1).

The "Itai-itai" (ouch-ouch) disease reported by several investigators (Ref. 1, 7, 40, 41, 89) which occurred in certain areas of Japan may be due to contamination of crops and water with industrial wastes containing cadmium. The disease is apparently osteomalacia and involves painful joints and bones, especially in the back and legs. Other factors, such as diet and hormone levels, may also play a role.

The development of a yellow ring at the neck of the tooth was cited by NIOSH to have been reported in early epidemiologic studies of cadmium exposed workers and was at one time suggested to be a warning sign of chronic cadmium poisoning. The etiology and significance of this effect remains unclear.

One study (Ref. 55), cited by NIOSH, reported abnormal liver function tests in workers exposed to cadmium oxide dust for a mean exposure time of 20 years. This was considered as an unusual finding and the extent of liver abnormalities in exposed workers is unknown.

Studies in animals have suggested that cadmium may exert some destructive effect on the gonads (Ref. 91, 92, 162). These studies found testicular necrosis in rats after injection of cadmium chloride solution. Other studies reported by NIOSH, demonstrated that injection of cadmium had a sterilizing effect on the ovaries of rats and gerbils (Ref. 166–169). One study (Ref. 94) reported high levels of cadmium in the tests of men exposed to cadmium fume. NIOSH cautions, however, that further study is necessary before any conclusion can be drawn concerning the possible effects of cadmium on gonadal function in workers exposed to cadmium.

A Russian study, cited by NIOSH, reported reduced birth weights in children born to mothers who had been occupationally exposed to cadmium (Ref. 95). Teratological effects of cadmium have been demonstrated in animals. Severe malformations (e.g., anophthalmia, microphthalmia, hydrocephaly, renal agenesis) have been reported after injection of rats, mice, or hamsters with cadmium chloride (Ref. 172–176). One study (Ref. 174) found no increased rate of malformations in mice at a dose of 0.33 mg/kg but did find a dose-related increase at higher doses (0.63 mg/kg, 2.5 mg/kg, and 5 mg/kg).

Chromosomal damage due to cadmium has also been studied. Male mice were killed 3 months after mating to ascertain fertility, and dividing spermatocytes were examined for chromosomal rearrangements but none were found. In humans, no significant differences in chromosomal aberrations were found in exposed and control groups from Sweden and Japan (Ref. 111). In leukocytes, from Itai-Itai patients, cultured in vitro, and in human leukocytes, cultured with cadmium sulfide, increases in chromosomal aberrations were found (Ref. 112, 113). An increased incidence of aberrations was found in chromosomes cultured from leukocytes of workers exposed to cadmium, zinc, and lead (Ref. 114). The effects of such mixed exposures are difficult to interpret as pointed out by both the authors of the study and NIOSH.

NIOSH included a report of one study which concluded that cadmium exposure can cause central nervous system changes (Ref. 116). Changes in cutaneous, optical and motor nerve chronaxy were reported.

The carcinogenic potential of cadmium has been examined in both exposed human populations and in experimental animals.

Surveys of cadmium workers have indicated that cancer of the prostate may be more frequent in these groups than in the general population (Ref. 65, 96). In one study (Ref. 65), 74 men with greater than 10 years exposure were surveyed. There were 8 deaths in this group, 3 from prostate cancer. In another study (Ref. 96), 4 prostate cancer deaths were found in a cohort of 248 workers. This is significantly more than expected. There may be some overlap in these two studies and one group of investigators, quoted by NIOSH, warned against drawing conclusions until further studies are done (Ref. 96). A study of 92 deaths among 292 cadmium smelter workers revealed 4 prostate cancers compared to 1.15 expected (Ref. 97). This was not considered significant. If only workers alive 20 years after their first exposures were considered 0.88 deaths would have been expected vs. the 4 observed. This was reported to be significant at the 0.05 level.

NIOSH states that these studies are suggestive of a link between occupational exposure to cadmium and prostate cancer but that the number of cases are small and some of these studies may be overlapping.

A significant excess (12 obs. vs. 5.11 exp.) of cancer of the respiratory tract has been reported in workers exposed to cadmium (Ref. 97). These authors also noted a significant excess of all neoplasms (27 obs. vs. 17.5 exp.).

In a study of patients hospitalized due to suspected neoplastic disease, Kolonel (Ref. 101) found a significant increase in renal cancer and a nonsignificant increase in pancreatic cancer in patients through to have had cadmium exposure. No increase in prostate cancer was found. NIOSH views the result of this study as uncertain due to the deficient occupational histories.

Elevated blood and tissue cadmium levels were found in lung cancer patients in a study by Morgan (Ref. 103). But whether this was a cause or effect is unknown.

Cadmium chloride produced tumors at the injection site in 3 of 30 rats 12–16 months post-injection (Ref. 182). Injection site sarcomas have also been induced by suspensions of cadmium oxide, sulfide, sulfate, and metal powder (Ref. 183–187). Cadmium chloride injection of 30μ mole/kg also caused interstitial cell tumors of the testes (Ref. 188, 189). No increase in tumors occurred in rats given drinking water containing 5 ppm cadmium acetate. (Ref. 192). No increase in prostate cancer was found in rats and mice given cadmium sulfate by injection or intragastric catheter (Ref. 105–107). Testicular changes and Leydig cell tumors did occur but no prostate neoplasms or preneoplastic changes occurred in either rodent species.

The International Agency for Research on Cancer (IARC) reviewed the potential carcinogenicity of cadmium. The IARC review, cited by NIOSH, suggested that the data were insufficient to permit conclusions on whether or not cadmium is carcinogenic.

Basis of the Current Standard

The present OSHA standard for cadmium fume is an 8-hour average of 0.1 mg/m³ with a ceiling concentration of 0.3 mg/m³. The standard for cadmium dust is an 8-hour average of 0.2 mg/m³ with a ceiling concentration of 0.6 mg/m³ (29 CFR 1910.1000, Table Z–2). The standard was originally developed in 1941, by the American Standards Association (now American National Standards Institute, or ANSI) as an American Defense Emergency Standard of 1 mg/m for cadmium and its compounds. ANSI revised the standard in 1970 to the present levels (ANSI Z37.5) which was subsequently adopted by OSHA under section 6(a) of the Occupational Safety and Health Act of 1970. The ANSI report briefly reviewed cadmium toxicity but the specific basis for the standard was not stated.

In 1946, the American Conference of Governmental Industrial Hygienists (ACGIH) recommended a Maximum Allowable Concentration (MAC) Value of 0.1 mg/cu m for cadmium, continuing it for several subsequent years but changing the name MAC Values to Threshold Limit Values (TLV's) in 1948 (these 1946–1949 MAC or TLV lists were unpublished but privately circulated). In 1956, the TLV of 0.1 mg/cu m was assigned to CdO fume, rather than Cd. In 1965, a tentative value of 0.2 mg/cu m for cadmium (metal dusts and soluble salts) was added, and changed to a recommended value in 1967. More recently, the ACGIH recommended several changes in the TLV's of cadmium dusts and fumes. In 1970, the TLV of cadmium dusts and salts was continued at 0.2 mg/cu m as a ceiling. In 1973, the ACGIH announced its intent to change the TLV of fume to 0.05 mg/cu m, also as a ceiling. In 1974, the intention to change the TLV of cadmium dusts and salts to 0.05 mg/cu m as a TWA concentration was announced. In 1975, a note was added indicating that cadmium oxide production involved a carcinogenic or co-carcinogenic potential. In a supplement to the 1971 TLV documentation, a review by Bonnell and the report of Tsuchiya were cited as reasons for a lowering of the TLV of cadmium fume to a ceiling concentration to 0.05 mg Cd/cu m. The basis for indicating that there is a carcinogenic or co-carcinogenic potential in cadmium oxide production was not stated.

Several foreign countries have set limits for exposure to cadmium. Some of the limits, reported by NIOSH, are 20μg/m³ for dust and 10 mg/m³ for fume in Finland; 0.05 mg/m³ total and 0.02 mg/m³ (respirable) in Sweden; and 0.1 mg/m³ for cadmium oxide in the USSR. Bulgaria, Czechoslovakia, Hungary, Japan, Poland, and Rumania all have adopted 0.1 mg/m³ for cadmium or cadmium oxide.

Basis for the Recommended Standard

The environmental limit recommended by NIOSH for exposure to cadmium is a time-weighted-average (TWA) concentration of 40μg/m³ and a 15 minute ceiling limit of 200μg/m³. A 1967 report by Tsuchiya (Ref. 63), cited by NIOSH, recommended a TWA of 50μg/m³. This author did state that this limit may only be valid for Japanese workers. A limit of 50μg/m³ was suggested in another study, by Lauwerys, et al (Ref. 133), which found no effects in workers exposed at 31μg/m³ and proteinuria and reduced pulmonary function in workers exposed at 66μg/m³. NIOSH cautions that the presence of toxic effects at the 66μg/m³ level suggests that a limit of 50μg/m³ would not have a large safety factor. NIOSH notes further that it is possible that workers exposed at 66μg/m³ were also exposed to higher concentrations but this is uncertain. A study by Piscator (Ref. 131) found no effects in a group of women workers exposed to less than 100μg/m³ (mostly about 40μg/m³). One elderly woman was found to have proteinuria but that was attributed to earlier exposures at higher levels.

Because of the low margin of safety afforded by a limit of 50 μg/m³, NIOSH recommends a limit of 40 μg/m³. NIOSH reports that it appears likely that the threshold for the development of adverse effects on pulmonary function is higher than the threshold for adverse effects on renal function, this has not been clearly established. The recommended limit is intended to protect against the development of renal damage. The recommended medical surveillance protocol for exposed employees includes examinations of both renal and pulmonary function.

The recommended ceiling limit of 200 μg/m³ for 15 minutes is based on evidence of acute pulmonary disease at 2,500–2,900 mg-min/m³ (about 5 mg/m³ for 8 hours). NIOSH reported that there have been cases of exposures up to 25 mg/m³ without acute pulmonary disease but such instances may have been only very brief exposures or exposures may have been to primarily non-respirable dust. Another study NIOSH cites, reported acute cadmium intoxication at an estimated concentration range of 10–140 μg/m³ for a cumulative exposure of almost 10 hours. Because of the contradictory evidence, NIOSH recommends a ceiling limit based on what NIOSH believes to be realistic limitations on excursions and the belief that acute pulmonary disease, possibly fatal, can develop at around 2500 mg-min/m³.

Although there is some evidence of the teratogenic effect of cadmium in both experimental animals and humans (see Effects of Exposure), the data, particularly in humans, NIOSH believes to be incomplete. NIOSH states that human fetal abnormalities may be related to zinc retention in the mother caused by cadmium absorption which created a zinc deficiency in the fetus. Injection of zinc into pregnant rats has been reported to exert a protective effect on the fetuses against the development of cadmium-induced abnormalities (Ref. 177, 178). NIOSH, therefore, concludes that reduction of cadmium exposure to a level that does not result in abnormal zinc requirements should allow sufficient zinc to the fetus for normal development. This has not been proven and NIOSH suggests further research be done.

The data on the potential carcinogenicity of cadmium is contradictory. Among men working with cadmium, small numbers of cases of prostatic cancers, mainly in the elderly, have been found (Ref. 65, 96, 97). Other epidemiologic studies (Ref. 101, 102) and animal studies (Ref. 105–7) have not found excess prostate cancers. These studies are considered inadequate by NIOSH as the human subjects were not known to have had cadmium exposure and the animals were not given large enough doses of cadmium. The findings of excess total cancers and lung cancers among cadmium smelter workers is confounded by the concomitant exposure to arsenic. (Ref. 97.) Due to the uncertainties of the presently available data on the carcinogenicity of cadmium, NIOSH did not feel that a limit based on this effect was appropriate.

The NIOSH recommended limits for cadmium are based on total dust sampling and not limited to only the respirable portion. NIOSH feels that large particles of cadmium and its compounds, while not reaching the alveoli, may still be toxic because they may be cleared from the upper respiratory tract and swallowed and be absorbed through the gastrointestinal tract.

The past and present standards for cadmium have separate limits for dust and fume due to the greater penetrability in the lungs of the smaller fume particles. The recommended standard does distinguish different forms of cadmium. NIOSH states that the evidence of proteinuria in populations exposed to either dust or fume demonstrates that the effects found are comparable at similar concentrations of either form of cadmium. NIOSH feels that the data does not show that a given amount of cadmium is more toxic as small particles than as large particles; therefore, a standard expressed as total dust is an effectively lower standard and is therefore more protective. Lack of good data precludes NIOSH from recommending different standards for different compounds of cadmium based on their individual toxicities.

Public Participation

In addition to the general issues, listed under Introduction, on which comment and information are requested, OSHA requests comment and information on the following specific issues raised by the NIOSH recommendations for a standard for occupational exposure to cadmium:

The exposure limit recommended by NIOSH is based on protection against kidney damage—is this a correct approach?

Are there other significant toxic effects of cadmium not discussed in the NIOSH criteria document?

Is the evidence sufficient for cadmium to be considered a teratogen and/or a carcinogen? If so, what steps should be taken to protect exposed workers?

Should all forms of cadmium be considered in a single exposure limit, as recommended by NIOSH, or should separate standards be set for dust and fume?

Should the cadmium standard be expressed in terms of total particulate, as recommended by NIOSH, or should it be based upon only the respirable fraction?

Are the NIOSH recommendations for limiting employee exposure to cadmium technologically and economically feasible? If not, what alternatives are appropriate?

Are there effective substitutes which can be used to replace cadmium in some of its applications?

Is the NIOSH estimate of exposed workers (100,000) accurate?

Are there employee groups not listed which are potentially exposed to cadmium?

The NIOSH criteria document, all references, and comments on the document from the NIOSH review consultants and other groups (Tab Document) are available for review and copying at the OSHA Technical Data Center at the address listed below for the Docket Officer. The NIOSH recommendations are reprinted in Appendix B.

Comments should be addressed to Docket Officer, Docket HO57, Department of Labor—OSHA, Room N3620, 3rd and Constitution Avenue, NW., Washington, D.C. 20210, and should be submitted by March 20, 1977.

Dated at Washington, D.C., this 19th day of January 1977.

MORTON CORN
Assistant Secretary of Labor

Appendix A—Criteria Documents Transmitted to OSHA

Asbestos: Received January 21, 1972. As a result of a petition to OSHA, an Emergency Temporary Standard on asbestos had been issued on December 7, 1971. Current standard published on June 7, 1972. Proposed revision published October 9, 1975. New NIOSH recommendations received by OSHA on December 15, 1976.

Hot Environments: Received June 30, 1972 OSHA Advisory Committee established on subject on January 24, 1973. Committee recommendations submitted January 11, 1974. Inadequate information on which to establish a mandatory standard.

Beryllium: Received June 30, 1972. Proposed standard published October 17, 1975.

Carbon Monoxide: Received August 3, 1972.

Noise: Received August 10, 1973. OSHA Advisory Committee established on subject on January 26, 1973. Committee recommendations submitted December 20, 1973. Proposed revision to existing OSHA noise standard published on October 24, 1974. Hearings held in June and July 1975, and September and October 1976.
Ultraviolet Radiation: Received December 20, 1972.
Inorganic Lead: Received January 5, 1973. Proposed standard published October 3, 1975.
Coke oven Emissions: Received February 28, 1973. Advisory Committee established August 12, 1974. Committee recommendations submitted May 24, 1975. Proposed standard published July 24, 1975. Final standard promulgated October 22, 1976.
Chromic Acid: Received July 17, 1973. (see Hexavalent Chromium).
Toluene: Received July 23, 1973. Proposed standard published October 6, 1975.
Toluene Diisocyanate: Received July 13, 1973.
Trichloroethylene: Received July 23, 1973. Proposed standard published October 20, 1975.
Inorganic Mercury: Received August 13, 1973.
Inorganic Arsenic: Received January 21, 1974. Proposed January 21, 1975. Hearings held April 1975 and September 1976. Revised Criteria Document received June 23, 1973.
Sulfur Dioxide: Recieved February 11, 1974. Proposed November 24, 1975.
Sulfuric Acid: Received June 6, 1974.
Ammonia: Received June 15, 1974. Proposed November 25, 1975.
Benzene: Received July 24, 1974.
Chloroform: Received September 11, 1974.
Cotton Dust: Received September 26, 1974. Proposed December 28, 1976.
Silica: Received November 11, 1974.
Identification System for Hazardous Materials: Received December 20, 1974. Advisory Committee established September 19, 1974. Committee recommendations submitted May 24, 1975.
Xylene: Received May 30, 1975.
Inorganic Fluorides: Received June 30, 1975.
Sodium Hydroxide: Received October 9, 1975.
Zinc Oxide: Received October 10, 1975.
Hexavalent chromium: Received December 3, 1975. Combined as single OSHA project with Chromic Acid.
Carbon Tetrachloride: Received January 23, 1976.
Isopropyl Alcohol: Received March 9, 1976.
Methylene Chloride: Received March 9, 1976.
Hydrogen Fluoride: Received March 9, 1976.
Phosgene: Received March 3, 1976.
Nitric Acid: Received March 9, 1976.
Ethylene Dichloride: Received March 9, 1976.
Methyl Alcohol: Received March 22, 1976.
Nitrogen Dioxide: Received March 22, 1976.
Chlorine: Received May 25, 1976.
Methyl Chloroform (1,1,1 Trichloroethylene): Received July 1, 1976.
Perchloroethylene (Tetrachloroethylene): Received July 1, 1976.
Acetylene: Received June 30, 1976.
Malathion: Received June 30, 1976.
Phenol: Received June 30, 1976.
Parathion: Received June 30, 1976.
Carbon Dioxide: Received August 11, 1976.
Cadmium: Received August 24, 1976.
Epichlorohydrin: Received September 17, 1976.
Allyl Chloride: Received September 21, 1976.
Methyl Parathion: Received September 30, 1976.
Carbaryl: Received September 30, 1976.
Cyanide and Cyanide Salts: Received October 5, 1976.
Organotin Compounds: Received November 12, 1976.
Acrylamide: Received December 1, 1976.
Boron Trifluoride: Received December 17, 1976.
Formaldehyde: Received December 30, 1976.

APPENDIX B

1. RECOMMENDATIONS FOR A CADMIUM STANDARD

The National Institute for Occupational Safety and Health (NIOSH) recommends that worker exposure to cadmium in the workplace be controlled by adherence to the following sections. The standard is designed to protect the health and safety of workers for up to a 10-hour workday, 40-hour week over a working lifetime. Compliance with all sections of the standard should prevent adverse effects of ex posure to cadmium on the health and safety of workers. The standard is measurable by techniques that are valid, reproducible, and available to industry and government agencies. Sufficient technology exists to permit compliance with the recommended standard. The criteria and the standard will be subject to review and revision as necessary. "Cadmium" refers to elemental cadmium and all cadmium compounds. An "action level" is defined as half the time-weighted average concentration environmental limit of cadmium. "Occupational exposure to cadmium" is defined as exposure to cadmium at a concentration greater than the action level. Exposure at lower environmental concentrations will not require adherence to the following sections, except for Section 6(b) and 7(d).

SECTION 1 *Environmental (Workplace air)*—(a) *Concentration.* Occupational exposure to cadmium shall be controlled so that workers are not exposed to cadmium at a concentration greater than 40 micrograms per cubic meter of air (40(μ)g Cd/cu m determined as a time-weighted average (TWA) exposure concentration for up to a 10-hour workday, 40-hour workweek, or at a ceiling concentration greater than 200 (μ) g Cd/cu m for any 15-minute sampling period.

(b) *Sampling and analysis.* Sampling in the work environment shall be performed by the method provided in Appendix I or by a method with at least equivalent efficiency. Samples shall be analyzed by the method provided in Appendix II or by a method shown at least equivalent in precision and sensitivity.

SEC. 2 *Medical.* Medical monitoring shall be made available to all workers subject to occupational exposure to cadmium.

(a) Preplacement examinations shall be made available to new or reassigned employees prior to job placement, and, within 6 months of the promulgation of a standard based on these recommendations, to employees already engaged in work involving exposure to cadmium.

Preplacement examinations shall include a comprehensive work and medical history, a 14" x 17" P.A. chest x-ray, measurement of forced vital capacity (FVC) and forced expiratory volume during the first second (FEV 1), measurement of blood pressure, blood analysis (blood urea nitrogen, complete blood count, and serum glutamic oxaloacetate transaminase or other liver enzymes), and urinalysis (microscopic examination, sugar determination, quantitative protein determination, and specific gravity measurements). A judgment of the worker's ability to work in positive or negative pressure respirators shall be made.

The method for protein determination in urine shall be quantitative and capable of detecting low molecular weight protein (see Appendix III). Determination of urine cadmium levels is also recommended.

(b) Periodic examinations shall also be made available, except for urine protein determinations, which shall be made available every 4 months, these examinations shall be offered yearly, or as otherwise directed by the responsible physician.

These periodic examinations shall include interim work and medical history, urinalysis (with quantitative protein determinations every 4 months) pulmonary function tests (FVC and FEV 1), and blood pressure. Chest radiographs shall be taken if judged necessary by the responsible physician.

In addition, blood analysis, palpation of the prostate in male workers over 40 years old, and monitoring of urine cadmium concentrations are also recommended. If the concentration of cadmium in the urine rises above 10 (μ)g/liter, an investigation of the cause, such as environmental exposures, personal and industrial hygiene practices, and nonoccupational exposure, should be conducted.

Reassessment of occupational exposure, work practices, and personal habits shall be undertaken if FVC or FEV 1 becomes reduced 15 percent or more or the ratio FEV 1/FVC is reduced 10 percent or more than would be expected from the age and smoking habits of the person examined, if persistent symptoms of respiratory tract disease develop, if there are frequent upper or lower respiratory infections, or if persistent proteinuia or other abnormal laboratory or clinical findings relatable to cadmium toxicity develop.

Smokers should be counseled on their possibly increased risk of chronic respiratory disease.

(c) At termination of or transfer from employment involving occupational exposure to cadmium, a comprehensive examination including the components of (a) above shall be offered.

(d) Pertinent medical records shall be retained for 20 years after the last occupational exposure to cadmium. These records shall be made available to the designated medical representatives of the Secretary of Labor, of the Secretary of Health, Education, and Welfare, of the employer, and of the employee or former employee.

SEC. 3 *Labeling and Posting*—(a) *Containers.* Shipping and storage containers or package containing cadmium or cadmium compounds shall bear the following label:

DANGER!

CONTAINS --------[1]

POISONOUS FUMES MAY BE FORMED ON HEATING

HARMFUL IF INHALED OR SWALLOWED

AVOID CONTACT WITH SKIN, EYES, AND CLOTHING

WASH HANDS THOROUGHLY AFTER HANDLING

Avoid breathing fume, dust or mist

Keep container closed

Use only with adequate ventilation

(b) Work areas

Locations or areas where cadmium dust or fumes are likely to be generated shall be designated with clearly visible warning signs as shown below:

DANGER!

CADMIUM (Cd)

Cadmium Fume (or Dust) Areas

Authorized Personnel Only

Breathing Fume (or Dust) May Cause Immediate or Delayed Injury

No Smoking

Respirators Are Located --------[2]

[1] Complete by inserting "cadmium" or

[2] Give location of respirators.

This sign shall be printed in English and in the predominant language of non-English-speaking workers. All employees shall be trained and informed of the hazards and the hazardous areas. All illiterate workers shall receive special attention.

SEC. 4. *Personal Protective Equipment.* Engineering controls shall be used if needed to maintain airborne cadmium concentrations at or below the limits recommended in Section 1. Compliance with these workplace environmental limits by the use of respirators is permitted only during emergencies. When use of a respirator is permitted, it shall be selected and used in accordance with the following requirements:

(a) For the purpose of determining the type of respirator to be used, the employer shall measure the concentrations of cadmium in the workplace initially and thereafter whenever control, process, operation, worksite, or climate changes occur that are likely to increase the concentration of airborne cadmium.

(b) The employer shall ensure that no worker is exposed to cadmium in excess of the recommended limits because of improper respirator selection, fit, use, or maintenance.

(c) A respiratory protection program meeting the requirements of 29 CFR 1910.134, which incorporates the American National Standard Practices for Respiratory Protection, Z88.2–1969, shall be established and enforced by the employer.

(d) The employer shall provide respirators in accordance with Table I–1 and shall ensure that employees use the respirators provided in a proper manner when wearing of respirators is required.

(e) Respirators selected from those described in Table I–1 shall be those approved under the provisions of 30 CFR Part 11.

(f) The employer shall ensure that employees are properly instructed in the use of respirators assigned to their use and on how to test for leakage, proper fit, and proper operations.

(g) Respirators specified in Table I–1 for use in atmospheres of higher concentrations of airborne cadmium may be used in atmospheres of lower cadmium concentrations.

(h) The employer shall establish and conduct a program of cleaning, sanitizing, inspecting, maintaining, repairing, and storing of respirators, to ensure that employees are provided with clean respirators that are in good operating condition.

(i) The employer shall periodically monitor the use of respirators to ensure that the proper type of respirator is worn, to evaluate the effectiveness of the respiratory protection program, and to eliminate any deficiencies in use and care of respirators.

Table I–1.—Respirator selection guide

Air concentrations	*Respirator type*
Less than or equal to 0.4 mg/m³.	(1) Half-mask respirator with high efficiency filter(s). (2) Type C demand type (negative pressure) supplied air respirator with half-mask facepiece.
Less than or equal to 2.0 mg/m³.	(1) Full facepiece respirator with high efficiency filter(s). (2) Type C demand type (negative pressure) supplied air respirator with full facepiece. (3) Self-contained breathing apparatus with full facepiece in demand mode (negative pressure).
Less than or equal to 40 mg/m³.	(1) Powered air-purifying (positive pressure) respirator with high efficiency filters. (2) Type C continuous flow (positive pressure) supplied air respirator.
40 mg/m³ or greater or unknown.	(1) Combination supplied air respirator, pressure-demand type, with auxiliary self-contained air supply. (2) Self-contained breathing apparatus with full facepiece in positive pressure mode.

SEC. 5 *Inform Employees of Hazards from Cadmium.*—(a) Workers initially assigned or reassigned to jobs involving occupational exposure to cadmium shall be informed of the hazards, symptoms of overexposure (including information on the characteristics of onset and stages of illness), appropriate procedures to be taken in the event of an emergency, and precautions to ensure safe use and to minimize exposure. They shall be advised of the availability of relevant information, including that prescribed in (c) below. This information shall be accessible to each worker occupationally exposed to cadmium.

(b) A continuing education program, conducted by a person or persons qualified by experience or special training, shall be instituted to ensure that all workers have current knowledge of job hazards, proper maintenance procedures and cleanup methods, and that they know how to use respirators correctly. It shall include a description of the general nature of the medical surveillance procedures and why it is advantageous to the worker to undergo these examinations.

(c) Required information shall be recorded on a "Material Safety Data Sheet" as specified in Appendix IV or on any other form approved for the purpose by the Occupational Safety and Health Administration, U.S. Department of Labor.

SEC. 6 *Work Practices*—(a) *Exhaust Systems.* Operations creating workplace exposure to cadmium shall be enclosed to the maximum extent practicable and be provided with local exhaust ventilation unless appropriate air sampling and analysis have demonstrated that concentrations are at or below the environmental limits. Methods other than enclosure and ventilation for meeting exposure limits to cadmium may be used if they bring concentrations in workplace air to or below the environmental limits. Effluent air shall be cleaned to meet any emission standards that may become promulgated. Air from the exhaust ventilation system shall not be recirculated into the workplace.

Enclosures, exhaust hoods, and ductwork shall be kept in good repair so that design airflows are maintained. Airflow shall be measured at each hood at least semiannually and preferably monthly. Continuous airflow indicators are recommended, such as water or oil manometers properly mounted at the juncture of fume hood and dust throat (marked to indicate acceptable airflow). A log showing design airflow and results of semiannual inspectione shall be kept.

(b) *Welding, Brazing, and Thermal Cutting.* Welding, brazing, or thermal cutting of material containing cadmium shall be performed using local exhaust ventilation demonstrated by air sampling and analysis to keep cadmium concentrations within the limits of Section 1. For single operations where local exhaust ventilation is not available, where air sampling has not been performed, or where air sampling has demonstrated a likelihood of overexposure to cadmium fume or dust, respirators shall be provided and worn as specified in Section 4.

Where molten cadmium is used or formed, temperatures should be kept as low as possible consistent with the requirements of the operation to prevent excessive fume generation. Additions of cadmium should be made in the manner generating the least fume. Wherever possible this should be accomplished by automatic controls, with recording of temperature and use of alarms or indicators for higher temperature.

(c) *Emergency Procedures.* Emergency procedures shall be established for any event which may result in substantial release of airborne cadmium. Such procedures shall include provision for appropriate respirators as specified in Section 4.

Specific emergency procedures shall be designed for fires, to protect both in-plant workers and firefighters.

(d) *Work Clothing.* Workers shall wear work clothing consisting at the least of hat, shirt, or blouse, pants or skirt, and shoes. Work clothing and street clothing shall be exchanged at the beginning and the end of each workday, so that work clothing will not be worn outside the workplace. The employer shall provide for proper laundry of clothing and shall instruct launderers on procedures to be taken to avoid inhalation of cadmium-containing dusts.

SEC. 7 *Sanitation Practices.*—(a) Where there is cadmium-containing dust, cleaning should be performed by vacuum pickup or wet mopping. No dry sweeping or blowing shall be permitted.

(b) Emphasis shall be placed upon prompt cleanup of spills, repair of equipment and leaks, proper storage of materials, and collection of cadmium-containing dust.

(c) Cadmium-containing and cadmium-plated metal parts should be kept separate from parts not containing cadmium and marked appropriately so that accidental exposures resulting from welding and cutting will not occur.

(d) Facilities shall be maintained to protect foodstuffs and food consumption areas from contamination by materials containing cadmium. Food storage, handling, and consumption shall be separate from cadmium work areas. Smoking or carrying uncovered tobacco or tobacco products in cadmium work areas shall be prohibited.

(e) Adequate handwashing and shower facilities shall be provided. Workers shall wash their hands before eating or before using tobacco to prevent their absorbing additional amounts of cadmium compounds.

SEC. 8 *Monitoring and Recordkeeping.* Workers are not considered to be occupationally exposed to cadmium if environmental concentrations, as determined on the basis of an industrial hygiene survey to be performed within 90 days of the promulgation of a standard, do not exceed the action level, i.e., half the recommended TWA environmental limit, or if there is no operation, storage, or handling or cadmium in any form or contamination of workplace air by cadmium from other sources. These industrial hygiene surveys shall be repeated at least every 3 years and within 30 days after any process or operating change likely to result in increases of airborne concentrations of cadmium. Records of these surveys, including the basis for concluding that airborne concentrations of cadmium are at or below the action level, shall be maintained until the next survey has been completed.

The following requirements apply to occupational exposure to cadmium, ie, to work-

place where the action level is exceeded.

(a) *Personal monitoring.* A program of breathing zone or personal monitoring shall be instituted to identify and measure the exposure of all employees occupationally exposed to cadmium. This sampling and analysis shall be conducted every 3 months on at least 25 percent of the workers so that each worker's exposure is measured at least every year; this frequency and fraction of employees sampled may be different if so directed by a professional industrial hygienist. Sufficient numbers of samples shall be collected and analyzed to permit construction of valid estimates of the TWA and ceiling concentration exposures of workers during each workshift; the number of TWA and ceiling concentration determinations for an operation shall be based on such factors as mobility and job functions of workers in that operation. If monitoring of any worker shows exposure in excess of either recommended environmental limit, additional monitoring shall be promptly initiated. If confirmed, control procedures shall be instituted as soon as possible; these may precede and obviate confirmatory monitoring if the employer desires. Affected employers shall be advised that exposures have been excessive and be notified of the control procedures being implemented. Monitoring of these employees' exposure shall be conducted at least as ofter as every 30 days and shall continue until successive samplings at least a week apart confirm that exposure no longer exceeds recommended limits. Normal monitoring may then be resumed.

(b) *Recordkeeping.* Environmental monitoring records shall be maintained for at least 20 years. These records shall include methods of sampling and analysis used, types of respiratory protection used, and TWA and ceiling concentrations found. Each employee shall be able to obtain information on his own environmental exposures. Environmental records shall be made available to designated representatives of the Secretary of Labor and of the Secretary of Health, Education and Welfare.

Pertinent medical records shall be retained for 20 years after the last occupational exposure to cadmium. Records of environmental exposures applicable to an employee should be included in the employee's medical records. These medical records shall be made available to the designated medical representatives of the Secretary of Labor, of the Secretary of Health, Education and Welfare, of the employer, and of the employee or former employee.

[FR Doc.77-2379 Filed 1-19-77;5:06 pm]

Occupational Safety and Health Administration

[V-77-1]

RICHMOND ENGINEERING COMPANY, INC.

Application for Variance and Interim Order; Grant of Interim Order

I. *Notice of application.* Notice is hereby given that RECO Constructors, Inc., Box 25189, 7th & Hospital Streets, Richmond, Virginia 23260 has made application pursuant to section 6(d) of the Occupational Safety and Health Act of 1970 (84 Stat. 1596; 29 U.S.C. 655) and 29 CFR 1905.11 for a variance and interim order, pending a decision on the application for a variance, from the standards prescribed in 29 CFR 1926.451 (a) (4), (5), and (10) dealing with scaffolds.

The place of employment affected by the application is as follows:

Richmond Engineering Company, Inc., 7th & Hospital Streets, Richmond, Virginia 23260.

The applicant certifies that employees who would be affected by the variance have been notified of the application by giving a copy of it to their authorized employee representative, and by posting a copy at all places where notices to employees are normally posted. Employees have also been informed of their right to petition the Assistant Secretary for a hearing.

Regarding the merits of the application, the applicant contends that it is providing a place of employment as safe as that required by § 1926.451(a) (4), (5), and (10). Section 1926.451(a) (4) and (5) read as follows:

(4) Guardrails and toeboards shall be installed on all open sides and ends of platforms more than 10 feet above the ground or floor, except needle beams scaffolding and floats (see paragraphs (p) and (w) of this section). Scaffolds 4 to 10 feet in height having a minimum horizontal dimension in either direction of less than 45 inches, shall have standard guardrails installed on all open sides and ends of the platform.

(5) Guardrails shall be 2 x 4 inches, or the equivalent, approximately 42 inches high, with a midrail, when required. Supports shall be at intervals not to exceed 8 feet. Toeboards shall be a minimum of 4 inches in height.

The applicant states that its business is of a specialized nature involving steel plate erectionb y members of the boilermaker's trade.

The applicant contends that the scaffolds used in building tanks are mobile and are frequently raised as are the tank sections, in order to position the next set of steel plates. The scaffolds used do not have toeboards because tools are placed in well designed "loose tool" containers provided for that purpose. In addition, the applicant proposes to rope off the area directly below and in close proximity to the scaffold and to permit only those employees, and tools currently being used by them, on the scaffolds. As a further precaution, a taut wire is installed midway between the innermost plank face of the scaffold platform and the tank face. The applicant states that because the scaffolds must be moved frequently, it would be more hazardous to constantly remove and replace toeboards.

The applicant also proposes to place guardrail supports at 10'6" intervals in lieu of the 8' requirement of § 1926.451 (a)(5). This would allow consistent bracket spacing since the applicant further desires to use 10'6" spans for its scaffold planking although § 1926.451(a) (16) allows a maximum span of 10'. The planks proposed to be used are rough full-dimensioned 2" x 12" x 12' planks of Douglas Fir or Southern Yellow Pine of select structural grade. The Douglas Fir has a fiber stress of 1,900 and a modulus of elasticity of 1,900,000, while the Southern Yellow Pine has a 2,500 fiber stress and a modulus of elasticity of 2,000,000. The applicant contends that the scaffolds he is using are safe, even though the span is one-half foot longer than the maximum length allowed, because of the increased strength of the wood.

A copy of the application will be made available for inspection and copying upon request at the Office of Variance Determination, U.S. Department of Labor, Room N-3668, 200 Constitution Avenue, NW., Washington, D.C. 20210, and at the following Regional and Area Offices:

U.S. Department of Labor, Occupational Safety and Health Administration, Gateway Building—Suite 15220, 3535 Market Street, Philadelphia, Pennsylvania 19104.

U.S. Department of Labor, Occupational Safety and Health Administration, Federal Building (P.O. Box 10186) Room 8018, 400 North 8th Street, Richmond, Virginia 23240.

All interested persons, including employers and employees who believe they would be affected by the grant or denial of the application for variance are invited to submit written data, views, and arguments relating to the pertinent application no later than February 28, 1977. In addition, employers and employees who believe they would be affected by a grant or denial of the variance may request a hearing on the application no later than February 28, 1977, in conformance with the requirements of 29 CFR 1905.15. Submission of written comments and requests for a hearing should be in quadruplicate, and must be addressed to the Office of Variance Determination at the above address.

II. *Interim Order.* It appears from the application for variance and interim order that the proposed scaffolding described in the application, with certain variations, will provide a place of employment as safe as those which would prevail if the applicant were to comply fully with 29 CFR 1926.451(a) (4), (5), and (10). It further appears that an interim order is necessary, pending a decision on the application, in order to prevent undue hardship to the applicant and its employees. Therefore, it is ordered, pursuant to section 6(d) of the Occupational Safety and Health Act of 1970, and 29 CFR 1905.11(c), that the Richmond Engineering Company, Inc., be, and is hereby authorized to use scaffolds in accordance with the following conditions, in lieu of complying with the toeboard and span requirements in § 1926.451(a) (4), (5), and (10):

(a) The applicant's loose tools and equipment shall be kept in well-designed tool containers. This does not include fitup bars, key plates, key channels, or long handled maul which may be placed on the scaffold plank during the time they are required for work. The loose tool containers shall be secured to prevent their upset or dislodgment from the scaffold area.

(b) Areas beneath and far enough away from the base of the scaffold to contain anything that falls from above shall be roped off and posted with clearly visible signs stating: "Danger Overhead Work."

(c) The space between the innermost edge of the scaffold platform and the curved plate structure of the tank shell shall not exceed 12" without protective measures. A taut wire rope supported on scaffold brackets at plank level may be used to divide any space exceeding 12" in lieu of using a guardrail or tie-off system.

(d) Not more than three employees shall be working on a 10'6" span of scaffold planking at any time.

(e) The maximum distance between brackets to which scaffolding and guardrail supports are attached shall be 10'6". These brackets shall be welded to the steel plates.

(f) Scaffold planks of rough full-dimensioned 2"×12"×12' Douglas Fir or Southern Yellow Pine of select structural grade or equivalent planking shall be used. The Douglas Fir shall have at least a 1,900 fiber stress and 1,900,000 modulus of elasticity, while the Yellow Pine shall have at least 2,500 fiber stress and 2,000,000 modulus of elasticity. Three planks with full thickness 2"×10"×12' dimensions may be used in lieu of two 2"×12"×12' planks provided that they are clamped or bonded together at the midpoint of the span, in order to spread the weight of the employees.

(g) All planking shall be secured from movement or overlapped in accordance with § 1926.451(a)(12).

(h) Guardrails shall be constructed of taut wire rope, and shall be supported by angle irons attached to brackets welded to the steel plates. These guardrails shall be at least of equivalent strength, stability and height as those required for the 8 foot span of 2" x 4" wood rails by 29 CFR 1926.451(a)(5). Guardrail supports shall be located at no greater than 10'6" intervals.

Richmond Engineering Company, Inc., shall give notice of this interim order to employees affected thereby, by the same means required to be used to inform them of the application for a variance.

Effective date: This interim order shall be effective as of January 28, 1977, and shall remain in effect until a decision is rendered on the application for variance.

Signed at Washington, D.C., this 19th day of January 1977.

B. M. CONCKLIN,
Deputy Assistant Secretary of Labor.

[FR Doc.77-2826 Filed 1-27-77;8:45 am]

Pension and Welfare Benefit Programs Office

ADVISORY COUNCIL ON EMPLOYEE WELFARE AND PENSION BENEFIT PLANS

Cancellation of Meeting

Through Notice published on January 18, 1977 (FEDERAL REGISTER, Vol. 42, No. 12 42 FR 3364) it was announced that pursuant to section 512 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1142) the January 11, 1977 meeting of the Advisory Council on Employee Welfare and Pension Benefit Plans will reconvene at 9 a.m. on Friday, February 4, 1977, in the Federal Ballroom North, Quality Inn—Capitol Hill, 415 New Jersey Avenue, NW, Washington, D.C.

Notice is hereby given that the above meeting is cancelled.

Signed at Washington, D.C., this 24th day of January 1977.

WILLIAM J. CHADWICK,
Administrator of Pension and Welfare Benefit Programs.

[FR Doc.77-2779 Filed 1-25-77;11:17 am]

Office of the Secretary

[TA-W-1372]

BERN INDUSTRIES, INC.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the result of TA-W-1372: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on December 1, 1976 in response to a worker petition received on December 1, 1976 which was filed by the United Steelworkers of America on behalf of workers and former workers producing steel, alloy, copper, and brass fittings valves, couplings, flanges, etc. at the Brooklyn, New York plant of Bern Industries, Inc.

The Notice of Investigation was published in the FEDERAL REGISTER on January 4, 1977 (42 FR 870). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Bern Industries, Inc. and United Steelworkers of America.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in such workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

Without regard to whether any other criteria have been met, criterion (1) has not been met.

The Brooklyn, New York plant of Bern Industries, Inc. produces only small brackets fabricated from iron and steel.

Evidence developed in the Department's investigation reveals that no involuntary separations occurred at the plant from November 1, 1975, one year prior to the signature date of the petition, to the present.

Conclusion. After careful review of the facts obtained in the investigation, I conclude that employees at the Brooklyn, New York plant of Bern Industries, Inc. have not become totally or partially separated as required in section 222 of the Trade Act of 1974.

Signed at Washington, D.C. this 17th day of January 1977.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc.77-2836 Filed 1-27-77;8:45 am]

[TA-W-141T]

BROWN SHOE CO.

Revised Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223(d) of the Trade Act of 1974, the Department of Labor herein presents the results of TA-W-141T: investigation regarding termination of certification of eligibility to apply for worker adjustment assistance as prescribed in section 223(d) of the Act.

On November 12, 1975, workers producing women's shoes at the Owensville, Missouri plant of the Brown Shoe Company were certified as eligible to apply for trade adjustment assistance. The Notice of Determination was published in the FEDERAL REGISTER on November 26, 1976 (40 FR 54889-54890).

The investigation regarding termination of certification was initiated on July 28, 1976 to determine whether the group of workers specified above continue to meet the group eligibility requirements of section 222 of the Act. The Notice of Investigation was published in the FEDERAL REGISTER (41 FR 33594) on August 10, 1976. No public hearing was requested and none was held.

During the course of the investigation, information was obtained from officials of the Brown Shoe Company, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or

subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

Whenever it becomes evident that any of the above criteria are no longer met, the certification as issued must be revised to include a termination date. The termination date would apply only with respect to total or partial separations occurring after this date as specified in the revised certification.

Without regard to whether the other criteria are satisfied, the investigation reveals that the first and second criteria are no longer met with respect to workers at the Owensville, Missouri plant of the Brown Shoe Company.

Significant Total or Partial Separations. Subsequent to the November 12, 1975 finding, the average number of workers employed at the Owensville, Missouri plant of the Brown Shoe Company decreased 1 percent from 1974 to 1975. Employment increased 17 percent in the last 6 months of 1975 compared to the like period of 1974, and 22 percent in the first nine months of 1976 compared to the like period of 1975. Employment increased in the first, second, and the third quarters of 1976, 29 percent, 39 percent, and 18 percent, respectively, compared to the same quarters of 1975.

Sales or Production, or Both, Have Decreased Absolutely. Subsequent to the November 12, 1975 finding, sales of women's shoes at the Owensville, Missouri plant of the Brown Shoe Company decreased in quantity and value, 15 percent and 10 percent, respectively, from 1974 to 1975. Sales increased in quantity and value, 21 percent and 25 percent, respectively, in the last 6 months of 1975 compared to the like period of 1974. Sales increased in quantity and value, 47 percent and 56 percent, respectively, in the first nine months of 1976 compared to the like period of 1975. Sales increased in the first, second and third quarters of 1976, 38 percent, 82 percent and 55 percent, respectively, compared to the same quarters in 1975.

Subsequent to the November 12, 1975 finding, production of women's shoes at the Owensville, Missouri plant of the Brown Shoe Company decreased 14 percent in quantity from 1974 to 1975. Production increased 21 percent in quantity in the last 6 months of 1975 compared to the like period of 1974, and 41 percent in the first nine months of 1976 compared to the like period of 1975. Production increased in the first, second and third quarters of 1976, 44 percent, 67 percent and 39 percent, respectively, compared to the same quarters of 1975.

Conclusion. After careful review of the facts obtained in the investigation, I conclude that total or partial separations of workers engaged in employment related to the production of women's shoes at the Owensville, Missouri plant of the Brown Shoe Company are no longer attributable to the conditions specified in section 222 of the Trade Act of 1974. In accordance with section 223(d) of the Act, I hereby revise the certification of November 12, 1975 to read as follows:

That all workers of the Owensville, Missouri plant of the Brown Shoe Company (TA-W-141) who became or will become totally or partially separated on or after October 3, 1974 and before January 31, 1977 be certified eligible to apply for trade adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974. All employees who became or will become totally or partially separated from employment after January 31, 1977 are denied certification of eligibility to apply for adjustment assistance.

Signed at Washington, D.C. this 17th day of January 1977.

JAMES F TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc 77 2828 Filed 1-27-77;8:45 am]

[TA-W-1154]

DANA CORP.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-1154: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on October 12, 1976 in response to a worker petition received on October 12, 1976 filed by United Steelworkers of America on behalf of workers and former workers producing automobile and light truck frames, heat treated truck side rails and miscellaneous stampings and weldments at the Reading Plant, Parrish Division of Dana Corporation, Reading, Pennsylvania.

The notice of investigation was published in the FEDERAL REGISTER on October 29, 1976 (41 FR 47620). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of the Dana Corporation and its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in such workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales, or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

The investigation revealed that with respect to those workers engaged in employment related to the production of automobile and light truck frames, the second criterion has not been met and with respect to those workers engaged in employment related to the production of heat treated truck side rails, that the third and fourth criteria have not been met.

Significant Total or Partial Separations. Employment of production workers decreased 27.8 percent in 1974 compared with 1973, decreased 10.2 percent in 1975 compared with 1974 and increased 6.1 percent in the first three quarters of 1976 compared with the first three quarters of 1975. Employment of salaried workers increased 3.7 percent in 1974 compared with 1973 and increased 19.3 percent in 1975 compared with 1974.

Sales or Production, or Both, Have Decreased Absolutely. Production of heat treated truck side rails in terms of quantity decreased 13.0 percent in 1974 compared with 1973, decreased 24.0 percent in 1975 compared with 1974 and increased 20.6 percent in the first three quarters of 1976 compared with the first three quarters of 1975.

Production of automobile and light truck frames in terms of quantity increased 2.1 percent in 1975 compared with 1974 and increased 54.7 percent in the first three quarters of 1976 compared with the first three quarters of 1975.

Sales of automobile and light truck frames in terms of quantity increased 2.3 percent in 1975 compared to 1974 and increased 42.8 percent in the first three quarters of 1976 compared to the first three quarters of 1975.

Increased Imports. Imports of frames for automobiles and light trucks decreased 31.3 percent in 1974 compared with 1973, decreased 18.2 percent in 1975 compared with 1974 and increased 40.0 percent in the first half of 1976 compared with the first half of 1975. The ratio of imports to domestic production decreased from 21.7 percent in the first half of 1975 to 20.6 percent in the first half of 1976 and the ratio of imports to domestic consumption increased from 16.3 percent in the first half of 1975 to 17.8 percent in the first half of 1976. Industry sources report no imports of heat treated side rails for trucks.

Contributed Importantly. Customers purchasing heat treated truck side rails verified that they relied on the Reading Plant, Parrish Division of Dana Corporation and one other domestic manufacturer of heat treated truck side rails for these products. Purchases of heat treated truck side rails by the trucking industry have increased in 1976 compared with 1975 when the industry experienced a decline in sales as it suffered through the general economic downturn.

Full sized automobile frames are produced by the Reading Plant, Parrish Division of Dana Corporation for one particular customer and light truck frames for another. While customers purchase some imported frames from Canada, purchases of frames from the Reading plant increased both in 1975 and in the first three quarters of 1976 reflecting increased activity within the automotive industry.

Conclusion. After careful review of the facts, it is concluded that imports of articles like or directly competitive with heat treated truck side rails produced at the Reading Plant, Parrish Division of Dana Corporation have not increased and that sales and production of automobile and light truck frames produced at the Reading Plant, Parrish Division of Dana Corporation have not declined as required for certification under section 222 of the Trade Act of 1974.

Signed at Washington, D.C. this 19th day of January 1977.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc.77-2829 Filed 1-27-77;8:45 am]

[TA-W-1382]

E. W. BOHREN TRANSPORT, INC.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-1382: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on December 7, 1976 in response to a worker petition received on that date which was filed by the Teamsters Union on behalf of workers and former workers at E. W. Bohren Transport, Incorporated, Woodburn, Indiana who were engaged in providing transportation services to steel companies.

The Notice of Investigation was published in the FEDERAL REGISTER on January 4, 1977 (42 FR 876). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of E. W. Bohren Transport, Inc. and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met:

(1) That a significant number of proportion of the workers in such workers' firm, or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely, and

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separation, or threat thereof, and to the decrease in sales or production. The term 'contributed importantly" means a cause which is important but not necessarily more important than any other cause.

If any of the above criteria is not satisfied a negative determination must be made.

E. W. Bohren Transport does not produce an article within the meaning of section 222(3) of the Act and this Department has already determined that the performance of services are not covered by the adjustment assistance program. See Notice of Determination in Pan American World Airways, Incorporated (TA-W-153, 40 FR 54639). The only question in this case is whether any of the steel companies with which business is conducted i.e., firms which produce an article, namely steel, and for whom the service is provided, can be considered the "workers' firm". The Department has also previously determined that an independent firm for which such services are provided cannot be considered the "workers' firm." See Notice of Determination in Nu-Car Driveaway, Incorporated (TA-W-393, 41 FR 12749).

E. W. Bohren Transport is a transport business incorporated in the state of Indiana and licensed and regulated by the state and the Interstate Commerce Commission. E. W. Bohren competed for available business with other carriers in the Pittsburgh to Chicago area and each was free to haul for any business requesting their services.

Neither the steel companies on one hand, nor E. W. Bohren Transport on the other, is financially or otherwise involved in the business of the other. E. W. Bohren either owns or leases the facilities necessary to the operation of its business and owns or leases all its trucks and equipment.

The workers upon whose behalf this petition was filed were hired and are paid by E. W. Bohren Transport. They are supervised by and subject to the control of E. W. Bohren personnel only. All employment benefits which they enjoy are provided and maintained by E. W. Bohren Transport.

Conclusion. After careful review of the issues and facts involved, I have determined that services of the kind provided by E. W. Bohren Transport, Inc., Woodburn, Indiana are not "articles" within the meaning of section 222(3) of the Trade Act of 1974, and that none of the steel companies can be considered the "workers' firm." The petition for trade adjustment assistance is, therefore, denied.

Signed at Washington, D.C. this 19th day of January 1977.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc.77-2837 Filed 1-27-77;8:45 am]

[TA-W-1346]

GENERAL SIGNAL CORPORATION, MARSH INSTRUMENTS

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-1346: investigation regarding certification of eligibility for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on December 1, 1976 in response to a worker petition received on December 1, 1976 which was filed by the United Steelworkers of America on behalf of workers and former workers producing steel, alloy, copper, and brass fittings, valves, couplings, flanges, etc. at the Skokie, Illinois plant of General Signal Corporation, Marsh Instruments Division.

The notice of investigation was published in the FEDERAL REGISTER on December 21, 1976 (41 FR 55607). No public hearing was requested, and none was held.

The information upon which the determination was made was obtained principally from General Signal Corporation, Marsh Instruments Division and the United Steelworkers of America.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

Without regard to whether any other criteria have been met, criterion (1) has not been met.

The Skokie, Illinois plant of General Signal Corporation, Marshall Instruments Division produces only bourdon tube pressure gauges.

Evidence developed in the Department's investigation reveals that there

have been no involuntary separations from the Skokie, Illinois plant since November 1, 1975.

Conclusion. After careful review of the facts obtained in the investigation, I conclude that employees at the Skokie, Illinois plant of General Signal Corporation, Marsh Instruments Division have not become totally or partially separated as required in Section 222 of the Trade Act of 1974.

Signed at Washington, D.C. this 17th day of January 1977.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc.77-2835 Filed 1-27-77;8:45 am]

[TA-W-1169]

GTE SYLVANIA

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-1169; investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on October 14, 1976 in response to a worker petition received on October 14, 1976 which was filed by the International Union of Electrical, Radio and Machine Workers on behalf of workers and former workers producing color televisions at the Batavia, New York plant of GTE Sylvania.

The notice of investigation was published in the FEDERAL REGISTER on November 5, 1976 (41 FR 48809). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of GTE Sylvania, its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof and to the decrease in sales and production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

The Department's investigation has revealed that all of the above criteria have been met for the Batavia plant.

On July 14, 1975 a certification of eligibility to apply for adjustment assistance was issued for all workers who became separated from employment related to the production of flybacks at the Batavia, New York plant of GTE Sylvania. (TA-W-25).

On November 14, 1975, a certification of eligibility to apply for adjustment assistance was issued for all workers who became separated from employment related to the production of monchrome televisions at the Batavia, New York plant of GTE Sylvania. (TA-W-151).

Significant Total or Partial Separations. The average number of production workers at the Batavia plant decreased 24 percent from 1974 to 1975 and increased 14 percent in the first ten months of 1976 compared to the first ten months of 1975.

Approximately 90 percent of production employment at Batavia was terminated in December 1976.

Sales, Production, or Both, Have Decreased Absolutely. Production of color televisions at Batavia declined 52 percent from 1974 to 1975. Production at Batavia ceased in December 1976, when several lines of production were moved to Juarez, Mexico and Smithfield, North Carolina with the exception of three component operations.

Plastic knob production, circuit board fabrication, and automation (machine placement of components into circuit boards) remained at Batavia along with the company headquarters and television warehouse. Batavia is the only Sylvania plant equipped for fabrication and automation.

Increased Imports. Imports of color televisions increased absolutely in each year from 1971 through 1973. Imports increased relative to domestic production from 1973 to 1974 and from 1974 to 1975. In the first nine months of 1976, imports increased 156 percent compared to the first nine months of 1975. The ratio of imports to domestic production increased from 24.3 percent in the first nine months of 1975 to 54.5 percent in the first nine months of 1976.

Contributed Importantly. The Department's investigation revealed that Sylvania's color television customers, who were surveyed, also purchase imported color televisions. Over 50 percent of the customers surveyed had reduced their purchases of color televisions from Sylvania, while increasing their purchases of imported color televisions. The customers agreed that imports are capturing an increasing share of the color television market because they offer a lower price and greater quality than domestically manufactured televisions.

The declines in color television production at Batavia in 1975 and 1976 compared with 1974 illustrate importantly the impact of increased import competition. In an effort to maintain price competitiveness with imports major elements of Batavia's television production were transferred to various foreign and domestic locations to reduce production costs.

Presently three component operations, employing less than 10 percent of total production employment, remain at Batavia, along with the company headquarters and warehouse.

Conclusion. After careful review of the facts obtained in the investigation I conclude that increases of imports like or directly competitive with color televisions produced at the Batavia, New York plant of GTE Sylvania contributed importantly to the total or partial separation of the workers of that plant. In accordance with the provisions of the Act, I make the following certification:

All workers engaged in employment related to the production of color televisions at the Batavia, New York plant of GTE Sylvania who became totally or partially separated from employment on or after August 1, 1976 are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Trade Act of 1974.

Signed at Washington, D.C. this 17th day of January 1977.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc.77-2830 Filed 1-27-77;8:45 am]

[TA-W-1194]

HONEYCOMB INC.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-1194: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on October 19, 1976 in response to a worker petition received on October 19, 1976 which was filed by the International Ladies' Garment Workers' Union on behalf of workers and former workers producing women's dresses at the Philadelphia, Pennsylvania plant of Honeycomb, Incorporated.

The notice of investigation was published in the FEDERAL REGISTER (41 FR 48809) on November 5, 1976. No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Honeycomb, Incorporated, the U.S. Department of Commerce, the U.S. International Trade Commission, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

Without regard to whether any of the other criteria have been met, criterion (1) has not been met. The evidence developed in the Department's investigation reveals that employment increased 9 percent in the first nine months of 1976 compared to the first nine months of 1975.

Conclusion. After careful review of the facts obtained in the investigation, I conclude that employees at the Philadelphia, Pennsylvania plant of Honeycomb, Incorporated have not become totally or partially separated as required by Section 222 of the Trade Act of 1974.

Signed at Washington, D.C. this 17th day of January 1977.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc.77-2831 Filed 1-27-77;8:45 am]

[TA-W-1229]

LESANDE SHOE COMPANY, INC.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-1229: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on November 8, 1976 in response to a worker petition received on November 8, 1976 which was filed on behalf of workers and former workers producing women's shoes at the Haverhill, Massachusetts plant of the Lesande Shoe Company, Inc.

The notice of investigation was published in the FEDERAL REGISTER on November 30, 1976, (41 FR 52563). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Lesande Shoe Company, Inc., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

The investigation has revealed that although criterion (3) has been met, criteria (1), (2), and (4) have not been met.

Significant Total or Partial Separations. The average number of workers (both hourly production and salaried) employed at the Lesande Shoe Company, Inc. declined 3.3 percent in 1975 compared to 1974 and then increased 2.4 percent in the period January-November 1976 compared to the corresponding time period in 1975. The average number of hours worked per week by hourly production employees increased 0.4 percent in 1975 compared to 1974 and 14.8 percent in the period January-November 1976 compared to the corresponding time period in 1975.

Sales or Production, or Both, Have Decreased Absolutely. Sales of women's shoes at the Lesande Shoe Company, Inc. declined 10.3 percent in quantity in 1975 compared to 1974 and then increased 20.1 percent in the period January-November 1976 compared to the corresponding time period in 1975.

Increased Imports. Imports of women's and misses' nonrubber footwear increased absolutely and relatively in 1972 compared to 1971 and in 1973 compared to 1972. Imports declined absolutely and relatively in 1974 compared to 1973 and then increased absolutely, but declined relatively in 1975 compared to 1974. The ratios of imports to domestic production and consumption declined from 102.6 percent and 50.6 percent, respectively, in 1974 to 101.1 percent and 50.3 percent, respectively, in 1975. Imports increased absolutely but declined relatively in the first six months of 1976 compared to the first six months of 1975. The ratios of imports to domestic production and consumption declined from 107.8 percent and 51.9 percent, respectively, in the first six months of 1975 to 94.6 percent and 48.6 percent, respectively, in the first six months of 1976.

Contributed Importantly. Customers of Lesande Shoe Company, Inc. indicated that they have increased purchases from the Lesande Shoe Company, Inc. and therefore have not been switching their purchases to imported women's shoes.

Conclusion. After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with the women's shoes produced by the Lesande Shoe Company, Incorporated did not contribute importantly to the total or partial separations of the workers of such firm or subdivision.

Signed at Washington, D.C. this 19th day of January 1977.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc.77-2833 Filed 1-27-77;8:45 am]

[TA-W-1216]

LOCKHEED-CALIFORNIA CO.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-1216: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on November 2, 1976 in response to a worker petition received on November 2, 1976 which was filed by the International Association of Machinists and Aerospace Workers on behalf of workers and former workers producing aircraft components and subassemblies for the P-3 Orion Anti-Submarine and the L-1011 Tristar airliner at the McAlester, Oklahoma plant of the Lockheed-California Company.

The notice of investigation was published in the FEDERAL REGISTER on November 23, 1976 (41 FR 51631). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Lockheed-California Company, the U.S. International Trade Commission, the U.S. Department of Commerce, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in such workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated,

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

Without regard to whether any of the other criteria have been met, criterion four (4) has not been met.

Lockheed Aircraft Corporation is a multi-product, multi-plant firm specializing in the manufacture of aerospace parts and products. The McAlester plant produces aircraft subassemblies, parts and products for commercial and military uses.

The Department's investigation revealed that Lockheed Aircraft Corporation was the successful bidder to supply aircraft to the Canadian government. The terms of the contract contained an offset agreement provision. This agreement required the prime contractor to assure that Canadian firms would receive subcontract work on certain airframe subassemblies, parts and products for use in the aircraft. In January 1977, as a result of this agreement, Lockheed initiated the transfer of some equipment from the McAlester plant to Canadian firms for use in subcontracting work on certain subassemblies, parts and products. All completed aircraft under the terms of this contract will be exported to Canada.

The balance of current production of airframe subassemblies, parts and products at the McAlester plant for use in commercial and military aircraft will be transferred to Lockheed's Burbank, California facility.

Several factors contributing to some of the current separations from the McAlester plant and the scheduled closing of this plant in the last quarter of 1977 include the offset agreement requiring the production of certain airframe subassemblies, parts and products by Canadian firms, the decline in new aircraft orders, and the transfer of production from one domestic facility to another domestic facility. This transfer of production will lead to increased production and employment at the Burbank, California plant.

Company officials indicated that the imports of airframe subassemblies from Canada to the United States are expected to begin about June or July 1977. As of this date no subassemblies have been imported, and, until such importation takes place, there is no basis for certification.

Conclusion. After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with subassemblies, parts and products for commercial and military aircraft produced at the McAlester, Oklahoma plant of the Lockheed-California Company did not contribute importantly to the total or partial separation of workers of that plant as required under Section 222 of the Trade Act of 1974. Therefore eligibility to apply for adjustment assistance is denied.

Signed at Washington, D.C. this 17th day of January 1977.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc.77-2832 Filed 1-27-77;8:45 am]

[TA-W-1270]

SPORTABLES, INC.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-1270: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on November 24, 1976 in response to a worker petition received on November 24, 1976 which was filed by the International Ladies Garment Workers' Union on behalf of workers and former workers producing women's suits at the Philadelphia, Pennsylvania plant of Sportables, Incorporated.

The notice of investigation was published in the FEDERAL REGISTER (41 FR 53553) on December 7, 1976. No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Sportables, Incorporated, the U.S. Department of Commerce, the U.S. International Trade Commission, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat, thereof, and to the decrease in sales or production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

Without regard to whether any of the other criteria have been met, criterion (1) has not been met. The evidence developed in the Department's investigation reveals that average employment increased 9 percent in the first nine months of 1976 compared to the first nine months of 1975.

Conclusion. After careful review of the facts obtained in the investigation, I conclude that employees at the Philadelphia, Pennsylvania plant of Sportables, Incorporated have not become totally or partially separated as required by Section 222 of the Trade Act of 1974.

Signed at Washington, D.C. this 17th day of January 1977.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc.77-2834 Filed 1-27-77;8:45 am]

[TA-W-1,545]

WESTERN LEATHER PRODUCTS CORP.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On January 4, 1977 the Department of Labor received a petition dated December 13, 1976 which was filed under section 221(a) of the Trade Act of 1974 ("the Act") on behalf of the workers and former workers of Western Leather Products Corporation, Milwaukee, Wisconsin (TA-W-1,545). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with heels, counters and welting for shoes and leather for waist belts produced by Western Leather Products Corporation or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address show below, not later than February 9, 1977.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 9, 1977.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C., this 4th day of January 1977.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.77-2838 Filed 1-27-77;8:45 am]

Office of the Secretary

[TA-W-1,574]

AMBOY MANUFACTURING CO.

Investigation Regarding Certification of Eligibility to Apply for Worker Adjustment Assistance

On January 17, 1977 the Department of Labor received a petition dated December 17, 1976 which was filed under section 221(a) of the Trade Act of 1974 ("the Act") on behalf of the workers and former workers of Amboy Manufacturing Company, Perth Amboy, New Jersey (TA-W-1,574). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with children's coats produced by Amboy Manufacturing Company or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 9, 1977.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 9, 1977.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 17th day of January 1977.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.77-2862 Filed 1-27-77;8:45 am]

[TA-W-1,581]

A & T LADIES' GARMENT CORP.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On January 18, 1977 the Department of Labor received a petition dated January 7, 1977 which was filed under section 221(a) of the Trade Act of 1974 ("the Act") on behalf of the workers and former workers of A & T Ladies' Garment Corporation, Brooklyn, New York (TA-W-1,581). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with ladies' coats and suits produced by A & T Ladies' Garment Corporation or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 9, 1977.

Interested persons are invited to submit written comments regarding the subject mater of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 9, 1977.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20210.

Signed at Washington, D.C. this 18th day of January 1977.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.77-2869 Filed 1-27-77;8:45 am]

[TA-W-1,566]

ATWATER THROWING COMPANY, INC.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On January 11, 1977 the Department of Labor received a petition dated December 27, 1976 which was filed under section 221(a) of the Trade Act of 1974 ("the Act") by the United Textile Workers of America on behalf of the workers and former workers of Wilkes Barre, Pennsylvania plants of Atwater Throwing Co., Inc., Plymouth, Pa. a Division of Burlington Industries, Greensboro, N.C. (TA-W-1,556). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with textured yarn and throwing yarn produced by Atwater Throwing Company, Inc. or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 9, 1977.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 9, 1977.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200

Constitution Avenue NW., Washington, D.C. 20210.

Signed at Washington, D.C. this 11th day of January 1977.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.77-2854 Filed 1-27-77;8:45 am]

[TA-W-1,567]

ATWATER THROWING COMPANY, INC.

Investigation Regarding Certification of Eligibility To apply for Worker Adjustment Assistance

On January 11, 1977 the Department of Labor received a petition dated December 27, 1976 which was filed under section 221(a) of the Trade Act of 1974 ("the Act") by the United Textile Workers of America on behalf of the workers and former workers of Atwater Throwing Company, Inc., Plymouth, Pennsylvania, a Division of Burlington Industries, Greensboro, N.C. (TA-W-1,567). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with textured yarn and throwing yarn produced by Atwater Throwing Company, Inc. or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of section 22 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 9, 1977.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 9, 1977.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 11th day of January 1977.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.77-2855 Filed 1-27-77;8:45 am]

[TA-W-1,547]

BALI COMPANY, INC.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On January 4, 1977 the Department of Labor received a petition dated December 14, 1976 which was filed under section 221(a) of the Trade Act of 1974 ("the Act") by the International Ladies Garment Workers Union on behalf of the workers and former workers of the Jersey City, New Jersey plant of The Bali Company, Inc., Winston-Salem, New Jersey, a wholly owned subsidiary of Hanes Corporation, Winston-Salem, N.C. (TA-W-1,547). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with brassieres and allied products produced by The Bali Company, Inc. or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 9, 1977.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 9, 1977.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 4th day of January 1977.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.77-2840 Filed 1-27-77;8:45 am]

[TA-W-1,546]

BELLEVILLE SHOE MANUFACTURING CO.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On January 4, 1977 the Department of Labor received a petition dated December 20, 1976 which was filed under section 221(a) of the Trade Act of 1974 ("the Act") on behalf of the workers and former workers of Belleville Shoe Manufacturing Company, Belleville, Illinois (TA-W-1,546). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with combat boots & athletic shoes produced by Belleville Shoe Manufacturing Company or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 9, 1977.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 9, 1977.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 4th day of January 1977.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.77-2839 Filed 1-27-77;8:45 am]

[TA-W-1,568]

CAPITOL FOOTWEAR CORP.

Investigation Regarding Certification of Eligibility To apply for Worker Adjustment Assistance

On January 10, 1977 the Department of Labor received a petition dated December 10, 1976 which was filed under section 221(a) of the Trade Act of 1974 ("the Act") on behalf of the workers and former workers of Capitol Footwear Corporation, Worcester, Massachusetts (TA-W-1,568). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with men's casual shoes, slippers & sandals produced by Capitol Footwear Corporation or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 9, 1977.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 9, 1977.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 10th day of January 1977.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.77-2856 Filed 1-27-77;8:15 am]

[TA-W-1,548]

CURLEE CLOTHING COMPANY, INC.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On January 4, 1977 the Department of Labor received a petition dated December 14, 1976 which was filed under section 221(a) of the Trade Act of 1974 ("the Act") on behalf of the workers and former workers of Curlee Clothing Company, Inc., Mayfield, Kentucky (TA-W-1,548). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with men's tailored suits, vests, sportcoats & slacks produced by Curlee Clothing Company, Incorporated or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 9, 1977.

Interested persons are invited to submit written coments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 9, 1977.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 4th day of January 1977.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.77-2841 Filed 1-27-77;8:45 am]

[TA-W-1,553]

DILAVORE SPORTSWEAR CORP.

Investigation Regarding Certification of Eligibility to Apply for Worker Adjustment Assistance

On January 5, 1977 the Department of Labor received a petition dated December 10, 1976 which was filed under section 221(a) of the Trade Act of 1974 ("the Act") by the International Ladies' Garment Workers Union on behalf of the workers and former workers of DiLavore Sportswear Corp., Elmont, New York (TA-W-1,553). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with women's pants, jackets, skirts, blouses & dresses produced by DiLavore Sportswear Corporation or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of Section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 9, 1977.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 9, 1977.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 5th day of January 1977.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.77-2846 Filed 1-27-77;8:45 am]

[TA-W-1,556]

DUCHESS GARTER CORP.

Investigation Regarding Certification of Eligibility to Apply for Worker Adjustment Assistance

On January 1, 1977, the Department of Labor received a petition dated December 1, 1976 which was filed under section 221(a) of the Trade Act of 1974 ("the Act") by the International Ladies' Garment Workers Union on behalf of the workers and former workers of Duchess Garter Corporation, New York, New York (TA-W-1,556). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with garters and shoulder straps produced by Duchess Garter Corporation or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further relate, as appropriate to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 9, 1977.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 9, 1977.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 1st day of January 1977.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.77-2849 Filed 1-27-77;8:45 am]

[TA-W-1,576]

DURALOY-BLAW-KNOX, INC.

Investigation Regarding Certification of Eligibility to Apply for Worker Adjustment Assistance

On January 17, 1977, the Department of Labor received a petition dated December 17, 1976 which was filed under section 221(a) of the Trade Act of 1974 ("the Act") by the United Steelworkers of America on behalf of the workers and former workers of Duraloy-Blaw-Knox, Inc., Scottdale, Pennsylvania, a division of White Consolidated Industries, Cleveland, Ohio (TA-W-1,576). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increase of imports of articles like or directly competitive with tubing carbon steel, stainless steel, alloy and alloy metals produced by Duraloy-Blaw-Knox, Inc. or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of Section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjust Assistance, at the address shown below, not later than February 9, 1977.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjust Assistance, at the address shown below, not later than February 9, 1977.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 17th day of January 1977.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.77-2864 Filed 1-27-77;8:45 am]

[TA-W-1,554]

EMPIRE OLDSMOBILE

Investigation Regarding Certification of Eligibility To apply for Worker Adjustment Assistance

On January 5, 1977 the Department of Labor received a petition dated December 13, 1976 which was filed under section 221(a) of the Trade Act of 1974 ("the Act") on behalf of the workers and former workers of Empire Oldsmobile, New York, New York, a Division of General Motors, Rochester, N.Y. (T-W-1,554). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with the selling of automobiles provided by Empire Oldsmobile or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90-13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 9, 1977.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 9, 1977.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 6th day of January 1977.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.77-2847 Filed 1-27-77;8:45 am]

[TA-W-1,555]

GETTYSBURG GARMENT CO.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On January 6, 1977 the Department of Labor received a petition dated December 22, 1976 which was filed under section 221(a) of the Trade Act of 1974 ("the Act") on behalf of the workers and former workers of Gettysburg Garment Company, Gettysburg, Pennsylvania, a Division of Cardinal Cottons Corp., New York, New York (TA-W-1,555). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with ladies' robes and loungewear produced by Gettysburg Garment Company or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 9, 1977.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 9, 1977.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 6th day of January 1977.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.77-2848 Filed 1-27-77;8:45 am]

[TA-W-1,551]

HANSEN SEAWAY SERVICE LTD.

Investigation Regarding Certification of Eligibilty To Apply for Worker Adjustment Assistance

On January 2, 1977 the Department of Labor received a petition dated December 2, 1976 which was filed under section 221(a) of the Trade Act of 1974 ("the Act") by the International Longshoremen's Association on behalf of the workers and former workers of Hansen Seaway Service Ltd., Milwaukee, Wisconsin (TA-W-1,551). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with the storing of import and export products provided by Hansen Seaway Service Ltd. or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 9, 1977.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 9, 1977.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 2nd day of January 1976.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.77-2844 Filed 1-27-77;8:45 am]

[TA-W-1,552]

INTERNATIONAL HARVESTER CO.

Investigation Regarding Certification of Eligibility to Apply for Worker Adjustment Assistance

On January 5, 1977 the Department of Labor received a petition dated December 14, 1976 which was filed under section 221(a) of the Trade Act of 1974 ("the Act") on behalf of the workers and former workers of the New Orleans, La. plant of International Harvester Company, Chicago, Ill. (TA-W-1,552). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in section 221 (a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with industrial twine produced by International Harvester Company or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 9, 1977.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 9, 1977.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 5th day of January 1977.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc 77-2845 Filed 1-27-77;8:45 am]

[TA-W-1,549]

K-P HYDRAULICS CO.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On January 2, 1976 the Department of Labor received a petition dated December 2, 1976 which was filed under section 221 (a) of the Trade Act of 1974 ("the Act") by the Electrical Radio and Machine Workers of America on behalf of the workers and former workers of K-P Hydraulics Company, Hudson, Wisconsin (TA-W-1,549). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with hydraulic jacks produced by K-P Hydraulics Company or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or prodution, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90,13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address show below, not later than February 9, 1977.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 9, 1977.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 2nd day of January 1977.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.77-2842 Filed 1-27-77;8:45 am]

[TA-W-1,573]

L.B. EVANS' SON CO.

Investigation Regarding Certification of Eligibility to Apply for Worker Adjustment Assistance

On January 17, 1977 the Department of Labor received a petition dated December 20, 1976 which was filed under section 221 (a) of the Trade Act of 1974 ("the Act") on behalf of the workers and former workers of L. B. Evans' Son Company, Wakefield, Massachusetts (TA-W-1,573). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in section 221 (a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with men's slippers and shoes produced by L. B. Evans' Son Company or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address show below, not later than February 9, 1977.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 9, 1977.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 17th day of January 1977.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.77-2861 Filed 1-27-77;8:45 am]

[TA-W-1,559]

LEEMAR KNITTING MILLS

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On January 10, 1977 the Department of Labor received a petition dated December 19, 1976 which was filed under section 221(a) of the Trade Act of 1974 ("the Act") on behalf of the workers and former workers of Leemar Knitting Mills, Long Island City, New York (TA-W-1,559). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with women's pants, dresses, blouses and jackets produced by Leemar Knitting Mills or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 9, 1977.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 9, 1977.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 10th day of January 1977.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.77-2850 Filed 1-27-77;8:45 am]

[TA-W-1,580]

LINETT TAILEURS CO.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On January 18, 1977 the Department of Labor received a petition dated December 23, 1976 which was filed under section 221(a) of the Trade Act of 1974 ("the Act") by the Amalgamated Clothing and Textile Workers Union on behalf of the workers and former workers of Linett Taileurs Company, New York, New York, a subsidiary of Linett Clothes, Inc., New York, New York (TA-W-1,580). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with men's tailored suits and sports jackets produced by Linett Taileurs Company or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 9, 1977.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 9, 1977.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 18th day of January 1977.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.77-2868 Filed 1-27-77;8:45 am]

[TA-W-1,575]

MARIA GARMENT CO.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On January 17, 1977 the Department of Labor received a petition dated December 20, 1976 which was filed under section 221(a) of the Trade Act of 1974 ("the Act") on behalf of the workers and former workers of Maria Garment Company, Jersey City, New Jersey (TA-W-1,575). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with ladies' dresses, pants and blouses produced by Maria Garment Company or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 9, 1977.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 9, 1977.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 17th day of January 1977.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.77-2863 Filed 1-27-77;8:45 am]

[TA-W-1,565]

MIRED FOUNDATIONS, INC.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On January 1, 1977, the Department of Labor received a petition dated December 1, 1976, which was filed under section 221(a) of the Trade Act of 1974 ("the Act") by the International Ladies' Garment Workers Union on behalf of the workers and former workers of Mired Foundations, Inc., New York, New York (TA-W-1,565). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with brassieres and girdles produced by Mired Foundations, Incorporated or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of Section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 9, 1977.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 9, 1977.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 1st day of January 1977.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.77-2853 Filed 1-27-77;8:45 am]

[TA-W-1,578]

NATIONAL SUPPLY CO.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On January 9, 1977, the Department of Labor received a petition dated December 9, 1976, which was filed under section 221(a) of the Trade Act of 1974 ("the Act") by the United Steelworkers of America on behalf of the workers and former workers of Gainesville, Texas plant of National Supply Co., Houston, Texas, a Div. of Armco Steel Corp., Middletown, Ohio (TA-W-1,578). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with steel triplex pumps, slush pumps, converters and cranes produced by National Supply Company or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separatiton of a significant number or proportion of the workers of such firm or subdivision. The investigation will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of Section 222 of the Act will be certified as eligible to apply for adjustment assistant under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 9, 1977.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 9, 1977.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 9th day of January 1977.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.77-2866 Filed 1-27-77;8:45 am]

[TA-W-1,550]

ROBERT HALL CLOTHES

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On January 5, 1977, the Department of Labor received a petition dated December 5, 1976, which was filed under section 221(a) of the Trade Act of 1974 ("the Act") on behalf of the workers and former workers of Robert Hall Clothes, New York City, New York (TA-W-1,550). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with men's tailored suits, sportcoats, leisure suits and slacks produced by Robert Hall Clothes or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number of proportion of the workers of such firm or subdivision. The investigation will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 9, 1977.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 9, 1977.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 5th day of January 1977.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.77-2843 Filed 1-27-77;8:45 am]

[TA-W-1,571]

ROCKWELL INTERNATIONAL

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On December 6, 1976, the Department of Labor received a petition dated November 29, 1976, which was filed under section 221(a) of the Trade Act of 1974 ("the Act") by the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America on behalf of the workers and former workers of Harvard, Illinois, Admiral Group of Rockwell International, Pittsburgh, Pa. (TA-W-1,571). Acordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with color televisions produced by Rockwell International or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 9, 1977.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 9, 1977.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 4th day of January 1977.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.77-2859 Filed 1-27-77;8:45 am]

[TA-W-1,583]

SHENANGO, INC.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On January 18, 1977, the Department of Labor received a petition dated December 27, 1976, which was filed under section 221(a) of the Trade Act of 1974 ("the Act") by the United Steelworkers of America on behalf of the workers and former workers of the Buffalo, New York plant of Shenango, Inc., Pittsburgh, Pa., a wholly-owned subsidiary of Shenango Furnance Company, Pittsburgh, Pa. (TA-W-1,583). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with cast iron molds produced by Shenango, Incorporated or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 9, 1977.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 9, 1977.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 18th day of January 1977.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.77-2871 Filed 1-27-77;8:45 am]

[TA-W-1,569]

SOUTH END TRANSPORTATION, INC.

Investigation Regarding Certification of Eligibility to Apply for Worker Adjustment Assistance

On January 11, 1977 the Department of Labor received a petition dated December 20, 1976 which was filed under section 221(a) of the Trade Act of 1974 ("the Act") by the on behalf of the workers and former workers of South End Transportation, Inc., Trout Creek, Michigan (TA-W-1,569). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with transporting of workers to the White Pine Copper Mine provided by South End Transportation, Inc. or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 9, 1977.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 9, 1977.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 11th day of January 1977.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.77-2857 Filed 1-27-77;8:45 am]

[TA-W-1,582]

UNION CARBIDE CORP.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On January 18, 1977 the Department of Labor received a petition dated December 20, 1976 which was filed under section 221(a) of the Trade Act of 1974 ("the Act") by the Oil, Chemical and Atomic International Union on behalf of the workers and former workers of the Marietta, Ohio, Metals Division plant of Union Carbide Corporation, New York, New York (TA-W-1,582). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with ferro chrome, ferro manganese, silicon manganese and electrolytic manganese produced by Union Carbide Corporation or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 9, 1977.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 9, 1977.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200

Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 18th day of January 1977.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.77-2870 Filed 1-27-77;8:45 am]

[TA-W-1,577]

UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On January 7, 1977 the Department of Labor received a petition dated December 7, 1976 which was filed under section 221(a) of the Trade Act of 1974 ("the Act") by the United Automobile, Aerospace & Agricultural Implement Workers of America on behalf of the workers and former workers of United Automobile, Aerospace & Agricultural Implement Workers of America, Kenosha, Wis. (TA-W-1,577). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with secretarial services provided by United Automobile, Aerospace & Agricultural Implement Workers of America or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 9, 1977.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 9, 1977.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 7th day of January 1977.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc. 77-2865 Filed 1-27-77;8:45 am]

[TA-W-1,563]

U.S. STEEL CORP.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On January 10, 1977 the Department of Labor received a petition dated December 23, 1976 which was filed under section 221(a) of the Trade Act of 1974 ("the Act") by the United States Steelworkers of America on behalf of the workers and former workers of Lorain, Ohio plant of United States Steel Corporation, Pittsburgh, Pa. (TA-W-1,563). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with furnace for pig iron produced by United States Steel Corporation or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 9, 1977.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 9, 1977.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 10th day of January 1977.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.77-2851 Filed 1-27-77;8:45 am]

[TA-W-1,564]

U.S. STEEL CORP.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On January 10, 1977 the Department of Labor received a petition dated December 23, 1976 which was filed under section 221(a) of the Trade Act of 1974 ("the Act") by the United Steelworkers of America on behalf of the workers and former workers of Irvin ET Works, Braddock and Dravosburg, Pennsylvania of U.S. Steel Corp., Pittsburgh, Pa. (TA-W-1,564). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with carbon sheet and strip, coded sheet, slabs and tin mill products produced by U.S. Steel Corporation or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a subtantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 9, 1977.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 9, 1977.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 10th day of January 1977.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.77-2852 Filed 1-27-77;8:45 am]

[TA-W-1,570]

WEYENBERG SHOE MANUFACTURING CO.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On January 10, 1977 the Department of Labor received a petition dated December 10, 1976 which was filed under section 221(a) of the Trade Act of 1974 ("the Act") by the Boot and Shoe Workers Union on behalf of the workers and former workers of Weyenberg Shoe Manufacturing Co., Milwaukee, Wisconsin (TA-W-1,570). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with insoles and outsoles for men's shoes produced by Weyenberg Shoe Manufacturing Co. or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 9, 1977.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 9, 1977.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20210.

Signed at Washington, D.C. this 10th day of January 1977.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.77-2858 Filed 1-27-77;8:45 am]

[TA-W-1,572]

WHEELING-PITTSBURGH STEEL CORP.

Investigation Regarding Certification of Eligibility to Apply for Worker Adjustment Assistance

On January 1, 1977 the Department of Labor received a petition dated December 1, 1976 which was filed under section 221(a) of the Trade Act of 1974 ("the Act") by the United Steelworkers of America on behalf of the workers and former workers of Martins Ferry, Ohio plant of Wheeling-Pittsburgh Steel Corp. Pittsburgh, Pa. (TA-W-1,572). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in section 221 (a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with galvanized sheets, coils & metal ware products produced by Wheeling-Pittsburgh Steel Corporation or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 9, 1977.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 9, 1977.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 1st day of January 1977.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.77-2860 Filed 1-27-77;8:45 am]

[TA-W-1,579]

WILLIAM ATKIN COMPANY, INC.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On January 18, 1977 the Department of Labor received a petition dated December 30, 1976 which was filed under section 221(a) of the Trade Act of 1974 ("the Act") by the Amalgamated Clothing and Texitle Workers Union on behalf of the workers and former workers of William Atkin Company, Incorporated, Allentown, Pennsylvania (TA-W-1,579). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in section 221 (a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with men's shirts produced by William Atkin Company, Incorporated or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 9, 1977.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not latter than February 9, 1977.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 18th day of January 1977.

MARVIN M. FOOKS,
Director, Office of
Trade Adjustment Assistance.

[FR Doc.77-2867 Filed 1-27-77;8:45 am]

NATIONAL COMMISSION ON ELECTRONIC FUND TRANSFERS

MEETINGS

The National Commission on Electronic Fund Transfers will meet on Wednesday, February 9, 1977 and Thursday, February 10, 1977 at the Motor House Complex, Colonial Williamsburg, Williamsburg, Virginia, beginning at 9 a.m. each day. The meetings will discuss the contents of the Commission's interim report to the President and the Congress.

The meetings are open to the public on a first-call basis to the extent that space permits. Any person interested in attending should first call Ms. Janet Miller at (202) 254–7400 to check on the availability of space.

Dated: January 24, 1977.

JAMES O. HOWARD, Jr.,
General Counsel.

[FR Doc.77-2790 Filed 1-27-77; 8:45 am]

OFFICE OF MANAGEMENT AND BUDGET

CLEARANCE OF REPORTS

List of Requests

The following is a list of requests for clearance of reports intended for use in collecting information from the public received by the Office of Management and Budget on January 19, 1977 (44 U.S.C. 3509). The purpose of publishing this list in the FEDERAL REGISTER is to inform the public.

The list includes the title of each request received; the name of the agency sponsoring the proposed collection of information; the agency form number(s), if applicable; the frequency with which the information is proposed to be collected; the name of the reviewer or reviewing division within OMB, and an indication of who will be the respondents to the proposed collection.

Requests for extension which appear to raise no significant issues are to be approved after brief notice through this release.

Further information about the items on this daily list may be obtained from the clearance office, Office of Management and Budget, Washington, D.C. 20503, (202–395–4529), or from the reviewer listed.

NEW FORMS

DEPARTMENT OF DEFENSE

Department of the Navy, U.S. Navy paid broadcast media mix and media weight, attitude and awareness study, single time, nonprior service males age 17–21, National Security Division, Maria Gonzalez, 395–4734.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Policy Development Research, single-family default counseling referral, screening, and status record, 8118A, 8118B, single time, counseling agencies for Sec. 203, 221, 235 mortgagors, Larry Haber, 395–5631.

Office of Human Development, Survey of Headstart Assessment Instruments and Survey of Headstart Assessment Procedures, single time, Headstart directors and teachers, Raynsford, R., 395–3814.

Housing management:
Development cost budget for public housing program, HUD–52484, on occasion, public housing agency, Housing, Veterans and Labor Division, 395–3532.
Application by public agency for public housing program, HUD–52470, on occasion, public housing agencies, Housing Veterans and Labor Division, 395–3532.
Preliminary site report by public housing agency HUD–52651, on occasion, public housing agencies, Housing, Veterans and Labor Division, 395–3532.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration, retail level drug sample, monthly, State & local crime laboratories in 25 cities, Tracey Cole, 395–5870.

DEPARTMENT OF LABOR

Labor Management and Service Administration, survey to assess the impact of ERISA on administration Costs of small pension plans, single time, employers who sponsored pension plans having 19 participants, Strasser, A., 395–5867.

EXTENSIONS

GENERAL SERVICES ADMINISTRATION

Bidders mailing list application, SF129, on occasion, applicants, Caywood, D. P., 395–3443.

NATIONAL SCIENCE FOUNDATION

Survey of earned doctorates awarded in the United States, annually, all new Ph. D.'s, Kathy Wallman, 395–6140.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

New Technology Transmittal form, NASA 666, on occasion, NASA Contractors, Warren Topelius, 395–5872.

PHILLIP D. LARSEN,
Budget and Management Officer.

[FR Doc.77-2932 Filed 1-27-77;8:45 am]

DEPARTMENT OF STATE

[Public Notice 514]

US–UK AIR SERVICES AGREEMENT (THE BERMUDA AGREEMENT)

Current Renegotiation

On June 22, 1976, the United Kingdom notified the United States of its intention to terminate one year hence the United States-United Kingdom Air Services Agreement, commonly referred to as the Bermuda Agreement.[1] The United Kingdom requested consultations under the terms of Article 13 of the Bermuda Agreement.

The Department of State is responsible for the negotiation of international agreements, including air transport agreements. Under Section 802 of the Federal Aviation Act, the Secretary of State is required to "consult with the Secretary of Transportation, (the Civil Aeronautics) Board, or Secretary (of Commerce), as appropriate, concerning the negotiations of any agreements with foreign governments for the establishment or development of * * * air routes and services." The Department of State is coordinating with other agencies regarding United States positions for negotiations with the United Kingdom looking to a new United States-United Kingdom air transport agreement. Consultations between the two countries aimed at developing a new bilateral agreement have begun and will continue during 1977.

Traffic rights between the United States and the United Kingdom were exchanged in 1946 when the Governments of the two nations entered into the Bermuda Agreement. This document has become a model not only for numerous subsequent agreements between the United States and other countries but also for bilateral agreements between other countries. As amended, the provisions of the Bermuda Agreement have continued to serve as the foundation for commercial air services between the United States and the United Kingdom.

Any new agreement which may ultimately be concluded could have significant effects both on the United States aviation industry and on shippers and travelers involved in trade and transport between the United States and the United Kingdom and its territories. Furthermore, the fact that many other bilateral air transport agreements have adopted the Bermuda Agreement as a model suggests that a new agreement could have significance beyond its effect on US–UK air transport relationships.

The Department of State, the Civil Aeronautics Board, and on occasion other interested federal agencies have in the past solicited the views of interested parties prior to the commencement of significant aviation negotiations. Because renegotiation of the Bermuda Agreement portends significant consequences for United States relations with many aviation partners, the Department of State has decided more formally to invite the submission of written views and data from interested members of the United States public relating to the renegotiation. This general solicitation of views does not constitute a proceeding governed by the Administrative Procedures Act, as agency actions involving foreign affairs functions of the United States are specifically exempted from the requirements of the Act by 5 U.S.C. 553(a)(1). Although the Department welcomes any relevant submission or presentation, the public is particularly invited to address the following issues raised by the United Kingdom or of interest to the United States Government.

1. *Capacity.* Under the Bermuda Agreement, it is anticipated that the amount of capacity to be provided on a route will be decided by each carrier individually, subject to review by governments after a reasonable period of experience to determine whether the capacity operated has been consistent with certain specified principles relating to market demand, undue effect on the carriers of the other country, and to the origin and destination "freedom" composition) of traffic. The United Kingdom proposes that some form of capacity control be introduced which would require agreement on capacity levels either among the carriers or between the governments.

2. *Routes.* Under the Bermuda Agreement, the United States has rights for its carriers to operate an extensive route system between the United States and the United Kingdom and beyond, between the United States and Bermuda and British possesions in the Caribbean, and between the United States and Hong Kong and beyond. The United Kingdom also has extensive route rights to and from the United States, some of which are not currently being exercised. The United Kingdom has proposed that all transatlantic routes be turnaround routes (i.e., no operations by United States carriers beyond United Kingdom points), that the United States rights to operate beyond Hong Kong be terminated, and that, to the extent the United Kingdom may not request reciprocal routes involving Bermuda, the Caribbean, and Hong Kong, it be accorded additional routes in other market areas.

3. *Designation of Carriers.* Under the Bermuda Agreement, each government has the right to designate one or more carriers to operate over each route. The United Kingdom has proposed that no more than one combination carrier of each country be allowed to operate on any city-pair route in transatlantic markets and that only one carrier of each country be allowed to operate all-cargo services.

4. *Fares.* Under the Bermuda Agreement, proposed air fares must be filed with the aeronautical authorities and are subject to disapproval if, after notice and consultations, the two governments are not able to agree on the appropriate air fare. The British have expressed dissatisfaction over how this system works, but have not proposed a specific alternative. Among the relevant issues are:

(a) What role, if any, should governments play in establishing air fares or in providing guidance or criteria to the carriers?

(b) What role should governments play when either IATA cannot agree or an IATA resolution is disapproved by one or more governments?

(c) What revisions should be made in the rate article in the Bermuda Agreement?

(d) If some form of capacity control were to be agreed, should there be greater price competition and, if so, how can the latter be achieved?

(e) Should commission rates be subject to the same provisions in a new agreement as air fares?

5. *Charter Services.* The Bermuda Agreement governs only scheduled air services. Charter air services are not subject to an overall United States-United Kingdom agreement, although there was in effect until December 31, 1976, a bilateral understanding addressed mostly to the charterworthiness issue (Understanding Relating to Passenger Charter Air Services (TIAS 8303)). Among the relevant issues are:

(a) Should any new air transport agreement with the United Kingdom cover both scheduled and charter air services? Or, alternatively, should there be separate, but otherwise coequal, agreements on scheduled and charter air services?

(b) If charter air services are to be governed by a full agreement, how should it address such questions as charter traffic rights, number of carriers that may be designated, capacity, price (charter air fares), and the relationship of scheduled and charter air services?

6. *User Charges.* The Bermuda Agreement does not address user charges, except to confirm the general language in Article 15 of the Convention on International Civil Aviation (61 Stat. 1180, TIAS 1591, 15 UNTS 295). Among the issues is whether any new agreement should establish user charge standards and, if so, what these standards should be.

Any member of the United States public desiring to submit views and data relating to the foregoing should address his submission in writing to the Director, Office of Aviation, Department of State, Washington, D.C. 20520. Material should be captioned "Bermuda Renegotiation" and should be supplied in original and 15 copies. In order to be of maximum usefulness, material should be received as soon as feasible.

Unless valid legal cause is demonstrated, all submissions will become part of a public record to be maintained by the Office of Aviation, Department of State. Any party who believes that all or any part of the material he is submitting may be withheld from public disclosure under the Freedom of Information Act, either because it contains commercially competitive information or for any other reason, should identify such material in his submission.

The Department will give thorough consideration to each of the submissions it receives. It may contact parties who submit material in response to this notice or other interested parties to seek clarification or elaboration of the views and data they have conveyed, or to seek views and data on other issues of a subsidiary nature which may be posed by the negotiation, particularly as the negotiations progress to the consideration of specific matters. As United States negotiating positions are formulated and developed, the Department's policy in favor of public disclosure of comments submitted on the Bermuda renegotiation will inevitably conflict with the need to maintain a degree of confidentiality in order not to reveal our negotiating posture piecemeal or prematurely. The Department will attempt to include in its public record the above responses to requests for clarification or elaboration to the greatest extent consistent with this requirement of confidentiality of negotiating positions.

Dated: January 19, 1977.

JULIUS L. KATZ,
Assistant Secretary for
Economic and Business Affairs.

[FR Doc.77-2805 Filed 1-27-77;8:45 am]

[1] Agreement Between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the United States of America Relating to Air Services Between Their Respective Territories, February 11, 1946, 60 Stat. 1499, TIAS 1507, 3 UNTS 253. Amended May 27, 1946, 17 UST 683, TIAS 6019, 573 UNTS 274.

DEPARTMENT OF COMMERCE

National Bureau of Standards

COMMERCIAL STANDARD

Intent To Withdraw

In accordance with § 10.12 of the Department's "Procedures for the Development of Voluntary Product Standards" (15 CFR Part 10, as revised; 35 FR 8349 dated May 28, 1970), notice is hereby given of the intent to withdraw Commercial Standard CS 132-46, "Hardware Cloth." It has been tentatively determined that this standard is technically inadequate and that revision would serve no useful purpose. The subject matter of CS 132-46 is adequately covered by American Society for Testing and Materials ANSI/ASTM A 740-76, "Standard Specification for Hardware Cloth (Woven or Welded Galvanized Steel Wire Fabric)."

Any comments or objections concerning this intended withdrawal of this standard should be made in writing to the Standards Development Services Section, National Bureau of Standards, Washington, D.C. 20234, on or before February 28, 1977. The effective date of withdrawal will be not less than 60 days after the final notice of withdrawal. Withdrawal action terminates the authority to refer to a published standard as a voluntary standard developed under the Department of Commerce procedures from the effective date of withdrawal.

Dated: January 21, 1977.

ERNEST AMBLER,
Acting Director.

[FR Doc.77-2751 Filed 1-27-77;8:45 am]

National Oceanic and Atmospheric Administration

NALCO ENVIRONMENTAL SCIENCES

Receipt of Application for Endangered Species Permit

Notice is hereby given that the following Applicant has applied in due form for a Permit to take an endangered species of fish for scientific purposes as authorized by the Endangered Species Act of 1973 (16 U.S.C. 1531-1543) and the National Marine Fisheries Service Regulations Governing Endangered Fish and Wildlife Permit (50 CFR Parts 217-222).

Nalco Environmental Sciences, 6720 Thompson Road, Syracuse, New York 13211, to take for research purposes, an endangered species of fish, the shortnose sturgeon (*Acipenser brevirostrum*) in the Hudson River in the State of New York during the next 5 years.

The Applicant will in the course of assessing the status of fish populations and the impact of power generation facilities on these populations, occasionally take shortnose sturgeon by such means as gill netting or trawling. Live specimens so captured will be measured, weighed and returned immediately to the Hudson River. Any specimen found dead upon the retrieval of the collecting gear will be preserved after being weighed and measured. Such specimens will be deposited in scientific collections.

The data collected from these occasionally captured specimens will be provided to other researchers who are conducting more extensive work on shortnose sturgeon.

Documents submitted in connection with this application are available for review in the following offices:

Director, National Marine Fisheries Service, Department of Commerce, 3300 Whitehaven Street, N.W., Washington, D.C.; and

Regional Director, National Marine Fisheries Service, Northeast Region, Federal Building, 14 Elm Street, Gloucester, Massachusetts 01930.

Written data or views, or requests for a public hearing on this application, should be submitted to the Director, National Marine Fisheries Service, Department of Commerce, Washington, D.C. 20235, on or before February 28, 1977. The holding of such a hearing is at the discretion of the Director. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate.

Any statements and opinions that may be contained in this notice in support of this application are summarized from information supplied by the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Dated: January 21, 1977.

ROBERT J. AYERS,
Acting Assistant Director for Fisheries Management, National Marine Fisheries Service.

[FR Doc.77-2759 Filed 1-27-77;8:45 am]

NEW ENGLAND REGIONAL FISHERY MANAGEMENT COUNCIL AND MID-ATLANTIC REGIONAL FISHERY MANAGEMENT COUNCIL

Fishery Conservation and Management Draft Fishery Management Plan Concerning Atlantic Cod, Haddock, and Yellowtail Flounder; Receipt of Public Comment

Notice of a series of public meetings for the purpose of receiving public views and comments concerning the enclosed Draft Fishery Management Plan for Atlantic Cod, Haddock, and Yellowtail Flounder pursuant to section 302(h) of the Fishery Conservation and Management Act of 1976, Pub. L. 94-265 has already been made by publication in the FEDERAL REGISTER. The purpose of this publication is to ensure that the public has the greatest possible opportunity to review the contents of the draft fishery management plan which was prepared by the New England Regional Fishery Management Council in consultation with the Mid-Atlantic Regional Fishery Management Council.

Persons desiring to comment or submit their views may do so by directing their comments to either:

John C. Bryson, Executive Director, Mid-Atlantic Regional Fishery Management Council, c/o Senator Roth's Office, Federal Building, North New Street, Dover, Delaware 19901.

Patricia Pelczarski, New England Regional Fishery Management Council, c/o National Marine Fisheries Service, State Fish Pier, Gloucester, Massachusetts 01930.

Written comments on the draft plan may be submitted by interested members of the public no later than February 23, 1977 to either of the addresses above.

This notice was prepared and published at the request of the New England Regional Fishery Management Council in consultation with the Mid-Atlantic Regional Fishery Management Council.

Dated at Washington, D.C. this 24th day of January, 1977.

WINFRED H. MEIBOHM,
Associate Director,
National Marine Fisheries Service.

TABLE OF CONTENTS

I. Introduction
II. The Fishery Management Plan
1. Description of the fishery
a. Cod
b. Yellowtail flounder
c. Haddock
d. Significance of the Historic Domestic Fisheries
(1) Introduction
(2) The industry —1950-62
(a) Overview
(b) Return to the Factors of Production
(c) Prices, Productivity, and Costs
(d) Selected data for haddock, cod, and yellowtail flounder, 1950-62
(3) The industry during the early 1960-70's with particular emphasis on Massachusetts
(a) Overview
(b) Vessel earnings
(c) Fishermen's earnings
(d) Species trends
(e) Prices
(f) Summary
(4) Recent trends, 1971-75
(a) Overview
(b) Species trends

e. Types and numbers of vessels employed
(1) Cod
(2) Yellowtail flounder
(3) Haddock
f. Types of gear
g. Historical impacts of foreign fishing on the domestic fishery
(1) Cod
(2) Yellowtail flounder
(3) Haddock
2. Status of the fishery stocks
a. Cod
b. Yellowtail flounder
c. Haddock
3. Optimum Yield and U.S. Capacity
a. Cod
b. Yellowtail flounder
c. Haddock
4. Suggested Management Measures
a. Quotas
b. Mesh size regulation
c. Area and season restrictions
III. Minimum Size Limits
1. Suggested Regulations

I. Introduction. The Fishery Conservation and Management Act of 1976 (Pub. L. 94-265) provides for the conservation and management of fishery resources of the United States by establishing a fishery conservation zone of 200 nautical miles, within which the United States has exclusive management authority over all fishery resources except highly migratory species. The Act calls for the preparation and implementation of fishery management plans to meet the objectives of a National Fishery Management Program.

This fishery management plan, prepared under authority of the Fishery Conservation and Management Act of 1976 (FCMA), addresses only haddock, cod, and yellowtail flounder. Other demersal species will be evaluated in the future.

Harvesting of haddock, cod, and yellowtail flounder off the Northeastern United States was, until December 31, 1976, regulated under terms of the International Commission for the Northwest Atlantic Fisheries (ICNAF), and subsequent agreements between the 18 signatory nations. The FCMA, enacted and signed into law on April 13, 1976, is effective March 1, 1977. Management of seriously depleted New England stocks, such as are addressed in this plan, is not provided for in the interim. Management plans for offshore New England waters are to be formulated by the New England Regional Fisheries Management Council, one of eight such Councils provided for by the FCMA.

The management plan proposes management measures for the groundfish fisheries for haddock, cod, and yellowtail flounder to achieve historic levels of maximum sustainable yield. Since the stocks in question have substantially declined as a result of overfishing and other factors, quotas, areas, mesh size restrictions, and minimum size regulations are recommended for implementation.

II. The Fishery Management Plan

1. Description of the fishery.

II. 1.a. Cod.

II.1.a(1) Areas and Stocks Involved.

Wise (1958, 1962) proposed three or possibly four separate groups of cod in the waters off the eastern U.S. coast. The areas inhabited by these groups were defined as 1) Georges Bank, east of the 68th meridian; 2) Gulf of Maine, north of Provincetown, Massachusetts; 3) southern New England, south and west of Nantucket Sholas, and 4) a New Jersey coastal group which spends part of the year mingled with a group in the southern New England area. For management purposes the cod stocks have been grouped as Gulf of Maine ICNAF 5Y and Georges Bank and southward ICNAF 5Z and 6 (See Fig. 1). Historically, the majority of the commercial landings have come from Georges Bank.

Similar groupings can be identified in the waters immediately adjacent to the north of Georges Bank but the degree of intermixing appears to be minimal.

II.1.a(2) Statistical History of Exploitation.

Cod have been exploited off the eastern U.S. seaboard since the seventeenth century. They have been fished both commercially and for recreation throughout their range.

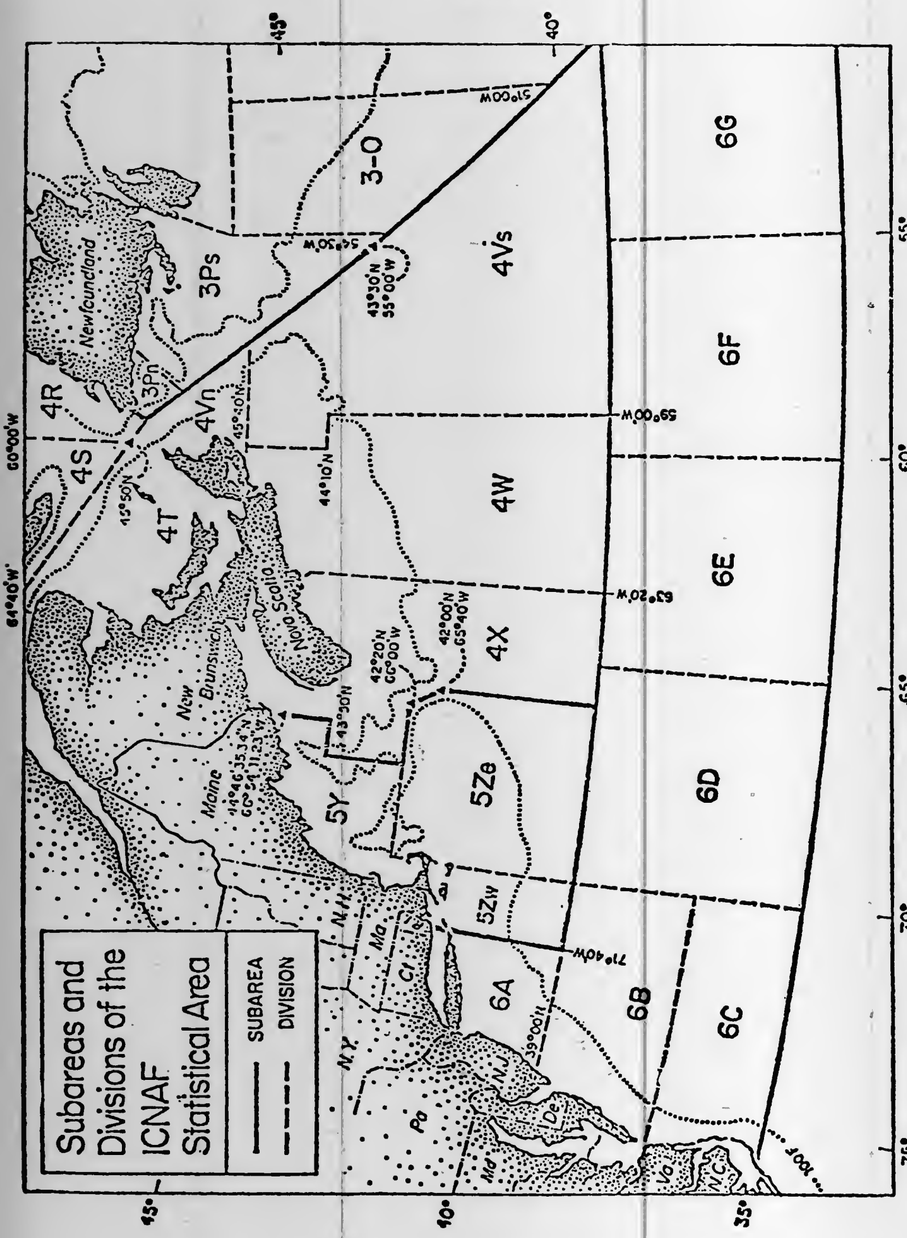


Figure 1. Northwest Atlantic from Cape Hatteras to Newfoundland, showing ICNAF Areas referred to in the Management Plan.

FEDERAL REGISTER, VOL. 42, NO. 19—FRIDAY, JANUARY 28, 1977

In the Middle Atlantic-New York Bight area the commercial fishery has been seasonal, with peak catches taken from December through February. The fishery at one time extended as far south as the Chesapeake Bay region, with pound nets, longlines, and trawls being used, but catches were never large in comparison with the more northerly stocks; i.e., in the New York Bight area, peak catches in 1930 approached 5,000 metric tons (m.t.) and the Chesapeake Bay region yielded a maximum catch of only 450 m.t. (1962). In contrast, cod landings from New England waters have exceeded 50,000 m.t. several times since 1900. The shift in fishing practices for the southern cod stock has resulted in the current harvest of cod mainly as an incidental catch associated with other groundfish fisheries. Commercial landings from the New York Bight area in 1970 approximated only 260 m.t. However, with the increasing trend in the number of salt water anglers and the growing popularity of winter sportfishing, the cod has taken on a new importance, particularly in the New York area.

Marine recreational surveys conducted in 1960, 1965, 1970, and 1974 estimated the recreational catches of cod to be 6,349, 13,560, 16,281, and 12,381 m.t. respectively. The U.S. commercial landings of cod in 1970 for this same area, New York to Maine were only 24,000 m.t. with the greatest share of the catch coming from offshore waters not generally fished by the recreational fishermen.

Landings statistics for the major offshore commercial fisheries for cod are available since 1893. Up until 1960, the stocks were exploited almost exclusively by U.S. fishing vessels, but following 1960, exploitation by foreign nations increased the total landings of cod threefold. This fishery may be separated into three periods: The early period from 1893–1910 in which years of record high landings in 1895 and 1907 were followed by much reduced catches; the middle period from 1910–1950 during which landings remained fairly steady; and the latest period from 1950–1975 when landings first rose to near record high levels and then returned to the long-term average levels (Fig. 2, Table 11). The mean annual catch for the total fishery since 1893 is 32,000 m.t. Approximately 80 percent of the catch comes from Georges Bank.

Nominal catches for the Gulf of Maine have fluctuated between 2,700 and 14,500 m.t. since 1932 and have averaged 7,100 m.t. over the past 10 years (1966–1975); almost all of this catch has been taken by the U.S. In 1975, the provisional catch approximated 9,400 m.t. In addition, this stock has supported undetermined, but apparently increasing, levels of recreational fishing for some time.

During the period 1932–1960, nominal U.S. commercial catches for the Georges Bank stock complex fluctuated between 8,100 and 32,300 m.t. With increased Canadian fishing and the advent of distant water fleets, landings rose very sharply to 52,900 tons in 1966. Landings declined sharply thereafter and then stabilized around 26,000 m.t. annually during 1970–75. In 1975, nominal catch approximated 24,000 m.t.

Table 11. Historical cod landings (MT x 10^{-3}) in the US Zone

	Gulf of Maine (5Y)		Georges Bank & Southward (5Z)
	US	Others	US
1932	5.9		25.1
1933	7.0		25.2
1934	11.6		16.0
1935	9.7		21.2
1936	7.4		23.3
1937	7.4		32.3
1938	7.5		24.9
1939	5.5		22.0
1940	5.8		18.4
1941	6.1		25.5
1942	6.7		18.3
1943	9.4		17.3
1944	10.5		17.6
1945	14.5		14.3
1946	9.2		20.9
1947	7.9		16.6
1948	7.5		17.6
1949	7.2		17.7
1950	5.1		15.4
1951	3.6		14.8
1952	3.0		10.9
1953	3.1		8.1
1954	3.4		8.8
1955	3.2		9.3
1956	2.7	*	10.5
1957	2.6	*	10.4
1958	4.7	*	11.1
1959	3.8	0.1	12.1

*Less than 100 metric tons.

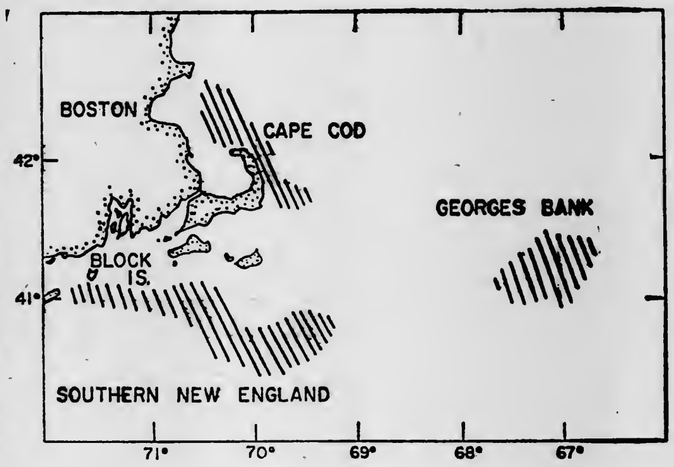


Figure 3. Yellowtail Flounder Fishing Grounds.

Table 11 - (continued)

Year		US 5Y	US 5Z	Canada 5Y	Canada 5Z	Spain 5Y	Spain 5Z	USSR 5Y	USSR 5Z	Poland 5Y	Poland 5Z	Other 5Y	Other 5Z	Total 5Y	Total 5Z
1960		3.4	10.8	0.1	-	-	-	-	-	-	-	-	-	3.5	10.4
1961		3.2	14.0	-	0.2	-	-	-	-	-	-	-	-	3.2	14.3
1962		3.0	15.2	-	2.4	-	-	-	5.3	-	0.1	-	-	3.1	23.1
1963		2.6	13.9	-	7.8	-	-	0.1	5.2	-	-	-	-	2.7	27.0
1964		3.2	12.3	-	7.1	-	-	-	5.4	-	-	-	0.2	3.3	25.2
1965		3.8	11.4	0.1	10.6	-	-	-	14.4	-	1.9	-	-	3.9	38.3
1966		4.0	11.8	0.4	15.6	-	8.4	-	16.8	-	0.3	-	0.1	4.4	52.9
1967		5.7	12.7	0.3	8.2	-	14.7	-	0.5	-	-	-	-	6.0	36.3
1968		6.4	14.9	0.1	9.1	-	14.6	-	1.5	-	2.6	-	-	6.4	42.8
	(5Ze)		(13.5)		(9.1)		(14.5)		(1.4)		(2.3)		(-)		(40.9)
	(5Zw)		(1.4)		(-)		(0.1)		(0.1)		(0.3)		(-)		(1.9)
1969		8.2	16.4	0.1	6.0	0.2	13.6	-	0.7	-	0.7	-	0.1	8.5	37.3
	(5Ze)		(15.0)		(6.0)		(13.6)		(0.3)		(0.4)		(0.1)		(35.3)
	(5Zw)		(1.4)		(-)		(-)		(0.4)		(0.3)		(-)		(2.0)
1970		7.8	14.6	-	2.6	0.4	6.8	-	0.3	-	0.7	-	0.1	8.2	25.1
	(5Ze)		(13.4)		(2.6)		(6.8)		(0.2)		(0.6)		(0.1)		(23.7)
	(5Zw)		(1.2)		(-)		(-)		(0.1)		(0.1)		(-)		(1.4)
1971		7.4	15.8	0.1	3.0	0.2	7.5	-	1.2	-	0.1	-	-	7.7	27.9
	(5Ze)		(15.0)		(3.0)		(6.4)		(1.1)		(0.1)		(-)		(26.0)
	(5Zw)		(0.8)		(-)		(1.1)		(0.1)		(-)		(-)		(1.9)
1972		6.8	13.2	0.1	2.5	-	6.7	-	1.9	-	0.2	0.1	0.2	6.9	24.6
	(5Ze)		(12.5)		(2.5)		(5.7)		(1.8)		(0.2)		(0.2)		(22.8)
	(5Zw)		(0.7)		(-)		(1.0)		(0.1)		(-)		(-)		(1.8)
1973		6.1	15.9	0.1	3.2	-	5.9		2.9	-	0.4	-	0.1	6.2	28.5
	(5Ze)		(14.8)		(3.2)		(5.5)		(2.0)		(-)		(0.1)		(25.7)
	(5Zw)		(1.1)		(-)		(0.4)		(0.9)		(0.4)		(-)		(2.8)
1974		7.8	17.8	0.1	1.3	-	6.4		0.5	-	0.5	-	0.1	7.9	25.6
	(5Ze)		(16.6)				(6.4)		(0.1)		(0.3)				(24.7)
	(5Zw)		(1.2)						(0.4)		(0.2)				(1.8)
1975*		8.7	15.2	0.1	1.8	-	3.4	-	2.3	-	0.3	-	-	8.8	23.0
	(5Ze)		(14.6)		(1.8)		(3.4)		(2.3)		(0.3)				(22.4)
	(5Zw)		(0.6)												(0.6)

*Provisional

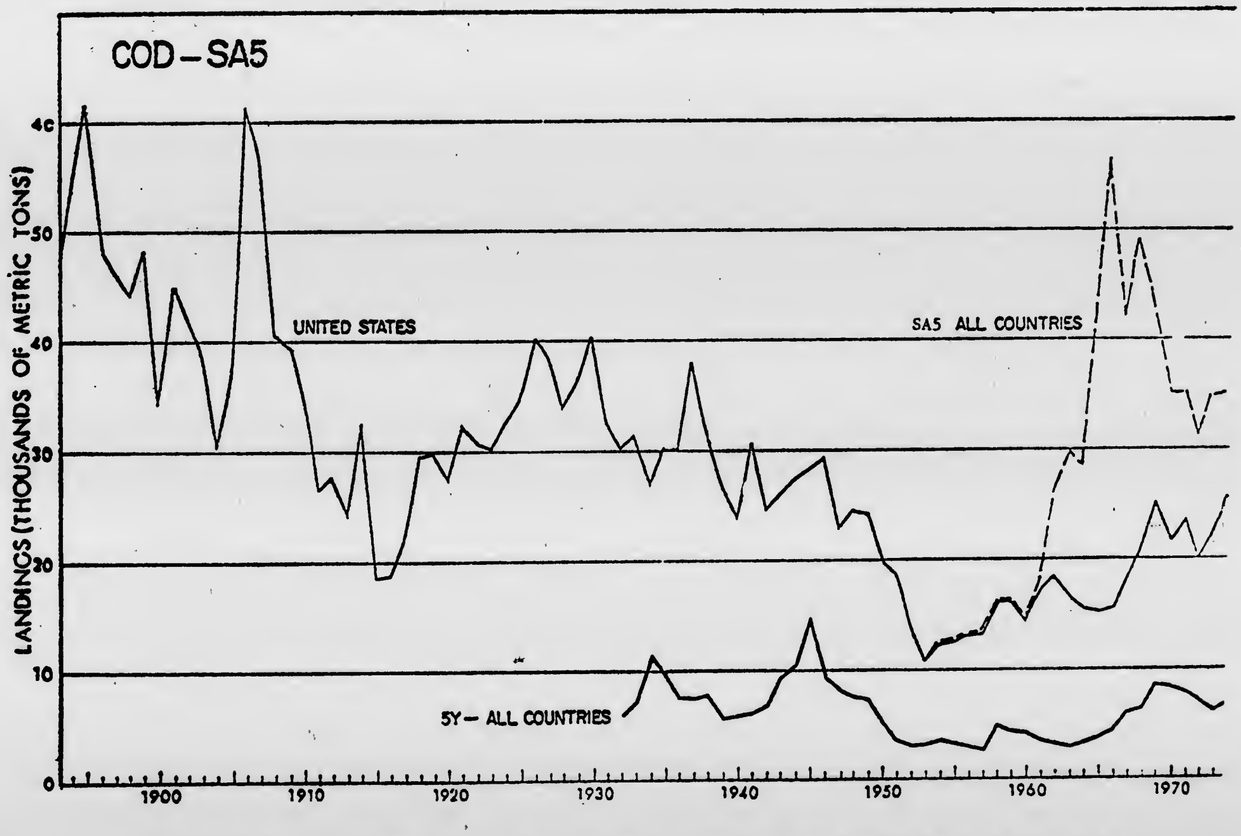


Figure 2. Landings of cod since 1893 for Subarea 5, US and all countries, and for Division 5Y, all countries. Prior to 1956 US landings represented all landings in Division 5Y.

II.1.b. Yellowtail.

II.1.b.(1) Area and Stocks Involved.

Prior to the 1970's yellowtail flounder was primarily sought on three fishing grounds along the Atlantic coast of the United States. They are the Southern New England, Georges Bank and Cape Cod grounds (Figure 3). Tagging experiments and parasite studies performed by Lux (1963) indicated that there is relatively little mixing between yellowtail flounder from the three New England grounds. In general, the Southern New England ground has been the most productive although in recent years, catches from the Georges Bank ground have been higher than from Southern New England. During the 1970's significant catches of yellowtail flounder have been reported from Subarea 6 south of the Southern New England ground. The degree of intermixing between this most recent fishing area and the population of the Southern New England ground is unknown. In practice, the yellowtail flounder west of 69° W. and Subarea 6 (including the Cape Cod and Southern New England grounds) have been managed as a unit. Yellowtail flounder east of 69° W. (including Georges Bank) are also managed as a unit.

II.1.b.(2) Statistical History of Exploitation.

The yellowtail flounder, *Limanda ferruginea*, is an important food fish. It is sought primarily by Massachusetts and Rhode Island otter trawlers from the ports of New Bedford, Provincetown, and Point Judith. The species is also landed in Connecticut, New York, and in the past by foreign fishing fleets.

Yellowtail flounder was unexploited prior to 1935. With the decline in abundance of the thicker-bodied winter flounder, the yellowtail flounder fishery in Subarea 5 west of 69° W. developed rapidly. The fishery prospered through the 1940's declined during the 1950's, then recovered during the 1960's and has once again declined in the 1970's. The fishery for yellowtail flounder in Georges Bank (east of 69° W.) developed more slowly than the Southern New England fishery. The Georges Bank fishery did not yield more than 10,000 m.t. prior to the 1960's while the yield from the Southern New England exceeded this level during the 1930's. The annual catch of yellowtail flounder for each area from 1935 to the present is given in Table 12. Catch data include discard estimates of small fish by domestic vessels. These are based on samples taken at sea and on interviews with vessel captains. In the past, discards have comprised as much as ½ of the total catch, although the percentage of discards appears much lower at present. Few, if any, yellowtail flounder are taken by marine recreational fishermen.

Table 12 Yellowtail flounder catch ... for ... stock, thousands

	West of 69°W			SA6		East of 69°W		
	Domestic Catch m.t.x10⁻³	Total Days Fished	Foreign Catch m.t.x10⁻³	Domestic Catch m.t.x10⁻³	Foreign Catch m.t.x10⁻³	Domestic Catch m.t.x10⁻³	Total Days Fished	Foreign Catch m.t.x10⁻³
1935	8.9					0.4		
6	10.0					0.4		
7	11.3					0.4		
8	11.5					0.4		
9	14.1					0.5		
40	21.1					0.8		
1	28.7					1.2		
2	40.3					2.1		
3	27.0	6280				1.7	200	
4	16.9	5140				2.2	220	
5	16.2	3470				1.9	280	
6	16.8	4260				1.2	230	
7	18.4	5340				3.1	480	
8	14.8	5610				7.7	1120	
9	8.4	4080				9.8	2490	
50	8.5	4180				5.3	1640	
1	5.0	2790				5.8	1610	
2	5.4	3200				5.0	1600	
3	4.1	2410				3.9	1240	
4	3.7	2240				3.9	1380	
5	5.1	2700				3.9	1230	
6	7.3	3950				2.1	790	
7	11.5	4060				3.1	820	
8	15.2	4770				6.1	1400	
9	13.3	5890				5.5	1970	
60	13.5	5720				5.9	2020	
1	19.4	5760				5.7	1820	
2	21.1	5050				10.3	2350	
3	32.3	6470	0.2			16.6	2420	0.1
4	31.4	5800	---	1.8		19.8	3530	---
5	28.4	7310	1.4	2.1		18.4	4680	0.8
6	25.0	9790	0.7	2.2		13.4	5710	0.3
7	25.3	8200	2.8	5.3		13.9	4130	1.4
8	26.7	7650	3.5	3.3		16.4	4660	1.8
9	19.6	11460	17.6	3.9	0.7	18.5	6710	2.4
70	21.6	6913	2.5	4.1	0.1	21.0	6275	0.3
1	14.5	4553	0.3	6.9	0.9	15.0	6142	0.5
2	11.9	5458	3.0	8.8	0.1	15.3	8099	2.2
3	9.3	4954	0.2	1.8	---	16.5	6833	0.3
4	9.3	5325	0.1	4.9	0.2	15.8	8584	1.0
5	5.5	3769	---	0.7	---	14.5	8670	0.1

II. 1.c. Haddock.

II. 1.c.(1) Areas and Stocks Involved.

Biological data and tagging studies indicate that haddock on Georges Bank east of the Great South Channel are a relatively localized and distinct population. This population is largely separated from stocks in Subarea 4 by the Fundian Channel and the Gulf of Maine, however, some interchange has been documented between this area the areas to the west (Grosslein, 1962). In addition, two small populations may exist inshore in Subarea 5; a southern group has been identified in the Nantucket Shoals and Jeffreys Ledge area, while to the north, migration into Subarea 5 as far south as the Nantucket Shoals and Jeffreys Ledge area has been documented from haddock tagged in Passamaquoddy Bay. Some movement of haddock tagged in the Nantucket Shoals and Jeffreys Ledge areas into the Georges Bank area east of the Great South Channel has also been documented but does not appear to be extensive. In view of the relatively small size of the population resident to the Gulf of Maine-Nantucket Shoals area and uncertainty relative to interchange between this population and the population on Georges Bank, haddock on Georges Bank and in adjacent areas east of Cape Cod (Subdivision 5Ze) have been considered for assessment purposes as a discrete stock, recognizing that an unknown, but apparently slight, amount of interchange may occur between Subdivision 5Ze and areas to the north (Division 5Y) and west (Division 5Zw).

II.1.C.(1) Statistical History of Exploitation.

The decline in market for salt fish early in the century coupled with increased demand for fresh (iced) fish and technological innovations (otter trawling, and adoption of diesel engines) contributed to rapid growth of the Georges Bank haddock fishery during the 1920's. Landings rose steadily to a peak of 115,500 m.t. in 1929, dropped to 59,500 m.t. in 1931, and subsequently fluctuated around 47,000 m.t. annually from 1935–1960. During this period, this was an almost exclusive U.S. fishery (very small catches were made by Canada). In the 1960's, however, foreign nationals (primarily the U.S.S.R. and Canada) intensified their fishing effort upon this stock. Recruitment of the outstanding 1963 year-class in 1965 attracted greatly increased effort by these two countries, while U.S. effort remained relatively

constant, and as a result landings from this stock rose dramatically to an all-time high of 150,000 m.t. Since that year, landings have declined drastically and in 1969 totalled 22,100 m.t. (the final year of unrestricted fishing). Since 1970, annual landings have averaged 7,100 m.t. under quota management. Historical statistics for the New England fishery are given in Table 13; landings by ration since 1960 are given in Table 14.

It can be seen that the U.S.S.R., Canada and Spain have accounted for most of the catch by foreign nationals in recent years.

Recreational catches for Subarea 5 have been significant on occasion with salt-water angling surveys indicating catches of 800, 9,700, 1,100, and 200 m.t. for 1960, 1965, 1970, and 1974 respectively. Almost all of the above catches were taken in Subarea 5.

Table 13 Historical catch data (thousands of metric tons) for the New England haddock fishery, 1917-1959.

Year	Georges Bank (Subdiv. 5Ze)[1]	Total[2]
1917	14.1	-[3]
1918	24.8	-[3]
1919	39.4	40.8
1920	40.6	-[3]
1921	29.7	-[3]
1922	30.8	-[3]
1923	32.9	-[3]
1924	36.9	42.4
1925	41.4	-[3]
1926	51.3	-[3]
1927	73.9	-[3]
1928	98.6	107.8
1929	115.5	116.0
1930	95.0	120.0
1931	59.5	82.1
1932	54.5	68.2
1933	42.2	72.6
1934	25.8	-[3]
1935	41.0	88.3
1936	43.4	-[3]
1937	49.4	76.9
1938	47.8	71.6
1939	54.0	71.6
1940	47.9	64.0
1941	62.9	-[3]
1942	55.4	62.3
1943	46.3	53.2
1944	49.6	60.3
1945	40.5	66.8
1946	53.7	66.8
1947	54.4	73.5
1948	48.3	70.1
1949	42.2	60.7
1950	41.3	71.6
1951	47.3	69.5
1952	43.2	73.2
1953	35.9	63.2
1954	46.4	70.3
1955	40.8	61.2
1956	48.9	69.0
1957	46.2	60.5
1958	35.5	54.2
1959	35.9	51.1

[1] Source: ICNAF Res. Doc. 69/90.

[2] Total New England Fisheries (including Subarea 4) as reported in Fishery Statistics of the US (historical summary for 1965).

[3] Not reported.

Table 14 Commercial landings of haddock (metric tons) from Subarea 5 and Statistical Area 6 by country, 1960–1975.

Year	Country: Canada	Poland	Romania	Spain	UK	USSR	USA	Other[1]	Total
					Div. 5Y[2]				
1960	383	-	-	-	-	-	4,541	-	4,924
1961	56	-	-	-	-	-	5,297	-	5,353
1962	107	-	-	-	-	-	5,003	-	5,110
1963	3	-	-	-	-	44	4,742	-	4,789
1964	70	-	-	-	-	-	5,383	-	5,453
1965	159	-	-	-	-	-	4,204	-	4,363
1966	1,125	-	-	-	-	-	4,579	-	5,704
1967	589	-	-	-	-	-	4,907	-	5,496
1968	120	-	-	-	-	-	3,437	-	3,557
1969	59	-	-	230	-	-	2,423	-	2,712
1970	38	-	-	63	-	-	1,457	-	1,558
1971	85	-	-	26	-	-	1,194	1	1,306
1972	23	-	-	-	-	4	909	-	936
1973	49	-	-	-	-	-	509	-	558
1974	198	-	-	-	9	-	622	-	829
1975[4]	78	-	-	-	-	-	1,183	-	1,261
					Subdiv. 5Ze[3]				
1960[3]	77	-	-	-	-	-	40,800[5]	-	40,877
1961[3]	133	-	-	-	-	-	46,384[5]	-	46,517
1962[3]	3,461	-	-	-	-	1,134	49,409[5]	-	54,004
1963[3]	8,379	-	-	-	-	2,317	44,150[5]	-	54,846
1964[3]	11,625	-	-	2	464	5,483	46,512	-	64,086
1965[3]	14,889	28	-	10	-	81,882	52,823	730	150,362
1966[3]	18,292	29	-	1,111	29	48,409	52,918	486	121,274
1967[3]	13,040	-	12	1,355	3	2,316	34,728	4	51,458
1968	9,292	1,145	-	2,845	-	1,308	25,197	29	39,816
1969	3,990	458	-	1,201	-	51	16,443	4	22,147
1970	1,978	15	-	782	-	98	8,400	1	11,274
1971	1,630	1	225	1,240	-	292	7,301	16	10,705
1972	609	1	14	1,098	-	126	3,866	5	5,719
1973	1,563	-	-	386	-	574	2,776	3	5,302
1974	462	-	-	764	426	97	2,396	-	4,145
1975[4]	1,353	-	-	-	-	8	3,985	-	5,346

Table 14, (Cont'd) Commercial landings of haddock (MT, live) from Subarea 5 and Statistical Area 6 by country, 1960-1975

	COUNTRY: Canada	Poland	Romania	Spain	UK	USSR	USA	Other[1]	Total
						Total Subarea 5 and Statistical Area 6			
1960[6]	460	-	-	-	-	-	45341	-	45801
1961[6]	189	-	-	-	-	-	51681	-	51870
1962[6]	3566	-	-	-	-	1134	54412	-	59114
1963[6]	8382	-	-	-	-	2361	48892	-	59635
1964[6]	11695	-	-	2	464	5483	51895	-	69539
1965[6]	15048	28	-	10	-	81882	57027	730	154725
1966	12417	29	-	1111	29	48516	57510	486	127098
1967	13529	-	12	1355	3	2315	39659	15	56989
1968	9443	1327	402	3014	-	1397	28914	33	44530
1969	4049	458	66	1431	-	65	18892	16	24977
1970	2016	15	-	845	-	103	9874	11	12864
1971	1715	1	225	1336	-	374	8508	17	12176
1972	632	1	14	1098	-	141	4779	5	6670
1973	1612	-	-	386	-	602	3289	3	5892
1974	660	-	-	764	568	111	3018	-	5121
1975	1431	-	-	-	-	8	5168	-	6607

1 Includes landings for Bulgaria, France, FRG, GDR, Japan and non-members.
2 From ICNAF statistical bulletins 10-24.
3 Landings not allocated by subdivision (5Ze or 5Zw).
4 From provisional ICNAF statistics for 1976 (incomplete).
5 Subarea 5 HX landings were added into 5Z.
6 No statistical area 6 landings data are available prior to 1966, but haddock landings for the area were apparently negligible.

II.1.d. Significance of the Historical Domestic Fisheries.[1]

II.1.d.(1) Introduction.

The FMP is designed to address haddock, cod, and yellowtail flounder. However, other species are also landed by the same vessels that land the subject species. Since the available performance data relate to the groundfish fishery in general, the discussion below also relates to the entire groundfish sector, with particular reference to the subject species. Further, the vast majority of these species are landed in New England ports. Therefore, the discussion below is essentially on the New England groundfish industry (harvesting level). The following section first discusses the industry during the period 1950–62. The second section presents similar data for the period 1960–1971. Recent conditions are contained in the final section. This section does not address the significance of the recreational fisheries. An economic assessment of the recreational fisheries will be included as the requisite studies are completed.

II.1.d.(2). The Industry 1950–62.

II.1.d.(2)(a) Overview.

The New England groundfish fleet (mostly otter trawlers) is usually considered a separate segment of the entire New England Fishing Industry. These vessels land haddock, ocean perch, flounder, cod, whiting, pollock, hake and cust. The groundfish fleet reached its peak of 795 vessels in 1951. By 1962 this fleet had dwindled to 592 vessels, a decline of 25.5 percent. During the same period, the number of fishermen employed on these vessels dropped from 5,298 to 3,189. This represented a considerable attrition of both capital and labor from one of the largest segments of the New England fishing industry. With this loss of factors of production, the groundfish catch declined from 681.3 million pounds in 1951 to 515.8 million pounds in 1962—a decline of 24.3 percent. It should be pointed out that although the groundfish segment comprised 81.4 percent of the capital in the industry (using the number of vessels as a rough indicator) it employed only 14.8 percent of the industry's fishermen. This is due presumably to the high capital/labor ratio in groundfishing compared to lobstering and shell fishing. In addition, employment in fisheries other than groundfish is somewhat overstated since it includes more part-time workers. The movement of both capital and labor from the industry produced three investigations by the United States Tariff Commission. The Commission found in two investigations that under the competitive pressure of increased imports of groundfish fillets, the size of the New England groundfish fleet had been reduced significantly. The Tariff Commission's recommendation to increase import duties in each case was turned down because it was felt that such an increase might lead to retaliation and thus jeopardize our relations with Canada and Iceland. Although not leading to any specific action, the Tariff Commission studies did provide a great deal of data useful in assessing the financial returns in the groundfish industry at that time. It should be pointed out that the increased imports were partially the results of the rebuilding of foreign fishing fleets under the Marshall Plan and other subsidies that were made by foreign governments to their fleets. Such benefits were not made available to the domestic fisheries.

[1] Portions of this section are based on Bell (1966) and Vondruska (1972).

In 1951, the average share (or annual earnings) per groundfisherman was 5 percent above those in all U.S. industry. By 1953, however, groundfishermen's earnings were 23 percent below those received in all U.S. industry. Table 15 indicates the slow but steady deterioration of the earnings position of both capital and labor in the groundfish segment of the New England industry during this period.

Table 15 Returns to Capital and Labor in New England Groundfishing

	1950	1951	1952	1953	1954	1955	1956	1957	1958	1959	1960	1961	1962
Capital[1]													
Vessels (number)	672	795	769	776	739	684	673	649	657	628	642	587	592
Average Profit per Vessel[2] (in dollars before taxes)	+$5,000	+$13,069	+ 6,603	- 1,706	- 2,288	- 2,431	- 3,323	8,300	n.a.	n.a.	n.a.	n.a.	n.a.
Labor[1]													
Fishermen (number)	4,512	5,298	4,737	4,714	4,561	4,009	3,905	3,889	3,658	3,537	3,476	3,142	3,180
Average Share per Fisherman (in dollars)	3,161	3,200	3,162	2,541	2,745	2,868	3,042	3,374	3,885	3,772	3,157	3,308	3,048
Crew Per Vessel	6.71	6.66	6.15	6.07	6.01	5.86	5.79	5.88	5.57	6.01	5.42	5.35	5.39
Average Annual Earnings per Employee in United States	3,088	3,231	3,414	3,586	3,670	3,847	4,062	4,311	4,349	4,370	4,712	4,837	5,016
Ratio of Fisherman's Earnings to Annual Earnings per Employee in United States	1.05	0.99	0.92	0.71	0.75	0.75	0.75	0.80	0.88	0.83	0.67	0.73	0.77

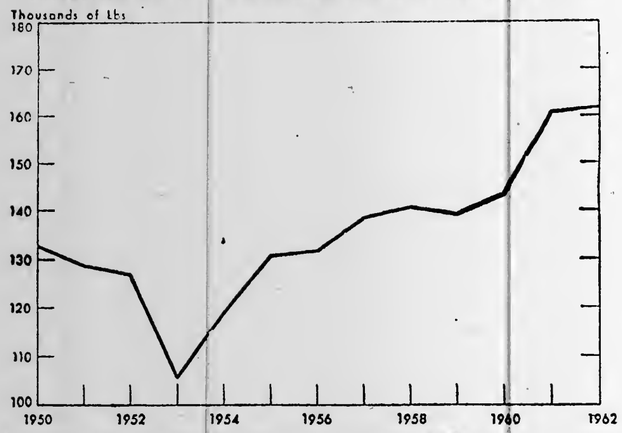
Source:
[1] 1950-56: U. S. Tariff Commission, Groundfish Fillets (1954 and 1965); Report to the President on Escape Clause Investigation Nos. 22, 47.
1957-58: E. J. Lynch, R. N. Doherty, and C. P. Graham, The Groundfish Industries of New England and Canada, (U. S. Fish and Wildlife Service, Circular 121, Washington, D. C., 1961).
[2] U. S. Department of Commerce, Survey of Current Business, 1950-62.

II.1.d.(2)(c) Prices, Productivity and Costs.

Although New England groundfish prices fluctuated from year to year, during the 1952–60 period they exhibited no pronounced secular trend over the post-war period. Because of the withdrawal of factors of production, the decline in groundfish landings would lead (*ceteris paribus*) to higher ex-vessel prices (i.e. prices received by fishermen for their landed catch). However, the industry would experience lower total revenue since the demand curve for most groundfish species is highly elastic at the primary market level. This highly elastic nature of the demand curve is due to the existence of foreign substitutes and competing products such as meat and poultry. On the other hand, increases in consumer demand (i.e. expansion in population, etc.) will result in a shift in the demand curve, a rise in ex-vessel prices, and consequently total revenue. Even though U.S. population or consumer demand expanded rapidly in the postwar period there was no secular increase in ex-vessel prices as foreign imports supplied an increasing share of the market for groundfish. In fact, both revenue and output in the New England groundfish industry declined by the same percentage over the 1951–62 period, thereby resulting in constant prices during that decade. It may be concluded that the secularly constant New England ex-vessel price was partially produced by the increased pressure of foreign imports even though consumer demand increased and domestic landings fell.

Figure 4

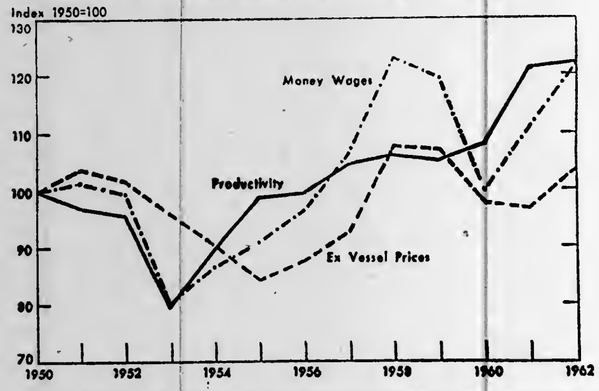
GROUNDFISH OUTPUT PER FISHERMAN IN NEW ENGLAND, 1950 – 1962



Source: Fishery Statistics of the United States and special report by the Bureau of Commercial Fisheries

Figure 5

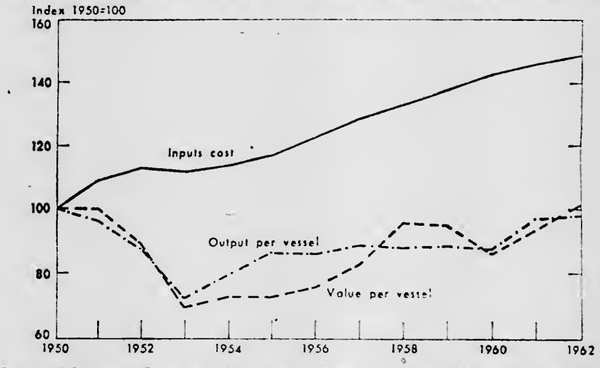
AVERAGE EX VESSEL PRICES, LABOR PRODUCTIVIVITY, AND MONEY WAGES IN THE NEW ENGLAND GROUNDFISH INDUSTRY, 1950–1962



Source: Fishery Statistics of the United States and special report from the Bureau of Commercial Fisheries

Figure 6

LANDINGS AND REVENUE PER VESSEL AND COST INDEX OF INSURANCE, REPAIR, AND MAINTENANCE IN THE NEW ENGLAND GROUNDFISH INDUSTRY, 1950 – 1962



Source (i) Cost Index - Shipbuilding, Construction and Repair—U.S. Maritime Administration, Miscellaneous Textile Products-Fish Gear—Bureau of Labor Statistics, Insurance and Administration Expenses—Prices and Costs a American Industries C.E.D. Publication, (ii) Output and Value Indices—Fishery Statistics of the United States

The groundfish industry had apparently experienced some technological advance which raised labor productivity (hence money wages). The data revealed that output and revenue declined by 24 percent while employment dropped 40 percent over the 1951–62 period. However, fishermen's wages failed to keep pace with the rest of the economy and this deterioration resulted in an attrition of labor from the industry. Figure 4 shows the course of groundfish output per fisherman on an annual basis over the 1950–62 period. From 1950–53 labor productivity actually declined and did not reestablish its 1950 level until 1955. The slow growth of labor productivity is certainly not surprising since groundfish vessels and their equipment had not changed greatly over the postwar period. The side trawling fishing technique has been used for years in the industry.

Figure 5 shows the change in labor productivity, average ex-vessel prices for groundfish and fishermen's money wages. Upward movements in labor productivity seem to have produced a rising wage in the fishing industry. However, labor left the fishing industry due to the steadily deteriorating relative wage levels and because of the flight of capital (or decline in the fleet).

Profits in the groundfish industry were greatly influenced by rising fixed costs. Landings per vessel (or firm) changed little over the postwar period. Over the 1951–62 period, the number of groundfish vessels and pounds landed decreased by approximately the same percentage. As indicated before, ex-vessel prices failed to increase; therefore, revenue per vessel did not increase from 1951–62. On the other hand, such fixed costs as repair and maintenance, insurance, and administrative expenses increased over this period. A rough fixed cost index was constructed from these components. Results show that the index increased much more rapidly than value of the landings per vessel (or firm) (Figure 6). As a result, return on capital declined as did new investment in the industry.

The basic conclusion is that ex-vessel prices were an important factor in the postwar decline of groundfishing in New England. The secular consistency of ex-vessel prices resulted partly from an increasing supply of foreign imports which offset rising demand for groundfish products. The secularly constant ex-vessel prices coupled with rising costs for repair, insurance and maintenance produced a pressure on profits as revenue per vessel remained the same throughout the period. The adverse profit position created disinvestment (a decline in the fleet). Money wages in groundfishing increased slowly, presumably due to rising labor productivity. The deterioration of relative wages and the attrition of capital resulted in a contraction in employment. Again the increase in imports was partially the results of subsidies being made available to foreign vessels that were not made available to U.S. fishermen.

II.1.d.(2)(d) Selected Data for Haddock, Cod and Yellowtail Flounder, 1950–62.

HADDOCK

Table 16 contains data on total U.S. haddock landings in thousands of pounds and thousands of dollars for the 1950–62 period. Tables 17 and 18 contain data on New England landings of haddock for selected years during the 1952–62 period. Clearly, New England landings constitute essentially all of the U.S. haddock landings, and Massachusetts landings account for almost all of the New England landings. While landings declined during the 1950's, there was an upturn during the early 1960's. The actual value of the haddock landings in 1962 was essentially the same as in the early 1950's. Thus, the deflated value (while not presented here) was less in 1962 than in the early 1950's.

Table 16. U. S. Landings and Ex-Vessel Value of Haddock 1950 - 1962

	Haddock	
	Quantity	Value
	Thousand pounds	Thousand dollars
1950	158,559	11,834
1951	154,103	11,968
1952	161,497	12,506
1953	139,603	10,528
1954	154,934	10,010
1955	133,035	8,301
1956	152,246	9,587
1957	153,571	10,198
1958	119,554	11,732
1959	112,629	10,939
1960	118,697	9,398
1961	133,597	9,907
1962	134,250	10,913

Table 17 --New England haddock landings.

Year	Maine	New Hampshire	Massachusetts	Rhode Island	Connecticut
	Thousands of Pounds				
1950	7,442	1	150,025	242	54
1955	4,566	--	130,093	320	50
1960	3,834	20	114,643	98	20
1961	2,940	35	130,478	64	19
1962	2,545	30	131,558	29	7

Table 18 --Value of New England haddock landings.

Year	Maine	New Hampshire	Massachusetts	Rhode Island	Connecticut
	Thousands of Dollars				
1950	524	nil	11,228	15	4
1955	276	.--	7,805	17	2
1960	290	2	9,091	7	1
1961	227	3	9,666	4	1
1962	196	3	10,701	2	1

YELLOWTAIL

Table 19 contains data on U.S. landings of yellowtail flounder during the 1950–62 period. Landings during this period more than doubled between 1950 and 1962. Massachusetts again was the dominant state for yellowtail landings. Within Massachusetts, New Bedford was the dominant port.

COD

Table 20 contains data on U.S. landings of cod in thousands of pounds and thousands of dollars. Table 21 contains data on cod landings by state in New England. Again, New England accounted for essentially all of the U.S. landings and Massachusetts accounted for essentially all of New England landings. Cod landings declined by 30% between 1950 and 1960, however, there was some increase during 1961 and 1962. Here too, with the actual value of the catch in 1962 and 1952 being equal, the value in real terms had declined.

PRICES

Table 22 presents the actual ex-vessel prices for cod, haddock, and flounders during the 1950–62 period in Massachusetts. As stated previously, prices for all groundfish were essentially constant despite the decline in landings and increases in consumer demand (yellowtail landings increased, however, during this period). These data reflect the overall trend. The role of foreign supply and its impact on prices was discussed previously.

Table 19. Annual U.S. Landings of Yellowtail Flounder in New England States, New York & New Jersey; 1938-1971

(in 000 pounds)

Year	Maine	Mass.	R. I.	Conn.	Total New England	New York & New Jersey	Total
1950	145	21399	1029	302	22875	1241	24116
1951	82	16735	723	100	17640	774	18414
1952	55	15306	1334	49	16744	234	16978
1953	58	12627	1014	24	13723	50	13773
1954	24	10972	1681	30	12707	56	12763
1955	30	12661	1448	60	14199	174	14373
1956	52	11756	2444	161	14413	230	14643
1957	41	19910	2230	91	22272	179	22451
1958	64	29519	2984	226	32793	532	33325
1959	113	25932	3012	139	29196	615	29811
1960	65	27701	2110	160	30036	1171	31207
1961	34	34667	2537	107	37146	2082	39228
1962	17	50835	5730	79	56661	3929	60590

Table 20. U. S. Landings and Ex-Value of Cod 1950-1962

Year	Cod	
	Quantity	Value
	Thousand pounds	Thousand dollars
1950	57,490	3,623
1951	50,023	3,635
1952	43,686	3,158
1953	32,660	2,206
1954	36,824	2,183
1955	33,582	2,156
1956	35,127	2,225
1957	34,068	2,128
1958	41,362	3,042
1959	46,481	3,311
1960	40,381	2,696
1961	46,591	2,993
1962	46,910	3,294

Table 21. New England Landings of Cod, 1950-1962

(THOUSANDS OF POUNDS)

YEAR	MAINE	NEW HAMPSHIRE	MASSACHUSETTS	RHODE ISLAND	CONNECTICUT	TOTAL
1950	6,813	4	45,848	1,327	[illegible]	53,948
1951	5,203	12	40,711	1,161	302	47,479
1952	3,814	16	36,828	673	170	41,501
1953	3,709	-	27,465	357	[illegible]	31,988
1954	3,088	-	29,901	1,320	239	34,529
1955	2,863	-	28,506	724	186	32,309
1956	2,746	-	29,127	733	154	32,760
1957	2,352	-	28,390	639	330	31,911
1958	2,735	-	33,383	1,247	389	37,754
1959	2,694	-	36,578	1,246	282	40,800
1960	2,897	28	31,866	822	210	35,823
1961	2,507	18	38,166	1,068	180	42,168
1962	2,260	31	40,647	699	290	43,946

II. 1.d.(3) The Industry During the Early 1960's-70's with Massachusetts.

II.1.d.(3)(a) Overview.

Declines continued to occur in the New England landings of several major fish species between 1960 and 1971, namely: herring, ocean perch, sea scallops, yellowtail flounder, haddock and whiting. Despite the decline in landings, the total number of fishermen in New England was virtually the same in 1960 and 1970, although the number of fishermen on vessels followed a downward trend, from 5,927 in 1950 to 3,236 in 1970. (Table 23).

The New England fishing fleet declined by 56 vessels, 1960–70. At least 92 vessels were added to the fleet and at least 125 were lost at sea. Scrapping, retirement, and shifts to other regions or to nonfishing activities account for other parts of the decline.

Table 23--New England Fishermen and Fishing Craft, 1950-70.

Year	Fishermen				Motor Vessels			Boats 2/	
	On Vessels	On Boats and Shore		Total	Number	Gross Tonnage 1/		Motor	Other
		Regular	Casual						
1950	5,927	8,724	8,783	23,434	865	28,827		8,459	4,766
1951	6,100	7,888	9,651	23,639	874	29,503		8,782	4,249
1952	6,124	7,484	9,289	23,097	915	30,957		9,092	3,717
1953	7,001	7,777	11,614	26,392	1,071	36,748		10,491	2,938
1954	5,344	8,032	9,972	23,348	885	30,138		11,711	2,305
1955	5,226	7,267	10,075	22,566	846	28,661		11,946	1,806
1956	5,331	7,904	8,523	21,778	831	28,090		11,280	1,375
1957	4,813	7,551	9,374	21,738	799	27,455		10,972	978
1958	4,617	7,112	10,140	21,789	773	26,775		10,868	921
1959	4,501	7,204	9,346	21,051	758	26,282		10,705	674
1960	4,349	7,510	10,341	22,200	742	44,514		11,356	572
1961	4,233	7,044	10,462	21,737	738	44,242		11,155	709
1962	4,169	6,640	10,727	21,536	727	45,476		10,414	699
1963	4,202	5,746	11,440	21,428	733	47,581		10,070	676
1964	4,058	5,599	10,557	20,194	721	47,084		10,118	465
1965	3,852	5,389	10,084	19,435	703	45,929		10,412	405
1966	3,674	5,057	9,587	18,318	704	46,316		9,455	344
1967	3,847	4,919	9,277	18,043	714	45,350		9,290	334
1968	3,689	5,164	9,327	18,180	695	46,433		9,429	297
1969	3,537	5,501	10,911	19,949	695	48,553		10,849	281
1970	3,236	6,885	12,097	22,218	686	43,798		11,703	282

1/Net tonnage, 1950-69.
2/Includes accessory boats.

Source: BCF (now NMFS) Fishery Statistics of the U.S., annual editions, and NMFS Statistics and Market News Division.

Table 24 Actual Ex-vessel Price Data for Cod, Haddock and Flounder (¢/lb.)

Year	MASSACHUSETTS		
	Cod	Haddock	Flounder*
1950	6.2	7.5	11.1
1951	7.0	7.7	13.8
1952	7.2	7.6	13.6
1953	6.7	7.5	12.4
1954	5.9	6.4	12.0
1955	5.8	6.0	12.6
1956	6.1	6.3	12.8
1957	6.0	7.3	13.0
1958	7.5	9.8	11.8
1959	7.0	9.7	12.8
1960	6.5	7.9	12.2
1961	6.2	7.4	10.6
1962	6.8	8.2	9.7

Source: Prices Received by Fishermen, 1939-1974, Current Fishery Statistics, No. 6600, 1975

*These are the prices for all flounder

Massachusetts fish otter trawling operations account for about 50–60 percent of the number of New England vessel fishermen, vessels and vessel tons, and largely explain declines in the numbers. Haddock was the leading species caught by Massachusetts otter trawl fishermen, and haddock landings declined from 114 million pounds, valued at $9 million in 1960 to 25 million pounds in 1970, valued at $6 million. The deflated average ex-vessel price of Massachusetts otter trawl landings of haddock increased from 8.9 cents to 19.4 cents per pound between 1960 and 1970.

Despite the decline in fishermen and vessels, the deflated value of catch was higher in 1970 than in 1960, although not as high as in 1965. Also, the average tonnage of vessels increased and the total tonnage decreased far less than is suggested by the decline in vessel numbers, comparing 1960 and 1970.

Expressed in 1967 dollars, the value of output per full-time equivalent fisherman was $12,413 in 1970, compared to $9,894 in 1960, but below that in 1965.

Data presented in Table 24 are for all Massachusetts fish otter trawlers and do not reveal the species emphasized by vessels operating out of different ports. Boston vessels have emphasized cod and haddock landings; New Bedford, flounder, especially yellowfish; and Gloucester, whiting and haddock. The weight of landings of these species declined since 1960, but ex-vessel prices increased. Among these species, foreign landings surpassed U.S. landings in 1965–66 for haddock in ICNAF Subarea 5. Canada, U.S.S.R. and Spain were the leading countries besides the United States. A similar story applies to cod. For yellowtail flounder, however, the United States has been the leading catcher in all years, with substantial secondary harvests by U.S.S.R. vessels only in 1969.

Table 24.--Massachusetts fish otter trawl vessel and boat fishery.

	1960	1965	1970
Catch quantity, pounds			
haddock	112,440,900	128,568,600	23,517,500
other catch	283,961,500	263,582,100	203,892,800
total	396,402,400	392,150,700	227,410,300
Catch value, current dollars			
haddock	8,875,943	13,007,680	5,317,936
other catch	14,126,945	16,743,674	22,124,595
total	23,002,888	29,751,354	27,442,531
Fishermen			
on vessels	2,609	2,486	1,887
on boats & shore			
regular	12	-	14
casual	-	7	-
total	2,621	2,493	1,901
Vessels			
number	422	399	343
tonnage	28,664	30,556	26,686
average tonnage	68	77	78
Boats, motor	7	6	7
Gear (trawls)	429	405	350
Productivity (pounds)			
catch per man	151,241	157,522	119,627
catch per craft	924,015	968,273	649,744
catch per trawl	924,015	968,273	649,744
Delated value of catch, dollars			
per man	9,894	12,646	12,413
per craft	60,451	77,736	67,418

Source: Fishery Statistics of the U.S., annual editions, and NMFS Statistics and Market News Division.

Note: Catch and deflated value of catch per man are for full-time fisherman equivalents (the sum of vessel fisherman, regular boat and shore fisherman, and one-half casual boat and shore fisherman).

II.1.d.(3)(b). Vessel Earnings.

Table 25 contains data on the vessel earnings in the Boston fleet during the mid-1960's and Table 26 presents data on the New Bedford vessel earnings during the mid-1960's. For both ports, the net return on sales was extremely low, and even negative for the New Bedford vessels in 1967. However, this represented a considerable improvement as compared to the performance during the 1950's.

II.1.d.(3) (c). Fishermen's Earnings.

Tables 27 and 28 present data on fishermen's earnings during the mid-1960's in Boston and New Bedford. In both ports, earnings of the fishermen were above the real wage in Massachusetts manufacturing. Again this was a considerable improvement over the 1950's performance.

Table 25.—Average costs and earnings of Boston large trawlers, 1964-66

Item	Unit	1964	1965	1966
Vessels	Number	23	23	15
Length of vessels	Feet	109	109	114
Trips	Number	27.2	26.1	26.6
Average length of trip	Days	9.3	9.1	9.0
Crew size	Number	15.7	15.7	16.3
Man days at sea	Days	253	238	258
Landings	Pounds	2,524,000	2,348,000	2,556,000
Average price	Cents per pound	9.5	10.8	11.5
Gross receipts	Dollars	239,884	253,279	294,502
Trip expenditures				
Food	do	14,668	13,897	15,717
Fuel & lube	do	21,141	19,863	22,939
Ice & icing	do	6,499	6,409	6,827
Other	do	9,192	8,810	8,245
Subtotal	do	51,500	48,979	53,728
Repair & maintenance				
Gear	do	13,965	13,965	14,653
Hull & engine	do	17,518	17,518	18,100
Subtotal	do	31,483	31,483	32,753
Fixed charges				
Interest	do	—	—	—
Insurance	do	15,403	15,403	16,351
Taxes (employee)	do	7,446	7,446	7,804
Administrative	do	8,915	8,915	9,284
Subtotal	do	31,764	31,764	33,439
TOTAL CASH EXPENDITURES	do	114,747	112,226	119,920
Share to labor & capital				
Wages	do	100,329	111,180	130,466
Captain's commission	do	9,100	9,624	11,240
Owner's share (before depreciation)	do	15,708	20,249	32,876
TOTAL SHARE EXPENDITURES	do	125,137	141,053	174,582
Depreciation	do	11,364	11,364	12,280
Net return before taxes	do	4,344	8,885	20,596

Table 26.—Average costs and earnings of New Bedford trawlers, 1967-68

Item	Unit	1967	1968
Vessels	Number	31	33
Length of vessels	Feet	69.3	69.7
Trips	Number	25.7	26.6
Average length of trip	Days	8.2	8.3
Crew size	Number	5.8	5.9
Man days at sea	Days	211	221
Landings	Pounds	710,843	816,806
Average price	Cents per pound	12.69	12.87
Gross receipts	Dollars	90,206	105,123
Trip expenditures			
Food	do	5,582	5,952
Fuel & lube	do	7,441	7,810
Ice & icing	do	2,875	3,534
Other	do	1,018	1,303
Subtotal	do	16,916	18,599
Repair & maintenance			
Gear	do	4,077	4,169
Hull & engine	do	8,595	8,122
Subtotal	do	12,672	12,291
Fixed charges			
Interest	do	1,213	1,342
Insurance	do	5,369	6,881
Taxes (employee)	do	3,607	3,977
Administrative	do	1,071	1,133
Subtotal	do	11,260	13,333
TOTAL CASH EXPENDITURES	do	40,848	44,223
Share to labor & capital			
Wages	do	44,901	52,252
Captain's commission	do	2,889	3,434
Owner's share (before depreciation)	do	1,568	5,214
TOTAL SHARE EXPENDITURES	do	49,358	60,900
Depreciation	do	4,637	4,834
Net return before taxes	do	(-3,069)	380

Table 27.—Earnings of fishermen in the Boston trawler fleet, 1964-66

Item	1964	1965	1966
		Number	
Vessels	23	23	15
Average crew size	15.7	15.7	16.3
		Dollars	
Gross receipts per vessel	239,884	253,279	294,502
Share to labor per vessel	109,429	120,804	141,706
Average share per man	6,970	7,694	8,694
Food expenditures per man	934	885	964
Average share per man including food	7,904	8,579	9,658
Real average share per man including food1/	8,508	9,078	9,936
Wage in Massachusetts manufacturing	5,741	5,913	6,235
Real wage in Massachusetts manufacturing1/	6,180	6,257	6,415

1/ Divided by consumer price index, 1967=100.

Table 28 --Earnings of fishermen in the New Bedford trawler fleet, 1967-68

Item	1967	1968
	Number	
Vessels	31	33
Average crew size	5.8	5.9
	Dollars	
Gross receipts per vessel	90,206	105,123
Share to labor per vessel	47,790	55,686
Average share per man	8,240	9,438
Food expenditures per man	962	1,009
Average share per man including food	9,202	10,447
Real average share per man including food 1/	9,202	10,026
Wage in Massachusetts manufacturing	6,514	6,944
Real wage in Massachusetts manufacturing 1/	6,514	6,664

1/ Divided by consumer price index, 1967=100.

II.1.d.(3)(d) Species Trends.

HADDOCK

Tables 29 and 30 show the weight and value of haddock landings during the 1963–1970 period. A drastic decline in haddock landings occurred during the period with the 1970 catch being only about 25 percent of the 1963 catch. The value of the haddock landings also declined to about 50 percent of the 1963 level.

YELLOWTAIL

Tables 31 and 32 contain data on the weight and value of yellowtail flounder landings. The decline in the catches of this species was not nearly as severe as the decline in the haddock catch during the 1963–1970 period. The drastic decline in yellowtail flounder landings occurred during the 1970's. Yet, the smaller catch had a greater value than in 1963.

COD

Table 33 presents data on the weight and value of cod landings during the 1963–71 period. Overall, cod landings increased both in weight and value during this period.

Table 29. -New England haddock landings.

Year	Maine	New Hampshire	Massachusetts	Rhode Island	Connecticut	Total
	Thousands of Pounds					
1963	2,877	40	120,940	21	3	123,881
1964	2,948	55	130,373	68	6	133,450
1965	1,881	60	131,863	74	--	133,878
1966	1,773	55	130,102	252	2	132,264
1967	2,351	60	95,840	187	--	98,438
1968	1,790	12	68,478	348	--	70,628
1969	983	9	44,421	396	--	45,809
1970	1,013	7	25,308	553	--	26,881
1971						

Source: Fishery Statistics of the U.S., annual editions. BCF (now NMFS).

Table 30 --Value of New England haddock landings.

Year	Maine	New Hampshire	Massachusetts	Rhode Island	Connecticut	Total
	Thousands of Dollars					
1963	245	4	11,444	2	nil	11,695
1964	260	6	11,568	5	nil	11,839
1965	184	7	13,430	7	--	13,628
1966	174	7	13,735	24	nil	13,940
1967	215	6	10,855	16	--	11,092
1968	190	2	9,061	37	--	9,290
1969	139	2	7,561	61	--	7,763
1970	184	2	5,715	113	--	6,044
1971						

Source: Fishery Statistics of the U.S., annual editions. BCF (now NMFS).

Table 31 .--New England Yellowtail Flounder Landings.

Year	Maine	New Hampshire	Massachusetts	Rhode Island	Connecticut	Total
	Thousands of Pounds					
1963	-		68,875	8,998	136	78,009
1964	5		70,974	8,249	49	79,277
1965	7	n.a.	70,920	5,602	38	76,567
1966	22		57,471	5,855	53	63,401
1967	78		46,449	5,793	67	52,387
1968	13		57,761	6,533	34	64,341
1969	76	8	56,282	8,375	66	64,807
1970	155	48	57,462	8,925	747	67,337
1971						54,274

Source: Fishery Statistics of the U.S., annual editions. BCF (now NMFS).

Table 32.--Value of New England Yellowtail Flounder Landings.

Year	Maine	New Hampshire	Massachusetts	Rhode Island	Connecticut	Total
	Thousands of Dollars					
1963	-		4,576	472	7	5,055
1964	1		4,879	471	3	5,353
1965	1	n.a.	6,716	412	3	7,132
1966	2		7,157	607	5	7,771
1967	6		4,961	487	6	5,460
1968	1		5,999	574	3	6,577
1969	8	1	7,581	954	8	8,552
1970	13	5	8,659	1,115	93	9,885
1971						8,408

Source: Fishery Statistics of the U.S., annual editions. BCF (now NMFS).

Table 33 . U.S. Landings of Cod during the 1963-1971 Period

Year	Weight (1,000 lbs)	Value ($1,000)
1963	42,177	3,106
1964	38,746	2,669
1965	36,048	2,877
1966	37,756	3,196
1967	44,400	3,578
1968	49,217	3,463
1969	57,502	4,838
1970	53,225	5,742
1971	52,824	6,345

II.1.d.(3)(e) Prices, 1963–71.

Table 34 presents data on prices during the 1963 to 1971 period. As can be seen, the decline in landings for haddock and yellowtail coupled with increasing consumer demand during this period led to almost tripling the price of haddock and a doubling the price of yellowtail. The price of cod also increased, in spite of increased supplies. Clearly, the demand situation for cod improved during the period.

II.1.d.(3)(f) Summary.

While the number of vessels and fishermen continued to decline during the 1960's, the average profit and the average real earnings of the vessels and fishermen that remained in the fishery improved in the mid-1960's compared to mid-1950's. The productivity of these vessels was higher in 1965 than in 1960 but declined by 1970. In spite of increasing imports throughout the decade, the ex-vessel prices of the principal groundfish species (haddock, cod, and yellowtail flounder) increased considerably, reflecting apparent increases in demand (and also domestic supply conditions). By 1970, the production of the remaining vessels and crew decreased, but the rising prices resulted in increases in the real value of the catch per vessel and per fisherman. No information on the net revenue of the vessels in 1970 is available.

Finally, while haddock landings underwent a tremendous decline during the 1960's, the decline in yellowtail flounder landings was moderate; cod landings even increased.

Table 34. Ex-vessel Prices for Cod, Haddock and Flounders in Massachusetts (¢/lb)

Year	Cod	Haddock	Flounder 2/
1963	7.1	9.5	8.4
1964	7.6	8.9	8.0
1965	8.0	8.9	9.5
1966	9.0	9.2	12.7
1967	8.2	11.3	11.5
1968	7.3	13.2	11.4
1969	8.6	17.0	13.7
1970	11.2	22.7	15.3
1971	12.4	26.1	16.7

2/ This is for all flounders

II.1.d.(4) Recent Trends—1971–75.

II.1.d.(4)(a) Overview.

The decline in the number of vessels and fishermen in the New England groundfish fishery continued during the 1971–1975 period. In Massachusetts, the number of otter trawls (vessels) declined 8 percent from 343 in 1970 to 315 in 1975 (Table 35). The number of fishermen on these vessels declined by 19 percent from 1887 to 1533.

Total landings of all fish species by these vessels declined by 24 percent from 227 to 172 million pounds. However the prices of the principal species increased considerably during the period. The ex-vessel value of this reduced level of landings was approximately $43 million in 1975 compared to $27 million in 1970, an increase of about 60 percent.

While the productivity of the remaining units declined, the increase in prices resulted in the deflated value of the catch per fisherman increasing by 39 percent and the deflated value of the catch per vessel increasing by 20 percent compared to 1970. Regretably there are no data available to determine the performance of these units in terms of profits, return on sales, return on assets, fishermen's real earnings, etc.

Table 35- Massachusetts fish otter trawl vessel and boat fishery--1975.

Catch quantity, pounds	
haddock	14,219,600
other catch	158,256,400
total	172,476,000
Catch value, current dollars	
haddock	4,591,267
other catch	38,782,832
total	43,374,099
Fishermen	
on vessels	1,533
on boats & shore	
regular	32
casual	—
total	1,565
Vessels	
numbers	315
tonnage	23,395
average tonnage	74
Boats, motor	17
Gear (trawls)	332
Productivity (pounds)	
catch per man	110,208
catch per craft	519,506
catch per trawl	519,506
Deflated value of catch, dollars	
per man	17,214
per craft	81,146

Source: NMFS Statistics and Market News Division

Note: Catch and deflated value of catch per man are for full-time fishermen equivalents (the sum of vessel fisherman, regular boat and shore fishermen, and one-half casual boat and shore fisherman).

II.1.d.(4)(b) Species Trends.

HADDOCK

Haddock landings in New England continued to decline from 21 million pounds worth $5.6 million in 1971 to 8 million pounds worth $3.0 million in 1974 (Table 36). However, New England landings in 1975 increased to 16.2 million pounds valued at $5.3 million. Catch restrictions on haddock were in place during most of this period due to the condition of the haddock stocks.

COD

Landings of cod in New England remained above the 50 million pound mark during most of the period (Table 37). By 1975 the value of the cod catch was approximately 2½ times greater than the value of the haddock catch.

YELLOWTAIL FLOUNDER

During the 1971 to 1975 period, yellowtail landings peaked at 64 million pounds in 1972 (Table 38). By 1975, they had declined by about 35 percent to 41 million pounds. A significant price increase resulted in the value of this reduced catch being worth about $14.7 million, the most for the entire period and was the largest value for any finfish in New England.

While the data in Tables 36, 37, and 38 are for all catching methods and the data in Table 35 are for otter trawls alone, it is clear that cod, haddock and yellowtail flounder constitute the resource base for the groundfish fleet. In 1972 for example, the value of the catch of these three species alone comprised about two-thirds of the total value of the catch for Massachusetts otter trawls. In 1973, these species accounted for approximately 60 percent of the total value of the Massachusetts otter trawl catch.

Table 36. New England haddock landings

	MAINE		NEW HAMPSHIRE		MASSACHUSETTS		RHODE ISLAND		CONNECTICUT		TOTAL	
	1000 lbs	$1000	1000 lbs	$1000	1000 lbs	$1000	1000 lbs	$1000	1000 lbs	$1000	1000 lbs	$1000
1971	321	180	19	5	20,345	5,324	358	98	-	-	21,543	5,601
1972	491	165	15	8	10,931	4,018	314	112	-	-	11,751	4,303
1973	352	124	18	10	7,707	2,940	231	85	-	-	8,308	3,159
1974	229	87	40	15	7,684	2,838	272	83	-	-	8,225	3,023
1975	776	276	50	16	14,728	4,832	656	174	-	-	16,210	5,298

Table 37. New England cod landings

	MAINE		NEW HAMPSHIRE		MASSACHUSETTS		RHODE ISLAND		CONNECTICUT		TOTAL	
	1000 lbs	$1000	1000 lbs	$1000	1000 lbs	$1000	1000 lbs	$1000	1000 lbs	$1000	1000 lbs	$1000
1971	4,379	335	201	30	46,554	5,729	2,309	296	180	23	53,623	6,413
1973	4,432	437	254	40	39,226	6,947	2,396	461	35	7	46,343	7,872
1973	4,035	498	472	85	42,411	7,847	2,976	491	106	18	50,000	8,939
1974	4,003	542			49,582	49,690	3,245	655			(56,830)	(10,887)
1975	5,596	911			46,385	11,188	1,889	475			(53,870)	(12,574)

Table 38. New England yellowtail flounder landings

	MAINE		NEW HAMPSHIRE		MASSACHUSETTS		RHODE ISLAND		CONNECTICUT		TOTAL	
	1000 lbs	$1000	1000 lbs	$1000	1000 lbs	$1000	1000 lbs	$1000	1000 lbs	$1000	1000 lbs	$1000
1971	87	9	53	6	41,940	6,889	11,810	1,499	474	47	54,634	8,451
1972	276	47	65	12	43,647	8,796	19,960	2,891	--	--	63,948	11,746
1973	120	23	4	1	40,338	9,186	18,882	3,593	268	40	59,612	12,843
1974	197	45	3	1	38,826	10,215	13,936	3,144	9	2	52,971	13,409
1975	324	104	4	2	33,221	11,971	7,938	2,622	7	2	41,494	14,701

II.1.e. Types and Number of Vessels Employed.

II.1.e.(1) Cod.

Table 39 gives the number of vessels in 1965, 1970, and 1975 which landed some cod and the number whose catch for the year consisted of 50 percent or more cod (by weight). There has been a consistent increase in the numbers of vessels landing some cod from 1965–1975 as well as an increase in the number of vessels whose total catch for the year was 50 percent or more cod.

Table 40 contains data on the number of trips (by all gears), days fished, and catch per day fished for those New England trips where 50 percent or more of the trip catch consisted of cod for the years 1965, 1970, and 1975. These data emphasize even more the general shift toward a directed fishery for cod in the ground-fish fishery. Between 1965 and and 1975 the number of trips directed toward cod doubled and the number of days fished increased 3-fold.

The number of recreational fishermen seeking cod is unknown but recent NMFS statistics indicate that there are approximately 10.8 million people participating in marine recreational fisheries (including shellfishing) from the states of Maine through Virginia, West Virginia, Vermont, and Washington, D.C., suggesting that recreational fisheries may be of considerable importance in the total harvest of cod, particularly for those components of the cod stocks most closely related to nearshore areas and in the mid-Atlantic winter fishery.

Table. 39 Number of vessels in the cod fishery, 1965, 1970, and 1975.

Year	Vessels landing some cod	Vessels whose total catch was 50% or more of cod
1965	492	16
1970	549	41
1975	595	47

Table. 40 Performance data on vessel trips where landings consisted of 50 percent or more cod.

Year	Trips	Days fished	Catch/day fished (1,000 lb.)
1965	979	2253.5	2.96
1970	1661	4106.5	4.62
1975	1987	6272.6	3.57

Foreign Vessels—In 1961, Soviet fleets made their appearance on Georges Bank, 150 miles east of Boston. The maximum number of vessels observed on the grounds at any one time was around 50, but for the year the Soviet expedition included 100 individual vessels. In subsequent years, 300–400 different Soviet vessels fished seasonally on Georges Bank, primarily for herring. By 1965, during peak fishing seasons (summer and fall), 200–250 Soviet vessels were fishing for herring, red and silver hake, haddock, and cod on Georges Bank and in southern New England. Throughout that year more than 450 individual vessels were sighted. Soviet fleets were joined each year, beginning in 1966 and continuing into the early 1970's, by numbers of vessels from Poland and Romania, followed closely by vessels from East and West Germany and Japan. Other nations followed, including Bulgaria, Spain, France, Greece, and Italy. Recently, nations such as Cuba, South Korea, and Ireland have been represented. During this period, 900–1000 foreign vessels annually fished in international waters off the U.S. east coast from the southern tip of Nova Scotia to Cape Hatteras. Depending on the season, 250 to 300 vessels were observed at one time or another, whether it be off North Carolina-Virginia in winter or on Georges Bank during the summer.

Table 41 Numbers of foreign fishing vessels sighted in SA 5 and 6 by type, 1971-1975[a].

Year	Type vessel	Country USSR	Poland	GDR	FRG	Japan	Spain	Bulgaria	Romania	Italy
1971	Stern	186	40	28	26	17	4	11	8	1
	Side	359	57	24		18	34			1
	Support	105	20	8	7			2		
	Total	650	117	60	33	35	38	13	8	2
1972	Stern	211	50	33	18	19	7	11	7	4
	Side	379	59	26		24	47			1
	Support	90	14	9	4	1		2	1	
	Total	680	123	68	22	44	54	13	8	5
1973	Stern	207	50	32	19	18	36	11	7	14
	Side	234	19	29		22	25/52			2
	Support	67	18	7		1		2	1	
	Total	508	87	68	19	41	113	13	8	16
1974	Stern	218	46	23	17	21	57	13	4	11
	Side	144	14	29		30	28/58			
	Support	81	16	7	4	2		4	2	
	Total	443	76	59	21	53	143	17	6	11
1975	Stern	252	37	22	18	15	38	16	2	8
	Side	145	12	20		6	12/70			
	Support	81	16	5	5	5	-	3		
	Total	478	65	47	23	26	120	19	2	8

[a]In addition, small numbers (<10) of stern trawlers belong to France, Cuba, South Korea, Ireland, and Greece have been observed in SA 5 and 6 in recent years.

Between 1971 and 1975 the annual number of foreign vessels declined from 956 to under 800 (Table 41). It can reasonably be assumed that foreign fleets have dwindled even more during 1976 in response to greatly reduced fish stocks and increasingly more stringent catch restrictions, such as low quotas, closed areas, etc. Despite these restrictions, at the peak seasons (winter and spring, 1975–1976), 200–250 vessels were observed at one time on the fishing grounds. However, during other times of the year activity has been at its lowest level in many years.

It is difficult to make an accurate evaluation of actual numbers and types of foreign vessels involved in the yellowtail flounder fishery, as such evaluations must be based on surveillance data collected for approximate numbers of vessels fishing a variety of species. Foreign fishing for yellowtail flounder peaked in 1969 when 33 percent of the total catch was taken by foreign vessels. However, since 1972, foreign fleets have caught only about 2 percent of the total yellowtail flounder catch in Subarea 5 and Statistical Area 6. Table 42 indicates the relative amount of fishing pressure exerted by foreign nationals and the U.S. (note that these data do not take fishing power into account) for 1974. Note that almost all of the fishing pressure exerted on flounder was by the United States.

II.1.e(2) Yellowtail Flounder.

Domestic.—Table 43 contains data on the number of U.S. vessels which recorded some yellowtail flounder landings in 1965, 1970, and 1975, and those vessels whose yellowtail flounder catch was 50 percent or more of their total catch.

Foreign Vessels—See II.1.e.(1) Cod for details.

Table 42 1974 days fished as reported to ICNAF.

Country	Cod	Haddock	Redfish	Silver hake	Red hake	Pollock	Flounder	Groundfish	Herring	Mackerel	Pelagic	Other fish	Squid	Total
Bulgaria				65						712				767
Canada	310	91	13			553		148	0				9	1,124
Denmark														
France	3								65					68
FRG									616					616
Iceland												0		
Italy[a]														
Japan														
Norway														
Poland	6							3	147		308		1,902	2,640
Portugal														
Romania									1,241	3,600		6	423	5,175
Spain	419								178	345				523
USSR				6,804	8,412									
UK			11				18	304	3,012	4,045		1,317	435	10,347
USA	5,898	77	770	924	106	1,148	13,365	7,051	222	641	674	1,276	1,888	33,754
GDR	2									1,382	9	488		2,787
Other									936					

[a]No reporting of effort units.

TABLE 43.—*Number of vessels in the yellowtail flounder fishery*

	Number of vessels landing some yellowtail flounder	Number of vessels whose total catch was 50 pct or more yellowtail flounder
Year:		
1965	426	133
1970	397	132
1975	501	128

II.1.e.(3) Haddock.

Domestic—Prior to the entrance of Canada and the U.S.S.R. to the fishery, the bulk of the U.S. catch was taken by otter trawlers ranging in size from 51–150 gross registered tons, which spent 5 to 7 days at sea. Smaller amounts were also taken by vessels of from 0–50 tons making trips of shorter duration in inshore waters (off Cape Cod, long-liners have been of local importance). In recent years, the number of larger vessels in the U.S. fishery has declined steadily.

Table 44 shows the number of U.S. vessels in 1965, 1970, and 1975 which landed some haddock and also gives the numbers for 1965 and 1970 whose catch for the year was composed of 50 percent or more of haddock (by weight). It can be seen that during this ten year period there was a drastic decline in the number of U.S. vessels involved in directed fisheries for this species. Performance data for vessels pursuing directed fisheries for haddock (1965 and 1970) reveal essentially the same trend (Table 45).

Foreign Vessels—See II.1.e.(1) Cod for details.

Table 44 Number of vessels in the haddock fishery.

Year	Vessels landing some haddock	Vessels whose total catch was 50% or more of haddock
1965	443	111
1970	437	11
1975	425	-[1]

[1]Under incidental catch limitation; vessels prohibited from directed fishery for haddock.

Table 45. Performance data for trips in which the total catch consisted of 50% or more of haddock.[1]

Year	Trips	Days fished	Catch/Day (000 lbs)
1965	3,676	11,387	8.69
1970	538	1,411	6.61

[1]Directed fishing was not permitted for this species in 1975.

II.1.f. Types of Gear.

The traditional U.S. fisheries for these species were prosecuted primarily by means of otter trawls, and the bulk of the catch is still taken by otter trawling. In addition, small amounts of these species are taken in the course of line trawling, hand lining, and gillnetting.

The U.S. recreational fisheries for these species employ hook and line gear fished by anglers from shore, small boats, and chartered party boats.

II. 1.g. Historical Impacts of Foreign Fishing on Domestic Fishery.

II.1.g(1). Cod.

U.S. and foreign landings of cod for the period 1960–1975 are given in Table 46 for Division 5Y and 5Z. For the Gulf of Maine stock (Division 5Y), competition has been minimal with foreign landings exceeding five percent of the total only once (1966) since 1960. For the Division 5Z stock, however, major shifts in the distribution of the total catch are evident throughout the 16 year period. With the advent of the distant-water fleets in the early 1960's, the percentage contribution of the U.S. domestic fishery decreased steadily from virtually 100% (1960) to a low of only 22 percent (1966). Following 1966, the U.S. portion of the total landings began to increase again reaching 64 percent by 1975. During this period total landings increased from 10,400 tons (1960) to 52,800 tons (1966) and then decreased to 24,000 tons (1975). In the area south of Division 5Z the reported landings of cod are a consequence of by-catch in other directed groundfish fisheries.

Table 46 USA, foreign, and total landings (metric tons) for the Division 5Y and 5Z cod stocks expressed as relative percentages of the total catch, 1960-1975.

Year	USA Landings	USA Percent of total	Foreign Landings	Foreign Percent of total	Total
		Division 5Y			
1960	3,400	99	29	1	3,429
1961	3,200	99	18	1	3,218
1962	3,000	97	83	3	3,083
1963	2,600	96	103	4	2,703
1964	3,200	99	25	1	3,225
1965	3,780	96	148	4	3,928
1966	4,008	91	384	9	4,392
1967	5,676	95	297	5	5,973
1968	6,360	99	61	1	6,421
1969	8,157	96	327	4	8,484
1970	7,812	95	449	5	8,261
1971	7,380	96	282	4	7,662
1972	6,776	98	141	2	6,917
1973	6,069	99	77	1	6,146
1974	7,639	98	125	2	7,764
1975[1]	9,252	99	110	1	9,362
		Division 5Z			
1960	10,390	100	20	0	10,410
1961	13,996	98	280	2	14,276
1962	15,231	66	7,850	34	23,081
1963	13,903	52	13,050	48	26,953
1964	12,324	49	12,841	51	25,165
1965	11,410	30	26,923	70	38,333
1966	11,794	22	41,069	78	52,863
1967	12,742	35	23,592	65	36,334
1968	14,967	35	27,790	65	42,757
1969	16,356	44	21,068	56	37,424
1970	14,535	58	10,674	42	25,209
1971	15,795	57	11,900	43	27,695
1972	13,140	53	11,490	47	24,630
1973	15,933	56	12,607	44	28,540
1974	17,870	67	8,822	33	26,692
1975[1]	15,329	64	8,667	36	23,996

[1]Provisional

II.1.g.(2) Yellowtail Flounder.

U.S. and foreign landing data for yellowtail flounder in Subarea 5 and Statistical Area 6 are given in Table 47. Total U.S. landings have varied widely since 1935. Competition between the U.S. and foreign fishing fleets (particularly of the U.S.S.R.) for yellowtail flounder was most intensive during 1969 on the Southern New England ground. Following the highest catches of yellowtail flounder on the Southern New England ground since 1942, catches since 1969 have declined sharply. Catches of yellowtail flounder on Georges Bank have remained relatively steady in recent years although some decline has occurred.

II.1.g.(3) Haddock.

U.S. and foreign landing data for haddock in Subarea 5 and Statistical Area 6 are given in Table 48. It can be seen that in the mid-1960's the U.S. share of the total catch declined from approximately 100 percent in 1960 to 37 percent in 1965;

since that year, the relative percentage has increased although the overall volume of landings has declined.

mid-1960's. There can be little doubt that greatly increased levels of fishing by foreign nationals at this time resulted in a significant reduction in stock abundance and in long-term productivity and yield.

Table 49 shows the magnitude of Canadian and U.S.S.R. landings during the

Table 47 Yellowtail flounder catch. Catches for SA5 includes discards.

	SA5 West of 69°W				SA6		SA5 East of 69°W			
	Domestic Catch m.t.x10-3	Total Days Fished	Foreign Catch m.t.x10-3		Domestic Catch m.t.x10-3	Foreign Catch m.t.x10-3	Domestic Catch m.t.x10-3	Total Days Fished	Foreign Catch m.t.x10-3	
1935	8.9						0.4			
6	10.0						0.4			
7	11.2						0.4			
8	11.5						0.5			
9	14.1						1.2			
40	23.1				1.8		2.1			
1	21.3				2.1		1.7			
2	15.4				2.2		1.2			
3	15.3				5.3		1.2			
4	15.3				3.3		2.1			
5	11.4				3.9		1.5			
6	13.1				4.1		2.3			
7	11.6				6.9		3.0			
8	13.3				8.8		3.1			
9	15.3				8.1		6.1			
50	7.3				0.9		3.1			
1	5.1						3.3			
2	3.1						3.0			
3	3.0						3.0			
4	3.0						5.3			
5	4.2						5.3			
6	3.9						5.3			
7	4.0						5.3			
8	4.2						5.3			
9	4.0						5.3			
60	4.0						5.3			
1	4.2						5.3			
2	4.0						5.3			
3	4.0						5.3			
4	4.0						5.3			
5	4.0						5.3			
6	4.0						5.3			
7	4.0						5.3			
8	4.0						5.3			
9	4.0						5.3			
70	4.0						5.3			
1	4.0						5.3			
2	4.0						5.3			
3	4.0						5.3			
4	4.0						5.3			
5	4.0						5.3			

Table 48 USA and foreign landings (metric tons) for haddock in Subarea 5 and Statistical Area 6 expressed as relative percentages of the total catch, 1960-1975

Year	USA Landings	% of Total	Foreign Landings	% of total	Grand Total
1960	45341	99	460	1	45801
1961	51681	100	189	0	51876
1962	54412	92	4702	8	59118
1963	48892	82	10743	18	59635
1964	51895	75	17644	25	69539
1965	57027	37	97698	63	154725
1966	57510	45	69588	55	127098
1967	39659	70	17330	30	56989
1968	28914	65	15616	35	44530
1969	18092	76	6085	24	24977
1970	9874	77	2990	23	12864
1971	8508	70	3668	30	12176
1972	4779	72	1891	28	6670
1973	3209	56	2603	44	5892
1974	3018	59	2103	41	5121
1975	5168	78	1439	22	6607

Table 49 Commercial landings of haddock (metric tons) from Subarea 5 and Statistical Area 6 by country. 1960-1975.

	Country								
Year	Canada	Poland	Romania	Spain	UK	USSR	USA	Other[1]	Total
				Div. 5Y[2]					
1960	383	-	-	-	-	-	4,541	-	4,924
1961	56	-	-	-	-	-	5,297	-	5,353
1962	107	-	-	-	-	-	5,003	-	5,110
1963	3	-	-	-	-	44	4,742	-	4,789
1964	70	-	-	-	-	-	5,383	-	5,453
1965	159	-	-	-	-	-	4,204	-	4,363
1966	1,125	-	-	-	-	-	4,579	-	5,704
1967	589	-	-	-	-	-	4,907	-	5,496
1968	120	-	-	-	-	-	3,437	-	3,557
1969	59	-	-	230	-	-	2,423	-	2,712
1970	38	-	-	63	-	-	1,457	-	1,558
1971	85	-	-	26	-	-	1,194	1	1,306
1972	23	-	-	-	-	4	909	-	936
1973	49	-	-	-	-	-	509	-	558
1974	198	-	-	-	9	-	622	-	829
1975[6]	78	-	-	-	-	-	1,183	-	1,261
				Subdiv. 5Ze[2]					
1960[3]	77	-	-	-	-	-	40,800[5]	-	40,877
1961[3]	133	-	-	-	-	-	46,384[5]	-	46,517
1962[3]	3,461	-	-	-	-	1,134	49,409[5]	-	54,004
1963[3]	8,379	-	-	-	-	2,317	44,150[5]	-	54,846
1964[3]	11,625	-	-	2	464	5,483	46,512	-	64,086
1965[3]	14,889	28	-	10	-	81,882	52,823	730	150,362
1966[3]	18,292	29	-	1,111	29	48,409	52,918	486	121,274
1967[3]	13,040	-	12	1,355	3	2,316	34,728	4	51,458
1968	9,292	1,145	-	2,845	-	1,308	25,197	29	39,816
1969	3,990	458	-	1,201	-	51	16,443	4	22,147
1970	1,978	15	-	782	-	98	8,400	1	11,274
1971	1,630	1	225	1,240	-	292	7,301	16	10,705
1972	609	1	14	1,098	-	176	3,866	5	5,719
1973	1,563	-	-	386	-	574	2,776	3	5,302
1974	462	-	-	764	426	97	2,386	-	4,145
1975[6]	1,353	-	-	-	-	8	3,985	-	5,346

1 Includes landings for Bulgaria, France, FRG, GDR, Japan and non-members.
2 From ICNAF statistical bulletins 10-24.
3 Landings not allocated by subdivision (5Ze or 5Zw).
4 From provisional ICNAF statistics for 1976 (incomplete).
5 Subarea 5 MIX landings were added into 5Z.
6 No statistical area 6 landings data are available prior to 1966, but haddock landings for the area were apparently negligible.

II.2. Status of the Fishery Stocks.

II.2.a. Cod.

II.2.a.(1) Distribution of Exploited Stocks.

Cod are distributed generally throughout the entire region of their involvement off the U.S. coast showing a more southerly extension in distribution and a tendency to inhabit shoaler waters of the area during the spring months of the year. As the waters warm during the spring and summer and cod move toward deeper waters. For the stock in Division 5Z the cooler waters of the Great South Channel provide a favorable habitat while the stock in the Gulf of Maine are found between the 10 and 140 meter contours, summer or winter. Differences in growth rates between these two stocks of cod and the results of tagging studies (Wise, 1958; 1962) would suggest that the amount of intermingling is minimal. However, the extent to which these are nearshore localized cod stocks which support nearshore recreational fisheries with minimal interaction with the more offshore cod stocks is unknown.

II.2.a.(2) Abundance of Exploited Stocks.

Equilibrium Yield Curves—Surplus production analyses have been completed only for the Division 5Z cod stock. While they are not considered wholly satisfactory, the estimates do indicate the general range of yields that can be expected from this stock. As such, the MSY estimates for the Division 5Z cod stock range from 32,500 to 34,500 m.t. The TAC for this stock has been set at 35,000 m.t. since 1973. Nominal landings for the Gulf of Maine stock have fluctuated between 2,700 and 14,500 m.t. since 1932. On this basis, a TAC of 10,000 m.t. was established as a provisional estimate of the MSY although the nominal landings for this stock have only averaged 7,100 m.t. over the past 10-year period, 1966–1975. This TAC was reduced to 8,800 m.t. for 1976 based on (1) a decline in the relative abundance of the stock as observed in the U.S. research autumn bottom trawl surveys, (2) the average historical catch levels with the implication of an expanding recreational fishery component on this stock, and (3) estimates of current rates of fishing mortality above those considered to give the maximum yield per recruit.

Yield Per Recruit (YPR)—The yield from a cohort of fish of the same age (year-class) reflects the age at which exploitation of the cohort is initiated (t_c) and the instantaneous fishing mortality rate (F). For cod the yield per recruit for various combinations of t_c and F (M=0.2) are given in Table 49A. Exploitation of a cohort of cod begins, at present, at about 2 years of age.

TABLE 49A.—*Yield per recruit (kilogram) of cod*

Instantaneous rate of fishing (F)	Age at 1st capture in years with corresponding length (centimeter)							
	2 (30.5)	3 (52)	4 (62.5)	5 (72.5)	6 (81)	8 (88.5)	8 (95.5)	9 (101.5)
0.1	2.6	2.8	3.0	3.1	3.1	3.1	3.0	2.8
.2	2.7	3.1	3.5	3.8	4.0	4.1	4.2	4.1
.3	2.3	2.9	3.4	3.9	4.2	4.5	4.6	4.6
.4	2.0	2.6	3.2	3.8	4.2	4.5	4.8	4.9
.5	1.7	2.4	3.0	3.6	4.1	4.5	4.8	5.0
.6	1.5	2.2	2.9	3.5	4.0	4.5	4.8	5.0
.7	1.4	2.0	2.7	3.4	4.0	4.4	4.8	5.0
.8	1.3	1.9	2.6	3.3	3.9	4.4	4.8	5.0
.9	1.2	1.8	2.5	3.2	3.8	4.3	4.7	5.0
1.0	1.1	1.7	2.5	3.2	3.8	4.3	4.7	5.0
1.5	.9	1.5	2.2	2.9	3.6	4.2	4.6	4.9

Clearly, for cod, an increase in age of first exploitation will result in an increase in YPR. This would also allow more fish to reach the age of first spawning and possibly improving future recruitment.

McCracken (1963; ICNAF Spec. Publ. No. 5) found a mesh selection factor for cod ranging from 3.4–3.9. The 50 percent retention length of a net is calculated by multiplying the mesh selection factor times the mesh of the net being considered. Therefore the range of mesh sizes that are associated with various 50 percent retention length for cod were estimated as follows:

50 percent retention	*Range of meshes*
30 cm	77 mm to 88 mm.
40 cm	103 mm to 118 mm.
50 cm	128 mm to 147 mm.
60 cm	154 mm to 176 mm.
70 cm	180 mm to 206 mm.
80 cm	205 mm to 235 mm.

Most of the experiments reported by McCracken used net with a mesh of less than 130 mm, therefore the 50 percent retention estimates for larger mesh needs should be viewed with caution.

Cohort Analysis, Stock Recruitment Relationship, and Related Studies—Detailed cohort and stock recruitment relationship analyses are not currently available for these cod stocks. Nor have the recreational catches of the cod been explicitly included in the assessment analyses, largely because existing estimates are available for only the few years in which special angler surveys were conducted.

II.2.a.(3) Current Fishing Status.

An update of the survey data for the Gulf of Maine stock suggests that the stock has stabilized since 1973. Current estimates of fishing mortality suggest that the average commercial catch of 7,400 m.t. in 1970–74 generated an average F of 0.48. If recruitment remains stable, fishing at F_{max}=0.30 would result in a catch of approximately 5,000 m.t. and fishing at $F_{0.1}$=0.18 would produce a catch of about 3,200 m.t.

For the division 5Z—Area 6 stock, catch data from U.S. autumn bottom trawl surveys indicate a stable level of abundance since 1963, with good recruitment since 1970. A strong 1971 year-class became fully recruited to the fishery by 1974 and the 1975 year-class appears to be about equal in size to that of 1971. Although an analytical assessment (virtual population analysis) has not yet been completed for the stock, preliminary analyses suggest that the very high catches in the late 1960's may have generated F-values in the range of 0.55 and 0.65, which are considerably above the calculated value of F_{max}=0.3, with M=0.2. Catches averaging about 26,500 m.t. during 1970–74 generated F-values averaging 0.36.

If recruitment remains stable, fishing at a level associated with F_{max} would result in a catch of about 24,000 m.t. If fishing is conducted at $F_{0.1}$=0.18, the corresponding catch would be approximately 15,000 m.t.

II.2.b. Yellowtail Flounder.

II.2.b.(1) Abundance of Exploited Stocks.

Yellowtail flounder in Subarea 5 (west of 69°W) and Statistical Area 6—Three yellowtail populations are located in this management area. The Cape Cod and the Southern New England stocks have been under a collective TAC regulation since 1971 and the Statistical Area 6 stock has been included since 1975. The provisional nominal catch from all three stocks was slightly less than 6,000 m.t. in 1975.

i. Cape Cod Stock. The 1975 catch was about 2,000 m.t. which is similar to the long-term average. This long-term average is the best current estimate of MSY. However, catch rates of U.S. commercial vessels declined from 1.9 tons per day in 1974 to 1.6 tons per day in 1975, indicating a possible decrease in stock size.

ii. Southern New England Stock. Although TAC regulations greatly decreased total catches since 1970, U.S. commercial fishery catch rates continued to decline during the period. Abundance indices (Brown and Hennemuth 1971a) from autumn surveys indicate a drastic decrease (90 percent since 1969) in pre-recruits (age I), with the catch per tow in 1974 being among the lowest values observed during the entire series of years for which data are available (Table 50). Assuming that the 1976 pre-recruit index is equal to that for 1975, the stock size index will have decreased by about 80% between 1970 and 1977, and it is obvious that the current stock is extremely low. The catch per day fished by U.S. vessels has declined from well over 3.0 tons in each year during 1957–72 to 1.9 tons in 1974 and to 1.4 tons in 1975.

iii. Statistical Area 6 stock. Abundance indices indicate a 90% decrease in stock size between 1970 and 1975 (Table 50). If the 1976 year-class is assumed to be about the same size as that of 1975, the stock size in 1977 is projected to be extremely low in contrast to earlier levels.

Yellowtail flounder in Subarea 5 (east of 69°W)—Provisional statistics indicate a nominal catch of 14,500 m.t. in 1975, in contrast with 16,800 m.t. in 1974. Stock abundance, as measured by autumn bottom trawl surveys and by catch rates of U.S. commercial vessels, seemed to stabilize after 1971–73 with a total allowable catch of 16,000 m.t. The catch per day fished was 1.7 tons in 1975 and 2.0 tons in 1974 in contrast to an average of 2.6 tons per day in the 1970–73 period. The bottom trawl survey indices in 1974–75 averaged 8.8, compared with 14.5 for 1970–73. Abundance indices of age I fish, estimated from the autumn bottom trawl surveys in terms of the stratified mean number caught per tow, are as follows:

Table 50. Catch per tow (age I+) of pre-recruits and associated stock abundance indices for yellowtail in southern New England and Statistical Area 6 from USA autumn surveys.

Year	Southern New England		Statistical Area 6	
	No. per tow (age I+)	Abundance index	No. per tow (age I+)	Abundance index
1963	16.3		11.1	
1964	18.6		5.3	
1965	11.5		19.2	
1966	35.5		14.2	
1967	20.0	102.5	12.5	64.4
1968	10.0	119.2	11.6	67.3
1969	12.8	92.6	0.6	59.0
1970	7.3	71.9	1.9	36.8
1971	6.3	53.6	11.0	11.7
1972	4.3	40.0	0.6	22.4
1973	1.9	30.8	0.7	21.6
1974	1.1	20.1	0.04	7.5
1975	1.7	11.9	0.46	2.7
1976		8.1		1.2
1977		7.8		1.6

Year-class	1962	1963	1964	1965	1966	1967	1968	1969	1970	1971	1972	1973	1974
Number per tow	11.60	2.64	1.29	9.76	6.96	10.59	7.64	4.75	3.82	2.42	2.71	3.50	4.05
Log_e (number per tow plus 1)	1.774	.760	.586	1.344	1.492	1.451	1.322	1.074	.970	.641	.670	.839	.617

These data indicate that the year-classes which will support the fishery in 1976–77 are less abundant than those which supported the fishery in 1970–73. Age compositions of 1975 catches indicate a large contribution of age II fish, although survey data did not show the increased abundance of this year-class. In view of the abundance of this age-group in the catches, it can be assumed that fishing mortality on it approximately doubled. If higher yields are desired from this fishery, the fishing mortality on 2-year-old fish must be reduced because yellowtail flounder double their weight between 2 and 3 years of age.

Equilibrium Yield Curves—Equilibrium yield curves were estimated by Brown and Hennemuth (1971b) using a generalized production model (Pella and Tomlinson 1969). Although the generalized production model allows skewed equilibrium yield curves, the symmetric logistic model was found to best describe the data for yellowtail flounder of the Southern New England grounds. Both symmetric and skewed equilibrium yield curves were calculated for the Georges Bank stock. Equilibrium yield curves have not been estimated for the smaller Cape Cod and Subarea 6 stocks.

The maximum sustainable yield (MSY) for the Southern New England stock was estimated at about 16,000 m.t. at a fishing intensity of 5400 standard days/year. For Georges Bank the estimated MSY figures were 9200 m.t. with 3420 standard days/year and 18,500 m.t. with 6,780 days/year fished for the symmetric and skewed curves, respectively. Data in Table 47 indicate that the catches and number of days fished annually exceeded these levels during the late 1960's and early 1970's. More recently the total MSY for Subarea 5Z west of 69° has been estimated as 16,000 m.t.

There is evidence that production of yellowtail flounder on the Southern New England ground is highly correlated with annual anomalies of temperature (Sissenwine 1974). Because of environmentally-related fluctuations in yellowtail flounder production, management of this species on a year-to-year basis should not be founded on equilibrium yield considerations.

II 2.b.(2) Yield Per Recruit (YPR). The yield from a cohort of fish of the same age (year-class) reflects the age at which exploitation of the cohort is initiated (t_c) and the instantaneous fishing mortality rate (F). For the yellowtail flounder, the yield per recruit (for a natural mortality rate of 0.2) is given in Table 51 for various combinations of F and t_c. By increasing the age at first capture from 2 years (265 mm) to 2.5 years (302 mm) or to 3.0 years (332 mm), the yield per recruit increases by 8 to 18 percent or 12 to 32 percent respectively for F between 0.5 and 1.5. Increasing the age at first capture will also increase the size of the spawning stock and may favorably affect future recruitment.

Table 51 Yield per 1000 recruits in kg for M = 0.2.

Instantaneous rate of fishing (F)	Minimum age at first capture in years (length in mm in ( ))					
	1.75 (245)	2.00 (265)	2.25 (284)	2.50 (302)	2.75 (318)	3.00 (332)
0.5	230	240	248	258	263	268
0.6	256	273	288	300	309	317
0.7	250	269	285	299	311	320
0.8	244	264	282	297	310	321
0.9	238	259	278	294	308	320
1.0	232	254	274	291	306	319
1.1	227	250	270	288	304	317
1.2	222	245	267	286	302	316
1.3	218	242	263	283	300	314
1.4	214	238	260	280	298	313
1.5	210	235	258	278	296	311

YPR analysis indicates that there is considerable advantage in increasing t_c. Maximum yield per recruit occurs with $F(F_{max})$ between 0.6 and 0.8, but F has often exceeded 1.0.

If the age of entry is assumed to be 2 years (265 mm), the age at which yellowtail flounder begin to be captured in large amounts at present, and the level of F set at 1.0, then raising the age at entry to 3 (332 mm) and reducing F to 0.8 results in a 26 percent gain. If the present F is 1.1 the gain would be 28 percent if F is 1.2, 31 percent and if F is 1.3, 33 percent. The corresponding gains from a reduction in effort alone would be 4, 6, 8, and 9 percent in catch.

Increasing the age of entry to 2½ years would reduce discards by about 25 percent under the current culling practice. An increase to age II would reduce discards by about 45 percent.

It is estimated from the curves given by Hennemuth and Lux (1970) that 129 mm synthetic mesh would retain approximately 66 percent of the 2.5-year-olds and 77 percent of the 3-year-olds relative to presently used 114 mm mesh. The 145 mm mesh would retain 33 percent of the 2.5-year-olds and 50 percent of the 3-year-olds.

Since fishing at F_{max} ignores the need to allow an adequate spawning stock to assure future recruitment to the fishery, $F_{0.1}$ has been proposed as a level of fishing mortality more appropriate as a management goal. $F_{0.1}$ is the level of fishing mortality at which one additional unit of effort results in 10% of the increased YPR that results from the first unit of effort. $F_{0.1}$ usually results in nearly as high a YPR as F_{max} at a considerably lower level of effort with less reduction in stock size. $F_{0.1}$ for yellowtail flounder is 0.4.

Cohort Analysis—Management of yellowtail flounder in Subarea 5+6 has been based on stock abundance estimates from U.S. bottom trawl surveys. Therefore, virtual population analysis (See "cohort analysis" in Ricker, 1975) is not applied routinely to yellowtail flounder data. Brown and Hennemuth (1971) report estimates of population size and fishing mortality rate based on virtual population analysis for the 1958–1962 year-classes.

Stock-Recruitment Relationship—The relationship between spawning stock size and recruitment for yellowtail flounder is unknown. However, it should be noted that the very low spawning stock size has consistently produced poor year-classes in recent years.

II.2.b.(3) Current Fishery Status and Outlook for 1977.

Subarea 5 west of 69° and Statistical Area 6—As indicated above, yellowtail flounder stocks of Subarea 5 west 69° and Statistical Area 6 are severely depressed. At present, almost the entire catch of yellowtail flounder in Subarea 5+6 is taken by domestic fishermen. Fishing in Subarea 5 west of 69° longitude and Subarea 6 is restricted to bycatch only to minimize fishing mortality. Even with this restriction, stock abundance indices for recent years indicate that fishing mortality is higher than 1.0, whereas F_{max} is about 0.7 and $F_{0.1}$ is about 0.4. Because of the depressed conditions of yellowtail flounder stocks in Subarea 5 west of 69° and Statistical Area 6, a total allowable catch of zero is necessary for 1977 (with knowledge that the unavoidable catch may approach 4,000 m.t.) if further declines are to be avoided. Even if catch is held to only 4,000 m.t. in 1977, no recovery of the stock is expected without improved recruitment. While recruitment of yellowtail flounder may be strongly related to temperature, further declines in stock could threaten recovery of the fishery when more favorable conditions do occur.

Table 52 Yellowtail in Subarea 5 (east of 69°W): catch and stock size projections, 1975-77.

Year	Age	Stock numbers[1]	F	Catch		Residual stock[2]
				Numbers	Weight	
		(10^{-3})		(10^{-3})	(tons)	(10^{-3})
1975	2	40,100	0.4	12,030		
	3	20,900	0.8	10,450		
	4	12,198	0.8	6,099		
	5	4,150	0.8	2,125		
	6	1,060	0.8	530		
	7	542	0.8	271		
	8+	212	0.8	106		
	Total	79,162		31,611		
1976	2	42,000	0.4	12,600	3,037	
	3	21,979	0.8	10,987	4,582	
	4	7,689	0.8	3,845	2,284	
	5	4,487	0.8	2,243	1,671	
	6	1,527	0.8	763	658	
	7	392	0.8	196	188	
	8+	277	0.8	139	140	(age 3 and older)
	Total	78,341		30,773	12,568	
1977	2	42,000	0.4	12,600	3,034	-
	3	23,100	0.8	11,505	4,797	23,100
	4	8,084	0.8	4,042	2,400	8,489
	5	2,829	0.8	1,415	1,054	2,974
	6	1,660	0.8	830	716	1,040
	7	565	0.8	282	270	611
	8+	248	0.8	186	187	301
	Total	88,486		30,860	12,458	36,515
1977	2	42,000	0.2	7,140	1,721	-
	3	23,100	0.4	6,576	2,742	28,153
	4	8,084	0.4	2,425	1,440	12,678
	5	2,829	0.4	849	504	4,610
	6	1,660	0.4	498	430	1,552
	7	565	0.4	170	163	911
	8+	248	0.4	166	167	446
	Total	88,486		17,824	7,176	42,050

[1]Stock numbers refer to beginning of the indicated year.
[2]Residual stock (age 3 and older) at the start of the following year.

Subarea 5 east of 60°—As indicated above, indices of abundance for yellowtail flounder of Subarea 5 of 69° have declined substantially since 1970–1973.

Utilizing available data on age composition and estimated mortality for 1975, catch and stock size projections were made for 1976 and 1977 (Table 54). Using F=0.8 for fish age III and older in the 1975 fishery and F=0.4 for age II fish (based on fishing mortality for 1964–72 as calculated by Penttila and Brown (1976)), stock sizes in 1975 and 1976 were estimated. Using the same F-values for 1976, a catch of 12,500 m.t. is predicted. This catch probably approximates that which will actually be taken in 1976, based on the experience of the 1975 fishery and provisional figures for the 1976 catch. Increased fishing effort directed towards younger fish in 1976 would result in higher catch. The level of recruitment assumed for 1976 and 1977 (42 million fish at age II) is equal to the lowest level since 1962, as estimated from preliminary virtual population analysis and indicated by recent trends in survey indices.

If fishing is conducted at the level of F_{max} in 1977 for a predicted yield of 12,400 m.t., the stock size will be maintained at about the relatively low level existing in 1975 and 1976. Fishing at $F_{0.1}$=0.4 for a projected catch of 7,000 m.t. would result in increasing the stock size by about 10 percent. If fishing is continued in future years at the $F_{0.1}$ level and recruitment remains at about the current level, annual yields should increase to about 12,000 m.t. in 5–6 years and the stock size (age III fish and older) should increase to about 61 million fish, a level similar to that which prevailed in the 1962–73 period.

II.2.c Haddock.

II.2.c.(1) Distribution of Exploited Stocks.

As pointed out under *Biology of the Regulated Species* above, haddock on Georges Bank (former ICNAF Subdivision 5Ze) appear to be relatively sedentary, although some degree of interchange may occur with populations to the west. However, seasonal shifts in distribution in response to temperature changes have been documented; further, spawning aggregations also form on the northeastern portion of the Bank, and (at least in some years) in the Nantucket Shoals—Great South Channel area as well.

The major assessments in recent years have been made principally on the Georges Bank stock.

II.2.c.(2) Abundance and Current Status.

Prior to 1965, this stock was in a relatively stable condition; surplus production model studies (Hennemuth 1969) indicate an MSY of 47,000 m.t. based on an average stock size estimate of 145×10^6 fish during the 1935–1960 period.

Both commercial catch/effort data and U.S. autumn bottom trawl survey data, however, indicate a pronounced decline in abundance since 1967. Recruitment has been generally poor. The 1972 and 1975 year-classes were the strongest since 1967, although strength of the 1975 year-class is based only on one research survey and additional data will be required for a more definitive estimate. Both stock size estimates (Table 53) and survey data indicate a decline in abundance in the late 1960's and early 1970's followed by an increase.

Projections for 1976 and 1977 (Clark, 1976) indicate that, if recruitment con-

tinues at the average level observed during 1972–75 (approximately 15 million fish), maintaining the existing TAC level of 6,000 m.t. would lead to a stabilization of stock size in the late 1970's at only about one-half of the pre-1960 level, while an increased TAC could lead to a substantial reduction in abundance. Even with better than average recruitment, by-catches would be expected to increase, thereby delaying somewhat the projected improvement in stock size. The problem is further complicated by increased growth rates in recent years (Clark, 1975) thus indicating recruitment at a progressively earlier age.

Table 53. Stock abundance, removals and recruitment estimates for Georges Bank haddock, 1968–77.

		Yearly estimates in millions of fish								
	1935-60[1]	1968	1969	1970	1971	1972	1973	1974	1975	1976	1977
Stock size (age 2+)	145	70[2]	36	21	24	14	27	55	50	48	66
Removals											
-total	63	35	16	8	9	5	8	12	12	12	14
-fishing[3]	41	25	11	5	5	2	3	3	3	4	4
-natural[3]	22	10	5	3	4	3	5	9	9	8	10
Recruits (age 2)	54	15	1	1	11	1	16	36	7	10	30

[1] Average of yearly estimates during this period.

[2] Estimated assuming $F_{68} = 0.5$ and $M = 0.2$ during 1968.

[3] Values computed on the basis of mean weight at age in USA data.

Yield Per Recruit (YPR)—The yield from a cohort of fish of the same age (year-class) reflects the age at which exploitation of the cohort is initiated (t_c) and the instantaneous fishing mortality rate (F). For SA 5Z haddock, the yield per recruit for a natural mortality rate of 0.2 is given in Table 53A for various combinations of F and t_c. YPR was calculated using a modification of Ricker's piecewise integration method where weight at age is estimated by the average weight of individuals in the catch for 1970–1974 for fish greater than 2 years old and from Grosslein (1962; ICNAF Redbook Part III, p. 124) and Schuck (1951: Fish. Bull. 66: 151–176) for age I and II fish.

The results presented in Table 53A must be considered preliminary at this time because the validity of the growth assumptions on which these results are based have not yet been tested. The results do indicate a substantial benefit when fishing mortality is removed from fish less than 50 cm in length. When fishing is limited to fish greater than 50 cm, the maximum yield appears to occur with $F \geq 1.0$, but the increase in yield as F is increased above 0.5 is minor. The reduction in spawning stock size that will accompany high values of F may threaten future recruitment of the fishery.

Graham (1952; ICNAF Second Annual Report, Part 3, p. 23) reported a 50 percent selection point of about 39 cm for haddock using a 114 mm mesh net. Larger mesh nets will be required if fishing mortality to haddock less than 50 cm is to be reduced. Although Graham did not consider nets with a mesh greater than 115 mm, by extrapolating from his results, the 50 percent selection point of a 159 mm mesh net can be crudely estimated as 50 cm. Also extrapolating from Graham (1952), the 50 percent selection point for a 130 mm mesh net (used at present) is estimated as 43 cm.

Table 53A. Yield per recruit (kg) to age 1 for 5Z haddock.

Instantaneous rate of fishing(F)	Age at first capture in years with corresponding length(cm) and weight(kg)						
	1.0 (20,.18)	2.0 (37,.41)	3.0 (52,1.63)	4.0 (56,2.41)	5.0 (60,2.76)	6.0 (63,3.18)	7.0 (66,3.52)	8.0 (69,3.84)
.1	.58	.61	.61	.55	.47	.39	.31	.24
.2	.74	.85	.90	.83	.73	.63	.52	.41
.3	.76	.93	1.04	.99	.89	.77	.55	.53
.4	.72	.95	1.12	1.08	.98	.87	.74	.61
.5	.67	.94	1.15	1.14	1.03	.93	.60	.67
.6	.61	.92	1.18	1.17	1.06	.97	.65	.72
.7	.56	.89	1.19	1.20	1.10	1.00	.88	.75
.8	.52	.87	1.20	1.21	1.12	1.02	.90	.77
.9	.48	.84	1.20	1.23	1.14	1.04	.92	.79
1.0	.45	.81	1.20	1.24	1.15	1.05	.94	.81

of the maximum sustainable yield from such fishery, as modified by any relevant economic, social or ecological factor" (Section 3, Para. 18). We must start with the best estimate of maximum sustainable yield from each fishery and then determine optimum yield by applying various social, economic and ecological factors in a somewhat subjective manner. The projected U.S. capacity has been determined largely from historical catch data. Table 54 provides the results of this analysis, described in detail below. The process of determining optimum yield, and its application to fishery management under Pub. L. 94-265, is shown in Figure 6A.

II.3. Optimum Yield and U.S. Capacity.

Pub. L. 94-265 defines "optimum" yield as that: "(A) which will provide the greatest overall benefit to the nation, with particular reference to food production and recreational opportunities; and (B) which is prescribed on the basis

. Clark (1963: ICNAF Spec. Publ. No. 5. p. 24-83) reports the results of several mesh selection experiments for haddock. (These are summarized in Table 53B). Clark's results indicate that a mesh in excess of 140 mm is necessary for a 50 percent selection factor greater than 50 cm.

Table 53B. Summary of Haddock Escapement Experience.

Twine type	Experimental method	Experiment	Twine weight	Mesh size mm	50% point cm	Selection factor
Double manila	Paired tows	Pairtrows. I	45/4	119	29.5	3.3
" "	Cover	Michigan	50/4	91	29.0	3.3
" "	"	"	50/4	98	31.4	3.2
" "	"	"	50/4	105	32.3	3.1
" "	"	Wisconsin	50/4	109	34.1	3.1
" "	"	"		112	35.7	3.3
" "	"	"		114	36.6	3.2
" "	"	"		121	29.9	3.3
" "	" 20 min. tows	Alb. No. 49	50/4	113	33.8	3.0
" "	" 40 " "	" " "			35.2	3.2
" "	" 60 " "	" " "			37.2	3.3
" "	" 80 " "	" " "			33.6	3.4
" "	" 40 " "	" " "	45/4	123	36.8	3.0
" "	" 60 " "	" " "			39.7	3.8
" "	" 80 " "	" " "			41.2	3.3
" "	" 40 " "	" " "	75/4	73	24.8	3.4
" "	" 60 " "	" " "			25.2	3.5
" "	" 80 " "	" " "			24.8	3.4
" "	"	Alb. No. 51	45.4	107	31.8	3.0
" "	"	" " "	75/4	75	24.5	3.3
" "	"	Alb. No. 52	45/4	113	36.8	3.3
" "	"	Alb. No. 59	45/4	140	49.1	3.5
" "	"	" " "	45/4	154	52.8	3.4
" "	"	" " "	45/4	167	54.7	3.3
Single cotton	Paired tows	Pairtrows I	120th	144	52.4	3.6
" "	"	"	120th	106	37.2	3.5
" "	"	"	120th	111	37.8	3.4
" "	Cover	"	120th	138	49.6	3.6
" "	"	"	120th	114	42.4	3.7
" "	"	"	84th	86	25.8	3.0
" "	"	"	72th	73	20.8	2.5
Single dacron(Br.)	Cover	Prjectila V Alb. No. 74		127	39.8	2.1

Table 54 - Summary of harvest, yields, U.S. capacity, and foreign surplus (metric tons).

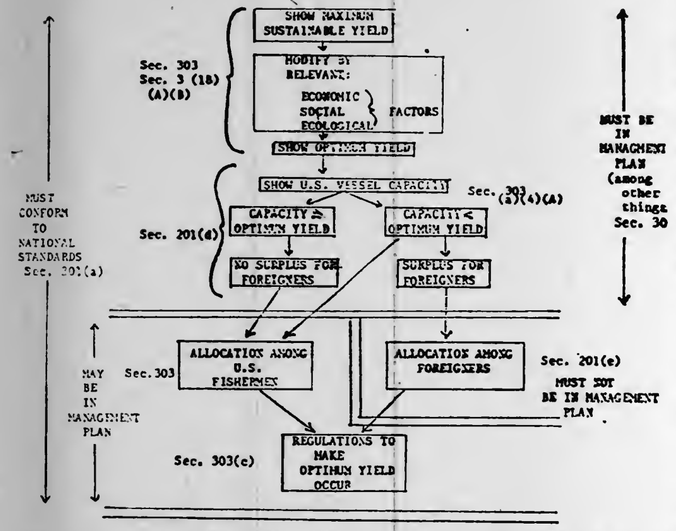
Species	Fishing Area	MSY 1/	O.Y.	U.S. 2/ Capacity	Foreign Surplus (TALFF)	U.S. Recreat. 3/ Catch 1974	U.S. Commer. Harvest 1975	Foreign Harvest 1975
Haddock	ICNAF 5	47,000	6,200	6,200	0	200	5,168	1,438
Cod	ICNAF 5Y	10,000	7,700	5,000(a) 2,300(b)	0		8,700	100
	ICNAF 5Z and 6	50,000	30,000	20,000(a) 10,000(b)	0	12,400	15,200	7,900
Yellowtail Flounder	ICNAF 5Ze	16,000	10,000	10,000	0		14,500	100
	ICNAF 5Zw and 6	9,200	4,000	4,000	0	Trace	5,500	0

1/ Fishing morality from commercial and recreational data.

2/ (a) Commercial
(b) Recreational

3/ The 1974 recreational catch is from Maine to and including New York.

Figures 6A ANATOMY OF MANAGEMENT UNDER PUBLIC LAW 94-265



As a consequence of differences in the nature of the dynamic models used for assessment or fish populations, two measures of fishing mortality (F_{max} and F_{MSY}) have been identified as reference points on which to base regulations for optimizing yield. F_{max} refers to the fishing mortality rate at which the average catch per recruit to a fishery is at a maximum. It is a function of the growth and natural mortality processes within the fish stock and of the size (age) at which the fish enter (i.e., "are recruited to") the fishery, and it is therefore independent of changes in recruitment. F_{MSY}, on the other hand, refers to the fishing mortality rate at which the average long-term catch from the fish stock as a whole is highest and is therefore a function of the total production processes within the fish stock, including recruitment. Where the average level of recruitment does not change directly in response to changes in stock size, F_{max} and F_{MSY} will correspond. In the absence of detailed knowledge of the relationship between stock size and recruitment for particular stocks, this correspondence was assumed by ICNAF in the presentation of scientific advice on management.

Principal features of the F_{max} reference point are identified as follows with regard to a basis for management action:

(a) The form of the relationship between catch per recruit and fishing mortality (F) differs markedly for the various fish stocks according to their growth and natural mortality characteristics. For some stocks, F_{max} occurs at a relatively high level of fishing mortality and it may not be clearly defined. Furthermore, its value for each stock is dependent upon the age and pattern of recruitment to the fishery.

(b) Although F_{max} defines the fishing mortality rate at which the greatest catch will be obtained from each recruit entering the fishery by taking no account of the relationship between the size of the spawning stock and recruitment, it does not necessarily correspond with that giving the highest average catch (MSY) for the fish stock as a whole (although, as indicated above, it does so if average recruitment does not change with changes in stock size).

(c) Because F_{max} takes no account of the stock and recruitment relationship, management measures based on this reference point do not guarantee the maintenance of an optimum average level of recruitment.

(d) The F_{max} level of fishing takes no account of possible economic objectives and factors.

This indicates that the F_{max} reference point has potential limitations which have to be recognized and evaluated in the provision of scientific advice on management action. They are obviously greatest with respect to fish stocks for which the relationship between yield per recruit and fishing mortality has no clearly defined maximum or, if present, occurs at a relatively high value of fishing mortality rate. In these situations, the setting of catch quotas at the F_{max} level may lead to a severe reduction in the stock size, reduction in the number of age groups in the exploited stock, large short-term changes in catch (and hence in the magnitude of the short-term quota changes), and possible recruitment failures due to the generation of too low a spawning stock size.

The principal element of the biological system governing the adequacy of F_{max} as a basis for management action is the recruitment process, both its variability due to environmental factors and the relationship between recruitment levels and spawning stock size. At present, little is known about the latter relationship so that the evaluation has usually been made on a generally qualitative basis using all available information on the size and composition of the stock and the observed variability in recruitment together with the relationship to other components of the exploited ecosystem. However, the relationship is taken into account empirically in some assessment models.

In view of the possible substantial adverse consequences of setting the fishing mortality rate too high in cases where there is doubt about its adequacy, a more restrictive management system (other than controlling the size (age) of recruitment to the fishery through mesh regulation), might comprise either, or a combination, of the following elements: (i) fixing the fishing mortality rate at a level somewhat lower then F_{max}, and (ii) setting a target spawning stock size.

II.3.a Cod.

Two groups of cod are considered as stocks for management purposes: (a) the Georges Bank—Southern New England stock (ICNAF areas 5Z and 6), and: (b) the Gulf of Maine stock (ICNAF area 5Y). Maximum sustainable yields for commercial fisheries in these areas are 50,000 metric tons and 10,000 metric tons respectively. Recreational landings from both stocks were estimated as 16,400 m.t. in 1970 and 12,400 m.t. in 1974. The estimated 1974 recreational catch was 800 m.t. from Maine and New Hampshire and 3,030 m.t. from Massachusetts. Applying half of the Massachusetts landings and all of the Maine and New Hampshire landings to area 5Y, it appears that 1974 recreational catches were about 10,100 m.t. from area 5Z–6 and 2,300 m.t. from area 5Y. Assuming that the same relative amounts were taken in the two areas in 1970, recreational landings were about 13,400 m.t. from area 5Z–6 and 3,000 m.t. from area 5Y. Since U.S. and foreign commercial catches have averaged (1970–1974) 26,500 m.t. and 7,400 m.t. in the two areas, it appears that combined commercial-recreational removals have been about 37,000–40,000 m.t. from the 5Z–6 stock and around 10,000 m.t. from the 5Y stock in recent years.

While catch levels have apparently been at or below the MSY levels in 5Y and 5Z–6, the levels of F have been greater than F_{max} and the stock abundance needs to increase in order to provide the MSY. ICNAF scientists recommended that the 1977 commercial catches be set at the $F_{0.1}$ levels of 3200 m.t. for 5Y and 15,000 m.t. for 5Z–6. Considering the economic and social inputs provided mainly by the U.S. commercial fisheries advisors however, these figures were raised to 5000 m.t. for 5Y and 20,000 m.t. for 5Z–6. Expected catches by recreational fishermen in 1977 would probably amount to no more than 2,300 m.t. in 5Y and 10,000 m.t. in 5Z–6 bringing the optimum yields for 1977 to 7,300 m.t. for 5Y and 30,000 m.t. for 5Z–6. (This proposed total 1977 catch level is less than the total foreign and domestic catch in recent years but the proposed U.S. commercial and recreational catch for 1977 will be greater than the U.S. catches in recent years. These catch levels, therefore, should not limit either the U.S. commercial or recreational fisheries in 1977 and should also allow stock rebuilding in both areas.)

The recreational catches are now included in the MSY, OY, and U.S. capacity figures (Table 54). This differs from the previous assessments where recreational mortality was combined with natural mortality and considered in the changes in total stock size, but was not included in the fishery catch statistics due to the poor quality of the recreational data. The present estimates of MSY, OQ, and U.S. capacity are therefore less reliable than the previous estimates.

We recommend the optimum yield be set at 7,700 m.t. for 5Y and 30,000 m.t. for 5Z and 6. The projected commercial harvest for the respective areas is 5,000 m.t. and 20,000 m.t. A projected total 1977 recreational catch of 12,300 m.t. was estimated 2,300 m.t. for 5Y and 10,000 for 5Z and 6.

II.3.b Yellowtail Flounder.

As noted above (Section II.2.b) there are two groups of yellowtail flounder considered as stocks for management purposes. There are the Georges Bank stock (ICNAF area 5Ze) and the Southern New England stock (ICNAF area 5Zw and 6). Maximum sustainable yields have been estimated at 16,000 m.t. and 9,200 m.t. respectively. Recreational fishermen do not take appreciable amounts of yellowtail flounders. Resource surveys and catch effort statistics indicate that the abundance of the 5Zw–6 stocks is declining and that the 5Ze stock is stable but slightly below the level required to produce MSY. From an ecological viewpoint catch from both stocks should be reduced as much as possible in order to increase the spawning biomass and provide a buffer against recruitment failures. However, this would cause undue economic hardship for the harvesting sector and coastal communities. Accordingly, we recommend optimum yields of 10,000 m.t. for area 5Ze and 4,000 m.t. for areas 5Zw+6. These harvest levels should provide for adequate rates of stock recovery without causing substantial, adverse, short term economic impacts. Over the long term, recovery of these stocks should result in some economic growth of the harvesting sector and secondary benefits for coastal communities.

II.3.c Haddock.

Removals should be kept at the lowest possible level to allow for rapid recovery of the haddock stock to the MSY level. We recommend the optimum yield be set at 6,200 m.t., which would include both recreational and commercial catch. It is estimated there would be an unavoidable by-catch of about 6,000 m.t. in other northwest Atlantic trawl fisheries, which may be taken only as undirected by-catch.

II.4. Suggested Management Measures.

Due to the condition of the stocks of these three species, it is recommended that the following management measures be adopted as applicable to domestic fishermen.

(a) Quotas.

(1) Cod.—This proposed total 1977 catch level is less than the total foreign and domestic catches in recent years but the proposed U.S. commercial and recreational catch for 1977 will be greater than the U.S. catches in recent years. These catch levels therefore should not limit either the U.S. commercial or recreational fisheries in 1977 and should also allow stock rebuilding in both areas.

(a) It is recommended that the landings of cod from the Gulf of Maine be limited to 5,000 m.t. commercial and 2,300 m.t. recreational.

(b) It is recommended that the landings of cod from Georges Bank be limited to 20,000 m.t. commercial and 10,000 m.t. recreational.

(2) Yellowtail Flounder.—(a) It is recommended that the landings of yellowtail flounder from Georges Bank east of 69° west longitude be limited to 10,000 m.t.

(b) It is recommended that the landings of yellowtail flounder from the area west of 69° west longitude be limited to 4,000 m.t.

(3) Haddock. It is recommended that the landings of haddock from the Gulf of Maine and Georges Bank be limited to 6,200 m.t.

(b) Mesh Size Regulation.

The taking of cod, haddock, and yellowtail flounder be prohibited from an area formally designated as ICNAF SA5 with trawl nets having, in any part of the

net other than the codend, meshes dimensions less than 114 mm or 4¼ inches, and having, in the codend of the nets, meshes of dimensions less than 130 mm or 5⅛ inches. These mesh sizes relate to manila twine netting when measured wet after use or the equivalent thereof when measured dry before use. The Council may, on the basis of scientific advice as to selectivity equivalents, determine the appropriate mesh sizes when trawl nets made of materials other than manila are used or when seine nets are used.

(1) Mesh sizes are measured by a flat wedge-shaped gauge having a taper of 2 centimeters in 8 centimeters and a thickness of 2.3 millimeters, inserted into the meshes under a pressure or pull of 5 kilograms. The mesh size of a net shall be taken to be the average of the measurements of any series of twenty consecutive meshes, at least ten meshes from the landings, and when measured in the codend of the net beginning at the after end and running parallel to the long axis.

(2) In order to avoid impairment of fisheries conducted primarily for other species and which take small quantities of cod, haddock, and yellowtail flounder incidentally, persons permitted to fish may take cod, haddock, and yellowtail flounder with nets having a mesh size less than that specified in the preceding paragraph, so long as persons on board a vessel fishing primarily for other species do not have in possession (either at sea or at the time of offloading) cod, hadock, or yellowtail flounder in amounts in excess of 2,500 kg (5,510 lbs) for each species or 10 percent by weight of all fish on board such vessel for each species, whichever is greater.

(3) Any means or device is prohibited, other than those described in paragraph 4, which would obstruct the meshes of the nets or which would otherwise diminish the size of the meshes of the nets. Devices may be attached to the upper side of the codend in such a manner that they will not obstruct the meshes of the codend. Any such device must have the approval of the Council based on scientific advice that the attached devices do not obstruct the meshes or reduce significantly the selectivity of the codend.

(4) Canvas, netting, or other material may be attached to the underside only of the codend of a net to reduce and prevent damage.

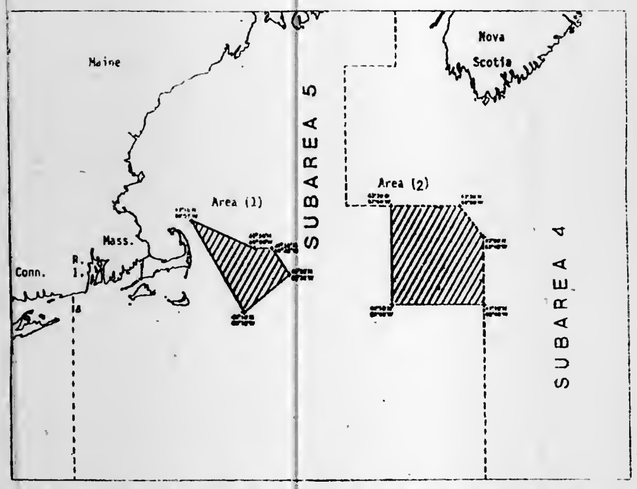
(C) Area and Season Restrictions.

(1) Commercial.—It is prohibited to use fishing gear other than pelagic fishing gear (purse seines or true midwater trawls using midwater trawl doors incapable of being fished on the bottom) and to attach any protective device to pelagic fishing gear or employ any means which would in effect make it possible to fish for demersal species during March, April, and May in areas bounded by straight lines connecting the following coordinates in the order listed:

(1)	69°55′ W, 42°10′ N
	69°10′ W, 41°10′ N
	68°30′ W, 41°35′ N
	68°45′ W, 41°50′ N
	69°00′ W, 41°50′ N
(2)	67°00′ W, 42°20′ N
	67°00′ W, 41°15′ N
	65°40′ W, 41°15′ N
	65°40′ W, 42°00′ N
	66°00′ W, 42°20′ N

Figure 7

Chart illustrating the areas affected by Recommendation C for Regulation of the Fishery for Haddock in the area formerly known as Subarea 5.



The provisions of this paragraph shall not apply to vessels that fish in area (1) with hooks having a gape of not less than 3 cm, or to vessels that fish in areas (1) and (2) with gear designed to fish for crustaceans and scallops (see Figure 7).

The plan recommends minimum size limits for haddock and cod be imposed in two steps over a two-year period.

HADDOCK

(1) Calendar year 1977—A minimum size of 420 millimeters is recommended, representing the average length of a 2½ year old fish. (The average weight of such a fish would be about 0.7 kilogram.)

(2) Calendar Year 1978.—The minimum size would be increased to 520 millimeters, representing an average length of a 3 year old fish. (The average weight would be 1.63 kilograms.)

COD

(1) Calendar Year 1977.—A minimum size of 400 millimeters is recommended (representing the average length of a 2 year old fish) for recreational and commercial fishing. (The average weight of such a fish would be about 0.6 kilogram.)

(2) Calendar Year 1978.—The minimum size would be increased to 520 mm representing an average length of a 3 year old fish. (The average weight would be 1.41 kilograms.)

(E) Yellowtail Flounder Landing Restrictions.

The plan further proposes that any vessel shall land no more than 5,000 pounds of yellowtail for each crew member on board up to a maximum of 30,000 pounds per vessel per trip.

III. Minimum size limits.

1. Suggested regulations, forthcoming

[FR Doc.77-2658 Filed 1-27-77;8:45 am]

PACIFIC FISHERY MANAGEMENT COUNCIL'S ANCHOVY ADVISORY PANEL

Public Meeting

Notice is hereby given of a meeting of the Pacific Fishery Management Council's Anchovy Advisory Panel, established under section 302(g) of the Fishery Conservation and Management Act of 1976 (Pub. L. 94-265).

The Pacific Council, established under section 302 of the Act, will have authority, effective March 1, 1977, over fisheries within the fishery conservation zone adjacent to the States of California, Oregon, and Washington. The Council will, among other things, prepare and submit to the Secretary of Commerce fishery management plans with respect to the fisheries within its area of authority, prepare comments on applications for foreign fishing, and conduct public meetings.

The Anchovy Advisory Panel, composed of persons who are either actually engaged in the harvest of, or are knowledgeable and interested in the conservation and management of the anchovy resource, assists the Council in the development or amendment of an anchovy fishery management plan.

The meeting will be held February 16, 1977, at the California Department of Fish and Game offices, 350 Golden Shore, Long Beach, California. The meeting will convene at 10 a.m. and adjourn at 4 p.m.

Proposed Agenda:

1. Panel organization.
2. Consideration of development of an anchovy fishery management plan.
3. Review of reports and documents related to anchovy management.
4. Inter-fishery aspects of anchovy management.

This meeting will be open to the public and there will be seating for approximately 25 members of the public on a first-come, first-served basis.

Members of the public having an interest in specific items for discussion are advised that changes to the agenda are at times made prior to the meeting. To receive information on changes, if any, made to the agenda, interested members of the public should contact by February 9, 1977:

Mr. Svein Fougner, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, CA 90731, Telephone 213-548-2575.

At the discretion of the Panel, interested members of the public may be permitted to speak at times which will allow the orderly conduct of business. Persons who wish to submit written statements should contact Mr. Fougner at the address given above. To receive due consideration and facilitate inclusion of these comments in the record of the meeting, typewritten statements should be received within 10 days after the close of the meeting.

Dated: January 25, 1977.

WINFRED H. MEIBOHM,
Associate Director,
National Marine Fisheries Service.

[FR Doc.77-2681 Filed 1-27-77;8:45 am]

Office of the Secretary

COMMERCE TECHNICAL ADVISORY BOARD

Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. I. (Supp. V, 1975) notice is hereby given that the Commerce Technical Advisory Board will hold a meeting on Tuesday, February 22, 1977, from 9 a.m. to 5 p.m. and Wednesday, February 23, 1977, from 8:30 a.m. to 12 Noon, at the National Bureau of Standards, Room 1107 Radio Building, Boulder, Colorado.

The Board was established to study and evaluate the technical activities of the Department of Commerce and recommend measures to increase their value to the business community. Tentative agenda items include:

Continuation of discussion on the "Role of Technological Innovation in U.S. Productivity, Foreign Trade, and General Welfare of Society", and
Report from Energy Policy Panel.

The meeting will be open to public observation. The public may submit written statements or inquiries to the Chairman before or after the meeting. A limited number of seats will be available to the public and to the press on a first-come, first-served basis.

Copies of minutes and materials distributed will be made available for reproduction, following certification by the Chairman, in accordance with the Federal Advisory Committee Act, at the U.S. Department of Commerce Central Reference and Inspection Facility, Washington, D.C. 20230.

Further information may be obtained from Mrs. Florence S. Feinberg, Administrator, Room 3865, U.S. Department of Commerce, Washington, D.C. 20230; telephone 202-377-5065.

BETSY ANCKER-JOHNSON,
Assistant Secretary for Science and Technology.

JANUARY 24, 1977.

[FR Doc.77-2797 Filed 1-27-77;8:45 am]

NATIONAL SCIENCE FOUNDATION

ADVISORY PANEL FOR GENETIC BIOLOGY

Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Advisory Panel for Genetic Biology.
Date and time: February 17-19, 1976, 9:00 a.m. to 6:00 p.m. each day.
Place: Room 517, National Science Foundation, 1800 G Street, N.W., Washington, D.C.
Type of meeting: Closed.
Contact person: Dr. J. Christopher Cordaro, Program Director, Genetic Biology Program, Rm. 326, National Science Foundation, Washington, D.C. 20550, telephone (202) 632-5965.
Purpose of panel: To provide advice and recommendations concerning support for research in Genetic Biology.
Agenda: To review and evaluate research proposals and projects as part of the selection process for awards.
Reason for closing: The proposals and projects being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals and projects. These matters are within exemptions (4) and (6) of 5 U.S.C. 552(b), Freedom of Information Act. The rendering of advice by the panel is considered to be a part of the Foundation's deliberative process and is thus subject to exemption (5) of the Act.
Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of P.L. 92-463. The Committee Management Officer was delegated the authority to make determinations by the Director, NSF, on February 11, 1976.

M. REBECCA WINKLER,
Acting Committee Management Officer.

JANUARY 25, 1977.

[FR Doc.77-2820 Filed 1-27-77;8:45 am]

JOINT MEETING OF THE SYSTEMATIC AND ECOLOGICAL SCIENCES PANEL

Meeting

In accordance with the Federal Advisory Committee Act, P.L. 92-463, the National Science Foundation announces the following meeting:

Name: Joint Meeting of the Systematic and Ecological Sciences Panels.
Date and time: February 17 and 18, 1977, 8:30 a.m. to 5:00 p.m. each day.
Place: Room 642, National Science Foundation, 1800 G Street, N.W., Washington, D.C. 20550.
Type of meeting: Closed.
Contact person: Dr. John W. Wright, Program Director, Systematic Biology Program, Room 336, National Science Foundation, Washington, D.C. 20550, telephone (202) 632-5846.
Purpose of panel: To provide advice and recommendations concerning support for research in systematic biology and ecological sciences.
Agenda: To review and evaluate research proposals and projects as part of the selection process for awards.
Reason for closing: The proposals and projects being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals and projects. These matters are within exemptions (4) and (6) of 5 U.S.C. 552(b), Freedom of Information Act. The rendering of advice by the panel is considered to be a part of the Foundation's deliberative process and is thus subject to exemption (5) of the Act.
Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of P.L. 92-463. The Committee Management Officer was delegated the authority to make determinations by the Director, NSF, on February 11, 1976.

M. REBECCA WINKLER,
Acting Committee Management Officer.

JANUARY 25, 1977.

[FR Doc.77-2821 Filed 1-27-77;8:45 am]

INTERSTATE COMMERCE COMMISSION

[Notice No. 313]

ASSIGNMENT OF HEARINGS

JANUARY 25, 1977.

Cases assigned for hearing, postponement, cancellation or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the Official Docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested.

MC-F-12953, Red Ball Motor Freight, Inc.—Purchase (Portion)—Thunderbird Freight Lines, Inc.; F.D. 28260, Red Ball Motor Freight, Inc. Note; MC 69512 (Sub-No. 11), Thunderbird Freight Lines, Inc. and MC 2229 (Sub-No. 196), Red Ball Motor Freight, Inc., now being assigned April 12, 1977 (14 days) at Los Angeles, California, in a hearing room to be later designated.

MC 141897 Sub 2, Phil Poggi Trucking now assigned February 23, 1977 at Phoenix, Arizona is cancelled, application dismissed.

MC 134922 (Sub-No. 175), B. J. McAdams, Inc. now assigned January 31, 1977 at Chicago, Illinois is cancelled, application dismissed.

MC 127042 Sub 175, Hagen, Inc. now being assigned March 29, 1977 (1 day) at Kansas City, Missouri in a hearing room to be later designated.

MC 106497 Sub 132, Parkhill Truck Company now being assigned March 30, 1977 (1 day) at Kansas City, Missouri in a hearing room to be later designated.

MC 109692 Sub 38, Grain Belt Transportation Company and MC 136076 Sub 6, Heavy Hauling, Inc. now being assigned March 31, 1977 (2 days) at Kansas City, Missouri in a hearing room to be later designated.

MC 30844 Sub 571, Kroblin Refrigerated Xpress, Inc. now being assigned April 4, 1977 (1 day) at Kansas City, Missouri in a hearing room to be later designated.

MC 114273 Sub 254, CRST, Inc. now being assigned April 5, 1977 (2 days) at Kansas City, Missouri in a hearing room to be later designated.

MC 138823 Sub 15, Miller Trucking Co., Inc. now being assigned April 7, 1977 (2 days) at Kansas City, Missouri in a hearing room to be later designated.

ROBERT L. OSWALD,
Secretary.

[FR Doc.77 2890 Filed 1-27-77;8:45 am]

FOURTH SECTION APPLICATIONS FOR RELIEF

JANUARY 25, 1977.

An application, as summarized below, has been filed requesting relief from the requirements of Section 4 of the Interstate Commerce Act to permit common carriers named or described in the application to maintain higher rates and charges at intermediate points than those sought to be established at more distant points.

Protests to the granting of an application must be prepared in accordance with Rule 40 of the General Rules of Practice (49 CFR 1100.40) and filed by February 14, 1977.

FSA No. 43310—*Vinyl Chloride from Points in Louisiana and Texas.* Filed by Southwestern Freight Bureau, Agent, (No. B-653), for interested rail carriers. Rates on vinyl chloride, in tank-car loads, as described in the application, from specified points in Louisiana and Texas, to Perryville, Maryland and Pottstown, Pennsylvania.

Grounds for relief—Market competition.

Tariff—Supplement 28 to Southwestern Freight Bureau, Agent, tariff 12-J, I.C.C. No. 5219.

Rates are published to become effective on February 22, 1977.

FSA No. 43311—*Joint Water-Rail Container Rates—Black Sea Shipping Company.* Filed by Black Sea Shipping Company, (No. 103), for itself and interested rail carriers. Rates on general commodities, between ports in Europe, and rail stations on the U.S. Atlantic Coast Seaboard.

Grounds for relief—Water competition.

FSA No. 43312—*Lightweight Aggregates, Viz.: Cinders, Etc., Between Points in Southern Territory.* Filed by M. B. Hart, Jr., Agent, (No. A6349), for interested rail carriers. Rates on lightweight aggregates, viz.: cinders, clay and shall aggregate, etc., in carloads, as described in the application, between points in southern territory.

Grounds for relief—Short-line distance formula and grouping; rate relationship.

Tariff—Supplement 112 to Southern Freight Association, Agent, tariff 388-L, I.C.C. No. S-1188.

Rates are published to become effective on February 28, 1977.

By the Commission:

ROBERT L. OSWALD,
Secretary.

[FR Doc.77 2894 Filed 1-27-77;8:45 am]

[Finance Docket No. 27620; 27621]

MAINE CENTRAL RAILROAD CO. v. AMOSKEAG, CO. FREDERICK C. DUMAINE AND DUMAINES

Application for Authority To Acquire Control

JANUARY 18, 1977.

Application of Amoskeag Company, a Delaware Corporation, and Dumaines, a voluntary association, under section 5(2) of the Interstate Commerce Act for authority to acquire control of Maine Central Railroad Company through voting of trusteed stock.

By notice served November 24, 1976, parties to the above-entitled proceeding and other interested parties were given until January 19, 1977, to submit comments on the draft environmental impact statement prepared for the proposed action by the Commission's Section of Energy and Environment. The commenting period has been extended to February 3, 1977.

ROBERT L. OSWALD,
Secretary.

[FR Doc.77-2888 Filed 1-27-77;8:45 am]

[Notice No. 10]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

JANUARY 24, 1977.

The following are notices of filing of applications for temporary authority under section 210a(a) of the Interstate Commerce Act provided for under the provisions of 49 CFR 1131.3. These rules provide that an original and six (6) copies of protests to an application may be filed with the field official named in the FEDERAL REGISTER publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the FEDERAL REGISTER. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in the ICC Field Office to which protests are to be transmitted.

MOTOR CARRIERS OF PROPERTY

No. MC 102616 (Sub-No. 927TA), filed January 13, 1977. Applicant: COASTAL TANK LINES, INC., 250 N. Cleveland-Massillon Road, P.O. Box 5555, Akron, Ohio 44313. Applicant's representative: David F. McAllister, (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Anhydrous ammonia*, in bulk, in tank vehicles, from Middletown, Ohio, to points in Indiana, Illinois, Michigan and Kentucky, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Vistron Corporation, 313 Midland Bldg., Cleveland, Ohio 44115. Send protests to: James Johnson, District Supervisor, Interstate Commerce Commission, 181 Federal Office Bldg., 1240 E. Ninth St., Cleveland, Ohio 44199.

No. MC 113658 (Sub-No. 12TA), filed January 12, 1977. Applicant: SCOTT TRUCK LINE, INC., 5871 N. Broadway, P.O. Box 16346, Denver, Colo. 80216. Applicant's representative: William J. Boyd, 600 Enterprise Drive, Oak Brook, Ill. 60521. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, packinghouse products and commodities* in motor carrier certificates, 61 M.C.C. 209 and 766, from Denver, Colo., to points in Connecticut, Delaware, Illinois, Indiana, Maryland, Massachusetts, Michigan, New Jersey, New York, Ohio, Pennsylvania, Virginia, West Virginia, Wisconsin and the District of Columbia, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shippers: Circle C Beef Co., 5900 York St.; United Packing Co., 5000 Clarkson St.; Colorado Beef Processors, Inc., 5590 High St.; Pepper Packing Co., 901 E. 46th Ave.; and Litvak Meat Co., Inc., 5900 York St., Denver, Colo. Send protests to: Roger L. Buchanan, District Supervisor, Interstate Commerce Commission, 721 19th St., 492 U.S. Customs House, Denver, Colo. 80202.

No. MC 113843 (Sub-No. 236TA), (Correction), filed December 21, 1976, published in the FEDERAL REGISTER issue of January 11, 1977, and republished as corrected this issue. Applicant: REFRIGERATED FOOD EXPRESS, INC., 316 Summer St., Boston, Mass. 02210. Applicant's representative: Lawrence T. Sheils (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Food and food products*, in vehicles equipped with mechanical refrigeration (except commodities in bulk, in tank vehicles), from the plantsite and facilities of Granite State Packing Co., at or near Manchester, N.H., to points in Colorado, District of Columbia, Illinois, Indiana, Maryland, Michigan, Missouri, New York, Ohio, Pennsylvania, Virginia and Wisconsin, restricted to traffic originating at the above-named origin and destined to the above-named destinations, for 180 days. Supporting shipper: Granite State Packing Co., 163 Hancock St., Manchester, N.H. 03105. Send protests to: Max Gorenstein, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 150 Causeway St., Boston, Mass. 02114. The purpose of this republication is to indicate that Manchester is located in New Hampshire, in lieu of New Jersey.

No. MC 114004 (Sub-No. 159TA), filed January 14, 1977. Applicant: CHANDLER TRAILER CONVOY, INC., 8828 New Benton Highway, Little Rock, Ark. 72209. Applicant's representative: Winston Chandler, Jr. (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Trailers*, designed to be drawn by passenger automobiles (except recreational vehicles), *and buildings*, in sections (except prefabricated buildings), in initial movements, in truck-away service, from Alexander City and Russellville, Ala.; Woodland, Calif.; Longmont, Colo.; Lake City and Ocala, Fla.; Waycross, Ga.; Elkhart, Ind.; Manhattan and Newton, Kans.; Gering, Nebr.; and Stayton, Oreg., to points in the United States, including Alaska but excluding Hawaii, for 180 days. Supporting shipper: Guerdon Industries, Inc., P.O. Box 1259, Louisville, Ky. 40201. Send protests to: William H. Land, Jr., District Supervisor, 3108 Federal Office Bldg., 700 W. Capitol, Little Rock, Ark. 72201.

No. MC 114004 (Sub-No. 160 TA), filed January 14, 1977. Applicant: CHANDLER TRAILER CONVOY, INC., 8828 New Benton Highway, Little Rock, Ark. 72209. Applicant's representative: Winston Chandler, Jr. (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Buildings*, in sections, moving on wheeled undercarriages (except prefabricated buildings), from McNairy County, Tenn., to points in Alabama, Arkansas, Illinois, Indiana, Kentucky, Louisiana, Missouri, Mississippi, North Carolina, South Carolina, Virginia and West Virginia, for 180 days. Supporting shipper: Townhouse, Inc., P.O. Box 449, Selmer, Tenn. 38379. Send protests to: William H. Land, Jr., District Supervisor, 3108 Federal Office Bldg., 700 W. Capitol, Little Rock, Ark. 72201.

No. MC 116710 (Sub-No. 26TA), filed January 13, 1977. Applicant: MISSISSIPPI CHEMICAL EXPRESS, INC., P.O. Box 6176, 2001 E. Texas St., Bossier City, La. 71010. Applicant's representative: Joe T. Lanham, 1102 Perry-Brooks Bldg., Austin, Tex. 78701. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Anhydrous aluminum chloride*, in bulk or in sealed bins, from the plantsite of Aluminum Co., of America, at or near Alcoa, Tenn., to Mobile Ala.; Baton Rouge, La.; Carville and St. James, La.; Baltimore, Md.; Hamilton, Picayune, and Gulfport, Miss.; Sugar Creek, Mo.; Bound Brook and East Hanover, N.J.; Ashtabula, Ohio; West Elizabeth, Pa.; Institute, W. Va.; Texas City, Tex.; and Freeport and Seadrift, Tex.; Port Huron, Mich., under a continuing contract with Aluminum Company of America, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Aluminum Company of America, 1501 Alcoa Bldg., Pittsburgh, Pa. 15219. Send protests to: Ray C. Armstrong, Jr., District Supervisor, 9038 Federal Bldg., 701 Loyola Ave., New Orleans, La. 70113.

No. MC 124679 (Sub-No. 72TA), filed January 11, 1977. Applicant: C. R. ENGLAND & SONS, INC., 975 W. 2100 South, Salt Lake City, Utah 84119. Applicant's representative: Daniel E. England, 300 Arrow Press Square, Bldg. #2, Salt Lake City, Utah 84110. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Malt beverages*, from Fairfield, Calif., to Cedar City, Logan, Prince, Provo, Salt Lake City, and Tooele, Utah, for 180 days. Supporting shippers: There are approximately 6 statements of support attached to the application, which may be examined at the Interstate Commerce Commission in Washington, D.C., or copies thereof, which may be examined at the field office named below. Send protests to: Lyle D. Helfer, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 5301 Federal Bldg., 125 S. State St., Salt Lake City, Utah 84138.

No. MC 126736 (Sub-No. 92TA), filed January 7, 1977. Applicant: FLORIDA ROCK & TANK LINES, INC., 155 E. 21st St., P.O. Box 1559, Jacksonville, Fla. 32201. Applicant's representative: L. H. Blow, (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Ground dolomitic limestone and ground calcium limestone*, in bulk in dump trailers, from Jackson County, Fla., to points in Alabama and Georgia, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Green Valley Lime Company, Inc., P.O. Box 1505, Marianna, Fla. 32446. Send protests to: Fauss, Jr., District Supervisor, Bureau of Operations, Interstate Commerce Commission, Box 35008, 400 W. Bay St., Jacksonville, Fla. 32202.

No. MC 128007 (Sub-No. 95 TA), filed January 13, 1977. Applicant: HOFER, INC., P.O. Box 583, 4032 Parkview Drive, Pittsburg, Kans. 66762. Applicant's representative: Larry E. Gregg, 641 Harrison St., Topeka, Kans. 66603. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Premixed mineral feed ingredients*, in bulk, from the plantsite and storage facilities of Ragland Mills, Inc., in Newton County, Mo., to points in DeSota County, Miss., and Gregg County, Tex., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Ragland Mills, Inc., Route 2, Box 55A, Neosho, Mo. 64850. Send protests to: M. E. Taylor, District Supervisor, Interstate Commerce Commission, Suite 101, Litwin Bldg., 110 N. Market, Wichita, Kans. 67202.

No. MC 128866 (Sub-No. 58 TA), filed January 13, 1977. Applicant: B & B TRUCKING, INC., P.O. Box 128, 9 Brade Lane, Cherry Hill, N.J. 08034. Applicant's representative: J. Michael Farrell, 1725 K St., N.W., Suite 814, Washington, D.C. 20006. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Aluminum foil and sheet*, from the plantsites of the Aluminum Company of America, at Davenport, Iowa, Lebanon, Pa., and Alcoa, Tenn., and from Consolidated Aluminum Company, at Jackson, Tenn., to the plantsite of Penny Plate, Inc., at Waynesboro, Va.; and (2) *Aluminum food containers*, from the plantsite of Penny Plate, Inc., at Waynesboro,

Va., to points in Alabama, Arkansas, California, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, Tennessee, Texas and Wisconsin, for 180 days. Supporting shipper: Penny Plate, Inc., P.O. Box 458, Haddonfield, N.J. 08033. Send protests to: Dieter H. Harper, District Supervisor, Interstate Commerce Commission, 428 E. State St., Room 204, Trenton, N.J. 08608.

No. MC 129219 (Sub-No. 9 TA), filed January 11, 1977. Applicant: CMD TRANSPORTATION, INC., 12340 S. E. Dumolt Road, Clackamas, Oreg. 97015. Applicant's representative. Philip G. Skofstad, P.O. Box 594, Gresham, Oreg. 90730. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Waste paper products* for recycling or reuse in furtherance of recognized pollution control programs, from Salt Lake City, Utah, to Newberg, Oregon City and Portland, Oreg.; and (2) *Newsprint paper*, in rolls, from Oregon City and Newberg, Oreg., to Salt Lake City, Utah, under a continuing contract with Publishers Paper Company, for 180 days. Supporting shipper: Publishers Paper Company, 6637 S. E. 100th Ave., Portland, Oreg. 97266. Send protests to: A. E. Odoms, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 114 Pioneer Courthouse, 555 S. W. Yamhill St., Portland, Oreg. 97204.

No. MC 129613 (Sub-No. 24 TA), filed January 13, 1977. Applicant: ARTHUR H. FULTON, P.O. Box 86, Stephens City, Va. 22655. Applicant's representative: Edward N. Button, 1329 Pennsylvania Ave., P.O. Box 1417, Hagerstown, Md. 21740. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Paper, paperboard and materials, supplies and equipment* used in the manufacture thereof, between Halltown, W. Va., and its commercial zone and points in New Jersey, New York, Pennsylvania and Connecticut, under a continuing contract with Halltown Paperboard Company, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Halltown Paperboard Company, Halltown, W. Va. 25423. Send protests to: Interstate Commerce Commission, 12th & Constitution Ave., N.W., Room 1413. W. C. Hersman, District Supervisor, Washington, D.C. 20423.

No. MC 134477 (Sub-No. 140TA), filed January 12, 1977. Applicant: SCHANNO TRANSPORTATION, INC., 5 W. Mendota Road, W. St. Paul, Minn. 55118. Applicant's representative: Robert P. Sack, P.O. Box 6010, W. St. Paul, Minn. 55118. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meat, meat products, meat by-products and articles distributed by meat packinghouses* as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except in bulk), from the plantsite and storage facilities utilized by Whitehall Packing Company, Inc., at or near Whitehall and Eau Claire, Wis., to points in Connecticut, Delaware, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Virginia and Washington, D.C., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Whitehall Packing Co., Inc., P.O. Box 215, Whitehall, Wis. 54773. Send protests to: Marion L. Cheney, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, 414 Federal Bldg., and U.S. Courthouse, 110 S. 4th St., Minneapolis, Minn. 55401.

No. MC 134645 (Sub-No. 15TA), filed January 14, 1977. Applicant: LIVESTOCK SERVICE, INC., 1420 Second Ave., South, P.O. Box 944, St. Cloud, Minn. 56301. Applicant's representative: Robert P. Sack, P.O. Box 6010, W. St. Paul, Minn. 55118. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meat, meat products, meat by-products and articles distributed by meat packinghouses*, as described in Sections A and C of Appendix I to the report in Descriptions in Motor Carrier Certificates, 61 M.C.C. 209 and 766 (except hides and commodities in bulk), from the plantsite and storage facilities utilized by Landy of Wisconsin, at or near Eau Claire, Wis., to points in Connecticut, Maine, Maryland, Massachusetts, Michigan, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Virginia and the District of Columbia, for 180 days. Supporting shipper: Landy of Wisconsin, 2411 3rd St., Eau Claire, Wis. 54701. Send protests to: Marion L. Cheney, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, 414 Federal Bldg., and U.S. Courthouse, 110 S. 4th St., Minneapolis, Minn. 55401.

No. MC 140384 (Sub-No. 2TA), filed January 10, 1977. Applicant: BERNARD D. HARRIS, 4146 State St., New Orleans, La. 70125. Applicant's representative: Harold R. Ainsworth, 2307 American Bank Bldg., New Orleans, La. 70130. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *New furniture*, from the Southern Railway Shed H at 511 N. Villere St., New Orleans, La., to Baton Rouge, Denham Springs, Gonzales, Hammond, Houma, Luling, Morgan City, Raceland, Thibodaux and Vacherie, La., restricted to traffic having an immediate prior movement by rail, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shippers: There are approximately 19 statements of support attached to the application, which may be examined at the Interstate Commerce Commission in Washington, D.C., or copies thereof which may be examined at the field office named below. Send protests to: Ray C. Armstrong, Jr., District Supervisor, 701 Loyola Ave., 9038 Federal Bldg., New Orleans, La. 70113.

No. MC 140908 (Sub-No. 3TA), filed January 14, 1977. Applicant: COMMERCIAL & PACKAGE DELIVERY SERVICE, INC., Route 6, Box 53–A, Wilmington, N.C. 28401. Applicant's representative: James E. Savitz, 4 Professional Drive, Suite 145, Gaithersburg, Md. 20760. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between points in North Carolina and South Carolina, restricted to packages not to exceed 150 pounds, for 180 days. Supporting shippers: There are approximately 29 statements of support attached to the application, which may be examined at the Interstate Commerce Commission in Washington, D.C., or copies thereof which may be examined at the field office named below. Send protests to: Archie W. Andrews, District Supervisor, Bureau of Operations, Interstate Commerce Commission, P.O. Box 26896, Raleigh, N.C. 27611.

No. MC 141914 (Sub-No. 5TA), filed January 12, 1977. Applicant: FRANKS & SON, INC., Rt. 1, Box 108A, Big Cabin, Okla. 74332. Applicant's representative: Gary Brasel, Mezzanine Floor, Beacon Bldg., Tulsa, Okla. 74103. Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: *Coal and coal* by-products, from points in Oklahoma, to points in Arkansas, Colorado, Kansas, New Mexico, Oklahoma, Texas, Utah and Wyoming, for 180 days. Supporting shippers: D & R Coal Company, 1008 Main St., Quinton, Okla. 74561. Leon's Coal Company, Box 415, Welch, Okla. 73469. Send protests to: Joe Green, District Supervisor, Room 240 Old Post Office Bldg., 215 N.W. Third St., Oklahoma City, Okla. 73102.

No. MC 142186 (Sub-No. 4TA), filed January 14, 1977. Applicant: WHEELS WEST, INC., 612 159th Place, S.E., Bellevue, Wash. 98008. Applicant's representative: Henry C. Winters, 1100 IBM Bldg., Seattle, Wash. 98101. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Parts of mobile homes and utility trailers, automotive springs, suspensions and parts thereof, brake drums, brake assemblies and parts thereof, tailgate hoists and parts thereof, wheels and wheel attaching parts* for motor vehicle chassis and motor vehicle undercarriage, from Henderson, Ky., Wyandotte, Mich., Akron and Kenton, Ohio, to Portland, Oreg., restricted to a transportation service to be performed under a continuing contract with Rivco Pacific, Inc., of Portland, Oreg., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Rivco Pacific, Inc., P.O. Box 14158, Portland, Oreg. 97214. Send protests to: L. D. Boone, Transportation Specialist, Bureau of Operations, 858 Federal Bldg., 915 Second Ave., Seattle, Wash. 98174.

No. MC 142258 (Sub-No. 1TA), filed January 11, 1977. Applicant: DALE BLAND TRUCKING, INC., RR No. 1, Switz City, Ind. 47465. Applicant's representative: Walter F. Jones, Jr., 601 Chamber of Commerce Bldg., Indianapolis, Ind. 46204. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Coal*, in dump trucks, from points in Jefferson and Saline Counties, Ill., to points in Vanderburgh County, Ind., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Arkla Industries, Inc., Evansville, Ind. Send protests to: Fran Sterling, Transportation Assistant, Interstate Commerce Commission, Federal Bldg., and U.S. Courthouse, 46 E. Ohio St., Room 429, Indianapolis, Ind. 46204.

No. MC 142689 (Sub-No. 1TA), filed January 13, 1977. Applicant: REM TRANSPORT CO., INC., 25–36 Jackson Ave., Long Island City, N.Y. 11101. Applicant's representative: Harold Sacks, 19 W. 44th St., New York, N.Y. 10036. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Chemicals and plastic films and sheets*, from Bound Brook, South Bound Brook, Piscataway and East Brunswick, N.J., to Newton Upper Falls, Mass., and return of same products, to New York Metropolitan area, and counties of northern N.J., i.e. Passaic, Bergen, Hudson, Morris, Essex, Somerset and Union, under a continuing contract with Tenneco Chemicals, Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Tenneco Chemicals, Inc., Turner Place, P.O. Box 365, Piscataway, N.J. Send protests to: Maria B. Kejss, Transportation Assistant, Interstate Commerce Commission, 26 Federal Plaza, New York, N.Y. 10007.

No. MC 142803TA, filed January 12, 1977. Applicant: SIMPSON TRUCKING, INC., R.F.D. No. 4, Harrisburg, Ill. 62946. Applicant's representative: Robert T. Lawley, 300 Reisch Bldg., Springfield, Ill. 62701. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Coal*, from Harrisburg and Waltonville, Ill., to Evansville, Ind., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: David Smith, Senior Buyer, Whirlpool Corporation, Evansville Division, Highway 41 North, Evansville, Ind. 47727. Send protests to: Harold C. Jolliff, District Supervisor, Interstate Commerce Commission, P.O. Box 2418, Springfield, Ill. 62705.

No. MC 142811TA, filed January 13, 1977. Applicant: S.R.I. TRUCKING CO., 1000 N. Cindy Lane, Carpinteria, Calif. 93013. Applicant's representative: Steven M. Kirby, 3760 State St., Santa Barbara, Calif. 93105. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Restaurant supplies, foodstuffs (canned), processed meat, fresh meat, carcass beef, baking goods (frozen), flour, shellfish (frozen), cheese, potatoes (frozen), dairy products, poultry (frozen), poultry (frozen-processed), fish (frozen), fish (frozen-processed), produce-fresh, vegetables-frozen, syrup, fats and oils (processed), dressings and furniture and fixtures;* from (1) the warehouse facilities of Sambo's Restaurants, Inc., in Carpinteria, Calif., to all Sambo's Restaurants located in Arizona, Arkansas, California, Colorado, Idaho, Illinois, Iowa, Kansas, Louisiana, Minnesota, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, Wisconsin and Wyoming, with return backhaul trips from those states to Carpinteria, Calif.; and (2) from the warehouse facilities of Sambo's Restaurants, Inc., in Florence, Ky., to all Sambo's Restaurants located in Alabama, Delaware, Florida, Georgia, Indiana, Kentucky, Maine, Maryland, Massachusetts, Mississippi, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Virginia and West Virginia with return backhaul trips from those states to Florence, Ky.; and (3) between the warehouse facilities of Sambo's Restaurants, Inc., in Carpinteria, Calif., and Florence, Ky. Restriction: Restricted to a transportation service to be performed under a continuing contract with Sambo's Restaurants, Inc., for 180 days. Supporting shipper: Sambo's Restaurants, Inc., 3760 State St., Santa Barbara, Calif. 93105. Send protests to: Mary A. Francy, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, Room 1321 Federal Bldg., 300 N. Los Angeles St., Los Angeles, Calif. 90012.

PASSENGER APPLICATIONS

No. MC 139210 (Sub-No. 4TA), filed January 13, 1977. Applicant: WESLEE ENTERPRISES, INC., doing business as ALASKA–YUKON MOTORCOACHES, 2434 32nd Ave., West Seattle, Wash. 98199. Applicant's representative: A. T. Wendells, 910 Bank of California Center, Seattle, Wash. 98164. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *Passengers and their baggage* in the same vehicle with passengers. Restriction: Limited to passengers originating in or destined for Alaska, traveling with applicant's bus between Alaska and Prince Rupert, British Columbia, Canada, on ferries of the Alaska Ferry System, or traveling by preticketed connection with Alaska Ferries at Prince Rupert, between Seattle, Wash., and the port of entry on the International Boundary line between the United States and Canada at Sumas, Wash., over Interstate Highway 5, to junction Washington State Highway 539 and thence over Highway 539 to junction Washington State Highway 546, and thence over Highway 546 to junction of Washington State Highway 9, and thence over Highway 9 to Sumas, and return over the same route, serving no intermediate points. Restriction: Operations seasonal between April 1 and December 15 of each year. Applicant intends to tack its existing authority with MC 139210, at Haines, Alaska, applicant also intends to interline with White Pass and Yukon Route, a rail carrier at Skagway, Alaska, for 180 days. Supporting shippers: There are approximately 15 statements of support attached to the application, which may be examined at the Interstate Commerce Commission in Washington, D.C., or copies thereof, which may be examined at the field office named below. Send protests to: L. D. Boone, Transportation Specialist, Bureau of Operations, 858 Federal Bldg., 915 Second Ave., Seattle, Wash. 98174.

No. MC 142781 (Sub-No. 1TA), filed January 14, 1977. Applicant: GREEN LINE CHARTERS LTD., 2769 E. 4th Ave., Vancouver, B.C., Canada V5M 1K1. Applicant's representative: Charles M. LaHue (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Passengers and their baggage*, in round-trip charter operations, restricted to traffic originating at or destined to Vancouver, B.C., Canada for the account of Four Star Tours Worldwide, Ltd., between the United States and Canada International Boundary line located at points in Washington, on the one hand, and, on the other, points in Washington and Portland, Oreg., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Four Star Tours Worldwide Ltd., 2027 W. 6th Ave., Vancouver, B.C., Canada. Send protests to: L. D. Boone, Transportation Specialist, Bureau of Operations, 858 Federal Bldg., 915 Second Ave., Seattle, Wash. 98174.

No. MC 142812TA, filed January 12, 1977. Applicant: DONNA LEE GOODNER, doing business as THE TRUCKEE STAGE COMPANY, P.O. Box 775, Truckee, Calif. 95734. Applicant's representative: Donna Lee Goodner (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *Passengers and their baggage, including recreational equipment*, from Incline Village, Nev., via Nevada Highway 28 to Crystal Bay, Nev., thence via California Highway 28 to the junction of California Highway 267, and via California Highway 267 to Northstar, Calif., returning to California Highway 267 to junction with California Highway 28 and via that highway to Alpine Meadows, Calif., and Olympic Valley, Calif., and return; charter and special operations, between Stateline, Nev., on the one hand, and, on the other, points in Placer and Nevada Counties, Calif., for 180 days. Supporting shipper: Squaw Valley Ski Corporation, P.O. Box 2007, Olympic Valley, Calif. 95730. Send protests to: Huetig, District Supervisor, Interstate Commerce Commission, 203 Federal Bldg., 705 N. Plaza St., Carson City, Nev. 89701.

WATER CARRIER APPLICATION

No. WC 1314, filed January 13, 1977. Applicant: A. WALLACE LANE & BELVA D. KERBY, 831 Riverview Blvd., Clarkston, Wash. 99403. Applicant's representative: A. Wallace Lane, 1122 14th Ave., Lewiston, Idaho 83501. Authority sought to operate as a *common carrier*, by water, in the transportation of: *General commodities*, between ports and points along the Columbia/Snake river system, from Booneville, Oreg., to Asotin, Wash., on the one hand, and ports and points along the Pacific Seaboard of the United States, from Imperial Beach, Calif., to Bellingham, Wash., on the other (except those along the Columbia and Williamette River ship channels below Booneville Dam), for 180 days. Supporting shippers: There are approximately 10 statements of support attached to the application, which may be examined at the Interstate Commerce Commission in Washington, D.C., or copies thereof which may be examined at the field office named below. Send protests to: L. D. Boone, Transportation Specialist, Bureau of Operations, Interstate Commerce Commission, 858 Federal Bldg., 915 Second Ave., Seattle, Wash. 98174.

By the Commission.

ROBERT L. OSWALD,
Secretary.

[FR Doc.77-2895 Filed 1-27-77;8:45 am]

[Notice No. 9]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

JANUARY 21, 1977.

The following are notices of filing of applications for temporary authority under section 210a(a) of the Interstate Commerce Act provided for under the provisions of 49 CFR 1131.3. These rules provide that an original and six (6) copies of protests to an application may be filed with the field official named in the FEDERAL REGISTER publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the FEDERAL REGISTER. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in the ICC Field Office to which protests are to be transmitted.

MOTOR CARRIERS OF PROPERTY

No. MC 51146 (Sub-No. 484TA), filed January 11, 1977. Applicant: SCHNEIDER TRANSPORT, INC., 2661 S. Broadway, P.O. Box 2298, Green Bay, Wis. 54304. Applicant's representative: Neil A. DuJardin (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Plastic film, plastic sheeting, and cloth*, in mechanically-refrigerated trailers, from Plainfield, Conn., and Holyoke and Lowell, Mass., to Beaver Dam and Appleton, Wis., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Ray-O-Vac Division, ESB Inc., 101 E. Washington Ave., Madison, Wis. 53703. Send protests to: Gail Daugherty, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, U.S. Federal Bldg., & Courthouse, 517 E. Wisconsin Ave., Room 619, Milwaukee, Wis 53202.

No. MC 61620 (Sub-No. 13TA), filed January 12, 1977. Applicant: M & G TRANSPORTATION COMPANY, INC., Gloucester, Va. 23061. Applicant's representative: Eugene Thomas (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Bananas*, from Norfolk, Va., to points in Maryland, Delaware, New Jersey, New York, Connecticut, Pennsylvania, Virginia, West Virginia, and the District of Columbia, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Dominican Import Co. Inc., 700 Boundry St., Chesapeake, Va. Send protests to: Paul D. Collins, District Supervisor, Bureau of Operations, Room 10-502 Federal Bldg., 400 N. 8th St., Richmond, Va. 23240.

No. MC 93903 (Sub-No. 13TA), filed January 10, 1977. Applicant: ANDERSON'S TRUCKING CORPORATION, P.O. Box 709, Englishtown, N.J. 07726. Applicant's representative: Nathaniel H. Yehalem, Sutton Metropark, Woodbridge, N.J. 07095. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Concrete pipes and poles, light and/or telephone poles, fittings, forms, molds, connectors, grout and other equipment and accessories* used in the manufacture and installation thereof (except cranes or other lifting devices or heavy machinery), between Hillsboro, N.J., and points in Connecticut, Delaware, Maryland, the District of Columbia, Massachusetts, New Jersey, New York, Pennsylvania, Rhode Island, Maine, Vermont, New Hampshire, Virginia, West Virginia, Kentucky, North Carolina, Ohio and Indiana, under a continuing contract with Interpace Corporation, for 180 days. Supporting shipper: Interpace Corporation, 260 Cherry Hill Road, Parsippany, N.J. 07054. Send protests to: Dieter H. Harper, District Supervisor, Interstate Commerce Commission, 428 E. State St., Room 204, Trenton, N.J. 08608.

No. MC 99427 (Sub-No. 34TA), filed January 11, 1977. Applicant: ARIZONA TANK LINES, INC., 666 Grand, P.O. Box 855, Des Moines, Iowa 50309. Applicant's representative: Earl Check (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Hydroflouric acid*, in bulk, in tank vehicles (shipper owned), from Phoenix, Ariz., to Kokomo, Ind., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Kerley Chemical Corporation, 2801 W. Osborn Road, Phoenix, Ariz. Send protests to: Herbert W. Allen, District Supervisor, Bureau of Opertions, Interstate Commerce Commission, 518 Federal Bldg., Des Moines, Iowa 50309.

No. MC 112520 (Sub-No. 329TA), filed January 11, 1977. Applicant: MCKENZIE TANK LINES, INC., P.O. Box 1200, 122 Appleyard Drive, Tallahassee, Fla. 32302. Applicant's representative: Sol H. Proctor, 1101 Blackstone Bldg. Jacksonville, Fla. 32202. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Processed clay catalyst*, in bulk, in tank vehicles, from Attapulgus, Ga., to New Castle, Wyo., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Engelhard Minerals & Chemicals Corp., Menlo Park, Edison, N.J. 08817. Send protests to: Fauss, Jr., District Supervisor, Bureau of Operations, Interstate Commerce Commission, Box 35008, 400 W. Bay St., Jacksonville, Fla. 32202.

No. MC 117765 (Sub-No. 220TA), filed January 10, 1977. Applicant: HAHN TRUCK LINE, INC., 5315 N.W. 5th St., P.O. Box 75218, Oklahoma City, Okla. 73107. Applicant's representative: R. E. Hagan (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Perlite*, in containers or bags, from the plantsite of Persolite Products, at or near Florence Colo., to points in Arkansas and Texas, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Perlite of Oklahoma, 3304 Alexander Lane, Bethany, Okla. 73008. Send protests to: Joe Green, District Supervisor, Room 240, Old Post Office Bldg., 215 N.W. Third St., Oklahoma City, Okla. 73102.

No. MC 117940 (Sub-No. 207TA), filed January 11, 1977. Applicant: NATIONWIDE CARRIERS, INC., P.O. Box 104, Maple Plain, Minn. 55359. Applicant's representative: Bruce A. Bullock, Suite 530 Univac Bldg., 7100 W. Center Road, Omaha, Nebr. 68106. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Commodities* as are dealt in by retail department stores (except foodstuffs and furniture), and (2) *Furniture*, in mixed loads with the commodities in (1) above; (a) from points in the New York, New York Commercial Zone, points in the Philadelphia, Pa., Commercial Zone, and points in New Jersey, Massachusetts and Connecticut, to points in the Lansing, Mich., Commercial Zone, points in the Grand Rapids, Mich., Commercial Zone, Wyoming, Mich., points in the Minneapolis-St. Paul, Minn., Commercial Zone, and Minnetonka, Minn., and (b) from points in the Chicago, Ill., Commercial Zone, to points in the Minneapolis-St. Paul, Minn., Commercial Zone and Minnetonka, Minn., restricted to traffic originating at the named origins and destined to the facilities of Modern Merchandising, Inc., and its wholly owned subsidiaries, for 180 days. Supporting shipper: Modern Merchandising, Inc., P.O. Box 900, 1300 S. Second St., Hopkins, Minn. 55343. Send protests to: Marion L. Cheney, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, 414 Federal Bldg., & U.S. Courthouse, 110 S. 4th St., Minneapolis, Minn. 55401.

No. MC 120626 (Sub-No. 2TA), filed January 11, 1977. Applicant: LAW FARMS AND CATTLE CO., doing business as LAW MOTOR LINES, 1012 Swink Ave., Rocky Ford, Colo. 81067. Applicant's representative: Truman A. Stockton, Jr., The 1650 Grant St. Bldg., Denver, Colo. 80203. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid sugar*, in bulk, in tank vehicles, from American Crystal Sugar Company, at or near Rocky Ford, Colo., to Wichita, Kans., for 180 days. Supporting shippers: Pepsi-Cola Bottling Co., of Wichita, Inc., 301 McLean Blvd., N.W., Wichita, Kans. The Dr. Pepper Bottling Company, Inc., 2328 S.E. Blvd., Wichita, Kans. American Crystal Sugar Company, 101 N. Third St., Moorhead, Minn. 56560. Seavey & Flarsheim Brokerage Co., a Div. of Sales Force Companies, Inc., 951 E. 33rd St., P.O. Box 1100, Wichita, Kans. 67201. Send protests to: Herbert C. Ruoff, District Supervisor, Interstate Commerce Commission, 721 19th St., Denver, Colo. 80202.

No. MC 121240 (Sub-No. 3TA), filed January 3, 1977. Applicant: ABC TRUCK LINES, INC., P.O. Box 1824, Elko, Nev. 89801. Applicant's representative: Antoinette M. Bloch (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities*, between Owyhee, Nev., and Boise, Idaho, over the following route: Nevada and Idaho State Highway No. 51, from Owyhee, Nev., to Mountain Home, Idaho, thence over Interstate 80N., to Boise, Idaho and return over the same route, serving all intermediate points. Applicant requests authority to serve the commercial zones of Boise and Mountain Home, Idaho. Applicant intends to tack its existing authority with MC 121240, applicant also intends to interline at all points involved in the application, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shippers: There are approximately 74 statements of support attached to the application, which may be examined at the Interstate Commerce Commission in Washington, D.C., or copies thereof which may be examined at the field office named below. Send protests to: W. J. Huetig, District Supervisor, Interstate Commerce Commission, 203 Federal Bldg., 705 N. Plaza St., Carson City, Nev. 89701.

No. MC 127187 (Sub-No. 24TA), filed January 11, 1977. Applicant: FLOYD DUENOW, INC., 1728 Industrial Park Blvd., Fergus Falls, Minn. 56537. Applicant's representative: Gene P. Johnson, 425 Gate City Bldg., Fargo, N. Dak. 58102. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Dry animal and poultry feed, and dry animal and poultry feed ingredients*, from the facilities of Central Soya Company, Inc., at or near Belmond, Iowa, to points in Minnesota on and south of U.S. Highway 12 (except the Minneapolis-St. Paul commercial zone), for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Central Soya Company, Inc., 1300 Fort Wayne Bank Bldg., Fort Wayne, Ind. 46802. Send protests to: Ronald R. May, District Supervisor, Bureau of Operations, Interstate Commerce Commission, P.O. Box 2340, Fargo, N. Dak. 58102.

No. MC 129032 (Sub-No. 33TA), filed January 11, 1977. Applicant: TOM INMAN TRUCKING, INC., 6015 S. 49th West Ave., P.O. Box 9667, Tulsa, Okla. 74107. Applicant's representative: John Paul Fischer, 256 Montgomery St., San Francisco, Calif. 94194. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Pet food and canned seafood*, in mixed loads with pet food, from San Diego, Calif., to Denver, Colo.; Davenport, Iowa; Clinton, Iowa; Milan, Ill.; Rock Island, Ill.; Sharonville, Ohio; and Blue Ash, Ohio; and points in Oklahoma and Texas, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shippers: Sun Harbor Industries, 1995 Bay Front, San Diego, Calif. 92113; Ralston-Purina Co., Checkerboard Square, St. Louis, Mo. 63188. Send protests to: Joe Green, District Supervisor, Room 240 Old Post Office Bldg., 215 N.W. Third St., Oklahoma City, Okla. 73102.

No. MC 129759 (Sub-No. 16TA), filed January 10, 1977. Applicant: TRIANGLE TRUCKING CO., P.O. Box 490, McKees Rocks, Pa. 15136. Applicant's representative: A. Charles Tell, Columbus Center, 100 E. Broad St., Columbus, Ohio 43215. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Pipe, cable, conduit, wire and strip steel and attachments therefor*, between Glendale, Marshall County, W. Va., and points in Alabama, Arkansas, Florida, Georgia, Kansas, Louisiana, Mississippi, Nebraska, North Carolina, North Dakota, Oklahoma, South Carolina, South Dakota and Texas, under a continuing contract with Triangle PWC, Inc., for 180 days. Supporting shipper: Triangle PWC, Inc., Jersey Ave., New Brunswick, N.J. Send protests to: John J. England, District Supervisor, Interstate Commerce Commission, 2111 Federal Bldg., 1000 Liberty Ave., Pittsburgh, Pa. 15222.

No. MC 134404 (Sub-No. 31TA), filed January 12, 1977. Applicant: AMERICAN TRANS-FREIGHT, INC., P.O. Box 796, Manville, N.J. 08835. Applicant's representative: Eugene M. Malkin, 5 World Trade Center, Suite 6193, New York, N.Y. 10048. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Brass, bronze, copper, pipe and tubing, brass and copper alloys, brass, bronze, copper and nickel products, and copper billets*, from Reading, Pa. to Memphis, Tenn.; East Alton, Ill.; and Buffalo, N.Y.; and (2) *Metal scrap, fire brick, and materials and supplies* (except in bulk), used in the manufacture, sale and distribution of the aforementioned commodities, from the destination points named in (1) above, to Reading, Pa., under a continuing contract with Reading Industries, Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Reading Industries, 236 Green St., South Hackensack, N.J. 07606. Send protests to: Julia M. Papp, Transportation Assistant, Interstate Commerce Commission, 9 Clinton St., Newark, N.J. 07102.

No. MC 135539 (Sub-No. 4TA), filed January 11, 1977. Applicant: FARM SERVICE & SUPPLIES, INC., P.O. Box 535, Evansville, Ind. 47715. Applicant's representative: Margie Market, 305 Van Buren, Marengo, Ill. 60152. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Lawn mowers, tractors, non-flammable latex paints, rotary tillers, snow blowers, and related parts and accessories including, grass catchers, engines, decks, blades, tires and chute deflectors*, from the plantsite of General Power Equipment Company, a Division of Cotter & Company, Cary, Ill., to points in Iowa, Kentucky, Wisconsin, Minnesota, Michigan, Missouri, Indiana, Nebraska and Texas, under a continuing contract with General Power Equipment Company, a Division of Cotter & Company, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: General Power Equipment Company, a Division of Cotter & Company, 203 Jandus Road, Cary, Ill. 60013. Send protests to: Fran Sterling, Transportation Assistant, Interstate Commerce Commission, Federal Bldg. and

U.S. Courthouse, 46 E. Ohio St., Room 429, Indianapolis, Ind. 46204.

No. MC 135874 (Sub-No. 69TA), filed January 7, 1977. Applicant: LTL PERISHABLES, INC., 550 E. 5th St., South, S. St. Paul, Minn. 55075. Applicant's representative: Paul Nelson (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen potatoes and potato products* (except in bulk), from the facilities of Midwest Foods Corporation, at or near Sioux Falls, S. Dak., to points in Colorado, Connecticut, Delaware, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Massachusetts, Maine, Michigan, Minnesota, Missouri, Nebraska, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Virginia, West Virginia, Vermont, Wisconsin and the District of Columbia, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Midwest Foods Corporation, P.O. Box 100, Clark, S. Dak. 57225. Send protests to: Marion L. Cheney, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, 414 Federal Bldg. and U.S. Courthouse, 110 S. 4th St., Minneapolis, Minn. 55401.

No. MC 139156 (Sub-No. 3TA), filed January 7, 1977. Applicant: FAITH TRUCK LINES, INC., 26 W. 142nd St., Dixmoor, Ill. 60426. Applicant's representative: Charlie Woodard (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Muriatic acid*, in rubber lined tank vehicles, from Niagara Falls, N. Y., to Albion and Niles, Mich.; Burns Harbor, Ind.; Chicago, Ill.; and its commercial zone, Dwight, Joliet and Rockford, Ill.; and Juneau, Wis., and from Ashtabula, Ohio, to Chicago and its commercial zone and Rockford, Ill., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Thompson Hayward Chemical Company, Jack H. Stitzer, Acid Sales Coordinator, 2501 S. Damen Ave., Chicago, Ill. 60608. Send protests to: Patricia A. Roscoe, Transportation Assistant, Interstate Commerce Commission, Everett McKinley Dirksen Bldg., 219 S. Dearborn St., Room 1386, Chicago, Ill. 60604.

No. MC 139193 (Sub-No. 53TA), filed January 7, 1977. Applicant: ROBERTS & OAKE, INC., 527 E. 52nd St., North, P.O. Box 1356, Sioux Falls, S. Dak. 57101. Applicant's representative: Jacob P. Billig, Suite 300, 2033 K St., N.W., Washington, D.C. 20006. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Meat, meat products, meat by-products, dairy products and articles distributed by meat packinghouses* as described in Sections A, B, and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except hides and liquid commodities in bulk), from John Morrell & Co., at St. Paul, Minn., to points in Illinois and Wisconsin, under a continuing contract with John Morrell & Co., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: John Morrell & Co., 208 S. LaSalle St., Chicago, Ill. 60604. Send protests to: J. L. Hammond, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 369 Federal Bldg., Pierre, S. Dak. 57501.

No. MC 141742 (Sub-No. 1TA), filed January 7, 1977. Applicant: FLOWERS TRANSPORTATION INC., P.O. Box B, Station A, Auburn, Calif. 95603. Applicant's representative: Randall M. Faccinto, 100 Pine St., Suite 2550, San Francisco, Calif. 94111. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lumber and lumber products*, from Reno, Nev., to Denver, Colorado Springs, and Grand Junction, Colo., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Rocklin Forest Products, Inc., P.O. Box 400, Roseville, Calif. 95678. Send protests to: W. J. Huetig, District Supervisor, Interstate Commerce Commission, 203 Federal Bldg., 705 N. Plaza St., Carson City, Nev. 89701.

No. MC 141813 (Sub-No. 2TA), filed January 11, 1977. Applicant: MILTON G. JANSSEN, doing business as JANSSEN TRANSPORTATION, Route 2, Box 433, Delta, Colo. 81416. Applicant's representative: Milton G. Janssen (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Oil shale*, from that part of Colorado that lies west of the Continental Divide and north of U.S. Highway 6 to Los Angeles, Calif., and its commercial zone, San Francisco, Calif., and its commercial zone and Livermore, Calif., and its commercial zone, and to Unita County, Utah. Applicant intends to tack its existing authority with MC 141813 Sub-No. 1, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Development Engineering Incorporated, Box A, Anvil Points, Rifle, Colo. 81650. Send protests to: Herbert C. Ruoff, District Supervisor, Interstate Commerce Commission, 721 19th St., Denver, Colo. 80202.

No. MC 142669 (Sub. No. 4TA), filed January 12, 1977. Applicant: GENE WALTERS AND CLARK WURTELE, doing business as, M & M TRUCKING, Buchanan, N. Dak. 58420. Applicant's representative: Charles E. Johnson, P.O. Box 1982, Bismarck, N. Dak. 58501. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Dry animal and poultry feed, feed ingredients, and health care products*, from Mankato, Dawson, Minneapolis-St. Paul and its commercial zone, Willmar, Redwood Falls, Perham and Owatonna, Minn., to Edgeley, Dickinson and Carrington, N. Dak., and Glendive, Mont.; and (2) Paper bags, from Minneapolis, Minn., to Dickinson, Edgeley and Carrington, N. Dak., and Glendive, Mont., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shippers: Dickinson GTA Feed Plant, a Division of Farmers Union Grain Terminal Assn., Dickinson, N. Dak. 58601; Edgeley GTA Feed Plant, a Division of Farmers Union Grain Terminal Assn., Edgeley, N. Dak. 58433; Carrington GTA, a Division of Farmers Union Grain Terminal Assn., Carrington, N. Dak. 58421. Send protests to: Ronald R. Mau, District Supervisor, Bureau of Operations, Interstate Commerce Commission, P.O. Box 2340, Fargo, N. Dak. 58102.

No. MC 142796TA, filed January 7, 1977. Applicant: VAN HORN MOVING & STORAGE, INC., 1421 Harrison Ave., Panama City, Fla. 32401. Applicant's representative: Sol H. Proctor, 1101 Blackstone Bldg., Jacksonville, Fla. 32202. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Household goods*. Restriction: Said operations are restricted to the transportation of shipments having a prior or subsequent movement in containers beyond the points authorized. Said operations are restricted to the performance of pickup and delivery service (in connection with packing, crating, and containerization of such shipments), between points in Holmes, Jackson, Washington, Bay, Gulf, Franklin, Liberty, Gadsden, Waukulla, Calhoun and Leon Counties, Fla., for 180 days. Supporting shipper: Vanpac Carriers, Inc., 2114 MacDonald Ave., Richmond, Calif. 94801. Send protests to: Fauss, Jr., District Supervisor, Interstate Commerce Commission, Box 35008, 400 W. Bay St., Jacksonville, Fla. 32202.

No. MC 142797TA, filed January 7, 1977. Applicant: FULTON OREGON AIR, INC., 401 S.E. 8th Ave., Portland, Oreg. 97214. Applicant's representative: Lawrence V. Smart, Jr., 419 N.W. 23rd Ave., Portland, Oreg. 97210. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, and commodities in bulk), restricted to the transportation of shipments having an immediately prior or subsequent movement by air, between the Portland International Airport, on the one hand, and, on the other, points in Oregon, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shippers: There are approximately 6 statements of support attached to the application, which may be examined at the Interstate Commerce Commission in Washington, D.C., or copies thereof which may be examined at the field office named below. Send protests to: A. E. Odoms, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 114 Pioneer Courthouse, 555 S.W. Yamhill St., Portland, Oreg. 97204.

No. MC 142802TA, filed January 11, 1977. Applicant: W. C. BRILEY, doing business as BRILEY TRANSPORT, Box 348, San Angelo, Tex. 76901. Applicant's representative: Thomas F. Sedberry, 1102 Perry-Brooks Bldg., Austin, Tex. 78701. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Hides*, green, salted, between Tom Green County, Tex., on the one hand, and, on the other, points in Texas, New Mexico and Colorado, for 180 days. Supporting shipper: Dreiling Hide Co. and San A Angelo By Products, P.O. Box 631, San Angelo, Tex. Send protests to: Robert J. Kirspel, District Supervisor, Room 9A27 Federal Bldg., 819 Taylor St., Fort Worth, Tex. 76102.

PASSENGER APPLICATION

No. MC 142799TA, filed January 10, 1977. Applicant: COLONIAL COACH CORP., 17 Franklin Turnpike, Mahwah, N.J. 07430. Applicant's representative: Samuel B. Zinder, 98 Cutter Mill Road, Great Neck, N.Y. 11021. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Passengers and their baggage*, beginning and ending at Sutton, at Collingswood, Collingswood, N.J., and extending to Philadelphia, Pa., and return, under a continuing contract with J & G Management Co., Inc., T/A Grace Management Co., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: J & G Management Co., Inc., T/A Grace Management Co., Sutton at Collingswood, Collingswood, N.J. 08107. Send protests to: Julia M. Papp, Transportation Assistant, Interstate Commerce Commission, 9 Clinton St., Newark, N.J. 07102.

By the Commission.

ROBERT L. OSWALD,
Secretary.

[FR Doc.77-2896 Filed 1-27-77;8:45 am]

[I.C.C. Order No. 18; Under Revised Service Order No. 1252; Service Date, January 25, 1977]

REROUTING TRAFFIC

To all railroads: In the opinion of Joel E. Burns, Agent, railroads operating in the States of Ohio, Pennsylvania, and New York are unable to transport traffic over normal routes because of excessive accumulations of snow and ice.

It is ordered, That (a) *Rerouting traffic.* Railroads operating in the States of Ohio, Pennsylvania, and New York being unable to transport traffic over normal routes accordance with shippers' routing because of excessive accumulations of snow and ice, are hereby authorized to divert and reroute such traffic over any available route to expedite the movement regardless of the routing shown on the waybill. The billing covering all such cars rerouted shall carry a reference to this order as authority for the rerouting.

(b) *Concurrence of receiving roads to be obtained.* The railroad desiring to divert or reroute traffic under this order shall receive the concurrence of other railroads to which such traffic is to be diverted or rerouted, before the rerouting or diversion is ordered.

(c) *Notification to shippers.* Each carrier rerouting cars in accordance with this order shall notify each shipper at the time each car is rerouted or diverted and shall furnish to such shipper the new routing provided under this order.

(d) Inasmuch as the diversion or rerouting of traffic by said Agent is deemed to be due to carriers' disability, the rates applicable to traffic diverted or rerouted by said Agent shall be the rates which were applicable at the time of shipment on the shipments as originally routed.

(e) In executing the directions of the Commission and of such Agent provided for in this order, the common carriers involved shall proceed even though no contracts, agreements, or arrangements now exist between them with reference to the divisions of the rates of transportation applicable to said traffic. Divisions shall be, during the time this order remains in force, those voluntarily agreed upon by and between said carriers; or upon failure of the carriers to so agree, said divisions shall be those hereafter fixed by the Commission in accordance with pertinent authority conferred upon it by the Interstate Commerce Act.

(f) *Effective date.* This order shall become effective at 5:00 p.m., January 19, 1977.

(g) *Expiration date.* This order shall expire at 11:59 p.m., January 26, 1977, unless otherwise modified, changed or suspended.

It is further ordered, That this order shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association; and that it be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., January 19, 1977.

INTERSTATE COMMERCE COMMISSION,
JOEL E. BURNS,
Agent.

[FR Doc.77-2893 Filed 1-27-77;8:45 am]

[Amendment No. 1 to I.C.C. Order No. 17 Under Service Order No. 1252; Service Date Jan. 25, 1977]

REROUTING TRAFFIC

To all railroads: Upon further consideration of I.C.C. Order No. 17 (The Chesapeake and Ohio Railway Company) and good cause appearing therefor:

It is ordered, That: I.C.C. Order No. 17 be, and it is hereby, amended by substituting the following paragraph (g) for paragraph (g) thereof:

(g) *Expiration date.* This order shall expire at 11:59 p.m., January 31, 1977, unless otherwise modified, changed, or suspended.

It is further ordered, That this amendment shall become effective at 11:59 p.m., January 18, 1977, and that this order shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association; and that it be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., January 17, 1977.

INTERSTATE COMMERCE COMMISSION,
JOEL E. BURNS,
Agent.

[FR Doc.77-2892 Filed 1-27-77;8:45 am]

[AB 55 (Sub-No. 8)]

SEABOARD COAST LINE RAILROAD CO.

Abandonment of Lines

JANUARY 18, 1977.

The Interstate Commerce Commission hereby gives notice that its Section of Energy and Environment has concluded that the proposed abandonment by the Seaboard Coast Line Railroad Company between Bruce and Portsmouth, in the cities of Chesapeake and Portsmouth, Va., a distance of 3.88 miles, if approved by the Commission, does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321, et seq., and that preparation of a detailed environmental impact statement will not be required under section 4332(2)(C) of the NEPA.

It was concluded, among other things, that the environmental impacts of the proposed action are considered insignificant because traffic on the line has been very low for 3 years and there is no prospect of an increase in demand for rail service in the future. Also, no land use plans of an economic or industrial importance exist which would necessitate the continued operation of the line. The right-of-way has been determined to be suitable for other transportation and recreational use following abandonment.

This conclusion is contained in a staff-prepared environmental threshold assessment survey, which is available on request to the Interstate Commerce Commission, Office of Proceedings, Washington, D.C. 20423; telephone 202-275-7011.

Interested persons may comment on this matter by filing their statements in writing with the Interstate Commerce Commission, Washington, D.C., 20423, on or before March 2, 1977.

It should be emphasized that the environmental threshold assessment survey represents an evaluation of the environmental issues in the proceeding and does not purport to resolve the issue of whether the present or future public convenience and necessity permit discontinuance of the line proposed for abandonment. Consequently, comments on the environmental study should be limited to discussion of the presence or absence of environmental impacts and reasonable alternatives.

ROBERT L. OSWALD,
Secretary.

[FR Doc.77-2889 Filed 1-27-77;8:45 am]

federal register

FRIDAY, JANUARY 28, 1977

PART II



DEPARTMENT OF THE INTERIOR

Mining Enforcement and Safety Administration

■

HEALTH AND SAFETY STANDARDS FOR METAL AND NONMETAL MINES AND MILLS

DEPARTMENT OF THE INTERIOR

Mining Enforcement and Safety Administration

[30 CFR Parts 55, 56, 57]

NEW AND REVISED HEALTH AND SAFETY STANDARDS

Notice of Proposed Rulemaking

Notice is hereby given that pursuant to the authority vested in the Secretary of the Interior under section 6 of the Federal Metal and Nonmetallic Mine Safety Act (30 U.S.C. 725) to develop, revise, and promulgate health and safety standards for the purpose of the protection of life, the promotion of health and safety, and the prevention of accidents in metal and nonmetal mines and mills, it is proposed to amend Parts 55, 56, and 57, Subchapter N, Chapter I, Title 30, Code of Federal Regulations by revising certain existing standards and adding certain new definitions, deleting or revising certain advisory standards and making them mandatory, and revising and adding new mandatory standards relating to ground control; fire prevention and control; ventillation and radiation; loading, hauling, dumping; man. hoisting; travelways and escapeways; electricity; personal protection; miscellaneous; and gassy mines. These standards have been developed after consultation with the Federal Metal and Nonmetal Mine Safety Advisory Committee appointed pursuant to section 7 of the Act (30 U.S.C. 726). In accordance with section 10(a) of the Federal Advisory Committee Act (5 U.S.C. Appendix I (Supp. V 1975)) these standards were included in an agenda which was made available to the public, discussed during an open meeting of the Advisory Committee with timely notices of such meetings published in the FEDERAL REGISTER, and interested persons were permitted to attend, appear before, and file statements with the Advisory Committee.

Each standard which is to be a mandatory standard is so designated by the word "Mandatory" which appears at the beginning of the subsection in which the standard is prescribed. If the Federal Metal and Nonmetal Mine Safety Advisory Committee has recommended a mandatory standard, the standard is preceded by the word "Mandatory" and the letters "MNMSAC" in this manner "Mandatory. MNMSAC.—".

Under the provisions of subsection (e) of section 6 (30 U.S.C. 725(e)) and in accordance with the provisions of subsection (d) of section 6 of the Act (30 U.S.C. 725(d)), any persons who may be adversely affected by a proposed health and safety standard which is designated as a mandatory standard under subsections (b) and (c) of section 6 of the Act (30 U.S.C. 725 (b) and (c)), which has not been recommended as a mandatory standard by the Federal Metal and Nonmetal Mine Safety Advisory Committee, may file with the Secretary on or before the last day of the period herein fixed for the submission of written data, views, or arguments, written objections stating the grounds for such objections and requesting a public hearing on those objections subject to the provisions of the Administrative Procedure Act (5 U.S.C. 556, 557).

Under subsection (e) of section 6 of the Act proposed mandatory standards which have been recommended by the Federal Metal and Nonmetal Mine Safety Advisory Committee are not subject to public hearings.

The Mining Enforcement and Safety Administration (MESA) and the Occupational Safety and Health Administration (OSHA) entered into a Memorandum of Understanding on April 22, 1974, to (1) clarify the jurisdictional responsibility of each agency and (2) provide a procedure for the coordination and adoption of safety standards which have significant application of working conditions in mines and mills subject to the Federal Metal and Nonmetallic Mine Safety Act. The Memorandum of Understanding was published in the FEDERAL REGISTER on Friday, July 26, 1974 (39 FR 27382–27384).

In accordance with the requirements of Article D1 (a) and (b) of the Memorandum, MESA personnel consulted with representatives of OSHA regarding those OSHA standards promulgated by the Secretary of Labor as of April 22, 1974, which may have a significant application to mines and mills subject to the Federal Metal and Nonmetallic Mine Safety Act, and are not covered by mandatory standards promulgated by the Secretary of the Interior prior to the effective date of the Memorandum. After such consultations held on June 13 and October 4, 1974, MESA submitted a list identifying those OSHA standards that are not covered by mandatory standards applicable to metal and nonmetal mining and milling operations other than coal and lignite mining. Article D1(c) provides further that after determining those OSHA standards which may have significant application to working conditions in mines and mills subject to the Federal Metal and Nonmetallic Mine Safety Act, the Secretary of the Interior would publish in the FEDERAL REGISTER (1) those standards which the Secretary proposes to publish without change, and (2) those standards which he proposes to adopt with modification or revision because specific conditions associate with the metal and nonmetal mining industries warrant such modification or revision. The Memorandum also provides that the Secretary would publish the text of the proposed modified or revised standards and indicates the reasons for the modifications or revisions.

A comparison has been made between the substantive requirements of each proposed new and revised definition and mandatory standard with the corresponding OSHA definition and standard. In each instance, the proposed definition or mandatory standard affords at least the same degree of health and safety protection to the individuals working in the metal and nonmetal mining industries as its counterpart OSHA definition or standard affords those persons working in the general and construction industries subject to the Occupational Safety and Health Act.

Listed below are the action numbers of proposed definitions and mandatory standards (listed proposals) that have corresponding OSHA definitions and standards.

Part 55—1, 2, 3, 4, 8, 9, 11, 13, 39, 40, 73, 88, 89, 90, 91, 92, and 93.

Part 56—94, 95, 96, 97, 101, 102, 104, 106, 132, 133, 166, 181, 182, 183, 184, 185, and 186.

Part 57—188, 189, 191, 192, 196, 201, 202, 204, 206, 215, 224, 225, 226, 227, 228, 258, 291, 306, 307, 308, 309, 310, 311, and 336.

The listed proposals identified above include definitions for the electrical terms "circuit breaker," "conductor," "insulated," and "insulation," and, proposed mandatory safety standards concerning such mining activities as secondary drilling and blasting of material, scaling and scaling bars, rock bolt installation and torquing of rock bolts, shaft sets, blocking and wedging of timbers used for ground support in underground mining operations, criteria for automatically-actuated fire suppression systems on unattended equipment used in underground mining operations, and the location of trolley wires and trolley feeder wires in underground gassy mines. Also covered by the listed proposals are mandatory health standards relating to quick-drenching facilities for flushing of eyes and body, potable drinking water, clean and safe workplaces, warning signs, and barricades in areas where health and safety hazards exist, receptacles for disposal of waste food and associated matrial, marking and labeling toxic materials, prohibiting eating and drinking in toilets and areas exposed to toxic materials, and several other proposed health standards relating to radon daughters and radon gas, including the wearing of approved respirators, conducting gamma radiation surveys, and posting areas with radon daughters in excess of 1.0 WL against unauthorized entry and designating such areas by signs indicating that respirators must be worn.

The text of the listed proposals are like, but not identical with, their corresponding OSHA definitions and standards for several reasons. The main reasons for this difference in wording are as follows:

The listed proposals are designed primarily as performance-oriented standards. They are directed toward eliminating recognized hazards wherever practicable and neutralizing other hazards. They provide certain definite requirements that delineate the responsibilities of the mine operator to protect mine workers. The form and philosophy of the listed proposals are different from that used to develop OSHA standards. The listed proposals are generally short and concise statements that are readily understandable by persons working in the metal and nonmetal mining industries.

With the exception of listed proposals 40, 133, and 258, relating to quick-drenching facilities, and proposal 224 concerning radon daughter concentrations in excess of 0.3 WL in underground mining operations, the language for each of the listed proposals are recommended to the Secretary of the Interior by the Federal Metal and Nonmetal Mine Safety Advisory Committee. The Advisory Committee members considered each definition and mandatory standard on the basis of recognized hazards in metal and nonmetal mining and the needs of workers in the metal and nonmetal mining industries. Thus, the vocabulary and wording recommended by by the Advisory Committee are designed specifically for metal and nonmetal mining operations by representatives of mine management, mine workers, and State agencies charged with health and safety responsibilities. The Secretary has adopted the language recommended to him for the listed proposals and so designated them by the letters "MNMSAC" under the rulemaking provisions of section 6 (a), (b), and (c) of the Federal Metal and Nonmetallic Mine Safety Act.

The requirements in listed proposals 40, 133, and 258, that quick-drenching facilities for flushing of the eyes and body must be available for immediate emergency use where injurious corrosive materials are used or handled, contain substantially the same language as the corresponding OSHA provision. The wording of the OSHA standard has been reorganized and restated to provide more concise standards. Listed proposal 224 applies to underground operations of underground mines where radon daughter concentrations in excess of 0.3 WL are found in active workings. This proposal, in effect, upgrades and expands the corresponding OSHA standard to provide protection equivalent to or more protection than the OSHA provision by requiring that radon daughter sampling equipment and a competent person to make radon daughter measurements are available on each shift, that alpha detectors be calibrated prior to initial use and thereafter at intervals not to exceed six months, and that the most recent calibration record for each instrument is to be kept with the instrument and available for inspection. Also, the procedure for sampling and calibrating the sampling equipment must be in accordance with section 14 of American National Standards Institute (ANSI) N–13.8–1973.

Interested persons may submit, on or before March 14, 1977, written data, views, arguments, and objections including a request for public hearing on those proposed mandatory standards not recommended by the Federal Metal and Nonmetallic Mine Safety Advisory Committee, to the Administrator, Mining Enforcement and Safety Administration, Department of the Interior, Room 618, Ballston Tower No. 3, 4015 Wilson Boulevard, Arlington, Virginia 22203.

In consideration of the foregoing, it is proposed to amend Parts 55, 56, and 57 of Subchapter N, Chapter I, Title 30, Code of Federal Regulations, as set forth below.

The Department of the Interior has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A–107.

Dated: January 19, 1977.

RAYMOND A. PECK, JR.,
Deputy Assistant Secretary of the Interior.

PART 55—HEALTH AND SAFETY STANDARDS—METAL AND NONMETALLIC OPEN PIT MINES

§ 55.2 [Amended]

A. Section 55.2 "Definitions" is proposed to be amended as follows:

1. It is proposed to add a definition of "Circuit breaker" as follows: Circuit breaker. MNMSAC.—"Circuit breaker" means a device designed to open and close a circuit by nonautomatic means and to open the circuit automatically on a predetermined overcurrent setting without injury to itself when properly applied within its rating.

2. It is proposed to add a definition of "Conductor" as follows: Conductor. MNMSAC.—"Conductor" means a material, usually in the form of a wire, cable, or bus bar, capable of carrying an electric current.

3. It is proposed to add a definition of "Insulated" as follows: Insulated. MNMSAC.—"Insulated" means separated from other conducting surfaces by a dielectric substance permanently offering a high resistance to the passage of current and to disruptive discharge through the substance. When any substance is said to be insulated, it is understood to be insulated in suitable manner for the conditions to which it is subjected. Otherwise, it is, within the purpose of this definition, uninsulated. Insulating covering is one means for making the conductor insulated.

4. It is proposed to add a definition of "Insulation" as follows: Insulation. MNMSAC.—"Insulation" means a dielectric substance offering a high resistance to the passage of current and to disruptive discharge through the substance.

5. It is proposed to add a definition of "Overcurrent" as follows: Overcurrent. MNMSAC.—"Overcurrent" means an abnormal current that is greater than the full load value of the circuit.

6. It is proposed to add a definition of "Overload" as follows: Overload. MNMSAC.—"Overload" means that current which will cause an excessive or dangerous temperature in the conductor or conductor insulation.

7. It is proposed to add a definition of "Short circuit" as follows: Short circuit. MNMSAC.—"Short circuit" means an abnormal connection of relatively low resistance, whether made accidentally or intentionally, between two points of different potential in a circuit.

§ 55.3 [Amended]

B. Section 55.3 "Ground control" is proposed to be amended as follows:

8. It is proposed to revise and renumber advisory standard 55.3–11 and make it mandatory as follows:

55.3–50 *Mandatory.* MNMSAC.—Material, other than hanging material, to be broken by secondary drilling and blasting, or by any other method shall be positioned or blocked to prevent hazardous movement before persons commence breaking operations. Persons who perform those operations shall work from a location where, if movement of material occurs, those persons will not be endangered.

9. It is proposed to add a new mandatory standard 55.3–51 as follows:

55.3–51 *Mandatory.* MNMSAC.—A scaling bar of sufficient length to place the user out of danger of falling material shall be provided at each working place, where manual scaling may be required. The scaling bar shall be blunt on one end. Picks or other short tools shall not be used for scaling when their use places the user in danger of falling material.

10. It is proposed to add a new mandatory standard 55.3–52 as follows:

55.3–52 *Mandatory.*—When rock bolting is a part of the mining cycle, rock bolts shall be installed as soon as possible after an area is exposed. Blasting shall be scheduled so that a minimal time will elapse between exposure of ground by blasting and installation of bolts.

11. It is proposed to add a new mandatory standard 55.3–53 as follows:

55.3–53 *Mandatory.* MNMSAC.—Rock-bolt installation requiring torquing shall be torqued to a value within the range determined from information of tests in the strata in which the rock bolt assembly is used. In no case shall installation torques cause bolt tensions that would exceed the yield point or anchorage capacity of the rock bolt assembly being used.

12. It is proposed to add a new mandatory standard 55.3–54 as follows:

55.3–54 *Mandatory.* MNMSAC.—When rock bolts are used as a means of ground support, anchorage pull-test procedures shall be established and tests shall be conducted to determine anchorage capacity of rock-bolt installations. Test results shall be set forth in writing and made available to the Secretary or his duly authorized representative.

13. It is proposed to add a new mandatory standard 55.3–55 as follows:

55.3–55 *Mandatory.* MNMSAC.—In installing point-anchor rock bolts: (a) A torque test shall be conducted on at least every fourth installed bolt.

(b) Torque testing shall be conducted immediately after bolt installation.

(c) If the recommended torque has not been achieved, the equipment used to install the bolt shall be adjusted and the next bolt installed shall then be tested.

(d) If the recommended torque has not been achieved on the majority of bolts installed in a working place through equipment adjustment, supplemental support such as longer roof bolts with adequate anchorage, steel or wood sets, or cribs shall be installed.

14. It is proposed to add a new mandatory standard 55.3–57 as follows:

55.3–56 *Mandatory.* MNMSAC.—Rock bolt hole drill bits shall be easily identifiable by sight or feel and diameters shall be within a tolerance of ±0.030-inches of the manufacturer's recommended hole diameter for the anchor used.

15. It is proposed to add a new mandatory standard 55.3–57 as follows:

56.3-57 *Mandatory.* MNMSAC.—Washers if used in rock-bolt assemblies to reduce friction between the bolt head and the bearing plate shall: (a) Have hardness in the range of 35-45 HRC (Hardness Rockwell C Scale).
(b) Conform to the shape of the bolt head and bearing plate.
(c) Have sufficient strength to withstand loads up to the yield point of the rock bolt.

16. It is proposed to add a new mandatory standard 55.3-58 as follows:

55.3-58 *Mandatory.*—Alignment compensating devices shall be placed between the bolt head and the bearing plate where the angle between the bolt axis and the normal to (perpendicular) the bearing plate surface is more than 5 degrees.

§ 55.9 [Amended]

C. Section 55.9 "Loading, hauling, dumping" is proposed to be amended as follows:

17. It is proposed to revoke advisory standard 55.9-18. MNMSAC.

18. It is proposed to revise advisory standard 55.9-35 and make it mandatory as follows:

55.9-35 *Mandatory.* MNMSAC. — Movements of two or more pieces of rail equipment operating independently on the same track shall be suitably controlled for safe operation.

19. It is proposed to revise advisory standard 55.9-46 and make it mandatory as follows:

55.9-46 *Mandatory.* MNMSAC.—Backpoling of trolleys shall be avoided wherever possible; but when necessary, backpoling shall be done only at slow speeds.

20. It is proposed to revise advisory standard 55.9-56 and make it mandatory as follows:

55.9-56 *Mandatory.* MNMSAC. — Where necessary, bumper blocks or the equivalent shall be provided at all track dead-ends.

21. It is proposed to revise advisory standard 55.9-57 and make it mandatory as follows:

55.9-57 *Mandatory.* MNMSAC.—Grizzlies, grates, and other stationary sizing devices shall be anchored securely.

22. It is proposed to add a new mandatory standard 55.9-72 as follows:

55.9-72 *Mandatory.* MNMSAC.—Persons attempting to free hangups shall be experienced persons who understand the hazards involved.

23. It is proposed to add a new mandatory standard 55.9-73 as follows:

55.9-73 *Mandatory.* MNMSAC.—Defective equipment, removed from service as unsafe to operate, shall be tagged to prohibit further use until repairs are completed.

§ 55.12 [Amended]

D. Section 55.12 "Electricity" is proposed to be amended as follows:

24. It is proposed to revise mandatory standard 55.12-1 as follows:

55.12-1 *Mandatory.*—Electrical circuits and equipment shall be protected against overloads and short circuits by automatic-trip circuit breakers or fuses. Such circuit breakers or fuses shall be capable of interrupting overloads and short circuits without damage to the circuit or equipment. Overload protective devices shall open all ungrounded conductors of the circuit whenever any one conductor becomes overloaded. Thermal devices used to protect the equipment and circuits against overloads shall be backed up by short circuit protection.

25. It is propsed to revise mandatory standard 55.12-3 as follows:

55.12-3 *Mandatory.*—Individual overload and short-circuit protection shall be provided for the trailing cables of mobile equipment.

26. It is proposed to revise mandatory standard 55.12-5 as follows:

55.12-5 *Mandatory.* MNMSAC.—Mobile equipment shall not run over power conductors, nor shall loads be dragged over power conductors, unless the conductors are properly bridged or protected.

27. It is proposed to revise advisory standard 55.12-6 and make it mandatory as follows:

55.12-6 *Mandatory.* MNMSAC.—Distribution boxes shall be provided with a disconnecting device for each branch circuit. Such disconnecting devices shall be equipped or designed in such a manner that it can be determined by visual observation that the circuit is deenergized when such devices are open, and shall be labeled to show which units they control.

28. It is proposed to revise advisory standard 55.12-8 and make it mandatory as follows:

55.12-8 *Mandatory.* MNMSAC.—Power wires and cables shall be insulated adequately where they pass into or out of electrical compartments. Cables shall enter metal frames of motors, splice boxes, and electrical compartments only through proper fittings. When insulated wires, other than cables, pass through metal frames, the holes shall be substantially bushed with insulated bushings.

29. It is proposed to revise advisory standard 55.12-10 and make it mandatory as follows:

55.12-10 *Mandatory.* MNMSAC.—Telephone and low-potential signal wire shall be protected, by isolation or additional insulation, from contacting energized power conductors or any other power source.

30. It is proposed to revise mandatory standard 55.12-11 as follows:

55.12-11 *Mandatory.* MNMSAC.—High-potential electrical conductors shall be covered, insulated, or placed to prevent contact with low potential conductors.

31. It is proposed to revise advisory standard 55.12-12 and make it mandatory as follows:

55.12-12 *Mandatory.* MNMSAC.—The potential on bare signal wires accessible to contact by persons shall not exceed 40 volts.

32. It is proposed to revise advisory standard 55.12-13 and make it mandatory as follows:

55.12-13 *Mandatory.* MNMSAC.—Permanent splices and repairs made in power cables, including the ground conductor where provided, shall be: (a) Mechanically strong with electrical conductivity as near as possible to that of the original,
(b) Insulated to a degree at least equal to that of the original, and sealed to exclude moisture, and
(c) Provided with damage protection as near as possible to that of the original, including good bonding to the outer jacket.

33. It is proposed to revise mandatory standard 55.12-14 as follows:

55.12-14 *Mandatory.* MNMSAC.—Power cables energized to potentials in excess of 150 volts, phase-to-ground, shall not be moved with equipment unless sleds or slings, insulated from such equipment, are used. When such energized cables are moved manually, insulated hooks, tongs, ropes, or slings shall be used unless suitable protection for persons is provided by other means. This does not prohibit pulling or dragging of cable by the equipment it powers when the cable is physically attached to the equipment by suitable mechanical devices, and the cable is insulated from the equipment in conformance with other standards in this Part.

34. It is proposed to revise mandatory standard 55.12-16 as follows:

55.12-16 *Mandatory.* MNMSAC.—Electrical equipment shall be deenergized before work is done on such equipment. Power switches shall be locked out or other measures taken which shall prevent the equipment from being energized without the knowledge of the individuals working on it. Suitable warning notices shall be posted at the power switch and signed by the individuals who are to do the work. Such locks or preventive devices shall be removed only by the persons who installed them or by authorized personnel.

35. It is proposed to revise mandatory standard 55.12-28 as follows:

55.12-18 *Mandatory.* MNMSAC.—Continuity and resistance of grounding systems shall be tested immediately after installation, repair, and modification; and annually thereafter. A record of the most recent tests shall be made available to the Secretary.

36. It is proposed to revise advisory standard 55.12-34 and make it mandatory as follows:

55.12-34 *Mandatory.* MNMSAC.—Portable extension lights, and other lights that by their location present a shock or burn hazard, shall be guarded.

37. It is proposed to revise advisory standard 55.12-42 and make it mandatory as follows:

55.12-42 *Mandatory.* MNMSAC.—Both rails shall be bonded or welded at every joint and rails shall be crossbonded at least every 200 feet if the track serves as the return trolley circuit. When rails are moved, replaced, or broken bonds are discovered, they shall be rebonded within three working shifts.

38. It is proposed to revoke advisory standard 55.12-70, and to revise advisory standard 55.12-69 and make it mandatory as follows:

55.12-69 *Mandatory.* MNMSAC.—Each ungrounded power conductor or telephone wire directly exposed to lightning that leads underground shall be equipped with suitable lightning arrestors of approved type within 100 feet of the point where the circuit enters the mine. Lightning arrestors shall be connected to a low resistance grounding medium on the surface and shall be separated from neutral grounds by a distance of not less than 25 feet.

§ 55.15 [Amended]

E. Section 55.15 "Personal protection" is proposed to be amended as follows.

39. It is proposed to revise advisory standard 55.15-6 and make it mandatory as follows:

55.15-6 *Mandatory.* MNMSAC. — Special protective equipment and clothing shall be provided, maintained in a sanitary and reliable condition and used whenever (1) hazards of process or environment, (2) chemical hazards, (3) radiological hazards, or (4) mechanical irritants are encountered in a manner capable of causing injury or impairment.

40. It is proposed to add a new mandatory standard 55.15-14 as follows.

55.15-14 *Mandatory.*—Quick-drenching facilities for flushing of the eyes and body shall be provided for immediate emergency use within the work area at operations where injurious corrosive materials are used or handled.

§ 55.19 [Amended]

F. Section 55.19 "Man hoisting" is proposed to be amended as follows:

41. It is proposed to revise mandatory standard 55.19-7 as follows:

55.19-7 *Mandatory.*—All hoists shall be provided with devices to prevent overtravel. Hoists for shafts exceeding 100 feet in depth also shall be provided with overspeed devices.
(a) The overtravel devices shall: (1) Be directly activated by the conveyance travel, or be directly driven from the hoist drum and synchronized with the movement of the conveyance;
(2) When activated, cause the hoist drum or traction wheel brakes to bring the conveyance to a safe stop; and
(3) Be provided with back-out switches.
(b) The overspeed devices shall: (1) Be directly driven from the hoist drum;
(2) When activated, cause the hoist drum or traction wheel brakes to bring the conveyance to a safe stop;
(3) Activate the control at a setting not to exceed the rated man-hoisting speed by more than 15 percent; and
(4) Monitor effectively the speed of the conveyance at any point of its travel so that safe travel and safe stops can be effected.

42. It is proposed to revised advisory standard 55.19-8 and make it mandatory as follows:

55.19-8 *Mandatory.* MNMSAC.—Where creep or slip may alter the effective position of safety devices, friction hoists shall be equipped with synchronizing mechanisms that recalibrate the overtravel devices and position indicators.

43. It is proposed to revise advisory standard 55.19-11 and make it mandatory as follows:

55.19-11 *Mandatory. MNMAC.*—Flanges on drums shall extend radially a minimum of 4 inches or three rope diameters beyond the last wrap, whichever is the lesser.

44. It is proposed to revise advisory standard 55.19-12 and make it mandatory as follows:

55.19-12 *Mandatory.* — Where grooved drums are used, the grooves shall be of the proper size and pitch for the ropes used. When new rope is installed, the grooves of grooved drums shall be machined as needed to assure the size and pitch recommended by the manufacturer for the new rope.

45. It is proposed to add a new mandatory standard 55.19-14 as follows:

55.19-14 *Mandatory.* MNMSAC.—In a friction hoist installation, tapered guides or other approved devices shall be installed above and below the limits of regular travel of the conveyance and arranged to prevent overtravel in the event of failure of other devices.

46. It is proposed to add a new mandatory standard 55.19-15 as follows:

55.19-15 *Mandatory.* — Hooks, shackles, and other attachments that are used to connect a conveyance to the hoist rope shall be individually approved for strength as exceeding rated breaking strength of the rope to which the hook, shackle, or other attachment is connected by a factor of at least 10 percent. Hooks, shackles, and other attachments that have been modified or repaired shall be reapproved before returning to service. Proof of such approval for each hook, shackle, and other attachments in use shall be available for inspection by the Secretary or his duly authorized representative.

47. It is proposed to add a new mandatory standard 55.19-16 as follows:

55.19-16 *Mandatory.*—All cages and skips used for lowering or raising of persons in a mine shall comply with the following:
(a) When a bonnet is required, the bonnet shall be made of not less than three-sixteenths (3/16) inch steel plate or of a noncombustible material having equivalent
(b) The cage or skip shall be provided with not less than one-eighth (1/8) inch sheet iron or steel side casing or a noncombustible material having equivalent strength.
(1) The side casing shall extend to a height of not less than five feet from the floor.
(2) The side casing shall have no openings through which a three-eighths (3/8) inch diameter rod will pass, excepting those openings that are necessary for signaling.
(c) The cage shall be equipped with a door, or doors, made of steel or other suitable noncombustible material that extends to a height of not less than five feet above the floor.
(1) All doors shall have no openings through which a three-eighths (3/8) inch diameter rod will pass, excepting those openings necessary for signaling, and they shall have a maximum clearance of two inches from the floor.
(2) All doors shall be arranged so that the doors cannot be opened outward from the cage.
(3) All doors shall be fitted with latches that will prevent accidental opening of a door.
(d) The bottom structural members and floor shall be constructed of steel or noncombustible material of sufficient strength to support the conveyance with maximum load at maximum emergency acceleration or deceleration.
(e) The conveyance shall be provided with an escape hatch in the top and/or an escape hatch in the side of the conveyance nearest the manway. Bonnets having a hinged movable section weighing no more than 150 pounds may be considered as having escape hatches.
(f) Cages or skips suspended by a single hoisting rope shall be provided with safety catches. These safety catches shall:
(1) Be of sufficient strength to safely stop and hold the conveyance with its maximum passenger load at any point in the shaft from the maximum man hoisting speed. The deceleration rate shall not exceed 3 times the acceleration due to gravity (3g's).
(2) Be performance tested before the conveyance is used to hoist men.
(3) Be visually inspected by a competent person each shift before the conveyance is used. The conveyance shall be rested on chairs or blocked at least once every seven operating days to test mechanical linkage.

48. It is proposed to add a new mandatory standard 55.19-17 as follows:

55.19-17 *Mandatory.* MNMSAC.—Each electric hoist shall be equipped with a manually-operable switch that will initiate emergency braking action to bring the conveyance and the counterbalance safely to rest. This switch shall be located within reach of the hoistman in case the manual controls of the hoist fail.

49. It is proposed to add a new mandatory standard 55.19-18 as follows:

55.19-18 *Mandatory.* MNMSAC.—An overtravel by-pass switch shall be installed on hoists, where necessary, that will allow the conveyance to travel through the overtravel position when the switch is held in the closed position by the hoistman. The overtravel by-pass switch shall return automatically to the open position when released by the hoistman.

50. It is proposed to revoke advisory standard 55.19-27 MNMSAC.

51. It is proposed to revise advisory standard 55.19-36 and make it mandatory as follows:

55.19-36 *Mandatory.*—Headframes shall be high enough to provide clearance for overtravel and safe stopping of the conveyances. This clearance shall be not less than 15 feet from the bottom of the sheaves or drum and the uppermost part of the highest rope connection of the conveyance when the conveyance is at its uppermost man-landing.

52. It is proposed to revise advisory standard 55.19-37 and make it mandatory as follows:

55.19-37 *Mandatory.*—Fleet angles shall not be greater than 1½ degrees. Fleet angles shall be not less than ½ degree unless a rope guiding device is used.

53. It is proposed to revise advisory standard 55.19-39 and make it mandatory as follows:

55.19-39 *Mandatory.*—Minimum diameters of head sheaves and hoist drums shall conform to the following specifications:

Rope construction	*Diameter of sheaves and drum times rope diameter*
6×7 Classification	72
6×17 Seale	56
6×19 Seale	51
6×21 Filler wire	45
6×25 Filler wire	41
6×31	38
6×37	33
6×25 type B, flattened strand	45
6×27 type H, flattened strand	45
6×30 type G, flattened strand	45
8×29 Seale	36
8×19 Warrington	31
18×7	51

Drum and sheave diameters shall comply with the rope manufacturer's recommendations for man hoisting applications when ropes of other constructions are used.

54. It is proposed to revise advisory standard 55.19-40 and make it mandatory as follows:

55.19-40 *Mandatory.* MNMSAC.—Head, idler, knuckle, and curve sheaves shall have grooves of proper contour for the specific rope diameter used.

55. It is proposed to revise mandatory standard 55.19-50 as follows:

55.19–50 *Mandatory.* MNMSAC.—Buckets used to hoist persons during vertical shaft sinking operations shall:

(a) Be securely attached to a crosshead when traveling in either direction between the lower and upper crosshead parking locations;

(b) Have overhead protection when the shaft depth exceeds 50 feet;

(c) Have sufficient depth or a suitably designed platform to transport persons safely in a standing position;

(d) Have devices to prevent accidental dumping where the bucket is supported by a bail attached to its lower half.

56. It is proposed to revise mandatory standard 55.19–54 as follows:

55.19–54 *Mandatory.* MNMSAC.—Where rope guides are used in shafts other than in shaft sinking operations, the rope guides shall be of a type of lock coil construction.

57. It is proposed to revise advisory standard 55.19–56 and make it mandatory as follows:

55.19–56 *Mandatory.* MNMSAC.—When automatic hoisting is used, a competent operator of the hoist shall be readily available at or near the hoisting device while any person is underground.

58. It is proposed to revise advisory standard 55.19–57 and make it mandatory as follows:

55.19–57 *Mandatory.* MNMSAC.—No person shall operate a hoist unless within the preceeding 12 months he has had a medical examination by a qualified, licensed physician who shall certify his fitness to perform this duty. Such certification shall be available at the mine.

59. It is proposed to revoke advisory standard 55.19–60. MNMSAC.

60. It is proposed to revise advisory standard 55.19–61 and make it mandatory as follows:

55.19–61 *Mandatory.* MNMSAC.—The safe speed for hoisting men shall be determined for each shaft, and this speed shall not be exceeded. Men shall not be hoisted at a speed faster than 2,500 feet per minute except in an emergency.

61. It is proposed to revise advisory standard 55.19–62 and make it mandatory as follows:

55.19–62 *Mandatory.* MNMSAC.—Maximum normal operating acceleration and deceleration shall not exceed 6 feet per second per second. During emergency braking, the deceleration shall not exceed 16 feet per second per second.

62. It is proposed to revise advisory standard 55.19–66 and make it mandatory as follows:

55.19–66 *Mandatory.* MNMSAC.—In shafts inclined over 45 degrees, management shall determine and post in the conveyance or at each shaft station the maximum number of persons permitted to ride in a hoisting conveyance at any one time. Each person shall be provided a minimum of 1.5 square feet of floor space.

63. It is proposed to revise advisory standard 55.19–67 and make it mandatory as follows:

55.19–67 *Mandatory.*—During shift changes, an authorized person shall be in charge of each man trip.

64. It is proposed to revise advisory standard 55.19–68 and make it mandatory as follows:

55.19–68 *Mandatory.* MNMSAC.—Men shall enter, ride, and leave conveyances in an orderly manner.

65. It is proposed to revise advisory standard 55.19–72 and make it mandatory as follows:

55.19–72 *Mandatory.*—When combinations of cages and skips are used in the same compartment, the skips shall be empty while men are being transported.

66. It is proposed to revise advisory standard 55.19–74 and make it mandatory as follows:

55.19–74 *Mandatory.*—Men shall not ride the bail, rim, bonnet, or crosshead of any shaft conveyance.

67. It is proposed to revise advisory standard 55.19–76 and make it mandatory as follows:

55.19–76 *Mandatory.* MNMSAC.—When men are hoisted, bucket speeds shall not exceed 500 feet per minute, and shall not exceed 200 feet per minute when within 100 feet of the intended station.

68. It is proposed to revise advisory standard 55.19–81 and make it mandatory as follows:

55.19–81 *Mandatory.*—Conveyances controlled by a hoistman, when not in use, shall be released and the conveyance shall be raised or lowered at least 10 feet from the floor of the landing.

69. It is proposed to add a new mandatory standard 55.19–83 as follows:

55.19–83 *Mandatory.* MNMSAC.—A manually operated device shall be installed on each electric hoist that will allow the conveyance or counterbalance to be removed from an overtravel position. Such device shall not release the brake, or brakes, holding the overtravelled conveyance or counterbalance until sufficient drive motor torque has been developed to assure movement of the conveyance or counterbalance in the correct direction only.

70. It is proposed to revise advisory standard 55.19–91 and make it mandatory as follows:

55.19–91 *Mandatory.*—Hoistmen shall not accept hoisting instructions by voice communication unless the regular signaling systems are out of order. During such an emergency one authorized person shall be designated to direct movement of the conveyance.

71. It is proposed to revise advisory standard 55.19–93 and make it mandatory as follows:

55.19–93 *Mandatory.*—A standard code of hoisting signals shall be adopted and used at each mine. The movement of a shaft conveyance on a "one bell" signal shall be prohibited.

72. It is proposed to revise advisory standard 55.19–102 and make it mandatory as follows:

55.19–102 *Mandatory.* MNMSAC.—A means shall be provided to guide the movement of a shaft conveyance.

73. It is proposed to revise advisory standard 55.19–106 and make it mandatory as follows:

55.19–106 *Mandatory.* MNMSAC.—Shaft sets shall be kept in good repair and clean of hazardous material.

74. It is proposed to revise advisory standard 55.19–111 and make it mandatory as follows:

55.19–111 *Mandatory.* MNMSAC.—Substantial fixed ladders shall be provided from the collar to as near the shaft bottom as practical during shaft-sinking operations, or an escape hoist powered by an emergency power source shall be provided. When persons are on the shaft bottom, a chain ladder, wire rope ladder, or other extension ladders shall be used from the fixed ladder or lower limit of the escape hoist to the shaft bottom.

75. It is proposed to revise advisory standard 55.19–121 and make it mandatory as follows:

55.19–121 *Mandatory.* MNMSAC.—Complete records shall be kept for three years of inspections, tests, and maintenance of shafts and hoisting equipment.

76. It is proposed to revise advisory standard 55.19–122 and make it mandatory as follows:

55.19–122 *Mandatory.* MNMSAC.—Parts used to repair hoists shall have properties that will insure the proper and safe function of the hoist.

77. It is proposed to revise advisory standard 55.19–123 and make it mandatory as follows:

55.19–123 *Mandatory.* MNMSAC.—Wire ropes shall be lubricated or treated with dressing as recommended or approved by the rope manufacturer.

78. It is proposed to revise advisory standard 55.19–124 and make it mandatory as follows:

55.19–124 *Mandatory.*—Ropes other than those on friction hoists shall be cut off and reconnected to the conveyance at regular intervals at least five times during the anticipated life of the rope, or more frequently if inspection shows it necessary; cutoff intervals shall not exceed 6 months for ropes with life of more than 3 years. At least 6 feet shall be cut from the rope above the highest connection; this portion shall be examined for corrosion, damage, wear, and fatigue.

79. It is proposed to revise advisory standard 55.19–125 and make it mandatory as follows:

55.19–125 *Mandatory.*—Hoist ropes wound on the drum in multiple layers shall be cut off and repositioned on the drum at least three times during the anticipated life of the hoist rope to distribute wear at change of layers and crossover points. The length of the cutoff at the drum end shall be at least ¾ of a wrap and shall not be a whole number multiple of the circumference of the drum.

80. It is proposed to revise advisory standard 55.19–126 and make it mandatory as follows:

55.19–126 *Mandatory.*—Ropes shall be calipered at least every two months to effectively determine the rate of wear and damage. Caliper measurements shall be taken:

(a) Immediately above the socket or clips and above the safety connection.

(b) Where the ropes rest on the sheaves.

(c) Where the ropes leave the drums when the conveyances are at the regular stopping points.

(d) Where a layer of rope begins to overlap another layer on the drum.

(e) At 100-foot intervals; measurements shall be made midway between the last previously calipered points.

81. It is proposed to revoke advisory standard 55.19–127. MNMSAC.

82. It is proposed to revise advisory standard 55.19–130 and make it mandatory as follows:

55.19–130 *Mandatory.*—Empty man conveyances shall be operated up and down shafts at least one round trip before:

(a) Hoisting men after any shaft or related equipment repairs, and

(b) Regular man trips.

83. It is proposed to revise advisory standard 55.19–130 and make it mandatory as follows:

55.19–131 *Mandatory.*—Conveyance connections shall be inspected each day that they are in use.

84. It is proposed to revise advisory standard 55.19–132 and make it mandatory as follows:

55.19–132 *Mandatory.*—Safety catches shall be inspected daily; drop tests shall be made at the time of installation. Every operating day the cage shall be rested on chairs or proper blocking to check the operation or activation of the safety catches by allowing the rope to be slacked suddenly.

85. It is proposed to revise advisory standard 55.19–133 and make it mandatory as follows:

55.19–133 *Mandatory.* MNMSAC.—Operating shafts shall be inspected at least weekly. Idle shafts shall be inspected immediately before use.

86. It is proposed to revise advisory standard 55.19–134 and make it mandatory as follows:

55.19–134 *Mandatory.* MNMSAC.—Sheaves in operating shafts shall be inspected weekly and kept properly lubricated.

87. It is proposed to revise advisory standard 55.19–135 and make it mandatory as follows:

55.19–135 *Mandatory.* MNMSAC.—Rollers used in operating inclined shafts shall be lubricated, properly aligned, and kept in good repair.

§ 55.20 [Amended]

G. Section 55.20 "Miscellaneous" is proposed to be amended as follows:

88. It is proposed to revise mandatory standard 55.20–2 as follows:

55.20–2 Mandatory. MNMSAC.—An adequate supply of potable drinking water shall be provided at all active working areas.

(a) The common drinking cup and containera from which drinking water must be dipped or poured are prohibited.

(b) Where single service cups are supplied, a sanitary container for unused cups and a receptacle for used cups shall be provided.

(c) When water is cooled by ice, the ice shall either be of potable water or shall not come in contact with the water.

(d) Potable water outlets shall be posted.

(e) Potable water systems shall be constructed to prevent backflow or back-siphonage of non-potable water.

89. It is proposed to revise advisory standard 55.20–3 and make it mandatory as follows:

55.20–3 *Mandatory.* MNMSAC.—At all mining operations:

(a) Workplaces, passageways, storerooms, and service rooms shall be kept clean and orderly.

(b) The floor of every workplace shall be maintained in a clean and, so far as possible, a dry condition. Where wet processes are used, drainage shall be maintained, and false floors, platforms, mats, or other dry standing places shall be provided where practicable.

(c) Every floor, working place, and passageway shall be kept free from protruding nails, splinters, holes, or loose boards, as practicable.

90. It is proposed to add a new mandatory standard 55.20–11 as follows:

55.20–11 *Mandatory.* MNMSAC.—Areas where health or safety hazards exist that are not immediately obvious to employees shall be barricaded, or warning signs shall be posted at all approaches. Warning signs shall be readily visible, legible, display the nature of the hazard, and any protective action required.

91. It is proposed to add a new mandatory standard 55.20–12 as follows:

55.20–12 *Mandatory.* MNMSAC.—Toxic materials used in conjunction with or discarded from mining or milling of a product shall be plainly marked or labeled so as to positively identify the nature of the hazard and the protective action required.

92. It is proposed to add a new mandatory standard 55.20–13 as follows:

55.20–13 *Mandatory.* MNMSAC.—Receptacles with covers shall be provided and used for the disposal of waste food and associated materials. They shall be emptied frequently and shall be maintained in a clean and sanitary condition.

93. It is proposed to add a new mandatory standard 55.20–14 as follows:

55.20–14 *Mandatory.* MNMSAC.—No person shall be allowed to consume or store food or beverages in a toilet room nor in any area exposed to a toxic material.

PART 56—HEALTH AND SAFETY STANDARDS—SAND, GRAVEL, AND CRUSHED STONE OPERATIONS

§ 56.2 [Amended]

H. Section 56.2 "Definitions" is proposed to be amended as follows:

94. It is proposed to add a definition of "Circuit breaker" as follows:

Circuit breaker. MNMSAC.—"Circuit breaker" means a device designed to open and close a circuit by nonautomatic means and to open the circuit automatically on a predetermined overcurrent setting without injury to itself when properly applied within its rating.

95. It is proposed to add a definition of "Conductor" as follows:

Conductor. MNMSAC.—"Conductor" means a material, usually in the form of a wire, cable, or bus bar, capable of carrying an electric current.

96. It is proposed to add a definition of "Insulated" as follows:

Insulated. MNMSAC.—"Insulated" means separated from other conducting surfaces by a dielectric substance permanently offering a high resistance to the passage of current and to disruptive discharge through the substance. When any substance is said to be insulated, it is understood to be insulated in suitable manner for the conditions to which it is subjected. Otherwise, it is, within the purpose of this definition, uninsulated. Insulating covering is one means for making the conductor insulated.

97. It is proposed to add a definition of "Insulation" as follows:

Insulation. MNMSAC.—"Insulation" means a dielectric substance offering a high resistance to the passage of current and to the disruptive discharge through the substance.

98. It is proposed to add a definition of "Overcurrent" as follows:

Overcurrent. MNMSAC.—"Overcurrent" means an abnormal current that is greater than the full load value of the circuit.

99. It is proposed to add a definition of "Overload" as follows:

Overload. MNMSAC.—"Overload" means that current which will cause an excessive or dangerous temperature in the conductor or conductor insulation.

100. It is proposed to add a definition of "Short circuit" as follows:

Short circuit. MNMSAC.—"Short circuit" means an abnormal connection of relatively low resistance, whether made accidentally or intentionally, between two points of different potential in a circuit.

§ 56.3 [Amended]

1. Section 56.3 "Ground control" is proposed to be amended as follows:

101. It is proposed to revise and renumber advisory standard 56.3–11 and make it mandatory as follows:

56.3–50 *Mandatory.* MNMSAC.—Material, other than hanging material, to be broken by secondary drilling and blasting, or by any other method shall be positioned or blocked to prevent hazardous movement before persons commence breaking operations. Persons who perform those operations shall work from a location where, if movement of material occurs, those persons will not be endangered.

102. It is proposed to add a new mandatory standard 56.3–51 as follows:

56.3–51 *Mandatory.* MNMSAC.—A scaling bar of sufficient length to place the user out of danger of falling material shall be provided at each working place, where manual scaling may be required. The scaling bar shall be blunt on one end. Picks or other short tools shall not be used for scaling when their use places the user in danger of falling material.

103. It is proposed to add a new mandatory standard 56.3–52 as follows:

56.3–52 *Mandatory.*—When rock bolting is a part of the mining cycle, rock bolts shall be installed as soon as possible after an area is exposed. Blasting shall be scheduled so that a minimal time will elapse between exposure of ground by blasting and installation of bolts.

104. It is proposed to add a new mandatory standard 56.3–53 as follows:

56.3–53 *Mandatory.* MNMSAC.—Rock-bolt installation requiring torquing shall be torqued to a value within the range determined from information of tests in the

strata in which the rock bolt assembly is used. In no case shall installation torques cause bolt tensions that would exceed the yield point or anchorage capacity of the rock bolt assembly being used.

105. It is proposed to add a new mandatory standard 56.3–54 as follows:

56.3–54 *Mandatory.* MNMSAC. — When rock bolts are used as a means of ground support, anchorage pull-test procedures shall be established and tests shall be conducted to determine anchorage capacity of rock-bolt installations. Test results shall be set forth in writing and made available to the Secretary or his duly authorized representative.

106. It is proposed to add a new mandatory standard 56.3–55 as follows:

56.3–55 *Mandatory.* MNMSAC.—In installing point-anchor rock bolts:

(a) A torque test shall be conducted on at least every fourth installed bolt.

(b) Torque testing shall be conducted immediately after bolt installation.

(c) If the recommended torque has not been achieved, the equipment used to install the bolt shall be adjusted and the next bolt installed shall then be tested.

(d) If the recommended torque has not been achieved on the majority of bolts installed in a working place through equipment adjustment, supplemental support such as longer roof bolts with adequate anchorage, steel or wood sets, or cribs shall be installed.

107. It is proposed to add a new mandatory standard 56.3–56 as follows:

56.3–56 *Mandatory.* MNMSAC.—Rock bolt hole drill bits shall be easily identifiable by sight or feel and diameters shall be within a tolerance of ±0.030-inches of the manufacturer's recommended hole diameter for the anchor used.

108. It is proposed to add a new mandatory standard 56.3–57 as follows:

56.3–57 *Mandatory.* MNMSAC.—Washers if used in rock-bolt assemblies to reduce friction between the bolt head and the bearing plate shall:

(a) Have hardness in the range of 35–45 HRC (Hardness Rockwell C Scale).

(b) Conform to the shape of the bolt head and bearing plate.

(c) Have sufficient strength to withstand loads up to the yield point of the rock bolt.

109. It is proposed to add a new mandatory standard 56.3–58 as follows:

56.3–58 *Mandatory.*—Alignment compensating devices shall be placed between the bolt head and the bearing plate where the angle between the bolt axis and the normal to (perpendicular) the bearing plate surface is more than 5 degrees.

§ 56.9 [Amended]

J. Section 56.9 "Loading, hauling, dumping" is proposed to be amended as follows:

110. It is proposed to revoke advisory standard 56.9–18. MNMSAC.

111. It is proposed to revise advisory standard 56.9–35 and make it mandatory as follows:

56.9–35 *Mandatory.* MNMSAC.—Movements of two or more pieces of rail equipment operating independently on the same track shall be suitably controlled for safe operation.

112. It is proposed to revise advisory standard 56.9–46 and make it mandatory as follows:

56.9–46 *Mandatory.* MNMSAC.—Backpoling of trolleys shall be avoided wherever possible; but when necessary, backpoling shall be done only at slow speeds.

113. It is proposed to revise advisory standard 56.9–56 and make it mandatory as follows:

56.9–56 *Mandatory.* MNMSAC.—Where necessary, bumper blocks or the equivalent shall be provided at all track dead-ends.

114. It is proposed to revise advisory standard 56.9–57 and make it mandatory as follows:

56.9–57 *Mandatory.* MNMSAC.—Grizzlies, grates, and other stationary sizing devices shall be anchored securely.

115. It is proposed to add a new mandatory standard 56.9–72 as follows:

56.9–72 *Mandatory.* MNMSAC.—Persons attempting to free hangups shall be experienced persons who understand the hazards involved.

116. It is proposed to add a new mandatory standard 56.9–73 as follows:

56.9–73 *Mandatory.* MNMSAC.—Defective equipment, removed from service as unsafe to operate, shall be tagged to prohibit further use until repairs are completed.

K. Section 56.12 "Electricity" is proposed to be amended as follows:

117. It is proposed to revise mandatory standard 56.12–1 as follows:

56.12–1 *Mandatory.*—Electrical circuits and equipment shall be protected against overloads and short circuits by automatic-trip circuit breakers or fuses. Such circuit breakers or fuses shall be capable of interrupting overloads and short circuits without damage to the circuit or equipment. Overload protective devices shall open all ungrounded conductors of the circuit whenever any one conductor becomes overloaded. Thermal devices used to protect the equipment and circuits against overloads shall be backed up by short circuit protection.

118. It is proposed to revise mandatory standard 56.12–3 as follows:

56.12–3 *Mandatory.*—Individual overload and short-circuit protection shall be provided for the trailing cables of mobile equipment.

119. It is proposed to revise mandatory standard 56.12–5 as follows:

56.12–5 *Mandatory.* MNMSAC.—Mobile equipment shall not run over power conductors, nor shall load be dragged over power conductors, unless the conductors are properly bridged or protected.

120. It is proposed to revise advisory standard 56.12–6 and make it mandatory as follows:

56.12–6 *Mandatory.* MNMSAC.—Distribution boxes shall be provided with a disconnecting device for each branch circuit. Such disconnecting devices shall be equipped or designed in such a manner that it can be determined by visual observation that the circuit is deenergized when such devices are open, and shall be labeled to show which units they control.

121. It is proposed to revise advisory standard 56.12–8 and make it mandatory as follows:

56.12–8 *Mandatory.* MNMSAC.—Power wires and cables shall be insulated adequately where they pass into or out of electrical compartments. Cables shall enter metal frames of motors, splice boxes, and electrical compartments only through proper fittings. When insulated wires, other than cables, pass through metal frames, the holes shall be substantially bushed with insulated bushings.

122. It is proposed to revise advisory standard 56.12–10 and make it mandatory as follows:

56.12–10 *Mandatory.* MNMSAC.—Telephone and low-potential signal wire shall be protected, by isolation or additional insulation, from contacting energized power conductors or any other power source.

123. It is proposed to revise mandatory standard 56.12–11 as follows:

56.12–11 *Mandatory.* MNMSAC.—High-potential electrical conductors shall be covered, insulated, or placed to prevent contact with low potential conductors.

124. It is proposed to revise advisory standard 56.12–12 and make it mandatory as follows:

56.12–12 *Mandatory.* MNMSAC.—The potential on bare signal wires accessible to contact by persons shall not exceed 40 volts.

125. It is proposed to revise advisory standard 56.12–13 and make it mandatory as follows:

56.12–13 *Mandatory.* MNMSAC.—Permanent splices and repairs made in power cables, including the ground conductor where provided, shall be:

(a) Mechanically strong with electrical conductivity as near as possible to that of the original,

(b) Insulated to a degree at least equal to that of the original, and sealed to exclude moisture, and

(c) Provided with damage protection as near as possible to that of the original, including good bonding to the outer jacket.

126. It is proposed to revise mandatory standard 56.12–14 as follows:

56.12–14 *Mandatory.* MNMSAC.—Power cables energized to potentials in excess of 150 volts, phase-to-ground, shall not be moved with equipment unless sleds or slings, insulated from such equipment, are used. When such energized cables are moved manually, insulated hooks, tongs, ropes, or slings shall be used unless suitable protection for persons is provided by other means. This does not prohibit pulling or dragging of cable by the equipment it powers when the cable is physically attached to the equipment by suitable mechanical devices, and the cable is insulated from the equipment in conformance with other standards in this Part.

127. It is proposed to revise mandatory standard 56.12–16 as follows:

56.12–16 *Mandatory.* MNMSAC.—Electrical equipment shall be deenergized before work is done on such equipment. Power switches shall be locked out or other measures taken which shall prevent the equipment from being energized without the knowledge of the individuals working on it. Suitable warning notices shall be posted at the power switch and signed by the individuals who are to do the work. Such locks or preventive devices shall be removed only by the persons who installed them or by authorized personnel.

128. It is proposed to revise mandatory standard 56.12–28 as follows:

56.12–28 *Mandatory.* MNMSAC.—Continuity and resistance of grounding systems shall be tested immediately after installation, repair, and modification; and annually thereafter. A record of the most recent tests shall be made available to the Secretary.

129. It is proposed to revise advisory standard 56.12–34 and make it mandatory as follows:

56.12–34 *Mandatory.* MNMSAC.—Portable extension lights, and other lights that by their location present a shock or burn hazard, shall be guarded.

130. It is proposed to revise advisory standard 56.12–42 and make it mandatory as follows:

56.12–42 *Mandatory.* MNMSAC.—Both rails shall be bonded or welded at every joint and rails shall be crossbonded at least every 200 feet if the track serves as the return trolley circuit. When rails are moved, replace, or broken bonds are discovered, they shall be re-bonded within three working shifts.

131. It is proposed to revoke advisory standard 56.12–70, and to revise advisory standard 56.12–69 and make it mandatory as follows:

56.12–69 *Mandatory.* MNMSAC.—Each ungrounded power conductor or telephone wire directly exposed to lightning that leads underground shall be equipped with suitable lightning arrestors of approved type within 100 feet of the point where the circuit enters the mine. Lightning arrestors shall be conducted to a low resistance grounding medium on the surface and shall be separated from neutral grounds by a distance of not less than 25 feet.

§ 56.15 [Amended]

L. Section 56.15 "Personal protection" is proposed to be amended as follows:

132. It is proposed to revise advisory standard 56.15–6 and make it mandatory as follows:

56.15–6 *Mandatory.* MNMSAC.—Special protective equipment and clothing shall be provided, maintained in a sanitary and reliable condition and used whenever (1) hazards of process or environment, (2) chemical hazards, (3) radiological hazards, or (4) mechanical irritants are encountered in a manner capable of causing injury or impairment.

133. It is proposed to add a new mandatory standard 56.15–14 as follows:

46.15–14 *Mandatory.*—Quick-drenching facilities for flushing of the eyes and body shall be provided for immediate emergency use within the work area at operations where injurious corrosive materials are used or handled.

M. Section 56.19 Man hoisting is proposed to be amended as follows:

134. It is proposed to revise mandatory standard 56.19–7 as follows:

56.19–7 *Mandatory.*—All hoists shall be provided with devices to prevent overtravel. Hoists for shafts exceeding 100 feet in depth also shall be provided with overspeed devices:

(a) The overtravel devices shall:

(1) Be directly activated by the conveyance travel, or be directly driven from the hoist drum and synchronized with the movement of the conveyance;

(2) When activated, cause the hoist drum or traction wheel brakes to bring the conveyance to a safe stop; and

(3) Be provided with back-out switches.

(b) The overspeed devices shall:

(1) Be directly driven from the hoist drum;

(2) When activated, cause the hoist drum or traction wheel brakes to bring the conveyance to a safe stop;

(3) Activate the control at a setting not to exceed the rated man-hoisting speed by more than 15 percent; and

(4) Monitor effectively the speed of the conveyance at any point of its travel so that safe travel and safe stops can be effected.

135. It is proposed to revise advisory standard 56.19–8 and make it mandatory as follows:

56.19–8 *Mandatory* MNMSAC.—Where creep or slip may alter the effective position of safety devices, friction hoists shall be equipped with synchronizing mechanisms that recalibrate the overtravel devices and position indicators.

136. It is proposed to revise advisory standard 56.19–11 and make it mandatory as follows:

56.19–11 *Mandatory.* MNMSAC.—Flanges on drums shall extend radially a minimum of 4 inches or three rope diameters beyond the last wrap, whichever is the lesser.

137. It is proposed to revise advisory standard 56.19–12 and make it mandatory as follows:

56.19–12 *Mandatory.*—Where grooved drums are used, the grooves shall be of the proper size and pitch for the ropes used. When new rope is installed, the grooves of grooved drums shall be machined as needed to assure the size and pitch recommended by the manufacturer for the new rope.

138. It is proposed to add a new mandatory standard 56.19–14 as follows:

56.19–14 *Mandatory.* MNMSAC.—In a friction hoist installation, tapered guides or other approved devices shall be installed above and below the limits of regular travel of the conveyance and arranged to prevent overtravel in the event of failure of other devices.

139. It is proposed to add a new mandatory standard 56.19–15 as follows:

56.19–15 *Mandatory.*—Hooks, shackles, and other attachments that are used to connect a conveyance to the hoist rope shall be individually approved for strength as exceeding rated breaking strength of the rope to which the hook, shackle, or other attachment is connected by a factor of at least 10 percent. Hooks, shackles, and other attachments that have been modified or repaired shall be reapproved before returning to service. Proof of such approval for each hook, shackle, and other attachments in use shall be available for inspection by the Secretary or his duly authorized representative.

140. It is proposed to add a new mandatory standard 56.19–16 as follows:

56.19–16 *Mandatory.*—All cages and skips used for lowering or raising of persons in a mine shall comply with the following:

(a) When a bonnet is required, the bonnet shall be made of not less than three-sixteenths ($^3/_{16}$) inch steel plate or of a noncombustible material having equivalent strength.

(b) The cage or skip shall be provided with not less than one-eighth ($^1/_8$) inch sheet iron or steel side casing or a noncombustible material having equivalent strength.

(1) The side casing shall extend to a height of not less than five feet from the floor.

(2) The side casing shall have no openings through which a three-eighths ($^3/_8$) inch diameter rod will pass, excepting those openings that are necessary for signaling.

(c) The cage shall be equipped with a door, or doors, made of steel or other suitable noncombustible material that extends to a height of not less than five feet above the floor.

(1) All doors shall have no openings through which a three-eighths ($^3/_8$) inch diameter rod will pass, excepting those openings necessary for signaling, and they shall have a maximum clearance of two inches from the floor.

(2) All doors shall be arranged so that the doors cannot be opened outward from the cage.

(3) All doors shall be fitted with latches that will prevent accidental opening of a door.

(d) The bottom structural members and floor shall be constructed of steel or noncombustible material of sufficient strength to support the conveyance with maximum load at maximum emergency acceleration or deceleration.

(e) The conveyance shall be provided with an escape hatch in the top and/or an escape hatch in the side of the conveyance nearest the manway. Bonnets having a hinged moveable section weighing no more than 150 pounds may be considered as having escape hatches.

(f) Cages or skips suspended by a single hoisting rope shall be provided with safety catches. These safety catches shall:

(1) Be of sufficient strength to safely stop and hold the conveyance with its maximum passenger load at any point in the shaft from the maximum man hoisting speed. The deceleration rate shall not exceed 3 times the acceleration due to gravity (3g's).

(2) Be performance tested before the conveyance is used to hoist men.

(3) Be visually inspected by a competent person each shift before the conveyance is used. The conveyance shall be rested on chairs or blocked at least once every seven operating days to test mechanical linkage.

141. It is proposed to add a new mandatory standard 56.19–17 as follows:

56.19–17 *Mandatory.* MNMSAC. — Each electric hoist shall be equipped with a manually-operable switch that will initiate emergency braking action to bring the conveyance and the counterbalance safely to rest. This switch shall be located within reach of the hoistman in case the manual controls of the hoist fail.

142. It is proposed to add a new mandatory standard 56.19–18 as follows:

56.19–18 *Mandatory.* MNMSAC.—An overtravel by-pass switch shall be installed on hoists, where necessary, that will allow the conveyance to travel through the overtravel position when the switch is held in the closed position by the hoistman. The overtravel by-pass switch shall return automatically to the open position when released by the hoistman.

143. It is proposed to revoke advisory standard 56.19–27. MNMSAC.

144. It is proposed to revise advisory standard 56.19–35 and make it mandatory as follows:

56.19–36 *Mandatory.*—Headframes shall be high enough to provide clearance for overtravel and safe stopping of the conveyances. This clearance shall be not less than 15 feet from the bottom of the sheaves or drum and the uppermost part of the highest rope connection of the conveyance when the conveyance is at its uppermost man-landing.

145. It is proposed to revise advisory standard 56.19–37 and make it mandatory as follows:

56.19–37 *Mandatory.*—Fleet angles shall not be greater than 1½ degrees. Fleet angles shall be not less than ½ degree unless a rope guiding device is used.

146. It is proposed to revise advisory standard 56.19–39 and make it mandatory as follows:

56.19–39 *Mandatory.*—Minimum diameters of head sheaves and hoist drums shall conform to the following specifications:

Rope construction:	*Diameter of sheaves and drum times rope diameter*
6×7 Classification	72
6×17 Seale	56
6×19 Seale	51
6×21 Filler wire	45
6×25 Filler wire	41
6×31	38
6×37	33
6×25 type B, flattened strand	45
6×27 type H, flattened strand	45
6×30 type G, flattened strand	45
8×29 Seale	36
8×19 Warrington	31
18×7	51

Drum and sheave diameters shall comply with the rope manufacturer's recommendations for man hoisting applications when ropes of other constructions are used.

147. It is proposed to revise advisory standard 56.19–40 and make it mandatory as follows:

56.19–40 *Mandatory.* MNMSAC.—Head, idler, knuckle, and curve sheaves shall have grooves of proper contour for the specific rope diameter used.

148. It is proposed to revise mandatory standard 56.19–50 as follows:

56.19–50 *Mandatory.* MNMSAC.—Buckets used to hoist persons during vertical shaft sinking operations shall:

(a) Be securely attached to a crosshead when traveling in either direction between the lower and upper crosshead parking locations;

(b) Have overhead protection when the shaft depth exceeds 50 feet;

(c) Have sufficient depth or a suitably designed platform to transport persons safely in a standing position;

(d) Have devices to prevent accidental dumping where the bucket is supported by a bail attached to its lower half.

149. It is proposed to revise mandatory standard 56.19–54 as follows:

56.19–54 *Mandatory.* MNMSAC.—Where rope guides are used in shafts other than in shaft sinking operations, the rope guides shall be of a type of lock coil construction.

150. It is proposed to revise advisory standard 56.19–56 and make it mandatory as follows:

56.19–56 *Mandatory.* MNMSAC.—When automatic hoisting is used, a competent operator of the hoist shall be readily available at or near the hoisting device while any person is underground.

151. It is proposed to revise advisory standard 56.19–57 and make it mandatory as follows:

56.19–57 *Mandatory.* MNMSAC.—No person shall operate a hoist unless within the preceeding 12 months he has had a medical examination by a qualified, licensed physician who shall certify his fitness to perform this duty. Such certification shall be available at the mine.

152. It is proposed to revoke advisory standard 56.19–60. MNMSAC.

153. It is proposed to revise advisory standard 56.19–61 and make it mandatory as follows:

56.19–61 *Mandatory.* MNMSAC.—The safe speed for hoisting men shall be determined for each shaft, and this speed shall not be exceeded. Men shall not be hoisted at a speed faster than 2,500 feet per minute except in an emergency.

154. It is proposed to revise advisory standard 56.19–62 and make it mandatory as follows:

56.19—62 *Mandatory.* MNMSAC.—Maximum normal operating acceleration and deceleration shall not exceed 6 feet per second per second. During emergency braking, the deceleration shall not exceed 16 feet per second per second.

155. It is proposed to revise advisory standard 56.19–66 and make it mandatory as follows:

56.19–66 *Mandatory.* MNMSAC.—In shafts inclined over 45 degrees, management shall determine and post in the conveyance or at each shaft station the maximum number of persons permitted to ride in a hoisting conveyance at any one time. Each person shall be provided a minimum of 1.5 square feet of floor space.

156. It is proposed to revise advisory standard 56.19–67 and make it mandatory as follows:

56.19–67 *Mandatory*—During shift changes, an authorized person shall be in charge of each man trip.

157. It is proposed to revise advisory standard 56.19–68 and make it mandatory as follows:

56.19–68 *Mandatory.* MMMSAC.—Men shall enter, ride, and leave conveyances in an orderly manner.

158. It is proposed to revise advisory standard 56.19–72 and make it mandatory as follows:

56.19–72 *Mandatory.*—When combinations of cages and skips are used in the same compartment, the skips shall be empty while men are being transported.

159. It is proposed to revise advisory standard 56.19–74 and make it mandatory as follows:

56.19–74 *Mandatory.*—Men shall not ride the bail, rim, bonnet, or crosshead of any shaft conveyance.

160. It is proposed to revise advisory standard 56.19–76 and make it mandatory as follows:

56.19–76 *Mandatory.* MNMSAC.—When men are hoisted, bucket speeds shall not exceed 500 feet per minute, and shall not exceed 200 feet per minute when within 100 feet of the intended station.

161. It is proposed to revise advisory standard 56.19–81 and make it mandatory as follows:

56.19–81 *Mandatory.*—Conveyances controlled by a hoistman, when not in use, shall be released and the conveyance shall be raised or lowered at least 10 feet from the floor of the landing.

162. It is proposed to add a new mandatory standard 56.19–83 as follows:

56.19–83 *Mandatory.* MNMSAC.—A manually operated device shall be installed on each electric hoist that will allow the conveyance or counterbalance to be removed from an overtravel position. Such device shall not release the brake, or brakes, holding the overtravelled conveyance or counterbalance until sufficient drive motor torque has been developed to assure movement of the conveyance or counterbalance in the correct direction only.

163. It is proposed to revise advisory standard 56.19–91 and make it mandatory as follows:

56.19–91 *Mandatory.*—Hoistmen shall not accept hoisting instructions by voice communication unless the regular signaling systems are out of order. During such an emergency one authorized person shall be designated to direct movement of the conveyance.

164. It is proposed to revise advisory standard 56.19–93 and make it mandatory as follows:

56.19–93 *Mandatory.*—A standard code of hoisting signals shall be adopted and used at each mine. The movement of a shaft conveyance on a "one bell" signal shall be prohibited.

165. It is proposed to revise advisory standard 56.19–102 and make it mandatory as follows:

56.19–102 *Mandatory.* MNMSAC.—A means shall be provided to guide the movement of a shaft conveyance.

166. It is proposed to revise advisory standard 56.19–106 and make it mandatory as follows:

56.19–106 *Mandatory.* MNMSAC.—Shaft sets shall be kept in good repair and clean of hazardous material.

167. It is proposed to revise advisory standard 56.19–111 and make it mandatory as follows:

56.19–111 *Mandatory.* MNMSAC.—Substantial fixed ladders shall be provided from the collar to as near the shaft bottom as practical during shaft-sinking operations, or an escape hoist powered by an emergency power source shall be provided. When persons are on the shaft bottom, a chain ladder, wire rope ladder, or other extension ladders shall be used from the fixed ladder or lower limit of the escape hoist to the shaft bottom.

168. It is proposed to revise advisory standard 56.19–121 and make it mandatory as follows:

56.19–121 *Mandatory.* MNMSAC.—Complete records shall be kept for three years of inspections, tests, and maintenance of shafts and hoisting equipment.

169. It is proposed to revise advisory standard 56.19–122 and make it mandatory as follows:

56.19–122 *Mandatory.* MNMSAC.—Parts used to repair hoists shall have properties that will insure the proper and safe function of the hoist.

170. It is proposed to revise advisory standard 56.19–123 and make it mandatory as follows:

56.19–123 *Mandatory.* MNMSAC.—Wire ropes shall be lubricated or treated with dressing as recommended or approved by the rope manufacturer.

171. It is proposed to revise advisory standard 56.19–124 and make it mandatory as follows:

56.19–124 *Mandatory.*—Ropes other than those on friction hoists shall be cut off and reconnected to the conveyance at regular intervals at least five times during the anticipated life of the rope, or more frequently if inspection shows it necessary; cutoff intervals shall not exceed 6 months for ropes with life of more than 3 years. At least 6 feet shall be cut from the rope above the highest connection; this portion shall be examined for corrosion, damage, wear, and fatigue.

172. It is proposed to revise advisory standard 56.19–125 and make it mandatory as follows:

56.19–125 *Mandatory.*—Hoist ropes wound on the drum in multiple layers shall be cut off and repositioned on the drum at least three times during the anticipated life of the hoist rope to distribute wear at change of layers and crossover points. The length of the cutoff at the drum end shall be at least ¾ of a wrap and shall not be a whole number multiple of the circumference of the drum.

173. It is proposed to revise advisory standard 56.19–126 and make it mandatory as follows:

56.19–126 *Mandatory.*—Ropes shall be calipered at least every two months to effectively determine the rate of wear and damage. Caliper measurements shall be taken:

(a) Immediately above the socket or clips and above the safety connection.

(b) Where the ropes rest on the sheaves.

(c) Where the ropes leave the drums when the conveyances are at the regular stopping points.

(d) Where a layer of rope begins to overlap another layer on the drum.

(e) At 100-foot intervals; measurements shall be made midway between the last previously calipered points.

174. It is proposed to revoke advisory standard 56.19–127. MNMSAC.

175. It is proposed to revise advisory standard 56.19–130 and make it mandatory as follows:

56.19–130 *Mandatory.*—Empty man conveyances shall be operated up and down shafts at least one round trip before:

(a) Hoisting men after any shaft or related equipment repairs, and

(b) Regular man trips.

176. It is proposed to revise advisory standard 56.19–131 and make it mandatory as follows:

56.19–131 *Mandatory.*—Conveyance connections shall be inspected each day that they are in use.

177. It is proposed to revise advisory standard 56.19–132 and make it mandatory as follows:

56.19–132 *Mandatory.*—Safety catches shall be inspected daily; drop tests shall be made at the time of installation. Every operating day the cage shall be rested on chairs or proper blocking to check the operation or activation of the safety catches by allowing the rope to be slacked suddenly.

178. It is proposed to revise advisory standard 56.19–133 and make it mandatory as follows:

56.19–133 *Mandatory.* MNMSAC.—Operating shafts shall be inspected at least weekly. Idle shafts shall be inspected immediately before use.

179. It is proposed to revise advisory standard 56.19–134 and make it mandatory as follows:

56.19–134 *Mandatory.* MNMSAC.—Sheaves in operating shafts shall be inspected weekly and kept properly lubricated.

180. It is proposed to revise advisory standard 56.19–135 and make it mandatory as follows:

56.19–135 *Mandatory.* MNMSAC.—Rollers used in operating inclined shafts shall be lubricated, properly aligned, and kept in good repair. N. Section 56.20 "Miscellaneous" is proposed to be amended as follows:

181. It is proposed to revise mandatory standard 56.20–2 as follows:

56.20–2 *Mandatory.* MNMSAC.—An adequate supply of potable drinking water shall be provided at all active working areas.

(a) The common drinking cup and containers from which drinking water must be dipped or poured are prohibited.

(b) Where single service cups are supplied, a sanitary container for unused cups and a receptacle for used cups shall be provided.

(c) When water is cooled by ice, the ice shall either be of potable water or shall not come in contact with the water.

(d) Potable water outlets shall be posted.

(e) Potable water systems shall be constructed to prevent backflow or back-siphonage of non-potable water.

182. It is proposed to revise advisory standard 56.20–3 and make it mandatory as follows:

56.20–3 *Mandatory.* MNMSAC.—At all mining operations:

(a) Workplaces, passageways, storerooms, and service rooms shall be kept clean and orderly.

(b) The floor of every workplace shall be maintained in a clean and, so far as possible, a dry condition. Where wet processes are used, drainage shall be maintained, and false floors, platforms, mats, or other dry standing places shall be provided where practicable.

(c) Every floor, working place, and passageway shall be kept free from protruding nails, splinters, holes, or loose boards, as practicable.

183. It is proposed to add a new mandatory standard 56.20–11 as follows:

56.20–11 *Mandatory.* MNMSAC.—Areas where health or safety hazards exist that are not immediately obvious to employees shall be barricaded, or warning signs shall be posted at all approaches. Warning signs shall be readily visible, legible, display the nature of the hazard, and any protective action required.

184. It is proposed to add a new mandatory standard 56.20–12 as follows:

56.20–12 *Mandatory.* MNMSAC.—Toxic materials used in conjunction with or discarded from mining or milling of a product shall be plainly marked or labeled so as to positively identify the nature of the hazard and the protective action required.

185. It is proposed to add a new mandatory standard 56.20–13 as follows:

56.20–13 *Mandatory.* MNMSAC.—Receptacles with covers shall be provided and used for the disposal of waste food and associated materials. They shall be emptied frequently and shall be maintained in a clean and sanitary condition.

186. It is proposed to add a new mandatory standard 56.20–14 as follows:

56.20–14 *Mandatory.* MNMSAC.—No person shall be allowed to consume or store food or beverages in a toilet room nor in any area exposed to a toxic material.

PART 57—HEALTH AND SAFETY STANDARDS—METAL AND NONMETALLIC UNDERGROUND MINES

§ 57.2 [Amended]

O. Section 57.2 "Definitions" is proposed to be amended as follows:

187. It is proposed to add a definition of "Attended equipment" which is applicable to Part 57 only as follows:

Attended equipment. MNMSAC.—"Attended equipment" means any machine or device regularly operated by a miner assigned to operate such machine or device, or any machine or device which is mounted in a direct line of sight of a jobsite which is located within 500 feet of such machine or device, and which jobsite is regularly occupied by a miner assigned to perform job duties at such jobsite during each production shift.

188. It is proposed to add a definition of "Circuit breaker" as follows:

"Circuit breaker" MNMSAC.—"Circuit breaker" means a device designed to open and close a circuit by nonautomatic means and to open the circuit automatically on a predetermined overcurrent setting without injury to itself when properly applied within its rating.

189. It is proposed to add a definition of "Conductor" as follows:

Conductor. MNMSAC.—"Conductor" means a material, usually in the form of a wire, cable, or bus bar, capable of carrying an electric current.

190. It is proposed to add a definition which is applicable to Part 57 only as follows:

Fire door. MNMSAC.—"Fire door" means an openable closure for a passageway, shaft or other mine opening to serve as barrier to fire, the effects of fire, and air leakage. A fire door shall have a fire resistance rating of 1½ hours or greater and, on exposure to fire on one side for 30 minutes, the temperature on the unexposed side shall not exceed 250° F. as determined by a nationally

recognized testing agency in accordance with "Standard Method of Fire Tests of Door Assemblies", National Fire Protection Association (NFPA) Code No. 252, 1972, or equivalent. The framework assembly of a fire door and the surrounding bulkhead, if any, shall be at least equivalent to the fire door in fire and air-leakage resistance, and in physical strength. NFPA Code No. 252 is hereby incorporated by reference and made a part hereof. This publication may be examined in any Metal and Nonmetal Mine Health and Safety Subdistrict Office, Mining Enforcement and Safety Administration, or may be obtained from the National Fire Protection Association, 470 Atlantic Avenue, Boston, MA 02210.

191. It is proposed to add a definition of "Insulated" as folows:

Insulated. MNMSAC.—"Insulated" means separated from other conducting surfaces by a dielectric substance permanently offering a high resistance to the passage of current and to disruptive discharge through the substance. When any substance is said to be insulated, it is understood to be insulated in suitable manner for the conditions to which it is subjected. Otherwise, it is, within the purpose of this definition, uninsulated. Insulating covering is one means for making the conductor insulated.

192. It is proposed to add a definition of "Insulation" as follows:

Insulation. MNMSAC.—"Insulation" means a dielectric substance offering a high resistance to the passage of current and to disruptive discharge through the substance.

193. It is proposed to add a definition of "Overcurrent" as follows:

Overcurrent. MNMSAC.—"Overcurrent" means an abnormal current that is greater than the full load value of the circuit.

194. It is proposed to add a definition of "Overload" as follows:

Overload. MNMSAC.—"Overload" means that current which will cause an excessive or dangerous temperature in the conductor or conductor insulation.

195. It is proposed to add a definition of "Short circuit" as follows:

Short circuit. MNMSAC.—"Short circuit" means an abnormal connection of relatively low resistance, whether made accidentally or intentionally, between two points of different potential in a circuit.

§ 57.3 [Amended]

P. Section 57.3 "Ground control" is proposed to be amended as follows:

196. It is proposed to revoke advisory standard 57.3–25 and revise advisory standard 57.3–26 which is applicable to underground only and make it mandatory as follows:

57.3–26 *Mandatory.* MNMSAC.—Timbers used for support of ground in active workings shall be set, blocked and/or wedged so that a tight fit is achieved. Damaged, loosened, or dislodged timbers which create a hazardous condition shall be promptly repaired or replaced.

197. It is proposed to revise advisory standard 57.3–33 which is applicable to underground only and make it mandatory as follows:

57.3–33 *Mandatory. MNMSAC.*—Calibrated torque meters or torque wrenches shall be available at mines where rock bolts are used for ground control. Periodic tests shall be made to determine the torque meter or torque wrench accuracy.

198. It is proposed to add a new mandatory standard 57.3–34 which is applicable to underground only as follows:

57.3–34 *Mandatory.*—Each operator shall develop and set out in written form a ground control plan suitable to the current conditions and mining systems or proposed mining systems of the mine. Within 45 calendar days after promulgation of this standard, a copy of the plan and any revisions thereof shall be submitted for approval to the Secretary or his authorized representative. Upon approval the plan shall be adopted by the operator. Each approved and adopted plan shall be updated as necessary and each updated plan shall be submitted for approval to the Secretary or his authorized representative. Upon approval the updated plan shall be adopted by the operator. Each approved plan or updated plan shall be reviewed jointly by the operator and the Secretary or his authorized representative at least every twelve months from the last date of approval.

The ground control plan shall include where applicable:

(a) A general description of the structural geology of the mine including location, orientation, and geologic description of major structural defects.

(b) A mine map showing a plan view of each level in the mine and identifying all workings and their elevations.

(c) A description of the mining method(s) and/or procedure(s) used. Included would be:

(1) Dimensions and shape(s) of planned and designed openings;

(2) Chronology of ongoing development and mining, including the time delay between creation of an unsupported opening and installation of support; and

(3) Method of rock breakage including depth of round, spacing and angling of drill holes, explosives used, powder factor, and type of detonator and primer.

(d) The methods and procedures for installing permanent or temporary support. Information shall include:

(1) The support type, e.g., rock bolting, timbering, backfill;

(2) Normally planned spacing of support units;

(3) Step-by-step description of installation procedures;

(4) Parameters of preparation and fit which are to be followed to insure maximum support; and

(5) Equipment used in the installation and testing of rock bolts.

(e) A listing of and specifications for materials used for artificial support. Dimensions, quality, and rated strengths of such materials shall be given. Materials and mixes thereof utilized in the composition of sealants, sprayed concretes, grouts, or backfill should be described relative to quality, shelf life, and in-place strengths.

(f) Scaling methods, procedures, and equipment. Required information includes:

(1) The technique and practice to be followed by workers during scaling done as a part of the normal mining cycle;

(2) Methods and procedures to conduct scaling operations as a part of repair and salvage of damaged walls and backs of mine openings; and

(3) A listing of types of equipment used specifically for scaling.

(g) Policy and practice to be followed in the supervision of scaling operations and inspection for loose ground and unsafe working conditions in back, face, and ribs of working places.

(h) Method(s) for monitoring ground movement including types of instruments to be used together with their sensitivities and ranges; the frequency of readings; and the relationship between the extent of movement and fall-of-ground hazards.

(i) Proposed training. Plans shall be specified for training all persons engaged in scaling and in ground support installation and operation of related mining equipment.

(j) Method of company official reporting and recording of failures and falls of ground. Information shall include the type, magnitude, and cause, when possible, of a fall of ground or support failure, and the remedial action to be taken.

199. It is proposed to add a new mandatory standard 57.3–35 which is applicable to underground only as follows:

57.3–35 *Mandatory.* MNMSAC.—Operators of mines that have experienced rock bursts within the mine shall develop a comprehensive rock burst detection plan applicable to current conditions in that mine within 90 days after promulgation of this standard or, thereafter, within 90 days after a rock burst has been experienced. This plan shall be updated from time to time as conditions and available technology warrant. This comprehensive rock burst detection plan shall be available to the Secretary or his designated representative and to mine employees.

200. It is proposed to reserve numbers 57.3–36 through 57.3–49, and to add a new center subheading in section 57.3 as follows:

(a) Numbers 57.3–36 through 57.3–49 under the present center subheading are reserved.

(b) A new center subheading entitled "General—Surface and Underground" immediately below the reserved numbers 57.3–36 through 57.3–49.

As proposed the reserved standard numbers and center subheadings will read as follows:

• • • • •

UNDERGROUND ONLY

• • • • •

57.3–36 through 57.3–49 [Reserved].

GENERAL—SURFACE AND UNDERGROUND

• • • • •

201. It is proposed to revise and renumber advisory standard 57.3–11 which is applicable to surface and underground and make it mandatory as follows:

57.3–50 *Mandatory.* MNMSAC.—Material, other than hanging material, to be broken by secondary drilling and blasting, or by any other method shall be positioned or blocked to prevent hazardous movement before persons commence breaking operations. Persons who perform those operations shall work from a location where, if movement of material occurs, those persons will not be endangered.

202. It is proposed to revoke advisory standards 57.3–23 and 57.3–24 and to add a new mandatory standard 57.3–51 which is applicable to surface and underground as follows:

57.3–51 *Mandatory.* MNMSAC.—A scaling bar of sufficient length to place the user out of danger of falling material shall be provided at each working place, where manual scaling may be required. The scaling bar shall be blunt on one end. Picks or other short tools shall not be used for scaling when their use places the user in danger of falling material.

203. It is proposed to revoke advisory standard 57.3–32 and add a new mandatory standard 57.3–52 which is applicable to surface and underground as follows:

57.3–52 *Mandatory.*—When rock bolting is a part of the mining cycle, rock bolts shall be installed as soon as possible after an area is exposed. Blasting shall be scheduled so that a minimal time will elapse between exposure of ground by blasting and installation of bolts.

204. It is proposed to add a new mandatory standard 57.3–3 which is applicable to surface and underground as follows:

57.3–53 *Mandatory.* MNMSAC.—Rock-bolt installation requiring torquing shall be torqued to a value within the range determined from information of tests in the strata in which the rock bolt assembly is used. In no case shall installation torques cause bolt tensions that would exceed the yield point or anchorage capacity of the rock bolt assembly being used.

205. It is proposed to add a new mandatory standard 57.3–54 which is applicable to surface and underground as follows:

57.3–54 *Mandatory.* MNMSAC.—When rock bolts are used as a means of ground support, anchorage pull-test procedures shall be established and tests shall be conducted to determine anchorage capacity of rock-bolt installations. Test results shall be set forth in writing and made available to the Secretary or his duly authorized representative.

206. It is proposed to add a new mandatory standard 57.3–55 which is applicable to surface and underground as follows:

57.3–55 *Mandatory.* MNMSAC.—Rock-bolt stalling point-anchor rock bolts:

(a) A torque test shall be conducted on at least every fourth installed bolt.

(b) Torque testing shall be conducted immediately after bolt installation.

(c) If the recommended torque has not been achieved, the equipment used to install the bolt shall be adjusted and the next bolt installed shall then be tested.

(d) If the recommended torque has not been achieved on the majority of bolts installed in a working place through equipment adjustment, supplemental support such as longer roof bolts with adequate anchorage, steel or wood sets, or cribs shall be installed.

207. It is proposed to add a new mandatory standard 57.3–56 which is applicable to surface and underground as follows:

57.3–56 *Mandatory.* MNMSAC.—Rock bolt hole drill bits shall be easily identifiable by sight or feel and diameters shall be within a tolerance of ±0.030-inches of the manufacturer's recommended hole diameter for the anchor used.

208. It is proposed to add a new mandatory standard 57.3–57 which is applicable to surface and underground as follows:

57.3–57 *Mandatory. MNMSAC.*—Washers if used in rock-bolt assemblies to reduce friction between the bolt head and the bearing plate shall:

(a) Have hardness in the range of 35–45 HRC (Hardness Rockwell C Scale).

(b) Conform to the shape of the bolt head and bearing plate.

(c) Have sufficient strength to withstand loads up to the yield point of the rock bolt.

209. It is proposed to add a new mandatory standard 57.3–58 which is applicable to surface and underground as follows:

57.3–58 *Mandatory.*—Alignment compensating devices shall be placed between the bolt head and the bearing plate where the angle between the bolt axis and the normal to (perpendicular) the bearing plate surface is more than 5 degrees.

§ 57.4 [Amended]

Q. Section 57.4 "Fire prevention" and control is proposed to be amended as follows:

210. It is proposed to revise advisory standard 57.4–66 which is applicable to underground only and make it mandatory as follows:

57.4–66 *Mandatory.* — Automatically-actuated fire-suppression systems shall be installed at all conveyor belt drives, (including the drive motor, controls, reducing gears, and take-up units) and extend 50 feet along the conveyor belt from the drive drum for a flame-resistant belt which shall be approved under Part 18 of Title 30, or 150 feet for a nonflame-resistant belt.

211. It is proposed to add a new mandatory standard 57.4–87 which is applicable to underground only as follows:

57.4–87 *Mandatory.*—All attended internal-combustion engine-driven equipment shall be equipped with an installed fire-suppression system.

212. It is proposed to add a new mandatory standard 57.4–88 which is applicable to underground only as follows:

57.4–88 *Mandatory.*—All attended electrically powered equipment which uses nonfire-resistant hydraulic fluid shall be equipped with an installed fire-suppression system.

213. It is proposed to add a new mandatory standard 57.4–89 which is applicable to underground only as follows:

57.4–89 *Mandatory.* MNMSAC.—Unattended diesel-operated equipment shall be provided with an automatically-actuated fire-suppression system.

214. It is proposed to add a new mandatory standard 57.4–90 which is applicable to underground only as follows:

57.4–90 *Mandatory.* MNMSAC.—Unattended electric motors rated at 60 hp or more, or unattended electric motors of less than 60 hp associated with equivalents of one gallon or more of combustible liquid, 50 pounds of nonfire-retardant treated wood, or 10 pounds of plastic material shall be provided with an automatically-actuated fire-suppression system.

215. It is proposed to add a new mandatory standard 57.4–91 which is applicable to underground only as follows:

57.4–91 *Mandatory.* MNMSAC.—Automatically-actuated fire-suppression systems on unattended equipment shall meet the following criteria:

(a) Fire-suppression system; approved components; installation requirements:

(1) The components of each fire-suppression system shall be listed as approved by Factory Mutual Engineering Corporation or Underwriters Laboratories, Inc., or approved by the Secretary.

(2) Where used, pressure vessels shall be designed and constructed in accordance with one of the following: Nationally recognized testing laboratory standard, e.g., Underwriters Laboratories, Inc.; Federal agency standard, e.g., Department of Transportation; or American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code, Section VIII (1971).

(3) The cover of hose installed in fire-suppression systems, after the effective date of this standard, shall meet the flame-resistant requirements of Section 18.65, Part 18 of Title 30.

(4) Fire-suppression systems shall, where appropriate, be installed in accordance with the manufacturer's specifications.

(b) Sensors' requirements, and installation:

(1) Where fire-suppression devices are installed, one or more point-type sensors or equivalent shall be installed for each 50 square feet or fraction thereof of top surface area of such equipment. Each such sensor shall be designed to activate the fire-suppression system and to disconnect the electrical power source or to stop the internal combustion engine power to the equipment protected; and, except where sprinklers are used, there shall be in addition, a manual actuator installed to operate the fire-suppression system. Where sprinklers are used, provision shall also be made for manual application of water to the protected equipment.

(2) Sensors, where practicable, shall be installed in accordance with the recommendations set forth in National Fire Code No. 72A, "Local Protective Signaling Systems" (NFPA No. 72A–1974).

(3) If electrically operated sensors are used in fire-suppression systems, they shall operate independently of power to the main motor (or equivalent) or contain a standby power source so that the fire-suppression system will remain operative for at least four hours if the circuit breakers (or other protective devices) actuate.

(4) Sensor systems shall include a device or method for determining their operative condition.

(c) Capacity of fire-suppression devices; location and direction of nozzles;

(1) Each fire-suppression device shall be:

A. Adequate in size and capacity to extinguish potential fires in or on the equipment protected; and

B. Suitable for the atmospheric conditions surrounding the equipment protected (e.g., air velocity, type, and proximate combustible material); and

C. Rugged enough to withstand rough usage and vibration.

(2) The extinguishant-discharge nozzle of each fire-suppression system where practicable, shall be located so as to take advantage of mine ventilation air currents. The fire-suppression system may be of the internal injection, inundating, or combination type. Where fire control is achieved by internal injection, and inundation, hazardous locations shall be enclosed to minimize runoff and over-shoot of the extinguishing agent.

(d) Fire-suppression systems; water supply systems requirements:

(1) Fire-suppression systems using water or liquid chemical to protect unattended equipment shall:

A. Be limited to a pressure consistent with the pipe fittings, valves, and nozzles used in the system.

B. Be located so as to be protected against damage during operation of the equipment protected.

C. Employ liquid which is free from excessive sediment and is noncorrosive to the system.

D. Include strainers equipped with flushout connections or equivalent protective devices and a rising stem or other visual-indicator-type shut-off valve.

(2) Water for fire-suppression systems installed on underground equipment may be supplied from mounted water tanks or by connection to water mains. Such water supplies shall be continuously connected to the fire-suppression system whenever the equipment is connected to a power source.

(e) Water spray systems: capacity, water supply minimum requirements:

(1) Where water spray systems are used the rate of flow shall be at least 0.25 gallon per minute per square foot over the top surface area of the equipment and the supply of water shall be adequate to provide the required flow of water for 10 minutes.

(2) Liquid chemical, if used, shall be nontoxic, and when applied to fire shall not produce excessive toxic compounds. The quantity of liquid chemicals required shall be proportionately less than water as based on equivalency ratings made by a nationally-recognized testing agency acceptable to the Secretary.

(f) Dry chemical systems: capacity and minimum requirements:

Dry chemical fire extinguishing systems used on underground equipment shall be of the multipurpose powder type and shall include:

(1) The system, including all hose and nozzles, shall be protected against the entrance of moisture, dust, or dirt;

(2) The system shall be guarded against damage during operation of the equipment protected;

(3) Hose and pipe shall be as short as possible; the distance between the chemical container and furthest nozzle shall not exceed 50 feet;

(4) Hose, piping, and fittings between the actuator and the chemical container shall have a bursting pressure of 500 pounds per square inch (gage) or higher; the hose, piping, and fittings between the chemical container and the nozzles shall have a bursting pressure of 300 pounds per square inch (gage) or higher; and

(5) The system shall discharge in 1 minute or less, for quantities less than 50 pounds (nominal) [1] and in less than 2 minutes for quantities more than 50 pounds.

(6) On unattended underground equipment, the number of pounds of dry chemical employed by the system shall be not less than 1 pound per square foot of top surface area of the equipment; however, the minimum amount in any system shall be 20 pounds (nominal). The discharge shall be directed into and on potentially hazardous locations of the equipment.

(g) High expansion foam systems; minimum capacity requirements:

On unattended underground equipment, the amount of water delivered as high expansion foam for a period of approximately 20 minutes shall be not less than 0.06 gallon per minute per square foot of surface area of the equipment protected; provided, however, the minimum total rate for any system shall be not less than 3 gallons per minute.

(h) Inerting of mine atmosphere by total flooding prohibited:

No fire suppression device designed to control fire by total flooding with an inert gas shall be installed to protect unattended underground equipment except in enclosed dead-end entries or enclosed rooms.

(i) Fire-suppression systems; hazards; training of miners:

Each operator shall instruct all miners normally assigned to the active workings of the mine with respect to any hazards inherent in the operation of all fire-suppression systems used in those workings and, where appropriate, the safeguards available at each such installation.

(j) Inspection of fire-suppression systems:

(1) All fire-suppression systems shall be visually inspected at least once each week by a person competent to make such inspections.

(2) Each fire-suppression system shall be tested and maintained in accordance with the requirements specified in the appropriate National Fire Code listed for the type and kind of device used as follows:

National Fire Code No. 11A "High Expansion Foam Systems" (NFPA No. 11A–1970).

National Fire Code No. 13 "Installation of Sprinkler Systems" (NFPA No. 13–1974).

National Fire Code No. 15 "Water Spray Fixed Systems" (NFPA No. 15–1973).

National Fire Code No. 17 "Dry Chemical Systems" (NFPA No. 17–1973).

National Fire Code No. 72A "Local Protective Signaling Systems" (NFPA No. 72A–1974).

National Fire Code No. 198 "Care of Fire Hose" (NFPA No. 198–1972).

(3) A record of the inspections required by this section shall be maintained by the operator. The record of the weekly inspections shall be maintained at an appropriate location near each fire-suppression system.

(k) Incorporation by reference; availability of publications

Publications to which references are made in this standard are hereby incorporated by reference and made a part hereof. The incorporated publications are available for examination at each Metal and Nonmetal Mine Health and Safety Subdistrict Office of the Mining Enforcement and Safety Administration. National Fire Codes may be purchased from the National Fire Protection Association, 470 Atlantic Avenue, Boston, MA 02210. The Boiler and Pressure Vessel Code may be purchased from the American Society of Mechanical Engineers, 345 East 47th St., New York, NY 10017.

216. It is proposed to add a new mandatory standard 57.4–92 which is applicable to underground only as follows:

57.4–92 *Mandatory.* MNMSAC.—Fire-suppression systems on attended equipment shall meet the following criteria.

(a) Fire-suppression system, approved components, installation requirements are as follows:

(1) The components of each fire-suppression system, where appropriate, shall be listed as approved by Factory Mutual Engineering Corporation or Underwriters Laboratories or approved by the Secretary.

(2) Where used, pressure vessels shall be designed and constructed in accordance with one of the following: nationally recognized testing laboratory standard, e.g., Underwriters Laboratories, Inc.; Federal agency standard, e.g., Department of Transportation; or American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code, Section VIII (1971).

(3) The cover of hose installed in fire-suppression systems after the effective date of this standard shall meet the flame-resistant requirements of Section 18–65, Part 18 of Title 30.

(4) Two or more manual actuators, where practicable, shall be installed, as provided in subdivisions (5) and (6) of this subparagraph, to activate a fire-suppression system on attended equipment purchased on or after the effective date of this standard. At least one manual actuator shall be used on equipment purchased prior to the effective date of this standard.

(5) Manual actuators shall be located at different locations on the equipment, and at least one manual actuator shall be located within easy reach of the operator's normal operating position.

(6) Manual actuators to activate fire-suppression devices on attended equipment not regularly operated by a miner shall be installed at different locations, and at least one manual actuator shall be installed so as to be easily reached by the miner at the job site or by persons approaching the equipment.

(7) Where sprinklers are used, provisions shall be made for manual application of water to protected equipment in lieu of a manual actuator.

(b) Sensors: requirements and installation are as follows:

(1) Sensors, where practicable, shall be installed in accordance with the recommendations set forth in National Fire Code No. 72A "Local Protective Signaling Systems" (NFPA No. 72A–1974). On attended equipment powered through a trailing cable, the fire-suppression system shall operate independently of the electrical power provided by the cable.

(2) Point-type sensors (such as thermocouple, bimetallic strip, or rate of temperature rise) located in ventilated passageways shall be installed downwind from the equipment to be used.

(3) Sensor systems shall include a device or method for determining their operative condition.

(c) Capacity of fire-suppression devices; location and direction of nozzles are as follows:

(1) Each fire-suppression device shall be:

A. Adequate in size and capacity to extinguish potential fires in or on the equipment protected; and

B. Suitable for the atmospheric conditions surrounding the equipment protected (such as air velocity, type, and proximity of adjacent combustible material); and

C. Rugged enough to withstand rough usage and vibration when installed on mining equipment.

(2) The extinguishant-discharge nozzle of each fire-suppression system, where practicable, shall be located so as to take advantage of mine ventilation air currents. The fire-suppression system may be of the internal injection, inundating, or combination type. Where fire control is achieved by internal injection, or combination of internal injection and inundation, hazardous locations shall be enclosed to minimize runoff and over-shoot of the extinguishing agent; the extinguishing agent shall be directed onto:

A. Cable reel compartments and electrical cables on the equipment which are subject to flexing or to external damage; and

B. All hydraulic components on the equipment which are exposed directly to or located in the immediate vicinity of electrical cables which are subject to flexing or to damage.

(d) Water spray systems; capacity; water supply; minimum requirements are as follows:

(1) Where water spray systems are used for inundating attended underground equipment the rate of flow shall be at least 0.18 gallon per minute per square foot over the top surface area of the equipment (excluding conveyors, cutters, and gathering heads), and the supply of water shall be adequate to provide the required flow of water for 10 minutes.

(2) Where water is used for internal injection on attended equipment the total quantity of water shall be at least 4.5 gallons times the number of hazardous locations. The rate of flow shall be not less than 7 gallons per minute.

(3) Where water is used in a combination internal injection and inundation system on attended equipment, the rate of flow shall be at least 0.12 gallon per minute per square foot over the top surface area of the equipment (excluding conveyors, cutters, and gathering heads), and the supply of water shall be adequate to provide the required flow of water for 10 minutes.

(4) On equipment provided with a cable reel and an internal injection or combination-type system, the amount of water discharged into the cable reel compartments shall be approximately 25 percent of the amount required to be discharged by the system, however, such quality need not exceed 10 gallons.

(5) Liquid chemical may be used in self-contained fire-suppression systems. Such liquid chemicals shall be nontoxic and when applied to a fire shall not produce excessive toxic compounds. The quantity of liquid chemicals required shall be proportionately less than water as based on equivalency ratings made by a nationally recognized agency approved by the Secretary.

(e) Fire-suppression systems; extinguishant supply systems are as follows:

(1) Fire-suppression systems using water or liquid chemical to protect attended equipment shall:

A. Be limited to a pressure consistent with the pipe, fittings, valves, and nozzles used in the system.

B. Be located so as to be protected against damage during operation of the equipment protected.

C. Employ liquid which is free from excessive sediment and noncorrosive to the system.

D. Include strainers equipped with flushout connections or equivalent protective devices and a rising stem or other visual indicator-type shutoff valve.

(2) Water supplies for fire-suppression system installed on underground equipment may be maintained in mounted water tanks or by connection to water mains. Such water supplies shall be continuously connected to the fire-suppression system whenever the equipment is connected to a power source, except for a reasonable time for changing hose connections to hydrants while the machine is stopped in a ventilated passageway.

(f) Dry chemical systems; capacity; minimum requirements are as follows:

(1) Dry chemical fire extinguishing systems used on underground equipment shall be of the multipurpose powder-type and shall include the following:

A. The system including all hose and nozzles shall be protected against the entrance of moisture, dust, or dirt;

B. The system shall be guarded against damage during operation of the equipment protected;

C. Hose and pipe shall be as short as possible; the distance between the chemical container and furthest nozzle shall not exceed 50 feet;

D. Hose, piping, and fittings between the actuator and the chemical container shall have a bursting pressure of 500 pounds per square inch (gage) or higher; the hose, piping, and fitting between the chemical container and the nozzles shall have a bursting pressure of 300 pounds per square inch (gage) or higher; and

E. The system shall discharge in 1 minute or less, for quantities less than 50 pounds (nominal)[2] and in less than 2 minutes for quantities more than 50 pounds.

(2) On underground equipment, the number of pounds (nominal) employed by the system shall equal 5 times the total number of hazardous locations.

(3) The amount of dry chemical discharged into the cable reel compartments of attended underground equipment shall be approximately 25 percent of the total amount required to be discharged by the system; however, the quantity discharged into a cable reel compartment need not exceed 10 pounds.

(g) High expansion foam systems; minimum capacity requirements are as follows:

(1) On underground equipment, foam may be delivered by internal injection, inundation, or combination-type systems. Each system shall deliver water as foam for a minimum of 10 minutes. For internal injection, the rate of water application as high expansion foam shall be not less than 0.5 gallon per minute per hazardous location; however, the minimum total rate shall be not less than 2 gallons per minute. For inundation, the rate of water application as high expansion foam shall be not less than 0.05 gallon per minute per square foot of top surface area of the equipment protected; however, the minimum total rate shall be not less than 5 gallons of water per minute.

(2) In combined internal injection and inundation systems the rate of water applied as foam shall not be less than 0.035 gallon per minute per square foot of top surface area of the equipment protected; however, the minimum total rate shall not be less than 3.5 gallons of water per minute.

(3) Where internal injection is employed, the amount of water discharged as high expansion foam into the cable reel compartments of underground equipment regularly operated by a miner shall be approximately 25 percent of the total amount required to be discharged by the system; however, the quantity of water discharged as foam into the cable reel compartment need not exceed 1.5 gallons.

(h) Extinguishing agents; requirements on mining equipment employed in low vertical clearance are as follows: On mining equipment no more than 32 inches high, the quantity of extinguishing agent required may be reduced by one-fourth if space limitations on the equipment require such reduction.

(i) Fire-suppression systems; hazards; training of miners requirements are as follows: Each operator shall instruct all miners normally assigned to the active workings of the mine with respect to any hazards inherent in the operation of all fire-suppression systems and where appropriate, the safeguards available at each such installation.

(j) Inspection of fire-suppression systems requirements are as follows: (1) All fire-suppression systems shall be visually inspected at least once each week by a person qualified to make such inspections.

(2) Each fire-suppression system shall be tested and maintained in accordance with the requirements specified in the appropriate National Fire Code listed as follows for the type and kind of device used:

National Fire Code No. 11A "High Expansion Foam Systems" (NFPA No. 11A–1970).

National Fire Code No. 13 "Installation of Sprinkler Systems" (NFPA No. 13A–1974).

National Fire Code No. 15 "Water Spray Fixed Systems" (NFPA No. 15–1973).

National Fire Code No. 17 "Dry Chemical Systems" (NFPA No. 17–1973).

National Fire Code No. 72A "Local Protective Signaling Systems" (NFPA No. 72A–1974).

National Fire Code No. 198 "Care of Fire Hose" (NFPA No. 198–1972).

(3) A record of the inspections required by this Section shall be maintained by the operator. The record of the weekly inspections shall be maintained at an appropriate location near each fire-suppression system.

(k) Incorporation by reference; availability of publications:

Publications to which references are made in this standard are hereby incorporated by reference and made a part herof. The incorporated publications are available for examination at each Metal and Nonmetal Mine Health and Safety Subdistrict Office of the Mining Enforcement and Safety Administration. National Fire Codes may be obtained from the National Fire Protection Association, 470 Atlantic Avenue, Boston, MA 02210. The Boiler and Pressure Vessel Code may be purchased from the American Society of Mechanical Engineers, 345 East 47th St., New York, NY 10017.

R. Section 57.5 "Air quality, ventilation, radiation, and physical agents" is proposed to be amended as follows:

217. It is proposed to add a new mandatory standard 57.5–18E which is applicable to surface and underground as follows:

57.5–18E *Mandatory.*—Mechanical ventilation equipment shall be installed and used whenever ventilation and air quality is not maintained in accordance with the applicable standards in this section 57.5.

218. It is proposed to add a new mandatory standard 57.5–18F which is applicable to surface and underground as follows:

57.5–18F *Mandatory.* MNMSAC.—All underground main fans shall have remote controls at safe locations, preferably on the surface, and protected against possible damage.

219. It is proposed to revoke advisory standard 57.5–21. MNMSAC.

220. It is proposed to revoke advisory standard 57.5–30. MNMSAC.

221. It is proposed to revoke and replace reserved number 57.5–35 with the series of numbers 57.5–35A through 57.5–35Z under the present center heading and center subheading, and reserve numbers 57.5–35C through 57.5–35Z.

223. It is proposed to add a new mandatory standard 57.5–35A which is applicable to underground only as follows:

57.5–35A *Mandatory.* MNMSAC. — Seals shall be provided with a means for checking the quality of air behind the seal and a means to prevent a water head from developing unless the seal is designed to impound water.

223. It is proposed to add a new mandatory standard 57.5–35B which is applicable to underground only as follows:

[1] The word "nominal" is used in this standard to express the approximate weight in pounds of all-purpose dry chemical (ammonium dihydrogen phosphate) because the density of the all-purpose dry chemical is less than the density of sodium bicarbonate; a system originally designed for 50 pounds of sodium bicarbonate will not hold quite 50 pounds of all-purpose dry chemical.

[2] The word "nominal" is used in this standard to express the approximate weight in pounds of all-purpose dry chemical (ammonium dihydrogen phosphate) because the density of the all-purpose dry chemical is less than the density of sodium bicarbonate; a system originally designed for 50 pounds of sodium bicarbonate will not hold quite 50 pounds of all-purpose dry chemical.

57.5-35B *Mandatory*.—Booster fans shall be:

(a) Installed in noncombustible bulkheads or with noncombustible air ducts in a manner to prevent recirculation;

(b) Installed with noncombustible housings;

(c) Inspected at least weekly to insure proper operation of fan, fan signal devices and fan controls;

(d) Provided with an automatic signal device to give warning or alarm should the fan system malfunction. The signal device shall be so located that it can be seen or heard by a responsible person at all times when persons are underground;

(e) Equipped with two sets of controls capable of starting, stopping, and reversing the fans. One set of controls shall be located at the fans. A second set of controls shall be at another location remote from the fans.

224. It is proposed to add a new mandatory standard 57.5-43 which is applicable to underground only as follows:

57.5-43 *Mandatory*.—At every underground mine where radon daughter concentrations in excess of 0.3 WL are found in any active workings:

(a) Radon daughter sampling equipment shall be available for use on each given shift when men are working underground.

(b) A competent person shall be available to make radon daughter measurements required by the standard in this section on each shift.

(c) Each alpha detector in the sampling equipment shall be calibrated prior to its initial use, and thereafter, at intervals not to exceed 6 months. The most recent calibration record for each instrument shall be kept with the instrument and be available for inspection by the Secretary or his duly authorized representative.

(d) Except as required by this section, procedures for sampling and calibration of sampling equipment shall be in accordance with American National Standards Institute (ANSI) N-13.8-1973, section 14, which is hereby incorporated by reference and made a part hereof. This publication may be examined in any Metal and Nonmetal Mine Health and Safety Subdistrict Office, Mining Enforcement and Safety Administration, or may be obtained from the American National Standards Institute, Inc., 1430 Broadway, New York, NY 10018.

225. It is proposed to add a new mandatory standard 57,5-44 which is applicable to underground only as follows:

57.5-44 *Mandatory*. MNMSAC.—The wearing of respirators approved for protection against radon daughters shall be required in environments exceeding 1.0 WL and respirator use shall be in compliance with Standard 57.5-5.

226. It is proposed to add a new mandatory standard 57.5-45 which is applicable to underground only as follows:

57.5-45 *Mandatory*. MNMSAC.—Inactive workings, in which radon daughter concentrations are above 1.0 WL, shall be posted against unauthorized entry and designated by signs indicating them as areas in which approved respirators shall be worn.

227. It is proposed to add a new standard 57.5-46 which is applicable to underground only as follows:

57.5-46 *Mandatory*. MNMSAC.—Where radon daughter concentrations exceed 10 WL, respirator protection against radon gas shall be provided in addition to protection against radon daughters. Protection against radon gas shall be provided by supplied air devices or by face masks containing adsorbent material capable of removing both radon and its daughters.

228. It is proposed to add a new mandatory standard 57.5-47 which is applicable to underground only as follows:

57.5-47 *Mandatory*. MNMSAC.—Gamma radiation surveys shall be conducted annually in all underground mines where radioactive ores are mined.

(a) Surveys shall be in accordance with ANSI N 13.8-1973, section 14, for gamma radiation measurement methods as set forth in 57.5-43(d). This publication may be examined in any Metal and Nonmetal Mine Health and Safety Subdistrict Office, Mining Enforcement and Safety Administration, or may be obtained from the American National Standards Institute, Inc., 1430 Broadway, New York, NY 10018.

(b) Where average gamma radiation measurements are in excess of 2.0 milliroentgen per hour in the working place, gamma radiation dosimeters shall be provided for all persons affected, and records of cumulative individual gamma radiation exposure shall be kept.

(c) Annual individual gamma radiation exposure shall not exceed 5 Rems.

S. Section 57.9 "Loading, hauling, dumping" is proposed to be amended as follows:

229. It is proposed to revoke advisory standard 57.9-18. MNMSAC.

230. It is proposed to revise advisory standard 57.9-35 which is applicable to surface and underground and make it mandatory as follows:

57.9-35 *Mandatory*. MNMSAC. — Movements of two or more pieces of rail equipment operating independently on the same track shall be suitably controlled for safe operation.

231. It is proposed to revise advisory standard 57.9-46 which is applicable to surface and underground and make it mandatory as follows:

57.9-46 *Mandatory*. MNMSAC.—Backpoling of trolleys shall be avoided wherever possible; but when necessary, backpoling shall be done only at slow speeds.

232. It is proposed to revise advisory standard 57.9-56 which is applicable to surface and underground and make it mandatory as follows:

57.9-56 *Mandatory*. MNMSAC.—Where necessary, bumper blocks or the equivalent shall be provided at all track dead-ends.

233. It is proposed to revise advisory standard 57.9-57 which is applicable to surface and underground and make it mandatory as follows:

57.9-57 *Mandatory*. MNMSAC.—Grizzlies, grates, and other stationary sizing devices shall be anchored securely.

234. It is proposed to renumber and revise advisory standard 57.9-108 and make it mandatory and applicable to surface and underground as follows:

57.9-72 *Mandatory*. MNMSAC. — Persons attempting to free hangups shall be experienced persons who understand the hazards involved.

235. It is proposed to add a new mandatory standard 57.9-73 which is applicable to surface and underground as follows.

57.9-73 *Mandatory*. MNMSAC.—Defective equipment, removed from service as unsafe to operate, shall be tagged to prohibit further use until repairs are completed.

236. It is proposed to revise advisory standard 57.9-112 which is applicable to underground only and make it mandatory as follows:

57.9-112 *Mandatory*. MNMSAC.—On rail haulage, trip lights shall be used on the rear of pulled trips and on the front of pushed trips.

§ 57.11 [Amended]

T. Section 57.11 "Travelways and escapeways" is proposed to be amended as follows:

237. It is proposed to revise mandatory standard 57.11-50 which is applicable to underground only as follows:

57.11-50 *Mandatory*. MNMSAC. — Every mine shall have two or more separate, properly maintained escapeways to the surface from the lowest levels which are so positioned that damage to one shall not lessen the effectiveness of the others. A method of refuge shall be provided while a second opening to the surface is being developed. A second escapeway is recommended, but not required, during the exploration or development of an ore body.

In addition to separate escapeways, a method of refuge shall be provided for every employee who cannot reach the surface from his working place through at least two separate escapeways with in a time limit of one hour when using the normal exit method. These refuges must be positioned so that the employee can reach one of them within 30 minutes from the time he leaves his workplace.

238. It is proposed to revise mandatory standard 57.11-55 which is applicable to underground only as follows:

57.11-55 *Mandatory*. MNMSAC.—Designated escapeways inclined more than 30 degrees from the horizontal, and more than 300 feet in vertical extent, shall be provided with emergency hoisting facilities.

§ 57.12 [Amended]

U. Section 57.12 "Electricity" is proposed to be amended as follows:

239. It is proposed to revise mandatory standard 57.12-1 which is applicable to surface and underground as follows:

57.12-1 *Mandatory*.—Electrical circuits and equipment shall be protected against overloads and short circuits by automatic-trip circuit breakers or fuses. Such circuit breakers or fuses shall be capable of interrupting overloads and short circuits without damage to the circuit or equipment. Overload protective devices shall open all ungrounded conductors of the circuit whenever any one conductor becomes overloaded. Thermal devicea used to protect the equipment and circuits against overloads shall be backed up by short-circuit protection.

240. It is proposed to revise mandatory standard 57.12-3 which is applicable to surface and underground as follows:

57.12-3 *Mandatory*.—Individual overload and short-circuit protection shall be provided for the trailing cables of mobile equipment.

241. It is proposed to revise mandatory standard 57.12-5 which is applicable to surface and underground as follows:

57.12-5 *Mandatory*. MNMSAC.—Mobile equipment shall not run over power conductors, nor shall loads be dragged over power conductors, unless the conductors are properly bridged or protected.

242. It is proposed to revise advisory standard 57.12-6 which is applicable to surface and underground and make it mandatory as follows:

57.12-6 *Mandatory*. MNMSAC.—Distribution boxes shall be provided with a disconnecting device for each branch circuit. Such disconnecting devices shall be equipped or designed in such a manner that it can be determined by visual observation that the circuit is deenergized when such devices are open, and shall be labeled to show which units they control.

243. It is proposed to revise advisory standard 57.12-8 which is applicable to surface and underground and make it mandatory as follows:

57.12-8 *Mandatory*. MNMSAC.—Power wires and cables shall be insulated adequately where they pass into or out of electrical compartments. Cables shall enter metal frames of motors, splice boxes, and electrical compartments only through proper fittings. When insulated wires, other than cables, pass through metal frames, the holes shall be substantially bushed with insulated bushings.

244. It is proposed to revise advisory standard 57.12-10 which is applicable to surface and underground and make it mandatory as follows:

57.12-10 *Mandatory*. MNMSAC.—Telephone and low-potential signal wire shall be protected, by isolation or additional insulation, from contacting energized power conductors or any other power source.

245. It is proposed to revise mandatory standard 57.12-11 which is applicable to surface and underground as follows:

57.12-11 *Mandatory*. MNMSAC.—High-potential electrical conductors shall be covered, insulated, or placed to prevent contact with low potential conductors.

246. It is proposed to revise advisory standard 57.12-12 which is applicable to surface and underground and make it mandatory as follows:

57.12-12 *Mandatory*. MNMSAC.—The potential on bare signal wires accessible to contact by persons shall not exceed 40 volts.

247. It is proposed to revise advisory standard 57.12-13 which is applicable to surface and underground and make it mandatory as follows:

57.12-13 *Mandatory*. MNMSAC.—Permanent splices and repairs made in power cables, including the ground conductor where provided, shall be:

(a) Mechanically strong with electrical conductivity as near as possible to that of the original,

(b) Insulated to a degree at least equal to that of the original, and sealed to exclude moisture, and

(c) Provided with damage protection as near as possible to that of the original, including good bonding to the outer jacket.

248. It is proposed to revise mandatory standard 57.12-14 which is applicable to surface and underground as follows:

57.12-14 *Mandatory*. MNMSAC.—Power cables energized to potentials in excess of 150 volts, phase-to-ground, shall not be moved with equipment unless sleds or slings, insulated from such equipment, are used. When such energized cables are moved manually, insulated hooks, tongs, ropes, or slings shall be used unless suitable protection for persons is provided by other means. This does not prohibit pulling or dragging of cable by the equipment it powers when the cable is physically attached to the equipment by suitable mechanical devices, and the cable is insulated from the equipment in conformance with other standards in this Part.

249. It is proposed to revise mandatory standard 57.12-16 which is applicable to surface and underground as follows:

57.12-16 *Mandatory*. MNMSAC.—Electrical equipment shall be deenergized before work is done on such equipment. Power switches shall be locked out or other measures taken which shall prevent the equipment from being energized without the knowledge of the individuals working on it. Suitable warning notices shall be posted at the power switch and signed by the individuals who are to do the work. Such locks or preventive devices shall be removed only by the persons who installed them or by authorized personnel.

250. It is proposed to revise mandatory standard 57.12-28 which is applicable to surface and underground as follows:

57.12-28 *Mandatory*. MNMSAC.—Continuity and resistance of grounding systems shall be tested immediately after installation, repair, and modification; and annually thereafter. A record of the most recent tests shall be made available to the Secretary.

251. It is proposed to revise advisory standard 57.12-34 which is applicable to surface and underground and make it mandatory as follows:

57.12-34 *Mandatory*. MNMSAC.—Portable extension lights, and other lights that by their location present a shock or burn hazard, shall be guarded.

252. It is proposed to revise standard 57.12-42 which is applicable to surface and underground and make it mandatory as follows:

57.12-42 *Mandatory*. MNSAC.—Both rails shall be bonded or welded at every joint and rails shall be crossbonded at least every 200 feet if the track serves as the return trolley circuit. When rails are moved, replaced, or broken bonds are discovered, they shall be re-bonded within three working shifts.

253. It is proposed to revoke advisory standard 57.12-70, and to revise advisory standard 57.12-69 which is applicable to surface only and make it mandatory as follows:

57.12-69 *Mandatory*. MNMSAC.—Each ungrounded power conductor or telephone wire directly exposed to lightning that leads underground shall be equipped with suitable lightning arrestors of approved type within 100 feet of the point where the circuit enters the mine. Lightning arrestors shall be connected to a low resistance grounding medium on the surface and shall be separated from neutral grounds by a distance of not less than 25 feet.

254. It is proposed to revise advisory standard 57.12-81 which is applicable to underground only and make it mandatory as follows:

57.12-81 *Mandatory*. MNMSAC.—All metallic pipelines, 1,000 feet or more in length running parallel to trolley tracks, that are used as a ground return circuit shall be bonded to the return circuit rail at the ends of the pipeline and at intervals not to exceed 500 feet.

255. It is proposed to revise advisory standard 57.12-83 which is applicable to underground only and make it mandatory as follows:

57.12-83 *Mandatory*. MNMSAC.—Power cables in shafts and boreholes shall be fastened securely in such a manner as to prevent undue strain on the sheath, insulation, or conductors.

256. It is proposed to revise advisory standard 57.12-84 which is applicable to underground only and make it mandatory as follows:

57.12-84 *Mandatory*. MNMSAC.—Disconnecting switches that can be opened safely under load shall be provided underground at all branch circuits extending from primary power circuits near shafts, adits, levels, and boreholes.

§ 57.15 [Amended]

V. Section 57.15 "Personal protection is" proposed to be amended as follows:

257. It is proposed to revise advisory standard 57.15-6 which is applicable to surface and underground and make it mandatory as follows:

57.15-6 *Mandatory*. MNMSAC.—Special protective equipment and clothing shall be provided, maintained in a sanitary and reliable condition and used whenever (1) hazards of process or environment, (2) chemical hazards, (3) radiological hazards, or (4) mechanical irritants are encountered in a manner capable of causing injury or impairment.

258. It is proposed to add a new mandatory standard 57.15-14 which is applicable to surface and underground as follows:

57.15-14 *Mandatory*.—Quick - drenching facilities for flushing of the eyes and body shall be provided for immediate emergency use within the work area at operations where injurious corrosive materials are used or handled.

W. Section 57.19 "Man hoisting" is proposed to be amended as follows:

259. It is proposed to revise mandatory standard 57.19-7 as follows:

57.19-7 *Mandatory*.—All hoists shall be provided with devices to prevent overtravel. Hoists for shafts exceeding 100 feet in depth also shall be provided with overspeed devices.

(a) The overtravel devices shall: (1) Be directly activated by the conveyance travel, or be directly driven from the hoist drum and synchronized with the movement of the conveyance;

(2) When activated, cause the hoist drum or traction wheel brakes to bring the conveyance to a safe stop; and

(3) Be provided with back-out switches.

(b) The overspeed devices shall: (1) Be directly driven from the hoist drum;

(2) When activated, cause the hoist drum or traction wheel brakes to bring the conveyance to a safe stop;

(3) Activate the control at a setting not to exceed the rated man-hoisting speed by more than 15 percent; and

(4) Monitor effectively the speed of the conveyance at any point of its travel so that safe travel and safe stops can be effected.

260. It is proposed to revise advisory standard 57.19–8 and make it mandatory as follows:

57.19–8. *Mandatory.* MNMSAC.—Where creep or slip may alter the effective position of safety devices, friction hoists shall be equipped with synchronizing mechanisms that recalibrate the overtravel devices and position indicators.

261. It is proposed to revise advisory standard 57.19–11 and make it mandatory as follows:

57.19–11 *Mandatory.* MNMSAC.—Flanges on drums shall extend radially a minimum of 4 inches or three rope diameters beyond the last wrap, whichever is the lesser.

262. It is proposed to revise advisory standard 57.19–12 and make it mandatory as follows:

57.19–12 *Mandatory.* — Where grooved drums are used, the grooves shall be of the proper size and pitch for the ropes used. When new rope is installed, the groove of drums shall be machined as needed to assure the size and pitch recommended by the manufacturer for the new rope.

263. It is proposed to add a new mandatory standard 57.19–14 as follows:

57.19–14 *Mandatory.* MNMSAC.—In a friction hoist installation, tapered guides or other approved devices shall be installed above and below the limits of regular travel of the conveyance and arranged to prevent overtravel in the event of failure of other devices.

264. It is proposed to add a new mandatory standard 57.19–15 as follows:

57.19–15 *Mandatory.*—Hooks, shackles, and other attachments that are used to connect a conveyance to the hoist rope shall be individually approved for strength as exceeding rated breaking strength of the rope to which the hook, shackle, or other attachment is connected by a factor of at least 10 percent. Hooks, shackles, and other attachments that have been modified or repaired shall be reapproved before returning to service. Proof of such approval for each hook, shackle, and other attachments in use shall be available for inspection by the Secretary or his duly authorized representative.

265. It is proposed to add a new mandatory standard 57.19–16 as follows:

57.19–16 *Mandatory.*—All cages and skips used for lowering or raising of persons in a mine shall comply with the following: (a) When a bonnet is required, the bonnet shall be made of not less than three-sixteenths (3/16) inch steel plate or of a noncombustible material having equivalent strength.

(b) The cage or skip shall be provided with not less than one-eight (1/8) inch sheet iron or steel side casing or a noncombustible material having equivalent strength.

(1) The side casing shall extend to a height of not less than five feet from the floor.

(2) The side casing shall have no openings through which a three-eighths (3/8) inch diameter rod will pass, excepting those openings that are necessary for signaling.

(c) The cage shall be equipped with a door, or doors, made of steel or other suitable noncombustible material that extends to a height of not less than five feet above the floor.

(1) All doors shall have no openings through which a three-eighths (3/8) inch diameter rod will pass, excepting those openings necessary for signaling, and they shall have a maximum clearance of two inches from the floor.

(2) All doors shall be arranged so that the doors cannot be opened outward from the cage.

(3) All doors shall be fitted with latches that will prevent accidental opening of a door.

(d) The bottom structural members and floor shall be constructed of steel or noncombustible material of sufficient strength to support the conveyance with maximum load at maximum emergency acceleration or deceleration.

(e) The conveyance shall be provided with an escape hatch in the top and/or an escape hatch in the side of the conveyance nearest the manway. Bonnets having a hinged moveable section weighing no more than 150 pounds may be considered as having escape hatches.

(f) Cages or skips suspended by a single hoisting rope shall be provided with safety catches. These safety catches shall:

(1) Be of sufficient strength to safely stop and hold the conveyance with its maximum passenger load at any point in the shaft from the maximum man-hoisting speed. The deceleration rate shall not exceed 3 times the acceleration due to gravity (3g's).

(2) Be performance tested before the conveyance is used to hoist men.

(3) Be visually inspected by a competent person each shift before the conveyance is used. The conveyance shall be rested on chairs or blocked at least once every seven operating days to test mechanical linkage.

266. It is proposed to add a new mandatory standard 57.19–17 as follows:

57.19–17 *Mandatory.* MNMSAC.—Each electric hoist shall be equipped with a manually-operable switch that will initiate emergency braking action to bring the conveyance and the counterbalance safety to rest. This switch shall be located within reach of the hoistman in case the manual controls of the hoist fail.

267. It is proposed to add a new mandatory standard 57.19–18 as follows:

57.19–18 *Mandatory.* MNMSAC.—An overtravel by-pass switch shall be installed on hoists, where necessary, that will allow the conveyance to travel through the overtravel position when the switch is held in the closed position by the hoistman. The overtravel by-pass switch shall return automatically to the open position when released by the hoistman.

268. It is proposed to revoke advisory standard 57.19–27. MNMSAC.

269. It is proposed to revise advisory standard 57.19–36 and make it mandatory as follows:

57.19–36 *Mandatory.*—Headframes shall be high enough to provide clearance for overtravel and safe stopping of the conveyances. This clearance shall be not less than 15 feet from the bottom of the sheaves or drum and the uppermost part of the highest rope connection of the conveyance when the conveyance is at its uppermost man-landing.

270. It is proposed to revise advisory standard 57.19–37 and make it mandatory as follows:

57.19–37 *Mandatory.*—Fleet angles shall not be greater than 1½ degrees. Fleet angles shall be not less than ½ degree unless a rope guiding device is used.

271. It is proposed to revise advisory standard 57.19–39 and make it mandatory as follows:

57.19–39 *Mandatory.*—Minimum diameters of head sheaves and hoist drums shall conform to the following specifications:

	Diameter of sheaves and drum times rope diameter
Rope construction:	
6×7 Classification	72
6×17 Seale	56
6×19 Seale	51
6×21 Filler wire	45
6×25 Filler wire	41
6×31	38
6×37	33
6×25 type B, flattened strand	45
6×27 type H, flattened strand	45
6×30 type G, flattened strand	45
8×29 Seale	38
8×19 Warrington	31
18×7	51

Drum and sheave diameters shall comply with the rope manufacturer's recommendations for man hoisting applications when ropes of other constructions are used.

272. It is proposed to revise advisory standard 57.19–40 and make it mandatory as follows:

57.19–40 *Mandatory.* MNMSAC.—Head, idler, knuckle, and curve sheaves shall have grooves of proper contour for the specific rope diameter used.

273. It is proposed to revise mandatory standard 57.19–50 as follows:

57.19–50 *Mandatory.* MNMSAC.—Buckets used to hoist persons during vertical shaft sinking operations shall: (a) Be securely attached to a crosshead when traveling in either direction between the lower and upper crosshead parking locations;

(b) Have overhead protection when the shaft depth exceeds 50 feet;

(c) Have sufficient depth or a suitably designed platform to transport persons safely in a standing position;

(d) Have devices to prevent accidental dumping where the bucket is supported by a bail attached to its lower half.

274. It is proposed to revise mandatory standard 57.19–54 as follows:

57.19–54 *Mandatory.* MNMSAC.—Where rope guides are used in shafts other than in shaft sinking operations, the rope guides shall be of a type of lock coil construction.

275. It is proposed to revise advisory standard 57.19–56 and make it mandatory as follows:

57.19–56 *Mandatory.* MNMSAC.—When automatic hoisting is used, a competent opertor of the hoist shall be readily available at or near the hoisting device while any person is underground.

276. It is proposed to revise advisory standard 57.19–57 and make it mandatory as follows:

57.19–57 *Mandatory.* MNMSAC.—No person shall operate a hoist unless within the preceding 12 months he has had a medical examination by a qualified, licensed physician who shall certify his fitness to perform this duty. Such certification shall be available at the mine.

277. It is proposed to revoke advisory standard 57.19–60. MNMSAC.

278. It is proposed to revise advisory standard 57.19–61 and make it mandatory as follows:

57.19–61 *Mandatory.* MNMSAC.—The safe speed for hoisting men shall be determined for each shaft, and this speed shall not be exceeded. Men shall not be hoisted at a speed faster than 2,500 feet per minute except in an emergency.

279. It is proposed to revise advisory standard 57.19–62 and make it mandatory as follows:

57.19–62 *Mandatory.* MNMSAC.—Maximum normal operating acceleration and deceleration shall not exceed 6 feet per second per second. During emergency braking, the declaration shall not exceed 16 feet per second per second.

280. It is proposed to revise advisory standard 57.19–66 and make it mandatory as follows:

57.19–66 *Mandatory.* MNMSAC.—In shafts inclined over 45 degrees, management shall determine and post in the conveyance or at each shaft station the maximum number of persons permitted to ride in a hoisting conveyance at any one time. Each person shall be provided a minimum of 1.5 square feet of floor space.

281. It is proposed to revise advisory standard 57.19–67 and make it mandatory as follows:

57.19–67 *Mandatory.* MNMSAC.—During shift changes, an authorized person shall be in charge of each man trip.

282. It is proposed to revise advisory standard 57.19–68 and make it mandatory as follows:

57.19–68 *Mandatory.* MNMSAC.—Men shall enter, ride, and leave conveyances in an orderly manner.

283. It is proposed to revise advisory standard 57.19–72 and make it mandatory as follows:

57.19–72 *Mandatory.*—When combinations of cages and skips are used in the same compartment, the skips shall be empty while men are being transported.

284. It is proposed to revise advisory standard 57.19–74 and make it mandatory as follows:

57.19–74 *Mandatory.*—Men shall not ride the bail, rim, bonnet, or crosshead of any shaft conveyance.

285. It is proposed to revise advisory standard 57.19–76 and make it mandatory as follows:

57.19–76 *Mandatory.* MNMSAC.—When men are hoisted, bucket speeds shall not exceed 500 feet per minute, and shall not exceed 200 feet per minute when within 100 feet of the intended station.

286. It is proposed to revise advisory standard 57.19–81 and make it mandatory as follows:

57.19–81 *Mandatory.*—Conveyances controlled by a hoistman, when not in use, shall be released and the conveyance shall be raised or lowered at least 10 feet from the floor of the landing.

287. It is proposed to add a new mandatory standard 57.19–83 as follows:

57.19–83 *Mandatory.* MNMSAC.—A manually operated device shall be installed on each electric hoist that will allow the conveyance or counterbalance to be removed from an overtravel position. Such device shall not release the brake, or brakes, holding the overtravelled conveyance or counterbalance until sufficient drive motor torque has been developed to assure movement of the conveyance or counterbalance in the correct direction only.

288. It is proposed to revise advisory standard 57.19–91 and make it mandatory as follows:

57.19–83 *Mandatory.* MNMSAC.—A man-accept hoisting instructions by voice communication unless the regular signaling systems are out of order. During such an emergency one authorized person shall be designated to direct movement of the conveyance.

289. It is proposed to revise advisory standard 57.19–93 and make it mandatory as follows:

57.19–93 *Mandatory.*—A standard code of hoisting signals shall be adopted and used at each mine. The movement of a shaft conveyance on a "one bell" signal shall be prohibited.

290. It is proposed to revise advisory standard 57.19–102 and make it mandatory as follows:

57.19–102 *Mandatory.* — MNMSAC. — A means shall be provided to guide the movement of a shaft conveyance.

291. It is proposed to revise advisory standard 57.19–106 and make it mandatory as follows:

57.19–106 *Mandatory.*—MNMSAC.—Shaft sets shall be kept in good repair and clean of hazardous material.

292. It is proposed to revise advisory standard 57.19–111 and make it mandatory as follows:

57.19–111 *Mandatory.*—MNMSAC.—Substantial fixed ladders shall be provided from the collar to as near the shaft bottom as practical during shaft-sinking operations, or an escape hoist powered by an emergency power source shall be provided. When persons are on the shaft bottom, a chain ladder, wire rope ladder, or other extension ladders shall be used from the fixed ladder or lower limit of the escape hoist to the shaft bottom.

293. It is proposed to revise advisory standard 57.19–121 and make it mandatory as follows:

57.19–121 *Mandatory.*—MNMSAC.—Complete records shall be kept for three years of inspections, tests, and maintenance of shafts and hoisting equipment.

294. It is proposed to revise advisory standard 57.19–122 and make it mandatory as follows:

57.19–122 *Mandatory.*—MNMSAC. — Parts used to repair hoists shall have properties that will insure the proper and safe function of the hoist.

295. It is proposed to revise advisory standard 57.19–123 and make it mandatory as follows:

57.19–123 *Mandatory.* MNMSAC. — Wire ropes shall be lubricated or treated with dressing as recommended or approved by the rope manufacturer.

296. It is proposed to revise advisory standard 57.19–124 and make it mandatory as follows:

57.19–124 *Mandatory.*—Ropes other than those on friction hoists shall be cut off and reconnected to the conveyance at regular intervals at least five times during the anticipated life of the rope, or more frequently if inspection shows it necessary; cutoff intervals shall not exceed 6 months for ropes with life of more than 3 years. At least 6 feet shall be cut from the rope above the highest connection; this portion shall be examined for corrosion, damage, wear, and fatigue.

297. It is proposed to revise advisory standard 57.19–125 and make it mandatory as follows:

57.19–125 *Mandatory.*—Hoist ropes wound on the drum in multiple layers shall be cut off and repositioned on the drum at least three times during the anticipated life of the hoist rope to distribute wear at change of layers and crossover points. The length of the cutoff at the drum end shall be at least ¾ of a wrap and shall not be a whole number multiple of the circumference of the drum.

298. It is proposed to revise advisory standard 57.19–126 and make it mandatory as follows:

57.19–126 *Mandatory.*—Ropes shall be calipered at least every two months to effectively determine the rate of wear and damage. Caliper measurements shall be taken:

(a) Immediately above the socket or clips and above the safety connection.

(b) Where the ropes rest on the sheaves.

(c) Where the ropes leave the drums when the conveyances are at the regular stopping points.

(d) Where a layer of rope begins to overlap another layer on the drum.

(e) At 100-foot intervals; measurements shall be made midway between the last previously calipered points.

299. It is proposed to revoke advisory standard 57.19–127. MNMSAC.

300. It is proposed to revise advisory standard 57.19–130 and make it mandatory as follows:

57.19–130 *Mandatory.*—Empty man conveyances shall be operated up and down shafts at least one round trip before:

(a) Hoisting men after any shaft or related equipment repairs, and

(b) Regular man trips.

301. It is proposed to revise advisory standard 57.19–131 and make it mandatory as follows:

57.19–131 *Mandatory.* — Conveyance connections shall be inspected each day that they are in use.

302. It is proposed to revise advisory standard 57.19–132 and make it mandatory as follows:

57.19–132 *Mandatory.*—Safety catches shall be inspected daily; drop tests shall be made at the time of installation. Every operating day the cage shall be rested on chairs or proper blocking to check the operation or activation of the safety catches by allowing the rope to be slacked suddenly.

303. It is proposed to revise advisory standard 57.19–133 and make it mandatory as follows:

57.19-133 *Mandatory.* MNMSAC.—Operating shafts shall be inspected at least weekly. Idle shafts shall be inspected immediately before use.

304. It is proposed to revise advisory standard 57.19-134 and make it mandatory as follows:

57.19-134 *Mandatory.* MNMSAC.—Sheaves in operating shafts shall be inspected weekly and kept properly lubricated.

305. It is proposed to revise advisory standard 57.19-135 and make it mandatory as follows:

57.19-135 *Mandatory.* MNMSAC.—Rollers used in operating inclined shafts shall be lubricated, properly aligned, and kept in good repair.

X. Section 57.20 "Miscellaneous" is proposed to be amended as follows:

306. It is proposed to revise mandatory standard 57.20-2 which is applicable to surface and underground as follows:

57.20-2 *Mandatory.* MNMSAC.—An adequate supply of potable drinking water shall be provided at all active working areas.

(a) The common drinking cup and containers from which drinking water must be dipped or poured are prohibited.

(b) Where single service cups are supplied, a sanitary container for unused cups and a receptacle for used cups shall be provided.

(c) When water is cooled by ice, the ice shall either be of potable water or shall not come in contact with the water.

(d) Potable water outlets shall be posted.

(e) Potable water systems shall be constructed to prevent backflow or backsiphonage of non-potable water.

307. It is proposed to revise advisory standard 57.20-3 which is applicable to surface and underground and make it mandatory as follows:

57.20-3 *Mandatory.* MNMSAC.—At all mining operations:

(a) Workplaces, passageways, storerooms, and service rooms shall be kept clean and orderly.

(b) The floor of every workplace shall be maintained in a clean and, so far as possible, a dry condition. Where wet processes are used, drainage shall be maintained, and false floors, platforms, mats, or other dry standing places shall be provided where practicable.

(c) Every floor, working place, and passageways shall be kept free from protruding nails, splinters, holes, or loose boards, as practicable.

308. It is proposed to add a new mandatory standard 57.20-11 which is applicable to surface and underground as follows:

57.20-11 *Mandatory.* MNMSAC.—Areas where health or safety hazards exist that are not immediately obvious to employees shall be barricaded, or warning signs shall be posted at all approaches. Warning signs shall be readily visible, legible, display the nature of the hazard, and any protective action required.

309. It is proposed to add a new mandatory standard 57.20-12 which is applicable to surface and underground as follows:

57.20-12 *Mandatory.* MNMSAC—Toxic materials used in conjunction with or discarded from mining or milling of a product shall be plainly marked or labeled so as to positively identify the nature of the hazard and the protective action required.

310. It is proposed to add a new mandatory standard 57.20-13 which is applicable to surface and underground as follows:

57.20-13 *Mandatory.* MNMSAC.—Receptacles with covers shall be provided and used for the disposal of waste food and associated materials. They shall be emptied frequently and shall be maintained in a clean and sanitary condition.

311. It is proposed to add a new mandatory standard 57.20-14 which is applicable to surface and underground as follows:

57.20-14 *Mandatory.* MNMSAC.—No person shall be allowed to consume or store food or beverages in a toilet room nor in any area exposed to a toxic material.

§ 57.21 [Amended]

Y. Section 57.21 "Gassy mines" is proposed to be amended as follows:

312. It is proposed to revise mandatory standard 57.21-12 as follows:

57.21-12 *Mandatory.* MNMSAC.—Immediately before and continuously during welding or cutting with an arc or open flame or soldering with an open flame, in other than fresh air, or in places where methane is present or may enter the air current, a competent person shall test for methane with a device approved by the Secretary for detecting methane.

313. It is proposed to revise mandatory standard 57.21-13 as follows:

57.21-13 *Mandatory.* MNMSAC.—Welding or cutting with an arc of open flame or soldering with an open flame shall not be performed in atmospheres containing more than 1.0 percent of methane as determined by a device approved by the Secretary for detecting methane.

314. It is proposed to revise advisory standard 57.21-22 and make it mandatory as follows:

57.21-22 *Mandatory.* MNMSAC.—The main intake and return air currents in mines shall be in separate shafts, slopes, or drifts, except that during shaft or slope development, vent tubing may be used in the same opening. Until a second opening to the surface can be provided, single shafts used for intake and return air shall be provided with a curtain wall or partition.

315. It is proposed to revoke mandatory standard 57.21-26, MNMSAC.

316. It is proposed to revise mandatory standard 57.21-27 as follows:

57.21-27 *Mandatory.* MNMSAC.—When the main fan or fans have been shut down with all men out of the mine, no person, other than those competent to examine the mine, or other authorized persons, shall go underground until the fans have been started and the mine is examined for methane and other hazards and declared safe.

317. It is proposed to revise mandatory standard 57.21-30 follows:

57.21-30. *Mandatory.* MNMSAC.—Auxiliary fans shall be of a permissible type, maintained in permissible condition, so located and operated to avoid recirculation of air. Auxiliary fans shall not be used to ventilate any working place during interruption of normal mine ventilation. If the auxiliary fan is stopped or fails, the electrical equipment in the affected area shall be stopped and the power disconnected at the power source until ventilation in the affected area is restored. Tests shall be made at the fan for methane before auxiliary fans are started. The air passing over or through auxiliary fan units shall not exceed 1.0 percent of methane.

318. It is proposed to revise advisory standard 57.21-31 and make it mandatory as follows:

57.21-31 *Mandatory.* MNMSAC.—Auxiliary fans shall be inspected by competent persons at least twice each operating shift.

319. It is proposed to revoke mandatory standard 57.21-32. MNMSAC.

320. It is proposed to revise mandatory standard 57.21-33 as follows:

57.21-33 *Mandatory.* MNMSAC.—The volume and velocity of the current of air coursed through all active areas shall be sufficient to dilute, render harmless, and carry away methane, smoke, fumes, and dust.

321. It is proposed to revise mandatory standard 57.21-34 as follows:

57.21-34 *Mandatory.* MNMSAC.—The quantity of air coursed through the last open crosscut in pairs or sets of entries or through other ventilation openings nearest the face, shall be at least 6,000 cubic feet per minute, or 9,000 cubic feet per minute in longwall and continuous miner sections.

322. It is proposed to revise advisory standard 57.21-36 and make it mandatory as follows:

57.21-36 *Mandatory.* MNMSAC.—Permanently installed battery-charging stations and transformer stations in combustible areas shall be ventilated by separate splits of air conducted directly to return air courses. Permanently installed means intended to exist for 1 year or more.

323. It is proposed to revise mandatory standard 57.21-39 as follows:

57.21-39 *Mandatory.* MNMSAC.—If methane gas in excess of 1.0 percent is detected in the air not less than 12 inches from the back, face, and rib of an underground working place or places, adjustments shall be made in the ventilation immediately so that the concentration of methane gas in such air is reduced to 1.0 percent or less. While such changes or adjustments are underway and until they have been achieved, power to electric equipment located in such place shall be cut off, no other work shall be permitted in such place, and due precautions shall be carried out under the direction of the operator or his agent so as not to endanger other areas of the mine.

324. It is proposed to revise mandatory standard 57.21-40 as follows:

57.21-40 *Mandatory.* MNMSAC.—If 1.5 percent or higher concentration of methane gas is present in air returning from an underground working place or places, or is present in the air not less than 12 inches from the back, face, and rib of an underground working place, all men other than those persons referred to in Section 8(a) of the Federal Metal and Nonmetallic Mine Safety Act shall be withdrawn from the area of the mine endangered by such methane gas until the concentration of methane in such areas is reduced to 1.0 percent or less.

325. It is proposed to revise mandatory standard 57.21-41 as follows:

57.21-41 *Mandatory.* MNMSAC.—Air that has passed by an opening of any unsealed abandoned area and contains 0.25 percent or more of methane shall be coursed directly to a return airway. Examinations of such air shall be conducted during the preshift examinations required by mandatory standard 57.21-59.

326. It is proposed to revoke advisory standard 57.21-47. MNMSAC.

327. It is proposed to revise mandatory standard 57.21-50 as follows:

57.21-50 *Mandatory.*—Damaged brattices, vent tubing, seals, stoppings, bulkheads, overcasts, regulators and all other equipment and installations used to course air throughout the mine shall be repaired immediately.

328. It is proposed to revise mandatory standard 57.21-52 as follows:

57.21-52. *Mandatory.* MNMSAC.—Entries or rooms shall not be started off entries beyond the last open crosscuts, except that room necks and entries not to exceed 18 feet in depth may be turned off entries beyond the last open crosscuts if such room necks or entries are kept free of accumulations of methane by use of line brattice or other adequate means.

329. It is proposed to revise advisory standard 57.21-53 and make it mandatory as follows:

57.21-23 *Mandatory.* MNMSAC.—Stoppings in crosscuts between intake and return airways, on entries other than room entries, shall be built of solid, substantial material; exposed surfaces shall be made of fire-resistant material or, if the material mined is combustible, stopping shall be made of noncombustible material.

330. It is proposed to revoke advisory standard 57.21-54. MNMSAC.

331. It is proposed to revise mandatory standard 57.21-57 as follows:

57.21-57 *Mandatory.* MNMSAC.—Doors which control the flow of air by being closed shall be kept closed, except when persons or equipment are passing through such doorways. Doors shall be plainly marked to indicate whether they shall be closed or open for ventilation control purposes.

332. It is proposed to revise mandatory standard 57.21-58 as follows:

57.21-58 *Mandatory.* MNMSAC.—Overcasts and undercasts shall be:

(a) Constructed tightly of noncombustible material.

(b) Of sufficient strength to withstand possible falls from the back.

(c) Kept clear of obstruction.

333. It is proposed to revise advisory standard 57.21-65 and make it mandatory as follows:

57.21-65 *Mandatory.*—At intervals not greater than seven days the mine foreman, or other equally competent person designated by the mine foreman, shall make examinations for hazardous conditions and for compliance with mandatory health and safety standards, and shall make tests for methane, toxic gases, and carbon monoxide. Such tests shall be made with devices approved by the Secretary at the following locations:

(a) In the return of each split where it enters a the main return,

(b) On accessible pillar falls,

(c) At seals,

(d) In the main return,

(e) In at least one entry of each intake and return airway,

(f) In idle workings,

(g) In abandoned workings, insofar as conditions permit.

334. It is proposed to revise advisory standard 57.21-66 and make it mandatory as follows:

57.21-66 *Mandatory.* MNMSAC.—The mine foreman or other designated official shall read and countersign promptly the reports of the required examinations made by competent persons. Where such reports disclose hazardous conditions, the affected employees shall be so informed and such conditions shall be corrected promptly. If such conditions create an imminent danger, the operator shall withdraw all persons from, or prevent any person from entering, as the case may be, the area affected by such conditions, except those persons referred to in section 8(a) of the Federal Metal and Nonmetallic Mine Safety Act until such danger is abated. A responsible mine official at the next highest level of authority, if such level exists, shall also read and countersign at least weekly the required reports to insure that proper inspections have been made and remedial action taken.

335. It is proposed to revise mandatory standard 57.21-76 as follows:

57.21-76 *Mandatory.* MNMSAC.—Diesel-powered equipment shall not be taken into or operated in places where methane exceeds 1.0 percent at any point not less than 12 inches from the back, face, and rib.

336. It is proposed to revise mandatory standard 57.21-77 as follows:

57.21-77 *Mandatory.* MNMSAC.—Trolley wires and trolley feeder wires shall be on intake air and shall not extend into the last open crosscut or other ventilation opening. Such wires shall be kept at least 150 feet from pillar recovery workings.

337. It is proposed to revise mandatory standard 57.21-78 as follows:

57.21-78 *Mandatory.*—Only permissible equipment maintained in permissible condition shall be taken into or used beyond the last open crosscut or in places where 1.0 percent or more methane is present or may enter the air current.

338. It is proposed to revise mandatory standard 57.21-79 as follows:

57.21-79 *Mandatory.* MNMSAC.—Only permissible distribution boxes shall be used ing working places and other places where 1.0 percent or more of methane may be present or may enter the air current.

339. It is proposed to revoke mandatory standard 57.21-81. MNMSAC.

340. It is proposed to revise mandatory standard 57.21-99 as follows:

57.21-99 *Mandatory.* MNMSAC.—When blasting on shift, examinations for methane shall be made immediately before firing each shot or round, and again before other work is performed. Examinations shall be made by competent persons with devices approved by the Secretary for detecting methane.

341. It is proposed to revise mandatory standard 57.21-100 as follows:

57.21-100 *Mandatory.* MNMSAC.—Shots or rounds shall not be fired in places where 1.0 percent or more of methane is present at a point no less than 12 inches from the back, face, and rib. Tests to determine the presence of methane sall be made by a competent person with devices approved by the Secretary for detecting methane.

342. It is proposed to revise advisory standard 57.21-101 and make it mandatory as follows:

57.21-101 *Mandatory.* MNMSAC.—Shots and rounds shall be fired by competent persons.

[FR Doc.77-2462 Filed 1-27-77;8:45 am]

57.19–133 *Mandatory.* MNMSAC.—Operating shafts shall be inspected at least weekly. Idle shafts shall be inspected immediately before use.

304. It is proposed to revise advisory standard 57.19–134 and make it mandatory as follows:

57.19–134 *Mandatory.* MNMSAC.—Sheaves in operating shafts shall be inspected weekly and kept properly lubricated.

305. It is proposed to revise advisory standard 57.19–135 and make it mandatory as follows:

57.19–135 *Mandatory.* MNMSAC.—Rollers used in operating inclined shafts shall be lubricated, properly aligned, and kept in good repair.

X. Section 57.20 "Miscellaneous" is proposed to be amended as follows:

306. It is proposed to revise mandatory standard 57.20–2 which is applicable to surface and underground as follows:

57.20–2 *Mandatory.* MNMSAC.—An adequate supply of potable drinking water shall be provided at all active working areas.

(a) The common drinking cup and containers from which drinking water must be dipped or poured are prohibited.

(b) Where single service cups are supplied, a sanitary container for unused cups and a receptacle for used cups shall be provided.

(c) When water is cooled by ice, the ice shall either be of potable water or shall not come in contact with the water.

(d) Potable water outlets shall be posted.

(e) Potable water systems shall be constructed to prevent backflow or backsiphonage of non-potable water.

307. It is proposed to revise advisory standard 57.20–3 which is applicable to surface and underground and make it mandatory as follows:

57.20–3 *Mandatory.* MNMSAC.—At all mining operations:

(a) Workplaces, passageways, storerooms, and service rooms shall be kept clean and orderly.

(b) The floor of every workplace shall be maintained in a clean and, so far as possible, a dry condition. Where wet processes are used, drainage shall be maintained, and false floors, platforms, mats, or other dry standing places shall be provided where practicable.

(c) Every floor, working place, and passageways shall be kept free from protruding nails, splinters, holes, or loose boards, as practicable.

308. It is proposed to add a new mandatory standard 57.20–11 which is applicable to surface and underground as follows:

57.20–11 *Mandatory.* MNMSAC.—Areas where health or safety hazards exist that are not immediately obvious to employees shall be barricaded, or warning signs shall be posted at all approaches. Warning signs shall be readily visible, legible, display the nature of the hazard, and any protective action required.

309. It is proposed to add a new mandatory standard 57.20–12 which is applicable to surface and underground as follows:

57.20–12 *Mandatory.* MNMSAC—Toxic materials used in conjunction with or discarded from mining or milling of a product shall be plainly marked or labeled so as to positively identify the nature of the hazard and the protective action required.

310. It is proposed to add a new mandatory standard 57.20–13 which is applicable to surface and underground as follows:

57.20–13 *Mandatory.* MNMSAC.—Receptacles with covers shall be provided and used for the disposal of waste food and associated materials. They shall be emptied frequently and shall be maintained in a clean and sanitary condition.

311. It is proposed to add a new mandatory standard 57.20–14 which is applicable to surface and underground as follows:

57.20–14 *Mandatory.* MNMSAC.—No person shall be allowed to consume or store food or beverages in a toilet room nor in any area exposed to a toxic material.

§ 57.21 [Amended]

Y. Section 57.21 "Gassy mines" is proposed to be amended as follows:

312. It is proposed to revise mandatory standard 57.21–12 as follows:

57.21–12 *Mandatory.* MNMSAC.—Immediately before and continuously during welding or cutting with an arc or open flame or soldering with an open flame, in other than fresh air, or in places where methane is present or may enter the air current, a competent person shall test for methane with a device approved by the Secretary for detecting methane.

313. It is proposed to revise mandatory standard 57.21–13 as follows:

57.21–13 *Mandatory.* MNMSAC.—Welding or cutting with an arc of open flame or soldering with an open flame shall not be performed in atmospheres containing more than 1.0 percent of methane as determined by a device approved by the Secretary for detecting methane.

314. It is proposed to revise advisory standard 57.21–22 and make it mandatory as follows:

57.21–22 *Mandatory.* MNMSAC.—The main intake and return air currents in mines shall be in separate shafts, slopes, or drifts, except that during shaft or slope development, vent tubing may be used in the same opening. Until a second opening to the surface can be provided, single shafts used for intake and return air shall be provided with a curtain wall or partition.

315. It is proposed to revoke mandatory standard 57.21–26, MNMSAC.

316. It is proposed to revise mandatory standard 57.21–27 as follows:

57.21–27 *Mandatory.* MNMSAC.—When the main fan or fans have been shut down with all men out of the mine, no person, other than those competent to examine the mine, or other authorized persons, shall go underground until the fans have been started and the mine is examined for methane and other hazards and declared safe.

317. It is proposed to revise mandatory standard 57.21–30 follows:

57.21–30. *Mandatory.* MNMSAC.—Auxiliary fans shall be of a permissible type, maintained in permissible condition, so located and operated to avoid recirculation of air. Auxiliary fans shall not be used to ventilate any working place during interruption of normal mine ventilation. If the auxiliary fan is stopped or fails, the electrical equipment in the affected area shall be stopped and the power disconnected at the power source until ventilation in the affected area is restored. Tests shall be made at the fan for methane before auxiliary fans are started. The air passing over or through auxiliary fan units shall not exceed 1.0 percent of methane.

318. It is proposed to revise advisory standard 57.21–31 and make it mandatory as follows:

57.21–31 *Mandatory.* MNMSAC.—Auxiliary fans shall be inspected by competent persons at least twice each operating shift.

319. It is proposed to revoke mandatory standard 57.21–32. MNMSAC.

320. It is proposed to revise mandatory standard 57.21–33 as follows:

57.21–33 *Mandatory.* MNMSAC.—The volume and velocity of the current of air coursed through all active areas shall be sufficient to dilute, render harmless, and carry away methane, smoke, fumes, and dust.

321. It is proposed to revise mandatory standard 57.21–34 as follows:

57.21–34 *Mandatory.* MNMSAC.—The quantity of air coursed through the last open crosscut in pairs or sets of entries or through other ventilation openings nearest the face, shall be at least 6,000 cubic feet per minute, or 9,000 cubic feet per minute in longwall and continuous miner sections.

322. It is proposed to revise advisory standard 57.21–36 and make it mandatory as follows:

57.21–36 *Mandatory.* MNMSAC.—Permanently installed battery-charging stations and transformer stations in combustible areas shall be ventilated by separate splits of air conducted directly to return air courses. Permanently installed means intended to exist for 1 year or more.

323. It is proposed to revise mandatory standard 57.21–39 as follows:

57.21–39 *Mandatory.* MNMSAC.—If methane gas in excess of 1.0 percent is detected in the air not less than 12 inches from the back, face, and rib of an underground working place or places, adjustments shall be made in the ventilation immediately so that the concentration of methane gas in such air is reduced to 1.0 percent or less. While such changes or adjustments are underway and until they have been achieved, power to electric equipment located in such place shall be cut off, no other work shall be permitted in such place, and due precautions shall be carried out under the direction of the operator or his agent so as not to endanger other areas of the mine.

324. It is proposed to revise mandatory standard 57.21–40 as follows:

57.21–40 *Mandatory.* MNMSAC.—If 1.5 percent or higher concentration of methane gas is present in air returning from an underground working place or places, or is present in the air not less than 12 inches from the back, face, and rib of an underground working place, all men other than those persons referred to in Section 8(a) of the Federal Metal and Nonmetallic Mine Safety Act shall be withdrawn from the area of the mine endangered by such methane gas until the concentration of methane in such areas is reduced to 1.0 percent or less.

325. It is proposed to revise mandatory standard 57.21–41 as follows:

57.21–41 *Mandatory.* MNMSAC.—Air that has passed by an opening of any unsealed abandoned area and contains 0.25 percent or more of methane shall be coursed directly to a return airway. Examinations of such air shall be conducted during the preshift examinations required by mandatory standard 57.21–59.

326. It is proposed to revoke advisory standard 57.21–47. MNMSAC.

327. It is proposed to revise mandatory standard 57.21–50 as follows:

57.21–50 *Mandatory.*—Damaged brattices, vent tubing, seals, stoppings, bulkheads, overcasts, regulators and all other equipment and installations used to course air throughout the mine shall be repaired immediately.

328. It is proposed to revise mandatory standard 57.21–52 as follows:

57.21–52. *Mandatory.* MNMSAC.—Entries or rooms shall not be started off entries beyond the last open crosscuts, except that room necks and entries not to exceed 18 feet in depth may be turned off entries beyond the last open crosscuts if such room necks or entries are kept free of accumulations of methane by use of line brattice or other adequate means.

329. It is proposed to revise advisory standard 57.21–53 and make it mandatory as follows:

57.21–23 *Mandatory.* MNMSAC.—Stoppings in crosscuts between intake and return airways, on entries other than room entries, shall be built of solid, substantial material; exposed surfaces shall be made of fire-resistant material or, if the material mined is combustible, stopping shall be made of noncombustible material.

330. It is proposed to revoke advisory standard 57.21–54. MNMSAC.

331. It is proposed to revise mandatory standard 57.21–57 as follows:

57.21–57 *Mandatory.* MNMSAC.—Doors which control the flow of air by being closed shall be kept closed, except when persons or equipment are passing through such doorways. Doors shall be plainly marked to indicate whether they shall be closed or open for ventilation control purposes.

332. It is proposed to revise mandatory standard 57.21–58 as follows:

57.21–58 *Mandatory.* MNMSAC.—Overcasts and undercasts shall be:

(a) Constructed tightly of noncombustible material.

(b) Of sufficient strength to withstand possible falls from the back.

(c) Kept clear of obstruction.

333. It is proposed to revise advisory standard 57.21–65 and make it mandatory as follows:

57.21–65 *Mandatory.*—At intervals not greater than seven days the mine foreman, or other equally competent person designated by the mine foreman, shall make examinations for hazardous conditions and for compliance with mandatory health and safety standards, and shall make tests for methane, toxic gases, and carbon monoxide. Such tests shall be made with devices approved by the Secretary at the following locations:

(a) In the return of each split where it enters the main return,

(b) On accessible pillar falls,

(c) At seals,

(d) In the main return,

(e) In at least one entry of each intake and return airway,

(f) In idle workings,

(g) In abandoned workings, insofar as conditions permit.

334. It is proposed to revise advisory standard 57.21–66 and make it mandatory as follows:

57.21–66 *Mandatory.* MNMSAC.—The mine foreman or other designated official shall read and countersign promptly the reports of the required examinations made by competent persons. Where such reports disclose hazardous conditions, the affected employees shall be so informed and such conditions shall be corrected promptly. If such conditions create an imminent danger, the operator shall withdraw all persons from, or prevent any person from entering, as the case may be, the area affected by such conditions, except those persons referred to in section 8(a) of the Federal Metal and Nonmetallic Mine Safety Act until such danger is abated. A responsible mine official at the next highest level of authority, if such level exists, shall also read and countersign at least weekly the required reports to insure that proper inspections have been made and remedial action taken.

335. It is proposed to revise mandatory standard 57.21–76 as follows:

57.21–76 *Mandatory.* MNMSAC.—Diesel-powered equipment shall not be taken into or operated in places where methane exceeds 1.0 percent at any point not less than 12 inches from the back, face, and rib.

336. It is proposed to revise mandatory standard 57.21–77 as follows:

57.21–77 *Mandatory.* MNMSAC.—Trolley wires and trolley feeder wires shall be on intake air and shall not extend into the last open crosscut or other ventilation opening. Such wires shall be kept at least 150 feet from pillar recovery workings.

337. It is proposed to revise mandatory standard 57.21–78 as follows:

57.21–78 *Mandatory.*—Only permissible equipment maintained in permissible condition shall be taken into or used beyond the last open crosscut or in places where 1.0 percent or more methane is present or may enter the air current.

338. It is proposed to revise mandatory standard 57.21–79 as follows:

57.21–79 *Mandatory.* MNMSAC.—Only permissible distribution boxes shall be used ing working places and other places where 1.0 percent or more of methane may be present or may enter the air current.

339. It is proposed to revoke mandatory standard 57.21–81. MNMSAC.

340. It is proposed to revise mandatory standard 57.21–99 as follows:

57.21–99 *Mandatory.* MNMSAC.—When blasting on shift, examinations for methane shall be made immediately before firing each shot or round, and again before other work is performed. Examinations shall be made by competent persons with devices approved by the Secretary for detecting methane.

341. It is proposed to revise mandatory standard 57.21–100 as follows:

57.21–100 *Mandatory.* MNMSAC.—Shots or rounds shall not be fired in places where 1.0 percent or more of methane is present at a point no less than 12 inches from the back, face, and rib. Tests to determine the presence of methane sall be made by a competent person with devices approved by the Secretary for detecting methane.

342. It is proposed to revise advisory standard 57.21–101 and make it mandatory as follows:

57.21–101 *Mandatory.* MNMSAC.—Shots and rounds shall be fired by competent persons.

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FRIDAY, JANUARY 28, 1977

PART III



DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

■

LOANS FOR HOUSING THE ELDERLY OR HANDICAPPED

Title 24—Housing and Urban Development

CHAPTER VIII—LOW INCOME HOUSING, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. R-77-332]

PART 885—LOANS FOR HOUSING THE ELDERLY OR HANDICAPPED

The Department of Housing and Urban Development (HUD) published on February 25, 1976, at 41 FR 8314, a final rule amending Title 24, Part 885 to provide a program of both construction and long-term financing for projects for the elderly or handicapped pursuant to Section 202 of the Housing Act of 1959, as amended (12 U.S.C. 1701q). Subsequent to publication of this final rule, the Housing Authorization Act of 1976, Pub. L. 94-375, was enacted August 3, 1976, making certain changes in the provisions of Section 202, pursuant to which the Department is issuing this final rule amending Part 885.

The significant changes being made in Part 885 are the following:

1. Section 885.3 is being changed to correct an error in the final rule, since Parts 880 and 881 apply to loans made under this Part to the extent that they are "not" inconsistent with Subparts C and D of this Part. The original publication omitted the word "not".

2. The definition of "Elderly or Handicapped Families" in Section 885.5 is being amended to reflect a statutory change to include two or more elderly or handicapped persons living together, or one or more of such persons living with another person who is determined by HUD to be essential to their care or well being. This definition is also being changed to include the surviving member or members of any family described in the definition who are living with the deceased member of the family at the time of his or her death.

The definition of "Assistant Secretary" is being changed to mean the Assistant Secretary for Housing-Federal Housing Commissioner to reflect an organizational name change in HUD.

3. Section 885.215 is being amended by the addition of a new subsection (e) which will provide that the Assistant Secretary or field office may amend the amount of a fund reservation pursuant to subsection (b) at any time before the final closing of a loan. This change is needed since program experience has shown that the amount of the reservation initially granted is often insufficient to provide loan funds needed to permit development of a financially feasible project. Since minimal project information is required at this stage, it is difficult to determine the amount of loan funds which will be needed.

4. Section 885.315(c) is being amended to restrict the requirement for evaluation of the Borrower's proposed Contract Rents to a determination as to their compliance with the Fair Market Rent Limits, except that in the case of any Proposal for a project with less than all rental dwelling units under the Section 8 Housing Assistance Payments Program, the amendment also provides that sufficient market demand should be anticipated to assure the feasibility of the project.

5. Section 885.315(d)(1)(i) is being amended to eliminate the requirement that Field Office approval of a Preliminary Proposal include notification of the Contract Rents which are acceptable to HUD. Such notification will be made in connection with notice of approval of the Final Proposal.

6. A new § 885.320 is being added to provide that any Contract Rents which are hereafter or have been previously proposed by a Borrower in its Preliminary Proposal, or have been approved by HUD under the Preliminary Proposal submission may be modified and resubmitted by the Borrower at the final proposal stage, or at any time prior to execution of the Agreement to Enter into the Housing Assistance Payments Contract.

This Section also will provide that HUD will evaluate the acceptability of the Contract Rents proposed by the Borrower and will notify the Borrower at the time of approval of the Final Proposal as to the Contract Rents which will be acceptable to HUD when these are lower than the Contract Rents proposed by the Borrower.

7. A new § 885.325 is being added to provide that the provisions of § 880.108(b) (New Construction) and § 881.108(b) (Substantial Rehabilitation) are inapplicable to Section 202 projects. In lieu of the comparability test provided thereunder, a provision has been added that the applicable Contract Rents will be subject to reduction only to the extent that they are higher than the rents determined by HUD to be necessary to cover operating costs, including debt service on the Section 202 loan, and reasonable reserves as approved by HUD. However, as noted in Paragraph 4, above, in the case of proposals for projects with less than all rental dwelling units under the Section 8 Housing Assistance Payments Program, this amendment also provides that there should be sufficient market demand to assure the feasibility of the project.

8. Section 885.410(a) is being amended to provide that the Assistant Secretary or field office may increase the amount of a fund reservation at any time before the final closing of a loan, and to require that applications for substantial rehabilitation shall be subject to a maximum mortgage amount that would apply under § 231.4 (b) and (c) of Chapter II of this Title.

9. Section 885.410(b) is being amended to reflect the new statutory interest rate formula as set forth in section 11(c)(1) of the Housing Authorization Act of 1976. Under this amendment, the interest rate for Section 202 loans will be based on the average interest rate on all interest bearing obligations of the United States then forming a part of the public debt computed at the end of the fiscal year next preceding the date on which the loan is made. This section is also being changed to provide that the applicable interest rate will be the one in effect at the time the loan is made. A clarifying provision is being added stating that a loan will be deemed to be made as of the date of initial loan closing for the purpose of determining the applicable interest rate.

10. Section 885.415(n) is being amended to permit an incentive payment to general constractors so that they may share the benefits of savings in interest charges, taxes, and insurance stemming from earlier than estimated completion of construction.

Although far more extensive revisions to these regulations are being considered, because the statutory changes are remedial in nature, this final rule will be made effective upon publication, in order to provide Section 202 Applicants the benefits of these changes as soon as possible. Further, the changes involving Section 8 processing are needed at the earliest possible date to enable the Field Offices to proceed with orderly processing of the Section 8 proposals for Section 202 projects for which fund reservations had been made during the 1976 Fiscal Year and Transition Quarter ending September 30, 1976. These changes also will apply to those proposals which receive fund reservations in following years.

The Department has determined that this amendment will not have a significant impact upon the quality of the environment. A Finding of Inapplicability with respect to the National Environmental Policy Act of 1969 has been made in accordance with HUD procedures. A Finding of Inapplicability will be available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Room 10141, Department of Housing and Urban Development, Washington, D.C.

It is hereby certified that the economic and inflationary impacts of this final rule have been carefully evaluated in accordance with OMB Circular A-107.

Accordingly, 24 CFR, Part 885 Subpart A is amended as follows:

1. Section 885.3 is revised to read:

§ 885.3 Applicability of Parts 880 and 881.

To determine whether a project for which a direct loan is requested under this part complies with the requirements of the Section 8 Housing Assistance Payments Program—New Construction or Section 8 Housing Assistance Payments Programs—Substantial Rehabilitation, the provisions of Part 880 and 881 of this chapter shall apply to the extent that such provisions are not inconsistent with the provisions of Part 885.

2. Section 885.5 is amended to read:

* * * * *

Assistant Secretary means the Assistant Secretary for Housing—Federal Housing Commissioner.

* * * * *

Elderly or Handicapped Families means (a) families of two or more persons the head of which (or his/her spouse) is sixty-two years of age or over or is handicapped, or (b) the surviving member or members of any family described in (a) who were living in a unit assisted under the Section 202 program, with the deceased member of the family at the time of his or her death, or (c) a single person who is sixty-two years of age or over or who is handicapped or (d) two or more elderly or handicapped persons living together or one or more such persons living with another person who is determined by HUD, based upon a licensed physician's certification provided by the resident or prospective resident, to be essential to their care or well being.

* * * * *

3. Section 885.215 is amended by the addition of a new paragraph (e).

§ 885.215 Approval of requests for fund reservations.

* * * * *

(e) The Assistant Secretary or field office may amend the amount of a fund reservation approved pursuant to paragraph (b) of this section at any time before the final closing of a loan, subject to the availability of loan authority.

4. Section 885.315 is amended by revising paragraphs (c) and (d)(1)(i) to read:

§ 885.315 Screening and evaluation of preliminary proposals.

* * * * *

(c) Evaluation of Preliminary Proposals by the Field Office. The Field Office may begin its evaluation of proposals upon receipt, but the evaluation may not be completed until the response periods referred to in paragraph (b) of the section have ended. The Preliminary Proposal will be evaluated by the Field Office based on those factors which may be necessary to determine the acceptability of the location (site), acceptability of the design concept, the market value of the site, compliance with the Fair Market Rent Limits, and the comments, if any, received from the appropriate A-95 clearinghouse and the unit of general local government. However, analysis of Preliminary Proposals for Section 8 contract authority for less than all of the rental dwelling units should indicate that sufficient market demand is anticipated for the unsubsidized portion to assure the feasibility of the project.

(d) * * *

(1) * * *

(i) The Borrower's proposed Contract Rents fall within the Fair Market Rent Limits. The proposed Contract Rents submitted by the Borrower shall be evaluated and approved at the Final Proposal stage." * * *

* * * * *

5. A new § 885.320 under Subpart C is added:

§ 885.320 Final proposal.

(a) Any Contract Rents which are or have been proposed by a Borrower in its Preliminary Proposal or approved by HUD pursuant to the Preliminary Proposal submission may be modified in the Final Proposal, or at any time prior to execution of the Agreement to Enter into Housing Assistance Payments Contract.

(b) The evaluation by HUD of a Final Proposal submitted by a Borrower shall include, in addition to the items listed in § 880.210 for New Construction and §881.210 for Substantial Rehabilitation, the Contract Rents and financial feasibility of the project, based upon the criteria set forth in § 885.325 of this Part.

(c) Notification of the Borrower of approval of its Final Proposal shall include the Contract Rents acceptable to HUD, and if lower than the rents proposed by the Borrower the reasons for the reduction.

6. A new § 885.325 is also added:

§ 885.325 Contract rents determined acceptable to HUD at final proposal.

Sections 880.108(b) (New Construction) and 881.108(b) (Substantial Rehabilitation) of the Section 8 Regulations are not applicable to Section 202 projects in which units are eligible for occupancy under the Section 8 Housing Assistance Payments Program. Contract Rents will be established within the applicable Fair Market Rent Limits in the Final Proposal pursuant to § 880.108(a) or § 881.108(a) and will be no higher than the rents determined by HUD to be necessary to cover operating costs, including debt service on the Section 202 loan, and reasonable reserves as approved by HUD. In the case of Proposals for projects with Section 8 contract authority for less than all of the rental dwelling units, these rents must be within such levels that sufficient market demand is anticipated for the unsubsidized portion to assure the feasibility of the project.

7. Section 885.410 is amended by revising paragraphs (a) and (b) to read:

§ 885.410 Amount and terms of financing.

(a) The amount of financing approved shall be the amount stated in the Notice of section 202 Fund Reservation, including any increase approved by the Assistant Secretary or field office prior to the final closing of a loan; Provided, however, that the amount of financing provided shall not exceed the lesser of (1) the maximum mortgage amount that would apply under § 231.3 or 231.4 (b) and (c) of Chapter II of this title if the mortgage were insured under section 231 of the National Housing Act, or (2) the total Development Cost of the project.

(b) The loan shall bear interest at a rate established by the Secretary by adding: (1) A rate determined by the Secretary of the Treasury to be the average interest rate on all interest bearing obligations of the United States then forming a part of the public debt computed at the end of the fiscal year next preceding the date on which the loan is made: plus (2) an allowance to cover administrative costs and probable losses under the program, which allowance has been determined by the Secretary to be one percent (1 percent) per annum during the construction period, and one half of one percent (.5 percent) thereafter. Loans committed to be made by the Assistant Secretary shall bear interest at the rate in effect at the time a loan is made. A loan shall be deemed to be made as of the date of the initial loan closing pursuant to § 885.415, except that any loans made on and after August 3, 1976, and prior to October 1, 1976, shall bear interest at the rate stated in the next sentence. The interest rate applicable to loans made between August 3, 1976, and September 30, 1977, shall be seven and three-eighths percent (7⅜ percent) per annum during the construction period and six and seven-eighths percent (6⅞ percent) thereafter. The interest rate applicable to subsequent fiscal years shall be published in the FEDERAL REGISTER. If a loan is made in a fiscal year other than that fiscal year in which the application is processed, and the interest rate for the year in which the loan is made is different from the rate used for processing, HUD will determine whether or not reprocessing is necessary.

* * * * *

8. Section 885.415(n) is revised to read as follows:

§ 885.415 Requirements prior to initial disbursement of loan.

* * * * *

(n) A Construction or Substantial Rehabilitation Contract between the Borrower and General Contractor, on a form to be prescribed by the Assistant Secretary, which Contract shall be in the form of a cost plus contract which shall provide for the payment of the actual cost of construction or substantial rehabilitation not to exceed an upset price, and may include a provision for an additional payment to the builder of a fee in an amount allowed by HUD for earlier than estimated completion. The Contract shall be supplemented by such Cost or Trade Payment Breakdown and General Conditions as the Assistant Secretary may prescribe.

* * * * *

Effective date: These amendments are effective on January 28, 1977.

JOHN T. HOWLEY,
Acting Assistant Secretary for Housing — Federal Housing Commissioner.

[FR Doc.77-2451 Filed 1-27-77;8:45 am]

federal register

FRIDAY, JANUARY 28, 1977

PART IV



DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Federal Housing Commissioner—Office of Assistant Secretary for Housing

■

LEASE AND GRIEVANCE PROCEDURES

Title 24—Housing and Urban Development
Urban Development

CHAPTER VIII—LOW-INCOME PUBLIC HOUSING, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. R-77-344]

PART 866—LEASE AND GRIEVANCE PROCEDURES

Subpart A—Dwelling Leases, Procedures and Requirements

On March 10, 1976, a notice of proposed rule was published in the FEDERAL REGISTER (41 CFR 10313) which would amend Title 24, Chapter VIII, Part 866, Subpart A, Dwelling Leases, Procedures and Requirements by extending the time for compliance by Public Housing Agencies, clarifying provisions giving rise to inquiries, and correcting editorial errors. The Department received five comments in response to the Proposed Rule. Three of the comments dealt with parts of Subpart A that are not proposed for change.

The two responsive comments were directed to § 866.2, the extension of time until February 16, 1977, for implementation of this Subpart. One supported the Proposed Rule, and the other opposed it. The extension was proposed for two reasons. First, it was felt that this Subpart, together with Part 866, Subpart B (Grievance Procedures and Requirements) should be effective simultaneously. Second, prior to publication of this proposal, the Department received numerous requests from both Public Housing Agencies and tenant representatives requesting an extension of time to assure proper compliance. The Department has determined that the time for compliance should be extended.

The Secretary has determined that Title 24, Chapter VIII, Part 866, Subpart A does not have a substantial environmental impact and a finding of inapplicability is available for public inspection in the Office of the Rules Docket Clerk, Office of the Secretary, Room 10141, Department of Housing and Urban Development, 451 7th Street, S.W., Washington, D.C. 20410.

It is hereby certified that the economic and inflationary impacts of Part 866, Subpart A have been carefully evaluated in accordance with OMB Circular A-107.

Accordingly, Title 24, Chapter VIII, Part 866, Subpart A is amended as set forth below.

§ 866.1 [Amended]

1. Section 866.1 is amended by deleting the word "Tribal" immediately after the word "Indian."

§ 866.2 [Amended]

2. Section 866.2 is amended by deleting the words "within six months from the effective date of these regulations" immediately after the words "each PHA" and substituting the words "by February 16, 1977."

3. Section 866.4(b)(4) is amended to read as follows:

§ 866.4 Lease requirements.

* * * * * *

(b) * * *

(4) The lease shall provide that charges assessed under paragraph (b)(2) of this section shall not become due and collectible before the first day of the second month following the month in which the charge is incurred.

Effective Date: These amendments are effective on February 16, 1977.

JOHN T. HOWLEY,
Acting Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc.77-2465 Filed 1-27-77;8:45 am]

[Docket No. R-77-344]

PART 866—LEASE AND GRIEVANCE PROCEDURES

Subpart B—Grievance Procedures and Requirements

On March 10, 1976, a notice of proposed rule was published in the FEDERAL REGISTER (41 FR 10313) which would amend Title 24, Chapter VIII, Part 866, Subpart B, Grievance Procedures and Requirements, by extending the time for compliance by Public Housing Agencies and correcting an editorial error. The Department received five comments in response to this proposal. Three of the comments dealt with parts of Subpart B that are not proposed for change.

The two responsive comments were directed to Section 866.52, the extension of time for implementation. One supported and one opposed the Proposed Rule. The extension was proposed for two reasons. First, it was felt that this regulation, together with Part 866, Subpart A (Dwelling Leases, Procedures and Requirements) should be effective simultaneously. Second, prior to publication of this proposal, the Department received numerous requests from both Public Housing Agencies and tenant representatives requesting an extension of time to assure proper compliance. The Department has determined to extend the time for compliance.

Because some PHAs have applied directly to the HUD Central Office for waivers under § 866.59 rather than to the HUD Field Offices normally conducting day-to-day business with them, the Department is adopting an amendment to § 866.59 which was not published in the Proposed Rule on March 10, 1976. Section 866.59 as adopted August 7, 1975 (40 FR 33409) provided that a waiver of Subpart B to permit PHAs to utilize existing Grievance Procedures may be granted under named conditions by "the Secretary or his designee." The Amendment provides that the waiver may be granted by the Directors of the HUD Field Office with which the particular PHA normally transacts its low-income housing business.

The Secretary has determined that Part 866, Subpart B does not have a substantial environmental impact and a finding of inapplicability is available for public inspection in the Office of Rules Docket Clerk, Office of the Secretary, Room 10141, Department of Housing and Urban Development, 451 7th Street, SW, Washington, D.C.

It is hereby certified that the economic and inflationary impacts of Part 866, Subpart B have been carefully evaluated in accordance with OMB Circular A-107.

Accordingly, Title 24, Chapter VIII, Part 866, Subpart B is amended as follows.

§ 866.52 [Amended]

1. Section 866.52 is amended by deleting the words "Within ninety days of the effective date of this Subpart" immediately before the words "each PHA" and substituting the words "by February 16, 1977."

§ 866.55 [Amended]

2. Section 866.55(b)(2) is amended by deleting the reference "(a)" immediately after the word "paragraph" and substituting the reference "(b)."

§ 866.59 [Amended]

1. Section 866.59 is amended by deleting the words "the Secretary or his designee" and substituting "the Director of the HUD Field Office with which the PHA normally transacts its low-income housing business."

Effective Date: February 16, 1977.

JOHN T. HOWLEY,
Acting Assistant Secretary for Housing — Federal Housing Commissioner.

[FR Doc.77-2466 Filed 1-27-77;8:45 am]

federal register

FRIDAY, JANUARY 28, 1977

PART V



DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Federal Insurance Administration

■

NATIONAL FLOOD INSURANCE PROGRAM

Tentative Draft Agreement Between NFIA and the Federal Insurance Administration

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Federal Insurance Administration

[24 CFR Part 1909]

[Docket No. N-77-695]

NATIONAL FLOOD INSURANCE PROGRAM

Tentative Draft Agreement Between NFIA and the Federal Insurance Administration

The Department hereby publishes for public comment a form of draft tentative agreement negotiated between the Department and the National Flood Insurers Association (NFIA). The relationship between the Department and NFIA is governed by the National Flood Insurance Act of 1968 (Pub. L. 90-448) and the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), as amended, which established the National Flood Insurance Program.

Pursuant to the National Flood Insurance Act of 1968, the Department and NFIA, on June 6, 1969, entered into an agreement which has been amended several times and is currently in effect. Should the draft tentative agreement published herewith be finalized and executed, it would replace the current agreement.

The form of agreement published for comment is a draft tentative agreement which has been negotiated between the Department and NFIA during the past five months. While the Department and NFIA have reached tentative agreement, subject to public comment, on the provisions of the draft agreement, the Department and NFIA are each free to renegotiate all provisions of the draft agreement.

A major outstanding issue as to which the Department and NFIA did not reach tentative agreement concerns the effect of regulations and other directives issued by the Administrator on the obligations undertaken by NFIA under the Agreement.

HUD's position throughout the course of these negotiations has been that the Secretary has such regulatory authority over the insurance component of the program and NFIA as is necessary to provide continuing involvement in and supervision of NFIA. HUD maintains that, when agreement on an issue cannot be reached through consultation between the parties, final resolution rests with the Secretary, and the Secretary cannot enter into a contract under which the Secretary would voluntarily agree to contract away the powers of Government.

On the other hand, NFIA's position in the negotiations has been that, while it recognizes that the Secretary has oversight responsibilities under the Act, the relationship between NFIA and the Secretary is contractual in nature and the Secretary may not issue regulations or directives which unilaterally amend that contractual relationship or impose extra-contractual obligations on NFIA.

In the Department's view, the term "operational responsibilities" used with reference to NFIA in several articles, but not defined in the draft agreement, would have to be clearly defined in a final agreement to conform to the resolution of this issue. The Department believes that the term should be defined to refer only to the functional aspects of the insurance component, such as the issuing of the policies, collecting and accounting for the premiums, investigating and paying claims, and similar functions. NFIA maintains that such a characterization reduces NFIA to the status of a mere fiscal agent and that the Act contemplates a partnership arrangement between the government and the industry.

HUD and NFIA have not reached tentative agreement on contract provisions which would satisfactorily resolve this issue.

There are some additional, and major, issues still being negotiated by the parties which have not yet resulted in tentative agreement. As noted in the draft tentative agreement, provisions are not included regarding contracting requirements applicable to NFIA with respect to operation of the Computer System. Whether the operation of the Computer System will be contracted out, and if so, what method of contracting will be used, are matters as to which the parties have not reached tentative agreement. The Department's position is that the Computer System should be operated by an independent firm rather than by NFIA to assure transferability of the Computer System to HUD or HUD's designee at all times. NFIA is of the view that the agreement between the Department and NFIA should not require NFIA to enter into such a contract, but should leave such determination to NFIA as a matter of business judgment, and that transferability of the Computer System can be assured without contracting the system out to a third party. Public comment is invited on this issue.

Interested persons are invited to comment on the draft tentative agreement by submitting their comments to the Rules Docket Clerk, Office of the Secretary, Room 10141, Department of Housing and Urban Development, 451 7st Street, SW., Washington, D.C. 20410. Comments received on or before February 28, 1977 will be considered.

The draft agreement is set forth hereinafter.

(42 U.S.C. 3535(d).)

Issued at Washington, D.C., January 19, 1977.

J. ROBERT HUNTER,
Acting Federal Insurance Administrator.

Approved:

JOHN B. RHINELANDER,
Under Secretary of Housing and Urban Development.

TENTATIVE DRAFT AGREEMENT BETWEEN NFIA AND THE ADMINISTRATION

TABLE OF CONTENTS

Article I—Contractual responsibilities of the parties.
Article II—Organization of NFIA.
Article III—Issuance of policies.
Article IV—Financial provisions.
Article V—Consultation and notice.
Article VI—Adjustment and payment of claims, interpretation and clarification of insurance policies.
Article VII—Litigation.
Article VIII—Contracting by NFIA.
Article IX—Computer systems.
Article X—Financial records, audits, and reports.
Article XI—Promotional material.
Article XII—Equal opportunity.
Article XIII—Construction.
Article XIV—Amendments.
Article XV—Term.
Article XVI—Termination and transfer.
Article XVII—Attendance at program meetings.
Article XVIII—Toll free telephones.
Article XIX—Notice to policyholders.
Article XX—Assignment, notices and time periods.
Article XXI—Regulations of the Administrator. (Tentative agreement not yet reached.).
Exhibit A—States with 5,000 or more policies as of October 31, 1976.
Exhibit B—Form of Preamble to FEDERAL REGISTER Publication of Clarification.
Exhibit C—Servicing Companies getting Toll Free Lines.

AGREEMENT

This Agreement dated _____, by and between the National Flood Insurers Association, an unincorporated association of insurers (hereinafter referred to as "NFIA") with its headquarters at 1755 S. Jefferson Davis Highway, Arlington, Virginia, and the Department of Housing and Urban Development of the United States Government (hereinafter referred to as the "Administrator");

Whereas the Department of Housing and Urban Development is authorized by the National Flood Insurance Act of 1968, as amended, and the Flood Disaster Proteciton Act of 1973, as amended, both of which are codified at 42 U.S.C. 4001 *et seq.* (hereinafter referred to as "the Act"), to establish and carry out a National Flood Insurance Program to be made available throughout the Nation for the protection of property owners; and

Whereas the Secretary of the Department of Housing and Urban Development has delegated the authority to establish and operate such program under the Act to the Federal Insurance Administrator; and

Whereas the Administrator desires to enter into a revised agreement with NFIA pursuant to 42 U.S.C. 4051-4056, under which NFIA will carry out the operation of certain aspects of the National Flood Insurance Program and under which the relationship between the Administrator and NFIA, and the respective obligations of each, will be set forth; and

Whereas NFIA has been formed to constitute a pool of insurers in order to participate in the National Flood Insurance Program and desires to enter into an agreement with the Administrator;

Now, therefore, the parties agree as follows:

Article I. Contractual responsibilities of the parties.

A. *General.* This Agreement is entered into between NFIA and the Administrator under Part A of the Act.

B. *Contractual Responsibility of NFIA.* NFIA agrees, by the terms of this Agreement, to provide a continuous program of flood insurance coverage authorized under Chapter I of the Act, and to assume, as provided specifically in Article IV of this Agreement, a reasonable proportion of the financial responsibility for payment of operating costs, losses, and loss adjustment expenses incurred in the operation of the National Flood Insurance Program. In carrying out its operational and financial responsibilities under this Agreement NFIA shall fulfill the following obligations and functions:

1. Provision of risk capital and participation in risk of loss as set forth in Article IV.

2. Issuance and servicing of flood insurance policies as provided in Article III.

3. Adjustment and payment of claims as provided in Article VI.

4. Letting, administration, and termination of contracts as provided in Article VIII.

5. Distribution of flood insurance maps to persons who request such maps.

c. *Contractual Responsibility of the Administrator.* 1. *Financial Assistance.* The Administrator shall provide to NFIA program payments, reinsurance coverage, and operating allowances as set forth in Article IV.

3. *Notice and Consultation.* The Administrator shall provide NFIA the advance notice and shall engage in the consultation provided for in Article V.

4. *Designation of Communities.* For all communities presently participating in the program and for all communities which shall, in the future, participate in the program, the Administrator shall indicate to NFIA whether the insurance policies shall be issued pursuant to the regular program or emergency program and whether the community is designated as coastal or inland.

5. *Flood Maps.* The Administrator shall develop flood insurance maps and issue NFIA an adequate supply for its distribution.

Article II. Organization of NFIA.

A. *Membership.* 1. *General.* NFIA shall keep its membership open to all insurers meeting the requirements prescribed by the Administrator for insurance companies and other insurers for financial participation and risk sharing in NFIA. No insurance company or other insurer meeting the requirements so prescribed and indicating an intention to participate in the flood insurance program on a risk-sharing basis shall be excluded from participation in the pool, providing that NFIA may require that no insurers desiring such participation shall be admitted to membership in NFIA for a term less than a full accounting period or subsequent to the first day of any accounting period.

2. *Changes in Membership.* Changes in NFIA's membership, whether additions or withdrawals, shall not alter, amend, or affect the provisions of this Agreement. NFIA shall promptly advise the Administrator of all additions to and withdrawals from its membership. Nothing in this Agreement shall limit the right of any member of NFIA to reduce or terminate its financial participation or risk sharing in NFIA as of the end of any accounting period.

B. *Amendments to NFIA Constitution and Dissolution of NFIA.* NFIA shall give the Administrator at least thirty days' advance written notice of any meeting of the NFIA Executive Committee or Membership called to consider any amendment to NFIA's Constitution or dissolution of NFIA.

C. *NFIA Committee Meetings and Public Hearings.* 1. NFIA shall invite the Administrator or his representative to attend meetings of the Executive Committee or subcommittees thereof by giving the Administrator the same notice of meeting as is given to the members of the Executive Committee or subcommittee.

2. NFIA shall promptly notify the Administrator in writing of all actions taken by the Executive Committee at its meetings. In addition, NFIA shall furnish the Administrator copies of written agenda and formal minutes of meetings of the Executive Committee and subcommittees.

3. NFIA and the Administrator shall conduct at least annually a joint Public Meeting, at which time members of the public may express their views, opinions, and suggestions for the Program. Notice to the public shall be as determined by the Administrator and NFLA at the time of the proposed meetings.

4. NFIA and the Administrator shall make available to any interested person who requests them copies of all formal actions taken by the Administrator and NFIA relating to the Program.

5. Nothing herein shall preclude the NFIA Executive Committee or any subcommittee from meeting in Executive Session for such purposes and at such times as it, in its sole discretion, determines to be necessary or appropriate. NFIA shall promptly notify the Administrator in writing of all actions taken at any such meeting, but shall not be required to furnish the Administrator formal minutes of such meetings.

Article III. Issuance of policies.

A. *Issuance.* 1. NFIA shall arrange for the issuance of policies of flood insurance and renewals thereof to any person or organization who qualifies for such coverage in accordance with Regulations promulgated by the Administrator pursuant to Section 1306(a) of the Act. NFIA shall have the operational responsibility for the issuance, renewal, and other servicing of standard flood insurance policies, and for the collection and investment of flood insurance premiums.

2. All such policies of insurance shall conform with the Regulations prescribed by the Administrator and this Agreement and shall be issued in the form prescribed by the Administrator in the Regulations. The amount of coverage provided under policies of flood insurance issued by NFIA shall not exceed the dollar limits set forth in Section 1306(b) of the Act.

3. Policies of flood insurance shall be issued in consideration of such premiums and in such States or areas or subdivisions thereof as may be designated by the Administrator pursuant to the Act.

4. A standard flood insurance policyholder whose property has been determined not to be in a special hazard area after a map revision or a Letter of Map Amendment under the Regulations may cancel the policy within the current policy year, provided: (a) he was required to purchase or to maintain flood insurance coverage, or both, as a condition for financial assistance; and (b) his property was located in an identified special flood hazard area as represented on an effective FHBM or FIRM when the financial assistance was provided. If no claim under the policy has been paid or is pending. NFIA shall refund the full gross premium, including any agents commissions paid by the insured, for the current policy year, and for an additional policy year where the insured had been required to renew the policy during the period when a revised map was being reprinted. If NFIA refunds a premium pursuant to this subparagraph, the Administrator shall reimburse NFIA for the full amount of the refunded agents commission, and NFIA shall allow the agent to retain his commission as fully earned.

B. *Agreement Not to Compete.* In an area in which the Administrator authorizes the offering of flood insurance under this Agreement, and subject to the coverage limits specified in the Act, all flood insurance offered by NFIA or any member or non-member company authorized to write under this program shall be written under this Agreement and in accordance with the terms of this Agreement. The Administrator shall prescribe provisions in the Regulations setting forth this requirement as a condition of insurance company participation in the National Flood Insurance Program, but such restrictions shall not be construed to apply to flood insurance written specifically as excess coverage above the program limits set forth in the Act.

Article IV—Financial provisions.

A. *Definitions.* The following terms as used in this Article shall have the meaning ascribed below:

1. Accounting Period means any annual period during which this Agreement is in effect.

2. Operating Costs means all costs for the accounting period incurred in the offering, selling and servicing of policies of flood insurance including administrative costs of the Association, loss adjustment expenses, producers commissions, state premium taxes and similar charges and reinsurance premiums as defined under Paragraph D.7. of Article IV but shall not include any amount for operating allowances.

3. Incurred Losses means the aggregate of all losses on proved and approved claims incurred under all policies with

an effective date during the accounting period.

4. Participation Year means all policy periods for all policies with effective dates during the accounting period.

5. Investment Income means interest earned during the accounting period on NFIA investments.

6. Shareable Operating Costs means operating costs less producers commissions, state premium taxes and reinsurance premium payments.

7. Policyholder Premiums means the aggregate of all flood insurance premiums paid or payable by insureds for flood insurance.

8. Policyholder Earned Premiums means the aggregate of flood insurance premiums paid or payable by insureds for flood insurance for policy periods which have expired.

9. Operating Allowance means the amount the Association shall retain in accordance with Paragraph D.4, D.5 of Article IV.

10. Risk Capital means the amount of funds NFIA member companies shall put at risk to pay for NFIA negative operating balance for a participation year as determined in Paragraph D.6 of Article IV.

11. Loss Adjustment Expenses means all expenses incurred in the settlement of flood insurance incurred losses.

12. Negative Operating Balance Reduced by Loss Reinsurance Payments means the amount the NFIA pays the Administrator from members' risk capital as the result of the final adjustment of a participation year.

B. *Collection and Investment of Policyholder Premiums.* 1. NFIA shall have the operational responsibility for the collection and interim investment of premiums paid by policyholders.

2. Until a final adjustment is made by NFIA and the Administrator for the Participation Year as provided in paragraph F below, policyholder premiums collected by NFIA during such participation year except for those amounts necessarily on hand for daily operations shall be invested in obligations of or fully guaranteed by the United States or any agency or instrumentality thereof.

C. *Program Payments.* 1. During an Accounting Period, NFIA shall pay operating costs and make incurred loss payments from policyholder premiums collected and premium investment income, to the extent such sources are adequate for such purposes.

2. In recognition that policyholder premiums and investment income will be from time to time insufficient to cover operating costs and incurred losses under the Program, the Administrator shall issue a Letter of Credit and Amendments thereto against which NFIA may draw to meet operating costs and incurred losses under the Program. The purpose of this procedure is to keep NFIA in a positive operating balance with respect to operating costs and incurred losses under the Program in order to make flood insurance available under reasonable terms and conditions to the public.

NFIA will be authorized to make daily or other periodic drawdowns against the Letter of Credit for the following purposes:

(i) Payment of operating costs incurred by NFIA;

(ii) Payment of incurred flood insurance losses;

(iii) Payment of expenses incurred by NFIA other than (i) and (ii) pursuant to separate agreements which are deemed reasonable by the Administrator and the Association.

Comment: Procedures for the Letter of Credit remain to be established. Letter of Credit Procedures shall not be used for dispute resolutions.

D. *Determination of NFIA's Profit or Loss.* 1. In recognition of the principle that the risk of the National Flood Insurance Program shall be shared by the insurance industry and the Federal Government, NFIA's profit or loss for a particular participation year shall be determined by taking the sum of (i) the Federal share of claims payments plus shareable operating costs (such share to be determined in accordance with the "Balancing Formula" set forth in paragraph D.2 below), and (ii) earned policyholder premium ascribed to such participation year, and (iii) investment income earned by NFIA during the first twelve months of such participation year and subtracting from such sum incurred losses and operating costs for such participation year.

2. The "balancing formula" used to calculate NFIA's share of incurred losses and shareable operating costs for the participation year being settled is as follows:

$$R_n=\frac{\sum_{i=1}^{n} A_i,\ \sum_{i=1}^{n-1}(A_i-C_i)+\sum_{i=1}^{n} I_i-(S\times D_n)}{\sum_{i=1}^{n} B_i,\qquad A_n\div\left(\sum_{i=1}^{n} A_i\div\sum_{i=1}^{n} B_i\right)}$$

R_n = NFIA's Sharing Ratio in participation year n
$1-R_n$ = Administrator's Sharing Ratio in participation year n
A_i = Participation year earned policyholder premium less premium taxes and similar charges, producers commissions, reinsurance premiums and hoped for underwriting profit of 5% of policyholder premiums
B_i = Total actual incurred losses and shareable operating costs for a participation year less reinsurance premium (estimated ultimate payments)
C_i = NFIA's actual share of incurred losses and shareable operating costs (estimated ultimate payment) for a participation year
I_i = Net investment income earned during the first 12 months of a participation year
S = .20
D_n = Policyholder premium in participation year n
Limits:

(a) $(R_{[n-1]}+.10)\geq R_n\geq(R_{[n-1]}-.15)$

(b) $.95\geq R_n\geq.05$

(c) $\sum_{i=1}^{n-1}(A_i-C_i)\leq.75\ D_{n-1}$

Symbols:
n = Current year
n−1 = Previous year
i=1 = the 1st year of the National Flood Insurance Program

3. If for the participation year being settled, using the computation referred to in Paragraph D.1., NFIA has a negative operating balance in excess of (i) 25 percent (25%) of policyholder premiums for such participation year, or (ii) 125 percent (125%) of the Trust and Liability Account as determined at the settlement of the prior participation year, whichever is greater, the Administrator shall pay the amount of such excess to NFIA as excess loss reinsurance payments.

4. (a) If for the participation year being settled, using the computation referred to in Paragraph D.1., NFIA has a positive operating balance it may retain out of such balance as an operating allowance, for such uses as its Constitution may permit, an amount not to exceed five percent (5%) of the policyholder premiums for that participation year. If for the participation year being settled, NFIA does not have a positive operating balance sufficient to retain an operating allowance equal to five percent (5%) of the policyholder premiums for that participation year, the Administrator shall pay to NFIA from the Trust and Liability Account an amount not exceeding the balance of such account, sufficient to provide NFIA an operating allowance equal to five percent (5%) of policyholder premiums for such period.

(b) The amount, if any, by which NFIA's operating balance for the participation year exceeds five percent (5%) of policyholder premiums shall be paid to the Administrator to be held in the Trust and Liability Account for the uses set forth below.

5. If for the participation year being settled, NFIA has a negative operating balance, using the computation referred to in Paragraph D.1. reduced by the loss reinsurance payments computed in Paragraph D.3. which is less than or equal to the Trust and Liability Account, the Administrator shall pay to NFIA from the Trust and Liability Account an amount equal to such reduced negative operating balance. If, after the payment of such amount, there remains a positive balance in the Trust and Liability Account, NFIA shall be paid therefrom an operating allowance equal to the lesser of (i) five percent (5%) of policyholder premiums for such participation year, or (ii) the balance in the Trust and Liability Account, to be used as NFIA's Constitution may permit.

6. If for the participation year being settled, NFIA has a negative operating balance, using the computation referred to in Paragraph D.1. reduced by the loss reinsurance payments computed under Paragraph D.3., which is more than the Trust and Liability Account, the Administrator shall pay to NFIA the balance in the Trust and Liability Account.

7. For the Loss Reinsurance referred to in paragraph D.3. above, NFIA shall pay to the Administrator a reinsurance premium in an amount and in the manner as follows:

(a) The reinsurance premium shall be an amount equal to the sum of:

(i) Four and one-tenth per centum (4.1%) of the policyholder premiums for flood insurance in areas designated by the Administrator as areas subject to inland flooding;

(ii) Eighteen and three-tenths per centum (18.3%) of the policyholder premiums for flood insurance provided in areas designated by the Administrator as subject to coastal flooding.

(b) Premiums for reinsurance against excess flood losses for each accounting period shall be paid in quarterly installments which shall be due thirty days after each quarter, or NFIA may, at its option, credit the reinsurance premiums due against the program payments requested of the Administrator by NFIA pursuant to paragraph C of this Article.

(c) Each such quarterly installment shall be an amount equal to a percentage of all policyholder premiums for such quarter, which percentage figure shall be determined by dividing reinsurance premiums paid by NFIA in the preceding accounting period by total policyholder premiums for the same period. The premiums paid in quarterly installments shall be provisional only and, in accordance with the provisions of paragraph 7(a) above, shall be adjusted at the conclusion of the participation year.

E. *Trust and Liability Account.* 1. Funds in the Trust and Liability Account are held by the Administrator as though in trust solely for the purposes of meeting NFIA's share of operating costs, incurred losses and operating allowances as determined in paragraphs D.4., D.5., and D.6. above and for making payment to the Administrator as provided in paragraph E.2. below. Until paid out for such purposes any such funds invested shall be invested only in obligations of or fully guaranteed by the United States or any agency or instrumentality thereof. The income from such investments shall be available for the same purposes as the principal thereof, and for no other purpose. Funds shall be held in the Trust and Liability Account in accordance with applicable law. The Administrator shall guarantee payments to NFIA from such account under paragraphs D.5., and D.6. mentioned above. Any such funds remaining at the termination of this Agreement (including any renewal thereof) shall, after the payment of all obligations incurred for the most recent participation year, be paid into the National Flood Insurance Fund. The Administrator shall report annually to NFIA the balance held in trust, including the interest earned on such amounts.

2. In the event that the balance in the Trust and Liability Account, after complete adjustment of a participation year as provided for below in this article, exceeds 75 per cent of the participation year's policyholders premiums, such excess shall be paid out of the Trust and Liability Account into the National Flood Insurance Fund, to be used by the Administrator, at his discretion, for such purposes as are authorized therefore in the Act.

F. *Final Adjustment for Participation Year.* 1. Not later than 6 months after the end of a participation year, NFIA and the Administrator shall make a final adjustment of accounts for such participation year by using the Balancing Formula and making the computations and payments provided for in paragraph D of this Article, and excluding any operating costs and incurred losses finally determined not to be shareable under paragraph J below.

2. For purposes of this paragraph F, payments made by NFIA pursuant to settlements made and loss adjustment expenses incurred by NFIA under paragraph A of Article VI shall, subject to audit, be binding on the Administrator.

G. *Risk Capital.* NFIA shall provide a minimum of $48 million in risk capital subscribed by its member companies for the first full participation year under this Agreement. Thereafter, NFIA shall advise the Administrator, on or before the last day of the sixth month of each Accounting Period, of the minimum aggregate amount of risk capital of NFIA for the succeeding participation year and of the amount of risk capital subscribed by each member.

H. *Government Corporation Control Act.* It is acknowledged and agreed that NFIA is not owned or controlled by the United States government or any agency or instrumentality thereof. However, if, as a result of the contractual relationship created by this Agreement, the Administrator is obligated to comply with any requirements of the Government Corporation Control Act (31 U.S.C. § 847–849), NFIA will cooperate with the Administrator by furnishing such records or documents as the Administrator may require for such purposes.

I. *Bankruptcy and Insolvency.* All program payments, reinsurance payments and operating allowances due the NFIA hereunder shall be made to NFIA without diminution because of the bankruptcy or insolvency of any NFIA member.

J. (a) Any dispute arising out of the Administrator's failure or refusal to make any payment to NFIA under Paragraph C or F of this Article shall be resolved as provided in this Paragraph.

(b) At NFIA's request the Administrator shall state his decision regarding payment in writing and furnish a copy to NFIA. The decision of the Administrator shall be final and conclusive unless within 30 days from the date of receipt of such copy, NFIA furnishes to the Administrator a written appeal addressed to the Secretary. The decision of the Secretary or his duly authorized representative for the determination of such appeals (other than the Administrator) shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal proceeding under this clause, NFIA shall be afforded an opportunity to be heard and to offer evidence in support of its appeal before an Administrative Law Judge of the Department. Pending final decision of a dispute hereunder, the Administrator shall not withhold any undisputed payments or portions thereof due NFIA under Paragraph C or F of this Article.

Article V. Consultation and notice.

A. *General Consultation.* The complexity of the National Flood Insurance Program and the cooperative nature of the government-industry relationship established by the Act and this Agreement require almost continuous consultation between the Administrator and NFIA on issues of major importance affecting the National Flood Insurance Program and the relationship between the parties. Consultations between the Administrator and NFIA shall be effectuated through correspondence, telephonic conversations, meetings and other communications so as to inform the Administrator and NFIA of matters arising which relate to this Agreement and the relationship between the Administrator and NFIA under this Agreement and to give each party an opportunity to respond to such matters.

B. *Further Consultation.* In addition to engaging in such general consultation under paragraph A, the Administrator and NFIA shall follow the procedures set forth below in paragraph C with respect to:

1. Any Regulation, rule, directive, or order issued by the Administrator with respect to the National Flood Insurance Program, issued by the Administrator other than (i) an Interpretation or Clarification of the Standard Flood Insurance Policy, and (ii) routine and recurring rules or regulations as agreed to from time to time.

2. Any determination by the Administrator of chargeable premium rates under Section 1308 of the Act;

3. Any NFIA membership requirement established by the Administrator under Article II;

4. Any notice of termination given by either party under Article XVI;

5. Implementation by the Administrator of a government program under Part B of Chapter II of the Act;

C. *Procedure for Further Consultation.* With respect to any proposed action described in paragraph B, the following procedures shall apply:

1. The Administrator shall give NFIA advance written notice of any proposed action under paragraph B not less than

thirty (30) days before solicitation of public comment, or, if public comment is not solicited, not less than thirty (30) days before the proposed action is to take effect. NFIA shall give the Administrator advance written notice of any proposed action under paragraph B.4 not less than thirty (30) days before the proposed action is to take effect. The Notice shall contain a brief explanation of the nature of the proposed action and of the general basis, reasoning, or calculation upon which the proposed action is predicated, and shall identify the staff member or members who may be contacted by the other party for further information regarding the proposed action.

2. Where practicable, the party proposing the action shall, at the request of the other party, meet in person with representatives of the other party to receive, discuss and consider the other party's views of the proposed action.

3. In the case of a Regulation, rule, directive, or order proposed to be issued by the Administrator, the Administrator shall, in addition to the notice required by subparagraph 2(a), provide a reasonable opportunity to NFIA to review and comment upon the specific language of the proposed Regulation, rule, directive or order before it is published for public comment, or, if it is not published for public comment, before it is published for effect.

D. *Timely Notice.* The Administrator shall give NFIA timely advance notice of the issuance or revision of any flood insurance map; the final establishment or modification of any premium rate, the conversion of any community to the regular program, the suspension from the program of any community, and the initial participation of any community in the program.

E. *Construction.* Nothing in this Article shall be construed as limiting any legal authority the Administrator may have to make an order, directive, rule or interpretation apply, after it has been issued or published for effect, to a period or periods prior to the date of issuance or publication for effect.

Article VI. Adjustment and payment of claims, interpretation and clarification of insurance policies.

A. *General.* NFIA shall have the operational responsibility for the adjustments and payment of all claims arising under flood insurance policies. NFIA shall arrange for the prompt processing, investigation, adjustment and settlement of all such claims through appropriate insurance adjustment organizations.

B. *Manuals.* 1. NFIA shall change outstanding manuals, handbooks, guidelines, and related materials concerning the adjustment of claims to conform them with this Agreement, with Interpretations and Clarifications issued by the Administrator pursuant to paragraph D of this Article VI, and with the Regulations of the Administrator and shall make such other changes of technical nature as are requested by the Administrator. Prior to issuance of a proposed revision to any such manual, NFIA shall submit the proposed revision to the Administrator for his review and comment. NFIA shall incorporate in the proposed revision all changes of a technical nature requested by the Administrator, and shall give due consideration to all other changes suggested by the Administrator. All manuals, handbooks, guidelines and related materials outstanding on the date of this Agreement shall be reviewed by the Administrator and NFIA for the purposes of this paragraph.

2. For the purpose of the foregoing subparagraph, the term "changes of a technical nature" shall mean changes requested by the Administrator to provisions setting forth or describing the terms of the Standard Flood Insurance Policy, the Act, premium rates, provisions of the Regulations or this Agreement.

C. *Monitoring of Claims Processing.* 1. NFIA shall arrange to review with the representatives of the Administrator on a regular basis a sampling or other selection of files chosen by the Administrator relating to claims adjusted by or through NFIA. The Administrator may convene such a meeting at any time at the offices of the Administrator, NFIA or the Servicing Company upon notice to NFIA of not less than 48 hours. The purpose of this review is to provide the Administrator with current information regarding the basis upon which claims are denied or adjusted. At the Administrator's request NFIA shall assemble any particular class or category of claims files for review at any such meeting, except to the extent such assembly presents severe practical difficulties.

2. NFIA shall require each servicing company to report to NFIA any claims or categories of claims which raise unusual or difficult problems of adjustment or which involve any unusual issue of contractual interpretation of the Standard Flood Insurance Policy. Any such claims or categories of claims shall immediately be reported by NFIA to the Administrator.

3. At the request of the Administrator, NFIA shall promptly provide to the Administrator a copy of the complete files, or any part thereof designated by the Administrator, relating to any claim or category of claims designated by the Administrator, and shall provide any information reasonably requested regarding claims.

4. Before the Administrator responds substantively to a complaint, request, or other inquiry from any person regarding a claims matter, the Administrator shall first review the relevant claim file, if any NFIA shall arrange for the delivery of the file in a manner which permits the Administrator to respond on a timely basis. In the event that a complaint, request, or other inquiry requires that information be obtained from the other party, the party to whom the communication is initially directed shall provide a copy of such correspondence, if in writing, or a written summary of the oral communication if not in writing, to the other party. If the complaint, request, or inquiry is confidential in nature, or is otherwise subject to a privilege in law, the name and title of the initiating correspondent may be deleted.

D. *Resolutions of Ambiguities or Questions of Interpretation Under Standard Flood Insurance Policy.* 1. NFIA and the Administrator shall cooperate with each other as provided below in this paragraph D to achieve prompt and clear resolution of any disagreement regarding any issue of contractual interpretation of the Standard Flood Insurance Policy.

2. Whenever an issue which involves an unusual or difficult question of contractual interpretation of the Standard Flood Insurance Policy comes to the attention of either NFIA or the Administrator, NFIA or the Administrator shall bring the matter informally to the attention of the other immediately.

3. The following procedure shall apply to any issue of interpretation of the Standard Flood Insurance Policy as to which the Administrator and NFIA disagree:

(a) NFIA and the Administrator shall attempt informally, by telephone or otherwise, to resolve the issue of interpretation.

(b) If the issue of interpretation is not informally resolved pursuant to subparagraph 2(a) above, the Administrator may initiate the formal interpretation procedure of subparagraphs D–4 through D–10 by giving written notice thereof to NFIA.

4. (a) Upon initiation of the formal interpretation procedure set forth in subparagraphs D–4 through D–10 by the Administrator, NFIA shall promptly give the Administrator a written statement of NFIA's position as to the issue of interpretation of the Standard Flood Insurance Policy, including a full statement of the reasoning and legal basis for NFIA's position.

(b) The Administrator shall consider the position presented by NFIA under subparagraph D–4(a) above and engage in such further discussion with NFIA by meeting or otherwise as may be practicable. The Administrator shall advise NFIA in writing whether or not the Administrator concurs in the position communicated by NFIA pursuant to subparagraph D–3(a) above. If the Administrator does not concur in NFIA's position, the Administrator shall prepare a proposed Interpretation of the Standard Flood Insurance Policy and shall provide NFIA an advance copy of such Interpretation in draft prior to any final editing or revisions and give NFIA at least seven calendar days thereafter to present any further comments or views NFIA may have. Such draft Interpretation shall be accompanied by a draft legal opinion of the General Counsel of the Department of Housing and Urban Development.

(c) The Administrator shall give NFIA at least seven calendar days' notice, in addition to the comment period provided under subparagraph D–4(b) above, prior to the issuance for effect of any Interpretation and shall include with the notice a copy of the Interpretation proposed to be issued for effect subject to final editing in light of comments by NFIA.

(d) Upon issuance of any Interpretation for effect the Administrator shall furnish NFIA a final legal opinion of the General Counsel of the Department of Housing and Urban Development supporting such Interpretation.

5. At NFIA's written request, the Administrator shall issue, in place of an Interpretation under subparagraph D–4, a Clarification (a revision of the specific language of the Standard Flood Insurance Policy) with a Federal Register preamble in the form of Exhibit B hereto, incorporating, by express provision in the Standard Flood Insurance Policy, the Interpretation of the Administrator under subparagraph D–4 above. Such written request by NFIA must be delivered to the Administrator within the additional notice period referred to in subparagraph D–4(c), and shall include NFIA's certification in writing, based on legal analysis, that the issuance of the Interpretation proposed under subparagraph D–4 would create a risk of substantial complications in the interpretation of insurance policies not related to the National Flood Insurance Program which contain identical or similar provisions to the provisions of the Standard Flood Insurance Policy as to which the issue of interpretation in question has arisen. In making such a certification, NFIA shall also consider whether a revision to the specific language of the Standard Flood Insurance Policy with corresponding redress and notification to policyholders and other administrative consequences, would or would not serve the objective of assisting the public. Prior to publishing a Clarification, the Administrator shall provide NFIA a draft of the Clarification and allow NFIA seven (7) calendar days in which to submit comments.

6. Upon final issuance for effect of an Interpretation under subparagraph D–4, or a Clarification under subparagraph D–5, NFIA shall apply such Interpretation or Clarification.

(a) In adjustment of all claims duly filed after the effective date of such Interpretation or Clarification;

(b) In adjustment of all claims duly filed after the effective date of such Interpretation or Clarification;

(c) If the Administrator so directs, in adjustment of all claims previously filed which arose out of occurrences within two years before the effective date of such Interpretation or Clarification, provided that the policyholder requests in writing, not later than sixty days after receiving notice of the Interpretation or Clarification under subparagraph D–7, that the claim be re-opened; and

(d) If the Administrator so directs, in adjustment of all other claims arising out of occurrences within two years before the effective date of such Interpretation of Clarification, provided that the policyholder files notice and proof of loss not later than sixty days after receiving notice of the Interpretation or Clarification under subparagraph D–7.

Nothing in this subparagraph D–6 shall limit any legal or equitable right which any policyholder may otherwise have to assert an earlier claim under an Interpretation or Clarification.

7. NFIA will distribute to servicing companies and adjustment organizations copies of Interpretations issued under subparagraph D–4 and Clarifications issued under subparagraph D–5. In addition, NFIA will provide notice of Interpretations and Clarifications issued under subparagraphs D–4 and D–5 to policyholders in connection with the mailing or renewal notices and the issuances of new policies.

8. Within a reasonable time following issuance of any Interpretation under subparagraph D–4 or any Clarification under subparagraph D–5, the Administrator shall determine the effect, if any, which the Interpretation or Clarification has had or may have on loss payments and actuarial premium rates, and shall make appropriate adjustments, if any, to actuarial rates. In making such determination the Administrator shall consider any information or views presented by NFIA. To facilitate this analysis, NFIA shall keep a record of any increased costs and losses which may result from the interpretation or clarification.

9. This Article VI applies only to Interpretations and Clarifications and has no application to changes in the Standard Flood Insurance Policy issued from time to time by the Administrator for prospective effect.

10. Interpretations and Clarifications of the Standard Flood Insurance Policy shall be issued only as provided in this Article VI.

Article VII. Litigation.

A. *Litigation Involving NFIA.* 1. *Litigation Against NFIA.* If NFIA, any NFIA member or NFIA contractor is made a defendant in any litigation which involves the National Flood Insurance Program, NFIA shall immediately notify the Administrator of such litigation. Such notice shall be accompanied by a copy of any pleading filed or received by NFIA to date of notice. NFIA shall thereafter supply to the Administrator copies of such pleadings and other documents and related information as the Administrator may from time to time request.

2. *Litigation Initiated by NFIA.* Except in the case of actions for injunctive or similar emergency relief NFIA shall notify the Administrator at least fifteen (15) days in advance of any litigation which NFIA initiates, or which any NFIA member or any NFIA contractor initiates with the knowledge of NFIA, against any party, including the Administrator or any other agency or instrumentality of the Federal government, involving the National Flood Insurance Program. The notice required herein shall include a copy of the proposed complaint and any other initial pleading proposed to be filed. In the case of actions for injunctive or similar emergency relief NFIA shall provide notice and copies of pleadings to the Administrator as soon as reasonably practicable.

B. *Litigation Involving the Administrator.*—1. *Litigation Against the Administrator.* If the Administrator is made a defendant in any litigation which involves the National Flood Insurance Program, the Administrator shall immediately notify NFIA of such litigation. Such notice shall be accompanied by a copy of the pleadings filed in that litigation to date of notice. The Administrator shall thereafter supply to NFIA copies of such pleadings and other documents and related information as NFIA may from time to time request.

2. *Litigation Initiated by the Administrator.* Except in the case of actions for injunctive relief or similar emergency relief, the Administrator shall notify NFIA at least fifteen (15) days in advance of any litigation which the Administrator or the Secretary initiates, or which any agency or instrumentality of the Federal government initiates with the knowledge of the Administrator or the Secretary, against any party, including NFIA or its members or contractors, involving the National Flood Insurance Program. The notice required herein shall include a copy of the complaint or other initial pleading intended to be filed. In the case of actions for injunctive or similar emergency relief the Administrator shall provide notice and copies of pleadings to NFIA as soon as reasonably practicable.

C. *Exchange of Views Regarding Litigation.* NFIA and the Administrator shall exchange views regarding legal theories and positions taken in litigation involving the National Flood Insurance Program to which either the Administrator, the Secretary or any agency or instrumentality of the Federal government, or NFIA or any of its members or contractors, is a party. However, no exchange of views is required with respect to any litigation in which NFIA and the Administrator are adverse parties.

D. *Disallowance of NFIA Expenses Incurred to Litigate Claims Against the Administrator.* In the event that NFIA asserts any claim against the Administrator in litigation initiated by NFIA, and such claim is finally decided against NFIA, then NFIA shall reimburse the Administrator, from an assessment of Members, for all expenses, including attorneys fees, incurred by NFIA in preparing for or conducting such litigation to the extent such expenses were paid by NFIA out of policyholder premiums or any other funds held by NFIA under the National Flood Insurance Program.

Article VIII. Contracting by NFIA.

A. *Contracts to Which Applicable.* This Article applies to each contract let by NFIA which involves an aggregate amount or initially estimated aggregate amount in excess of $10,000.

B. *Method of Procurement: Use of Competitive Bidding by Formal Advertisement, Competitive Negotiation, Other Methods.* NFIA and the Administrator intend that the provisions of this Article VIII shall result in substantial competition in the letting of all contracts by NFIA. In letting contracts, NFIA shall use Competitive Negotiation or the other methods of procurement, as follows:

1. *Servicing Company Contracts.* (a) NFIA shall let servicing company contracts in such fashion as is intended to

assure full, open, and free competition among all qualified bidders, by using Competitive Bidding by Formal Advertisement, as provided in paragraph C below, for the letting of all servicing company contracts for States and U.S. Territories having in effect more than 5,000 Flood Insurance Policies at the time procurement is commenced. For a single servicing company contract, NFIA may combine any two or more of States and U.S. Territories.

Exhibit A sets forth the States and U.S. Territories more than 5,000 Flood Insurance Policies in effect as of October 31, 1976.

(b) For States or U.S. Territories having 5,000 or fewer Flood Insurance Policies in effect at the time procurement is commenced, NFIA shall let such contracts by Competitive Bidding by Formal Advertisement unless NFIA determines that, considering the number of policies in force in relation to the geographical area and the number of insurance facilities available in the geographical area, use of Competitive Negotiation is in the best interests of the National Flood Insurance Program, the public and NFIA. Where NFIA lets a contract by use of Competitive Negotiation, NFIA shall include in its Notice under Paragraph G. 1 a statement in writing why such determination was made, and shall follow the procedures set forth in paragraph D below.

(c) NFIA shall utilize the form of servicing company contract annexed hereto as an Exhibit for all servicing company contracts, regardless of the method used for letting such contracts.

(d) NFIA agrees to relet all servicing company contracts on a staggered basis within eighteen (18) months after the effective date of this Agreement.

2. *Insurance Adjustment Organizations.* Unless and until NFIA and the Administrator agree otherwise, (i) NFIA shall utilize the services of qualified insurance adjustment organizations selected by the servicing companies on a rotation basis; (ii) written contracts shall not be required for such services; and (iii) the advance notice provisions of paragraph G below shall not apply. NFIA agrees to conduct a feasibility study to be completed not later than ninety (90) days after the effective date of this Agreement, regarding the possibility of utilizing a method of competitive sealed bidding by formal advertisement or a method of competitive negotiation for the procurement of services of insurance adjustment organizations. NFIA shall promptly advise the Administrator of the results of such study, and, if the Administrator so elects, NFIA and the Administrator shall conduct negotiations for the purpose of considering a change in the method of selecting Insurance Adjustment Organizations.

3. *Insurance Agents, Brokers and Non-Member Insurers.* The parties acknowledge that NFIA does not and need not contract for the services of insurance agents and brokers, and agree that the advance notice provisions of paragraph G below shall not apply to agents and brokers. NFIA agrees that it and its servicing companies shall accept and process any policy application or policy renewal application submitted in proper form by a property insurance agent or broker or non-member insurer qualified to do business in the State in which the property to be insured is located.

4. *Computer System.* (No tentative agreement between the Administrator and NFIA on this point.)

5. *Accountants, Attorneys and Other Professionals.* NFIA shall select accountants, attorneys or other professionals in a manner to assure that, where feasible, at least three qualified interested professionals are thoroughly considered. The provisions of paragraphs G.1 and G.3 below shall not apply to the selection of accountants, attorneys and other professionals.

6. *Services, Supplies and Other Procurement.* (a) The procurement of printing services, photocopying services, furniture, office supplies or other goods and services under a proposed contract or series of related contracts having an aggregate amount or estimated amount in excess of $50,000 shall be by sealed bid invited by ample notice to the public and potential bidders, except where a regulated utility is the only potential supplier as in the case of telephone services, or where there exist only three or fewer potential suppliers, in which case a negotiation procedure may be used which gives each potential supplier thorough consideration and an ample and fair opportunity to compete for award of the contract.

(b) Contracts in an estimated aggregate amount of less than $50,000 may be let by a sealed bid procedure or by a procedure of Competitive Negotiation which is conducted in a manner that thoroughly considers at least three qualified potential suppliers and gives each an ample and fair opportunity to compete for award of the contract.

(c) NFIA shall normally let each contract under this paragraph B.6 to the contractor offering the lowest price; however, where NFIA lets a contract to a contractor other than the contractor offering the lowest price, NFIA shall promptly thereafter prepare a written notice to the Administrator setting forth in full the reasons why NFIA has determined to let the contract to a contractor other than the contractor offering the lowest price.

C. *Servicing Company Contracts: Procedures for Competitive Bidding by Formal Advertisement.* "Competitive Bidding by Formal Advertisement," as used in this Article, shall mean the method of procuring servicing company contracts through solicitation of bids from all qualified potential contractors in the manner calculated to assure full, open and free competition among all qualified bidders, which is set forth in this paragraph C, as follows:

1. NFIA shall advertise for such competitive bids, and advertisements for such competitive bids shall be placed in:

(a) At least one newspaper of general circulation published in each of the following cities: Washington, D.C.; New York, New York; Chicago, Illinois; and San Francisco, California; and

(b) At least two national insurance trade publications such as, but not limited to, The National Underwriter (Property and Casualty Edition), Business Insurance, the U.S. Investor, or The Weekly Underwriter.

2. Every such solicitation for bids shall provide sufficient time for bidding, and in no event less than 15 business days.

3. Every such solicitation for bids shall include a clear statement of work to be performed by the successful bidder.

4. Every such invitation for bids shall specify the time and place for the public opening of bids and shall notify bidders of their right to be present.

5. Provision shall be made for the receipt of bids and for such bids to be maintained, unopened, in a secured, locked bid box.

6. Only bids received prior to the time set for opening set forth in this paragraph C, as follows:

1. NFIA shall advertise for such competitive bids, and advertisements for such competitive bids shall be placed in:

(a) At least one newspaper of general circulation published in each of the following cities: Washington, D.C.; New York, New York; Chicago, Illinois; and San Francisco, California; and

(b) At least two national insurance trade publications such as, but not limited to, The National Underwriter (Property and Casualty Edition), Business Insurance, the U.S. Investor, or The Weekly Underwriter.

2. Every such solicitation for bids shall provide sufficient time for bidding, and in no event less than 15 business days.

3. Every such solicitation for bids shall include a clear statement of work to be performed by the successful bidder.

4. Every such invitation for bids shall specify the time and place for the public opening of bids and shall notify bidders of their right to be present.

5. Provision shall be made for the receipt of bids and for such bids to be maintained, unopened, in a secured, locked bid box.

6. Only bids received prior to the time set for opening shall be considered.

7. Bids shall be opener publicly at the time and place specified in the invitation and shall also be recorded and placed in an appropriate file which shall be available for inspection by interested persons for a period of not less than six months after the award.

8. Except where otherwise provided in the invitation for bids, a bid shall be deemed responsive to the invitation if the bid price is inserted in the space allotted to such purpose and any other requirements of the invitation are met.

9. No bid shall be considered wherein the bidder imposes conditions modifying the requirements of the invitation, or which limits his liability, or which would impose any other condition which would give him an advantage over other bidders. However, NFIA may, with the approval of the Administrator, agree to such modifications of the standard

servicing company contract as may be necessary or appropriate to conclude an agreement in a particular territory.

10. NFIA shall make award of the contract (as soon as practicable after opening of the bids) to the responsible bidder whose bid conforms to all of the essential provisions of the invitation and whose price will be most advantageous. NFIA may reject all bids if it determines that no otherwise responsible bidder has bid an acceptable price.

11. The award shall be made by mailing to the successful bidder a properly executed award document or notice of award. If an advance notice is issued, it shall be followed as soon as possible by a formal award document.

D. *Contracting Through Competitive Negotiation.* In any case where Competitive Negotiation is provided for under the provisions of this Agreement, the following procedures shall be followed:

1. To the fullest extent practicable, Competitive Negotiation shall follow the procedures applicable to formal advertising. At the minimum all solicitations for proposal shall fully describe the criteria which will be utilized for the evaluation of responses.

2. Each solicitation for proposal shall call for a response divided into two separate parts, to wit,

(a) Cost elements, and

(b) All other relevant elements.

3. NFIA shall evaluate such proposals first on the basis of all elements other than cost and shall rank them in the order of acceptability. A proposal is acceptable if it conforms to all the essential requirements of the solicitation for proposal.

4. Only after the foregoing evaluation shall the price be considered by NFIA. Although, in awarding the contract, NFIA shall accord great weight to price, it is recognized that there are cases where price is overbalanced by a proposal which offers the greater value in terms of performance.

5. NFIA shall apply some form of price or cost analysis, where appropriate, in connection with Competitive Negotiation. For such purposes:

(a) Price Analysis is a technique for evaluating prospective price without evaluation of cost as separate elements; for example, comparison of the price quotations submitted; comparison of prior quotations for the same or similar services or items; use of rough yardsticks such as published price lists; comparison of proposed price with estimates independently developed by NFIA personnel.

(b) Cost analysis means the evaluation of separate cost elements of a cost proposal and of the judgmental factors used in projecting the estimated cost from the data including vertification of the cost data, the necessity for certain costs, and the basis for allocation of overhead costs.

7. The justification for the acceptance of any proposed contract price or cost shall be adequately documented and placed in the contract file and shall be available for inspection by any interested person for not less than six months after the award of the contract.

E. If, having fully complied with the provisions of paragraph C above, where applicable, and paragraph D above, where applicable, NFIA has been unable to obtain a contract using such competitive procedures, NFIA may award the contract after negotiations with a sole source or by using competitive bidding by formal advertisement or competitive negotiation or a combination thereof.

F. *Affiliated Adjustment Organizations.* No insurance adjustment organization which is part of or affiliated with or controlled by any NFIA member insurer or any servicing company employee shall be employed to investigate or adjust flood insurance claims except with the approval of the Administrator in connection with a catastrophic event.

G. *Requirements Applicable to All Contracts Let by NFIA.* The following requirements shall apply to all contracts covered by this Article let by NFIA:

1. *Advance Notice.* NFIA shall give Notice to the Administrator before entering into any contract. Such notice shall be given to the Administrator at least thirty (30) days in advance of the commencement of any contractor selection process except that less than thirty (30) days' notice may be given in the case of emergencies and in the normal acquisition of office supplies and equipment in amounts less than $25,000, in which cases such notice shall be given as reasonably expeditiously as possible. The Notice shall include:

(a) A copy of the proposed contract;

(b) A brief description of the supplies or services called for by the contract;

(c) Identification of the method of contractor selection to be used.

2. *Contracts to be in Writing.* All contracts covered by this Article shall be in writing and shall be duly executed by NFIA and by the other contracting party, except as expressly provided herein.

3. *Extensions and Modifications.* In general, new contracts shall be let in accordance with the requirements of this Article, and extensions of existing contracts or modifications of existing contracts shall not be utlized in lieu of letting new contracts. Extensions or modifications of contracts for puropses other than to avoid letting a new contract are permissible, provided that NFIA gives the Administrator 30 days' advance written notice of its intention to execute an extension or amendment to effect a modification.

4. *No Third Party Rights.* The provisions of this Article relating to the selection of servicing companies and other contractors shall not be construed as provisions for the benefit of any potential bidder or contractor or any other person or company not a party to this Agreement, and shall not give rise to any rights on behalf of third parties against NFIA or the Administrator by reason of waiver or violation of such provisions by either party or otherwise.

5. *No Use of Federal Procurement Regulations.* No provision of this Article shall be construed as a reference to or adoption or incorporation of any rule, practice, procedure, term or definition contained in the Federal Procurement Regulations.

6. *Disallowance of Expenses Where Contract is Let in Material Violation of This Article.*

(a) Any expenses incurred pursuant to a contract let by NFIA in material violation of the provisions of this Article, or any expenses incurred to procure goods or services without a contract which should have been procured by contract let in accordance with this Article, shall not be subject to any cost-sharing or other reimbursement by the Federal government unless determined otherwise by the Administrator.

(b) This paragraph G–6 shall apply only to contracts let by NFIA under this Article after the effective date of this Agreement.

(c) This paragraph G–6 shall be subject to the consultation provisions of Article V.A.

H. *NFIA Operational Responsibility.* NFIA shall have the operational responsibility for the letting of contracts as provided in this Article, the day-to-day administration of such contracts; and responsibility over termination of such contracts consistent with the provisions of Article XVI hereof. NFIA's contracting shall be subject to monitoring by the Administrator to assure compliance with the procedures set forth in this Article, and the provisions of Articles X and XII.

Article IX. Computer systems.

A. *General.* This Article applies to all computer systems ("Computer System") which are or may be utilized by NFIA, in carrying out its obligations under this Agreement, in connection with map distribution, flood insurance policy writing, billing and processing, and other services to be provided by NFIA under this Agreement. For purposes of this Article, the term Computer System shall mean all elements (except personnel) used by NFIA for the operations of such system, including: computer programs, operating manuals and instructions, all other documentation developed for or specifically relating to NFIA's information processing, problem logs on operational problems with software or hardware, all NFIA source documents, records, stored data, operational diagnoses or cure of problems or "bugs," all development materials, program listings, historical files, file and table limits, error messages, and other materials relating to retention and storage, data collection and consolidation, validity editing of data, premium payments, calculation of agents' commissions, refunding of policyholder premiums, preparation of agents' checks and statements, accounting for losses, preparation of checks for policyholder refunds and general checks, general ledger accounting, and the furnishing of printed reports, whether on paper, microfilm, magnetic tape, disc, or other medium. The term Computer System shall also be deemed to include any additions, enhancements, improvements or modifications thereto.

B. *Modifications.* Upon consultation as provided in Article V.A., the Adminis-

trator may direct NFIA to modify the Computer System for the purpose of enabling the Administrator to fulfill the Administrator's obligations under this Agreement, the Act or related legislation.

C. *Ownership, Operation, Use, Transfer.* 1. The Computer System shall be owned by both NFIA and the Administrator.

2. The Administrator shall, during normal business hours and without undue interruption of Computer System operations, have access to the Computer System for inspection thereof. Upon request of the Administrator, NFIA shall provide the Administrator a copy of the Computer System or any part thereof. During the term of this Agreement, the Computer System shall be utilized solely for the purposes of the National Flood Insurance Program. NFIA shall at all times during the term of the Agreement adequately store and protect the Computer System.

3. Upon the termination of this Agreement, without payment to the other party or any other restriction, each party hereto may use any part of the Computer System without limitation, whether for such party's own independent use, assignment or transfer to any third party, or other use. Upon termination of this Agreement, NFIA shall provide to the Administrator a copy of the Computer System, in whole or in part, as the Administrator may request.

4. During the term and after termination of this Agreement, without payment to the other party or any other restriction, each party hereto may use, without limitation, any ideas, discoveries, technological inventions or any similar things of value generated or developed through the implementation and use of the Computer System, whether for such party's own independent use, assignment or transfer to any third party, or other use.

D. *Reports.* NFIA shall provide the Administrator from time to time such Computer System reports as the Administrator may reasonably request, and all other reports routinely generated by the Computer System, including copies of any reports received by NFIA upon NFIA's request made to any contractor operating a Computer System under NFIA's direction and control.

Article X. Financial records, audits, and reports.

A. *Records and Audits.* NFIA shall keep and shall by contract require its contractors to keep, such records as may be prescribed by the Administrator in writing to NFIA, including records which fully disclose the total cost of the program undertaken or services being rendered and such other records as will facilitate an effective audit of NFIA's performance under this Agreement. Such records shall include, but are not limited to, flood insurance policy issuance records, books of account, personnel remuneration records and position descriptions, organization structure records, personnel travel approval and standards for reimbursement of employee travel expenses, and open and closed claim files. Such records shall be retained for three years after the final adjustment pertaining to the accounting period covered thereby or such longer time as may be prescribed by the Administrator prior to the expiration of the three-year period. The Secretary, the Administrator, and the Comptroller General of the United States, or any other duly authorized Federal officials shall have access to such records for the purpose of audit and examination at the place where the records are maintained. Nothing in this paragraph shall be construed as a waiver of any attorney-client privilege which NFIA may have in connection with NFIA's written or oral communications with, or documents prepared by, for or at the request of, attorneys employed or retained by NFIA.

B. *Reports of NFIA.* NFIA shall make periodic reports to the Administrator not less often than quarterly indicating (1) the financial condition of the pool, (2) the estimated amount of insurance in force, (3) the status of policyholder premiums collected and the investment income thereon, currently held by NFIA, (4) all distributions of funds to, and financial transactions with, NFIA members, and (5) such other information as the Administrator may reasonably specify.

C. *NFIA Manuals.* NFIA shall include in its manuals for insurance agents, brokers, and adjusters such provisions as may be necessary to facilitate an effective audit of the total cost of the program undertaken and the services being rendered.

Article XI. Promotional material.

A. *Approval by the Administrator.* NFIA shall submit to the Administrator before final printing a draft of each item of promotional material prepared by NFIA. In preparing its final version of such material NFIA shall, subject to the provisions of paragraph C,

1. Take into account all comments made with respect to the material by the Administrator,

2. Comply with all changes of a technical nature made with respect to the material by the Administrator, and

3. Exclude from the material any portion thereof disapproved by the Administrator in writing on the ground that it advocates a political position,

provided that the Administrator's comments, changes, or exclusions are received by NFIA within 15 calendar days after actual receipt of the material by the Administrator for review.

B. *Definition of Promotional Material.* "Promotional materials" is all material, whether in print, on film, slide, or other medium, prepared for wide distribution for the purpose of:

1. Soliciting flood insurance purchases,

2. Educating interested persons, including insurance agents, lending institutions, insurance adjusters or companies, with respect to their participation in the National Flood Insurance Program, or

3. Providing general informational material to members of the public about the National Flood Insurance Program or its history.

Promotional material does not include any form of communication solely with members of NFIA.

C. *Limitations.* Nothing in paragraph A shall:

1. Prevent NFIA from printing and distributing in its own name or in the name(s) of one or more of its members any material, whether of a political nature or otherwise, provided that the expense of printing and distributing the material is not paid out of policyholder premiums and is not subject to the cost-sharing provisions of Article IV of this Agreement;

2. Be construed as a waiver by NFIA or any of its members of the right to free expression guaranteed under the First Amendment of the Constitution of the United States.

Article XII. Equal opportunity. During the performance of this contract, NFIA agrees as follows:

A. NFIA will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. NFIA will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. NFIA agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Administrator setting forth the provisions of this Equal Opportunity clause.

B. NFIA will, in all solicitations or advertisements for employees placed by or on behalf of NFIA, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

C. NFIA will send to each labor union or representative of workers with which NFIA has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Administrator, advising the labor union or workers' representative of NFIA's commitments under this Equal Opportunity clause, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

D. NFIA will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

E. NFIA will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for

purposes of investigation to ascertain compliance with such rules, regulations, and orders.

F. In the event of NFIA's noncompliance with the Equal Opportunity clause of this contract or with any of the said rules, regulations, or orders, this contract may be cancelled, terminated, or suspended, in whole or in part, and NFIA may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.

G. NFIA will include the provisions of paragraphs (a) through (g) in every contract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order No. 11246 of September 24, 1965, substituting the word "Contractor" for the word "NFIA" in each such provision so that such provisions will be binding upon each contractor or vendor. NFIA will take such action with respect to any contract or purchase order as the contracting agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: *Provided, however*, That in the event NFIA becomes involved in, or is threatened with, litigation with a contractor or vendor as a result of such direction by the contracting agency, NFIA may request the United States to enter into such litigation to protect the interests of the United States.

H. *Civil Rights Act of 1964.* NFIA acknowledges that this Agreement and all flood insurance provided hereunder is subject to the provisions of Title VI of the Civil Rights Act of 1964 and to the applicable Federal regulations issued and requirements established pursuant thereto, and agrees that NFIA shall not exclude any person or organization from participation in the program authorized by the Act or otherwise subject any person or organization to discrimination under the program, on the basis of sex, shall refer to the Administrator for apprace, color, or national origin. NFIA propriate action any complaint or information concerning the existence of any such unlawful discrimination in any manner within the purview of this Agreement.

Article XIII. Construction. This Agreement shall be construed, interpreted, and the rights of the parties determined, in accordance with the law of contracts of the District of Columbia.

Article XIV. Amendments. This Agreement, including exhibits hereto, sets forth the entire understanding and agreement of the parties. All amendments hereto or modifications hereof, to be binding on the parties, must be in writing duly executed by both parties.

Article XV. Term. This Agreement shall become effective as of and shall remain in effect for a minimum of one full accounting period thereafter, and, unless terminated as provided in Article XVI shall be considered to have been renewed annually thereafter as of the first day of the succeeding accounting period.

Article XVI. Termination and transfer.

A. *Termination at End of Accounting Period.* Unless earlier terminated by expiration of its authorization under the Act, this Agreement may be terminated by either party by giving written notice to the other on or before the last day of the seventh month of any accounting period. Such termination shall not become effective until the end of the accounting period during which written termination notice is given.

B. *Termination by Conversion to Part B of the Act.* This Agreement may be terminated by either party at any time concurrently with the implementation of Part B of Chapter II of the Act.

C. *Termination for Material Breach.* Either party may terminate this Agreement upon the commission of a material breach thereof by the other party, provided that, prior to such termination, the party asserting a material breach must give written notice of such assertion to the other party, and give such other party a reasonable time, not less than 30 days, to cure such asserted breach. The consultation provisions of Article V shall apply in connection with all such assertions of material breach. Upon termination of this Agreement by either party under this Paragraph C, the other party shall retain all rights at law or in equity to seek damages or other relief against the first party for an unjustified termination or otherwise. The termination date for a termination under this Paragraph C must be specified in the notice of asserted breach, and shall not be less than 30 days or more than 90 days after the date of such notice.

D. *Transfer Upon Termination.* Effective upon the termination date of this Agreement under any provision of this Article XVI:

1. *Policies.* NFIA will assign and the Administrator will assume, all of NFIA's rights and obligations pursuant to or in connection with all policies of flood insurance issued by NFIA at any time under the program.

2. *Computer Systems.* NFIA will assign, and the Administrator will assume, all of NFIA's right, title and interest in, and obligations under leases and contracts for, any computer mainframe, data entry equipment, microfilm equipment or other Computer System equipment.

3. *Policy and Claims Files.* NFIA shall deliver to the Administrator all policy and claims files in NFIA's possession in the form maintained by NFIA; provided, however, that the Administrator shall grant NFIA continued access to such files during normal business hours for the purpose of preparing or defending any claim or litigation.

4. *Other Program Materials.* NFIA shall transfer to the Administrator all promotional materials, flood insurance manuals, and similar materials disseminated to agents, servicing companies, independent adjustment organizations and the general public; provided, however, that NFIA shall be entitled to retain a reasonable number of copies of such materials for its own records and for such future use, without limitation, as NFIA or any of its members may determine.

5. *Leases and Other Contracts.* NFIA will assign, and the Administrator will assume, all of NFIA's rights and obligations arising out of or under any lease for real or personal property or any contract for services or supplies relating to NFIA's performance under this Agreement. The Administrator acknowledges, however, that servicing companies, under the standard servicing agreement attached hereto as Exhibit may terminate such contract as provided therein.

E. *Cooperation During Transition.* In the event of a termination under this Article, the parties agree to cooperate with each other to effect orderly transfers as contemplated by Paragraph D above. During the transition period between the date of any notice of termination and the termination date NFIA shall provide all reasonable assistance to the Administrator in connection with the transfer of the Computer System to permit the Administrator to assume operational responsibility therefor without undue interruption of computer services.

Article XVII. Attendance at program meetings. On reasonable notice from the Administrator or FIA's flood insurance specialists NFIA shall participate, and cause its servicing companies to participate, at community and other program meetings convened by the Administrator and/or FIAs flood insurance specialists. NFIA shall notify the Administrator of, and invite his representative to attend, public meetings held by NFIA, including but not limited to seminars and briefings for insurance agents, brokers, adjustment organizations, and servicing companies. The Administrator shall notify NFIA of, and invite NFIA's representatives to attend, all public meetings of any nature convened by the Administrator or his designate relating to the National Flood Insurance Program.

Article XVIII. Toll free telephones. NFIA shall require in servicing company contracts for those jurisdictions set forth in Exhibit C that the servicing company install, staff and maintain a toll free telephone for each servicing territory for the benefit and use of the general public during normal business hours. For all other servicing territories NFIA shall install a single centralized toll free telephone for the same purposes and times. During evenings, weekends, and legal holidays, such lines may be operated by means of a message recording service. NFIA or its servicing company shall respond to recorded messages no later than the close of business on the next business day following receipt of the message.

Article XIX. Notice to policyholders. NFIA shall provide a notice at the time each flood insurance policy is issued or renewed that advises the policyholder of

(1) the availability of the toll free telephone services provided in Article XVIII. (2) the name of the appropriate servicing company, (3) the address of the Administrator, (4) the Administrator's toll free telephone service, and (5) the Administrator's invitation to submit inquiries, complaints, or suggestions relating to the National Flood Insurance Program.

Article XX. Assignment, notices and time periods.

A. The terms of this Agreement shall extend to the benefit of, and be binding upon, the Secretary, the Administrator, and NFIA and their successors and assigns. This Agreement shall not be assigned by NFIA without the express written consent of the Administrator.

B. Any notice required to be given or made hereunder shall be deemed properly given if personally delivered or mailed, postage prepaid, return receipt requested, to the address specified below:

If to NFIA:

Chairman, Executive Committee, NFIA, 1755 S. Jefferson Davis Highway, Arlington, Virginia 22202.

If to the Administrator:

Federal Insurance Administrator, 451 Seventh Street, Washington, D.C. 20410.

C. Time periods specified in this Agreement shall, unless otherwise specified, be calculated in calendar days, and shall be calculated by including the day on which an event occurs which causes the commencement of the time period.

EXHIBIT A

States with 5.000 or More Policies as of October 31, 1976:

1. Florida
2. Louisiana
3. Texas
4. New Jersey
5. California
6. Pennsylvania
7. New York
8. Mississippi
9. Illinois
10. Virginia
11. Arizona
12. North Carolina
13. South Carolina
14. Michigan
15. Massachusetts
16. Puerto Rico
17. Maryland
18. Ohio
19. Missouri
20. Connecticut
21. Oklahoma
22. Alabama
23. Washington
24. North Dakota
25. Georgia
26. Rhode Island
27. Kentucky

EXHIBIT B

FORM OF PREAMBLE TO FEDERAL REGISTER PUBLICATION OF CLARIFICATION

This Notice is published for the purpose of clarifying provisions in the Standard Flood Insurance Policy under the National Flood Insurance Program which relate to [state subject matter of Clarification]. In adjusting and settling claims under the Standard Flood Insurance Policy, a question has arisen as to whether these provisions permit [state issue involved in Clarification]. The Administrator had determined that [ ].

The Administrator has proposed to the National Flood Insurers Association that the Administrator's position on this matter be issued as a formal Interpretation of the Standard Flood Insurance Policy. The National Flood Insurers Association, however, has advised the Administrator that insurance policies which are not related to the National Flood Insurance Program contain provisions identical or similar to those provisions of the Standard Flood Insurance Policy which are the subject of this Notice. The National Flood Insurers Association has therefore requested that in order to avoid unintended complications in the interpretation of such unrelated policies, the language of the Standard Flood Insurance Policy be revised in order to clarify the intent of the Standard Flood Insurance Policy. The Standand Flood Insurance Policy is therefore revised as set forth below.

The Clarification indicated above does not effect a change in existing coverage under the Standard Flood Insurance Policy, but reflects the Administrator's interpretation of coverage under that Policy as it presently exists. Accordingly, in adjusting and settling claims under the Standard Flood Insurance Policy, the National Flood Insurers Association has agreed to implement the above Clarification by [description of implementation].

EXHIBIT C

SERVICING COMPANIES GETTING TOLL FREE LINES

Servicing company	*Territory*
Travelers Insurance[1]	Florida
Aetna Technical Service	Louisiana
St. Paul Fire & Marine	Texas
Great American	New Jersey, New York
Fireman's Fund	California
General Accident	Pennsylvania, Delaware
Travelers Insurance	Mississippi
State Farm	Illinois
I.N.A.	Virginia, District of Columbia
Aetna Technical Services	Arizona
Kemper Insurance	North Carolina
I.N.A.	Michigan
Hartford Insurance	Alabama, Georgia
Maryland Casualty	South Carolina
U.S.F. & G. Co.[1]	Maryland
Commercial Union [1]	Maine

[1] Company had toll-free line installed in July, 1976 as part of NFIA feasibility study.

[FR Doc.77-2516 Filed 1-25-77;3:41 pm]

federal register

FRIDAY, JANUARY 28, 1977

PART VI

DEPARTMENT OF COMMERCE

Patent and Trademark Office

PATENT CASES

Examining and Appeal Procedures

Title 37—Patents, Trademarks and Copyrights

CHAPTER 1—PATENT AND TRADEMARK OFFICE, DEPARTMENT OF COMMERCE

PART 1—RULES OF PRACTICE IN PATENT CASES

Patent Examining and Appeal Procedures

On October 4, 1976 notice was given in the FEDERAL REGISTER (41 FR 43729) of a proposal to amend sixteen sections of Title 37 of the Code of Federal Regulations relating to patent examining and appeal procedures. Interested persons were invited to comment on the proposal by December 7, 1976. One hundred seventy-five written letters and statements were submitted. A hearing was held in Arlington, Virginia on December 7, 1976 at which 21 persons testified orally. Careful consideration has been given to all comments received, and the proposal is being adopted with certain changes.

The regulations adopted involve all sections that were proposed to be revised, amended or added—namely, §§ 1.11, 1.14, 1.52, 1.56, 1.65, 1.69, 1.97, 1.98, 1.99, 1.109, 1.175, 1.194, 1.196, 1.291, 1.292, and 1.346. Amendments also are being made in two sections which were not included in the published proposal—§§ 1.51 and 1.176. Since amendments to these sections are closely related to the substance of matters which were contained in the published proposal, separate notice and public comment on these amendments are deemed unnecessary.

In addition, amendments are being adopted which were published for comment in two earlier, much less extensive proposals that concerned availability of certain files for public inspection. A notice of a proposed amendment to § 1.14(b) was published on June 4, 1974 (39 FR 19786). A notice of a proposed amendment to § 1.11(a) was published on September 17, 1974 (39 FR 33376). No negative comments were submitted with respect to either of these proposals and both are being adopted without change.

The text of the rules will be reproduced in the Patent and Trademark Office Official Gazette in about a month with additions indicated by arrows and deletions indicated by brackets to help readers identify the changes. A transcript of the hearing, the letters and written statements received, and a summary and analysis of the comments are available for public inspection in Room 11E10 of Crystal Plaza Building 3, 2021 Jefferson Davis Highway, Arlington, Virginia.

PURPOSE OF RULES

The purpose of the rules that are being adopted is to improve the quality and reliability of issued patents by strengthening patent examining and appeal procedures. It is desirable that patents be as dependable as possible, so as to enhance the incentives provided by the patent system to make inventions, to invest in research and development, to put new or improved products on the market, and to disclose inventions that otherwise would be kept as trade secrets. It is believed that the rules being adopted will help to maintain strong patent incentives.

The rules afford patent owners an opportunity, through the filing of a reissue application, to obtain a ruling from an examiner on the pertinence of additional prior art after a patent has been issued. The rules also broaden the public's opportunity for participation in the patent examining process, consistent with the limitations of statute, the protection of trade secrets, and the need to avoid making it unduly expensive to obtain a patent.

The rules set forth the duty of candor and good faith which applicants have to the Patent and Trademark Office and encourage them to provide information about the prior art in a way that will make it more useful to examiners. A provision for foreign language oaths by individuals who do not understand English is intended to make them more aware of their representations and of their obligations.

Under the rules more Patent and Trademark Office decisions that could have important precedent value will be available to the public, and some additional files will be available for inspection. Proceedings before the Board of Appeals are modified to help avoid the issuance of invalid patents. The rules encourage examiners to see that persons inspecting the file history of issued patents will be able to tell why the case was allowed.

REISSUE APPLICATIONS

Amended § 1.175 permits a patent owner to have new prior art considered by the Office by way of a reissue application without making any changes in the claims or specification. It is adopted with no change from the proposal. The requirement for an oath or declaration alleging that the reissue applicant believes "the original patent to be wholly or partly inoperative or invalid. . . ." is dispensed with in § 1.175(a)(1) unless the applicant believes that to be the case. Section 1.175(a)(4) recognizes that reissues may be filed to have the patentability of the original patent considered in view of prior art or other information relevant to patentability which was not previously considered by the Office.

Thus, a patentee may file a reissue if he believes his patent is valid over prior art not previously considered by the Office but would like to have a reexamination. The procedure may be used at any time during the life of a patent. During litigation, a federal court may, if it chooses, stay proceedings to permit new art to be considered by the Office.

If a reissue application is filed as a result of new prior art with no changes in the claims or specification and the examiner finds the claims patentable over the new art, the application will be rejected as lacking statutory basis for a reissue, since 35 USC 251 does not authorize reissue of a patent unless it is deemed wholly or partly inoperative or invalid. However, the record of prosecution of the reissue will indicate that the prior art has been considered by the examiner.

A substantial majority of the comments received favored amended § 1.175 as a means for improving the reliability of patents and avoiding unnecessary litigation costs. The negative comments generally questioned the statutory authority of the Commissioner to adopt this section. Authority for § 1.175 is believed to exist in 35 U.S.C. 6, which is the Commissioner's rulemaking authority, and in 35 U.S.C. 251. The latter section of the statute requires that the patent be deemed wholly or partly inoperative or invalid before a reissue may be granted, but does not require such a belief by the patentee before a reissue application may be filed. The case law does not suggest that the approach of new § 1.175(a)(4) is inconsistent with 35 U.S.C. 251.[1] Inasmuch as 35 U.S.C. 251 is a remedial provision,[2] it is believed that a liberal interpretation is justified and that adequate authority exists for the amended section.

Amended § 1.11(b) opens all reissue applications to inspection by the general public. Section 1.11(b) also provides for announcement of the filings of reissue applications in the Official Gazette. This announcement will give interested members of the public an opportunity to submit to the examiner information pertinent to patentability of the reissue application. The announcement will include at least the filing date, reissue application and original patent numbers, title, class and subclass, name of the inventor, name of the owner of record, name of the attorney or agent of record, and examining group to which the reissue application is assigned. Section 1.11(b) is amended from the proposal to so indicate. Reissue applications already on file on the effective date of the section will not be automatically open to inspection and will not be announced in the Official Gazette. However, a liberal policy will be followed in granting petitions for access to individual applications already on file.

In order that members of the public may have time to review the reissue application and submit pertinent information to the Office before the examiner's action, § 1.176 is amended to provide that reissue applications will not be acted on sooner than two months after the Official Gazette announcement of filing.

A substantial majority of the comments received favored adoption of § 1.11(b). The only opposition was based upon a suggestion that no statutory authority exists. However, since reissue applications contain no new disclosure, and therefore no trade secrets or confidential information, they are considered to present a "special circumstance" within the meaning of 35 U.S.C. 122.

[1] See *In re Clark*, 522 F.2d 623, 187 USPQ 209 (CCPA 1975), at footnote 4 where the court declined to decide whether it is proper to seek reissue merely to disclose uncited prior art. See also *In re Altenpohl*, 500 F.2d 1151, 183 USPQ 38 (CCPA 1974).

[2] See *In re Ode*, 443 F.2d 1200, 170 USPQ 268 (CCPA 1971).

The insertion of "all" as the fifth word of the first sentence of § 1.11(b) is for clarity. The word "furnished" is changed to "obtained" in § 1.11 for clarity.

PROTESTS AND PUBLIC USE PROCEEDINGS

Amended §§ 1.291 and 1.292 give greater recognition to the value of written protests and public use petitions in avoiding the issuance of invalid patents.

A substantial majority of the comments favored these sections and viewed them as improving the quality of issued patents. Entry of protests has been upheld in court.[3]

Section 1.291(a) provides that public protests against pending applications will be entered in the application file and will, if they meet stated requirements, be considered by the examiner. To guarantee consideration by the examiner, protests must be accompanied by copies of prior art documents relied upon, although protests without copies will not necessarily be ignored. This is similar to the requirement of new § 1.98 that copies of patents and publications accompany prior art statements. Section 1.291 does not contemplate permitting a protester to participate as a party in further proceedings. In the case of applications available to the public, such as reissue applications, the protester may file papers rebutting statements made by the applicant. The examiner at his discretion may request a protester to submit additional written information or may provide extra time for comments by a protester to be filed.

To ensure consideration by the examiner, all protests must be timely submitted. Protests will generally be considered timely submitted if they are filed before final rejection or allowance of the application by the examiner. The consideration given to protests filed after final rejection or allowance of the application by the examiner will depend upon the relevance of the prior art documents submitted and the point in time at which they are submitted. Obviously, if the prior art documents anticipate or clearly render obvious one or more claims they will not knowingly be ignored. It must be recognized, however, that the likelihood of consideration by the examiner decreases as the patent date approaches. Accordingly, protests must be filed early in order to ensure their consideration.

The first sentence of § 1.291(a) is deleted as unnecessary. Section 1.291(a) also is changed from the proposal to make clear that it applies to pending applications and that all protests will be referred to the examiner having charge of the subject matter involved.

Section 1.291(b) incorporates the existing Office policy of permitting persons to submit prior art citations or copies of prior art after a patent has been granted. The section is changed from the proposal by the addition of the words "any papers related thereto" to recognize that statements as to the pertinence of prior art may be submitted. Both the citations and the related papers are to be entered without comments. The material submitted is not examined by the Office but is available to members of the public inspecting Office records.

Some suggestions were received for major modifications of § 1.291. It was suggested that an advisory opinion of the examiner be placed in the patent file when protests were received after issuance of the patent. Several persons supported a suggestion for examiners to state whether a "new issue" was raised by prior art cited by a protester. Another suggestion was that a procedure similar to that used in the recent Trial Voluntary Protest Programs[4] be adopted on a continuing basis. These suggestions were carefully considered, but are not adopted. The suggestions extend substantially beyond § 1.291 as proposed, and their benefits do not appear sufficient to justify the added cost at this time.

Materials submitted to the Office under §§ 1.291 and 1.292 are to be served upon the applicant, patentee, attorney or agent when possible. The term "patentee" is used in its ordinary sense as defined in 35 USC 100(d). If service is not possible, materials are to be submitted in duplicate so that the Office can attempt to send the duplicate copy. The proposal is changed by adding the words "with the Office" after "filed" in §§ 1.291(c) and 1.292(b) for clarity.

In § 1.292, the requirement that petitioner bear the Office's expenses in conducting the public use proceeding is deleted. Section 1.292 is also amended to ensure that the existence of public use proceedings is recorded in the application file wrapper. Notice of a petition for a public use proceeding will be entered in the file in lieu of the petition itself when the petition and the accompanying papers are too bulky to accompany the file. Any public use papers not physically entered in the file will be publicly available whenever the application file wrapper is available.

DUTY OF DISCLOSURE

Amended § 1.56 defines the duty to disclose information to the Office and the criteria for striking an application when that duty is violated. The wording of the section is changed in several respects from the proposal, but the purpose and general scope are the same as in the proposal. The section codifies the existing Office policy on fraud and inequitable conduct, which is believed consistent with the prevailing case law in the federal courts. The expanded wording of the section is intended to be helpful to individuals who are not expert in the judicially developed doctrines concerning fraud. The section should have a stabilizing effect on future decisions in the Office and may afford guidance to courts as well.

A majority of comments received favored § 1.56 as proposed or with modifications. Persons opposed expressed concern over the imprecise definition of the duty of disclosure and the possibility that the proposal would substantially increase the burden on patent applicants. Some stated that there would be increased litigation as a result of the proposal. Several suggestions were received on better ways to define the individuals who should disclose information and the kinds of information that should be disclosed.

The first sentence of § 1.56(a) is changed from the proposal by adding the word "substantively," so that individuals having a duty of disclosure are limited to those who are "substantively involved in the preparation or prosecution of the application." This change is intended to make clear that the duty does not extend to typists, clerks, and similar personnel who assist with an application. This phrase, when taken with the last sentence of § 1.56(a), is believed to provide an adequate indication of the individuals who are covered by the duty of disclosure. The word "with" is inserted in the first sentence of § 1.56(a) before "the assignee" and before "anyone to whom there is an obligation to assign" to make clearer that the duty applies only to individuals, not to organizations.

Numerous comments concerned the term "relevance" that was used in the proposal. In response to the comments, language is substituted in § 1.56 and related sections which is believed to establish a clearer standard for determining whether information need be disclosed to the Office. "Relevant" is replaced by "material" because the latter term connotes something more than a trivial relationship. It appears to be more commonly used in court opinions. In addition, the third sentence of § 1.56, which defines materiality, is rewritten. The sentence now states that information is material "where there is a substantial likelihood that a reasonable examiner would consider it important in deciding whether to allow the application to issue as a patent." The sentence paraphrases the definition of materiality used by the Supreme Court in its recent decision in *TSC Industries* v. *Northway*.[5] Although in that case the court was concerned with rules promulgated by the Securities and Exchange Commission, the Court's articulation of materiality is believed consistent with the prevailing concept that has been applied by lower courts in recent patent cases.

The definition of materiality in § 1.56 will have to be interpreted in the context of patent law rather than securities law. Principles followed by courts in securities cases should not be translated to patent cases automatically. It is noteworthy, however, that in formulating the definition of materiality in *TSC Industries* the Supreme Court considered some of the same matters over which concern was expressed in the public

[3] *International Paper Co.* v. *Fibreboard Corp.*, 63 F.R.D. 88, 181 USPQ 740 (D. Del. 1974).

[4] 923 O.G. 2; 930 O.G. 1454; 938 O.G. 945

[5] 426 U.S. ——, 48 L. Ed. 2d 757, 96 S. Ct. 2126, 44 U.S.L.W. 4952, decided June 14, 1976.

comments on proposed § 1.56. The Court noted that the standard of materiality should not be so low that persons would be "subjected to liability for insignificant omissions or misstatements," or so low that the fear of liability would cause management "simply to bury the shareholder in an avalanche of trivial information—a result that is hardly conducive to informed decision making."[6]

Although the third sentence of § 1.56 (a) refers to decisions of an examiner, it is intended that the duty of disclosure would apply in the same manner in the less common instances where the official making a decision on a patent application is someone other than an examiner—e.g., a member of the Board of Patent Interferences or the Board of Appeals. This is implicit in the duty "of candor and good faith" toward the Office that is specified in the first sentence of § 1.56(a).

Comments and questions were received concerning the term "information" used in the second and third sentences of § 1.56(a) and elsewhere. It means all of the kinds of information required to be disclosed under current case law. In addition to prior art patents and publications, it includes information on prior public uses, sales, and the like. It is not believed practicable to define information in the text of the rule at this time. However, the rule is not intended to require disclosure of information favorable to patentability—e.g., evidence of commercial success of the invention. Neither is it meant to require disclosure of information concerning the level of skill in the art for purposes of determining obviousness.

Several comments were received concerning the duty to disclose information the patent applicant regards as confidential, including information the applicant has received from another party under an injunction of secrecy. This problem has existed prior to amendment of § 1.56. The Patent and Trademark Office, of course, keeps information disclosed by applicants confidential until a patent is issued. It has been suggested that the Office should develop a mechanism for continuing to hold information in confidence after issuance of a patent if in the judgment of the examiner the information is not material to the examination of the application. The feasibility of offering a rule for public comment on this topic at a later date will be considered.

New § 1.56(b) is added to make clear that information may be disclosed to the Office through an attorney or agent of record or through a pro se inventor, and that other individuals may satisfy their duty of disclosure to the Office by disclosing information to such an attorney, agent or inventor. Information that is not material need not be passed along to the Office.

Proposed sections 1.56 (b) and (c) have been revised and shortened and appear at §§ 1.56 (c) and (d). The proposal was criticized for leaving it open to the Office to apply a different standard of materiality from the one set forth in § 1.56.[7] Section 1.56(d) as adopted states that an application "shall" be stricken when the criteria set forth are met. Thus § 1.56(d) as adopted establishes a single standard for striking applications.

The term "inequitable conduct" is dropped from § 1.56(d) as covering too great a spectrum of conduct to be subject to mandatory striking. Inequitable conduct that is equivalent to fraud is intended to come within the definition of fraud. The Court of Customs and Patent Appeals already has interpreted "fraud" in existing § 1.56 to encompass conduct of this sort.[8] Moreover, § 1.56(d) as adopted calls for striking an application either for fraud or for a violation of the duty of disclosure.

In § 1.56(d) "bad faith" is substituted for the term "deliberate" that was used in the proposal. This change is to make clear that an intent to deceive (or gross negligence equivalent to such an intent) must be shown before an application will be stricken. Bad faith is not present if information is withheld as a result of an error in judgment or inadvertence.

Several comments concerned whether attorneys and agents could represent their clients' interests and at the same time comply with § 1.56. Similar comments were directed to §§ 1.97 to 1.99. It is of course in the interest of the client to have a valid patent and this cannot be obtained without disclosure of known material facts. It is not inconsistent for an attorney or agent to fulfill his duty of candor and good faith to the Office and to act as an advocate for his client. The submission of information under § 1.56 does not preclude the submission of arguments that such information does not render the subject matter of the application unpatentable.

In § 1.65 a new third sentence is added to require the patent applicant to acknowledge the duty of disclosure. The language is changed from the proposal to be consistent with changes made in § 1.56. To allow time for the Office and applicants to revise printed oath and declaration forms now in use, the mandatory acknowledgement of the duty of disclosure in amended § 1.65 does not become effective until January 1, 1978. Applicants at their option may include the new language in oaths and declarations filed prior to the effective date. The Office will publish a separate notice in the FEDERAL REGISTER adding a sentence acknowledging the duty of disclosure to appropriate forms in 37 CFR Part 3, "Forms for Patent Cases."

The word "statement" is deleted from the title of § 1.65 to avoid confusion with the prior art statement of §§ 1.97 through 1.99.

Amended § 1.346 emphasizes that there must be a reasonable basis to support every allegation of improper conduct made by a registered practitioner in any Office proceeding. The language that was proposed is clarified in the section as adopted. Although § 1.346 is limited to papers filed in Office proceedings, the amendment to § 1.346 is not intended to imply that disciplinary action never will be taken against a registered practitioner under § 1.348 for a groundless allegation of improper conduct in a court proceeding.

PRIOR ART STATEMENTS

New §§ 1.97, 1.98 and 1.99 deal with prior art statements and provide a mechanism by which patent applicants may comply with the duty of disclosure provided in § 1.56. The sections have been substantially changed from the proposal, in response to comments received.

Unlike the corresponding part of the proposal, the sections as adopted are not mandatory, though applicants are strongly encouraged to follow the procedures described in them. Applications will be examined whether or not a prior art statement is filed and whether it complies with the rules or is defective. It is nevertheless believed that applicants will find that the use of prior art statements complying fully with the requirements of §§ 1.97 through 1.99 will be the best way to satisfy the duty of disclosure. The Patent and Trademark Office cannot assure that prior art disclosed in other ways will be considered by the examiner.

Sections 1.97 through 1.99 do not prescribe the content of what materials should be submitted in the prior art statement; this is for the applicant and the attorney or agent to decide in the light of the duty of disclosure expressed in § 1.56. The only criterion contained in §§ 1.97 through 1.99 as to content of the art cited is in § 1.97(b). This subsection indicates that the statement will be construed as a representation that the prior art listed includes what the submitter considers to be the closest art of which he is aware. The submitter need not decide which particular items of prior art are the closest or identify any items as such; the representation is simply that he is not withholding known prior art which he considers closer than that which is submitted. Section 1.97(b) makes clear that the prior art statement is not a representation that a search has been made or that no better art exists

In § 1.97(a) the time for filing the prior art statement is extended from the two months of the original proposal to three months. In most cases prior art submitted within three months will be available to the examiner before he takes up the case for action, though it will be helpful if citations are made as promptly as possible.

Section 1.98 lists the elements of the prior art statement: a listing of the art, a concise explanation of the relevance of each listed item, and copies of the art or the pertinent portions thereof.

The prior art statement resembles somewhat the "patentability statement" of the proposal and the "patentability brief" proposed elsewhere.[9] The name has been changed to reflect a change in the requirements of § 1.98(a). Unlike the proposed version of this paragraph, which called for an explanation of why the claimed invention is believed patentable over the cited art, the paragraph as adopted calls only for a concise explanation of the relevance of each listed item. This may be nothing more than identification of the particular figure or paragraph of the patent or publication which has some relation to the claimed invention. It might be a simple statement pointing to similarities between the item of prior art and the claimed invention. It is permissible but not necessary to discuss differences between the prior art and the claims. It is thought that the explanation of relevance will be essentially as useful to the examiner as the formerly proposed explanation of patentability, and should be significantly less burdensome for the applicant to prepare.

Section 1.98 requires a copy of each patent or publication cited, including U.S. patents, to accompany the prior art statement. Several comments questioned the need for burdening the applicant to supply copies of materials that are present in the Office's files. However, substantial time and effort often is needed to locate a document in the Office's files. Since the person submitting the prior art statement generally has available a copy of the item being cited, it is believed that expense and effort can be minimized by having that person supply the copy in all cases. Consideration has been given to proposals to allow the applicant to submit an order for copies of the patents along with his statement instead of actually submitting copies. This will be further studied, but to date no way has been found to assure that the copies will be available to the examiner by the first action unless the applicant submits them with the prior art statement.

Other changes to §§ 1.97 through 1.99 from the proposal eliminate unnecessary language and clarify the requirements.

A notice published in 1974[10] contained guidelines for the citation of prior art by applicants. Many of those guidelines are repeated or superseded by §§ 1.97 through 1.99. In order to allow applicants, attorneys and agents time to adjust their procedures to comply with the requirements for prior art statements, the effective date of §§ 1.97 through 1.99 will be July 1, 1977. Until these new sections become effective, applicants should continue to follow the 1974 guidelines. Issuance of a revised notice, to take effect July 1, 1977, is under study.

A survey conducted by the Office in 1976 concludes that many applicants have not been citing prior art to the Office.[11] It is hoped that with the duty of disclosure expressly set forth in § 1.56, applicants will perceive that it is to their advantage to use the procedures of §§ 1.97 through 1.99.

Section 1.51 is amended by designating the existing rule as § 1.51(a) and adding new § 1.51(b) which contains a reference to §§ 1.97 through 1.99.

FOREIGN LANGUAGE OATHS

Amended § 1.52 and new § 1.69 are adopted as proposed.

Section 1.69 requires that oaths and declarations be in a language which is understood by the individual making the oath or declaration, i.e., a language which the individual comprehends. If the individual comprehends the English language, he must use it. If the individual cannot comprehend the English language, any oath or declaration must be in a language which the individual can comprehend. If an individual uses a language other than English for an oath or declaration, the oath or declaration must include a statement that the individual understands the content of any documents to which the oath or declaration relates. If the documents are in a language the individual cannot comprehend; the documents may be explained to him so that he is able to understand them.

The Office will provide approved translations for as many of the oath or declaration forms which appear in Part 3 of Title 37 of the Code of Federal Regulations as practicable, and in as many languages as practicable, probably using a side-by-side English/foreign language format. The availability of the foreign language forms will be announced in the Official Gazette at a later date.

The change in § 1.52, providing for an exception to the requirement that oaths and declarations be in the English language, is necessitated by the adoption of § 1.69.

Although very few persons opposed §§ 1.52 and 1.69, several suggested that the philosophy behind the change be extended to the specification, requiring the specification to be in a language which the applicant understands, accompanied by an English translation. This suggestion was not considered feasible because of the obvious burdens on the applicant and the danger to the applicant and the public if the translation is not literally correct. Also, if a large number of applications were filed in a foreign language, there would be significant administrative burdens on the Office. Attention is directed to the Manual of Patent Examining Procedure, § 608.1, which permits non-English language applications to be filed in certain limited circumstances.

Other suggested modifications of the proposed rule included: (1) using an English language oath or declaration with one additional clause in a language understood by the person making the oath or declaration, the clause stating that the person understands all the documents to which the oath or declaration relates; and (2) extending the two month grace period for filing an English translation of an oath or declaration filed under § 1.65.

After due consideration, suggestion (1) was believed not to accomplish the objectives of the rule as well as the adopted rule. Suggestion (2) would cause unsatisfactory delays in the initial processing of applications.

DECISIONS AND FILES MADE PUBLIC

Section 1.14(d) makes more explicit the conditions under which significant decisions of the Patent and Trademark Office will be made available to the public, and includes reference to decisions of the Board of Patent Interferences, in addition to decisions of the Board of Appeals and the Commissioner.

A large majority of the comments received were favorable. Several commentators felt that more decisions would be made available as a result of the proposed section and that it would assist in publicizing aspects of Office procedure which may not have been available previously.

Some negative comments were based on the view that the Freedom of Information Act[12] required all decisions of the Office to be made publicly available. A greater number of those opposing the proposed section, however, felt that applicants should have an absolute right to have their applications maintained in confidence and that no information should be made public without specific authorization from them. One commentator felt that rulemaking on this subject should be deferred until currently pending litigation[13] under the Freedom of Information Act was finally resolved.

The section as adopted is applicable to decisions deemed by the Commissioner to involve an interpretation of patent laws or regulations that would be of significant precedent value, where such decisions are contained in either pending or abandoned applications or in interference files not otherwise open to the public. It is applicable whether or not the decision is a final decision of the Patent and Trademark Office.

The parenthetical phrase in the first sentence of the proposed section, which cited other provisions of the rules under which decisions are open to public inspection, is deleted as unnecessary and possibly confusing. Also, in view of several comments received, the period of time during which an applicant or party in interest may object to having a decision made public is extended from one month to two months. At least twenty days is given to request reconsideration and seek court review before a decision is made public over an objection.

Section 1.14(d) is considered to place a duty on the Patent and Trademark Office to identify significant decisions and to take the steps necessary to inform the public of such decisions, by publication of such decisions, in whole or in part. It is anticipated, however, that no more than a few dozen decisions per year will be deemed of sufficient importance to warrant publication under the authority of this section.

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[6] 426 U.S. at ——, 48 L. Ed. 2d at 765, 96 S. Ct. at 2132, 44 U.S.L.W. at 4855.

[7] See discussion accompanying proposed rules in FEDERAL REGISTER of October 4, 1976, page 43731, first sentence.

[8] *Norton v. Curtiss*, 433 F. 2d 779, 792, 167 USPQ 532, 543 (CCPA 1970).

[9] E.g., FEDERAL REGISTER of September 9, 1968, 34 FR 14176, 866 O.G. 1402; S. 2255, 94th Congress, § 131(b).

[10] Notice of August 12, 1974, 926 O.G. 2.

[11] BNA's Patent, Trademark and Copyright Journal, No. 301, October 28, 1976, page D-1.

[12] 5 USC 552.

[13] *Irons v. Gottschalk*, Slip Opinion, No. 74-1365 (D.C. Cir., October 21, 1976).

Amended § 1.14(b) allows public inspection of abandoned applications referred to in defensive publications. The comments received on the proposed amendment on this topic in 1974 expressed no opposition and the proposal is adopted without change.

The amendment is intended to encourage use of the defensive publication program provided under § 1.139. The objective of that program is to make available to the public the technical disclosure of applications in which the owner prefers to publish an abstract in lieu of obtaining an examination. Existing §§ 1.11(b) and 1.139 open the complete defensive publication application to inspection by the general public upon publication of the abstract. With the amendment, an abandoned application referred to in a defensive publication application will likewise be open to public inspection, avoiding any need to repeat its contents in the defensive publication application. Thus, public availability of the applications involved should be of benefit both to the applicant and the public.

A suggestion was made that the section be extended still further to include abandoned applications referred to in foreign patents. This suggestion, however, goes too far beyond the proposal that was published and has too uncertain an impact to be adopted at this time.

Amended § 1.11(a) provides earlier access to the file of an interference which involved a patent or an application on which a patent has issued. All comments that were submitted on the 1974 proposal on this topic were favorable and two commentators felt the proposal should be extended further. The proposal is being adopted without change.

Under present practice, access to the file of an interference is not permitted until judicial review of the decision of the Board of Patent Interferences has been exhausted. The amended section allows access to the file after final decision of the Board of Patent Interferences if that decision is an award of priority as to all parties. It is believed that such earlier access will be of benefit to members of the public by making available information relevant to the issuance of the patent whether or not the interference decision is still being adjudicated.

PATENT APPEALS

Section 1.194 clarifies the circumstances in which oral hearings should be requested, provides for oral arguments by or on behalf of examiners in certain appeals, and reduces the time permitted for oral arguments.

Comments relating to this section were favorable by a very substantial majority, although there were several reservations to the effect that § 1.194(a) tended to discourage or downgrade oral arguments. Participation by examiners was considered to be desirable not only from the standpoint of improving the overall presentation of the argument, particularly in complex cases, but also for the educational and experience benefits to the examiners themselves.

The only opposition to the section was based on the feeling that oral hearings would be discouraged. The rule is intended to discourage oral hearings only to the same extent as the Office's 1975 Official Gazette notice on the subject.[14] Section 1.194(a) indicates that oral hearings should not be requested as a matter of course in every appeal, but only in those circumstances where the appellant feels that such a hearing will be of material assistance to the proper presentation of the appeal. The section expressly provides that equal consideration will be accorded in deciding all appeals, whether or not an oral hearing is held.

In appeals where the appellant has requested an oral hearing, § 1.194(b) provides for oral argument by, or on behalf of, the primary examiner, if such argument is considered to be helpful by either the primary examiner or the Board. This provision incorporates the present practice of permitting examiners to present an oral argument before the Board.[15] It gives the Board additional discretionary authority to request presentation of an oral argument by, or on behalf of the examiner to ensure that all issues are fully and accurately presented.

Section 1.194(c) provides, as does existing § 1.194, that appeals will be assigned for consideration and decision without an oral hearing where none has been requested by the appellant. Where an oral hearing has been requested, a day of hearing will be set, and both appellant and the primary examiner will be notified. A provision for notice to the examiner is added to the proposed version. Additionally, § 1.194(c) reflects the present practice of limiting oral argument on behalf of the appellant to twenty minutes.[16] The time permitted for argument by the examiner has been shortened from twenty minutes, as proposed, to fifteen minutes. The examiner, unlike the appellant, will not ordinarily need time to present the facts of the case or for rebuttal.

In any appeal where oral argument is to be presented by, or on behalf of, the primary examiner, the appellant will be given due notice of that fact.

Proposed § 1.196(b) would have authorized the Board of Appeals to reject allowed claims, in cases before it, whenever the Board had knowledge of grounds for so doing.

While a majority of those commenting on this section favored in principle the concept of allowing the Board to have this right, significant concern was voiced that there was no statutory authority for the Board to actually reject allowed claims. Further, the question of proper authority for judicial review of such action by the Board was a matter of concern. Other reasons advanced in opposition to the section were that applicants would be inhibited from appealing by the risk of having allowed claims rejected and that the proposal would create a higher presumption of validity in cases reviewed by the Board. A significant number commented that it would be more appropriate for the Board to remand the case to the primary examiner for consideration of the grounds raised by the Board. This would afford the applicant an opportunity to demonstrate the patentability of the claims and would remove any question as to statutory authority.

In view of the comments received, existing § 1.196(b) will not be modified, but a new § 1.196(d) is added providing express authority for the Board of Appeals to include, in its decision, a statement of any grounds for rejecting any allowed claim that it believes should be considered by the primary examiner. Section 1.196(d) provides that the Board may remand the case to the examiner for such consideration, and that the applicant shall have an opportunity to respond to the grounds set forth by the Board prior to consideration by the examiner. If the previously allowed claims are rejected by the examiner, the rejection may be appealed to the Board.

The new section further provides that a decision of the Board which includes a remand will not be considered as a final decision in the case, but that the Board, following conclusion of the proceedings before the primary examiner, will either adopt its earlier decision as final or will render a new decision based on all appealed claims, as it considers appropriate. In either case, final action by the Board will give rise to the existing alternatives available to an appellant following a decision by the Board.

In situations where the primary examiner concludes after consideration of all the evidence and argument that the remanded claims should be allowed, the new rule dealing with reasons for allowance (§ 1.109) provides an appropriate mechanism for him to explain, on the record, his reasoning for coming to this conclusion, notwithstanding the grounds set forth by the Board in its statement.

Promulgation of new § 1.196(d) does not affect the Board's existing authority to remand a case to the primary examiner without rendering a decision in appropriate circumstances. Section 1.196(d) is not intended as an instruction to the Board to reexamine every allowed claim in every appealed application. It is, rather, intended to give the Board express authority to act when it becomes apparent, during the consideration of rejected claims, that one or more allowed claims may be subject to rejection on either the same or on different grounds from those applied against the rejected claims.

REASONS FOR ALLOWANCE

New § 1.109 is intended to emphasize and formalize the examiner's authority to state his reasoning for allowing a claim or claims. The authority is discretionary with the examiner and is only to be used when the record does not otherwise reveal the reasons for allowance.

[14] See notice of March 20, 1975, 933 O.G. 1010.
[15] MPEP, § 1209.
[16] See notice of March 20, 1975, 933 O.G. 1010.

A majority of the comments received favored the rule as proposed because it would tend to provide courts and others who were reviewing the patent with a clearer record. Those who opposed the rule most often gave the reason that the examiner might fail to state all the reasons or the strongest reasons why a claim was allowed, which could place unnecessary limitations on the claims or create an estoppel in subsequent litigation or licensing.

To help insure that the examiner's statement of his reasoning in allowing a claim will not unnecessarily limit the claims or create an estoppel, a final sentence is added to the proposal which states that failure of the applicant to comment upon or rebut the examiner's reasoning "shall not give rise to any implication that the applicant agrees with or acquiesces in the reasoning of the examiner."

Several commenters suggested that stricter enforcement of §§ 1.111 and 1.133 would eliminate the need for a new rule concerning reasons for allowance. Situations exist, however, where a statement of reasons for allowance could be helpful, for example when an examiner withdraws a rejection for reasons not suggested by the applicant; when an applicant submits several arguments for allowing a claim and the examiner finds not all of them persuasive; when an examiner allows a claim on the first Office action after citing very close prior art; and when the examiner allows a claim after remand from the Board of Appeals (see new § 1.196(d)).

The first sentence of the proposed rule is changed to define more precisely the circumstances in which an examiner's statement is appropriate, as well as to define more precisely the content of the statement. The statement will include the examiner's "reasoning." The examiner may state his reasoning whenever he "believes that the record of the prosecution as a whole does not make clear his reasons for allowing a claim or claims."

Several persons commented that the rule should provide a procedure for appeal from the examiner's statement of his reasoning. The rule does permit applicants to comment upon the examiner's reasoning. If the applicant does not wish to comment, he may reserve for a later proceeding, without prejudice, any rebuttal.

TEXT OF RULES ADOPTED

After consideration of the comments received and pursuant to the authority contained in § 6 of Title 35 of the United States Code, Part 1 of Title 37 of the Code of Federal Regulations is amended as set forth below.

1. Section 1.11 is revised to read as follows:

§ 1.11 Files open to the public.

(a) After a patent has been issued, the specification, drawings, and all papers relating to the case in the file of the patent are open to inspection by the general public, and copies may be obtained upon paying the fee therefor. After an award of priority by the Board of Patent Interferences as to all parties, the file of any interference which involved a patent, or an application on which a patent has issued, is similarly open to public inspection and procurement of copies. See § 2.27 for trademark files.

(b) All reissue applications and all applications in which the Office has accepted a request filed under § 1.139, and related papers in the application file, are open to inspection by the general public, and copies may be obtained upon paying the fee therefor. The filing of reissue applications will be announced in the *Official Gazette*. The announcement shall include at least the filing date, reissue application and original patent numbers, title, class and subclass, name of the inventor, name of the owner of record, name of the attorney or agent of record, and examining group to which the reissue application is assigned.

2. In § 1.14 paragraphs (b) and (d) are revised to read as follows:

§ 1.14 Patent applications preserved in secrecy.

* * * * *

(b) Except as provided in § 1.11(b) abandoned applications are likewise not open to public inspection, except that if an application referred to in a U.S. patent, or in an application which is open to inspection pursuant to § 1.139, is abandoned and is available, it may be inspected or copies obtained by any person on written request, without notice to the applicant. Abandoned applications may be destroyed after 20 years from their filing date, except those to which particular attention has been called and which have been marked for preservation. Abandoned applications will not be returned.

* * * * *

(d) Any decision of the Board of Appeals or the Board of Patent Interferences, or any decision of the Commissioner on petition, not otherwise open to public inspection shall be published or made available for public inspection if: (1) The Commissioner believes the decision involves an interpretation of patent laws or regulations that would be of important precedent value; and (2) the applicant, or any party involved in the interference, does not, within two months after being notified of the intention to make the decision public, object in writing on the ground that the decision discloses a trade secret or other confidential information. If a decision discloses such information, the applicant or party shall identify the deletions in the text of the decision considered necessary to protect the information. If it is considered the entire decision must be withheld from the public to protect such information, the applicant or party must explain why. Applicants or parties will be given time, not less than twenty days, to request reconsideration and seek court review before any portions of decisions are made public over their objection. See § 2.27 for trademark applications.

3. Section 1.51 is revised to read as follows:

§ 1.51 General requisites of an application.

(a) Applications for patents must be made to the Commissioner of Patents and Trademarks. A complete application comprises:

(1) A specification, including a claim or claims, see §§ 1.71 to 1.77.

(2) An oath or declaration, see §§ 1.65 and 1.68.

(3) Drawings, when necessary, see §§ 1.81 to 1.88.

(4) The prescribed filing fee. (See 35 USC section 41 for filing fees.)

(b) Applicants are encouraged to file a prior art statement at the time of filing the application or within three months thereafter. See §§ 1.97 through 1.99.

4. In § 1.52 paragraph (a) is revised to read as follows:

§ 1.52 Language, paper, writing, margins.

(a) The specification and oath or declaration must be in the English language except as provided in § 1.69. All papers which are to become a part of the permanent records of the Patent and Trademark Office must be legibly written or printed in permanent ink or its equivalent in quality. All of the application papers must be presented in a form having sufficient clarity and contrast between the paper and the writing or printing thereon to permit the production of readily legible copies in any number by use of photographic, electrostatic, photooffset, and microfilming processes. If the papers are not of the required quality, substitute typewritten or printed papers of suitable quality may be required.

* * * * *

5. Section 1.56 is revised to read as follows:

§ 1.56 Duty of disclosure; striking of applications.

(a) A duty of cander and good faith toward the Patent and Trademark Office rests on the inventor, on each attorney or agent who prepares or prosecutes the application and on every other individual who is substantively involved in the preparation or prosecution of the application and who is associated with the inventor, with the assignee or with anyone to whom there is an obligation to assign the application. All such individuals have a duty to disclose to the Office information they are aware of which is material to the examination of the application. Such information is material where there is a substantial likelihood that a reasonable examiner would consider it important in deciding whether to allow the application to issue as a patent. The duty is commensurate with the degree of involvement in the preparation or prosecution of the application.

(b) Disclosures pursuant to this section may be made to the Office through an attorney or agent having responsibility for the preparation or prosecution of the application or through an inventor who is acting in his own behalf. Disclosure to such an attorney, agent or

inventor shall satisfy the duty, with respect to the information disclosed, of any other individual. Such an attorney, agent or inventor has no duty to transmit information which is not material to the examination of the application.

(c) Any application may be stricken from the files if: (1) Signed or sworn to in blank, or without actual inspection by the applicant; or

(2) Altered or partly filled in after being signed or sworn to.

(d) An application shall be stricken from the files if it is established by clear and convincing evidence that any fraud was practiced or attempted on the Office in connection with it or that there was any violation of the duty of disclosure through bad faith or gross negligence.

6. In the heading preceding § 1.65 "STATEMENT:" is deleted.

7. In § 1.65 the heading and paragraph (a) are revised to read as follows:

§ 1.65 Oath or declaration.

(a) (1) The applicant, if the inventor, must state that he verily believes himself to be the original and first inventor or discoverer of the process, machine, manufacture, composition of matter, or improvement thereof, for which he solicits a patent; that he does not know and does not believe that the same was ever known or used in the United States before his invention or discovery thereof, and shall state of what country he is a citizen and where he resides and whether he is a sole or joint inventor of the invention claimed in his application. In every original application the applicant must distinctly state that to the best of his knowledge and belief the invention has not been in public use or on sale in the United States more than one year prior to his application or patented or described in any printed publication in any country before his invention or more than one year prior to his application, or patented or made the subject of an inventor's certificate in any foreign country prior to the date of his application on an application filed by himself or his legal representatives or assigns more than twelve months prior to his application in this country. He must acknowledge a duty to disclose information he is aware of which is material to the examination of the application. He shall state whether or not any application for patent or inventor's certificate on the same invention has been filed in any foreign country, either by himself, or his legal representatives or assigns. If any such application has been filed, the applicant shall name the country in which the earliest such application was filed, and shall give the day, month, and year of its filing; he shall also identify by country and by day, month, and year of filing, every such foreign application filed more than twelve months before the filing of the application in this country.

(2) This statement (i) must be subscribed to by the applicant, and (ii) must either (*a*) be sworn to (or affirmed) as provided in § 1.66, or (*b*) include the personal declaration of the applicant as prescribed in § 1.68. See § 1.153 for design cases and § 1.162 for plant cases.

* * * * *

8. Section 1.69 is added to read as follows:

§ 1.69 Foreign language oaths and declarations.

(a) Whenever an individual making an oath or declaration cannot understand English, the oath or declaration must be in a language that such individual can understand and shall state that such individual understands the content of any documents to which the oath or declaration relates.

(b) Unless the text of any oath or declaration in a language other than English is a form provided or approved by the Patent and Trademark Office, it must be accompanied by a verified English translation, except that in the case of an oath or declaration filed under § 1.65, the translation may be filed in the Office no later than two months after the filing date.

9. The heading "PRIOR ART STATEMENT" is added following § 1.95 and preceding § 1.97.

10. Section 1.97 is added to read as follows:

§ 1.97 Filing of prior art statement.

(a) As a means of complying with the duty of disclosure set forth in § 1.56, applicants are encouraged to file a prior art statement at the time of filing the application or within three months thereafter. The statement may either be separate from the specification or may be incorporated therein.

(b) The statement shall serve as a representation that the prior art listed therein includes, in the opinion of the person filing it, the closest prior art of which that person is aware; the statement shall not be construed as a representation that a search has been made or that no better art exists.

11. Section 1.98 is added to read as follows:

§ 1.98 Content of prior art statement.

(a) Any statement filed under § 1.97 or § 1.99 shall include: (1) A listing of patents, publications or other information and (2) a concise explanation of the relevance of each listed item. The statement shall be accompanied by a copy of each listed patent or publication or other item of information in written form or of at least the portions thereof considered by the person filing the statement to be pertinent.

(b) When two or more patents or publications considered material are substantially identical, a copy of a representative one may be included in the statement and others merely listed. A translation of the pertinent portions of foreign language patents or publications considered material should be transmitted if an existing translation is readily available to the applicant.

12. Section 1.99 is added to read as follows:

§ 1.99 Updating of prior art statement.

If prior to issuance of a patent an applicant, pursuant to his duty of disclosure under § 1.56, wishes to bring to the attention of the Office additional patents, publications or other information not previously submitted, the additional information should be submitted to the Office with reasonable promptness. It may be included in a supplemental prior art statement or may be incorporated into other communications to be considered by the examiner. Any transmittal of additional information shall be accompanied by explanations of relevance and by copies in accordance with the requirements of § 1.98.

13. Section 1.109 is added to read as follows:

§ 1.109 Reasons for allowance.

If the examiner believes that the record of the prosecution as a whole does not make clear his reasons for allowing a claim or claims, the examiner may set forth such reasoning. This shall be incorporated into an Office action rejecting other claims of the application or be the subject of a separate communication to the applicant. The applicant may file a statement commenting on the reasons for allowance within such time as may be specified by the examiner. Failure to file such a statement shall not give rise to any implication that the applicant agrees with or acquiesces in the reasoning of the examiner.

14. In § 1.175 paragraph (a) is revised to read as follows:

§ 1.175 Reissue oath or declaration.

(a) Applicants for reissue, in addition to complying with the requirements of the first sentence of § 1.65, must also file with their applications a statement under oath or declaration as follows:

(1) When the applicant verily believes the original patent to be wholly or partly inoperative or invalid, stating such belief and the reasons why.

(2) When it is claimed that such patent is so inoperative or invalid "by reason of a defective specification or drawing," particularly specifying such defects.

(3) When it is claimed that such patent is inoperative or invalid "by reason of the patentee claiming more or less than he had a right to claim in the patent," distinctly specifying the excess or insufficiency in the claims.

(4) When the applicant is aware of prior art or other information relevant to patentability, not previously considered by the Office, which might cause the examiner to deem the original patent wholly or partly inoperative or invalid, particularly specifying such prior art or other information and requesting that if the examiner so deems, the applicant be permitted to amend the patent and be granted a reissue patent.

(5) Particularly specifying the errors or what might be deemed to be errors relied upon, and how they arose or occurred.

(6) Stating that said errors, if any, arose "without any deceptive intention" on the part of the applicant.

* * * * *

15. Section 1.176 is revised to read as follows:

§ 1.176 Examination of reissue.

An original claim, if re-presented in the reissue application, is subject to reexamination, and the entire application will be examined in the same manner as original applications, subject to the rules relating thereto, excepting that division will not be required. Applications for reissue will be acted on by the examiner in advance of other applications, but not sooner than two months after announcement of the filing of the reissue application has appeared in the Official Gazette.

16. Section 1.194 is revised to read as follows:

§ 1.194 Oral hearing.

(a) An oral hearing should be requested only in those circumstances in which the appellant considers such a hearing necessary or desirable for a proper presentation of his appeal. An appeal decided without an oral hearing will receive the same consideration by the Board of Appeals as appeals decided after oral hearing.

(b) If appellant requests an oral hearing, an oral argument may be presented by, or on behalf of, the primary examiner if considered desirable by either the primary examiner or the Board.

(c) If no request for oral hearing has been made by the appellant, the appeal will be assigned for consideration and decision. If the appellant has requested an oral hearing, a day of hearing will be set, and due notice thereof given to the appellant and to the primary examiner. Hearing will be held as stated in the notice, and oral argument will be limited to twenty minutes for the appellant and fifteen minutes for the primary examiner unless otherwise ordered before the hearing begins.

17. Section 1.196 is amended by adding new paragraph (d) to read as follows:

§ 1.196 Decision by the Board of Appeals.

* * * * *

(d) Although the Board of Appeals normally will confine its decision to a review of rejections made by the primary examiner, should it have knowledge of any grounds for rejecting any allowed claim that it believes should be considered, it may include in its decision a statement to that effect and remand the case to the primary examiner for consideration thereof. In such event, the Board shall set a period, not less than one month, within which the applicant may submit to the primary examiner an appropriate amendment, or a showing of facts or reasons, or both, in order to avoid the grounds set forth in the statement of the Board of Appeals. If the primary examiner rejects the previously allowed claim or claims on the basis of such statement, the applicant may appeal to the Board of Appeals from the rejection. Whenever a decision of the Board of Appeals includes a remand, that decision shall not be considered as a final decision in the case, but the Board of Appeals shall, upon conclusion of the proceedings before the primary examiner on remand, either adopt its decision as final or render a new decision on all of the claims on appeal, as it may deem appropriate.

18. Section 1.291 is revised to read as follows:

§ 1.291 Protests and prior art citations by public.

(a) Protests against pending applications will be acknowledged and referred to the examiner having charge of the subject matter involved. A protest specifically identifying the application to which the protest is directed will be entered in the application file and, if timely submitted and accompanied by a copy of each prior art document relied upon, will be considered by the examiner.

(b) Citations of prior art and any papers related thereto may be entered in the patent file after a patent has been granted, at the request of a member of the public or the patentee. Such citations and papers will be entered without comment by the Patent and Trademark Office.

(c) Protests and prior art citations by the public and any accompanying papers should either (1) reflect that a copy of the same has been served upon the applicant or patentee or upon his attorney or agent of record; or (2) be filed with the Office in duplicate in the event service is not possible.

19. In § 1.292 paragraph (b) is revised to read as follows:

§ 1.292 Public use proceedings.

* * * * *

(b) The petition and accompanying papers should either (1) reflect that a copy of the same has been served upon the applicant or upon his attorney or agent of record; or (2) be filed with the Office in duplicate in the event service is not possible. The petition and accompanying papers, or a notice that such a petition has been filed, shall be entered in the application file.

20. Section 1.346 is revised to read as follows:

§ 1.346 Signature and certificate of attorney.

Every paper filed by an attorney or agent representing an applicant or party to a proceeding in the Patent and Trademark Office must bear the signature of such attorney or agent, except papers which are required to be signed by the applicant or party in person (such as the application itself and affidavits or declarations required of applicants). The signature of an attorney or agent to a paper filed by him, or the filing or presentation of any paper by him, constitutes a certificate that the paper has been read; that its filing is authorized; that to the best of his knowledge, information, and belief, there is good ground to support it, including any allegations of improper conduct contained therein; and that it is not interposed for delay.

Effective date: These amendments become effective on March 1, 1977, except for §§ 1.51, 1.97, 1.98, and 1.99 which become effective on July 1, 1977, and §§ 1.65 and 1.69 which become effective on January 1, 1978.

Dated: January 18, 1977.

C. MARSHALL DANN,
Commissioner of Patents and Trademarks.

Approved: January 19, 1977.

BETSY ANCKER-JOHNSON,
Assistant Secretary for Science and Technology.

[FR Doc.77-2528 Filed 1-27-77;8:45 am]

federal register

FRIDAY, JANUARY 28, 1977

PART VII

DEPARTMENT OF COMMERCE

Economic Development Administration

■

PUBLIC WORKS GRANT AND LOAN PROGRAM

Title 13—Business Credit and Assistance

CHAPTER III—ECONOMIC DEVELOPMENT ADMINISTRATION, DEPARTMENT OF COMMERCE

Grant and Loan Program

Pursuant to the authority vested in it by section 701 of the Public Works and Economic Development Act of 1965, as amended (hereafter referred to as the Act), the Economic Development Administration (EDA) hereby amends 13 CFR Parts 301, 305, and 309 for the purpose of revising regulations which affect the Public Works Program. These regulations are being revised to reflect the changes made to the Act by Pub. L. 94–487.

Section 301.2 is amended by adding a definition for the term "community development corporation" after the definition of "Assistant Secretary". The term is defined to implement the new authority contained in section 101(c) of the Act which allows the Assistant Secretary to waive or reduce the non-Federal share of the cost of public works impact projects sponsored by such entities. The definition of "community development corporation" encompasses two types of bodies. The first is a public organization created by authority of State or local law to further the development of the area; in order to qualify, such an organization cannot have powers of taxation. The second is a private non-profit organization whose purpose is to further the development of the area.

Section 305.5(b) is revised and expanded to reflect the several amendments made to section 101(c) of PWEDA. Paragraph (1) of subsection (b) now lists the three occasions when the Assistant Secretary is empowered to reduce or waive the non-Federal share of the costs of a public works project, and the specific circumstances which are attendant to each of these occasions.

Paragraph (b)(1)(i) describes the authority with respect to projects sponsored by Indian tribes which are concerned with general economic development. Here, the Assistant Secretary has discretion to waive or reduce the non-Federal share of the project's cost.

Paragraph (b)(1)(ii) concerns public works impact projects sponsored by States or political subdivisions. The Assistant Secretary must waive or reduce the non-Federal share of the project's cost if the applicant can demonstrate that it has exhausted its effective taxing and borrowing capacity. Exhaustion of effective taxing and borrowing capacity is not defined exclusively; rather, § 305.5 (b)(1)(ii)(A) states that it can be demonstrated "by showing legal limitations on debt and tax assessments and rates, severe financial difficulties, or other factors" preventing the applicant from raising the required non-Federal share. This explanation was developed from suggestions in H.R. Rep. No. 94–1075, 94th Cong., 2d Sess. (1976), at page 4.

Paragraph (b)(1)(iii) outlines the treatment of public works impact projects sponsored by community development corporations. The Assistant Secretary has discretion to waive or reduce the non-Federal share of the project's cost if the applicant can demonstrate that it has exhausted its effective borrowing capacity. Because of Congressional concern noted at page 4 of S. Rep. No. 94–839, 94th Cong., 2d Sess. (1976), a qualification has been added to this paragraph limiting use of this authority to situations where the project would otherwise be lost because of the applicant's inability to provide the non-Federal share. Here the phrase "exhaustion of effective borrowing capacity" is explained in similar terms to those describing "exhaustion of effective taxing and borrowing capacity" in paragraph (b)(1)(ii).

Paragraph (3) of subsection (b) is revised by the addition of a new paragraph (iii) in the list of maximum grant rates. This new paragraph (iii) describes the 100 percent grants for projects sponsored by community development corporations. The remaining paragraphs in the list are renumbered accordingly.

Section 305.5(c)(1) is deleted, because of the new section 107 of PWEDA. Section 305.5(c)(1) had allowed the Assistant Secretary, under certain circumstances, to increase a project's grant rate if the project was experiencing cost overruns. This authority directly conflicts with section 107 which states that while grants may be made for projects experiencing cost overruns, in no case may the grant rate exceed that provided for in the original grant.

Section 305.6(a) is revised by correcting its reference to § 305.5(b)(3) to reflect the changes made to that section which are described above.

Part 305 is revised by adding a new section 8 to implement the new section 107 of PWEDA. Section 305.8 describes grants to aid projects experiencing cost overruns. These grants may be used to supplement the amount of any grant made under title I subject to certain conditions. First, the percentage of the Federal share of the project's cost may not exceed the percentage provided for in the grant agreement. The project must be not yet completed, and it must be constructed according to its original designs and specifications. The cost overrun must result from increases in construction costs.

Section 305.53 is revoked because of the deletion of sections 101(e) and 201 (d) of PWEDA. Section 305.53 had precluded financial assistance to public service and development facilities which would compete with privately owned public utilities.

Section 309.4 is revised to incorporate the changes made to section 704(e). New paragraphs (a)(2)(ii) and (b)(2)(ii) describe the conditions under which electric and gas facilities can qualify for financial assistance.

First, the facility must be intended to serve an industrial park or an industrial or commercial area of a community. The area which the project will serve must have lost or be faced with a loss of jobs due to the actual or threatened interruption or curtailment of energy supplies, or it must be able to create new jobs based on an assured supply of energy.

Second, the Assistant Secretary must determine that financing for the project is not available from either private sources or other Federal agencies on terms which would permit the accomplishment of the project. Finally, the appropriate Federal or State regulatory body must determine that the project will not compete with existing public utilities or, if it would compete, that existing public utilities cannot meet demands for energy.

A new § 309.4(c) establishes an annual limit of seven million dollars on the amount of assistance which may be granted to projects involving energy facilities. Also, necessary technical and format changes have been made where appropriate in § 309.4.

In that the matters contained herein relate to the EDA grant and loan program, the relevant provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of the proposed rulemaking, opportunity for public participation, and delay in effective date are inapplicable. However, in accordance with the spirit of public policy set forth in 5 U.S.C. 553, interested persons may submit written comments or suggestions regarding these amendments to the Assistant Secretary for Economic Development, U.S. Department of Commerce, Room 7800B, Washington, D.C. 20230, on or before February 28, 1977. Until such time as further changes are made, these amendments shall remain in effect thus permitting the public business to proceed more expeditiously.

Consideration has been given as to whether the matters set forth in these regulations constitute a major proposal with an inflationary impact within the meaning of OMB Circular No. A–107 and the interpretative guidelines issued by the Department of Commerce. It has been determined that these regulations do not constitute action requiring an inflationary impact statement.

In consideration of the foregoing, 13 CFR Chapter III is hereby amended.

PART 301—ESTABLISHMENT AND ORGANIZATION

1. Section 301.2 is amended by adding after the definition of "Assistant Secretary" the following new definition:

§ 301.2 Definitions.

• • • • • •

"Community development corporation" means (i) Any public organization or association created under the authority of State or local law to further the development of the area but which has no power of taxation; and

(ii) Any private nonprofit organization whose purpose is to further the development of the area.

• • • • • •

PART 305—PUBLIC WORKS AND DEVELOPMENT FACILITIES PROGRAM

1. Section 305.5 is amended as follows:

(a) Paragraph (b)(1) is revised and new subdivisions (i), (ii), and (iii) are added to it;

(b) Paragraph (b)(3) is amended by adding a new subdivision (iii) to it and renumbering the subsequent paragraphs accordingly;

(c) Paragraph (c)(1) is deleted in its entirety. As amended, § 305.5(b)(1) and (b)(3) read as follows:

§ 305.5 Supplementary grants.

• • • • • •

(b) In determining the amount of any supplementary grant assistance which would raise the EDA share to more than 50 percent of the aggregate cost of a project, the Assistant Secretary will take into consideration the following factors:

(1) The nature of the project to be assisted.

(i) Projects of Indian tribes which are concerned with general economic development will be given special consideration, and the Assistant Secretary may reduce or waive the non-Federal share for such projects.

(ii) In the case of projects located in redevelopment areas designated under section 401(a)(6) of the Act and applied for by States or political subdivisions thereof which have demonstrated exhaustion of their effective taxing and borrowing capacity, the Assistant Secretary shall reduce or waive the non-Federal share for such projects.

(A) Exhaustion of effective taxing and borrowing capacity can be demonstrated by showing legal limitations on debt and tax assessments and rates, severe financial difficulties or other factors which prevent the applicant from obtaining the funds necessary for the non-Federal share of the project costs.

(iii) In the case of projects located in redevelopment areas designated under section 401(a)(6) of the Act and applied for by community development corporations which have exhausted their effective borrowing capacity, the Assistant Secretary may reduce or waive the non-Federal share for such projects.

(A) This authority will be used when necessary to prevent the loss of a project because of the applicant's inability to provide the non-Federal share.

(B) Exhaustion of effective borrowing capacity can be demonstrated by showing legal limitations on debt, or practical limitations on increasing debt, severe financial difficulties or other factors which prevent the applicant from borrowing the funds necessary for the non-Federal share of the project costs.

• • • • • •

(3) • • •

(iii) Projects located in redevelopment areas designated under section 401(a)(6) of the Act applied for by community development corporations (as defined in 13 CFR 301.2) which have demonstrated they have exhausted their effective borrowing capacity----------100

• • • • • •

(c) • • •

(1) [Deleted]

• • • • • •

2. Section 305.6 is amended by revising paragraph (a) to read as follows:

§ 305.6 Ten percent bonus supplemental grants.

(a) Subject to the limitation that the maximum Federal share for any project may not exceed 80 percent of the aggregate project cost or 100 percent for projects listed in § 305.5(b)(3)(i), (ii), and (iii), the Assistant Secretary may increase the amount of grant assistance for projects within redevelopment areas by an amount not to exceed 10 percent of the aggregate cost of any such project if:

• • • • • •

3. Part 305 is amended by adding a new § 305.8 to read as follows:

§ 305.8 Grants for construction cost increases.

(a) For the purposes of this section, "construction cost increases" means those costs which the applicant incurs or will incur in completing the project according to the original designs and specifications beyond the project costs set forth in the grant agreement.

(b) Subject to the limitation that the percentage of the Federal share of a project's cost shall not exceed that percentage originally provided for in the grant agreement, the Assistant Secretary may increase the amount of any grant under Title I of the Act made to a project which meets the following conditions:

(1) The project is being or will be constructed according to original designs and specifications;

(2) The project's total cost has increased because of increases in costs based on the original designs and specifications; and

(3) The project has incurred construction cost increases after the grant was made but prior to completion of the project.

(c) The amount of a grant made under paragraph (b) of this section may be equal to an amount based on the percentage increase in the costs referred to in paragraph (b)(2) of this section, as determined by the Assistant Secretary.

§ 305.53 [Revoked]

4. Section 305.53 is revoked in its entirety.

PART 309—GENERAL REQUIREMENTS FOR FINANCIAL ASSISTANCE

1. Section 309.4 is revised, by adding new paragraphs (a)(2)(ii), (b)(2)(ii) and (c) and by making certain technical and format changes, to read as follows:

§ 309.4 Electric and gas facilities.

(a) Except for those types of facilities listed in paragraph (a)(2) of this section, no financial assistance authorized under the Act will be used to finance the cost of facilities for the generation, transmission, or distribution of electrical energy, regardless of whether such activities constitute the primary or secondary functions of the facility which is to receive financial assistance under the Act, and regardless of whether such activities are solely for on-site consumption.

• • • • • •

(2) • • •

(ii) Local facilities serving industrial parks or industrial commercial areas of communities which have lost or are threatened with a loss of jobs due to the interruption or curtailment, or threat thereof, of electrical energy supplies, or which could create new jobs through an assured supply of electrical energy, provided the following requirements are met.

(A) The Assistant Secretary determines that project financing is not available from private lenders or other Federal agencies on terms which, in the opinion of the Assistant Secretary, would permit completion and operation of the project.

(B) The Federal or State regulatory body regulating such energy facility makes one of the following determinations:

(*1*) The facility to be financed would not compete with existing public utilities providing energy to the public at rates or charges subject to control by the regulatory body; or

(*2*) The facility to be financed would compete with existing public utilities, but the area to be served by the facility needs increased supplies of electrical energy and existing public utilities are not able to meet this demand through existing facilities or are not willing to meet this demand through expansion.

(iii) An internal electrical system consisting of the electrical installation on the consumer's side of the distribution system metering station, providing it meets the requirements set forth below. The internal electrical system may include conductors, conduits, structures, switch-gear, transformers, and other appurtenances. In order for an internal electrical system to qualify as an exception, it must meet the following requirements:

(A) Ownership of the system must lie with the owners of the facilities, or portion thereof, served by the internal electrical system; and

(B) Electricity carried by the internal electrical system may not be resold.

(iv) Standby electrical generating equipment: *Provided:*

(A) Such equipment is neither of sufficient capacity to, nor intended to, provide electricity for the regular sustained operation of the facility which is to receive financial assistance under the Act; and

(B) Significant damage or harm could result from an electric power failure in the absence of such standby agreements.

(b) Except for those types of facilities listed in paragraph (b)(2) of this section, no financial assistance authorized under the Act will be used to finance the cost of facilities for the production or transmission of gas (natural, manufactured or mixed), regardless of whether such activities constitute the primary or secondary function of the facility which is to receive financial assistance under the Act, and regardless of whether such

activities are solely for on-site consumption.

• • • • • •

(2) • • •

(ii) Local facilities serving industrial parks or industrial or commercial areas of communities which have lost or are threatened with a loss of jobs due to the interruption or curtailment, or threat thereof, of gas energy supplies or which could create new jobs through an assured supply of gas energy: *Provided*, The following requirements are met.

(A) The Assistant Secretary determines that project financing is not available from private lenders or other Federal agencies on terms which, in the opinion of the Assistant Secretary, would permit completion and operation of the project.

(B) The Federal or State regulatory body regulating such energy facility makes one of the following determinations:

(1) The facility to be financed would not compete with existing public utilities providing energy to the public at rates or charges subject to control by the regulatory body; or

(2) The facility to be financed would compete with existing public utilities, but the area to be served by the facility needs increased supplies of gas energy and existing public utilities are not able to meet this demand through existing facilities or are not willing to meet this demand through expansion.

(iii) Facilities for the distribution of gas as described in paragraph (b)(1) of this section.

(c) Not more than seven million dollars a year shall be expended for projects described in paragraphs (a)(2) and (b)(2) of this section.

(Pub. L. 94-487, 90 Stat. 2331 (42 U.S.C. 3121 et seq.); sec. 701, Pub. L. 89-136, 79 Stat. 570 (42 U.S.C. 3211); Department of Commerce Organization Order 10-4, 40 FR 56702.)

Effective date: This amendment becomes effective on January 28, 1977.

NOTE.—The Economic Development Administration has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107.

Dated: January 21, 1977.

JOHN W. EDEN,
Assistant Secretary
for Economic Development.

[FR Doc.77-2716 Filed 1-27-77;8:45 am]

federal register

FRIDAY, JANUARY 28, 1977

PART VIII



DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

■

SECTION 8 HOUSING ASSISTANCE PROGRAMS—SPECIAL ALLOCATIONS

Projects With HUD-Insured and HUD-Held Mortgages

Title 24—Housing and Urban Development

CHAPTER VIII—LOW-INCOME HOUSING, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. R-77-378]

PART 886—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—SPECIAL ALLOCATIONS

Subpart A—Additional Assistance Program for Projects With HUD-Insured and HUD-Held Mortgages

FINAL RULE

The Department, at 41 FR 12170 (March 23, 1976) published interim regulations to amend Title 24 of the Code of Federal Regulations by adding a new Part 886, Subpart A, to Chapter VIII authorizing use of Section 8 assistance in existing multifamily projects with HUD-Insured or HUD-Held mortgages, including projects sold by HUD subject to purchase money mortgages and Section 202 projects. The name of Part 886 is being changed from "Section 8 Housing Assistance Payments Program—Additional Assistance Program for Projects Insured or Formerly Insured by HUD" to "Section 8 Housing Assistance Payments Program—Special Allocations."

The Department received comments from eleven persons and institutions during the 15-day review period, and after having carefully considered these comments, is publishing these regulations in final form.

The majority of the comments proposed amendments to the interim rule which would have been inconsistent with the other elements of the Section 8 program, or which are not possible under the law. For example, several persons suggested that the maximum term of the Section 8 contract be extended to be coterminous with the project mortgage; however, Section 8(d)(2) of the U.S. Housing Act of 1937 specifically limits contract terms on existing housing to 15 years. Where comments on the interim regulation call for changes in policy positions common throughout the Section 8 program, the Department has noted the proposals and will consider them in the context of the Section 8 programs generally.

Several comments were made on the process for inviting and selecting among applications. The Department reviewed these comments carefully, and concluded that the criteria for choosing among potentially eligible projects are reasonably consistent with the program goals as stated in the preamble to the interim regulations. In the same context, the Department is unwilling to forego the selection criterion which requires a demonstration that the infusion of Section 8 assistance can reasonably be expected to solve an identifiable problem and provide a reasonable assurance of long-term project viability; projects which are not likely to remain viable over the long term, even with the increased level of assistance available under Section 8, are not considered an advantageous use of limited Section 8 contract authority.

Four respondents specifically requested that non-insured projects, especially state-financed Section 236 subsidized projects, be made eligible for assistance under this part. Non-insured projects do not fall under the regulations covering insured projects, and, therefore, this issue is not relevant.

In another instance it was recommended that the regulations be modified to apply to Section 236 projects not yet finally endorsed, with the justification that this will assure the continued availability of units to families for whom they were intended. Because the program is available to projects not yet finally endorsed, with certain conditions, no further comment is necessary.

Three comments suggested that this Department is proposing to bypass the Public Housing Agency with the new regulations. This program is not designed to reduce the functions already performed by the PHA. However, to meet the additional housing needs and goals the program is being administered as a part of the HUD Loan Management activity, thereby limiting the involvement of the PHA. The PHA is invited to participate in the supervision of eviction proceedings because of their expertise in this function.

One respondent specifically discussed the objective of achieving economic integration which he felt would be undermined by the steering of prospective tenants to HUD-insured projects under this program. The purpose of this program is to assist families presently in occupancy in a HUD-insured or HUD-assisted project to more easily carry their rental burden. The program is not intended to be a method by which a large turnover in project occupancy is effected, and, therefore, an adverse impact upon a neighborhood or community in which the project is located should not occur.

In response to the comments and review of the interim rule within the Department, the final rule incorporates the following changes:

1. The name of the part has been changed to Part 886—Section 8 Housing Assistance Payments Program—Special Allocations, to broaden the scope of the part and provide greater flexibility in the organization of Chapter VIII.

2. Language has now been inserted in § 886.101(c) to make clear that the primary goal of the Program is to reduce claims on the insurance fund by aiding those FHA-insured or Secretary-held projects which are in serious financial difficulties. To the extent resources remain available after taking care of these priority projects, assistance may also be provided to projects with potentially serious financial problems and which have a high probability of producing claims on the insurance fund with the succeeding five years.

3. A number of revisions have been made to conform this regulation to the revised Section 8 Existing Housing Regulations (Part 882), as published for effect on May 13, 1976. These changes are:

a. The definition of "Allowance for Utilities and Other Services" has been revised by deleting the second sentence.

b. The definition of "Eligible Family" has been revised.

c. Section 886.110 (a) and (b) have been revised to authorize the Regional Administrator, rather than the Assistant Secretary, to approve Gross Rents up to 20 percent above Fair Market Rents in certain circumstances.

d. "Housing Quality Standards", § 886.113(b)(2), has been revised in part to conform to the Existing Housing Regulations.

e. Section 886.112 has been revised to clarify that when special additional adjustments are approved by HUD, they "shall", rather than "may" be granted.

A Finding of Inapplicability respecting the National Environmental Policy Act of 1969 has been made in accordance with HUD procedures. A finding that this regulation is not subject to inflation impact statement requirements has also been made in accordance with HUD procedures. A copy of these findings will be available for public inspection during regular business hours in the office of the Rules Docket Clerk, Office of the Secretary, Room 10141, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C.

Accordingly, 24 CFR Chapter VIII is amended by revising Part 886, Subpart A, to read as follows:

Subpart A—Additional Assistance Program for Projects With HUD-Insured and HUD-Held Mortgages

Sec.

886.101 Applicability.
886.102 Definitions.
886.103 Allocation of Section 8 contract authority.
886.104 Invitations to participate.
886.105 Content of application.
886.106 Notices.
886.107 Approval of applications.
886.108 Maximum annual contract commitment.
886.109 Housing assistance payments to owners.
886.110 Contract rents.
886.111 Term of contract.
886.112 Rent adjustments.
886.113 Housing quality standards.
886.114 Equal opportunity requirements.
886.115 [Reserved]
886.116 Security and utility deposits.
886.117 Establishment of income limit schedules; 30 percent. Occupancy by very low income families.
886.118 Establishment of amount of housing assistance payments.
886.119 Responsibility of owner.
886.120 Responsibility for contract administration.
886.121 Marketing.
886.122 Lease requirements.
886.123 Maintenance, operation, and inspections.
886.124 Reexamination of family income, composition, and extent of exceptional medical or other unusual expenses.
886.125 Overcrowded and underoccupied units.
886.126 Adjustment of allowance for utilities and other services.
886.127 Inapplicability of low rent public housing model lease and grievance procedures.
886.128 Evictions.
886.129 Reduction of number of contract units for failure to lease to eligible families.
886.130 HUD Review of contract compliance.

AUTHORITY: Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3536(d)); sec. 5(b) of the United States Housing Act of 1937 (42 U.S.C. 1437c (b)); sec. 3 of the United States Housing Act of 1937 (42 U.S.C. 1437f)

Subpart A—Additional Assistance Program for Projects With HUD-Insured and HUD-Held Mortgages

§ 886.101 Applicability.

(a) The policies and procedures contained herein are applicable to the making of Housing Assistance Payments on Behalf of Eligible Families in eligible projects under Section 8 Project commitments pursuant to provisions of section 8 of the U.S. Housing Act of 1937 ("Act"). As used in this Part, "Project" or "Eligible Project" means any existing subsidized or unsubsidized multifamily residential project which is subject to a mortgage insured pursuant to any section of the National Housing Act, any such project the mortgage for which has been assigned to the Secretary, any such project acquired by the Secretary and thereafter sold under a Secretary-held purchase money mortgage, or a project for the elderly financed under Section 202 of the Housing Act of 1959.

(b) Since HUD, as part of its loan management activities, is responsible for most of the activities assigned to a PHA in the Section 8 Existing Housing program, duplicative PHA activities are not required. However, because of the PHAs' expertise in connection with evictions, the PHA will be invited to perform the function of authorization of evictions, for an agreed fee. In addition, the PHA may be invited to perform inspections of dwelling units, on a fee basis, if HUD determines that such inspections will be performed more efficiently and economically by the PHA. The Contract will be directly between HUD and the Owner, with the PHA as a party for the purpose of supervising evictions and for such other purposes as may be negotiated.

(c) The primary goal of the Section 8 Loan Management Set-Aside Program is to reduce claims on the Department's insurance fund by aiding those FHA-insured or Secretary-Held projects with immediately or potentially serious financial difficulties. A first priority should be given to projects with presently serious financial problems, which are likely to result in a claim on the insurance fund in the near future. To the extent resources remain available, assistance also may be provided to projects with potentially serious financial problems which, on the basis of financial and/or management analysis, appear to have a high probability of producing a claim on the insurance fund within approximately the next five years.

§ 886.102 Definitions.

Act. The United States Housing Act of 1937.

Allowance for Utilities and Other Services (*"Allowance"*). An amount determined or approved by HUD as an allowance for the cost of utilities (except telephone) and charges for other services payable directly by the Family.

Contract (See *Section 8 Contract*).

Contract Rent. The rent payable to the Owner as required by HUD in connection with its mortgage insurance and/or lending functions, including the portion of the rent payable by the Family, not to exceed the amount stated in the Section 8 Contract as such amount may be adjusted in accordance with § 886.112. In the case of a cooperative, the term "Contract Rent" means charges under the occupancy agreements between the members and the cooperative.

Decent, Safe and Sanitary. Housing is Decent, Safe and Sanitary if the requirements of § 886.113 are met.

Eligible Family (*"Family"*). A Family which qualifies as a Lower-Income Family and which meets the other requirements of the Act and this part. The term Family includes an elderly, mentally or physically handicapped, disabled, or displaced person and the remaining member of a tenant family as defined in Section 3(2) of the Act.

Eligible Project. See § 885.101.

Fair Market Rent. (a) The rent which is determined by HUD as the Fair Market Rent for Existing Housing under Section 8. This Fair Market Rent is the rent, including utilities (except telephone), ranges and refrigerators, parking, and all maintenance, management and other services, which, as determined at least annually by HUD, would be required to be paid in order to obtain privately owned, existing, Decent, Safe and Sanitary rental housing of modest (non-luxury) nature with suitable amenities. Separate Fair Market Rents shall be established for dwelling units by various sizes (number of bedrooms) and types (e.g., elevator and non-elevator).

(b) The Fair Market Rent, minus the amount of any applicable Allowance for Utilities and Other Services payable directly by the Family, shall be the maximum amount that can be approved as the Contract Rent, except that the maximum approvable amount may be higher or lower as provided in § 886.110 or § 886.112.

Gross Family Contribution. The portion of the Gross Rent payable by an Eligible Family, i.e., the difference between the amount of the housing assistance payment payable on behalf of the Family and the Gross Rent.

Gross Rent. The Contract Rent plus any Allowance for Utilities and Other Services.

HCD Act. The Housing and Community Development Act of 1974.

Housing Assistance Payment on Behalf of Eligible Family. The amount of housing assistance payment on behalf of an Eligible Family determined in accordance with schedules and criteria established by HUD (see also 24 CFR Part 889).

HUD. The Department of Housing and Urban Development or its designee.

Income. Income from all sources of each member of the household as determined in accordance with criteria established by HUD.

Lease. A written agreement between an Owner and an Eligible Family for leasing of a Decent, Safe and Sanitary dwelling unit in accordance with the applicable Contract, which agreement is in compliance with the provisions of this part.

Lower-Income Family. A Family whose Income does not exceed 80 percent of the median income for the area as determined by HUD with adjustments, for smaller or larger families, except that HUD may establish Income limits higher or lower than 80 percent on the basis of its findings that such variations are necessary because of the prevailing levels of construction costs, unusually high or low incomes, or other factors.

Owner. The mortgagor of record under a multifamily project mortgage insured, or held by the Secretary, including purchase money mortgages; the owner of a Section 202 project.

Project. See §886.101.

Project Account. The account established and maintained in accordance with §886.108.

Public Housing Agency (*"PHA"*). Any state, county, municipality, or other governmental entity or public body (or agency or instrumentality thereof) which is authorized to engage in or assist in the development or operation of housing for low-income Families;

Secretary. The Secretary of Housing and Urban Development.

Section 8 Contract (*"Contract"*). A written Contract between the Owner of an Eligible Project and HUD for providing Housing Assistance Payments to the Owner on behalf of Eligible Families pursuant to this part.

Subsidized Rent. In section 221(d)(3) BMIR, section 202, or section 236 projects, the rent payable to the project, based on the particular circumstances of any assisted tenant in the absence of any Housing Assistance Payment.

Very Low-Income Family. A Family whose Income does not exceed 50 percent of the median Income for the area, as determined by HUD, with adjustments for smaller or larger families.

§ 886.103 Allocation of Section 8 contract authority.

HUD will allocate to field offices contract authority for Section 8 project commitments for metropolitan and nonmetropolitan areas in conformance with section 213(d) of the HCD Act.

§ 886.104 Invitations to participate.

(a) HUD shall identify Eligible Projects which are most likely to meet the selection criteria set forth in § 886.117, and shall invite the Owners of such projects to make application for Section 8 assistance under this part.

(b) An Owner of an Eligible Project who has not been notified pursuant to paragraph (a) of this section may also make application for such assistance.

§ 886.105 Content of application.

Applications shall be in the form and in accordance with the instructions prescribed by HUD, and shall include:

(a) Information on Gross Income, family size, and amount of rent paid to the project by Families currently in residence;

(b) Information on vacancies and turnover;

(c) Estimate of effect of the availability of Section 8 assistance on marketability of units in the project;

(d) For projects having a history of financial default, financial difficulties or deferred maintenance, a plan and a schedule for remedying such defaulted or deferred obligations;

(e) Total number of units by unit size (by bedroom count) for which section 8 assistance is requested; and

(f) Affirmative Fair Housing Marketing Plan on a HUD-prescribed form.

§ 886.106 Notices.

(a) Within 10 days of receipt of each completed application by the HUD field office, the field office shall send to the chief executive officer of the unit of general local government in which the proposed assistance is to be provided, a notification in a form prescribed by HUD for purposes of compliance with section 213 of the HCD Act.

(b) If an application is approved, HUD shall send to the Owner a notice of application approval. If an application can be approved only on certain conditions, HUD shall notify the Owner of the conditions and specify a time limit by which those conditions must be met. If an application is disapproved, HUD shall so notify the Owner by letter indicating the reasons for disapproval.

(c) Simultaneously with the issuance of a notice of approval, HUD shall send a letter to the PHA advising it of HUD's intention to enter into a Contract, and inviting the PHA to become a party to the Contract, as provided in § 886.101(b).

§ 886.107 Approval of applications.

HUD shall approve applications, after considering all pertinent information including comments (if any) received during the comment period from the unit of general local government, based on the following criteria:

(a) The Owner's Affirmative Fair Housing Marketing Plan is approvable.

(b) The HUD-approved unit rents are approvable within the Fair Market Rent limitations contained in § 886.110.

(c) The residential units meet the housing quality standards set forth in § 886.113, except for such variations as HUD may approve. Local climatic or geological conditions or local codes are examples which may justify such variations.

(d) A significant number of residents, or potential residents, in the case of projects having a vacancy rate over 10 percent, are eligible for and in need of Section 8 assistance.

(e) The infusion of Section 8 assistance into the subject project should not affect other HUD-related multifamily housing within the same neighborhood in a substantially adverse manner. Examples of such adverse effects are (1) substantial move-outs from nearby HUD-related projects precipitated by much lower rents in the subject project, or (2) substantial diversion of prospective applicants from such projects to the subject project.

(f) A first priority is given to HUD-Insured or Secretary-Held projects with presently serious financial problems, which are likely to result in a claim on the insurance fund in the near future. To the extent resources remain available, assistance also may be provided to projects with potentially serious financial problems which, on the basis of financial and/or management analysis, appear to have a high probability of producing a claim on the insurance funds within approximately the next five years.

(g) The infusion of Section 8 assistance into the subject project solves an identifiable problem, e.g., high vacancies and/or turnover, and provides a reasonable assurance of long-term project viability. A determination of long-term viability shall be based upon the following considerations:

(1) The project is not subject to any serious problems that are non-economic in nature. Examples of such problems are poor location, structural deficiencies or disinterested ownership.

(2) The Owner is in substantial compliance with the Regulatory Agreement. Owners are not diverting project funds for personal use. No dividends are being paid during any period of financial difficulty.

(3) The management agent is in substantial compliance with the management agreement. The current management agreement has been approved by HUD. Financial records are adequately kept. Occupancy requirements are being met. Marketing and maintenance programs are being carried out in an adequate manner, based upon available financial resources.

(4) The project's problems are primarily the result of factors beyond the control of the present ownership and management.

(5) The major problems are traceable to an inadequate cash flow.

(6) The infusion of Section 8 assistance will solve the cash flow problem by:

(i) Making it possible to grant needed rent increases;

(ii) Reducing turnover, vacancies and collection losses.

(7) The Owner's plan for remedying any deferred maintenance, financial problems, or other problems is realistic and achievable. There is positive evidence that the Owner will carry out the plan. Examples of such evidence are the Owner's past performance in correcting problems and, in the case of profit-motivated Owners, any cash contributions made to correct project problems.

(h) Any plan submitted pursuant to § 886.105(d) is found by HUD to be adequate.

§ 886.108 Maximum annual contract commitment.

(a) *Number of units assisted.* Based on analysis of housing assistance needs of families residing or expected to reside in the project, HUD shall determine the number of units to be assisted up to 100 percent of the units in the project. All units currently assisted under section 23 or Section 8 shall be converted and included under the Contract pursuant to this Subpart, unless the parties to the Lease or Contract object to such conversion. Units assisted under section 101 of the Housing and Urban Development Act of 1965 or under section 236(f)(2) of the National Housing Act shall not be included under the Contract pursuant to this Subpart unless the Owner proposes and HUD approves such conversion.

(b) *Maximum Annual Contract Commitment.* The maximum annual housing assistance payments that may be committed under the Contract shall be that amount which, when paid annually over the term of the Contract, is determined by HUD to be sufficient to provide for all housing assistance payments and fees under the Contract.

(c) *Project Account.* In order to assure that housing assistance payments will be increased on a timely basis to cover increases in Contract Rents or decreases in Family Incomes:

(1) A Project Account shall be established and maintained, in an amount as determined by the Secretary consistent with his responsibilities under Section 8(c)(6) of the Act, out of amounts by which the maximum annual Contract commitment per year exceeds amounts paid under the Contract for any year. This account shall be established and maintained by HUD for each project as a specifically identified and segregated account, and payment shall be made therefrom only for the purposes of (i) housing assistance payments, and (ii) other costs specifically authorized or approved by the Secretary.

(2) Whenever a HUD-approved estimate of required housing assistance payments for a fiscal year exceeds the maximum annual Contract commitment, and would cause the amount in the Project Account to be less than an amount equal to 40 percent of such maximum annual Contract commitment, HUD shall, within a reasonable period of time, take such additional steps authorized by Section 8(c)(6) of the Act as may be necessary to carry out this assurance, including (as provided in that section of the Act) "the allocation of a portion of new authorizations for the purpose of amending housing assistance contracts."

§ 886.109 Housing assistance payments to owners.

(a) Housing Assistance Payments shall be paid to Owners for units under lease by Eligible Families, in accordance with the Contract and as provided in this section. These housing assistance payments will cover the difference between the Contract Rent and the portion of said rent payable by the Family. If the Gross Family Contribution is less than the Allowance for Utilities and Other Services, the difference shall be payable to the Family.

(b) No Section 8 assistance may be provided for any unit occupied by an

Owner; cooperatives are considered rental housing.

(c) If an Eligible Family vacates its unit (other than as a result of action by the Owner which is in violation of the Lease or the Contract or any applicable law), the Owner shall receive housing assistance payments in the amount of 80 percent of the Contract Rent for a vacancy period not exceeding 60 days: *Provided, however,* That if the Owner collects any of the Family's share of the rent for this period, or applies security deposits for unpaid rent, in amounts which when added to the 80 percent payments, results in more than the Contract Rent, such excess shall be payable to HUD or as HUD may direct. (See also § 886.116.) The Owner shall not be entitled to any payment under this paragraph unless he: (1) Immediately upon learning of the vacancy, has notified HUD of the vacancy or prospective vacancy and the reasons for the vacancy, and (2) has taken and continues to take all feasible actions to fill the vacancy including, but not limited to, contacting applicants on his waiting list (if any), and advising them of the availability of the unit, and (3) has not rejected any eligible applicant except for good cause.

§ 886.110 Contract rents.

(a) The sum of the Contract Rents plus an Allowance for Utilities and Other Services shall not exceed the published Section 8 Fair Market Rents for Existing Housing, except that they may be exceeded by (1) up to 10 percent if the Field Office Director determines that special circumstances warrant such higher rents, or (2) by up to 20 percent where the Regional Administrator determines that special circumstances warrant such higher rents, and in either case, such higher rents meet the test of reasonableness in paragraph (c) of this section.

(b) In the case of any project completed not more than six years prior to the date of the application for assistance under this part, contract rents plus any allowance for utilities and other services may be as high as 75 percent of the published Section 8 Fair Market Rents for New Construction, which limitation may be increased (1) by up to 10 percent if the field office director determines that special circumstances warrant such higher rents, or (2) by up to 20 percent where the Regional Administrator determines that special circumstances warrant such higher rents, and in either case, such higher rents meet the test of reasonableness in paragraph (c) of this section.

(c) In any case, HUD shall determine and so certify that the Contract Rents for the project do not exceed rents which are reasonable for the location, quality, amenities, facilities, and management and maintenance services in relation to the rents paid for comparable units in the private unassisted market, nor shall the Contract Rents exceed the rents charged by the Owner to unassisted Families for comparable units. HUD shall maintain for three years all certifications and relevant documentation under this paragraph (c).

§ 886.111 Term of contract.

A Contract may be for an initial term of not more than 5 years, renewable for successive 5 year terms by agreement between HUD and the Owner: *Provided,* That the total Contract term, including renewals, shall not exceed 15 years.

§ 886.112 Rent adjustments.

This section applies to adjustments of the dollar amount stated in the Contract as the Maximum Unit Rent. It does not apply to adjustments in rents payable to Owners as required by HUD in connection with its mortgage insurance and/or lending functions.

(a) *Funding of Adjustments.* Housing Assistance Payments will be made in increased amounts commensurate with Contract Rent adjustments up to the maximum annual amount of housing assistance payments specified in the Contract pursuant to § 886.108(b).

(b) *Automatic Annual Adjustments.* (1) Automatic Annual Adjustment Factors will be determined by HUD at least annually; interim revisions may be made as market conditions warrant. Such Factors and the basis for their determination will be published in the FEDERAL REGISTER. These published Factors will be reduced appropriately by HUD where utilities are paid directly by Families.

(2) On each anniversary date of the Contract, the Maximum Unit Rents shall be adjusted by applying the applicable Automatic Annual Adjustment Factor most recently published by HUD. Maximum Unit Rents may be adjusted upward or downward, as may be appropriate; however, in no case shall the adjusted rents be less than the Maximum Unit Rents on the effective date of the Contract.

(c) *Special additional adjustments.* Special additional adjustments shall be granted, when approved by HUD, to reflect increases in the actual and necessary expenses of owning and maintaining the Contract units which have resulted from substantial general increases in real property taxes, utility rates or similar costs (i.e., assessment, and utilities not covered by regulated rates), but only if and to the extent that the Owner clearly demonstrates that such general increases have caused increases in the Owner's operating costs which are not adequately compensated for by automatic annual adjustments. The Owner shall submit to HUD financial statements which clearly support the increase.

(d) *Overall Limitation.* Notwithstanding any other provisions of the subpart, adjustments as provided in this section shall not result in material differences between the rents charged for assisted and comparable unassisted units, as determined by HUD.

(e) *Incorporation of Rent Adjustments.* Any adjustment in Maximum Unit Rents shall be incorporated into the Contract by a dated addendum to the Contract establishing the effective date of the adjustment.

§ 886.113 Housing quality standards.

Housing used in this program shall meet the Performance Requirements set forth in this section. In addition, the housing shall meet the Acceptability Criteria set forth in this section except for such variations as are proposed and approved by HUD. Local climatic or geological conditions or local codes are examples which may justify such variations.

(a) *Sanitary Facilities*—(1) *Performance Requirement.* The dwelling unit shall include its own sanitary facilities which are in proper operating condition, can be used in privacy, and are adequate for personal cleanliness and the disposal of human waste.

(2) *Acceptability Criteria.* A flush toilet in a separate, private room, a fixed basin with hot and cold running water, and a shower or tub with hot and cold running water shall be present in the dwelling unit, all in proper operating condition. These facilities shall utilize an approved public or private disposal system.

(b) *Food Preparation and Refuse Disposal*—(1) *Performance Requirement.* The dwelling unit shall contain suitable space and equipment to store, prepare, and serve foods in a sanitary manner. There shall be adequate facilities and services for the sanitary disposal of food wastes and refuse, including facilities for temporary storage where necessary.

(2) *Acceptability criteria.* The unit shall contain the following equipment in proper operating condition: A cooking stove or range and a refrigerator of appropriate size for the unit, and a kitchen sink with hot and cold running water. The sink shall drain into an approved public or private system. Adequate space for the storage, preparation and serving of food shall be provided. There shall be adequate facilities and services for the sanitary disposal of food wastes and refuse, including facilities for temporary storage where necessary (e.g., garbage cans).

(c) *Space and Security*—(1) *Performance Requirement.* The dwelling unit shall afford the Family adequate space and security.

(2) *Acceptability Criteria.* A living room, kitchen area, and bathroom shall be present; and the dwelling unit shall contain at least one sleeping room or living/sleeping room of appropriate size for each two persons. Exterior doors and windows accessible from outside the unit shall be lockable.

(d) *Thermal Environment*—(1) *Performance Requirement.* The dwelling unit shall have and be capable of maintaining a thermal environment healthy for the human body.

(2) *Acceptability Criteria.* The dwelling unit shall contain safe heating and/or cooling facilities which are in proper operating condition and can provide adequate heat and/or cooling to each room in the dwelling unit appropriate for the climate to assure a healthy living environment. Unvented room heaters which burn gas, oil or kerosene are unacceptable.

(e) *Illumination and Electricity*—(1) *Performance Requirement.* Each room shall have adequate natural or artificial illumination to permit normal indoor activities and to support the health and safety of occupants. Sufficient electrical sources shall be provided to permit use of essential electrical appliances while assuring safety from fire.

(2) *Acceptability Criteria.* Living and sleeping rooms shall include at least one window. A ceiling or wall type light fixture shall be present and working in the bathroom and kitchen area. At least two electric outlets, one of which may be an overhead light, shall be present and operable in the living area, kitchen area, and each bedroom area.

(f) *Structure and Materials*—(1) *Performance Requirement.* The dwelling unit shall be structurally sound so as not to pose any threat to the health and safety of the occupants and so as to protect the occupants from the environment.

(2) *Acceptability Criteria.* Ceilings, walls and floors shall not have any serious defects such as severe bulging or leaning, large holes, loose surface materials, severe buckling or noticeable movement under walking stress, missing parts or other serious damage. The roof structure shall be firm and the roof shall be weathertight. The exterior wall structure and exterior wall surface shall not have any serious defects such as serious leaning, buckling, sagging, cracks or holes, loose siding, or other serious damage. The condition and equipment of interior and exterior stairways, halls, porches, walkways, etc., shall be such as not to present a danger of tripping or falling. Elevators shall be maintained in safe and operating condition.

(g) *Interior Air Quality*—(1) *Performance Requirement.* The dwelling unit shall be free of pollutants in the air at levels which threaten the health of the occupants.

(2) *Acceptability Criteria.* The dwelling unit shall be free from dangerous levels of air pollution from carbon monoxide, sewer gas, fuel gas, dust, and other harmful air pollutants. Air circulation shall be adequate throughout the unit. Bathroom areas shall have at least one openable window or other adequate exhaust ventilation.

(h) *Water Supply*—(1) *Performance Requirement.* The water supply shall be free from contamination.

(2) *Acceptability Criteria.* The unit shall be served by an approved public or private sanitary water supply.

(i) *Lead Based Paint*—(1) *Performance Requirement.* (i) The dwelling unit shall be in compliance with HUD Lead Based Paint regulations, 24 CFR, Part 35, issued pursuant to the Lead Based Paint Poisoning Prevention Act, 42 U.S.C. 4801, and the Owner shall provide a certification that the dwelling is in accordance with such HUD Regulations.

(ii) If the property was constructed prior to 1950, the Family upon occupancy shall have been furnished the notice required by HUD Lead Based Paint regulations and procedures regarding the hazards of lead based paint poisoning, the symptoms and treatment of lead poisoning and the precautions to be taken against lead poisoning.

(2) *Acceptability Criteria.* Same as Performance Requirement.

(j) *Access*—(1) *Performance Requirement.* The dwelling unit shall be useable and capable of being maintained without unauthorized use of other private properties, and the building shall provide an alternate means of egress in case of fire.

(2) *Acceptability Criteria.* The dwelling unit shall be useable and capable of being maintained without unauthorized use of other private properties. The building shall provide an alternate means of egress in case of fire (such as fire stairs or egress through windows).

(k) *Site and Neighborhood*—(1) *Performance Requirement.* The site and neighborhood shall be reasonably free from disturbing noises and reverberations and other hazards to the health, safety, and general welfare of the occupants.

(2) *Acceptability Criteria.* The site and neighborhood shall not be subject to serious adverse environmental conditions, natural or manmade, such as dangerous walks, steps, instability, flooding, poor drainage, septic tank back-ups, sewage hazards or mudslides; abnormal air pollution, smoke or dust; excessive noise, vibration or vehicular traffic; excessive accumulations of trash; vermin or rodent infestation; or fire hazards.

(l) *Sanitary Condition*—(1) *Performance Requirement.* The unit and its equipment shall be in sanitary condition.

(2) *Acceptability Criteria.* The unit and its equipment shall be free of vermin and rodent infestation.

(m) *Congregate Housing.* The foregoing standards shall apply except for paragraph (b) of this section, Food Preparation and Refuse Disposal. In addition, the following standards shall apply:

(1) The unit shall contain a refrigerator of appropriate size.

(2) The central dining facility (and kitchen facility, if any) shall contain suitable space and equipment to store, prepare and serve food in a sanitary manner, and there shall be adequate facilities and services for the sanitary disposal of food wastes and refuse, including facilities for temporary storage where necessary (e.g., garbage cans).

§ 886.114 Equal opportunity requirements.

Participation in the program authorized in this Subpart requires compliance with (a) Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, Executive Orders 11063 and 11246, and section 3 of the Housing and Urban Development Act of 1968; and (b) all rules, regulations, and requirements issued pursuant thereto.

§ 886.115 [Reserved]

§ 886.116 Security and utility deposits.

(a) An Owner may require Families to pay a security deposit in an amount up to, but not more than, one month's Gross Family Contribution. If a Family vacates its unit, the Owner, subject to State and local laws, may utilize the deposit as reimbursement for any unpaid rent or other amount owed under the Lease. If the Family has provided a security deposit and it is insufficient for such reimbursement, the Owner may claim reimbursement from HUD, not to exceed an amount equal to the remainder of one month's Contract Rent. Any reimbursement under this section shall be applied first toward any unpaid rent. If a Family vacates the unit owing no rent or other amount under the Lease or if such amount is less than the amount of the security deposit, the Owner shall refund the full amount or the unused balance, as the case may be, to the Family.

(b) In those jurisdictions where interest is payable by the Owner on security deposits, the refunded amount shall include the amount of interest payable. All security deposit funds shall be deposited by the Owner in a segregated bank account, and the balance of this account, at all times, shall be equal to the total amount collected from tenants then in occupancy, plus any accrued interest. The Owner shall comply with all State and local laws regarding interest payments on security deposits.

(c) Families shall be expected to obtain the funds to pay security and utility deposits, if required, from their own resources and/or other private or public sources.

§ 886.117 Establishment of Income Limit Schedules; 30 Percent Occupancy by Very Low-Income Families.

(a) HUD will establish schedules of Income limits for determining whether Families qualify as Lower-Income Families and Very Low-Income Families.

(b) In filling vacancies, the Owner shall rent to Very-Low Income Families until at least 30 percent of the Contract units are occupied by such Families. Thereafter, the Owner shall exercise his best efforts to maintain at least 30 percent occupancy of Contract units by Very Low-Income Families.

§ 886.118 Establishment of amount of housing assistance payments.

(a) The amount of Housing Assistance Payment on Behalf of Eligible Family, to be determined in accordance with schedules and criteria established by HUD, will equal the difference between (1) no less than 15 percent nor more than 25 percent of the Family's Income, and (2) the Gross Rent taking into consideration the Income of the Family, the number of minor children in the household, and the extent of medical or other unusual expenses incurred by the Family except that, in the case of a large Very Low-Income Family or a very large Lower-Income Family or a Family with exceptional medical or other unusual expenses, the amount of the Housing Assistance Payment shall be the difference between 15 percent of the Family's Income and the Gross Rent. The term large Family means a Family which includes six or more minors (other than the head of the Family or spouse). The term very large Family means a Family which includes eight or more minors (other than the head of the Family or spouse).

(b) For any section 221(d)(3) BMIR, section 236, or Section 202 project, the Housing Assistance Payment shall be the amount by which the rent payable by the eligible Family under section 8 is less than the subsidized rent (which subsidy shall not be reduced by reason of any section 8 assistance).

(c) In no event may any tenant benefit from more than one of the following subsidies: Rent Supplements, section 236 deep subsidies, section 23 leasing assistance, and section 8 housing assistance.

§ 886.119 Responsibilities of Owner.

(a) The Owner shall be responsible for management and maintenance of the project in conformance with requirements of the Regulatory Agreement. These responsibilities shall include but not be limited to:

(1) Payment for utilities and services (unless paid directly by the Family), insurance and taxes;

(2) Performance of all ordinary and extraordinary maintenance;

(3) Performance of all management functions including the taking of applications, selection of Families including verification of Income and other pertinent requirements, and determination of eligibility and amount of Family contribution in accordance with HUD-established schedules and criteria;

(4) Collection of Family rents;

(5) Termination of tenancies, including evictions; except that in cases where the PHA is a party to the Contract, the Owner must obtain the PHA's authorization for an eviction;

(6) Preparation and furnishing of information required under the Contract;

(7) Reexamination of Family Income, composition, and extent of exceptional medical or other unusual expenses, and redeterminations, as appropriate, of the amount of Family contribution and amount of Housing Assistance Payment in accordance with HUD-established schedules and criteria;

(8) Redeterminations of amount of Family contribution and amount of Housing Assistance Payment in accordance with HUD-established schedules and criteria as a result of an adjustment by HUD of any applicable Allowance for Utilities and Other Services; and

(9) Compliance with equal opportunity requirements.

(b) In the event of a financial default under the project mortgage, HUD shall have the right to make subsequent Housing Assistance Payments to the mortgagee until such time as the default is cured, or, at the option of the mortgagee and subject to HUD approval, until some other agreed-upon time.

(c) Subject to HUD approval, any Owner may contract with any private or public entity to perform for a fee the services required by paragraph (a) of this section: *Provided*, That such contract shall not shift any of the Owner's responsibilities or obligations.

§ 886.120 Responsibility for contract administration.

(a) HUD is responsible for administration of the Contract. HUD may contract with another entity for the performance of some or all of its Contract administration functions.

(b) The Contract shall contain a provision to the effect (1) that if HUD determines that the Owner is not in compliance under the Contract, HUD shall notify the Owner of the actions required to be taken to restore compliance and of the remedies to be applied by HUD including abatement of Housing Assistance Payments and recovery of overpayments, where appropriate; and (2) that if he fails to comply, HUD has the right to terminate the Contract or to take other corrective action. A default under the Regulatory Agreement shall be treated as non-compliance under the Contract.

§ 886.121 Marketing.

(a) Marketing of units and selection of Families by the Owner shall be in accordance with the Owner's HUD-approved Affirmative Fair Housing Marketing Plan, if required, and with all regulations relating to fair housing advertising including use of the equal opportunity logotype, statement, and slogan in all advertising. Projects shall be managed and operated without regard to race, color, creed, religion, sex, or national origin.

(b) In taking applications, selecting families, and all related determinations, the Owner shall comply with the applicable provisions of the Contract.

§ 886.122 Lease requirements.

The Lease shall contain all required provisions specified in paragraph (b) of this section and none of the prohibited provisions listed in paragraph (c) of this section and shall otherwise conform to the form of Lease approved by HUD.

(a) *Term of Lease.* The term of the Lease shall be for not less than one month, nor more than one year. The Lease may contain a provision permitting termination up to 30 days advance written notice by either party.

(b) *Required Provisions.* The Lease between the Owner (Lessor) and the Family (Lessee) shall contain the following provisions:

Addendum to Lease. The following additional Lease provisions are incorporated in full in the Lease between _____ (Lessor) and _____ (Lessee) for the following dwelling unit: _____. In case of any conflict between these and any other provisions of the Lease, these provisions shall prevail.

a. The total rent shall be $_____ per month.

b. Of the total rent, $_____ shall be payable by or at the direction of the Department of Housing and Urban Development ("HUD") as housing assistance payments on behalf of the Lessee and $_____ shall be payable by the Lessee. These amounts shall be subject to change by reason of changes in the Lessee's family income, family composition, or extent of exceptional medical or other unusual expenses, in accordance with HUD-established schedules and criteria; or by reason of adjustment by HUD of any applicable Allowance for Utilities and Other Services. Any such change shall be effective as of the date stated in a notification to the Lessee.

c. The Lessor shall not discriminate against the Lessee in the provision of services, or in any other manner, on the grounds of race, color, creed, religion, sex, or national origin.

d. The Lessor shall provide the following utilities, services, and maintenance:

e. The Lessor shall not evict the Lessee unless the Lessor complies with the requirements of local law, if any, and of this provision. The Lessor shall give the Lessee a written notice of the proposed eviction, stating the grounds and advising the Lessee that he has 10 days (or such greater number, if any, that may be required by local law) within which to respond to the Lessor.

f. (Include this provision only where a PHA is a party to the Contract between the Lessor and HUD.) Because the Lessor must obtain the PHA's authorization for an eviction, a copy of the notice shall be furnished simultaneously to the PHA, and the notice shall also state that the Lessee may, within the same time period, present his objections to the PHA in writing or in person. The PHA shall forthwith examine the grounds for eviction and shall authorize the eviction unless it finds the grounds to be insufficient under the Lease. The PHA shall notify the Lessor and the Lessee of its determination within 20 days of the date of the notice to the Lessee, whether or not the Lessee has presented objections to the PHA. If the Lessor has not received a response from the PHA within 20 days, he shall telephone the PHA and shall be informed by the PHA whether a notice of determination has been mailed. If the PHA informs the Lessor that no notice has been mailed within the 20-day period, the PHA shall be deemed to have authorized the eviction. The PHA shall be entitled to a fee as provided in the Contract for each proposed eviction action submitted by the Lessor and reviewed by the PHA.

Lessor _____
By _____
Date _____
Lessee _____
Date _____

(c) *Prohibited Provisions.* Lease clauses which fall within the classifications listed below shall not be included in any Lease.

(1) *Confession of Judgment.* Prior consent by tenant to any lawsuit the landlord may bring against him in connection with the Lease and to a judgment in favor of the landlord.

(2) *Distraint for Rent or Other Charges.* Authorization to the landlord to take property of the tenant and hold it as a pledge until the tenant performs any obligation which the landlord has determined the tenant has failed to perform.

(3) *Exculpatory Clause.* Agreement by tenant not to hold the landlord or landlord's agents liable for any acts or omissions whether intentional or negligent on the part of the landlord or the landlord's authorized representative or agents.

(4) *Waiver of Legal Notice by Tenant Prior to Actions for Eviction or Money Judgments.* Agreement by tenant that the landlord may institute suit without any notice to the tenant that the suit has been filed.

(5) *Waiver of Legal Proceedings.* Authorization to the landlord to evict the tenant or hold or sell the tenant's possessions whenever the landlord determines that a breach or default has occurred, without notice to the tenant or any determination by a court of the rights and liabilities of the parties.

(6) *Waiver of Jury Trial.* Authorization to the landlord's lawyer to appear in court for the tenant and to waive the tenant's right to a trial by jury.

(7) *Waiver of Right to Appeal Judicial Error in Legal Proceedings.* Authorization to the landlord's lawyer to waive the tenant's right to appeal on the ground of judicial error in any suit or the tenant's right to file a suit in equity to prevent the execution of a judgment.

(8) *Tenant Chargeable with Costs of Legal Actions Regardless of Outcome.* Agreement by the tenant to pay attorney's fees or other legal costs whenever the landlord decides to take action against the tenant even though the court finds in favor of the tenant. (Omission of such clause does not mean that the tenant as a party to a lawsuit may not be obligated to pay attorney's fees or other costs if he loses the suit.)

§ 886.123 Maintenance, operation and inspections.

(a) *Maintenance and Operation.* The Owner shall maintain and operate the project so as to provide Decent, Safe, and Sanitary housing and he shall provide all the services, maintenance and utilities which he agrees to provide under the Contract, subject to abatement of housing assistance payments or other applicable remedies if he fails to meet these obligations.

(b) *Inspection Prior to Occupancy.* Prior to occupancy of any unit by a Family, the Owner and the Family shall inspect the unit and both shall certify, on forms prescribed by HUD that they have inspected the unit and have determined it to be Decent, Safe, and Sanitary in accordance with the criteria provided in the prescribed forms. Copies of these reports shall be kept on file by the Owner for at least three years.

(c) *Periodic Inspections.* HUD will inspect or cause to be inspected each Contract unit and related facilities at least annually and at such other times as HUD may determine to be necessary to assure that the Owner is meeting his obligation to maintain the units in Decent, Safe and Sanitary condition and to provide the agreed upon utilities and other services. HUD will take into account complaints by occupants and any other information coming to its attention in scheduling inspections and shall notify the Owner of its determination.

(d) *Units Not Decent, Safe, and Sanitary.* If HUD notifies the Owner that he has failed to maintain a dwelling unit in Decent, Safe, and Sanitary condition and the Owner fails to take corrective action within the time prescribed in the notice, HUD may exercise any of its rights or remedies under the Contract, including abatement of housing assistance payments, even if the Family continues to occupy the unit.

§ 886.124 Reexamination of family income, composition, and extent of exceptional medical or other unusual expenses.

(a) Reexamination of Family Income, composition, and the extent of medical or other unusual expenses incurred by the Family shall be made by the Owner at least annually (except that such reviews may be made at intervals no longer than two years in the case of elderly Families), and appropriate redeterminations shall be made by the Owner of the amount of the Gross Family Contribution and the amount of the housing assistance payment, all in accordance with schedules and criteria established by HUD.

(b) A Family's eligibility for housing assistance payments shall continue until the amount payable by the Family equals the Gross Rent for the dwelling unit it occupies. However, the termination of eligibility at such point shall not affect the Family's other rights under its Lease nor shall such termination preclude resumption of payments as a result of subsequent changes in income or rents or other relevant circumstances during the term of the Contract. A Family may at any time request a redetermination of its Gross Family Contribution on the basis of changes in Family Income or other relevant circumstances.

§ 886.125 Overcrowded and underoccupied units.

If HUD determines that a contract unit assisted under this part is not Decent, Safe, and Sanitary by reason of increase in Family size or that a Contract unit is larger than appropriate for the size of the Family in occupancy, housing assistance payments with respect to such unit will not be abated, unless the Owner fails to offer the Family a suitable unit as soon as one becomes vacant and ready for occupancy. The Owner may receive housing assistance payments for the vacated unit if he complies with the requirements of § 886.109.

§ 886.126 Adjustment of allowance for utilities and other services.

HUD shall determine, as part of its annual inspection and at such other times as it deems appropriate, whether an adjustment is required in the Allowance for Utilities and Other Services applicable to the dwelling units in the project, on grounds of changes in utility rates or other change of general applicability to all units in the project. If HUD determines that an adjustment should be made, HUD shall prescribe the amount of the adjustment and direct the Owner to make promptly a corresponding adjustment in the amount of rent to be paid by the affected Families and the amount of housing assistance payment.

§ 886.127 Inapplicability of low-rent public housing model lease and grievance procedures.

Model lease and grievance procedures established by HUD for PHA-owned low-rent public housing are not applicable to projects operating under section 8 project commitments pursuant to this subpart.

§ 886.128 Evictions.

(a) The Owner shall not evict the Family unless the Owner complies with the requirements of local law, if any, and of this section. The Owner shall give the Family a written notice of the proposed eviction, stating the grounds and advising the Family that it has 10 days (or such greater number, if any, that may be required by local law) within which to respond to the Owner.

(b) Where a PHA is a party to the Contract between the Owner and HUD, the Owner must obtain the PHA's authorization for an eviction; accordingly, a copy of the notice shall be furnished simultaneously to the PHA, and the notice shall also state that the Family may, within the same time period, present its objections to the PHA in writing or in person. The PHA shall forthwith examine the grounds for eviction and shall authorize the eviction unless it finds the grounds to be insufficient under the Lease. The PHA shall notify the Owner and the Family of its determination within 20 days of the date of the notice to the Family, whether or not the Family has presented objections to the PHA. If the Owner has not received a response from the PHA within 20 days, he shall telephone the PHA and shall be informed by the PHA whether a notice of determination has been mailed. If the PHA informs the Owner that no notice has been mailed within the 20-day period, the PHA shall be deemed to have authorized the eviction. The PHA shall be entitled to a fee as provided in the Contract for each proposed eviction action submitted by the Owner and reviewed by the PHA.

§ 886.129 Reduction of number of contract units for failure to lease to eligible families.

(a) If at any time, beginning six months after the effective date of the Contract, the Owner fails for a continuous period of six months to have at least 80 percent of the Contract units leased or available for leasing by Eligible Families, HUD may on 30 days notice reduce the number of Contract units to not less than the number of units under lease or available for leasing by Eligible Families, plus 10 percent of such number if the number is 10 or more, rounded to the next highest number.

(b) At the end of the initial term of the Contract and of each renewal term, HUD may, by notice to the Owner, reduce the number of Contract units to not less than (1) the number of units under lease or available for leasing by Eligible Families at that time, or (2) the average number of units so leased or available for leasing during the last year, whichever is the greatest number, plus 10 percent of such number if the number is 10 or more, rounded to the next highest number.

(c) HUD will agree to an amendment of the Contract to provide for subsequent restoration of any reduction made pursuant to paragraph (a) or (b) of this section if HUD determines that the restoration is justified as a result of changes in demand and in the light of the Owner's record of compliance with his obligations under the Contract and if contract authority is available; and HUD will take such steps authorized by Section 8(c)(6) of the Act as may be necessary to carry out this assurance.

§ 886.130 HUD review of contract compliance.

HUD will review project operation at such intervals as it deems necessary to ensure that the Owner is in full compliance with the terms and conditions of the Contract. Equal Opportunity review may be conducted with the scheduled HUD review or at any time deemed appropriate by HUD.

Effective date: This final rule shall be effective on February 24, 1977.

NOTE.—It is hereby certified that the economic and inflationary impacts of this regulation has been carefully evaluated in accordance with OMB Circular A-107.

JOHN T. HOWLEY,
Acting Assistant Secretary for Housing — Federal Housing Commissioner.

[FR Doc.77-2705 Filed 1-27-77;8:45 am]

federal register

FRIDAY, JANUARY 28, 1977

PART IX



DEPARTMENT OF LABOR

Employment Standards Administration

■

MINIMUM WAGES FOR FEDERAL AND FEDERALLY ASSISTED CONSTRUCTION

General Wage Determination Decisions

DEPARTMENT OF LABOR

Employment Standards Administration

MINIMUM WAGES FOR FEDERAL AND FEDERALLY ASSISTED CONSTRUCTION

General Wage Determination Decisions

General Wage Determination Decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed in construction activity of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determinations by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of Part 1 of Subtitle A of Title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates, (37 FR 21138) and of Secretary of Labor's Orders, 12–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General Wage Determination Decisions are effective from their date of publication in the FEDERAL REGISTER without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

MODIFICATIONS AND SUPERSEDEAS DECISIONS TO GENERAL WAGE DETERMINATION DECISIONS

Modifications and Supersedeas Decisions to General Wage Determination Decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the Modifications and Supersedeas Decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of Part 1 of Subtitle A of Title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates, (37 FR 21138) and of Secretary of Labor's Orders 13–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in foregoing General Wage Determination Decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and Supersedeas Decisions are effective from their date of publication in the FEDERAL REGISTER without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Office of Special Wage Standards, Division of Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rule-making procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Wage Determination Decision.

MODIFICATIONS TO GENERAL WAGE DETERMINATION DECISIONS

The numbers of the decisions being modified and their dates of publication in the FEDERAL REGISTER are listed with each State.

Georgia:
GA76-1118 ..... Oct. 15, 1976.
Illinois:
IL76-2122 ..... Oct. 1, 1976.
IL76-2123; IL76-2124 ..... Oct. 8, 1976.
IL76-2125. ..... Oct. 22, 1976.
Iowa:
IA76-4148; IA76-4149 ..... Sept. 10, 1976.
Kentucky:
KY76-1077 ..... July 23, 1976.
KY76-1086 ..... Aug. 27, 1976.
KY76-1091 ..... Sept. 3, 1976.
Montana:
MT76-5103 ..... Nov. 19, 1976.
Nevada:
NV76-5114 ..... Dec. 10, 1976.
NV77-5004 ..... Jan. 4, 1977
Pennsylvania:
PA76-3163 ..... May 7, 1976
Texas:
TX76-4115 ..... July 16, 1976.
TX76-4127 ..... July 23, 1976.
TX76-4140 ..... Aug. 6, 1976
Virginia:
MD76-3285 ..... Nov. 19, 1976.
Washington, D.C.:
DC76-3284 ..... Do.

SUPERSEDEAS DECISIONS TO GENERAL WAGE DETERMINATION DECISIONS

The numbers of the decisions being superseded and their dates of publication in the FEDERAL REGISTER are listed with each State.

Supersedeas Decision numbers are in parentheses following the numbers of the decisions being superseded.

Alabama:
AL76-1047 (AL77-1006) ... Apr. 9, 1976.
AL76-1117 (AL77-1007) ... Oct. 8, 1976.
Georgia:
GA76-1089 (GA77-1005) ... Aug. 27, 1976.
GA76-1120 (GA77-1009) ... Oct. 29, 1976.
New Hampshire:
NH76-2094 (NH77-2003) ... July 30, 1976.
NH76-2114 (NH77-2004) ... Sept. 17, 1976.
Pennsylvania:
PA76-3158 (PA77-3023) ... Apr. 9, 1976
PA76-3247 (PA77-3016) ... Sept. 17, 1976.
Texas:
TX76-4153 (TX77-4008); ... Oct. 1, 1976.
TX76-4154 (TX77-4009);
TX76-4155 (TX77-4010);
TX76-4156 (TX77-4012)
TX76-4163 (TX77-4013); ... Oct. 8, 1976.
TX76-4164 (TX77-4014);
TX76-4165 (TX77-4015);
TX76-4166 (TX77-4016)
TX76-4161 (TX77-4011) ... Oct. 15, 1976.
Utah:
UT76-5097 (UT77-5006) ... Nov. 5, 1976.

CANCELLATION OF GENERAL WAGE DETERMINATION DECISIONS

General Wage Determination Decision No. PA75–3060, pertaining to Franklin County, Pennsylvania only is cancelled. Agencies with building construction projects pending in this location should utilize the project determination procedure by submitting form SF–308. See Regulations Part 1 (29 CFR). Section 1.5. Contracts for which bids have been opened shall not be affected by this notice, and consistent with 29 CFR 1.7(b)(2), the incorporation of Decision No. PA75–3060 in contract specifications the opening of bids which is within ten (10) days of this notice need not be affected.

Signed at Washington, D.C., this 21st day of January 1977.

RAY J. DOLAN,
Assistant Administrator,
Wage and Hour Division.

MODIFICATIONS P. 2

	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION #IL76-2122 - Mod. #2 (41 FR 43576 - October 1, 1976) Cook County, Illinois					
CHANGE:					
Electricians	$11.25	8.37%	12+6.93%	.80	.92%
Ironworkers:					
Metal Fence Erector	8.30	.50	.675		.10
Ornamental	10.90	.65	.675		.10
Rod Book Fence Erector	8.05	.65	.675		.10
Truck Drivers:	-				
Building & Residential					
2-3 Axle Trucks	9.05	a23.00	a27.00		
4-Axle Trucks	9.20	a23.00	a27.00		
5-Axle Trucks	9.40	a23.00	a27.00		
6-Axle Trucks	9.60	a23.00	a27.00		
Heavy & Highway					
2-3 Axle Trucks	8.55	.675	.575		
4-Axle Trucks	8.80	.675	.575		
5-Axle Trucks	9.00	.675	.575		
6-Axle Trucks	9.20	.675	.575		
DECISION #IL76-2123 - Mod. #2 (41 FR 44612 - October 8, 1976) DuPage, Grundy, Kane, Kendall, Lake, McHenry, & Will Counties, Illinois					
CHANGE:					
Electricians-DuPage County	$11.75	4%	7%	8%	.5%
Sheet Metal Workers-DuPage Co	11.35	.40	.45	.20	
Truck Drivers:					
2-3 Axle Trucks	9.05	a23.00	a27.00		
4-Axle Trucks	9.20	a23.00	a27.00		
5-Axle Trucks	9.40	a23.00	a27.00		
6-Axle Trucks	9.60	a23.00	a27.00		

MODIFICATIONS P. 1

	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
Decision # GA76-1119 - Mod. # 1 (41 FR-45800 - October 15, 1976) Richmond County, Georgia					
CHANGE:					
Elevator constructors	6.52	.495	.32	4%+a+b	.02
Elevator constructors helpers'	5.96	.495	.32	4%+a+b	.02
Elevator constructors helpers' (Probationary)	4.26	.30	.30		.05
Glaziers	6.15				.05
Laborers:					.05
Unskilled	4.10	.15			.05
Air tool (jackhammer,vib.)	4.25	.15			.05
Mason tenders	4.25	.15			.05
Mortar mixers	4.25	.15			.05
Pipelayers (concrete, clay)	4.25	.15			.05
Plasterers tenders	4.25	.15			
Lathers	4.30				
Painters:					
Brush & roller	7.10	.30	.30		.03
Steel & spray	8.10	.30	.30		
Plumbers & Steamfitters	9.33	.50	.45		

MODIFICATIONS P. 3

	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION #IL76-2124 - Mod. #1 (41 FR 44616 - October 8, 1976) Ford, Iroquois & Kankakee Counties, Illinois					
CHANGE:					
Truck Drivers:					
Kankakee Co; Northern ½ of Ford Co., & the Remainder of Iroquois County:					
2-3 Axle Trucks	$9.05	a23.00	a27.00		
4-Axle Trucks	9.20	a23.00	a27.00		
5-Axle Trucks	9.40	a23.00	a27.00		
6-Axle Trucks	9.60	a23.00	a27.00		
Power Equipment Operators:					
Ford & Iroquois Counties					
Class I	11.00	.40	.75		.13
Class II	10.95	.40	.75		.13
Class III	10.75	.40	.75		.13
Class IV	7.25	.40	.75		.13
DECISION #IL76-2125 - Mod. #1 (41 FR 44620 - October 8, 1976) Bureau, LaSalle, Livingston, Marshall, Putnam & Woodford Counties, Illinois					
CHANGE:					
Truck Drivers:					
Remainder of Woodford & Livingston Counties:					
2-3 Axle Trucks	$9.05	a23.00	a27.00		
4-Axle Trucks	9.20	a23.00	a27.00		
5-Axle Trucks	9.40	a23.00	a27.00		
6-Axle Trucks	9.60	a23.00	a27.00		

MODIFICATIONS P. 4

	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION #IL76-2133 - Mod. #1 (41 FR 46831 - October 22, 1976) Boone, Carroll, DeKalb, JoDaviess, Lee, Ogle, Stephenson, Whiteside & Winnebago Counties, Illinois					
CHANGE:					
Truck Drivers:					
Boone, Stephenson, Winnebago Counties; Carroll (North of Rt. #72 & East of Rt. #78) Co; JoDaviess (East of Rt. #78 - Except City of Stockton) County:					
2-3 Axle Trucks	$9.00	.40	.65		
4-Axle Trucks	9.15	.40	.65		
5-Axle Trucks	9.35	.40	.65		
6-Axle Trucks	9.55	.40	.65		
DeKalb County; East of Rt. # 51 in Lee & Ogle Counties:					
2-3 Axle Trucks	9.05	a23.00	a27.00		
4-Axle Trucks	9.20	a23.00	a27.00		
5-Axle Trucks	9.40	a23.00	a27.00		
6-Axle Trucks	9.60	a23.00	a27.00		

MODIFICATIONS P. 5

	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION NO. IA76-4148 - Mod. #2 (41 FR 38719 - Sept. 10, 1976) Johnson County (City of Iowa City and abutting municipalities), Iowa					
Change:					
Building, Water Treatment Plants & Sewage Disposal Plants Construction:					
Carpenters:					
Carpenters; Soft Floor Layers	$8.905	.45	.45		.08
Millwrights	9.305	.45	.45		.08
Piledrivermen	9.255	.45	.45		.08
DECISION NO. IA76-4149 - Mod. #2 (41 FR 38722 - Sept. 10, 1976) Linn County, Iowa					
Change:					
Building, Water Treatment Plants & Sewage Disposal Plants Construction:					
Carpenters	$8.905	.45	.45		.08
Millwrights	9.305	.45	.45		.08
Piledrivermen	9.255	.45	.45		.08
Soft Floor Layers	8.905	.45	.45		.08

MODIFICATIONS P. 6

	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
(Decision # KY76-1077 - Mod. # 4) (41 FR-30525 - July 23, 1976) Warren County, Kentucky					
Change:					
Boilermakers	10.80	.75	1.00		.02
Cement masons	8.50	.20			.01
Elevator constructors	11.00	.545	.35	4%+a+b	.02
Elevator constructors' helpers	70%JR	.545	.35	4%+a+b	.02
Elevator constructors' helpers (prob.)	50%JR				
Plasterers	8.50	.20			.01
Drop:					
Footnote (e) for Sheet Metal Workers	-				
Decision # KY76-1086 - Mod. # 3 (41 FR-36384 - August 27, 1976) Boone, Campbell, Kenton, and Pendleton Counties, Kentucky					
Change:					
Plumbers & Gas fitters	11.47	.75	1.05		.05
Soft floor layers	8.70	.60	.65		.05
POWER EQUIPMENT OPERATORS:					
GROUP A	11.11	.46	1.00		.11
GROUP B	10.95	.46	1.00		.11
GROUP C	10.59	.46	1.00		.11
GROUP D	9.81	.46	1.00		.11
GROUP E	9.48	.46	1.00		.11
GROUP F	8.03	.46	1.00		.11

MODIFICATIONS P. 7

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Decision # KY76-1091 - Mod. # 2 (41 FR-37470 - September 3, 1976) Christian County (Ft. Campbell only), Kentucky					
Change:					
Boilermakers	10.80	.75	1.00		.02
Laborers:					
Laborers	5.60	.35	.35		
Air tool operators, mason tenders, mortar mixers, pipelayers (clay & concrete),					
Plasterers tenders'	5.75	.35	.35		
DECISION NO. MT76-5103 - Mod. #3 (41 FR 51326 - November 19, 1976) Statewide, Montana					
Change:					
Carpenters:					
Broadwater, Lewis & Clark and Jefferson Counties					
Carpenters	$8.27	.45	.75		.02
Piledrivermen	8.42	.45	.75		.02
Millwrights	8.52	.45	.75		.02

MODIFICATIONS P. 8

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION #NV76-5114 - Mod. #3 (41 FR 54133 - December 10, 1976) Clark County (excluding the Nevada Test Site), Nevada					
Change:					
Asbestos Workers	$12.11	.85	$1.10		
Painters:					
Brush; Roller	11.55	.75	.35		.06
Paperhangers; Spray; Steel; Swing Stage; Sandblasters; Tapers	11.90	.75	.35		.06
DECISION #NV77-5004 - Mod. #2 (42 FR 1000 - January 4, 1977) Statewide (excluding the Nevada Test Site and Tonopah Test Range), Nevada					
Change:					
Asbestos Workers:					
Clark, Esmeralda, Lincoln, Nye Counties	$12.11	.85	$1.10		
Painters:					
Clark, Esmeralda, Lincoln, Nye Counties:					
Brush; Roller	11.55	.75	.35		.06
Paperhangers; Spray; Steel; Swing Stage; Sandblasters; Sign; Tapers	11.90	.75	.35		.06
Buffing Steel; Sandblasters; Structural Steel	12.35	.75	.35		.06
Steeplejack	13.15	.75	.35		.06
DECISON #PA76-3163 - Mod. #3 (41 FR 19020 - May 7, 1976) Adams, Berks, Bradford, Carbon, Columbia, Cumberland, Dauphin, Juniata, Lackawanna, Lancaster, Lebanon, Lehigh, Luzerne, ~~Lycoming, Monroe, Montour,~~ Northampton, Northumberland, Perry, Pike, Schuylkill, Snyder, Sullivan, Susquehanna, Tioga, Union, Wayne, Wyoming & York Counties, Pennsylvania					
Change:					
Ironworkers:					
Cumberland & Dauphin Counties	$10.63	.84	1.21		.03

MODIFICATIONS P. 9

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION #TX76-4115 - Mod. #5 (41 FR 29652 - July 16, 1976) Gregg County, Texas					
Change:					
Bricklayers	$ 8.85		.35		.05
Electricians:					
Electricians	8.30	.60	1%		1/4%
Cable splicers	8.70	.60	1%		1/4%
DECISION #TX76-4127 - Mod. #2 (41 FR 30491 - July 23, 1976) Smith County, Texas					
Change:					
Electricians	8.30	.60	1%		1/4%
DECISION #TX76-4140 - Mod. #4 (41 FR 33184 - August 6, 1976) Bexar County, Texas					
Change:					
Bricklayers & stonemasons	8.57	.40	.30	.25	.05
Electricians:					
Electricians	10.24	.30	3%		1%
Cable splicers	10.49	.30	3%		1%
Painters:					
Brush; Paperhanger; Taper & floater	7.925		.20		.05
Spray; structural steel	8.175		.20		.05
Spray on structural steel; sand blasting	8.425		.20		.05

MODIFICATIONS P. 10

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION #MD76-3285 - Mod. # 2 (41 FR 51308 - November 19, 1976) Montgomery and Prince Georges Counties, Maryland; Arlington and Fairfax Counties, Virginia; and for WMATA - Rapid Rail Transit System Projects Only, Alexandria, Virginia					
Change:					
Plasterers	$10.15	.55	.65		.06
Terrazzo and Mosaic Workers	10.78	.50	.40		
Tile Setters	10.78	.50	.40		
Terrazzo Workers Helpers	9.30	.50	.40		
Tile Setters Helpers	9.30	.50	.40		
DECISION #DC76-3284 - Mod. # 2 (41 FR 51368 - November 19, 1976) Washington, D. C.					
Change:					
BUILDING AND HEAVY CONSTRUCTION, (INCLUDING WMATA)					
Plasterers	$10.15	.55	.65		.06
Terrazzo Workers and Mosaic Workers	10.78	.50	.40		
Tile Setters	10.78	.50	.40		
Terrazzo Workers Helpers	9.30	.50	.40		
Tile Setters Helpers	9.30	.50	.40		

SUPERSEDEAS DECISION

STATE: Alabama COUNTY: Madison
DECISION NO.: AL77-1006 DATE: Date of Publication
Supersedeas Decision No.: AL76-1047 dated April 9, 1976 in 41 FR-15238
DESCRIPTION OF WORK: Building construction (excluding single family homes and garden type apartments up to and including 4 stories.)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Asbestos workers	8.61	.30	.30		.05
Boilermakers	7.50	.40	.90		.02
Bricklayers	9.40				
Carpenters	7.86				.03
Cement masons	8.65				
Electricians: Linemen	9.55	.40	1%+.30		1%
Glaziers	6.00				
Ironworkers:					
Reinforcing	8.405	.40	.35		.03
Structural	8.405	.40	.35		.03
Laborers:					
Laborers, Mason tenders	4.52	.20	.30		
Air tool op. (jackhammer, vibrator), Mortar mixers	4.77	.20	.30		
Millwrights	8.27				.03
Painters:					
Commercial	7.50		.25		.05
Industrial	8.25		.25		.05
New Industrial	8.50		.25		.05
Plasterers	8.90				
Plumbers: Pipefitters	9.45	45	.50	.25	.10
Roofers	4.85				
Sheet metal workers	9.50	.55	.60		.05
Tile setter	9.21				
Tile setter helper	4.75				
Truck drivers	3.67				
POWER EQUIPMENT OPERATORS:					
Group A	8.78	.30	.30		
Group B	7.44	.30	.30		
Group C	6.73	.30	.30		

AL77-1006 - (Cont'd)

POWER EQUIPMENT OPERATORS:
(CONT'D)

Group A - Backhoe, bulldozers, crane, crane car, central mixing plant, concrete pump, derrick, dragline, dredge drill, elevating, grader, finishing machine (concrete), forklift, front end loader, gradall, grout pump, helicopter pilot, hoist, locomotive engineer, mechanic, motor patrol, mucking mechanic piledriver, post hole digger, scraper (pull type & self prop.), shovel, sweeper, tractor (spec. equip.,) trenching machine, well point & winch truck operators

Group B - Bituminous dist., central air comp., concrete mixer (port.) fireman floating equip., front end loader, rubber tire, ¼ cu. yd. & under, locomotive brakeman, locomotive flagman, locomotive switchman, oiler-driver (35 tons crane & over) outboard motor boat (when used for towing), paving machine, portable hoist "Buck hoist type", post hole digger mounted on farm type tractor & walk behind type trenching machine operators

Group C - Air compressor (port.) conveyor, fireman stationary equip., mechanic helper, oiler, outboard motor boat & pump operators

Oiler driver - additional $.10 per hour

All cranes, derricks & gantry operators such equipment with an overall height of 150', including jibs; all scrapers operators - additional $.25 per hour.

SUPERSEDEAS DECISION

STATE: Alabama COUNTIES: Jefferson & Shelby
DECISION NUMBER: AL77-1007 DATE: Date of Publication
Supersedeas Decision No.: AL76-1117 dated October 8, 1976 in 41 FR-44610
DESCRIPTION OF WORK: Building Construction, (excluding single family homes and garden type apartments up to and including 4 stories).

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Asbestos workers	9.41	.40	.30		.05
Boilermakers	9.50	.75	1.00		.02
Bricklayers; pointers; caulkers; stonemasons	9.25	.25	.25		.05
Cleaners	8.15	.25	.25		.05
Carpenters:					
Carpenters, soft floor layers	8.05	.45	.25		.07
Millwrights	9.85				.07
Piledrivermen	8.25	.45	.25		.07
Cement masons	7.33	.50			
Electricians:					
Electricians	10.10	.30	1%+.40		½%
Cable splicers	10.35	.30	1%+.40		½%
Elevator constructors	9.14	.495	.32	4%+a+b	.02
Elevator constructors' helpers	6.40	.495	.32	4%+a+b	.02
Elevator constructors' helpers (prob.)	4.905				
Glaziers	8.03	.50	.50		.01
Ironworkers	9.25	.60	.815		.06
Lathers	6.90		.10		.01
Linemen:					
Linemen	8.88	.35	1%		½%
Groundmen under one year	4.21	.35	1%		½%
Groundmen one year and over	4.97	.35	1%		½%
Hole and ditch digging equipment, tractor with winch and derrick, truck with winch and derrick	7.55	.35	1%		½%
Tractor with towing machine truck with winch only	6.22	.35	1%		½%
Truck without winch	5.33	.35	1%		½%
Marble setters	8.20		.40		
Painters:					
Brush (Commercial)	8.25		.50		
Spray; Structural steel	8.75		.50		
Paperhangers	8.40		.50		
Plasterers	7.47	.50			
Plumbers; Pipefitters	10.50	.48	.65		.09
Roofers	7.85		.20		.10
Material handlers	4.12		.20		.10
Sheet metal workers	9.90	.65	.70		.09
Sprinkler fitters	10.10	.60	.90		.08
Terrazzo workers, Tile setters	8.20		.40		
Tile, Marble terrazzo helpers	5.95				

AL77-1007 - (Cont'd)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Truck Drivers:					
Up to but not including 1½ tons	5.75	.20			
1½ to but not including 3 tons	5.95	.20			
3 tons but not including 5 tons	6.20	.20			
5 tons and over including special equipment	6.35	.20			
Heavy Duty - off the road trucks	6.45	.20			
Welders, riggers, riveters - receive rate prescribed for craft performing operation to which welders, riggers, and rivsters are incidental.					

PAID HOLIDAYS:
A-New Year's Day: B-Memorial Day: C-Independence Day: D-Labor Day: E-Thanksgiving Day, F-Christmas Day.

FOOTNOTES:
a. 6 paid holidays: A through F.

b. Employer contributes 1% of regular hourly rate to Vacation Pay Credit for employee who has worked in business more than 5 years. Employer contributes 2% of regular hourly rate to Vacation Pay Credit for employee who has worked in business less than 5 years.

AL77-1007 - (Cont'd)

BUILDING CONSTRUCTION LABORERS:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP A	6.00	.25	.30		.03
GROUP B	5.95	.25	.30		.03
GROUP C	5.90	.25	.30		.03
GROUP D	5.85	.25	.30		.03
GROUP E	6.25	.25	.30		.03
GROUP F	6.70	.25	.30		.03
GROUP G	6.60	.25	.30		.03
GROUP H	6.65	.25	.30		.03
GROUP I	6.55	.25	.30		.03
GROUP J	6.40	.25	.30		.03

GROUP A
Air or electric tool operators and asphalt rakers

GROUP B
Vibrator operators, chain saw ope. of mechanical equipment which replaces (wheelbarrows or buggies), power mowers, morter mixers, pipe layers, conc. & clay and muckers

GROUP C
Plasterers' tenders and hod carriers

GROUP D
Mason tenders, building laborers and wagon drill operators' helpers

GROUP E
Burners on demolition, wagon drill operators and tunnel laborers

GROUP F
Powderman

GROUP G
Caisson driller (10' Dia)

GROUP H
Tunnel miner

GROUP I
Pneumatic concrete gun operator and nozzleman

GROUP J
Chuck tender

AL77-1007 - (Cont'd)

BUILDING CONSTRUCTION POWER EQUIPMENT OPERATORS:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP A	8.14	.30	.20		.10
GROUP B	7.91	.30	.20		.10
GROUP C	7.14	.30	.20		.10
GROUP D	8.84	.30	.20		.10
GROUP E	8.43	.30	.20		.10
GROUP F	7.27	.30	.20		.10

GROUP A
Asphalt plant, boom tractor, bulldozer, cableways, core driller, compressors (2 or more), crane-derrick-dragline, dinky locomotive, dredges, fork lift, front end loader, gradall, heavy duty mechanic, hoist (1 drum or more), mixers, push tractor, scrapers, shovels, trenching machine (and all similar equipment), winch trucks, motor graders, concrete pump, piledriver, rotary drill

GROUP B
Air compressor (over 125), asphalt spreaders, blade gradere (pull type), boat operator, conveyor (2 or more up to 4), crawler tractor, distributore, (bituminous surface), farm tractors, finishing machine, pumps over 4 inches, rollers, welding machine (4 or more)

GROUP C
Air compressor (125 & under), oilers-firemen, conveyor (1) tended by oiler), pumps (under 4 inches), welding machines (3 or under), mechanic helpers

GROUP D
ON STEEL ERECTION: Crane, dragline, derrick, hoist, piledriver, winch truck, fork lift, tower cranes, climbing cranes, cherry picker, mechanics, locomotives, tug boat

GROUP E
Tractors, welding machine, gas or diesel driven welding machine (4 or more), air compressors over 125 (2 or less), power generating units (gas or diesel)

GROUP F
Gas or diesel driven welding machine (3 or less), mechanic helper, air compressor 125 and under (2 or less), oiler, fireman, small boat

SUPERSEDEAS DECISION

STATE: Georgia COUNTIES: Clayton, Fulton & Dekalb
DECISION NUMBER: GA77-1005 DATE: Date of Publication
Supersedes Decision No.: GA76-1089 dated August 27, 1976 in 41 FR-36378
DESCRIPTION OF WORK: Building Construction (excluding single family homes and garden type apartments up to and including 4 stories).

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Asbestos workers	9.35	.45	.50		.05
Boilermakers	9.50	.75	1.00		.02
Bricklayers:					
Bricklayers & Stonemasons	9.10	.55	.40		.05
Marble masons, terrazzo workers, and ceramic tile setters	8.95	.55	.40		
Carpenters:					
Carpenters, drywall hangers, and resilient floor layers	9.10	.40	.45		.02
Carpet layers	7.15	.40	.45		.02
Millwrights	8.85	.45	.50		.05
Piledrivermen	9.25	.40	.45		.02
Cement masons	8.60	.40	.55		
Electricians	9.95	8%	1%+8		½ of 1%
Elevator constructors	9.43	.545	.35	4%+a+b	.02
Elevator constructors' helpers	6.60	.545	.35	4%+a+b	.02
Elevator constructrrs' helpers (probationary)	4.715				
Glaziers	9.00	.55	.38		.105
Ironworkers:					
Structural, ornamental & reinforcing	8.85	.55	.57		.07
Lathers	8.75	.40	.35		.05
Leadburners	7.80	.30		c	.01
Marble & tile workers' helpers	5.55				
Painters:					
Brush & dry wall finishing	9.10	.45	.55		.04
Spray & sandblasting	10.10	.45	.55		.04
Paperhanging	9.35	.45	.55		.04
Plasterers	8.67	.40	.55		
Plumbers & steamfitters	9.95	.65	.50		.11
Sheet metal workers	9.40	.50	.66		.06
Sprinkler fitters	10.10	.60	.90		.08
Terrazzo workers' helpers:					
Helpers	5.55				
Terrazzo floor machine operators	5.65				
Terrazzo base machine operator	5.75				
Truck drivers	4.00				
Roofers	6.32				
Welders - Rate for craft					

GA77-1005 - (Cont'd) Page 2

PAID HOLIDAYS:
A-New Year's; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day

FOOTNOTES
a. Holidays: A through F

b. Employer contributes 4% of regular hourly rate to Vacation Pay Credit for employee whohas worked in business more than 5 years. Employer contributes 2% of regular hourly rate to Vacation Pay Credit for employee who has worked in business less than 5 years.

c. Holidays: A through F; Washington's Birthday, Good Friday, and Christmas Eve providing employee has worked 45 full days during th 120 calendar days prior to the holiday, and the regularly scheduled work days immediately preceding and following the holidays.

LABORERS	Basic Hourly Rates -	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP A	6.00	.20	.25		.05
GROUP B	6.12	.20	.25		.05
GROUP C	6.22	.20	.25		.05
GROUP D	6.30	.20	.25		.05
GROUP E	6.50	.20	.25		.05
GROUP F	6.90	.20	.25		.05
GROUP G	6.75	.20	.25		.05
GROUP H (25c above rate for classification under which employed).					

GROUP A: Batch plant men, buggy rollers (Ga.,), cleaners (brick or lumber), clearing of right of way and building site (hand tools), concrete curer-sealer and liquid hardner, conveyer operator (used by tenders of plasterers and bricklayers), electrician laborer, excavator, backfiller grader (hand), forklift operator, walk type tending bricklayers and plasterers, form oiler, form stripper, metal pan handler, plumber-laborer, pipe doper, precast slab layer (floors, roofs, walks, curbs), concrete puddler, rail porter, railroad track laborer, reinforcing steel handler, scaffolds and staging for masons and plasterers, erecting and removing scarifyer, concrete (mechanical and hand), sheeting and shoring laborers, steam jennies (used in cleaning equipment), tenders (all crafts), truck spotter dumper, winch handler (manual), wrecking buildings and miscellaneous structures.

GROUP B: Bucket-dumpman (concrete), mixer-mortar, grout clay, etc., (hand or machine), power post hole digger, power cleaning machine operator, power wheel-barrow, mortar mixer-hose for gypsum roofs, plastering, asbestos fiber sound proofing, etc.

GROUP C: Burner-demolition, chain saw operator, power concrete saw operator, steel form setter, sewer pipe layer, yarner, wiper, potman, slip form raiser (steel or wood), jack or screw type.

GROUP D: Wagon drill operator (track or wheel type) and like used in drilling for blasting.

GROUP E: Powderman-helper

GROUP F: Powderman, nozzleman (concrete pneumatic)

GROUP G: Caisson holeman

GROUP H: Chimney or stacks isolated

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP A	8.50	.50	.75		.07
GROUP B	8.15	.50	.75		.07
GROUP C	6.48	.50	.75		.07
GROUP D	6.83	.50	.75		.07
GROUP E	5.93	.50	.75		.07
GROUP F	6.28	.50	.75		.07
GROUP G	5.26	.50	.75		.07

GROUP A: Backhoe operators, clamshell operator, conc. mix operator, cent, mix plant, conc. pump operator-Ridley or similar type, crane operator (truck, tower, crawler, or locomotive), derrick operator, dragline operator, drill operator-caisson foundation type, elevating grader operator, forklift operator that comes within the jurisdiction of the Operating Engineers hoisting engine operator, locomotive operator, mechanics-heavy duty, oilers on cranes with earth boring drill attached with a separate power source, concrete paving mixer operator, pile driver operator, rock crusher operator, shovel operator, trenching machine operator over 6 ft. depth capacity, well point system operator (including the operation of all pumps on project operated by the contractor) generator operator-75 K. VA. and over, tugger hoist operator, winch truck operator, hoisting material, air compressor operator, 365 C.F.M. and over furnishing air simultaneously for more than one contractor.

GROUP B: Bulldozer operator, dozer shovel operator, drill operator-Quarry master type, firemen-stationary or portable, motor grader operator, motor scraper operator (pans), pusher dozer operator, self-propelled compactor operator with blade, tract or operator with special equipment, trenching machine operator up to and including 6 ft. depth capacity.

GROUP C: Air compressor operator 600 cu. ft. and over, air compressor operator batt, of two, 300 cu. ft. and over, hydrohammer operator, concrete batch plant operator.

GROUP D: Oiler-truck or locomotive cranes

GROUP E: Oiler-unspecified, pump operator over 4" up to batteries of 4, welding machine operator, batteries of two 300 amps and over.

GROUP F: Concrete mixer operator skip types except paving mixers, concrete finishing machine operator, concrete paving machine operator, roller operator well drill operator

GROUP G: Air compressor operator up to and including 300 cu. ft. or one machine over 300 but less than 600 cu. ft. conveyor operator, belt type, sand blasting machine operator, water pump operator 4" or less, water pump operator over 4" (one only), welding machine operator 300 amps and over.

NOTICES

5622

SUPERSEDEAS DECISION

STATE: Georgia COUNTY: Chatham
DECISION NUMBER: GA77-1009 DATE: Date of Publication
Supersedes Decision No.: GA76-1120 dated October 29, 1976 in 41 FR-47722
DESCRIPTION OF WORK: Building Construction

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Asbestos workers	8.99	.45	.40		
Boilermakers	9.50	.75	1.00		.02
Bricklayers:					
Bricklayers & Stonemasons	8.10	.20	.20		.01
Marble masons, terrazzo workers, & tile setters	5.00				
Carpenters:					
Carpenters & soft floor layers	8.15	.50			
Millwrights	8.65	.50			
Piledrivermen	8.40	.50			
Cement masons	7.00				
Electricians:					
Electricians	8.95	.50	.50+1%		.2%
Cable splicers	9.20	.50	.50+1%		.2%
Elevator constructors	8.52	.495	.32	4%+a+b	.02
Elevator constructors' helpers	5.96	.495	.32	4%+a+b	.02
Elevator constructors' helpers (probationary)	4.26				
Glaziers	7.35				
Ironworkers:					
Structural, ornamental, and reinforcing	8.80	.55	.60		.03
Lathers	7.15				
Painters:					
Brush	7.35				
Rollers	7.35				
Tapers	7.60				
Stage work and window jack work	7.85				
Paperhangers	7.60				
Paint burners	7.60				
Spray painting & sandblasting	8.10				
Plasterers	6.50				
Plumbers & pipefitters	9.80	.40	.55		.05
Roofers	5.50				
Sheet metal workers	8.75	.45			.02
Sprinkler fitters	10.10	.60	.90		.08

TRUCK DRIVERS	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Truck drivers:					
Pick-up and all other trucks up to and including 2½ tons tractor-farm type.	4.20				
Trucks from 2½ tons up to and including 5 tons. All lowboys and other trailers pulled by tractor with rating up to and including 5 tons (except farm type tractors) forklift	4.30				
Truck over 5 tons including all Euclids up toand including 10 tons	4.55				
Euclids over 10 tons	4.60				
Welders - receive rate prescribed for craft performing operation to which welding is incidental.					

PAID HOLIDAYS:
A-New Years' Day; B-Memorial Day; C-Independence Day; E-Thanksgiving Day; E-Christmas Day.

FOOTNOTES:
a. Holidays: A through F.

b. Employer contributes 4% of regular hourly rate to vacation pay credit for employee who has worked in business more than 5 years. Employer contributes 2% of regular hourly rate to vacation pay credit for employee who has worked in business less than 5 years.

NOTICES

5623

GA77-1009 - (Cont'd)

BUILDING CONSTRUCTION LABORERS:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP A:					
General laborers	4.50	.15	.10		.05
GROUP B:					
Air tool vibrator operator, operators of jackhammers, tamp, paving breaker, chipper hammer, spade, chain saw, motorized buggies. Mason tenders, cement mason tenders, terrazzo helpers, railroad or track laborers, walk behind compactor or roller plasterer and carpenter tenders	4.65	.15	.10		.05
GROUP C:					
Motor mixers, (hand or machine) pipelayers	4.75	.15	.10		.05
GROUP D:					
Burner (torch) on demolition work track or wagon drill used in blasting	5.00	.15	.10		.05
GROUP E:					
Powderman or blaster	5.50	.15	.10		.05

GA77-1005 - (Cont'd)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP A	8.50	.50	.75		.07
GROUP B	8.15	.50	.75		.07
GROUP C	6.48	.50	.75		.07
GROUP D	6.83	.50	.75		.07
GROUP E	5.93	.50	.75		.07
GROUP F	6.28	.50	.75		.07
GROUP G	5.26	.50	.75		.07

GROUP A: Backhoe operators, clamshell operator, conc. mix operator, cent, mix plant, conc. pump operator-Ridley or similar type, crane operator (truck, tower, crawler, or locomotive), derrick operator, dragline operator, drill operator-caisson foundation type, elevating grader operator, forklift operator that comes within the juriedidction of the Operating Engineers hoisting engine operator, locomotive operator, mechanics-heavy duty, oilers on cranes with earth boring drill attached with a separate power source, concrete paving mixer operator, pile driver operator, rock crusher operator, shovel operator, trenching machine operator over 6 ft. depth capacity, well point system operator (including the operation of all pumps on project operated by the contractor) generator operator-75 K. VA. and over, tugger hoist operator, winch truck operator, hoisting material, air compressor operator, 365 C.F.M. and over furnishing air simultaneously for more than one contractor.

GROUP B: Bulldozer operator, dozer shovel operator, drill operator-Quarry master type, firemen-stationary or portable, motor grader operator, motor scraper operator (pans), pusher dozer operator, self-propelled compactor operator with blade, tract or operator with special equipment, trenching machine operator up to and including 6 ft. depth capacity.

GROUP C: Air compressor operator 600 cu. ft. and over, air compressor operator batt, of two, 300 cu. ft. and over, hydrohammer operator, concrete batch plant operator.

GROUP D: Oiler-truck or locomotive cranes

GROUP E: Oiler-unspecified, pump operator over 4" up to batteries of 4, welding machine operator, batteries of two 300 amps and over.

GROUP F: Concrete mixer operator skip types except paving mixers, concrete finishing machine operator, concrete paving machine operator, roller operator well drill operator

GROUP G: Air compressor operator up to and including 300 cu. ft. or one machine over 300 but less than 600 cu. ft. conveyor operator, belt type, sand blasting machine operator, water pump operator 4" or less. water pump operator over 4" (one only), welding machine operator 300 amps and over.

SUPERSEDEAS DECISION

STATE: New Hampshire COUNTY: Rockingham
DECISION NO.: NH77-2003 DATE: Date of Publication
Supersedes Decision No. NH76-2094, dated July 30, 1976 in 41 FR 32165
DESCRIPTION OF WORK: Building, Heavy, Highway and Marine Construction

BUILDING, HEAVY & HIGHWAY CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$10.26	.80	.80		.01
BOILERMAKERS	10.00	.60	10%		.01
BRICKLAYERS, CEMENT MASONS, MARBLE MASONS, PLASTERERS, STONEMASONS, TILE SETTERS & TERRAZZO WORKERS	8.19	.55	.40		.01
CARPENTERS:					
Salem:					
Carpenters & Soft Floor Layers	10.20	.60	1.00		.02
Remainder of County:					
Carpenters & Soft Floor Layers	7.35	.55	.60		.01
Piledrivermen, wharfs & dock builders & millwrights	8.20	.55	.60		.01
ELECTRICIANS:					
Twps, of Exeter, Greenland, Hampton, Hampton Falls, Portsmouth, Newington, Newmarket, Northwood, Nottingham, Rye, Seabrook Strathan & S. New Market	9.50	.50	1%+.10		.02
Kingston, Kensington, N. Kingston, Hampstead, Plaistow, Westville, Atkinson N. Salem & Salem	10.02	.35	1%+.20		.02
Remainder of County	10.10	.40	1%		.03
ELEVATOR CONSTRUCTORS:					
Constructors	10.665	.495	.32	4%+a+b	.02
Helpers	7.465	.495	.32	4%+a+b	.02
Helpers (Prob.)	5.33	.495	.32	4%+a+b	.02
GLAZIERS	7.87	.52	.59		.03
IRONWORKERS:					
Structural, Ornamental and Reinforcing	9.70	.70	1.00		.02
LABORERS, Building:					
Auburn, Candia, Chester, Denville, Deerfield, Deerfield Center, Derry, E. Derry, Fremont, Hampstead, Londonderry, Raymond Sandown, W. Epping & Windham AND Derrfield:					
Laborers	6.16	.60	.70		.10
Plasterers tenders	6.31	.60	.70		.10

PAGE 2

DECISION NO. NH77-2003

LABORERS (CONT'D)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Drillers, pavement breakers, pneumatic tool ops., chipping gun ops., blasters & powdermen	6.66	.60	.70		.10
All other pneumatic tool ops. on boiler & stack work	7.06	.60	.70		.10
Pipelayers, fence & guard rail erectors	6.41	.60	.70		.10
Laborers: Heavy and Highway Auburn, Canida, Chester, Danville, Deerfield, Deerfield Center, Derry, E. Derry, Fremont, Hampstead, Lodonderry, Raymond, Sandown, W. Epping & Windham:					
Laborers & Pipelayers	5.91	.50	.45		.10
Pneumatic tool op., drillers concrete vibratora, & pneumatic breakers	6.41	.50	.45		.10
Blasters & powdermen	6.66	.50	.45		.10
Salem, Heavy & Highway	7.50	.50	.45		.10
Salem, Rockingham Park, Building & Demolition	7.50	.50	.45		.05
Remainder of County:					
Building, heavy & highway	5.91	.50	.45		.10
Pneumatic tool operator, drillers pavement breakers	6.31	.50	.45		.10
Blasters & powdermen	6.31	.50	.45		.10
Plasters' tenders	6.06	.50	.45		.10
LATHERS	9.25	.45	.55		.01
LEAD BURNERS	8.75	.30		c	.01
LINE CONSTRUCTION:					
Linemen	9.34	.65	1%	d	3/8of1%
Equipment Operator	8.74	.65	1%	d	3/8of1%
Groundman	6.36	.65	1%	d	3/8of1%
Driver Groundman	7.38	.65	1%	d	3/8of1%

DECISION NO. NH77-2003

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PAINTERS:					
Deerfield, Candia, Raymond, Auburn, Chester, Dondonderry, Derry & Windham:					
Brush	$ 6.90	.25			
Paperhangers	7.15	.25			
Spray & Sandblasting	8.40	.25			
Open Structural Steel	8.15	.25			
Enclosed Structural Steel and Steeplejack	7.90	.25			
Salem:					
Brush	9.46	.72	.85		.04
Structural	11.58	.72	.85		.04
Townships of Northwood, Deerfield, Gandia, Raymond, Auburn, Chester, Londonderry, Derry & Windham:	—				
Brush	4.70	.175			
Open structural steel, work to 25'	5.95	.175			
Enclosed Steel, over 25'	5.80	.175			
Remainder of County:					
Brush	6.35		.25		
Spray	7.35		.25		
Structural steel	6.96		.25		
Structural steel 45' or more	7.96		.25		
Taping & Paperhanging	6.60		.25		
PLUMBERS & STEAMFITTERS:					
Plaistow, Atkinson, Danville, Sampstead, and Kingston	9.90	1.35	.52		.05
Salem and Windham	10.24	.73	.65		.05
Remainder of County	9.90	.53	.55		.02
ROOFERS	6.65				
Roofers' Helpers	5.80				
SHEET METAL WORKERS	8.92	.45	3%+.35		.02
SPRINKLER FITTERS	10.21	.60	.90		.08
Welders receive rate prescribed for which craft performing operation to which welding is incidental.					

DECISION NO. NH77-2003

PAID HOLIDAYS:

A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F- Christmas Day.

FOOTNOTES:

a. Employer contributes 4% of basic hourly rate for 5 years or more of service or 2% basic hourly rate for 6 months to 5 years of service as Vacation Pay credit.

b. Holidays: A through F.

C. Holidays: A through F; plus Washington's Birthday, Christmas Eve and Good Friday (providing employee has worked at least 45 full days during the 120 calendar days prior to the holiday, and the regular scheduled work days immediately preceding and following the holidays.

d. Holidays: B through F, provided, the employee has been employed 5 working days prior to the holiday and provided the employee works the day immediately preceding and following the holiday.

e. $.25 contribution ot annuity fund.

BUILDING CONSTRUCTION
POWER EQUIPMENT OPERATORS

NH 3-PEO-O

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS 1	$ 9.74	1.10	.80	a	.02
CLASS 2	9.62	1.10	.80	a	.02
CLASS 3	8.93	1.10	.80	a	.02
CLASS 4	8.19	1.10	.80	a	.02
CLASS 5	7.67	1.10	.80	a	.02
CLASS 6	7.26	1.10	.80	a	.02

Boom lengths including jib" over 150' add $.55; over 185' add $.90; over 210' add $1.25; over 250' add $1.90; over 295' add $2.65.

CLASS 1 - Shovels,cranes, truck cranes, cherry pickers, dragline, trench hoe, backhoe, 3 drum machine, derricks, pile, elevator tower, hoist, gradall, shovel dozer (except when pushing), front end loader (except when pushing), fork lift auger, boring machine, rotary drill, post hole hammer, post hole digger, pumpcrete machine.
CLASS 2 - Sonic or vibratory hammer, grader, scraper more than 21 yds. struck, tahdem scraper, concrete pump, bulldozer, scraper 21 yds. struck or less, portable steam boiler, portable steam generator, roller, spreader, tamper, asphalt paver, Mechanics, Maintenance.
CLASS 3 - Assistant engineers (Firemen).
CLASS 4 - Pumps (1-3 grouped), compressor, welding machine (1-3 grouped), generator, concrete vibrator, lighting plant, heater (power driven 1-5), wellpoint system (operating & installing), syphons-pulsometers, conc. mixers, valves controlling permanent plant air or steam conveyor, Jackson tyep tamper cranes & gradalls.
CLASS 5 - Oilers on truck cranes & gradalls
CLASS 6 - Oilers (other than truck cranes & gradalle.

FOOTNOTE: a 10 paid holidays; New Year's Day; Memorial Day, Independence day, Labor Day, Thanksgiving Day, Christmas Day, Washington's Birthday, Fast Day, Columbus Day, and Armistice Day.

DECISION NO. NH77-2003

HEAVY & HIGHWAYCONSTRUCTION
POWER EQUIPMENT OPERATORS

NH 5-PEO-4-F

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS 1	$ 8.93	1.10	.80	a	.02
CLASS 2	9.48	1.10	.80	a	.02
CLASS 3	8.81	1.10	.80	a	.02
CLASS 4	7.745	1.10	.80	a	.02
CLASS 5	8.31	1.10	.80	a	.02
CLASS 6	7.01	1.10	.80	a	.02
CLASS 7	7.07	1.10	.80	a	.02

Boom length including jib: over 150' - additional $.25 per hour; over 185' additional $.5o per hour; over 220' - additional $.75 per hour; over 275' additional $1.00 per hour; over 295' additional $2.00 per hour.

CLASS - Power shovels, cranes, truck cranes, darrick, pile drivers, trenching machines, mechanical hoist, pavement breakers, cement concrete pavers, draglines, hoisting engines, three drum machines, pumpcrete machines elevating graders, shoval dozers, (when used for digging or loading), front end loaders (when used for digging or loading), mucking machines (when used as in shafts and tunnels), shaft hoists,steam engineers, backhoes, gradalls and cableways.
CLASS 2 - Master Mechanics
Class 3 - Grader, scrapers, more than 21 yds., struck andtandem scrapers, bulldozer, scrapers, 21 yds., struck or less, grout pumps, portable steam boilers, roller, spreaders, asphalt pavers, locomotive and tampers, self-propelled or tractor-drawn, Mechanics, maintenance.
CLASS 4 - Pumps (s) (1-3 grouped), compressors welding machine (s) (1-3 grouped) generators, lighting plants, heaters (power driven (105), syphons, pulsomsters, concrete mixers, valves controlling pernament plant air or steam, conveyors, wellpoint systems (operating and installing).
CLASS 5 - Aasistant engineers (Firemen).
CLASS 6 - Oilers (other than truc cranes and gradalls).
CLASS 7 - Oilers on truck cranes and gradalls.

PAID HOLIDAYS: A-NewYear's Day; B-Memorial Day; D-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

FOOTNOTE: a. Holidays A through F; Washington's Birthday; Columba Day; Veterans' Day; Fast Day.

DECISION NO. NH77-2003

NH 5-PEO-4-F 1 of 1

POWER EQUIPMENT OPERATORS MARINE CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS 1	$ 6.335	.275	.30	a	.02
CLASS 2	6.285	.275	.30	a	.02
CLASS 3	6.215	.275	.30	a	.02
CLASS 4	5.965	.275	.30	a	.02
CLASS 5	5.755	.275	.30	a	.02
CLASS 6	5.23	.275	.30	a	.02
CLASS 7	4.555	.275	.30	a	.02
CLASS 8	5.18	.275	.30	a	.02
CLASS 9	4.605	.275	.30	a	.02

Booms over 150' including jib-additional $.25 per hour.
Booms over 185' including jib-additional $.50 per hour.
Booms 220' including jib-additional $.75 per hour.
Booms over 275' including jib-additional $1.00 per hour.

CLASS 1 - Power shovel, crane, truck crane, derrick, cherry picker, pile driver, 2 or more drum machine, lightner, derrick boat, trenching machine, mechanical hoist, pavement breaker, cement concrete paver, dragline, hoisting engine, pumpcrete machine, elevating grader, shovel dozer (except when pushing front end loader (except when pushing), backhoe, gradall, cableway, boring machine, rotary drill, post hole hammer, post hole digger, for, lift
CLASS 2 - Swinger engine
CLASS 3 - Sonic or vibratory hammer, grader, scraper (over 21 yds. struck), tandem scraper concrete pump, Bulldozer, scraper (21 yds. struck or less).
CLASS 4 - Portable steam boiler, portable steam generator, roller, tractor, mechanic (maintenance), concrete mixer with side loader.
CLASS 5 - Assistant engineer (fireman).
CLASS 6 - Pump, compressor, welding machine, heater (power driven), valve controlling pernament plant (air or steam), wellpoint system, auger (powered by independent engine and attached to pile driver), hydraulic saw, generator, lighting plant, syphon, pulsometer, concrete mixer.
CLASS 7 - Oiler (other than truck crane and gradall).
CLASS 8 - Oiler on scow.
CLASS 9 - Oiler on truck crane and gradall.

PAID HOLIDAYS: (WHERE APPLICABLE)
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

FOOTNOTE: a. Holidays: A through F; Washington's Birthday, Patriot's Day, Columbus Day; & Veteran's Day; Provided the employee has worked 3 days during the week in which the holidays falls and is available for work the days preceding the holidays.

DECISION NO. NH77-2003

NH 1-TD-1-2-3-K

TRUCK DRIVERS	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS 1	$4.41	.30	.25	a	
CLASS 2	4.64	.30	.25	a	
CLASS 3	4.87	.30	.25	a	

CLASS 1 - Two Axle equipment
CLASS 2 - Three axle equipment including low beds
CLASS 3 - Special earth hauling equipment other than conventional type on the road truck and semitrailers trailer dumps.

PAID HOLIDAYS: A-New Year's Day; B-Memorial Day; C-Independence Day; D- Labor Day; E-Thanksgiving Day; F-Christmas Day.

FOOTNOTE: a Holidays: A through F, plus Washington's Birthday, Veteran's Day and Columbus Day; (provided employee works two days in the calendar week in which the holiday falls; reports for work the last day assigned prior to the holiday and the first assigned following the holiday).

SUPERSEDEAS DECISION

STATE: New Hampshire COUNTY: Strafford
DECISION NO.: NH77-2004 DATE: Date of Publication
Supersedes Decision No. NH76-2114, dated September 17, 1976, in 41 FR 40399.
DESCRIPTION OF WORK: Building Construction (excluding single family homes and garden type apartments up to and including 4 stories), heavy, highway and Marine Construction.

9-NH-1-2-3-E 1 of 2

BUILDING, HEAVY & HIGHWAY CONSTRUCION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$10.26	.80	.80		.01
BOILERMAKERS	10.00	.60	10%		.01
BRICKLAYERS, Cement masons, Marble setters, Plasterers, Stone masons, Terrazzo workers and Tile setters	8.19	.55	.40		.01
CARPENTERS & SOFT FLOOR LAYERS	7.35	.55	.60		.01
ELECTRICIANS	9.50	.60	1%+.50		.02
ELEVATOR CONSTRUCTORS:					
Constructors	10.665	.495	.32	4%+a+b	.02
Helpers	7.465	.495	.32	4%+a+b	.02
Helpers (Prob.)	5.33	.495	.32	4%+a+b	.02
GLAZIERS	7.87	.52	.59		.03
IRONWORKERS:					
Structural, Ornamental & Reinforcing	9.70	.70	1.00		02
LABORERS:					
Laborers	6.16	.60	.70		.10
Plasterers Tenders	6.31	.60	.70		.10
Boilers, stack work, Pneumatic tool op., drillers, pavement breakers, electirc chipping ops., blasters & Powdermen, Creosote work	6.66	.60	.70		.10
Pipelayers, fence & guardrail erectors	6.41	.60	.70		.10
Pneuamtic tools on boiler & Stack work	7.06	.60	.70		.10
LEADBURNERS	9.25	.35		c	.01
LINE CONSTRUCTION: Linemen	9.34	.65	1%	d	3/8of1%
Equipment Operator	8.74	.65	1%	d	3/8of1%
Groundman	6.36	.65	1%	d	3/8of1%
Driver Groundman	7.38	.65	1%	d	3/8of1%
PAINTERS: Brush	6.35		.25		
Spray and Tender	7.35		.25		
Structural Steel	6.96	.25			
Structural Steel (45 ft. or more)	6.90		.25		
Taping & Paperhanging	6.60		.25		
PILEDRIVERMEN & MILLWRIGHTS	8.05	.55	.50		.01
PLUMBERS & STEAMFITTERS	9.90	.53	.55		.02
ROOFERS	6.65				
Roofers' Helpers	5.80				
SHEET METAL WORKERS	8.92	.45	3%+.35		.02
SPRINKLER FITTERS	10.21	.60	.90		.08

DECISION NO. NH77-2004

Welders - Receive rate prescribed for craft performing operation to which welding is incidental.

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independennece Day; D-Labor Day; D-E-Thanksgiving Day; F-Christmas Day.

FOOTNOTES:

a. Employer contributes 4% basoc hourly rate for 5 years or more of service or 2% of basic hourly rate for 6 months to 5 years of service as Vacation Pay Credit.

b. Bolidays: A through F.

c. Holidays: a through F; Washington's Birthday, Good Friday and Christmas Eve providing employee has worked at leasst 45 fulls days during the 120 caldendar days prior to the holiday, and the regular scheduled work days immediately preceding and following the holiday.

d. Boliday; B through F provided employee has beene mployed 5 working days prior to the holiday and provided employee works the scheduled work days immediately preceding and following the holidays.

PAGE 3

DECISION NO. NH77-2004

NH 3-PEO-O

BUILDING CONSTRUCTION POWER EQUIPMENT OPERATORS	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS 1	$ 9.74	1.10	.80	a	.02
CLASS 2	9.62	1.10	.80	a	.02
CLASS 3	8.93	1.10	.80	a	.02
CLASS 4	8.19	1.10	.80	a	.02
CLASS 5	7.67	1.10	.80	a	.02
CLASS 6	7.26	1.10	.80	a	.02

Boom lengths including jib" over 150' add $.55; over 185' add $.90; over 210' add $1.25; over 250' add $1.90; over 295' add $2.65.

CLASS 1 - Shovels,cranes, truck cranes, cherry pickers, dragline, trench hoe, backhoe, 3 drum machine, derricks, pile, elevator tower, hoist, gradall, shovel dozer (except when pushing), front end loader (except when pushing), fork lift auger, boring machine, rotary drill, post hole hammer, post hole digger, pumpcrete machine.
CLASS 2 - Sonic or vibratory hammer, grader, scraper more than 21 yds. struck, tahdem scraper, concrete pump, bulldozer, scraper 21 yds. struck or less, portable steam boiler, portable steam generator, roller, spreader, tamper, asphalt paver, Mechanics, Maintenance.
CLASS 3 - Assistant engineers (firemen).
CLASS 4 - Pumps (1-3 grouped), compressor, welding machine (1-3 grouped), generator, concrete vibrator, lighting plant, heater (power driven 1-5), wellpoint system (operating & installing), syphons-pulsometers, conc. mixers, valves controlling permanent plant air or steam conveyor, Jackson type tamper cranes & gradalls.
CLASS 5 - Oilers on truck cranes & gradalls
CLASS 6 - Oilers (other than truck cranes & gradalls.

FOOTNOTE: a 10 paid holidays; New Year's Day; Memorial Day, Independence day, Labor Day, Thanksgiving Day, Christmas Day, Washington's Birthday, Fast Day, Columbus Day, and Armistice Day.

PAGE 4

DECISION NO. NH77-2004

PEO-2-3

HEAVY & HIGHWAY CONSTRUCTION POWER EQUIPMENT OPERATORS	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS 1	$ 8.93	1.10	.80	a	.02
CLASS 2	9.48	1.10	.80	a	.02
CLASS 3	8.81	1.10	.80	a	.02
CLASS 4	7.745	1.10	.80	a	.02
CLASS 5	8.31	1.10	.80	a	.02
CLASS 6	7.01	1.10	.80	a	.02
CLASS 7	7.07	1.10	.80	a	.02

Boom length including jib: over 150' - additional $.25 per hour; over 185' additional $.5o per hour; over 220' - additional $.75 per hour; over 275' additional $1.00 per hour; over 295' additional $2.00 per hour.

CLASS - Power shovels, cranes, truck crane, derrick, pile drivers, trenching machines, mechanical hoist, pavement breakers, cement concrete pavers, draglines, hoisting engines, three drum machines, pumpcrete machines elevating graders, shovel dozers, (when used for digging or loading), front end loaders (when used for digging or loading), mucking machines (when used as in shafts and tunnels), shaft hoists,steam engineers, backhoes, gradalls and cableways.
CLASS 2 - Master Mechanics
Class 3 - Grader, scrapers, more than 21 yds., struck andtandem scrapers, bulldozer, scrapers, 21 yds., struck or less, grout pumps, portable steam boilers, roller, spreaders, asphalt pavers, locomotive and tampers, self-propelled or tractor-drawn, Mechanics, maintenance.
CLASS 4 - Pumps (s) (1-3 grouped), compressors welding machine (s) (1-3 grouped) generators, lighting plants, heaters (power driven (105), syphons, pulsometers, concrete mixers, valves controlling pernament plant air or steam, conveyors, wellpoint systems (operating and installing).
CLASS 5 - Assistant engineers (Firemen).
CLASS 6 - Oilers (other than truc cranes and gradalls).
CLASS 7 - Oilers on truck cranes and gradalls.

PAID HOLIDAYS: A-NewYear's Day; B-Memorial Day; D-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

FOOTNOTE: a. Holidays A through F; Washington's Birthday; Columbs Day; Veterans' Day; Fast Day.

PAGE 5

DECISION NO. NH77-2004

NH 5-PEO-4-F

POWER EQUIPMENT OPERATORS MARINE CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS 1	$ 6.335	.275	.30	a	.02
CLASS 2	6.285	.275	.30	a	.02
CLASS 3	6.215	.275	.30	a	.02
CLASS 4	5.965	.275	.30	a	.02
CLASS 5	5.755	.275	.30	a	.02
CLASS 6	5.23	.275	.30	a	.02
CLASS 7	4.555	.275	.30	a	.02
CLASS 8	5.18	.275	.30	a	.02
CLASS 9	4.605	.275	.30	a	.02

Booms over 150' including jib-additional $.25 per hour.
Booms over 185' including jib-additional $.50 per hour.
Booms 220' including jib-additional $.75 per hour.
Booms over 275' including jib-additional $1.00 per hour.

CLASS 1 - Power shovel, crane, truck crane, derrick, cherry picker, pile driver, 2 or more drum machine, lightner, derrick boat, trenching machine, mechanical hoist, pavement breaker, cement concrete paver, dragline, hoisting engine, pumpcrete machine, elevating grader, shovel dozer (except when pushing front end loader (except when pushing), backhoe, gradall, cableway, boring machine, rotary drill, post hole hammer, post hole digger, for, lift
CLASS 2 - Swinger engine
CLASS 3 - Sonic or vibratory hammer, grader, scraper (over 21 yds. struck), tandem scraper concrete pump, Bulldozer, scraper (21 yds. struck or less).
CLASS 4 - Portable steam boiler, portable steam generator, roller, tractor, mechanic (maintanance), concrete mixer with aids loader.
CLASS 5 - Assistant engineer (fireman).
CLASS 6 - Pump, compressor, welding machine, heater (power driven), valve controlling pernament plant (air or steam), wellpoint system, auger (powered by independent engine and attached to pile driver), hydraulic saw, generator, lighting plant, syphon, pulsometer, concrete mixer.
CLASS 7 - Oiler (other than truck crane and gradall).
CLASS 8 - Oiler on scow.
CLASS 9 - Oiler on truck crane and gradall.

PAID HOLIDAYS: (WHERE APPLICABLE)
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

FOOTNOTE: a. Holidays: A through F; Washington's Birthday,Patriot's Day, Columbus Day; & Veteran's Day; Provided the employee has worked 3 days during the week in which the holidays falls and is available for work the days preceding the holidays.

PAGE 6

DECISION NO. NH77-2004

NH 1TD-1-2-3-K

TRUCK DRIVERS	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS 1	$4.71	.55	.25	a	
CLASS 2	4.94	.55	.25	a	
CLASS 3	5.17	.55	.25	a	

CLASS 1 - Two Axle equipment
CLASS 2 - Three axle equipment including low beds
CLASS 3 - Special earth hauling equipment other than conventional type on the road truck and semitrailers trailer dumps.

PAID HOLIDAYS: A-New Year's Day; B-Memorial Day; C-Indapendence Day; D- Labor Day; E-Thanksgiving Day; F-Christmas Day.

FOOTNOTE: a Holidays: A through F, plus Washington's Birthday, Veteran's Day and Columbus Day; (provided employee works two days in the calendar week in which the holiday falls; reports for work the last day assigned prior to the holiday and the first assigned following the holiday).

SUPERSEDEAS DECISION

STATE: Pennsylvania

COUNTIES: Bucks, Chester, Delaware, Montgomery & Philadelphia

DECISION NO.: PA77-3016

DATE: Date of Publication

Supersedes Decision No.: PA76-3247 dated September 17, 1976, in 41 FR 40409.

DESCRIPTION OF WORK: Building Construction, including single family homes and gardent type apartments up to & including 4 stories.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS					
ZONE 1	$11.72	70	.75		.06
ZONE 2	11 10	70	.75		.025

AREA COVERED BY ASBESTOS WORKERS

ZONE 1 - Chester, Delaware, Montgomery, Philadelphia and Remainder of Bucks County

ZONE 2 - Bridgeton, Durham, Lower Makefield, Middletown Falls, Morristown, New Hope, Newton, Noxkamixon, Plumstead Riegelsville, Solebury, Tullytown, Tinicum, Upper Makefield and Yardley Townships in Bucks County

BOILERMAKER	12.05	75	1.00		.02
BRICKLAYERS					
ZONE 1	10.38	1 05	1.00		.01
ZONE 2	10.46	.62	1.50		.01
ZONE 3	10.56	1 07	.85		.02

AREA COVERED BY BRICKLAYERS ZONES

ZONE 1 - Bucks, Chester, Philadelphia Counties, Radnor and Haverford Township in Delaware County, Lower Marion, Abington, Upper Moreland and Cheltenham Townships in Montgomery County

ZONE 2 - Remainder of Delaware County

ZONE 3 - Remainder of Montgomery County

CARPENTERS	9.77	1.88	1.30		.12
CEMENT MASONS					
ZONE 1	10.00	1 19	1.25		
ZONE 2	8.70	58	.42		
ZONE 3	9.69		.50		

DECISION NO. PA77-3016

AREA COVERED BY CEMENT MASONS ZONES

ZONE 1 - Bucks, Delaware and Philadelphia Counties, Remainder of Chester County and Remainder of Montgomery County

ZONE 2 - Oxford, Kenneth Square, Avondale and Longwood Townships in Chester County

ZONE 3 - Pennsburg and Pottstown Townships in Montgomery County

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DRYWALL FINISHERS	9.75	.94	.75	.85	.03
ELECTRICIANS					
ZONE 1					
Commercial	12.11	6%	5%		2%
Residential up to and including 4 stories	11.32	6%	5%		2%
ZONE 2					
Commercial	12.20	4.4%	1%+2.6%		1.5%
Residential up to and including 3 stories	10.57	3.4%	1%+2.6%		1.5%
ZONE 3					
Comercial	12.34	4.4%	1%+3%		1/2 of 1%
Residential up to and including 3 stories	8.725	4.4%	1%+3%		1/2 of 1%
ZONE 4					
Commercial	10.64	9½%	7%		1/4 of 1%
ZONE 5					
Commercial	10.49	.73	1%		.03
ZONE 6					
Commercial	11.00	6%	1%+.50		.02
ZONE 7					
Commercial	10.60	.35	1%+.40		.02
ZONE 8					
Commercial	12.80	.6%	1%+.40		.13

DECISION NO. PA77-3016

AREA COVERED BY ELECTRICIANS ZONES

ZONE 1

Bucks County - starting at the Delaware River and following the west limits of the Borough of Bristol, along the continuation of U.S. Highway 13 and under the Pennsylvania Railroad bridge to Route 09113, north 09113 to Route 152, north along ROute 152 to the Humeville Road, east on Humeville Road to Route 344, north on Route 344 to the junction of Spurs 281 and 252, continue north on Spur 252 to Route 09028, west on 09028 to Route 152, north on 152 to TR 232, north on TR 532 to Tr 113, north on TR 113 to TR 232 at Anchor Inn, northeast on TR 232 and continue northeast along Route 659 to Route 09060, west on 09060 to Route 402, north on 402 to the Borough line at the southwest corner of the Borough of New Hope. The Borough of New Hope is excluded.

starting at the Delaware River and proceeding southwest along the Plumstead-Solebury and the Plumstead-Buckingham Township linss to Route 09064, northwest on 09064 to U.S. Highway 611 south on 611 to the spur of Route 270, northwest along the spur to Route 397, southwest on 397 to Route 350, southeast on 350 to Route 395, southwest on 395 to Route 09069, southeast on 09069 to Route 09041 southwest on 09041 to the Montgomery County line.

Delaware County - that portion east of a line following State Highway 320 from Montgomery County to Maple, then along the Springfield Road to Saxer Avenue, along Saxer Avenue to Powell Road, along Powell Road to State Highway 420 and continuing in a straight line to the Delaware River.

Montgomery County - that portion southeast of a line following Lower State Road from Bucks County southwest to the Bethlehem Pike (U.S. Highway 309), south on the Bethlehem Pike to the Penllyn Pike, southwest on the Penllyn and Blue Bell Pikes to the Wissahickon Creek, southeast on the Wissahickon Creek to the Butler Pike to North Lane near Conshohocken Borough, southwest onNorth Lane to Schuylkill River and continuing southeast in a line to the SPring Mill Road and southwest on the Spring Mill Road to Delaware County.

DECISION NO. PA77-3016

Philadelphia County - In its entirety.

ZONE 2

Bucks County - Hilltown and New Britain Townships in their entirety; that portion of Telford Borough northeast of County Line Road (Main Street) and bounded by West Rockhill and Hilltown Township; that portion of Dublin Borough west of State Highway 313, and that portion of Doylestown and Warrington Townships and Doylestown Borough northwest of a line following U.S. Highway 611 south from Route 09064 to the spur of Route 270, and proceeding northwest along the spur to Route 397, southwest on 397 to Route 350, southeast on 350 to Route 395, southwest on 395 to Route. 09069, southeast on 09069 to Route 09041, southwest on 09041 to the Montgomery County Line.

Chester County - East Coventry, East Vincent, West Vincent, East Pikeland, West Pikeland, Uwchlan, Upper Uwchlan, East Brandywine, Schuylkill and Charlestown Townships in their entirety, and that portion of Caln, East Caln, West Whiteland, East Whiteland, Tredyffrin, Willstown, Easttown Townships and the Borough of Downingtown north of U. S. Highway 30.

Delaware County - That portion of Radnor Township north of U.S. Highway 30 and west of State Highway 320.

Norristown, Montgomery County - That portion northwest of a line following Lower State Road from Bucks County southwest to the Bethlehem Pike (U.S. Highway 309), south on Bethlehem Pike to the Penllyn Pike, southwest on the Penllyn and BLue Bell Pikes to Wissahickon Creek, southeast on the Wissahickon Creek to the Butler Pike, southwest on the Butler Pike,to North Lane near Conshohocken Borough, southeast on North Lane to the Schuylkill River and continuing southeast in a line to the Spring Mill Road, southwest on the Spring Mill Road to Delaware County; but excluding Upper Hanover, Douglas, Upper Pottsgrove, West Pottsgrove Townships and also excluding that portion of the

DECISION NO.: PA77-3016

Borough of Pottstown north and west of a line drawn northeast on Keim Street from the Schuylkill River to the Reading Railroad northwest on the railroad to Madison Street, to High Street, east on High Street to Green Street, north on Green Street and northeast on Mintzer Street to the Lower Pottsgrove Township Line, along this township line and the borough line northwest to Adams Street and the Beehive Road, northeast on the Beehive Road to the Township Line at Mervine Street in the State of Pennsylvania.

ZONE 3
Chester County - That portion south of U.S. Highway 30 and north and west of U. S. Highway 1

Delaware County - That portion south of U.S. Highway 30 and north of that part of U.S. Highway 1 between U.S. Highway 202 and the Chester County Line, and east of that part of U.S. Highway 202 between U.S. Highway 1 and the Delaware Line, and west of a line extending from Montgomery County along State Route 320 to Maple, then along the Springfield Road to Saxer Avenue, along Saxer Avenue to Powell Road; along Powell Road to State Highway 420; along 420 and continuing in a straight line to the Delaware River in the State of Pennsylvania.

ZONE 4
Chester County - Oxford, Avondale and Kenneth Square Twps.

ZONE 5
Chester County - West Clan, West Brandywine, Honey Brook, Wallace, West Nantmeal, East Nantmeal, Warwick, South Coventry, Valley Twps. and Coatesville.

DECISION NO.: PA77-3016

Montgomery County - West Pottsgrove, Upper Pottsgrove, Douglas Twps. Pottstown.

ZONE 6
Bucks County - Plumstead, Bedminister, Tinicum, Nockomixon, Bridgeton and Durham Townships in their entireties, and that portion of Haycock and Springfield Townships east of a line following State Highway 412, from Northampton County south to Route 09071 to State Highway 212, along highway 212 to Route 09068, and along 09068 to State Highway 313. Also included is that portion of Bublin Borough east of State Highway 313.

ZONE 7
Bucks County - East Rock Hill, West Rock Hill, Milford and Richland Townships in their entirety and that portion of Haycock and Springfield Townships West of a line following State Highway 212 from Northampton County South to Route 09071 along 09071 to State Highway 212, along Highway 212 to Route 09068 and along 09068 to State Highway 313

Montgomery County - Upper Hanover in its entirety

ZONE 8
Bucks County - That portion east of a line starting at the Delaware River and following the west limits of the Borough of Bristol, along the continuation of U.S. Highway 13 and under the Pennsylvania Railroad Bridge to Route 09113, north along 09113 to Route 152, north along Route 152 to the Hulmeville Rd., east on the Hulmeville to Route 344, north on Route 344 to the junction of Spurs 281 and 252 continue north on Spur 252 and Route 09028, west on 09028 to Route 152, north on 152 to TR 532, north on TR 532 to TR 113, north on TR 113 to TR 232 as Anchor Inn. northeast on TR 232 and continue northeast along Route 659 to Route 09060, West on 09060 to Route 402, north on 402 to the Borough line at the southwest corner of the Borough of New Hope. The Boroughs of New Bope and Bristoe are included.

DECISION NO.: PA77-3016

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ELEVATOR CONSTRUCTORS					
Elevator Constructors	12.09	.545	.35	4%+a+b	.02
Elevator Constructors Helpers	8.46	.545	.35	4%+a+b	.02
Elevator Constructors Helpers (Prob.)	6.045				
GLAZIERS					
ZONE 1	10.08	.45	.25		.01
ZONE 2	8.89	.40	.30		.01

AREA COVERED BY GLAZIERS ZONES

ZONE 1 - Delaware and Philadelphia Counties, Remainder of Bucks, Chester and Montgomery Counties

ZONE 2 - Milford, West Rockville, Rickland, E. Rockville, Haycock, Durham, Springfield, Richlandtown, Sqoherton, Nockamixon Townships in Bucks County, Warwick, S. Coventry, E. Coventry, N. Coventry, Spring City and Royersford Townships in Chester County, Pottstown, Lower Pottsgrove, Limrick, Lower Frederick, Upper Salford, Sounderton, Greenland, Upper Hanover, New Hanover, Douglas, Marlboro Twps. in Montgomery County

IRONWORKERS					
ZONE 1	10.36	.79	1.11		.05
ZONE 2	10.53	.79	1.11		.05
ZONE 3					
Structural & Ornamental	11.67	.84	1.21		.04
Reinforcing	11.42	.84	1.46		.01

AREA COVERED BY IRONWORKERS ZONES

ZONE 1 - Bucks County

ZONE 2 - Chester County

ZONE 3 - Delaware, Montgomery and Philadelphia Counties

DECISION NO. PA77-3016

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LABORERS					
CLASS I	7.95	.90	.65		
CLASS II	8.05	.90	.65		
CLASS III	8.10	.90	.65		
CLASS IV	8.25	.90	.65		
CLASS V	8.35	.90	.65		
CLASS VI	7.89	.90	.65		

CLASSIFICATIONS DEFINITIONS

CLASS I - Stripping & dismantling concrete form work, loading, carrying 7 handling of all reinforced steel 7 steel mesh, handling lumber and other building materials, operating jackhammers, paving breakers 7 all other pheumatic tools, building-scaffolds, raking, shoveling 7 tamping of asphalt, spading & concrete pit work, grading, form pinning, shoring, demolition except burners, laying conduits and ducts, sheathing, lagging, laying non metallic pipe & caulking, all other types of Laborers

CLASS II - Mason tender, power buggies, burners on demolition

CLASS III - Wagon drill operator (single)

CLASS IV - Powdermen, wagon drill operator (multiple), circular caissons excavation: Caisson groundmen, Underpinning excavation: Laborers, working at depth of 8 feet or under

CLASS V - Caisson bottom man

CLASS VI - Yard workers

LANDSCAPE LABORERS					
CLASS I	6.60	.95	.65	C	
CLASS II	7.10	.95	.65	C	

CLASSIFICATIONS DEFINITIONS

CLASS I - Landscape Laborers

CLASS II - Fare tractor driver, hydroseeder nozzle man, and mulcher nozzle man

DECISION NO. PA77-3016

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LATHERS					
ZONE 1	8.61	.225	.10		
ZONE 2	9.15	.50	.15		.01
ZONE 3	7.69	.40	.25		
ZONE 4	7.75	25	.25		.02

AREAS COVERED BY LATHERS ZONES

ZONE 1 - Delaware, Montgomery and Philadelphia Counties, Remainder of Bucks and Chester Counties

ZONE 2 - Coatesville & lower part of Chester County

ZONE 3 - Milford, Trumbersville, Richland, Quakertown, Springfield, Durham, Riegelsville, Bridgetown, NokKamixon, Tinicum, Plumstead, Dublin, Bedminister. Haycock, East Rockhill, Perkasie, Sellersville, West Rockhill Townships in Bucks County

ZONE 4 - Solebury, New Hope, Upper Makefield, Wrightstown, Newton, Yardley, Lower Makefield, Morrisville, Falls, Tullytown Townships in Bucks County

LEAD BURNERS	10.75	.40	.25	d	.01
LINE CONSTRUCTION					
Linemen	13.04	.35	1%		1%
Groundmen	7.80	.35	1%		1%
WINch truck operator	9.11	35	1%		1%
MARBLE SETTERS	9.75	.87	.90		
MILLWRIGHTS	10.27	1.88	1.30		.12
PAINTERS					
ZONE 1					
Brush	9.295	.825	.40	.40	.06
SPray, steel & swing	9.545	.825	.40	.40	.06
Roller	9.295	.825	.40	.40	.06
ZONE 2					
Commercial, brush	9.05	.65	.50		
Commercial, spray	9.40	65	.50		
ZONE 3					
Brush	8.40	.60	.45		
Steel and spray	9.45	.60	.45		
Roller	8.40	60	.45		
ZONE 4					
Brush	9.64	55	.60	.75	
Steel	10.39	.55	.60	.75	

DECISION NO. PA77-3016

AREA COVERED BY PAINTERS ZONES

ZONE 1 - Bucks & Philadelphia Counties: Randnor, Haverford, Newton, Maple, Springfield, Upper Darby, Berby, Ridley, Tinicum & Yeodon Townships in Delaware County, Cheltenahm, Abington, Upper and Lower Moreland, Springfield, Whitemarsh, Plymouth, Upper Dubling, Horsham, Whitpain, Upper and Lower Gwynodd, Lower Marion, Upper Southampton, Lower Southampton Townships in Montgomery County

ZONE 2 - Chester County and Remainder of Delaware County

ZONE 3 - Pottstown, Pottsgrove, New Hanover and Douglas Townships in Montgomery County

ZONE 4 - Remainder of Montgomery County

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PILEDRIVERMEN	10.42	1.88	1.30		.12
POINTERS, CAULKERS AND CLEANERS	9.25	.45	.50		
PLASTERERS					
ZONE 1	9.47	.53			.01
ZONE 2	9.71		.53		.01
ZONE 3	8.97	.65			.01
ZONE 4	9.45				.01

AREA COVERED BY PLASTERERS ZONES

ZONE 1 - Bucks & Philadelphia Counties; Remainder of Chester County, Remainder of Montgomery County

ZONE 2 - Pennsburg Township in Montgomery County

ZONE 3 - Longwood, Kennett Square, Avondale and Oxford Townships in Chester County

ZONE 4 - Delaware County

DECISION NO. PA77-3016

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PLUMBERS					
ZONE 1	11.96	.57	1.00		.12
ZONE 2	8.50	.485	.82		.035
ZONE 3	10.02	57	.92		.08

AREA COVERED BY PLUMBERS ZONES

ZONE 1 - Delaware & Philadelphia Counties; Remainder of Bucks County: Tedyffrin, E. Whiteland, W. Whiteland, Easttown, Willistown, E. Goshen, W. Goshen, W. Chester, E. Bradford, Westtown, Birmingham, Twps. & Thornbury City Townships in Chester County, Lower Marion, Horsham, Upper Dublin, Moreland, Lower Moreland, Abington, Springfield and Cheltenham Townships in Montgomery County

ZONE 2 - Remainder of Chester & Montgomery County

ZONE 3 - Milford, Trumbaversville, West Rockhill, Sellerville, Perkasie, East Rockhill, Richland, Quackertown, Haycock, Noxkamixon, Bridgeton, Durham, Riegelsville Townships in Bucks County

ROOFERS					
ZONE 1					
Commercial					
Composition, damp & water-proofers	11.36	1.20	.82	e	
Roofers Assistant	5.20	1 55	.82	e	
Slate, tile and asbestos	10.75	1.00	.50		
Asphalt shingle	8.91	1.00	.50		
ZONE 2					
Commercial					
Composition & stste	8.35	.25	.25		
Helpers	4.63	.25	.25		
ZONE 3					
Commercial					
Composition roofers	9.70	.40	.50		
ZONE 4					
Comercial					
Composition, damp & water-proofing	10.60	.45	.25	f	
Slate, tile & asbestos	11.15	.45	.25	f	
Precast slab	11.40	.45	.25	f	
ZONE 5					
Residential reroofers	8.82	.65	.50		
Residential Reroofers Helpers	3.75	.65			

DECISION NO. PA77-3016

AREA COVERED BY ROOFERS ZONES

ZONE 1 - Delaware, Montgomery and Philadelphia Counties, Remainder of Bucks and Chester Counties

ZONE 2 - Milford, Trumbbaversville, Richland, Quakertown. Springfield, Durham, Reigllville Townships in Bucks County

ZONE 3 - Solesbury, New Hope, Upper Makefield, Wrightstown, Newton, Yardley, Lower Makefield, Morrisville, Falls, Tullytown and Bistol Townships in Bucks County

ZONE 4 - Parksbury Township in Chester County

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
SHEET METAL WORKERS					
ZONE 1 (Commercial)	11.84	1.01	.65		.03
ZONE 2 (Residential)	7.15				

AREA COVERED BY SHEET METAL WORKERS ZONES

ZONE 1 - Bucks, Chester, Delaware, Montgomery & Philadelphia Counties

ZONE 2 - Chester, Delaware, Montgomery Counties and Bucks County excluding the Townships of Falls, Buckingham, Newton, Upper and Lower Makefield, Solebury, Plumstead and Wrightstown

SOFT FLOOR LAYERS	8.58	1.58	1.30		.12
SPRINKLER FITTERS					
ZONE 1	11 61	60	.90		.08
ZONE 2	12.04	.60	.90		.10

DECISION NO. PA77-3016

AREA COVERED BY SPRINKLER FITTERS ZONES

ZONE 1 - Bucks, Chester, Delawars & Montgomery Counties

ZONE 2 - Philadelphia County

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
STEAMFITTERS					
ZONE 1	11.41	67	1.45		.11

AREA COVERED BY STEAMFITTERS ZONES

ZONE 1 - Bucks, Delaware, Philadelphia Counties and Remainder of Montgomery County

STONE MASONS					
ZONE 1	9.20	.87	.90		
ZONE 2	10.51	67	.60		.01
ZONE 3	10.75	.95	.78		.01
ZONE 4	9.30	.77	.75		

AREA COVERED BY STONE MASONS ZONES

ZONE 1 - Delaware & Philadelphia Counties; Remainder of Bucks County

ZONE 2 - Montgomery County

ZONE 3 - Chester County

ZONE 4 - Bristol Township in Bucks County

DECISION NO. PA77-3016

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
TERRAZZO WORKERS	9.42	87	.90		
TILE SETTERS	9.25	1.10	.90		.13
WELDERS - rate precribed for craft performing operation to which welding is incidental.					

Paid Holidays (Where Applicable):
A-New Year's Day; B- Memorial Day; C- Indepedence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

Footnotes:

a. Employer contributes 4% of basic hourly rate for 5 years or more of service or 2% basic hourly rate for 6 months to 5 years of service as Vacation Pay Credit.

b. Paid Holidays; A through F.

c. Paid Holidays: July 4th; Labor Day and Thanksgiving Day.

d. Paid holidays, A through F, Washington's Birthday, Good Friday and Christmas Eve, provided the employee has worked 45 days for the employer during the 120 days prior to the holiday, and is available for work the day preceding and following the holiday.

e. Paid Holidays: Election Day

f. Paid Holidays: Labor Day and Election Day

POWER EQUIPMENT OPERATORS					
CLASS I	11.91	5.5%	9.5%	a	1.2%
CLASS II	11.65	5.5%	9.5%	a	1.2%
CLASS III	10.78	5.5%	9.5%	a	1.2%
CLASS IV	10.57	5.5%	9.5%	a	1.2%
CLASS V	10.26	5.5%	9.5%	a	1.2%
CLASS VI	10.09	5.5%	9.5%	a	1.2%
CLASS VII	9.58	5.5%	9.5%	a	1.2%
CLASS VIII	8.84	5.5%	9.5%	a	1.2%

DECISION NO. PA77-3016

CLASSIFICATIONS DEFINITIONS

CLASS I - Handling steel and stone in connection with erection; cranes doing hook work; any machines handling machinery; cable spinning machines; Helicopters; machines similar to the above

CLASS II - Engineers working with dock builders and pile drivers, all types of cranes, all types of backhoes; cableways; draglines; keystones, all types of shovels; derricks; trench shovels; trenching machines; pippin type backhoes; hoist with two towers; pavers 21E and over; all types overhear cranes; building hoists - double drum (unless used as single drum); mucking machines in tunnel; gradalls; front-end loaders over 3 cu. yd., boat captain; tandem scraper; tower type crane operation, erecting, dismantling, jumping or jacking; drill self-contained (drillmaster type); fork lift (20 ft. and over), mortar patrols (fine grade), batch plant with mixer; Machines similar to the above

CLASS III - Conveyors (except building conveyors), building hoists (single drum), scrapers and tournapulls, asphalt plant engineers, roller (high grade finishing); caterpillar-type tractors with frontend overhead loaders and rubbertired loaders 2 c.y. up to & including 3 c.y., maintenance engineers with tools; spreaders, high or low pressure boilers, concrete pumps, well drillers, forklift trucks of all types; bulldozers D-7 or equivalent and over; ditch witch type trencher, motor patrol; machines similar to the above

CLASS IV - Concrete breaking machines, rollers and machines similar to the above

CLASS V - All bulldozers under D-7, tractors including rubber-tired type with front and overhead loaders under 2 c.y., seaman pulverizing mixer, welders and maintenance engineers, tireman on power equipment, maintenance engineer (Power boat), and machines similar to the above

CLASS VI - Conveyors (building), welding machines, heaters, wellpoints, compressors, farm tractors, form line graders, road finishing machines, pumps, power broom (self contained), seed spreader and machines similar to the above

CLASS VII - Fireman

CLASS VIII - Oilers and deck hand (personnel boats)

DECISION NO. PA77-3016

FOOTNOTE:

a. Paid Holidays: New Year's Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day; and Christmas Day providing the employee works the day before and after the holiday.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
TRUCK DRIVERS					
CLASS I	7.92	.6425	.625	a+b	
CLASS II	8.02	.6425	.625	a+b	
CLASS III	8.22	.6425	.625	a+b	

CLASSIFICATIONS DEFINITIONS

CLASS I - Warehouseman, checker, fork lift driver, stake body truck (single axle), 1½ ton and under vehicles

CLASS II - Truck driver over 1½ tons, dump trucks, tandem and batch trucks semi-trailers, agitator mixer trucks, and dumpcrete type vehicles, asphalt distributors, farm tractor when used for transportation, stake body truck (tandem)

CLASS III - Euclid type, off-highway equipment - back or belly dump trucks and double - hitched equipment straddle (Ross) carrier, lowbed trailers

FOOTNOTES:

a. Employer will earn one (1) vacation day every two (2) months up to a maximum of five (5) vacation days (40 hours pay) per calendar year. During each two (2) consecutive month period, employee must have worked twenty-six (26) days in that two month period. After 130 workdays the employee will be entitled to all days of vacation, employees with five (5) years or more senority shall be eligible for two (2) weeks of vacation.

b. Paid Holidays: Memorial Day; Independence Day; Labor Day and (5) personal holidays for employees who have worked a minimum of thiry days and are on the employer's senority list, provided he works the schedule work days before and after the said holidays.

SUPERSEDEAS DECISION

STATE: Pennsylvania **COUNTIES:** Butler, Cambria, Erie, Fayette, Mercer, Washington, Westmoreland, Lawrence, Somerset, Allegheny, Beaver, Armstrong, Blair, Cameron, Centre, Clarion, Clearfield, Crawford, Forest, Greene, Indiana, McKean, Venango, Warren, Bedford, Jefferson, Clinton, Elk, Franklin, Fulton, Huntingdon, Mifflin and Potter

DECISION No.: PA77-3023 **DATE:** Date of Publication

Supersedes Decision No. PA76-3158 dated April 9, 1976 in 41 FR 15315.

DESCRIPTION OF WORK: Heavy and Highway Construction

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CARPENTERS					
ZONE 1	$10.13	8%	7%		
ZONE 2	9.80	8%	7%		
CARPENTER - WELDER					
ZONE 1	10.48	8%	7%		
ZONE 2	10.15	8%	7%		

AREA COVERED BY CARPENTERS ZONES

ZONE 1 - Allegheny, Armstrong, Beaver, Butler, Erie, Fayetta, Graene, Lawrence, Mercer, Washington and Westmoreland

ZONE 2 - Bedford, Blair, Cambria, Cameron, Centre, Clarion, Clinton, Clearfield, Crawford, Elk, Forest, Franklin, Fulton, Huntingdon, Indiana, Jefferson, McKean, Mifflin, Potter, Somerset, Venango and Warren

CEMENT MASONS	9.55	.57	1.53		
PILEDRIVERMEN	10.60	5%	10%		.01
IRONWORKERS	7.71	.785	.905		

	Basic Hourly Rates ZONE 1	BASIC HOURLY RATE ZONE 2	BASIC HOURLY RATE ZONE 3	FRINGES BENEFITS H&W	PEN
LABORERS					
CLASS 1	$ 7.71	7.56	7.44	.60	.60
CLASS 2	7.90	7.78	7.66	.60	.60
CLASS 3	8.21	8.09	7.95	.60	.60
CLASS 4	8.33	8.21	8.09	.60	.60
CLASS 5	8.40	8.40	8.40	.60	.60
CLASS 6	9.55	9.55	9.55	.60	.60
CLASS 7	7.71	7.54	7.42	.60	.60
CLASS 8	7.95	7.78	7.66	.60	.60
CLASS 9	8.21	8.09	7.95	.60	.60
CLASS 10	8.33	8.21	8.09	.60	.60
CLASS 10	8.40	8.40	8.40	.60	.60

DECISION NO. PA77-3023

AREA COVERED BY LABORERS ZONES

ZONE 1 - Allegheny, Beaver, Butler, Cambria, Erie, Fayette, Mercer, Washington, Westmoreland, Lawrence and Somerset.

ZONE 2 - Armstrong, Blair, Cameron, Centre, Clarion, Clearfield, Crawford, Forest, Greene, Indiana, McKean, Venango and Warren

ZONE 3 - Bedford, Jefferson, Clinton, Elk, Franklin, Fulton, Huntingdon, Mifflin and Potter

CLASSIFICATION DEFINITIONS
FOR ALL ZONES

CLASS 1 - Construction Laborer (including tenders handling Salamanders, L.P. gas heaters or similar, etc.), Air or electric Impector Wrench, Air Tamper Operator, Asphalt Tampera, Batcherman (weigh), Blaster's Helper, Blower Man (bulk cement), Brakeman, Coffer Dam, Concrete Pitman, Puddler including Vibrator Operator, Drill Runner's Helper (includes drill mounted on truck, track or similar and Davey drills (spots - clean-up and helps to maintain), Fence Construction, Form Stripper and Mover, Hydro-jet Blaster Nozzlemen, Manually moved Emulsion Sprayer, Radio actuated traffic control operator (non-automatic), Rip Rap work, Scaffolds and runways (as per agreement of record), Sheeters and Shorers, Structural Concrete Top Surfacer, Walk Behind Street Sweeper, Welder's Helper (pipeline), Wood Chipper

CLASS 2 - Asphalt, Batch and Concrete Plant Operator (mannually operated), Asphalt Rakers, Burner, Caisson Men (open Air), Carryable Pumps, Chain Saw Operator, Chipping Hammer or similar (air or otherwisw), Combination Tamper and Vibrator, Concrete Buster (paving breaker), Cribbing (concrete or steel), Curb Machine Operator (asphalt and concrete) walk behind), Earth Drill, Fork Lift (walk behind), Form Setter (road forms line man), Handyman, Highway Slab Reinforcement Placers (including joint and basket setter), Hydraulic Pipe Pusher, Jack Hammer Operator, Liner Plates (tile or vitrified clay), Manually operated Diamond Head Core Drill, Mechanical Joint Sealer, Dope Pot, and Tar Kettle, Mortar Mixer (hand or machine), Pin Drivers or Puller (power-highway), Pipe Layers, Plant set-up, Maintenance Men, Portable single unit Conveyor, Post Hole Auger (2 or 4 cycle) (hand operated), Power Fence Operator, Power Wheelbarrows and Buggies, Rail Porter, or similar, Screed Operator, Signal Man, Whacker,

All Railroad Track Work: Adzing Machine, Ballast Router, Bolting Machine, Power Jacks, Rail Drills, Railroad Brakemen, Rail Saws, Spike Drivers, Spike Pullers, Tamping Machine

DECISION NO. PA77-3023

CLASSIFICATION DEFINITIONS
FOR ALL ZONES (CONT'D)

CLASS 3 - Cement Mortar Lining Car Pusher, Cement Mortar Mixer (pipe relining), Cement Saw Operator (walk behind), Form Setter (road forms-lead man), Grout Machine Operator, Gunnite (nozzle and machine man), Paving Block Rammers, Wagon Drill (air track or similar) Operators, Walk Behind Power Rollers (1 or 2 barrel), Walk Behind Roller and Tamper, Walk Behind Ditching Machine (trancher or similar)

CLASS 4 - Blacksmith, Blaster, Brick and Block Pavers (wood, belgain and asphalt), Curb Cutters and Setters, Manhole or Catch Basin Builder (brick, block, concrete or any prefabrication)

CLASS 5 - Multi-plate Pipe (aligning and securing) Placing Wire Mesh on Gunite projects, Reinforcing steel placers (bending, aligning and securing), Welder, elevated roadway drainage

CLASS 6 - Welder (pipeline)

CLASS 7 - Tunnel and Shaft Work (Inside); Change House Attendent

CLASS 8 - Muckers, Brakemen and all other labor (includes installation of utility lines), Signal Man, Drill Runner Helper

CLASS 9 - Miners and Drillers (including lining, supporting and form workmen, setting of shields, miscellaneous equipment and jumbos)

CLASS 10 - Caisson and Tunnel Men under pressure (0-18 pounds)

CLASS 11 - Reinforcing steel placers (bending, aligning and securing)

	BASIC HOURLY RATES	BASIC HOURLY RATES	Fringe Benefits Pensions		
			H & W	PENSION	APPR. TR.
	ZONE 1	ZONE 2			
LANDSCAPE:					
Landscape Laborer	$ 5.50	5.40	.40	.40	
Skilled Landscape Laborer	5.65	5.55	.40	.40	
Landscape Tractor Operator	6.00	5.90	.40	.40	

DECISION NO. PA77-3023

AREA COVERED BY LANDSCAPE
LABORERS ZONES

ZONE 1 - Allegheny, Armstrong, Beaver, Butler, Clarion, Crawford, Fayette, Greene, Indiana, Jefferaon, Lawrence, Mercer, Venango, Washington, Westmoreland

ZONE 2 - Bedford, Blair, Cambria, Cameron, Centre, Clearfield, Clinton, Elk, Erie, Forest, Franklin, Fulton, Huntingdon, McKean, Mifflin, Potter, Somerset, Warren

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LINE CONSTRUCTION					
Journeyman Lineman	$11.32	.30	.113		.056
Experienced Winch Truck Op.	7.92	.30	.079		.039
2nd 1000 Hrs.	7.73	.30	.077		.038
1st 1000 Hrs.	7.55	.30	.075		.037
Experienced Truck Driver	7.36	.30	.074		.036
2nd 1000 Hrs.	7.17	.30	.072		.035
1st 1000 Hrs.	6.98	.30	.071		.034

AREA COVERED BY LINE CONSTRUCTION

Allegheny, Armstrong, Beaver, Bedford, Blair, Cambria, Centre, Clarion, Clearfield, Fayette, Fulton, Greene, Huntingdon, Indiana, Jefferson, Somerset, Washington & Westmoreland Counties, Pennsylvania

	Basic Hourly Rates ZONE 1	BASIC HOURLY RATE ZONE 2	Fringe Benefits Payments Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS					
CLASS 1	$ 9.93	9.64	.65	.60	.09
CLASS 2	9.67	9.36	.65	.60	.09
CLASS 3	7.31	7.02	.65	.60	.09
CLASS 4	6.86	6.53	.65	.60	.09
CLASS 5	6.71	6.42	.65	.60	.09

DECISION NO. PA77-3023

AREA COVERED BY POWER
EQUIPMENT OPERATORS ZONES

ZONE 1 - Allegheny, Armstrong, Beaver, Blair, Butler, Cambria, Centre, Clearfield, Crawford, Erie, Fayette, Greene, Indiana, Jefferson, Lawrence, McKean, Mercer, Somerset, Venango, Warren, Washington, Westmoreland
ZONE 2 - Badford, Cameron, Clarion, Clinton, Elk, Forest, Franklin, Fulton, Huntingdon, Mifflin, Potter

CLASSIFICATION DEFINITION
FOR ALL ZONES

CLASS 1 - Austin Western or Similar (25 ton & over), Austin Western or Similar (under 25 ton), Autograder (C.M.I. & similar), Backfiller, Backhoe - 360 degree Swing, Cableway, Caisson Drill (Similar to Hugh Williams), Central Mix Plant, Cooling Plant, Concrete Paving Mixer, Concrete Pump (self-propelled). Cranes, Cranes (Boom or mast 101 ft. or over up to & including 150 ft. inclusive of jib plus $.25), Cranes (Boom or mast over 150 ft. up to & including 200 ft. inclusive of jib plus $.50), Cranes (Boom or mast over 200 ft. inclusive of jib plus $.75), Cranes (Tower-Stationary-Climbing Tower Crane), Derrick, Derrick Boat, Dozer, Dragline, Dredge, Dredge Hydraulic (1 Leverman 1 Oiler-1 Apprentice), Elevating Grader, Franki Pile Machine, Gradall (Remote control or otherwise), Grader (Power-Fine Grade), Helicopter (1500 lbs. or over lift), Helicopter (Under 1500 lbs. lift), Hilift (4 cy. & over), Hoist 2 Drums or more (in one unit), Hydraulic Boom Truck (With pivotal cab) (Single motor-Pitman or similar), Kocal, Koering Skooper, Lead Mechanic, Locomotive (Std. Gauge), Metro-chip Harvester or similar, Mix Mobile, Mix Mobile (With Self Loading Attachment), Mucking Machine (Tunnel), Pile Driver Machine, Pipe Extrusion Machine, Presplitter Drill (Self Contained), Quad Nine, Refrigeration Plant (Soil stabilization), Scraper, Scraper (Multi-bowl), Shovel-Power, Slip Form Paver (C.M.I. & similar), Trenching Machine (30,000 lbs. & over) Trenching Machine (Under 30,000 lbs.), Tunnel Machine (Mark XXI Jarva or similar) and Whirley

DECISION NO. PA77-3023

CLASSIFICATION DEFINITION
FOR ALL ZONES (CONT'D)

CLASS 2 - Asphalt Paving Machine (Spreader), Asphalt Plant Operator, Athey Loader, Auger (Tractor Mtd.), Auger (Truck Mtd.), Backhoe (Rear Pivotal Swing) (180 degree Swing), Boring Machine, Cable Placer or Layer, Compactor with Blade Concrete Batch Plant (Electronically Synochronized), Concrete Belt Placer (C.M.I. & similar), Concrete Finishing Machine & Spreader, Concrete Mixer (over 1 cy.), Concrete Pump (Stationary), Core Drill (Truck or Skid Mtd. - similar to Penn Drill), Euclid Loader, Fork Lift (Lull or similar), Grader - Power, Grease Unit Operator (Head), Guard Rail Post Driver (Truck Mounted), Guard Rail Post Driver (Skid Type), Hilift (Under 4 cy.), Hydraulic Boom Truck (Non-pivotal cab), Job Work Boat (Powered) (When assistance is required it shall be a Deckhand), Jumbo Operator, Locomotive (Narrow Gauge), Mechanic, Minor Equipment Operator (Accumulative four units), Mucking Machine, Over-Head Crane, Roller-Power-Asphalt, Rosa Carrier, Side Boom or Tractor Mounted Boom, Stone Crusher (Screening-Washing Plants), Stone Spreader (Self-Propelled), Truck Mounted Drill (Davey or similar), Welder & Repairman and Well Point Pump Operator
CLASS 3 - Broom Finisher (C.M.I. or similar), Compactors/Rollers (Static or Vibratory) (Self-propelled), Curb Builder, Minor Equipment Operator (Two to three units), Multi-head Tie Tamper, Pavement Breaker (Self-propelled or ridden), Soil Stabilizer Machine, Tire Repairman (As per Agreement with Teamsters), Tractor (Snaking & Hauling), Well Driller & Horizontal and Winch or "A" Frame Truck (When hoisting & lowering)
CLASS 4 - Ballast Regulator, Compressor, Concrete Mixer (1 cy. & under with skip), Concrete Saw (Ridden or self-propelled), Conveyor, Elevator (Material hauling only), Fork-lift (Ridden or self-propelled), Form Line Machine, Generator, Grout Pump, Heater (Mechanical), Hoist (Single Drum), Ladavator, Light Plant, Mulching Machine, Personnel Boar (powered), Pulverizer, Pumps, Seeding Machine, Spray Cure Machine (power Driven), Subgrader, Tie Puller, Tugger and Welding Machine (Gas or Diesel)
CLASS 5 - Deck Hand, Farm Tractor, Fireman or Boiler, Mechanic's Helper, Oiler, Power Room, Side Delivery Shoulder Spreader (Attachment)

DECISION NO. PA77-3023

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
TRUCK DRIVERS					
ZONE 1					
CLASS 1	$ 8.55	7.3%	4.2%		
CLASS 2	8.29	7.3%	4.2%		
CLASS 3	8.39	7.3%	4.2%		
CLASS 4	8.47	7.3%	4.2%		
CLASS 5	8.34	7.3%	4.2%		
CLASS 6	8.24	7.3%	4.2%		
CLASS 7	8.57	7.3%	4.2%		

CLASSIFICATIONS DEFINITIONS ZONE 1

CLASS I - Heavy Duty Trailer, such as Low-Boy, Dump Trailer, Pole Trailer, A-Frames (when used for transporting materials), Dumpsters, Ross Carriers, Form Trucks, Dual-purpose Trucks (when load has been loaded or unloaded with truck winch, loading, hauling and unloading), Mechanical Tailgate Trucks, Bucket Self-loading Trucks, Farm Tractors (when pulling and hauling), Fork Lift Trucks (in storage areas and warehouses), Tar and Asphalt Distributing Trucks
CLASS 2 - Single-axle Ready-mixed Concrete Trucks (such as agitators, barrel, redi-mix concrete trucks, etc.)
CLASS 3 - Tandem-axle Ready-mixed Concrete Trucks (Suah as agitators barrel, redi-mix concrete trucks, etc.); Liquid Tank Trucks - Straight and Semi including water, sprinkler, oil trucks such as fuel, dump (tandem), Flat bottom, Sicssors, and combination fuel and grease)
CLASS 4 - Tri-axle Ready-Mixed Concrete Trucks (such as agitators, barrel, redi-mix concrete trucks, etc.); Tar and Asphalt Trailer Trucks; Heavy equipment whose capacity exceeds that for which state licenses are issued - specifically refers to units in excess of 8 feet width (such as Euclids, Athey Wagon, Pay-loader, Tournawagons, and similar equipment when ot self-loaded) Rated under forty-five tons, Tri Axle trucks
CLASS 5 - Trucks with Dolley or Trailer
CLASS 6 - Trucks under 33,000 lbs. gross load category (including all types of trucks such as fuel, dump, flat bottom, pickup and similar equipment. Also parts man and warehouseman).
CLASS 7 - Heavy off-the-road equipment (rated at forty-five tons or over): Bottom or Belly-dump Trucks

DECISION NO. PA77-3023

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
TRUCK DRIVERS					
ZONE 2					
CLASS 1	$ 8.35	7.3%	4.2%		
CLASS 2	8.03	7.3%	4.2%		
CLASS 3	8.14	7.3%	4.2%		
CLASS 4	8.30	7.3%	4.2%		
CLASS 5	8.19	7.3%	4.2%		
CLASS 6	8.14	7.3%	4.2%		
CLASS 7	8.00	7.3%	4.2%		
CLASS 8	8.39	7.3%	4.2%		

CLASSIFICATIONS DEFINITIONS ZONE 2

CLASS 1 - Heavy Duty Trailer, such as Low-Boy, Hi-Boy, Dump Trailer, Pole Trailer, A-Frames (when used for transporting materials), Dumpsters, Ross Carriers, Form Trucks, Dual-purpose Trucks (when load has been loaded or unloaded with truck winch, loading, hauling and unloading), Mechanical Tailgate Trucks, Bucket Self-loading Trucks, Farm Tractors (when pulling and Hauling), Fork Lift Trucks (in storage areas and warehouses), Tar and Asphalt Distributing Trucks
CLASS 2 - Single-axle Ready-mixed Concrete Trucks (such as agitators, barrel, redi-mix concrete trucks, etc.)
CLASS 3 - Tandem-axle Ready-mixed Concrete Trucks (such as agitators, barrel, redi-mix concrete trucks, etc.)
CLASS 4 - Tri-axle Ready-mixed Concrete Trucks (such as agitators, barrel, redi-mix concrete trucks, etc.); Tar and Asphalt Trailer Trucks; Tri-axle Trucks); Heavy equipment whose capacity exceeds that for which state licenses are issued - specifically refers to units in excess of 8 feet width (such as Euclids, Athey Wagon, Payloader, Tournawagons, and similar equipment when not self-loaded) Rated under forty-five tons
CLASS 5 - Liquid Tank Trucks - Straight and Semi (including water, sprinkler, oil trucks, etc.); Trucks over 33,000 lbs. gross load category (including all types of trucks such as fuel, dump (tandem), flat bottom, scissors and combination fuel and grease);
CLASS 6 - Trucks with Dolley or Trailer
CLASS 7 - Trucks under 33,000 lbs. gross load category (including all types of trucks such as fuel, dump, flat bottom, pickup and similar equipment. Also parts man and warehouseman.)
CLASS 8 - Heavy off-the-road Equipment (rated at forty-five tons and over); Bottom or Belly dump trucks

AREA COVERED BY TRUCK DRIVERS ZONES

ZONE 1 - Allegheny, Armstrong, Beaver, Blair, Butler, Cambria, Centre Clearfield, Crawford, Erie, Fayette, Greene, Indiana, Jefferson, Lawrence, McKean, Mercer, Somerset, Venango, Warren, Washington, Westmoreland
ZONE 2 - Bedford, Cameron, Clarion, Clinton, Elk, Forest, Franklin, Fulton, Huntingdon, Mifflin, Potter

SUPERSEDEAS DECISION

STATE: Texas

COUNTY: Statewide (excluding Dallas-Fort Worth Regional Airport)

DECISION NO.: TX77-4008

DATE: Date of Publication

Supersedes Decision No. TX76-4153, dated October 1, 1976, in 41 FR 43635

DESCRIPTION OF WORK: See "Area Covered by Various Zones"

	ZONE 1 Basic Hourly Rates	ZONE 2 Basic Hourly Rates	ZONE 3 Basic Hourly Rates	ZONE 4 Basic Hourly Rates	ZONE 5 Basic Hourly Rates
Air Tool Man	$ -	$2.75	$2.75	$ -	$2.75
Asphalt Heaterman	3.50	3.45	3.00	3.00	3.00
Asphalt Raker	3.90	3.25	3.55	3.10	3.25
Asphalt Shoveler	-	2.75	2.75	2.85	2.30
Batching Plant Scaleman	4.55	4.00	3.45	3.60	3.60
Batterboard Setter	-	3.00	3.65	2.50	3.45
Carpenter	4.70	4.25	4.50	3.90	4.00
Carpenter Helper	3.75	3.55	3.85	3.60	3.10
Concrete Finisher (Paving)	4.30	4.00	4.25	4.00	4.00
Concrete Finisher Helper (Paving)	3.00	3.20	3.25	3.00	2.50
Concrete Finisher (Structures)	4.80	4.05	4.25	3.40	3.50
Concrete Finisher Helper (Structures)	3.90	3.00	3.35	2.75	3.20
Concrete Rubber	-	-	-	2.75	3.00
Electrician	-	6.25	4.00	6.60	6.85
Electrician Helper	-	3.80	-	5.00	3.60
Fireman	-	-	-	-	-
Form Builder (Structures)	4.70	3.50	4.55	3.40	3.90
Form Builder Helper (Structures)	3.75	-	3.50	3.00	3.25
Form Liner (Paving and Curb)	4.00	-	-	2.85	-
Form Setter (Paving and Curb)	4.00	4.50	4.15	3.65	4.00
Form Setter Helper (Paving & Curb)	3.65	3.70	2.75	3.00	3.75
Form Setter (Structures)	5.05	5.05	5.05	3.65	3.90
Form Setter Helper (Structures)	4.40	3.60	2.90	3.15	3.10
Laborer, Common	3.00	2.75	2.50	2.50	2.30
Laborer, Utility Man	3.30	3.50	3.35	2.95	2.85
Manhole Builder, Brick	3.85	-	3.00	-	3.00
Mechanic	4.85	4.40	4.40	4.25	4.05
Mechanic Helper	3.50	3.75	3.00	3.35	3.35
Oiler	4.00	3.80	3.00	3.00	3.15
Serviceman	3.90	3.75	3.60	3.65	3.00
Painter (Structures)	5.00	-	3.50	5.50	4.90
Painter Helper (Structures)	-	-	-	3.70	3.00
Piledrivermen	-	-	-	4.40	4.75
Pipelayer	3.75	3.85	3.50	3.15	3.50
Pipelayer Helper	3.00	3.50	2.90	2.75	2.90
Pneumatic Mortarman	-	-	-	-	2.65
Powderman	4.40	4.00	4.00	4.00	3.75
Powderman Helper	-	-	2.75	3.40	2.50
Reinforcing Steel Setter (Paving)	4.35	-	-	3.50	-
Reinforcing Steel Setter (Structures)	4.75	4.25	4.05	3.40	3.90
Reinforcing Steel Setter Helper	$3.05	$ -	$3.75	$3.00	$3.10
Steel Worker (Structural)	-	-	-	-	3.25
Steel Worker Helper (Structural)	-	-	-	-	-
Sign Erector	3.25	-	-	3.50	3.35
Sign Erector Helper	-	-	-	-	-
Spreader Box Man	3.70	4.00	3.25	3.50	3.25
Swamper	3.45	3.25	-	3.10	3.10
Power Equipment Operators:					
Asphalt Distributor	4.35	3.75	3.70	3.10	3.50
Asphalt Paving Machine	4.65	3.90	3.50	3.35	4.00
Broom or Sweeper Operator	3.25	4.00	3.25	3.30	3.25
Bulldozer, 150 HP and Less	3.75	3.40	3.50	3.75	3.75
Bulldozer, over 150 HP	4.50	4.00	4.00	4.00	4.10
Concrete Paving Curing Machine	3.75	-	-	-	-
Concrete Paving Finishing Machine	4.80	4.35	-	4.65	-
Concrete Paving Form Grader	3.75	-	-	-	-
Concrete Paving Gang Vibrator	-	-	-	-	-
Concrete Paving Grinder	-	-	-	-	-
Concrete Paving Joint Machine	-	-	-	-	-
Concrete Paving Joint Sealer	-	-	-	-	-
Concrete Paving Longitudinal Float	-	-	-	-	-
Concrete Paving Mixer	4.80	-	-	-	3.25
Concrete Paving Saw	4.30	4.00	-	-	-
Concrete Paving Spreader	-	-	-	-	4.35
Paving Sub Grader	-	-	-	-	-
Crane, Clamshell, Backhoe, Derrick, Dragline, Shovel (less than 1½ CY)	4.50	4.05	4.10	4.00	3.85
Crane, Clamshell, Backhoe, Derrick, Dragline, Shovel (1½ CY and Over)	5.05	5.05	4.95	4.45	4.50
Crusher or Screening Plant Op.	4.90	4.00	3.50	3.55	3.75
Elevating Grader	-	4.00	4.10	-	3.50
Form Loader	-	-	-	-	3.25
Foundation Drill Operator (Crawler Mounted)	5.35	3.25	4.60	-	6.00
Foundation Drill Operator (Truck Mounted)	5.85	4.75	4.90	-	5.50
Foundation Drill Operator Helper	3.90	-	-	-	3.75
Front End Loader (2½ CY & Less)	4.00	3.80	3.50	3.50	3.50
Front End Loader (Over 2½ CY)	4.70	4.30	4.00	4.10	4.00
Hoist (Double Drum and Less)	-	-	-	3.10	-

	ZONE 1 Basic Hourly Rates	ZONE 2 Basic Hourly Rates	ZONE 3 Basic Hourly Rates	ZONE 4 Basic Hourly Rates	ZONE 5 Basic Hourly Rates
Power Equipment Operators (Cont'd):					
Mixer (Over 16 CF)	$4.60	$ -	$ -	$ -	$ -
Mixer (16 CF and Less)	-	-	-	-	-
Motor Grader Operator, Fine Grade	5.05	5.00	4.70	4.60	4.50
Motor Grader Operator	4.65	4.50	4.25	4.15	4.00
Pump Crete	-	-	-	-	-
Roller, Steel Wheel (Plant-Mix Pavements)	3.90	3.50	3.50	3.35	3.00
Roller, Steel Wheel (Other-Flat Wheel or Tamping)	3.80	3.00	3.00	3.15	3.00
Roller, Pneumatic (Self-Propelled)	3.50	3.00	3.00	3.05	2.95
Scrapers (17 CY and Less)	4.05	3.75	3.80	3.75	3.50
Scrapers (Over 17 CY)	4.50	4.00	4.15	3.75	3.75
Self-Propelled Hammer	-	-	3.50	-	3.00
Side Boom	4.00	3.25	3.50	-	-
Tractor (Crawler Type) 150 HP and Less	3.60	3.50	3.10	3.50	3.00
Tractor (Crawler Type) over 150 HP	4.00	4.00	3.50	3.80	4.00
Tractor (Pneumatic) 80 HP and Less	3.55	3.00	3.00	2.85	3.00
Tractor (Pneumatic) over 80 HP	3.90	4.00	3.25	3.25	3.25
Traveling Mixer	4.35	3.25	2.75	4.00	3.10
Trenching Machine, Light	4.00	3.00	3.70	3.75	3.50
Trenching Machine, Heavy	4.00	-	3.80	4.25	4.25
Wagon Drill, Boring Machine or Post Hole Driller Operator	3.65	3.75	3.50	3.50	3.50
Truck Drivers:					
Single Axle, Light	3.00	3.00	3.00	3.00	2.95
Single Axle, Heavy	3.50	3.50	3.00	3.00	3.00
Tandem Axle or Semitrailer	3.00	3.00	3.10	-	2.95
Lowboy-Float	3.55	3.00	3.35	3.00	3.35
Transit-Mix	3.50	-	-	3.10	-
Winch	3.25	-	3.40	-	3.25
Vibrator Man (Hand Type)	3.05	-	-	-	-
Weighman (Truck Scales)	3.00	2.95	2.50	2.85	-
Welder	5.05	4.50	4.00	4.20	4.00
Welder Helper	-	-	-	-	3.75

	ZONE 6 Basic Hourly Rates	ZONE 7 Basic Hourly Rates	ZONE 8 Basic Hourly Rates	ZONE 9 Basic Hourly Rates	ZONE 10 Basic Hourly Rates
Air Tool Man	$2.75	$2.50	$3.30	$3.00	$2.75
Asphalt Heaterman	3.25	3.25	2.90	3.40	3.50
Asphalt Raker	3.25	3.50	3.50	3.90	3.75
Asphalt Shoveler	2.75	2.90	-	-	3.00
Batching Plant Scaleman	3.40	3.00	3.75	4.20	4.25
Batterboard Setter	-	3.90	-	-	-
Carpenter	4.00	4.20	4.50	4.00	4.25
Carpenter Helper	2.95	3.00	3.00	3.00	3.50
Concrete Finisher (Paving)	3.35	4.00	4.50	4.25	4.50
Concrete Finisher Helper (Paving)	2.75	2.50	3.60	3.25	3.25
Concrete Finisher (Structures)	3.50	4.00	4.15	4.20	4.25
Concrete Finisher Helper (Structures)	3.15	3.25	3.75	3.45	3.55
Concrete Rubber	-	3.00	2.80	3.35	3.50
Electrician	7.50	7.65	7.75	6.00	6.75
Electrician Helper	+	3.15	2.75	4.00	4.00
Fireman	-	-	-	-	-
Form Builder (Structures)	4.25	4.00	4.00	4.00	4.00
Form Builder Helper (Structures)	3.50	3.75	3.75	3.25	3.80
Form Liner (Paving and Curb)	3.00	3.50	3.75	-	4.50
Form Setter (Paving and Curb)	3.70	3.70	4.00	3.85	4.25
Form Setter Helper (Paving & Curb)	2.85	3.00	3.50	-	3.50
Form Setter (Structures)	3.80	4.10	3.75	4.25	4.25
Form Setter Helper (Structures)	3.00	3.00	3.30	3.25	3.85
Laborer, Common	2.60	2.50	2.50	2.50	2.75
Laborer, Utility Man	3.00	3.10	2.75	3.00	3.35
Manhole Builder, Brick	3.50	3.75	-	-	-
Mechanic	4.10	4.25	4.30	4.50	4.45
Mechanic Helper	3.60	3.75	4.00	4.00	3.35
Oiler	3.10	3.35	3.75	3.25	3.80
Serviceman	2.60	3.40	3.55	3.50	4.00
Painter (Structures)	-	4.00	4.25	5.25	-
Painter Helper (Structures)	-	3.50	-	-	-
Piledrivermen	3.95	3.75	-	-	4.50
Pipelayer	2.85	3.50	3.35	3.35	4.00
Pipelayer Helper	2.60	3.25	3.00	3.00	3.00
Pneumatic Mortarman	-	-	-	-	-
Powderman	3.75	-	4.40	4.50	4.35
Powderman Helper	-	-	-	-	-
Reinforcing Steel Setter (Paving)	-	-	-	-	3.00
Reinforcing Steel Setter (Structures)	3.75	3.65	4.00	4.00	3.50
Reinforcing Steel Setter Helper	2.60	3.50	3.50	3.00	3.00

	ZONE 6 Basic Hourly Rates	ZONE 7 Basic Hourly Rates	ZONE 8 Basic Hourly Rates	ZONE 9 Basic Hourly Rates	ZONE 10 Basic Hourly Rates
Steel Worker (Structural)	$ -	$ -	$4.25	$ -	$4.15
Steel Worker Helper (Structural)	-	-	-	-	3.75
Sign Erector	-	-	3.25	3.25	4.25
Sign Erector Helper	-	-	2.95	3.00	3.90
Spreader Box Man	3.60	3.60	3.00	4.00	4.00
Swamper	-	-	-	3.30	-
Power Equipment Operators:					
Asphalt Distributor	3.40	3.70	3.75	3.95	4.00
Asphalt Paving Machine	3.50	4.25	4.00	4.00	4.00
Broom or Sweeper Operator	3.25	3.50	2.50	3.15	3.25
Bulldozer, 150 HP and Less	3.75	3.70	3.50	4.00	4.00
Bulldozer, over 150 HP	4.15	4.15	4.00	4.40	4.25
Concrete Paving Curing Machine	-	3.50	-	3.50	4.50
Concrete Paving Finishing Machine	-	3.00	-	-	4.00
Concrete Paving Form Grader	-	3.50	-	-	-
Concrete Paving Gang Vibrator	-	3.50	-	-	-
Concrete Paving Grinder	-	3.50	-	-	-
Concrete Paving Joint Machine	-	-	-	-	-
Concrete Paving Joint Sealer	-	-	-	-	-
Concrete Paving Longitudinal Float	-	-	-	-	4.50
Concrete Paving Mixer	-	-	-	-	4.00
Concrete Paving Saw	3.50	-	-	3.50	4.30
Concrete Paving Spreader	-	-	-	-	3.00
Paving Sub Grader	-	3.50	-	-	4.00
Crane, Clamshell, Backhoe, Derrick, Dragline, Shovel (less than 1¼ CY)	3.50	3.90	4.00	4.20	4.25
Crane, Clamshell, Backhoe, Derrick, Dragline, Shovel (1¼ CY and Over)	4.50	4.50	4.75	4.50	4.75
Crusher or Screening Plant Op.	-	3.50	-	4.15	-
Elevating Grader	-	4.00	-	-	-
Form Loader	-	-	-	-	3.25
Foundation Drill Operator (Crawler Mounted)	-	-	5.75	3.50	-
Foundation Drill Operator (Truck Mounted)	4.50	-	5.50	4.35	4.60
Foundation Drill Operator Helper	-	-	4.00	3.00	3.50
Front End Loader (2½ CY and Less)	3.50	3.75	3.50	4.00	3.75
Front End Loader (Over 2½ CY)	3.85	4.00	3.90	4.25	4.50
Hoist (Double Drum and Less)	-	-	-	-	-
Mixer (Over 16 CF)	3.00	4.30	-	-	3.75
Mixer (16 CF and Less)	3.00	-	-	-	3.75

	ZONE 6 Basic Hourly Rates	ZONE 7 Basic Hourly Rates	ZONE 8 Basic Hourly Rates	ZONE 9 Basic Hourly Rates	ZONE 10 Basic Hourly Rates
Power Equipment Operators (Cont'd):					
Motor Grader Operator, Fine Grade	$4.50	$5.00	$4.50	$5.00	$4.50
Motor Grader Operator	3.50	4.25	3.95	4.25	4.25
Pump Crete	-	-	-	-	-
Roller, Steel Wheel (Plant-Mix Pavements)	3.50	3.50	3.15	3.00	3.90
Roller, Steel Wheel (Other-Flat Wheel or Tamping)	2.75	2.70	3.00	3.30	3.50
Roller, Pneumatic (Self-Propelled)	3.30	3.10	2.95	3.40	3.55
Scrapers (17 CY and Less)	3.00	3.25	3.75	3.75	4.25
Scrapers (Over 17 CY)	3.60	3.75	4.05	4.00	4.50
Self-Propelled Hammer	3.15	-	-	-	4.25
Side Boom	-	-	-	-	-
Tractor (Crawler Type) 150 HP and Less	2.80	2.80	2.75	3.35	3.45
Tractor (Crawler Type) over 150 HP	4.00	3.85	4.00	3.75	4.50
Tractor (Pneumatic) 80 HP and Less	3.00	2.60	3.25	3.25	3.60
Tractor (Pneumatic) over 80 HP	3.45	3.40	3.75	3.75	3.90
Traveling Mixer	3.25	3.20	-	3.60	3.35
Trenching Machine, Light	3.75	3.25	3.25	3.25	-
Trenching Machine, Heavy	-	-	4.50	3.85	-
Wagon Drill, Boring Machine or Post Hole Driller Operator	-	3.25	3.10	3.75	3.90
Truck Drivers:					
Single Axle, Light	2.60	2.90	3.15	3.25	3.00
Single Axle, Heavy	2.75	3.00	3.25	-	3.60
Tandem Axle or Semitrailer	-	3.00	3.50	-	3.50
Lowboy-Float	3.50	3.50	-	3.35	4.50
Transit-Mix	-	-	-	-	3.25
Winch	-	3.00	-	-	3.50
Vibrator Man (Hand Type)	-	2.50	3.00	-	-
Weighman (Truck Scales)	-	-	-	2.50	3.00
Welder	3.75	3.90	5.00	4.15	4.50
Welder Helper	-	3.50	-	3.25	-

	ZONE 11 Basic Hourly Rates	ZONE 12 Basic Hourly Rates	ZONE 13 Basic Hourly Rates	ZONE 14 Basic Hourly Rates	ZONE 15 Basic Hourly Rates
Air Tool Man	$3.15	$ -	$2.75	$2.50	$3.50
Asphalt Mesterman	3.75	3.00	3.25	-	3.75
Asphalt Raker	4.00	3.50	3.70	3.25	4.05
Asphalt Shoveler	3.25	2.85	3.10	-	4.00
Batching Plant Scaleman	4.00	4.15	2.75	2.85	4.75
Batterboard Setter	-	-	-	-	4.15
Carpenter	4.25	4.50	4.85	4.35	5.25
Carpenter Helper	3.50	3.65	3.45	4.00	4.00
Concrete Finisher (Paving)	4.50	4.75	4.50	4.25	5.35
Concrete Finisher Helper (Paving)	3.25	4.10	3.85	-	4.00
Concrete Finisher (Structures)	4.50	4.30	4.00	4.50	5.00
Concrete Finisher Helper (Structures)	3.50	3.80	3.75	4.25	3.50
Concrete Rubber	3.25	3.10	-	-	3.80
Electrician	5.85	5.75	5.00	6.75	6.00
Electrician Helper	3.75	-	-	3.50	3.50
Fireman	-	-	2.90	3.00	-
Form Builder (Structures)	4.50	4.00	4.30	4.40	4.50
Form Builder Helper (Structures)	3.75	3.25	3.00	3.80	3.75
Form Liner (Paving and Curb)	4.10	4.05	3.75	-	5.20
Form Setter (Paving and Curb)	4.00	4.00	3.50	-	5.00
Form Setter Helper (Paving & Curb)	3.00	3.25	3.25	-	4.00
Form Setter (Structures)	4.25	4.25	4.45	4.25	4.85
Form Setter Helper (Structures)	3.00	3.40	3.25	3.65	3.70
Laborer, Common	2.75	2.85	2.50	2.50	3.00
Laborer, Utility Man	3.00	3.40	3.00	3.25	3.60
Manhole Builder, Brick	-	-	-	-	3.90
Mechanic	4.50	4.50	4.75	4.70	5.50
Mechanic Helper	3.75	3.90	3.60	3.40	4.10
Oiler	3.75	3.75	3.75	3.50	4.15
Serviceman	3.50	3.35	3.45	3.00	4.30
Painter (Structures)	5.50	4.50	-	-	5.75
Painter Helper (Structures)	4.50	-	-	-	3.75
Piledriverman	-	5.25	-	-	6.00
Pipelayer	3.85	3.25	3.60	3.25	4.60
Pipelayer Helper	3.00	3.00	2.75	2.75	3.50
Pneumatic Mortarman	-	-	-	-	-
Powderman	4.50	4.25	-	3.40	-
Powderman Helper	-	3.25	-	-	-
Reinforcing Steel Setter (Paving)	3.00	3.50	-	-	4.30
Reinforcing Steel Setter (Structures)	4.00	3.75	3.50	3.25	4.55
Reinforcing Steel Setter Helper	2.75	3.25	3.00	-	3.00

	ZONE 11 Basic Hourly Rates	ZONE 12 Basic Hourly Rates	ZONE 13 Basic Hourly Rates	ZONE 14 Basic Hourly Rates	ZONE 15 Basic Hourly Rates
Steel Worker (Structural)	$3.75	$4.35	$ -	$ -	$4.40
Steel Worker Helper (Structural)	3.00	-	-	-	3.25
Sign Erector	4.00	-	-	-	3.25
Sign Erector Helper	-	-	-	-	-
Spreader Box Man	3.65	3.75	4.10	3.75	4.00
Swamper	3.30	3.30	-	-	-
Power Equipment Operators:					
Asphalt Distributor	3.75	3.50	4.00	3.10	4.50
Asphalt Paving Machine	4.00	4.00	4.00	4.10	4.50
Broom or Sweeper Operator	3.50	3.75	2.75	3.25	3.40
Bulldozer, 150 HP and Less	4.25	4.00	4.00	4.00	4.40
Bulldozer, over 150 HP	4.50	4.50	4.50	4.30	5.00
Concrete Paving Curing Machine	4.50	5.00	-	-	4.45
Concrete Paving Finishing Machine	3.70	4.50	-	-	5.00
Concrete Paving Form Grader	4.00	-	-	-	4.25
Concrete Paving Gang Vibrator	-	-	-	-	-
Concrete Paving Grinder	-	-	-	-	-
Concrete Paving Joint Machine	-	-	-	-	5.25
Concrete Paving Joint Sealer	4.00	-	-	-	-
Concrete Paving Longitudinal Float	-	-	-	-	4.50
Concrete Paving Mixer	4.00	4.50	-	-	-
Concrete Paving Saw	4.00	4.50	-	-	5.00
Concrete Paving Spreader	-	4.00	-	-	5.40
Paving Sub Grader	4.00	4.00	-	-	-
Crane, Clamshell, Backhoe, Derrick, Dragline, Shovel (less than 1¼ CY)	4.25	4.30	4.50	4.00	4.40
Crane, Clamshell, Backhoe, Derrick, Dragline, Shovel (1¼ CY and over)	4.50	4.50	4.90	4.50	5.70
Crusher or Screening Plant Op.	4.50	4.35	-	3.25	3.50
Elevating Grader	-	-	-	-	-
Form Loader	3.25	3.75	-	-	3.80
Foundation Drill Operator (Crawler Mounted)	-	5.75	3.50	-	6.00
Foundation Drill Operator (Truck Mounted)	4.55	5.75	5.75	-	4.50
Foundation Drill Operator Helper	3.35	3.90	-	-	-
Front End Loader (2½ CY and Less)	3.75	3.75	3.85	3.50	4.00
Front End Loader (Over 2½ CY)	4.30	4.50	4.60	4.20	4.95
Hoist (Double Drum and Less)	-	-	-	-	3.50
Mixer (Over 16 CF)	-	4.50	-	-	4.65
Mixer (16 CF and Less)	3.75	-	-	-	4.00

	ZONE 11	ZONE 12	ZONE 13	ZONE 14	ZONE 15
	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates
Power Equipment Operators (Cont'd):					
Motor Grader Operator, Fine Grade	$4.50	$4.50	$5.00	$4.50	$5.00
Motor Grader Operator	4.00	4.25	4.00	4.00	4.60
Pump Crete	-	3.60	-	-	-
Roller, Steel Wheel (Plant-Mix Pavements)	4.25	3.80	4.00	3.60	4.00
Roller, Steel Wheel (Other-Flat Wheel or Tamping)	3.50	3.00	3.55	3.25	3.50
Roller, Pneumatic (Self-Propelled)	3.50	3.00	3.60	2.85	4.00
Scrapers (17 CY and Less)	4.00	3.75	4.00	3.75	3.75
Scrapers (Over 17 CY)	4.50	4.00	4.50	4.00	4.45
Self-Propelled Hammer	-	-	-	-	-
Side Boom	-	-	3.35	-	-
Tractor (Crawler Type) 150 HP and Less	3.25	3.60	3.55	-	4.00
Tractor (Crawler Type) over 150 HP	4.25	3.75	4.60	3.50	5.00
Tractor (Pneumatic) 80 HP and Less	3.00	3.25	3.50	3.00	3.00
Tractor (Pneumatic) over 80 HP	4.25	3.50	4.00	-	3.25
Traveling Mixer	3.75	4.05	3.50	3.00	3.90
Trenching Machine, Light	3.75	-	-	-	3.75
Trenching Machine, Heavy	3.85	-	-	-	-
Wagon Drill, Boring Machine or Post Hole Driller Operator	3.35	3.40	-	3.00	3.10
Truck Drivers:					
Single Axle, Light	3.00	3.00	3.00	3.00	3.00
Single Axle, Heavy	3.40	3.00	3.40	-	4.00
Tandem Axle or Semitrailer	3.00	3.00	3.25	3.00	3.70
Lowboy-Float	3.80	3.00	4.15	-	4.60
Transit-Mix	3.50	-	-	-	3.50
Winch	3.50	-	-	-	3.50
Vibrator Man (Hand Type)	3.00	2.85	-	-	-
Weighman (Truck Scales)	3.00	3.15	-	-	3.35
Welder	4.55	4.60	4.50	3.60	5.50
Welder Helper	3.50	-	-	-	4.40

	ZONE 16				
	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates
Air Tool Man	$ -				
Asphalt Heaterman	3.60				
Asphalt Raker	4.00				
Asphalt Shoveler	-				
Batching Plant Scaleman	4.00				
Batterboard Setter	-				
Carpenter	5.10				
Carpenter Helper	4.00				
Concrete Finisher (Paving)	5.60				
Concrete Finisher Helper (Paving)	4.50				
Concrete Finisher (Structures)	5.50				
Concrete Finisher Helper (Structures)	4.00				
Concrete Rubber	-				
Electrician	6.65				
Electrician Helper	-				
Fireman	-				
Form Builder (Structures)	4.25				
Form Builder Helper (Structures)	-				
Form Liner (Paving and Curb)	-				
Form Setter (Paving and Curb)	4.00				
Form Setter Helper (Paving & Curb)	-				
Form Setter (Structures)	5.50				
Form Setter Helper (Structures)	3.50				
Laborer, Common	3.50				
Laborer, Utility Man	4.00				
Manhole Builder, Brick	-				
Mechanic	4.75				
Mechanic Helper	4.00				
Oiler	4.00				
Serviceman	3.50				
Painter (Structures)	-				
Painter Helper (Structures)	-				
Piledrivermen	5.00				
Pipelayer	3.50				
Pipelayer Helper	-				
Pneumatic Mortarman	-				
Powderman	-				
Powderman Helper	-				
Reinforcing Steel Setter (Paving)	-				
Reinforcing Steel Setter (Structures)	4.75				
Reinforcing Steel Setter Helper	-				

	ZONE 16				
	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates
Steel Worker (Structural)	$ -				
Steel Worker Helper (Structural)	-				
Sign Erector	-				
Sign Erector Helper	-				
Spreader Box Man	4.50				
Swamper	-				
Power Equipment Operators:					
Asphalt Distributor	5.00				
Asphalt Paving Machine	4.60				
Broom or Sweeper Operator	3.50				
Bulldozer, 150 HP and Less	4.75				
Bulldozer, over 150 HP	5.00				
Concrete Paving Curing Machine	4.50				
Concrete Paving Finishing Machine	4.50				
Concrete Paving Form Grader	4.50				
Concrete Paving Gang Vibrator	-				
Concrete Paving Grinder	-				
Concrete Paving Joint Machine	4.50				
Concrete Paving Joint Sealer	-				
Concrete Paving Longitudinal Float	4.50				
Concrete Paving Mixer	-				
Concrete Paving Saw	-				
Concrete Paving Spreader	4.75				
Paving Sub Grader	-				
Crane, Clamshell, Backhoe, Derrick, Dragline, Shovel (less than 1½ CY)	5.00				
Crane, Clamshell, Backhoe, Derrick, Dragline, Shovel (1½ CY and Over)	5.00				
Crusher or Screening Plant Op.	-				
Elevating Grader	-				
Form Loader	-				
Foundation Drill Operator (Crawler Mounted)	-				
Foundation Drill Operator (Truck Mounted)	-				
Foundation Operator Helper	-				
Front End Loader (2½ CY and Less)	4.50				
Front End Loader (Over 2½ CY)	5.00				
Hoist (Double Drum and Less)	-				
Mixer (Over 16 CF)	-				
Mixer (16 CF and Less)	-				

	ZONE 16				
	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates
Power Equipment Operators (Cont'd):					
Motor Grader Operator, Fine Grade	$5.00				
Motor Grader Operator	4.50				
Pump Crete	-				
Roller, Steel Wheel (Plant-Mix Pavements)	4.50				
Roller, Steel Wheel (Other-Flat Wheel or Tamping)	4.50				
Roller, Pneumatic (Self-Propelled)	4.50				
Scrapers (17 CY and Less)	4.35				
Scrapers (Over 17 CY)	5.00				
Self-Propelled Hammer	-				
Side Boom	-				
Tractor (Crawler Type) 150 HP and Less	-				
Tractor (Crawler Type) over 150 HP	4.50				
Tractor (Pneumatic) 80 HP and Less	3.50				
Tractor (Pneumatic) over 80 HP	4.50				
Traveling Mixer	4.50				
Trenching Machine, Light	-				
Trenching Machine, Heavy	-				
Wagon Drill, Boring Machine or Post Hole Driller Operator	-				
Truck Drivers:					
Single Axle, Light	3.50				
Single Axle, Heavy	3.50				
Tandem Axle or Semitrailer	3.50				
Lowboy-Float	5.75				
Transit-Mix	-				
Winch	-				
Vibrator Man (Hand Type)	-				
Weighman (Truck Scales)	-				
Welder	5.50				
Welder Helper	-				

AREA COVERED BY VARIOUS ZONES

ZONE 1 - Archer, Armstrong, Baylor, Briscoe, Carson, Castro, Childress, Clay, Collingsworth, Dallam, Deaf Smith, Donley, Gray, Hall, Hansford, Hardeman, Hartley, Hemphill, Hutchinson, Lipscomb, Montague, Moore, Ochiltree, Oldham, Parmer, Potter, Randall, Roberts, Sherman, Swisher, Wheeler, Wichita & Wilbarger Counties

DESCRIPTION OF WORK: Heavy (excluding tunnels & dams) and Highway Construction and Paving & Utilities Incidental to General Building Construction. This wage determination does not apply to any residential construction (single family homes and garden type apartments up to and including 4 stories).

ZONE 2 - Bailey, Borden, Cochran, Cottle, Crosby, Dawson, Dickens, Fisher, Floyd, Foard, Gaines, Garza, Hale, Haskell, Hockley, Jones, Kent, King, Knox, Lamb, Lubbock, Lynn, Motley, Scurry, Shackelford, Stephens, Stonewall, Terry, Throckmorton, Yoakum & Young Counties

DESCRIPTION OF WORK: Heavy (excluding tunnels & dams) and Highway Construction and Paving & Utilities Incidental to General Building Construction. This wage determination does not apply to any residential construction (single family homes and garden type apartments up to and including 4 stories).

ZONE 3 - Andrews, Brown, Callahan, Coke, Coleman, Comanche, Concho, Crane Crockett, Eastland, Ector, Erath, Glasscock, Howard, Irion, Kimble, Loving, Martin, McCulloch, Menard, Midland, Mills, Mitchell, Nolan, Reagan, Runnels, San Saba, Schleicher, Sterling, Sutton, Taylor, Tom Green, Upton, Ward & Winkler Counties

DESCRIPTION OF WORK: Heavy (excluding tunnels & dams) and Highway Construction and Paving & Utilities Incidental to General Building Construction. This wage determination does not apply to any residential construction (single family homes and garden type apartments up to and including 4 stories)

ZONE 4 - Brewster, Culberson, El Paso*, Hudspeth, Jeff Davis, Pecos, Presidio, Reeves & Terrell Counties

DESCRIPTION OF WORK: Heavy (excluding tunnels & dams) and Highway Construction and Paving & Utilities Incidental to General Building Construction. This wage determination does not apply to any residential construction (single family homes and garden type apartments up to and including 4 stories).

*Not to be used for Utilities Incidental to General Building Construction in El Paso County

ZONE 5 - Atascosa, Bandera, Bexar, Comal, Dimmit, Edwards, Frio, Guadalupe, Kendall, Kerr, Kinney, LaSalle, Maverick, McMullen, Medina, Real, Uvalde, Val Verde, Wilson & Zavala Counties

DESCRIPTION OF WORK: Heavy (excluding tunnels & dams) and Highway Construction and Paving & Utilities Incidental to General Building Construction. This wage determination does not apply to any residential construction (single family homes and garden type apartments up to and including 4 stories).

ZONE 6 - Brooks, Cameron, Duval, Hidalgo, Jim Hogg, Kenedy, Starr, Webb, Willacy & Zapata Counties

DESCRIPTION OF WORK: Heavy (excluding tunnels & dams) and Highway Construction, Incidental Shore Work and Paving & Utilities Incidental to General Building Construction. This wage determination does not apply to any residential construction (single family homes and garden type apartments up to and including 4 stories).

ZONE 7 - Aransas, Bee, Calhoun, DeWitt, Goliad, Jackson, Jim Wells, Karnes, Kleberg, Lavaca, Live Oak, Nueces, Refugio, San Patricio & Victoria Counties

DESCRIPTION OF WORK: Heavy (excluding tunnels & dams) and Highway Construction, Incidental Shore Work and Paving & Utilities Incidental to General Building Construction. The wage determination does not apply to any residential construction (single family homes and garden type apartments up to and including 4 stories)

ZONE 8 - Austin, Bastrop, Blanco, Burnet, Caldwell, Colorado, Fayette, Gillespie, Gonzales, Hays, Lee, Llano, Mason, Travis & Williamson Counties

DESCRIPTION OF WORK: Heavy (excluding tunnels & dams) and Highway Construction and Paving & Utilities Incidental to General Building Construction. This wage determination does not apply to any residential construction (single family homes and garden type apartments up to and including 4 stories).

ZONE 9 - Bell*, Bosque, Coryell*, Falls, Freestone, Hamilton, Bill, Lampasas, Limestone, McLennan & Navarro Counties

DESCRIPTION OF WORK: Heavy (excluding tunnels & dams) and Highway Construction and Paving & Utilities Incidental to General Building Construction. This wage determination does not apply to any residential construction (single family homes and garden type apartments up to and including 4 stories.

*Not to be used for Paving & Utilities Incidental to General Building Construction in Bell & Coryell Counties.

ZONE 10 - Cooke, Denton, Hood, Jack, Johnson, Palo Pinto, Parker, Somervell, Tarrant* & Wise Counties

DESCRIPTION OF WORK: Heavy (excluding tunnels, dams & work performed on the site of water or sewage treatment facilities) and Highway Construction and Paving & Utilities Incidental to General Building Construction. This wage determination does not apply to any residential construction (single family homes and garden type apartments up to and including 4 stories).

*Not to be used for Utilities Incidental to General Building Construction in Tarrant County

ZONE 11 - Collin, Dallas, Ellis, Grayson, & Rockwall Counties

DESCRIPTION OF WORK: Heavy (excluding tunnels, dams & work performed on the site of water or sewage treatment facilities) and Highway Construction and Paving & Utilities Incidental to General Building Construction. This wage determination does not apply to any residential construction (single family homes and garden type apartments up to and including 4 stories).

ZONE 12 - Bowie, Camp, Cass, Delta, Fannin, Franklin, Gregg, Harrison, Hopkins, Hunt, Kaufman, Lamar, Marion, Morris, Rains, Red River, Rusk, Smith, Titus, Upshur, Van Zandt & Wood Counties

DESCRIPTION OF WORK: Heavy (excluding tunnels & dams) and Highway Construction and Paving & Utilities Incidental to General Building Construction. This wage determination does not apply to any residential construction (single family homes and garden type apartments up to and including 4 stories).

ZONE 13 - Anderson, Angelina, Cherokee, Henderson, Houston, Jasper, Nacogdoches, Newton, Panola, Polk, Sabine, San Augustine, San Jacinto, Shelby, Trinity & Tyler Counties

DESCRIPTION OF WORK: Heavy (excluding tunnels & dams) and Highway Construction and Incidental Shore Work and Paving & Utilities Incidental to General Building Construction. This wage determination does not apply to any residential construction (single family homes and garden type apartments up to and including 4 stories).

ZONE 14 - Brazos, Burleson, Grimes, Leon, Madison, Milam, Robertson, Walker & Washington Counties

DESCRIPTION OF WORK: Heavy (excluding tunnels & dams) and Highway Construction and Paving & Utilities Incidental to General Building Construction. This wage determination does not apply to any residential construction (single family homes and garden type apartments up to and including 4 stories).

ZONE 15 - Brazoria, Fort Bend, Galveston*, Harris, Matagorda, Montgomery, Waller & Wharton Counties

DESCRIPTION OF WORK: Heavy (excluding tunnels, dams & work performed on the site of water or sewage treatment facilities) and Highway Construction, Incidental Shore Work and Paving & Utilities Incidental to General Building Construction. This wage determination does not apply to any residential construction (single family homes and garden type apartments up to and including 4 stories).

*Not to be used for Paving & Utilities Incidental to General Building Construction on Galveston Island

ZONE 16 - Chambers, Hardin, Jefferson*, Liberty & Orange* Counties

DESCRIPTION OF WORK: Heavy (excluding tunnels & dams) and Highway Construction, Incidental Shore Work and Paving & Utilities Incidental to General Building Construction. This wage determination does not apply to any residential construction (single family homes and garden type apartments up to and including 4 stories).

*Not to be used for Heavy Construction, Incidental Shore Work and Paving & Utilities Incidental to General Building Construction in Jefferson & Orange Counties.

SUPERSEDEAS DECISION

STATE: Texas

COUNTIES: Anderson, Cherokee & Henderson

DECISION NO.: TX77-4009

DATE: Date of Publication

Supersedeas Decision No. TX76-4154, dated October 1, 1976, in 41 FR 43643.

DESCRIPTION OF WORK: Residential construction consisting of single family homes and garden type apartments up to and including 4 stories.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
AIR CONDITIONING MECHANICS	$ 4.30				
BRICKLAYERS	5.00				
CARPENTERS	4.80				
CEMENT MASONS	3.12				
ELECTRICIANS	6.35		1%		1/4%
IRONWORKERS	4.25				
LABORERS	2.30				
PAINTERS:					
Brush	4.00				
Tape & bed	5.00				
PLUMBERS	5.50				
ROOFERS	3.50				
SHEET METAL WORKERS	3.00				
SOFT FLOOR LAYERS	3.50				
TRUCK DRIVERS	2.50				

DECISION NO. TX77-4009

INCIDENTAL PAVING & UTILITIES & SITE PREPARATION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Air Tool Man	$ 2.75				
Asphalt Heaterman	3.25				
Asphalt Raker	3.70				
Asphalt Shoveler	3.10				
Batching Plant Scaleman	2.75				
Carpenter	4.85				
Carpenter Helper	3.45				
Concrete Finisher (Paving)	4.50				
Concrete Finisher Helper (Paving)	3.65				
Concrete Finisher (Structures)	4.00				
Concrete Finisher Helper (Structures)	3.75				
Electrician	5.00				
Fireman	2.90				
Form Builder (Structures)	4.30				
Form Builder Helper (Structures)	3.00				
Form Liner (Paving and Curb)	3.75				
Form Setter (Paving and Curb)	3.50				
Form Setter Helper (Paving & Curb)	3.25				
Form Setter (Structures)	4.45				
Form Setter Helper (Structures)	3.25				
Laborer, Common	2.50				
Laborer, Utility Man	3.00				
Mechanic	4.75				
Mechanic Helper	3.60				
Oiler	3.75				
Serviceman	3.45				
Pipelayer	3.60				
Pipelayer Helper	2.75				
Reinforcing Steel Setter (Structures)	3.50				
Reinforcing Steel Setter Helper	3.00				
Spreader Box Man	4.10				
Power Equipment Operators:					
Asphalt Distributor	4.00				
Asphalt Paving Machine	4.00				
Broom or Sweeper Operator	2.75				
Bulldozer, 150 HP and Less	4.00				
Bulldozer, over 150 HP	4.50				

DECISION NO. TX77-4009

INCIDENTAL PAVING & UTILITIES & SITE PREPARATION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Power Equipment Operators (Cont'd):					
Crane, Clamshell, Backhoe, Derrick, Dragline, Shovel (less than 1½ CY)	$ 4.50				
Crane, Clamshell, Backhoe, Derrick, Dragline, Shovel (1½ CY and Over)	4.90				
Foundation Drill Operator (Crawler Mounted)	3.50				
Foundation Drill Operator (Truck Mounted)	3.75				
Front End Loader (2½ CY & Less)	3.85				
Front End Loader (Over 2½ CY)	4.60				
Motor Grader Operator, Fine Grade	5.00				
Motor Grader Operator	4.00				
Roller, Steel Wheel (Plant-Mix Pavements)	4.00				
Roller, Steel Wheel (Other-Flat Wheel or Tamping)	3.55				
Roller, Pneumatic (Self-Propelled)	3.60				
Scrapers (17 CY and Less)	4.00				
Scrapers (Over 17 CY)	4.50				
Side Boom	3.35				
Tractor (Crawler Type) 150 HP and Less	3.55				
Tractor (Crawler Type) over 150 HP	4.60				
Tractor (Pneumatic) 80 HP & Less	3.50				
Tractor (Pneumatic) over 80 HP	4.00				
Traveling Mixer	3.50				
Truck Drivers:					
Single Axle, Light	3.00				
Single Axle, Heavy	3.40				
Tandem Axle or Semitrailer	3.25				
Lowboy-Float	4.15				
Welder	4.50				

SUPERSEDEAS DECISION

STATE: Texas

COUNTIES: Armstrong, Carson, Castro, Childress, Collingsworth, Dallam, Deaf Smith, Donley, Gray, Hansford, Hartley, Hemphill, Hutchinson, Lipscomb, Moore, Ochiltree, Oldham, Potter, Randall, Roberts, Sherman, Swisher & Wheeler

DECISION NO.: TX77-4010

DATE: Date of Publication

Supersedeas Decision No. TX76-4155, dated October 1, 1976, in 41 FR 43645.

DESCRIPTION OF WORK: Residential construction consisting of single family homes and garden type apartments up to and including 4 stories.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
BRICKLAYERS	$ 9.30		.30		
CARPENTERS	9.20				
CEMENT MASONS	8.30				
ELECTRICIANS	9.88	.40	1%		1/2%
LABORERS:					
Laborers	4.89	.43	.15		
Mason tenders	5.04	.43	.15		
PAINTERS	7.95		.30		
PLUMBERS	8.56	.35	.55	.60	
SHEET METAL WORKERS	5.08		.10		
TILE SETTERS	4.60				

DECISION NO. TX77-4010

INCIDENTAL PAVING & UTILITIES & SITE PREPARATION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Asphalt Heaterman	$ 3.50				
Asphalt Raker	3.90				
Batching Plant Scaleman	4.55				
Carpenter	4.70				
Carpenter Helper	3.75				
Concrete Finisher (Paving)	4.30				
Concrete Finisher Helper (Paving)	3.00				
Concrete Finisher (Structures)	4.80				
Concrete Finisher Helper (Structures)	3.90				
Form Builder (Structures)	4.70				
Form Builder Helper (Structures)	3.75				
Form Liner (Paving and Curb)	4.00				
Form Setter (Paving and Curb)	4.00				
Form Setter Helper (Paving & Curb)	3.65				
Form Setter (Structures)	5.05				
Form Setter Helper (Structures)	4.40				
Laborer, Common	3.00				
Laborer, Utility Man	3.30				
Manhole Builder, Brick	3.85				
Mechanic	4.85				
Mechanic Helper	3.50				
Oiler	4.00				
Serviceman	3.90				
Painter (Structures)	5.00				
Pipelayer	3.75				
Pipelayer Helper	3.00				
Powderman	4.40				
Reinforcing Steel Setter (Paving)	4.35				
Reinforcing Steel Setter (Structures)	4.75				
Reinforcing Steel Setter Helper	3.05				
Sign Erector	3.25				
Spreader Box Man	3.70				
Swamper	3.45				
Power Equipment Operators:					
Asphalt Distributor	4.35				
Asphalt Paving Machine	4.65				
Broom or Sweeper Operator	3.25				
Bulldozer, 150 HP and Less	3.75				
Bulldozer, over 150 HP	4.50				

DECISION NO. TX77-4010

INCIDENTAL PAVING & UTILITIES & SITE PREPARATION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Power Equipment Operators (Cont'd):					
Concrete Paving Curing Machine	$ 3.75				
Concrete Paving Finishing Machine	4.80				
Concrete Paving Form Grader	3.75				
Concrete Paving Mixer	4.80				
Concrete Paving Saw	4.30				
Crane, Clamshell, Backhoe, Derrick, Dragline, Shovel (less than 1½ CY)	4.30				
Crane, Clamshell, Backhoe, Derrick, Dragline, Shovel (1½ CY and Over)	5.05				
Crusher or Screening Plant Op.	4.90				
Foundation Drill Operator (Crawler Mounted)	5.35				
Foundation Drill Operator (Truck Mounted)	5.85				
Foundation Drill Operator Helper	3.90				
Front End Loader (2½ CY & Less)	4.00				
Front End Loader (Over 2½ CY)	4.70				
Mixer (Over 16 CF)	4.60				
Motor Grader Operator, Fine Grade	5.05				
Motor Grader Operator	4.65				
Roller, Steel Wheel (Plant-Mix Pavements)	3.90				
Roller, Steel Wheel (Other-Flat Wheel or Tamping)	3.80				
Roller, Pneumatic (Self-Propelled)	3.50				
Scrapers (17 CY and Less)	4.05				
Scrapers (Over 17 CY)	4.50				
Side Boom	4.00				
Tractor (Crawler Type) 150 HP and Less	3.60				
Tractor (Crawler Type) over 150 HP	4.00				
Tractor (Pneumatic) 80 HP & Less	3.55				
Tractor (Pneumatic) over 80 HP	3.90				
Traveling Mixer	4.35				
Trenching Machine, Light	4.00				
Trenching Machine, Heavy	4.00				
Wagon Drill, Boring Machine or Post Hole Driller Operator	3.65				

DECISION NO. TX77-4010

INCIDENTAL PAVING & UTILITIES & SITE PREPARATION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Truck Drivers:					
Single Axle, Light	$ 3.00				
Single Axle, Heavy	3.50				
Tandem Axle or Semitrailer	3.00				
Lowboy-Float	3.55				
Transit-Mix	3.50				
Winch	3.25				
Vibrator Man (Hand Type)	3.05				
Weighman (Truck Scales)	3.00				
Welder	3.05				

SUPERSEDEAS DECISION

STATE: Texas

COUNTIES: Bosque, Freestone, Hill, Limestone, McLennan & Navarro

DECISION NO.: TX77-4011

DATE: Date of Publication

Supersedes Decision No. TX76-4161, dated October 15, 1976, in 41 FR 45814 and also dated October 22, 1976, in 41 FR 46838.

DESCRIPTION OF WORK: Residential construction consisting of single family homes and garden type apartments up to and including 4 stories.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
BRICKLAYERS	$ 6.50				
CARPENTERS	5.75				
CEMENT MASONS	5.63				
ELECTRICIANS	4.31				
IRONWORKERS	5.515	.15	.30		.02
LABORERS	3.00				
PAINTERS, BRUSH	4.50				
PLUMBERS & PIPEFITTERS	6.00				
ROOFERS	4.00				
SHEET METAL WORKERS	4.25				
TILE SETTERS	5.00				
TRUCK DRIVERS	2.88				
POWER EQUIPMENT OPERATORS:					
Front end loaders	3.95				
Motor graders	3.95				

Page 2

DECISION NO. TX77-4011

INCIDENTAL PAVING & UTILITIES & SITE PREPARATION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Air Tool Man	$ 3.00				
Asphalt Heaterman	3.40				
Asphalt Raker	3.90				
Batching Plant Scaleman	4.20				
Carpenter	4.00				
Carpenter Helper	3.00				
Concrete Finisher (Paving)	4.25				
Concrete Finisher Helper (Paving)	3.25				
Concrete Finisher (Structures)	4.20				
Concrete Finisher Helper (Structures)	3.45				
Concrete Rubber	3.35				
Electrician	6.00				
Electrician Helper	4.00				
Form Builder (Structures)	4.00				
Form Builder Helper (Structures)	3.25				
Form Setter (Paving and Curb)	3.85				
Form Setter (Structures)	4.25				
Form Setter Helper (Structures)	3.25				
Laborer, Common	2.50				
Laborer, Utility Man	3.00				
Mechanic	4.50				
Mechanic Helper	4.00				
Oiler	3.25				
Serviceman	3.50				
Painter (Structures)	5.25				
Pipelayer	3.35				
Pipelayer Helper	3.00				
Powderman	4.50				
Reinforcing Steel Setter (Structures)	4.00				
Reinforcing Steel Setter Helper	3.00				
Sign Erector	3.25				
Sign Erector Helper	3.00				
Spreader Box Man	4.00				
Swamper	3.30				
Power Equipment Operators:					
Asphalt Distributor	3.95				
Asphalt Paving Machine	4.00				
Broom or Sweeper Operator	3.15				
Bulldozer, 150 HP and Less	4.00				
Bulldozer, over 150 HP	4.40				

Page 3

DECISION NO. TX77-4011

INCIDENTAL PAVING & UTILITIES & SITE PREPARATION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Power Equipment Operators (Cont'd):					
Concrete Paving Curing Machine	$ 3.50				
Concrete Paving Saw	3.50				
Crane, Clamshell, Backhoe, Derrick, Dragline, Shovel (less than 1½ CY)	4.20				
Crane, Clamshell, Backhoe, Derrick, Dragline, Shovel (1½ CY and Over)	4.50				
Crusher or Screening Plant Op.	4.15				
Foundation Drill Operator (Crawler Mounted)	3.50				
Foundation Drill Operator (Truck Mounted)	4.35				
Foundation Drill Operator Helper	3.00				
Front End Loader (2½ CY & Less)	4.00				
Front End Loader (Over 2½ CY)	4.25				
Motor Grader Op., Fine Grade	5.00				
Motor Grader Operator	4.25				
Roller, Steel Wheel (Plant-Mix Pavements)	3.00				
Roller, Steel Wheel (Other-Flat Wheel or Tamping)	3.30				
Roller, Pneumatic (Self-Propelled)	3.40				
Scrapers (17 CY and Less)	3.75				
Scrapers (Over 17 CY)	4.00				
Tractor (Crawler Type) 150 HP and Less	3.35				
Tractor (Crawler Type) over 150 HP	3.75				
Tractor (Pneumatic) 80 HP & Less	3.25				
Tractor (Pneumatic) over 80 HP	3.75				
Traveling Mixer	3.60				
Trenching Machine, Light	3.25				
Trenching Machine, Heavy	3.85				
Wagon Drill, Boring Machine or Post Hole Driller Operator	3.75				
Truck Drivers:					
Single Axle, Light	3.25				
Lowboy-Float	3.35				
Weighman (Truck Scales)	2.50				
Welder	4.15				
Welder Helper	3.25				

SUPERSEDEAS DECISION

STATE: Texas

COUNTIES: Camp, Delta, Fannin, Franklin, Hopkins, Lamar & Titus

DECISION NO. TX77-4012

DATE: Date of Publication

Supersedes Decision No. TX76-4156, dated October 1, 1976, in 41 FR 43647.

DESCRIPTION OF WORK: Residential construction consisting of single family homes and garden type apartments up to and including 4 stories.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
BRICKLAYERS	$ 6.50				
CARPENTERS	4.00				
CEMENT MASONS	4.50				
ELECTRICIANS	4.30				
LABORERS:					
Laborers	2.59				
Mason tenders	3.00				
LATHERS	7.90				
PAINTERS:					
Brush	4.00				
Taper	4.00				
PLASTERERS	7.465	.35		.50	.03
PLUMBERS	5.64				
ROOFERS	5.00				
SHEET METAL WORKERS	4.77				
SOFT FLOOR LAYERS	5.00				
TILE SETTERS	4.625				

DECISION NO. TX77-4012

INCIDENTAL PAVING & UTILITIES & SITE PREPARATION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Asphalt Heaterman	$ 3.00				
Asphalt Raker	3.50				
Asphalt Shoveler	2.85				
Batching Plant Scaleman	4.15				
Carpenter	4.50				
Carpenter Helper	3.65				
Concrete Finisher (Paving)	4.75				
Concrete Finisher Helper (Paving)	4.10				
Concrete Finisher (Structures)	4.30				
Concrete Finisher Helper (Structures)	3.60				
Concrete Rubber	3.10				
Electrician	5.75				
Form Builder (Structures)	4.00				
Form Builder Helper (Structures)	3.25				
Form Liner (Paving and Curb)	4.05				
Form Setter (Paving and Curb)	4.00				
Form Setter Helper (Paving & Curb)	3.25				
Form Setter (Structures)	4.25				
Form Setter Helper (Structures)	3.40				
Laborer, Common	2.85				
Laborer, Utility Man	3.40				
Mechanic	4.50				
Mechanic Helper	3.90				
Oiler	3.75				
Serviceman	3.35				
Painter (Structures)	4.50				
Piledriverman	5.25				
Pipelayer	3.25				
Pipelayer Helper	3.00				
Powderman	4.25				
Powderman Helper	3.25				
Reinforcing Steel Setter (Paving)	3.50				
Reinforcing Steel Setter (Structures)	3.75				
Reinforcing Steel Setter Helper	3.25				
Steel Worker (Structural)	4.35				
Spreader Box Man	3.75				
Swamper	3.30				

DECISION NO. TX77-4012

INCIDENTAL PAVING & UTILITIES & SITE PREPARATION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Power Equipment Operators:					
Asphalt Distributor	$ 3.50				
Asphalt Paving Machine	4.00				
Broom or Sweeper Operator	3.75				
Bulldozer, 150 HP and Less	4.00				
Bulldozer, over 150 HP	4.50				
Concrete Paving Curing Machine	5.00				
Concrete Paving Finishing Machine	4.50				
Concrete Paving Mixer	4.50				
Concrete Paving Saw	4.50				
Concrete Paving Spreader	4.00				
Paving Sub Grader	4.00				
Crane, Clamshell, Backhoe, Derrick, Dragline, Shovel (less than 1¼ CY)	4.30				
Crane, Clamshell, Backhoe, Derrick, Dragline, Shovel (1¼ CY and Over)	4.50				
Crusher or Screening Plant Op.	4.35				
Form Loader	3.75				
Foundation Drill Operator (Crawler Mounted)	5.75				
Foundation Drill Operator (Truck Mounted)	5.75				
Foundation Drill Op. Helper	3.90				
Front End Loader (2½ CY & Less)	3.75				
Front End Loader (Over 2½ CY)	4.50				
Mixer (Over 16 CF)	4.50				
Motor Grader Operator, Fine Grade	4.50				
Motor Grader Operator	4.25				
Pump Crete	3.60				
Roller, Steel Wheel (Plant-Mix Pavements)	3.80				
Roller, Steel Wheel (Other-Flat Wheel or Tamping)	3.00				
Roller, Pneumatic (Self-Propelled)	3.00				
Scrapers (17 CY and Less)	3.75				
Scrapers (Over 17 CY)	4.00				

DECISION NO. TX77-4012

INCIDENTAL PAVING & UTILITIES & SITE PREPARATION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Power Equipment Operators (Cont'd):					
Tractor (Crawler Type) 150 HP and Less	$ 3.60				
Tractor (Crawler Type) over 150 HP	3.75				
Tractor (Pneumatic) 80 HP & Less	3.25				
Tractor (Pneumatic) over 80 HP	3.50				
Traveling Mixer	4.05				
Wagon Drill, Boring Machine or Post Hole Driller Operator	3.40				
Truck Drivers:					
Single Axle, Light	3.00				
Single Axle, Heavy	3.00				
Tandem Axle or Semitrailer	3.00				
Lowboy-Float	3.00				
Vibrator Man (Hand Type)	2.85				
Weighman (Truck Scales)	3.15				
Welder	4.60				

SUPERSEDEAS DECISION

STATE: Texas

COUNTIES: Gregg, Harrison, Rusk & Upshur

DECISION NO.: TX77-4013

DATE: Date of Publication

Supersedes Decision No. TX76-4163, dated October 8, 1976, in 41 FR 44676.

DESCRIPTION OF WORK: Residential construction consisting of single family homes and garden type apartments up to and including 4 stories.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
AIR CONDITIONING MECHANICS	$ 4.00				
BRICKLAYERS	6.00				
CARPENTERS	4.88				
CEMENT MASONS	3.965				
ELECTRICIANS:					
Single or multiple family dwellings or apartments up to and including 3 families	5.50		1%		1%
Over 3 families	7.95	.40	1%		1/4%
IRONWORKERS, STRUCTURAL & ORNAMENTAL	4.30				
LABORERS	3.98				
PAINTERS, BRUSH	5.25				
PLASTERERS	7.50				
PLUMBERS & PIPEFITTERS	6.40				
ROOFERS	3.00				
SHEET METAL WORKERS	5.50				
TILE SETTERS	5.00				
TRUCK DRIVERS	3.00				

DECISION NO. TX77-4013

INCIDENTAL PAVING & UTILITIES & SITE PREPARATION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Asphalt Heaterman	$ 3.00				
Asphalt Raker	3.50				
Asphalt Shoveler	2.85				
Batching Plant Scaleman	4.15				
Carpenter	4.50				
Carpenter Helper	3.65				
Concrete Finisher (Paving)	4.75				
Concrete Finisher Helper (Paving)	4.10				
Concrete Finisher (Structures)	4.30				
Concrete Finisher Helper (Structures)	3.60				
Concrete Rubber	3.10				
Electrician	5.75				
Form Builder (Structures)	4.00				
Form Builder Helper (Structures)	3.25				
Form Liner (Paving and Curb)	4.05				
Form Setter (Paving and Curb)	4.00				
Form Setter Helper (Paving & Curb)	3.25				
Form Setter (Structures)	4.25				
Form Setter Helper (Structures)	3.40				
Laborer, Common	2.85				
Laborer, Utility Man	3.40				
Mechanic	4.50				
Mechanic Helper	3.90				
Oiler	3.75				
Serviceman	3.35				
Painter (Structures)	4.50				
Piledrivermen	5.25				
Pipelayer	3.25				
Pipelayer Helper	3.00				
Powderman	4.25				
Powderman Helper	3.25				
Reinforcing Steel Setter (Paving)	3.50				
Reinforcing Steel Setter (Structures)	3.75				
Reinforcing Steel Setter Helper	3.25				
Steel Worker (Structural)	4.35				
Spreader Box Man	3.75				
Swamper	3.30				

DECISION NO. TX77-4013

INCIDENTAL PAVING & UTILITIES & SITE PREPARATION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Power Equipment Operators:					
Asphalt Distributor	$ 3.50				
Asphalt Paving Machine	4.00				
Broom or Sweeper Operator	3.75				
Bulldozer, 150 HP and Less	4.00				
Bulldozer, over 150 HP	4.50				
Concrete Paving Curing Machine	5.00				
Concrete Paving Finishing Machine	4.50				
Concrete Paving Mixer	4.50				
Concrete Paving Saw	4.50				
Concrete Paving Spreader	4.00				
Paving Sub Grader	4.00				
Crane, Clamshell, Backhoe, Derrick, Dragline, Shovel (less than 1½ CY)	4.30				
Crane, Clamshell, Backhoe, Derrick, Dragline, Shovel (1½ CY and Over)	4.50				
Crusher or Screening Plant Op.	4.35				
Form Loader	3.75				
Foundation Drill Operator (Crawler Mounted)	5.75				
Foundation Drill Operator (Truck Mounted)	5.75				
Foundation Drill Operator Helper	3.90				
Front End Loader (2½ CY & Less)	3.75				
Front End Loader (Over 2½ CY)	4.50				
Mixer (Over 16 CF)	4.50				
Motor Grader Op., Fine Grade	4.50				
Motor Grader Operator	4.25				
Pump Crete	3.60				
Roller, Steel Wheel (Plant-Mix Pavements)	3.80				
Roller, Steel Wheel (Other-Flat Wheel or Tamping)	3.00				
Roller, Pneumatic (Self-Propelled)	3.00				
Scrapers (17 CY and Less)	3.75				
Scrapers (Over 17 CY)	4.00				

DECISION NO. TX77-4013

INCIDENTAL PAVING & UTILITIES & SITE PREPARATION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Power Equipment Operators (Cont'd):					
Tractor (Crawler Type) 150 HP and Less	$ 3.60				
Tractor (Crawler Type) over 150 HP	3.75				
Tractor (Pneumatic) 80 HP & Less	3.25				
Tractor (Pneumatic) over 80 HP	3.50				
Traveling Mixer	4.05				
Wagon Drill, Boring Machine or Post Hole Driller Operator	3.40				
Truck Drivers:					
Single Axle, Light	3.00				
Single Axle, Heavy	3.00				
Tandem Axle or Semitrailer	3.00				
Lowboy-Float	3.00				
Vibrator Man (Hand Type)	2.85				
Weighman (Truck Scales)	3.15				
Welder	4.60				

SUPERSEDEAS DECISION

Page 2

STATE: Texas COUNTY: Howard
DECISION NO.: TX77-4014 DATE: Date of Publication
Supersedes Decision No. TX76-4164, dated October 8,1976, in 41 FR 44665.
DESCRIPTION OF WORK: Building (including Residential) Construction. (See current heavy & highway general wage determination for Paving & Utilities Incidental to Building Construction).

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
BRICKLAYERS	$ 7.00				
CARPENTERS	6.10				
CEMENT MASONS	5.00				
ELECTRICIANS	7.40	.30	1%		1/10%
IRONWORKERS, STRUCTURAL & ORNAMENTAL	8.23	.55	1.00		.10
LABORERS:					
Laborers	3.06				
Mason tenders	3.50				
PAINTERS	4.50				
PLUMBERS	4.26				
ROOFERS	4.00				
SHEET METAL WORKERS	5.25				
TILE SETTERS	4.00				
TRUCK DRIVERS	2.50				
WELDERS - receive rate prescribed for craft performing operation to which welding is incidental.					

DECISION NO. TX77-4014

INCIDENTAL PAVING & UTILITIES & SITE PREPARATION (RESIDENTIAL CONSTRUCTION ONLY)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Air Tool Man	$ 2.75				
Asphalt Heaterman	3.00				
Asphalt Raker	3.55				
Asphalt Shoveler	2.75				
Batching Plant Scaleman	3.45				
Batterboard Setter	3.65				
Carpenter	4.50				
Carpenter Helper	3.85				
Concrete Finisher (Paving)	4.25				
Concrete Finisher Helper (Paving)	3.25				
Concrete Finisher (Structures)	4.25				
Concrete Finisher Helper (Structures)	3.35				
Electrician	4.00				
Form Builder (Structures)	4.35				
Form Builder Helper (Structures)	3.50				
Form Setter (Paving and Curb)	4.15				
Form Setter Helper (Paving & Curb)	2.75				
Form Setter (Structures)	5.05				
Form Setter Helper (Structures)	2.90				
Laborer, Common	2.50				
Laborer, Utility Man	3.35				
Manhole Builder, Brick	3.00				
Mechanic	4.40				
Mechanic Helper	3.00				
Oiler	3.00				
Serviceman	3.60				
Painter (Structures)	3.50				
Pipelayer	3.50				
Pipelayer Helper	2.90				
Powderman	4.00				
Powderman Helper	2.75				
Reinforcing Steel Setter (Structures)	4.05				
Reinforcing Steel Setter Helper	3.75				
Spreader Box Man	3.25				
Power Equipment Operators:					
Asphalt Distributor	3.70				
Asphalt Paving Machine	3.50				
Broom or Sweeper Operator	3.25				
Bulldozer, 150 HP and Less	3.50				
Bulldozer, over 150 HP	4.00				

Page 3

DECISION NO. TX77-4014

INCIDENTAL PAVING & UTILITIES & SITE PREPARATION (RESIDENTIAL CONSTRUCTION ONLY)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Power Equipment Operators (Cont'd):					
Crane, Clamshell, Backhoe, Derrick, Dragline, Shovel (less than 1½ CY)	$ 4.10				
Crane, Clamshell, Backhoe, Derrick, Dragline, Shovel (1½ CY and Over	4.95				
Crusher or Screening Plant Op.	3.50				
Elevating Grader	4.10				
Foundation Drill Operator (Crawler Mounted)	4.60				
Foundation Drill Operator (Truck Mounted)	4.90				
Front End Loader (2½ CY & Less)	3.50				
Front End Loader (Over 2½ CY)	4.00				
Motor Grader Operator, Fine Grade	4.70				
Motor Grader Operator	4.25				
Roller, Steel Wheel (Plant-Mix Pavements)	3.50				
Roller, Steel Wheel (Other-Flat Wheel or Tamping)	3.00				
Roller, Pneumatic (Self-Propelled)	3.00				
Scrapers (17 CY and Less)	3.80				
Scrapers (Over 17 CY)	4.15				
Self-Propelled Hammer	3.50				
Side Boom	3.50				
Tractor (Crawler Type) 150 HP and Less	3.10				
Tractor (Crawler Type) over 150 HP	3.50				
Tractor (Pneumatic) 80 HP & Less	3.00				
Tractor (Pneumatic) over 80 HP	3.25				
Traveling Mixer	2.75				
Trenching Machine, Light	3.70				
Trenching Machine, Heavy	3.80				
Wagon Drill, Boring Machine or Post Hole Driller Operator	3.50				
Truck Drivers:					
Single Axle, Light	3.00				
Single Axle, Heavy	3.00				
Tandem Axle or Semitrailar	3.10				
Lowboy-Float	3.35				
Winch	3.40				
Weighman (Truck Scales)	2.50				
Welder	4.00				

SUPERSEDEAS DECISION

Page 2

STATE: Texas
DECISION NO.: TX77-4015
COUNTIES: Smith, Van Zandt & Wood
DATE: Date of Publication
Supersedeas Decision No. TX76-4165, dated October 8, 1976, in 41 FR 44678.
DESCRIPTION OF WORK: Residential construction consisting of single family homes and garden type apartments up to and including 4 stories.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
BRICKLAYERS	$ 6.00				
CARPENTERS	5.00				
CEMENT MASONS	4.75				
ELECTRICIANS	5.25				
GLAZIERS	4.20				
IRONWORKERS, STRUCTURAL & ORNAMENTAL	4.94				
LABORERS	3.00				
LATHERS	5.80				
PAINTERS, BRUSH	4.50				
PLASTERERS	6.00				.01
PLUMBERS & PIPEFITTERS	4.10				
ROOFERS	4.30				
SHEET METAL WORKERS	4.00				
TILE SETTERS	4.125				
TRUCK DRIVERS	2.62				

DECISION NO. TX77-4015

INCIDENTAL PAVING & UTILITIES & SITE PREPARATION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Asphalt Heaterman	$ 3.00				
Asphalt Raker	3.50				
Asphalt Shoveler	2.85				
Batching Plant Scaleman	4.15				
Carpenter	4.50				
Carpenter Helper	3.65				
Concrete Finisher (Paving)	4.75				
Concrete Finisher Helper (Paving)	4.10				
Concrete Finisher (Structures)	4.30				
Concrete Finisher Helper (Structures)	3.60				
Concrete Rubber	3.10				
Electrician	5.75				
Form Builder (Structures)	4.00				
Form Builder Helper (Structures)	3.25				
Form Liner (Paving and Curb)	4.05				
Form Setter (Paving and Curb)	4.00				
Form Setter Helper (Paving & Curb)	3.25				
Form Setter (Structures)	4.25				
Form Setter Helper (Structures)	3.40				
Laborer, Common	2.85				
Laborer, Utility Man	3.40				
Mechanic	4.50				
Mechanic Helper	3.90				
Oiler	3.75				
Serviceman	3.35				
Painter (Structures)	4.50				
Piledriverman	5.25				
Pipelayer	3.25				
Pipelayer Helper	3.00				
Powderman	4.25				
Powderman Helper	3.25				
Reinforcing Steel Setter (Paving)	3.50				
Reinforcing Steel Setter (Structures)	3.75				
Reinforcing Steel Setter Helper	3.25				
Steel Worker (Structural)	4.35				
Spreader Box Man	3.75				
Swamper	3.30				

Page 3

DECISION NO. TX77-4015

INCIDENTAL PAVING & UTILITIES & SITE PREPARATION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Power Equipment Operators:					
Asphalt Distributor	$ 3.50				
Asphalt Paving Machine	4.00				
Broom or Sweeper Operator	3.75				
Bulldozer, 150 HP and Less	4.00				
Bulldozer, over 150 HP	4.50				
Concrete Paving Curing Machine	5.00				
Concrete Paving Finishing Machine	4.50				
Concrete Paving Mixer	4.50				
Concrete Paving Saw	4.50				
Concrete Paving Spreader	4.00				
Paving Sub Grader	4.00				
Crane, Clamshell, Backhoe, Derrick, Dragline, Shovel (less than 1½ CY)	4.30				
Crane, Clamshell, Backhoe, Derrick, Dragline, Shovel (1½ CY and Over	4.50				
Crusher or Screening Plant Op.	4.35				
Form Loader	3.75				
Foundation Drill Operator (Crawler Mounted)	5.75				
Foundation Drill Operator (Truck Mounted)	5.75				
Foundation Drill Op. Helper	3.90				
Front End Loader (2½ CY & Less)	3.75				
Front End Loader (Over 2½ CY)	4.50				
Mixer (Over 16 CF)	4.50				
Motor Grader Op., Fine Grade	4.50				
Motor Grader Operator	4.25				
Pump Crete	3.60				
Roller, Steel Wheel (Plant-Mix Pavements)	3.80				
Roller, Steel Wheel (Other-Flat Wheel or Tamping)	3.00				
Roller, Pneumatic (Self-Propelled)	3.00				
Scrapers (17 CY and Less)	3.75				
Scrapers (Over 17 CY)	4.00				
Tractor (Crawler Type) 150 HP and Less	3.60				
Tractor (Crawler Type) over 150 HP	3.75				

Page 4

DECISION NO. TX77-4015

INCIDENTAL PAVING & UTILITIES & SITE PREPARATION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Power Equipment Operators (Cont'd):					
Tractor (Pneumatic) 80 HP & Less	$ 3.25				
Tractor (Pneumatic) over 80 HP	3.50				
Traveling Mixer	4.05				
Wagon Drill, Boring Machine or Post Hole Driller Operator	3.40				
Truck Drivers:					
Single Axle, Light	3.00				
Single Axle, Heavy	3.00				
Tandem Axle or Semitrailer	3.00				
Lowboy-Float	3.00				
Vibrator Man (Hand Type)	2.85				
Weighman (Truck Scales)	3.15				
Welder	4.60				

SUPERSEDEAS DECISION

STATE: Texas COUNTY: Wichita
DECISION NO.: TX77-4016 DATE: Date of Publication
Supersedes Decision No. TX76-4166, dated October 8, 1976, in 41 FR 44667.
DESCRIPTION OF WORK: Residential construction consisting of single family homes and garden type apartments up to and including 4 stories.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
BRICKLAYERS	$ 7.00				
CARPENTERS	6.00				
CEMENT MASONS	4.50				
ELECTRICIANS	5.55				
LABORERS:					
Laborers	3.00				
Mason tenders	3.55				
PAINTERS, BRUSH	4.32				
PLUMBERS & PIPEFITTERS	5.53				
ROOFERS	4.00				
SHEET METAL WORKERS	5.30				
SOFT FLOOR LAYERS	5.00				

DECISION NO. TX77-4016

INCIDENTAL PAVING & UTILITIES & SITE PREPARATION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Asphalt Heaterman	$ 3.50				
Asphalt Raker	3.90				
Batching Plant Scaleman	4.55				
Carpenter	4.70				
Carpenter Helper	3.75				
Concrete Finisher (Paving)	4.30				
Concrete Finisher Helper (Paving)	3.00				
Concrete Finisher (Structures)	4.80				
Concrete Finisher Helper (Structures)	3.90				
Form Builder (Structures)	4.70				
Form Builder Helper (Structures)	3.75				
Form Liner (Paving and Curb)	4.00				
Form Setter (Paving and Curb)	4.00				
Form Setter Helper (Paving & Curb)	3.65				
Form Setter (Structures)	5.05				
Form Setter Helper (Structures)	4.40				
Laborer, Common	3.00				
Laborer, Utility Man	3.30				
Manhole Builder, Brick	3.85				
Mechanic	4.85				
Mechanic Helper	3.50				
Oiler	4.00				
Serviceman	3.90				
Painter (Structures)	5.00				
Pipelayer	3.75				
Pipelayer Helper	3.00				
Powderman	4.40				
Reinforcing Steel Setter (Paving)	4.35				
Reinforcing Steel Setter (Structures)	4.75				
Reinforcing Steel Setter Helper	3.05				
Sign Erector	3.25				
Spreader Box Man	3.70				
Swamper	3.45				
Power Equipment Operators:					
Asphalt Distributor	4.35				
Asphalt Paving Machine	4.65				
Broom or Sweeper Operator	3.25				
Bulldozer, 150 HP and Less	3.75				
Bulldozer, over 150 HP	4.50				
Concrete Paving Curing Machine	3.75				

DECISION NO. TX77-4016

INCIDENTAL PAVING & UTILITIES & SITE PREPARATION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Power Equipment Operators (Cont'd):					
Concrete Paving Finishing Machine	$ 4.80				
Concrete Paving Form Grader	3.75				
Concrete Paving Mixer	4.80				
Concrete Paving Saw	4.30				
Crane, Clamshell, Backhoe, Derrick, Dragline, Shovel (less than 1½ CY)	4.50				
Crane, Clamshell, Backhoe, Derrick, Dragline, Shovel (1½ CY and Over)	5.05				
Crusher or Screening Plant Op.	4.90				
Foundation Drill Operator (Crawler Mounted)	5.35				
Foundation Drill Operator (Truck Mounted)	5.85				
Foundation Drill Op. Helper	3.90				
Front End Loader (2½ CY & Less)	4.00				
Front End Loader (Over 2½ CY)	4.70				
Mixer (Over 16 CF)	4.60				
Motor Grader Op., Fine Grade	5.05				
Motor Grader Operator	4.65				
Roller, Steel Wheel (Plant-Mix Pavements)	3.90				
Roller, Steel Wheel (Other-Flat Wheel or Tamping)	3.80				
Roller, Pneumatic (Self-Propelled)	3.50				
Scrapers (17 CY and Less)	4.05				
Scrapers (Over 17 CY)	4.50				
Side Boom	4.00				
Tractor (Crawler Type) 150 HP and Less	3.60				
Tractor (Crawler Type) over 150 HP	4.00				
Tractor (Pneumatic) 80 HP & Less	3.55				
Tractor (Pneumatic) over 80 HP	3.90				
Traveling Mixer	4.35				
Trenching Machine, Light	4.00				
Trenching Machine, Heavy	4.00				
Wagon Drill, Boring Machine or Post Hole Driller Operator	3.65				

DECISION NO. TX77-4016

INCIDENTAL PAVING & UTILITIES & SITE PREPARATION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Truck Drivers:					
Single Axle, Light	$ 3.00				
Single Axle, Heavy	3.50				
Tandem Axle or Semitrailer	3.00				
Lowboy-Float	3.55				
Transit-Mix	3.50				
Winch	3.25				
Vibrator Man (Hand Type)	3.05				
Weighman (Truck Scales)	3.00				
Welder	5.05				

SUPERSEDEAS DECISION

STATE: Utah **COUNTIES:** Statewide
DECISION NUMBER: UT77-5006 **DATE :** Date of Publication
Supersedes Decision No. UT76-5097 dated November 5, 1976, in 41 FR 49003.
DESCRIPTION OF WORK: Building Construction (excluding single family homes and garden type apartments up to and including 4 stories), heavy and highway construction.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$ 10.56	.52	$ 1.17		
BOILERMAKERS	11.45	.75	1.00	.50	.02
BRICKLAYERS	10.36	.45	.32+.10		.09
CARPENTERS:					
Building Construction:					
Carpenters	9.25	.50	.60		.03
Saw Operators; Carpenters handling creosote materials	9.50	.50	.60		.03
Millwrights	9.85	.50	.60		.03
Piledrivermen	11.63	.50	.60		.03
Heavy and Highway Construction:					
Zone 1: Area 0 to 40 miles from the following Cities:— Brigham City, Cedar City, Kanab, Logan, Moab, Monticello, Ogden, Price, Provo, Richfield, St. George, Salt Lake City, Vernal:	—				
Carpenters	9.25	.50	.60		.03
Saw Operators; Carpenters handling creosote materials	9.50	.50	.60		.03
Millwrights	9.85	.50	.60		.03
Piledrivermen	11.63	.50	.60		.03
Zone 2: Area 40 to 60 miles from the above-named Cities:					
Carpenters	10.25	.50	.60		.03
Saw Operators; Carpenters handling creosote materials	10.50	.50	.60		.03
Millwrights	9.85	.50	.60		.03
Piledrivermen	11.63	.50	.60		.03

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CARPENTERS: (Cont'd)					
Heavy and Highway Construction (Cont'd)					
Zone 3: Area over 60 miles from the above-named Cities:					
Carpenters	$ 11.25	.50	.60		.03
Saw Operators; Carpenters handling creosote materials	11.50	.50	.60		.03
Millwrights	9.85	.50	.60		.03
Piledrivermen	11.63	.50	.60		.03
CEMENT MASONS:					
Building Construction:					
Cement Masons	9.01	.50	.60		.03
Machine Operator; Mastic Floor Materials	9.14	.50	.60		.03
Swing Scaffold; Swing Stage	9.26	.50	.60		.03
Heavy and Highway Construction:					
Zone 1: Area 0 to 40 miles from the following Cities: Brigham City, Cedar City, Kanab, Logan, Moab, Monticello, Ogden, Price, Provo, Richfield, St. George, Salt Lake City, Vernal:					
Cement Masons	9.01	.50	.60		.03
Machine Operator; Mastic Floor Materials	9.14	.50	.60		.03
Swing Scaffold, Swing Stage	9.26	.50	.60		.03
Zone 2: Area 40 to 60 miles from the above-named Cities:					
Cement Masons	10.01	.50	.60		.03
Machine Operator; Mastic Floor Materials	10.14	.50	.60		.03
Swing Scaffold; Swing Stage	10.26	.50	.60		.03
Zone 3: Area over 60 miles from the above-named Cities:					
Cement Masons	11.01	.50	.60		.03
Machine Operator; Mastic Floor Materials	11.14	.50	.60		.03
Swing Scaffold; Swing Stage	11.26	.50	.60		.03

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DRYWALL INSTALLERS:					
Taping, finishing and texturing (hand or machine)	$ 9.54	.51	.30		.03
ELECTRICIANS:					
North section of Utah - Box Elder, Cache, Davis County (north of 41st Parallel), Morgan, Rich, Weber Counties:					
Zone 1: That area 10 miles on either side of Interstate Hwy. #15, commencing on the south at the 41st Parallel in Davis County, continuing north to Hwy. #91 Interstate 15 junction south of Brigham City; at this point go east and north through Logan and continue north to the 42nd Parallel in Cache County on Hwy #91:					
Electricians; Technicians	10.50	.45	1%+.50		8/10%
Cable Splicers	10.75	.45	1%+.50		8/10%
Zone 2: That area not included in Zone 1 that lies east of 112°20' longitude in Box Elder County and that area lying west of 111°35', north of the 41st Parallel and south of the 40th Parallel in Cache, Morgan, Weber Counties:					
Electricians; Technicians	11.00	.45	1%+.50		8/80%
Cable Splicers	11.25	.45	1%+.50		8/10%
Zone 3: All remaining Area north of 41st Parallel:					
Electricians; Technicians	12.50	.45	1%+.50		8/10%
Cable Splicers	12.75	.45	1%+.50		8/10%
In the above areas on any job or project not exceeding $35,000 electrical, labor and material including, Zone 1 rates shall apply.					

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ELECTRICIANS: Cont'd)					
South section of Utah (Remaining Counties):					
Zone 1: Davis County (south of 41st Parallel); Salt Lake County; Tooele County (northeast corner beginning at a point where the township line between Township 3 south and Township 4 south, Salt Lake Base Meridian, intersects the east boundary line of Tooele County and thence west along said township line to the southwest corner of Section 32, Township 3 south, Range 4 west, Salt Lake Base Meridian, thence north to the northwest corner of Section 17 of Township 3 south, Range 4 west, thence west to longitude 112.5°, thence north along the line of longitude 112.5° to the north line of Tooele County); Utah County (north of 40th Parallel):					
Area A: Ten miles either direction (east or west) from Interstate Hwy. #15), bounded on the north by the 41st Parallel and on the south by the 40th Parallel:					
Electricians; Technicians	$ 10.50	.45	1%+.50		8/10%
Cable Splicers	10.75	.45	1%+.50		8/10%
Area B: The balance of Zone 1 that lies in Davis, Salt Lake, Utah Counties:					
Electricians; Technicians	11.25	.45	1%+.50		8/10%
Cable Splicers	11.50	.45	1%+.50		8/10%

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ELECTRICIANS: (Cont'd)					
South section of Utah (Remaining Counties): (Cont'd)					
Area C: That portion of the remainder of Zone 1 that lies in Tooele County:					
Electricians; Technicians	$ 12.00	.45	1%+.50		8/10%
Cable Splicers	12.25	.45	1%+.50		8/10%
Zone 2: Remainder of Counties and all portions of Counties not included in Zones 1 and 2 of south section of Utah:					
Electricians; Technicians	13.25	.45	1%+.50		8/10%
Cable Splicers	13.50	.45	1%+.50		8/10%
ELEVATOR CONSTRUCTORS	10.03	.545	.35	3%+a	.02
ELEVATOR CONSTRUCTORS' HELPERS	7.02	.545	.35	3%+a	.02
ELEVATOR CONSTRUCTORS' HELPERS (PROB.)	5.015				
GLAZIERS:					
Iron, Washington Counties	12.88	.35	.40		.05
Remaining Counties	8.34	.51	.20	b	
IRONWORKERS:					
Fence Erectors; Ornamental; Reinforcing; Structural	10.05	.55	1.00		.10
LATHERS	8.88	.50	.50		.01
LINE CONSTRUCTION WORKERS:					
Groundman	7.19	.35	1%		3/4%
Line Equipment Serviceman	8.56	.35	1%		3/4%
Line Equipment Mechanic:					
Base Shop	8.56	.35	1%		3/4%
Right-of-way	9.14	.35	1%		3/4%
Line Equipment Operators	8.70	.35	1%		3/4%
Linemen	9.65	.35	1%		3/4%
Cable Splicers	10.61	.35	1%		3/4%

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
MARBLE SETTERS	$ 10.35	.20			
PAINTERS:					
Area north of the 41st Parallel:					
Brush; Roller	8.19	.51	.50		.03
Spray; Sandblaster; Steeplejack	8.44	.51	.50		.03
Spray (swing stage); Sandblaster (swing stage)	8.64	.51	.50		.03
Remaining part of State:					
Brush; Roller	9.20	.51	.30		.02
Brush (swing stage); Brush (steel and bridge); Spray, Sandblaster; Steeplejack	9.50	.51	.30		.02
Spray (swing stage); Spray (steel and bridge); Sandblaster (swing stage)	9.75	.51	.30		.02
Wallcovering Hanger	9.45	.51	.30		.02
PLASTERER TENDERS	8.40	.35	.35		
PLASTERERS	9.40	.50	.60		.01
PLUMBERS; Pipefitters:					
Zone 1: Within a 15 mile radius from the center of each City, namely Salt Lake City, Ogden and Provo, Utah	10.10	.51	1.00		.06
Zone 2: Zone 1 plus 15 miles	10.40	.51	1.00		.06
Zone 3: Zone 2 plus 15 miles	10.75	.51	1.00		.06
Zone 4: Zone 3 plus 15 miles	12.10	.51	1.00		.06
Zone 5: All areas beyond Zone 4	12.60	.51	1.00		.06
REFRIGERATION & AIR CONDITIONING:					
Under 50 tons	8.55	.51	.75		.04
50 tons and over	9.15	.51	.75		.04
ROOFERS	8.59	.57	.35		
SHEET METAL WORKERS	10.19	.54	.59		.08
SOFT FLOOR LAYERS	8.15	.51	.12		
SPRINKLER FITTERS	10.43	.60	.90		.08
TERRAZZO WORKERS	10.35	.20			
TILE SETTERS	10.35	.20			
WELDERS: Receive rate prescribed for craft performing operation to which welding is incidental.					

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

FOOTNOTES

a. Employer contributes 4% of basic hourly rate for 5 years' service and 2% basic hourly rate for 6 months to 5 years' service as Vacation Pay Credit. 6 Paid Holidays: A through F.

b. Employees who have been employed for a period of 1 year shall have 3 weeks' vacation with pay. Should a holiday listed below occur within a employee's vacation period he shall be allotted an additional day's vacation. Any employee who has served continuously with one company for 12 or more years as of October 31, 1969, will continue to receive an additional week's vacation. For those employees who have voluntarily quit or are terminated prior to working 12 months, there will be accumulated for such employee by each individual employer for all straight time hours worked, 6% of his gross income for such straight time hours upon termination of such employment.

HOLIDAYS:
Straight time shall be paid when the following holidays are worked: New Year's Day; President's Day; Memorial Day; Independence Day; Pioneer Day; Labor Day; Thanksgiving Day and Christmas Day. Other than temporary employees shall be paid for all such holidays regardless upon which day in the week the holiday shall fall. When work is performed on a holiday, an additional straight time rate shall be paid. No work will be performed on Labor Day.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LABORERS:					
Building					
Group 1	$ 7.10	.35	.35		.03
Group 2	7.23	.35	.35		.03
Group 3	7.35	.35	.35		.03
Group 4	7.60	.35	.35		.03
Group 5	8.10	.35	.35		.03
POWER EQUIPMENT OPERATORS:					
Steel Erection					
Group 1	9.22	.75	1.615	.85	.14
Group 2	9.60	.75	1.615	.85	.14
Group 3	10.61	.75	1.615	.85	.14
Group 4	10.75	.75	1.615	.85	.14
Group 4-A	11.04	.75	1.615	.85	.14
Group 5	11.52	.75	1.615	.85	.14
Group 6	11.93	.75	1.615	.85	.14
Group 6-A	12.49	.75	1.615	.85	.14
Group 7	13.47	.75	1.615	.85	.14
Piledriving					
Group 1-A	8.78	.75	1.615	.85	.14
Group 1-B	9.11	.75	1.615	.85	.14
Group 1-C	9.26	.75	1.615	.85	.14
Group 2-A	7.89	.75	1.615	.85	.14
Group 2-B	10.10	.75	1.615	.85	.14
Group 3	10.40	.75	1.615	.85	.14
Group 3-A	10.78	.75	1.615	.85	.14
Group 4	11.33	.75	1.615	.85	.14
Group 5	11.48	.75	1.615	.85	.14
Group 6	12.49	.75	1.615	.85	.14

LABORERS*	Basic Hourly Rates	Basic Hourly Rates	Fringe Benefits Payments			
			H & W	Pensions	Vacation	Education and/or Appr. Tr.
Heavy and Highway	AREA 1	AREA 2				
Group 1	$ 7.10	$ 8.60	.35	.35		.04
Group 2	7.23	8.73	.35	.35		.04
Group 3	7.35	8.85	.35	.35		.04
Group 4	7.60	9.10	.35	.35		.04
Group 5	8.10	9.60	.35	.35		.04
Tunnel and Shaft Work						
Group 1	7.25	8.75	.35	.35		.04
Group 2	7.35	8.85	.35	.35		.04
Group 3	7.55	9.05	.35	.35		.04
Group 4	8.00	9.50	.35	.35		.04
*LABORERS - AREA DEFINITION: See "Area Definition" - following Truck Drivers.						
POWER EQUIPMENT OPERATORS:						
Group 1	7.76	8.76	.75	1.615	.85	.14
Group 2	8.04	9.04	.75	1.615	.85	.14
Group 3	8.39	9.39	.75	1.615	.85	.14
Group 4	8.57	9.57	.75	1.615	.85	.14
Group 4-A	8.68	9.68	.75	1.615	.85	.14
Group 5	8.68	9.68	.75	1.615	.85	.14
Group 6	9.14	10.14	.75	1.615	.85	.14
Group 7	9.29	10.29	.75	1.615	.85	.14
Group 7-A	9.40	10.40	.75	1.615	.85	.14
Group 8	9.70	10.70	.75	1.615	.85	.14
Group 8-A	9.76	10.76	.75	1.615	.85	.14
Group 9	9.82	10.82	.75	1.615	.85	.14
Group 10	9.98	10.98	.75	1.615	.85	.14
Group 11	10.42	11.41	.75	1.615	.85	.14
Group 11-A	11.38	12.38	.75	1.615	.85	.14
Group 11-B	11.83	12.83	.75	1.615	.85	.14
Group 12	11.99	12.99	.75	1.615	.85	.14
*POWER EQUIPMENT OPERATORS - AREA DEFINITIONS: See "Area Definition" - following Truck Drivers						

LABORERS
Building

Group 1: General Laborer (all classifications not included in Groups 2, 3, 4, 5)

Group 2: Asphalt Raker; Sandblast Pot Tender; Gunite Nozzleman; Concrete pump (head hoseman); Signalman and Dumpman on Concrete construction

Group 3: Work of all types using cutting torch; Operators of gasoline, electric or pneumatic tools (e.g., compressor, compactors, jackhammer, vibrator, concrete saw, chain saw and concrete cutting torch); Pipelayer; Laser instrument operator; Refinery Tank and Vessel Cleaner; Sandblaster

Group 4: Air Track and similar Drills

Group 5: Powderman

LABORERS
Heavy and Highway

Group 1: General Laborers (all classifications not included in Groups 2, 3, 4, or 5)

Group 2: Asphalt Raker; Sandblast Pot Tender; Gunite Nozzleman; Concrete Pump Head Hoseman; Signalman and Dumpman on concrete construction

Group 3: Work of all types using cutting torch; Operators of gasoline, electric or pneumatic tools (e.g., compressor, compactors, jackhammer, vibrator, concrete saw, chain saw and concrete cutting torch); Pipelayer; Laser Instrument Operator; Refinery Tank and Vessel Cleaner; Sandblaster

Group 4: Air Track and similar Drills

Group 5: Powderman

LABORERS
Tunnel and Shaft Work

Group 1: Underground Laborers

Group 2: Brakeman; Chucktender; Dumpman; Powderman Helper; Puddler; Nipper; Tapman; Vibrator; Screedmen

Group 3: Cutting Machine Operator; Drill Doctor; Finisher; Gunite Gunman; Miner; Powder Makeup Man; Spader and Tugger; Steelman; Gunite Groundman; Gunite Nozzleman; Gunite Rodman; Concrete Head Hoseman

Group 4: Shifter

POWER EQUIPMENT OPERATORS

Group 1: Repairman Helper

Group 2: Asphalt Plant Fireman; Assistant to Engineer; Brakeman - Locomotive; Elevator Operator; Fireman; Hydraulic Monitor; Material Loader or Conveyor Operator; Partsman - Field; Repairman Helper - Field

Group 3: Air Compressor Operator; Concrete Mixer Operator (skip-type); Concrete Pump or Pumpcrete Gun Operator; Engineer, Dinky Operator; Generator Operator (100 KW or over); Mixer Box Operator or similar (concrete or asphalt plant continuous mix); Pump Operator; Screedman; Self-propelled, automatically applied concrete curing machine (on street, highways, airports and canals); Truck Crane Oiler; Boxman, Asphalt Plant

Group 4: Ballast Jack Tamper; Ballast Regulator; Ballast Tamper - multiple-purpose; Front End Loader (up to and including 1 cu. yd. struck MRC); Hoist Operator - 1 drum; Line Master; Slip Form Pumps

Group 4-A: Slurry Seal Machine or similar

Group 5: Air Compressor Operator (2 or more compressors); Batch Operator (asphalt plant); Motorman; Pavement Breaker Operator (Essco and similar type); Shuttleman; Signalman; Small rubber-tired tractor; Small self-propelled pneumatic rollers; Towermobile Operator; Welding Machine (2 or more); Lube and Service Engineer (mobile and grease rack); Concrete Conveyor (building site)

Group 6: A-Frame Truck and Tugger Hoist; Concrete Saws (self-propelled units on streets, highways, airports and canals); Engineer-locomotive; Fork Lift (construction jobsite); Kolman Loader (and similar); Loader Operator (over 1 cu. yd. up to and including 2 cu. yds. struck MRC); Maginnis Internal Full Slab Vibrator (on airports, highways, canal and warehouses); Mixermobile Operator; Pipe Bending Machine Operator; Pipe Cleaning Machine; Pipe Wrapping Machine; Power Jumbo Operator (setting slip forms, etc., in tunnels); Road Mixing Machine Operator; Ross Carrier or similar type; Small rubber-tired tractor (with attachments, including backhoe); Small rubber-tired Trenching Machine; Small Tractor with boom; Surface Heater (self-propelled); Gradesetter

POWER EQUIPMENT OPERATORS (Cont'd)

Group 7: Bridge Crane; Chip Box Spreader (Flaherty-type and similar); Concrete Mixer Operator (paving or batch plant); Deck Engineer (marine); Drilling Machine Operator (well or diamond); Dual Drum Mixers; Elevating Grader Operator; Fuller Kenyon Pump and similar types; Heavy Duty Rotary Drill Rigs (such as Quarry Master, Joy Drills or equal); Hoist Operator - 2 drums; Lull High Lift (40 ft. or similar); Mechanical Finisher Operator (asphalt or concrete); Mine or Shaft Hoist; No-Joint Pipe Laying Machine; Pavement Breaker; Pavement Breaker with Compressor Combination; Pavement Breaker, truck mounted, compressor combination; Refrigeration Plant; Roller Operator or self-propelled Compactor; Self-propelled Pipeline, Wrapping Machine (Perault, CRC, or similar types); Slusher Operator; Tractor Compressor Drill combination; Tractor Operator (Sheep's foot and compacting equipment); Trenching Machine; Concrete Conveyor or Concrete Pump, truck or equipment mounted (boom length to apply); Mechanical Burm, Curb and/or Curb and Gutter Machine, Concrete or Asphalt; Self-propelled Compactor with or without dozer; Drilling and Boring Machinery, Horizontal and Vertical (not to apply to waterliners, wagon drills or jackhammers); Self-propelled Compactor (with multiple-propulsion power units)

Group 7-A: Side Boom Operator; Tractor Operator (Bulldozer or tractor-drawn scraper or drag-type shovel or boom attachment, up to and including D-7 or similar)

Group 8: Chicago Boom (including Stiff Leg and Sheer Pole); Combination Slusher and Motor Operator; Concrete Batch Plant (multiple units); Do-mor Loader and Adams Elegrader; Euclid Loader and similar types; Koehring Skooper (or similar)(up to 5 cu. yds. struck MRC); Loader Operator (over 2 cu. yds. up to and including 5 cu. yds. struck MRC); Mechanical Trench Shield; Mucking Machine Operator; Rubber-tired Scrapers (under 35 cu. yds. struck MRC); Saurman-type Drag-line (under 5 cu. yds. struck MRC); Self-propelled Boom-type Lifting Device (center mount)(10 ton capacity or less MRC); Self-propelled Elevating Grade Plane; Soil Stabilizer (P&H or equal); Subgrader (automatic subgrader - fine grader); Tri-batch Paver; Tunnel Mole (or similar); Asphalt Plant Engineer; Engineer, crushing plant; Combination Backhoe and Loader (3/4 yds. and over struck MRC)

Group 8-A: Heavy Duty Repairman or Welder; Tractor Operator (bulldozer or tractor-drawn scraper or drag-type shovel or boom attachment, larger than D-7 or similar)

Group 9: Combination Mixer and Compressor (gunits); Highline Cableway Signalman; Motor Patrol; Tower Crane (Linden-type or similar designs and capacity)

POWER EQUIPMENT OPERATORS (Cont'd)

Group 10: D.W. 10, 20, etc. (Tandem Scrapers); Highline Cableway Operator; Lift Slab Machine (Vagtborg and similar types); Loader Operator (over 5 cu. yds. up to and including 12 cu. yds. struck MRC); Locomotive (over 100 tons)(single or multiple units); Prestress Wire Wrapping Machine; Saurman-type Dragline (5 cu. yds. and over struck MRC); Tractor (tandem scrapers); Universal Equipment Operator (shovel, backhoe, dragline, derrick, derrick barge, clamshell, crane, gradeall, etc.)(up to and including 5 cu. yds. struck MRC); Self-propelled Boom-type lifting device (center mount) (over 10 tons)

Group 11: Automatic Concrete Slip Form Paver; Koehring Skooper (or similar)(5 cu. yds. and over struck MRC); Multiple Propulsion power unit eatch movers (up to and including 75 cu. yds. struck MRC); Power Equipment with Shovel-type controls (over 5 cu. yds. up to and including 7 cu. yds. struck MRC); Remote-controlled Cranes and Derricks; Rubber-tired Scrapers (35 cu. yds. and over struck MRC); Slip Form Paver (concrete or asphalt); Tandem Tractors; Tower Cranes Mobile

Group 11-A: Loader Operator (over 12 cu. yds. struck MRC, up to 18 cu. yds. MRC); Multi-purpose earth moving machines (2 or more scrapers)(over 75 cu. yds. struck MRC); Power Shovels and Draglines (over 7 cu. yds. struck MRC)

Group 11-B: Operator of Helicopter (when used in erection work); Loader (18 cu. yds. and over)

Group 12: Cranes (over 125 tons)

POWER EQUIPMENT OERATORS
Steel Erection

Group 1: Assistant to Engineer (oiler)

Group 2: Compressor Operator; Generator, gasoline or diesel driven (100 KW or over)(structural steel or tank erection only); Assistant to Engineer (truck crane oiler)

Group 3: Compressors, Generators and/or Welding Machines or combination (2 to 6)(structural steel or tank erection only); Deck Engineer; Signalman (using mechanical equipment); Fork Lift

Group 4: Heavy Duty Repairman; Tractor Operator

Group 4-A: Combination Heavy Duty Repairman - Welder

POWER EQUIPMENT OPERATORS (Cont'd)
Steel Erection (Cont'd)

Group 5: Dual-purpose A-Frame or Boom Truck; Boom Cat; Chicago Boom; Crawler Cranes and Truck Cranes (15 tons MRC or less); Self-propelled Boom-type Lifting Device (center mount)(10 ton capacity or less MRC); Single Drum Hoist; Tugger Hoist

Group 6: Crawler Cranes and Trucks Cranes (over 15 tons MRC); Derricks; Highline Cableway; Gantry Rider (or similar equipment); Self-propelled Boom-type Lifting Device (center mount) (over 10 tons); Tower Cranes Mobile (including rail mounted); Universal Liebher and Tower Cranes (and similar types); 2 or more drum Hoist

Group 6-A: Cranes (over 125 tons)

Group 7: Operator of Helicopter

POWER EQUIPMENT OPERATORS
Piledriving

Group 1-A: Assistant to Engineer (deckhand, fireman, oiler)

Group 1-B: Compressor Operator

Group 1-C: Assistant to Engineer (truck crane oiler)

Group 2-A: Operator of Tugger-Hoist (hoisting materials only)

Group 2-B: Compressor Operator (over 2); Generators; Pumps; Welding Machines (powered other than by electricity)

Group 3: Deck Engineer; Fork Lift Operator; A-Frame; Self-propelled Boom-type Lifting Device (center mount)(10 ton capacity or less MRC)

Group 3-A: Heavy Duty Repairman and/or Welder

Group 4: Operating Engineer in lieu of Assistant to Engineer tending boiler or compressor attached to Crane Piledriver; Operator of Piledriving Rigs, skid or floating and derrick barges; Operator of diesel or gasoline powered Crane Piledriver (without boiler) up to and including 1 cu. yd. rating; Self-propelled Boom-type lifting device (center mount)(over 10 tons); Truck Crane Operator (up to and including 25 tons) (hoisting material only)

Group 5: Operator of diesel or gasoline powersd Crane Piledriver (without boiler) over 2 cu. yd. rating; Operator of Crane (with steam, flash boiler, pump or compressor attached); Operator of steam powered Crwaler or Universal-type Driver (Raymond or similar type); Truck Crane Operator (over 25 tons) (hoisting material or performing piledriving Work)

Group 6: Cranes (over 125 tons)

TRUCK DRIVERS:*	Basic Hourly Rates	Basic Hourly Rates	Fringe Benefits Payments			
			H & W	Pensions	Vacation	Education and/or Appr. Tr.
Dump Trucks - Water level Capacity (bottom, end and side) (including Dumpster Trucks, Euclid type Trucks, Turnawagons, Turnarockers and Dumporete)						
Less than 8 yards	$ 8.00	$ 9.50	.54	.70	$1.00	.10
8 yards and less than 14 yards	8.15	9.65	.54	.70	1.00	.10
14 yards and less than 35 yards	8.30	9.80	.54	.70	1.00	.10
35 yards and less than 55 yards	8.50	10.00	.54	.70	1.00	.10
55 yards and less than 75 yards	8.70	10.20	.54	.70	1.00	.10
75 yards and less than 95 yards	8.90	10.40	.54	.70	1.00	.10
95 yards and less than 105 yards	9.10	10.60	.54	.70	1.00	.10
105 yards and less than 130 yards	9.22	10.72	.54	.70	1.00	.10
All 130 cu. yds. and over to be paid one-half cent ($.005) per cu. yds. capacity per hour in addition to rate for 105 yards and less than 130 yards						
Flat Rack Trucks, Bulk Cement Trucks, Tansport Trucks, Semi-Trailer (carrying capacity):						
Pickup	7.825	9.325	.54	.70	1.00	.10
Less than 10 tons	7.90	9.40	.54	.70	1.00	.10
10 tons and less than 15 tons	8.05	9.55	.54	.70	1.00	.10
15 tons and less than 20 tons	8.15	9.65	.54	.70	1.00	.10
20 tons and over	8.30	9.80	.54	.70	1.00	.10
Transit Mix Trucks:						
4½ yards capacity and less	8.025	9.525	.54	.70	1.00	.10
Over 4½ yards to and including 6½ yards capacity	8.125	9.625	.54	.70	1.00	.10
Over 6½ yards capacity	8.225	9.725	.54	.70	1.00	.10
Concrete Pumping Trucks	8.225	9.725	.54	.70	1.00	.10

TRUCK DRIVERS: (Cont'd)	Basic Hourly Rates	Basic Hourly Rates	Fringe Benefits Payments			
			H & W	Pensions	Vacation	Education and/or Appr. Tr.
Water, Fuel and Oil Tank Trucks:						
Less than 1200 gallons	$ 7.875	$ 9.375	.54	.70	$1.00	.10
1200 gallons to less than 2500 gallons	8.00	9.50	.54	.70	1.00	.10
2500 gallons to less than 4000 gallons	8.15	9.65	.54	.70	1.00	.10
4000 gallons to less than 6000 gallons	8.45	9.95	.54	.70	1.00	.10
6000 gallons to less than 10,000 gallons	8.70	10.20	.54	.70	1.00	.10
10,000 gallons to less than 15,000 gallons	8.95	10.45	.54	.70	1.00	.10
15,000 gallons to less than 20,000 gallons	9.20	10.70	.54	.70	1.00	.10
20,000 gallons to less than 25,000 gallons	9.45	10.95	.54	.70	1.00	.10
25,000 gallons and over	9.70	11.20	.54	.70	1.00	.10
Oiler Spreader Operator (on single man operation where boot man is not required)	8.70	10.20	.54	.70	1.00	.10
Construction Job Servicemen:						
Telescopic Manlift Truck	8.20	9.70	.54	.70	1.00	.10
Fork Lift (under 6 tons) and Straddle Truck	8.20	9.70	.54	.70	1.00	.10
Truck Driver Helper	7.775	9.275	.54	.70	1.00	.10
Chauffeurs	7.775	9.275	.54	.70	1.00	.10
Warehousemen (Counter Clerk)	7.95	9.45	.54	.70	1.00	.10
Washers	7.975	9.475	.54	.70	1.00	.10
Tireman and Greaser	8.40	9.90	.54	.70	1.00	.10
Gas Station Attendants	7.825	9.325	.54	.70	1.00	.10
Fork Lift (over 6 tons)	8.30	9.80	.54	.70	1.00	.10
Teamster Mechanic	9.01	10.51	.54	.70	1.00	.10
Teamster Mechanic Selper	8.76	10.26	.54	.70	1.00	.10
Teamster Welder	9.01	10.51	.54	.70	1.00	.10
Teamster Driving two Horses	8.775	10.275	.54	.70	1.00	.10
Teamster Driving three or more horses	8.875	10.375	.54	.70	1.00	.10
Sweeper or Vacuum Truck	8.15	9.65	.54	.70	1.00	.10

*TRUCK DRIVERS - AREA DEFINITION: See "Area Definition" - following this page.

AREA DEFINITIONS

Laborers
(Heavy and Highway Construction)
Power Equipment Operators
Truck Drivers

Area 1: All areas included in the description defined below which is based upon township and range lines as referenced to the Salt Lake City Base and Meridian:

Commencing at the intersection of the Utah/Nevada border and the Southerly line of township 35 south;
Thence easterly to the S.E. corner of township 35 south, range 17 west;
Thence northerly to the S.E. corner of township 34 south, range 17 west;
Thence easterly to the S.E. corner of township 34 south, range 16 west;
Thence northerly to the S.E. corner of township 30 south, range 16 west;
Thence easterly to the S.E. corner of township 30 south, range 15 west;
Thence northerly to the S.E. corner of township 25 south, range 15 west;
Thence easterly to the S.E. corner of township 25 south, range 14 west;
Thence northerly to the S.E. corner of township 24 south, range 14 west;
Thence easterly to the S.E. corner of township 24 south, range 13 west;
Thence northerly to the S.E. corner of township 23 south, range 13 west;
Thence easterly to the S.E. corner of township 23 south, range 12 west;
Thence northerly to the S.E. corner of township 18 south, range 12 west;
Thence easterly to the S.E. corner of township 18 south, range 11 west;
Thence northerly to the S.E. corner of township 16 south, range 11 west;
Thence easterly to the S.E. corner of township 16 south, range 10 west;
Thence northerly to the S.E. corner of township 15 south, range 10 west;
Thence easterly to the S.E. corner of township 15 south, range 9 west;
Thence northerly to the S.E. corner of township 14 south, range 9 west;
Thence easterly to the S.E. corner of township 14 south, range 8 west;
Thence northerly along the easterly line of range 8 west, crossing the Salt Lake Base Line to the intersection of the easterly line of range 8 west and the northerly border of Utah;
Thence easterly along the northerly border of Utah crossing the Salt Lake Meridian to the Utah/Idaho/Wyoming border;
Thence southerly along the Utah/Wyoming border;
Thence easterly along the Utah/Wyoming border to the intersection of the Utah/Wyoming border and Longitude 111 degrees west;
Thence southerly along Longitude 111 degrees west crossing the Salt Lake Base Line to the intersection of Longitude 111 degrees west and the southerly line of township 4 south;
Thence easterly along the southerly line of township 4 south to the S.E. corner of township 4 south, range 17 east;
Thence northerly to the S.E. corner of township 1 south, range 17 east;
Thence easterly along the southerly line of township 1 south to the intersection of the Utah/Colorado border;
Thence southerly along the Utah/Colorado border to the intersection of the Utah/Colorado border and the southerly line of township 7 south;

AREA DEFINITIONS (Cont'd)

AREA 1: (Cont'd)

Thence westerly along the southerly line of township 7 south to the S.W. corner of township 7 south, range 20 east;
Thence southerly to the S.E. corner of township 8 south, range 19 east;
Thence westerly along the southerly line of township 8 south to the S. E. corner of township 8 south, range 12 east;
Thence southerly along the easterly line of range 12 east to the S.E. corner of township 20 south, range 12 east;
Thence westerly along the southerly line of township 20 south to the S.E. corner of township 20 south, range 3 east;
Thence southerly along the easterly line of range 3 east to the S.E. corner of township 27 south, range 3 east;
Thence westerly to the intersection of the southerly line of township 27 south and the Salt Lake Meridian, thence southerly along the Salt Lake Meridian to the intersection of the Salt Lake Meridian and the southerly line of township 39 south;
Thence westerly crossing the Salt Lake Meridian to the S.E. corner of township 39 south, range 2 west;
Thence southerly to the S.E. corner of township 41 south, range 2 west;
Thence westerly to the S.E. corner of township 41 south, range 3 west;
Thence southerly along the easterly line of range 3 west to the Utah/Arizona border;
Thence westerly along the Utah/Arizona border to the Utah/Arizona/Nevada border;
Thence northerly along the Utah/Nevada border to the point of beginning; commencing at the intersection of the Utah/Colorado border and the southerly line of township 34 south;
Thence westerly to the S.W. corner of township 34 south, range 21 east;
Thence northerly to the S.W. corner of township 29 south, range 21 east;
Thence westerly to the S.W. corner of township 29 south, range 19 east;
Thence northerly to the N.W. corner of township 23 south, range 19 east;
Thence easterly to the N.W. corner of township 23 south, range 22 east;
Thence northerly to the N.W. corner of township 21 south, range 22 east;
Thence easterly to the N.E. corner of township 21 south, range 24 east;
Thence southerly to the N.E. corner of township 31 south, range 24 east;
Thence easterly along the northerly line of township 31 south, to the Utah/Colorado border;
Thence southerly along the Utah/Colorado border to the point of beginning

AREA 2: All areas not included in Area 1 as defined.

[FR Doc.77-2474 Filed 1-21-77;8:45 am]

Vol.42—No.20
1-31-77

PAGES
5677-5966

federal register

MONDAY, JANUARY 31, 1977

highlights

PART I:

FREEDOM OF INFORMATION INDEXES
OFR publishes 1976 guide to agency material..... 5720

ENERGY
FEA publishes notice of decisions and orders (3 documents)..... 5713, 5716, 5717

GOVERNMENT IN SUNSHINE ACT
FRS proposal on public observation of meetings; comments by 3-2-77..... 5699
CRC proposal on procedures for conducting meetings; comments by 3-1-77..... 5705

MOTOR VEHICLES
DOT publishes status report of federal task force on goals beyond 1980 and requests further public input (2 documents)..... 5774, 5775

EQUAL CREDIT OPPORTUNITY
FRS amendments to include model credit application forms; effective 3-23-77..... 5677

HAZARDOUS MATERIALS
DOT/MTB proposes conversion of individual exemptions to regulation of general applicability; comments by 2-23-77..... 5708

POLITICAL ORGANIZATIONS
Treasury/IRS proposal announcing hearing date of 2-24-77..... 5704

MUTUAL MORTGAGE INSURANCE PROGRAM
HUD proposal on maximum charges, fees or discounts which an insured lender may collect from borrower at closing; comments by 2-26-77..... 5704

EMERGENCY MESSAGES BROADCAST
FCC establishes requirements for visual captioning over television stations; effective 2-1-77..... 5697

PRIVACY ACT
OMB list reports on new systems of records..... 5737

NORTHWEST ATLANTIC FISHERIES ACT
Commerce/NOAA clarifies continued efficacy of regulations..... 5698

CONTINUED INSIDE

reminders

(The items in this list were editorially compiled as an aid to FEDERAL REGISTER users. Inclusion or exclusion from this list has no legal significance. Since this list is intended as a reminder, it does not include effective dates that occur within 14 days of publication.)

Rules Going Into Effect Today

HUD—Mobile Home construction and safety standards..... 960; 1–4–77
ICC—Cars for shippers' exclusive use (Rule 16); order..... 2966; 1–14–77

List of Public Laws

NOTE: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's LIST OF PUBLIC LAWS.

AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The six-month trial period ended August 6. The program is being continued on a voluntary basis (see OFR notice, 41 FR 32914, August 6, 1976). The following agencies have agreed to remain in the program:

Monday	Tuesday	Wednesday	Thursday	Friday
NRC	USDA/ASCS		NRC	USDA/ASCS
DOT/COAST GUARD	USDA/APHIS		DOT/COAST GUARD	USDA/APHIS
DOT/NHTSA	USDA/FNS		DOT/NHTSA	USDA/FNS
DOT/FAA	USDA/REA		DOT/FAA	USDA/REA
DOT/OHMO	CSC		DOT/OHMO	CSC
DOT/OPSO	LABOR		DOT/OPSO	LABOR
	HEW/FDA			HEW/FDA

Documents normally scheduled on a day that will be a Federal holiday will be published the next work day following the holiday.

Comments on this program are still invited. Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408.

ATTENTION: For questions, corrections, or requests for information please see the list of telephone numbers appearing on opposite page.

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FEDERAL REGISTER, Daily Issue:	
Subscriptions and distribution.....	**202–783–3238**
"Dial - a - Regulation" (recorded summary of highlighted documents appearing in next day's issue).	**202–523–5022**
Scheduling of documents for publication.	523–5220
Copies of documents appearing in the Federal Register.	523–5240
Corrections	523–5286
Public Inspection Desk.....	523–5215
Finding Aids.....	523–5227
Public Briefings: "How To Use the Federal Register."	523–5282
Code of Federal Regulations (CFR)..	523–5266
Finding Aids.....	523–5227
PRESIDENTIAL PAPERS:	
Executive Orders and Proclamations.	523–5233
Weekly Compilation of Presidential Documents.	523–5235
Public Papers of the Presidents....	523–5235
Index	523–5235
PUBLIC LAWS:	
Public Law dates and numbers.....	523–5237
Slip Laws.....	523–5237
U.S. Statutes at Large.....	523–5237
Index	523–5237
U.S. Government Manual.....	523–5230
Automation	523–5240
Special Projects.....	523–5240

HIGHLIGHTS—Continued

TRUTH IN LENDING
FRS publishes official staff interpretations of Regulation Z..... 5690

CONSTRUCTION OF TREATMENT WORKS
EPA holds meeting on proposed rules; 1–14–77; comments on proposal by 2–14–77..... 5705

MEETINGS—
Commerce/NOAA: Coastal Zone Management Advisory Committee, 2–22 thru 2–25–77..... 5741
DOD/AF: Air University Board of Visitors; 3–15–77.. 5746
Navy: Naval Research Advisory Committee, 2–16 and 2–17–77..... 5746
DOT/FAA: Minimizing safety hazards associated with slippery runways; 2–23–77..... 5774
EPA: FIFRA Scientific Advisory Panel, 2–17 and 2–18–77 5746
Implementation of the Toxic Substances Control Act, 2–14 and 2–15, 2–17, 2–24, 3–1, 3–3, 3–9, 3–15, 3–17 and 3–22–77..... 5756
Loan guarantees for construction of treatment works; 2–14–77..... 5705
Science Board Environmental Measurements Advisory Committee, 2–22–77..... 5755
State-Federal Water Programs Advisory Committee, 2–14–77 5746
FCC: Radio Technical Commission for Marine Services (RTCM), 2–16 and 2–17–77..... 5758
FHLBB: Alternative Mortgage Instruments Research Study Advisory Committee; 2–16–77..... 5719
HEW/CDC: Immunization Practices Advisory Committee; 2–10 and 2–11–77..... 5761
OE: Developing Institutions Advisory Council, 3–4–77 5761
NSF: Research Advisory Committee, Task Group #16, 2–18–77 5765
National Study Commission on Records and Documents of Federal Officials, 2–17–77..... 5765
NRC: Reactor Safeguards Advisory Committee, Regulatory Activities Subcommittee; 2–9–77..... 5768
Plutonium packaging; and planned nuclear facilities, early site review..... 5768
USDA/AMS: Shippers Advisory Committee, 2–15 and 2–22–77 5738
Water Resources Council: Standing State Advisory Committee, 2–16–77..... 5777

PART II:

GRANT ADMINISTRATION
NSF publishes Grant Policy Manual..... 5807

PART III:

SOCIAL SERVICES
HEW/SRS adopts rules for programs for individuals and families under Title XX of the Social Security Act; effective 5–2–77..... 5841

PART IV:

ALCOHOL ABUSE
HEW/PHS proposal on grants for alcoholism prevention, treatment, and rehabilitation; comments by 4–1–77.... 5865

PART V:

PUBLIC HOUSING PROGRAM
HUD adopts general requirements and policies for development of low-income housing projects; effective 2–7–77 5877

PART VI:

LAND REGISTRATION
HUD/ILSRO proposal amending "Property Report" and "Statement of Record"; comments by 4–30–77..... 5889

PART VII:

PROCEDURES AND RULES OF PRACTICE
HUD/ILSRO proposal revising exemption and disclosure regulations; comments by 4–30–77..... 5905

PART VIII:

HOUSING ASSISTANCE PAYMENTS

HUD/FHC proposal on special procedures for neighborhood renewal strategy areas; comments by 3–2–77..... 5917

PART IX:

LOW INCOME HOUSING

HUD/FHC provides construction and long-term financing for elderly or handicapped; comments by 2–24–77..... 5923

PART X:

NEW STATIONARY SOURCES

EPA revisions to emission monitoring requirements and to reference methods; effective 3–2–77..... 5935

PART XI:

BOAT SAFETY

DOT/CG issues standards for electrical and gasoline fuel system (2 documents), effective 8–1–77..... 5940, 5946

PART XII:

NAVIGATION PROCEDURES

DOT/CG amends vessel inspection, testing and equipment regulations, and proposes safety requirements (3 documents); comments by 4–1–77; effective 6–1–77.... 5956, 5962, 5966

contents

AGENCY FOR INTERNATIONAL DEVELOPMENT
Notices
Authority delegations:
Honduras, Director; farm loans ... 5773
Indonesia, Mission Director and Deputy; loan and grant agreements ... 5773
Pakistan, Mission Director and Deputy; loan and grant agreements ... 5773
Philippines, Mission Director and Deputy; loan and grant agreements ... 5774

AGRICULTURAL MARKETING SERVICE
Rules
Almonds grown in Calif.; correction ... 5677
Oranges (navel) grown in Ariz. and Calif ... 5677
Notices
Meetings:
Shippers Advisory Committee ... 5738

AGRICULTURE DEPARTMENT
See Agricultural Marketing Service; Farmers Home Administration; Packers and Stockyards Administration.

AIR FORCE DEPARTMENT
Rules
Privacy Act; implementation ... 5696
Notices
Meetings:
Air University Board of Visitors ... 5746

BONNEVILLE POWER ADMINISTRATION
Notices
Environmental statements; availability, etc.:
Colstrip Project ... 5762

CIVIL AERONAUTICS BOARD
Notices
Hearings, etc.:
Air New England, Inc ... 5739
British Airways Board ... 5740

CIVIL RIGHTS COMMISSION
Proposed Rules
Sunshine Act implementation ... 5705

COAST GUARD
Rules
Boating safety:
Boats and associated equipment; electrical systems, standards ... 5940
Boats and associated equipment; gasoline fuel systems, standards ... 5946
Safety, navigation:
Procedures, tests, and equipment requirements ... 5956
Vessel inspection regulations ... 5962
Proposed Rules
Inland waters, boundary lines:
Prince William Sound, Alaska ... 5705
Navigation aids:
Loran-C; vessels of 1600 gross tons or more ... 5966

COMMERCE DEPARTMENT
See also Domestic and International Business Administration; National Oceanic and Atmospheric Administration.
Notices
Organization and functions:
Maritime Administration ... 5742

DEFENSE DEPARTMENT
See Air Force Department; Navy Department.

DISEASE CONTROL CENTER
Notices
Meetings:
Immunization Practices Advisory Committee ... 5761

DOMESTIC AND INTERNATIONAL BUSINESS ADMINISTRATION
Notices
Scientific articles; duty free entry:
Eye & Ear Hospital et al ... 5740

DRUG ENFORCEMENT ADMINISTRATION
Notices
Registration applications, etc.; controlled substances:
Umbles' Drew-Hale Pharmacy, Inc ... 5765

EDUCATION OFFICE
Notices
Audit appeals:
New Jersey ... 5762
New Mexico ... 5762
Meetings:
Developing Institutions Advisory Council ... 5761

ENVIRONMENTAL PROTECTION AGENCY
Rules
Air pollution; standards of performance for new stationary sources:
Emission monitoring requirements and performance testing reference methods ... 5935
Water pollution; effluent guidelines for certain point source categories:
Pharmaceutical manufacturing; inquiry, extension of time ... 5697
Proposed Rules
Grants; environmental financing:
Treatment works construction loan guarantees; meeting ... 5705
Notices
Air pollution; ambient air monitoring reference and equivalent methods (2 documents) ... 5748
Committees; establishment, renewals, etc.:
Administrator's Toxic Substances Advisory Committee ... 5746
Meetings:
Environmental Measurements Advisory Committee ... 5755
FIFRA Scientific Advisory Panel ... 5746
State-Federal Water Programs Advisory Committee ... 5746
Toxic Substances Control Act; implementation ... 5756
Pesticide applicator certification; State plans:
Kansas ... 5753
Missouri ... 5754
Oklahoma ... 5749
Utah ... 5747
Pesticide registration:
Applications (2 documents) ... 5750
Water pollution control:
Spokane Valley-Rathdrum Prairie Aquifer, Idaho-Wash.; proposed determination ... 5749

FARMERS HOME ADMINISTRATION
Notices
Disaster and emergency areas:
Georgia ... 5738
North Dakota ... 5738

FEDERAL AVIATION ADMINISTRATION
Rules
Airworthiness directives:
Canadair ... 5693
Cessna ... 5692
McDonnell Douglas ... 5692
Narco Avionics ... 5691
Control zones ... 5694
Control zones and transition areas ... 5693
Proposed Rules
Airworthiness directives:
Canadair (2 documents) ... 5701, 5702
McCauley ... 5703
Collins ... 5702
Notices
Air traffic control towers:
Pueblo, Colo.; hours of operation reduced ... 5774
Runway slipperiness and pavement maintenance, airports serving turbojets; improvement procedures; meeting ... 5774

FEDERAL COMMUNICATIONS COMMISSION
Rules
Radio broadcast services:
Emergency messages on television; visual captioning ... 5697
Proposed Rules
Amateur radio services:
Licensing and operation of complex systems of stations and modification of repeater sub-bands, correction ... 5708
Cable television:
Compliance certificate applications and Federal-State/local regulatory relationships; extension of time ... 5708
Notices
Domestic public radio services; applications accepted for filing ... 5756
FM and TV translator applications ready and available for processing ... 5758
Meetings:
Radio Technical Commission for Marine Services (RTCM) (various) ... 5758
Satellite communications services; applications accepted for filing ... 5757

FEDERAL ENERGY ADMINISTRATION
Notices
Appeals and applications for exception, etc.; cases filed with Exceptions and Appeals Office:
List of applicants, etc. (3 documents) ... 5713, 5716, 5717

FEDERAL HIGHWAY ADMINISTRATION
Notices
Right-of-way acquisition; advance requests ... 5774

FEDERAL HOME LOAN BANK BOARD
Notices
Meetings:
Alternative Mortgage Instruments Research Study Advisory Committee ... 5719

FEDERAL HOUSING COMMISSIONER—OFFICE OF ASSISTANT SECRETARY FOR HOUSING
Rules
Low-rent public housing; CFR Part deleted ... 5694
Proposed Rules
Mortgage and loan insurance programs:
Mutual mortgage insurance; interest fees charge date ... 5704

FEDERAL MARITIME COMMISSION
Notices
Oil pollution; certificates of financial responsibility ... 5758
Agreements filed, etc.:
Pacific-Straits Conference ... 5759

FEDERAL POWER COMMISSION
Notices
Natural gas companies:
Certificates of public convenience and necessity; applications, abandonment of service and petitions to amend ... 5760

FEDERAL REGISTER OFFICE
Notices
Freedom of information index requirements; 1976 guide to agency material ... 5720

FEDERAL RESERVE SYSTEM
Rules
Equal credit opportunity, nondiscrimination on basis of sex or marital status:
Mortgage loan application forms ... 5677
Truth-in-lending:
Official staff interpretations ... 5690
Proposed Rules
Sunshine Act implementation ... 5699
Notices
Applications, etc.:
Trust Co. of Georgia (2 documents) ... 5719

FEDERAL TRADE COMMISSION
Rules
Prohibited trade practices:
Harbor Banana Distributors, Inc ... 5694
Notices
Authority delegations:
Directors, Bureaus of Competition, Consumer Protection and Economics ... 5761

FISH AND WILDLIFE SERVICE
Notices
Endangered species permits; applications ... 5762

GENERAL SERVICES ADMINISTRATION
See Federal Register Office.

HEALTH, EDUCATION, AND WELFARE DEPARTMENT
See Disease Control Center; Education Office; Public Health Service; Social and Rehabilitation Service.

HOUSING AND URBAN DEVELOPMENT DEPARTMENT
See also Federal Housing Commissioner—Office of Assistant Secretary for Housing; Interstate Land Sales Registration Office.
Rules
Low-income housing:
Public housing program, traditional, development phase ... 5877
Proposed Rules
Low-income housing:
Elderly and handicapped, loans for; loan responsibility decentralization ... 5923
Housing assistance payments; substantial rehabilitation; neighborhood renewal strategy area procedures ... 5917

INTERIOR DEPARTMENT
See Bonneville Power Administration; Fish and Wildlife Service; Land Management Bureau.

INTERNAL REVENUE SERVICE
Rules
Excise taxes:
Highway vehicles; definition; correction ... 5695
Procedure and administration:
Disclosure of returns and return information by Federal agencies; correction ... 5695
Proposed Rules
Income taxes:
Political organizations; hearing ... 5704

INTERSTATE COMMERCE COMMISSION
Notices
Hearing assignments ... 5778
Motor carriers:
Temporary authority applications ... 5778
Transfer proceedings ... 5783
Railroad freight rates and charges; various States:
Canada/U.S. traffic ... 5778

INTERSTATE LAND SALES REGISTRATION OFFICE
Proposed Rules
Formal procedures and practice rules ... 5905
Land registration; statement of record and property report ... 5889

JUSTICE DEPARTMENT
See also Drug Enforcement Administration.

CONTENTS

Rules
Policy statements:
Representation of Federal employees in employment-related matters 5695

LAND MANAGEMENT BUREAU
Notices
Withdrawal and reservation of lands, proposed, etc.:
Nevada 5765

LEGAL SERVICES CORPORATION
Notices
Grants and contracts; applications 5765

MANAGEMENT AND BUDGET OFFICE
Notices
Clearance of reports; list of requests 5737
Federal management circulars; status 5737
Privacy Act; systems of records 5737

MATERIALS TRANSPORTATION BUREAU
Proposed Rules
Exemptions, individual; conversion to regulation of general applicability 5708

NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION
Proposed Rules
Inspection standards, vehicle in use; air brake and air-over-hydraulic brake systems 5711

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
Rules
Atlantic fisheries, Northwest:
Regulations, clarification of effectiveness 5698
Notices
Marine mammal permit applications, etc.:
Naval Undersea Sciences Department 5742
Meetings:
Coastal Zone Management Advisory Committee 5741

NATIONAL SCIENCE FOUNDATION
Notices
Grant administration; new policy manual 5807
Meetings:
Research Advisory Committee, Task Group No. 16 5765

NAVY DEPARTMENT
Notices
Meetings:
Naval Research Advisory Committee 5746

NUCLEAR REGULATORY COMMISSION
Notices
Committees; establishment, renewals, etc.:
Medical Uses of Isotopes Advisory Committee 5768
International Atomic Energy Agency codes of practice and safety guides; availability of drafts (2 documents) 5766, 5767
Meetings:
Reactor Safeguards Advisory Committee 5768
Plutonium packaging; and planned nuclear facilities, early site review 5768
Regulatory guides; issuance and availability 5766
Applications, etc.:
Georgia Power Co 5767
Pacific Gas and Electric Co 5766
Public Service Co. of Oklahoma, et al 5768
Yankee Atomic Electric Co 5766

PACKERS AND STOCKYARDS ADMINISTRATION
Rules
Practice rules:
Disciplinary, reparation, and rate proceedings 5677
Notices
Posting and deposting of stockyards:
London Livestock and Car Auction, London, Ark., et al 5738

PUBLIC HEALTH SERVICE
Proposed Rules
Grants:
Alcohol abuse and alcoholism prevention, treatment, and rehabilitation services 5865

RECORDS AND DOCUMENTS OF FEDERAL OFFICIALS, NATIONAL STUDY COMMISSION
Notices
Meeting 5765

SECURITIES AND EXCHANGE COMMISSION
Notices
Hearings, etc.:
Alabama Power Co 5768
Colonial Convertible & Senior Securities, Inc. et al 5769
Indiana & Michigan Electric Co 5770
John Hancock Investors, Inc 5772
King Resources Co 5772

SOCIAL AND REHABILITATION SERVICE
Rules
Social services programs:
Individuals and families; eligibility determination, etc 5841

STATE DEPARTMENT
See Agency for International Development.

TRANSPORTATION DEPARTMENT
See also Coast Guard; Federal Aviation Administration; Federal Highway Administration; Materials Transportation Bureau; National Highway Traffic Safety Administration.
Notices
Motor vehicles, commercial; post-1980 goals, interagency study; status report and inquiry 5775
Motor vehicles, passenger; post-1980 goals, Federal task force report; status report 5774

TREASURY DEPARTMENT
See Internal Revenue Service.

WATER RESOURCES COUNCIL
Notices
Meetings:
Standing State Advisory Committee 5777

"THE FEDERAL REGISTER—WHAT IT IS AND HOW TO USE IT"
Briefings at the Office of the Federal Register
(For Details, See 41 FR 46527, Oct. 21, 1976)
RESERVATIONS: DEAN L. SMITH, 523–5282

list of cfr parts affected in this issue

The following numerical guide is a list of the parts of each title of the Code of Federal Regulations affected by documents published in today's issue. A cumulative list of parts affected, covering the current month to date, follows beginning with the second issue of the month.

A Cumulative List of CFR Sections Affected is published separately at the end of each month. The guide lists the parts and sections affected by documents published since the revision date of each title.

7 CFR
907 5677
981 5677
9 CFR
201 5677
202 5677
12 CFR
202 5677
226 5690
PROPOSED RULES:
261b 5699
14 CFR
39 (4 documents) 5691–5693
71 (2 documents) 5693, 5694
PROPOSED RULES:
39 (4 documents) 5701–5703
16 CFR
13 5694
24 CFR
275 5694
841 5878
PROPOSED RULES:
203 5704
881 5918
885 5924
1710 5890
1720 5906
26 CFR
48 5695
404 5695
PROPOSED RULES:
1 5704
28 CFR
50 5695
32 CFR
806b 5696
33 CFR
164 5956
183 (2 documents) 5940, 5946
PROPOSED RULES:
82 5705
164 5966
40 CFR
60 5936
439 5697
PROPOSED RULES:
39 5705
42 CFR
PROPOSED RULES:
54a 5866
45 CFR
228 5842
PROPOSED RULES:
702 5705
46 CFR
32 5962
35 5963
77 5963
78 5963
96 5963
97 5964
167 5964
184 5964
185 5964
195 5964
196 5965
47 CFR
73 5697
PROPOSED RULES:
76 5708
97 5708
49 CFR
PROPOSED RULES:
173 5708
174 5708
178 5708
179 5708
570 5711
50 CFR
240 5698

CUMULATIVE LIST OF PARTS AFFECTED DURING JANUARY

The following numerical guide is a list of parts of each title of the Code of Federal Regulations affected by documents published to date during January.

1 CFR

PROPOSED RULES:
442 ... 1267

3 CFR

EXECUTIVE ORDERS:
10480 (Amended by EO 11956) ... 2947
10900 (Amended by EO 11963) ... 4325
10973 (Amended by EO 11959) ... 4315
11490 (Amended by EO 11953) ... 2491
11501 (Revoked by EO 11958) ... 4311
11651 (Amended by EO 11951) ... 1453
11718 (Revoked by EO 11966) ... 4331
11724 (Superseded by EO 11954) ... 2297
11793 (Revoked by EO 11957) ... 3295
11821 (Amended by EO 11949) ... 1017
11888 (Amended by EO 11960) ... 4317
11921 (See EO 11953) ... 2491
11949 ... 1017
11950 ... 1451
11951 ... 1453
11952 ... 2293, 4809
11953 ... 2491
11954 ... 2297
11955 ... 2499
11956 ... 2947
11957 ... 3295
11958 ... 4311
11959 ... 4315
11960 ... 4317
11961 ... 4321
11962 ... 4323
11963 ... 4325
11964 ... 4327
11965 ... 4329
11966 ... 4331
11967 ... 4393

PROCLAMATIONS:
4423 (See Proc. 4482) ... 4309
4481 ... 4307
4482 ... 4309
4483 ... 4391

5 CFR

213 ... 1455, 2949, 3297, 3827
610 ... 3297
1410 ... 2299

7 CFR

1 ... 743, 5341
2 ... 2968, 4395
26 ... 1019
55 ... 2969
56 ... 2970
59 ... 2971
70 ... 2971
210 ... 2971
226 ... 1475
354 ... 1475
401 ... 4111
601 ... 3845
718 ... 2973
722 ... 1476
726 ... 2300
729 ... 749
730 ... 2301
905 ... 1022, 5071
907 ... 1230, 2665, 3845, 3846, 4395, 5072, 5677
910 ... 1476, 2977, 3297, 4111, 5341
912 ... 4811
917 ... 3625
928 ... 1, 2, 2665
930 ... 3626
959 ... 2308, 4395
966 ... 5072
971 ... 2666, 3626
980 ... 5073
981 ... 3159, 3847, 5341, 5677
1205 ... 4812
1421 ... 4397
1430 ... 3
1473 ... 2977
1701 ... 3847
1803 ... 4401
1821 ... 4405
1822 ... 1023, 2051, 4406
1823 ... 4408, 4409
1843 ... 1231
1845 ... 2308
1924 ... 4111

PROPOSED RULES:
52 ... 3178
270 ... 1479
271 ... 1479
272 ... 780, 2328
275 ... 1479
661 ... 3311
730 ... 780
967 ... 2691, 5362
987 ... 2503
1002 ... 4471
1033 ... 4127
1063 ... 1356
1070 ... 1356
1078 ... 1356
1079 ... 1356
1205 ... 2503
1260 ... 4484, 5362
1421 ... 2328
1434 ... 2980
1473 ... 2977
1488 ... 3849
1701 ... 1479, 4489

8 CFR

204 ... 3626
212 ... 3627
214 ... 3627

9 CFR

73 ... 2949, 3297, 5343
78 ... 5343
97 ... 1455
113 ... 750, 1456
201 ... 5677
202 ... 5677
317 ... 3298
319 ... 751, 3298
381 ... 2949

PROPOSED RULES:
92 ... 1483, 3859

10 CFR

100 ... 2051
140 ... 46
Ch. II ... 1036, 4409
203 ... 3814
210 ... 4416, 4417, 5036
211 ... 4416, 4421, 4422, 5031, 5033, 5036
212 ... 1036, 1456, 2308, 4417, 5023, 5030, 5036, 5346
500 ... 4813
711 ... 4826

FEA RULINGS:
1977-1 ... 3628
1977-3 ... 4833

PROPOSED RULES:
2 ... 3178
51 ... 3178
211 ... 5362
212 ... 2646, 4491, 5364
215 ... 3652

11 CFR

PROPOSED RULES:
2 ... 3810
3 ... 3810

12 CFR

4 ... 2950
16 ... 2200, 3299
202 ... 1242, 2950, 5677
206 ... 3171
207 ... 968
211 ... 752
212 ... 2951
213 ... 752
220 ... 752
221 ... 968
224 ... 968
225 ... 752, 1263, 2951
226 ... 753, 1264, 2650, 3827, 5690
227 ... 2950
265 ... 2501, 2950
563 ... 2952
570 ... 2952
601 ... 2666
704 ... 1458

PROPOSED RULES:
226 ... 780, 1268
261b ... 5699
405 ... 5364
505b ... 2503
523 ... 2338
545 ... 2328
564 ... 2328
604 ... 55, 2078

13 CFR

301 ... 5598
305 ... 5598
309 ... 753, 5599

PROPOSED RULES:
112 ... 2506
121 ... 2505, 2980, 4854

14 CFR

25 ... 2052
36 ... 4113
37 ... 19
39 ... 1217, 1218, 2053–2055, 3870, 3828, 4113–4116, 5036, 5037, 5691–5693

14 CFR—Continued

71 ... 300, 2055, 2056, 3170, 3171, 3829, 4117, 5038, 5693, 5694
73 ... 300, 3829
75 ... 300, 4117
97 ... 1219, 2056, 3171, 5038, 5039
207 ... 4117
208 ... 4118
221a ... 1220
241 ... 1219
288 ... 3299
300 ... 5346
302 ... 2667
378a ... 2309
385 ... 1220, 2667, 2668
1214 ... 3829

PROPOSED RULES:
39 ... 1268–1270, 5701–5703
71 ... 1270, 1271, 2078, 2079, 3179, 3861–3863, 4132, 4133, 5074
91 ... 3863
152 ... 2850, 4134
239 ... 2693
288 ... 1271
298 ... 2692
310b ... 2995
370 ... 2995
371 ... 5367
399 ... 3180

15 CFR

369 ... 2057
371 ... 1222
377 ... 1222
931 ... 1164

PROPOSED RULES:
920 ... 2507
923 ... 5074
933 ... 4046

16 CFR

2 ... 3300
4 ... 4834
13 ... 3–5, 3636, 3640, 3833, 4118, 4119, 5347, 5694
1012 ... 5040
1201 ... 1428

PROPOSED RULES:
1 ... 2980
4 ... 2079
438 ... 1483
447 ... 2694
450 ... 1038
456 ... 5075
600 ... 5075
801 ... 3181, 3655
1012 ... 5079
1301 ... 1484

17 CFR

1 ... 2628, 4120
155 ... 4120
180 ... 3433
200 ... 753, 5040
211 ... 2058
240 ... 753, 754, 2060, 3301, 4424
241 ... 759
249 ... 4424
276 ... 2953

PROPOSED RULES:
1 ... 4134
155 ... 4134

17 CFR—Continued

PROPOSED RULES—Continued
239 ... 3312
240 ... 781, 782, 3312, 4854, 5084
249 ... 782
270 ... 3312
275 ... 3312

18 CFR

2 ... 2954, 4834
11 ... 1226
141 ... 8
154 ... 2954
300 ... 2668

PROPOSED RULES:
1 ... 2079
2 ... 2329, 4834
3 ... 2079
154 ... 1272
157 ... 56
301 ... 4859

19 CFR

1 ... 5040
4 ... 3160, 5040
6 ... 2309
10 ... 2309, 2310, 3161, 5041
18 ... 4120
24 ... 4120, 5041
153 ... 2501
172 ... 3161

PROPOSED RULES:
1 ... 2329
113 ... 2330
201 ... 805

20 CFR

401 ... 3640
404 ... 2062
405 ... 1028
416 ... 2062
422 ... 3640
614 ... 1459
601 ... 4724
602 ... 4724
603 ... 4724
604 ... 4724
651 ... 4724
652 ... 4727
653 ... 4727
654 ... 4731
655 ... 4731
656 ... 3440
657 ... 4731
658 ... 4731
701 ... 3847
702 ... 3847

PROPOSED RULES:
405 ... 4966
416 ... 2079, 3316, 5367
655 ... 4670

21 CFR

1 ... 4697
2 ... 1459, 4436, 4697
4 ... 3108
6 ... 4712
8 ... 1459, 4712
10 ... 4712
11 ... 4713
80 ... 4713
90 ... 4713
100 ... 4713
102 ... 761
121 ... 1460, 1461, 3302, 4713
310 ... 4714
314 ... 1624, 1638, 3109, 4714, 5349
320 ... 1624, 1638, 5349
501 ... 4716
503 ... 4716
508 ... 4717
510 ... 3837
514 ... 3109, 4717
520 ... 1462, 3838
522 ... 3838, 5349
540 ... 1462, 5349
548 ... 3838
555 ... 3838
558 ... 761, 1463, 2312
564 ... 4717
570 ... 4717
571 ... 4717
601 ... 4718
701 ... 4718
809 ... 4719

PROPOSED RULES:
1 ... 2330
3e ... 1483, 5367
8 ... 5367
11 ... 806
18 ... 2330
121 ... 1483, 5367
128d ... 807
312 ... 5367
314 ... 5367
369 ... 2330
430 ... 5367
431 ... 5367
500 ... 2330
510 ... 2981
514 ... 5367
701 ... 2330
740 ... 2330, 5368
801 ... 2330
1309 ... 5370

22 CFR

41 ... 2501
42 ... 2501

PROPOSED RULES:
93 ... 5086
707 ... 5086

23 CFR

625 ... 6, 3642
655 ... 4835
712 ... 7

PROPOSED RULES:
1204 ... 5088

24 CFR

24 ... 5304
35 ... 5042
42 ... 5044
200 ... 3838, 5044
201 ... 3839, 5044, 5045
203 ... 762
207 ... 764, 2954
213 ... 764, 2954
221 ... 765, 2954
231 ... 766, 2954
241 ... 763, 3162
275 ... 5694
280 ... 960
290 ... 5049
570 ... 5312
841 ... 5878
866 ... 5573
885 ... 5568

24 CFR—Continued

886 ... 5602
1905 ... 3162
1914 ... 2193, 4264
1916 ... 4264, 4265
1917 ... 2063–2068, 4265–4268
3282 ... 2576

PROPOSED RULES:

108 ... 5097
200 ... 4296
201 ... 1487
203 ... 5704
235 ... 5088
242 ... 3655
279 ... 3112
406 ... 2796
501 ... 1488
570 ... 3292, 3437
800 ... 4300
866 ... 3181
881 ... 4300, 5918
885 ... 5924
888 ... 5370
891 ... 5099
1710 ... 5890
1720 ... 5906
1909 ... 5576
1917 ... 2082, 4269–4280, 4641–4649
2205 ... 5093, 5094

25 CFR

700 ... 5054

PROPOSED RULES:

221 ... 3319
504 ... 3864

26 CFR

1 ... 767, 1195, 1463, 2501, 3839, 4436
7 ... 1469, 1471, 2954, 4121
41 ... 2671
48 ... 2671, 5695
142 ... 2677
154 ... 2312
404 ... 1029, 2313, 4437, 4438, 5695

PROPOSED RULES:

1 ... 57, 2694, 3181, 3866, 5371, 5704
54 ... 1488
301 ... 1038, 1489

27 CFR

170 ... 3840
178 ... 5350
181 ... 5350
194 ... 3840
201 ... 3840
245 ... 5355
270 ... 4999
275 ... 5002
290 ... 5008
295 ... 5010
296 ... 5011

PROPOSED RULES:

250 ... 5104

28 CFR

0 ... 3163, 4440, 5054
30 ... 5318
50 ... 5695

PROPOSED RULES:

16 ... 5104
32 ... 1390

29 CFR

15 ... 769
60 ... 3440
94 ... 1656, 2426
95 ... 2427
96 ... 2428
97 ... 1656
98 ... 2428
99 ... 773, 2430
511 ... 2313
609 ... 2954
613 ... 3303
657 ... 4440
672 ... 2955
673 ... 2955
720 ... 3303
1601 ... 3163
1903 ... 5356
1904 ... 5356
1910 ... 2956, 3304
1926 ... 2956
1951 ... 5356
1952 ... 2313
2608 ... 2677, 4440
2610 ... 2678

PROPOSED RULES:

90 ... 2981, 5372
102 ... 5105
215 ... 3319, 4492
1910 ... 808, 1742, 1806, 5372, 5374
2550 ... 1488, 1618, 3871
2610 ... 4862

30 CFR

100 ... 1214
211 ... 3642, 4441

PROPOSED RULES:

11 ... 2986
55 ... 5546
56 ... 5546
57 ... 5546
77 ... 2800
211 ... 1489, 2082, 4492, 4493
251 ... 3321

31 CFR

1 ... 2311
13 ... 3841
51 ... 2196, 2422
101 ... 1471
128 ... 4121
210 ... 9
515 ... 1472

32 CFR

40 ... 3646
256 ... 773
806b ... 5696
2000 ... 2679

PROPOSED RULES:

242a ... 1492
903 ... 2085
1482 ... 3322

33 CFR

40 ... 10
92 ... 2681
117 ... 3841
159 ... 11
164 ... 5956
183 ... 2681, 2682, 5940, 5946
204 ... 3646
265 ... 3841

33 CFR—Continued

PROPOSED RULES:

82 ... 5705
110 ... 3871
114 ... 3181
115 ... 3181
161 ... 3182
164 ... 5966
181 ... 5107
207 ... 4863
209 ... 2572

34 CFR

Ch. I ... 12
232 ... 1478

36 CFR

9 ... 4836
212 ... 2957
221 ... 2957
231 ... 2957
251 ... 2957
261 ... 2957
262 ... 2961
271 ... 2962
272 ... 2962
291 ... 2962
295 ... 2962
606 ... 1473

PROPOSED RULES:

7 ... 3655, 3656
16 ... 812
17 ... 812
66 ... 5374

37 CFR

1 ... 5588
201 ... 2962

PROPOSED RULES:

1 ... 2632
3 ... 2632
5 ... 2632
201 ... 4134, 5109

38 CFR

0 ... 2314
3 ... 2069
17 ... 2316

39 CFR

111 ... 3470
233 ... 4123
257 ... 4123
258 ... 4124
951 ... 5357
952 ... 5357
953 ... 5357
954 ... 5358
957 ... 5358
958 ... 5358
959 ... 5358
3002 ... 3646

PROPOSED RULES:

1 ... 2699
2 ... 2699
3 ... 2699
4 ... 2699
5 ... 2699
6 ... 2699, 5383
7 ... 2699
8 ... 2699

40 CFR

6 ... 2450
52 ... 3841, 4124
60 ... 1214, 4124, 5936
61 ... 1215, 4124
86 ... 1122, 1150
129 ... 2588, 2617
136 ... 3306
190 ... 2858
220 ... 2468
221 ... 2470
222 ... 2471
223 ... 2474
224 ... 2474
225 ... 2475
226 ... 2475
227 ... 2476
228 ... 2482
229 ... 2489
409 ... 3164
430 ... 1398
439 ... 5697
440 ... 3165
455 ... 2316

PROPOSED RULES:

22 ... 1492
39 ... 5705
52 ... 1273, 1494, 2705, 3657, 4134, 4135, 4496, 5383, 5385
60 ... 2842, 4863
80 ... 3183
85 ... 1044
180 ... 2330
201 ... 2330
202 ... 2330
260 ... 2331
1516 ... 1044

41 CFR

3–3 ... 2683
3–4 ... 2684
3–16 ... 2684
3–50 ... 2684
5A–1 ... 5054
5A–2 ... 5055
5A–5 ... 5055
5A–7 ... 5057
5A–14 ... 5057
5A–16 ... 5058
5A–19 ... 5058
5A–53 ... 5058
5A–72 ... 5058
5A–76 ... 5059
7–1 ... 4841
7–3 ... 4841
7–4 ... 4842
7–6 ... 4842
7–7 ... 4842
7–8 ... 4843
7–10 ... 4843
7–12 ... 4843
7–15 ... 4843
7–30 ... 4843
9–4 ... 4124
9–7 ... 2963
9–15 ... 2963
9–51 ... 2684
Ch. 14 ... 1215
14–1 ... 1215
14–10 ... 1215
60–1 ... 3458
60–2 ... 3461
60–3 ... 3825
60–30 ... 3462, 4057

41 CFR—Continued

60–741 ... 3307
101–1 ... 12
101–25 ... 1030
101–26 ... 1032
101–28 ... 2317
101–38 ... 1477
114–43 ... 5358

PROPOSED RULES:

3–1 ... 1273
12–70 ... 5324
101–17 ... 816

42 CFR

56b ... 4125
100 ... 4024, 4847
101 ... 4676
122 ... 4024
123 ... 4028

PROPOSED RULES:

54a ... 5866
54b ... 2986
101 ... 2994, 4256–4260, 4624, 4632, 4637

43 CFR

4 ... 1216
419 ... 3307
2650 ... 779
3040 ... 4441
3041 ... 4442
3100 ... 1032
3500 ... 4451, 4457
3520 ... 4452
3830 ... 5298
4110 ... 778
4120 ... 778
9230 ... 4457

PUBLIC LAND ORDER:

5561 (Amended by PLO 5612) ... 2684
5611 (Corrected by PLO 5612) ... 2684
5612 ... 2706

PROPOSED RULES:

2 ... 4496
29 ... 3660
2400 ... 3657
2920 ... 5294
3520 ... 2684
3800 ... 1045
4700 ... 4500
6260 ... 5294

45 CFR

99 ... 4460
177 ... 2963
185 ... 3842
193 ... 1190
228 ... 5842
233 ... 3307
248 ... 2684
249 ... 4125
250 ... 779
304 ... 3843
416 ... 5272
1005 ... 3165
1050 ... 3272
1068 ... 3165
1336 ... 3782
1385 ... 5276
1386 ... 5279
1387 ... 5287
1619 ... 4848

45 CFR—Continued

PROPOSED RULES:

Subtitle A ... 3325
46 ... 2792, 3076
63 ... 4135
74 ... 4137
Ch. I ... 5110
153 ... 3792
158 ... 2086
185 ... 4501
Ch. II ... 2445
201 ... 3684
205 ... 2440
249 ... 3325, 3665, 4967
250 ... 2331, 3328
304 ... 3663
504 ... 3872
702 ... 5705
706 ... 2708
1480 ... 1045
1606 ... 4864
1621 ... 4867
1703 ... 3687

46 CFR

32 ... 5962
35 ... 5963
77 ... 5963
78 ... 5963
96 ... 5963
97 ... 5964
167 ... 5964
184 ... 5964
185 ... 5964
195 ... 5964
196 ... 5965
536 ... 1473

PROPOSED RULES:

10 ... 3186
12 ... 1278
502 ... 817
531 ... 3186

47 CFR

0 ... 3166, 3167
1 ... 3166–3168, 3308
13 ... 1231
15 ... 1231, 3308, 4461
21 ... 1232
73 ... 1233, 2502, 3167, 3308, 3646, 4157, 5697
74 ... 2069
76 ... 3308
81 ... 1474
83 ... 1231, 1474
87 ... 3168, 3308
89 ... 4158
97 ... 3166, 3167

PROPOSED RULES:

64 ... 1278
73 ... 1278, 1279, 2086, 3186
74 ... 2087
76 ... 3670, 5708
83 ... 2088
97 ... 2089, 5708

49 CFR

Ch. II ... 4464
Ch. V ... 2864
25 ... 12
99 ... 3118, 5359
173 ... 2071, 2688, 5059
174 ... 2071
178 ... 2688

49 CFR—Continued

218 ..... 2318, 3843, 5059
220 5065
221 ..... 2321, 3843
225 1221
231 1222
258 4652
260 4652
265 4286
268 4982
310 2964
501 3843
571 ..... 3844, 5071
630 3772
1033 ..... 2965, 3309, 3310, 3844, 4467, 4849, 5359
1047 19
1056 ..... 3169, 5360
1100 4126
1241 1474
1249 1474
1250 1474
1251 1474

PROPOSED RULES:

Subtitle A 2868
173 2709

49 CFR—Continued

PROPOSED RULES—Continued

173 5708
174 5708
178 5708
179 ..... 2709, 5708
228 ..... 2994, 5387
230 2994
258 4660
267 2507
268 4982
523 2092
570 5711
571 3187
804 5111
1251 2092

50 CFR

17 ..... 2071, 2965
26 ..... 1033, 2689, 2690, 3845
32 2690
33 ..... 1034, 2690, 3845, 4849
216 ..... 1034, 3845
240 5698
260 2326
261 2326
262 2326
263 ..... 2326, 4468

50 CFR—Continued

264 2326
265 2326
266 2326
267 2326
268 2326
269 2326
270 2326
271 2326
272 2326
273 2326
274 2326
275 2326
276 2326
277 2326
278 2326
279 2326
601 2968
602 2968

PROPOSED RULES:

17 ..... 2101, 2102, 2507, 4868
26 4872
33 5387
216 1049
217 4873
233 4874

FEDERAL REGISTER PAGES AND DATES—JANUARY

Pages	Date	Pages	Date
1–741	Jan. 3	3159–3294	17
743–1015	4	3295–3624	18
1017–1194	5	3625–3826	19
1195–1450	6	3827–4109	21
1451–2049	7	4110–4394	24
2051–2291	10	4395–4808	25
2293–2497	11	4809–5021	26
2499–2664	12	5023–5339	27
2665–2946	13	5341–5676	28
2947–3157	14	5677–5966	31

rules and regulations

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

Title 7—Agriculture

CHAPTER IX—AGRICULTURAL MARKETING SERVICE (MARKETING AGREEMENTS AND ORDERS; FRUITS, VEGETABLES, NUTS), DEPARTMENT OF AGRICULTURE

[Navel Orange Reg. 397, Amdt. 1]

PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

Limitation of Handling

This regulation increases the quantity of California-Arizona Navel oranges that may be shipped to fresh market during the weekly regulation period January 21–27, 1977. The quantity that may be shipped is increased due to improved market conditions for Navel oranges. The regulation and this amendment are issued pursuant to the Agricultural Marketing Agreement Act of 1937, as amended, and Marketing Order No. 907.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 907, as amended (7 CFR Part 907), regulating the handling of Navel oranges grown in Arizona and designated part of California, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and upon the basis of the recommendations and information submitted by the Navel Orange Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such Navel oranges, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) The need for an increase in the quantity of oranges available for handling during the current week results from changes that have taken place in the marketing situation since the issuance of Navel Orange Regulation 397 (42 FR 3846). The marketing picture now indicates that there is a greater demand for Navel oranges than existed when the regulation was made effective. Therefore, in order to provide an opportunity for handlers to handle a sufficient volume of Navel oranges to fill the current market demand thereby making a greater quantity of Navel oranges available to meet such increased demand, the regulation should be amended, as hereinafter set forth.

(3) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this amendment until 30 days after publication thereof in the FEDERAL REGISTER (5 U.S.C. 553) because the time intervening between the date when information upon which this amendment is based became available and the time when this amendment must become effective in order to effectuate the declared policy of the act is insufficient, and this amendment relieves restriction on the handling of Navel oranges grown in Arizona and designated part of California.

(b) *Order, as amended.* The provisions in paragraph (b)(1) (i), and (ii) of § 907.697 (Naval Orange Regulation 397 (42 FR 3846)) are hereby amended to read as follows:

(i) District 1: 1,453,000 cartons;
(ii) District 2: 297,000 cartons.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.)

Dated: January 26, 1977.

CHARLES R. BRADER,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc.77-3009 Filed 1-28-77;8:45 am]

PART 981—ALMONDS GROWN IN CALIFORNIA

Administrative Rules and Regulations; Quality Control; Correction

In FR Doc. 77-1421 appearing at page 3159 in the FEDERAL REGISTER of Monday January 17, 1977, a change on page 3160 should be made in subparagraph (6) of the third column. The words "inedibles. However, no waiver shall be granted for more than 30 percent" are added to follow "two percent".

Dated: January 26, 1977.

CHARLES R. BRADER,
Deputy Director, Fruit and Vegetable Division.

[FR Doc.77-3008 Filed 1-28-77;8:45 am]

Title 9—Animals and Animal Products

CHAPTER II—PACKERS AND STOCKYARDS ADMINISTRATION, DEPARTMENT OF AGRICULTURE

PART 201—REGULATIONS UNDER THE PACKERS AND STOCK YARDS ACT

PART 202—RULES OF PRACTICE GOVERNING PROCEEDINGS UNDER THE PACKERS AND STOCKYARDS ACT

Rules Applicable to Disciplinary Proceedings, Reparation Proceedings, and Rate Proceedings

On January 4, 1977, there was published in the FEDERAL REGISTER (42 F.R. 743) a notice that the Department of Agriculture, had adopted, effective February 1, 1977, uniform rules of practice governing formal adjudicatory proceedings. The rules are applicable to all adjudicatory proceedings under Sections 203, 312, 401, 502(b), and 505 of the Packers and Stockyards Act, 1921, as supplemented (7 U.S.C. 193, 213, 218a, 218d, and 221), and Section 1, 57 Stat. 422, as amended by Section 4, 90 Stat. 1249 (7 U.S.C. 204).

The Administrator of the Packers and Stockyards Administration, as directed by the notice, publishes the following notice.

Effective February 1, 1977, the rules of practice governing disciplinary proceedings under the Packers and Stockyards Act (9 CFR 201.1, 201.22) are revoked with respect to all formal adjudicatory proceedings instituted on and after said date under the provisions of Packers and Stockyards Act referred to above. However, any of the rules of practice so revoked that are made applicable to the rules governing rate and reparation proceedings (9 CFR 202.23, 202.48) by reference, continue in effect for the purposes of such proceedings until modified by further notice.

Done at Washington, D.C., January 26, 1977.

(Section 407, 42 Stat. 169, as amended, 72 Stat. 1750, 77 Stat. 79, and 90 Stat. 1252 3; 7 U.S.C. 228; 7 CFR §§ 2.17, 2.54)

MARVIN L. MCLAIN,
Administrator, Packers and Stockyards Administration.

[FR Doc.77-2956 Filed 1-28-77;8:45 am]

Title 12—Banks and Banking

CHAPTER II—FEDERAL RESERVE SYSTEM

SUBCHAPTER A—BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

[Reg. B; Docket No. R-0031]

PART 202—EQUAL CREDIT OPPORTUNITY

Model Credit Application Forms

Pursuant to the 1976 amendments to the Equal Credit Opportunity Act (15 U.S.C. 1691 et seq.), the Board published for public comment on July 20 (41 FR 29870) and November 8, 1976 (41 FR 49123) proposed revisions of its Regulation B, which implements the Act. Since many creditors, particularly smaller ones, experienced difficulties in preparing credit application forms to comply with existing Regulation B, the Board included in its July and November proposals sample application forms. In addition, on November 24, the Board published (41 FR 51837) a proposed model residential real estate mortgage loan application.

After consideration of the numerous comments that were submitted regarding the proposed model forms, the Board has adopted revised versions of the forms, which constitute Appendix B of Regulation B as published on January 6, 1977 (42 FR 1242). Appendix B contains five model forms: One designed for use in open end, unsecured consumer credit transactions; one for closed end, secured transactions; another one for closed end transactions, whether unsecured or secured; one for use in community property situations; and one for use in residential real estate mortgage transactions.

The Appendix B forms are only models. Their use is optional. A creditor may design its own forms; use forms prepared by another person or entity; or use or modify the model forms. Proper use of the model forms assures compliance with Regulation B's requirements. Before using a model form, however, a creditor should check that use of the form complies with applicable State law. The subject of application forms is covered in § 202.5(e) of the revised regulation.

The forms will be printed as sample applications in a pamphlet containing the texts of Regulation B and the amended Equal Credit Opportunity Act. If a creditor chooses to use a model form, it should make its own reproduction arrangements using the forms as they appear in the Board's pamphlet or as printed in the FEDERAL REGISTER. Neither the Board nor the Federal Reserve Banks will print or distribute multiple copies for actual use by a creditor. Copies of the model residential real estate mortgage loan application, as modified to meet the requirements of the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association (form FHLMC 65/FNMA 1003 (Rev. 3/77)), will be available for reproduction purposes from either FHLMC or FNMA.

A discussion of the changes that have been made in the forms from the November proposals follows. The revised version of Regulation B, including Appendix B, becomes effective on March 23, 1977.

COVER SHEET OF APPENDIX B

The directions printed on the cover sheet of Appendix B have been completely rewritten and expanded. As revised, the directions specify the appropriate use for each form, confirm the optional nature of the forms, and list the three informational items that a creditor is expressly authorized to add to any of the model forms. The directions also note that the model residential real estate mortgage loan application was developed in conjunction with the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association, and is substantially the same as the joint FHLMC 65/FNMA 1003 (Rev. 3/77) form. The directions state, however, that the model form must be modified as required by FHLMC and FNMA or the joint FHLMC/FNMA form must be used if a creditor intends to participate in the governmentally sponsored secondary mortgage market. The FHLMC 65/FNMA 1003 (Rev. 3/77) form, of course, complies with the requirements of the revised version of Regulation B.

NON-REAL ESTATE FORMS

While the general format of the four non-real estate model forms remains unchanged from the November proposal, several significant clarifying changes have been made.

The directions to the applicant at the head of the forms have been rewritten in an attempt to clarify those instructions. Since creditors may include, particularly in open end credit situations, an obligation agreement on the forms and since the issue of who must sign an application is a matter of policy for each creditor to decide in conformity with the requirements of § 202.7(d) of the revised regulation, the directions regarding signatures have been deleted.

While several commentators recommended that the terms "applicant" and "co-applicant" be substituted for the word "you" in the directions, the Board has decided to retain the "you." Although the use of "you" may be ambiguous when a joint applicant is involved, the substitution of "applicant" and "co-applicant" would make the directions lengthier and would, in the Board's opinion, negate any clarity obtained by the substitution.

At the request of several creditors, "birthdate" has been substituted for "age" in the inquiries about age in Sections A and B of the forms. This was done to provide birthdate information as an identifier for credit investigations and credit reporting purposes and to provide the necessary birthdate information when credit insurance is involved.

In order to obtain a more accurate picture of an applicant's disposable income, the word "net" has been inserted before "salary or commission" in both Sections A and B to clarify that the question requests after-tax take-home pay.

The notice regarding the option not to reveal alimony, child support, or separate maintenance income has been further highlighted by placing it within a rectangular box. Also included within the box is the question about the basis on which such income is paid. This was done to underscore the point that no information concerning the receipt of alimony, child support, or separate maintenance need be provided if an applicant chooses not to do so.

Since the revised regulation (§§ 202.6(b)(2)(iii) and 202.6(b)(5)) permits creditors to consider the probable continuity of an applicant's income, a question about the likelihood of a reduction in income has been added to the forms.

Since a creditor is permitted to inquire about the marital status of any party about whom information is furnished when the application is not for an unsecured, individual account, Section C has been expanded to include a request about the marital status of any such other party.

In Section D, under Assets Owned, the third column has been retitled "Subject to Debt?—Yes/No" to replace the confusing title "Encumbered?" In that same section, more space has been provided for listing automobiles, real estate, and marketable securities.

Credit references have been segregated from outstanding debts, a note has been inserted that rent payments should not be included in the Original Debt and Present Balance columns, and the Past Due column has been converted into a yes/no question.

The statement above the signature lines has been completely rewritten to simplify and clarify it. Since the criminal penalty statement would not necessarily apply in every situation and since it appeared inappropriate on a model form, it has been deleted.

Finally, since they were inappropriate in certain contexts, the words "borrow," "loan," and "lender" and similar terms have been eliminated from the forms.

REAL ESTATE FORM

The model residential real estate mortgage loan application published by the Board in November followed the form designed and currently used by the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association. In cooperation with those agencies, the Board has revised the proposed form in response to the numerous and extensive comments that were submitted.

For clarification, certain abbreviations have been modified or spelled out.

The item requesting whether the property is a fee, leasehold, condominium, or planned unit development has been deleted. The request would be confusing to an applicant, and the information is better obtained at the appraisal stage.

The blocks relating to the names and manner in which title will be held have been revised to make the questions more understandable to an applicant.

The item asking who the note will be signed by has been deleted. That determination is one to be made by the creditor in compliance with § 202.7(d) of the revised regulation.

The instructions regarding the completion of the co-borrower section have been rewritten to make them clearer. A sentence has also been added to indicate that the form is designed to be completed by an applicant with the lender's assistance.

Lines for the borrower's and co-borrower's Social Security numbers have been added. This information will assist creditors in verifying and furnishing credit history information. Also, spaces have been inserted on the front of the form for home and office telephone numbers.

A footnote has been added, specifying that present monthly housing expenses should be listed by the borrower and co-borrower on a combined basis. For purposes of a comparison between present and proposed monthly housing expenses, a combined listing makes more sense than the separate listing required in the November proposal.

Under Details of Purchase, the abbreviation "(Est.)" has been inserted on lines b, c, and j to make clear that the listed closing costs are estimates. This section is intended to assist a lender at the application stage in calculating whether an applicant has the funds to meet anticipated closing costs. It is not a substitute for the good-faith estimate of settlement costs required by the Real Estate Settlement Procedures Act.

The section at the bottom of the front of the form has been revised. The request for an explanation of a "yes" answer has been rewritten to make clear that it applies only to the questions in the left-hand column and not to the ones in the right-hand column. The first series of questions in the left column have been rephrased and separated into distinct questions. Finally, the words "sales price" have been substituted for the less definite term "value" in the last question in the column on the right.

On the reverse side, more space has been provided in the schedule of assets and liabilities, and, in the liabilities section, a column has been inserted for the name in which a debt is carried by a creditor if different from the borrower's or co-borrower's name.

The credit references section has been expanded to include a request for any other names in which the borrower or co-borrower has received credit.

The agreement has been modified to include a notice that the application will be retained by the lender. The criminal penalties provision has been deleted since it would not apply to lenders whose assets are not insured by a Federal agency or who do not make Federally insured or guaranteed loans.

The section relating to information for monitoring purposes has been changed in several respects. The title of the section and the text have been revised to underscore that the information is being sought by the Federal government, not the lender, and that furnishing the information is completely voluntary. The text has also been changed to clarify that the request for information applies only if an applicant is seeking a mortgage loan for the purchase of residential real property or the construction of a home.

In addition, the questions regarding marital status and age have been deleted from the monitoring section because their inclusion was confusing. Although marital status and age information is sought for monitoring purposes, questions relating to those items appear on the face of the form, where disclosure of the information is not optional. Furthermore, a creditor may consider that information as authorized in Regulation B.

For the reasons stated in this notice and pursuant to section 703 of the Equal Credit Opportunity Act (15 U.S.C. 1691 et seq.), the following materials are adopted as Appendix B of Regulation B (12 CFR Part 202), effective March 23, 1977.

APPENDIX B—MODEL APPLICATION FORMS

This Appendix contains five model credit application forms, each designed for use in a particular type of consumer credit transaction as indicated by the bracketed caption on each form (which should be removed prior to reproduction). The first sample form is intended for use in open end, unsecured transactions; the second for closed end, secured transactions; the third for closed end transactions, whether unsecured or secured; the fourth for use in transactions involving community property of occurring in community property States; and the fifth for use in secured residential real estate transactions. The real estate form should be used only when a lender's representative is available to assist an applicant in completing the form.

The forms contained in this Appendix are models; their use by creditors is optional. In all instances, the use or modification of these forms is governed by § 202.5(e) of this Part and the directions contained in this Appendix.

In addition to deleting any information request printed on the forms or rearranging their format, as specified in § 202.5(e), a creditor is expressly permitted to modify any of the model forms contained in this Appendix by adding any of the following three items:

(1) An inquiry about the names in which an applicant has previously received credit as authorized in § 202.5(c)(3);

(2) A request to designate a courtesy title as authorized in § 202.5(d)(3); or

(3) An inquiry about an applicant's permanent residence and United States immigration status as authorized by § 202.5(d)(5).

The fifth form contained in this Appendix, the model residential real estate mortgage loan application, was prepared in conjunction with the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association. It is substantially identical to the joint FHLMC 65/FNMA 1003 (Rev. 3/77) form, except for type face and the inclusion on the FHLMC/FNMA form of certain items required by the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association. If a creditor wishes to participate in the secondary mortgage market involving the Federal Home Loan Mortgage Corporation, Federal National Mortgage Association, or Government National Mortgage Association, it should either modify the model form as specified by the Federal Home Loan Mortgage Corporation and Federal National Mortgage Association or use form FHLMC 65/FNMA 1003 (Rev. 3/77) with supporting schedule FHLMC 65A/FNMA 1003A. Use of the FHLMC 65/FNMA 1003 (Rev. 3/77) form constitutes full compliance with subsections (c) and (d) of § 202.5 of this part.

[Open end, unsecured credit]

CREDIT APPLICATION

IMPORTANT: Read these Directions before completing this Application.

Check Appropriate Box

- ☐ If you are applying for an individual account in your own name and are relying on your own income or assets and not on the income or assets of another person as the basis for repayment of the credit requested, complete only Sections A and D.
- ☐ If you are applying for a joint account or an account that you and another person will use, complete all Sections, providing information in B about the joint applicant or user.
- ☐ If you are applying for an individual account, but are relying on income from alimony, child support, or separate maintenance or on the income or assets of another person as the basis for repayment of the credit requested, complete all Sections to the extent possible, providing information in B about the person on whose alimony, support, or maintenance payments or income or assets you are relying.

SECTION A—INFORMATION REGARDING APPLICANT

Full Name (Last, First, Middle): ..... Birthdate: / /

Present Street Address: ..... Years there: .....

City: ..... State: ..... Zip: ..... Telephone: .....

Social Security No.: ..... Driver's License No.: .....

Previous Street Address: ..... Years there: .....

City: ..... State: ..... Zip: .....

Present Employer: ..... Years there: ..... Telephone: .....

Position or title: ..... Name of supervisor: .....

Employer's Address: .....

Previous Employer: ..... Years there: .....

Previous Employer's Address: .....

Present net salary or commission: $..... per ..... No. Dependents: ..... Ages: .....

Alimony, child support, or separate maintenance income need not be revealed if you do not wish to have it considered as a basis for repaying this obligation.

Alimony, child support, separate maintenance received under: court order ☐ written agreement ☐ oral understanding ☐

Other income: $..... per ..... Source(s) of other income: .....

Is any income listed in this Section likely to be reduced in the next two years?
☐ Yes (Explain in detail on a separate sheet.) No ☐

Have you ever received credit from us? ..... When? ..... Office: .....

Checking Account No.: ..... Institution and Branch: .....

Savings Account No.: ..... Institution and Branch: .....

Name of nearest relative not living with you: ..... Telephone: .....

Relationship: ..... Address: .....

SECTION B—INFORMATION REGARDING JOINT APPLICANT, USER, OR OTHER PARTY (Use separate sheets if necessary.)

Full Name (Last, First, Middle): ..... Birthdate: / /

Relationship to Applicant (if any): .....

Present Street Address: ..... Years there: .....

City: ..... State: ..... Zip: ..... Telephone: .....

Social Security No.: ..... Driver's License No.: .....

Present Employer: ..... Years there: ..... Telephone: .....

Position or title: ..... Name of supervisor: .....

Employer's Address: .....

Previous Employer: ..... Years there: .....

Previous Employer's Address: .....

Present net salary or commission: $..... per ..... No. Dependents: ..... Ages: .....

Alimony, child support, or separate maintenance income need not be revealed if you do not wish to have it considered as a basis for repaying this obligation.

Alimony, child support, separate maintenance received under: court order ☐ written agreement ☐ oral understanding ☐

Other income: $..... per ..... Source(s) of other income: .....

Is any income listed in this Section likely to be reduced in the next two years?
☐ Yes (Explain in detail on a separate sheet.) ☐ No

Checking Account No.: ..... Institution and Branch: .....

Savings Account No.: ..... Institution and Branch: .....

Name of nearest relative not living with Joint Applicant, User, or Other Party: ..... Telephone: .....

Relationship: ..... Address: .....

SECTION C—MARITAL STATUS
(Do not complete if this is an application for an individual account.)

Applicant: ☐ Married ☐ Separated ☐ Unmarried (including single, divorced, and widowed)
Other Party: ☐ Married ☐ Separated ☐ Unmarried (including single, divorced, and widowed)

SECTION D—ASSET AND DEBT INFORMATION (If Section B has been completed, this Section should be completed giving information about both the Applicant and Joint Applicant, User, or Other Person. Please mark Applicant-related information with an "A." If Section B was not completed, only give information about the Applicant in this Section.)

ASSETS OWNED (Use separate sheet if necessary.)

Description of Assets	Value	Subject to Debt? Yes/No	Name(s) of Owner(s)
Cash	$		
Automobiles (Make, Model, Year)			
Cash Value of Life Insurance (Issuer, Face Value)			
Real Estate (Location, Date Acquired)			
Marketable Securities (Issuer, Type, No. of Shares)			
Other (List)			
Total Assets	$		

OUTSTANDING DEBTS (Include charge accounts, installment contracts, credit cards, rent, mortgages, etc. Use separate sheet if necessary.)

Creditor	Type of Debt or Acct. No.	Name in Which Acct. Carried	Original Debt	Present Balance	Monthly Payments	Past Due? Yes/No
1. (Landlord or Mortgage Holder)	☐ Rent Payment ☐ Mortgage		$ (Omit rent)	$ (Omit rent)	$	
2.						
3.						
4.						
5.						
6.						
Total Debts			$	$	$	
(Credit References)						Date Paid
1			$			
2.						

Are you a co-maker, endorser, or guarantor on any loan or contract? Yes ☐ No ☐ If "yes" for whom? To whom?

Are there any unsatisfied judgments against you? Yes ☐ No ☐ Amount $ If "yes" to whom owed?

Have you been declared bankrupt in the last 14 years? Yes ☐ No ☐ If "yes" where? Year

Other Obligations—(E.g., liability to pay alimony, child support, separate maintenance. Use separate sheet if necessary.)

Everything that I have stated in this application is correct to the best of my knowledge. I understand that you will retain this application whether or not it is approved. You are authorized to check my credit and employment history and to answer questions about your credit experience with me.

Applicant's Signature Date

Other Signature (Where Applicable) Date

[Closed end, secured credit]

CREDIT APPLICATION

IMPORTANT: Read these Directions before completing this Application.

Check Appropriate Box

- ☐ If you are applying for individual credit in your own name and are relying on your own income or assets and not the income or assets of another person as the basis for repayment of the credit requested, complete Sections A, C, D, and E, omitting B and the second part of C.
- ☐ If this is an application for joint credit with another person, complete all Sections, providing information in B about the joint applicant.
- ☐ If you are applying for individual credit, but are relying on income from alimony, child support, or separate maintenance or on the income or assets of another person as the basis for repayment of the credit requested, complete all Sections to the extent possible, providing information in B about the person on whose alimony, support, or maintenance payments or income or assets you are relying.

Amount Requested ..... Payment Date Desired ..... Proceeds of Credit

$..... To be Used For.....

SECTION A—INFORMATION REGARDING APPLICANT

Full Name (Last, First, Middle): ..... Birthdate: / /

Present Street Address: ..... Years there: .....

City: ..... State: ..... Zip: ..... Telephone: .....

Social Security No.: ..... Driver's License No.: .....

Previous Street Address: ..... Years there: .....

City: ..... State: ..... Zip: .....

Present Employer ..... Years there: ..... Telephone: .....

Position or title: ..... Name of supervisor: .....

Employer's Address: .....

Previous Employer: ..... Years there: .....

Previous Employer's Address: .....

Present net salary or commission: $..... per ..... No. Dependents: ..... Ages: .....

Alimony, child support, or separate maintenance income need not be revealed if you do not wish to have it considered as a basis for repaying this obligation.

Alimony, child support, separate maintenance received under: court order ☐ written agreement ☐ oral understanding ☐

Other income: $..... per ..... Source(s) of other income: .....

Is any income listed in this Section likely to be reduced before the credit requested is paid off?
☐ Yes (Explain in detail on a separate sheet.) No ☐

Have you ever received credit from us? ..... When? ..... Office: .....

Checking Account No. ..... Institution and Branch: .....

Savings Account No. ..... Institution and Branch: .....

Name of nearest relative not living with you: ..... Telephone: .....

Relationship: ..... Address: .....

SECTION B—INFORMATION REGARDING JOINT APPLICANT OR OTHER PARTY (Use separate sheets if necessary.)

Full Name (Last, First, Middle): ..... Birthdate: / /

Relationship to Applicant (if any): .....

Present Street Address: ..... Years there: .....

City: ..... State: ..... Zip ..... Telephone: .....

Social Security No.: ..... Driver's License No.: .....

Present Employer: ..... Years there: ..... Telephone: .....

Position or title: ..... Name of supervisor: .....

Employer's Address: .....

Previous Employer: ..... Years there: .....

Previous Employer's Address: .....

Present net salary or commission: $..... per ..... No. Dependents: ..... Ages: .....

Alimony, child support, or separate maintenance income need not be revealed if you do not wish to have it considered as a basis for repaying this obligation.

Alimony, child support, separate maintenance received under: court order ☐ written agreement ☐ oral understanding ☐

Other income: $..... per ..... Source(s) of other income: .....

Is any income listed in this Section likely to be reduced before the credit requested is paid off?
☐ Yes (Explain in detail on a separate sheet.) No ☐

Checking Account No.: ..... Institution and Branch: .....

Savings Account No.: ..... Institution and Branch: .....

Name of nearest relative not living with Joint Applicant or Other Party: .....

Relationship: ..... Address: .....

SECTION C—MARITAL STATUS

Applicant: ☐ Married ☐ Separated ☐ Unmarried (including single, divorced, and widowed)
Other Party: ☐ Married ☐ Separated ☐ Unmarried (including single, divorced, and widowed)

SECTION D—ASSET AND DEBT INFORMATION (If Section B has been completed, this Section should be completed giving information about both the Applicant and Joint Applicant or Other Person. Please mark Applicant-related information with an "A." If Section B was not completed, only give information about the Applicant in this Section.)

ASSETS OWNED (Use separate sheet if necessary.)

Description of Assets	Value	Subject to Debt? Yes/No	Name(s) of Owner(s)
Cash	$		
Automobiles (Make, Model, Year)			
Cash Value of Life Insurance (Issuer, Face Value)			
Real Estate (Location, Date Acquired)			
Marketable Securities (Issuer, Type, No. of Shares)			
Other (List)			
Total Assets	$		

OUTSTANDING DEBTS (Include charge accounts, instalment contracts, credit cards, rent, mortgages, etc. Use separate sheet if necessary.)

Creditor	Type of Debt or Acct. No.	Name in Which Acct. Carried	Original Debt	Present Balance	Monthly Payments	Past Due? Yes/No
1. (Landlord or Mortgage Holder)	☐ Rent Payment ☐ Mortgage		$ (Omit rent)	$ (Omit rent)	$	
2.						
3.						
Total Debts			$	$	$	
(Credit References)						Date Paid
1.			$			
2.						

Are you a co-maker, endorser, or guarantor on any loan or contract? Yes ☐ No ☐ If "yes" for whom? To whom?

Are there any unsatisfied judgments against you? Yes ☐ No ☐ Amount $ If "yes" to whom owed?

Have you been declared bankrupt in the last 14 years? Yes ☐ No ☐ If "yes" where? Year

Other obligations—(E.g., liability to pay alimony, child support, separate maintenance. Use separate sheet if necessary.)

SECTION E—SECURED CREDIT Briefly describe the property to be given as security:

and list names and addresses of all co-owners of the property:

Name Address

If the security is real estate, give the full name of your spouse (if any): .....

Everything that I have stated in this application is correct to the best of my knowledge. I understand that you will retain this application whether or not it is approved. You are authorized to check my credit and employment history and to answer questions about your credit experience with me.

Applicant's Signature ..... Date ..... Other Signature (Where Applicable) ..... Date .....

[Closed end, unsecured/secured credit]

CREDIT APPLICATION

IMPORTANT: Read these Directions before completing this Application.

Check Appropriate Box

- ☐ If you are applying for individual credit in your own name and are relying on your own income or assets and not the income or assets of another person as the basis for repayment of the credit requested, complete only Sections A and D. If the requested credit is to be secured, also complete the first part of Section C and Section E.
- ☐ If you are applying for joint credit with another person, complete all Sections except E, providing information in B about the joint applicant. If the requested credit is to be secured, then complete Section E.
- ☐ If you are applying for individual credit, but are relying on income from alimony, child support, or separate maintenance or on the income or assets of another person as the basis for repayment of the credit requested, complete all Sections except E to the extent possible, providing information in B about the person on whose alimony, support, or maintenance payments or income or assets you are relying. If the requested credit is to be secured, then complete Section E.

Amount Requested ____ Payment Date Desired ____ Proceeds of Credit To be Used For ____

SECTION A—INFORMATION REGARDING APPLICANT

Full Name (Last, First, Middle): ____ Birthdate: / /

Present Street Address: ____ Years there: ____

City: ____ State: ____ Zip: ____ Telephone: ____

Social Security No.: ____ Driver's License No.: ____

Previous Street Address: ____ Years there: ____

City: ____ State: ____ Zip: ____

Present Employer: ____ Years there: ____ Telephone: ____

Position or title: ____ Name of supervisor: ____

Employer's Address: ____

Previous Employer: ____ Years there: ____

Previous Employer's Address: ____

Present net salary or commission: $ ____ per ____ No. Dependents: ____ Ages: ____

Alimony, child support, or separate maintenance income need not be revealed if you do not wish to have it considered as a basis for repaying this obligation.

Alimony, child support, separate maintenance received under: court order ☐ written agreement ☐ oral understanding ☐

Other income: $ ____ per ____ Source(s) of other income: ____

Is any income listed in this Section likely to be reduced before the credit requested is paid off?

☐ Yes (Explain in detail on separate sheet.) ☐ No

Have you ever received credit from us? ____ When? ____ Office ____

Checking Account No.: ____ Institution and Branch: ____

Savings Account No.: ____ Institution and Branch: ____

Name of nearest relative not living with you: ____ Telephone: ____

Relationship: ____ Address: ____

SECTION B—INFORMATION REGARDING JOINT APPLICANT OR OTHER PARTY (Use separate sheets if necessary.)

Full Name (Last, First, Middle): ____ Birthdate: / /

Relationship to Applicant (if any): ____

Present Street Address: ____ Years there: ____

City: ____ State: ____ Zip: ____ Telephone: ____

Social Security No.: ____ Driver's License No.: ____

Present Employer: ____ Years there: ____ Telephone: ____

Position or title: ____ Name of supervisor: ____

Employer's Address: ____

Previous Employer: ____ Years there: ____

Previous Employer's Address: ____

Present net salary or commission: $ ____ per ____ No. Dependents: ____ Ages: ____

Alimony, child support, or separate maintenance income need not be revealed if you do not wish to have it considered as a basis for repaying this obligation.

Alimony, child support, separate maintenance received under: court order ☐ written agreement ☐ oral understanding ☐

Other income: $ ____ per ____ Source(s) of other income: ____

Is any income listed in this Section likely to be reduced before the credit requested is paid off?

☐ Yes (Explain in detail on separate sheet.) ☐ No

Checking Account No.: ____ Institution and Branch: ____

Savings Account No.: ____ Institution and Branch: ____

Name of nearest relative not living with Joint Applicant or Other Party: ____ Telephone: ____

Relationship: ____ Address: ____

SECTION C—MARITAL STATUS
(Do not complete if this is an application for individual unsecured credit.)

Applicant: ☐ Married ☐ Separated ☐ Unmarried (including single, divorced, and widowed)
Other Party: ☐ Married ☐ Separated ☐ Unmarried (including single, divorced, and widowed)

SECTION D—ASSET AND DEBT INFORMATION (If Section B has been completed, this Section should be completed giving information about both the Applicant and Joint Applicant or Other Person. Please mark Applicant-related information with an "A." If Section B was not completed, only give information about the Applicant in this Section.)

ASSETS OWNED (Use separate sheet if necessary.)

Description of Assets	Value	Subject to Debt? Yes/No	Name(s) of Owner(s)
Cash	$		
Automobiles (Make, Model, Year)			
Cash Value of Life Insurance (Issuer, Face Value)			
Real Estate (Location, Date Acquired)			
Marketable Securities (Issuer, Type, No. of Shares)			
Other (List)			
Total Assets	$		

OUTSTANDING DEBTS (Include charge accounts, instalment contracts, credit cards, rent, mortgages, etc. Use separate sheet if necessary.)

Creditor	Type of Debt or Acct. No.	Name in Which Acct. Carried	Original Debt	Present Balance	Monthly Payments	Past Due? Yes/No
1. (Landlord or Mortgage Holder)	☐ Rent Payment ☐ Mortgage		$ (Omit cents)	$ (Omit cents)	$	
2.						
3.						
Total Debts			$	$	$	
(Credit References)						Date Paid
1.			$			
2.						

Are you a co-maker, endorser, or guarantor on any loan or contract? Yes ☐ No ☐ If "Yes," for whom? To whom?

Are there any unsatisfied judgments against you? Yes ☐ No ☐ Amount $ If "Yes," to whom owed?

Have you been declared bankrupt in the last 14 years? Yes ☐ No ☐ If "Yes," where? Year

Other obligations—(E.g., liability to pay alimony, child support, separate maintenance. Use separate sheet if necessary.)

SECTION E—SECURED CREDIT (Complete only if credit is to be secured.) Briefly describe the property to be given as security:

and list names and addresses of all co-owners of the property:

Name Address

If the security is real estate, give the full name of your spouse (if any):

Everything that I have stated in this application is correct to the best of my knowledge. I understand that you will retain this application whether or not it is approved. You are authorized to check my credit and employment history and to answer questions about your credit experience with me.

Applicant's Signature ____ Date ____ Other Signature (Where Applicable) ____ Date ____

[Community property]

CREDIT APPLICATION

IMPORTANT: Read these Directions before completing this Application.

Check Appropriate Box

☐ If you are applying for individual credit in your own name, are not married, and are not relying on alimony, child support, or separate maintenance payments or on the income or assets of another person as the basis for repayment of the credit requested, complete only Sections A and D. If the requested credit is to be secured, also complete Section E.

☐ In all other situations, complete all Sections except E, providing information in B about your spouse, a joint applicant or user, or the person on whose alimony, support, or maintenance payments or income or assets you are relying. If the requested credit is to be secured, also complete Section E.

Amount Requested $ | Payment Date Desired | Proceeds of Credit To be Used For

SECTION A—INFORMATION REGARDING APPLICANT

Full Name (Last, First, Middle): Birthdate: / /

Present Street Address: Years there:

City: State: Zip: Telephone:

Social Security No.: Driver's License No.:

Previous Street Address: Years there:

City: State: Zip:

Present Employer: Years there: Telephone:

Position or title: Name of supervisor:

Employer's Address:

Previous Employer: Years there:

Previous Employer's Address:

Present net salary or commission: $ per No. Dependents: Ages:

Alimony, child support, or separate maintenance income need not be revealed if you do not wish to have it considered as a basis for repaying this obligation.

Alimony, child support, separate maintenance received under: court order ☐ written agreement ☐ oral understanding ☐

Other income: $ per . Source(s) of other income:

Is any income listed in this Section likely to be reduced in the next two years or before the credit requested is paid off? ☐ Yes (Explain in detail on a separate sheet.) ☐ No

Have you ever received credit from us? When? Office:

Checking Account No.: Institution and Branch:

Savings Account No.: Institution and Branch:

Name of nearest relative not living with you Telephone:

Relationship Address:

***SECTION B*—INFORMATION REGARDING SPOUSE, JOINT APPLICANT, USER, OR OTHER PARTY (Use separate sheets if necessary.)**

Full Name (Last, First, Middle): Birthdate: / /

Relationship to Applicant (if any): Years there:

Present Street Address:

City: State: Zip: Telephone:

Social Security No.: Driver's License No.:

Present Employer: Years there: Telephone:

Position or title: Name of supervisor:

Employer's Address:

Previous Employer: Years there:

Previous Employer's Address:

Present net salary or commission: $ per No. Dependents: Ages:

Alimony, child support, or separate maintenance income need not be revealed if you do not wish to have it considered as a basis for repaying this obligation.

Alimony, child support, separate maintenance received under: court order ☐ written agreement ☐ oral understanding ☐

Other income: $ per . Source(s) of other income:

Is any income listed in this Section likely to be reduced in the next two years or before the credit requested is paid off? ☐ Yes (Explain in detail on a separate sheet.) ☐ No

Checking Account No.: Institution and Branch:

Savings Account No.: Institution and Branch:

Name of nearest relative not living with Spouse, Joint Applicant, User, or other Party: Telephone:

Relationship: Address:

SECTION C—MARITAL STATUS

Applicant: ☐ Married ☐ Separated ☐ Unmarried (including single, divorced, and widowed)
Other Party: ☐ Married ☐ Separated ☐ Unmarried (including single, divorced, widowed)

SECTION D—ASSET AND DEBT INFORMATION (If Section B has been completed, this Section should be completed giving information about both the Applicant and Spouse, Joint Applicant, User, or Other Person. Please mark Applicant-related information with an "A." If Section B was not completed, only give information about the Applicant at this Section.)

ASSETS OWNED **(Use separate sheet if necessary.)**

Description of Assets	Value	Subject to Debt? Yes/No	Name(s) of Owner(s)
Cash	$		
Automobiles (Make, Model, Year)			
Cash Value of Life Insurance (Issuer, Face Value)			
Real Estate (Location, Date Acquired)			
Marketable Securities (Issuer, Type, No. of Shares)			
Other (List)			
Total Assets	$		

OUTSTANDING DEBTS **(Include charge accounts, instalment contracts, credit cards, rent, mortgages, etc. Use separate sheet if necessary.)**

Name of Creditor	Type of Debt or Acct. No.	Name in Which Acct. Carried	Original Debt	Present Balance	Monthly Payments	Past Due? Yes/No
1. (Landlord or Mortgage Holder)	☐ Rent Payment ☐ Mortgage		$ (Unit rent)	$ (Unit rent)	$	
2.						
3.						
Total Debts			$	$	$	
(Credit References)						Date Paid
1.			$			
2.						

Are you a co-maker, endorser, or guarantor on any loan or contract? Yes ☐ No ☐ If "yes," for whom? To whom?

Are there any unsatisfied judgments against you? Yes ☐ No ☐ Amount $ If "yes," to whom owed?

Have you been declared bankrupt in the last 14 years Yes ☐ No ☐ If "yes," where? Year

Other obligations—(E.g., Liability to pay alimony, child support, separate maintenance. Use separate sheet if necessary.)

SECTION E—SECURED CREDIT (Complete only if credit is to be secured.) Briefly describe the property to be given as security:

and list names and addresses of all co-owners of the property:

Name Address

Everything that I have stated in this application is correct to the best of my knowledge. I understand that you will retain this application whether or not it is approved. You are authorized to check my credit and employment history and to answer questions about your credit experience with me.

Applicant's Signature | Date | Other Signature (Where Applicable) | Date

RESIDENTIAL LOAN APPLICATION

(Residential real estate mortgage loan)

MORTGAGE APPLIED FOR: ☐ Conventional ☐ FHA ☐ VA ☐ _____ | Amount $_____ | Interest Rate _____ % | No. of Months | Monthly Payment Principal & Interest $_____ | Escrow/Impounds (To be collected monthly) ☐ Taxes ☐ Hazard Ins. ☐ Mtg. Ins. ☐ _____

Prepayment Option

1. SUBJECT PROPERTY

Property Street Address | City | County | State | Zip | No. Units

Legal Description (Attach description if necessary) | Year Built

Purpose of Loan: ☐ Purchase ☐ Construction-Permanent ☐ Construction ☐ Refinance ☐ Other (Explain)

Complete this line if Construction-Permanent or Construction Loan. | Lot Value Data: Original Cost | Present Value (a) | Cost of Improv. (b) | Total(a + b) | ENTER TOTAL Adj PURCHASE PRICE IN DETAILS OF THIS PURCHASE.

Year Acquired | $ | $ | $ | $

Complete this line if a Refinance Loan | Purpose of Refinance | Describe Improvements [ ] made [ ] to be made

Year Acquired | Original Cost | Amt. Existing Liens | Cost: $

$ | $

Title Will Be Held in What Name(s) | Manner in Which Title Will Be Held

Source of Down Payment and Settlement Charges

This application is designed to be completed by the borrower(s) with the lender's assistance. The Co-Borrower Section and all other Co-Borrower questions must be completed if ☐ another person will be jointly obligated with the Borrower on the loan, ☐ the Borrower is relying on income from alimony, child support, or separate maintenance or on the income or assets of another person as a basis for repayment of the loan, or ☐ the Borrower is married and resides, or the property is located, in a community property state.

2. BORROWER

Name | Age | School Yrs.

Present Address | No. Years _____ ☐ Own ☐ Rent

Street

City/State/Zip

Former address if less than 2 years at present address

Street

City/State/Zip

Years at former address ☐ Own ☐ Rent

Marital Status: ☐ Married ☐ Separated ☐ Unmarried (incl. single, divorced, widowed)

Dependents other than listed by Co-Borrower: No. | Ages

Name and Address of Employer | Years employed in this line of work or profession? _____ years | Years on this job _____ ☐ Self Employed

Position/Title | Type of Business

Social Security Number | Home Phone | Business Phone

3. CO-BORROWER

Name | Age | School Yrs.

Present Address | No. Years _____ ☐ Own ☐ Rent

Street

City/State/Zip

Former address if less than 2 years at present address

Street

City/State/Zip

Years at former address ☐ Own ☐ Rent

Marital Status: ☐ Married ☐ Separated ☐ Unmarried (incl. single, divorced, widowed)

Dependents other than listed by Borrower: No. | Ages

Name and Address of Employer | Years employed in this line of work or profession? _____ years | Years on this job _____ ☐ Self Employed

Position/Title | Type of Business

Social Security Number | Home Phone | Business Phone

4. GROSS MONTHLY INCOME

Item	Borrower	Co-Borrower	Total
Base Empl. Income	$	$	$
Overtime			
Bonuses			
Commissions			
Dividends Interest			
Net Rental Income			
Other* (Before completing, see notice under Describe Other Income below.)			
Total	$	$	$

5. MONTHLY HOUSING EXPENSE

Rent	Present* $	Proposed $
First Mortgage (P&I)		
Other Financing (P&I)		
Hazard Insurance		
Real Estate Taxes		
Mortgage Insurance		
Homeowner Assn. Dues		
Other:		
Total Monthly Pmt.	$	$
Utilities		
Total	$	$

6. DETAILS OF PURCHASE

a. Purchase Price	$
b. Total Closing Costs (Est.)	
c. Pre Paid Escrows (Est.)	
d. Total (a+b-b+c)	$
e. Amount of Mortgage	( )
f. Other Financing	( )
g. Present Equity in Lot	( )
h. Amount of Cash Deposit	( )
i. Closing Costs Paid by Seller	( )
j. Cash Reqd. For Closing (Est.)	$

7. DESCRIBE OTHER INCOME

B-Borrower C-Co-Borrower

NOTICE: † Alimony, child support, or separate maintenance income need not be revealed if the Borrower or Co-Borrower does not choose to have it considered as a basis for repaying this loan.

B/C	Description	Monthly Amount
		$

8. IF EMPLOYED IN CURRENT POSITION FOR LESS THAN TWO YEARS COMPLETE THE FOLLOWING

B/C	Previous Employer/School	City/State	Type of Business	Position/Title	Dates From/To	Monthly Income
						$

9. THESE QUESTIONS APPLY TO BOTH BORROWERS

If a "yes" answer is given to a question in this section, explain on an attached sheet.	Borrower Yes/No	Co-Borrower Yes/No
Have you any outstanding judgments?		
In the last 14 years, have you been bankrupt? Have you had property foreclosed upon or given title or a deed in lieu thereof?		
Are you a co-maker or endorser on a note?		
Are you a party in a law suit?		
Are you obligated to pay alimony, child support, or separate maintenance?		
Is any part of the down payment borrowed?		

	Borrower Yes/No	Co-Borrower Yes/No
Do you have health and accident insurance?		
Do you have major medical coverage?		
Do you intend to occupy the property?		
Will this property be your primary residence?		
Have you previously owned a home?		
Sale price of previously owned home	$	$

* All Present Monthly Housing Expenses of the Borrower and Co-Borrower should be listed on a combined basis

This statement and any applicable supporting schedules may be completed jointly by both married and unmarried co-borrowers if their assets and liabilities are sufficiently joined so that the statement can be meaningfully and fairly presented on a combined basis; otherwise separate statements and schedules are required. If the Co-Borrower section was completed about a spouse, this statement and supporting schedules must be completed about that spouse also. ☐ Completed Jointly ☐ Not Completed Jointly

STATEMENT OF ASSETS AND LIABILITIES

10. ASSETS

Description	Cash or Market Value
Cash Deposit Toward Purchase Held By	$
Checking and Savings Accounts (Names of Institutions/ Acct. Nos.)	
Stocks and Bonds (No./description)	
Life Insurance Net Cash Value	
Face Amount ($)	
SUBTOTAL LIQUID ASSETS	$
Real Estate Owned (Enter Market Value from Schedule of Real Estate Owned)	
Vested Interest in Retirement Fund	
Net Worth of Business Owned (Attach Financial Stat.)	
Automobiles (Make and Year)	
Furniture and Personal Property	
Other Assets (Itemize).	
TOTAL ASSETS	A $

11. LIABILITIES

Indicate by (*) those liabilities that will be satisfied upon sale of real estate owned or upon refinancing of property.

Creditor's Name, Address, Account Number	Acct. Name If Not Borrower(s)	Mo. Pmt. and Mos. left to pay	Unpaid Balance
Installment Debts (include "revolving" charge accounts)		$ Pmt./Mos.	$
		/	
		/	
		/	
Automobile Loans		/	
		/	
Real Estate Loans		X	
Other Debt, Including Stock Pledges			
		/	
Alimony, Child Support, and Maintenance Payments (Owed To)			X
			X
TOTAL MONTHLY PAYMENTS		$	X
NET WORTH (A minus B) $		TOTAL LIABILITIES	B $

SCHEDULE OF REAL ESTATE OWNED (If Additional Properties Owned Attach Separate Schedule)

Address of Property (Indicate S if Sold, PS if Pending Sale or R if Rental being held for income)	Type of Property	Present Market Value	Amount of Mortgages & Liens	Gross Rental Income	Mortgage Payments	Taxes, Ins. Maintenance and Misc.	Net Rental Income
		$	$	$	$	$	$
TOTALS		$	$	$	$	$	$

12. LIST PREVIOUS CREDIT REFERENCES

B-Borrower C-Co-Borrower	Creditor's Name and Address	Account Number	Purpose	Highest Balance	Date Paid
				$	

List any additional names under which credit has previously been received _____

AGREEMENT: The Undersigned applies for the loan indicated in this application, to be secured by a first mortgage or deed of trust on the property described herein, and represents that the property will not be used for any illegal or restricted purpose and that all statements made in this application are true and are made for the purpose of obtaining the loan. Verification may be obtained from any source named in this application. The original or a copy of this application will be retained by the lender, even if the loan is not granted.

Borrower's Signature _____ Date / / Co-Borrower's Signature _____ Date / /

VOLUNTARY INFORMATION FOR GOVERNMENT MONITORING PURPOSES

If this loan is for purchase or construction of a home, the following information is requested by the Federal Government to monitor this lender's compliance with Equal Credit Opportunity and Fair Housing Laws. The law provides that a lender may neither discriminate on the basis of this information nor on whether or not it is furnished. Furnishing this information is optional. If you do not wish to furnish the following information, please initial below.

BORROWER: I do not wish to furnish this information (Initials) _____

Race/National Origin: ☐ American Indian, Alaskan Native ☐ Asian, Pacific Islander ☐ Black ☐ Other (specify)

SEX ☐ Female ☐ Male

☐ Hispanic ☐ White

CO-BORROWER: I do not wish to furnish this information (Initials) _____

Race/National Origin: ☐ American Indian, Alaskan Native ☐ Asian, Pacific Islander ☐ Black ☐ Other (specify)

SEX ☐ Female ☐ Male

☐ Hispanic ☐ White

FOR LENDER'S USE ONLY

By order of the Board of Governors, January 14, 1977.

THEODORE E. ALLISON,
Secretary of the Board.

[FR Doc.77-2762 Filed 1-28-77;8:45 am]

[Reg. Z; FC-0038, FC-0039, FC-0040, FC-0041]

PART 226—TRUTH IN LENDING

Official Staff Interpretations

In accordance with 12 CFR 226.1(d), the Board is publishing the following official staff interpretations of Regulation Z, issued by a duly authorized official of the Division of Consumer Affairs.

Identifying details have been deleted to the extent required to prevent a clearly unwarranted invasion of personal privacy. The Board maintains and makes available for public inspection and copying a current index providing identifying information for the public subject to certain limitations stated in 12 CFR 261.6.

Official staff interpretations may be reconsidered by the Board upon request of interested parties and in accordance with 12 CFR 226.1(d)(2). Every request for reconsideration should clearly identify the number of the official staff interpretation in question, and should be addressed to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

This interpretation shall be effective as of January 31, 1977.

[FC-0038]

Section 226.13(j) Bankruptcy court order permitting card issuer to offset customer's debt against funds held by card issuer on deposit would be "court order" within the meaning of 13(j) and the offset would be permissible.

JANUARY 17, 1977.

This is in reply to your letter of * * *, in which you raise a question regarding offsets of credit card debts under § 169 of the Truth in Lending Act and § 226.13(j) of Regulation Z. Specifically, you ask whether a card issuer may offset a customer's credit card debt against the customer's funds held by the card issuer in a deposit account in bankruptcy proceedings in which the customer is the bankrupt. You state that under the Bankruptcy Act all creditors are entitled to offset any provable claims they may have against debts they owe the bankrupt.

This staff does not believe that it is the proper interpreter of questions regarding the meaning of the Bankruptcy Act or the resolution of potential conflicts between that Act and the Truth in Lending Act and Regulation Z. However, § 226.13(j) prohibits a card issuer from offsetting a cardholder's credit card debts against the cardholder's funds held by the card issuer in a deposit account "unless a court order is obtained." It is staff's view that if a bankruptcy court allowed a claim for a credit card debt and permitted an offset of the cardholder's funds held in deposit by the card issuer, such allowance would be a court order within the meaning of § 226.13(j) and the offset would be permissible.

This is an official staff interpretation of Regulation Z issued pursuant to § 226.1(d)(3) of the Regulation and limited in its application to the facts outlined herein. I trust this is responsive to your inquiry.

Sincerely,

JERAULD C. KLUCKMAN,
Associate Director.

[FC-0039]

§ 226.7(b) Credit unions who do not debit (or add on) finance charges for a billing cycle but take accrued finance charges out of each payment, need not show accrued finance charges as part of their disclosure under § 226.7(b)(1)(iv) or as part of the "new balance" under § 226.7(b)(1)(ix).

JANUARY 21, 1977.

This is in reply to your letter of * * *, in which you raised questions concerning the proper disclosure under Regulation Z of the finance charge and "new balance" on a credit union open end credit periodic statement. Specifically, you ask the following two questions:

1. Can a credit union extending open end credit use a periodic billing statement disclosing only the finance charge paid by the borrower during the cycle rather than the total amount of the finance charge actually incurred during the cycle and still be in compliance with § 226.7(b)(1)(iv)?

2. Can a credit union extending open end credit use a periodic billing statement showing a "new balance" which does not include all finance charges incurred during the billing cycle (as opposed to those paid) and still be in compliance with § 226.7(b)(1)(ix)?

In answering these questions we make the following factual assumptions (which are drawn from your letter, the materials accompanying your letter, and the letter from your trade association). As we understand it finance charges accrue from the application of a percentage rate to the outstanding principal balance, but there is no increase in the obligation reflected in the account from the addition of accrued finance charges to the outstanding principal balance. Instead, the appropriate portion of each payment is attributed to payment of accrued finance charges and the remainder of the payment is reflected in reduction of the principal. Consequently, finance charges are calculated by application of the percentage rate to the outstanding principal balance over the period from one payment to the next. No finance charges are debited to the account except when a payment is credited and even then there is nothing added to the outstanding obligation.

In such circumstances it is staff's opinion that disclosing the amount of finance charges actually debited to the account pursuant to payments received during the billing cycle is sufficient to comply with the requirement of § 226.7(b)(1)(iv) calling for disclosure of the finance charge imposed due to application of a periodic rate. Staff is also of the opinion that in such circumstances the "new balance" required to be disclosed by § 226.7(b)(1)(ix) need not reflect accrued finance charges, which have not been debited to the customer's account and, therefore, have not been added to the total outstanding obligation.

I trust this is responsive to your inquiry. This is an official staff interpretation of Regulation Z, issued in accordance with § 226.1(d)(3) of the Regulation and limited in its application to the facts outlined herein.

Sincerely,

JERAULD C. KLUCKMAN
Associate Director.

[FC-0040]

§ 226.101 Creditor may quote simple annual interest rate along with APR in response to oral inquiries.

§ 226.6(c) Use of term APR not required in commitment letter, but use of simple interest rate alone may violate § 226.6(c) if commitment letter accompanies disclosure statement and interest rate not identified as component of APR.

JANUARY 18, 1977.

This is in reply to your letter of * * *, requesting an official staff interpretation concerning how interest rates may be communicated in oral transactions and in commitment letters between mortgage lenders and customers.

You state that, when customers shopping for mortgage loans make oral inquiries of what your client's current interest rate on mortgages is, the bank answers these inquiries with a statement of the simple annual interest rate and of the annual percentage rate (which includes the simple interest charge, service charge, mortgage insurance premiums, etc.). You ask whether this procedure is proper under Regulation Z.

Board Interpretation § 226.101 states that in response to a customer making oral inquiry concerning cost of credit, "a creditor when quoting annual rates should use only those rates permitted to be used in advertisements under § 226.10." Section 226.10(d)(1) states that "[w]here the total finance charge includes, as a component, interest computed at a simple annual rate, the simple annual rate may be stated in conjunction with, but not more conspicuously than, the annual percentage rate * * *." Thus it is clear that the bank may give the simple annual rate as well as the annual percentage rate in response to oral inquiries.

You ask whether the final sentence in § 226.101 changes this result. That sentence says, "Irrespective of the method used by the creditor to compute finance charges, the annual rate of the creditor's total finance charges should be quoted only in terms of the 'annual percentage rate.'" It is staff's opinion that this sentence does not contradict the conclusion reached above, i.e., that both the simple interest rate and the annual percentage rate may be quoted. This sentence merely states that when the rate for the total finance charge is given, it must be given in terms of the annual percentage rate, as opposed to an add-on or discount rate. This sentence does not preclude use of the simple annual rate to describe a component of the total finance charge.

You also ask whether the bank may state the simple interest rate in the commitment letter or whether the annual percentage rate is required. You are correct in stating that the Truth in Lending Act and Regulation Z require use of the term "annual percentage rate" on the Truth in Lending disclosure statement but do not dictate terminology to be used in commitment letters or other mortgage contract documents. However you should note that if the commitment letter is delivered to the customer together with the Truth in Lending disclosures, and if the commitment letter does not make clear that the simple interest rate is only one component of the annual percentage rate, it is possible that the statement of the simple interest rate in the commitment letter might constitute a violation of § 226.6(c), since it may mislead consumers or contradict, obscure or detract attention from the annual percentage rate disclosure required by § 226.8(b)(2).

This letter is an official staff interpretation of Regulation Z, issued in accordance with § 226.1(d)(3) of the Regulation and is limited to the facts presented herein. I trust that it is responsive to your inquiry.

Sincerely,

JERAULD C. KLUCKMAN,
Associate Director.

[FC-0041]

§ 226.13(a) The return and re-encoding of an existing card which had no credit privileges attached to it at the time of its unsolicited issuance is an acceptable manner of providing a credit card where the customer has signed a request or application for a card providing credit privileges.

JANUARY 21, 1977.

This is in response to your letter of * * *, concerning § 226.13(a) of Regulation Z and certain check identification cards which you propose to issue on an unsolicited basis to your present checking account customers.

The cards would be used as a form of identification to facilitate the cashing of checks by bank customers. You also propose at the time of issuance of the card to advise your customers that at some time in the future they may have the opportunity to return their check identification card to the bank and have it encoded to permit access to automatic tellers and electronic terminals. The customer's credit line would be accessible via the encoded card, and the customer would be required to sign and forward a request for a credit card before the new card is issued. If a new card were issued to customers requesting credit privileges, clearly there would be no violation of § 226.13(a) of the Regulation. You have asked whether it would be permissible under the Regulation to re-encode the existing card to provide for credit privileges after receiving a request from the customer for such privileges rather than to issue a new card. Staff feels that the return and encoding of the existing card is an acceptable manner of providing a credit card pursuant to a request or application as you propose.

Some uncertainty may have developed regarding the staff's position on the issuance of a non-credit card where the issuer contemplates at the time of issuance that the holder will be offered a subsequent opportunity to have credit privileges attached to the card if he so requests. Staff feels that the dictates of § 132 are satisfied so long as the cardholder actually makes a specific request that credit privileges be made available on the card prior to the attachment of credit capability to the card. This means that a card issuer may send on an unsolicited basis a non-credit card usable for a specific substantive purpose(s) other than obtaining credit to any of its customers and may, at the same time or at some later date, solicit the customer to request that credit privileges be attached to the card. Accordingly, this letter supersedes Public Information Letter 916 and the last paragraph of Public Information Letter 796.

As part of your proposal, you indicate that the cards will be sent on an unsolicited basis to those customers with overdraft checking privileges as well. Staff does not agree with your initial conclusion regarding the unsolicited issuance of check identification cards to customers with overdraft checking privileges. In your letter you mentioned a series of staff public information letters on the unsolicited issuance of credit cards. That list, however, did not include Public Information Letter 717 (a copy of which is enclosed) which states that a check identification card used in conjunction with a checking account with overdraft checking privileges is a credit card and, thus, cannot be issued on an unsolicited basis. This view is also outlined in Public Information Letter 916. However, assuming the initial check identification cards were issued in response to a request or application as to those customers with overdraft privileges, then, in staff's view, no further steps regarding solicitation for issuance need be taken to convert such credit cards into cards usable in teller machines which access the overdraft line of credit. This could be done, for example, either by encoding the original card or issuing a substitute card.

This is an official staff interpretation of Regulation Z issued in accordance with § 226.1(d)(3) and is confined solely to the facts as stated. I regret our long delay in responding and hope that it has not seriously inconvenienced you.

Sincerely,

JERAULD C. KLUCKMAN,
Associate Director.

Enclosure.

[FC-0042]

§§ 226.2 (h) and (5) and 226.6(d). Merchant who merely supplies customer with credit card application and agreement forms and calls in the application to the card issuing bank to obtain approval of the credit card application, but does not receive a fee or other compensation for this service is not an arranger of credit under § 226.2(h) and, therefore, need not provide the disclosures required by § 226.6(d).

JANUARY 18, 1977.

This is in reply to your letter of * * *, in which you raised questions regarding the language of § 226.6(d) of Regulation Z which requires an "arranger" as defined in § 226.2(h) to make certain § 226.8 disclosures.

In your letter you indicate that your bank proposes to provide appliance dealers with [credit card] application and agreement forms intended to comply with § 226.7(a) of the Regulation so that the dealers' customers who wish to purchase appliances on credit can obtain a [credit card] account for such purposes. Under the proposal, the dealer supplies the customer with the bank's combined application and agreement form. The customer completes the application and the agreement. The customer keeps the agreement portion and returns the completed application to the dealer. The dealer then calls in the application to the bank, and a [credit card] account is either approved or rejected by the bank within 15 to 30 minutes. If approved, the dealer, using a regular [credit card] sales slip to evidence the transaction, sells the appliance to the customer. Subsequently, the dealer mails the signed application form to the bank and, within a few weeks, the customer receives a [ ] credit card.

As you state, § 226.2(s) of Regulation Z defines "creditor" as a person who, in the ordinary course of business, regularly extends or arranges for the extension of consumer credit. Section 226.2(h) of the Regulation defines "arrange for the extension of credit" as providing or offering to provide consumer credit which is or will be extended by another person under a business relationship pursuant to which the person arranging such credit has knowledge of the credit terms and participates in the preparation of the contract documents in connection with the extension of credit. The term does not include honoring a credit card or similar device where no finance charge is imposed at the time of that transaction.

Staff is in agreement with your suggestion that the appliance dealers' activities do not constitute "arranging for the extension of credit" within the meaning of Regulation Z. In reaching this conclusion, staff assumes that the appliance dealers receive no fee, compensation, or other consideration for their services. Therefore, in accordance with § 226.2(h), the issue as to their characterization as arrangers is whether the dealers' activities are such that they have knowledge of the credit terms and participate in the preparation of the contract documents required in connection with the extension of credit. In staff's view, the fact that the appliance dealers may assist a customer in completing an application-agreement form for a credit card, which may include conveying to the credit card issuer information provided on a completed form, would not be sufficient to classify the dealers as arrangers under Regulation Z.

It is staff's understanding that in your situation the dealer is merely supplying the customer with a printed application-agreement form. When completed by the prospective customer, this form does not identify the dealer or the merchandise to be purchased. Furthermore, the approval of the application-agreement form will entitle the customer to benefits which extend beyond the purchase of the dealer's merchandise. In light of the foregoing, staff does not view the prospective customer's completing and signing the application-agreement form at a dealer's place of business or in a dealer's presence as participation by the dealer in the preparation of the contract documents. Staff is of the opinion that the appliance dealer's activities, to the extent that they are limited as described above, are not to be classified as those of an "arranger." Accordingly, the disclosure requirements of § 226.6(d) need not be made by the appliance dealer.

This is an official staff interpretation of Regulation Z, issued in accordance with § 226.1(d)(3) of the Regulation and relates solely to the facts and issues presented. I apologize for the delay in replying and trust that the interpretation is responsive to your inquiry.

Sincerely,

JERAULD C. KLUCKMAN,
Associate Director.

Board of Governors of the Federal Reserve System, January 25, 1977.

THEODORE E. ALLISON,
Secretary of the Board.

[FR Doc.77-2939; Filed 1-28-77;8:45 am]

Title 14—Aeronautics and Space

CHAPTER I—FEDERAL AVIATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Docket No. 76-EA-63; Amdt. 39-2818]

PART 39—AIRWORTHINESS DIRECTIVES

Narco Avionics

The Federal Aviation Administration is amending § 39.13 of Part 39 of the Federal Aviation Regulations so as to issue an airworthiness directive applicable to Narco Avionics Emergency Locator Transmitter—ELT-10.

There have been reports of ELT-10s failing to activate as a result of corroded and broken battery leads.

Since this is a deficiency which can exist or develop in similarly designed transmitters, an airworthiness directive is being issued which will require a repetitive inspection and replacement where necessary of the battery leads and battery.

Since this is an air safety item, notice and public procedure hereon are impractical and good cause exists for making the directive effective in less than 30 days.

It has been determined that the expected impact of the proposed regulation is so minimal that the proposal does not warrant an evaluation.

In consideration of the foregoing and pursuant to the authority delegated to me by the Administrator, 14 CFR 11.89 [31 FR 13697] § 39.13 of Part 39 of the Federal Aviation Regulations is amended by issuing a new airworthiness directive, as follows:

NARCO. Applies to all Narco Model ELT-10 Emergency Locator Transmitter batteries, with a battery replacement date prior to November 1977.

Compliance required as indicated. As a result of battery corrosion which results in

battery lead breakage and the resulting failure of the ELT to operate, accomplish the following:

(a) Within the next 90 days and thereafter, at each additional 90-day interval after the effective date of this Airworthiness Directive, accomplish the following:

1. Remove the control head from battery pack by removing four screws.

2. Check for battery leakage, which will appear as a white residue which normally occurs first around battery leads.

3. Check for corrosion at the battery terminals, printed circuit board and components.

4. Check for secure battery leads.

5. If no corrosion is found, determine ELT transmits properly in accordance with FAA Advisory Circular 91-44 or 20-81, and reinstall in accordance with paragraph 8 of the Narco Owner's Manual or approved alternate installation procedures.

6. If corrosion is found, replace battery (Narco P/N 57674-0001) with one which has a replacement date of November 1977, or later.

7. The checks required by this Airworthiness Directive may be conducted by the pilot or aircraft owner.

(Narco Service Bulletin ELT-10 No. 6, dated August 2, 1976, covers this same subject).

The Federal Aviation Agency has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107.

This amendment is effective February 1, 1977.

(Secs. 313(a), 601 and 603 of the Federal Aviation Act of 1958 [49 U.S.C. 1354(a), 1421 and 1423], and section 6(c) of the Department of Transportation Act [49 U.S.C. 1655(c)].)

Issued in Jamaica, N.Y., on January 18, 1977.

WILLIAM E. MORGAN,
Director, Eastern Region.

[FR Doc.77-2967 Filed 1-28-77;8:45 am]

[Docket No. 74-WE-12-AD; Amdt. 39-2819]

PART 39—AIRWORTHINESS DIRECTIVES

McDonnell Douglas DC-10-10, -10F, -30, -30F, -40 Airplanes

Amendment 39-1812 (39 FR 12997), AD 74-08-07, as amended by Amendments 39-1928 (39 FR 30109); 39-2115 (40 FR 8795); 39-2230 (40 FR 23723) and 39-2798 (42 FR 1218) pertains to the DC-10 automatic landing system.

After issuing Amendment 39-2798, AD 74-08-07 the intent of paragraph (h) was questioned. Paragraph (h) as written, could be interpreted to require compliance with its provisions prior to conducting autolandings regardless of weather minimums: this was not our intent. The provisions of paragraph (d) or (f), as previously adopted, provided for conducting autolandings to Category II meteorological conditions. The intent of paragraph (h) is to provide for operation to Category III meteorological conditions. Therefore, the AD is being further amended to restate paragraph (h).

Since this amendment provides a clarification only and imposes no additional burden on any person, notice and public procedure hereon are unnecessary and the amendment may be made effective in less than 30 days.

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (31 F.R. 13697), Section 39.13 of Part 39 of the Federal Aviation Regulations, Amendment 39-1812 (39 F.R. 12997) AD 74-08-07, as amended by Amendments 39-1928 (39 F.R. 30109), 39-2115 (40 F.R. 8795), 39-2230 (40 F.R. 23723) and 39-2798 (42 F.R. 1218) is further amended as follows:

(1) Amend paragraph (h) in pertinent part, to read:

(h) An operator may use the DC-10-10, -10F, -30, -30F, or -40 Automatic Landing System to Category III meteorological conditions for revenue service, as provided in the applicable FAA approved Airplane Flight Manuals when all of the following are accomplished:

This amendment becomes effective February 1, 1977.

(Secs. 313(a), 601, 603, Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421, 1423); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)))

The Federal Aviation Administration has determined that this document does not contain a major proposal requiring preparation of an Inflationary Impact Statement under Executive Order 11821 and OMB Circular A-107.

Issued in Los Angeles, California on January 18, 1977.

WILLIAM R. KRIEGER,
Acting Director, FAA Western Region.

[FR Doc.77-2974 Filed 1-28-77;8:45 am]

[Docket No. 77-CE-1-AD; Amdt. 39-2820]

PART 39—AIRWORTHINESS DIRECTIVES

Cessna Models 150, A150, 172, R172, 182, 206 and 208 Airplanes

An Airworthiness Directive (AD) was adopted on January 12, 1977, and made effective immediately by air mail letter to all known owners of certain serial numbers of Cessna Models 150, A150, 172, R172, 182, 206 and 207 airplanes in which either part number C301002-0101 (12 volt) or part number C301002-0102 (24 volt) wing flap actuators may be installed. This AD was issued because there have been reports of failures of the wing flap actuator ball assemblies on some of the aforementioned aircraft that could result in a total failure of the wing flap system. These failures may be caused by mall assemblies that were improperly heat treated during their manufacture and are more particularly identified by the date code OH, HH, WH or ZH stamped on the wing flap actuator assembly. Since this condition is likely to exist in other airplanes of the same type design, the AD requires immediate visual inspection of the wing flap actuator to determine the date code stamp. If the date code stamp is OH, HH, WH or ZH, the directive requires installation of a placard which prohibits flap extension until the wing flap actuator ball nut assembly is replaced with an airworthy assembly in accordance with Cessna Service Letter No. SE76-25, dated December 13, 1976. This replacement must be accomplished within 50 hours' time in service after the effective date of the AD.

Since it was found that immediate corrective action was required, notice and public procedure hereon were impracticable and contrary to the public interest and good cause existed for making this AD effective immediately to the owners of certain serial numbers of Cessna Models 150, A150, 172, R172, 182, 206 and 207 airplanes. These conditions still exist and the AD is hereby published in the FEDERAL REGISTER as an amendment to § 39.13 of Part 39 of the Federal Aviation Regulations to make it effective as to all persons who did not receive the letter of notification.

(NOTE.—The Federal Aviation Administration has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107.)

In consideration of the foregoing and pursuant to the authority delegated to me by the Administrator 14 C.F.R. 11.89 (31 F.R. 13697), Section 39.13 of Part 39 of the Federal Aviation Regulations is amended by adding the following new AD.

CESSNA. Applies to the following Models and Serial Numbers of aircraft:

Models:	*Serial numbers*
150----	15078687 through 78733, 78735 through 78782, 78784 through 78789, 78791 through 78839, 78841 through 78848, 78850 through 78856, 78858 through 78865, 78867 through 78906, 78908 through 78921, 78923, 78926 through 78928, 78931, 78932, 78934 through 78938, 78940 through 78947, 78950 through 78955, 78958, 78960 through 78968, 78971 through 78973, 78976, 78977, 78978, 78980, 78981, 78984 through 78987, 78994, 78995, 78998.
A150---	A1500697 through 0706, 0709, 0711.
172----	17267789 through 67814, 67816 through 67877, 67879 through 67884, 67886 through 67957, 67959 through 67988, 67990 through 68021, 68023 through 68029, 68031 through 68053, 68055 through 68060, 68062 through 68077, 68079, 68081 through 68089, 68091 through 68097, 68099 through 68105, 68107, 68108, 68111 through 68116, 68119, 68121 through 68123, 68125 through 68129, 68131 through 68133, 68135 through 68138, 68140, 68142, 68145 through 68153, 68155 through 68158, 68160, 68161, 68163, 68167, 68168, 68170, through 68176, 68178 through 68180, 68183, 68185, 68188, 68190, 68191, 68193, 68195, 68196, 68198, 68200 through 68202, 68207, 68208, 68210, 68211, 68214 through 68217, 68219, 68226, 68239.

Models:	*Serial numbers*
R172---	R1722028 through 2091, 2093 through 2096, 2098 through 2102, 2105 through 2108, 2111, 2112, 2115 through 2117, 2119, 2120, 2123 through 2125, 2134, 2140.
182----	18265065 through 65107, 65109 through 65147, 65149 through 65156, 65160 through 65174, 65176 through 65199, 65201 through 65209, 65211, 65212, 65215 through 65219, 65222 through 65227, 65229, 65230, 65233 through 65239, 65241, 65243, 65245, 65247, 65249 through 65252, 65254.
206----	U20603454 through 03469, 03471 through 03473, 03475 through 03491, 03493 through 03497, 03501 through 03505, 03507 through 03513, 03515 through 03519, 03521, 03523 through 03527, 03529 through 03534, 03536, 03538 through 03540, 03542 through 03547, 03549 through 03553, 03557, 03561, 03562.
207----	20700357 through 00362, 00364 through 00367.

Compliance: Required as indicated, unless already accomplished.

To preclude failure of the wing flap system, accomplish the following:

A. Before the next flight of the affected airplanes, visually inspect the P/N C301002-0101 (12 volt) or C301002-0102 (24 volt) wing flap actuator for the date code stamp.

1. If the date code stamp on the actuator is OH, HH, WH or ZH install a placard near the flap control which reads: "FLAP EXTENSION PROHIBITED" and operate the aircraft in accordance with this limitation.

2. Within 50 hours' time in service after the effective date of this AD, replace the wing flap actuator ball nut assembly with an airworthy assembly in accordance with Cessna Service Letter SE76-25, dated December 13, 1976, or later approved revision. The placard required by Paragraph A.1. may be removed when the replacement ball nut assembly is installed.

3. If the date stamp code on the actuator is not one of those identified in Paragraph A.1., make an entry in the aircraft maintenance records indicating that this AD has been accomplished and the airplane may be returned to service.

B. Airplanes located where the inspection cannot be accomplished may be flown in accordance with FAR 21.197 to a place where the inspection may be accomplished, providing the flaps are not used for the flight.

C. Any equivalent method of compliance with this AD must be approved by the Chief, Engineering and Manufacturing Branch, FAA, Central Region.

NOTE 1.—The date code stamp is steel stamped into the lower side of the actuator gear housing, adjacent to the flap motor and switch bar, is visible on the lower side of the actuator as it is installed in the aircraft. Inked stamped numbers on the motor housing are to be disregarded.

NOTE 2.—The manufacturer has advised the FAA that sufficient replacement parts are available to accomplish Paragraph A.2. of this AD.

This amendment becomes effective February 3, 1977, to all persons except those to whom it was made effective earlier by air mail letters dated January 13, 1977.

(Secs. 313(a), 601, 603, Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421, 1423); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)).)

Issued in Kansas City, Missouri, on January 19, 1977.

J. A. HARGRAVE,
Acting Director, Central Region.

[FR Doc.77-2975 Filed 1-28-77;8:45 am]

[Docket No. 75-EA-80; Amdt. 39-2821]

PART 39—AIRWORTHINESS DIRECTIVES

Canadair Aircraft

On page 9365 of the FEDERAL REGISTER for March 4, 1976, the Federal Aviation Administration published a proposed rule which would require a repetitive inspection of Canadair Type CL-44D4 and CL-44J type airplane.

Interested parties were given 30 days after publication in which to submit written data or views. No objections to the proposed regulations have been received.

It has been determined that the expected impact of the regulation is so minimal that it does not warrant an evaluation.

In view of the foregoing and pursuant to the authority delegated to me by the Administrator, 14 CFR 11.89 [31 F.R. 13697] § 39.13 of the Federal Aviation Regulations is amended hereby and the airworthiness directive adopted as published.

(NOTE.—The Federal Aviation Agency has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107.)

This amendment is effective February 4, 1977.

(Section 313(a), 601 and 603 of the Federal Aviation Act of 1958 (49 U.S.C. 1421 and 1423) and sections 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)))

Issued in Jamaica, N.Y., on January 21, 1977.

L. J. CARDINALI,
Acting Director, Eastern Region.

CANADAIR. Applies to all CL-44D4 and CL-44J airplanes, certificated in all categories.

Compliance required within the next six months, unless already accomplished within the last six months, and thereafter at subsequent intervals not to exceed twenty-four months, after the effective date of this AD.

(a) To detect corrosion in the fuselage skin in the area where the bonding strip under the ice guards contacts the fuselage, inspect bonding strip in accordance with Canadair Service Information Circular No. 385-CL44, dated May 19, 1975, or an approved equivalent inspection.

(b) If corrosion is detected, replace bonding strips and repair fuselage skin in accordance with the circular referenced in paragraph (a) or an approved equivalent alteration.

(c) The repetitive inspection required by this AD also applies to aircraft on which the beryllium copper bonding strips have been replaced by aluminum alloy in accordance with the circular referenced in paragraph (a) or an approved equivalent part.

(d) Equivalent inspections of parts must be approved by the Chief, Engineering and Manufacturing Branch, FAA, Eastern Region.

(e) Upon request, with substantiating data submitted through an FAA maintenance inspector, the compliance time of this AD may be increased by the Chief, Engineering and Manufacturing Branch, FAA, Eastern Region.

[FR Doc.77-2976 Filed 1-28-77;8:45 am]

[Airspace Docket No. 76-CE-20]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

Alteration of Control Zone and Transition Area

The purpose of this amendment to Part 71 of the Federal Aviation Regulations is to alter the Chesterfield, Missouri, control zone and transition area.

The Maryland Heights VORTAC, Chesterfield, Missouri, has been decommisioned and replaced with a new facility installed near Foristell, Missouri. The Chesterfield, Missouri, control zone and transition area designations must be changed to delete that airspace specified therein which are predicated on instrument approach procedures based on the Maryland Heights VORTAC. Accordingly, action is taken herein to affect these changes.

Since these changes reduce the amount of controlled airspace and impose no additional burden on any person, notice and public procedure hereon are unnecessary and the changes may be accomplished by Final Rule action.

(NOTE.—The FAA has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107.)

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective April 21, 1977, 0901 G.m.t., as hereinafter set forth:

In § 71.171 (42 FR 355), the following control zone is amended to read:

Chesterfield (Spirit of St. Louis), Missouri. Within a 5 mile radius of Spirit of St. Louis Airport (latitude 38°39'35" N, longitude 90°38'45" W). This control zone is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airman's Information Manual.

In § 71.181 (42 FR 440), the following transition area is amended to read:

CHESTERFIELD, MISSOURI

That airspace extending upward from 700 feet above the surface within a 9 mile radius of Spirit of St. Louis Airport (latitude 38°39'35" N, longitude 90°38'45" W); within 3 miles each side of the Foristell, Missouri, VORTAC 093° radial; extending from the 9 mile radius area to 9½ miles west of the Spirit of St. Louis Airport, excluding the portion which overlies the St. Louis, Missouri, 700 foot floor transition area.

(Sec. 307(a), Federal Aviation Act of 1958 (49 U.S.C. 1348); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)))

Issued in Kansas City, Missouri on January 21, 1977.

C. R. MELUGIN, JR.,
Director, Central Region.

[FR Doc.77-2972 Filed 1-28-77;8:45 am]

[Airspace Docket No. 76-SW-57]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

Alteration of Control Zone

The purpose of this amendment to Part 71 of the Federal Aviation Regulations is to alter the Killeen, Tex., control zone.

On December 13, 1976, a notice of proposed rule making was published in the FEDERAL REGISTER (41 FR 54187) stating the Federal Aviation Administration proposed to alter the Killeen, Tex., control zone.

Interested persons were afforded an opportunity to participate in the rule making through submission of comments. All comments received were favorable.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective 0901 G.M.T., April 21, 1977, as hereinafter set forth.

In § 71.171 (42 FR 355), the Killeen, Tex., control zone is amended as follows:

KILLEEN, TEX.

Within a 5-mile radius of Fort Hood AAF (latitude 31°08'15" N., longitude 94°42'50" W.); within a 4-mile radius of Killeen Municipal Airport (latitude 31°05'10" N., longitude 97°41'05" W.); within 3 miles each side of the Hood VOR 219° radial extending from the 4-mile-radius zone to 8 miles southwest of the VOR; within a 5-mile radius of Robert Gray AAF (latitude 31°04'20" N., longitude 97°49'45" W.); within 3.5 miles each side of the 341° bearing from the NDB (latitude 31°10'03" N., longitude 97°52'41" W.), extending from the 5-mile-radius zone to 8 miles north of the NDB.

(Sec. 307(a), Federal Aviation Act of 1958 (49 U.S.C. 1348); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)))

Issued in Fort Worth, Tex., on January 21, 1977.

PAUL J. BAKER,
Acting Director,
Southwest Region.

[FR Doc.77-2973 Filed 1-28-77;8:45 am]

Title 16—Commercial Practices

CHAPTER I—FEDERAL TRADE COMMISSION

[Docket 8795]

PART 13—PROHIBITED TRADE PRACTICES, AND AFFIRMATIVE CORRECTIVE ACTIONS

Harbor Banana Distributors, Inc.

Codification under 16 CFR Part 13 appears in 38 FR 5160 issued February 26, 1973.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 2, 49 Stat. 1526; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 13, 18.)

In the Matter of Harbor Banana Distributors, Inc. a corporation.

Order modifying a previous order issued January 3, 1975, 40 FR 14304, 85 FTC 7 (which modified the original order dated January 12, 1973, 38 FR 5160, 82 FTC 53), by dismissing Counts I, II, and III of the complaint, eliminating the divestiture requirements regarding Charles C. McCann Company and Tradewinds Produce, Inc.

The modifying order is as follows:

ORDER REOPENING PROCEEDING AND MODIFYING CEASE AND DESIST ORDER

On January 3, 1975, the Federal Trade Commission, pursuant to the mandate of the United States Court of Appeals for the Fifth Circuit issued its modified Cease and Desist Order requiring in Paragraph II divestiture of all assets of Charles C. McCann and Tradewinds Produce, Inc. acquired by Harbor Banana Distributors, Inc.

Section 5(b) of the Federal Trade Commission Act provides that the Commission may at any time, after notice and opportunity for hearing, reopen and alter, modify or set aside, in whole or in part, any order issued by it, whenever in the opinion of the Commission conditions of fact or of law have so changed as to require such action or if the public interest shall so require.

On September 21, 1976, the Commission issued its order to respondent to show cause why the Commission should not alter and modify the modified Cease and Desist Order issued on January 3, 1975 so as to eliminate the divestiture requirement thereof. On September 30, 1976, the Commission issued its Order Correcting Order To Show Cause. Service of both of these orders on the respondent was completed on October 4, 1976.

Respondent has not filed an answer to the Order To Show Cause during the thirty (30) day period after service thereof. In this connection, Section 3.72 (b)(1) of the Commission's Procedures and Rules of Practice provides that any person not responding to the Order To Show Cause within the time allowed may be deemed to have consented to the proposed changes.

Accordingly, *It is ordered*, That the matter be reopened, and that the modified Cease and Desist Order of January 3, 1975 be altered and modified to read as follows:

I

It is ordered, That Counts I, II and III of the complaint be dismissed.

II

It is further ordered, That respondent Harbor Banana Distributors, Inc. shall not, for a period of ten (10) years from January 28, 1975, acquire, directly or indirectly, through subsidiaries, joint ventures, or otherwise, without the prior approval of the Federal Trade Commission, the whole or any part of the stock, share capital or assets of any concern engaged in the processing, sale or distribution of bananas.

III

It is further ordered, That respondent Harbor Banana Distributors, Inc. shall notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in its corporate organization, such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation that may affect compliance obligations arising out of this order.

IV

It is further ordered, That Harbor Banana Distributors, Inc. shall, each year, on the anniversary of the date of service of this Order, submit in writing to the Federal Trade Commission a report setting forth in detail the manner and form in which it is complying and/or has complied with Paragraph II of this Order.

The Modifying Order was issued by the Commission December 17, 1976.

JOHN F. DUGAN,
Acting Secretary.

[FR Doc.77-2997 Filed 1-28-77;8:45 am]

Title 24—Housing and Urban Development

CHAPTER II—OFFICE OF ASSISTANT SECRETARY FOR HOUSING—FEDERAL HOUSING COMMISSIONER, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. R-77-438]

PART 275—LOW-RENT PUBLIC HOUSING

Deletion of Certain Material

On November 18, 1976, the Department of Housing and Urban Development published a proposed rule on the reactivation of the Traditional Public Housing program for comment at 41 FR 50946 under Docket No. R-76-426. That publication sought public comments on a proposed new Part 841 to Chapter VIII of 24 CFR and stated that it was proposed to delete most of the material in Part 275 of Chapter II, and the deleted material would be incorporated in the new Part 841. Only § 275.8 of that part would be retained.

The proposed rule on Traditional Public Housing is now being issued in final form. Inasmuch as the FEDERAL REGISTER requires that amendments to separate chapters of the Code of Federal Regulations be treated in separate rules documents, the instant amendment to Part 275 of Chapter II is being issued concurrently with the publication of the final Public Housing Program—Development Phase Regulations to delete superseded portions of Part 275.

A finding of inapplicability respecting the National Environmental Policy Act of 1969 and HUD requirements with respect thereto has been made in connection with Docket R-76-426. Both findings are applicable with respect to this rule and such findings are available for inspection in the office of the Rules Docket Clerk, Room 10141, Department of Housing and Urban Development, 451 7th Street, S.W., Washington, D.C., during normal business hours.

Accordingly, Part 275 of Chapter II of Title 24 of the Code of Federal Regulations is hereby amended by deleting §§ 275.1 through 275.7 and the Appendix to Part 275.

This Amendment shall be effective February 7, 1977.

JOHN T. HOWLEY,
Acting Assistant Secretary for Housing - Federal Housing Commissioner.

[FR Doc.77-2549 Filed 1-28-77;8:45 am]

Title 26—Internal Revenue

CHAPTER I—INTERNAL REVENUE SERVICE, DEPARTMENT OF THE TREASURY

SUBCHAPTER D—MISCELLANEOUS EXCISE TAXES

[T.D. 7461]

PART 48—MANUFACTURERS AND RETAILERS EXCISE TAXES

Highway Vehicles

Correction

In FR Doc. 77-1174 appearing at page 2670 in the issue of Thursday, January 13, 1977 in the third column on page 2673, paragraph (d)(2)(iii) of § 48.4061 (a)-1 should read as follows:

(iii) *Certain trailers and semi-trailers specially designed to perform non-transportation functions off the public highways.* A trailer or semi-trailer is not a highway vehicle if it is specially designed to serve no purpose other than providing an enclosed stationary shelter for the carrying on of a function which is directly connected with and necessary to, and at the off-highway site of, a construction, manufacturing, processing, mining, drilling, farming, timbering, or operation similar to any one of the foregoing enumerated operations such as a trailer specially designed to serve as an office for such an operation.

SUBCHAPTER F—PROCEDURE AND ADMINISTRATION

[T.D. 7463]

PART 404—TEMPORARY REGULATIONS ON PROCEDURE AND ADMINISTRATION UNDER THE TAX REFORM ACT OF 1976

Disclosure of Returns and Return Information; Correction

On Tuesday, January 25, 1977, Treasury Decision 7463 was published in the FEDERAL REGISTER (42 FR 4438).

The following corrections are made:

(1) The fourteenth line of § 404.6103(h)(2)-1(a)(2) (column one, page 4439) should be amended to read as follows: "Justice, where necessary in connection".

(2) The eleventh line of § 404.6103(h)(2)-1(b)(1) (column two, page 4439) should be amended to read as follows: "this section, but only to the extent neces-".

(3) The seventeenth line of § 404.6103(h)(2)-1(b)(1) (column two, page 4439) should be amended to read as follows: "clude, but are not limited to, disclosures".

ROBERT A. BLEY,
Acting Director, Legislation and Regulations Division.

[FR Doc.77-3020 Filed 1-28-77;8:45 am]

Title 28—Judicial Administration

CHAPTER I—DEPARTMENT OF JUSTICE

[Order No. 683-77]

PART 50—STATEMENTS OF POLICY

Limitation for Representation of Federal Employees

AGENCY: Department of Justice.

ACTION: Statement of policy.

EFFECTIVE DATE: January 31, 1977.

SUMMARY: The attached statement of policy describes the limits within which the Department may provide for representation of Federal employees with respect to employment-related matters in which they are involved in their individual capacity. Representation in these matters is limited to state criminal proceedings, and civil and Congressional proceedings.

SUPPLEMENTARY INFORMATION: It may be helpful to set forth briefly the manner in which the representation authority set forth in the statement of policy is currently being applied. Bearing in mind that extraordinary situations may justify going to the outer limits of the guidelines, the present practice of the Department is as follows:

1. The Department will represent an employee who is sued or subpoenaed in his individual capacity, if the acts which constitute the subject of the proceeding reasonably appear to have been performed within the scope of his employment and if he is not the target of a Federal criminal investigation with respect to such actions.

2. Where, although the employee reasonably appears to have acted within the scope of his employment, a pending investigation has disclosed some evidence of his specific participation in a crime, the Department will pay for representation by a private attorney.

3. The Department will likewise pay for representation by a private attorney when several employees, otherwise entitled to representation by the Department, have sufficiently conflicting interests which in the Department's view preclude representation of each of them by the Department.

4. The Department will not represent, or pay for the representation of, any employee, if, with respect to the acts that are the subject of the representation, an indictment or information has been filed against him by the United States or a pending investigation of the Department indicates that he committed a criminal offense.

5. The Department will not provide or pay for representation where the positions taken would oppose positions maintained by the United States itself.

By virtue of the authority invested in me by 28 U.S.C. 509, Part 50 of Chapter I of Title 28 of the Code of Federal Regulations is hereby amended by addition of the following §§ 50.15 and 50.16:

§ 50.15 Representation of Federal Employees by Department of Justice Attorneys or by Private Counsel Furnished by the Department in State Criminal Proceedings and in Civil Proceedings and Congressional Proceedings in Which Federal Employees Are Sued or Subpoenaed in Their Individual Capacities.

(a) Under the procedures set forth below, a federal employee (herein defined to include former employees) may be represented by Justice Department attorneys in state criminal proceedings and in civil and Congressional proceedings in which he is sued or subpoenaed in his individual capacities, not covered by § 15.1 of this chapter.

(1) When an employee believes he is entitled to representation by the Department of Justice in a proceeding, he must submit a request for that representation, together with all process and pleadings served upon him, to his immediate supervisor or whomever is designated by the head of his department or agency, forthwith. The employee's employing federal agency shall submit to the Civil Division in a timely manner a statement, with all supporting data, as to whether the employee was acting within the scope of his employment, together with its recommendation as to whether representation should be provided. The communication between the employee and any individual acting as an attorney at his employing agency, with regard to the request for representation, shall be treated as subject to the attorney-client privilege. In emergency situations the Civil Division may initiate conditional representation after communication by telephone with the employing agency. In such cases, appropriate written data must be subsequently provided.

(2) Upon receipt of the agency's notification of request for counsel, the Civil Division will determine whether the employee's actions reasonably appear to have been performed within the scope of his employment, and whether providing representation is in the interest of the United States. If a negative determination is made, Civil Division will inform the agency and/or the employee that no representation will be provided.

(3) Where there appears to exist the possibility of a federal criminal investigation or indictment relating to the same subject matter for which repersentation is sought, the Civil Division will contact a designated official in the Criminal Division for a determination whether the employee is either a target of a federal criminal investigation or a defendant in a federal crminal case. An employee is the target of an investigation if, in addition to being circumstantially implicated by having the appropriate responsibilities at the appropriate time, there is some

evidence of his specific participation in a crime. In appropriate instances, Civil Rights and Tax Divisions and any other prosecutive authority within the Department should be contacted for a similar determination.

(4) If the Criminal, Civil Rights or Tax Division or other prosecutive authority within the Department (hereinafter "prosecuting division") indicates that the employee is not the target of a criminal investigation concerning the act or acts for which he seeks representation, then representation may be provided. Similarly, if the prosecuting division indicates that there is an ongoing investigation, but into a matter other than that for which representation has been requested, then representation may be provided.

(5) If the prosecuting division indicates that the employee is the target of a criminal investigation concerning the act or acts for which he seeks representation, Civil Division will inform the employee that no representation by Justice Department attorneys will be provided. If the prosecuting division indicates that the employee is a target of an investigation concerning the act or acts for which he seeks representation, but no decision to seek an indictment or issue an information has been made, a private attorney may be provided to the employee at federal expense under the procedures of § 50.16.

(6) If conflicts exist between the legal or factual positions of various employees in the same case which make it inappropriate for a single attorney to represent them all, the employees may be separated into as many groups as is necessary to resolve the conflict problem and each group may be provided with separate representation. Some situations may make it advisable that private representation be provided to all conflicting groups and that Justice Department attorneys be withheld so as not to prejudice particular defendants. In such situations, the procedures of § 50.16 will apply.

(7) Once undertaken, representation under this subsection will continue until either all appropriate proceedings, including applicable appellate procedures, have ended, or until any of the foregoing bases for declining or withdrawing from representation is found to exist, including without limitation the basis that representation is not in the interest of the United States. In any of the latter events, the representing Department attorney on the case will seek to withdraw but will ensure to the maximum extent possible that the employee is not prejudiced thereby.

(8) Justice Department attorneys who represent employees under this section undertake a full and traditional attorney-client relationship with the employees with respect to the attorney-client privilege. If representation is discontinued for any reason, any incriminating information gained by the attorney in the course of representing the employee continues to be subject to the attorney-client privilege. All legal arguments appropriate to the employee's case will be made unless they conflict with governmental positions. Where adequate representation requires the making of a legal argument which conflicts with a governmental position, the Department attorney shall so advise the employee.

(b) Representation by Department of Justice attorneys is not available to a federal employee whenever:

(1) The representation requested is in connection with a federal criminal proceeding in which the employee is a defendant;

(2) The employee is a target of a federal criminal investigation on the same subject matter;

(3) The act or acts with regard to which the employee desires representation do not reasonably appear to have been performed within the scope of his employment with the federal government; or

(4) It is otherwise determined by the Department that it is not in the interest of the United States to represent the employee.

§ 50.16 Representation of Federal Employees by Private Counsel at Federal Expense.

(a) Representation by private counsel at federal expense may be provided to a federal employee only in the instances described in § 50.15 (a)(5) and (a)(6).

(b) Where private counsel is provided, the following procedures will apply:

(1) The Department of Justice must approve in advance any private counsel to be retained under this section. Where national security interests may be involved, the Department of Justice will consult with the employing agency.

(2) Federal payments to private counsel for an employee will cease if the Department of Justice (i) decides to seek an indictment of or to issue an information against that employee on a federal criminal charge relating to the act or acts concerning which representation was undertaken; (ii) determines that the employee's actions do not reasonably appear to have been performed within the scope of his employment; (iii) resolves the conflict described in § 50.15(a)(6) and tenders representation by Department of Justice attorneys; (iv) determines that representation is not in the interest of the United States; (v) terminates the retainer with the concurrence of the employee-client, for any reason.

(c) In any case in which the employee is not represented by a Department of Justice attorney, the Department of Justice may seek leave to intervene or appear as amicus curiae on behalf of the United States to assure adequate consideration of issues of governmental concern.

Dated: January 19, 1977.

EDWARD H. LEVI,
Attorney General.

[FR Doc.77-2915 Filed 1-28-77;8:45 am]

Title 32—National Defense

CHAPTER VII—DEPARTMENT OF THE AIR FORCE

PART 806b—AIR FORCE PRIVACY ACT PROGRAM

Subpart H—Appendices

SPECIFIC EXEMPTIONS

On December 23, 1976, there was published in the FEDERAL REGISTER on page 55885 (41 FR 55585), a proposal to amend § 806b.58 of Subpart H (40 FR 55592), by proposing as a rule under 5 U.S.C. 552a(k) to exempt an additional system of records within the Department of the Air Force from the specified subsections of 5 U.S.C. 552a. Interested persons were invited to participate in this proposed amendment to the regulation, not later than January 15, 1977, by submitting written data, views, or arguments. No comments were received relative to that proposal. Accordingly, the proposed amendment is hereby adopted without change as set forth below.

Effective date: January 28, 1977.

FRANKIE S. ESTEP,
Air Force Federal Register Liaison Officer, Directorate of Administration.

MAURICE W. ROCHE,
Director, Correspondence and Directives, OASD (Comptroller).

JANUARY 26, 1977.

A new paragraph (l) is added to § 806b.58 to read as follows:

§ 806b.58 Specific Exemptions.

* * * * *

(l) 16802 Child Advocacy Case Files.

(1) *Exemption.* Portions of this system of records are exempt from the following subsections of Title 5, *United States Code*, section 552a:(c)(3) and (d).

(2) *Authority.* 5 U.S.C. 552a(k)(2) and (5).

(3) *Reasons.* Exemptions are needed in order to encourage persons having knowledge of abusive or neglectful acts toward children to report such information and to protect such sources from embarrassment or recriminations as well as to protect their right to privacy. It is essential that the identities of all individuals who furnish information under an express promise of confidentiality be protected. Additionally, granting individuals access to information relating to criminal and civil law enforcement, as well as the release of certain disclosure accountings, could interfere with ongoing investigations and the orderly administration of justice in that it could result in the concealment, alteration, destruction or fabrication of information; could hamper the identification of offenders or alleged offenders and the disposition of charges; and could jeopardize the safety and well-being of parents and their children.

[FR Doc.77-2964 Filed 1-28-77;8:45 am]

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER N—EFFLUENT GUIDELINES AND STANDARDS

[FRL 677-3]

PART 439—PHARMACEUTICAL MANUFACTURING POINT SOURCE CATEGORY

Extension of Comment Period and Notice of Availability

On November 17, 1976 the Environmental Protection Agency published a notice of interim final rulemaking (41 FR 50676) establishing effluent limitations and guidelines for the pharmaceutical manufacturing point source category, based upon use of best practicable control technology currently available. The due date for comments provided in the notice was January 17, 1977.

The Agency anticipated that the document entitled "Development Document for Interim Final Effluent Limitations Guidelines and Proposed New Source Performance Standards for the Pharmaceutical Manufacturing Point Source Category," which contains information on the analysis undertaken in support of the regulation would be available to the public throughout the comment period. Production difficulties delayed the availability of this document. Copies of the document are now available and have been forwarded to those persons having submitted written requests to the Environmental Protection Agency. A limited number of additional copies are available for distribution from the Environmental Protection Agency, Effluent Guidelines Division, Washington, D.C. 20460, Attention: Distribution Officer, WH-552.

Accordingly, the date for submission of comments is hereby extended to March 15, 1977.

Dated: January 21, 1977.

ANDREW W. BREIDENBACH,
Assistant Administrator for Water and Hazardous Materials.

[FR Doc.77-2899 Filed 1-28-77;8:45 am]

Title 47—Telecommunication

CHAPTER I—FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 20659; RM-2502; FCC 77-63]

PART 73—RADIO BROADCAST SERVICES

Requirements for Captioning of Emergency Messages on Television; Memorandum Opinion and Order

Adopted: January 19, 1977.

Released: January 28, 1977.

In the matter of Amendment of Part 73 of the rules to establish requirements for captioning of emergency messages on television.

1. The Commission has before it a petition filed by CBS Inc. (CBS) requesting partial reconsideration of our Report and Order in Docket No. 20659, RM-2502 (FCC 76-852, 41 FR 40108) released September 15, 1976, wherein Part 73 of the Rules was amended to establish requirements for visual captioning of emergency messages broadcast over television stations, effective February 1, 1977.

2. In its petition for partial reconsideration, CBS reiterates its opposition to any requirement that licensees broadcast all special news bulletins aurally as well as visually. Specifically, CBS proposes that § 73.675(b) be further revised to eliminate the requirement that emergency announcements be broadcast both aurally and visually and instead permit announcements to be transmitted, at the discretion of the licensee, either aurally and visually or just visually. CBS contends "* * * that there are numerous instances where a visual message alone would achieve the desired objective of alerting viewers to a particular emergency situation, and that it now appears that the visual display of information of the types set forth in § 76.675(a) will trigger a requirement for an audio announcement interrupting programming." CBS further contends that "To force such a construction upon this section would further serve to discourage licensees from broadcasting emergency announcements, and would certainly discourage licensees from repeating or updating them." The Public Broadcasting Service (PBS) and the American Broadcasting Companies, Inc. (ABC) concur in the CBS petition. The National Association of the Deaf (NAD) wants the Report and Order to take effect unchanged, but offers no reasons in support of its position.

3. Our September 15 Report and Order did not require the simultaneous transmission of visual and aural emergency information, but it did require that emergency announcements be transmitted both visually and aurally.

4. It was not our intention to discourage the use of captioning by imposing an aural announcement requirement on the licensee in situations where, because of the nature of the programming or the manner of its presentation, such announcements would serve no useful purpose. Accordingly, with respect to the transmitting of "NON-EBS"[1] special news bulletins under § 73.675(b), we find that the public interest would best be served by leaving aural announcements to the discretion of the licensee. Since the activation of the Emergency Broadcast System (EBS) requires the interruption of normal aural programming by the transmission of a two-tone attention signal for 20 to 25 seconds, the aural and visual announcement requirement will be retained for EBS emergency announcements in Subpart G, Part 73 of the Rules.

5. We emphasize that the only emergency situation in which a licensee must transmit an emergency bulletin is upon activation of the EBS during a National-Level Emergency. At all other times, emergency bulletins are transmitted at the sole discretion of the licensee. We also stress that because not all persons with impaired hearing understand sign language, the use of only sign language or symbols is not sufficient to fulfill the intent of the new requirements. A legible message conveying the essential information is required. Methods which may be used include, but are not necessarily limited to, electronic captioning, manual methods, (e.g., hand printing), slides, or mechanical printing processes. The use of sign language or symbols may be used to supplement, but not supplant, the other methods.

6. Finally, while we are specifically concerned in this proceeding with the deaf, we are not unmindful of the need for emergency information by the blind and visually handicapped. Although the latter do not place primary reliance on television reception as a means of receiving emergency information, there are critical weather and other community-wide emergencies in which a small but undetermined number of such persons would benefit from companion aural announcements. Examples of critical emergency situations are listed in § 73.675(a) of the rules. Comments of record in this proceeding indicate an awareness of the problems of the blind by the television industry and a willingness to carry companion aural announcements when captioning for critical emergencies. In live interruptions of normal programming, this will occur automatically because of the customary placement of cameras and microphones in the television studio. Where this is not the case (for example, where captioning is used in conjunction with weather warning slides unaccompanied by audio input), we will expect that the licensee make timely aural announcements for the benefit of persons with visual handicaps.

7. Accordingly, *It is ordered*, That the CBS petition for partial reconsideration is granted and, pursuant to the authority contained in sections 1, 4(i), 4(o), 303 (g), 303(r), and 405 of the Communications Act of 1934, as amended, Part 73 of the Commission's rules is amended as set forth below. Since the amendment herein ordered relaxes previously ordered restrictions and should take effect to coincide with the effective date of the earlier Report and Order in this proceeding, it shall take effect February 1, 1977 (5 USC 553(d)).

(Secs. 1, 4, 303, 405, 48 Stat., as amended, 1064, 1066, 1082, 1095; 47 U.S.C. 151, 154, 303, 405.)

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS,
Secretary.

Part 73 of Chapter I, Title 47 Code of the Federal Regulations, is amended as follows:

Section 73.675(b) is amended to read as follows:

[1] E.g. News bulletins warranting interruption of scheduled programming which are not preceded by activation of the Emergency Broadcast System (EBS) at the National, State, or Local Level.

§ 73.675 Operation during emergency.

• • • • •

(b) Any emergency information transmitted in accordance with this Section shall be transmitted both aurally and visually or only visually. Television broadcast stations may use any method of visual presentation which results in a legible message conveying the essential information. Methods which may be used include, but are not necessarily limited to, slides, electronic captioning, manual methods (e.g., hand printing) or mechanical printing processes. However, when emergency operation is being conducted under a National, State, or Local Level Emergency Broadcast System (EBS) Plan, emergency announcements shall be transmitted both aurally and visually.

• • • • •

[FR Doc.77-2979 Filed 1-28-77;8:45 am]

Title 50—Wildlife and Fisheries

CHAPTER II—NATIONAL MARINE FISHERIES SERVICE, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT OF COMMERCE

PART 240—REGULATED COMMERCIAL FISHERIES

Northwest Atlantic Fisheries Act Regulations

Recently it has come to the attention of the National Marine Fisheries Service (NMFS) that there is confusion concerning the continued efficacy of the regulations promulgated pursuant to the Northwest Atlantic Fisheries Act, 16 U.S.C. 986. In order to clarify the position of NMFS, I am hereby announcing that, in light of the fact that the Northwest Atlantic Fisheries Act continues to be a governing Federal statute, the implementing regulations contained in 50 CFR Part 240 remain in effect with respect to U.S. fishermen and vessels.

JACK W. GEHRINGER,
Deputy Director,
National Marine Fisheries Service.

JANUARY 27, 1977.

[FR Doc.77-3060 Filed 1-28-77;8:45 am]

proposed rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL RESERVE SYSTEM

[12 CFR Part 261b]

[Docket No. R.0077]

GOVERNMENT IN THE SUNSHINE

Proposed Implementation

Pursuant to its authority under the Government in the Sunshine Act ("the Act"), 5 U.S.C. 552b, the Board of Governors of the Federal Reserve System proposes to amend Title 12 of the Code of Federal Regulations by adding a new Part 261b, which is required by subsection (g) of the Act. The purpose of proposed Part 261b is to provide for the procedures under which the open meeting requirements of subsections (b) through (f) of the Act will be met.

The objective of the Act is to provide the public with the fullest practicable information regarding the decision making processes of defined agencies while at the same time protecting the rights of individuals and the ability of the Government to carry out its responsibilities (§ 261b.1). Under the Act and the proposed regulations, members of the Board may not, after March 12, 1977, jointly conduct or dispose of official agency business other than in accordance with the procedures specified in this Part (§ 261b.3). Generally, such procedures require that every portion of every Board meeting be open to public observation, except when a meeting or a portion of a meeting is closed because it relates to a matter exempt from such public observation under subsection (c) of the Act (§ 261b.4).

The Board has determined that it qualifies for the use of expedited procedures for closing meetings under subsection (d)(4) of the Act because a majority of its meetings may properly be closed pursuant to paragraphs (4), (8), (9)(A) or (10) of subsection (c) of the Act or any combination thereof. The Board has examined the records of its meetings from January 1, 1974 to December 31, 1976, and determined that of the 493 meetings held, a portion or portions of 465 (94 per cent) could have been properly closed pursuant to paragraphs (4), (8), (9)(A) or (10) of subsection (c) of the Act or any combination thereof.

As a result of this finding, the regulations provide for the closing of meetings under expedited procedures (§ 261b.7) as well as for the closing of meetings under regular procedures (§ 261b.8). The proposed regulations also provide for the public announcement of meetings open to public observation and meetings to be partially or completely closed under regular procedures (§ 261b.6), changes with respect to publicly announced meetings (§ 261b.9), and certification by the General Counsel with respect to closed meetings (§ 261b.10). In addition, rules are set forth for the maintenance of transcripts, recordings, and minutes (§ 261b.11), for inspection and copying of such transcripts and minutes (§ 261b.12) and for fees related thereto (§ 261b.13).

To aid in the consideration of this matter by the Board, interested persons are invited to submit relevant views, comments, or arguments. Any such material should be submitted in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than March 2, 1977. All material submitted should include the docket number R.0077. Such material will be made available for inspection and copying upon request.

Notice is given that it is proposed to make Part 261b effective, following consultation with the office of the Chairman of the Administrative Conference of the United States and after consideration of comments received by the Board, on March 12, 1977, the effective date of the Act.

Part 261b would read as follows:

PART 261b—RULES REGARDING PUBLIC OBSERVATION OF MEETINGS

Sec.

261b.1 Basis and scope.
261b.2 Definitions.
261b.3 Conduct of agency business.
261b.4 Meetings open to public observation.
261b.5 Exemptions.
261b.6 Public announcements of meetings.
261b.7 Meetings closed to public observation under expedited procedures.
261b.8 Meetings closed to public observation under regular procedures.
261b.9 Changes with respect to publicly announced meeting.
261b.10 Certification of general counsel.
261b.11 Transcripts, recordings, and minutes.
261b.12 Procedures for inspection and obtaining copies of transcripts and minutes.
261b.13 Fees.

AUTHORITY: Sec. 552b of Title 5, United States Code.

§ 261b.1 Basis and scope.

This part is issued by the Board of Governors of the Federal Reserve System (the "Board") under section 552b of Title 5 of the United States Code, the Government in the Sunshine Act (the "Act"), to carry out the policy of the Act that the public is entitled to the fullest practicable information regarding the decision making processes of the Board while at the same time preserving the rights of individuals and the ability of the Board to carry out its responsibilities. These regulations fulfill the requirement of subsection (g) of the Act that each agency subject to the provisions of the Act shall promulgate regulations to implement the open meeting requirements of subsections (b) through (f) of the Act.

§ 261b.2 Definitions.

For purposes of this Part, the following definitions shall apply:

(a) The term "agency" means the Board and subdivisions thereof.

(b) The term "subdivision" means any group composed of two or more Board members that is authorized to act on behalf of the Board.

(c) The term "meeting" means the deliberations of at least the number of individual agency members required to take action on behalf of the agency where such deliberations determine or result in the joint conduct or disposition of official Board business, but does not include (1) deliberations required or permitted by subsections (d) or (e) of the Act, or (2) the conduct or disposition of official agency business by circulating written material to individual members.

(d) The term "number of individual agency members required to take action on behalf of the agency" means in the case of the Board, a majority of its members except that (1) Board determination of the ratio of reserves against deposits under section 19(b) of the Federal Reserve Act requires the vote of four members, (2) Board action with respect to advances, discounts and rediscounts under sections 10(a), 11(b) and 13(3) of the Federal Reserve Act requires the vote of five members and (3) Board action with respect to the percentage of individual member bank capital and surplus which may be represented by loans secured by stock and bond collateral under section 11(m) of the Federal Reserve Act requires the vote of six members. In the case of subdivisions of the Board, the term means the number of members constituting a quorum of the designated subdivision.

(e) The term "member" means a member of the Board appointed under section 10 of the Federal Reserve Act. In the case of certain Board proceedings pursuant to 12 U.S.C. 1818(e), the Comptroller of the Currency is entitled to sit as a member of the Board and for these proceedings he shall be deemed a "member" for the purposes of this Part. In the case of any subdivision of the Board, the term "member" means a member of the Board designated to serve on that subdivision.

(f) The term "public observation" means that the public shall have the right to listen and observe but not to record any of the meetings by means of cameras or electronic or other recording devices unless approval in advance is obtained from the Public Affairs Office of

the Board and shall not have the right to participate in the meeting, unless participation is provided for in the Board's Rules of Procedure.

(g) The term "Federal agency" means an "agency" as defined in 5 U.S.C. 551(1).

§ 261b.3 Conduct of agency business.

Members shall not jointly conduct or dispose of official agency business other than in accordance with this Part.

§ 261b.4 Meetings open to public observation.

Except as provided in § 261b.5 of this Part, every portion of every meeting of the agency shall be open to public observation.

§ 261b.5 Exemptions.

(a) The agency may close a meeting or a portion or portions of a meeting under the procedures specified in §§ 261b.7 or 2161b.8 of this Part, and withhold information under the provisions of §§ 261b.6, 261b.7, 261b.8, or 261b.11 of this Part, where the agency properly determines that such meeting or portion or portions of its meeting or the disclosure of such information is likely to:

(1) Disclose matters that are (A) specifically authorized under criteria established by an Executive order to be kept secret in the interests of national defense or foreign policy, and (B) in fact properly classified pursuant to such Executive order;

(2) Relate solely to internal personnel rules and practices;

(3) Disclose matters specifically exempted from disclosure by statute (other than section 552 of Title 5 of the United States Code), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Involve accusing any person of a crime, or formally censuring any person;

(6) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(7) Disclose investigatory records compiled for law enforcement purposes, or information which if written would be contained in such records, but only to the extent that the production of such records or information would (i) interfere with enforcement proceedings, (ii) deprive a person of a right to a fair trial or an impartial adjudication, (iii) constitute an unwarranted invasion of personal privacy, (iv) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by a Federal agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (v) disclose investigative techniques and procedures, or (vi) endanger the life or physical safety of law enforcement personnel;

(8) Disclose information contained in or related to examination, operating, or condition reports prepared by, or on behalf of, or for the use of the Board or other Federal agency responsible for the regulation or supervision of financial institutions;

(9) disclose information the premature disclosure of which would—

(i) Be likely to (A) lead to significant speculation in currencies, securities, or commodities, or (B) significantly endanger the stability of any financial institution; or

(ii) Be likely to significantly frustrate implementation of a proposed action,

except that subparagraph (ii) shall not apply in any instance where the Board has already disclosed to the public the content or nature of its proposed action, or where the Board is required by law to make such disclosure on its own initiative prior to taking final action on such proposal; or

(10) Specifically concern the issuance of a subpoena, participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct, or disposition of a particular case of formal agency adjudication pursuant to the procedures in section 554 of Title 5 of the United States Code or otherwise involving a determination on the record after opportunity for a hearing.

(b) A meeting or portion or portions of a meeting shall not be closed nor information withheld pursuant to paragraph (a) of this section if the agency finds that the public interest requires that the meeting or portion or portions of a meeting be open to public observation or that the information not be withheld.

§ 261b.6 Public announcements of meetings.

(a) Except as otherwise provided by the Act, public announcement of meetings open to public observation and meetings to be partially or completely closed to public observation pursuant to § 261b.8 of this part will be made at least one week in advance of the meeting. Except to the extent such information is determined to be exempt from disclosure under subsection (c) of the Act and § 261b.5 of this part, each such public announcement will state the time, place and subject matter of the meeting, whether it is to be open or closed to the public, and the name and phone number of the official designated to respond to requests for information about the meeting.

(b) If a majority of the members of the agency determines by a recorded vote that agency business requires that a meeting covered by paragraph (a) of this section be called at a date earlier than that specified in paragraph (a) of this section, the agency will make a public announcement of the information specified in paragraph (a) of this section at the earliest practicable time.

(c) Changes in the subject matter of a publicly announced meeting, or in the determination to open or close a publicly announced meeting or any portion of a publicly announced meeting to public observation, or in the time or place of a publicly announced meeting made in accordance with the procedures specified in § 261b.9 of this Part will be publicly announced at the earliest practicable time.

(d) Public announcements required by this section will be posted at the Board's Public Affairs Office and Freedom of Information Office and may be made available by other means or at other locations as may be desirable.

(e) Immediately following each public announcement required by this section, notice of the time, place and subject matter of a meeting, whether the meeting is open or closed, any change in one of the preceding announcements, and the name and telephone number of the official designated by the Board to respond to requests about the meeting, shall also be submitted for publication in the FEDERAL REGISTER.

§ 261b.7 Meetings closed to public observation under expedited procedures.

(a) Since the Board qualifies for the use of expedited procedures under subsection (d)(4) of the Act, meetings or portions thereof exempt under paragraphs (4), (8), (9)(A) or (10) of subsection (c) of the Act and § 261b.5(a) of this Part, will be closed to public observation under the expedited procedures of this section. Following are examples of types of items that, absent compelling contrary circumstances, will qualify for these exemptions: matters relating to a specific bank or bank holding company, such as bank branches or mergers, bank holding company formations, or acquisition of an additional bank or acquisition or *de novo* undertaking of a permissible nonbanking activity; bank regulatory matters, such as applications for membership, issuance of capital notes and investment in bank premises; foreign banking matters; bank supervisory and enforcement matters, such as cease-and-desist and officer removal proceedings; monetary policy matters, such as discount rates, use of the discount window, changes in the limitations on payment of interest on time and savings accounts, and changes in reserve requirements or margin regulations.

(b) At the beginning of each meeting, a portion or portions of which is closed to public observation under expedited procedures pursuant to this section, a recorded vote of the members present will be taken to determine whether a majority of the members votes to close such meeting or portions of such meeting to public observation.

(c) A copy of the vote, reflecting the vote of each member, and except to the extent such information is determined to be exempt from disclosure under subsection (c) of the Act and § 261b.5 of this part, a public announcement of the time, place and subject matter of the meeting or each closed portion thereof, will be made available at the earliest

practicable time at the Board's Public Affairs Office and Freedom of Information Office.

§ 261b.8 Meetings closed to public observation under regular procedures.

(a) A meeting or a portion of a meeting will be closed to public observation under regular procedures, or information as to such meeting or portion of a meeting will be withheld, only by recorded vote of a majority of the members of the agency when it is determined that the meeting or the portion of the meeting or the withholding of information qualifies for exemption under subsection (c) of the Act and § 261b.5 of this Part. Votes by proxy are not allowed.

(b) Except as provided in paragraph (c) of this section, a separate vote of the members of the agency will be taken with respect to the closing or the withholding of information as to each meeting or portion thereof which is proposed to be closed to public observation or with respect to which information is proposed to be withheld pursuant to this section.

(c) A single vote may be taken with respect to a series of meetings, a portion or portions of which are proposed to be closed to public observation or with respect to any information concerning such series of meetings proposed to be withheld, so long as each meeting or portion thereof in such series involves the same particular matters and is scheduled to be held no more than thirty days after the initial meeting in such series.

(d) Whenever any person's interests may be directly affected by a portion of a meeting for any of the reasons referred to in paragraphs (5), (6) or (7) of subsection (c) of the Act and § 261b.5(a) of this part, such person may request in writing to the Secretary of the Board that such portion of the meeting be closed to public observation. The Secretary, or in his absence the Acting Secretary of the Board, will transmit the request to the members and upon the request of any one of them a recorded vote will be taken whether to close such meeting to public observation.

(e) Within one day of any vote taken pursuant to paragraphs (a) through (d) of this section, the agency will make publicly available at the Board's Public Affairs Office and Freedom of Information Office a written copy of such vote reflecting the vote of each member on the question. If a meeting or a portion of a meeting is to be closed to public observation, the agency, within one day of the vote taken pursuant to paragraphs (a) through (d) of this section, will make publicy available at the Board's Public Affairs Office and Freedom of Information Office a full, written explanation of its action closing the meeting or portion of the meeting together with a list of all persons expected to attend the meeting and their affiliation, except to the extent such information is determined by the agency to be exempt from disclosure under subsection (c) of the Act and § 261b.5 of this Part.

§ 261b.9 Changes with respect to publicly announced meeting.

The subject matter of a meeting or the determination to open or close a meeting or a portion of a meeting to public observation may be changed following public announcement under § 261b.6 only if a majority of the members of the agency determines by a recorded vote that agency business so requires and that no earlier announcement of the change was possible. Public announcement of such change and the vote of each member upon such change will be made pursuant to § 261b.6(c). Changes in time, including postponements and cancellations of a publicly announced meeting or portion of a meeting or changes in the place of a publicly announced meeting will be publicly announced pursuant to § 261b.6 (c) by the Secretary of the Board or, in the Secretary's absence, the Acting Secretary of the Board.

§ 261b.10 Certification of general counsel.

For every meeting or portion of a meeting closed to public observation under §§ 261b.7 or 261b.8 of this Part, the General Counsel, or in the General Counsel's absence, the Acting General Counsel, shall publicly certify whether or not in his or her opinion the meeting may be closed to public observation and shall state each relevant exemptive provision. A copy of such certification, together with a statement from the presiding officer of the meeting setting forth the time and place of the meeting and the persons present, will be retained for the time prescribed in § 261b.11(d).

§ 261b.11 Transcripts, recordings, and minutes.

(a) The agency will maintain a complete transcript or electronic recording or transcription thereof adequate to record fully the proceedings of each meeting or portion of a meeting closed to public observation pursuant to exemptions (1), (2), (3), (4), (5), (6), (7) or (9)(B) of subsection (c) of the Act and § 261b.5(a) of this part. Transcriptions of recordings will disclose the identity of each speaker.

(b) The agency will maintain either such a transcript, recording or transcription thereof, or a set of minutes that will fully and clearly describe all matters discussed and provide a full and accurate summary of any actions taken and the reasons therefor, including a description of each of the views expressed on any item and the record of any roll call vote (reflecting the vote of each member on the question), for meetings or portions of meetings closed to public observation pursuant to exemptions (8), (9)(A) or (10) of subsection (c) of the Act and § 261b.5(a) of this part. The minutes will identify all documents considered in connection with any action taken.

(c) Transcripts, recordings or transcriptions thereof, or minutes will promptly be made available to the public in the Freedom of Information office except for such item or items of such discussion or testimony as may be determined to contain information that may be withheld under subsection (c) of the Act and § 261b.5 of this part.

(d) A complete verbatim copy of the transcript, a complete copy of the minutes, or a complete electronic recording or verbatim copy of a transcription thereof of each meeting or portion of a meeting closed to public observation will be maintained for a period of at least two years or one year after the conclusion of any agency proceeding with respect to which the meeting or portion thereof was held, whichever occurs later.

§ 261b.12 Procedures for inspection and obtaining copies of transcriptions and minutes.

(a) Any person may inspect or copy a transcript, a recording or transcription of a recording, or minutes described in § 261b.11(c) of this Part.

(b) Requests for copies of transcripts, recordings or transcriptions of recordings, or minutes described in § 261b.11(c) of this Part shall specify the meeting or the portion of meeting desired and shall be submitted in writing to the Secretary of the Board, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. Copies of documents identified in minutes may be made available to the public upon request under the provisions of 12 CFR 261 (Rules Regarding Availability of Information).

§ 261b.13 Fees.

(a) Copies of transcripts, recordings or transcriptions of recordings, or minutes requested pursuant to § 261b.12(b) of this part will be provided at a cost of 10¢ per standard page for photocopying or at a cost not to exceed the actual cost of printing, typing, or otherwise preparing such copies.

(b) Documents may be furnished without charge where total charges are less than $2.

By order of the Board of Governors, January 26,1977.

THEODORE E. ALLISON,
Secretary of the Board.

[FR Doc.77-3016 Filed 1-28-77;8:45 am]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Part 39]

[Docket No. 76-EA-65]

CANADAIR AIRCRAFT

Proposed Airworthiness Directive

The Federal Aviation Administration is considering amending § 38.13 of Part 39 of the Federal Aviation Regulations so as to issue an airworthiness directive applicable to Canadair CL-215 type airplanes.

There has been a report of cracks in the MLG wheel well angles, P/N 215-32200-60 LH and -61 RH. Since this is a deficiency which can exist or develop in

aircraft of similar type design an airworthiness directive is proposed which will require a repetitive inspection and repair where necessary. While this is an air safety item, there are at present no U.S. registered CL-215 type airplanes, and all operable airplanes have been affected by a Canadian airworthiness directive. However, the airplane is U.S. type certificated and an airworthiness directive must be issued for possible future registrations. It has been determined that the expected impact of the proposed regulation is so minimal that the proposal does not warrant an evaluation.

Interested parties may submit such such written data or views as they may desire. Communications should be submitted in triplicate to the Director, Eastern Region, Attn: Chief, Engineering and Manufacturing Branch, Department of Transportation, Federal Aviation Administration, Federal Building, John F. Kennedy International Airport, Jamaica, New York 11430. All communications received on or before March 2, 1977 will be considered before action is taken on the proposed amendment. No hearing is contemplated at this time, but arrangements may be made for informal conferences with Federal Aviation Administration officials by contacting the Chief, Engineering and Manufacturing Branch, Eastern Region.

Any data or views presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official docket will be available for examination by interested parties at the Office of Regional Counsel, Federal Aviation Administration, Federal Building, John F. Kennedy International Airport, Jamaica, New York.

In consideration of the foregoing, it is proposed to issue a new airworthiness directive as hereinafter set forth:

CANADAIR: Applies to Canadair CL-215-1A10 airplanes, Serial Nos. 1001 to 1040 inclusive, not altered with Canadair Reinforcement Kit K215-30043 or an FAA-approved equivalent.

Compliance is required as indicated.

To assure the structural integrity of the main landing gear wheel well angles, P/N 215-32200-58, -59, -60, -61, accomplish the following:

(a) On aircraft with 1000 or more hours in service, compliance with paragraph (c) is required before the next flight. The inspection of paragraph (c) must be repeated at intervals not to exceed 150 hours in service.

(b) On aircraft with less than 1000 hours in service, compliance with paragraph (c) is required at or before 1000 hours in service. The inspections of paragraph (c) must be repeated at intervals not to exceed 150 hours in service.

(c) Inspect for cracks and modify in accordance with Canadair Service Information Circular No. 104-CL-215 dated September 5, 1975, or an equivalent approved by the Chief, Engineering and Manufacturing Branch, Eastern Region.

(d) Upon submission of substantiating data by an owner or operator through an FAA Maintenance Inspector, the Chief, Engineering and Manufacturing Branch, FAA, Eastern Region, may adjust the compliance time in this AD.

NOTE.—The Federal Aviation Agency has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107.

(Sec. 313(a), 601, 603, Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 and 1423), sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c))

Issued in Jamaica, New York, on January 21, 1977.

L. J. CARDINALI,
Acting Director, Eastern Region.

[FR Doc.77-2971 Filed 1-28-77;8:45 am]

[14 CFR Part 39]

[Docket No. 76-EA-66]

CANADAIR AIRCRAFT

Proposed Airworthiness Directive

The Federal Aviation Administration is considering amending § 39.13 of Part 39 of the Federal Aviation Regulations so as to issue an airworthiness directive applicable to Canadair CL-215 type airplanes.

There have been reports of corrosion on the nose landing gear door closing rods P/N 215-85009 and sequencing redundancy mechanism and rod P/N 215-85026 which could affect the structural integrity of the rods.

Since this is a deficiency which can exist or develop in aircraft of similar type design, an airworthiness directive is proposed which will require an inspection and alteration of the rods. While this is an air safety item, there are at present no U.S. registered CL-215 type airplanes, and all operable airplanes have been affected by a Canadian airworthiness directive. However, the airplane is U.S. type certificated and an airworthiness directive must be issued to cover future registrations.

It has been determined that the expected impact of the proposed regulation is so minimal that the proposal does not warrant an evaluation.

Interested parties may submit such written data or views as they may desire. Communications should be submitted in triplicate to the Director, Eastern Region, Attn: Chief, Engineering and Manufacturing Branch, Department of Transportation, Federal Aviation Administration, Federal Building, John F. Kennedy International Airport, Jamaica, New York 11430. All communications received on or before March 2, 1977 will be considered before action is taken on the proposed amendment. No hearing is contemplated at this time, but arrangements may be made for informal conferences with Federal Aviation Administration officials by contacting the Chief, Engineering and Manufacturing Branch, Eastern Region.

Any data or views presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official docket will be available for examination by interested parties at the Office of Regional Counsel, Federal Aviation Administration, Federal Building, John F. Kennedy International Airport, Jamaica, New York.

In consideration of the foregoing, it is proposed to issue a new airworthiness directive as hereinafter set forth:

CANADAIR: Applies to Canadair CL-215-1A10 airplanes, Serial Numbers 1001 to 1040 inclusive, in all categories.

Compliance is required as indicated unless already accomplished.

To assure the structural integrity of the nose landing gear door closing rods, P/N 215-85009, and the sequencing redundancy mechanism rod, P/N 215-85026, accomplish the following:

(a) On aircraft that have been in service for 12 months or more, compliance with paragraph (c) is required and flight operations are restricted to land operations until compliance is shown.

(b) On aircraft that have been in service less than 12 months, compliance, with paragraph (c) is required before achieving 12 months in service.

(c) Inspect and rework in accordance with Canadair Service Information Circular No. 101-CL-215 dated May 6, 1975, or an equivalent method of compliance. A later revision and an equivalent method of compliance must be approved by the Chief, Engineering and Manufacturing Branch, FAA, Eastern Region.

(d) Upon request, with substantiating data submitted through an FAA Maintenance Inspector, the compliance time specified in this AD may be increased by the Chief, Engineering and Manufacturing Branch, FAA, Eastern Region.

NOTE.—The Federal Aviation Agency has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OBM Circular A-107.

(Sec. 313(a), 601, 603, Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421, 1423); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c))

Issued in Jamaica, New York, on January 18, 1977.

WILLIAM E. MORGAN,
Director, Eastern Region.

[FR Doc.77-2968 Filed 1-28-77;8:45 am]

[14 CFR Part 39]

[Docket No. 76-CE-31-AD]

COLLINS MODEL 51RV-1 VOR/ILS RECEIVER

Airworthiness Directives; Cancellation of Advance Notice of Proposed Rulemaking

On November 1, 1976, an Advanced Notice of Proposed Rulemaking was published in the FEDERAL REGISTER (41 FR 47946, 47947), soliciting comments regarding Proposed Rulemaking Action to correct a problem of cross modulation interference with respect to the Collins Radio Group Model 51RV-1 Navigation Receiver and possibly the communications and navigational airborne receiving equipment of other manufacturers.

The Advance Notice stated consideration would be given to all comments received on or before January 1, 1977. Five (5) comments were received. One commentator simply provided information on equipment and locations where he experienced interference problems but did not object to the proposal or offer any corrective recommendations. The other four commentators objected to further rule making action and provided specific reasons for their objection.

One of the commentators who operates 51RV1-equipped airplanes at one of the locations where problems had occurred pointed out that they had experienced no unsatisfactory performance with their receivers. This commentator pointed out that avionic failures do not occur in a particular pattern, and therefore any required repetitive maintenance schedule with respect to the 51RV1 receiver would not ensure freedom from the problem and may create an unnecessary financial burden.

Another commentator discussed the two locations where interference problems had occurred and pointed out that in one case the environment exceeded those specified in the receiver requirements of FAR 37 and that the other case resulted from a complaint that was later identified as a faulty receiver. This commentator does not believe that the experiences at these two locations justifies AD action against the receiver.

Comments received from one of the operator groups provided a detailed discussion of the interference problem and identified other receivers that have experienced interference problems and locations where they occurred. This group believes that FAA should not issue an Airworthiness Directive against the 51RV1 VOR/ILS receiver.

The last of the comments was from a 51RV1 user who had not experienced problems with its receivers. While this commentator did not feel that it was necessary to issue an AD against the 51RV1 receiver, it did recommend that FAA take action to bring the possible interference problem to the attention of the aviation community and alert them of the alignment procedures provided by Collins Service Bulletin No. 36 or Revision 10 of the VOR/ILS Overhaul Manual.

Two of the above commentators also suggested that action should be taken to investigate the interference problem and to control the environment in which the airborne receivers operate. While these suggestions are beyond the scope of the proposed action, it should be noted that the FAA has initiated action to study interference sources and their effects on various communication and navigation receivers, Responses to this Advanced Notice that include information that could be of assistance to this research will be forwarded to the FAA responsible office for that study.

Subsequent to the receipt of the above comments, FAA has reviewed the information provided along with the service history of the 51RV1 receiver and agrees that rule making action on this receiver cannot be justified at this time and is not in the public interest. In addition, information received does not justify rule making action at this time against any other airborne receiving equipment.

The FAA believes that the comment recommending that the aviation community be alerted to this problem has merit, and therefore is taking action to publish a Maintenance Alert Bulletin on this subject. This bulletin will advise all FAA field inspectors of this problem and the improved alignment procedures for this model receiver who in turn can advise owners, operators and repair shops of this information.

Cancellation of this Advance Notice of Proposed Rule Making constitutes only such action, and does not preclude the agency from taking further rule making action regarding this matter, or commit the agency to any future course of action.

In consideration of the foregoing and pursuant to the authority delegated to me by the Administrator 14 CFR 11.89 (31 FR 13697), the Advance Notice of Proposed Rulemaking published in the FEDERAL REGISTER on November 1, 1976 (41 FR 47946, 47947), is hereby cancelled.

Issued in Kansas City, Missouri, on January 21, 1977.

C. R. MELUGIN, Jr.,
Director, Central Region.

[FR Doc.77-2970 Filed 1-28-77;8:45 am]

[14 CFR Part 39]

[Doc. No. 77-GL-1]

AIRWORTHINESS DIRECTIVES

McCauley Model D2AF34C56 and D2AF34C61 Series Propellers

Amendment 39-589 (33 FR 6083), AD 68-8-4, as revised by Amendment 39-604 (33 FR 7751) requires initial and periodic inspection of McCauley Model D2AF34C56 and D2AF34C61 series propeller hubs for cracks and replacement as necessary. After issuing Amendment 39-604, due to service experience, the agency determined that hub cracking and failure continued to be a problem. Therefore, the agency is considering superseding Amendment 39-589, as amended, with a new AD that requires periodic inspection of the propeller hubs for fatigue cracking until replaced by McCauley oil-filled series hubs containing a dyed oil crack detection system.

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views or arguments as they may desire. Communications should identify the docket number and be submitted in duplicate to the Federal Aviation Administration, Office of the Regional Counsel, Attention: Rules Docket, 2300 East Devon Avenue, Des Plaines, Illinois 60018. All communications received on or before February 22, 1977 will be considered by the Administrator before taking action upon the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

This amendment is proposed under the authority of sections 313(a), 601 and 603 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a) 1421, 1423) and of section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

In accordance with Departmental Regulatory Reform dated March 23, 1976, we have determined that the expected impact of this proposed regulation is so minimal that it does not warrant an evaluation.

In consideration of the foregoing, it is proposed to amend § 39.13 of Part 39 of the Federal Aviation Regulation by adding the following new airworthiness directive.

MCCAULEY PROPELLERS. Applies to the following two-bladed, constant speed and full feathering propeller models installed on but not limited to rear engine of Cessna Model 336 and 337 series aircraft:

D2AF34C56
D2AF34C56-A
D2AF34C56-B
D2AF34C56-C
D2AF34C56-E
D2AF34C56-P
D2AF34C56-AP
D2AF34C56-BP
D2AF34C56-CP
D2AF34C56-DP
D2AF34C56-EP
D2AF34C61 or -XM
D2AF34C61-A or -AM
D2AF34C61-E or -EM
D2AF34C61-J or -JM
D2AF34C61-K or -KM
D2AF34C61-L or -LM
D2AF34C61-M
D2AF34C61-N
D2AF34C61-NKM

Compliance required as indicated, unless already accomplished. To detect propeller hub cracks and prevent possible failure, accomplish the following:

(a) Models D2AF34C56 and D2AF34C61 series listed above.

(1) Propeller hubs with less than 500 hours time in service, inspect in accordance with paragraph (d)(2) within 525 hours total time in service and reinspect in accordance with paragraph (d)(2) every 100 hours time in service from last inspection.

(2) Propeller hubs with 500 or more but less than 1200 hours time in service, inspect in accordance with paragraph (d)(2) within the next 25 hours time in service after the effective date of this AD and reinspect in accordance with paragraph (d)(2) every 100 hours time in service from last inspection.

(b) Model D2AF34C56 series listed above. Propeller hubs with 1200 or more total hours in service, or whose total time in service is unknown, remove from service and replace in accordance with paragraph (d)(1) within the next 25 hours in service after the effective date of this AD.

(c) Model D2AF34C61 series listed above. Propeller hubs with 1200 or more total hours in service or whose total time in service is unknown, inspect in accordance with paragraph (d)(3) within the next 50 hours time in service after the effective date of this AD unless already accomplished within the last 300 hours time in service and reinspect in accordance with paragraph (d)(3) every 300 hours time in service from the last inspection.

(d) Action required.

(1) Remove propeller from the aircraft, disassemble, inspect components and replace hub with an oil-filled Model D2AF34C61–XMO, –AMO, –EMO, –JMO, –KMO, –MO, –NKMO, –NO or –O in accordance with McCauley Service Bulletin No. 123 dated February 15, 1977 and Service Manual 710930.

(2) Inspect all external surfaces of propeller hub for cracks by dye penetrant method. Replace before further flight any cracked hub with a Model D2AF34C61 series oil-filled hub as in paragraph (d)(1).

(3) Remove propeller from aircraft and disassemble. Inspect all external and internal hub surfaces including retention threads for cracks using dye penetrant method in accordance with McCauley Service Letter 1974–3 dated March 29, 1974. Replace before further flight any cracked hub with a Model D2AF34C61 series oil-filled hub as in paragraph (d)(1).

(e) The foregoing inspections may be discontinued after replacement of Model D2AF 34C56 or D2AF34C61 series hubs with McCauley oil-filled hubs as in paragraph (d)(1).

This supersedes Amendment 39–589 (33 FR 6083), AD 68–8–4, as amended by Amendment 39–604 (33 FR 7751).

The manufacturer's specifications and procedures identified and described in this directive are incorporated herein and made a part hereof pursuant to 5 U.S.C. 522(a)(1). All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to McCauley Accessory Division, Cessna Aircraft Company, Box 7, Roosevelt Station, Dayton, Ohio 45417. These documents may also be examined at the Great Lakes Regional Office, 2300 East Devon Avenue, Des Plaines, Illinois 60018, and at FAA Headquarters, 800 Independence Avenue, S.W., Washington, D.C. 20591. A historical file on this AD which includes the incorporated material in full is maintained by the FAA at its headquarters in Washington, D.C. and at the Great Lakes Region.

NOTE—The Federal Aviation Administration has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821, as amended by Executive Order 11949, and OMB Circular A–107.

The incorporation by reference provisions in this document were approved by the Director of the FEDERAL REGISTER on June 19, 1967.

Issued in Des Plaines, Illinois on January 21, 1977.

LEON C. DAUGHERTY,
Acting Director,
Great Lakes Region.

[FR Doc.77-3015 Filed 1-28-77;8:45 am]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

[24 CFR Part 203]

[Docket No. R–77–439]

MUTUAL MORTGAGE INSURANCE AND HOME IMPROVEMENT LOANS

Proposed Rulemaking

Title 24 CFR 203.27(a) identifies various charges which an insured lender may collect from the borrower at the closing of a HUD-insured mortgage loan under the Mutual Mortgage Insurance Program. Although a lender is justified in charging the borrower interest on such loan proceeds as are disbursed for the benefit of the borrower, current program regulations are silent as to the date from which interest may be charged. As a result, lenders arbitrarily determine a date from which interest will accrue and charge borrowers interest from that date. The date chosen, in some instances, is not the date on which the funds are actually disbursed. In such instances the borrowers costs are increased unjustifiably.

In order to protect borrowers from being overcharged interest without penalizing lenders, HUD is proposing an amendment to the regulation. Thus, it is proposed that a new paragraph (a)(5) be added to explicitly state that interest may be collected for the period between the actual disbursement and the beginning of amortization of the loan. The proposed amendment is intended to clarify the allowable time period for which interest may be charged to a mortgagor by the mortgagee.

Interested persons are invited to participate in this rulemaking by submitting written data, views or arguments with respect to this proposal. Communications should be identified by the above docket number and title, and should be filed with the Rules Docket Clerk, Office of the Secretary, Room 10141, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410. All comments received on or before February 26, 1977, will be considered before adoption of the final rule. Copies of all comments submitted will be available for public inspection during normal business hours at the above address.

The Department has determined that an Environmental Impact Statement is not required with respect to this rule. A copy of the Finding of Inapplicability is available for public inspection at the above address during regular business hours. It is hereby certified that the economic and inflationary impacts of this proposed regulation have been carefully evaluated in accordance with OMB Circular A–107.

In consideration of the foregoing, it is proposed to amend Part 203 of Chapter II of Title 24 of the Code of Federal Regulations as follows:

Section 203.27 is amended by adding a new paragraph (a)(5) as follows:

§ 203.27 Maximum charges, fees or discounts.

(a) The mortgagee may collect from the mortgagor the following charges, fee or discounts:

* * * * * *

(5) Interest from the date on which all mortgage proceeds have been disbursed, to the mortgagor or to his creditors for his account, to the date of the beginning of amortization.

(Sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d)))

JOHN T. HOWLEY,
Acting Assistant Secretary for Housing — Federal Housing Commissioner.

[FR Doc.77-2948 Filed 1-28-77;8:45 am]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR Part 1]

POLITICAL ORGANIZATIONS

Public Hearing on Proposed Regulations

Proposed regulations under section 527 of the Internal Revenue Code of 1954, relating to political organizations, appear in the FEDERAL REGISTER for November 24, 1976 (41 FR 51840).

A public hearing on the provisions of such proposed regulations will be held on February 24, 1977, beginning at 10 a.m. in the IRS Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, N.W., Washington, D.C. 20224.

The rules of § 601.601(a)(3) of the "Statement of procedural Rules" (26 CFR Part 601) shall apply with respect to such public hearing. Copies of these rules may be obtained by a request directed to the Commissioner of Internal Revenue, Attention: CC:LR:T, Washington, D.C. 20224, or by telephoning (Washington, D.C.) 202–566–3935. Under § 601.601(a)(3), persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who desire to present oral comments at the hearing on such proposed regulations, should submit an outline of the comments to be presented at the hearing and the time they wish to devote to such subject by February 17, 1977. Such outlines should be submitted to the Commissioner of Internal Revenue, Attention: CC:LR:T, Washington, D.C. 20224. Under § 601.601(a)(3) (26 CFR Part 601) each speaker will be limited to 10 minutes for an oral presentation exclusive of time consumed by questions from the panel for the Government and answers thereto.

An agenda showing the scheduling of the speakers will be made after outlines are received from the speakers. Copies of this agenda will be available free of charge at the hearing, and information with respect to its contents may be obtained on February 23, 1977, by telephoning (Washington, D.C.) 202–566–3935.

ROBERT A. BLEY,
Acting Director, Legislation and Regulations Division.

[FR Doc. 77-3019 Filed 1-28-77;8:45 am]

DEPARTMENT OF TRANSPORTATION

Coast Guard

[33 CFR Part 82]

[CGD 76–049]

BOUNDARY LINES OF INLAND WATERS

Proposed Demarcation Line Prince William Sound, Alaska

The Coast Guard is considering establishing three lines of demarcation for inland waters in the approaches to Prince William Sound, Alaska.

Interested persons may participate in this proposed rulemaking by submitting written data, views, or arguments concerning the proposal to Commandant (C–CMC/81), U.S. Coast Guard, Washington, D.C. 20590. Each person submitting comments should include his name and address and organization, if any, identify the notice number (CGD 76–049), and give reasons for any recommended change in the proposal. Copies of all written comments received will be available for examination in Room 8117, Department of Transportation, Nassif Building, 400 Seventh Street SW., Washington, D.C.

All comments received on or before March 17, 1977, will be fully considered before final action is taken on this proposal.

This document proposes to establish three lines of demarcation for inland waters at the approaches to Prince William Sound, Alaska. Prince William Sound provides access to the port of Valdez, Alaska, which is being used in conjunction with the Trans-Alaska Pipeline System. Valdez will be a major oil port and will experience a significant increase in shipping.

The lines of demarcation will require that all vessels transiting Prince William Sound navigate under the Inland Rules of the Road. It will eliminate the need for vessels to estimate where the International or Inland rules would apply and therefore result in increased navigational safety for vessels.

In consideration of the foregoing, it is proposed that Part 82 of Chapter I of Title 33 of the Code of Federal Regulations be amended by adding § 82.280 to read as follows:

§ 82.280 Prince William Sound, Alaska.

(a) *Hawkins Island Cutoff:* A line drawn from Point Whitshed on the Alaska Mainland at position 60°26.7′ N, 145°-52.7′ W west-southwesterly to Point Bentick aero-beacon on Hinchinbrook Island.

(b) *Hinchinbrook Entrance:* A line drawn from Cape Hinchinbrook Light northwesterly to Schooner Rock Light.

(c) *Montague Strait:* A line drawn from a point on the western end of Montague Island at postion 59°50.2′N, 147°-54.5′W northwesterly to Point Elrington Light on Elrington Island thence due west to the Alaska Mainland at Cape Puget.

(Sec. 2, 28 Stat. 672, as amended (33 U.S.C. 151); sec. 6(b)(1), Pub. L. 89–670, 80 Stat. 937 (49 U.S.C. 1655(b)(1); 49 CFR 1.46(b).))

The Coast Guard has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A–107.

Dated: January 25, 1977.

A. F. FUGARO,
Rear Admiral, U.S. Coast Guard,
Chief, Office of Marine Environment and Systems.

[FR Doc.77-2991 Filed 1-28-77;8:45 am]

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 39]

[FRL 676–7]

LOAN GUARANTEES FOR CONSTRUCTION OF TREATMENT WORKS

Open Meeting

Notice is hereby given that an open meeting will be held by the Environmental Protection Agency (EPA) to discuss draft regulations to implement Pub. L. 94–558. That law, signed by the President on October 19, 1976, amends Title II of the Federal Water Pollution Control Act by adding a new section 213, Loan Guarantees for Construction of Treatment Works.

An Advance Notice of Proposed Rulemaking regarding this legislation was published in the FEDERAL REGISTER on November 23, 1976 (41 FR 51619). Five letters of comment were received in response to the request for comments in that notice. All have been carefully considered in the development of the draft regulations to be discussed at the open meeting. The comments are on file at the Public Information Reference Unit, EPA Headquarters, Room 2922 Waterside Mall, 401 M Street, S.W., Washington, D.C., and may be inspected between 8:00 a.m. and 4:30 p.m. at that location.

The open meeting will be held on Monday, February 14, 1977, beginning at 9:00 a.m. in Room 2409 of the Waterside Mall (EPA Headquarters) at 401 M Street S.W., Washington, D.C. The draft to be discussed will be made available in advance of the meeting to all persons requesting it. Parties interested in attending the meeting or in obtaining a copy of the draft to be discussed are requested to telephone 202 755–0374 so that appropriate arrangements can be made.

Parties interested in submitting written comments on the draft, either instead of, or supplemental to, participation in the open meeting, may do so until February 14, 1977. All comments must be submitted in triplicate, either at the meeting or by mail to the Director, Grants Administration Division (PM–216), Attention: Loan Guarantee Regulations, Environmental Protection Agency, Washington, D.C. 20460. Comments will be retained on file at the Public Information Reference Unit, Room 2922, Waterside Mall, and may be inspected between 8:00 a.m. and 4:30 p.m. at that location.

No applications for assistance under this loan guarantee program will be accepted by the Agency until interim or final rules are promulgated.

Dated: January 27, 1977.

ALVIN L. ALM,
Assistant Administrator for Planning and Management.

[FR Doc.77-3070 Filed 1-28-77;8:45 am]

COMMISSION ON CIVIL RIGHTS

[45 CFR Part 702]

GOVERNMENT IN THE SUNSHINE ACT

Notice of Proposed Rulemaking

AGENCY: U.S. Commission on Civil Rights.

ACTION: Proposed rules.

SUMMARY: These rules propose to establish procedures for the conduct of meetings of the Commissioners of the U.S. Commission on Civil Rights in accordance with the Government in the Sunshine Act, U.S.C. 552b, Pub. L. No. 94–409. Required by 5 U.S.C. 552b (g) of that Act, these rules are intended to open to public observation the decisionmaking processes of the Commission to the fullest extent practicable without sacrificing the rights of individuals, or the ability of the Commission to carry out its statutorily mandated responsibilities.

DATES: Comments on these proposed rules are invited and will be accepted until March 1, 1977. The final rules will be effective on March 12, 1977.

ADDRESSES: Comments may be addressed to the General Counsel, U.S. Commission on Civil Rights, 1121 Vermont Avenue, N.W., Washington, D.C. 20425.

FOR FURTHER INFORMATION CONTACT: Jack Hartog, Office of General Counsel, U.S. Commission on Civil Rights, 1121 Vermont Avenue, N.W., Washington, D.C. 20425, (202) 254–6690.

SUPPLEMENTARY INFORMATION: These proposed rules will govern all Commission meetings. After defining in § 702.51 the terms used, § 702.52 of these rules proposes that all Commission meetings be open to the public, except when they involve the few carefully defined situations outlined in § 702.53. Meetings concerning such information may be closed. Section 702.54 will relate the procedures the Commission must follow if it wishes to close all or part of a meeting or withhold information pertaining to a closed meeting. Section 702.55 will assure public knowledge of Commission meetings by requiring timely public announcements of the time, place and subject matter of Commission meetings, and whether they will be open or closed. Section 702.56 will list the records which the Commission will retain to indicate its conformity with the requirements of these rules. Section 702.57 will provide a means for persons questioning Commission compliance with these rules to have

their concerns answered promptly by the Commission.

These rules also propose to change the title of Part 702 to "Rules on Hearings, Reports and Meetings of the Commission." The rules presently contained in Part 702 will become "subpart A" and a new "subpart B" will contain the Government in the Sunshine rules described in this preamble.

ARTHUR S. FLEMMING,
Chairman.

JANUARY 26, 1977.

1. The heading of Part 702 of Title 45 is amended to read:

PART 702—RULES ON HEARINGS, REPORTS AND MEETINGS OF THE COMMISSION

2. Section 702.1–702.18 presently existing in Part 702 are designated "Subpart A—Hearings and Reports."

3. A new "Subpart B—Meetings" is added to Part 702 of Title 45, which is as follows:

Subpart B—Meetings

Sec.
702.50 Purpose and scope.
702.51 Definitions.
702.52 Open meeting requirements.
702.53 Closed meetings.
702.54 Closed meeting procedures.
702.55 Public announcement of meetings.
702.56 Records.
702.57 Administrative review.

Subpart B—Meetings

§ 702.50 Purpose and scope.

This section contains the regulations of the U.S. Commission on Civil Rights implementing sections (a)–(f) of 5 U.S.C. 552b, the "Government in the Sunshine Act." They are adopted to further the principle that the public is entitled to the fullest practicable information regarding the decisionmaking processes of the Commission. They open to public observation meetings of the Commissioners of the U.S. Commission on Civil Rights except where the rights of individuals are involved or the ability of the Commission to carry out its responsibilities requires confidentiality.

§ 702.51 Definitions.

(a) *Commission* means the U.S. Commission on Civil Rights and any Subcommittee of the Commission authorized under 42 U.S.C. 1975d(f).

(b) *Commissioner* means a member of the U.S. Commission on Civil Rights appointed by the President under 42 U.S.C. 1975(b).

(c) *General Counsel* means the General Counsel of the U.S. Commission on Civil Rights.

(d) *Meeting* means the deliberations of at least the number of Commissioners required to take action on behalf of the Commission where such deliberations determine or result in the joint conduct or disposition of official Commission business.

(1) The number of Commissioners required to take action on behalf of the Commission is four, except that such number is two when the Commissioners are a Subcommittee of the Commission authorized under 42 U.S.C. 1975d(f).

(2) Deliberations among Commissioners regarding the setting of the time, place or subject matter of a meeting, whether the meeting is open or closed, whether to withhold information discussed at a closed meeting, and any other deliberations required or permitted by 5 U.S.C. § 552b (d) and (e) and § 702.54 and § 702.55 of this subpart, are not meetings for the purposes of this subpart.

(3) The consideration by Commissioners of Commission business which is not discussed through conference calls or a series of two party calls by the number of Commissioners required to take action on behalf of the Commission is not a meeting for the purposes of this subpart.

(e) *Public announcement* or *publicly announce* means the use of reasonable methods, such as the posting on Commission public notice bulletin boards and the issuing of press releases, to communicate information to the public regarding Commission meetings.

(f) *Staff Director* means the Staff Director of the U.S. Commission on Civil Rights.

§ 702.52 Open meeting requirements.

(a) Every portion of every Commission meeting shall be open to public observation, except as provided in § 702.53 of this subpart. Commissioners shall not jointly conduct or dispose of agency business other than in accordance with this subpart.

(b) This subpart gives the public the right to attend and observe Commission open meetings; it confers no right to participate in any way in such meetings.

(c) The Staff Director shall be responsible for making physical arrangements for Commission open meetings which provide ample space, sufficient visibility and adequate acoustics for public observation.

(d) The presiding Commissioner at an open meeting may exclude persons from a meeting and shall take all steps necessary to preserve order and decorum.

§ 702.53 Closed meetings.

(a) The Commission may close a portion or portions of a meeting and withhold information pertaining to such meeting when it determines that the public interest does not require otherwise and when such portion or portions of a meeting or the disclosure of such information is likely to:

(1) Disclose matters that are (i) specifically authorized under criteria established by an Executive Order to be kept secret in the interests of national defense or foreign policy and (ii) in fact properly classified pursuant to such Executive Order;

(2) Disclose information relating solely to the internal personnel rules and practices of the Commission;

(3) Disclose matters specifically exempted from disclosure by statute (other than 5 U.S.C. 552), provided, that such statute (i) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Involve accusing any person of a crime, or formally censuring any person;

(6) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(7) Disclose investigatory records compiled for law enforcement purposes, or information which if written would be contained in such records, but only to the extent that the production of such records or information would (A) interfere with enforcement proceedings, (B) deprive a person of a right to a fair trial or an impartial adjudication, (C) constitute an unwarranted invasion of personal privacy, (D) disclose the identity of a confidential source and, in the case of a record received by the Commission from a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (E) disclose investigative techniques and procedures, or (F) endanger the life or physical safety of law enforcement personnel;

(8) Disclose information received by the Commission and contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions;

(9) Disclose information the premature disclosure of which would (i) In the case of information received by the Commission from an agency which regulates currencies, securities, commodities, or financial institutions, be likely to (A) lead to significant financial speculation in currencies, securities, or commodities, or (B) significantly endanger the stability of any financial institution; or (ii) be likely to significantly frustrate implementation of a proposed action, except that paragraph (ii) shall not apply in any instance where the Commission has already disclosed to the public the content or nature of its proposed action, or where the Commission is required by law to make such disclosure on its own initiative prior to taking final agency action on such proposal; or

(10) Specifically concern the Commission's issuance of a subpena, or the Commission's participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration.

§ 702.54 Closed meeting procedures.

(a) A meeting or portion thereof will be closed, and information pertaining to a closed meeting will be withheld, only after four Commissioners when no Commissioner's position is vacant, or three Commissioners when there is such a vacancy, or two Commissioners on a subcommittee authorized under 42 U.S.C. 1975d(f), vote to take such action.

(b) A separate vote shall be taken with respect to each meeting a portion or portions of which is proposed to be closed to the public under § 702.53, and with respect to any information to be withheld under § 702.53.

(1) A single vote may be taken with respect to a series of meetings, a portion or portions of which are proposed to be closed to the public, or with respect to any information concerning such series of meetings, so long as:

(i) Each meeting in such series involves the same particular matters, and

(ii) Is scheduled to be held no more than thirty (30) days after the initial meeting in such series.

(c) The Commission will vote on the question of closing a meeting or portion thereof and withholding information under paragraph 702.54(b) if one Commissioner calls for such a vote. The vote of each Commissioner participating in a vote to close a meeting shall be recorded and no proxies shall be allowed.

(1) If such vote is against closing a meeting and withholding information, the Staff Director, within one working day of such vote, shall make publicly available by putting in a place easily accessible to the public a written copy of such vote reflecting the vote of each Commissioner.

(2) If such vote is for closing a meeting and withholding information, the Staff Director, within one working day of such vote, shall make publicly available by putting in a place easily accessible to the public:

(i) A full written explanation of the decision to close the meeting or portions thereof (such explanation will be as detailed as possible without revealing the exempt information);

(ii) A list of all persons other than staff members expected to attend the meeting and their affiliation (the identity of persons expected to attend such meeting will be withheld only if revealing their identity would reveal the exempt information which is the subject of the closed meeting).

(d) Prior to any vote to close a meeting or portion thereof under § 702.54(c) the Commissioners shall obtain from the General Counsel his or her opinion as to whether the closing of a meeting or portions thereof is in accordance with paragraphs (1)–(10) of § 702.53(a).

(1) For every meeting closed in accordance with paragraphs (1)–(10) of § 702.53(a), the General Counsel shall publicly certify in writing that, in his or her opinion, the meeting may be closed to the public and shall cite each relevant exemptive provision.

(e) For all meetings closed to the public, the Commission shall maintain a complete verbatim transcript or electronic recording adequate to record fully the proceedings of each meeting, or portion of a meeting which sets forth the time and place of the meeting and the persons present.

(1) In the case of a meeting, a portion of a meeting, closed to the public pursuant to paragraphs (8), (9)(i)(A), or (10) of § 702.53(a), the Commission may retain a set of minutes;

(i) such minutes shall fully and clearly describe all matters discussed and shall provide a full and accurate summary of any actions taken, and the reasons therefor, including a description of each of the views expressed on any item and the record of any roll call vote (reflecting the vote of each member on the question). All documents considered in connection with any action shall be identified in such minutes.

(f) Any person whose interests may be directly affected by a portion of a meeting may request that such portion be closed to the public under § 702.53 or that it be open to the public if the Commission has voted to close the meeting pursuant to § 702.53(a) (5) or (6). The Commission will vote on the request if one Commissioner asks that a vote be taken.

(1) Such requests shall be made to the Staff Director within a reasonable amount of time after the meeting or vote in question is publicly announced.

§ 702.55 Public announcement of meetings.

(a) *Agenda:* The Staff Director shall set as early as possible but in any event at least eight calendar days before a meeting, the time, place and subject matter for the meeting.

(1) Agenda items will be identified in detail adequate to inform the general public of the specific business to be discussed at the meeting.

(b) *Notice:* The Staff Director, as early as possible but in any event at least eight calendar days before a meeting, shall make public announcement of:

(1) The time of the meeting;

(2) Its place;

(3) Its subject matter;

(4) Whether it is open or closed to the public; and

(5) The name and phone number of a Commission staff member who will respond to requests for information about the meeting.

(c) *Changes:* (1) The time of day or place of a meeting may be changed following the public announcement required by § 702.55(b) of this subpart, if the Staff Director publicly announces such change at the earliest practicable time subsequent to the decision to change the time of day or place of the meeting.

(2) The date of a meeting may be advanced following the public announcement required by § 702.55(b), or a meeting may be scheduled less than eight calendar days in advance, if:

(i) Four Commissioners when no Commissioner's position is vacant, or three Commissioners when there is such a vacancy, or two Commissioners on a Subcommittee authorized under 42 U.S.C. 1975d(f), determine by recorded vote that Commission business requires such a meeting at an earlier date; and

(ii) The Staff Director, at the earliest practicable time following such vote, makes public announcement of the time, place and subject matter of such meeting, and whether it is open or closed to the public.

(3) The subject matter of a meeting or the determination to open or close a meeting or a portion of a meeting to the public, may be changed following the public announcement required by 702.55(b) of this subpart if:

(i) Four Commissioners when no Commissioner's position is vacant, or three Commissioners when there is such a vacancy, or two Commissioners on a Subcommittee authorized under 42 U.S.C. 1975d(f), determine by recorded vote that Commission business so requires; and

(ii) The Staff Director publicly announces such change and the vote of each Commissioner upon such change at the earliest practicable time subsequent to the decision to make such change.

(d) *Federal Register:* Immediately following all public announcements required by § 702.55(b) and (c) of this subpart, notice of the time, place and subject matter of a meeting, whether the meeting is open or closed to the public, any change in one of the preceding, and the name and phone number of the official designated by the Commission to respond to requests for information about meeting, shall be submitted for publication in the FEDERAL REGISTER.

(1) Notice of a meeting will be published in the FEDERAL REGISTER even after the meeting which is the subject of the notice has occurred in order to provide a public record of all Commission meetings.

§ 702.56 Records.

(a) The Commission shall promptly make available to the public in an easily accessible place at Commission headquarters the following materials:

(1) A copy of the certification by the General Counsel required by § 702.54(e)(1).

(2) A copy of all recorded votes required to be taken by these rules.

(3) A copy of all announcements published in the FEDERAL REGISTER pursuant to this subpart.

(4) Transcripts, electronic recordings and minutes of closed meetings determined not to contain items of discussion or information which may be withheld under § 702.53.

(i) Copies of such material will be furnished to any person at the actual cost of transcription or duplication.

(b) Requests to review or obtain copies of records compiled under this Act, other than transcripts, electronic recordings or minutes of a closed meeting, will be processed under the Freedom of Information Act and, where applicable, the Privacy Act regulations of the Commission (Parts 704 and 706, respectively, of this title). Nothing in this subpart expands or limits the present rights of any person under these rules with respect to such requests.

(1) Requests to review or obtain copies of transcripts, electronic recordings or minutes of meetings of a closed meeting

maintained under § 702.54(e) and not released under § 702.56(a)(4) shall be directed to the Staff Director who shall respond to such requests within ten (10) working days.

(c) The Commission shall maintain a complete verbatim copy of the transcript, a complete copy of minutes, or a complete electronic recording of each meeting, or portion of a meeting, closed to the public, for a period of two years after such meeting, or until one year after the conclusion of any agency proceeding with respect to which the meeting or portion was held, whichever occurs later.

§ 702.57 Administrative review.

(a) Any person who believes a Commission action governed by this subpart to be contrary to the provisions of this subpart shall file in writing with the Staff Director an objection specifying the violation and suggesting corrective action. Whenever possible, the Staff Director shall respond within ten (10) working days of the receipt of such objections.

[FR Doc.77-2986 Filed 1-28-77;8:45 am]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 76]

[Docket No. 21002; RM-2695; 2723]

APPLICATIONS FOR CERTIFICATES OF COMPLIANCE AND FEDERAL-STATE/LOCAL REGULATORY RELATIONSHIPS

Order Extending Comment Period

Adopted: January 19, 1977.

Released: January 25, 1977.

In the matter of amendment of Subparts B and C of Part 76, of the Commission's rules pertaining to applications for certificates of compliance and Federal-State/Local Regulatory Relationships, Docket No. 21002, RM-2695, RM-2723.[1]

1. Comments in this proceeding are now due January 31, 1977, and reply comments on or before March 2, 1977. The League of California Cities has requested a 30 day extension of these filing dates. The additional time is said to be needed in order to complete a survey of California Cities which will better enable the League to determine its position and file comments in this matter.

2. The staff of the Cable Television Information Center also seeks an extension of the filing dates. They state that there has been some time delay in information concerning this proceeding reaching municipalities. The additional time is necessary in order to allow time for municipalities to prepare and submit comments.

3. Good cause therefore having been shown, the requested time extension will be granted.

Accordingly, it is ordered, That the dates for filing comments and reply comments in the captioned proceeding are extended to March 1, 1977 and April 1, 1977, respectively.

[1] See 41 FR 54506, December 14, 1976.

This action is taken by the Chief, Cable Television Bureau pursuant to authority delegated by § 0.288(a) of the Commission's rules.

FEDERAL COMMUNICATIONS COMMISSION,
JAMES R. HOBSON,
Chief, Cable Television Bureau.

[FR Doc.77-2925 Filed 1-28-77;8:45 am]

[47 CFR Part 97]

[Docket No. 21033; RM-2664; 2780]

AMATEUR RADIO STATIONS

Inquiry and Licensing or Operation of Complex Systems and Modification of Repeater Sub-bands; Correction

Released: January 25, 1977.

In the matter of deregulation of Part 97 of the Commission's rules to simplify the licensing and operation of complex systems of amateur radio stations and modification of repeater sub-bands, Docket No. 21033, RM-2664, RM-2780.

In the Commission's Notice of Inquiry and notice of proposed rulemaking in Docket 21033, FCC 76-1198 (42 FR 2089 January 10, 1977), released January 6, 1977, the following paragraph, permitting portable and mobile operation of amateur stations in auxiliary operation, pursuant to paragraph 7 of the notice of proposed rulemaking, was inadvertently omitted:

22. Section 97.95(a)(1) is revised to read as follows:

§ 97.95 Operation away from the authorized fixed operation station location.

(a) • • •

(1) When there is no change in the authorized fixed operation station location, an amateur radio station, other than a military recreation or special event station, may be operated under its station license anywhere in the United States, its territories or possessions, as a portable or mobile operation, subject to § 97.61.

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FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS,
Secretary.

[FR Doc.77-2980 Filed 1-28-77;8:45 am]

DEPARTMENT OF TRANSPORTATION

Materials Transportation Bureau

[49 CFR Parts 173, 174, 178, 179]

[Docket No. HM-139; Notice No. 77-1]

CONVERSION OF INDIVIDUAL EXEMPTIONS TO REGULATION OF GENERAL APPLICABILITY

AGENCY: Materials Transportation Bureau, D.O.T.

ACTION: Proposed Rule.

SUMMARY: The Materials Transportation Bureau (proposes to amend) the regulations governing the transportation of hazardous materials to incorporate therein a number of changes based on existing exemptions which have been granted to individual applicants allowing them to perform particular functions in a manner that varies from that specified by the regulations. Adoption of these exemptions as rules of general applicability would provide wider access to the benefits of transportation innovations recognized as effective and safe.

DATES: Comments by: February 23, 1977.

ADDRESS TO: Docket Section, Office of Hazardous Materials Operations, Department of Transportation, Washington, D.C. 20590. Comments should refer to Docket No. HM-139; Notice No. 77-1, and be submitted in triplicate.

FOR FURTHER INFORMATION:

Complete copies of the exemptions and their related applications and supporting documentation are available for inspection and copying at the Public Docket Room, Office of Hazardous Materials Operations, Department of Transportation, Room 6500, Trans Point Building 2100 Second Street, S.W., Washington, D.C.

SUPPLEMENTARY INFORMATION:

Each of the proposed amendments described in the table below is founded upon either: (1) actual shipping experience gained under an exemption, or (2) the data and analysis supplied in the application. In each case the resulting level of safety being afforded the public is considered at least equal to the level of safety provided by the current regulations.

Analysis of these proposed amendments also indicates that the costs of regulatory enforcement will not be significantly affected, nor will additional costs be imposed on the private sector, consumers, or Federal, State or local governments, since these amendments, if adopted, will authorize the general use of shipping alternatives previously available to only a few users under exemptions. The safety record or analysis of shipments under the identified exemptions demonstrates that significant environmental impacts will not result from any of the amendments proposed herein.

Adoption of an amendment derived from an existing exemption will obviate the need for that exemption and effectively terminate it, in which event the affected exemption holder and parties to that exemption will be individually notified. Adoption of an amendment derived from an application for exemption should provide the relief sought, in which event, the exemption request will be denied and the applicant so notified. In the event the Bureau decides not to adopt any of those proposed amendments, that application will be evaluated and acted upon in accordance with the applicable provisions of the exemption procedures in 49 CFR Part 107, Subpart B. Consequently, persons commenting on proposed amendments may wish to address both the proposed amendment and the exemption application. Consideration of comments of the merits of including within an amendment modes of transportation other than those for which the exemption application requested is anticipated.

Each mode of transportation for which a particular exemption is authorized or requested is indicated in the "Nature of Exemption or Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft. The status of the exemption action is indicated in the column titled Identification Number where prefix "E" means an exemption has been issued and prefix "SP" means a special permit exists under previous authorities. The suffix "No" means no applications for exemptions are pending, but the Bureau is taking action by this proposal; the suffix "X" means a renewal application is pending; and the suffix "P" means one or more party status applications are pending; and the suffix "N" means a new application for exemption is pending.

Proposed Amendments of Hazardous Materials Regulations to Terminate Special Permits and Exemptions

Identification No.	Applicant or holder	Regulation affected	Nature of exemption or application	Nature of proposed amendment
E-2748-No	GAF Corp.	172.101, 173.304(a), 173.314(c).	Authorizes shipment of vinyl methyl ether uninhibited in packagings as prescribed in sec. 173.304(a)(2) and 173.314(c) for vinyl methyl ether inhibited (modes 1 and 2).	To delete the word inhibited where it appears after vinyl methyl ether in sec. 172.101, 173.304(a)(2) and 173.314(c).
E-3944-No	E. I. du Pont de Nemours & Co., Inc.	173.314(c)	Authorizes shipment of dimethylamine, anhydrous; monomethylamine, anhydrous; trimethylamine, anhydrous in DOT specification 112A340W and 112A400W tank cars (mode 2).	To add DOT 112A340, DOT-112A400W to the table in sec. 173.314(c).
E-3946-No	E. I. du Pont de Nemours & Co.,	173.314(c)	Authorizes shipment of monochlorodifluoromethane and monochlorotetrafluoroethane in DOT specification 112A400W tank cars equipped and filled in accordance with the requirements for single unit tank cars (mode 2).	To add DOT 112A400W tank cars to the Table in sec. 173.314(c).
E-4666-No SP 6706-No	Economics Laboratory Inc.; American Cyanamid Co.	178.205-7 (b)(4).	Authorizes closure of DOT specification 12B fiberboard box with pressure-sensitive tape in addition to that prescribed by sec. 178.205-7(b)(1)-(2).	To add paragraph (b)(4) to read as follows: (4) Pressure-sensitive tape must be not less than 2 in wide and have a plastics film backing of polyester, polypropylene, or equivalent material. Tape must have a minimum tensile strength of 45 lb/in of width in the machine direction and not less than 55 lb/in of width in the cross direction and may not be affected by temperature extremes. Boxes closed by means of this pressure-sensitive tape must be capable of passing performance tests prescribed in sec. 178.210-10.
SP 4897-X	Hercules Inc.	173.336(a) (3).	Authorizes shipment of nitrogen tetroxide, liquid in DOT specification 110A500W stainless steel tanks (modes 1, 2).	To revise paragraph (a)(3) to read: (3) Specification 106A500X or 110A 500W (secs. 179.300, 179.301 of this subchapter) tanks. Each tank must be equipped with gas tight valve protection caps which must be approved by the Bureau of Explosives. Tanks must not be equipped with safety devices of any type. Outage must be sufficient to prevent tanks from becoming liquid full at 130° F. (55° C.). (See secs. 174.200 and 177.834(m) of this subchapter for special requirements for rail and highway shipments). Specification 110A500W tanks must be stainless steel.
SP 5375-X	Union Carbide Corp.	173.289(a) (2)	Authorizes shipment of formic acid or formic acid solution, in DOT specification 111A100W-6 tank car tanks fabricated from type 304L or 316L stainless steel (mode 2).	To revise paragraph (a)(2) to read: Specification 103ALW, 103CW, 103EW, 111A60ALW or 111A100W6 (secs. 179.200, 179.201 of this subchapter). Tank cars. Specification 103EW tanks must be of type 316 stainless steel. Specification 111A100W6 tanks must be of type 304L or 316L stainless steel. Specification 103ALW tanks without bottom outlets, and specification 111A60ALW tanks are authorized only for concentrations of 97 pct or greater and must be equipped with top loading and unloading devices. Specification 111A100W6 tanks are authorized only for concentrations of 80 pct or greater, have bottom outlets effectively sealed, be equipped with safety vents, and must be equipped with top loading and unloading devices. Not authorized for transportation by water.
SP 5771-X	Hooker Chemicals & Plastic Corp.	173.163(a) (7).	Authorizes shipment of sodium chlorate in accordance with 173.163(a)(7) except that tank car tanks may have their internal operating valve removed provided the bottom outlet is securely capped (mode 2).	To revise paragraph (a)(7) to read: (7) Chlorate of soda, dry, is authorized for shipment in aluminum or steel tank car tanks, steel cargo tank vehicles, tight siftproof covered hopper cars, or tight siftproof covered hopper-type motor vehicles. Tank car tanks, cargo tank vehicles, hopper cars, and hopper-type motor vehicles must be thoroughly cleaned before loading. Tank car tanks may have their internal operating value removed provided the bottom outlet is securely capped.
E-6488	Allied Chemical Corp.; MC/B Manufacturing.	173.370(a) (2).	Authorizes shipment of cyanide mixtures, solid and postassium cyanide, solid in DOT specification 12B fiberboard box with inside polyethylene container with a minimum thickness of 0.030 in, not over 5-lb epacity (modes 1 and 2).	To add paragraph (a)(2) to read as follows: (2) Specification 12B 40 sec. 178.205 of this subchapter). Fiberboard box with inside polyethylene bottles having a minimum thickness of 0.030 in and not over 5-lb capacity each. Maximum net weight of contents must not exceed 25 lb/box.
E-6516-No	Chemetron Corp.	173.288	Authorizes shipment of ethyl and meth l chloroformate in DOT specification 111A100W2, 111A100W4, 112A200W or 112A400F tank cars (mode 2).	To add paragraph (f) to read: (f) Specification 111A100W2, 111A100W4, 112A200W or 112A400F (secs. 179.100 179.101, 179.200, 179.201 of this subchapter). Tank cars. Authorized only for ethyl chloroformate or methyl chloroformate.
E-6621-No	Dow Chemical Co.	173.353(a) (2).	Authorizes shipment of methyl bromide and methyl bromide mixtures in inside metal cans not over 1¾ pounds. Cans must be overpacked in a DOT specification 12B fiberboard box with hot-melt glue used as a sealing material for flaps of the carton (modes 1, 2, and 3).	To amend paragraph (a)(2) to read: (2) Specification 15A, 15B, 15C, 16A, 19A or 12B (secs. 178.185, 178.160, 178.170, 178.185, 178.190, 178.205 of this subchapter). Wooden, wirebound wooden, or fiberboard boxes, with inside metal cans containing not over 1 lb each or inside metal cans with a minimum wall thickness of 0.007 in containing not over 1¾ pounds each. The 1-lb can must be able to withstand an interior pressure of 130 pounds lb/in²g without leakage or permanent distortion and pressure of contents must not exceed 130 lb/in²g at 130° F (55° C.). The 1¾ lb can must be able to withstand an interior pressure of 140 lb/in²g without leakage or permanent distortion and pressure of contents must not exceed 140 lb/in²g at 130° F. (55° C.). Outage shall be such that the cans will not become liquid full at 130° F. Cans must be of tin plate or lined with suitable material and must have concave or pressure ends.
		178.205-17 (a)(4).		To add paragraph (a)(4) to read as follows: (4) Outside DOT specification 12B fiberboard box may have all closing flaps firmly glued with a hot-melt adhesive of 100 pct solids content of the thermoplastic material which will maintain bond at temperature ranging from 20° F. below zero to 165° F. above zero. Adhesive must be applied in not less than eight stripes (except as specified below) on each inner flap, each stripe having a minimum width of 3/16 in after compression. Stripes may not be more than 1½ in apart and not less than four stripes must be applied on each side of center seam on each inner flap for full length of flap overlap area with one stripe not more than ½ in from each side of center seam. If less than eight such stripes are applied on each inner flap, adhesive must cover and securely bond not less than 25 pct of flap contact area with bonded areas extending to within ½ in or less of center seam.

Identification No.	Applicant or holder	Regulation affected	Nature of exemption or application	Nature of proposed amendment
SP 6628-No SP 6868-No	E. I. du Pont de Nemours & Co., Inc.; Dow Chemical Co.	173.272(j) (22)	Authorizes shipment of 100 pct sulfuric acid in DOT specification 103CW and 111A100W6 tank cars constructed of type 304–L stainless steel and shipments of 77.5 to 99.5 pct sulfuric acid in DOT specification 105A300W tank cars (mode 2).	To amend paragraph (22) to read as follows: (22) Specification 103A,[1] 103AW, 103CW, 105A300W, 111A60W2, 111A100W6, or 111A100F2 (secs. 179.200, 179.201 of this subchapter). Tank cars. Authorized for sulfuric acid of concentrations 65.25 pct or greater concentrations, provided the corrosive effect in steel is not greater than that of 65.25 pct sulfuric acid, measured at 100° F. Tank cars used for sulfuric acid, mixed acid (nitric and sulfuric acids) (nitrating acid), and other fuming acids, may be equipped with safety vents incorporating frangible discs having a ⅛-in breather hole in their center. The ⅛-in breather hole is not permitted in frangible discs of safety vents on oleum tank cars. Specifications 103CW and 111A100W6 must have tanks constructed of type 304–L stainless steel.
E-6636-No	Pennwalt Corp.....	173.264(a)...	Authorizes shipment of hydrofluoric acid of 70 pct strength in DOT specification 111A100W2 (unlined) and 111A100W4 (rubber-lined) tank car tanks (mode 2).	To amend subparagraph (12) to read: (12) Specification 111A100W2 or 111A100W4 (secs. 179.200, 179.201 of this subchapter). Tank cars. Only Specification 111A100W2 tank cars may be unlined.
E-6641-No	Dow Chemical Co....	173.139(a) (4).	Authorizes shipment of ethylene imine, inhibited in DOT specification 105A 100W tank cars (mode 2).	To revise paragraph (4) to read: (4) Specification 104W, 105A100W, or 111A60W1 (secs. 179.100, 179.101, 179.200, 179.201 of this subchapter). Tank cars, for ethylene imine, inhibited only. Specification 111A60W1 tank cars must be insulated in accordance with sec. 179.200–4 of this subchapter.
SP 6701-X	E. I. du Pont de Nemours & Co., Inc.	172.101, 173.314.	Authorizes shipment of hexafluoropropylene oxide in DOT specification 110A500W tanks (modes 1, 2).	To amend sec. 172.101 to add hexafluoropropylene oxide to read as follows:

§ 172.101 *Hazardous materials table*

(1)	(2)	(3)	(4)	(5)		(6)		(7)		
				Packaging		Maximum net quantity in 1 package (in pounds)		Water shipments		
*/W/Δ	Hazardous materials descriptions and proper shipping names	Hazard class	Label(s) required (if not excepted)	(a) Exceptions	(b) Specific requirements	(a) Passenger carrying aircraft or railcar	(b) Cargo only aircraft	(a) Cargo vessel	(b) Passenger vessel	(c) Other requirements
	(Add) oxide. hexafluoropropylene	Nonflammable gas.	Nonflammable gas.	173.306	173.304 173.314	150	300	1	4	

Identification No.	Applicant or holder	Regulation affected	Nature of exemption or application	Nature of proposed amendment

To amend the table in sec. 173.314(c) to add hexafluoropropylene oxide to read as follows:

Kind of gas	Maximum permitted filling density, note 1	Required tank car, see sec. 173.31(a) (2) and (3)
Hexafluoropropylene oxide	110	DOT 110A500W, note 7.

Identification No.	Applicant or holder	Regulation affected	Nature of exemption or application	Nature of proposed amendment
SP 6710-X	E. I. du Pont de Nemours & Co., Inc.	173.273(a) (4).	Authorizes shipment of sulfur trioxide, stabilized in DOT specification 103AW tank cars equipped with standpipe electrical heaters approved by the AAR Committee on Tank Cars (mode 2).	To add a sentence at the end of paragraph (4) to read: Specification 103AW tank cars may be equipped with standpipe electrical heaters approved by the AAR Committee on Tank Cars.
		179.202–13		To revise sec. 179.202–13 to read: Sec. 179.202–13 sulfur trioxide, stabilized. Tank cars used to transport sulfur trioxide stabilized must be equipped with safety relief valves of approved design. Tanks equipped with interior heating coils not permitted. Specification 103AW tank cars may be equipped with standpipe electrical heaters approved by the AAR Committee on Tank Cars.
SP 6714-X	E. I. du Pont de Nemours & Co., Inc.	173.314(c)....	Authorizes shipment of difluoroethane in DOT specification 112A400W tank cars with a maximum filling density of 79 pct (mode 2).	To amend the table in sec. 173.314(c) to add DOT specification 112A400W tank cars to read as follows:

Kind of gas	Maximum permitted filling density, note 1	Required tank car, see § 173.31(a) (2) and (3)
Difluoroethane	79	DOT–106A500X, 110A500W, Note 7.
	79	DOT–112A400W.
	84	DOT–105A300W.

Identification No.	Applicant or holder	Regulation affected	Nature of exemption or application	Nature of proposed amendment
SP 6715-X	FMC Corp.....	173.358(a) (11).	Authorizes shipment of ethion, and organic phosphate compound, liquid in DOT 105A300ALW or 105A300W tank cars (mode 2).	To revise paragraph (a)(11) to read: (11) Specification 105A300ALW or 105A300W (secs. 179.100, 179–101 of this subchapter). Tank cars. Authorized for parathion, methyl parathion and liquid organic phosphate only. The nominal water capacity of a tank car must not exceed 12,000 gal.
SP 6837-X	Department of Defense; FMC Corp.	173.245(a) (32).	Authorizes shipment of acetic anhydride in DOT specification 105A200ALW tank cars (mode 2).	To revise paragraph (32) to read: (32) Specification 103AW, 103A-AWL, 103ANW, 103BW, 103CW, 103EW, 105A200ALW, 111A100F2, 111A60ALW2, 111A60W2, 111A60W5 (secs. 179.100, 179.101, 179.200, 179.201 of this subchapter). Tank cars. Specification 105A200ALW tank cars authorized only for acetic anhydride.
SP 6850-X	Allied Chemical Corp.	173.346(a) (10).	Authorizes shipment of arsenic acid, liquid containing less than 0.05 pct nitric acid in DOT specification 103BW, rubber-lined tank cars (mode 2).	To revise paragraph (10) to read: (10) Specification 103J, 103W, 103A[1], 103AW, 103AW, 103BW, 104[1], 104W, 105A100[1], 105A100W, 111A60ALW1, 111A60F1, 111A60W1, 111A60W2, 111A100F2, 111A100W4, 115A60W6, or ARA-IV-A[1] (secs. 179.100, 179.101, 179.200, 179.201, 179.220, 179.221 of this subchapter). Tank cars. Specification 103BW tank cars must be rubber-lined and are authorized only for arsenic acid as prescribed in § 173.346.
E-7017-No	Phillips Petroleum Co.	173.346(a) (10).	Authorizes shipment of class B poisonous liquids in DOT specification 109A300ALW tank cars (mode 2).	To revise paragraph (a)(10) by adding specification 109A300ALW as an authorized tank car.
E-7039-X	Trojan-U.S. Powder..	173.63(e).....	Authorizes shipment of high explosives as specified in sec. 173.63(e) except inside packing consist of two 3-mil polyethylene bags (one within the other) in lieu of the prescribed double-lining paper (mode 2).	To revise paragraph (e) to read: (e) High explosives (straight gelatin dynamites of 80 pct strength and over and blasting gelatin) must be packed in cartridges or in bulk in outside boxes. When packed in bulk in boxes either double-lining paper throughout or two 3-mil polyethylene bags (one within the other) must be used. Not more than one double bag may be packed in one outside specification 12H box. Containers must comply with the following specifications
E-7045-No	Eastman Kodak Co.; Department of Defense.	173.245(a) (18).	Authorizes shipment of certain corrosive liquids, not otherwise specified in accordance with 49 CFR 173.245(a)(18) except inside containers may be 5-qt capacity instead of 1-gal (modes 1, 2, and 3).	To revise paragraph (a)(18) to read as follows: (18) specification 12A (sec. 178.210 of this subchapter). Fiberboard boxes with inside glass, polyethylene, or other nonfragile plastic bottles not over 5 qt capacity each. Not more than 4 inside glass bottles exceeding 5 pt capacity each shall be packed in the outside container. Shipper must have established that the completed package meets test requirements prescribed by sec. 178.210–10 of this subchapter.
E-7047-No	Hooker Chemicals & Plastics Corp.	173.31(c)(2), note (d), to retest table I.	Authorizes retesting DOT specification 111A60W2 and 111A100W2 tank cars in accordance with note (d) of retest table I in sec. 173.31. This authorizes tank cars to be retested using commodities for which the tank is approved when the tank is less than 10 years old (mode 2).	To amend sec. 173.31, retest table I, by adding the footnote "d" immediately before the required "retest interval years" in the first column for DOT Specifications 111A60W2 and 111A100W2.
E-7213-No	Union Carbide Corp..	173.245b (a)(8).	Authorizes shipment of a corrsive solid, not otherwise specified in metal portable tanks containing 750 gal of product (mode 2).	To revise paragraph (8) to read: (8 Metal portable tank or closed lug not over 7,000 lbs gross weight.
E-7262-No	Hercules Inc.....	173.266(c) (2).	Authorizes shipment of 98 pct nitric acid in DOT specification 111A60-ALW2 tank cars with a safety relief valve setting of 45 lb/in² (mode 2).	To amend paragraph (c)(2) to read as follows: (2) specification 103A-ALW or 111A60ALW2 (secs. 179.200, 179.201 of this subchapter). Tank cars. Specification 111A60ALW2 may have a safety relief valve start-to-discharge pressure setting of 45 lb/in².
E-7419-No	Department of Defense.	174.104(b) (10).	Authorizes shipment of high explosives in COFC/TOFC service as prescribed in sec. 174.104(b)(10) except cars may be equipped with high phosphorous cast iron brakeshoes (mode 2).	To revise paragraph (10) to read: (10) The car must be equipped with high-friction composition brakeshoes (except metal deck flat cars used for COFC/TOFC service may be equipped with high phosphorus cast iron brakeshoes when MILVAN8 are used) and brake rigging designed for this type of brakeshoe. Each brakeshoe on the car must be at least ⅜s in thick, and in safe and suitable condition for service.

(49 U.S.C. 1803, 1804, 1808; 49 CFR 1.53(e) and paragraph (a)(4) of App. A to Part 102).

Issued in Washington, D.C., on January 21, 1977.

C. H. THOMPSON,
Acting Director, Office of Hazardous Materials Operations.

[FR Doc.77-2659 Filed 1-28-77;8:45 am]

National Highway Traffic Safety Administration

[49 CFR Part 570]

[Docket 73-9; Notice 12]

VEHICLE IN USE INSPECTION STANDARDS

Proposed Rulemaking; Response to Petition

This notice proposes amending the Vehicle In Use Inspection Standards (49 CFR Part 570) as they relate to air brake systems and air-over-hydraulic brake systems for vehicles with gross vehicle weight ratings (GVWR) of more than 10,000 pounds (49 CFR 570.57).

On June 8, 1976, General Motors Corporation (GM) petitioned the National Highway Traffic Safety Administration (NHTSA) to amend 49 CFR 570.57(a)(2) and 570.57(c)(1), along with their associated inspection procedures, to clarify the meaning of these requirements. The sections in question provide that the ability of a brake system to restore its air pressure after one brake application is to be measured "with the compressor governor in the cut-off position." GM requested that this phrase be deleted from 49 CFR 570.57(a)(2) and 570.57(c)(1) to improve clarity. Since the compressor governor functions automatically to cycle the compressor "on" or "off" depending on system air pressure, the phrase in question can be deleted without affecting the test requirement. The NHTSA proposes to amend 49 CFR 570.57(a)(2) and 570.57(c)(1) accordingly.

GM further petitioned to change the baseline from which the pressure build-up time is to be measured under the inspection procedures accompanying 49 CFR 570.57(a) and 570.57(c). The inspection procedure currently specifies measuring the time necessary to raise the air pressure from 85 p.s.i. to 100 p.s.i. However, GM has pointed out that the air pressure in many newer brake systems would normally never fall as low as 85 p.s.i. during a single brake application, and that the use of the 85–100 p.s.i. criterion is not appropriate for these systems. The test procedure recommended by GM would overcome the problem associated with this variance in braking systems by establishing the pressure attained after one brake application as a baseline and by measuring the time to increase pressure from that baseline pressure to normal operating pressure. The NHTSA concurs with this recommendation, and proposes to amend the inspection procedures accordingly.

In addition, 49 CFR 570.57(a)(2) and 570.57(c)(1) would be amended by deleting the distinction for vehicles manufactured before March 1, 1975. This distinction was initially constructed to differentiate between vehicles which were manufactured before and after the effective date of Federal Motor Vehicle Safety Standard No. 121 (49 CFR 571.121). At the time this distinction was made, it was the view of the NHTSA that Standard No. 121 would necessitate larger reservoirs and consequently longer pressure build-up times. This has not proven to be the case, however, and it is proposed that the distinction be deleted.

The requirements for air-over-hydraulic brake subsystems found in 49 CFR 570.5(c)(1) would also be amended to clarify the requirement that this subsystem must permit one full service brake application, after the engine is stopped and with the system fully charged, without lowering reservoir pressure more than 20 percent below the initial reading. Currently, § 570.57(c)(1) only incorporates by reference this test procedural as prescribed in § 570.57(a)(1).

In consideration of the foregoing, it is proposed that 49 CFR, Part 570, Subpart B, *Vehicle In Use Inspection Standards for Vehicles With GVWR of More Than 10,000 Pounds*, be amended as follows:

1. Paragraph 570.57(a)(2) is amended as follows:

§ 570.57 Air brake system and air-over-hydraulic brake subsystem.

• • • • •

(a) *Air brake system integrity.* • • •

(2) The air brake system compressor shall increase the air pressure in the reservoir(s) from the level developed after the test prescribed in § 570.57(a)(1) to the initial pressure noted before the full brake application, with the engine running at the manufacturer's maximum recommended number of revolutions per minute, in not more than 30 seconds.

• • • • •

2. The closing text of § 570.57(a) is amended to read:

Inspection procedure. With the air system charged, open the drain cocks in the service and supply reservoir on the truck or truck-tractor. Note the pressure at which the visual or audible warning device connected to the low-pressure indicator is activated. With all drain cocks closed and with the trailer(s) uncoupled, read the air pressure gauge when the system is fully charged. Make one full service brake application, and again read the air pressure gauge. Deplete the air pressure in the system to at least 10 p.s.i. below the compressor cut-in pressure. Increase the air pressure at the manufacturer's maximum recommended revolutions per minute and determine the time required to increase the air pressure from the level achieved after one brake application to the level of the fully charged system. Continue running the engine until the governor cuts out and note the pressure. Reduce engine speed to idle, couple the trailer(s), if applicable, and make a series of brake applications. Note the pressure at which the governor cuts in. Increase engine speed to fast idle and charge the system to its governed pressure. Stop the engine and record the pressure drop in p.s.i. per minute with brakes released and with brakes fully applied.

3. Paragraph 570.57(c)(1) is amended to read:

(c) *Air-over-hydraulic brake subsystem integrity.* • • •

(1) With the vehicle in a stationary position, compressed air reserve shall be sufficient to permit one full service brake application, after the engine is stopped and with the system fully charged, without lowering reservoir pressure more than 20 percent below the initial reading. From the level developed after this brake application, the air compressor shall increase the air pressure in the reservoir(s) to the initial pressure noted before the full brake application, with the engine running at the recommended maximum number of revolutions per minute, in not more than 30 seconds.

• • • • •

4. The closing text of § 570.57(c) is amended to read:

Inspection procedure. With the air system charged, open the drain cocks in the service and supply reservoir on the truck or truck-tractor. Note the pressure at which the visual or audible warning device connected to the low-pressure indicator is activated. With all drain cocks closed and with the trailer(s) uncoupled, read the air pressure gauge when the system is fully charged. Make one full service brake application, and again read the air pressure gauge. Deplete the air pressure in the system to at least 10 p.s.i. below the compressor cut-in pressure. Increase the air pressure at the manufacturer's maximum recommended revolutions per minute and determine the time required to increase the air pressure from the level achieved after one brake application to the level of the fully charged system. Continue running the engine until the governor cuts out and note the pressure. Reduce engine speed to idle, couple the trailer(s), if applicable, and make a series of brake applications. Note the pressure at which the governor cuts in. Increase engine speed to fast idle and charge the system to its governed pressure. Stop the engine and record the pressure drop in p.s.i. per minute with brakes released and with brakes fully applied.

Interested persons are invited to submit comments on the proposal. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5108, 400 Seventh Street, S.W., Washington, D.C. 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the comment closing date indicated below will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date, and comments received after the closing date and too late for consideration in regard to the action will be treated as suggestions for future rulemaking. The NHTSA will continue to file relevant material as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Comment closing date. March 25, 1977.

(Sec. 103, 108, 119, Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392, 1397, 1407); delegation of authority at 49 CFR 150(b) and 501.6(d)).

Issued on January 24, 1977.

FRED W. VETTER, Jr.,
Associate Administrator,
Traffic Safety Programs.

[FR Doc.77-2961 Filed 1-28-77;8:45 am]

notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

FEDERAL ENERGY ADMINISTRATION

ISSUANCE OF DECISIONS AND ORDERS BY THE OFFICE OF EXCEPTIONS AND APPEALS

Week of November 15 through November 19, 1976

Notice is hereby given that during the week of Novemver 15 through November 19, 1976, the Decisions and Orders summarized below were issued with respect to Appeals and Applications for Exception or other relief filed with the Office of Exceptions and Appeals of the Federal Energy Administration. The following summary also contains a list of submissions which were dismissed by the Office of Exceptions and Appeals and the basis for the dismissal.

APPEALS

Navajo Refining Company; Artesia, N. Mex.; FEA-0905; Crude Oil.

On July 19, 1976, the Navajo Refining Company (Navajo) filed an Appeal from a Decision and Order which the Federal Energy Administration had issued to it on June 21, 1976. *Navajo Ref. Co.*, 3 FEA Par. 83,242 (June 21, 1976). In the June 21 determination the FEA granted Navajo an exception from the provisions of 10 CFR 211.67 (the Old Oil Entitlements Program) and thereby partially relieved the firm of its entitlement purchase obligations during the period June 1 through November 30, 1976. The exception relief approved in that Order was based on the historical financial data submitted by Navajo for its refining and marketing operations for the fiscal years 1970 through 1974 and the first six months of the firm's 1975 fiscal year. In its Appeal, Navajo contended that the historical financial data that the FEA utilized in the June 21 Order does not accurately reflect the firm's historical level of profitability because Navajo restated its financial operating results for fiscal years 1973 and 1974 and the first six months of its 1975 fiscal year. The Appeal, if granted, would have resulted in the recalculation of Navajo's historic profitability on the basis of the restated historical financial data and the approval of additional exception relief from Navajo's purchase obligations under the Entitlements Program. In considering Navajo's Appeal, the FEA determined that during the firm's 1975 fiscal year it changed the method by which it accounted for certain transactions relating to the resale or exchange of foreign crude oil and associated import tickets. In approving this change in accounting treatment, Navajo's independent accountants required the firm to restate its financial operating results for fiscal years 1973 and 1974. The FEA noted that Navajo had submitted the restated financial material sufficiently in advance of the issuance of the June 21, 1976 exception Decision to have permitted it to be taken into account in connection with that proceeding. The FEA determined that the restatement of the financial data materially distorted Navajo's historical level of profitability which had been used to calculate the amount of exception relief approved in the June 21 Decision, and concluded that the level of exception relief previously provided should be increased to reflect the restated financial data. The FEA therefore granted Navajo's Appeal.

Sun Co., Inc.; Washington, D.C.; FEA-0998; Freedom of Information

Sun Company, Inc. appealed from a partial denial by the FEA Information Access Officer of a Request for Information which the firm had submitted under the Freedom of Information Act (the Act). In its initial request, Sun requested 27 categories of information which relate to the FEA's crude oil transfer pricing requirements, including the supporting data used by the FEA in calculating representative prices for various types of crude oil. In the Order which he issued the FEA Information Access Officer released certain documents and withheld other material on the grounds that it was exempt from mandatory disclosure under either Exemption 4 or 5 of the Act. In analyzing the Sun Appeal, the FEA determined that certain documents which Sun sought had already been denied in a prior Decision which had been issued with respect to another Appeal under the Act which Sun had filed. The FEA also determined that of the remaining documents, two complete documents and portions of five others which were withheld should have been released to Sun. The FEA determined that the two documents which should have been released contained purely factual material and were not exempt from mandatory public disclosure under the Act. The portions of the five documents which were released were deemed by the FEA to contain reasonably segregable factual material or discussions which describe or implement final agency policy decisions which should have been released under the act. The FEA also reserved a decision concerning the releasability of one additional document since a determination with respect to its releasability was not possible at this time.

Utopia Oil Industries, Inc.; Richland, Wash.; FEA-0857; Motor Gasoline

Utopia Oil Industries, Inc. (Utopia) appealed from a Decision and Order which the FEA issued to it on March 31, 1976. *Utopia Oil Industries, Inc.*, 3 FEA Par. 83,156 (March 31, 1976). In that Decision, the FEA denied Utopia's request that it be assigned a new, lower-priced supplier of motor gasoline for the entire base period use of motor gasoline of the firm's Sunnyside, Washington retail outlet. The Appeal, if granted, would reverse the March 31, 1976 Decision and Order and grant Utopia the exception relief which it originally requested. In considering Utopia's Appeal, the FEA determined that contrary to the firm's assertions, the FEA did not err by taking into account the petroleum related operations of the entire firm in considering Utopia's claim that the FEA regulatory requirements resulted in a serious financial hardship. On the basis of the analysis conducted the FEA also concluded that no showing had been made that the denial of the exception application adversely affected the public interest in a substantial manner. The firm's Appeal was therefore denied.

REQUESTS FOR EXCEPTION

Atlantic Richfield Co.; Dallas, Tex.; FEE-3260 through FEE-3273; Natural Gas Liquids and Products

Atlantic Richfield Company (Arco) filed Applications for Exception from the provisions of 10 CFR 212.165 which, if granted, would permit Arco to increase the prices it charges to reflect non-product cost increases which the firm has incurred in producing natural gas liquid products and natural gas liquids at certain of its natural gas processing plants. In considering the applications, the FEA noted that as a general rule exception relief will be granted to any natural gas processor which can demonstrate that the non-product costs which it has experienced since May 1973 have increased substantially in excess of the $.005 per gallon passthrough for natural gas liquid products and the $.00375 per gallon passthrough for natural gas liquids permitted under Section 212.165. The FEA found that Arco had made such a showing with respect to 14 of its plants and therefore granted the firm appropriate exception relief for those plants.

Boston Gas Co.; Washington, D.C.; FEE-3213; Propane

The Boston Gas Company (Boston Gas) submitted an application for an extension of exception relief in which it requested that an exception granted to the firm by FEA Region I on March 8, 1974, be extended until at least April 15, 1977. The firm asserted that an extension would permit Boston Gas to retain and utilize its current allocation for propane for SNG feedstock for the remainder of the current heating season. In considering Boston Gas' request, the FEA found that Boston Gas failed to make a timely submission of the additional information which the FEA requested with respect to an Application for Assignment submitted pursuant to the provisions of 10 CFR 211.29. In view of the firm's failure to diligently pursue its remedies in that Assignment proceeding the FEA concluded that it would not extend exception relief in the manner which the firm requested. The FEA noted however, that a final determination of that Application for Assignment was not expected to be issued to Boston Gas until after January 1, 1976. Consequently, since the previous exception would expire on December 31, 1976, some extension of time was waranted in order to assure Boston Gas of an adequate supply of SNG feedstock pending a determination. Accordingly, the exception relief provided in the previous Decision was extended until May 16, 1977.

Clark Equipment Co., Buchanan, Mich.; FEE-2553; Propane.

Clark Equipment Company (Clark) filed an Application for Exception from the provisions of 10 CFR 211.12, which, if granted, would result in the issuance of Orders by the FEA increasing the annual base period use of propane at Clark's Gwinner, North

Dakota plant from 241,842 to 1,079,318 gallons. Clark claimed that during the base period the Gwinner plant was substantially expanded and the space heating equipment of the plant was modernized. According to the Clark submission the additional usage of propane which resulted from that expansion and modernization was not reflected in the firm's base period use of propane. In considering the exception request, the FEA found that Clark's propane requirements at the Gwinner facility had increased substantially when the expanded manufacturing facilities became operational subsequent to the base period. The FEA also found that if Clark were unable to obtain an increase in its adjusted base period use of propane at the Gwinner location, the objectives specified in Section 4(b)(1) of the Emergency Petroleum Allocation Act of 1973, as amended, would be significantly frustrated. The FEA also found that the base period use of propane at the Gwinner plant was significantly less than its current requirements, and that a gross disparity existed between the quantity of propane which the firm is actually using and its base period use. Moreover, the FEA determined that the allocation to Clark of the additional volumes of propane which it requires for its Gwinner facility would not seriously affect the market for the product or adversely affect in a significant manner any other wholesale purchaser-consumer in the applicable marketing area. The FEA therefore concluded that Clark qualified for exception relief under the criteria established in Climax Molybdenum Co., 2 FEA Par. 83,157 (May 20, 1975). However, the FEA also held that a portion of the additional quantity of propane requested by Clark was intended as fuel for space heating equipment which was installed in late 1975. Exception relief was denied with respect to that usage because it was found to contravene the national policy to encourage alternate fuel sources instead of propane when installing new equipment subsequent to the promulgation of the FEA regulatory program. On the basis of these findings, exception relief was approved increasing the base period use of propane at the Gwinner, North Dakota plant to 717,000 gallons per year.

Estate of George H. Coates; Dallas, Tex.; FEE–3199; Natural Gas Liquids.

The Estate of George H. Coates (Coates) filed an Application for Exception from the provisions of 10 CFR 212.165 which, if granted, would permit Coates to increase the selling price of natural gas liquids produced at its Jay Simmons gas plant to reflect the nonproduct cost increases which the applicant has incurred in producing natural gas liquids at that plant. In considering the application, the FEA noted that as a general rule exception relief will be granted to any natural gas processor which can demonstrate that the non-product costs which it has experienced since May 1973 have increased substantially in excess of the $.00375 per gallon passthrough for natural gas liquids permitted under Section 212.165. The FEA found that Coates had made such a showing with respect to its Jay Simmons gas plant and therefore granted the Estate of George H. Coates appropriate exception relief.

Gasco Gasoline, Inc.; Oxnard, Calif.; FEE–2686; Motor Gasoline.

Gasco Gasoline, Inc. filed an Application for Exception from the provisions of 10 CFR 212.9 which, if granted, would have resulted in the issuance of orders assigning Gasco a new, lower-priced supplier for a portion of the firm's base period use of motor gasoline to replace the Fletcher Oil and Refining Company (Fletcher). In considering the application the FEA determined that contrary to Gasco's allegations, the price which Gasco pays Fletcher for motor gasoline is only marginally higher than the average of the prices which the firm's competitors are required to pay their suppliers. The FEA also found that Gasco is able to offset the marginally higher price of the gasoline received from Fletcher with purchases of lower-priced motor gasoline from other suppliers. As a result, the weighted average price which Gasco pays for its motor gasoline supplies is not significantly different from the prices which the firm's competitors pay to their suppliers for motor gasoline. With respect to a further claim by Gasco that Fletcher has been frequently unable to supply the firm with adequate volumes of motor gasoline, Gasco acknowledged that it has consistently attempted to minimize its purchases of motor gasoline from Fletcher. Since Gasco had provided no material which indicates that its operations had experienced a substantial adverse impact as a result of the alleged supply difficulty, the FEA concluded that Gasco had failed to establish that the maintenance of its base period supplier/purchaser relationship with Fletcher resulted in a serious hardship or gross inequity to Gasco and the firm's exception application was denied.

William C. Kirkwood; Casper, Wyo.; FEE–3208; Crude Oil.

William C. Kirkwood (Kirkwood) filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D. The exception request, if granted, would relieve Kirkwood of the obligation to refund any revenues which the firm may have realized as a result of improperly charging exempt prices for crude oil from certain properties located in Wyoming and Colorado. Kirkwood requested that the exception relief be granted retroactively for the period September 1, 1973 through April 30, 1976. In considering Kirkwood's Application, the FEA determined that Kirkwood's assertions that it might be adversely affected as a result of possible compliance action by the FEA are purely speculative, and that an argument based on speculative future hardship does not form a proper basis for the approval of exception relief. The FEA therefore denied Kirkwood's request.

W. C. Montgomery; Midland, Tex.; FEE–2384; Crude Oil.

W. C. Montgomery filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D. The exception request, if granted, would permit Montgomery to sell the crude oil produced from a well which he proposes to drill at upper tier ceiling prices. Montgomery's request was based on the assumption that the "property" on which he proposed to drill the well was an entire 320 acre lease owned by the Marathon Oil Company (Marathon) in Lea County, New Mexico from which crude oil was already being produced. In considering the Application, the FEA determined that although the 40 acre tract on which the proposed Montgomery well would be drilled (the McAlester tract) had originally been part of the larger 320 acre lease owned by Marathon, the right to produce crude oil on the 40 acre tract was assigned by Marathon to the McAlester Fuel Company in 1949. Consequently, McAlester held a separate right to produce crude oil on the tract during 1972. In accordance with FEA Ruling 1975–15, the McAlester tract was determined to be a separate property. The FEA therefore concluded that since no crude oil was yet being produced from the property, all of the crude oil which would be produced from the proposed Montgomery well could be sold as new crude oil at upper tier ceiling prices. In view of the determination that the McAlester tract was a separate property, the FEA concluded that exception relief was not necessary and Montgomery's Application was dismissed without prejudice.

Phillips Petroleum Co.; Bartlesville, Okla.; FEE–2791; Crude Oil.

Phillips Petroleum Company (Phillips) filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D, which if granted, would permit Phillips to sell crude oil produced from the Alene Lease (the Lease) at upper tier ceiling prices. In considering Phillips exception request, the FEA determined that the costs of producing crude oil from the Lease have increased significantly since 1974 and as a result of these increased costs, Phillips' production costs now exceed the price which the firm is permitted to charge for the crude oil which it sells. Consequently, the FEA concluded that Phillips does not have an economic incentive to continue to operate the Lease. The FEA also found that there would be little possibility that the recoverable crude oil on the Lease would be produced by any firm in the absence of the type of exception relief requested by Phillips. The nation would therefore be deprived of that amount of recoverable crude oil if exception relief is not approved and the wells on the Lease were abandoned. On the basis of previous precedents involving similar factual situations, the FEA concluded that the application of the lower tier ceiling price rule in this case resulted in a gross inequity. Accordingly, Phillips was granted exception relief which permits the firm to sell at upper tier ceiling prices 44.02 percent of the crude oil produced and sold from the Lease.

Ruthven, Inc. (Ruthven) filed an Application for Exception from the provisions of 10 CFR., Part 212, Subpart D. The request, if granted, would result in a determination that the firm's Ben Rein lease was a stripper well property during the period December 1, 1973 through December 31, 1975, and thereby relieve Ruthven of any obligation to refund revenues which it may have realized as a result of charging unlawful prices for crude oil produced and sold from the lease during the period. In its exception application, Ruthven contended that the Ben Rein lease would have been classified as a stripper well property during the period of the alleged overcharges if the lease's Well No. 5, which produces crude oil from two separate reservoirs, were regarded as two separate wells. In considering Ruthven's exception request, the FEA noted that pursuant to Ruling 1975–12, a well may be regarded as two wells for the purpose of calculating average daily production pursuant to the stripper well lease exemption only if the well consists of two or more tubing strings and the production capabilities of each formation are unaffected by any change in the production level of any other formation producing crude oil through the same well. The FEA determined that Ruthven's Ben Rein lease Well No. 5 produces crude oil from two reservoirs through the same tubing string and that the production capabilities of each reservoir are not independent of each other. The FEA therefore concluded that Well No. 5 did not qualify as a multiple completion well under Ruling 1975–12. The FEA further noted that the type of specialized treatment for multiple completion wells discussed in Ruling 1975–12 was intended to compensate crude oil producers who invested a significant amount of capital in excess of that generally required to complete a single well. Since Ruthven had not demonstrated that the cost of completing and operating Well No. 5 substantially exceeds the investment required to complete and operate a well which produces crude oil from only one formation, the FEA denied Ruthven's request for exception relief without prejudice to a refiling after the FEA formally concludes its investigation of the alleged overcharges.

SAS Co.; Los Angeles, Calif.; FEES–2843; Crude Oil.

SAS Company (SAS) filed an Application for exception from the provisions of 10 CFR, Part 212, Subpart D,, which, if granted, would permit SAS to sell crude oil produced from Fault Block Units 4 and 5 located in the Wilmington Field, Long Beach, California, at prices which exceed the lower tier ceiling prices. In considering SAS' exception request, the FEA determined that since SAS is not the operator of the Units involved and owns only a small working interest in each of them, the Units would not be abandoned in the event that SAS terminated its interest in them. Moreover, the FEA noted that it had recently declined to grant exception relief requested by the City of Long Beach, owner of a majority share of the working interests in Units 4 and 5 and operator of a large segment of each of these units, which would have permitted Long Beach and all other working interest owners in the Units to sell their crude oil at prices which exceed the maximum permissible levels specified in the FEA Price Regulations. City of Long Beach, 4 FEA Par. 83,040 (August 10, 1976). The FEA determined that the Long Beach Decision, which indicates that Units 4 and 5 are presently operating at a profit, supports the conclusion that these Units would not be abandoned in the event SAS' exception request is denied. Finally, the FEA found that prior to the promulgation of the FEA Price Regulations, SAS incurred a loss with respect to the property concerned whereas in 1974, when the Price Regulations were in effect, the property generated a cash income. The FEA therefore concluded that SAS had not established that the application of the FEA Price Regulations had produced the financial difficulties which the firm is currently experiencing. Consequently, the FEA concluded that SAS had not demonstrated that the application to the firm of the provisions of 10 CFR, Part 212, Subpart D, constituted a serious hardship or gross inequity and the firm's exception request was denied.

Texaco, Inc.; Houston, Tex.; FEE–3243 through FEE–3257; FEE–3290 through FEE–3292; Natural Gas Liquid Products.

Texaco, Inc. (Texaco) filed Applications for Exception from the provisions of 10 CFR 212.165 which, if granted, would permit Texaco to increase the prices it charges to reflect non-product cost increases which the firm has incurred in producing natural gas liquid products at certain of its natural gas processing plants. In considering the applications, the FEA noted that as a general rule exception relief will be granted to any natural gas processor which can demonstrate that the non-product costs which it has experienced since May 1973 have increased substantially in excess of the $.005 per gallon passthrough for natural gas liquid products permitted under Section 212.165. The FEA found that Texaco had made such a showing with respect to 18 of its plants and therefore granted the firm appropriate exception relief for those plants.

United Refining Co.; Warren, Penn.; FEE–2404; FEE–2735; Crude Oil.

United Refining Company (United) filed an Application for Exception from the provisions of 10 CFR 214.31 (the Mandatory Canadian Crude Oil Allocation Program). If United's request were granted, the base period runs to stills of Canadian crude oil at its West Branch, Michigan refinery would be increased. On Juy 13, 1976 United filed a second Application which, if granted, would result in the designation of West Branch as a first priority refinery. In considering United's request for classification of West Branch as a first priority facility, the FEA noted that the Deputy Assistant Administrator for Regulatory Programs had originally classified West Branch as a first priority refinery for the second quarter of 1976 but had indicated that he would reclassify the facility as second priority for the allocation period beginning July 1, 1976 unless United demonstrated that it could not acquire additional supplies of non-Canadian crude oil by means of exchanges. The Deputy Assistant Administrator subsequently determined that a crude oil exchange with Mobil Oil Corporation (Mobil) was available to United and therefore redesignated West Branch as a second priority facility. In considering United's exception request, the FEA determined that United had not shown that the proposed exchange with Mobil was unworkable. The FEA further stated that even if United could make such a showing, in order to qualify as a first priority refinery under the Canadian Allocation Regulations a refinery must establish that it cannot obtain sufficient crude oil to operate its refinery at 75 percent of its base period runs to stills. The FEA concluded that even without the proposed exchange United currently processes a volume of crude oil which exceeds 100 percent of its base period runs to stills and therefore the firm does not meet one of the regulatory criteria which it must satisfy in order to qualify as a first priority refinery.

In its April 21, 1976 exception request United contended that due to an extraordinary series of operating problems which occurred at West Branch during the base period, the quantity of crude oil which it processed during that period was substantially less than historic levels and that the base period is therefore unrepresentative of its historic performance. After considering United's contentions, the FEA determined that the condemnation of the West Branch refinery's preflash tower and the consequent reduction in crude oil runs to stills which occurred over eight months of the base period was an anomalous event which affected the firm in a significant manner. Since this event resulted in a distortion in the intended use of the base period to reflect a relatively normal and customary period of business activity, the FEA adjusted the refinery's base period runs to stills of Canadian crude oil in order to compensate for that distortion. The FEA declined however to adjust United's base period volume to compensate for various other operating problems which allegedly occurred during the base period. The FEA concluded in this respect that in view of significant discrepancies between various submissions which United had filed, no conclusive findings could be made as to these alleged difficulties. Finally, the FEA determined that United had not shown that in the absence of exception relief restoring West Branch to first priority status, the refinery would incur a serious hardship. The FEA concluded that portions of the loss which United projected for West Branch in 1976 were attributable to events which were unrelated to the FEA regulations. The FEA further indicated that certain of United's computations were erroneous and furthermore that the firm's entitlements revenues for the month of July 1976 alone exceeded the total loss projected for West Branch for the entire year. Based on the foregoing considerations, the FEA denied United's request that West Branch be designated as a first priority refinery and granted a portion of the adjustment which United had requested be made in its base period volume of Canadian crude oil runs to stills.

PETITION FOR SPECIAL REDRESS RELIEF

Jarrell Oil Co., Inc.; Doswell, Va.; FSG–0025; Motor Gasoline.

The Jarrell Oil Company, Inc. filed a Petition for Special Redress Relief which, if granted, would result in the issuance of FEA orders (1) assigning a base period use of motor gasoline to a new retail sales facility which Jarrell constructed; and (ii) assigning Exxon Company, U.S.A. as the base period supplier of the new facility. Jarrell, a wholesale purchaser-reseller of motor gasoline and diesel fuel, markets those products under the Texaco brand. In early 1975, Jarrell began the construction of a new Exxon-branded retail gasoline sales facility on the property adjacent to the firm's existing truck plaza in order to accommodate increased traffic associated with the opening of a large adjacent amusement park called Kings Dominion. However, the firm's Application for Assignment of a base period use of gasoline for the proposed facility was dismissed by FEA Region III on the grounds that the new facility was an extension of the existing Jarrell's Truck Plaza, rather than a new "retail sales outlet" as defined in Section 211.51. Jarrell's Appeal of that determination was denied. In considering Jarrell's Petition for Special Redress, the FEA determined that Jarrell's new facility does not technically meet the definition of a new "retail sales outlet" because Jarrell maintains an on-going business activity in which it sells gasoline to end-users from its existing truck plaza. Nevertheless the FEA found that Jarrell's new station is distinguishable from a retail sales outlet which has merely expanded its existing facility since the new station was constructed to provide services to a different market from the existing outlet and has separate facilities for service and maintenance. Moreover, while the increased demand for gasoline in the area is currently being satisfied with surplus gasoline supplied by Exxon, the FEA determined it was never intended that new retail stations should be supplied on a permanent basis with surplus product. The FEA also determined that if Exxon were unable to supply the new facility with surplus product, Jarrell would be forced either to discontinue the new operation resulting in the loss of its investment or to convert the station to a Texaco outlet at a substantial cost, and because of the lack of other retail outlets at the interchange, Jarrell's inability to obtain a base period use of gasoline for the new facility would result in substantial economic inefficiency and a gross inequity to both Jarrell and the users of the Kings Dominion amusement park. The FEA concluded that since this result would significantly frustrate the national objectives of economic efficiency and equitable distribution of refined products, special redress relief was warranted. The FEA therefore directed the Regional Administrator for Region III to assign a base period use of gasoline to Jarrell's new facility as if it were a new retail sales outlet, and to assign Exxon as the facility's base period supplier.

REQUEST FOR MODIFICATION OR RECISSION

Algonquin SNG, Inc.; Washington, D.C.; FMR–0056; Naphtha

Algonquin SNG, Inc. (Algonquin SNG) filed an Application for Rescission of a Decision and Order issued to the Petrochemical Energy Group (PEG) on June 28, 1976. *Petrochemical Energy Group*, 3 FEA Par. 80,661 (June 28, 1976). In that Decision, the FEA remanded a previous Assignment Order issued to Algonquin Gas Transmission Company (Algonquin) on August 29, 1975 to the Assistant Administrator for Regulatory Programs for further consideration of several issues relating to the allocation of naphtha to Algonquin for use as feedstock in the

firm's Freetown, Massachusetts synthetic natural gas (SNG) plant. In its present Application, Algonquin SNG requested that the June 28 Decision and Order be rescinded on the ground that the circumstances upon which the June 28 Decision was predicated have "changed significantly" since the date of its issuance. Algonquin SNG contended that although the June 28 Order was partially based on findings regarding the existence of a shortage of naphtha, this assumption has been repudiated by subesequent FEA findings which were prepared in connection with a proposal to exempt most naphthas from the scope of the Mandatory Petroleum Allocation and Price Regulations. 41 Fed. Reg. 30098 (July 22, 1976). In considering Algonquin SNG's Application, the FEA determined that the findings contained in the July 22 proposal to decontrol naphthas did not constitute "changed circumstances" as that term is defined in 10 CFR 205.135 since they did not pertain to the allocation of naphtha for use as a SNG feedstock. Moreover, the FEA found that the June 28 Order was based on FEA policies regarding the desirability of encouraging conversion from natural gas and SNG to other fuels in view of the existing shortage of natural gas and the inefficiency of SNG production. Accordingly, the FEA determined that Algonquin SNG was not correct in contending that the June 28 Order was based on assumptions as to the availability of naphtha. The Algonquin SNG Application for Recession of the June 28 Order was therefore denied.

DISMISSALS

The following submissions were dismissed following a statement by the applicant indicating that the relief requested was no longer needed:

Al Jones Oil Corp.; Jamaica, N.Y., FEE–2822
Fuller Oil Co.; Fayetteville, N.C., FEE–3341
Superior Oil Co.; Houston, Tex., FEA–0898

The following submission was dismissed for failure to correct deficiencies in the firm's filing as required by the FEA Procedural Regulations:

Connecticut Refining Co.; New York, N.Y., FEA–0970

The following submission was dismissed on the grounds that the applicant failed to show any basis for the FEA to eliminate or alter the requirement that the firm establish an escrow account as a condition of a stay:

Varibus Corp.; Beaumont, Tex., FMR–0069

TEMPORARY STAY

The following Application for Temporary Stay was granted on the grounds that the applicant had made a compelling showing that temporary stay relief was necessary to prevent an irreparable injury;

Quincy Oil, Inc.; Quincy, Mass.; FST–0054

Copies of the full text of these Decisions and Orders are available in the Public Docket Room of the Office of Private Grievances and Redress, Room B–120, 2000 M Street, N.W., Washington, D.C. 20461, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., e.s.t., except Federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: January 24, 1977.

DAVID G. WILSON,
Acting General Counsel.

[FR Doc.77–2758 Filed 1–25–77;9:43 am]

CASES FILED WITH THE OFFICE OF EXCEPTIONS AND APPEALS

Week of December 31, 1976 through January 7, 1977

Notice is hereby given that during the week of December 31, 1976 through January 7, 1977, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Federal Energy Administration's Office of Exceptions and Appeals.

Under the FEA's procedural regulations, 10 CFR, Part 205, any person who will be aggrieved by the FEA action sought in such cases may file with the FEA written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of those regulations, the date of service of notice shall be deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first.

Dated: January 24, 1977.

DAVID G. WILSON,
Acting General Counsel.

APPENDIX.—*List of cases received by the Office of Exceptions and Appeals, week of Dec. 31 through Jan. 7, 1977*

Date	Name and location of applicant	Case No.	Type of submission
Jan. 3, 1977	Melton's Auto Service, Petersburg, Va. (If granted: The FEA's Sept. 20, 1976, decision and order would be modified, and Melton's Auto Service would be assigned a base period use of 783,964 gal/yr of motor gasoline.)	FEX-0110	Supplemental order.
Do	Tenneco Oil Co., Washington, D.C. (If granted: The FEA's Nov. 30, 1976, information request denial would be rescinded and the Tenneco Oil Co. would receive access to portions of documents compiled in connection with the FEA compliance case No. N00A00394 involving the Tenneco Oil Co.)	FEA-1110	Appeal of FEA's information request denial.
Jan. 4, 1977	Allied Chemical Corp., Houston, Tex. (If granted: Allied Chemical Corp. would be permitted to increase its prices to reflect nonproduct cost increases in excess of $0.005/gal for natural gas liquid products produced at the following natural gas plants: Benedum, Glendive, Perkins, Sligo, and Walnut Bend.)	FEE-3550—FEE-3554	Price exception (sec. 212.165).
Do	Arkansas Louisiana Gas Co., Shreveport, La. (If granted: Arkansas Louisiana Gas Co. would be permitted to increase its prices to reflect nonproduct cost increases in excess of $0.005/gal for natural gas liquid products produced at its Bistineau, Hamilton, Sligo, and Waskom natural gas plants.)	FEE-3557—FEE-3560	Do.
Do	City of Long Beach, Calif. (If granted: Crude oil produced from the Fault Block 111 Unit, Wilmington Oil Field, Los Angeles County, Calif., would be sold at upper tier ceiling prices.)	FEE-3549	Do.
Do	Duke Oil Co., Inc., Mineral, Va. (If granted: The FEA's Dec. 23, 1976, remedial order would be rescinded and Duke Oil Co., Inc., would be permitted to sell motor gasoline at prices which exceed the maximum level permitted under the mandatory petroleum price regulations.)	FRA-1111	Appeal of FEA's remedial order dated Dec. 23, 1976.
Do	O'Meara, Robert W., New Orleans, La. (If granted: Robert W. O'Meara would be permitted to sell crude oil produced from the Louisiana Fruit No. 2 well located in the Tiger Pass Field of Plaquemines Parish, La., at a price which exceeds the lower tier ceiling price specified in the FEA mandatory petroleum price regulations on the basis that he is continuing to experience a serious hardship.)	FXE-3555	Extension of relief granted in Robert W. O'Meara, 4 FEA par. 83,029 (July 30, 1976).
Do	Wallace & Wallace Fuel Co., Washington, D.C. (If granted: Wallace & Wallace Fuel Co. would be granted retroactive relief which would permit it to have sold No. 2 heating oil above the maximum level permitted under the mandatory petroleum price regulations.)	FEE-3556	Price exception (Sec. 212.93(a)).
Do	Wise, Watson W., Tyler, Tex. (If granted: The FEA's July 22, 1976, decision and order would be rescinded and Wise and other working interest owners of the Stone Johnson lease would be permitted to sell the crude oil which they produce at prices which exceed the maximum levels specified in the FEA mandatory petroleum price regulations.)	FXA-1106	Appeal of decision and order in Watson W. Wise, 4 FEA par. 83,018 (July 22, 1976).
Jan. 5, 1977	Dorie Petroleum, Inc. (Enid), Houston, Tex. (If granted: Dorie Petroleum, Inc., would be permitted to increase its prices to reflect nonproduct cost increases in excess of $0.005/gal for natural gas liquid products produced at the Enid Gas Processing Plant.)	FEE-3516	Price exception (sec. 212.165).
Do	Doss, Inc., Eupora, Miss. (If granted: The Greenville, Miss. facilities and the Hattiesburg, Miss., salt dome storage facilities would be considered as separate inventories, retroactive to May 15, 1973.)	FEE-3562	Exception.
Do	Edco Research Associates, Newcastle, Wyo. (If granted: Edco Research Associates' crude oil supplier/purchaser relationship with National Cooperative Refinery Association would be terminated and Edco would be permitted to enter into a supplier/purchaser relationship with Tesoro Crude Oil Co.)	FEE-3561	Allocation exception (sec. 211.63).
Do	Harris Enterprises, Inc., Washington, D.C. (If granted: The FEA's Dec. 3, 1976, decision and order would be rescinded and Harris Enterprises, Inc., would be assigned new, lower priced suppliers of motor gasoline to replace its base period suppliers, Aminoil Oil Co., Lion Oil Co., Powerine Oil Co., and Mercury Oil Do.)	FXA-1113	Appeal of decision and order in Harris Enterprises, Inc., 4 FEA par. ——— (Dec. 3, 1976).
Do	Seabrook, H. S., Pine Bluff, Ark. (If granted: The FEA's Oct. 8, 1976, decision and order would be rescinded and crude oil produced from the Central Hillight Unit located in the Powder River Basin of eastern Wyoming would be sold at upper tier ceiling prices for the benefit of both the working interest owners and the royalty interests.)	FXA-1114	Appeal of FEA's decision and order in Central Hillight Unit, 4 FEA par. 83,138 (Oct. 8, 1976).

Date	Name and location of applicant	Case No.	Type of submission
Do	Zenith Oil Co., Inc., Minneapolis, Minn. (If granted: The FEA's Dec. 8, 1976, decision and order would be rescinded and Zenith Oil Co., Inc., would not be required to make refunds for overcharges in its sales of No. 2 heating oil.)	FEX-0111	Supplemental order.
Jan. 6, 1977	Hudson Oil Co., Inc., Washington, D.C. (If granted: The FEA's Dec. 20, 1976, decision and order would be modified and Hudson Oil Co., Inc., would receive additional administrative relief in order to facilitate the acquisition by Hudson of a refinery which Midland Cooperatives owns in Cushing, Okla.)	FEX-0112	Modification of FEA's decision and order in Hudson Oil Co., Inc., 4 FEA par. ——— (Dec. 20, 1976).
Do	Varibus Corp., Beaumont, Tex. (If granted: Varibus Corp. would receive a stay of the requirements of the FEA's Sept. 20, 1976, remedial order and would not be required to make refunds to Thomas P. Reidy and Riffe Petroleum for overcharges in sales of No. 2 heating fuel oil pending a judicial review of such remedial order.)	FES-0052	Stay request, remedial order dated Sept. 20, 1976.

[FR Doc.77–2757 Filed 1–25–77;9:43 am]

CASES FILED WITH THE OFFICE OF EXCEPTIONS AND APPEALS

Week of January 7 through January 14, 1977

Notice is hereby given that during the week of January 7 through January 14, 1977 the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Federal Energy Administration's Office of Exceptions and Appeals.

Under the FEA's procedural regulations, 10 CFR, Part 205, any person who will be aggrieved by the FEA action sought in such cases may file with the FEA written comments on the application within ten days of notice, as prescribed in the procedural regulations. For purposes of those regulations, the date of service of notice shall be deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first.

Dated: January 24, 1977.

DAVID G. WILSON,
Acting General Counsel.

APPENDIX.—*List of cases received by the Office of Exceptions and Appeals, week of Jan. 7 through Jan. 14, 1977*

Date	Name and location of applicant	Case No.	Type of submission
Jan. 7, 1977	Getty Oil Co., Los Angeles, Calif. (If granted: The FEA's Dec. 3, 1976, decision and order would be rescinded and the FEA would grant Getty Oil Co. exception relief based on a comparison of the firm's operations at various natural gas processing plants during the fiscal quarter ended June 30, 1973, and the fiscal quarter ending June 30, 1976.)	FXA-1116—FXA-1141	Appeal of decision and order in Getty Oil Co., 4 FEA par. ——— (Dec. 3, 1976)
Do	Marathon Oil Co., Mid-Continent, Inc, Hamilton Oil Co., Ingram Corp., Publix Oil Co., Inc., Washington, D.C. (If granted: The Marathon Oil Co. would be assigned as the base period supplier of motor gasoline to Mid-Continent, Inc., Hamilton Oil Co. Ingram Corp., and Publix Oil Co., Inc., in the quantities for which they have contracted.)	FEE-3563—FEE-3567	Allocation exception.
Do	Tenneco Oil Co., Houston, Tex. (If granted: The Tenneco Oil Co. would receive a stay of the requirements of the FEA's Dec. 21, 1976 decison and order pending a judicial review of that order.)	FES-0056	Stay request.
Do	Texas American Oil Corp., Midland, Tex. (If granted: The Texas American Oil Corp. would receive a stay of the requirements of the FEA's Dec. 16, 1976, decision and order which may prevent TAO from participating in the old oil entitlements program with regard to crude oil runs at the Osceola refinery beginning Sept. 1, 1976, pending an appeal of that order which it intends to file.)	FES-1115	Do.
Jan. 10, 1977	Hanover Management Co., Dallas, Tex. (If granted: Crude oil produced from the Fruin "A" No. 1 Well, Coyle Field, Payne County, Okla., would be sold at upper tier ceiling prices.)	FEE-3568	Price exception (sec. 212.73).
Do	Mockabee's, Marlboro, Md. (If granted: FEA's Dec. 22, 1976, remedial order would be rescinded and Mockabee's would not be required to refund overcharges in its kerosene and fuel oil sales.)	FRA-1145	Appeal of FEA's Dec. 22, 1976, remedial order.
Do	Omega Oil Co., Washington, D.C. (If granted: FEA's Nov. 9, 1976, decision and order would be rescinded and Omega Oil Co. would receive an increase in the base period use of motor gasoline for retail outlets Omega purchased from the Standard Oil Co. of Ohio.)	FXA-1144	Appeal of FEA's decision and order in Omega Oil Co., 4 FEA par. ——— (Nov. 9, 1976).
Do	Standard Oil Co. of Ohio, Cleveland, Ohio. (If granted: FEA's Dec. 3, 1976, decision and order ould be rescinded and Standard Oil Co. of Ohio would be permitted to calculate its maximum permissible selling prices for the covered products which it refines on the basis of an adjusted May 1973 crude oil cost rather than the firm's actual May 1973 crude oil cost.)	FXA-1142	Appeal of FEA's decision and order in Standard Oil Co. of Ohio, 4 FEA par. ——— (Dec. 3, 1976).

Date	Name and location of applicant	Case No.	Type of submission
Do.....	Tipperary Corp., Midland, Tex. (If granted: The FEA's Dec. 7, 1976, decision and order would be modified so that Tipperary's crude oil allocation would be sufficient to enable the refinery to operate at the national supply-to-capacity ratio.)	FEA-1143	Appeal of FEA's Dec. 7, 1976, decision and order.
Jan. 11, 1977	Berry Holding Co., Taft, Calif. (If granted: The FEA's Oct. 26, 1976, decision and order would be rescinded and Berry Holding Co. would be permitted to retain revenues which it apparently realized during 1975 as a result of charging prices which were in excess of the maximum levels permitted under the provisions of part 212 of the mandatory petroleum price regulations).	FXA-1149	Appeal of FEA's decision and order in Berry Holding Co., 4 FEA par. 83,167 (Oct. 26, 1976).
Do.....	Boston Gas Co., Boston, Mass. (If granted: Boston Gas Co. would receive an extension of the relief, as it pertains to 10 CFR 211.29, granted in FEA's Nov. 16, 1976, decision and order.)	FXE-3577	Extension of relief granted in Boston Gas Company, 4 FEA par. ..... (Nov. 16, 1976).
Do.....	Champlin Petroleum Co., Fort Worth, Tex. (If granted: Crude oil produced from Fault Blocks II, III, and IV, Units of the Wilmington Field would be sold at upper tier ceiling prices to benefit the working interest owners.)	FEE-3574	Price exception (sec. 212.74).
Do.....	Columbia LNG Corp. (If granted: The Cincinnati Gas & Electric Co. would be permitted to process in its peak shaving facilities the propane which Columbia is currently permitted to process in its Green Springs SNG plant. The temporary stay is based upon the fact that a recent explosion of Columbia's SNG plant has substantially reduced the supply of natural gas available to Columbia customers.)	FST-0026	Temporary stay.
Do.....	Columbia LNG Corp. (If granted: The Cincinnati Gas & Electric Co. would be permitted to process in its peak shaving facilities the propane which Columbia is currently permitted to process in its Green Springs SNG plant. The exception is based upon the fact that a recent explosion at Columbia's SNG plant has substantially reduced the supply of natural gas available to Columbia customers.)	FEE-3576	Allocation exception.
Do.....	Commonwealth Oil Refining Co., Inc., Washington, D.C. (If granted: Commonwealth Oil Refining Co., Inc., would be assigned additional entitlements on the basis that it is experiencing a serious hardship and gross inequity.)	FEE-3573	Exception to the old oil entitlements program.
Do.....	Domind Petroleum Corp., Inc., Hopewell Junction, N.Y. (If granted: The FEA's Nov. 29, 1976, remedial order would be rescinded and Domind Petroleum Corp. would not be required to refund overcharges in its fuel oil sales during the period Nov. 15, 1973, through Dec. 31, 1974.)	FRA-1148 FRS-1148	Appeal of FEA's Nov. 29, 1976, remedial order stay request.
Do.....	Farmland Industries, Inc., Kansas City, Mo. (If granted: Farmland Industries, Inc., would receive an extension of the exception relief granted in FEA's Nov. 23, 1976, decision and order which would permit the firm to increase prices to reflect nonproduct cost increases in excess of $0.005/gal for natural gas liquid products at its Lamont and Mertzon processing plants.)	FXE-3571 FXE-3572	Extension of exception relief granted in Farmland Industries, Inc., 4 FEA par. ..... (Nov. 23, 1976).
Do.....	Genie Car Wash, San Diego, Calif. (If granted: Genie Car Wash would be supplied motor gasoline by Standard Oil Co. of California rather than Mobil Oil Corp.)	FEE-3569	Exception to change suppliers.
Do.....	Gulf Oil Corp., Houston, Tex. (If granted: FEA's Jan. 6, 1977, decision and order would be rescinded and Gulf would be relieved of its supplier/purchaser relationships for motor gasoline in Northern California, Northern Nevada, Oregon, and Washington.)	FMR-0079	Rescission of FEA's Jan. 6, 1977, decision and order in Mobil Oil Corp., et al., 4 FEA Par. ..... (Jan. 6, 1977).
Do.....	Gulf Oil Corp., Tulsa, Okla. (If granted: FEA region VI's Dec. 10, 1976, decision and order would be rescinded and Gulf Oil Corp. would not be required to supply Bay-Tex Terminal, Ltd with motor gasoline.)	FMR-0080	Rescission of region VI's Dec. 10, 1976, decision and order.
Do.....	MacKellar, Inc., Oklahoma City, Okla. (If granted: FEA's December 30, 1976 Remedial Order would be rescinded and MacKellar, Inc., would not be required to refund overcharges in its crude oil sales.)	FRA-1147 FRS-1147	Appeal of FEA's Dec. 30, 1976, remedial order stay request.
Do.....	Scarsdale Fuel Oil Company, Inc., Scarsdale, New York (If granted: Scarsdale Fuel Oil Co., Inc., would not be required to file FEA report forms.)	FEE-3570	Exception to reporting requirements.
Do.....	Tenneco Oil Co., Houston, Tex. (If granted: FEA's Dec. 8, 1976, decision and order would be rescinded and the first 6,019 bbl of crude oil produced from the Kopp replacement well would be sold at upper tier ceiling prices for the benefit of the working interest owners.)	FXA-1146	Appeal of FEA's Dec. 8, 1976, decision and order Tenneco Oil Co., 4 FEA par. ..... (Dec. 8, 1976).
Do.....	U.S.A. Gas, Inc., and Rossi Oil Co., Pennsauken, N.J. (If granted: Rossi Oil Co. would be assigned a new, lower priced supplier of motor gasoline on the basis that it is experiencing a serious hardship.)	FEE-3575	Exception to change suppliers.
Jan. 12, 1977	Columbia LNG Corp. (If granted: Consumers Power Co., and Columbia Gas Transmission Corp., would be permitted to process the propane which Columbia is currently permitted to process in Columbia LNG Corp.'s Green Springs SNG plant in order to alleviate shortages produced by a recent explosion at the Green Springs plant, which has reduced the supply of natural gas available to Columbia customers.)	FST-0027	Temporary stay.
Do.....	Columbia LNG Corp. (If granted: Consumers Power Co. and Columbia Gas Transmission would be permitted to process the propane which Columbia is currently permitted to process in its Green Springs SNG plant in order to alleviate shortages which may arise as a result of a recent explosion at Columbia's SNG plant, which has substantially reduced the supply of natural gas available to Columbia customers.)	FEE-3578	Allocation exception.

Date	Name and location of applicant	Case No.	Type of submission
Do.....	Kershaw Properties, Muskogee, Okla. (If granted: The FEA's Dec. 8, 1976, decision and order would be rescinded and crude oil produced from the Kopp No. 1 Unit would be sold at upper tier ceiling prices for the benefit of both the working interest owners and the royalty interest owners.)	FXA-1150 FES-1150	Appeal of FEA's decision and order in Tenneco Oil Company, 4 FEA par. ....(Dec. 8, 1976) stay request.
Do.....	Navajo Refining Co., Washington, D.C. (If granted: The FEA would review the entitlements exception relief granted to Navajo Refining Co. during its 1976 fiscal year in order to determine whether the level of exception relief approved was appropriate.)	FEX-0113	Review of entitlements exception relief (supplemental order).
Do.....	Readygas Propane Service, Inc., Eldon, Mo. (If granted: FEA's Dec. 20, 1976, decision and order would be rescinded and Readygas Propane Service, Inc., would be assigned a new, lower priced supplier of propane on the basis that it is experiencing a serious hardship.)	FXA-1151	Appeal of FEA's decision and order in Readygas Propane Service, 4 FEA par. (Dec. 20, 1976).
Jan. 13, 1977	Commonwealth Natural Gas Corp., Lynchburg, Va. (If granted: Commonwealth Natural Gas Corp. would receive a temporary stay of the requirements of 10 CFR 211.83(e)(2)(v) and 211.10(g)(8) in order to permit it to purchase surplus propane for processing in Washington Gas & Light Co.'s propane-air facility.)	FST 0028	Temporary stay.
Do.....	Hudson Oil Co., Washington, D.C. (If granted: The FEA's Jan. 12, 1977, decision and order would be modified and Hudson Oil Co. would receive additional administrative relief in order to facilitate the acquisition by Hudson of a refinery which Midland Cooperatives owns in Cushing, Okla.)	FEX-0114	Supplemental order in Hudson Oil Co., 4 FEA par. ..... (Jan. 12, 1977).
Do.....	Marine Contractors & Supply, Inc., Houston, Tex. (If granted: Crude oil produced from the S. J. Simoneaux Lease would be sold at upper tier ceiling prices.)	FEE-3579	Price exception (sec. 212.74).
Do.....	Phillips Petroleum Co., Bartlesville, Okla. (If granted: Phillips Petroleum Co. would receive a stary of the requirements of an FEA special report order dated Dec. 3, 1976, with respect to the firm's exchanges involving refined petroleum products.)	FES-0059	Stay of FEA's special report order.
Do.....	Piedmont Natural Gas Co., Inc., Charlotte, N.C. (If granted: Piedmont Natural Gas Co., Inc., would receive an emergency allocation of propane on the basis that the severe winter has increased demand and the firm has been unable to obtain additional supplies of natural gas to maintain service to its customers.)	FST-0029	Temporary stay.
Do.....	Riddle Oil Co., San Antonio, Tex. (If granted: Riddle Oil Co. would receive an exception to the 60-day rule and would be permitted to retroactively increase prices for crude oil produced from the Bass lease in Victoria County, Tex. to upper tier levels.)	FEE-3580	Price exception (sec. 212.74).

[FR Doc.77-2752 Filed 1-25-77;9:43 am]

FEDERAL HOME LOAN BANK BOARD

ALTERNATIVE MORTGAGE INSTRUMENTS RESEARCH STUDY ADVISORY COMMITTEE

Meeting

JANUARY 27, 1977.

Pursuant to Section 10(a) of Pub. L. 92-463, entitled the Federal Advisory Committee Act, notice is here given by the Federal Home Loan Bank Board of the meeting of its Alternative Mortgage Instruments Research Study Advisory Committee on Wednesday, February 16 at the Mayflower Hotel, 1127 Connecticut Avenue, N.W., Washington, D.C.

The meeting of the Alternative Mortgage Instruments Research Study Advisory Committee is open to the public.

GRADY PERRY, Jr.,
Board Member.

AGENDA

Wednesday, February 16, 1977, 9 a.m. to 3:30 p.m., East Room, Mayflower Hotel, 1127 Connecticut Avenue, N.W., Washington, D.C.

I. INTRODUCTORY REMARKS (9 A.M.)

New Committee Members, Eli Shapiro.

II. REVIEW OF PROGRESS REPORT

Comments on Report of December 29, New Legislative Developments, Don Kaplan.

III. INDIVIDUAL PROJECT STATUS REPORTS (9:15 A.M. TO 12 M.)

(9:15) Demographic Study of Potential Demand for Alternative Mortgage Instruments (AMI's), Prof. James Smith, Yale University.

(9:45) National Survey of Borrower's Housing Characteristics, Attitudes and Preferences, Profs. Art Solomon and Kent Colton, MIT-Harvard Joint Center for Urban Studies.

(10) Coffee break.

(10:30) Economic Framework for Analyzing AMI's, Henry Cassidy and Al Field, OER, FHLBB.

(11) Analysis of Consumer Safeguards for AMI's, Prof. Maurice Weinrobe, Clark University.

(11:30) Accounting and Tax Policy Implications of AMI's: Origination and Servicing Cost Implications of AMI's, Frank Orschlager, Peat, Marwick, Mitchell & Co.

12 m.-1:15 p.m., Luncheon—Chinese Room, Mayflower Hotel.

(1:30) HUD Section 245 Experimental Finance Program—Graduate Payment Mortgages, Chet Foster, HUD.

(1:45) Reverse Annuity Mortgage Proposal, Prof. Jack Guttentag, Wharton School.

(2) California VRM Status Report, Dr. Mark Riedy, FHLB—San Francisco.

(2:15) Canadian Style Roll-Over Mortgage.

(2:30) Secondary Mortgage Market Analysis of AMI's, Ken Plant, FHLMC.

(2:45) VRM Consumer Survey in California, Jerry Albaum, Center for Capital Market Research, University of Oregon.

IV. CLOSING REMARKS (3 to 3:30 p.m.)

Other projects not discussed: National Survey of Current AMI Activty, Default and Foreclosure Analysis of AMI's, National Survey of Lender's Attitudes and Preferences on AMI's, Impact of AMI's on Housing Construction Activity, Analysis of AMI Price Relationships, Impact of AMI's on Conduct and Effect of Monetary Policy, Legal Analysis of AMI's.

Distribution and responses: Advisory Committee Meeting Transcript, Individual Project Study Drafts; Plans for Third Advisory Committee Meeting, Eli Shapiro and Don Kaplan.

3:30 p.m., adjourn.

[FR Doc.77-3088 Filed 1-28-77;8:45 am]

FEDERAL RESERVE SYSTEM

TRUST COMPANY OF GEORGIA

Acquisition of Bank

Trust Company of Georgia, Atlanta, Georgia, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 100 per cent (less directors' qualifying shares) of the voting shares of the successor by merger to The First National Bank of Albany, Albany, Georgia. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Atlanta. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than February 18, 1977.

Board of Governors of the Federal Reserve System, January 25, 1977.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc.77-2940 Filed 1-28-77;8:45 am]

TRUST COMPANY OF GEORGIA

Acquisition of Bank

Trust Company of Georgia, Atlanta, Georgia, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 100 per cent of the voting shares, less directors' qualifying shares, of the successor by merger to The First National Bank of Brunswick, Brunswick, Georgia. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. § 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Atlanta. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than February 23, 1977.

Board of Governors of the Federal Reserve System, January 25, 1977.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc.77-2941 Filed 1-28-77;8:45 am]

OFFICE OF THE FEDERAL REGISTER

FREEDOM OF INFORMATION INDEX REQUIREMENTS

Guide to Agency Material; January to December 1976

5 U.S.C. 552 (commonly called the Freedom of Information Act) requires agencies to maintain and make available for public inspection and copying current indexes providing identifying information for the public as to any matter issued, adopted, or promulgated after July 4, 1967, and required to be made available or published (5 U.S.C. 552(a)(2)). Certain amendments (Public Law 93-502, Nov. 21, 1974, 88 Stat. 1561) require the publication (with some exceptions) and distribution of these indexes at least quarterly. This guide has been compiled by the Office of the Federal Register from information submitted by agencies for the calendar year 1976 in order to notify the public of the availability of these indexes for sale and/or public inspection.

Agency and subagency name	Index title, period covered, brief description of contents	Order from; price; make checks payable to—	For inspection, copying, or additional information contact
Department of Agriculture, Agricultural Stabilization and Conservation Service.	ASCS handbooks: Current listing of all administrative staff manuals.	Director, Data Systems Division, ASCS, USDA, P.O. Box 2415, Washington, D.C. 20013. No charge.	Director, Data Systems Division, ASCS USDA, P.O. Box 2415, Washington, D.C. 20013.
Do	Marketing quota. Review committee determinations; 1970 to date; listing by crop-year of all decisions made on marketing quota appeals.	do	Do.
Do	Board of contract appeals decisions; 1970 to date; listing of all decisions on appeals affecting ASCS and or CCC.	do	Do.
Do	CCC Board dockets; 1969 to date; listing of all Commodity Credit Corporation dockets approved by the Secretary of Agriculture.	do	Do.
Do	ASCS program appeals; 1970 to date; chronological listing of all appeals handled by ASCS program appeals staff.	do	Do.
Department of Agriculture, Rural Electrification Administration.	Index of current REA publications: Electric Program, as of Apr. 6, 1976, with supplement thereto updating the index to Dec. 31, 1976. An alphabetic and numerical index of REA electric program bulletins, staff instructions, contract forms, and specifications.	Director, Information Services Division, Rural Electrification Administration, U.S. Department of Agriculture, Room 4043 South, Washington, D.C. 20250. No charge.	Director, Information Service Division, Rural Electrification Administration, U.S. Department of Agriculture, Room 4043 South, Washington, D.C. 20250.
Do	Index of current REA publications: Telephone as of Mar. 5, 1976, with supplement thereto updating the index to Dec. 31, 1976. An alphabetic and numerical index of REA telephone program bulletins, staff instructions, contract forms, specifications, sections of the Telephone Engineering and Construction and Telephone Operations manuals, and the rules and regulations of the Rural Telephone Bank.	do	Do.
Department of Defense, Department of the Air Force.	Numerical index of departmental forms (AFR 0-9). Aug. 6, 1976. Lists forms numerically within each category, including accountable forms, forms requiring storage safeguards, and obsolete forms.	DADF at nearest Air Force installation. Shelf stock. $2.76 per copy; reproduced copies, $5.50 per copy; shelf stock will be used while it lasts. Checks payable to: AFO (name of base furnishing copies).	DADF at nearest Air Force installation.
Do	Guide to indexes, catalogs, and lists of departmental publications (AFR 0-1). Sept. 1, 1974. Describes the indexes, catalogs, and lists of departmental publications; explains their use, tells how often they are revised, shows their distribution and gives the office of primary responsibility.	DADF at nearest Air Force installation. Shelf stock, $2.05 per copy; reproduced copies $2 per copy; shelf stock will be used while supply lasts. Checks payable to: AFO (name of base furnishing copies).	Do.
Do	Numerical index of standard publications and recurring periodicals (AFR 0-2). Oct. 1, 1976. Lists regulations, manuals, and pamphlets together under each subject series; lists visual aids and recurring periodicals separately.	DADF at nearest Air Force Installation. Shelf stock, $2.78 per copy; reproduced copies $5.90; shelf stock will be used while supply lasts. Checks payable to: AFO (name of base furnishing copies).	Do.
Do	Miscellaneous Air Force and other Government agency publications (AFR 0-16). Sept. 10, 1976. Lists a wide range of subjects of interest to the Air Force.	DADF at nearest Air Force installation. Shelf stock, $2.08 per copy; reproduced copies, $2.10 per copy; shelf stock will be used while supply lasts. Checks payable to: AFO (name of base furnishing copies).	Do.
Do	Publications Numbering Systems (AFR 5-4). February 15, 1974. Contains subject series and description guide and alphabetical list of subjects.	DADF at nearest Air Force installation. Shelf stock $2.15 per copy, reproduced copies $2.45 per copy; shelf stock will be used while it lasts. Checks payable to: AFO (name of base furnishing copies).	Do.
Do	Disposition of Air Force documentation (AFM 12-50). Oct. 1, 1969. Pt. 2 consists of decision logic tables which provide for disposition of documentation created or accumulated by all Air Force activities. Attachment 3 is an index to the tables, arranged alphabetically by title of the record.	DADF at nearest Air Force installation. Shelf stock will not be used. Pt. 2 is voluminous, therefore, only tables pertaining to requested records will be reproduced. $2. for 1st 6 pages, plus $0.05 for each additional page. Checks payable to: AFO (name of base furnishing copies).	Do.

Agency and subagency name	Index title: period covered, brief description of contents	Order from; price; make checks payable to—	For inspection, copying, or additional information contact
Department of Defense, Department of the Army, TAGCEN, Army Publications Directorate.	DA pamphlet 310-1: Index of administrative publications (regulations, circulars, pamphlets, posters, general orders, joint chiefs of staff publications.) Basic dated May 1975, with/change 1, Aug. 25, 1975.	Director, Army Publications Directorate, Forrestal Bldg., Washington, D.C. 20314. Price: $4.30. Payable to: Treasurer of United States.	Director, Army Publications Directo Forrestal Bldg., Washington, D.C. 20314.
Do	DA pamphlet 310-2: Index of blank forms, May 1974, with/change 1, December 1974.	Director, Army Publications Directorate, Forrestal Bldg., Washington, D.C. 20314. Price: $3.50. Payable to: Treasurer of United States.	Do.
Do	DA pamphlet 310-3: Index of doctrinal, training, and organizational publications (field manuals, reserve officer's training corps manuals, training circulars, Army training programs, Army subject schedules, Army training tests, firing tables and trajectory charts, tables of distribution and allowances). Basic dated May 1975.	Director, Army Publications Directorate, Forrestal Bldg., Washington, D.C. 20314. Price: $3.55. Payable to: Treasurer of United States.	Do.
Do	DA pamphlet 310-4: Index of technical manuals, technical bulletins, supply manuals (types 7, 8, and 9), supply bulletins, and lubrication orders. Basic dated November 1974, with change 3, October 1975.	Director, Army Publications Directorate, Forrestal Bldg., Washington, D.C. 20314. Price: $8.50. Payable to: Treasurer of United States.	Do.
Do	DA pamphlet 310-6: Index of supply catalogs and supply manuals. Basic dated July 1976.	Director, Army Publications Directorate, Forrestal Bldg., Washington, D.C. 20314. Price: $3.50. Payable to: Treasurer of United States.	Do.
Do	DA pamphlet 310-7: Index of Equipment Modification Work Orders, February 1976.	Director, Army Publications Directorate, Forrestal Bldg., Washington, D.C. 20314. Price: $3.50. Payable to: Treasurer of United States.	Do.
Defense Civil Preparedness Agency.	Publications catalog, MP-20: A listing of publications and other printed matter on the U.S. Civil Defense program available to the public. Contains a brief resume of each one and provides information on where to obtain.	U.S. Army Publications Center, Civil Preparedness Branch, 2800 Eastern Blvd. (Middle River), Baltimore, Md. 21220. No charge.	DCPA Headquarters, Room 1D511, Pentagon Bldg., Washington, D.C. 20301 or DCPA regional offices as shown at app. C, pt. 1813, ch. XVIII, title 32, CFR.
Do	DCPA manual 5450.2: Index of DCPA instructions and manuals, a listing, both numerical and subjective, of the Agency instructions announcing policy, outlining programs, and prescribing internal operating procedures.	do	Do.
Defense Communications Agency.	1. DCA circulars and notices: Enclosure 1 consists of 2 sections. Section A contains the index of current DCA circulars and notices. Those circulars, notices, and changes published during the period Jan. 1-June 30, 1976, are highlighted by a number sign (#) in the left margin. Section B contains a listing of those publications which have been canceled or replaced since Jan. 1, 1976, by a publication of a different number. Publications superseded by a revised issue bearing the same number are not included. Enclosure 2 is an alphabetical listing of current DCA circulars. Enclosure 3 is an alphabetical listing of current DCA Notices.	Defense Communications Agency, Washington, D.C. 20305. No charge.	Defense Communications Agency, 8th St. and South Courthouse Rd., Arlington, Va. 22204.
	2. DCA instructions: Enclosure 1 consists of 2 sections. Section A contains the index of current DCA instructions. Those instructions and changes published during the period Apr. 1 to Sept. 30, 1976, are highlighted by a number sign (#) in the left margin. Section B contains a listing of those instructions which have been canceled or replaced by an instruction of a different number since Apr. 1, 1976. Enclosure 2 is an alphabetical listing of current DCA instructions.		
Defense Nuclear Agency	Index to administrative publications, May 10, 1976, with changes. Description: Administrative instructions covering manpower, personnel, international programs, planning and readiness, R. & D., logistics, maintenance, transportation, general administration, organization and function, security, administrative services, public information, legal and legislative policies, comptrollership, budgeting, appropriations accounting and control, auditing, and reports control.	Defense Nuclear Agency, Attention: PAO, Washington, D.C. 20305. $1 by xeroxing, $0.35 by printing rtn. Payable to: Treasurer of the United States.	
Do	Government reports index: Biweekly, annual cumulation. Description: Indexes DNA and other Government-sponsored research and development reports prepared by Federal agencies or their contractors.	National Technical Information Service, Springfield, Va. 22161. $125 annual subscription rate. Payable to National Technical Information Service.	Director, Defense Nuclear Agency, Technical Library, Washington, D.C. 20305.
Defense Nuclear Agency, Armed Forces Radiobiology Research Institute.	Index of Armed Forces Radiobiology Research Institute (AFRRI) instructions, Nov. 10, 1975, with changes. Description: Listing of all AFRRI instructions in force.	Director, Armed Forces Radiobiology Research Institute, Attention: Administrative Officer, Defense Nuclear Agency, National Naval Medical Center, Bethesda, Md. 20014. 9 pages at $0.05 per page ($0.45). Checks payable to Treasurer of the United States.	
Defense Nuclear Agency, field command.	FCDNA instruction 5025.8J. Apr. 30, 1976 with changes. Description: Current index to field command instructions.	Field Command, Defense Nuclear Agency, Attention: Security Specialist, Support Directorate, Kirtland AFB, N. Mex. 87115. No charge.	
Defense Nuclear Agency, field command (FCDNA).	FCDNA instruction 5030.1D; Oct. 31, 1976. Description: Current index to FCDNA agreements, memoranda of understanding, and interservice agreements.	do	
Defense Nuclear Agency, field command, Johnston Atoll (FCJ).	FCJ instruction 5025.8A; Jan. 22, 1975 with changes. Description: Current index to FCJ instructions.	do	

Agency and subagency name	Index title: period covered, brief description of contents	Order from; price; make checks payable to—	For inspection, copying, or additional information contact
Defense Supply Agency	DSAH 5025.1, pt. I: Defense Supply Agency index of publications, July 1976, provides an alphabetical and numerical listing of DSA and DOD publications applicable to the Defense Supply Agency.	HQ DSA (DSAH-XMD), Bldg. 6, Door 26, Cameron Station, Alexandria, Va. 22314. Price: $2 minimum fee per order, plus $0.01 per printed page. Payable to: Defense Supply Agency.	HQ DSA, Attention: DSAH-XA, Room 5A119, Cameron Station, Alexandria, Va. 22314.
Do	DSAH 5025.1, pt. II: Quarterly listing of numbered letters, October 1976, provides a listing of interim issuances and numbered letters for the period ending Sept. 30, 1976.	do	Do.
Do	DSAH 5025.1, pt. III: Index of Federal catalog system publications, July 1976, provides a numerical listing of cataloging handbooks, Federal item identification guides, identification lists, master cross-reference lists, and related publications.	Defense Logistics Services Center, Attention: DLSC-AP, Federal Center, Battle Creek, Mich. 49016. Price: $2 minimum fee per order, plus $0.01 per printed page. Payable to: U.S. Treasury Department.	Defense Logistics Services Center, Attention: DLSC-TD, Room 1-9-7, Federal Center, Battle Creek, Mich. 49016.
Do	DSAH 5025.6: Index of forms, July 1976, is a listing of DSA and DD forms used by DSA.	HQ DSA (DSAH-XMD), Bldg. 6, Door 26, Cameron Station, Alexandria, Va. 22314. Price: $2 minimum fee per order, plus $0.01 per printed page. Payable to: Defense Supply Agency.	HQ DSA, Attention: DSAH-XA, Room 5A119, Cameron Station, Alexandria, Va. 22314.
Defense Supply Agency, Defense General Supply Center.	Index of publications: Current listing of policy statements, regulations, handbook, manuals, directives, letters, supplements, procedures, and clause manual.	Commander, Defense General Supply Center, attention of DGSC-B, Richmond, Va. Reproduced copies $2. Treasurer of the United States.	Public Affairs Officer, Defense General Supply Center, Richmond, Va. 23297.
Department of Health, Education, and Welfare, Food and Drug Administration (HEW/FDA).	Administrative Guidelines Manual. Jan. 1, 1973. Provides guidance to personnel responsible for regulatory decisions. Contains regulatory tolerances and guidance, and authorization for direct action by the field in areas of seizure, citation, and prosecution.	Supervisor, Public Records and Documents Center (HFC-18), 5600 Fishers Lane, Rockville, Md. 20852. No charge.	Supervisor, Public Records and Documents Center (HFC-18), Room 4-62, FDA, 5600 Fishers Lane, Rockville, Md. 20852.
Do	Bureau of Foods Staff Manual Guide. Primarily concerned with the preparation of and review of documents within the Bureau of Foods.	Supervisor, Public Records and Documents Center (HFC-18), 5600 Fishers Lane, Rockville, Md. 20852. $10. Checks payable to Food and Drug Administration.	Do.
Do	Bureau of Drugs staff manual guide. Primarily concerned with the preparation of and review of documents within the Bureau of Drugs.	Supervisor, Public Records and Documents Center (HFC-18), 5600 Fishers Lane, Rockville, Md. 20852. $21.50. Checks payable to Food and Drug Administration.	Do.
Do	Compliance Policy Guides. Provides a system for the issuing, filing, and retrieval of all official statements of FDA compliance policy.	Supervisor, Public Records and Documents Center (HFC-18), 5600 Fishers Lane, Rockville, Md. 20852. No charge.	Do.
Do	Compliance Program Guidance Manual. Provides general guidance to the field as to how certain industries will be inspected, sampled, etc., during a fiscal year. Programs within this manual assign the number of inspections or samples to be done within a specific industry. Over 3,000 pages.	Supervisor, Public Records and Documents Center (HFC-18), 5600 Fishers Lane, Rockville, Md. 20852. 10 cents per page. (Suggest before ordering, to request transmittal checklist to ascertain programs needed.) Checks payable to Food and Drug Administration.	Do.
Do	Drug autoanalysis manual. Provides content uniformity test specifications in USP XVII and NFX II. Provides assurance of homogeneity within a single lot for a safe and effective drug supply. Specifications are for all tablet monographs where the active ingredient is present in low quantities (usually 50 mg or less).	Supervisor, Public Records and Documents Center (HFC-18), 5600 Fishers Lane, Rockville, Md. 20852. No charge.	Do.
Do	ERDO data code manual. Lists computer code information for programs management system project (PMS) which is used for reporting project information into the program oriented data system (PODS).	Supervisor, Public Records and Documents Center (HFC-18), 5600 Fishers Lane, Rockville, Md. 20852. $15. Checks payable to Food and Drug Administration.	Do.
Do	Field management directives. Used by the field staff to transmit FDA field policy in the areas of operations management, planning and budget guidance, program management, and State program management which gives policy information.	do	Do.
Do	Food additives analytical manual. Presents a compilation of analytical methodology for additives authorized for use. Compilation consists of methods for additives which can be used only as permitted in foods for human consumption and in feeds and drinking water of animals or treatment of food-producing animals.	Supervisor, Public Records and Documents Center (HFC-18), 5600 Fishers Lane, Rockville, Md. 20852. No charge.	Do.
Do	Hazard Analysis and Critical Control Point—A System for Inspection of Food Processors. Explains the hazard analysis and critical control point procedure. Used for overseeing industry's processing practices in order to provide the consumer with the best assurances possible of quality control in processing foods.	Supervisor, Public Records and Documents Center (HFC-18), 5600 Fishers Lane, Rockville, Md. 20852. $131.95. Checks payable to Food and Drug Administration.	Do.
Do	Inspector Operations Manual. Provides FDA personnel with standard operating inspectional and investigational procedures. Contains instructions needed by operating inspectors and investigators. Contains authorities, objectives, responsibilities, policies, and guides.	Supervisor, Public Records and Documents Center (HFC-18), 5600 Fishers Lane, Rockville, Md. 20852. $25. Checks payable to Food and Drug Administration.	Do.
Do	Inspector Training Manual. Basic training manual for food and drug inspectors and inspection technicians to provide the field with uniform approach to the administration of basic training.	Supervisor, Public Records and Documents Center (HFC-18), 5600 Fishers Lane, Rockville, Md. 20852. $15. Checks payable to Food and Drug Administration.	Do.
Do	Inspector's Manual for State Food and Drug Officials. Divided into 2 parts (1) Operations manual with information applicable to sample collection, inspections, and investigations in all fields of food and drug work; (2) commodities manual divided into specific types of food commodities. Manual for official use of State and local food and drug enforcement officers only.	Supervisor, Public Records and Documents Center (HFC-18), 5600 Fishers Lane, Rockville, Md. 20852. $65. Checks payable to Food and Drug Administration.	Do.

Agency and subagency name	Index title: period covered, brief description of contents	Order from; price; make checks payable to—	For inspection, copying, or additional information contact
Department of Health, Education, and Welfare, Food and Drug Administration (HEW/FDA).	Inspector's Technical Guide. To provide a medium for making all FDA inspectors aware of selected technical information not previously available on a broad scale.	Supervisor, Public Records and Documents Center (HFC-18) 5600 Fishers Lane, Rockville, Md. 20852. $5.20. Payable to Food and Drug Administration.	Supervisor, Public Records and Documents Center (HFC-18) Room 4-62, FDA, 5600 Fishers Lane, Rockville, Md. 20852.
Do	Laboratory Operations Manual. Provides day-to-day guide for laboratory directors and supervisors. Reflects the science advisor program and district laboratory relationships with BDAC field offices and disposition of consumer complaint samples.	Supervisor, Public Records and Documents Center (HFC-18), 5600 Fishers Lane, Rockville, Md. 20852. $17.50. Checks payable to Food and Drug Administration.	Do.
Do	Pesticide Analytical Manual. Brings together the procedures and methods used in the FDA laboratories for surveillance of the extent and significance of contamination of man and his environment by pesticides and their metabolites.	Supervisor, Public Records and Documents Center (HFC-18), 5600 Fishers Lane, Rockville, Md. 20852. No charge.	Do.
Do	Quantity of contents compendium. Used to measure acceptable levels of shrinkage in food containers. Manual divided into 2 parts: (1) Contains procedures for measuring fill-of-container, statistical evaluation acceptable common or usual declaration of quantity of contents; (2) contains information on sampling where special techniques are required.	Supervisor, Public Records and Documents Center (HFC-18), 5600 Fishers Lane, Rockville, Md. 20852. $25. Checks payable to Food and Drug Administration.	Do.
Do	Regulatory Procedures Manual. Provides guidance on regulatory policy and supporting processing procedures.	Supervisor, Public Records and Documents Center (HFC-18), 5600 Fishers Lane, Rockville, Md. 20852. $85. Checks payable to Food and Drug Administration.	Do.
Do	Staff Manual Guides—Organization and Delegations. Contains directives issued by the Food and Drug Administration to establish policy, organization, procedures or responsibilities in the administrative area. Used to issue continuing instructions or information and remains in effect until rescinded or superseded.	Supervisor, Public Records and Documents Center (HFC-18), 5600 Fishers Lane, Rockville, Md. 20852. Vol. I, $60; Vol. II, $60; Vol. III, $30. Checks payable to Food and Drug Administration.	Do.
Do	Supervisory Inspectors Guide. Designed to furnish supervisory inspectors with guidelines to assist them in performing their duties.	Supervisor, Public Records and Documents Center (HFC-18), 5600 Fishers Lane, Rockville, Md. 20852. $28.50. Checks payable to Food and Drug Administration.	Do.
Do	Index to Administrative Staff Manuals. Current listing of all staff manuals with indexes and/or table of contents and costs.	Supervisor, Public Records and Documents Center (HFC-18), 5600 Fishers Lane, Rockville, Md. 20852. $20. Checks payable to Food and Drug Administration.	Do.
Do	Statements of policy and interpretations adopted by FDA and not published in the FEDERAL REGISTER.	Supervisor, Public Records and Documents Center (HFC-18), 5600 Fishers Lane, Rockville, Md. 20852. $5.90. Payable to Food and Drug Administration.	Do.
Department of Health, Education, and Welfare, National Institutes of Health (NIH).	NIH Freedom of Information Act index: from July 4, 1967-Mar. 31, 1976, includes items in the following categories: (1) administrative manuals and memorandum, (2) animal resources and programs, (3) audio-visuals policy and criteria, (4) clinical center operations, (5) contracts policy and guides, (6) employee and committee member handbooks and manuals, (7) grants policy and guides, (8) library resources and guidelines, (9) minority programs, (10) patient policy, (11) research centers guides, (12) safety guides and permits, and (13) site visit formats.	In addition to copies of the NIH EOIA index maintained by HEW, NIH will make photocopies available if requests are forwarded to: Associate Director for Communications, NIH, Building 1, Room 309, 9000 Rockville Pike, Bethesda, Md. 20014. Fees, as prescribed in 45 CFR 5.61, are 10 cents per page with the charge being made if the total amount exceeds $5. Checks payable to: DHEW—National Institutes of Health.	Associate Director for Communications, NIH, Building 1, Room 309, 9000 Rockville Pike, Bethesda, Md. 20014. (301) 496-4461.
Department of Health, Education, and Welfare, Public Health Service, Alcohol, Drug Abuse, and Mental Health Administration.	The ADAMHA Freedom of Information Act Index is comprised of various ADAMHA component program guidelines, handbook listings, policy supplements, instructions, and manual materials. The index is divided to reflect the various ADAMHA components, namely the National Institute on Alcohol Abuse and Alcoholism, the National Institute on Drug Abuse, the National Institute of Mental Health, including Saint Elizabeths Hospital, and the Office of the Administrator.	Copies of the ADAMHA Freedom of Information Act index are maintained by the HEW, FOI Officer, Room 5300, HEW North Bldg., 330 Independence Ave., SW., Washington, D.C. 20201. ADAMHA will also make copies available if requests are forwarded to: Director, OCPA, ADAMHA, Parklawn Bldg., Room 16-95, 5600 Fishers Lane, Rockville, Md. 20852. Fees are 10¢ per page with the charge being made if the total amount exceeds $5 and are payable to Treasurer of the United States.	Director, Office of Communications and Public Affairs, Parklawn Bldg., Room 16-95, 5600 Fishers Lane, Rockville, Md. 20852.
Department of Health, Education, and Welfare, Public Health Service, Center for Disease Control (HEW/PHS/CDC).	A written description of the general preventive medicine residency program, dated Apr. 29, 1976. Residency assignments, qualifications, appointments, and supervision, as outlined in this document.	Center for Disease Control, Attention: Assistant Director for Operations, Atlanta, Ga. 30333. No charge for 1 copy.	Center for Disease Control, Assistant Director for Operations, 1600 Clifton Rd. NE., Atlanta, Ga. 30333.
Do	Memorandum dated July 7, 1975. Subject: Medical care, resource personnel. This is the written procedure for handling telephone calls regarding the medical care of certain individuals.	Center for Disease Control, Attention: Director, Office of Biosafety, Atlanta, Ga. 30333. No charge for 1 copy.	Center for Disease Control, Office of Biosafety, 1600 Clifton Rd. NE., Atlanta, Ga. 30333.
Do	Memorandum dated Apr. 27, 1976. Subject: Hot line, 633-5313. This is the written procedure for handling reports of damage to packages of infectious materials.	do	Do.
Do	Staff publications booklet: An annual bibliographical listing of contributions made by the CDC staff to medical and scientific literature during the previous year.	Center for Disease Control, Attention: Director, Office of Information, Atlanta, Ga. 30333. No charge for 1 copy.	Center for Disease Control, Office of Information, 1600 Clifton Rd. NE., Atlanta, Ga. 30333.
Do	Minutes of meetings and annual reports of following public advisory committees: Coal Mine Health Research Advisory Committee, Safety and Occupational Health Study Section, Immunization Practices Advisory Committee, Medical Laboratory Services Advisory Committee, Tuberculosis Control Advisory Committee.	Center for Disease Control, Attention: Director, Management Analysis Office, Atlanta, Ga. 30333. No charge for 1 copy.	Center for Disease Control, Management Analysis Office, 1600 Clifton Rd. NE., Atlanta, Ga. 30333.
Do	Morbidity and mortality weekly reports. In addition to providing informational morbidity and mortality data on diseases, these reports prescribe policies and interpret policies relative to prevention of diseases as well as health requirements that are covered by regulations.	Center for Disease Control, Attention: Director, Bureau of Epidemiology, Atlanta, Ga. 30333. No charge for 1 copy.	Center for Disease Control, Bureau of Epidemiology, 1600 Clifton Rd. NE., Atlanta, Ga. 30333.

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Department of Health, Education, and Welfare, Public Health Service, Center for Disease Control (HEW/PHS/CDC).	Annual report to Congress regarding smoking and health.	Center for Disease Control, Attention: Director, Bureau of Health Education, Atlanta, Ga., 30333. No charge for 1 copy.	Center for Disease Control, Bureau of Health Education, 1600 Clifton Rd. NE., Atlanta, Ga. 30333.
Do	"Current Items". This publication from the Bureau of Laboratories is directed generally to heads of State or local laboratories. The publication includes technical procedures and informational data.	Center for Disease Control, Attention: Director, Bureau of Laboratories, Atlanta, Ga. 30333. No charge for 1 copy.	Center for Disease Control, Bureau of Laboratories, 1600 Clifton Rd. NE. Atlanta, Ga. 30333.
Do	National Institute for Occupational Safety and Health (NIOSH) policy memorandum, dated Sept. 11, 1974, on trade secret information.	Director, National Institute for Occupational Safety and Health, Park Bldg., Room 3-30, 5600 Fishers Lane, Rockville, Md. 20852. No charge for 1 copy.	Director, National Institute for Occupational Safety and Health, Park Bldg., Room 3-30, 5600 Fishers Lane, Rockville, Md. 20852.
Do	"NIOSH Policy Letter", dated Nov. 5, 1973, regarding reimbursement to an employer for financial loss (production time; pay) incurred as a result of a NIOSH research project.	do	Do.
Do	The President's report on occupational safety and health, annual report for 1974. This report covers programs of the Department of Labor; Department of Health, Education, and Welfare; and the Occupational Safety and Health Review Commission for calendar year 1974. It contains results of the 1st full year of occupational injury and illness survey.	do	Do.
Do	The Federal coal mine health program in 1973. This is a report of health activities under the Federal Coal Mine Health and Safety Act of 1969.	do	Do.
Do	The Division of Training, National Institute for Occupational Safety and Health, Center for Disease Control, announcement of courses that are available to the public. HEW publication No. (NIOSH) 75-170.	do	Do.
Do	The National Institute for Occupational Safety and Health current intelligence bulletin. This current bulletin alerts members of the occupational health community, government, labor, and industry to new information on potential occupational health hazards.	do	Do.
Do	Proposed interim program guidelines for venereal disease control, dated March 1975.	Center for Disease Control, Attention: Director, Bureau of State Services, Atlanta, Ga. 30333. No charge for 1 copy.	Center for Disease Control, Bureau of State Services, 1600 Clifton Rd. NE., Atlanta, Ga. 30333.
Do	Venereal disease review criteria, dated Dec. 10, 1971.	do	Do.
Do	Recommended treatment schedules for syphilis, dated 1976.	do	Do.
Do	Gonorrhea, CDC recommended treatment schedules, dated 1974.	do	Do.
Do	Commentary on national strategies to control gonorrhea, dated July 1975.	Center for Disease Control, Attention: Director, Bureau of State Services, Atlanta, Ga. 30333. No charge for 1 copy.	Center for Disease Control, Bureau of State Services, 1600 Clifton Rd. NE., Atlanta, Ga. 30333.
Do	Program guidelines for the influenza immunization project grants, dated Apr. 14, 1976.	do	Do.
Do	Community-wide influenza compaign, achieving public response.	do	Do.
Do	Influenza immunization operations workbook, dated May 1976.	do	Do.
Do	Supplemental guidelines on informed consent for influenza immunization project grants, dated June 21, 1976.	do	Do.
Do	Guidelines for assessing immunity levels, dated November 1973.	do	Do.
Do	Immunization Against Disease, 1972 handbook.	do	Do.
Do	Directions for use of PHS PPD products for use in tuberculosis control programs, dated January 1971.	do	Do.
Do	Preventive therapy of tuberculosis infection, dated February 1975.	do	Do.
Do	Memorandum dated Nov. 7, 1975, regarding duration of preventive therapy with isoniazid.	do	Do.
Do	Summary of the report of the Ad Hoc Advisory Committee on Isoniazid and Liver Disease, dated Mar. 19, 1971.	do	Do.
Do	Memorandum dated Nov. 15, 1971, regarding tuberculin PPD-T distributed by CDC.	do	Do.
Do	Statement on preventive treatment of tuberculosis, dated June 25, 1971.	do	Do.
Do	Concepts and evaluation measures recommended by an ad hoc committee on evaluation of tuberculosis, dated September 1971.	do	Do.
Do	Memorandum dated Jan. 13, 1972, regarding PPD-tuberculin and PPD-Battey distributed by CDC.	do	Do.
Do	Memorandum dated Nov. 21, 1972. Subject: Liver disease among recipients of isoniazid chemoprophylaxis under special surveillance—preliminary report.	do	Do.
Do	Memorandum dated Dec. 15, 1972. Subject: Liver disease among recipients of isoniazid chemoprophylaxis under special surveillance—followup report.	do	Do.
Do	Memorandum dated Jan. 23, 1973. Subject: Liver disease among recipients of isoniazid chemoprophylaxis under special surveillance—followup report.	do	Do.
Do	Memorandum dated Jan. 29, 1973, regarding PPD-tuberculin and atypical mycobacterial PPD antigens.	do	Do.

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Department of Health, Education, and Welfare, Public Health Service, Center for Disease Control (HEW/PHS/CDC).	Guidelines for prevention of TB transmission in hospitals, dated September 1974.	Center for Disease Control, Attention: Director, Bureau of State Services, Atlanta, Ga. 30333. No charge for 1 copy.	Center for Disease Control, Bureau of State Services, 1600 Clifton Rd. NE., Atlanta, Ga. 30333.
Do	Suggested tuberculosis nurse functions in a nurse directed clinic, dated April 1974.	do	Do.
Do	Recommendations for health department supervision of tuberculosis patients—MMWR, dated Feb. 23, 1974.	do	Do.
Do	Equipment and procedures for erythrocyte protoporphyrin (EP) analysis as a screening method for pediatric lead poisoning, dated Feb. 3, 1975.	do	Do.
Do	Urban rat survey—guidelines for classroom use and field training of inspectors who serve in community rodent control programs, dated March 1974.	do	Do.
Do	Urban rat control project grants program guidelines for applicants, dated 1975.	do	Do.
Do	Guidelines for grant applications. Childhood lead poisoning control, dated Mar. 14, 1974.	do	Do.
Do	Policy statement—laboratories performing blood lead determination for community programs receiving lead-based paint poisoning grant funds, dated 1972.	do	Do.
Do	Increased lead absorption and lead poisoning in young children. A statement by the Center for Disease Control, dated March 1975.	do	Do.
Do	Policy and procedures for shipping and lending federally owned XRF analyzers, Mar. 26, 1973.	do	Do.
Do	The "Training Bulletin," which is published every 18 mo. This document lists each of the headquarters, field, or home-study courses that are available through the auspices of CDC during that time period. Specific information is presented that identifies prerequisites for attendance and describes the nature of each course.	Center for Disease Control Attention: Director, Bureau of Training, Atlanta, Ga. 30333. No charge for 1 copy.	Center for Disease Control, Bureau of Training, 1600 Clifton Rd. NE., Atlanta, Ga. 30333.
Do	Final denials, revocations, suspensions and limitations of licenses, and letters of exemptions to laboratories subject to the Clinical Laboratories Improvement Act of 1967.	Center for Disease Control, Attention: Bureau of Laboratories, Atlanta, Ga. 30333. No charge for 1 copy.	Center for Disease Control, Bureau of Laboratories, 1600 Clifton Rd. NE., Atlanta, Ga. 30333.
Do	Administrative issuance. Facilities Engineering and Construction Manual, ch. CDC: 3-335, dated May 1, 1972. This issuance provides rules and regulations covering CDC buildings and grounds. It applies to CDC employees and also to visitors, solicitors, etc.	Center for Disease Control, Attention: Management Analysis Office, Atlanta, Ga. 30333. No charge for 1 copy.	Center for Disease Control, Management Analysis Office, 1600 Clifton Rd. NE., Atlanta, Ga. 30333.
Do	Administrative issuance. Manual Guide—General Administration No. CDC-57, dated Nov. 13, 1970. This issuance provides policy and procedures to CDC employees for claims including those against CDC or against CDC employees as a result of their official duties.	do	Do.
Do	Administrative issuance. Manual Guide—General Administration No. CDC-1, dated Sept. 30, 1970. This issuance provides policy and procedures for conferences including those cosponsored by CDC and an organization other than a Federal agency.	do	Do.
Do	Administrative issuance. Manual Guide—ADP Systems No. CDC-1, dated Apr. 22, 1971. This issuance specifies the type of information for CDC organizations to furnish CDC computer systems office for determination as to whether a contract should be entered into with an outside source to perform the ADP services or whether the work can be performed within the Center.	do	Do.
Do	Administrative issuance. CDC General Memorandum No. 74-9, dated June 20, 1974. This issuance specifies rates for the Center to pay for blood.	do	Do.
Do	Administrative issuance. Procurement Manual Subpart CDC: 3-75.3, dated May 12, 1972. This issuance specifies CDC delegations of authority for publication of advertisements, notices, or proposals.	do	Do.
Do	Administrative issuance. Manual Guide—Printing Management No. CDC-6, dated Nov. 5, 1969. This issuance provides CDC policies and procedures for procurement of CDC authored articles which are to be published in private journals and briefly mentions publishers' services, e.g., setting of type, sending proofs, etc.	do	Do.
Do	Administrative issuance. National Institute for Occupational Safety and Health Administrative Issuance No. 406, dated Sept. 3, 1974. This issuance describes contents and documentation needed for research and technical services contract requests for NIOSH.	do	Do.
Do	Administrative issuance. Procurement Manual Subpart CDC: 3-3.6, dated Sept. 21, 1970. This issuance prescribes CDC policies and procedures for small purchases particularly through use of imprest funds, and briefly mentions vendors' role.	do	Do.

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Department of Health, Education, and Welfare, Public Health Service, Center for Disease Control (HEW/PHS/CDC).	Administrative issuance. CDC General Memorandum No. 76-8, dated Sept. 22, 1976. This issuance provides instructions to CDC employees for obtaining typewriter repair service and lists individual companies under contract to make repairs.	Center for Disease Control, Attention: Management Analysis Office, Atlanta, Ga. 30333. No charge for 1 copy.	Center for Disease Control, Management Analysis Office, 1600 Clifton Rd. NE., Atlanta, Ga. 30333.
Do	Administrative issuance. CDC General Memorandum No. 74-1, dated Jan. 16, 1974. This issuance specifies CDC policies and procedures on unauthorized commitments and for obtaining approval for such commitments.	do	Do.
Do	Administrative issuance. Manual Guide—General Administration No. CDC-52, dated Mar. 12. 1973. This issuance provides policies and procedures for handling public inquiries to CDC during nonwork hours.	do	Do.
Do	Administrative issuance. Manual Guide—General Administration No. CDC-18, dated Mar. 6, 1969. This issuance provides CDC policies and procedures for obtaining clearance of CDC authored manuscripts, publications, etc., and includes policy on responding to requests from the press, etc.	do	Do.
Do	Administrative issuance. CDC General Memorandum No. 72-3, dated Feb. 9, 1972. This issuance provides policies and general guidelines to CDC employees on giving assurances of confidentiality in obtaining information from the public.	do	Do.
Do	Administrative issuance. Manual Guide—Personal Property Management Na. CDC-2, dated Apr. 17, 1969. This issuance provides CDC policies and procedures for producing, maintaining, shipping, and storing exhibits and includes procedures for production o exhibits by commercial contractors.	do	Do.
Do	Administrative issuance. Manual Guide—Safety Management No. CDC-19, dated Mar. 18, 1974. This issuance provides policy to CDC employees for distribution of cultures of microbial agents and of vectors to non-CDC persons.	do	Do.
Do	Administrative issuance. Manual Guide—Safety Management No. CDC-2, dated Dec. 15, 1975. This issuance provides policy on the need for and use of hasard warning signs that applies to CDC employees and also to visitors.	do	Do.
Do	Administrative issuance. Manual Guide—Safety Management No. CDC-3, dated June 18, 1973. This issuance provides policies on and procedures for handling compressed gases in cylinders. It applies to CDC employees and also certain policies and procedures apply to vendors.	do	Do.
Do	Administrative issuance. Personnel Guides for Supervisors, chapter IV, CDC Guide 7-2, dated Mar. 12, 1968, but still current. This issuance provides CDC policies and procedures for handling complaints on employee indebtedness.	do	Do.
Do	Administrative issuances. Manual Guide—General Administration No. CDC-5, dated Apr. 8, 1971 and National Institute for Occupational Safety and Health Administrative Issuance No. 2, dated Mar. 4, 1974. These issuances provide policies and procedures for making CDC and NIOSH facilities available to guest researchers.	do	Do.
Do	Administrative issuance. Manual Guide—General Administration No. CDC-61, dated Apr. 26, 1972. This issuance provides CDC policies and procedures for providing to students work experiences which relate to the CDC mission and to the educational objectives of the students.	do	Do.
Do	Administrative issuance. National Institute for Occupational Safety and Health unnumbered memorandum, dated Mar. 4, 1974. This issuance provides NIOSH policy on loan of property to non-Federal persons or institutions.	do	Do.
Do	Administrative issuances. Manual Guide—General Administration No. CDC-11, dated June 8, 1973 and National Institute for Occupational Safety and Health policy memorandum, dated June 25, 1973. These issuances provide policies and procedures for the protection of the individuals who are participating or involved in research investigations of the Center and of NIOSH, respectively.	do	Do.
Do	Administrative issuance. Manual Guide—Travel CDC-10, dated Dec. 26, 1972. This issuance provides CDC policy and procedures for employees renting automobiles for official travel and mentions services provided by the car rental contractors and the conditions of the contracts.	do	Do.
Do	Administrative issuances. Manual Guide—Travel No. CDC-2 dated Jan. 14, 1974 and Correspondence Manual Chapter 10-40, dated Oct. 1, 1974. These issuances provide instructions to CDC employees for making reservations on common carriers and for picking up the tickets. They list the airlines and their telephone numbers.	do	Do.

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Department of Health, Education, and Welfare, Public Health Service, Center for Disease Control (HEW/PHS/CDC).	Administrative issuance. Manual Guide—General Administration No. CDC-63, Privacy Act, dated Nov. 23, 1976. This issuance provides to CDC employees guidance on carrying out requirements of the act.	Center for Disease Control, Attention: Management Analysis Office, Atlanta, Ga. 30333. No charge for 1 copy.	Center for Disease Control, Management Analysis Office, 1600 Clifton Rd. NE., Atlanta, Ga. 30333.
Do	Administrative issuance. CDC general memorandum No. 75-10. Freedom of Information Act, dated July 25, 1975. This issuance provides general information to CDC employees on major provisions of the act, procedures for responding to requests for information under the act, and brief data to the CDC employees on the Privacy Act.	do	Do.
Do	Administrative issuance. CDC general memorandum No. 75-2, civil defense, dated April 2, 1975. This issuance provides information on the civil defense capecity and equipment of the CDC facilities in the Atlanta area that are officially designated to be used as public shelter areas under the national fallout shelter program.	do	Do.
Do	Administrative issuance. CDC unnumbered memorandums, parking at Clifton Rd. facilities, dated July 14, 1975 and Jan. 20, 1976. These issuances provide policy for CDC employees and visitors parking at the Clifton Rd. facilities, Center for Disease Control.	do	Do.
Do	Administrative issuance. CDC unnumbered memorandum, directory of licensed day-care facilities in the Metropolitan Atlanta area, dated Mar. 15, 1976. This issuance provides a listing of these facilities.	do	Do.
Do	Administrative issuance. CDC unnumbered memorandum, injury compensation, dated Sept. 15, 1975. This issuance provides procedures for CDC employees to follow to document on-the-job traumatic injuries, including submission of reports from attending physicians.	do	Do.
Do	Administrative issuance. Manual guide—general administration No. CDC-8, soliciting, vending, and displaying or distributing commercial advertising within CDC, dated Apr. 23, 1975. This issuance provides policy for soliciting, vending, and commercially advertising on property occupied by CDC.	do	Do.
Do	Administrative issuance. Personnel guide for supervisors, ch. III, CDC guide 1-2, commercial employment offices, dated Jan. 7, 1976. This issuance provides policy on using commercial employment offices for recruiting personnel.	do	Do.
Do	Administrative issuance. Personnel guide for supervisors, ch. III, CDC guide 1-9, dated Feb. 26, 1976. This issuance provides policies, responsibilities, and procedures for the selective placement program for handicapped employees and disabled veterans.	do	Do.
Do	Administrative issuance. National Institute for Occupational Safety and Health Administration, issuance No. 5, dated Apr. 15, 1976. This issuance provides policies and procedures for keeping interested governmental, labor, and management groups informed on the initiation and progress of NIOSH field studies.	do	Do.
Do	Administrative issuance. National Institute for Occupational Safety and Health Administration issuance No. 8, dated Oct. 30, 1975. This issuance provides procedures for maintenance of minutes of NIOSH meetings with representatives of nongovernmental groups.	do	Do.
Do	Recommendations of the Public Health Service Advisory Committee on Immunization Practices, such as: BCG vaccines, cholera vaccine, diphtheria and tetanus toxoids and pertussis vaccine, immune serum globulin for protection against viral hepatitis, perspectives on the control of viral hepatitis, type B, influenza vaccine, measles vaccine, meningococcal polysaccharide vaccines, mumps vaccine, plague vaccine, poliomyelitis vaccines, rabies, Rh immune globulin, Rocky Mountain spotted fever vaccine, rubella vaccine, smallpox vaccine, typhoid vaccine, typhus vaccine, yellow fever vaccine.	Center for Disease Control, Attention: Director, General Services Office, Atlanta, Ga. 30333. No charge for 1 copy.	Center for Disease Control, General Services Office 1600 Clifton Rd., NE., Atlanta, Ga. 30333.
Department of Health, Education, and Welfare, Public Health Service, Health Resources Administration (HEW/PHS/HRA).	Health Resources Administration index of policy documents as required by Public Law 90-23 (Freedom of Information). July 1, 1973, to Oct. 1, 1976. The HRA FOIA index is a listing of the following HRA documents: HRA policy, information, and instruction memoranda; supplements and circulars to the Federal personnel and HEW staff manuals; Federal regulations; delegations of authority; organization and functions statements; programmatic circulars, memoranda, instructions, notices, guides, guidelines, and operating manuals used by HRA components.	Associate Administrator, Office of Communications, Health Resources Administration, Room 10A-31, Parklawn Bldg., 5600 Fishers Lane, Rockville, Md. 20857. Fees, as prescribed in 45 CFR 5.61, are 10c per page with the charge being made if the total amount exceeds $5. Check payable to DHEW-Health Resources Administration.	Associate Administrator, Office of Communications, Health Resources Administration Room 10A-31, Parklawn Bldg., 5600 Fishers Lane, Rockville, Md. 20857, (301) 443-1620

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Department of Health, Education, and Welfare, Public Health Service, Health Services Administration (HEW/PHS/HSA).	HSA Freedom of Information Act (FOIA) Index: March 1975 to December 1976. The HSA, FOIA index is a compilation of supplements to the departmental manual system, program level operations manuals, circulars, memoranda, notices and guides used by the components of HSA. All information included in this index is current as of Dec. 31, 1976. The respective bureau level indexes are listed as follows: OA—OFFICE OF THE ADMINISTRATOR OCPA—Public Affairs Management System Manual; OPEL—HSA forward plan, fiscal year 1977-81; OM/OCO—HSA procurement operating instructions; OM/OMP—HSA transmittal notices for supplements to DHEW manuals; OM/OFS—policy decisions and opinion. BMS—BUREAU OF MEDICAL SERVICES Division of Hospitals and Clinics Operations Manual; BMS supplements to DHEW manuals; Manual of Operations for PHS Health Unit, DFEH, BMS; CHAMPUS circulars; Contract Physician's Guide; Division of Hospitals and Clinics circular memoranda. IHS—INDIAN HEALTH SERVICES IHS circulars; IHS supplements to DHEW manuals; IHS Operations Manual; General Counsel opinions. BCHS—BUREAU OF COMMUNITY HEALTH SERVICES BCHS administrative guide system; BCHS Operations Manual. BQA—BUREAU OF QUALITY ASSURANCE BQA transmittal system; BQA Procedures Manual; PSRO Program Manual; PSRO Financial Management and Accounting Systems Manual; PSRO Contracts Management Manual; PSRO Management Information System (PMIS) Federal Reports Manual (FRM) medical care evaluation studies; PMIS—FRM—cost reporting; PMIS—FRM—concurrent review reporting; PSRO Hospital Discharge Data Set (PHDDS) Training Manual.	Office of Communications and Public Affairs, DHEW/PHS/HSA, Room 14A-55, 5600 Fishers Lane, Rockville, Md. 20852. Checks payable to DHEW/Public Health Service. Mail to HSA Collection Officer, DHEW/PHS/HSA, Room 16-96, 5600 Fishers Lane, Rockville, Md. 20852. Fees charged for research and reproduction of information is based upon the current departmental fee schedule for information under the FOI regulations (45 CFR part 5 subpart E).	Office of Communications and Public Affairs DHEW/PHS/HSA, Room 14A-55, 5600 Fishers Lane, Rockville, Md.
HEW/PHS/Office of Administrative Management.	Index to the PHS Manual for financial evaluation of Public Health Service awards,' continuous from July 1, 1974.	Photocopies available if requests are forwarded to: Division of Grants and Contracts, ORM/OAM/PHS, 5600 Fishers Lane, Rockville, Md. 20852. Fees as prescribed in 45 CFR 5.61 are 10¢ per page, with the charge being made if the total amount exceeds $5. Checks payable to DHEW, Public Health Service.	Division of Grants and Contracts, ORM/OAM/PHS, 5600 Fishers Lane, Rockville, Md. 20852.
Do	A guide to institutional cost sharing agreements for research grants and contracts, supported by the Department of Health, Education, and Welfare, continuous from July 1974.	Copies may be obtained from Division of Grants and Contracts, ORM/OAM/PHS, 5600 Fishers Lane, Rockville, Md. No charge.	Division of Grants and Contracts, 5600 Fishers Lane, Rockville, Md. 20852.
Do	PHS procurement regulations; policies and procedures which implement and supplement the DHEW procurement regulations and the Federal procurement regulations, continuous from May 1974.	Photocopies available if requests are forwarded to: Division of Grants and Contracts, ORM/OAM/PHS, 5600 Fishers Lane, Rockville, Md. 20852. Fees as prescribed in 45 CFR 5.61 are 10¢ per page with the charge being made if the total amount exceeds $5. Checks payable to DHEW, Public Health Service.	Copies available: ASC Forms and Publications Service Center, OAM, 12109 Parklawn Dr., Rockville, Md. 20852 Additional information: Division of Grants and Contracts ORM/OAM/PHS, 5600 Fishers Lane, Rockville, Md. 20852.
Do	PHS grants policy statement; comprehensive policy document for use by PHS grantees, continuous from July 1974.	GPO, 90 cents, Superintendent of Documents (Stock No. 1720-00055).	Superintendent of Documents, GPO, Washington, D.C. 20402.
Do	Index to PHS supplements to HEW Grants Administration Staff Manual; supplementation and implementations to HEW manual; continuous from January 1974.	Photocopies available if requests are forwarded to: Division of Grants and Contracts, ORM/OAM/PHS, 5600 Fishers Lane, Rockville, Md. 20852. Fees are prescribed in 45 CFR 5.61, as 10¢ per page with the charge being made if the total amount exceeds $5. Checks payable to DHEW, PHS.	Division of Grants and Contracts ORM, OAMs PHS, 5600 Fishers Lane, Rockville, Md. 20852.
Do	Tables of contents to PHS supplementation of HEW staff manuals containing authorities, policies, and procedures in the following areas: Emergency, forms management, general administration, grants administration, organization, public affairs, systems management, records management, safety management, security, facilities engineering and construction, procurement, and reports management.	Chief, Management Support Branch, Division of Management Policy and Analysis, OASH. Room 17-75 Parklawn Bldg., 5600 Fishers Lane, Rockville, Md. 20852. Fees as described in 45 CFR 5.61, are 10¢ per page with the charge being made if the total amount exceeds $5. Checks payable to DHEW, Public Health Service, Office of the Assistant Secretary for Health.	Chief, Management Support Branch, Division of Management Policy and Analysis, Room 17-75, Parklawn Bldg., 5600 Fishers Lane Rockville, Md. 20852.
Do	Table of contents to PHS Commissioned Corps Personnel Manual containing authorities, policies, and procedures in that subject area.	do	Do.
Do	Table of contents to PHS supplementation of the Federal Personnel Manual containing authorities, policies, and procedures in that subject area.	do	Do
Do	Table of contents to Parklawn guidelines: a series of internal operating guides providing operating instructions and procedures of a continuing nature for occupants of the Parklawn Bldg., Rockville, Md., with regard to operations of the Administrative Services Center, Office of Administrative Management. Guidelines include such subjects as procedures for operation and use of official conference rooms; apportionment and assignment of parking spaces; official hours; and conservation of paper in copying, duplicating, and printing, Parklawn Bldg.	Executive Officer, Administrative Services Center, Office of Administrative Management, OASH, Room 5-77, Parklawn Bldg. 5600 Fishers Lane, Rockville, Md. 20852. Fees, as prescribed in 45 CFR 5.61, are 10c per page with the charge being made if the total amount exceeds $5. Checks payable to Department of Health, Education, and Welfare, Public Health Service, Office of the Assistant Secretary for Health.	Do.

Agency and subagency name	Index title: period covered, brief description of contents	Order from: price; make checks payable to—	For inspection, copying, or additional information contact
HEW/PHS/Office of Assistant Secretary for Health/OEEO.	Guidelines for the precomplaint counseling system in the Public Health Service regional offices.	No charge. Director, OEEO/OASH, Room 17-66, 5600 Fishers Lane, Rockville, Md. 20852.	Director, OEEO/OASH, Room 17-66, 5600 Fishers Lane, Rockville, Md. 20852.
HEW/PHS/Office of Long-Term Care.	Long-term care facility improvement study; introductory report, July 1975.	U.S. Government Printing Office, Washington, D.C. 20402. Price $2.15.	Ms. Florence Garson
Do	ONHA policy circulars or memoranda (numbered).	ONHA will provide single copies of 1 memorandum without charge. Complete sets of policy memoranda published by Commerce Clearing House, Inc., 4025 W. Peterson Ave., Chicago, Ill. 60646. (annual subscription charge).	Do.
Department of the Interior, Bonneville Power Administration.	BPA Manual Index dated 11-5-75: 83 pp. Policy, procedural, and directives material indexed by subject and BPA Manual chapter number.	The public may review the index, obtain a copy of the index without charge, or secure further information concerning the contents of the records listed by contacting Bonneville Power Administration's Public Information Office, 1002 NE. Holladay St., Portland, Oreg. 97232, or the Washington, D.C., office, 5600 Interior Bldg., Washington, D.C. 20240.	Bonneville Power Administration offices listed in previous column or BPA area and district offices at the following: 910 NE. 19th Ave., Portland Oreg. 97208; 415 1st Ave. North, Seattle, Wash. 98109; U.S. Courthouse, Spokane, Wash. 99201; West 101 Poplar St., Walla Walla, Wash. 99362; U.S. Federal Bldg., 211 East 7th St., Eugene, Oreg. 97401; Highway 2 E., Box 758, Kalispell, Mont. 59901; U.S. Federal Bldg., 301 Yakima St., Wenatchee, Wash. 98801; and 531 Lomax St., Idaho Falls, Idaho 83401.
Department of the Interior, Bureau of Indian Affairs.	Bureau of Indian Affairs Manual Index (BIAM); Oct. 6, 1975. Internal instructions and procedures for Bureau employees on Indian programs (such as realty, forestry, social services, education, etc.) and on administrative areas (such as personnel, safety, finance, etc.) Accounting Procedures Handbook Index: Procedures for handling individual Indian money accounts and investment procedures for Indian money. Guaranteed and Insured Loans Guidelines: Instructions and procedures for processing loans. United States Direct Loans and Loans by Tribes and Relending Organization Guidelines: Contains terms, conditions, and processing procedures for such loans. Financing by Customary Financial Institutions Handbook Index: Internal instructions to assist Indians and Indian organizations to obtain justified financing to promote their economic development. Real Estate Appraisal Handbook Index: General policy and standards for real estate appraisals and applies to all real estate transactions affecting real property under, or to be taken under, the Bureau's jurisdiction. General Grazing Regulations Handbook: Internal administrative instructions on implementing the regulations. Investigations and Planning Handbook: General guidelines on conducting inventories of Indian resources. Construction Handbook: Contains policy and requirements for construction projects. Operation and Maintenance Handbook: Policy and procedure for operating and maintaining irrigation and power projects. Road Construction Handbook: General guidelines for conducting public hearing and construction requirements.	Not a sales publication	1. Central office. Chief, Division of Management Research and Evaluation, Bureau of Indian Affairs, 1951 Constitution Ave. NW., Washington, D.C. 20245, telephone 202-343-4144. 2. Field offices. See U.S. Organization Manual for addresses.
Department of the Interior, Bureau of Land Management.	Subject Function Classification Chart—Release No. 1—1027—Feb. 5, 1976. This classification chart contains the complete index of the entire manual system. Manuals have not as yet been issued on all subjects.	Bureau of Land Management, Denver Federal Center Building 50, Denver, Colo. 80225, price $4.10, make checks payable to: Bureau of Land Management.	Bureau of Land Management, Division of Records Systems, Department of the Interior, 18th and C Sts. NW., Washington, D.C. 20240. Phone 202-343-5739.
Department of the Interior, Bureau of Mines.	Basic Bureau of Mines Manual, General Table of Contents and Checklist—July 6, 1976. Numeric and subject listing of internal policies and procedures by series, part, chapter, paragraph, and subordinate paragraph.	In accordance with fee schedule in 43 CFR 2, app. A. Bureau of Mines.	Chief, Organization and Management Staff, Columbia Plaza Office Bldg., 2401 E St. NW., Washington, D.C. 20241.
Department of the Interior, Bureau of Reclamation.	Reclamation Instructions Index—Apr. 1, 1974: Subject listing of current instructions pertaining to Bureau of Reclamation organization and delegations of authority, policy and procedures, and detailed instructions on limited technical subjects. Guidelines—Task Force Report on Water Marketing Index.	Division of Management Support, E. & R. Center, Bureau of Reclamation, P.O. Box 25007, Denver, Colo. 80225. No charge. Bureau of Reclamation, Division of Personnel, Branch of Management Systems, Interior Department, Washington, D.C. 20240. No charge.	Division of Management Support, E. & R. Center, Bureau of Reclamation, P.O. Box 25007, Denver, Colo. 80225. Phone 303 234-2061. Bureau of Reclamation, Division of Personnel, Branch of Management Systems, Interior Department, Washington, D.C. 20240.
Department of the Interior, Fish and Wildlife Service.	Administrative Manual. Index related to administrative policies, procedures and standards of the Fish and Wildlife Service as contained in the Administrative Manual.	Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240. Price: In accordance with the uniform fee schedule contained in 43 CFR 2, app. A. Checks payable to: Fish and Wildlife Service.	Arthur J. Ferguson, Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240, phone: 202-343-5627.
Department of the Interior, Geological Survey.	Index to the USGS Manual	U.S. Geological Survey, Branch of Management Analysis, Mail Stop 206, Reston, Va. 22092. Standard FOIA fees.	Gertrude M. Winkle, Branch of Management Analysis, phone: (703) 860-7211.

Agency and subagency name	Index title; period covered, brief description of contents	Order from; price; make checks payable to—	For inspection, copying, or additional information contact
Department of the Interior, Mining Enforcement and Safety Administration.	MESA Management Manual Index June 24, 1974 to present. MESA publishes a Management Manual which describes policies, standards, and procedures, which are directives upon all MESA personnel. The manual is organized to be compatible with that of the Department, both in numbering and arrangement. Thus, the Departmental Manual's index and the MESA Management Manual's index are one in the same. Procurement Handbook Index: Provides instructions regarding the use of the open market purchasing procedures within MESA to personnel involved in the procurement functions. Health and Safety Manual for Orders, Notices and Report Writing Index: Handbook gives guidelines for issuance of notices, orders and other reports by MESA coal mine health and safety inspectors. Coal Mine Health and Safety Inspection Manual for Surface Coal Mines and Surface Work Areas of Underground Coal Mines Index: Manual outlines the inspection procedures used for surface coal mine inspections performed by MESA inspectors. Coal Mine Health and Safety Inspection Manual for Underground Coal Mines Index: Manual outlines the inspection procedures used for underground coal mine inspections performed by MESA inspectors. Metal and Nonmetal Mine Health and Safety Inspection and Investigation Manual Index: Manual outlines the inspection procedures used for all inspections of metal and nonmetal mines by MESA inspectors. Mine Rescue and Recovery and Accident Investigation Procedures Index: Manual outlines procedures to be followed in the event of a mine accident for both rescue and recovery work and the accident investigation. Coal Mine Safety Electrical Inspection Manual for Underground Coal Mines, Surface Coal Mines, and Surface Work Areas of Underground Coal Mines Index: Manual outlines the duties of an inspector inspecting underground and surface coal mines for electrical hazards. Property Handbook Index: Handbook provides information and instructions to MESA property management personnel regarding MESA's automated capitalized property system.	Not a sales publication.	MESA Headquarters Office Ballston Tower No. 3, 4015 Wilson Blvd., Arlington, Va. 22203.
Department of the Interior, National Park Service.	National Park Service Directives System. Consisting of: (Numbered) NPS Guidelines; NPS Special Directives; NPS Staff Directives. Guidelines document procedures or techniques required by the operational elements to accomplish specific jobs in their day-to-day activities. Special Directives issued by the Director or his deputy, of major importance and of special concern to the Director and the Service, instructions which are affecting the Service in part or as a whole. Staff Directives instructions issued by an Associate Director. Directive in nature pertaining only to a certain segment of the Service.	Department of the Interior, National Park Service, 18th and C Sts. NW., Washington, D.C. 20240. Attention: Assistant to the Director for Public Affairs. Index price: No charge.	Department of the Interior, National Park Service, 18th and C Sts. NW., Washington, D.C. 20240. Attention: Assistant to the Director for Public Affairs, telephone (202) 343-6843, room 3041.
Department of the Interior, Office of the Secretary.	Departmental Manual Table of Contents and Checklist, November 1975; policy, procedural, and directives material indexed by part and chapter.	Not a sales publication.	Department of the Interior, Office of the Secretary, Division of Directives and Reports Management, Washington, D.C. 20240.
Department of the Interior, Office of the Secretary, Office of Personnel Management.	Checklist of DM additions to the FPM, issued July 19, 1974. This index identifies the departmental manual chapters which contain policies and/or programs which supplement the Federal personnel manual.		Office of Personnel Management, Division of Program Planning and Evaluation.
Department of Labor/ILAB.	Trade adjustment assistance decision. Apr. 1 to June 30, 1976.	Bureau of International Labor Affairs, 10¢ per page, Department of Labor.	ILAB, New Department of Labor Bldg., 200 Constitution Ave. NW., Washington, D.C. 20210 or DOL publication-information offices in major cities in the United States.
DOL/OSHA	Program directives, Jan. 1 to June 30, 1976.		
DOL/OWCP/FECA	Bulletins: compensation, Federal employees, longshoremen, black lung. Jan. 1 to June 30, 1976.	Office of Workers Compensation Programs, 10¢ per page. Department of Labor.	Office of Workers Compensation, New Department of Labor Bldg., 200 Constitution Ave. NW., Washington, D.C. 20210 or DOL publication-information offices in major cities in the United States.
DOL/OWCP/LHWCA			
DOL/OWCP/BLBP			
DOL/ESA/W-H	Wage hour, field operations handbook	Wage and hour, 10¢ per page, Department of Labor.	Wage and Hour Division, New Department of Labor Bldg., 200 Constitution Ave. NW. Washington, D.C. 20210.
DOL/ESA/OFCC	Office of Contract Compliance, program memoranda.	Office of Contract Compliance, 10¢ per page, Department of Labor	Office of Contract Compliance

Department of Transportation, Federal Highway Administration.	Opinions and final orders of the Federal Highway Administration in regard to the regulation of toll bridges- 1968–76; 1 page listing of opinions and final orders regarding regulation of toll bridges; issued by the Federal Highway Administrator, which identifies the case and the date issued.	FOIA Program Officer, Federal Highway Administration, 400 7th St. SW., Washington, D.C. 20590. No charge.	FOIA Program Officer, Federal Highway Administration, 400 7th St. SW., Washington, D.C. 20590.
Do	Cease and desist and driver disqualification final orders by the Federal Highway Administrator; 1969–75; 6-page listing of cease and desist and driver disqualification final orders of the Federal Highway Administrator; items listed are identified by case docket number, name of carrier, and date notice of investigation was mailed.	do	Do.
Do	Cross reference index of current Federal Highway Administration directives as of Sept. 20, 1976. The index is alphabetical by subject. Within each subject applicable Federal Highway Administration orders, notices, and manuals are identified (in some cases manuals may be also identified by the applicable volume or other subordinate breakdown). The index is computerized and updated quarterly.	FOIA Program Officer, Federal Highway Administration, 400 7th St. SW., Washington, D.C. 20590. Shelf stock, $10.80 per copy; reproduced copies, $9.20 per copy; shelf stock will be used while it lasts. Checks payable to: Ohe Treasury of the United States.	FOIA Program Officer, Federal Highway Administration, 400 7th St. SW., Washington, D.C. 20590; Federal Highway Administration Regional Offices. (For location see 49 CFR pt. 7); Federal Highway Administration Division Offices. (For location see 49 CFR pt. 7.)
Department of the Treasury, Bureau of Alcohol, Tobacco, and Firearms.	The Director, Bureau of Alcohol, Tobacco, and Firearms (ATF), has determined that publication in the FEDERAL REGISTER of the ATF index of materials required by the Freedom of Information Act is unnecessary and impracticable for the reason that the index is changing continually and that items listed are of interest to relatively few potential users. Copies of the index may, however, be obtained upon request to the Office of Assistant to the Director (Disclosure), Bureau of Alcohol, Tobacco, and Firearms, Washington, D.C. 20226, at a cost of $2. The index is entitled, "Index of Materials Required by the Freedom of Information Act, ATF P 1200.3". The Index covers the period of July 1967 through March 1976 and consists of final opinions and orders made in the adjudication of cases, statements of policy and bureau directives, and the latest listing of ATF publications.	Office of Assistant to the Director (Disclosure), Bureau of Alcohol, Tobacco, and Firearms, Washington, D.C. 20226. Price: $2. Make check payable to Bureau of Alcohol, Tobacco, and Firearms.	Freedom of Information Act Reading Room 1315, Bureau of Alcohol, Tobacco, and Firearms, 1200 Pennsylvania Ave. NW., Washington, D.C. 20226; Bureau of Alcohol, Tobacco, and Firearms, North Atlantic Regional Office, 6 World Trade Center, Room 620, New York, N.Y. 10048; Bureau of Alcohol, Tobacco, and Firearms, Mid-Atlantic Regional Office, Room 310, 2 Penn Center Plaza, Philadelphia, Pa. 19102; Bureau of Alcohol, Tobacco, and Firearms, Southeast Regional Office, 3835 Northeast Expressway, Room 201, Atlanta, Ga. 30340; Bureau of Alcohol, Tobacco, and Firearms, Central Regional Office, Federal Office Bldg., Room 6510–A, 550 Main St., Cincinnati, Ohio 45202; Bureau of Alcohol, Tobacco, and Firearms, Midwest Regional Office, 230 South Dearborn St., 15th Floor, Chicago, Ill. 60604; Bureau of Alcohol, Tobacco, and Firearms, Southwest Regional Office, Main Tower, 1200 Main St., Room 355, Dallas, Tex. 75202; Bureau of Alcohol, Tobacco, and Firearms, Western Regional Office, 525 Market St., 34th Floor, San Francisco, Calif. 94105.
Department of the Treasury, Customs Service.	CSA (Customs Simplification Act) Index (revised) index to letters and letters relating to Customs Simplification Act, from 1956 forward.	Freedom of Information and Privacy Branch, Office of Regulations and Rulings, U.S. Customs Service, Washington, D.C. 20229; Price: $1.75. Checks payable to: U.S. Customs Service.	Freedom of Information and Privacy Branch, Office of Regulations and Rulings, U.S. Customs Service, Washington, D.C. 20229.
	Synopsis of Decisions on the Duty Assessment Process, 1972; administrative and court decisions and rulings concerning duty assessment process.	Freedom of Information and Privacy Branch, Office of Regulations and Rulings, U.S. Customs Service, Washington, D.C. 20229; Price: $3. Checks payable to: U.S. Customs Service.	Do.
	Customs Forms Catalog; Customs and other agency forms currently available from the Customs Service, July 1975.	Freedom of Information and Privacy Branch, Office of Regulations and Rulings, U.S. Customs Service, Washington, D.C. 20229. Price: (not available until revision is complete). Checks payable to: U.S. Customs Service.	Do.
	KWIC (Key Word in Context) Index. June 1975; current Customs Service circular letters.	Freedom of Information and Privacy Branch, Office of Regulations and Rulings, U.S. Customs Service, Washington, D.C. 20229. Price: $1. Checks payable to: U.S. Customs Service.	Do.
Do	Legal Keyword Precedent Directory. The directory is a listing by selected keywords of all classification rulings issued since early 1975 that affect a substantial volume of imports or transactions or are otherwise of general interest or importance and of all published classification rulings issued since Aug. 31, 1963, including classification decisions, and classification rulings circulated within the Customs Service by the Customs Information Exchange and the Office of Regulations and Rulings. The directory also contains limited information on decisions and rulings pertaining to entry, value, drawback, marking, country of origin, and vessel repairs. The Legal Keyword Precedent Directory is maintained on microfiche and is continually updated.	Freedom of Information and Privacy Branch, Office of Regulations and Rulings, U.S. Customs Service, Washington, D.C. 20229. Price: Duplicate microfiche are available at a cost of $0.15 each and are available only in sets; a set presently contains 24 microfiche. Payable to: U.S. Customs Service.	Freedom of Information and Privacy Branch, Office of Regulations and Rulings, U.S. Customs Service, Washington, D.C. 20229 and at regional offices of the Customs Service.
Department of the Treasury, Office of the Secretary.	Index of Selected Records; July 1967 to December 1976; Listing of current administrative documents, reports, and releases from the Office of the Secretary, Bureau of Engraving and Printing, Bureau of the Mint, U.S. Secret Service, Bureau of the Public Debt, Bureau of Government Financial Operations, Federal Law Enforcement Training Center, U.S. Customs Service.	Treasury Department Library, Room 5010, Treasury Bldg., 15th and Pennsylvania Ave., Washington, D.C. 20220, $1.50, Treasury of the United States.	Treasury Department Library, Room 5010, Treasury Bldg., 15th and Pennsylvania Ave., Washington, D.C. 20220.
(U.S.) Arms Control and Disarmament Agency.	Index to notices, instructions, regulations, and other ACDA records.	Freedom of Information Officer, U.S. Arms Control and Disarmament Agency, Department of State Bldg., Washington, D.C. 20451. No charge.	Freedom of Information Officer, U.S. Arms Control and Disarmament Agency, Department of State Bldg., Washington, D.C 20451.
Civil Service Commission (CSC).	Index to Civil Service Commission information. CSC document No. 1. Period covered: February 1975 to November 1976. A listing of policy and nonpolicy publications and information systems arranged alphabetically by title and subject.	Distribution Unit, Room B-431, U.S. Civil Service Commission, 1900 E St. NW., Washington, D.C. 20415. Free.	Commission Library or any Commission office, including regional and area offices.

Agency and subagency name	Index title; period covered, brief description of contents	Order from; price; make checks payable to—	For inspection, copying, or additional information contact
Committee for Purchase from the Blind and Other Severely Handicapped.	Index of additions and deletions to the procurement list. Fiscal year 1972 (additions and deletions occurring after Aug. 20, 1971 thru June 30, 1972); fiscal year 1973; fiscal year 1974; fiscal year 1975; fiscal year 1976; fiscal year 1977.	Order from: Executive Director, Committee for Purchase from the Blind and Other Severely Handicapped, 2009 N. 14th St., Suite 610, Arlington, Va. 22201. Price: 10¢ per page, per copy. Make checks payable to: Treasurer of the United States.	Committee for Purchase from the Blind and Other Severely Handicapped. Attention: Freedom of Information Officer.
Consumer Product Safety Commission.	Index: Final Opinions and Orders; Statements of Policy and Interpretations; Administrative Staff Manual and Instructions.	Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207, No charge.	Office of the Secretary, Consumer Product Safety Commission, 1750 K St. NW., Washington, D.C. 20207.
Council on Environmental Quality	*Memoranda to the heads of all Federal agencies:*		
Do	(i) CEQ memo to heads of agency on revised guidelines, Apr. 23, 1971.	Available from CEQ	Council on Environmental Quality, General Counsel's Office, 722 Jackson Pl., NW., Washington, D.C. 20006; (202) 382-7965.
Do	(ii) CEQ memo to agency NEPA liaison on agency NEPA procedures May 14, 1971.	do	Do.
Do	(iii) CEQ memo to agency NEPA liaison on inclusion of cost-benefit analyses, May 24, 1971.	do	Do.
Do	(iv) CEQ memo to agency NEPA liaison on *Calvert Cliffs* decision, July 30, 1971.	do	Do.
Do	(v) CEQ memo to agency NEPA liaison on extension of deadline on NEPA procedures, Aug. 5, 1971.	do	Do.
Do	(vi) CEQ memo to heads of agencies on agency NEPA procedures, Sept. 23, 1971.	do	Do.
Do	(vii) CEQ memo to heads of agencies on agency NEPA procedures, Nov. 2, 1971.	do	Do.
Do	(viii) CEQ memo to agency NEPA liaison on outline of issues in agency NEPA procedures Dec. 3, 1971.	do	Do.
Do	(ix) CEQ memo to agency NEPA liaison on extracts from leading NEPA court decisions, Dec. 3, 1971.	do	Do.
Do	(x) CEQ memo to agency NEPA liaison on cumulative list of environmental impact statements, Dec. 23, 1971.	do	Do.
Do	(xi) Revised CEQ guidelines on environmental impact statements prepared under section 102(2)(C) of the National Environmental Policy Act, Apr. 23, 1971.	do	Do.
Do	(xii) Recommendations for improving agency NEPA procedures, May 16, 1972.	do	Do.
Do	(xiii) Revision of agency procedures for preparation of environmental impact statements, Aug. 2, 1973.	do	Do.
Do	(xiv) NTIS and the public availability of environmental impact statements under NEPA, Mar. 1, 1974, 102 Monitor vol. 4, No. 2, March 1974. p. 23.	do	Do.
Do	(xv) Council advisory memorandum #1 on delegation by Federal agencies of responsibility for preparation of EIS's, 102 Monitor.	do	Do.
Do	(xvi) CEQ publications list, Apr. 30, 1976	do	Council on Environmental Quality, Attention: Freedom of Information Officer, 722 Jackson Pl. NW., Washington, D.C. 20006; (202) 382-1415.
Do	(xvii) CEQ memo to heads of agencies on SCRAP decision Nov. 26, 1975.	do	Council on Environmental Quality, General Counsel's Office, 722 Jackson Pl. NW., Washington, D.C. 20006; (202) 382-7965.
Do	(xviii) CEQ memo to heads of agencies on environmental impact statements Feb. 10, 1976.	do	Do.
Do	(xix) CEQ position paper "Pollution Control and Employment" February 1976.	do	Council on Environmental Quality, Attention: Dr. E. H. Clark, 722 Jackson Pl. NW., Washington, D.C. 20006; (202) 382-6162.
Do	(xx) CEQ memo to heads of agencies on prime agricultural lands Aug. 30, 1976.	do	Council on Environmental Quality, Attention: General Counsel, 722 Jackson Pl. NW., Washington, D.C. 20006 (202) 382-7965.
Do	(xxi) CEQ memo to heads of agencies on NEPA Supreme Court decisions Sept. 16, 1976.	do	Do.
Do	(xxii) CEQ memo to heads of agencies on NEPA requirement to projects abroad.	do	Do.
Do	(A) Memorandum of implementation of the agreement between the United States and the U.S.S.R. on cooperation in the field of environmental protection, May 1972, 102 Monitor vol. 2, No. 9, October 1972.	Available by Ordering Cited Copy of the 102 Monitor from GPO.	Council on Environmental Quality, General Counsel's Office, 722 Jackson Place NW., Washington, D.C. 20006 (202) 382-7965.
Do	(B) 20 questions and answers explaining NEPA Sec. 102, environmental impact statement process, 102 Monitor, vol. 1, No. 10, November 1971, p. 1.	do	Do.
Do	(C) Coal surface mining and reclamation study, 102 Monitor, vol. 3, No. 2, March 1973 p. 62.	do	Do.
Do	(D) Economic impact of environmental programs, 102 Monitor vol. 4, No. 10, November 1974, p. 3.	do	Do.
Do	(E) Environmental programs and employment, 102 Monitor vol. 5, No. 4, May 1975.	do	Do.
Do	(F) Council advisory memorandum (memo on) 102 Monitor, vol. 5, No. 3, April 1975.	do	Do.
Do	(G) Council advisory memorandum #2 on application of NEPA to enforcement of the antitrust laws by the FTC, 102 Monitor. vol. 5, No. 2, March 1975, p. 13.	do	Do.

Agency and subagency name	Index title; period covered, brief description of contents	Order from; price; make checks payable to	For inspection, copying, or additional information contact
Energy Research and Development Administration.	ERDA headquarters reports: Cumulative index issued monthly starting Jan. 1 1975. Includes report number, corporate author, and subject indexes. Includes reports prepared by individual headquarters authors, task forces and study groups, and environmental statements covering ERDA programs and facilities.	ERDA Library and Public Document Room, Washington, D.C. 20545. Copies made available at $0.08 per page. Payable to: Energy Research and Development Administration.	ERDA Library and Public Document Room Room 1223, 20 Massachusetts Ave NW Washington, D.C. 20545.
Do	ERDA manual table of contents: Covers directives; procurement instructions and regulations; and property management regulations, instructions, and bulletins. A cumulative table of contents is issued quarterly listing ERDA issuances and those AEC issuances still in effect.	do	Do.
ERDA, Board of Contract Appeals (BCA).	Decisions and orders for the periods Jan. 19, 1975 to December 1975 and Jan. 1 to June 30, 1976, including indexes.	do	Do.
Do	Atomic Energy Commission Reports; Oct. 1956–Jan. 1975, Vols. 1–8: Contains the BCA decisions and orders and indexes.	Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.	Do.
Equal Employment Opportunity Commission.	Index to Commission Decisions Unpublished 1965–72.	Librarian, Equal Employment Opportunity Commission, 2401 E St., NW., Washington, D.C. Price: 5 pp, 25¢. Payable to: U.S. Treasurer.	Librarian, Equal Employment Opportunity Commission, 2401 E St., NW., Washington, D.C. 20506.
Do	Index to Commission Decisions, Published		Librarian or district office addresses at 29 C F R 1610.4.
Do	Index to Equal Employment Opportunity Commission Orders.	See above. Price: 3 pp, 15¢; Payable to: U.S. Treasurer.	Librarian or district office.
Do	Index to Compliance Mannal	See above. Price: $2. Payable to: U.S. Treasurer.	Do.
Do	Index to General Counsel Manual	See above. Price: 9 pp, 45¢; Payable to: U.S. Treasurer.	Librarian.
Farm Credit Administration	Index of FCA Information Materials; Oct. 1, to Dec. 31, 1976; (1) Publications (those available in supply); (2) news releases—(single copies available free of charge) issued since Jan. 1, 1972; (3) biographies of FCA officials; (4) speeches by FCA officials; (5) FCA regulations and clarification letters; (6) research reports; (7) FCA administrative and Personnel Handbook; (8) Directory of the FCA and Farm Credit Districts; (9) Monthly statistics on farm credit bank lending (list of tables); (10) FCA orders; and (11) FCA organization charts.	Information Division, Farm Credit Administration, 490 L'Enfant Plaza SW., Washington, D.C. 20578. No charge.	Mr. Carroll Arnold, Director of Information Farm Credit Administration, 490 L'Enfant Plaza SW., Washington, D.C. 20578.
Federal Communications Commission.	The "FCC Reports," containing Commission decisions of historical or precedential significance since 1934 and indices thereto. The "FCC Reports" are published weekly in pamphlet form and are subsequently compiled and published in bound volumes. The bound volumes contain cumulative indices. Cumulative index volumes covering longer periods are issued periodically.	Order from Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. Available on a subscription basis. Bound volumes may also be purchased separately. Prices vary. Checks Superintendent of Documents	Office of General Counsel Federal Communications Commission.
Federal Power Commission	Subject—Index: July 1967 to Sept. 30, 1976.	Office of Public Information, Federal Power Commission, 825 North Capitol St. NE., Washington, D.C. 20426. No charge.	Office of Public Information, Federal Power Commission, Room 1000, 825 North Capitol St. NE., Washington, D.C. 20426.
Federal Reserve System, Board of Governors.	Card Index to Board actions of the type that are made available to the public under the Freedom of Information Act from July 4, 1967 to date.		May be inspected in Freedom of Information Office, Room B-1118, Main Board Bldg 20th and C Sts. NW.
Do	Microfilm copies of above index covering period July 4, 1967 to Dec. 31, 1975. Subsequent years to be microfilmed.	Order from Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. Checks payable to Board of Governors of the Federal Reserve System. $12.50 a roll.	Freedom of Information Office, Room B-1118 Main Board Bldg., 20th and C St NW (202) 452-3684.
Do	Hard copy bound index for:		
	1967	do[1]	Do.
	1968–71	do[1]	Do.
	Copies for additional years in preparation.		
Do	Individual copy of the card index	Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. Charge not to exceed the direct cost of duplication.	Do.
Do	Weekly index published and distributed to the public providing identifying information as to any matter issued, adopted or promulgated by the Board from the first week in January 1975 to date (H.2 release).	Publications Services, Division of Administrative Services, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. (Mailing list maintained; no charge for current copies.)	Do

See footnote at end of table.

Agency and subagency name	Index title: period covered, brief description of contents	Order from; price; make checks payable to	For inspection, copying, or additional information contact
Federal Trade Commission (FTC).	Final orders and opinions (duplicated pages of Index): Bound volumes of decisions July 1967, to December 1975.	Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. Checks: Superintendent of Documents. $5–17 each.	Legal and Public Records, Federal Trade Commission, Room 130, 6th and Pennsylvania Ave. NW., Washington, D.C. 20580.
Do	Advisory opinions (duplicated pages of Index): Bound volume, July 1967 to December 1968. Index of advisory opinions subsequent to above date is in bound volumes of decisions.	Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. Checks: Superintendent of Documents. $2.25 each.	Do.
Do	Final orders and opinions: Supplemental index, July 1973 to December 1976.	Legal and Public Records FTC, Room 130, 6th and Pennsylvania Ave. NW., Washington, D.C. 20580. $0.10 per page.	Do.
Do	Enforcement statement, July 1967 to December 1976.	do	Do.
Do	Trade regulation rules, July 1967 to December 1976.	do	Do.
Do	Manuals—operating administrative	do	Do.
Do	Freedom of Information Act, access requests and responses, March 1973–December 1976.	do	Do.
Do	Closing letters, investigatory material, March 1974–December 1976.	do	Do.
Do	Motions to quash, investigational subpoenas, June 1962–December 1976.	do	Do.
Do	Motions to quash, 6(b) Orders and Orders requiring access, November 1975–December 1976.	do	Do.
Do	Clearance requests, January 1969–December 1976.	do	Do.
Do	Commissioners' outside contacts, April 1974–December 1976.	do	Do.
Do	Staff opinion letters, May 1962–December 1976	do	Do.
Do	Freedom of Information Act operating guidelines, December 1976.	do	Do.
Foreign Claims Settlement Commission (FCSC).	Guide to indexes, claim decisions, list of FCSC publications, and other material related to claims programs administered by the Foreign Claims Settlement Commission (July 4, 1967 to June 30, 1976).	Executive Director, FCSC, 1111 20th St. NW., Washington, D.C. 20579. No charge.	Executive Director, FCSC, 1111 20th, St. NW., Washington, D.C. 20579.
General Services Administration (GSA).	GSA Freedom of Information Act index; July 4, 1967 through Dec. 31, 1976. Category A information which is final opinions, including concurring and dissenting opinions and orders, made in the adjudication of cases. Category B information which is those statements of policy and interpretations which have been adopted by GSA and are not published in the FEDERAL REGISTER. Category C information which is administrative staff manuals and instructions to staff that affect a member of the public.	GSA, Director of Information (AV), Washington, D.C. 20405. Price: $4.75. Make checks payable to General Services Administration.	GSA Central Office Library and the business service centers located in each regional office listed below: Central Office Library, 18 and F Sts, NW., Room 1033, Washington, D.C. 20405. Business service centers: Region 1: John W. McCormack Post Office and Courthouse, Boston, Mass. 02109. Region 2: 26 Federal Plaza, New York, N.Y. 10007. Region 3: 7 and D Sts. SW., Washington, D.C. 20407. Region 4: 1776 Peachtree St. NW., Atlanta, Ga. 30309. Region 5: 230 South Dearborn St., Chicago, Ill. 60604. Region 6: 1500 East Bannister Rd., Kansas City, Mo. 64131. Region 7: 819 Taylor St., Fort Worth, Tex. 76102. Region 8: Building 41, Denver Federal Center, Denver, Colo. 80225. Region 9: 525 Market St., San Francisco, Calif. 94105. Region 10: GSA Center, Auburn, Wash. 98002.
Indian Claims Commission	Index of Indian Claims Commission decisions, inception to date: tribe, docket number, citations, summary of action, date. Currently 173 pp.	Clerk, Indian Claims Commission, 1730 K St., NW., Room 642, Washington, D.C. 20006. $0.04 per page. (Payee to be designated.)	Clerk, Indian Claims Commission, 1730 K St., NW., Room 642, Washington, D.C. 20006.
International Boundary and Water Commission, United States and Mexico, U.S. Section.	Brochure: Amistad Dam and Reservoir	Project Engineer, U.S. Section, IBWC, Route 2, Box 37, Highway 90 West, Del Rio, Tex. 78840. No charge.	Project Engineer, U.S. Section, IBWC, Route 2, Box 37, Highway 90 West, Del Rio, Tex. 78840.
Do	Brochure Falcon Dam and powerplant	Reservoirs Manager, U.S. Section, IBWC, P.O. Box 1, Falcon Village, Tex. 78545. No charge.	Reservoirs Manager, U.S. Section, IBWC, P.O. Box 1, Falcon Village, Tex. 78545.
Do	Water Bulletins: Containing data for 1 yr, covering flow of Rio Grande and related data from Elephant Butte, N. Mex., to Gulf of Mexico, re storage in major reservoirs, sources of river flow, diversions, suspended silt, chemical analyses, sanitary aspects of water quality, meteorologic data, and irrigated areas—for years 1931 through 1974.	Principal Engineer, Water Operations, U.S. Section, IBWC, room 203, IBWC Bldg., 4110 Rio Bravo, El Paso, Tex. 79902. Price: $3 per bulletin (data for 1 yr). Payable to: Treasurer of the United States.	Principal Engineer, Water Operations, U.S. Section, IBWC, Room 203, IBWC Bldg., 4110 Rio Bravo, El Paso, Tex. 79902.
Do	Water Bulletins: Containing data for 1 yr covering flow of Colorado River and other western boundary streams, and related data (including Tijuana, Santa Cruz, and San Pedro Rivers, and Whitewater Draw) for years 1960 through 1973.	Principal Engineer, Water Operations, U.S. Section, IBWC (same address as shown above). Price: $2 per bulletin (data for 1 yr). Payable to: Treasurer of the United States.	Principal Engineer, Water Operations, U.S. Section, IBWC (same address as shown above).
Interstate Commerce Commission.	Interpretations Manual		Bureau of Operations, Interstate Commerce Commission, 12th and Constitution Ave. NW., Washington, D.C. 20423.
National Labor Relations Board.	Digest of Decisions of the National Labor Relations Board; July 1, 1967–June 30, 1968; Subject matter index to decisions of the N.L.R.B. including outline.	Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402; $4.75; Superintendent of Documents.	Any regional office of the National Labor Relations Board or Freedom of Information Officer, National Labor Relations Board, 1717 Pennsylvania Ave. NW., Washington, D.C. 20570.
Do	Digest of Decisions of the National Labor Relations Board; July 1, 1968–June 30, 1969; Subject matter index to decisions of the N.L.R.B. including outline.	Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402; $4; Superintendent of Documents.	Do.
Do	Digest of Decisions of the National Labor Relations Board; July 1, 1969–June 30, 1970; Subject matter index to decisions of the N.L.R.B. including outline.	Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402; (price: not yet consolidated for purchase); Superintendent of Documents.	Do.

Agency and subagency name	Index title: period covered, brief description of contents	Order from; price; make checks payable to—	For inspection, copying, or additional information contact
National Labor Relations Board.	Litigation Manual Outline and Litigation Manual National Labor Relations Board; July 1, 1956–June 30, 1971; Subject matter classification of court decisions relating to the National Labor Relations Act.	Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402; $9.60; Superintendent of Documents.	Any regional office of the National Labor Relations Board or Freedom of Information Officer, National Labor Relations Board, 1717 Pennsylvania Ave. NW., Washington D.C. 20570.
Do	Classified Index of N.L.R.B. and related court decisions; July 1970–June 1974; Subject matter classification to Board decisions and court decisions related to the National Labor Relations Act.	Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402; $19.50; Superintendent of Documents.	Do.
Do	Classified index of N.L.R.B. and related court decisions; subscription to cumulative publications part 1 July 1, 1974–June 30, 1975; part 2 July 1, 1975–Dec. 31, 1975; part 1 now being printed; part 2 in preparation for print.	Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402; $21 for both parts when available; Superintendent of Documents.	Do.
Do	Classified Index of decisions of regional directors of the National Labor Relations Board in representation proceedings; prepublication print and supplement for July 1, 1967–March 1975; index in publication for period June 1, 1967–Dec. 30, 1975 with quarterly supplements thereafter.	Prepublication print and supplement available from Freedom of Information Officer, N.L.R.B., 1717 Pennsylvania Ave. NW.; $7.00; National Labor Relations Board—printed index and quarterly supplements to be available from Superintendent of Documents, Government Printing Office.	Do.
Do	Classified index of dispositions of unfair labor practice charges by the General Counsel of the National Labor Relations Board; subject matter index to advice memoranda and appeals memoranda and dispositions; July 1, 1967–Dec. 31, 1975.	In publication; will be made available through Superintendent of Documents with quarterly supplements.	Do.
Do	Table of cases in which the General Counsel of the National Labor Relations Board refused to issue complaint on ULP charges because of insufficient evidence; July 1, 1967–Dec. 31, 1975; and quarterly thereafter; rudimentary subject outline of cases in which the General Counsel refused to issue complaint because of insufficient evidence; cases in which refusal to issue complaint was based upon finding of no violation of the act are listed in the classified index of dispositions of ULP charges by the General Counsel described *supra*.	Not published because unnecessary and impracticable due to insignificance of cases listed therein. Copies available at cost of direct duplication.	Do.
National Science Foundation (NSF).	Index of NSF circulars, manuals, and bulletins in effect as of Dec. 31, 1976. A numerical and classification index of agency-wide issuances, encompassing: (a) NSF circulars—convey agency policies, regulations, and procedures of a continuing nature; (b) NSF manuals—provide detailed instructions for implementing operating procedures, requirements, and criteria; and (c) NSF bulletins—used to communicate urgent information concerning changes in policy or procedure prior to its incorporation into a circular or manual, and to communicate other information that is pertinent for a specific period.	NSF Public Information Office, Room 531, 1800 G St. NW., Washington, D.C. 20550. $0.10 per page, per copy. Payable to: National Science Foundation.	NSF Library, Room 219, 1800 G St. NW., Washington, D.C. 20550.
Do	Reviewer/panelist, alphabetical listing for the period of Oct. 1, 1975 to Sept. 30, 1976. Listing contains name, State, and institution of individuals who have reviewed proposals for the National Science Foundation for the period indicated above.	do	Do.
Do	Index of Office of the Director staff memoranda (O/D) in effect, as of Dec. 31, 1976. A numerical index, by calendar year, of issuances used by the Director and Deputy Director of the National Science Foundation to implement policy and to communicate with the staff on subjects of their choice.	do	Do.
Do	Numerical index of NSF important notices in effect as of Dec. 31, 1976. An index of notices serving as the primary means of general communication by the Director, NSF, with organizations receiving or eligible for NSF support. The notices convey important announcements of NSF policies and procedures or concerning other subjects determined to be of interest to the academic community and to other selected audiences.	do	Do.
Do	Reference file of current internal directorate issuances. A listing, by NSF directorate, of pertinent internal issuances of major NSF organizational components conveying policies, criteria, instructions or procedures amplified at a level below the Office of the Director and to communicate information of specific scope.	do	Do.
Do	Index of NSF regulations promulgated in the Code of Federal Regulations under title 41, public contracts, property management; and title 45, public welfare. A listing, by subject title, of current Foundation regulations with a brief description of the content of each.	do	Do.
Do	Publications of the National Science Foundation. An index by topical classification, as of November 1976, of current NSF publications issued and available to the public. Listings include annual reports, specific program announcements and brochures, science resources studies pamphlets, special studies publications and NSF periodicals. In addition to titles, provides NSF publication numbers and copy prices. (NSF publication 76–43.)	NSF Central Processing Section, 1800 G St. NW., Washington, D.C. 20550. One copy gratis.	For inspection or copying: NSF Library, Room 219, 1800 G St. NW., Washington, D.C. 20550. For additional information: NSF Communications Resource Branch (OGPP) Room 531, 1800 G St. NW., Washington D.C. 20550.

Agency and subagency name	Index title: period covered, brief description of contents	Order from; price; make checks payable to	For inspection, copying, or additional information contact
National Science Foundation (NSF).	NSF guide to programs. A composite listing of summary information about NSF support programs, as of September 1976. Provides general guidance and information describing the principal characteristics and basic purposes of each activity; eligibility requirements; closing dates (where applicable); and the address where more detailed information or applications may be obtained. (NSF publication 76-33.)	NSF Central Processing Section, 1800 G St. NW., Washington, D.C. 20550. One copy gratis; or Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. Stock No. 038-000-00291-5. Unit price: $1.25.	For inspection or copying: NSF Library, Room 219, 1800 G St. NW., Washington, D.C. 20550. For additional information: NSF Communications Resource Branch (OGPP) Room 531, 1800 G St. NW., Washington, D.C. 20550.
National Transportation Safety Board (NTSB).	Initial decisions of administrative law judges, Apr. 4, 1967 to Dec. 21, 1976. Chronological listing (by date of service) of decisions after hearings on appeal involving airman or air safety certificates. Safety enforcement decisions, May 18, 1967 to Dec. 29, 1976. Alphabetical and numerical listings of EA and EM final opinions/orders of the Board on appeal from initial decisions of NTSB administrative law judges or Commandant, U.S. Coast Guard. NTSB directives checklist as of Jan. 9, 1976. Numerical listing (by NTSB order No.) of staff operations directives.	Copies of indexes and checklist may be obtained by writing to Public Inquiries Section, National Transportation Safety Board, Washington, D.C. 20594. (Fees for duplication and instructions for payment will be included in letter of acknowledgment to requester.)	Chief, Public Inquiries Section, Room 806-B, National Transportation Safety Board, 800 Independence Ave. SW., Washington, D.C. 20594. Public Reference Room 806-B.
Office of Management and Budget (OMB).	Index to BOB/OMB bulletins, July 4, 1967 to Dec. 31, 1976. Keyword index of OMB bulletins.	Office of Management and Budget. No fee	Velma N. Baldwin, Assistant to the Director for Administration.
Do	Office of Management and Budget circulars index, 1948 to Dec. 31, 1976. Arranges current OMB circulars by keywords in the titles of the directives and by a limited number of broader captions.	do	Do.
Do	Index to Office of Management and Budget manual. All those sections currently in effect through Dec. 31, 1976. Arranged by keywords in the titles.	do	Do.
Do	Rescinded Office of Management and Budget circulars, through Dec. 31, 1976. Arranged by number, date, subject, rescission date, and circular replacement (if any).	do	Do.
Do	Listing of Federal management circulars transferred from General Services Administration. Arranged by number, subject, and date.	do	Do.
Office of Telecommunications Policy.	Office of Telecommunications Policy public document index, 1970 to June 30, 1975. Arranges statements of policy by title under keyword subject heading.	Copies of index may be obtained by writing to: Publications Office, Office of Telecommunications Policy, 1800 G St. NW., Washington, D.C. 20504.	Publications Office, Office of Telecommunications Policy, 1800 G St. NW., Washington, D.C. 20504.
Do	Office of Telecommunications Policy circulars index, 1971 to June 30, 1976. Arranges OTP circulars chronologically by number and title.	do	Do.
Do	Office of Telecommunications Policy orders to staff indexed chronologically by number and title.	do	Do.
Pension Benefit Guaranty Corporation, Office of the General Counsel.	Index to Pension Benefit Guaranty Corp. Opinion Manual; Sept. 2, 1974 to Dec. 31, 1976; interpretive letters addressing the provisions of title IV of the Employee Retirement Income Security Act—plan termination insurance program.	The Office of Communications, Pension Benefit Guaranty Corp., Room 7100, 2020 K St. N.W., Washington, D.C. 20006; Charge $0.10 per page; Payable to The Pension Benefit Guaranty Corp.	The Office of Communications, Attention: Mr. William Fitzgerald, (202) 254-4817, 2020 K St. NW., Washington, D.C. 20006.
Postal Rate Commission	Postal Rate Commission Index, from 1971 to date. Opinions and recommended decisions, advisory opinions and orders having a precedential value.	Secretary of the Commission, Postal Rate Commission, Washington, D.C. 20268. No charge.	Commission's Reading Room, Suite 500, 2000 L St. NW., Washington, D.C.
Postal Service	USPS Public Index, July 4, 1967-Dec. 31, 1976. List of USPS Directives and Publications; Index of Final Legal Opinions, Orders; Current Information Services Price List.	USPS Headquarters Library, 475 L'Enfant Plaza West SW., Washington, D.C. 20260. Section I—List of USPS Directives and Publications ..... $1 Section II—Index of Final Legal Opinions and Orders ..... $9 Complete Index ..... $10 Checks payable to U.S. Postal Service.	General Manager, Library Division, USPS Headquarters Library, 475 L'Enfant Plaza West SW., Washington, D.C. 20260.
Renegotiation Board	Index of documents, vols. 1, 2, and 3, 1967 to present: Agreements, modification agreements, clearances after assignment, clearances after reassignment, clearances without assignment, clearance agreements, letters not to proceed, final opinions, regional board opinions, orders, modification orders, special accounting agreements, interpretations, general orders, administrative orders, memoranda of decision, statements of facts and reasons, summaries of facts and reasons, decisions on applications for stock item exemption, decisions on new durable productive equipment exemption, and decisions on applications for commercial exemption.	Public Information Office, The Renegotiation Board, 2000 M St. NW., Washington, D.C. 20446. $0.15 per page.	Public Information Office, The Renegotiation Board, 2000 M St. NW., Washington, D.C. 20446, Room 4310, Telephone: 254-7019.
Securities and Exchange Commission.	Index to Commission Decisions. Index to opinions, final orders and nonroutine interlocutory orders issued by the Office of Opinions and Review. Updated on a quarterly basis and serves as a basis for the index to the bound volumes of Commission Decisions and Reports.	Publications Department, Securities and Exchange Commission, Washington, D.C. 20549. Available for purchase at cost of duplication.	Public Reference Room, Securities and Exchange Commission, 1100 L St., NW., Washington, D.C. (202) 523-5506
Do	Decisions and Reports. Index of decisions and opinions of the Commission in adjudicatory proceedings, miscellaneous public announcements of general interest, and reports on proposed plans of reorganization under Bankruptcy Act. Principal index is subdivided into 6 statutes administered by the Commission. Ancillary index contains alphabetical list of respondents in Commission proceedings.	Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. Latest volume (vol. 43) available at $11.45. Photocopies of indexes only may be obtained from SEC at 10 cents per page.	Do.

Agency and subagency name	Index title: period covered, brief description of contents	Order from; price; make checks payable to	For inspection, copying, or additional information contact
Securities and Exchange Commission.	Index to SEC Docket. Index of all releases issued by the Commission. Index is organized by subject headings and by a listing of persons, corporations named in Commission releases.	Subscriptions to SEC Docket at $42 per year may be purchased from Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. Photocopies of indexes only may be obtained from SEC at 10 cents per page.	Public Reference Room, Securities and Exchange Commission, 1100 L St., N.W., Washington, D.C. (202) 523-5506.
Selective Service System	1. Index to Selective Service regulations and directives, 1948 to 1972. 2. Index to Selective Service regulations and registrants processing manual, 1972 to present. 3. General index to reconciliation service manual. 4. Registrant information bank guide index, 1972 to present.	National Headquarters, Selective Service System, 600 E St. NW., Washington, D.C. 20435. Prices: 1. $2, 2. $2, 3. $0.10, 4. $0.10. Make checks payable to: Selective Service System.	Records Manager, National Headquarters, Selective Service System, 600 E St. N.W., Washington, D.C. 20435. Telephone (202) 382-2304.
Tennessee Valley Authority	Index to general administrative releases; covers period through September 1976; index to TVA organization bulletins, TVA codes, and TVA instructions.	John Van Mol, Director of Information, Tennessee Valley Authority, Knoxville, Tenn. 37902. Price: $2.00. Checks payable to: Tennessee Valley Authority.	John Van Mol, Director of Information, Tennessee Valley Authority, Knoxville, Tenn. 37902.

[1] $5. a copy.
[2] $10. a copy for each year.

JANUARY 26, 1977.

FRED J. EMERY,
Director, Office of the Federal Register.

[FR Doc.77-2958 Filed 1-28-77:8:45 am]

OFFICE OF MANAGEMENT AND BUDGET

FEDERAL MANAGEMENT CIRCULARS

Status

By Executive Order No. 11893, issued December 31, 1975, certain policy functions were returned to the Office of Management and Budget from the General Services Administration. Pursuant to Section 4 of the Executive Order,

(a) ny circulars, directives, or regulations issued pursuant to functions transferred by this order shall remain in effect until modified or rescinded by the Office of Management and Budget.

The notice published in 42 FR 12 (1977), has raised questions concerning the status of these Federal Management Circulars. That notice was designed, in part, to indicate these circulars are still in effect and are binding upon the agencies to the same extent as they were prior to the effective date of the Executive Order. They have neither been modified or rescinded by this office.

VELMA N. BALDWIN,
Assistant to the Director for Administration.

[FR Doc.77-2931 Filed 1-28-77:8:45 am]

PRIVACY ACT OF 1974

Reports on New Systems

The purpose of this notice is to list reports on new systems filed with the Office of Management and Budget to give members of the public the opportunity to make inquiries about them and to comment on them.

The Privacy Act of 1974 requires that agencies give advance notice to the Congress and the Office of Management and Budget of their intent to establish or modify systems of records subject to the Act (5 U.S.C. 552a(o)). During the period January 10, through January 21, 1977 the Office of Management and Budget received the following reports on new (or revised) systems of records.

NATIONAL ENDOWMENT FOR THE ARTS

System Name:

Interns.

Report Date:

January 6, 1977.

Point of Contact:

Mr. Robert Wade, General Counsel, National Endowment for the Arts, 2401 E Street, NW., Washington, D.C. 20506.

VETERANS ADMINISTRATION

System Name:

Employee ADP Training Records.

Report Date:

January 14, 1977.

Point of Contact:

Richard L. Roudebush, Administrator, Veterans Administration, Washington, D.C. 20420.

VELMA N. BALDWIN,
Assistant to the Director for Administration.

[FR Doc.77-2930 Filed 1-28-77:8:45 am]

CLEARANCE OF REPORTS

List of Requests

The following is a list of requests for clearance of reports intended for use in collecting information from the public received by the Office of Management and Budget on January 25, 1977 (44 U.S.C. 3509). The purpose of publishing this list in the FEDERAL REGISTER is to inform the public.

The list includes the title of each request received; the name of the agency sponsoring the proposed collection of information; the agency form number(s), if applicable; the frequency with which the information is proposed to be collected; the name of the reviewer or reviewing division within OMB, and an indication of who will be the respondents to the proposed collection.

Requests for extension which appear to raise no significant issues are to be approved after brief notice through this release.

Further information about the items on this daily list may be obtained from the Clearance Office, Office of Management and Budget Washington, D.C. 20503, (202-395-4529), or from the reviewer listed.

NEW FORMS

ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION

Combustion and Advanced Power Technologies Commercialization Study, E(49-18), single time, utilities, industry and institutions, Ellett, C. A., 395-5867.

DEPARTMENT OF COMMERCE

Bureau of Census, Annual Demographic Survey—March 1977, CPS-1, CPS-5, CPS-581, CPS, single time, 53,000 households, George Hall, 395-6140.

DEPARTMENT OF DEFENSE

Department of the Air Force, Reserve Forces Attitude Survey, single time, Reserve Forces, Richard Eisinger, 395-6140.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education, Assessment of Educational Programming Needs, OE-551, single time, national sample of households, Kathy Wallman, 395-6140.

Office of Human Development, Instruction for Completing Application for Federal Assistance for RSA Training Grants, annually, State VR agencies, colleges, and universities, Budget Review Division, Lowry, R. L., 395-4775.

REVISIONS

VETERANS ADMINISTRATION

Custodians Certificate and Agreement (in cases of minor, or incompetent beneficiaries), VA 27-4703, on occasion, custodians, Caywood, D. P., 395-3443.

DEPARTMENT OF COMMERCE

Bureau of Census, Environmental Quality Control Agency Compilation Sheet EQC 1, annually, large governments, Eliett, C. A. 395–5867.

Economic Development Administration, Employment Schedule and Assurances of Job Opportunities, ED 223, on occasion, business entities expanding or building new facilities, Tracey Cole, 395–5870.

REVISIONS

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Social Security Administration, Refund Questionnaire, SSA–632, on occasion, individuals and households, Caywood, D. P., 395–3443.

EXTENSIONS

VETERANS ADMINISTRATION

Conversion Information, VA 29–358B, on occasion, insured veterans, Caywood, D. P., 395–3443.

UNITED STATES INFORMATION AGENCY

Application for Certificate of International Educational Character—Recording, IAP–2, on occasion, business firms, Warren Topelius, 395–5872.

Application for Certificate of International Educational Character—Filmstrip, IAP–3, on occasion, business firms, Warren Topelius, 395–5872.

Application for Certificate of International Educational Character—Slides, IAP–4, on occasion, business firms, Warren Topelius, 395–5872.

Application for Certificate of International Educational Character—Wall Chart, Map, Poster, IAP–8, on occasion, business firms, Warren Topelius, 395–5872.

Application for Certificate of International Educational Character—Motion Picture, IAP–1, on occasion, business firms, Warren Topelius, 395–5872.

DEPARTMENT OF COMMERCE

Domestic and International Business Administration, Basic Rules of the Defense Materials and Priority Systems Between Canada and United States, DMS–1, DPS–1, on occasion, producers of industrial products, Warren Topelius, 395–5872.

National Oceanic and Atmospheric Administration, Severe Storm Report, WS–F–61, on occasion, cooperating weather observers, Tracey Cole, 395–5870.

Economic Development Administration, Potential Project Report for Field Staff Screening of Business Loan Applicants, ED–233, on occasion, firms planning new/expanded plants, Warren Topelius, 395–5872.

DEPARTMENT OF THE TREASURY

Departmental and other, Bank Deposits in Minority Bank Cities, MBDP–1A, quarterly, government agencies, C. Louis Kincannon, 395–3211.

PHILLIP D. LARSEN,
Budget and Management Officer.

[FR Doc.77–3083 Filed 1–28–77;8:45 am]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

SHIPPERS ADVISORY COMMITTEE

Meetings

Pursuant to the provisions of section 10(a)(2) of the Federal Advisory Committee Act (86 Stat. 770), notice is hereby given of meetings of the Shippers Advisory Committee established under Marketing Order No. 905 (7 CFR Part 905). This order regulates the handing of oranges, grapefruit, tangerines, and tangelos grown in Florida and is effective pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The committee will hold meetings on February 15 and February 22, 1977, at 10:30 a.m. in the A. B. Michael Auditorium of the Florida Citrus Mutual Building, 302 South Massachusetts Avenue, Lakeland Florida.

The meetings will be open to the public and a brief period will be set aside at each meeting for public comments and questions. The agenda of each meeting includes analysis of current information concerning market supply and demand factors, and consideration of recommendations for regulation of shipments of the named fruits.

The names of committee members, agenda, and other information pertaining to each meeting may be obtained from Frank D. Trovillion, Manager, Growers Administrative Committee, P.O. Box R, Lakeland, Florida 33802; telephone 813–682–3103.

Dated: January 26, 1977.

WILLIAM T. MANLEY,
Deputy Administrator, Program Operations.

[FR Doc.77–3007 Filed 1–28–77;8:45 am]

Farmers Home Administration

[Designation Number A424]

GEORGIA

Designation of Emergency Areas

The Secretary of Agriculture has determined that farming, ranching, or aquaculture operations have been substantially affected in the following Georgia Counties as a result of drought July 1 through August 31, 1976, in both Johnson and Laurens Counties in addition to an early freeze October 29, 1976, in Johnson County and intermittent extreme heat from July 1 through August 31, 1976, in Laurens County.

Johnson Laurens

Therefore, the Secretary has designated this area as eligible for emergency loans pursuant to the provisions of the Consolidated Farm and Rural Development Act, as amended by Pub. L. 94–68, and the provisions of 7 CFR 1832.3(b) including the recommendation of Governor George Busbee that such designation be made.

Applications for emergency loans must be received by this Department no later than March 10, 1977, for physical losses and October 7, 1977, for production losses, except that qualified borrowers who receive initial loans pursuant to this designation may be eligible for subsequent loans. The urgency of the need for loans in the designated area makes it impracticable and contrary to the public interest to give advance notice of proposed rulemaking, and invite public participation.

Done at Washington, D.C., this 19th day of January, 1977.

FRANK B. ELLIOTT,
Administrator, Farmers Home Administration.

[FR Doc.77–2954 Filed 1–28–77;8:45 am]

[Designation Number A427]

NORTH DAKOTA

Designation of Emergency Areas

The Secretary of Agriculture has determined that farming, ranching, or aquaculture operations have been substantially affected in Barnes County, North Dakota, as a result of prolonged drought beginning September 1, 1975, and extending through the 1976 crop year ending December 31, 1976.

Therefore, the Secretary has designated this area as eligible for emergency loans pursuant to the provisions of the Consolidated Farm and Rural Development Act, as amended by Public Law 94–68, and the provisions of 7 CFR 1832.3(b) including the recommendation of Governor Arthur A. Link that such designation be made.

Applications for emergency loans must be received by this Department no later than March 10, 1977, for physical losses and October 7, 1977, for production losses, except that qualified borrowers who receive initial loans pursuant to this designation may be eligible for subsequent loans. The urgency of the need for loans in the designated area makes it impracticable and contrary to the public interest to give advance notice of proposed rulemaking and invite public participation.

Done at Washington, DC, this 19th day of January, 1977.

FRANK B. ELLIOTT,
Administrator, Farmers Home Administration.

[FR Doc.77–2953 Filed 1–28–77;8:45 am]

Packers and Stockyards Administration

LONDON LIVESTOCK AND CAR AUCTION, LONDON, ARKANSAS, ET AL.

Proposed Posting of Stockyards

The Chief, Registrations, Bonds, and Reports Branch, Packers and Stockyards Administration, United States Department of Agriculture, has information that the livestock markets named below are stockyards as defined in Section 302 of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 202), and should be made subject to the provisions of the Act.

AR–156, London Livestock and Car Auction, London, Arkansas.
GA–183, Miller Livestock Company, Colquitt, Georgia.
IL–167, United Market Center, Goreville, Illinois.
MN–169, Willmar Feeder Pig Market, Willmar, Minnesota.

TN–175, Tennessee Livestock Producers, Inc., Cross Plains, Tennessee.

Notice is hereby given, therefore, that the said Chief, pursuant to authority delegated under the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 et seq.), proposes to issue a rule designating the stockyards named above as posted stockyards subject to the provisions of the Act as provided in Section 302 thereof.

Any person who wishes to submit written data, views, or arguments concerning the proposed rule, may do so by filing them with the Chief, Registrations, Bonds, and Reports Branch, Packers and Stockyards Administration, United States Department of Agriculture, Washington, D.C. 20250, by February 15, 1977.

All written submissions made pursuant to this notice shall be made available for public inspection at such times and places in a manner convenient to the public business (7 U.S.C. 1.27(b)).

Done at Washington, D.C., this 24th day of January, 1977.

EDWARD L. THOMPSON,
Chief, Registrations, Bonds, and Reports Branch, Livestock Marketing Division.

[FR Doc.77–2955 Filed 1–28–77;8:45 am]

CIVIL AERONAUTICS BOARD

[Order 77–1–138; Docket 27436]

AIR NEW ENGLAND, INC.

Establishment of Subsidy Mail Rates; Order to Show Cause

Petition of Air New England, Inc. for establishment of subsidy mail rates pursuant to section 406 of the Federal Aviation Act of 1958, as amended.

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 25th day of January, 1977.

On January 24, 1975, Air New England, Inc. (ANE), was certified by the Board, thus becoming eligible for subsidy support. The carrier has been operating for nearly two years under a temporary subsidy rate established and revised by the Board.[1] By its petition as amended on October 1, 1976, ANE requests a past period rate for the period January 24, 1975 through June 30, 1976 and a final future rate as of July 1, 1976.

The carrier's original petition, filed January 24, 1975, requested the establishment of both temporary and final annual subsidy rates of $3.8 million. After analysis of the available data for the carrier, the Board set an annual temporary subsidy rate of $1.9 million.[2]

The carrier subsequently filed an amendment to its petition on August 6, 1975, requesting an increased temporary annual subsidy rate of $3.7 million, and an increased final annual rate of $4.5 million. In response to the request for an increase in the temporary subsidy rate, the Board set a revised temporary annual rate of $3.2 million.[3]

ANE's October 1, 1976, amendment to its petition proposed a final rate of $7.3 million for the past period January 24, 1975, through June 30, 1976.[4] The carrier requested that the past period rate be set "as quickly as possible" indicating that this rate "is sorely needed to improve its cash position." The carrier's October 1, 1976, filing also requested a final future rate of $4.4 million per year in addition to several requests regarding the method of determination and payment of the future rate. In order to avoid a delay in setting a past period rate for the carrier, the determination of ANE's final future rate level and payment formula will be addressed in a subsequent order.

The Board has decided that sufficient operating experience has been gained by ANE as a certificated carrier to support the establishment of a final past-period subsidy mail rate from the date of certification, January 24, 1975, through June 30, 1976. In arriving at the proposed past period rate, the Board has thoroughly reviewed the carrier's petition, its reported financial and traffic data, and the results of a special ratemaking audit conducted by the Board's Bureau of Enforcement (BOE). In addition, we have examined in detail the carrier's operations during the period and find that, given the experimental nature of the initial period of certificated operations, the carrier's decisions with regard to service and equipment were reasonable.

ANE reported system operating revenues of $16.2 million for the 18 months ended June 30, 1976, and operating expenses of $22.7 million for the same period, producing a reported operating breakeven need of $6.5 million for the 18-month period.[5] This deficit includes the effects of such items as the costs associated with certification as well as the integration of FH–227 aircraft into the carrier's system.

We have adjusted ANE's reported operating results to reflect disallowances required by the BOE audit plus other adjustments normally made for subsidy ratemaking purposes.[6] The adjustments to breakeven need were allocated to eligible and ineligible services. Details of the specific adjustments and the methods of allocation are described in Appendix B, attached.[7] [7a]

ANE's reported investment was also adjusted in accordance with subsidy ratemaking policy. The adjustments include: direct adjustments to debt to reflect the elimination of those notes which were repaid within 90 days, the elimination of unamortized discount and expense on debt, and an allowance for construction work in progress; direct adjustments to equity to reflect disallowed FH–227 depreciation expense, an adjustment for unrealized capital losses,[8] and an adjustment to DHC–6 depreciation: and pro rata adjustments to eliminate special funds—other, nonoperating property and equipment—net, developmental and preoperating costs and other intangibles. (For details of these adjustments see Appendix C).

ANE has requested a 12.35-percent annual rate of return for the past period.[9] It has long been the Boards policy to establish past period rates of return at a level below applicable future rates. During a past open rate period, many of the normal and abnormal risks of air transport which would be borne by a carrier under a final future rate, are shifted to the Government. This shifting of risks is properly reflected in lower rates of return for past periods.[10] Seven percent is the rate of return which the Board has employed for a number of years in past period rate cases, most recently in 1973.[11] It is apparent, however, that a past period rate of return of seven percent would not be adequate today considering prevailing interest rates. For example, ANE's cost of embedded debt during the open rate period was 9.62 percent (See Appendix F.)

We have determined that a past period annual rate of 10 percent would be fair and reasonable in this case. With a ten percent rate of return, ANE's full debt costs are met and the carrier is provided with a past period return on the equity portion of adjusted eligible investment of 11.6 percent which the Board deems reasonable given the reduced risks associated with a past period.

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[1] Order 75–4–21, April 3, 1975 and Order 75–11–5, November 3, 1975.

[2] Order 75–3–82, March 21, 1975 and Order 75–4–21, April 3, 1975.

[3] Order 75–10–75, October 17, 1975 and Order 75–11–5, November 3, 1975.

[4] Certain revisions and additions to the carrier's October 1, 1976 petition were filed on November 23, 1976, establishing ANE's current rate requests.

[5] The reported figures include a 23-day period of precertificated operations for which the carrier is not seeking subsidy support.

[6] The BOE audit covered calendar year 1975. The audit adjustments were projected over the last six months of the past period where appropriate.

[7] As has been done in the past when an initial past period rate has been set for a small newly certificated carrier, no seasonal adjustment has been made to ANE's reported results due to the experimental nature of the start-up period. See: Challenger Airlines Co., Mail Rates, 10 C.A.B. 809 (1949); and Monarch Air Lines, Inc., Mail Rates, 10 C.A.B. 188 (1949).

[7a] Appendices A–F filed as part of original document.

[8] To eliminate operating investment in DC–3 equipment. A contra adjustment increasing nonoperating property and equipment—net was made.

[9] This is the rate of return found reasonable for local service carriers for commercial ratemaking purposes in Phase 8 of the DPFI. (Order 71–4–58, April 9, 1971).

[10] For a more complete discussion of the rationale behind past period rates of return, see Transatlantic Final Mail Rate Case, 19 C.A.B. 464, 614 (1954).

[11] Order 73–10–51, October 12, 1973.

ANE's reported eligible breakeven need of $6.3 million is $1.2 million greater than the Board's calculated need of $5.1 million. This difference results from our reallocation of system breakeven need to its eligible and ineligible components,[12] plus the normal ratemaking adjustments mentioned above and detailed in Appendix B. In addition, the Board's determination of the return element on eligible investment of $.9 million is $.4 million below the carrier's request of $1.3 million, due to the carrier's use of the higher rate of return, plus the adjustments mentioned previously and detailed in Appendix C.

The Board's analysis (see Appendix A) reveals, therefore, that the carrier's eligible breakeven need after adjustments is $5.1 million, and together with a return element on eligible investment of $.9 million, combines to produce a total subsidy eligible need of $6.0 million for the entire 18-month period. After an adjustment to eliminate 23 days of precertificated operations, the past period subsidy need amounts to $5.7 million. After an allowance for a return on the past period subsidy deficiency has been added the past period subsidy rate totals $5.8 million.[13]

Based on the foregoing analysis, it is reasonable to provide ANE with subsidy in the amount of $5.8 million to meet its adjusted subsidy need for the past period. Therefore, the Board tentatively finds and concludes that the fair and reasonable final rate of compensation to be paid to Air New England, Inc., for the transportation of mail by aircraft, the facilities used and useful therefor, and the subsidy eligible services connected therewith between the points between which the carrier has been authorized to transport mail by its certificate of public convenience and necessity for the period January 24, 1975, through June 30, 1976, is the sum of (a) the service mail rates as heretofore established for the carrier by orders of the Board[14] and (b) subsidy in the amount of $5,828,830.

Accordingly, pursuant to the Federal Aviation Act of 1958, as amended, particularly sections 102, 204, 406 and 1002(b) thereof, and the regulations promulgated in 14 CFR 302,

It is ordered, That:[15]

1. Air New England, Inc. is directed to show cause why the Board should not fix, determine, and publish the aforesaid rate as the fair and reasonable final rate of compensation to be paid Air New England, Inc. for the transportation of mail by aircraft, the facilities used and useful therefor, and the services connected therewith over that part of the carrier's system which is eligible for subsidy for the period January 24, 1975, through June 30, 1976, inclusive;[16]

2. Further procedures with respect to the final rate proposed herein shall be in accordance with the Board's Rules of Practice particularly Rule 302, et seq., and, if there is any objection to the rate specified herein, notice thereof must be filed within 10 days, and, if notice is filed, written answer and supporting documents must be filed within 30 days after the date of service of this order;

3. If notice of objection is not filed within 10 days, or if notice is filed and answer is not filed within 30 days after service of this order, or, if an answer timely filed raises no material issue of fact, all parties shall be deemed to have waived the right to a hearing and all other procedural steps short of a final decision by the Board, and the Board may enter an order fixing the final subsidy rate specified herein;

4. If notice of objection and answer are filed presenting issues for hearing, issues going to the establishment of the fair and reasonable rates herein shall be limited to those specifically raised by such answers except as otherwise provided in 14 CFR, § 302.307, and

5. This order shall be served upon all parties to this proceeding.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board:

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc.77-2988 Filed 1-28-77;8:45 am]

[12] ANE's allocation procedures for most revenue and expense categories were not deemed reasonable nor in conformance with the methods employed by the Board in the past in determining subsidy eligible breakeven need requirements. Major reallocations were necessary in the areas of transport related revenues and expenses, aircraft and traffic servicing expense and general and administrative expense.

The vast majority of ANE's transport related revenues and expenses arise from items such as equipment rentals and general service sales to outside companies. The revenues and expenses from such items do not directly relate to either eligible or ineligible services. Nevertheless, ANE directly assigned the bulk of transport related revenues and expenses to ineligible services. In the area of aircraft and traffic service expense, ANE employed an arbitrary and unsupported one-half weighting of unit costs in ineligible services. In a similar fashion, ANE employed a one-half weighting in allocating general and administrative expenses to ineligible services.

[13] The exact amount of ANE's subsidy for the period January 24, 1975, through June 30, 1976, is calculated as follows:

	Eligible	Ineligible	Total
18 mo adjusted breakeven need	$5,101,512	$740,476	$5,841,988
Return element	898,913	135,556	1,034,469
Total need	6,000,425	876,032	6,876,457
Adjustment for 23d of precertificated operations	(252,308)		
Past period need (Jan. 24, 1975, to June 30, 1976)	5,748,119		
Return allowance on subsidy deficiency *	80,711		
Total, past period subsidy	5,828,830		

*Computed as follows:

$$[(1+\tfrac{1}{2}D)+\tfrac{1}{2}r]\,[521/365]=r$$

Where:
D = subsidy need ($5,748,119) less subsidy paid ($1,705,722).
r = rate of return (10 pct) per annum.
i = return allowance on Deficiency.
521/365 = ratio of past period to annual period.

[14] This order is not intended to disturb the service mail rates established for Air New England, Inc., in other orders of the Board.

[15] All forms, reports, schedules, and tariffs filed by Air New England with the Board, to the date of the Board's final decision, and the official mileage record of the Board, are incorporated into the record of this proceeding.

[16] The compensation provided herein shall be in lieu of, and not in addition to, the compensation heretofore received by Air New England for mail transported over its subsidy-eligible routes for the period January 24, 1975, through June 30, 1976.

[Docket 30352]

BRITISH AIRWAYS BOARD, d.b.a. BRITISH AIRWAYS ENFORCEMENT PROCEEDING

Assignment of Proceeding

This proceeding is hereby assigned to Administrative Law Judge Alexander N. Argerakis. Future communications should be addressed to Judge Argerakis.

Dated at Washington, D.C., January 25, 1977.

HENRY M. SWITKAY,
Acting Chief
Administrative Law Judge.

[FR Doc.77-2987 Filed 1-28-77;8:45 am]

DEPARTMENT OF COMMERCE

Domestic and International Business Administration

EYE & EAR HOSPITAL, ET AL.

Consolidated Decision on Applications for Duty-Free Entry of Ultramicrotomes

The following is a consolidated decision on applications for duty-free entry of ultramicrotomes pursuant to section 6 (c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR Part 301). (See especially § 301.11(e).)

A copy of the record pertaining to each of the applications in this consolidated decision is available for public review during ordinary business hours of the Department of Commerce, at the Special Import Programs Division, Office of Import Programs, Department of Commerce, Washington, D.C. 20230.

Docket number: 76-00540. Applicant: Eye & Ear Hospital, 230 Lothrop Street, Pittsburgh, PA 15213. Article: Ultramicrotome, Model LKB 8800A and accessories. Manufacturer: LKB-Produkter AB, Sweden. Intended use of article: The article is intended to be used for studies of biological tissues which range is hardness from very soft (inner ear receptor cells), to medium hardness (myelinated nerve fibers), to very hard (calcium carbonate otolithic membrane and petrous bone). The research to be conducted will involve the study of the normal and pathologic anatomy of the inner ear. This includes ultrastructural studies and analysis of both single and serial sections. In addition, the article will be used in the course Graduate Research in Anatomy which includes basic electron microscopic techniques in sample preparation, sectioning, instrument operation, dark room procedures, and techniques available for quantitative analysis of data.

Application received by Commissioner of Customs: September 14, 1976. Advice submitted by the Department of Health, Education, and Welfare on: January 7, 1977.

Docket number: 76-00547. Applicant: Herbert H. Lehman College of CUNY, Bedford Park Bldv. W., Bronx, New York 10468. Article: Ultramicrotome, Model LKB 8800A and accessories. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The article is intended to be used for sectioning plant, animal, fungal and bacterial tissues embedded in epoxy resins which will be investigated to further basic knowledge of cell and tissue ultrastructure. It is hoped that the investigations will aid in the understanding of the abscission process, differentiation, host-parasite interactions and blue-green algal structure in relation to their environment. The article will also be used in the courses Electron Microscopy, Cytology and Tutorials which involve a study of the general principles on techniques and the use of the electron microscopes (transmission and scanning) to study the fine structure of cells and tissues and the employment of certain cytochemical methods to localize various enzymes. Application received by Commissioner of Customs: September 29, 1976. Advice submitted by the Department of Health, Education, and Welfare on: January 7, 1977.

Comments: No comments have been received with respect to any of the foregoing applications. Decision: Applications approved. No instrument or apparatus of equivalent scientific value to the foreign articles for such purposes as these articles are intended to be used, is being manufactured in the United States. Reasons: Each of the foreign articles provides a range of cutting speeds from 0.1 to 20 millimeters per second. The most closely comparable domestic instrument is the Model MT-2B ultramicrotome which is manufactured by Ivan Sorvall, Inc. (Sorvall). The Model MT-2B has a range of cutting speeds from 0.09 to 3.2 millimeters per second. The conditions for obtaining high-quality sections that are uniform in thickness, depend to a large extent on the hardness, consistency, toughness and other properties of the specimen materials, the properties of the embedding materials, and geometry of the block. In connection with a prior application (Docket Number 69-00665-33-46500), which relates to the duty-free entry of an article that is identical to those to which the foregoing applications relate, the Department of Health, Education, and Welfare (HEW) advised that "Smooth cuts are obtained when the speed of cutting, (among such [other] factors as knife edge condition and angle), is adjusted to the characteristics of the material being sectioned. The range of cutting speeds and a capability for the higher cutting speeds is, therefore, a pertinent characteristic of the ultramicrotome to be used for sectioning materials that experience has shown difficult to section." In connection with another prior application (Docket Number 70-00077-33-46500) which also relates to an article that is identical to those described above, HEW advised that "ultrathin sectioning of a variety of tissues having a wide range in density, hardness etc." requires a maximum range in cutting speed and, further, that the "production of ultrathin serial sections of specimens that have a great variation in physical properties is very difficult." Accordingly, HEW advises in its respectively cited memoranda, that cutting speeds in excess of 4 millimeters per second are pertinent to the satisfactory sectioning of the specimen materials and the relevant embedding materials that will be used by the applicants in their respective experiments.

For these reasons, we find that the Sorvall Model MT-2B ultramicrotome is not of equivalent scientific value to the foreign articles to which the foregoing applications relate, for such purposes as these articles are intended to be used.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to any of the foreign articles to which the foregoing applications relate, for such purposes as these articles are intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational nad Scientific Materials)

RICHARD M. SEPPA,
Director,
Special Import Programs Division.

[FR Doc.77-2928 Filed 1-28-77;8:45 am]

National Oceanic and Atmospheric Administration

COASTAL ZONE MANAGEMENT ADVISORY COMMITTEE

Public Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. I (Supp. V, 1975), notice is hereby given of the meeting of the Coastal Zone Management Advisory Committee (the "Committee") on Tuesday through Friday, February 22-25, 1977. The meeting will commence at 9 a.m., February 22, in the Governor's Conference Room, State Capitol, Monroe Street, Tallahassee, Florida; at 10 a.m., February 23, in the County Commissioner's Meeting Room, Franklin County Courthouse, Market Street, Apalachicola, Florida; at 8:30 a.m., February 24, in the National Hurricane Center's 4th Floor Conference Room, Ungar/Computer Building, University of Miami, Coral Gables, Florida; and at 9 a.m., February 25, in the 1st Floor Conference Room, Atlantic Oceanographic and Meteorological Laboratory, 15 Rickenbacker Causeway, Miami, Florida.

The meeting will be open to public observation subject to the extent of seating available. Interested persons are invited to attend and participate in the meeting, subject to the procedures which follow. From approximately 11:30 a.m until 12 noon on February 22, 11:15 a.m until 11:30 a.m. on February 23, and 11:45 a.m. until 12 noon on February 25, interested persons will be permitted to make oral statements to the Committee which are relevant to topics on the agenda. Depending on the level of interest expressed in making oral statements and the time allotted, the number of persons permitted to speak and the length of oral statements may be limited, and preference may be given based upon relevance of statements to items on the agenda; such decisions will be made by the Chairman in consultation with the Committee. Interested persons wishing to make oral statements must register on February 22, 23, and 25 with the Executive Secretary 15 minutes prior to meeting time in the meeting room and must provide their topic(s). A written version of an oral statement or a written statement may be submitted to the Executive Secretary before or after the meeting, or may be mailed within five days to: Office of Coastal Zone Management, National Oceanic and Atmospheric Administration, 3300 Whitehaven Street, NW., Washington, D.C. 20235 (Attn: Dr. Richard J. Keating, Executive Secretary, CZM Advisory Committee). All statements received in type-written form will be distributed to the Committee for consideration with the minutes of the meeting. Inquiries may be directed to Richard Keating at 634-4232.

The items for Committee discussion at the meeting will include the following:

TUESDAY, FEBRUARY 22—TALLAHASSEE, FLA

9 a.m.	Call to order. Approval of minutes.
9:30 a.m.	Presentation on progress of Florida CZM program.
10:30 a.m.	Brief recess.
10:45 a.m.	Continuation of above topic; allowing time for discussion by committee.
11:30 a.m.	Oral statements (if any) by interested person(s).
12 noon	Lunch.

1:30 p.m.	Presentation on proposed estuarine sanctuary (Apalachicola River/Bay System).
3 p.m.	Brief recess.
3:15 p.m.	Evaluation of CZM program.
4:30 p.m.	Adjourn.

WEDNESDAY, FEBRUARY 23—APALACHICOLA, FLA.

10 a.m.	Presentation on proposed Corps of Engineers' dam project and its environmental, social, and economic impacts.
11:15 a.m.	Oral statements (if any) by interested person(s).
11:30 a.m.	Lunch.
1 p.m.	Onsite inspection of State-owned wetlands.
4 p.m.	Return to Tallahassee.

THURSDAY, FEBRUARY 24—CORAL GABLES, FLA.

8:30 a.m.	Brief tour and discussion of National Hurricane Center's activities.
9:30 a.m.	Presentation on natural hazards and their impact on State coastal management programs.
10:15 a.m.	Brief recess.
10:30 a.m.	Committee's discussion of above topics.
11 a.m.	Leave National Hurricane Center. Onsite inspection of Florida Keys' areas likely to be impacted by hurricanes; discussion of evacuation problems in low-lying areas, mangrove loss, etc. Lunch along the way.
2 p.m.	Onsite visit to Key Largo coral reef designated a marine sanctuary in December 1975. Presentation by Florida Interpretive Service boat tour.
5:30 p.m.	Return to Miami.

FRIDAY, FEBRUARY 25—MIAMI, FLA

9 a.m.	Call to order.
9:15 a.m.	Report on progress of CZM program; CEIP regulations: 305 amendments regulations; key issues in pending 306 programs approvals.
10:15 a.m.	Brief recess.
10:30 a.m.	Committee's discussion of above topics.
11 a.m.	Committee's recommendations on excluded Federal lands legislation.
11:45 a.m.	Oral statements (if any) by interested person(s).
12 noon	Lunch.
1:30 p.m.	Discussion of possible committee involvement in ongoing "Methodology Study to Predict Onshore Impacts of Oil and Gas".
2:30 p.m.	Report by task force on State assistance.
3 p.m.	Discussion of agenda for next meeting.
3:30 p.m.	Adjourn.

Dated: January 25, 1977.

T. P. GLEITER,
Assistant Administrator for Administration, National Oceanic and Atmospheric Administration.

[FR Doc.77-2917 Filed 1-28-77;8:45 am]

NAVAL UNDERSEA CENTER

Receipt of Application for Scientific Research Permit

Notice is hereby given that the following Applicant has applied in due form for a permit to take and import marine mammals for scientific research as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407); and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

Naval Undersea Sciences Department, Naval Undersea Center, San Diego, California 92132, to take and import six (6) beluga whales (*Delphinapterus leucas*), six (6) Risso's dolphins (*Grampus griseus*), ten (10) common dolphins (*Delphinus delphis*), two (2) white-beaked dolphins (*Lagenorhynchus albirostris*), six (6) Pacific white-sided dolphins (*Lagenorhynchus obliquidens*), six (6) finless porpoises (*Neophoeoena phocaenoides*) three (3) false killer whales (*Pseudorca crassidens*), two (2) rough-toothed dolphins (*Steno bredanensis*), thirty seven (37 bottlenose dolphins (*Tursiops truncatus*), twenty six (26) California sea lions (*Zalophus californianus*), and eight (8) ringed seals (*Phoca (=Pusa) hispida*) to be maintained alive.

The animals requested are to be used in five categories of investigations: (1) Whales and dolphins as noise making animals that affect naval operations; (2) specialized sensory and physiological systems as models for man-made analogs; (3) organisms that might be used to perform underwater tasks more efficiently than human divers; (4) the health care and nutrition of animals maintained as captive laboratory animals; and (5) the ecology, behavior, movements, and migrations of the animals with emphasis on their mechanisms of navigation.

The program is a continuation of the studies the Navy has been doing for over ten years. These studies are conducted by a staff of sixteen veterinarians and scientists plus a support staff. The animals will be maintained in San Diego and Kanehoe Bay, Hawaii. The facilities in San Diego include four circular tanks each measuring 6 feet deep, 30 feet in diameter with a 30,000 gallon capacity, and a rectangular pool measuring 20 feet by 30 feet by 9 feet deep. Four holding pens, each with a floor area 10 feet by 12 feet and a center pool that measures 6 feet by 4 feet by 3 feet deep, are used for pinniped maintenance. Five medical holding pens are available for animals that might need isolation. The water supply is pumped from the ocean through four primary filter tanks and through additional filter tanks located near each of the holding tanks. The facilities in Hawaii consist of floating pens in the Bay measuring 20 feet by 20 feet by 8 feet deep. Three larger pens of the same depth, 50 yards on a side, are for animal maintenance and a larger pen is used solely for cetacean breeding. Dolphins are found naturally in the Bay and special filtration systems are not necessary.

The Applicant cooperates with state and local agencies in assisting in the treatment of beached and stranded animals. The arrangements and facilities for transporting and maintaining the marine mammals requested in the above described application have been inspected by a licensed veterinarian, who has certified that such arrangements and facilities are adequate to provide for the well-being of the marine mammals involved.

Documents submitted in connection with this application are available for review in the following offices:

Director, National Marine Fisheries Service, 3300 Whitehaven Street, N.W., Washington, D.C.;
Regional Director, National Marine Fisheries Service, Southwest Region, 300 South Ferry Street, Terminal Island, California 90731;
Regional Director, Northwest Region, National Marine Fisheries Service, 1700 Westlake Avenue North, Seattle, Washington 98109;
Regional Director, National Marine Fisheries Service, Southeast Region, Duval Building, 9450 Gandy Boulevard, St. Petersburg, Florida 33702;
Regional Director, National Marine Fisheries Service, Northeast Region, Federal Building, 14 Elm Street, Gloucester, Massachusetts 01930; and
Regional Director, National Marine Fisheries Service, Alaska Region, P.O. 1668, Juneau, Alaska 99801.

Concurrent with the publication of this notice in the FEDERAL REGISTER, the Secretary of Commerce is sending copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors. Interested parties may submit written data or views, or requests for a public hearing on this application to the Director, National Marine Fisheries Service, Department of Commerce, Washington, D.C. 20235, on or before March 2, 1977. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Director.

All statements and opinions contained in this notice in support of this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Dated: January 25, 1977.

ROBERT J. AYERS,
Acting Assistant Director for Fisheries Management, National Marine Fisheries Service.

[FR Doc.77-2962 Filed 1-28-77;8:45 am]

Office of the Secretary

[Dept. Organization Order 25-2]

MARITIME ADMINISTRATION

Statement of Organization and Functions and Delegation of Authority

This order effective December 9, 1976 supersedes the material appearing at 38 FR 30757 of November 7, 1973, 40 FR 16707 of April 14, 1975, 40 FR 31824 of July 29, 1975, of 40 FR 56707 of December 4, 1975 and 41 FR 31413 of July 28, 1976.

SECTION 1. Purpose. .01 This order prescribes the organization and assignment of functions within the Maritime Administration. The delegations of authority to the Assistant Secretary for Maritime Affairs and the Maritime Subsidy Board are set forth in Department Organization Order 10–8.

.02 This revision incorporates the provisions of the previous amendments (Sections 9., 10., 12., and 13.) and, in general, updates the language of the order.

SEC. 2. *Organization structure.* The organization structure and line of authority of the Maritime Administration shall be depicted in the attached organization chart (Exhibit 1). A copy of the organization chart is on file with the original of this document on file with the Office of the Federal Register.

SEC. 3. *Office of the Assistant Secretary for Maritime Affairs.* .01 The Assistant Secretary for Maritime Affairs ("the Assistant Secretary"), who is ex-officio Maritime Administrator, is the head of the Maritime Administration and serves as Chairman of the Maritime Subsidy Board.

.02 The "Deputy Assistant Secretary for Maritime Affairs" shall assist the Assistant Secretary in carrying out his responsibilities and perform such duties as the Assistant Secretary shall prescribe, together with the duties which he performs as a member of the Maritime Subsidy Board. In addition, he shall be the Acting Assistant Secretary during the absence or disability of the Assistant Secretary and, unless the Secretary of Commerce designates another person, during a vacancy in the office of the Assistant Secretary. He shall also be responsible for supervision and coordination of contract compliance activities and activities under Title VI of the Civil Rights Act of 1964.

.03 The "Executive Staffs" shall consist of the Secretary of the Maritime Administration who also serves as Secretary of the Maritime Subsidy Board, the administrative law judges, and officials concerned with other special services for the Assistant Secretary and the Maritime Subsidy Board.

SEC. 4. *Maritime Subsidy Board.* The Maritime Subsidy Board shall be responsible for and perform the following functions: a. The functions with respect to making, amending, and terminating subsidy contracts, which shall be deemed to include, in the case of construction-differential subsidy, (1) the contract for the construction, reconstruction or reconditioning of a vessel, and (2) the contract for the sale of the vessel to the subsidy applicant or the contract to pay a construction-differential subsidy and the cost of the national defense features and, in the case of operating-differential subsidy, the contract with the subsidy applicant for the payment of the subsidy;

b. The functions with respect to: (1) conducting hearings and making determinations antecedent to making, amending, and terminating subsidy contracts, under the provisions of Titles V, VI, and VIII, and Sections 301 (except investigations, hearings and determinations, including changes in determinations, with respect to minimum manning scales, minimum wage scales and minimum working conditions), 708, 805(a) and 805 (f) of the Merchant Marine Act, 1936, as amended (the "Act"), (2) making readjustments in determinations as to operating cost differentials under Section 606 of the Act, and (3) the approval of the sale, assignment, or transfer of any operating subsidy contract under Section 608 of the Act;

c. The functions with respect to investigating and determining: (1) the relative cost of construction of comparable vessels in the United States and foreign countries, (2) the relative cost of operating vessels under the registry of the United States and under foreign registry, and (3) the extent and character of aids and subsidies granted by foreign governments to their merchant marines, under the provisions of Subsections (c), (d), and (e) of Section 211 of the Act;

d. So much of the functions specified in Section 12 of the Shipping Act, 1916, as amended, as the same relate to the functions of the Board under subparagraphs a. through c. of this paragraph; and

e. So much of the functions with respect to adopting rules and regulations, subpoenaing witnesses, administering oaths, taking evidence, and requiring the production of books, papers, and documents, under Sections 204 and 214 of the Act, as relate to the functions of the Board.

SEC. 5. *Office of the General Counsel.* The Office of the General Counsel shall, subject to the overall authority of the Department's General Counsel as provided in Department Organization Order 10–6, serve as the law office of the Administration; review and give legal clearance to applications for subsidy and other Government aids to shipping, sales, mortgages, charters, and transfers of ships; prepare and approve as to form and legality, contracts, agreements, performance bonds, deeds, leases, general orders, and related documents; render legal opinions as to the interpretation of such documents and the statutes; coordinate preparation and issuance of general orders and regulations for guidance of the public and outside organizations; prepare drafts of proposed legislation, executive orders, and legislative reports to Congressional committees and the Office of Management and Budget; provide advice to agency officials on matters concerning the Privacy and Freedom of Information Acts; negotiate and settle, or recommend settlement of, admiralty claims, just compensation claims, tort claims, and claims referred to the office for litigation; assist the Department of Justice in the trial, appeal and settlement of litigation; represent the Administration in public proceedings involving all shipping matters before administrative agencies of the Government; and represent the Administration before State and Federal courts with the permission of the Department of Justice.

SEC. 6. *Office of Public Affairs.* The Office of Public Affairs shall develop and coordinate a public information and publications program as needed to further the objectives of the Administration's programs; issue or clear for issuance all information for the general public on shipping and on decisions and activities of the Administration; and prepare periodic and special reports, as assigned.

SEC. 7. *Office of Civil Rights.* The Office of Civil Rights shall formulate and conduct programs to assure compliance by Federal contractors and subcontractors with Executive Orders 11246 and 11375 and related regulations, and applicants for and recipients of Federal financial assistance and their contractors and subcontractors with Title VI of the Civil Rights Act of 1964 and related regulations; plan and direct special programs to assure equal opportunity in employment in the ship and boat building and repair industries, water transportation industry, and related industries as assigned; provide assistance in communicating to minority communities the career opportunities available in the Merchant Marine; assist in the recruitment of qualified minority midshipmen candidates for the U.S. Merchant Marine Academy and assure equal opportunity for the Academy midshipmen; and, in cooperation with other agencies, formulate and implement national policies and programs for the development of minority business enterprises through contractors and subcontractors of the Maritime Administration.

SEC. 8. *Office of International Activities.* The Office of International Activities shall plan, conduct and coordinate Maritime Administration's participation in intergovernmental and international organizations concerned with shipping matters; keep abreast of developments in the United States and foreign countries with a foreign relations impact that may affect the U.S. merchant marine; take and/or coordinate action to establish and present Maritime Administration's position in these matters. Within this Office are personnel responsible for representing the Maritime Administration in international activities, as assigned, for development of maritime foreign cost data, and other technical maritime activities in foreign countries.

SEC. 9. *Office of Maritime Manpower.* The "Office of Maritime Manpower" shall analyze and advise the Administration regarding labor management relations and problems as they apply to seamen, longshoremen and shipyard workers, including labor trends, potential areas of dispute, and the effects of technological changes and proposed legislation on labor; develop plans in cooperation with the Department of Labor to provide reserve maritime manpower for mobilization and other emergencies; obtain, analyze, and publish data for use of

industry, labor, Government and the public concerning maritime employment, wages, hours, manning, working conditions, and manpower requirements; process nominations for appointment of midshipmen to the U.S. Merchant Marine Academy; administer a grant-in-aid program for the State maritime academies; determine need for and coordinate training programs for licensed and unlicensed personnel in maritime industries; coordinate technical maritime training assistance to foreign countries under international cooperative programs, and issue merchant marine decorations and awards.

SEC. 10. *Assistant Administrator for Policy and Administration.* The Assistant Administrator for Policy and Administration shall be the principal assistant and adviser to the Assistant Secretary on administrative services, budget and program analysis, financial analysis and accounting, management information systems, management and organization, personnel, and policy and planning activities. He shall direct the activities of the following organizational units:

.01 The "Office of Administrative Services" shall plan and establish national policies and programs for the conduct of facilities and supply management and office services activities, including material control and disposal of real and personal property, other than ships; administer the security program; settle loss or damage claims arising from shipments on Government bills of lading; secure allocations of the production capacity of private plants for the manufacture of components and materials required in the event of mobilization; administer programs for the management of mail, files, records equipment, vital records, and records disposition; and, for headquarters of the Maritime Administration, provide or obtain travel and office services, including space, communications, correspondence control, and administrative property management services.

.02 The "Office of Budget and Program Analysis" shall conduct studies to evaluate the effectiveness of operating programs in accomplishing established objectives; develop and maintain the Agency program category structure and a system of multi-year program analysis and evaluation; direct and coordinate the development and operation of a system of management by objectives, including identification of program objectives and measurement of accomplishments against these objectives; formulate, recommend, and interpret budgetary policies and procedures; develop and present budget requests and justifications; allocate and maintain budgetary control of funds available; analyze fiscal and program plans and reprogramming proposals for conformance with established policies; and maintain a continuous review of the status of funds and program performance in relation to fiscal plans.

.03 The "Office of Financial Management" shall render financial advice and opinions with respect to the substantive programs and contractual activities of the Administration; prescribe a uniform system of accounts for subsidized operators, agents, charterers, and other contractors; administer a program of external audits of contractors' accounts (except those of research and development contractors) to determine compliance with applicable laws, regulations and contract provisions concerning costs and profits; analyze financial statements and other data submitted by contractors to determine financial qualifications and limitations; make special financial surveys and analyses of contractors or of their operations, when necessary; develop a data base and a financial analysis system to determine the financial condition of the American merchant marine, or segments thereof; perform accounting, payrolling and related functions, including preparation of financial statements and reports, auditing and certification of vouchers for payment, and collection of amounts due the Administration; and develop and maintain a financial information reporting system to assist officials in managing their programs and resources.

.04 The "Office of Management Information Systems" shall plan and develop data processing and management information systems; develop systems and programs for the application of computer techniques; and operate the electronic data processing facility, including auxiliary equipment.

.05 The "Office of Management and Organization" shall conduct manpower surveys to determine staffing requirements for all components of the Administration; conduct surveys and studies to improve management practices, organization structures, delegations of authorities, procedures, and work methods; coordinate management improvement activities; maintain a system for the issuance of the manual of orders and other directives; administer programs for the management of reports, forms, correspondence, and committee activities; and prepare special progress and administrative reports to the Office of the Secretary and others, as required.

.06 The "Office of Personnel" shall plan and administer personnel programs and activities relating to recruitment, placement, promotion, separation, employee performance evaluation, training and career development, employee recognition and incentives, employee relations and services, employee-management relations, classification, pay management, and various employee benefit programs. This office shall also plan and administer the equal opportunity program for employment in the Maritime Administration.

.07 The "Office of Policy and Plans" shall develop and recommend long-range marine affairs policies and plans, including new program initiatives and modifications of policies and plans for the revitalization of the United States merchant marine; conduct economic studies and operations analysis activities in support of the policy and planning functions; identify major issues and problems affecting shipping, and conduct or direct and coordinate studies and analyses to provide solutions thereto; generate methodologies for the conduct of economic and operational analyses, and provide analytic services to other offices of the Administration; direct and coordinate the development and maintenance of plans for carrying out the Maritime Administration's responsibilities and functions in the event of mobilization for war or other national emergency; provide representation and participate in the formulation of international and national plans for emergency and mobilization activities; and coordinate disaster assistance plans and programs, energy conservation and related activities of the Administration.

SEC. 11. *Assistant Administrator for Commercial Development.* The Assistant Administrator for Commercial Development shall be the principal assistant and adviser to the Assistant Secretary on research and development, market development, ports, and intermodal transportation development activities. Within his office are personnel responsible for overall program development and control in the above areas, and for planning, directing and coordinating the activities of the National Maritime Research Center located at Kings Point, N.Y. He shall direct the activities of the following organizational units:

.01 The "Office of Maritime Technology" shall develop, coordinate and manage programs to establish a scientific and technological base for achieving a more productive and competitive United States merchant marine; initiate, solicit, develop and recommend specific projects, such as research in hydrodynamics, structures, and oceanographic subject which have a bearing on improvements in the merchant marine, and institutional and university research in marine science and technology appropriate to maritime affairs; and negotiate and administer technical aspects of contracts in above areas.

.02 The "Office of Advanced Ship Development" shall develop, organize, coordinate and manage programs for the application of scientific and technological developments to improve ship systems, shipbuilding, ship machinery, equipment, and other components, with the objective of increasing the efficiency, productivity, and effectiveness of the United States merchant marine; initiate, solicit, develop, and recommend specific projects; and negotiate and administer technical aspects of contracts in these areas.

.03 The "Office of Advanced Ship Operations" shall develop, organize, coordinate and manage programs for the application of scientific, technological, and other developments to upgrade the operational efficiency and competitive position of the United States merchant marine; initiate, solicit, develop, and recommend specific projects in these areas, including navigation and communications, port and terminal operations, cargo handling, marine personnel requirements, automation, ship handling and other operational aspects of the

ship; and negotiate and administer technical aspects of contracts in above areas.

.04 The Office of Market Development shall formulate national policies and programs, and conduct programs for the promotion and development of increased trade for U.S.-flag ships in the foreign commerce of the United States; develop and maintain cooperative efforts with Government agencies, and with shippers, forwarders, bankers, insurance and other groups interested in cargo and trade expansion for U.S.-flag ships; calculate and recommend guideline rates, terms and conditions for transportation of Government-financed cargoes; and regulate, review and report on the administration of cargo preference activities under Public Law 664, 83d Congress, Public Resolution 17, 73d Congress, and other statutes, in accordance with Section 901 of the Merchant Marine Act 1936, as amended.

05. The Office of Port and Intermodal Development shall formulate national policies and programs, and conduct programs for the development and promotion of intermodal transportation systems; conduct studies and formulate plans for the promotion, development and utilization of ports and port facilities; provide technical advice to other Government agencies, private industry and State and municipal governments in the above fields; coordinate and provide leadership to the Department's overall effort to reduce, simplify and otherwise facilitate the use of documents required for trade, travel, and transport purposes; and conduct emergency planning for the utilization and control of ports and port facilities under national mobilization conditions.

SEC. 12. *Assistant Administrator for Operations.* The Assistant Administrator for Operations shall be the principal assistant and adviser to the Assistant Secretary on ship consrtuction, ship operations, and domestic shipping activities. He shall direct the activities of the following organizational units:

.01 The "Office of Ship Construction" shall conduct studies in naval architecture, marine engineering, electrical engineering, and engineering economics; develop preliminary designs establishing the basic characteristics of proposed ships; review and approve ship designs submitted by applicants for Government aid; recommend and, upon request, conduct research and development projects in ship design and construction; develop or approve contract plans and specifications for the construction, reconstruction, conversion, reconversion, reconditioning and betterment of ships; review, obtain approval and certification of national defense features by the Department of the Navy; administer ship construction contracts; inspect ships during course of construction to determine progress and assure conformance with approved plans and specifications; provide naval architectural and engineering services in connection with construction of special purpose ships for other Government agencies; maintain current records of facilities, capacities, workload and employment in commercial shipyards in the United States; and develop requirements for mobilization ship construction programs.

.02 The "Office of Shipbuilding Costs" shall collect, analyze, and maintain data on the relative costs of shipbuilding in the United States and foreign countries; calculate and recommend the amount of construction-differential subsidy; prepare cost estimates, invitations to bid, and recommendations to the Maritime Subsidy Board for the award of ship construction type contracts; authorize progress payments; prepare cost estimates of changes in contract plans and specifications, adjudicate change orders, and recommend approval of cost settlements and contract addenda; secure, analyze and maintain data on domestic and world market values of ships; direct and coordinate a pollution abatement program to protect and enhance the quality of the marine environment by control and abatement of ship-generated pollution; and coordinate implementation of the provisions of the National Environmental Policy Act of 1969 within the Maritime Administration.

.03 The "Office of Domestic Shipping" shall formulate and implement national policies and programs for the development and promotion of domestic waterborne commerce; conduct studies, formulate plans, and make recommendations to improve the competitive position and increase the utilization of the domestic waterborne transportation; give national program direction for maintenance and preservation of the national defense reserve fleet, and for the operation, maintenance and repair of Maritime Administration-owned or acquired merchant ships, conduct of ship condition surveys, and related activities; administer the ship sales program; provide safety engineering services; approve or recommend approval of transfers of ships to foreign ownership, registry or flag; and develop plans for the acquisition, allocation, and operation of merchant ships in time of national emergency and administer these activities as required.

SEC. 13. Assistant Administrator for Maritime Aids. The Assistant Administrator for Maritime Aids shall be the principal assistant and adviser to the Assistant Secretary on subsidy administration, Title XI ship financing guarantees, and other Government aids programs, and marine insurance activities. He shall direct the activities of the following organizational units:

.01 The "Office of Subsidy Administration" shall process applications for construction-differential subsidy, operating-differential subsidy, Federal ship financing guarantees, trade-in allowances, capital construction fund agreements, and other forms of Government aid to shipping; conduct negotiations with applicants, obtain comments of other offices and within delegated authority, approve or recommend approval or disapproval, and take other actions in relation to the award and the administration of aid contracts; administer Construction Reserve Funds; approve actions relating to the administration of Capital Reserve Funds; maintain control records of statutory and contractual reserve funds; collect, analyze and evaluate costs of operating ships under United States and foreign registry; calculate and recommend operating-differential subsidy rates; analyze and recommend trade route structure and service requirements of the oceanborne commerce of the United States, and extent of foreign flag competition on essential trade routes; and collect, maintain, analyze, and disseminate statistical data on cargo and commodity movements in the oceanborne commerce of the United States, composition of world's merchant fleets, and utilization of U.S.-flag ships.

.02 The "Office of Marine Insurance" shall develop, coordinate, control, and administer the marine insurance and the marine war risk insurance activities and programs of the Maritime Administration; maintain contact with the commercial insurance markets, analyze events and trends, and take action to meet changing conditions and foster cooperation between the Federal Government and American marine insurance underwriters in helping to strengthen the domestic marine insurance market; gather, analyze, and disseminate information on marine insurance useful to ship operators and the marine insurance industry; and settle or recommend settlement of claims of a marine insurance and marine war risk insurance nature.

SEC. 14. Field Organization. .01a. There shall be four field organizations called Regions, each headed by a Region Director, as specified below:

Region	*Headquarters location*
Eastern region	New York, N.Y.
Great Lakes region	Cleveland, Ohio.
Central region	New Orleans, La.
Western region	San Francisco, Calif.

b. The Regions shall have geographic areas of responsibility as shown in Exhibit 2.

c.1. The Region Directors shall be responsible for all field operations and programs of the Maritime Administration within their respective Regions, except ship construction and the United States Merchant Marine Academy, subject to national policies, determinations, procedures and directives of the appropriate headquarters office in Washington, D.C. The programs and activities under their jurisdiction shall include marine inspections; training for marine personnel in radar, loran, etc.; market development; port and intermodal transportation development activities; and administrative support activities.

2. In addition, the Eastern, Central, and Western Region Directors shall be responsible for the custody and preservation of ships in the national defense reserve fleets; operation, repair and maintenance of ships; facilities management; contract compliance activities; activities to assure equal opportunity in employment in water transportation industries, as assigned; accounting and ex-

ternal auditing; financial analysis of the shipping industry; and procurement and disposal of property and supplies.

3. The Great Lakes Region Director shall conduct programs and activities to promote the development of Great Lakes shipping.

.02 The "United States Merchant Marine Academy," Kings Point, New York, shall develop and maintain programs for the training of United States citizens to become officers in the United States merchant marine.

This order supersedes Department Organization Order 25-2 of October 23, 1973, as amended.

Effective date: December 9, 1976.

JOSEPH E. KASPUTYS,
Assistant Secretary for Administration.

[FR Doc.77-2927 Filed 1-28-77;8:45 am]

DEPARTMENT OF DEFENSE

Department of the Air Force

AIR UNIVERSITY BOARD OF VISITORS

Meeting

JANUARY 13, 1977.

The Air University Board of Visitors will hold a closed meeting on March 15, 1977, at 1:00 p.m. in the Air University Conference Room, Austin Hall (Building 800), Maxwell Air Force Base, Alabama.

The purpose of this meeting is to give the board an opportunity to present to the Commander, Air University, a report of the findings and recommendations concerning Air University educational programs. The meeting will be closed to protect the free exchange of views on matters related solely to the internal personnel rules and practices of an agency as appropriate according to section 552 (b)(2), Title 5, United States Code.

For further information on this meeting contact Dorothy D. Reed, Coordinator, AU Board of Visitors, Office of the Deputy Chief of Staff, Education, Headquarters Air University (EDV), telephone (205) 293-7423.

FRANKIE S. ESTEP,
Air Force Federal Register Liaison Officer, Directorate of Administration.

[FR Doc.77-2922 Filed 1-28-77;8:45 am]

Department of the Navy

NAVAL RESEARCH ADVISORY COMMITTEE

Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. I), notice is given that the Naval Research Advisory Committee will hold a closed meeting on February 16 and 17, 1977, at Headquarters, U.S. Atlantic Fleet, Norfolk, Virginia. The topic of the meeting will be the examination of the current status and projected needs of the Navy's Command, Control, and Communications systems as a first step in a projected review of the research and development programs being conducted in support of these systems. The objective of this review is to ascertain the adequacy of these programs and their relationship to those of the other services. All sessions will address classified matters required to be kept secret in the interest of national defense. The Secretary of the Navy has therefore determined in writing that the public interest requires the meeting to be closed to the public because it will be concerned with matters listed in section 552b(c)(1) of Title 5, United States Code.

Dated: January 25, 1977.

J. S. JENKINS,
Captain, JAGC, United States Navy, Assistant Judge Advocate General (Civil Law).

[FR Doc.77-2929 Filed 1-28-77;8:45 am]

ENVIRONMENTAL PROTECTION AGENCY

[FRL 669-7]

ADMINISTRATOR'S TOXIC SUBSTANCES ADVISORY COMMITTEE

Establishment

Pursuant to the Federal Advisory Committee Act (Pub. L. 92-463), it is hereby determined that establishment of the Administrator's Toxic Substances Advisory Committee is in the public interest in connection with duties imposed on the U.S. Environmental Protection Agency by law.

This Committee is established to advise, consult with, and make recommendations to the Administrator, EPA, on policy, technical and procedural matters related to the environmental, economic, and social impacts of actions considered under the Toxic Substances Control Act (TSCA) and of particular interest to the Administrator. The Committee will consider and comment on proposals for rules and regulations, and will assess the likely impacts of such rules and regulations should they be promulgated. It may recommend studies to EPA and may raise other issues relevant to implementing the TSCA.

Copies of the Committee charter will be filed with appropriate standing committees of the Congress and the Library of Congress.

Dated: January 25, 1977.

JOHN QUARLES,
Acting Administrator.

[FR Doc.77-3022 Filed 1-28-77;8:45 am]

[FRL 678-6; OPP-00041]

FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT SCIENTIFIC ADVISORY PANEL

Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 86 Stat. 770), notice is hereby given that a two-day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel will be held from 9:30 a.m. to 4:30 p.m. daily on Thursday, February 17, 1977, and Friday, February 18, 1977. The meeting will be held in Room 1112 A, Crystal Mall, Building Number 2, 1921 Jefferson Davis Highway, Arlington, Virginia.

The Scientific Advisory Panel is authorized in accordance with section 25(d) of FIFRA as amended [86 Stat. 973; 89 Stat. 751; 7 U.S.C. 136(a) et seq.]. In accordance with Section 25(d), the Scientific Advisory Panel will comment on the impact on health and the environment of regulatory actions under Sections 6(b) and 25(a) prior to implementation. The purpose of the meeting is to discuss the following topics:

1. Organizational activities of the Panel.
2. Review of proposed regulations for Special Packaging of Pesticides under Section 25(c)(3) of FIFRA.

The meeting will be open to the public. Any member of the public wishing to attend or submit a paper should contact Dr. H. Wade Fowler, Jr., Executive Secretary, FIFRA Scientific Advisory Panel, Office of Pesticide Programs (WH-567), Room E315, Environmental Protection Agency, 401 M Street S.W., Washington, D.C. 20460 (telephone: 202/755-4851). Interested persons are permitted to file written statements before or after the meeting, and may, upon advance notice to the Executive Secretary, present oral statements to the extent that time permits. Written or oral statements will be taken into consideration by the Panel in formulating comments or in deciding to waive comments. Persons desirous of making oral statements must notify the Executive Secretary and submit four copies of a summary no later than February 15, 1977. Individuals who wish to file written statements are advised to submit ten copies of statements to the Executive Secretary in a timely manner to ensure appropriate consideration by the Panel.

Dated: January 25, 1977.

EDWIN L. JOHNSON,
Deputy Assistant Administrator for Pesticide Programs.

[FR Doc.77-3023 Filed 1-28-77;8:45 am]

[FRL 678-5]

STATE-FEDERAL WATER PROGRAMS ADVISORY COMMITTEE

Open Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463) announcement is made of the following subcommittee meeting of the State-Federal Water Program Advisory Committee:

Name: Nonpoint Source Strategy Subcommittee.
Date and time: February 14, 1977, 9:30 a.m.
Place: Environmental Protection Agency, 401 M Street SW., Washington, D.C., Room 1032, West Tower.

Agenda: Discussion of proposed elements of the NPS strategy.

These meetings are open to the public. Any member of the public may file a written statement with the Committee before, during or after the meeting. All communication regarding these meetings should be addressed to: David K. Sabock, Executive Secretary, State-Federal Water Programs Advisory Committee, Office of Water and Hazardous Materials (WH-556), Environmental Protection Agency, 401 "M" Street SW., Washington, D.C. 20460. Anyone wishing to have their name placed on the mailing list for any Committee reports, meeting announcements, and minutes of all meetings should contact the Executive Secretary, either in writing or by telephone—202-755-0405.

Date: January 26, 1977.

ANDREW W. BREIDENBACH,
Assistant Administrator for Water and Hazardous Materials.

[FR Doc.77-3021 Filed 1-28-77;8:45 am]

[OPP-42040; FRL 677-6]

STATE OF UTAH

Submission of State Plan for Certification of Pesticide Applicators

In accordance with the provisions of section 4(a)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (86 Stat. 973; 7 U.S.C. 136 *et seq.*) and 40 CFR Part 171, the Honorable Calvin Rampton, Governor of the State of Utah, has submitted a State Plan for the Certification of Commercial and Private Applicators of Restricted Use Pesticides to the U.S. Environmental Protection Agency (EPA) for approval on a contingency basis. Contingency approval is being requested pending enactment of proposed amendments to the Utah Pesticide Control Act of 1971 and implementation of proposed regulations. A description of these regulations is attached to the Plan.

Notice is hereby given of the intention of the Regional Administrator, EPA, Region VIII, to approve this Plan on a contingency basis.

A summary of this Plan follows. The entire Plan, together with all appendices (except for sample examinations), may be examined during normal business hours at the following locations:

1. The Utah State Department of Agriculture, 147 North 200 West, Salt Lake City, Utah 84103, telephone (801) 533-5421.
2. Room 2013, 1860 Lincoln Street, Denver, Colorado 80295, (Pesticides Branch, Air and Hazardous Materials Division, EPA, Region VIII), telephone (303) 837-3926.
3. Room 401, East Tower, Waterside Mall, 401 M Street, S.W., Washington, D.C. 20460. (Federal Register Section, Technical Services Division, WH-569, Office of Pesticide Programs, EPA), telephone (202) 755-4854.

SUMMARY OF STATE PLAN

The Utah Department of Agriculture (UDA) has been designated the State lead agency for the administration of the pesticide applicator certification program. The UDA is responsible for development of any necessary enabling legislation and promulgation of regulations as well as enforcement activities. The UDA is advised on pesticides matters by the Utah Pesticide Control Committee made up of representatives of farmer organizations, the pesticide industry, the State Department of Health, the State Division of Fish and Game, the State Cooperative Extension Service and the State Department of Agriculture. Applicator training activities are the responsibility of the Utah Cooperative Extension Service (UCES). Coordination of the various certification activities is a UDA responsibility. Legal authority for the program is found in the Utah Pesticide Control Act of 1971, proposed amendments thereto, and in regulations to be promulgated under this authority. A copy of the Utah Pesticide Control Act and a description of regulations to be promulgated are attached to the State Plan.

The UDA anticipates utilizing present personnel to administer the Plan and does not anticipate requiring Federal funding for the program. A list of jobs and their descriptions for personnel participating in the program and a Department of Agriculture budget are attached to the State plan.

The UDA will submit an annual report to EPA on or before February 1 of each year and other reports as requested by the Administrator of EPA.

Pesticide applicators in Utah will be grouped into three classes: private, commercial, and non-commercial applicators. A private applicator is defined as in Pub. L. 92-516, section 2(e)(2). A commercial applicator is any person who uses any pesticide for hire or compensation. A non-commercial applicator is any person working as an individual or an employee of a firm or government agency who uses pesticides classified for restricted use and who does not qualify as a commercial or private applicator. The State anticipates certifying 6,000 to 8,000 private applicators and 400 to 600 commercial and non-commercial applicators.

The commercial and non-commercial applicator categories are those listed in 40 CFR 171.3(b) with an additional category titled "aerial applicators." The competency standards for the first ten categories are the same as given in 40 CFR 171.4 (b) and (c). The standards for supervision (40 CFR 171.6) are inapplicable for commercial and non-commercial applicators. The use of restricted use pesticides by non-certified applicators in the State of Utah is limited solely to use under the direct supervision of a certified private applicator for uses covered by the private applicator's certification. Competency standards for aerial applicators are contained in the Plan. Commercial and non-commercial applicators will be certified by means of written examination. Each applicator must pass a test covering the general standards for commercial and non-commercial applicators and an examination covering the specific standards for the category(s) for which the applicant applies. Optional training courses will be offered by UCES at various locations in the State to prepare commercial and non-commercial applicants to take the examinations. After passing the written examinations, commercial and non-commercial applicators will be issued a license by a UDA representative stating the categories in which they have qualified. A five-dollar license fee will be assessed each commercial applicator. Non-commercial applicators will not be required to pay a license fee.

The standards of competency for the certification of private applicators are those set forth in 40 CFR 171.5(a) and 171.6.

Private applicators may be routinely certified by a (1) training course, (2) programmed instruction home study, or (3) written examination method. The training course method requires the successful completion of a course provided by UCES. The course will include a no pass/no fail quiz intended to ensure to the instructor that the course material was successfully imparted. The home study method requires the successful completion of an UDA approved program instruction home study workbook which will be available at UDA or UCES offices. The completed workbook must be returned to a UDA representative for grading. A private applicator may take a written examination. A passing grade of 70% or higher is required. The examination will be available at all UDA offices. All private applicator applicants who successfully complete one of the three private applicator certification methods wil be issued private applicator certification credentials by a UDA representative. No certification fee will be charged to private applicators.

A single restricted use pesticide may be purchased and used by a previously non-certified person on a one-time-only basis if an emergency control situation is shown to exist. Before purchasing the product, the applicant will participate in a discussion concerning the specific product with a UCES county agent or a UDA representative. A sample emergency use interview checklist to be used by the State representative and a sample Emergency Pesticide Purchase Permit are attached to the Plan.

Non-English-reading applicants may be certified to use a specific restricted use product by completion of an oral examination administered by a representative of the UDA.

All certified applicators will be required to be recertified at least every five years by satifying any of the general certification procedures previously described.

In the event a Government Agency Plan is developed, the UDA will accept it if it meets all of the State's certification requirements.

Utah will issue appropriate Utah State certification documents to any out-of-state applicant providing proof of certifi-

cation from any state with a federally approved Certification Plan.

Uintah Indian Reservation applicators will utilize the State's certification and enforcement mechanism. A cooperative agreement with the Uintah Reservation governing body is included as an attachment to the State Plan.

Other regulatory activities include the following: Restricted-use pesticide dealers will be required to be licensed and pay a licensing fee. However, dealers will not be required to satisfy any pesticides competency standards. A regular program of inspection, product sampling and follow-up investigations of accidents and complaints will be conducted by UDA personnel.

PUBLIC COMMENTS

Interested persons are invited to submit written comments on the proposed State Plan for the State of Utah to the Chief, Pesticides Branch, Region VIII, Environmental Protection Agency, 1860 Lincoln Street, Suite 103, Denver, Colorado 80295. The comments must be received within 30 days of publication of this notice and should bear the identifying notation (OPP-42040). All written comments filed pursuant to this notice will be available for public inspection at the above mentioned location from 8:30 a.m. to 3:30 p.m., Monday through Friday.

Dated: January 18, 1977.

JOHN A. GREEN,
Regional Adminis'rator,
Region VIII.

[FR Doc.77-2903 Filed 1-28-77;8:45 am]

[FRL 677-2]

AMBIENT AIR MONITORING REFERENCE AND EQUIVALENT METHODS

Reference Method Designation

Notice is hereby given that the EPA, in accordance with 40 CFR Part 53 (40 FR 7044, February 18, 1975), has designated another reference method for the measurement of ambient concentrations of carbon monoxide. The new reference method is an automated method (analyzer) which utilizes the measurement principle (non-dispersive infrared spectrometry) and calibration procedure specified in Appendix C of 40 CFR Part 50, as amended on February 18, 1975 (40 FR 7042). The method is:

RFCA-0177-018, "LIRA Model 202S Air Quality Carbon Monoxide Analyzer System," consisting of a LIRA Model 202S (P/N 459839), a regenerative dryer (P/N 464084), and rack-mounted sampling system; operated on a 0-50 ppm range, with the slow response amplifier, and with or without any of the following options:

Remote meter
Remote zero and span controls
0-10, 100 mv output ranges
0-1, 5, or 10 volt output ranges
0-1, 5, 20, or 50 ma output ranges
1-5, 4-20, or 10-50 ma output ranges

A notice of receipt of application for this method appeared in the FEDERAL REGISTER, Volume 41, December 13, 1976, page 54212. The method is available from Mine Safety Appliances Company, 600 Penn Center Boulevard, Pittsburgh, Pennsylvania 15208.

A test analyzer representative of this method has been tested by its manufacturer, in accordance with the test procedures specified in 40 CFR Part 53. After reviewing the results of these tests and other information submitted by the applicant, EPA has determined, in accordance with Part 53, that this method should be designated as a reference method. The information submitted by the applicant will be kept on file at the address shown below and will be available for inspection to the extent consistent with 40 CFR Part 2 (EPA's regulations implementing the Freedom of Information Act).

As a reference method, this method is acceptable for use by States and other control agencies for purposes of section 51.17(a) of 40 CFR Part 51 ("Requirements for preparation, Adoption, and Submittal of Implementation Plans") as amended on February 18, 1975 (40 FR 7042). For such use, the method must be used in strict accordance with the operation or instruction manual provided with the method and subject to any limitations (*e.g.*, operating range) specified in the applicable designation (see description of the method above). Vendor modifications of a designated method used for purposes of § 51.17(a) are permitted only with prior approval of EPA, as provided in Part 53. Provisions concerning modification of such methods by users were promulgated on March 17, 1976 (FEDERAL REGISTER, Vol. 41, page 11255).

In general, each designation applies to any analyzer which is identical to the analyzer described in the designation. In many cases, similar analyzer systems manufactured prior to the designation may be upgraded (*e.g.*, by minor modification or by substitution of new operation or instruction manual) so as to be identical to the designated method and thus achieve designated status at modest cost. The manufacturer should be consulted to determine the feasibility of such upgrading.

Part 53 requires that sellers of designated methods comply with certain conditions. These conditions are given in 40 CFR 53.9 and are summarized below:

(1) A copy of the approved operation or instruction manual must accompany the analyzer when it is delivered to the ultimate purchaser.

(2) The analyzer must not generate any unreasonable hazard to operators or to the environment.

(3) The analyzer must function within the limits of the performance specifications given in Table B-1 of Part 53 for at least 1 year after delivery when maintained and operated in accordance with the operation manual.

(4) Any analyzer offered for sale as a reference or equivalent method must bear a label or sticker indicating that it has been designated as a reference or equivalent method in accordance with Part 53.

(5) If such an analyzer has one or more selectable ranges, the label or sticker must be placed in close proximity to the range selector and indicate which range or ranges have been designated as reference or equivalent methods.

(6) An applicant who offers analyzers for sale as reference or equivalent methods is required to maintain a list of ultimate purchasers of such analyzers and to notify them within 30 days if a reference or equivalent method designation applicable to the analyzer has been cancelled or if adjustment of the analyzers is necessary under 40 CFR 53.11(b) to avoid a cancellation.

(7) An applicant who modifies an analyzer previously designated as a reference or equivalent method is not permitted to sell the analyzer (as modified) as a reference or equivalent method (although he may choose to sell it without such representations), nor to attach a label or sticker to the analyzer (as modified) under the provisions described above, until he has received notice under 40 CFR 53.14(c) that the original designation or a new designation applies to the method as modified or until he has applied for and received notice of a new reference or equivalent method determination for the analyzer as modified.

Aside from occasional breakdowns or malfunctions, consistent or repeated non-compliance with any of these conditions should be reported to: Director, Environmental Monitoring and Support Laboratory, Department E (MD-76), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

Designation of this reference method will provide assistance to the States in establishing and operating their air quality surveillance systems under 40 CFR 51.17(a). Additional information concerning this action may be obtained by writing to the address given above.

WILSON K. TALLEY,
Assistant Administrator for
Research and Development.

JANUARY 21, 1977.

[FR Doc.77-2904 Filed 1-28-77;8:45 am]

[FRL 677-1]

DASIBI ENVIRONMENTAL CORP.

Notice of Receipt of Application for Reference or Equivalent Method Determination

Notice is hereby given that on December 22, 1976, the Environmental Protection Agency received an application from Dasibi Environmental Corporation, Glendale, California, to determine if its Model 1003-AH ozone analyzer should be designated by the Administrator of the EPA as a reference or equivalent method under 40 CFR Part 53, promulgated February 18, 1975 (40 FR 7044). A concurrent application has also been received from California Air Resources Board, Sacramento, California, for such a determination pertinent to the Dasibi Model 1003-AH ozone analyzers owned by that agency. If, after appropriate technical study, the Administrator determines that this method should be so designated, notice thereof will be given in a subsequent issue of the FEDERAL REGISTER.

WILSON K. TALLEY,
Assistant Administrator
for Research and Development.

JANUARY 21, 1977.

[FR Doc.77-2905 Filed 1-28-77;8:45 am]

[FRL 678-8]

SPOKANE VALLEY—RATHDRUM PRAIRIE AQUIFER IN IDAHO AND WASHINGTON

Proposal on EPA Determination

The Public Health Service Act, as amended by the Safe Drinking Water Act, Pub. L. 93-523, 88 Stat. 1661, provides in section 1424(e):

(e) If the Administrator determines, on his own initiative or upon petition, that an area has an aquifer which is the sole or principal drinking water source for the area and which, if contaminated, would create a significant hazard to public health, he shall publish notice of that determination in the FEDERAL REGISTER. After the publication of any such notice, no commitment for Federal financial assistance (through a grant, contract, loan guarantee, or otherwise) may be entered into for any project which the Administrator determines may contaminate such aquifer through a recharge zone so as to create a significant hazard to public health, but a commitment for Federal financial assistance may, if authorized under another provision of law, be entered into to plan or design the project to assure that it will not so contaminate the aquifer.

The first "sole source" designation under Section 1424(e) was the Edwards Underground Reservoir, San Antonio, Texas. The designation, rationale for the Edwards designation and interim project review guidelines were published in the FEDERAL REGISTER, Vol. 40, No. 242, Tuesday, December 16, 1975. National Guidelines for Implementation of Section 1424(e) of the Safe Drinking Water Act (Pub. L. 93-523) are being prepared and will be published in the FEDERAL REGISTER soon.

Petitions have been presented on behalf of the Idaho Coalition for Shorelands Preservation, Spokane Audubon Society, Spokane Vera Valley Citizens Committee and Spokane Sierra Club urging the U.S. Environmental Protection Agency to make a "sole source" determination for the Spokane Valley, Rathdrum Prairie Aquifer in Idaho and Washington.

In view of the foregoing, the Administrator will decide whether to make such a determination under section 1424(e) at the earliest date consistent with a thorough and complete review of the relevant facts and considerations. As a part of that review, and before deciding whether to make such a determination, the Environmental Protection Agency intends to develop a full, factual record and to consider the views of interested persons. Accordingly, the Agency solicits the submission of comments, data and references to sources of information relevant to making the determination provided for in section 1424(e). In particular, information is sought concerning the geographical boundaries and other characteristics of the Spokane Valley, Rathdrum Prairie Aquifer, the recharge zone for that aquifer, the area or areas dependent upon that aquifer for drinking water, the significance of current or anticipated threats to public health that might result from contamination of the aquifer, and the prospects that such contamination will occur as a result of current activities or events that must be anticipated.

Comments, data and references in response to this notice should be submitted in writing to EPA's Region X Office: 1200 Sixth Avenue, M/S 409, Seattle, WA 98101 no later than March 20, 1977. EPA has documentation concerning the Spokane Valley, Rathdrum Prairie Aquifer which is available for inspection at the address listed above.

There has been significant public interest in this matter and the agency will hold an informal public hearing on March 4, 1977 in Spokane, Washington at the Washington Water Power Company's Auditorium, 1411 East Mission Street, from 7:00 p.m. to 10:30 p.m. The public is invited to participate at the public hearing.

Dated: January 21, 1977.

DONALD P. DUBOIS.
Regional Administrator.

[FR Doc.77-2908 Filed 1-28-77;8:45 am]

[OPP-42035A; FRL 678-2]

STATE OF OKLAHOMA

Approval of State Plan for Certification of Commercial and Private Applicators of Restricted Use Pesticides

Section 4(a)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (86 Stat. 973; 7 U.S.C. 136 *et seq.*), and the implementing regulations of 40 CFR Part 171, require each State desiring to certify applicators to submit a plan to EPA for its certification program. Any State certification program under this section shall be maintained in accordance with the State Plan approved under this section.

On November 30, 1976 notice was published in the FEDERAL REGISTER (41 FR 52514) of the intent of the Regional Administrator, Environmental Protection Agency (EPA) Region VI, to approve, on a contingency basis, the Oklahoma State Plan for Certification of Commercial and Private Applicators of Restricted Use Pesticides (Oklahoma State Plan). Contingency approval was requested by the State of Oklahoma pending enactment of proposed legislation and promulgation of a recordkeeping regulation thereunder.

Complete copies of the Oklahoma State Plan (except for sample examinations) were made available for public inspection at the following locations: Oklahoma Department of Agriculture, Director, Entomology and Plant Industry Division, 312 NE 28th Street, Room 108, Oklahoma City, Oklahoma; U.S. Environmental Protection Agency, Air and Hazardous Materials Division, Pesticides and Hazardous Materials Branch, EPA, Region VI, Dallas, Texas; and the U.S. Environmental Protection Agency, Federal Register Section, Technical Services Division, Office of Pesticide Programs, Washington, D.C.

No comments were received concerning the Oklahoma State Plan during the 30 day comment period. Therefore, it has been determined that the Oklahoma State Plan will satisfy the requirements of Section 4(a)(2) of the amended FIFRA and 40 CFR Part 171, if the proposed legislation is enacted and the record keeping regulation promulgated as prescribed in the Oklahoma State Plan.

The Oklahoma State Plan will remain available for public inspection at the Oklahoma Department of Agriculture, State Capitol Building, Oklahoma City, Oklahoma.

This contingency approval shall expire October 21, 1977 if these terms and conditions are not satisfied by that time. On or before the expiration of the period of contingency approval, a notice shall be published in the FEDERAL REGISTER concerning the extent to which these terms and conditions have been satisfied, and the approval status of the Oklahoma State Plan as a result thereof.

EFFECTIVE DATE

Pursuant to section 4(d) of the Administrative Procedure Act, 5 U.S.C. 553 (d), the Agency finds that there is good cause for providing that the contingency approval granted herein to the Oklahoma State Plan shall be effective upon signature of this notice. Neither the Oklahoma State Plan itself nor this Agency's contingency approval of the Plan creates any direct or immediate obligation on pesticide applicators or other persons in the State of Oklahoma. Delays in starting the work necessary to implement the Plan such as may be occasioned by providing some later effective date for this contingency approval are inconsistent with the public interest. Accordingly, this contingent approval shall become effective immediately.

Dated: January 19, 1977.

JOHN C. WHITE,
Regional Administrator, Environmental Protection Agency, Region VI.

[FR Doc.77-2909 Filed 1-28-77;8:45 am]

[OPP—30126; FRL 678–1]

DEPARTMENT OF AGRICULTURE

Receipt of Application To Register a Pesticide Product Containing a New Active Ingredient

The U.S. Forest Service, U.S. Department of Agriculture, PO Box 2417, Washington, DC 20013, has submitted to the Environmental Protection Agency (EPA) an application to register the pesticide product Gypchek Biological insecticide for the Gypsy Moth (EPA File Symbol 27586–E), containing 20% of the active ingredient polyhedral inclusion bodies of gypsy moth nucleopolyhedrosis virus which has not been included in any previously registered pesticide products. The application received from the U.S. Forest Service proposes that the product be classified for general use in gypsy moth control. PM17

Application was made pursuant to the provisions of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (86 Stat. 973, 89 Stat. 751, 7 U.S.C. 136(a) et seq.), and the regulations thereunder (40 CFR Part 162). Notice of receipt of this application is made in accordance with the provisions of Section 3(c)(4) of FIFRA (40 CFR 162.2(b)(6)) and does not indicate a decision by the Agency on the application.

Any Federal agency or other interested persons are invited to submit written comments on this application to the Federal Register Section, Technical Services Division (WH–569), Office of Pesticide Programs, Environmental Protection Agency, Rm. 401, East Tower, 401 M Street SW., Washington, D.C. 20460. Three copies of the comments should be submitted to facilitate the work of the Agency and others interested in inspecting them. The comments must be received within 30 days from the date of publication of this notice in the FEDERAL REGISTER and should bear a notation indicating the EPA File Symbol "27586–E." Comments received within the specified time period will be considered before a final decision is made with respect to the pending application. Comments received after the specified time period will be considered only to the extent possible without delaying processing of the application. Specific questions concerning this application should be directed to the designated Product Manager (PM), Registration Division (WH–567), Office of Pesticide Programs, at the above address or by telephone at 202/426–9425.

Notice of approval or denial of this application to register Gypchek Biological Insecticide for the Gypsy Moth will be announced in the FEDERAL REGISTER. The label furnished by the U.S. Forest Service, as well as all written comments filed pursuant to this notice, will be available for public inspection in the office of the Federal Register Section from 8:30 a.m. to 4:30 p.m. Monday through Friday.

Dated: January 24, 1977.

DOUGLAS D. CAMP,
Acting Director
Registration Division.

[FR Doc.77–2910 Filed 1–28–77;8:45 am]

[FRL 677–8]

[OPP–33000/489; FRL 677–8]

NOTICE OF RECEIPT OF APPLICATION FOR PESTICIDE REGISTRATION

Data to be Considered in Support of Applications

On November 19, 1973, the Environmental Protection Agency (EPA) published in the FEDERAL REGISTER (39 FR 31862) its interim policy with respect to the administration of Section 3(c)(1)(D) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended ["Interim Policy Statement"]. On January 22, 1976, EPA published in the FEDERAL REGISTER a document entitled "Registration of a Pesticide Product—Consideration of Data by the Administrator in Support of an Application" [41 FR 3339]. This document described the changes in the Agency's procedures for implementing Section 3(c)(1)(D) of FIFRA, as set out in the Interim Policy Statement, which were effectuated by the enactment of the recent amendments to FIFRA on November 28, 1975 [Pub. L. 94–140], and the new regulations governing the registration and re-registration of pesticides which became effective on August 4, 1975 [40 CFR Part 162].

Pursuant to the procedures set forth in these FEDERAL REGISTER documents, EPA hereby gives notice of the applications for pesticide registration listed below. In some cases these applications have recently been received; in other cases, applications have been amended by the submission of additional supporting data, the election of a new method of support, or the submission of new "offer to pay" statements.

In the case of all applications, the labeling furnished by the applicant for the product will be available for inspection at the Environmental Protection Agency, Room 209, East Tower, 401 M Street, SW., Washington, DC 20460. In the case of applications subject to the new Section 3 regulations, and applications not subject to the new Section 3 regulations which utilize either the 2(a) or 2(b) method of support specified in the Interim Policy Statement, all data citations submitted or referenced by the applicant in support of the application will be made available for inspection at the above address. This information (proposed labeling and, where applicable, data citations) will also be supplied by mail, upon request. However, such a request should be made only when circumstances make it inconvenient for the inspection to be made at the Agency offices.

Any person who (a) is or has been an applicant, (b) believes that data he developed and submitted to EPA on or after January 1, 1970, is being used to support an application described in this notice, (c) desires to assert a claim under Section 3(c)(1)(D) for such use of his data, and (d) wishes to preserve his right to have the Administrator determine the amount of reasonable compensation to which he is entitled for such use of the data or the status of such data under Section 10 must notify the Administrator and the applicant named in the notice in the FEDERAL REGISTER of his claim by certified mail. Notification to the Administrator should be addressed to the Product Control Branch, Registration Division (WH–567), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW, Washington, DC 20460. Every such claimant must include, at a minimum, the information listed in the Interim Policy Statement of November 19, 1973.

Specific questions concerning applications made to the Agency should be addressed to the designated Product Manager (PM), Registration Division (WH–567), Office of Pesticide Programs, at the above address, or by telephone as follows:

PM 11, 12, & 13—202/755–9315
PM 21 & 22—202/426–2454
PM 24—202/755–2196
PM 31—202/426–2635
PM 33—202/755–9041
PM 15, 16, & 17—202/426–9425
PM 23—202/755–1397
PM 25—202/426–2632
PM 32—202/426–9486
PM 34—202/426–9490

The Interim Policy Statement requires that claims for compensation be filed within 60 days of publication of this notice. With the exception of 2(c) applications not subject to the new Section 3 regulations, and for which a sixty-day hold period for claims is provided, EPA will not delay any registration pending the assertion of claims for compensation or the determination of reasonable compensation. Inquiries and assertions that data relied upon are subject to protection under Section 10 of FIFRA, as amended, should be made within 30 days subsequent to publication of this notice.

Dated: January 24, 1977.

DOUGLAS D. CAMPT,
Acting Director,
Registration Division.

APPLICATIONS RECEIVED (OPP—33000/489)

EPA File Symbol 100–LIT. Ciba-Geigy Corp., PO Box 11422, Greensboro NC 27409. CIBA-GEIGY CGA–24705 TECHNICAL. Active Ingredients: 2-Chloro-N-(2-ethyl-6-methylphenyl)-N-(2 - methoxy-1-methylethyl) acetamide 95%. Method of Support: Application proceeds under 2(b) of interim policy. PM24

EPA File Symbol 121–RU. Cutter Laboratories, Inc., Regulatory Affairs Dept., 4th and Parker Sts., Berkeley CA 94710. CUTTER INSECT REPELLENT FOAM. Active Ingredients: N,N-Diethyl-meta-toluamide 27.7%; Other isomers 1.46%; Dimethyl Phthalate 2.5%; Di-n-propyl isocinchomeronate 0.83%; N-octyl bicycloheptene dicarboximide 0.83%. Method of Support: Application proceeds under 2(c) of interim policy. Republished: Revised offer to pay statement submitted. PM17

EPA File Symbol 121–RL. Cutter Laboratories, Inc. CUTTER INSECT REPELLENT SPRAY. Active Ingredients: N,N-Diethyl-meta-toluamide 17.1%; Other isomers 0.9%; Dimethyl Phthalate 12%; Di-n-propyl isocinchomeronate 1%; N-octyl bicycloheptene dicarboximide 1%. Method of Support: Application proceeds under 2(c) of interim policy. Republished: Revised offer to pay statement submitted. PM17

EPA File Symbol 121–RA. Cutter Laboratories, Inc. CUTTER INSECT REPELLENT LOTION. Active Ingredients: N,N-diethyl-meta-toluamide 33.25%; Other isomers 1.75%; Dimethyl Phthalate 13%; Di-n-propyl isocinchomeronate 1%; N-octyl bicycloheptene dicarboximide 1%. Method of Support: Application proceeds under 2(c) of interim policy. Republished: Revised offer to pay statement submitted. PM17

EPA Reg. No. 239–2418. Chevron Chemical Co.—Ortho Div., 940 Hensley St., Richmond CA 94804. ORTHENE 75–S SOLUBLE POWDER. Active Ingredients: Acephate (O,S-Dimethyl acetyl-phosphoramidothioate) 75%. Method of Support: Application proceeds under 2(a) of interim policy. Republished: New uses. PM16

EPA Reg. No. 270–65. Parnam Co., 8701 N. 29th St., Omaha NB 63112. TOP II GLOSS WITH FLY REPELLENT. Active Ingredients: N-octyl bicycloheptene dicarboximide 1.00%; Di-n-propyl isocinchomeronate 0.40%; Isopropyl Lanolin Ester 9.00%. Method of Support: Application proceeds under 2(a) of interim policy. PM17

EPA Reg. No. 279–1364. FMC Corp., Agricultural Chemical Div., 100 Niagara St., Middleport NY 14105. PHOSDRIN 2 DUST INSECTICIDE. Active Ingredients: Alpha isomer of 2-carbomethoxyl-1-methylvinyl dimethyl phosphate 1.20%; Related Compounds 0.80%. Method of Support: Application proceeds under 2(b) of interim policy. Application for reregistration. PM16

EPA Reg. No. 432–439. S. B. Penick & Co., 1050 Wall St., W., Lyndhurst NJ 07071. SBP–1382 CONCENTRATE 15. Active Ingredients: (5-Benzyl-1-3-furyl) methyl 2,2 - dimethyl-3-(2-methylpropenyl) cyclopropanecarboxylate 15.00%; Related compounds 2.04%; Aromatic petroleum hydrocarbons 19.86%. Method of Support: Application proceeds under 2(b) of interim policy. PM17

EPA Reg. No. 476–1979. Stauffer Chemical Co., Westport CT 06880. RO-NEET 6–E EMULSIFIABLE LIQUID. Active Ingredients: S-ethyl cyclohexylethylthiocarbamate 73.9%. Method of Support: Application proceeds under 2(a) of interim policy. PM25

EPA Reg. No. 551–200. Baird & McGuire, Inc., Manufacturing Chemists, South St., Holbrook MS 02343. MITE REPELLENT CLOTHING APPLICATION. Active Ingredients: Benzyl Benzoate 90%. Method of Support: Application proceeds under 2(b) of interim policy. PM17

EPA Reg. No. 748–207. PPG Industries, Inc., One Gateway Ctr., Pittsburgh PA 15222. CHEM HOE FL4. Active Ingredients: Isopropyl carbanilate 43.0%. Method of Support: Application proceeds under 2(a) of interim policy. Republished: Added use in irrigation systems. PM25

EPA File Symbol 892–GR. Pioneer Manufacturing Co., 3053 E. 87th St., Cleveland OH 44104. PIONEER INSTANT WIPE & CLEAN LIQUID. Active Ingredients: n-Alkyl (60% C14, 30% C16, 5% C18) dimethyl benzyl ammonium chlorides 0.09%; n-Alkyl (68% C12, 32% C14) dimethyl ethylbenzyl ammonium chlorides 0.09%; Tetrasodium ethylenediamine tetraacetate 1.44%; Sodium Metasilicate 0.18%. Method of Support: Application proceeds under 2(b) of interim policy. PM33

EPA Reg. No. 1023–51. The Upjohn Co., 7171 Portage Rd., Kalamazoo MI 49001. PROXOL 80 SP INSECTICIDE. Active Ingredients: Dimethyl (2,2,2-trichloro-1-hydroxyethyl) phosphonate 80%. Method of Support: Application proceeds under 2(a) of interim policy. Republished: Dosage rate reduction. PM16

EPA Reg. No. 1266–28. Malter International Corp., PO Box 6099, New Orleans LA 70174. AIRBORNE INSECT KILLER. Active Ingredients: Petroleum Distillates 58.46%; Aromatic Hydrocarbons 15.55%; Essential Oils 03.03%; Technical Piperonyl Butoxide 01.30% Pyrethrins 00.26%. Method of Support: Application proceeds under 2(a) of interim policy. PM17

EPA File Symbol 1266–RLT, Malter International Corp. ADIOS DEODORIZING INSECT SPRAY. Active Ingredients: Petroleum distillates 18.270%; Tetramethrin 0.250%; Related compounds 0.034%; (5-Benzyl-3-furyl) methyl 2,2-dimethyl-3-(2-methylpropenyl) cyclopropanecarboxylate 0.250%; related compounds 0.033%. Method of Support: Application proceeds under 2(c) of interim policy. Republished: Revised offer to pay statement submitted. PM17

EPA Reg. No. 1706–95. Nalco Chemical Co., 6216 W. 66th Pl., Chicago IL 60638. 273 MICROORGANISM CONTROL CHEMICAL. Active Ingredients: Methylene bis(thiocyanate) 10%. Method of Support: Application proceeds under 2(a) of interim policy. Republished: New use. PM33

EPA Reg. No. 1706–146. Nalco Chemical Co. NALCO 2532. Active Ingredients: n-alkyl (60% C14, 30% C18, 5% C18) dimethyl benzyl ammonium chloride 12.5%; Bis-(tri-n-butyltin) oxide 2.5%. Method of Support: Application proceeds under 2(a) of interim policy. Republished: New use. PM33

EPA Reg. No. 1757–57. Drew Chemical Corp., 701 Jefferson Rd., Parsippany NJ 07054. BIOSPERSE 219. Active Ingredients: Tributyl chloride complex of ethylene oxide condensate of dehydroabiethylamine 9.63%. Method of Support: Application proceeds under 2(a) of interim policy. Republished: Added new use. PM33

EPA Reg. No. 1812–49. Parramore & Griffin, PO Box 1847, Valdosta GA. 25% WETTABLE MALATHION. Active Ingredients: Malathion 25%. Method of Support: Application proceeds under 2(b) of interim policy. Application for reregistration. PM16

EPA Reg. No. 3051–32. Agricultural Products Co., Inc., PO Drawer A, Mesquite NM 88048. AGCO 4% MALATHION DUST. Active Ingredients: Malathion 4.00%. Method of Support: Application proceeds under 2(b) of interim policy. Application for reregistration. PM16

EPA Reg. No. 3125–102. Chemagro, Agricultural Div., Mobay Chemical Corp., Box 4913, Kansas City MO 64120. GUTHION 2L EMULSIFIABLE INSECTICIDE. Active Ingredients: *O,O-Dimethyl S-*[4-oxol,2,3-benzotriazin-3 *(4H)*-yl)methyl] phosphorodithloate 22.2%; Aromatic Petroleum Distillate 67.8%. Method of Support: Application proceeds under 2(a) of interim policy. Republished: Amendments. PM12

EPA Reg. No. 3125–123. Chemagro. GUTHION 2S EMULSIFIABLE INSECTICIDE. Active Ingredients: O,O-Dimethyl S[(4oxo-1,2,3-benzotriazin-3(4H)-yl)methyl] phosphorodithloate 22%; Method of Support: Application proceeds under 2(a) of interim policy. Republished: Amendments. PM12

EPA File Symbol 3286–UU. Ferd Staffel Co., PO Box 2380, San Antonio TX 78298. 5% MALATHION DUST. Ative Ingredients: Malathion 5%. Method of Support: Application proceeds under 2(c) of interim policy. Republished: Revised offer to pay statement submitted. PM16

EPA Reg. No. 4313–3. Carroll Co., 2900 W. Kingsley Rd., Garland TX 75041. THRIFTY PINE PINE ODOR DISINFECTANT. Active Ingredients: Isopropyl alcohol 19.3%; Pine Oil 14.6%; Coconut Oil Soap 6.1%; ortho - benzyl - para - chlorophenol 2.6%; Potassium ortho-benzyl-para-chlorophenate 0.4%. Method of Support: Application proceeds under 2(b) of interim policy. PM32

EPA Reg. No. 4450–34. Chemex Chemicals & Coating Co., Inc., PO Box 5072, Tampa FL 33675. CHEMEX WASP & HORNET INSECTICIDE SPRAY. Active Ingredients: (5-benzyl-3-furyl)methyl 2,2-dimethyl-3-(2-methylpropenyl) cyclopropanecarboxylate 0.250%; Related compounds 0.034%; Aromatic petroleum hydrocarbons 0.331%; Petroleum distillate 28.375%. Method of Support: Application proceeds under 2(c) of interim policy. Republished: Revised offer to pay statement submitted. PM34

EPA Reg. No. 4643–5. Dearborn Chemical Div., 300 Genesee St., Lake Zurich IL 60047. DEARCIDE 711. Active Ingredients: Sodium Pentachlorophenate 25.3%; Sodium Trichlorophenate 6.8%; Sodium Salts of Other Chlorophenols and Related Compounds 3.5%. Method of Support: Application proceeds under 2(b) of interim policy. PM32

EPA Reg. No. 4652–4. Crown Chemical Co., 1416 N. Dixie Highway, Hollywood FL 33020. WONDER BUG KILLER. Active Ingredients: Pyrethrins 0.05%; Piperonyl Butoxide, Technical 0.26%; O,Odiethyl O(2isopropyl4methyl6pyrimidinyl) phosphorothioate 0.50%; Petroleum Distillates 99.00%. Method of Support: Application proceeds under 2(c) of interim policy. Republished: Revised offer to pay statement submitted. PM15

EPA Reg. No. 4691–3. Philip Roxane, Inc., 2621 N. Belt Highway, St. Joseph MO 64502. PETS' BEST MANGE LOTION. Active Ingredients: Gamma Isomer of Benzene Hexachloride from Lindane 0.10%; Rotenone 0.12%; 2,2'-Methylenebis (4-chlorophenol) (Dichlorophene) 0.5%; Benzyl Benzoate 30%; Isopropyl Alcohol 68.38%. Method of Support: Application proceeds under 2(b) of interim policy. PM17

EPA Reg. No. 5197–49. Kem Manufacturing Corp., Kem International Bldg., Tucker GA 30084. KEM KEMSECT. Active Ingredients: (5-Benzyl-3-furyl) methyl-2,2-dimethyl-3-(2-methylpropenyl) cyclopropanecarboxylate 0.200%; Related compounds 0.028%; d-trans Allethrin (allyl homolog of Cinerin 1) 0.150%; Related compouds 0.012%; Aromatic petroleum hydrocarbons 0.272%. Method of Support: Application proceeds under 2(b) of interim policy. PM17

EPA Reg. No. 5204–14. M&T Chemicals, Inc., PO Box 1104, Rahway NJ 07065. BIOMET 607 SANITIZER FOR LAUNDRY. Active Ingredients: Dilsobutylphenoxyethoxy dimethyl benzyl ammonium chloride monohydrate 39.35%; Isopropanol 14.85%; Tri-n-butyltin benzoate 5.30%. Method of Support: Application proceeds under 2(b) of interim policy. PM 33

EPA Reg. No. 5348-12. Patco Lawn Products, Div. of Vaughan's Seed Co., Chimney Rock Rd., Bound Brook NJ 08805. PATCO CRABGRASS PREVENTER. Active Ingredients: Dimethylester of tetrachloroterephthalic Acid 5.0%. Method of Support: Application proceeds under 2(b) of interim policy. Application for reregistration. PM23

EPA File Symbol 6198-RR. National Chemicals, Inc., Winona MN 55987. Q-IV. Active Ingredients: Didecyl dimethyl ammonium chloride 7.5%; Isopropanol 3.0%. Method of Support: Application proceeds under 2(b) of interim policy. PM31

EPA File Symbol 7001-EGE. Occidental Chemical Co., PO Box 198, Lathrop CA 95330. SYSTEMIC DISEASE CONTROL. Active Ingredients: Benomyl (Methyl 1-(butylcarbamoyl) 2-benzimidazolecarbamate) 50%. Method of Support: Application proceeds under 2(b) of interim policy. PM22

EPA File Symbol 7116-I. U.N.X. Chemicals, Inc., Greenville NC 27834. ALLY DISINFECTANT — SANITIZER — DEODORANT. Active Ingredients: Alkyl (C14 50%, C12 40%, C16 10%) dimethyl benzyl ammonium chloride 10.00%; Ethanol 2.50%. Method of Support: Application proceeds under 2(b) of interim policy. PM31

EPA File Symbol 7173-RUE. Chempar Chemical Co., Inc., 260 Madison Ave., New York NY 10016. CHEMPAR AMINOTRIAZOLE 90. Active Ingredients: Amitrole (3-amino-1,2,4-triazole) 90%. Method of Support: Application proceeds under 2(b) of interim policy. PM25

EPA File Symbol 7182-I. 3M Co., 3M Center Bldg, 2236SE, St. Paul MN 55101. EMBARK 4-S PLANT GROWTH REGULATOR. Active Ingredients: Diethanolamine salt of mefluidide [N-2,4-dimethyl 15]trifluoromethyl) sulfonyl[amino] phenyl] acetamide] 52%. Method of Support: Application proceeds under 2(a) of interim policy. PM25

EPA File Symbol 7216-RO. Ecco Chemicals, Inc., Dallas TX 75247. ECCO SAN 750. Active Ingredients: Didecyl dimethyl ammonium chloride 7.5%; Isopropanol 3.0%. Method of Support: Application proceeds under 2(b) of interim policy. PM31

EPA File Symbol 7531-RU. Modern Pool Products, Inc., 737 Canal St., Stamford CT 06902. ALGEM II. Active Ingredients: n-Alkyl (60% C14, 30% C16, 5% C12, 5% C18) dimethyl benzyl ammonium chlorides 5%; n-Alkyl (68% C12, 32% C14) dimethylethylbenzyl ammonium chlorides 5%. Method of Support: Application proceeds under 2(b) of interim policy. PM24

EPA File Symbol 7531-RG. Modern Pool Products, Inc. DELUXE ALGAECIDE. Active Ingredients: n-Alkyl (60% C14, 30% C16, 5% C12, 5% C18) dimethyl benzyl ammonium chlorides 2.5%; n-Alkyl (68% C12, 32% C14) dimethyl ethylbenzyl ammonium chlorides 2.5%. Method of Support: Application proceeds under 2(b) of interim policy. PM24

EPA File Symbol 9339-O. Flexabar Corp., 140 Walnut St., Northvale NJ 07647. FLEXABAR BACTERIOSTATIC RUG SHAMPOO CONCENTRATE. Active Ingredients: (3,5-dimethyl - 2,4 - dichlorophenol) (DCMX) 1.50%; Sodium Salt of Ethylenediamine tetro acetic acid (EDTA) 0.06%; Isopropyl Alcohol 1.50%. Method of Support: Application proceeds under 2(b) of interim policy. PM32

EPA File Symbol 9538-A. Sellers Chemical Corp., PO Box 23523, Harahan LA 70183. FLO-MO 10 TOBACCO SUCKER CONTROL AGENT. Active ngredients: n-Decanol (Fatty Alcohol C10) 79.0%. Method of Support: Application proceeds under 2(b) of interim policy. PM25

EPA File Symbol 11741-RU. D. W. Davies & Co., Inc., 3200 Phillips Ave., Racine WI 53403. DAVIES "SURE-SAN". Active Ingredients: n-Alkyl (60% C14, 30% C16, 5% C12, 5% C18) dimethyl benzyl ammonium chlorides 5.0%; n-Alkyl (68% C12, 32% C14) dimethyl ethylbenzyl ammonium chlorides 5.0%; Phosphoric Acid 30.0%. Method of Support: Application proceeds under 2(b) of interim policy. PM32

EPA File Symbol 12004-E. Aerosol & Pharmaceutical Specialist Assoc., George F. DeFoney, 9852 Cowden St., Philadelphia PA 19115. SAN-A-SAFE. Active Ingredients: Benzethenium Chloride 0.25%. Method of Support: Application proceeds under 2(b) of interim policy. PM31

EPA File Symbol 14819-U. Universal Chemicals & Supplies, Inc., 3043 Walnut St., Denver CO 80205. UNIVERSAL ALGIFECT 2000. Active Ingredients: n-Alkyl (60% C14, 30% C16, 5% C12, 5% C18) dimethyl benzyl ammonium chlorides 5%; n-Alkyl (68% C12, 32% C14) dimethyl ethylbenzyl ammonium chlorides 5%. Method of Support: Application proceeds under 2(b) of interim policy. Republished: Revised offer to pay statement submitted. PM24

EPA File Symbol 15057-O. Vitex Chemical, Inc., 5000 Track Rd., Cleveland OH 44127. VITEX NO-ALG. Active Ingredients: n-Alkyl (60% C14, 30% C16, 5% C12, 5% C18) dimethyl benzyl ammonium chlorides 5%; n-Alkyl (68% C12, 32% C14) dimethyl ethylbenzyl ammonium chlorides 5%. Method of Support: Application proceeds under 2(b) of interim policy. Republished: Revised offer to pay statement submitted. PM31

EPA Reg. No. 16377-2. Gloss-All Products Co., 2317 Parmenter St., Middleton WI 53562. WIPE-OUT. Active Ingredients: n-Alkyl (60% C14, 30% C16, 5% C12, 5% C18) dimethyl benzyl ammonium chlorides 2.25%; n-Alkyl (68% C12, 32% C14) dimethyl ethylbenzyl ammonium chlorides 2.25%; Sodium Carbonate 3.00%; Tetrasodium ethylenediamine tetraacetate 1.00%. Method of Support: Application proceeds under 2(b) of interim policy. Republished: Revised offer to pay statement submitted. PM31

EPA Reg. No. 279-1364. FMC Corp., Agricultural Chemical Div., 100 Niagara St., Middleport NY 14105. PHOSDRIN 2 DUST INSECTICIDE. Active Ingredients: Alpha isomer of 2-carbomethoxyl-1-methylvinyl dimethyl phosphate 1.20%; Related Compounds 0.80%. Method of Support: Application proceeds under 2(b) of interim policy. Application. for reregistration. PM16

EPA Reg. No. 432-439. S. B. Penick & Co., 1050 Wall St., W., Lyndhurst NJ 07071. SBP-1382 CONCENTRATE 15. Active Ingredients: (5-Benzyl-1-3-furyl) methyl 2,2-dimethyl-3-(2-methylpropenyl) cyclopropanecarboxylate 15.00%; Related compounds 2.04%; Aromatic petroleum hydrocarbons 19.86%. Method of Support: Application proceeds under 2(b) of interim policy. PM17

EPA Reg. No. 476-1979. Stauffer Chemical Co., Westport CT 06880. RO-NEET 6-E EMULSIFIABLE LIQUID. Active Ingredients: S-ethyl cyclohexylethylthiocarbamate 73.9%. Method of Support: Application proceeds under 2(a) of interim policy. PM25

EPA Reg. No. 551-200. Baird & McGuire, Inc., Manufacturing Chemists, South St., Holbrook MS 02343. MITE REPELLENT CLOTHING APPLICATION. Active Ingredients: Benzyl Benzoate 90%. Method of Support: Application proceeds under 2(b) of interim policy. PM17

EPA Reg. No. 748-207. PPG Industries, Inc., One Gateway Ctr., Pittsburgh PA 15222. CHEM HOE FL4. Active Ingredients: Isopropyl carbanilate 43.0%. Method of Support: Application proceeds under 2(a) of interim policy. Republished: Added use in irrigation systems. PM25

EPA File Symbol 892-GR. Pioneer Manufacturing Co., 3063 E. 87th St., Cleveland OH 44104. PIONEER INSTANT WIPE & CLEAN LIQUID. Active Ingredients: n-Alkyl (60% C14, 30% C16, 5% C18) dimethyl benzyl ammonium chlorides 0.09%; n-Alkyl (68% C12, 32% C14) dimethyl ethylbenzyl ammonium chlorides 0.09%; Tetrasodium ethylenediamine tetraacetate 1.44%; Sodium Metasilicate 0.13%. Method of Support: Application proceeds under 2(b) of interim policy. PM33

EPA Reg. No. 16377-1. Gloss-All Products Co. STER-ALL DISENFECTANT. Active Ingredients: n-Alkyl (60% C14, 30% C16, 5% C12, 5% C18) dimethyl benzyl ammonium chlorides 4.5%; n-Alkyl (68% C12, 32% C14) dimethyl ethylbenzyl ammonium chlorides 4.5%; Tetrasodium ethylenediamine tetraacetate 2.0%; Sodium Carbonate 4.0%. Method of Support: Application proceeds under 2(b) of interim policy. Republished: Revised offer to pay statement submitted. PM31

EPA Reg. No. 16377-3. Gloss-All Products Co. SUPER STER-ALL DISENFECTANT. Active Ingredients: n-Alkyl (60% C14, 30% C16, 5% C12, 5% C18) dimethyl benzyl ammonium chlorides 6.25%; n-Alkyl (68% C12, 32% C14) dimethyl ethylbenzyl ammonium chlorides 6.25%; Tetrasodium ethylenediamine tetraacetate 3.60%; Sodium Carbonate 3.00%. Method of Support: Application proceeds under 2(b) of interim policy. Republished: Revised offer to pay statement submitted. PM31

EPA Reg. No. 20954-G. Zoecon Corp., 975 California Ave., Palo Alto CA 94304. TRICHLORFON TECHNICAL. Active Ingredients: Dimethyl 2,2,2-trichloro-1-hydroxyethylphosphonate 98%. Method of Support: Application proceeds under 2(a) of interim policy. Republished: Revised offer to pay statement submitted and Method of Support changed from 2(c) to 2(a). PM16

EPA File Symbol 20954-I. Zoecon Corp. ZOECON INSECT AND MITE HOUSEPLANT MIST CONCENTRATE. Active Ingredients: methoprene [Isopropyl (E,E)-11-methoxy-3,7,11-trimethyl-2,4-dodecadienoate] 5.00%; hexadecyl cyclopropanecarboxylate 3.75%; resmethrin [(5-benzyl-3-furyl) methyl 2,2-dimethyl-3-(2-methylpropenyl) cyclopropanecarboxylate] Min. 70% (+) trans, Max. 30% (+) cis isomers 2.50%; related compounds 0.35%. Method of Support: Application proceeds under 2(b) of interim policy. PM17

EPA Reg. No. 20954-0. Zoecon Corp. ZOECON INSECT AND MITE HOUSEPLANT MIST. Active Ingredients: methoprene [Isopropyl (E,E) - 11 - methoxy-3,7,11-trimethyl-2,4-dodecadienoate] 0.100%; hexadecyl cyclopropanecarboxylate 0.075%; resmethrin [(5-benzyl-3-furyl) methyl 2,2-dimethyl-3-(2-methylpropenyl) cyclopropanecarboxylate] Min. 70% (+) trans, Max. 30% (+) cis isomers 0.050%; related compounds 0.007%. Method of Support: Application proceeds under 2(b) of interim policy. PM17

EPA Reg. No. 23566-4. U.S. Yacht Paint Co., PO Box 96, Roseland NJ 07068. U.S. YACHT PAINT TROPICAL ANTI-FOULING 690 CRAB POT PAINT BLACK FOR CALVANIZED WIRE CRAB POTS. Active Ingredients: Bix (Tributyltin) oxide 7.5%. Method of Support: Application proceeds under 2(a) of interim policy. PM24

EPA File Symbol 33840-G. Williamson Paint Mfg. Co., Watts St. & Penn-Central R.R. Tracks, Box 6066, Charleston WV 25302. COPPER NAPTHENATE WOOD PRESSERVER 2%. Active Ingredients: Copper Naphthenate 19.75%. Method of Support: Application proceeds under 2(b) of interim policy. PM22

EPA File Symbol 35135-R. Markay Laboratories, Water Treatment Engineers, 250 Riverview Rd., Montebello CA 90640. MARKAY #32. Active Ingredients: Disodium cyanodithioimidocarbonate 3.68%; Potassium N-methyldithiocarbamate 5.07%. Method of Support: Application proceeds under 2(b) of interim policy. Republished: Revised offer to pay statement submitted. PM33

EPA File Symbol 37370-RN. American Water Purification, 1025 Contra Costa Blvd., Pleasant Hill CA 94523. UTS SILVERATOR RECHARGE. Active Ingredients: Silver 0.624%. Method of Support: Application proceeds under 2(a) of interim policy. PM33.

EPA File Symbol 39496-R. Conoco Chemicals, Continental Oil Co., PO Box 2197, Houston TX 77001. ALFOL 810 ALCOHOL. Active Ingredients: n-octanol 45.1%; n-decanol 54.5%; n-hexanol 0.4%. Method of Support: Application proceeds under 2(b) of interim policy. PM25

EPA File Symbol 39496-E. Conoco Chemicals. ALFOL 10 ALCOHOL. Active Ingredients: n-decanol 99.3%. Method of Support: Application proceeds under 2(b) of interim policy. PM25.

[FR Doc.77-2911 Filed 1-28-77;8:45 am]

[OPP-42039; FRL 677-4]

KANSAS

Submission of State Plan for Certification of Pesticide Applicators

In accordance with the provisions of section 4(a)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (86 Stat. 973; 7 U.S.C. 136 et seq.) and 40 CFR Part 171 (39 FR 36466 (October 9, 1974) and 40 FR 11698 (March 12, 1975), the Honorable Robert F. Bennett, Governor of the State of Kansas has submitted a State plan for certification of private and commercial applicators of restricted-use pesticides to the Environmental Protection Agency (EPA) for approval on a contingency basis.

Notice is hereby given of the intention of the Regional Administrator, EPA, Region VII, to approve this plan on a contingency basis pending enactment of proposed amendments to present legislation and subsequent regulations as described in the plan.

A summary of this plan follows; the entire plan, together with all attached appendices (except for sample examinations), may be examined during normal business hours at the following locations:

State of Kansas, Board of Agriculture, Weed and Pesticide Division, 1720 South Topeka Avenue, Topeka, Kansas 66612.

Environmental Protection Agency, Room 116, Pesticides Branch, Air and Hazardous Materials Division, 1735 Baltimore Avenue, Kansas City, Missouri 64108.

Room 401, East Tower, Waterside Mall, 401 M Street SW., Washington, D.C. 20460, Federal Register Section, Technical Services Division (WH-569), Office of Pesticide Programs.

Summary of Kansas State Plan

The Kansas State Board of Agriculture has been designated the State Lead Agency and has the sole responsibility for administering the Pesticide Applicator Certification Program. The Kansas Pesticide Law provides for a Pesticide Advisory Board, which was originally created by the Kansas Pesticide Use Law of 1970. The Pesticide Advisory Board consists of: Secretary of Health and Environment; Executive Director of the State Water Resources Board; Director of the Forestry, Fish and Game Commission; Director of State Geological Survey; Secretary of the State Board of Agriculture; Executive Secretary of the State Conservation Commission; Livestock Commissioner of the Animal Health Department; Director of Kansas Biological Survey; Director of Cooperative Extension Service, Kansas State University; Director of the Agricultural Experiment Stations; one member appointed by the Speaker of the House of Representatives; one member appointed by the President of the Senate; one member licensed under the Kansas Pesticide Law and appointed by the Governor; one member licensed under the Law to operate aerial equipment and appointed by the Governor; one member of the industry who manufactures or wholesales pesticides and is appointed by the Governor; an agricultural user of pesticides appointed by the Governor; and the President of the Kansas Termite and Pest Control Association.

The function of the Advisory Board is to advise the Secretary of the Board of Agriculture (Secretary) on any or all problems relating t othe use, manufacture, transportation, application, and restriction of pesticides in the State.

The Kansas Cooperative Extension Service (Extension Service) is the cooperating agency and has the responsibility of offering training to all private and commercial applicators under a cooperative agreement with the State Board of Agriculture. The Extension Service has an approved training plan.

The Board of Agriculture in cooperation with the Extension Service will distribute information about "Integrated Pest Managament" at all pesticide educational meetings and to other persons upon request.

Pesticides distributed and sold within the State must be registered annually with the State Board of Agriculture as provided by the Kansas Agricultural Chemical (Economic Poison) Act of 1947, KSA 2-2201, et seq.; implementation of State pesticide regulatory and enforcement efforts is a responsibility of the Lead Agency. The Secretary will propose regulations designating "Restricted-Use Pesticides" according to EPA classifications.

The plan indicates that the State Lead Agency and cooperating agencies will have sufficient qualified personnel and funds to carry out the proposed program.

The State Lead Agency will submit an annual report to EPA by April 1 of each year and special reports relating to certification as required.

Legal authority for the Kansas certification program is contained in the Kansas House Bill No. 2001 which shall be known as the Kansas Pesticide Law; Proposed Changes to House Bill No. 2001; and regulations to be proposed and promulgated thereunder as described in the State plan.

The State estimates 3,900 commercial applicators and 40,000 to 45,000 private applicators will need to be certified. All applicators will be provided with certification documents to authorize purchase and use of restricted-use pesticides.

Kansas shall adopt all ten categories of commercial applicators as listed in 40 CFR 171.3. The Secretary has the authority and intends to promulgate regulations subdividing certain categories.

Commercial applicators will be certified by means of written examinations, administered by the Board of Agriculture; one covers the general standards of competency (40 CFR 171.4(b) and 171.6), and the others cover the specific standards of competency (40 CFR 171.4 (c)), for each category in which the applicator desires certification.

A complete copy of the examination for commercial applicators covering the general standards of competency and sample questions for the category Agricultural Pest Control (Plant) are attached to the State plan. However, the State of Kansas has requested that the examinations and sample questions not be made available for public inspection, in order to maintain their confidentiality. The Agency has acceded to this request and has removed the examinations and sample questions from the public inspection copies of the State plan.

The Secretary plans to submit a proposal to the legislature which would allow the Lead Agency to examine, collect fees and issue certificates to private applicators, in place of the Extension Service as the present statute now provides.

Private applicators will be certified by having attained a score of at least 70 percent on an open-book examination approved by the Secretary. In passing the examination, the individual shall demonstrate adequate knowledge of pest problems: proper storage; use; handling and disposal of pesticides and pesticide containers; pertinent information on the pesticide labels; pesticide use safety; and environmental considerations. Following successful completion of the examination and payment of fees a private applicator certificate and pocket card will be issued.

Federal employees qualified for certification under the Government Agency Plan will be certified by the State without further testing provided the Federal certification program is fully equivalent to the requirements of the State.

The State of Kansas will facilitate the certification of applicators on Indian Reservations and may cooperate or enter into formal agreements with any other agency or educational institution for carrying out the purposes of the Kansas Pesticide Law.

To assure that certified applicators comply with the standards for the use of restricted-use pesticides, enforcing personnel will conduct regular inspections, service complaints, personally contact applicators on a regular basis, assist the courts with prosecutions and prepare informational material through investigations that will be used for hearings to consider suspension or revocation of certification. Enforcement authority includes but is not limited to, inspection of records and sampling of pesticides being used.

Other regulatory activities conducted in the State of Kansas which contribute to the control of pesticide use include licensing of commercial applicators and registration of governmental agencies to allow use by their employees. All commercial applicators of general use pesticides must be licensed with the exception of ground-applied agricultural uses.

Both commercial and private applicators will be recertified at three year intervals. Applicators must either pass an examniation or have completed a renewal training course covering new technology and approved by the Secretary.

PUBLIC COMMENTS

Interested persons are invited to submit written comments on the proposed State Plan for the State of Kansas to the Regional Administrator, Region VII, U.S. Environmental Protection Agency, 1735 Baltimore Avenue, Kansas City, Missouri 64108. The comments must be received within 30 days of date of publication of this notice, and should bear the identifying notation [OPP–42039]. All written comments filed pursuant to this notice will be available for public inspection at the above-mentioned locations from 9:00 a.m. to 4:00 p.m., Monday through Friday.

Dated: January 21, 1977.

ROBERT L. MARKEY,
Acting Regional Administrator,
Region VII.

[FR Doc.77-2901 Filed 1-28-77;8:45 am]

[OPP 42041; FRL 677-5]

MISSOURI

Submission of State Plan for Certification of Pesticide Applicators

In accordance with the provisions of section 4(a)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (86 Stat. 973; 7 U.S.C. 136 et seq.) and 40 CFR Part 171 (39 FR 36466 (October 9, 1974) and 40 FR 11698 (March 12, 1975), the Honorable Christopher S. Bond, Governor of the State of Missouri, has submitted a State plan for certification of private and commercial applicators of restricted-use pesticides to the Environmental Protection Agency (EPA) for approval on a contingency basis.

Notice is hereby given of the intention of the Regional Administrator, EPA, Region VII, to approve this plan on a contingency basis pending enactment of proposed amendments to the Missouri Pesticide Act of 1974 and subsequent promulgation of the regulations as described in the plan.

A summary of this plan follows; the entire plan, together with all attached appendices (except for sample examinations), may be examined during normal business hours at the following locations:

State of Missouri, Department of Agriculture, 13th Floor, Jefferson Building, Jefferson City, Missouri 65101.
Environmental Protection Agency, Air and Hazardous Materials Division, Pesticides Branch, Room 116, 1735 Baltimore Avenue, Kansas City, Missouri 64108.
Room 401, East Tower, Waterside Mall, 401 M Street SW., Washington, D.C. 20460, Federal Register Section, Technical Services Division (WH-569), Office of Pesticide Programs, EPA.

SUMMARY OF MISSOURI PLAN

The Missouri Department of Agriculture (MDA) has been designated as the State Lead Agency for the administration and enforcement of the Missouri State Plan for the Certification of Pesticide Applicators. Subsection (6) of Section 281.110 of the Act also authorizes the Director, MDA, to cooperate with any agency of the Federal Government in order to prepare and submit State plans to meet Federal certification standards. The Director is authorized to issue regulations after a public hearing following due notice of not less than thirty (30) days to all interested persons; he is directed to adopt by regulation a list of "restricted-use pesticides" to be applied only by, or under the direct supervision of, a certified applicator; a private applicator with a permit may only apply these pesticides.

In accordance with a Memorandum of Understanding between the State Lead Agency and the University of Missouri Cooperative Extension Service, the Extension Service is designated as a cooperating agency to conduct and continue training courses for private and commercial pesticide applicators, and possibly pesticide dealers. The State Lead Agency will administer examinations, certification, licensing and regulatory control, and approve all training for pesticide applicators and dealers. Meetings between the State Lead Agency and the Extension Service are held at periodic intervals to coordinate the training and testing programs.

Legal authorities for Missouri's certification program are contained in the Missouri Pesticide Act of 1974, Senate Bill No. 431, 77th General Assembly, the proposed amendments dated November 23, 1976, and regulations needed to fully implement the plan.

The plan indicates that the State Lead Agency and the Extension Service have or will have sufficient qualified personnel and funds to carry out the proposed program. Funds for maintenance of the State plan will be requested of the General Assembly as a part of the budget request of the Lead Agency. These funds will be determined by the General Assembly on an annual basis.

The State estimates that between 40,000 and 60,000 private applicators and 2,801 commercial applicators, including noncommercial and public/governmental applicators will need to be certified. All applicators certified to use restricted-use pesticides will be provided with credentials that will also authorize purchase of such pesticides.

The MDA agrees to furnish the Administrator, EPA, a detailed annual report on or before August 1 of each year, and other reports as requested in conformity to 40 CFR 171.7(d).

Missouri intends to adopt all ten (10) major categories of commercial applicators as listed in 40 CFR 171.3. Subcategories of commercial applicators proposed in the State plan are as follows:

1. Agricultural pest control:
   a. Plant pest control.
   b. Animal pest control.
2. Forest pest control.
3. Ornamental and turn pest control.
4. Seed treatment.
5. Aquatic pest control.
6. Right-of-way pest control.
7. Industrial, institutional, structural and health-related pest control:
   a. General structural pest control
   b. Termite pest control.
   c. Fumigation pest control.
8. Public health pest control.
9. Regulatory pest control.
10. Demonstration and research pest control.

In Missouri, commercial applicators using restricted-use pesticides are required to be certified. Private applicators using restricted-use pesticides in production of an agricultural commodity must also be certified. However, the MDA may exempt a private applicator from the ordinary certification procedures in cases where an emergency situation necessitates his use of a restricted-use pesticide, and in instances where a private applicator finds the pesticide which he has customarily been using to have been reclassified as restricted. In the event of such an emergency, a private applicator permit for single purchase and single use of a restricted-use pesticide will be issued by an approved agent of the MDA after the applicator provides answers to a series of learning responses that meet the requirements of 40 CFR Part 171.5 and 171.6.

To become certified, commercial noncommercial and public applicators must apply for a license, and additionally are required to pass a written examination administered by the MDA that will be of the closed-book type for both the general and specific standards requirements. To qualify for a license, the examinee must attain a passing score of 70 percent on both test sections. Those not passing the test may retake it. Sample questions have been included for approval as a part of the plan, but at the request of the MDA have been deleted from copies of the plan which are available for public inspection.

Private applicators may become certified through the satisfactory completion of a group training program consisting of a course approved by the Administrator, EPA, and provided by the Extension Service. A written test is not required. The private applicator instead will complete a study guide during the training program.

A self-study program is provided for private applicators who are unable to attend the group training programs. After the applicant has completed the EPA-developed programmed instruction learning program "Apply Pesticides Correctly," he will retain the material for self-correction in the course of a discussion with the instructor. These discussions will be conducted in such a manner as to enable the trainer to assure adequate feedback by each trainee. This will also allow the instructor to go over difficult areas for the private applicator more than once to insure that the appropriate information is imparted.

The private applicator may choose to take autotutorial training which involves the use of video-cassettes and/or slide/tapes in conjunction with a study guide. This material will be presented at such a place as to allow the trainee time to write the information in the study guide as it is shown on the viewing screen. After the applicant has completed the study guide, he will retain the material for self-correction in the course of a discussion with the instructor. These discussions will be conducted in such a manner as to enable the trainer to assure adequate feedback by each trainee.

All private applicators under the ordinary certification procedures will be required to sign an attestation form in the presence of an authorized public official to verify that the requirements for certification have been completed. The public official will also sign the attestation form and mail it to the Lead Agency whereupon a private applicator license will be issued to the applicant.

An oral training program is designed for applicants who have difficulty in understanding the English language and who have poor reading comprehension. The applicant shall attend a group training program or an audiotutorial training program to be informed of the Standards of Competence as required for certification as a private applicator. Following the training program, the applicant will contact the County Extension Agent or the MDA to complete the requirements of certification. The Standards of Competence will be reviewed again as to their application to a specific pesticide label. The applicant will verbally demonstrate to the public official his understanding of a pesticide label and labeling as to its particular use and safety. The applicant will be certified to purchase and use only those pesticides for which he has demonstrated competency; an authorized public official will complete an attestation form and mail it to the Lead Agency. The form will show the limitations as to which restricted-use pesticides can be purchased or used by the applicant. The limitations will be shown on the license and mailed to the private applicator. If and when additional pesticides are required by this applicator, the same procedures will be followed for each pesticide.

Federal employees qualified under the Government Agency Plan (GAP) will satisfy requirements for certification in the State of Missouri when the Director, MDA, receives a copy of the GAP and determines that its requirements for the demonstration of competence are at least equal to those of the plan.

Missouri has no Indian Governing Body subject to jurisdiction of the United States.

The Director, MDA, is authorized to enter into an agreement of reciprocity with any State or jurisdiction if the provisions of the plans of those States or jurisdictions are substantially in accordance with the Missouri plan. At present, Missouri has no formal agreement on reciprocity with other States involving pesticide applicator certification. Any reciprocal agreements will be submitted to EPA.

Other regulatory activities which supplement the certification program include pesticide dealer licensing and registration of pesticides. In accordance with the Missouri Pesticide Act of 1974, Section 281.055, all dealers or restricted-use pesticides will be examined and licensed. All commercial applicators of either restricted-use or general-use pesticides must also be licensed. The Missouri Economic Poisons Act of 1955 requires that all economic poisons sold, distributed or offered for sale within the State, or delivered for transportation or transported in intrastate commerce or between points within the State through any point outside the State shall be registered in the office of the Director MDA, and renewed annually.

To assure maintenance of a high level of competency among certified applicators, and to serve as a basis for certificate renewal, specific requirements will be imposed for recertification of commercial, noncommercial and public pesticide applicators within three years from initial certification and within each subsequent three year period; recertification requirements for private applicators will be imposed within five years from initial certification and within each subsequent five year period. Options include programs conducted by the Extension Service, farm associations, private industry, and trade associations. Commercial applicators may be reexamined without formal training.

The State Lead Agency will maintain records of certified applicators who have attended approved training programs.

To insure that certified applicators comply with standards for the use of restricted-use pesticides, and carry out their responsibility to provide adequate supervision of noncertified applicators, state pesticide inspectors will: investigate complaints of pesticides use; investigate randomly selected sites where restricted-use pesticides are used; and bring violations to the attention of the proper legal and regulatory officials. The Director, MDA, may report violations to the prosecuting attorney of the county where the violation occurs. If any prosecuting attorney refuses or fails to act on request of the Director, the attorney general shall so act. The Director may bring an action to enjoin the violation or threatened violation of the Missouri Pesticide Act of 1974.

PUBLIC COMMENTS

Interested persons are invited to submit written comments on the proposed State Plan for the State of Missouri to the Chief, Pesticides Branch, Region VII, Environmental Protection Agency, Room 116, 1735 Baltimore Avenue, Kansas City, Missouri 64108. These Comments must be received within 30 days of date of publication of this notice, and should bear the identifying notation (OPP–42041). All written comments filed pursuant to this notice will be available for public inspection at the above mentioned locations from 9:00 a.m. to 4:00 p.m., Monday through Friday.

DONALD A. TOWNLEY,
Acting Regional Administrator
Region VII.

JANUARY 28, 1977.

[FR Doc.77-2902 Filed 1-28-77;8:45 am]

[FRL 676-6]

SCIENCE ADVISORY BOARD ENVIRONMENTAL MEASUREMENTS ADVISORY COMMITTEE

Meeting

Pursuant to Pub. L. 92–463, notice is hereby given that a meeting of the Environmental Measurements Advisory Committee will be held beginning at 9:00 a.m. February 22, 1977, in room 1112A, Building 2, Crystal Mall, 1921 S. Jefferson Davis Highway, Arlington, Virginia.

This is the fifth meeting of the Committee. The agenda includes current activities of the Science Advisory Board; action to transmit to the Agency requested advice regarding the Draft Sulfates Research Plan; status report by the chairman of the subcommittee formed to provide advice and assistance in the study of emissions from automotive catalytic exhaust control devices; discussion of the Agency's request for the Committee's review of plans to revise existing approaches to monitoring national environmental quality; and member items of interest.

The meeting is open to the public. Any member of the public wishing to attend or obtain additional information should contact Dr. A. F. Forziati, Executive Secretary, Environmental Measurements Advisory Committee, (703) 557–7720 by close of business February 18, 1977.

THOMAS D. BATH,
Staff Director,
Science Advisory Board.

JANUARY 25, 1977.

[FR Doc.77-2906 Filed 1-28-77;8:45 am]

[FRL 678-4]

DISCUSSIONS RELEVANT TO TOXIC SUBSTANCES CONTROL ACT

Meetings

The Environmental Protection Agency will hold a series of public meetings nationwide to discuss policy issues relevant to the implementation of the Toxic Substances Control Act (Pub. L. 94-469). The regional meetings are designed to explain and discuss various provisions of the act, which became effective on January 1, 1977, and to review EPA's implementation plans to date. The primary purpose of these meetings is to receive comments from the public on issues deriving from the implementation of this new law.

The schedule for the meetings follows. For information about programs, meeting sites, preregistration procedures, and scheduling a time for presentation of comment, please contact the individual or office indicated below:

Federal region	Date	City	Contact	Address
VI	Feb. 14-15	Houston	Franklin Bradford, Office of Public Affairs, 214-749-1153.	EPA, 1201 Elm St., 1st International Bldg., Dallas, Tex. 75270.
IV	Feb. 17	Atlanta	Asa Foster, Air & Hazardous Materials Division, 404-257-3454.	EPA, 345 Courtland St. NE., Atlanta, Ga. 30308.
II	Feb. 24	New York	Herman Phillips, Office of Public Affairs, 212-264-2515.	EPA, 26 Federal Plaza, Room 1009, New York, N.Y. 10007.
I	Mar. 1	Boxborough (northeast of Worcester).	Paul Keough, Office of Public Affairs, 617-223-7223.	EPA, John F. Kennedy Bldg., Boston, Mass. 02203.
V	Mar. 3	Chicago	Office of Public Affairs, 312 353 2072.	EPA, 230 South Dearborn St., Chicago, Ill. 60604.
VII	Mar. 9	Kansas City, Mo.	Dr. Gerald Jacobson, Chief, Hazardous Materials Branch, 816-374-3307.	EPA, 1735 Baltimore St., Kansas City, Mo. 64108.
IX	Mar. 15	Los Angeles	Rick Hoffman, 415-556-6266; or, Bob Boesch, 415-556-3352.	EPA, 100 California St., San Francisco, Calif. 94111.
X	Mar. 17	Seattle	Office of Public Affairs, 206-442-1203.	EPA, 1200 6th Ave., Seattle, Wash. 98101.
VIII	Mar. 22	Denver	Office of Public Affairs, 303-837-4904.	EPA, 1860 Lincoln St., Denver, Colo. 80203.

A final meeting in this series will be held in Washington in the spring and will include participants from Federal Region III. The date will be announced in a future FEDERAL REGISTER.

Dated: January 21, 1977.

KENNETH L. JOHNSON,
Acting Assistant Administrator for Toxic Substances.

[FR Doc.77-2907 Filed 1-28-77;8:45 am]

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 842]

COMMON CARRIER SERVICES INFORMATION

Applications Accepted for Filing

JANUARY 24, 1977.

The applications listed herein have been found, upon initial review, to be acceptable for filing. The Commission reserves the right to return any of these applications, if upon further examination, it is determined they are defective and not in conformance with the Commission's rules and regulations or its policies.

Final action will not be taken on any of these applications earlier than 31 days following the date of this notice, except for radio applications not requiring a 30 day notice period (See section 309(c) of the Communications Act), applications filed under Part 68, applications filed under Part 63 relative to small projects, or as otherwise noted. Unless specified to the contrary, comments or petitions may be filed concerning radio and section 214 applications within 30 days of the date of this notice and within 20 days for Part 68 applications.

In order for an application filed under Part 21 to the Commission's rules (Domestic Public Radio Services) to be considered mutually exclusive with any other such application appearing herein, it must be substantially complete and tendered for filing by whichever date is earlier: (a) The close of business one business day preceding the day on which the Commission takes action on the previously filed application; or (b) within 60 days after the date of the public notice listing the first prior filed application (with which the subsequent application is in conflict) as having been accepted for filing. In common carrier radio services other than those listed under Part 21, the cut-off date for filing a mutually exclusive application is the close of business one business day preceding the day on which the previously filed application is designated for hearing. With limited exceptions, an application which is subsequently amended by a major change will be considered as a newly filed application for purposes of the cut-off rule. (See §§ 1.227(b) (3) and 21.30(b) of the Commission's rules.)

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS,
Secretary.

APPLICATIONS ACCEPTED FOR FILING

DOMESTIC PUBLIC LAND MOBILE RADIO SERVICE

20613-CD-P-(2)-77, Airsignal International, Inc. (KLJ368). C.P. for additional Repeater facilities to operate on 2110.8 MHz at Loc. No. 1: Fruitville Rd. and Christie Avenue, Sarasota; and for additional Control facilities to operate on 2160.8 MHz at a new Loc. No. 2: 1695 10th Street, Sarasota, Fla.

20614-CD-P-(2)-77, Lubbock Radio Paging Service, Inc. (KKE970). C.P. for additional facilities to operate on 454.175 and 454.225 MHz at Loc. No. 3: Metro Tower, Broadway and Avenue L, Lubbock, Tex.

20615-CD-P-(5)-77, South Central Bell Telephone Company (KKD292). C.P. to relocate facilities, change antenna system and replace transmitter operating on 152.51, 152.63, 152.72 and 152.81 MHz, Base and 157.77 and 157.89 MHz. Test to be located at 3951 Erato Street, New Orleans, La.

20616-CD-P-77, San Juan Radiotelephone Corporation (WWA311). C.P. for additional facilities to operate on 152.12 MHz at Loc. No. 3: Atop El Yunque Peak, Puerto Rico

20617-CD-P-(2)-77, Industrial and Commercial Communications Services, Inc. (KLF 464). C.P. for additional facilities to operate on 454.175 and 454.325 MHz at a new Loc. No. 2: 5720 Taylor Avenue, Racine, Wis.

20618-CD-P-(2)-77, South Central Bell Telephone Company (KLB558). C.P. to change antenna system and replace transmitter operating on 152.57 MHz and for additional facilities to operate on 152.81 MHz located at 825 Murray Street, Alexandria La.

20621-CD-P-(2)-77, Radio Paging, Inc. (KKI 445). C.P. to change antenna system operating on 35.58 MHz at Loc. No. 3: 910 West Belt Drive North, Houston; and for additional facilities to operate on 76.92 MHz. Control at a new Loc. No. 7: 1907 Southwest Freeway, Houston, Tex.

20622-CD-P-77, Airsignal of Colorado, Inc. (KAA276). C.P. to relocate facilities operating on 2175.2 MHz, Control at Loc. No 4: 3915 East Exposition Ave., Denver, Colo.

20623-CD-P-77, Radio Paging, Inc. (KWU 485). C.P. to relocate facilities and change antenna system operating on 152.24 MHz to be located at One Shell Plaza, Houston, Tex.

20624-CD-MP-77, Frank L. Yates, Jr. d.b.a. Gulf Mobilphone (KWT972). C.P. to relocate facilities operating on 152.09 MHz to be located near Waveland, Miss.

20625-CD-P-(3)-77, The Mountain States Telephone and Telegraph Company (KOK 347). C.P. for additional facilities to operate on 152.63, 152.69 and 152.81 MHz at a new Loc. No. 2: 6 miles WSW of Burley, Idaho.

Corrections

20428-CD-P-(2)-77, Valley Telephone Coop. Inc. (KLB559). Correct PN entry to read: C.P. to reinstate expired facilities operating on 152.69 and 152.78 MHz located 8 miles east of Lyford, Tex.

20571-CD-P-77, Radio Broadcasting Company (KWU290). Correct entry to show Loc No. 8. All other particulars are to remain as reported on PN No. 841, dated January 17, 1977.

RURAL RADIO

60136-CR-P/L-77, Tony H. Scamardo d.b.a. Industrial Electronics (New). C.P. for a new Rural Subscriber station to operate on 158.67 MHz to be located at any temporary-fixed location within the territory of the Grantee.

Major Amendment

60086-CR-ML-77, David R. Williams d.b.a. Industrial Communications (KZA88). Temporary-Fixed Locations within the territory of the grantee. Amend application to add frequencies 459.025, 459.050, 459.075, 459.100, 459.150, 459.175, 459.200 and 459.250 MHz. All other particulars remain the same as reported on PN No 836, dated December 13, 1976.

POINT TO POINT MICROWAVE RADIO SERVICE

1026-CF-P-77, General Telephone Company of Florida (KGP52). Plant City Jct. 1.73 miles WNW of Plant City, Florida Lat. 28° 01'32" N. Long. 82°10'01" W. C.P. to add point of communication on frequencies 6256.5H, 6315.9H, 6404.8V, and 2170.4H MHz toward Zephyrhills, Fla. on azimuth 356.9°.

1027-CF-P-77, Same (KYJ44). 201 S. Gall Blvd. Zephyrhills, Fla. Lat. 28°13'39" N. Long. 82°10'46" W. C.P. to add frequencies 6004.5H, 6063.8H, 6152.8V, 2120.4H MHz toward Plant City Jct., Fla. on azimuth 176.9° and 6034.2H MHz toward Spring Lake, Fla. on azimuth 334.8°.

1030-CF-P-77, Southern Bell Telephone and Telegraph Company (WAH421). 708 East 1st St. Rome, Ga. Lat 34°15'19" N. Long. 85°09'59" W. C.P. to increase transmit antenna structure height and move antenna on frequency 6286.2V MHz toward Cedartown, Ga.

1035-CF-P-77, Same (KIV69). 111 East 5th Street Panama City, Fla. Lat. 30°09'26" N. Long. 85°39'34" W. C.P. to add frequency on 3710H MHz toward Merial Lake, Fla.

1036-CF-P-77, Same (KIV58). Merial Lake Approx. 6.5 miles NW of Southport, Fla. Lat. 30°22'42" N, Long. 85°40'34" W. C.P. to add frequencies 3760H MHz toward Panama City, Fla. and 3750H MHz toward Dbl Brch Pd, Fla.

1037-CF-P-77, Same (KIU64). Dbl Brch Pd 5 miles SW of Wausau, Fla. Lat. 30°34'56" N, Long. 85°38'41" W. C.P. to add frequencies 3710H MHz toward Merial Lake, Fla. and 3710H MHz toward Chipley, Fla.

1038-CF-P-77, Same (KIU54). 206 West Railroad Ave. Chipley, Fla. Lat. 30°46'47" N, Long. 85°32'28" W. C.P. to add frequency 3750H MHz toward Dbl Brch Pd, Ga.

1039-CF-P-77, Same (KIW68). Liberty 6.5 miles South of Lakewood, Fla. Lat. 30°53' 26" N, Long. 86°16'51" W. C.P. to add frequency 3970H MHz toward Crestview, Fla.

1040-CF-P-77, Same (KIW69). Beach Ave. and Savage St. Crestview, Fla. Lat. 30°45' 29" N, Long. 86°34'25" W. C.P. to add frequencies 4010H MHz toward Liberty, Fla. and 4010H MHz toward Harold, Fla.

1041-CF-P-77, Same (KIW70). 4.1 miles West of Harold, Fla. Lat. 30°39'04" N, Long. 86° 57'15" W. C.P. to add frequencies 3970H MHz toward Crestview, Fla. and 3970H MHz toward Pensacola, Fla.

1042-CF-P-77, Same (KIW71). 30 West Belmont Street Pensacola, Fla. Lat. 30°25'02" N, Long. 87°13'03" W. C.P. to add freqency 4010H MHz toward Harold, Fla.

1043-CF-P-77, The Bell Telephone (KIL58). 121 Adams Avenue, Lat. 41°24'23" N., Long. 75°39'49" W. C.P. to add frequencies 11285V, 11365V MHz toward Lookout Mtn., Pa. on azimuth 192.5°.

1044-CF-P-77, Same (KIL37). Lookout Mtn. 4.7 miles SE of Dupont, Pa. Lat. 40°15'45" N., Long. 75°42'26" W. C.P. increase transmit antenna structure height; add frequencies 10755V, 10835 V MHz toward Scranton, Pa. on azimuth 12.9° and 10775V, 10835V MHz toward Locust, Pa. on azimuth 138.5°.

1045-CF-P-77, Same (new). Locust 3.5 miles NE of Blakeslee, Pa. Lat. 41°08'15" N., Long. 75°33'39" W. C.P. for a new station on frequencies 11305V, 11385V MHz toward Lookout on azimuth 318.6° and 11265V. 11345V MHz toward Rocky on azimuth 125.5°.

1046-CF-P-77, Same (new). Rocky 4.2 miles West of Tannersville, Pa. Lat. 41°02'36" N., Long. 75°23'12" W. C.P. for a new station on frequencies 10735V, 10815V MHz toward Locust, Pa. on azimuth 305.6° and 10775V. 10855V MHz toward Stroudsburg, Pa. on azimuth 111.9°.

1047-CF-P-77, Same (new). 20 South of 7th Street Stroudsburg, Pa. Lat. 40°59'04" N., Long. 75°11'38" W. C.P. for a new station on frequencies 11305V, 11385V MHz toward Rocky, Pa. on azimuth 292.0°.

1079-CF-P-77, Southern Bell Telephone and Telegraph Company (KJA97). 213 South of Colt Street Florence, S.C. Lat. 34°11'39" N., Long. 79°46'17" W. C.P. to change polarization from horizontal to vertical 3710, 3790, 3870 MHz toward Marion, S.C.

1089-CF-P-77, Same (KJA98). Pine at Harlee, Marion, S.C. Lat. 34°10'47" N., Long. 79°23'53" W. C.P. to change polarization from horizontal to vertical 3990, 4070, 4150 MHz toward Florence, S.C.

1119-CF-P-77, The Mountain States Telephone and Telegraph Company (KCO85). 124 West of Magnollia Street, Collins, Colo. Lat. 40°35'00" N., Long. 105°04'41" W. C.P. to add frequency 6004.5V MHz toward Milliken, Colo.

1120-CF-P-77, Same (KCO84). 3.3 miles NNW of Milliken, Colo. Lat. 40°22'43" N., Long. 104°52'13" W. C.P. to add frequencies 6256.5H MHz toward Fort Collins, Colo. and 6256.5V MHz toward Greiley Jct., Colo.

680-CF-P-77, Tower Communication Systems Corporation (KQO 41). Ridgeview Drive, Coshocton, Ohio. Lat. 40°16'04" N. Long. 81°50'14" W.: Construction permit to change transmit station location, replace antenna and add 6241.7V MHz toward Newcomerstown, Ohio, on azimuth 85.8°. (Note: Applicant requests waiver of Section 21.701(1) and Special Temporary Authority.)

984-CF-P-77. Midwestern Relay Company (WLJ 46). Lake Geneva No. 1, 3.0 miles East of Lake Geneva, Wis. Lat. 42°85'49" N, Long. 88°21'30" W.: Construction permit to add 11625H MHz toward Lake Geneva No. 3, Wisconsin, on azimuth 289.5°.

985-CF-P-77. Midwestern Relay Company (new). Lake Geneva No. 3, 1.0 mile North of Lake Geneva, Wis. Lat. 42°87'05" N, Long. 88°26'21" W.: Construction permit for new station—11175H MHz toward Lake Geneva No. 1, Wis., on azimuth 109.4°.

998-CF-P-77. Teleprompter Transmission of Kansas, Inc. (KPH 85). Mt. Aeneas, 18.0 miles ESE of Kalispell, Mont. Lat. 48°09' 12" N, Long. 113°55'45" W.: Construction permit to change location of receive station—5967.4H, 6041.6V, 6100.9V and 6160.2V MHz toward Polson Ridge, Mont., on azimuth 196.8°.

1015-CF-P-77. Midwestern Relay Company (WIV 63). Duluth RPT. 5th Avenue West and 10th Street, Duluth, Minn. Lat. 46° 47'21" N, Long. 92°06'51" W.: Construction permit to replace transmitter—6375.2V MHz toward Duquette, Minn.

1117-CF-P-77, South Central Bell Telephone Company (KRW 72). Charity Hospital, 1532 Tulane Ave., New Orleans, La. Lat. 29°57'21" N, Long. 90°04'42" W: Construction permit to replace transmitter—6375.2V 29°57'21" N, Long. 90°04'42" W.: Construction permit to change receive station

1077-CF-MP-77, United States Transmission Systems, Inc. (WAH514). 1.3 miles NW of Moore, S.C. Lat. 34°50'42" N., Long. 82°00' 36" W.: Modified Construction Permit to add 6226.9H MHz toward Spartanburg, S.C. on azimuth of 29.6°.

1078-CF-P-77, Same (new). Daniel Morgan Boulevard. E/O Highway 221 in Spartanburg, S.C. Lat. 34°57'17" N., Long. 81°56' 04" W.: Construction Permit for a new station—5945.2H MHz toward Moore, S.C. on azimuth 209.6°.

MAJOR AMENDMENTS

65-CF-P-77. RCA American Communications, Inc. (new). Kokee Park, Hawaii. Amended application to change coordinates to Lat. 22°07'00" N., Long. 159°50'21" W.; add new point of communication at Barking Sands, Hawaii for frequency 2129.0V on azimuth 230.2°

66-CF-P-77. Same (new). Barking Sands, Hawaii. Amended application to add new point of communication at Kokee Park for frequency 2179.0V on azimuth 50.1°. (Rest remains same as appeared on public notice dated October 18, 1976.)

[FR Doc 77-2982 Filed 1-28-77; 8:45 am]

[Report No. I-311]

COMMON CARRIER SERVICES INFORMATION

International and Satellite Radio Applications Accepted for Filing

JANUARY 24, 1977.

The Applications listed herein have been found, upon initial review, to be acceptable for filing. The Commission reserves the right to return any of these applications if, upon further examination, it is determined they are defective and not in conformance with the Commission's rules, regulations and its Policies. Final action will not be taken on any of these applications earlier than 31 days following the date of this notice. Section 309(d)(1).

FEDERAL COMMUNICATIONS COMMISSION
VINCENT J. MULLINS,
Secretary.

SATELLITE COMMUNICATIONS SERVICES

92-DSE-MP-77 RCA Alaska Communications, Inc. (KD52). Unalaska, Alaska. Modification of construction permit (File No. 357-DSE-P-76) to install FM/FDM multiplex equipment in lieu of Single Channel Per Carrier, and changes in the EIRP and Emission Designators.

93-DSE-P-77 Independent School District No. 492, Austin, Minn. For authority to construct, own and operate a domestic communications satellite receive-only earth station at this location. Lat. 43°40'40" N., Long. 93°00'05" W. Freq. 3700-4200 MHz. Emission: 36000F9. 10 meter antenna.

94-DSE-P-77 Public Broadcasting Council of Central New York, Syracuse (Liverpool) N.Y. For authority to construct, own and operate a domestic communications satellite receive-only earth station at this location. Lat. 43°12'14" N. Long. 76°12'17" W. Rec. Freq. 3700-4200 MHz. Emission 36000 F9. 10 meter antenna.

95-DSE-P-77 South Carolina ETV Commission, Columbia, S.C. For authority to construct, own and operate a domestic communications satellite receive-only earth station at this location. Lat. 34°07'10" N., Long. 80°56'16" W. Rec. Freq. 3700-4200 MHz. Emission 36000F9. 10 meter antenna.

96-DSE-P-77 Louisiana Educational Television Authority, Baton Rouge, La. For authority to construct, own and operate a domestic communications satellite receive-only earth station at this location. Lat. 30°22'23" N., Long. 91°12'18" W. Rec. Freq. 3700-4200 MHz. Emission 36000F9. 10 meter antenna.

97-DSE-P-77 Twin City Area ETV Corp. and West Central Minnesota Educational Television Co., Appleton, Minn. For authority to construct, own and operate a domestic communications satellite receive-only earth station at this location. Lat. 45°10'-03" N., Long. 96°00'00" W. Rec. Freq.

3700–4200 MHz. Emission: 36000F9. 10 meter antenna.

98-DSE-P-77 New Jersey Public Broadcasting Authority, Trenton, N.J. For authority to construct, own and operate a domestic communications satellite receive-only earth station at this location. Lat. 40°16'-57" N., Long. 74°41'11" W. Rec. Freq. 3700–4200 MHz. Emission 36000F9. 10 meter antenna.

99-DSE-P-77 State Educational Radio and Television Facility Board, Des Moines, Iowa. For authority to construct, own and operate a domestic communications satellite receive-only earth station at this location. Lat. 41°33'47" N., Long. 93°39'19" W. Rec. Freq. 3700–4200 MHz. Emission 36000F9. 10 meter antenna.

100-DSE-P-77 WHYY, INC., Philadelphia, Pa. For authority to construct, own and operate a domestic communications satellite receive-only earth station at this location. Lat. 39°57'29" N. Long. 75°12'46" W. Rec. Freq. 3700–4200 MHz. Emission 36000F9. 10 meter antenna.

[FR Doc.77-2924 Filed 1-28-77;8:45 am]

FM AND TV TRANSLATOR APPLICATION READY AND AVAILABLE FOR PROCESSING

Adopted: January 24, 1977.

Released: January 26, 1977.

Notice is hereby given pursuant to §§ 1.572(c) and 1.573(d) of the Commission's rules, that on March 2, 1977, the TV and FM translator applications listed, which were inadvertently omitted from the Cut-Off List, adopted January 6, 1977 released January 17, 1977, Mimeo No. 76914, will be considered as ready and available for processing. Pursuant to §§ 1.227(b)(1) and 1.519(b) of the Commission's rules, an application, in order to be considered with either application listed below or with any other application on file by the close of business on March 1, 1977, which involves a conflict necessitating a hearing with any application on that list, must be substantially complete and submitted for filing at the offices of the Commission in Washington, D.C., by the close of business on March 1, 1977.

The attention of any party in interest desiring to file pleadings concerning any pending TV and FM translator application, pursuant to section 309(d)(1) of the Communications Act of 1934, as amended, is directed to § 1.580(i) of the Commission's rules for provisions governing the time for filing and other requirements relating to such pleadings.

BPFT-376 (new), Silver Bay, Minn., Stereo Broadcasting, Inc. Req: Channel 288, 105 MHz, 10 watt. Primary: WAKX, Duluth, Minn.

BPTT-3140 (new), Norris Camp, Minn., Lake of the Woods County. Req: Channel 69, 800–806 MHz, 100 watt. Primary: KTHI, Fargo—Grand Forks, N. Dak.

FEDERAL COMMUNICATIONS COMMISSION
VINCENT J. MULLINS,
Secretary.

[FR Doc.77-2983 Filed 1-28-77;8:45 am]

RADIO TECHNICAL COMMISSION FOR MARINE SERVICES

Meetings

In accordance with Pub. L. 92-463, "Federal Advisory Committee Act," the schedule of future Radio Technical Commission for Marine Services (RTCM) meetings is as follows:

Special Committee No. 68, "Marine Radiotelephone Operator Education," Notice of 19th Meeting, Wednesday, February 16, 1977—9:30 a.m., Conference Room 847, 1919 M Street, N.W., Washington, D.C.

AGENDA

1. Call to Order; Chairman's Report.
2. Confirmation of Secretary; Adoption of Agenda.
3. Acceptance of SC-68 Summary Records, December 15, 1976, Paper 180-76/SC 68-86.
4. Review unfinished business.
5. Discuss final report.
6. New business.
7. Establishment of next meeting date.

A. Newell Garden, Chairman, SC-68, Raytheon Company, 141 Spring Street, Lexington, Mass. 02173, Phone: 617-862-6600 (Ext. 414).

WEDNESDAY, FEBRUARY 16, 1977

To: Members of Special Committee No. 65, "SHIP RADAR".
Subject: Notice of 52nd Meeting.
Date/Time: Wednesday, February 16, 1977—1:30 p.m.
Location: Conference Room 8210, 2025 M Street, NW., Washington, D.C.

Agenda for SC-65 Committee Meeting appears on reverse side of this sheet. SC-65 Working Group schedule. To be held at 2025 M Street, NW., Washington, D.C.

Working Group: Collision Avoidance; Room 8210; Date: February 16; Time: 9:30 a.m.

If other Working Group meetings are scheduled, Group Members will be notified.

NOTE: Meeting Room location is subject to change. Check at Room 8210 first.

AGENDA FOR FEBRUARY 16, 1977

AGENDA

1. Call to Order; Chairman's Report; Adoption of Agenda.
2. Acceptance of SC-65 Summary Records; Appointment of Rapporteur, January 14, 1977, Paper 6-77/SC 65-229.
3. Progress Report of Collision Avoidance Working Group.
4. Status Reports on Other Working Groups.
5. Report of Action of Executive Committee on RTCM Paper 145-76/SC 65-220, "Performance Specification for a Computer Aided Collision Avoidance System for Merchant Ships."
6. Other business.
7. Establishment of next meeting date, March 16, 1977.

For approval at this meeting. Irvin Hurwitz, Chairman, SC-65, Federal Communications Commission, Washington, D.C. 20554, Phone: 202-632-7197.

EXECUTIVE COMMITTEE MEETING

THURSDAY, FEBRUARY 17, 1977

The next Executive Committee Meeting will be on Thursday, February 17, 1977, at 9:30 a.m. in Conference Room 847, 1919 M Street, NW., Washington, D.C.

AGENDA

1. Call to Order; Chairman's Report.
2. Introduction of Attendees; Adoption of Agenda.
3. Acceptance of the Minutes of Executive Committee Meetings.
4. Progress Reports on Currently Active Committees.
5. Status Reports on Other Committees.
6. New Membership Applications for Executive Committee Approval.
7. Report on 1977 Assembly Meeting.
8. Approval of Special Committee Papers.
9. Administrative Action Items.
10. Summary Reports and Announcemnts.
11. New Business.
12. Establishment of next meeting date.

To comply with the advance notice requirements of Pub. L. 92-463, a comparatively long interval of time occurs between publication of this notice and the actual meeting. Consequently, there is no absolute certainty that the listed meeting room will be available on the day of the meeting. Those planning to attend the meeting should report to the room listed in the notice. If a room substitution has been made, the new meeting room location will be posted at the room listed in this notice.

Agendas, working papers, and other appropriate documentation for the meeting is available at that meeting. Those desiring more specific information may contact either the designated Chairman or the RTCM Secretariat. (Phone (202) 632-6490)

The RTCM has acted as a coordinator for maritime telecommunications since its establishment in 1947. Problems are studied by Special Committees and the final report is approved by the RTCM Executive Committee. All RTCM meetings are open to the public. Written statements are preferred but by previous arrangement, oral presentations will be permitted within time and space limitations.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS,
Secretary.

[FR Doc.77-2984 Filed 1-28-77;8:45 am]

FEDERAL MARITIME COMMISSION

CERTIFICATES OF FINANCIAL RESPONSIBILITY (OIL POLLUTION)

Certificates Revoked

Notice of voluntary revocation is hereby given with respect to Certificates of Financial Responsibility (Oil Pollution) which had been issued by the Federal Maritime Commission, covering the below indicated vessels, pursuant to Part 542 of Title 46 CFR and section 311(p)(1) of the Federal Water Pollution Control Act, as amended.

Certificate No.	*Owner/Operator and vessels*
01058---	States Steamship Co.: *Hawaii, M.M. Dant.*
01059---	London & Overseas Freighters Ltd.: *London Pioneer.*

Certificate No.	*Owner/Operator and Vessels*
01088---	Schulte & Burns: *Guenther Schulte.*
01330---	Shell Tankers (U.K.) Ltd.: *Hindsia.*
01336---	Aktieselskabet Borgestad: *Milles.*
01351---	The Hadley Shipping Co. Ltd.: *Clymene, Cerinthus.*
01447---	Scotstoun Shipping Co. Ltd.: *Loch Long.*
01574---	Fearnley & Eger: *Ferncourt.*
01663---	Hydroussa Compania Naviera S.A.: *Hydroussa.*
01935---	Partnership between Steamship Company Svendborg Ltd. and Steamship Company of 1912 Ltd.: *Karen Maersk, Maersk Feeder.*
02146---	Pittston Marine Transport Corp.: *Rockland.*
02152---	A. F. Klaveness & Co. A/S: *Queensville.*
02198---	Peninsular & Oriental Steam Navigation Co.: *Sussex.*
02199---	Atlantic Richfield Co.: *Great Lakes.*
02212---	Mill Ridge Corp.: *M.R. 1, M.R. 2.*
02270---	Enso-Gutzeit Osakeyhtio: *Trolleholm, Vasaholm, Malteholm.*
02477---	American Dredging Co.: *SE-104, SE-103.*
02585---	Koch Refining Co.: *TCB 68.*
02693---	Metropolitan Waterways Corp.: *Mykali.*
02715---	Allied Towing Corp.: *ATC-92.*
02728---	Societe Ivoirienne de Transport Maritime: *Tabou, Tonkoui, Kossou, Korhogo, Azaguie, Agou.*
02842---	Clemente Campos y Cia. S.A.: *Manuel Campos.*
02959---	Kokuyo Kaiun Kabushiki Kaisha: *Izumigawa Maru.*
03047---	E. I. du Pont de Nemours and Co.: *TCB 308.*
03106---	Oriental Africa Lines Inc.: *Oriental Amiga.*
03227---	Pando Compania Naviera S.A. of Panama: *North Duchess.*
03230---	Principle Compania Naviera S.A. of Panama: *North Highness.*
03256---	Upper Mississipi Towing Corp.: *UM 901, UM 902.*
03276---	Universe Tankships Inc.: *Universe Frontier.*
03293---	Maritime Fruit Carriers Co.: Ld.: *Sabracore, Bananacore, Lemoncore, Mangocore, Tangerinecore, Avocadocore.*
03295---	Huron Cement Division National Gypsum Co.: *Samuel Mitchell.*
03389---	Shell Tankers B.V.: *Philidora.*
03397---	Hilmar Reksten: *Lucian, Hadrian, Octavian, Sir Winston Churchill, Aurelian, Kong Haakon VII, Julian, Fabian, Nerva.*
03421---	Daio Kisen K.K.: *Munakata Maru.*
03536---	Iino Kaiun K.K.: *Fujisan Maru.*
03458---	Matsuoka Kisen Kabushiki Kaisha: *Hakonesan Maru.*
03479---	Okada Shosen Kabushiki Kaisha: *Settsu Maru.*
03492---	Sawayama Kisen K.K.: *Philippine Maru.*
03504---	Shonan Kisen K.K.: *Shotai Maru.*
03525---	Tsurumi Yuso K.K.: *Kakuyu Maru.*
03692---	Marmac Corp.: *KS-101, KS-102.*
03917---	Mobil Shipping Co. Ltd: *Sachem.*
03971---	Korea Shipping Corp.: *Chang Hang, Dong Myung.*
04002---	Compagnie Des Messageries Maritimes: *Godavery, Yarra, Yalou, Mariotte.*
04029---	National Sand and Material Co. Ltd.: SS *Charles Dick.*
04113---	Mon River Towing Inc.: *PO 1201.*
04398---	Hapag-Lloyd: *Bischofstein.*
05090---	Esso Petroleum Co. Ltd.: *Esso Lincoln, Esso Edinburgh.*
05096---	Esso Tankschiff Reederei GmbH: *Esso Bremen, Esso Stuttgart.*
05263---	Oceanomar Compania Maritima S.A.: *Kilima.*
05349---	Trans-Caribbean Lines Inc.: *Carib Freeze.*
05383---	Lineas Pinillos: *Lago Victoria.*
05472---	National Shipping Corp.: *Rupsa.*
05645---	National Sea Products, Inc.: *Storm, Surf.*
05732---	Tank Masters Inc.: *Tank Master No. 2.*
05743---	Reederei Barthold Richters: *Petra.*
05775---	Good Luck Shipping Co. Ltd.: *Good Commander.*
05810---	John Hudson Fuel & Shipping Ltd.: *Hudson Light.*
06392---	Sofamar-Sociedade de Fainas de Mar E Rio S.A.R.L.: *Rio Zambeze, Rio Zaire, Rio Cuanza.*
06435---	Dampskibsaktieselskabet Den Norske Afrika-Og Australielinie, Wilhelmesn Dampskibsaktieselskabet A/S Tonsberg, A/S Tankfart I, A/S Tankfart IV, A/S Tankfast V, A/S Tankfart VI: *Tiber.*
06495---	Mortensen & Lange: *Sirtus.*
06553---	Manunited Compania Naviera S.A. Panama: *Achillet.*
06567---	Hooker Chemical Corp.: *Heco 1.*
06578---	Van Nievelt, Goudriaan & Co. B.V.: *Meres, Alcor, Anne Christina.*
06838---	Compagnie Franco Camerounaise S.A.R.L. de Navigation: *Mungo.*
06847---	Getty Oil Co. (Eastern Operations) Inc.: *Louisiana Getty, Wilmington Getty, Providence Getty, New York Getty, Delaware Getty.*
06914---	Evans McKell Workboats Ltd.: *Cargo Master.*
07072---	United Ram Corp.: *Saas Grund.*
07154---	NV Veendam: *Veendam.*
07176---	Great Fortune Navigation Co. S.A.: *Great Power.*
07257---	Sea Ploutos Shipping Co. S.A.: *Sea Gull.*
07283---	Evergreen Line S.A.: *Ever Fortune.*
07291---	Butler Marine Equipment Co.: *T 100 SL, T 150 SL, T 200 SL, BU 41, BU 42, BU 40, BU 43, T 250 SL.*
07327---	Marcomando Armadora S.A.: *Kapetanissa.*
07328---	New England Fish Co.: *Smokwa, G. W. King.*
07640---	Exxon Co. U.S.A.: *TTC-1.*
07642---	Armadores Marisurf Ltd.: *Maribruna.*
07817---	Yick Fung Shipping and Enterprises Co., Ltd.: *Mindano Sea, Coral Sea, Caspian Sea.*
07824---	Swiftsure, Inc.: *Western Pioneer.*
07833---	Pyramid Ventures Group, Inc.: *Pyramid Veteran, Pyramid Venus, Pyramid Viking.*
07843---	Northland Marine Lines, Inc.: *Tazlina, Galena, Kivalina, ZB 300, Western Trader, ZB 204, ZB 301, Koko Head.*
07880---	Logicon, Inc.: *GW-100.*
08018---	Protoklitos Compania Naviera S.A.: *Agios Fanourios.*
08129---	Caltec Maritime S.A. Panama: *Caltec Trader.*
08212---	Revenna Shipping, Inc.: *Nego Shang.*
08495---	Nautic Star Shipping Co. S.A.: *Porto.*
08688---	Diakan Grace S.A.: *Diakan Grace.*
08723---	Product Carriers, Inc.: *Stolt Vidar.*
09121---	Oram S.A. Panama: *South Wall.*
09266---	Atlantic Consolidated Foods Ltd.: *Atlantic Hawke, Atlantic Gairdner, Atlantic J.A.G., Atlantic Paton, Atlantic Ocean Maid, Olga, Elizabeth, Claire, Lindsey, Atlantic Margaret, Atlantic Carol, Atlantic Toni, Atlantic Norma, Atlantic Ruthann, Atlantic Peggy, Atlantic Marie, Atlantic Jane, Atlantic Ellen, Atlantic Beatrice, Dorothy.*
09329---	Rederierne Steencoasters K S: *Jytte Steen.*
09465---	River Barges Inc.: *Joyce O.*
09518---	Pacific Universal Navigation S.A.: *Pacific Reefer.*
09678---	Hullgates Shipping Co. Ltd.: *Bengate.*
09711---	Albatross Maritime Co. Ltd. (Panama) S.A.: *Pacific Ocean.*
09833---	Arnica Shipping Co. Ltd.: *Fropadano.*
09874---	Gulf Caribbean Navigation Co.: *Katya M.*
10093---	Universal Giant Shipping Co. Ltd S.A.: *Great Antares.*
10260---	Hollywood Marine Inc.: *Hollywood 1806.*
10279---	Ikuchi Kaiun Kabushiki Kaisha: *Gallant, Grace.*
10481---	Tracey Navigation Co. Ltd.: *Jennifer.*
10598---	International Ship Finance (Liberia) Co. Inc.: *Capella.*
11073---	Evifar Compania Naviera S.A.: *Montaza.*
11323---	James P. Cross Sr.: *Farken No. 1.*
11759---	Sameiet Helmstaub: *Starik.*
11951---	I/S Rederiet Erik B. Kromann: *Aage Andreasen.*
12044---	International Iranian Trading Co.: *Capetan Michalis.*
12064---	Dietrich Sander Bereederungs-GmbH: *Hede.*
12065---	La Islas Navegacion S.A.: Altemis Island.

By The Commission.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.77-3012 Filed 1-28-77;8:45 am]

PACIFIC-STRAITS CONFERENCE

Agreement Filed

Notice is hereby given that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1100 L Street, N.W., Room 10126; or may inspect the agreement at the Field Offices located at New York, N.Y., New Orleans, Louisiana, San Francisco, California, and San Juan, Puerto Rico. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, by February 21, 1977. Any person desiring a hearing on the proposed agreement shall provide a clear and concise statement of the matters upon which

they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the statement should indicate that this has been done.

Notice of Agreement Filed by:

H. R. Rollins, Secretary, Pacific-Straits Conference, 635 Sacramento Street, San Francisco, California 94111.

Agreement No. 5680-23, entered into by the member lines of the Pacific-Straits Conference, modifies the conference agreement by the addition of a new article (Article 11) which will give the Conference Secretary permanent authority to sign on behalf of the Conference membership and file for approval with the Federal Maritime Commission any amendments or additions to Agreement No. 5680 which have previously been voted on and approved by the Conference membership. The added Article 11 reads as follows:

Article No. 11. This agreement may be executed in several parts the said parts to read and be effectual as one instrument, which may be changed or added to at any meeting by consent of the members as provided in Article 8(a), provided, however, that no action under this paragraph or any other paragraph of this agreement constituting modification of this agreement within the purview of Section 15 of the Shipping Act shall be carried into effect until approved by the Governmental Agency charged with the administration of Section 15 of the Shipping Act, 1916, as amended. Each of the parties hereto, hereby expressly authorize the Conference Secretary to sign on its behalf and to file for approval with the Agency charged with administering the Shipping Act of 1916, as amended, any amendments to this agreement and to the appendix to this agreement which have been duly adopted by the Conference by the vote and procedures prescribed by this agreement or by the appendix to this agreement. Any person, by the act of becoming a party to this agreement shall thereby authorize the Secretary to sign and file amendments on its behalf as provided hereinabove.

By Order of the Federal Maritime Commission,

Dated: January 26, 1977.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.77-3013 Filed 1-28-77;8:45 am]

FEDERAL POWER COMMISSION

[Docket No. G-8820, etc.]

TEXACO INC. (OPERATOR), ET AL.

Applications for Certificates, Abandonment of Service and Petitions To Amend Certificates[1]

JANUARY 19, 1977.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before February 11, 1977 file with the Federal Power Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure a hearing will be held without further notice before the Commission on all applications in which no petition to intervene is filed within the time required herein if the Commission on its own review of the matter believes that a grant of the certificates or the authorization for the proposed abandonment is required by the public convenience and necessity. Where a petition for leave to intervene is timely filed, or where the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft³	Pressure base
G-8820 D 12-30-76	Texaco Inc. (operator), et al., P.O. Box 2420, Tulsa, Okla. 74102.	Natural Gas Pipeline Co. of America, Blakemore Field, Hansford County, Tex.	(1)	(1)
G-14250 B 12-20-76	Atlantic Richfield Co., P.O.Box 2819, Dallas, Tex. 75221.	El Paso Natural Gas Co., Lockhart B. No. 8, sec. 14-T21-R36 Lea County, N. Mex.	(2)	(2)
C170-917 C175-42 C 1-3-77	Phillips Petroleum Co., 5 C4 Phillips Bldg., Bartlesville, Okla. 74004.	Panhandle Eastern Pipe Line Co., Douglas plant, Powder River basin area, Converse and Campbell Counties, Wyo.	(3)	14.73
C176-327 B 12-21-76	Aminoil Development, Inc., 2800 North Loop West, Houston, Tex. 77092.	Transcontinental Gas Pipe Line Corp., block 117 field, East Cameron area, offshore Louisiana.	(4)	-------
C177-184 (G-19720) B 12-27-76	Diamond Shamrock Corp., P.O. Box 631, Amarillo, Tex. 79173.	Northern Natural Gas Co., Ochiltree County, Tex.	(5)	(5)
C177-185 A 12-27-76	HNG Oil Co., P.O. Box 1188, Houston, Tex. 77001.	Mid-Louisiana Gas Co., Kansas-Nebraska Natural Gas Co., secs. 9, 11, and NE/4 and S/2, sec. 10, block Z-1, A. C. H. & B. & W. Survey, Viking (Upper Morrow) Field, Hemphill County, Tex.	[6] [7] 153.1962¢	14.73
C177-186 A 12-27-76	Petroleum, Inc., 300 West Douglas, Wichita, Kans. 67202.	Northwest Pipeline Corp., Sublette County, Wyo.	[8] $1.650516	14.73
C177-187 A 12-27-76	Terra Resources, Inc., 5416 South Yale Ave., Tulsa, Okla. 74135.	United Gas Pipe Line Co., Lapeyrouse Field, Terrebonne Parish, La.	[8] [9] 151.3900	15.025
C177-188 A 12-27-76	Cities Service Oil Co., P.O. Box 300, Tulsa, Okla. 74102.	Colorado Interstate Gas Co., Haskell County, Kans., SW/4 sec. 4-28S-34W.	[8] [10] 52.8022¢ [11] [12] [13] 53.7967¢	14.65 -------
C177-189 A 12-27-76	Helmerich & Payne, Inc. (operator), et al., 1579 East 21st St., Tulsa, Okla. 74114.	Michigan Wisconsin Pipe Line Co., Northeast Binger Field, Caddo County, Okla.	[8] $1.5653	14.73
C177-190 A 12-28-76	Arkla Exploration Co., P.O. Box 21734, Shreveport, La. 71151.	Arkansas Louisiana Gas Co., Bonanza Field, Sebastian County, Ark.	[11] [14] $1.4262	14.65
C177-192 A 12-29-76	Freeport Oil Co., a division of Freeport Minerals Co., P.O. Box 3038, Midland, Tex. 79701.	Mississippi River Transmission Corp., Brick Prospect area, Beckham County, Okla.	[15] [16] 99.158¢	14.65
C177-193 A 12-29-76	American Natural Gas Production Co., 1 Woodward Ave., Detroit, Mich. 48226.	Michigan Wisconsin Pipe Line Co., Beckham County, Okla.	[15] $1.44	14.65

Filing code: A—Initial service.
B—Abandonment.
C—Amendment to add acreage.
D—Amendment to delete acreage.
E—Succession.
F—Partial succession.
See footnotes at end of table.

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft³	Pressure base
C177-194 A 12-29-76	Exxon Corp., P.O. Box 2180, Houston, Tex. 77001.	Columbia Gas Transmission Corp., Grand Isle Block 16 Field, offshore, Louisiana.	[8] $1.76	15.025
C177-195 (C867-82) B 12-27-76	Mesa Petroleum Co., P.O. Box 2009, Amarillo, Tex. 79105.	Panhandle Eastern Pipe Line Co., Southwest Fargo Field, Ellis County, Okla.	(16)	(16)
C177-196 A 12-27-76	The Superior Oil Co., P.O. Box 1521, Houston, Tex. 77001.	Michigan Wisconsin Pipe Line Co., Deep Lake Field, Cameron Paris., La.	[11] [17] $1.43	15.025
C177-197 (G-19016) B 12-28-76	Coastal States Gas Producing Co., 5 Greenway Plaza East, Houston, Tex. 77046.	South Texas Natural Gas Gathering Co., Duval, LaSalle, and Webb Counties, Tex.	(18)	(18)
C177-200 A 12-30-76	The Superior Oil Co., P.O. Box 1521, Houston, Tex. 77001.	Michigan Wisconsin Pipe Line Co., West Cameron Block 71 Field, offshore La.	[11] [17] $1.43	15.025
C177-201 A 12-30-76	Phillips Petroleum Co., 5 C4 Phillips Bldg., Bartlesville, Okla. 74004.	El Paso Natural Gas Co., Brimhistool No. 1 Weil, Lea, County, N. Mex.	[8] $1.44	14.73
C177-202 A 1-3-77	Gulf Oil Corp., P.O. Box 2100, Houston, Tex. 77001.	Michigan Wisconsin Pipe Line Co., Cupp A unit, Mayfield, Southwest Field, Beckham County, Okla.	[8] [19] 152.2891¢	14.65
C177-203 (G-10801) B 1-3-77	Diamond Shamrock Corp., P.O. Box 631, Amarillo, Tex. 79173.	Northern Natural Gas Co., Clark and Comanche Counties, Kans.	(20)	(20)
C177-204 A 1-3-77	Sun Oil Co., P.O. Box 20, Dallas, Tex. 75221.	Transcontinental Gas Pipe Line Corp., Bear Field, Beauregard Parish, La.	[11] [21] [22] 62.7926¢	15.025
C177-205 (CS72-21) B 1-3-77	Earlsboro Oil & Gas Co., Inc., 1380 1st National Center North, Oklahoma City, Okla. 73102.	Cities Service Co., Wakita Field, Granty County, Okla.	(23)	-------
C177-206 (CS72-21) B 1-3-77	do	Arkla Gas Co., Southeast Lamont Field, Grant County, Okla.	(24)	(24)
C177-207 (CS72-21) B-1-3-77	do	Cities Service Gas Co., Wakita Field, Grant County, Okla.	(25)	-------

[1] Nonproductive.
[2] Reclassification of well from gas to oil.
[3] Subject to adjustments pursuant to opinion No. 770, as amended.
[4] Applicant states that the acreage was erroneously included in exhibit A-1 of gas purchase contract dated May 22 1975.
[5] Depleted.
[6] Subject to 2.1795¢ downward Btu adjustment.
[7] Includes 11.6757¢ tax reimbursement, plus 1¢ escalation per quarter.
[8] Includes 7¢ tax reimbursement and 0.5100¢ gathering.
[9] Price prior to Jan. 1, 1977.
[10] Price effective Jan. 1, 1977.
[11] Subject to upward and downward Btu adjustment.
[12] Includes 0.0946¢ gathering.
[13] Includes 100-pct tax reimbursement.
[14] Applicant and purchaser are affiliated.
[15] Plus 7.077¢ tax reimbursement, minus 1.408¢ Btu adjustment based on Btu content of 986.
[16] Depletion of reserves.
[17] Plus 1¢ escalation per quarter.
[18] Depletion of gas reserves.
[19] Includes 143.2181¢ base rate, plus 10.9207¢ tax reimbursement, and an estimated Btu adjustment of −1.8368¢ per 1,000 ft³.
[20] Reservoir has been depleted.
[21] Includes 54.0614¢ base rate, 7¢ tax reimbursement, 1.2212¢ Btu adjustment and 0.51¢ gathering.
[22] Contracts for sale of natural gas in interstate commerce for gas from wells commenced prior to Jan. 1, 1973, and not previously sold in interstate commerce prior to Jan. 1, 1973, except pursuant to the provisions of sec. 2.68, 2.70, 157.22 or 157.29.
[23] Applicant unable to buck high-pressure gas line; uneconomical to set compressor. Connection changed to Sun Oil Co.'s low pressure line going through their gasoline plant with the residue gas being purchased by Cities Service Co.
[24] Well ran dry.

[FR Doc.77-2808 Filed 1-28-77;8:45 am]

FEDERAL TRADE COMMISSION

DIRECTORS OF THE BUREAUS OF COMPETITION, CONSUMER PROTECTION AND ECONOMICS

Delegation of Authority

On June 23, 1976, the United States Government and the Federal Trade Commission entered into a Restrictive Business Practices ("RBP") Cooperation Agreement with the Federal Republic of Germany, ---- U.S.T. ----, T.I.A.S. No. 8291. That agreement, which amounts to mutual reinforcement of the antitrust law enforcement agencies of the United States and those of the Federal Republic of Germany, went into force on September 11, 1976, and provides, inter alia, that any party may request information from any other party in connection with RBP law enforcement or studies relating to RBP's.

Pursuant to the authority provided by Reorganization Plan No. 4 of 1961 (26 F.R. 6191, 75 Stat: 837), the Commission announces that it has delegated to the Directors of the Bureaus of Competition, Consumer Protection and Economics the authority to make any future information requests pursuant to the above agreement which may be necessary in the conduct of any investigation or other official Commission business to the Government of the Federal Republic of Germany on behalf of the Commission, subject to the concurrence of the General Counsel. The General Counsel was authorized to make necessary liaison with the Department of State to facilitate the processing of all such requests.

By direction of the Commission dated January 19, 1977.

JOHN F. DUGAN,
Acting Secretary.

[FR Doc.77-2947 Filed 1-28-77;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Center for Disease Control

IMMUNIZATION PRACTICES ADVISORY COMMITTEE

Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Center for Disease Control announces the following Committee meeting:

Name: Immunization Practices Advisory Committee.
Dates and time: February 10-11, 1977, 8:30 a.m.
Place: Room 207, Building 1, Center for Disease Control, 1600 Clifton Road, N.E., Atlanta, Georgia 30333.
Type of Meeting: Open.
Contact person: H. Bruce Dull, M.D., Executive Secretary of Committee, Building 1, Room 2118, Center for Disease Control, 1600 Clifton Road, NE., Atlanta, Georgia 30333. Phone: AC/404 633-3311, Extension 3701, FTS: 236-3701.
Purpose: The Committee is charged with advising on the appropriate uses of immunizing agents for public health practice.
Agenda: The Committee will continue its review of existing recommendations on vaccines of public health importance and proceed with their updating.

At the recent emergency meetings on influenza, time was not scheduled for the Committee to review other vaccine recommendations. It is now necessary for the Committee to meet at the earliest possible date for purposes outlined in the agenda; therefore, the usual requirement for 15 days' advance notice of this meeting is not possible.

Agenda items are subject to change as priorities dictate.

The meeting is open to the public for observation and participation. A roster of members and other relevant information regarding the meeting may be obtained from the contact person listed above.

Dated: January 26, 1977.

WILLIAM C. WATSON, JR.,
Acting Director,
Center for Disease Control.

[FR Doc.77-3073 Filed 1-28-77;8:45 am]

Office of Education

ADVISORY COUNCIL ON DEVELOPING INSTITUTIONS

Public Meeting

JANUARY 26, 1977.

Notice is hereby given, pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), that the next meeting of the Advisory Council on Developing Institutions will be held

March 4, 1977, from 9:00 a.m. to 4:00 p.m. in Room 5636, Regional Office Building 3, 7th & D Streets, S.W., Washington, D.C.

The Advisory Council on Developing Institutions was established by Title III of the Higher Education Act of 1965, as amended. The Council is governed by the provisions of Part D of the General Education Provisions Act and of the Federal Advisory Committee Act (Pub. L. 92–463). The Council shall assist the Commissioner in identifying the characteristics of developing institutions through which the purpose of Title III may be achieved, and in establishing the priorities and criteria to be used in making grants under section 304(a) of that Title.

The meeting of the Council shall be open to the public. The meeting will be devoted entirely to the next Annual Report of the Council.

Records shall be kept in the form of the Council's Annual Report. Copies of the Annual Report will be available at a later date to the public at the Office of the Director of the College and University Unit, BPE, located in Room 3036, ROB, 7th & D Streets, S.W.

Signed at Washington, D.C. on January 26, 1977.

PRESTON VALIEN,
Office of Education
Delegate to the Council.

[FR Doc.77-2959 Filed 1-28-77;8:45 am]

TITLE I AUDIT APPEAL

Acceptance of Application for Appeal

Notice is hereby given that, pursuant to the notice establishing the Title I Audit Hearing Board (37 FR 23002, October 27, 1972, as amended by 41 FR 28568, July 12, 1976), an application for an appeal before the Board has been received from the State of New Jersey and it has met the jurisdictional requirements of section 5 of the notice establishing the Board.

The appeal involves the allowability of specified expenditures of funds under Title I of the Elementary and Secondary Education Act during the period September 1, 1970, through August 31, 1973. The sum of $1,161,917 is sought for recovery on the grounds that Newark, a local education agency, used Title I funds in schools which did not mean the eligibility requirements established in Federal regulations. The Audit Control Number is 50006–02.

The prehearing conference will be held at 10:30 a.m. on March 3, 1977, in Room 4173, 400 Maryland Avenue, S.W. Washington, D.C.

Section 7(c) of the Notice setting up the Board provides:

(c) Intervention by third parties. (1) Interested third parties may, upon application to the Board Chairman, intervene in proceedings conducted under this notice. Such application must indicate to the satisfaction of the Board Chairman that the intervener has information relative to the specific issues raised by the final audit determination and that such information will be useful to the Hearing Panel in resolving those issues.

(2) When third parties are given leave to intervene in accordance with subparagraph (1) above, such parties shall be afforded the same opportunities as other parties to present written materials, to participate in informal conferences, to call witnesses, to cross-examine other witnesses, and to be represented by counsel.

All such applications for intervention will be considered if received on or before February 14, 1977.

(20 U.S.C. 241a, 1232c.)

(Catalog of Federal Domestic Assistance Number 13.428, Educationally Deprived Children—Local Educational Agencies.)

Dated: January 25, 1977.

WILLIAM F. PIERCE,
Acting U.S. Commissioner
of Education.

[FR Doc.77-2977 Filed 1-28-77;8:45 am]

TITLE I—AUDIT APPEAL

Acceptance of Application for Appeal

Notice is hereby given that, pursuant to the notice establishing the Title I Audit Hearing Board (37 FR 23002, October 27, 1972, as amended by 41 FR 28568, July 12, 1976), an application for an appeal before the Board has been received from the State of New Mexico and it has met the jurisdictional requirements of section 5 of the notice establishing the Board.

The appeal involves the allowability of specified expenditures of funds for programs under Title I of the ESEA during the period March 28, 1967, through August 31, 1971. The U.S. Office of Education seeks to recover $157,587 from New Mexico for allegedly inappropriate expenditures of Title I migrant funds in the local educational agencies of Gadsden, Las Cruces, Clovis, Roswell, Hutch Valley, Espanola and Las Vegas. The issues involve the eligibility of participating children, the appropriateness of project design, and the adequacy of certain administrative and accounting procedures. The Audit Control Number is 20093–06.

The prehearing conference will be held at 10:30 a.m. on March 31, 1977, in Room 4173, 400 Maryland Avenue, S.W., Washington, D.C.

Section 7(c) of the notice setting up the board provides:

(c) Intervention by third parties. (1) Interested third parties may, upon application to the Board Chairman, intervene in proceedings conducted under this notice. Such application must indicate to the satisfaction of the Board Chairman that the intervener has information relative to the specific issues raised by the final audit determination and that such information will be useful to the Hearing Panel in resolving those issues.

(2) When third parties are given leave to intervene in accordance with subparagraph (1) above, such parties shall be afforded the same opportunities as other parties to present written materials, to participate in informal conferences, to call witnesses, to cross-examine other witnesses, and to be represented by counsel.

All such applications for intervention will be considered if received on or before March 15, 1977.

(20 U.S.C. 241a, 1232c.)

Dated: January 25, 1977.

WILLIAM F. PIERCE,
Acting United States
Commissioner of Education.

(Catalog of Federal Domestic Assistance Number 13.428, Educationally Deprived Children—Local Educational Agencies.)

[FR Doc.77-2978 Filed 1-28-77;8:45 am]

DEPARTMENT OF THE INTERIOR

Bonneville Power Administration

DRAFT COLSTRIP ENVIRONMENTAL IMPACT STATEMENT

Intent To Prepare Draft Environmental Statement

Notice of intent to file an environmental statement is hereby given by the Bonneville Power Administration (BPA), 1002 NE. Holladay Street, Portland, Oregon 97232.

Bonneville Power Administration has been designated by the Secretary of the Interior to act as lead bureau within the Department of the Interior for the preparation of the environmental impact statement on the Federal actions related to the Colstrip Project. The environmental statement will cover the impacts from the Federal action associated with the coal supply, the power plant, the water supply, and the transmission system that make up the Colstrip Project.

Suggestions, comments, and observations are solicited during this period for consideration in preparation of the draft environmental statement.

Upon filing of the draft environmental statement with the Council on Environmental Quality (CEQ), comments will be received on the draft statement itself. Tentatively, the draft environmental statement is now planned for filing with the CEQ in September 1977.

For additional information on the Colstrip EIS, contact the BPA Kallspell District Office, telephone (406) 755–6202.

Dated: January 19, 1977.

DONALD PAUL HODEL,
Administrator.

[FR Doc.77-2926 Filed 2-8-77;8:45 am]

Fish and Wildlife Service

THREATENED SPECIES PERMIT

Receipt of Application

Notice is hereby given that the following application for a permit is deemed to have been received under section 4(d), 16 U.S.C. 1533(d), of the Endangered Species Act of 1973 (Pub. L. 93–205).

Applicant. Glenn C. Yoder, Route 1, Box 34A, Topeka, Indiana 46571.

DEPARTMENT OF THE INTERIOR
U.S. FISH AND WILDLIFE SERVICE
FEDERAL FISH AND WILDLIFE
LICENSE/PERMIT APPLICATION

DMB NO. 42-R1678

1. APPLICATION FOR *(Indicate only one)*
☐ IMPORT OR EXPORT LICENSE ☒ PERMIT

2. BRIEF DESCRIPTION OF ACTIVITY FOR WHICH REQUESTED LICENSE OR PERMIT IS NEEDED.
Permit for buying and selling all pheasants on "T (C/P) list.

3. APPLICANT. *(Name, complete address and phone number of individual, business, agency, or institution for which permit is requested)*
Glenn C. Yoder
Rt. 1 Box 34A
Topeka , Indiana 46571

4. IF "APPLICANT" IS AN INDIVIDUAL, COMPLETE THE FOLLOWING.
☒ MR. ☐ MRS. ☐ MISS ☐ MS. | HEIGHT 5' 8" | WEIGHT 150
DATE OF BIRTH 2/13/49 | COLOR OF HAIR Brown | COLOR OF EYES Brown
DRIVER'S LICENSE NUMBER AND STATE 219/553-3??? | SOCIAL SECURITY NUMBER 314-52-2100
OCCUPATION Carpenter
ANY BUSINESS, ACTIVITY OR INSTITUTION NOT LISTED ABOVE WHICH IS TO DO WITH THE WILDLIFE TO BE COVERED BY THIS LICENSE/PERMIT

5. IF "APPLICANT" IS A BUSINESS, CORPORATION, PUBLIC AGENCY OR INSTITUTION, COMPLETE THE FOLLOWING.
EXPLAIN TYPE OR KIND OF BUSINESS, AGENCY OR INSTITUTION
NAME, TITLE AND ADDRESS OF PRINCIPAL OFFICER, DIRECTOR, ETC.
STATE OR PLACE OF INCORPORATION

6. LOCATION WHERE OR ROUTE FOR WHICH ACTIVITY IS TO BE CONDUCTED
To and from my farm.

7. DO YOU HOLD ANY CURRENTLY VALID FEDERAL AND/OR WILDLIFE LICENSE OR PERMIT? ☐ YES ☐ NO
(If yes, list license or permit number)
23-4778

8. IF REQUIRED BY ANY STATE OR FOREIGN GOVERNMENT, DO YOU HAVE THEIR APPROVAL TO CONDUCT THE ACTIVITY YOU PROPOSE? ☐ YES ☐ NO
(If yes, list jurisdiction and type of document)

9. CERTIFIED CHECK OR MONEY ORDER ATTACHED OR AMOUNT TO BE CHARGED TO THE U.S. FISH AND WILDLIFE SERVICE ENCLOSED IN AMOUNT OF

10. DESIRED EFFECTIVE DATE
Oct.1 /76

11. DURATION NEEDED
2 years

12. ATTACHMENTS. THE SPECIFIC INFORMATION REQUIRED FOR THE TYPE OF LICENSE/PERMIT YOU ARE APPLYING FOR IS CONTAINED IN 50 CFR PARTS 13 AND 23. IF NOT ATTACHED, IT CONSTITUTES AN INTEGRAL PART OF THIS APPLICATION. LIST SECTIONS OF 50 CFR UNDER WHICH ATTACHMENTS ARE PROVIDED.
17.33 Permit-captive self-sustaining population

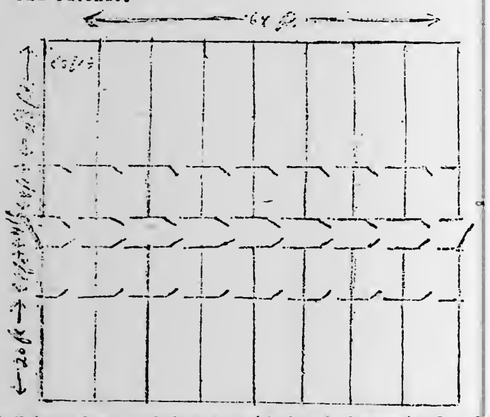
CERTIFICATION
I HEREBY CERTIFY THAT I HAVE READ AND AM FAMILIAR WITH THE REGULATIONS CONTAINED IN TITLE 50, PART 13, OF THE CODE OF FEDERAL REGULATIONS AND THE OTHER APPLICABLE PARTS IN SUBCHAPTER B OF CHAPTER I OF TITLE 50, AND I FURTHER CERTIFY THAT THE INFORMATION SUBMITTED IN THIS APPLICATION FOR A LICENSE/PERMIT IS COMPLETE AND ACCURATE TO THE BEST OF MY KNOWLEDGE AND BELIEF. I UNDERSTAND THAT ANY FALSE STATEMENT HEREIN MAY SUBJECT ME TO THE CRIMINAL PENALTIES OF 18 U.S.C. 1001.

SIGNATURE *(In ink)* Glenn C. Yoder | DATE 7/20/76

3-200
16.(74) GPO 825-042

(1) Pheasant,Brown-eared Crossoptilon mantchuricum
Pheasants,Edwards Lophura edwardsi
Pheasant,Humes (Bar-tailed) Syrmaticus humiae
Pheasant,Mikado Sayrmaticus mikado
Pheasant,Palawan peacock Polyplectron emphanum
Pheasant,Swinhoe Lophura swinhoii
Pheasant, White-eared Crossoptilon crossoptilon
Also all pheasants that might be added later.
For buying and selling in interstate commerce.

(2) All my birds are housed in new building 20'X 64' with runs inside and outside.



(3) I have been raising many kinds of pheasants for four years.
(4) I would be willing to participate in a cooperative breeding program, and to maintain or contribute data to a studbook.
(5) Birds would be shiped in heavy duty cardboard boxes with plenty of vent holes cut in. Boxes will be big enough so birds have plenty of room.Container of water, lettuce, and apple will be put in box.
(6) The birds I have lost were young birds from of good brooding conditions. And some older birds lost to predators. Now have new brooder house and breeding pens that are predator proof.
(7) (i) Buying and selling in interstate commerce.
(ii) Birds would be sold to persons with permit.

GLENN C. YODER,
Rt. 1 Box 34A,
Topeka, Indiana 46571.

DEAR MR. HESTER: This letter is in regards to more information you required on my application.

(1) The following are pheasants I have raised, Blue Eared, Impeyans, Amherst, Golden, and Reeves. I have been raising these pheasants for over 5 years.

(2) Shipping containers are heavy duty cardboard boxes with large holes, covered with mesh wire for light and ventilation. Boxes will be large enough for birds to move around in freely. Water container will be wired to box.

Most of the birds would be shipped and received by United Air Lines. Transportation takes from 6 hrs. to not more than 36 hrs. Other birds would be picked up and delivered personally.

(3) The reason I feel I would be justified in obtaining a permit is to get unrelated birds to prevent inbreeding. Inbreeding can soon destroy these beautiful birds.

(4) Activities I seek to have authorized by permit is to buy and sell captive self-sustaining species any were in the United States.

Sincerely,

GLEN C. YODER.

Documents and other information submitted in connection with this application are available for public inspection during normal business hours at the Service's office in Room 512, 1717 H Street, NW., Washington, D.C.

Interested persons may comment on this application by submitting written data, views, or arguments, preferably in triplicate, to the Director (FWS/WPO), U.S. Fish and Wildlife Service, Washington, D.C. 20240. This application has been assigned File Number PRT 2-301-25; please refer to this number when submitting comments. All relevant comments received on or before March 2, 1977, will be considered.

Dated: January 14, 1977.

DONALD G. DONAHOO,
Chief, Permit Branch, Federal Wildlife Permit Office. United States Fish and Wildlife Service.

[FR Doc. 77-2985 Filed 1-28-77;8:45 am]

Bureau of Land Management

[Nev-036338]

NEVADA

Modification of Request for Renewal, in Part, of Withdrawn Lands and Request for Withdrawal of Additional Lands

JANUARY 18, 1977.

Pursuant to section 204(h) of the Federal Land Policy and Management Act of 1976, the notice published in the FEDERAL REGISTER, Doc. 76-13198, at page 18690 of the issue for May 6, 1976, is modified to include the following paragraph:

All interested persons who desire to be heard on the proposed withdrawal must submit a written request for a hearing to the State Director, Bureau of Land Management, at the address shown below, on or before March 2, 1977. Upon determination by the State Director that a public hearing will be held, the time and place will be announced.

Bureau of Land Management, 3008 Federal Building, 300 Booth Street, Reno, Nevada 89509.

WM. J. MALENCIK,
Chief,
Division of Technical Services.

[FR Doc.77-2923 Filed 1-28-77;8:45 am]

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 76-37]

UMBLES' DREW-HALE PHARMACY, INC.

Hearing

Notice is hereby given that on September 9, 1976, the Drug Enforcement Administration, Department of Justice, issued to Umbles' Drew-Hale Pharmacy, Inc., Toledo, Ohio an Order to Show Cause as to why the Drug Enforcement Administration should not deny the applications for Registration under the Controlled Substances Act of 1970, of the Respondent executed on April 24, 1975 and April 14, 1976, pursuant to Section 303 of the Controlled Substances Act (21 U.S.C. 823).

Thirty days having elapsed since the said Order to Show Cause was received by the Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held commencing at 10:00 a.m. on February 15, 1977 in the Hearing Room, Room 1210, Drug Enforcement Administration, 1405 I Street. N.W., Washington, D.C.

Dated: January 26, 1977.

PETER B. BENSINGER,
Administrator, Drug Enforcement Administration.

[FR Doc.77-2966 Filed 1-28-77;8:45 am]

LEGAL SERVICES CORPORATION

Grants and Contracts

JANUARY 25, 1977.

The Legal Services Corporation was established pursuant to the Legal Services Corporation Act of 1974, Pub. L. 93-355, 88 Stat. 378, 42 U.S.C. 2996-2996*l*. Section 1007(f) provides: "At least thirty days prior to the approval of any grant application or prior to entering into a contract or prior to the initiation of any other project, the Corporation shall announce publicly, and shall notify the Governor and the State Bar Association of any State where legal assistance will thereby be initiated, of such grant, contract, or project * * *"

The Legal Services Corporation hereby announces publicly that it is considering the grant applications submitted by:

1. Greater Orlando Area Legal Services for Orange County, Florida.

2. Legal Aid Service of Broward County for Broward County, Florida.

Interested persons are hereby invited to submit written comments or recommendations concerning the above applications to the Regional Office of the Legal Services Corporation at:

Atlanta Regional Office, 615 Peachtree Street, N.E., Room 503, Atlanta, Georgia 30308.

THOMAS EHRLICH,
President.

[FR Doc.77-2957 Filed 1-28-77;8:45 am]

NATIONAL STUDY COMMISSION ON RECORDS AND DOCUMENTS OF FEDERAL OFFICIALS

MEETING

Pursuant to Subsection 10(a) of the Federal Advisory Committee Act, Pub. L. 92-463, notice is hereby given that the National Study Commission on Records and Documents of Federal Officials will meet on February 17, 1977 at 9:30 a.m., in Room 105 of the National Archives Building, Pennsylvania Avenue at 8th Street, N.W., Washington, D.C.

Purpose: The Commission was established under Title II of the Presidential Recordings and Materials Preservation Act (Pub. L. 93-526; 88 Stat. 1698; 44 U.S.C. 3315 et seq.) to study problems involving the control, disposition, and preservation of records and documents produced by or on behalf of Federal officials.

Agenda: The purpose of the meeting is to review and discuss the preliminary policy decisions for the final report of the Commission.

The meeting will be open to the public. Individuals are welcome to attend to the extent of available space.

Dated: January 26, 1977.

HERBERT BROWNELL,
Chairman.

[FR Doc.77-2963 Filed 1-28-77;8:45 am]

NATIONAL SCIENCE FOUNDATION

ADVISORY COMMITTEE FOR RESEARCH, TASK GROUP NO. 16

Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Task Group #16 of the Advisory Committee for Research.
Place: Room 338, National Science Foundation, 1800 G Street NW., Washington, D.C. 20550.
Date: February 18, 1977, 9 a.m. each day
Type of meeting: Open.
Contact person: Mr. Leonard F. Gardner, Executive Secretary, Advisory Committee for Research, National Science Foundation, Room 307, Washington, D.C. 20550, Telephone (302) 632-4278.
Purpose of Task Group: The purpose of the Task Group, composed of members of the Advisory Committee for Research, is to provide the full Committee with a mechanism to consider numerous issues of interest to the Committee that have been assigned by the National Science Foundation.
Summary minutes: May be obtained from the Committee Management Coordination Staff, Div. of Pers. and Mgmt., Rm. 248, National Science Foundation, Washington, D.C. 20550.

Tentative agenda: *February 18.* To consider the determinants of academic faculty salaries and the extent to which they may be influenced by the awarding of Federal research grants.

Dated: January 26, 1977.

M. REBECCA WINKLER,
Acting Committee Management Officer.

[FR Doc.77-3017 Filed 1-28-77;8:45 am]

NUCLEAR REGULATORY COMMISSION

INTERNATIONAL ATOMIC ENERGY DRAFT SAFETY GUIDE

Availability of Draft for Public Comment

The International Atomic Energy Agency (IAEA) is developing a limited number of internationally acceptable codes of practice and safety guides for nuclear power plants. These codes and guides will be developed in the following five areas: Government Organization, Siting, Design, Operations and Quality Assurance. The purpose of these codes and guides is to provide IAEA guidance to countries beginning nuclear power programs.

The IAEA odes of Practice and Safety Guides are developed in the following way. The IAEA receives and collates relevant existing information used by member countries. Using this collation as a starting point, an IAEA Working Group of a few experts then develops a preliminary draft. This preliminary draft is reviewed and modified by the IAEA Technical Review Committee to the extent necessary to develop a draft acceptable to them. This draft code of practice or safety guide is then sent to the IAEA Senior Advisory Group which reviews and modifies the draft as necessary to reach agreement on the draft and then forwards it to the IAEA Secretariat to obtain comments from the member states.

As a part of this program, Safety Guide, SG–S4, "Site Selection and Evaluation for Nuclear Power Plants With Respect to Population Distribution," is being developed. The Working Group draft of this Safety Guide was modified by the IAEA Technical Review Committee on Siting which met in September 1976, and we are soliciting public comments on this modified draft. Comments on this draft received by April 1, 1977 will be useful to the U.S. representatives to the Technical Review Committee and Senior Advisory Group in evaluating its adequacy prior to the next IAEA discussion.

Single copies of this draft may be obtained by a written request to the Director, Office of Standards Development, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

(5 U.S.C. 522(a).)

Dated at Rockville, Md., this 18th day of January 1977.

For the Nuclear Regulatory Commission.

ROBERT B. MINOGUE,
Director,
Office of Standards Development.

[FR Doc.77-2769 Filed 1-28-77;8:45 am]

[Docket No. P-564-A]

PACIFIC GAS & ELECTRIC CO., (STANISLAUS NUCLEAR PROJECT, UNIT NO. 1)

Memorandum and Order Resetting Oral Argument

The Petitioner for Intervention Northern California Power Agency (NCPA) has moved that the oral argument set for January 25, 1977 with regard to the outstanding petitions to intervene be continued until February 8, 1977. The basis for the motion is the unavailability of counsel and the necessity for time to analyze the recent Initial Decision of an Atomic Safety and Licensing Board in "Toledo Edison Company, et al.", (Davis-Besse Nuclear Power Station, Units 1, 2 and 3), Docket Nos. 50–364A, et al. NCPA indicates that the Applicant, the Regulatory Staff and the other Petitioners have consented to the requested continuance.

Since good cause has been shown, the Board hereby grants the NCPA motion for change of date for oral argument on the petitions to intervene.

Accordingly, notice is hereby given that oral argument on the outstanding petitions to intervene in this proceeding is rescheduled from January 25, 1977 until 10:00 a.m. on February 8, 1977 at the 5th Floor Hearing Room, East-West Towers Building, 4350 East-West Highway, Bethesda, Maryland 20014.

Dated at Bethesda, Md., this 19th day of January 1977.

By order of the Atomic Safety and Licensing Board.

DANIEL M. HEAD,
Chairman.

[FR Doc.77-2770 Filed 1-28-77;8:45 am]

REGULATORY GUIDE

Issuance and Availability

The Nuclear Regulatory Commission has issued a guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public methods acceptable to the NRC staff of implementing specific parts of the Commission's regulations and, in some cases, to delineate techniques used by the staff in evaluating specific problems or postulated accidents and to provide guidance to applicants concerning certain of the information needed by the staff in its review of applications for permits and licenses.

Regulatory Guide 1.68, Revision 1, "Initial Test Programs for Water-Cooled Reactor Power Plants," describes the general scope and depth of initial test programs acceptable to the NRC staff for water-cooled reactor power plants. Appendix A provides a representative listing of plant structures, systems, components, design features, and performance capability tests that should be demonstrated during the initial test program. Appendix B provides information on NRC inspections relating to initial test programs. Appendix C provides guidance on the preparation of initial test programs. This guide, originally published in November 1973, was extensively revised to incorporate improvements in the conduct of initial test programs. The revision is based on experience gained during the implementation of the original version of the guide.

Separate regulatory guides providing more detailed guidance in the conduct of initial test programs for specific systems are developed as considered necessary. Such guides are now being designated as Regulatory Guide 1.68. X series guides.

Comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time. Public comments on Regulatory Guide 1.68, Revision 1, will, however, be particularly useful in evaluating the need for an early revision if received by March 28, 1977.

Comments should be sent to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch.

Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. Requests for single copies of issued guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future guides should be made in writing to the Director, Office of Standards Development, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a).)

Dated at Rockville, Md., this 24th day of January 1977.

For the Nuclear Regulatory Commission.

ROBERT B. MINOGUE,
Director,
Office of Standards Development.

[FR Doc.77-2772; Filed 1-28-77;8:45 am]

[Docket No. 50-29]

YANKEE ATOMIC ELECTRIC CO.

Issuance of Amendment to Facility Operating License

The Nuclear Regulatory Commission (the Commission) has issued Amendment No. 34 to Facility Operating License No. DPR–3, issued to Yankee Atomic Electric Company (the licensee), which revised Technical Specifications for operation of the Yankee Nuclear Power Station (Yankee-Rowe) (the facility) located in Rowe, Franklin County, Massachusetts. The amendment is effective as of its date of issuance.

The amendment changes the "Core XII Allowable Peak Rod LHGR versus Exposure" in Figure 3.2–1 in the Technical Specifications. The changes are based on the results of the revised ECCS performance analysis submitted in compliance with NRC's Order for Modification of License dated August 27, 1976. The changes are also based on an acceptable correction in the evaluation model that precludes the use of a nucleate boiling heat transfer correlation during blowdown after CHF has been predicted, in response to the request in our letter dated December 10, 1976.

Concurrent with the change in the Technical Specifications, this amendment terminates NRC's August 27, 1976 Order for Modification of License.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice is a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5 (d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated October 8, 1976 as supplemented December 27, 1976, (2) Amendment No. 34 to License No. DPR–3, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the Greenfield Public Library, 422 Main Street, Greenfield, Massachusetts 01581. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Md., this 10th day of January 1977.

For the Nuclear Regulatory Commission.

A. SCHWENCER,
Chief, Operating Reactors Branch No. 1, Division of Operating Reactors.

[FR Doc.77-2771 Filed 1-28-77;8:45 am]

[Docket Nos. 50-424, 50-425]

GEORGIA POWER CO.

Issuance of Amendments to Construction Permits Nos. CPPR–108 and CPPR–109

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) pursuant to a Supplemental Initial Decision dated January 11, 1977, has issued Amendment No. 1 to Construction Permits Nos. CPPR–108 and CPPR–109 issued to Georgia Power Company for the contruction of Alvin W. Vogtle Nuclear Plant, Units 1 and 2, respectively. These units are pressurized water reactors and are located in Burke County, Georgia. The amendments are effective as of the date of issuance.

The amendments reflect a change in ownership of Alvin W. Vogtle Nuclear Plant, Units 1 and 2. As a result of the change, Oglethorpe Electric Membership Corporation (OEMC), and the Municipal Electric Authority of Georgia (MEAG) will acquire interests in the ownership of the facilities. The Georgia Power Company will retain sole responsibility for overall planning, design, construction, operation, maintenance and disposal of the facilities. In addition, the amendments extend the latest dates for completion of construction of Units 1 and 2.

The application for the amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the construction permit amendments. Notice of supplemental hearing on proposed amendments to construction permits in connection with this action was published in the FEDERAL REGISTER on September 8, 1975 (40 FR 41568).

The Commission has determined that the issuance of these amendments will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement need not be prepared in connection with issuance of these amendments. A Negative Declaration supporting change of ownership interest and extension of dates for completion of construction was published in the FEDERAL REGISTER on November 26, 1976 (41 FR 52111).

For further details with respect to this action, see (1) the application for amendments dated July 15, 1975, as amended on December 15, 1975, and September 16, 1976; (2) Supplemental Initial Decision dated January 11, 1977, (3) Amendment No. 1 to Construction Permit No. CPPR–108, and (4) Amendment No. 1 to Construction Permit No. CPPR–109. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the Burke County Public Library, 4th Street, Waynesboro, Georgia 30830.

A copy of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Project Management.

Dated at Bethesda, Md., this 24th day of January 1977.

For the Nuclear Regulatory Commission.

STEVEN A. VARGA,
Chief, Light Water Reactors Branch 4, Division of Project Management.

[FR Doc.72-2792 Filed 1-28-77;8:45 am]

INTERNATIONAL ATOMIC ENERGY AGENCY DRAFT SAFETY GUIDE

Availability of Draft for Public Comment

The International Atomic Energy Agency (IAEA) is developing a limited number of internationally acceptable codes of practice and safety guides for nuclear power plants. These codes and guides will be developed in the following five areas: Government Organization, Siting, Design, Operations, and Quality Assurance. The purpose of these codes and guides is to provide IAEA guidance to countries beginning nuclear power programs.

The IAEA Codes of Practice and Safety Guides are developed in the following way. The IAEA receives and collates relevant existing information used by member countries. Using this collation as a starting point, an IAEA Working Group of a few experts then develops a preliminary draft. This preliminary draft is reviewed and modified by the IAEA Technical Review Committee to the extent necessary to develop a draft acceptable to them. This draft Code of Practice or Safety Guide is then sent to the IAEA Senior Advisory Group which reviews and modifies the draft as necessary to reach agreement on the draft and then forwards it to the IAEA Secretariat to obtain comments from the member states.

As a part of this program, Safety Guide, SG–G4, "Inspection and Enforcement by the Regulatory Body," has been developed and the NRC staff is soliciting comments on this Guide from the U.S. public.

An IAEA Working Group consisting of Mr. N. Hoffmeister of Germany, Mr. V. K. Razdan of India and Mr. K. S. Pedersen (U.S. Nuclear Regulatory Commission) of the United States developed the draft from an IAEA collation during a meeting that was held in Vienna, Austria on October 11–22, 1976.

As the next step in its development the draft Safety Guide is scheduled to be reviewed by the IAEA Technical Review

Committee on Government Organization at a meeting in Vienna, Austria in May 1977. Comments received by March 15, 1977 will be useful to this review. Single copies of this draft may be obtained by a written request to the Director, Office of Standards Development, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

(5 U.S.C. 522(a))

Dated at Rockville, Md., this 18th day of January 1977.

For the Nuclear Regulatory Commission.

ROBERT B. MINOGUE,
Director,
Office of Standards Development.

[FR Doc.77-2793 Filed 1-28-77;8:45 am]

[Docket Nos. STN 50-556, STN 50-557]

PUBLIC SERVICE COMPANY OF OKLAHOMA, ASSOCIATED ELECTRIC COOPERATIVE, INC. AND WESTERN FARMERS ELECTRIC COOPERATIVE, INC. (BLACK FOX, UNITS 1 AND 2)

Third Prehearing Conference

Notice is hereby given that the Third Prehearing Conference in the above-identified proceeding will be held at 10:00 a.m. on Tuesday, February 15, 1977, in Courtroom No. 3, U.S. District Courthouse, 333 W. 4th Street, Tulsa, Oklahoma 74103.

This Third Prehearing Conference will be held by the Atomic Safety and Licensing Board (the Board) established to conduct this licensing proceeding, which involves an application for construction permits for two nuclear reactors designated as the Black Fox Station, Units 1 and 2, which are proposed to be built in Oklahoma. The Third Prehearing Conference will deal with the following matters:

(1) Oral argument on all outstanding petitions to intervene;
(2) Oral argument on all outstanding motions;
(3) Discussion of the status of discovery;
(4) Discussion of the status of the schedule for the proceeding; and
(5) Such other matters as may aid in the orderly disposition of the proceeding.

The currently admitted parties have advised the Board that the proposed schedule[1] submitted at the Second Prehearing Conference is acceptable and the Board, therefore, adopts that schedule until modified by further order of the Board.

Members of the public are invited to attend this prehearing conference as well as the evidentiary hearing which will be held at a later date. Members of the public wishing to make limited appearances pursuant to § 2.715(a) of the Commission's rules of practice may identify themselves at this conference but oral or written statements to be presented will not be received at this conference. The Board will receive such limited appearances at the beginning of the evidentiary hearing.

Issued this 24th day of January 1977, at Bethesda, Maryland.

By order of the Atomic Safety and Licensing Board.

DANIEL M. HEAD,
Chairman.

[FR Doc.77-2794 Filed 1-28-77;8:45 am]

[1] This proposed schedule is Exhibit A to the Board's Second Prehearing Conference Order and was distributed with the Board's Memorandum and Order of January 18, 1977.

ADVISORY COMMITTEE ON REACTOR SAFEGUARDS SUBCOMMITTEE ON REGULATORY ACTIVITIES

Meeting; Addition to Agenda

The agenda for the February 9, 1977 meeting of the ACRS Subcommittee on Regulatory Activities has been changed as follow:

(B) *11:00 a.m. until the close of business.* (Open).

Add: (2) Evaluation of the integrity of reactor vessels designed to ASME Code, Sections I and/or VIII, as discussed in NUREG-0081, dated June 1976.

All other items remain the same.

Notice of this meeting was published in FEDERAL REGISTER, Vol. 42, January 24, 1977, page 4226.

Dated: January 25, 1977.

JOHN C. HOYLE,
Advisory Committee
Management Officer.

[FR Doc.77-3046 Filed 1-28-77;8:45 am]

FEDERAL ADVISORY COMMITTEES

Renewal

In accordance with section 14 of Pub. L. 92-463 (Federal Advisory Committee Act) the Nuclear Regulatory Commission has determined that renewal of the Advisory Committee on Medical Uses of Isotopes for the period February 1, 1977, through February 1, 1979, is necessary and in the public interest. A new charter for this Committee has been filed in accordance with sections 9 and 14 of Pub. L. 92-463.

A new charter has also been filed for the Advisory Committee on Reactor Safeguards, which was established by the Atomic Energy Act of 1954, as amended. (Pub. L. 83-703), the duration of which is of a continuing nature.

Dated: January 26, 1977.

JOHN C. HOYLE,
Advisory Committee
Management Officer.

[FR Doc.77-3047 Filed 1-28-77;8:45 am]

BRIEFING ON PLUTONIUM PACKAGING, AND EARLY SITE REVIEWS FOR PLANNED NUCLEAR FACILITIES

Notice of Meeting

Notice is hereby given that the Nuclear Regulatory Commission will hold the following meetings on February 3, 1977:

2 p.m. ---------- Briefing on plutonium packaging.
3:30 p.m. ------- Early site reviews for planned nuclear facilities (policy session).

These meetings are being held open to public observation as an initial step in the Commission's implementation of the Government in the Sunshine Act which goes into effect March 13, 1977.

The meetings will be held in the Commissioners' Conference Room, Room 1115, 1717 H Street NW., Washington, D.C. For further information, contact Walter Magee, Office of the Secretary, telephone: 634-1410.

Dated this 28th day of January 1977, at Washington, D.C.

For the Commission.

SAMUEL J. CHILK,
Secretary of the Commission.

[FR Doc.77-3133 Filed 1-28-77;9:34 am]

SECURITIES AND EXCHANGE COMMISSION

[Release No. 19857]

ALABAMA POWER CO.

Proposed Issuance of Promissory Notes To Finance Pollution Control Facilities

JANUARY 24, 1977.

Notice is hereby given that Alabama Power Company ("Alabama"), 600 North 18th Street, Birmingham, Alabama 35291, an electric utility subsidiary company of The Southern Company, a registered holding company, has filed a declaration and an amendment thereto with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act") designating Sections 9(a) and 12(d) of the Act and Rule 44(b)(3) promulgated thereunder as applicable to the following proposed transaction. All interested persons are referred to the declaration which is summarized below for a complete statement of the proposed transaction.

Alabama states that in order to comply with prescribed air and water quality control standards of the State of Alabama it has been and will be necessary to construct certain pollution control facilities. The filing relates to Alabama's proposal for its disposition and acquisition of the pollution control facilities for use in connection with its Miller Steam Plant (the "Plant") located in Jefferson County, Alabama. By agreement dated September 1, 1972, and supplement thereto dated July 17, 1975, between The Industrial Development Board of the Town of West Jefferson, Alabama (the "Board") and Alabama, the Board will issue its pollution control revenue bonds for paying the cost of the construction and equipping of the pollution control facilities at the Plant (the "Project").

Alabama proposes to enter into an Installment Sale Agreement ("Agreement") with the Board which will provide for the acquisition and completion of the Project by the Board and the issuance by the Board of its pollution control revenue bonds (the "Revenue Bonds") in a principal amount estimated not to exceed $50,000,000 to cover a portion of the cost of construction of the Project. The proceeds of the sale of the Revenue Bonds will be deposited by the Board with the trustee ("Revenue Trustee") under an indenture ("Revenue Indenture") to be entered into between the Board and the Revenue Trustee pursuant to which the Revenue Bonds are to be issued and secured. Such proceeds will be applied to payment of the cost of construction of the Project. The Agreement also will provide for the sale of the Project to Alabama, the payment by Alabama of the purchase price for the Project in semi-annual installments over a term of years, and the assignment to the Revenue Trustee of the Board's interest in, and of the moneys receivable by the Board under the Agreement. The Agreement will provide that the purchase price for the Project, including interest thereon, payable by Alabama will be such amount as shall be sufficient (together with other moneys held by the Revenue Trustee for that purpose) to pay the principal of and premium (if any) and interest on the Revenue Bonds as the same become due and payable. The Agreement will also obligate Alabama to pay the fees and charges of the Revenue Trustee. To secure its obligations under the Agreement, Alabama proposes to grant to the Board a security interest in the Project subordinate to the lien of the Indenture dated as of January 1, 1942, between Alabama and Chemical Bank, as Trustee, as supplemented and amended, such subordinated security interest to be assigned by the Board to the Revenue Trustee along with the assignment by the Board of its other interests under the Agreement.

The Agreement will provide that Alabama may at any time prepay the purchase price for the Project, including interest thereon, in whole or in part (at the option of Alabama), such payment to be sufficient to redeem or purchase the outstanding Revenue Bonds in the manner and to the extent provided in the Revenue Indenture, including applicable premiums which will be 3% of the principal amount in the eleventh year and which will reduce by ½ of 1% annually thereafter.

The Agreement will provide that Alabama may prepay the purchase price for the Project, including interest thereon, in whole at the option of Alabama in certain cases of undue burdens or excessive liabilities imposed with respect to the Project, its destruction or damage beyond practicable or desirable repairability and condemnation or taking by eminent domain, or if operation of the Plant is enjoined and Alabama determines to discontinue operation thereof, such redemptions to be at the principal amount plus accrued interest, but without premium. The Revenue Bonds will mature not later than 30 years from the first day of the month in which they are initially issued and will include serial maturities and/or the benefit of a mandatory redemption sinking fund, the effect of either to be calculated to retire not less than 25% of the aggregate principal amount of the issue prior to final maturity.

In order to comply with the applicable laws of the State of Alabama it will be necessary for Alabama to convey to the Board such portions of the Project as are now owned by Alabama ("Existing Facilities") subject to said Indenture between Alabama and Chemical Bank. Under the Agreement, Alabama will receive, out of the proceeds of the Revenue Bonds, an amount equal to Alabama's original cost for the existing facilities, including amounts advanced by Alabama to the Board on account of any cost of construction. The existing facilities will thereupon become a part of the Project which is to be completed by the Board and which Alabama proposes to purchase as provided in the Agreement.

It is contemplated that arrangements will be made by the Board with one or more investment bankers for the sale of the Revenue Bonds. In accordance with the laws of the State of Alabama, the interest rate to be borne by the Revenue Bonds will be fixed by the Board. Alabama will not be party to the underwriting agreement for the Revenue Bonds. Bond counsel will issue an opinion that interest on the Revenue Bonds presently is exempt from Federal income taxation. Alabama has been advised that the annual interest rates on obligations, the interest on which is tax exempt, historically have been and can be expected at the time of issue of the Revenue Bonds, to be 1½% to 2½% lower than the rates of obligations of like tenor and comparable quality, interest on which is fully subject to Federal income taxation.

The fees and expenses to be incurred in connection with this transaction will be supplied by amendment. The Alabama Public Service Commission has approved the issuance of the pollution control obligations under the Agreement by Alabama and that no other State commission or Federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Notice is further given that any interested person may, not later than February 22, 1977, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the declarant at the above stated address, and proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as amended or as it may be further amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations permitted under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.77-2943 Filed 1-28-77;8:45 am]

[Rel. No. 9617]

COLONIAL CONVERTIBLE & SENIOR SECURITIES, INC. ET AL.

Filing of Application For Exemption to Permit an Offer of Exchange

JANUARY 24, 1977.

In the matter of Colonial Convertible and Senior Securities, Inc., Colonial Growth Shares, Inc., The Colonial Fund, Inc., Colonial Income Fund, Inc., and Colonial Management Associates, Inc., 75 Federal Street, Boston, Massachusetts 02110 (812-4034).

Notice is hereby given that Colonial Convertible & Senior Securities Inc., Colonial Growth Shares, Inc., The Colonial Fund, Inc. and Colonial Income Fund, Inc. (the "Colonial Funds"), each of which is registered as an open-end, diversified, management investment company under the Investment Company Act of 1940 ("Act"), and Colonial Management Associates, Inc. ("CMAI"), the investment adviser and principal underwriter for each of the Colonial Funds (collectively referred to as "Applicants"), filed an application on October 4, 1976, for an order of the Commission (1) pursuant to Section 11(a) of the Act to permit each of the Colonial Funds to offer its shares for shares of Standard & Poor's/Inter Capital Liquid Asset Fund, Inc. ("S&P") upon payment of a $5 exchange fee and (2) pursuant to Section 6(c) of the Act to exempt Applicant's from the provisions of Section 22(d) of the Act and the rules thereunder to the extent necessary to permit such an offer of exchange. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below

CMAI, as principal underwriter for each of the Colonial Funds, maintains a continuous public offering of the shares of each of the Colonial Funds at their respective net asset values plus a sales charge. Applicants state that on purchases of less than $10,000, the maximum sales charge is 8.50%, which is reduced on larger purchases; and there is no sales charge imposed on the reinvestment of dividends and capital gains from shares of any of the Funds.

According to the application, S&P, an open-end investment company registered under the Act, invests primarily in short-term money market instruments

and acts as its own distributor, and it imposes no sales or administrative charge in connection with the sale of its shares. Applicants assert that since the Colonial Funds impose no charge on redemption of their shares, a shareholder of any of the Colonial Funds may redeem his shares of any of the Colonial Funds and purchase shares of S&P (provided that the minimum initial investment in S&P shares is $1,000), without payment of any redemption or sales charges, except that a $5 service fee is charged by Bradford Trust Company of Boston ("Bradford"), the transfer and shareholder services agent for each of the Colonial Funds.

Applicants propose to permit an S&P shareholder to exchange shares of S&P acquired either (1) by investing the net proceeds from a redemption of shares of any of the Colonial Funds (the "redeemed Fund") and held for such shareholder in a Colonial Exchange Account in the name of such shareholder at S&P, or (2) by the reinvestment of income dividends and capital gain distributions paid on all S&P shares held in such Account, for shares of the redeemed Fund, in either case without the imposition of the customary sales charge described in the prospectus of the redeemed Fund (hereinafter referred to as the "Exchange Privilege"). S&P shares acquired in any other manner than as described above would not qualify for the Exchange Privilege.

The participant in a Colonial Exchange Account would be able to exercise his Exchange Privilege at any time by instructing S&P to redeem shares of S&P in his Colonial Exchange Account and apply the redemption proceeds to the acquisition of shares of the redeemed Fund. No charge on the exchange of S&P shares for shares of the redeemed Fund will be imposed by S&P or Applicants. The Exchange Privilege will not be available to the proceeds from a redemption of S&P shares which are paid directly to the investor. Each of the Colonial Funds and S&P have reserved the right to establish a limit on the number of exchanges pursuant to the Exchange Privilege which any investor may make within a certain period. The Exchange Privilege will be subject to termination by each of the Colonial Funds or S&P on not less than six months' prior written notice to holders of such Fund or Funds' Colonial Exchange Accounts. An investor maintaining a Colonial Exchange Account will receive the current prospectuses of both S&P and the redeemed Fund provided he remains entitled to the Exchange Privilege. The Exchange Privilege will lapse for an investor if his account balance of shares of the redeemed Fund shows a zero balance for a period of three consecutive years.

Section 11(a) provides, in part, that it shall be unlawful for any registered open-end company or any principal underwriter for such a company to make or cause to be made an offer to the holder of a security of such company or any other open-end investment company to exchange his security for a security in the same or another such company on any basis other than the relative net asset values of the respective securities to be exchanged, unless the terms of the offer have first been submitted to and approved by the Commission. Section 22(d) of the Act provides, in pertinent part, that no registered investment company or principal underwriter thereof shall sell any redeemable security issued by such company to any person except at current offering prices described in the prospectus.

Applicants view the Exchange Privilege as an integrated arrangement, exercisable only by an investor who initially acquires S&P shares by first redeeming his shares of a Colonial Fund and applying the proceeds therefrom to the purchase of S&P shares. Therefore, Applicants submit that an exercise of the Exchange Privilege may be deemed an exchange on a basis other than the relative net asset values of the shares since the $5 service charge would have been imposed on the initial acquisition of S&P shares by application of the proceeds of the redemption of shares of the redeemed Fund.

Applicants state that the Exchange Privilege might also violate Section 22(d) of the Act since an investor would be able to purchase shares of the redemed Fund without the customary sales charge described in such Fund's prospectus. Applicants state that, because any investor eligible for the Exchange Privilege will have initially been an investor in shares of the redeemed Fund and will continue to receive current prospectuses of such Fund while he holds a Colonial Exchange Account with S&P, no additional sales efforts will be incurred by CMAI in connection with the reacquisition of shares of such Fund, and that no sales charge should be imposed on the investor in connection with his reacquisition of shares of the redeemed Fund. Applicants represent that the $5 service charge will defray the administrative costs involved in each exchange. It is asserted that the Exchange Privilege will not enable any investor to avoid payment of the applicable sales charge on his original investment in shares of any of the Colonial Funds.

Section 6(c) of the Act provides, in pertinent part, that the Commission, by order upon application, may conditionally or unconditionally exempt any class of transactions from any provisions of the Act or any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given, that any interested person may, not later than February 17, 1977, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter, accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the address stated above. Proof of such service (by affidavit, or in case of an attorney-at-law by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.77-2946 Filed 1-28-77;8:45 am]

[Rel. No. 19856]

INDIANA & MICHIGAN ELECTRIC CO.

Proposed Issue and Sale of Notes to Banks and Dealers in Commercial Paper and Request for Exception From Competitive Bidding

JANUARY 24, 1977.

Notice is hereby given that Indiana & Michigan Electric Company ("I&M"), 2101 Spy Run Avenue, Fort Wayne, Indiana 46801, an electric utility subsidiary company of American Electric Power Company, Inc., a registered holding company, has filed with this Commission a third and fourth post-effective amendment to its application previously filed in this proceeding pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Section 6(b) of the Act and Rules 50(a)(2) and 50(a)(5) promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the application, which is summarized below, for a complete statement of the proposed transactions.

By orders dated June 30, August 2, and September 15, 1976 (HCAR Nos. 19598, 19655, and 19680), this Commission, among other things, authorized the issuance and sale of short-term notes by I&M to 38 banks with lines of credit in an aggregate amount of $189,595,000. By said orders, I&M was authorized to incur short-term borrowings through June 30, 1977, to mature no later than December 31, 1977, in an aggregate principal amount not to exceed $150,000,000 outstanding at any one time. This amount, date, and maturity were to be limited as allowable under I&M's Articles of Acceptance (20 percent of capitalization as defined therein, December 31, 1976, and June 30, 1977 respectively). I&M was granted an exception from the competitive bidding requirements of Rule 50 in connection with the issuance of this short-term debt. Pursuant to order dated September 29, 1976 in proceeding 70-5887 (HCAR No. 19697), I&M called a special meeting of its cumulative preferred shareholders on October 13, 1976, at which time I&M was permitted, under its Articles of Acceptance, to issue short-term debt up to 20 percent of capitalization as defined therein, to December 31, 1980, with maturity no later than June 30, 1981.

By its third post-effective amendment, I&M proposes to incur such short-term debt in an aggregate amount not to exceed $175,000,000 outstanding at any one time. By its fourth post-effective amendment, I&M proposes to issue and sell such short-term notes to the 38 banks with lines of credit in an aggregate amount of $190,345,000. The authorization sought by the fourth post-effective amendment is to increase the line of credit available at the previously named American National Bank and Trust Company, South Bend, Indiana, from $500,000 to $750,000. The notes are to be issued from time to time prior to July 1, 1977, as funds may be required, provided that none of the notes, commercial paper, and demand notes to bank trust departments will mature later than December 31, 1977. As of January 13, 1977, I&M had short-term notes, including commercial paper and demand notes, outstanding in an aggregate amount of $143,838,000.

Each note payable to a bank to be issued by I&M will mature not more than 270 days after the date of issuance or renewal thereof, will bear interest at an annual rate of interest not greater than the prime rate of commercial banks in effect at the time of issuance or in effect from time to time and will be prepayable at any time without premium or penalty. In the case of most of the banks from which I&M proposes to borrow, sufficient bank balances to meet operating and financial needs are kept at such banks to satisfy any compensating balance requirements of such banks in connection with the borrowings. If the average of such bank balances were maintained solely in order to fulfill the prevailing compensating balance requirements of such banks, generally up to about 20 percent, the effective interest cost to I&M of issuance and sale of such notes to such banks would be approximately 1.6 percent above a prime comercial rate of 6¼ percent, or about 7.81 percent. In the case of those banks in which I&M does not maintain bank balances for operating and financial needs, I&M will be required to maintain compensating balances, generally 10 percent of the amount of the bank lines made available by such banks and additional compensating balances, generally 10 percent, of the amount of any borrowings. If the full amount were borrowed from these banks, the effective interest cost to I&M would be approximately 1.6 percent above a prime commercial rate of 6¼ percent, or about 7.81 percent. I&M will also file with the Commission, by post-effective amendment, lists of other banks not previously identified in filings with the commission in this proceeding to which it proposes to issue and sell notes, and no such notes will be issued and sold to such banks not previously identified prior to the issuance of a Supplemental Order by the Commission in connection therewith. Such post-effective amendments will also indicate the compensating balances, if any, required to be maintained in connection with such borrowings and the effective annual cost of the borrowings.

I&M also proposes to issue commercial paper in the form of promissory notes in denominations of not less than $50,000 nor more than $5,000,000, which will be of varying maturities, with no maturity more than 270 days after the date of issue and none will be prepayable prior to maturity. The commercial paper notes will be sold directly by I&M to Lehman Commercial Paper Incorporated (the "dealer") at a discount rate not in excess of the discount rate per annum prevailing at the time of issuance for commercial paper of comparable quality and maturity. No commercial paper notes will be issued having a maturity of more than 90 days if such commercial paper notes would have an effective interest cost which exceeds the effective interest cost at which I&M could borrow from banks. The dealer will reoffer the commercial paper notes to not more than 200 of the dealer's customers identified and designated in a nonpublic list prepared by the dealer in advance, at a discount rate of ⅛ of 1 percent per annum less than the discount rate to I&M. It is expected that such customers of the dealer will hold the commercial paper prior to maturity, but, if any such customer wishes to resell such commercial paper prior to maturity, the dealer, pursuant to a verbal repurchase agreement, will repurchase such commercial paper sold by it and reoffer it to other customers on its nonpublic list.

I&M also proposes to issue and sell its demand notes to the trust departments of Fort Wayne National Bank, Fort Wayne, Indiana and Lincoln National Bank; Fort Wayne, Indiana, in the maximum amounts of $5,000,000 and $10,000,000, respectively. It is stated that the bank trust department have a flow of funds as fiduciaries for various accounts, which would be available for investment in such demand notes. These demand notes will be in the form of promissory notes in denominations of not less than $1,000 bearing an interest rate equivalent to the highest rate paid daily by General Motors Acceptance Corporation on its commercial paper with a maturity of less than 180 days. Notes issued from January 1 to June 30 will mature July 1 of the same year. The bank trust departments will have the right to demand payment at any time and I&M will have the right to repay at any time without penalty, all or part of the principal amount of such notes outstanding.

On January 13, 1977, the highest rate paid by General Motors Acceptance Corporation on its commercial paper with a maturity of less than 180 days was 4⅝ percent. This rate was approximately 1¼ percent less than the rate at which I&M was then able to issue commercial paper of comparable maturities and approximately 3 percent below the effective rate for bank borrowings based on a prime rate of 6¼ percent and compensating balances of 15 percent and 20 percent. It is stated that based on past experiences, the rate on these demand notes will consistently be lower than the comparable rates for commercial paper and bank borrowings including the effect of compensating balances.

The proceeds from the issue and sale of the notes will be used by I&M to reimburse its treasury for past expenditures made in connection with its construction program and to pay part of the cost of its future construction program. Such construction expenditures for the year 1977 are estimated at approximately $140,000,000, exclusive of the cost of the construction program of I&M's subsidiary, Indiana & Michigan Power Company. The estimate of this subsidiary's construction expenditures for the year 1977 is approximately $85,000,000.

I&M requests and claims exception from the competitive bidding requirements of Rule 50 for the proposed issuance of notes to banks and demand notes to bank departments pursuant to paragraph (a)(2) thereof. Additionally, I&M requests exception from the competitive bidding requirements of Rule 50 for the proposed issue and sale of its commercial paper pursuant to paragraph (a)(5) thereof on the grounds that it is not practicable to invite competitive bids for commercial paper and that current rates for commercial paper of prime borrowers such as I&M are published daily in financial publications.

No fees and expenses are expected to be incurred in connection with the proposed transactions. It is further stated that no state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Notice is further given that any interested person may, not later than February 16, 1977, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application, as amended by said post-effective amendments or as it may be further amended, may be granted as provided in Rule 23 of the General Rules

and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.77-2944 Filed 1-28-77;8:45 am]

[Rel. No. 9618]

JOHN HANCOCK INVESTORS, INC.

Filing of Application for Exemption

JANUARY 24, 1977.

Notice is hereby given that John Hancock Investors Inc. ("Applicant"), 200 Berkeley Street, Boston, Massachusetts 02117, a closed-end investment company registered under the Investment Company Act of 1940 (the "Act"), filed an application on December 1, 1976, pursuant to Section 6(c) of the Act, for an order of the Commission exempting Applicant's holding of securities of Geneve Corporation from the provisions of Section 12(d)(3) of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant had total assets, as of June 30, 1976, of approximately $128 million. On April 15, 1971, Applicant acquired, by direct placement, $2,000,000 of 7 percent Convertible Senior Notes due 1986 (the "Notes") of Geneve Corporation (now Genevco Capital Services, Ltd., hereinafter called "Geneve"), a Delaware corporation. In January of 1974, Geneve invested $7,000,000 in the firm of Torpie & Saltzman, Inc. ("Torpie"), a registered broker-dealer and a member firm of the National Association of Securities Dealers, Inc. At the same time an additional $7,000,000 was invested in Torpie by Cable Funding Corporation (a Delaware Corporation in which Geneve held a 45 percent stock interest). Applicant had no knowledge of these investments in Torpie until after they were made, and Applicant did not participate in the investment decisions. Notwithstanding its considerable efforts over the intervening period to sell the Notes, Applicant has been unable to find a purchaser willing to pay a fair price for them. Applicant states that the market for the Notes is limited because they are restricted securities, and because Section 12(d)(3) of the Act prevents any investment company from purchasing them. However, Applicant represents that it intends to continue its efforts to find a purchaser willing to pay a fair price for the Notes.

Section 12(d)(3) of the Act, in pertinent part, makes it unlawful for any registered investment company and any company or companies controlled by such registered investment company to purchase or otherwise acquire any security issued by, or any other interest in, certain proscribed categories of business, including a broker-dealer, such as Torpie unless certain conditions are met. In Investment Company Act Release No. 3542, dated September 21, 1962, the Commission set forth its view that Section 12(d)(3) of the Act is applicable to the acquisition by investment companies of interests in companies which, in turn, have an interest by stock ownership or otherwise in certain proscribed categories of business including brokers or dealers. In that Release, the Commission set forth its view that section 12(d)(3) of the Act is violated not only when a security of interest in a proscribed category of business is originally purchased or acquired by an Investment company, but also when investment companies, or controlled companies thereof, hold an interest in a portfolio company which thereafter acquires an interest in such a proscribed category of business. In the instant case, Applicant holds an interest in a portfolio company, Geneve, which, after the acquisition of such interest by Applicant, in turn acquired an interest in a broker-dealer, Torpie.

While Applicant does not concede that Section 12(d)(3) of the Act can be properly applied to this situation, the Applicant requests an order of the Commission, pursuant to Section 6(c) of the Act, exempting the Applicant's investment in the Notes from the requirements of Section 12(d)(3) of the Act subject to the condition that Applicant will continue its efforts to find a purchaser for the Notes willing to pay a price considered to be fair by Applicant for them.

Section 6(c) of Act provides, in pertinent part, that upon application the Commission may conditionally or unconditionally exempt any person, security or transaction or any class of classes of persons, securities or transactions from any provision or provisions of the Act or of any rule or Regulation thereunder, if and to the extent such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicant submits that exempting its investment in Geneve from Section 12(d)(3) of the Act is consistent with the public interest, the protection of investors, and the policy and purposes of the Act. Applicant asserts that none of its directors, officers or its investment adviser participated in the decision by Geneve or Cable Funding Corporation to invest $7,000,000 in Torpie. Applicant represents that neither Geneve nor Cable Funding Corporation themselves currently engage in, and have never engaged in any of the categories of business prescribed by Section 12(d)(3). Applicant states that the Notes were purchased in an arm's length transaction, and do not involve any self-dealing by any affiliated person of it. Applicant further asserts that failure to grant such an exemption will directly harm Applicant's shareholders by requiring sale of the Notes at a price which is disadvantageous to the Applicant.

Notice is further given that any interested person may, not later than February 17, 1977, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address set forth above. Proof of such service (by affidavit, or in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date, unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.77-2945 Filed 1-28-77;8:45 am]

[File No. 500-1]

KING RESOURCES COMPANY

Suspension of Trading

JANUARY 21, 1977.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the securities of King Resources Company being traded on a national securities exchange or otherwise is required in the public interest and for the protection of investors;

Therefore, pursuant to Section 12(k) of the Securities Exchange Act of 1934, trading in such securities on a national securities exchange or otherwise is suspended, for the period from 12:15 p.m. (EST) on January 21, 1977 through January 24, 1977.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.77-2942 Filed 1-28-77;8:45 am]

DEPARTMENT OF STATE

Agency for International Development

DIRECTOR, USAID/HONDURAS

Delegation of Authority

Pursuant to the authority vested in me as Assistant Administrator for Latin America, Agency for International Development, by the Foreign Assitance Act of 1961, as amended, and the delegations of authority issued thereunder, I hereby delegate to the Director, USAID/Honduras, authority to negotiate and execute A.I.D. Loan No. 522-T-032 (Small Farmer Technologies) in accordance with and subject to the terms and conditions set forth in a project authorization dated December 30, 1976, authorizing said Project ("Project Authorization").

This delegation of authority shall lapse 120 days from the date of execution of the Project Authorization.

E. N. S. GIRARD II,
Assistant Administrator for Latin America.

[FR Doc.77-2921 Filed 1-28-77;8:45 am]

[Redelegation of Authority No. 164-10]

MISSION DIRECTOR AND DEPUTY MISSION DIRECTOR, USAID INDONESIA

Redelegation of Authority

Pursuant to the authority delegated to me by A.I.D. Delegations of Authority No. 5, dated December 29, 1961 (27 FR 449), as amended, with respect to Loan Agreements; No. 38, dated April 10, 1964 (29 FR 5280), as amended, with respect to Project Agreements, Trust Fund Agreements, and Grants to International Organizations: No. 99, dated April 27, 1973 (38 FR 12834), with respect to Contracting and Related Functions; and No. 112, dated October 12, 1975 (40 FR 48955), with respect to other authorities and functions delegated to me, I hereby redelegate to the Mission Director and Deputy Mission Director, USAID/Indonesia, and to any person acting in their official capacity, authority to exercise any of the following functions, retaining for myself concurrent authority to exercise any of the functions herein redelegated:

1. Authority to negotiate and execute loan and grant agreements and amendments thereto, with respect to loans and grants authorized under the Foreign Assistance Act of 1961, as amended (the Act), in accordance with the terms of the authorization of such loan or grant; such grant agreements for purposes of this authority and all other authorities contained in this redelegation shall mean agreements with foreign governments, foreign government agencies and international organizations having a membership consisting primarily of such foreign governments;

2. Authority to implement loan and grant agreements with respect to loans and grants authorized under the Act and loans authorized by the Board of Directors of the corporate Development Loan Fund, including the following:

(a) Authority to prepare, negotiate, sign and deliver letters of implementation;

(b) Authority to review and approve documents and other evidence submitted by borrowers or grantees in satisfaction of conditions precedent to financing under such loan or grant agreements except as provided in 2(e) below;

(c) Authority to negotiate, execute and implement all agreements and other documents ancillary to such loan and grant agreements;

(d) Authority to sign or approve Project Implementation Orders—Technical Services (PIO/T); and

(e) Authority to approve contractors, review and approve the terms of contracts amendments and modifications thereto, and invitations for bids with respect to such contracts financed by funds made available under such loan or grant agreements; the foregoing authority with respect to contractors and contracts does not extend to country contracts for technical assistance financed in whole or in part by an A.I.D. grant.

The authorities enumerated above may be redelegated by the individuals listed above, as appropriate, but not successively redelegated, except that the authority described above in paragraph 1 with respect to execution of loan agreements and amendments may not be redelegated.

The authority enumerated above in paragraph 1 with respect to execution of loan agreements is also hereby redelegated under the same terms and conditions set forth herein to the U.S. Ambassador to Indonesia.

The Redelegation of Authority dated October 24, 1973 from D. G. MacDonald, Assistant Administrator, Bureau for Asia, to the Mission Director and Deputy Mission Director, USAID/Indonesia is hereby rescinded.

This Redelegation of Authority is effective immediately.

Dated: December 23, 1976.

MICHAEL H. B. ADLER,
Acting Assistant Administrator Bureau for Asia.

[FR Doc.77-2918 Filed 1-28-77;8:45 am]

[Redelegation of Authority No. 164-11]

MISSION DIRECTOR AND DEPUTY MISSION DIRECTOR, USAID PAKISTAN

Redelegation of Authority

Pursuant to the authority delegated to me by A.I.D. Delegations of Authority No. 5, dated December 29, 1961 (27 F.R. 449), as amended, with respect to Loan Agreements; No. 38, dated April 10, 1964 (29 F.R. 5280), as amended, with respect to Project Agreements, Trust Fund Agreements, and Grants to International Organizations; No. 99, dated April 27, 1973 (38 F.R. 12834), with respect to Contracting and Related Functions; and No. 112, dated October 12, 1975 (40 F.R. 48955), with respect to other authorities and functions delegated to me, I hereby redelegate to the Mission Director and Deputy Mission Director, USAID/Pakistan, and to any person acting in their official capacity, authority to exercise any of the following functions, retaining for myself concurrent authority to exercise any of the functions herein redelegated:

1. Authority to negotiate and execute loan and grant agreements and amendments thereto, with respect to loans and grants authorized under the Foreign Assistance Act of 1961, as amended (the Act), in accordance with the terms of the authorization of such loan or grant; such grant agreements for purposes of this authority and all other authorities contained in this redelegation shall mean agreements with foreign governments, foreign government agencies and international organizations having a membership consisting primarily of such foreign governments;

2. Authority to implement loan and grant agreements with respect to loans and grants authorized under the Act and loans authorized by the Board of Directors of the corporate Development Loan Fund, including the following:

(a) Authority to prepare, negotiate, sign and deliver letters of implementation;

(b) Authority to review and approve documents and other evidence submitted by borrowers or grantees in satisfaction of conditions precedent to financing under such loan or grant agreements except as provided in 2(e) below;

(c) Authority to negotiate, execute and implement all agreements and other documents ancillary to such loan and grant agreements;

(d) Authority to sign or approve Project Implementation Orders—Technical Services (PIO/T); and

(e) Authority to approve contractors, review and approve the terms of contracts, amendments and modifications thereto, and invitations for bids with respect to such contracts financed by funds made available under such loan or grant agreements; the foregoing authority with respect to contractors and contracts does not extend to country contracts for technical assistance financed in whole or in part by an A.I.D. grant.

The authorities enumerated above may be redelegated by the individuals listed above, as appropriate, but not successively redelegated, except that the authority described above in paragraph 1 with respect to execution of loan agreements and amendments may not be redelegated.

The authority enumerated above in paragraph 1 with respect to execution of loan agreements is also hereby redelegated under the same terms and conditions set forth herein to the U.S. Ambassador to Pakistan.

Redelegation of Authority No. 164-5 dated June 26, 1972 (37 FR 13646) is hereby rescinded.

This Redelegation of Authority is effective immediately.

Dated: December 23, 1976.

MICHAEL H. B. ADLER,
Acting Assistant Administrator, Bureau for Asia.

[FR Doc.77-2919 Filed 1-28-77;8:45 am]

[Redelegation of Authority No. 164-12]

MISSION DIRECTOR AND DEPUTY MISSION DIRECTOR, USAID PHILIPPINES

Redelegation of Authority

Pursuant to the authority delegated to me by A.I.D. Delegations of Authority No. 5, dated December 29, 1961 (27 FR 449), as amended, with respect to Loan Agreements; No. 38, dated April 10, 1964 (29 FR 5280), as amended, with respect to Project Agreements, Trust Fund Agreements, and Grants to International Organizations; No. 99, dated April 27, 1973 (38 FR 12834), with respect to Contracting and Related Functions; and No. 112, dated October 12, 1975 (40 FR 48955), with respect to other authorities and functions delegated to me, I hereby redelegate to the Mission Director and Deputy Mission Director, USAID/Philippines, and to any person acting in their official capacity, authority to exercise any of the following functions, retaining for myself concurrent authority to exercise any of the functions herein redelegated:

1. Authority to negotiate and execute loan and grant agreements and amendments thereto, with respect to loans and grants authorized under the Foreign Assistance Act of 1961, as amended (the Act), in accordance with the terms of the authorization of such loan or grant; such grant agreements for purposes of this authority and all other authorities contained in this redelegation shall mean agreements with foreign governments, foreign government agencies and international organizations having a membership consisting primarily of such foreign governments;

2. Authority to implement loan and grant agreements with respect to loans and grants authorized under the Act and loans authorized by the Board of Directors of the corporate Development Loan Fund, including the following:

(a) Authority to prepare, negotiate, sign and deliver letters of implementation;

(b) Authority to review and approve documents and other evidence submitted by borrowers or grantees in satisfaction of conditions precedent to financing under such loan or grant agreements except as provided in 2(e) below;

(c) Authority to negotiate, execute and implement all agreements and other documents ancillary to such loan and grant agreements;

(d) Authority to sign or approve Project Implementation Orders—Technical Services (PIO/T); and

(e) Authority to approve contractors, review and approve the terms of contracts, amendments and modifications thereto, and invitations for bids with respect to such contracts financed by funds made available under such loan or grant agreements; the foregoing authority with respect to contractors and contracts does not extend to country contracts for technical assistance financed in whole or in part by an A.I.D. grant.

The authorities enumerated above may be redelegated by the individuals listed above, as appropriate, but not successively redelegated, except that the authority described above in paragraph 1 with respect to execution of loan agreements and amendments may not be redelegated.

The authority enumerated above in paragraph 1 with respect to execution of loan agreements is also hereby redelegated under the same terms and conditions set forth herein to the U.S. Ambassador to the Philippines.

Delegation of Authority No. 111 dated September 23, 1975 (40 FR 45451) is hereby rescinded.

This Redelegation of Authority is effective immediately.

Dated: December 23, 1976.

MICHAEL H. B. ADLER,
Acting Assistant Administrator
Bureau for Asia.

[FR Doc.77-2920 Filed 1-28-77;8:45 am]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

AIRPORT TRAFFIC CONTROL TOWER AT PUEBLO, COLORADO

Notice To Reduce Hours

Notice is hereby given that on or about March 24, 1977, the Airport Traffic Control Tower at Pueblo, Colorado, will be closed each day from 10:00 p.m. until 6:00 a.m. local time. This information will be reflected in forthcoming issues of the Airman Information Manual.

Issued in Aurora, Colorado, on January 18, 1977.

M. M. MARTIN,
Director, Rocky Mountain Region.

[FR Doc.77-2969 Filed 1-28-77;8:45 am]

MINIMIZING SAFETY HAZARDS ASSOCIATED WITH SLIPPERY RUNWAYS

Meeting

This notice announces a meeting to obtain individual viewpoints on reducing runway slipperiness and improving pavement maintenance procedures at each airport serving turbojet aircraft. This one-day meeting will commence at 10 a.m., February 23, 1977, in Conference Rooms 6 A, B, and C, Federal Aviation Administration Headquarters Building, 800 Independence Avenue SW, Washington, D.C. 20591. Persons desiring to attend should write or call the Operations Division, Office of Airports Programs, Washington, D.C. 20591, telephone (202) 426-3087, by February 9, 1977.

The meeting is open to the public, but limited to space available. Any member of the public may present oral statements at the meeting. Written views may be submitted at or following the meeting, but not later than a date which will be given at the meeting. No group action will take place.

Subject matters on which viewpoints are invited include:

a. Determining slippery conditions.
b. Reducing the effects of slippery surfaces.
c. Promoting airport pavement maintenance procedures.

Issued in Washington, D.C., on January 26, 1977.

WILLIAM V. VITALE,
Acting Assistant Administrator,
Office of Airports Programs.

[FR Doc.77-3014 Filed 1-28-77;8:45 am]

Federal Highway Administration

ADVANCE ACQUISITION OF RIGHT-OF-WAY PARCELS

Acquisition of particular parcels within the limits of a proposed Federal-aid highway corridor prior to normal right-of-way acquisition activities is permitted in individual cases of demonstrated need under the provisions of § 712.204(d) of Title 23, Code of Federal Regulations. This procedure has been criticized by the United States Court of Appeals for the District of Columbia Circuit in *National Wildlife Federation* v. *Tiemann*, Civil Action No. 75-1214 (D.C. Cir. October 28, 1976).

To fulfill the understanding of the Federal Highway Administration (FHWA) with regard to the intent of this court decision, it is necessary to revise current advance acquisition procedures. State applications for authority to make advance acquisitions are ordinarily reviewed and acted upon by FHWA field offices pursuant to the delegation of authority in paragraph 6b(3) of FHWA Order 1-1, Part 1, Chapter 5. As an interim measure, all such applications recommended for approval by a regional office will be submitted to the Washington Headquarters office for review and action.

Questions concerning this notice should be directed to the Chief, Real Property Acquisition Division, Office of Right-of-Way, Federal Highway Administration, 400 7th Street SW., Washington, D.C. 20590.

Issued on: January 24, 1977.

NORBERT T. TIEMANN,
Federal Highway Administrator.

[FR Doc.77-2998 Filed 1-28-77;8:45 am]

Office of the Secretary

[OST File No. 40; Notice 77-4]

FEDERAL TASK FORCE REPORT ON MOTOR VEHICLE GOALS BEYOND 1980

Status Report

On March 21, 1975, the Chairman of the Energy Resources Council requested the Secretary of Transportation to lead a joint task force to recommend long range energy goals for the motor vehicle fleet. The interagency task force has published seven panel reports dealing with various aspects of the automobile (i.e., safety; air quality, noise, and health; design; manufacturing and maintenance; marketing and mobility; fuel and material resources; industrial and consumer economics). These panel reports and other information were integrated into "The Report of the Federal Task Force on Motor Vehicle Goals Beyond 1980" which was published in September 1976. A public comment docket was established, public briefing sessions were held in September in Washington, Detroit, Houston and Los Angeles and a formal public hearing was held in October in Washington to facilitate public comment upon the work of the task force.

Summary of Public Hearing. The public docket on the draft report of the Federal Task Force on Motor Vehicle Goals Beyond 1980 includes statements delivered at a public hearing held October 21, 1976, letters from members of the public, several volumes of detailed comments from automobile manufacturers and the Motor Vehicle Manufacturers Association (MVMA), and a research report on the costs and benefits of air pollution control. The comments offered at the October 21 public hearing are representative of much of the material in the public docket and this highlight summary is based primarily on those comments.

The draft report and the Task Force itself received favorable comment in several respects: the candor and openness of much of the work of the Task Force, including the opportunities for comment which had been provided from the start of the studies; the fact that the task force considered comprehensively the many trade-offs associated with the fuel economy, safety, emissions, and economics of automobile design, manufacture, purchase, and operation; and the fact that the several Federal agencies associated with policy, regulation, and R&D on automotive matters had effectively cooperated in the work of the Task Force.

It was broadly stated that the Task Force Report was a highly useful document to be refined through continuing discussions and evaluations, together with periodic updating.

The major U.S. automobile manufacturers and the Motor Vehicle Manufacturers Association (MVMA) submitted a substantial number and variety of comments. Many involved minor criticisms, but several were of deeper concern to the automotive industry.

In general the industrial sector takes the view that the report was overly optimistic in a number of respects. They consider the Task Force weight estimates for future cars as too low; the weight estimates for improved emission controls and for vehicle safety improvements as too low; the estimates for fuel economy of future vehicles as too high; the relationship between vehicle acceleration performance (through the horsepower to weight ratio) and fuel economy as incorrect, and the fuel economy penalties for safety improvements and for emission improvements as too low. They consider the projection of consumer prices for future vehicles and for safety, emissions, and fuel economy improvements to be too low; the maintenance cost estimates for future vehicles to be too low, and the total fuel savings due to mandated fuel economy improvements to be too high. They consider the estimates of the benefits of improved safety and reduced emissions to be too high, and not properly supported by hard data and not adequately compared with non-vehicle approaches to improving highway safety and air quality. They consider the projections of future sales of automobiles to be unreliable; the discussion of alternative strategies for conserving energy to be too brief, and that insufficient attention is given to the option of increasing the price of fuel to conserve energy.

It is these many suggestions for modification of details which leads the industry to urge continuing refinement. They do believe the present report is a good base for doing this, including the real value of bringing together the various agencies involved with automobiles so as to provide the best balance for the action.

Some commentators also said that the Task Force should not limit itself to considering only motor vehicles, but should consider the full spectrum of energy conservation measures potentially available to the U.S. economy.

The American Automobile Association, as spokesman for the motorist, expressed concern about the possibility of excessive regulation leading to a denial of efficient personal transportation to consumers and suggested a moratorium on regulations applicable to cars until the "assumptions" underlying the conclusions of the Task Force are proven out.

The Center for Auto Safety (CAS) advocated stronger vehicular safety measures and suggested that the Task Force consider pedestrian safety measures and levels of safety beyond "level II". The CAS spokesman criticized the National Highway Traffic Safety Administration for acting too deliberately in issuing and enforcing safety regulations.

The representative of the American Lung Association urged a tightening of standards of oxides of nitrogen.

Dr. Lawrence Goldmuntz of Economics, Science and Planning, Inc., criticized the estimate of safety benefits as being overstated, unproven and hypothetical and considered the costs of tightening safety standards to level II (rather than enforcing the use of seat belts) to be greater than the benefits. He also stated that the health benefits of reducing oxide of nitrogen emissions is misrepresented by the failure of the Task Force to include base year reference numbers.

A research report submitted to the public docket by Professor S. Fred Singer on the costs and benefits of air pollution control concluded that marginal costs of automotive emission control already exceed marginal benefits, at least with current emission control technology.

Dr. Victor Wouk pointed out potential benefits of hybrid engines for cars and recommended that the Task Force consider them more thoroughly.

General Accounting Office Comments. On January 13, 1977, the General Accounting Office submitted comments on the Task Force report to the Chairman of the ERC, which included the following:

We believe that a logical next step to the draft report by the Federal Task Force on Motor Vehicle Goals Beyond 1980 is a follow-up program that would further assess the problems and issues raised in the report and would then develop and recommend to the Congres feasible levels and timing of Federal emissions, safety, and fuel economy standards beyond 1980 that best meet the total needs of the Nation.

The Federal task force study represents the first time the Federal Government has comprehensively looked at the problem of often conflicting Federal standards affecting automobile design. As such the draft study report is a valuable and current base of information for starting the process of making needed decisions on trade-offs among the various standards. Therefore, we believe that this is the most opportune time for the executive branch to undertake a program designed specifically to resolve the issue of how to best balance Federal automobile standards beyond 1980.

The GAO recommended the following:

Establish a comprehensive follow-up program with the specific objective of developing and recomemnding to the Congress a balanced set of automobile standards that address the feasible levels and timing of Federal emissions, safety, and fuel economy standards beyond 1980 which will best meet the total needs of the Nation.

Review and update these standards periodically as changes occur in technology, the Nation's energy situation, and the related environmental and economic impacts.

Availability of the Report and Comments. Copies of all comments received on the panel reports, the transcript of the public hearing and comments on the Task Force report are available for inspection and copying from 9:00 a.m. to 5:30 p.m. local time, Monday through Friday, except Federal holidays, in the Office of the Assistant General Counsel for Operations and Legal Counsel, Room 10100, 400 Seventh Street, S.W., Washington, D.C., telephone (202) 426-4723.

Single copies of the Task Force report and the Executive Summary of the report are available upon request to Mr. Paul Long, Chief Facilities Management Branch, TAD-443, U.S. Department of Transportation, Washington, D.C. 20590, phone (202) 426-9654.

Issued in Washington, D.C., on January 20, 1977.

JOHN W. BARNUM,
Deputy Secretary of Transportation.

[FR Doc.77-2999 Filed 1-28-77;8:45 am]

[Notice 77-5])

INTERAGENCY STUDY OF POST-1980 GOALS FOR COMMERCIAL MOTOR VEHICLES

Status Report and Request for Further Public Input

On March 21, 1975, the Chairman of the Energy Resources Council requested the Secretary of Transportation to lead a joint task force to recommend long

range energy goals of the motor vehicle fleet. The ERC's charge stated:

> As part of the Nation's long range effort to conserve energy, there is a need to set motor vehicle fuel economy goals beyond 1980. Such goals must meet the transportation needs for automobiles, trucks, and buses, but they must also be blended with environment, safety, and economic considerations.

Separate interagency task forces were established to approach passenger car and light truck concerns, on the one hand, and commercial vehicle (medium and heavy-duty trucks and buses) concerns on the other.

Participating in the commercial vehicle task force have been representatives of the Department of Transportation, Federal Energy Administration, Environmental Protection Agency, National Science Foundation, Energy Research and Development Administration, Interstate Commerce Commission and the United States Postal Service. It should be noted here that concurrent with this activity the Department of Transportation, Federal Energy Administration and Environmental Protection Agency were operating a voluntary truck and bus fuel economy improvement program under a joint memorandum of understanding. The Interagency Study of Post-1980 Goals for Commercial Motor Vehicles will also serve to set the goals for the voluntary program.

A request was made for public comment and a public hearing was held during the conduct of the interagency study and on May 17, 1976, (41 FR 20204) the availability of the draft "Interagency Study of Post-1980 Goals for Commercial Motor Vehicles" was announced. Comments were requested to be submitted before June 30, 1976. Nineteen responses were received. Subsequently several additional comments were received and accepted into the comment file. These comments are available for viewing and selective copying from 8:00 a.m. to 5:30 p.m., weekdays at Room 5222 of the DOT Trans Point Building, 2100 Second Street, S.W., Washington, D.C. 20590. A summary of the comments is available without cost upon receipt of mail requests to: Manager, Voluntary Truck and Bus Program, TST-50, U.S. Department of Transportation, Washington, D.C. 20590.

It was recognized at the outset of the study that setting goals for commercial vehicles involved complex evaluations because of the many types of these vehicles, their wide variety of services and their numerous impacts. Accordingly it was not considered feasible to arrive at final recommendations on goals without a continuing dialogue among the concerned parties. The present report represents the first step in the process envisioned. The report on "National Transportation Trends and Choices", published by the Secretary of Transportation on January 14, 1977, also contains many of the findings of the commercial motor vehicle goals report.

The next steps should be to improve the data base and analytic techniques and to expose the subject to full public debate and full participation, particularly by those elements of society most directly affected by future decisions regarding commercial vehicles.

The concensus of those who have commented on the commercial motor vehicle goals study is that it represents a good start toward establishing desirable goals, but that the issues need further discussions and evaluations among government, industry and other interested parties. The report predicts a 68 percent increase in ton miles of freight hauled by commercial vehicles in 1990, which may be accomplished with merely a 50 percent increase in commercial vehicle miles and a 21 percent increase in fuel consumed. Included in the efficiency increases are technical changes to the vehicles to improve fuel economy, gaseous emissions, noise emissions, and safety. The fuel productivity projected in the over-the-road combination vehicle category may be substantially improved by postulated increases in size and weight, which would allow the freight to be hauled by fewer trucks with less fuel expended, and producing fewer opportunities for accidents, reduced emissions, and fewer noise events per ton-mile of freight demand.

As the initial analysis of the combined effects of the future energy, emissions, noise, and safety options, the draft report makes obvious the need for additional cost and effect data, as well as improved means to evaluate potential benefits. During the first stage of public debate, the comments received have substantiated these needs by raising a number of specific issues which must be considered as revisions are being made to the report and its Executive Summary and subsequently as legislative and regulatory decisions are made regarding commercial vehicles.

Highlights of Comments Received to Date are.—1. *Size and weights.* The study explored the potential effect of a set of truck size and weight values substantially larger than generally permitted today. Commentors generally agreed that size and weight increases could substantially improve fuel-use efficiency, but there was considerable divergence of view as to whether increased sizes and weights would be generally acceptable or could be truly justified. It was noted that the FHWA research study, upon which suggested size and weights goals were based, would need updating of both the costs and benefits. Questions were raised in particular as to realistic bridge replacement costs associated with possible size and weight increases. Other questions concerned the ability of the states to raise sufficient funds to achieve the necessary road and bridge upgrading prior to operation of heavier vehicles.

The realism of achieving nationwide standardization of future increases in size and weight was also questioned, considering the complexities of the political authorities involved, the past history of size and weight regulations, and the reduction in size and weight which would occur in the few states that presently permit up to 108 foot long triples or gross weights of up to 139,000 pounds.

In addition to the comments submitted and discussed above, letters have been received from citizens and organizations representing competitive transportation modes criticizing the higher size and weight limits suggested as possible goals by the study. The commentors suggest that the goals set forth in the study might not be achieved if freight were attracted away from competing modes and if the truck population were increased beyond that projected in the report. These commentors suggested that these factors must be evaluated in the context of all modes of good transportation if maximum benefits to society are to be identified.

The assignment from the Energy Resources Council was not so broad in scope as to include the study of such modal interface factors. However, the criticism is valid and plans for DOT research now include analysis of the intermodal comparisons. In that connection consideration should also be given to improving the energy efficiency of long-haul freight movement through increased use of trailer-on-flat-car and container-on-flat-car capabilities.

A specific step-by-step plan for action is set forth in the Secretary's "National Transportation Trends and Choices", to analyze the issues raised regarding size and weight. It should be noted that the Secretary's document places greater emphasis on prospects for use of twin 40-foot trailers than this report has considered. Both reports, however, emphasize the need to withhold permission for increased axle loading until the roadways (including bridges) are appropriately upgraded to accommodate any such increases. In addition, if weight increases are adopted, Federal and State highway use taxes should be increased for the heavier classes of commercial vehicles to cover the costs of improvements and increased maintenance for the highway system. As each step is taken, safety, environment, and effects upon competing modes must be considered.

2. *Noise Emissions.* The discussion concerning potential 75dB(A)* truck noise limitations and stringent tire noise regulations received extensive criticism, especially the cost benefits of such limits and the analytical approach used. Data submitted by one commentor showed crossbar tire costs to be lower than rib tire costs, for example. The report's conclusion that radial ribs provide adequate traction and lowest cost per mile, while providing lowest present noise levels, was questioned. (Additional DOT and SAE publications within the next few months will address many of these questions in detail.) A number of commentors stated that EPA's new truck noise standards should be discussed in the "Goals Study" (They had not been published when the study went to print.) and that the FPA standards confirmed the commentors' contention that there is not any practical present technology available for achieving a truck noise level of 75dB(A), considering the requirement to meet Selective Enforcement Audits contained in the EPA standards. Also questioned were the initial costs and the maintenance costs of low-noise trucks.

3. *Gaseous Emissions.* The study was criticized for not adequately supporting the recommendation that the most stringent, cost-effective technically feasible emissions standards should be set. Specifically it was felt that the report had not proven that the goals suggested for heavy-duty vehicle emissions (a) were cost-effective in terms of air quality improvement and (b) were more cost-effective than stationary source controls. The goals (0.5 gms/bhp-hr HC, 10 gms/bhp-hr CO and 3 gms/bhp-hr NO_x)[1] were criticized by some as going beyond available technology and not providing "a reasonable compromise." One commentor suggested that standards should be written favoring fuel-efficient engines and suggested 1, 5, and 5 gms/bhp-hr for diesel engine HC, CO, and No_x respectively. Questions were raised concerning modeling techniques used, the status of available technology, the issue of tradeoffs against stationary source emissions control and the magnitude of control costs.

Support was expressed for the concept stated in the report that the Administrator of EPA retain authority to set appropriate heavy duty vehicle emission levels as the uncertainties concerning the most practical "balanced" levels are clarified.

4. *Safety.* Numerous vehicle safety improvement items were suggested in the report as possible goals.[1] A number of other commentors questioned the value of some of these improvements, including the associated costs and weight penalties. Alternative suggestions for improving safety revolved around improved driver selection and training. All commentors appeared to agree with the report that the available commercial motor vehicle safety statistics are insufficient to resolve the many and diverse views on truck safety. Some commentors proposed a moratorium on further safety standards until an adequate data base could be made available.

5. *Baseline Year.* The use of 1973 as a truck baseline data year (as was done in the report) was criticized by some as not using the latest data; its use could also tend to penalize unfairly some operators if regulations were later set forth which used the average percentage fuel economy gains by each carrier relative to the 1973 average.

6. *Ton-miles.* The use of "ton-miles" or "ton-miles per gallon" as units to measure productivity and fuel-use efficiency was supported by some and criticized by others who felt that other criteria such as dollar value, cargo density, and service should also be considered.

7. *Other Issues.* A number of other issues were discussed by one or more commentors, including past sales trends data which may include, questionable data provided by the vehicle manufacturers as to vehicle weight ratings, the degree of conservativism of the motor carrier industry in respect to changes, the need for "real world" data, the effectiveness of various fuel-saving devices, the desirability of separating trucks from buses in the study, the monetary cost of lower speed limits (despite fuel savings), and the effectiveness of lean burn, stratified charge and turbocharged gasoline engines for truck use.

A number of commentators indicated that the use of the steady-state fuel economy equation in Sections II and VI for estimating overall fuel economy improvements was not valid. The study's authors did not make any estimates of overall fuel economy based upon that equation, but used it merely to show in a formal manner improvements in one mode of operation. This will be clarified in future drafts or the final publication of the "Goals Study".

Some commentors interpreted the present draft as the final statement of future commercial vehicle goals rather than the initial draft around which the future goals would be developed through ongoing discussions and analyses.

Continuing Analysis: Based upon early comments, a revised Executive Summary was released in November 1976 and remains available upon request at the DOT address noted below. Public comment and recommendations are invited on the Report on its entirety, on the revised Executive Summary, on the initial comments discussed above, and on the major policy issues involved in establishing recommendations for future commercial vehicle goals.

A revised draft of the Report and the Executive Summary is anticipated toward the end of 1977. It will be based upon the comments received to date, comments received as a result of this solicitation and other new information being developed by the government.

In addition to comments on the report, we welcome suggestions regarding means by which the "Commercial Vehicle Goals Study" can best serve the interests of the nation. Consideration is being given to the establishment of a Joint Government-Private Sector Advisory Committee: (1) To consider revisions to the content of the "Goals Study"; (2) to reflect the consensus of the various concerned individuals and groups; (3) to assist in continuation of the dialogue begun with the Draft Report; (4) to provide input for the Voluntary Truck and Bus Fuel Economy Improvement Program; and (5) to consider and make recommendations on methods of institutionalizing cooperative and coordinated decisionmaking in the commercial vehicle field. Comments on the merits of such a committee and suggestions for membership would be appreciated. Suggestions regarding other means to achieve these ends are also welcome. Additionally, suggestions regarding measures to address the intermodal interface questions would also be welcomed.

Copies of the summary of initial comments, the revised Executive Summary and the full "Interagency Study of Post-1980 Goals for Commercial Motor Vehicles" are available without cost until present supplies are exhausted for inspection or pick up from 8:00 a.m. to 5:30 p.m. in the office of the Manager, Voluntary Truck and Bus Fuel Economy Program, Room 5222, Trans Point Building, U.S. Department of Transportation, 2100 Second Street, S.W., Washington, D.C. Copies are also available upon receipt of mail requests to Manager, Voluntary Truck and Bus Program, TST-50, U.S. Department of Transportation, Washington, D.C. 20590.

Although the main report has been reprinted since it was first offered for public comment in May 1976, its content is essentially unchanged. Therefore, while we are seeking comments on the whole study and its implications, we request that, if a copy was obtained previously, further copies be requested only as necessary to facilitate review and comment preparation. All comments (in three copies if possible) should reference the "Interagency Study of Post-1980 Goals for Commercial Motor Vehicles" and should be sent to: W. H. Close, Manager, Voluntary Truck and Bus Fuel Economy Program, at the above address. All comments received prior to the close of business on April 29, 1977, will be given full consideration.

Issued in Washington, D.C., on January 20, 1977.

JOHN W. BARNUM,
Deputy Secretary of Transportation.

[FR Doc.77-3000 Filed 1-28-77;8:45 am]

[1] These goals are now also reflected in the January 1977 planning document published by the Secretary of Transportation entitled "National Transportation Trends and Choices" which is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. The price is $3.50 and the stock number is 050.000-00124-5.

WATER RESOURCES COUNCIL

STANDING STATE ADVISORY COMMITTEE

Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following committee meeting:

Name: Standing State Advisory Committee (SSAC).

Date and time: February 16, 1977, 9:30 a.m. until 12 noon.

Place: Lower Level Conference Room, Gelman Building, 2120 L Street, N.W., Washington, D.C. 20037.

Proposed Agenda: (1) State and local government expenditures for water planning and management. (2) Reanalysis of selected completed water resources projects. (3) Institutional arrangements for the Water Assessment and Appraisal Program. (4) 1977 National Conference on Water, May 22-25, 1977. (5) Joint meeting of State and Federal water officials, August 30-September 1, 1977.

Purpose of Meeting: Discussion and solicitation of the Committee's views on the above items.

The meeting of the Standing State Advisory Committee (SSAC) is open to the public.

Any member of the public may file a written statement with the Committee before, during or after the meeting. To the extent that time permits, the Committee Chairman may allow public presentation of oral statements at the meeting.

All communications regarding the SSAC should be addressed to Handley C. Oswalt, Administrative Officer, Water Resources Council, Acting Committee Management Officer, Room 810, 2120 L Street, N.W., Washington, D.C. 20037, phone (202) 254-6453.

GARY D. COBB,
Acting Director.

JANUARY 27, 1977.

[FR Doc.77-3011 Filed 1-28-77;8:45 am]

INTERSTATE COMMERCE COMMISSION

U.S./CANADA RAILROAD FREIGHT RATES

Request for Special Docket Applications and Complaints

JANUARY 24, 1977.

In Civil Action No. 74-167 *Canadian National Railway Company and Canadian Pacific Limited v. The United States of America and the Interstate Commerce Commission and Aluminum Company of Canada LTD., et al.*, the United States District Court for the District of Columbia held that the defendants were entitled to judgment on their counterclaims as a matter of law and ordered:

1. That the failure of defendants to the counterclaims, Canadian National Railway Company, Canadian Pacific Limited and the 32 Eastern Railroads, to limit, under the authority of Ex Parte No. 267, increases on their rates on export-import traffic moving by all-rail or water-rail between points in Canada and Eastern Territory of the United States to not more than 12 percent over the Ex Parte No. 265 level, constitutes a violation of the Interstate Commerce Commission's Order entered in the general revenue proceeding identified as Ex Parte No. 267, *Increased Freight Rates, 1970 and 1971*, on March 4, 1971, as subsequently interpreted and clarified by the Commission's Orders entered on August 19, 1971, August 6, 1973, and October 5, 1973; and further

2. That said railroad defendants to the counterclaims, their officers, agents or representatives are hereby enjoined and restrained from further disobedience of the Commission's Orders entered in Ex Parte No. 267 and are further ordered to obey said Commission Orders and cease and desist from charging rates on the aforesaid traffic in excess of 12 percent over the Ex Parte No. 265 level and to correct their tariffs accordingly;

In view of the order of the Court shippers and/or receivers of import or export traffic moving between points in Canada, on the one hand, and points in the United States on the other, should request rail carriers subject to the jurisdiction of the Interstate Commerce Commission to file special docket applications with this Commission seeking reparation[1] or in the alternative shippers and/or receivers should file informal complaints—such complaints should conform with the Commission's General Rules of Practice—with the Commission's Bureau of Traffic, Section of Rates and Informal Cases, for the purpose of tolling the Statute set forth in Section 16(3) of the Interstate Commerce Act. Special docket applications should be addressed to:

Office of the Secretary, Interstate Commerce Commission, 12th & Constitution Avenue, Washington, DC 20423.

and complaints should make reference to this notice and be addressed to:

Mr. Scott Walker, Chief, Section of Rates & Informal Cases, Bureau of Traffic, Interstate Commerce Commission, 12th & Constitution Avenue, Washington, DC 20423.

ROBERT L. OSWALD,
Secretary.

[FR Doc.77-2891 Filed 1-28-77;8:45 am]

INTERSTATE COMMERCE COMMISSION

[Notice No. 314]

ASSIGNMENT OF HEARINGS

JANUARY 26, 1977.

Cases assigned for hearing, postponement, cancellation or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the Official Docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested.

MC 48315 (Sub-No. 6), Hopkins Motor Coach Inc.; MC 100853 (Sub-No. 15), Pinkett's Shore Lines, Inc. and MC 104656 (Sub-No. 13), Mandrell Motor Coach, Inc., now being assigned March 15, 1977 (3 days) at Cambridge, Maryland, in a hearing room to be later designated.

MC 136897 (Sub-No. 19), Swift Transportation Company, Inc., now assigned March 2, 1977, at Los Angeles, Calif. is canceled and application dismissed.

MC 107295 Sub 830, Pre-Fab Transit Co. now being assigned March 2, 1977 (1 day) at Los Angeles, California and will be held in Room 8041, Federal Building, 300 North Los Angeles Street.

ROBERT L. OSWALD,
Secretary.

[FR Doc. 77-3004 Filed 1-28-77;8:45 am]

[Notice No. 11]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

The following are notices of filing of applications for temporary authority under Section 210a(a) of the Interstate Commerce Act provided for under the provisions of 49 CFR 1131.3. These rules provide that an original and six (6) copies of protests to an application may be filed with the field official named in the FEDERAL REGISTER publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the FEDERAL REGISTER. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the services it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertipence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in the ICC Field Office to which protests are to be transmitted.

MOTOR CARRIERS OF PROPERTY

No. MC 4405 (Sub-No. 544TA), filed January 18, 1977. Applicant: DEALERS TRANSIT, INC., 522 S. Boston Ave., Enterprise Bldg., Tulsa, Okla. 74130. Applicant's representative: Leonard L. Bennett (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Trailers, semi-trailers and trailer chassis*, other than those designed to be drawn by passenger automobiles, in initial movements in truckaway and driveaway service; and (2) *Tractors*, in secondary movements, in driveaway service, when drawing trailers, semi-trailers and trailer chassis in initial movements; (1) from Murfreesboro, Tenn., to points in the United States (except Alaska and Hawaii); and (2) from Murfreesboro, Tenn., to points in Arizona, Nevada, Oregon and Vermont, for 180 days. Supporting shipper: Butler Manufacturing Company, 900 S. E. Sixth Ave., Minneapolis, Minn. 55414. Send protests to: Joe Green, District Supervisor, Room 240 Old Post Office Bldg., 215 N.W. Third St., Oklahoma City, Okla. 73102.

No. MC 27817 (Sub-No. 126TA), filed January 19, 1977. Applicant: H. C. GABLER, INC., R.D. No. 3, P.O. Box 220, Chambersburg, Pa. 17201. Applicant's representative: Christian V. Graf, 407 N. Front St., Harrisburg, Pa. 17101. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Such merchandise* as is dealt in by retail, wholesale and chain grocery and food business houses

[1] In order to expedite matters the carriers may register shipments prior to filing special docket applications.

(except commodities in bulk and frozen foods), from the facilities of Belt's Wharf Warehouses Incorporated, and its affiliates, at Elkridge, Md., to points in Delaware, New Jersey, New York and Pennsylvania, restricted to traffic originating at and destined to the above-named points, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Belt's Wharf Warehouses Incorporated, Baltimore, Md. 21230. Send protests to: Robert P. Amerine, District Supervisor, Bureau of Operations, Interstate Commerce Commission. 278 Federal Bldg., P.O. Box 869. Harrisburg, Pa. 17108.

No. MC 47583 (Sub-No. 38TA), filed January 17, 1977. Applicant: TOLLIE FREIGHTWAYS, INC., 1020 Sunshine Road, Kansas City, Kans. 66115. Applicant's representative: D. S. Hults, P.O. Box 225, Lawrence, Kans. 66044. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Paper and paper products*, from the plantsite and storage facilities of Packaging Corporation of America, at or near Abilene, Tex, to Wichita, Kans. for 180 days. Supporting shipper: Packaging Corporation of America, 1603 Orrington, Evanston, Ill. 60204. Send protests to: Vernon V. Coble, District Supervisor, Interstate Commerce Commission, 600 Federal Bldg., 911 Walnut St., Kansas City, Mo. 64106.

No. MC 61231 (Sub-No. 99TA), filed January 18, 1977. Applicant: ACE LINES, INC., 4143 E. 43rd St., Des Moines, Iowa 50317. Applicant's representative: William L. Fairbank, 1980 Financial Center, Des Moines, Iowa 50309. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel articles*, from the plantsite of Southwest Ornamental Iron Co., at or near Bonner Springs, Kans., to the construction site of Marble Hill Generating Station near Paynesville, Ind., for 180 days. Supporting shipper: Southwest Ornamental Iron Co., P.O. Box 275, Bonner Springs, Kans. 66012. Send protests to: Herbert W. Allen, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 518 Federal Bldg., Des Moines, Iowa 50309.

No. MC 65802 (Sub-No. 61TA), filed January 17, 1977. Applicant: LYNDEN TRANSPORT, INC., P.O. Box 433, Lynden, Wash. 98264. Applicant's representative: James T. Johnson, 1610 IBM Bldg., Seattle, Wash. 98101. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Gypsum rock*, in bulk, in hopper-type vehicles, from Ports of Entry on the United States-Canada International Boundary, at or near Blaine, Lynden and Sumas, Wash., to points in Whatcom County, Wash., restricted to traffic originating at Vancouver, B.C., Canada, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Columbia Cement Corporation, a Subsidiary of Filtrol Corporation, P.O. Box 37, Belingham, Wash. 98225. Send protests to: L. D. Boone, Transportation Specialist, Bureau of Operations, Interstate Commerce Commission, 858 Federal Bldg., Seattle, Wash. 98174.

No. MC 95540 (Sub-No. 967TA), filed January 17, 1977. Applicant: WATKINS MOTOR LINES, INC., 1144 W. Griffin Road, P.O. Box 1636, Lakeland, Fla. 33801. Applicant's representative: Benjy W. Fincher (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs* (except commodities in bulk, in tank vehicles), from the plantsite of Mid-Continent Underground Storage, located at or near Kansas City, Kans., to points in Georgia and Tennessee, for 180 days. Supporting shipper: The Kroger Co., 1014 Vine St., Cincinnati, Ohio 45201. Send protests to: Joseph B. Teichert. District Supervisor, Interstate Commerce Commission, Bureau of Operations, Monterey Bldg., Suite 101, 8410 N.W. 53rd Terrace, Miami, Fla. 33166.

No. MC 95540 (Sub-No. 968TA), filed January 17, 1977. Applicant: WATKINS MOTOR LINES, INC., 1144 W. Griffin Road, P.O. Box 1636, Lakeland, Fla. 33801. Applicant's representative: Benjy W. Fincher (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Wooden pallets, wooden pallet parts and lumber*, from Elijay and Loganville, Ga., to Austin, Minn.; Fremont, Nebr.; Beloit, Wis.; and Fort Dodge and Ottumwa, Iowa, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Atlanta Southern Corporation, P.O. Box 872, Covington, Ga. 30209. Send protests to: Joseph B. Teichert. District Supervisor, Interstate Commerce Commission, Bureau of Operations, Monterey Bldg., Suite 101, N.W. 53rd Terrace, Miami, Fla. 33166.

No. MC 105269 (Sub-No. 63TA), filed January 17, 1977. Applicant: GRAFF TRUCKING COMPANY, INC., 2110 Lake St., P.O. Box 986, Kalamazoo, Mich. 49005. Applicant's representative: James W. Muldoon, Suite 1815, 50 W. Broad St., Columbus, Ohio 43215. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Adhesives*, when moving in mixed shipments with paper and paper products, from Chillicothe, Ohio, to points in Michigan on and south of M-21 from Port Huron, Mich., to Grand Rapids, Mich., and on and south of Interstate-96 from Grand Rapids, Mich., to Muskegon, Mich., for 180 days. Supporting shipper: The Mead Corporation, Talbott Tower, Dayton, Ohio 45402. Send protests to: C. R. Flemming, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 225 Federal Bldg., Lansing, Mich. 48933.

No. MC 106195 (Sub-No. 10TA), filed January 14, 1977. Applicant: CLARK BROS. TRANSFER, INC., P.O. Box 388. 802 N. 1st St., Norfolk, Nebr. 68701. Applicant's representative: Michael J. Ogborn, P.O. Box 82028, Lincoln, Nebr. 68501. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel articles*, as described in *Descriptions in Motor Carrier* Certificates, 61 M.C.C. 209 and 766, from Portage, Ind., to the facilities of the Vulcraft Division of Nucor Corporation, at or near Norfolk, Nebr., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: R. D. Bisping, Traffic Manager, Nucor Corp., Vulcraft Division, Box 59, Norfolk, Nebr. 68701. Send protests to: Carroll Russell, District Supervisor, Interstate Commerce Commission, Suite 620, 110 N. 14th St., Omaha, Nebr. 68102.

No. MC 106398 (Sub-No. 765TA), filed January 17, 1977. Applicant: NATIONAL TRAILER CONVOY, INC., 525 S. Main, P.O. Box 3329, Tulsa, Okla. 74101. Applicant's representative: Irvin Tull (same addrss as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Pipe, cable, conduit, wire, and strip steel and attachments therefor*, from Glendale, Marshall County, W. Va., to points in Alabama, Arkansas, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Minnesota, Mississippi, Missouri, Nebraska, North Carolina, North Dakota, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Virginia, Wisconsin and the District of Columbia, for 180 days. Supporting shipper: Triangle PWC, Inc., Jersey Ave., New Brunswick, N.J. Send protests to: Joe Green, District Supervisor, Room 240 Old Post Office Bldg., 215 N.W. Third St., Oklahoma City, Okla. 73102.

No. MC 106644 (Sub-No. 231TA), filed January 17, 1977. Applicant: SUPERIOR TRUCKING COMPANY, INC., 2770 Peyton Road, P.O. Box 916, Atlanta, Ga. 30321. Applicant's representative: Wilfred Rohling (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Used motorized step van delivery vehicles*, each weighing less than 15,000 pounds transported on flatbed, lowboy or drop deck trailers, between points in the United States (except Alaska and Hawaii), restricted to movement for account of Frito-Lay, Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Frito-Lay, Inc., P.O. Box 35034. Send protests to: Sara K. Davis, Transportation Assistant, Bureau of Operations, Interstate Commerce Commission, 1252 W. Peachtree St., NW., Room 546, Atlanta, Ga. 30309.

No. MC 107403 (Sub-No. 997TA), filed January 18, 1977. Applicant: MATLACK, INC., Ten W. Baltimore Ave., Lansdowne, Pa. 19050. Applicant's representative: Martin C. Hynes, Jr. (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle,

over irregular routes, transporting: *Adhesive cement*, nol, in bulk, in tank vehicles, from Decatur, Ala., to Knoxville, Iowa, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Minnesota Mining and Manufacturing Co., 3M Center, St. Paul, Minn. 55101. Send protests to: Monica A. Blodgett, Transportation Assistant, Interstate Commerce Commission, 600 Arch St., Room 3238, Philadelphia, Pa. 19106.

No. MC 107403 (Sub-No. 998TA), filed January 18, 1977. Applicant: MATLACK, INC., Ten W. Baltimore Ave., Lansdowne, Pa. 19050. Applicant's representative: Martin C. Hynes, Jr. (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Sodium sulfate* (salt cake), in bulk in tank vehicles, from Nitro, W. Va., to Baltimore, Md., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Avtex Fibers, Inc., P.O. Box 880, Valley Forge, Pa. 19482. Send protests to: Monica A. Blodgett, Transportation Assistant, Interstate Commerce Commission, 600 Arch St., Room 3238, Philadelphia, Pa. 19106.

No. MC 109708 (Sub-No. 68TA), filed January 13, 1977. Applicant: INDIAN RIVER TRANSPORT CO., doing business as INDIAN RIVER TRANSPORT, INC., P.O. Box 966, 908 North N.W. Park St., Okeechbee, Fla. 33472. Applicant's representative: James E. Wharton, Suite 811, Metcalf Bldg., 100 S. Orange Ave., Orlando, Fla. 32801. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fruit juices and fruit juice concentrate*, in bulk, in tank vehicles, from points in Florida, to points in Alabama, Arkansas, Connecticut, Delaware, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Mississippi, Missouri, New Hampshire, New Jersey, New York, North Carolina, Minnesota, North Dakota, South Dakota, Nebraska, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Vermont, Virginia, West Virginia, Wisconsin and California, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shippers: The Coca Cola Company, Foods Division, P.O. Box 247, Auburndale, Fla. 33823. H. P. Hood, Inc., 427 San Christopher Drive, Dunedin, Fla. 33528. Lykes Pasco Packing Co., P.O. Box 97, Dade City, Fla. 33525. Sunstar Foods, Citrus Division, P.O. Box 950, Lakeland, Fla. 33802. Alcoma Packing Co., Inc., P.O. Box 231, Lake Wales, Fla. 33853. Send protests to: Joseph B. Teichert, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Monterey Bldg., Suite 101, 8410 N.W. 53rd Terrace, Miami, Fla. 33166.

No. MC 117548 (Sub-No. 3TA), filed January 17, 1977. Applicant: M & M TANK LINES OF VIRGINA, INC., P.O. Box 30006, Washington, D.C. 20014. Applicant's representative: William P. Sullivan, Federal Bar Bldg. West, Suite 1030, Washington, D.C. 20006. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Ground, pulverized, and crushed limestone; silica sand materials and premixed building materials*, from Buchanan, Va., to points in Kentucky, Maryland, North Carolina, South Carolina, Tennessee, Virginia, West Virginia and the District of Columbia, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: James River Limestone Company, Inc., Drawer 617, Buchanan, Va. 24066. Send protests to: Interstate Commerce Commission, 12th & Constitution Ave., N.W., Room 1413, W. C. Hersman, District Supervisor, Washington, D.C. 20423.

No. MC 119619 (Sub-No. 97TA), filed January 18, 1977. Applicant: DISTRIBUTORS SERVICE CO., 2000 W. 43rd St., Chicago, Ill. 60609. Applicant's representative: Arthur J. Piken, One Lefrak City Plaza, Flushing, N.Y. 11368. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Meat*, fresh or frozen, suspended or in boxes, from Chicago, Ill., and its commercial zone, to Bedford and Manchester, N.H., and (2) *Returned, refused and rejected shipments* of the commodities described in (1) above, from the destinations to the origins specified in (1) above, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: M. M. Mades, Inc., Theodore T. Stopyra, Vice-President, Manufacturing & Plant Superintendent, 409 Elm St., Manchester, N.H. 03105. Send protetss to: Patricia A. Roscoe, Transportation Assistant, Interstate Commerce Commission, Everett McKinley Dirksen Bldg., 219 S. Dearborn St., Room 1386, Chicago, Ill. 60604.

No. MC 119626 (Sub-No. 10TA), filed January 18, 1977. Applicant: ILL.-PAC. COAST TRANSPORTATION CO., 1601 Market St., P.O. Box 128, Madison, Ill. 62060. Applicant's representative: Ernest A. Brooks, II, 1301 Ambassador Bldg., St. Louis, Mo. 63101. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Exempt poultry products*, when transported in the same vehicle with meats and packinghouse products, as described in Docket No. MC-119626 Sub. Nos. 1, 2, 7 and 9, (1) from St. Louis, Mo., to Los Angeles, San Francisco and Stockton, Calif.; (2) from Springfield, Ill., to San Diego, Sacramento, Los Angeles and San Francisco, Calif.; (3) between Chicago, Ill., on the one hand, and, on the other, St. Louis, Mo.; (4) from Springfield, Ill., to Las Vegas, Nev., and (5) from St. Louis, Mo., Springfield, Ill.; and Chicago, Ill., to points in Arizona, Nevada and New Mexico, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Morris C. Hesner, President, Continental Meat Distributors, Inc., 3067 S. Throop St., Chicago, Ill. 60608. Send protests to: Harold C. Jolliff, District Supervisor, Interstate Commerce Commission, P.O. Box 2418, Springfield, Ill. 62705.

No. MC 123887 (Sub-No. 10TA), filed January 17, 1977. Applicant: L. J. NAVY TRUCKING CO., 2300 Eighth Ave., Huntington, W. Va. 25703. Applicant's representative: John M. Friendman, 2930 Putnam Ave., Hurricane, W. Va. 25526. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Malt beverages*, in containers, *and used empty containers* on return, from Peoria, Ill., to Logan, W. Va., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shippers: Richard Trampe, General Traffic Manager, Pabst Brewing Company, 917 W. Juneau Ave., Milwaukee, Wis. 53201. Wilma J. Cook, Owner, Guyan Distributing Company, Box 1350, 301 Cole St., Logan, W. Va. 25601. Send protests to: H. R. White, District Supervisor, Interstate Commerce Commission, 3108 Federal Office Bldg., 500 Quarrier St., Charleston, W. Va. 25301.

No. MC 124111 (Sub-No. 52TA), filed January 14, 1977. Applicant: OHIO EASTERN EXPRESS, INC., P.O. Box 2297, 300 W. Perkins Ave., Sandusky, Ohio 44870. Applicant's representative: John P. McMahon, 100 E. Broad St., Columbus, Ohio 43215. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Bananas, and agricultural commodities* exempt, from economic regulation under Section 203(b)(6) of the Act, when transported in mixed loads with bananas, from Norfolk, Va., to points in Connecticut, Delaware, District of Columbia, Georgia, Illinois, Indiana, Kansas, Maryland, Massachusetts, Michigan, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, West Virginia and Wisconsin, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Dominican Import Company, 700 Boundary Ave., Chesapeake, Va. 23324. Send protests to: Keith D. Warner, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 313 Federal Office Bldg., 234 Summit St., Toledo, Ohio 43611.

No. MC 124878 (Sub-No. 10TA), filed January 17, 1977. Applicant: LAPADULA AIR FREIGHT TRANSFER, INC., 149-04 New York Blvd., Jamaica, N.Y. 11434. Applicant's representative: John L. Alfano, 550 Marmaroneck Ave., Harrison, N.Y. 10528. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except Classes A and B explosives and commodities in bulk), restricted to shipments having a prior or subsequent movement by air, between John F. Kennedy International Airport, at New York, N.Y., on the one hand, and,

on the other, T. F. Green State Airport, at Warwick, R.I., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shippers: (1) Air Express International, 151 Harvard Ave., Stamford, Conn. 06902. (2) Emery Air Freight Corporation, Cargo Bldg., State Airport, Warwick, R.I. 02888. (3) Delivery Service, Inc., 155 Bignall St., Warwick, R.I. 02888. Send protests to: Maria B. Kejss, Transportation Assistant, Interstate Commerce Commission, 26 Federal Plaza, New York, N.Y. 10007.

No. MC 124947 (Sub-No. 52 TA), filed January 14, 1977. Applicant: MACHINERY TRANSPORTS, INC., P.O. Box 417, 116 Allied Road, Stroud, Okla. 74079. Applicant's representative: T. M. Brown, 223 Ciudad Bldg., Oklahoma City, Okla. 73112. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lumber and lumber mill products*, from lumber mill sites, at or near (1) Panguitch, Escalante, Vernal and Kamas, Utah; (2) Durango, Paradox, Montrose, Pagosa Springs, and South Fork, Colo.; and (3) Fredonia, Flagstaff, Williams, Winslow, Snowflake, Cutter, McNary, Eager, White River, Payson and Show Low, Ariz., to points in Texas and Oklahoma, restricted to traffic moving for the account of Southwestern Sales, Inc., on bills of lading issued for the account of Woughwestern Sales, Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Southwestern Sales, Inc., P.O. Box 14703, Albuquerque, N. Mex. 87111. Send protests to: Joe Green, District Supervisor, Room 240 Old Post Office Bldg., 215 N.W. Third St., Oklahoma City, Okla. 73102.

No. MC 129808 (Sub-No. 24 TA), filed January 18, 1977. Applicant: GRAND ISLAND CONTRACT CARRIER, INC., P.O. Box 2078, West Highway No. 30, Grand Island, Nebr. 68801. Applicant's representative: Michael J. Ogborn, P.O. Box 82028, Lincoln, Nebr. 68501. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Processed logs and wooden beams*, from Claremore, Okla., and Licking, Mo., to points in Kansas, Nebraska, Iowa and Colorado, under a continuing contract with Chisum Industries, Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Lee O. Petersen, Marketing Manager, Chisum Industries, Inc., P.O. Box 1966, Grand Island, Nebr. 68801. Send protests to: Max H. Johnston, District Supervisor, 285 Federal Bldg., and Courthouse, 100 Centennial Mall North, Lincoln, Nebr. 68508.

No. MC 134676 (Sub-No. 4 TA), filed January 13, 1977. Applicant: H. H. MOORE, JR., P.O. Box 477, Appomattox, Va. 24522. Applicant's representative: Richard J. Lee, 4070 Falstone Road, Richmond, Va. 23234. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Ground level steel reservoirs and materials, supplies and equipment* used in the manufacture of ground level steel reservoirs, between the plantsite of Flippo's And Company, at or near Powhatan, Va., and points in Georgia, North Carolina, Pennsylvania and Alabama, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Flippo's And Company, P.O. Box 3305, Richmond, Va. 23235. Send protests to: Danny R. Beeler, District Supervisor, Interstate Commerce Commission, P.O. Box 210, Roanoke, Va. 24011.

No. MC 134755 (Sub-No. 88 TA), filed January 14, 1977. Applicant: CHARTER EXPRESS, INC., 1959 E. Turner St., P.O. Box 3772, Springfield, Mo. 65804. Applicant's representative: Larry D. Knox, 900 Hubbell Bldg., Des Moines, Iowa 50309. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, meat by-products and articles distributed by meat packing plants*, as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, M.C.C. 209 and 766 (except hides and commodities in bulk), from Rockville, Mo., to points in Iowa, Illinois, Indiana, Kansas, Minnesota, Nebraska, Ohio, Oklahoma, Pennsylvania, South Dakota and Wisconsin, restricted to traffic originating at the named origin and destined to named points, for 180 days. Supporting shipper: Geo. A. Hormel and Co., P.O. Box 800, Austin, Minn. 55912. Send protests to: John V. Barry, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 600 Federal Bldg., 911 Walnut St., Kansas City, Mo. 64106.

No. MC 134922 (Sub-No. 221 TA), filed January 17, 1977. Applicant: B. J. MCADAMS, INC., Route 6, Box 15, North Little Rock, Ark. 72118. Applicant's representative: Bob McAdams (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fluorescent lighting fixtures and accessories*, associated electrical compounds and homeowner improvement products, between points in Washington, Oregon, California, Nevada, Utah, Colorado, Arizona, Texas, Oklahoma, Louisiana, Wisconsin, Illinois, Michigan, Indiana, Ohio, New York, Pennsylvania, Massachusetts, New Jersey, Maryland, Connecticut, Virginia, North Carolina, South Carolina, Georgia, Florida and Minnesota, for 180 days. Supporting shipper: Acme Lighting and Mfg. Company, 18401 E. Arenth Ave., City of Industry, Calif. 91748. Send proteests to: William H. Land, Jr., District Supervisor, 3108 Federal Office Bldg. 700 W. Capitol, Little Rock, Ark. 72201.

No. MC 138274 (Sub-No. 41 TA), filed January 14, 1977. Applicant: SHIPPERS BEST EXPRESS, INC., 2151 N. Redwood Road, Salt Lake City, Utah 84116. Applicant's representative: Chester Zyblut, 366 Executive Bldg., Suite 202, 1030 Fifteenth St., N.W., Washington, D.C. 20005. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meat, meat products, and articles distributed by meat packinghouses*, as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except commodities in bulk), from the plantsite of Joe Coctorman & Son, Inc., at or near Salt Lake City, Utah, to San Diego, San Francisco, Oakland, San Jose, Stockton, Fresno, Sacramento and Los Angeles, Calif., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Suppporting shipper: Joe Doctorman and Son, Inc., 2900 S. 300 West, Salt Lake City, Utah 84115. Send protests to: Lyle D. Helfer, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 5301 Federal Bldg., 125 S. State St., Salt Lake City, Utah 84138.

No. MC 139495 (Sub-No. 188TA), filed January 17, 1977. Applicant: NATIONAL CARRIERS, Inc., P.O. Box 1358, 1501 E. 8th St., Liberal, Kans. 67901. Applicant's representative: Herbert Alan Dubin, 1819 H St., N.W., Suite 1030, Washington, D.C. 20006. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Cleaning, scouring and washing compounds; and water treating compounds* (except in bulk), from the plantsite and storage facilities of Calgon Corporation, located at or near Frisco, Pa., to Seattle, Wash., and Salt Lake City, Utah for 180 days. Supporting shipper: Calgon Corporation, P.O. Box 1346, Pittsburgh, Pa. 15230. Send protests to: M .E. Taylor, District Supervisor, Interstate Commerce Commission, Suite 101 Litwin Bldg., 110 N. Market, Wichita, Kans. 67202.

No. MC 139973 (Sub-No. 14TA), filed January 17, 1977. Applicant: J. H. WARE TRUCKING, INC., 909 Brown St., P.O. Box 398, Fulton, Mo. 65251. Applicant's representative: Larry D. Knox, 900 Hubbell Bldg., Des Moines, Iowa 50309. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, meat by-products, and articles distributed by meat packing plants*, as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except hides and commodities in bulk), from Rockville, Mo., to points in Iowa, Illinois, Indiana, Kansas, Minnesota, Nebraska, Ohio, Oklahoma, Pennsylvania, South Dakota and Wisconsin, restricted to traffic originating at the named origin and destined to named points, for 180 days. Supporting shipper: George A. Hormel and Co., P.O. Box 800, Austin, Minn. 55912. Send protests to: Vernon V. Coble, District Supervisor, Interstate Commerce Commission, 600 Federal Bldg., 911 Walnut St., Kansas City, Mo. 64106.

No. MC 140033 (Sub-No. 22 TA), filed January 18, 1977. Applicant: COX RE-

FRIGERATED EXPRESS, INC., 10606 Goodnight Lane, Dallas, Tex. 75220. Applicant's representative: Lawrence A. Winkle, 4645 N. Central Expressway, Dallas, Tex. 75205. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meat, meat products, meat by-products, and articles distributed by meat packing plants, and foodstuffs* (except hides and commodities in bulk), from the plantsite and warehouse facilities of Geo. A. Hormel and Co., at Fremont, Nebr., and Ottumwa, Iowa, to points in Virginia, West Virginia and Ahoskie, N.C., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Geo. A. Hormel and Co., P.O. Box 800, Austin, Minn. 55912. Send protests to: Opal M. Jones, Transportation Assistant, Interstate Commerce Commission, 1100 Commerce St., Room 13C12, Dallas, Tex. 75242.

No. MC 140421 (Sub-No. 13 TA), filed January 14, 1977. Applicant: ACTION MOTOR EXPRESS, INC., P.O. Box 29102, 8303 Old Gentilly Road, New Orleans, La. 70126. Applicant's representative: Sandra H. Roberson (same address as applicant). Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Fibre drums and components, supplies and materials* used in the manufacture of fibre drums, *fibre drums*, from the plantsite of the Continental Group, Inc., located at Van Wert, Ohio, to points in Illinois, Indiana, Kentucky, Michigan, Missouri, Pennsylvania, West Virginia and Wisconsin; *and drums, components, materials and supplies*, between the plantsites of the Continental Group, Inc., located at Midland, Mich.; Carteret, N.J.; Pittsburg, Calif.; Culloden, W. Va.; Windsor Locks, Conn.; Tonawanda, N.Y.; Van Wert, Ohio; Reading, Pa.; Overland, Mo.; Jacinto City, Tex.; Charlotte, N.C.; and Lithonia, Ga., under a continuing contract with The Continental Group, Inc., for 180 days. Supporting shipper: The Continental Group, Inc., Office Park II, Greenwich, Conn. 06830. Send protests to: Ray C. Armstrong, Jr., District Supervisor, 9038 U.S. Postal Service Bldg., 701 Loyola Ave., New Orleans, La. 70112

No. MC 140601 (Sub-No. 5 TA), filed January 17, 1977. Applicant: BILLY FRANK, doing business as FRANK BROS., 349 Abbott Ave., Hillsboro, Tex. 76645. Applicant's representative: James M. Doherty, P.O. Box 1945, Austin, Tex. 78767. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Plastic pipe, and fittings and accessories* for plastic pipe, from Waco, Tex., to points in Arkansas, Louisiana, New Mexico, Oklahoma and Texas; and (2) *Materials, equipment and supplies* (except commodities in bulk), used in the manufacture of the commodities named in (1) above, from points in Arkansas, Louisiana, New Mexico, Oklahoma and Texas, to Waco, Tex., under a continuing contract with Certain-teed Products Corporation, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Certain-teed Products Corporation, P.O. Box 860, Valley Forge, Pa. Send protests to: Robert J. Kirspel, District Supervisor, Room 9A27 Federal Bldg., 819 Taylor St., Fort Worth, Tex. 76102.

No. MC 142318 (Sub-No. 2 TA), filed January 14, 1977. Applicant: RICK MINNIS, doing business as RICK MINNIS TRUCKING, 1125 N. Main St., Milpitas, Calif. 95035. Applicant's representative: Thomas M. Loughran, 100 Bush St., 21st Floor, San Francisco, Calif. 94104. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Pozzolan*, in bulk, in tank trailers equipped with pneumatic unloading equipment, from the facilities of Lassenite Industries, Inc., on U.S. Highway 395, six miles north of Hallelujah Junction, Calif., to American Falls Dam, at or near American Falls, Idaho, under a continuing contract with Lassenite Industries, Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Lassenite Industries, Inc., 445 Coney Island Drive South, Sparks, Nev. 89431. Send protests to: Claud W. Reeves, District Supervisor, 211 Main, Suite 500, San Francisco, Calif. 94105.

No. MC 142423 (Sub-No. 2TA), filed January 17, 1977. Applicant: BIG D CARTAGE, INC., 28091 Kingsberry Drive, Mt. Clemens, Mich. 48043. Applicant's representative: Robert E. McFarland, 999 W. Big Beaver Road, Suite 1002, Troy, Mich. 48084. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Malt beverages*, from Fulton, N.Y., to points in Macomb County, Mich., with empty containers on return, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Vic Wertz Distributing Co., Mitch Housey, General Manager, 40585 Production Drive, Mt. Clemens, Mich. 48083. Send protests to: James A. Augustyn, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 1110 Broderick Tower, 10 Witherell Ave., Detroit, Mich. 48226.

No. MC 142706 (Sub-No. 1TA), filed January 17, 1977. Applicant: EARLY BIRD TRANSFER, INC., 210 Fourth Ave., International Falls, Minn. 56649. Applicant's representative: John B. Van de North, Jr., 4610 IDS Center, 80 S. Eighth St., Minneapolis, Minn. 55402. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, meat by-products and articles* distributed by meat packinghouses, (1) from Minneapolis and St. Paul, Minn., to Chicago, Ill., and Detroit, Mich., and (2) from Chicago and Forest Park, Ill., to Minneapolis, St. Paul, Fridley, Hopkins, St. Charles and Mantorville, Minn., and Eau Claire, Wis. Restriction: (2) above limited to the transportation of less-than-truckload shipments, maximum weight 25,000 pounds, for 180 days. Supporting shippers: There are approximately 14 statements of support attached to the application, which may be examined at the Interstate Commerce Commission in Washington, D.C., or copies thereof which may be examined at the field office named below. Send protests to: Ronald R. Mau, District Supervisor, Bureau of Operations, Interstate Commerce Commission, P.O. Box 2340, Fargo, N. Dak. 58102.

No. MC 142778 (Sub-No. 1 TA), filed January 18, 1977. Applicant: DON BAKER, R.F.D. No. 1, McLeansboro, Ill. 62859. Applicant's representative: Don Baker (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Coal*, in bulk, in dump vehicles, from Coal Mine, at or near Waltonville and Carrier Mills, Ill., to Evansville, Ind., for 180 days. Supporting shipper: R. F. Sheets, Purchasing Manager, Arkla Industries, Inc., 819 E. Franklin St., Evansville, Ind. Send protests to: Harold C. Jolliff, District Supervisor, Interstate Commerce Commission, P.O. Box 2418, Springfield, Ill. 62705.

No. MC 142789 (Sub-No. 1 TA), filed January 14, 1977. Applicant: WETCO, INCORPORATED, doing business as KEY LIMOUSINE, 3909 S. Airport Road, Ogden, Utah 84403. Applicant's representative: Frank S. Warner, No. 9 Bank of Utah Plaza, Ogden, Utah 84401. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* having a prior or subsequent movement by aircraft (except articles of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment, and commodities otherwise partially exempt from regulation as provided by Section 203 (b)(6) of the Interstate Commerce Act), to be transported in mixed loads with the previously described commodities; as follows: between Salt Lake City and Richmond, Utah; from Salt Lake City, Utah, over U.S. Highway 89 and 91 (Interstate 15) to Richmond, Utah, and return over the same route, serving Salt Lake City, Brigham City, Logan, Smithfield, and Richmond, Utah, and serving the off-route points of Hyrum and Providence, Utah; also between Salt Lake City and Provo, Utah; also from Salt Lake City, Utah; over U.S. Highway 89 and 91 (Interstate 15) to Provo, Utah, and return over the same route, serving Salt Lake City and Provo, Utah. The service authorized herein is subject to the following conditions: Said service is restricted (1) to the transportation of packages or articles each weighing not more than 100 lbs., and (2) against the transportation of packages or articles weighing more than 200 lbs. in the aggregate from one consignor at one location to one consignee at one location during a single day, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shippers: There are approximately 33 statements of support attached to the application, which may be examined at the Interstate Commerce Commission in Washington, D.C., or copies thereof which may be examined at the field office named below. Send protests to: Lyle D. Helfer, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 5301 Federal Bldg., 125 S. State St., Salt Lake City, Utah 84138.

No. MC 142820 TA, filed January 18, 1977. Applicant: ODEX EXPRESS, INC., 169 Avenue F, Bayonne, N.J. 07002. Applicant's representative: Bruce J. Robbins, One Lefrak City Plaza, Flushing, N.Y. 11368. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Fat and trimmings* (except in bulk), in mechanically refrigerated vehicles, from Baltimore, Md.; Boston, Mass.; points in New York and New Jersey, and the District of Columbia, to Carteret, N.J.; and (2) *Shortening* (except in bulk), in mechanically refrigerated vehicles, from Carteret, N.J., to points in Connecticut, Delaware, New York, New Jersey, Maryland, Massachusetts, Rhode Island, and the District of Columbia; Kissimmee, Fla.; Collingswood, Pittsburgh and Saltsburg, Pa.; Roanoke, Va.; Clarksburgh, and New Cumberland, W. Va.; and all points within that part of the United States bounded generally on the east by the Atlantic Ocean; on the north by the Maryland-Virginia State line; and on the west, generally by a line beginning at the junction of U.S. Highway 15, and the Maryland-Virginia State line, and extending southerly along U.S. Highway 15 through the state of Virginia and across the Virginia-North Carolina State line to Oxford, N.C., thence southerly along U.S. Highway 85 to the North Carolina-South Carolina State line, thence westerly along the North Carolina-South Carolina and North Carolina-Georgia State line to its junction with U.S. Highway 75, thence southerly along U.S. 75 through the states of Georgia and across the Georgia-Florida State line to the junction of U.S. Highway 75 and U.S. Highway 95 in the state of Florida, thence southerly along U.S. Highway 95 to its junction with U.S. Highway 1, thence southerly along U.S. Highway 1 to the Atlantic Ocean, under a continuing contract with Intercon Company, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Intercon Company, Division of CFS Continental of Chicago, Ill., 351 Roosevelt Ave., Cartaret, N.J. 07008. Send protests to: Robert E. Johnston, District Supervisor, Interstate Commerce Commission, 9 Clinton St., Newark, N.J. 07102.

No. MC 142821 TA, filed January 19, 1977. Applicant: ROY M. BROWN, Rt. No. 2, Galatia, Ill. 62935. Applicant's representative: Robert T. Lawley, 300 Reisch Bldg., Springfield, Ill. 62701. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Coal*, from Carrier Mills and Waltonville, Ill., to Evansville, Ind., for 180 days. Supporting shipper: W. A. Gallmeister, Director of Purchasing, Mead Johnson and Company, 2404 Pennsylvania St., Evansville, Ind. 47721. Send protests to: Harold C. Jolliff, District Supervisor, Interstate Commerce Commission, P.O. Box 2418, Springfield, Ill. 62705.

No. MC 142822 TA, filed January 17, 1977. Applicant: GAIL DENNY TRUCKING, INC., Route No. 2, Harrisburg, Ill. 62946. Applicant's representative: Fred Denny, 10 Dogwood Place, Harrisburg, Ill. 62946. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Coal*, in bulk, in dump vehicles, from Uniontown, Ky., to Evansville, Ind., for 180 days. Supporting shipper: David L. Smith, Senior Buyer, Whirlpool Corporation, Hwy. 41 North, Evansville, Ind. 47727. Send protests to: Harold C. Jolliff, District Supervisor, Interstate Commerce Commission, P.O. Box 2418, Springfield, Ill. 62705.

No. MC 142823TA, filed January 17, 1977. Applicant: R. H. CROSBY, JR., P.O. Box 25, Staunton, Va. 24426. Applicant's representative: Richard J. Lee, 4070 Falstone Road, Richmond, Va. 23234. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Steel sheet, steel plates and steel coils*, from the plantsite of Maphis Chapman Corp., at or near Harrisonburg, Va., to points in North Carolina, South Carolina and Maryland, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Maphis C. Chapman Corporation, P.O. Box 151, Harrisonburg, Va. 22801. Send protests to: Danny R. Beeler, District Supervisor, Bureau of Operations, Interstate Commerce Commission, P.O. Box 210, Roanoke, Va. 24011.

By the Commission.

ROBERT L. OSWALD,
Secretary.

[FR Doc 77-3003 Filed 1-28-77;8:45 am]

[Notice No. 111]

MOTOR CARRIER BOARD TRANSFER PROCEEDINGS

The following publications include motor carrier, water carrier, broker, and freight forwarder transfer applications filed under Sections 212(b), 206(a), 211, 312(b), and 410(g) of the Interstate Commerce Act.

Each application (except as otherwise specifically noted) contains a statement by applicants that there will be no significant effect on the quality of the human environment resulting from approval of the application.

Protests against approval of the application, which may include a request for oral hearing, must be filed with the Commission within 30 days after the date of this publication. Failure seasonably to file a protest will be construed as a waiver of opposition and participation in the proceeding. A protest must be served upon applicants' representative(s), or applicants (if no such representative is named), and the protestant must certify that such service has been made.

Unless otherwise specified, the signed original and six copies of the protest shall be filed with the Commission. All protests must specify with particularity the factual basis, and the section of the Act, or the applicable rule governing the proposed transfer which protestant believes would preclude approval of the application. If the protest contains a request for oral hearing, the request shall be supported by an explanation as to why the evidence sought to be presented cannot reasonably be submitted through the use of affidavits.

The operating rights set forth below are in synopses form, but are deemed sufficient to place interested persons on notice of the proposed transfer.

No. MC-FC-76868, filed December 13, 1976. Transferee: SPECIAL D COURIERS, INC., 244 S. Bloomfield Ave., Windsor, Conn. 06095. Transferor: Dominic Cersosimo & Sons, Inc., 780 Silver Lane, East Hartford, Conn. 06118. Applicant's representative: Thomas W. Murrett, Attorney at Law, 342 No. Main St., West Hartford, Conn. 06117. Authority sought for purchase by transferee of the operating rights of transferor, as set forth in Certificate No. MC-104932, issued May 20, 1958, as follows: *Fertilizer*, over irregular routes, from Deerfield, Mass., to points in Hartford County, Conn., from points in Hartford County, Conn., to Hatfield, Hadley, and Deerfield, Mass., and *Cosmetics, toilet preparations, disinfectants*, and *insecticides; household waxes, polishes*, and *cleaning compounds; brushes, brooms, mops, and component parts therefor; and advertising material and sales promotion premiums* used in connection with the distribution and sale of the above-specified commodities, all in individual packages or containers not exceeding 55 pounds, from East Hartford, Conn., to points in Connecticut, and points in Washington County, R.I. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under Section 210a(b).

No. MC-FC-76877, filed December 20, 1976. Transferee: ZOGORSKI WAREHOUSE, INC., 416 Washington Ave., Hulmeville, Pa. 19047. Transferor: Joseph Zogorski, Swamp Rd., R.D. 2, Newtown, Pa. 18940. Applicants' representative: Robert Hallworth, 416 Washington Ave., Hulmeville, Pa. 19047. Authority sought for purchase by transferee of the operating rights of transferor, as set forth in Certificate No. MC 70833, issued April 24, 1976, as follows: Irregular routes: *Plush* and *plush yarns*, Between Hulmeville, Pa., and Mt. Holly, N.J. *Wallpaper* and *articles* used in or related to the manufacture of wall-

paper, between Philadelphia, Pa., and Beverly, N.J. *Wallpaper*, from South Langhorne and Hulmeville, Pa., to points in New York, Delaware, Maryland, and the District of Columbia, and Camden, N.J., and points in that part of New Jersey on and north of a straight line extending from Trenton, N.J., through Highlands, N.J., to the Atlantic Ocean, except Trenton and Highlands, N.J. *Damaged, refused and rejected shipments of wallpaper*, from the above-specified destination points to Hulmeville, Pa., *Agricultural commodities* and *livestock*, between points in Bucks County, Pa., other than incorporated municipalities, on the one hand, and, on the other, New York, N.Y., and points in New Jersey, Delaware, and Maryland. *Flowers*, from Richboro Pa., to Washington, D.C., and *agricultural commodities*, from Richboro, Pa., and points in Pennsylvania within 10 miles of Richboro, to Camden, N.J., Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under Section 210a(b).

No. MC–FC–76885, filed December 17, 1976. Transferee: DIERINGER TRUCKING SERVICE, INC., P.O. Box 550, Fairbanks, Alaska 99701. Transferor: James F. Dieringer, doing business as Dieringer Trucking Service, 1732 Hilton, Fairbanks, Alaska 99701. Applicant's representative: George L. Benesch, Attorney at Law, 213 West Sixth Avenue, Suite #1, Anchorage, Alaska 99501. Authority sought for purchase by transferee of the operating rights of transferor, as set forth in Certificate No. MC–118513 (Sub-No. 2) issued October 24, 1963, as follows: General commodities with the usual exceptions between points in Valdez, Alaska and between Valdez, Alaska, on the one hand, and, on the other specified points on or near specified Alaska Highways. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under Section 210a(b).

No. MC–FC–76888, filed December 21, 1976. Transferee: CRIDER TRUCK LEASING, INC., R.D. #4, Burtner Road, Butler, Pa. 16001. Tranferor: R/T Trucking, Inc., (Stanley G. Makoroff, Receiver), 1124 Frick Building, Pittsburgh, Pa. 15219. Applicant's representative: Arthur J. Diskin, Esq., 806 Frick Building, Pittsburgh, Pa. 15219. Authority sought for purchase by transferee of the operating rights of transferor, as set forth in Permit No. MC 138376, issued May 31, 1973, as follows: Such commodities as are dealt in by hardware, drug and department stores and by supermarkets from Philadelphia, Pa., to points in Allegheny County, Pa., restricted to the transportation of shipments having an immediately prior movement by water, and between points in Allegheny County, Pa., on the one hand, and, on the other, points in Connecticut, Delaware, Illinois, Indiana, Massachusetts, Maryland, Michigan, New Jersey, New York, Ohio, Rhode Island, Virginia, West Virginia, and Wisconsin, subject to various specified restrictions. Transferee is presently authorized to operate as a contract carrier under Permit No. MC 140431. Application has not been filed for temporary authority under Section 210a(b).

No. MC–FC–76890 filed December 22, 1976. Transferee: Burlingame Truck Line, Inc., R.R. #2, Scranton, Kansas, 66537. Transferor: A. J. Flynn, P.O. Box 224, Perry, Kansas, 66073. Applicants' representative: Clyde N. Christey, 514 Capitol Federal Bldg., Topeka, Kansas, 66603. Authority sought for purchase by transferee of the operating rights of transferor, as set forth in Certificate No. MC–37755, issued February 8, 1973, as follows: *Livestock, agricultural machinery, implements, and parts, feed, binder twine, building materials, household goods* as defined by the Commission, *petroleum products in containers, petroleum-products containers*, and *coal*, between Valley Falls, Kans., and points within 16 miles of Valley Falls, on the one hand, and, on the other, Kansas City, Kans., and Kansas City and St. Joseph, Mo.; *Livestock*, between Valley Falls, Kans., and points within 16 miles of Valley Falls, on the one hand, and, on the other, Auburn, Nebr.; *Fertilizer*, in containers, between Valley Falls, Kans., and points within 16 miles of Valley Falls, on the one hand, and, on the other, Kansas City and St. Joseph, Mo.; *Asphalt coated crushed stone*, Between Valley Falls, Kans., and points within 16 miles thereof, on the one hand, and, on the other, Kansas City and St. Joseph, Mo.; *Feed and fertilizer*, From Kansas City, Mo., to Perry, Kans.; *Emigrant movables*, From points in Jefferson, Atchison, and Jackson Counties, Kans., and that part of Shawnee County, Kans., North of the Kansas River, to points in Missouri and Nebraska; *Feed and feed ingredients*, From Kansas City and St. Joseph, Mo., to points in Leavenworth, Jackson, Jefferson, Shawnee, and Douglas Counties, Kans. Transferee is presently authorized to operate as a common carrier under Certificate No. MC–50866 issued August 23, 1974. Application has not been filed for temporary authority under Section 210a(b).

No. MC–FC–76891 filed December 22, 1976. Transferee: Wayne Plunske, Doing Business As Plunske's Garage, 915 North Colony Rd., Wallingford, Connecticut 06492. Transferor: Donald G. Gilletti, Jr., Doing Business As Gilletti's Garage & Auto Body Works, Main Street Extension, Middletown, Connecticut 06457. Authority sought for purchase by transferee of the operating rights of transferor, as set forth in Certificate No. MC–138234, issued January 8, 1974, as follows: *Wrecked and disabled motor vehicles*, by use of wrecker equipment only, Between points in Connecticut, on the one hand, and, on the other, points in Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia, and the District of Columbia. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under Section 210a(b).

No. MC–FC–76892, filed December 22, 1976. Transferee: Ames Sand & Gravel, Inc., 2702 First Avenue North, Fargo, North Dakota 58102. Transferor: Materials Transport, Inc., 2702 First Avenue North, Fargo, North Dakota 58102. Applicant's representative: Richard A. Ames, Secretary-Treasurer, 2702 First Avenue North, Fargo, North Dakota 58102. Authority sought for purchase by transferee of the operating rights of transferor as set forth in Certificate No. MC–118894 (Sub-No. 1), issued February 16, 1960, as follows: Such commodities as are transported in dump vehicles and which can be unloaded by dumping, and ready-mixed concrete between 16 specified counties in North Dakota and 21 specified counties in Minnesota. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under Section 210a(b).

No. MC–FC–76898, filed December 27, 1976. Transferee: Fred Olson Motor Service Corporation, doing business as FOMS, 6022 West State St., Wauwatosa, Wis. 53213. Transferor: Fred Olson Motor Service Company, doing business as FOMS, 6022 West State St., Wauwatosa, Wis. 53213. Applicant's representative: Richard J. Bliss, Attorney-at-Law, 780 N. Water St., Milwaukee, Wis. 53202. Authority sought for purchase by transferee of the operating rights of transferor set forth in Permit No. MC–135540, issued September 15, 1971, authorizing the transportation of kerosene and Numbers 1, 2, 3, 5, 5, and 6 heating oil, in bulk, in tank vehicles, from points in Cook and Will Counties, Ill., and Lake County, Ind., to points in Wisconsin, limited to a transportation service to be performed under a continuing contract, or contracts, with Quickflash Division of the Jacobus Company of Milwaukee, Wis.; and the operating rights set forth in Certificates Nos. MC–52673, MC–52673 (Sub-No. 14), MC–52673 (Sub-No. 17), MC–52673 (Sub-No. 26) and MC–42673 (Sub-No. 28), issued June 11, 1973, April 4, 1962, July 3, 1975, April 25, 1969, and October 10, 1969, respectively, authorizing the transportation of general commodities and various specified commodities, from, to, and between points in Illinois, Wisconsin, Indiana, Iowa, Missouri, and Nebraska. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under Section 210a(b) of the Act.

No. MC–FC–76902, filed December 28, 1976. Transferee: Worley's Asphalt & Paving Co., a corporation, Hunt Rd., P.O. Box 118, Burlington, Iowa 52601. Transferor: Fred B. Miller, doing business as Fred B. Miller & Co., 1605 South St., Burlington, Iowa 52601. Applicants' representative: Pryor, Riley, Jones & Walsh, Attorney at Law, 321 N. 3rd St., Burlington, Iowa 52601. Authority sought for purchase by transferee of the operating rights of transferor, as set forth in Certificate No. MC–133113, issued March 20, 1969, as follows: *Sand, gravel, crushed stone*, and *asphaltic concrete*, in bulk, in dump trucks, over irregular routes, from points in Des Moines County, Iowa, to to points in Henderson, Mercer, Knox, Warren, Hancock, and McDonough Counties, Ill. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under Section 210a(b).

No. MC–FC–76903, filed December 28, 1976. Transferee: Kitchell Truck Lines, Inc., Ipswich, South Dakota 57451. Transferor: Porter Truck Service, Inc., 1217 W. Cherokee, P.O. Box 866, Sioux Falls, South Dakota 57101. Applicants' representative: F. H. Kroeger, 1745 University Ave., St. Paul, Minn. 55104. Authority sought for purchase by transferee that a portion of the operating rights of transferor, as set forth in Certificate No. MC–32213, issued August 17, 1965, as follows: *Petroleum products* in containers, over irregular routes, from Omaha, Nebr., Sioux City, Iowa, and Minneapolis, Minn., to points in South Dakota. From Minneapolis, Minn., to Mitchell, S. Dak., from Sioux City, Iowa, to Murdo and Mitchell, S. Dak. *Empty petroleum products containers*, over irregular routes, from points in South Dakota, to Omaha, Nebr. Sioux City, Iowa, and Minneapolis, Minn. Transferee is presently authorized to operate as a common carrier under Certificate No. MC–30045 and subs thereafter. Application has not been filed for temporary authority under Section 210a(b).

No. MC–FC–76910, filed January 3, 1977. Transferee: Star Enterprises, Inc., R 2 Monsees Lake, Sedalia, MO 65301. Transferor: Jordan Sand and Gravel Co., Inc., R 2 Monsees Lakes, Sedalia, MO 65301. Applicant's representative: James T. Tuckley, Attorney-at-Law, 309 East Fifth St., Sedalia, MO 65301. Authority sought for purchase by transferee of the operating rights set forth in Certificates Nos. MC–127944 and MC–127944 (Sub-No. 1), issued September 3, 1970 and July 9, 1975, respectively, to transferor as follows: Blacktop, lime, sand, crushed rock (filter rock), and gravel, between points in a described area in Kansas, Oklahoma, Arkansas, and Missouri: and barite ore, in bulk, in dump vehicles, from points in Missouri, to the plant site of Sherwin Williams Chemicals, a Division of the Sherwin-Williams Company, at or near Coffeyville, Kans. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under Section 210a(b) of the Act.

ROBERT L. OSWALD,
Secretary.

[FR Doc 77-3005 Filed 1-28-77;8:45 am]

federal register

MONDAY, JANUARY 31, 1977

PART II



NATIONAL SCIENCE FOUNDATION

GRANT POLICY MANUAL

Proposed Implementation of OMB Circular A–110

NATIONAL SCIENCE FOUNDATION

GRANT POLICY MANUAL

Proposed Implementation of OMB Circular A–110

Notice is hereby given that the National Science Foundation intends to implement the provisions of OMB Circular A–110 and certain other directives by a new Grant Policy Manual (NSF Manual No. 15) replacing the existing Grant Administration Manual (NSF 73–26).

The proposed new Manual distinguishes between projects with minimal Federal involvement during performance and those with substantial involvement during performance. It prescribes that the traditional "grant" mechanism will be used for the former, and is intended to be definitive for them. It prescribes that "other agreements" will be awarded in support of the latter, and indicates how they differ from grants. It extends the provisions of OMB Circular A–110 to all types of organizations (both public and private, commercial and nonprofit). The Preface summarizes its contents and highlights proposed changes to current policies and procedures.

In the interests of reducing paperwork, the Table of Contents, Exhibits, Glossary, and Index are not reproduced herein. Most Exhibits are documents (or portions thereof) which currently are available to the public, including:

OMB Circular A–110: FR 41, No. 148, Part II—Friday, July 30, 1976;
FMC 73–3: 34 CFR Part 211
NSF Criteria for Selection of Research Projects: 39 FR 42954, Dec. 9, 1974 and NSF Guide to Programs (NSF 76–33)

Other Exhibits will be furnished to interested parties on request.

Comments are invited on or before March 15, 1977, and should be addressed to:

Director, Division of Grants and Contracts, National Science Foundation, 1800 G Street, N.W., Washington, D.C. 20550.

To assist NSF in considering and acting on comments, it would be helpful if:

(1) They could be arranged in the Chapter and Section sequence of the proposed Manual, with any general comments or suggestions at the beginning; and

(2) Those from different segments of an organization could be consolidated on an organizational basis.

ELDON D. TAYLOR,
Assistant Director for Administration.

JANUARY 19, 1977.

PREFACE

This NSF "Grant Policy Manual" (NSF Manual No. 15) updates and replaces the NSF "Grant Administration Manual" (NSF 73–26) dated October 1973. It is applicable to all NSF grants and other agreements issued on and after July 1, 1977 under the authority of the NSF Act of 1950, as amended (42 U.S.C. 1861 et. seq). It is not applicable to procurement contracts issued in accordance with the Federal Procurement Regulations System (41 CFR Subtitle A) and the NSF Procurement Regulations (41 CFR Chapter 25).

Prior to January 1, 1974 NSF grants were made subject to the applicable terms and conditions of program announcements, such as "Grants for Scientific Research" and to the special provisions stated in the grant instrument. On and after that date NSF grants were made subject to a form letter, which referenced appropriate sections of the "Grant Administration Manual," and to the stated special provisions. On and after July 1, 1977 NSF grants will be subject to the general provisions in an Appendix to this "Manual" and to the stated special provisions. Other NSF agreements will be subject to comparable general provisions in other Appendices to this "Manual" and to the stated special provisions.

Subsequent to the issuance of the "Grant Administration Manual," a number of new laws, executive orders, and other directives have been issued. The most significant of these for non-procurement awards is OMB Circular A–110 (41 FR, No. 148—July 30, 1976), which promulgated uniform standards and requirements applicable to all Federal agencies for the administration of grants to, and other agreements with, public and private colleges, universities, and hospitals and other quasi-public and private nonprofit organizations. That Circular is analogous to FMC 74–7 (formerly OMB Circular A–102), which promulgated uniform standards applicable to all Federal agencies for the administration of grants-in-aid to State and local governments and federally recognized Indian tribal governments. OMB Circular A–110 also rescinds and replaces parts of FMC 73–7 (formerly OMB Circular A–101) which, until the issuance of A–110, was the principal source of policies and procedures applicable to Federal grants, contracts, or other agreements for research projects with colleges and universities.

The "Grant Administration Manual" implemented the provisions of A–101 for all NSF grants to all types of performing organizations, and implemented such of the provisions of A–102 as seemed appropriate to the kinds of research and other science projects as are supported by the National Science Foundation. This "Grant Policy Manual"—implements the provisions of A–110 and other OMB directives with certain minor exceptions. Although most OMB directives apply only to governmental and non-profit organizations, the provisions of this "Manual" are applicable to all nonprocurement awards including those made to commercial organizations.

This "Manual" has been prepared in loose-leaf form, and will be updated periodically by means of numbered transmittal notices. It is being distributed, under a controlled distribution list, in limited numbers of copies to:

a. Administrative and financial management officials of public and private organizations and institutions which now are or propose to be recipients of Federal financial assistance for the performance of research or other science projects of the types described in the NSF "Guide to Programs" or applicable program announcements or solicitations. Those institutions and organizations which are recipients of an NSF letter of credit will receive 10 copies; other awardees will receive fewer numbers, with a minimum of three.

b. Federal audit agencies and their offices in the ten Federal regions.

c. The NSF staff.

Such administrative and financial management information as individual scientists and educators need to know for the preparation of proposals for NSF support and for the performance and reporting of their projects will continue to be contained in appropriate program announcements and solicitations.

Major differences between the NSF requirements and procedures contained in this "Manual" and its predecessor are, in order of their appearance:

1. BASIC INFORMATION

a. In order to maintain the traditional flexibility of its grants for scientific research and related purposes, while accommodating the concerns of the Congress and the public for greater accountability, within the framework of the new OMB directives, NSF is giving explicit recognition to the fact that it supports different kinds of projects, with different degrees of Federal involvement during performance. Chapter I extends the FMC 73–7 concept of two basic types of research projects to the broader concept of two basic types of all projects.

b. It then differentiates between the terms "grants" and "other agreements" found in that document and in A–110, and defines them so that they become award instruments to support the two types of projects, along the general lines recommended by the ninety-fourth Congress in the proposed "Federal Grant and Cooperative Agreement Act of 1976."

2. PROPOSAL SUBMISSION, EVALUATION, AND AWARD

a. While maintaining its traditional policy of prescribing proposal procedures through program announcements and solicitations, NSF recognizes that OMB Circulars A–95, A–110, and A–111 and FMC 74–7 prescribe a standard Federal assistance multipurpose facesheet for certain purposes.

b. Chapter II prescribes a new award budget to replace the combination grant budget and fiscal report.

c. Since some of the Attachments to FMC 74–7 and OMB Circular A–110 distinguish between the Federal share and the non-Federal share of project costs, NSF is requiring estimates of total project costs, and distinguishing between the two shares, both in the proposal budget and in the award budget.

d. Chapter II contains additional provisions concerning proposals involving consultant services or expensive special purpose equipment.

3. GRANTEE STANDARDS

a. In addition to continuing the financial management standards required by section 510 of NSF 73–26, Chapter III contains the new procurement standards required by A–110 and FMC 74–7.

b. It expands those standards to specifically include procurement of consultants, and prescribes a variant of the A–110 and FMC 74–7 property management standards to cover expensive research-related equipment.

c. It refines the provisions of section 140 of NSF 73–26 which requires certain data from prospective grantees, for greater consistency with both the new OMB standards and with the requirements of FPR Subpart 1–1.12, concerning responsible prospective contractors.

4. PAYMENT AND FINANCIAL REPORTING REQUIREMENTS

a. Chapter IV prescribes payment policy, methods and procedures contained in Treasury Circular 1075 (revised) and A–110. The new Treasury Department Regional Disbursing Office letter of credit system is included.

b. It prescribes a machine-formated version of the new Federal Cash Transactions Report prescribed by A–110 and FMC 74–7 to replace the traditional NSF Quarterly Expenditure Report.

5. ALLOWABILITY OF COSTS

a. NSF criteria as to the allowability of costs evolved over the last quarter century. Chapter V prescribes that their allowability shall be in accordance with the Federal cost principles in effect as of the date of the award.

b. It also delegates to awardees certain prior approval authority.

6. PROJECT AND AWARD MANAGEMENT

a. Chapter VI implements the various Parts of FMC 73–7 concerning changes in project direction and management and expenditure approval procedures, and the various Attachments to A–110 and FMC 74–7 concerning those and other post-award administration matters.

b. It prescribes an organizational prior approval system to implement the monitoring requirements of A–110 and FMC 74–7 and the budget revision procedures of those Circulars and of FMC 73–7. It clarifies NSF lines of authority for such prior approvals as are not delegated to the performing organization (or awardee, as appropriate).

c. It distinguishes between various requirements under grants and other agreements.

d. It promulgates the new A–110 suspension and termination procedures to replace the traditional revocation procedures.

e. The new Financial Status Report is prescribed as a part of the award closeout procedures in lieu of the traditional NSF fiscal report. Because of its requirement to report cost sharing on an award-by-award basis, the NSF cost sharing procedures are revised. Its requirements for reporting project income are revised slightly to conform with the requirements of the Senate Committee on Appropriations with respect to royalty income generated by the sale of federally-supported education materials.

f. The provisions of Notice No. 62 are revised both to reflect the new Financial Status Report and to recognize the differences between grant and other agreement reporting requirements.

7. OTHER CONSIDERATIONS

Chapter VII summarizes various other policies and practices which do not necessarily apply to every award.

8. GENERAL PROVISIONS

Separate appendices contain the general provisions for grants and for various other agreements.

NOTE.—These will be published for comment in a subsequent issue of the FEDERAL REGISTER.

CHAPTER I—BASIC INFORMATION

This chapter provides basic information about the National Science Foundation, its organization, award policies, and this "Manual". It consists of the following topics:

100 The National Science Foundation
110 The NSF Grant Policy Manual
120 Types of NSF awards
130 NSF—awardee relationships
140 NSF organization

100 THE NATIONAL SCIENCE FOUNDATION

101 GENERAL

The National Science Foundation is an agency of the Federal Government established in 1950 to promote and advance scientific progress in the United States. The Foundation fulfills this responsibility primarily by sponsoring scientific research, encouraging and supporting improvements in science education, and fostering scientific information exchange. NSF does not itself conduct research or carry out education projects. Recipients of NSF support have full responsibility, in accordance with the terms of their grants or other agreements, for the conduct of their projects or activities and for the results achieved.

102 BASIC AUTHORITY

a. The basic authority of the National Science Foundation is contained in the National Science Foundation Act of 1950 (Pub. L. 81–507, as amended; 42 U.S.C. 1861 et. seq.).

b. Among other things, Sec. 3a of the NSF Act (42 U.S.C. 1862) authorizes and directs the Foundation to:

(1) Initiate and support basic scientific research and programs to strengthen scientific research potential by making contracts or other arrangements (including grants, loans, and other forms of assistance) to support such scientific activities, without restriction as to the type of performance;

(2) Award scholarships and graduate fellowships in the sciences; and

(3) Foster the interchange of scientific information among scientists in the United States and foreign countries.

c. Sec. 3c of the Act also authorizes NSF to initiate and support applied research at academic institutions and other nonprofit organizations, and, when so directed by the President, to support applied scientific research relevant to national problems involving the public interest through other appropriate organizations. By letter of April 13, 1972, the President implemented the extended authority of Sec. 3c in the following terms:

The Foundation, in making grants or contracts for applied scientific research relevant to national problems involving the public interest, may support such work at other than academic and nonprofit institutions when the Director of the National Science Foundation determines that it would be advantageous to use the capabilities of such other institutions to accomplish the program objectives.

d. Sec. 3e of the Act prescribes that one of the objectives of the Foundation shall be to strengthen research and education in the sciences throughout the United States and to avoid undue concentration of such research and education.

e. Sec. 11 of the Act (42 U.S.C. 1870) provides broad authority to the Foundation to, among other things:

(1) Enter into contracts or other arrangements for the performance by organizations or individuals in the United States and foreign countries (including other government agencies) of such scientific activities as the Foundation deems necessary, without legal consideration, without performance or other bonds, and without regard to Section 3648 of the Revised Statutes;

(2) Make advance, progress, or other payments which relate to scientific activities without regard to Sec. 3648 of the Revised Statutes (31 U.S.C. 529);

(3) Publish or arrange for the publication of scientific and technical information without regard to various statutes.

e. Sec. 14(c) of the Act (42 U.S.C. 1873) preclude the Foundation from operating any laboratories or pilot plants.

f. Unlike some other Federal agencies, NSF does not rely on the so-called Grant Act of 1958 (42 U.S.C. 1891–1983) for its authority to award grants in support of scientific research.

110 THE NSF GRANT POLICY MANUAL

111 PURPOSE, SCOPE, AND APPLICABILITY

a. This NSF "Grant Policy Manual" establishes uniform polices and procedures relating to the award and administration of NSF asistance and support through grants and other agreements awarded pursuant to the authority contained in the NSF Act. It is issued pursuant to the authority contained in section 11(a) of the Act (42 U.S.C. 1870).

b. It implements the Public Laws, Executive Orders, and other directives listed in Exhibit 1–1 insofar as they pertain to NSF nonprocurement awards.

c. In the event of discrepancy between any existing NSF publication and this "Manual", the provisions of the "Manual" shall govern on and after the effective date stated in the Preface. In the event of discrepancy between any future NSF publication and this "Manual", the provisions of the "Manual" shall govern unless the publication is a numbered NSF publication which specifically states that its provisions supersede specific sections of this Manual.

d. This "Manual" is applicable to all NSF grants, to all types of grantee institutions and organizations, awarded on and after the effective date stated in the Preface. The Grant General Provisions contained in the Appendix will be incorporated by reference in the grant instrument. Those general provisions may be modified only by a special provision in the grant instrument or numbered amendment thereto. This "Manual" is applicable to other nonprocurement agreements to the extent indicated in the award instrument. It is not applicable to procurement contracts.

112 GENERAL ORGANIZATION AND CITATION

a. This "Grant Policy Manual" is organized into chapters which correspond in general to the sequence of events from proposal submission through award closeout. Other considerations which either are not universally applicable or which do not necessarily follow the proposal-award cycle are contained in a separate Chapter VII. Chapters are subdivided into sections which cover single subjects within the scope of the chapter. Preceding the numbered chapters are a Preface, which summarizes changes from the predecessor "Grant Administration Manual" and states the effective date of this "Manual", and the Table of Contents. Following the numbered Chapters are the Glossary, General Provisions, and Index.

b. For purposes of brevity, the NSF "Grant Policy Manual" may be cited as "NSF GPM." Specific Sections may be cited by appending the Section number, e.g., "NSF GPM 112b."

113 CHANGES

Changes of this "Manual" will be issued under serially numbered Transmittal Notices, signed by the Assistant Director for Administration. Each such notice will describe the new material transmitted, the old material superseded, and the purpose of the change. New material will be printed in looseleaf form, containing revised or additional pages, bearing the change number and date. Approximately each three years or when required, the "Manual" will be reissued.

114 DEFINITIONS

The words and terms used in this "Manual" shall have the meanings set forth in the applicable chapter, if defined therein, or in the Glossary.

120 TYPES OF NSF AWARDS

121 BACKGROUND

a. The types of activities funded by the Foundation and the purposes of NSF funding are varied. Consequently, the degree of NSF responsibility for and management control of such activities also varies. NSF traditionally has used grants for its basic research and other support activities. These grants generally have not required significant NSF involvement in the conduct or management of the supported activity.

b. It is the policy of the Foundation, consistent with the general purposes and limitations specified in the NSF Act and other applicable authority, to use the most appropriate methods and arrangements, consistent with sound business and management practices, to achieve program objectives. Such methods and arrangements will be consistent with the purpose of NSF funding and the nature of the activity and will reflect the degree of NSF involvement in the activity.

c. The key factor in determining the terms and conditions appropriate to a particular award for scientific research or related activities is not the type of performing organization which will be the recipient of the award, and is not necessarily the NSF program recommending the award, but is the type of project which is to be conducted.

d. This Manual is based on the premise that, in furtherance of its basic mission to foster the health of science, NSF grant administration requirements should continue to be:

(a) As minimal as possible, consistent with the need to ensure that Federal funds made available to NSF by the Congress are wisely spent for the purposes intended;

(b) As flexible as possible, to permit optimum freedom for scientific inquiry; and

(c) As consistent as possible among both NSF Programs and categories of grantees to improve mutual understanding and administrative efficiency.

122 DEFINITIONS

The following basic terms pertaining to NSF awards have the indicated meanings.

Assistance. The provision of money, services, or property to a non-Federal recipient for the purpose of supporting or stimulating activities in the national interest.

Award. Grant or other agreement awarded by NSF under the authority of the NSF Act of 1950, as amended, and this "Manual" to any type of recipient to support a science-related project. Excludes contracts for the procurement of goods or services for Government use.

Awardee. The grantee or recipient of other assistance. See also "performing organization."

Award Instrument. The document by means of which Federal assistance is provided to a recipient. NSF award instruments consist of:

a. The award letter and any numbered amendments thereto (see Exhibit 2–7);

b. The award budget, which indicates the amounts, by categories of expense, on which NSF has based its support (see Exhibit 2–8);

c. The proposal referenced in the award letter;

d. The general provisions applicable to that type of NSF award (see Appendix); and

e. Such special provisions as are applicable to a specific award.

Grant. An award by which money, or property provided in lieu of money, is paid or furnished by the Federal Government to a recipient under a program that provides financial assistance, support, or stimulation to accomplish a public purpose where no substantial involvement is anticipated between NSF, acting for the Federal government, and the recipient during performance of the project.

Grantee. The institution, public or private nonprofit organization, or other legally accountable entity that receives a grant, and assumes legal and financial responsibility and accountability both for the awarded funds and for the performance of the grant-supported activity. In certain cases, a grantee may be an individual in the United States. See also "Awardee," "Performing Organization," or "Recipient."

Other Agreement. An award by which money, or property provided in lieu of money, is paid or furnished by the Federal Government to a recipient under a program that provides financial assistance, support, or stimulation to accomplish a public purpose where substantial involvement is anticipated between NSF, acting for the Federal government, and the recipient during performance of the project. The term "other agreement" does not include a contract which is required to be entered into and administered under procurement laws and regulations.

Performing organization. The organization or institution which conducts a science project supported by an NSF grant or other agreement. In most cases, same as awardee, although in some cases (e.g., some State colleges or universities) the "awardee" may be a legal entity related to but different from "performing organization."

Project. The activity outlined in the proposal and approved for NSF support.

Recipient. The institution or organization to which an NSF grant or other agreement is awarded. See also "awardee," "grantee," and "performing organization."

123 TYPES OF AWARD INSTRUMENTS

On and after the effective date of this Manual, non-procurement award instruments will be used by the Foundation as provided below:

123.1 *Grants.* Grants will be used to support performing organizations in carrying out activities for which only minimum NSF involvement is required during performance. The activities will be carried out by performing organizations in accordance with the grant instrument. NSF will monitor performance of the activities to the extent necessary to keep generally informed of progress and to assure compliance with the applicable standards as outlined in section 610, "Monitoring and Reporting Project Performance."

123.2 *Other Agreements.* Other agreements will be used by NSF for awards when NSF's purpose is to support or stimulate performing organizations to carry out activities which require substantial NSF technical or management involvement during performance. For example, they may be used if an activity is complex technically and managerially, requires extensive or close coordination with other Federally-supported work, is a new type of effort or is one in which NSF decides to be involved.

124 CATEGORIES OF NSF GRANTS

NSF awards two basic categories of grants, described in this Section. See also section 250, "Additional Funding Support."

124.1 *Standard Grants.* Standard grants will be awarded for support periods ranging from six months to three years. Support of up to five years may be awarded in exceptional cases where the project warrants and the award amount is modest. Funds for the whole award period of a standard grant are fully obligated by NSF in a single action.

124.2 *Continuing Grants.* a. Continuing grants are awarded to support long term projects of high scientific merit. Such grants provide initial support for one year and, subject to the availability of funds and satisfactory progress of the work, will provide additional annual increments not to exceed a total of five years' support for the entire project.

b. Normally the grant instrument will specify the full term to be supported and the dollar amounts for each future annual increment of support. For awards with annual levels exceeding $200,000, the grant letter may state an approximate support level with the provision that the actual level will be negotiated annually. See section 253, "Continuing Awards."

125 CATEGORIES OF OTHER NSF AGREEMENTS [RESERVED]

130 NSF-AWARDEE RELATIONSHIPS

131 BASIC REQUIREMENTS

An NSF award is made to an organization, known as the awardee, rather than to the individual principal investigator or project director who proposes to conduct the project. The award establishes a relationship between NSF and the recipient in which:

a. NSF agrees to provide full or partial financial support for the costs of the project to be performed under the provisions of the award instrument.

b. The official to whom the award letter is addressed agrees, on behalf of the recipient, to the performance of the project, to the prudent management of the funds provided by the award and to the provisions of the award instrument.

132 AWARD ACCEPTANCE

a. The awardee is free to accept or reject the award. However, in the absence of a specific acceptance, action to obtain Federal funds constitutes acceptance of an award. In some cases, NSF may require an awardee to formally accept an award in writing.

140 NSF ORGANIZATION

141 GENERAL

a. Reporting to the Director, National Science Foundation, are several staff Offices, the Directorate for Administration, and six scientific/technological Directorates. The current NSF organization chart is at Exhibit 1–2.

b. Of most direct concern to awardees are the Central Processing Section to which formal proposals are sent (section 200), the appropriate NSF Program Officer (section 132, below), the Grants and Contracts Office (section 133 below), and the Grantee and Cash Management Branch (section 134 below).

142 NSF PROGRAM OFFICERS

The NSF Program Officers are the principal operational personnel in the scientific/technological directorates. They review, evaluate and recommend proposals for award. In the event NSF makes an award, the scientific aspects will be monitored by the appropriate NSF Program Officer, whose name and telephone number are shown in award instruments issued on and after the effective date of this Manual (see Exhibit 2–7). Changes requiring NSF approval must be approved by the responsible program officer and, in some cases, by the grants officer as outlined in Chapter VI.

143 DIVISION OF GRANTS AND CONTRACTS

a. The NSF Division of Grants and Contracts has the responsibility for assuring that any proposed award is consistent with applicable policy, regulations, directives, and fund certifications. The Division of Grants and Contracts is the only NSF office authorized to issue award letters and to obligate NSF funds for expenditures under awards.

144 GRANTEE AND CASH MANAGEMENT BRANCH

The Grantee and Cash Management Branch of the Division of Financial and Administrative Management (telephone 202–632–4006) is available to assist the business officer in matters of payment and financial reporting discussed in Chapter IV.

Exhibits:

1–1 Public Laws, Executive Orders, and Other Directives
1–2 NSF Organization Chart

CHAPTER II.—PROPOSAL SUBMISSION, EVALUATION, AND AWARD

This chapter discusses the overall aspects of a proposal becoming an award and specifically highlights perspectives of the following topics:

200 Submission of Proposals
210 Project Notification and Review System
220 Joint Funding Simplification Act
230 Evaluation of Proposals
240 NSF Award Periods
250 Additional Funding Support

200 SUBMISSION OF PROPOSALS

201 GENERAL

a. NSF makes awards for the following general purposes: basic research; applied research; science education; studies, surveys and analyses; science information; equipment and facilities; ship operations and oceanographic facilities; science policy and technology assessment; intergovernmental science activities; international cooperative scientific activities; symposia, workshops and conferences; research initiation; dissertations; group travel, and individual travel.

b. The purpose of a proposal is to provide a statement establishing the objectives and the scientific significance of the proposed activity, the technical adequacy of the project director/principal investigator and of the institutional base, and the level of funding required. Excluding group travel and individual travel, the proposal should also establish the suitability of the methods or approach to be used.

c. The proposal is intended to persuade the Foundation's scientific and technical staff and members of the scientific community (who will review the proposal and advise the Foundation) that the proposed activity is both sound and worthy of support under the NSF criteria for the selection of research projects (Exhibit 2–1), or such other specific criteria as are specified in the applicable publication described in section 202. The proposal should be succinct, self contained and written with care and thoroughness.

d. Before submitting the proposal to NSF, the authorized organizational representative should determine that, among other things:

(1) The proposed project is consistent with the policies and goals of the submitting organization;

(2) The organization has, or can make available, the necessary facilities, general purpose equipment, most of the special purpose equipment, and services for the conduct of the project;

(3) The organization can make available the necessary personnel for the amounts of time estimated to be required;

(4) The organization has legal authority to accept awards and the requisite policies, procedures, and personnel to meet the standards shown in Chapter III;

(5) The total costs estimated to be required for the conduct of the project are reasonable and there is a plan for meeting such costs either from award funds or from some other source;

(6) If the proposal is for a research project which has not specifically been solicited by NSF, the submitting organization is willing to share in the costs of such project as outlined in section 642;

(7) The costs which NSF is being asked to support are allowable and the treatment of such costs as direct or indirect in the proposal budget is consistent with Federal cost principles and with the policies of the submitting organization (see Chapter V).

e. If the submitting organization does not already have an indirect cost base and rate recognized by NSF or by the Cognizant Federal Negotiating Agency, an indirect cost proposal should be separately submitted.

f. If not previously done, the submitting organization should also separately furnish the organization and management information described in section 340 and the Civil Rights Assurance described in section 700.

2 NSF MECHANISMS FOR GENERATING PROPOSALS

Program announcements will be used to generate unsolicited proposals for NSF support. Any resultant award will generally be in the form of a grant. Program Solicitations will be used to generate solicited proposals for NSF support in targeted areas. Any resultant award will either be a grant or other agreement. Requests for Proposals (RFP's) will be used to generate proposals for the procurement of products or services for NSF or the Government. Any resultant award will be in the form of a contract. Basic guidance for the use of each mechanism follows:

202.1 *Program Announcement.* Includes program brochures, announcements, guidelines for submission of proposals, published program plans, etc. Program Announcements are the primary mechanisms used by NSF to generate proposals. The information and general guidelines provided may be applicable to an entire program directorate or to a single program element. Program Announcements do not identify specific projects, generally do not contain proposal due dates and tend to have a greater life expectancy than other proposal generation mechanisms. Proposals submitted in response to program announcements are considered unsolicited and if for research, the resulting awards are subject to statutory cost sharing. (See section 640, "Cost Sharing and Matching.") Proposals are evaluated pursuant to general evaluation criteria (see Exhbit 2–1) and compete with each other but less directly than under solicitation mechanisms.

202.2 *Program Solicitation.* More definitive and specific than a program announcement, it generally describes types of projects the program wishes to fund and normally applies for a more limited period of time, with specific proposal due dates, as contrasted with the more open-ended program announcement. Competition among proposals is more focused, and special evaluation and selection procedures are identified and used. Statutory cost sharing is not required and awards may provide for full costs and fees where appropriate.

202.3 *Request for Proposals.* This is a procurement solicitation mechanism under the Federal Procurement Regulations (Title 41, Chapter 1, CFR) as amplified by the NSF procurement regulations (Title 41, Chapter 25, CFR). Proposals are usually generated for one specific award for that particular project. Statutory cost sharing is not required and awards may provide for full costs and fees where appropriate. This Manual is not aplicable to procurement transactions.

203 BASIC OUTLINE FOR PREPARING AND SUBMITTING PROPOSALS

203.1 *Categories of Applicants.* a. Proposals to NSF for nonprocurement support may be recived from and awards made to the following types of performing organizations, defined in section 340.1:

(1) NonProfit Academic Institutions (Colleges and Universities);

(2) Other Nonprofit Organizations (such as independent museums; observatories; research laboratories; hospitals; stock centers; consortia; professional, scientific and educational associations or societies; and similar organizations.

(3) Commercial firms (including profit making educational institutions);

(4) State and local governments and agencies thereunder;

(5) Foreign Institutions or Organizations;

a. The Foundation rarely provides dollar support to foreign institutions. However, support may be provided to foreign institutions utilizing U.S.-owned excess foreign currencies (See section 730, "International Considerations").

b. NSF rarely awards grants to unaffiliated scientists or other individuals who are not employed by any of the above organizations or institutions. However, NSF may provide support (i.e., airline tickets) for international travel (see section 734, "International Travel Support Awards") directly to individual scientists, regardless of organizational affiliation.

c. Proposals for NSF support may also be received from and interagency support agreements concluded with other Federal agencies.

203.2 *When To Submit Proposals.* Unsolicited proposals should be formally submitted to NSF at least six and preferably eight months prior to the requested effective date of the project activity. Proposals may be submitted at any time unless they are in response to:

a. A Program Solicitation (frequently used by NSF's Applied Research Directorate). Program Solicitations always have fixed deadlines for receipt of proposals by NSF (see section 202.2, "Program Solicitation").

b. Those "Program Announcements," "Guides for Preparation of Proposals," etc. that contain fixed deadlines for receipt of proposals by NSF (see section 202.1, "Program Announcement"). Most of the proposals received by NSF's Education Directorate are in response to "Guides for Preparation of Proposals" containing fixed deadline dates. Both the Applied Research Directorate and the Education Directorate as well as NSF's Division of Science Information frequently issue "Program Announcements" with fixed deadline dates.

203.3 *Where to Submit Proposals.* Unless stated otherwise in a Program Solicitation, Program Announcements, etc., 15 copies of each proposal should be forwarded to:

Central Processing Section, National Sience Foundation, Washington, D.C. 20550

The Foundation will acknowledge receipt of each proposal and assign an identification number which should be referred to in all future correspondence concerning the proposal.

203.4 *Standard Application Forms.* a. NSF does not have an "application kit" and does not prescribe the use of standard preapplication or application forms, except for proposals to programs covered by the Project Notification and Review System of OMB Circular A–95, and by Attachment M to OMB Circular A–110. See Section 210, "Project Notification and Review System."

203.5 *NSF Proposal Format.* a. Proposals consist of three parts: cover page, narrative, and budget. (Supplemental documents should be placed in one or more appendixes.)

b. Proposals being forwarded to a particular program in NSF in response to a "specific" NSF program issuance should follow instructions therein on what to submit.

c. Other proposals should follow the guidelines set forth in appropriate general NSF brochures, such as "Grants for Scientific Research" or "RANN Guidelines for the Preparation of Unsolicited Proposals and the Operation of Projects."

d. A brief synopsis of what to submit follows:

(1) Cover Page—Except for proposals to programs covered by A–95 (see section 210), the cover page should follow the general format of Exhibit 2–3, or the applicable program Announcement, Brochure, Solicitation, etc. (See section 203.6 on "Proposal Signatures.")

(2) Narrative—The Narrative contains a brief abstract (200-300 words), table of contents, what is being proposed, objectives and significance of the proposal, general plan of achieving these objectives, relation to the current status of the topic of the proposal addresses, outline (with pertinent references) of what has been done on the topic to date, plans for making the results of the project known and widely available, assurance that the proper facilities and equipment are available, justification for equipment (see section 204.2)and consultants (see section 204.1); the principal publications of senior personnel during the past five years, location of work to be performed if off campus or away from headquarters, and vitae of senior personnel. Included with the vitae should be information on *all* current awards or consultant arrangements to which time is committed (title of project, beginning and ending date of award, amount of time (man months) being devoted to the project and salary arrangements thereto, source of funds, annual budget level). In addition, the vitae should provide similar data on all proposed projects which are being considered by or which will be submitted in the near future to other possible sponsors, including other NSF programs.

(3) Proposal Budget—See Exhibit 2–4 for suggested format.

203.6 *Proposal Signatures.* NSF requires that the original of each proposal for NSF support be signed by the principal investigator (PI), and co-principal investigator if more than one principal investigator is involved in the project, or project director(s) (PD) who wishes to undertake the project, and be endorsed by the authorized organizational representative or his designee. Proposing organizations may have additional signature requirements. The principal investigator (PI)/project director (PD) is the individual designated by the performing organization and approved by NSF who will be responsible for the scientific or technical direction of the project. The term "principal investigator" generally is used in basic research projects, while the term "project director" generally is used in science education and other projects. The authorized organizational representative is the administrative official who is empowered to commit the proposing organization to the conduct of a project if NSF agrees to support it.

a. *PI Signature.* The signature of the principal investigator/project director signifies the agreement of the signer to assume responsibility for the scientific or technical direction of the project and for the preparation of required technical reports.

b. *Organizational Endorsement.* By endorsing the cover sheet, the authorized organizational representative affirms on behalf of the proposing organization that all the requirements outlined in this Manual for handling and managing awards can be met.

204 PROPOSALS INVOLVING CONSULTANT SERVICES OR EQUIPMENT

204.1 *Consultant Services.* (a) If the need for a particular consultant is anticipated, and is approved by the organization's prior approval system (section 613), the requirement should be shown in the proposal narrative and budget (see section 203.5d).

(b) Provision for funds in item j of the Award Budget (Exhibit 2–8) normally will constitute NSF approval for the expenditure of Federal funds for the services outlined in the proposal, subject to audit verification.

(c) Unless contemplated in the proposal and approved in the award, the use of consultant services is not authorized in grants.

(d) For other agreements, if consultant services not contemplated in the proposal subsequently are needed, the awardee must request such NSF approvals as are required by the terms of the agreement.

204.2 *Equipment.* If a proposal for NSF support involves the purchase or lease of "expensive special purpose equipment" (i.e., having a unit acquisition cost exceeding $25,000), the authorized organizational representative must certify on the proposal budget (Exhibit 2–4) that the equipment is (a) essential and not reasonably available and accessible to the project and, if funded by NSF will be subject to (b) reasonable inventory controls and maintenance procedures and (c) organizational policies designed to enhance multiple or shared use on other projects if such other use will not interfere with the work on the project for which the equipment is being acquired (see section 332, "Equipment Management Standards").

205 PROPOSALS FOR MASTER AWARDS

205.1 *Definition.* A proposal for a master award is a proposal from one institution or organization for support of a project which will be carried out through an ad hoc cooperative arrangement between or among the proposed awardee and one or more other extramural performers which are legally independent of the proposed awardee. Examples of such projects are:

a. Those in which investigators at two or more independent organizations carry on various phases of the principal activity of the project.

b. Those in which cooperating organizations provide essential services or common data information for the project.

205.2 *Tentative Agreements.* Prior to submission of a proposal for a master award, the proposing coordinating principal investigator or project director and the submitting organization and all cooperating organizations should reach tentative agreement on both the scientific and administrative aspects of the proposed cooperative project.

205.3 *Informal Proposal.* Submission of an informal proposal to the cognizant NSF Program is encouraged prior to formalizing the application for a Master award.

205.4 *What to Submit.* a. The formal proposal should contain the information requested in the proposal submission requirements of the applicable NSF Program (see section 203.5, "NSF Proposal Format"). It should clearly outline the prime awardee, the scope of the work to be undertaken by each of the cooperating institutions, identify the overall project director and the principal investigators at each cooperating organization, and outline procedures for monitoring and directing the project effort. In lieu of the single proposal budget required by other awards, it should contain separate proposed budgets, listing both direct and indirect costs, for each cooperating organization. The budget for the prospective awardee should show the budget line items for that institution, and, under the "other direct cost" category, the totals of the proposed award amounts for the cooperating institutions.

b. The formal proposal cover page should contain a certification, signed by the over-all Project Director and authorized organizational representative, indicating that appropriate scientists and administrative officials in each cooperating organization concur in the submission of this proposal and agree to conduct their part of the project, if approved.

205.5 *Formal Agreement Between Awardee and Cooperating Organizations*—a. *General.* Following receipt of an NSF master award, the awardee should formalize by contract or other agreement, the tentative agreement previously negotiated with each cooperating organization. The agreement will set out the operational guidelines for control and direction of the project effort to facilitate a smoothly functioning cooperative venture. Each contract or other agreement should provide for the provisions summarized in b through i below.

b. *Scientific Considerations.* The agreement should identify the coordinating principal investigator or project director and the responsible persons at each cooperating organization and describe their responsibilities in the project. Specific procedures for monitoring and directing the project effort, and for required technical reports, should also be delineated.

c. *Fiscal Considerations.* The agreement should cite specific procedures to be followed in funding cooperating organizations for their effort and should include dollar ceilings, the time schedule and method of payment, the type of supporting documents required, and procedures for review and approval of expenditure of award funds at each organization. (See Chapters V, "Allowability of Costs," and IV, "Payment and Financial Reporting Requirements."

d. *Project Changes.* The agreement should provide for awardee approval of the types of project changes by cooperating institutions which Chapter VI requires be approved by NSF.

e. *Equipment.* The agreement should provide for the management of equipment acquired with funds made available through the award. Unless otherwise specified by the NSF award letter, the agreement may provide that title will vest either in the awardee or the cooperating organization, (if an academic institution or other public or private nonprofit organization) with disposition to be consistent with the provisions of section 770, "Equipment Title, Use, and Disposition."

f. *Award-related Income.* Unless otherwise specified, the agreement should provide for the management of any income generated as a result of the award, in a manner consistent with section 650, "Project Income."

g. *Patents and Copyrights.* Unless otherwise specified, the agreement should provide for publication and copyrights, rights in data, and patents and inventions in a manner consistent with section 750, "Intangible Property."

h. *Records Retention and Audit.* The agreement should contain provisions analogous to those in section 680, "Records Retention and Audit."

i. *Civil Rights Assurance—Subrecipient.* The agreement should contain necessary subrecipient civil rights language. See section 704, "Civil Rights Assurance—Subrecipient."

206 SALARY INFORMATION AND DISCLOSURE SURE

a. Proposals for NSF support are normally reviewed not only by Foundation staff but also by selected outside review-

ers chosen for their knowledge in the subject areas of proposed projects. An integral part of most proposals is a budget which includes the proposed commitment to the project by named senior personnel of a specified amount of time or effort for which the proposal requests NSF support and the corresponding salary amounts. Unless the proposing organization itemizes these salary amounts in a separate statement, rather than in the budget itself, this information is available to outside reviewers as part of the evaluation process.

b. Any organization submitting a proposal for support under any NSF program has the option of listing in a separate schedule the salary amounts for named senior project personnel which it proposes be reimbursed through an NSF award. If this option is selected, the proposal budget may substitute asterisks for the expressions of both the time or effort for which NSF support is requested and the corresponding salary amounts. In this event, the omitted information is to be furnished in a separate salary schedule with the legend, "It is requested that the following salary information not be released to persons outside the Government," two copies of which should be attached to the original proposal budget only. Whether or not the option is exercised, the proposal budget should continue to list the names of senior project personnel; the total senior personnel salaries for which NSF funding is requested; and other totals called for in the budget format.

c. Proposals resulting in NSF awards, including the budget, become part of the award instrument and will be made available to the public, upon request, pursuant to NSF procedures under the Freedom of Information Act of 1974 (see § 722.4, "Freedom of Information Act.") However, any separate salary schedule bearing the legend described in the preceeding paragraph will be considered confidential and withheld from release to the extent permitted by law.

207 ENVIRONMENTAL IMPACT STATEMENT

a. The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4332) requires that Federal agencies add environmental considerations to those criteria which are traditionally used to decide on: (1) New (proposed) actions to be taken, and (2) the continued funding of ongoing actions. "Environmental" encompasses all actions that affect the quality of the human environment.

b. Identificaiton of actual and/or potential environmental impacts requires the continuous analysis of ongoing actions. Awardees must provide information in the proposal on such impacts (and any changes that occur during the course of the award) sufficient to assist Foundation officials in assessing the environmental consequences of ongoing actions. NSF will determine (1) the adequacy of the information submitted; (2) whether or not additional information is needed; and (3) whether or not a full scale environmental impact statement will be necessary.

c. The NSF regulation is contained in 45 CFR Part 640.

208 FLOOD DISASTER PROTECTION ACT

a. The Flood Disaster Protection Act of 1973 (28 U.S.C. 4001 et. seq.) provides that no Federal agency shall approve any financial assistance for "acquisition or construction" purposes for use in any area identified by the Department of Housing and Urban Development (HUD) as an area having special flood hazards and in which the sale of flood insurance has been made available under the National Flood Insurance Act of 1968 unless the building and any related equipment is covered by adequate flood insurance.

b. NSF awardees located in special flood hazard areas identified by HUD and where the sale of flood insurance has been made available under the National Flood Insurance Act, will:

(1) With respect to NSF awards for the construction of a building or facility, furnish the necessary proof of compliance with the Act before an award can be made, regardless of the dollar amount of the award.

(2) With respect to NSF research awards, and any other award where assistance for repair, alteration, or improvement of a building or facility is incidental, proof of compliance with the Act will be necessary only where the line item amount budgeted for repair, construction or improvement exceeds $10,000.

c. In the above cases where insurance is required, the proposal should contain either a certification that (a) the facilities or equipment are not located in an identified special flood hazard area or (b) adequate flood insurance under this Act has been obtained.

d. Applicants requiring flood insurance coverage should contact their local government or local federally insured financial institutions to determine areas identified as having special flood hazards and the availability of flood insurance in their community.

209 PROTECTION OF PROPERTIES IN THE NATIONAL REGISTER OF HISTORIC PLACES

The National Historic Preservation Act of 1966 (16 U.S.C. 470) requires that Federal Agencies institute procedures to assure that where as a result of Federal action or assistance a property listed on the National Register of Historic Places (by the Federal Advisory Council on Historic Preservation) is to be substantially altered or demolished, timely steps be taken to make or have made records, including measured drawings, photographs and maps, of the property, and that copy of such records then be deposited in the Library of Congress for future use and reference.

Proposed awardees must provide such information in the proposal on such alterations or demolishments (and any changes that occur during the course of the award) in order that NSF, in conjunction with the Advisory Council on Historic Preservation, may determine what steps need to be taken by the awardee to protect or establish and preserve the record of the property.

210 PROJECT NOTIFICATION AND REVIEW SYSTEM (PNRS)

211 BACKGROUND

a. OMB Circular A–95 (Revised January 2, 1976) implements section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, Title IV of the Intergovernmental Cooperation Act of 1968, and section 102(2)(c) of the National Environmental Policy Act of 1969 by establishing requirements relating to:

(1) A Project Notification and Review System (PNRS) (Part I),

(2) Direct Federal development (Part II),

(3) State plans (Part III), and

(4) Coordination of planning in multijurisdictional areas (Part IV).

b. Attachment M to OMB Circular A–110 promulgates a standard form (SF 424) to be used as a face sheet for applications for support under programs covered by Part I of Attachment A to A–95, as an optional notification of intent by applicants, and as a Federal report form of actions taken on such applications.

c. NSF has no programs involving the use of land or the construction of public works in metropolitan areas, no development assistance programs, no programs requiring State plans as a condition of assistance, none involving coordination of planning in multijurisdictional areas, and no programs of grants-in-aid to State and local governments as defined in Section 106 of the Intergovernmental Cooperation Act.

d. Therefore, except for environmental aspects, covered in section 207 of this "Manual," OMB Circular A–95 would not normally be applicable to NSF. However, since our Intergovernmental Science Program is related to certain aspects of the afore cited programs, it is included among the list of those programs covered by the PNRS requirements of A–95 (listed in the "Catalog of Federal Domestic Assistance" as number 47.036) as of the date of the Manual.

e. Treasury Circular 1082 provides procedures for the notification to States of award information. In view of d, above, NSF uses the supplemental reporting procedures of subparagraph 6B of TC 1082, summarized in section 212d, below.

f. The NSF regulations to implement OMB Circular A–95 and Treasury Circular 1082 are contained in 45 CFR Part 660.

212 PNRS PROCEDURES

a. Any organization desiring to submit a proposal for support under the Intergovernmental Science Program must (1) notify the appropriate State clearinghouse in Exhibit 2–5 of intent to apply for NSF support, using the notification form and procedures prescribed by the clearinghouse; and (2) use the standard Federal Assistance Application Form (SF 424), reproduced in Exhibit 2–6, as the "face sheet" for the proposal, in lieu of the NSF "cover page" format illustrated in Exhibit 2–3.

b. NSF will return to the originator any formal proposal to the Intergovernmental Science Program which does not contain the State Application Identifier (SAI) number and certification. However, unless the proposal is for support under the Intergovernmental Science Program, such State clearinghouse forms are neither required nor desired by NSF. They constitute unnecessary paperwork which serves no useful purpose for NSF.

c. Within seven days of taking action (declination or award) on the proposal, NSF will complete the SF 424 and return it to the State clearinghouse.

d. To implement the related requirements of Treasury Circular 1082, NSF will furnish to each State Central Information Reception Agency (SCIRA) listed in Exhibit 2–5 a quarterly "Statewide Award Report," summarizing basic data on each award to any institution or organization within the State, under any NSF program.

220 JOINT FUNDING SIMPLIFICATION ACT

a. The Joint Funding Simplification Act of 1974 (42 U.S.C. 4251 et seq.) provides for State and local governments and nonprofit organizations to combine State and Federal resources in support of projects of common interest to the governments and organizations concerned.

b. OMB Circular A–111 has established procedures for the submission of applications for joint funding through State and areawide clearinghouses and Federal Regional Councils.

c. NSF has been unable to identify any of its programs which are particularly suitable or appropriate for funding under the A–111 procedures. Prospective applicants should make preliminary inquiries to the Foundation before initiating formal applications.

230 EVALUATION OF PROPOSALS

231 PEER REVIEW AND MERIT SELECTION

The National Science Foundation's scientists, engineers and other program experts evaluate all proposals submitted to the Foundation. To assist them in the evaluation process they generally obtain the advice of scientists and others who are specialists in the fields covered in the proposals. The guidelines for NSF Program Officers on selection of reviewers is shown in Exhibit 2–2. Proposals must contain pertinent information in sufficient detail to define the nature and merit of the proposed project. In general, proposals will be supported in order of merit to the extent permitted by available funds. In cases of proposals of substantially equal merit, consideration is given to such factors as geographic distribution and general subject-matter coverage of awards made in that program.

232 CRITERIA

The general criteria used in the selection by NSF of projects to support is shown in Exhibit 2–1.

Other and more specific criteria may be contained in the various Program Solicitations, Program Announcements, Guidebooks for the Preparation of Proposals, etc., which are applicable to certain types of projects, proposals, or programs.

233 REVISIONS TO PROPOSALS MADE DURING REVIEW PROCESS

233.1 *Revised Budgets.* Whenever the annual rate requested has been deduced or increased by NSF by 10 percent or $10,000 (whichever is less), NSF will obtain revised budgets, signed by the principal investigator/project director and countersigned by the authorized organizational representative.

233.2 *Other Changes.* If a significant change is made to the proposal for policy reasons (e.g., restriction of human experimentation) or for other reasons which affect the scope, objectives, or methodology of the proposed project, NSF will obtain a letter of concurrence from the principal investigator/project director countersigned by the authorized organizational representative.

234 NSF ACTION TIME ON PROPOSALS

Although more expeditious handling is possible in some instances, normally action on proposals is taken within six to nine months and will continue on that timetable.

235 RECONSIDERATION OF PROPOSAL DECLINATIONS

A formal procedure for reconsideration of declination actions on proposal was established by NSF Important Notice No. 61 of January 27, 1976 (see Exhibit 2–9).

236 RELEASE OF PEER REVIEW INFORMATION

NSF Notice No. 59 of June 30, 1976 (see Exhibit 2–10), provided that verbatim copies of reviews requested by NSF after January 1, 1976, not including the identity of the reviewer, will be made available to the principal investigator/project director upon request.

240 NSF AWARD PERIODS

241 BACKGROUND

a. Most NSF grants show an effective date, an approximate support period (e.g., one year or two years), and an expiration date. The expiration date encompasses both the approximate period of support and an additional period of up to six months to allow for flexibility in the performance of the project and completion of technical reports and publication arrangements.

242 DEFINITIONS

The following basic terms pertaining to NSF award periods have the indicated meanings:

Effective Date. The date specified in the award letter after which expenditures may be changed to the grant. If no effective date is specified, then the date shown in the upper right corner of the award letter is the effective date. This date remains constant except under exceptional circumstances justifying a formal amendment.

Expiration Date. The date specified in the award letter after which expenditures may not be charged against the award except to satisfy obligations of funds to pay allowable project costs committed on or before that date. The expiration date is normally the last day of the month.

Award Period. The period of time between the effective date and the expiration date of an NSF award shown as a number of months. In many cases the award period includes up to six months of additional time to provide flexibility in the performance of the project and completion of technical reports and publications arrangements.

243 SIGNIFICANCE OF AWARD PERIOD

a. An NSF award gives authority to the recipient to commit and expend funds for allowable costs (see Chapter V) in support of the project, up to the award amount specified in the award letter, at any time during the award period. The amount of the award is calculated to provide support for the number of months requested in the proposal (e.g., 12 or 24 months) or such lesser period as may be funded at the time of the award.

b. Except as provided in §§ 504.3 and 504.4, expenditures may not be charged against an NSF award prior to the effective date or subsequent to the expiration date.

244 CHANGES IN AWARD PERIODS

244.1 *Effective Date.* The effective date of an award will not be changed except under exceptional circumstances. Any request to change the effective date must contain justification of such circumstances, and be signed by the principal investigator and endorsed by the authorized organizational representative. The request should be transmitted to the cognizant NSF program officer for scientific recommendation. If approved, the change will be made by numbered amendment to the award.

244.2 *Expiration Date.* The expiration date may be changed as a result of approval of a request for continued support of a continuing award, for a no-fund award extension, or, in some cases, by renewed support of a standard award or supplemental support. Such approval will be furnished by numbered amendment to the award.

244.3 *No-Fund Extension.* If additional time beyond the established expiration date is required to assure adequate completion of the original scope of work within the funds already made available, a request for no-fund award extension should be received by NSF at least 30 days prior to that date. Such request must contain the signatures both of the principal investigator/project director or his designee and of the authorized organizational representative and should include summaries of progress, funds remaining, and plans to complete that part of the project for which the extension is being requested. The need for an extension of time should be justified. Normally, no single extension may exceed 12 months and only in exceptional cases will more than one extension be allowed. If approved, the extension will be in the form of a numbered amendment to

the award, specifying a new expiration date.

250 ADDITIONAL FUNDING SUPPORT

251 TYPES OF ADDITIONAL FUNDING SUPPORT

Additional funding of a project beyond the original award period will be in the form of "renewed" support, "continued" support, or "Supplemental" support.

252 STANDARD AWARDS

252.1 *Renewed Support.* a. Standard awards will normally be made for durations up to three years (five years in exceptional cases) with the full award amount obligated by NSF at the time of the award. They may be renewed one time by amendment of the original award instrument: *Provided,* That the cumulative duration does not exceed five years.

b. Proposals for renewed support of a project during a subsequent period of time are evaluated in competition with all other pending proposals. Unless there is an explicit provision in the award instrument or in applicable guidelines or program announcements for a modified format or content, a proposal for renewed support should be documented and endorsed as fully as though the proposer were applying for the first time, with all the information required in a proposal for a new project. In addition, a summary of progress to date should be included indicating its relation to the proposed work. In order that awards may be made in time to provide an uninterrupted flow of Federal funding, proposals normally should be submitted to the NSF Central Processing Section (see § 203.3, "Where to Submit Proposals") well in advance of the intended effective date. In the absence of a different submission date prescribed by the award instrument or applicable guidelines, renewal proposals should be submitted at least six months prior to either:

(1) The time additional Federal funding will be required or

(2) The expiration date of the current award, whichever occurs first. In this situation, the proposed budget should estimate the amount of Federal funding authorization which will remain (i.e., the estimated unobligated balance) as of the expiration date.

252.2 *Supplemental Support.* a. If funds provided by an award are insufficient to complete the original scope of work, a request for supplemental funding support may be submitted, with justification of need. If approved, the award will be amended to provide additional funding for the current support period. The amendment letter will specify both the amount of supplemental funding and the cumulative amount awarded through the expiration date, which normally will remain unchanged. In some cases, the expiration date may be advanced, but no more than six months.

b. Normally NSF will not favorably consider requests for supplemental support for such purposes as defraying the costs of increases in salaries, wages or staff benefits or for additional indirect cost reimbursement, whether caused by a change in the indirect cost rate or by changes in direct cost expenditures which affect the indirect cost base.

c. Only in exceptional cases will more than one supplement be approved.

253 CONTINUING AWARDS

253.1 *Request for Continued Support.* a. Requests for funding increments for projects being supported under a continuing award receive high priority within NSF and normally are not considered in competition with proposals for renewed support of standard award projects.

b. In order to ensure continuity of Federal funding, each request for further support within the overall period of the continuing award should be received by NSF at least three months prior to the time additional Federal funding will be required. The letter of request must be signed by the principal investigator(s) and by the authorized organizational representative. Unless otherwise specified by the award or applicable program guidelines, requests for each increment of funds under a continuing award need only include the following in lieu of the detailed proposal data required for other types of awards:

(1) A brief summary of scientific progress;

(2) A statement of funds estimated to remain unobligated at the end of the period for which NSF currently is providing support; and

(3) A proposed budget for the ensuing year.

c. A request for further support beyond the final increment of the continuing grant should be in the form of a new proposal for a new grant.

253.2 *Funding Adjustments*—a. *Insufficient Funds.* If the funding allocated in any incremental award of a continuing award is insufficient to fund the project through the end of the support period, a request for continued support should be initiated far enough in advance so that, if approved, the amendment providing additional funding authorization may be awarded in a timely manner. Any approved supplemental funding normally would be provided at the same time as the next conditionally assured annual funding increment.

b. *Residual Funds.* If the funding allocated in any increment to a continuing award is more than enough to continue the project through the current support period, the awardee must notify NSF. NSF will adjust the succeeding incremental award either by (1) reducing the funding for the next interim period by any residual amount over $1,000 or (2) advancing the expiration date of the next interim period by a maximum of 6 months with no decrease in the planned funding. See also section 635, "Overbudgeted Expenditures."

Exhibits:

2-1 NSF Criteria for the Selection of Research Proposals (39 FR 42954, Dec. 9, 1974).
2-2 NSF Guidelines for Program Officers on Selection of Reviewers (O/D 76-11).
2-3 Cover Page Format.
2-4 Proposal Budget Format.
2-5 Directory of State Clearinghouses (A-95) and SCIRA (TC 1082).
2-6 Standard Form 424, "Federal Assistance".
2-7 Sample NSF Award Letters (a. Grant: b. Other Agreement-Reserved).
2-8 NSF Award Budget.
2-9 Reconsiderations of Proposals Declined by NSF (NSF Notice No. 61).
2-10 National Science Board Resolution on Peer Review Information (NSF Notice No. 59).

CHAPTER III—AWARDEE STANDARDS

300 BACKGROUND

a. OMB Circular A-110 prescribes three sets of standards for academic and other nonprofit recipients of Federal grants or other agreements. These govern financial management systems, procurement policies and procedures and property management. They are analogous to comparable standards prescribed by FMC 74-7 (formerly OMB Circular A-102) for State of local government recipients of Federal grants-in-aid.

b. Subpart 1-1.12 of the Federal Procurement Regulations (FPR) establishes the policy that purchases shall be made only from, and contracts shall be awarded only to, responsible prospective contractors. It prescribes minimum standards and requires acceptable evidence of a contractor's ability to obtain equipment, facilities, and personnel.

c. NSF long as required prospective awardees to furnish basic organization and management information to assist the grants officer in assessing their financial and managerial responsibility.

d. Succeeding sections 310-330 prescribe the OMB standards for all types of recipients of NSF grants or other agreements, including commercial firms and others to whom neither FMC 74-7 nor A-110 is directly applicable. Section 340 prescribes revised NSF requirements for organization and management information for greater consistency with both the FPR and the OMB directives.

310 STANDARDS FOR FINANCIAL MANAGEMENT SYSTEMS

NSF grantees, and recipients of other management systems which meet the requirements of Attachment F to OMB Circular A-110, reproduced as Exhibit 3-1 at the end of this chapter. The succeeding Chapter IV describes how to obtain, manage, and report Federal funds authorized by NSF grants or other agreements to be expended for costs which are allowable under the criteria of Chapter V.

320 PROCUREMENT STANDARDS

321 BACKGROUND

a. Attachment O to OMB Circular A-110, reproduced as Exhibit 3-2, prescribes standards for use by recipients in establishing procedures for the procurement of supplies, equipment, construction, and services with Federal funds. In addition, Attachment J to OMB Circular A-110 requires recipients to obtain prior approvals before expending Federal funds for certain kinds of equipment, construction, and services.

b. NSF awardees are assumed to be established organizations (or, in unusual cases, unaffiliated scientists), with the necessary skills and other resources to conduct the projects proposed for NSF support and the necessary organizational and financial resources to manage them effectively. Awardees normally are expected to utilize the services of their own officers or employees to the maximum feasible extent in managing and performing the activities supported by NSF awards. Where it is necessary for an awardee to contract for the services of persons who are not its officers or employees, it is expected to do so in accordance with written organizational standards which provide for consideration of the factors outlined in the governing Federal cost principles and for an organizational system of justification, approval, and documentation. (See § 516, "Consultant Services" and § 613, "Organizational Prior Approval Systems.")

322 NSF REQUIREMENT

a. NSF grantees, and recipients of other NSF agreements, shall procure in a fashion which meets the requirements of Exhibit 3-2. In addition, such procurements must provide for the following:

(1) Prior NSF approval before any of the research or other substantive project effort supported by an NSF award is contracted, granted, or otherwise transfered. (See section 623), "Subcontracting or Transferring the Project Effort.")

(2) Prior NSF approval before procurement action is initiated to acquire any of the following services or capital items to be charged as a direct cost to the grant or other treatment:

Alterations and Renovation (see section 521);
General purpose equipment (see section 512.3);
Special purpose equipment with a unit acquisition cost of $1,000 or more (see section 512.4);
Tickets for Foreign Travel (see section section 731.2).

(3) Procurement of consultant services only after compliance with the factors specified in the governing cost principles (see section 516) has been verified by an appropriate official of the organization (see section 613).

(4) Arangements for commercial production and/or distribution of books, films, or similar materials, developed with the support of an NSF award specifically for such purpose, only as prescribed in section 761, "Production or Distribution as a Specific Purpose."

b. Unless otherwise specified in a particular award instrument, NSF does not require

(1) That proposed sole source contracts be subject to prior approval (subparagraph 3c(6) of Exhibit 3-2) or

(2) Adherence to the Davis Bacon Act (subparagraph 4f of Exhibit 3-2).

330 PROPERTY MANAGEMENT STANDARDS

331 BACKGROUND

a. Attachment N to OMB Circular A-110 prescribes uniform standards governing the management of tangible and intangible property furnished by the Federal government or whose cost was charged to a project supported by a Federal grant or other agreement.

b. Since NSF grants and other agreements do not involve the acquisition of real property, the standards in paragraph 3 of Attachment N are not applicable to NSF awards.

c. Paragraphs 4 through 7 of Attachment N prescribe (1) policies with respect to title to and disposition of Federally-owned nonexpendable personal property, exempt property, other nonexpendable property, and expendable property and (2) property management standards. Paragraph 2 defines those and other terms, which differ from the terms prescribed by the Federal cost principles described in section 501 of this Manual.

d. NSF is exercising the authority contained in subsection 11e of its Act (42 U.S.C. 1870) to prescribe equipment policies and property management standards which are comparable to those contained in Attachment N to A-110.

e. The various NSF requirements with respect to equipment are contained in the following sections of this Manual:

(1) Proposal submission—section 204.2;
(2) Equipment management standards—section 332;
(3) Definition for and allowability of equipment costs—section 512, and
(4) Equipment title, use and disposition—section 772.

f. Subparagraph 8a of Attachment N prescribes that recipients of Federal grants or other agreements shall report inventions or other patentable items or processes to the sponsoring agency which will determine how the rights shall be allocated and administered. The NSF policies, procedures, and requirements with respect to rights in inventions made in the course of or under grants, fellowships, or other agreements are contained in 45 CFR Part 650 and are summarized in section 750 of this Manual. Subparagraph 8b of Attachment N prescribes OMB policies with respect to copyrights. NSF implementation of that subparagraph with respect to Type 1 projects supported by NSF grants, and alternative provisions with rspect to Type 2 projects supported by other agreements, are contained in section 753 of this Manual.

332 EQUIPMENT MANAGEMENT STANDARDS

332.1 *Applicability.* a. NSF grantees, and recipients of other NSF agreements, shall have equipment management standards which include the procedural requirements in § 332.2 with respect to:

(1) Special purpose equipment with a unit acquisition cost of $10,000 or more,

(2) Special purpose equipment, with a unit acquisition cost of $1,000 or more, for which the grant or other agreement specifically reserves to NSF the right to transfer title to the Federal Government or to a third party as prescribed in section 772 of this Manual, and

(3) Federally-owned equipment furnished by NSF.

b. For the purposes of this § 332, the terms "equipment," "special purpose equipment," and "unit acquisition cost" shall have the meanings prescribed in § 512.2. The term "Federally-owned equipment" does not include excess government property obtained by organizations in accordance with the procedures described in section 740.

332.2 *Awardee Standards.* a. For the types of special purpose equipment described in § 332.1.a.(1) above, such standards shall include provisions for:

(1) Determining the need for, and the nonavailability or nonaccessibility under reasonable circumstances of, any such equipment for which the proposal requests NSF funding support.

(2) Enhancing the multiple or shared use of any such equipment on other projects as prescribed in § 332.3, below.

b. For all types of equipment described in section 332.1 above, such standards shall include provisions for:

(1) Appropriate property records which contain

(a) A description of the equipment, including manufacturer's serial number, model number, or other identification; and whether it is general purpose or special purpose equipment;

(b) Source of the equipment, including grant or other agreement number;

(c) Acquisition date or date received, if furnished by NSF, and cost;

(d) Whether title vests in the awardee or in the Federal Government; and in the latter event, the equipment must be marked to indicate Federal ownership;

(e) Location, use and condition of the equipment and the date the information was reported.

(f) Ultimate disposition date and sales price or fair market value.

(2) A physical inventory and records reconciliation at least once every two years, to include verification of condition and of continued need for the equipment.

(3) A control system to ensure adequate safeguards to prevent loss, damage, or theft. Any loss, damage, or theft of equipment owned by the Federal Government shall be promptly reported.

(4) Adequate maintenance procedures to keep the equipment in good condition.

(5) Procedures for sale or other disposition of unneeded equipment.

332.3 *Shared Use of Equipment.* During the time that (1) special purpose equipment with a unit acquisition cost of $10,000 or more or (2) Federally-owned equipment furnished by NSF is held for use on the project for which it was acquired, the awardee shall make it available for use on other projects if such other use will not interfere with the work on the project for which the property was originally acquired. First preference for such other use shall be given to other projects sponsored by NSF; second preference shall be given to projects sponsored by other Federal agencies. If the property is owned by

the Federal Government, use on other activities not sponsored by the Federal Government shall be permissible unless the award instrument prescribes otherwise.

340 PROSPECTIVE AWARDEE ORGANIZATION AND MANAGEMENT DATA

340.1 *General.* a. Each proposing institution or organization which has not been the recipient of an NSF contract, grant, or other agreement within the previous 2 years must submit basic organization and management information and certifications to the Foundation at the time it submits its formal proposal. A public or private institution of higher education, hospital or other nonprofit organization should send the prescribed material to:

Grants Officer, MPE/BBS/SE Branch, Division of Grants and Contracts.

A commercial firm or State or local government agency should address the information to:

Grants Officer, RA/STIA Branch, Division of Grants and Contracts.

b. For the purposes of this requirement, the following terms have the indicated meanings:

(1) *College or university.* A public or private institution of postsecondary education which, if a U.S. college or university, is listed in the current edition of the "Education Director, Colleges and Universities," published by the U.S. Department of Health, Education, and Welfare and available from the Superintendant of Documents, U.S. Government Printing Office.

(2) *Other nonprofit organization.* Any corporation, trust, association, cooperative, or other organization which (1) is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest; (2) is not organized primarily for profit; and (3) uses all income exceeding costs to maintain, improve, and/or expand its operations. For this purpose, the term "nonprofit organization" excludes (1) educational institutions, (2) hospitals, and (3) State, local, and Indian tribal governments. An organization which has tax exemption as a nonprofit organization from the U.S. Internal Revenue Service shall be considered to have met the criteria of this definition.

(3) *Small Business.* A concern, including its affiliates, which is independently owned and operated, is not a "nonprofit organization," is not dominant in the field of operation in which it is transacting business, and can further qualify under the criteria concerning the number of employees, average annual receipts, or other criteria, currently prescribed by the Small Business Administration (SBA).

(4) *Other commercial firm.* Any corporation, trust, or other organization which is organized primarily for profit and does not meet the SBA criteria of a "small business."

(5) *State.* Any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State exclusive of State institutions of higher education and hospitals.

(6) *Local Government.* A local unit of government including specifically a county, municipality, city, town, township, local public authority, school district, special district, intrastate district, council of governments, sponsor group representative organization (as defined in 7 CFR 620.2, 40 FR 12472, March 19, 1975), and other regional or interstate government entity, or any agency or instrumentality of a local government exclusive of institutions of higher education and hospitals.

340.2 *Required Information.* The following information is to be submitted:

a. The commonly-used name of the organization, together with the legal (registered) name, if different, and mailing address.

b. *Organization type.* Indicate the appropriate organizational type defined in section 340.1, above, or, if some other type, so indicate. If a U.S. college or university, show the Federal Interagency Committee on Education (FICE) code and category of control or affiliation as shown in the most recent "Education Directory."

c. *Federal Employee Identification No.* Employer identification number as assigned by Internal Revenue Service (U.S. organizations only).

d. *Congressional District.* (U.S. organizations only.)

e. *Organizational Affiliations.* Describe relationship of the organization to a parent organization or to subsidiaries or other affiliates. If the organization is a successor in interest to a predecessor or if changes in organization affiliation are anticipated, describe briefly.

f. *Statement of Purposes and Powers.* Enclose an official or published statement of the major purposes of the organization and of the powers which have been granted to it to enter into contractual relationships and/or to accept grants (e.g., articles of incorporation, terms of reference, or by-laws). (See section 340.3a, below.)

g. *Key Officials.* List the name, title, address, and telephone number of the following officials and their alternatives (if any):

(1) Chief Executive Officer. (NSF award letters normally are addressed to the Chief Executive Officer unless another appropriate addressee, such as the authorized organizational representative is designated by him.)

(2) Authorized Organizational Representative (see Glossary); and

h. *Affiliations of Key Officials.* If the organization is other than a college or university, a State or local government, or an international organization, indicate whether or not each official listed in (g) above is affiliated with any international, Federal, or State or local agency or with any college or university. If so, describe such affiliation. NSF reserves the right to consult with such affiliated organizations.

i. A representative listing of current or recent Federal awards to the organization indicating agency, award number, award amount, and title of project.

j. A copy of the most recent indirect cost agreement negotiated between the organization and some Federal agency or, if lacking such an agreement, an indirect cost rate proposal.

k. If other than a college or university or a state or local government, also submit the following:

(1) A certified statement of financial condition covering at least the preceeding two years; and

(2) Bank or other references.

340.3 *Required Certifications.* In addition to the basic information described in section 340.2, above, NSF requires that an organization described in section 340.1 a, above, submit a certification substantially as follows, signed by the Chief Executive Officer or authorized organizational representative:

a. I certify that

(Name of institution or organization)

has legal authority to accept grants, contracts or other agreements, as evidenced by the attached

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(Describe document)

and the requisite policies, procedures, and personnel to ensure stewardship of Federal funds and management of Federally supported projects, specifically including standards for financial management, procurement, and equipment management which meet those prescribed by sections 310, 322, and 332 of the NSF Grant Policy Manual.

NOTE.—In the event this is not the case, list exceptions and provide a realistic estimate of when such standards might be met.

b. Any proposals to the National Science Foundation will be consistent with the policies and goals of

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and will be submitted in accordance with its procedures and pursuant to appropriate authority.

NOTE.—See Chapter II of this Manual regarding proposal submission.

c. In the event the National Science Foundation awards grants, contracts, or other agreements as a result of any such proposals, I agree that

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will:

(1) Make available the necessary facilities, equipment, services, and personnel to conduct the project substantially as outlined in the proposal or such modifications thereof as may be mutually agreed;

(2) Conduct such project oversight as may be appropriate, manage the Federal funding with probity and prudence, and comply with the terms and conditions of the NSF award; and

(3) Comply with applicable laws and regulations.

d. I further affirm that the "Assurance of Compliance with National Science Foundation Regulations under Title VI of the Civil Rights Act of 1964," attached (or, previously executed by

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(Title of officer)

on ---------- will be fully applicable to
(Date)

any such awards.

NOTE: See section 700.

e. If the organization meets SBA criteria and wishes to be considered by NSF as a small business, add a certification that the organization is a small business concern as defined in the appropriate SBA regulations.

(Signature)

(Typed name and title)

(Date)

Exhibits:

3-1 Attachment F to OMB Circular A-110: Standards for financial management systems.

3-2 Attachment O to OMB Circular A-110: Procurement standards.

CHAPTER IV—PAYMENT AND FINANCIAL REPORTING REQUIREMENTS

400 INTRODUCTION

401 GENERAL

The acceptance of a grant or other agreement from the NSF creates a legal duty on the part of the recipient organization (hereafter referred to as "recipient") to use the funds or property made available in accordance with the conditions of the grant or other agreement. Payments may be made in advance of work performed or as a reimbursement for work performed or costs incurred by the recipient. The NSF has a reversionary interest in the unused balance of advance payments, in any funds improperly applied, whether received as an advance or reimbursable payment, and in property acquired through the grant or other agreement, to which the NSF specifically either retains title or reserves the right to require title transfer as prescribed in section 770, "Equipment Title, Use, and Disposition".

402 BASIC AUTHORITIES

The procedures prescribed in this chapter are based largely on selected portions of the uniform administrative requirements contained in Attachments A, G, and I to OMB Circular A-110 and Treasury Circular 1075.

403 SCOPE AND APPLICABILITY

The provisions of this chapter cover all NSF awards, except grants awarded from Special Foreign Currency Program appropriations. Graduate Fellowship agreements with domestic colleges and universities are included, but contracts are excluded. In this chapter "awards" will be used to include grants and other agreements. All categories of recipients (academic, nonacademic, profit, and nonprofit) are covered by this chapter. The procedures in this chapter apply primarily to the comptroller or business officer and his staff.

404 DEFINITIONS

The following definitions are either not included elsewhere in the manual or are repeated in this section because of their special applicability to this chapter.

a. *Business Officer.* The financial official of the recipient institution or organization who has primary responsibility for the accountability for and reporting on NSF award funds.

b. *Cash on Hand.* NSF funds on deposit, imprest funds, and undeposited Treasury checks.

c. *Disbursements.* Payments in cash or by check.

d. *Expenditures (Outlays).* Charges made to the project during a given period for (1) goods and other tangible property received, (2) services performed by employees, subcontractors, and other payees, and (3) amounts becoming owed for which no current services or performance is required.

e. *Obligations.* The amounts of orders placed, contracts awarded, services received, and similar transactions during a given period that will require payment by the recipient during the same or a future period.

f. *Recipient.* The institution or organization to which an NSF grant or other agreement is awarded.

g. *Unobligated Balance.* The portion of the funds authorized by the grant or other agreement that has not been obligated by the recipient. It is determined by deducting outlays and unliquidated obligations from the cumulative funds authorized.

h. *Unliquidated Obligations.* For reports prepared on a cash basis, unliquidated obligations represent the amount of obligations incurred by the recipient that have not been paid. For reports prepared on an accrued expenditure basis, they represent the amount of obligations incurred by the recipient for which an outlay has not been recorded.

410 STANDARDS FOR FINANCIAL MANAGEMENT SYSTEMS

Recipients of NSF awards shall have financial management systems which, at a minimum, meet the requirements of Attachment F to OMB Circular A-110, reproduced as Exhibit 3-1 at the end of Chapter III.

420 PAYMENT REQUIREMENTS

421 GENERAL

Federal grant and other programs involving advances to various organizations outside the Federal Government constitute a significant portion of the Federal Budget. Advances of cash from the Treasury to such organizations for the purpose of financing current operations under Federal programs have a substantial impact on Treasury financing costs and the level of the public debt. The purpose of this section is to prescribe the timing of such advances and the procedures to be observed to assure that cash withdrawals from the Treasury occur only when essential to meet the needs of a recipient for its actual disbursements.

422 PAYMENT METHODS

a. *Letter of Credit.* A letter of credit is a commitment, certified by an authorized official of the NSF, specifying a dollar limit available to a designated payee. A letter of credit is the equivalent of cash available to the recipient and is irrevocable to the extent that the recipient has obligated funds in good faith thereunder for the execution of its authorized NSF programs.

Letter of credit funding is used where all of the following conditions exist:

(1) When there is, or will be, a continuing relationship between a recipient and the NSF for at least a 12-month period and the total amount of advances expected to be received within that period is $120,000, or more, and

(2) When the recipient has established or demonstrated to the NSF the willingness and ability to establish procedures that will minimize the time elapsing between the transfer of funds from the Treasury and their disbursement by the recipient, and

(3) When the recipient's financial management system meets the standards for fund control and accountability prescribed in Attachment F to OMB Circular A-110 (Exhibit 3-1).

b. *Request for Advance.* When a recipient meets all of the requirements specified in section 422a, above, except those in section 422a(1), payments will be made in advance of costs incurred by the submission of a Request for Advance, SF 270, to the NSF on a monthly, biweekly, or any other regular cycle. (See section 425 and Exhibit 4-6.)

c. *Request for Reimbursement.* When a recipient does not meet the requirements specified in either or both of section 422a (2) and section 422a(3), or when otherwise considered appropriate by the NSF, the recipient shall be required to finance its operations with its own working capital, and payments shall be made to reimburse the recipient for actual cash disbursements based on the submission of a Request for Reimbursement, SF 270, to the NSF. (See section 426 and Exhibit 4-6.)

d. *Working Capital Advance.* In those cases where the reimbursement method described in section 422c above, is not feasible, arrangements may be made whereby the operations of the recipient are financed on a working capital advance basis. On this basis, funds may be advanced to the recipient to cover its estimated disbursement needs for a given initial period. Thereafter, the recipient would be reimbursed for the amount of its actual cash disbursements. The amount of the initial advance shall be geared to the reimbursement cycle so that after the initial period, the advance approximately equals the average amount of the recipient's unreimbursed program disbursements.

423 PAYMENT POLICIES

a. *Timing of Payments.* Regardless of the particular method used, advances to a recipient shall be limited to the minimum amounts needed and shall be timed to be in accord with the actual, immediate cash requirements of the recipient in carrying out the purpose of the approved program or project. The timing and amount of cash advances shall be as close as is administratively feasible to actual disbursements for direct program costs and the proportionate share of any allowable indirect costs.

Cash advances made by primary recipients (those which receive advances

directly from the NSF) to secondary recipients shall conform to the same standards of timing and amount as apply to advances by the NSF to primary recipients, including the furnishing of reports of cash disbursements and balances.

b. *Withholding Payments.* The NSF reserves the right, upon written notice, to withhold future payments after a specified date if the recipient:

(1) Fails to comply with the conditions of an NSF award, including the reporting requirements, or

(2) Is indebted to the U.S. Government.

c. *Safeguarding Funds* In no case will NSF furnished funds be comingled with the personal funds of, or be used for personal purposes by, any officer, employee, or agent of the grantee; nor will any of these funds be deposited in personal bank accounts for disbursement by personal check.

424 LETTER OF CREDIT

a. *Summary* The following is a brief outline of the letter of credit procedures under the Treasury Regional Disbursing Office (RDO) System:

(1) The NSF makes a determination that a recipient will be funded through a letter of credit and sends the recipient SF 1194, Authorized Signature Card for Payment Vouchers on Letter of Credit, and NSF Form 931, Designation of Depositary for Direct Deposit of Grant and/or Contract Funds. (See Exhibits 4–1 and 4–2.)

(2) The recipient completes SF 1194 and NSF Form 931 and returns them to the NSF.

(3) The NSF approves the completed SF 1194 and forwards one copy to the designated Treasury Regional Disbursing Office or Center.

(4) The NSF prepares a Letter of Credit, TFS 7577 (SF1193A). Copies are transmitted to the designated Treasury Regional Disbursing Office or Center and to the recipient. (See Exhibit 4–3.)

(5) The NSF furnishes the recipient a supply of SF 183, Request for Payment on Letter of Credit and Status of Funds Report.

(6) Following the effective date of the Letter of Credit, the recipient completes Requests for Payment, SF 183, and submits them to the designated Treasury Regional Disbursing Office or Center in order to receive funds to meet immediate cash disbursement needs. (See Exhibit 4–4.)

(7) The Treasury Regional Disbursing Office or Center then mails a Treasury check directly to the recipient's designated depositary (for credit to its account) or directly to the recipient.

b. *Authorized Signature Card* The Authorized Signature Card for Payment Vouchers on Letter of Credit, SF 1194, must contain the signature(s) of the official(s) authorized by the recipient to sign Request for Payment on Letter of Credit and Status of Funds Report, SF 183. The Treasury Regional Disbursing Office or Center will accept only the signature(s) of the official(s) named on the current signature card; the number of officials named should be limited to a practical number. A designation must be made, in the blocks provided, as to whether one or two signatures are required on Requests for Payment. New signature cards shall be submitted whenever there is a change, including additions or deletions of the officials authorized to sign Requests for Payment. Change in the title or position does not require a superseding signature card if the official's authority to sign Requests for Payment remains unchanged. SF 1194 and preparation instructions are shown in Exhibit 4–1.

c. *Designation of Depositary* The direct deposit procedures are for optional use by NSF recipients funded by letter of credit. Recipients electing to utilize the direct deposit procedures must make such election by submitting NSF Form 931, Designation of Depositary for Direct Deposit of Grant and/or Contract Funds, to the NSF.

Under direct deposit procedures, Treasury checks will be mailed directly to the designated depositary for credit to the recipient's bank account. Recipients electing to use the direct deposit procedures shall complete Section I of NSF Form 931 and forward it to the depositary for completion of Section II. After the form is completed, the recipient shall forward it to the NSF. A recipient will execute a power of attorney only where the depositary requires such an authorization in order to receive checks directly from the Treasury Regional Disbursing Office or Center for credit to the recipient's bank account. Recipients shall execute a new NSF Form 931 whenever changes to the depositary are necessary. NSF Form 931 and preparation instructions are shown in Exhibit 4–2.

d. *Letter of Credit* Upon determination by the NSF that a recipient shall be funded by a letter of credit (based on the criteria stated in section 422a, above) and after receipt of the completed signature and depositary forms (described in sections 424b and 424c, respectively) the NSF will issue a Letter of Credit, TFS 7577 (SF 1193A), in favor of the recipient.

The "Amount Authorized" is based on the recipient's anticipated cash requirements for the fiscal year and the NSF's cash outlay ceiling imposed by the Office of Management and Budget. The recipient's anticipated cash requirements for the fiscal year are reported to the NSF, in item 22, "Remarks", of SF 272, Federal Cash Transactions Report, which is described in Exhibit 4–7. Cash outlay projections are reported on the second and third quarter FCTR in the manner described in Exhibit 4–10. The combination of total recipient requirements and the NSF's cash outlay ceiling will determine the percentage of anticipated recipient requirements to be provided (percentage funding level). When 100 percent coverage cannot be provided by the NSF, the recipient has four alternatives:

(1) Defer outlays until the next fiscal year (to the extent possible), or

(2) Use funds from other sources until the next fiscal year, or

(3) Request the NSF to defer new project awards until the next fiscal year, or

(4) Use any combination of alternatives (1), (2), and (3).

The Letter of Credit, TFS 7577 (SF 1193A), is illustrated in Exhibit 4–3.

e. *Request for Payment on Letter of Credit.*—(1) *Preparation* The recipient shall submit a Request for Payment each time funds are needed to meet current expenses. Recipients are expected to exercise sound financial judgment and planning to insure that the requirements for maintaining minimum cash balances are met. In preparing the Request for Payment, careful consideration of such key factors as payroll dates, payments to subgrantees or contractors, and major fixed costs will be required in order to determine when funds will be needed. Careful consideration of mail time required for transmission of the Request for Payment to the Treasury Regional Disbursing Office or Center and for transmission of the Treasury check to the recipient or recipient's bank will also be necessary. For example, if $20,000 will be needed on the fifteenth of the month in order to meet payroll expenses, pay bills on hand, and provide funds to subgrantees to meet their current disbursement needs, and normal mail time from the date the Request for Payment is submitted to the date the Treasury check is received by the recipient is seven days, then these funds should be requested on approximately the eighth of the month. Once the letter of credit system has been in operation a short time, it is expected that the recipient will have determined its disbursing pattern and calculated mail time so that withdrawals will be timed as close as is administratively feasible to actual cash disbursements. Controls should be maintained on a current basis so that cash balances do not exceed the recipient's immediate disbursements needs. An illustration of SF 183 and instructions for completing it are shown in Exhibit 4–4.

(2) *Conditions for Rejection* The following is a list of conditions which will cause a Request for Payment, SF 183, to be rejected by the Treasury Regional Disbursing Office or Center.

(a) Unauthorized signature(s).

(b) Insufficient balance available under the Letter of Credit.

(c) The name of the drawer and/or the name of the payee to whom the Treasury check is to be issued is not identical to that shown on the related Letter of Credit.

(d) Incorrect Letter of Credit number. However, before rejecting, the Treasury Disbursing Office shall attempt to relate the request to the specific Letter of Credit, and if successful, correct the erroneous Letter of Credit number, and honor the Request for Payment.

(e) A written request from the NSF to withhold payments.

(f) The Status of Federal Funds Section is incomplete or incorrect.

(g) Excessive N&F cash in the hands of the recipient, as determined by Treasury.

(h) The classification section (Section III) is incomplete or the sum of the amounts is not in agreement with the "Amount Requested".

A Rejection Notice stating the reason(s) for rejection shall be furnished by the Treasury Disbursing Office to the recipient. A copy of the Rejection Notice shall be sent to the NSF and the Special Financing Staff, Banking and Cash management (Department of the Treasury in Washington, D.C.) along with a copy of the rejected Request for Payment.

(3) *Distribution of Copies.* Copies of the Request for Payment shall be distributed as follows:

(a) *Original.* To the Treasury Regional Disbursing Office or Center indicated on the Letter of Credit, TFS 7577 (SF 1193A).

(b) *Duplicate.* To the Treasury Regional Disbursing Office or Center for transmission to the NSF after payment or rejection.

(c) *Triplicate.* To the National Science Foundation, Division of Financial and Administrative Management, 1800 G Street, NW., Washington, D.C. 20550.

(d) *Quadruplicate.* Retained by the recipient.

(e) *Quintuplicate.* To the Treasury Regional Disbursing Office or Center for transmission to the Special Financing Staff, Banking and Cash Management (the Department of Treasury in Washington, D.C.)

(4) *Emergency payments.* In the event that a recipient did not receive a Treasury check, the recipient should request the NSF to contact the Treasury Regional Disbursing Office to determine the status of the payment.

(a) *Lost or delayed Treasury checks.* If the Treasury Regional Disbursing Office finds that a Treasury check was mailed to the recipient, but less than the normal number of days mail time has lapsed since the date the check was mailed, the recipient should wait a few days to see if the check arrives. If several days have lapsed since the check was mailed and the recipient needs the funds to meet immediate disbursements, the NSF will request the Treasury Regional Disbursing Office to issue a substitute check. If a substitute check is issued, a stop payment order will be placed on the first check. In the event the first check is received before the substitute check arrives, the original check can be negotiated only if the Treasury Regional Disbursing Office is requested to remove the stop payment order.

(b) *Lost or delayed Request for Payment.* If the Treasury Regional Disbursing Office finds that it never received the request for Payment, the NSF will determine whether sufficient mail time has been allowed for the Request for Payment to reach the Treasury Regional Disbursing Office. If there is an immediate need for the funds and the recipient cannot wait for a few days to see if the Request for Payment will be received by the Treasury Regional Disbursing Office, the recipient should prepare and submit another Request for Payment. The second Request for Payment should be boldly marked "SECOND ORIGINAL" across the top of the form. If the need is extremely critical and the recipient cannot wait the length of time it would take for the Request for Payment and the Treasury check to travel in the mails, the recipient should telephone the Chief, Grantee and Cash Management Branch (NSF) 202–632–4006, and arrangements will be made with the Treasury Department to wire-transfer funds to the recipient's bank. The recipient must return duplicate checks to the Treasury Regional Disbursing Office when and if, received.

425 REQUEST FOR ADVANCE

The Request for Advance, SF 270, enables a recipient which meets all of the requirements specified in section 422a, except those in section 422a(1), to obtain cash in advance to meet current disbursement needs. The recipient's designated official (Accounting Officer, Business Officer, Treasurer, etc.) must submit Requests for Advance to the NSF on a periodic basis (monthly, biweekly), or other regular cycle) depending on normal disbursement patterns. Such requests should be limited to the minimum amounts needed and be timed to meet the anticipated cash requirements for allowable charges to active NSF projects. Recipients not qualifying for funding by letter of credit but are otherwise qualified to receive advance payments are instructed to use the "Alternate Computation for Advance", item 12, instead of lines 11a through j. A copy of SF 270 along with preparation instructions is included in Exhibit 4–6.

426 REQUEST FOR REIMBURSEMENTS

When a recipient fails to meet the requirements specified in either or both of sections 422a(2) and 422a(3), or when otherwise considered appropriate by the NSF, the recipient will be required to finance NSF projects with its own working capital. Reimbursement will be made upon submission of a Request for Reimbursement, SF 270. The amount requested as reimbursement will be reported on line 11i. All other lines in item 11 and the "Alternate Computation for Advances", item 12, will be left blank. A SF 270, with instructions, is included in Exhibit 4–6.

427 WORKING CAPITAL ADVANCE

In those cases when the reimbursement method described in section 426 is not feasible, arrangements may be made whereby NSF projects are financed on a working capital advance basis. On this basis, funds may be advanced to cover estimated disbursement needs for a given initial period. Thereafter, reimbursement would be made for the amount of the recipient's disbursements. The amount of the initial advance will be geared to the reimbursement cycle so that after the initial period the advance approximately equals the average amount of unreimbursed program disbursements. Under this method of payment, SF 270, item 12, will be used for the initial advance; thereafter, reimbursements will be requested on SF 270, line 11i. SF 270, with instructions is included in Exhibit 4–6.

430 FEDERAL CASH TRANSACTIONS REPORT

a. *General.* Shortly after the end of each calendar quarter, the NSF will mail to each recipient a Federal Cash Transactions Report (FCTR) (SF 272 and SF 272A) to be updated and returned to the NSF. This report is required whether funds are provided on an advance or a reimbursable basis. The Federal Cash Transactions Report is basically a modification of the traditional NSF Grantees Quarterly Expenditure Report (QER). The new name and the new report elements are in compliance with the new uniform Federal standards applicable to financial reporting by recipients. The FCTR with instructions is shown in Exhibit 4–7 (SF 272) and 4–8 (SF 272A.)

A Status of Final Reports has been added to the FCTR as a means of notifying recipients of due or past due Technical Reports, Financial Status Reports, and Summaries of Completed Projects. The Status of Final Reports and instructions are shown in Exhibit 4–9.

b. *Purpose.* In compliance with the new uniform Federal standards and other NSF requirements, the Federal Cash Transactions Report will be used for the following purposes:

(1) To monitor the balances of undisbursed NSF cash advances;

(2) To provide data which will enable the NSF to record on a reasonably current basis the recipient's actual disbursements against individual awards in order to liquidate obligations and advances;

(3) To provide data which can be translated into internal NSF reports to assist program officers and the Division of Grants and Contracts in determining the funding needs of recipients (See "Additional Funding Support", Chapter II, Section 250);

(4) To report recipient's forecasts of cash requirements to the NSF when funds are advanced by letter of credit;

(5) To report the NSF share of project income which was used in projects supported by the NSF (see "Project Income", Section 640);

(6) To report interest income to the NSF; and

(7) To report recipients advances to subgrantees or subcontractors.

c. *Distribution and Due Date.* The original and copy 1 of the Federal Cash Transactions Report (SF 272 and SF 272A) and the Status of Final Reports must be completed and returned to the NSF by not later than 15 working days after it is mailed to the recipient. The due date will be printed on the bottom of SF 272.

440 CASH REFUNDS AND CREDITS TO NSF

441 FINAL UNOBLIGATED BALANCE

The NSF has a reversionary interest in the unobligated balance of an award upon expiration or completion of the

award. The unobligated balance of Federal funds as reported on the Financial Status Report (see "Award Closeout", Chapter VI, § 670) will be deducted from the award amount and reported on SFA 272A of the Federal Cash Transactions Report at the end of the quarter in which the Financial Status Report was approved by the Division of Grants and Contracts. The entry reduces the recipient's "Balance Authorized" as computed on line 21 of SF 272 of the Federal Cash Transactions Report. (See Exhibit 4–7.)

If the recipient's "Balance Authorized" has been fully advanced and the unobligated balance deduction results in a negative "Balance Authorized", the recipient must refund by check (payable to the National Science Foundation) the amount of the negative "Balance Authorized".

442 ERRONEOUS PAYMENTS

Advances or reimbursements made in error must be refunded by check (payable to the National Science Foundation) if the erroneous payment creates an excess cash on hand condition or a negative "Balance Authorized" as computed on line 21 of SF 272. (See Exhibit 4–7.)

443 INTEREST EARNED ON ADVANCE PAYMENTS

Interest earned on advance payments to other than State agencies must be reported to the NSF on the Federal Cash Transaction Report, SF 272, (Exhibit 4–7) and remitted by check payable to the National Science Foundation.

444 PROJECT INCOME

In accordance with section 653, project income designated for credit to award costs up to the amount of the award will be recovered by the NSF by crediting costs otherwise chargeable against the award on the Federal Cash Transactions Report, SF 272 and SF 272A, (Exhibit 4–7 and 4–8). Income in excess of the award will be remitted to NSF by check payable to the National Science Foundation. Section 653 also requires that royalties and other income from curriculum development projects be added to funds committed to the project with any excess income over project cost remitted by check payable to the National Science Foundation.

445 OTHER COST CREDITS

Purchase discounts, rebates, allowances, credits resulting from overhead rate adjustments, and other credits relating to any allowable cost received by or accruing to the recipient shall be credited to the NSF award costs if the award has not been closed out. An award is closed out if the three final reports (Financial Status Report, SF 269, Technical Report, and the Summary of Completed Project, NSF Form 98A) have been submitted to and accepted by the NSF. If the award has been closed out, cost credits will be accepted only if the amount is $100 or more. Such credits will be accomplished by the submission of a revised Financial Status Report, SF 269. See section 675e.

Exhibits:

4–1 Authorized Signature Card for Payment Vouchers on Letter of Credit (SF 1194).
4–2 Designation of Depositary for Direct Deposit of Grant and/or Contract Funds (NSF Form 931).
4–3 Letter of Credit (TFS Form 7577).
4–4 Request for Payment on Letter of Credit (TFS Form 7578).
4–5 Treasury Disbursement Centers and Regional Offices.
4–6 Request for Advance or Reimbursement (SF 270).
4–7 Federal Cash Transactions Report (SF 272, machine formatted version).
4–8 Federal Cash Transactions Report (SF 272A), Federal Share of Net Disbursement.
4–9 Status of Final Reports.
4–10 Cash Outlay Report.

CHAPTER V—ALLOWABILITY OF COSTS

500 BASIC CONSIDERATIONS

501 FEDERAL COST PRINCIPLES

501.1 *Applicability to Primary Awardees.* Expenditures under NSF awards (grants, other agreements, and contracts) are governed by the Federal cost principles applicable to specific types of grantees/contractors, as follows:

a. *Institutions of Higher Education.* FMC 73–8 (formerly OMB Circular A–21) provides principles for determining the costs applicable to research and development and to training and other educational services performed by colleges and universities under grants from and contracts with the Federal government. That circular, which is applicable to all NSF awards to both public and private institutions of higher education, is codified in the Code of Federal Regulations as 34 CFR Part 254. It is also reproduced as 41 CFR Subparts 1–15.3 and 1–15.8. FMC 73–6 (formerly OMB Circular A–88) assigned to the Department of Health, Education, and Welfare (DHEW) the responsibility for coordinating the establishment of indirect cost rates and the auditing of Federal grants and contracts with most colleges and universities.

b. *Other Nonprofit Organizations.* A proposed set of government-wide cost principles for certain other nonprofit organizations is being prepared under the aegis of the Director, Federal Procurement Regulations, to be incorporated as Subpart 1–15.9 of the Federal Procurement Regulations (FPR). Pending the promulgation of such government-wide cost principles, expenditures under NSF grants or other agreements will be governed either by Subpart 1–15.2 of the FPR (41 CFR Subpart 1–15.2) or by the cost principles contained in DHEW publication "Guide for Nonprofit Institutions," OSAC–5, or DHEW publication, "Guide for Hospitals," OASC–3, as appropriate, in accordance with the following criteria:

1. Any independent nonacademic research organization shown in the current edition of the NSF Surveys of Science Resources Series Federal Support to "Universities, Colleges, and Selected Nonprofit Institutions," to have been a recipient of Federal R&D funds totalling 5 million dollars or more during the listed fiscal year will be governed by Subpart 1–15.2 of the FPR.

2. Any other nonacademic nonprofit organization will be governed by the appropriate DHEW cost principles unless it formally requests the NSF Division of Grants and Contracts to make the provisions of Subpart 1–15.2 applicable to it and such request is approved.

c. *Commercial Firms.* The government-wide cost principles and procedures for use in cost-reimbursement type supply and research contracts with commercial organizations, contained in 41 CFR Subpart 1–15.2, are applicable to NSF grants to or other agreements with commercial firms.

d. *State and Local Governments.* FMC 74–4 (formerly OMB Circular A–87) provides principles and standards for determining costs applicable to grants and contracts with State and local governments. That circular, which is applicable to all NSF awards to State and local government entities (excluding publicly financed colleges and universities and hospitals), is codified in the Code of Federal Regulations as 34 CFR Part 255. It also is reproduced as 41 CFR Subpart 1–15.7. Section J of FMC 74–4 assigned to DHEW the primary responsibility for negotiation, approval, and audit of cost allocation plans to cover central support service costs of the States and of indirect cost proposals at departmental levels.

501.2 *Applicability to subcontracts.* Costs of all subcontracts and subgrants under NSF nonprocurement awards are subject to those cost principles and procedures appropriate to the subcontract/subgrant type and subcontractor/subgrantee concern, organization, or institution involved. For example, if the subcontract is for supplies or services with a commercial concern, Subpart 1–15.2 would apply; if the subcontract is for experimental, developmental, or research work with an educational institution, Subpart 1–15.3 would apply. The extent of applicability will vary depending on the type of subcontract, as the several subparts vary in applicability as to type of prime contract, grant, or other agreement.

501.3 *Conflicting Guidelines.* In the event of any discrepancy between the summary information contained in this chapter and any specific provision of the applicable Federal cost principles, the cost principles in effect as of the effective date of the NSF award will govern. In the case of a discrepancy between the special provisions of an NSF award and the standards of the applicable cost principles, the special provisions of the award shall govern.

502 TYPES OF COSTS

502.1 *Direct Costs.* A direct cost is any cost which is identified specifically with a particular final cost objective. Costs identified specifically with the NSF-supported project are direct costs of the project and may be charged to the award if allowable. Section 503 contains considerations as to the allowability of costs. Sections 510 and 520 summarize the standards of the various Federal cost principles for establishing the allowability of the items of cost most frequently charged as direct costs to NSF awards.

502.2 *Indirect Costs.* An indirect cost is one which, because of its incurrence for common or joint objectives, is not readily subject to treatment as a direct cost. Minor direct cost items may be considered to be indirect costs for reasons of practicality. After direct costs have been determined and charged directly to the grant-supported project or other work as appropriate, indirect costs are those remaining to be allocated to the several classes of work. That allocation process and the determination of indirect cost rates are as specified in the governing set of Federal cost principles. Section 530 contains NSF policy and procedures with respect to indirect costs.

502.3 *Composition of Total Cost.* The total cost of an NSF award is the sum of the allowable direct and indirect costs allocable to the project, less any applicable credits. The total cost of the award generally is less than the total cost of the project because of cost sharing or matching by the awardee institution or organization. (See section 640, "Cost Sharing and Matching.")

503 CONSIDERATIONS AS TO ALLOWABILITY OF COSTS

Each of the Federal cost principles described in section 501 provides basic tests of allowability of costs which, in summary, are that they must:

(a) Be necessary and reasonable for the performance of the contract or grant and be allocable thereto under the cost principles;

(b) Conform to any limitations or exclusions set forth in the cost principles and procedures, applicable Federal laws, or other governing limitations as to types or amounts of cost items;

(c) Be consistent with policies, regulations, and procedures that apply uniformly to both federally assisted and other activities of the organization;

(d) Be accorded consistent treatment through application of generally accepted accounting principles appropriate to the circumstances; and

(e) Not be allocable to or included as a cost of any other federally financed program in either the current or a prior period.

504 OTHER FACTORS

In addition to the basic considerations regarding allowability of costs, contained in section 503, above, the following apply to NSF awards:

504.1 *Maximum Obligation.* The maximum obligation of NSF for support of the project will not exceed the amount specified in the award instrument, as amended. NSF does not amend grants to provide additional funds for such purposes as reimbursement for unrecovered indirect costs resulting from the establishment of final negotiated rates or for increases in salaries, fringe benefits, and other costs. (See General Provision 2.)

504.2 *Applicable Credits.* Purchase discounts, rebates, allowances, and other credits relating to any allowable cost, received by or accruing to the awardee shall be credited to the Government either as a cost reduction or by cash refund, as appropriate. (See also section 440, "Refunds to NSF"; section 653 "NSF Project Income Provisions"; and section 675, "Financial Status Report and Summary."

504.3 *Pre-award Costs.* Expenditures may not be charged against NSF funds prior to the effective date of the award. However, commitments requiring long lead times, such as for major items of equipment, may be initiated prior to that date, at the risk of the awardee, for delivery subsequent to that date but in time for use in the project being supported. If an award is made and such items are approved, Federal funds may be expended for them on or after the effective date of the award.

504.4 *Post-expiration Costs.* NSF funds may not be expended subsequent to the expiration date of the award except to liquidate valid commitments which were made on or before the expiration date.

504.5 *Uniform Application.* a. Exhibit 5–1 contains a table which shows where the general criteria as to allowability of selected items of cost may be found in the cost principles described in section 501. The cost principles applicable to awards to one type of organization do not always cover an item of cost covered by the cost principles governing a different type of organization. Further, the various cost principles do not all contain the same limitations or exclusions.

b. For uniform treatment of those items of cost most frequently listed as direct cost items in proposal budgets (Exhibit 2–2) and in award budgets (Exhibit 2–8), succeeding sections 510 and 520 summarize their allowability under NSF grants and other agreements. For ease of referral to the source, both those sections and Exhibit 5–1 identify the governing cost principles by CFR section number, since those relating to commercial firms are contained in the FPR and those relating to institutions of higher education and to State and local governments are reproduced there. Since Governmentwide cost principles for other nonprofit organizations have not yet been promulgated, they are not referenced herein.

504.6 *Prior Approval.* a. Some of the cost principles require prior agency approval before certain expenditures may be charged as a direct cost to the grant or other agreement; others do not. In the interests of uniformity of treatment among various types of grantees, NSF requires prior agency approval, as outlined in section 630, "Changes in the Award Budget" for expenditures of Federal funds for the direct costs of any of the following not specifically approved in the award instrument:

(i) Alterations and renovations.
(ii) General purpose equipment.
(iii) Special purpose equipment with a unit acquisition cost of $1,000 or more.
(v) Each foreign trip.

b. NSF hereby delegates to awardee organizations its authority for approval, as outlined in section 613, for either of the following which require approval under the provisions of FMC 73–8:

(i) Cumulative equipment expenditures which exceed the budgeted amount by 25 percent; or
(ii) Cumulative domestic travel expenditures which exceed the budgeted amount by $500 or 25 percent, whichever is greater.

504.7 *Advance Understandings.* a. As indicated in FPR 1–15.107, the extent of allowability of the selected items of cost covered in the various cost principles is stated to apply broadly to many accounting systems in varying situations. In some cases (e.g., professional and consultant services costs) the various cost principles prescribe specific factors or conditions to be considered in determining the allowability of such costs in specific situations. In such cases, it is important that the stated conditions or factors be adhered to and documented in order to avoid possible subsequent disallowance or dispute based no unreasonableness or nonallocability.

b. In the event an awardee organization anticipates charging the NSF grant or other agreement for an item of direct cost which, in light of the above, might subsequently be disputed, the authorized organizational representative may negotiate an advance agreement with the cognizant NSF grants officer.

510 ITEMIZED DIRECT COSTS

The following subsections summarize the allowability of frequently encountered direct cost items in the order in which they appear in the standard NSF Award Budget (Exhibit 2–8). Exhibit 5–1 shows the specific subparts of the various cost principles which govern the allowability of these and other costs.

511 SALARIES, WAGES, AND FRINGE BENEFITS

511.1 *Salaries and Wages.*—a. *All Awardees.* All remuneration paid currently or accrued by the organization for employees working on the NSF supported project during the grant period are allowable to the extent that (1) total compensation to individual employees is reasonable for the work performed and conforms to the established policy of the organization consistently applied to both Government and non-Government activities; *And* (2) *provided,* That the charges for work performed directly under NSF awards and for other work allocable as indirect costs are determined as provided in the applicable Federal cost principles. The NSF share of estimated salaries and wages is shown in items A and B of the Award Budget (Exhibit 2–8).

b. *Colleges and Universities.* Section J.7 of FMC 73–8 (FPR Subpart 1–15.309–7) establishes special criteria for work performed on Government projects by faculty members during and outside the

academic year. In summary these are (as of December 19, 1973):

(1) *Academic Year Salaries.* To be based on the individual faculty member's regular compensation for the continuous period which, under the practice of the institution concerned, constitutes the basis of his salary. In no event will the charge to Federal awards, irrespective of the basis of computation, exceed the proportionate share of the base salary for that period. (J.7.i)

(2) *Periods Outside the Academic Year.* During the summer months or other periods not included in the base salary period, to be at a monthly rate not in excess of that which would be applicable under the base salary. (J.7.j)

511.2 *Fringe Benefits.* Fringe benefits are allowable as a direct cost (if not included as an indirect cost) in proportion to the salary charged to the award to the extent that such payments are made under formally established and consistently applied organizational policies. The NSF share of the estimated fringe benefits is shown in item C of the Award Budget.

512 EQUIPMENT

512.1 *Background.* The current Federal cost principles have slightly different provisions concerning the allowability of capital expenditures, equipment and other facilities, and depreciation and use allowances thereon. Pending changes will conform them to the provisions of Attachment N to OMB Circular A–110. For consistency of treatment of equipment costs in awards to all types of organizations, the following subsections are applicable to all NSF nonprocurement awards issued on and after the effective date of this Manual.

512.2 *Definitions.* The following definitions, derived from Attachment N to OMB Circular A–110 and from the pending FPR 1–15.911–14 apply to all NSF awards (or amendments thereto) issued on and after the effective date of this Manual. Note that they are different from terms previously used.

a. *Acquisition cost.* The net invoice unit price of an item of equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is required. Ancillary charges, such as taxes, duty, protective intransit insurance, freight, and installtaion shall be included in or excluded from acquisition cost in accordance with the organization's regular accounting practices.

b. *Equipment.* An article of nonexpendable tangible personal property having a useful life of more than one year and an acquisition cost of $300 or more per unit. An organization may use its own definition: *Provided,* That it at least includes all nonexpendable tangible personal property as defined herein.

c. *General purpose equipment.* Equipment which is usable for other than research, medical, scientific, or technical activities, whether or not special modifications are needed to make them suitable for a particular purpose. Examples of general purpose equipment include office equipment and furnishings, air conditioning equipment, reproduction and printing equipment, motor vehicles, and automatic data processing equipment.

d. *Special purpose equipment.* Equipment which is usable only for research, medical, scientific, or technical activities. Examples of special purpose equipment include microscopes, x-ray machines, surgical instruments, and spectrometers.

e. *Nonexpendable tangible personal property.* Any property (except land, structures, and appurtenances thereto) having physical existence.

512.3 *General Purpose Equipment.* Capital expenditures for general purpose equipment are unallowable except where such expenditures are justified in the proposal and specifically approved by NSF as an authorized direct cost. If approved by NSF, the NSF share of general purpose equipment costs will be shown in item D of the Award Budget (Exhibit 2–8).

512.4 *Special Purpose Equipment.* Capital expenditures for special purpose equipment are allowable as direct costs provided that the acquisition of items with a unit cost of $1,000 or more are justified in the proposal and approved in the award. See also percent 204, "Proposals with Consultant Services or Equipment." The NSF share of estimated equipment costs is shown in item E of the Award Budget.

512.5 *Expenditure Limitations.* Expenditures for equipment from the NSF share may not be increased by more than 25 percent of items D and E without prior approval. (See section 504.6 b)

513 MATERIALS AND SUPPLIES

The costs of materials and supplies (expendable equipment) necessary to carry out the project are allowable as prescribed in the governing cost principles. The NSF share of such estimated costs is shown in item F of the Award Budget.

514 TRAVEL COSTS

a. Expenses for transportation, lodging, subsistence, and related items incurred by project personnel who are in travel status on business incident to an NSF-supported project are allowable as prescribed in the governing cost principles.

b. Except as provided in the governing cost principles, the difference in cost between first-class air accommodations and less than first-class air accommodations is unallowable. A train, bus, or other surface carrier may be used in lieu of or as a supplement to air travel at the lowest first-class rate by the transportation facility used. However, if such travel could have been performed by air, the allowance will not normally exceed that for jet economy air fare.

c. The NSF share of estimated domestic travel costs is shown in item G of the Award Budget. Expenditures from the NSF share for domestic travel during any budget period may not be increased by more than 25 percent of the amount allotted in item G or $500, whichever is greater, without prior approval. (See section 504.6 b.)

d. The NSF share of estimated foreign travel costs is shown in item H of the Award Budget. Expenditures are allowable only as prescribed in section 731, "Travel to Foreign Countries."

e. Travel costs of dependents of project personnel are not allowed without prior NSF approval, which will be granted only under the following circumstances:

(1) The individual scientist is a key person whose full-time presence is essential to the effective performance of the project;

(2) His residence in a foreign country for a continuous period of at least six months is essential to the effective performance of the project; and

(3) The payment of a travel allowance for dependents is consistent with the policies of the awardee organization.

515 COMPUTER (ADPE) COSTS

515.1 *Automatic Data Processing Equipment (ADPE) Leasing—Costs.* The costs of leasing ADPE are allowable, up to the amount that the awardee would be allowed had he purchased the ADPE, and to the extent that the rates are reasonable in light of factors such as those described in 1–15.205–34(c)(1).

515.2 *Awardee-owned ADPE Facilities.* The costs of services involving the use of highly complex or specialized facilities operated by the organization, such as electronic computers, are allowable provided the charges therefor meet the conditions of 1–15.309–37 or comparable section of other governing cost principles and otherwise take into account any items of income or Federal financing that qualify as applicable credits under the governing cost principles (see section 504.2, "Applicable Credits" and section 650, "Project Income").

516 CONSULTANT SERVICES

516.1 *Outside Consultants.* (a) Costs of professional and consultant services provided by persons who are members of a particular profession or possess a special skill and who are not officers or employees of the grantee organization are allowable when approved by the organizational prior approval system (see section 613), subject to paragraphs (b), (c), and (d), when reasonable in relation to the services rendered and when not contingent upon recovery of the costs from the Government.

(b) In determining the allowability of costs in a particular case, no single factor or any special combination of factors is necessarily determinative. However, the following factors among others are relevant:

(1) The nature and scope of the service rendered in relation to the service required;

(2) The necessity of contracting for the service considering the organization's capability in the particular area;

(3) The past pattern of such costs, particularly in the years prior to the award of Government contracts; grants, or other agreements;

(4) The impact of government awards on the organization's total activity (i.e., what new problems have arisen);

(5) Whether the proportion of Government work to the organization's total activity is such as to influence the organization in favor of incurring the cost, particularly where the services rendered are not of a continuing nature and have little relationship to work under Government contracts, grants, or other agreements;

(6) Whether the service can be performed more economically by employment rather than by contracting;

(7) The qualifications of the individual or concern providing the service and the customary fees charged, especially on non-government contracts;

(8) Adequacy of the contractual agreement for the service (e.g., description of the service; estimate of time required, rate of compensation; termination provisions).

(c) In addition, retainer fees to be allowable must be supported by evidence of bona fide services available or rendered.

(d) Costs of legal, accounting, and consulting services, and related costs, incurred in connection with organization and reorganization, defense of antitrust suits, and the prosecution of claims against the Government, are unallowable. Costs of legal, accounting, and consulting services, and related costs, incurred in connection with patent infringement litigation, are unallowable unless otherwise provided for in the award.

(e) See also section 204, "Proposals with Consultant Services or Equipment;" section 320, "Procurement Standards"; and section 632, "Unbudgeted Expenditures."

(f) The NSF share of the estimated consultant costs is shown in item J of the Award Budget.

516.2 *Intra-University Consulting.* Since intra-university consulting is assumed to be undertaken as a university obligation requiring no compensation in addition to full-time salary, the principle (see section 511.1b(1)), above) also applies to those who function as consultants or otherwise contribute to a project conducted by another faculty member of the same institution. However, in unusual cases where consultation is across departmental lines or involves a separate or remote operation, and the work performed by the consultant is in addition to his regular appointment, any charges for such work representing extra compensation above the salary are allowable provided such consulting arrangement is specifically provided for in the NSF award or otherwise approved in writing by NSF (1–15.309)7(i)).

516.3 *Federal Employees.* Employees of the Federal government (other than NSF) may be utilized as lecturers or staff members in a science education project and may receive compensation and/or expenses if they obtain prior approval from their agencies to participate and if services to the project are performed outside their regular working hours or while they are on leave status from official duties. Under no circumstances may NSF employees receive compensation from an NSF-supported project.

517 PAGE CHARGES IN SCIENTIFIC JOURNALS

(a. As indicated in section 752.2. NSF encourages and sometimes requires publication and distribution of the results of research conducted with the support of its awards.

b. Costs of page charges in non-profit scientific journals to report the results of NSF-supported projects are allowable where the charges are levied impartially on all research papers published by the journal.

c. NSF support for such page charges is shown in item K of the Award Budget.

518 PUBLICATION COSTS

a. As indicated in section 674, NSF requires both a final technical report and a summary for each project supported by an NSF award.

b. Specific provisions for funds to cover the costs of such project reports and, where appropriate, other publication costs, are contained in item L of the Award Budget. Portions of such costs properly allocable to other budget categories (e.g., salaries, wages, and fringe benefits) should be shown under the appropriate ones of those categories rather than under publication costs.

519 PARTICIPANT SUPPORT COSTS

519.1 *General.* a. Participant support costs are direct costs for items such as stipends or subsistence allowances, travel allowances, and registration fees paid to or on behalf of participants or trainees (but not employees) in connection with meetings, conferences, symposia, or training projects.

b. When appropriate to a particular activity, they may be requested in the proposal budget (Exhibit 2–2). If approved, funds will be provided in the award budget (Exhibit 2–8) under line item M. But see section 532.2 for NSF indirect cost policy.

c. Funds provided for participant support may not be used by awardees for other categories of expense without the specific prior approval of the cognizant NSF program officer. (OMB Circular A–110, Attachment J., 3e)

d. Participant support allowances may not be paid to trainees who are receiving compensation, either directly or indirectly, from other Federal government sources while participating in the project. Educational benefits from the Veterans Administration and retirement or disability compensation are exempt from this restriction. A Federal employee may receive participant support allowances from award funds provided there is no duplication of funding of items and provided no single item of participant cost is divided between his parent agency and NSF award funds.

519.2 *Stipends or Subsistence Allowances.* a. To help defray the costs of personal maintenance while participating in a conference or training activity, participants may be paid a stipend, per diem, or subsistence allowance, based on the type and duration of the activity, as outlined in the pertinent program announcement and in the award instrument. Such allowances must be reasonable, in conformance to the usual policy of the awardee organization, and limited to the days of attendance at the conference plus the actual travel time required to reach the conference location by the most direct route available. Where meals and/or lodgings are furnished without charge or at a nominal cost (e.g., as part of the registration fee), the per diem or subsistence allowance will be correspondingly reduced. Award funds may not be used to pay per diem or similar expenses for local participants in the conference.

b. Costs of amusement, diversion, social activities, ceremonials, and incidental costs related thereto, such as bar charges, and personal telephone calls of participants or guests are unallowable.

519.3 *Travel Allowances.* a. Travel costs of participants may be allowable as outlined in the pertinent program announcement and in the award instrument. If so, the restrictions regarding class of accomodations (see section 514 b) and use of U.S. flag carriers (see section 731.3) are applicable.

b. In training activities which involve field trips, costs of transportation of individuals may be allowable.

520 OTHER DIRECT COSTS

Following summarizes the allowability of certain other items of cost concerning which questions frequently arise:

521 ALTERATIONS AND RENOVATION

Costs incurred for ordinary or normal rearrangement and alteration of facilities are allowable. Special rearrangement and alteration costs incurred specifically for the project are allowable when such work has been approved in advance by NSF.

522 MEETINGS AND CONFERENCES

Because of the frequency with which similar questions are raised regarding the phrase "facilities for meetings and costs incidental thereto", contained in the various sets of Federal cost principles, the following summarizes the allowability of various items of cost associated with conferences, symposia, workshops or other meetings supported by NSF awards.

a. *Conference Facilities.* Rental of facilities and necessary equipment is allowable. (See section 523, "Rental or Lease of Facilities or Equipment.")

b. *Supplies.* Purchase of expendable materials and supplies necessary for the meeting is allowable. (See section 513, "Materials and Supplies.")

c. *Conference Services.* Costs of translation services, and of recording and transcribing the proceedings, are allowable.

d. *Publication Costs.* Cost of publishing the proceedings are allowable only if approved in the award instrument.

e. *Salaries.* Salaries of professional personnel, editorial and clerical assistants, and other staff members are allowable in accordance with section 511 above, in proportion to the time or effort devoted to the preparation and conduct of the conference and summarizing its results.

f. *Consultant Services and Speakers Fees.* Reasonable fees and travel allowances are allowable as prescribed in sections 514 and 516, above.

g. *Meals and Coffee Breaks.* When certain meals are an integral and necessary part of a conference (i.e., working meals where business is transacted), award funds may be used for such meals. Award funds may also be used for furnishing a reasonable amount of coffee and/or soft drinks to conference participants and attendees during periodic "coffee breaks."

h. *Participant Support Costs.* Allowable as prescribed in section 519, above.

523 RENTAL OR LEASE OF FACILITIES OR SPECIAL PURPOSE EQUIPMENT

a. Normally the awardee is expected to make available appropriate facilities without direct charge to award funds. However, on occasion, it is necessary to utilize facilities not under the control of the awardee. Rental of space off-site may be allowed, for example, for a science education project where for the benefit of the participants, the project must be held at locations other than the campus or, for a research project, if laboratory facilities or other work areas of a type or coverage not normally available within the holdings of the grantee are required. If justification for the rental of space is given in the proposal, and space rental costs are included in the award budget, rental charges may be made in conformance with the organization's policies and in the same manner that similar charges are made to any account, provided that such rental costs are reasonable and otherwise conform to the governing cost principles.

b. Rental of special purpose equipment is allowable. See also section 515.1, "ADPE Leasing Costs."

524 STIPENDS OF SUBSISTENCE ALLOWANCES

a. Stipends or subsistence allowances are authorized in some grants in support of international science activities. Such stipends are treated as "Other Costs," not as "Salaries and Wages."

b. Graduate students actually employed as research assistants may not be paid "stipends" but may be compensated for their service to the project as prescribed in section 511.1, "Salaries and Wages." See also section 525, "Tuition Remission."

c. Stipends or subsistence allowances also may be allowable to participants in meetings, conferences, symposia, or training activities. See section 519, "Participant Support Costs."

525 TUITION REMISSION

a. Tuition remission, tuition waiver and other forms of compensation by universities as, or in lieu of, salaries or wages to students performing necessary work on NSF supported projects is allowable: *Provided*, That (1) there is a bona fide employer/employee relationship between the student and the institution for the work performed, (2) the tuition remitted or other payment is reasonable compensation for the work performed and conditioned explicitly upon the performance of necessary work, and (3) it is the institution's practice to similarly compensate students in non-Federal as well as federally supported work.

b. Tuition remission, tuition waiver and other forms of compensation to students shall be considered as salaries and wages, not as a fringe benefit or other direct cost.

530 INDIRECT COSTS

531 BASIC PRINCIPLES

531.1 *Federal Cost Principles.* Most of the Federal cost principles described in section 501, above, are designed to provide recognition of the full allocated costs of federally supported projects but make no attempt to identify the circumstances or dictate the extent of agency and grantee or contractor participation in the financing of a particular project. They recognize that such arrangements properly are matters for agreement between the supporting agency and the performing organization in accordance with such Governmentwide criteria as may be applicable.

531.2 *Predetermined Fixed Rate Principle.* In order to simplify the administration of cost-type research and development contracts and grants with educational institutions and to permit more expeditious close-out of awards than is possible under a system of provisional overhead rates for billing purposes subject to post-audit adjustment, Pub. L. 87–638 (76 Stat. 437) authorized payment of reimbursable indirect costs on the basis of predetermined fixed-percentage rates applied to a portion of the reimbursable costs incurred.

In 1965, the Comptroller General (B–15784) authorized NSF to extend the principles of Pub. L. 87–638 to other nonprofit organizations for grants which are fixed in amount with NSF having no responsibility to make additional funds available regardless of what the total cost may be. In providing for the determination and application of indirect cost rates, the Federal cost principles (less those governing commercial organizations) recommend that consideration be given to the use of predetermined fixed rates where the cost experience and other pertinent facts are sufficient to produce an informed judgement as to the probable level of indirect costs during the ensuing accounting period.

532 NSF "FULL REIMBURSEMENT" POLICY

532.1 *Basic Policy.* a. It is NSF policy that a U.S. awardee is entitled to "full reimbursement" from award funds for the indirect costs allocable to the NSF share of allowable direct costs of a project except where specifically excluded by section 532.2, below.

b. If the awardee institution or organization has executed an indirect cost negotiation agreement with a cognizant Federal negotiating agency or otherwise has agreed to an indirect cost rate and base with some Federal department or agency, NSF will utilize the negotiation agreement as the basis for calculating the indirect cost amount in order to approximate "full reimbursement" for the indirect costs allocable to the anticipated direct costs of the project. Indirect cost rates established subsequent to the submission of a proposal for NSF support of a specific project will be used by NSF in calculating the indirect cost reimbursement for that project: *Provided*, That the new rates have been accepted by NSF for use prior to the final stages of processing the award.

c. NSF recognizes that the costs of a proposed project, the anticipated period of performance, and the progress to be made are estimates. Nevertheless, the indirect cost rate(s) specified in the NSF award will not be altered during the support period funded by that award (grant or amendment). NSF will neither amend an award solely to provide additional funds for subsequent indirect cost rate changes, nor settle indirect costs on a post audit basis except for awards with maximum provisional rates. NSF awards are, in effect, cost reimbursement awards with ceilings.

d. Within the framework of section 531, above, NSF implements its "full reimbursement" policy by: (1) Application of the predetermined fixed rate principle to awards to universities and colleges and to those nonprofit organizations where the cost experience and other pertinent facts available are deemed sufficient to determine the probable level of indirect costs during the ensuing accounting period as described in section 534, below, and (2) utilization of the latest available rate based on actual past cost experience or, when appropriate, on cost projections, as a maximum provisional rate, in awards to other nonprofit organizations and to profit-making firms.

e. In furtherance of section 531.1, above, any negotiations with respect to business and financial matters, including the amount of indirect cost reimbursement, are conducted by the NSF grants manager with the authorized organizational representative, not by the program officer with the prospective principal investigator.

f. NSF does not provide for the indirect costs of foreign grantees.

532.2 *Exceptions to Basic Policy.* a. NSF provides no amounts for indirect costs for the following:

(1) Awards to individuals;

(2) Awards solely for the support of travel, equipment, construction of facilities, or doctoral dissertation research; and

(3) Awards in which NSF support is exclusively in the form of fellowships, traineeships, or other fixed amounts such as cost-of-education allowances.

(4) Participant support costs.

b. In some projects NSF provides a lump sum allowance for administrative expenses in lieu of reimbursement for indirect costs. An award to a U.S. organization in support of U.S. personnel on leave of absence to conduct research and/or teach abroad during the segment of the U.S. academic year may provide for such administrative expenses. This is standard procedure in certain types of NSF awards as stated in the applicable program announcement.

533 INDIRECT COSTS IN PROPOSALS FOR NFS SUPPORT

533.1 *Proposal Budgets.* Each proposal for NSF support of a project should include a budget indicating the total amount requested from NSF, with subtotals for direct and indirect costs. The amounts shown opposite the various line items should be the amounts requested from NSF. The amount shown for indirect costs should be calculated by applying the indirect cost rate(s), approved by the cognizant Federal negotiating agency for the time period of the proposed project to the proposed direct cost items contained in the approved indirect cost base.

533.2 *Off-Campus (Off-Site) Activities.* If the proposed project contemplates work to be performed in an environment or in a manner which would generate a significantly different level of indirect costs than the normal work of the organization, such as off-campus (off-site) projects, the proposed budget should calculate the indirect cost portion of the award on the basis of where the preponderance of effort supported by NSF will occur during the period of support unless the organization and the cognizant Federal negotiating agency have negotiated some different arrangement. If so, the proposed budget should so state.

533.3 *Projects Performed by More Than One Organization.* If the proposal is for a master award (see section 205) indirect costs requested by the awardee should be as in any other proposal. Similarly, individual indirect cost amounts for cooperating institutions or organizations should be computed using the approved rates for those institutions or organizations and shown in the proposed budget(s) for each such organization. In addition, the totals of each organization's costs to be funded through the award should appear as separate line items under the "Other Direct Costs" category of the awardee's composite proposal budget.

534 INDIRECT COSTS IN NSF AWARD

534.1 *General.* Each award letter specifies NSF's maximum obligation for its share of the total costs of a project (see section 504.1, above). The award budget attached to the award letter summarizes the categories of costs itemized in the final proposal budget, on which NSF based its level of support. The amount for indirect costs will be based on the most recent "Federally negotiated" rate(s) accepted by NSF for use prior to the final stage of processing the award. Normally these will be the same as those shown in the proposal budget, as revised if necessary (see section 532.1, above).

534.2 *NSF Calculation of Indirect Cost Amount*—a. *Most Organizations.* In accordance with section 532.1, above, NSF implements its indirect cost policy for universities, colleges, and other appropriate nonprofit organizations by application of the predetermined fixed rate principle to the indirect cost rate(s) contained in the current indirect cost negotiation agreement. Such "Federally negotiated" rate(s) will be applied to the support period of each award and extended through the expiration date as follows:

(1) If the negotiation agreement specifies: (1) A "final" rate which becomes the provisional rate for a later period or (2) a single "predetermined" or "fixed" rate, such rate will be the "predetermined fixed rate" used by NSF in calculating the indirect cost portion of the NSF award.

(2) If the negotiation agreement provides two or more "predetermined" or "fixed" rates for two or more successive time frames within the NSF grant period, each such rate will be applied to appropriate direct cost expenditures anticipated to be made during each time frame. If the effective period of the negotiation agreement ends prior to the expiration date of the award, NSF will extend the last of the two or more rates through the expiration date of the award under preparation.

b. *Other Organizations.* Each NSF grant to a commercial firm or nonprofit organization which does not meet the criteria of § 532.1.d, above will contain an indirect cost ceiling based on a maximum provisional rate for the specific project.

534.3 *Off-Campus (Off-Site) Activities*—a. *General.* When a project involves off-campus (off-site) activities, NSF normally will compute the indirect cost amount on the basis of the off-campus rate. When a project involves both on and off campus activities, NSF normally will compute the indirect cost amount on the basis of where the preponderance of NSF-supported effort will occur during the period of support unless the organization and the cognizant Federal agency have negotiated some different arrangement. In that event, NSF will follow the provisions of the negotiated agreement.

b. *Special Foreign Currency (SFC) Awards.* Where an award involving SFC is made to a U.S. organization, the amount for indirect costs will be calculated by applying the appropriate approved rate(s) to the appropriate base as in a, above, whether in dollars or SFC. The resultant indirect cost amount will be payable in dollars, unless the organization specifically requests that some or all of it be payable in SFC, which can be obtained and expended only in the participating SFC country.

534.4 *Amendment for Additional Funding Support.* As indicated in section 250, NSF may award additional funding support either (a) during the originally contemplated support period or (b) for a subsequent support period. An amendment for "supplemental support" to provide funds for unforeseen expenditures during the originally contemplated support period, will contain the same indirect cost rate as the award being amended. An amendment for either (a) "renewed support" of a project originally supported for a limited period), or (b) "continued support" of a long-term project will contain the appropriate indirect cost rate for the new support period.

535 AWARDEE REIMBURSEMENT FOR INDIRECT COSTS

535.1 *Predetermined Fixed Rate.* a. Awardees should charge NSF awards at the predetermined rate(s) stipulated in the award or amendment budget unless the award letter states that the indirect cost amount is based on a maximum provisional rate. However, should negotiations between the organization and the cognizant Federal agency result in changes in the approved indirect cost rate not reflected in the NSF award, the organization may charge NSF projects at the newly negotiated rate in effect at the time direct cost expenditures are made: *Provided*, That this method of charging indirect costs is consistently applied and meets generally accepted accounting principles; and provided further that, to do so would not:

(1) Reduce the scientific scope of the project;

(2) Result in increased cost to NSF during the award period; or

(3) Decrease the period of support as contemplated in the award instrument.

b. Organizations electing to use this method rather than using the rate stipulated in the award budget must advise the NSF Division of Grants and Contracts in writing, and furnish a copy of this advice to the cognizant audit agency. Any subsequent change of method will require prior approval of the Division of Grants and Contracts.

535.2 *Maximum Provisional Rate.* Commercial organizations, or others whose awards specify a maximum provisional rate, should charge NSF awards at the lesser of: (1) The maximum provisional rate stated in the award budget, or (2) the audited rate. In the event the audited rate is lower than the maximum provisional rate, the difference must be reported and credited to NSF as prescribed in section 440, "Refunds to NSF."

535.3 *Under-recoveries of Indirect Cost.* NSF recognizes that any inability to obtain "full reimbursement" for indirect costs at the prevailing negotiated rate means the awardee must absorb the shortfall. Any such shortfall may be allocated as part of the organization's required cost-sharing. See section 640, "Cost-Sharing and Matching."

5–1 Selected Items of Cost.
Exhibits:

CHAPTER VI—PROJECT AND AWARD MANAGEMENT

600 BACKGROUND

a. Parts I and II of Attachment A to FMC 73–7 (formerly OMB Circular A–101) contain OMB policies on the review and direction of the research effort in, and expenditure approval procedures for, projects supported by Federal grants, contracts, and other agreements with

educational institutions in the United States.

b. Various attachments to OMB Circular A–110 provide OMB policies, criteria, and procedures affecting those and related aspects of post-award administration and management of grants and other agreements (excluding contracts) to educational institutions and to other nonprofit organizations. They are comparable to various attachments to FMC 74–7 (formerly OMB Circular A–102) concerning grants-in-aid to State and local governments.

c. Federal Management Circular 73–3 (formerly OMB Circular A–100) provides basic guidelines for Federal agencies concerning cost participation by all types of performing organizations (including commercial firms) in the cost of research supported by Federal agencies.

d. This chapter implements the directives cited in a through c, above, and extends their applicability to all nonprocurement awards to all types of performing organizations. It contains the following principal topics:

610 Monitoring and Reporting Project Performance.
620 Changes in Project Direction or Management.
630 Changes in the Award Budget.
640 Cost Sharing and Matching.
650 Project Income.
660 Suspension and Termination Procedures.
670 Award Close-out Procedures.
680 Records Retention and Audit.

e. Where the requirements for grants differ from those for other agreements, succeeding sections suggest those differences.

610 MONITORING AND REPORTING PROJECT PERFORMANCE

611 BACKGROUND

Succeeding sections 612 through 615 implement the monitoring and reporting requirements of Attachment H to OMB Circular A–110 (and of Attachment I to FMC 74–7) and prescribe guidelines for organizational and NSF approval systems to effectuate them.

612 MONITORING PROJECT PERFORMANCE

612.1 *Performing Organizations.* In implementation of paragraph 2 of Attachment H to OMB Circular A–110, NSF requires that performing organizations monitor grants and other agreements substantially as follows:

(1) *Grants.* The performing organization shall monitor the performance of the project as appropriate to assure adherence to the requirements of this chapter and shall conduct such other project oversight as may be required by the policies of the performing organization and sound management practices.

(2) *Other Agreements.* The performing organization shall monitor the performance of the project as appropriate to assure adherence to (1) the requirements of this chapter, (2) such performance goals, time schedules, or other requirements as may be appropriate to the project and the terms of the award instrument, and (3) sound management practices and organizational policies.

612.2 *NSF.* a. In implementation of paragraph 7 of Attachment H to OMB Circular A–110, NSF intends to conduct site visits essentially as follows:

(1) *Grants.* The cognizant NSF program officer will make site visits, as appropriate, to keep informed of the progress of the work. Similarly, the cognizant NSF grants manager may make site visits, as appropriate to review grantee management control systems.

(2) *Other Agrements.* The cognizant NSF program officer and the NSF administrative staff will make site visits deemed necessary to review project management, keep informed of the progress of the work, and provide such technical assistance as may be required. The NSF staff also may make site visits to review grantee management control systems and provide appropriate advice.

b. Additionally the NSF program officer will take apropriate action on the progress reports prescribed by section 615 and the final technical report prescribed by section 674.

613 ORGANIZATIONAL PRIOR APPROVAL SYSTEM

613.1 *Purpose.* In order to carry out its project monitoring responsibilities (see section 612.1), each performing organization should have a system to ensure that authorized officials provide necessary organizational approvals in advance of any section that would result in either (a) the performance or modification of an NSF-supported activity where such approval is required by this chapter or (b) the obligation or expenditure of funds where the governing cost principles prescribe conditions or prior approvals as summarized in Chapter V. Where such action also requires prior agency approval, as stated in sections 620 and 630, the organizational prior approval system is the framework for obtaining NSF approvals as outlined in section 614.

613.2 *Implementing Guidelines.* Performing organizations may utilize whatever system and organizational structure meets their own internal policies and procedures provided they conform in general to the following guidelines:

a. *Approving Official.* The organization must designate an appropriate official or officials, such as the authorized organizational representative (see Glossary), to review and approve, for the organization, the types of actions described in section 613.1, above. The designated official(s) may not be the principal investigator or project director or other personnel involved in the conduct of the project.

b. *Approval Documentation.* Decisions requiring prior approval must be documented and retained in records available for inspection or audit for a period consistent with the records retention requirements of section 680. Specific documented actions include:

(1) Justification of the action by the principal investigator/project director (for grants) or other appropriate employee (for other agreements);

(2) Review for scientific propriety, project relevance, and effective utilization of resources by appropriate official(s) at an administrative level above that of the initiator of the request;

(3) Review for policy permissibility and funds availability; and

(4) Final approval, by the designated organizational official.

614 NSF PRIOR APPROVAL SYSTEM

In order to carry out that portion of its project monitoring responsibilities which involves furnishing required approvals, NSF utilizes its program and grants management staffs in the following manner on NSF grants:

614.1 *Program Officers.* The cognizant NSF program officer will review grantee requests for changes in project direction or management (section 620) or for rebudgeting (section 630) and either provide NSF approval or disapproval or forward his recommendation to the cognizant NSF grants officer.

614.2 *Grants Officer.* Where the action proposed by the grantee requires grants officer approval, he will furnish the NSF decision to the grantee, with copies to the cognizant NSF program officer and principal investigator/project director. NSF approvals in other agreements will be governed by the terms of the agreement.

615 REPORTING PROJECT PERFORMANCE

In implementation of paragraphs 3 through 5 of Attachment H to OMB Circular A–110, principal investigators/project directors shall submit progress reports as required by §§ 615.1 through 615.3, below. Such reports shall be submitted to the NSF program officer specified in the award instrument in accordance with such procedures as the performing organization may prescribe. See section 674 for final technical report requirements.

615.1 *Content of Progress Reports*—a. *Grants*—Brief progress reports should include:

(1) A summary of overall progress, including results obtained to date, and comparisons of actual accomplishments with proposed goals for the period;

(2) An indication of any current problems or favorable or unusual developments;

(3) A summary of work to be performed during the succeeding budget period, if any; and

(4) Other information pertinent to the type of project being supported or as specified in the program announcement or solicitation.

b. *Other Agreements*—Same as in a, above, plus whatever additional information is required by the terms of the agreement.

615.2 *Timing of Progress Reports*—a. *Grants*—Unless otherwise specified in the award instrument, progress reports shall be submitted in the following frequency:

(1) For Standard Grants, the first report should be submitted no later than

90 days after the anniversary of the effective date of the grant, with succeeding reports annually thereafter, less the final year.

(2) For Continuing Grants, the progress report should be attached to the annual request for continued support.

b. *Other Agreements*—Progress reports should be submitted as required by the terms of the award instrument.

615.3 *Significant Changes or Delays*—In the event the principal investigator/project director encounters problems, delays, or adverse conditions that will materially affect the ability to attain the objectives of the project or to meet such time schedules as may have been proposed, he should advise appropriate officials of his parent organiaztion and the cognizant NSF Program Officer.

620 CHANGES IN PROJECT DIRECTION AND MANAGEMENT

Sections 621 through 623 implement the policies contained in Part I of Attachment A to FMC 73–7 regarding the direction of projects.

621 CHANGES IN OBJECTIVES, SCOPE, OR METHODOLOGY

621.1 *Background.* a. Subpart I.B.1 of FMC 73–7 prescribes restrictions on changes in research methods, procedures, objectives, or phenomena under study. It recognizes that the degree of Government review or direction exercised may vary from project to project. Subparagraph 3a of Attachment J to OMB Circular A–110 also requires prior agency approvals before changes may be made in scope or objectives of the project.

b. A key factor in the NSF decision to support a project involves the broad objectives of the proposal in terms of the areas of scientific knowledge to be advanced or other aims to be achieved. The methods and procedures employed in reaching those goals and the specific early objectives also are of importance in many program areas. These factors are inherent in the criteria for the selection of research projects (Exhibit 2–1) but are somewhat different for grants, as distinct from other agreements.

621.2 *Change in Objectives or Scope*—a. *Grants.* Neither the phenomenon or phenomena under study (i.e., the broad category of the research) nor the objectives of the project stated in the proposal or agreed modification thereto shall be changed without prior NSF approval. For grants, such changes should be made the subject of a revised proposal, submitted about three months in advance of the proposed changes, to allow time for consideration and recommendation by the NSF program officer and amendment to the grant instrument.

b. *Other Agreements.* Such changes should be proposed in a fashion consistent with the terms of the award instrument.

621.3 *Changes in Methodology*—a. *Grants.* NSF believes that the principal investigator, operating within the established policies of his parent organization, should feel free to pursue interesting and important leads which may arise during the conduct of a scientific research (or other grant-supported) project or to adopt an alternative approach which appears to be a more promising means of achieving the objectives of the project. Significant changes in methods or procedures shall be reported to appropriate grantee official(s) and to the cognizant NSF program officer.

b. *Other Agreements.* Changes in basic methodology or procedures may require advance coordination with, and specific approval of NSF.

622 CHANGES IN SENIOR PERSONNEL OR THEIR LEVEL OF EFFORT

622.1 *Background.* a. The NSF decision as to whether or not to support a proposed project is based to a considerable extent upon its evaluation of the proposed principal investigator's knowledge of the field of study and his capabilities to conduct the project in an efficient and productive manner. This is reflected in Category A of the NSF criteria for the selection of research projects, Exhibit 2–1. NSF desires that the named principal investigator or project leader be continuously responsible for the conduct of the project and be closely involved with the effort. Succeeding §§ 622.2 through 622.7 translate the general FMC 73–7 requirements into NSF requirements for grants. Other agreements will be governed by the specific terms of the award instrument.

622.2 *Basic Requirements.*—If a named principal investigator or project director plans to, or becomes aware that he will, (1) devote substantially less effort to the work than anticipated in the approved proposal, (2) sever his connection with the grantee organization, or (3) otherwise relinquish active direction of the project, he shall advise both the NSF program officer and his organization's authorized organizational representative. They shall initiate action appropriate to the situation, under the guidelines which follow.

622.3 *Short-term Absence of Senior Personnel.* If a named principal investigator or project director will be absent from the project for a period of three months or less, he shall notify appropriate officials of his parent organization and the cognizant NSF program officer of arrangements for conduct of the project during his temporary absence.

622.4 *Long Term Absence of Senior Personnel.* In the event the PI/PD will be away from the project for a period greater than three months (up to twelve months, as on sabbatical leave) but intends to return, he shall provide the cognizant program officer with a written statement, endorsed by the authorized organizational representative, of arrangements for oversight of the project and for authorizing charges against the grant. The program officer will provide written approval if the arrangements are satisfactory, but no formal amendment to the grant will be made. If the PI/PD's temporary activities might constitute a conflict of interest (e.g., working for a Federal agency), a substitute PI/PD must be appointed as described in section 622.7 below.

622.5 *Change in Level of Effort.* a. If the PI/PD will devote substantially less effort to the work than anticipated in the proposal, he shall consult with appropriate officials of his organization and with the NSF program officer.

b. If either determines that the reduction of effort would be substantial enough to impair the successful prosecution of the project, he will consult the cognizant NSF grants officer. The grants officer may (1) request the grantee to nominate a replacement principal investigator or project director acceptable to the cognizant NSF program officer, (2) initiate the termination procedures described in section 660, or (3) negotiate other appropriate modification to the award.

622.6 *Withdrawal of Senior Personnel.* In the event the named principal investigator or project director severs his connection with the grantee organization or otherwise relinquishes active direction of the project, the authorized organizational representative shall notify the NSF program officer and the NSF grants officer and either:

(a) initiate the award close-out procedures prescribed by section 670 or

(b) nominate a substitute project leader as prescribed in section 622.7.

622.7 *Substitute PI/PD.* In the event the grantee desires to continue the project with a substitute PI/PD, the authorized organizational representative shall advise the cognizant NSF program officer and the cognizant NSF grants officer of the name and qualifications of the proposed substitute. If approved by NSF, the grant will be appropriately amended. If not, the termination procedures described in section 660 will be initiated.

623 SUBCONTRACTING OR TRANSFERRING THE PROJECT EFFORT

In implementation of Subpart I.B.3 of Attachment A to FMC 73–7 and paragraph 4 of Attachment J to OMB Circular A–110, the following will be observed:

a. Excluding the purchase of commercially available supplies, materials, equipment or general support services allowable under the award, none of the research or substantive effort under an NSF award may be contracted, granted or otherwise transferred to another organization without prior NSF approval. Normally, the intent to so contract is fully disclosed in the proposal submission, and evidence of NSF prior approval appears in the grant letter and accompanying budget. Other agreements will be governed by specific approval requirements in the award instrument.

b. In the event the need arises to so contract after a grant has been awarded, the grantee must submit to the NSF program officer, with a copy to the appropriate NSF grants officer, the proposed performance statement and budget, a statement indicating the basis for selection of the subrecipient, and a justification of the proposed arrangement. NSF approval will be indicated by letter from the grants officer.

630 CHANGES IN THE AWARD BUDGET

631 BACKGROUND

a. Part II of Attachment A to FMC 73–7 restricts the extent of Government controls and limitations on expenditures for specific items under research projects at educational institutions to those prescribed by the Federal cost principles contained in FMC 73–8 (i.e., Subparts 1–15.3 and 1–15.8 of the Federal Procurement Regulations).

b. Attachment J to OMB Circular A–110 contains related criteria and procedures to be followed by Federal agencies in requiring nonacademic nonprofit organizations, as well as educational institutions, to request approvals for changes in grants and other agreements supporting any type of project. Those criteria and procedures are similar to the budget deviation procedures prescribed by Attachment K to FMC 74–7 for grants-in-aid to State and local governments.

c. Succeeding sections 632 through 636 translate the criteria and procedures of those OMB directives and of the Federal cost principles described in section 501 into operational requirements for changes in the grant budget during performance of grant projects by any category of performing organization. Other agreements will be governed by the specific time of the award instrument. See also section 504.6, "Prior Approval."

632 BUDGETED EXPENDITURES

Expenditures from Federally furnished funds for goods, services, and capital items contemplated in the proposal and its budget may be made as prescribed in Chapter V up to the amount specified in the appropriate line item of the award budget (Exhibit 2–8): *Provided*, That neither the grant letter nor its budget precludes such expenditure. Note, however, that, whether or not the grant budget provides funds for them,

a. Each foreign trip requires specific approval, in writing, by the NSF program officer (see sections 514d and 731), and

b. The hiring of consultants requires organizational approval (see section 613) and documentation of the factors specified in the applicable Federal cost principles (see section 516).

633 UNBUDGETED EXPENDITURES

a. Expenditures from Federally furnished funds for items not covered by the grant budget may not be made unless approved both by the organizational prior approval system (section 613) and by NSF (section 614).

b. Written approval by the NSF program officer constitutes NSF approval except for the following, which require the specific approval of the grants officer:

(1) General purpose equipment (see section 512.2)

(2) Consultant services (see sections 204.1 and 516)

(3) Subcontracting or transferring the project effort (see section 623)

(4) Special alterations and renovations (see section 519.1)

(5) Commercial production or distribution of materials (see section 760)

634 UNDERBUDGETED EXPENDITURES

a. If funds are budgeted for a category of expense, but the amount indicated is insufficient, the budgeted amount may be exceeded: *Provided*, That

(1) The budget adjustments are approved by the organizational prior approval system (section 613)

(2) The amount charged against the NSF award will not exceed the amount specified in the award instrument, as amended (see section 504.1, "Maximum Obligation") and

(3) The budget adjustments receive prior NSF approval if required by the succeeding section 635.

b. See section 525, "Grantee Reimbursement for Indirect Costs."

635 OVERBUDGETED EXPENDITURE

Whenever the amount of Federal funds authorized by an NSF award is expected to exceed the needs of the recipient by more than $5,000 or five percent of the award, whichever is greater, the recipient shall promptly notify the NSF program officer.

636 BUDGET CHANGES REQUIRING PRIOR NSF APPROVAL

a. In implementation of subpart II C. of FMC 73–7 and of paragraphs 3 and 6 of Attachment J to OMB Circular A–110, only the following budget changes require specific NSF approval in most awards:

(1) Unbudgeted expenditures (see section 633, above);

(2) Any transfer of funds from the participant support category (see section 518.1) to any other direct cost category or to indirect costs without the express written approval of the cognizant NSF program officer;

b. In projects for which NSF support exceeds $100,000 in any support period, transfers between budget line items exceeding five percent of the NSF share require approval of the cognizant NSF program officer as provided in paragraph 5 of Attachment J to A–110.

640 COST SHARING AND MATCHING

641 BASES FOR NSF REQUIREMENTS

641.1 *Statutory Requirement.* a. The Appropriation Acts of the Congress providing funds to NSF and other independent agencies contain the following language:

SEC. 508. None of the funds provided in this Act may be used for payment, through grants or contracts, to recipients that do not share in the cost of conducting research resulting from proposals for projects not specifically solicited by the Government: *Provided*, That the extent of cost sharing by the recipient shall reflect the mutuality of interest of the grantee or contractor and the Government in the research.

b. It should be noted that this requirement distinguishes between solicited and unsolicited proposals, regardless of the type of instrument used in research awards to successful proposers. The statutory requirements applicable to some other Federal departments and agencies are based on the type of award instrument (grant or contract), rather than on whether or not the proposal was solicited by the awarding agency. Section 642 defines terms for NSF purposes.

641.2 *OMB Directives.* a. Federal Management Circular 73–3 (formerly OMB Circular A–100) provides basic guidance to Federal agencies for determining:

(1) The amount of cost sharing to be obtained when cost sharing is required by statute; and

(2) Whether performing organizations should be requested to participate in the cost of the research even though cost sharing is not required by statute, and, if so, in what amount. It is applicable to all awards to all kinds of organizations (except other Federal agencies) for all kinds of research, both basic and applied. It is reproduced as Exhibit 6–1.

b. FMC 73–3 also prescribes (7.c.(2)) that the amount of cost participation by a performer may be determined by either of two methods: (1) For each individual research project, or (2) if the supporting agency desires, for the aggregate of all or some of the research projects supported by an agency at a given organization. However, the standard Financial Status Report prescribed by Attachment G to OMB Circular A–110 requires that the "non-Federal share of outlays" be reported for each grant or other agreement. (That report is reproduced as Exhibit 6–4.)

c. When the amount of cost sharing is determined for individual projects, OMB authorizes the supporting agency to consider the organization's participation over the total term of the project so that a relatively high contribution in one year may be offset by a relatively low contribution in another year. It also authorizes the Federal agency and the performer to agree that relatively high contributions on some projects may be offset by relatively low contributions on other projects.

d. Attachment E to OMB Circular A–110 supplements FMC 73–3 by prescribing criteria and procedures for the allowability of cash and in-kind contributions in satisfying cost sharing and matching requirements. It is reproduced as Exhibit 6–2.

642 DEFINITIONS

For the purposes of interpreting the statutory cost sharing requirement (§ 641.1) and the two OMB directives (§ 641.2), the definitions which follow are used by NSF. Since most of these terms are not contained either in those directives or in standard glossaries, such as the Library of Congress' "Science Policy—A Working Glossary," their source is indicated in parenthesis.

a. *Cost participation.* A generic term denoting any situation where the Government does not fully reimburse the performer for all allowable costs, profits, or fees associated with the specified effort. The term encompasses cost sharing, cost matching, cost limitation (direct or indirect), and similar phrases. Cost participation may be in any form, including but not limited to cash, personal property or services, or real property or interest therein, needed for the project, the value of which shall be established by mutual agreement between the agency and the performer. (Source: Special Task Group Report on COGP Recommendation B–8.)

b. *Cost sharing.* Participation by the performing organization in more than a token amount of project costs. (Derived from FMC 73–3 and NSF Notice No. 31 of September 3, 1970, "Cost Sharing on Research Projects.")

c. *Federal share.* That portion of project costs that is borne by the Federal government. (Derived from Attachment E to OMB Circular A–110, subparagraph 2b.)

d. *Awardee share.* That portion of verifiable project costs that is borne by the awardee from its own resources or from those of third parties. *Provided*, That such costs are (1) not included as contributions for any other Federally-assisted project and (2) not paid by the Federal Government under another assistance agreement (unless the agreement is authorized by Federal law to be used for cost sharing or matching). (Derived from Attachment E to OMB Circular A–110, subparagraph 3b.)

e. *Matching share.* Cost participation by the awardee in a substantial amount of project costs as required by a specific program announcement or solicitation. (Derived from Attachment E to OMB Circular A–110, subparagraph 2b.)

f. *Project costs.* All allowable costs (as set forth in the applicable Federal cost principles) incurred by the performing organization, including the value of any in-kind contributions by that organization or non-Federal third parties in accomplishing the objectives of the grant or other agreement during the project period. (Derived from Attachment E to OMB Circular A–110, subparagraph 2a.)

g. *Research.* Systematic, intensive study directed toward fuller scientific knowledge or understanding of the subject studied. (Source: Technical Notes to NSF series "Federal Funds for Research, Development, and Other Scientific Activities".)

h. *Solicited proposal.* A proposal resulting from a document issued by the Foundation which specifically states that proposals are being solicited. Such a document usually is either: (a) A Request for Proposals (RFP) or Invitation for Bids (IFB), issued pursuant to the NSF Procurement Regulations (Chapter 25, Title 41, CFR) or (b) an NSF Program Solicitation, issued as a non-procurement action under the authority of Sec. 11(c) of the NSF Act (42 U.S.C. 1870). (See section 202, "NSF Mechanisms for Generating Proposals.")

i. *Token participation.* Cost participation equal to at least 1 percent of project costs. (Derived from NSF Notice No. 31 of September 3, 1970, subject "Cost-sharing on Research Projects.")

j. *Unsolicited proposal.* A proposal not specifically solicited by a Request for Proposals (RFP), Invitation for Bids (IFB), or an NSF Program Solicitation (see section 202, "NSF Mechanisms for Generating Proposals.")

643 NSF COST SHARING REQUIREMENTS

643.1 *Unsolicited Research Projects.* In accordance with its statutory directive § 641.1, above) NSF requires that each awardee share in the costs of each research project for which the NSF grant or other agreement results from an unsolicited proposal. NSF awards which provide funds solely for the following purposes are not considered to be in support of "research" for statutory cost-sharing purposes:

a. International travel;
b. Construction, improvement, or operation of facilities;
c. Acquisition of research equipment;
d. Ship operations;
e. Education and training;
f. Publication, distribution, and translation of scientific data and information;
g. Symposia, conferences, and workshops;
h. Special studies authorized or required by Subsections 3a(5) through 3a(7) of the NSF Act, as amended.

As a matter of policy, NSF does not reimburse grantees for the indirect costs associated with doctoral dissertation research and considers this as satisfaction of the cost-sharing requirement.

The NSF requirement is contained in General Provision "Cost Sharing", and is further described in succeeding parts of this section 643.

643.2 *Solicited Research Projects.* NSF encourages organizations responding to program solicitations to contribute to the cost of performing the research unless that would be inappropriate because of the circumstances described in subparagraph 7a(2) of Exhibit 6–1. However, unless otherwise specified in a particular program solicitation, cost sharing is not a prerequisite to the award of a grant or other agreement to support a project resulting from such a program solicitation.

643.3 *Cost Sharing Amount.* On each NSF-supported project requiring cost-sharing, the awardee must share in the costs on more than a token participation basis. However, NSF expects that awardees will share in the costs at a level which reflects their interest in the research, the potential benefits they may derive, and their ability to cost-share. Institutions and organizations have a great deal of flexibility with regard to their approach to cost-sharing under NSF-supported projects, and thus must assume and exercise considerable responsibility in determining appropriate levels of cost-sharing.

643.4 *Cost Sharing Method*—a. *Background.* For many years, NSF required that proposal budgets show both the NSF (i.e., Federal) share and the grantee share of estimated project cost being proposed for NSF support; both were reflected in the summary budget attached to the grant letter. In May, 1970 (Important Notice No. 28), NSF combined its research grant budget and fiscal report forms into a single form, and eliminated the item-by-item cost sharing report. In September, 1970 (Important Notice No. 31), NSF eliminated cost sharing data from proposal budgets, grant budgets, and fiscal reports. In July, 1971 (Important Notice No. 40), NSF initiated a requirement for annual cost sharing reports covering all awards made during the preceding fiscal year. As a result of Congressional concern with the amount of cost sharing actually being made by grantees, and to conform with the financial reporting requirements of Attachment G to OMB Circular A–110, NSF is revising its cost sharing requirements for all proposals submitted on and after May 1, 1977 as described in succeeding parts of this section 643.

b. *Proposals for NSF Support.* The proposal budget (Exhibit 2–4) should show both the proposed NSF and awardee shares of the total estimated costs of the project and a figure indicating the ratio which the proposed awardee share bears to the estimated total project costs. Whereas the proposal budget must allocate the NSF share to specific line items, to arrive at the total amount requested from NSF, it need show the proposed awardee share only as a lump sum figure, included in the total project cost figure.

c. *Cost Sharing Negotiations.* (1) NSF does not utilize "institutional cost sharing agreements," such as those used by some granting agencies to provide for aggregated cost sharing. NSF requires that cost sharing be offered on each individual unsolicited research project, utilizing the proposal budget as the basis for negotiation, rather than a separate "cost sharing proposal," such as that used by some granting agencies.

(2) Prior to recommending whether or not NSF should support a particular project, the NSF program officer may engage in preliminary discussions with the proposing principal investigator/project director. Should such discussions result in changes in the basic objectives or scope of the project, a revised proposal must be submitted (see section 621, "Changes in Objectives, Scope, or Methodology.") Should such preliminary discussions result in changes of 10 percent or more in any of the line items of the proposed budget a new proposal budget, with new NSF share, awardee share, and percentage figures, must be submitted. (See section 630, "Changes in the Award Budget.") Such revised proposals or budgets must be approved by the authorized organizational representative (see Glossary).

(3) The cost sharing amount and percentage shown on the (revised) proposal budget will be shown in item S of the Award Budget (Exhibit 2–8), and will affect the respective income shares of NSF and the awardee in income producing awards. See section 650, "Project Income."

643.5 *Cost Sharing Records and Reports*—a. *Awardee Records.* (1) Awardees must maintain records of all research project costs which distinguish between those to be paid from funds furnished by the Government and those claimed as

the awardee contribution to cost participation. Such records are subject to audit (Exhibit 6–1, subparagraph 7(c)(3)).

(2) If the awardee's cost participation includes in-kind contributions, the basis for determining the valuation for volunteer services and donated property must be documented (Exhibit 6–2, paragraph 6).

b. *Awardee Reports.* (1) The actual cost participation by the awardee will be reported to NSF in line 10f of SF 269, Financial Status Report (Exhibit 6–4). The actual amount need not be the same as the proposed amount, but must be more than a token amount, as defined in section 642.3, above.

(2) In a cooperative project, awarded under a master grant (section 205) the grantee is responsible to NSF for cost-sharing on the entire project but may require cooperating institutions to contribute in proportion to their participation.

644 NSF MATCHING REQUIREMENT

Some NSF programs have a requirement for awardees to match the Federal support in whole or part, as outlined in the specific program announcement. Procedural requirements are as in section 643, above.

650 PROJECT INCOME

651 BACKGROUND

a. Attachment D to OMB Circular A–110 and Attachment E to FMC 74–7 provide somewhat different standards regarding grantee accountability for income related to projects financed in whole or in part with Federal funds.

b. The Report of Federal Cash Transactions and the Financial Status Report prescribed by Attachment G to A–110 and by Attachment H to FMC 74–7 provide somewhat different instructions as to how such income is to be reported by the different types of organizations.

c. The Senate Committee on Appropriations, in its report on the fiscal year 1976 NSF appropriation, stated that the NSF policy of allowing grantees to retain royalty income generated (subsequent to commercial release) by the sale of federally-developed education materials was improper and should be terminated and also directed NSF to collect all moneys being held in such accounts.

d. In order to continue to carry out the Congressional directive cited in c, above, and to provide equitable treatment both to the Government and to the various types of organizations to which NSF awards grants and other agreements, NSF will adapt the program income and income reporting provisions of those two directives to its awards, as of the effective date of this Manual. Section 652 defines terms; section 653 prescribes the new NSF project income provisions; Exhibit 6–6 summarizes both the project income provisions of section 653 and the reporting and refund requirements of sections 430, 440, and section 675.

652 DEFINITIONS

The following terms have the indicated meanings, derived from paragraph 1 of Attachment D to OMB Circular A–110 and from paragraph 5 of Attachment E to FMC 74–7.

a. *Project income.* Gross income earned by the awardee from a project financed in whole or in part with Federal funds. Such earnings include, but are not limited to, income from service fees, sale of commodities, usage or rental fees, and royalties received as a result of patents or copyrights. Project income includes royalty income and other income as defined below. It excludes interest earned on advance payments (see section 423 "Payment Policies").

b. *Royalty income.* Project income earned by the awardee for the right to manufacture, sell or distribute materials developed or produced with NSF support, including payments to the awardee based on sales and any interest earned thereon.

c. *Other income.* Project income other than royalty income.

d. *Federal share.* That portion of project income which accrues to the Federal government. Unless otherwise mutually agreed prior to the expiration of the award, the Federal share shall be computed on the same ratio basis as the Federal share of the total project cost as reflected in the Award Budget (Exhibit 2–8).

e. *Awardee share.* That portion of project income which accrues to the awardee. Unless mutually agreed prior to the expiration of the award, the awardee share of project income shall be computed on the same ratio basis as the awardee share of total project costs as reflected in the award budget, Exhibit 2–8. (See section 643.4, "Cost Sharing Method.")

f. *Total project costs.* The sum of the Federal and awardee shares of all costs (both direct and indirect) of a project, which are allowable as set forth in the applicable Federal cost principles.

653 NSF PROJECT INCOME PROVISIONS

653.1 *Grants*—a. *Royalty income.* Unless otherwise specified in the award instrument, the awardee will have no obligation to the Federal government with respect to the Federal share of royalties received as a result of copyrights or patents produced under the award except to satisfy the reporting requirements of section 675, summarized in Exhibit 6–6.

b. *Other income.* Unless otherwise specified in the award instrument, the Federal share of other project income shall be retained by the awardee and added to the funds committed to the project by NSF and the awardee and be used to further eligible project objectives. The awardee share may be used as desired by the awardee, including financing the non-Federal share of the project.

653.2 *Curriculum Development Agreements*—a. *Royalty income.* Unless otherwise specified in the award instrument, the Federal share of royalty income earned from a publisher or distributor under a curriculum development award, and any interest thereon, must be reported to NSF semi-annually in the special income report prescribed by the terms and conditions of the award, and credited or returned to NSF as prescribed in section 430, "Federal Cash Transactions Report." Unless otherwise specified in the award instrument, the awardee share is to be (1) added to funds committed to the project up to the total project cost and used to further eligible project objectives, and (2) any amount in excess of total project cost is to be returned to NSF.

b. *Other income.* Unless otherwise specified in the award instrument, the Federal and grantee shares of other income are to be reported and credited as in a(1), above.

653.3 *Other Agreements*—a. *Royalty income.* Unless otherwise specified in the award instrument, the Federal share of royalty income up to the total project cost is to be added to funds committed to the project and used to further eligible project objectives, but the awardee will have no obligation to the Federal government with respect to either its share or the Federal share in excess of total project costs except to satisfy the reporting requirements of section 675.

b. *Other income.* The award instrument may specify that the Federal share up to total project cost is to be used for either of the following purposes:

(a) Added to funds committed to the project and be used to further eligible project objectives, or

(b) Deducted from the total project costs in determining the net costs on which the Federal share of costs will be based.

Both the awardee share and the Federal share in excess of total project costs may be used as desired by the awardee, including financing the non-Federal share of the project.

660 SUSPENSION AND TERMINATION PROCEDURES

661 BACKGROUND

a. Succeeding sections 662 through 664 implement the suspension and termination procedures of Attachment L to OMB Circular A–110, which are substantially the same as those of Attachment L to FMC 74–7. Those procedures are analogous to but different from the revocation procedures used for many years in NSB grants.

b. Many NSF grantees are familiar with the general principles applicable to termination for convenience, contained in Subpart 1–8.2 of the Federal Procurement Regulations, which differ substantially from the similarly named procedures of A–110 and FMC 74–7. To avoid misunderstanding, NSF will use the phrase "termination by mutual agreement" vice "termination for convenience" to implement the procedures prescribed by subparagraph 4.b. of Attachment L to A–110 and subparagraph 5.b. of FMC 74–7.

662 DEFINITIONS

The following terms have the indicated meanings:

a. *Suspension.* An action by NSF that temporarily withholds further Federal support of a project pending corrective action by the awardee or a decision by NSF to terminate the award.

b. *Termination.* The cancellation of an award, in whole or in part, at any time prior to its expiration.

c. *Terms and Conditions.* The general and special provisions of the award instrument.

663 SUSPENSION OR TERMINATION FOR CAUSE

663.1 *NSF Policy.* a. When a awardee has materially failed to comply with the terms and conditions of a grant or other agreement, NSF may (1) suspend the award or (2) terminate the award for cause as prescribed in the General Provisions for Suspension or Termination (Appendices A or B).

b. NSF prefers that deficiencies be corrected whenever practicable. Therefore, action to suspend or terminate an award normally will be taken only after the awardee has been informed of the deficiency and given sufficient time to correct it, in accordance with the procedures in section 663.2. However, this policy does not preclude immediate suspension or termination when such action is reasonable in the circumstances and necessary to protect the interests of the Government.

c. If an award is suspended pursuant to this section, no obligations incurred by the awardee during the period of suspension shall be allowable under the suspended award. However, NSF will allow necessary and proper costs which the awardee could not reasonably avoid during the period of suspension; provided that such costs would otherwise be allowable under the applicable Federal cost principles.

d. If an award is terminated pursuant to this section, financial obligations incurred by the awardee prior to the effective date of termination will be allowable to the extent they would have been allowable had the award not been terminated, except that no obligations incurred during the period in which the award was suspended (except those allowed pursuant to c, above) will be allowed. The settlement of termination costs will be in accordance with the applicable Federal cost principles (e.g., FPR 1–15.205–42, 1–150.309–45, etc.).

663.2 *NSF Procedures.* a. When it is believed that the awardee has failed to comply with one or more of the terms and conditions of an award, the grants officer will advise the awardee by letter of the nature of the problem and that failure to correct the deficiency may result in suspension or termination of the award. The awardee will be requested to respond in writing within 30 days of the date of such letter, describing the action taken or the plan designed to correct the deficiency. Copies of such correspondence will be furnished to the principal investigator and to the NSF program officer.

b. If a satisfactory response is not received within 30 days of such letter, the grants officer may issue a notice suspending authority to further obligate award funds, in whole or in part. The notice of suspension will be sent by certified mail (return receipt requested), to the authorized organizational representative, with a copy to the PI/PD. Within the Foundation, copies will be furnished to the Division of Financial and Administrative Management (DFA) and to the program officer. The notice will set forth the activities covered by the suspension and its effective date, and the corrective action required by the awardee in order to remove the suspension.

c. The suspension shall remain in effect for 90 days during which time the awardee shall take corrective action to the satisfaction of NSF or give assurances satisfactory to NSF that corrective action will be taken. In that event, the grants officer will issue a notification, addressed as in b, above, that the suspension is lifted. Otherwise, NSF may terminate the award.

d. In the event the deficiency is not corrected to the satisfaction of NSF, the grants officer may issue a notice of termination, addressed as in b, above. The notice will establish the reasons for the action and its effective date.

e. Within 90 days of the effective date of termination, the awardee shall furnish an itemized accounting of funds expended for allowable costs and the unexpended award balance. Within 30 days of a request therefore, the awardee shall remit or otherwise credit to NSF any amounts found due, as prescribed in section 670, "Award Closeout Procedures."

f. In the event of deficiencies involving more than one award, NSF reserves the right to suspend or terminate all support to any or all projects being performed by the awardee, and to withhold any future support until such time as the awardee completes corrective action on present deficiencies and certifies the intention of abiding by the provisions of this "Manual" in the future.

664 TERMINATION BY MUTUAL AGREEMENT

664.1 *NSF Policy.* Circumstances may arise whereby either NSF wishes to terminate its support of a project or the awardee wishes to terminate its performance of a project. If both parties agree that continuation of the project would not produce beneficial results commensurate with the further expenditure of funds, it is NSF policy to terminate the award by mutual agreement.

664.2 *Procedures.* a. If the awardee wishes to terminate the project, the authorized organizational representative should advise the NSF grants officer, with a copy to the NSF program officer.

b. If NSF wishes to terminate the project, the grants officer will advise the awardee's authorized organizational representative, with copies to the PI/PD and the NSF program officer.

c. Within 30 days after receipt of request from either party for termination by mutual agreement, the other party will provide an appropriate written response. In the event of disagreement between the parties, the NSF decision will be final.

d. Following termination, the close-out procedures of section 670 shall be initiated.

670 AWARD CLOSEOUT PROCEDURES

671 BACKGROUND

Succeeding sections 672 through 676 implement:

a. The closeout procedures of Attachment K to OMB Circular A–110 and of Attachment L to FMC 74–7;

b. The requirements of Attachment H to A–110 and of Attachment I to FMC 74–7 for a final technical or performance report;

c. The requirements of Attachment G to A–110 and of Attachment H to FMC 74–7 for a financial status report; and

d. The requirements of NSF Notice No. 62, as amended by NSF Notice No. 63, for a summary of completed projects.

672 DEFINITIONS

The following definitions, adapted from the documents listed in section 671, above, apply for the purposes of closeout of NSF non-procurement awards:

a. *Closeout.* The process by which NSF determines that all applicable administrative actions and all required work of the grant or other agreement have been completed by the performing organization (and the awardee, if different) and NSF.

b. *Disallowed costs.* Those charges to a grant or other agreement which NSF determines to be unallowable, in accordance with the applicable Federal cost principles or other conditions contained in the award. (See Chapter V, "Allowability of costs.")

c. *Expenditures (Outlays).* Charges made to the project during a given period for (1) goods and other tangible property received, (2) services performed by employees, subcontractors, and other payees, and (3) amounts becoming owed for which no current services or performance is required.

d. *Expiration date.* The date specified in the award letter after which expenditures may not be charged against the award except to satisfy obligations of funds to pay allowable project costs committed on or before that date. The expiration date normally is the last day of the month. It is analogous to the "completion date" described in Attachment K to A–110 and Attachment L in FMC 74–7.

e. *Final Technical Report.* The final scientific or technical report of project performance required by Attachment 1–1 to A–110 and Attachment I to FMC 74–7.

f. *Financial Status Report.* Standard Form 269, prescribed by Attachment G to A–110 and by Attachment H to FMC 74–7, to report the status of funds for non-construction projects. On and after the effective date of this "Manual" it replaced the report portion of the

Research Grant Budget and Fiscal Report (NSF Form 98), the Education Grant Budget and Fiscal Report (NSF Form 235), and any other NSF fiscal report forms or formats prescribed by any NSF program announcements, program solicitations, or specific award instruments. It is reproduced at Exhibit 6–4. (The replacement NSF Award Budget is reproduced at Exhibit 2–8.)

g. *Summary of Completed Project.* NSF Form 98A, prescribed by NSF Notice No. 62, to summarize in laymen's language the final technical report in order to answer inquiries by nonscientists as to the nature and significance of the project. It is reproduced at Exhibit 6–3. If the technical report is to be deposited in the National Technical Information Service (NTIS), the Bibliographic Data Sheet (NTIS Form 35), reproduced as Exhibit 6–4, may be substituted.

673 AWARDEE REQUIREMENTS

a. The awardee must furnish NSF with the following, as prescribed in section 674: (1) Summary of Completed Project (Exhibit 6–3 or 6–4, as appropriate) together with (2) Final technical report.

b. Within 90 days after the expiration date, the awardee also must furnish NSF with the following, as prescribed in section 675: (1) Financial Status Report (Exhibit 6–4), (2) Copy of Summary Completed Project (Exhibit 6–3 or 6–4, as appropriate).

c. The documents listed in a and b above will be submitted to:

National Science Foundation, Division of Grants and Contracts, 1800 G Street, NW., Washington, D.C. 20550.

674 FINAL TECHNICAL REPORT AND SUMMARY

674. *Background.* a. For many years, NSF has had requirements, reflected in program announcements such as "Grants for Scientific Research" and in program solicitations, for the submission of final technical reports. Additionally, as indicated in section 752, NSF traditionally has encouraged the publication of research results in the open scientific literature whenever appropriate and worthy.

b. In recent years, there has been increased interest in the Foundation, the Congress, other science agencies, and the scientific community in providing improved access to information about the results of research supported by public funds. Therefore, NSF Notice No. 62, as amended by NSF Notice No. 63, prescribed for the submission of either a Summary of Completed Projects (NSF Form 98A) or a Bibliographic Data Sheet (Form NTIS–35), in addition to the traditional publication in scientific journals and submission of final technical reports, for awards expiring on or after October 1, 1976.

c. This § 674 prescribes the NSF requirements for both the traditional detailed scientific report and for the new summary report for the two basic types of projects which NSF supports.

674.2 *Grants.* a. Within 90 days following the expiration of the grant, the principal investigator/project director must submit the Summary of Completed Project, in accordance with the instructions on the reverse thereof (see Exhibit 6–3), to the address indicated in 673 c, above. In the event that material for publication in the scientific literature has not yet been completed, or has not yet been accepted, the list of publications required by the form should so indicate.

b. Unless otherwise specified in the award instrument, the final technical report should be attached to the summary report. It should include appropriate identifying data and the following basic information:

Brief Description of Research and Results
Publications (published and planned) (give title, Journal or other reference, date, authors)
Theses (if any)
Inventions or discoveries (whether or not patented)
Scientific Collaborators connected with grant (including students) (include title or status, e.g., Associate Professor, Graduate Student, etc.)
Comments (include reference to continuation if appropriate, etc.)
Signature of principal investigator and Date.

c. At such time as the PI/PD publishes in a scientific or technical journal, he should send two reprints of the publication to the cognizant NSF program officer. They should be clearly labeled with the grant number and other appropriate identifying information. (See section 517, "Page Charges in Scientific Journals.")

674.3 *Other Agreements.* a. In accordance with the terms of the agreement but prior to the expiration of the award, the principal investigator/project director must submit the Summary of Completed Project (Exhibit 6–3) or the Bibliographic Data Sheet (Exhibit 6–4) to the address indicated in 673c, above.

b. A final technical report, containing the information required by the award instrument, should be attached to the summary report.

675 FINANCIAL STATUS REPORT AND SUMMARY

a. The Financial Status Report (Exhibit 6–4), in an original and two copies, shall be submitted to the address specified in section 673c, above, within 90 days after the expiration of each nonprocurement award. The certification in item 13 must be signed by the business officer or other authorized certifying official on at least the original, with his name, title, telephone number and date shown on all copies.

b. Prior to completing line 10c, (Program income credits), reference should be made to section 653, "NSF Project Income Provisions." Note that section 653.2 contains special reporting and refund policies with respect to income earned under curriculum development projects supported by NSF awards. Exhibit 6–6 summarizes the project income disposition and reporting requirements.

c. After the Financial Status Report has been accepted by the Division of Grants and Contracts (DGC) it becomes the basis for the Division of Financial and Administrative Management (DFA) to make the final dollar adjustment on the official NSF financial records relating to that award. (See section 441, "Final Unobligated Balance.")

d. NSF makes no provisions for any upward or downward adjustments to the Federal share of costs after the Financial Status Report has been accepted by DGC.

e. Further, the administrative expense of reopening closed-out awards is disproportionate when only small sums are involved. Therefore, NSF will not normally reopen an award account to add or delete costs amounting to $100 or less after the award has been closed. Any post close-out expenditure adjustments of $100.00 or less must be absorbed by the awardee. The Federal Cash Transactions Report should remain in agreement with the Financial Status Report.

f. However, in the event a final audit has not been performed prior to the closeout of the award, NSF retains the right to recover an appropriate amount after fully considering any recommendations on disallowed costs resulting from such final audit as may be conducted.

680 RECORDS RETENTION AND AUDIT

681 BACKGROUND

Section 682 implements the requirements of Attachment C to OMB Circular A–110 and of Attachment C to FMC 74–7 concerning retention and custodial requirements for records concerning grants and other agreements. Those requirements are analogous to but different from the retention requirements for contractor and subcontractor records contained in Part 1–20 of the FPR.

682 NSF REQUIREMENTS

a. Financial records, supporting documents, statistical records, and other records pertinent to a grant or other agreement shall be retained by the awardee for a period of three years from submission of the Financial Status Report prescribed by section 670 except for:

(1) Records which relate to audits, appeals, litigation, or the settlement of claims relating out of the performance of the project shall be retained until such audits, appeals, litigation, or claims have been disposed of.

(2) Records relating to projects subject to the project income provisions of section 653 shall be retained until final disposition of the Federal share of such income shall have been made.

b. Unless court action or audit proceedings have been initiated, the awardee may substitute microfilm copies of original records.

c. The NSF Director and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any pertinent books, documents, papers, and records of the awardee organization, of the performing organization if different, and any subrecipients to make audits, examination, excerpts, and transcripts.

d. NSF may request transfer to its custody of records not needed by the awardee when it determines that the records possess long-term retention value.

Exhibits:

6–1 FMC 73–3; Cost Sharing on Federal Research
6–2 Attachment E to OMB Circular A–110; Cost Sharing and Matching
6–3 NSF Form 98A: Summary of Completed Project
6–4 Form NTIS–35: Bibliographic Data Sheet
6–5 SF 269: Financial Status Report
6–6 Summary of NSF Project Income Disposition and Reporting Requirements.

CHAPTER VII—OTHER CONSIDERATIONS

This chapter discusses those aspects of NSF awards not covered in the preceding chapters. Topics covered are as follows:

700 Civil Rights Act of 1964.
710 Treatment of warm blooded mammals.
720 Handling of information (including questionnaires).
730 International considerations (including travel awards and use of U.S. flag carrier).
740 Excess Government personal property.
750 Intangible property (including patents and inventions, publication and copyright, rights in ADP data banks and software).
760 Production or distribution of materials.
770 Equipment title, use, and disposition.
780 Acquisition and control of materials and supplies.
790 Miscellaneous (including bonding and insurance, liabilities and losses, tax status, national security).

700 CIVIL RIGHTS ACT OF 1964

701 BACKGROUND

Section 602 of the Civil Rights Act of 1964 (Pub. L. 88–362; 42 U.S.C. 2000d–1), provides that no person in the United States shall, on the grounds of race, color or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance, and requires that each Government agency which is empowered to extend such financial assistance shall issue rules or regulations effectuating Title VI (Sections 601–605) of the Act with respect to such programs or activities administered by the agency. Subject to certain exceptions regarding admission policies and certain religious and military institutions, Title IX of the Education Amendments of 1972 (Pub. L. 92–318; 20 U.S.C. 1681–1786), prohibits the exclusion of persons on the basis of sex from any education program or activity receiving Federal financial assistance.

702 NSF REGULATIONS

NSF regulations to implement Title VI of the Civil Rights Act are contained in 45 CFR Part 611. Section 611.4 requires that as a condition of approval of an application for assistance, the applicant must execute the Assurance of Compliance form reproduced in Exhibit 7–1, whether or not a comparable assurance form has been filed with another Federal agency.

703 ASSURANCE OF COMPLIANCE

If not already done, prospective awardees may either reproduce the Assurance of Compliance form or request copies from the Division of Grants and Contracts. The "applicant" referred to in the form is the organization itself whose Chief Executive Officer or comparable official should sign the Assurance. The name and title of the organization and of the official should be typed on the form. The signed original should be mailed to the NSF Division of Grants and Contracts (see § 340.3, "Required Certifications"). Once a properly executed form has been filed with NSF, it will cover all future applications to NSF. Acceptance of a subsequent award constitutes affirmation that the Assurance of Compliance will be fully applicable to the award.

704 CIVIL RIGHTS ASSURANCE—SUBRECIPIENT

Each organization that applies to be or serves as a subrecipient, subgrantee, or subcontractor under an NSF award (for other than the provision of commercially available supplies, materials, equipment, or general support services) must have filed with the awardee an Assurance of Compliance with Title VI of the Civil Rights Act of 1964 and the regulations thereunder. Such Assurance may be filed in one of two ways: (1) By written notification that the appropriate Assurance of Compliance form has been executed and filed either with NSF or the U.S. Department of Health, Education and Welfare; or (2) by executing and filing with the awardee an NSF Assurance of Compliance form.

710 TREATMENT OF WARM BLOODED MAMMALS

711 HUMAN SUBJECTS

a. The protection of the rights and welfare of human subjects involved in research, development, and related activities supported by NSF awards is the responsibility of the awardee.

b. The informed consent of the individual is a vital element in the protection of human subjects. Before a subject participates in an investigation involving risk or the likelihood of substantial stress or discomfort, the nature of these hazards and the procedures to be followed must be carefully explained and consent of the subject given. Likewise, in respect to privacy, each individual selected to participate in a study must decide how much to share with others his or her thoughts, feelings, and the facts of his or her personal life, and under what circumstances; and he or she must be given sufficient information to make this decision in writing before the study begins. If the subject is under eighteen years of age or otherwise legally incompetent, the consent of the parent or legal guardian must be obtained. Awardees are referred to DHEW Publication No. (NIH) 72–102, "Institutional Guide to DHEW Policy on Protection of Human Subjects," dated December 1, 1972, as amended by Part 46, Subtitle A of Title 45 of the Code of Federal Regulations, dated March 13, 1975, for guidance.

c. Proposals submitted to NSF involving the use of human subjects must be reviewed by an appropriate science review committee at the awardee institution and contain a statement that the plan to use human subjects has been reviewed and approved by that committee. The Foundation also requires written assurances that the awardee will comply with the DHEW policies, as amended, regarding the use of human subjects.

712 RESEARCH INVOLVING RECOMBINANT DNA MOLECULES

A new biological method has been developed by which segments of genetic material (DNA) from different sources can be joined together outside of living organisms. Such laboratory generated molecules are referred to as "recombinant DNA." Through the use of recombinant DNA techniques it is possible to transfer genetic material from any source to a given host cell where it may be able to replicate and function. The NSF recognizes that this method offers potentially significant benefits in fundamental and applied biological research. The NSF also recognizes that such research may involve biohazards. Therefore, it is essential that all research involving the use of recombinant DNA molecules be conducted in a responsible manner adhering to safety precautions and conditions designed to protect laboratory workers, the general public and all other living organisms in their general natural environments.

NSF awardees and principal investigators shall comply with the following specific sections of the NIH Guidelines for Recombinant DNA Research (FEDERAL REGISTER, Vol. 41, No. 131, July 7, 1976):

II. Containment (P. 27912–14).
III. Experimental guidelines (P. 27914–20).
IV. Section A and B, Roles and responsibilities of principal investigator and institution P. 27920).
Appendix D (P. 27926–43).

713 LABORATORY ANIMAL WELFARE ACT OF 1966

The awardee will comply with the Laboratory Animal Welfare Act of 1966 (Pub. L. 89–544, as amended, 7 U.S.C. 231 et seq.) and the regulations promulgated thereunder by the Secretary of Agriculture (CFR, Title 9, Subchapter A). This Act and ensuing Regulations pertains to the care, handling, and treatment of warm blooded animals held or used for research, teaching or other activities supported by Federal awards. The awardee is expected to ensure that the guidelines described in DHEW Publication No. (NIH) 74–23, "Guide for the Care and Use of Laboratory Animals," are followed.

NOTE: The awardee may request registration of his facility and a current listing of licensed dealers from the Regional Office of the Animal and Plant Health Inspection Service

(APHIS), USDA for the region in which his research facility is located. The location of the appropriate APHIS Regional Office as well as information concerning this program may be obtained by contacting the Senior Staff Officer, Animal Care Staff, USDA/APHIS, Federal Center Building, Hyattsville, MD 20782.

714 MARINE MAMMAL PROTECTION ACT

The protection of marine mammals in research activities supported by NSF awards is the responsibility of the awardee.

Proposals submitted to NSF in support of marine research activities will include a statement that the awardee will comply with the Marine Mammal Protection Act of 1972, Pub. L. 92–522 (see Appendix A).

720 HANDLING OF INFORMATION

721 QUESTIONNAIRES: DATA COLLECTION UNDER NSF GRANTS

721.1 *Background.* In accordance with Attachment A to revised OMB Circular No. A–40, collection of information from 10 or more organizatons or individuals through a questionnaire, interview, etc., is deemed to be sponsored by the Federal government when:

a. The PI/PD represents to respondents that the information is being collected for or in association with a Federal agency; or

b. The PI/PD uses the report form to collect information requested by the agency for the planning, operation, or evaluation of one of its programs; or

c. The terms and conditions of the award provide for agency approval of the survey design, questionnaire content or data collection procedures; or

d. The terms and conditions of the award provide for submission to the agency either of the data for individual respondents or of special tabulations requested by the agency.

721.2 *NSF Policy.* In the event that NSF intends to "sponsor" the collection of data as defined in OMB Circular No. A–40, it will normally do so by means of a contract. Data collection activities outlined in a proposal resulting in other kinds of awards are the responsibility of the awardees and NSF support of the project does not constitute NSF approval of the survey design, questionnaire content or data collection procedures. No representation may be made to respondents that such data is being collected for or in association with the National Science Foundation or the Government. However, this requirement is not intended to preclude mention of NSF support of the project in response to an inquiry or acknowledgement of such support in any publication of this data (see General Provision —).

722 RELEASE OF INFORMATION BY NSF

722.1 *Routine Information Release.* a. NSF furnishes to Members of Congress a daily listing of awards (see Exhibit 7–2). This listing, arranged by State and Congressional District, displays opposite each awardee institution or organization the name and department of the principal investigator or project director, number and title of the award, duration (support period), award amount, and NSF Program.

b. Comparable listings are furnished quarterly to the State Central Information Reception Agency (SCIRA) of each State in furtherance of the supplemental reporting requirements of Treasury Circular 1082 (Revised). See section 210, "Project Notification and Review System."

c. On an annual basis NSF publishes a numbered volume, "National Science Foundation Grants and Awards" (year). This document, obtainable from the Superintendent of Documents, U.S. Government Printing Office, contains a list of all awards made the previous fiscal year, arranged alphabetically by State within the major program headings contained in the "NSF Guide to Programs."

722.2 *Press Releases.* Awards for projects which appear to be of special interest to the general public may be made the subject of an NSF Press Release, made available to the news media.

722.3 *NSF Project Summaries.* At the time an award is made in support of a project involving research, NSF furnishes to the Smithsonian Science Information Exchange (SSIE) a summary of the proposed work. Copies of this "Project Summary," based on the abstract submitted by the proposing investigator, are furnished to the principal investigator or project director with the award letter. Copies may be obtained by the general public upon request to SSIE, 1730 M Street, NW., Washington, D.C. 20036. Following completion of the project, NSF may disseminate the technical report through the National Technical Information Service (NTIS), as outlined in section 722.5.

722.4 *Freedom of Information Act (FOIA) of 1974.* Pursuant to the Freedom of Information Act of 1974 (5 USC 552), the National Science Foundation will provide agency records, with certain exceptions, if the request is in writing and identified as an FOIA request, and if the records sought are described with sufficient specificity to permit identification. The requester must also agree to pay fees that are chargeable under the NSF regulations regarding the availability of records and information. Detailed procedures are contained in 45 CFR Part 612.

722.5 *Release of Technical Reports.* a. It is the policy of the National Science Foundation that the results of Foundation-funded research be made publicly available through appropriate dissemination channels. In implementing this policy, the Foundation encourages awardees to arrange for access to research results through refereed dissemination channels. These include refereed journals; edited books, monographs and other publications; and national data banks operated by government agencies and private organizations (see section 752, "Publication" and section 753, "Copyright").

Technical Reports also will be made available to others on request. In recognition of the author's interest to be the first to publish the results of his research. NSF will normally honor requests to delay release of these reports.

b. Often, however, such channels are unable to provide for adequate dissemination of technical reports submitted by awardees. In general, for substantive technical reports (i.e., those reporting new scientific or engineering research results, including policy and applied research), the Foundation will arrange for dissemination through the National Technical Information Service (NTIS) of the Department of Commerce. The various NSF Program Directorates are responsible for ensuring that the appropriate arrangements are made so that dissemination to NTIS is carried out. NSF may use its own program funds to meet costs associated with dissemination activities, including payment of page charges to journal publishers and processing charges for inputting reports to NTIS or other information centers.

730 INTERNATIONAL CONSIDERATIONS

731 TRAVEL TO FOREIGN COUNTRIES

731.1 *Definition.* In awards to U.S. organizations, travel performed to, between, or within a country other than the U.S. is defined as foreign travel. The U.S. includes Guam, American Samoa, Puerto Rico, the Virgin Islands, Canal Zone, and the Trust Territory of the Pacific Islands. For awards to foreign organizations, "foreign travel" means travel outside the boundaries of the country in which the awardee is located.

731.2 *Prior NSF Approval.* Prior NSF approval in writing is required for each separate foreign trip, except to Canada, before award funds may be used to defray foreign travel costs. If the proposal contemplates specific foreign travel, NSF approval of such travel will be indicated in the travel line item of the award budget (see section 514, "Travel Costs," and section 632, "Unbudgeted Expenditures").

731.3 *Use of United States-Flag Carriers.* a. The Comptroller General of the United States, by Decision B–138942 of June 17, 1975, (as amended) provided guidelines for implementation of Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974.

b. Except for transportation services that can be financed only with excess foreign currency, any foreign air transportation of persons or property, the expense of which will be assisted by NSF funding, must be performed on a U.S. flag carrier if service provided by such carrier is "available" (see General Provision —).

c. If U.S. flag carriers are unable to perform transportation services that can be financed only with excess foreign currencies, transportation by foreign flag carriers is permissible.

d. For the purposes of this requirement.

(1) Passenger or freight service by a certificated air carrier is considered "available" even though:

(a) Comparable or a different kind of service by a non-certificated air carrier costs less, or

(b) Service by a non-certificated air carrier can be paid for in excess foreign currency, or

(c) Service by a non-certificated air carrier is preferred by the grantee, contractor or traveler needing air transportation, or

(1) Service by a non-certificated air carrier is more convenient for the grantee, contractor, or traveler needing air transportation.

(2) Passenger service by a certificated air carrier is considered to be "unavailable":

(a) When the traveler, while en route, has to wait six hours or more to transfer to a certificated air carrier to proceed to the intended destination, or

(b) When any flight by a certificated air carrier is interrupted by a stop anticipated to be six hours or more for refueling, reloading, repairs, etc., and no other flight by a certificated air carrier is available during the six hour period, or

(c) When the flight of a certificated air carrier, by itself or in combination with other certificated or noncertificated air carriers (if certificated air carrier are "unavailable"), takes 12 or more hours longer from the origin airport to the destination airport to accomplish the Federally funded mission than would service by a non-certificated air carrier or carriers.

e. NSF will no longer consider as an allowable cost under any of its project awards foreign travel which does not meet the criteria of prior NSF approval. Similarly, NSF will hold responsible for compliance with the provisions any individuals who travel abroad with the financial assistance of an NSF International Travel Support Award.

732 PROJECTS IN A FOREIGN COUNTRY

Prior to undertaking any projects outside the United States, the awardee should ensure that such permits or licenses as may be required by the host country or the political subdivision in which the project will be performed have been obtained and that the researcher(s) will abide by the appropriate ordinances of such foreign countries. Foundation funds may not be used in support of a project which is prohibited by law in the country where it is undertaken. A close working arrangement with local scientists in foreign research projects provides the best basis for learning of these ordinances and obtaining assistance for necessary clearances and approvals. International scientific ethics require not only adherence to the local legal requirements but also sensitivity to the best interests of the other country's scientific community. Projects in a foreign country should improve the competence of cooperating scientists and encourage wide distribution within that country of the resulting materials, data, analyses and publications.

733 PASSPORTS AND VISAS

NSF assumes no responsibility for securing passports or visas required by any person because of participation in an NSF-supported project.

734 INTERNATIONAL TRAVEL SUPPORT AWARDS

734. *Funding Limitations.* Funds for international travel normally will not exceed the cost of the round trip air fare, at economy class or excursion rates (including applicable surcharges), between an air terminal near the point of origin and one near the point of destination and will be in the form of an airline ticket mailed directly to the traveler. NSF international travel support awards may not be supplemented by funds from an NSF project grant or fellowship.

734.2 *Charter Flights.* Because of the risk of catastrophic loss, the Foundation does not encourage the use of charter flights as a means of mass transportation for groups of scientists. However, individual travelers may utilize group or charter arrangements involving the use of U.S.-flag carriers at less than jet economy fare.

734.3 *Per Diem.* If the traveler is an official U.S. delegate to an international conference. per diem may be provided.

734.4 *Return of Airline Ticket.* In the event the planned trip is cancelled, the airline ticket must be returned immediately to the NSF Division of International Programs.

734.5 *International Travel Support Award Report.* Within sixty days after completion of the foreign travel, the grantee must submit an NSF Questionnaire form (copies of which will be enclosed with the airline ticket) to the NSF Division of International Programs.

740 EXCESS GOVERNMENT PERSONAL PROPERTY

As a means of providing additional support and conserving supply and equipment funds, NSF may sponsor the transfer of a limited quantity of excess Government personal property to NSF awardees which are public or private institutions of higher education or nonprofit organizations whose primary purpose is the conduct of scientific research. See Important Notice No. 58 (Exhibit 7–3).

750 INTANGIBLE PROPERTY

751 PATENTS AND INVENTIONS

751.1 *Background.* Section 12(a) of the NSF Act requires that every grant or other arrangement which relates to scientific research provide for disposition of inventions in a manner calculated to protect the public interest and the equities of the awardee. NSF patent regulations are contained in Part 660, Title 45, of the Code of Federal Regulations. Intangible property management standards are also contained in Attachment N to OMB Circulars A–102 and A–110. The allowability of patent costs is governed by the applicable Federal cost principles (see Chapter V).

751.2 *Applicability of NSF Patent Provisions.* NSF awards which are made for the purpose of supporting experimental or research work or which contain a significant element of any such activity will contain appropriate provisions dealing with rights to inventions made thereunder. An NSF award made solely for support of one of the following purposes normally will not include NSF patent provisions:

a. Construction, improvement, or operation of facilities;
b. Research equipment;
c. Ship operations;
d. Education and training grants not in support of research;
e. Publication, distribution, and translation of scientific data and information;
f. Symposia and Conferences;
g. Special studies authorized or required by Subsections 3a(5) through 3a(7) of the NSF Act, as amended.

Suitable provision shall also be made to govern disposition of inventions made by subcontractors wherever such a clause appears in the primary award.

751.3 *Basic NSF Patent Provisions.* Except for the exempt projects listed in section 751.2, every NSF award relating to experimental or research activities will be subject to the deferred determination patent clause prescribed by section 650.4 of the NSF Regulations (see General Provision —) unless:

a. Special provisions for a particular project are negotiated at the request of the prospective awardee under the provisions of section 650.5 of the NSF Regulations.

b. The award is for an NSF fellowship or traineeship, in which case the award will substitute the clause contained in section 650.6 of the NSF Regulations requiring only that the Government receive a royalty-free license with "march-in" rights; or

c. The amount of support is small and where all or part of the work will take place at a commercial firm (e.g., Engineering Research Initiation Grants or Faculty Research Participation Grants) in which case the awardee's retention of rights may be specified;

d. The award is to a college, university, or other nonprofit organization which has entered into an Institutional Patent Agreement (IPA), pursuant to section 650.8 of the NSF Regulation.

751.4 *Deferred Determination of Rights.* a. When NSF provides for deferring the determination of rights in inventions until such time as an invention has been identified and reported, it will make its determinations on the basis of consideration of such factors as (i) the nature and purpose of the project; (ii) the commercial position of the inventing organization in the subject technical field; (iii) the contribution of the awardee to the cost of the invention; (iv) the need for Government control of the invention; (v) the intention and capability of the inventing organization effectively to bring the invention to the point of practical application, either by itself or through an invention or patent management organization; and (vi) the degree of domination by and extent of availability of background patents controlled by the awardee.

b. In cases where title to an invention is left with an awardee which itself is not expected to develop and use the invention, NSF will normally require the licensing of such invention on a nonexclusive basis to all qualified applicants.

However, an exclusive license may be permitted if necessary as an incentive for development of the invention or where market conditions are such as to require licensing on an exclusive basis. Any such exclusive license will normally be for a limited period of time less than the life of the patent such as three years from the first commercial use or sale or eight years from the inception of the license agreement, whichever first occurs. Thereafter, additional licenses will be made available nonexclusively unless the original period is extended with NSF approval.

c. Where the awardee does not wish to retain title to the invention and neither NSF nor any other Government agency wishes to take title, the invention may be left with the individual inventor on terms which are reasonable in the circumstances, on a showing that the inventor wishes to and has the ability to bring the invention to the marketplace by his own efforts or the efforts of licensees, or if more appropriate, it may be dedicated to the public by publication.

751.5 *Minimum Government Rights.* In all cases where an award is subject to patent provisions and the awardee or any other party has been allowed to retain principal rights in inventions, NSF shall reserve the license and "march-in" rights described in § 650.10 of the NSF Regulations. Alternative patent provisions are contained in General Provision _____.

751.6 *Availability to the Public of Research Results.* A major objective of the NSF patent policy is to encourage the use of inventions arising out of activities supported by NSF. It is important where an award is for research to assure that any useful product or process developed or improved under the award is made available to the public on reasonable terms. Industrial or commercial organizations may be permitted to retain title to inventions as provided for in Section 1 of former President Nixon's 1971 Statement of Government Patent Policy. However, such an organization may be requested to furnish to responsible applicants technical data and any other rights which it is able to provide to the extent necessary to make the product or practice the process concerned, where such organization is not in a position to, does not desire to, or otherwise will not make available to the public the products or the advantages of using processes developed or improved under the award.

752 PUBLICATION

752.1 *Background.* Section 11(g) of the NSF Act authorizes the Foundation to publish or arrange for the publication of scientific and technical information so as to further the full dissemination of information of scientific value consistent with the national interest.

752.2 *NSF Policy.* In furtherance of the Act, it is NSF policy to encourage, and, in some cases, require publication and distribution of the results of research conducted under awards. Generally, publication is in scientific journals or other news media, the circulation of which is particularly addressed to the scientific community. In furtherance of the policy of the Federal Council for Science and Technology, page charges for publication of scientific results in scientific journals will be budgeted for and paid as a necessary part of research costs under NSF awards. See section 517, "Page Charges in Scientific Journals."

752.3 *Awardee Responsibilities.* The preparation, consent, editing, and publication of manuscripts are the responsibilities of the principal investor, in conformance with such policies and procedures as the awardee may prescribe. Review of manuscripts prior to submission for publication will normally not be made by NSF. However, in some instances, the preparation, publication and dissemination of research results will be subject to agreement between NSF and the awardee. Where required, such procedures or requirements will be included in the award instrument. Upon publication, a minimum of two copies of reprints shall be furnished to the cognizant NSF Program Office. (See section 750, "Production or Distribution of Materials," and section 650, "Project Income.") NSF Requirements are contained in General Provision_____.

753 COPYRIGHT

753.1 *General.* Unless otherwise provided in the award instrument, the author or awardee is free to copyright any books, publications, films, or other copyrightable materials developed in the course of or under an NSF grant. However, any such copyrighted materials shall be subject to a royalty-free, irrevocable, worldwide, nonexclusive license in the United States Government to reproduce, perform, translate, and otherwise use and to authorize others to use such materials for Government purposes (see General Provision _____).

753.2 *Need for Exclusivity.* In some instances, it may be necessary to guarantee exclusivity in order to obtain proper distribution arrangements. In such cases, NSF might be willing to accept a more limited license, and the award instrument will so provide. See General Provision _____.

753.3 *Public Domain.* In some instances, NSF will require that the material be publicly disseminated and remain in the public domain, without copyright. In such cases, the award instrument will so specify. See General Provision _____.

753.4 *Disclaimer.* Regardless of whether material is copyrighted, it shall contain the following acknowledgment and disclaimer statement:

Some (All) of the materials incorporated in this Work were developed with the financial support of the National Science Foundation Grant _____. However, any opinions, findings, conclusions, or recommendations expressed herein are those of the author(s) and do not necessarily reflect the views of the Foundation.

754 RIGHTS IN ADP DATA BANKS AND SOFTWARE

754.1 *Background.* Some NSF awards support the accumulation of a large body of machine readable data by any of a number of means including literature search, consolidation of existing material, and original creation or collection. Accumulation of such a data bank may itself be a principal purpose of the award or the data bank may be expected to be so large and comprehensive that it would probably be useful to others for other purposes. A relatively few NSF awards may support projects which produce software as a major end product, such as methodologies for processing data, general purpose programs, and course materials, which can readily be adapted to other computers.

754.2 *NSF Policy.* It is the policy of the Foundation that data banks and software, produced with the assistance of NSF awards, having utility to others in addition to the awardee, shall be made available to qualified users, at no cost to the awardee, by publication or, on request, by duplication or loan for reproduction by others. However, awardees will not be required to release finite data banks which are incomplete, or which contain errors, ambiguities, or distortions, information which is privileged or confidential, or information the release of which is otherwise not in the public interest. Awardees will be allowed a reasonable time to make necessary corrections. Any dispute over the release or use of such material will be referred to the Foundation for resolution.

754.3 *Implementation.* See General Provision _____ for "Rights in ADP Data Banks and Software."

760 PRODUCTION OR DISTRIBUTION OF MATERIALS

761 PRODUCTION OR DISTRIBUTION AS A SPECIFIC PURPOSE OR OUTCOME OF AN AWARD

a. The other agreement format generally will be used if an awardee, as a specific purpose of the award, intends to publish, sell or commercially distribute any materials developed under the award.

b. Such publishing, selling, or commercial distributing may be undertaken only as described in the proposal, or if not so described, with prior NSF approval. Arrangements shall be such as to permit a number of qualified concerns to submit proposals for production and distribution.

Selection of manufacturers, publishers and distributors shall be made so as to assure wide distribution at a reasonable price. NSF is to be informed of the plan upon which negotiations will be based, including the companies to be approached, measures to assure that qualified concerns will have an opportunity to submit proposals for production and distribution, and criteria to be used in selecting the successful bidder(s).

c. NSF Circular 123, reproduced as Exhibit 7–4, established guidelines, procedures and responsibilities of awardees for the development and submission of publication plans and agreements relating to NSF supported curriculum materials, and of the NSF staff for their review and approval. Specific sections of the Grant Administration Manual referred to in paragraph 4 of Exhibit 7–6 have been incorporated into this Grant Policy Manual as sections 320, 623, 752, 753 and 760. See also section 650, "Project Income."

770 EQUIPMENT TITLE, USE AND DISPOSITION

771 BACKGROUND

a. NSF equipment management standards are contained in section 332.

b. Limitations on the acquisition of and the allowability of costs for equipment are contained in section 512.

c. This section implements portions of Attachment N to OMB Circular A–110 concerning equipment title, use, and disposition.

772 TITLE TO EQUIPMENT

772.1 *Nonprofit organizations* — a. *Normal Situations.* Title to equipment purchased or fabricated with NSF award funds by a college or university or other nonprofit organization normally will vest in the awardee institution, with the understanding that such equipment will remain in use for the specific project for which it was obtained (subject to the shared use provisions of § 332.3) and upon expiration of the project, it will be used for scientific research or for science education purposes as long as it has a useful life. At such time as the property is no longer useful for such purposes, it may be disposed of in accordance with the organization's property management standards, but the proceeds therefrom shall be used by the awardee either (1) to offset costs which otherwise would be chargeable to the grant or (2) for scientific research or science education and training.

b. *Special Situations.* In special situations the award instrument may either (1) require that title to equipment purchased by an awardee with NSF funds pass directly to the Government from the vendor, or (2) reserve the right to require the awardee to transfer title to the Government or to a third party as prescribed in §773, below.

c. *Excess Government Property.* See paragraph 9 of Exhibit 7–3.

772.2 *Commercial firms.* Title to equipment acquired by a profit-making organization with NSF funds normally will pass directly from the vendor to the Government. Upon expiration of the award, disposition of Government property will be determined by the NSF Grants Officer in consultation with the awardee.

773 RIGHT TO TRANSFER TITLE

For items of equipment having a unit acquisition cost of $1,000 or more, NSF may reserve the right to transfer the title to the Federal Government or to a third party named by the Federal Government when such third party is otherwise eligible under existing statutes. Such reservation shall be subject to the following conditions prescribed by Attachment N to OMB Circular A–110 (paragraph 6a):

a. The property shall be appropriately identified in the grant or other agreement or otherwise made known to the awardee in writing.

b. NSF shall issue disposition instructions within 120 calendar days after the end of the Federal support of the project for which it was acquired. If NSF fails to issue disposition instructions within the 120 calendar period, title vests in the awardee, subject to the provisions of § 772.1, above.

c. If NSF exercises its right to take title, the equipment shall be subject to the provisions for federally-owned nonexpendable property discussed in § 332, "Equipment Management Standards."

d. When title is transferred either to the Federal Government or to a third party the awardee shall be reimbursed by the benefitting Federal agency with an amount which is computed by applying the awardee share of the cost of the project to the current fair market value of the equipment, plus any reasonable or interim storage costs incurred.

780 ACQUISITION AND CONTROL OF MATERIALS AND SUPPLIES

Excluding the final inventory of books, films and similar material developed under an NSF award, title to materials and supplies shall vest in the awardee upon acquisition. If there is a residual inventory exceeding $1,000 in total aggregate fair market value, upon termination or completion of the award, and the property is not needed for any other federally sponsored project or program, the awardee shall retain the property for use on nonfederally sponsored activities, or sell it, but must in either case, in accordance with paragraph 6c(2) of Attachment N to OMB Circular A–110, compensate the Federal Government for its share.

790 MISCELLANEOUS

791 BONDING AND INSURANCE

a. The NSF Act (42 U.S.C. 1870c) provides NSF with authority to enter into grants, contracts or other agreements without performance or other bonds and without regard to section 3709 of the Revised Statutes.

b. Attachment B to OMB Circular A–102 and A–110 prescribe bonding and involving construction or facility improvement exceeding $100,000 and permit agencies to require fidelity bond insurance.

c. Unless the award instrument specifically provides otherwise NSF does not require performance or other bonds or insurance (see General Provision ____).

792 LIABILITIES AND LOSSES

NSF assumes no liability with respect to accidents, bodily injury, illness, breach of contract or any other damages or loss, or with respect to any claims arising out of any activities undertaken with the financial support of an NSF award, whether with respect to persons or property of the awardee or third parties. The awardee is advised to insure or otherwise protect itself or others as it may seem desirable (see General Provision _____).

793 TAX STATUS

Determination of the tax status of an organization or person receiving compensation in any form as a result of an NSF award is the responsibility of the Internal Revenue Service, State and local tax authorities, and the courts.

794 NATIONAL SECURITY

NSF normally does not support classified projects. When, in the course of an NSF supported project, information or materials are developed which may affect the defense and security of the United States, the awardee must notify the appropriate NSF Program Director immediately. Classified materials should be directed to the NSF Security Officer. The performing organization may wish or need to discontinue the project under these conditions. See section 664, "Termination by Mutual Agreement."

Exhibits:

7–1 Assurance of Compliance.
7–2 Congressional Listing (sample page).
7–3 NSF Important Notice No. 58 (Excess Property).
7–4 NSF Circular 123 (Publication/Distribution Agreements.

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MONDAY, JANUARY 31, 1977

PART III



DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Social and Rehabilitation Service

■

SOCIAL SERVICES PROGRAMS FOR INDIVIDUALS AND FAMILIES

Title 45—Public Welfare

CHAPTER II—SOCIAL AND REHABILITATION SERVICE (ASSISTANCE PROGRAMS), DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

PART 228—SOCIAL SERVICES PROGRAMS FOR INDIVIDUALS AND FAMILIES: TITLE XX OF THE SOCIAL SECURITY ACT

Final Regulations

Notice of proposed rulemaking was published in the FEDERAL REGISTER August 26, 1976 (41 FR 36156) revising existing regulations for the provision of social services under Pub. L. 93-647, Title XX of the Social Security Act. These proposed revisions represented the first comprehensive review of the Title XX regulations since the program began October 1, 1975. They were aimed at reducing the operational difficulties States encountered during the first program year. The final regulations which follow are issued after further consideration of the policies and changes proposed in the NPRM and of the comments received on these proposals.

Three hundred letters containing about 1400 comments were received from a broad range of respondents: private citizens, Governors, members of Congress, national and local health and welfare organizations, advocacy organizations, public and private provider agencies, provider agency organizations, State and local Title XX agencies, other State agencies, and colleges and universities. In addition, staff in each of the HEW regions arranged informal public meetings during September and October, 1976 in one or more States in each region to obtain additional discussion and comments. Summaries of comments received during these public meetings have also been carefully considered.

The overall reaction to the proposed regulations was one of substantial approval. SRS believes the circulation in April 1976 of the draft proposed regulations to State Title XX agencies and 175 national public and private organizations was beneficial. (See Preamble to the proposed regulations, 41 FR 36156, August 26, 1976.) Such prior circulation and opportunity for public discussion and comment produced useful suggestions from a knowledgeable audience. It also increased the sense of cooperation between the Department and the public in the administration of the social services program. In addition, greater public involvement in meetings where the proposed policies were discussed and explained seems also to have produced an increase in the number of letters which indicate a high degree of understanding of and familiarity with the issues dealt with in the NPRM.

Some letters provided thoughtful discussions of program and policy issues. The majority of comments, however, contained either well-documented observations, recommendations, and suggestions; or requested clarification, specificity, or technical guidance. Where possible, these recommendations and suggestions have been incorporated. For the purpose of public information, significant numbers of requests for statutory changes are noted in the comment analysis which follows. Respondents are referred to the State Title XX agency or the Social and Rehabilitation Service Regional Office for technical guidance and interpretation regarding issues specific to a particular State or problem area which could not be addressed in the regulation.

Also incorporated into the regulations which follow are the interim final regulations implementing Pub. L. 94-401, 1976 Amendments to Title XX of the Social Security Act, published in the FEDERAL REGISTER (41 FR 55668) on December 21, 1976. Although the 45 day comment period for those interim final regulations is still in effect, they are incorporated in this issuance to provide a complete set of Title XX regulations as they now stand. If public comment indicates that modification of the amendments required by Pub. L. 94-401, is desirable changes will be published at a later date.

In response to questions, we wish to reiterate that States planning to implement the options provided by Pub. L. 94-401 must amend their State services plan in accord with § 228.36. Amendments are required with regard to group eligibility (§§ 228.24(f) and 228.26(a), e.g., individuals to be served and services provided); providing family planning services without regard to income; establishing an authority for determining the non-feasibility of standards in day care facilities (§ 228.26(i)); and making grants to providers to hire welfare recipients in day care facilities (§ 228.29(d)). However, States may begin making grants to providers as of September 7, 1976. However, for the purpose of public information as well as receipt of FEP, the plan must be amended. The final amendment will show an effective date of October 1, 1975, or a later date, depending on the date of implementation of such amendments by the State.

The purpose of the portion of the regulation that revises the existing 45 CFR Part 228 is to establish policies and procedures that will:

(1) Clarify or provide specificity in some aspects of existing regulations;

(2) Simplify or eliminate administrative requirements and reduce the possibility of fiscal sanctions on States;

(3) Provide extensions of benefits wherever possible;

(4) Provide additional options for the States in designing their programs; and

(5) Provide an integrated set of all Title XX regulations.

The basis for the final regulation is the Department's continued wish to enhance the ability of the States to focus on the delivery of services to eligible persons and to avoid undue administrative burdens and unnecessary costs.

The following is a summary of the substantive comments received as a result of the publication of the proposed regulations of August 26, 1976, the major issues raised by the respondents, the SRS response to the comments, and a general statement of the bases and purposes of the rules adopted herein. Because the proposed regulations received widespread approval, most, but not all, of the changes made in the proposed regulations are in response to requests for clarification. However, all changes from the August 26 proposal, other than minor editorial corrections, are discussed below.

SUBPART A—SCOPE AND DEFINITIONS

Three changes have been made in this Subpart in response to comments. In § 228.1, the definition of Indian Tribal Council has been revised for clarification.

Also in § 228.1, the current definition of Indian Tribe covers only those Indian Tribes which have received Federal recognition. In the final regulation, the definition has been broadened to include Indian Tribes recognized by appropriate State authority. The purpose of the change is to extend benefits under this program to State recognized Indian Tribes. This expanded definition of an Indian Tribe will be used in all SRS programs.

The third change is a clarification of the term "licensed health professional" under the definition of medical and remedial care. Respondents pointed out that some health professionals (such as respiratory therapists and mental retardation professionals) are not licensed by States but are credentialed by national professional organizations. This language change has been incorporated.

Respondents also recommended changes in the definition of Family, e.g., *Recommendation (1)*: broaden the definition to include unmarried pregnant teenagers and unmarried teenage parents living in their parents' homes as one person families.

Response to (1): It is the Department's view that Congress intended eligibility under Title XX to be based on a definition of "Family" that is consistent, reasonable, and operationally feasible. The present definition is seen as incorporating as many exceptions and as much flexibility as is possible within the intent of the law. It is our belief that children living with and supported by parents cannot be made an exception to the definition of Family without violating the integrity and internal consistency of the definition and without negating the intent of the law.

Recommendation (2): Mandate a national definition of "Family" or mandate various groups, such as children in the custody of State agencies, as one person families.

Recommendation (3): Provide a definition of an "emancipated minor."

Responses to (2) and (3): These recommendations were not accepted based on the Department's wish to provide States with programmatic options in these matters. States are expected to use their State definition of emancipated minor.

There were also a number of requests for policy interpretation, technical guidance, and clarification regarding the application of these definitions to specific State programs or problems. It was not deemed appropriate to address these requests in the regulation. Respondents are encouraged to contact the appropriate Title XX State agency or Social and Rehabilitation Service Regional Office for further assistance.

SUBPART B—STATE PLAN REQUIREMENTS, REPORTS, MAINTENANCE OF EFFORT, COMPLIANCE

The proposed regulations contained clarifying language in § 228.6. No substantial objections were submitted to these proposed changes; therefore, they are included in the final regulations.

SUBPART C—COMPREHENSIVE ANNUAL SERVICE PROGRAM PLAN

This Subpart received the highest number of comments and was the focus of concern of a wide range of respondents. Comments are summarized below. Changes made in the proposed regulations are primarily for specificity or clarification, although two new requirements have been added.

In § 228.21, the word "Federal" has been added to clarify that the State may use either the Federal fiscal year or the fiscal year of the State government as the basis of their services program year.

Section 228.22(a) is revised to recognize, in accordance with the law, the responsibility of the Chief Executive Officer of the State (not the State Title XX agency) for publication of the Comprehensive Annual Services Plan (CASP).

Section 228.22(b) is rewritten for clarity. It also adds a specification that States shall, as a part of the statutory mandate to explain the difference between the proposed and final services plans, include a summary in the CASP of the public comment on the proposed plan and the State's response to these comments. Respondents to the NPRM cited the Federal publication and comment process as a model in support of the public review and participation process. A parallel change is also made in § 228.36 with respect to comments received on the proposed amendments to final services plans.

In § 228.24, the example used of "female headed families" brought objections for our use of sexist language. The example has been changed to "one parent families."

Section 228.26(b) adds a requirement that States shall specify in the CASP the effective dates (the dates certain) of each discrete service. This requirement will provide options and flexibility to States who wish to "phase-in" a service as service delivery capability increases, or to "phase-out" (indicate the termination of) a service. The purpose of this change is to (1) inform the public more specifically regarding the availability of services; (2) give States added options in services delivery planning; and (3) ease publication costs.

For example, a State is in the process of increasing its homemaker services delivery capability and will be "phasing-in" this service during the program year. Homemaker services will be available at the beginning of the program year in all but one geographic area of the State. The service will be available (date certain) in the remaining geographic area 4 months later. The State has two options in this situation. It may, under this change, specify in the CASP that the effective date of the homemaker service is October 1 for all but one geographic area and is February 1 for the remaining geographic area. Or, it may publish an amendment to the CASP after the program year has begun showing that homemaker service has been added in the remaining geographic area and is now available on a specified date.

States can also use this option to indicate the termination of a service that is date certain. For example, a State offers day care services to migrant children for a 6-month period during the program year. States may include the service in the CASP and amend the CASP when it terminates the service. Or, under this change in the regulation, the State may specify in the CASP that the effective dates (the dates certain) of the availability of this service are from July 1 to January 1. It is not the intention of this regulation to permit States to use broad, non-specific phrases such as "This service will continue to be available if additional funds are appropriated."

Section 228.28 clarifies that "other funds" may, at State option, be included in the list of program resources used to support the State's Title XX program even though such funds are in excess of the amount needed to match the Federal allotment. This change provides an option to States in regard to FFP for training expenditures. For example, some States use non-Federally matched funds above their ceiling to continue or expand the same services that are included in their CASPs to the same or additional eligible individuals identified in their CASPs. Staff who carry out these programs may receive training as provided in Subpart H so long as these non-Federally matched "other funds" are estimated in the CASP as available Title XX program resources.

FFP for training expenditures of staff carrying out these programs is available if the services program so funded (e.g., with non-Federally matched funds) meets all requirements of 45 CFR Part 228. For example, these include the requirements that the service is described in the CASP, is offered to the same eligible categories of individuals, and adheres to the same standards, eligibility requirements, and limitations on services as pertain to Title XX.

In response to concern for accountability to the public, § 3228.28 clarifies how a State shall indicate in the CASP its Federal allotment, depending on whether the State program year does or does not coincide with the Federal fiscal year.

In § 228.29 the words "A general description of the steps taken * * *" are substituted for the words "The steps taken * * *" in response to many comments. Respondents interpreted the phrase "The steps taken" too specifically, i.e., to mean a list of every meeting, interview, contact, telephone call, etc., with respect to the requirement for program coordination and utilization in this section.

Section 228.33(a). Considerable comment and discussion was received with respect to the public review process described in this section. In general, numerous respondents, primarily national and local health and welfare agencies and organizations, advocacy groups, local government, and individuals objected to the detailed focus of the regulations on the publication and public review process (e.g., a public education and information function) and a diminished focus on assuring active and continuing public participation in the development of the State's services program. Respondents urged an increase in specific requirements on States aimed at strengthening and requiring public participation at all stages of the development of the services program.

The Department has attempted to support requirements for public participation while attempting to avoid unnecessary requirements on States. The requirements contained in these regulations are considered to be minimum requirements. The Department assumes and strongly encourages State commitment to good planning processes, general accountability to the public, and increased public participation in the development of the service program. However, because of the newness of Title XX and the range of capability among the States, not all States have been able to achieve these goals. The Department has tried to indicate its views, position, and concerns (while allowing States maximum flexibility to develop their own procedures) by the inclusion of § 228.29 (c) in the proposed regulations and by the new language in § 228.33(a) related to purpose.

In § 228.33, items (b)(7) and (b)(9) are added for clarification to complete the list of steps that make up the scope of the public review process. These are not new requirements. Section 228.33(b)(7) refers to publication of necessary corrections to a proposed amendment; § 228.33(b)(9) refers to publication of necessary corrections to a final amendment.

In § 228.33(d), a requirement is added that copies of the proposed and final CASPs be retained for inspection for three years. This change is considered minimal for reference and accountability purposes and parallels the requirement that public comments be retained for three years.

Two changes are made in § 228.33(h) with regard to information which must be included in the summary of the proposed services plan. The first, in § 228.33(h)(8), clarifies the specific fiscal data that shall be included in the summary, e.g., the amount of the Federal allotment to the State and the amount of State and local appropriated funds and of other funds available to finance the services program. The second change adds paragraph (h)(9) and requires that the summary include information regarding where an individual may apply for serv-

ices or where he may obtain information about where to apply. This requirement places no burden on the State since this information must also be included in the proposed and final services plan and in the display ad announcing the final services plan. Respondents felt such information included in the summary would help inform the public and assist individuals to apply for needed services. The change was made in response to such requests.

Section 228.33(g)(7) clarifies that States have options in distributing the proposed services plan from local public agency offices, e.g., distributing directly or taking orders for distribution from another source.

In § 228.36(a)(1), an editorial change is made to show that "changes in the program year" means "changes in the period of time encompassed by the program year."

Several new subsections and paragraphs have been added in § 228.36 in response to requests for clarification of the procedures, including the SRS role and responsibility, in making corrections to proposed and final amendments. The newly added citations are: § 228.36 (b)(2), (b)(3), (b)(4), and § 228.36 (e) and (f). These are not new requirements. Since the procedures for correcting proposed and final amendments are parallel to the procedures for correcting proposed and final services plans (with the exception that a 30 day rather than a 45 day comment period is required), the language is similar, if not identical, to previous language and procedures in this Subpart.

In the publication of amendments to the regulations required by Pub. L. 94-401, a section was coded "228.35 Amendments to Final Services Plan." The citation number was in error and should read § 228.36. The pertinent language has been properly included under § 228.36(d) in this issuance.

Changes in § 228.36(b)(5)(iii) were discussed earlier in a parallel change made in § 228.22(b). The added requirement here is that States must include in the display ad which announces an amendment to the final CASP, a summary of the public comments to a proposed amendment and the State's response to such comments.

A significant number of comments regarding this Subpart objected to the delay in FFP until the CASP has met all appropriate requirements of this Subpart. Respondents offered alternate recommendations including deletion of requirements for publication of corrections to the plan and inclusion of corrections in the final plan in lieu of publication. The rationale was saving of publication costs, eliminating the delay in a 45 day comment period on the correction, and, primarily, easing the threat of loss to FFP.

The Department is aware of and concerned about the problems cited. However, these recommendations cannot be accepted, because they conflict with statutory requirements, including the requirement for public notice of all provisions of the plan, and a 45 day review of these provisions. To help prevent such problems, the Department concurs with the suggestion made that States can work with the Regional Offices to obtain technical assistance and review prior to publication of their CASPs and amendments thereto.

A significant number of comments also registered disapproval of the reduction of detailed requirements in § 228.31 and 228.32, concerning needs assessment, planning, evaluation and reporting. They considered that States will diminish their efforts in these areas to the probable detriment of the program. An equal number of comments expressed strong approval for these deletions. All comments have been carefully considered. The Department's decision is that the changes proposed will become final. The basis for this position is the desire of the Department to simplify the administration of the program and reduce the number of detailed requirements which must be included in the CASP. This decision was taken in the context of increased State efforts to improve their programs in these areas. Incidentally, these areas of needs assessment, program planning, monitoring, reporting and the public participation process are priority areas of technical assistance by SRS. Many excellent suggestions and recommendations were received (such as use of television, public meetings, etc., to reach additional groups of citizens) which can be useful in a technical assistance effort. Many of the suggestions made are currently being utilized by States to adapt their programs/procedures to local needs.

SUBPART D—LIMITATIONS: SERVICES

This Subpart of the proposed amendments was the focus of considerable comment, both positive and negative. Specifically, the following changes have been made in response to these comments.

Sections 228.40 and 228.41 have been changed to eliminate the requirement for a case-by-case documentation of how medical and remedial care or room or board is integral but subordinate to a discrete service in the CASP. The Department is appreciative of the many methods of documentation sent us. However, the overwhelming majority of comments objected to this requirement, stating it would be severely burdensome and/or administratively infeasible. Respondents further recommended that the requirement for documentation of room or board and medical and remedial care could be accomplished by a description of these service components in the CASP. This suggestion is accepted. The regulation has been changed to require, under § 228.40, that the medical and remedial care must, first, be necessary to achieve the objective of the discrete service of which it is an integral but subordinate part. Secondly, a specific description of the medical and remedial care must be included in the CASP, together with a description of the service of which it is an integral but subordinate part. A general statement in the CASP such as "including medical and remedial care" is no longer acceptable. Similar requirements with respect to room or board are incorporated in § 228.41. The regulation intends that the State agency will be held responsible for determining the specific type of medical and remedial care and specifically whether both room or board (or one or the other) will be provided as integral and subordinate to a social service. To communicate this to the public, the State agency is also responsible for the publication of this detailed information in the CASP. Only the specific medical and remedial care and the room or board so described in the CASP are matchable.

Section 228.44 is clarified in response to many questions and considerable confusion regarding the provision of services under this section. Paragraph (b)(1) is revised to provide specificity and to clarify the term "inherent responsibilities." Paragraph (b)(2) is revised to clarify that the "intrinsic activities" of a facility are determined by facility charter, State law or standards, relevant licensing or certification requirements, or Federal or State court decisions.

Strong objection was received to § 228.44(d) concerning limitations on services provided in juvenile correctional facilities. These limitations were the result of inadvertent drafting error and have been removed. Section 228.44(d) returns to the language of the current regulation and allows FFP for services but not for inherent responsibilities (e.g., food, clothing, shelter, general maintenance and administration (including the detention function), general supervision and care) in such facilities.

Two major areas of comment were raised regarding § 228.46. The first was a strong request that FFP be available for emergency shelter for adults, particularly battered women. Since Section 2002(a)(11) of title XX limits the provision of emergency shelter to children, this recommendation could not be accepted.

The second area of concern pertained to the limitation of 30 days in any 12-month period for provision of emergency shelter to a child. Respondents cited this limitation as unrealistic and overly-restrictive in the context of service delivery to abused, neglected, or exploited children. In response to recommendations for added flexibility, the regulation has been changed to allow 30 days (as provided by law) in any 6 month period, for children, under the conditions specified in this section.

The 6 month time period will allow States the flexibility needed in diagnosis and service provision to such children and their families. This flexibility is valuable, particularly with respect to a decision to remove a child from his own home, in a service area such as this one that lacks diagnostic precision.

The 6 month time period was selected (as opposed to other suggestions which included 30 days for any one placement or episode, and 90 days in a 12 month period) on the basis that it extends FFP for this service; that it offers States additional alternates for services provision; and that it is a reasonable, if somewhat arbitrary, compromise between the current provisions and the strong recommendation for 30 days per placement or episode which we believe supports an undesirable revolving-door approach to service delivery in these difficult cases. (For example, the child is abused or neglected, is given 30 days of emergency shelter, No diagnostic study or services are provided to the child or his family. He returns home but is back in the care of the agency needing emergency shelter for the same or similar problems within a short time. This cycle occurs repeatedly.)

Regarding § 228.47, many of the comments seemed unclear with respect to the availability of FFP when State funds are advanced to an eligible individual for an authorized service. The regulations do not address State practices. However, the regulation intends that if a State advances its own funds, such an advance may become an expenditure for FFP purposes only after a service has been authorized and delivered as evidenced by a bill or receipt.

Recommendations that FFP be made available for foster care in foster family homes and foster care institutions were received. This is a limitation in the law (Section 2002(a)(7)) and cannot be allowed under regulation.

SUBPART E—LIMITATIONS: FINANCIAL

Two changes have been made in this Subpart in response to comments. Sections 228.53 and 228.54 are clarified to show that public or private agencies or organizations may make funds available to the title XX agency for training as well as for services and other administrative functions. Since this has always been the case, the purpose of the change is to make this provision explicit. It was suggested that in-kind donations be allowed from private donors. This suggestion could not be accepted since such a change would require legislative action.

Section 228.55, containing the definition of family planning services, was vacated under the regulations pertaining to Pub. L. 94-401 and its contents were moved to § 228.63.

SUBPART F—LIMITATIONS: INDIVIDUALS SERVED, ELIGIBILITY AND FEES

SEC. 228.60 *Persons eligible and access to services.* This section has been reorganized and new material added for clarification. It has also been retitled from "Persons eligible" to "Persons eligible and access to services" to more clearly reflect its content.

A new paragraph (a) "Conditions for FPP," consolidates the material on Federal financial participation previously scattered throughout the section.

It was suggested by commentators that individuals who may receive certain services without regard to income was a third category of eligible persons and should be listed with income maintenance status and income status persons. The regulation has been changed accordingly. In addition, the regulation also notes that persons whose eligibility is determined on a group basis are income status individuals.

Paragraph (b) on median income is revised to make clear that all States, whether conducting their Title XX programs on a State or Federal fiscal year, are to use the median income promulgated annually in December for their ensuing program year.

Paragraph (d) formerly called "Income levels," is now broken down into two paragraphs. Paragraph (d) is entitled "Income levels as baselines for fee imposition" and clarifies how to calculate the upper and lower limits of median income which set the boundaries for the mandatory imposition of fees on persons in income status. In order to make clear that the State has the option to impose fees on other persons not having incomes within the limits for mandatory fees, a cross reference is now included to the regulation concerned with discretionary fees.

In regard to adjustment figures for family size relative to setting the income levels for mandatory fees, three respondents thought that 3 percentage points increase for each additional person over a family of six was inequitable. No change has been made in the regulation in this respect because: (1) The Department has concluded that it would not be prudent to make a change in view of the fact that the issue was not raised in a proposal which could be evaluated and commented upon by all interested parties; and (2) The Department believes that the matter of adjustments around incomes must be examined in the broader context of considering other Federal programs which also require a means test.

Paragraph (e) is now called "Income levels for services" and presents the same options for setting income levels as previously.

When Pub. L. 94-401 introduced determination of eligibility on a group basis into the Title XX program, the word "application" in the regulations had to be reconsidered. Generally in the public social services field, application has meant the submission by the applicant of a written, signed form containing information on income needed to establish eligibility for a service. Sometimes it also included a request for a service if the State did not have a separate form for this purpose. However, information on income is not required from individuals whose eligibility is being determined on a group basis, but a request for services is still applicable. Therefore, the regulation now differentiates between an application and a request for services. The application is used only when there is a need to determine eligibility on an individual basis. A request for services is made by everyone seeking a service. The State is to document such requests for purposes of FFP, fair hearings, and to verify that the request for services was a voluntary one. Documentation may be accomplished through submission of a written request by an individual or by the recording of information elicited by the agency, except that a request for family planning services must be in writing to insure that it was requested voluntarily. Documentation for protective services remains the same as in the proposed amendment. The State must establish a procedure for documenting information and referral requests as to the number and nature of these requests.

A heading has been added, "Prompt action on eligibility applications and requests for service" as paragraph (g) to include existing material on time frames in which the State must make decisions on applications for eligibility and notify applicants. As noted previously, an application often included a request for services. To this paragraph has been added new material dealing with a response by the State to requests for service as described in paragraph (f), and to carry out the intent of the legislation which provides that "an opportunity for a fair hearing before the appropriate State agency will be granted to any individual whose claim for any service described in Section 2002(a)(1) is denied or is not acted upon with reasonable promptness." The new material directs that unless a service is denied, the State must provide the service requested with reasonable promptness. "Provide the service" is defined as the actual provision of the service or arrangements for its provision at an appropriate later date. The latter half of the definition is to accommodate those cases where a service is not needed until a later date—e.g., homemaker service is needed six weeks from the date of the request when the mother will be going to the hospital. "Reasonable promptness" means providing the service within 15 days after notification of eligibility to a person whose eligibility is determined on an individual basis, or within 30 days after acceptance of a request for service. If the service is being denied, the State must notify the applicant in writing of the denial within the same time limits.

Paragraph (h) is newly lettered and covers "Notification of right to a fair hearing" which has been rewritten to include applicants who make only a request for services.

Some respondents requested that time limits in the fair hearings process be presented in the regulation along with the time limits on notifying applicants about their eligibility. An SRS decision has been made that fair hearings materials for all SRS programs (now contained in 45 CFR 205.10) would be revised to reflect the needs of the Title XX program and be contained in a separate regulation. A Notice of Intent was published in the FEDERAL REGISTER on this matter on November 30, 1976 (41 FR 52491) and comments are being accepted through the end of January.

Several comments were received about the time limits specified for the State to notify applicants about their eligibility on an individual basis. One dealt with the difficulty of getting a response from the Social Security Administration within 30 days about SSI recipients; another proposed giving the States complete freedom to set their own time limits provided they were "reasonable"; another opposed having to notify the applicant about his eligibility within 15 days after the State has reached a decision. These comments generally represent administrative problems at the State and local level. The suggestion for States setting a "reason-

able time" is unacceptable as it affords the applicant little protection against possible abuse and nullifies an effective fair hearings procedure.

SEC. 228.61 *Determination and redetermination of eligibility.* Paragraph (7) in § 228.60 which deals with safeguarding the civil and other rights of the individual in standards and methods of determining eligibility has been transferred from that section and added to paragraph (a) of § 228.61 which is concerned with methods of determining eligibility. This is merely a consolidation of relevant material.

By inadvertence, material in this Section on the documentation method of determining individual eligibility had been dropped. It is now restored so that a description of both the documentation and declaration methods of determining eligibility are included. The description of what constitutes a determination of individual eligibility has also been clarified.

Respondents were divided on whether the State should have the choice of using different methods of determining eligibility for different categories, services, and geographic areas. Providers and organizations generally favored mandating one method throughout the State, using the declaration method. The regulation was not changed, however, in the interests of permitting flexibility to the States.

The paragraph on conditions for FPP has been changed to reduce the material in (1) and (3) of paragraph (b) to one item and relate it more clearly to conditions for FFP when an individual who had formerly been eligible is subsequently found ineligible. The incorrect citation in the last paragraph of (b) has also been adjusted.

There was overwhelming support from respondents for including recipients of SSI in the group for whom redetermination could be conducted an an annual basis. This change was made, as well as permitting the individual to have a combination of income from a pension, social security and SSI. Other suggestions which were not accepted recommended that AFDC recipients, the developmentally disabled, and other groups be included in the yearly redetermination category. SRS believes that more experience with the Title XX program is necessary before further changes are made.

A great deal of apprehension was expressed about the possibilities of audit exceptions if the declaration method is used. States wanted sepcifications—such as for monitoring, error rates, and valid samples—before they constructed their monitoring procedures and undertook using the declaration method. SRS does not believe the regulation is the proper vehicle for such material, and the Department has no plans for such promulgation. For the present, § 228.61(g) is as far as the Department wishes to go in requiring States to conform to specified procedures. Technical assistance will be available to the States in these areas.

When regulations for Pub. L. 94-401 were published December 21, 1976 (FR 55668), it was specified in § 228.61(d)(2) that if a State agency were claiming expenditures retroactively for services on a group determination of eligibility basis, as permitted to October 1, 1975, the validation of each group of persons receiving such services had to be completed within three months following December 21, 1976. Since this date would fall in the middle of March, SRS has extended the completion date to March 31, 1977 to make it coincide with the end of a month and end of the quarter.

Another change in the regulation issued on December 21, 1976 has been made for purposes of operational feasibility. The regulation, § 228.61(d)(6), instructed the State agency, in the event it found that persons receiving a particular service on the basis of group eligibility did not meet the test of "substantially all," to take two steps within 75 days of making the finding. One step was to discontinue claiming FFP for expenditures incurred for the service provided to persons in the group whose eligibility had been determined on a group basis. The other step was to amend the services plan. Since the end of the 75 days could occur at any point in a month and result in administrative problems relative to stopping FFP, the regulation has been changed to discontinue FFP "by the end of the month in which the 75th day occurs."

In response to queries, paragraph (d)(5) has been revised to clarify that the 75 percent validation test for group eligibility is to be conducted on the same basis as each group is described in the services plan. This means that if a State has described the group on a geographic area basis, it shall conduct the validation on a geographic area basis; if a State has conceived of the group on a Statewide basis, it shall conduct the validation on a Statewide basis. Even though this change has been made on the basis of early comments to the interim final regulation published on December 21, 1976, the Department is still accepting comments on that regulation.

SEC. 228.62 *Fees.* Some respondents seemed unaware that the legislation requires imposition of a fee "reasonably related to income" on service recipients with family gross incomes exceeding 80 percent of the median up to 115 percent of the median. They proposed various legally unacceptable changes: waivers of fees, fees based on characteristics of a group, fees related to cost of service rather than income, exceptions when calculating the income of various groups. Several objected to the possibility of different fees in different geographic areas for the same service. Since States must describe their fee structures in the annual services plan, the public has the opportunity to question differences in fees they believe unjustified.

In paragraph (e)(1) of the proposed regulations, the intended meaning of the words "normal charge" was the going rate in the community for a service. Since the words used raised questions, the regulation has been revised to substitute "the going rate in the community" for "normal charge," for purposes of clarification.

It was of concern to a number of respondents that a Title XX service provider, having been given the opportunity to expand the service with fees collected, would discriminate in favor of providing services to persons who had to pay fees. SRS believes the State agency has the responsibility to detect such trends and deal with them. Others questioned why the State agency was not permitted to use the service fees it collected to expand Title XX services. SRS has added this possibility to the regulation. In response to questions, it has also clarified that fees collected cannot be used to match Federal funds. Pursuant to 45 CFR 74.45(b), these fees (whether initially paid by service recipients to a private or public provider) are to be retained by the State agency to be used in one of two ways: (1) to further the objectives of the program (expand the service); or (2) to reduce the size of the claim for Federal matching. Despite the fees thus becoming State agency monies, SRS has concluded on the basis of long-standing Federal policy relating to conditions under which public funds may be used as the non-Federal match (as expressed in 45 CFR 228.53), that such fees do not meet the requirements of that policy and hence cannot be used as the non-Federal share.

Clarification is also made that FFP is not available if providers impose fees or charges other than those which are stated in the purchase of service agreement with the State agency and are in accordance with the fee schedules published in the State's services plan.

Some respondents also seem unaware that the legislation specifies use of the median income as the basis for determining eligibility for Title XX services for income status individuals. There were suggestions to use for the Title XX eligibility determination, data gathered for determining eligibility for other programs such as food stamps or medical assistance. This is not feasible because income considered for Title XX (as described in § 228.66) is not necessarily the same as that for other programs.

Several respondents reacted unfavorably to the new paragraph (f) requiring the Title XX agency to make outside contacts at the applicant's request in order to protect the confidentiality of an inquiry relating to determination of eligibility when a provider agency is making the eligibility determination. One objection was that providers, seeking audit protection, would flood the State agency with requests to make outside contacts. Another objection was that an extensive system of procedures and administrative effort would be required to carry out this policy. SRS believes that this assurance of confidentiality is crucial in view of continuing concern for individuak privacy in governmental programs. This provision will be tested and the situation evaluated later on the basis of experience.

Another change, as a result of the comments, is the clarification that States have authority to charge fees if they

wish for persons receiving services without regard to income. This is of particular significance because there is a pattern of fee setting in many community agencies which provide family planning services.

SEC. 228.63 *Family Planning Services.* Changes were made in this section to include additional components of family planning services as examples for greater specificity.

SEC. 228.64 *Information and Referral.* No changes in this section were suggested by the respondents. Strong approval was expressed by a number of respondents for restricting FFP for information and referral services only when provided by an agency having I&R as a recognized, specific function.

SEC. 228.65 *Protective Services.* A recommendation was made to include services to battered women. Insofar as such individuals meet the definitions in § 228.65, they may receive the services specified in the State's services plan to provide protective services.

SUBPART G—PURCHASE OF SERVICE

Two changes have been made in this Subpart. In response to requests for clarification, § 228.71(a) has been revised to specify factors to be considered and procedures to be used in establishing rates for the purchase of services from public and private agencies. The purpose of these changes are to provide definitive information on which States and provider agencies may base their procedures.

A significant number of respondents disagreed with the option in § 228.70(d) of allowing an unwritten contract with certain individual providers of services. They cited the lack of accountability, including the difficulties in auditing an unwritten contract, and the potential for abuse. They also noted that the requirement that the terms of the unwritten contract be documented in the record was operationally similar to the requirement for a written contract. These comments were carefully considered as were comments which approved of this option as a method of easing administrative requirements. Approving respondents cited the benefits to individual providers (such as day care providers) who wish to provide a service but who are reluctant to sign a formal contract. They cited the resulting threat to services availability due to a decrease in numbers of service providers. They also cited cumbersome contract processing requirements in some States which delay provision of services and create an exceptionally heavy administrative workload.

On balance, this provision was retained on the basis that administrative options are needed by the States. However, for the purpose of clarification, a change is made in § 228.70(d) to specify that States in documenting the terms of the unwritten contract, shall document the terms of the contract that has been negotiated with the individual provider, including all applicable items in § 228.70(a). We anticipate that States, at their discretion, will continue to require written contracts for certain services provided by such individual providers.

The effective date of this option for unwritten contracts for certain individual providers of services under § 228.70(d) is made retroactive to October 1, 1975. This retroactive date aims to avoid undue administrative burdens on States. The requirement for a written contract with all providers of services was based on the Department's intent to encourage sound administrative and business practices which would support accountability. However, the Department was not aware of the volume of individual providers in some States, the difficulties involved in obtaining written contracts, nor the administrative difficulties of processing such a large number of contracts in some States. In this instance, the Department considers its requirements, although based on good intent, to have been unduly burdensome.

SUBPART H—TRAINING AND RETRAINING

This Subpart received a substantial number of comments from a wide range of respondents. Comments were received on the proposed regulations and in response to the SRS request for public consideration of and comment on the feasibility of combining all SRS training regulations into a consolidated regulation. SRS is appreciative of the large number of comments received on this matter, the majority of which favored separate training regulations. This decision is still pending. All responses, including those received in response to an NOI on this subject, will be carefully considered in reaching a final decision.

The following is a summary of changes which have been made in the proposed regulations after consideration of comments.

The issue, related to this Subpart, which produced the most comment was the deletion of the requirement for submittal of a Training Plan to SRS in § 228.80. A majority of respondents who commented specifically on the Training Plan urged re-instatement of this requirement. Many other respondents, however, commented in general terms approving changes made in this Subpart or approving the relaxation of administrative requirements in this section. It was difficult for the Department to precisely assess these general comments since they might refer to any or all of the several changes made in this Subpart. They were read, however, to give implicit approval to the proposed deletion of the requirement.

Therefore, the requirement for submittal of a Training Plan has been deleted as contemplated in the August proposed regulation. The Department believes the working relationship with the States can be enhanced by avoiding mandated requirements whenever possible and by working on a joint basis with States for program improvement. The Department also recognizes the interest in and shares a concern for good program management with respect to training. The President's Budget for FY 1978 contains a recommendation for a $75 million ceiling on the presently open-ended training fund for income maintenance and social services. The Department will be working closely with States to monitor the use of all training expenditures and their impact on service delivery.

An opportunity for further comment on Departmental regulations with respect to training for all SRS programs is contained in a Notice of Intent and Notice of Proposed Rule-Making published in the FEDERAL REGISTER January 11, 1977 (42 FR 2440). SRS will give further consideration to procedures for planning and reviewing training activities in considering public comment on the issues raised in that notice.

The ten remaining changes made in this Subpart respond to requests for clarification. Their purpose is to eliminate confusion.

Editorial changes are made in §§ 228.81(c) and (c)(1) to clarify that a provider agency does not need to have a contract to determine eligibility in effect before its service delivery staff may be trained. This section also clarifies that eligibility determination staff of providers may be trained when the contract includes the eligibility determination function.

Section 228.81(c)(2) has been revised to provide that an individual family or in-home day care provider may receive training both:

(1) To enable her (him) to provide services to an eligible person already in her (his) care, or

(2) To prepare her (him) to give such services to an eligible person at a later date, under the conditions specified in this section.

This clarification is made in response to questions asking when the training of such providers may occur. The specified conditions under which the training may be given are the same as for other service providers.

In § 228.82(c), the words "which include equal representation from the three groups comprising the panel" have been deleted in response to requests from State Title XX agencies. They pointed out that since States have primary responsibility for such grants, they should have the responsibility, if they wish, to determine the numerical composition of the evaluation panel, so long as the panel consists of representatives of the SRS Regional Office, the educational institution, and the State agency.

Section 228.84(b) adds language to specify that costs of State agency staff, such as program area specialists, may be matchable when such persons are utilized in training programs under the supervision of the State agency Director of Staff Development, and are properly allocated.

Section 228.84(c) is modified to set limits on the type of expert whose services will qualify for FFP, e.g., FFP is available for experts who are from outside the Title XX agency. This clarification is made in response to questions about whether supervisors or other pro-

gram area specialists in the Title XX agency may be considered as "experts" and thus be eligible to receive salaries, fringe benefits, travel, and per diem as training expenditures.

Section 228.84(e) adds language that clarifies the requirement for a training contract between the Title XX agency and the provider agency.

Section 228.84(g) is modified to parallel the change made in § 228.84(c), namely, to allow FFP only for experts who are from outside the provider agency. This clarification is also made in response to questions from provider agencies on this matter.

Section 228.86, entitled "Phase-in of training requirements," is vacated as no longer applicable. The phase-in period to which this section referred expired on June 30, 1976.

Regarding other comments received, many respondents, primarily those from provider agencies, urged that regulations permit FFP as a training cost for the training of management/administrative staff of and volunteers in provider agencies, and for financial assistance for persons preparing for employment in a provider agency. These recommendations were not accepted. The Department is concerned, first of all, about a public policy position and an interpretation of the statute that would allow FFP as a training expenditure, outside the ceiling, to train the non-direct service delivery staff of agencies from whom the Title XX agency is presumably purchasing such expertise and services. This concern is particularly strong as it is possible to fund the training of such persons only under certain conditions and in appropriate cases within the overall cost of a purchase of service contract.

Secondly, with respect to the recommendation to train persons preparing for employment in provider agencies, this provision would increase considerably the administrative burdens of the State Title XX agency in attempting to control, monitor, and assure benefits of such training to the Title XX program. Unlike the provision of allowing training for persons preparing for employment in the Title XX agency, the administrative costs associated with the potentially multiple number of persons so funded could tend to divert Title XX monies away from service provision.

In addition, two mis-interpretations of the proposed regulations appeared in the comments. The first was in regard to the requirement for accreditation of Departments or Institutes, such as an Institute of Social Policy and Planning, which are a part of an accredited educational institution. The regulation intends that for FFP to be available under § 228.82, to Departments or Institutes which are a part of an accredited educational institution must themselves be accredited by a special accrediting body, if such an accrediting body exists for that Department or Institute. If no special accrediting body exists for the program of such Departments or Institutes, then FFP is available, under § 228.82, for grants to such Departments or Institutes if the Department or Institute is a part of an accredited educational institution. A Department or an Institute which is not a part of an accredited educational institution cannot receive funding under § 228.82.

SUBPART I—GENERAL PROVISIONS

Three changes have been made in this Subpart. In response to requests for clarification, § 228.90(a)(2) adds language that clarifies the availability of FFP for medical examinations for eligible persons precedent to receipt of a service, such as an examination for a child entering day care.

Section 228.90(a)(3) also adds the word "agency" to clarify that FFP is available for costs of State (and local) Title XX agency advisory committees. This clarification is made in response to questions concerning FFP for costs of local advisory committees.

Also in response to comments, § 228.91 clarifies that no FFP is available for goods or services provided in-kind by individuals. The purpose of these changes is to make explicit statements that will resolve continuing questions in these areas.

Part 228, Chapter II, Title 45 of the Code of Federal Regulations is revised to read as set forth below:

Subpart A—Scope and Definitions

Sec.
228.0 Scope of program.
228.1 Program definitions.

Subpart B—State Plan Requirements, Reports, Maintenance of Effort, Compliance

228.5 State plan requirements.
228.6 Appropriate State agency.
228.7 State financial participation.
228.8 Statewide operation.
228.9 Merit system.
228.10 Safeguarding information.
228.11 Residency requirements.
228.12 Standards for institutions or foster homes.
228.13 Standards for child day care services.
228.14 Fair hearings.
228.15 Amendments to State plan.
228.16 Submittal of State plan and amendments for approval by the Secretary.
228.17 Reports and maintenance of records.
228.18 Maintenance of effort.
228.19 Noncompliance.

Subpart C—Comprehensive Annual Services Program Plan

228.20 Conditions for FFP.
228.21 Establishment of program year.
228.22 Services plan.
228.23 Program goals and objectives.
228.24 Individuals to be served.
228.25 Availability of services by geographic area.
228.26 Services.
228.27 Estimates of individuals to be served and expenditures.
228.28 Program resources.
228.29 Program coordination and utilization.
228.30 Organizational structure.
228.31 Needs assessment.
228.32 Planning, evaluation and reporting.
228.33 The public review process.
228.34 Regional review of proposed and final services plans.
228.35 Correction of proposed and final services plans.
228.36 Amendments to final services plan.

Subpart D—Limitations: Services

228.39 General.
228.40 Minor medical and remedial care.
228.41 Room or board.
228.42 Child care standards.
228.43 Educational services.
228.44 Services to individuals living in hospitals, skilled nursing facilities, intermediate care facilities (including hospitals or facilities for mental diseases or for the mentally retarded), or prisons.
228.45 Special services provided by foster family homes.
228.46 Emergency shelter.
228.47 Cash payments for a service.
228.48 Confidentiality regarding services to drug and alcohol abusers.

Subpart E—Limitations: Financial

228.50 Services and individuals covered in the services plan.
228.51 Matching rates.
228.52 Allotments to States.
228.53 Public sources of State's share.
228.54 Private sources of State's share.
228.55 Family Planning Services.
228.56 Fifty Percent Rule.

Subpart F—Limitations: Individuals Served, Eligibility and Fees

228.60 Persons eligible and access to services.
228.61 Determination and redetermination of eligibility.
228.62 Fees for services.
228.63 Family planning services.
228.64 Information and referral services.
228.65 Services directed at the goal of preventing or remedying neglect, abuse, or exploitation of children or adults unable to protect their own interests.
228.66 Monthly gross income.

Subpart G—Purchase of Service

228.70 Procurement standards.
228.71 Rates of payment.

Subpart H—Training and Retraining

228.80 Conditions for FFP.
228.81 Who may be trained.
228.82 Grants to educational institutions.
228.83 Financial assistance to students.
228.84 Activities and costs matchable as training expenditures.
228.85 Activities and costs not matchable as training expenditures.
228.86 (Reserved)

Subpart I—General Provisions

228.90 Expenditures for which Federal financial participation is available.
228.91 Expenditures for which Federal financial participation is not available.

Subpart J—Grants to Child Day Care Providers To Employ Welfare Recipients

228.100 Definitions.
228.101 Conditions for Federal financial participation.
228.102 Claims for Federal financial participation.

AUTHORITY: Sec. 1102, 49 Stat. 647 (42 U.S.C. 1302).

Subpart A—Scope and Definitions

§ 228.0 Scope of program.

(a) Federal financial participation is available, in accordance with title XX of the Social Security Act and this Part, with respect to expenditures under a State program for the provision of services, to low income individuals and families, directed at the goals of:

(1) Achieving or maintaining economic self-support to prevent, reduce, or eliminate dependency;

(2) Achieving or maintaining self-sufficiency, including reduction or prevention of dependency;

(3) Preventing or remedying neglect, abuse, or exploitation of children and adults unable to protect their own interests, or preserving, rehabilitating, or reuniting families;

(4) Preventing or reducing inappropriate institutional care by providing for community-based care, home-based care, or other forms of less intensive care, or

(5) Securing referral or admission for institutional care when other forms of care are not appropriate, or providing services to individuals in institutions.

§ 228.1 Program definitions.

As used in this Part:

Act means the Social Security Act.

Administrator means the Administrator of the Social and Rehabilitation Service of the U.S. Department of Health, Education, and Welfare.

Categories of individuals means groupings of persons on the basis of common characteristics such as recipient status (AFDC, SSI, Medicaid), income level, age, physical or mental condition, or any other characteristic that the State specifies in its comprehensive annual services plan.

Family means one or more adults and children, if any, related by blood, or law, and residing in the same household. Where adults, other than spouses, reside together, each may be considered a separate family by the State. Emancipated minors and children living under the care of individuals not legally responsible for that care may be considered one-person families by the State.

Fiscal year means the Federal fiscal year unless otherwise specified.

FFP means Federal financial participation.

Geographic area means any identifiable area encompased within the State.

Indian tribal council means the official Indian organization administering the government of an Indian tribe, but only with respect to those tribes with a reservation land base. This includes Inter Tribal Councils whose membership tribes have reservation status.

Indian tribe means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native region, village or group as defined in the Alaska Native Claims Settlement Act (85 Stat. 688), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, or any Indian Tribe, band, nation, or other organized group or community which is recognized as an Indian Tribe by any State commission, agency, or authority which has the statutory power to extend such recognition.

Medical or remedial care means care directed toward the correction or amelioration of a medical condition which has been diagnosed as such by a licensed medical practitioner operating within the scope of medical practice as defined by State law, and which care is provided by or under the direct supervision of such a medical practitioner or other health professionals licensed by the State or credentialed by the appropriate professional organization.

Monthly gross income means the monthly sum of income received from sources identified by the U.S. Census Bureau in computing median income. (See 228.66.)

Other public agencies means State and local public agencies other than the State agency, and Indian Tribes.

Room means shelter only; and *board* means 3 meals a day or any other full nutritional regimen.

Secretary means the Secretary of the U.S. Department of Health, Education, and Welfare.

Services plan means the State Comprehensive Annual Services Program Plan under section 2004 of the Act.

SSI (Supplemental Security Income) means monthly cash payments made by the Social Security Administration to an aged, blind or disabled individual who meets the requirements for such aid under title XVI of the Act, and also includes State supplementary payments made by a State on a regular basis to an individual receiving SSI, or who would, but for his income, be eligible to receive such benefits, as assistance based on need in supplementation of such benefits.

State means the 50 States and the District of Columbia.

State agency means the appropriate State agency, designated by the chief executive officer of the State or as otherwise provided by the laws of the State, to administer or supervise the administration of the State's program, and except where the context otherwise requires, includes local agencies administering the program under the supervision of the State agency.

State plan means the State plan under section 2003 of the Act.

Title XX means title XX of the Social Security Act.

Subpart B—State Plan Requirements, Reports, Maintenance of Effort, Compliance

§ 228.5 State plan requirements.

Each State which establishes a services plan under title XX shall operate it pursuant to a State plan, approved as meeting the requirements of §§ 228.6 through 228.16.

§ 228.6 Appropriate State agency.

(a) *Designation of appropriate State agency.* The State plan shall provide:

(1) For the designation, by the chief executive officer of the State or as otherwise provided by the laws of the State, of a State agency with authority to administer or supervise the administration of the State's program under title XX; and

(2) For a description of the appropriate State agency, and inclusion of an organizational chart showing location of the agency within the State Government.

(b) If on December 1, 1974, a separate agency administered or supervised the service program for the blind under title VI, such agency may continue to do so for title XX. Both agencies shall use the same program year.

(c) *Administration of title IV–B of the Act.* Under title IV–B of the Act, the State agency shall administer or supervise the administration of title IV–B of the Social Security Act unless, prior to December 1, 1974, title IV–A and IV–B of the Act were administered by separate agencies.

(d) *Legal authority.* The Attorney General of the State shall submit a certification identifying the State agency and certifying the legal authority under which such agency administers or supervises the administration of the State program including the authority to make ruls and regulations governing the administration of the program.

(e) *Authority and responsibility of the agency.* There shall be maintained within the State agency the authority and responsibility for:

(1) The State plan;

(2) The services plan;

(3) The projection of estimated expenditures;

(4) The accountability for Federal funds;

(5) The establishing and maintaining of standards for the determination of eligibility;

(6) The administration or supervision of the administration for the provision of services;

(7) Operating the program on a Statewide basis;

(8) Complying with any program reporting requirements;

(9) Maintaining a working relationship between the Secretary and the State; and

(10) Overall supervision, control and oversight of title XX activities.

(f) *Administrative support agreements.* In carrying out the responsibilities under paragraph (e) of this section, the State agency may enter into agreements in accordance with the procurement requirements of 45 CFR Part 74, Subparts P and Q, with public or private entities to provide administrative support. A local agency administering the program under the supervision of the State agency may also enter into such agreements.

§ 228.7 State financial participation.

A State plan under title XX shall provide that State funds will be included in meeting the cost of the program.

§ 228.8 Statewide operation.

A State plan shall provide that the State's program for the provision of services described in its services plan shall be in effect in every political subdivision of the State. Every part of every political subdivision shall be part of a geographic area described in the services plan.

§ 228.9 Merit system.

(a) The State plan shall provide that methods of personnel administration will be established and maintained in the State agency administering or supervising the administration of the State plan and in local agencies administering the State plan in conformity with the standards for a Merit System of Personnel Administration, 45 CFR Part 70, and any standards prescribed by the U.S.

Civil Service Commission pursuant to section 208 of the Intergovernmental Personnel Act of 1970, modifying or superseding such standards. Under this requirement, laws, rules, regulations, and policy statements effectuating such methods of personnel administration are a part of the State plan. Statements of acceptance of these standards by all official local agencies included in the State plan must be obtained and methods must be established by the State to assure compliance by local jurisdictions. These statements and citations of applicable State laws, rules, regulations, and policies which provide assurance of conformity to the standards in 45 CFR Part 70 must be submitted to the U.S. Civil Service Commission in accordance with 5 CFR Part 900 for determination as to adequacy. Copies of the materials cited and of similar local materials maintained by a State official responsible for compliance by local jurisdictions must be furnished to the Department on request.

(b) The State plan shall provide that the State agency will develop and implement an affirmative action plan for equal employment opportunity in all aspects of personnel administration as specified in 45 CFR Part 70.4. The affirmative action plan will provide for specific action steps and timetables to assure such equal opportunity. The plan shall be made available for review upon request.

§ 228.10 Safeguarding information.

The State plan shall contain provisions regarding safeguarding the use and disclosure of information on applicants for, and recipients of, services in accordance with 45 CFR 205.50.

§ 228.11 Residency requirements.

The State plan shall provide that no requirements as to duration of residence or citizenship will be imposed as a condition of participation in the State's program for the provision of services.

§ 228.12 Standards for institutions or foster homes.

Where a services plan includes services to individuals living in institutions or foster homes, the State plan shall provide for the establishment or designation of a State authority or authorities, that may include Indian tribal councils on Indian reservations, which shall be responsible for establishing and maintaining standards which are reasonably in accord with recommended standards of national standard setting organizations concerned with standards for such institutions or homes including standards related to admissions policies, safety, sanitation, and protection of civil rights. For purposes of this section, "institution" includes all residential facilities providing for group living.

§ 228.13 Standards for child day care services.

Where a services plan provides for child day care services, the State plan shall provide for the establishment or designation of a State authority or authorities, that may include Indian tribal councils on Indian reservations, which shall be responsible for establishing and maintaining standards for such services which are reasonably in accord with recommended standards of national standard setting organizations for such services including standards related to admissions policies for facilities providing such services, safety, sanitation and protection of civil rights.

§ 228.14 Fair hearings.

The State plan shall provide for a system of hearings under which applicants for, or recipients of, services or an individual acting on behalf of an applicant or recipient, may appeal denial, reduction, or termination of a service, or failure to act upon a request for service with reasonable promptness. Under this requirement, the procedures and provisions of 45 CFR 205.10 shall apply.

§ 228.15 Amendments to State plan.

The State plan shall provide that it will be amended whenever necessary to reflect new or revised Federal statutes or regulations, or material change in any State law, organization, policy, or State agency operation.

§ 228.16 Submittal of State plan and amendments for approval by the Secretary.

Upon adoption by the State of a State plan, or an amendment to a State plan, it shall be certified by a duly authorized officer of the State agency and submitted to the Social and Rehabilitation Service in accordance with 45 CFR Part 201.

§ 228.17 Reports and maintenance of records.

(a) Each State which participates in the program shall maintain or supervise the maintenance of records necessary for the proper and efficient operation of the program, including records regarding applications, determination of eligibility, the provision of services, and administrative cost; and statistical, fiscal and other records necessary for reporting and accountability required by the Secretary in accordance with 45 CFR Part 201 and Part 205; and shall retain such records for such periods as are prescribed by the Secretary.

(b) The State agency shall make such reports in such form and containing such information, as the Secretary may from time to time require, and comply with such provisions as he finds necessary to assure the correctness and verification of such reports.

§ 228.18 Maintenance of effort.

Each State which participates in the program shall assure that the aggregate expenditures from appropriated funds from the State and political subdivisions for, the provision of services during each services program year with respect to which payment is made under this Part is not less than the aggregate expenditures from such appropriated funds for the provision of services during the fiscal year ending June 30, 1973, or the fiscal year ending June 30, 1974, with respect to which payment was made under the plan of the State approved under title I, VI, X, XIV, or XVI, or Part A of title IV, whichever is less, except that the requirements of this subsection shall not apply to any State for any services program year if the payment to the State under this Part, for each fiscal year any part of which is included in that services program year, with respect to expenditures, other than expenditures for personnel training or retraining directly related to the provision of services, equals the allotment of the State for that fiscal year under § 228.52 of this Part. Where such sum totals appropriated include privately donated funds that are identifiable and documented, such donated funds are not considered part of the aggregate expenditures from appropriated funds.

§ 228.19 Noncompliance.

(a) *Withholding of payment.* If the Secretary, after reasonable notice and opportunity for a hearing to the State, in accordance with 45 CFR 213, finds that the plan of the State no longer complies with any of the requirements of § 228.6 through § 228.15, that in the administration of the plan, there is a substantial failure to comply with any of those requirements, or that there is a substantial failure to comply with the requirements of §§ 228.17 or 228.18, he shall, except as provided in paragraph (b) of this section, notify the State that further payments will not be made to the State under this Part until he is satisfied that there will no longer be any such failure to comply.

(b) *Alternate three percent penalty.* The Secretary may suspend implementation of any termination of payments under paragraph (a) of this section for such period as he deems appropriate and, alternatively, reduce the amount otherwise payable to the State under this Part for expenditures during that period by three percent for each requirement set forth in § 228.6 through §228.18 with respect to which there was a finding of noncompliance and with respect to which he is not yet satisfied that there will no longer be any failure to comply.

Subpart C—Comprehensive Annual Services Program Plan

§ 228.20 Conditions for FFP.

(a) The State's final services plan shall meet all requirements of this Subpart and of § 228.50; if it does not (except for family planning services provided pursuant to § 228.26(g)), there will be no FFP in expenditures for services under the services plan.

(b) FFP will be available in expenditures under the final services plan for services that are provided:

(1) No earlier than 90 days after a proposed services plan has been published and made available for public review and any corrections necessary to bring such proposed plan into compliance with all requirements of §§ 228.21 through 228.33 have been published, with 45 days for public comment; and

(2) No earlier than the date of publication of a final services plan that meets all requirements of §§ 228.21 through 228.35 (if applicable).

§ 228.21 Establishment of program year.

The State shall establish the beginning of the Federal fiscal year or the fiscal year of the State government as the beginning of the State's services program year. In order to exercise this option, the State may have a program year of less than 12 months or may extend the program year to 15 months.

§ 228.22 Services plan.

(a) The Chief Executive Officer of the State, or such other official as the laws of the State shall provide, shall publish in both proposed and final form the Comprehensive Annual Services Plan (hereinafter in this part referred to as the services plan) prepared by the State agency prior to the beginning of each services program year. The proposed and final services plans shall meet all requirements of this Subpart.

(b) The final services plan shall also include: (1) A summary of the public comments, including the State's response to the comments; and

(2) An explanation of differences between the proposed and final services plan, if any and the reasons therefor.

§ 228.23 Program goals and objectives.

(a) The services plan shall provide that services offered are directed at the goals of:

(1) Achieving or maintaining economic self-support to prevent, reduce, or eliminate dependency;

(2) Achieving or maintaining self-sufficiency, including reduction or prevention of dependency;

(3) Preventing or remedying neglect, abuse, or exploitation of children and adults unable to protect their own interests, or preserving, rehabilitating, or reuniting families;

(4) Preventing or reducing inappropriate institutional care by providing for community-based care, home-based care, or other forms of less intensive care; or

(5) Securing referral or admission for institutional care when other forms of care are not appropriate, or providing services to individuals in institutions.

(b) The objectives to be achieved under the program shall be directed to the goals in paragraph (a) of this section, and shall be stated in the services plan in measurable terms so that an assessment may be made of the extent to which they are achieved.

§ 228.24 Individuals to be served.

The proposed and final services plans shall:

(a) Specify which of the categories of individuals described in § 228.60 will be provided services in the forthcoming program year; describe the income levels for eligibility, and include the Statewide definition of family in accordance with § 228.1;

(b) If the State limits services to individuals with certain characteristics, describe the limitations imposed for each category in sufficient detail to enable individuals to know if they are likely to meet the eligibility requirements, e.g., one parent families whose income is not more than 80 percent of the median income; mentally retarded SSI recipients, or alcohol abusers whose income does not exceed 50 percent of the median income;

(c) Specify which of the categories to be served will be charged a fee;

(d) Include the fee schedule, specifying any variations by service or by geographic area, as permitted under § 288.62; and

(e) Specify whether family planning services, information and referral services, and services to prevent or remedy neglect, abuse or exploitation will be provided without regard to income.

(f) If the State is determining eligibility on a group basis in accordance with § 228.61, the services plan shall so state and describe any specific conditions or characteristics (other than income), that must be met or that individuals must have so that they will know if they might qualify to receive a particular service for which eligibility is determined on a group basis. Conditions or characteristics that may be used by the State as a basis for determining that a service is to be offered on a group eligibility basis may include one or more of the following: the nature of the service, characteristics of persons to receive the service (such as age, physical or mental condition, place of residence, single parenthood, common problems, etc.), location of the service site(s), nature of the community where the service will be provided, or other factors which lead the State to reasonably conclude that substantially all the persons to whom the services will be offered are members of families which have a monthly gross income of no more than 90 percent of the State's median income, adjusted for family size.

§ 228.25 Availability of services by geographic area.

For the purpose of delivering services described in the service plan, the State agency may divide the State into geographic areas, but only if such geographic areas encompass the entire State, including Indian reservations. The State shall consider, in defining geographic areas, the boundaries of planning areas of other human services programs. If the State chooses to establish such geographic areas, the services plan shall:

(a) Describe those geographic areas;

(b) Provide that the services described in § 228.26(f) will be available to eligible individuals in every geographic area; and

(c) Where different services are made available to a category of individuals in different geographic areas, provide that the services furnished in a geographic area will be available to all eligible individuals in that category who reside in that area.

§ 228.26 Services.

The services plan shall: (a) Describe each discrete service, including the service(s) which is (are) available to individuals on the basis of group determination of eligibility, in as much detail as necessary to enable a reasonably prudent person to understand what is included in the service. For purposes of this paragraph, services such as "child welfare services" "services to alcoholics" or "protective services" are not discrete services but rather clusters of services, each of which shall be separately described. If medical or remedial care or room or board as described in §§ 228.40 and 228.41 are part of a service, the plan shall so specify in describing that service.

(b) Specify the effective date when each discrete service is available if the effective date is other than the beginning of the program year. For each discrete service that is to be offered in a prescribed time frame, specify the effective date on which that service is available and the effective date on which that service is to be discontinued. (See § 228.50 (a)(2).)

(c) Specify the method of delivery for each service, i.e., directly by the State agency, by a provider (public or private), or both;

(d) Indicate the relationship of each service to one or more of the program goals and one or more of the program objectives specified in § 228.23;

(e) Specify the categories of individuals in each geographic area to whom each service will be provided, including any services provided on a group basis;

(f) Include among the services to be provided in each geographic area:

(1) At least three services for SSI recipients;

(2) At least one service directed at each of the program goals specified in § 228.23.

(g) Describe the foster care services required under section 408 of the Act to be provided to all recipients of AFDC-FC, if such services are available under title XX;

(h) Describe any family planning services that will be provided pursuant to section 402(a)(15) of the Act. Failure to include such family planning services will not constitute a deficiency in the services plan. However, failure to provide family planning services pursuant to section 402(a)(15) of the Act may result in a loss of FFP to the State under its AFDC program.

(i) The State agency shall identify in its services plan the point in its organizational structure or the level of staff where it has placed authority:

(1) To make the decision for the State that it is not feasible to furnish child day care in a day care center or group day care home which complies with Federal staffing standards; and

(2) To furnish child day care by granting a waiver of otherwise applicable Federal staffing standards in a day care center or group day care home which serves few title XX funded children (see § 228.42(c)(2)) and meets applicable State staffing standards.

§ 228.27 Estimates of individuals to be served and expenditures.

In order to provide residents of the State with information on the scope of the services program, the services plan shall include estimates of State and Fed-

eral expenditures applicable to the title XX program as follows:

(a) For each discrete service, a list of estimated expenditures and estimated numbers of individuals to be served, by each category of eligible individuals and by each geographic area;

(b) Estimated expenditure for the forthcoming program year; and

(c) A comparison of estimated aggregate non-Federal expenditures for the forthcoming program year with those of the preceding completed program year.

§ 228.28 Program resources.

(a) The services plan shall indicate how the State intends to finance its title XX program by providing an estimate of the funds to be used from the State's title XX allotment, and by separately identifying and estimating State and local appropriated funds, and the aggregate of donated and other funds to be used to meet the expenditures under the program. ("Other funds" include any State or local funds used in the title XX program that are in excess of the State's allotment ceiling so long as such funds are administered in accordance with all requirements of this Part.)

(b) Where a State program year is the same as the Federal fiscal year, States shall include in the services plan the full amount of the federal allotment. Where a State program year extends through more than one Federal fiscal year, States shall include in the services plan the full amount of the federal allotment for both fiscal years. The services plan shall also indicate the proportion of each Federal fiscal year encompassed by the State's program year.

§ 228.29 Program coordination and utilization.

The services plan shall describe:

(a) How the planning and the provision of services under the program will be coordinated with and utilize the following programs:

(1) Under the Social Security Act:

(i) title IV-A, AFDC (including WIN);

(ii) title IV-B, Child Welfare Services;

(iii) title XVI, SSI; and

(iv) title XIX, Medical Assistance (Medicaid); and

(2) Other appropriate programs for the provision of related human services within the State—for example, programs for the aging, children, develop mentally disabled, alcohol and drug abusers; programs in corrections, public education, vocational rehabilitation, mental health, housing, medical and public health, employment and manpower.

(b) A general description of the steps taken to assure maximum feasible utilization of services under these programs to meet the needs of the low income population; and

(c) A general description of the steps taken to assure public participation in the development of the services program, including contacts with public and private organizations, officials of county and local general purpose government units, and citizen groups and individuals, including recipients of services.

(d) The description shall also include the extent to which the title XX agency utilizes grants and otherwise encourages child day care providers under contract to employ AFDC recipients.

§ 228.30 Organizational structure.

The services plan shall describe the organizational structure of the State agency through which the program will be administered including where individuals may apply for services and have their eligibility determined, and the estimated number of volunteers or a brief description of volunteer activities.

§ 228.31 Needs assessment.

The services plan shall describe the steps taken to assure that the needs of all residents of, and all geographic areas in, the State are taken into account in the development of the services plan. The description shall include the data sources used (or to be used).

§ 228.32 Planning, evaluation and reporting.

The services plan shall describe the planning, evaluation, and reporting procedures and activities the State has carried out or plans to carry out in connection with its services program. Examples of these procedures and activities which may be described include the following:

(a) *Planning.* Relationship with the State budget process and the legislature; input from other State, regional and local planning units and from local general purpose governmental units; citizen organizations and individuals; relationship of needs assessment and service resources inventory to setting of program priorities and allocation of resources.

(b) *Evaluation.* Purpose, scope and timing of current and proposed evaluations, and the schedule for dissemination of evaluation results.

(c) *Reporting.* Description of planned formal reports, such as reports to elected officials or to the public (but excluding reports furnished to SRS), and the schedule for issuance.

§ 228.33 The public review process.

A State's services plan does not become effective for its services program year until the public review process is completed in accordance with § 228.33, § 228.34, and § 228.35 (if applicable).

(a) *Purpose.* The purpose of the public review process is to enable the residents of each State to participate meaningfully in the State decision making processes with respect to the States services plan. The public review process is intended to assure that each State has provided opportunity for prior public participation of title XX clients, title XX advisory groups, public and private organizations, public officials and the general public in needs assessment, identification of priorities and allocation of resources throughout the development of the services plan. (See § 228.29(c))

(b) *Scope.* The public review process shall include at least:

(1) Publication of the proposed services plan and a display advertisement describing that plan, and a summary of the plan, if any, at least 90 days before the beginning of the program year, with a 45-day period for public comment;

(2) Consideration of, and public access to, comments received;

(3) Publication of any corrections required to bring the proposed services plan into compliance with the requirements of §§ 228.21 through 228.33;

(4) Publication of the final services plan and a display advertisement announcing its publication no earlier than 45 days after publication of the proposed services plan;

(5) Publication of any necessary corrections to the final plan;

(6) Publication of any proposed amendments to the final plan with a 30-day period for comments;

(7) Publication of any corrections required to bring the proposed amendment into compliance with the requirements of § 228.21 through § 228.33;

(8) Publication of the final amendments; and

(9) Publication of any necessary corrections to the final amendment;

(10) Public access to copies of the proposed and final services plans.

(c) *Approval prior to publication.* Prior to publication, the proposed and final services plans shall each be approved by the Governor or such other official as the laws of the State provide.

(d) *Retention of published services plans.* Copies of the proposed and final services plans shall be retained for at least three years in specified local public offices and made available for public and Federal inspection throughout the program year.

(e) *Handling of public comments.* (1) Written comments on the proposed services plan shall be considered by the State agency if received within 45 days after publication of the display advertisement announcing publication and availability of the proposed services plan; and

(2) Such comments shall be retained for at least 3 years for inspection by the public and by Federal officials.

(f) *Display advertisement; general requirements.* (1) A display advertisement is one prepared for and published within the main news section of a newspaper; advertisements placed in the legal or classified sections of a newspaper do not meet this requirement.

(2) Such advertisement must be published in the newspaper of widest circulation (and in foreign languages or foreign language newspapers where appropriate) in each geographic area described in the proposed and final services plans.

(g) *Display advertisement for the proposed plan.* A display advertisement shall at least:

(1) Specify the beginning and ending dates of the program year;

(2) Include a brief description of the services to be offered under the services plan;

(3) Describe the categories of individuals to be served:

(i) Identify those whose eligibility is based on income maintenance status (AFDC or SSI); and

(ii) Specify the maximum dollar amount of income that a family of four can have and still be eligible on the basis of income status; and

(iii) Indicate that such dollar amount is adjusted by family size.

(4) If the State has different income levels for different services, or different income levels for different geographic areas, specify that those different income levels are described in the proposed plan and in the plan summary (if the State has published a summary);

(5) Indicate beginning and ending dates of the 45-day period for public review and comment.

(6) Specify a toll-free telephone number that can be called to obtain without charge either a copy of the proposed plan or a summary thereof; or state that such copies can be obtained by calling a specified local public agency in each county, such as the local social services agency.

(7) Identify a local public agency in each county such as the social services agency where copies of the proposed services plan are available for public review; available for distribution to the public either free (if no summary is provided) or at a reasonable cost; or where copies of the proposed service plan may be ordered, if distributed from another source; and

(8) Specify the address where written comments may be sent and, if there are to be public hearings on the proposed plan, the location, date, and time for such hearings; or state that information concerning the hearings can be obtained by calling a specified toll-free number or by telephoning specified local agencies after a given date.

(h) *Summary of proposed services plan.* If the State publishes a services plan summary (to be provided free in lieu of a free copy of the entire services plan), it shall contain at least the following information:

(1) The beginning and ending dates of the program year;

(2) The categories of individuals including any limitations, who are eligible for services;

(3) The categories of individuals to whom a fee will be charged if they wish to be provided services under the services plan;

(4) Fee schedules, including any variations by service or by geographic area;

(5) A description of each discrete service to be provided under the plan;

(6) The services that will be made available to each category of individuals in each geographic area under the services plan;

(7) For each service, estimated expenditures, and estimated numbers to be served by each category of eligible individuals and by each geographic area; and

(8) Amount of the Federal allotment to the State and the amounts of State and local appropriated funds and of other funds to finance the services program; and

(9) A toll-free telephone number that can be called to obtain information on where to apply for services or the name of a local public agency in each county where applications for services will be accepted.

(i) *Display advertisement of the final services plan.* The display advertisement of the final services plan shall contain at least:

(1) A statement that the final services plan has been published and is available for review by the public;

(2) An explanation of any differences between the proposed and final services plans and the reasons therefore;

(3) A toll-free telephone number that can be called to obtain information about the services plan and where to apply for services; or the name of a local public agency in each county, where information regarding the services plan will be made available and where applications for services will be accepted;

(4) The name of a local public agency in each county where copies of the final services plan are available for public review and distribution to the public either free or at a reasonable cost; and

(5) The location where public comments on the proposed services plan are available for review.

§ 228.34 Regional review of proposed and final services plans.

(a) *Proposed services plan.* (1) Not later than 5 working days after publication of the proposed services plan, the State shall submit to the SRS Regional Commissioner the following: 7 copies of the proposed services plan and its summary, if any; a dated copy of the display advertisement; the names of the newspapers in which the display advertisement appeared; and the geographic areas covered by those newspapers.

(2) The Regional Commissioner will review the materials submitted to determine whether all requirements of §§ 228.21 through 228.33 have been met.

(3) Within 10 working days following receipt of the materials described in paragraph (a)(1) of this section, the SRS Regional Commissioner will notify the director of the State agency in writing that those materials meet all the requirements of this Subpart, or will specify the deficiencies that must be corrected in accordance with § 228.35. For purposes of this paragraph, a display advertisement which does not meet each requirement of paragraphs (f) and (g) of § 228.33, or a proposed services plan which does not comply with each required item under §§ 228.21 through 228.32, and 228.33(c) is deficient.

(4)(i) If correction(s) to the proposed services plan or to the display advertisement is necessary, the State shall submit to the SRS Regional Commissioner no later than 5 working days after publication of such correction(s), the following:

(A) For correction(s) to the proposed services plan, 7 copies of the corrected pages and one dated copy of the display advertisement announcing the correction(s). (The State shall file the corrected pages in the proposed services plan.)

(B) For correction(s) to the display advertisement announcing the proposed services plan, one dated copy of the display advertisement containing the correction(s) to the original display advertisement.

(ii) Within 5 working days of receipt of the materials submitted pursuant to paragraph (a)(4)(i) (A) and (B) of this section, the SRS Regional Commissioner will notify the director of the State agency in writing that the correction meets the requirements of §§ 228.21 through 228.32, 228.33(c), and 228.35; and that the State is free to publish its final services plan following expiration of the 45-day comment period; or will specify the additional correction that must be made in accordance with § 228.35.

(b) *Final services plan.* (1) Not later than 5 working days after publication of the final services plan, the State shall transmit to the SRS Regional Commissioner: 7 copies of such plan; a dated copy of the display advertisement; and a statement containing the date of publication of the final services plan; the names of newspapers where the display advertisement appeared; and the geographic areas in the services plan covered by those newspapers;

(2) The Regional Commissioner will review the materials submitted to determine whether all requirements of §§ 228.21 through 228.33 have been met;

(3) Within 5 working days following receipt of the materials described in paragraph (b)(1) of this section, the SRS Regional Commissioner will notify the director of the State agency in writing that the final services plan meets all the requirements of §§ 228.21 through 228.33, or will specify the deficiencies that must be corrected in accordance with § 228.35. For purposes of this paragraph (b)(3), a display advertisement that does not meet all requirements of § 228.33(i), or a final services plan that does not comply with each requirement of §§ 228.21 through 228.32, and 228.33(c) is deficient.

(4)(i) If correction(s) to the final services plan or to the display advertisement announcing the final services plan is necessary, the State shall submit to the SRS Regional Commissioner no later than 5 working days after publication of such correction(s), the following:

(A) For correction(s) to the final services plan, 7 copies of the corrected pages and one dated copy of the display advertisement announcing the correction(s). (The State shall file the corrected pages in the final services plan.)

(B) For correction(s) to the display advertisement announcing the final services plan, one dated copy of the display advertisement containing the correction(s) to the original display advertisement.

(ii) Within 5 working days of the receipt of the materials specified in paragraph (b)(4)(i) (A) and (B) of this section, the SRS Regional Commissioner will notify the State agency in writing that the correction(s) meets all the require-

ments of §§ 228.21 through 228.32, 228.33 (c) and 228.35; and that the final services plan is in effect; or specify the additional corrections that are required before the plan can become effective.

§ 228.35 Correction of proposed and final services plans and display advertisements.

(a) A display advertisement which is deficient shall be corrected by publication of correct information for each deficient item in a display advertisement in all newspapers in which the original display advertisement appeared.

(b) A deficient proposed or final services plan shall be corrected by publishing the following information in a display advertisement in all newspapers in which the original advertisement apeared:

(1) The items being corrected;

(2) A statement that corrected pages for insertion in the plan are available without charge; and

(3) A toll-free number or the address of the local public office where corrected pages may be obtained.

(c) For correction of a proposed services plan, the display advertisement shall contain the information specified in paragraph (b) of this section and also indicate the beginning and ending dates of the new 45-day comment period on the corrected plan, and the method for submitting comments.

§ 228.36 Amendments to final services plan.

(a) Amendments to the final services plan are necessary at least when:

(1) Change is to be made in the period of time encompassed by the program year (See § 228.21);

(2) Geographic areas are to be realigned; or

(3) Any of the following changes are to be made, whether applicable Statewide or only in particular geographic areas:

(i) Specific services are to be added or deleted;

(ii) Fees are to be changed, or the charging of fees is to be initiated or discontinued; or

(iii) The categories of individuals to be served are to be changed.

(b) Any amendment to a final services plan shall be prepared by the State agency and approved, published, and made generally available to the public by the Chief Executive Officer or such other official as the laws of the State provide in the following manner:

(1) The proposed amendment shall be published in a display advertisement in the newspaper of widest circulation (and in foreign languages or foreign language newspapers, where appropriate) in each geographic area in which the change has impact, and shall provide for a public comment period of at least 30 days. The display advertisement shall contain at least:

(i) A description of the proposed changes and the reasons therefor, and the proposed effective date of the changes which shall be no earlier than 30 days after publication of the proposed changes;

(ii) The method for public comment and where comments will be received; and

(iii) The beginning and ending dates of the 30 day period for public comment.

(2) Not later than 5 calendar days after publication of the proposed amendment, the State shall submit to the SRS Regional Commissioner 7 copies of the proposed amendment and a dated copy of the display advertisement which announced the proposed amendment.

(3) The SRS Regional Commissioner will review the proposed amendment(s) to determine whether applicable requirement(s) of § 228.21 through § 228.33 have been met. Within five working days following receipt of the amendment(s) the Regional Commissioner will notify the director of the State Agency in writing that the amendment meets the applicable requirement(s) of § 228.21 through § 228.33 or will specify deficiencies.

(4) Corrections to the proposed amendment(s) shall be made in accordance with the procedures for corrections to the proposed plan as described in § 228.34(a)(4) except that the period for public review and comment prior to publication of the final amendment is 30 days.

(5) No earlier than 30 days following the publication of the proposed amendment, the final amendment shall be published as a display advertisement in each newspaper in which the proposed amendment was published. This display advertisement shall contain at least:

(i) A description of the final amendment of the services plan;

(ii) The effective date of the amendment; and

(iii) An explanation of the State's response to the public comments; and

(iv) An explanation of the differences between the proposed and final amendments if any and the reasons therefor.

(c) The effective date of an amendment shall be no earlier than the date of publication of the final amendment.

(d)(1) Notwithstanding paragraph (c), of this section, when a State amends its services plan so that it may provide family planning services without regard to income, or determine eligibility on a group basis for the provision of a service, the final amendment to the services plan may have a retroactive effective date of October 1, 1975 (or later, depending on when the State began providing the particular service specified in the amendment). FFP is available for a service which is the subject of an amendment made in accordance with this paragraph (d)(1), *Provided*, That the service was in the State's services plan when the service was delivered.

(2) The State shall publish the proposed and final amendments to the services plan, in accordance with the provisions of this section, and specify therein the relevant retroactive dates.

(e) Not later than 5 calendar days following publication of the final amendment, the State agency shall submit to the SRS Regional Commissioner 7 copies of the final amendment and a dated copy of the display advertisements which announced the final amendments.

(f) The SRS Regional Commissioner will review the final amendment(s) to determine whether applicable requirement(s) of § 228.21 through § 228.33 have been met. Within 5 working days following receipt of the amendment(s) the Regional Commissioner will notify the director of the State agency in writing that the amendment meets the applicable requirement(s) of § 228.21 through § 228.33 or will specify deficiencies.

(g) Corrections to the final amendment(s) shall be made in accordance with procedures for corrections to the final plan as described in § 228.35(b).

Subpart D—Limitations: Services

21. Section 228.40 is revised to read as follows:

§ 228.40 Minor medical and remedial care.

(a) FFP is not available for medical and remedial care, other than family planning services, except when they are an integral but subordinate part of a service described in the services plan, and the medical and remedial care is not available to the individual under the State's approved title XIX plan and to the extent the individual or the provider is not eligible to receive payment under title XVIII for the provision of the service to the individual.

(b) Medical and remedial care are deemed to be integral but subordinate components of a service if:

(1) They are necessary to achieve the objective of that service and not merely to correct a medical condition; and

(2) The specific medical and remedial care are described and included in the State's services plan along with the description of the service of which they are an integral but subordinate part. For example, in describing child day care services, a State could describe (itemize) medical examinations, dental screening, and immunizations as integral but subordinate parts of the child day care service.

(c) Notwithstanding the requirement of paragraph (a) of this section, that medical and remedial care must be integral but subordinate to a particular service, FFP is available for medical and remedial care provided between October 1, 1975 and October 1, 1977 in a program of rehabilitative services to drug and alcohol abusers, under the following conditions:

(1) When provided in the initial detoxification of such persons for up to 7 days, so long as such detoxification is integral (but not necessarily subordinate) to the further provision of other title XX services to drug and alcohol abusers; and

(2) When integral but subordinate to the entire rehabilitative process (rather than a particular service), including but not limited to initial detoxification, short-term residential services, and subsequent outpatient counseling and rehabilitative services, whether or not such a process involves more than one provider of services.

§ 228.41 Room or board.

(a) FFP is not available for room or board under a services plan, except when

provided in emergency shelter under § 228.46, or as an integral but subordinate part of another service and then only for a period of not more than six consecutive months for any one placement.

(b) Room or board is deemed to be as an integral but subordinate component of a service if:

(1) It is necessary to achieve the objective of that service and not merely to provide food and shelter; and

(2) Room or board are included in the State's services plan along with the description of the service of which it is an integral but subordinate part, and is provided in accordance with all applicable requirements under this Part.

(c) Room or board under this Part shall not be considered an integral but subordinate part of a service when provided to an individual in a foster family home or other facility such as a foster care institution or other facility whose primary purpose is to provide board, room and care or supervision.

(d) As used in this section, the term *placement* means an uninterrupted period of time during which an individual takes up, or is placed in, residence in a facility other than his usual place of residence, for the purpose of undergoing a specific regimen of services or treatment according to a prescribed plan.

(e) Notwtihstanding the requirement of paragraph (a) of this section, that room or board must be integral but subordinate to a particular service, FFP is available for room or board provided between October 1, 1975 and October 1, 1977 in a program of rehabilitative services to drug and alcohol abusers, under the following conditions:

(1) When provided in the initial detoxification of such persons for up to 7 days, so long as detoxification is integral (but not necessarily subordinate) to the further provision of other title XX services to drug and alcohol abusers; and

(2) When integral but subordinate to the entire rehabilitative process (rather than a particular service), including but not limited to initial detoxification, short-term residential services, and subsequent outpatient counseling and rehabilitative services, whether or not such a process involves more than one provider of services.

§ 228.42 Child care standards.

(a) FFP is available for child care services provided under a services plan only where the following standards are met:

(1) *In-home care.* (i) When homemaker service is utilized for this purpose, it meets standards established by the State or by an Indian tribal council, in accordance with § 228.13, which are reasonably in accord with recommended standards of national standard setting organizations concerned with this type of home care for children.

(ii) When other caretakers are utilized for this purpose, such care meets standards established by the State or by an Indian tribal council, in accordance with § 228.13, which, as a minimum, cover the caretaker's age, health, capacity and available time to properly care for children; minimum and maximum hours to be allowed per 24 hour day for such care; maximum number of children that may be cared for in the home at any one time; and proper feeding and health care of the children.

(2) *Out-of-home care.* (i) Facilities used to provide day care outside a child's own home are licensed by the State, an Indian tribal council, in accordance with § 228.13, or approved as meeting the standards for such licensing.

(ii) Such facilities and care meet the 1968 Federal Interagency Day Care Requirements, except that:

(A) Subdivision III of such requirements with respect to educational services is recommended but not required.

(B) Required staffing standards for children under age 3 in day care centers and group day care homes are: 1 adult for each child under 6 weeks of age; 1 adult to 4 children, ages 6 weeks through 36 months. (States may, at their option, require fewer children per adult.)

(C) Required staffing standards for school age children in day care centers are: at least 1 adult to 15 children, ages 6–10; and at least 1 adult to 20 children, ages 10–14.

(b) The requirements in paragraph (a)(2)(ii) of this section are in lieu of otherwise applicable requirements under section 522(d) of the Economic Opportunity Act of 1964 with respect to child day care services under title XX.

(c) Notwithstanding the Federal staffing requirements for out-of-home child day care services set forth in paragraph (a)(2)(ii)(B) of this section:

(1) FFP is available between October 1, 1975 and October 1, 1977 for title XX child day care services so long as day care centers and group day care homes providing day care services to children 6 weeks of age to 6 years of age apply staffing standards which:

(i) Are the State staffing standards which are in effect at the time the child day care services are provided;

(ii) Are no lower than the corresponding staffing standards which were imposed or required by applicable State law on September 15, 1975; and

(iii) Are no lower, in the case of a particular day care center or group day care home, than the corresponding standards actually being met in such center or home on September 15, 1975.

(2)(i) When States find that it is not feasible to furnish day care (partly or totally funded under title XX) for children of any age in a day care center or group day care home that complies with Federal staffing standards, they may waive such Federal standards otherwise applicable, and furnish day care services, if:

(A) A day care center or group day care home serves few title XX children (of the total number of children served at any given time in each such facility, not more than 5 of the children in a center, or 20 percent of them, whichever is lower; not more than 20 percent of the children in a group day care home); and

(B) Such day care center or group day care home complies with applicable State staffing standards.

(ii) States shall establish criteria against which to assess the non-feasibility of their use of a day care center or group day care home which complies with Federal staffing standards; and they shall maintain a record of the waiver for each facility in terms of these criteria.

(d) Between October 1, 1975 and October 1, 1977, in applying Federal staffing standards, States shall not count the children of the operator of a family day care home unless such children are under 6 years of age.

§ 228.43 Educational services.

FFP is not available for any educational service made generally available through any State or local educational agency to residents of the State without cost and without regard to their income. To the extent a fee is imposed on any resident, FFP is available only for such fee.

§ 228.44 Services to individuals living in hospitals, skilled nursing facilities, intermediate care facilities (including hospitals or facilities for mental diseases or for the mentally retarded), or prisons.

(a) FFP is available for services to individuals living in hospitals, skilled nursing facilities, intermediate care facilities (including any such hospitals or facilities for mental diseases or for the mentally retarded), or prisons only under the following conditions:

(1) The services provided are separately identifiable in the services plan (generalized descriptions such as "services to nursing home patients" or "services to increase socialization skills" are unacceptable under this provision).

(2) Such services are provided by other than the facility in which the individual is living. This requirement is not met if the services are provided by:

(i) Staff or contractors who are under the professional direction or direct supervision of the facility; the facility exercises control of the employment, tenure or compensation of such staff or contractors or makes assignments or alters the service regimen provided by them; or

(ii) Staff of like facilities under reciprocal arrangement.

(3) Such services are also provided to individuals who:

(i) Are not living in a hospital, skilled nursing facility, intermediate care facility (including any such hospitals or facilities for mentally retarded), or prison; and

(ii) Are residents of any part of a geographic area that is within the catchment area of such facility.

(b) FFP is not available for:

(1) Inherent responsibilities of a facility including but not limited to the provision of food, clothing, shelter, general maintenance and administration (includ-

ing the detention function), general supervision and personal care; or

(2) Activities that are intrinsic to the purpose of such facility as determined by facility charter, State law or standards, relevant licensing or certification requirements, or Federal or State court decisions.

(c) For purposes of this section:

(1) *"Prison"* means any State or local correctional institution or facility for the confinement of individuals charged with or convicted of criminal offenses. The term does not include separate juvenile correctional facilities nor community-based residential service facilities, such as half-way houses.

(2) *Separate juvenile correctional facility* means one that is located in a separate building or buildings; is served by separate day-to-day operational staff; and provides a separate and distinct program of services.

(3) *Skilled nursing facility (SNF)* means an institution primarily engaged in providing to inpatients skilled nursing care and related services for patients requiring medical or nursing care, or rehabilitation services for the rehabilitation of injured, disabled or sick persons.

(4) *Intermediate care facility (ICF)* means an institution which provides on a regular basis, health related care and services to individuals who do not require the degree of care which a hospital or SNF is designed to provide, but who because of their mental or physical condition require health related care and services above the level of room or board which can be made available to them only through institutional facilities.

(5) *Hospital* means an institution which is primarily engaged in providing by or under the supervision of physicians, to inpatients diagnostic services and therapeutic services for medical diagnosis, treatment, and care of injured, disabled, or sick persons, or rehabilitation services for the rehabilitation of injured, disabled, or sick persons.

(d) Services in separate juvenile correctional facilities may be provided by staff of the facility. However, FFP is not available for inherent responsibilities of the facility (e.g., food, clothing, shelter, and managing and carrying out the detention function).

(e) Notwithstanding the requirements of paragraphs (a)(2) and (b)(1) and (2) of this section, FFP is available between October 1, 1975 and October 1, 1977 for the cost of providing initial detoxification services for up to 7 days for drug and alcohol abusers when such detoxification is integral to the further provision of other title XX services, even though:

(1) Hospital or other institutional staff provide detoxification services to resident drug and alcohol abusers; and

(2) Such detoxification services include inherent or intrinsic responsibilities of the facility where they are provided.

§ 228.45 Special services provided by foster family homes.

(a) A foster family home is a home licensed or approved by appropriate State or local authority or an Indian tribal council on Indian reservations, in accordance with § 228.12, to provide board and care including parenting for children and oversight for adults.

(b) *Special services provided by foster family homes.* FFP is not available for activities described under paragraph (a) of this section, but is available for special services provided by a foster family home to an individual living in that home, only upon documentation, by an appropriately qualified professional person who is other than the placement worker, that:

(1) The individual requires an identified special service because of a health (physical or mental) condition, an emotional or behavioral problem; and

(2) The caregivers are capable, by virtue of special training, or experience, of providing the needed service.

(c) Nothing in this section precludes the provision of any other service in the services plan to eligible individuals living in foster family homes when provided by other than the foster family.

§ 228.46 Emergency shelter.

(a) FFP is available for emergency shelter as a protective service to any child, including runaways, only under the following conditions:

(1) The child is in danger of abuse, neglect or exploitation;

(2) The need for emergency shelter is documented by personnel authorized by State law to place children, or by an Indian tribal council; and

(3) Emergency shelter is provided for not in excess of 30 days in any 6 month period, which may be consecutive or may accumulate over more than one stay.

(b) Emergency shelter may be provided in facilities such as foster family homes, institutions, and group homes.

§ 228.47 Payments to recipient for services.

FFP is available in cash payments made to a recipient for a service already rendered to him, upon presentation of a bill for, or presentation of a receipt of payment for, such service if he was eligible under the services plan for the service at the time it was provided and if the purchased service:

(a) Is identified in the services plan;

(b) Was authorized by the State agency prior to its purchase and meets applicable standards, if any; and

(c) Was secured by the individual within a period of time and at a cost which were approved by the State agency.

§ 228.48 Confidentiality regarding services to drug and alcohol abusers.

States providing services to drug and alcohol abusers shall safeguard information about such services and recipients by applying the provisions of section 333 of the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970 (as amended by section 122(a) of Pub. L. 93-282), as implemented by regulations at 42 CFR Part 2.

Subpart E—Limitations: Financial

§ 228.50 Services and individuals covered in the services plan.

(a) FFP is available with respect to any expenditures for the provision of any service for any individual only when:

(1) The State's services plan meets the requirements of Subpart C, and

(2) The final services plan (including any amendments published in final) in effect when the service is provided to the individual includes the provision of that service to a category of individuals which includes that individual.

(3) The State plan is approved as meeting the requirements of Subpart B of this Part.

§ 228.51 Matching rates.

(a) *Seventy-five percent FFP.* FFP is available at the 75 percent rate for service costs and for personnel training and retraining directly related to the provision of services under the services plan.

(b) *Ninety percent FFP.* Notwithstanding paragraph (a) of this section, FFP is available at the 90 percent rate for costs of family planning services provided under the services plan.

(c) *One hundred percent FFP.* Notwithstanding paragraph (a) of this section, FFP is available at the 100 percent rate up to the State's share of the additional allotments described in § 228.52(c)(3). The purpose of the additional funds is to encourage States to the maximum extent they determine to be feasible to promote the employment of AFDC recipients in jobs related to day care services.

(1) During fiscal year 1977, 100 percent FFP is available for:

(i) Day care services provided to children in day care centers, group day care homes, and family day care homes, which are licensed by the State for child day care services and otherwise meet the requirements of § 228.42(a)(2) as modified by the provisions of § 228.42(c) and (d).

(ii) Day care services provided to children in their own homes in accordance with § 228.42(a)(1); and

(iii) Staff activities in direct support of the child day care services such as: licensing homes or facilities used by title XX children, monitoring title XX child care services delivery, and training staff in accordance with Subpart H of this Part.

(2) During the transition quarter (July 1, 1976 through September 30, 1976) and the 1977 fiscal year, 100 percent FFP is available for grants by States to child day care providers to employ welfare recipients, in accordance with Subpart J.

§ 228.52 Allotments to States.

(a) *Basic Limitation.* The amount of Federal funds payable to the 50 States and the District of Columbia under this Part for any fiscal year with respect to expenditures for services under the services plan (other than expenditures for personnel training or retraining directly related to the provision of services) may not exceed the allotment set forth in this section.

(b) *Allotments for fiscal year beginning July 1, 1975.* The allotment of each State for the fiscal year beginning July 1, 1975, shall be the allotment of the State for that fiscal year as determined under section 1130 of the Act. In determining, for the purposes of that limitation, the total amount of the payments made to any State with respect to expenditures during that fiscal year, there shall be included the amount of any payments made to the State that are chargeable against the allotment of the State for the fiscal year beginning July 1, 1975, under section 1130.

(c) *Allotments for fiscal years beginning after June 30, 1976.* (1) The allotment of each State for each fiscal year beginning after June 30, 1976, shall be an amount which bears the same ratio to $2,500 million as the population of such State bears to the population of all the States.

(2) The allotment for each State will be promulgated for each fiscal year by the Secretary prior to the first day of the third month of the preceding fiscal year, on the basis of the population of each State and of all the States as determined on the basis of the most recent satisfactory data available from the Department of Commerce.

(3)(i) The basic allotment described in paragraph (c)(1) of this section shall be increased by an amount which bears the same ratio to $40 million for the transition quarter (July 1, 1976 through September 30, 1976) and to $200 million in the 1977 fiscal year as the population for such State bears to the population of all States. The amount of these additional allotments payable to each State shall be the lesser of:

(A) The amount of each additional allotment; or

(B) The amount of actual expenditures incurred for the provision of child day care services and for grants by States to child day care providers for the employment of welfare recipients.

(d) *Certification of allotment need.* (1) Each fiscal year, each State shall certify to the Secretary, within 30 days after the beginning of the fiscal year, whether the amount of its allotment is greater or less than the amount needed by the State for such fiscal year and, if so, the amount by which the amount of such allotment is greater than such need.

(2) If any State certifies in accordance with paragraph (d)(1) of this section, that the amount of its allotment for any fiscal year is in excess of its need for such year, the amount of the limitation of such State for such year shall be adjusted downward by the amount of such excess.

(3) Of the amounts made available pursuant to paragraph (d)(2) of this section, the Secretary shall allot to the jurisdiction of Puerto Rico $15,000,000, to the jurisdiction of Guam $500,000, and to the jurisdiction of the Virgin Islands $500,000, which shall be available to each such jurisdiction in addition to amounts available under Section 1108 of the Act for the purpose of matching the expenditures of such jurisdictions for services pursuant to sections 3(a)(4) and (5), 403(a)(3), 1003(a)(3) and (4), 1403(a)(3) and (4), and 1603(a)(4) and (5) of the Act, except that if the amounts made available pursuant to paragraph (d)(2) of this section are less than $16,000,000, such amounts as are available shall be allotted to each of the three jurisdictions in proportion to their respective populations.

(e) *Date of Expenditure.* For purposes of this section, expenditures for services are ordinarily considered to be incurred on the date on which the State or local agency makes payment or the date to which the expenditure was allocated, pursuant to the cost principles of Subpart Q of 45 CFR Part 74 and the cost allocation procedures of 45 CFR 205.150. In the case of local administration, the date of expenditures by the local agency governs. In the case of purchase of services from another public agency, the date of expenditure by such other public agency governs. Different rules may be applied with respect to a State, either generally or for particular classes of expenditures, only upon justification by the State to the Administrator and approval by him. In reviewing State requests for approval, the Administrator will consider generally applicable State law, consistency of State practice, particularly in relation to periods prior to October 1, 1975, and other factors relevant to the purposes of this section.

(f) *Procedures for making grants to States.* See 45 CFR Part 201.

§ 228.53 Public sources of State's share.

(a) *Funds available for matching.* Public funds used by the State or local agency for its services programs, including training and other administrative functions, may be considered as the State's share in claiming FFP only where such funds are:

(1) Appropriated directly to the State or local agency; or

(2) Funds of another public agency (including Indian tribes) which are:

(i) Transferred to the State or local agency and are under its administrative control; or

(ii) Certified by the contributing public agency as representing expenditures for services eligible for FFP under this Part; or

(iii) Representing value, as determined in accordance with 45 CFR 74.53(b) and (c), and Appendix C, Part II, B.11 of 45 CFR 74, of goods or property provided by a public agency even if the agency does not incur any current expenditures for such goods or property during the period of their use in the services program.

(b) *Funds not available for matching.* Notwithstanding paragraph (a) of this section, public funds used by the State or local agency for its services programs may not be used as the State's share in claiming FFP where such funds are:

(1) Federal funds not authorized by Federal law to be used to match other Federal funds; or

(2) Used to match other Federal funds.

§ 228.54 Private sources of State's share.

(a) *Funds available for matching.* Funds donated from private sources for services, training, or other administrative functions may be considered as State funds in claiming FFP only where such funds are:

(1) Transferred to the State or local agency and under its administrative control;

(2) Donated to the State, without restrictions as to use, other than restrictions as to the services, administration or training with respect to which the funds are to be used imposed by a donor who is not a sponsor or operator of a program to provide those services, or the geographic area in which the services with respect to which the contribution is used are to be provided; and

(3) Not used to purchase services from the donor unless the donor is a nonprofit organization and it is an independent decision of the State agency to purchase services from the donor.

(b) For purposes of this Part, a voluntary federated fund-raising organization is not considered to be a sponsor or operator of a service facility, and member agencies are considered separate autonomous entities so long as control by interlocking board membership or other means does not exist.

§ 228.55 [Reserved]

§ 228.56 Fifty Percent Rule.

(a) If one-half of the Federal funds to which the State is otherwise entitled is greater than the amount of the aggregate expenditures (combined State and Federal) made under the program for individuals identified in this paragraph, such Federal funds will be adjusted so the total Federal reimbursement does not exceed twice the amount of the total expenditures in behalf of those individuals:

(1) Who are receiving aid under the plan of the State approved under part A of title IV or who are eligible to receive such aid; or

(2) Whose needs are taken into account in determining the needs of an individual who is receiving or is eligible to receive such aid; or

(3) With respect to whom supplementary security income benefits under title XVI or State supplementary payments, are being paid, or who are eligible to have such benefits or payments paid with respect to them; or

(4) Whose income and resources are taken into account in determining the amount of supplemental security income benefits or State supplementary payments being paid with respect to an individual, or whose income and resources would be taken into account in determining the amount of such benefits or payments to be paid with respect to an individual who is eligible to have such benefits or payments paid with respect to him, or

(5) Who are eligible for medical assistance under the plan of the State approved under title XIX.

(b) In accounting for costs of services to meet the requirements of paragraph (a) of this section:

(1) In lieu of accounting for the status of each person receiving a service on the basis of group determination of eligibility, States may use generally accepted statistical sampling procedures.

(2) Regarding services to persons who receive services without regard to income (family planning services, services to prevent or remedy abuse, neglect or exploitation of children and adults, and information and referral services), States may use any appropriate method, including generally accepted sampling procedures or allocation of costs to the services provided these persons in the same ratio as the known cost of all other services distributed for the 50 percent rule.

(3) States shall deem grants made by them to child day care providers for the employment of welfare recipients, to be expenditures for child day care services made on behalf of AFDC recipients.

Subpart F—Limitations: Individuals Served, Eligibility, and Fees

§ 228.60 Persons eligible and access to services.

(a) *Conditions for FFP.* FFP is available in expenditures for services to individuals provided that:

(1) The service is included in the State's services plan;

(2) The individual who receives the service is a member of one of the categories covered by the State's services plan; and

(3) Such individual was eligible under the provisions of this section and those of § 228.61 at the time of receipt of the service.

(b) *Categories of individuals who may receive services.*

(1) *Income maintenance status.* The following individuals are eligible on the basis of income maintenance status:

(i) Recipients of AFDC; and

(ii) Those persons whose needs were taken into account in determining the needs of AFDC recipients; and

(iii) Recipients of SSI benefits or State supplementary payments.

(2) *Income status.* Individuals other than those described in paragraph (b)(1) of this section, are eligible if the family's monthly gross income is less than 115 percent (or, at State option, a lower percentage) of the median income of a family of four in the State adjusted for size of family, subject to the limitations set forth in § 228.62. Income status individuals include those whose eligibility is determined on a group basis.

(3) *Without regard to income.* Individuals may be provided family planning services under § 228.63, information or referral services under § 228.64, or services to prevent or remedy neglect, abuse, or exploitation of children or adults under § 228.65, without regard to income at State option if the State so provides in its services plan.

(c) *Median income.* On or before December 1 of each year, beginning with calendar year 1975, the Secretary will promulgate the median income for a family of four for each State and for the 50 States and the District of Columbia. This promulgation shall be used for purposes of determining eligibility and establishing fees in the following Federal or State fiscal year.

(d) *Income levels as baselines for fee imposition.*

(1) Except for individuals whose eligibility is determined on a group basis, individuals whose eligibility is based on income status shall be subject to imposition of a fee for service (in accordance with § 228.62) if their family's monthly gross income exceeds 80 percent of the median income of a family of four in the State or the median income of a family of four in all States, whichever is less, and does not exceed 115 percent of the median income of a family of four in the State, adjusted for family size.

(2) The median incomes (at 80 percent and 115 percent) as calculated in paragraph (d)(1) of this section for a family of four, shall be adjusted for family size according to the following percentages:

(i) One person—52 percent.
(ii) Two person family—68 percent.
(iii) Three person family—84 percent.
(iv) Four person family—100 percent.
(v) Five person family—116 percent.
(vi) Six person family—132 percent.
(vii) For each additional family member above six persons, the State shall add 3 percentage points to the percentage for a family of six.

(3) For discretionary fees applicable to persons who are at or below the lower level median income described in paragraph (d)(1) of this section, or are eligible on the basis of income maintenance status, or who may receive services without regard to income, see § 228.62(b).

(e) *Income levels for services.* So long as the State observes the baselines for income levels for imposition of fees established pursuant to paragraph (d)(1) of this section, it may establish income levels for services:

(1) At any level lower than 115 percent of the median income of the State;

(2) At different levels for different services under the services plan;

(3) At different levels for different categories of individuals;

(4) At different levels in different geographic areas; or

(5) At different levels for different sizes of families within the limits for eligibility and fees set forth in paragraph (d)(2) of this section.

(f) *Opportunity to apply:* The State shall assure that each individual wishing to do so has an opportunity to apply for services without delay. The State shall use the following intake process for individuals seeking service:

(1) *Determination of eligibility.*

(i) When eligibility must be determined on an individual basis, the State shall require a written signed application containing the necessary information.

(A) The application shall be in a form prescribed by the State and the applicant shall certify that the information submitted is correct.

(B) The application may be filed by the applicant himself or by his authorized representative; or where the applicant is incompetent or incapacitated or in an emergency, by someone acting responsibly for him, including agency staff.

(ii) No written application is necessary for services available without regard to income.

(iii) No written application is necessary for individuals whose eligibility is determined on a group basis.

(2) *Request for services.* Except as described in paragraph (f)(2)(iv)(B) of this section, the State shall document each request for service for purposes of FFP as well as for fair hearings and as evidence of the voluntary nature of the request for service. Documentation may be accomplished through submission of a written request by an individual needing service or his representative, or by the recording of information elicited by the agency, except that a request for family planning services (whether or not it is a "universal" service) must be in writing in order to verify that it was requested voluntarily. With respect to the following:

(i) When an individual has had eligibility determined on an individual basis, the written application for eligibility determination may be deemed a request for services (unless the State has a separate process for requesting services), and may serve as initial documentation. Subsequent requests for services from such an eligible individual shall be documented as described in paragraph (f)(2) of this section.

(ii) For protective services, an acceptable alternative to a request for services is a dated agency record that documents the circumstances of actual or potential abuse, neglect, or exploitation of a child or adult.

(iii) For requests for information and referral services, the State shall establish a procedure for documenting the number and nature of the requests.

(iv) When eligibility is determined on a group basis in accordance with § 228.61, requests for services shall be handled in one of two different ways:

(A) If the State has established specific conditions (other than income) or characteristics as a condition precedent to the receipt of a service on the basis of group eligibility, the State shall, in the intake process, elicit information necessary to determine whether an individual meets the specified conditions or has the characteristics for membership in the group (e.g.—if eligibility for homemaker services to teenage parents maintaining their own homes in public housing is determined on a group basis, the intake process shall elicit a statement regarding age, parenthood, address, and maintenance of one's own home).

(B) If the State has concluded, solely on the basis of the nature of a service and/or the location where it will be provided (e.g.—recreation services in specified senior centers or day care services for migrant children), that substantially all of the individuals who would apply for the service are members of families with gross monthly incomes of 90 percent or less of the State's median income, adjusted for family size, no information need be elicited at intake or documentation made except as to the numbers served. The presence of the individual at the service site or participation in the service is deemed a request for services.

(g) *Prompt action on eligibility applications and requests for service.*

(1) A decision shall be made on all applications within time standards established by the State agency pursuant to § 228.6, but not to exceed 30 calendar days from the date of application.

(2) The agency shall notify applicants about their eligibility within 15 calendar days after it makes a decision. The date of each notification shall be entered in the case record. Applicants found to be eligible shall be notified orally or in writing; those found to be ineligible shall be notified in writing unless the requested service is provided by that agency to them through another funding source.

(3) Unless a service is denied, the State shall provide the service requested with reasonable promptness. "Provide the service" means actual provision of the service or arrangement for its provision at an appropriate later date. "Reasonable promptness" is accomplished when the State provides the service:

(i) Within 15 calendar days after notification of eligibility; or

(ii) Within 30 calendar days after acceptance of a request for service.

If the service is denied, the State shall notify the applicant in writing of the denial within these same time limits.

(h) *Notification of right to a fair hearing.* At the time of application or request for services, each individual shall be given information about the right to request and obtain a fair hearing, in accordance with § 228.14.

§ 228.61 Determination and redetermination of eligibility.

(a) *Methods of determining (or redetermining) eligibility.* (1) Standards and methods for determination of eligibility will be consistent with the objectives of the program, and will respect the rights of individuals under the United States Constitution, the Social Security Act, title VI of the Civil Rights Act of 1964, and all other relevant provisions of Federal and State laws.

(2) States may establish any method or methods, including a declaration method, for determining individual eligibility in accordance with § 228.60 and § 228.66.

(i) A determination of individual eligibility means a decision, reflected in the State's records, based on a dated and signed application and sufficient information which would lead a reasonable person to conclude that the criteria set forth in § 228.60 have been met and the individual is eligible to receive services on the basis of income or income maintenance status.

(A) *Documentation method* means that the State has sought and obtained verification regarding the source and amount of the gross family monthly income of the individual applying, or has verified his income maintenance status.

(B) *Declaration method* means acceptance of an individual's statements regarding the source and amount of his family's gross monthly income, and the income maintenance status as described in § 228.60(b)(1)) of any member of the family.

(ii) (For group determination of eligibility, see paragraph (2) of this section and § 228.60(f)(2)(iv).)

(3) (i) States may determine eligibility on a group basis if, upon consideration of one or more of the following factors, with respect to a particular service, they can reasonably conclude without individual determination that substantially all members of the group who receive the particular service are members of families with monthly gross incomes of not more than 90 percent of the State's median income, adjusted for family size:

(A) The geographic area in which a particular service is provided;

(B) The characteristics of the community in which the service is provided;

(C) The nature of the service provided;

(D) The conditions, other than income, of eligibility to receive the service; or

(E) Other factors surrounding provision of the service.

(ii) "Substantially all" means that no less than 75 percent of the persons provided a service on the basis of group eligibility determination shall be members of families whose gross monthly incomes are no more than 90 percent of the State's median income, adjusted for family size.

(iii) There are no mandatory fees, as defined in § 228.62(a), for persons whose eligibility is determined on a group basis.

(iv) Group determination of eligibility may be used for any service except, that for child day care, it is limited to the children of migratory workers.

(4) States may use one method for determining eligibility for all services, categories of individuals and geographic areas, or they may use different methods for different services, different categories of individuals and different geographic areas.

(5) States shall have available for Federal review a written description of the method(s) they have established for determining and redetermining eligibility.

(b) *Conditions for FFP.* (1) Regardless of the method chosen for determination or redetermination of eligibility:

(i) FFP is available in the cost of services provided prior to the actual date of an initial determination of eligibility only if such determination is made within 30 days of the date of application and the individual is properly determined to have been eligible when the services were initiated.

(ii) When a recipient of services was improperly determined to be eligible, FFP is not available in the cost of services provided during the period of improperly determined eligibility.

(2) When an individual properly determined to be eligible on the basis of information available to the agency at the time of determination of eligibility is subsequently found ineligible, FFP is available until the end of the month in which he is determined ineligible.

A proper determination of eligibility is a determination which is based on a correct assessment on the information available to the agency at the time of such determination, provided that all information necessary to make a determination is available; a proper redetermination is one which meets those criteria and, in addition, is made within the time limits established by paragraph (c) of this section.

(c) *When redetermination shall be made.*

(1) Redetermination of eligibility shall be made for persons whose eligibility is determined on an individual basis:

(i) When required on the basis of information the agency has obtained about anticipated changes in the individual's situation;

(ii) Promptly, not to exceed 30 days, after information is obtained about changes which have occurred in the individual's circumstances that may make him ineligible; and

(iii) Periodically, but not less frequently than every 6 months except that for individuals whose family gross monthly income at the time of determination is derived exclusively from pensions, or social security benefits, or SSI, or a combination thereof, redetermination may be made at 12-month intervals.

(2) If the State has established specific conditions or characteristics as a condition precedent to the receipt of a service on the basis of group eligibility (and, in accordance with § 228.60(g)(2)(iv)(A), has elicited information at intake that individuals applying for the service meet the conditions or have the characteristics for membership in the group), it shall, unless the characteristic is irreversible (such as being above a certain age), redetermine the eligibility of these individuals as follows:

(i) When the conditions or characteristics established by the State are apt to change in regard to an individual (such as place of residence, marital status, children living in the home), the State shall ascertain not less frequently than every 6 months whether persons receiving the service on a group eligibility basis still meet the conditions or have the characteristics which made them members of the group; or

(ii) When the conditions or characteristics established by the State are not apt to change substantially in regard to an individual (such as a physical disability), the State shall ascertain not less frequently than once a year whether persons receiving the service on a group eligibility basis still meet the conditions or have the characteristics which made them members of the group.

(iii) The State shall discontinue providing the service on the basis of group eligibility determination by the end of the month in which it finds persons who no longer meet the conditions or have the characteristics required for group membership.

(d) *Validation of "substantially all" basis for establishing a group:*

(1) Each group of persons receiving a service on the basis of group determination of eligibility shall be subject

to a validation check of whether at least 75 percent of those receiving the service are members of families with gross monthly incomes of no more than 90 percent of the State's median income, adjusted for family size.

(2) States shall conduct their initial validation check not later than 6 months after they have started providing a service to individuals on the basis of group eligibility. (If a State claims expenditures for services on a group determination of eligibility basis retroactively, as permitted to October 1, 1975, the validation shall be made by no later than March 31, 1977.)

(3) After the initial validation, States shall thereafter conduct such validations for the same group no less frequently than once a year.

(4) The validations may be conducted on a sample basis. States shall maintain a record of how the test was conducted, and document the process used and the findings.

(5) In order to determine whether at least 75 percent of the persons who receive a particular service on the basis of group eligibility are in families with the specified income level, States shall take into account the findings made on members of the group, as described in the services plan.

(6) If a State finds that *less* than 75 percent of the persons receiving a particular service on the basis of group eligibility meet the specified income standard, the State shall, within 75 days following such a finding:

(i) Discontinue by the end of the month in which the 75th day occurs, claiming FFP for expenditures incurred for the service provided to persons in that particular group whose eligibility has been determined on a group basis:

(ii) Amend the State's services plan to either delete the service, or to provide a new basis for determination of eligibility to continue the service.

(iii) If the State decides to continue the service, FFP is available, in accordance with the amended services plan, for providing the service:

(A) On the basis of individual eligibility; or

(B) On the basis of group eligibility if the State changes the conditions or characteristics relative to the group and has a reasonable basis on which to conclude that with such modification, at least 75 percent of the individuals served would then be members of families with the specified monthly gross income.

(e) *Who makes the determination.* Determinations of eligibility shall be made by the State agency, or, pursuant to written contract in accordance with Subpart G, by a provider of services.

(f) *Outside contacts.* (1) When the provider agency determines eligibility, it shall inform the applicant or recipient that, if it is necessary to contact outside sources (including employers) and the applicant or recipient wishes to keep the service confidential, he is entitled to request that such contacts be made by the State agency; and

(2) The State agency, upon notification of the individual's request, shall make the outside contacts and relay the information to the provider.

(g) *State monitoring of eligibility process.* Whether the determination of eligibility is made by the State or the provider, the State shall establish and implement a continuing monitoring procedure to test the ability of its method(s) for determining eligibility to correctly make those determinations and shall, where erroneous determinations are disclosed, take action designed to eliminate such errors. A monitoring procedure under this paragraph may include the use of statistically valid samples. Periodic reports on the State agency's monitoring procedures, findings, and actions under this paragraph will be required pursuant to § 228.17(b).

§ 228.62 Fees for services.

(a) *Mandatory fees.* FFP is available for a service provided to an individual whose eligibility is based on income status if his family's monthly gross income exceeds 80 percent of the median income of a family of four in the State or the median income of a family of four in all States, whichever is less, and does not exceed 115 percent of the median income of a family of four in the State, adjusted as to family size, only if a fee or other charge, based on a fee schedule in accordance with paragraph (c) of this section, is imposed.

(b) *Discretionary fees.* (1) A State may impose a fee or other charge for any service to any individual who is eligible for services based on income maintenance status, or is eligible based on income status and whose family's month gross income is less than 80 percent of the median income of a family of four in the State, adjusted for family size, or the median income for a family of four in all States, adjusted for family size, whichever is less, but only if the fee or other charge is based on a fee schedule in accordance with paragraph (c) of this section.

(2) A State may impose a fee on individuals who are provided services without regard to income (family planning services, information or referral services, or services to prevent or remedy abuse, neglect or exploitation of children and adults). The fee shall be based on a fee schedule in accordance with paragraph (c) of this section and be described in the State's services plan in accordance with § 228.24(c).

(c) *Criteria for fees.* (1) Fees established by the State agency:

(i) May be different for different services;

(ii) May be different for different geographic areas;

(iii) Shall be reasonably related to the individual's income; and

(iv) Shall not exceed the cost of the service to the title XX agency.

(2) Where several services are provided concurrently to an individual, the total fees imposed shall not exceed the amount reasonably related to his income.

(d) *Methods of collection.* The State agency shall:

(1) Establish methods for the collection of any fee or other charge imposed; and

(2) Maintain evidence of a reasonable effort to collect such fee or charge.

(e) *Disposition of fees collected.* Fees collected from service recipients may not be used as the non-Federal matching share. However, at State option, fees may:

(1) If provided for in the purchase of service agreement, be retained by the provider and used to expand the title XX service to eligible individuals under that contract; or

(2) Be used to reimburse the provider if the contract so specifies, for costs above the negotiated rate when it is lower than the going rate in the community for the service. Any amount remaining after such reimbursement to the provider for these costs shall be deducted from the amount of expenditures for which FFP is claimed; or

(3) Be deducted from service expenditures before FFP is claimed.

(4) If collected by the State in direct delivery of a service, be retained by the State and used only to expand the service to eligible individuals.

(f) Under this provision, FFP is not available in the costs of any service when a provider imposes a fee or charge other than that set by the State agency, pursuant to the purchase of service agreement under § 228.70(a)(7), described in the State's services plan pursuant to § 228.24 (c) and (d), and formulated in accordance with paragraph (c) of this section.

§ 228.63 Family planning services.

(a) FFP is available in the cost of family planning services provided without regard to income.

(b) For purposes of this part, family planning services means counseling, educational and medical services (including diagnosis, treatment and continuing supervision, necessary laboratory examinations and tests, drugs, supplies, devices and related counseling furnished, prescribed by, or under the supervision of, a physician) to enable individuals (including minors) voluntarily to limit their family size, to space their children, or to correct infertility.

(c) Where a State authorizes sterilization as a family planning service, it must comply with the provisions of 45 CFR 205.35.

§ 228.64 Information and referral services.

FFP is available: (a) Only for information about services provided under title XX and related service programs, brief assessment (but not diagnosis and evaluation) to facilitate appropriate referral, and referral to and follow-up with those community resources which provide or make available such services; and (b) Only when provided by an agency that has information and referral as a specific recognized function and that has a staff with identifiable tasks relating to information and referral.

§ 228.65 Services directed at the goal of preventing or remedying neglect, abuse, or exploitation of children or adults unable to protect their own interests.

(a) FFP is available without regard to income for services directed at the goal of preventing or remedying neglect, abuse or exploitation of children and adults unable to protect their own interests, only as follows:

(1) With respect to children, only when provided to or in behalf of an individual under the age of 18 who is harmed or threatened with harm through nonaccidental physical or mental injury, sexual abuse (as defined by State law); or negligent treatment or maltreatment, including the failure to provide adequate food, clothing, or shelter. For purposes of this section, runaways are presumed to be harmed or threatened with harm by virtue of their status.

(2) With respect to adults, only when provided with respect to individuals 18 years of age or older unable to protect their own interests, harmed or threatened with harm through action or inaction by another individual or through their own actions due to ignorance, incompetence or poor health; resulting in physical or mental injury, neglect or maltreatment, failure to receive adequate food, shelter, or clothing, deprivation of entitlements due them, or wasting of their resources.

(3) In each case, the State agency shall document the circumstances which lead it to believe that the individual is subject to, or at risk of, abuse, neglect or exploitation.

(4) No later than six months after the case has been opened, the State agency shall redocument and evaluate the circumstances then existing with respect to abuse, neglect or exploitation for the purpose of ascertaining if the individual still meets the conditions for services without regard to income. Such redocumentation and evaluation of the circumstances shall take place thereafter no less frequently than at six-month intervals if the case remains open.

(b) Except in the case of runaways, no individual shall be deemed to meet the conditions specified in paragraph (a)(1) or (2) of this section merely because he belongs to a particular class (e.g., mentally retarded, aged, juvenile delinquents); each person shall be individually determined to meet the specified criteria.

(c) States may include in their services plan, subject to the limitations of Subpart D, any appropriate service which they plan to provide to prevent or remedy abuse, neglect or exploitation of children or adults as set forth in this section.

§ 228.66 Monthly gross income.

(a) Monthly gross income means the monthly sum of income received by an individual from the following sources that are identified by the U.S. Census Bureau in computing the median income:

(1) *Money, wages or salary*—i.e., total money earnings received for work performed as an employee, including wages, salary, Armed Forces pay, commissions, tips, piece-rate payments, and cash bonuses earned, before deductions are made for taxes, bonds, pensions, union dues, and similar purposes.

(2) *Net income from nonfarm self-employment*—i.e., gross receipts minus expenses from one's own business, professional enterprise, or partnership. Gross receipts include the value of all goods sold and services rendered. Expenses include costs of goods purchased, rent, heat, light, power, depreciation charges, wages and salaries paid, business taxes (not personal income taxes), and similar costs. The value of salable merchandise consumed by the proprietors of retail stores is not included as part of net income.

(3) *Net income from farm self-employment*—i.e., gross receipts minus operating expenses from the operation of a farm by a person on his own account, as an owner, renter, or sharecropper. Gross receipts include the value of all products sold, government crop loans, money received from the rental of farm equipment to others, and incidental receipts from the sale of wood, sand, gravel, and similar items. Operating expenses include cost of feed, fertilizer, seed, and other farming supplies, cash wages paid to farmhands, depreciation charges, cash rent, interest on farm mortgages, farm building repairs, farm taxes (not State and Federal income taxes), and similar expenses. The value of fuel, food, or other farm products used for family living is not included as part of net income.

(4) *Social Security* includes Social Security pensions and survivors' benefits, and permanent disability insurance payments made by the Social Security Administration prior to deductions for medical insurance and railroad retirement insurance checks from the U.S. Government.

(5) *Dividends, interest (on savings or bonds), income from estates or trusts, net rental income or royalties* include dividends from stockholdings or membership in associations, interest on savings or bonds, periodic receipts from estates or trust funds, net income from rental of a house, store, or other property to others, receipts from boarders or lodgers, and net royalties.

(6) *Public assistance or welfare payments* include public assistance payments such as AFDC, SSI, State Supplemental Payments, and general assistance.

(7) *Pensions and annuities* include pensions or retirement benefits paid to a retired person or his survivors by a former employer or by a union, either directly or through an insurance company; periodic receipts from annuities or insurance.

(8) *Unemployment compensation* means compensation received from government unemployment insurance agencies or private companies during periods of unemployment and any strike benefits received from union funds.

(9) *Worker's compensation* means compensation received periodically from private or public insurance companies for injuries incurred at work. The cost of this insurance must have been paid by the employer and not by the person.

(10) Alimony.

(11) Child support.

(12) *Veterans' pensions* means money paid periodically by the Veterans' Administration to disabled members of the Armed Forces or to survivors of deceased veterans, subsistence allowances paid to veterans for education and on-the-job training, as well as so-called "refunds" paid to ex-servicemen as GI insurance premiums.

(b) *Exclusions from monthly gross income.* Excluded from computation of monthly gross income are the following:

(1) Per capita payments to or funds held in trust for any individual in satisfaction of a judgment of the Indian Claims Commission or the Court of Claims;

(2) Payments made pursuant to the Alaska Native Claims Settlement Act to the extent such payments are exempt from taxation under section 21(a) of the Act;

(3) Money received from sale of property, such as stocks, bonds, a house, or a car (unless the person was engaged in the business of selling such property in which case the net proceeds would be counted as income from self employment);

(4) Withdrawals of bank deposits;

(5) Money borrowed;

(6) Tax refunds;

(7) Gifts;

(8) Lump sum inheritances or insurance payments;

(9) Capital gains;

(10) The value of the coupon allotment under the Food Stamp Act of 1964, as amended, in excess of the amount paid for the coupons;

(11) The value of USDA donated foods;

(12) The value of supplemental food assistance under the Child Nutrition Act of 1966 and the special food service program for children under the National School Lunch Act, as amended;

(13) Any payment received under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;

(14) Earnings of a child under 14 years of age (no inquiry shall be made);

(15) Loans and grants, such as scholarships, obtained and used under conditions that preclude their use for current living costs;

(16) Any grant or loan to any undergraduate student for educational purposes made or insured under any program administered by the Commissioner of Education under the Higher Education Act; and

(17) Home produce utilized for household consumption.

Subpart G—Purchase of Service

§ 228.70 Procurement standards.

FFP is available in the costs of purchased services only if they are secured in accordance with relevant provisions of Subpart P of 45 CFR 74, and the requirements of this Subpart.

(a) *Written contracts.* The State agency executes a written contract in accordance with requirements under this Part and 45 CFR 74.159 with the agency, individual, or organization from which services are purchased. In addition to the applicable requirements of § 74.159, the contract shall:

(1) Include all terms of the contract in one instrument, be dated, and be executed by authorized representatives of all parties to the contract prior to the date of implementation;

(2) Have a definite beginning and ending date for provision of services;

(3) Contain a detailed description of the services to be provided and of the methods, including subcontracting, to be used by the provider in carrying out its obligations under the contract;

(4) If eligibility determinations are to be made by the provider, contain a statement to that effect and criteria in accordance with Subpart F which shall be used by the provider for such determinations; and specify that the provider will inform individuals of their right to fair hearings in accordance with § 228.14;

(5) Provide for a stated number of units of service at a specific dollar rate, or for a specific dollar amount, or for costs to be determined in accordance with acceptable cost allocation methods;

(6) Specify the method and source of payment to the provider, including collection and disposition of fees, if applicable;

(7) Specify that no fees shall be imposed by the provider other than those set by the State in accordance with § 228.62 and described in the services plan;

(8) Include a statement that the provider meets applicable State or Federal standards as specified in this part;

(9) Specify the locations of facilities to be used in providing services;

(10) Provide that the provider will comply with the requirements of the Civil Rights Act of 1964, and for safeguarding information in accordance with § 228.10;

(11) Provide that any subcontracts permitted by the contract shall be subject to the requirements of this Part; and that the provider is responsible for the performance of any subcontractor;

(12) Specify requirements for fiscal and program responsibility, billing, records, controls, reports, and monitoring procedures; and

(13) Provide for access to financial and other records pertaining to the program by State and Federal officials.

(b) The requirements of this section may be satisfied by a simple printed contract form so long as all items described in paragraph (a) of this section are contained therein.

(c) The provisions of this section do not apply when services are obtained directly by the recipient and payment is made to him. (See § 228.47.)

(d) A written contract is not required for purchase of services from an individual provider who has no direct service employees or subcontractors provided:

(1) The State's statute of frauds does not preclude the agency from enforcing its unwritten contract with the provider; and

(2) The State agency maintains documentation of the terms of the unwritten contract negotiated with the individual provider, including all applicable items specified in paragraph (a) of this section.

§ 228.71 Rates of payment.

(a) FFP is available for expenditures for services only where the rates of payment for services do not exceed the amounts reasonable and necessary to assure the quality of service. (See § 228.62 (e) for disposition of fees.) Where services are purchased from other public agencies, rates shall be established in accordance with cost principles of Appendix C of 45 CFR Part 74 and such cost are reasonably assignable to such services. Where services are purchased from private agencies, rates may be established on the basis of negotiation, utilizing any reasonable methods for establishing competitive rates, including the Principles for Determining Costs suggested in Appendix F of 45 CFR Part 74. The State agency shall maintain and make available for Federal review records which describe and support the rates of payment and the methods used to establish and maintain such rates.

(b) Public Health Service grant funds from programs specified in 42 CFR Part 50 of the Health Services Funding regulation (as well as any matching funds required to earn those grant funds) which have been made available under a grant to a health service project, if not required to be used to finance cost of services to individuals eligible for services under title XX, shall not be deemed by the State agency to be available to reduce the costs otherwise subject to reimbursement under title XX. This precludes double Federal payment for the same individuals.

Subpart H—Training and Retraining

§ 228.80 Conditions for FFP.

FFP is available in expenditures for personnel training and retraining that is directly related to the services program if the State meets all requirements of this Subpart. The training may include in-service training, and short and long-term training at educational institutions. FFP in such training expenditures may be claimed inside or outside the State's allotment for services and is available at the 75 percent rate. FFP shall be available for training expenditures no earlier than the date on which FFP is available for the provision of services under the final services plan in accordance with § 228.20.

§ 228.81 Who may be trained.

FFP is available for training only the following individuals:

(a) State agency staff employed in all classes of positions which directly relate to the operation of the Title XX program;

(b) Volunteers attached to the State agency and supervised by it in relation to duties directly related to the program;

(c) Service delivery personnel employed by providers (and in instances where the provider agency also determines eligibility for service, eligibility determination personnel employed by providers) only when:

(1) A purchase of service contract or a purchase of service and eligibility determination contract, is in effect in accordance with Subpart G;

(2) The training provided is directly related to the provision of services, or the determination of eligibility under the contract; and

(3) The provider personnel, during or immediately following the training period, participate in the provision of services or the determination of eligibility under the contract for a period of time at least equal to the period of time for which training was provided;

(d) Persons preparing for employment in the State agency in all classes of positions which directly relate to operation of the title XX program;

(e) Individual providers who are currently under contract pursuant to Subpart G including, but not limited to:

(1) Foster family caregivers who need training to enable them to provide special services (as specified in § 228.45) to eligible individuals living in the home, or to prepare them to receive eligible individuals who need such services if the home is used within the period covered by the contract, or

(2) Family or in-home day care givers to enable them to provide services to eligible individuals already in their care or to prepare them to receive eligible individuals who need such services, if the home is used within the period covered by the contract;

(f) Individuals who provide services paid for by the recipient, as provided in § 228.47, if training is directly related to such service, and

(g) Foster family caregivers whose homes provide a resource to the title XX agency in carrying out its directly operated foster care services program for eligible children and adults.

§ 228.82 Grants to educational institutions.

(a) FFP is available in payments for training furnished under grants to educational institutions, if all conditions specified in this section are met:

(1) Grants are made: (i) For the purpose of developing, expanding, or improving training for employees of the State agency and of providers, or persons preparing for employment with the State agency; (ii) For an educational program (curriculum development, classroom instruction, and related field instruction) that is directly related to the title XX program and provision of services; and (iii) For not more than three years, renewable subject to the provisions of paragraph (b) of this section;

(2) Grants are available only to post secondary, undergraduate and graduate educational institutions and programs that have been accredited by the appropriate institutional accrediting body recognized by the U.S. Commissioner of Education. A specialized program for which there is a specialized accrediting body shall be accredited by, have pre-accreditation status from, or have applied for, accreditation by such body, (45 CFR Part 149 specifies the criteria and procedures for obtaining recognition as an accrediting agency or association. Lists of currently recognized accrediting bodies are published in the FEDERAL REGISTER periodically. See also "Nationally Recognized Accrediting Agencies and Associations" dated June, 1975 and published by the Office of Education).

(3) The State agency has written policies establishing conditions and procedures for such grants; and

(4) Each grant specifies objectives in terms of how the educational program is related to the title XX services program and how it is designed to meet the State agency's manpower needs.

(b) An evaluation of the educational program funded by each grant is made no later than the close of the second year of the grant. The evaluation shall be conducted by a panel consisting of representatives from the educational institution, the State agency, and the SRS Regional Office to determine whether the conditions and objectives specified in the grant are being met.

(c) If a majority of the panel members finds that the educational programs are failing to meet such conditions and objectives, payment shall be terminated no later than the close of the second year of the grant.

§ 228.83 Financial assistance to trainees.

(a) FFP is available for expenditures in the costs of training persons specified in § 228.81. If the following conditions are met, and within the specified limitations:

(1) State agency employees and service delivery personnel and eligibility workers of provider agencies who are in attendance full-time at training programs for 8 consecutive workweeks or longer have a legally binding commitment to continue to work in the State or provider agency for a period of time at least equal to the period for which financial assistance is granted.

(2) Persons preparing for employment in the State agency are:

(i) Selected by the State agency and accepted by the school;

(ii) Pursuing educational programs approved by the agency; and

(iii) Legally committed to work for the State agency for a period of time at least equal to the period for which financial assistance is granted if employment is offered within 6 months after training is completed. If not employed by the State agency, such persons shall keep the agency informed of their employment status for one year.

(b) *State agency responsibilities.* The State agency shall:

(1) Offer employment to the individual preparing for employment in the State agency during the 6 months following completion of the training, unless precluded by Merit System requirements, legislative cuts, position freezes, or other circumstances beyond the agency's control; and

(2) Evaluate the training programs.

(c) Any recoupment of funds by the State from trainees failing to fulfill their commitment under this section shall be treated as a refund and deducted from total training costs for the purpose of determining net costs for FFP.

§ 228.84 Activities and costs matchable as training expenditures.

Costs matchable as training expenditures include:

(a) *State agency employees.* (1) For State agency employees in full-time training programs of eight consecutive work weeks or longer (with no assigned agency duties); salaries (including fringe benefits), or stipends, dependency allowances, travel, and education costs (that is, tuition, books, and supplies);

(2) For State agency employees in full-time training programs of less than eight consecutive work weeks: per diem, travel and education costs;

(3) For State agency employees in part-time training programs (part of work week, evenings, mornings): Education costs.

(b) *State agency staff development personnel.* For State agency staff development personnel (including support staff), asigned full time to training functions with respect to State agency or provider agency staff: salaries, fringe benefits, travel and per diem. (Costs of staff spending less than full time on training for the title XX program, including costs of other State agency staff under the supervision of the State agency Director of Staff Development, must be allocated according to the time actually spent on such training.)

(c) *State agency training activities.* (1) For experts outside the State agency engaged to develop or conduct special programs: salary, fringe benefits, travel and per diem;

(2) For State agency training activities directly related to the title XX program: cost of use of space, postage, teaching supplies, and purchase or development of teaching materials and equipment—for example, books and audio-visual aids.

(d) *Persons preparing for employment.* For persons preparing for employment with the State agency: stipends, travel, and education costs.

(e) *Provider agency personnel.* FFP is available in the following costs of training provider agency personnel as training costs, provided there is a contract with the State agency which includes such training; such costs are not included in the cost of services purchased from the provider agency; and such costs are reasonably assignable to title XX training:

(1) For provider agency employees in full-time training programs of 8 consecutive work weeks or longer (with no assigned provider agency duties): travel and education costs;

(2) For provider agency employees in full-time training programs of less than 8 consecutive work weeks: per diem, travel, and education costs;

(3) For provider agency employees on part-time educational leave: education costs;

(f) *Provider agency staff development personnel.* For provider agency staff development personnel (including support staff) engaged in providing training to State title XX agency staff or provider agency staff eligible for training under § 228.81 salaries and fringe benefits, travel and per diem.

(g) *Provider agency training activities.* (1) For experts outside the provider agency engaged to develop or conduct special programs: salary, fringe benefits, travel and per diem.

(2) For provider agency training activities directly related to the title XX program: cost of teaching supplies and purchase or development of teaching materials and equipment—for example, books and audio-visual aids.

(h) *Individudl providers.* For individual providers and foster parents in part-time training: travel and education costs.

(i) *Payments to educational institutions.* Under conditions specified in § 228.82, for curriculum development, classroom and field instruction: salaries, fringe benefits and travel of instructors; clerical assistance; teaching materials and equipment—for example, books and audio-visual aids.

§ 228.85 Activities and costs not matchable as training expenditures.

FFP is not available for the following as expenditures outside the State's allotment for social services. Such expenditures are matchable as administrative costs (not training expenses) under the State's allotment for services.

(a) Salaries of newly-employed workers in the State agency or a provider agency while they are in orientation;

(b) Salaries of State agency employees who attend training programs less than full-time for a period of less than eight consecutive work weeks;

(c) Salaries of supervisors (day-to-day supervision of staff is not a training activity);

d) Attendance at meetings or conferences of professional organizations; and

(e) Employment of students on a temporary basis, such as in the summertime.

§ 228.86 [Reserved]

Subpart I—General Provisions

44. Section 228.90 is revised to read as follows:

§ 228.90 Expenditures for which Federal financial participation is available.

(a) Federal financial participation is available only for expenditures which are identified and allocated in accordance with grant administration requirements set forth in 45 CFR Part 74, and, where appropriate, with the cost allocation provisions of 45 CFR 205.150.

(b) Under this Part, expenditures for the following are considered appropriate for the effective and efficient administration of the program:

(1) Salary, fringe benefits and travel costs of staff engaged in carrying out service work or service related work;

(2) Costs or related expenses, such as equipment, furniture, supplies, communications, and office space; transportation (such as tokens or tickets); and medical examinations, when necessary for the development of a services plan or when precedent to obtaining a service for an individual, provided such medical examination is not available to the individual under title XVIII or title XIX of the Act.

(3) Costs of State agency advisory committees on services, including expenses of members in attending meetings, supportive staff, and other technical assistance;

(4) Costs of agency staff attendance at meetings pertinent to the development or implementation of Federal and State service policies and programs;

(5) Cost to the agency for the use of volunteers in the program;

(6) Costs of operation of agency facilities used solely for the provision of services, except that appropriate distribution of costs is necessary when other agencies also use such facilities in carrying out their functions;

(7) Costs of administrative support activities furnished by other public agencies, private organizations, or individuals, or other units within the State agency which are properly cost allocated;

(8) Costs of technical assistance, data collection, surveys and studies performed by other public agencies, private organizations or individuals to assist the State agency in developing, planning, monitoring, and evaluating the services program; and

(9) Costs of public liability and other insurance protection.

44. Section 228.91 is revised to read as follows:

§ 228.91 Expenditures for which Federal financial participation is not available.

(a) Federal financial participation is not available under this part in expenditures for:

(1) Carrying out any maintenance assistance payments functions or any other functions or activities which are not related to services under this Part;

(2) The purchase, construction, or major modification of any land, building or other facility, or fixed equipment. However, FFP is available in the cost of using buildings, capital improvements, and equipment, in accordance with 45 CFR 74, Appendix C, Part II, B. 11.

(3) Housing costs for families and individuals including rent, deposits, purchase, construction, major renovation or repair;

(4) Goods or services provided in-kind by a private organization or individual; and

(5) Sabbatical leave.

Subpart J—Grants to Child Day Care Providers to Employ Welfare Recipients

§ 228.100 Definitions.

For purposes of this Subpart:

(a) A "qualified" child day care provider is one in whose facility at least 20 percent of the total number of children regularly served are partly or totally funded under title XX.

(b) An "eligible" welfare recipient is, as defined in section 50B(g) of the Internal Revenue Code of 1954, one who meets all the following requirements:

(1) Has been certified by the State or local welfare department as being eligible for financial assistance for aid to families with dependent children (AFDC) and as having continuously received AFDC during the 90-day period which immediately precedes the date on which the employee is hired;

(2) Has been a full-time employee of the provider for a period in excess of 30 consecutive days;

(3) Has not displaced any other individual from employment by the provider; and

(4) Is not a migrant worker. (The Internal Revenue Code of 1954 defines a migrant worker as one who is employed in a job for which the customary period of employment by one employer is less than 30 days if the nature of the job requires the worker to travel from place to place over a short period of time.)

§ 228.101 Conditions for FFP

From September 7, 1976 until October 1, 1977, FFP is available from additional allotments specified in §228.52 (c)(3) for salaries paid under grants which States make in accordance with this Subpart to qualified public, nonprofit private, and proprietary child day care providers under contract to the State agency, to employ eligible welfare recipients, as defined in § 228.100: *Provided*, That:

(a) The grants do not exceed:

(1) $5,000 to public and non-profit private providers for each recipient per year; and

(2) $4,000 to proprietary providers for each recipient per year. (The Internal Revenue Code of 1954 provides a tax credit of up to $1,000 per year per welfare recipient employed by proprietary child day care providers (section 50A(a)(6)(B) of the Code) under an extension until October 1, 1977 of the credit for Federal welfare recipient employment incentive expenses to proprietary child day care providers (section 50B(a)(2)(B)). The tax credit, to a maximum of $1,000, equals 20 percent of the wages to a recipient to the extent that a provider is not specifically reimbursed for such wages. There is no aggregate tax credit limit for such child day care employers of recipients.)

(b) States make such grants on a time schedule that minimizes balances of Federal funds and in a manner consistent with Treasury Department Circular #1075 (revised) which promulgated the Letter of Credit system and was published in the FEDERAL REGISTER (38 FR 5242) on February 27, 1973.

(c) Pursuant to § 228.17, States submit statistical and financial reports on the AFDC recipients hired under these grants, in accordance with instructions issued by the Secretary.

§ 228.102 Claims for FFP.

(a) States may claim for salaries paid by child day care providers for the 30 days of full-time, continuous employment needed to make a recipient eligible, as defined in § 228.100(b).

(b) If a recipient starts employement with a provider on or after September 7, 1976, expenditures incurred for salaries for any part of the continuous 30-day employment which occurs after September 7, but within the transition quarter, are chargeable to the State's new allotment for the transition quarter.

(c) Any expenditures incurred on or after October 1, 1976 through September 30, 1977 for salaries under the grants for employment of welfare recipients are chargeable to the State's new allotment for the 1977 fiscal year.

Effective date: These regulations shall be effective 90 days after publication or earlier at State option with the following exceptions: (1) Section 228.70(d) is made retroactive to October 1, 1975, at State option; (2) Sections of Part 228 (as listed below), that were issued as interim final regulations implementing Pub. L. 94-401 (1976 Amendments to Title XX of the Social Security Act) published in the FEDERAL REGISTER (41 FR 55668) on December 21, 1976, are effective October 1, 1975, at State option, with the following exceptions: Additional allotments to States (§ 228.52) are available from 7-1-76 through 9-30-77; State grants to child day care providers (Subpart J) may be made on or after September 7, 1976 for use through September 30, 1977; and the option to waive Federal staffing standards in out-of-home facilities with few title XX children (§ 228.42(c)(2)) is effective no earlier than September 7, 1976.

The list of sections effective October 1, 1975, at State option, is as follows:

SUBPART C

§ 228.24 (e) and (f)
§ 228.26(a)
§ 228.29(d)
§ 228.36(d)

SUBPART D

§ 228.40(c) (1) and (2)
§ 228.41(e) (1) and (2)
§ 228.42(c) (1) and (d)
§ 228.44(e) (1) and (2)
§ 228.48

SUBPART E

§ 228.51(c)
§ 228.56(b)

SUBPART F

§ 228.60(b)(3)
§ 228.60(f)(2)(ii)
§ 228.60(f)(1)(iii)
§ 228.60(f)(2)(iv) (A) and (B)
§ 228.61(a)(3)
§ 228.61(c)(2)
§ 228.61(d)

(Catalog of Federal Domestic Assistance Program No. 13754 Public Assistance Social Services.)

NOTE.—The Social and Rehabilitation Service has determined that this document does not require preparation of an Inflationary Impact Statement under Executive Order 11821 and OMB Circular A-107.

Dated: January 6, 1977.

ROBERT FULTON,
Administrator, Social and Rehabilitation Service.

Approved: January 18, 1977.

MARJORIE LYNCH,
Acting Secretary.

[FR Doc.77-2656 Filed 1-28-77;8:45 am]

federal register

MONDAY, JANUARY 31, 1977

PART IV

THE NATIONAL ARCHIVES OF THE UNITED STATES 1934

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Public Health Service

GRANTS FOR ALCOHOL ABUSE AND ALCOHOLISM PREVENTION, TREATMENT, AND REHABILITATION SERVICES

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Public Health Service

[42 CFR Part 54a]

ALCOHOL ABUSE AND ALCOHOLISM PREVENTION, TREATMENT, AND REHABILITATION SERVICES

Proposed Revision of Grant Regulations

Notice is hereby given that the Assistant Secretary for Health, with the approval of the Secretary of Health, Education, and Welfare, proposes to revise Part 54a of Title 42, Code of Federal Regulations, which currently sets forth only the formula for computing allotments to States under section 302 of the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970 (42 U.S.C. 4572).

SUMMARY OF THE PROPOSED REGULATIONS

It is proposed to revise Part 54a to set forth regulations implementing the provisions of the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970, as amended by Pub. L. 93–282 and Pub. L. 94–371, hereinafter sometimes referred to as the Act, governing: (1) Formula grants to assist States in planning, establishing, maintaining, coordinating, and evaluating projects for the development of more effective prevention, treatment, and rehabilitation programs to deal with alcohol abuse and alcoholism (sections 301–303 of the Act, 42 U.S.C. 4571–4573), and (2) grants for alcohol abuse and alcoholism prevention and treatment projects (section 311 of the Act, 42 U.S.C. 4577).

GENERAL PROVISIONS

Subpart A of the proposed regulations is applicable to all the grants authorized by Title III of the Act (42 U.S.C. 4571, et seq.). The proposed regulatory provisions specify those generally applicable statutory and regulatory requirements which apply to all recipients of the grant assistance authorized by the Act.

FORMULA GRANTS TO STATES

Subpart B of the proposed regulations implements the statutory provisions (sections 301–303 of the Act, 42 U.S.C. 4571–73) which authorize formula grants to assist States in planning, establishing, maintaining, coordinating, and evaluating projects for the development of more effective prevention, treatment, and rehabilitation programs to deal with alcohol abuse and alcoholism. The formula grants are provided through an allotment of funds which is computed on the basis of relative population, financial need, and need for more effective prevention, treatment, and rehabilitation of alcohol abuse and alcoholism (section 302(a) of the Act, § 54a.203 of the proposed regulations). The Secretary of Health, Education, and Welfare is authorized, however, on the request of any State, to arrange for the assignment of officers or employees of the Department or to provide equipment or supplies in lieu of a portion of the allotment to the State (section 302(d) of the Act added by Pub. L. 93–282, § 54a.206 of the proposed regulations). To receive an allotment a State must submit to and have approved by the Secretary of Health, Education, and Welfare a State plan or modification thereof which meets the requirements specified in the Act and the proposed regulations (section 303 of the Act § 54a.207 of the proposed regulations). The State plan, among other things, must: (1) Designate a single State agency as the sole agency for administering the State plan or for supervising the administration of the State plan (section 303(a)(1) of the Act, § 54a.209 of the proposed regulations); (2) provide for the designation of a State advisory council which shall include representatives of nongovernmental organizations, of groups to be served with attention to assuring representation of minority and poverty groups, of public agencies concerned with the prevention and treatment of alcohol abuse and alcoholism, and at least one representative of the Statewide Health Coordinating Council, if any, established pursuant to section 1524 of the Public Health Service Act, to consult with the State agency in carrying out the plan (section 303(a)(3) of the Act, § 54a.210 of the proposed regulations); (3) set forth, in accordance with criteria established by the Secretary of Health, Education, and Welfare, a survey of need for the prevention and treatment of alcohol abuse and alcoholism, including a survey of the health facilities needed to provide services for alcohol abuse and alcoholism and a plan for the development and distribution of such programs throughout the State (section 303(a)(4) of the Act, § 54a.211 of the proposed regulations); (4) contain, to the extent feasible, a complete inventory of all public and private resources available in the State for the purpose of alcohol abuse and alcoholism treatment, prevention, and rehabilitation (section 303(a)(11) of the Act, § 54a.211(b)(1) of the proposed regulations); (5) provide that the State agency will review admissions to hospitals and outpatient facilities to assist the Secretary in determining the compliance of such hospitals and outpatient facilities with Section 321 of the Act (42 U.S.C. 4581), which provides that alcohol abusers and alcoholics who are suffering from medical conditions shall not be discriminated against in admission or treatment, solely because of their alcohol abuse or alcoholism, by any private or public general hospital or outpatient facility which receives support in any form from any program supported in whole or in part by funds appropriated to any Federal department or agency (section 303(a)(15) of the Act, § 54a.214 of the proposed regulations); and, (6) set forth, in accordance with criteria to be set by the Secretary, standards (including enforcement procedures and penalties) for construction and licensing of public and private treatment facilities, and for other community services or resources available to assist individuals to meet problems resulting from alcohol abuse (section 303(a)(10) of the Act added by Pub. L. 93–282, § 54a.212 (Reserved) of the proposed regulations). The criteria for standards for the construction and licensing of public and private treatment facilities and for other community services are being developed. Comments and suggestions on the scope and content of the criteria to be established by the Secretary are invited. To receive an allotment a State must also submit to the Secretary periodic reports assessing the progress of the State in the implementation of its State plan (section 303(c) of the Act, § 54a.207(c) of the proposed regulations).

Section 54a.203(a) of this Notice of Proposed Rulemaking sets forth the formula for allotting grant funds to the States. This formula is now in effect as § 54a.102 of the current Part 54a. It is included in this notice for the purpose of providing a complete regulation. However, the Senate Committee on Labor and Public Welfare, in its report (Senate Report No. 94–705) on the bill enacted as Pub. L. 94–371, has expressed concern about this formula and stressed that formula grant funds must be allotted not only on the basis of relative population and financial need, as the formula now provides, but also of need for more effective prevention, treatment, and rehabilitation, as Pub. L. 91–616 requires. In conference, the House agreed with the Senate, and section 3(b) of Pub. L. 94–371 thus requires the Secretary to establish, by regulation, a methodology for determining the incidence and prevalence of alcohol abuse within the States to be used in determining State need for more effective prevention, treatment, and rehabilitation of alcohol abuse and alcoholism. Section 3(b) further requires that this be accomplished within 180 days of enactment of the law.

In response to this directive, and with appropriate public participation, the Department is now developing a methodology for determining incidence and prevalence of alcohol abuse within the States and will shortly issue a separate Notice of Proposed Rulemaking setting forth a methodology and a revised formula for the allotment of grant funds to the States which will incorporate incidence and prevalence of alcohol abuse within the States as a measure of need.

SPECIAL GRANTS FOR IMPLEMENTATION OF THE UNIFORM ALCOHOLISM AND INTOXICATION TREATMENT ACT

Subpart C of the proposed regulations, which would implement the statutory provision (added by Pub. L. 93–282 as section 304, and amended and redesignated as section 310, 42 U.S.C. 4576, by Pub. L. 94–371) establishing a special grant program to assist States which have adopted the basic provisions of the Uniform Alcoholism and Intoxication Treatment Act to utilize fully the protection of the Uniform Act in their efforts to approach alcohol abuse and alcoholism from a community care standpoint, has been reserved. This subpart will be proposed and promulgated separately, at a later date.

PROJECT GRANTS FOR THE PREVENTION AND TREATMENT OF ALCOHOL ABUSE AND ALCOHOLISM

Subpart D of the proposed regulations implements the statutory provision (section 311 of the Act, amended by Pub. L. 93–282 and Pub. L. 94–371, 42 U.S.C. 4577) which authorizes grants to public and nonprofit private entities to assist them in (a) Conducting demonstration and evaluation projects, (b) Providing treatment and prevention services, (c) Providing education and training, and (d) Providing programs and services, including counseling and education services, in cooperation with law enforcement personnel, schools, courts, penal institutions, and other public agencies, on an individual or community basis, for the prevention and treatment of alcohol abuse and alcoholism and for the rehabilitation of alcohol abusers and alcoholics. Eligible entities (public and nonprofit private) must submit an application to the Secretary of Health, Education, and Welfare (§ 54a.404 of the proposed regulations). The applicant must give assurance that a copy of the application has been forwarded for review by the single State agency designated in the State plan (§ 54a.404(c) of the proposed regulations)—note that under § 54a.208 of the proposed regulations the State plan must incorporate by reference documents which describe the policies and procedures under which the single State agency will review and comment upon project grant applications. In order to be considered for approval an application must meet the minimum requirements prescribed in § 54a.405 of the proposed regulations. These requirements include the statutory requirements, added by Pub. L. 93–282 and Pub. L. 94–371, that projects shall: (a) Whenever possible, be community based, seek to insure care of good quality in general community care facilities and under health insurance plans, and be integrated with, and provide for the active participation of a wide range of public and nongovernmental agencies, organizations, institutions, and individuals; (b) where a substantial number of the individuals in the population served by the project are of limited English-speaking ability, take special steps to ensure that the services provided are responsive to their needs; and (c) where appropriate, utilize existing community resources, including community mental health centers. The Secretary, after taking into account the contents of the application and the comments of the single State agency and appropriate peer review groups thereon, and after receiving the National Advisory Council on Alcohol Abuse and Alcoholism's recommendation for approval, may award grants (to cover all or part of the project costs) to applicants whose projects will in his judgment best promote the purposes of section 311 of the Act (§ 54a.406 of the proposed regulations). Among the factors to be considered by the Secretary are: The administrative and management capabilities of the applicant; the ability of the applicant to provide care of good quality; the need for the activities to be conducted under the project; and the degree to which available non-Federal resources are committed to the project and will progressively supplant Federal funds (§ 54a.406 of the proposed regulations).

GRANTS FOR NATIONAL ALCOHOL RESEARCH CENTERS

Subpart E of the proposed regulations, which would implement the statutory provision (section 504 of the Act, added by Pub. L. 94–371, 42 U.S.C. 4588) authorizing grants to National Alcohol Research Centers for interdisciplinary research relating to alcoholism and other alcohol problems, has been reserved. This subpart will be proposed and promulgated separately, at a later date.

HEALTH PLANNING

Those reviewing and subject to these regulations should also understand that the alcohol abuse and alcoholism program is, in many respects, subject to the National Health Planning and Resources Development Act of 1974 (Pub. L. 93–641). Pub. L. 93–641 mandates the establishment of Health Systems Agencies (HSAs) on a nationwide basis, one for each health service area. HSAs are charged with providing planning for all health services for their respective areas. Among their responsibilities, HSAs will develop a comprehensive health systems plan; review and approve (or disapprove) applications for Federal health project grants—including most of those for alcohol abuse and alcoholism services; and review all existing and proposed institutional health services to determine the need for and appropriateness of such services.

At the State level, Pub. L. 93–641 requires that each State designate a State Health Planning and Development Agency (SHPDA). The SHPDA is, among other things, responsible for the development of a State health plan which will derive from the (local) health systems plans. The SHPDA is advised by a Statewide Health Coordinating Council (SHCC). The SHCC is responsible, among other things, for annual review and approval (or disapproval) of a variety of State plans for health services—including alcohol abuse and alcoholism services—and of any applications for allotments submitted to the Secretary under these plans.

In addition, Pub. L. 93–641 requires each State to adopt a Certificate of Need program covering the development of new institutional services or facilities. Both publicly and privately financed institutions will have to obtain such certification before new services or facilities are initiated (see the Notice of Proposed Rulemaking of March 19, 1976 appearing at 41 FR 11688, particularly proposed regulations for 42 CFR Part 100 and Subpart E of 42 CFR Part 123).

The specific provisions of Pub. L. 93–641 affecting the development of services under the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act are set forth in Pub. L. 93–641 and regulations thereunder. (Materials and information relating to Pub. L. 93–641 may be obtained from the Health Resources Division in each of the Department's Regional Offices). However, § 54a.105 of the proposed regulations calls attention to the requirements of Pub. L. 93–641. Other sections of the proposed regulations require that (1) each State plan include evidence that all applicable requirements for submitting State plans for review under Pub. L. 93–641 have been met, and (2) each application for a project grant include evidence that all applicable requirements for submitting project grant applications for review under Pub. L. 93–641 have been met. In addition, the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act, by its own terms, requires certain interactions with the entities mandated by Pub. L. 93–641. These requirements are set forth in §§ 54a.208(b)(3) and 54a.210(b)(1)(iv) of the proposed regulations.

The Department wishes to stress the importance of developing effective formal and informal relations among alcohol abuse and alcoholism programs, State alcoholism agencies, State alcohol abuse advisory councils, and those State and local planning agencies created pursuant to Pub. L. 93–641. In order to effectively carry out their planning responsibilities, HSAs and SHPDAs must become familiar with the requirements of the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act and alcohol programs generally. Similarly, alcohol abuse and alcoholism programs and State alcoholism agencies and advisory councils must become familiar with the requirements of the National Health Planning and Resources Development Act of 1974 and health planning generally. All parties are urged to work together in the development of local and State plans for health services and facilities as well as in the development of applications for Federal health project grants and other Federal assistance—helping one another in effectively carrying out their specific responsibilities.

IMPLEMENTATION PLAN

The new regulations policies of the Department issued July 25, 1976 (see FR Doc. 76–24042 appearing at 41 FR 43811, August 17, 1976) require that an implementation plan for this Notice of Proposed Rulemaking (NPRM) be prepared prior to its issuance. In compliance with these requirements, an implementation plan was forwarded to the Secretary who authorized the issuance of this NPRM without publication of the Notice of Intent (NOI) otherwise required by the new policies because, over an extended period of time, there has been significant interaction between the Department and organizations and individuals in the development of the proposed regulations which has satisfied the spirit and intent of the NOI.

The requirements set forth in the proposed regulations, which have been un-

der development for more than 3 years, have received extensive public exposure and discussion at annual meetings with the directors of State alcohol agencies, during site visits by Federal staff to communities which have applied for and received funds authorized under the Act, and in formal and informal discussions with national organizations interested in alcohol abuse and alcoholism. Issues raised during this process have been carefully reviewed and suggestions for change have been incorporated wherever possible.

SUBMISSION OF COMMENTS

Interested persons are invited to submit written comments, suggestions, or objections regarding this proposed revision of 42 CFR Part 54a to the Office of the Director, National Institute on Alcohol Abuse and Alcoholism, Room 16-105, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, on or before April 1, 1977.

Comments received will be available for public inspection at Room 16-105, Parklawn Building, between the hours of 8:30 a.m. and 5:30 p.m., Monday through Friday.

This revision is proposed under the authority of sections 101, 301-303, 310, and 311 of the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970, as amended by Pub. L. 93-282 and Pub. L. 94-371 (42 U.S.C. 4551, 4571-4573 and 4576-4577).

Therefore, it is proposed to revise Part 54a of Title 42 CFR in the manner set forth below.

NOTE.—The Department of Health, Education, and Welfare has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107.

(Catalog of Federal Domestic Assistance Program Nos. 13.257 Alcohol Formula Grants, 13.252 Alcohol Demonstration Programs)

Dated: December 23, 1976.

THEODORE COOPER,
Assistant Secretary for Health.

Approved: January 18, 1977.

MARJORIE LYNCH,
Acting Secretary.

It is proposed to revise Part 54a to read as follows:

PART 54a—GRANTS FOR ALCOHOL ABUSE AND ALCOHOLISM PREVENTION, TREATMENT, AND REHABILITATION SERVICES

Subpart A—General

Sec.
54a.101 Applicability.
54a.102 Definitions.
54a.103 Nondiscrimination.
54a.104 Confidentiality of patient records.
54a.105 Reviews required by Health Planning and Resources Development Act.
54a.106 Applicability of 45 CFR Part 74.

Subpart B—Formula Grants to States

54a.201 Applicability.
54a.202 Definitions.
54a.203 Allotments to States.
54a.204 Transfer of allotments.
54a.205 Allotment; administrative expenditures.
54a.206 Allotment; equipment, supplies or personnel in lieu of cash.
54a.207 State plan; submission and review.
54a.208 State plan; purpose; coordination.
54a.209 State plan; single State agency.
54a.210 State plan; State advisory council.
54a.211 State plan; survey of need; resource allocation plan.
54a.212 State plan; criteria for construction and licensing of facilities. [Reserved]
54a.213 State plan; personnel administration.
54a.214 State plan; nondiscrimination by Federally assisted private and public general hospitals in the admission and treatment of alcohol abusers.
54a.215 Assurances.

Subpart C—Special Grants for Implementation of the Uniform Alcoholism and Intoxication Treatment Act [Reserved]

Subpart D—Project Grants for the Prevention and Treatment of Alcohol Abuse and Alcoholism

54a.401 Applicability.
54a.402 Definitions.
54a.403 Eligibility.
54a.404 Application.
54a.405 Project requirements.
54a.406 Evaluation and grant award.
54a.407 Payments.
54a.408 Expenditure of grant funds.
54a.409 Grantee accountability.
54a.410 Publications and copyrights.
54a.411 Additional conditions.
54a.412 Matching rates. [Reserved]

Subpart E—Grants for National Alcohol Research Centers [Reserved]

Subpart A—General

AUTHORITY: 42 U.S.C. 4551, 4571-4573 and 4576-4577.

§ 54a.101 Applicability.

The provisions of this subpart apply to all grants which are authorized by Title III of the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970 as amended by Pub. L. 93-282 and Pub. L. 94-371 (42 U.S.C. 4571, et seq.), and administered by the National Institute on Alcohol Abuse and Alcoholism under the authority granted by Title I of that Act (42 U.S.C. 4551, et seq.). Those grants include: (a) Formula grants to assist States in planning, establishing, maintaining, coordinating, and evaluating projects for the development of more effective prevention, treatment, and rehabilitation programs to deal with alcohol abuse and alcoholism (42 U.S.C. 4571-4573; Subpart B of this part); (b) Special grants to assist States in implementing the Uniform Alcoholism and Intoxication Treatment Act (42 U.S.C. 4576; Subpart C of this part); and (c) Grants for alcohol abuse and alcoholism prevention and treatment projects (42 U.S.C. 4577; Subpart D of this part).

§ 54a.102 Definitions.

As used in this part:

(a) "Act" means the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970, as amended by Pub. L. 93-282 and Pub. L. 94-371 (42 U.S.C. 4541, et seq.).

(b) "Secretary" means the Secretary of Health, Education, and Welfare and any other officer or employee of the Department of Health, Education, and Welfare to whom the authority involved may be delegated.

(c) The term "State" means the 50 States, the District of Columbia, the Virgin Islands, the Commonwealth of Puerto Rico, Guam, American Samoa, and the Trust Territory of the Pacific Islands.

§ 54a.103 Nondiscrimination.

(a) *Race, color, national origin.* Attention is called to the requirements of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d; 78 Stat. 252) which provides that no person in the United States shall, on the ground of race, color, or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. A regulation implementing such Title VI has been issued by the Secretary of Health, Education, and Welfare with the approval of the President (45 CFR Part 80). Such regulation is applicable to assistance provided under Title III of the Act and the regulations of this part.

(b) *Handicapped individuals.* Attention is called to the requirements of section 504 of the Rehabilitation Act of 1973, as amended, which provides that no otherwise qualified handicapped individual in the United States shall, solely by reason of his handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

(c) *Admission of alcohol abusers to federally assisted private and public general hospitals and outpatient facilities.* Attention is called to section 321 of the Act (42 U.S.C. 4581) which provides that alcohol abusers and alcoholics who are suffering from medical conditions shall not be discriminated against in admission or treatment, solely because of their alcohol abuse or alcoholism, by any private or public general hospital or outpatient facility (as defined in section 1633(6) of the Public Health Service Act, 42 U.S.C. 300s-3(6)) which receives support in any form from any program supported in whole or in part by funds appropriated to any Federal department or agency.

§ 54a.104 Confidentiality of patient records.

Attention is called to section 333 of the Act (42 U.S.C. 4582) which provides that records of the identity, diagnosis, prognosis, or treatment of any patient which are maintained in connection with the performance of any program or activity relating to alcoholism or alcohol abuse education, training, treatment, rehabilitation or research, which is conducted, regulated, or directly or indirectly assisted by any department or agency of the United States, shall be confidential and may be disclosed only for the purposes and under the circumstances

expressly authorized under section 333 of the Act. Violations of section 333 are subject to a fine of not more than $500 in the case of a first offense and not more than $5,000 in the case of each subsequent offense. A regulation implementing section 333 of the Act has been promulgated (42 CFR Part 2).

§ 54a.105 Reviews required by Health Planning and Resources Development Act.

Attention is called to section 1524(c)(6) of the Public Health Service Act (42 U.S.C. 300m-3(c)(6)) which requires that the Statewide Health Coordinating Council, if any, established under section 1524 annually review and approve or disapprove the alcohol abuse and alcoholism State plan and any application for alcohol formula grant funds submitted to the Secretary. Attention is also called to section 1513(e)(1)(A) of the Public Health Service Act (42 U.S.C. 3001-2(e)(1)(A)) which requires that the Health Systems Agency, if any, established under section 1513 review and approve or disapprove each proposed use within its health service area of Federal funds for the development, expansion, or support of health resources which are made available through project grants for the prevention and treatment of alcohol abuse and alcoholism and through special grants for implementation of the Uniform Alcoholism and Intoxication Treatment Act and Federal funds made available through grants and contracts by the State from alcohol abuse and alcoholism formula grants. Attention is also called to section 1536 (42 U.S.C. 300n-5), which authorizes the State Health Planning and Development Agency to perform this review under section 1513(e)(1)(A) in those States where health service areas will not be established and health systems agencies will not be designated.

§ 54a.106 Applicability of 45 CFR Part 74.

The relevant provisions of 45 CFR Part 74, establishing uniform administrative requirements and cost principles, shall apply to all grants under this part to State and local governments as those terms are defined in Subpart A of that Part 74; the relevant provisions of the following subparts of Part 74 shall also apply to grants to all other grantee organizations under Subpart D of this part:

45 CFR PART 74

Subpart
A. General.
B. Cash Depositories.
C. Bonding and Insurance.
D. Retention and Custodial Requirements for Records.
F. Grant-Related Income.
G. Matching and Cost Sharing.
K. Grant Payment Requirements.
L. Budget Revision Procedures.
M. Grant Closeout, Suspension and Termination.
O. Property.
Q. Cost Principles.

Subpart B—Formula Grants to States

AUTHORITY: 42 U.S.C. 4571-4573.

§ 54a.201 Applicability.

This subpart applies only to grants under sections 301-303 of the Act (42 U.S.C. 4571-4573) to assist States in planning, establishing, maintaining, coordinating, and evaluating projects for the development of more effective prevention, treatment, and rehabilitation programs to deal with alcohol abuse and alcoholism.

§ 54a.202 Definitions.

All terms not defined herein shall have the same meaning as given them in § 54a.102. As used in this subpart:

(a) "State agency" means the single State agency, which may be an individual agency or an inter-departmental agency, designated pursuant to section 303(a)(1) of the Act as the sole agency for the administration of the State plan or for supervising the administration of the State plan.

(b) "State plan" means the document for planning, establishing, conducting, coordinating, and evaluating projects for the development of more effective prevention, treatment, and rehabilitation programs within the State to deal with alcohol abuse and alcoholism, which contains the information, proposals, and assurances required by section 303 of the Act and the regulations of this subpart.

(c) "Treatment" means any of the broad range of emergency, outpatient, intermediate, and inpatient services and care, including diagnostic evaluation, medical, psychiatric, psychological, and social service care, vocational rehabilitation and career counseling, which may be extended to persons with alcohol abuse problems.

(d) "Population", with respect to any State or area thereof, means the latest figures of total population certified by the United States Department of Commerce.

§ 54a.203 Allotments to States.

(a) The allotments to the several States under section 302 of the Act will be computed by the Secretary as follows:

(1) One-third weight on the basis of need for more effective prevention, treatment, and rehabilitation programs to deal with alcohol abuse and alcoholism, expressed by the relationship of the population in each State to the total population of all the States.

(2) Two-thirds weight on the basis of total population weighted by financial need, as determined by the relative per capita income for each State for the three most recent consecutive years for which data is available from the United States Department of Commerce.

(b) If, after determining the amount of the allotment for each State in accordance with paragraph (a) of this section, it appears that any State (with the exception of the Virgin Islands, American Samoa, Guam, and the Trust Territory of the Pacific Islands) will receive less than $200,000, the minimum allotment prescribed by section 302(a) of the Act, the Secretary shall reduce the shares of each State which would receive more than $200,000 by an equal percentage and reallocate those sums as required to assure that every State (other than the Virgin Islands, American Samoa, Guam, and the Trust Territory of the Pacific Islands) will receive at least $200,000.

§ 54a.204 Transfer of allotments.

(a) *Allotments to the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.* Any amount allotted to a State in a fiscal year (other than the Virgin Islands, American Samoa, Guam, and the Trust Territory of the Pacific Islands) which is unobligated at the end of that year shall remain available to the State, for the purposes for which made, for the next fiscal year (and for such year only), and that amount shall be in addition to the amounts allotted to the State for that purpose for the next fiscal year; except than any amount, remaining unobligated at the end of the sixth month following the end of the year in which it was allotted, which the Secretary determines will remain unobligated by the close of the next fiscal year, may be reallotted by the Secretary to any other of the States having need therefor, on such basis as the Secretary deems equitable and consistent with the purposes of the Act and the regulations of this subpart. Funds thus reallotted to any of the States shall be available for the purposes for which made until the close of such next fiscal year and shall be in addition to the amounts allotted and available for the same period.

(b) *Allotments to the Virgin Islands, American Samoa, Guam, and the Trust Territory of the Pacific Islands.* Any amount allotted to the Virgin Islands, American Samoa, Guam, or the Trust Territory of the Pacific Islands in a fiscal year which is unobligated at the end of that year shall remain available for the purposes for which made, for the next two fiscal years (and for such years only), and that amount shall be in addition to the amounts allotted for that purpose for each of the next two fiscal years; except that any amount remaining unobligated at the end of the first of the next two fiscal years, which the Secretary determines will remain unobligated at the close of the second of the next two fiscal years, may be reallotted by the Secretary to any other of the four States (Virgin Islands, American Samoa, Guam, and the Trust Territory of the Pacific Islands) having need therefor on such basis as the Secretary deems equitable and consistent with the purposes of the Act and the regulations of this subpart. Funds thus reallotted to any of those four States shall be available for the purposes for which made until the close of the second of the next two fiscal years and shall be in addition to the amounts allotted and available for the same period.

(c) *Reallotment approval.* Funds will not be reallotted to a State under paragraphs (a) and (b) of this section unless the Secretary finds that:

(1) The State has an approved State plan for the fiscal year during which the reallotted funds would be available for expenditure; and

(2) The State has filed the report required under paragraph (d) of this section and has provided such additional information as the Secretary may request with regard to the proposed use of the funds to be reallotted.

(d) *Reports.* Each State shall, with respect to each fiscal year in which it receives an allotment, submit a report to the Secretary which shall set forth the amount of the allotment remaining unobligated as of the date of the report, the State's plans, if any, for obligating such unobligated amount, the need, if any, for additional funds, and the State's plans for meeting such need if such additional funds are made available through reallotment.

(1) A State (other than the Virgin Islands, American Samoa, Guam, and the Trust Territory of the Pacific Islands) shall submit the report within 60 days of the end of the sixth month following the end of the fiscal year in which the allotment was made.

(2) The Virgin Islands, American Samoa, Guam, and the Trust Territory of the Pacific Islands shall submit the report within 60 days of the end of the first fiscal year following the fiscal year in which the allotment was made.

§ 54a.205 Allotment; administrative expenditures.

(a) At the request of a State on such forms, at such time, and in such manner as the Secretary may prescribe, a portion of any allotment or allotments of the State shall be available to pay that portion of the expenditures found necessary by the Secretary for the proper and efficient administration during the year of the State plan approved under the Act and the regulations of this subpart, except that not more than 10 percent of the total of the allotments of the State for a year, or $50,000 whichever is less, shall be available during the year for that purpose.

(b) *Allowable costs.* Allowability of administrative costs shall be dtermined in accordance with the applicable cost principles set forth in Subpart Q of 45 CFR Part 74. Expenditures which are allowable, if found necessary for the proper and efficient administration of the State plan, include:

(1) Costs of compensation of personnel and other administrative expenditures directly related to the preparation and administration of the State plan or to supervising that preparation and administration; and

(2) Expenditures incurred by a State advisory council established pursuant to section 303(a)(3) of the Act, including per diem and travel expenses incurred by council members at rates not exceeding those established under applicable State law.

(c) *Unallowable costs.* Funds made available under this section may not be used for:

(1) Administrative costs exceeding 10 percent of the total of the allotment of a State for a year or $50,000, whichever is less;

(2) Administrative costs attributable to programs other than those funded under this subpart;

(3) Costs of central administrative departments of State and local governments other than those directly related to administration of the State plan;

(4) Administrative costs relating to services which the State is required to provide at its own expense in order to satisfy the maintenance of effort requirements of the Act and the regulations of this subpart;

(5) Acquisition of land or construction or acquisition of buildings; or,

(6) Matching other Federal grants.

§ 54a.206 Allotment; equipment, supplies, or personnel in lieu of cash.

At the request of a State on such forms, at such time, and in such manner as the Secretary may prescribe, the Secretary may, in lieu of cash payments, furnish equipment or supplies to the State or detail to the State officers or employees of the Department of Health, Education, and Welfare when he finds that the equipment, supplies, or personnel would be used for purposes for which an allotment would be available under the Act and the regulations of this subpart. In that case, the Secretary will reduce the payments to which the State would otherwise be entitled from its allotment for the fiscal year by an amount which equals the fair market value of the equipment and supplies furnished and by the amount of the pay, allowances, traveling expenses, and other costs incurred in connection with the detail of officers or employees. The amount by which the payments are reduced shall be available for the payment of the costs incurred by the Secretary in furnishing the equipment, supplies, and personnel but that amount shall, for purposes of determining the allotment under section 302(a) of the Act and § 54a.203, be deemed to have been paid to the State.

§ 54a.207 State plan; submission and review.

(a) *Submission.* To receive funds from its allotment a State must submit to and have approved by the Secretary a State plan which contains or, as required by these regulations, incorporates by reference the information, proposals, and assurances specified in the Act and in the regulations of this subpart. Documents incorporated by reference become a part of the State plan as though fully set forth therein. Such documents must be:

(1) Clearly identified as to subject, date and location;

(2) Officially adopted and disseminated in accordance with applicable procedures; and

(3) Made available to the Secretary and readily available to the public for inspection.

(b) *Modification.* The State agency shall from time to time, but not less often than annually, review its State plan and submit to the Secretary for approval modifications thereof which shall:

(1) Contain budgetary requirements for the new fiscal year and such updates of the assurances and information, which under this subpart must be contained in the State plan, as may be prescribed by the Scretary; and

(2) Incorporate by reference such changes in the proposals and information, which under this subpart must be incorporated by reference in the State plan, as may be prescribed by the Secretary and such additional changes as the State agency may consider to be necessary.

(c) *Assessment of progress.* The State agency shall submit to the Secretary periodic reports assessing the progress of the State in implementing its State plan in such form and manner as the Secretary may prescribe. Such a report shall first be submitted with the State plan submitted for the first fiscal year beginning after September 30, 1977. Thereafter, the State agency shall make additional reports every third year in which it receives an allotment.

(d) *Review and comment by the Governor.* The State plan, any modification thereof, and all assessments of progress shall be submitted to the Governor of the State for his review and comment at least 45 days prior to submission of the plan, modification, or assessment of progress to the Secretary. The comments of the Governor, or such documentation of his review without comment as the Secretary may prescribe, must be submitted to the Secretary with the plan, modification, or assessment of progress.

(e) *Publicized plan.* The State agency shall publicize a general description of the proposed plan, modification, or assessment of progress at least 30 days prior to the submission of the plan, modification or assessment of progress to the Secretary. The State plan, modifications thereof, and assessments of progress must be readily available and accessible for examination and comment by interested persons prior to submission to the Secretary and during the period they are in effect.

§ 54a.208 State plan; purpose, coordination.

(a) *Purpose.* The purpose of the State plan is to provide a rational and more effective basis for the utilization of Federal, State, and all other available resources in planning, establishing, conducting, maintaining, coordinating, and evaluating prevention, treatment, and rehabilitation projects and programs to deal with alcohol abuse and alcoholism in the State and for ongoing planning for improvement and expansion of such activities, as necessary.

(b) *Coordination of alcohol abuse and alcoholism prevention, treatment, and rehabilitation programs.* The State plan must: (1) Incorporate by reference a description of the policies and procedures under which the State agency will review and comment upon applications for assistance under section 311 of the Act (42 U.S.C. 4577). As a minimum the policies and procedures must provide for:

(i) A written evaluation of the project set forth in the application which shall include comments on the relationship of the project to other projects pending and approved, and to the State plan.

(ii) State agency submission of such evaluation to the Secretary within 30 days of the date upon which the State agency received the application for assistance.

(iii) The furnishing of a copy of the evaluation to the applicant.

(2) Incorporate by reference the policies and procedures under which the State agency will, to the maximum extent practicable, coordinate and review the activities of other agencies within the State government, local and metropolitan area agencies, and interstate agencies to assure that all programs for the provision of services for people with alcohol abuse problems are consistent with the State plan. As a minimum, these policies and procedures must include provisions under which:

(i) The State agency will review and evaluate proposals for programs and projects directly or indirectly related to the development of more effective prevention, treatment, and rehabilitation programs to deal with alcohol abuse and alcoholism which are submitted to it by other agencies; and

(ii) The State agency will ensure that those agencies or authorities with interests or responsibilities related to the project and program proposals developed or reviewed by the State agency have been afforded an opportunity to review the proposals.

(3) Provide assurance that the State agency will cordinate its planning with local alcoholism and alcohol abuse planning agencies and with other State and local health planning agencies.

(4) Incorporate by reference documentary evidence that all applicable requirements for submitting the State plan for review under Title XV of the Public Health Service Act (42 U.S.C. 300k–1—300n–5) have been met.

§ 54a.209 State plan; single State agency.

(a) The State plan must incorporate by reference documentary evidence of the designation or establishment of a single State agency. Such documentation shall include:

(1) The Executive Order, statute, resolution, motion or similar action by the State authority which designated or established the State agency; and,

(2) Evidence that the State agency has legal authority to carry out the State plan and all duties and responsibilities required by the Act and the regulations of this subpart.

(b) If the State agency is responsible for State programs in addition to the State alcohol abuse and alcoholism program, the State plan must incorporate by reference documents which identify the officials who will head each area of responsibility, and which establish policies and procedures for ensuring that separate records are maintained with respect to each program and that all other applicable Federal requirements are met.

(c) The State plan must incorporate by reference documents which describe methods under which the State agency will either administer or supervise the administration of the activities to be carried out under the State plan. If part or all of the responsibility for administering the State plan has been or is to be delegated to one or more agencies (under the supervision of the State agency), the State plan must incorporate by reference documents which identify such other agency or agencies, including local government agencies, and set forth the responsibilities of each such agency.

§ 54a.210 State plan; State advisory council.

(a) *Establishment; scope of authority.* The State plan must incorporate by reference documents which provide for the designation or establishment of a State Alcohol Abuse Advisory Council to consult with and advise the State agency in carrying out the State plan.

(b) *Membership.* (1) The membership of the State Alcohol Abuse Advisory Council shall, to the extent practicable, be drawn from different geographical areas of the State, and shall provide representation for:

(i) Nongovernmental organizations concerned directly or indirectly with alcohol abuse and alcoholism, such as local affiliates of the National Council on Alcoholism, local citizen groups, employee groups, labor and management, members of Alcoholics Anonymous, and other provider, consumer, and consumer advocate groups; and

(ii) Public agencies concerned directly or indirectly with alcohol abuse and alcoholism, such as local elected officials or representatives of health and mental health agencies, vocational rehabilitation agencies, welfare agencies, and law enforcement agencies; and

(iii) The minority, poverty, and major population groups which are significantly affected by the problems of alcohol abuse and alcoholism and which are to be served under the State plan; and

(iv) At least one representative of the Statewide Health Coordinating Council established pursuant to section 1524 of the Public Health Service Act (42 U.S.C. 300m–3).

(2) The State plan shall incorporate by reference documents which contain the policies and procedures for selection of Advisory Council members, and a list of members for the current fiscal year, their names, addresses, occupations, and affiliations.

(c) *Meetings; recommendations.* (1) The State plan must incorporate by reference guidelines and instructions establishing the time, place, and frequency of meetings of the Council which shall provide, as a minimum, for annual meetings of the Council.

(2) The State agency shall maintain records of the recommendations made to it by the State Alcohol Abuse Advisory Council and, if such recommendations are not adopted, the reasons therefor.

§ 54a.211 State plan; survey of need, resource allocation plan.

(a) *Need.* Each State plan must set forth a survey of the need for prevention, treatment, and rehabilitation programs to deal with alcohol abuse and alcoholism, including a survey of the need for health facilities to provide services for alcohol abuse and alcoholism. The survey of need shall encompass the social, economic, and medical aspects of the problem of alcohol abuse and alcoholism; and shall take into account the relative extent of the problems of alcohol abuse and alcoholism within various population groups (including women and individuals under the age of eighteen) or areas as follows:

(1) Estimate the proportion of the population of the State with alcohol abuse and alcoholism problems and the proportion of the population directly or indirectly affected by such problems.

(2) Identify areas within the State with a high incidence of alcohol abuse and alcoholism problems determined on the basis of:

(i) The demographic and socioeconomic characteristics of the population within each area identified, such as age, sex, income, employment, underemployment and unemployment rates, types of occupation, housing conditions, pertinent geographical factors, and ethnic makeup of the area; and

(ii) The special needs of specific population groups within each area with actual or potential problems of alcohol abuse and alcoholism, such as drinking drivers, chronic public intoxicants, offenders within the correctional system, women, senior citizens, youth (individuals under the age of eighteen), Indians, employees of State and local governments and private industry, and groups within each such area whose occupational and social conditions make them vulnerable to alcohol abuse and alcoholism.

(3) Estimate the extent of the problem of alcohol abuse and alcoholism compared to other health and social problems confronting the people of the State.

(b) *Current resources.* The State plan shall contain a description of the present availability and accessibility of public and private resources for the provision of alcohol abuse and alcoholism prevention, treatment, and rehabilitation services, including:

(1) A complete inventory (to the extent feasible) of all private and public resources available in the State for such purposes including but not limited to programs funded under State and local laws, occupational programs for employees in State and local government and in private industry or other work settings, voluntary organizations, education programs, military and Veterans' Administration resources, community mental health centers, hospitals, and other health care or social service centers which provide such services;

(2) Personnel qualified to provide such services;

(3) Financial support, including public and private third party payments, for the provision of such services;

(4) State laws affecting the availability and accessibility of such resources; and

(5) Other health and social problems confronting the State which may affect the availability of resources for meeting alcohol abuse and alcoholism problems.

(c) *Additional resources needed.* The State plan must contain a description of the additional resources, including facilities, personnel, training, technical assistance, and funds, necessary to meet those needs identified pursuant to paragraph (a) of this section which are not being met by the existing resources described pursuant to paragraph (b) of this section.

(d) *Action plan.* The State plan must set forth a comprehensive action plan establishing priorities for the development and distribution throughout the State of alcohol abuse and alcoholism prevention, treatment, and rehabilitation programs and facilities. This plan must:

(1) Utilize, to the extent practicable, the existing resources described in paragraph (b) of this section;

(2) Describe the steps necessary to secure and develop the necessary resources described in paragraph (c) of this section;

(3) Establish priorities for the distribution of facilities and services in all geographic areas and subareas of the State;

(4) Set forth, in the order of such priorities, the additional projects and programs required to meet the unmet need, the estimated costs of each and the source of financial and other resources expected to support each project or program, including formula grant support made available under the Act and the regulations of this subpart;

(5) Include a timetable for completing all such projects and programs; and

(6) Include a long term plan for expansion or diminution of existing resources or development of new resources in accordance with projected estimates of future needs.

§ 54a.212 State plan; criteria for construction and licensing of facilities. [Reserved]

COMMENT: Criteria are currently being developed for standards (including enforcement procedures and penalties) for (1) The construction and licensing of public and private facilities for the treatment of alcohol abuse and alcoholism and (2) For other community services or resources available to assist individuals to meet problems resulting from alcohol abuse. Comments and suggestions concerning the scope and content of the criteria will be welcomed.

§ 54a.213 State plan; personnel administration.

(a) *Merit system personnel.* The State plan shall provide for the establishment and maintenance of personnel standards on a merit basis for persons employed by by the State agency in the administration or supervision of the administration of the State plan. Conformity with Standards for a Merit System of Personnel Administration, 45 CFR Part 70, issued by the Secretary of Health, Education, and Welfare, including any amendments thereto, and any standards prescribed by the U.S. Civil Service Commission pursuant to section 208 of the Intergovernmental Personnel Act of 1970 (Pub. L. 91-648; 84 Stat. 1915) modifying or superseding such standards, will be deemed to meet this requirement as determined by said Commission. Laws, rules, regulations, and policy statements, and amendments thereto, effectuating such methods of personnel administration shall be incorporated by reference in the State plan.

(b) *Equal employment opportunity.* Equal employment opportunity will be assured in the State merit system and affirmative action provided in its administration. Discrimination against any person in recruitment, examination, appointment, training, promotion, retention, discipline or any other aspect of personnel administration because of political or religious opinions or affiliations or because of race, national origin, or other nonmerit factors will be prohibited. Discrimination on the basis of age or sex or physical disability will be prohibited except where specific age, sex or physical requirements constitute a bona fide occupational qualification necessary to proper and efficient administration. The State merit system must include procedures for appeals in cases of alleged discrimination to an impartial body whose determination shall be binding upon a finding of discrimination. The State must develop an affirmative action plan to assure such equal employment opportunity which shall be subject to inspection, comment and approval by the Secretary. Such plan shall contain such information and be completed on such date as the Secretary may prescribe.

(c) *Nondiscrimination on the basis of prior alcohol abuse.* The State shall contain an assurance that the State will establish policies and procedures to assure that no qualified applicant for a position supported in whole or in part from funds made available from the State's allotment will be denied employment solely on the basis of having or not having a prior history of alcohol abuse.

(d) *Other personnel.* The State plan must include professional standards to be followed in hiring individuals (other than employees under a government merit system) to carry out activities related to the implementation of the State plan. Such standards shall include schedules or other bases upon which the salaries of such personnel are determined and paid which shall be in accord with the usual and customary practices in the State.

§ 54a.214 State plan; Nondiscrimination by federally assisted private and public general hospitals and outpatient facilities in the admission and treatment of alcohol abusers.

(a) The State plan must provide that the State agency will:

(1) Review admissions to private and public general hospitals and outpatient facilities to assist the Secretary in determining the compliance of such facilities with section 321 of the Act (42 U.S.C. 4581) which provides that alcohol abusers and alcoholics who are suffering from medical conditions shall not be discriminated against in admission or treatment, solely because of their alcohol abuse or alcoholism, by any private or public general hospital or outpatient facility (as defined in section 1633(6) of the Public Health Service Act, 42 U.S.C. 300s-3(6)) which receives support in any form from any program supported in whole or in part by funds appropriated to any Federal department or agency, and

(2) Make periodic reports to the Secretary respecting such review at such time and on such forms as the Secretary may prescribe.

§ 54a.215 Assurances.

In addition to any other assurances required by law and the regulations of this subpart the State plan must contain the following assurances:

(a) *Maintenance of effort.* An assurance that Federal funds made available under sections 301-303 of the Act and the regulations of this subpart will be so used as to supplement and increase, to the extent feasible and practical, the level of State, local and other non-Federal funds that would in the absence of such Federal funds to made available for the programs described in sections 301-303 of the Act and will in no event supplant such State, local, and other non-Federal funds. A State will be considered to be in substantial compliance with such assurance if the Secretary finds that the aggregate level of State, local, and other non-Federal funds expended for alcohol abuse prevention, treatment, and rehabilitation services and activities carried out under the State plan with Federal assistance made available under sections 301-303 of the Act is no lower for any fiscal year than the aggregate level of those expenditures in the immediately preceding fiscal year, except that the Secretary may take into consideration the extent to which the level of such funds for any fiscal year may have included funds for an activity of a nonrecurring nature.

(b) *Community service.* Assurances that all facilities, programs, and services supported in whole or in part with funds made available under sections 301-303 of the Act and the regulations of this subpart will be:

(1) Responsive to the needs of all members of the population to be served and made available to them without discrimination on the grounds of sex, creed, duration of residence, or ability or inability to pay for services;

(2) So publicized as to be generally known to the population to be served; and

(3) So located as to be readily accessible to the population to be served.

(c) *Records and reports.* An assurance that the State agency will comply with the provisions of 45 CFR Part 74 relating to records and reports.

(d) *Certification, accreditation, or licensure requirements.* Assurance that State certification, accreditation, or licensure requirements, if any, applicable to alcohol abuse and alcoholism treatment facilities and personnel take into account the special nature of such programs and personnel, including the need to encourage the development of nonmedical modes of treatment and the need to acknowledge previous experience when assessing the adequacy of treatment personnel.

(e) *Performance standards.* Reasonable assurance that prevention or treatment programs supported by funds made available under section 302 of the Act have provided to the State agency a proposed performance standard or standards to measure, or research protocol to determine, the effectiveness of such prevention or treatment programs or projects.

(f) *Women and youth.* Assurance that prevention and treatment programs within the State will be designed to meet the need of women and individuals under the age of eighteen for alcohol abuse and alcoholism prevention and treatment.

(g) *Relocation assistance.* An assurance that the State agency will comply with the requirements of the Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (Pub. L. 91-646) and the applicable regulations issued thereunder (45 CFR Part 15).

Subpart C—Special Grants for Implementation of the Uniform Alcoholism and Intoxication Treatment Act [Reserved]

Subpart D—Project Grants for the Prevention and Treatment of Alcohol Abuse and Alcoholism

AUTHORITY: 42 U.S.C. 4577.

§ 54a.401 Applicability.

This subpart applies only to grants under section 311 of the Act (42 U.S.C. 4577) for the prevention and treatment of alcohol abuse and alcoholism and for the rehabilitation of alcohol abusers and alcoholics.

§ 54a.402 Definitions.

All terms not defined herein shall have the same meaning as given them in § 54a.102. As used in this subpart:

(a) "Council" means the National Advisory Council on Alcohol Abuse and Alcoholism established pursuant to section 217 of the Public Health Service Act (42 U.S.C. 218).

(b) "Nonprofit" as applied to a private entity means that no part of the net earnings of such entity inures or may lawfuly inure to the benefit of any shareholder or individual.

(c) "Project period" means the total period of time for which support for a project has been recommended as specified in the grant award document. Such recommendation does not commit or obligate the Federal government to any addition, supplemental or continuation support beyond the current budget period.

(d) "Budget period" means the interval of time (usually 12 months) into which the project period has been divided for budgetary and reporting purposes and for which the Government has made a financial commitment to fund a particular project.

§ 54a.403 Eligibility.

(a) *Eligible applicants.* To be eligible for a grant award under this subpart, an applicant must be a public or nonprofit private entity.

(b) *Eligible projects.* To be eligible for a grant award under this subpart, an eligible applicant must propose a project which is designed:

(1) To demonstrate innovative approaches to solving the problems of alcohol abuse and alcoholism such as:

(i) New methods and programs for the prevention and treatment of alcohol abuse and alcoholism and for the rehabilitation of alcohol abusers and alcoholics;

(ii) The adaptation of existing services to meet the needs of specific population groups; or,

(iii) Methods for initiating or improving delivery systems for alcohol abuse and alcoholism prevention, treatment, and rehabilitation services at local, State, or regional levels (including projects designed to develop methods for the effective coordination of all alcoholism training, treatment, and prevention and research resources available within a health service area established pursuant to section 1511 of the Public Health Service Act, 42 U.S.C. 300l);

(2) To provide prevention, treatment, or rehabilitation services for persons with alcohol abuse and alcoholism problems, with special emphasis on currently underserved populations and individuals in geographic areas where such services are not otherwise adequately available, including the training of persons to provide such services;

(3) To educate and train professional or nonprofessional personnel for the prevention and treatment of alcohol abuse and alcoholism and for the rehabilitation of alcohol abusers and alcoholics (including personnel attempting to meet certification requirements of public or private accreditation or licensure, or requirements of third-party payors);

(4) To provide alcohol abuse and alcoholism prevention, treatment, and rehabilitation programs and services through, or in cooperation with, law enforcement personnel, schools, courts, penal institutions and other public agencies; or

(5) To provide, on a local, State or national basis, counseling and education activities for the prevention and treatment of alcohol abuse and alcoholism and for the rehabilitation of alcholic abusers and alcoholics.

§ 54a.404 Application.

(a) Each eligible entity desiring a grant under this subpart shall submit an application in such form and at such time as the Secretary may prescribe.[1] The application shall contain a full and adequate description of the proposed project and of the manner in which the applicant intends to conduct the project and carry out the requirements of this subpart, a budget and justification of the amount of funds required, and such other pertinent information as the Secretary may require.

(b) The application shall be executed by an individual authorized to act for the applicant and to assume for the applicant the obligations imposed by the terms and conditions of any award including the regulations of this subpart.

(c) An application to the Secretary from an applicant within a State must:

(1) Provide assurance that a copy of the application has been forwarded for review by the State agency designated under section 303 of the Act, if that designation has been made;

(2) Include evidence that all applicable requirements for submitting the application for review under Title XV of the Public Health Service Act (42 U.S.C. 300k-1-300n-5) have been met.

(3) Include evidence that the requirements of Part I of Office of Management and Budget Circular No. A-95 have been satisfied.

§ 54a.405 Project requirements.

To be considered for approval under this subpart, an application must, as relevant to the particular project proposed:

(a) Contain an assurance that all activities to be carried out under the grant will be substantially administered by or under the supervision of the applicant.

(b) Contain an assurance that Federal funds made available under the Act will not supplant non-Federal funds otherwise available for carrying out the activities which are eligible for assistance under this subpart and that such funds will, to the extent practical, be used to increase the level of funds otherwise available for such activities. A recipient of assistance under this subpart will be considered to be in substantial compliance with such assurance if the Secretary finds that the aggregate level of non-Federal funds available to and spent by an applicant to which Federal grant funds are made available under the Act and the regulations of this subpart is no lower for any fiscal year than if it was for the immediately preceding fiscal year, except that the Secretary may take into consideration the extent to which the level of such funds for any fiscal year may have included funds for an activity of a nonrecurring nature.

[1] Prevention grant applications and instructions may be obtained from the Director of the National Institute on Alcohol Abuse and Alcoholism, 5600 Fishers Lane, Rockville, Maryland 20857. Treatment grant applications and instructions may be obtained from the designated State Alcoholism Authority for the State in which the applicant is located or directly from the National Institute on Alcohol Abuse and Alcoholism.

(c) Contain an assurance that no qualified applicant for a position supported in whole or in part from grant funds made available under this subpart will be denied employment solely on the basis of having or not having a prior history of alcohol abuse or alcoholism.

(d) Provide for such methods of administration as the Secretary prescribes as necessary for the proper and efficient operation of the project, including the requirements prescribed by the regulations of this subpart.

(e) Describe fiscal control and fund accounting procedures which meet the requirements prescribed by the Secretary for assuring proper disbursement of and accounting for Federal funds paid to the applicant, including the requirements of the regulations of this subpart.

(f) Provide evidence satisfactory to the Secretary of the need for the particular type of project proposed.

(g) Describe how the project will serve or support the provision of services to a particular community, area, or population group.

(h) Provide, in the case of treatment projects, an estimate of the number of persons to be served by each program element, i.e., inpatient, outpatient, intermediate care, etc. for each budget period of the project period.

(i) Provide, in the case of treatment projects, an estimate of the costs per unit of service, i.e., inpatient day, outpatient hour, intermediate care day, etc. for each budget period of the project period.

(j) Describe the facilities (including the location thereof) which will be utilized in the conduct of the project.

(k) Describe the extent to which the project will utilize existing community resources (including community mental health centers).

(l) Describe how the project will be integrated with, and, involve the active participation of, a wide range of public and nongovernmental agencies, organizations, institutions, and individuals, including individuals representative of the population to be served by the project. The description must specify how such agencies, organizations, institutions, and individuals have been given an opportunity to participate in the development of the project and will be given an opportunity to participate in the implementation and evaluation of such project.

(m) Propose a performance standard (or standards) to measure, or research protocol to determine, the effectiveness of services provided under the project.

(n) Agree to provide client demographic, treatment service, and resource data, as required, for the routine monitoring of treatment projects at the Federal level.

(o) Describe how the project will become self-sufficient.

(p) Provide assurance that all services provided under the project will be made available on a voluntary basis (to the extent possible) without the imposition as a condition of eligibility for services of any durational residence or referral requirement and that services will be made available in such manner as to protect the dignity and rights of individuals.

(q) Provide assurance that no person shall be denied services by reason of his inability to pay therefor, but that the applicant shall:

(1) Comply with 42 CFR 50.101–50.106 which, among other things, require each project to establish a plan to: (i) Institute sound fiscal management procedures so that it can recover to the maximum extent feasible third-party revenues to which it is entitled as a result of services provided; (ii) Garner all other available Federal, State, local and private funds; and (iii) Charge beneficiaries according to their ability to pay for services provided, without creating a barrier to those services; and

(2) Otherwise seek, whenever possible, to provide care under public and private health insurance plans.

(r) Contain a plan for the performance of informational and educational activities to inform the community or population to be served of the availability of services under the project and to promote continuing participation in the project by persons to whom alcohol abuse and alcoholism prevent, treatment, and rehabilitation services may be beneficial.

(s) Include a description of the standards and qualifications which will be required for personnel and facilities utilized in carrying out the project.

(t) Indicate whether a substantial number of individuals in the population served by the project are of limited English-speaking ability and, where a substantial number are of limited English-speaking ability, describe how the project will:

(1) Utilize the services of outreach workers fluent in the language spoken by a predominant number of such individuals, and

(2) Develop a plan and make arrangements responsive to the needs of such population for providing services to the extent practicable in the language and cultural context most appropriate to such individuals, and

(3) Identify an individual who is employed by, or available to, the project on a full-time basis who is fluent both in that language and English and whose responsibilities shall include providing guidance to the individuals of limited English-speaking ability and to appropriate staff members with respect to cultural sensitivities and bridging linguistic and cultural differences.

(u) In the case of applicants which received assistance under the Community Mental Health Centers Act, contain assurances satisfactory to the Secretary that the recipient will undertake to develop and maintain such new and existing relationships, including affiliation agreements, with community mental health centers and providers of alcohol services in its service area as are sufficient to assure the availability of mental health and alcohol services to the population served by the recipient.

§ 54a.406 Evaluation and grant award.

(a) Within the limits of funds available for such purpose, the Secretary, after taking into account the comments, if any, of the State agency designated under section 303 of the Act and of appropriate peer review groups, may award grants to cover all or part of the cost of those projects which have been recommended for approval by the Council and which will in his judgment best promote the purposes of section 311 of the Act, giving special consideration to those projects for prevention and treatment of alcohol abuse and alcoholism by women and by individuals under the age of eighteen and taking into consideration the following factors, among others, as relevant to the particular project proposed:

(1) The administrative and management capability and competence of the applicant;

(2) The ability of the applicant to provide care of good quality taking into account factors such as the adequacy of the applicant's facilities and staff;

(3) The extent to which the activities to be carried out under the project are needed to provide, or support the provision of alcohol abuse and alcoholism prevention, treatment, and rehabilitation services in the community or population to be served;

(4) The relative availability of non-Federal resources within the community or population to be served and the degree to which those resources are committed to the project and will progressively supplant Federal funds; and

(5) The degree to which the project application adequately meets the applicable requirements set forth in §§ 54a.404 and 54a.405.

(b) The amount of any award shall be determined by the Secretary on the basis of his estimate of the sum necessary for all of a designated portion of the direct costs of the project plus an additional amount for indirect costs, if any, which will be calculated by the Secretary either:

(1) On the basis of his estimate of the actual indirect costs reasonably related to the project; or

(2) On the basis of a percentage of all or a designated portion of the estimated direct costs of the project when there are reasonable assurances that the use of such percentage will not exceed the approximate actual indirect costs.

Such award may include an estimated provisional amount for indirect costs or for designated direct costs such as fringe benefit rates subject to upward (within the limits of available funds) as well as downward adjustments to actual costs when the amount properly expended by the grantee for provisional items has been determined by the Secretary.

(c) All grant awards shall be in writing, shall set forth the amount of funds granted and the period for which such funds will be available for obligation by the grantee.

(d) Neither the approval of any project nor the award of any grant shall commit or obligate the United States in any way to make any additional, supplemental, continuation, or other award with respect to any approved project or portion thereof. For continuation support (i.e., support for a subsequent budget period within the project period), grantees must make separate applications at such times and on such forms as the Secretary may direct.

§ 54a.407 Payments.

The Secretary shall from time to time make payments to a grantee of all or a portion of any grant award, either in advance or by way of reimbursement for expenses incurred or to be incurred in the performance of the project, to the extent he determines such payments necessary to promote prompt initiation and advancement of the approved project.

§ 54a.408 Expenditure of grant funds.

(a) Any funds granted pursuant to the subpart, and any non-Federal funds required as a condition of the grant to be expended in the project, shall be expended solely for carrying out the approved project in accordance with section 311 of the Act, the regulations of this subpart, the terms and conditions of the award, and the applicable cost principles prescribed by Subpart Q of 45 CFR Part 74.

(b) Any unobligated grant funds remaining in the grant account at the close of a budget period may be carried forward with the prior approval of the Secretary and be available for obligation during subsequent budget periods of the project period. The amount of a subsequent award will take into consideration the amount remaining in the grant account. At the end of the last budget period of the project period, any unobligated grant funds remaining in the grant account must be refunded to the Federal Government.

§ 54a.409 Grantee accountability.

(a) *Accounting for grant payments.* All payments made by the Secretary shall be recorded by the grantee in accounting records which identify adequately the source and application of funds for grant or subgrant/subcontract supported activities. These records shall contain information pertaining to grant or subgrant/subcontract awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income. With respect to each approved project the grantee shall account for the sum total of all amounts paid by presenting or otherwise making available evidence satisfactory to the Secretary of expenditures for costs meeting the requirements of this subpart. However, when the amount awarded for indirect costs is based on a predetermined fixed percentage of estimated direct costs, the amount allowed for indirect costs shall be computed on the basis of such predetermined fixed-percentage rates applied to the total, or a selected element thereof, of the reimbursable direct costs incurred.

(b) *Accounting for royalties.* Royalties received by grantees from copyrights on publications or other works developed under the grant, or from patents or inventions conceived or first actually reduced to practice in the course of or under the grant shall be accounted for as follows:

(1) Royalties received during the period of grant support as a result of copyrights or patents shall be retained by the grantee and, in accordance with the terms and conditions of the grant, be disposed of under either or a combination of the following options:

(i) Used by the grantee for any purposes that further the objectives of the legislation under which the grant was made.

(ii) Deducted from the total project costs for the purpose of determining the net costs on which the Federal share of costs will be based.

(2) Royalties received after the completion or termination of grant support shall be disposed of as follows:

(i) Patent royalties shall be governed by agreements between the Assistant Secretary for Health, Department of Health, Education, and Welfare, and the grantee pursuant to the Department's patent regulations (45 CFR Parts 6 and 8).

(ii) Copyright royalties may be retained by the grantee, unless the terms and conditions of the grant or a specific agreement negotiated between the Secretary and the grantee provide otherwise except State or local government grantees which receive royalties in excess of $200 a year shall return the Federal share of the excess amount (computed by applying the percentage of Federal participation in the cost of the grant supported project to the excess amount) to the Federal government, unless a specific agreement provides otherwise.

(c) *Audit*—(1) *State and local governments.* Where the grantee is a State or local government as those terms are defined in 45 CFR 74.3, audits shall be conducted as provided in 45 CFR 74.61(h)(1). A copy of the report of each such audit shall be provided to the Secretary within 30 days of its receipt by the grantee.

(2) *Grantees other than State and local governments.* Where the grantee is not a State or local government as so defined, an independent audit shall be conducted by a certified public accountant at least annually not later than 60 days after the close of the budget period. A copy of the report of each such audit shall be provided to the Secretary within 90 days after the close of the budget period.

(3) *Costs of Audits.* The costs of audits conducted pursuant to paragraphs (1) and (2) of this paragraph are allowable costs chargeable to the grant as direct or indirect costs, as appropriate. The estimated direct costs of the annual audit, if any, should be shown as a separate line item in the budget for each year of support requested in the application.

(d) *Grant closeout.*—(1) *Date of final accounting.* In addition to such other special and periodic accounting as the Secretary may require, a grantee shall render, with respect to each approved project, a full account, as provided herein, as of the termination of grant support which shall be (i) The end of the budget period if a continuation grant is not made, (ii) The end of the project period or (iii) The date of any termination of grant support pursuant to Subpart M of 45 CFR Part 74.

(2) *Final settlement.* There shall be payable to the Federal Government as final settlement with respect to each approved project the total sum of (i) Any amount not accounted for pursuant to paragraphs (a) and (b) of the section; and (ii) Any other amounts due pursuant to Subparts F, M, and O of 45 CFR Part 74. Such total sum shall constitute a debt owed by the grantee to the United States and shall be recovered from the grantee or its successors or assigns by setoff or other action as provided by law.

§ 54a.410 Publications and copyrights.

(a) *Copyright.* Except as may otherwise be provided under the terms and conditions of the award, the grantee is free to copyright any book or other copyrightable materials developed under the grant subject to a royalty-free, nonexclusive, and irrevocable license of the Department of Health, Education, and Welfare to reproduce, publish, alter or otherwise use, and to authorize others to use the work for government purposes. In any case in which a copyright has been obtained, the Secretary shall be so notified.

(b) *Publications.* Any reports, papers, statistics, or other materials developed from work supported in whole or in part by an award made under this subpart shall be submitted to the Secretary. The Secretary may make such materials available and disseminate the material on as broad a basis as practicable, and in such form as to make such materials understandable.

§ 54a.411 Additional conditions.

The Secretary may with respect to any grant award impose additional conditions prior to or at the time of any award when in his judgment such conditions are necessary to assure or protect advancement of the approved project, the interest of public health or the conservation of grant funds.

§ 54a.412 Matching rates. [Reserved]

Subpart E—Grants for National Alcohol Research Centers [Reserved]

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federal register

MONDAY, JANUARY 31, 1977

PART V



DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

■

PUBLIC HOUSING PROGRAM; DEVELOPMENT PHASE

Traditional Public Housing Program

Title 24—Housing and Urban Development

CHAPTER VIII—LOW INCOME HOUSING, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. R-77-426]

PART 841—PUBLIC HOUSING PROGRAM; DEVELOPMENT PHASE

Promulgation

On November 18, 1976, the Department of Housing and Urban Development (HUD) published for comment in the FEDERAL REGISTER at 41 FR 50946, a proposed amendment to Chapter VIII of Title 24 of the Code of Federal Regulations adding a new Part 841, "Traditional Public Housing Program."

HUD received over 100 responses to the November 18, 1976 publication. All of these comments have been carefully considered and certain changes have been made in the regulations as a result of these comments and other pertinent considerations. The following is a discussion of the principal comments and changes. The section numbers refer to the numbers as contained in this final rule, except for several references to the numbers in the proposed rule where necessary to understand a particular explanation.

1. Subsection (c), entitled "References," has been added to § 841.101 to include the two regulations previously cited and to add a reference to 24 CFR, Part 891, since comments indicated that there was a lack of understanding of the statutory constraints on the allocation process required pursuant to section 213 of the Housing and Community Development Act of 1974.

2. Comments indicated a general belief that only the program covered by this regulation is subject to the requirement of meeting unmet needs in an area. Section 841.103(a) has been changed by the addition of the phrase "coordinated with assistance provided under other programs subject to Section 213 of the HCD Act of 1974" to make it clear that all such programs must be administered to respond to unmet needs.

3. Many comments indicated that the title of § 841.103(c) "Restrictions on use of high-rise elevator structures", created the impression that the regulations unduly restricted the use of such structures for elderly housing. The title has been changed to "Use of high-rise elevator structures" and the second sentence has been changed from the negative "shall not be used unless" to the positive "may be used if." The requirement for a Field Office determination that high-rise elevator construction is appropriate has not been changed, since section 805 of the Senate Report on the Housing and Community Development Act of 1974 stated that HUD would be required "to determine, on the basis of land costs, safety and security and availability of community service factors, the appropriateness of a high-rise housing project designed primarily for the elderly or handicapped."

4. Sections 841.105, 841.108 and 841.109 of the proposed regulations have been combined into § 841.107, Site and Construction Standards, in response to comments which indicated that it would be desirable to combine the statutory requirement of economical and efficient design and construction with the rules applicable to site selection and to construction standards. The language has been revised to make it clear that economy in construction is not to be achieved by sacrificing durability of construction and efficiency of project operation. In line with the foregoing principles concerning the addition of extra durability and other special features, Appendix A has been revised to emphasize that determination of prototype costs is to be based not only on HUD Minimum Property Standards but also on these special features. The Handbook will further emphasize the importance of including in the information provided to developers the extra features on which the prototype cost determination is based and a statement that proposals will be evaluated accordingly.

5. The Department is publishing separately a regulation on site and neighborhood standards and when the final rule on this subject is published, it will replace the Project Selection Criteria referred to in § 841.107(b).

6. Paragraph (a) of § 841.106 of the proposed rule has been moved to § 841.115 in the final rule. Section 841.108(a) now includes a list of the various PHA contracts which require prior HUD approval.

7. In addition to editorial changes, the reference to 24 CFR, Part 811 has been deleted from § 841.110(a), since only regular PHAs using regular public housing financing are expected to participate in this program. Section 841.110(b) has been changed to require that the application include "an executed Cooperation Agreement." The purpose of this change is to require, at the application stage, the commitment of the local governing body which would eventually be required and to save the time involved in going to the local governing body twice, first for the resolution and second for the actual execution of the Cooperation Agreement.

8. In response to comments questioning the completeness of the list of examples of what would constitute "capacity to provide adequate administration," it was determined to delete the specific examples in § 841.111(a) and to provide appropriate guidance in the Handbook.

9. Section 841.111(b) has been changed in the interest of clarity and, in response to a number of comments, § 841.111(f) has been changed to emphasize local needs in selecting applications.

10. Numerous comments pointed out that HUD as well as the PHA and other parties should be required to adhere to the Time Schedule. Section 841.112 has been amended accordingly.

11. Section 841.113(a) entitled "Preliminary Loan," has been changed to state that the maximum loan is $200 per unit ($400 per unit in Alaska), which is expected to be sufficient for turnkey projects, but that the Field Office is authorized to increase these maximums to $500 per unit ($1,000 per unit in Alaska) where justified by special circumstances, which could include use of the conventional method. Section 841.115(b) of the proposed rule has been deleted, since the first sentence is included in § 841.108(a) and the second is more appropriately stated in the Handbook.

Numerous comments suggested that repayment of a preliminary loan should not be required if the project fails to reach ACC. A preliminary loan must be repaid since it is a loan and HUD has no legal authority to provide such funds as a grant. Normally, the loan is repaid by inclusion in the development cost of the resulting project. Where an approvable project does not result, the loan is repaid by inclusion in the development cost of a subsequently approved project of the PHA. The suggestion that funds from the Operating Reserve could be used for this purpose was rejected because such use would be illegal under the ACC and the U.S. Housing Act of 1937.

12. Section 841.114(c) was changed to modify the requirement that the developer must own the site prior to execution of the turnkey Contract of Sale. The substituted requirement, which has been in effect for a number of years, provides that the developer must acquire ownership of the site prior to commencement of construction.

13. For the sake of clarity and completeness, § 841.115 has been changed by deleting the reference to the Cooperation Agreement as a part of the Development Program, adding a sentence on inclusion in development cost of funds necessary to cover the preliminary loan (moved from subsection 841.117(d)(2) of the proposed rule), and specifying the amount of the contingency allowance to be included in development cost for turnkey (1%) and for conventional (5%) projects.

14. The second sentence of § 841.115(b)(2) has been substituted for the equivalent sentence in the proposed rule to clarify that prototype cost limits cannot be revised on the basis of cost for a single project, but only on the basis of areawide construction costs.

15. To clarify that off-site facilities may be included in the development costs of turnkey projects, the first sentence of § 841.115(b)(4) has been modified by substituting "project" for "PHA" and "development" for "developer."

16. Section 841.117(c) of the proposed rule contained a "financial feasibility test" which a proposed project had to meet as a condition for approval. This test required that the project's estimated expenses not exceed the estimated income for the first five years without the use of operating subsidy. The comments objected almost unanimously to the imposition of this test stating, essentially, that public housing cannot function without operating subsidy and that it is unrealistic to expect low-income families to pay the full cost of the housing.

In response to these comments, substantial changes have been made in the final rule. In resolving this difficult issue, the Department took into account the provisions of the Housing and Community Development Act of 1974 on this subject and the substantial legislative history indicating Congressional intent.

Section 6(c) of the U.S. Housing Act, as amended by the Housing and Community Development Act of 1974 requires that:

> Every contract for annual contributions shall provide that . . . the public housing agency shall comply with such procedures and requirements as the Secretary may prescribe to assure that sound management practices will be followed in the operation of the project, including requirements pertaining to—
>
> (A) the establishment of tenant selection criteria designed to assure that, within a reasonable period of time, the project will include families with a broad range of incomes and will avoid concentrations of low-income and deprived families with serious social problems, but this shall not permit maintenance of vacancies to await higher income tenants where lower income tenants are available.

The explanatory Senate Committee report (S. Rept. 93-693, dated February 27, 1974) at page 40 states that:

> While it is expected that public housing agencies will continue to give particular attention and priority to very low income families, the Committee expects that in the long run we would have more housing developments which are not occupied solely by the very poor, but by a cross section of lower income households, representing a variety of household types. Experience has demonstrated that a cross-section of occupancy is an essential ingredient in creating economically viable housing as well as a healthy social environment. It is recognized by the Committee that existing public housing in many of our largest cities has become a concentration of very poor families and often predominantly of families receiving public assistance. The provisions of this Act make it possible to develop new public housing with a cross section of low income families. At the same time it is clear that steps must also be taken to alter the occupancy in existing public housing to achieve a similar cross section of occupancy. It is the intent of the Committee that the Secretary of HUD take appropriate steps to assist public housing agencies to achieve this cross section of occupancy in existing public housing within a reasonable time period. However, the Committee does not approve the imposition of occupancy requirements which have the effect of denying admission to any family on the basis that its income is too low [emphasis added].

The Department considers the foregoing to be clear Congressional intent to achieve a cross section of incomes in order to create "economically viable housing", which would thereby reduce as much as possible the need for operating subsidies. To accomplish this, PHAs must rent new public housing projects with an economic mix of families so that those with sufficient income to pay above the "break-even amount" (the rent level at which operating revenues cover operating expenses) will balance the lower income families whose incomes are too low to pay the break even portion of the operating expenses. In this connection, the Senate Report clearly distinguishes between new and existing projects. Existing projects are to be given a "reasonable time period" to achieve a cross section of occupancy, and occupancy requirements are not to deny admission to any family on the basis that its income is too low; these provisions are intended to allow existing projects time to adjust. With respect to new projects, the intent of the Committee is clearly stated in the underscored sentence of the above quotation: "The provisions of this Act make it possible to develop new public housing with a cross section of low income families."

Aside from the concern of the Congress for creation of "economically viable housing," the legislative history is quite clear that there was another objective; that is, the creation of a "healthy social environment" and to get away from "concentration of very poor families and often predominantly of families receiving public assistance."

Many of the comments assumed that families with sufficient income to pay rents above the "break-even amount" were not low income families and were not receiving subsidy because they were paying enough to cover operating expenses. This is, of course, not the case since all tenant families must be low-income families and are subsidized by the capital cost of the housing and the benefits of local property tax exemption.

Accordingly, § 841.115(c) of the final rule has been modified to require that a project be financially feasible without operating subsidy for the first year of operation except when a determination is made that estimated rental income resulting from occupancy on the basis of such cross section is insufficient to meet anticipated operating expenses. As to payment of operating subsidy in subsequent years, the final rule requires that the PHA demonstrate that it has used its best efforts to maintain the projected cross section of families and to otherwise maintain the projected financial position. These revisions should meet the criticism of the prohibition of operating subsidies for the first five years of operation and at the same time carry out the Congressional intent expressed in the above-quoted statutory language and Senate Committee report.

A number of comments expressed concern about the capacity of public housing agencies to meet the requirements of admitting and maintaining a cross section of families to assure financial stability because of longstanding waiting lists which may not include enough higher income families. The principle of using "income ranges" in selecting from a waiting list or preference classes has existed since the inception of the public housing program. Although there have been court decisions questioning the legality of using income ranges, those decisions no longer apply in the light of the 1974 statutory changes quoted above. It is the position of the Department that, in meeting the federal requirement for an economic mix, public housing agencies are legally authorized and required by the regulation and the annual contributions contract to use income ranges in selecting families from existing waiting lists, and if there are not a sufficient number of eligible applicants in a particular range or ranges, to advertise for additional families in the required income ranges. The necessity of advertising for additional families should be ascertained sufficiently in advance during the period that the project is being planned and developed and from time to time thereafter) to avoid the existence of vacancies which under the statute would require the admission of lower income families.

A number of comments criticized the regulation because it applied a policy to public housing which the Department was not applying to Section 8 projects. The Department considers Section 8 a different approach to housing assistance and does not believe a policy appropriate to public housing should necessarily be adapted to the Section 8 program.

17. A number of comments indicated confusion as to the requirements for obtaining construction financing by the PHA. Section 841.116(b) has been rewritten so that it is clear that the established methods of obtaining financing for turnkey and conventional projects will continue to be available.

18. In response to numerous comments, § 841.202(b) has been rewritten to state that where a PHA owns a site the PHA may restrict turnkey proposals to that site and that in all other cases proposals may be restricted to a preselected site if this is justified by the PHA and approved by the Field Office.

19. The second sentence of § 841.204 of the proposed rule has been deleted in response to comments that the sentence over-emphasized cost at the expense of other factors that should be weighed in evaluating proposals.

20. Many comments objected to the requirement of § 841.301 that the PHA shall use the turnkey method unless the PHA can demonstrate that the conventional method is less costly. The Department has determined that, in general, use of the turnkey method is the quickest, most efficient and most economical method. In response to comments that projects constructed by use of the turnkey method have been of poor quality design and construction and unsuitable for long-term public housing use, the regulations, procedures and forms have been revised to require higher standards of design, quality and durability and to strengthen construction inspection requirements. In response to comments indicating that in some areas use of the turnkey method may not be possible for a variety of reasons, § 841.301 has been amended to permit use of the conventional method where the PHA demonstrates and the Field Office determines that the turnkey method "cannot be used."

21. The second sentence of § 841.401 has been deleted as unnecessary and a definition of substantial rehabilitation has been added.

22. Section 841.406, entitled "Prequalified Contractors," of the proposed rule has been deleted. HUD will consider permitting use of such a procedure on a case-by-case basis where the PHA considers this would be helpful, but the procedure is considered to be of limited applicability.

23. Several comments noted the absence of a homeownership section. Homeownership under this program will be the subject of separate regulations.

24. Several comments stated that Housing Assistance Plans (HAPs) were inadequate. These comments will be considered by HUD in evaluation of the regulations governing the preparation and review of HAPs.

25. There were a number of comments on management concerns, which are addressed in other HUD regulations in Chapter VIII. The title of these regulations was changed to indicate these regulations cover the Development Phase. The subject of tenant participation in management and operation is under review by HUD.

26. Many comments noted the lack of specific standards with respect to the "density" and "scattered" aspects of projects. Since there is wide variation among localities in assessing these aspects, the regulations do not specify standards. Section 841.103(b) has been clarified and the Handbook will provide further guidance to PHAs and the Field Office in making their determinations.

A Finding of Inapplicability respecting the National Environmental Policy Act of 1969 has been made in accordance with HUD procedures. In addition, a Finding of Inapplicability of inflation impact statement requirements has been made in accordance with HUD procedures. The Findings of Inapplicability are available for inspection with the Rules Docket Clerk.

The proposed rule stated that the new Part 841 would incorporate relevant material from 24 CFR Part 275 and 24 CFR Part 845 and that the final rule would delete all or part of these regulations. All of 24 CFR Part 275, including Appendix A, has been incorporated in Part 841, except for § 275.8. The amendment to Part 275 will be accomplished by a separate rule. This final rule includes the acquisition and/or rehabilitation of HUD-owned properties and properties with HUD-held or insured mortgages, including relocation provisions derived from § 845.412 thereof. Accordingly, Part 845 is being deleted from Chapter VIII.

One fourth of the program year has already passed and it is important that this program for which Congress has appropriated $120,000,000 be implemented expeditiously in accordance with the intention of the Congress. Thus, the regulations are being made *effective* February 7, 1977.

Accordingly, Title 24, Chapter VIII is amended to delete Part 845 and a new Part 841 is added to Chapter VIII reading as follows:

Subpart A—General Requirements

Sec.
841.101 Applicability, scope and references.
841.102 Definitions.
841.103 Types of projects.
841.104 Civil rights and equal opportunity.
841.105 Prevailing wage rates.
841.106 Relocation and acquisition.
841.107 Site and construction standards.
841.108 Contracts requiring HUD approval.
841.109 Notification of Housing Assistance Availability.
841.110 Application submission.
841.111 Field Office review and approval of applications.
841.112 Time schedule.
841.113 Preliminary loan.
841.114 Site approval.
841.115 Development Program.
841.116 Annual contributions contract.
841.117 Construction requirements.

Subpart B—Turnkey Method—New Construction

841.201 Description.
841.202 Invitation for proposals.
841.203 Opening of proposals.
841.204 Evaluation and selection.
841.205 Negotiation conference.
841.206 Development Program and ACC.
841.207 Contract of sale or preliminary contract of sale.
841.208 Construction requirements.

Subpart C—Conventional Method—New Construction

841.301 Justification and description.
841.302 Site selection.
841.303 Development program and ACC.
841.304 Construction contract and bidding documents.
841.305 Award of contract.
841.306 Construction requirements.

Subpart D—Acquisition Method

841.401 Description.
841.402 Property selection.
841.403 Rehabilitation standards.
841.404 Acquisition procedure.
841.405 Methods of accomplishing repair and rehabilitation.
841.406 Relocation on acquisition of HUD-Owned properties or properties with HUD-Held or HUD-Insured mortgages.

Appendix A—Prototype Cost Limits for Low-Income Housing

AUTHORITY: Sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d)); U.S. Housing Act of 1937 (42 U.S.C. 1437).

Subpart A—General Requirements

§ 841.101 Applicability, scope and references.

(a) *Applicability.* The U.S. Housing Act of 1937, as amended, authorizes the U.S. Department of Housing and Urban Development (HUD) to provide financial and technical assistance to public housing agencies for the development and operation of low-income housing projects. This Part states the regulations under which such rental projects are to be developed by a Public Housing Agency (PHA) with financial assistance pursuant to Sections 4 and 5 of the Act under an Annual Contributions Contract (ACC). The regulations applicable to other types of projects, including modernization, Indian Housing, Turnkey III homeownership opportunities and Section 8 projects are contained in other parts of this chapter.

(b) *Scope.* Subpart A of this part sets forth the general requirements and the basic policies for the development of projects by a PHA. Subparts B and C of this part set forth the procedures for the construction of a project. Subpart D of this part sets forth the procedures for acquisition of an existing project (properties that do not require substantial rehabilitation) or acquisition of a project requiring substantial rehabilitation and the procedures for accomplishing necessary rehabilitation work.

(c) *References.* For information on income limits for admission to and occupancy of projects and rental requirements under this part, refer to 24 CFR Part 860; on the payment of operating subsidy, refer to 24 CFR Part 890; and on the allocation of housing assistance funds, refer to 24 CFR Part 891.

§ 841.102 Definitions.

(a) *Act.* The U.S. Housing Act of 1937 (42 U.S.C. 1437).

(b) *Annual Contributions Contract (ACC).* A contract (on the form prescribed by HUD) for loans and annual contributions, execution of which creates legal obligations between HUD and a PHA, under which HUD finances the development and provides financial assistance for operation of a project under the Act and the PHA agrees to comply with HUD requirements for the development and/or operation of the project. The amount of the maximum annual contribution is the amount charged against contract authority and this amount multiplied by the number of annual contributions over the term of the ACC is the amount charged against budget authority.

(c) *Cooperation Agreement.* An agreement (on the form prescribed by HUD) between a PHA and local governing body assuring tax exemption and certain local governmental cooperation and services in respect to the development and operation of a low-income housing project under the Act and providing for payments in lieu of taxes.

(d) *Housing Assistance Plan (HAP).* (1) A HAP meeting the requirements of § 570.303(c) of the Community Development Block Grant (CDBG) regulations (24 CFR Part 570), which is submitted by local government as part of the block grant application, and is approved by the Field Office Director.

(2) A HAP, meeting the requirements of § 570.303(c), submitted by a local government not participating in the CDBG Program and approved by the Field Office Director.

(e) *HCD Act.* The Housing and Community Development Act of 1974 (42 U.S.C. 5301).

(f) *HUD.* The Department of Housing and Urban Development, including the Regional Office and the Area or Insuring Office (herein called Field Office) which has been delegated authority under the Act to perform functions pertaining to this part.

(g) *Preliminary Loan Contract.* A contract (on the form prescribed by HUD) between HUD and the PHA under which HUD loans funds to the PHA, up to a stated limit, to pay the costs of preliminary surveys and planning of a project.

(h) *Program Reservation.* A written notification by HUD to the PHA, which is not a legal obligation, expressing HUD's determination, subject to fulfillment by the PHA of all legal and administrative requirements within a stated time, to enter into a new or amended Preliminary Loan Contract or ACC covering the stated number of housing units, or such lesser number as is consistent with the amount of contract and budget authority reserved by HUD with respect to the Program Reservation.

(i) *Project.* An entire undertaking to provide housing and necessary appurtenances under the Act, including all real or personal property, funds and reserves, rights, interests and obligations, and related activities.

(j) *Public Housing Agency (PHA).* Any state, county, municipality, or other governmental entity or public body (or agency or instrumentality thereof) which is authorized to engage in or assist in the development or operation of low-income housing and is determined by HUD to be eligible to undertake projects under this part. Other regulations which govern the operation and management of projects by a PHA are set forth in 24 CFR Chapter VIII, as amended from time to time.

§ 841.103 Types of projects.

(a) *Determination of type or project.* Assistance under this Part shall be used to meet the needs of household types in the jurisdiction of the PHA whose needs are not being met under other programs subject to Section 213 of the HCD Act proportionately to their share of total housing needs in the jurisdiction of the PHA, as shown by the approved HAP or HAPS applicable to the jurisdiction, or in the absence of such HAPs, as determined by HUD. In determining the extent to which the needs of any household type are being met, units proposed or not yet completed shall be counted only if there is a commitment or reservation of funds or contract authority for the provision of federal or other assistance.

(b) *Low-density housing for families with children.* Projects approved under this part for families with children, including large families (families requiring three or more bedrooms), shall to the maximum extent practicable consist of low-density housing (e.g., non-elevator structures, scattered sites or other types of low density developments appropriate in the locality).

(c) *Use of high-rise elevator structures.* High-rise elevator structures shall not be provided for families with children regardless of density unless the Field Office makes a determination that there is no practical alternative. High-rise buildings for the elderly or handicapped may be used if a determination is made by the Field Office that such construction is appropriate taking into consideration land costs, safety and security, and the availability of community services.

§ 841.104 Civil rights and equal opportunity.

(a) *Title VI and Title VIII and Executive Order 11063.* Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) and Executive Order 11063, which prohibit discrimination on the basis of race, color, creed or national origin in federally assisted programs, and Title VIII of the Civil Rights Act of 1968, as amended (42 U.S.C. 3601), which prohibits discrimination based on race, color, religion, sex or national origin in the sale or rental of housing, apply to PHAs under this part.

(b) *Handicapped individuals.* Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), which prohibits discrimination in federally assisted programs against any otherwise qualified individual solely by reason of a handicap, as defined by the Secretary of Health, Education, and Welfare, applies to PHAs under this part.

(c) *Executive Order 11246.* Contracts for construction work in connection with Projects under this part are subject to Executive Order 11246 (30 FR 12319), as amended by Executive Order 11375 (32 FR 14303), and applicable implementing regulations (24 CFR, Part 130; 41 CFR, Chapter 60), rules and orders of HUD and Office of Federal Contract Compliance Programs of the Department of Labor. Executive Order 11246 prohibits discrimination and requires affirmative action to ensure that employees or applicants for employment are treated without regard to their race, color, religion, sex or national origin.

(d) *Section 3 of the HUD Act of 1968.* The projects under this part are subject to Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701u), which requires that, to the greatest extent feasible, opportunities for training and employment be given lower income residents of the project area and contracts for work in connection with a project be awarded to business concerns which are located in or owned in substantial part by persons residing in the project area.

(e) *PHA's employment practices.* In connection with the development or operation of any project, the PHA shall not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The PHA shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to race, color, religion, sex or national origin. The PHA shall comply with all HUD requirements against discrimination with respect to employment by the PHA or by contractors of the PHA. The PHA shall adopt and promulgate regulations with respect to the PHA's employment practices which shall be in compliance with this paragraph. A copy of these regulations shall be posted in the PHA office and a copy shall be submitted to HUD promptly after adoption by the PHA.

§ 841.105 Prevailing wage rates.

Not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276) shall be paid to all laborers and mechanics employed in the development of the project. Not less than the wages prevailing in the locality, as determined or adopted (subsequent to a determination under applicable state or local law) by HUD, shall be paid to all architects, technical engineers, draftsmen and technicians employed in the development of the project.

§ 841.106 Relocation and acquisition.

Projects shall be developed in compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act) (42 U.S.C. 4601) and HUD policies and requirements thereunder (24 CFR Part 42). Development Cost may include the cost of compliance with the Uniform Act as well as the actual reasonable moving expenses of a family which is temporarily moved from a project site during construction and is returned to the site after completion (see § 841.406 in the case of acquisition of a HUD-owned property or a property with a HUD-held or HUD-insured mortgage).

§ 841.107 Site and construction standards.

(a) *Economy and efficiency.* Each project, including the site and site improvements, shall be developed in such a manner that the project will not be of elaborate or extravagant design or materials, and the project shall be developed and administered to promote serviceability, efficiency, economy and stability and to achieve the economic and social well-being and advancement of the tenants.

(b) *Site standards.* (1) Project sites shall be subject to the requirements with respect to sites set forth in the Project Selection Criteria (24 CFR Part 200, Subpart N). The physical characteristics and cost of the site and the availability of utilities and of access roads to the site shall facilitate economical construction and operation of the project.

(2) Participation in this program requires compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), the National Historic Preservation Act (Pub. L. 89-665), the Archeological and Historic Preservation Act of 1974 (Pub. L. 93-219), Executive Order 11593 on Protection and Enhancement of the Cultural Environment (including the procedures prescribed by the Advisory Council on Historic Preservation in 36 CFR Part 800), the Clean Air Act (42 U.S.C. 1857 et seq.), the Federal Water Pollution Control Act (33 U.S.C. 1151 et seq.) and the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001 et seq.).

(c) *Construction Standards.* (1) In accordance with section 6(b) of the Act, the design of a project shall include: "(i) The extra durability required for safety and security and economical maintenance of such housing, (ii) The provision of amenities designed to guarantee a safe and healthy family life and neighborhood environment, (iii) The application of good design as an essential component of such housing for safety and security as well as other purposes, (iv) The maintenance of quality in architecture to reflect the standards of the neighborhood and community, (v) The need for maximizing the conservation of energy for heating, lighting, and other purposes, (vi) The effectiveness of existing cost limits in the area, and (vii) The advice and recommendations of local housing producers."

(2) The foregoing shall be in addition to the minimum standards stated in the HUD Minimum Property Standards (24 CFR Part 200, Subpart S), or HUD minimum Design Standards for Rehabilitation for Residential Properties, as applicable, and applicable state and local laws, codes, ordinances and regulations.

(3) Projects for the elderly or handicapped shall comply with Section 209 of the HCD Act and projects for congregate or single room occupant housing shall comply with the appropriate HUD guidelines and standards.

§ 841.108 Contracts requiring HUD approval.

(a) *Construction contracts.* The PHA shall not, without the prior written approval of HUD, enter into, execute or approve any Preliminary Contract of Sale, Contract of Sale or Construction Contract. These contracts and the contracts for architectural and/or inspection services must be on the forms prescribed by HUD.

(b) *Other contracts requiring HUD approval.* The PHA shall not, without the prior written approval of HUD, enter into, execute or approve any agreement or contract for (1) Personal, management, legal or other services with any person or firm where the initial period or term of the agreement or contract (including any renewal) is in excess of three years, or (2) Where the amount of the agreement or contract is in excess of the amount included for such purpose in the HUD-approved development cost budget or operating budget or an amount specified from time to time by HUD, as the case may be, or (3) Where the agreement or contract is for legal or other services in connection with litigation.

§ 841.109 Notification of Housing assistance availability (NOHAA).

In the context of the constraints on the use of housing assistance funds, including HAPs and local needs (see 24 CFR Part 891), the Field Office shall determine the geographic areas in which the housing is to be located, the extent to which assistance is to be made available for new construction, acquisition with substantial rehabilitation or acquisition of existing housing and the sizes and types of housing. As promptly as possible, the Field Office shall send to the appropriate PHAs a NOHAA stating the availability of housing assistance for which they may apply, including information reflecting the Field Office's determinations and the deadline date for submission of an Application. To the extent feasible, a copy of the NOHAA should be sent to the Chief Executive Officers of local governments in the applicable geographic area, representatives of the media and organizations interested in housing and urban development. Appropriate instructions, forms and other program information necessary to prepare an Application shall be sent by the Field Office to each PHA.

§ 841.110 Application submission.

(a) *Eligibility.* To be eligible to participate under this part, an entity shall demonstrate that it meets the definition of a PHA and has the required legal authority to perform all the functions of a PHA under this part. Generally, the entity will have been created pursuant to a state housing authorities law. In such cases, a reference in the Application to ACCs previously entered into will be sufficient to establish prima facie eligibility. Where the eligibility of such an entity has not been previously approved by HUD or where the entity was not created pursuant to a state housing authorities law, the Field Office shall advise the entity of the documents that must be submitted to establish eligibility. The evidence that the entity has the required legal authority shall include citations to and copies of state or local law, the charter or other organizational papers establishing the entity and an opinion from counsel that the entity has all the legal authority required to develop and operate a low-income project under this part.

(b) *Application.* To apply for a Program Reservation, a PHA shall submit an Application (on the form prescribed by HUD), which shall identify the number and types of units, the site or location insofar as it has been determined and its relationship to HAPs and site requirements; state whether new construction, acquisition with substantial rehabilitation or acquisition of existing housing is proposed; state the proposed production method which in the case of new construction shall be the turnkey method unless adequate justification is furnished; show that the household types for whose needs the project will be developed will be in accordance with § 841.103(a); and furnish a statement that the project will be developed in accordance with § 841.103 with any justification required thereunder. If the Application identifies a site or sites, the Chief Executive Officer of the unit of general local government in which the proposed housing is to be located should have been requested pursuant to Section 213 of the HCD Act by the PHA to provide a letter stating his finding as to consistency with the locality's approved HAP, or in the absence of a HAP as to whether there is or will be available in the area public facilities and services adequate to serve the proposed project. Where such letter has been provided, it shall be attached to the PHA's Application. The Application shall also be accompanied by an executed Cooperation Agreement. If a Cooperation Agreement already exists for the location sufficient to cover the number of units in the Application, a statement to this effect may be included in the Application.

(c) *Preliminary loan.* The Application for a Program Reservation may include an application for a preliminary loan, which must be accompanied by a resolution of the local governing body approving the application for a preliminary loan. Such an application shall state the amount requested and explain the purpose for which these funds are to be used. (See § 841.113).

§ 841.111 Field Office review and approval of applications.

(a) *Prerequisites to application approval.* The Field Office shall begin processing of complete Applications promptly after receipt. Each Application will be evaluated on the basis of all pertinent factors under this part. In addition to meeting the requirements of § 841.110, an Application shall be approved if the Field Office determines that:

(1) The PHA's Application meets the requirements of § 841.103.

(2) The PHA's Application is likely to meet the requirements for approval of the Development Program under § 841.115(c).

(3) The PHA has the capability to provide adequate administration of the development and operation of the project and other HUD-assisted projects of the PHA are in compliance with all applicable HUD requirements.

(b) *Designated site.* If specific sites are designated for the proposed project in the Application, the Field Office may approve the Application, while deferring approval on the site, or may withhold decision on the Application until after approval of the site. In either event, the Field Office shall promptly initiate the necessary action to obtain compliance with Section 213 of the HCD Act and A–95:

(1) For purposes of compliance with Section 213, Review of Applications for Housing Assistance; Allocation of Housing Assistance Funds (24 CFR Part 891; published in 41 FR 35660, August 23, 1976) shall be followed.

(2) For A–95 clearance, Implementation of OMB Circular A–95 (24 CFR Part 52; published in 41 FR 41874, September 23, 1976) shall be followed.

(c) *Notification of deficiencies.* If the evaluation discloses deficiencies that can be corrected, the Field Office shall notify the PHA in writing of the deficiencies and give the PHA a reasonable opportunity to correct the deficiencies.

(d) *Notification of approval.* The Field Office shall issue a Program Reservation to the PHA whose Application is approved, specifying new construction, acquisition with substantial rehabilitation or acquisition of existing housing, the production method and the location. If the Application is approved for fewer units than requested, the Program Reservation shall be accompanied by a statement of the reasons for not approving the number of units requested. The Program Reservation shall set a time limit of not to exceed one year within which the PHA must submit an approvable Development Program. The Field Office shall cancel the Program Reservation if the time limit is exceeded unless the Field Office determines, for good cause, to extend the time limit.

(e) *Notification of disapproval.* Any PHA whose Application was not approved by the Field Office shall be sent a letter notifying the PHA of the determination and of the reasons therefor.

(f) *Deficiency or excess of available housing assistance.* (1) If the available contract authority and budget authority are not sufficient for all the approvable Applications, the Field Office shall approve the Applications with respect to localities and number and types of units most nearly in accord with the requirements of section 213 of the HCD Act.

(2) Where approved Applications are or become insufficient to utilize fully the available contract authority and budget authority, the Field Office may give further consideration to other Applications, affording PHAs an opportunity to remedy any deficiencies, or the Field Office may solicit Applications from other appropriate PHAs for localities to which the housing assistance may be reallocated.

§ 841.112 Time schedule.

Promptly after issuance of a Program Reservation, the PHA and the Field Office shall hold a Project Planning Conference at which they shall mutually agree upon a Time Schedule, consistent with the deadline stated in the Program Reservation, of all actions to be taken by the PHA and HUD during planning and construction of the project. The PHA and Field Office shall adhere to the Time Schedule, and any deviation shall be explained in the project file.

§ 841.113 Preliminary loan.

(a) *Amount.* If a Program Reservation is issued, the Field Office may approve a preliminary loan to pay the cost of preliminary surveys and planning (including the cost of HUD-approved appraisals) necessary to prepare a Development Program. The maximum amount of the preliminary loan shall be $200 per unit ($400 per unit in Alaska); however, where the PHA is able to justify a higher amount because of special circumstances, the Field Office may permit a maximum amount of $500 per unit ($1,000 per unit in Alaska). The Field Office shall review the PHA's explanation set forth in its Application of the need for funds and shall approve a preliminary loan in the amount which the Field Office determines is a reasonable expenditure for the accomplishment of tasks that are clearly necessary to prepare the Development Program. Where the maximum amount approvable by the Field Office is insufficient, a request may be submitted to the Assistant Secretary for Housing-Federal Housing Commissioner for authorization to provide additional preliminary loan funds. Any such request shall be supported by full justification for the proposed expenditures.

(b) *Repayment of preliminary loans.* The amount of preliminary loan funds advanced by HUD to the PHA are included in the development cost of a project and covered by the development loan funds under the ACC. In the event the project fails to reach ACC, the total amount of preliminary loan funds advanced to the PHA shall be repaid to HUD by the PHA from any funds or assets available for this purpose.

§ 841.114 Site approval.

(a) *Tentative site approval.* The PHA shall request tentative Field Office approval for each site by submitting a Preliminary Site Report (on the form prescribed by HUD). The PHA may submit the Preliminary Site Report with the Application. Unless A–95 and Section 213 compliance was completed at the time of the Application, the Field Office shall obtain compliance by forwarding copies of the Preliminary Site Report in accordance with § 841.111(b) and Tentative Site Approval shall not be given until the response periods for A–95 and Section 213 have ended. Tentative site approval shall not be given unless HUD's environmental requirements have been met. The Field Office shall notify the PHA as soon as possible of tentative site approval or disapproval of the proposed sites or portions thereof. The notfication shall specifically state any conditions to be met for final site approval. A notification of disapproval shall state the reasons for disapproval.

(b) *Final site approval.* To obtain final site approval, the PHA shall submit documentation that conditions, if any, of tentative site approval have been met, request a HUD appraisal (unless previously requested) and submit title information, site surveys and evidence of site control which are satisfactory to the Field Office. For acquisition projects under Subpart D of this part, the appraisal shall be of the "as is" value of the property. The Field Office shall not give final site approval or approve a Development Program until all of these requirements have been satisfied. Final site approval shall not constitute authorization to acquire a site or property.

(c) *Site acquisition.* The PHA shall not authorize a turnkey developer to acquire a site or make a commitment to acquire a site until after execution of the ACC. The PHA shall not acquire a site or make a commitment for acquisition until after execution of the ACC. Ownership of the site by the PHA or developer as required by the production method being used shall be accomplished prior to execution of the Construction Contract for conventional or prior to commencement of construction for turnkey.

§ 841.115 Development program.

(a) *Description.* A Development Program is a statement of the basic elements of a project, which is prepared by the PHA (on the form and attachments prescribed by HUD) and includes: (1) Site documentation required by § 841.114(b), (2) Preliminary Plans and Specifications (or Work Write-Ups for acquisition projects under Subpart D of this part), (3) Estimate of Total Development Cost, (4) Demonstration of Financial Feasibility, and (5) Updating of Administrative Capability of the PHA. The Development Program shall be adopted by the PHA and submitted to the Field Office for approval.

(b) *Development cost.* (1) The Total Development Cost is the sum of all HUD-approved costs for planning administration, land acquisition, relocation, demolition, construction and equipment, their necessary financing (including interest and other carrying charges, if any, to the point authorized by HUD), initial operating deficit, and any other costs necessary to carrying out the development of the project. It shall include funds necessary to cover any preliminary loan funds advanced to the PHA. Development cost may include on-site streets and driveways, on-site utilities, non-dwelling facilities, a contingency allowance (not to exceed 1% for turnkey or 5% for conventional) and insurance premiums for the first three years.

(2) For new construction projects, dwelling construction and equipment cost shall not exceed 110 percent of the appropriate prototype cost for the area published by HUD (Appendix A). When the PHA finds that the Project Prototype Cost Limit, calculated by using the latest costs published in the FEDERAL REGISTER, is inadequate to produce an approvable estimated dwelling construction and equipment cost, the PHA may request that the published prototype costs be revised. Specific justification and cost data must accompany the request.

(3) For acquisition projects under Subpart D of this part the Total Development Cost shall not exceed 90 percent (or appropriately lower percentage if the acquired project has less than a 40-year useful life) of the imputed development cost of a comparable hypothetical newly constructed low-income housing project unless the PHA demonstrates that a higher amount is necessary for the acquisition and rehabilitation of properties in accordance with a locally established plan for neighborhood preservation and revitalization and such higher amount is approved by the Assistant Secretary for Housing.

(4) Where the project would be required to bear a part or all of the cost of off-site facilities if it were a private development, the cost of such facilities may be included in the Total Development Cost; provided that the Field Office determines that the off-site facilities are a necessary appurtenance to the project and the amount included is limited to the lower of: (i) The HUD approved estimate of the cost of such facilities, or (ii) The enhancement in value of the project site attributable to such facilities. Where the cost of off-site facilities is required to be borne by the local government without cost to the project, whether because of normal practice or by virtue of the Cooperation Agreement, the cost of such facilities may not be included in Total Development Cost, but the Field Office may arrange for a HUD loan evidenced by an Off-Site Facilities Note; provided that the Field Office determines that the off-site facilities are a necessary appurtenance to the project and the amount is limited to the lower of (A) The HUD approved estimate of the cost of such facilities, or (B) The enhancement in value of the project site attributable to such facilities; and provided, that the PHA submits legally enforceable commitments, acceptable to HUD, to repay the cost of such facilities from sources other than annual contributions or project income.

(c) *Financial feasibility test and operating subsidies.* (1) The Development

Program shall be approved if the Field Office determines that the project is financially feasible based on the PHA's demonstration, in the form prescribed by HUD, that the project's estimated operating expenses do not exceed the estimated operating income without the use of operating subsidy, or as provided in paragraph (c)(3) and (4) of this section.

(2) The estimate of operating expenses shall be the annual average of the projected operating expenses for the first three years of operation based on the operations of a comparable well-managed project and other HUD standards for operation, including, as required by section 6(c)(4) of the Act,

(i) The establishment of satisfactory procedures designed to assure the prompt payment and collection of rents and the prompt processing of evictions in the case of nonpayment of rent; and

(ii) The establishment of effective tenant-management relationships designed to assure that satisfactory standards of tenant security and project maintenance are formulated and that the PHA (together with tenant councils where they exist) enforces those standards fully and effectively.

(3) The estimate of operating income shall be the projected income for the first fiscal year of operation without use of operating subsidy based upon 95 percent occupancy by a tenant body selected in accordance with regulations (based on sections 3 and 6(c)(4) of the Act and 24 CFR Part 860) which are designed to achieve:

(i) The establishment of tenant selection criteria designed to assure that the project will include families with a broad range of incomes and will avoid concentrations of low-income and deprived families with serious social problems, but this shall not permit maintenance of vacancies to await higher income tenants where lower income tenants are available; and

(ii) Occupancy of at least 20 percent of the dwelling units by very low-income families.

(4) Pursuant to paragraph (c)(3) of this section, the PHA shall determine the range of low-income families residing in the county, or jurisdiction of the PHA if data is available, by household types (elderly/non-elderly) and by income intervals. The percentage distribution of these families by established income intervals shall be recorded. The PHA shall determine the estimated rental income of the project by projecting occupancy which replicates as nearly as feasible the percentage distribution of families (provided that at least 20% of the families shall be very low-income) and by applying its current rent determination standards to the median net income of such families in each income intervals. If this analysis shows that the estimated rental income would be insufficient to meet estimated operating expenses, the PHA may request the approval of the required operating subsidy.

(5) Requirements or preferences for those living in the jurisdiction of the PHA at the time of application are permissible subject to the following: No requirement or preference may be based upon the identity or location of the housing which is occupied or proposed to be occupied by the applicant nor upon the length of time the applicant has resided in the jurisdiction; applicants who are working or who have been notified that they are hired to work in the jurisdiction shall be treated as residents of the jurisdiction.

(6) The PHA shall be committed to selection of tenants, achievement and maintenance of project occupancy and operation of the project in accordance with the foregoing principles and as indicated in connection with its projections of income and operating expenses.

(7) No request for operating subsidy based upon an operating deficit with respect to the project for the first fiscal year which is substantially in excess of the amount, if any, included in the approved Development Program shall be considered by HUD unless the PHA clearly shows to the satisfaction of HUD that such operating deficit was due to changes in circumstances (e.g., a deficiency of relatively higher income applicants notwithstanding best efforts by the PHA to obtain such applicants) which (i) could not reasonably have been foresee, or (ii) were beyond the control of the PHA to prevent or mitigate, and in either case (iii) were reported to HUD promptly at the time of their occurrence.

(8) Any application for operating subsidy after the first fiscal year shall include a showing that the PHA has used its best efforts to comply with its commitment stated in paragraph (c)(6) of this section.

§ 841.116 Annual contributions contract.

(a) *Timing.* The ACC shall be based on the HUD-approved Development program. The ACC for a project shall not be executed until the PHA has adopted and HUD has approved the Development Program. The PHA shall not enter into any Construction Contract, Preliminary Contract of Sale, Contract of Sale, contracts for rehabilitation work or contracts to acquire a property until after execution of the ACC. Following execution of an ACC, no modifications may be made in a Development Program except in accordance with procedures prescribed by HUD.

(b) *Development funds.* HUD will provide or will assure the provision of development loan funds pursuant to its obligation to make loans as stated in the ACC. Annual contributions payable by HUD for debt service shall in no case exceed a sum equal to the annual amount of principal and interest payable on obligations issued by the PHA to finance the development or acquisition cost of the project. In no case shall such annual contributions be in excess of the maximum sum specified in the ACC, nor shall the number of annual contributions be greater than the number authorized by the ACC, nor shall the annual contributions be paid over a period in excess of forty years. Where the Field Office has determined that an acquisition project under Subpart D of this part has less than a forty year useful life, the term of the ACC and the number of payments shall be appropriately reduced.

(c) *Repayment.* In the event that a project does not reach the point where annual contributions are payable by HUD, the amount of development loan funds advanced to the PHA by HUD or other sources shall be repaid by the PHA from any funds or assets available for this purpose.

§ 841.117 Construction requirements.

(a) *Economy.* The PHA shall complete development of the project in accordance with the approved Development Program at the lowest possible cost and in no event at a cost in excess of the Total Development Cost approved by HUD.

(b) *Changes in contracts.* The PHA shall not order or agree to any changes in or additions to the work required under the Construction Contract or Contract of Sale except as authorized by the provisions of these contracts or with prior HUD approval.

(c) *Construction inspections.* (1) The PHA shall be responsible for inspections during construction which shall be performed by an architect or other qualified person with the frequency and in accordance with such standards as HUD shall prescribe for the production method involved. The PHA shall forward copies of all inspection reports to the Field Office with comments on actions taken to remedy deficiencies.

(2) Field Office representatives shall make on-site inspections as required by HUD. A copy of each inspection report shall be sent to the PHA with recommendations of actions to be taken by the PHA.

(d) *Final inspection and acceptance of project.* (1) The contractor or developer shall notify the PHA in writing as to the date when the contract work or stages when applicable, including agreed to off-site work, will be completed and ready for final inspection. If the PHA determines that the state of the work is as represented, the PHA shall promptly notify the Field Office. The final inspection shall be made jointly by the representatives of the PHA, the Field Office and the contractor or developer.

(2) If the inspection discloses no deficiencies other than punch list items or items awaiting seasonal opportunity to complete, the PHA shall submit for Field Office approval an Interim Certificate of Completion, which shall detail the items, and a proposed time schedule agreed to by the contractor or developer and the PHA for completion of the items. Upon Field Office approval, the PHA may release the monies to the contractor or developer less the withholdings required by the contract.

(3) The contractor or developer shall complete the punch list items and items awaiting seasonal opportunity in accordance with the HUD-approved time schedule for completion of the items. The contractor or developer will be paid for such items only after inspection and acceptance by the PHA and the Field Office; the PHA and Field Office shall not accept any items if there is a dispute as to whether such items have been completed. If the PHA is satisfied that the applicable requirements of the contract have been met, the PHA shall submit to the Field Office a Final Certificate of Completion and upon receiving Field Office approval shall release to the contractor or developer the amounts withheld with respect to such items in accordance with the applicable provisions of the contract.

(e) *Warranties.* The Construction Contract or Contract of Sale shall specify the warranty period applicable to all items of construction, including items covered by manufacturer's and supplier's warranties, and shall provide for assignment to the PHA of all manufacturer's and supplier's warranties. The PHA shall inspect each dwelling unit not less often than every three months during the contractor's or developer's warranty period or periods beginning three months after the date of the approved Interim Certificate of Completion, provided that there shall be a final inspection in time to exercise rights before expiration of the warranties. These inspections shall also cover all items under manufacturer's and supplier's warranties and, to the extent feasible, the PHA shall check the condition of items covered by these warranties so as not to lose any rights under them.

Subpart B—Turnkey Method—New Construction

§ 841.201 Description.

Under the Turnkey method, the PHA, following issuance of a Program Reservation, advertises for developers to submit proposals to provide a completed project, including site, as described in the PHA's Invitation for Proposals and the developer's packet. The PHA selects, subject to HUD approval, the best of the proposals received, taking into consideration site, cost, design, the developer's experience and other evidence of ability to complete the project. After HUD approval of the proposal selected by the PHA, the working drawings and specifications are agreed to by the developer, the PHA and HUD, and the developer and the PHA enter into a Contract of Sale. The developer is fully responsible for all development and construction, including the provision of necessary financing. Upon completion of the project in accordance with the Contract of Sale, the PHA purchases the project from the developer.

§ 841.202 Invitation for proposals.

(a) *Preparation and distribution.* The PHA shall prepare and submit to the Field Office the Invitation for Proposals and the developer's packet containing full project information and detailed minimum submission requirements which shall be in full compliance with the provisions of this part and as approved by HUD. Upon approval by the Field Office, the PHA shall publish the Invitation at least weekly for two consecutive weeks in a local newspaper of general circulation and shall also distribute, to the extent feasible, copies of the Invitation to the media, trade associations, local minority organizations and developers and builders. The PHA shall furnish a copy of the developer's packet to all parties indicating interest in responding to the Invitation. The Invitation shall specify a deadline by which proposals must be received by the PHA and a date, time and place for opening of proposals.

(b) *Preselected sites.* The PHA may, if approved by the Field Office, preselect a site. The PHA's request to preselect a site shall identify the site and shall include a justification stating the reasons why preselection is requested. Preselected sites must receive final site approval from the Field Office prior to publication of the Invitation for Proposals. If the preselected site is owned by the PHA, the PHA's Invitation may limit proposals to that site. If the site is not owned by the PHA, the PHA shall specify in its request whether it proposes to limit proposals to the preselected site and, if so, the reasons for such limitation. The Field Office shall promptly advise the PHA of its determination and the reasons for the decision. Where preselection is approved, the PHA's Invitation shall identify the preselected site, invite developers to submit proposals with regard to that site and specify whether or not proposals with respect to other sites may be submitted.

§ 841.203 Opening of proposals.

The PHA shall open all proposals received before the deadline, at the time and place specified in the Invitation; proposals received after the deadline be returned unopened. The PHA shall send copies of each opened proposal to the Field Office.

§ 841.204 Evaluation and selection.

(a) *Evaluation.* The PHA shall evaluate each opened proposal on the basis of cost, site, design and amenities and experience of the developer and/or builder. The PHA shall tentatively select the best of the proposals and submit to the Field Office its rationale for the tentative selection with a request for HUD approval.

(b) *Preliminary Site Report.* The PHA's submission of its tentative selection shall be accompanied by a Preliminary Site Report in accordance with § 841.114 for the site or sites in the tentatively selected proposal.

(c) *Field Office review.* The Field Office shall review the PHA documentation and selection, process the Preliminary Site Report to tentative site approval in accordance with § 841.114(a) and notify the PHA of approval or disapproval of the selection.

(d) *Selection.* (1) After obtaining HUD approval, the PHA shall notify the developer of the selection and shall set a date for a conference at which the parties will discuss the steps necessary to obtain final site approval and the documents to be prepared for a subsequent negotiation conference.

(2) The PHA shall prepare a statement setting forth the factors which contributed to the selection of the developer and make the statement available for public inspection.

§ 841.205 Negotiation conference.

(a) At this conference the developer will advise the PHA whether he will want a Preliminary Contract of Sale before having the working drawings and specifications prepared. If so, the parties shall agree on a purchase price for the site and a price for the architectural and engineering services and on a negotiated price of the project based on the preliminary plans and specifications. This price for the project may be reduced after submission and review of the working drawings and specifications.

(b) If the developer is prepared to negotiate the purchase price and other project requirements on the basis of working drawings and specifications which have been reviewed and approved by HUD, this shall be done and there will be no need to agree on the purchase price for the site or for the architectural and engineering services or to execute a Preliminary Contract of Sale.

§ 841.206 Development Program and ACC.

On the basis of the developer's proposal and any modifications as a result of the negotiations, the PHA shall prepare the Development Program which shall be submitted to and reviewed by the Field Office to assure that all requirements have been met. After approval of the Development Program, the Field Office shall prepare and process the documents required for execution of the ACC.

§ 841.207 Contract of sale or preliminary contract of sale.

Following execution of the ACC, the parties shall execute the Contract of Sale or the Preliminary Contract of Sale (on the forms prescribed by HUD). If the final price for the project was negotiated on the basis of working drawings and specifications, the PHA and the developer shall execute a Contract of Sale. If the Development Program included only preliminary plans and specifications, the PHA and the developer may execute a Preliminary Contract of Sale which states their mutual obligations during the period that the working drawings and specifications are being prepared. Subsequently, after HUD review and approval of the working drawings and specifications, the final price for the project shall be determined and the PHA and the developer shall execute the Contract of Sale.

§ 841.208 Construction requirements.

The requirements concerning changes in the Contract of Sale, inspections during construction, acceptance and warranties are stated in § 841.117. The PHA shall contract with an architect (on the form prescribed by HUD) for the performance of inspection services during construction.

Subpart C—Conventional Method—New Construction

§ 841.301 Justification and Description.

(a) The PHA shall use the turnkey method for new construction unless the PHA can demonstrate in its Application and the Field Office determines (1) That the conventional method will permit development of the project at direct and indirect costs, including consideration of total development cost and administrative costs of the PHA and HUD, that are less than would be required under the turnkey method, or (2) That the turnkey method cannot be used. Force account cannot be used for new construction projects.

(b) Under the conventional method, the PHA contracts with an architect to prepare plans and specifications for a proposed project on a site owned by the PHA. Following HUD approval of the plans and specifications, the PHA advertises for bids from contractors to build the project and awards the Construction Contract to the lowest responsible bidder, subject to HUD approval. The contractor provides assurance in the form of 100 percent performance and payment bonds, or other security approved by HUD, such as a letter of credit or escrow. The contractor receives progress payments from the PHA during construction and a final payment upon completion in accordance with the Construction Contract.

§ 841.302 Site selection.

Following issuance of a Program Reservation, the PHA shall, if it has not already done so, select sites in accordance with the criteria stated in 841.107 and shall request site approval in accordance with 841.114. The PHA may option a site during this process.

§ 841.303 Development Program and ACC.

The PHA shall contract with an architect (on the form prescribed by HUD). The architect shall prepare schematic design plans and specifications in accordance with § 841.107 and as prescribed by the PHA. Based on these plans, the architect shall prepare a detailed estimate of project construction cost covering all work to be included in the construction contract. After review and approval by the Field Office of these plans and estimates, the PHA shall prepare and submit the Development Program as specified in § 841.115. The Field Office shall review the Development Program to assure that all requirements have been met. Upon approval of the Development Program, the Field Office shall prepare and process the documents required for execution of an ACC.

§ 841.304 Construction contract and bidding documents.

Following execution of the ACC, the PHA and its architect shall prepare the construction and bid documents and submit them to the Field Office for approval. The Field Office shall determined that the bidding documents, the procedures for inviting bids, the proposed Construction Contract and attachments and all drawings and specifications are in compliance with HUD requirements. Following HUD approval, the PHA shall publish the advertisement for bids. A standard package of bid documents shall be issued to each prospective bidder.

§ 841.305 Award of contract.

The PHA shall award the Construction Contract to the lowest responsible bidder after obtaining HUD approval of the proposed award. Following the receipt of Field Office approval, the PHA and contractor shall execute the Construction Contract and the PHA shall issue the Notice to Proceed directing the contractor to commence work.

§ 841.306 Construction requirements.

The requirements for changes in construction contracts, inspections during construction, acceptance and warranties are stated in § 841.117.

Subpart D—Acquisition Method

§ 841.401 Description.

(a) Under the acquisition method, the PHA acquires a property which may or may not require substantial rehabilitation to serve as low-income housing.

(b) To qualify as substantial rehabilitation, the rehabilitation work with respect to a structure shall comprise at least one or more of the following:

(1) Major repair or replacement of mechanical equipment and/or plumbing;

(2) Extensive resurfacing of walls and/or floors;

(3) Extensive structural repair; or

(4) Major alterations.

§ 841.402 Property selection.

(a) *Types of Property.* Structures of various types may be appropriate for use in an acquisition project, including non-housing structures which may be converted to housing use. Structures, other than those assisted under the Act, owned by HUD, a PHA, or city, county or state government, as well as properties with HUD-held or HUD-insured mortgages, are eligible for selection.

(b) *Other considerations.* In addition to § 841.107, the PHA in its property selection shall consider:

(1) The design and quality of original construction as well as the degree, complexity and cost of rehabilitation necessary to place the property in acceptable physical condition, and

(2) The feasibility of relocating site occupants during and after rehabilitation, and availability of funds for this purpose, if applicable.

§ 841.403 Rehabilitation standards.

Projects shall be rehabilitated in compliance with § 841.107 and all acquired projects must comply with HUD regulations issued pursuant to the Lead Based Paint Poisoning Prevention Act (42 U.S.C. 4801).

§ 841.404 Acquisition procedure.

The property to be acquired shall meet the criteria set forth in §§ 841.402 and 841.403. The PHA shall request site approval in accordance with § 841.114. Following final site approval and approval of the property, the PHA shall prepare and submit a Development Program (which shall include the cost of work) in accordance with § 841.115. Upon approval, the Field Office shall prepare and process the documents required for execution of the ACC. The Field Office shall arrange the closing at which the purchase of the property shall be accomplished.

§ 841.405 Methods of accomplishing repair or rehabilitation.

(a) Either the turnkey (Subpart B) or the conventional (Subpart C) method may be used.

(b) Force account, whereby the PHA uses its existing staff or hires additional personnel to perform the work, may be used for rehabilitation work on acquisition projects only in exceptional cases. Its use must be justified and the PHA must demonstrate in its Application that it has the capability to successfully implement this procedure. An exceptional case could be a project or unit or work of unusually small size, a project involving properties requiring only minor rehabilitation or a project involving individual small structures requiring major rehabilitation where it is necessary to utilize many separate sets of detailed plans and specifications or other contract documents and the work of preparing, advertising, awarding and administering such contracts would be disproportionately difficult, time-consuming and high in cost. Force account work shall be subject to Davis-Bacon wage rates. Force account may be combined with a conventional Construction Contract for other portions of the rehabilitation. The Field Office may specify special conditions or procedures designed to assure timely completion of the work within the approved development cost.

§ 841.406 Relocation on acquisition of HUD-Owned properties or properties with HUD-held or HUD-insured mortgages.

(a) *Applicability.* This section is applicable only to acquisition of HUD-owned properties or properties with HUD-held or HUD-insured mortgages.

(b) *Applicability of Uniform Act.* Any tenant in occupancy on the date the PHA acquires the real property as part of the project and who thereafter moves from the real property shall be considered a displaced person within the meaning of the Uniform Act, unless the tenant is permitted to continue in occupancy of a dwelling in accordance with

paragraph (c) and (d) of this section. The relocation of any displaced person shall be carried out in compliance with 24 CFR Part 42, as modified by the special policies contained in this section.

(c) *Preliminary notice to each tenant.* Not later than 30 days after the date of execution of the applicable ACC, the PHA shall issue to each tenant a written communication which shall:

(1) State that the PHA intends to acquire the real property occupied by the tenant and has entered into a contract with HUD under which the funds necessary to acquire the property will be made available;

(2) Inform the tenant whether or not it appears that the tenant will be required to relocate permanently as a result of the PHA's acquisition of the real property;

(3) State that the communication is not a notice to vacate the real property and that, if the tenant moves for any reason, except after being issued a notice of displacement as described in paragraph (e) of this section, the tenant will not be considered a displaced person under the Uniform Act;

(4) Indicate that as soon as feasible, but not later than 10 days following the date of acquisition of the real property, the tenant will receive from the PHA an appropriate notice as specified under paragraph (d) and (e) of this section, as the case may be (the provisions of such notice or notices as are referred to shall be generally described in the communication);

(5) Generally describe the relocation payments and other assistance for which the tenant would be eligible, if displaced under the Uniform Act, including conditions of eligibility therefor; and

(6) Inform the tenant of the policies contained in paragraphs (e) (3), (e) (4) (ii) and (e) (4) (iii) of this section.

(d) *Notice of right to continue in occupancy.* Not later than 10 days after the date of acquisition of the real property, the PHA shall furnish each tenant who will not be displaced a written notice of the tenant's right to continue in occupancy, which contains the following conditions:

(1) The tenant shall have the right to lease and occupy a decent, safe and sanitary dwelling which is either the tenant's current dwelling or another dwelling located within the same building or nearby building identified as part of the same project, for a period of at least four years beginning on the date of acquisition, or the date the dwelling is placed in decent, safe and sanitary condition, or the date of termination of any temporary relocation, whichever is later, for so long as the tenant complies with the terms of the lease and the rules, regulations and procedures of the PHA except for those establishing standards and criteria for continued occupancy related to income. Rents for such tenants shall be determined in accordance with applicable HUD regulations but in no event shall the rent exceed an amount established by the PHA and approved by HUD which shall represent an unsubsidized rent for the units occupied by such tenants taking into consideration the fixed annual contribution, projected operating expenses and the amount of local property taxes if the property were not exempt. Notwithstanding the provisions of any ACC, pursuant to the Act, which may be inconsistent with this section, the PHA is authorized to permit tenants to remain in occupancy subject to the provisions of this section. The PHA will assure that at the beginning of such four year period the dwelling is decent, safe and sanitary as determined under the housing quality standards set forth at, 24 CFR § 882.109.

(2) The tenant's monthly housing cost shall be determined in accordance with the provisions of the United States Housing Act of 1937, as amended.

(3) The tenant shall not be required to move from the dwelling unless the move is necessary to permit rehabilitation or demolition. If such move is required to be made, (i) Not more than one temporary relocation by the tenant shall be required, (ii) The temporary relocation shall not exceed one year in duration, (iii) The PHA shall make available to the tenant for the temporary period decent, safe and sanitary housing meeting the standards of Sec. 882.109, and (iv) The PHA shall pay the actual reasonable expenses, including any moving costs or increase in rent incurred by the tenant in connection with the temporary relocation.

(4) If the PHA fails to comply with any requirement to which it is committed in accordance with this notice, the tenant shall automatically be deemed to have been issued a notice of displacement as described in paragraph (e) of this section and to be entitled to relocation payments and other relocation assistance under 24 CFR Part 42, as modified by the special policies contained in this section.

(e) *Notice of displacement.* To be eligible as a displaced person for relocation payments and other assistance under the Uniform Act, the tenant must be issued a written notice of displacement as described in this paragraph.

(1) *Timing of notice.* Not later than 10 days after the date of acquisition of the real property, the PHA shall issue to each tenant who will be displaced a written notice of displacement. The notice shall be effective not later than the date of acquisition.

(2) *Contents of notice.* The notice shall state that if the tenant moves from the real property on or after the effective date of the notice, the tenant will be considered a displaced person under the Uniform Act and will be entitled to certain relocation payments and other assistance, which shall be generally described, including the maximum allowable dollar amount or range of each payment for which the tenant will apparently be eligible, any conditions of eligibility, and the procedures for obtaining the payment. The basis of the computation of a replacement housing payment, as set forth in paragraph (f) of this section, shall also be fully described.

(3) *Tenant request for notice of displacement.* At any time after the execution of the ACC, a tenant may request the PHA to issue a notice of displacement. Within 30 days after receiving the tenant's request, the PHA shall consider the tenant's stated reasons for making the request and shall either issue a notice of displacement or a written statement denying the request and stating the reasons for denial.

(4) *Automatic notice of displacement.* A person shall be deemed to have been issued a notice of displacement, effective immediately or on the date of acquisition, whichever is earlier, if the PHA:

(i) Within 30 days after the date of execution of the ACC, fails to issue to the tenant the preliminary notice described in paragraph (c) of this section, except that subsequent issuance of a preliminary notice as described in paragraph (c) of this section shall have the effect of cancelling the notice of displacement; or

(ii) Within 10 days after the date of acquisition of the property, fails to issue to the tenant either the written notice of displacement described in paragraph (e) of this section, or the written notice of the right to continue in occupancy described in paragraph (d) of this section; or

(iii) Fails to fully meet its commitments as set forth in the notice of the right to continue in occupancy as described in paragraph (d) of this section.

(f) *Computation of replacement housing payment.* If a tenant is displaced, the computation of any replacement housing payment for rental assistance under 24 CFR 42.95(c) (1) shall be based upon the cost of renting a publicly owned or subsidized replacement dwelling, if available and offered to the displaced tenant, which meets all of the requirements of the term "comparable replacement dwelling" as defined in 24 CFR 42.20(b) except the requirement at § 42.20(b) (3) that it be "on the private market." The offer of an actual, available, comparable, subsidized or publicly owned unit must be documented in the relocation case file, if such unit is used for purposes of calculating the replacement housing payment.

(g) *Notice of determination not to acquire.* If, after execution of the ACC, the PHA determines not to acquire the property, the PHA shall serve a written notice on each tenant occupying the property. The notice shall state that the PHA has determined not to acquire the property and that any tenant moving from the property thereafter will not be eligible as a displaced person for relocation payments and assistance under the Uniform Act.

(h) *Manner of notices.* Any notice which the PHA is required to provide under this section shall be personally served, receipt documented, or sent by certified or registered first-class mail, return receipt requested.

(i) *Temporary relocation costs.* Actual reasonable expenses, including any costs for moving or any increase in rent, incurred in connection with any temporary relocation carried out in accordance with paragraph (d) (3) of this section shall be

borne as a development cost of the project.

APPENDIX A—PROTOTYPE COST LIMITS FOR LOW-INCOME HOUSING

A. UNIT PROTOTYPE COST

1. Prototype cost comprises the cost of dwelling structures, account No. 1460, and dwelling equipment, account No. 1465, as described in Handbook 7510.1, chapter 3, section 15, which include their pro rata share of the builders' fee and overhead, insurance, social security, sales tax, and bonds.

2. Prototype cost does not include the costs of site acquisitions, site improvement, nondwelling structures or spaces (and equipment), planning (architectural-engineering fees, permit fees, inspection, and similar costs), relocation, interest or local authority administrative costs, all of which are described in Handbook 7510.1, chapter 3, section 15.

3. The determination of prototype cost shall consider:

(a) Compliance with applicable HUD Minimum Property Standards and planning and design criteria described in HUD Handbook 7417.1, chapter 5. Currently copies of HUD Handbooks are maintained and available for public inspection in the Office of Public Information, room 1104, Department of Housing and Urban Development, 451 Seventh Street S.W., Washington, D.C. 20410, and in each of the Department's regional, area and insuring offices.

(b) The additional cost to provide, as required by section 6(b) of the Act:

"(1) The extra durability required for safety and security and economical maintenance of such housing,

(2) The provision of amenities designed to guarantee a safe and healthy family life and neighborhood environment,

(3) The application of good design as an essential component of such housing for safety and security as well as other purposes,

(4) The maintenance of quality in architecture to reflect the standards of the neighborhood and community,

(5) The need for maximizing the conservation of energy for heating, lighting, and other purposes,

(6) The effectiveness of existing cost limits in the area, and

(7) The advice and recommendations of local housing producers.

B. PROJECT PROTOTYPE COSTS

1. The project prototype cost is the sum of the unit prototype costs for the dwellings of various sizes and types comprising the project. The total cost of dwelling construction and equipment (accounts 1460 and 1465), and the related proportionate share of the contingency established by any development cost budget shall not exceed the sum of 105 percent of the project prototype costs for the dwellings to be constructed.

2. A request for approval of a cost which exceeds the 105 percent cost limitation but which is not in excess of the statutory 110 percent cost limitation may be submitted to the Regional Administrator. Such requests shall be supported by a detailed justification with respect to the particular project, taking into account all of the circumstances involved and demonstrating that such approval is necessary and desirable in carrying out the objectives of the Act.

3. If it is found at any time between annual updates that all or part of the current prototype cost for a Field Office jurisdiction are unworkable, the procedures outlined in HUD Handbook 7417.1, chapter 5 will be followed for requesting revisions.

4. Development cost budgets, main construction contracts, preliminary contracts of sale and contracts of sale will not be approved unless an appropriate prototype cost for the area is published in the FEDERAL REGISTER.

(NOTE.—For FEDERAL REGISTER page references to the list of Prototype Per Unit Cost Schedules issued under this Appendix but not carried in the Code of Federal Regulations, consult the List of CFR Sections affected.)

NOTE.—It is hereby certified that the economic and inflationary impacts of this regulation have been carefully evaluated in accordance with OMB Circular A-107.

Issued at Washington, D.C., January 18, 1977.

Effective Date. This rule is effective on February 7, 1977.

JOHN T. HOWLEY,
Acting Assistant Secretary for Housing, Federal Housing Commissioner.

[FR Doc.77-2550 Filed 1-28-77;8:45 am]

federal register

MONDAY, JANUARY 31, 1977

PART VI



DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Interstate Land Sales Registration

■

LAND REGISTRATION

Proposed Revision of Exemption and Disclosure Regulations

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Interstate Land Sales Registration

[24 CFR Part 1710]

[Docket No. R-77-412]

LAND REGISTRATION

Proposed Revision of Exemption and Disclosure Regulations

Notice is hereby given that pursuant to the Interstate Land Sales Full Disclosure Act (15 U.S.C. 1701 et seq.) it is proposed to amend Chapter IX of 24 CFR. Under this proposal, certain technical and substantive changes would be made in Part 1710 of Title 24.

On August 4, 1976, the Assistant Secretary for Consumer Affairs and Regulatory Functions published advance notice of a proposal to initiate rulemaking. The objective is a substantial revision of the exemption and disclosure regulations of the Office of Interstate Land Sales Registration (OILSR). It is felt that these proposals will exempt subdivisions for which registration is not necessary in the public interest and simplify registration for other developers and will give the purchasers a much readable and meaningful Property Report.

An effort has been made, based on many of the comments received, to eliminate needless repetition of disclosure in the Property Report and the rest of the Statement of Record. Also, developers will be required to answer only those questions in the Property Report that pertain to their particular subdivision and will be of interest to a potential purchaser there. It is hoped that the new format of the Property Report, including a revised cover page, a Special Risks and Notices section and an index page, will provide the purchaser with a more understandable disclosure document. Based on comments, long and complicated information such as the financial statement has been eliminated from the Property Report.

The sections of the regulations which are affected by the proposed technical and clarifying changes are as follows:

In § 1710.1 the definitions of the term "sale" is proposed to be amended. It has been OILSR's policy and practice in litigation to adhere to the theory of an ongoing sale for purposes of the statute of limitation provisions of the Act in fraud cases. The amendment of the term "sale" will clarify the Agency's position with regard to the period of time covered by a sale. A sale shall continue while the purchaser is making payments on his obligation or arrangement or until a deed has been delivered by the developer, whichever comes later.

Section 1710.11(c) now extends this same policy to the time requirements for obtaining a § 1710.11 exemption. This change is proposed to avoid loopholes in the regulations which were not intended by Congress. Under the previous definition of "time of sale" the developer could sell lots encumbered by a mortgage (if the deed passed within 120 days and payments were placed in escrow) or developers could sell lots that were free and clear of all liens, encumbrances, and adverse claims at the time the sales contract was signed, but were later encumbered so that at the time the deed was delivered, the purchaser would not receive real estate with a free and clear title. Section 1710.11(c)(1) would be amended to avoid either situation; the real estate must remain free and clear until the obligation or arrangement has been paid in full or until a deed has been delivered, whichever comes later.

Furthermore, § 1710.11(b)(1) would be amended to eliminate the requirement of having the developer file each acknowledged statement and developer's affirmation within 31 days after the expiration of the calendar year in which the sale or lease was made. The comments received indicated that developers found this method burdensome. Section 1710.11(b)(1) would be amended to require the developer to file a single approved copy of the Statement of Reservations, Restrictions, Taxes, and Assessments along with an affidavit stating that the Statement is a true representation of the Statement provided to each purchaser. This procedure will eliminate the need for the developer to file copies of each Statement; instead, paragraph (b)(1)(iii) will permit the developer to file only a copy of the purchaser's acknowledgement evidencing receipt of the Statement. Additionally, the developer will continue to be required to affirm that the purchaser made an on-the-lot inspection of the real estate prior to signing the purchase agreement.

Several comments were received objecting to OILSR's policy of denying a developer's § 1710.11 exemption application if the real estate is subject to a reservation in a land patent, as is the case with much land west of the Mississippi River. A reservation in a land patent is an encumbrance; since it is not one of the "liens, encumbrances or adverse claims" specifically omitted by section 1403(10) of the Act, a developer may not qualify for this exemption. However, it is felt that these subdivisions may now be able to qualify for the new §§ 1710.14(a)(2) or (a)(3) exemptions.

The previous § 1710.13(c) exempted the sale or lease of lots in a subdivision provided their number was less than 50 lots and not more than five percent of the developer's total lots in the subdivision platted of record and provided that the other lots in the subdivision were exempted pursuant to § 1710.10(c) or § 1710.10(i). Based on the comments received, § 1710.13(c) is proposed to be amended to increase the five percent limitation to ten percent.

A new § 1710.13(d) is proposed to provide an exemption for a lot or lots sold by the developer to a person engaged in the land sales business. To qualify for this exemption the sale must be to a person who is going to resell the lot(s) in the normal course of his business. The term "business" is viewed as an activity of some continuity, regularity and permanency or means of livelihood. It was thought that the protections afforded by the property report need not be extended to the sophisticated businessman who is engaged in the land sales business. Section 1710.13(d), however, does not permit an exemption when the sale is made to an individual purchaser who is merely buying the lot for investment purposes to be sold sometime in the future. Such an individual would not be considered to be engaged in the land sales business.

Considerable comment was received with respect to § 1710.14. It was suggested that the previous § 1710.14(a)(2) exemption should be revised and a new exemption created for subdivisions in which all improvements and amenities are installed and free and clear title provided to the purchasers. In response to these requests, § 1710.14 has been substantially revised.

The previous § 1710.14(a)(2) would be deleted and replaced by a new limited offering exemption. This new limited offering exemption is designed to provide an exemption for the small developer who seeks to promote his subdivision locally without using sophisticated marketing techniques to attract purchasers residing outside the local community.

Section 1710.14(a)(2) would apply to subdivisions with less than 150 lots in which the plan of promotion and disposition is directed to persons residing within the local community in which the subdivision is located. In the previous limited offering exemption, developments with a local market which included residents of more than one state often were precluded from obtaining this exemption. Section 1710.14(a)(2) would permit interstate sales if the logical promotion in the local market includes residents of more than one state (e.g., a local community located on a state border). OILSR would carefully examine the advertising and promotional media and methods used by a developer to determine whether his sales program is geared to attract residents of the local community or whether that promotion is more broadly based. If the latter is found to be the case, the exemption would be denied.

Additionally, the purchaser must make an on-site inspection of the real estate prior to purchase and the developer must affirm the inspection in accordance with the format set forth in § 1710.103. The developer must deliver to the purchaser a general warranty deed unencumbered by any mortgage or liens.

The developer must specify within the terms of the purchase agreement whether improvements such as roads, sewers, water, utilities or amenities will be provided by the developer or if the responsibility for such installation has been left to the purchaser. Furthermore, the purchase agreement must contain a 15-day cooling off period in which the purchaser may cancel the agreement for any reason and receive a complete refund of all monies paid; the developer must specifically notify the purchaser of this cooling off period by providing a non-waivable provision in the purchase agreement.

In order to qualify for this exemption the developer may not use sophisticated marketing techniques such as direct mail or telephone solicitation, offers of gifts, dinners, trips or such other forms of promotion as a means to induce purchasers to visit the subdivision or purchase a lot.

A new developmental exemption is proposed as § 1710.14(a)(3). This exemption would exempt subdivisions where the improvements and amenities have been completed prior to the time of sale and, where the developer is able and is contractually obligated to provide a general warranty deed.

Specifically, § 1710.14(a)(3) would exempt subdivisions which have less than 300 lots promoted via a common promotional plan. As in the proposed § 1710.14(a)(2), the developed must direct his plan of promotion and disposition to persons residing in the local community in which the subdivision is located, he must be able and contractually obligated to deliver a general warranty deed free and clear of any encumbrances or liens and the purchaser must make an on-site inspection to be affirmed by the developer in the format as set forth in § 1710.103.

A developer could not qualify for this exemption unless each lot is situated on a paved road or street dedicated to the local governing body; the subdivision must have drainage structures and fill approved by the local governing authority necessary to prevent flooding; electric power must extend to each lot and the developer must provide potable water and sanitary sewage disposal facilities that meet the requirements of the local governing authority. If recreational facilities are promised, such facilities must have been completed or the developer must place funds in escrow or obtain an irrevocable letter of credit to assure their completion before commencing sales.

All of the requirements of paragraphs (a)(3)(v) through (a)(3)(xi) of § 1710.14 must be met before a single lot may be sold pursuant to this proposed exemption. However, only 30 percent of the lots in the subdivision have to fulfill the requirements of paragraphs (a)(3)(v) through (a)(3)(ix) at the time of application for this exemption, provided that for the remaining lots, funds are in escrow with an independent institution having trust powers or an irrevocable letter of credit from a lending institution exists assuring completion of the roads, drainage structures and fill necessary to prevent flooding, electric power, and water and sewage disposal facilities. It should be re-emphasized that while only 30 percent of the lots have to meet the requirements of paragraphs (a)(3)(v) through (a)(3)(ix) at the time the developer files for the exemption, no single lot may be sold until it has satisfied all of these requirements. This procedure would be established to avoid requiring the developer to reapply for the exemption when he is ready to develop the remaining lots in the subdivision.

Procedurally, § 1710.14 (c) and (d) are proposed to instruct developers on how to obtain an exemption order pursuant to this section. The paragraph (c) dealing with the termination of a § 1710.14 exemption has been redesignated paragraph (e).

Section 1710.103 would be amended to require the developer's affirmation when filing for §§ 1710.14(a)(2) and 1710.14(a)(3) exemptions.

Comments were received requesting the establishment of a brokers' exemption for real estate brokers selling lots in scattered locations where no one site consisted of more than 50 lots even though the lots were sold via a common promotion, the theory being that there would be difficulty in writing a statement of record and property report when a few lots were scattered in numerous locations. While OILSR appreciates the developer's dilemma in trying to comply with the Act's registration requirements, a brokers' exemption is not proposed. The registration requirements should not hinge on whether or not an offering is comprised of scattered lots. But, in those cases where no affirmative action is necessary to protect the public interest or prospective purchasers, OILSR feels that the No-Action letter's case-by-case review is preferable to a general brokers' exemption.

Section 1710.20 would be amended to reflect the changes in the disclosure sections later in this part. Old paragraphs (b) and (c) have been combined into one new paragraph (b) to make it clear that the property report is part of the statement of record. New § 1710.110 dealing with annual notice requirements is cited in both paragraphs (b) and (c) to clarify that the annual notice requirement is for both the Federal registration and registrations made through state filings.

Section 1710.26 would be amended to make the requirements for initial state filings applicable to all amendments and consolidations to existing state filings. Thus, the new disclaimer page, signature page and financial information required for initial state filings will now be required for all consolidations and amendments to existing state filings.

Section 1710.101 is proposed to be amended to delete § 1710.101(8) and to move the signature lines and all that follows to immediately after subparagraph (7). This proposed change is to make this section consistent with the proposed changes to § 1710.11.

The old § 1710.105 and § 1710.110 dealing with statement of record and property report format and instructions are proposed to be deleted and several new sections dealing with new disclosure requirements for the statement of record are added.

The proposed new § 1710.105 deals with the format and instructions for the statement of record. This amendment makes it clear that the statement of record consists of the property report and twelve other sections containing additional questions and documentation. This section contains the format for the statement of record which includes the format for the property report. The format also includes the affirmation the developer is required to sign at the end of the statement of record. This proposed amendment also contains technical instructions for completion of the statement of record. The instructions state that the responses in the property report must be in short narrative statements and that the headings and subheadings in the format must be followed. The instructions also state that the Secretary may require such further material information, documentation or certification as may be necessary in the public interest or for the protection of purchasers. The instructions further permit the Secretary to modify the format to accomodate states which accept the Federal filing. Whenever documentation required by the statement of record cannot be obtained, a statement giving the reasons therefor must be furnished along with the best alternative documentation.

Section 1710.106 is a proposed new section dealing with the introductory pages in the property report. Based on comments received, it was felt that the old style of the property report was often confusing to purchasers. It is hoped that the new requirements for the cover page will be less cumbersome and more readable. Section 1710.106(b) sets forth the requirements for the table of contents on the second page of the property report which will be of great assistance to purchasers in understanding the contents of the property report. Section 1710.106(c) deals with the requirements for the third page of the property report which is headed by a special risks section. This section provides warnings to purchasers and contains a special warning dealing with environmental concerns of the subdivision. Many comments were received indicating that there was already adequate environmental disclosure in the property report and the statement of record. However, a study ("Subdividing Rural America: Impacts of Recreational Lot and Second Home Development") conducted for agencies including HUD and CEQ, found that recreational subdivision development may create a variety of adverse environmental impacts, depending upon the subdivision's design, location, buildout rate and sales objectives. Although the relationship, if any, between those impacts and these regulations is remote, the Secretary believes that an environmental warning could be useful to purchasers in cases where there are no studies indicating the environmental impact of the subdivision. The remainder of the third page and a fourth page, if necessary, will be reserved for a special notices section. This section will be used by OILSR to alert purchasers to particular areas of interest about the subdivision and illustrations of these notices are given in this section.

Section 1710.107 is a proposed new section dealing with disclosure topics found in the property report. With the exception of the General Information section, most responses are to be in a short narrative form. Unlike the old property report format, the questions asked are not to be repeated in the body of the property report which the purchaser receives. It is hoped that this new format will shorten the length of the

property report considerably. This section also eliminates several of the sections found in the old property report form and eliminates the need for a developer to provide extraneous information that does not apply to his particular subdivision.

Paragraph (b) dealing with subdivision characteristics and climate and paragraph (c) dealing with land use and control give some additional environmental disclosures. Paragraph (d) dealing with roads provides for two charts which it is felt will improve the readability of the property report for purchasers. In § 1710.107(e) dealing with utilities there has been an emphasis on questions concerning water and sewage disposal. Section 1710.107(8) dealing with recreational facilities also provides for a chart which it is expected will be helpful to purchasers. Section 1710.107(i) provides for additional information for the property report. Subparagraphs (4)–(8) are to be answered only if they apply to the subdivision.

Section 1710.107(j) provides for a Cost Sheet and a signature page. Based on the comments received, it was felt that a cost sheet summarizing the expenses for a purchaser would be helpful. This cost summary and the purchaser's signed receipt will appear at the end of the property report. This section also requires an agent's certification to be signed by the salesman in the presence of the purchaser. Based on comments, the requirement that a financial statement be attached to the property report has been deleted, but the developer must make a copy available to the purchaser at any time if he wishes it, pursuant to § 1710.-107(i)(3).

Section 1710.108 is proposed to provide for additional information and documentation to be found in the statement of record. The headings in this section parallel the headings found in the property report section and this section essentially provides the additional information and documentation to support the statements made in the property report section. Based on comments, there has been a substantial effort made to eliminate documentation. Among the documents eliminated from the old requirements are: copies of state property reports and registration statements; diagrams of cross-sections of streets and curbs; financial statements or pro forma financial statements for non-publicly regulated water suppliers, suppliers of sewage treatment services and property owners' associations; construction contracts for water systems; rate schedules for non-publicly regulated electricity suppliers; articles of incorporation and by-laws for non-publicly regulated water suppliers and suppliers of sewage treatment services; rate schedules for non-publicly regulated telephone service suppliers; copies of construction contracts, bond or enscrow agreements for installation of telephone service facilities and information regarding television service.

Based on many comments received, § 1710.108(i)(3) dealing with financial statements has been modified. The most significant change deals with raising the level for requiring certified audited financials from $500,000 to $1,500,000 for the offering.

A new § 1710.110, Annual Notice Requirement, is proposed to be added to require developers to submit a brief statement by January 31 of each year (1) giving OILSR notice whether the developer is still doing business or the subdivision has been sold out, and (2) either certifying that no material changes have occurred in the offering or stating that material changes have occurred and that amendments are enclosed or will be immediately forthcoming. This notice requirement is being proposed in order to reduce the necessity for OILSR action against developers who fail to submit amendments disclosing material changes, as required, and to eliminate inactive subdivisions from the inventory of effective registrations.

Section 1710.115, State Property Report Disclaimer, is proposed to be amended in consonance with the proposed amendments dealing with §§ 1710.-106 and 1710.107. Both the format for the disclaimer page and the language of the HUD disclaimer are proposed to be changed, and a developer certification is proposed to be added to the receipt at the bottom of the page.

Section 1710.120, Statement of Record—State Filing, is proposed to be amended in consonance with the newly proposed § 1710.108. In this case, the proposed changes are predominantly technical, due to the reorganization and renumbering of documentation requirements.

Section 1710.125, Partial Statement of Record, is proposed to be amended in consonance with the provisions of § 1710.108(a). In addition, the Affirmation and Agreement in this section has been amended to delete the paragraph which stated that the developer agreed to file the remaining portions of the Statement of Record if the Secretary determined the offering was not exempt. The reason for this deletion is that in the event the Secretary determines that the offering does not qualify for the particular exemption sought, a developer might pursue alternate methods of exempt sales, rather than register.

The proposed effective date of the regulations would apply prospectively but would require compliance by developers of effective registrations on a monthly basis during 1978. An updated filing would be made in the anniversary month of the month in which the most recent effective date of a registration or amendment was obtained. The proposed effective date would not affect the viability of exemptions previously obtained or in process.

Interested persons are invited to participate in this rulemaking proceeding by submitting written comments or suggestions to the Rules Docket Clerk, Office of the Secretary, Department of Housing and Urban Development, Room 10141, 451 7th Street, S.W., Washington, D.C. 20410. All communications should refer to the Office of Interstate Land Sales Registration, Land Registration, and the date of publication. It is requested, though not required, that all written communications be submitted in triplicate.

These proposals only modify certain sections in Part 1710 and the remaining sections should be read together with these proposals. When published in final, all of Part 1710 will be published for the ease of the public in understanding the regulations. Particular attention is invited with respect to the revised exemption procedures in § 1710.14, the revised format for disclosures in the Property Report set forth in §§ 1710.105, 1710.106, 1710.107, the modification of the documentation requirements of the Statement of Record offered in § 1710.108 and the annual notice requirement in § 1710.110.

OILSR expects in the future to modify and expand the exemption guidelines to be consistent with final regulations. These guidelines would define common promotional plan and local community and would provide more examples to give assistance to developers. OILSR is also considering issuing proposed regulations that would modify the fee schedule.

All communications received by April 30, 1977 will be considered before taking action on the proposed rules. Also, public hearings may be scheduled to hear comments on the proposed rules. If public hearings are scheduled, notice will appear in the FEDERAL REGISTER and various general and special circulation newspapers and periodicals. The proposals contained in this notice may be changed in light of comments received. A copy of each written submittal will be available for public inspection during business hours at the above address.

A draft environmental impact statement is being forwarded to the Council on Environmental Quality and will be circulated for comment.

This notice of proposed rulemaking is issued under the authority of section 7 (d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d); section 1419, Interstate Land Sales Full Disclosure Act, 15 U.S.C. 1718.

It is hereby certified that the economic and inflationary impacts of this proposed regulation have been carefully evaluated in accordance with OMB Circular A–107.

Accordingly, Part 1710 of Chapter IX of 24 CFR is amended as follows:

1. In Section 1710.1 paragraph (n) is proposed to be amended as follows:

§ 1710.1 Definitions.

* * * * *

(n) "Sale" means any obligation or arrangement for consideration to purchase or lease a lot directly or indirectly. A sale shall continue until the obligation or arrangement has been paid in full or a deed has been delivered, whichever comes later. The term "sale" or "seller" include in their meanings the terms "lease" and "lessor."

* * * * *

2. In § 1710.11 paragraphs (a)(2), (b)(1) and (c)(1) is proposed to be amended to read as follows:

§ 1710.11 Statutory exemptions—determination required.

(a) * * *

(2) Each and every purchaser has made a personal on-the-lot inspection of the real estate which he purchased or leased, prior to the signing of a contract to purchase or lease, and the developer submits his written affirmation to that effect, in the format set forth in § 1710.-103.

* * * * *

(b)(1) Within 31 days after the expiration of the calendar year in which the sale or lease is made, the developer shall file with the Secretary

(i) One copy of the approved Statement of Reservations, Restrictions, Taxes, and Assessments;

(ii) An affidavit stating that the Statement submitted is a true representative copy of the Statement provided to each purchaser;

(iii) One copy of each purchaser's acknowledgement required by paragraph (a)(5) of this section; and

(iv) The developer's affirmation required by paragraph (a)(2) of this section.

* * * * *

(c) For the purposes of this section:

(1) "Time of sale or lease" is the period which begins with the purchaser entering into an obligaton or arrangement for consideration to purchase or lease a lot directly or indirectly and continues until the obligation or arrangement has been paid in full or a deed has been delivered, whichever comes later.

* * * * *

3. In § 1710.13 paragraph (c) is proposed to be amended and a new paragraph (d) is added to read as follows:

§ 1710.13 Regulatory exemptions.

* * * * *

(c) The sale or lease of lots in the subdivision: *Provided,* That the number of such sales or leases is less than fifty lots and not more than ten percent of the developer's total lots in the subdivision platted of record, *and provided further:* * * *

(d) The sale or lease of lots to a person engaged in the land sales business.

The foregoing exemptions are available * * *

4. Section 1710.14 is proposed to be revised to read as follows:

§ 1710.14 Regulatory exemptions—exemption order required—limited offering.

(a) The Secretary may exempt from the protection of purchasers by reason division or any lots in a subdivision which otherwise would be covered by the provisions of this part, by issuing an exemption order in writing to the effect that the enforcement of this part with respect to such subdivision or lots is not necessary in the public interest and for the prtoection of purchasers by reason of the small amount involved or the limited character of the public offering, if he determines that:

(1) The request for the exemption order is limited to a single transaction; or

(2) All the following criteria are met:

(i) There are less than 150 lots in the subdivision.

(ii) The plan of promotion and disposition shall be directed to persons residing within the local community in which the subdivision is located.

(ii) Each and every purchaser shall make a personal on-the-lot inspection of the real estate to be purchased or leased, before signing a contract to purchase or lease, and the developer submits his written affirmation to that effect, in the format set forth in § 1710.103.

(iv) The developer shall convey title to the purchaser by general warranty deed unencumbered by any mortgage or other liens and the contract shall so provide.

(v) The developer shall state specifically within the terms of the purchase agreement whether roads, sewers, water, utilities and amenities will be provided by the developer.

(vi) The purchase agreement shall contain a non-waivable provision for a period of 15 days from the date the agreement is signed by the purchaser in which the purchaser may cancel the agreement and receive a refund of all considerations paid.

(vii) There are no direct mail or telephone solicitations. There are no offers of gifts, dinners, trips, or other such forms of promotion to induce purchasers to visit the subdivision or purchase a lot; or

(3) All the following criteria are met:

(i) There are less than 300 lots in the subdivision.

(ii) The plan of promotion and disposition shall be directed to persons residing within the local community in which the subdivision is located.

(iii) Each lot shall satisfy paragraphs (a)(3)(v) through (xi) of this section at the time of sale.

(iv) At least 30 percent of the lots in the subdivision shall satisfy paragraphs (a)(3)(v) through (ix) of this section at the time of application for this exemption. With respect to the remaining lots, the developer has funds in escrow with an independent institution having trust powers or has an irrevocable letter of credit from a lending institution to assure that paragraphs (a)(3)(v) through (ix) of this section will be satisfied.

(v) Each lot shall be situated on a paved road which has been dedicated to the local governing body and that body has accepted such road or street for maintenance.

(vi) The subdivision shall have drainage structures and fill necessary to prevent flooding and such structures shall have been approved by the local governing authority.

(vii) Electric power shall be extended to each lot.

(viii) Potable water and sanitary sewage disposal shall be available for each lot and meet the requirements of the applicable governing authority.

(ix) All recreational facilities for the subdivision shall be complete or the developer shall have funds placed in escrow with an independent institution having trust powers or have an irrevocable letter of credit from a lending institution to assure completion of all recreational facilities.

(x) The developer shall convey title to the purchaser by general warranty deed unencumbered by any mortgage or other liens and the contract shall so provide.

(xi) Each and every purchaser shall make a personal on-the-lot inspection of the real estate to be purchased or leased, before signing a contract to purchase or lease, and the developer submits his written affirmation to that effect, in the format set forth in § 1710.103.

(b) To obtain an order by the Secretary under paragraph (a)(1) of this section, the developer shall:

(1) File a partial Statement of Record—request for exemption in accordance with § 1710.125. The partial Statement of Record shall not operate as registration under the Act.

(2) Pay the filing fee required by § 1710.35(g).

(3) Submit a comprehensive statement: (i) Identifying the lots which are subject of the exemption request and setting forth the reasons supporting the request. The developer shall enumerate and identify prior sales, if any.

(ii) Describing the advertising and promotion media and methods used or to be used in connection with the sale or lease or offers to sell or lease lots in the subdivision. The statement shall describe the area and states in which the newspapers and periodicals are distributed, or in which broadcasts of radio or television stations are received, or to which mailings or other promotional materials are directed. If the request is for the exemption of a single transaction, the statement shall include the details of that transaction only.

(iii) Stating whether any of the holders of an ownership interest in the land, or the developer or any principals in the holder or developer, are directly or indirectly involved in any other subdivision. If so, the statement shall identify the subdivision by name, location and OILSR number or numbers, if any.

(4) Submit such additional information as the Secretary may require in order to make his decision.

(c) To obtain an order by the Secretary under paragraph (a)(2) of this section, the developer shall:

(1) Submit the materials required by paragraphs (b)(1), (b)(2) and (b)(3) of this section.

(2) File a copy of the developer's affirmation in the format set forth in § 1710.103 for each signed purchase agreement within 31 days after the expiration of the calender year in which the sale or lease is made.

(3) File a sample copy of the general warranty deed to be delivered to the purchaser.

(4) File a sample copy of the purchase agreement.

(5) Submit such additional information as the Secretary may require in order to make his decision.

(d) To obtain an order by the Secretary under paragraph (a)(3) of this section, the developer shall:

(1) Submit the material required by paragraphs (b)(1), (b)(2) and (b)(3) of this section.

(2) Submit the materials required by paragraph (c)(2) and (c)(3) of this section.

(3) If required by paragraphs (a)(3)(iv) or (a)(3)(xi), submit a copy of the escrow agreement or irrevocable letter of credit.

(4) Submit letters from responsible officials of the proper local governing body or authority substantiating that the requirements of paragraphs (a)(3)(v), (a)(3)(vi), (a)(3)(vii) and (a)(3)(viii) of this section are satisfied.

(5) Submit such additional information as the Secretary may require in order to make his decision.

(e) Any exemption order issued pursuant to the provisions of this section shall be limited to the facts, affirmations, and methods of operation as represented in the request, and any material change in or deviation therefrom shall automatically terminate the effect of such exemption order.

5. Section 1710.20 is proposed to be amended as follows:

§ 1710.20 Statement of record including property report-form and filing.

The requirements for registering a subdivision, by filing a Statement of Record including a Property Report with the Secretary and obtaining the Secretary's determination of a date when such filing becomes effective, are as follows:

(a) *Filing.* A Statement of Record relating to a subdivision shall be filed with the Secretary by personal delivery or by certified mail, return receipt requested, addressed as shown in § 1710.2.

(b) *Form of Statement of Record.* The Statement of Record shall include the Property Report and be filed in the form, and shall be supported by the documentation, required by §§ 1710.105, 1710.106, 1710.107, 1710.108, and 1710.110. The Statement of Record shall also include such other information as the Secretary may require as being reasonably necessary or appropriate for the protection of purchasers.

(c) *State filings.* Instead of the forms required by paragraph (b) of this section, a Statement of Record and Property Report may be in the form required by State authorities if filed in accordance with the provisions of §§ 1710.25, 1710.110, 1710.115, and 1710.20.

(d) *Effective date—Property Report.* The Property Report shall be considered to be a part of the Statement of Record for the purpose of determining the effective date and the suspension of the effective date thereof.

6. Section 1710.26(b) is proposed to be amended so that everything after the numerical listing of States reads as set forth below:

§ 1710.26 State filings—acceptable filings.

* * * * *

(b) * * * The requirements of §§ 1710.25, 1710.115 and 1710.120 shall apply to all amendments and consolidations which are filed or required to be filed in connection with initial filings which have been effected with States and accepted by the Secretary.

§ 1710.101 [Amended]

Section 1710.101 is proposed to be amended by deleting paragraph (8). The signature lines and the parenthetical phrase that follows are moved to immediately follow paragraph (7).

8. Section 1710.103 is proposed to read as follows:

§ 1710.103 Affirmation — purchaser's on-the-lot inspection format.

The affirmation required by § 1710.11(a)(2) shall be submitted in the form set forth below and may be submitted as a separate document or as an attachment to the purchaser's acknowledgement of receipt of the Statement of Reservations, Restrictions, Taxes and Assessments. The affirmation required by §§ 1710.14(a)(2)(iii) and (a)(3)(x) shall be submitted in the form set forth below.

* * * * *

9. Sections 1710.105 and 1710.110 are proposed to be deleted in their entirety, and new §§ 1710.105, 1710.106, 1710.107, 1710.108 and 1710.110 are proposed to be added as follows:

§ 1710.105 Statement of record—format and instructions.

The Statement of Record required by § 1710.20 shall contain the Property Report and 12 other sections containing some additional questions, documentation and an affirmation as set forth in §§ 1710.106, 1710.107 and 1710.108. It shall be prepared in accordance with the format and instructions below. For ease of reference, the appropriate citation where specific instructions can be found appears in the margin to the right.

(a) *Format*—Statement of records.

Property report	*Citation*
Cover page	1710.106(a)
Table of contents	1710.106(b)
Special risks and notices	1710.106(c)
General information	1710.107(a)
(1)	
(2)	
(3)	
(4)	
(5)	
Subdivision characteristics and climate	1710.107(b)
(1) Topography and physical characteristics	
(2) Drainage and flooding	
(3) Nuisance and safety hazards	
(4) Climate and natural hazards	
Land use and control	1710.107(c)
Roads	1710.107(d)
Utilities	1710.107(e)
(1) Water	
(2) Sewage disposal	
(3) Electric	
(4) Telephone	
(5) Gas	
(6) Garbage and trash disposal	
Recreational facilities	1710.107(f)
Local services	1710.107(g)
Title	1710.107(h)
Additional information	1710.107(i)
(1) Property owners association	
(2) Resale program	
(3) Financial information	
(4) Violations, bankruptcies, and litigation	
(5) Special improvement districts	
(6) Time sharing	
(7) Foreign subdivisions	
(8) Leases	
Cost sheet and signature page	1710.107(j)
Additional information and documentation for statement of record	1710.108
(a) General information	1710.108(a)
(1) Administrative information:	
(i)	
(ii)	
(iii)	
(iv)	
(v)	
(vi)	
(2) Subdivision information:	
(i)	
(ii)	
(iii)	
(iv)	
(v)	
(3) Developer information:	
(i)	
(ii)	
(iii)	
(iv)	
(v)	
(4) Supporting documentation:	
(i)	
(ii)	
(iii)	
(b) Subdivision characteristics and climate	1710.108(b)
(1)	
(2)	
(3)	
(c) Land use control	1710.108(c)
(1)	
(2)	
(3)	
(4)	
(d) Roads	1710.108(d)
(1)	
(2)	
(3)	
(4)	
(e) Utilities	1710.108(e)
(1) Water	
(2) Sewage disposal	
(3) Electricity	
(4) Telephone	
(5) Gas	
(6) Garbage and Trash Disposal	
(f) Recreational facilities	1710.108(f)
(g) Local Services	1710.108(g)

Property report	*Citation*
(h) Title	1710.108(h)
(1)	
(2)	
(3)	
(4)	
(5)	
(6)	
(i) Additional information	1710.108(i)
(1) Property owners' association	
(2) Resale program	
(3) Financial information	
(i)	
(ii)	
(4) Violations, bankruptcies and litigation	
(5) Special improvement districts	
(6) Time sharing	
(7) Foreign subdivision	
(8) Leases	
(9) Methods of sales and proposed range of selling prices or rents	
(10) Taxes and assessments	
(j) Cost sheet and signature page	1710.108(j)
(k) Affirmation	1710.108(k)

I hereby affirm that I am the Senior Executive Officer of the developer of the lots herein described or will be the Senior Executive Officer of the developer at the time lots are offered for sale or lease to the public, or that I am the agent authorized by the Senior Executive Officer of such developer to complete this statement (if agent, submit written authorization to act as agent):

That the statements contained in this Statement of Record and any supplement thereto, together with any documents submitted herewith, are full, true, complete, and correct;

That the developer is bound to carry out the promises and obligations set forth in this statement of record and property report or that I have clearly delineated the proposals for which the developer is not bound and stated who is or will be responsible, if anyone; and

That the fees accompanying this application are in the amount required by the rules and regulations of the Office of Interstate Land Sales Registration.

That the developer will, by January 31 of each year, give the Secretary an annual notice concerning the status of the filing in accordance with the regulations.

(Date)

(Signature)

(Corporate seal if applicable)

(Title)

Property report
WARNING: Section 1418 of the Interstate Land Sales Full Disclosure Act (82 Stat. 598, 15 U.S.C. 1717) provides: "Any person who willfully violates any of the provisions of this title or of the rules and regulations or any person who willfully, in a statement of record filed under, or in a property report issued pursuant to, this title, makes any untrue statement of a material fact * * *, shall upon conviction be fined not more than $5,000 or imprisoned not more than 5 years, or both."

(b) Instructions.

(1) For each part of the Property Report and the rest of the Statement of Record, the heading or subheading given in the instructions shall be printed as set forth in the format. Unless otherwise noted, each question in the Property Report must be answered in a short narrative statement from which the question asked can be ascertained.

(2) All statements made in the Property Report section of the Statement of Record must be made in plain concise language that an uninformed purchaser can understand but must disclose all pertinent facts. Potential consequences to a purchaser must be made clear even though not specifically asked for in the instructions. Whenever the Statement of Record requires a summary or statement of terms or items, such statement or summary must be presented in a clear and concise manner.

(3) In addition to the information expressly required to be stated in the Statement of Record, there shall be added, and the Secretary may require, such further material information, documentation and certifications, if any, as may be necessary in the public interest and for the protection of purchasers or necessary in order to make the statements not misleading in the light of circumstances under which they are made. Further, the Secretary may authorize modifications to the content and format of the statement of record in order to accommodate states which agree to utilize the Federal property report as meeting state disclosure requirements.

(4) Whenever a response to a question in the Property Report section of the Statement of Record exceeds eight lines, it shall be generally broken into more than one paragraph.

(5) Whenever the documentation required by the Statement of Record cannot be obtained, a statement giving the reasons therefor must be furnished in place of the exhibit, along with the best alternative documentation available. However, the following documentation must be provided before the filing will be considered to constitute a Statement of Record:

(i) The property report required by §§1710.106 and 1710.107.

(ii) The general development plan required by § 1710.108(a)(4).

(iii) The Articles of Incorporation and list of officers and directors required by §1710.108(a)(3).

(iv) The subdivision map and topographical map or maps required by § 1710.108(b)(1).

(v) The title evidence required by § 1710.108(h)(1) and (2).

(vi) The copies of contracts or sales agreements and deeds or leases required by § 1710.108(h)(3).

(vii) The financial statements required by § 1710.108(i)(3).

(6) Proposed amenities (as opposed to amenities already provided for the subdivision) may not be included in the Statement of Record unless the developer has clearly stated that they are merely proposals and disclosed conditions of completion (such as successful sales of lots) and whether he is obligated or who else is obligated, if anyone, to complete the amenity.

(7) If a statement of record filing is to be consolidated pursuant to § 1710.22, the developer shall submit a new Statement of Record, except that supporting documentation may be incorporated by reference in those instances where it is applicable to both the original filing and to the additional lots to be offered. Incorporation by reference shall be accomplished by placing in the subsection in which the documentation ordinarily appears the OILSR number of the previous filing and the identity of the exhibit. In all other respects, the consolidated Statement of Record shall conform to the format requirements for an initial Statement of Record filed under these regulations.

(8) All amendments, pre-effective and post-effective, shall be prepared and filed in accordance with § 1710.23(b) of these regulations.

(9) The Statement of Record shall be bound with the Property Report section on top, including any additional exhibits which may be required to be delivered with the Property Report, followed by the documentation section and having the affirmations placed at the end.

(10) The Statement of Record shall be on good quality, unglazed white or pastel paper of a size no smaller than 8 x 10½ inches and no larger than 8½ x 14 inches with margins no less than one inch at the top, one inch at the sides and ½ inch at the bottom. It shall be in blue, blue-black, or black ink, and the type size shall not be smaller than 10 point baded type of uniform font and in an easily readable style. Statements of Record shall be properly signed and dated. The developer shall include the date of typing or preparation of the page in the lower right-hand corner of each page of the Statement of Record. The final printed version of the Property Report which is delivered to lot purchasers shall be verbatim to that found effective with this Office and shall have no covers, pictures, emblems, logograms, or identifying insignia other than as required by these regulations. The Special Notices heading in the Property Report format may be omitted if the Secretary does not require anything to be contained under that heading in the particular Property Report.

(11) Deeds, title policies, subdivision plat or maps and other documentary information required to be contained in the documents section of the Statement of Record need not be on the same size paper as the Property Report, but if larger, should be folded to a size no larger than 8½ x 14 inches. The supporting documents required by these regulations shall each be separated and identified by affixing a tab on the right side of the cover sheet of the exhibit and by identifying on the tab the section number of the Statement of Record instructions to which the documentation corresponds. The pages of each exhibit shall be numbered sequentially, beginning with page one. If additional data is later provided for incorporation into or amendment to an exhibit, the pages of the additional data also must be numbered sequentially, beginning with the number following the last number already in the exhibit. If the data in one exhibit is applicable to more than one section of instructions, the developer may substitute as an exhibit in the second case a statement incorporating the earlier exhibit by reference.

(12) No part of the Statement of Record may be used to insert advertising or promotional material which tends to counteract facts adverse to the interests of the buyer or lessee.

(13) Within 20 days of the date upon which the Statement of Record is allowed to become effective by the Secretary, three copies of the Property Report, in the identical form in which it will be distributed to prospective purchasers, shall be filed with the Secretary. Three copies of any subsequent reproduction, alteration, duplication or reprint of the Property Report shall be filed with and found effective by the Secretary prior to its use if such subsequent reproduction, duplication or reprint contains any change in content or form.

§ 1710.106 Property Report, Introductory Pages.

(a) *Cover Page for Property Report.*

The cover page of the Property Report shall contain the following language in red ¼ inch type at the top of the page:

"PURCHASERS SHOULD READ THIS DOCUMENT BEFORE SIGNING ANYTHING."

In the middle of the cover page the name of the subdivision, the developer's name and the effective date of the Property Report should appear in ¼ inch type.

The following disclaimer should appear at the bottom of the cover page in ⅛ inch type:

Federal law requires that you receive this information prepared by the developer. The information contained in this Report is subject to change. The Department of Housing and Urban Development has not given approval to this subdivision nor made any determination as to the value of this property, if any.

If you receive this Property Report less than 48 hours prior to signing a contract or agreement, you have until midnight of the third business day following the consummation of the transaction to void the contract or agreement by notice to the seller.

(b) *Table of contents.* The second page of the Property Report shall be a table of contents prepared as follows:

TABLE OF CONTENTS

	Page
Special risks notices	
General information	
Subdivision characteristics	
Land use and control	
Roads	
Utilities	
Water	
Sewage disposal	
Electric	
Telephone	
Gas	
Garbage and trash disposal	
Recreational facilities	
Local services	
Title	
Additional information	
Property owners' association	
Resale program	
Financial information	
Violations, bankruptcies, litigation	
Special improvement districts	
Time-sharing ownership	
Foreign subdivisions	
Leases	
Cost sheet and signature page	

(1) At the top of the third page, a section headed "Risks of Buying Land" shall be set forth. The following statements shall comprise this section and shall be set forth in the following manner. Item 4 may be omitted or modified if an environmental study or impact statement showing little or no adverse environmental impact is submitted with the Statement of Record, § 1710.108(c).

(i) The future value of land is uncertain. DO NOT expect the value to increase.

(ii) The developer will not try to resell your lot for you unless he so states in this Property Report.

(iii) Even though the developer may not fulfill his promises you may still have to pay the full amount of your obligation to a bank or other third party.

(iv) This subdivision may have an adverse impact on the surrounding environment. The degree of the impact will depend upon the location and size of the subdivision and the rate of development. You may wish to consider what effect this subdivision will have on plant and animal life, air and water quality, noise levels and use of local services and recreational facilities.

(2) The remainder of the third page will be reserved for a section requiring disclosure of a particularly significant information in the form of Special Notices. The Special Notices which will be required and the exact wording of the Notices will be at the discretion of OILSR based upon information submitted in the file or obtained from other sources. Notwithstanding the discretion of OILSR, the developer is under an affirmative obligation to highlight any significant fact and the consequences to purchasers arising out of unusual or potentially adverse circumstances.

The following is a list of situations which will ordinarily require Special Notices and the type of information which would be expected in the Notice. This list is for the purpose of illustration only and is not meant to be all-inclusive.

(i) If the developer has not made financial arrangements to assure the completion of facilities, include a Notice to the effect that no money has been set aside in any bond, escrow or trust account for the completion of (insert name of facility or facilities) and that there is no assurance that the developer will be able to complete the facility.

(ii) If the developer has not documented whether there is sufficient water to serve the entire anticipated population of the subdivision and whether the water is pure or of acceptable quality, include a Notice to the effect that there is no assurance that there will be sufficient drinkable water for purchasers.

(iii) If the developer states that it has no responsibility for providing roads, water, electricity or sewage disposal and that it will be the purchasers responsibility to obtain and pay for such services, include a Notice to that effect, stating that the costs may be extremely high, and the services perhaps economically unfeasible.

(iv) If the developer failed to provide copies of the required permits, approvals or licenses for the installation of any facility, include a Notice to the effect that a permit, approval or license is required for the installation of (name of facility), that the developer has failed to obtain the permit approval or license and that there is no assurance that the facility will be completed or usable by lot owners.

(v) If septic tanks are the planned method of sewage disposal and the developer failed to submit documentation to show that spetic tanks will fuction properly on each and every lot or that the use of spetic tanks has been approved for each and every lot in the subdivision, include a Notice to the effect that there is no assurance that a septic tank can be used on each and every lot in the subdivision.

(vi) If there is an encumbrance on lots in the subdivision and the encumbrance contains no release provisions, include a Notice to the effect that even when a purchaser has paid in full for his lot there is no assurance that he will be able to obtain free and clear title.

(vii) If the developer is involved in litigation or is a party to disciplinary proceedings which may be of particular interest to purchasers, include a Notice which states the nature of the litigation or disciplinary proceeding and the possible effect that it will have on the developer or the subdivision, if any.

(viii) If the developer's financial statements indicate that it has experienced a deficit in retained earnings or an operating loss in the past year, include a Notice to the effect that a loss has been experienced and that the developer may be unable to complete facilities or discharge financial obligations.

(ix) If the developer has filed a petition under the Bankruptcy Act, include a Notice which indicates the nature of the problem and the potential consequence to purchasers.

§ 1710.107 Property Report: Disclosure Topics.

(a) *General information.*

Insert and complete the following format:

(1) This subdivision is located in (township, county and state).
(2) Developer's name:
Developer's address:
Developer's phone number:
(3) Purchasers should call _____ to obtain information from the developer or make complaints.
(4) The estimated total number of lots planned for this subdivision is _____.
(5) The number of lots covered by this Property Report is _____.

(b) *Subdivision Characteristics and Climate—(1) Topography and Physical Characteristics.*

Describe the general topography and major physical characteristics of the subdivision and state the elevation of the highest and lowest lots in the subdivision. This answer must specifically state whether there are any physical features of the land, such as steep slopes, unstable or expansive soil conditions, rock outcroppings, etc., which will necessitate the use of special construction techniques or foundation work or fill to build a residential structure or otherwise use any lot in the subdivision. If such conditions exist, identify the lots affected, the nature of the special construction techniques or foundation work and the estimated costs to a lot purchaser for such work.

(2) *Drainage and Flooding.*

(i) State whether any lots or portions of lots in the subdivision are covered by water at any time of the year. If so, answer the following:

(A) Identify the affected lots and state when they are covered by water.

(B) Is any drainage or use of fill required to render the lots suitable for residential construction?

(C) Who will be responsible for draining or filling these lots? If the lot purchaser is responsible, what is the estimated cost?

(ii) State whether the subdivision is located within a flood plain or in an area designated by any local, state or Federal agency to be flood prone. If so, answer the following:

(A) Identify the affected lots and state the frequency with which these lots have been flooded.

(B) Is flood insurance available for new construction on these lots and is it required by any government agencies or private lending institutions for new construction?

(C) What is the cost of flood insurance, if any?

(iii) Is the subdivision subject to any type of flood control or flowage easements?

(iv) Does the developer have a program or plan to control soil erosion, sedimentation and periodic flooding throughout the subdivision? If the developer has such a plan, answer the following:

(A) Describe the facilities which have or are to be installed e.g., artificial drains, storm sewers or flood control channels. If these facilities have not been installed, what is the percentage of completion, the estimated month and year of completion and the assurance of completion, if any?

(B) Has the developer's plans or program been approved by the appropriate government officials and is the developer obligated to comply with the plan? If so, state the nature of the obligation.

(3) *Nuisances and Safety Hazards.*

(i) State whether any on-site or off-site land uses adversely affect the subdivision. Any unusual or unpleasant noises, odors, pollutants or other nuisances should be specifically identified.

Examples of unusual noises which might affect the subdivision include proposed or existing industrial activity, airports or other transportation facilites, animal pens, entertainment centers, or the like. Examples of unpleasant odors include noxious smoke, chemical fumes, stagnant ponds or marshes, slaughterhouses, and sewage treatment facilities. Any such conditions should be accurately described and fully explained identifying their origin and location and whether they are proposed or existing. If they are existing, state whether temporary (estimate duration) or permanent.

(ii) State whether any unusual safety factors or any proposed plans, private or governmental, of which the developer is aware, for construction of any facility which may create a nuisance or adversely affect the use of the land.

Examples of unusual safety factors which could affect the subdivision include physical hazards such as dilapidated or abandoned properties, unsafe construction, air or vehicular traffic hazards, danger from fire or explosion, and radiation hazards. Any such conditions should be accurately described identifying their origin and location and whether they are proposed or existing. If they are existing, state whether temporary (estimate duration) or permanent.

(4) *Climate and Natural Hazards.*

(i) State the temperature ranges for winter and summer including high, low and mean. Also state the average annual rainfall and snowfall.

(ii) State whether the area in which the subdivision is located is subject to any natural hazards or has been formally identified by any local, state or federal agency as being in an area of special natural hazard (tornadoes, hurricanes, earthquakes, mudslides, forest fires, brush fires, avalanches, etc.).

If so, answer the following:

(A) What has been the frequency of the hazards mentioned above?

(B) Is insurance available for these hazards? If so, what is the cost for this insurance?

(c) *Land Use and Control.*

(1) Has the subdivision plan been approved by local authorities and recorded among the land records of the county? If so, identify the agencies which have approved the subdivision and state the recording data of the plat(s).

(2) List the permissible uses of the property based upon the restrictive covenants and local zoning ordinances and state whether the lots can now be used for the purposes for which they are being sold?

(3) Must a lot purchaser obtain a building permit before he may construct on his lot? If so, state the name and address of the agency from which the permit must be obtained.

(4) Has each lot in the subdivision been surveyed? Has each individual lot been staked or marked so that a lot purchaser can identify the boundary lines of his lot? If not, what is the estimated cost to a lot purchaser to obtain a survey and have the boundary lines staked or marked?

(5) If an environmental study has been prepared which shows impacts on the environment from this subdivision, summarize the impacts on air and water pollution, plant and animal life.

(d) *Roads.*

(1) Complete the following chart in accordance with the instructions for the nonpublicly maintained access roads to the subdivision and for all the roads within the subdivision whether public or private:

Access roads	Percent complete	Type of surface currently	When complete	Surface width currently	When complete	Estimated completion date (month and year)	Completion financially assured
Access							
Within subdivision							

If there are separate units or sections being offered in the subdivision and if the description of the type of roads or the completion information is different for any unit, list the units sequentially and complete the chart for each. Give the month and year for all estimated completion dates and if the roads were previously scheduled for completion and the date was not met, give both the new estimated date and the earlier date or dates.

(2) Below the chart, write a separate narrative statement regarding the roads. Include information which answers the following questions:

(i) Who is responsible for constructing the roads?

(ii) Will the purchaser be required to pay any of the cost of construction? If so, estimate the cost.

(iii) Who is responsible for maintaining the roads?

(iv) Will the purchasers be required to pay any of the cost of maintaining the roads other than through property taxes? If so, state the estimated monthly cost to a purchaser for maintenance and state to whom paid.

(v) Is each lot in the subdivision now accessible by conventional automobile over legal rights-by-way? If not, identify all lots which are not accessible.

(3) Complete the following chart by listing the nearest established communities and the county seat. If the subdivision is located within the boundaries of a city or town, so state. State the population of each community and the distance over paved and unpaved roads from the center of the subdivison to each community.

Nearby communities	Population	Distance over paved roads	Distance over unpaved roads	Total

(e) *Utilities.*

(1) *Water.* (i) State how water will be supplied to each lot (e.g., central distribution system, individual well, etc.) and what is the name, street address and telephone number of the supplier, if supplied by a central distribution system, state whether system is completed. If not complete, state the percentage of completion.

(ii) State whether there is a sufficient supply of drinkable water available to serve the anticipated population of the subdivision. If undocumented, state that there is no assurance that there will be a sufficient supply of drinkable water to serve the anticipated population of the area. If there are unpleasant tastes or odors, so state.

(iii) State whether there are any approvals, licenses or permits from government agencies required for the method of water supply. If so, identify the responsible authority and state whether such approvals, licenses or permits have been obtained.

(iv) State the total costs to a lot purchaser to obtain water. If a central distribution system is to be used to supply the lots, state the connection charges, tap-in fees, availability fees, etc., and the rates for water. State whether the water rates are publicly regulated. If an individual well, cistern or other individual system is to supply the water, state the total cost of installation, storage facilities and all necessary equipment.

(v) Include in this description answers to any of the following items which are applicable:

(A) If a central distribution system is proposed, but not complete, state the estimated month and year of completion and the estimated month and year the system will be put in operation, who is responsible for completion and the assurance of completion (e.g., escrow, trust, etc.) if any.

(B) If a central distribution system is proposed or completed, state whether the facilities will be extended to each individual lot.

(C) If a central distribution system is proposed or completed, state whether individual wells will be permitted. If permitted, state whether a lot purchaser will be required to connect to the central system or be assessed for its operation or maintenance.

(D) If water is to be supplied by an individual private well, state whether there is any assurance that a lot purchaser can install a productive well on his property. If the lot purchaser is unable to install a productive well on his lot, state whether the developer will refund the purchase price of the lot.

(2) *Sewage Disposal.* (i) What methods of sewage disposal are to be used in the subdivision (e.g., central system, individual onsite systems such as septic tanks, etc.). If supplied by a central system, is the system complete? If not complete, state the percentage of completion and the number of lots presently served.

(ii) Are any approvals, licenses or permits from governmental agencies required for the method of sewage disposal? If so, identify the responsible authority and state whether such approvals, licenses or permits have been obtained.

(iii) State the total costs of a lot purchaser to obtain sewage service regardless of the method used. If a central system is to be used to service the lots, state the connection charges, tap-in fees, availability fees, etc. State whether the sewage rates are publicly regulated, if not, state the charge. If an individual on-site system is to be used, identify the type of system and state the total cost of installing and maintaining that system.

(iv) Also include in this description answers to any of the following items which are applicable:

(A) If a central system is proposed, but not complete, state the estimated month and year the system will be put into operation, who is responsible for completion and the assurance of completion (e.g., escrow, trust, etc.) if any.

(B) If a central system is proposed or completed, will individual on-site systems be permitted? If permitted, will a lot purchaser be required to connect to the central system or be assessed for its operation or maintenance?

(C) If a central system is proposed or completed, will sewage facilities be extended to each individual lot?

(D) If sewage disposal is to be by individual on-site systems, have the local authorities approved the use of such systems on each and every lot? State whether there is assurance that on-site systems will function satisfactorily on each and every lot? Have any percolation tests or similar tests been performed on the lots to determine the suitability of the soils for on-site disposal? State the results of these tests, if any. If the lot purchaser is unable to install an on-site disposal system on his lot, will the developer refund the full purchase price of the lot?

(3) *Electric.* (i) State whether electric lines have been extended and service is available to each lot in the subdivision. If so, state the name of the supplier.

(ii) If electric lines and service are not available to each lot, describe how purchasers can obtain electrical service and state the total costs to a lot purchaser to obtain electricity including line extension charges, connection charges, tap-in fees and availability fees.

(iii) Also include in this description answers to any of the following which are applicable:

(A) If the system is not completed, the estimated month and year of completion and operation, percentage currently completed, who is responsible for completion and the assurance of completion (e.g., escrow, trust, etc.) if any.

(B) If an individual electrical supply system is proposed (e.g., generator, soc power, etc.) describe the system, the costs to be borne by lot purchasers and whether any permits, licenses or approvals must be and/or have been obtained from any Governmental agency.

(4) *Telephone.* (i) State whether telephone lines and service is available to each lot in the subdivision. If so, state the name of the supplier.

(ii) If telephone lines and services are not presently available to each lot, describe the plans for installation and give the total cost to a lot purchaser to obtain service including line extension charges, connection charges, tap-in fees and availability fees.

(iii) If the system is proposed but not completed, give the estimated month and year of completion and operation, percentage currently completed, who is responsible for completion and the assurance of completion (e.g., escrow, trust, etc.) if any.

(5) *Gas.* (i) State whether gas lines presently serve each lot in the subdivision. If so, give the name of the supplier. If no service is planned, simply state Natural Gas Is Not Available in This Subdivision.

(ii) If gas lines do not serve each lot but are proposed, state the total costs to a lot purchaser to obtain gas service including line extension charges, connection charges, tap-in fees and availability fees. Also include the estimated month and year of completion and operation, percentage currently completed, who is responsible for completion and the assurance of completion (e.g., escrow, trust, etc.) if any.

(iii) If an alternate source of fuel such as propane or butane is available, disclose the alternate fuel and the cost to be borne by lot purchasers including installation, connection and tank rental charges.

(6) *Garbage and Trash Disposal.* Describe the method and costs to purchasers of garbage and trash disposal.

(f) *Recreational facilities.*

(1) Complete the following chart for each recreational facility according to the instructions:

Facility	Percent complete	Estimated completion date	Completion financially assured?	Buyer's cost of assessments

(i) Identify the facility.

(ii) Percentage of completion.

(iii) If the facility is not complete, state the estimated completion date (month and year). If a facility was previously scheduled for completion and the date was not met, state the new estimated completion date and the old date.

(iv) If the facility is not complete, state whether there is any financial assurance of completion. If so, state the type of assurance, i.e., bond, escrow or trust.

(v) State the buyer's cost or assesment for using the facility. These costs could include a property owners' association assessment, the developer's maintenance assessment or a per-use fee. If the cost information is lengthy, you may use an asterisk and include the cost information in a paragraph below the chart.

(2) Below the chart, write a separate narrative statement regarding the recreational facilities which answers the following questions:

(i) If the facilities are not complete, who is responsible for the construction of the facilities and is the developer contractually obligated to purchasers to provide these recreational facilities?

Will the purchaser be required to pay any of the cost of construction? If so, estimate the cost.

(ii) Who will be responsible for the operation and maintenance of the facilities?

(iii) Who will own the facilities? State when or under what conditions the developer will convey title.

(iv) State whether there is a mortgage or lien on any of the facilities.

(v) If title is to be conveyed to the property owners' association, will the developer convey the title free and clear and without charge.

(vi) Has the developer obtained the necessary permits for construction of the facilities? If not identify the facilities for which permits have not been obtained.

(vii) Who will be permitted to use the recreational facilities (e.g., lot owners, guests, employees of developer, general public, etc.)?

(g) *Local Services.*

Complete the following chart in accordance with the instructions provided below:

Service	Currently available	Location or address	Distance from center of subdivision
Fire protection			
Police protection			
Elementary school			
Junior high school			
High school			
Hospital facilities			
Physicians and dentists			
Shopping facilities			
U.S. Postal Service			

If fire protection is not available year-round, include the following statement below the chart: "Since fire protection is not available on a year-round basis, a fire insurance policy may not be available or the cost of obtaining such a policy may be increased."

(h) *Title.*

(1) *Type and Delivery of Deed.* (i) What instrument will be used to convey title? If a quit-claim deed will be used, make the following statement: Title will be conveyed by Quit Claim Deed. Quit Claim deeds give no assurance of clear title to the land.

(ii) How long after the purchaser signs a sales contract will he receive a deed?

(2) *Encumbrances.* (i) State whether any of the land in the subdivision is subject to a blanket lien. If yes, identify the type of lien (e.g., deed of trust, mortgage, mechanics lien), the holder of the lien and the lots encumbered by the lien. Also state how such liens might affect a purchaser's title if not released or subordinated to the purchaser's property interest.

(ii) Highlight the restrictive covenants, easements and other encumbrances that burden the lots covered by this Property Report. Copies of the actual covenants or title exceptions showing recording data, must be available to purchasers upon request but should not be attached to the Property Report.

(iii) If the developer does not hold title to all the land in the subdivision, identify the other title holder and his relationship to the developer. Describe any potential effects on purchasers.

(3) *Payments and Conditions.* (i) If the developer will not have the sales contract officially attested or if the applicable jurisdiction will not record sales contracts, state that the sales contract will not be recorded and why it will not be recorded.

(ii) If the sales contract may be recorded, so state; state whose responsibility it is to record; if the responsibility is the purchaser's, state the approximate cost of recordation.

(iii) State whether purchasers' deposits or down payments are placed in escrow or otherwise protected. If yes, describe the arrangement, including the name and address of the escrow holder or similar person.

(iv) State whether purchasers' installment payments are placed in escrow or otherwise protected. If yes, describe the arrangement, including the name and address of the escrow holder or similar person.

(v) For the purposes of this topic the questions regarding an escrow agreement or similar protection may be answered affirmatively only if the money is in the custody of an independent third party, allowing a purchaser to receive a return of money paid in the event of the developer's failure to convey title or the developer's default on any obligation which would otherwise result in the purchaser's loss of that money.

(vi) If the developer is furnishing an owner's title insurance policy to the purchaser, so state. If not, state that if the purchaser wants to know the condition of title to his lot, it is his responsibility to obtain an attorney's title opinion or a title insurance policy.

(vii) Explain any prepayment penalties or privileges.

(viii) What are the developer's remedies against a defaulted purchaser? In setting forth this information, include the financial impact on the purchaser as well as the nature of the remedies.

(i) *Additional Information.* This section contains paragraphs and statements concerning various miscellaneous factors. Information about parts 1, 2 and 3 is required to be included in this section.

Include discussions of any of the topics in 4, 5, 6, 7, and 8 is they apply to the subdivision.

(1) *Property Owners' Association.* If a property owners' association is not operating or planned, include a statement to that effect. If a property owners' association is currently operating or is planned, include a brief discussion about it. The discussion should answer the following questions:

(i) What is the name of the organization?

(ii) What was or will be the date of its formation?

(iii) What are or will be the functions of the association?

(iv) Describe the capability of the association to meet is present or planned financial obligations.

(v) Will the association hold architectural control over the subdivision?

(vi) Is membership voluntary? What are the requirements for membership?

(vii) What are the current charges for membership and the provisions for increasing charges?

(viii) What is the voting right of each lot purchaser?

(ix) What is the voting right of the developer?

(x) Is or will the association be independent of the developer?

(2) *Resale Program.* State whether the developer promises to resell lots for purchasers, and, if so, state the number of sales during the last year and the average price. Discuss any restrictions which may hinder a purchaser in selling his lot, such as restrictions against the posting of signs.

(3) *Financial Information.* (i) If the developer has incurred an operating loss or deficit in retained earnings during the last year, so state and provide the amounts. If the financial condition of the developer is such that it may be unable to complete any promises or proposals, so state and give the potential impact to purchasers.

(ii) Make the following statement:

Financial statements for the period (insert data) are available from developer entity upon request.

(4) *Violations, bankruptcies and litigation.* (i) State if any of the persons who hold an ownership interest in the land or developer or any officer or director of the developer have been disciplined, debarred, or suspended by any governmental body or agency, or indicted or convicted by any court for violation of a Federal, State, or local law or regulation in connection with activities relating to land sales, land investment, securities sales, construction or sale of homes or home improvements or any other similar or related activity. If so, describe the action.

(ii) State whether within the last 13 years any of the persons who hold an ownership interest in the land or developer or any officer or director of the developer filed a petition in bankruptcy or had an involuntary petition of bankruptcy filed against him or been an officer or director of a company which has become insolvent or has voluntarily or involuntarily filed in bankruptcy? If so, describe the action.

(iii) List all litigation of which the developer is aware which, individually or in the aggregate, may have a material effect upon the developer or subdivision. Summarize the action. An amendment should be filed each time there is a development during the course of such litigation which may cause a material change to the developer or subdivision.

(5) *Special Improvement Districts.* Briefly discuss the pertinent information concerning any special improvements districts. The discussion must include statements concerning the costs and assessments to each lot owner, the nature of the improvements and the voting rights of the lot purchasers.

(6) *Time Sharing.* Describe any arrangements which provide for purchasers to share ownership of the lot.

(7) *Foreign Subdivisions.* If the owner or developer is a foreign corporation or the subdivision is located in a foreign country, include any of the following statements which are applicable:

(i) The owner of the subdivision is a foreign corporation. You may have to seek legal remedies in the courts of a foreign country should it become necessary to enforce your contract.

(ii) The subdivision is located in a foreign country and your rights to your property may be affected.

(iii) It is necessary for an alien to obtain a license granted by the Government of (insert the name of the government of the country where the property is located) before he may live, work, own or manage a business in (insert name of country). (Describe the procedures for obtaining such a document and state the length of time that it will be effective.)

(iv) It is necessary to obtain a work permit, license to do business, or similar document from the Government of (insert the name of the government of the country where the property is located) before he may live, work, own or manage a business in (insert name of country). (Describe the procedures for obtaining such a document and state the length of time that it will be effective.)

(8) *Leases.* Discuss any lease provisions. In the discussion include answers to the following questions:

(i) What is the term of lease?

(ii) Will the lease be recordable?

(iii) Can the owner's or developer's creditors or others acquire title to the property free of any obligation to continue the lease? If yes, explain.

(iv) Describe whether rental payments are flat sums or graduated. Describe any provisions for increase of rental payments during the term of the lease.

(v) Are there any provisions in lease prohibiting assignments and/or subletting? If yes, describe.

(vi) Summarize termination provisions in the lease.

(vii) Does the lease prohibit the lessee from mortgaging or otherwise encumbering the leasehold?

(viii) Will lessee be permitted to remove improvements when lease expires?

(j) *Cost Sheet and Signature Page.*

(1) The last page of the Property Report shall contain cost information, agent certification and purchaser receipt, prepared in conformance with these instructions and the following format:

COST SHEET AND SIGNATURE PAGE

This cost sheet lists all costs you will be obligated to pay, including the purchase price of the lot. (Unit headings are for illustrative purposes.)

	Units I, II	Unit III	Payable to—
Purchase price of lot:	$	$	
1-time charges:			
1. Water tap-in fee			
2. Water well costs			
3. Sewer tap-in fee			
4. Septic system			
5. Electric service			
6. Other (identify)			
Total, purchase price			
Additional recurring (monthly) (annual) charges exclusive of utilities:			
1. Taxes			
2. Dues and assessments			
3. Recreational facility fees			
4. Garbage and trush collection			
Total (monthly) (annual) payment			

AGENT CERTIFICATION

I certify that I have made no representations to the person(s) receiving this Property Report contrary to the information contained in this Property Report.

Lot _____ Block _____ Section _____

Name of Salesperson.....

Signature.....Date.....

PURCHASER RECEIPT

IMPORTANT: READ CAREFULLY

Name of Subdivision: Effective Date:

The developer must give you a copy of this Property Report and give you an opportunity to read it before you sign any contract or agreement. By signing this receipt, you acknowledge that you have received a copy of the Property Report prepared according to the Rules and Regulations of the Office of Interstate Land Sales Registration, U.S. Department of Housing and Urban Development.

Received by.....Date.....
Street Address.....
City.....State.....Zip.....

Even though you received the Property Report you still have other important rights under the Interstate Land Sales Full Disclosure Act.

(2) The developer or its agent must complete the Cost Sheet schedule and agent certification in the presence of the purchaser, unless the transaction takes place through the mails with no personal contact. In the latter case, the schedule and certification should be completed before the Property Report is delivered to the purchaser. The person signing shall be the person most active in dealing with the prospective purchaser.

If any of the categories on the Cost Sheet do not apply to the particular subdivision or transaction, the developer or agent should write "NONE" in the blank.

Parenthetical notes, if necessary, may be added between the Cost Sheet and the Receipt, and minor modifications to the Cost Sheet format may be permitted, both at the discretion of the Secretary.

The certification and receipt on the bottom half of the page shall be trimmed with a red border one-eighth inch in size. The original shall be prepared in such a manner that it can be detached and retained by the developer after it is signed by the purchaser and so that the purchaser will also receive a copy of the receipt. This can be accomplished by designing the page so that an overlay covers the lower area of the page where the certification and receipt is printed. The printing on the overlay and the underlying part of the page should be identical so that a carbon can be inserted in between for the signatures, then the developer can remove the overlay and keep it for his files. The developer may use an identical copy of the full page if he desires. The developer shall retain the original receipt for each property report. Upon demand by the Secretary, the developer shall, without delay, make such files available for inspection by the Secretary, or he shall file copies of such receipts as the Secretary may specify.

§ 1710.108 Statement of Record—Additional Information and Documentation.

(a) *General Information.*

(1) *Administrative Information.* (i) Is this an initial, consolidated or amended filing for this subdivision with the Office of Interstate Land Sales Registration? If an additional offering of lots is being consolidated with a previously filed effective Statement of Record, identify the OILSR filing number for the original Statement of Record.

(ii) Are you submitting documentation to support a request for an exemption?

(iii) Has a Statement of Record or similar instrument been filed in any state or states? List the state or states.

(iv) Have any of the states listed in 3 above not permitted the filing to become effective or suspended the filing? If yes, give reasons cited by the state and also the developer's reasons, if different from those cited by the state.

(v) List the States in which you plan to offer lots for sale or lease. Have you registered or do you plan to register with each of these states?

(vi) Has the developer or the holder of any ownership made a filing with U.S. Securities and Exchange Commission (SEC). If a filing has been made, state the following:

(A) SEC identification number.

(B) Prospectus name.

(C) Date of filing.

(2) *Subdivision Information.* (i) What is the number of lots in this offering? Consolidated filings shall state the additional lots being offered and shall state the total number of lots included in previous filings on that subdivision.

(ii) What is the number of acres in this offering?

(iii) What is the total number of lots to be offered in the entire subdivision?

(iv) State the number of acres owned, the number of acres under option or similar arrangement for acquisition of title and the total number of acres to be offered, pursuant to the same common promotional plan.

(v) State the approximate number of dwellings in the subdivision at the time of filing.

(3) *Developer Information.* (i) List the name, address, including business and home address, and the type and extent of interest of each holder of any ownership interest in the land included in this offering. (Individuals who have purchased or leased lots from the developer need not be listed.) If the holder is other than an individual, name the type of legal entity and list the interest and extent thereof, of each principal. "Principal" means any person or entity having a 10 percent or more financial interest.

(ii) If the developer does not own an interest in the land, list name and address of each individual or entity having an ownership interest in the developer. If the developer is not an individual, name the type of legal entity and list the ownership interest of each principal. "Principal" means any person or entity having a 10 percent or more financial interest.

(iii) List the principal officers and directors and authorized agent of the developer and the business and home address of each officer. The authorized agent shall be a resident of the U.S.

(iv) Are any of the persons listed in 1, 2 or 3 above directly or indirectly involved in any other subdivision? If so, identify the person and subdivision by name, location and OILSR number.

(v) Is the developer a subsidiary corporation? If so, identify the parent company by name and address. Is the parent company or any of its subsidiaries directly or indirectly involved in any other subdivision? If so, identify the subdivision name, location, OILSR number or numbers and date of filing.

(4) *Supporting Documentation.* (i) Submit a general plan including a map or plat showing the total land owned or under option or other similar arrangement for acquisition of title to the land. On the map, delineate the land included in this offering and the land upon which recreational and/or other common facilities will be located.

(ii) If the developer is a corporation, submit a copy of the articles of incorporation with all amendments. If the developer is a partnership, unincorporated association, joint stock company, or any other form of organization, submit copies of articles of partnership or association and all other documents relating to its organization.

(iii) If the authorized agent is other than the developer himself, submit documentation showing the appointment and authority of the individual designated as authorized agent.

(b) *Subdivision Characteristics and Climate.*

(1) Submit two copies of the current Geological Survey topographic map or maps of the largest scale available from the United States Geological Survey with an outline of the entire subdivision and this offering clearly indicated. Photo or xerox copies made by the developer are not acceptable. Do not shade the area on the maps which have been outlined.

(2) Submit a copy of the local authority's approval of the developer's plan to control soil erosion, sedimentation and periodic flooding.

(3) If drainage facilities are proposed, but not yet completed, submit the following:

(i) A copy of a bond or escrow agreement to assure completion of the facilities.

(ii) A synopsis of the proposed plans, which must include:

(A) A description of the system of collection of surface waters;

(B) A description of the steps to be taken to control soil erosion and sedimentation; and

(C) The estimated cost of the proposed facilities.

(c) *Land Use Control.*

(1) Identify the Federal, state and local agencies or similar organizations which have the authority to regulate or issue permits, approvals or licenses which may have a material effect on the developer's plans with respect to the proposed division of the land, facilities, proposed facilities, common areas, improvements or proposed improvements to the subdivision. State what permits, approvals or licenses are required by these agencies and whether they have been obtained by the developer.

If no agency regulates the division of the land or issues any permits, approvals of licenses with respect to improvements, so state.

Your answer shall specifically address itself to the areas of environmental protection agencies, environmental impact statements, Corps of Engineers permits to construct, dredge, bulkhead, affect the flow of, or otherwise change or affect bodies of water within or around the subdivision. Also, include any permits or licenses issued or required by Water Resources Boards or pollution control boards, river basin commissions, conservation agencies, or other similar organizations or entities.

(2) Submit two copies of a recorded plat map. If the plat has not been recorded, include a map prepared to scale, showing the proposed division, lot dimensions, and their relation to proposed and existing streets and roads. The plat shall contain sufficient engineering data to enable a surveyor to locate the lots. The unrecorded plat should contain the approval of the local authorities. The map must show:

(i) The lot dimensions in the standard unit of measure used where the land is located.

(ii) Each of the lots and any existing or proposed common areas or facilities must be clearly delineated on the map.

(iii) Any encroachments or rights-of-way, on or over the land, should be shown or noted on the map.

(iv) If the land is described by metes and bounds, or by lands of adjoining owners, abutting streets, ways, etc., its boundaries should be defined on the map by courses, distances and monuments, natural or otherwise, and the ownership and contiguous boundaries of adjoining lands and names of abutting streets, ways, etc.

(v) If it is necessary to identify the land with U.S. patent or a State grant which is the source of title, a map of the land being offered should be superimposed on a copy of the map of the U.S. survey or State grant.

(vi) If the land being offered is part of a larger tract described in an abstract, it should, when necessary for its identification, be shown drawn to a common scale on a map showing the larger tract and any successive diminishing tracts.

(vii) Flood plains and/or any flood control easements which affect the subdivision shall be identified and clearly delineated on the plat map.

(viii) The map shall be prepared by a licensed surveyor or engineer.

(ix) The developer shall place an X on each lot on the plat which is included in this offering and shall state the number of lots included on each page of the plat in the lower right-hand corner.

(3) Submit a copy of the permits, licenses, advisory opinions, or similar documents obtained from the Federal, State, or local agencies which are authorized to regulate or issue permits or licenses regarding the developer's plans concerning division of the land, facilities, common areas or improvements.

(4) Submit a copy of any environmental impact study for this subdivision which has been prepared by the developer or any government agency.

(d) *Roads.*

(1) If the developer is to complete access roads, submit a copy of any contracts, bonds or escrow agreements which guarantee completion. If the access roads are to be completed by the local government, submit a copy of a letter from the local authorities setting forth the plan for completion of access roads and maintenance.

(2) Submit copies of contracts for the completion of the road system within the subdivision and copies of the bond or escrow agreements to assure completion.

(3) Submit a copy of a letter from the local authority setting forth the plan for maintenance of the road system within the subdivision.

(4) If the roads are not complete, submit a synopsis of the proposed plans for construction of the roads in this offering. The synopsis shall specifically include but need not be limited to the estimated cost of the street system.

(e) *Utilities.*

(1) *Water.* (i) Submit a copy of a letter from the water supplier stating that he will supply the water, if applicable.

(ii) Submit a copy of an engineer's report or hydrological survey indicating the source and quantity of the water. This report or survey shall include a statement of whether the water supply is sufficient to serve the anticipated total population of the subdivision based upon the general plan submitted.

(iii) Submit a copy of a letter or report from a cognizant health officer which includes an analysis in layman's language of the chemical quality and bacteriological purity of water.

(iv) If water is to be supplied by a central distribution system, submit the following:

(A) A copy of bond or escrow agreement to assure completion of the system, if any.

(B) If not complete, describe the capacity of the system, storage facilities and the estimated cost of the system.

(C) A copy of any membership agreement or similar documents or contract, if any, by which the lot purchaser will be required or permitted to use the services of the water supplier.

(v) If water is to be supplied by individual, private wells, submit a copy of a letter from a well drilling company or contractor stating the estimated cost of installing an individual well, including pump and all necessary equipment.

(2) *Sewage Disposal.* (i) Submit a copy of a letter from the entity providing sewage service stating that he will supply the service.

(ii) If sewage disposal is to be provided by a central system, submit the following:

(A) A copy of a bond or escrow agreement to assure completion of the system, if any.

(B) A description of the proposed plans for construction of the system if not complete, including a description of the type of plant treatment and outfall location and the estimated cost of the system.

(C) A copy of any membership agreement or similar documents or contract by which the lot purchaser will be required or permitted to use the services of the sewage supplier.

(iii) If sewaged disposal is to be provided by individual on-site systems or if such systems will be permitted in the subdivision, submit the following:

(A) A copy of a letter from the local health authorities stating the methods of on-site sewage disposal which will be permitted.

(B) A copy of a letter or report from the local health authorities stating that each and every lot in the subdivision has been tested and approved for the installation of an on-site sewage disposal system.

(C) A copy of a letter from a contractor stating the estimated cost of installing an on-site system on a lot.

(3) *Electricity.* (i) Submit a copy of a letter from the electric company stating under what conditions service will be supplied, including when it will supply the electricity and at what costs.

(ii) Submit a copy of the contract between the developer and a third party for construction of electrical facilities and any bond or escrow to assure completion of the facilities.

(4) *Telephone.* Submit a copy of a letter from the telephone company stating the conditions for providing service.

(5) *Gas.* Submit a copy of a letter from the gas company stating under what conditions, and when and at what costs the service will be provided.

(6) *Garbage and Trash Disposal.* Submit a copy of a letter from the company or government agency which shall provide garbage and trash collection service stating that it will supply the service.

(f) *Recreational and Common Facilities.*

(1) Submit a copy of any contract for construction of the facilities and any bond or escrow arrangements to assure their completion.

(2) If the facilities are not complete, describe the facility and give the dimensions and the estimated cost.

(g) *Local Services.* No information required.

(h) *Title.*

(1) Submit title evidence in one of the following forms:

(i) A signed owners policy of title insurance, a guaranty or guarantee of title, or similar instrument issued by a title company, duly authorized by law to issue such instruments in the State in which the subdivision is located (the title policy or similar instrument must guarantee the title to the subdivision); or

(ii) A signed legal opinion stating the condition of title, prepared and signed by an attorney at law experienced in the examination of titles and a member of the Bar in the State in which the property is located. Title opinions which limit liability are not acceptable to satisfy the requirements of this part. The title evidence shall be dated no earlier than 20 business days preceding the date of this filing. If the title evidence is dated earlier than 20 days prior to the date of filing or the title evidence does not contain all of the information required by this part, the developer may submit an attorney's opinion of title covering the period from the date of the title evidence to a date no earlier than 20 business days preceding the date of the filing.

The title evidence shall include:

(A) An adequate legal description acceptable to the political subdivision for conveying the land included in this offering. The title evidence shall include a separate legal description of the property upon which there is or will be located any common areas or facilities which will be known or advertised as being available for the benefit or use of purchasers of lots. The legal description shall specifically identify as individual parcels, each of the lots included in this offering. If the filing is based on a proposed division of the land, the title evidence shall include a description of the perimeters of the proposed division of land. If at the time of recordation or transfer, the legal description is discovered to be in error, or is changed, an amendment must be filed correcting the statement of record. The legal description shall reference the plat maps included in the Statement of Record and specifically state the status of the legal and equitable title with respect to the land included within those plats. The reference to the recorded plat maps shall be a sufficient legal description if those plats clearly delineate the lots and any common areas or facilities. Reference to a proposed plat shall be a sufficient legal description if those plats clearly delineate the lots and any common areas or facilities and include an accurate description of the perimeters of the proposed division of the land.

(B) The name of the person(s) or other legal entity(ies) holding fee title to the property described.

(C) The name of any person(s) or other legal entity(ies) holding a leasehold estate or other interest of record in the property described.

(D) A listing of any and all exceptions or objections to the title, estate or interest of the person(s) or legal entity(ies) referred to in (B) or (C) above, including any encumbrances, easements, covenants, conditions, reservations, limitations or restrictions of record. (Any reference to exceptions or objections to title shall include specific references to the instruments in the public records upon which the exception is based.) When an objection or exception to title affects less than all of the property included in this offering, the title evidence should specifically note which lots are affected.

(E) Copies of all instruments in the public records specifically referred to in (D) above. (Abstracts of such instruments are acceptable if prepared by an attorney or professional or official abstractor qualified and authorized by law to prepare and certify to abstracts and if the abstracts contain the material portion of the recorded instruments to determine the nature and effect of such instruments.)

(F) A statement as to whether there is a holder of an ownership interest in land other than the developer. If so, include documentation which evidences the developer's authorization to develop and/or sell the land.

(G) State whether the blanket encumbrances, if any, contain release provisions. State the legal sufficiency of those release provisions with respect to the protection of lot purchasers. State whether those rights are personal in nature and may be terminated by a foreclosure purchaser or whether they run with the land. State whether the release provisions are a matter of public record. If so, list the recordation data.

(iii) A statement of which public records were searched. A search must be made of all public records which may contain documents affecting title to the land or developer's ability to deliver marketable title. The search must cover a period of at least 60 years and include an examination of at least the following:

(A) The records of the recorder of deeds or similar authority;

(B) U.S. Internal Revenue Liens;

(C) The records of the circuit, probate, or other courts including Federal courts and bankruptcy or reorganization proceedings which have jurisdiction to affect the title to the land;

(D) The tax records;

(E) Financing statements filed pursuant to the Uniform Commercial Code or similar law. If it is held that the financing statements do not affect the title to the land, include a statement of the legal authority for that opinion.

(2) Submit copies of any trust deeds, deeds in trust, escrow agreement or other instrument which purports to protect the purchaser in the event of default or bankruptcy by the developer on any instrument or instruments which create a blanket encumbrance upon the property.

(3) Submit a copy of all forms of contracts or agreements to be used in selling or leasing lots. The contracts or agreements, including promissory notes, must contain the following language in boldface type (which must be distinguished from the type used for the rest of the contract) on the face or signature page above all signatures: "You have the option to void your contract or agreement by notice to the seller if you did not receive a Property Report prepared pursuant to the rules and regulations of the office of Interstate Land Sales Registration, U.S. Department of Housing and Urban Development, in advance of, or at the time of your signing the contract or agreement. If you received the Property Report less than 48 hours prior to signing the contract or agreement, you have the right to revoke the contract or agreement by notice to the seller until midnight of the third business day following the consummation of the transaction. A business day is any calendar day except Sunday and the following Business holidays: New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving and Christmas."

(i) State if the developer has reserved the right to exchange or withdraw lots after a purchaser has signed a sales contract (e.g., for prior sales, failure to pass credit check). If so, indicate this authority by reference to the applicable paragraph in the sales contract.

(ii) State if there is any provision giving purchasers an option to exchange lots. If so, indicate by reference to the applicable paragraph in the sales contract.

(4) Submit a copy of the agreement, if not included in the sales contract, in which seller agrees with buyer to secure the release of lots from any blanket encumbrance.

(5) Submit copies of deeds and leases by which the developer will lease or convey title to the lots to purchasers or lessees.

(6) If the developer knows of any instruments not of record which if recorded would affect title to the subdivision, copies of those instruments should be submitted.

(i) *Additional Information.*

(1) *Property Owners' Association.* (i) List the current officers and directors of the association and state whether any of these persons are officers or employees of the developer.

(ii) If the association has been formed as a legal entity, copies of articles of association and bylaws or similar documents and a statement from the appropriate State authority confirming that the charter is in effect. If not formed, attach proposed articles of association and bylaws or similar documents.

(iii) Submit a copy of membership agreement or similar documents.

(iv) Submit financial statements if a Property Owners' Association exists; otherwise submit a statement of potential expenses and receipts. If the developer has no control over the association and cannot obtain this information, so state.

(2) *Resale Program.* No documentation required.

(3) *Financial Information.* (i) Submit a copy of the developer's financial statements for the last full fiscal year prepared by an independent account and interim statements for a period up to the most recent practicable date. Generally these statements should be no more than six months older than the date of the filing of the last pre-effective amendment. Copies of financial statements must be made available to prospective and past purchasers upon request. These financial statements must include a balance sheet, statement of profit and loss and a statement of changes in financial condition and shall be prepared in accordance with generally accepted accounting principles, as prescribed by the American Institute of Certified Public Accountants. The fiscal year statements must be prepared and audited by an independent licensed public accountant and shall include a certified opinion unless one of the following criteria is met:

(A) The aggregate price of the lots offered pursuant to the common promotional plan equals $1,500,000 or less and there are fewer than three hundred lots in the subdivision or

(B) All facilities and utilities necessary to make the lots immediately useable as homesites have been completed and free and clear title is available at the time of sale. Interim statements may be unaudited and prepared by company personnel. If the accountant refuses to render a certified opinion, disclaims any opinion, or otherwise qualifies his opinion, the Secretary, at her discretion, may accept the statements and require such additional disclosure as she deems necessary in the public interest or for the protection of purchasers.

If the last full fiscal year has ended within the last 90 days and audited statements are not yet available, the developer may, at his option, submit a copy of audited statements for the previous full fiscal year, plus unaudited statements for the period up to the most recent practicable date (generally no older than six months).

The developer shall submit new financial statements anytime that they disclose there may be change having a material adverse effect upon the developer or lot purchasers but in no event shall the developer fail to file new statements every 24 months. This provision does not relieve a developer from the responsibility for filing other amendments to disclose material changes. Developers who file audited statements must continue with audited statements throughout the duration of the registration.

If the developer is newly formed or in the development stages and has not had any significant operating experience, an unaudited or audited balance sheet and statement of receipts and disbursements of funds may be submitted. However, within 120 days after the end of the first full fiscal year, the developer shall comply with the requirements of this part for audited and certified statements.

If the developer is a subsidiary company and does not have audited financial statements, the Secretary may permit the use of the audited and certified statements of the parent company, provided that those statements are accompanied by an unconditional guaranty that the parent shall perform and fulfill the obligations of the subsidiary. If this procedure is adopted, then the developer shall submit the following:

The unaudited financial statements of the subsidiary.

The audited and certified financial statements of the parent company.

A properly executed guaranty in the form set forth in a form acceptable to the Secretary.

(ii) Describe the financing plan or plans that have been or are to be used in financing the on-site and off-site improvements proposed in the statement of record. Also, describe the financing plan that is to be used, and by whom, in the offering of lots for sale in this subdivision. Describe fully any other financing plan, and with whom, which may affect title to the lots, which is not covered above or elsewhere in this statement of record.

(4) *Violations, Bankruptcies and Litigation.* Submit a copy of the documents involved in the actions listed in Violations, Bankruptcies and Litigation referenced in the Property Report or if not noted in the Property Report, any action arising under the Interstate Land Sales Full Disclosure Act. This includes, but is not limited to, copies of the following:

A. Complaint;

B. Answer;

C. Decision or other disposition.

(5) Special Improvement Districts: No documentation required.

(6) Time Sharing: No documentation required.

(7) Foreign Subdivisions: No documentation required.

(8) Leases: Documentation included in Title section.

(9) *Methods of Sale and Proposed Range of Selling Prices or Rents.* (i) Describe the advertising and promotional media and methods to be used in connection with the sale or lease or offers to sell or lease lots in the subdivision.

(ii) Will the developer only make on-site sales or sales be made sight unseen?

(iii) Does developer have his own sales staff or has he contracted with a marketing or sales organization? Give the name and address of the marketing or sales organization and list the names and addresses of its principals.

(iv) What is the range of selling prices or rents for lots in the subdivision?

(v) Copies of all advertising material used to promote the subdivision. This material shall include but need not be limited to the following:

(A) Newspaper and magazine advertisements;

(B) Promotional letters which are given or sent to purchasers;

(C) The text of any radio, television, or billboard advertisements; and

(D) Promotional maps, brochures and handbills.

(10) *Taxes and Assessments*—(i) *Before Taking Title.* (A) Is the lot purchaser required to pay any property taxes or special assessments to any municipal, governmental or public body after signing the contract to purchase, and prior to delivery of an executed deed? If so, itemize the amounts or rates to be paid and to whom they must be paid.

(B) Is the lot purchaser required to pay any assessments, dues or other payments to the developer or any organization or entity (other than a Property Owner's Association) for the maintenance of common facilities or other purposes after signing the contract to purchase, and prior to delivery of an executed deed? If so, itemize the amounts or rates to be paid and to whom they must be paid.

(ii) *After Taking Title.* (A) Is the lot purchaser required to pay any property taxes or special assessments to any municipal, governmental or public body after signing the contract to purchase, and prior to delivery of an executed deed? If so, itemize the amounts or rates to be paid and to whom they must be paid.

(B) Is the lot purchaser required to pay any assessments, dues or other payments to the developer or other organization (other than a Property Owner's Association) for the maintenance of common facilities or other purposes after signing the contract to purchase and after delivery of an executed deed? If so, itemize the amounts or rates to be paid and to whom they must be paid.

(j) *Cost Sheet and Signature Page.*

Submit a sample Cost Sheet and Signature Sheet which has been completed with regard to a typical lot in the subdivision.

(k) *Affirmation.*

The affirmation shall be signed by the developer's senior executive officer or his duly authorized agent. The affirmation will appear as set forth in § 1710.105(a) Format, Statement of Record.

§ 1710.110 Annual Notice requirement for Statement of Record.

By January 31 of each calendar year, a developer registered pursuant to § 1710.20 or § 1710.25 shall submit for each of his registered subdivisions a short notice which will become part of the statement of record containing the following information:

(a) Subdivision name and location;

(b) Developer's name, address and telephone number;

(c) OILSR number;

(d) Effective date of most recent filing;

(e) Either:

(1) A statement that the developer is still engaged in land sales at the subject subdivision, and either that no material changes have occurred since the most recent filing or that amendments are being submitted to reflect material changes in the present registration; or

(2) A statement that the developer is no longer engaged in land sales at the subject subdivision and requests suspension of the registration for the subject subdivision; such a suspension shall become effective upon counter-signature on the notice by the Secretary or his designee, a copy of which will be mailed to the developer.

(f) The Notice shall be signed by the senior executive officer of the developer in a signature line above his typed name and title.

10. Section 1710.115 is proposed to be amended as follows:

§ 1710.115 State property report disclaimer.

If the developer is filing with the Office of Interstate Land Sales Registration, Department of Housing and Urban Development, pursuant to § 1710.25, the statement required by this section must be affixed to the front of the State property report prior to the report's delivery to each purchaser. With the exception of size, the statement shall be in a form as follows:

PURCHASERS SHOULD READ THIS DOCUMENT BEFORE SIGNING ANYTHING

(Name of subdivision)

(Developer's Name)

Federal law requires that you receive this information prepared by the developer. The information contained in this Report is subject to change. The Department of Housing and Urban Development has not given approval to this subdivision nor made any determination as to the value of this property, if any.

If you receive this Property Report less than 48 hours prior to signing a contract or agreement, you have until midnight of the third business day following the consummation of the transaction to void the contract or agreement by notice to the seller.

Agent Certification

I certify that I have made no representations to the person(s) receiving this Property Report contrary to the information contained in this Property Report.

Lot _____ Block_____ Section _____

Name of Salesperson .....

Signature .....Date.....

Purchaser Receipt

IMPORTANT READ CAREFULLY

Name of Subdivision: Effective Date:

The developer must give you a copy of this Property Report and give you an opportunity to read it before you sign any contract or agreement. By signing this receipt you acknowledge that you have received a copy of the Property Report prepared according to the Rules and Regulations of the Office of Interstate Land Sales Registration, U. S. Department of Housing and Urban Development.

Received by ..... Date .....

Street Address.....

City.....State.....Zip.....

Even though you received the Property Report you still have other important rights under the Interstate Land Sales Full Disclosure Act.

The statement shall be on a separate page and shall be prepared in the format required by § 1710.105(b)(10). Final printed versions of the State property report and the Property Report disclaimer shall be submitted as required by § 1710.105(b)(13).

The language at the top of the page, "PURCHASER SHOULD READ THIS DOCUMENT BEFORE SIGNING ANYTHING", shall be printed in ¼ inch red type. Below that, the name of the subdivision and the developer's name should appear in ¼ inch black type. Following that, the two HUD disclaimer paragraphs should appear in ⅛ inch black type.

The certification and the receipt on the bottom half of the page shall be trimmed with a red border one-eighth inch in size. The original shall be prepared in such a manner that it can be detached and retained by the developer after it is signed by the purchaser and so that the purchaser will also receive a copy of the receipt. This can be accomplished by designing the page so that an overlay covers the lower area of the page where the certification and the receipt is printed. The printing on the overlay and the underlying part of the page should be identical so that a carbon can be inserted in between for the signature, then the developer can remove the overlay and keep it for his files. The developer may use an identical copy of the full page if he desires. The developer shall retain the original receipt for each Property Report. Upon demand by the Secretary, the developer shall, without delay, make such files available for inspection by the Secretary, or he shall file copies of such receipts as the Secretary may specify.

The Agent Certification must be completed by the developer or its agent in the presence of the purchaser, unless the transaction takes place through the mails with no personal contact. In the latter case, the certification should be completed before the Property Report is delivered to the purchaser. The person signing shall be the person most active in dealing with the prospective purchaser.

11. Section 1710.120 is amended as follows:

§ 1710.120 Statement of Record—State filing.

If the developer is filing pursuant to § 1710.25, there shall be filed with the Office of Interstate Land Sales Registration, Department of Housing and Urban Development, a statement as follows:

SEC. I. *State Filings.* The following information shall preface the State Statement of Record or similar instrument and shall be done in accordance with the format and general instructions set forth in § 1710.105 and contain the information required by § 1710.108(a), General Information, and § 1710.108(l)(3)(i), Financial Information.

SEC. II A. Submit all of the information, documentation, and certifications or affirmations submitted to the State.

B. The contracts or agreements must contain the language required by § 1710.108(h)(3).

C. * * *

12. Section 1710.125 is amended by deleting the current provisions and inserting the following new provisions in lieu thereof:

§ 1710.125 Partial Statement of Record—request for exemption.

Requests for an exemption order or an exemption advisory opinion pursuant to § 1710.14 or § 1710.15 shall be prepared in accordance with the following instructions:

INSTRUCTIONS FOR COMPLETION OF PARTIAL STATEMENT OF RECORD—REQUEST FOR EXEMPTION

The partial Statement of Record shall be prepared in the manner shown below and shall contain the information requested, as follows:

Employer's IRS No.----------
Developer ----------
Owner ----------

STATEMENT OF RECORD

Name of subdivision----------
Location ----------
Name of developer----------
Developer's address----------
Authorized agent----------
Authorized agent's address----------

Part I. General Information, shall be filed in the form set forth in § 1710.108(a) followed by the affirmation and agreement as set forth below:

The filing of this information does not preclude a developer from filing a complete Statement of Record. If the developer files the material necessary to complete the Statement of Record, the date of filing shall be the date the complete Statement of Record is received by the Secretary.

AFFIRMATION AND AGREEMENT

I hereby affirm that I am the developer of the lots herein described or will be the developer at the time the lots are offered for sale or lease to the public, or that I am the agent authorized by such developer to complete this statement (if agent, submit written authorization to act as agent);

That the statements contained in this partial Statement of Record and any supplement thereto, together with any documents submitted are full, true, complete, and correct;

That, if this request is filed pursuant to 24 CFR 1710.14(a)(2) the developer hereby affirms and represents to the Secretary that the facts, affirmations and method of operation are within the requirements of 24 CFR 1710.14(a)(2) subparagraphs (i), (ii), (iii), (iv), and (v);

That the fee accompanying this application is in the amount required by the regulations of the Office of Interstate Land Sales Registration.

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(date) (signature)

---------- ----------
(corporate seal if applicable) (title)

WARNING: Section 1418 of the Housing and Urban Development Act of 1968 (82 Stat. 598, 15 U.S.C. 1717) provides: "Any person who willfully violates any of the provisions of this title or the rules and regulations prescribed pursuant thereto * * * shall upon conviction be fined not more than $5,000 or imprisoned not more than 5 years, or both."

Proposed effective date. The foregoing proposed amendments to Part 1710 would become effective 60 days after the date of final publication with respect to initial and consolidated registrations and exemptions. Existing exemptions and registrations would be affected as follows:

(a) No existing exemption, or exemption in process, is affected;

(b) A developer applying for an exemption after the date of publication but prior to the effective date may apply for an exemption under either the present or the amended regulations;

(c) A developer with an effective registration who submits material, except for a consolidation, after the effective date of these regulations or the regulations effective December 1, 1973, but if he opts to follow these regulations, the entire registration must be brought into compliance;

(d) Registrations effective or in process upon the effective date of these regulations shall in any case comply with these regulations in 1978. The specific date on which each registration must be fully updated to these regulations in 1978 is based upon the anniversary month of the last effective date of the registration or amendments thereto.

Issued at Washington, D.C., January 17, 1977.

CONSTANCE B. NEWMAN,
Assistant Secretary for Consumer Affairs and Regulatory Functions.

[FR Doc.77-2704 Filed 1-26-77;9:30 am]

federal register

MONDAY, JANUARY 31, 1977

PART VII



DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Interstate Land Sales Registration

■

FORMAL PROCEDURES AND RULES OF PRACTICE

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Interstate Land Sales Registration

[24 CFR Part 1720]

[Docket No. R-77-446]

FORMAL PROCEDURES AND RULES OF PRACTICE

Proposed Rulemaking

Notice is hereby given that pursuant to Interstate Land Sales Full Disclosure Act (15 U.S.C. 1701 et seq.) it is proposed to amend Chapter IX of 24 CFR. Under this proposal, certain technical and substantive changes would be made in Part 1720 of Title 24.

On August 4, 1976, the Assistant Secretary for Consumer Affairs and Regulatory Functions published advance notice of a proposal to initiate rulemaking. The objective is a substantial revision of the exemption and disclosure regulations of the Office of Interstate Land Sales Registration (OILSR).

At that time the legal and OILSR staffs had already begun work on a revision of Part 1720. A decision was made to go forward with the changes to Part 1720 independently from the other changes.

Many of the changes are technical and are made to correct syntax, punctuation and other grammatical problems. For example, § 1720.1 would be amended by deleting a comma at the end of line 6, and by inserting a comma after the word "otherwise" in § 1720.75(c).

Other changes, such as in § 1720.75, have been made to remove surplus words from the regulations. The phrase "as distinguished from adjudicatory hearings" was deleted in § 1720.75(a). Similarly, § 1720.115 was rewritten to cut by nearly two thirds the number of words in the section and also to increase its clarity. Certain sections such as § 1720.135 have been rewritten solely to promote clarity and readability.

The final category of technical changes applies to those sections which reflect changes made elsewhere, e.g. the revised appeals procedure.

A change not formally proposed at this time but which might appear in the published rules is a re-ordering of the rules into a more logical and chronological sequence. What is envisioned is an identification of approximately 6 categorical headings such as General Provisions, which would include the existing regulations as to applicability of the section, restrictions on appearances, standards of practice, time and means of service, form and filing requirements and the administrative law judge's general powers. A category on Pleadings would include the regulations setting forth descriptions of procedures under suspension notices, orders and notice of proceedings and answers, amendments and supplemental pleadings. A third category would be Motions, which would include the existing regulations dealing with motions. A fourth category would be Discovery and Evidence, which would include the regulations dealing with depositions and, discovery, subpoenas, testimony and similar regulations. A fifth category tentatively entitled Hearings would deal with the provisions applicable during the course of a hearing and a final category would be Appeals, which would encompass all regulations from the time the administrative law judge's jurisdiction is terminated.

The sections, including the sections specified in the above paragraphs, which are affected by the proposed technical and clarifying changes are as follows:

1720.1	1720.220
1720.15	1720.235
1720.75 (a) and (c)	1720.240
1720.80 (b)(2) and (b)(3)	1720.250
1720.115	7120.255(d)
1720.135	1720.285(b)
1720.145	1720.300
1720.150	1720.320
1720.155	1720.350
1720.170	1720.360
1720.175	1720.390
1720.195	1720.400 (a), (b) and (c)
1720.210	1720.412
1720.215	1720.290

SUBPART A

The first substantive change would be in § 1720.5, Initiation of Rulemaking. The heading has been changed to reflect more accurately the text of this provision and to codify what, in the Agency's opinion, constitutes a rulemaking petition. Although the Agency has had no more than 6 purported rulemaking petitions, only one was found to be satisfactory for the purposes of this section. Rulemaking may still be initiated by the Secretary as well as any interested person.

SUBPART B

Section 1720.40(c) is proposed to be deleted because it is inconsistent with section 1407(b) of the statute, 15 U.S.C. 1706(b). The suspension notice described at § 1720.120 of this chapter is the means of notice contemplated by the statute when statements of record or amendments are found to be incomplete or inaccurate.

SUBPART C

Section 1720.45(a) is proposed to be amended by ending the sentence after the word "Secretary" in the fourth line. This paragraph is simply a statement of general scope and provisions for voluntary compliance can be found in § 1720.100.

Section 1720.55 is proposed to be amended by changing the title and by deleting the last sentence. It was determined that the Secretary's publication of information concerning violations is more appropriate in § 1720.90 after the finding that corrective action is warranted.

Section 1720.70(b) is proposed to be amended to provide for a petition to modify or withdraw a subpoena and to remove any inference that a subpoenaed party will receive a hearing from a non-interested third party. In effect, the revision reflects actual Agency practice.

Section 1720.80(b)(4) would be amended to reflect the change in § 1720.70(b).

Section 1720.85 is amended to show the action that may be taken by the Secretary as the result of noncompliance in an investigation. Specifically, the section refers to the Secretary's authority under section 1415(d) of the Act to enforce administrative subpoenas in the United States District Courts and the authority to suspend an effective registration under section 1407(e) of the Act, which is implemented by § 1710.45(b)(2) of the Regulations.

Section 1720.90 is proposed to be amended to show that the alternatives open to the Secretary after the conclusion of the investigation are injunctions under section 1415(a) of the Act, notices of proceedings under section 1407(d) of the Act and § 1710.45(b)(1) of the Regulations or a suspension order under section 1407(c) of the Act and § 1710.45(b)(3) of the Regulations, rather than § 1710.45(b)(2), which is now appropriately placed under § 1720.85. Also, a new paragraph (c) is added with respect to the publication concerning violations found as a result of the Secretary's investigation. The present paragraph (b) is reserved and the text is dropped because of its self-evident nature.

Section 1720.100 is proposed to be amended to reflect the reality of an agreement between the Secretary and a developer prior to the initiation of formal proceedings but retains recognition that the developer may initiate the action leading to the agreement.

SUBPART D

Section 1720.125(c), Adjudicatory Proceedings, would be amended by deleting the present language because the time and place of the hearings are believed to be better handled through the flexibility of an administrative law judge's order and substituting a reference to § 1720.160, which instructs a developer how to obtain a hearing upon receipt of a notice of proceedings.

Section 1720.131 would be amended by adding a new paragraph (e) which refers the suspended party to the hearing rights described in § 1720.165, it having been determined to restore an independent hearing right to developers who receive suspension orders pursuant to § 1710.45(b)(3).

Section 1720.134 is proposed to be amended to apply the presumption of hearing request to answers to suspension notices and suspension orders as well as notices of proceedings.

Section 1720.140(a) is proposed to be amended to apply to orders as well as notices; 1720.140(b) is amended to show that in certain cases the time for filing amended answers will run from the service of the administrative law judge's order granting a motion to amend. This matter is covered in detail in § 1720.205(a).

Section 1720.155(a) is proposed to be amended by deleting paragraphs (1) and (2) and substituting a reference to the time period in § 1720.140, rather than repeating the text of § 1720.140(a)(1) and (2). Section 1720.155(c) is amended by adding the words "or administrative law judge" in the 7th line after "Secretary." This change is made to cover the case of the judge's decision after a hearing. A new paragraph (d) is added to § 1720.155 providing for consolidation of the suspension notice under § 1710.45(a) and a suspension order under § 1710.45(b)(3). This provision would eliminate any question regarding the necessity to file two identical answers when the allegations in both proceedings are identical.

Section 1720.160 is proposed to be amended in paragraph (a) to use a reference in the case of filing a motion for more definite statement; in paragraph (b) the proposal would delete the requirement that a hearing be scheduled within 20 days after the hearing request is received and substitute a requirement that the hearing be held within 45 days after receipt of the request unless it is determined that more or less time is appropriate in the public interest; paragraph (c) is amended by changing the effective date of an order issued under this section from the date of issuance to the date of service or receipt. The objective of the proposal in § 1720.160(b) is that processing time for hearings would be shortened; the objective of the change in § 1720.160(c) is to assure that the effectiveness of the order is predicated on notice and receipt by the developer.

Section 1720.165 is proposed to be amended by changing the heading to include orders issued under § 1710.45(b)(3) and by including a hearing right as a result of orders issued pursuant to § 1710.45(b)(3). In the case of either order discussed in this section hearings would be held within 20 days after receipt of a hearing request because of the summary nature of these orders.

Section 1720.190(b) is amended in clauses (8) and (9) to reflect the effectiveness of the administrative law judge's decision and to reflect the reorganized appeals procedure, both of which are discussed hereafter.

Section 1720.205(a) is proposed to be amended by stating with certainty when pleadings may be amended as a matter of course and when they may be amended only by leave of the administrative law judge.

Section 1720.245 is proposed to be amended to make it more readable and to clarify that a motion to dismiss may be made at virtually any time during the course of a proceeding. The new paragraph was added to make this section more readable rather than to change its substance.

Section 1720.225(b) is amended by adding a new sentence at the end of the paragraph to permit evidentiary arguments based on the Federal Rules of Evidence when believed to be applicable to a particular presentation.

Section 1720.265(a) is proposed to be amended to eliminate the requirement that discovery is available only if the witness could not be available to testify. The result is that depositions may be used for impeachment purposes as well as discovery. However, the use of any deposition as primary evidence is still limited by the provisions of § 1720.265(g).

Section 1720.345 is proposed to be amended by re-titling the section, by requiring the filing of a decision by the administrative law judge within 40 days after the close of evidence and providing for the effective date of the decision to occur 10 days after service upon the parties. The consequences of these changes would be to make the administrative law judge's decision final for all purposes 10 days after it is served on the parties. The only means within the Department to stop the effectiveness of the administrative law judge's decision would be favorable action on a petition for appeal filed under § 1720.365 which would serve to stay the decision while the appeal procedure is ongoing. If there is an unfavorable decision on the petition or there is a failure to perfect the appeal, the decision would become immediately effective.

Section 1720.365 is amended to provide for a petition for appeal and requires the appeals officer to rule on the petition within 10 days. A denial of the petition would be final agency action.

Section 1720.385 is proposed to be amended by limiting the size of appellate briefs to 25 pages from the present 60 pages. This section would also be amended to delete the reference to the appeals board in accordance with the new appeals officer procedures.

Section 1720.400(d) is proposed to be amended by making the decision of the appeals officer effective 10 days after service on the parties in accordance with the decision to give effect to administrative decisions as quickly as feasible. Appeal from a decision of the appeals officer would be directly to the United States Court of Appeals, § 1720.405 having been proposed to be deleted.

A new § 1720.412 is proposed to be created but would simply state the text now found in § 1720.530 with respect to the Department representative.

Section 1720.530 would be eliminated.

Section 1720.430(a) is proposed to be amended by changing from 6 to 3 the number of copies required to be filed and to change the address of the place for filing documents to that of the Docket Clerk for Administrative Proceedings. This change is in conformance with the instructions in pleadings now in use and would eliminate the potential for mail snafus.

Section 1720.440 is proposed to be amended by changing the OILSR officials upon whom service can be made and adds a proviso that copies of process be sent to the Clerk as specified in § 1720.430(a). Section 1720.440(b) is proposed to be amended by providing for service by publication in the FEDERAL REGISTER when the persons sought to be served cannot with due diligence be served. Section 1720.440(d) is proposed to be amended by changing the last sentence of the paragraph to require service of copies of documents on attorneys of record.

SUBPART F

Except for § 1720.520, all of Subpart F is to be substantially amended. The Interstate Land Sales Board would be abolished under this proposal and in its place there would be established an individual appeals officer having all of the powers and duties of the present appeals officers who constitute the present appeals board. The appeals officer would be the Assistant Secretary for Consumer Affairs and Regulatory Functions, and the decision of the appeals officer would not be appealable within the Department.

Section 1720.500 would establish the position of a single appeals officer and would delete all provisions respecting an appeals board concept.

Section 1720.510 designates who shall be the appeals officer and also specifies that the Docket Clerk for Administrative Proceedings shall be the recorder of appellate proceedings. The headings of both of these sections would be changed to reflect their content.

Sections 1720.525 and 1720.530 would be deleted by this proposal.

Interested persons are invited to participate in this rulemaking proceeding by submitting written comments or suggestions to the Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, Room 10141, 451 7th Street, S.W., Washington, D.C. 20410. All communications should refer to Office of Interstate Land Sales Registration, Formal Procedures and Rules of Practice and the date of publication. It is requested, though not required, that all written communications be submitted in triplicate.

Particular attention is invited with respect to the revised appeals procedure proposed, the hearing procedures for suspension orders under §§ 1710.45(b)(2) and 1710.45(b)(3), the revised discovery provisions in § 1720.265(a) and the revised petition to limit subpoenas found in § 1720.70(b).

All communications received by April 30, 1977, will be considered before taking action on the proposed rules. Also, public hearings may be scheduled to hear comments on the proposed rules. If public hearings are scheduled, notice will appear in the FEDERAL REGISTER and various general and special circulation newspapers and periodicals. The proposals contained in this notice may be changed in light of comments received. A copy of each written submittal will be available for public inspection during business hours at the above address.

The Department has determined that these regulations do not constitute a major Federal action significantly affecting the quality of the human environment. Accordingly, a finding of inapplicability of environmental impact has been prepared and is available for inspection by the public during regular business hours in Room 10141, 451 7th Street, S.W., Washington, D.C. 20410.

This notice of proposed rulemaking is issued under the authority of section 7(d), Department of HUD Act, 42 U.S.C. 3535(d); section 1419, Interstate Land Sales Disclosure Act, 15 U.S.C. 1718.

(NOTE.—It is hereby certified that the economic and inflationary impacts of this proposed regulation have been carefully evaluated in accordance with OMB Circular A-107.)

Accordingly, it is proposed to amend Part 1720 of Chapter IX of 24 CFR to read as follows:

PART 1720—FORMAL PROCEDURES AND RULES OF PRACTICE

Subpart A—Rules and Rule Making

Sec.
1720.1 Scope of rules in this subpart.
1720.5 Initiation of rulemaking.
1720.10 Investigations and conferences.
1720.15 Notice.
1720.20 Promulgation of rules and regulations.
1720.25 Effective date of rules and regulations.

Subpart B—Filing Assistance

1720.30 Scope of this subpart.
1720.35 Prefiling assistance.
1720.40 Processing of filings.

Subpart C—Formal Investigations

1720.45 Scope of rules in this subpart.
1720.55 Signed statements in investigations.
1720.70 Subpoenas in investigations.
1720.75 Investigational proceedings.
1720.80 Rights of witnesses in investigations.
1720.85 Noncompliance.
1720.90 Disposition.
1720.100 Settlements and consent orders.

Subpart D—Adjudicatory Proceedings

1720.110 Scope of rules in this subpart.
1720.115 Applicability of sections of this subpart.
1720.120 Suspension notice under § 1710.45 (a) of this chapter.
1720.125 Notice of proceedings pursuant to § 1710.45(b) (1) of this chapter.
1720.130 Suspension order under § 1710.45 (b) (2) of this chapter.
1720.131 Suspension order under § 1710.45 (b) (3).
1720.134 Presumption of hearing request.
1720.135 Motion for more definite statement.
1720.140 Time for filing answer.
1720.145 Content of answer.
1720.150 Settlements.
1720.155 Hearings—suspension notice pursuant to § 1710.45(a) of this chapter.
1720.160 Hearings—notice of proceedings pursuant to § 1710.45(b) (1) of this chapter.
1720.165 Hearings—suspension orders issued pursuant to § 1710.45(b) (2) and § 1710.45(b) (3) of this chapter.
1720.170 Intervention by interested persons.
1720.175 Consolidation.
1720.190 Administrative law judge, powers and duties.
1720.195 Prehearing conferences.
1720.200 Reporting—prehearing conferences.
1720.205 Amendments and supplemental pleadings.
1720.210 Public nature and timing of hearings.
1720.215 Ex parte communications.
1720.220 Disqualification of administrative law judge.
1720.225 Failure to comply with administrative law judge's directions.
1720.230 Motions—filing requirements.
1720.235 Answers to motions.
1720.240 Motions for extension of time.
1720.245 Motions for dismissal.
1720.250 Interlocutory review of administrative law judge's decision.
1720.255 Presentation and admission of evidence.
1720.260 Production of witnesses' statements.
1720.265 Decositions and discovery.
1720.270 Subpoenas ad testificandum.
1720.275 Subpoenas duces tecum.
1720.280 Motion to limit or quash.
1720.285 Rulings on applications for compulsory process; appeals.
1720.300 Official notice.
1720.320 Reporting and transcription.
1720.325 Corrections.
1720.330 Proposed findings, conclusions, and order.
1720.345 Decision of administrative law judge.
1720.350 Decision of the administrative law judge—content.
1720.360 Reopening of proceeding; termination of jurisdiction.
1720.365 Appeal from decision of administrative law judge.
1720.375 Answering brief.
1720.380 Reply brief.
1720.385 Length and form of briefs.
1720.390 Oral argument.
1720.400 Decision on appeal or review.

Subpart E—Miscellaneous Rules

1720.410 Qualifications for appearances.
1720.412 Department representative.
1720.415 Restrictions on appearances as to former officers and employees.
1720.425 Standards of practice.
1720.430 Form and filing requirements.
1720.435 Time computation.
1720.440 Service.

Subpart F—Appeals Officer

1720.500 Functions of the appeals officer.
1720.510 Appointment of the appeals officer.
1720.520 Decisions of appeals officer.

AUTHORITY: Sec. 7(d), Department of HUD Act, (42 U.S.C. 3535(d)); sec. 1419, Interstate Land Sales Disclosure Act (15 U.S.C. 1718).

Subpart A—Rules and Rulemaking

§ 1720.1 Scope of rules in this subpart.

The rules in this subpart apply to and govern procedures for the promulgation of rules and regulations under the Act. The rules in this subpart do not apply to interpretative rules, general statements of policy, rules of organization procedure or practice or in any situation in which the Secretary for good cause finds (and incorporates the findings and brief statement of the reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary or contrary to the public interest.

§ 1720.5 Initiation of rulemaking.

(a) The issuance, amendment or repeal of any rule or regulation may be proposed upon the initiative of the Secretary or upon the petition of any interested person showing reasonable grounds therefor.

(b) Petitions for rulemaking by interested persons filed under this section:

(1) Shall be identified as a petition for rulemaking under this subpart;

(2) Shall explain the interest of the petitioner in the action requested;

(3) Shall set forth the text or substance of the rule or amendment proposed or specify the rule that the petitioner seeks to have repealed, as the case may be; and

(4) Shall contain any information and arguments available to the petitioner to support the action sought.

(c) The Secretary shall respond to a petition submitted under this section within 180 days of receipt thereof, except that this time limit may be exceeded for good cause found and communicated to the petitioner. The Secretary's normal response shall be to grant or deny the petition but alternatively, the Secretary may schedule a public hearing or other appropriate proceeding prior to the granting or denial of a petition. If the Secretary grants the petition, the Secretary shall publish a proposed rule in accordance with the petition and a copy of the proposed rule shall be furnished to the petitioner. If the Secretary denies the petition, the Secretary shall notify the petitioner within 7 days after such denial.

§ 1720.10 Investigations and conferences.

(a) In connection with a rulemaking proceeding, the Secretary may conduct such investigations, make such studies and hold such conferences as he may deem necessary. All or any part of such investigations may be conducted under the provisions of Subpart C of this part.

(b) At any such conferences, interested persons may appear to express views and suggest amendments relative to proposed rules and regulations.

§ 1720.15 Notice.

General notice of proposed rulemaking shall be published in the FEDERAL REGISTER and, to the extent practicable, otherwise made available to interested persons. Such notice shall state the time, place and nature of public hearings, if any; the authority under which the rule or regulation is proposed; either the terms or substance of the proposed rule or regulation or a description of the subjects and issues involved; and the manner in which interested persons shall be afforded the opportunity to participate in the rulemaking. If the rulemaking was instituted pursuant to petition, a copy of the notice shall be served on the petitioner.

§ 1720.20 Promulgation of rules and regulations.

The Secretary, after consideration of all relevant matters of fact, law, policy and discretion, including all relevant matters presented by interested persons in the rule making proceedings, shall adopt and publish in the FEDERAL REGISTER an appropriate rule or regulation together with a concise general statement of its basis and purpose and any necessary findings; or the Secretary shall give other appropriate public notice of disposition of the rule making proceeding.

§ 1720.25 Effective date of rules and regulations.

The effective date of any rule or regulation or of an amendment, suspension, or repeal of any rule or regulation shall be specified in a notice published in the FEDERAL REGISTER. Such date shall not be less than 30 days after the date of such publication unless the Secretary specifies an earlier effective date for good cause found and published with the rule or regulation.

Subpart B—Filing Assistance

§ 1720.30 Scope of this subpart.

The rules in this subpart apply to and govern procedures under which developers may obtain prefiling assistance and be notified of and permitted to correct deficiencies in the Statement of Record.

§ 1720.35 Prefiling assistance.

Persons intending to file with the Office of Interstate Land Sales Registration may receive advice of a general nature as to the preparation of the filing, including information as to proper format to be used and the scope of the items to be included in the format. Inquiries and requests for informal discussions with staff members should be directed to the Administrator, Office of Interstate Land Sales Registration, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20411.

§ 1720.40 Processing of filings.

(a) Statements of Record and accompanying filing fees will be received on behalf of the Secretary by the Administrator, Office of Interstate Land Sales Registration, for determination of (1) Completeness of the statement, (2) Adequacy of the filing fee and (3) Adequacy of disclosure. Where it appears that all three criteria are satisfied and it is otherwise practicable, acceleration of the effectiveness of the Statement of Record will normally be granted.

(b) Filings intended as Statements of Record but which do not comply in form with §§ 1710.105 and 1710.120 of this chapter, whichever is applicable, and Statements of Record accompanied by inadequate filing fees will not be effective to accomplish any purpose under the Act. At the discretion of the Administrator, such filings and any monevs accompanying them may be immediately returned to the sender or after notification may be held pending the sender's appropriate response.

Subpart C—Formal Investigations

§ 1720.45 Scope of rules in this subpart.

(a) The rules in this subpart apply to and govern procedures for the conduct of formal inquiries and investigations undertaken by the Secretary.

(b) The Secretary or his designee may make inquiries and investigations to determine whether any person has violated or is about to violate any provision of the Act or the rules and regulations, or to aid in the enforcement of the Act, or in prescribing rules and regulations thereunder, or in securing information to serve as a basis for recommending further legislation. The Secretary or his designee shall have the authority to administer oaths and affirmations in any matter under investigation.

§ 1720.55 Signed statements in investigations.

In connection with a formal investigation or inquiry involving an alleged or suspected violation or threatened violation of the Act or rules and regulations, the Secretary may require or permit any person to file with him a signed statement setting forth facts and circumstances known to such person and relevant to the investigation or inquiry.

§ 1720.70 Subpoenas in investigations.

(a) The Secretary or his designee may issue subpoenas relating to any matter under investigation for any or all of the following purposes:

(1) Requiring testimony to be taken by interrogatories.

(2) Requiring the attendance and testimony of witnesses at a specific time and place.

(3) Requiring access to, examination of and the right to copy documents, books, records, and papers.

(4) Requiring the production of documents, books, records, and papers at a specified time and place.

(b) A subpoenaed person may petition the Administrator or his designee to modify or withdraw a subpoena by filing the petition within 10 days after service of the subpoena. The petition may be in letter form but must set forth the facts and the laws upon which the petition is based.

§ 1720.75 Investigational proceedings.

(a) For the purpose of hearing the testimony of witnesses and receiving documents and other data relating to any subject under investigation, investigational proceedings may be conducted in the course of any investigation including rulemaking proceedings under Subpart A of this part.

(b) Investigational proceedings shall be presided over by the Secretary or his designee and shall be stenographically or mechanically reported. A transcript shall be a part of the record of the investigation.

(c) Unless the Secretary or his designee determines otherwise, investigational proceedings shall be public.

§ 1720.80 Rights of witnesses in investigations.

(a) Any person compelled to testify or to submit data in connection with any investigational proceedings shall be entitled to retain a copy or, on payment of lawfully prescribed costs, procure a copy of any data submitted by him and of his own testimony as stenographically or mechanically reported, except that in a nonpublic proceeding the witness may for good cause be limited to inspection of the official transcript of his testimony.

(b) Any witness compelled to appear in person in an investigational proceeding may be accompanied, represented, and advised by counsel as follows:

(1) Council for a witness may advise his client, in confidence, and upon initiative either of himself or of the witness, with respect to any question asked of his client; if the witness refuses to answer a question, counsel may briefly state on the record if he has advised his client not to answer the question and the legal grounds for such refusal.

(2) Where it is claimed that the testimony or other evidence sought from a witness is outside the scope of the investigation, or it is claimed that the witness is privileged to refuse to answer a question or to produce other evidence, counsel for the witness may object on the record to the question or requirement and may state briefly and precisely the grounds therefor.

(3) Objections made under the rules in this subpart will be continuing objections throughout the course of the proceeding, and repetitious or cumulative statement of an objection or of the grounds therefor is unnecessary and impermissible.

(4) Counsel for a witness may not, for any purpose or to any extent not allowed by paragraphs (b)(1) and (2) of this section, interrupt the examination of the witness by making any objections or statements on the record. Petitions challenging the authority of the Secretary to conduct the investigation or the sufficiency or the legality of the subpoena must have been presented to the Secretary or his designee pursuant to § 1720.70(b). Copies of such petitions may be filed with the presiding official at the proceeding as part of the investigation record, but no argument in support thereof shall be allowed.

(5) Upon completion of the examination of a witness, counsel for the witness may request that the presiding official permit the witness to clarify on the record any of his answers in order that specified points of ambiguity, equivocation, or incompleteness may be corrected. The granting or denial of such request in whole or in part, shall be within the sole discretion of the presiding official.

(6) The presiding official shall take all necessary action to regulate the course of the proceeding to avoid delay and to prevent or restrain disorderly, dilatory, obstructionist or contumacious conduct or contemptuous language. Such official shall, for reasons stated on the record, immediately report to the Secretary any instances where an attorney or witness has failed or refused to comply with his directions, lawful rules, regulations or orders in the course of the proceedings or has engaged in disorderly, dilatory, obstructionist, or contumacious conduct or contemptuous language. The Secretary or his designee may exclude the attorney or witness from further participation in the particular investigation or may take any action deemed appropriate under § 1720.85.

§ 1720.85 Noncompliance.

Failure to comply with the Secretary's investigational process may result in action pursuant to section 1407(e) or section 1415(d) of the Act or section 1710.45(b)(2).

§ 1720.90 Disposition.

(a) When investigation by the Secretary indicates that further action is warranted, the Secretary may seek an injunction under section 1415(a) of the Act, issue a notice of proceedings under section 1407(d) of the Act and section 1710.45(b)(1), or issue a suspension order under section 1407(c) of the Act and section 1710.45(b)(3).

(b) [Reserved]

(c) The Secretary may publish or otherwise divulge information concerning any violation of the Act or the rules and regulations.

§ 1720.100 Settlements and consent orders.

(a) *Offer of Settlement.* At any time during a proceeding, parties may be afforded an opportunity to submit to the Secretary or his designee a written proposal for disposition of the matter in the form of a settlement offer.

(b) *Consent Orders.* When the Secretary or his designee determines that a violation of the Act or regulations has taken place and the public interest will be fully safeguarded, he may enter into a consent order. Such order will be in lieu of further administrative proceedings or court actions pursuant to the Secretary's authority. Such orders may provide for the holding in abeyance of any further proceedings by the Secretary and the cessation of developer actions, notification to purchasers or other actions which are in the public interest and for the protection of purchasers.

Subpart D—Adjudicatory Proceedings

§ 1720.110 Scope of rules in this subpart.

The rules in this subpart are applicable to adjudicative proceedings which involve a hearing or opportunity for a hearing under the Interstate Land Sales Full Disclosure Act.

§ 1720.115 Applicability of sections of this subpart.

Succeeding sections of this subpart shall apply to all adjudicatory hearings conducted by OILSR unless specifically limited in applicability by a particular section.

§ 1720.120 Suspension notice under § 1710.45(a) of this chapter.

A suspension pursuant to § 1710.45(a) of this chapter shall be effected by service of a suspension notice which shall contain:

(a) An identification of the filing to which the notice applies.

(b) A specification of the deficiencies of form, disclosure, accuracy, documentation or fee tender which constitute the grounds, under § 1710.45(a) of this chapter, of the suspension, and of the additional or corrective procedure, information, documentation, or tender which will satisfy the Secretary's requirements.

(c) A notice of the hearing rights of the developer under § 1720.155, and of the procedures for invoking those rights.

(d) A notice that, unless otherwise ordered, the suspension shall remain in effect until 30 days after the developer cures the specified deficiencies as required by the notice.

§ 1720.125 Notice of proceedings pursuant to § 1710.45(b)(1) of this chapter.

A proceeding pursuant to § 1710.45(b)(1) of this chapter is commenced by issuance and service of a notice which shall contain:

(a) A clear and accurate identification of the filing or filings to which the notice relates.

(b) A clear and concise statement of material facts, sufficient to inform the respondent with reasonable definiteness of the statements, omissions, conduct, circumstances or practices alleged to constitute the grounds for the proposed suspension order under § 1710.45(b)(1) of this chapter.

(c) A notice of hearing rights of the developer under § 1720.160 and of the procedures for invoking those rights.

(d) Designation of the administrative law judge appointed to preside over pre-hearing procedures and over the hearings.

(e) A notice that failure to file an answer or motion as provided under § 1720.140 will result in an order suspending the Statement of Record.

§ 1720.130 Suspension order under § 1710.45(b)(2) of this chapter.

A suspension pursuant to § 1710.45(b)(2) of this chapter shall be effected by service of a suspension order which shall contain:

(a) An identification of the filing to which the order applies.

(b) Bases for issuance of order.

(c) A notice of the hearing rights of the developer under § 1720.165 and of the procedures for invoking those rights.

(d) A statement that the order shall remain in effect until the developer has complied with the Secretary's requirements.

§ 1720.131 Suspension order under § 1710.45(b)(3).

A suspension pursuant to paragraph (b)(3) of § 1710.45 of this chapter shall be effected by service of a suspension order which shall contain:

(a) An identification of the filing to which the order applies.

(b) An identification of the amendment to the filing which generated the order.

(c) A notice of the hearing rights of the order is necessary or appropriate in the public interest or for the protection of purchasers.

(d) A statement that the order shall remain in effect until the amendment becomes effective.

(e) A notice of the hearing rights of the developer under § 1720.165 and of the procedures for invoking those rights.

§ 1720.134 Presumption of hearing request.

When an answer to a suspension notice, a notice of proceedings, or a suspension order is timely filed but a respondent has failed specifically to request a hearing, his answer shall be deemed to constitute such a request.

§ 1720.135 Motion for more definite statement.

When a respondent finds that he is unable to respond to the allegations in a suspension notice, a notice of proceedings, or a suspension order, because such allegations are vague, unclear or otherwise indefinite, motion may be made requesting a more definite statement of the allegations before filing an answer. Such motion shall indicate specifically in what manner the notice or order is indefinite or defective and shall be mailed or submitted to the Docket Clerk for Administrative Proceedings, Room 10278, Dept. of Housing and Urban Development, Washington, D.C. 20410, within five days after service of the notice or order.

§ 1720.140 Time for filing answer.

(a) Within 15 days after service of the notice or order, the respondent shall mail or submit to the Docket Clerk for Administrative Proceedings, Rm. 10278, Department of Housing and Urban Development, Washington, D.C. 20410, an answer and three copies thereof signed by the respondent or his attorney. Unless a different time is fixed by the Secretary or his designee, the filing of a motion for a more definite statement of the allegations shall alter the period of time in which to file an answer as follows:

(1) If the motion is denied, the answer shall be filed within 15 days after service of the denial.

(2) If the motion is granted in whole or in part, the more definite statement of allegations shall be filed after service of the order granting the motion and the answer shall be filed within 15 days after service of the more definite statement of allegations.

(b) If a notice or order is amended (see § 1720.205(a)), the respondent shall have 15 days after service of the amended notice or order within which to file an answer. If an answer is filed prior to the amendment of a notice or order, the respondent shall have 15 days after service of the judge's order granting the motion to amend within which to file an amended answer.

§ 1720.145 Content of answer.

(a) An answer to a notice or order shall contain: (1) Specific admission, denial or explanation of each fact alleged in the notice or, if the respondent is without knowledge thereof, a statement to that effect; and

(2) A brief statement of the facts constituting each defense.

(b) Allegations not answered in this manner shall be deemed admitted.

§ 1720.150 Settlements.

Parties may propose in writing, at any time during the course of a proceeding, offers of settlement which shall be submitted to and considered by the Secretary or his designee. If determined to be appropriate, the party making the offer may be given an opportunity to make an oral presentation in support of such offer. If an offer of settlement is rejected, the party making the offer shall be so notified and the offer shall be deemed withdrawn and shall not constitute a part of the record in the proceeding. Final acceptance by the Secretary or his designee of any offer of settlement will terminate any proceeding related thereto upon notification to the administrative law judge.

§ 1720.155 Hearings—suspension notice pursuant to § 1710.45(a) of this chapter.

(a) A developer, upon receipt of a suspension notice issued pursuant to § 1710.45(a) of this chapter, may obtain a hearing by filing a written request in accordance with the instructions regarding such request contained in the suspension notice. Such a request must be filed within 15 days of receipt of the suspension notice and must be accompanied by an answer and 3 copies thereof signed by the respondent or his attorney conforming to the requirements of § 1720.145. Filing of a motion for a more definite statement pursuant to § 1720.135 shall alter the period of time to request a hearing in accordance with § 1720.140.

(b) When a hearing is requested pursuant to paragraph (a) of this section, such hearing shall be held within 20 days of receipt of the request. The time and place for hearing shall be fixed with due regard for the public interest and the convenience and necessity of the parties or their representatives.

(c) A request for hearing filed pursuant to paragraph (a) of this section shall not interrupt or annul the effectiveness of the suspension notice, and suspension of the effective date of the Statement or amendment shall continue until vacated by order of the Secretary or administrative law judge. Except in cases in which the developer shall waive or withdraw his request for such hearing, or shall fail to pursue the same by appropriate appearance at a hearing duly scheduled, noticed and convened, the suspended filing shall be reinstated in the event of failure of the Secretary or his designee to schedule, give notice of or hold a duly-requested hearing within the time specified in paragraph (b) of this section, or in the event of a finding that the Secretary has failed to support at such hearing the propriety of the suspension with respect to the material issues of law and fact raised by the answer. Such reinstatement shall be effective on the date on which the filing would have become effective had no notice of suspension been issued with respect to it.

(d) If there is an outstanding suspension notice under § 1710.45(a) with respect to the same matter for which a suspension order under §1710.45(b)(3) is issued, the notice and order shall be consolidated for the purposes of hearing. In the event that allegations upon which the suspension notice and suspension order are based are identical, only one answer need be filed.

§ 1720.160 Hearings—notice of proceedings pursuant to § 1710.45(b)(1) of this chapter.

(a) A developer, upon receipt of a notice of proceedings issued pursuant to § 1710.45(b)(1) of this chapter, may obtain a hearing by filing a written request in accordance with the instructions regarding such request contained in the notice of proceedings. Such a request must be filed within 15 days of receipt of the notice of proceedings and must be accompanied by an answer conforming to the requirements of § 1720.145. Filing of a motion for a more definite statement pursuant to § 1720.135 shall alter the period of time to request a hearing in accordance with § 1720.140.

(b) When a hearing is requested pursuant to paragraph (a) of this section, such hearing shall be held within 45 days of receipt of the request by the Secretary unless it is determined that it is not in the public interest. The time and place for hearing shall be fixed with due regard for the public interest and the convenience and necessity of the parties or their representatives.

(c) Failure to answer within the time allowed by § 1720.140 or failure of a developer to appear at a hearing duly scheduled shall result in an appropriate order under § 1710.45(b)(1) of this chapter suspending the statement of record. Such order shall be effective as of the date of service or receipt.

§ 1720.165 Hearings—suspension orders issued pursuant to § 1710.45(b)(2) and § 1710.45(b)(3) of this chapter.

(a) A developer, upon receipt of a suspension order issued pursuant to § 1710.45(b)(2) or § 1710.45(b)(3) of this chapter, may obtain a hearing by filing a written request in accordance with the instructions regarding such request contained in the suspension order. Such request must be filed within 15 days of receipt of the suspension order and must be accompanied by an answer and 3 copies thereof signed by the respondent or respondent's attorney conforming to the requirements of § 1720.145. Filing of a motion for a more definite statement pursuant to § 1720.135 shall alter the period of time to request a hearing in accordance with § 1720.140.

(b) When a hearing is requested pursuant to paragraph (a) of this section, a date for such hearing shall be scheduled within 20 days of receipt of the request. The time and place for hearing shall be fixed with due regard for the public interest and the convenience and necessity of the parties or their representatives.

(c) A request for hearing filed pursuant to paragraph (a) of this section shall not interrupt or annul the effectiveness of the suspension order.

§ 1720.170 Intervention by interested persons.

(a) The administrative law judge, upon timely petition in writing and for good cause shown, and if deemed to be in the public interest, may permit any person to participate by intervention in the proceeding. The petition shall state (1) The petitioner's relationship to and interest in the matters contained in the proceeding; (2) The petitioner's position with respect to each specific issue upon which he proposes to intervene, and the facts which he proposes to adduce in support of each such position; and (3) An assent to exercise of jurisdiction by the Department with respect to the petitioner.

(b) The administrative law judge shall determine the propriety of such intervention and the extent to which such intervener may participate, basing such determination upon applicable law, the directness and substantiality of the petitioner's interest in the proceeding and the effect upon the proceeding of allowing such participation.

§ 1720.175 Consolidation.

When more than one proceeding involves a common question of law or fact, the administrative law judge may order a joint hearing of any or all of the matters in issue in the proceedings and may make such other orders concerning the proceedings as to avoid unnecessary costs or delay.

§ 1720.190 Administrative law judge, powers and duties.

(a) Hearings in adjudicative proceedings shall be presided over by a duly qualified administrative law judge who shall be designated by the Secretary in a notice to the parties in the proceeding.

(b) Administrative law judges shall have the duty to conduct fair and impartial hearings, to take all necessary action to avoid delay in the disposition of proceedings and to maintain order. They shall have all powers necessary to those ends including all powers granted under 5 U.S.C. 556(c), and also power including but not limited to the following:

(1) To administer oaths and affirmations.

(2) To issue subpoenas and orders requiring access.

(3) To take or to cause depositions to be taken.

(4) To rule upon offers of proof and receive evidence.

(5) To regulate the course of the hearings and the conduct of the parties and their counsel.

(6) To hold conferences for simplification and clarification of the issues or any other purpose.

(7) To consider and rule upon, as justice may require, all procedural and other motions appropriate in an adjudicative proceeding, including motions to open defaults.

(8) To make and file decisions.

(9) To certify question to a Departmental appeals officer.

(10) To take any action authorized by the rules in this part or other appropriate action.

§ 1720.195 Prehearing conferences.

(a) Where it will expedite the proceeding, the administrative law judge may direct or allow the parties or their representatives to appear before him for a conference to consider: (1) Simplification and clarification of the issues; (2) Necessity or desirablity of amendments to the pleadings; (3) Stipulations and admissions of fact and the contents and authenticity of documents; (4) Expedition in the discovery and presentation of evidence; (5) Matters of which official or judicial notice will be taken; and (6) Such other matters as may aid in the orderly and expeditious disposition of the proceeding, including disclosure of the names of witnesses and of documents

or other exhibits which will be introduced in evidence in the course of the proceeding. Prior to the conference, the administrative law judge may direct or allow the parties or their representatives to file memoranda specifying the issues of law and fact to be considered.

(b) If the circumstances are such that a conference is impracticable, the administrative law judge may require the parties to correspond with him for the purpose of accomplishing any of the objectives set forth in this section.

§ 1720.200 Reporting—prehearing conferences.

Prehearing conferences shall be stenographically or mechanically reported; and the administrative law judge shall prepare and file for the record a written summary of the action taken at the conference, which shall incorporate any written agreements or stipulations made by the parties at the conference or as a result of the conference.

§ 1720.205 Amendments and supplemental pleadings.

(a) *Amendments.* Prior to the receipt by the Docket Clerk for Administrative Proceedings of an answer to a notice or order, that notice or order may be amended as a matter of course. After the receipt of an answer, the administrative law judge may allow appropriate amendments to pleadings by motion whenever determination of a controversy on the merits will be facilitated thereby.

(b) *Variances of proof.* When issues not raised by the pleadings but reasonably within the scope of the suspension notice or notice of proceedings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings; and such amendments of the pleadings as may be necessary to make them conform to the evidence and to raise such issues shall be allowed at any time.

(c) *Supplemental pleadings.* The administrative law judge may, upon reasonable notice and such terms as are just, permit service of a supplemental pleading setting forth transactions or events which have occurred since the date of the pleading sought to be supplemented and which are relevant to any of the issues involved.

§ 1720.210 Public nature and timing of hearings.

(a) All hearings in adjudicative proceedings shall be public.

(b) Hearings shall proceed with all reasonable speed and, insofar as practicable, shall be held at one place and shall continue without recess or suspension until concluded. The administrative law judge shall have the authority to order brief intervals of the sort normally involved in judicial proceedings and, in unusual and exceptional circumstances for good cause stated on the record, he shall have the authority to order hearings at more than one place and to order recesses to permit further gathering of evidence or settlement discussions.

§ 1720.215 Ex parte communications.

(a) No person shall communicate with an administrative law judge or an appeals officer either directly or indirectly concerning any pending proceeding unless prior to or simultaneously with such communication its contents are disclosed in detail to all persons interested in the proceeding; nor shall an administrative law judge or appeals officer request or consider any such unauthorized ex parte communication. This prohibition shall not apply to a simple request for information respecting the status of the proceeding, nor to any ex parte communication expressly authorized by these rules.

(b) Any administrative law judge or appeals officer, who receives an ex parte communication which he knows or has reason to believe is unauthorized, shall promptly place the communication, or its substance, in the public file and shall inform all persons interested in the proceeding of its existence and general contents. Facts or arguments so communicated shall not be taken into account in deciding any matter in issue unless such facts or arguments shall be brought properly before the administrative law judge.

(c) Opportunity to answer allegations or contentions contained in an unauthorized ex parte communication may be afforded any interested person upon his motion for leave to do so, wherever such leave will operate to assure a fair hearing or decision.

§ 1720.220 Disqualification of administrative law judge.

(a) When an administrative law judge deems himself disqualified from presiding in a particular proceeding, he shall withdraw therefrom by notice on the record and shall notify the Secretary of such withdrawal.

(b) Whenever any party believes that the administrative law judge should be disqualified from presiding, or continuing to preside in a particular proceeding, such party may file with the administrative law judge a motion that the administrative law judge disqualify and remove himself. Such motion shall be supported by affidavits setting forth the alleged grounds for disqualification. If the administrative law judge does not disqualify himself, he shall proceed with the hearing, and the question of fair hearing and due process may be raised on appeal.

§ 1720.225 Failure to comply with administrative law judge's directions.

Any party who refuses or fails to comply with a lawfully issued order or direction of an administrative law judge may be considered to be in contempt of the Secretary. The circumstances of any such neglect, refusal or failure, together with a recommendation for appropriate action, shall be promptly certified by the administrative law judge to the Secretary or his designee who may make such orders in regard thereto as the circumstances may warrant.

§ 1720.230 Motions—filing requirements.

During the time a proceeding is before an administrative law judge, all motions therein shall be in writing; and, except as otherwise provided in this part, a copy of each motion shall be served on the other party or parties. Such motions shall be signed, addressed to and filed with the administrative law judge and shall be ruled upon by him. The provisions of this section need not apply to motions made during the course of a hearing.

§ 1720.235 Answers to motions.

Within 7 days after service of any written motion, an opposing party shall answer or shall be deemed to consent to the granting of the relief asked for in the motion. The moving party shall have no right to reply except as permitted by the administrative law judge or the appeals officer.

§ 1720.240 Motions for extension of time.

As a matter of discretion, the administrative law judge or the appeals officer may waive the requirements of § 1720.235 as to motions for extensions of time, and may rule upon such motions ex parte. Extensions of time or continuances in any proceeding may be ordered by the administrative law judge on his own motion, or on the motion of either party for sufficient cause after the policy of the Secretary under § 1720.210 has been considered.

§ 1720.245 Motions for dismissal.

(a) A motion to dismiss may be made at any time until and including the fifth day after the close of the case for the reception of evidence.

(b) When a motion to dismiss, based upon alleged failure to establish a prima facie case, is made at the close of the evidence offered in support of the notice or order, the administrative law judge may defer ruling thereon until the close of the case for the reception of evidence.

(c) When a motion to dismiss is granted so as to terminate entirely the proceeding before the administrative law judge, the administrative law judge shall file a decision in accordance with the provisions of § 1720.345. If such a motion is granted only as to some allegations or as to some respondents, the administrative law judge shall enter this partial determination on the record and take it into account in his decision.

§ 1720.250 Interlocutory review of administrative law judge's decision.

The appeals officer will not review a ruling of an administrative law judge prior to the appeals officer's consideration of the entire proceeding in the absence of extraordinary circumstances. Except as provided in § 1720.190 an administrative law judge shall not certify a ruling for interlocutory review to an appeals officer unless a party so requests and the administrative law judge finds, either on the record or in writing, that in his opinion (A) a subsequent reversal of his ruling would cause unusual delay or expense, taking into consideration the probability of such reversal, or (B) substantial rights are at stake and the final decision might be materially affected. The certification by the administrative law judge shall be in writing and shall specify the material relevant to the ruling involved. The appeals officer may decline to consider the ruling certified if he determines that interlocutory review is not warranted or appropriate under the circumstances. If the administrative law judge does not certify a matter, a party who had requested certification may apply to the appeals officer for review. An application for review shall be in writing and shall briefly state the grounds relied on and shall be filed within 2 days after notice of the ruling complained of. Review will not be granted unless the appeals officer concludes that the administrative law judge erred in failing to certify the matter. Unless otherwise ordered by the administrative law judge, the hearing shall continue whether or not such certification or application is made. Failure to request certification or to make such application will not waive the right to seek review of the ruling of the administrative law judge after the close of the hearing.

§ 1720.255 Presentation and admission of evidence.

(a) All witnesses at a hearing for the purpose of taking evidence shall testify under oath or affirmation which shall be administered by the administrative law judge. Every party shall have the right to present such oral or documentary evidence and to conduct such cross-examinations as may be required for a full and true disclosure of the facts. The administrative law judge shall receive relevant and material evidence, rule upon offers of proof and exclude all irrelevant, immaterial or unduly repetitious evidence.

(b) Evidence shall not be excluded merely by application of technical rules governing its admissibility, competency, weight or foundation in the record; but evidence lacking any significant probative value, or substantially tending merely to confuse or extend the record, shall be excluded. The administrative law judge may allow arguments on the admissibility of evidence by analogy to the Federal Rules of Evidence currently applicable in the United States District Courts of the United States.

(c) When offered evidence is excluded, the party offering the same shall be permitted to state on the record an offer of proof with respect thereto and rejected exhibits, adequately marked, shall on request of the party offering the same be retained in the record for purposes of review. Evidence may be received subject to deferred ruling on objections to its admissibility.

(d) Objections to evidence shall be timely made and shall specify the particular ground of objection without argument except as argument may be expressly required by the administrative law judge. Formal exception to an adverse ruling is unnecessary.

§ 1720.260 Production of witnesses' statements.

After a witness called by the attorney for the Office of Interstate Land Sales Registration has given direct testimony in a hearing, any other party may request and obtain the production of any statement, or part thereof, of such witness pertaining to his direct testimony in the possession of the Office of Interstate Land Sales Registration, subject, however, to the limitations applicable to the production of witnesses' statements under the Jencks Act, 18 U.S.C. 3500.

§ 1720.265 Depositions and discovery.

(a) At any time during the course of a proceeding, the administrative law judge, in his discretion, may order the taking of a deposition and the production of documents by the deponent. Such order may be entered upon a showing that the deposition is necessary for the purpose of discovery or to preserve relevant evidence. Insofar as consistent with considerations of fairness and the requirements of due process and the rules of this subpart, a deposition shall not be ordered when it appears that it will result in undue burden to any other party or in undue delay of the proceeding. Depositions may be taken orally or upon written interrogatories and cross-interrogatories.

(b) Any party desiring to take a deposition shall make application in writing to the administrative law judge setting forth the justification therefor and the time and place proposed for the taking of the deposition. The application shall include also the name and address of each proposed deponent and the subject matter concerning which each is expected to depose and shall be accompanied by an application for any subpoenas desired.

(c) Such order as the administrative law judge may issue for taking a deposition shall state the circumstances warranting its being taken, and shall designate the time and place and shall show the name and address of each person who is expected to appear and the subject matter with regard to which each is expected to depose. The time designated shall allow not less than 5 days from date of service of the order when the deposition is to be taken within the United States, and not less than 15 days when the deposition is to be taken elsewhere.

(d) After an order is served for taking a deposition, upon motion timely made by any party or by the person to be deposed and for good cause shown, the administrative law judge may issue any of the following orders which he considers to be appropriate:

(1) That the deposition shall not be taken.

(2) That it may be taken only at some designated place other than that stated in the order.

(3) That it may be taken only on written interrogatories.

(4) That certain matters shall not be inquired into.

(5) That the examination shall be held with no one present except the parties to the action, their counsel and a person qualified in the designated place to administer oaths and affirmations.

(e) The administrative law judge may make any other order which justice requires to protect the party or deponent from annoyance, embarrassment or oppression, or to prevent the unnecessary disclosure or publication of information contrary to the public interest and beyond the requirements of justice in the particular proceeding.

(f) Each deponent shall be duly sworn, and any adverse party shall have the right to cross-examine. Objections to questions or documents shall be in short form, stating the grounds of objections relied upon. The questions and the answers, together with all objections made, but excluding argument or debate, shall be reduced to writing and certified by the person before whom the deposition was taken. Thereafter such person shall forward the deposition and one copy thereof to the party at whose instance the deposition was taken, and shall forward one copy thereof to the representative of each party who was present or represented at the taking of the deposition.

(g) A deposition taken to preserve relevant evidence which any party intends to offer in evidence may be corrected in the manner provided by § 1720.325. Any such deposition shall, in addition to the other required procedures, be read to or by the deponent and subscribed by him if the party intending to offer it in evidence so notifies the person before whom the deposition was taken. Subject to appropriate rulings on such objections to the questions and answers as were noted at the time the deposition was taken or as may be valid when it is offered, a deposition taken to preserve relevant evidence, or any part thereof, may be used or offered in evidence as against any party who was present or represented at the taking of the deposition or who had due notice thereof if the administrative law judge finds any of the following:

(1) That the deponent is dead.

(2) That the deponent is out of the United States or is located at such a distance that his attendance would be impractical, unless it appears that the absence of the deponent was procured by the party offering the deposition.

(3) That the deponent is unable to attend or testify because of age, sickness, infirmity or imprisonment.

(4) That the party offering the deposition has been unable to procure the attendance of the deponent by subpoena.

(5) That such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open hearing, to allow the deposition to be used.

§ 1720.270 Subpoenas ad testificandum.

Application for issuance of a subpoena requiring a person to appear and depose or testify at the taking of a deposition

or at an adjudicative hearing shall be made to the administrative law judge who may issue such subpoena.

§ 1720.275 Subpoenas duces tecum.

(a) Application for Issuance of a subpoena requiring a person to appear and depose or testify and to produce specific documents, papers, books, or other physical exhibits at the taking of a deposition, or at a prehearing conference, or at an adjudicative hearing shall be made in writing to the administrative law judge who may issue such subpoena and shall specify as exactly as possible the general relevancy of the material and the reasonableness of the scope of the subpoena.

(b) Subpoenas duces tecum may be used by any party for purposes of discovery or for obtaining documents, papers, books, or other physical exhibits for use in evidence, or for both purposes. When used for discovery purposes a subpoena may require a person to produce and permit the inspection and copying of nonprivileged documents, papers, books, or other physical exhibits which constitute or contain evidence relevant to the subject matter involved and which are in the possession, custody or control of such person.

§ 1720.280 Motion to limit or quash.

Any person to whom a subpoena is directed may, prior to the time specified therein for compliance, but in no event more than 5 days after the date of service of such subpoena, apply to the administrative law judge to quash or modify such subpoena, accompanying such application with a brief statement of the reasons therefor. The administrative law judge shall have the discretion of granting, denying or modifying said motion.

§ 1720.285 Rulings on applications for compulsory process; appeals.

(a) Applications for orders requiring the production of witnesses' statements pursuant to the provisions of § 1720.260, applications for orders requiring the taking of depositions pursuant to the provisions of § 1720.265 and applications for the issuance of subpoenas pursuant to the provisions of §§ 1720.270 and 1720.275 (other than as provided in § 1720.290) may be made ex parte, and, if so made, such applications and the rulings thereon shall remain ex parte unless otherwise ordered by the administrative law judge. Such applications shall be ruled upon by the adminitsrative law judge assigned to hear the case or, in the event he is not available, by another administrative law judge designated by the Secretary.

(b) Appeals to an appeals officer ---- ---- ---- ---- ---- ---- ---- ----from rulings denying applications within the scope of paragraph (a) of this section, or from rulings on motions to limit or quash process issued pursuant to such applications (other than as provided in § 1720.290) will be entertained by the appeals officer only upon a showing that the ruling complained of involves substantial rights and will materially affect the final decision, and that a determination of its correctness before conclusion of the hearing is essential to serve the interests of justice. Such appeals shall be made on the record, shall briefly state the grounds relied on and shall be filed within 5 days after notice of the ruling complained of. Appeals from denials of ex parte applications shall have annexed thereto copies of the applications and rulings involved. Any answer to such appeal shall not operate to suspend the hearing unless otherwise ordered by the administrative law judge or the appeals officer.

§ 1720.300 Official notice.

Official notice may be taken of any material fact which might be judicially noticed by a District Court of the United States, any matter in the public official records of the Office of Interstate Land Sales Registration or any matter which is peculiarly within the knowledge of the administrative law judge. When any decision of an administrative law judge rests, in whole or in part, upon the taking of official notice of a material fact portunity to disprove such noticed fact not appearing in evidence of record, opportunity to disprove such noticed fact shall be granted any party making timely request therefor.

§ 1720.320 Reporting and transcription.

Hearings shall be stenographically or mechanically reported and transcribed under the supervision of the administrative law judge. The original transcript shall be a part of the record and the sole official transcript. Copies of transcripts shall be available from the reporter at rates not to exceed the maximum rates fixed by contract between the Secretary or his designee and the reporter.

§ 1720.325 Corrections.

Corrections of the official transcript ordered by the administrative law judge shall be included in the record. Corrections shall not be ordered by the administrative law judge except upon notice and opportunity for the hearing of objections. Such corrections shall be made by the reporter by furnishing substitute pages, under the usual certificate of the reporter, for insertion in the official record.

§ 1720.330 Proposed findings, conclusions, and order.

The administrative law judge may fix a reasonable time, not to exceed 30 days after the close of the evidence, during which any party may file with the administrative law judge proposed findings of fact, conclusions of law and rules or orders together with briefs in support thereof. Such proposals shall be in writing, shall be served upon all parties and shall contain adequate references to the record and to authorities relied on. The record shall show the administrative law judge's ruling on each proposed finding and conclusion, except when his rule or order disposing of the proceeding otherwise informs the parties of the action taken by him thereon.

§ 1720.345 Decision of administrative law judge.

(a) The administrative law judge shall make and file a decision within 40 days after the close of the taking of evidence in cases in which a hearing is held.

(b) The decision shall be effective 10 days after service upon the parties unless a petition for appeal is filed pursuant to § 1720.365 which shall serve to stay the effectiveness of the decision while the appeal procedure is ongoing.

§ 1720.350 Decision of the administrative law judge—content.

The administrative law judge's decision shall include a statement of (a) Findings, with specific references to principal supporting items of evidence in the record and conclusions, as well as the reasons or bases therefor, upon all of the material issues of fact, law or discretion presented on the record, and (b) An appropriate order. The administrative law judge's decision shall be based upon a consideration of the whole record and supported by reliable, probative and substantial evidence.

§ 1720.360 Reopening of proceeding; termination of jurisdiction.

(a) At any time prior to the filing of his decision, the administrative law judge may reopen the proceeding for the reception of further evidence.

(b) The jurisdiction of the administrative law judge is terminated when the decision becomes effective unless and until the proceeding is remanded to him by the appeals officer or a court of appropriate jurisdiction. The administrative law judge may *sua sponte* or on motion of a party file corrections of clerical errors.

§ 1720.365 Appeal from decision of administrative law judge.

(a) *Petition for appeal.* The administrative law judge's decision may be appealed by filing a written petition for appeal with the appeals officer within 10 days after service of the decision appealed from. Copies of the petition for appeal shall be served on all interested parties.

(b) *Denial of petition.* A petition for appeal of the decision of the administrative law judge may be denied by the appeals officer. The petition shall be ruled on by the appeals officer within 10 days after filing. A denial of the petition shall be final agency action and shall render the administrative law judge's decision immediately effective.

(c) *Appeal brief.* The appeal shall be perfected by filing within 30 days after service of the decision appealed from and by serving all interested parties a brief conforming to § 1720.385. In addition, the appeal brief shall contain a proposed form of rule or order for the consideration of the appeals officer.

§ 1720.375 Answering brief.

Within 20 days after service of an appeal brief upon a party, such party may file an answering brief conforming to the requirements of § 1720.385.

§ 1720.380 Reply brief.

A brief in reply to an answering brief, limited to rebuttal of matters in the answering brief, may be filed and served by a party within 7 days after receipt of the answering brief or the day preceding oral argument whichever is earlier. No answer to a reply brief will be permitted.

§ 1720.385 Length and form of briefs.

No brief shall exceed 25 pages in length except with the permission of the administrative law judge or the appeals officer and shall contain, in the order indicated, the following:

(1) The title of the proceeding, file number, the name of the party on whose behalf it is submitted and the name and address of his attorney in the matter on the front cover or title page.

(2) Subject index with page references.

(3) Table of cases alphabetically arranged, statutes, texts, and other authorities and materials cited, with page references.

(4) A concise statement of the facts of the case, without argument.

(5) A concise statement of the questions sought to be raised.

(6) The argument, presenting clearly the points of fact and law relied upon in support of the position taken on each question with specific page references to the record so far as available, and to legal authority or other material relied upon in support of statements contained in the argument.

§ 1720.390 Oral argument.

Oral arguments will not be heard in cases on appeal to the appeals officer unless the officer otherwise orders, and stenographic or mechanical record of such oral argument may be made, in the officer's discretion. The purpose of oral argument is to emphasize and clarify the written argument appearing in the briefs and to answer questions.

§ 1720.400 Decision on appeal or review.

(a) Upon appeal from or review of an administrative law judge's decision, the appeals officer will consider such parts of the record as are cited or as may be necessary to resolve the issues and, in addition, to the extent necessary or desirable, will exercise all the powers which he could have exercised if he had made the initial decision. Unless exceptional circumstances are present, however, all appeals and reviews will be determined upon the record made before the administrative law judge.

(b) The appeals officer may affirm, reverse, modify, set aside or remand for further proceedings, in whole or in part, the administrative law judge's decision. The appellate order shall set forth the reasons upon which the decision is based.

(c) In those cases where the appeals officer believes that he should have further information or additional arguments of the parties as to the form and content of the rule or order to be issued, he may withhold final decision pending the receipt of such additional information or argument under procedures specified.

(d) The decision of the appeals officer shall be final 10 days after service upon the parties, unless the appeals officer determines that the protection of the public interest necessitates an earlier effective date under the circumstances, in which case he will specify in his order his specific findings as to such circumstances.

Subpart E—Miscellaneous Rules

§ 1720.410 Qualifications for appearances.

(a) Members of the bar of a Federal Court or of the highest court of any state or of the United States are eligible to practice before the Secretary. No register of attorneys will be maintained.

(b) Any individual or member of a partnership involved in any proceeding or investigation may appear on behalf of himself or of such partnership upon adequate identification. A corporation or association may be represented by a bona fide officer thereof upon a showing of adequate authorization.

(c) A person shall not be represented except as stated in paragraphs (a) and (b) of this section unless otherwise permitted.

§ 1720.412 Department representative.

In each case heard before an administrative law judge pursuant to this part, the Department shall be represented by a Department hearing attorney. The General Counsel shall designate one or more attorneys under his jurisdiction to act as Department hearing attorneys.

§ 1720.415 Restrictions on appearances as to former officers and employees.

(a) Except as specifically authorized by the Secretary, no former officer or employee of the Department of Housing and Urban Development shall appear as attorney or counsel or otherwise participate through any form of professional consultation or assistance in any proceeding or investigation, formal or informal, which was pending in any manner in the Office of Interstate Land Sales Registration while such former officer or employee served with the Department of Housing and Urban Development.

(b) In cases to which paragraph (a) of this section is applicable, a former officer or employee of the Department of Housing and Urban Development may request authorization to appear or participate in a proceeding or investigation by filing with the Secretary a written application disclosing the following relevant information: (1) The nature and extent of the former officer's or employee's participation in, knowledge of, and connection with the proceeding or investigation during his service with the Department of Housing and Urban Development; (2) whether the files of the proceeding or investigation came to his attention; (3) whether he was employed in the same office, division, or administrative unit in which the proceeding or investigation is or has been pending; (4) whether he worked directly or in close association with Office of Interstate Land Sales Registration personnel assigned to the proceeding or investigation; (5) whether during his service with the Department of Housing and Urban Development he was engaged in any matter concerning the individual, company, or industry in the proceeding or investigation.

(c) The requested authorization will not be given in any case (1) where it appears that the former officer or employee during his service with the Department of Housing and Urban Development participated personally and substantially in the proceeding or investigation, or (2) where the application is filed within one (1) year after termination of the former officer's or employee's service with the Department of Housing and Urban Development and it appears that within a period of one (1) year prior to the termination of his service the proceeding or investigation was within the official responsibility of the former officer or employee. In other cases, authorization will be given where the Secretary is satisfied that the appearance or participation will not involve any actual conflict of interest or impropriety thereof.

(d) In any case in which a former officer or employee of the Department of Housing and Urban Development is prohibited under this section from appearing or participating in a proceeding or investigation, any partner or legal or business associate of such former officer or employee shall likewise be so prohibited unless: (1) Such partner or legal or business associate files with the Secretary an affidavit that in connection with the matter the services of the disqualified former officer or employee will not be utilized in any respect and the matter will not be discussed with him in any manner, and that the disqualified former officer or employee shall not share, directly or indirectly, in any fees or retainers received for services rendered in connection with such proceeding or investigation; (2) The disqualified former officer or employee files an affidavit stating that he will not participate in the matter in any manner, and that he will not discuss it with any person involved in the matter; and (3) Upon the basis of such affidavits, the Secretary determines that the appearance or participation by the partner or associate would not involve any actual conflict of interest or impropriety thereof.

§ 1720.425 Standards of practice.

(a) Attorneys shall conform to the standards of professional and ethical conduct required by practitioners in the courts of the United States and by the bars of which the attorneys are members.

(b) The privilege of appearing or practicing may be denied, temporarily or permanently, to any person who is found after notice and opportunity for hearing which at his request or in the discretion of the Secretary may be private, and for presentation of oral argument in the matter (1) Not to possess the requisite

qualifications to represent others, or (2) To be lacking in character or integrity or (3) To have engaged in unethical or improper professional conduct.

(c) Contemptuous conduct at any hearing shall be grounds for summary exclusion from said hearing for the duration of the hearing.

§ 1720.430 Form and filing requirements.

(a) *Filing.* Except as otherwise permitted, an original and three copies of all documents shall be filed with the Docket Clerk for Administrative Proceedings, Room 10278, Department of Housing and Urban Development, Washington, D.C. 20410, on official work days between the hours of 8:45 a.m. and 5:15 p.m.

(b) *Title.* Documents shall show clearly the title of the action, the docket number, and the OILSR file number in connection with which they are filed.

(c) *Form.* Except as otherwise permitted, all documents shall be printed, typewritten, or otherwise processed in clear legible form and on good unglazed paper.

§ 1720.435 Time computation.

Computation of any period of time prescribed or allowed by the rules and regulations in this part, or by order of the Secretary or his designee or of an administrative law judge, shall begin with the first business day following that on which the act, event, development or default initiating such period of time shall have occurred. When the last day of the period so computed is a Saturday, Sunday, or national holiday, or other day on which the Department of Housing and Urban Development is closed, the period shall run until the end of the next following business day. Except when any prescribed or allowed period of time is 7 days or less, each of the Saturdays, Sundays, and national holidays shall be included in the computation of the prescribed or allowed period.

§ 1720.440 Service.

Notices, orders, processes, determinations and other documents required or permitted under these rules may be served as follows:

(a) *Upon the Secretary.* By personal delivery at the office, or by registered or certified mail addressed to the office of any of the following officials in the Office of Interstate Land Sales Registration: Administrator; Associate Administrator; Director, Office of Interstate Land Sales Registration: *Provided, however,* That during the pendency of a proceeding before the Secretary all pleadings, motions, notices or other documents shall be served in accordance with the terms of § 1720.430.

(b) *Upon any other person.* By delivery of a copy of the documents to the person to be served wherever he may be found, or by leaving such copy at his office or place of business with a person apparently in charge thereof, or, if there is no one in charge or if the office is closed or if he has no office, by leaving a copy at his residence with some person of suitable age and discretion then residing therein, or by sending a copy by registered or certified mail, return receipt requested, addressed to the person at his last known residence, or at his or its last known principal office or place of business. If the address of the residence, principal office, or place of business is unknown and cannot with due diligence be ascertained, service may be made by mail to any office at which the person to be served is known to be employed or by publication in the FEDERAL REGISTER.

(c) *Service on corporations, partnerships, associations, other entities.* Service may be made upon any corporation, partnership, business association or other entity by serving any officer, director, partner, trustee, agent for service or managing agent thereof. A managing agent, within the meaning of this subsection, is an agent having the principal managerial responsibility in connection with the regular operation of a distinct office or activity of the enterprise.

(d) *Service through attorney.* When a person other than the Secretary and his staff shall have appeared of record in a proceeding, generally or specially, by attorney, all subsequent services of notices, orders, processes, and other documents in connection with such proceeding may be made upon such person by serving the attorney, except that subpoenas and other orders by which such person may be brought in contempt shall be served upon him by one of the methods described in paragraphs (b) and (c) of this section. In any case, a copy of any document served on a client shall be sent to any attorney who has entered an appearance for that client. In such situations, it shall be sufficient proof of service to show that either the client or the attorney has received a copy of the document.

(e) *Proof of service.* Proof of service shall not be required unless the fact of service is seasonably put in issue by appropriate motion or objection on the part of the person allegedly served or other party. In such cases, service may be established by written admission signed by or on behalf of the person to be served, or may be established prima facie by affidavit or certificate of service or mailing, as appropriate. When service is by registered or certified mail, it is complete upon delivery of the document by the post office.

Subpart F—Appeals Officer

§ 1720.500 Functions of the appeals officer.

There is hereby established within the Department of Housing and Urban Development an appeals officer appointed by the Secretary. The functions, powers, and responsibilities delegated to the appeals officer designated as the authorized representative of the Secretary shall be to hear, consider and determine fully and finally appeals from decisions made pursuant to the rules in this part by the administrative law judge and to conduct hearings pursuant to 15 U.S.C. 1715.

§ 1720.510 Appointment of the appeals officer.

The appeals officer shall be the Assistant Secretary for Consumer Affairs and Regulatory Functions. The appeals officer shall be available at all times for the hearings of each appeal. Records of proceedings before the appeals officer shall be kept by the Docket Clerk for Administrative Proceedings.

§ 1720.520 Decisions of appeals officer.

A decision of the appeals officer shall be considered the final action on behalf of the Secretary on matters properly before such officer pursuant to the rules in this part.

Issued: January 17, 1977.

CONSTANCE B. NEWMAN,
Assistant Secretary for Consumer Affairs and Regulatory Functions.

[FR Doc.77-2695 Filed 1-26-77;9:30 am]

federal register

MONDAY, JANUARY 31, 1977

PART VIII

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM

Special Procedures for Neighborhood Renewal Strategy Areas

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

[24 CFR Part 881]

[Docket No. R-77-387]

SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM SUBSTANTIAL REHABILITATION

Special Procedures for Neighborhood Renewal Strategy Areas

The Department proposes to amend Title 24 by adding to Part 881 a new Subpart C, "Special Procedures for Neighborhood Renewal Strategy Areas."

On April 26, 1976, the Department published in the FEDERAL REGISTER (41 FR 17488) for interim effect amended regulations for the Section 8 Housing Assistance Payments Program—Substantial Rehabilitation 24 CFR Part 881, Subparts A and B, under Section 8 of the United States Housing Act of 1937. The preamble to the April 26, 1976 publication set forth the general outline for a new Subpart C and invited comments on it. Based on these and other comments, the Department has developed a new Subpart C now being published for comment, as described below:

1. A unit of general local government participating in the Community Development Block Grant (CDBG) program may request authorization from HUD to use the Special Procedures set forth in Subpart C for a single, identified area which is designated in the CDBG application to receive concentrated physical development activities, public improvements, and public services.

2. HUD reviews the request to determine whether the proposed area is acceptable under the site and neighborhood standards, contains sufficient units suitable for rehabilitation and whether the proposed concentrated activities, together with the requested amount of Section 8 Substantial Rehabilitation contract authority, are likely to result in the restoration and revitalization of the area. If the request is approved, the notification will include a statement of the amount of Section 8 contract authority set aside for projects developed under Subpart C procedures and will invite the unit of local government to submit Proposals for projects in the area.

3. After HUD approves the request, the local government assists Owners in the preparation of Proposals. The contents of the Proposal are set forth in § 881.304(e). When submitted to HUD by the local governing body, the proposal must be accompanied by certain certifications from the local governing body concerning special requirements for compliance with the Housing Assistance Plan, Owner's control of the property, reuse in the event of demolition, zoning and similar requirements, A-95 review, and reasonableness of rents.

4. HUD evaluates Proposals submitted under Subpart C on the basis of the factors set forth in § 881.303 which include completeness of the Proposal and certifications, reasonableness of rents where FHA insurance is proposed or where rents proposed are above the published fair market rents, previous participation of the Owner and other key program participants, compliance with environmental clearance requirements, proposed management plan, the term of the Contract, location within the approved area, form of lease, and Affirmative Fair Housing Marketing Plan among other factors. HUD may request clarification of individual items, additional information, or modifications of the Proposal. The local governing body and the Owner are notified of HUD's determination. Subsequent processing is in accordance with Subpart B, starting with § 881.211, Owner's Acceptance of Notification and Submission of Architect's Certification.

Interested persons are invited to participate in the proposed rulemaking by submitting such written statements or comments as they may desire. All comments received on or before March 2, 1977, will be considered before adopting a final rule in this matter. Communications should refer to docket number and date and should be filed with the Rules Docket Clerk, Office of the Secretary, Room 10141, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410. Copies of comments submitted will be available during business hours, both before and after the specified closing date, at the above address.

A Finding of Inapplicability respecting the National Environmental Policy Act of 1969 has been made in accordance with HUD procedures. A copy of the Finding of Inapplicability is available for public inspection during regular business hours at the Office of the Rules Docket Clerk, at the above address. It is therefore proposed that 24 CFR Part 881, be amended by adding a new Subpart C as follows:

Subpart C—Special Procedures for Neighborhood Renewal Strategy Areas

Sec.
881.301 Applicability and scope.
881.302 Request for approval of special procedures for neighborhood renewal strategy areas.
881.303 HUD review of requests for approval of special procedures.
881.304 Submission of proposals for projects within approved strategy areas.
881.305 HUD evaluation and approval of proposals.
881.306 Proposals indicating HUD-FHA mortgage insurance.
881.307 Subsequent processing.
881.308 Use of residual contract authority.

AUTHORITY: Sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d)); Sec. 5 U.S. Housing Act of 1937 (42 U.S.C. 1437c(b)); Sec. 8, U.S. Housing Act of 1937 U.S.C. 1437f).

Subpart C—Special Procedures for Neighborhood Renewal Strategy Areas

§ 881.301 Applicability and scope.

The policies and procedures contained in this subpart are applicable to the submission and review of Proposals for Section 8 Substantial Rehabilitation projects in Neighborhood Renewal Strategy Areas within the jurisdiction of units of general local government participating in the Community Development Block Grant (CDBG) program pursuant to 24 CFR Part 570.

§ 881.302 Requests for approval of special procedures for neighborhood renewal strategy areas.

(a) A unit of general local government participating in the CDBG program may submit to HUD a request for authorization to use the Special Procedures of this Subpart C for a single, identified Neighborhood Renewal Strategy Area which is designed in the local government's CDBG application to receive concentrated physical development activities, public improvements, and public services.

(b) Such a request may be submitted at any time provided that the CDBG application meeting the requirements of paragraph (a) of this section has been approved or is under review by HUD.

(c) The request shall include:

(1) An identification of the area proposed for Special Procedures, and a description of its demographic and physical characteristics in sufficient detail to allow HUD to make the determinations required by § 881.303;

(2) The basis for the local government's selection of the area proposed including information showing compliance with the site and neighborhood standards in § 881.112 and the environmental requirements in § 881.114 (b) and (c), including a showing of how and to what extent the proposed concentrated activities will remedy existing deficiencies;

(3) The number of units and the amount of Section 8 contract authority requested to be set aside for the area and a description of any local, State, Federal or private programs or other support available to the area which is not detailed in the CDBG application;

(4) A statement relating the needs of the proposed area to the available support and indicating how these resources can be combined to produce a restored and revitalized neighborhood within a designated three to five year period; and

(5) A description of the administrative structure within the local government which will be responsible for implementing the Special Procedures and of the experience and qualifications of the designated staff.

§ 881.303 HUD review of requests for approval of special procedures.

(a) Each request for use of the Special Procedures shall be reviewed by the field office to determine whether the proposed area contains a sufficient number of units suitable for rehabilitation to fully utilize the Section 8 contract authority requested pursuant to § 881.302(c)(3) and whether the proposed concentrated activities, including Section 8, are likely to result in the goal of a restored and revitalized neighborhood.

(b) The proposed area shall be reviewed to determine whether it complies with the site and neighborhood standards outined in § 881.112. In assessing compliance with § 881.112 (a), (d) and (f), HUD will consider the extent to which the proposed concentrated activities would remedy existing deficiencies.

(c) A preliminary review shall be undertaken to detefmine whether the area contains any major obstacles to meeting the environmental requirements of § 881.114 (b), (c) and (e). This review shall not preclude the environmental review required by § 881.305(a)(11) for each Proposal subsequently submitted.

(d) HUD review shall include consideration of the following elements:

(1) The present condition of the neighborhood and whether a suitable living environment will result after implementation of the proposed concentrated activities;

(2) The extent to which the proposed concentrated activities will resolve or ameliorate the physical problems in the area;

(3) The extent to which structures in the area appear suitable for rehabilitation under Section 8 and any other available programs, and the extent to which structures having a detrimental effect on the neighborhood would remain after completion of the concentrated activities;

(4) The extent to which private commitment, if any, is evidenced through the provision of programs providing private financing in the area, local agreements for special wage rates for rehabilitation, and/or through other supporting activities;

(5) The experience and qualifications of the local staff designated for implementation of the Special Procedures for Section 8 Substantial Rehabilitation.

(e) If, during review of the request, HUD finds that additional information is necessary, it may request such additional information and/or meet with representatives of the local government to resolve outstanding questions concerning the request.

(f) Upon completion of the review, HUD will notify the local government of its determination. If the request is rejected, the notification shall indicate the reasons for the rejetcion. If the request is approved, the notification shall:

(1) Include a statement of the amount of Section 8 contract authority which will be set aside from the allocation for the jurisdiction, for the use of Special Procedures;

(2) Indicate the boundaries of the approved area;

(3) Request the unit of local government to obtain and submit to HUD, in accordance with § 881.304, Proposals for projects to be located in that area; and

(4) Indicate that proposals must be prepared and submitted to HUD within 6 months of the date of the notification.

§ 881.304 Submission of proposals for projects within approved strategy areas.

(a) After written notification of HUD approval of the use of Special Procedures has been received by the unit of general local government, the local government shall (through negotiation, advertisement or other means), invite Owners to prepare and submit one or more Proposals for Substantial Rehabilitation to the local government for transmittal to HUD.

(b) The local government shall assist Owners in the preparation of Proposals and conduct a comprehensive review of all Proposals in order to make the certifications required by § 881.304(f) and to assure that approvable Proposals are transmitted to HUD.

(c) The local government shall assure that the Proposals transmitted to HUD do not collectively request contract authority in excess of that indicated as available in the notification pursuant to § 881.303(f).

(d) The local government shall assure that Proposals are prepared and transmitted to HUD within 6 months of the date of the approval notification pursuant to § 881.303(f). If approvable Proposals sufficient to utilize the set aside have not been submitted at the end of the 6 month period, or any extension thereto, HUD shall follow the procedures of § 881.308.

(e) The Proposal transmitted to HUD shall include or indicate the following:

(1) The address(es) of the property proposed to be rehabilitated.

(2) The identity of the Owner, rehabilitator (if known), and architect (if applicable and identity is known); the qualifications and experience of each; the names of officials and principal members, shareholders and investors, and other parties having substantial interest, and the prior participation of each in HUD programs, using the prescribed form.

(3) A description of the property, as is, including number and type of structures, number of stories, structural system, exterior finish, heating-air conditioning system, number of units by size (number of bedrooms), living area and composition for each size of unit, special amenities or features, if any, and exterior and interior photos; and sketches of the interior showing dimensions. If appropriate, typicals may be provided.

(4) A description of the proposed rehabilitation covering each basic element (e.g., roof, exterior walls, porches and steps; interior walls, ceilings and floors; kitchen and bathroom facilities and equipment; plumbing, heating and electrical equipment; landscaping; etc.) indicating the nature of the work to be done on each element. If alteration, renovation or remodeling is indicated, a description of such work and sketches showing layout after completion of rehabilitation. If appropriate, typicals may be provided.

(5) The number of units by unit size (number of bedrooms) and the type of occupancy (elderly or handicapped or other) proposed for the property after the completion of rehabilitation.

(6) A description of the existing utility combination, whether or not a change to a different combination is proposed, and if so, a description of the new utility combination.

(7) A statement as to whether or not the services of a registered architect will be utilized for preparation of final working drawings and specifications.

(8) The Contract Rent per unit, by size and structure type.

(9) The equipment to be included in the Contract Rent.

(10) The utilities and services to be included in the Contract Rent and those utilities and services not so included. For each utility and service not included in the Contract Rent, an estimate of the average monthly cost (for the first year of occupancy) to the occupants by unit size and structure type.

(11) The proposed term of the Contract (including renewals) and justification for such term in accordance with § 881.109.

(12) Whether the proposed project will displace site occupants. If so, the Proposal shall state the number of families, individuals, and business concerns to be displaced (identified by race or minority group status, and whether they are owners or renters), and shall demonstrate that relocation is feasible. In the case of a project owned by a PHA, provide a statement that the PHA undertakes liability for (i) The provision of relocation payments and assistance as prescribed in sections 202, 203 and 204 of the Uniform Relocation Assistance and Real Property Aquisition Policies Act of 1970, (ii) The provision of relocation assistance programs offering the services described in section 205 of said Act; (iii) Assuring that within a reasonable period of time prior to displacement, Decent, Safe, and Sanitary replacement dwellings will be available to displaced persons; and (iv) Full funding of the required relocation payments and assistance unless other commitments, satisfactory to HUD, have been made for the funding of such payments and assistance. In the latter case, the PHA shall specify such other commitments. (In the case of a privately owned project, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 is inapplicable).

(13) Submission of evidence of management capability and a proposed management plan and a certificate by the Owner and the managing agent, if any, in a format aceptable to HUD; or, if the Proposal is for less than 15 units, evidence of capability of providing the necessary management and maintenance services. If the Owner proposes to contract with another entity, including a PHA, for management and/or maintenance services for the project, a copy of the proposed contract(s) shall be included.

(14) A signed certification of the Owner's intention to comply with Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, Executive Order 11063, Executive Order 11246, and Section 3 of the Housing and Urban Development Act of 1968 and that Owner will take affirmative action to provide the opportunity to apply for units in the proposed project to persons expected to reside in the community as a result of current or planned employment, as indicated in the Local Housing Assistance Plan.

(15) Submission of an Affirmative Fair Housing Marketing Plan if the Proposal is for five (5) or more units together with a statement of the affirmative actions the Owner intends to take to provide the opportunity to apply for units in the proposed project to persons expected to reside in the community as a result of current or planned employment as indicated in the Local Housing Assistance Plan. Examples of such efforts include: Participation in regional or semi-regional application pools; establishment of a referral system with PHAs and other Section 8 Owner/managers in surrounding jurisdictions; contacts with

and provision of information about the project to local industries and their employees.

(16) Submission of the form of Lease the Owner proposes to use, which shall be in accordance with § 881.219.

(17) The anticipated time required for completion of the project after the Agreement is signed (if the project is to be completed in stages, identification of the units comprising each stage and the estimated dates for commencement and completion of each stage).

(18) The proposed method (e.g., conventional mortgage, FHA insured mortgage, bonds) and terms (e.g., interest rates, discounts, amortization period) of financing together with evidence of review and interest by a lender or bond underwriter or counsel or similar evidence that financing would likely be available should the Proposal be selected. (Such evidence of financing is not required if the Owner proposes to utilize FHA mortgage insurance (see § 881.306) or the FmHA Section 515 Rural Housing Program; in such cases, either the prescribed FHA form shall be completed and submitted with the Proposal, or evidence that a preapplication has been submitted to the FmHA shall be submitted with the Proposal). A statement shall be included in all Proposals as, to whether the Owner intends to pledge or offer the Agreement and/or Contract as security for any loan or obligation (see § 881.115(b)).

(f) Each Proposal shall be accompanied by the following information from the local government:

(1) A certification by the chief executive officer of the local government that the Proposal is consistent with requirements or restrictions of the Local Housing Assistance Plan and the neighborhood renewal strategy proposed by the local government pursuant to § 881.302.

(2) A certification that the owner has title to property, an option on the property or other legal commitment for the property.

(3) If demolition is proposed for any structures on the site of the property, a certification that the proposed reuse is acceptable and will promote the restoration and revitalization of the neighborhood.

(4) A certification that the proposed rehabilitation is permissible under applicable zoning, building, housing and other local codes, ordinances or regulations.

(5) A certification that the Proposal has been submitted to the appropriate A–95 clearinghouse for review and a copy of the letter transmitting the Proposal to the A–95 clearinghouse.

(6) Where the proposed Contract Rents are less than or equal to the Fair Market Rent, a certification that the rents are reasonable.

§ 881.305 HUD evaluation and approval of proposals.

(a) *Evaluation of Proposals.* HUD's evaluation of Proposals using the Special Procedures under the Subpart C shall be limited to determining whether:

(1) The Proposal and the certifications submitted by the local government contain all the elements required by § 881.304 (e) and (f).

(2) The proposed Contract Rent plus any Allowances for Utilities and Other Services do not exceed the Fair Market Rents limitation pursuant to § 881.108(a).

(3) Where the proposed Contract Rents plus any Allowances exceed the Fair Market Rents or if the project is expected to be financed with a HUD insured loan, the rents are reasonable pursuant to § 881.108(b). Where the Proposed Contract Rents plus any Allowances are 10 percent or more below Fair Market Rents or 10 percent or more below 75 percent thereof where the estimated cost of the rehabilitation is less than 25 percent of the estimated value of the property after rehabilitation, the field office shall accept the certification of the local government that the rents are reasonable. Where the Contract Rent plus any Allowances are less than 10 percent below the Fair Market Rents or less than 10 percent below 75 percent thereof, as appropriate, the field office may, in its discretion, accept the certification of the local governing body or make an independent determination of the reasonableness of the proposed rents.

(4) The proposed term of the Contract (including renewals) is acceptable in accordance with § 881.109.

(5) The property proposed for substantial rehabilitation is within the area approved for Special Procedures.

(6) The form of lease will meet the requirements of § 881.219.

(7) The previous experience of the Owner and other key participants in development and management is acceptable.

(8) The management capability of the Owner and the proposed management plan are acceptable.

(9) The Affirmative Fair Housing Marketing Plan is acceptable.

(10) The provisions for relocation are acceptable.

(11) The site meets the environmental requirements of § 881.14 (b), (c), and (e).

(12) The rehabilitation plan and design are acceptable.

(b) *Clarification or Modifications.* HUD may request clarification of individual items, additional information or modifications of the Proposal including substitution of alternate properties.

(c) *HUD Determination.* HUD shall notify the local governing body and the Owner that the Proposal is:

(1) Approved. The notification shall contain the information required by § 881.208(h).

(2) Approvable only if specified deficiencies are corrected including, where necessary, the substitution of alternative property(ies), and that HUD will approve the Proposal if it receives within a specified time evidence of such necessary corrections. The notification shall contain the information required by § 881.208 (h).

(3) Not approved with an indication of the reasons for disapproval.

(d) *Notification.* The appropriate A–95 Clearinghouse shall be notified by HUD of its final action.

§ 881.306 Proposals indicating HUD-FHA mortgage insurance.

Because of the differences in the definition of "substantial rehabilitation", a proposed project which qualifies as a Substantial Rehabilitation project under this part may fail to qualify as a substantial rehabilitation project under FHA mortgage insurance programs. The provisions of § 881.207 shall apply except that:

(a) Reference to a Preliminary Proposal shall mean a Proposal under this subpart;

(b) Reference to Preliminary Evaluation of Proposals shall mean evaluation of Proposals in accordance with this Subpart;

(c) The cross reference to § 881.208 in Section 207(b)(2) shall be considered as referring to § 881.305; and

(d) In lieu of § 881.207(b)(3) the following shall be applicable:

Where an Owner does not indicate in his Proposal that he intends to utilize HUD–FHA mortgage insurance and applies for HUD–FHA mortgage insurance after selection by HUD of the Proposal under this part, he risks (1) Having his proposal rejected for HUD–FHA mortgage insurance and (2) Having lower rents approved under the mortgage insurance program than the rents set forth in the Proposal approved under this subpart.

§ 881.307 Subsequent processing.

The Proposal shall be deemed to be a Final Proposal within the meaning of §§ 881.211 et seq. All further actions with regard to Proposals approved pursuant to these Special Procedures shall be in accordance with Subpart B of these regulations starting with § 881.211.

§ 881.308 Use of residual contract authority.

If Proposals sufficient to utilize the contract authority set aside for use of the Special Procedures have not been submitted by the end of the 6 month period, or any extensions thereto, or if an approved Proposal fails to result in an Agreement, the field office may:

(a) Authorize the local government to submit other Proposals for projects within the approved strategy area to utilize the remaining contract authority; or

(b) Issue a NOFA for the allocation area pursuant to § 881.203 to utilize the remaining contract authority; or

(c) If a NOFA has already been published for that allocation area, process Proposals submitted in response thereto, but not selected, including those to which the deadline does not apply (see § 881.203 (c)(5)); or

(d) Reallocate the unused contract authority to another allocation area.

NOTE.—It is hereby certified that the economic and inflationary impacts of this regulation have been carefully evaluated in accordance with OMB Circular A–107.

Issued at Washington, D.C., January 16, 1977.

JOHN T. HOWLEY,
Acting Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc.77–2916 Filed 1–28–77;8:45 am]

federal register

MONDAY, JANUARY 31, 1977

PART IX

THE NATIONAL ARCHIVES OF THE UNITED STATES • 1934 •

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

LOW INCOME HOUSING

Loans for Elderly or Handicapped

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

[24 CFR Part 885]

[Docket No. R-77-332]

LOW INCOME HOUSING

Loans for Housing for the Elderly or Handicapped

The Department of Housing and Urban Development (HUD) published on Febuary 25, 1976, at 41 FR 8314 a final rule amending Title 24, Part 885, to provide a program of both construction and long term financing for projects for the elderly or handicapped pursuant to section 202 of the Housing Act of 1959, as amended (12 USC 1701q). Subsequent to publication of this final rule, the Housing Authorization Act of 1976, Pub. L. 94-375, was enacted, August 3, 1976, making certain changes in the provisions of section 202, pursuant to which the Department published a final rule amending Part 885 on January 28, 1977 (FR Doc. 77-2451, Part III, January 28, 1977).

This proposed rule decentralizes the responsibility for granting section 202 loan fund authority to HUD field offices, partially consolidates section 202 and section 8 application and review procedures, and revises the criteria to be used in selecting among eligible Borrowers.

In the past, HUD Headquarters and other personnel have determined the eligibility and acceptability of nonprofit sponsors and approved or disapproved Requests for Section 202 Fund Reservations. Only after a nonprofit sponsor received a fund reservation was a site selected and the Section 8 Preliminary Proposal and, subsequently, the Section 8 Final Proposal, prepared and submitted to the appropriate field office for review. This division of responsibility and sequence of events has produced many anomalies and inefficiencies, the most serious of which is that a number of nonprofit Borrowers with Section 202 fund reservations have not yet submitted Section 8 Preliminary Proposals. Consequently, necessary Section 8 housing assistance funds have not been committed, and the intended beneficiaries still face long delays in obtaining occupancy of the projects to be financed under the Section 202 program.

This proposed rule will expedite progress from approval of a Request for Section 202 Fund Reservation/Section 8 Preliminary Proposal (hereinafter referred to as Request) to the submission of Section 8 Final Proposals, initiation and completion of construction, and occupancy by elderly or handicapped persons. In addition, to alleviate concern that selection criteria for the existing Section 202 program unduly restrict participation by less experienced or minority sponsors, it makes some changes in the selection criteria.

The Assistant Secretary for Housing already has assigned Section 202 loan fund authority for Fiscal Year 1977 to the ten HUD Regional Offices in conformance with the provisions of section 213(d) of the Housing and Community Development Act of 1974 as provided at Title 24, Part 891, Subpart D. In turn, the Regional Offices will subassign their loan fund authority to their field offices using the same procedure. The field offices will prepare advertisement(s) inviting the submission of proposals and indicating the amount of assistance available. The field offices will assemble and distribute Developer's Packets and hold workshops for potential Sponsors and Borrowers to offer them information and assistance.

Each Borrower entity will submit evidence that it has been formed, that it qualifies as a nonprofit organization, and that it has the capacity under the revised selection criteria to construct and operate housing and related facilities for the elderly or handicapped. It also will submit a Request and, concurrently, may submit an application for assistance under section 106(b) for seed money expenses.

The field offices will review the materials submitted for completeness and responsiveness to the invitation; they will assess the eligibility and capability of the Borrower, review and decide upon the Request. Among the factors to be considered in evaluating Requests is whether the proposed project is feasible based on an economic mix whereby not less than 20 percent nor more than 80 percent of the dwelling units would need Section 8 assistance. This does not mean that projects requiring Section 8 assistance for 100 percent of the dwelling units could not be funded. However, when several approvable applications have equivalent ratings, and some of these applications are for projects in which the Borrowers propose to cover at least 20 percent but not more than 80 percent of the dwelling units with Section 8 assistance, and the field office determines that these projects are feasible based on the proposed Section 8 coverage, the field office shall give preference for funding to these projects over the ones requiring Section 8 coverage for more than 80 percent of the dwelling units. Field offices will grant successful Borrowers reservations of Section 202 loan fund authority and necessary Section 8 housing assistance funds. Generally, Borrowers then will have 12 months within which to submit an acceptable Section 8 Final Proposal and initiate construction.

These changes are discussed in more detail below.

A. Each fiscal year, the Assistant Secretary for Housing will allocate Section 202 loan fund authority to the Regional Offices in conformance with section 213 (d) of the Housing and Community Development Act of 1974 as provided at Title 24, Part 891, Subpart D; and § 885.200 of this Part as revised.

B. The Regional Offices will suballocate Section 202 loan fund authority to the field offices in conformance with the above regulations. Those field offices responsible for processing Section 8 applications will be eligible to approve Section 202 loan fund requests under this provision. Regional Offices will suballocate Section 202 loan fund authority among eligible field offices on a fair share formula basis in accordance with section 213(d) and the breakdown by field office given the Regional offices by the Assistant Secretary for Housing.

C. Field offices will determine the number of units expected to be assisted and will issue invitations for Requests. In determining the estimated number of units to be assisted, the field office will take into consideration Local Housing Assistance Plans and Areawide or State Housing Allocation Plans. For each Allocation Area established for the purpose of allocating Section 8 funds, it will determine the estimated number of units to be made available for new construction and for substantial rehabilitation for the elderly or handicapped under Section 202. In cases where field offices have insufficient Section 202 loan fund authority to fund one or more projects in each Allocation Area, the office may combine Allocation Areas. However, nonmetropolitan areas may not be combined with metropolitan areas. It will prepare a publication schedule, and, in accordance with its schedule, it will publish invitations for Requests for its Allocation Areas or combinations thereof in a newspaper(s) of general circulation and in the minority media. The invitation will state the Allocation Area(s) in which the housing is to be constructed or substantially rehabilitated, the amount of Section 202 loan fund authority and Section 8 contract authority available, and the expected allocation of units between metropolitan and nonmetropolitan areas. It also will establish the time period within which the field office will accept Requests and will advise how the proper forms for the submission of such Requests may be obtained. The invitation also will provide information about a workshop for potential Borrowers to be held by the field office.

D. The field office will prepare and distribute the appropriate application forms, including the Developer's Packets, to those requesting such materials. During the workshop for potential Borrowers, the regulations and instructions governing the Section 202 program and the Section 106(b) program (which provides seed money loans to eligible nonprofit Borrowers) will be explained. Application forms and Developer's Packets also will be distributed and application procedures discussed at such workshops.

E. The Borrower, in cooperation with the Sponsor, will submit the information required in support of a Request. Because it is the Borrower that will receive the reservation of Section 202 and Section 8 funds, the Borrower entity must be formed prior to submission of a Request and must meet the selection criteria. In cases where the Borrower is dependent upon the experience, reputation, and financial resources of the Sponsor, whether the Borrower is a recently formed organization, or one that has been in existence for some time, most of the information requested shall be submitted on the Sponsor as well as on the Borrower. This will permit a dependent Borrower to draw upon the strength of the Sponsor.

F. Existing selection criteria have been revised to: (1) shorten the period of time (from ten to three years) for which the Sponsor and Borrower need report adverse financial information; (2) shorten the period of time (from ten to five years or less) for which the Borrower need describe its housing experience; (3) permit the Borrower to describe its nonhousing experience which gives evidence of its management capabilities; (4) define the amount of working capital that the Borrower will be expected to evidence at the time of its Request; and (5) require the Borrower to provide evidence of its local community base and reputation in the neighborhood in which the project is to be located, including evidence of any support for the project and the Borrower by the community and any national, state, or local groups and organizations.

It is anticipated that these revisions in the selection criteria will increase the likelihood that less-experienced and minority Borrowers will be able to demonstrate their qualifications to receive Section 202 fund reservations.

G. The Borrower will submit a Section 8 Preliminary Proposal, including evidence that it has control over the proposed project site. This requirement constitutes the largest departure from the existing procedure. The Department recognizes its disadvantages, but holds that they are outweighed by its advantages. The existing procedure requires that a Borrower for whom Section 202 loan funds have been reserved must submit an acceptable Section 8 Preliminary Proposal or lose its loan fund reservation. At the present time, this hurdle is postponed until after the eligibility of the nonprofit Borrower has been determined and the loan fund reservation granted. However, this procedure may give the Sponsor/Borrower a false sense of confidence, because most of the effort of putting together an application still lies ahead, and the Borrower must confront and overcome many obstacles. Only when a site has been selected can the difficulty of the obstacles be assessed and decisions be made on a realistic basis. It is true that Borrowers who do not already own the site on which they propose to build risk losing their option money, and that those with fewer resources and less experience may be discouraged from applying due to this requirement. However, provision for a workshop and revisions in the selection criteria are intended to offset this possible effect. Overall, fewer Sponsors and Borrowers may apply for Section 202 loan fund reservations, but more of them will advance speedily to the submission of a Section 8 Final Proposal and to the initiation of construction, with considerable benefit to the elderly and handicapped for whom the housing is intended.

H. The field office will process the Section 202 fund reservation submission and the Section 8 Preliminary Proposal concurrently. The processing of the fund reservation request also will include a determination of the eligibility and acceptability of the nonprofit Sponsor and Borrower.

I. The field office will determine which Requests are approvable for each allocation area or combinations thereof.

J. The Borrower with a Fund Reservation will submit a Section 8 Final Proposal in conformance with existing regulations.

Because applications will be processed simultaneously for reservations of Section 202 loan funds and Section 8 housing assistance funds, many of the changes proposed in these regulations are designed to reconcile Section 202 and Section 8 procedures. For the convenience of the reader, the numbered paragraphs below describe the changes in detail and identify, where appropriate, the existing sections of Part 885—Loans for Housing for the Elderly or Handicapped, Part 880—Section 8 Housing Assistance Payments Program—New Construction, and Part 881—Section 8 Housing Assistance Payments Program—Substantial Rehabilitation upon which the proposed rules are based.

1. Section 885.3 states that the provisions of Parts 880 and 881 of this Chapter shall apply to the extent that such provisions are not inconsistent with the provisions of Subparts B, C, and D of this part.

2. The definitions of "Allocation Area," "HCD Act," "Request," "Section 8 Preliminary Proposal," "Seed Money Expenses," and "Sponsor" have been added to § 885.5. The definition of "Applicant" has been deleted from § 885.5.

3. The title of § 885.200 has been changed from "Geographic distribution of Section 202 Loan Fund Authority" to "Allocation of Loan Fund Authority to Regional Offices," but the language of the section remains the same.

4. A new § 885.205, entitled "Allocation of Loan Fund Authority to Field Offices," has been written to reflect the decentralization of decision-making authority to the field offices authorized by this Part. It provides that HUD Regional Offices will allocate Section 202 loan fund authority for metropolitan and nonmetropolitan areas to the field offices. Formerly, Section 202 fund reservation requests were approved in Headquarters by the Assistant Secretary and applications for Section 8 funds were approved by the field offices; now both will be approved by the field offices.

5. Existing § 885.210 has been renumbered § 885.225 and will be discussed at the appropriate place. A new § 885.210, entitled "Determination of number of units to be assisted," has been created, based upon § 880.202 of this Chapter. It provides that, taking into consideration any applicable Local Housing Assistance Plans and State or Areawide Housing Allocation Plans, the field office shall determine the estimated number of units of housing for the elderly or handicapped to be made available through new construction and substantial rehabilitation in each Allocation Area, or combinations thereof, and shall prepare a schedule for publishing invitations for Requests.

6. Most of existing § 885.215 has been incorporated in new § 885.240 and will be discussed at the appropriate place. New § 885.215 is entitled "Invitations for Requests for Section 202 Fund Reservations Section 8 Preliminary Proposals," and sets forth the procedures to be followed by the field offices in publishing Invitations for Requests. The procedures set forth in this section are similar to the Notification of Fund Availability procedures which appear in § 880.203 of the Section 8—New Construction regulations. Certain paragraphs of this new Section are discussed below.

7. Section 885.215(c)(3) provides that eligible Borrowers may secure the Developer's Packet and all necessary forms from the field office.

8. Section 885.215(c)(4) specifies the time period within which field offices will accept Requests—"beginning on a specified date, and up to a specified deadline date (generally, 60 days following the date of the first publication)." It also provides that this period can be extended by HUD by publication of the change in the same newspapers and with appropriate notification to the minority media and those parties who have registered with the field office so that they may be notified. The purpose of this provision is to assure that the field offices will have an adequate number of Requests.

9. Section 885.215(c)(5) provides that the deadlines set in § 885.215(c)(4) will not apply in the case of Requests for projects to be located in nonmetropolitan areas, but further provides that the field office has the right to establish a deadline under specified circumstances.

10. Section 885.215(c)(6) provides that those interested in applying for a fund reservation are encouraged to contact the field office within 15 calendar days after the date of first publication. The purpose of this subparagraph is to assist the field office in inviting interested parties to the workshop described in paragraph (c)(7) of that section.

11. Section 885.215(c)(7) provides that a workshop will be held in the field office within 25 days of first publication of the invitation for Requests in order to explain the Regulations and instructions governing the Section 202 program and the Section 106(b) program, to distribute the Developer's Packets described in § 885.220 of this Part and the required forms for each program, and to discuss application procedures. The purpose of this workshop is to provide assistance to Sponsors and Borrowers who may be unfamiliar with the Section 202, and Section 106(b) programs.

12. Section 885.215(c)(8) is drawn from existing § 885.205(b) and sets limits on the number of units for which Sponsors, Co-sponsors and Borrowers may submit applications. It provides in part that no organization shall participate, whether as Sponsor, Co-sponsor, and/or Borrower, within a single Region during a single fiscal year, in the filing of applications for reservations of Section 202 loan funds in excess of those necessary to finance the construction or

substantial rehabilitation of 300 units of Housing and Related Facilities.

13. Existing § 885.220 has been renumbered § 885.245 and will be discussed in the appropriate place.

14. Existing § 885.305, entitled "Developer's Packet" has been moved to § 885.220 and revised to conform largely with §§ 880.204(a) and 881.204(a) of the Section 8 New Construction and Substantial Rehabilitation regulations, respectively.

15. New § 885.225, entitled "Contents of Requests," is based primarily on the existing § 885.210, "Contents of Requests for Fund Reservations." The new Section 885.225 requires Borrowers to submit materials to verify their eligibility as nonprofit entities, to submit materials to support their capacity to carry through to completion and successful long-term operation a project to provide housing and related facilities to the elderly or handicapped, and to submit a Section 8 Preliminary Proposal, as part of its Request. The implications of these changes were discussed in the introductory paragraphs above. Paragraphs (a) through (e), (i), (j), and (n), except for minor changes, are preserved and renumbered § 885.225 (a) through (e), (j), (k), and (p), respectively. Paragraphs (f), (g), and (h) have been preserved with revisions and renumbered § 885.225 (f), (g), and (i); and new paragraphs (h), (l), (m), (n), (o), and (q) have been added. Only those paragraphs which have been changed or added will be discussed below.

16. Section 885.225, "Contents of Requests," now provides that formation of the Borrower entity must be completed prior to the submission of a Request. Specifically, § 885.225(m) provides that each Request must include evidence that the Borrower has been formed and that it qualifies as an eligible nonprofit organization. Because a Section 8 Preliminary Proposal now must be submitted as part of a Request and will be reviewed by the field office to confirm that the Borrower has control over the proposed project site, and because an application for a Section 106(b) seed money loan can only be submitted by an eligible Borrower and may now accompany the Request, the borrower entity must have been formed prior to the submission of a Request. Also related is new § 885.225 (n) which provides that in cases where the borrower is dependent upon the experience, reputation, and financial resources of the Sponsor, whether the Borrower is a recently formed organization or one that has been in existence for some time, all information requested in paragraphs (c), and (g) through (m) of this Section also must be submitted on the Sponsor.

17. Section 885.225(f) requires that each Request include a description of any financial default, modification of terms and conditions of financing, or legal action taken against the Borrower for any reason during the past three years rather than the past ten years, as provided in existing § 885.210(f). The purpose of this change is to avoid penalizing Borrowers who encountered financial difficulties in the past, but have had a satisfactory record of performance in the past three years.

18. Section 885.225(g), which describes the evidence required to establish the Borrower's capacity to complete and operate a housing project for the elderly or handicapped successfully, has been changed by shortening from ten to five years the period of time for which the Borrower must provide descriptions of its housing experience. What is more, HUD will accept information covering a shorter time period if the Borrower satisfactorily demonstrates that the requested information is not available for the full five years. This change was made because the Department can make a reasonable judgment as to the Borrower's capacity to complete and operate a housing project successfully based on a statement covering five years, or in some cases, less than five years of experience in housing.

19. A new paragraph, § 885.225(h), provides that a Request shall include a description of the Borrower's past or current experience in providing services other than housing which would give evidence of the Borrower's management capabilities. The purpose of this new section is to broaden the nature of the experience that a Borrower may show to establish its capacity to complete and operate a project for the elderly or handicapped.

20. Section 885.225(i) provides that a Request shall include an estimate of the Borrower's anticipated Seed Money Expenses and evidence of its ability to provide sufficient working capital to meet these expenses and to fund the minimum required capital investment defined in § 885.410(d). In addition, it should be noted that the cash requirements for initial loan closing are not established until processing of the Section 8 Final Proposal has been completed, and the Borrower will have to demonstrate its capacity to meet these additional cash requirements, if any, before receiving a conditional or firm commitment.

21. Section 885.225(l) requires that each Request include evidence of the Borrower's local community base and reputation in the neighborhood in which the project will be located, including evidence of any support for the project and the Borrower by the community and any national, state, or local groups and organizations. The purpose of this provision is to assure that Borrowers have a commitment to the neighborhoods in which they plan to operate.

22. A new § 885.230 has been added, which outlines the requirements for the Section 8 Preliminary Proposal which previously were included under § 885.310. The requirements of § 885.230 are essentially the same as those appearing in § 880.205 of this Chapter, except that § 885.230(a) provides that a Section 8 Preliminary Proposal shall include the amount of Section 202 loan funds requested to be reserved.

23. New § 885.235 entitled, "Preliminary evaluation and technical processing of Requests," is based primarily on § 880.208. Paragraphs (a), (b), (c), and (d) of this new Section correspond to paragraphs (a), (b), (c), and (e) of § 880.208, respectively, except that paragraph (d)(3) of this new section is based on the existing § 885.315 (c) and paragraph (e)(7) of § 880.208 has been omitted. Paragraph (d)(3) requires that analysis of Section 8 Preliminary Proposals for projects with Section 8 Contract Authority for less than all of the rental dwelling units should indicate that sufficient market demand is anticipated for the unsubsidized portion to assure the feasibility of the project. Paragraph (d)(3) also provides that the Request will be evaluated by the field office on the basis of those factors which may be necessary to determine the eligibility and acceptability of the Sponsor or Borrower, the acceptability of the location (site), the acceptability of the design concept, the market value of the site, compliance with the Fair Market Rent Limits, and any comments received during the response periods from the appropriate A-95 Clearinghouse and from the unit of general local government. The effect of this amendment is to combine the determination of the eligibility and acceptability of the Borrower and Sponsor with the determination of the acceptability of the Section 8 Preliminary Proposal. Some minor word changes have been made to reconcile Section 202 with Section 8 procedures. Paragraph (f)(2) states that one of the factors to be considered in ranking applications is whether the proposed project is feasible based on an economic mix whereby not less than 20 percent nor more than 80 percent of the dwelling units would need Section 8 assistance.

24. Section 885.240, entitled "Approval of Requests," replaces the existing § 885.215 and incorporates the provisions for the approval of the Request by the field office. Section 885.240(b) (1), (2), and (3) preserves and renumbers applicable portions of paragraphs (1), (6), and (7) of existing § 885.215(b). Paragraph (7) has been modified to state that a Section 202 fund reservation may be used only in connection with the project whose Section 8 Preliminary Proposal has been approved in connection with the Request and may not be transferred to a Section 8 project which is proposed in response to an invitation pursuant to § 880.203 or § 881.203.

25. Section 885.240(b)(4)(i), (ii), (iii), and (iv) corespond to existing § 885.315 (d)(1)(i), (ii), (iii) and (iv), dealing with notification of selection.

26. Section 885.240(b)(5) corresponds to § 880.208(h)(1)(iv); § 885.240(c) corresponds to § 880.208(h)(2); and § 885.240(d) corresponds to § 880.208(h)(3).

27. Section 885.240(e) provides that Borrowers whose Requests are not approved shall be so notified in writing by the field office.

28. Section 885.240(f) coresponds to existing § 885.215(e), and provides that the field office director may amend the amount of a fund reservation approved pursuant to paragraph (b) at any time before the final closing of a loan.

29. Section 885.245, entitled "Duration of Section 202 Fund Reservations," formerly § 885.220, has been revised to

shorten from eighteen to twelve months the period of time within which construction must begin following the issuance of the notice of Section 202 Fund Reservation if the reservation is not to be cancelled. Because the Section 8 Preliminary Proposal will be approved concurrently with the Section 202 fund reservation submission, less time will be needed to complete the application process.

30. With respect to Subpart C, many of the provisions formerly included in this Subpart have been moved to Subpart B because submission of a Section 8 Preliminary Proposal has been made part of the Request.

31. Several provisions dealing with the Section 8 Final Proposal have been renumbered. Section 885.320 (a), (b), and (c) have been renumbered § 885.300 (b), (c), and (d), respectively; § 885.325 has been renumbered § 885.305.

32. Because the Borrower's Section 8 Preliminary Proposal will have been approved concurrently with its fund reservation submission, § 885.405, entitled "Approval for requests for financing," is revised to reflect this change. In reviewing requests for financing, the field office will review the Borrower's Section 8 Final Proposal, its request for Section 202 direct loan financing, and other materials submitted in accordance with § 885.400(a).

33. Because decision-making responsibility is being decentralized to the field offices, § 885.410(a) is revised so that the field office director rather than the Assistant Secretary may approve increases in the amount of financing stated in the notice of Section 202 Fund Reservation prior to the final closing of the loan, provided that certain conditions are met.

Interested persons are invited to participate in the making of this rule by furnishing such written comments, data and suggestions as they may desire. All such materials should be filed with the Rules Docket Clerk, Office of the Secretary, Room 10141, Department of Housing and Urban Development, 451 7th Street, S.W., Washington, D.C. 20410 and all comments received on or before February 24, 1977, will be considered before adoption of a final rule in his matter. Copies of all comments will be available for public inspection at the above address during regular business hours both before and after the close of the comment period.

The Department has determined that this proposed rule will not have a significant impact upon the quality of the environment. A Finding of Inapplicability respecting the National Environmental Policy Act of 1969 has been made in accordance with HUD Handbook 1390.1. A copy of such Finding is available for public inspection, during regular business hours in Room 10141, Department of Housing and Urban Development, Washington, D.C. 20410.

NOTE: It is hereby certified that the economic and inflationary impacts of this regulation have been carefully evaluated in accordance with OMB Circular A-107 and it is determined that this proposed rule has no inflationary impact.

Accordingly, it is proposed to amend Title 24 by amending Part 885, Loans for Housing for the Elderly or Handicapped, to read as follows:

PART 885—LOANS FOR HOUSING FOR THE ELDERLY OR HANDICAPPED

Subpart A—General Policy

Sec.
885.1 Purpose and policy.
885.3 Applicability of Parts 880 and 881.
885.5 Definitions.

Subpart B—Allocation of Loan Funds and Processing Requests for Section 202 Fund Reservations/Section 8 Preliminary Proposals

885.200 Allocation of Loan Fund Authority to regional offices.
885.205 Allocation of Loan Fund Authority to field offices.
885.210 Determination of number of units to be assisted.
885.215 Invitations for requests for Section 202 Fund Reservations/Section 8 Preliminary Proposals.
885.220 Developer's packet.
885.225 Contents of requests.
885.230 Section 8 preliminary proposal.
885.235 Preliminary evaluation and technical processing of requests.
885.240 Approval of requests.
885.245 Duration of Section 202 Fund Reservations.

Subpart C—Applicable Procedures Under Section 8 for Final Proposals

885.300 Section 8 final proposals.
885.305 Contract Rents determined acceptable to HUD at final proposal.

Subpart D—Direct Loan Financing Procedures

885.400 Requests for direct loan financing.
885.405 Approval of requests for financing.
885.410 Amount and terms of financing.
885.415 Requirements prior to initial loan closing.
885.420 Loan disbursement procedures.
885.425 Completion of construction or substantial rehabilitation, cost certification and approvals by HUD.

AUTHORITY: Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart A—General Policy

§ 885.1 Purpose and policy.

(a) *Purpose.* The purpose of the program described in this Part is provide direct Federal loans under Section 202 of the Housing Act of 1959, as amended, 12 U.S.C. 1701q, for housing projects to serve elderly or handicapped families and individuals. The housing projects are to be designed to provide, or management plans shall include, an assured range of necessary services for the occupants, which services may include, among others, health, continuing education, welfare, informational, recreational, homemaker, counseling, and referral services, as well as transportation where necessary to facilitate access to social services, and services designed to encourage and assist occupants to use the services and facilities made available.

(b) *General policy.* A loan made pursuant to this Part shall be used to finance the construction or substantial rehabilitation of projects which meet the requirements of, and which will receive the benefit of housing assistance payments under the Section 8 Housing Assistance Payments Program-New Construction (24 CFR Part 880) or the Section 8 Housing Assistance Payments Program-Substantial Rehabilitation (24 CFR Part 881).

§ 885.3 Applicability of parts 880 and 881.

To determine whether a project for which a direct loan is requested under this Part complies with the requirements of the Section 8 Housing Assistance Payments Program—New Construction or Section 8 Housing Assistance Payments Program—Substantial Rehabilitation, the provisions of Parts 880 and 881 of this chapter shall apply to the extent that such provisions are not inconsistent with the provisions of Subparts B, C and D of this Part.

§ 885.5 Definitions.

As used in this part:

Act means Section 202 of the Housing Act of 1959, as amended, 12 U.S.C. 1701q.

Affiliated Entities means entities that HUD determines to be related to each other in such a manner that it is appropriate to treat them as a single entity. Such relationship shall include any identity of interest among such entities or their principals and the use by any otherwise unaffiliated entities of a single Borrower or of Borrowers that have any identity of interest between themselves or their principals.

Allocation Area means a geographic area established by the field office in accordance with 24 CFR 891.404(a)(3) for the purpose of allocating Section 8 funds.

Assistant Secretary means the Assistant Secretary for Housing-Federal Housing Commissioner.

Borrower means a private nonprofit corporation or a nonprofit consumer cooperative, which may be established by the Sponsor, which will obtain a Section 202 loan and execute a mortgage in connection therewith as the legal owner of the project. "Borrower" does not mean a public body or the instrumentality of any public body. The purposes of the Borrower must include the promotion of the welfare of elderly or handicapped families. No part of the net earnings of the Borrower may inure to the benefit of any private shareholder, contributor or individual and the Borrower may not be controlled by or be under the direction of persons or firms seeking to derive profit or gain therefrom.

Construction means the erection or substantial rehabilitation of structures for Housing and Related Facilities.

Development Cost means the cost of construction or substantial rehabilitation of Housing and Related Facilities, and of the land on which they are located, including necessary site improvements and such other expenses as may be determined by the Assistant Secretary to be properly attributable to the capital cost of the construction or substantial rehabilitation or development of the Housing and Related Facilities.

Elderly or Handicapped Families means:

(a) Families of two or more persons the head of which (or his or her spouse)

is sixty-two years of age or over or is handicapped, or

(b) The surviving member or members of any family described in paragraph (a) who were living in a unit assisted under the Section 202 program with the deceased member of the family at the time of his or her death, or

(c) A single person who is sixty-two years of age or over or who is handicapped, or

(d) Two or more elderly persons living together, or one or more such persons living with another person who is determined by HUD, based upon a licensed physician's certification provided by the resident or prospective resident, to be essential to their care or well-being.

Field Office means any HUD Area, Insuring or Regional Office which is delegated authority to process applications under the Section 8 Program.

Handicapped Person means any person having an impairment which is expected to be of long-continued and indefinite duration, is a substantial impediment to his (or her) ability to live independently, and is of a nature that such ability could be improved by more suitable housing conditions. A person shall also be considered handicapped if he (or she) has a disability attributable to mental retardation, cerebral palsy, epilepsy, or another neurological condition found by the Secretary of Health, Education, and Welfare to be closely related to mental retardation or to require treatment similar to that required for mentally retarded individuals, which disability originates before such individual attains age eighteen, which has continued or can be expected to continue indefinitely, and which constitutes a substantial handicap to such individual.

HCD Act means the Housing and Community Development Act of 1974.

Housing and Related Facilities means rental or cooperative housing structures constructed or substantially rehabilitated as permanent residences for use by elderly or handicapped families, and includes structures suitable for use by families residing in the project or in the area as cafeterias or dining halls, community rooms or buildings, and workshops or other essential service facilities. "Housing and Related Facilities" does not include nursing homes, hospitals or intermediate and transitional care facilities.

Region means any one of the ten HUD Regions.

Request means the Request for Section 202 Fund Reservation and all required forms and exhibits, including the Section 8 Preliminary Proposal, which are submitted in response to a published invitation for such a Request.

Section 8 Preliminary Proposal means a proposal to provide newly constructed or substantially rehabilitated housing in response to an invitation published by a HUD field office for Requests as defined above.

Section 8 Program means the Housing Assistance Payments Program-New Construction or Substantial Rehabilitation under Parts 880 and 881 of this Chapter, which implements Section 8 of the United States Housing Act of 1937, as amended by the HCD Act.

Seed Money Expenses mean those expenses which are necessary to cover the costs of planning and obtaining financing for a Section 202 project and which will be incurred prior to the initial closing of the construction loan for the project.

Sponsor means any private nonprofit entity, no part of the net earnings of which inures to the benefit of any private shareholder, contributor or individual, which entity is not controlled by, or under the direction of persons or firms seeking to derive profit or gain therefrom, and which is approved by the Assistant Secretary as to administrative and financial capacity and responsibility. "Sponsor" does not mean a public body or the instrumentality of any public body.

Substantial Rehabilitation means the improvement of the condition of a property from deteriorated and substandard to good condition. Substandard or deteriorated properties are those which, while structurally sound, do not provide safe and adequate shelter, and in their present condition endanger the health, safety or well-being of the occupants. Substantial Rehabilitation also includes renovation, alteration or remodeling for the conversion or adaptation of structurally sound property to the design and condition required for use under this part (e.g., conversion of a hotel to housing for the elderly).

Subpart B—Allocation of Loan Funds and Processing Requests for Section 202 Fund Reservations/Section 8 Preliminary Proposals

§ 885.200 Allocation of Loan Fund Authority to regional offices.

From time to time, the Assistant Secretary will allocate Section 202 loan fund authority on a geographic basis for metropolitan and nonmetropolitan areas among Regions in conformance with the requirements of Section 213(d) of the HCD Act, as set forth in 24 CFR 891.402, by:

(a) Calculating for the respective Regions as a percent of the national total, the numbers of (1) Households where the head or spouse is aged 62 or older, (2) Such households which occupy units which lack one or more plumbing facilities and (3) Such households with incomes below regionally adjusted poverty levels;

(b) Averaging the three percentages; and

(c) Adjustment of the resulting percentage by average housing cost factors within each Region based on costs of prototype units.

§ 885.205 Allocation of Loan Fund Authority to field offices.

The HUD Regional Offices will allocate to the field offices Section 202 loan fund authority for metropolitan and for nonmetropolitan areas in accordance with 24 CFR 891.403(d).

§ 885.210 Determination of number of units to be assisted.

(a) Number of units to be assisted. Each field office shall, after considering the contents of any Local Housing Assistance Plans and any other pertinent information which it has or which is brought to its attention in relation to the factors set forth in Section 213(d) of the HCD Act, including any applicable State or Areawide Housing Allocation Plan, determine the number of units to be made available for new construction and substantial rehabilitation of housing for the elderly or handicapped in the geographic areas established pursuant to 24 CFR 891.404(a)(3) for the purpose of allocating Section 8 funds (herein called "Allocation Areas"). In cases where field offices have insufficient Section 202 loan fund authority to fund one or more projects in each Allocation Area, the office may combine Allocation Areas. However, nonmetropolitan areas may not be combined with metropolitan areas.

(b) New construction and substantial rehabilitation schedules. With respect to each Allocation Area or combinations thereof, the field office shall prepare an appropriate schedule for publishing invitations for Requests for Section 202 Fund Reservations/Section 8 Preliminary Proposals pursuant to § 885.215.

§ 885.215 Invitations for requests for Section 202 Fund Reservations/Section 8 Preliminary Proposals.

(a) Publication. The field office shall invite Requests in accordance with its schedule. Each invitation shall be published in a newspaper(s) of general circulation serving the Allocation Area(s) in which the Section 202 project(s) is (are) to be located at least once a week for two consecutive weeks.

(b) Notification to minority media and others. Simultaneously with the publication of the invitation in the media described in paragraph (a) of this section, the field office also shall notify and provides copies of the invitation to minority media, minority organizations involved in housing and community development, and fair housing groups. In addition, to the extent feasible, the field office shall notify and provide copies of the invitation to trade journals and other nonminority media.

(c) The invitation shall state:

(1) The Allocation Area or areas in which the Section 202 project(s) is (are) to be constructed or substantially rehabilitated;

(2) The amount of Section 202 loan fund authority and the amount of Section 8 contract authority being made available for projects to be constructed or rehabilitated which are designed for the elderly or handicapped and the approximate number of units these amounts are expected to assist in metropolitan and/or nonmetropolitan areas;

(3) That eligible Borrowers may secure the Developer's Packet described in §885.220 of this Part, and the forms required for a Request from the field office;

(4) That in the case of projects to be located in metropolitan areas, beginning on a specified date, and up to a specified deadline (generally, 60 calendar days following the publication of the invitation), the field office will accept Requests, but that such deadline date may be extended by the field office with appropriate publication of the change in the same general newspaper(s) and notification of minority and other media and groups, as well as to the extent feasible, the trade journals and other nonminority media which had been notified with regard to the invitation as first published. The notification of the change also shall be given by appropriate means, as determined by the field office, to eligible Borrowers who have registered with the field office so that they may be so notified;

(5) That in the case of invitations for Requests for projects to be located in nonmetropolitan areas, no deadline for filing of Requests shall be established, but the field office shall reserve the right to establish a deadline if the director determines (i) that Requests sufficient to use those funds set aside for nonmetropolitan areas have been received in the field office, or (ii) that insufficient time would remain to complete the processing and the reservation of funds by the end of the fiscal year. Appropriate notification of the establishment of such a deadline date shall be published in the same general newspapers and provided to minority and other media and groups which had been notified with regard to the invitation as first published;

(6) That eligible Borrowers interested in appliyng for a fund reservation under the Section 202 program, are encouraged to contact the field office within 15 calendar days after the date of first publication of the invitation to provide the field office with the name, address, and telephone number of the Sponsor, if any, and Borrower and to advise the field office as to whether they plan to attend the workshop described in paragraph (c)(7) of this section;

(7) That a workshop will be held by the field office on a specified date which falls within ten calendar days after the fifteen-day period referenced in paragraph (c)(6) of this section to explain the Regulations and instructions governing the Section 202 program and those governing the Section 106(b) program, to distribute the Developer's Packet described in § 885.220 of this Part and the required forms for both programs, and to discuss application procedures and required exhibits;

(8) That no organization shall participate either as Sponsor, if any, Co-sponsor, if any, and/or Borrower in the filing of an application or applications for a reservation of Section 202 loan funds in a single Region during a single fiscal year in excess of that (those) necessary to finance the construction or substantial rehabilitation of 300 units of Housing and Related Facilities.

(i) This limitation shall apply to organizations that participate as co-sponsors regardless of whether the co-sponsors are affiliated or unaffiliated entities.

(ii) Affiliated entities which submit separate applications shall be deemed to be a single entity for purposes of the 300-unit limitation.

§ 885.220 Developer's Packet.

The field office, upon request from a Sponsor or Borrower, or at the workshop described in § 885.215(c)(7), shall provide each Sponsor or Borrower with a special Developer's Packet (Section 202/Section 8) for either New Construction or Substantial Rehabilitation, whichever is applicable.

(a) The Developer's Packet shall include a copy of the applicable regulations, handbooks, and forms, and any requirements and information necessary to enable interested parties to prepare a Request for Section 202 Fund Reservation/Section 8 Preliminary Proposal in accordance with this Part. The Packet also shall indicate where copies of HUD Minimum Property Standards and other standards may be obtained.

(b) The Developer's Packet also shall include a statement that the Borrower may submit a Section 8 Final Proposal only after its Request has been approved.

§ 885.225 Contents of requests.

Each Request shall include the following:

(a) The name, address and telephone number of the Borrower and also of the Sponsor, if any.

(b) The names and addresses of all officers and directors of the Borrower and also of the Sponsor, if any.

(c) A description of the organization of the Borrower, including the date of its establishment, size and scope of its membership, and other pertinent information;

(d) A description of the relationship between the Sponsor and the Borrower.

(e) A description of any commitment, financial or otherwise, by the Sponsor for assistance to the Borrower.

(f) A description of any financial default, modification of terms and conditions of financing, or legal action taken against the Sponsor, the Borrower, or any other Borrower related to the Sponsor for any reason during the past three years.

(g) Evidence of the Borrower's capacity to carry through to completion and successful long term operation, a project to provide housing and related facilities for the elderly or handicapped. Such evidence shall include a detailed description of all rental or cooperative housing projects (including care facilities) owned or operated by the Borrower or other related entities during a minimum of the past five years. However, HUD will accept information for shorter periods of time if the Borrower satisfactorily demonstrates that the requested information is not available for the past five years. This description also shall include a listing of the locations, numbers and types of units, types and sources of financing, amenities and services provided, and indicators of successful project management such as low turnover, vacancy and delinquency rates, and low rent collection losses.

(h) A description of the Borrower's or related entities' past or current involvement in any programs or of its provision of services, other than housing, if any, which would give evidence of the Borrower's management capabilities.

(i) The Borrower's estimate of the Seed Money Expenses it expects to incur and evidence of its ability to provide sufficient working capital to meet these expenses and to fund the minimum required capital investment defined in § 885.410(d) of this Part. Such evidence shall include copies of the Borrower's balance sheets and statements of income and expenses for each of the past three years the Borrower has operated.

(j) A description of the Borrower's capability to sponsor, develop, own, manage, or provide special services in connection with housing for the elderly or handicapped, including any special capability in serving the needs of lower income elderly or handicapped families and individuals of all racial, ethnic and religious groups. The description shall include evidence of the Borrower's capability to construct or substantially rehabilitate projects that are specifically designed and equipped with such "related facilities" (as defined in Section 202(d)(8) of the Housing Act of 1959) as may be necessary to accommodate the special environmental needs of the intended occupants and shall be in support of and supported by the applicable state plans for comprehensive services pursuant to section 134 of the Mental Retardation Facilities and Community Mental Health Center Construction Act of 1963 or state and area plans pursuant to Title III of the Older Americans Act of 1965.

(k) Such other information as the Borrower may wish to provide which indicates any special capability to develop and successfully operate a housing project for the elderly or handicapped.

(l) Evidence of the Borrower's local community base and reputation in the neighborhood in which the project will be located including evidence of any support for the project and the Borrower by the community and any national, state, or local groups and organizations.

(m) Evidence that the Borrower has been formed and that it qualifies as an eligible nonprofit organization.

(n) In cases where the Borrower is dependent upon the experience, reputation, and financial resources of the Sponsor, whether the Borrower is a recently formed organization or an organization which has been in existence for some time, all information requested in paragraphs (c) and (g) through (m) of this section shall be submitted for the Sponsor as well as the Borrower.

(o) A Section 8 Preliminary Proposal which shall include the information required under § 885.230.

(p) Such additional information as HUD may find pertinent to the evaluation of the Request.

(q) The Borrower's application for a Section 106(b) Seed Money loan, if desired.

§ 885.230 Section 8 preliminary proposal.

The Section 8 Preliminary Proposal shall include:

(a) The amount of the Section 202 loan funds requested to be reserved.

(b) Identification of the proposed site, including a map showing the location of the site and the racial composition of the neighborhood, sketch of the site plan, dimensions, any unusual site features, and zoning.

(c) Documentary evidence that the Borrower has title to the site or a copy of a contract(s) of sale, if any, with respect to the site or a copy of the site option agreement(s) or other legal commitment for the site.

(d) A description of the proposed housing, including number and type of structures, number of stories, structural system, exterior finish, heating-air conditioning system, number of units by size (number of bedrooms), living area and composition for each size of unit, and special amenities or features; and sketches of the building and unit plans.

(e) The proposed Contract Rent per unit, by size and structure type.

(f) A description of the equipment to be included in the Contract Rent.

(g) A description of the utilities and services to be included in the Contract Rent, and, for those utilities and services not so included in the Contract Rent, an estimate of the average monthly cost (for the first year of occupancy) to the occupants by unit size and structure type.

(h) A showing that the Proposal meets any special requirements or restrictions necessary for compliance with the provisions of the local Housing Assistance Plan, if any.

(i) Evidence that the proposed construction or rehabilitation is permissible under applicable zoning ordinances or regulations, or a statement of the proposed action to make the construction or rehabilitation permissible and the basis for belief that such action will be successfully completed prior to the initial closing of the loan (e.g., a summary of results of any recent requests for rezoning on land in similar zoning classifications and the time required for such rezoning; preliminary indications of acceptability from zoning bodies, etc.).

(j) A statement as to whether the proposed project will displace site occupants. If so, the proposal shall state the number of families, individuals, and business concerns to be displaced (identified by race or minority group status and whether they are owners or renters), and shall demonstrate that relocation is feasible and how necessary relocation payments, if any, will be funded.

(k) A signed certification of the Borrower's intention to comply with Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, Executive Order 11063, Executive Order 11246, and section 3 of the Housing and Urban Development Act of 1968.

(l) The identity of the builder (if known), the architect (if known), and the consultant (if known); the qualifications and experience of each; and the names of officials and principal members, principal shareholders and investors, and other parties having substantial interests and the prior participation of each in HUD programs, using the prescribed form.

(m) Evidence as to whether the Borrower intends to provide management services or to contract with a management agent. In the latter case, the identity of the management agent, if known, and the other information specified in paragraph (l) of this section must be provided.

(n) Such additional information as HUD may find pertinent to the evaluation of the Section 8 Preliminary Proposal.

§ 885.235 Preliminary evaluation and technical processing of requests.

(a) *Preliminary evaluation.* In order to determine whether a Request is complete, responsive to the invitation, and acceptable for technical processing, the field office shall begin its preliminary evaluation immediately upon receipt of the Request. The preliminary evaluation shall consist of a review to ascertain whether it is clear, even without field investigation, that:

(1) The Request is lacking any of the required submissions and forms, or if any of them are not properly completed;

(2) The site(s) does (do) not meet standards set forth in §§ 880.112 and 881.112 of this Chapter;

(3) The proposed Gross Rents exceed the applicable Fair Market Rent Limits (see § 880.108(a) and § 881.108(a) of this Chapter);

(4) The sizes and types of units are not suitable for housing for the elderly or handicapped;

(5) The Borrower, builder, and/or managing agent lack the ability to construct or rehabilitate the project or to carry out the required management and maintenance services;

(6) The Request fails to comply with one or more requirements of the invitation, the Developer's Packet, Part 880 or 881 as applicable, or this Part 885.

(b) *Action on Requests found to be deficient.* If a Request is incomplete or if a deficiency is found with respect to any item set forth in paragraph (a) of this section, the Borrower shall be advised in writing of the deficiencies and (1) that the Request is rejected, or (2) if the field office determines that further consideration of the Request would assist in meeting the qualitative and quantitative objectives of this Part, that amendments or modifications will be accepted if they are received on or before a specified date (generally fifteen calendar days from the date of the request for additional information).

(c) *Eligibility for technical processing.* If a Request is found acceptable pursuant to paragraph (a) of this section, the Request shall be eligible for technical processing. Similarly, if amendments or modifications were requested pursuant to paragraph (b) of this section and were received by the date specified and found acceptable, the Request shall be eligible for technical processing. However, if such amendments or modifications are not received by the date specified or are not found acceptable, the Request shall be rejected.

(d) *Technical processing.* When a Request is determined eligible pursuant to paragraphs (a) or (c) of this section, the field office shall begin technical processing, but no final selection shall be made until the response periods provided in § 885.215(c) (4) or (5) have ended. Technical processing shall consist of the following:

(1) For each Preliminary Proposal which is determined to be subject to A–95 clearance, the field office shall send a copy (if not previously submitted by the Sponsor or Borrower) to the appropriate A–95 Clearinghouse for review, inviting a response within 34 calendar days from the date of the letter of transmittal;

(2) For purposes of compliance with Section 213 of the HCD Act, the field office shall forward (if not previously submitted by the Sponsor or Borrower) a notification, in the form prescribed by HUD, to the Chief Executive Officer (or such designee as that Officer may designate) of the unit of general local government in which the proposed housing is to be located and shall invite a response within 30 calendar days from the date of the notification letter;

(3) The Request will be evaluated by the field office on the basis of those factors which may be necessary to determine the eligibility and acceptability of the Sponsor and Borrower, acceptability of the location (site), acceptability of the design concept, market value of the site, compliance with the Fair Market Rent Limits, and the comments, if any, received during the response periods from the appropriate A–95 Clearinghouse and from the unit of general local government. Analysis of Preliminary Proposals for projects with Section 8 Contract Authority for less than all of the rental dwelling units should indicate that sufficient market demand is anticipated for the unsubsidized portion to assure the feasibility of the project;

(4) If, in its evaluation of all pertinent factors, the field office finds deficiencies which, in its judgment, are correctable within a reasonable time, it may grant such additional time as it deems appropriate to enable the Borrower to correct such deficiencies. Otherwise the Borrower shall be sent a notification specifying the deficiencies and stating that the Request is rejected;

(5) Prior to selection, the field office shall complete an environmental review pursuant to HUD National Environmental Policy Act requirements;

(6) Based on the factors set forth in this paragraph (d), the field office shall determine for each Allocation Area, or combinations thereof, the Requests which, in its judgment, are approvable. Selection of Requests then shall be made in accordance with paragraphs (e) or (f) of this section.

(e) Selection where there are sufficient Section 202 Loan Fund Authority and Section 8 Contract Authority for all approvable Requests. If the Section 202 loan fund authority and the Section 8 contract authority indicated in the invitation are sufficient for all approvable Requests, the Borrowers shall be notified of selection in accordance with § 885.240.

(f) Selection where Section 202 Loan Fund Authority and Section 8 Contract Authority are insufficient for all approvable Requests. In such cases, the field office shall proceed as follows:

(1) The field office shall rank order each Request on the basis of its assessment of the Borrower's qualifications; the project's proposed rent structure; site and design, and comments, if any, received from the appropriate A–95 Clearinghouse and from the unit of general local government;

(2) With respect to the listing, the field office shall identify for selection the highest ranking Requests in descending order which most reasonably approximate the estimated maximum number of units called for in the invitation. Among the factors to be considered in ranking Requests is whether the proposed project is feasible based on an economic mix whereby not less than 20 percent nor more than 80 percent of the dwelling units would need Section 8 assistance. This does not mean that projects requiring Section 8 assistance for 100 percent of the dwelling units could not be funded. However, when several approvable applications have equivalent ratings, and some of these applications are for projects in which the Borrowers propose to cover at least 20 percent but not more than 80 percent of the dwelling units with Section 8 assistance, and the field office determines that these projects are feasible based on the proposed Section 8 coverage, the field office shall give preference for funding to these projects over the ones requiring Section 8 coverage for more than 80 percent of the dwelling units.

(3) The field office shall select those Requests in order of the ranking for which there are sufficient Section 202 loan fund authority and sufficient Section 8 contract authority.

§ 885.240 Approval of requests.

(a) To be eligible for selection, a Request must be received by the field office within the period specified in the invitation and must be complete and responsive to the invitation. Requests for Section 202 Fund Reservations/Section 8 Preliminary Proposals will be approved by the field office based on an evaluation procedure that takes into account the information provided pursuant to § 885.225.

(b) A Borrower whose Request is approved shall be issued a notice of Section 202 Fund Reservation in a form to be prescribed by the Assistant Secretary, which form shall:

(1) Specify the amount of the fund reservation, the number of units, and whether the project will be located in a metropolitan or nonmetropolitan area;

(2) State that the amount of loan funds reserved or any portion thereof unused by the Borrower may not be transferred by the Borrower;

(3) State that a Section 202 fund reservation may only be used in connection with the project whose Section 8 Preliminary Proposal has been approved in connection with the Request and may not be transferred to a Section 8 project which is proposed in response to an invitation pursuant to §§ 880.203 or 881.203 of this Chapter.

(4) State that the Section 8 Preliminary Proposal submitted with the Request has been approved and request that the Borrower submit a Section 8 Final Proposal in accord with the requirements of the provisions of §§ 880.209 and 881.209 of this Chapter. In connection with the approval of the Section 8 Preliminary Proposal, the notification shall specify:

(i) That the Borrower's proposed Contract Rents fall within the Fair Market Rent Limits. The proposed Contract Rents submitted by the Borrower shall be evaluated and approved at the Section 8 Final Proposal stage;

(ii) The estimate of the amount of relocation payments, when applicable;

(iii) The number and types of units of Housing and Related Facilities; and

(iv) Any other special conditions or requirements, including those that may be applicable to substantial rehabilitation projects pursuant to § 881.208(g) of this Chapter.

(5) Specify a date by which the Borrower is required to return a copy of the notification with either (i) an indication of its acceptance of the notification including any modifications requested by the field office, or (ii) its request for reconsideration of any modifications.

(c) If the notification contains modifications, and the Borrower requests their reconsideration, the field office shall notify the Borrower of the date by which it is to furnish documentation in support of its request for reconsideration.

(d) If the Borrower does not accept the notification by the date specified, or if the Borrower requests reconsideration of modifications made by the field office and the field office and the Borrower are unable to reach agreement with respect thereto, the field office shall notify the Borrower that its previous approval of the Borrower's Request is rescinded.

(e) Borrowers whose Requests are not approved shall be so notified in writing by the field office.

(f) The field office director may amend the amount of a fund reservation approved pursuant to paragraph (b) of this section at any time before the final closing of a loan.

§ 885.245 Duration of Section 202 Fund Reservations.

The field office director shall cancel any reservations of Section 202 loan funds for projects for which the construction or substantial rehabilitation is not commenced within the twelve-month period following issuance of the notice of Section 202 Fund Reservation, unless an extension of time, not to exceed six months, is requested of and granted by the field office director.

Subpart C—Applicable Procedures Under Section 8 for Final Proposals

§ 885.300 Section 8 final proposals.

(a) Each final proposal submitted shall be consistent with the requirements of § 880.209(a) or § 881.209(a) of this Chapter as appropriate.

(b) Any Contract Rents which are or have been proposed by a Borrower in its Section 8 Preliminary Proposal or approved by HUD pursuant to the submission of its Section 8 Preliminary Proposal may be modified in the Section 8 Final Proposal, or at any time prior to the execution of the Agreement to Enter into a Housing Assistance Payments Contract.

(c) The evaluation by HUD of a Section 8 Final Proposal submitted by a Borrower shall include, in addition to the items listed in §§ 880.210 or 880.210 of this Chapter as appropriate, an evaluation of the Contract Rents and financial feasibility of the project, based upon the criteria set forth in § 885.305 of this Part.

(d) The notification to the Borrower of approval of its Section 8 Final Proposal shall specify the Contract Rents acceptable to HUD, and if the acceptable Rents are lower than those proposed by the Borrower, the reasons for the reduction(s).

§ 885.305 Contract Rents determined acceptable to HUD at final proposal.

Sections 880.108(b) and 881.108(b) of this Chapter are not applicable to Section 202 projects in which units are eligible for occupancy under the Section 8 Housing Assistance Payments Program. Contract Rents shall be established within the applicable Fair Market Rent Limits in the Section 8 Final Proposal pursuant to §§ 880.108(a) or 881.108(a) and shall be no higher than the rents determined by HUD to be necessary to cover operating costs, including debt service on the Section 202 loan, and reasonable reserves, as approved by HUD. In the case of Section 8 Final Proposals for projects with Section 8 Contract Authority for less than all of the rental dwelling units, the Contract Rents must be within such levels that sufficient market demand is anticipated for the unsubsidized rental dwelling units to assure the feasibility of the project.

Subpart D—Direct Loan Financing Procedures

§ 885.400 Request for direct loan financing.

(a) At the time of submission of a Section 8 Final Proposal under the Section 8 program pursuant to §§ 880.209 or 881.209 of this Chapter, a Borrower shall submit a request for Section 202 direct loan financing, on forms prescribed by HUD to the field office serving the area in which the project will be located.

(b) The request provided for in paragraph (a) of this section shall be accompanied by or include the following:

(1) The names and addresses of the officers and directors of the Borrower, and such other information as shall be required on the prescribed form, together with a certification by each officer or director that he or she will not receive any compensation from the Borrower for his or her services, and does not have any

financial interest in any contract with the Borrower, or in any firm or corporation which has a contract with the Borrower.

(2) Satisfactory evidence that the Borrower has the necessary legal authority to finance, construct or substantially rehabilitate and maintain the project and to apply for and receive the proposed loan, that it meets any requirements as to corporate organization, and that it has authority to enter into such contract obligation and execute such authority to enter into such contract obligation, and execute such security instruments as may be required by HUD.

§ 885.405 Approval for requests for financing.

The field office shall review the request for financing and the other submissions under § 885.400(a), and shall notify the Borrower of its approval or disapproval, indicating any deficiencies. The Borrower will be given a reasonable time, as determined by the field office, to correct any deficiencies. The approval shall set forth fully the terms and conditions upon which the loan will be disbursed.

§ 885.410 Amount and terms of financing.

(a) The amount of financing approved shall be the amount stated in the Notice of Section 202 Fund Reservation, including any increase approved by the field office director prior to the final closing of a loan: Provided, however, that the amount of financing provided shall not exceed the lesser of (1) the maximum mortgage amount that would apply under §§ 231.3 or 231.4 (b) and (c) of Chapter II of this title if the mortgage were insured under Section 231 of the National Housing Act, or (2) the Development Cost of the project.

(b) The loan shall bear interest at a rate established by the Secretary by adding:

(1) A rate determined by the Secretary of the Treasury to be the average interest rate on all interest bearing obligations of the United States then forming a part of the public debt computed at the end of the fiscal year next preceding the date on which the loan is made; plus

(2) An allowance to cover administrative costs and probable losses under the program, which allowance has been determined by the Secretary to be one percent (1%) per annum during the construction period, and one half of one percent (.5%) thereafter. Loans committed to be made by HUD shall bear interest at the rate in effect at the time a loan is made. A loan shall be deemed to be made as of the date of the initial loan closing pursuant to § 885.415, except that any loans made on and after August 3, 1976, and prior to October 1, 1976, shall bear interest at the rate stated in the next sentence. The interest rate applicable to loans made between August 3, 1976, and September 30, 1977, shall be seven and three-eighths percent (7 and ⅜%) per annum during the construction period and six and seven-eighths percent (6 and ⅞%) thereafter. The interest rate applicable to subsequent fiscal years shall be published in the FEDERAL REGISTER. If a loan is made in a fiscal year other than that fiscal year in which the application is processed, and the interest rate for the year in which the loan is made is different from the rate used for processing, HUD will determine whether or not reprocessing is necessary.

(c) The loan shall be secured by a first mortgage on real estate in fee simple or long term leasehold; the mortgage shall be for a term not to exceed 40 years and shall be subject to such terms and conditions as shall be determined by the Assistant Secretary.

(d) In order to assure HUD of the Borrower's continued commitment to the development, management and operation of the project, the Assistant Secretary may from time to time establish a minimum capital investment for Section 202 Borrowers. Such minimum capital investment is hereby initially determined to be one-half of one percent (.5%) of the mortgage amount committed to be disbursed, not to exceed the amount of $10,000. Section 106(b) loans made pursuant to Section 106 of the Housing and Urban Development Act of 1968 may not be utilized to meet the minimum capital investment requirement. Such minimum capital investment may take the form of payments by the Borrower out of the Borrower's own resources towards the project operating expenses or deficits over a period of not to exceed three years from initial occupancy of the project. Any such funds required to be put up as a minimum capital investment shall be held by HUD or other escrow agent acceptable to HUD for the aforementioned three year period and shall be used for operating expenses or deficits as may be directed by the field office; any unexpended balance remaining in the minimum capital investment account at the end of the three year period shall be returned to the Borrower.

§ 885.415 Requirements prior to initial loan closing.

Prior to the initial loan closing, the Borrower, in addition to any other requirements pursuant to Parts 880 and 881 of this chapter, shall furnish such executed documents as the field office may require, including but not limited to:

(a) An Agreement to Enter into Housing Assistance Payments Contract executed pursuant to § 880.214 or § 881.214 of this Chapter.

(b) A Housing Consultant's Certificate and Contract (if consultant services have been employed by the Borrower).

(c) A Certificate of Incorporation of the Nonprofit Borrower, or consumer cooperative, as required by applicable state or local law.

(d) A Certificate of Relationships and Nonprofit Motives of the Borrower.

(e) A Mortgagor's Attorney's Opinion as to the validity and legality of the mortgagor entity, the legality of the building permit, and compliance with applicable zoning laws and requirements.

(f) (1) A Regulatory Agreement for Nonprofit Section 202/Section 8 Mortgagors, on a form to be prescribed by the Assistant Secretary, by which agreement HUD will regulate the Borrower's operation of the project, or (2) An addendum to the Section 8 Housing Assistance Payments Contract as required by the Assistant Secretary.

(g) A Mortgagor's Oath, wherein the Borrower certifies that the property to be constructed or substantially rehabilitated will not be used for hotel or transient accommodation purposes during the term of the Section 202 Financing Loan.

(h) An Agreement and Certification to be executed by the Borrower and HUD on a form to be prescribed by HUD, wherein the Borrower (1) Agrees to certify actual costs and, as may be required by HUD to have the contractor and subcontractor also submit certificates of actual cost; (2) Certifies as to any financial and family relationship which exists as between such Borrower, the architect, general contractors and subcontractors.

(i) An Assurance of Compliance with HUD Regulations Under Title VI of the Civil Rights Act of 1964.

(j) A Note and Mortgage on forms aporoved by the Assistant Secretary for use in the jurisdiction in which the property covered by the mortgage is situated. The Note and Mortgage shall comply with applicable state law for such instruments and shall set forth the terms and method of repayment, maturity date, prepayment/refinancing and release provisions and such other requirements and covenants as prescribed by the Assistant Secretary.

(k) A Title Policy from a title insurance company or other title evidence satisfactory to the field office that the mortgage constitutes a first lien on the property as of the date the mortgage is filed for record.

(l) A survey of the mortgaged property, and final plans and specifications, shall have been prepared by registered survevors and architects, respectively (if required), shall be in a form satisfactory to the field office, and shall be accompanied by such Surveyor and Architect Certificates and Owner-Architect Agreements as the Assistant Secretary may prescribe.

(m) A Building Loan Agreement to be executed by the Borrower and HUD in a form to be prescribed by the Assistant Secretary. The Agreement shall set forth the terms and conditions under which progress payments may be advanced during the construction or substantial rehabilitation according to a schedule of disbursements, and shall include provisions for disbursements of loan proceeds only on account of portions of construction or substantial rehabilitation work completed and approved by HUD and provisions for a holdback or retainage from construction or substantial rehabilitation requisition payments in an amount determined by the Assistant Secretary.

(n) A New Construction or Substantial Rehabilitation Contract between the Borrower and General Contractor, on a form to be prescribed by the Assistant Secretary, which Contract shall be in the form of a cost plus contract which shall provide for the payment of the actual cost of construction or substantial rehabilitation not to exceed an upset price, and may include a provision for an additional payment to the builder of a fee in an amount allowed by HUD for earlier than estimated completion. The Contract shall be supplemented by such Cost or Trade Payment Breakdown and General Conditions as the Assistant Secretary may prescribe.

(o) Assurance of Completion of construction or substantial rehabilitation in such form as may be prescribed by the Assistant Secretary, which may include Performance and Payment bonds from approved sureties or cash escrows. Each Performance and each Payment Bond furnished under this Section shall be in the respective amounts of 50 percent of the total construction cost of the Housing and Related Facilities, and any such cash escrow furnished hereunder shall be in the amount of 25 percent of such cost; the terms and conditions of the forms of Assurance of Completion shall be satisfactory to the field office.

(p) An escrow agreement in the amount of the cost of any off-site facilities, funded by a cash deposit or Letter of Credit to assure completion of such facilities.

(q) A Contractor's and Sub-Contractor's Certification Concerning Labor Standards and Prevailing Wage Requirements, in a form prescribed by the Assistant Secretary, certifying that the laborers and mechanics employed in the construction or substantial rehabilitation of the dwellings will be paid not less than the wages prevailing in the locality in which the work is to be performed for the corresponding classes of laborers and mechanics employed on construction or substantial rehabilitation of a similiar character, as determined by the Secretary of Labor prior to the beginning of construction or substantial rehabilitation and after the date of the request for direct loan financing. Such certificates also shall include information as to all applicable labor standards and other provisions of the regulations of the Secretary of Labor.

(r) Such other information and documents as the Assistant Secretary or field office may require in order to approve disbursement of construction loan proceeds pursuant to this Part.

§ 885.420 Loan disbursement procedures.

(a) Disbursements of loan proceeds shall be made directly by HUD to or for the account of the Borrower and may be made through an approved lender, mortgage servicer, title insurance company or other agent satisfactory to the Borrower and HUD.

(b) All disbursements to the Borrower shall be made on a periodic basis in an amount not to exceed the HUD-approved cost of portions of construction or substantial rehabilitation work completed and in place, minus the appropriate holdback or retainage, as determined by the field office.

(c) Requisitions for loan disbursements shall be submitted by the Borrower on forms to be prescribed by the Assistant Secretary and shall be accompanied by such additional information as the field office may require in order to approve loan disbursements under this Part, including but not limited to evidence of compliance with the Davis-Bacon Act, Department of Labor regulations, all applicable zoning, buildings and other governmental requirements, and such evidence of continued priority of the mortgage of the Borrower as the Assistant Secretary may prescribe.

§ 885.425 Completion of construction or substantial rehabilitation, cost certification and approvals by HUD.

(a) The requirements for completion of construction or substantial rehabilitation and approvals by HUD set forth in Parts 880 and 881 of this Chapter shall be satisfied by the Borrower prior to submission of a final requisition for disbursement of loan proceeds.

(b) The Borrower shall, in connection with such final requisition, submit to the field office such documentation as may be prescribed by the Assistant Secretary for full and final disbursement of the loan, including any applicable holdback or retainage, and such guaranty against latent defects as the Assistant Secretary may prescribe, all of which foregoing shall be in addition to the requirements of Parts 880 and 881 of this chapter. The documentation hereunder shall include such information and forms as the Assistant Secretary may require in order to approve the Borrower's and Contractor's Cost Certification and to determine the total actual development cost of the Housing and Related Facilities, including, but not limited to, the following:

(1) A Borrower's/Mortgagor's Certificate of Actual Cost, in a form prescribed by the Assistant Secretary, showing the actual cost to the mortgagor of the cost plus construction contract, including the builder's fee actually paid and approved by HUD, architectural, legal, organizational, offsite costs and other items of expense approved by the field office. The Certificate shall not include as actual cost any kickbacks, rebates, trade discounts, or other similiar payments to the mortgagor or to any of its officers, directors, stockholders, partners or members. Any such payments shall be deducted from the costs determined to be eligible for inclusion in the total Section 202 loan amount approved by the field office.

(2) A verification of the Certificate of Actual Cost by an independent Certified Public Accountant or independent public accountant in a manner acceptable to the Assistant Secretary.

(3) A certification of the general contractor (and such subcontractors, material suppliers and equipment lessors, as the Assistant Secretary or field office may require), on a form prescribed by the Assistant Secretary, as to all actual costs paid for labor, materials and subcontract work under the general contract exclusive of the builder's fee and kickbacks, rebates, trade discounts, or other similar payments to the general contractor, the mortgagor, or any of its officers, directors, stockholders, partners or members.

Issued at Washington, D.C., on January 19, 1977.

JOHN T. HOWLEY,
Acting Assistant Secretary for Housing — Federal Housing Commissioner.

[FR Doc.77-2375 Filed 1-28-77;8:45 am]

federal register

MONDAY, JANUARY 31, 1977

PART X

THE NATIONAL ARCHIVES OF THE UNITED STATES
LIBER SCRIPTA MANET
1934

ENVIRONMENTAL PROTECTION AGENCY

REVISIONS TO EMISSION MONITORING REQUIREMENTS AND TO REFERENCE METHODS

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

[FRL 669-4]

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

Revisions to Emission Monitoring Requirements and to Reference Methods

On October 6, 1975 (40 FR 46250), under sections 111, 114, and 301 of the Clean Air Act, as amended, the Environmental Protection Agency (EPA) promulgated emission monitoring requirements and revisions to the performance testing Reference Methods in 40 CFR Part 60. Since that time, EPA has determined that there is a need for a number of revisions to clarify the requirements. Each of the revisions being made in 40 CFR Part 60 are discussed as follows:

1. *Section 60.13.* Paragraph (c)(3) has been rewritten to clarify that not only new monitoring systems but also upgraded monitoring systems must comply with applicable performance specifications.

Paragraph (e)(1) is revised to provide that data recording is not required more frequently than once every six minutes (rather than the previously required ten seconds) for continuous monitoring systems measuring the opacity of emissions. Since reports of excess emissions are based upon review of six-minute averages, more frequent data recording is not required in order to satisfy these monitoring requirements.

2. *Section 60.45.* Paragraphs (a) through (e) have been reorganized for clarification. In addition, restrictions on use of continuous monitoring systems for measuring oxygen on a wet basis have been removed. Prior to this revision, only dry basis oxygen monitoring equipment was acceptable. Procedures for use of wet basis oxygen monitoring equipment have been approved by EPA and were published in the FEDERAL REGISTER as an alternative procedure (41 FR 44838).

Also deleted from § 60.45 are restrictions on the location of a carbon dioxide (CO_2) continuous monitoring system downstream of wet scrubber flue gas desulfurization equipment. At the time the regulations were promulgated (October 6, 1975), EPA thought that limestone scrubbers were operated under conditions that could cause significant generation or absorption of CO_2 by the scrubbing solution which would cause errors in the monitoring results. EPA investigated this potential problem and concluded that lime or limestone scrubbers under typical conditions of operation do not significantly alter the concentration of CO_2 in the flue gas and would not introduce significant errors into the monitoring results. Lime scrubbers operate at a pH level between 7 and 8 which will maximize SO_2 absorption and minimize CO_2 absorption. Thus, the effect of CO_2 loss on the emission results is expected to be minimal. The exact amount of CO_2 loss, if any, during the scrubber operation has not been determined since it is dependent upon the operating conditions for a particular facility. Although each percent of CO_2 absorption will result in a positive bias of 7.1 percent (at a stack concentration of 14 percent CO_2) in the final emission results, i.e. the indicated results may be higher than actual stack concentrations, the actual bias is expected to be very small since the amount of CO_2 absorption will be much less than one percent.

In flue gases from limestone scrubbers, there exists a possibility of the addition of CO_2 from the scrubbing reaction to the CO_2 from the fuel combustion. Every two molecules of SO_2 reacting with the limestone will produce a molecule of CO_2. Limestone scrubbers are typically operated at an approximate temperature of 50° C under acidic conditions. At these operating conditions the amount of CO_2 generated in a 90 percent efficiency scrubber is 1350 ppm or 0.135 percent CO_2. This will introduce a negative bias of 1 to 1.5 percent for a CO_2 level of 8 to 15 percent. This amount of potential error compares favorably with systems previously approved. Therefore, EPA is removing the restrictions which limited the installation of carbon dioxide continuous monitoring systems to a location upstream of the scrubber.

Several other revisions are being made to paragraphs (a), (b), (c), and (e) of Subpart D which improve the clarity or further define the intent of the regulations. Paragraph (d) has been reserved for later addition of fuel monitoring provisions.

3. *Performance Specification 1.* Paragraph 6.2 has been rewritten to clarify requirements that must be met by continuous opacity monitor manufacturers. Manufacturers must certify that at least one analyzer from each month's production was tested and meets all applicable requirements. If any requirements are not met, the production for the month must be resampled according to military standard 105D (MIL–STD–105D) and retested. Previously the regulation required that each unit of production had to be tested. Copies of MIL–STD–105D may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

4. *Performance Specification 2.* Figure 2–3 of Performance Specification 2 has been corrected to properly define the term "mean differences." The corrections in the operations now conform with the statistical definitions of the specifications.

5. *General.* These amendments provide optional monitoring procedures that may be selected by an owner or operator of a facility affected by the monitoring requirements of 40 CFR Part 60. Certain editorial clarifications are also included. Proposal of these amendments is not necessary because the changes are either interpretative in nature, or represent minor changes in instrumentation testing and data recording, or allow a wider selection of equipment to be used. These changes will have no effect upon the number of emission sources that must be monitored or the quality of the resultant emission data. The changes are consistent with recent determinations of the Administrator with respect to use of alternative continuous monitoring systems.

6. *Effective date.* These revisions become effective March 2, 1977.

(Secs. 111, 114, 301(a), Clean Air Act, as amended, Pub. L. 91–604, 84 Stat. 1678 (42 U.S.C. 1857c–6, 1857c–9, 1857g(a)).)

NOTE.—The Environmental Protection Agency has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A–107.

Dated: January 19, 1977.

JOHN QUARLES,
Acting Administrator.

In 40 CFR Part 60 Subpart A, Subpart D, and Appendix B are amended as follows:

Subpart A—General Provisions

1. Section 60.13 is amended by revising paragraphs (c)(3) and (e)(1) as follows:

§ 60.13 Monitoring requirements.

• • • • • •

(c) • • •

(3) All continuous monitoring systems referenced by paragraph (c)(2) of this section shall be upgraded or replaced (if necessary) with new continuous monitoring systems, and the new or improved systems shall be demonstrated to comply with applicable performance specifications under paragraph (c)(1) of this section on or before September 11, 1979.

• • • • • •

(e) • • •

(1) All continuous monitoring systems referenced by paragraphs (c)(1) and (c)(2) of this section for measuring opacity of emissions shall complete a minimum of one cycle of sampling and analyzing for each successive ten-second period and one cycle of data recording for each successive six-minute period.

• • • • • •

Subpart D—Standards of Performance for Fossil Fuel-Fired Steam Generators

2. Section 60.45 is amended by revising paragraphs (a), (b), (c), and (e) and by reserving paragraph (d) as follows:

§ 60.45 Emission and fuel monitoring.

(a) Each owner or operator shall install, calibrate, maintain, and operate continuous monitoring systems for measuring the opacity of emissions, sulfur dioxide emissions, nitrogen oxides emissions, and either oxygen or carbon dioxide except as provided in paragraph (b) of this section.

(b) Certain of the continuous monitoring system requirements under paragraph (a) of this section do not apply to owners or operators under the following conditions:

(1) For a fossil fuel-fired steam generator that burns only gaseous fossil fuel, continuous monitoring systems for measuring the opacity of emissions and sulfur dioxide emissions are not required.

(2) For a fossil fuel-fired steam generator that does not use a flue gas desulfurization device, a continuous monitoring system for measuring sulfur dioxide emissions is not required if the owner or operator monitors sulfur dioxide emissions by fuel sampling and analysis under paragraph (d) of this section.

(3) Notwithstanding § 60.13(b), installation of a continuous monitoring system for nitrogen oxides may be delayed until after the initial performance tests under § 60.8 have been conducted. If the owner or operator demonstrates during the performance test that emissions of nitrogen oxides are less than 70 percent of the applicable standards in § 60.44, a continuous monitoring system for measuring nitrogen oxides emissions is not required. If the initial performance test results show that nitrogen oxide emissions are greater than 70 percent of the applicable standard, the owner or operator shall install a continuous monitoring system for nitrogen oxides within one year after the date of the initial performance tests under § 60.8 and comply with all other applicable monitoring requirements under this part.

(4) If an owner or operator does not install any continuous monitoring systems for sulfur oxides and nitrogen oxides, as provided under paragraphs (b)(1) and (b)(3) or paragraphs (b)(2) and (b)(3) of this section a continuous monitoring system for measuring either oxygen or carbon dioxide is not required.

(c) For performance evaluations under § 60.13(c) and calibration checks under § 60.13(d), the following procedures shall be used:

(1) Reference Methods 6 or 7, as applicable, shall be used for conducting performance evaluations of sulfur dioxide and nitrogen oxides continuous monitoring systems.

(2) Sulfur dioxide or nitric oxide, as applicable, shall be used for preparing calibration gas mixtures under Performance Specification 2 of Appendix B to this part.

(3) For affected facilities burning fossil fuel(s), the span value for a continuous monitoring system measuring the opacity of emissions shall be 80, 90, or 100 percent and for a continuous monitoring system measuring sulfur oxides or nitrogen oxides the span value shall be determined as follows:

[In parts per million]

Fossil fuel	Span value for sulfur dioxide	Span value for nitrogen oxides
Gas	(1)	500
Liquid	1,000	500
Solid	1,500	500
Combinations	1,000x+1,500z	500(x+y)+1,000z

[1] Not applicable.

where:

x = the fraction of total heat input derived from gaseous fossil fuel, and
y = the fraction of total heat input derived from liquid fossil fuel, and
z = the fraction of total heat input derived from solid fossil fuel.

(4) All span values computed under paragraph (c)(3) of this section for burning combinations of fossil fuels shall be rounded to the nearest 500 ppm.

(5) For a fossil fuel-fired steam generator that simultaneously burns fossil fuel and nonfossil fuel, the span value of all continuous monitoring systems shall be subject to the Administrator's approval.

(d) [Reserved]

(e) For any continuous monitoring system installed under paragraph (a) of this section, the following conversion procedures shall be used to convert the continuous monitoring data into units of the applicable standards (ng/J, lb/million Btu):

(1) When a continuous monitoring system for measuring oxygen is selected, the measurement of the pollutant concentration and oxygen concentration shall each be on a consistent basis (wet or dry). Alternative procedures approved by the Administrator shall be used when measurements are on a wet basis. When measurements are on a dry basis, the following conversion procedure shall be used:

$$E = CF\left[\frac{20.9}{20.9 - \text{percent } O_2}\right]$$

where:

E, C, F, and $\%O_2$ are determined under paragraph (f) of this section.

(2) When a continuous monitoring system for measuring carbon dioxide is selected, the measurement of the pollutant concentration and carbon dioxide concentration shall each be on a consistent basis (wet or dry) and the following conversion procedure shall be used:

$$E = CF_c\left[\frac{100}{\text{percent } CO_2}\right]$$

where:

E, C, F_c and $\%CO_2$ are determined under paragraph (f) of this section.

APPENDIX B—PERFORMANCE SPECIFICATIONS

3. Performance Specification 1 is amended by revising paragraph 6.2 as follows:

• • • • • •

6. • • •

6.2 Conformance with the requirements of section 6.1 may be demonstrated by the owner or operator of the affected facility by testing each analyzer or by obtaining a certificate of conformance from the instrument manufacturer. The certificate must certify that at least one analyzer from each month's production was tested and satisfactorily met all applicable requirements. The certificate must state that the first analyzer randomly sampled met all requirements of paragraph 6 of this specification. If any of the requirements were not met, the certificate must show that the entire month's analyzer production was resampled according to the military standard 105D sampling procedure (MIL–STD–105D) inspection level II; was retested for each of the applicable requirements under paragraph 6 of this specification; and was determined to be acceptable under MIL–STD–105D procedures. The certificate of conformance must show the results of each test performed for the analysers sampled during the month the analyzer being installed was produced.

• • • • • •

4. Performance Specification 2 is amended by revising Figure 2–3 as follows:

Test No.	Date and Time	Reference Method Samples: SO_2 Sample 1 (ppm)	NO Sample 1 (ppm)	NO Sample 2 (ppm)	NO Sample 3 (ppm)	NO_x Sample Average (ppm)	Analyzer 1-Hour Average (ppm)* SO_2	Analyzer 1-Hour Average (ppm)* NO_x	Difference (ppm) SO_2	Difference (ppm) NO_x
1										
2										
3										
4										
5										
6										
7										
8										
9										

Mean reference method test value (SO_2) _____ Mean reference method test value (NO_x) _____ Mean of the differences _____

95% Confidence intervals = ± _____ ppm (SO_2) = ± _____ ppm (NO_x)

Accuracies = $\frac{\text{Mean of the differences} + 95\% \text{ confidence interval}}{\text{Mean reference method value}} \times 100$ = ____% (SO_2) = ____% (NO_x)

* Explain and report method used to determine integrated averages

Figure 2-3. Accuracy Determination (SO_2 and NO_x)

(Secs. 111, 114, 301(a), Clean Air Act, as amended, Pub. L. 91–604, 84 Stat. 1678 (42 U.S.C. 1857c–6, 1857–9, 1857g(a))).

[FR Doc.77-2744 Filed 1-28-77;8:45 am]

federal register

MONDAY, JANUARY 31, 1977

PART XI



DEPARTMENT OF TRANSPORTATION

Coast Guard

■

BOATS AND ASSOCIATED EQUIPMENT

Safety Standards for Electrical and Gasoline Fuel Systems

Title 33—Navigation and Navigable Waters

CHAPTER I—COAST GUARD, DEPARTMENT OF TRANSPORTATION

[CGD 73-217]

PART 183—BOATS AND ASSOCIATED EQUIPMENT

Safety Standards for Boat Electrical Systems

• *Purpose.* This rule contains minimum safety standards for electrical systems on boats. The purpose of the standards is to reduce the number of deaths and injuries and the amount of property damage on recreational boats caused by fires and explosions of gasoline fuel, gasoline fuel vapors, and other materials. •

BACKGROUND

On October 4, 1976, the Coast Guard published its Proposed Safety Standards for Electrical Systems. Interested persons were invited to submit written data, views or arguments concerning that notice prior to December 1, 1976.

All relevant comments were considered and several changes are included in this rule as a result of these comments. These regulations reflect the best possible accommodation of viewpoints from private citizens, surveyors, insurance companies, testing laboratories and industry.

DISCUSSION OF COMMENTS

The comments received are grouped according to the section to which they relate and are discussed below.

Section 183.401—Purpose, applicability, and effective dates. One commentor inferred that these rules are retroactive. These standards are not retroactive. The standards apply only to boats built after the effective dates of the standards.

Two commentors wanted to extend the effective date of the standards from the proposed 18 months after the date of publication to 24 months after the date of publication. The commentors want more time for electrical component manufacturers to redesign and retool their products. It is felt that there is adequate time for manufacturers to redesign and retool in order to provide electrical components that comply with these standards. In fact, many of the electrical components required in these standards are already available.

Section 183.402—Definitions. One commentor suggested the addition of alternators and auxiliary power plants in the definition of "electrical components." The commentor is concerned that by not specifically including these items in the definition they are excluded by implication. The definition cannot be all inclusive in its list of examples of electrical components to which this rule applies. Alternators and auxiliary power plants are included within the scope of these standards and must comply. Generators are listed in the definition and the term includes propulsion generators and auxiliary power plants. There is no need to add any more items to the definition.

A conflict was noticed when comparing the definition of "sheath" in § 183.402 and the requirements for rigid ducts or conduits in § 183.445(a). The conflict is discussed in the comments for § 183.445 and the definition for "sheath" is changed by the addition of the word "flexible" before the word "tubing".

Section 183.410—Ignition protection. One commentor suggested that electrical components contained within a completely watertight box assembly be excepted from the ignition protection requirements of § 183.410(a). The commentor feels that a watertight box assembly should be considered an electrical control device which is included within the scope of the definition of "electrical component" in § 183.402(c). The scope of § 183.410 allows watertight box assemblies or enclosures to isolate electrical components from gasoline fuel sources. Electrical components isolated from exposure to gasoline fuel sources by a watertight box or other means of isolation do not have to be ignition protected.

Several commentors requested clarification of § 183.410(a). Paragraph 183.410(a) requires electrical components to be ignition protected unless the electrical component is isolated from gasoline fuel sources such as fittings in vent lines, fill lines, and distribution lines. The commentors infer from § 183.410(a) that because a vent line, fill line, or distribution line is inevitably interrupted along its length by a fitting, an electrical component will have to be ignition protected even when the component is exposed to only an uninterrupted section of that vent line, fill line, or distribution line. The implication suggested by the commentors does exist in § 183.410(a), but this implication is not consistent with the intent of the rule. The intent of § 183.410(a) is to require ignition protection only for those electrical components exposed to fittings in vent lines, fill lines, or distribution lines. Section 183.410(a) is revised to properly reflect this intent.

Several commentors are concerned that § 183.410(a) is not specific enough for manufacturers to use as a guide to determine whether or not their electrical components are properly ignition protected and meet the intent of these standards. The commentors suggest that § 183.410(a) be amended to include complete test procedures or adopt by reference present industry test procedures. The inclusion of descriptive test procedures for ignition protection in this standard was considered. This approach requires extensive listing of test procedures for every different electrical component on a boat. Even then, the list cannot be all inclusive, because new electrical components may come on the market after the standards are published. The alternative is to provide a general description of ignition protection requirements to encompass all electrical components which is what § 183.410(a) accomplishes. This regulation sets minimum safety standards for recreational boating. Industry test procedures for ignition protection exceed the minimum levels of safety necessary to promote safe boating. The intent of these regulations is to provide minimum safety standards without being needlessly restrictive. The manufacturer whose product passes accepted industry tests for ignition protection will find that his product meets the requirements of this rule. The commentors' suggestions are rejected.

Some commentors indicate that the requirement in § 183.410(b)(2) that requires a deck to be able to resist a water level of 12 inches without seepage of more than one-quarter fluid ounce of fresh water per hour restricts the design of boat interiors. Further, the commentors suggest that the requirement is not consistent with § 183.410(c) because it requires decks to be more watertight than bulkheads. The intent of § 183.410(b) is to prevent gasoline fuel and fuel vapors from becoming exposed to electrical components that are not ignition protected. Sections 183.410(b)(2) and 183.410(b)(3) address the problems of vertical isolation of gasoline fuel sources from electrical components. It is agreed that § 183.410(b)(2) may be needlessly restrictive when applied to certain boats because the rule requires them to have completely watertight decks. These watertight decks prevent access by the boat operator to machinery and boat equipment normally installed below the deck. A new § 183.410(b)(2) is added to the standard to reflect the intent of § 183.410(b).

Several commentors object to § 183.410(b) because it does not allow a space that is open to the atmosphere, characteristic of open cockpit boats, to act as a means of isolation. In an open boat configuration, where the gasoline fuel sources are in the stern, there is no need to require the electrical components in the dashboard panel to be isolated or ignition protected. The space between the gasoline fuel sources and the electrical components is open to the atmosphere allowing gasoline fuel vapors to quickly dissipate. In response to those comments, therefore, a new § 183.410(b)(3) is added to the standard which allows certain spaces open to the atmosphere to be a means of isolation. Paragraph 183.410(b)(3) permits a minimum open space of 2 feet between the gasoline fuel source and the electrical component. The two foot space must be open to the atmosphere.

Several commentors questioned the apparent inconsistency and impracticability of sealing bulkheads as required by § 183.410(c). Section 183.410(c) requires a bulkhead to extend fully to other structural members with no allowance for gaps or openings between the bulkhead and the structural members to which it is attached. At the same time the section allows a one-quarter inch space around certain items that may pass through the bulkhead. The commentors indicate that in some boat configurations the requirement to seal bulkheads at their extremities is impractical because the location of the bulkhead extremities renders them inaccessible. The objective of § 183.410(c) is to provide bulkheads that prevent nonignition protected electrical components from becoming exposed to gasoline fuel or gasoline fuel vapors. In some boat configurations the bulkheads used for isolation have to allow the passage of certain items of equipment that are necessary for the boat to operate properly. These items include control cables, conductors, ducting, piping, and mechanical equipment. Requiring all openings in bulkheads to be sealed is impractical when considering the various boat designs, types of materials, and construction techniques used in the recreational boating industry. Provision has been made for various boat design configurations by allowing a one-quarter inch spacing around certain items that pass through bulkheads that are used for isolation. Allowance for any more unnecessary openings in these bulkheads is unacceptable when the objective of the standard is to limit the passage of gasoline fuel and gasoline fuel vapors.

Two commentors requested clarification of the 12 inch or one-third maximum height measurement required in § 183.410(c)(2). The commentors want to know where the measurement is made on the bulkhead. The commentors also infer from § 183.410(c)(2) that a hatch, door, or access panel in the bulkhead must be watertight along its whole perimeter. The intent of § 183.410(c)(2) is to measure the 12 inches or one-third the maximum height of the bulkhead in a vertical direction from the lowest point of the bulkhead in the boat. Section 183.410(c)(2) is changed and a new § 183410(c)(3) is added to clarify the isolation requirements of catches, doors, or access panels installed in bulkheads. The requirements in § 183.410(c)(2) that apply to a bulkhead apply equally to a hatch, door, or access panel as if it were part of the bulkhead. The requirements in § 183.410(c)(3) that apply to openings in a bulkhead apply to doors, hatches, or access panels as if they are an item passing through an opening in the bulkhead.

Section 183.415—Grounding. One commentor indicated that the grounding requirement in § 183.415 is excessive for boats that have three or more grounded cranking motor circuits. Section 183.415 requires that the common conductor must be large enough in size throughout its length to carry the starting current of the largest cranking motor in the circuit. This requirement is not necessary when three or more grounded cranking motor circuits exist and the starting current of one or more cranking motor circuits is less than the others. The starting current carried by the common conductor when one cranking motor circuit opens would be shared by the other cranking motor circuits, and the amount of current going to each shared circuit would be inversely proportional to the size of the common conductor connected to that shared circuit. For these reasons § 183.415 is changed to require common conductor circuits, instead of a common conductor, to carry the starting current of each of the grounded cranking motor circuits. This change provides consideration for boats that have three or more grounded cranking motor circuits.

Section 183.420—Batteries. Several commentors objected to the one inch restriction for battery movement in § 183.420(a). The commentors feel that the restriction precludes the use of conventional plastic battery boxes because the battery boxes are generally oversized to allow the use of different sized batteries. Oversizing the battery boxes makes it easier to install and remove the battery. Conventional plastic battery boxes are an acceptable approach for securing batteries as long as the manufacturer supports the battery within the box so that it cannot move more than one inch.

Some commentors objected to the test requirements in § 183.420(a). They feel the pulling force and the one minute durations are excessive because some large battery installations use batteries weighing over 100 pounds and the boats carrying these batteries do not experience accelerations represented by the tests in § 183.420(a). In consideration of these comments § 183.420(a) is changed by reducing the pulling force requirement to one that more realistically simulates the forces batteries are exposed to in the marine environment. To provide a more consistent test, § 183.420(a) specifies that the pulling force be applied through the center of gravity of the battery.

Some commentors are concerned with the requirement for shielding fuel lines and fuel system components in § 183.420(c). They feel that the shielding requirements of that paragraph restrict the design of small engine compartments. The commentors suggest that plastic battery boxes be allowed as a means of dielectric shielding. The intent of § 183.420(c) is to prevent the battery terminals from coming in contact with fuel lines or fuel system components when the battery is being installed or removed. Twelve inches provide enough room to safely install and remove the battery without coming in contact with fuel lines and fuel system components. Fuel lines and fuel system components within 12 inches of the battery side surfaces do not present a hazard as do the fuel lines and fuel system components above the battery because the process of installing and removing batteries involves a vertical displacement of the battery. For this reason § 183.420(c) is changed to require only those fuel lines and fuel system components within 12 inches of the battery top surface to dielectrically shielded. As a result of this change to § 183.420(c), the suggestion by the commentors to allow plastic battery boxes to act as the dielectric shield is no longer necessary. A plastic battery top, however, is not an acceptable shield because it is removed when the battery is installed or removed and it therefore, does not provide the protection required by § 183.420(c).

Two commentors suggested that § 183.420(b) apply only to the positive battery terminal instead of both terminals because the negative terminal is already grounded. The commentors' concept is correct, but it is felt that a more general requirement is necessary to eliminate accidental short circuiting of exposed battery terminals. Section 183.420(b) is changed to require that all ungrounded battery terminals be protected.

Several commentors objected to § 183.420(e) because they feel it implies that a means must be provided in the boat to physically collect hydrogen gas discharged by a battery and remove it from the boat. The commentors state that this is excessive when normal engine compartment ventilation can adequately remove the discharged hydrogen gas. The intent of § 183.420(e) is to prevent discharged hydrogen gas from accumulating within the boat to the extent of it becoming an explosion hazard. Section 183.420(e) is changed to prohibit discharged hydrogen gas from accumulating within the boat.

Section 183.425—Conductors: General. One commentor objected to the provision in § 183.425(d) allowing No. 18 AWG conductors to be used on boats. The commentor believes No. 18 AWG conductors are too small because they lack sufficient mechanical strength. The commentor also points out that § 183.425(d) is not consistent with industry standards which require conductors to be at least No. 16 AWG. This standard is intended to provide minimum levels of safety without being needlessly restrictive. No. 18 AWG conductors do not have as much strength as No. 16 AWG conductors. Because of this fact § 183.420(d) permits the use of No. 18 AWG conductors only in bundles with other conductors. The support requirements in § 183.445(a) provide additional mechanical strength for the No. 18 AWG conductors. Mechanical strength is also provided by the terminations of the other conductors and the bundling effect in a sheath by relieving any unusual strains imposed upon the No. 18 AWG conductor. Section 183.425 requires all other conductors installed separately to be at least No. 16 AWG.

One commentor suggested clarification of the intent of § 183.425 because paragraphs (d), (e), and (f) of § 183.425 are not consistent. The commentor states that according to paragraphs (d), (e), and (f) of § 183.425, a No. 18 AWG conductor is allowed to run singly as long as it has a sheath. This is not the intent of § 183.425. To make the intent clear, § 183.425 is changed to permit the use of No. 18 AWG conductors only when they are in a sheath with other conductors.

One commentor questioned whether or not the exception of communication systems in § 183.425(g) includes stereo tape, radio, and record systems. These systems use conductors smaller than No. 18 AWG and are not an identifiable electrical hazard. For this reason the term "communication systems" as used in these regulations includes stereo tape, radio, and record systems.

One comment objected to the exception of navigation equipment in § 183.425(g) because he felt that navigation lights and their associated wiring would be excepted. Section 183.425(g), as well as §§ 183.430, 183.435, 183.445, and 183.450,

exempt electronic navigation equipment, but not other forms of navigation equipment. Accordingly, all the sections in this rule that make exception to navigation equipment are changed to except "electronic" navigation equipment.

It was noticed that § 183.425(b) may be misleading to some manufacturers. It implies that because a conductor may never carry a current greater than that allowed in Table 5 (Table 3 in proposal), the manufacturer would have to oversize his conductors to carry intermittent surge currents normally experienced during start up of electrical components. The intent of § 183.25(b) is to allow conductors to carry continuous currents that do not exceed the amperages allowed in Table 5. An intermittent surge current is not considered to be a continuous current that a conductor normally experiences and does not present a hazardous situation.

Section 183.430—Conductors in circuits of less than 50 volts. Two commentors recommended adoption of a new Society of Automotive Engineers Standard (SAE), J378b dated November 1976, which provides conductor insulating material standards accepted by the boating and electrical conductor industries. This new standard applies to conductors used in circuits of less than 50 volts. The commentors' recommendation has been reviewed and accepted. SAE Standard J378b represents a new development in industry standards for conductors that is acceptable. Section 183.430(a)(2) is changed to reference the insulation temperature rating requirements of SAE Standard J378b dated November 1976, in addition to the requirements of SAE Standards J1127 and J1128 dated November 1975.

One commentor objected to the exception of pigtails of less than seven inches of exposed length from the conductor insulation requirements of § 183.430. The commentor believes that the excepted pigtails are susceptible to damage and could be an electrical hazard. The comment is not accepted. Pigtails of less than seven inches of exposed length are not an identifiable hazard that can adversely affect boating safety.

Section 183.435—Conductors in circuits of 50 volts or more. One commentor objected to the reference to Underwriters Laboratories listing in § 183.435(a)(4) because there are other recognized independent testing laboratories that provide the same services as Underwriters Laboratories. Recognized independent testing laboratories have the same opportunity to test products for compliance with these regulations as does Underwriters Laboratories. These independent laboratories also provide listings of acceptable marine products. Section 183.435(a)(4) is changed in response to this comment to allow recognized independent testing laboratories which publish accepted industry listings, and have labeling and followup services, an opportunity to list items that meet the requirements of these regulations.

One commentor requested clarification of § 183.435(b). Paragraph 183.435(b) requires that conductors in circuits of 50 volts or more must have their allowable current carrying capacities reduced when they are bundled together with other similar conductors. The commentor states that these requirements imply that a conductor in a circuit of 50 volts or more must have its current capacity reduced when it is in a duct, bundle, or cable with other conductors regardless of the voltage rating of other conductors. The intent of § 183.435(b) is to reduce the current carrying capacity of conductors in circuits of 50 volts or more if they are in a duct, bundle, or cable with two or more conductors that are also in circuits of 50 volts or more. Paragraph 183.435(b) is changed to properly reflect this intent by rewording the paragraph. Note 2 to Table 5 (Table 3 in proposal) is changed to be consistent with the change to § 183.435(b).

Section 183.445—Conductors: Support and protection. Several commentors opposed the requirement in § 183.445(a) for ducts or conduits to be self draining. The requirement for self draining ducts and conduits provides a means for moisture in ducts and conduits to drain so that conductors in them do not become exposed to excessive moisture. The commentors state that self draining ducts and conduits violate the bulkhead isolation requirements of § 183.410 and that they create a hazard if they drain into junction boxes or onto electrical terminations. The requirement for self draining ducts and conduits has been reconsidered in light of these comments. The conductors required in §§ 183.430 and 183.435 are moisture resistant. Ducts and conduits that carry these moisture resistant conductors are not an identifiable hazard, even if moisture is entrapped in these ducts and conduits. The requirement that ducts and conduits be self-draining is removed from, § 183.445(a).

A problem was discovered when the definition of "sheath" in § 183.402 was compared with § 183.445(a) which permits ducts and conduits to support conductors as an alternative to supporting conductors every 18 inches with clamps or straps. The definition of "sheath" in § 183.402(h) includes tubing which manufacturers consider to be a type of conduit. A sheath is not a form of conduit, and, therefore, it must be supported by clamps or straps every 18 inches as required in § 183.445(a). The intent of § 183.445(a) is that ducts and conduits are rigid, they can support conductors, independent of clamps or straps, because they are rigid. Most tubing and other materials used as a sheath are flexible and do not provide support for conductors. To remove the ambiguity the definition of "sheath" in § 183.402(h) has been changed to include flexible tubing. Rigid ducts and conduits are specified in § 183.445(a) as a means of conductor support.

In § 183.445(a) it was discovered that ducts and conduits were not included in the requirement that conductor supports be designed to prevent chafing and damage to conductors. Ducts and conduits are abrasive. Section 183.445(a) is changed to include ducts and conduits in this requirement.

Section 183.450—Conductors: Termination. Two commentors objected to § 183.450(a). They contend that the paragraph is too restrictive because it allows only closed ring, eyelet, or captive spade connectors for terminating conductors. The commentors point out that there are other connectors that meet the intent of the paragraph. The intent of § 183.450 is to require connectors to have a means of mechanical locking that prevents them from coming off the terminal or stud to which they are attached if the nut on the terminal or stud accidentally loosens. For these reasons, and in response to this comment, paragraph 183.450(a) is changed, and a new § 183.450(b) is added to provide additional general requirements that allows the use of other connectors that meet the intent of § 183.450.

One commentor suggested that the scope of § 183.450(f) (§ 183.450(e) in the proposal) be broadened to include the output terminals on alternators. Output terminals on alternators are continuously energized and, as a result, should be protected from short circuiting. The output terminal on alternators should be required to be shielded from accidental short circuiting or meet the requirements of § 183.455 for overcurrent protection. In response to this comment the scope of § 183.450(f) is changed to require all ungrounded terminals or studs that are continuously energized to meet the requirements of § 183.450(f) if they are not protected from overcurrent in accordance with § 183.450(f).

Two commentors suggested that § 183.450(g) (§ 183.450(f) in proposal) be changed to make it clear that the intent of the paragraph is to prevent accidental short circuiting between terminations from different circuits. The commentors indicate that it is a common safe practice for boat manufacturers to intentionally connect two ungrounded current carrying conductors from the same circuit at the same terminal. It is needlessly restrictive to require that the terminations be protected from each other when there is no hazard because they are in the same circuit. In response to these suggestions, § 183.450(g) is changed by specifying that ungrounded terminations from different circuits be protected from accidental short circuiting with each other.

Section 183.455—Overcurrent protection: *General.* One commentor proposed a change to § 183.455(e) to except conductors in secondary circuits of ignition systems. The commentor pointed out that conductors in secondary circuits of ignition systems are intentionally ungrounded in order to maintain an arc at the spark plug. Without the arc the engine would not run. Accordingly, overcurrent protection in these conductors would interrupt the arc and prevent the engine from running. It is not the purpose of § 183.455 to require overcurrent protection in secondary circuits of ignition systems. In response to the comment

conductors in secondary circuits of ignition systems are excepted from the requirements of § 183.455.

One commentor suggested the rules include standards for the time/current tripping characteristics of circuit breakers used to meet the requirements of §§ 183.455 and 183.460. The time/current tripping characteristics of a circuit breaker are the characteristics that determine the time that it takes the circuit breaker to open once the current in the circuit exceeds the current for which the breaker is rated. The commentor has a knowledge of the amperages allowed for conductors in the National Electrical the NEC, Table 5 does not require a rein using low amperage, household type circuit breakers. The commentor's knowledge and experience suggests to him that the amperages allowed in Table 5 for two conductors that are bundled together, which are higher than those allowed in the NEC, combined with the time/current tripping characteristics of low amperage, household type circuit breakers, can result in conductors overheating and causing fires.

Table 5 is based on the standards in the NEC, Table 5 differs from the NEC only in relation to the amperage allowed to be carried by two conductors that are bundled together. The NEC requires a reduced amperage when two or more conductors are bundled together. Unlike the NEC, Table 5 does not require a reduced amperage in the conductors when two conductors are bundled together, but Table 5 does require reduced amperage in each conductor in a bundle of three or more conductors. The amount of reduced amperage required by Table 5 for three or more conductors in a bundle is the same as is required by the NEC for the corresponding number of conductors.

A review of industry data on conductor temperatures when conductors are carrying continuous currents indicates that there is no hazardous temperature rise for the two conductor combination. The time/current tripping characteristics of low amperage, household type circuit breakers is not an identifiable hazardous situation when considering the two conductor combination. The commentor does not provide any supporting data and the Coast Guard has no reported fire and explosion accidents attributed to circuit breakers failing to protect conductors. For these reasons, this rule is not changed in response to the comment.

Section 183.460—Overcurrent protection: Special applications. Some commentors objected to §§ 183.460 (a), (b), and (c) because they appear to violate the intent of § 183.455. The intent of § 183.455 is to protect conductors from overcurrent while §§ 183.460 (a), (b), and (c) are concerned with protecting electrical components from overcurrent.

It is not the intent of these standards to protect electrical components because they have not been identified as a major source of electrical fires due to overcurrent. The comments are accepted. Review of §§ 183.460 (a), (b), and (c) indicates that these paragraphs are inconsistent with § 183.455 and they are not needed. Paragraphs 183.460 (a), (b), and (c) of the proposal are removed from this rule.

One comment objected to § 183.460(d) because it does not require a master switch at the storage battery. The commentor feels the omission of a master switch creates a safety hazard because there is no easy way to disconnect the battery in an emergency. The merits of this comment are being considered and may become the subject of future rulemaking.

One commenter objected to the provision in § 183.460(d) that allows overcurrent protection for a conductor to be located 72 inches away from the battery. The commentor argues that the 72 inches of unprotected conductor can worsen a fire because the insulation could be burned off, exposing the electrically hot conductor. The unprotected hot conductor could then short circuit causing a fire or ignite materials not yet burning. The commentor suggests that the overcurrent protection should be located within 12 inches of the battery to reduce the length of unexposed conductors. This comment is rejected. The safest alternative to eliminating an unprotected conductor is to require an overcurrent protection device on the battery. However, this type of installation is impractical because the inaccessible location of the battery and the possibility of damage to the overcurrent protection device by battery acid vapors. The degree of this hazard was carefully considered during the development of these standards. The 72 inch provision is reasonable, within the scope of these minimum safety standards, and does not adversely affect boating safety.

One commentor objected to § 183.460(d) and suggested it be deleted because it requires a circuit breaker to be located within the engine room which exposes the circuit breaker to contaminating vapors and condensation that can cause premature failure of the circuit breaker as well as unnecessary nuisance outages. The comment is rejected because premature failure of a circuit breaker overcurrent protection devices and nuisance outages can be prevented by the use of a sealed circuit breaker.

Some commentors wanted clarification of § 183.460(d). They inferred from § 183.460(d) that a circuit breaker can be located more than 72 inches from the battery if the circuit breaker has a switch that disconnects the battery. The commentors feel that requiring a circuit breaker to have a switch restricts the design of circuit breakers and is not consistent with the intent of the paragraph. The intent of § 183.460(d) is to protect ungrounded supply conductors from storage batteries by locating an overcurrent protection device within 72 inches of the battery. Paragraph 183.460(d) does allow the overcurrent protection device to be located more than 72 inches from the battery if the circuit which the device is protecting also has a switch that disconnects the battery. This intent is made clear by deleting the third use of the word "breaker" in § 183.460(d). The switch to disconnect the battery does not have to be a part of the overcurrent protection. As long as the switch that disconnects the battery is in the circuit between the battery and the electrical load, the overcurrent protection can be located more than 72 inches from the battery.

Section 183.465—Conductors: Insulating materials. Two commentors suggested deletion of § 183.465 and Tables 4 and 5 in the proposal, if SAE Standard J378b is adopted in § 183.430 and because the National Electric Code is referenced in § 183.435. The commentors point out that SAE standard J378b, dated November, 1976, and the National Electric Code already specify insulating material standards. The comments are accepted. Review of these standards indicates that § 183.465 can be deleted from these standards without adversely affecting boating safety. Section 183.465 and Tables 4 and 5 are deleted from this rule.

Section 183.470—Caps, boots, and nipples. Several commentors suggested that the test requirements in § 183.470 be deleted because caps, boots, and nipples currently used by the boating and automotive industries are not capable of meeting the requirements of § 183.470. The technical content of § 183.470 was developed from standards used by these industries for testing high voltage conductor insulators made from materials similar to the materials used to make caps, boots, and nipples. There are no accepted industry standards, as such, for caps, boots, and nipples. The commentors indicated that the Society of Automotive Engineers is developing a standard for caps, boots, and nipples. We have reviewed the basic intent of the SAE standard and it is acceptable. The SAE standard, however, will not be completed for several months. For these reasons § 183.470 will be published at a later date.

The Tables in this Subpart I are renumbered because of the renumbering of tables in the preceding subparts of Part 183 and because of the deletion from this rule of proposed Tables 4 and 5.

It was noticed that the headings of §§ 183.435 and 183.460 as they are listed in the table of contents at the beginning of the regulations were not identical to the headings of these sections in the text of the regulations. The headings in the table of contents are changed by correcting the wording so that they are identical with the headings of §§ 183.435 and 183.460 in the text of the regulation.

Standards and Codes

The standards and codes referenced in these regulations have been approved for incorporation by reference by the Director of the Federal Register, and they are on file in the Federal Register Library.

Preparation of Compliance Guideline

Comments were received requesting more detailed definitions and information regarding the intent of many of the sections in this subpart. To the extent that it has been feasible, the regulations have been modified to be more specific. In other instances it has not been possible to change the regulation because a suggested change would impose restric-

tions on a manufacturer which would prohibit him from developing new materials and assembly methods.

The Coast Guard recognizes that a regulation of this magnitude is complex. For that reason a grant was given to the American Boat and Yacht Council, Inc, (ABYC). Under the grant, the ABYC is preparing a compliance guideline for these regulations. The guideline will contain explanatory and interpretive information, illustrations, and diagrams to aid manufacturers in complying with the regulations. The guideline will not prescribe the method a manufacturer must follow to comply with the regulations, but it will be a guide to methods that, if followed, will be accepable to the Coast Guard as meeting the intent and purpose of these rules.

The Coast Guard is working closely with ABYC in the preparation of these guidelines. Attention is being given specifically in areas where public comments indicated that additional information is needed. The guideline will be distributed by the Coast Guard through National Technical Information Service and will be available to the public before this rule is effective.

ECONOMIC IMPACT

This rule has been reviewed for economic effects under Department of Transportation "Policies to Improve Analysis and Review of Regulations" (41 FR 16200). The regulations will result in a cost to industry of approximately $1.275 million to $7.65 million per year. These industry costs will result in an increased cost to the consumer of 0.09 percent to 2.8 percent, depending on the size of the boat purchased. The benefit of the regulations is the reduction in the amount of property damage, the numbers of injuries, and the number of lives lost as a result of fewer gasoline fires and explosions.

Effective date: These rules become effective on August 1, 1977.

Authority: These regulations are adopted under authority of the Federal Boat Safety Act of 1971 (46 U.S.C. 1454). The authority vested in the Secretary of the Department of Transportation by the Act is delegated to the Commandant of the Coast Guard at 49 CFR 1.46(n)(1).

In consideration of the foregoing, Part 183 of Subchapter S of Chapter I, Title 33, Code of Federal Regulations, is amended by adding a new subpart I to read as set forth below.

I have determined that this document does not contain a major proposal requiring preparation of an Inflationary Impact Statement under Executive Order 11821 and OMB Circular A-107.

Dated: January 25, 1977.

O. W. SILER,
Admiral, U.S. Coast Guard Commandant.

Subpart I—Electrical Systems

GENERAL

Sec.

183.401 Purpose, applicability, and effective dates.
183.402 Definitions.
183.405 General.
MANUFACTURER REQUIREMENTS
183.410 Ignition protection.
183.415 Grounding.
183.420 Batteries.
183.425 Conductors: general.
183.430 Conductors in circuits of less than 50 volts.
183.435 Conductors in circuits of 50 volts or more.
183.440 Secondary circuits of ignition systems.
183.445 Conductors: support and protection.
183.450 Conductors: termination.
183.455 Overcurrent protection: general.
183.460 Overcurrent protection: special applications.

AUTHORITY: 46 U.S.C. 1454; 49 CFR 1.46(n)(1).

GENERAL

§ 183.401 Purpose, applicability, and effective dates.

(a) This subpart applies to all boats that have gasoline engines for electrical or mechanical power or propulsion, except outboard engines.

(b) The sections in this subpart are effective on the following dates:

August 1, 1977: § 183.401, § 183.405, § 183.420, § 183.445.
February 1, 1978: § 183.415, § 183.425, § 183.430, § 183.435, § 183.440, § 183.450, § 183.455, § 183.460.
August 1, 1978: § 183.410.

§ 183.402 Definitions.

As used in this subpart—(a) "ASTM" means American Society for Testing and Materials. ASTM standards in this subpart may be examined at Coast Guard Headquarters, Room 4314, Trans Point Building, 2100 2nd St., SW., Washington, D.C. 20590 and may be obtained from the American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103.

(b) "AWG" means American Wire Gauge.

(c) "Electrical component" means electrical equipment such as, but not limited to, conductors, solenoids, motors, generators, alternators, distributors, resistors, appliances and electrical control devices.

(d) "IEEE" means Institute of Electrical and Electronic Engineers, Inc. IEEE standards in this subpart may be examined at Coast Guard Headquarters, Room 4314, Trans Point Building, 2100 2nd St., SW., Washington. D.C. 20590 and may be obtained from the Institute of Electrical and Electronic Engineers, Inc., 345 East 47th Street, New York, N.Y. 10017.

(e) "NFPA" means National Fire Protection Association. NFPA standards in this subpart may be examined at Coast Guard Headquarters, Room 4314, Trans Point Building, 2100 2nd St., SW., Washington, D.C. and may be obtained from the National Fire Protection Association, 470 Atlantic Ave., Boston, MA 02110.

(f) "Pigtails" means external power conductors or wires that are part of electrical components and appliances, such as bilge pumps, blowers, lamps, switches, solenoids, and fuses.

(g) "SAE" means Society of Automotive Engineers, Inc. SAE standards in this subpart may be examined at Coast Guard Headquarters, Room 4314, Trans Point Building, 2100 2nd St., SW, Washington, D.C. 20590 and may be obtained from the Society of Automotive Engineers, Inc., 400 Commonwealth Drive, Warrendale, PA 15096.

(h) "Sheath" means a material used as a continuous protective covering, such as electrical tape, molded rubber, molded plastic, or flexible tubing, around one or more insulated conductors.

(i) "UL" means Underwriters Laboratories Inc. UL standards in this subpart may be examined at Coast Guard Headquarters, Room 4314, Trans Point Building, 2100 2nd St., SW, Washington, D.C. 20590 and may be obtained from Underwriters Laboratories Inc., 207 East Ohio Street, Chicago, IL 60611.

§ 183.405 General.

Each electrical component on a boat to which this subpart applies must meet the requirements of this subpart unless the component is part of an outboard engine or part of portable equipment.

MANUFACTURER REQUIREMENTS

§ 183.410 Ignition protection.

(a) Each electrical component must not ignite a propane gas and air mixture that is 4.25 to 5.25 percent propane gas by volume surrounding the electrical component when it is operated at each of its manufacturer rated voltages and current loadings, unless it is isolated from gasoline fuel sources, such as engines, and valves, connections, or other fittings in vent lines, fill lines, distribution lines or on fuel tanks, in accordance with paragraph (b) of this section.

(b) An electrical component is isolated from a gasoline fuel source if—

(1) A bulkhead that meets the requirements of paragraph (c) of this section is between the electrical component and the gasoline fuel source;

(2) The electrical component is—

(i) Lower than the gasoline fuel source and a means is provided to prevent fuel and fuel vapors that may leak from the gasoline fuel source from becoming exposed to the electrical component; or

(ii) Higher than the gasoline fuel source and a deck or other enclosure is between it and the gasoline fuel source; or

(3) The space between the electrical component and the gasoline fuel source is at least two feet and the space is open to the atmosphere.

(c) Each bulkhead required by paragraph (b)(1) of this section must—

(1) Separate the electrical component from the gasoline fuel source and extend both vertically and horizontally the distance of the open space between the fuel source and the ignition source;

(2) Resist a water level that is 12 inches high or one-third of the maximum height of the bulkhead, whichever is less, without seepage of more than one-quarter fluid ounce of fresh water per hour; and

(3) Have no opening located higher than 12 inches or one-third the maximum height of the bulkhead, whichever is less, unless the opening is used for the passage of conductors, piping, ventilation ducts, mechanical equipment, and similar items, or doors, hatches, and access panels, and the maximum annular space around each item or door, hatch or access panel must not be more than one-quarter inch.

§ 183.415 Grounding.

If a boat has more than one gasoline engine, grounded cranking motor circuits must be connected to each other by a common conductor circuit that can carry the starting current of each of the grounded cranking motor circuits.

§ 183.420 Batteries.

(a) Each installed battery must not move more than one inch in any direction when a pulling force of 90 pounds or twice the battery weight, whichever is less, is applied through the center of gravity of the battery as follows:

(1) Vertically for a duration of one minute.

(2) Horizontally and parallel to the boat's center line for a duration of one minute fore and one minute aft.

(3) Horizontally and perpendicular to the boat's center line for a duration of one minute to starboard and one minute to port.

(b) Each battery must be installed so that metallic objects cannot come in contact with the ungrounded battery terminals.

(c) Each metallic fuel line and fuel system component within 12 inches and above the horizontal plane of the battery top surface as installed must be shielded with dielectric material.

(d) Each battery must not be directly above or below a fuel tank, fuel filter, or fitting in a fuel line.

(e) Hydrogen gas discharged by a battery must not accumulate in the boat.

(f) The positive terminal of each battery must be identified by the letters "POS", or "P", or the symbol "+" marked on the terminal or on the battery case near the terminal.

(g) Each battery terminal connector must not depend on spring tension for its mechanical connection to the terminal.

§ 183.425 Conductors: general.

(a) Each conductor must be insulated, stranded copper.

(b) Except for intermittent surges each conductor must not carry a current greater than that specified in Table 5 for the conductor's gauge and temperature rating.

(c) For conductors in engine spaces, amperages must be corrected by the appropriate correction factor in note 1 of Table 5.

(d) Each conductor in a multiconductor sheath must be at least a No. 18 AWG conductor.

(e) Each conductor installed separately must be at least a No. 16 AWG conductor.

(f) Each No. 18 AWG conductor in a multiconductor sheath may not extend out of the sheath more than 30 inches.

(g) This section does not apply to communication systems; electronic navigation equipment; resistance conductors that control circuit amperage; high voltage secondary conductors and terminations that are in ignition systems; pigtails of less than seven inches of exposed length; and cranking motor conductors.

TABLE 5.—*Allowable amperage of conductors*

Conductor size (AWG)	Temperature rating of conductor insulation						
	60° C (140° F)	75° C (167° F)	80° C (176° F)	90° C (194° F)	105° C (221° F)	125° C (257° F)	200° C (392° F)
18	10	10	15	20	20	25	25
16	15	15	20	25	25	30	35
14	20	20	25	30	35	40	45
12	25	25	35	40	45	50	55
10	40	40	50	55	60	70	70
8	55	65	70	70	80	90	100
6	80	95	100	100	120	125	135
4	105	125	130	135	160	170	180
3	120	145	150	155	180	195	210
2	140	170	175	180	210	225	240
1	165	195	210	210	245	255	290
0	195	230	245	245	285	305	325
00	225	265	265	285	330	855	370
000	260	310	330	330	385	410	430
0000	300	360	385	385	445	475	510

NOTES

1. See the following table:

Temperature rating of conductor	60° C (140° F)	75° C (167° F)	80° C (176° F)	90° C (194° F)	105° C (221° F)	125° C (257° F)	200° C (392° F)
	0.58	0.75	0.78	0.82	0.85	0.89	1.00

2. See the following table:

Number of current carrying conductors:	*Correction factor*
3	0.70
4 to 6	.60
7 to 24	.50
25 and above	.40

§ 183.430 Conductors in circuits of less than 50 volts.

(a) Each conductor in a circuit that has a nominal voltage of less than 50 volts must—

(1) Meet the requirements of § 183.435; or

(2) Meet—

(i) The insulating material temperature rating requirements of SAE Standard J378b dated November 1976; and

(ii) SAE Standard J1127 dated November 1975, or SAE Standard 1128 dated November 1975.

(b) This section does not apply to communication systems; electronic navigation equipment; resistance conductors that control circuit amperage; and pigtails of less than seven inches of exposed length.

§ 183.435 Conductors in circuits of 50 volts or more.

(a) Each conductor in a circuit that has a nominal voltage of 50 volts or more must be—

(1) A conductor that has insulation listed and classified moisture resistant and flame retardant in Article 310, NFPA No. 70–1975, National Electric Code 1975;

(2) A flexible cord type SO, STO, ST, SJO, SJT, or SJTO listed in Article 400, NFPA No. 70–1975, National Electric Code 1975;

(3) A conductor that meets IEEE Std. 45–1971, dated December 3, 1970;

(4) A conductor listed for marine use by an independent testing laboratory which provides listing, labeling, and follow-up service; or

(5) A conductor that meets the mechanical water absorption and flame retardant standards of UL Standard 83, dated July 8, 1976.

(b) Where the nominal circuit voltage of each of three or more current carrying conductors in a duct, bundle, or cable is 50 volts or more, the amperages of each of those conductors must not exceed the value in Table 5 multiplied by the correction factor in note 2 to Table 5 for the number of conductors that carry 50 volts or more.

(c) This section does not apply to communication systems; electronic navigation equipment; resistance conductors that control circuit amperage conductors in secondary circuits of ignition systems; and pigtails of less than seven inches of exposed length.

§ 183.440 Secondary circuits of ignition systems.

(a) Each conductor in a secondary circuit of an ignition system must meet SAE Standard J557, dated January, 1968.

(b) The connection of each ignition conductor to a spark plug, coil, or distributor must have a tight fitting cap, boot, or nipple.

§ 183.445 Conductors: support and protection.

(a) Each conductor or group of conductors must be supported by clamps or straps not more than 18 inches apart unless the conductor or group of conductors is enclosed in a rigid duct or conduit. The clamps, straps, ducts, or conduits must be designed to prevent chafing or damage to the conductor insulation.

(b) If a conductor or group of conductors is connected between two components that can move in relation to each other, each conductor or group of con-

ductors must have a loop, slack, or other strain relief.

(c) Each conductor or group of conductors that passes through a bulkhead, structural member, junction box, or other rigid surface must be protected from abrasion.

(d) This section does not apply to communications systems; electronic navigation equipment; and high voltage secondary conductors and terminations in the ignition system.

§ 183.450 Conductors: termination.

(a) Each connection to a screw terminal or stud that is outside of a junction box or enclosure must be connected by a closed ring connector, eyelet connector, captive spade connector, mechanical locking connector, or spring locking connector.

(b) Each stripped conductor connected to a compression screw terminal that is outside a junction box or enclosure must be secured mechanically to provide strain relief for the stripped conductor connection.

(c) Each single friction connector, spring type connector, and multi-connector plug that is outside of a junction box or enclosure must not separate if subjected to a six pound tensile force along the axial direction of the connector for one minute.

(d) A soldered connection must not be the sole means of connection between two or more conductors or between a conductor and a connector, except a conductor may be soldered to a connector that joins the conductor to a battery terminal or stud, if the length of the soldered joint is at least 1.5 times the diameter of the stranded portion of the battery conductor.

(e) Each connection that is outside of a junction box and that is used to join conductors to each other or that is used to join a conductor to a connector must not break when subjected for 10 minutes to a tensile force shown in Table 6 for the smallest conductor size in the connection.

(f) Each ungrounded terminal or stud that is continuously energized must meet § 183.455 or must have a boot, nipple, cap, cover, or shield that prevents accidental short-circuiting at the terminals or studs.

(g) Each termination composed of an ungrounded current carrying conductor, terminal fitting, and connector must be protected from accidental short circuiting with—

(1) Another termination from another circuit composed of an ungrounded current carrying conductor, terminal fitting, and connector; or

(2) Any metal that is grounded.

(h) A conductor must not be joined to another conductor by a wire nut or wire screw.

(i) This section does not apply to communication systems and electronic navigation equipment.

§ 183.455 Overcurrent protection: general.

(a) Each ungrounded current-carrying conductor must be protected by a manually reset, tripfree circuit breaker or fuse.

(b) A manually reset, tripfree circuit breaker or fuse must be—

(1) At the source of power for each conductor;

(2) At the point where the conductor size is reduced to a smaller gauge; or

(3) At the origin of a circuit, if the circuit breaker or fuse has a current rating that prevents overloading of the smallest conductor in the circuit.

(c) The current rating of each circuit breaker or fuse must not exceed—

(1) For circuits of less than 50 volts, 150% of the value of the amperage in Table 5 for the conductor size it is protecting; and

(2) For circuits of 50 volts or more, the value of the amperage in Table 5 for the conductor size it is protecting. If this value does not correspond to a standard size or rated circuit breaker or fuse the next larger size or rated circuit breaker or fuse may be used if it does not exceed 150% of the allowed current capacity of the conductor.

(d) The voltage rating of each circuit breaker or fuse must not be less than the nominal circuit voltage of the circuit it is protecting.

(e) This section does not apply to resistance conductors that control circuit amperage; conductors in secondary circuits of ignition systems; pigtails of less than seven inches of exposed length; and power supply conductors in cranking motor circuits.

TABLE 6.—TENSILE TEST VALUES FOR CONDUCTOR SPLICES

(CONDUCTOR-CONDUCTOR AND CONDUCTOR-CONNECTOR JOINTS)

Wire size (AWG):	Tensile force pounds
18	10
16	15
14	30
12	35
10	40
8	45
6	50
5	60
4	70
3	80
2	90
1	100
0	125
00	150
000	175
0000	225

§ 183.460 Overcurrent protection: special applications.

(a) Each ungrounded supply conductor from a storage battery must have a manually reset, tripfree circuit breaker or fuse, unless the supply conductor is in the main power feed circuit from the battery to an engine cranking motor. The circuit breaker or fuse must be within 72 inches of the battery measured along the conductor, unless the circuit has a switch that disconnects the battery.

(b) Each ungrounded output conductor from an alternator or generator, except for self-limiting alternators or generators, must have a circuit breaker or fuse that has a current rating that does not exceed 120 percent of the maximum rated current of the alternator or generator at 60° C.

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CGD 74-209)

PART 183—BOATS AND ASSOCIATED EQUIPMENT

Safety Standards for Boat Gasoline Fuel Systems

• *Purpose.* This rule contains minimum safety standards for fuel systems on boats. The purpose of the rule is to reduce the number of deaths and injuries and the amount of property damage caused by fires and explosions of gasoline on boats. •

BACKGROUND

On September 30, 1976, the Coast Guard published its Proposed Safety Standards for Boat Gasoline Fuel Systems. Interested persons were invited to submit written data, views, or arguments concerning that notice prior to December 1, 1976.

All relevant comments were considered and several changes are made to the rule as a result of the comments. These regulations reflect the best possible accommodation of viewpoints from industry, surveyors, insurance companies, testing laboratories and private citizens.

DISCUSSION OF COMMENTS

The comments received are grouped according to the section to which they relate and are discussed below.

Section 183.501—Applicability. One commentor on § 183.501 requested that more time be granted before compliance is required with §§ 183.542 and 183.568 Section 183.582 deals with pressure tests for fuel systems and § 183.568 contains requirements for anti-siphon protection. The commentor requested the additional time because of possible tooling changes that may be necessary to comply with § 183.582 and because of the unavailability of the anti-siphon valves required by § 183.568. This comment is not accepted. The anti-siphon valves required by § 183.568 are commercially available, allowing boats to comply with this section immediately. Section 183.582(e) is, however, modified by excepting from the required examination each connection at fill and vent fittings. This modification of the rule eliminates the need for tooling changes.

One commentor requested that inboard boats with open engine installations be exempted from this rule because outboard engines are exempted. This comment is rejected. Even if the absence of an engine cover reduces fuel vapors, fuel leaks still occur, allowing fuel to leak into the boat where it can be ignited by electrical devices or other sources of ignition in the boat. Boats with outboard engines are exempted from these rules because outboard boats have a significantly lower rate of accidents involving fires and explosions of fuel.

One comment from an industry association suggested that outboard boats that have permanent fuel tanks be covered by these rules because these fuel tank installations are similar to those on inboard boats. This comment is rejected because present statistics show that the accident rate is too low, when compared with the cost of compliance, to warrant the inclusion of outboard boats.

Section 183.505—Definitions. One commentor pointed out that the specification for the fuel hoses in § 183.505 is too vague because it refers only to SAE Standard J30B. The SAE Standard J30B describes four different types of hoses, and specifies different test criteria for each application to which the hose is subjected. Specifically the commentor suggests that the fuel line should be specified SAE J30RI, one of the four types of hose in the SAE Standard. This comment is not accepted because it would prohibit the use of the other types of hoses which are specified in SAE J30B.

One commentor claimed that the description of the "USCG Type A Hose" and "USCG Type B Hose" in § 183.505 does not clearly state to what extent the SAE Standard has to be followed. The proposed § 183.505 was worded in such a way to require compliance with both the performance requirements and the construction dimensions of the SAE Standard. In response to this comment the word "performance" is added to the description to clarify that the requirement is to comply only with the performance requirements of the SAE Standard.

One commentor pointed out that the proposed rule also referred to a SAE J30B standard dated August 1973. The SAE J30B standard was recently replaced by SAE J30C, dated March 1976. The reference in § 183.505 to the SAE J30B has been changed to require compliance with the SAE J30C. Because Military Specification MIL P-2192913 is added to § 183.516(a)(2), a definition of the term "Military Specification" and a statement of the specification's availability are added to § 183.505.

Section 183.510—Fuel tanks. One commentor objected to the requirement in § 183.510 for mechanical testing of fuel tanks and proposed that these tests be deleted because tanks can be built sufficiently strong without the need to perform costly tests on them to determine their actual strength. This comment is rejected because mechanical tests are necessary to determine if a tank can survive the physical stresses encountered in the marine environment.

Several comments were received requesting the deletion of §§ 183.510 (d)(1) and (e)(1). Paragraphs 183.510 (d)(1) and (e)(1) require fuel tanks with a capacity of 25 gallons or more to be shock tested under § 183.584. The commentors argued that the shock test is not realistic because it simulates conditions that are more severe than the conditions that boats encounter in normal use. This comment is accepted because tests have shown that the proposed test does not simulate actual conditions. For this reason the requirement that tanks with capacities of 25 gallons or more be shock tested has been removed from §§ 183.510 (d) and (e)(1).

Section 183.512—Fuel tanks: prohibited materials. Two commentors asked that § 183.512 be changed to require that materials used for fuel tanks be of a specified thickness and alloy because some industry standards include those specifications. This request is rejected, because as long as the tank meets the tests for mechanical strength in § 183.510 there is no need to specify material and tank thickness.

One commentor objected to allowing metal tanks to be foamed in place. He argued that moisture can collect between the metal and the foam, causing the tank to corrode. The comment is rejected. The risk of moisture collecting between the tank and the foam, causing corrosion of the tank, is reduced by restrictions on the type of materials that can be used to construct the tank and by restrictions on the type of bond that must exist between the tank surface and the foam.

Section 183.514—Fuel tanks: labels One commentor suggested that § 183.514 should require the tank label to be placed on the tank where it can be easily inspected. The comment is rejected because a tank manufacturer cannot know which, if any, surface on the tank will be visible once the tank is installed.

Another commentor pointed out that § 183.514(b)(6), which requires the fuel tank label to include shock test classification in "g's," if applicable, be deleted as because the requirement is redundant in light of § 183.514(b)(8), which requires that a tank be installed in a location determined by the "g" load for which it has been tested. This comment is accepted. Section 183.514(b)(6) is removed and the subsequent paragraphs are renumbered.

Section 183.516—Cellular plastic used to encase fuel tanks. Some commentors objected to the requirement in § 183.516 that requires the use of polyurethane foam with a minimum density of 3.2 pounds per cubic foot. These commentors suggested the use of foam with a density of two pounds per cubic foot for encasing metal fuel tanks. The commentor claimed that two pounds density foam is sufficiently strong for encasing fuel tanks. The merits of these comments have been carefully reviewed and are rejected. The heavier density foam is needed for adequate compression strength and minimum water absorption.

One commentor suggested that ASTM Specification C-272 in § 183.516(b) of the proposal be replaced by Military Specification MIL P-21929B, a standard that is widely used by the boating industry and the military. Like the Military Specification, the ASTM Specification sets a limit on the amount of water that can be absorbed by cellular plastic foam. Most cellular plastic foams manufactured today, the commentor pointed out, absorb more water than is allowed to be absorbed under the ATSM standard. All of these foams, however, are able to meet the water absorption requirements of Military Specification MIL P-21929B. Because this rule sets only minimum acceptable safety standards for boats and because the Military Specification is an acceptable standard for marine use, it is substituted for the ASTM standard that appeared in proposed § 183.516(b). Proposed § 183.516(b) appears as § 183.516(a)(2) in this rule.

The density specification for polyurethane foam in proposed § 183.516(d) was incorrectly specified as 3.6 pounds per cubic foot. The density specification is corrected to 3.2 pounds per cubic foot.

One commentor pointed out that the proposed rule required cellular plastic to meet two different requirements: one for compressive strength, and one for a minimum density, because the word "and" was placed between the two requirements in the proposed rule. The commentor claimed that no cellular plastic meets both requirements. He suggested that the regulations should be changed to specify that only one of the requirements has to be met. This suggestion is accepted. It has been determined that cellular plastic used to encase metallic fuel tanks is acceptable as long as it meets either the requirement for compressive strength or the requirement for a minimum density for polyurethane foam. To make this determination clear an editorial change is made by rearranging the order of the paragraphs in § 183.516.

Section 183.520—Fuel tank systems. One commentor suggested that the heading of § 183.520 be changed from "Fuel tank vents" to "Fuel tank systems", to indicate that the vents are not part of the fuel tank, but instead are part of the fuel tank system. This suggestion is accepted because ventilation of the fuel tank is achieved through a system of components such as hoses and fittings. The word "system" is added after the word "vent" in the phrase "each fuel tank must have a vent * * *" in § 183.520 (a) for the same reason. Based on this comment, the word "system" is also added to the heading of § 183.552 for this same reason.

One commentor wanted to know why § 183.522(a) prohibits fuel from blowing back through the fill fitting when a tank is between one-fourth and three-fourths full. Fuel blowback can occur before a steady flow of fuel has started to pour into a tank that is about one-fourth full or when, during refueling, the fuel in the tank reaches the three-fourth full level and begins to surge along the inside top surface of the tank. Fuel that is blown back through the fill fitting may enter the boat and come in contact with a source of ignition and cause a fire or explosion.

Some commentors claimed that a flow rate for filling a fuel tank at nine gallons per minute, required by § 183.522 (b), is too high and should be lowered. This suggestion is not accepted because a flow rate of nine gallons per minute approximates the actual flow from a gasoline pump nozzle when it is used to fill the fuel tank in a boat. Unless the fuel tank, in combination with the fill and vent hoses, is capable of being filled up at a rate of at least nine gallons per minute, an overflow of gasoline is likely to occur. Another commentor suggested that the flow rate be changed to "at a

prudent rate". This suggestion is also rejected because a flow rate must be specified so a test can be conducted to determine compliance with this requirement.

Section 183.524—Fuel pumps. One commentor suggested that the materials used for fuel pumps be specified because of the chance that some materials might melt in a fire. This proposal is not accepted; the fire test requirement in § 183.590 assures that the material used for fuel pumps is durable enough to withstand a fire of at least 2½ minutes in duration. In this time period persons in the boat can notice the first and extinguish it before it spreads.

Section 183.526—Carburetors. Several commentors wanted to know if "leakage" as used in § 183.526(a) includes internal leaks within a carburetor. As used in the regulation, the word "leaks" means to leak externally from the carburetor into the boat. Any flow of fuel from the carburetor to the engine is internal and does not constitute a leak. The words "must meet the requirements of paragraph (b) of this section" are added to § 183.526(a) to specify how the presence of a leak is determined after the fire test under § 183.590 is conducted.

One commentor pointed out that under the regulation twin carburetors could leak ten cubic centimeters of fuel into an engine compartment and still comply with this regulation. This amount of leakage is acceptable; there still is a safety margin before the fuel vapors in an engine compartment reach an explosive level.

One commentor asked if carburetors that have been modified using racing kits have to be in compliance. The manufacturer of the boat is responsible for the modified carburetor meeting the requirements of this section if he installs or furnishes the kit. Modifications performed by the boat owner are not subject to this regulation.

Section 183.528—Fuel stop valves. One commentor suggested that § 183.528 require an expansion valve in the fuel line, if a fuel line has a closed stop valve in each end. An expansion valve eliminates the risk of the fuel line rupturing by relieving the pressure build-up in the fuel line if fuel expands due to temperature increases. This suggestion is not accepted because this type of failure has not shown up in accident statistics.

Section 183.530—Spud, pipe, and hose fitting configuration. One commentor suggested that fill lines should meet the requirements in § 183.530. Section 183.530 requires each spud, pipe, or hose fitting used with hose clamps, except those used for a fuel fill line, to have a bead, flare, or a series of grooves or separations to prevent the connection from coming loose. The commentor believes that vibrations in the boat might cause the hose to come off a fill fitting spud that does not have a bead or grooves. The rule is not changed in response to this comment. The fill fittings are excepted from § 183.530 because the relatively stiff fill hose is hard to properly install over a spud with a bead and improper installation might result in a fuel leak. Moreover, the requirement that two clamps be used for installing fill hoses ensures a secure connection without need for a bead or grooves on the spud.

Section 183.532—Clips, straps, and hose clamps. Some commentors suggested that the word "nominal" be included where the proposed § 183.532(c) and Table 7 specified "minimum band width" because the band widths of mass produced clamps are narrower than the widths specified in Table 7 due to manufacturing tolerances. For this reason the regulation is changed by adding the word "nominal" to § 183.532(c) and to the heading of Table 7.

One commentor said that § 183.532(c) restricts the design of fuel line connections by requiring the use of hose clamps which have a minimum band width that is contingent on the outside diameter of the hose to which it is attached. The commentor suggested that, as an alternative to specifying minimum band widths for clamps, the Commandant should develop a performance standard for hose clamps that would specify how tightly a clamp must be fastened to a hose. This comment is rejected because a performance standard would require a manufacturer to conduct a complicated test to determine clamp tightness. The use of Table 7 is an advantage over the commentor's suggestion because it is an easy method of determining the size of clamp to use that experience shows will ensure a secure connection between the hose and fuel line without having to test the tightness of the connection.

Section 183.536—Seals and gaskets in fuel filters and strainers. One commentor suggested that ASTM D-471 Reference Fuel C be specified in § 183.536(b) instead of a gasoline that has at least 50 percent aromatic content. The reason for this suggestion is that ASTM Reference Fuel C has a 50 percent aromatic content and is readily available. This suggestion is rejected because the aromatic content of fuel is the characteristic that deteriorates seals and gaskets. The other characteristics in ASTM D-471 Reference Fuel C are not necessary for the purpose of § 183.536.

Another commentor suggested that the requirements for gaskets in § 183.536 should also apply to gaskets in fuel gauges installed on fuel tanks. These gaskets are exposed to fuel and are, therefore, subject to deterioration. This comment is rejected. Because fuel gauge gaskets are located above the normal level of fuel in a tank, they are not constantly exposed to liquid fuel, and, because of this fact, there is little chance of their deterioration. Gaskets in fuel filters and strainers, on the other hand, are constantly exposed to the deteriorating effects of liquid fuel.

Section 183.538—Metallic fuel line materials. One commentor suggested that the word "metallic" be included in the heading of § 183.538 to clarify that this section does not apply to rubber fuel hoses. This suggestion is adopted.

Another commentor suggested that the minimum wall thickness specification of 0.029 inches in § 183.538(b) be replaced with a performance test in view of the different physical properties of the materials specified. This suggestion is rejected because its adoption would make it necessary for a boat manufacturer to perform costly tests to determine the strength and corrosion resistance of fuel line materials. Experience has shown that the use of the specified materials at the specified thickness ensures a safe fuel line.

One commentor wanted to know if stainless steel braided teflon covered aircraft hose is considered metallic fuel hose. Teflon covered hose is not considered metallic because the teflon is the material that comes in contact with fuel. Thus, teflon covered hose must meet the requirements for USCG Type A or B hoses.

Section 183.540—Hoses: identification. One commentor pointed out an error in § 183.540(d). In the proposal, the paragraph said that the marking on the hose must be "at no less than 12 inch intervals." This wording allows any spacing above 12 inches. The paragraph should have restricted the spacing to 12 inches or less. Paragraph 183.540(d) is modified by substituting the words "at intervals of 12 inches or less" for the words "at no less than 12 inch intervals."

Section 183.550—Fuel tanks: installation. One commentor pointed out that in the proposal § 183.550(g) specified that cellular plastic used to encase nonmetallic fuel tanks is required to meet two different requirements: one for compressive strength, and one for a minimum density. The proposed rule was in error because cellular plastic used to encase non-metallic fuel tanks is acceptable as long as it meets either the requirement for compressive strength or the requirement for a minimum density for polyurethane foam. An editorial change is made to § 183.550(g) by substituting the phrase "§ 183.516 (b) or (c)" for the phrase "§ 183.516 (a) and (d)."

A commentor asked what part of the tank must be aft of the boat's half length. Paragraph 183.550(h) of the proposal specified where fuel tanks must be installed in relation to the boat's half length. Paragraph 183.550(h) did not specify what part of the tank should be used as reference when installing the tanks in the boat. The intent of paragraph § 183.550(h) is that the tank should be located with its center of gravity either forward or aft of the boat's half length, depending on the shock test to which the tank was subjected. A tank rated for a shock of less than 25 g's can only be installed in the aft half of the boat, where the pounding from waves is less severe than in the forward half of the boat. These tanks are labeled under § 183.514(b)(8) with the words, "Must be installed aft of the boat's half length."

The words "installed with its center of gravity" are added to § 183.550(h) to clarify this intent so the paragraph now reads as follows:

"Each fuel tank labeled under § 183.514(b)(8) for installation aft of the boat's half length must be installed with its center of gravity aft of the boat's half length."

Section 183.556—Plugs and fittings. One commentor suggested that § 183.556(b) be amended to require the use of a non-corrosive material for the construction of plugs used to service the fuel filter or strainer. This suggestion is rejected because the materials presently used for plugs do not corrode enough to cause leaks in the fuel system.

Section 183.558—Hoses and connections. One commentor pointed out a typographical error in Table 8. The dimension 0.020 inch had incorrectly been printed 0.29 inch. The error is corrected in Table 8.

Several commentors proposed that USCG Type B hose be allowed only on boats 26 feet in length or less. They cited that a fire in boats over 26 feet can go undetected for 2½ or more minutes and for this reason all hoses on these boats should be USCG Type A, the type of hose that is required to meet the fire test in § 183.590. This suggestion is rejected because the Coast Guard does not have accident statistics that would indicate a need for requiring boats over 26 feet to use only fire resistant hose. A long fuel hose which might be used in a boat over 26 feet might not be readily accessible in case of a fire, but that hose, because of its length, would contain more than five ounces of fuel and thus it is required to be fire proof. A short hose which contains less than five ounces of fuel, and thus does not have to be fire resistant, would be installed close to the engine and thus is readily accessible to a fire extinguisher in case of a fire.

Section 183.564—Fuel tank fill system. Several commentors claimed that the gasoline overflow rate standard in § 183.564(a) is excessive because no time period is specified for the duration of the overflow. Paragraph 183.564(a) requires a tank's fuel fill opening to be in a place where a gasoline overflow at the rate of five gallons per minute will not enter the boat. An overflow might occur during refueling when the fuel tank becomes full, but fuel continues to be pumped through the fuel fill nozzle into the tank. When this situation occurs, the fuel is blown back into the nozzle which causes the nozzle to automatically shut off the flow of fuel, thus limiting the amount of fuel that actually overflows. The amount of fuel that overflows depends on the rate that the fuel is pumped into the tank and the period of time that it takes for the nozzle to shut off and be removed from the fill opening once an overflow begins. Because no time period was stated in the proposed § 183.564(a), the commentors felt that an unlimited and undeterminable amount of fuel might be allowed to overflow during compliance testing. For this reason, the standard, as proposed, did not duplicate the actual conditions it was designed to protect against. In response to the comment, therefore, a time period of five seconds has been added to the standard. Five seconds is considered adequate for the purpose of approximating the time it takes a fuel pump nozzle to shut off and be removed from the fill opening once fuel begins to overflow from a full fuel tank.

Another commentor objected to the requirement of having to use two hose clamps in § 183.564(b)(3) instead of one, because a second clamp, incorrectly installed, can cut the fuel line causing a leak. The proposed regulation is not changed in response to this comment. Two clamps are required to ensure that the relatively stiff hose will not slide off the fitting or twist into a position that would cause a fuel leak. If a hose is cut because of an improperly installed clamp a leak can occur whether one or two clamps are used.

Two commentors recommended that the word "nominal" be added immediately before the words "band width" in § 183.564(d)(1) because band clamps, due to manufacturing tolerances are narrower than the widths specified in the rule. This recommendation is accepted for the reason given by the commentors.

Section 183.566—Fuel pump: placement. One commentor suggested that all fuel pumps should be mounted on the engine to reduce the risk of vibration causing a rupture in a fuel line connection between the fuel pump and the engine. The commentor, therefore, suggested that the phrase "or within 12 inches of the engine" be deleted from § 183.566. This suggestion is rejected. A fuel leak occurs where the fuel line is connected to the engine or fuel pump, and whether the pump is mounted on the engine or not does not change the chances of leaks; in each case the hose is subjected to the same amount of vibration.

Section 183.568—Anti-siphon protection. One commentor suggested that anti-siphon valves be required to pass the fire test under § 183.590 because the other components in the fuel system are required to pass the test. This comment is rejected. If a fuel stop valve fails in a fire, air is induced into the valve. This process has the effect of preventing siphoning of fuel from the fuel tank. The other components in the fuel system are required to meet the fire test, because if any of them fail, fuel would leak out of them and feed the fire.

Some other commentors requested the deletion of the requirement that electrically operated fuel stop valves and anti-siphon valves be mounted at the fuel tank withdrawal fitting. The commentors suggested this change because it would allow a fuel filter to be placed in the fuel line between the tank and valve. This filter would prevent dirt in the fuel from reaching the valves and interfere with their function. This reasoning is accepted and § 183.568 is changed to allow the valves to be installed away from the tank if the valve and fuel line are mounted higher than the top of the tank. By mounting the fuel line higher than the top of the tank, fuel runs back into the tank, instead of running out of the fuel line, if the line is severed.

Section 183.582—Static pressure test for fuel systems. Some commentors requested that carburetors not be included in the pressure test under § 183.582(a) because the carburetor can not be pressurized without pressurizing the engine. This comment is accepted. The intent of the pressure test is to ensure that the fuel system, excluding the carburetor and engine, does not leak fuel. Paragraph 183.582(a) is modified to indicate that only that portion of the fuel system that is between the carburetor and the fill and vent fittings on the boat is pressure tested.

Several commentors questioned the requirement in § 183.582(e) for examination of all connections after the static pressure test. These commentors pointed out the difficulty in visually inspecting for possible leaks the fill and vent fittings below a boat deck and suggested that this requirement be deleted. This suggestion is adopted. Because they are at the highest point in the fuel system, fuel hoses at the deck fittings normally do not contain any fuel which can leak into the boat. Section 183.582(e) is modified by excepting each connection between the fill and vent fitting and the line at the deck or hull from the examination required under § 183.582(e).

Section 183.584—Shock test. One commentor pointed out that the requirement in § 183.584 to cap and seal each opening in the tank should be omitted because if these openings are capped there is no outlet for pressure that may build up due to changes in the water temperature. Without openings in the tank, excessive pressure can build up, causing the tank to fail structurally. For this reason, this comment is accepted and § 183.584(e) of the proposal is deleted and the subsequent paragraphs are renumbered.

Several commentors suggested that the shock test under § 183.584 for tanks with a capacity of 25 gallons or more does not simulate actual boating conditions and should be deleted or modified. The duration of the shock between 35 and 45 milliseconds was claimed to be especially severe. This reasoning is accepted and the reference to the alternative testing for tanks 25 gallons or more is deleted from § 183.584(e) (1) and (2). The tests required under §§ 183.586 and 183.588 are sufficient to ensure that fuel tanks with a capacity of 25 gallons or more are strong enough to withstand actual usage in boats.

Two commentors suggested that § 183.584(f), which requires each vertical acceleration pulse to approximate a half sine wave, be omitted because a half sine wave is neither definable nor reasonably achievable. The shock test ensures that the tank can withstand actual boating conditions without the need of specifying the shape of the shock wave. The requirement to approximate a half sine

wave for the shock would have imposed unnecessary cost on the tank manufacturers because of the sophisticated equipment that would have been required to perform the test. For these reasons the commentors suggestion is accepted and the requirement is removed.

Section 183 588—Slosh test. Some commentors pointed out that § 183.588(c) of the proposal, which requires preconditioning the tank in fuel for 30 days prior to testing, is redundant because the preconditioning has already taken place under § 183.586 and should not have to be repeated. This is correct, § 183.588(c) is deleted and the subsequent paragraphs are renumbered.

Section 183.590—Fire test. Several commentors requested that regular pump gasoline, because of its lower cost, be allowed as an alternative to the use of heptane in the fire test under § 183.590. This comment is rejected because regular pump gasoline produces a different temperature than heptane produces. Unless heptane is used in the test, a manufacturer can not be certain that his product meets the temperature requirement of this rule.

PREPARATION OF COMPLIANCE GUIDELINES

Several comments were received requesting more detailed definitions and test procedures on many of the sections in this subpart. To the extent that it has been feasible, the regulations have been modified to be more specific. In other instances it has not been possible to change the regulation because a suggested change would impose restrictions on a manufacturer which would prohibit him from developing new materials and assembly methods.

The Coast Guard recognizes that a regulation of this magnitude is complex. For that reason a grant was given to the American Boat and Yacht Council, Inc. (ABYC). Under the grant, the ABYC is preparing a compliance guideline for these regulations. The guideline will contain explanatory and interpretative information, illustrations, and diagrams to aid manufacturers in complying with the regulations. The guideline will not prescribe the method a manufacturer must follow to comply with the regulations, but it will be a guide to methods that, if followed, will be acceptable to the Coast Guard as meeting the intent and purpose of these rules.

The Coast Guard is working closely with ABYC in the preparation of the guideline. Attention is being given specifically in areas where public comments indicated that additional information is needed. The guideline will be distributed by the Coast Guard through the National Technical Information Service and will be available to the public at cost before this rule is effective.

STANDARDS AND CODES

The standards and codes referenced in these regulations have been approved for incorporation by reference by the Director of the FEDERAL REGISTER and they are on file in the Federal Register Library.

ECONOMIC IMPACT

This rule has been reviewed for economic effects under Department of Transportation "Policies to Improve Analysis and Review of Regulations" (41 FR 16200). The regulations will result in a cost to industry of approximately $2.75 million to $9.35 million per year. These industry costs will result in an increased cost to the consumer of .16 percent to 3.3 percent, depending on the size of boat purchased. The benefit of the regulations is a reduction in the amount of property damage, the number of injuries, and the number of lives lost as a result of fires and explosions of gasoline on boats.

Effective date: These rules are effective on August 1, 1977.

AUTHORITY: This rule is adopted under authority of the Federal Boat Safety Act of 1971 (46 U.S.C. 1454). The authority vested in the Secretary of Department of Transportation by the Act is delegated to the Commandant of the Coast Guard at 49 CFR 1.46(n)(1).

Accordingly, with these changes and additions, Part 183 of Chapter I of Title 33 of the Code of Federal Regulations is amended by adding a new Subpart J to read as set forth below.

I have determined that this document does not contain a major proposal requiring preparation of an Inflationary Impact Statement under Executive order 11821 and OMB Circular A-107.

Dated: January 25, 1977.

O. W. SILER,
Admiral, U.S. Coast Guard
Commandant.

Subpart J—Fuel Systems

GENERAL

Sec.
183.501 Applicability.
183.505 Definitions.
183.507 General.

EQUIPMENT STANDARDS

183.510 Fuel tanks.
183.512 Fuel tanks: prohibited materials.
183.514 Fuel tanks: labels.
183.516 Cellular plastic used to encase fuel tanks.
183.518 Fuel tank openings.
183.520 Fuel tank vent systems.
183.522 Fuel tank fill systems.
183.524 Fuel pumps.
183.526 Carburetors.
183.528 Fuel stop valves.
183.530 Spud, pipe, and hose fitting configuration.
183.532 Clips, straps, and hose clamps.
183.534 Fuel filters and strainers.
183.536 Seals and gaskets in fuel filters and strainers.
183.538 Metallic fuel line materials.
183.540 Hoses: identification.
183.542 Fuel systems.

MANUFACTURING REQUIREMENTS

183.550 Fuel tanks: installation.
183.552 Plastic encased fuel tanks: installation.
183.554 Fittings, joints, and connections.
183.556 Plugs and fittings.
183.558 Hoses and connections.
183.560 Hose clamps: installation.
183.562 Metallic fuel lines.
183.564 Fuel tank fill system.
183.566 Fuel pump: placement.
183.568 Anti-siphon protection.
183.570 Fuel filters and strainers: installation.
183.572 Grounding.

TESTS

183.580 Static pressure test for fuel tanks.
183.582 Static pressure test for fuel systems.
183.584 Shock test.
183.586 Pressure impulse test.
183.588 Slosh test.
183.590 Fire test.

AUTHORITY: 46 U.S.C. 1454; 49 CFR 1.46 (n)(1).

Subpart J—Fuel Systems

GENERAL

§ 183.501 Applicability.

(a) This subpart applies to all boats that have gasoline engines, except outboard engines, for electrical generation or mechanical power for propulsion.

(b) The sections in this subpart are effective on the following dates:

AUGUST 1, 1977

183.501	183.562
183.505	183.566
183.507	183.568
183.518	183.572
183.520	183.580
183.528	183.582
183.534	183.584
183.536	183.586
183.538	183.588
183.542	183.590
183.556	

FEBRUARY 1, 1978

183.510	183.550
183.514	183.554
183.522	183.560
183.530	183.564
183.532	183.570

AUGUST 1, 1978

183.512	183.540
183.516	183.552
183.524	183.558
183.526	

§ 183.505 Definitions.

As used in this subpart—

"ASTM" means American Society for Testing and Materials. ASTM standards in this subpart may be examined at Coast Guard Headquarters, Room 4314, Trans Point Building, 2100 2nd St., S.W., Washington, D.C. 20590 and may be obtained from the American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103.

"Flame arrestor" means a device or assembly that prevents passage of flame through a fuel vent.

"Fuel system" means the entire assembly of the fuel fill, vent, tank, and distribution components, including pumps, valves, strainers, carburetors, and filters.

"Military Specification" means a specification developed by the U.S. Armed Forces. Military Specifications in this subpart may be examined at Coast Guard Headquarters, room 4314, Trans Point Building, 2100 2nd St., S.W. Washington, D.C. 20590 and may be obtained from the Commander, Naval Ship Engineering Center, DOD Standardization Program & Documents Branch, Hyattsville, Maryland 20782.

"SAE" means Society of Automotive Engineers, Inc. SAE standards in this subpart may be examined at Coast Guard Headquarters, Room 4314, Trans Point Building, 2100 2nd St., S.W., Washington, D.C. 20590 and may be obtained from the Society of Automotive Engineers, Inc., 400 Commonwealth Dr., Warrendale, PA 15096.

"Static floating position" means the attitude in which a boat floats in calm water, with each fuel tank filled to its rated capacity, but with no person or item of portable equipment on board.

"UL" means Underwriters' Laboratories, Inc. UL standards in this subpart may be examined at Coast Guard Headquarters, Room 4314, Trans Point Building, 2100 2nd St., S.W., Washington, D.C. 20590 and may be obtained from Underwriters' Laboratories, Inc., 207 East Ohio Street, Chicago, IL. 60611.

"USCG Type A Hose" means hose that meets the performance requirements of—

(1) SAE Standard J30C, dated March, 1976 and the requirements of § 183.590; or

(2) UL Standard 1114 dated September 15, 1976.

"USCG Type B Hose" means hose that meets the performance reouirements of SAE Standard J30C, dated March, 1976.

§ 183.507 General.

Each fuel system component on a boat to which this subpart applies must meet the requirements of this subpart unless the component is part of an outboard engine or is part of portable equipment.

EQUIPMENT STANDARDS

§ 183.510 Fuel tanks.

(a) Each fuel tank in a boat must have been tested by its manufacturer under § 183.580 and not leak.

(b) Each fuel tank must not leak if subjected to the fire test under § 183.590. Leakage is determined by the static pressure test under § 183.580, except that the test pressure must be at least one-fourth PSIG.

(c) Each fuel tank of less than 25 gallons capacity must not leak if tested under § 183.584.

(d) Each fuel tank with a capacity of 25 to 99 gallons must not leak if tested under § 183.586.

(e) Each fuel tank of 100 gallons capacity or more must not leak if tested under §§ 183.586 and 183.588.

§ 183.512 Fuel tanks: prohibited materials.

(a) A fuel tank must not be constructd from terneplate.

(b) Unless it has an inorganic sacrificial galvanic coating on the inside and outside of the tank, a fuel tank must not be constructed from black iron or carbon steel.

(c) A fuel tank encased in cellular plastic or in fiber reinforced plastic must not be constructed from a ferrous alloy.

§ 183.514 Fuel tanks: labels.

(a) Each fuel tank must have a label that meets the requirements of paragraphs (b) through (d) of this section.

(b) Each label required by paragraph (a) of this section must contain the following information:

(1) Fuel tank manufacturer's name (or logo) and address.

(2) Month (or lot number) and year of manufacture.

(3) Capacity in U.S. gallons.

(4) Material of construction.

(5) The pressure the tank is designed to withstand without leaking.

(6) Model number, if applicable.

(7) The statement, "This tank has been tested under 33 CFR 183.580."

(8) If the tank is tested under § 183.584 at less than 25g vertical accelerations the statement, "Must be installed aft of the boat's half length."

(c) Each letter and each number on a label must—

(1) Be at least $\frac{1}{8}$ inch high and

(2) Contrast with the basic color of the label or be embossed on the label.

(d) Each label must—

(1) Withstand the combined effects of exposure to water, oil, salt spray, direct sun light, heat, cold, and wear expected in normal operation of the boat, without loss of legibility; and

(2) Resist efforts to remove or alter the information on the label without leaving some obvious sign of such efforts.

§ 183.516 Cellular plastic used to encase fuel tanks.

(a) Cellular plastic used to encase metallic fuel tanks must—

(1) Not change volume by more than five percent or dissolve after being immersed in any of the following liquids for 24 hours at 29° C:

(i) Reference fuel B ASTM D-471, dated December 18, 1968.

(ii) No. 2 reference oil of ASTM D-471, dated December 18, 1968.

(iii) Five percent solution of trisodium phosphate in water; and

(2) Not absorb more than 0.12 pound of water per square foot of cut surface, measured under Military Specification MIL P-21929B, dated June 22, 1970.

(b) Non-polyurethane cellular plastic used to encase fuel tanks must have a compressive strength of at least 60 pounds per square inch at ten percent deflection measured under ASTM D-1621, "Compressive Strength of Rigid Cellular Plastics", dated August 31, 1964.

(c) Polyurethane cellular plastic used to encase fuel tanks must have a density of at least 3.2 pounds per cubic foot, measured under ASTM D-1622, "Apparent Density of Rigid Cellular Plastics", dated September 30, 1963.

§ 183.518 Fuel tank opening.

Each opening into the fuel tank must be at or above the topmost surface of the tank.

§ 183.520 Fuel tank systems.

(a) Each fuel tank must have a vent system that prevents pressure in the tank from exceeding 80 percent of the pressure marked on the tank label under § 183.514(b)(5).

(b) Each vent must—

(1) Have a flame arrester that can be cleaned unless the vent is itself a flame arrestor; and

(2) Not allow a fuel overflow at the rate of up to two gallons per minute to enter the boat.

§ 183.522 Fuel tank fill systems.

Fuel must not blow back through the fuel fitting when a tank is—

(a) Between one-fourth and three-fourths full; and

(b) Refueled at a rate of at least nine gallons per minute.

§ 183.524 Fuel pumps.

(a) Each diaphragm pump must not leak fuel from the pump if the primary diaphragm fails.

(b) Each electrically operated fuel pump must not operate except when the engine is operating or when the engine is started.

(c) If tested under § 183.590, a fuel pump must not leak fuel.

§ 183.526 Carburetors.

(a) If tested under § 183.590, a carburetor must meet the requirements of paragraph (b) of this section.

(b) Each carburetor must not leak more than five cubic centimeters of fuel in 30 seconds when—

(1) The float valve is open;

(2) The carburetor is at half throttle; and

(3) The engine is cranked without starting; or

(4) The fuel pump is delivering the maximum pressure specified by its manufacturer.

(c) Each updraft and horizontal draft carburetor must have a device that—

(1) Collects and holds fuel that flows out of the carburetor venturi section toward the air intake;

(2) Prevents collected fuel from being carried out of the carburetor assembly by the shockwave of a backfire or by reverse air flow; and

(3) Returns collected fuel to the engine induction system after the engine starts.

§ 183.528 Fuel stop valves.

(a) Each electrically operated fuel stop valve in a fuel line between the fuel tank and the engine must—

(1) Open electrically only when the ignition switch is on; and

(2) Operate manually.

(b) If tested under § 183.590, a fuel stop valve must not leak fuel.

§ 183.530 Spud, pipe, and hose fitting configuration.

Except when used for a tank fill line, each spud, pipe, or hose fitting used with hose clamps must have—

(a) A bead;

(b) A flare; or

(c) A series of annular grooves or serrations no less than 0.015 inches deep, except a continuous helical thread, knurl, or groove.

§ 183.532 Clips, straps, and hose clamps.

(a) Each clip, strap, and hose clamp must—

(1) Be made from a corrosion resistant material; and

(2) Not cut or abrade the fuel line.

(b) When tested under § 183.590, a clip, strap, or hose clamp must not separate under a one pound tensile force.

(c) The minimum nominal band width of a hose clamp is determined under Table 7 by the outside diameter of the hose.

TABLE 7

Outside hose diameter (inches):	Minimum nominal clamp band width (inches)
Less than $\frac{1}{2}$	$\frac{1}{4}$
$\frac{1}{2}$ to $\frac{3}{4}$	$\frac{1}{2}$
Greater than $\frac{3}{4}$ to $1\frac{1}{2}$	$\frac{3}{4}$
Greater than $1\frac{1}{2}$	1

§ 183.534 Fuel filters and strainers.

When tested under § 183.590, each fuel filter and strainer must not leak fuel from the filter, strainer, or its connections.

§ 183.536 Seals and gaskets in fuel filters and strainers.

(a) Each gasket and seal used in a fuel filter and strainer must form an unsplit ring.

(b) Each gasket and each sealed joint in a fuel filter and strainer must not leak when subjected for 24 hours to a gasoline that has at least a 50 percent aromatic content at the test pressure determined under § 183.582(a).

§ 183.538 Metallic fuel line materials.

Each metallic fuel line connecting the fuel tank with the fuel inlet connection on the engine must—

(a) be made of seamless annealed copper, nickel copper, or copper-nickel; and

(b) except for corrugated flexible fuel line, have a minimum wall thickness of 0.029 inches.

§ 183.540 Hoses: identification.

(a) Each "USCG Type A" hose and each "USCG Type B" hose must be identified by the manufacturer by a marking on the hose itself. If the complete text of the marking is not on a section of hose, the boat manufacturer must attach a tag that meets the requirements of paragraphs (b) and (c) of this section.

(b) Each marking and tag must contain the following information in English:

(1) The statement "USCG TYPE (insert A or B) HOSE."

(2) The year in which the hose was manufactured.

(3) The manufacturer's name or registered trademark.

(c) Each character must be block capital letters and numerals that are at least one-eighth inch high.

(d) Each marking must be permanent, legible, and on the outside of the hose at intervals of 12 inches or less.

§ 183.542 Fuel systems.

Each fuel system in a boat must have been tested under § 183.582 by the boat manufacturer and not leak.

MANUFACTURER REQUIREMENTS

§ 183.550 Fuel tanks: installation.

(a) Each fuel tank must not be integral with any boat structure or mounted on an engine.

(b) Each fuel tank must not move at the mounting surface more than one-fourth inch in any direction.

(c) Each fuel tank must not support a deck, bulkhead, or other structural component.

(d) Water must drain from the surface of each metallic fuel tank when the boat is in its static floating position.

(e) Each fuel tank support, chock, or strap that is not integral with a metallic fuel tank must be insulated from the tank surface by a nonmoisture absorbing material.

(f) Cellular plastic must not be the sole support for a metallic fuel tank.

(g) If cellular plastic is the sole support of a non-metallic fuel tank, the cellular plastic must meet the requirements of § 183.516 (b) or (c)

(h) Each fuel tank labeled under § 183.514(b)(8) for installation aft of the boat's half length must be installed with its center of gravity aft of the boat's half length.

§ 183.552 Plastic encased fuel tanks: installation.

(a) Each fuel tank encased in cellular plastic foam or in fiber reinforced plastic must have the connections, fittings, and labels accessible for inspection and maintenance.

(b) If a metallic fuel tank is encased in cellular plastic or in fiber reinforced plastic, water must not collect between the plastic and the surface of the tank or be held against the tank by capillary action.

(c) If the plastic is bonded to the surface of a metallic fuel tank, the adhesive strength of the metal to the plastic bond must exceed the cohesive strength of the plastic.

§ 183.554 Fittings, joints, and connections.

Each fuel system fitting, joint, and connection must be arranged so that it can be reached for inspection, removal, or maintenance without removal of permanent boat structure.

§ 183.556 Plugs and fittings.

(a) A fuel system must not have a fitting for draining fuel.

(b) A plug used to service the fuel filter or strainer must have a tapered pipe-thread or be a screw type fitted with a locking device other than a split lock washer.

§ 183.558 Hoses and connections.

(a) Each hose between the fuel pump and the carburetor must be "USCG Type A" hose.

(b) Each hose used for a vent line or fill line and each hose from the fuel tank to the fuel inlet connection on the engine must be—

(1) "USCG Type A" hose; or

(2) "USCG Type A" or "USCG Type B" hose, if no more than five ounces of fuel is discharged in 2½ minutes when—

(i) The hose is severed at the point where maximum drainage of fuel would occur,

(ii) The boat is in its static floating position, and

(iii) The fuel system is filled to the capacity marked on the tank label under § 183.514(b)(5).

(c) Each hose must be secured by—

(1) A swaged sleeve;

(2) A sleeve and threaded insert; or

(3) A hose clamp.

(d) The inside diameter of a hose must not exceed the actual minor outside diameter of the connecting spud, pipe, or fitting by more than the distance shown in Table 8.

TABLE 8

If minor outside diameter of the connecting spud, pipe, or fitting is—	The inside diameter of the hose must not exceed the minor outside diameter of the connecting spud, pipe, or hose fitting by more than the following distance:
Less than ⅜ in.	0.020 in.
⅜ in. to 1 in.	0.035 in.
Greater than 1 in.	0.065 in.

§ 183.560 Hose clamps: installation.

Each hose clamp on a hose from the fuel tank to the fuel inlet connection on the engine, a hose between the fuel pump and the carburetor, or a vent line must—

(a) Be used with hose designed for clamps;

(b) Be at least one clamp width from the hose end;

(c) Be beyond the bead, flare, or over the serrations of the mating spud, pipe, or hose fitting; and

(d) Not depend solely on the spring tension of the clamp for compressive force.

§ 183.562 Metallic fuel lines.

(a) Each metallic fuel line that is mounted to the boat structure must be connected to the engine by a flexible fuel line.

(b) Each metallic fuel line must be attached to the boat's structure within four inches of its connection to a flexible fuel line.

§ 183.564 Fuel tank fill system.

(a) Each fuel fill opening must be located so that a gasoline overflow of up to five gallons per minute for at least five seconds will not enter the boat when the boat is in its static floating position.

(b) Each hose in the tank fill system must be secured to a pipe, spud, or hose fitting by—

(1) A swaged sleeve;

(2) A sleeve and threaded insert; or

(3) Two adjacent metallic hose clamps that do not depend solely on the spring tension of the clamps for compressive force.

(c) Each hose clamp in the tank fill system must be used with a hose designed for clamps.

(d) Hose clamps used in the tank fill system must—

(1) Have a minimum nominal band width of at least one-half inch; and

(2) Be over the hose and the spud, pipe, or hose fitting and not less than one-half inch from the end of the hose.

§ 183.566 Fuel pumps: placement.

Each fuel pump must be on the engine it serves or within 12 inches of the engine, unless it is a fuel pump used to transfer fuel between tanks.

§ 183.568 Anti-siphon protection.

Each fuel line from the fuel tank to the fuel inlet connection on the carburetor must—

(a) Be above the level of the tank top; or

(b) Have an anti-siphon device or an electrically operated fuel stop valve—

(i) at the tank withdrawal fitting; or

(ii) installed so the line from the fuel tank is above the top of the tank.

§ 183.570 Fuel filters and strainers: installation.

Each fuel filter and strainer must be supported on the engine or boat structure independent from its fuel line connections, unless the fuel filter or strainer is inside a fuel tank.

§ 183.572 Grounding.

Each metallic component of the fuel fill system and fuel tank which is in contact with fuel must be statically grounded so that the resistance between the ground and each metallic component of the fuel fill system and fuel tank is less than 100 ohms.

TESTS

§ 183.580 Static pressure test for fuel tanks.

A fuel tank is tested by performing the following procedures in the following order:

(a) Fill the tank with air or inert gas to the pressure marked on the tank label under § 183.514(b)(5). The pressure is measured by a calibrated pressure gauge with a pressure range not exceeding three times the test pressure required by this paragraph or by a manometer.

(b) Examine each tank fitting and seam for leaks using a leak detection method other than the pressure drop method.

§ 183.582 Static pressure test for fuel systems.

A fuel system is tested by performing the following procedures in the following order:

(a) Fill the portion of the system that is between the fuel line connection at the carburetor and the fill and vent fitting on the boat with air or inert gas to the greater of the following pressures:

(1) Three PSIG.

(2) One and one-half times the pressure created at the lowest point in the fuel system when the fill or vent line, whichever is lower in height, is filled to its top with fuel.

(b) Read the pressure. The pressure is measured by a calibrated pressure gauge with a pressure range not exceeding three times the test pressure required by this paragraph or by a manometer.

(c) Wait at least five minutes and thereafter wait one additional minute for each 10 gallon increment, or fraction thereof, in the tank's capacity greater than 50 gallons.

(d) Read the pressure in accordance with paragraph (b) of this section. A pressure drop measured at the end of the time required by paragraph (c) of this section is due to leakage.

(e) If no pressure drop is measured by the manometer or pressure gauge, then while the system remains pressurized, examine each fuel fitting, joint, and connection except each connection at fill and vent fittings for leaks, using a leak detection method other than the pressure drop method.

§ 183.584 Shock test.

A fuel tank is tested by performing the following procedures in the following order:

(a) Perform the static pressure test under § 183.580.

(b) If the tank is non-metallic, fill it to capacity with a gasoline that has at least a 50 percent aromatic content. Keep the fuel in the tank at 21° C or higher for 30 days prior to testing.

(c) Mount the tank to the platform of an impact test machine.

(d) Fill the tank to capacity with water.

(e) Apply one of the following accelerations within three inches of the center of the horizontal mounting surface of the tank. The duration of each vertical acceleration pulse is measured at the base of the shock envelope.

(1) If the tank is not labeled under § 183.514(b)(8) for installation aft of the half length of the boat, apply 1000 cycles of 25g vertical accelerations at a rate of 80 cycles or less per minute. The duration of the acceleration pulse must be between six and 14 milliseconds.

(2) If the tank is manufactured for installation with its center of gravity aft of the half length of the boat, apply 1000 cycles of 15g vertical accelerations at a rate of 80 cycles or less per minute. The duration of the shock pulse must be between six and 14 milliseconds.

(f) Perform the static pressure test under § 183.580.

§ 183.586 Pressure impulse test.

A fuel tank is tested by performing the following procedures in the following order:

(a) Perform the static pressure test under § 183.580.

(b) If the tank is non-metallic, fill it to capacity with a gasoline that has at least a 50 percent aromatic content. Keep the fuel in the tank at 21° C or higher for 30 days prior to testing.

(c) Mount the tank on a test platform.

(d) Fill the tank to capacity with water.

(e) Cap and seal each opening in the tank.

(f) Apply 25,000 cycles of pressure impulse at the rate of no more than 15 impulses per minute varying from zero to three PSIG to zero inside the tank top from a regulated source of air, inert gas, or water.

(g) Perform the static pressure test under § 183.580.

§ 183.588 Slosh test.

A fuel tank is tested by performing the following procedures in the following order:

(a) Perform the static pressure test under § 183.580.

(b) Perform the pressure impulse test under § 183.586.

(c) Secure the tank to the platform of a tank rocker assembly.

(d) Fill the tank to one-half capacity with water.

(e) Cap and seal each opening in the tank.

(f) Apply 500,000 cycles of rocking motion 15 degrees to each side of the tank centerline at the rate of 15 to 20 cycles a minute. The axis of rotation of the rocker and fuel tank must be perpendicular to the centerline of the tank length at a level six inches or less above or below the tank's bottom.

(g) Perform the static pressure test under § 183.580.

§ 183.590 Fire test.

(a) A piece of equipment is tested under the following conditions and procedures:

(1) Fuel stop valves, "USCG Type A" hoses, clips, straps, and hose clamps are tested in a fire chamber.

(2) Fuel filters, strainers, pumps, and carburetors are tested in a fire chamber or as installed on the engine.

(3) Fuel tanks must be tested filled with fuel to one-fourth the capacity marked on the tank in a fire chamber or in an actual or simulated hull section.

(b) Each fire test is conducted with free burning heptane and the component must be subjected to a flame for 2½ minutes.

(c) If the component is tested in a fire chamber—

(1) The temperature within one inch of the component must be at least 648°C sometime during the 2½ minute test;

(2) The surface of the heptane must be eight to 10 inches below the component being tested; and

(3) The heptane must be in a container that is large enough to permit the perimeter of the top surface of the heptane to extend beyond the vertical projection of the perimeter of the component being tested.

(d) If the component is being tested as installed on an engine, heptane sufficient to burn 2½ minutes must be poured over the component and allowed to run into a flat bottomed pan under the engine. The pan must be large enough to permit the perimeter of the top surface of the heptane to extend beyond the vertical projection of the perimeter of the engine.

(e) If a fuel tank is being tested in an actual or simulated hull section, the actual or simulated hull section must be of sufficient size to contain enough heptane to burn for 2½ minutes in a place adjacent to the tank.

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PART XII



DEPARTMENT OF TRANSPORTATION

Coast Guard

■

NAVIGATION SAFETY AND VESSEL INSPECTION REGULATIONS

Title 33—Navigation and Navigable Waters

CHAPTER I—COAST GUARD, DEPARTMENT OF TRANSPORTATION

[CGD 74–77]

PART 164—NAVIGATION SAFETY REGULATIONS

Navigation Procedures, Testing, and Equipment Requirements

The purpose of these amendments to Title 33 of the Code of Federal Regulations is to add a new Part 164 prescribing rules for navigation procedures, preliminary tests, and minimum equipment for vessels of 1600 gross tons or more when operating on the navigable waters of the United States, except the Panama Canal and St. Lawrence Seaway.

On page 18766 of the FEDERAL REGISTER of May 6, 1976, the Coast Guard published a notice of proposed rulemaking for these amendments. Operation of vessels that are as large as 1600 gross tons or more within coastal and harbor regions, where 80 percent of vessel casualties occur, regularly creates hazardous conditions with risks to persons, property, and the environment, especially if proper navigation procedures are not followed, essential vessel equipment is not operating properly, or a vessel does not have necessary equipment. As discussed in the preamble of the proposal, most vessels follow proper procedures, have the necessary equipment, and keep that equipment operating properly. It is those vessels that do not follow proper procedures or do not have properly operating, necessary equipment that aggravate the hazard. The hazard is compounded not only by the recurring problems of reduced visibility, adverse weather, and vessel congestion, but by the increasing speed and size of vessels, especially when carrying hazardous cargoes or other cargoes that can adversely affect the environment. The number of vessels involved in reported collisions, rammings, and groundings is increasing. Vessel casualties, such as those involving the *Torrey Canyon*, the *Tamano*, the *Oregon Standard*, and certain of those that have occurred in December of 1976 and January of 1977, might not have occurred if proper navigation procedures had been followed or if the vessels had had properly operating essential equipment. The purpose of these amendments is to prevent future casualties by requiring, for those larger vessels, that proper navigation procedures are followed, that necessary equipment is on board, and that all essential equipment is operating when those vessels are navigating in the coastal waters and harbors of the United States.

The public was invited to comment in writing on the proposed rules from May 6, 1976, through August 6, 1976, and at public hearings in Washington, D.C. on June 11, 1976, and in San Francisco, California on June 17, 1976. A discussion of comments received and changes in the proposed rules follows.

General comments: Fifteen commenters suggested that more and better training, not regulation, is needed. More and better training is desirable and the Coast Guard is considering many ways to help improve it; however, that training would not preclude the need for the proper navigational procedures and vessel equipment that these amendments address. Furthermore, these rules do apply to the large number of foreign flag vessels operating within our navigable waters, while licensing and certification requirements, including training, promulgated by the Coast Guard now do not. Five commenters recommended increasing the difficulty of license exams or establishing a higher license, such as the United Kingdom's "Extra Master". The Coast Guard is considering these recommendations for possible future action.

Ten commenters stated that the proposal includes nothing that is not already addressed in statute or regulation. The rules in this new part require navigation procedures that are not included in the statutory "rules of the road." The rules also require equipment for all U.S. and foreign vessels of 1600 gross tons or more that is not required under statute or other regulations for all those vessels and under all the operating conditions to which this part applies. Some of the proposed rules, such as those for lights, day signals, and fog signals, were duplicative and have not been included in these final rules.

One commenter stated that the proposed operating procedures would restrict a master's use of good judgment. The operating procedures in these amendments are safe operating procedures that most masters follow. If these rules are restrictive, the restriction applies to those few masters who in the past have not followed these minimally safe practices.

As one commenter observed, most vessels that operate exclusively upon rivers will not be affected by these rules because they are smaller than 1600 gross tons.

One commenter suggested that the Coast Guard should require, instead of the rules in this part, that shipping companies issue an operating manual. Although an operating manual consistent with these rules might be desirable, a rule requiring it could be applicable only to U.S. companies and would not be as comprehensive as these amendments, especially the equipment requirements, nor have the force of regulations.

Several commenters stated that some of the rules were vague. Some of the rules do not include detailed standards because all of the practical variables are not quantifiable. Those rules that could be more detailed have been changed, such as a detailed description of the maneuvering information that is required under paragraph (g) of § 164.35, paragraph (f) of the proposal.

Section 164.01 Applicability. Nine commenters requested a definition of "navigable waters of the United States." "Navigable waters of the United States" is defined in 33 CFR 2.05–25.

Applicability to tug and barge combinations that have large aggregate tonnages was suggested by seven commenters, to tugs and towing vessels by five commenters, to all vessels by one commenter, and to small passenger vessels by one commenter. These regulations are not appropriate for all of the vessels in each of those classifications. The Coast Guard is considering regulations for these vessels that would be the subject of separate rulemaking actions.

Section 164.11 Navigation underway: general. Ten commenters stated that the proposed operating procedures would create a heavy workload that would require additional manning. Changes in this section, which are discussed later in this preamble, should eliminate the need for any unnecessary manning in addition to that normally required upon vessels to which these rules apply.

Two commenters suggested that the rules be published as a code of navigational practices and not as mandatory regulations. As stated at the beginning of this preamble, the navigation procedures in these rules are followed by most masters. The Coast Guard is making them mandatory, instead of publishing a voluntary code, to reach those who now do not follow good navigation procedures.

One commenter stated that the regulation requires the master or person in charge to be guarantor of compliance and that he could not always, in his capacity, ensure compliance. The Coast Guard agrees that this would be especially true for equipment requirements. Therefore, the final rule is changed to include the "owner" of the vessel as an ensurer of compliance. Although this change is included in these amendments, any interested person may submit written comments on this particular change to the Commandant (G-CMC/81), U.S. Coast Guard, Washington, D.C. 20590. Each person submitting a comment should include his name, address, identify the notice (CGD 74–77), and give reasons in support of his comments. The Coast Guard will consider comments received before May 2, 1977 and may change the requirement in light of them. Copies of the comments received will be available for examination in Room 8117, Department of Transportation, Nassif Building, 400 Seventh Street, S.W., Washington, D.C.

Section 164.11(a). Six commenters requested a definition of "adequate number" of persons required to constantly man the wheelhouse to direct and control the movement of the vessel and fix the vessel's position. The intent of the paragraph is that the wheelhouse be "constantly manned" and that those functions be performed. Because of the variety of vessels to which this part applies, quantitative definition of "adequate number" is not practical. Therefore, to avoid confusion, the phrase "adequate number" is deleted.

Section 164.11(b). This paragraph requires the owner, master, or person in charge to ensure that persons performing the duties required under paragraph (a) be competent. Six commenters stated that the Coast Guard is responsible for ensuring competency through licensing and certification. "Competent" means more than qualified through licensing and certification. It also means physical and mental capacity to do the job at the time the person assumes the duty.

Section 164.11(c) in the proposal. This paragraph would have required the vessel's position to be fixed every 15 minutes. After further consideration, the Coast Guard has determined that this would not be practicable in all navigable waters. Therefore, it is not included in this final rule.

Section 164.11(c). This was paragraph (d) of the proposal which would have required the plotting of the vessel's position at each fix and the revised track on a chart of the area and that the person directing the movement of the vessel is informed of the vessel's position. Ten commenters stated that compliance would not be possible at present manning levels. Ten more commenters stated that the requirement is superfluous on rivers and in channels. Four others said this plotting would distract watch officers who are performing other duties. It is necessary for safety that the appropriate vessel's officers be aware of the vessel's position to supplement the functioning of a pilot; however, the Coast Guard has determined that the plotting of the track is unnecessarily burdensome in consideration of practical manning levels and the necessities of other duties. Therefore, the track plotting requirement is not included in the final rule.

Section 164.11(d). This was paragraph (e) in the proposal. This paragraph does not require specific navigation equipment, but requires the use of the electronic and other navigational equipment that is on a vessel plus geographic reference points and hydrographic contours for fixing positions. It should be read with the next paragraph which prohibits sole reliance on buoys.

Section 164.11(e). This was paragraph (f) in the proposal. Eight commenters suggested that buoys should be used to fix a position if no other aids are available. Buoys may be used to establish an estimated position if no other aids are available; however, they cannot be relied upon to establish a fix. Four commenters suggested that the Coast Guard spend more money on buoy maintenance. Three more stated that several buoys could be used to establish a fix. As stated in the note to this paragraph (e), strong currents, heavy seas, ice, and collisions with vessels can move, sink, or set adrift a buoy. "Spending more money" would not solve these problems. It is also not likely under these circumstances that several buoys could be used to establish a fix, but could only be used to establish an estimated position. The charted position of a buoy is approximate.

Section 164.11(g) in the proposal. This proposed requirement, to maintain a proper lookout, is included in the Federal "rules of the road", which are applicable to all vessels. Since it is therefore redundant, it is not included in the final rule.

Section 164.11(f). This was paragraph (h) in the proposal. Four commenters stated that the requirement to evaluate each closing radar contact conflicts with the radar Annex to the International Regulations for Preventing Collisions at Sea, 1960. That Annex cautions against reliance solely upon "scanty information" such as radar contacts and states what actions should be taken under certain circumstances. Paragraph (f) of these rules requires that each closing radar contact be evaluated, but does not require sole reliance upon radar and does not suggest what action should be taken once a contact is evaluated. One commenter stated that the rule was "pointless" in rivers and channels. The rule does not require plotting of course, speed, and closest point of approach of closing visual or radar contacts, which might not be effective in rivers and channels. The rule does require that the person directing the vessel's movement be aware of the actions of those contacts and the evaluation of how they may affect the navigation of that person's vessel.

Section 164.11 (g) and (h). These were paragraph (i) and (j) in the proposal. These rules require that rudder, engine speed, and direction orders be executed as given. One commenter stated that these rules would not prevent errors. Another commenter suggested that the requirement should be that the person directing the vessel's movement have a "positive indication" of proper execution. The intent of the rule is that the person directing the vessel's movement does what is necessary to ensure that these orders are being executed correctly, such as watching the direction the helmsman turns the wheel, the rudder angle indicator, and the engine order telegraph, so that person can respond immediately to correct any error being made. Some "positive indications," such as the movement of the vessel's head or change in vessel speed or engine vibrations, may not occur in time for correction of an error, especially on "very large" vessels.

One commenter suggested that the engine speed and direction orders be given using terms such as "ahead one-third" instead of terms such as "slow ahead," because there is less chance that the orders would be heard incorrectly. Application to foreign vessels to which this part applies of a rule requiring the use of this specific terminology would not be practicable.

Section 164.11(i). This was paragraph (k) in the proposal. One commenter stated the requirement that magnetic variation and deviation be known and correctly applied was "ridiculous" because the deviation changes can be so frequent. A survey of 300 randomly selected vessels showed that the deviation tables on many of these vessels were so out of date that the tables were of little use. The intent of this requirement is that a person directing the movement of a vessel be aware of the vessel's deviation. If that person has reasonably up to date tables or acts to verify deviation, such as by gyrocompass or celestial comparison, the requirement of this paragraph would be met and the safe navigation of the vessel enhanced.

Section 164.11(j). This was paragraph (l) in the proposal which would have required a qualified person to be at the steering position at all times. Six commenters stated that requiring the person to be at the steering position when a vessel was on automatic pilot was unreasonable. In light of this comment, the final rule requires only that the person be in the wheelhouse at all times. "Qualified person" has been changed to "competent" for the same reasons discussed earlier in this preamble for paragraph (a) of this section.

Section 164.11(k). This was paragraph (m) in the proposal. This paragraph requires a master and pilot conference to familiarize the pilot with the vessel because, although a pilot may be familiar with the type of vessel, each vessel has its own characteristics that often change with draft, trim, and speed. Furthermore, the pilot may not be familiar with the bridge layout and equipment and it would be too late to learn these things when risk of collision exists. Two commenters thought that the requirement was too vague. The paragraph is a clear expression of the intent of the requirement as just discussed. Further detail would be impractical because of the great variety of vessels to which this part applies. Three commenters asked about possible language barrier problems. If the pilot is unable to communicate somehow with the master, the Captain of the Port should be contacted under § 164.53 of this new part.

Paragraph (m)(2) in the proposal, which would have required the pilot to inform the master of abnormal characteristics of the area, is not included in this final rule. It may be the subject of a separate rulemaking at another time.

Section 164.11(l). This was paragraph (n) in the proposal. This paragraph requires the person directing the movement of the vessel to know the current velocity and direction for the area. One commenter stated that river current predictions are often inaccurate. The intent of the paragraph is that the person directing the movement of the vessel know as much about current velocity and direction as is possible.

Section 164.11(m). This was paragraph (o) in the proposal. One commenter stated that the predicted set and drift are unpredictable upon rivers. The intent of this paragraph is that the person directing the movement of the vessel use whatever data on current that is available to predict set and drift.

Section 164.11(n). This was paragraph (p) in the proposal. The words "tidal value" are replaced by "tidal state," as used in tide tables, to clarify the intent of the paragraph.

Section 164.11(q) in the proposal. This was to be a requirement for minimum net bottom clearance. It is not included in this final rule, but is to be the subject of a future rulemaking action.

Section 164.11(o). This was paragraph (r) in the proposal. It requires that the vessel's anchors be ready for letting go. Seven commenters suggested that application of the rule be limited to waters that are shallow enough for anchor use. Trying to narrowly define areas where the rule should apply would be impractical.

The intent of the rule is that the anchor be ready for use if necessary, such as when a vessel sheers suddenly into an area where it may ground. Nor should the rule be limited to confined or congested waters, as three commenters suggested, for the same reason. Six persons asked what "ready for letting go" means. "Ready for letting go" means that stoppers, covers, jackasses, and similar items are removed from the ground tackle and that the chain be rigged for quick release. It does not mean that the anchor should be walked out.

Section 164.11 (s) and (t) in the proposal. These proposed requirements were for the proper display of lights and day signals and the sounding of proper fog signals. These are included under the Federal "rules of the road," which are applicable to all vessels, and are therefore not included in this final rule.

Section 164.11(p). This was paragraph (u) in the proposal. Five commenters suggested that the Coast Guard coordinate this rule for setting a vessel's speed with the new Rule 6 of the International Regulations for Preventing Collisions at Sea, 1972. The Coast Guard has done so and the rules are consistent. Since Rule 6 applies to international waters, it is supplemented by this paragraph (p), which is more appropriate for the coastal and inland waters to which it applies.

Section 164.11(q). This was paragraph (v) in the proposal. The proposed paragraph, in part, required that the results of the tests reouired under § 164.25 be recorded in the vessel's "pilot house log." Two commenters suggested that the entry be in the "deck log." The intent of the rule is simply that the results be recorded in an official log of the vessel. To avoid confusion, the words "pilot house" are not included in the final rule.

Section 164.11(r). This was paragraph (w) in the proposal. This paragraph is the requirement that equipment required by this new part be maintained in operable condition. Four commenters suggested a "best effort" criterion. Two others stated that compliance is not always possible because of lack of parts and available technical ability. One commenter stated that radar, gyro, or depth finder malfunction should not be a reason to delay departure from a port where there are inadequate repair facilities. Notwithstanding these considerations, the intent of the rule is that this necessary equipment should be operating.

Section 164.15 Navigation underway: confined or congested waters and *Section 164.16 List of confined or congested waters.* These are special rules for the hazards of navigation in confined or congested waters. The substantive rules in § 164.15 are promulgated in this final rule as discussed in this preamble. The practical application of § 164.15, however, will not occur until specific geographic areas in which they would apply are included under § 164.16. The definition of "confined or congested waters," as requested by nine commenters, would be implicit in the naming of those waters. Those waters would be particularly hazardous because of restricted maneuvering room or a high volume of vessel traffic. The Coast Guard will conduct separate rulemaking actions for the listing of specific waters under § 164.16. A discussion of the rules in § 164.15 follows.

Section 164.15(a). The proposed rule stated that propulsion machinery is to be in the "maneuvering mode". One commenter requested a definition of "manuevering mode." To clarify the intent of the requirement, the final rule requires propulsion machinery to be ready to "respond immediately through its full operating range."

Section 164.15(b). This paragraph requires that the engine room be manned to operate the propulsion machinery as required under paragraph (a) of the section. Four commenters suggested that vessels that are designed for "unmanned" engine rooms be exempted. The intent of the paragraph is to require no more manning than is necessary to meet paragraph (a) of this section. "Engine room" also includes the main engine control station, even if it is not physically in the "engine room."

Section 164.15(c). This paragraph requires the availability of persons to anchor the vessel rapidly in an emergency. One commenter suggested that vessels with remote control of anchors be exempted. If there is remote control of anchors, the requirement is met by having persons at the remote control.

Section 164.15 (d) and (e) in the proposal. Paragraph (d) would have required the manning of the steering engine room to shift steering control from the pilot house to the steering engine room. Seventeen commenters stated that the requirement would be ineffective because a steering casualty cannot be so remedied quickly enough. In light of these comments, the requirement is not included in these final rules but will be considered further. Because of this, paragraph (e) of the proposal, which would have required communication between the pilot house and the person manning the steering engine room, is also deleted.

Section 164.15(d). This was paragraph (f) in the proposal. This paragraph prohibits the use of the automatic pilot device in confined or congested waters. Two commenters stated that automatic pilot is better than manual steering in certain situations. One suggested that the requirement be for use of the safest steering mode for a particular situation. One commenter stated that component failure in an auto pilot often causes a sudden sheer and that in confined or congested waters, there may be no time to shift. Furthermore, he stated that many companies have standing orders to use hand steering in "tight quarters." The last commenter's statements are consistent with the intent of the rule and the concept of the confined or congested waters in which it would apply. The paragraph is included in this final rule.

Section 164.17 of the proposal. The proposal stated that a rule for tug assistance in confined waters would be developed. This is to be the subject of a future rulemaking action.

Section 164.19 Requirements for vessels at anchor. To be chronologically consistent, paragraphs (a) and (b) of the proposal are interchanged in this final rule.

Section 164.19(a). This was paragraph (b) in the proposal. This paragraph requires the maintenance of a proper anchor watch. The proposed wording was "lookout". "Anchor watch" replaces it in this final rule in agreement with a comment, which stated that "anchor watch" was more appropriate.

Section 164.19(c). This paragraph combines paragraphs (c) and (d) in the notice. One commenter stated that veering chain or dropping a second anchor may solve the problem and that if repairs are being made to the vessel at anchor, it may not be able to get underway. Depending upon the severity of conditions, veering chain or dropping a second anchor may solve an anchor dragging problem; however, if conditions warrant, the vessel should be ready for getting underway if the other actions do not solve the problem. If the vessel has no propulsion, standby tug assistance may be appropriate.

Section 164.19 (e) and (f) in the proposal. These paragraphs would have required the display of proper light and day signals and sounding fog signals while at anchor. Since these are already required under the Federal "rules of the road", which are applicable to all vessels, they are not included in this final rule.

Section 164.23 in the proposal. This section would have required notification to the Captain of the Port or the Vessel Traffic Service of an area before getting underway under conditions that may abnormally affect vessel movement. There were 27 comments about the impracticality of this requirement. After consideration of these comments, the Coast Guard has determined that the practical value of this requirement is outweighed by its impractical aspects and it is not included in this final rule.

Section 164.25 Tests before entering or getting underway. Five commenters stated that the equipment tests required by this section are normal practice on "well-run" vessels and one commenter stated that the requirements are already included in parts of 46 CFR. The intent of the section is that these tests also be made on all those vessels to which this new part applies and not just the vessels to which the requirements in 46 CFR apply. 46 CFR is being amended to be consistent with this new rule. One commenter stated that compliance with this requirement is "impossible" for short inland or coastal voyages. These tests are as necessary for vessels of 1,600 or more gross tons that make short inland or coastal voyages, such as between Philadelphia and Baltimore, as they are for vessels that make longer voyages. If this seems impractical for a particular vessel, the Captain of the Port should be contacted under the requirements of § 164.55 of this new part.

Section 164.25(a). This paragraph requires the testing of primary and secondary steering gear. One commenter stated that careful inspection by a chief engineer or other qualified person would be sufficient. Visual inspection does not always disclose whether the system will fail and is less reliable than actual testing. One commenter suggested that testing a "trick wheel" is not practical while a vessel is underway. If this system is the only backup steering system, the test is necessary. Vessels to which this new part applies usually have at least two means of steering. To enhance safe navigation, both should be tested to ensure that they are operable.

Section 164.25(b). This paragraph requires the testing of internal vessel control communications and vessel control alarms. One commenter suggested that this apply only when necessary for safe maneuvering. These systems should be ready for all circumstances, including the unforeseen, for the purposes of safe navigation. One commenter stated that "all" of these systems on a highly automated vessel is a large number. Nevertheless, it is necessary for the purposes of safe navigation that these systems operate properly.

Section 164.25(c). The proposed paragraph (c) required the testing of "each emergency generator for at least fifteen minutes." Four commenters stated that once a week is sufficient. These are critical systems and whether or not they are working should be known at the time of actual vessel operation. Since the intent of the section is that there be a second working electrical power source, the final rule allows a standby or emergency generator. One commenter correctly suggested that, instead of a fifteen minute requirement, the test be as long as necessary to show proper functioning, including steady state temperature and pressure readings. The final wording has been changed accordingly.

Section 164.25(d). One commenter suggested that this requirement for the testing of storage batteries for emergency lighting and power systems to vessel control and propulsion machinery spaces not apply to vessels for which there is a regular testing program. The necessity of testing these critical systems at the time of entering or getting underway in the navigable waters of the United States is as discussed for the systems required under paragraphs (a) through (c) of this section.

Section 164.25(e). This paragraph requires the testing of main propulsion machinery, ahead and astern. Five commenters stated that backing engines in coastal waters might be dangerous. The Coast Guard assumes that reasonable masters would not do this test where it might be dangerous, such as in close proximity to other vessels. Two commenters suggested that the machinery be required to be tested only as is necessary to show that it can respond. That would meet the paragraph's requirement. One commenter suggested that the backing test of the engines be made when the vessel slows to pick up a pilot. This machinery must be tested, both ahead and astern, before entering the navigable waters of the United States, which is consistent with the intent of all the regulations in this new part as discussed in the beginning of this preamble.

Section 164.30 Charts, publications, and equipment: general. This section prohibits the operation of a vessel by any person unless the vessel has the charts, publications, and equipment as required by §§ 164.33 through 164.37 of this new part. Six commenters suggested a "due diligence" criterion for this requirement. That concept is reasonably included under the charts and publication requirements in § 164.33 as this section is rewritten in this final rule.

Section 164 33 Charts and publications. Seven commenters stated that the requirement to have the "most recently published" charts under paragraph (a)(1) is unreasonable under the present distribution system. Three commenters stated the same for the requirement under paragraph (a)(2) to have the "current" copy of the listed publications. Accordingly, the requirements are changed to require the "most recently published and available" charts and the "most recent, available * * *" copy of the publications.

Section 164.35 Equipment: all vessels. Seventeen commenters suggested that there be a requirement for "collision avoidance" device. Five commenters suggested a Loran C requirement for "large" vessels. Both will be the subject of a rulemaking action in the near future. Two commenters suggested that radio direction finding equipment be required. This equipment is now required for certain U.S. vessels. The Coast Guard is considering requiring it for all vessels of 1600 or more gross tons operating on the navigable waters of the United States.

Four commenters suggested that the burden of compliance for these equipment requirements be affirmatively placed upon vessel owners. Under the requirement of § 164.30 of this new part, if the owner, through his action or general policy, can reasonably be expected to ensure that the requirements of this equipment section are met, then the burden of compliance would be upon the owner.

Section 164.35(a). This paragraph requires a marine radar system for surface navigation. Four commenters suggested the requirement of gyro stabilization with north up capability. Three commenters suggested the requirement of reflection plotters. One comment suggested the requirement of a minimum 16 inch Plan Position Indicator (PPI) scope with moveable range rings. The Coast Guard has determined that these types of specifications are unnecessary at this time and that the usual radars that are available are sufficient for basic navigational safety. If further experience shows that more specification is necessary, the Coast Guard would conduct appropriate rulemaking actions.

Section 164.35(b). This paragraph requires an illuminated magnetic steering compass. Two commenters stated that many inland vessels do not use a compass. As stated earlier in this preamble, this part does not apply to most inland vessels because they are not 1600 gross tons or more. If an inland vessel is of 1600 gross tons or more and the compass is unnecessary for that vessel, a deviation may be requested under the requirements of § 164.55 of this new part.

Section 164.35(c). This paragraph requires a current magnetic compass deviation table or graph or compass comparison record for the steering compass. The comments on this requirement are discussed earlier in this preamble for § 164.11(i).

Section 164.35 (d) and (e). These were paragraph (d) in the proposal. For clarity, the two requirements, that there be a gyrocompass and that it or a repeater be illuminated and be at the main steering stand, are divided into two paragraphs.

Section 164.35(g). This was paragraph (f) in the proposal. It requires the display of maneuvering information on a fact sheet in the wheelhouse. To be consistent with a similar requirement in 46 CFR 35.20–40 and to clarify the intent of the requirement, the specific information required is stated in the paragraph in this final rule.

Section 164 35(h). This was paragraph (g) in the proposal. It requires an echo sounding device. Two commenters stated that the requirement was unnecessary in pilot waters and two other commenters stated that it was unnecessary for the Great Lakes. It is as important to know the depth of water in these waters as it is in any others. The requirement is unchanged.

Section 164.35(i). This was paragraph (h) in the proposal. It requires a device that can continuously record the depth readings of a vessel's echo sounding device. Nine commenters stated that the device serves no navigational purpose. The recorder is useful for navigational purposes as a valuable positioning device. One commenter stated that the requirement conflicted with IMCO Resolution A.224, which recommends a 15 minute recording capability. The requirement is that the device be one that can record continuously and not a requirement that it run continuously.

Section 164.35(j) in the proposal. This paragraph would have required an illuminated device that displays vessel speed, such as a pitometer log, revolutions-per-minute counter with speed equivalent table, or a direct read out device, such as a doppler indicator. Two commenters stated that such a device would not be useful on rivers. One commenter suggested that direct reading indicators, such as dopplers, be required on "large" vessels. After consideration of these comments and the facts that pitometer log swords would not be extended in shallow waters and revolutions-per-minute counters and speed equivalent tables are only valid in a steady state situation, the Coast Guard has determined that the requirement is insufficient as proposed. Because of the potential value of a direct speed indicating device, the Coast Guard is considering it as the subject of a future rulemaking action after more study; however, the requirement is not included in this final rule.

Section 164.37 in the proposal. This proposed section would have required two marine radar systems on vessels of 10,000 or more gross tons. As stated in the discussion of § 164.35 in this preamble, "collision avoidance" devices for vessels of 10,000 or more gross tons will be the subject of a rulemaking action in the near future. Since a radar system is a component part of some "collision avoidance" devices, this proposed requirement for a second radar is not included in this final rule; however, if after rulemaking procedures a requirement for collision avoidance devices is not promulgated as a final rule, the proposed requirement for a second radar would be reinstated.

Section 164.39 in the proposal. This proposed section would have required an illuminated rate of turn indicator on vessels of 35,000 gross tons or more. Two commenters stated that the device was not necessary on vessels of 100,000 gross tons or more. One commenter stated that the device was designed for use on rivers and was not appropriate for seagoing vessels. One commenter stated that the device had been insufficiently accurate when used on several of his vessels. The Coast Guard has determined that, although the rate of turn indicator may be useful on vessels of this size, further study is necessary and there is insufficient basis for requiring it in these rules.

Section 164.51 Deviatio s from rules: emergency. This section allows emergency deviations from these rules to avoid endangering persons, property, or the environment. Five commenters stated that this section only repeats the substance of Rule 29 of the International Regulations for Preventing Collisions at Sea, 1960, and Article 29 of the statutory inland "rules of the road" (33 U.S.C. 221). Although this section is consistent with those provisions, it applies specifically to the rules in this new part and not just to general navigation practices governed by the international regulations and inland "rules of the road." Proposed paragraph (b) of this section would have required a report of any deviation under this section to the Captain of the Port or Coast Guard District Commander. Two commenters stated this is unnecessary for brief emergency deviations. In light of these comments, the final rule is changed to require this report for only the failure of critical navigation equipment: the radar, gyrocompass, echo sounding device, or primary steering gear. This requirement is in paragraph (b) of new § 164.53. Paragraph (a) of this new section allows the person directing the movement of the vessel to continue a voyage if any equipment required by this new part stops operating properly, subject to the directions of the Captain of the Port under Part 160 of this chapter.

Section 164.55 Deviations from rules: continuing operation or period of time. This was § 164.53 in the proposal. Under this section, the Captain of the Port may authorize a deviation from these rules, if safe navigation is not impaired or the rules for preventing collisions at sea are not violated, for a vessel operating in the waters under his jurisdiction, for a continuing operation or for a period of time that he specifies. Two commenters stated that there would be "uneven enforcement" because Captains of the Port may interpret the rules differently. One commenter suggested that the section include a requirement that authorizations not be "unreasonably withheld." Another commenter suggested an internal procedure for informing Captains of the Port of the different deviations that have been authorized. The Coast Guard intends to issue internal guidelines so that this deviation authorization would be as consistent as is practicable. The intent of this section is to allow reasonable deviations from these rules if safe navigation of the vessel is not impaired and the rules for preventing collisions at sea are not violated. If a vessel operates in waters that include the jurisdiction of two or more Captains of the Port, an authorization from each is necessary. Deviation from the rules because of equipment failure on a particular voyage is covered under new § 164.53(a).

Section 164.61 Marine Casualty record retentio. Two commenters stated that this requirement for record retention when a vessel is involved in a marine casualty is unreasonable. One commenter stated that the requirement is already included in 46 CFR. This section cross references the record retention requirement in 46 CFR 4.05-15 for the convenience of those persons using these rules, which will be in 33 CFR. That requirement in Title 46 is necessary for the purposes of the marine casualty investigations that the Coast Guard is required to conduct.

This rule has been reviewed for economic effects under Department of Transportation "Policies to Improve Analysis and Review of Regulations" (41 FR 16200). Because the operational rules in this new part are followed already on most vessels and can be met with most existing manning levels, there should be no cost increase due to increased manning. The Coast Guard estimates that there should be no more than 1,100 U.S. flag vessels and 5,000 foreign flag vessels of 1,600 or more gross tons navigating in the navigable waters of the United States in any year. The following is based, in part, on a 1975 random survey of 300 vessels. Where appropriate, annual cost is based upon a 10 year amortization period. All of the vessels had radar. Adding a good marine radar to 5% of the 6,100 vessels for approximately $15,000 each would result in a cost of $1,282,500 in the first year and $457,500 in each of the following nine years. All the vessels had a magnetic compass. Adding the compass to 5% of the 6,100 vessels for $2,000 each would result in a cost of $496,000 in the first year and $61,000 in each of the following nine years. One vessel did not have a rudder angle indicator. Adding this indicator to 5% of the 6,100 vessels for approximately $4,000 each would result in a cost of $342,000 for the first year and $122,000 in each of the following nine years. Two vessels did not have a gyrocompass. Adding a gyrocompass to 10% of the 6,100 vessels for approximately $60,000 each would result in a cost of $10,260,000 in the first year and $3,660,000 in each of the following nine years. One hundred and seventy-nine vessels did not have their maneuvering characteristics posted. All U.S. vessels, approximately 1,100, are required to have it posted. If all 5,000 foreign vessels did not have it posted, testing for the information would cost approximately $5,000 each resulting in an amortized cost of $2,500,000 each year for ten years. Two vessels did not have a recording fathometer. Adding the fathometer to 10% of the vessels for $20,000 each would result in a cost of $2,420,000 in the first year and $1,000,000 in each of the following nine years.

The economic impact on the U.S. economy from U.S. vessels is the total cost of compliance in the first year plus 10% passed to the consumer in each of the ten years. The cost of foreign vessel compliance will be passed to the U.S. consumer evenly over the 10 year amortization period. The estimated first year cost from compliance to the U.S. shipping industry is $6,979,500. The estimated cost to the U.S. economy is $17,300,500 in the first year and $7,800,500 in each of the following nine years. The benefits from having this equipment and following the proper operating procedures would result not only in tangible savings, including less vessel damage or loss, less post vessel casualty costs, including investigation costs, and search and rescue costs, and less pollution clean up costs of which spill clean up costs alone are estimated at $30,000,000 to $35,000,000 per year, but significant intangible benefits, including less loss of life or injury, less pollution and resulting harm to the environment, and less hazards to navigation caused by abandoned vessels.

In consideration of the foregoing, Chapter I of Title 33, Code of Federal Regulations, is amended by adding a new Part 164 to read as follows:

Sec.

164.01 Applicability.
164.11 Navigation underway: general.
164.15 Navigation underway: confined or congested waters.
164.16 List of confined or congested waters.
164.19 Requirements for vessels at anchor.
164.25 Tests before entering or getting underway.
164.30 Charts, publications, and equipment: general.
164.33 Charts and publications.
164.35 Equipment: all vessels.
164.51 Deviation from rules: emergency.
164.53 Deviations from rules and reporting: non-operating equipment.
164.55 Deviations from rules: continuing operation or period of time.
164.61 Marine casualty reporting and record retention.

AUTHORITY: Sec. 104, 86 Stat. 427 (33 U.S.C. 1224); 49 CFR 1.46 (m) and (n)(4).

§ 164.01 Applicability.

This part applies to each self-propelled vessel of 1600 or more gross tons when it is operating in or on the navigable waters of the United States, except the Panama Canal and the St. Lawrence Seaway.

§ 164.11 Navigation underway: general.

The owner, master, or person in charge of each vessel underway shall ensure that:

(a) The wheelhouse is constantly manned by persons who—

(1) Direct and control the movement of the vessel; and

(2) Fix the vessel's position;

(b) Each person performing a duty described in paragraph (a) of this section is competent to perform that duty;

(c) The position of the vessel at each fix is plotted on a chart of the area and the person directing the movement of the vessel is informed of the vessel's position.

(d) Electronic and other navigational equipment, external fixed aids to navigation, geographic reference points, and hydrographic contours are used when fixing the vessel's position;

(e) Buoys alone are not used to fix the vessel's position;

NOTE.—Buoys are aids to navigation placed in approximate positions to alert the mariner to hazards to navigation or to indicate the orientation of a channel. Bouys may not maintain an exact position because strong or varying currents, heavy seas, ice, and collisions with vessels can move or sink them or set them adrift. Although buoys may corroborate a position fixed by other means, buoys cannot be used to fix a position; however, if no other aids are available, buoys alone may be used to establish an estimated position.

(f) The danger of each closing visual or each closing radar contact is evaluated and the person directing the movement of the vessel knows the evaluation;

(g) Rudder orders are executed as given;

(h) Engine speed and direction orders are executed as given;

(i) Magnetic variation and deviation and gyrocompass errors are known and correctly applied by the person directing the movement of the vessel;

(j) A person whom he has determined is competent to steer the vessel is in the wheelhouse at all times;[1]

(k) If a pilot other than a member of the vessel's crew is employed, the pilot is informed of the draft, maneuvering characteristics, and pecularities of the vessel and of any abnormal circumstances on the vessel that may affect its safe navigation;

(l) Current velocity and direction for the area to be transited are known by the person directing the movement of the vessel;

(m) Predicted set and drift are known by the person directing movement of the vessel;

(n) Tidal state for the area to be transited is known by the person directing movement of the vessel;

(o) The vessel's anchors are ready for letting go;

(p) The person directing the movement of the vessel sets the vessel's speed with consideration for—

(1) The prevailing visibility and weather conditions;

(2) The proximity of the vessel to fixed shore and marine structures;

(3) The tendency of the vessel underway to squat and suffer impairment of maneuverability when there is small underkeel clearance;

(4) The comparative proportions of the vessel and the channel;

(5) The density of marine traffic;

(6) The damage that might be caused by the vessel's wake;

(7) The strength and direction of the current; and

(8) Any local vessel speed limit;

(q) The tests required by § 164.25 are made and recorded in the vessel's log; and

(r) The equipment required by this part is maintained in operable condition.

§ 164.15 Navigation underway: confined or congested waters.

In the confined or congested waters described in § 164.16, the master or person in charge of each vessel underway shall ensure that—

(a) Propulsion machinery can respond immediately through its full operating range;

(b) The engine room, including the main engine control station even if it is not in the engine room, is manned to operate the propulsion machinery as required by paragraph (a) of this section;

(c) Persons are available to rapidly anchor the vessel in an emergency; and

(d) The automatic pilot device is not in use.

§ 164.16 List of confined or congested waters. [Reserved]

§ 164.19 Requirements for vessels at anchor.

The master or person in charge of each vessel that is anchored shall ensure that—

(a) A proper anchor watch is maintained;

(b) Procedures are followed to detect a dragging anchor; and

(c) Whenever weather, tide, or current conditions are likely to cause the vessel's anchor to drag, action is taken to ensure the safety of the vessel, structures, and other vessels, such as being ready to veer chain, let go a second anchor, or get underway using the vessel's own propulsion or tug assistance.

§ 164.25 Tests before entering or getting underway.

No person may cause a vessel to enter into or get underway on the navigable waters of the United States unless, no more than 12 hours before entering or getting underway, the following equipment has been tested:

(a) Primary and secondary steering gear.

(b) All internal vessel control communications and vessel control alarms.

(c) Standby or emergency generator for as long as necessary to show proper functioning, including steady state temperature and pressure readings.

(d) Storage batteries for emergency lighting and power systems in vessel control and propulsion machinery spaces.

(e) Main propulsion machinery, ahead and astern.

§ 164.30 Charts, publications, and equipment: general.

No person may operate or cause the operation of a vessel unless the vessel has the charts, publications, and equipment as required by §§ 164.33 through 164.35 of this part.

§ 164.33 Charts and publications.

(a) Each vessel must have the following:

(1) Except as provided by paragraph (b) of this section, charts of the area to be transited published by the National Ocean Survey, U.S. Army Corps of Engineers, or a river authority that—

(i) are of a large enough scale and have enough detail to enable safe navigation of the area; and

(ii) are the most recently published and available for the area and currently corrected.

(2) Except as provided by paragraph (b) of this section, the most recent, available, and currently corrected copy of, or applicable extract from, each of the following publications, if it includes the area to be transited:

(i) U.S. Coast Pilot.

(ii) Coast Guard Light List.

(iii) Notices to Mariners published by Defense Mapping Agency Hydrographic Center and local Coast Guard Notice to Mariners.

(iv) Tide Tables published by the National Ocean Survey.

(v) Tidal Current Tables published by the National Ocean Survey, or river current publication issued by the U.S. Army, Corps of Engineers, or a river authority.

(b) A vessel may have a chart or publication published by a foreign government instead of a chart or publication required by this section if the chart or publication contains similar information to the U.S. Government publication or chart. A vessel bound from a foreign port to a port in the United States may have the latest charts and publications that were available at previous ports of call.

§ 164.35 Equipment: all vessels.

Each vessel must have the following:

(a) A marine radar system for surface navigation.

(b) An illuminated magnetic steering compass, mounted in a binnacle, that can be read at the vessel's main steering stand.

(c) A current magnetic compass deviation table or graph or compass comparison record for the steering compass, in the wheelhouse.

(d) A gyrocompass.

(e) An illuminated repeater for the gyrocompass required by paragraph (d) of this section that is at the main steering stand, unless that gyrocompass is il-

[1] See also 46 U.S.C. 672, which requires an able seaman at the wheel on U.S. vessels of 100 gross tons or more in narrow or crowded waters or during low visibility.

luminated and is at the main steering stand.

(f) An illuminated rudder angle indicator in the wheelhouse.

(g) The following maneuvering information prominently displayed on a fact sheet in the wheelhouse:

(1) For full and half speed, a turning circle diagram to port and starboard that shows the time and the distance of advance and transfer required to alter the course 90 degrees with maximum rudder angle and constant power settings.

(2) The time and distance to stop the vessel from full and half speed while maintaining approximately the initial heading with minimum application of rudder.

(3) For each vessel with a fixed propeller, a table of shaft revolutions per minute for a representative range of speeds.

(4) For each vessel with a controllable pitch propeller, a table of control settings for a representative range of speeds.

(5) For each vessel that is fitted with an auxiliary device to assist in maneuvering, such as a bow thruster, a table of vessel speeds at which the auxiliary device is effective in maneuvering the vessel.

(6) The maneuvering information for the normal load and normal ballast condition for—

(i) Calm weather—wind 10 knots or less, calm sea;

(ii) No current;

(iii) Deep water conditions—water depth twice the vessel's draft or greater; and

(iv) Clean hull.

(7) At the bottom of the fact sheet, the following statement:

WARNING

The response of the (name of the vessel) may be different from that listed above if any of the following conditions, upon which the maneuvering information is based, are varied:

(1) Calm weather—wind 10 knots or less, calm sea;

(2) No current;

(3) Water depth twice the vessel's draft or greater;

(4) Clean hull; and

(5) Intermediate drafts or unusual trim.

(h) An echo depth sounding device.

(i) A device that can continuously record the depth readings of the vessel's echo depth sounding device.

(j) Equipment on the bridge for plotting relative motion.

§ 164.51 Deviations from rules: emergency.

Except for the requirements of § 164.53 (b), in an emergency, any person may deviate from any rule in this part to the extent necessary to avoid endangering persons, property, or the environment.

§ 164.53 Deviations from rules and reporting: non-operating equipment.

(a) If during a voyage any equipment required by this part stops operating properly, the person directing the movement of the vessel may complete the voyage subject to the requirements in Part 160 of this chapter.

(b) If the vessel's radar, gyrocompass, echo depth sounding device, or primary steering gear stops operating properly, the person directing the movement of the vessel must report or cause to be reported that it is not operating properly to the nearest Captain of the Port or Coast Guard District Commander as soon as possible.

§ 164.55 Deviations from rules: continuing operation or period of time.

The Captain of the Port, upon written application, may authorize a deviation from any rule in this part if he determines that the deviation does not impair the safe navigation of the vessel under anticipated conditions and will not result in a violation of the rules for preventing collisions at sea. The authorization may be issued for vessels operating in the waters under the jurisdiction of the Captain of the Port for any continuing operation or period of time the Captain of the Port specifies.

§ 164.61 Marine casualty reporting and record retention.

When a vessel is involved in a marine casualty as defined in 46 CFR 4.03–1, the master or person in charge of the vessel shall—

(a) Ensure compliance with 46 CFR Subpart 4.05, "Notice of Marine Casualty and Voyage Records;" and

(b) Ensure that the voyage records required by 46 CFR 4.05–15 are retained for—

(1) 30 days after the casualty if the vessel remains in the navigable waters of the United States; or

(2) 30 days after the return of the vessel to a United States port if the vessel departs the navigable waters of the United States within 30 days after the marine casualty.

Effective date: This rule becomes effective on June 1, 1977.

The Coast Guard has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107.

Dated: January 26, 1977.

O. W. SILER,
Admiral, U.S. Coast Guard Commandant.

[FR Doc.77-2994 Filed 1-28-77;8:45 am]

Title 46—Shipping

CHAPTER I—COAST GUARD, DEPARTMENT OF TRANSPORTATION

[CGD 75-074]

Vessel Inspection Regulations

On September 16, 1975, a document was published in the FEDERAL REGISTER (40 FR 24585) proposing to amend the vessel inspection regulations in Chapter I of Title 46 of the Code of Federal Regulations. Interested parties were given an opportunity to submit, not later than October 31, 1975, data, views and recommendations regarding the proposed amendments. These regulations are interrelated with and therefore must be read together with the Navigation Safety Regulations (33 CFR 164) published in this FEDERAL REGISTER.

Several comments were received in response to this proposal. One commentor felt that the proposed rules concerning nautical publications should apply only to vessels on the high seas and international waters and should not apply to tankships operating exclusively on bays, sounds, and lakes other than the Great Lakes. Current rules require that these vessels meet the same navigation requirements as other tankships in ocean, coastwise, and Great Lakes service. There are sufficient hazards to safe navigation in all waters to warrant the required carriage of nautical publications for the intended voyage in addition to the presently required charts. For this reason, the comment has not been adopted.

One commentor expressed concern about the effect of the proposed rules regarding radar, gyrocompass, and radio directional finders on vessels solely navigating the Great Lakes. The requirements of these regulations for radar and gyrocompasses apply only to vessels operating in ocean or coastwise service and are not applicable to vessels navigating solely on the Great Lakes. However, the regulations in 33 CFR Part 164, which require radar and gyrocompasses, apply to vessels navigating on the Great Lakes. The proposed rules did not address radio directional finders. The Coast Guard did not intend to extend the requirements for radar, magnetic compasses, and gyrocompasses to barges. This was not clear in the proposed regulations. To clarify this, the following changes are made in the final regulations. The words "mechanically propelled" are added to §§ 77.09–1(a), 77.11–1 (a) and (b), 96.17–1 (a) and (b), 96.25–1(a), 167.40–40(a), 167.40–45 (a) and (b), 195.17(a), 195.19–1 (a) and (b), as appropriate. One commentor suggested that the term "helmsman" could be interpreted as limited to a specific position rather than a specific function and suggested the use of the term "qualified person". The Coast Guard agrees that the term "helmsman" could possibly be misinterpreted as the commentor suggested. For this reason, the term "qualified helmsman" has been changed to "competent person".

The references to Federal Communications Commission regulations for radar have been deleted to make these regulations consistent with the Navigation Safety Regulations in 33 CFR Part 164 which require marine radars.

In consideration of the foregoing, Chapter I of Title 46 of the Code of Federal Regulations is amended as follows:

PART 32—SPECIAL EQUIPMENT MACHINERY AND HULL REQUIREMENTS

§ 32.15–10 [Amended]

1. In 32.15–10, by deleting the words "mechanical or" in the first sentence.

2. By adding a new sentence at the end of § 32.15–20(a) to read as follows:

§ 32.15–20 Radiotelegraph and Radiotelephone—T/ALL.

(a) * * * All vessels on an international voyage that are required to carry a radiotelegraph or radiotelephone in accordance with Chapter IV of the Safety of Life at Sea Convention, 1960, must carry the International Code of Signals.

3. By adding a new § 32.15–30 to read as follows:

§ 32.15–30 Radar—T/OC.

All tankships of 1,600 gross tons and over in ocean or coastwise service must be fitted with a marine radar system for surface navigation. Facilities for plotting radar readings must be provided on the bridge.

4. By adding a new § 32.15–35 to read as follows:

§ 32.15–35 Magnetic Compass and Gyrocompass—T/OC.

(a) All tankships in ocean or coastwise service must be fitted with a magnetic compass.

(b) All tankships of 1,600 gross tons and over in ocean or coastwise service must be fitted with a gyrocompass in addition to the magnetic compass.

(c) Each tankship must have an illuminated repeater for the gyrocompass required under paragraph (b) that is at the main steering stand unless the gyrocompass is illuminated and is at the main steering stand.

PART 35—OPERATIONS

5. By revising § 35.20–1(d) to read as follows:

§ 35.20–1 Notice to Mariners; aids to navigation—T/OCLB.

* * * * * *

(d) As appropriate for the intended voyage, all vessels must carry adequate and up-to-date—

(1) Charts;
(2) Sailing directions;
(3) Coast pilots;
(4) Light lists;
(5) Notices to mariners;
(6) Tide tables;
(7) Current tables; and
(8) All other nautical publications necessary.[1]

6. By adding a new § 35.20–45 to read as follows:

§ 35.20–45 Use of Auto Pilot—T/ALL.

Except as provided in 33 CFR 164.15, when the automatic pilot is used in—

(a) Areas of high traffic density;
(b) Conditions of restricted visibility; and
(c) All other hazardous navigational situations, the master shall ensure that—

(1) It is possible to immediately establish manual control of the ship's steering;

(2) A competent person is ready at all times to take over steering control; and

(3) The changeover from automatic to manual steering and vice versa is made by, or under, the supervision of the officer of the watch.

7. By revising the first sentence of § 35.30–20 to read as follows:

§ 35.30–20 Emergency Equipment—TB/ALL.

(a) Two emergency outfits, stored for use in widely separated, accessibe locations, are required for the following:

* * * * * *

PART 77—VESSEL CONTROL AND MISCELLANEOUS SYSTEMS AND EQUIPMENT

8. By adding a new Subpart 77.09 to read as follows:

Subpart 77.09—Radar

§ 77.09–1 When required.

All mechanically propelled vessels of 1,600 gross tons and over in ocean or coastwise service must be fitted with a marine radar system for surface navigation. Facilities for plotting radar readings must be provided on the bridge.

9. By adding a new Subpart 77.11 to read as follows:

Subpart 77.11—Magnetic Compass and Gyrocompass

§ 77.11–1 When required.

(a) All mechanically propelled vessels in ocean, coastwise or Great Lakes service must be fitted with a magnetic compass.

(b) All mechanically propelled vessels 1,600 gross tons and over in ocean or coastwise service must be fitted with a gyrocompass in addition to the magnetic compass.

(c) Each vessel must have an illuminated repeater for the gyrocompass required under paragraph (b) that is at the main steering stand unless the gyrocompass is illuminated and is at the main steering stand.

10. By adding a new paragraph (b) to § 77.13–1 to read as follows:

Subpart 77.13—Radiotelegraph and Radiotelephone

§ 77.13–1 Required by Federal Communications Commission.

* * * * * *

(b) All vessels on an international voyage which are required to carry a radiotelegraph or radiotelephone installation in accordance with Chapter IV of the Safety of Life at Sea Convention, 1960, must carry the International Code of Signals.

§ 77.27–1 [Amended]

11. In 77.27–1, by deleting the words "mechanical or" from the first sentence.

PART 78—OPERATIONS

12. By revising § 78.05–5 to read as follows:

§ 78.05–5 Charts and Nautical Publications.

As appropriate for the intended voyage, all vessels except barges, ferryboats and vessels operating exclusively on rivers, must carry adequate and up-to-date—

(a) Charts;
(b) Sailing directions;
(c) Coast pilots;
(d) Light lists;
(e) Notices to mariners;
(f) Tide tables;
(g) Current tables; and
(h) All other nautical publications necessary.[1]

13. By adding a new Subpart 78.19 to read as follows:

Subpart 78.19—Auto Pilot

§ 78.19–1 Use of Auto Pilot.

Except as provided in 33 CFR 164.15, when the automatic pilot is used in—

(a) Areas of high traffic density;
(b) Conditions of restricted visibility; and
(c) All other hazardous navigational situations, the master shall ensure that—

(1) It is possible to immediately establish manual control of the ship's steering;

(2) A competent person is ready at all times to take over steering control; and

(3) The changeover from automatic to manual steering and vice versa is made by, or under, the supervision of the officer of the watch.

PART 96—VESSEL CONTROL AND MISCELLANEOUS SYSTEMS AND EQUIPMENT

14. By adding a new paragraph (b) to § 96.13–1 to read as follows:

Subpart 96.13—Radiotelegraph and Radiotelephone

§ 96.13–1 Required by Federal Communications Commission.

* * * * * *

(b) All vessels on an international voyage which are required to carry a radiotelegraph or radiotelephone installation in accordance with Chapter IV of the Safety of Life at Sea Convention, 1960, must carry the International Code of Signals.

15. By adding a new Subpart 96.17 to read as follows:

Subpart 96.17—Magnetic Compass and Gyrocompass

§ 96.17–1 When required.

(a) All mechanically propelled vessels in ocean or coastwise service must be fitted with a magnetic compass.

(b) All mechanically propelled vessels of 1,600 gross tons and over in ocean or coastwise service must be fitted with a gyrocompass in addition to the magnetic compass.

(c) Each vessel must have an illuminated repeater for the gyrocompass required under paragraph (b) that is at the main steering stand unless the gyrocompass is illuminated and is at the main steering stand.

16. By adding a new Subpart 96.25 to read as follows:

[1] For United States vessels in or on the navigable waters of the United States, see 33 CFR 164.33.

Subpart 96.25—Radar

§ 96.25–1 When required.

All mechanically propelled vessels of 1,600 gross tons and over in ocean or coastwise service must be fitted with a marine radar system for surface navigation. Facilities for plotting radar readings must be provided on the bridge.

§ 96.27–1 [Amended]

17. In 96.27–1, by deleting the words "mechanical or" in the first sentence of paragraph (a).

18. By revising § 96.35–15 to read as follows:

§ 96.35–15 Stowage.

The fireman's outfits must be stored in widely separated, accessible locations.

PART 97—OPERATIONS

19. By revising § 97.05–5(a) to read as follows:

§ 97.05–5 Charts and nautical publications.

As appropriate for the intended voyage, all vessels except barges, vessels operating exclusively on rivers, and motorboats other than those certificated for ocean or coastwise route, must carry adequate and up-to-date—

(a) Charts;
(b) Sailing directions;
(c) Coast pilots;
(d) Light lists;
(e) Notices to mariners;
(f) Tide tables;
(g) Current tables; and
(h) All other nautical publications necessary.[1]

20. By adding a new Subpart 97.16 to read as follows:

Subpart 97.16—Auto Pilot

§ 97.16–1 Use of auto pilot.

Except as provided in 33 CFR 164.15, when the automatic pilot is used in—

(a) Areas of high traffic density;
(b) Conditions of restricted visibility; and
(c) All other hazardous navigational situations, the master shall ensure that—

(1) It is possible to immediately establish manual control of the ship's steering;

(2) A competent person is ready at all times to take over steering control;

(3) The changeover from automatic to manual steering and vice versa is made by, or under, the supervision of the officer of the watch.

PART 167—PUBLIC NAUTICAL SCHOOL SHIPS

§ 167.40–20 [Amended]

21. In § 167.40–20, by deleting the words "mechanical or" from the first and second sentences.

22. By adding a new § 167.40–40 to read as follows:

§ 167.40–40 Radar.

All mechanically propelled vessels of 1,600 gross tons and over in ocean or coastwise service must be fitted with a marine radar system for surface navigation. Facilities for plotting radar readings must be provided on the bridge.

23. By adding a new § 167.40–45 to read as follows:

§ 167.40–45 Magnetic compass and gyrocompass.

(a) All mechanically propelled vessels in ocean or coastwise service must be fitted with a magnetic compass.

(b) All mechanically propelled vessels of 1,600 gross tons and over in ocean or coastwise service must be fitted with a gyrocompass in addition to the magnetic compass.

(c) Each vessel must have an illuminated repeater for the gyrocompass required under paragraph (b) that is at the main steering stand unless the gyrocompass is illuminated and is at the main steering stand.

24. By adding a new § 167.65–35 to read as follows:

§ 167.65–35 Use of auto pilot.

Except as provided in 33 CFR 164.15, when the automatic pilot is used in—

(a) Areas of high traffic density;
(b) Conditions of restricted visibility; and
(c) All other hazardous navigational situations, the master shall ensure that—

(1) It is possible to immediately establish human control of the ship's steering;

(2) A competent person is ready at all times to take over steering control; and

(3) The changeover from automatic to manual steering and vice versa is made by, or under, the supervision of the officer of the watch.

25. By revising § 167.65–45(d) to read as follows:

§ 167.65–45 Notice to mariners; aids to navigation.

* * * * *

(d) As appropriate for the intended voyage, all nautical school ships must carry adequate and up-to-date—

(1) Charts;
(2) Sailing directions;
(3) Coast pilots;
(4) Light lists;
(5) Notices to mariners;
(6) Tide tables;
(7) Current tables; and
(8) All other nautical publications necessary.[1]

PART 184—VESSEL CONTROL AND MISCELLANEOUS SYSTEMS AND EQUIPMENT

26. By adding a new paragraph (c) to § 184.25–1 to read as follows:

Subpart 184.25—Radio

§ 184.25–1 Requirements of the Federal Communications Commission.

* * * * *

(c) All vessels on an international voyages which are required to carry a radiotelegraph or radiotelephone installation in accordance with Chapter IV of the Safety of Life at Sea Convention, 1960, must carry the International Code of Signals.

PART 185—OPERATIONS

27. By adding a new § 185.20–30 to read as follows:

Subpart 185.20—Miscellaneous Operating Requirements

§ 185.20–30 Use of auto pilot.

Except as provided in 33 CFR 164.15, when the automatic pilot is used in—

(a) Areas of high traffic density;
(b) Conditions of restricted visibility; and
(c) All other hazardous navigational situations, the operator shall ensure that—

(1) It is possible to immediately establish manual control of the ship's steering;

(2) That a competent person is ready at all times to take over steering control; and

(3) The changeover from automatic to manual steering and vice versa is made by, or under, the supervision of the operator.

28. By adding a new § 185.20–35 to read as follows:

Subpart 185.20—Miscellaneous Operating Requirements

§ 185.20–35 Charts and nautical publications.

As appropriate for the intended voyage, all vessels must carry adequate and up-to-date—

(a) Charts;
(b) Sailing directions;
(c) Coast pilots;
(d) Light lists;
(e) Notices to mariners;
(f) Tide tables;
(g) Current tables; and
(h) All other nautical publications necessary.[1]

PART 195—VESSEL CONTROL AND MISCELLANEOUS SYSTEMS AND EQUIPMENT

29. By adding a new paragraph (b) to § 195.13–1 to read as follows:

Subpart 195.13—Radiotelegraph and Radiotelephone

§ 195.13–1 Required by Federal Communications Commission.

* * * * *

(b) All mechanically propelled vessels on an international voyage which are required to carry a radiotelegraph or radio telephone installation in accordance with Chapter IV of the Safety of Life at Sea Convention, 1960, must carry the International Code of Signals.

30. By adding a new Subpart 195.17 to read as follows:

[1] For United States vessels in or on the navigable waters of the United States, see 33 CFR 164.33.

Subpart 195.17—Radar

§ 195.17–1 When required.

All mechanically propelled vessels of 1,600 gross tons and over in ocean or coastwise service must be fitted with a marine radar system for surface navigation. Facilities for plotting radar readings must be provided on the bridge.

31. By adding a new Subpart 195.19 to read as follows:

Subpart 195.19—Magnetic Compass and Gyrocompass

§ 195.19–1 When required.

(a) All mechanically propelled vessels in ocean or coastwise service must be fitted with a magnetic compass.

(b) All mechanically propelled vessels of 1,600 gross tons and over in ocean or coastwise service must be fitted with a gyrocompass in addition to the magnetic compass.

(c) Each vessel must have an illuminated repeater for the gyrocompass required under paragraph (b) that is at the main steering stand unless the gyrocompass is illuminated and is at the main steering stand.

§ 195.27–1 [Amended]

32. In 195.27–1, by deleting the words "mechanical or" in the first sentence.

33. By adding a new sentence at the end of § 195.35–10(b) to read as follows:

§ 195.35–10 Fireman's outfit.

* * * * *

(b) * * * The fireman's outfits must be stored in widely separated, accessible locations.

PART 196—OPERATIONS

34. By revising § 196.05–5 to read as follows:

§ 196.05–5 Charts and nautical publications.

As appropriate for the intended voyage, all vessels except barges, and vessels operating exclusively on rivers, must carry adequate and up-to-date—

(a) Charts;
(b) Sailing directions;
(c) Coast pilots;
(d) Light lists;
(e) Notices to mariners;
(f) Tide tables;
(g) Current tables; and
(h) All other nautical publications necessary.[1]

(46 U.S.C. 375, 416, 49 U.S.C. 1655(b)(1); 49 CFR 1.46(b))

Effective date: These amendments are effective on June 1, 1977.

The Coast Guard has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A–107.

Dated: January 26, 1977.

O. W. SILER,
Admiral, U.S. Coast Guard,
Commandant.

[FR Doc.77–2995 Filed 1–28–77;8:45 am]

[1] For United States vessels in or on the navigable waters of the United States, see 33 CFR 164.33.

DEPARTMENT OF TRANSPORTATION

Coast Guard

[33 CFR Part 164]

[CGD 77-002]

PROPOSED NAVIGATION SAFETY REQUIREMENTS

LORAN–C on Vessels of 1600, Gross Tons or More

• *Purpose.* The Coast Guard is considering amending the navigation safety requirements by adding LORAN–C to the list of required equipment for vessels of 1600 gross tons or more. •

Written comments. Interested persons are invited to participate in this proposed rulemaking by submitting written data, views, or arguments to the Commandant (G–CMC/81), U.S. Coast Guard, Washington, D.C., 20590. Each person submitting a comment should include his name and address, identify this notice (CGD 77–002), and give reasons for support of his comment. Comments received before April 1, 1977 will be considered before final action is taken on this proposal. Copies of all written comments received will be available for examination by interested persons in Room 8117, Department of Transportation, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. The proposal may be changed in light of the comments received.

Public Hearing. The Coast Guard will hold a public hearing on March 4, 1977, beginning at 10:00 a.m., in Room 2232, Department of Transportation, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. An additional public hearing will be held on March 16, 1977, beginning at 9:30 a.m., in the Marine Room, Travel Lodge at The Wharf, 250 Beach Street, San Francisco, California. Interested persons are invited to attend the hearing and present oral or written statements on this proposal. It is requested that anyone desiring to make oral comments at either hearing notify the Commandant (G–CMC/81), U.S. Coast Guard, Washington, D.C. 20590, at least 10 days before the scheduled date of the public hearing and specify the approximate length of time needed for the presentation. It is urged that a written summary or copy of the oral presentation be included with the request.

Summary of Proposal. New Navigation Safety Regulations (Part 164) are being published on page 5956 of this issue of the FEDERAL REGISTER. When the Navigation Safety Regulations were proposed in the May 6, 1976, issue of the FEDERAL REGISTER (41 FR 18766), the Coast Guard stated that the purposes of the rules would be to prevent vessel collisions and groundings and protect the navigable waters from environmental harm resulting from vessel collisions and groundings. The Coast Guard noted a concern about some vessels that do not currently approach an appropriate level of navigation practice and equipment. That concern has been intensified by recent tanker groundings. Some of these might not have occurred if the vessels involved had been making use of the best navigational tools available.

The Department of Transportation maintains a National Plan for Navigation. It is the official source of navigation policy and plans for the Department. The April, 1972, edition of the National Plan for Navigation was amended by an Annex published as a Notice in the July 19, 1974, issue of the FEDERAL REGISTER (39 FR 26468). The amendment announced the designation and implementation of LORAN–C as the government-provided radionavigation system for the U.S. maritime coastal confluence zone. The coastal confluence zone is defined as the seaward approaches to land, the inner boundary of which is the harbor entrance, and the outer boundary of which is 50 nautical miles offshore or the edge of the continental shelf (100 fathom curve), whichever is greater.

The July, 1974, Annex describes in detail how LORAN–C was selected after consideration of the alternative systems, LORAN–A, Differential Omega, and Decca.

The LORAN–C service in the coastal confluence zone is designed to provide 95% assurance that a vessel can fix its position to an accuracy of ¼ mile. The navigation system accuracy requirement has been established so that a vessel could be navigated safely along a track to its destination or within its designated shipping lane.

The existing LORAN–C system is being expanded to provide coverage for the entire U.S. coastal confluence zone and the Great Lakes. Overseas stations will continue to be operated by the Coast Guard in response to the requirements of the Department of Defense. Existing system coverage and new Pacific Coast service, which will become available by mid-1977, is depicted in the LORAN–C Coverage Diagram, Defense Mapping Agency Hydrographic Center Chart No. 5130. Basically, LORAN–C presently provides ¼ nautical mile accuracy over about two-thirds of the U.S. East Coast waters, throughout the Bering Sea, and in parts of the Hawaiian Islands and surrounding waters.

The expanded system is to provide coverage, with a fix accuracy of ¼ nautical mile or better, throughout the Great Lakes and in all U.S. coastal waters (out to 200 miles or more) except northern Alaskan waters and some Hawaiian areas. Scheduled dates for the availability of expanded service are approximately:

West Coast	Spring, 1977
Gulf of Alaska	Spring, 1977
East Coast	Expanded service: Summer, 1978.
East Coast	Complete service: Summer, 1979.
Gulf of Mexico	Summer, 1978
Great Lakes	Early 1980

Since, as of Spring 1977, LORAN–C will provide coverage of a major fraction of the coastal confluence zone, since the system is programmed for future expansion, and since there is a need to upgrade the ability of vessels entering the navigable waters of the U.S. to be informed accurately and continuously of their progress along a track, the Coast Guard has concluded that the use of LORAN–C should be a requirement for certain vessels entering U.S. waters. While this rule, of course, only applies on the navigable waters of the United States, the Coast Guard feels that operators of vessels with LORAN–C receivers installed will avail themselves of the benefits of the system in the offshore approaches, as well as in the overseas coverage areas. An incidental benefit will be the ability to navigate with greater confidence through areas of outer continental shelf resource exploration and production.

The Coast Guard randomly sampled navigation practice and equipment in mid-1975. Of the vessels boarded, 40% were equipped with LORAN–C receivers. Vessels under U.S. flag comprised 21% of the sample; 70% of these were equipped with LORAN–C. This 70% figure included both tankers and freighters. With respect to vessels sailing under foreign flag, 39% of foreign freighters were equipped with LORAN–C, and only 24% of foreign tankers were so equipped. Considering the reasonable marketing costs of receivers, it would not appear that adequate use is being made of this navigational aid.

While the Coast Guard proposes to require LORAN–C receivers on all vessels of 1600 or more gross tons that enter U.S. waters, it recognizes that a requirement of this nature would place a sudden surge on manufacturers' capabilities and would cause a severe backlog problem for those manufacturers. Accordingly, the Coast Guard proposes that if the amendment is adopted, it will become effective for each category of vessel at a staggered interval. Because the tank vessel segment of the industry is somewhat smaller than the freighter segment, and because the ability to accurately navigate tankers has assumed much greater importance of late, it is proposed that this segment of the industry would be required to comply with the regulation at the earliest time, such as 120 days after publication of the rule. It is proposed to require the remaining vessels to comply one year after publication of the rule.

In consideration of the foregoing, it is proposed to revise § 164.35 of Title 33, Code of Federal Regulations, by adding a new paragraph (k) to read as follows:

§ 164.35 Equipment: all vessels.

* * * * *

(k) A LORAN–C receiver.

(Sec. 104, 86 Stat. 427 (33 U.S.C. 1224); sec. 201(3), 86 Stat. 428, as amended (46 U.S.C. 391a(3)); 49 CFR 1.46 (n)(4).)

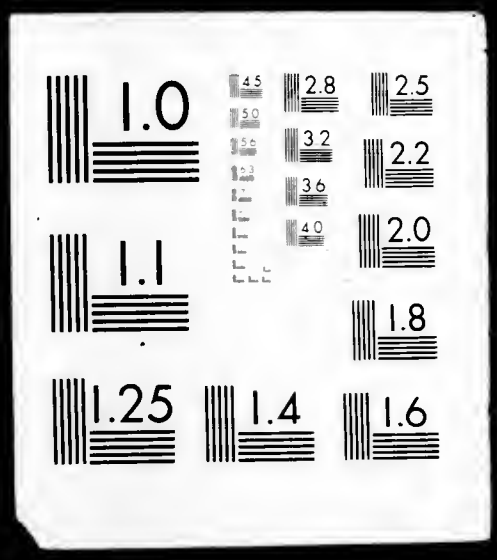
The Coast Guard has determined that this document does not contain a major rule requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A–107.

Dated: January 26, 1977.

A. F. FUGARO,
Rear Admiral, U.S. Coast Guard Chief, Office of Marine Environment and Systems.

[FR Doc.77-2996 Filed 1-28-77;8:45 am]

RESOLUTION CHART



100 MILLIMETERS

INSTRUCTIONS Resolution is expressed in terms of the lines per millimeter recorded by a particular film under specified conditions. Numerals in chart indicate the number of lines per millimeter in adjacent "T-shaped" groupings.

In microfilming, it is necessary to determine the reduction ratio and multiply the number of lines in the chart by this value to find the number of lines recorded by the film. As an aid in determining the reduction ratio, the line above is 100 millimeters in length. Measuring this line in the film image and dividing the length into 100 gives the reduction ratio. Example: the line is 20 mm. long in the film image, and $100 \div 20 = 5$.

Examine "T-shaped" line groupings in the film with microscope, and note the number adjacent to finest lines recorded sharply and distinctly. Multiply this number by the reduction factor to obtain resolving power in lines per millimeter. Example: 7.9 group of lines is clearly recorded while lines in the 10.0 group are not distinctly separated. Reduction ratio is 5, and $7.9 \times 5 = 39.5$ lines per millimeter recorded satisfactorily. $10.0 \times 5 = 50$ lines per millimeter which are not recorded satisfactorily. Under the particular conditions, maximum resolution is between 39.5 and 50 lines per millimeter.

Resolution, as measured on the film, is a test of the entire photographic system, including lens, exposure, processing, and other factors. These rarely utilize maximum resolution of the film. Vibrations during exposure, lack of critical focus, and exposures yielding very dense negatives are to be avoided.